# Agenda Item #3

From: Zachary Jackman
Sent: Thursday, August 21, 2008 4:21 PM
To: O'Brien, Gavin
Subject: Post Primary Report Filing - Late Fee Waiver Request

Mr. O'Brien:

My name is Zachary Jackman and I am writing on behalf of Geraldine Randall for Maine House to formally request a waiver of the Late Fee for filing her 42 Day Post Primary Report.

I serve as Mrs. Randall's Treasurer for her campaign.

During school, I had helped Mrs. Randall by filing her information on the Maine Ethics filing software. Because school was closer to where she lives, I had no problem getting the correct records from her and filing them accurately. I have moved home for the summer, and for the 42 Day Post Primary Report, Mrs. Randall decided to file the information from her computer at home using the America Online Browser.

At midnight that night I received a frustrated and nervous call from Gerri during which she told me that she was unable to file the information. I had similar problems using the Mozilla Firefox browser and the Maine Ethics Website for the previous report, but was able to resolve the issue using your recommended Internet Explorer settings.

The next day, knowing that the problem was technically linked to the browser she was using, I had her e-mail me the necessary information, logs, and records to file the report and did so. However, at this point, the 42 Day Post Primary Report was late.

I understand that Maine Ethics recommends using Internet Explorer to file all digital reports, as it is the only browser that works correctly. Gerri had difficulty using her America Online Browser, which is the only reason for the late filing of the report. I should have known to ask for the information from Gerri and file it myself using Internet Explorer, given that the software is somewhat complex, and i have made a point to do so in the future. I am requesting that Gerri be refunded her late fee because the error was on my part for not helping her deal with the AOL Incompatibility issue earlier.

Thank you for your time.

Respectfully,

Zachary D. Jackman

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

July 25, 2008

Geraldine Randall
540 Old Town Road
Hudson, ME 04449

**BY CERTIFIED MAIL**

Dear Ms. Randall:

RE: Late 42-Day Post-Primary Campaign Finance Report Due 7/22/2008.

You filed a 42-Day Post-Primary campaign finance report on 7/23/2008. A penalty must be assessed for late reports based on the amount of financial activity conducted during the filing period, the number of calendar days a report is filed late, and the candidate's filing record. Based on the prescribed statutory formula, the preliminary determination of the penalty for the late filing of your report would be $41.44. Please refer to the enclosed penalty matrix for more details on how the penalty is computed. If you agree with this preliminary determination of the amount of the penalty, you may use the enclosed billing statement to pay that penalty.

If you have a reason for filing late, you may request the Commission to make a final penalty determination. Any request for a Commission determination must be made within 10 calendar days of receipt of this notice, beginning on the day you sign its receipt. If this notice has been refused or left unclaimed at the post office, the 10-day period begins on the day the post office indicates it has given first notice of a certified letter. Upon receipt of your request for a Commission determination, we will schedule you to appear and will notify you of the date and time of the next Commission meeting. You or a person you designate may then appear personally before the Commission or you may send a written statement for the Commission's consideration. A statement must be notarized and contain a full explanation of the reason you filed late. Statements should be sent to the address shown on this letterhead. The Commission will notify you of the disposition of your case within 10 days after its determination.

**NOTE:** The Commission may waive penalties for late reports only in cases where tardiness is due to mitigating circumstances. The law defines "mitigating circumstances" as: 1) 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; 2) an error by the Commission staff; 3) failure to receive notice of the filing deadline; or (4) 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.

The Maine Clean Election Act requires all revenues distributed to certified candidates from the fund to be used for campaign-related purposes. Commission guidelines regarding permissible campaign-related expenditures do not include the payment of a penalty as a permissible expenditure.

Sincerely,

Gavin O'Brien
Candidate Registrar

cc: Treasurer

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE
WEBSITE: WWW.MAINE.GOV/ETHICS
PHONE: (207) 287-4179 FAX: (207) 287-6775

July 25, 2008

Geraldine Randall
540 Old Town Road
Hudson, ME 04449

The Commission staff has made a preliminary determination, based upon application of the statutory formula, that a penalty of $41.44 applies for the late filing of your 42-Day Post-Primary campaign finance report. If you agree with this determination, please make your check or money order in that amount payable to "Treasurer, State of Maine," and send it, along with the bottom half of this letter, to the Commission on Governmental Ethics and Election Practices, 135 State House Station, Augusta, Maine 04333, within 30 days of the date noted above. Please see the instructions included in the attached letter if you would like the Commission to make a formal determination of any penalty to be assessed in this case.

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 the full amount of any penalty. Please direct any questions you may have about this matter to Gavin O'Brien at 287-4709.

Cut Along Dotted Line

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

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

From: Geraldine Randall

RE: Penalty for late filing of 42-Day Post-Primary Campaign Finance Report

Penalty ID: 1468

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)

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 |
| X .01 | Percent prescribed for first violation |
| $25.00 | One percent of total contributions |
| X 2 | Number of calendar days late |
| $50.00 | Total penalty |

Geraldine Randall

Your penalty is calculated as follows:

| | |
|---|---|
| Receipts/Expenditures: | $ 4144 |
| Percent prescribed: | 1% |
| | $ $41.44 |
| Number of days late: | X 1 |
| Total penalty accrued: | $ $41.44 |

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)

$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.

# 21-A §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.

[ 1995, c. 483, §15 (NEW) .]

**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 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. [1999, c. 729, §5 (NEW).]

[ 2007, c. 443, Pt. A, §21 (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.

[ 1995, c. 625, Pt. B, §5 (AMD) .]

**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, except for accelerated campaign finance reports required pursuant to section 1017, subsection 3-B, 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