



Minutes of the April 27, 2016, Meeting of the
Commission on Governmental Ethics and Election Practices
45 Memorial Circle, Augusta, Maine

Present: Margaret E. Matheson, Esq., Chair; Hon. Richard A. Nass; William A. Lee III, Esq.; Meri N. Lowry, Esq.;

Absent: Michael T. Healy, Esq.

Staff: Jonathan Wayne, Executive Director; Phyllis Gardiner, Counsel

Commissioner Matheson convened the meeting at 9:03 a.m.

The Commission considered the following items:

1. Ratification of Minutes of January 27, 2016 Meeting

Mr. Lee moved to accept the minutes as written. Mr. Nass seconded. Motion passed (4-0). Mr. Nass stated there was an error on page 3; a quote attributed to him was unfinished. Mr. Lee moved to amend the Minutes to finish the quote. Mr. Nass seconded. Motion passed. (3-0; Ms. Lowry abstained.)

2. Overview of Request for Waivers of Late-Filing Penalties

Mr. Wayne stated this item was meant to give the new Commissioners an overview of the requests for waivers of late-filing penalties, which make up a large percentage of what the Commissioners review. He stated that Commissioner Lee had contacted him and suggested that it would be good to have a discussion about setting standards for this process. Mr. Lee stated that, as a new Commissioner, this information is very helpful but with the change in the law, he was not sure past practices would be a good guide for deciding future waivers.

Ms. Matheson stated that, when reviewing waiver requests, the Commissioners have used the facts of the case, *mens rea*, history of the organization, and past scenarios to try to maintain consistency. She stated she believed the Commissioners had done a good job deciding these cases and that staff has always done a good job of providing background and an appropriate range on the penalties. Ms. Matheson stated she thought the discussion should be about how the change in the law impacts their deliberations on waivers.

Mr. Nass stated that, when he first became a Commissioner, he was shocked at how much the penalties were mitigated. He stated that, based on the change in the law, it would appear that the voters are critical of this practice and a discussion of the process would be good. Ms. Matheson stated that the change in the law has resulted in the following changes to penalties: 1st violation - 1% to 2%; 2nd violation – 3% to 4%; 3rd violation – 5% to 6%. Mr. Lee stated that the cap, which used to be 1/5 of the violation amount, can now be the entire amount in violation. Ms. Lowry stated the cap had been entirely removed. Mr. Lee agreed and stated that, depending on how long an organization took to correct their error, they could amass a huge penalty.

Mr. Nass expressed surprise that most people pay the preliminary penalty. Ms. Matheson stated that may not happen in the future given the increase in the penalty structure. Mr. Wayne confirmed that more than 50% of violators voluntarily pay the preliminary penalty, especially if they are late in filing a routine report. He attributed this to staff routinely following up with late-filers in an effort to keep the penalties low. Mr. Wayne stated if it is a routine report, the error is usually discovered within 1-3 days but a 24-Hour Report could be missed for weeks.

Ms. Lowry stated she thought Commission staff had prepared the Commissioners very well for this meeting. The discussion of the cases was very informative and substantive and she ultimately felt the process worked very well. She stated she did not believe there was a way to develop and agree on set standards for determining waiver requests because she believed the Commissioners need to review the facts of the case on an individual basis and have discussions similar to the ones they had today.

Ms. Matheson stated she understood wanting to have a more standardized process for considering waiver requests but agreed with Ms. Lowry that reviewing the cases individually works best. She asked if the staff wanted to make some changes and if the process could be more efficient. Mr. Wayne stated staff was not suggesting any changes be made. He stated the smaller penalties do generate a disproportionate amount of work for both the staff and the Commissioners. Mr. Nass asked if it was an option to have staff decide penalties of \$100 or less or if it required a change in the statute. Mr. Wayne stated he believed it was more appropriate for the Commissioners to decide penalty waivers.

Ms. Matheson stated she believed the increase in penalties is aimed at the more egregious violations. Mr. Lee said he believed the Commissioners should be doing a top-down analysis of all waiver requests to be fair and consistent in their decisions. Mr. Nass stated that he has always relied on staff recommendations to begin his deliberations on waiver requests. Mr. Lee agreed but stated that the discussion at the meeting could also influence future staff recommendations. Mr. Wayne stated that staff attempts to maintain consistency with past practices when making their recommendations. Mr. Lee stated that past practices may not be applicable given the increase in penalties.

Mr. Wayne stated that staff planned to generally increase their penalty recommendations for PACs, BQCs and party committees. Mr. Wayne stated he thought staff would be doing a top-down review when making their preliminary penalty recommendations. Ms. Gardiner suggested the Commissioners could use proportionality as one of their measures for deciding penalty reductions, citing §1020-A (2) and §1020-A (2)(a).

Mr. Lee stated he believed the process should involve a review the applicable statutes and mitigating circumstances (any single factor could serve to completely waive the penalty) in order to arrive at a balanced decision based on the circumstances of the individual case. Ms. Matheson stated she believed past decisions were helpful to the decision-making process, if taken into context with the new higher penalty formula. Mr. Lee agreed but stated that any past reductions would probably be double given the increases. Mr. Nass raised the issue that MCEA candidates cannot use Clean Election funds to pay penalties. He suggested the Commission might find it hard to assess penalties against these candidates who would have to use personal funds to pay the penalty just because they made a mistake. Mr. Lee stated he would find it difficult to completely waive penalties for anyone who did not exercise due diligence or was negligent in their reporting responsibilities.

Ms. Lowry asked if they should have a different review standard for the \$200 and below penalties in order to streamline the process. Mr. Lee asked if she was referring to a consent agenda. Ms. Matheson stated that was an interesting thought but she did not think many low level penalties were placed on the agenda; largely because staff does a great job of contacting and following up with filers to make sure they are in compliance. Mr. Lee stated this might be worth looking into if a

large number of these penalties arise in the future. Ms. Gardiner stated that, as long as the violator has the opportunity to publicly address the violation, she did not see a problem with a consent agenda.

At the invitation of the Chair to comment, Katherine Knox, Esq., of Bernstein Shur, stated she has many clients who would like the opportunity to accept the staff recommendation without having to attend, or pay her to attend, a Commission meeting. Ms. Matheson stated this sounded efficient but expressed a concern about how the public would view this. She was concerned that such a process could be viewed by some violators as the cost of doing business in Maine. Ms. Lowry stated she did not believe this would be procedurally possible. She said that the Commission has already increased the staff recommended penalty and would not have been able to do so without the opportunity to question the violator and have a robust discussion of the issue. Mr. Nass stated the violator could make their case by submitting a letter and not attend the meeting. Ms. Gardiner stated that would be acceptable but did not address the issue of what would happen if the Commissioners did not agree with the staff recommendation. Mr. Lee suggested the violator could agree to the staff's recommended penalty and waive the right to be present but reserve the right to an opportunity to be heard if the Commission did not agree with the penalty recommended by the staff. Ms. Lowry expressed concern about making a decision on a case without having the violator present to answer any questions the Commissioners may have.

3. Request for Waiver of Late-Filing Penalty – Proteus Action League BQC

Mr. Wayne stated Proteus Action League is a not-for-profit corporation, which registered as a ballot question committee (BQC) to support a citizen initiative last year. It filed its October Quarterly Report on time but staff found the report to be late because the report did not report a general treasury transfer of \$253,000 from Proteus Action League to its BQC did not file an amended report until January 2016. The BQC bases its request for a waiver on the BQC's lack of understanding that a general treasury transfer is required to be reported as a contribution.

Katherine Knox, Esq., appeared on behalf of Proteus Action League. She stated that Proteus Action League designs and manages collaborative grant making, specifically for social justice issues. Ms. Knox stated Proteus Action League takes full responsibility for filing an incomplete report, deeply regrets the error occurred and has taken steps to ensure it does not happen again. She stated that while the mistake was unintentional, it was a mistake and should result in a penalty under Maine

law. Ms. Knox stated Proteus has reviewed the staff recommendation, believes it is fair and has no objection at this time.

Ms. Matheson stated the report was not corrected until January and asked how this happened. Ms. Knox stated she believed an error had shown up in the system and Ms. Magua, the treasurer, called Commission staff to find out what was wrong and how to correct it.

Mr. Nass questioned what a 501(c)(4) organization is and if they can participate in the political process. Ms. Knox stated a 501(c)(4) organization is social justice advocacy organization that can participate in political activities. Ms. Nass stated this contribution did not happen on its own, it had to have been solicited and questioned how the solicitation happened. Ms. Knox stated she was not sure who contacted who but Proteus did give the grant. She stated she did not believe it was fair to characterize the Maine Clean Election organization (Mainers for Accountable Elections BQC) as uncaring because there was a significant amount of communication between the two organizations about reporting various other components. She stated Mainers for Accountable Elections had properly reported receipt of the contribution; Proteus properly reported the contribution to the Maine organization, but it failed to properly state in its own BQC report that the source of contribution was the 501(c)(4) organizations general treasury.

Mr. Nass stated there has been a lot of discussion about the provision in the citizen initiative that requires the disclosure of top three donors to an organization. In this case, the report only lists a single contributor – Bernard Schwartz who gave \$100,000. The report does not indicate the contributors behind the \$253,000 contribution. He questioned why those contributors were not listed. He said it seemed small organizations that got involved in politics have to find out and disclose who contributed to them, but in this case, that information about the contributors behind the \$253,000 contribution disappeared. He said it seemed that the organizations who promoted the citizen initiative are able to ignore that provision to disclose their funders.

Ms. Knox stated the provision regarding the top three donor disclosure relates to independent expenditures made to support or oppose a candidate. That provision is not applicable in this situation which involves a contribution to a ballot question committee. She stated that Proteus did not specifically raise any money in order to make the contribution to its BQC or to promote the

citizen initiative and it did not do any Maine-based fundraising. The funds for the contribution came from the 501(c)(4) organization's general treasury. Solicitations for funds for the general treasurer are not made in connection with an specific purpose and are used to support a variety of activities. The statute is clear that contributions to an organization's general treasury do not have to be disclosed individually unless there is a specific tie to an election in Maine.

Ms. Matheson stated the recommended range for the penalty is quite large and questioned if Proteus would accept a penalty at the high end of that range. Ms. Knox stated Proteus would accept that without objection.

Mr. Lee asked how much money passed through Proteus Action League in 2015 and how active it was. He said that information may be relevant to understand the volume of work the BQC's treasurer was dealing with and the level of the treasurer's experience. Ms. Knox stated she did not have that information but Ms. Magua would.

Mr. Lee stated Commission staff viewed the violation as an on-going or continuing violation and had calculated the penalty using both the old and new formula and questioned if Proteus agreed with that method of determining the penalty. Ms. Knox stated that, unlike some provisions of environmental law which treat each day as a separate violation until the problem is remedied, it is not clear in election law that each day that a report is late is considered a separate violation and that the penalty can be calculated in this manner. She said that without a specific reference in the statute, she did not believe this was the proper way to calculate the penalty.

Mr. Lee stated it was important to determine how penalties should be calculated in order to determine where the starting point is when considering a reduction. Accepting for the sake of argument that the maximum penalty was \$50,000 because the violation initially occurred prior to the new law going into effect, he asked Ms. Knox whether the percentage used in the calculation should increase from 1% to 2% when the new law went into effect. Ms. Knox said that it did not seem logical to use a hybrid method of applying two different penalty calculations.

Ms. Gardiner stated Proteus hit the cap on October 26th using the 1% formula, so the 2% argument is purely academic. Mr. Lee asked if Ms. Gardiner agreed with Ms. Knox's argument. Ms.

Gardiner stated Ms. Knox made a good argument, but if this were a critical factor, she would need to do further analysis before providing a definitive answer.

Muthoni Magua, treasurer for Proteus Action League BQC, appeared via telephone to answer questions from the Commissioners. Mr. Lee questioned how long Ms. Magua has served as treasurer for Proteus. Ms. Magua stated she is the Chief Financial Officer for Proteus Action League and treasurer for the BQC. Mr. Lee questioned how long she has been the Chief Financial Officer for Proteus. Ms. Magua stated she started as the Administrative Director in 2003, later she became Director of Finance and Administration and recently became Chief Financial Officer. She stated she has oversight of the organization budget, works closely with various staff to ensure the financial health of the organization, review of systems for improvement, supervising the accounting team, etc. Mr. Lee asked how much money Proteus contributed to causes in 2015 and how many different campaigns it made contributions to. Ms. Magua stated Proteus Action League gave around three million dollars in grants and Proteus Fund gave about eight million dollars in grants. Ms. Knox clarified that Proteus Action League is the 501(c)(4) and Proteus Fund is the 501(c)(3); the eight million dollars from Proteus Fund would not have been political contributions. Mr. Lee asked how many campaigns or causes benefited from the three million dollars. Ms. Magua stated only the Maine campaign. Mr. Lee stated that the Maine campaign received \$250,000 and asked what happened to the remaining \$2,750,000. Ms. Knox clarified that Maine is the only campaign that received funds and the remaining funds would have been non-campaign related. Ms. Lowry asked Ms. Magua to clarify that the only campaign that received money from the 501(c)(4) was in Maine. Ms. Magua stated there was one in Maine and there was an earlier one in Nebraska.

Mr. Lee asked if Ms. Magua had read the online guidance for filing campaign finance reports. Ms. Magua stated that, early in the second quarter, Proteus had reviewed the requirements and it had understood that if the funds are received but are not related to a ballot question, it did not have to be reported. Mr. Lee asked if Ms. Magua had contacted Commission staff for guidance on filing requirements. Ms. Magua stated she had not. She stated they were used to creating the report, reviewing it with the team and attorney, so everyone was looking at a complete report. In Maine, because the information was entered into a portal, their usual process did not work. Ms. Magua stated that, going forward, she understood they needed to create a draft report to share with the team

before filing the report. She stated when she learned of the error, she immediately contacted Commission staff to find out what she needed to do to correct it.

Ms. Knox stated Ms. Magua was entering information from a remote location and had not known she could save and print a draft of the report to share with the team before filing; she was emailing information for the reports to the team for review.

Mr. Lee stated that it appears there was no follow-up from Commission staff on the negative balance and asked whether that could be considered an error and a mitigating circumstance. Mr. Wayne explained that when people enter information, the Commission's e-filing system creates a report viewable by staff and the organization. There is a financial activity summary which makes it easy for anyone to see if there is a cash balance problem. Mr. Wayne stated there is one staff person assigned to review campaign finance reports for all PACs, BQCs, party committees and lobbyists and it would be impossible for him to review every single report. He stated that work is being done to create an alert for negative cash balances, but ultimately it is the filer's responsibility to monitor this.

Mr. Lee stated that ultimately a negative balance error message was triggered. Ms. Knox stated she did not believe the error message Ms. Muthoni received was related to the negative balance. Mr. Wayne stated Ms. Magua had called the Commission on another unrelated message and Commission staff had noticed the negative balance and pointed it out to her. Mr. Lee stated that the instructions on the website are very clear but this is not the first time this scenario has happened and questioned if something could be changed to prevent this problem from happening again. Mr. Wayne stated Commission staff will look into improving guidance and help topics.

Mr. Nass stated that given the new standards for penalties and the apparent public criticism of past practices on penalty reductions, he did not see how they could significantly reduce this penalty without causing problems with future similar cases. Ms. Matheson stated she was inclined to view this case under the old penalty structure, based on the date of violation and the lack of clarity in the statute. Mr. Nass expressed the concern that depending on how they decided this case, the decision could be viewed as unfair to others. Ms. Matheson stated that, in her view, the Commission in order to try to be predictable and reliable, needs to approach matters from a politically neutral

standpoint. Ms. Lowry agreed with Ms. Matheson that this case should be reviewed under the old penalty structure.

Mr. Lee stated he did not find lack of experience to be a factor, but he did view that the harm to the public was significant due to the amount of money. However, it was not an intentional act; this was negligence.

Mr. Nass made a motion to assess a \$25,000 penalty. Mr. Lee seconded the motion.

At the invitation of the Chair to comment, Ms. Knox stated that Ms. Magua is not an experienced BQC treasurer, she was not the treasurer in Nebraska; her experience is with grant making and tracking funds. She expressed confusion with the overlapping of the penalty structures and believed that the statute in effect at the time of the violation should be the deciding structure and the will of the voters to increase penalties should not be overlaid on the old penalty structure.

Ms. Matheson stated she could not support the motion for a \$25,000 penalty and believed this case should be decided using the old penalty structure. Ms. Nass stated he believed a 50% reduction was a good reduction and expressed discomfort with a 75% reduction of the penalty. Mr. Lee stated that when reviewing the older cases, the average penalty was reduced to 25% of the original penalty.

Motion for \$25,000 penalty failed (1-3; Mr. Lee, Ms. Lowry and Ms. Matheson opposed).

Mr. Lee made a motion to assess a \$15,000 penalty. Ms. Lowry seconded the motion. Motion passed (3-1; Ms. Matheson opposed).

4. Request for Waiver of Late-Filing Penalty – Androscoggin County Republican Committee

Mr. Wayne stated that the Androscoggin County Republican Committee (ACRC) filed two campaign finance reports late. He explained that local party committees are required to file two or three campaign finance reports each year unless they raise or spend less than \$1,500 in a year. In 2015, ACRC collected more than \$4,000 in February and was required to file two campaign finance reports, one on July 15, 2015 and one on January 15, 2016; the July report was filed 186 days late and the January report was filed two days late. Mr. Wayne stated that because of the \$1,500

threshold, many local party committees do not have to file these reports and Commission staff would have no way of knowing if a report needed to be filed or not. He stated staff later learned that the former treasurer had taken an unauthorized loan from the committee. Mr. Wayne stated staff was recommending a full waiver of the penalty due to the unique circumstances of this case.

Mr. Nass asked what the staff thought the level of harm to the public was. Mr. Wayne stated that 2015 was a non-election year, the July report was very late but the only activity reported was the proceeds from an annual dinner held in the beginning of 2015; the January report was only two days late but complete, so the harm to the public seems minimal.

Les Gibson, Treasurer, and Jason Green, Vice Chair, of the Androscoggin County Republican Committee, appeared before the Commissioners to make ACRC's request for waiver of the late-filing penalties. Mr. Lee questioned who was responsible for filing the campaign finance reports. Mr. Green stated, per ACRC's bylaws, it was the treasurer's responsibility. Mr. Lee questioned who had oversight of the treasurer. Mr. Green stated, per ACRC's bylaws, the Chair has oversight of the treasurer. Starvos Mendros was the committee Chair during the relevant time period. Mr. Lee questioned what explanation Mr. Mendros, the Chair, had for not looking at the bank account. Mr. Green stated Mr. Mendros believed it was the responsibility of the full committee to oversee the treasurer and subsequently ACRC voted to remove him as Chair. Mr. Lee questioned what explanation the former treasurer gave for not filing the report. Mr. Green stated ACRC contacted Mr. Ramsay, the former treasurer, and requested an explanation, his resignation and a full repayment of the funds. He stated Mr. Ramsay admitted he had made a mistake, accepted full responsibility and did fully repay the funds. Mr. Lee questioned how ACRC discovered the problem. Mr. Green stated the former Chair was aware of the financial problem but did not inform the other officers; they heard rumors that ACRC might have financial problems from other ACRC members. He stated they attempted to verify ACRC's financial status with the bank, but the bank would only provide information to a signatory on the account, which they no longer had because of the removal of both Mr. Mendros and Mr. Ramsay. Mr. Green stated ACRC then contacted Mr. Gibson, former Vice Chair for ACRC, to find out if he was still listed as an account signatory, which he was. Mr. Gibson stated that ACRC's bylaws required the Chair, Vice Chair and Treasurer be signatories on the bank account. He stated he requested six months of bank statements and when he reviewed these statements, he became aware of the financial malfeasance and reported his

findings back to the officers of ACRC. Mr. Green stated the officers immediately contacted Mr. Ramsay to demand his resignation and return of the funds. He stated the officers also demanded the resignation of Mr. Stavros, who declined, so they held a vote of no confidence and, by a 2/3 vote, removed as Chair. Mr. Green stated the former Chair admitted to knowing about the problem for up to two weeks but did not inform the other officers.

Mr. Lee stated the non-filing of the July report was an intentional act and questioned why a complete waiver of the penalty was warranted. Mr. Gibson stated ACRC had requested the reduction or waiver because these actions were taken by one individual, with the indirect complicity of another individual who failed to provide appropriate oversight and failed to alert anyone else to these actions. He stated that this action happened without the knowledge of the other officers of ACRC, which is now under new leadership, and he did not believe the new leadership should be held accountable for this error. Mr. Gibson stated he felt there were extreme mitigating circumstances in this case.

Mr. Nass stated that, knowing the tenuous existence of these local committees and how difficult it is to get people to serve on these committees, he was reluctant to penalize them for the actions of a rogue individual. Mr. Lee questioned where in the statutory criteria is this a consideration. He stated this situation did not occur because of inexperience nor was a bona fide attempt made to file the report. Mr. Lee stated if ACRC's checkbook had been stolen, he could see a full waiver of the penalty but this was an intentional act committed to cover up inappropriate behavior.

Ms. Matheson asked if this case rose to the level of a referral to the Attorney General's office. Mr. Wayne stated the wrongdoing here relates to unauthorized taking of funds and the Commissioners could do a referral to the Attorney General's office. Ms. Matheson questioned if Mr. Wayne had a response to Mr. Lee's question regarding the reasons for the staff recommendation. Mr. Wayne stated the staff recommendation was based on past practices. Although this party committee appears to be better managed than most party committees, it would pose a burden on the new leadership to fundraise to correct the misdeeds of the past leadership.

Mr. Lee stated he was trying to be objective but he did not see any mitigating circumstances in this case. He stated there is an expectation of honesty from the officials of these committees, it did not happen in this case and that is unacceptable.

Mr. Green stated that when the officers became aware of their problem, they immediately contacted the Commission to correct the error. He stated they are all volunteers and are trying to do the right thing. He stated that while ACRC does acknowledge it is in violation, it requested a waiver due to the mitigating circumstances of this case. Mr. Green stated ACRC would abide by whatever decision the Commissioners make and would do whatever fundraising is necessary to pay any penalty that may be assessed.

Ms. Matheson stated that she would consider an untruthful treasurer and an uncommitted Chair mitigating circumstances. Mr. Nass agreed and stated he would not want to make any decision that would scare people away from serving on these local party committees.

Mr. Green stated this situation was further exacerbated when the former Chair contacted various media outlets claiming to be a whistleblower and blaming the other officers of attempting to cover this up. He stated ACRC spent hours dealing with calls from reporters, the police and the district attorney's office. Mr. Gibson stated the reports could not have been filed sooner because ACRC had to hold an election to elect new officers as a result of this situation.

Mr. Lee stated there are three factors to consider when considering a reduction of the penalty, in this case there is minimal harm to the public but inexperience and mitigating circumstances are not applicable. He made a motion that the penalty be 2/3 of the statutory amount. Ms. Matheson stated the late report was filed and that is what the penalty is based on. Motion failed due to lack of a second.

Mr. Nass made a motion to adopt the staff recommendation. Ms. Matheson seconded the motion. Mr. Nass stated he did not believe it was appropriate to apply equal value to each mitigating factor and he felt there are plenty of mitigating factors in this case. Ms. Matheson stated she believed having a treasurer who is hiding information to be a mitigating factor and pointed out that they are not absolving ACRC of the violation. Mr. Lee stated you cannot find a violation without attaching

a sanction. He pointed out that they had assessed a penalty in an earlier case, which had resulted from an unintentional act, and it was not equitable to not assess a penalty on a case which resulted from an intentional act.

Ms. Lowry stated she was persuaded by Mr. Lee's suggestion that the Commissioners are required to make note of the violation and assign some penalty. She suggested a 1/3 or \$150 penalty.

Motion to adopt staff recommendation failed (2-2; Mr. Lee and Ms. Lowry opposed).

Ms. Lowry made a motion that in light of significant mitigating circumstance and the limited harm to the public, that even with oversight fraud can occur, and not wanting to unduly burden the revived organization, to assess a penalty of 1/3 of the statutory penalty.

Mr. Lee asked if Ms. Lowry would consider amending her motion to make it a \$200 penalty. Ms. Lowry agreed and Mr. Lee seconded the motion.

Ms. Matheson stated she would not be voting in favor. Mr. Nass stated they appeared to be deadlocked and asked if the matter should be tabled until the next meeting.

Mr. Lee stated the decisions made by the Commission are viewed by other organizations in similar situations. While ACRC made a good argument, the Commission should consider the impact its decisions will have on other organizations. He stated that if the Commission wants organizations to abide by the rules, it is not enough to find a violation without assessing a penalty, no matter how small. Mr. Lee stated this was a preventable violation and ACRC failed in its responsibility to provide appropriate oversight.

Mr. Nass stated he thought too strict a standard was being applied to this case; there are plenty of mitigating factors that allow for no penalty in this case.

Motion for \$200 penalty failed (2-2; Ms. Matheson and Mr. Nass opposed).

Mr. Nass made a motion to table this matter until the next meeting. Ms. Matheson seconded the motion; no vote taken on this motion.

Mr. Green asked if this meant that they would have to attend another meeting. Mr. Nass stated that, because they had already provided information at this meeting, he did not think they would have to come back again. Mr. Lee stated that Mr. Healy may not want to vote on this matter because he had not been at the meeting when the information was provided. Mr. Wayne stated the audio of this case could be provided to Mr. Healy.

Ms. Matheson stated she thought they could eliminate the penalty based on the statutory penalty being disproportionate to the harm suffered to the public, especially as it occurred during a non-election year. Mr. Lee stated he thought that was a good argument to reduce the penalty but not eliminate it. Mr. Nass questioned why Mr. Lee felt so strongly about assessing a penalty in this case. Mr. Lee stated he did not believe they would be sending the right message if they find a violation but assess no penalty because this was an intentional violation.

Mr. Lee made a motion to find a violation and assess a penalty of \$100. Mr. Nass seconded the motion. Motion passed (4-0).

5. Request for Waiver of Late-Filing Penalty – Candidate Stephen Martin

Mr. Wayne stated that Mr. Martin was a first-time candidate in the Special Election for Senate District 32. He stated Mr. Martin made two expenditures of over \$1,000 during the 24-Hour reporting period and was required to file two 24-Hour Reports. He stated Mr. Martin filed the two reports two and six days late and claimed he had not known about the filing requirement. Mr. Wayne stated that, due to the short amount of time before the Special Election, staff had notified the candidates of the filing schedule via email.

Mr. Martin appeared before the Commissioners to make his request for waiver of the late-filing penalties. Mr. Martin admitted he made an error in not filing these reports. He stated that, in his work as a bail commissioner, he has to maintain the integrity of the process and, in order to do so, he takes various factors into consideration, which is similar to what the Commissioners do. Mr.

Martin stated this was not an intentional act; it was an oversight. He said he believed the harm to the public was minimal; however, he would accept whatever decision was made.

Mr. Nass questioned what Mr. Martin meant when he stated in his waiver request that initially Commission staff had some legal questions concerning this Special Election. Mr. Martin stated that when he initially registered to run for this Senate seat, the current occupant was going to serve out his term but then he resigned triggering the Special Election. He stated that, essentially, he was running two campaigns at once. Mr. Nass asked if Mr. Martin had taken advantage of the ability to receive supplemental Clean Election funds. Mr. Martin stated he had turned in 201 Qualifying Contributions, 197 or 198 were qualified, so he was not sure if he received any supplemental funds. Mr. Wayne clarified Mr. Martin did not qualify for a supplemental payment.

Mr. Nass moved to adopt the staff recommendation. Mr. Lee stated that if the Commissioners adopt the staff recommendation, it would be a 30% reduction of the statutorily calculated penalty. He stated that there was minimal harm to the public, the candidate was relatively inexperienced and he had no problem supporting Mr. Nass' motion. Ms. Lowry seconded the motion. Motion passed (4-0).

Mr. Martin stated he found the Commission to be a great resource but suggested that it would be good to have some form of training, preferably in person, with the Commission staff on this process. Mr. Wayne stated that most of the training during an election year is done by the party caucuses. Commission staff will sometimes provide assistance but is always available to answer questions or assistance.

Mr. Nass made a motion, seconded by Mr. Lee, to adjourn. The motion passed. The meeting adjourned at 12:28 p.m.

Respectfully submitted,
/s/ Jonathan Wayne
Jonathan Wayne, Executive Director