



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

Commission Meeting 10/30/2020
Agenda Item #1

To: Commissioners
From: Emma Burke, Candidate Registrar
Date: October 19, 2020
Re: Request by Jeffrey Pierce Campaign for Waiver of Late-Filing Penalty Due to
Late 42-Day Pre-General Report

Jeffrey Pierce is a traditionally financed candidate running for the Maine House of Representatives, District 53. Mr. Pierce is an experienced candidate, having served previously in the Maine House of Representatives.

Mr. Pierce's campaign was required to file the regularly scheduled 42-Day Pre-General Report by 11:59 p.m. on September 22, 2020. The Pierce campaign filed the report on September 23rd, one day late. The preliminary penalty for the late report is \$40.37. Mr. Pierce's campaign is requesting a waiver of the penalty.

LEGAL REQUIREMENTS

Candidates are required to file the 42-Day Pre-General Report no later than 11:59 p.m. on the 42nd day before the date on which an election is held and must be complete for the filing period as of the 39th day before that date. 21-A M.R.S. § 1017(3-A)(D-1). If the candidate is late in filing a regularly scheduled campaign finance report, the amount of the penalty is set by a formula which takes into consideration a percentage of the total contributions or expenditures, whichever is greater, the number of prior violations within a two-year period, and the number of days the report is late. 21-A M.R.S. § 1020-A(4-A).

DISCUSSION

Unlike the primary based reports for the 2020 election, the general election report due dates were not altered from their original schedule. It should be noted, however, that the Commission's website developer caused an error in the automatic report reminder emails that are typically sent two weeks, one week, and one day before a reporting due date. Therefore, it is possible that not all treasurers and candidates received all three emails. Candidate Registrar Emma Burke did send two direct emails to all candidates on the filing due date of September 22, 2020 (attached), and in the second email, included clear language about the absent automatic reminder emails and asking all candidates to communicate with their treasurers to make sure reports would be filed on time.

Based on the statutory formula for calculating late-filing penalties, the preliminary penalty amount is \$529.50, calculated as follows:

Report	Deadline	Financial Activity	Penalty Rate	Days Late	Preliminary Penalty
42-Day Pre-General Report	09/22/2020	\$2,018.44	2%	1	\$40.37

In Mr. Pierce's request, he states that there was confusion with three reports being due in close proximity to each other – referring to the 42-Day Post-Primary Report, the Statement of Sources of Income document candidates were required to file in September, and the 42-Day Pre-General Report. It is accurate that normally these reports are more spaced out from each other but were condensed this year due to the primary election date change. Mr. Pierce also states that his treasurer, Peter Flaherty, experienced an injury recently, and has been on pain medication. The mix of dealing with injuries, pain medication, and the number of reports being due and filed created confusion whereby the campaign did not realize another report was due, according to Mr. Pierce. Mr. Pierce states he has never been late with a report due date before, and that there was no harm to the public.

STAFF RECOMMENDATION

Timely campaign finance reports are an integral part of campaign finance transparency and disclosure. It is clear that their timely filing is considered to be of utmost importance, as statute requires late-filing penalties to increase by each day past the due date the report is filed. All campaigns, particularly experienced ones, are expected to pay attention to and meet all reporting deadlines.

Since the 2018 elections, the Commission staff typically has recommended penalties in the range of \$300 - \$400 for the late filing of campaign finance reports for legislative and county candidates.

In this case, the preliminary penalty of \$40.37 is quite low. Mr. Pierce is a very experienced candidate, and Mr. Flaherty has been the treasurer for Mr. Pierce multiple times. While it is understandable there was some confusion about the three reports being due in close proximity and the missing automatic reminder emails, the due date for the 42-Day Pre-General Report did not change. It is expected that candidates and campaigns will keep track of reporting deadlines independently of the automatic emails. The Commission staff also mailed postcard reminders to all candidates, and there were the two emails sent by Ms. Burke to Mr. Pierce on the due date of September 22nd. Mr. Pierce, as a traditionally financed candidate, is also capable of filing his own campaign finance reports.

Considering the preliminary penalty of \$40.37 is low, and that Mr. Pierce was able to file his own report if his treasurer was unavailable due to injury, and Mr. Pierce was sent multiple reminders, the Commission staff recommends not waiving or reducing the penalty of \$40.37.

Thank you for your consideration of this memo.

Jeffrey Pierce
Pierce for State House # 53
PO Box 51
Dresden Maine 04342

October 1, 2020

Maine Ethics Commission
135 State House station
Augusta Maine 04333-0135

Attention: Emma Burke


Emma, I'm write you to file an appeal for the Notice of Violation and Penalty for late Filed 42 Day Pre-General Report Date September 24, 2020.

For the following reason's

My treasurer Peter Flaherty and I received a number of emails from the 1st of September stating that the 42 day post primary report had been file and then there was the Statement of sources of incomed which was filed on 9/11/20 and updated on the 9/21/20 and then on the 9/22/20 there was an email stating that the 42 day post primary was filed these was confusing as it has not happen that way before. My Treasurer this September has been going thought some medical issues and some of the medications are for Pain, so with all this emails saying that things where filed, update's and coding changes. This was very confusing
My Campaign has never missed a filing date and we always check if we have questions. We also feel that this has caused no harm to the public as it was filed as on the morning of the 9/23/20.

We hope the Commission will grant us a waver on both the penalty and the Violation.

Best Regards


Jeffrey Pierce

September 24, 2020

Jeffrey Pierce
PO Box 51
Dresden, Maine 04342

Re: Notice of Violation and Penalty for Late-Filed 42-Day Pre-General Report

Dear Mr. Pierce:

You were required to file the 42-Day Pre-General Report on September 22, 2020 by 11:59 p.m., but the report was not filed until September 23, 2020. Under the Commission's statutes (21-A M.R.S.A. § 1020-A(4-A)), the late filing of a report triggers an enforcement process. The Commission staff has made a preliminary finding of violation and determined that the preliminary penalty for filing the report late is \$40.37. Please see the next page for the penalty calculation.

You may request that the Commission waive the penalty in whole or in part or find that there was no violation. The request must be made within 14 calendar days of your receipt of this notice. The request must be in writing and contain a full explanation of the reasons the report was filed late. Upon receiving your request, the Commission staff will schedule your request to be heard at an upcoming Commission meeting. You or your designee will have an opportunity to be heard at the meeting or you may submit a sworn statement to the Commission explaining the mitigating circumstances for its consideration.

The Commission may waive or reduce the penalty or find that there was no violation if it determines that the report was late due to mitigating circumstances, which are defined as (1) a valid emergency; (2) an error made by the Commission staff; or (3) relevant evidence that a bona fide effort was made to file the report on time. The Commission may also consider whether 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 to the public caused by the late disclosure.

The staff requests that you pay the preliminary penalty within 14 days of the date of your receipt of this notice if you do not intend to request a waiver. Please use the payment statement on the next page when paying by mail. You may also make a payment online at www.maine.gov/ethics by clicking the "Penalty Payment" link. Please contact me at (207) 287-4727 or emma.burke@maine.gov if you have any questions.

Sincerely,

Emma Burke
Candidate Registrar

Penalty Calculation

The penalty for filing a campaign finance report late is based on a percentage of the total contributions or expenditures for the reporting period, whichever is greater, multiplied by the number of days late. The percentage is based on your history of past violations: 2% for the first violation, 4% for the second violation, and 6% for the third and each subsequent violation. Violations for late-filed reports accumulate in the two-year period beginning on January 1st of each even-numbered year. A penalty accrues daily beginning on the day following the filing due date. Any penalty of less than \$10 is automatically waived.

How Your Penalty Was Calculated

Filer: Jeffrey Pierce			
Late-Filed Report: 42-Day Pre-General Report			
Contributions	\$700.73	Penalty Base Amount	\$2,018.44
Expenditures	\$2,018.44	Percentage	2%
Due Date	September 22, 2020	Daily Accrual Rate	\$40.37
Date Filed	September 23, 2020	Days Late	1
Previous Violations	0	Your Total Penalty	\$40.37

Payment Statement and Payment Options

From: Jeffrey Pierce

Penalty Amount: \$40.37

Amount Enclosed: _____

Check/M.O. #: _____

BY MAIL: Enclose this payment statement with your payment.

Please make check or money order payable to: Treasurer, State of Maine

Mail to: Maine Ethics Commission
135 State House Station
Augusta, Maine 04333-0135

ONLINE: Go to www.maine.gov/online/ethics/penalties.



Commission on Governmental Ethics and Election Practices
 Mail: 135 State House Station, Augusta, Maine 04333
Office: 45 Memorial Circle, Augusta, Maine
 Website: www.maine.gov/ethics
 Phone: 207-287-4179
 Fax: 207-287-6775

2020 CAMPAIGN FINANCE REPORT

FOR PRIVATELY FINANCED CANDIDATES

COMMITTEE		TREASURER	
Jeffrey K Pierce P.O. Box 51 Dresden, ME 04342 PHONE:(207) 441-3006 EMAIL: jefferykperce@gmail.com		Peter Flaherty 48 Cutting Rd Phippsburg, ME 04562 PHONE: EMAIL: flahertypeter@comcast.net	
REPORT	DUE DATE	REPORTING PERIOD	
42-Day Pre-General Report	09/22/2020	08/19/2020 - 09/15/2020	

FINANCIAL ACTIVITY SUMMARY

RECEIPTS	TOTAL FOR THIS PERIOD	TOTAL FOR CAMPAIGN
1. CASH CONTRIBUTIONS FOR THE PRIMARY ELECTION (SCHEDULE A)	\$0.00	\$10,102.67
1A. CASH CONTRIBUTIONS FOR THE GENERAL ELECTION(SCHEDULE A) <i>For party candidates, general election contributions will only appear on this line after the primary.</i>	\$700.73	\$1,506.29
1B. CASH CONTRIBUTIONS FOR THE GENERAL ELECTION RAISED PRIOR TO PRIMARY (Not shown on Schedule A of this report)		\$2,100.00
2. OTHER CASH RECEIPTS (INTEREST, ETC)	\$0.00	\$0.00
3. LOANS (SCHEDULE C)	\$0.00	\$0.00
4. TOTAL RECEIPTS	\$700.73	\$13,708.96
EXPENDITURES		
5. EXPENDITURES (SCHEDULE B)	\$2,018.44	\$2,929.02
6. LOAN REPAYMENTS (SCHEDULE C)	\$0.00	\$0.00
7. TOTAL PAYMENTS	\$2,018.44	\$2,929.02
CASH SUMMARY		
8. CASH BALANCE AT BEGINNING OF PERIOD	\$12,097.65	
9. PLUS TOTAL RECEIPTS THIS PERIOD (LINE 4)	\$700.73	
10. MINUS TOTAL PAYMENTS THIS PERIOD (LINE 7)	\$2,018.44	
11. CASH BALANCE AT END OF PERIOD	\$10,779.94	
OTHER ACTIVITY		
12. IN-KIND CONTRIBUTIONS (SCHEDULE A-1)	\$0.00	\$400.00
13. TOTAL LOAN BALANCE AT END OF PERIOD (SCHEDULE C)	\$0.00	
14. TOTAL UNPAID DEBTS AT END OF PERIOD (SCHEDULE D)	\$0.00	
FOR PARTY CANDIDATES ONLY: CASH CONTRIBUTIONS FOR THE GENERAL ELECTION RAISED PRIOR TO PRIMARY ELECTION (INCLUDED IN LINE 1A AFTER PRIMARY ELECTION)		

I, Peter Flaherty, CERTIFY THAT THE INFORMATION CONTAINED IN THIS REPORT IS TRUE, ACCURATE, AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

REPORT FILED BY: Peter Flaherty
 REPORT FILED ON: 9/23/2020 7:58:17 AM
 LAST MODIFIED:
 COMMITTEE ID: 354298

**SCHEDULE A
CASH CONTRIBUTIONS**

- For contributors who gave more that \$50, the names, address, occupation, and employer must be reported. If "information requested" is listed instead of occupation and employer, the candidate is waiting to receive that information.
- Cash contributions of \$50 or less can be added together and reported as a lump sum.
- Contributor Types

1 = Individual

2 = Candidate/ Spouse/ Domestic Partner

3 = Commercial Source

4 = Nonprofit Organization

5 = Political Action Committee

6 = Political Party Committee

7 = Ballot Question Committee

8 = Other Candidate/ Candidate Committee

9 = Candidate / Candidate Committee

10 = General Treasury Transfer

11 = Transfer from Previous Campaign

12 = Contributors giving \$50 or less

13 = Contributors giving \$100 or less

14 = Contributors giving \$200 or less

15 = MCEA Payment

16 = Financial Institution

DATE RECEIVED	CONTRIBUTOR	EMPLOYER AND OCCUPATION	TYPE	ELECTION	AMOUNT
8/31/2020	First Federal Savings 125 FRONT STREET BATH, ME, 04530		16	General	\$0.55
8/31/2020	First Federal Savings 125 FRONT STREET BATH, ME, 04530		16	General	\$0.18
9/11/2020	Molly Bintleff 739 RIVER ROAD DRESDEN, ME, 04342	Self Commercial Fishing	1	General	\$250.00
9/11/2020	Roger Bintleff 739 River Road Richmond, ME, 04342	Self Commercial Fishing	1	General	\$250.00
9/11/2020	Stephen Wood Box 272 Winthrop, ME, 04364	Self Construction/Engineering	1	General	\$200.00
TOTAL CASH CONTRIBUTIONS FOR PRIMARY					\$0.00
TOTAL CASH CONTRIBUTIONS FOR GENERAL					\$700.73

**SCHEDULE B
EXPENDITURES**

EXPENDITURE TYPES				
APP	Apparel (t-shirts, hats, embroidery, etc.)	CON	Contribution to party committee, non-profit, other candidate, etc.	
EQP	Equipment of \$50 or more (computer, tablet, phone, furniture, etc.)	EVT	Campaign and fundraising events (venue or booth rental, entertainment, supplies, etc.)	
FOD	Food for campaign events or volunteers, catering	HRD	Hardware and small tools (hammer, nails, lumber, paint, etc.)	
LIT	Printed campaign materials (palmcards, signs, stickers, flyers, etc.)	MHS	Mail house and direct mail (design, printing, mailing, and postage all included)	
NEW	Newspaper and print media ads only	OFF	Office supplies, rent, utilities, internet service, phone minutes and data	
ONL	Social media and online advertising only	OTH	Other and fees (bank, contribution, and money order fees, etc.)	
PER	Personnel and campaign staff, consulting, and independent contractor costs	PHO	Phones (phone banking, robocalls and texts)	
POL	Polling and survey research	POS	Postage for U.S. Mail and mail box fees	
PRO	Professional services (graphic design, legal services, web design, etc.)	RAD	Radio ads, production costs	
TKT	Entrance cost to event (bean suppers, fairs, party events, etc.)	TRV	Travel (fuel, mileage, lodging, etc.)	
TVN	TV/cable ads, production, and media buyer costs only	WEB	Website and internet costs (website domain and registration, etc.)	
DATE OF EXPENDITURE	PAYEE	REMARK	TYPE	AMOUNT
8/19/2020	Creative Imaging Group 64 Mussey Road Scarborough, ME, 04074	Postcards and mail	MHS	\$2,018.44
TOTAL EXPENDITURES FOR CANDIDATE:				\$2,018.44

Burke, Emma

From: Burke, Emma
Sent: Tuesday, September 22, 2020 12:31 PM
To: Gordon, Erin
Subject: 42-Day Pre-General Report Due TODAY

This is a reminder that the 42-Day Pre-General Report is **DUE TODAY.**

If you are receiving this email you are required to file this report, **NO EXCEPTIONS.**

If you need assistance filing, please reply to this email or call me as soon as possible.

Reports filed after midnight tonight will incur automatic financial penalties.

Go to www.mainecampaignfinance.com to get started.

Emma J. Burke
Candidate Registrar
Maine Ethics Commission
(207) 287-4727

Stay safe. Stay home. Thank your essential workers.

Burke, Emma

From: Burke, Emma
Sent: Tuesday, September 22, 2020 8:35 PM
Subject: FINAL REMINDER - REPORT DUE TONIGHT

This is your **FINAL** reminder that the 42-Day Pre-General Report is **DUE TODAY**.

If you are receiving this email you are required to file this report, **NO EXCEPTIONS** and your report has **NOT** been filed yet.

****If your treasurer or deputy treasurer normally files your reports, please forward them this email or contact them immediately. It is possible they have not received other reminder emails.****

If you need assistance filing, please reply to this email as soon as possible.

Reports filed after midnight tonight will incur automatic financial penalties.

Go to www.mainecampaignfinance.com to get started.

Emma J. Burke
Candidate Registrar
Maine Ethics Commission
(207) 287-4727

Stay safe. Stay home. Thank your essential workers.

year. These reports must include all contributions made to and all expenditures made or authorized by or on behalf of the candidate or the treasurer of the candidate as of the end of the preceding month, except those covered by a previous report.

B. Reports must be filed no later than 11:59 p.m. on the 11th day before the date on which an election is held and must be complete as of the 14th day before that date. If a report was not filed under paragraph A, the report required under this paragraph must cover all contributions and expenditures through the 14th day before the election.

C. Any single contribution of \$1,000 or more received or any single expenditure of \$1,000 or more made after the 14th day before any election and more than 24 hours before 11:59 p.m. on the day of any election must be reported within 24 hours of that contribution or expenditure. The candidate or treasurer is not required to include in this report expenditures for overhead expenses or compensation paid to an employee or other member of the campaign staff who has received payments at regular intervals that have been disclosed in previously filed campaign finance reports. As used in this paragraph, "overhead expenses" includes, but is not limited to, rent, utility payments, taxes, insurance premiums or similar administrative expenses.

D. Reports must be filed no later than 11:59 p.m. on the 42nd day after the date on which an election is held and must be complete for the filing period as of the 35th day after that date.

→ D-1. Reports must be filed no later than 11:59 p.m. on the 42nd day before the date on which a general election is held and must be complete as of the 49th day before that date, except that this report is not required for candidates for municipal office.

E. Unless further reports will be filed in relation to a later election in the same calendar year, the disposition of any surplus or deficit in excess of \$100 shown in the reports described in paragraph D must be reported as provided by this paragraph. The treasurer of a candidate with a surplus or deficit in excess of \$100 shall file reports semiannually with the commission within 15 days following the end of the 2nd and 4th quarters of the State's fiscal year, complete as of the last day of the quarter, until the surplus is disposed of or the deficit is liquidated. The first report under this paragraph is not required until the 15th day of the period beginning at least 90 days from the date of the election. The reports will be considered timely if filed electronically or in person with the commission on that date or postmarked on that date. The reports must set forth any contributions for the purpose of liquidating the deficit, in the same manner as contributions are set forth in other reports required in this section.

F. Reports with respect to a candidate who seeks nomination by petition must be filed on the same dates that reports must be filed by a candidate for the same office who seeks that nomination by primary election.

3-B. Accelerated reporting schedule. (REPEALED)

4. New candidate or nominee. A candidate for nomination or a nominee chosen to fill a vacancy under Chapter 5, subchapter 3 is subject to section 1013-A, subsection 1, except that the candidate shall register the name of a treasurer or political committee and all other information required in section 1013-A, subsection 1, paragraphs A and B within 7 days after the candidate's appointment or at least 6 days before the election, whichever is earlier. The commission shall send notification of this registration requirement and report forms and schedules to the candidate

of perjury, as provided in Title 17 A, section 451, a statement under oath or affirmation whether the 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. The commission may adopt procedures requiring the electronic filing of an independent expenditure report, as long as the commission receives the statement made under oath or affirmation set out in paragraph B by the filing deadline and the commission adopts an exception for persons who lack access to the required technology or the technological ability to file reports electronically. The commission may adopt procedures allowing for the signed statement to be provisionally filed by facsimile or electronic mail, as long as the report is not considered complete without the filing of the original signed statement.

5. Exclusions. An independent expenditure does not include:

- A. An expenditure made by a person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents;
- B. A telephone survey that meets generally accepted standards for polling research and that is not conducted for the purpose of changing the voting position of the call recipients or discouraging them from voting;
- C. A telephone call naming a clearly identified candidate that identifies an individual's position on a candidate, ballot question or political party for the purpose of encouraging the individual to vote, as long as the call contains no advocacy for or against any candidate; and
- D. A voter guide that consists primarily of candidates' responses to surveys and questionnaires and that contains no advocacy for or against any candidate.

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

21-A § 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 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, 2%;
- B. For the 2nd violation, 4%; and
- C. For the 3rd and subsequent violations, 6%.

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 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.

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; and section 1017, subsection 4, except that if the financial activity reported late exceeds \$50,000, the maximum penalty is 100% of the amount reported late;

A-1. Five thousand dollars for reports required under section 1019 B, subsection 4, except that if the financial activity reported late exceeds \$50,000, the maximum penalty is 100% of the amount reported late;