



To: Commission
From: Commission Staff
Date: July 21, 2021
Re: Background for Discussion of Late-Filing Procedures

At a previous meeting, Commissioner Dennis Marble expressed interest in discussing the Commission's procedures for deciding on requests for waivers of late-filing penalties. One of the concerns raised was that the current policy can result in some high-percentage reductions from the statutorily calculated penalty. The Commission staff would be pleased to take any action that the Commission would like on this.

Required Reports

Regularly scheduled campaign finance reports. Four groups of filers are required to submit campaign finance reports to the Commission according to certain deadlines set in statute: candidates, party committees, political action committees (PACs), and ballot question committees (BQCs). These reports must be filed on the Commission's e-filing website by 11:59 p.m. on each deadline.

24-hour reports and independent expenditure reports. Candidates and committees are required to file 24-Hour Reports if they receive large contributions or make large expenditures in the last 13 days before an election. Also, organizations that are spending money on communications to voters advocating for or against candidates are required to file independent expenditure (IE) reports if they spend more than \$250 per candidate. IE reports are generally filed by PACs and party committees.

Major contributor report. For about three years, organizations giving more than \$100,000 to a PAC or BQC for purposes of promoting or opposing a ballot question have been required to file a one-time "major contributor report." 21-A M.R.S. § 1060-A. While campaign finance reports are limited to transactional information, the major contributor report is a profile of the contributor. The contributor must include its purpose and form of the organization, tax-exempt status (if any), and names of largest income sources in past six months, among other information and certifications. The PAC or BQC is required to provide written notice to each major contributor of the requirement to file a major contributor report.

Requests to Waive Late-Filing Penalties

Staff calculation of preliminary penalties. Once a campaign finance report is filed late, the Commission staff conducts a series routine late-filing penalty procedures that are set out in 21-A M.R.S. § 1020-A and 1062-A. The Commission staff prepares a letter that calculates a preliminary penalty based on the amount of contributions or expenditures filed late (whichever is

greater) multiplied by a percentage that takes into consider the number of late-filing violations in a two-year period, multiplied by the number of days late. The candidate or committees can pay the preliminary penalty or request a waiver. If they request a waiver then the matter is scheduled for your consideration at a public meeting. Following your determination on the waiver request, the late filer has 30 days to pay the penalty, unless they work out a payment plan. If the candidate or committee does *not* request a waiver, the preliminary penalty becomes final.

When a major contributor files its report late, or when a PAC or BQC submits the written notice to the major contributor late, the preliminary penalty is 10% of the total contributions required to be reported. 21-A M.R.S. § 1020-A(5).

Disproportionality and mitigating circumstances. The Commission’s statutes allow the Commission to waive a preliminary penalty in whole or in part if it is:

- disproportionate to the level of experience of the person filing the report
- disproportionate to the harm suffered by the public from the late disclosure
- disproportionate to the size of the candidate’s campaign, or
- if the report was filed late due to mitigating circumstances, which are defined as:
 - a valid emergency determined by the Commission to warrant the waiver of a penalty,
 - an error by the Commission staff,
 - failure to receive notice of the filing deadline, or
 - other circumstances determined by the Commission that warrant mitigation of the penalty, based on evidence that a bona fide effort was made to file the report, including but not limited to unexplained delays in postal service or interruptions in internet service.

21-A M.R.S. §§ 1020(2) & 1062-A(2).

Other factors. It is common for candidates and committees requesting waivers to bring up other circumstances they believe are relevant:

- The filer acted in good-faith error without intent to deceive the public.
- A single mistake resulted in multiple reports being late.
- The violation was technical and without harm to the public.
- The filer has a positive history of filing reports on time.
- The filer took positive actions to be compliant (i.e., requested advice or performed research).
- The filer took corrective action after learning they were in noncompliance.

Recent Outcomes

In 2018-2021, the Commission staff has recommended penalties in the following ranges, provided that the late filing was due to a good-faith cause such as health or family circumstances, computer or internet problems, mistake in using the Commission’s e-filing website, or misunderstanding the filing requirements:

- penalties against a PAC or BQC in excess of \$750 for a late campaign finance report have generally been reduced to around \$750 (with some variations upward and downward)
- penalties against legislative candidates for a late campaign finance report are generally \$200 - \$300.
- Penalties against a municipal party committee have generally been around \$100.
- The late filing of a major contributor report by a contributor, or a late written notice by a PAC or BQC, has generally resulted in a penalty of \$2,500.

We have attached a chart of decisions on waiver requests from 2018 to the present.

Benefits of Current Procedures

Consistency. By relying on a presumptive amount or range, the Commission is more likely to arrive at results that are consistent over time.

Simplicity and efficiency. The current outcome-based approach is simpler for decision-making by the Commissioners and for the Commission staff in making penalty recommendations.

Flexibility. The Commissioners have flexibility to apply factors to reach an outcome that they believe is fair.

Potential Concerns with Current Procedures

Large percentage reductions. Although we believe there is a rationale for the current reductions, when a statutory penalty is reduced by 80% or more, some may view the large reduction as ignoring the formula in statute.

Commission giving less weight to specific factors in formula. The current procedures give less weight to the factors in the preliminary penalty formula. For example, assume two committees made the same good faith mistake that resulted in a late report, but one committee’s financial activity was \$1,000 and the other committee’s activity was \$10,000. Their proposed penalties would be:

PAC Name	Financial Activity	Days Late	Statutory Percentage	Preliminary Penalty	Recommendation	Amount Reduced
PAC #1	\$1,000	10	2%	\$200	No Reduction	\$0
PAC #2	\$10,000	10	2%	\$2,000	Reduce to \$750	\$1,250

If both PAC #1 and #2 committed the same violation and were both equally good faith actors, this approach rewards PAC #2 by giving a reduction despite their having caused more public harm because they had higher financial activity than PAC #1.

Offer of Assistance by Commission Staff

The Commission staff is comfortable with the status quo, but we would like to be responsive to any changes the Commission would like to make. The Commission can develop a proposal for different procedures if you specify what objectives what you would like to achieve. For example, one of the registrars has already begun work on one approach that would require the Commissioners to consider a series of steps, such as:

1. Is there a basis for granting a full waiver of the penalty due to reasons such as family hardship or error by Commission staff?
2. Do specific mitigating factors apply? Potentially, percentages adding up to 100% could assigned to each factor.
3. Should the penalty be increased if the violation occurred in the 14 or 28 days before an election?
4. Do the interests of justice require a reduction for any other reason, such as a single cause resulted in multiple late reports, or the late filing amounted to a technical violation with little harm to the public.

If you would like, we could develop alternative procedures for your consideration in August or September, or wait until 2022 once you have considered waiver requests more regularly.

Thank you for your consideration of this memo.

**Enforcement Decisions - Candidates
(2018 - present)**

Candidate	Type of Late Report/Other Violation	Preliminary Penalty	Final Penalty	Commission Meeting Date
Legislative and County candidates - waiver requests				
Ian Schwartz	Late 24-Hour Report	\$384.37	\$300.00	08/29/18
Danny Costain	Late 24-Hour Report	\$2,991.36	\$300.00	08/29/18
Jeffrey Slocum	Late July Semiannual	\$112.00	\$112.00	08/29/18
Mark Lawrence	11-Day Pre-Primary (not compliant)	\$1,739.73	\$400.00	09/26/18
John Tuttle, Jr.	Late 42-Day Post Primary	\$432.00	\$250.00	09/26/18
Dana Dow	Late 24-Hour Report	\$115.93	\$115.93	11/28/18
Jan Collins	Late 24-Hour Report	\$2,565.38	\$300.00	12/19/18
Cathleen Nichols				
Cathleen Nichols	Late 24-Hour Report	\$3,744.00	\$400.00	03/06/19
James LaBrecque	Late 42-Day Post General	\$235.03	\$235.03	03/06/19
Mark Remick	Late 24-Hour Report (2)	\$2,011.85	\$400.00	03/06/19
Philip Spiller (<i>Municipal</i>)	Late 24-Hour Report (3)	\$2,395.28	\$900.00	12/18/19
Mark Lawrence				
Mark Lawrence	Late 42-Day Post Primary	\$529.50	\$350.00	10/16/20
Brian Redmond	Late 42-Day Post Primary	\$84.00	\$84.00	10/16/20
Mark Andre	Late 42-Day Post Primary	\$132.00	\$132.00	10/16/20
Jeffrey Pierce	Late 42-Day Pre-General	\$40.37	\$40.37	10/30/20
Troy Jackson				
Troy Jackson	Late 24-Hour Report	\$50.00	\$50.00	01/27/21
Scott Gaiason	Late 11-Day Pre-General Report	\$109.54	\$109.54	01/27/21
Governor - waiver requests				
James Boyle	Late January Semiannual	\$1,000.00	\$500.00	03/28/18
Mark Eves	Late 24-Hour Report (2)	\$1,378.70	\$500.00	09/26/18

**Enforcement Decisions - Candidates
(2018 - present)**

Candidate	Type of Late Report/Other Violation	Preliminary Penalty	Final Penalty	Commission Meeting Date
Other Violations				
Diane Russell	Substantially Non-Compliant January Semiannual		\$100.00	05/30/18
Diane Russell	Substantially Non-Compliant 42-Day Pre-Primary		\$200.00	05/30/18
Cynthia Soma-Hernandez	Commingling funds		\$100.00	12/19/18
John Clark	MCEA Violation-Contributions after Certification		\$250.00	03/06/19
Stephen Ball	Commingling of funds		\$100.00	06/04/19
Edward Cohen	Failure to Register		\$100.00	05/27/20
Steve Collins	No Disclaimer on Signs		\$200.00	12/18/20
William Guerrette	No Disclaimer on Signs		\$0.00	03/08/21

Enforcement Decisions - Committees (2018 - present)				
Committee Name	Type of Report	Preliminary Penalty	Final Penalty	Commission Meeting Date
Waiver Requests				
Maine United Auto Workers PAC	Late January Quarterly	\$400.00	\$400.00	04/25/18
Maine Health Care Assoc. PAC	Late 24-Hour Report	\$2,760.00	\$500.00	08/29/18
Fecteau Leadership PAC	Late 24-Hour Report	\$400.00	\$400.00	08/29/18
New Mainers PAC	Late 24-Hour Report	\$10,000.00	\$1,000.00	03/06/19
Unite Portland PAC (<i>Municipal</i>)	Late IE Report	\$5,000.00	\$1,250.00	12/18/19
	Late IE Report	\$2,052.16	\$750.00	12/18/19
Mainers for Local Power PAC	Late Major Contributor (2)	\$53,431.15	\$2,500.00	03/10/20
Maine Street Solutions - Protect Schools BQC	Late Major Contributor	\$25,000.00	\$2,000.00	05/27/20
Women's Leadership Fund PAC	Late IE Report	\$100.00	\$50.00	08/11/20
Maine Truck PAC	Late 24-Hour Report	\$2,686.68	\$50.00	10/16/20
Revive Hometown Maine PAC	Late October Quarterly	\$510.00	\$250.00	10/30/20
Mainers for Health and Parental Rights	Late 24-Hour Report	\$980.00	\$750.00	01/27/21
Kittery Democratic Committee	Late 11-Day Pre-General Report	\$500.00	\$100.00	02/24/21
Madison Republican Committee of Maine	Late 11-Day Pre-General Report	\$500.00	\$100.00	02/24/21
York Town Republican Committee	Late 11-Day Pre-General Report	\$500.00	\$100.00	02/24/21
Energy PAC for Maine	Late 24-Hour Report	\$8,840.00	\$750.00	03/31/21
Clean Energy Matters PAC	Late Major Contributor Notice	\$50,000.00	\$2,500.00	03/31/21
We the People PAC	Late Major Contributor Notice	\$11,500.00	\$2,500.00	05/26/21

**Enforcement Decisions - Committees
(2018 - present)**

Committee Name	Type of Late Report/Other Violation	Preliminary Penalty	Final Penalty	Commission Meeting Date
Other Violations				
Sara Gideon Leadership PAC	Contributions Made in Name of Another		\$500.00	10/30/19

**Enforcement Decisions - Lobbyists
(2018 - present)**

Lobbyist Name	Type of Report	Preliminary Penalty	Final Penalty	Commission Meeting Date
Waiver Requests				
Timothy Vernon	Late March Lobbyist Report	\$100.00	\$50.00	04/25/18
Eliza Donaghue	Late February Lobbyist Report	\$100.00	\$50.00	05/27/20
Jonathan Courtney	Late July Lobbyist Report (2)	\$100.00	\$50.00	10/16/20
Kerri Bickford	Late August Lobbyist Report	\$50.00	\$50.00	10/16/20