STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
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Minutes of the September 28, 2016, Meeting of the
Commission on Governmental Ethics and Election Practices
45 Memorial Circle, Augusta, Maine

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

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

Commissioner Matheson convened the meeting at 9:00 a.m. The Commission considered the following items:

1. Ratification of the Minutes from August 31, 2016.

Mr. Nass moved to accept the August 31, 2016 minutes. Ms. Lowry seconded the motion. Motion passed (5-0). Mr. Nass noted that it appeared that, on page 4, first paragraph, third line from the bottom, the word "from" should be added to that line.

2. Request for Waiver of Late-Filing Penalty – Ryan McDonald (continued from August 31st meeting)

Mr. Wayne stated that Ryan McDonald, candidate for Senate District 26, was required to file his first campaign finance report on June 3rd. He only had one contribution to report but because he thought he had to have the contributor's address in order to enter it into the system, he decided to file the report on time and amend it once he had the address. Mr. McDonald entered the transaction three days later but failed to file the report until July 26th, 53 days late. The preliminary penalty is $397.50, which the staff believes is disproportionately high.

Mr. Wayne stated one of the concerns expressed at the last meeting was that, because of the certification statement that appears on the printed report form, Mr. McDonald may have made a false statement by knowingly filing an incomplete report. That certification statement did not appear on screen when a candidate filed a report electronically and was not present when Mr. McDonald filed his report. However, Mr. Wayne said that function is now working in the e-filing system and all filers will be required to certify the accuracy of the report when filing electronically. Mr. Lee clarified that when Mr. McDonald submitted the report in the e-filing system, he did not

have the certification statement on the screen before him. Mr. Wayne agreed that was correct. Mr. Lee said he finds this late-filing by Mr. McDonald to be a lesser wrong now that it is clear that he did not see the certification statement prior to filing the report.

Joshua Tardy, Esq., counsel for Mr. McDonald, and Mr. McDonald appeared before the Commission. Mr. Tardy stated he agreed with Mr. Wayne's presentation. He expressed Mr. McDonald's regret for not appearing at the last meeting and for not timely filing his report. He said this is a common mistake made by first time candidates.

Mr. Lee asked why Mr. McDonald did not call the Commission to get the address for the contributor, which would have averted this problem. Mr. McDonald said he had been out of state and returned later than he anticipated and it was too late to call the Commission. Mr. Lee asked why Mr. McDonald filed the report knowing it was incorrect. Mr. McDonald said he intended to include the information about the contribution in the report, but he did not have the PAC's address and did not know that he could have obtained the address on the Commission's website. He thought it was better to file the report on time showing that he had no expenditures and amend it later.

In response to a question from Mr. Nass, Mr. Wayne confirmed that traditionally financed candidates may file their own reports while Maine Clean Election Act (MCEA) candidates cannot. MCEA candidates must have their treasurers file their campaign finance reports.

Ms. Matheson said the mistake is understandable but it is still a requirement that reports be complete and filed on time. She said she is comfortable with the staff's initial recommendation of a $50 penalty. Mr. Lee asked what the staff's current recommendation is. Mr. Wayne said staff recommends a $75-$100 penalty.

Mr. Lee said he could support a $75 penalty. When Mr. McDonald filed the report, he was aware that it had to be complete. However, in light of the fact that the certification statement was not present when Mr. McDonald filed the report and in light of Mr. McDonald's explanation, he thought a $75 penalty was appropriate. Mr. McDonald had no intention to conceal the contribution.

In response to a question from Ms. Lowry about why he chose to attend this meeting, Mr. McDonald said that since he had provided a statement for the previous meeting, it was his

understanding the issue was resolved and his presence was not required. He had assumed everything would go smoothly at the meeting and because it did not, he attended this meeting.

Mr. Lee made a motion to find a violation and assess a $75 penalty. Mr. Pattershall seconded the motion.

Ms. Matheson said she is still comfortable with a $50 penalty. Mr. Pattershall said he concurred with Mr. Lee. Mr. Nass said he was also comfortable with a $50 penalty but could support the motion. Ms. Lowry said she agreed with the $75 recommendation.

Motion passed (5-0).

3. Request for Waiver of Late-Filing Penalty – Rachel Lynn Rumson

Mr. Wayne stated that Rachel Lynn Rumson is a first time MCEA candidate for the House. Ms. Rumson was required to file the 42-Day Post-Primary report on July 26th. It was filed a day late because Ms. Rumson did not realize that as an MCEA candidate, she could not file the report herself. Mr. Wayne stated staff is not recommending a waiver because, while there is little harm to the public, the penalty amount is not disproportionately high.

Rachel Lynn Rumson appeared before the Commission. Ms. Rumson said the Commission's educational materials are fabulous. She said she is an innkeeper and the summer is her busy time. Ms. Rumson said her treasurer is her sister. Around the time of the deadline for the report, they learned that their mother had been diagnosed with cancer. Ms. Rumson entered her transactions and texted her treasurer to file the report. When she saw that the report had not been filed, she attempted to file it herself. Ms. Rumson concluded by saying she only makes $16,000 a year and a $99 penalty would be substantial to her.

Mr. Lee noted that in the meeting materials provided to the Commissioners, the section on the requirement that a treasurer must file campaign finance reports is underlined and asked if this emphasis was added for the purposes of this meeting or whether it was also in the materials provided to the candidates. Mr. Wayne said it is underlined in the materials given to candidates. Mr. Lee asked if Ms. Rumson had read the materials. Ms. Rumson stated she had read the materials earlier this year. Mr. Lee asked if she had forgotten about this requirement when the report deadline

came up. Ms. Rumson said it had slipped her mind. She had asked her treasurer to file the report and did not know why her treasurer did not.

Mr. Nass said the penalties had been doubled as part of the citizen initiative that passed in November 2015, which means where they would normally impose a $50 penalty, it should now be a $100 penalty. Ms. Matheson said that, while she is sympathetic, she does believe the staff recommendation is on target. Ms. Lowry said they have had several similar cases recently and had imposed $50 penalties. She said maybe the difference was that those cases involved 24-hour reports and this is the 42-day post-election report, but she is still comfortable with a $50 penalty. Ms. Matheson said she believed there are reminders sent out for the 42-Day Post-Primary report, whereas there are no reminders for the 24-hour reports.

Mr. Lee made a motion to find a violation and assess a $75.00 penalty. Mr. Nass seconded the motion. Motion passed (3-2; Ms. Lowry and Mr. Pattershall opposed).

4. Request for Waiver of Late-Filing Penalty – Hon. MaryAnne Kinney

Mr. Wayne stated that Rep. MaryAnne Kinney is running for re-election as an MCEA candidate. Rep. Kinney was required to file a report on July 26th but filed it two days late. Rep. Kinney is requesting a waiver because she was traveling out of state and did not receive the filing reminders. In addition, when Rep. Kinney returned home, she found that her internet service was not working. Mr. Wayne noted that, in addition to the three email reminders, the staff mails newsletter reminders as well. He said staff recommends reducing the penalty to $100 because of the contributing factors and the amount seems disproportionate to the harm to the public.

Rep. MaryAnne Kinney appeared before the Commission. Ms. Matheson asked if Rep. Kinney had run as an MCEA candidate the last time. Rep. Kinney said she had not. She said her treasurer, Carol Weston, travels a lot and they usually touch base via telephone. Rep. Kinney said the email reminders had been going to her business email address. She has now updated her email address to ensure that all future notifications from the Commission are not mixed in with her business emails.

The Commission discussed how the change to the statutory formula for determining preliminary penalties affects their consideration of waiver requests and assessments of penalties. Ms. Gardiner clarified that the citizen initiative changed the statutory formula for determining the preliminary

penalty. When the Commission considers waiving a penalty in whole or in part, they are starting at a higher ceiling than before the initiative. The initiative did not change the mitigating factors the Commission could consider in waiving or reducing a penalty. Ms. Matheson said they had asked staff to increase the amounts of their initial recommendations several months ago. Ms. Lowry agreed and said staff has been responsive to that request. Mr. Lee agreed and said it was reflected in the written meeting materials.

Ms. Matheson made a motion to find a violation and assess a $100.00 penalty. Mr. Lee seconded the motion. Motion passed (5-0).

5. Recommended Finding of Violation – Failure by Candidates to File 2015 SOSOI

Ms. Matheson said she believed most of this issue had been resolved because most of the candidates have finally filed their statements of income. Mr. Wayne stated that only one candidate, Robert Griffin, has not filed. He said staff recommends finding Mr. Griffin in violation but assess no penalty because there is no penalty in the statute. Ms. Matheson asked if this would come under a general penalty provision. Mr. Lee said it seemed unusual to have a statutory prohibition with no associated penalty and asked if that was intentional or an oversight. Ms. Gardiner said she had not researched the history of this provision. Mr. Wayne said 1 M.R.S.A. § 1016-G applies to current officeholders and at some point § 1016-C was added to require legislative candidates to file the same disclosure. Mr. Lee asked if there was some catchall statute that imposes a penalty as there is for civil and criminal violations. Mr. Wayne said this filing requirement is in the statute regarding legislative ethics, not the campaign finance statute. He said there is no catchall civil penalty in election law.

Mr. Lee asked if there was any interest in proposing a legislative revision to impose a penalty for failure to file this disclosure. Ms. Matheson said it would be easy to incorporate subsection 3 from § 1016-G into § 1016-C. Ms. Lowry said she would not support a legislative revision to impose a penalty. While the form may provide some advance notice of where potential conflicts may lie, she does not believe it rises to a level that warrants a penalty. In addition, if the candidate is successful, they will have to a statement of sources of income form anyway and the information will be available to the public. Ms. Gardiner said that an opposing candidate could make an issue of the failure to file the statement whether the Commission took action or not. Mr. Nass said he would be

inclined to eliminate this requirement for candidates because he was not clear what the underlying intent for this filing requirement is. Mr. Wayne speculated that the thought process behind this filing requirement may have been that if the incumbent Legislator has to disclose his or her financial interests, the opponent should have to make the same disclosure.

Mr. Pattershall referenced the provisions for a civil penalty in § 1016-G (3)(A) and asked who would prosecute that. Mr. Wayne stated he had always assumed the Commission had that authority. Ms. Gardiner stated that phrasing is typical for when the Commission can impose a civil penalty. Mr. Pattershall asked if this provision applies to both Legislators and candidates. Ms. Gardiner said it does not; it only applies to Legislators. She said she would do some background research into § 1016-C.

Mr. Lee again posed the question of whether there was any interest in a legislative revision to § 1016-C. Mr. Pattershall stated he did not see why they could not add the penalty language from § 1016-G to § 1016-C. Mr. Nass stated that if they were not going to eliminate this provision then the enforcement provisions ought to be consistent. Ms. Matheson requested a report on the legislative history of § 1016-C.

Ms. Matheson made a motion to find candidate Robert Griffin in violation of § 1016-C and assess no penalty. Ms. Lowry seconded the motion. Motion passed (5-0).

6. Discussion of Filing Schedules for Off-Year and Primary Elections

Mr. Wayne stated this issue has been discussed at several recent meetings and the proposed statute changes reflect staff practices and are an attempt to clarify this issue. In an election year, all PACs, BQCs and party committees are required to file all campaign finance reports, including 24-hour reports. In the off-year elections, they would only have to file the quarterly reports unless they are spending money to influence an issue on the ballot, in which case the committee would have to file the pre- and post-election reports as well as the 24-hour reports. Mr. Nass said he did not see a reason why they would not go forward with this. Mr. Lee clarified that there would be no 24-hour reporting unless they were supporting or opposing an issue on the ballot during the off-year election.

Ms. Matheson said at the last meeting she had expressed her opinion that only unopposed candidates would be exempt from the 24-hour reporting requirement but committees would have to file 24-hour reports regardless of whether it was on- or off-year election because they did not want to have to parse expenditures to see if the expenditure was related to an election. Mr. Wayne said most committees are fairly compliant in properly disclosing contributions and expenditures to influence a ballot question in the 24-hour reporting period. He said they are aware of whether or not they need to file a 24-hour report. Mr. Lee stated that if the staff believes it can parse these transactions without too many problems, he trusts their judgment and experience. Ms. Matheson reiterated that they would still be required to file all reports in an election year.

Mr. Nass said he did not see a reference to county committees and asked if this applied to them, too. Mr. Wayne said there is a wrong word in the section heading; it should have referenced municipal and county committees. Mr. Nass asked if there were such a thing as district committee. Mr. Wayne said the law provides for that but he is not aware of any district committees registering with the Commission.

Ms. Matheson made a motion to approve the proposed campaign finance reporting schedule changes and add it to the legislative revision packet to be submitted later this year. Mr. Nass seconded the motion. Motion passed (5-0).

7. Proposed Legislation

Ms. Matheson asked if any rule amendments were in the works. Mr. Wayne stated the Commission had approved a major substantive rule amendment last year that was not approved by the Legislature. He said most of the suggested changes are still good ideas and a proposal would be on the agenda for the October meeting.

Ms. Matheson asked how the Commissioners wanted to handle suggested legislative revisions if they are not unanimous in their support. She said submitting proposed legislation that does not have the unanimous support of the Commission can send mixed messages to the Legislature. Mr. Lee said they should work hard toward reaching a consensus and he thought they had done a good job at that to date. Mr. Nass agreed they should work toward consensus but he would not want to prohibit anyone from expressing a non-consensus opinion. Mr. Lee agreed and said there are times when

the dissenting opinion is right. Ms. Lowry said this discussion reinforces for her that they are committed to working together toward consensus.

21-A M.R.S.A. § 1013-A. Ms. Matheson said she found the first proposed revision confusing. Mr. Wayne stated some words were inadvertently omitted and suggested this proposal be tabled until the next meeting. Ms. Lowry pointed out there is no requirement for municipal committees to identify officers and no requirement for state committees to identify the officers for county and municipal committee. Ms. Matheson asked who this proposal is aimed at. Mr. Wayne said the intent was that the state committee would submit a report with the names and addresses for each local party committee. Mr. Nass said this is an admirable goal but he believed there would be a poor response because these committees frequently change officers and many are inactive. It was agreed that the changes to this section would be reworked by the staff and counsel.

21-A M.R.S.A. § 1017. Ms. Matheson confirmed that there were no objections to the change in subsection 5 to require the address of a payee to be reported.

Ms. Matheson asked about the reasoning behind the proposed (8)(B-1) addition. Mr. Wayne said this proposal gives traditionally financed candidates more flexibility on how they dispose of surplus campaign cash after an election.

Mr. Lee said it would be useful to have an explanation on the nature of leadership PACs. Mr. Nass said Legislators, who are in leadership or want to be in leadership, can start a PAC to raise money which they use to support other candidates or to make contributions to their state party committees or caucus PACs. Recently, some Legislators who abused their leadership PACs were defeated at the polls after the public became aware of how they used their leadership PAC money. Ms. Matheson said the Legislator has sole control over how the PAC money is spent. Mr. Lee said there has to be a treasurer but the treasurer answers to the Legislator. Ms. Lowry said that the Legislator can then use that money to fund their activities, such as travel and conferences. Ms. Matheson said these leadership PACs do report how the money is raised and spent and agreed with Mr. Nass that it does appear the public is holding these Legislators accountable. Mr. Lee commented that this proposal was contained in legislation in the last session that did not survive the Governor's veto. Mr. Nass said he was opposed to (8)(B-1) and referred to a recent case where a Legislator used PAC funds to purchase tires for his car and to pay family members. Mr. Lee said that because of the

reporting requirements, the public was aware of these expenditures. Mr. Pattershall said he did not see a problem with (8)(B-1). Mr. Nass stated it was the leadership PAC piece he objected to and there are a lot of other ways for a candidate to dispose of surplus cash. Mr. Pattershall asked how much surplus cash there typically is at the end of campaigns. Mr. Wayne said most candidates do not end up with a lot of surplus cash at the end of their campaigns. Mr. Pattershall said none of this causes him any concern. Ms. Lowry said at least how the money is raised and spent is disclosed in PAC reports. Mr. Lee asked if there was a problem, from the contributor's perspective, if a candidate donates the money given for his or her campaign to a PAC or ballot question committee that the contributor may not support. It was agreed to table this proposal to a later meeting.

Regarding the proposed (8)(D-2) addition, Mr. Nass said if a candidate is allowed to use surplus campaign funds to pay for a recount, he was concerned it could encourage more recounts. Mr. Nass asked for clarification that MCEA funds could not be used for recounts. Mr. Wayne said that was correct. It was agreed that (8)(D-2) would be included in the legislative packet.

21-A M.R.S.A. § 1020-A. Ms. Matheson confirmed there were no objections with the proposal to increase the penalty for the failure to register as a candidate.

21-A M.R.S.A. § 1054-B. Mr. Nass said he was satisfied that this proposal would apply to leadership PACs. Mr. Wayne said the intent was to address the issue of leadership PACs, but the proposal was written broadly enough so that a Legislator in a leadership position could not be compensated by a caucus PAC for any work the Legislator does on its behalf.

Ms. Matheson made a motion to include proposed changes to § 1017 (5), § 1017 (8)(D-2), § 1020-A and § 1054-B in the proposed legislative revision packet. Mr. Nass seconded the motion. Motion passed (5-0).

Ms. Matheson made a motion to table proposed changes to § 1013-A (3) and § 1017 (8)(B-1) until the November Commission meeting. Mr. Nass seconded the motion. Motion passed (5-0).

8. Discussion of Replacement Candidates

Mr. Wayne stated this agenda item is in response to a request for further information from Mr. Nass at the August 31st meeting. Mr. Nass said there is nothing the Commission needs to do or should do

about this but he asked them to look at page two, second bullet, which states that if a candidate withdraws due to catastrophic illness or death, replacement nominations are possible as soon as practicable. He shared his experience with this provision: he was a Senate candidate who won the primary against the incumbent. The defeated incumbent switched parties and became the opposition candidate for the general election because the original opposition candidate withdrew, claiming he was ill. That candidate's daughter was a physician and certified his illness. The end result was that Mr. Nass ended up running against the same candidate twice and defeated him twice. He expressed his concern that this provision could be abused

Ms. Matheson stated the number of replacement candidates appeared down this year. She commented on how often they have heard the "I'm just a placeholder" excuse. Mr. Nass agreed that they heard it a lot and it was an indicator of just how hard it is to recruit candidates.

9. Meeting Schedule for October – November 2016

Mr. Wayne stated he was looking for a couple of possible meeting dates for the Commission to deal with last minute complaints or other issues that may arise near the general election. Ms. Matheson asked when the expedited meeting requirement started. Mr. Wayne said it starts on October 11th. Ms. Matheson asked whether a complaint made on October 11th could wait and be heard at the October 26th meeting. Mr. Wayne said it could as long as the parties agreed to that date. Ms. Gardiner added that if one of the parties pushed the issue, they would have to schedule a special meeting. She stated that if someone filed a complaint on the Friday before the general election, the matter could be scheduled on Monday. After some discussion, it was agreed to reserve November 1st and 7th as possible dates for special meetings. Ms. Matheson stated that if any of the Commissioners had an unavoidable conflict, they could participate via telephone.

Mr. Nass made a motion, seconded by Mr. Lee, to adjourn. The motion passed. The meeting adjourned at 11:08 a.m.

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