

Agenda

Item #5



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

November 1, 2010

By Regular and Certified Mail, Return Receipt Requested

Mr. Stephen Masters, Treasurer
Sagadahoc County Democratic Committee
241 Fiddler's Reach Rd
Phippsburg, Maine 04562

Re: Penalty for late filing of Independent Expenditure

Dear Mr. Masters:

The Sagadahoc County Democratic Committee filed an Independent Expenditure due October 23, 2010 eight days late on October 30, 2010. Under the Commission's statutes, the late filing of a report by a local party triggers an enforcement process. (21-A M.R.S.A. § 1020-A(4-A)) The Commission staff has calculated the amount of a preliminary penalty for the late filing, based on the amount of financial activity in the report, the number of calendar days the report was late, and the Committee's previous violations. The preliminary penalty for the late filing is \$142.80. (Please see attached penalty matrix for the calculation.)

The Committee may pay the penalty or request that the members of the Commission waive the penalty in whole or in part. Any request for a waiver must be made within 14 calendar days of your receipt of this notice (or attempted delivery by the U.S. Post Office). The request must be notarized and contain a full explanation of the reasons the committee filed late. Upon receiving your request, the Commission staff will schedule your request for an upcoming Commission meeting.

Under 21-A M.R.S.A. § 1062-A(2), the Commission may waive the penalty if it determines that the report was late due to 'mitigating circumstances,' which are defined as: (1) a valid emergency of the committee treasurer; (2) an error made by the Commission staff; or (3) other circumstances determined by the Commission that warrant mitigation of the penalty, based upon relevant evidence presented that the committee made a bona fide effort to file the report on time, including, but not limited to, unexplained delays in postal service or interruptions in Internet service. Also, the Commission may waive the penalty if it is disproportionate to the level of experience of the person filing the report or the harm suffered by the public from the late disclosure.

The Commission requests that the committee pay the preliminary penalty within two weeks, if it does not intend to request a waiver. Please call me at 287-6221 if you have any questions.

Sincerely,

Cindy Sullivan, PAC, Party, Lobbyist Registrar
Enc.: penalty matrix

**COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES
PENALTY MATRIX FOR LATE INDEPENDENT EXPENDITURE FILING**

**BASIS FOR PENALTIES
21-A M.R.S.A. Section 1062-A**

Committee Name: Sagadahoc County Democratic Co. **Report Title:** Independent Expenditure
Due Date: October 23, 2010
Previous Violation(s): 0 this quarter **Filed Date:** October 30, 2010

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%

A penalty begins to accrue at 11:59 p.m. on the day the report is due.

Penalty Example:		Your Penalty is calculated as follows:	
The treasurer files the IE report two (2) days late. The organization has not had any previous late violations this biennium. The IE reports a total of \$2,500 in contributions and \$1,500 in expenditures for the filing period. The penalty is		Contributions / Expenditures:	<u>\$1,785.02</u>
\$2,500	Greater amount of the total contributions received or expenditures made during the filing period	x	<u>1%</u>
X .01	Percent prescribed for first violation		<u>\$17.85</u>
\$25.00	One percent of total contributions	x	<u>8</u>
X 2	Number of calendar days late	Number of days late:	
\$50.00	Total Penalty	Total penalty accrued:	<u><u>\$142.80</u></u>

Any penalty of less than \$10 is waived.

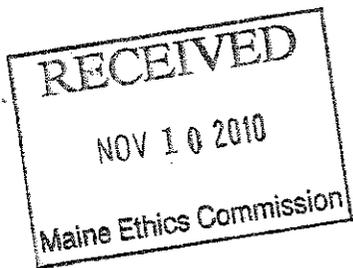
Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each even-numbered year. Waiver of a penalty does not nullify the finding of a violation.

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 1062-A(3)

\$10,000 for 11-Day Pre Election reports, 42-Day Post-Election reports, 24-Hour reports
and for Quarterly reports



**Sagadahoc County Democratic Committee
P. O. Box 115
Bath, ME 04530-0115
Stephen C. Masters, Treasurer**

November 9, 2010

Cindy Sullivan, PAC, Party, Lobbyist Registrar
State of Maine Commission on Governmental Ethics and Election Practices
133 State House Station
Augusta, ME 04333-0135

Dear Cindy:

This letter is in response to the Commission's letter dated November 1, 2010, in which it proposes a penalty for our failure to file an Independent Expenditure report on a timely basis. The purpose of this letter is to request a waiver of the proposed penalty.

The Independent Expenditure in question is one that we made in support of Denise Tepler's campaign for the House District 60 seat against the incumbent, Kerri Prescott. In the General Election on November 2, Kerri Prescott was re-elected.

The expenditure was made on October 22 and we were required to file the report by October 23. On October 23, I did file a report, but I filed the report incorrectly. I filed the report online using the "24-hour report" which is available on the "Reports Page," which serves as a home page for the online filing system. This was, I believe, the first independent expenditure report that I have filed for the SCDC since becoming its treasurer in January 2007.

I first discovered the "24-hour report" form on the online system when I filed a report for an expenditure of more than \$1,000 for slate advertising on October 19 and again when I filed the 11-day pre-general report on October 20.

As we were preparing for our Fall fund-raiser on October 24, I was notified of this independent expenditure. Because I was not aware of the need to include a notarized affidavit as part of an Independent Expenditure report and because I knew that there was a 24-hour report form online, I immediately went to the "Filer Login" on the Ethics Commission website and used the same 24-hour report form that I had used just three days before. Because I was so confident that this was the correct form to use, I never "saw" the links to Independent Expenditure reporting on the right side of the Ethics Commission's homepage.

A week later, when Denise Tepler discovered the Independent Expenditure that we had made, I received a copy of an e-mail that Denise sent to the officers of SCDC, thanking us for our support. In the e-mail, she mentioned, in passing, that she had not seen a copy of the report on the Ethics Commission's website. I read Denise's e-mail on Friday, October 29, so on Saturday morning, October 30, I went to the Ethics Commission's website to verify that my report was there. Again, I did not notice the Independent Expenditure report links on the right side of the Ethics Commission's page but went, instead, directly to the listing of reports by PACs and Party Committees in alphabetical order. I went to our list and saw that the report was there. I was concerned about Denise's statement, so I e-mailed the Commission to verify that the report had been received.

Later that morning, I began working on what seemed to be an unrelated problem. There was a voice-mail message waiting on our home phone, but I could not access our voice-mail system. I discovered that FairPoint Communications had upgraded their voicemail system on Thursday or Friday and that we needed to re-initialize our account in order to reactivate voicemail. Once that was completed, I found that I had a message from Paul Lavin, asking about our Independent Expenditure report. After hearing Paul's message, I immediately called the number that he had given, assuming that staff would be working on the weekend before the election. Paul was not there, but I talked to Jonathan Wayne.

Jonathan told me that it was a deliberate decision of the Commission not to put the Independent Expenditure report into the online filing system, since the report cannot be filed online, due to the notarized affidavit requirement. He e-mailed me a link to the correct report, which I completed and faxed to him that morning. On the following Monday, November 1, after having the affidavit notarized, I mailed the completed report to him.

I do feel very strongly that the Commission should consider providing information concerning Independent Expenditure reports on the "Reports Page" of the electronic filing system. From my own prior experience with web page design, it would seem to be that you could put a couple of sentences about Independent Expenditure reports in the vicinity of the existing "24-hour report" icon, and even provide a link to the Independent Expenditure report, just as Jonathan Wayne e-mailed the link to me, all with the clear indication that the report must be faxed to the Commission and not filed online.

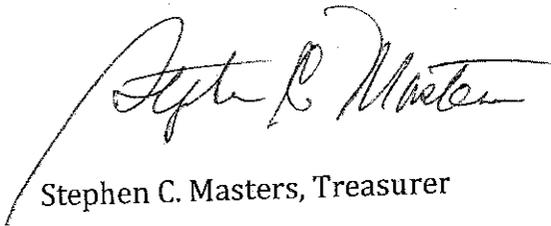
I hope that this narrative provides you with the information that the Commission will need to make a determination as to the appropriateness of waiving the penalty.

Maine Ethics Commission
November 9, 2010
Page 3

Although we, obviously, were hoping that Denise Tepler would be the successful candidate, I am pleased, from the standpoint of fairness, that the delay in providing Kerri Prescott with the additional funding to which she was entitled due to our expenditure did not, in the final analysis, have an impact on the election results.

I have always found the Commission to be both approachable and a valuable source of information. Thank you for the work that you do.

Sincerely,

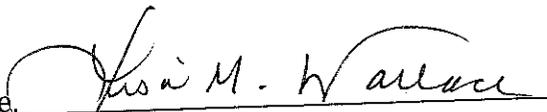


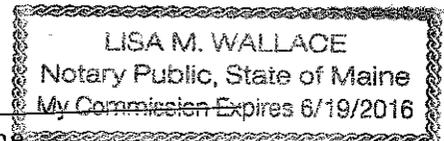
Stephen C. Masters, Treasurer

STATE OF MAINE
COUNTY OF SAGadahoc, ss.

DATE: 11/9/10

Then personally appeared the above-named STEPHEN C. MASTERS and acknowledged that the foregoing instrument to be his free act and deed.

Before me, 
Notary Public



Please type or print name
My commission expires:



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

November 12, 2010

Mr. Stephen Masters
Sagadahoc County Democratic Comm
241 Fiddler's Reach Road
Phippsburg, ME 04562

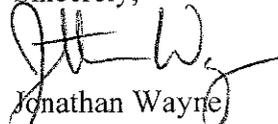
Dear Mr. Masters:

Thank you for requesting a waiver of a late-filing penalty. Your request will be considered by the members of the Ethics Commission at their next meeting on Tuesday, November 30, 2010 at 11:00 a.m. The meeting will be held at our office at 45 Memorial Circle, 2nd floor, Augusta, Maine. You are welcome to attend the meeting in support of your request, but that is not required.

Next week, I will discuss your request with my colleagues and will write up a short memo for the Commissioners that will include a recommendation on behalf of the Commission staff. All of the materials relating to your request will be mailed to the Commissioners on November 22. That day, the agenda and materials will be posted on the Commission's website, www.maine.gov/ethics.

If you have any questions, please call me at 287-4179.

Sincerely,


Jonathan Wayne
Executive Director

cp

21-A MRSA § 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.

[1995, c. 483, §15 (NEW) .]

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; [1999, c. 729, §5 (AMD) .]

B. An error by the commission staff; [1999, c. 729, §5 (AMD) .]

C. Failure to receive notice of the filing deadline; or [1999, c. 729, §5 (AMD) .]

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. [2009, c. 190, Pt. A, §13 (AMD) .]

[2009, c. 190, Pt. A, §13 (AMD) .]

3. (TEXT EFFECTIVE UNTIL 8/1/11) 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.

[1995, c. 625, Pt. B, §5 (AMD) .]

3. (TEXT EFFECTIVE 8/1/11) Municipal campaign finance reports. Municipal campaign finance reports must be filed, subject to all the provisions of this subchapter, with the municipal clerk in a town or city that has chosen to be governed by this subchapter 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.

[2009, c. 366, §12 (AFF); 2009, c. 366, §6 (AMD) .]

4. Basis for penalties.

[2001, c. 470, §7 (AMD); T. 21-A, §1020-A, sub-§§4, 5 (RP) .]

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%; [2001, c. 714, Pt. PP, §1 (NEW); 2001, c. 714, Pt. PP, §2 (AFF) .]

B. For the 2nd violation, 3%; and [2001, c. 714, Pt. PP, §1 (NEW); 2001, c. 714, Pt. PP, §2 (AFF) .]

C. For the 3rd and subsequent violations, 5%. [2001, c. 714, Pt. PP, §1 (NEW); 2001, c. 714, Pt. PP, §2 (AFF) .]

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 report required to be filed under this subchapter that is sent by certified or registered United States mail and postmarked at least 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 5 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 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.

[2007, c. 443, Pt. A, §22 (AMD) .]

5. Maximum penalties.

[2001, c. 470, §8 (AMD); T. 21-A, §1020-A, sub-§5 (RP) .]

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; [2009, c. 190, Pt. A, §14 (AMD) .]

B. Five thousand dollars for state party committee reports required under section 1017-A, subsection 4-A, paragraphs A, B, C and E; [2003, c. 628, Pt. A, §4 (AMD) .]

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; [2003, c. 628, Pt. A, §4 (AMD) .]

D. Five hundred dollars for municipal, district and county committees for reports required under section 1017-A, subsection 4-B; or [2003, c. 628, Pt. A, §4 (AMD).]

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. [2001, c. 714, Pt. PP, §1 (NEW); 2001, c. 714, Pt. PP, §2 (AFF).]

[2009, c. 190, Pt. A, §14 (AMD) .]

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 3 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.

[2009, c. 302, §5 (RPR) .]

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.

[2009, c. 302, §6 (AMD) .]

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.

[2007, c. 443, Pt. A, §25 (AMD) .]

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.

[2003, c. 628, Pt. A, §6 (NEW) .]

9. List of late-filing candidates. The commission shall prepare a list of the names of candidates who are late in filing a report required under section 1017, subsection 2, paragraph C or D or section 1017, subsection 3-A, paragraph B or C within 30 days of the date of the election and shall make that list available for public inspection.

[1995, c. 483, §15 (NEW) .]

10. Enforcement. A penalty assessed pursuant to this section that has not been paid in full within 30 days after issuance of a notice of the final determination may be enforced in accordance with section 1004-B.

[2009, c. 302, §7 (RPR) .]

SECTION HISTORY

RR 1995, c. 1, §10 (COR). IB 1995, c. 1, §15 (AMD). RR 1995, c. 2, §38 (COR). 1995, c. 483, §15 (NEW). 1995, c. 625, §B5 (AMD). 1999, c. 426, §§32,33 (AMD). 1999, c. 729, §5 (AMD). 2001, c. 470, §§7,8 (AMD). 2001, c. 470, §11 (AFF). 2001, c. 714, §PP1 (AMD). 2001, c. 714, §PP2 (AFF). RR 2003, c. 1, §14 (COR). 2003, c. 302, §4 (AMD). 2003, c. 448, §4 (AMD). 2003, c. 628, §§A3-6 (AMD). 2007, c. 443, Pt. A, §§21-25 (AMD). 2009, c. 190, Pt. A, §§13, 14 (AMD). 2009, c. 302, §§5-7 (AMD). 2009, c. 366, §12 (AFF). 2009, c. 366, §6 (AMD). MRSA T. 21-A, §1020-A, sub-§4 (AMD). MRSA T. 21-A, §1020-A, sub-§5 (AMD).