



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

Commission Meeting 10/01/2015
Agenda Item #3

To: Commissioners

From: Benjamin Dyer, Political Committee and Lobbyist Registrar

Date: September 21, 2015

Re: Request for Waiver of Late-Filing Penalty by Progressive Kick IE Maine PAC

Organizations that made independent expenditures (IEs) costing in the aggregate more than \$100 per candidate between October 22, 2014 and November 4, 2014 were required to report those payments as independent expenditures within one calendar day of making them. An independent expenditure is a paid communication to voters advocating the election or defeat of a candidate.

Progressive Kick describes itself as a progressive SuperPAC that is active in elections nationwide. On October 23, 2014, the Progressive Kick IE Maine PAC (the PAC) made an IE of \$8,000 related to online video ads in opposition to the LePage gubernatorial campaign. It was required to report these expenditures on an Independent Expenditure form by October 24, 2014, but did not do so until July 22, 2015. Instead, the PAC reported these expenditures on a 24-Hour Report filed on October 24, 2014. Commission staff discovered that the transaction was incorrectly filed during a routine review of amendments the PAC made to previously filed reports.

LEGAL REQUIREMENTS

IE reports for expenditures made after October 22, 2014 for amounts over \$100 per candidate were due within one calendar day of the expenditure. (Commission Rules, Chapter 1, Section 10(3)) If a PAC is late in filing an IE 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(4-A))

DISCUSSION

Based on the statutory formula for calculating late-filed report penalties, the preliminary penalty amount totals \$5,000, calculated as follows:

Transactions	Date Due	Financial Activity	Penalty Rate	Days Late	Preliminary Penalty
IE Report	10/23/2014	\$8,000.00	1%	272	\$5,000

The PAC asks that the Commission waive the penalty in its entirety because the preliminary penalty is disproportionate to the actual harm to the public. If the Commission does not completely waive the penalty, the PAC requests the Commission reduce the penalty to \$250, the same penalty assessed against another PAC for a nearly identical violation. The PAC argues that there was little harm to the public as a result of the PAC's disclosure because the PAC merely filed the wrong form, noting that the PAC timely-disclosed all the same information required by an IE report, only it placed that information on a 24-Hour Report.

STAFF RECOMMENDATION

Violations of the IE reporting requirements can be serious matters. IE reports, especially during the last days of the general election, play an important role in informing the electorate about how money is being spent to influence their votes. The IE report also contains a sworn statement that the expenditure was not coordinated with the candidates in the race, which is important for enforcing the contribution limits for candidates.

In this situation, \$8,000 was spent on an IE without that information being disclosed in the manner the public expects. The Commission reviewed nearly the identical situation at its April 2015 meeting with the Equality Maine PAC and its mistaken filing of a 24-Hour Report instead of an IE report. There, as here, a PAC filed a 24-Hour Report instead of an IE Report because it failed to check the “This is an Independent Expenditure” box, the proper procedure for filing IE Reports online. There was no attempt to conceal the information. While this was, by all appearances, a mistake, an organization as large and politically active as this PAC, both within Maine and nationally, should put in place staff trainings and procedures to ensure it complies with Maine campaign finance disclosure laws. The Commission staff recommends reducing the penalty to \$250. Where there was little public harm from the violation because the information was timely-disclosed in a 24-Hour Report, we believe this penalty is sufficient to encourage the organization to focus additional attention and resources on its future campaign finance reports.

Thank you for your consideration of this memo.



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

July 24, 2015

Neil Reiff, Treasurer
Progressive Kick IE Maine PAC
1904 FRANKLIN ST STE 725
OAKLAND CA 94612-2924

Re: Late Filing of Independent Expenditure Report

Dear Mr. Reiff:

The Commission staff has made a preliminary determination that the Progressive Kick IE Maine PAC (the PAC) was late in filing an Independent Expenditure report for online video ads in opposition to the LePage for Governor campaign. The report was due by 11:59 p.m. on October 24, 2014 but was not filed until July 22, 2015. Under the Commission's statutes, the late filing of a report triggers an enforcement process. (21-A M.R.S.A. § 1062-A(3)). Based on the amount of financial activity in the report, the number of calendar days the report was late, and the PAC's history of violations, the commission staff has determined that the statutory maximum penalty of \$5,000.00 is owed. (Please see attached penalty matrix for the calculation).

The PAC may make a written request that the Commission waive the violation or penalty in whole or in part. Any request for a waiver 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 PAC filed late. Upon receiving your request, the Commission staff will schedule your appeal for an upcoming Commission meeting.

The Commission may waive the penalty 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 the PAC made a bona fide effort to file the report on time. Also, the Commission may waive the penalty if it is disproportionate to the level of experience of the person filing the report or the harm suffered by the public from the late disclosure.

Please call me at (207) 287-4179 or send me an email at benjamin.p.dyer@maine.gov if you have questions.

Sincerely,

A handwritten signature in cursive script that reads 'Benjamin P. Dyer'.

Benjamin P. Dyer
Political Committee and Lobbyist Registrar

Payment Receipt

Mail payment to:

The Maine Ethics Commission
135 State House Station
Augusta, ME 04333

Make checks payable to: "Treasurer, State of Maine."

Neil Reiff, Treasurer
Progressive Kick IE Maine PAC
1904 FRANKLIN ST STE 725
OAKLAND CA 94612-2924

Violation: Late IE Report
Amount Due: \$5,000.00

Committee Name: Progressive Kick IE Maine PAC

Report Title: IE Report

Due Date: October 24, 2014

Previous Violation(s): N/A

Filed Date: July 22, 2015

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%

A penalty begins to accrue at 11:59 p.m. on the day the report is due.

Penalty Example:		Your Penalty is calculated as follows:	
The treasurer files the PAC's report two (2) days late. The PAC has not had any previous late violations this biennium. The PAC reports a total of \$2,500 in contributions and \$1,500 in expenditures for the filing period. The penalty is		Contributions / Expenditures:	<u>\$8,000.00</u>
\$2,500	Greater amount of the total contributions received or expenditures made during the filing period	X	<u>1%</u>
X .01	Percent prescribed for first violation		<u>\$80.00</u>
\$25.00	One percent of total contributions	X	<u>272</u>
X 2	Number of calendar days late	Number of days late:	
\$50.00	Total Penalty	Statutory maximum penalty:	<u>\$5,000.00</u>

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)(A-1)
\$5,000 for Independent Expenditure Reports,
except that if the financial activity reported late exceeds \$50,000,
the maximum penalty is one-fifth of the amount reported late.

August 5, 2015

State of Maine
Commission on Governmental Ethics and Election Practices
Attn: Benjamin Dyer
135 State House Station
Augusta, ME 04333-0135

Re: Progressive Kick IE Maine (#8051) Waiver Request

Mr. Dyer:

I am writing in response to a notice received by Progressive Kick IE Maine, PAC ID # 8051 (“Progressive Kick”), on July 24, 2015, regarding an independent expenditure report filing that was inadvertently reported on a 24-hour expenditure report. *This letter formally requests, pursuant to 21-A Maine Rev. Stat. § 1062-A(5), that the Commission on Governmental Ethics and Election Practices (the “Commission”) waive the \$5,000.00 penalty assessed in its entirety.*

Progressive Kick designates attorney Katherine Knox of the law firm Bernstein Shur as its designated representative for this determination.

Progressive Kick has rectified any reporting issues with amendments – the original expenditure was filed within the statutory one calendar day time period, but was inadvertently disclosed on a different report. The public had access to all of the details of the expenditure after the 24-hour expenditure report was filed on October 24, 2014. Progressive Kick acted in good faith when filing, but the expenditure was inadvertently placed on the incorrect report.

If the Commission does not waive the entirety of the assessed fine, Progressive Kick would request that the fine be no higher than \$250.00 – an amount assessed to a Maine PAC in April 2015 under very similar circumstances.

1. Factual Overview

On October 23, 2014, Progressive Kick made an independent expenditure of \$8,000.00, paid to The Campaign Network, for online video production. This expenditure of \$8,000.00 was a portion of a campaign totaling more than \$116,000. Maine law requires two sets of expenditures to be reported within one calendar day when within 14 days of an election:

independent expenditures above \$100.00, or expenditures above \$1,000.00.¹ The Campaign Network expenditure was reported on October 24, 2014, within the one calendar day filing period.

When the Campaign Network expenditure was prepared electronically on October 24, 2014, a check box on the Commission’s webform for “independent expenditures” was not checked. This caused the expenditure to be reported on the 24-hour expenditure report form, opposed to the independent expenditure report form. This failure to check the “independent expenditure” check box was an inadvertent, isolated error by Progressive Kick’s compliance consultant.

This inadvertent, isolated error was not discovered until nearly nine months later, until July 17, 2015, when Progressive Kick received a phone message and an email from Benjamin Dyer stating that an independent expenditure report was not filed for the Campaign Network expenditure. After working with Mr. Dyer and the Commission, a report of the expenditure was re-filed on an independent expenditure report on July 22, 2015, along with required amendments to the Post-General report. Progressive Kick has no previous record of filing issues in Maine.²

2. There is little harm to the public, as the public was notified of the Campaign Network expenditure on October 24, 2014.

Progressive Kick has rectified all reporting issues by filing amendments requested by Mr. Dyer and the Commission in good faith.³ Despite the amendments, Progressive Kick correctly notified the public that the Campaign Network expenditure was made on October 23, 2014. The report for the Campaign Network expenditure was filed within the one calendar day timeframe on October 24, 2014.

The information that was provided to the public on the 24-hour expenditure report for the Campaign Network expenditure is the same as the information that would have been provided on an independent expenditure report: the date and amount of the expenditure, the payee, the type of expenditure, and the candidate supported or opposed.⁴ Progressive Kick notes that 21-A Maine

¹ See 21-A Maine Rev. Stat. § 1019-B(4) (independent expenditure reporting), 94-270 Code of Maine Rules Ch. 1, § 10(3); 21-A Maine Rev. Stat. § 1059(2)(E) (expenditure reporting). The Commission’s regulations hold that if an independent expenditure report is filed, a separate 24-hour expenditure report is not required for the same expenditures. 94-270 Code of Maine Rules Ch. 1, § 10(3)(D).

² See 94-270 Code of Maine Rules Ch. 1, § 4(2)(B)(5) (consideration for “Previous record of the filer”); see also “Late Filing of Independent Expenditure Report” Letter from Benjamin Dyer at 2 (July 24, 2015).

³ See 94-270 Code of Maine Rules Ch. 1, § 4(2)(B)(6) (consideration for “Good faith effort of the filer to remedy the matter.”).

⁴ See 21-A Maine Rev. Stat. § 1019-B(4)(B) (independent expenditure reports requiring “. . .the date and purpose of each expenditure and the name of each payee or creditor. The report must state whether the expenditure is in support of or in opposition to the candidate. . .”); 21-A Maine

Rev. Stat. § 1019-B(4)(B) requires a notarized affirmation that expenditures were not coordinated. This affirmation was signed and notarized when the expenditure was re-filed on an independent expenditure report on July 22, 2015.⁵

When the 24-hour expenditure report was filed on October 24, 2014, the public was notified that on October 23, Progressive Kick made an \$8,000.00 expenditure to The Campaign Network, for online video production to oppose Paul R. LePage’s campaign for Governor. There was no delay in reporting this information to the public.⁶

Progressive Kick has timely filed its Maine campaign finance reports – Progressive Kick should not be punished for the webform’s differentiation between expenditures and independent expenditures. The public was given notice of the particulars of the Campaign Network expenditure on October 24, 2014. This failure to check “Independent Expenditure” was a one-time inadvertent error – Progressive Kick filed two additional independent expenditure reports containing multiple independent expenditures without issue. The issue with the Campaign Network expenditure was an isolated error.

Any harm to the public for failing to check one box is heavily outweighed by the timely reporting of the expenditure and its details. This lack of harm supports a full waiver of the assessed fine.⁷

3. This situation is substantially similar to a recently closed case before the Commission.

In April 2015, the Commission heard a case regarding EqualityMaine PAC, which found itself under a substantially similar situation as Progressive Kick – a check-box was not checked, and the Commission assessed an initial penalty of \$10,000.00 after an expenditure appeared on a 24-hour expenditure report, and not on an independent expenditure report.⁸ After consideration of the matter, the Commission reduced the penalty to \$250.00 by a vote of 5-0.⁹

Rev. Stat. §§ 1059(2)(E) (reporting requirement), 1060(4) (requiring “. . .the date, payee and purpose of the expenditure; the name of each candidate. . .supported or opposed. . .”).

⁵ 21-A Maine Rev. Stat. § 1019-B(4)(B).

⁶ See 21-A Maine Rev. Stat. § 1062-A(2)(C) (waiver of fine or penalty for mitigating circumstances when “. . . a bona fide effort was made to file the report in accordance with the statutory requirements. . .”).

⁷ See 21-A Maine Rev. Stat. § 1062-A(2) (waiver of fine if the penalty is “. . . disproportionate . . .to the harm suffered by the public from the late disclosure.”).

⁸ See Maine Commission on Governmental Ethics and Election Practices, Documents regarding Commission Meeting on 4/29/2015, Agenda Item #3 (“EqualityMaine PAC”), available at <http://www.maine.gov/ethics/pdf/04292015agenda3.pdf> (last accessed August 4, 2015).

⁹ Maine Commission on Governmental Ethics and Election Practices, “Minutes of the April 29, 2015, Meeting of the Commission on Governmental Ethics and Election Practices” at 2-3 available at http://www.maine.gov/ethics/pdf/04292015_minutes_final.pdf (last accessed August 4, 2015).

The Commission is bound by its finding in EqualityMaine PAC. Progressive Kick's matter is substantially similar to EqualityMaine PAC's. An inadvertent error was made, and the "Independent Expenditure" box was not checked on a report. The Commission's finding in EqualityMaine PAC should lead it to waive the penalty against Progressive Kick in full, or to reduce the penalty to \$250.00 or less.

4. Progressive Kick will terminate its Maine PAC.

Since Maine's November 2014 elections have concluded, Progressive Kick will terminate its Maine PAC once this matter has been resolved. Progressive Kick's activities in Maine have ceased for the foreseeable future.

5. Request for Relief

This issue arose when Progressive Kick inadvertently did not check that an expenditure was an "Independent Expenditure", which resulted in the expenditure being reported on the 24-hour expenditure report form, opposed to the independent expenditure report form. Besides this one inadvertent, isolated error, Progressive Kick has filed multiple independent expenditure reports without issue. This sole reporting issue has been rectified by amendment.

Since Progressive Kick (1) had disclosed the details of the Campaign Network expenditure to the public within the required one calendar day period, and notified the public of all of the pertinent details of the expenditure, (2) the situation is substantially similar to the Commission's EqualityMaine PAC finding in April 2015, and (3) Progressive Kick will terminate its Maine PAC, we request that the Commission:

- A. Waive all fines associated with this filing (or in the alternative reduce the assessed fine to \$250.00 or less); and
- B. Take no further enforcement action against Progressive Kick for this independent expenditure report.

Thank you for your assistance with this matter. Progressive Kick is committed to compliance with Maine campaign finance laws, has fully cooperated with the Commission, and will continue to cooperate throughout this process.

If you have any questions, please feel free to contact our counsel, David Mitrani, Esq. of Sandler Reiff Lamb Rosenstein & Birkenstock, P.C., at 202-479-1111 or at mitrani@sandlerreiff.com.

Sincerely,



Neil Reiff
Treasurer
Progressive Kick IE Maine

Due - 10/24/2014
Filed - 07/22/2015

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 INDEPENDENT EXPENDITURE REPORT

COMMITTEE		TREASURER	
PROGRESSIVE KICK IE MAINE 1904 FRANKLIN ST., SUITE 725 OAKLAND, CA 94612 PHONE: (510) 893-9200 EMAIL: ADMIN@PROGRESSIVEKICK.ORG		NEIL REIFF 1904 FRANKLIN ST., SUITE 725 OAKLAND, CA 94612 PHONE: (510) 893-9200 EMAIL: ADMIN@PROGRESSIVEKICK.ORG	
REPORT	DUE DATE	REPORTING PERIOD	
Independent Expenditure Report	10/24/2014	10/23/2014 - 10/23/2014	

FINANCIAL ACTIVITY SUMMARY

EXPENDITURES	
1. CANDIDATE(S) SUPPORTED/OPPOSED	\$8,000.00
2. DEBTS AND OBLIGATIONS	\$0.00
3. TOTAL PAYMENTS (LINE 1 + 2)	\$8,000.00

AFFIDAVIT

STATE OF _____

COUNTY OF _____

JOSHUA GROSSMAN, being duly sworn, attests that he/she made each of the expenditures listed in the attached report independently of, and not in cooperation, consultation, or concert with, or at the request or suggestion of, the candidate(s) named in the report, the political committee of the candidate(s), or their agents.

(Signature of Affiant)

Sworn to before me this _____ day of _____ 2014

(Notary Public/Attorney at Law)

Perjury is a Class C Crime. (17-A MRSA § 451)

REPORT FILED BY: JOSHUA GROSSMAN
REPORT FILED ON: 07/22/2015
LAST MODIFIED: 07/22/2015
PRINTED: 09/24/2015
COMMITTEE ID: 8051
REPORT NUMBER: 144306

**SCHEDULE B-IE-1
CANDIDATE(S) SUPPORTED/OPPOSED**

Expenditure Date	Support / Oppose	Candidate Name	Office	District / County	Payee	Expenditure Amount
10/23/2014	OPPOSE	HON. PAUL R LEPAGE	GOVERNOR		THE CAMPAIGN NETWORK	\$8,000.00
Total expenditures for all candidates this reporting period						\$8,000.00

**SCHEDULE B-IE-2
PAYMENTS AND OBLIGATIONS**

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, address, zip code	Remark	Expenditure type	Net Amount
10/23/2014	THE CAMPAIGN NETWORK 140 BAYSWATER STREET BOSTON, MA 02128	ONLINE VIDEO PRODUCTION	PRO	\$8,000.00
A. Total Expenditure Payments				\$8,000.00
B. Total Obligations				\$0.00
C. Total independent expenditures for this reporting period (A+B)				\$8,000.00

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	
PROGRESSIVE KICK IE MAINE 1904 FRANKLIN ST., SUITE 725 OAKLAND, CA 94612 PHONE: (510) 893-9200 EMAIL: ADMIN@PROGRESSIVEKICK.ORG		NEIL REIFF 1904 FRANKLIN ST., SUITE 725 OAKLAND, CA 94612 PHONE: (510) 893-9200 EMAIL: ADMIN@PROGRESSIVEKICK.ORG	
REPORT	DUE DATE	REPORTING PERIOD	
24 Hour Report of Major Contributions and Expenditures	10/24/2014	10/23/2014 - 10/23/2014	

FINANCIAL ACTIVITY SUMMARY

CONTRIBUTIONS AND EXPENDITURES	
1. TOTAL CONTRIBUTIONS / LOANS	\$0.00
2. TOTAL EXPENDITURES	\$8,000.00
3. TOTAL DEBTS	\$0.00

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

REPORT FILED BY: JOSHUA GROSSMAN
 REPORT FILED ON: 10/24/2014
 LAST MODIFIED: 10/24/2014
 PRINTED: 09/24/2015
 COMMITTEE ID: 8051

24-HOUR EXPENDITURE AND PAYEE INFORMATION

EXPENDITURE TYPES				
<p>CNS Campaign consultants</p> <p>CON Contribution to other candidate, party, committee</p> <p>EQP Equipment (office machines, furniture, cell phones, etc.)</p> <p>FND Fundraising events</p> <p>FOD Food for campaign events, volunteers</p> <p>LIT Print and graphics (flyers, signs, palmcards, t-shirts, etc.)</p> <p>MHS Mail house (all services purchased)</p> <p>OFF Office rent, utilities, phone and internet services, supplies</p> <p>OTH Other</p> <p>PHO Phone banks, automated telephone calls</p>	<p>POL Polling and survey research</p> <p>POS Postage for U.S. Mail and mail box fees</p> <p>PRO Other professional services</p> <p>PRT Print media ads only (newspapers, magazines, etc.)</p> <p>RAD Radio ads, production costs</p> <p>SAL Campaign workers' salaries and personnel costs</p> <p>TRV Travel (fuel, mileage, lodging, etc.)</p> <p>TVN TV or cable ads, production costs</p> <p>WEB Website design, registration, hosting, maintenance, etc.</p>			
DATE OF EXPENDITURE	PAYEE	REMARK	TYPE	AMOUNT
10/23/2014	THE CAMPAIGN NETWORK 140 BAYSWATER STREET BOSTON, MA 02128	ONLINE VIDEO PRODUCTION COSTS. PAYMENT OF \$8,000.00 TO OPPOSE: HON. PAUL R LEPAGE. JURISDICTION: STATEWIDE. PARTY: REPUBLICAN. OFFICE: GOVERNOR. ELECTION YEAR: 2014	OTH	\$8,000.00
TOTAL EXPENDITURES FOR CANDIDATE:				\$8,000.00

21-A MRS § 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