



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 #5

To: Commissioners
From: Jonathan Wayne, Executive Director
Emma Burke, Candidate Registrar
Date: September 21, 2015
Re: Request for Waiver of Late-Filing Penalty by Frank Stanley

Frank Stanley was a traditionally financed candidate for the Maine House of Representatives in District 134. He did not win the general election. After filing the post-general election report in mid-December, all candidates with surplus cash of greater than \$100 are required to file semiannual campaign finance reports every six months by July 15th and January 15th, until their cash balance is under \$100.

Mr. Stanley filed his 42-Day Post-General Report on December 15, 2014. At that time, the report indicated that he had a cash balance of \$1,505. Accordingly, he was required to file a semiannual report by July 15, 2015. He filed the report five days late on July 20. According to his registration form, Mr. Stanley was serving as his own treasurer.

LEGAL REQUIREMENTS

Candidates are required to file semiannual reports with the Commission every six months by July 15th and January 15th if they have a surplus or deficit in excess of \$100. (21-A M.R.S.A. § 1017(3-A)(E)) 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))

DISCUSSION

Leading up to the July 15, 2015 deadline, the Commission's e-filing system automatically generated three email reminders to candidates such as Mr. Stanley who were required to file the July 15 semiannual report. In addition, the Commission staff sent a reminder letter via U.S. Mail one week before the deadline. On the afternoon of July 15, Candidate Registrar Emma Burke personally sent email reminders to all candidates who had not yet filed their 2015 July Semiannual Report, including Mr. Stanley.

Between the dates of July 16 - 20, 2015, Ms. Burke attempted to contact Mr. Stanley multiple times via telephone and email to remind him to file the 2015 July Semiannual Report. On July 20, 2015, Ms. Burke and Mr. Stanley had a telephone conversation during which Ms. Burke helped him amend his previous 2014 regular campaign finance reports. The amended version of Mr. Stanley's 42-Day Post-General Report had an ending cash balance of \$491.21, indicating that Mr. Stanley was still required to file the 2015 July Semiannual Report.

On July 20, Ms. Burke also helped Mr. Stanley file the January 2015 Semiannual Report, which is attached for your reference. The report contained one transaction dated December 30, 2014, which was an expenditure (a donation) of \$449.71 to the Hancock County Republican Women's Club. (*see* attached report) This transaction brought his cash balance to \$41.50. Accordingly, he is not required to file any more campaign finance reports for the 2014 election cycle, after the July 2015 semiannual report.

Based on the statutory formula for calculating late-filing penalties, the preliminary penalty amount totals \$112.42, calculated as follows:

Report	Date	Financial Activity	Penalty Rate	Days Late	Preliminary Penalty
2015 July Semiannual Report	07/15/2015	\$449.71	5%	5	\$112.42

The penalty rate is 5% because Mr. Stanley had filed two other 2014 campaign finance reports late. He filed his 11-Day Pre-Primary Report 5 days late, which did not result in a

monetary penalty. Mr. Stanley filed his 42-Day Pre-General Report one day late, which resulted in a penalty of \$21.75.

STAFF COMMENTS

Semiannual reports provide information to the public and political constituencies concerning whether former candidates (including office-holders) are continuing to raise political contributions and how they are spending their surplus cash. The reports provide indications of whether the candidate might be raising money for a future election or has received an over-the-limit contribution through a forgiven debt or loan.

The 2014 election cycle was Mr. Stanley's second experience as a legislative candidate. As noted above, he was late filing reports in May and September 2014, resulting in a penalty of \$21.75. Therefore, Mr. Stanley should have been aware of the importance of filing reports on time, and that there are financial penalties if a report is filed late.

In his written request for a waiver, Mr. Stanley said that the filing caught him by surprise, and that he "had assumed when my Treasurer filed after the election that I was solvent." Mr. Stanley has not appointed a treasurer other than himself, so the Commission staff is unsure to whom he is referring. The only username and password assigned to the campaign was the candidate's.

Mr. Stanley further requests a waiver because the penalty of \$112.42 would be a financial hardship. He says that he is currently unemployed and living on a fixed income. He apologizes for not filing on time, and states that he has had to attend to a severe family matter and has been engaged in negotiations for renovations of his American Legion Hall.

The Commission staff is unsure what Mr. Stanley is referring to as being "solvent." It is possible that, following the December 30, 2014 payment of \$449.71, he concluded that no further reporting was due – not realizing that he was required to disclose the December 30 payment in a report due July 15, 2015. That is speculation on our part.

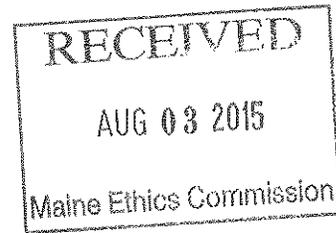
RECOMMENDATION

The Commission staff leaves it to your discretion whether to waive any part of the preliminary penalty of \$112.42. Mr. Stanley has not presented any of the statutory reasons for a waiver (valid emergency, error by Commission staff, bona fide effort to file, etc.) The preliminary penalty of \$112.42 is not excessive for a third late report. If, however, you wish to waive part of the penalty, you could base the decision on the level of harm to the public caused by the late filing. The report contained only one transaction which did not affect the candidate's election, and the report was due more than seven months after the election when, presumably, the public's interest is reduced.

Many semiannual reports filed by candidates after an election contain little or no financial activity. In recent memory, the Commission staff has not brought waiver requests to you relating to post-election semiannual reports.

Thank you for your consideration of this memo.

Frank L. Stanley
54 Butlers Ledge
Bernard, Maine 04612



I am responding to the Notice of Violation and Penalty for Late-filed 2015 July semiannual Report.

I am requesting that the Commission waive any penalties levied against me for this late filing. I find this penalty a financial hardship due to the fact that I am currently unemployed and living on a fixed income. I must apologize for not filing on time. I have had to attend to a severe family matter and as Commander of my local American Legion I have been in negotiations with an organization for intense renovations to our Legion Hall. This filing caught me by surprise. I had assumed when my Treasurer filed after the election that I was solvent. Thank you for your consideration.


Frank L. Stanley

7/30/15



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

2015 CAMPAIGN FINANCE REPORT

FOR PRIVATELY FINANCED CANDIDATES

COMMITTEE		TREASURER	
FRANK L STANLEY 54 BUTLERS LEDGE BERNARD, ME 04612 EMAIL: FRANK_STANLEY@MYFAIRPOINT.NET		FRANK L STANLEY 54 BUTLERS LEDGE BERNARD, ME 04612 PHONE: (207) 460-7488 EMAIL: FRANK_STANLEY@MYFAIRPOINT.NET	
REPORT	DUE DATE	REPORTING PERIOD	
2015 JULY SEMIANNUAL	07/15/2015	12/10/2014 - 06/30/2015	

FINANCIAL ACTIVITY SUMMARY

RECEIPTS	TOTAL FOR THIS PERIOD	TOTAL FOR CAMPAIGN
1. CASH CONTRIBUTIONS FOR THE PRIMARY ELECTION (SCHEDULE A)	\$0.00	\$1,075.00
1A. CASH CONTRIBUTIONS FOR THE GENERAL ELECTION(SCHEDULE A) <i>For party candidates, general election contributions will only appear on this line after the primary.</i>	\$0.00	\$585.00
1B. CASH CONTRIBUTIONS FOR THE GENERAL ELECTION RAISED PRIOR TO PRIMARY (Not shown on Schedule A of this report)		\$0.00
2. OTHER CASH RECEIPTS (INTEREST, ETC)	\$0.00	\$0.00
3. LOANS (SCHEDULE C)	\$0.00	\$0.00
4. TOTAL RECEIPTS	\$0.00	\$1,660.00
EXPENDITURES		
5. EXPENDITURES (SCHEDULE B)	\$449.71	\$1,618.50
6. LOAN REPAYMENTS (SCHEDULE C)	\$0.00	\$0.00
7. TOTAL PAYMENTS	\$449.71	\$1,618.50
CASH SUMMARY		
8. CASH BALANCE AT BEGINNING OF PERIOD	\$491.21	
9. PLUS TOTAL RECEIPTS THIS PERIOD (LINE 4)	\$0.00	
10. MINUS TOTAL PAYMENTS THIS PERIOD (LINE 8)	\$449.71	
11. CASH BALANCE AT END OF PERIOD	\$41.50	
OTHER ACTIVITY		
12. IN-KIND CONTRIBUTIONS (SCHEDULE A-1)	\$0.00	\$0.00
13. TOTAL LOAN BALANCE AT END OF PERIOD (SCHEDULE C)	\$0.00	
14. TOTAL UNPAID DEBTS AT END OF PERIOD (SCHEDULE D)	\$0.00	
FOR PARTY CANDIDATES ONLY: CASH CONTRIBUTIONS FOR THE GENERAL ELECTION RAISED PRIOR TO PRIMARY ELECTION (INCLUDED IN LINE 1A AFTER PRIMARY ELECTION)		

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

REPORT FILED BY: EMMA BURKE
 REPORT FILED ON: 07/20/2015
 LAST MODIFIED: 07/20/2015
 PRINTED: 08/03/2015
 COMMITTEE ID: 7699

**SCHEDULE B
EXPENDITURES**

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
12/30/2014	HANCOCK COUNTY REPUBLICAN WOMEN'S CLUB P. O. BOX ELLSWORTH, ME 04605	DISPOSITION OF SURPLUS FUNDS.	CON	\$449.71
TOTAL EXPENDITURES FOR CANDIDATE:				\$449.71



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

July 21, 2015

Frank Stanley
54 Butlers Ledge
Bernard, Maine 04612

Re: Notice of Violation and Penalty for Late-Filed 2015 July Semiannual Report

Dear Mr. Stanley:

You were required to file the 2015 July Semiannual Report on 07/15/2015 by 11:59 p.m., but the report was not filed until 07/20/2015. 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 \$112.42. 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

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: Frank Stanley			
Late-Filed Report: 2015 July Semiannual			
Contributions	\$0	Penalty Base Amount	\$449.71
Expenditures	\$449.71	Percentage	5%
Due Date	07/15/2015	Daily Accrual Rate	\$22.48
Date Filed	07/20/2015	Days Late	5
Previous Violations	2	Your Total Penalty	\$112.42

PAYMENT STATEMENT AND PAYMENT OPTIONS

From: Frank Stanley

Penalty Amount: \$ 112.42

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.

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).]

[2011, c. 558, §§4, 5 (AMD) .]

6. Request for a commission determination. If the commission staff finds that a candidate or political committee has failed to file a report required under this subchapter, the commission staff shall mail a notice to the candidate or political committee within 3 business days following the filing deadline informing the candidate or political committee that a report was not received. If a candidate or a political committee files a report required under this subchapter late, a notice of preliminary penalty must be sent to the candidate or political committee whose registration or campaign finance report was not received by 11:59 p.m. on the deadline date, informing the candidate or political committee of the staff finding of violation and preliminary penalty calculated under subsection 4-A and providing the candidate or political committee with an opportunity to request a determination by the commission. Any request for a determination must be made within 14 calendar days of receipt of the commission's notice. A candidate or political committee requesting a determination may either appear in person or designate a representative to appear on the candidate's or political committee's behalf or submit a sworn statement explaining the mitigating circumstances for consideration by the commission. A final determination by the commission may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C.

[2013, c. 334, §17 (AMD) .]

7. Final notice of penalty. If a determination has been requested by the candidate or political committee and made by the commission, notice of the commission's final determination and the penalty, if any, imposed pursuant to this subchapter must be sent to the candidate and the political committee.

If a determination is not requested, the preliminary penalty calculated by the commission staff is final. The commission staff shall mail final notice of the penalty to the candidate and treasurer. A detailed summary of all notices must be provided to the commission.

[2009, c. 302, §6 (AMD) .]

8. Failure to file report. The commission shall notify a candidate who has failed to file a report required by this subchapter, in writing, informing the candidate of the requirement to file a report. The notice must be sent by certified mail. If a candidate fails to file a report after 2 notices have been sent by the commission, the commission shall send a final notice by certified mail informing the candidate of the requirement to file and that the matter may be referred to the Attorney General for criminal prosecution. A candidate who fails to file a report as required by this subchapter after the commission has sent the notices required by this subsection is guilty of a Class E crime.

[2007, c. 443, Pt. A, §25 (AMD) .]

8-A. Penalties for failure to file report. The penalty for failure to file a report required under this subchapter may not exceed the maximum penalties as provided in subsection 5-A.

[2003, c. 628, Pt. A, §6 (NEW) .]

9. List of late-filing candidates. The commission shall prepare a list of the names of candidates who are late in filing a report required under section 1017, subsection 2, paragraph C or D or section 1017, subsection 3-A, paragraph B or C within 30 days of the date of the election and shall make that list available for public inspection.

[1995, c. 483, §15 (NEW) .]

10. Enforcement. A penalty assessed pursuant to this section that has not been paid in full within 30 days after issuance of a notice of the final determination may be enforced in accordance with section 1004-B.

[2009, c. 302, §7 (RPR) .]

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.

...

E. Unless further reports will be filed in relation to a later election in the same calendar year, the disposition of any surplus or deficit in excess of \$100 shown in the reports described in paragraph D must be reported as provided by this paragraph. The treasurer of a candidate with a surplus or deficit in excess of \$100 shall file reports semiannually with the commission within 15 days following the end of the 2nd and 4th quarters of the State's fiscal year, complete as of the last day of the quarter, until the surplus is disposed of or the deficit is liquidated. The first report under this paragraph is not required until the 15th day of the period beginning at least 90 days from the date of the election. The reports will be considered timely if filed electronically or in person with the commission on that date or postmarked on that date. The reports must set forth any contributions for the purpose of liquidating the deficit, in the same manner as contributions are set forth in other reports required in this section. [2007, c. 443, Pt. A, §16 (AMD).]

[2013, c. 334, §11 (AMD) .]