

Agenda

Item #8



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

Date: October 18, 2012

Re: Request for Waiver of Late Filing Penalty by Lee Goldsberry

Lee Goldsberry is a candidate for Maine House, District #99 in Oxford, Cumberland, and York Counties. He is participating in the Maine Clean Election Act program. He was required to file a campaign finance report 42 days before the general election on Tuesday, September 25, 2012 at 11:59 p.m. He filed the report the following afternoon, after receiving word from the Commission staff that he was late. The report disclosed one transaction: he received an MCEA payment of \$3,930.96 for the general election. The amount of the preliminary penalty is \$39.31 (one percent of total receipts for the period).

Mr. Goldsberry requests a waiver because:

- The late filing was “simply an oversight on [his] part” and the report was filed as soon as its late nature was brought to his attention.
- He is a replacement candidate with “very little experience,” no campaign staff, and his wife is his treasurer.
- The late report did not harm taxpayers or the public treasury, and there was no financial damage to any party.

Staff Recommendation

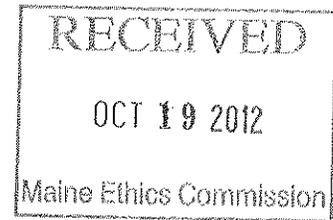
The Commission staff believes that Mr. Goldsberry is acting in good faith, and that the late filing was a result of an oversight on his part. Also, the harm to the public was limited. The report was filed approximately 16 hours late and consisted of only one transaction which was added to the report by the Commission staff. Mr. Goldsberry's opponents were made aware of the amount of the general election MCEA payment (\$3,930.96) when Mr. Goldsberry qualified for MCEA financing on August 30th.

Nevertheless, some penalty is appropriate to underscore that candidates need to meet the financial disclosure deadlines. Mr. Goldsberry ran for the same office in 2008 with MCEA financing and did not file any reports late that election cycle. Mr. Goldsberry has indicated to the staff that he was away on vacation for the two weeks before the September 25th deadline. The candidate presumably received notice of the September 25th deadline in the form of a filing schedule and a pre-deadline reminder newsletter.

The Commission staff recommends waiving 50% of the preliminary penalty and assessing a penalty of \$19.66, because the amount of the preliminary penalty (\$39.31) is disproportionate to the harm to the public from the late disclosure.

Thank you for your consideration of this memo.

Lee and Jan Goldsberry
30 Cumberland Street
Cornish, Maine 04020
October 16, 2012



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

Dear Mr. Dyer:

I understand that one may request reconsideration of a penalty for late filing when said "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." I respectfully request that the penalty be waived on these grounds. As a replacement candidate with very little experience, no campaign staff, and a wonderful wife who serves as my treasurer, I admit the late filing was simply an oversight on my part. Because there were no expenditures to report and because I did file immediately when you called my oversight to my attention, I can see no harm suffered by the public.

As you advised, I will gladly send a hard copy of this request by mail. If the Commissioners decline my request, I will immediately pay the penalty from my personal funds.

Thanks to you for your cordial help, and thanks to the Commissioners for their consideration.

Respectfully,

A handwritten signature in black ink, appearing to be "Lee". Below the signature, the name "Lee" is printed in a small, bold, sans-serif font.

*Lee Goldsberry, Candidate
Maine House District #99*

*P.S. Ben, do please let
me know if this
one arrives.
Thanks!
Lee*

Dyer, Benjamin P

From: Lee Goldsberry [leegolds@mac.com]
Sent: Monday, October 15, 2012 3:40 PM
To: Dyer, Benjamin P
Cc: Jan Goldsberry
Subject: Appeal of late filing penalty

Dear Mr. Dyer:

I understand that one may request reconsideration of a penalty for late filing when said "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." I respectfully request that the penalty be waived on these grounds. As a replacement candidate with very little experience, no campaign staff, and a wonderful wife who serves as my treasurer, I admit the late filing was simply an oversight on my part. Because there were no expenditures to report and because I did file immediately when you called my oversight to my attention, I can see no harm suffered by the public.

As you advised, I will gladly send a hard copy of this request by mail. If the Commissioners decline my request, I will immediately pay the penalty from my personal funds.

Thanks to you for your cordial help, and thanks to the Commissioners for their consideration.

Respectfully,

Lee



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

September 28, 2012

BY CERTIFIED MAIL AND REGULAR MAIL

Mr. Lee Goldsberry
30 Cumberland Street
Cornish, ME 04020

Re: Late 42-Day Pre-General Campaign Finance Report Due 9/25/2012

Dear Mr. Goldsberry:

Preliminary penalty amount. You filed a 42-Day Pre-General campaign finance report on 9/26/2012. Under the Election Law, the Commission must calculate a preliminary penalty for the late filing, based on the amount of financial activity during the report period, the number of days the report was filed late, and the candidate's filing record. The preliminary penalty for the late filing of your report is \$39.31. (Please refer to the enclosed penalty matrix for the calculation.) If you agree to pay the penalty, please use the enclosed billing statement within 14 days of receiving this letter. Please do not use Maine Clean Election Act funds to pay the penalty.

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

Mitigating circumstances. The Election Law defines mitigating circumstances as: (1) a valid emergency, (2) an error by the Commission staff, (3) failure to receive notice of the filing deadline, or (4) relevant evidence presented that a *bona fide* effort was made to file the report in accordance with the statutory requirements. Also, the Commission may waive a preliminary penalty if the Commission determines that the penalty is disproportionate to the size of the candidate's campaign, the level of experience of the candidate, treasurer, or campaign staff, or the harm suffered by the public from the late disclosure.

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

Sincerely,

Benjamin P. Dyer
Candidate Registrar

cc: Jan Goldsberry (by regular mail)

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

PHONE: (207) 287-4179

FAX: (207) 287-6775

September 28, 2012

Mr. Lee Goldsberry
30 Cumberland Street
Cornish, ME 04020

The Commission staff has calculated a preliminary penalty of \$39.31 for the late filing of your 42-Day Pre-General campaign finance report. Please pay the penalty or request a waiver within 14 days of receiving this notice. If the Commission does not receive a payment or waiver request, the Commission will send you a final notice requesting payment within 30 days.

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

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

Cut Along Dotted Line

For Office Use Only:
Account: MCGEEP
Fund: 014 Approp: 02

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

From: Mr. Lee Goldsberry

RE: Penalty for late filing of 42-Day Pre-General Campaign Finance Report

Penalty ID: 1908

Amount Enclosed: \$ _____

Check/M.O. No.: # _____

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

COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

PENALTY MATRIX FOR LATE CANDIDATE REPORT FILINGS

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

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

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

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

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

Lee Goldsberry

Your penalty is calculated as follows:

Receipts/Expenditures:	\$ <u>3,930.96</u>
Percent prescribed:	<u>1%</u>
	\$ <u>39.31</u>
Number of days late:	X <u>1</u>
Total penalty accrued:	\$ <u>39.31</u>

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

Any penalty of less than \$10 is waived.

Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each even-numbered year. Waiver of a penalty does not nullify the finding of a violation.

A required report that is sent by certified or registered United States mail and postmarked at least 2 days before the deadline is not subject to penalty.

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

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



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

2012 CAMPAIGN FINANCE REPORT

FOR MCEA CANDIDATES

CANDIDATE		
LEE GOLDSBERRY 30 CUMBERLAND STREET CORNISH, ME 04020 OFFICE SOUGHT: REPRESENTATIVE DISTRICT: 99		TEL: (207)625-7139 FAX: E-MAIL: leegolds@mac.com
TREASURER		
JAN GOLDSBERRY 30 CUMBERLAND STREET CORNISH, ME 04020		TEL: (207)625-7139 FAX: E-MAIL: jgoldsberry@sanford.org
TYPE OF REPORT	DUE DATE	REPORTING PERIOD
42-DAY PRE-GENERAL	09/25/2012	8/30/2012 - 9/18/2012
NO FINANCIAL ACTIVITY IN THIS REPORTING PERIOD FOR SCHEDULES B, D, E		
CERTIFICATION		
I, LEE GOLDSBERRY, CERTIFY THAT THE INFORMATION CONTAINED IN THIS REPORT IS TRUE, ACCURATE AND COMPLETE TO THE BEST OF MY KNOWLEDGE. REPORT FILED BY: LEE GOLDSBERRY REPORT FILED ON: 9/26/2012 IF THIS REPORT IS FILED BY AN AUTHORIZED AGENT OF THE CANDIDATE, THE CANDIDATE, TREASURER AND AGENT ARE LIABLE FOR ANY VIOLATIONS OF MAINE CAMPAIGN FINANCE LAW (21-A M.R.S.A. CHAPTER 13) AND THE COMMISSION'S RULES THAT MAY RESULT FROM THE FILING OF A FALSE OR INACCURATE REPORT.		

UNSWORN FALSIFICATION IS A CLASS D CRIME (17-A M.R.S.A. § 453).

**SCHEDULE A
MAINE CLEAN ELECTION ACT PAYMENT AND AUTHORIZATIONS
(THIS PERIOD ONLY)**

DATE	TYPE	AMOUNT
8/30/2012	MCEA INITIAL PAYMENT - GENERAL	\$3,930.96
TOTAL MCEA PAYMENTS AND AUTHORIZATIONS ⇨		\$3,930.96

**SCHEDULE F
 SUMMARY SECTION
 (MAINE CLEAN ELECTION ACT CANDIDATES)**

CASH ACTIVITY		
	TOTAL FOR THIS PERIOD	TOTAL FOR CAMPAIGN
1. CASH BALANCE FROM LAST REPORT	\$6.04	
2. SEED MONEY CONTRIBUTIONS		\$489.00
3. MAINE CLEAN ELECTION ACT PAYMENTS & AUTHORIZATIONS	\$3,930.96	\$3,930.96
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	\$482.96
7. CASH BALANCE AT CLOSE OF PERIOD (lines 1 + 3 + 4 + 5 - 6)	\$3,937.00	

OTHER ACTIVITY		
8. IN-KIND SEED MONEY CONTRIBUTIONS		\$0.00
9. TOTAL UNPAID DEBTS AT CLOSE OF PERIOD (Schedule D)	\$0.00	