

Agenda

Item #3



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Commission Members

From: Jonathan Wayne, Executive Director

Date: February 12, 2010

Re: Request by Cutler Campaign for Waiver of Late-Filing Penalty

Eliot R. Cutler is an independent candidate for governor in the 2010 elections. On the deadline of January 19, 2010, his campaign attempted to file the campaign finance report due by 11:59 p.m. That day, Justin Schair of the Cutler campaign was exceptionally diligent in attempting to file the report on time, but he encountered considerable technical problems. Mr. Schair has credibly stated to the Commission staff that as of 7:30 p.m. that evening, he believed that the report had been successfully filed.

Unfortunately, the Commission's electronic filing website did not record that the report was filed on January 19. On the following morning, the Commission staff telephoned Mr. Schair and asked him to try filing the report again. The report was filed at 8:30 a.m. on January 20.

The Commission staff recommends a complete waiver of the finding of violation and monetary penalty. We believe mitigating circumstances set forth in 21-A. M.R.S.A. §1020-A(2) are present that support a full waiver:

- "a bona fide effort was made to file the report" by the 11:59 p.m. deadline,
- as explained below, the campaign had no experience using the data upload feature of the Commission's website to file a report, and
- because the campaign finance report was publicly available at 8:30 a.m. on January 20, the public suffered no harm from the late disclosure.

Events on January 19, 2010

The Cutler campaign has hired a private company, Aristotle, Inc., to maintain records of its campaign finances and to file campaign finance reports with the Commission. Information of the campaign's contributions and expenditures are saved in software that Aristotle has developed for political campaigns. The company is based in Washington, D.C., and

operates a national political consulting business that includes campaign finance compliance.

Aristotle was attempting to use a data upload feature of the Commission's e-filing website that has been designed for larger campaigns. If a campaign is saving its contribution and expenditure information electronically in off-the-shelf software such as Microsoft Excel or Quickbooks, or customized software such as Aristotle's, those programs can export the data in electronic files known as CSV (comma separated value) files. When the files are complete, the campaign may upload the CSV files to the Commission's website electronically, rather than typing the information by hand onto the Commission's website. In order for this CSV upload function to work properly, campaigns need to have the data stored in exactly the right format.

As part of its services, Aristotle customizes its basic software to meet the technical requirements of dozens of states and municipalities that require electronic filing of campaign finance reports. Aristotle's software apparently had difficulty exporting the data of the Cutler campaign into the exact format that was required by the Commission.

In the mid-afternoon of January 19, Justin Schair began telephoning our office for assistance. He explained that Aristotle's software was having trouble getting the software in the correct format. The Commission's Candidate Registrar, Gavin O'Brien, spoke with Mr. Schair and Aristotle staff numerous times. Gavin stayed in the office until 6:30 p.m. on January 19 assisting the Cutler campaign and other candidates.

Shortly afterward, the Cutler campaign completed the electronic upload successfully. The campaign needed to take one remaining step, which was to click the "File Report" button on the Commission's website. Mr. Schair has stated that he specifically remembers pressing the button around 7:30 p.m. on January 19. For some reason, the system did not record that the report was filed at that time. We believe it is unlikely that the upload problems interfered with the operation of the "File Report" button, but we cannot rule that out as a possibility.

To document the good faith of the campaign in trying to have the data entered well before the January 19th deadline, Mr. Schair has enclosed e-mail correspondence between the Cutler campaign and Aristotle. As early as January 12 (one week before the deadline), Mr. Schair stated that "[w]e are under tremendous time constraints to get this report completed so that we are able to review all of the information ... before it is submitted." He has also included e-mails documenting the trouble the campaign experienced with the Aristotle software on January 19.

Staff Recommendation

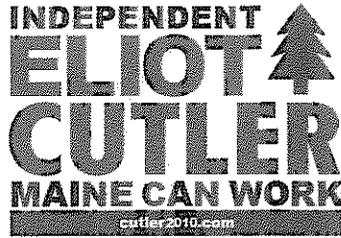
Based on the formula in 21-A M.R.S.A. §1020-A(4), the amount of the preliminary penalty for the one-day late-filing would be \$2,664.85, but the maximum penalty for the late January 19, 2010 report is \$1,000 under 21-A M.R.S.A. §1020-A(5-A)(C).

There is no question in our mind that the Cutler campaign fully intended to file the report well before the 11:59 p.m. deadline. Therefore, the Commission staff recommends a complete waiver of the finding of violation and monetary penalty. We believe mitigating circumstances set forth in 21-A. M.R.S.A. §1020-A(2) are present that warrant a full waiver:

- “[A] bona fide effort was made to file the report” by the 11:59 p.m. deadline.
- The campaign had no experience using the data upload feature of the Commission’s website. The January 19, 2010 campaign finance report was the first report filed by the Cutler campaign.
- Because the campaign finance report was available to the public at 8:30 a.m. on January 20, the public suffered no harm from the late disclosure.

Mr. Schair is expected to attend the February 25, 2010 to answer any questions that you have.

Thank you for your consideration of this memo.



RECEIVED
FEB 1 2010
MAINE ETHICS COMMISSION

January 29, 2010

Commission on Governmental Ethics & Election Practices,
State of Maine
135 State House Station
Augusta, Maine 04330
(VIA CERTIFIED MAIL)

RE: January Pre-Election Campaign Finance Report

Dear Commission Members:

The Cutler 2010 committee received notice from the Commission on Governmental Ethics and Election Practices on January 26, 2010 that our 2010 Pre-Election Semiannual Finance Report is considered late.

On behalf of the campaign, I want to assure you that we made a bona fide attempt to file the report before deadline and prior to 5 p.m. on the due date so we could confirm receipt with the Commission office. Due to an extensive and ongoing series of technical issues involving our campaign software, Aristotle 360, we were not able to upload our data to the Commission's website until 7:30 p.m. on January 19th. I was the individual who filed the report on behalf of the campaign that evening and it was my understanding that our report had successfully filed online.

For nearly two weeks leading up to our report filing, we were working to solve a number of problems with the Aristotle 360 software, in cooperation with their technical support, to ensure that there would be no problems preventing us from filing the finance report on time. On January 12, 2010, a full week before the filing deadline, our campaign manager expressed our concerns to Aristotle in an email that read in part: "As the report deadline is looming, we are getting very nervous about our ability to file properly and on time. Anything you can do to help us resolve these problems ASAP would be much appreciated."

While we continued to work with Aristotle on a daily basis leading up to the filing date, more issues arose as we attempted to file the report during the day of January 19th. These were issues we only could have encountered once we actually attempted to file the report online. Aristotle was directly in touch with Gavin O'Brien of the Commission staff, as was I, throughout the day as we sought to remedy issues with the CSV files. Nearly all of these issues are documented in e-mail communications, many of which Gavin received. After repeated attempts to upload and file the CSV files containing the relevant data, it appeared that the report finally had been properly filed that evening.

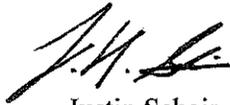
I was notified by Candidate Registrar, Sandra Thompson, just after 8:00 a.m. on January 20th that the report, in fact, had not been properly received. We immediately filed the report again, and this time it was accepted at 8:30 a.m.

We are grateful to the Commission staff for their assistance and understanding throughout this process in the days leading up to the filing and for recommending to you that any penalties for a late filing be waived. I believe they know how committed we were to filing an accurate and timely report.

On behalf of the Cutler 2010 campaign, I respectfully request that the Commission accept the staff recommendation to waive the penalty given that our failure to file on time was due to mitigating circumstances, that we made a substantial good-faith effort to file the report on time, and that ultimately no harm to the public was caused as a result of our filing getting delayed until 8:30 a.m. the morning after the deadline.

Thank you for your consideration and understanding of this situation. I can assure you that we are continuing to work with our software vendor to resolve any lingering issues and that if they cannot be resolved, we will find another vendor that will be able to ensure that we can file our reports properly in the future.

Sincerely,



Justin Schair
Finance Director
Cutler 2010

Enclosures: E-Mail correspondence between Cutler 2010 Campaign staff and Aristotle 360 technical support

CC: Jonathan Wayne, Executive Director,
State of Maine Commission on Governmental Ethics & Election Practices

Robert C.S. Monks, Treasurer, Cutler 2010

Justin Schair

From: CompleteCampaigns.com Support [support@completecampaigns.com]
Sent: Tuesday, January 12, 2010 17:29
To: justin@cutler2010.com
Subject: Re: (Case 99656) Cutler 2010 - ME Filing Issues

Hi Justin,

Yes, we spoke yesterday and you also spoke to Jennifer on my team. To clarify, these are the issues that you're having with ME Filing.

1. Unable to populate the Schedule A1 fields with in-kind contributions.
2. Input remarks on Schedule B for all expenditures.
3. The report is being generated is the Maine 2008 Finance Report. We need to file the 2010 Maine Finance Report.
4. Populating the "OFFICE SOUGHT" and "DISTRICT NUMBER/COUNTY" fields on the first page.

On issues 1 & 2, we have been working since you notified us of this issue with our compliance and development department as a top priority. As soon as we modified the report to include this information, we will let you know.

I will take a look at issues 3 & 4 and see what I can do to get you a solution for these issues.

I understand the time constraint you are working under. We have been diligently working on these issues to resolve them.

Jessica Hilt
Aristotle, Inc.
CompleteCampaigns.com®
support@aristotle.com

>
>From: Justin Schair [mailto:justin@cutler2010.com]
>Sent: Tuesday, January 12, 2010 1:43 PM
>To: Jessica Hilt
>Cc: Merideth A. Houseman; Ted O'Meara
>Subject: Aristotle 360 issues
>Importance: High

>
>
>
>Dear Jessica,
>
>
>
>I believe I spoke to you yesterday. As you probably know, we have a
>couple of critical problems with Aristotle 360 relating to the Maine
>Finance Report. We are unable to populate the Schedule A1 fields with
>in-kind contributions. Also, Maine requires remarks for only a few

>types of expenditures in Schedule B, however, remarks are required if a
>reimbursement was involved for all expenditures. Therefore, we need to
>be able to input remarks on Schedule B for all expenditures.

>
>
>
>Finally, I have just noticed the report that is being generated is the
>Maine 2008 Finance Report. We need to file the 2010 Maine Finance
>Report. I am hopeful the reports are similar enough that were not
>running into new problems. We need guidance on how to populate the
>"OFFICE SOUGHT" and "DISTRICT NUMBER/COUNTY" fields on the first page as
>well (assuming those fields appear on the 2010 report).

>
>
>
>We are under tremendous time constraints to get this report completed so
>we are able to review all of the information and put it in front of the
>necessary people before it is submitted. If it would be easier to
>discuss this, please call me on my mobile at 207-831-5325.

>
>
>
>Thank you for your help,

>
>
>
>Justin

>
>
>
>Justin Schair

>
>
>
>Cutler 2010
>
>P.O. Box 15277 | Portland, Maine | 04112
>
>office (207) 699-4401 | mobile (207) 831-5325
>
>www.cutler2010.com

>
>
>
>Check out this great video <<http://www.youtube.com/user/EliotCutler>> of
>Eliot!

>
>
>
>

Justin Schair

From: Merideth A. Houseman [Merideth.Houseman@ARISTOTLE.com]
Sent: Tuesday, January 12, 2010 15:51
To: Ted O'Meara
Cc: Justin Schair
Subject: RE: Aristotle 360 issues

Ted, I am so sorry! I am staying on top of them and will call up there once again. Please feel free to contact or call the Director of Support Jessica Hilt. Her number is 858-634-5106 ext 223 and her email is Jessica.Hilt@aristolte.com I completely and totally understand your frustration and am working on getting this resolved. Jessica is the Director so contacting her may help as well.

Sincerely,
Merideth

Merideth Houseman

Political Sales
Aristotle/Complete Campaigns
770-955-3113 Direct
1-800-296-2747 toll free
404-375-4384 Cell
1-800-243-4401 Technical Support
www.aristotle.com
www.completecampaigns.com
merideth.houseman@aristotle.com

From: Ted O'Meara [mailto:ted@cutler2010.com]
Sent: Tuesday, January 12, 2010 3:44 PM
To: Merideth A. Houseman
Cc: 'Justin Schair'
Subject: FW: Aristotle 360 issues

Merideth – As you can see, we are still having some serious problems with the software. What concerns me most is that we that we are paying for a program that was purported to be fully compatible with Maine Ethics Commission reporting, but obviously is not. As the report deadline is looming, we are getting very nervous about our ability to file properly and on time. Anything you can do to help us resolve these problems ASAP would be much appreciated.

■ Ted

Ted O'Meara
Cutler 2010
P.O. Box 15277
Portland, ME 04112

(207) 699-4401
(207) 653-2392 (cell)

www.cutler2010.com

Check out this great [video](#) of Eliot!

From: Justin Schair [mailto:justin@cutler2010.com]
Sent: Tuesday, January 12, 2010 3:14 PM

To: Ted O'Meara
Subject: Aristotle 360 issues

Ted,

There are two critical issues with Aristotle 360 related to the Maine finance report for which I have not received responses. It appears these are technical flaws with the Aristotle 360 software, but it is possible we need further instruction on how to input information differently.

The issues are:

- 1) The purpose/remarks fields in schedule B needs to be filled in for expenditures that were paid by a staff member or consultant, even if that particular expenditure type generally requires no remark. [We let Aristotle support know about this on Friday 1/8/10, they said we would have a resolution by today – 1/12/10 – at the latest.]
- 2) Schedule A1 of the finance reports is where in-kind contributions are recorded. Though there are a number of in-kind contributions save in Aristotle, they are not reflected into the report. [Aristotle support was made of this issue yesterday and they said they were looking into it.]

These problems are holding up the review and, ultimately the submission, of the Maine Finance Report.

Thank you,

Justin

Justin Schair

Cutler 2010

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From: Merideth A. Houseman [Merideth.Houseman@ARISTOTLE.com]
Sent: Wednesday, January 13, 2010 16:44
To: Ted O'Meara
Cc: Justin Schair
Subject: RE: Aristotle 360 issues

Ted, I agree that this is not acceptable. I am doing everything in the world and staying on top of them to get this resolved. I can only suggest that you email your concerns and issues with 360 and lack of support to John Aristotle Phillips, he is the owner of the company. I say this because I understand that you are frustrated and I want you to know that I do care and I am trying to get them resolved. Yes, I am your Sales Rep and I totally sold this to you in good faith. I have been with Aristotle for over 12 years and I can promise you that this report issue is not typically how we conduct business and I think it is totally unacceptable!!!!

I am giving you this information in confidence because I feel your pain and I am so sorry!!!!!!

Sincerely,
Merideth

Merideth Houseman

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merideth.houseman@aristotle.com

From: Ted O'Meara [mailto:ted@cutler2010.com]
Sent: Wednesday, January 13, 2010 4:23 PM
To: Merideth A. Houseman
Cc: 'Justin Schair'
Subject: RE: Aristotle 360 issues

Merideth – We have really reached the breaking point on these issues. Aside from all the other problems we realized that Aristotle had the wrong report (2008 instead of 2010) in the system. Now we are told we have to choose between being able to run a paper report or file electronically. We want to file electronically, but we also need to review a hard copy first. I think you can understand that. We can't and shouldn't have to choose between the two. This is just unacceptable and is causing us to seriously re-think our decision to go with Aristotle. I know that you do not handle tech support, but we purchased this program through you and I would appreciate anything you can do to get these issues fixed now.

- Ted

Ted O'Meara
Cutler 2010
P.O. Box 15277
Portland, ME 04112

(207) 699-4401
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These problems are holding up the review and, ultimately the submission, of the Maine Finance Report.

Thank you,

Justin

Justin Schair

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Justin Schair

From: O'Brien, Gavin [Gavin.O'Brien@maine.gov]
Sent: Tuesday, January 19, 2010 16:12
To: Justin Schair
Cc: Ted O'Meara
Subject: RE: Cutler 2010 - Maine Finance Report/Aristotle

I did get a call from Jenifer Broadbent and she said she would forward those csv files to me. Usually I can tell fairly easily what is preventing them from being accepted by the system. I don't mind filing the report for you, but without having seen the files, I don't know that they constitute a complete report or whether there's anything you need to do on your end. Feel free to send them to me directly if you have them.

From: Justin Schair [mailto:justin@cutler2010.com]
Sent: Tuesday, January 19, 2010 3:39 PM
To: O'Brien, Gavin
Cc: Ted O'Meara
Subject: Cutler 2010 - Maine Finance Report/Aristotle

Dear Gavin,

I just want to confirm that Jennifer Broadbent from Aristotle was, or will be, in touch with you regarding the issues we're having uploading the CSV files through the Maine Ethics Commission web site. I have sent those file to Jennifer via e-mail. It is my understanding that she will electronically submit those to you.

So that I know we're in the clear for submitting the Cutler 2010 Finance Report on time, can you let me know this is okay?

I have copied our Campaign Manager, Ted O'Meara, so is in the loop on this matter.

Again, thank you for all of your help and attention over the past week.

My best,

Justin

Justin Schair

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Justin Schair

From: O'Brien, Gavin [Gavin.O'Brien@maine.gov]
Sent: Tuesday, January 19, 2010 16:33
To: Justin Schair
Cc: compliance@aristotle.com
Subject: RE: Cutler 2010 - Maine Finance Report/Aristotle

Two things I noticed on Schedule A is that it's missing all the contributor last names that should go in the "contributor_name" field. Also, there should be a comma before the header for the final column, "election_type", so that it appears in the file as "Contribution_amt,election_type" instead of "Contribution_amtelection_type". I will review Schedule B and let you know what I can figure out.

From: Justin Schair [mailto:justin@cutler2010.com]
Sent: Tuesday, January 19, 2010 4:16 PM
To: O'Brien, Gavin
Subject: RE: Cutler 2010 - Maine Finance Report/Aristotle

Hi Gavin,

We had one error, which she though she corrected. Now when I try to submit them through the Ethics Commission Web site, I'm getting a message that says: "Line # 1 - Wrong/Invalid file is selected for uploading this schedule. Please select proper file for uploading."

These CSV files are being generated by Aristotle, and then I'm downloading them to my computer and trying to upload them to you. I have attached both files.

Please let me know if this is adequate for submission. I have called Jennifer back at Aristotle to try to troubleshoot, but have not heard back from her as of yet.

Thanks again.

Justin

Justin Schair

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Sent: Tuesday, January 19, 2010 16:12
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Again, thank you for all of your help and attention over the past week.

My best,

Justin

Justin Schair

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Justin Schair

From: O'Brien, Gavin [Gavin.O'Brien@maine.gov]
Sent: Tuesday, January 19, 2010 16:42
To: Jenifer Broadbent
Cc: Justin Schair
Subject: RE: (Case 100680) Maine Finance Report - Schedules A and B

I believe that error was caused by the header issue. I'm not getting it now when I try to upload the file you attached. Are you sure the Schedule A csv file is being uploaded to the Schedule A/A1 upload screen and not Schedule B (or vice versa)? It indicates the schedule in the upper-left corner of the screen.

-----Original Message-----

From: Jenifer Broadbent [mailto:compliance@aristotle.com]
Sent: Tuesday, January 19, 2010 4:37 PM
To: O'Brien, Gavin
Subject: Fw: (Case 100680) Maine Finance Report - Schedules A and B

Gavin,

Here are the 2 uploads that you & I spoke about. I was able to resolve one of the issues (the header line was incorrect), but now the client is getting the following error when attempting to upload Schedule A:

Line # 1 - Wrong/Invalid file is selected for uploading this schedule.
Please select proper file for uploading.

Please clarify.

Thanks!
Jenifer Broadbent
Phone: 888.217.9600 x.240
Fax: 858.634.5111

Justin Schair

From: O'Brien, Gavin [Gavin.O'Brien@maine.gov]
Sent: Tuesday, January 19, 2010 16:45
To: Jenifer Broadbent
Cc: Justin Schair
Subject: RE: (Case 100680) Maine Finance Report - Schedules A and B

The only thing preventing Schedule B from uploading is that on line 46 there's a consulting payment that requires a remark but no remark is included.

-----Original Message-----

From: Jenifer Broadbent [mailto:compliance@aristotle.com]
Sent: Tuesday, January 19, 2010 4:37 PM
To: O'Brien, Gavin
Subject: Fw: (Case 100680) Maine Finance Report - Schedules A and B

Gavin,

Here are the 2 uploads that you & I spoke about. I was able to resolve one of the issues (the header line was incorrect), but now the client is getting the following error when attempting to upload Schedule A:

Line # 1 - Wrong/Invalid file is selected for uploading this schedule.
Please select proper file for uploading.

Please clarify.

Thanks!
Jenifer Broadbent
Phone: 888.217.9600 x.240
Fax: 858.634.5111

Justin Schair

From: O'Brien, Gavin [Gavin.O'Brien@maine.gov]
Sent: Tuesday, January 19, 2010 16:47
To: Justin Schair; Jenifer Broadbent
Subject: RE: (Case 100680) Maine Finance Report - Schedules A and B

Yes, that's correct; you're still getting that error message when you try to upload the "Cutler_CNDA.csv" file? When I did it just now, I get error messages about the lack of last names but nothing about "Wrong/Invalid file".

-----Original Message-----

From: Justin Schair [mailto:justin@cutler2010.com]
Sent: Tuesday, January 19, 2010 4:45 PM
To: O'Brien, Gavin; 'Jenifer Broadbent'
Subject: RE: (Case 100680) Maine Finance Report - Schedules A and B

Gavin,

We have two CSV files, one is A/A1 the other is B. The State Web site lists separate Schedule A and schedule A1 submit option, though there is only one file. Therefore, I'm submitting the A/A1 CSV file as Schedule A.

Is this correct?

Justin Schair

Cutler 2010

P.O. Box 15277 | Portland, Maine | 04112 office (207) 699-4401 | mobile (207) 831-5325
www.cutler2010.com

Check out this great video of Eliot!

-----Original Message-----

From: O'Brien, Gavin [mailto:Gavin.O'Brien@maine.gov]
Sent: Tuesday, January 19, 2010 16:42
To: Jenifer Broadbent
Cc: Justin Schair
Subject: RE: (Case 100680) Maine Finance Report - Schedules A and B

I believe that error was caused by the header issue. I'm not getting it now when I try to upload the file you attached. Are you sure the Schedule A csv file is being uploaded to the Schedule A/A1 upload screen and not Schedule B (or vice versa)? It indicates the schedule in the upper-left corner of the screen.

-----Original Message-----

From: Jenifer Broadbent [mailto:compliance@aristotle.com]
Sent: Tuesday, January 19, 2010 4:37 PM
To: O'Brien, Gavin
Subject: Fw: (Case 100680) Maine Finance Report - Schedules A and B

Gavin,

Here are the 2 uploads that you & I spoke about. I was able to resolve one of the issues (the header line was incorrect), but now the client is getting the following error when attempting to upload Schedule A:

Line # 1 - Wrong/Invalid file is selected for uploading this schedule.
Please select proper file for uploading.

Please clarify.

Thanks!

Jenifer Broadbent

Phone: 888.217.9600 x.240

Fax: 858.634.5111

Justin Schair

From: O'Brien, Gavin [Gavin.O'Brien@maine.gov]
Sent: Tuesday, January 19, 2010 17:14
To: Justin Schair; Jenifer Broadbent
Subject: RE: (Case 100680) Maine Finance Report - Schedules A and B

One other minor issue I found on Schedule A: on line 64, it's not accepting the contributor's occupation unless I reduce the length by 1 character. So instead of "Special Advisor on Women's Iss" I had to change it to "Special Advisor on Women's Is".

-----Original Message-----

From: Justin Schair [mailto:justin@cutler2010.com]
Sent: Tuesday, January 19, 2010 4:45 PM
To: O'Brien, Gavin; 'Jenifer Broadbent'
Subject: RE: (Case 100680) Maine Finance Report - Schedules A and B

Gavin,

We have two CSV files, one is A/A1 the other is B. The State Web site lists separate Schedule A and schedule A1 submit option, though there is only one file. Therefore, I'm submitting the A/A1 CSV file as Schedule A.

Is this correct?

Justin Schair

Cutler 2010
P.O. Box 15277 | Portland, Maine | 04112 office (207) 699-4401 | mobile (207) 831-5325
www.cutler2010.com

Check out this great video of Eliot!

-----Original Message-----

From: O'Brien, Gavin [mailto:Gavin.O'Brien@maine.gov]
Sent: Tuesday, January 19, 2010 16:42
To: Jenifer Broadbent
Cc: Justin Schair
Subject: RE: (Case 100680) Maine Finance Report - Schedules A and B

I believe that error was caused by the header issue. I'm not getting it now when I try to upload the file you attached. Are you sure the Schedule A csv file is being uploaded to the Schedule A/A1 upload screen and not Schedule B (or vice versa)? It indicates the schedule in the upper-left corner of the screen.

-----Original Message-----

From: Jenifer Broadbent [mailto:compliance@aristotle.com]
Sent: Tuesday, January 19, 2010 4:37 PM
To: O'Brien, Gavin
Subject: Fw: (Case 100680) Maine Finance Report - Schedules A and B

Gavin,

Here are the 2 uploads that you & I spoke about. I was able to resolve one of the issues (the header line was incorrect), but now the client is getting the following error when attempting to upload Schedule A:

Line # 1 - Wrong/Invalid file is selected for uploading this schedule.
Please select proper file for uploading.

Please clarify.

Thanks!

Jenifer Broadbent

Phone: 888.217.9600 x.240

Fax: 858.634.5111

Justin Schair

From: Jenifer Broadbent [compliance@aristotle.com]
Sent: Tuesday, January 19, 2010 22:39
To: justin@cutler2010.com
Subject: Re: (Case 100711) Schedule B
Attachments: Cutler_CNDB.CSV

Justin,

Please tell me I'm not on Crazy Glue and just TOTALLY neglected to send this to you....

If I did, I cannot say how sorry I am.

Here is your file.

Jen



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

January 25, 2010

Mr. Eliot R. Culter
P.O. Box 15277
Portland, ME 04112

BY REGULAR AND CERTIFIED MAIL

Dear Mr. Cutler:

RE: Late January Pre-Election Campaign Finance Report Due January 19, 2010.

You filed a January Pre-Election campaign finance report on January 20, 2010. A penalty must be assessed for late reports based on the amount of financial activity conducted during the filing period, the number of calendar days a report is filed late, the candidate's filing record, and the maximum penalty amount allowed under Maine Election Law (21-M.R.S.A. §1017 (5-A)). Based on the prescribed statutory formula, the preliminary determination of the penalty for the late filing of your report is \$2,664.85. However, a penalty may not exceed \$1,000 for a semiannual report. Please refer to the enclosed penalty matrix for more details on how the penalty is computed. If you agree with this preliminary determination of the amount of the penalty, you may use the enclosed billing statement to pay that penalty.

If you have a reason for filing late, you may request the Commission to make a final penalty determination. Any request for a Commission determination must be made within 10 calendar days of receipt of this notice, beginning on the day you sign its receipt. If this notice has been refused or left unclaimed at the post office, the 10-day period begins on the day the post office indicates it has given first notice of a certified letter. Upon receipt of your request for a Commission determination, we will schedule you to appear and will notify you of the date and time of the next Commission meeting. You or a person you designate may then appear personally before the Commission or you may send a written statement for the Commission's consideration. A statement must be notarized and contain a full explanation of the reason you filed late. Statements should be sent to the address shown on this letterhead. The Commission will notify you of the disposition of your case within 10 days after its determination.

NOTE: The Commission may waive penalties for late reports only in cases where tardiness is due to mitigating circumstances. The law defines "mitigating circumstances" as: 1) a valid emergency determined by the Commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part; 2) an error by the Commission staff; 3) failure to receive notice of the filing deadline; or (4) other circumstances determined by the Commission that warrant mitigation of the penalty, based upon relevant evidence presented that a *bona fide* effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service.

If you have any questions, please contact me at 207-287-7651. Thank you.

Sincerely,

Sandy Thompson
Candidate Registrar

cc: Treasurer

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE
WEBSITE: WWW.MAINE.GOV/ETHICS

COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

PENALTY MATRIX FOR LATE CANDIDATE REPORT FILINGS

BASIS FOR PENALTIES
21-A M.R.S.A. Section 1020-A(4)

The penalty for late filing of a required report is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days the report is filed late, as follows:

- For the first violation, 1%
- For the second violation, 3%
- For the third and each subsequent violation, 5%

Example: The treasurer files the candidate's report two (2) days late. The candidate has not had any previous late violations this biennium. The candidate reports a total of \$2,500 in contributions and \$1,500 in expenditures for the filing period. The penalty is calculated as follows:

\$2,500	Greater amount of the total contributions received or expenditures made during the filing period
<u>X .01</u>	Percent prescribed for first violation
\$25.00	One percent of total contributions
<u>X 2</u>	Number of calendar days late
\$50.00	Total penalty

Mr. Cutler:

Your penalty is calculated as follows:

Receipts/Expenditures:	\$ 266,485.00
Percent prescribed:	1%
	<hr/>
	\$ 2,664.85
Number of days late:	X (1 Day)
Total penalty accrued:	\$ 2,664.85
Maximum penalty allowed:	\$ 1,000.00

A penalty begins to accrue on the day following the due date of the report.

Any penalty of less than \$10 is waived.

Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each even-numbered year. Waiver of a penalty does not nullify the finding of a violation.

A required report that is sent by certified or registered United States mail and postmarked at least 2 days before the deadline is not subject to penalty.

MAXIMUM PENALTIES
21-A M.R.S.A. Section 1020-A(5)

\$5,000 for reports required to be filed 42 days before an election,
11 days before an election, 42 days after an election, and for 24-hour reports;
\$1,000 for semiannual reports.

January 25, 2010

Mr. Eliot R. Culter
P.O. Box 15277
Portland, ME 04112

The Commission staff has made a preliminary determination, based upon application of the statutory formula, that a penalty of \$1,000 applies for the late filing of your January Pre-Election campaign finance report. If you agree with this determination, please make your check or money order in that amount payable to "Treasurer, State of Maine," and send it, along with the bottom half of this letter, to the Commission on Governmental Ethics and Election Practices, 135 State House Station, Augusta, Maine 04333, within 30 days of the date noted above. Please see the instructions included in the attached letter if you would like the Commission to make a formal determination of any penalty to be assessed in this case.

Failure to pay the full amount of an assessed penalty is a civil violation. The Commission is required to report to the Attorney General the name of any person who fails to pay the full amount of any penalty. Please direct any questions you may have about this matter to Sandy Thompson at 287-7651.

Cut Along Dotted Line

For Office Use Only:
Account: CGEEP
Fund: 014 Approp: 02

To Commission on Governmental Ethics and Election Practices
 135 State House Station
 Augusta, Maine 04333

From: Mr. Eliot R. Cutler

RE: Penalty for late filing of January Pre-Election Campaign Finance Report

Penalty ID: 1599

Amount Enclosed: \$ _____

Check/M.O. No.: # _____

Please Make Check or Money Order Payable to Treasurer, State of Maine
Or Pay Online at <http://www.maine.gov/online/ethics/penalties>

whether the contribution or expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, the candidate or an authorized committee or agent of the candidate.

C. A report required by this subsection must be on a form prescribed and prepared by the commission. A person filing this report may use additional pages if necessary, but the pages must be the same size as the pages of the form.

21A § 1020. Failure to file on time (REPEALED)

21A § 1020-A. Failure to file on time

1. Registration. A candidate that fails to register the name of a candidate, treasurer or political committee with the commission within the time allowed by section 1013-A, subsection 1 may be assessed a forfeiture of \$10. The commission shall determine whether a registration satisfies the requirements for timely filing under section 1013-A, subsection 1.

2. Campaign finance reports. A campaign finance report is not timely filed unless a properly signed or electronically submitted copy of the report, substantially conforming to the disclosure requirements of this subchapter, is received by the commission by 11:59 p.m. on the date it is due. Except as provided in subsection 7, the commission shall determine whether a report satisfies the requirements for timely filing. The commission may waive a penalty in whole or in part if the commission determines that the penalty is disproportionate to the size of the candidate's campaign, the level of experience of the candidate, treasurer or campaign staff or the harm suffered by the public from the late disclosure. The commission may waive the penalty in whole or in part if the commission determines the failure to file a timely report was due to mitigating circumstances. For purposes of this section, "mitigating circumstances" means:

- A. A valid emergency determined by the commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part;
- B. An error by the commission staff;
- C. Failure to receive notice of the filing deadline; or
- D. Other circumstances determined by the commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service or interruptions in Internet service.

3. Municipal campaign finance reports. Municipal campaign finance reports must be filed, subject to all the provisions of this subchapter, with the municipal clerk on forms prescribed by the Commission on Governmental Ethics and Election Practices. The municipal clerk shall send any notice of lateness required by subsection 6 and shall notify the commission of any late reports subject to a penalty.

4. Basis for penalties. (REPEALED)

4-A. Basis for penalties. The penalty for late filing of a report required under this subchapter, except for accelerated campaign finance reports required pursuant to section 1017, subsection 3-B, is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days late, as follows:

- A. For the first violation, 1%;
- B. For the 2nd violation, 3%; and
- C. For the 3rd and subsequent violations, 5%.

Any penalty of less than \$10 is waived.

Violations accumulate on reports with filing deadlines in a two-year period that begins on January 1st of each even-numbered year. Waiver of a penalty does not nullify the finding of a violation.

A report required to be filed under this subchapter that is sent by certified or registered United States mail and postmarked at least two (2) days before the deadline is not subject to penalty.

A registration or report may be provisionally filed by transmission of a facsimile copy of the duly executed report to the commission, as long as the facsimile copy is filed by the applicable deadline and an original of the same report is received by the commission within five calendar days thereafter.

The penalty for late filing of an accelerated campaign finance report as required in section 1017, subsection 3-B may be up to but no more than 3 times the amount by which the contributions received or expenditures obligated or made by the candidate, whichever is greater, exceed the applicable Maine Clean Election Fund disbursement amount, per day of violation. The commission shall make a finding of fact establishing when the report was due prior to imposing a penalty under this subsection. A penalty for failure to file an accelerated campaign finance report must be made payable to the Maine Clean Election Fund. In assessing a penalty for failure to file an accelerated campaign finance report, the commission shall consider the existence of mitigating circumstances. For the purposes of this subsection, "mitigating circumstances" has the same meaning as in subsection 2.

5. Maximum penalties. (REPEALED)

5-A. Maximum penalties. Penalties assessed under this subchapter may not exceed:

- A. Five thousand dollars for reports required under section 1017, subsection 2, paragraph B, C, D, E or H; section 1017, subsection 3-A, paragraph B, C, D, D-1 or F; section 1017, subsection 4; and section 1019-B, subsection 3;
- B. Five thousand dollars for state party committee reports required under section 1017-A, subsection 4-A, paragraphs A, B, C and E;
- C. One thousand dollars for reports required under section 1017, subsection 2, paragraphs A and F and section 1017, subsection 3-A, paragraphs A and E;
- D. Five hundred dollars for municipal, district and county committees for reports required under section 1017-A, subsection 4-B; or

E. Three times the unreported amount for reports required under section 1017, subsection 3-B, if the unreported amount is less than \$5,000 and the commission finds that the candidate in violation has established, by a preponderance of the evidence, that a bona fide effort was made to file an accurate and timely report.

6. Request for a commission determination. If the commission staff finds that a candidate or political committee has failed to file a report required under this subchapter, the commission staff shall mail a notice by certified mail to the candidate or political committee within three business days following the filing deadline informing the candidate or political committee that a report was not received. If a candidate or a political committee files a report required under this subchapter late, a notice of preliminary penalty must be sent to the candidate or political committee whose registration or campaign finance report was not received by 11:59 p.m. on the deadline date, informing the candidate or political committee of the staff finding of violation and preliminary penalty calculated under subsection 4-A and providing the candidate or political committee with an opportunity to request a determination by the commission. The notice must be sent by certified mail. Any request for a determination must be made within 14 calendar days of receipt of the commission's notice. The 14-day period during which a determination may be requested begins on the day a recipient signs for the certified mail notice of the proposed penalty. If the certified letter is refused or left unclaimed at the post office, the 14-day period begins on the day the post office indicates it has given first notice of a certified letter. A candidate or political committee requesting a determination may either appear in person or designate a representative to appear on the candidate's or political committee's behalf or submit a sworn statement explaining the mitigating circumstances for consideration by the commission. A final determination by the commission may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C.

7. Final notice of penalty. If a determination has been requested by the candidate or political committee and made by the commission, notice of the commission's final determination and the penalty, if any, imposed pursuant to this subchapter must be sent to the candidate and the political committee.

If a determination is not requested, the preliminary penalty calculated by the commission staff is final. The commission staff shall mail final notice of the penalty to the candidate and treasurer. A detailed summary of all notices must be provided to the commission.

8. Failure to file report. The commission shall notify a candidate who has failed to file a report required by this subchapter, in writing, informing the candidate of the requirement to file a report. The notice must be sent by certified mail. If a candidate fails to file a report after 2 notices have been sent by the commission, the commission shall send a final notice by certified mail informing the candidate of the requirement to file and that the matter may be referred to the Attorney General for criminal prosecution. A candidate who fails to file a report as required by this subchapter after the commission has sent the notices required by this subsection is guilty of a Class E crime.

8-A. Penalties for failure to file report. The penalty for failure to file a report required under this subchapter may not exceed the maximum penalties as provided in subsection 5-A.