



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

To: Commissioners
From: Lorrie Brann, Candidate Registrar
Date: January 10, 2023
Re: Request by Neil McLean, Jr. for Waiver of Late-Filing Penalty for 24-Hour Report

Neil McLean, Jr. was a first-time candidate in the 2022 general election for District Attorney, Prosecutorial District 3. Candidates who make any single transaction of \$1,000 or more in the last 13 days before an election must disclose it within one day by filing a “24-Hour Report.” On November 3, Mr. McLean paid RumbleUp \$4,600 for campaign text messaging, which he was required to report by November 4. Ms. Patricia Poulin, treasurer for the McLean campaign, logged into eFiling and entered the expenditure and filed the report 40 days late on December 14. The preliminary penalty for the late report is \$3,680 and the candidate seeks a waiver of the penalty.

LEGAL REQUIREMENTS

Candidates must file 24-Hour Reports with the Commission during the 13 days prior to an election if they receive a contribution or loan or make an expenditure or incur a debt of \$1,000 or more. 21-A M.R.S. § 1017(3-A)(C). If the candidate is late filing a 24-Hour Report, the Commission staff calculates a preliminary penalty that is determined 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). The Commission may waive the preliminary penalty in whole or in part under 21-A M.R.S. § 1020-A(2). ETH 8-10.

DISCUSSION

On October 25, the day before the start of the 13-day period for filing 24-Hour Reports, Candidate Registrar Lorrie Brann sent an email titled “Guidance on 24-Hour Reporting Period and Reporting Debts & Obligations” to all candidates in the general election advising them of their reporting requirements including what types of transactions would trigger reporting and

instructions on how to file. The email also contained information about what would constitute a debt reportable on the 11-Day Pre-General Report, due October 28. ETH-1.

Based on the statutory formula for calculating late-filing penalties, the preliminary penalty amount is \$3,680, is calculated as follows:

Report	Deadline	Financial Activity	Penalty Rate	Days Late	Preliminary Penalty
24-Hour Report	11/04/22	\$4,600.00	2%	40	\$3,680.00

In her December 28, 2022, request for waiver, Ms. Poulin asks the Commission to waive or reduce the preliminary penalty, due to inexperience and the disproportionate size of the penalty to the overall size of the campaign. It should be noted that the McLean campaign had filed one other 24-Hour report on time, so in spite of their inexperience, they were obviously aware of the 24-Hour reporting period.

STAFF RECOMMENDATION

Commission staff believes that the language in the October 25 email sent by Lorrie Brann clearly stated that any expenditure or unpaid debt of \$1,000 or more needed to be reported within 24 hours:

PLEASE READ THIS EMAIL THOROUGHLY!

As a reminder, the 24-Hour Reporting Period begins Wednesday, October 26 and ends on Monday, November 7. During the 24-Hour Reporting Period, any transactions in the following list must be reported within 24 hours on the Commission's eFiling website:

- Any single contribution of \$1,000 or more
- Any single loan of \$1,000 or more
- Any single expenditure of \$1,000 or more
- Any single unpaid debt or unpaid order of \$1,000 or more

The Commission staff does its utmost to provide candidates with clearly worded guidance and reminders to help them avoid common campaign finance reporting pitfalls, such as late-filed reports. The October 25 email was meant to serve as a reminder of information already available to candidates in the 2022 Candidate Guidebook, the 2022 filing schedule, and Quick Guide regarding 24-Hour reporting. The relevant pages of the 2022 Candidate Guidebook, 2022 filing schedule and Quick Guide are also attached. Both contain clear direction under the heading of

“When to file” that the report must be filed within 24 hours. Also attached is the 11-Day Pre-General reminder postcard, which also contained a reminder about the 24-Hour reporting period. ETH 2-7.

During 2018-2022, the Commission has waived late-filing penalties against candidates downward to a range of \$300 - \$400, for example:

- from \$2,991.36 to \$300 – late 24-Hour Report by Danny Costain (8/29/2018)
- from \$3,744 to \$400 – late 24-Hour Report by Cathleen Nichols (3/16/2019)
- from \$529.50 to \$350 – late 42-Day Post-Primary Report by Mark Lawrence (10/16/2020)
- from \$423.54 to \$300 – late 24-Hour Report by Stephen Hanrahan (11/30/22)
- from \$368.12 to \$300 – late 11-day Pre-General Report by Danielle Fienberg (11/30/2022)

The expenditure triggering this late 24-Hour Report was subsequently reduced to \$2,304.62 and if the preliminary penalty were recalculated based on that amount, it would be \$1,843.70.

However, the Commission staff believes even that penalty amount is disproportionate to the inexperience and size of the campaign and the harm to the public. We recommend reducing the penalty to \$350. Thank you.



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04333-0135

December 15, 2022

Neil E. McLean, Jr.
45 Orchard Way
Turner, ME 04282

Re: Notice of Violation and Penalty for Late-Filed 24-Hour Report

Dear Mr. McLean:

You were required to file a 24-Hour Report on November 4, 2022 by 11:59 p.m. (21-A M.R.S. § 1017 (3-A)(C)), but the report was not filed until December 14, 2022. Under the Commission's statutes, the late filing of a report triggers an enforcement process (21-A M.R.S. § 1020-A(4-A)). The Commission staff has made a preliminary finding of violation and determined the preliminary penalty for filing the report late is **\$3,680.00**. Please see the next page for the penalty calculation.

You may request the Commission waive the penalty in whole or in part or find 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 there was no violation if it determines 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. (21-A M.R.S. § 1020-A(2)) 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 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 lorrie.j.brann@maine.gov if you have any questions.

Sincerely,

Lorrie J. Brann
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: Neil E. McLean, Jr.			
Late-Filed Report: 24-Hour Report			
Contributions	0	Penalty Base Amount	\$4,600.00
Expenditures	\$4,600.00	Percentage	2%
Due Date	11/04/2022	Daily Accrual Rate	\$92.00
Date Filed	12/14/2022	Days Late	40
Previous Violations	0	Your Total Penalty	\$3,680.00

Payment Statement and Payment Options

From: Neil E. McLean, Jr.

Penalty Amount: \$3,680.00

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.

December 28, 2022

Maine Ethics Commission
William Schneider, Chairman
45 Memorial Circle
Augusta, Maine 04330

Re: Request for Determination, Waiver and/or Reduction of Penalty
21-A M.R.S. § 1020-A(2)

Dear Commissioners:

I serve as the treasurer for Neil McLean's campaign for District Attorney in Prosecutorial District III. Our campaign was notified in writing on December 15, 2022, of a late filing penalty regarding the 24-hour report that was due on November 4, 2022. We are requesting a waiver or reduction in the assessed penalty for this error pursuant to 21-A M.R.S. § 1020-A(2).

The request for a waiver or reduction of the penalty is for the reasons stated below.

A. Inexperience of a first political campaign

This was the first political campaign for both Candidate McLean and me. The campaign did not have any paid staff or advisors. No one who volunteered their time for this endeavor had political experience or training. Candidate McLean, his wife, sister, and children have been the mainstays of the "campaign staff." We were fortunate enough to have various friends join us for parades and a few events, but the effort has mainly been a family affair. Indeed, I think Neil's youngest daughter, at only four years old, probably logged the most campaign hours of any of his campaign volunteers.

The expenditure I, as treasurer, failed to send a 24- hour report on was for a \$ 4,600 transfer of funds to Rumble Up on November 3¹. Rumble up is a texting platform. At the time, I understood these funds to sit in reserve with the platform and to be drawn down as text messages were sent. As campaign texts were sent the reduction in funds could be seen in real time with each text costing less than twenty cents. On November 16, 2022, Rumble Up refunded \$ 2,395.38 to our campaign account as unused funds. I mistakenly understood that the settlement from Rumble Up was the "expenditure" for the campaign while the funds were held in an escrow type account pending draw downs.

I should have given more attention to the expansive definition of "expenditure" in Title 21-A M.R.S. § 1012 (3). I now understand that the expenditure had to be reported on the date we believed we may spend that amount of money, even if we did not have the final expenditure amount until much later.

¹ The funds were withdrawn from the campaign account the following day, November 4th.

Both Candidate McLean and I have full time jobs that do not allow for any campaign work to be done during regular business hours. The final weeks of the campaign Candidate McLean was involved in campaigning events every evening during the timeframe we would normally communicate about campaign issues. My personal family situation created extraordinary demands on my time and limited effective communication between Candidate McLean and myself during this critical time. Going forward, the campaign will have a better idea about the time commitment of the weeks leading up to the general election. We will plan accordingly to allow for more effective and timely communication in that critical timeframe.

B. The penalty is disproportionate to the size of this campaign

The McLean Campaign is small both in the size of our team and in the amount of money raised. The current penalty amount represents over 25% of the total funds raised for the entire campaign from January until November of 2022.² Unfortunately, this transfer of funds to Rumble Up was the largest single transaction of the campaign representing over 30% of our total funds raised. We understand the twenty-four-hour reporting period is very important. However, the penalty is disproportionate to the size of this small campaign.

C. Harm to the public with late disclosure

The harm to the public by failing to timely disclose this expenditure can be mitigated with a reduced penalty. The offending transaction was discovered while I was on the phone with the Candidate Registrar asking other questions about our reporting. There was no effort to hide or obfuscate this reporting issue. The process of Notice of Violation has increased awareness to the campaign to ensure this will not be a problem again. The McLean Campaign has never had any other late reports, and this does not represent a pattern of failing to adhere to required guidelines.

Thank you to the Commission for your time and consideration of this request. I wish to thank Lorrie Brann for her professionalism and patience. Ms. Brann has been very responsive to questions and generous with her time and knowledge during this campaign process. For the reasons stated above, I request a waiver or reduction of the penalty assessed to the McLean Campaign on December 15, 2022.

Sincerely,



Patricia K. Poulin
Treasurer, McLean Campaign

² The total funds raised between the primary and general election by the campaign was \$14, 421.



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

24-HOUR REPORT OF CONTRIBUTIONS AND EXPENDITURES

2022 CAMPAIGN YEAR

COMMITTEE		TREASURER	
Mr. Neil E McLean, Jr. 45 Orchard Way Turner, ME 04282 PHONE:(207) 877-1492 EMAIL: neilemcleanjr@gmail.com		Patricia K Poulin 220 Kerns Hill Road Manchester, ME 04351 PHONE:(207) 512-2332 EMAIL: qpkpoulin@gmail.com	
REPORT	DUE DATE	REPORTING PERIOD	
24-Hour Report of Contributions and Expenditures	11/04/2022	11/03/2022-11/03/2022	

FINANCIAL ACTIVITY SUMMARY

CONTRIBUTIONS AND EXPENDITURES	
1. TOTAL CONTRIBUTIONS / LOANS	\$0.00
2. TOTAL EXPENDITURES	\$4,600.00
3. TOTAL DEBTS	\$0.00

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

REPORT FILED BY: Patricia K. Poulin
REPORT FILED ON: 12/14/2022 11:03:33 PM
LAST MODIFIED:
COMMITTEE ID: 425183

24-HOUR EXPENDITURE AND PAYEE INFORMATION

EXPENDITURE TYPES				
<p>CNS Campaign consultants</p> <p>CON Contribution to other candidate, party, committee</p> <p>EQP Equipment (office machines, furniture, cell phones, etc.)</p> <p>FND Fundraising events</p> <p>FOD Food for campaign events, volunteers</p> <p>LIT Print and graphics (flyers, signs, palmcards, t-shirts, etc.)</p> <p>MHS Mail house (all services purchased)</p> <p>OFF Office rent, utilities, phone and internet services, supplies</p> <p>OTH Other</p> <p>PHO Phone banks, automated telephone calls</p>	<p>POL Polling and survey research</p> <p>POS Postage for U.S. Mail and mail box fees</p> <p>PRO Other professional services</p> <p>PRT Print media ads only (newspapers, magazines, etc.)</p> <p>RAD Radio ads, production costs</p> <p>SAL Campaign workers' salaries and personnel costs</p> <p>TRV Travel (fuel, mileage, lodging, etc.)</p> <p>TVN TV or cable ads, production costs</p> <p>WEB Website design, registration, hosting, maintenance, etc.</p>			
DATE OF EXPENDITURE	PAYEE	REMARK	TYPE	AMOUNT
11/3/2022	RumbleUp 2021 L St. NW, Suites 101-220 Washington, DC, 20037	Campaign Set Aside for Text ad campaign	PHO	\$4,600.00
TOTAL EXPENDITURES FOR CANDIDATE:				\$4,600.00