

October 12, 2012

David Lawrence Morton  
County of San Diego/Registrar of Voters  
Financial Disclosure Desk  
5201 Ruffin Road, Suite I  
San Diego, CA 92123

Re: Your Request for Informal Assistance  
**Our File No. I-12-087**

Dear Mr. Morton:

This letter responds to your request for advice regarding the campaign filing officer provisions of the Political Reform Act (the "Act").<sup>1</sup> Because your questions seek general guidance and do not reference any specific proceedings, we are treating your request as one for informal assistance.<sup>2</sup>

### **QUESTION**

May a filing officer apply a ten-day grace period before assessing a fine for a late-filed semi-annual campaign statement if specific written notice is not sent?

### **ANSWER**

Yes, a filing officer has discretion to wait on assessing a late fine until ten days has elapsed after the semi-annual filing deadline as long as specific written notice is not sent. You must ensure that the fine procedure is applied to all filers on an impartial basis.

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

## FACTS

You are seeking advice on behalf of the San Diego County Registrar of Voters (ROV) in your capacity as a staff member who performs filing officer duties for the agency's financial disclosure desk. In 2009, you requested a review of the ROV's Department Policy Manual as it related to waiving late filing fees, non-filer notifications, and fines for late-filed campaign statements. The ROV is seeking to modify the portion of its policy entitled "Fines and late fees as they pertain to Campaign Financial Disclosure," and you are requesting Fair Political Practices Commission (FPPC) staff to review and comment on your latest draft policy, specifically whether the ROV has the authority to apply a ten-day grace period before assessing a fine in situations where specific written notice is not sent. In an e-mail dated September 10, 2012, you clarified that the late fine policy is specific to only semi-annual statements and the grace period would not be applied to habitual late filers who have a record of not filing earlier reports on time.

The draft policy you submitted states as follows:

**“Purpose:**

To assure that fines and late fees are issued in compliance with the Political Reform Act and that enforcement of fines and late fees are appropriately addressed.

The late filing of campaign disclosure statements denies voters and the general public of important information that should be current and readily available, especially when it is close in time to an election.

Financial Disclosure laws mandate that filings be done according to schedules set by the Political Reform Act via the Fair Political Practices Commission.

The Political Reform Act provides that campaign disclosure statements filed late are subject to fines. If deadlines are not met, the County of San Diego/Registrar of Voters, Financial Disclosure Desk will enforce these fines.

**Procedure:**

Any person who files a campaign statement or report after the deadline imposed by the Political Reform Act is liable for a late fine pursuant to Government Code Section 91013.

There are no provisions for granting extensions of the filing deadlines.

Original Statements or Reports: In the case of an original statement or report which is filed late, the fine is \$10 per day, starting the tenth day after the filing

deadline until the statement or report was filed; however, no liability shall exceed the cumulative amount of reported contributions or expenditures stated in the late statement or report, or \$100, whichever is greater.

Copies of Statements or Reports: In the case of a copy of a statement or report which is filed late, the fine is \$10 per day, starting 10 days or five days in the case of a second pre-election statement, after the filing officer has sent *specific written notice* of the filing requirement, until the statement or report was filed; however, no liability shall exceed the cumulative amount of reported contributions or expenditures stated in the late statement or report, or \$100, which is greater.

The filing officer receiving the late fines will deposit the funds into the general fund of the jurisdiction of which he or she is an officer.

Liability need not be enforced by the filing officer if, on an impartial basis, he or she determines that the late filing was not willful and that enforcement of the liability will not further the purposes of the Act.<sup>3</sup> In addition, the filer must provide a reason for the late filing in writing. No liability may be waived if a statement or report is not filed within 10 days, or five days in the case of a second pre-election statement, after the filing officer has sent *specific written notice* of the filing requirement.

When considering whether to waive or partially waive a fine, a filing officer should take into consideration any prior late filings by the candidate, officeholder, or committee. Those who repeatedly file late greatly increase their chances of being fined.

Late filing penalties may be assessed only when a report or statement is filed late. Failure to file required reports or statements can result in civil and criminal penalties. If the filing officer has notified a non-filer of the obligation to file a statement and the candidate, officeholder, or committee does not file the required statement, the matter should be referred to the Fair Political Practices Commission, Enforcement Division using the Non-filer Enforcement Referral form.

Filing officers may bring a civil action in superior court to collect any unpaid monetary penalties or fees.

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<sup>3</sup> Your original draft policy contained the following sentence: “The filing officer retains the authority to apply fines by filing type (i.e. candidate filings vs. officeholder yearly filings).” However, during your phone conversation with Dixie Howard on July 6, 2012, you stated that this sentence would be removed from your policy as it pertains to late Statements of Economic Interests, Form 700s, and does not apply to late-filed campaign statements. On July 9, 2012, you submitted a modified request for advice only on the issue of whether it is possible to have a ten-day grace period when assessing fines if specific written notice is not sent.

**Further Information:**

Based on recommendations from the Fair Political Practices Commission

**References:**

Political Reform Act:

- Government Code Section 81007
- Government Code Section 91013
- Government Code Section 91013.5<sup>4</sup>

**ANALYSIS**

Section 81010 sets out the following duties a filing officer<sup>4</sup> must perform with respect to reports and statements filed with his or her office:

- “(a) Supply the necessary forms and manuals prescribed by the Commission;
- (b) Determine whether required documents have been filed and, if so, whether they conform on their face with the requirements of this title.
- (c) Notify promptly all persons and known committees who have failed to file a report or statement in the form and at the time required by this title.
- (d) Report apparent violations of this title to the appropriate agencies.
- (e) Compile and maintain a current list of all reports and statements filed with this [his or her] office.”

In addition, Section 91013 specifies a filing officer’s authority with respect to assessing late filing penalties and waiving fines for campaign statements that are filed after filing deadlines:

- “(a) If any person files an original statement or report after any deadline imposed by this act, he or she shall, in addition to any other penalties or remedies established by this act, be liable in the amount of ten dollars (\$10) per day after the deadline until the statement or report is filed, to the officer with whom the statement or report is required to be filed. *Liability need not be enforced by the filing officer if on an impartial basis he or she determines that the late filing was not willful and that enforcement of the liability will not further the purposes of the act*, except that no liability shall be waived if a statement or report is not filed within 30 days for a statement of economic interest, other than a candidate’s statement filed pursuant to Section 87201, five days for a campaign statement

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<sup>4</sup> “‘Filing Officer’ means the office or officer with whom any statement or report is required to be filed . . . .” (Section 82027.)

required to be filed 12 days before an election, and 10 days for all other statements or reports, after the filing officer has sent specific written notice of the filing requirement.

“(b) If any person files a copy of a statement or report after any deadline imposed by this act, he or she shall, in addition to any other penalties or remedies established by this chapter, be liable in the amount of ten dollars (\$10) per day, starting 10 days, or five days in the case of a campaign statement required to be filed 12 days before an election, after the officer has sent specific written notice of the filing requirement and until the statement is filed.

“(c) The officer shall deposit any funds received under this section into the general fund of the jurisdiction of which he or she is an officer. No liability under this section shall exceed the cumulative amount stated in the late statement or report, or one hundred dollars (\$100), whichever is greater.” (Emphasis added.)

Section 91013 provides discretion to filing officers with respect to assessing fines if the filing officer determines on an impartial basis that the late filing was not willful and would not further the purposes of the Act. (*Rundstrom* Opinion, 75-084.) The Commission has not adopted a clarifying regulation and thus, the implementation is left to the discretion of filing officers, so long as the implementation does not exceed the parameters of Section 91013. Therefore, as long as specific written notice is not sent, you may apply a ten-day grace period before assessing late filing penalties for semi-annual statements as long as the policy is applied to all filers on an impartial basis.<sup>5</sup>

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini  
General Counsel

By: Dixie Howard  
Assistant Division Chief  
Technical Assistance Division

DH:jgl

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<sup>5</sup> We include a caution that the ten-day grace period should not be applied to habitual late filers who have a record of not filing earlier reports on time, pre-election statement filers, or to 24-hour reports filed during the 90 days before the election. Please note that AB481, which takes effect on January 1, 2013, requires that 24-hour contribution and independent reports be filed 90 days before an election. It is imperative that these reports be promptly filed so that information is available to voters in a timely manner before an election.