



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

Commission Meeting 10/16/2020
Agenda Item #6

To: Commissioners
From: Erin Gordon, Candidate Registrar
Date: September 14, 2020
Re: Request by Mark André for Waiver of Late-Filing Penalty for 42-Day Post-Primary Report

Mark André is a Maine Clean Election Act candidate in the 2020 general election for the Maine House, District 110. This is Mr. André's fifth time as candidate. His treasurer, Mark Potter, also served as treasurer for Mr. André in 2018.

All candidates who participated in the 2020 primary election were required to file a 42-Day Post-Primary campaign finance report on August 25, 2020. Due to an unexpected change in his work schedule, the treasurer, Mr. Potter, did not file the report until the next day, August 26, making the report one day late. ETH 4-5. The preliminary penalty for the late report is \$132.00 and the candidate is requesting a waiver of the penalty. ETH-1.

LEGAL REQUIREMENTS

Candidates participating in an election, either primary or general, must file a report by the 42nd day after the date on which the election was held, and the report must be complete as of the 35th day after the election. 21-A M.R.S.A. § 1017(3-A)(D) ETH-7. When a candidate is late in filing a 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.A. § 1020-A(4-A). ETH-9.

DISCUSSION

Prior to the August 25, 2020 deadline, the Commission’s efilings website sent automatic email reminders of the 42-Day Post-Primary Report to all candidates who were scheduled to file the report. Candidate Registrar Erin Gordon also directly emailed all candidates who had not yet filed to remind them of the report at midday on the 25th. ETH-6. The email urged candidates to – at the very least – log into the system by 5:00 p.m. in case they needed any staff assistance with usernames and passwords.

On the morning of August 26, when the report was one day late, Ms. Gordon again emailed all candidates who had not filed the report by the 11:59 p.m. deadline to remind them to file and contact her with any questions. Ms. Gordon did not receive a reply from Mr. André to either reminder email. Mr. Potter logged during in the evening of the 26th and filed the report.

Based on the statutory formula for calculating late-filing penalties, the preliminary penalty amount is \$132.00 (ETH 2-3), calculated as follows:

Report	Deadline	Financial Activity	Penalty Rate	Days Late	Preliminary Penalty
42-Day Post-Primary Report	08/25/2020	\$6,625	2%	1	\$132.00

Through an email dated September 4, 2020 (ETH-1), Mr. André asks that the Commission waive the preliminary penalty, because his treasurer was traveling for work on the day of the deadline and was unexpectedly unavailable. He also states that, because the only activity on the report are his initial MCEA payments, there was no harm to the public. (He made no expenditures during the time period of the report.)

STAFF RECOMMENDATION

MCEA candidates are required to appoint a treasurer other than themselves. The treasurer may file a campaign finance report, but not the MCEA candidate. Although Mr. André would not have been able to file his report himself, Candidate Registrars have often filed reports on a candidate’s behalf when their treasurer is unavailable.

As to the level of harm to the public, while it is true that MCEA candidates for House all receive the same amount for the general election (\$5,300), this report publicly disclosed that Mr. Andre had received one supplemental payment of \$1,325 (ETH-5) and that he had made no expenditures of his general election funds through the end of the report period. ETH-4.

In his waiver request, Mr. André refers to “many deadlines” that have been extended due to the COVID-19 pandemic, and specifically to the extension of the deadline to qualify for MCEA funding (“certification”). The Governor extended the certification deadline and campaign finance reporting deadlines when she adjusted the date of the primary election to July 14, 2020. The only deadline extended by the Commission was for the Statement of Sources of Income, which was necessary because of the introduction of a new electronic filing system (previously this statement was filed on paper forms). Staff have been clear with candidates that campaign finance report deadlines are firm and ensure that these deadlines do not pass without direct communication from Candidate Registrar to candidate.

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

- from \$2,565.38 to \$300 – late 24-Hour Report by Jan Collins
- from \$1,739.73 to \$400 – incomplete 11-day pre-primary by Mark Lawrence
- from \$384.00 to \$300 – late 24-Hour Report by Ian Schwartz

The Commission *declined* to waive preliminary penalties that were already below \$300:

- \$112.00 – late July Semiannual by Jeffrey Slocum
- \$115.93 – late 24-Hour Report by Dana Dow
- \$235.03 – late 24-Hour Reports by James LeBrecque.

We do not recommend reducing Mr. André’s original penalty from \$132, as it falls well below the range of \$300-\$400. Though understandable, the factors that caused the delay in his filing were not remarkable and we do not feel that the penalty amount is disproportionate.

Thank you for your consideration of this memo.

Gordon, Erin

From: Mark Andre <andreforhouse76@yahoo.com>
Sent: Friday, September 4, 2020 8:52 AM
To: Gordon, Erin
Subject: Waiver Request for Late Filing

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Erin,

Please record and transmit the following request for Waiver for my campaign's late filing of the 42 Day Post Primary Report.

I am requesting this Waiver for the following reasons:

- 1) My campaign in a lay person who is employed by Henry Schein as a medical equipment service technician that travels throughout the State on an on call basis. He was called upstate on the day the filing was due and inadvertently missed the reporting deadline. Upon receiving the email noting the deadline was missed, the report was immediately filed within 24 hours.
- 2) The report filed was a no activity report. Because I am a clean elections candidate, the income received by my campaign is automatically logged. The information displayed on my campaign finance page was correct as of the August 25 deadline and simply needed to be confirmed by my Treasurer. Therefore, no harm to the public existed.
- 3) Given the Covid crisis, waivers to many deadlines have been handed down this election season. Regarding the most important deadline (initial qualifying contributions), my paperwork and QC's were handed in prior to the State mandate deadline specified in the law. My opponent only qualified by virtue of the Governor issuing a last minute extension of the deadline. If I could get my QC's in on time as a challenger, the incumbent in the race should have been able to get the hell off her lazy ass and do the same. Regardless, when you began extending deadlines in certain cases, it creates an expectation that deadlines are and should be flexible in other cases given the pandemic.
- 4) I have run for office 5 times. This is the first Ethics Commission deadline that has ever been missed by one of my campaigns.

Thank you for your time. Please note that as a sole proprietor of a business, I will likely be unable to attend a zoom conference on this matter. I hope the information provided above, which is pretty straightforward, is sufficient to grant the Waiver requested. This especially given the fact that two years ago I was one of two candidates that the Commission failed to distribute a Clean Elections payments to in a manner consistent with the law, requiring many appearances before the Commission by me, to obtain the payment to which my campaign was entitled.

Sincerely, Mark Andre' Unenrolled HD110 Waterville/ Oakland

August 31, 2020

Mark Andre
33 Holmes Farm Road
Oakland, Maine 04963

Re: Notice of Violation and Penalty for Late-Filed 42-Day Post-Primary Report

Dear Mr. Andre:

You were required to file the 42-Day Post-Primary Report on August 25, 2020 by 11:59 p.m., but the report was not filed until August 26, 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 \$132.00. 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) 287-3651 or erin.gordon@maine.gov if you have any questions.

Sincerely,

Erin Gordon
Candidate Registrar

cc:

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: Mark Andre			
Late-Filed Report: 42-Day Post-Primary Report			
Contributions	\$6,625.00	Penalty Base Amount	\$6,625.00
Expenditures	\$0	Percentage	2%
Due Date	August 25, 2020	Daily Accrual Rate	\$132.00
Date Filed	August 26, 2020	Days Late	1
Previous Violations	0	Your Total Penalty	\$132.00

Payment Statement and Payment Options

From: Mark Andre

Penalty Amount: \$132.00

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.



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 MCEA CANDIDATES

COMMITTEE		TREASURER	
Mr. Mark R Andre 33 Holmes Farm Road Oakland, ME 04963 PHONE:(207) 649-2410 EMAIL: andreforhouse76@yahoo.com		Mark Potter 10 Maple Street Oakland, ME 04963 PHONE: EMAIL: maddawgmarkus@yahoo.com	
REPORT	DUE DATE	REPORTING PERIOD	
42-Day Post-Primary Report	08/25/2020	07/01/2020 - 08/18/2020	

FINANCIAL ACTIVITY SUMMARY

CASH ACTIVITY		
	TOTAL FOR PERIOD	TOTAL FOR CAMPAIGN
1. CASH BALANCE FROM LAST REPORT	\$525.00	
2. SEED MONEY CONTRIBUTIONS	\$0.00	\$0.00
3. MAINE CLEAN ELECTION ACT PAYMENTS & AUTHORIZATIONS	\$6,625.00	\$7,150.00
4. SALE OF CAMPAIGN PROPERTY (SCHEDULE E, PART 2)	\$0.00	\$0.00
5. OTHER CASH RECEIPTS (INTEREST, ETC.,)	\$0.00	\$0.00
6. MINUS EXPENDITURES (SCHEDULE B)	\$0.00	\$0.00
7. CASH BALANCE AT CLOSE OF PERIOD	\$7,150.00	
OTHER ACTIVITY		
8. IN-KIND SEED MONEY CONTRIBUTIONS	\$0.00	\$0.00
9. TOTAL UNPAID DEBTS AT CLOSE OF PERIOD (SCHEDULE D)	\$0.00	

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

REPORT FILED BY: Mark Potter
REPORT FILED ON: 8/26/2020 7:40:38 PM
LAST MODIFIED:
COMMITTEE ID: 362459

**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 | 9 = Candidate / Candidate Committee |
| 2 = Candidate/ Spouse/ Domestic Partner | 10 = General Treasury Transfer |
| 3 = Commercial Source | 11 = Transfer from Previous Campaign |
| 4 = Nonprofit Organization | 12 = Contributors giving \$50 or less |
| 5 = Political Action Committee | 13 = Contributors giving \$100 or less |
| 6 = Political Party Committee | 14 = Contributors giving \$200 or less |
| 7 = Ballot Question Committee | 15 = MCEA Payment |
| 8 = Other Candidate/ Candidate Committee | 16 = Financial Institution |

DATE RECEIVED	CONTRIBUTOR	EMPLOYER AND OCCUPATION	TYPE	AMOUNT
7/15/2020	MCEA Payment	Supp Payments - Group 1	15	\$1,325.00
7/15/2020	MCEA Payment		15	\$5,300.00
TOTAL CASH CONTRIBUTIONS				\$6,625.00

Gordon, Erin

From: Gordon, Erin
Sent: Tuesday, August 25, 2020 12:19 PM
Cc: Burke, Emma
Subject: REMINDER: 42-Day Post-Primary Report DUE TODAY

Good afternoon Candidates,

You are receiving this email because you are required to file the 42-Day Post-Primary Report and you have not yet done so. The report is due today, **August 25, 2020 by 11:59 p.m.**

I will be available by phone or email until 5 p.m. today to answer any questions about filing or to assist in troubleshooting. If you are not planning to file your report until later this evening, please be sure to check your username and password to www.mainecampaignfinance.com before 5 p.m. so that I can help with any log-in problems. If you believe you are receiving this email in error, let me know.

Thank you,

Erin Gordon

Candidate Registrar

Maine Ethics Commission

(207) 287-3651 | www.maine.gov/ethics

135 State House Station, Augusta, ME 04333-0135

45 Memorial Circle, Augusta, ME

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;