



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

To: Commissioners
From: Emma Burke, Candidate Registrar
Date: October 5, 2020
Re: Request by Mark Lawrence Campaign for Waiver of Late-Filing Penalty Due to
Late 42-Day Post-Primary Report

State Senator Mark Lawrence is a Maine Clean Election Act (MCEA) candidate running for the Maine Senate, District 35. Sen. Lawrence is an experienced candidate, having served previously in both the Maine House of Representatives and the Maine Senate.

Sen. Lawrence's campaign was required to file the regularly scheduled 42-Day Post-Primary Report by 11:59 p.m. on August 25, 2020. The Lawrence campaign filed the report on August 26th, one day late. The preliminary penalty for the late report is \$529.50. Sen. Lawrence's campaign is requesting a waiver of the penalty.

LEGAL REQUIREMENTS

Candidates are required to file the 42-Day Post-Primary Report no later than 11:59 p.m. on the 42nd day after the date on which an election is held and must be complete for the filing period as of the 35th day after that date. 21-A M.R.S. § 1017(3-A)(D). If the candidate is late in filing a regularly scheduled campaign finance report, the amount of the penalty is set by a formula which takes into consideration a percentage of the total contributions or expenditures, whichever is greater, the number of prior violations within a two-year period, and the number of days the report is late. 21-A M.R.S. § 1020-A(4-A).

It should be noted the 42-Day Post-Primary Report was originally scheduled to be filed on July 21, 2020, which is the date used in the Commission's published Candidate Guidebook and Candidate Quick Guide. The reporting date changed when Governor

Janet Mills moved the date of the primary election to July 14, 2020, in response to the COVID-19 pandemic. All candidates were mailed and emailed notice of the requisite deadline and reporting due date changes on April 11, 2020 (attached).

DISCUSSION

On August 18, 2020, Candidate Registrar Emma Burke sent an email message (attached) to all her assigned candidates, notifying them she would not be working on the 42-Day Post-Primary Report deadline of August 25th, due to a planned vacation. In this email, Ms. Burke encouraged candidates to attempt to file their reports early, so if they needed assistance or have questions, she would be available to them. August 18th marked the end of the reporting period for the 42-Day Post-Primary Report, so candidates were welcome to file beginning on the day Ms. Burke sent her email. On August 20, 2020, Ms. Burke sent another reminder email to all candidates whose reports were not filed yet (attached), which included Sen. Lawrence, again reminding them she would not be available the day before or the day of the filing due date, and requesting they file their reports early.

In addition to these two emails sent by Ms. Burke the week before the report's due date, Candidate Registrar Erin Gordon sent an email during the afternoon of the due date, August 25th, to all candidates who had not yet filed, reminding them to file (attached). This was sent to Sen. Lawrence. The Commission's eFiling website also sends automatic reminder emails to candidates and treasurers two weeks, one week, and one day before the filing due date. This means that Sen. Lawrence received a letter and seven emails about the 42-Day Post-Primary Report's due date, and his treasurer received three emails. To Ms. Burke's knowledge, Sen. Lawrence, his treasurer James Mundy, nor authorized agent Abigail Kemble, responded to any of these communications.

Based on the statutory formula for calculating late-filing penalties, the preliminary penalty amount is \$529.50, calculated as follows:

Report	Deadline	Financial Activity	Penalty Rate	Days Late	Preliminary Penalty
42-Day Post-Primary Report	08/25/2020	\$26,475	2%	1	\$529.50

Abigail Kemble is working as the campaign manager for Sen. Lawrence's re-election. When the campaign registered, it identified Ms. Kemble as an authorized agent for purposes of filing campaign finance reports. On Friday, September 11th, she emailed Ms. Burke to ask a question about qualifying contributions. During this email exchange, Ms. Burke inquired as to the status of a waiver request for the preliminary penalty, as the penalty is rather high. Ms. Kemble was unaware of the preliminary penalty and said she would reach out to Sen. Lawrence. On Monday, September 14th, Ms. Kemble emailed Ms. Burke asking for a copy of the penalty letter to be emailed to her. Ms. Burke did so, and Ms. Kemble emailed a request for waiver of penalty on the same day.

However, later that week, Mr. Mundy, the campaign treasurer, called the Commission's office and spoke to Commission Assistant Lorrie Brann, and requested a copy of the penalty letter be sent to him, as *he* was going to request a waiver of penalty for Sen. Lawrence. This prompted Ms. Burke to send an email (attached) to Sen. Lawrence, Mr. Mundy, and Ms. Kemble, asking them to communicate between themselves about who was responsible for requesting the waiver. On Sunday, September 20th, Ms. Kemble emailed Ms. Burke to confirm that her previous request for waiver of penalty would be the official request from the Lawrence campaign.

In Ms. Kemble's request, she states that she takes full responsibility for the late report, and that with the stress, logistics, and complications of getting her two young children prepared for the school year with the COVID-19 precautions, the report was missed. Ms. Kemble states she has set alarm reminders for all other reporting due dates.

STAFF RECOMMENDATION

Timely campaign finance reports are an integral part of campaign finance transparency and disclosure. It is clear that their timely filing is considered to be of utmost importance, as statute requires late-filing penalties to increase by each day past the due date the report is filed. All campaigns, particularly experienced ones, are expected to pay attention to and meet all reporting deadlines, especially when multiple reminders are sent for each due date.

Since the 2018 elections, the Commission staff typically has recommended penalties in the range of \$300 - \$400 for the late filing of campaign finance reports for legislative and county candidates.

In this case, the preliminary penalty of \$529.50 is rather high. However, there is a combination of both aggravating and mitigating factors. Sen. Lawrence is a very experienced candidate, and Mr. Mundy has been the treasurer for Sen. Lawrence for the past three elections. The Lawrence campaign was penalized \$400 in 2018 for filing a substantially non-conforming report, thus they should be very aware of filing deadlines and requirements. Ms. Kemble is also being paid by the campaign to ostensibly complete and file reports on time.

It is also important to take into consideration that Ms. Kemble has not worked on a campaign before, and was assuredly juggling a multitude of stressors during this time, with attempting to ready her children for school during COVID-19. There is also the fact that the primary election date change was completely unique to all candidates this year, and probably induced some amount of confusion, regardless of the number of reminders the Commission staff sent. The effect of COVID-19 and its ability to skew time and days should also be noted, as it has been experienced by all of us.

There appears to be a communication issue between Sen. Lawrence, Mr. Mundy, and Ms. Kemble, as can be seen with the incident where Sen. Lawrence had not notified Ms. Kemble of the notice of preliminary penalty, and Mr. Mundy seemingly was unaware that Ms. Kemble had already requested a waiver of penalty four days after it was submitted. Ms. Kemble is being paid to provide campaign management services to the Lawrence campaign – she has been paid \$3,500 to date. It also appears she is the one who is responsible for filing reports, as she stated in the waiver request that she takes responsibility for the late filing. However, she was registered with the Commission as an authorized agent, not deputy treasurer or treasurer. It has also been Mr. Mundy, not Ms.

Kemble, who has filed the Seed Money Report, the 42-Day Post-Primary Report, and the 42-Day Pre-General Report. Ms. Kemble did file the 11-Day Pre-Primary Report.

While MCEA candidates cannot file their own reports, it is expected that candidates are responsible for those assisting them, and ultimately making sure due dates and deadlines are met. It appears that communication issues and responsibility confusion may be factors in the 42-Day Post-Primary Report being filed one day late by the Lawrence campaign. Sen. Lawrence is an experienced candidate with an experienced campaign treasurer, and has a well-compensated campaign manager; both the candidate and treasurer received a multitude of reminders as well. Therefore, the Commission staff recommends a penalty of \$350.

Thank you for your consideration of this memo.

Burke, Emma

From: Burke, Emma
Sent: Friday, September 18, 2020 11:28
To: mundy.james@gmail.com; Abigail Kemble; mark@marklawrence.org
Subject: Waiver Request

Hello Lawrence Team,

It has come to my attention that there has been some confusion about who the penalty letter was sent to, and who is requesting the waiver. As a reminder, Sen. Lawrence has been preliminary assigned a penalty of \$529.50 for his 42-Day Post-Primary Report being filed one day late.

The notice of penalty was sent to Sen. Lawrence only, on August 28th. It is our normal routine to send penalty letters to only the candidate, and then the candidate can manage the waiver request, including who requests it, as they see fit.

After a couple weeks had gone by, I was emailing with Abby Kemble and asked about the status of waiver request. She did not know a letter had been sent. I emailed her the PDF of the letter, and she emailed me a waiver request, which we are in receipt of. I understand that James Mundy contacted the office yesterday asking for a copy of the letter, and mentioned something about requesting a waiver.

I think it would be best for there to be a conversation amongst the three of you as to 1) if you would like Abby's waiver request to stand as is, or 2) if you would like to replace that with a separate waiver request, and if so, who is responsible for writing it. The waiver request will not be scheduled until mid-October, so if you would like to send a new waiver request, please make sure to send it to me (*not* Jonathan, please), by the end of next week.

Please keep me updated. Thank you.

Emma J. Burke
Candidate Registrar
Maine Ethics Commission
(207) 287-4727

Stay safe. Stay home. Thank your essential workers.

Burke, Emma

From: Abigail Kemble <abigail.kemble@gmail.com>
Sent: Monday, September 14, 2020 13:58
To: Burke, Emma
Cc: mark@marklawrence.org
Subject: Re: Mark's appeal letter

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Maine Ethics Commission,

I am Mark Lawrence's campaign manager and am writing to accept responsibility for the day late filing of the 42 day post primary report and to ask for a waiver to be considered by the Maine Ethics Commission.

This past cycle with the Covid-19 pandemic has been challenging. My two young daughters are entering public school (the youngest for the first time) and I honestly was overwhelmed with paperwork for school, work, and managing all possible logics for the upcoming year for making the school transition work for my family. This error was completely my fault and shouldn't harm Mark Lawrence's clean elections race. All subsequent deadlines will be made promptly and signaled alarm reminders have been set for campaign manager and treasurer.

Respectfully Submitted,
Abigail Sherwood Kemble

> On Sep 14, 2020, at 1:32 PM, Burke, Emma <Emma.Burke@maine.gov> wrote:

>

> It is attached!

>

> Emma J. Burke

> Candidate Registrar

> Maine Ethics Commission

> (207) 287-4727

>

> -----Original Message-----

> From: Abigail Kemble <abigail.kemble@gmail.com>

> Sent: Monday, September 14, 2020 13:25

> To: Burke, Emma <Emma.Burke@maine.gov>

> Subject: Mark's appeal letter

>

> EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

>

> Hi Emma,

>

> I just left a message on your phone. Could you please send me a copy of the appeal letter so I can make sure this gets back to you office? Thanks so much.

>

> Abby

>

>

> Sent from my iPhone

> <Lawrence, Mark - Late w Penalty.pdf>

August 28, 2020

Hon. Mark Lawrence
52 Wildbrook Lane
Eliot, Maine 03903

Re: Notice of Violation and Penalty for Late-Filed 42-Day Post-Primary Report

Dear Sen. Lawrence:

You were required to file the 42-Day Post-Primary Report on August 25, 2020 by 11:59 p.m., but the report was not filed until August 26, 2020. Under the Commission's statutes (21-A M.R.S.A. § 1020-A(4-A)), the late filing of a report triggers an enforcement process. The Commission staff has made a preliminary finding of violation and determined that the preliminary penalty for filing the report late is \$529.50. Please see the next page for the penalty calculation.

You may request that the Commission waive the penalty in whole or in part or find that there was no violation. The request must be made within 14 calendar days of your receipt of this notice. The request must be in writing and contain a full explanation of the reasons the report was filed late. Upon receiving your request, the Commission staff will schedule your request to be heard at an upcoming Commission meeting. You or your designee will have an opportunity to be heard at the meeting or you may submit a sworn statement to the Commission explaining the mitigating circumstances for its consideration.

The Commission may waive or reduce the penalty or find that there was no violation if it determines that the report was late due to mitigating circumstances, which are defined as (1) a valid emergency; (2) an error made by the Commission staff; or (3) relevant evidence that a bona fide effort was made to file the report on time. The Commission may also consider whether the penalty is disproportionate to the size of the candidate's campaign, the level of experience of the candidate, treasurer or campaign staff, or the harm to the public caused by the late disclosure.

The staff requests that you pay the preliminary penalty within 14 days of the date of your receipt of this notice if you do not intend to request a waiver. Please use the payment statement on the next page when paying by mail. You may also make a payment online at www.maine.gov/ethics by clicking the "Penalty Payment" link. Please contact me at (207) 287-4727 or emma.burke@maine.gov if you have any questions.

Sincerely,

Emma Burke

Emma Burke
Candidate Registrar

Penalty Calculation

The penalty for filing a campaign finance report late is based on a percentage of the total contributions or expenditures for the reporting period, whichever is greater, multiplied by the number of days late. The percentage is based on your history of past violations: 2% for the first violation, 4% for the second violation, and 6% for the third and each subsequent violation. Violations for late-filed reports accumulate in the two-year period beginning on January 1st of each even-numbered year. A penalty accrues daily beginning on the day following the filing due date. Any penalty of less than \$10 is automatically waived.

How Your Penalty Was Calculated

Filer: Mark Lawrence			
Late-Filed Report: 42-Day Post-Primary Report			
Contributions	\$26,475.00	Penalty Base Amount	\$26,475.00
Expenditures	\$991.69	Percentage	2%
Due Date	August 25, 2020	Daily Accrual Rate	\$529.50
Date Filed	August 26, 2020	Days Late	1
Previous Violations	0	Your Total Penalty	\$529.50

Payment Statement and Payment Options

From: Mark Lawrence

Penalty Amount: \$529.50

Amount Enclosed: _____

Check/M.O. #: _____

BY MAIL: Enclose this payment statement with your payment.

Please make check or money order payable to: Treasurer, State of Maine

Mail to: Maine Ethics Commission
135 State House Station
Augusta, Maine 04333-0135

ONLINE: Go to www.maine.gov/online/ethics/penalties.



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

2020 CAMPAIGN FINANCE REPORT

FOR MCEA CANDIDATES

COMMITTEE		TREASURER	
Hon. Mark W Lawrence 52 Wildbrook Lane Eliot, ME 03903 PHONE:(207) 475-4975 EMAIL: mark@marklawrence.org		Mr. James Mundy 40 Portland Street South Berwick, ME 03908 PHONE: EMAIL: Mundy.james@gmail.com	
REPORT	DUE DATE	REPORTING PERIOD	
42-Day Post-Primary Report	08/25/2020	07/01/2020 - 08/18/2020	

FINANCIAL ACTIVITY SUMMARY

CASH ACTIVITY		
	TOTAL FOR PERIOD	TOTAL FOR CAMPAIGN
1. CASH BALANCE FROM LAST REPORT	\$1,625.00	
2. SEED MONEY CONTRIBUTIONS	\$0.00	\$2,150.00
3. MAINE CLEAN ELECTION ACT PAYMENTS & AUTHORIZATIONS	\$26,475.00	\$28,599.46
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)	\$991.69	\$3,641.15
7. CASH BALANCE AT CLOSE OF PERIOD	\$27,108.31	
OTHER ACTIVITY		
8. IN-KIND SEED MONEY CONTRIBUTIONS	\$0.00	\$0.00
9. TOTAL UNPAID DEBTS AT CLOSE OF PERIOD (SCHEDULE D)	\$0.00	

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

REPORT FILED BY: James Mundy
 REPORT FILED ON: 8/26/2020 1:24:57 PM
 LAST MODIFIED:
 COMMITTEE ID: 361372

**SCHEDULE A
CASH CONTRIBUTIONS**

- For contributors who gave more than \$50, the names, address, occupation, and employer must be reported. If "information requested" is listed instead of occupation and employer, the candidate is waiting to receive that information.
- Cash contributions of \$50 or less can be added together and reported as a lump sum.
- Contributor Types

- | | |
|--|--|
| 1 = Individual | 9 = Candidate / Candidate Committee |
| 2 = Candidate/ Spouse/ Domestic Partner | 10 = General Treasury Transfer |
| 3 = Commercial Source | 11 = Transfer from Previous Campaign |
| 4 = Nonprofit Organization | 12 = Contributors giving \$50 or less |
| 5 = Political Action Committee | 13 = Contributors giving \$100 or less |
| 6 = Political Party Committee | 14 = Contributors giving \$200 or less |
| 7 = Ballot Question Committee | 15 = MCEA Payment |
| 8 = Other Candidate/ Candidate Committee | 16 = Financial Institution |

DATE RECEIVED	CONTRIBUTOR	EMPLOYER AND OCCUPATION	TYPE	AMOUNT
7/15/2020	MCEA Payment	Supp Groups 1	15	\$5,300.00
7/15/2020	MCEA Payment		15	\$21,175.00
TOTAL CASH CONTRIBUTIONS				\$26,475.00

**SCHEDULE B
EXPENDITURES**

EXPENDITURE TYPES				
APP	Apparel (t-shirts, hats, embroidery, etc.)	CON	Contribution to party committee, non-profit, other candidate, etc.	
EQP	Equipment of \$50 or more (computer, tablet, phone, furniture, etc.)	EVT	Campaign and fundraising events (venue or booth rental, entertainment, supplies, etc.)	
FOD	Food for campaign events or volunteers, catering	HRD	Hardware and small tools (hammer, nails, lumber, paint, etc.)	
LIT	Printed campaign materials (palmcards, signs, stickers, flyers, etc.)	MHS	Mail house and direct mail (design, printing, mailing, and postage all included)	
NEW	Newspaper and print media ads only	OFF	Office supplies, rent, utilities, internet service, phone minutes and data	
ONL	Social media and online advertising only	OTH	Other and fees (bank, contribution, and money order fees, etc.)	
PER	Personnel and campaign staff, consulting, and independent contractor costs	PHO	Phones (phone banking, robocalls and texts)	
POL	Polling and survey research	POS	Postage for U.S. Mail and mail box fees	
PRO	Professional services (graphic design, legal services, web design, etc.)	RAD	Radio ads, production costs	
TKT	Entrance cost to event (bean suppers, fairs, party events, etc.)	TRV	Travel (fuel, mileage, lodging, etc.)	
TVN	TV/cable ads, production, and media buyer costs only	WEB	Website and internet costs (website domain and registration, etc.)	
DATE OF EXPENDITURE	PAYEE	REMARK	TYPE	AMOUNT
7/1/2020	Abigail Sherwood Kemble 51 Tamarack Dr. South Berwick, ME, 03908	July campaign management	PER	\$500.00
7/30/2020	Abigail Sherwood Kemble 51 Tamarack Dr. South Berwick, ME, 03908	Certified mailing of QC forms for cash/check	POS	\$4.95
8/2/2020	Lisa Quintero Photography 77 Thurlow Road Lincolnville, ME, 04949	photo session	PRO	\$468.75
8/9/2020	Abigail Sherwood Kemble 51 Tamarack Dr. South Berwick, ME, 03908	40.0 miles = \$17.99	TRV	\$17.99
TOTAL EXPENDITURES FOR CANDIDATE:				\$991.69

Burke, Emma

From: Gordon, Erin
Sent: Tuesday, August 25, 2020 12:19
Cc: Burke, Emma
Subject: REMINDER: 42-Day Post-Primary Report DUE TODAY

Good afternoon Candidates,

You are receiving this email because you are required to file the 42-Day Post-Primary Report and you have not yet done so. The report is due today, **August 25, 2020 by 11:59 p.m.**

I will be available by phone or email until 5 p.m. today to answer any questions about filing or to assist in troubleshooting. If you are not planning to file your report until later this evening, please be sure to check your username and password to www.mainecampaignfinance.com before 5 p.m. so that I can help with any log-in problems. If you believe you are receiving this email in error, let me know.

Thank you,

Erin Gordon

Candidate Registrar

Maine Ethics Commission

(207) 287-3651 | www.maine.gov/ethics

135 State House Station, Augusta, ME 04333-0135

45 Memorial Circle, Augusta, ME

Burke, Emma

From: Burke, Emma
Sent: Thursday, August 20, 2020 12:21
To: mark@marklawrence.org

Dear Mark,

As a reminder, I am going to be on vacation next week when the 42-Day Post-Primary Report is due on **Tuesday, August 25th**.

This camping trip was scheduled before the time of Covid and the primary and reporting date changes. **If you could do your best to make sure your report is filed either today or tomorrow before 5pm**, I would greatly appreciate it.

Of course, other Ethics Commission staff members will be available next week if assistance is needed. Please do not hesitate to reach out today or tomorrow if you need assistance or have questions.

Burke, Emma

From: Burke, Emma
Sent: Tuesday, August 18, 2020 11:36
To: Burke, Emma
Subject: **PRIORITY** Reporting Deadline Update

Dear candidate,

As you know, the 42-Day Post-Primary Report is due next Tuesday, on August 25th. However, **I am requesting that you attempt to file your report THIS WEEK**, because I am out of the office Monday-Wednesday next week for a camping trip (this trip was scheduled well before the primary date and reporting dates). There will be staff in office, of course, on Monday and Tuesday to assist filers, but the more folks that can get filed this week the better. The reporting period end date is today, so there is no issue with filing early.

Please let me know if you need any assistance with filing or have any questions or concerns about this.

Emma J. Burke
Candidate Registrar
Maine Ethics Commission
(207) 287-4727



To: 2020 Maine Clean Election Act Candidates
 From: Maine Ethics Commission Staff
 Date: April 11, 2020
 Re: Changes to 2020 Campaign Finance Deadlines

Due to the novel coronavirus pandemic, Governor Janet T. Mills has postponed Maine’s 2020 primary election to **July 14, 2020**.

Maine Clean Election Act (MCEA) Certification Deadline

The Governor has also postponed the MCEA certification deadline:

All MCEA certification materials must be submitted by 5:00 p.m. on May 19, 2020.

Until further notice, the Commission is requiring candidates to mail MCEA submissions or to use the drop-box in the hallway outside the Commission’s office. Detailed instructions for submitting MCEA certification materials are available on the Commission’s website (www.maine.gov/ethics) in the Notices section.

Primary election MCEA payments will be disbursed at the time a candidate is certified. General election MCEA payments will be sent as soon as possible after the July 14th primary election.

Revised Campaign Finance Reporting Deadlines

Because the primary election has been postponed, the revised campaign finance reporting deadlines are:

	Period Begin Date	Period End Date	Due Date
Seed Money Report	Beginning of campaign, or January 1, 2020 if a January Semiannual Report was filed	May 19, 2020	May 19, 2020
11-Day Pre-Primary	Date after Seed Money Report is filed	June 30, 2020	July 6, 2020
42-Day Post-Primary	July 1, 2020	August 18, 2020	August 25, 2020
42-Day Pre-General	August 19, 2020	September 15, 2020	September 22, 2020

The 11-Day Pre-General Report and the 42-Day Post-General Report are *not* affected by the change to the primary date.

More Assistance

As always, if you have questions or concerns, please reach out to your Candidate Registrar.

Emma Burke – House: 1-76/Senate: 18-35
 (207) 287-4727
emma.burke@maine.gov

Erin Gordon – House: 77-151/Senate: 1-17
 (207) 287-3651
erin.gordon@maine.gov

year. These reports must include all contributions made to and all expenditures made or authorized by or on behalf of the candidate or the treasurer of the candidate as of the end of the preceding month, except those covered by a previous report.

B. Reports must be filed no later than 11:59 p.m. on the 11th day before the date on which an election is held and must be complete as of the 14th day before that date. If a report was not filed under paragraph A, the report required under this paragraph must cover all contributions and expenditures through the 14th day before the election.

C. Any single contribution of \$1,000 or more received or any single expenditure of \$1,000 or more made after the 14th day before any election and more than 24 hours before 11:59 p.m. on the day of any election must be reported within 24 hours of that contribution or expenditure. The candidate or treasurer is not required to include in this report expenditures for overhead expenses or compensation paid to an employee or other member of the campaign staff who has received payments at regular intervals that have been disclosed in previously filed campaign finance reports. As used in this paragraph, "overhead expenses" includes, but is not limited to, rent, utility payments, taxes, insurance premiums or similar administrative expenses.

→ D. Reports must be filed no later than 11:59 p.m. on the 42nd day after the date on which an election is held and must be complete for the filing period as of the 35th day after that date.

D-1. Reports must be filed no later than 11:59 p.m. on the 42nd day before the date on which a general election is held and must be complete as of the 49th day before that date, except that this report is not required for candidates for municipal office.

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

F. Reports with respect to a candidate who seeks nomination by petition must be filed on the same dates that reports must be filed by a candidate for the same office who seeks that nomination by primary election.

3-B. Accelerated reporting schedule. (REPEALED)

4. New candidate or nominee. A candidate for nomination or a nominee chosen to fill a vacancy under Chapter 5, subchapter 3 is subject to section 1013-A, subsection 1, except that the candidate shall register the name of a treasurer or political committee and all other information required in section 1013-A, subsection 1, paragraphs A and B within 7 days after the candidate's appointment or at least 6 days before the election, whichever is earlier. The commission shall send notification of this registration requirement and report forms and schedules to the candidate

of perjury, as provided in Title 17 A, section 451, a statement under oath or affirmation whether the expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, the candidate or an authorized committee or agent of the candidate.

C. A report required by this subsection must be on a form prescribed and prepared by the commission. A person filing this report may use additional pages if necessary, but the pages must be the same size as the pages of the form. The commission may adopt procedures requiring the electronic filing of an independent expenditure report, as long as the commission receives the statement made under oath or affirmation set out in paragraph B by the filing deadline and the commission adopts an exception for persons who lack access to the required technology or the technological ability to file reports electronically. The commission may adopt procedures allowing for the signed statement to be provisionally filed by facsimile or electronic mail, as long as the report is not considered complete without the filing of the original signed statement.

5. Exclusions. An independent expenditure does not include:

- A. An expenditure made by a person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents;
- B. A telephone survey that meets generally accepted standards for polling research and that is not conducted for the purpose of changing the voting position of the call recipients or discouraging them from voting;
- C. A telephone call naming a clearly identified candidate that identifies an individual's position on a candidate, ballot question or political party for the purpose of encouraging the individual to vote, as long as the call contains no advocacy for or against any candidate; and
- D. A voter guide that consists primarily of candidates' responses to surveys and questionnaires and that contains no advocacy for or against any candidate.

21-A § 1020. Failure to file on time (REPEALED)

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.

→ **2. Campaign finance reports.** A campaign finance report is not timely filed unless a properly signed or electronically submitted copy of the report, substantially conforming to the disclosure requirements of this subchapter, is received by the commission by 11:59 p.m. on the date it is due. Except as provided in subsection 7, the commission shall determine whether a report satisfies the requirements for timely filing. The commission may waive a penalty in whole or in part if the commission determines that the penalty is disproportionate to the size of the candidate's campaign, the level of experience of the candidate, treasurer or campaign staff or the harm suffered by the public from the late disclosure. The commission may waive the penalty in whole or in part if the commission determines the failure to file a timely report was due to mitigating circumstances. For purposes of this section, "mitigating circumstances" means:

- A. A valid emergency determined by the commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part;

- B. An error by the commission staff;
- C. Failure to receive notice of the filing deadline; or
- D. Other circumstances determined by the commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service or interruptions in Internet service.

3. Municipal campaign finance reports. Municipal campaign finance reports must be filed, subject to all the provisions of this subchapter, with the municipal clerk on forms prescribed by the Commission on Governmental Ethics and Election Practices. The municipal clerk shall send any notice of lateness required by subsection 6 and shall notify the commission of any late reports subject to a penalty.

4. Basis for penalties. (REPEALED)

4-A. Basis for penalties. The penalty for late filing of a report required under this subchapter is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days late, as follows:

- A. For the first violation, 2%;
- B. For the 2nd violation, 4%; and
- C. For the 3rd and subsequent violations, 6%.

Any penalty of less than \$10 is waived.

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

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

A registration or report may be provisionally filed by transmission of a facsimile copy of the duly executed report to the commission, as long as the facsimile copy is filed by the applicable deadline and an original of the same report is received by the commission within 5 calendar days thereafter.

5. Maximum penalties. (REPEALED)

5-A. Maximum penalties. Penalties assessed under this subchapter may not exceed:

A. Five thousand dollars for reports required under section 1017, subsection 2, paragraph B, C, D, E or H; section 1017, subsection 3-A, paragraph B, C, D, D-1 or F; and section 1017, subsection 4, except that if the financial activity reported late exceeds \$50,000, the maximum penalty is 100% of the amount reported late;

A-1. Five thousand dollars for reports required under section 1019 B, subsection 4, except that if the financial activity reported late exceeds \$50,000, the maximum penalty is 100% of the amount reported late;