

Agenda

Item #6



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

To: Commissioners

From: Jonathan Wayne, Executive Director
Emma Burke, Candidate Registrar

Date: August 15, 2014

Re: Request for Waiver of Late-Filing Penalty by Steven Juskewitch

Steven Juskewitch is an attorney who was running for the position of District Attorney for Prosecutorial District #7, which includes Hancock and Washington Counties. He was defeated in the June 10, 2014 Democratic Party primary election by another candidate. Prior to this year, Mr. Juskewitch has run for the office of District Attorney three times, and has run for the Maine House of Representatives once.

In the thirteen days before an election, all candidates must file a report within 24 hours of receiving any single contribution or making any expenditure of \$1,000 or more. On June 4, 2014, Mr. Juskewitch contributed \$1,600 to his campaign in the form of a loan and made a corresponding expenditure for a mailing, but did not file a report within 24 hours.

LEGAL REQUIREMENTS

Candidates are required to report any single contribution received or single expenditure made of \$1,000 or more during the 13 days before an election within 24 hours of that transaction. (21-A M.R.S.A. § 1017(3-A)(C)) If the candidate is late in filing the 24-

Hour Report, the amount of the penalty is set by a formula which takes into consideration the amount of the transaction, 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)

DISCUSSION

On June 4, 2014, Mr. Juskewitch loaned his campaign \$1,600 to make a corresponding expenditure for yard signs from Downeast Graphics & Printing Inc. in Ellsworth, Maine on the same day. When Mr. Juskewitch entered these transactions in his 42-Day Post-Primary Report on July 22, 2014, the Commission’s e-filing website recognized that both the loan and the expenditure were required to be reported in a 24-Hour Report with a deadline of June 5, 2014. The e-filing system alerted Mr. Juskewitch to this reporting requirement, and created a 24-Hour Report for him to file. That day (July 22), Mr. Juskewitch filed two 24-Hour Reports (one for the loan and one for the expenditure) 46 days after the reports were due.

Based on the statutory formula for calculating late-filed report penalties, the preliminary penalty amount totals \$736, calculated as follows:

| Transaction | Date | Financial Activity | Penalty Rate | Days Late | Preliminary Penalty |
|---|-------------|---------------------------|---------------------|------------------|----------------------------|
| Loan from candidate to campaign; Expenditure to Downeast Graphics & Printing, Inc. | 6/4/2014 | \$1,600 | 1% | 46 | \$736 |

Mr. Juskewitch asks that the Commission waive the penalty because the amount of the penalty is disproportionate to the size of his campaign, which, including the loan, raised a total of \$2,050. Mr. Juskewitch also argues that his campaign staff, consisting solely of him and his treasurer, have limited experience with campaign finances, and that there was no harm to the public from the late disclosure of a limited mailing.

STAFF RECOMMENDATION

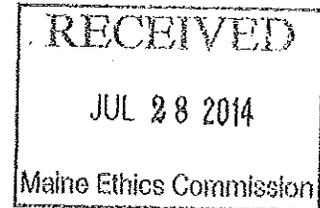
24-Hour Reports are important in helping disclose to the public how money is being spent to influence elections in the critical time before an election. The Commission staff disagrees that there was no public harm, because Mr. Juskewitch was running in a contested primary election. Mr. Juskewitch gave himself a “last minute loan” to purchase a mailer in order to influence Democratic primary election voters. This is the type of financial activity that the 24-hour reporting requirement was designed for.

Although Mr. Juskewitch may not have run large campaigns, he is an experienced candidate. This campaign represents his fifth in which he has been required to file campaign finance reports with the State of Maine. The Commission staff hopes that, during this experience, he has had opportunities to learn that candidates have a duty to quickly disclose large contributions and expenditures that occur in the last two weeks before an election. These reporting requirements have been part of the law for years, and are described in the Commission’s educational publications.

The Commission staff acknowledges that the preliminary penalty of \$736 is disproportionately large, relative to the harm to the public. We recommend a partial waiver of the preliminary penalty and assessment of a penalty of \$150. The recommendation is a little higher than for candidates Karen Gerrish and Dana Lajoie, because they are first-time candidates who lack campaign experience.

Thank you for your consideration of this memo.

STEVEN A. JUSKEWITCH
ATTORNEY AT LAW
3 Franklin Street
Ellsworth, Maine 04605



Stephanie Fountaine, Paralegal

207-667-0483 (Office)
207-667-5139 (Fax)

July 24, 2014

Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, Maine 04333

RE: Request for Waiver

Dear Commission:

I request a waiver of the penalty for late 24-Hour Report for Contribution and Expenditures based upon 1) the size of penalty (\$736.00) is disproportionate to the size of my campaign (\$2,050.00); 2) the experience of the candidate, treasurer, or campaign staff (my staff consisted solely of my treasurer and we had have very limited experience with campaign finances); and 3) it appears that no harm was suffered by the public from the late disclosure (of the last minute loan I made to my campaign for a limited mailing).

Unfortunately, neither I nor my treasurer recognized that a last minute loan for a limited mailing had to be reported within twenty-four hours and please consider my request favorably. Accordingly, it was not reported until the final submission.

Thank you for your attention to this matter. I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven A. Juskewitch".

Steven A. Juskewitch, Esquire

Cc:
File



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

2014 CAMPAIGN YEAR

| COMMITTEE | | TREASURER | |
|---|------------|--|--|
| STEVEN A JUSKEWITCH 346 PEAKES HILL RD DEDHAM, ME 04429 EMAIL: JUSKE4U@HOTMAIL.COM | | STEPHANIE B FOUNTAINE 3 FRANKLIN ST ELLSWORTH, ME 04605 PHONE: (207) 667-0483 EMAIL: JUSKE4U@HOTMAIL.COM | |
| REPORT | DUE DATE | REPORTING PERIOD | |
| 24 Hour Report of Major Contributions and Expenditures | 06/05/2014 | 06/04/2014 - 06/04/2014 | |

FINANCIAL ACTIVITY SUMMARY

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

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

REPORT FILED BY: STEPHANIE B FOUNTAINE
REPORT FILED ON: 07/22/2014
LAST MODIFIED: 07/22/2014
PRINTED: 08/07/2014
COMMITTEE ID: 7803

24-HOUR EXPENDITURE AND PAYEE INFORMATION

| EXPENDITURE TYPES | | | | |
|--|--|---------|--|-------------------|
| CNS | Campaign consultants | POL | Polling and survey research | |
| CON | Contribution to other candidate, party, committee | POS | Postage for U.S. Mail and mail box fees | |
| EQP | Equipment (office machines, furniture, cell phones, etc.) | PRO | Other professional services | |
| FND | Fundraising events | PRT | Print media ads only (newspapers, magazines, etc.) | |
| FOD | Food for campaign events, volunteers | RAD | Radio ads, production costs | |
| LIT | Print and graphics (flyers, signs, palmcards, t-shirts, etc.) | SAL | Campaign workers' salaries and personnel costs | |
| MHS | Mail house (all services purchased) | TRV | Travel (fuel, mileage, lodging, etc.) | |
| OFF | Office rent, utilities, phone and internet services, supplies | TVN | TV or cable ads, production costs | |
| OTH | Other | WEB | Website design, registration, hosting, maintenance, etc. | |
| PHO | Phone banks, automated telephone calls | | | |
| DATE OF EXPENDITURE | PAYEE | REMARK | TYPE | AMOUNT |
| 6/4/2014 | DOWNEAST GRAPHICS & PRINTING INC. 477 WASHINGTON JUNCTION ROAD ELLSWORTH, ME 04605 | MAILING | LIT | \$1,600.00 |
| TOTAL EXPENDITURES FOR CANDIDATE: | | | | \$1,600.00 |



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

2014 CAMPAIGN YEAR

| COMMITTEE | | TREASURER | |
|---|------------|--|--|
| STEVEN A JUSKEWITCH 346 PEAKES HILL RD DEDHAM, ME 04429 EMAIL: JUSKE4U@HOTMAIL.COM | | STEPHANIE B FOUNTAINE 3 FRANKLIN ST ELLSWORTH, ME 04605 PHONE: (207) 667-0483 EMAIL: JUSKE4U@HOTMAIL.COM | |
| REPORT | DUE DATE | REPORTING PERIOD | |
| 24 Hour Report of Major Contributions and Expenditures | 06/05/2014 | 06/04/2014 - 06/04/2014 | |

FINANCIAL ACTIVITY SUMMARY

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

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

REPORT FILED BY: STEPHANIE B FOUNTAINE
REPORT FILED ON: 07/22/2014
LAST MODIFIED: 07/22/2014
PRINTED: 08/07/2014
COMMITTEE ID: 7803

24-HOUR CONTRIBUTOR INFO

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 | OCCUPATION AND EMPLOYER | CONTRIBUTOR/ CONTRIBUTION TYPE | AMOUNT |
|------------------------------------|---|---|--------------------------------|-------------------|
| 6/4/2014 | STEVEN A JUSKEWITCH 346 PEAKES HILL ROAD DEDHAM, ME 04429 | OWNER DESCRIPTION: Attorney/Legal | 2 Loan | \$1,600.00 |
| TOTAL CONTRIBUTIONS / LOANS | | | | \$1,600.00 |

August 8, 2014

Mr. Steven Juskewitch
346 Peakes Hill Road
Dedham, Maine 04429

Re: Late Penalty for 24-Hour Report of Contributions and Expenditures Campaign Finance Report – Due 6/05/2014

Dear Mr. Juskewitch:

Preliminary penalty amount. You filed a 24-Hour Report for Contributions and Expenditures campaign finance report on July 22, 2014. Under the Election Law, the Commission must calculate a preliminary penalty for the late filing, based on the amount of financial activity during the report period, the number of days the report was filed late, and the candidate's filing record. The preliminary penalty for the late filing of your report is \$736.00. (Please refer to the enclosed penalty matrix for the calculation.) If you agree to pay the penalty, please use the enclosed billing statement within 14 days of receiving this letter. Please do not use Maine Clean Election Act funds to pay the penalty.

Requesting a waiver. You may ask the members of the Ethics Commission to waive the preliminary penalty due to mitigating circumstances (defined below). To request a waiver, please send a letter within 14 days of receiving this notice that contains a full explanation of the reasons you filed late. If you request a waiver, the Commission staff will notify you of the date and time of the public meeting at which the Commissioners will consider your request. You or a person you designate may appear at the meeting. The Commission staff will notify you of the Commissioners' decision shortly afterward.

Mitigating circumstances. The Election Law defines mitigating circumstances as: (1) a valid emergency, (2) an error by the Commission staff, (3) failure to receive notice of the filing deadline, or (4) relevant evidence presented that a *bona fide* effort was made to file the report in accordance with the statutory requirements. Also, the Commission may waive a preliminary penalty 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.

Please call me at 287-4179 if you have any questions.

Sincerely,

Emma Burke
Candidate Registrar

Cc: Stephanie Fountaine

August 8, 2014

The Commission staff has calculated a preliminary penalty of \$736.00 for the late filing of your 24-Hour Report of Contributions and Expenditures campaign finance report. Please pay the penalty or request a waiver within 14 days of receiving this notice. If the Commission does not receive a payment or waiver request, the Commission will send you a final notice requesting payment within 30 days.

To pay the penalty, submit a check or money order to the address below, along with the bottom half of this letter. Or, please pay online using a credit or debit card at the web address listed below. If you would like to request a waiver of the preliminary penalty, please see the instructions included in the attached letter.

Failure to pay the full amount of an assessed penalty is a civil violation. The Commission is required to report to the Attorney General the name of any person who fails to pay a late-filing penalty. If you have questions, please call Emma Burke at 287-4179.

Cut Along Dotted Line

For Office Use Only:
Account: MCGEEP

To Commission on Governmental Ethics and Election Practices
 135 State House Station
 Augusta, Maine 04333

From: Steven Juskewitch

RE: Penalty for late filing of 24-Hour Report of Contributions and Expenditures
 Campaign Finance Report

Amount Enclosed: \$ _____

Check/M.O. No.: # _____

**Please Make Check or Money Order Payable to Treasurer, State of Maine
Or Pay Online at <http://www.maine.gov/online/ethics/penalties>**

COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

PENALTY MATRIX FOR LATE CANDIDATE REPORT FILINGS

BASIS FOR PENALTIES
21-A M.R.S.A. Section 1020-A(4-A)

The penalty for late filing of a required report is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days the report is filed late, as follows:

- For the first violation, 1%
- For the second violation, 3%
- For the third and each subsequent violation, 5%

Example: The treasurer files the candidate's report two (2) days late. The candidate has not had any previous late violations this biennium. The candidate reports a total of \$2,500 in contributions and \$1,500 in expenditures for the filing period. The penalty is calculated as follows:

| | |
|--------------|--|
| \$2,500 | Greater amount of the total contributions received or expenditures made during the filing period |
| <u>X .01</u> | Percent prescribed for first violation |
| \$25.00 | One percent of total contributions |
| <u>X 2</u> | Number of calendar days late |
| \$50.00 | Total penalty |

Your penalty is calculated as follows:

| | |
|------------------------------------|-----------------|
| Receipts/Expenditures: | \$1,600.00 |
| Percent prescribed: | X <u>.01</u> |
| One Percent of total contributions | \$16.00 |
| Number of days late: | X 46 |
| Total penalty accrued: | <u>\$736.00</u> |

A penalty begins to accrue on the day following the due date of the report.

Any penalty of less than \$10 is waived.

Violations accumulate on reports with filing deadlines in a 2-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 required report that is sent by certified or registered United States mail and postmarked at least 2 days before the deadline is not subject to penalty.

MAXIMUM PENALTIES
21-A M.R.S.A. Section 1020-A(5-A)

- \$5,000 for reports required to be filed 42 days before an election, 11 days before an election, 42 days after an election, and for 24-hour reports;
- \$1,000 for semiannual reports.

21-A M.R.S.A. § 1017. REPORTS BY CANDIDATES

...

3-A. Other candidates. A treasurer of a candidate for state or county office other than the office of Governor shall file reports with the commission and municipal candidates shall file reports with the municipal clerk as follows. Once the first required report has been filed, each subsequent report must cover the period from the end date of the prior report filed.

A. In any calendar year in which an election for the candidate's particular office is not scheduled, when any candidate or candidate's political committee has received contributions in excess of \$500 or made or authorized expenditures in excess of \$500, reports must be filed no later than 11:59 p.m. on July 15th of that year and January 15th of the following calendar 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. [2007, c. 443, Pt. A, §16 (AMD).]

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. [2007, c. 443, Pt. A, §16 (AMD).]

✓ 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 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. [2013, c. 334, §11 (AMD).]

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. [2007, c. 443, Pt. A, §16 (AMD).]

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. [2009, c. 190, Pt. A, §5 (AMD).]

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

21-A MRSA § 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; [1999, c. 729, §5 (AMD).]
- B. An error by the commission staff; [1999, c. 729, §5 (AMD).]
- C. Failure to receive notice of the filing deadline; or [1999, c. 729, §5 (AMD).]
- 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. [2009, c. 190, Pt. A, §13 (AMD).]

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.

[2001, c. 470, §7 (AMD); T. 21-A, §1020-A, sub-§4 (RP) .]

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