



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

Amended Minutes of the July 16, 2007 Meeting of the  
Commission on Governmental Ethics and Election Practices  
Held in the Commission's Meeting Room,  
PUC Building, 242 State Street, Augusta, Maine

Present: Michael Friedman, Esq., Chair; Hon. Jean Ginn Marvin; Hon. Vinton Cassidy; Hon. Mavourneen Thompson; Staff: Executive Director Jonathan Wayne; Phyllis Gardiner, Counsel.

At 9:06 A.M., Jean Ginn Marvin convened the meeting and welcomed new Commission member David C. Shiah to the Commission.

The Commission considered the following items:

**Agenda Item #1 Ratification of Minutes: March 9 and May 14, 2007 Meetings**

Mr. Friedman moved, and Ms. Thompson seconded, that the Commission ratify the minutes of the March 9 and May 14, 2007 meetings. The motion passed by a vote of 4-0 (Mr. Shiah abstained).

Counsel Phyllis Gardiner advised the Commission that it would be in the best interest of the Commission to appoint a new chair at this point, since an acting chair is only for occasions when the chair cannot be in attendance. Ms. Ginn Marvin agreed to be the acting chair when Andrew Ketterer's term ended in April. Ms. Gardiner referred to the provision on appointing a chair in Title 1, Section 1002 (1-A).

Discussion followed regarding appointment of a new chair. Ms. Thompson nominated Mr. Friedman; Mr. Cassidy seconded.

Mr. Friedman stated that he would be honored and expressed his belief that the dynamics of this current Commission indicate that the members are all very independent thinkers and non-partisan members.

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The motion passed (5-0).

Mr. Friedman assumed the chair for the remainder of the meeting.

Ms. Thompson spoke to the issue of a written protocol for procedures and hearings of the Ethics Commission so that the public, Legislators, and others will have a clearer understanding about how the Commission conducts meetings and hearings. She stated that she did not bring this issue up because she thinks that there has been a problem with people getting a fair hearing, but that she thinks the process will be clearer for the public if there were written protocols.

Ms. Gardiner pointed out that the current rules for conducting hearings may be quite out-dated. She suggested that there could be a written protocol on how to conduct regular meetings but that some other procedures, such as requesting a reconsideration, should be done by rulemaking.

Mr. Friedman asked the staff to look at the procedures that other boards and commissions employ and bring that to the Commission for the next meeting. He said that at least the Commission could come up with a consistent procedure for conducting meetings.

**Agenda Item #2 Audit Findings/Hon. Philip A. Cressey**

Mr. Wayne notified the Commission that Representative Philip A. Cressey could not be at today's meeting due to a new job he has started. Mr. Wayne indicated the Commission could discuss the issue today without Mr. Cressey or postpone until the August meeting. It was decided to postpone until the August 13, 2007 meeting.

Ms. Thompson made a motion to postpone this matter until August 13<sup>th</sup> meeting. Mr. Shiah seconded. The motion passed (5-0).

**Agenda Item #3 Violations of Maine Clean Election Act/Hon. Arthur H. Clement**

Mr. Wayne reported that Mr. Clement was a MCEA candidate for the House in the 2006. Mr. Clement did not return unspent MCEA funds by the deadline. The Commission staff did a preliminary investigation and the Commission issued a subpoena for Mr. Clements' bank records. In June, he deposited \$4,362 into his personal bank account and spent most of it on personal expenses (e.g.,

mortgage payment) not related to his campaign. In October, Mr. Clement received another check for matching funds in the amount of \$8,724, which were returned but which the staff believes that some portion was used for personal expenses before being paid back. Eventually, Mr. Clement repaid all unspent MCEA funds. The staff is recommending penalties totaling \$2,000 for violations of commingling funds, spending public funds on non-campaign purposes, and for returning funds late.

Ms. Thompson asked if this was a result of a random audit. Mr. Wayne said that it was not. This came to the staff's attention because Mr. Clement did not repay the unspent funds by the deadline and did not do so until the Commission had referred this case to the Attorney General's office.

Mr. Arthur Clement said that he had been a candidate and Legislator in the past and that he knew that he was not supposed to use MCEA funds for personal purposes. He said that he did not spend any of the matching funds he received for personal purposes. He informed the Commission that he had been on pain medicine during last fall's election as the result of a 2003 motorcycle accident injury. He said that the medication affected his thinking negatively. He explained that he spent several months confused and unclear until he requested his doctor take him off the pain medicine. At that point, he went through a detoxification program at home. He said that he was just recently hospitalized and learned he needs a liver transplant. A side effect of the liver disease was an accumulation of ammonia levels in his blood system which causes mental confusion.

He stated that he let down the people of his district and members of his family. Mr. Clement is concerned because he cannot work, he has no health insurance and does not know how he will pay these penalties. Mr. Clement provided a doctor's letter.

Mr. Clement said that when he was first contacted by Sandy Thompson, candidate registrar, about returning the unspent MCEA funds, he made up an elaborate story about how he told his daughter to deposit the check into his personal account because he thought it was a rebate check from the State.

Ms. Thompson expressed sympathy for Mr. Clement's health issues. She asked whether Mr. Clement was sick during the time period he received his first payment.

Mr. Clement confirmed he was sick but he did not know it at the time.

Mr. Friedman asked when the motorcycle accident was. Mr. Clement said that it happened in 2003. Mr. Friedman asked how long he had been out of work and Mr. Clement thought it was around May 11, 2007. Mr. Friedman asked Mr. Clement whether he was on any pain medications today or had been in the past 72 hours. Mr. Clement answered “no” to both questions. Mr. Friedman asked Mr. Clement if he understood the charges. Mr. Clement said that he did. Mr. Friedman asked whether Mr. Clement had used MCEA funds for personal purposes, commingled MCEA funds with personal funds, and returned the unspent MCEA funds late. Mr. Clement said that he had. Mr. Friedman further asked Mr. Clement to confirm whether he thought the reason for these actions was the side effects caused by his pain medicine. Mr. Clement said that he believed that was the reason and that when he ran before, he ran a responsible campaign.

Mr. Friedman asked Mr. Wayne whether there were any inconsistencies between Mr. Clement’s statements and what the staff discovered. Mr. Wayne stated that it was possible that Mr. Clement did not use the second payment for personal purposes but that he did use his first payment for personal expenses.

Mr. Cassidy asked what amount was actually spent on Mr. Clement’s campaign. Mr. Wayne stated that approximately \$600 was spent on his campaign.

Ms. Ginn Marvin asked whether he had a treasurer; Mr. Clement said he did until he fired him after a few weeks and then he acted as his own treasurer.

Mr. Shiah asked if the money used for personal expenses was repaid; Mr. Wayne confirmed that it had been.

Ms. Thompson asked whether there are procedures for people on whom the Commission has imposed penalties to pay on an extended basis or an appeal process for people who have medical conditions to request to delay paying penalties. Ms. Gardiner stated that the Commission has agreed to payment plans; however, Ms. Gardiner stressed that the Commission is not a collection agency. The opportunity to take into account Mr. Clements’ medical and financial circumstances as they may affect what penalty the Commission imposes is here and now. Once a penalty is assessed, the Commission could work out a payment schedule. However, that would not preclude the Commission from deciding not to pursue

collection if his circumstances did not improve and he really was not able to pay. Aside from the informal process of establishing a payment schedule, the other option would be a more formal process through a collection action in the court in which the person can bring forth information about their ability to pay at a disclosure hearing.

Ms. Thompson made a motion to assess the staff recommended penalty of \$2,000 with provision Mr. Clement will be advised of all avenues of payment procedures with regard to payment of the penalty. The motion failed for the lack of a second.

Mr. Wayne explained the staff arrived at this penalty in comparison to the Tom Bossie issue; however, Mr. Bossie was more deliberate in trying to take money from the State. Mr. Clement's medical issues which have left him unable to work, has set a new precedent since this has not come up before. The Commission has leeway to decide what they want to do.

Mr. Cassidy made a motion to cut the penalty to \$1,000 and set up a payment schedule due to Mr. Clement's medical issues. Ms. Ginn Marvin seconded for discussion purposes.

Ms. Ginn Marvin expressed concern over Mr. Clement's lack of means to pay this penalty. She felt that to issue a penalty he cannot pay, seems unproductive on the Commission's behalf, knowing Mr. Clement would be referred to the Attorney General's office in the end.

Mr. Wayne said there have been no previous cases similar to this one where the candidate does not have resources to pay a penalty.

Ms. Thompson stressed her concern over the increasing number of violations with regard to commingling and using public funds as a personal 'loan' which can be paid back before returning the funds to the State. There already is a procedure in place for this very serious violation and she feels the Commission should stand by these procedures. Since there is a procedure in place to assess a penalty; the Commission's decision should not be based on the ability to pay penalties.

Mr. Friedman stated it is a dangerous precedent to consider the ability to pay when assessing a penalty. If a penalty is uncollectible, that should be someone else's determination. The Commission should decide to impose a penalty because of the seriousness of the violation and let collection fall to others.

Mr. Cassidy's motion did not pass (1 – 4; Mr. Cassidy in favor).

Ms. Thompson made a motion to adopt the staff recommendation and assess the \$2,000 penalty; seconded by Ms. Ginn Marvin. The motion passed by a vote of 3-2 (Ms. Ginn Marvin, Ms. Thompson, and Mr. Friedman in favor; Mr. Cassidy and Mr. Shiah opposed).

**Agenda Item #4 Request for Waiver of Late-Filing Penalty/ Hon. Arthur H. Clement**

Mr. Wayne explained that the preliminary penalty for the late 42-Day Post General filing is \$2,224.75 for filing 55 days late. However, the staff recommends that the Commission reduce the penalty to \$400 because the preliminary penalty amount was disproportionate to the level of harm suffered by the public and because it would be consistent with previous determinations.

Mr. Cassidy moved to accept the staff recommendation; seconded by Ms. Thompson.

Ms. Ginn Marvin asked how the penalty amount was derived.

Mr. Wayne explained that the staff has been much more diligent in notifying candidates when reports are due, reminding them of deadlines, and consequences if they are delinquent. This figure is the maximum amount that has been issued within this election cycle. The Commission staff prefers to keep it within reasonable limits but send the message that reports need to be filed on time.

Ms. Ginn Marvin stated she will not support the motion because it does not follow the formula designed for these violations.

The motion passed by a vote of 3-2 (Ms. Thompson, Mr. Cassidy, and Mr. Friedman in favor; Ms. Ginn Marvin and Mr. Shiah opposed).

## **NEW BUSINESS**

### **Agenda Item #5 Request for Waiver of Penalty/Leadership for Maine's Future PAC**

Mr. Wayne explained that Representative Josh Tardy would be on the phone for this discussion. Due to the special election in June, political action committees that raised contributions or made expenditures were required to file a campaign finance report six days before the election. On May 10, 2007, the Commission staff sent a filing schedule by e-mail to all PACs. The schedule inadequately described the June 6 special election filing requirement. The Election Law authorizes the Commission to waive late-filing penalties due to errors by the Commission staff.

Mr. Wayne explained that the Leadership for Maine's Future is Rep. Tardy's PAC. Three other PAC's should have filed a report on June 6. The staff recommends waiver of these penalties because the filing schedule may have contributed to the late filing.

Ms. Ginn Marvin moved to accept the staff recommendation to grant a waiver due to a staff error for the Leadership for Maine's Future, Senate Republican Victory Fund, and Experience Counts. The motion was seconded by Ms. Thompson. The motion passed by a vote of 5-0.

*Due to Senator Perry's late arrival (Item #6), Item #9 was taken out of order and discussed at this time.*

### **Agenda Item #6 Violations of Maine Clean Election Act/Hon. Joseph C. Perry**

Mr. Wayne explained that the audit of Senator Joseph C. Perry showed that he had deposited his MCEA funds in his credit union savings account in order to earn interest on the funds. The savings account was linked to his personal checking account for overdraft protection. Over the course of the campaign, MCEA funds from his savings account were transferred to his checking account to cover insufficient funds for a total of \$4,028. Senator Perry recognizes he should have stopped these transfers but he did not. As a result of the overdraft transfers, Sen. Perry commingled MCEA funds with personal funds. The audit also concludes that Senator Perry did not obtain complete documentation of his campaign expenditures as required by the MCEA. Mr. Wayne said that Sen. Perry's case and one other that will come before the Commission in August are instances where the candidate used their MCEA funds to cover personal expenses in the short term but returned the funds after the election at the required deadlines. Mr. Wayne stated that the staff did not believe that Sen. Perry had any intention of holding

onto the funds and fully intended to return the funds. Mr. Wayne referred to the chart provided to the Commission members. Mr. Wayne recommended three findings of violation and a total penalty of \$950: a penalty of \$600 for spending MCEA funds for non-campaign purposes; \$250 for commingling MCEA funds with personal funds; and \$100 for not keeping required documentation.

Ms. Thompson asked if the penalty was based on an established formula. Mr. Wayne stated that these cases are new to the Commission and are not based on a particular formula. This would be the first time the Commission has issued a penalty for not keeping correct documentation. Mr. Wayne referred to the chart he gave to the Commission members and explained that the penalty amounts for misuse of MCEA funds for Sen. Perry and Mr. Feeney (to appear before the Commission in August) are half of the amounts recommended for Thomas Bossie and Arthur Clement because the misuse by Sen. Perry and Mr. Feeney was not as serious as that by Mr. Bossie and Mr. Clement who gave every indication that they did not intend to return the funds. He stressed to the Commission that they could change the penalty amounts up or down, if deemed necessary. Regarding the penalty for the commingling of funds, Mr. Wayne explained that when compared to the commingling by Joan Bryant-Deschenes and Donald Marean, the commingling by Sen. Perry and Mr. Feeney was a more serious problem because it resulted in the misuse of MCEA funds.

Ms. Thompson asked again if there was a formula for calculating penalties for commingling offenses. Mr. Wayne said that there was not but that the penalty amounts set now could be considered as precedents in determining penalties in subsequent elections.

Ms. Thompson stated her concern over the commingling issues. She said it appears some candidates are using MCEA funds as a loan for the candidate's personal use, which is not what the public money was intended for. She said that there should be a specific formula for a penalty for commingling rather than leaving it to the Commission's discretion on a case-by-case basis. She believes the candidate guidebook needs to be very specific and more direct with the wording as to what constitutes commingling and the penalty for such actions. The Commission needs to give attention to this issue as a priority she said.

Senator Perry approached the Commission members along with his attorney, Newell Auger. He read a prepared statement apologizing for his actions and commending the Commission staff for their professionalism during this time. He said that he did not disagree with the staff's audit findings but he

did dispute the penalty amounts. He explained he was his own treasurer and that since he did not have a treasurer he did not have the expertise necessary to fill this role.

Mr. Auger pointed out the precedent setting nature of this issue. He said that he did disagree with the penalty amount as he indicated in his letter to the Commission.

Mr. Cassidy asked the procedure for interest on public funds earned in candidates' accounts. Mr. Wayne explained that the candidates are allowed to spend the interest and the money is counted as a receipt in the tabulations. This interest does not trigger matching funds since the amount is so small.

Mr. Wayne clarified for Mr. Cassidy that the maximum penalty amount is \$10,000 for this type of violation. Mr. Cassidy stated he could not understand why Senator Perry would not stop the transfers when he first found out it happened. Senator Perry admitted that he was overwhelmed with all that was going on at the time and felt the money was being spent appropriately on campaign purposes.

Discussion followed regarding the amount of the penalties for each violation.

Mr. Augur argued that the commingling penalty should be reduced to \$100 similar to the penalty amount for Representatives Bryant-Deschenes and Marean. He thought that since the candidate was being penalized for misusing campaign funds as a result of the commingling, he should not also get a larger penalty for the commingling itself.

Ms. Ginn Marvin expressed concern with regard to candidates using public funds for personal expenses. She said Senator Perry is not new to the program; therefore, he should have known the seriousness of this violation. Ms. Ginn Marvin stated she would be in favor of a larger penalty due to the seriousness. She said candidates cannot use public money for personal use, even if they justify it by paying it back in the end.

Ms. Thompson asked for clarification of past cases. She said she would support the staff's recommended penalty. She said that the Commission needs to be more specific with penalty amounts for these types of violations and also be diligent and provide candidates with a detailed list of procedures to follow when receiving their MCEA money. She said it was important for the Commission to give

detailed guidance to the candidates so that they were very clear about what they had to do to stay within the bounds of the law. She also stressed that it was important that candidates not be discouraged from running as a MCEA for fear of making an inadvertent mistake.

Mr. Cassidy stated that the candidates are not children. If they are elected, they need to be able to account for money if they are going to be a member of the Legislature. He would not support holding their hand during their campaign. They know the laws and should be able to follow them. He believes the penalties are not high enough and that if they were aware of the seriousness of the penalties and violation, there would be fewer cases.

Mr. Shiah asked for clarification as to whether all the money was returned. Mr. Wayne confirmed that the funds were all paid back.

Mr. Friedman stated each case has its own story, some more believable than others. This penalty could amount to \$30,000 and the staff recommended \$950 for a variety of reasons. He would be concerned if every case were treated the same because each case is different and the results will be different. Mr. Friedman expressed his concern if the Commission were restricted to a certain fine for a particular case despite the facts. This case, he feels, is serious since MCEA public funds were used for personal use. The Commission needs to be flexible and consider all facts of each case.

Ms. Thompson moved to accept the staff recommendation of \$950 penalty. Ms. Ginn Marvin seconded the motion. There was no further discussion and the motion passed unanimously.

#### **Agenda Item #7 Violations of Maine Clean Election Act/Hon. Barbara E. Merrill**

Mr. Wayne explained that the staff are conducting audits of all MCEA candidates running for Governor. Mr. Wayne informed the Commission that former State Representative Barbara E. Merrill was a MCEA candidate for Governor in the 2006 elections. The audit of her campaign disclosed some reporting and documentation problems along with a conflict of interest issue (Finding #1). Mr. Wayne referred specifically to Finding #1 which he expressed concern over since Mr. Merrill was the deputy treasurer and a media consultant for the campaign. Mr. Merrill was making payments on behalf of the campaign to himself as a vendor (Mountain Top Productions) to the campaign. Mr. Wayne stated that this is legal

under the MCEA laws; however, he feels the lack of public disclosure of this relationship is an issue of concern.

Mr. Vincent Dinan, staff auditor, approached the Commission. This was the second of four audits to be conducted of the gubernatorial candidates. These campaigns were the most heavily funded campaigns during the 2006 elections. Issues addressed in the audit report were conflict of interest, qualifying contributions (seed money) reporting, and lack of documentation for expenditures. The campaign returned all money, so recovery is not an issue. Mr. Dinan stressed that in normal financial management practices, the person procuring is not the person who provides the service and also pays for the service. He said although this is not an illegal practice, it is not a normal financial practice due to oversight concerns.

Ms. Ginn Marvin asked why the seed money issue was not found in violation. Mr. Dinan explained that almost all gubernatorial campaigns audited in 2006 had these seed money reporting issues in the beginning of their campaigns; therefore, staff was more lenient in this area. Mr. Dinan stated that the staff sought a balance between enforcing the reporting requirements and an acknowledgment of the real world difficulties that candidates experience.

Mr. Dinan explained the audit procedure for verifying expenditures made with public funds. He said that the Merrill campaign had nine expenditures that had proof of payment but not adequate support of the original invoices. These were Mountain Top Production payments he said.

Ms. Thompson asked for clarification of the media outlet invoices. Mr. Dinan restated that the invoices for the services were not received in connection to the payments made. He further stated that the candidate is responsible for going to the media outlet to get proof, not the Commission's auditor. He also said this finding could be reduced or eliminated if this had been done. Other candidates have been able to produce this documentation when requested to do so.

Mr. Cassidy asked about FCC's requirement to return funds for spots not run. Mr. Dinan said there have been occasions when candidates contract for services with the station and if something does not run, the media company will issue a refund. He said this happened in the Merrill campaign also.

Mr. Friedman asked if any audits showed that the campaign did not receive value for Mr. Merrill's services. Mr. Dinan could confirm that the value appeared to be legitimate.

Ms. Ginn Marvin asked Mr. Dinan if he was concerned that Mountain Top Productions was not known to be Mr. Merrill in the beginning. Mr. Dinan stated this was a concern. Ms. Ginn Marvin asked if there is a routine billing amount for media services; Mr. Dinan confirmed that it is difficult to determine from invoices what the rate is. He stated that the fees were not out of line with other campaigns. Ms. Ginn Marvin stated that \$100,000 for less than a year's work seemed like a great deal of money.

Ms. Thompson spoke to the issue of procurement, providing and paying for a service by the same person as being a concern as far as appearances. She also wondered why this was not illegal. Mr. Dinan stressed the importance of oversight in this financial process.

Mr. Cassidy wondered about the need for creating a rule in the MCEA program. Mr. Dinan explained that the Commission is considering this issue for future discussions.

Ms. Thompson asked if Mr. Dinan had seen other cases where family members have been reimbursed for campaign activity. Mr. Dinan stated that the Woodcock campaign had one and the LaMarche campaign also had a couple family members, both were small payment amounts and low level of service was provided.

Ms. Gardiner clarified that Finding #1 was focusing on the dual role of deputy treasurer and consultant, not the family member issue.

Philip Merrill, Deputy Treasurer for the Merrill campaign, approached the Commission. Mr. Merrill did not dispute the findings regarding the incomplete reporting and record keeping during the qualifying period. He also stated that keeping track of the money orders during the qualifying process is a nightmare.

The finding lack of documentation was the next issue Mr. Merrill addressed. He strongly stated that all documentation received from the stations was submitted to the Commission. Some documentation submitted by stations is difficult to follow with regard to the service provided and payments made. Mr.

Merrill informed the Commission that he has done all he could and spent a great deal of time trying to get the documentation the Commission requested. Due to the lateness of the request, he feels the stations do not feel obligated to provide documentation months after the campaign is finished. Mr. Merrill strongly urged anyone trying to get this documentation to demand the station provide this documentation at the time the campaign requests the service.

Mr. Merrill addressed the conflict of issue matter. He became the deputy treasurer because during the campaign, one cannot always get to the treasurer when something needs to be done. He said that he did not carry out treasurer's duties on a daily basis. He was not hired at the onset of the campaign to be the principal media consultant; he was the second choice of Ms. Merrill. She wanted an experienced Maine political advisor to rely on and felt Mr. Merrill, with his background, was that person. He submitted a written proposal to Ms. Merrill and the campaign manager, they provided a counter-proposal, and that became a contract for services. Mr. Merrill said he stuck with this contract through the campaign regarding purchases and services. He also informed the Commission that he was the person who submitted the original legislation for an independent commission to handle legislative conflicts of interests.

Mr. Merrill stated that independent candidates have a narrower field of political and media consultants to chose from than do party candidates. Most consultants are affiliated with one party or another. Mr. Merrill said that the staff memo suggested that there was something surreptitious in how the campaign reported the expenditures to his company. He said that whenever he has been involved as a consultant in a campaign, he has used the name of a company. For a long time, he called his business the Kennebec Group. He said that there was no attempt at stealth and that he was in contact with television stations on a daily basis. He stressed that he was not trying to be secretive with his association as a consultant and vendor providing services. He said television stations knew he was the person in charge of these efforts and any one could have found out this information at any time during the campaign. Mr. Merrill raised the question of what other kinds of information should be disclosed by publicly funded candidates, such as whether the media company used by a candidate also does work for tobacco companies, whether the campaign is purchasing goods and services from out of state, etc. He also questioned, if there was a prohibition on hiring family members, how the Commission would treat gay couples.

Ms. Thompson recognized that Mr. Merrill did try to get the documentation that was missing and the seed money reporting issue does need to be looked at. However, the conflict of interest issue is concerning. She asked whether Mr. Merrill personally earned money from the campaign funds. Mr. Merrill confirmed that he did. Ms. Thompson stated that is the concern here. She said a family member earning a large amount of money and providing a service for the campaign does not look appropriate.

Mr. Merrill stated that the Legislature previously turned down this change in statute when recommended by the Commission. He acknowledged that David Emery consulted with the Commission about whether he could use public funds to pay his own firm. Mr. Merrill said that he and his wife are both attorneys and know what the law is. They also knew that the Commission had asked the Legislature to prohibit the hiring of family members and that the Legislature had turned down that request. He feels the law is very clear - if the Legislature says it is not illegal to have family members in this role, then it should be a non-issue. He further stated in his opinion, that the greater threat to this MCEA law is the fact that more money is spent outside MCEA by PACs and "independent groups." The other issue he is concerned about is absentee ballot voting trend. Quite often when matching funds are received it is too late to make an impact because of the number of people who have already voted by that time.

Ms. Thompson asked about the amount of money made by Mr. Merrill. Mr. Merrill explained the process of procuring, creating and purchasing the services and expenses involved in doing this. He said that the amount he made was about \$100,000.

Ms. Thompson stated that the issue is not whether the work was done – it was. The issue is the public appearance of this significant amount of public money going to a family member. Mr. Merrill suggested that the law needs to be changed if the Commission does not like it the way it is, but the Commission should not penalize him for the law that should be in place.

Ms. Ginn Marvin asked why it was not clear at the beginning that Mr. Merrill was Mountain Top Productions. She said there is no separate bank account for Mountain Top, or corporate registration. She asked if there were any other clients. Mr. Merrill said there was no separate account or corporate registration, and no other clients for Mountain Top Productions. Ms. Ginn Marvin asked if Mr. Merrill thought it was wise to sign his own checks. Mr. Merrill admitted that he did sign a few, but it was not the general practice. Ms. Ginn Marvin stressed to Mr. Merrill that this was the issue – billing and

paying by one person. Mr. Merrill stated that his contract outlined what was agreed upon. His experience with campaign practices is that it is often the campaign manager writing checks, including his or her own check, and paying bills.

Mr. Ginn Marvin stated that the public has entrusted the Commission to oversee their money and therefore the Commission needs to be sure that this money is not being spent inappropriately.

Ms. Ginn Marvin asked why other candidates have been able to provide the documentation that the auditor requested, but the Merrill campaign cannot do so. Mr. Merrill said he requested a form from the auditor which he could provide to the stations to get the requested documentation, but he did not receive a form from the Commission auditor.

Mr. Daniel Billings, counsel for the Woodcock campaign, addressed the Commission. He spoke to the issue of the money order tracking. The Woodcock campaign went through similar problems trying to keep track of contributions, especially with so many volunteers working on this. He thought it was important to point out that in the qualifying period the candidate is not using public funds.

Mr. Billings stated the missing documentation was a finding in the Woodcock audit also; however, after Mr. Dinan requested more detail be provided, it was obtained with some extra work and diligence on the part of the campaign. Mr. Billings also stated he feels the documentation is required and requests by the auditor are within reason. He also confirmed the amounts of the media invoices are similar to the Woodcock campaign's billed amount and that dollar amount for services would warrant the need for the documentation.

Carl Lindemann, the founder of [truedialog.org](http://truedialog.org), which is concerned primarily with the integrity of the state Ethics Commission, spoke from his professional expertise regarding the process of how media companies document services. Broadcast companies are not helpful in getting validation of when spots actually run.

Mr. Friedman opened the discussion on this item. Mr. Friedman said that as he saw it there were two issues before the Commission: the conflict of interest issue and the filing and documentation requirements. He restated Mr. Merrill's testimony regarding the two issues. Mr. Friedman stressed that

recordkeeping for publicly funded candidates is very important and the burden of proof for documentation sufficient for auditing purposes is on the candidate. Mr. Friedman would support the penalty of \$1,500 for this violation. He said the conflict of interest issue did not have merit. He said that while the conflict of interest issue seems pressing, everyone also seems to agree that the Merrill campaign did not violate any law or rule. Mr. Friedman feels this situation is unique since the person hired by the candidate is an expert in this field – political campaigning – and he brings unique knowledge to the campaign. Mr. Merrill was paid a reasonable sum for his time and provided fair value to the campaign. Mr. Friedman believes other campaigns or the press would have picked up on this issue if it were significant problem. Mr. Friedman said that there was nothing before the Commission in this case that was illegal or unethical. If the Commission decides to do something in the future regarding the use of public funds to pay for services from a family member, it can do so by proposing a statutory amendment. The Legislature refused to support the proposal that the Commission recently brought to that body. He thought that this was an issue that should be addressed by the Legislature if it deems it significant enough to act upon.

Ann Luther, of Maine Citizens for Clean Elections, asked if future legislative proposals were going to be discussed today. Mr. Friedman stated this issue would not be discussed today but will be on a future agenda.

Ms. Thompson stated she believes the Legislature was wrong in not adopting previous legislation regarding conflict of interest submitted by the Commission. She also stated that the legislation should be submitted again.

Mr. Cassidy stated that there is no violation of law. He believes the arrangement does give the appearance of a conflict, even though the value of work was there. Mr. Cassidy feels the public may have trouble with this and Mr. Merrill should have been up front at the beginning as to the connection to Mountain Top Productions.

Mr. Shiah stated he was troubled also by the appearance of a conflict; the Commission is limited as to what they can do regarding penalties for conflict of issues. Mr. Shiah would support reviewing this issue at a future meeting also.

Mr. Cassidy moved to accept the staff recommendation for a total penalty in the amount of \$1,500; Mr. Shiah seconded, and the motion passed (5-0).

Mr. Shiah left the meeting.

### **Agenda Item #8 Presentation of Audit Reports**

Mr. Dinan presented audit reports for seven candidates. Three of the reports contain minor findings, and four reports contain no exceptions. The staff recommends that the Commission make minor findings of violation against Joseph Hanslip and John Cushing with no penalties.

Joseph Hanslip addressed the Commission. Mr. Hanslip stated he was present out of respect for the process. He complimented the Commission staff by saying that everyone was professional, gracious and helpful. He further stated the audit report was fair and accurate.

Ms. Thompson moved to accept staff recommendation regarding Mr. Hanslip's violation to amend errors and no penalty be assessed. Mr. Cassidy seconded the motion. The motion passed (4-0).

Ms. Ginn Marvin moved to accept staff recommendation regarding John Cushing. Ms. Thompson seconded the motion, which passed by a vote of 4-0.

Ms. Thompson asked Mr. Dinan for his rough estimate regarding percentage of commingling of funds instances. Mr. Dinan said out of 48 audits conducted, 5 or 6 were found commingling. He further stated that many instructions were sent out to the candidates regarding this violation and new materials have been drafted for the 2008 elections. Ms. Thompson asked if this issue should be a concern for the Commission; Mr. Dinan confirmed the increasing occurrences are a concern.

Discussion followed regarding keeping candidates and public informed about this issue.

### **Agenda Item #9 Amounts of Maine Clean Election Act Payments for 2008 Candidates**

Mr. Wayne explained that during the four elections to-date, MCEA payments have been increased. The staff recommends keeping the 2008 payment amounts at 2006 levels, rather than increasing them. The amounts of the initial payments made to MCEA candidates are based on average candidate spending in

the two previous elections. The staff received no complaints from candidates that the 2006 amounts were inadequate. If the 2008 amount was adjusted according to the formula, the increase could be as much as 15 %. He said the staff was a little concerned about maintaining the same level because some costs, *e.g.*, the cost of postage, have gone up. He reported that the only comment was received from Rep. Patrick Flood who recommended using 2006 levels.

Ann Luther representing Maine Citizens for Clean Elections distributed written testimony from her non-partisan organization to protect the Clean Election Act. In summary, MCCE supports the recommendation of the Commission staff to keep the distribution for 2008 the same as 2006, in order to balance inflation in the cost of the program and candidates' ability to run competitive campaigns. It appears candidates were not at a disadvantage in 2006. The current formula is based on average campaign spending in the preceding two elections and extreme spending can skew averages which pushes results upward, affecting the following election cycle distributions. The MCCE would support more sophisticated techniques for determining averages. The Ethics Commission has the authority for obtaining and adopting these techniques.

Daniel Billings, Esq., said that he spoke with many Republican legislative candidates regarding this issue. He supports the staff recommendation with some concerns. Legislators are concerned with cost of the MCEA program, so the Commission needs to be aware of the need to place controls on the costs. He is concerned that the Legislature will take steps that may be harmful to the program. He said postage rates have increased since the last election, so that was a major expense increase for most candidates. Mr. Billings believes the formula in the statute could be reviewed; however, he does not believe that the determination of the distribution amount should be left to the discretion of Commission. He believes changes in the formula need to go out for public comment through rules process or statutory changes. He said that averaging may not be the best way to go and that inflation needs to be considered.

Ms. Ginn Marvin asked why inflation should be a consideration if everyone gets same amount. Mr. Billings felt that by not factoring in inflation, the amount of money candidates have in order to reach candidates will decline. He feels the amount of money could force candidates to run as privately funded if the funds do not cover the cost of running an effective, successful campaign. This would decrease the number of MCEA candidates.

Ms. Ginn Marvin stated she believed with the increased use of computers to reach the public the result would be a decrease in mailing costs. Mr. Billings stated the information needs to be pushed to the public, not many are apt to go and get information themselves. It has to be placed in front of them, especially the last few weeks before the election.

Ms. Thompson expressed concern over the future of MCEA with regard to this issue. She said since outliers are allowed in the averages, how accurate are the averages. She further asked if a statutory change for more sophisticated techniques is required.

Mr. Wayne stated he felt most comfortable with a statutory change in the next two years. He said that one approach could be to consider inflation; another could be to use an average that would remove the outliers. Based on what the Commission thought was appropriate, a proposal could be made for the 2009 session of the Legislature to request a statutory change. Mr. Wayne said he would like to get away from using averages. If there is a change in 2009, the revised formula would be used for 2010.

Ms. Gardiner stated that most people would understand “average” to mean exactly what the Commission has done in calculating payment amounts: adding together the expenditures of all campaigns and dividing by total number of campaigns. She has not looked into whether the plain language of the statute is broad enough to include other methods of averaging as Ms. Luther suggested. It is a different question as to whether the Commission has the discretion to do this through rule-making or whether it must be done by statutory amendment.

Ms. Ginn Marvin suggested contacting the Muskie School in Portland for a professional statistician that would be the good resource.

Ms. Thompson stated her concern that by using a simple averaging formula could be detrimental to the viability of the program.

Ms. Thompson moved to accept the recommendation from staff to keep funding limits the same as 2006 for the 2008 election. Mr. Cassidy seconded. The motion passed by a vote of 5-0. (This item had been taken out of order. Mr. Shiah was present for the vote.)

### **Agenda Item #10 Proposed Changes to MCEA Expenditure Guidelines for 2008**

Mr. Wayne outlined briefly the changes. The Maine Clean Election Act requires the Commission to publish guidelines outlining permissible campaign-related expenditures. In June 2007, the staff proposed changes to the guidelines and invited comments from legislative leadership and committees. The staff recommends that the Commission adopt the proposed changes regarding:

- The permissible use of MCEA funds to pay an entry fee to an event or an ad in a program as long as it is campaign related;
- The prohibition that public funds cannot be used on short term basis for personal use;
- The prohibition against using public funds for thank you gifts for campaign volunteers or supporters;
- The proper reporting of equipment expenditures on Schedules B and E of the campaign finance report;
- The proper way to document and report travel expenditures and expenditures made by campaign consultants;
- The required documentation to support campaign expenditures for auditing purposes; and
- The process for auditing MCEA candidates.

Mr. Friedman and Ms. Thompson suggested changes to the language regarding the prohibition against using public funds for personal purposes. Ms. Gardiner also suggested possible language. The Commission asked Mr. Wayne to change that particular guideline accordingly. Ms. Thompson suggested that the section on auditing candidates be changed to indicate that at least 25% of candidates will be audited.

Mr. Cassidy moved to accept staff recommendations regarding guidelines with the suggested changes; Ms. Thompson seconded, and motion passed by a vote of 4-0.

### **Agenda Item #11 Final Adoption of Rule Changes**

Mr. Wayne stated this only requires a vote from the Commission members at this point. Legislators approved changes submitted. This is the final adoption of the rules as required by the Maine Administrative Procedures Act.

Ms. Ginn Marvin moved to accept the final adoption of the rules as authorized by the Legislature; Mr. Cassidy seconded, and the motion passed by a vote of 4-0.

## **OTHER BUSINESS**

Carl Lindemann approached the Commission. He said that he appreciated Ms. Ginn Marvin handing over the gavel but wondered about the propriety of Ms. Ginn Marvin remaining on the Commission while there are still questions in the air about her status when she came onto the Commission and continued service on the Commission. He asked whether it would be appropriate for her to step aside until those issues are resolved in order to maintain the highest standard and integrity of the Commission. He also said that he was talking with Mr. Wayne about some jurisdictional issues.

Mr. Wayne said that Mr. Lindemann has raised an argument that Ms. Ginn Marvin is disqualified from serving on the Commission because she is an officer of the Maine Heritage Policy Center (MHPC) which qualifies as a political committee. He said that he discussed this with Ms. Gardiner and that they disagree with that point of view.

Mr. Lindemann said that he thought the discussion he had with Mr. Wayne was about whether this issue was within the purview of the Commission.

Mr. Wayne agreed. He stated that, in his discussion with Mr. Lindemann, Mr. Lindemann raised the question of whether it was appropriate for the Commission to consider the concerns Mr. Lindemann raised with the Governor and the presiding officers or whether the Commission had any jurisdiction to take any action regarding the qualifications of a single Commission member.

Ms. Gardiner stated that after looking at the statute, Section 1002 of Title 1 on Commission membership, it does not appear to be within the Commission's purview to rule on the qualifications of its members or whether any Commission member has engaged in any prohibited activities.

Any Commission member whose qualifications or activities are challenged can answer that individually as to their reasoning why they can continue to serve on the Commission and why they have not engaged in prohibited activities. Other than that, the remedy is not with this Commission.

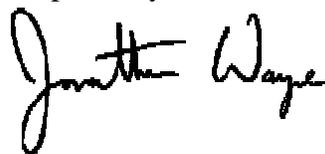
Mr. Friedman stated that he had looked at the statute and had done some research. He said that he agreed with Ms. Gardiner that this body does not have jurisdiction to expel or to any way exclude a Commission member from taking part in anything before the Commission. The individual can decide whether there is a conflict and not participate in that agenda item. He said he believed that Ms. Ginn Marvin did exactly that. He stated that Ms. Ginn Marvin has recused herself regarding any MHPC issues, which he thought was sufficient in that situation.

Mr. Friedman suggested that Mr. Lindemann and his counsel submit their research on the issue to the Commission's counsel for the purpose of reaching an agreement about the jurisdictional issue. If there were no meeting of the minds, the issue could be scheduled for a future Commission meeting. He advised Mr. Lindemann to submit something in writing for a future if meeting, if he thought necessary.

Mr. Lindemann said that he has not filed anything with the Commission because he did not think that it would work for the Commission to stand in judgment or rule on a Commission member's qualifications. He sought clarification regarding the oversight of the Commission. He said that he was concerned that if there was no clear jurisdiction that no one would touch the issue.

There being no further business, the meeting adjourned.

Respectfully submitted,

A handwritten signature in black ink that reads "Jonathan Wayne". The signature is written in a cursive, flowing style.

Jonathan Wayne  
Executive Director