

Agenda

Item #4

Request for Waiver – Paige K. Brown



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: September 11, 2014
Re: Request for Waiver of Late-Filing Penalty by Paige Brown

Paige Brown is a Maine Clean Election Act candidate for the House of Representatives in District 97. On July 22, 2014, all candidates were required to file a 42-Day Post-Primary Report. This deadline was extended until the next day, because during the evening of July 22 there was an unexpected 90-minute shutdown of the servers on which the e-filing system is housed. Ms. Brown did not file her 42-Day Post-Primary Report until July 29, 2014, which was six days after the extended deadline of July 23.

LEGAL REQUIREMENTS

Candidates are required to file a report on the forty-second 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. (21-A M.R.S.A. § 1017(3-A)(D)) If the candidate is late in filing the 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))

CIRCUMSTANCES OF LATE REPORT AND PRELIMINARY PENALTY

The Commission's Candidate Registrar, Emma Burke, corresponded with Ms. Brown on July 23-29 as follows:

- On the morning of July 23, 2014 the Commission staff had become aware of those candidates who had not yet filed their reports. Ms. Brown's candidate registrar, Emma Burke, contacted her in an email at approximately 9:00 a.m. The Commission staff also sent out an email to all candidates with unfiled reports around mid-day.
- On July 23, 2014 at 6:13 p.m., Ms. Brown replied to Ms. Burke's email stating that she was having trouble figuring out how to enter expenditures.
- On July 24, 2014 at 8:20 a.m., Ms. Burke responded with instructions.
- On Sunday, July 27, 2014, Ms. Brown stated that she did not know how to enter her one expenditure because it was purchased online and she did not know what to input for the address.
- On Tuesday, July 29, 2014 around 9:00 a.m., Ms. Burke replied with advice concerning how to find the address and enter the expenditure. (Ms. Burke was out of the office on July 28.)
- Ms. Brown replied at approximately 1:30pm on July 29, 2014 stating that she had input the expenditure's information and had filed the report. Ms. Burke responded to Ms. Brown that the July 17, 2014 expenditure the candidate had made to an online company for printing was after the time period covered by the July 22, 2014 report. Accordingly, the payment would appear in the report due September 23, 2014.

The time period covered by the report is 5/28/2014 to 07/15/2014. The only transaction in this period was the candidate's receipt of \$4,724 in MCEA funds on 6/13/2014. (The report is attached.)

Based on the statutory formula for calculating late-filed report penalties, the preliminary penalty amount totals \$283.44, calculated as follows:

Report	Date	Financial Activity	Penalty Rate	Days Late	Preliminary Penalty
42-Day Post-Primary Report	07/23/2014	\$4,724	1%	6	\$283.44

After receiving notification of the preliminary penalty, Ms. Brown attempted to pay the penalty with Maine Clean Election Act funds, which is not allowed under the Commission's Rules. Ms. Brown asks that the Commission waive the preliminary penalty because she was traveling during the time of the filing and she had limited access to the internet.

STAFF RECOMMENDATION

Regularly scheduled campaign finance reports are an integral part of Maine Campaign Finance Law. Disregard of filing deadlines harms the public by impeding their knowledge of candidates' financial activity – especially the financial activity of publicly financed candidates.

While Ms. Brown was a first-time candidate, her campaign had already successfully filed two campaign finance reports earlier in the election year and was aware of how to enter transactions and file reports.¹ The report deadlines are published in a filing schedule that we included in a forms packet for MCEA candidates. *Both* the candidate *and* the treasurer were sent reminders by U.S. Mail and electronic mail before the July 22 deadline. Ms. Brown's treasurer is Eric Brown of Benton, Maine, whom we presume is a relative.

¹ Her seed money report, filed in April 2014, contained five contributions and eight expenditures.

In her waiver request, Ms. Brown states that the report was late because she was traveling, did not receive her mail, and had limited internet availability. She was, however, able to email Ms. Burke multiple times on July 23, 24, 27, and 29. During that email correspondence, she did not mention that travel was interfering with the filing of her campaign finance report. Since receiving her waiver request, the Commission staff has recommended twice that she provide more information concerning her travel in order to strengthen her waiver request, but she has declined to provide additional details.

Ms. Brown has not stated why her treasurer, Eric Brown, could not have filed her reports. Since Paige Brown is an MCEA candidate, she is permitted by law to enter transactions into her campaign finance report, but her treasurer must file the report. Based on the email correspondence (“I was able to find the info and file, I think it’s all set.”), the Commission staff has some concern that she filed the report using her treasurer’s username and PIN.

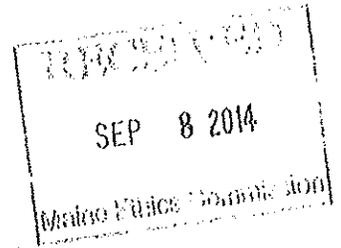
Although we are concerned about some aspects of the situation, the Commission staff recommends a reduction of the penalty to \$100 for the following reasons:

- Ms. Brown is a first-time candidate and may be unaware of the importance Maine Election Law places on timely filing of campaign finance reports.
- The only transaction in the report is the candidate’s receipt of \$4,724 in MCEA funds, which is a figure that is well-published on the Commission’s website. The late filing did not delay the disclosure of any other campaign finance information to the public.
- A penalty of \$100 is more proportionate to the harm to the public, than the preliminary amount of \$283.44. Ms. Brown will be paying the penalty from her own pocket, because she may not use MCEA funds for this purpose.

- The Commission staff will impress on Ms. Brown in the written penalty determination that penalties for future late reports will be assessed at a higher rate.

Thank you for your consideration of this memo.

Paige Katharine Brown
P.O. Box 42
Belfast, ME
04915
8/29/14



Commission On Governmental Ethics
And Election Practices
135 State House Station
Augusta, ME
04333-0135

Commissioners,

After having received your letter dated July 29, 2014, Notice of Violation and Penalty for Late-Filed 42-Day Post-Primary Report, I understand fully the consequences stated.

My failure to file my report in a timely manner is due to the fact that I was travelling and did not receive my mail while I was away. During this time, I also had limited Internet availability.

I would like to request that the fee of \$283.44 be waived.

Thank you for your time and consideration.

Sincerely,

Paige Katharine Brown



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

July 29, 2014

Ms. Paige Brown
PO Box 29
Belfast, Maine 04915

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

Dear Ms. Brown:

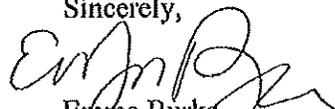
You were required to file the 42-Day Post-Primary Report on 07/22/2014 by 11:59 p.m. (due to system issues the deadline was extended to 07/23/2014), but the report was not filed until 07/29/2014. Under the Commission's statutes (21-A M.R.S.A. § 1020-A(4-A)) the late filing of a report triggers an enforcement process. The Commission staff has made a preliminary finding of violation and determined that the preliminary penalty for filing the report late is \$283.44. 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 level of experience of the person filing the report 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 the Commission staff at (207) 287-4179 or ethics@maine.gov if you have any questions.

Sincerely,


Emma Burke
Candidate Registrar

OFFICE LOCATED AT: 45 MEMORIAL CIRCLE, AUGUSTA, MAINE
WEBSITE: WWW.MAINE.GOV/ETHICS

PHONE: (207) 287-4179

FAX: (207) 287-6775

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: 1% for the first violation, 3% for the second violation, and 5% 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: Ms. Paige Brown			
Late-Filed Report: 42-Day Post-Primary			
Contributions	\$4,724	Penalty Base Amount	\$4,724
Expenditures	\$0	Percentage	1%
Due Date	07/22/2014 (07/23/2014)	Daily Accrual Rate	\$47.24
Date Filed	07/29/2014	Days Late	6
Previous Violations	0	Your Total Penalty	\$283.44

PAYMENT STATEMENT AND PAYMENT OPTIONS

From: Ms. Paige Brown

Penalty Amount: \$283.44

Penalty ID: N/A

Amount Enclosed: _____

Check/M.O. #: _____

BY MAIL: Enclose this payment statement with your payment so that it will be properly accounted for.

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. Please include the penalty ID so that your payment will be properly accounted for.



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

2014 CAMPAIGN FINANCE REPORT

FOR MCEA CANDIDATES

COMMITTEE		TREASURER	
MS. PAIGE K BROWN PO BOX 29 BELFAST, ME 04915 PHONE: (207) 649-4128 EMAIL: PAIGEBROWN@GMAIL.COM		MR. ERIC R BROWN 317 BANGOR RD BENTON, ME 04901 PHONE: (207) 453-8149 EMAIL: ERICRBROWN44@GMAIL.COM	
REPORT	DUE DATE	REPORTING PERIOD	
42-DAY POST-PRIMARY	07/22/2014	05/28/2014 - 07/15/2014	

FINANCIAL ACTIVITY SUMMARY

CASH ACTIVITY		
	TOTAL FOR THIS PERIOD	TOTAL FOR CAMPAIGN
1. CASH BALANCE FROM LAST REPORT	\$486.00	
2. SEED MONEY CONTRIBUTIONS	\$0.00	\$500.00
3. MAINE CLEAN ELECTION ACT PAYMENTS & AUTHORIZATIONS	\$4,724.00	\$5,209.75
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	\$499.75
7. CASH BALANCE AT CLOSE OF PERIOD	\$5,210.00	
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, MR. ERIC R BROWN, CERTIFY THAT THE INFORMATION CONTAINED IN THIS REPORT IS TRUE, ACCURATE, AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

REPORT FILED BY: MR. ERIC R BROWN
REPORT FILED ON: 07/22/2014
LAST MODIFIED: 07/22/2014
PRINTED: 09/11/2014
COMMITTEE ID: 7291

**SCHEDULE A
CASH CONTRIBUTIONS**

- For contributors who gave more than \$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

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	TYPE	AMOUNT
6/13/2014	MCEA Payment		15	\$4,724.00
TOTAL CASH CONTRIBUTIONS				\$4,724.00

Burke, Emma

From: Burke, Emma
Sent: Wednesday, July 23, 2014 9:01 AM
Cc: Phillips, Cyndi; Hudson, Elizabeth; Lavin, Paul
Subject: Required Report Not Yet Filed

Importance: High

Hello,

This is a reminder that you are required to file the 42-Day Post-Primary Campaign Finance Report that was due before midnight yesterday. The late filing of a campaign finance report generates an automatic penalty process, so please file as soon as possible. If you are experiencing difficulty of any kind, please call me at 287-4727. I am expecting a high volume of calls today, and I will get back to you as quickly as possible if I am unable to answer.

To log-in to e-filing, go to www.maine.gov/ethics and click on the blue "Filer Login" button in the middle of the page.

Best regards,

Emma J. Burke
Candidate Registrar
Maine Ethics Commission
(207) 287-4727 | www.maine.gov/ethics
135 State House Station, Augusta, ME 04333-0135
45 Memorial Circle, Augusta, ME

Burke, Emma

From: Paige Brown <paigebrown@gmail.com>
Sent: Wednesday, July 23, 2014 6:31 PM
To: Burke, Emma
Subject: Re: Required Report Not Yet Filed

Hi Emma,

I am having trouble filing. I can not seem to find a place where I can fill in my expenditures. Please get back to me at your earliest convenience.

Thanks,

Paige Katharine Brown

Paige K Brown, LLC
P.O. Box 42
Belfast, ME 04915
M: 207.649.4128

On Wed, Jul 23, 2014 at 9:00 AM, Burke, Emma <Emma.Burke@maine.gov> wrote:

Hello,

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Best regards,

Emma J. Burke

Burke, Emma

From: Burke, Emma
Sent: Thursday, July 24, 2014 8:20 AM
To: 'Paige Brown'
Subject: RE: Required Report Not Yet Filed
Attachments: Easy Filing Steps.pdf

Hi Paige,

These instructions are available on our home page, but I have attached them here.

Emma J. Burke
Candidate Registrar
Maine Ethics Commission
(207) 287-4727 | www.maine.gov/ethics
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Burke, Emma

From: Burke, Emma
Sent: Tuesday, July 29, 2014 8:54 AM
To: 'Paige Brown'
Subject: RE: Required Report Not Yet Filed

Hi Paige,

Usually it is possible to find a physical/ mailing address for an online company – typically a Google search of the company's name plus "location" or "mailing address" seem to work. If you truly cannot find it, you can enter the information to the best of your ability (for instance, you could use "Internet" for town name). Please remember that late filing penalties increase daily, so it is important to file as soon as possible. It is usually better to enter the information the best you can and file and then have to amend, versus waiting to file.

Best regards,

Emma J. Burke
Candidate Registrar
Maine Ethics Commission
(207) 287-4727 | www.maine.gov/ethics
135 State House Station, Augusta, ME 04333-0135
45 Memorial Circle, Augusta, ME

From: Paige Brown [<mailto:paigebrown@gmail.com>]
Sent: Sunday, July 27, 2014 7:40 PM
To: Burke, Emma
Subject: Re: Required Report Not Yet Filed

Thanks, Emma.

My problem is that I only made one expenditure for lit, and it was from a website and I cannot find a physical address for it, obviously. So how do I enter that info?

Paige Katharine Brown

Paige K Brown, LLC
P.O. Box 29
Belfast, ME 04915
M: 207.649.4128

On Thu, Jul 24, 2014 at 8:19 AM, Burke, Emma <Emma.Burke@maine.gov> wrote:

Hi Paige,

Burke, Emma

From: Paige Brown <paigebrown@gmail.com>
Sent: Tuesday, July 29, 2014 1:38 PM
To: Burke, Emma
Subject: Re: Required Report Not Yet Filed

Emma,

I was able to find the info and file, I think it's all set.
How much has the late penalty cost me?

Thanks!

Paige Katharine Brown

Paige K Brown, LLC
P.O. Box 29
Belfast, ME 04915
M: 207.649.4128

On Tue, Jul 29, 2014 at 8:53 AM, Burke, Emma <Emma.Burke@maine.gov> wrote:

Hi Paige,

Usually it is possible to find a physical/ mailing address for an online company – typically a Google search of the company's name plus "location" or "mailing address" seem to work. If you truly cannot find it, you can enter the information to the best of your ability (for instance, you could use "Internet" for town name). Please remember that late filing penalties increase daily, so it is important to file as soon as possible. It is usually better to enter the information the best you can and file and then have to amend, versus waiting to file.

Best regards,

Emma J. Burke

Candidate Registrar

Maine Ethics Commission

Burke, Emma

From: Burke, Emma
Sent: Tuesday, July 29, 2014 2:19 PM
To: 'Paige Brown'
Subject: RE: Required Report Not Yet Filed

Hi Paige,

The report has been filed successfully. However, because the expenditure you entered was outside the date of the filing period, it was not reported on this report. It will remain in the "pending expenditures" area on the e-filing system until the next report is filed. The 42-Day Post-Primary Report covered the dates of 05/28-07/15.

The penalty, which will be sent to you in the mail tomorrow, is \$283.44.

Best regards,

Emma J. Burke
Candidate Registrar
Maine Ethics Commission
(207) 287-4727 | www.maine.gov/ethics
135 State House Station, Augusta, ME 04333-0135
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Paige Katharine Brown

Paige K Brown, LLC
P.O. Box 29
Belfast, ME 04915
M: 207.649.4128

On Tue, Jul 29, 2014 at 8:53 AM, Burke, Emma <Emma.Burke@maine.gov> wrote:

Hi Paige,

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

period, whichever is greater, multiplied by the number of calendar days late, as follows:

- A. For the first violation, 1%; [2001, c. 714, Pt. PP, §1 (NEW); 2001, c. 714, Pt. PP, §2 (AFF).]
- B. For the 2nd violation, 3%; and [2001, c. 714, Pt. PP, §1 (NEW); 2001, c. 714, Pt. PP, §2 (AFF).]
- C. For the 3rd and subsequent violations, 5%. [2001, c. 714, Pt. PP, §1 (NEW); 2001, c. 714, Pt. PP, §2 (AFF).]

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 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.

[2001, c. 470, §8 (AMD); T. 21-A, §1020-A, sub-§5 (RP) .]

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; [2011, c. 389, §23 (AMD).]
- 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 1/5 of the amount reported late; [2011, c. 389, §24 (NEW).]
- B. Five thousand dollars for state party committee reports required under section 1017-A, subsection 4-A, paragraphs A, B, C and E, except that if the financial activity reported late exceeds \$50,000, the maximum penalty is 1/5 of the amount reported late; [2011, c. 389, §25 (AMD).]
- C. One thousand dollars for reports required under section 1017, subsection 2, paragraphs A and F and section 1017, subsection 3-A, paragraphs A and E; or [2011, c. 558, §4 (AMD).]
- D. Five hundred dollars for municipal, district and county committees for reports required under section 1017-A, subsection 4-B. [2011, c. 558, §4 (AMD).]
- E. [2011, c. 558, §5 (RP).]