

**Memorandum**

To : Members of the Commission

Date : August 11, 1977

From : FAIR POLITICAL PRACTICES COMMISSION  
Michael BennettSubject: Guidelines for imposing and waiving fines with  
respect to Statements of Economic Interests

M-77-421

At its meeting on October 15, 1976, the Commission authorized the Executive Director to impose fines and grant waivers to late filers of Statements of Economic Interests pursuant to Government Code Section 91013, provided that certain guidelines were followed and that any fines imposed could be appealed to the Commission. Attached is an outline of the procedures followed since that date in imposing fines and granting waivers, including copies of all form letters used to communicate with late filers and the fine/waiver guidelines applied by the Executive Director. Also attached is an opinion from the Office of the Attorney General in answer to our question as to the legitimacy of waiving a portion of the fine to which a late filer is liable under Government Code Section 91013. The conclusion reached by the Office of the Attorney General is:

When waiving fines pursuant to Government Code section 91013, a filing officer may waive a portion of the fine to which a late filer is liable.

In light of this opinion and on the basis of nine months' experience under the above-mentioned procedures and guidelines, the staff proposes to change the guidelines applied by the Executive Director with respect to imposing and waiving fines. Two alternative approaches are described below. The first alternative follows generally along the lines of the currently used guidelines, but incorporates the partial waiver concept. The second alternative, which is recommended by the staff, is clearly preferable from an administrative cost standpoint in that it relieves the Executive Director of considering on a case-by-case basis the multitude of reasons that we receive for late filing and, hence, eliminates a good deal of internal paperwork and multiple correspondence with each late filer.

ALTERNATIVE I

GUIDELINES FOR IMPOSING AND WAIVING FINES  
REGARDING STATEMENTS OF ECONOMIC INTERESTS

(These guidelines do not apply to campaign statements or lobbying statements.)

The Executive Director will consider late filings on a case-by-case basis, but will generally apply these guidelines when imposing and waiving fines with respect to officials who file Statements of Economic Interests after their deadlines. Application of these guidelines assumes good faith on the part of the filer and relatively immaterial consequences resulting from the late filing. Deliberate late filing or late filing where the lateness is material, will be dealt with independent of these guidelines.

- I. Fines in the amount of the late filer's full liability (\$10 per day up to a maximum of \$100) will be imposed on these late filers:
  - A. Filers who fail to file with their agency or the Commission within five (5) days after the Commission or the agency has sent (postmarked) specific written notice of the filing requirement.
  - B. Filers who fail to respond to the Commission's certified letter requesting a reason that justifies waiver of a fine.

C. Filers who do not qualify for a waiver pursuant to the guidelines set out in II and III, below.

II. Full waivers will be granted to late filers who file prior to or no later than five (5) days after specific written notice was sent (postmarked) by the Commission or their agency and who, because of serious and debilitating illness or injury, personal tragedy or similar legitimate reasons, found it impossible to file on or prior to their deadline, but filed as soon as possible thereafter. (Full details of the emergency must be provided.)

III. Partial waivers may be granted to late filers who file prior to or within five (5) days after specific written notice was sent by the Commission or their agency, and who fall within one of the below-listed categories. (A stricter standard will be applied to persons who filed late on another occasion during the two years immediately prior to the late filing under consideration.)

A. Filers who received no prior notification or an erroneous notification of the filing requirement, and filed within five (5) days of becoming aware of their filing obligations.

B. Filers who were necessarily out of town on business prior to and on the filing deadline, and filed as soon as possible thereafter.

- C. Filers who themselves or on their behalf had someone write to the Commission or their agency prior to the filing deadline indicating that the filing would be late and stating a justifiable reason why.

THE COMMISSION HAS DETERMINED THAT IMPLEMENTATION OF THE FOREGOING GUIDELINES WILL FURTHER THE PURPOSES OF THE ACT IN THAT THE FINES IMPOSED WILL ACT AS A DETERRENT TO LATE FILING WITHOUT BEING UNDULY OPPRESSIVE.

#### ALTERNATIVE II

##### GUIDELINES FOR IMPOSING AND WAIVING FINES REGARDING STATEMENTS OF ECONOMIC INTERESTS

(These guidelines do not apply to campaign statements or lobbying statements.)

The Executive Director will apply these guidelines when imposing and waiving fines with respect to officials who file Statements of Economic Interests after their deadlines. Application of these guidelines assumes good faith on the part of the filer and relatively immaterial consequences resulting from the late filing. Deliberate late filing or late filing where the lateness is material will be dealt with independent of these guidelines.

- I. A fine in the amount of the late filer's full liability (\$10 per day up to a maximum of \$100) will be imposed on

those who fail to file with their agency or the Commission within five (5) days after their agency or the Commission has sent (postmarked) to the late filer specific written notice of the filing requirement.

- II. A fine of \$10 will be imposed on late filers who have no past record of late filing if the \$10 fine is received by the Commission within thirty (30) days of the date the late filer receives the Commission's certified letter imposing the fine. If the \$10 fine is not received within thirty (30) days, a fine in the amount of the late filer's full liability (\$10 per day up to a maximum of \$100) will be imposed.
- III. A fine of \$20 will be imposed on late filers who file two (2) or more days late and who have a past record of late filing if the \$20 fine is received by the Commission within thirty (30) days of the date the late filer receives the Commission's certified letter imposing the fine. If the \$20 fine is not received within thirty (30) days, a fine in the amount of the late filer's full liability (\$10 per day up to a maximum of \$100) will be imposed. A fine of \$10 will be imposed on late filers who file one (1) day late and who have a past record of late filing. (It should be noted that fining is only one penalty that can be imposed under the Political Reform

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Act. Those who repeatedly violate filing requirements increase the likelihood that they may be subject to the liability of administrative proceedings and civil court action.)

THE COMMISSION HAS DETERMINED THAT IMPLEMENTATION OF THE FOREGOING GUIDELINES WILL FURTHER THE PURPOSES OF THE ACT IN THAT THE FINES IMPOSED WILL ACT AS A DETER-  
RENT TO LATE FILING WITHOUT BEING UNDULY OPPRESSIVE.

MB:cjb  
Attachments

## PROCEDURE

NON-FILERS AND LATE FILERS  
OF STATEMENTS OF ECONOMIC INTERESTS

I. Non-filers

- A. Providing specific written notice. Within twelve (12) days of the filing date, the Documents Examiner will send a certified letter (return receipt requested) to the home address of each non-filer (with a copy to the non-filer's clerk) providing "specific written notice" of the filing requirement, the liability incurred for violation, and the five (5) day deadline rule. (Letter A)
- B. Referring to Enforcement Division. If a response to the above "specific written notice" is not received within ten (10) days of its receipt by the non-filer, the Documents Examiner will turn the matter over to the Enforcement Division for appropriate legal action which may include, but will not be limited to, injunctive action.

II. Late Filers

- A. Fining five (5) day deadline violators. Regarding each late filer who has violated the five (5) day deadline imposed by "specific written notice," the Executive Director will send a certified letter (return receipt requested) to the late filer's home address (with a copy to the late filer's clerk) imposing the appropriate fine and requesting prompt payment. (Letter B)
- B. Requesting excuse statements. Regarding late filers who

by "specific written notice," the Documents Examiner will send the appropriate certified letter (return receipt requested) to the home address of each late filer (with a copy to the late filer's clerk):

1. To those who were never sent "specific written notice" or who were sent such notice and filed within five (5) days thereafter, a letter requesting payment of the appropriate fine or an excuse statement justifying waiver of the fine. (Letter C)

2. To appointees who violated the "ten days prior to assuming office" deadline, a letter requesting payment of the appropriate fine or an excuse statement justifying waiver of the fine. (Letter D)

- C. Fining non-responders. If a response is not received within twenty (20) days of that person's receipt of LETTERS C or D, the Executive Director will send a certified letter (return receipt requested) to the home address of the late filer (with a copy to the late filer's clerk) imposing the appropriate fine and requesting prompt payment. (Letter E)
- D. Waiving and imposing fines in accordance with the GUIDELINES. Regarding late filers who provide excuse statements in response to LETTERS C or D, the Executive Director will apply the GUIDELINES FOR IMPOSING AND WAIVING FINES and send the appropriate

letter to the home address of each late filer (with a copy to the late filer's clerk);

1. To persons who have not left office and whose excuse statements justify waiver, a letter informing them that their fine is waived. (Letter F)

2. To persons who have left office and whose excuse statements justify waiver, a letter informing them that their fine is waived. (Letter G)

3. To all those whose excuse statements do not justify a waiver, a letter imposing the fine and informing them of their right to appeal to the Commission. (Letter H)

E. Referring to Enforcement Division. If the full amount of the fine is not received within thirty (30) days of receipt by the late filer of a certified letter imposing the fine (LETTERS B, E, H), the matter will be turned over to the Enforcement Division for appropriate legal action which may include, but will not be limited to, letter and/or telephone communications, injunctive action, referral to the Attorney General for appropriate action.

LETTER A ("specific written notice" to non filers)

Date

Name  
Address  
City, State

Dear \_\_\_\_\_:

This is to inform you that the Fair Political Practices Commission has not received your Statement of Economic Interests which was due to be filed no later than \_\_\_\_\_ with your \_\_\_\_\_ clerk, who was to retain a copy and forward the original to the Commission. If you have already filed your Statement, please contact your clerk to insure that the original has been forwarded to the Commission. If you have not yet filed your Statement, please do so immediately.

You should be advised that Government Code Section 91013 provides that any person who files a statement after its deadline becomes liable in the amount of \$10 per day, up to a maximum of \$100. The Commission, as your filing officer, has limited discretion to waive enforcement of the late filing liability if your Statement is filed within five (5) days after you are sent specific written notice of your filing requirement. This letter constitutes your specific written notice, and in order to maintain your eligibility for waiver your Statement must be delivered to your clerk's office or postmarked on or before the fifth calendar day after the date of this letter. If you fail to file, appropriate legal action will be taken.

If you have any questions, please contact me at (916) 322-5660.

Very truly yours,

Dawn Wiser

DW:plh  
cc: \_\_\_\_\_ Clerk

LETTER B (final 5 day deadline violators)

Date

Name  
Address  
City, State

Dear \_\_\_\_\_:

According to our records, your Statement of Economic Interests, which was due \_\_\_\_\_, was filed \_\_\_\_\_ days late and \_\_\_\_\_ days after specific written notice of your filing requirement was sent to you by the Fair Political Practices Commission.

Government Code Section 91013 provides that any person who files a Statement after its deadline shall be liable in the amount of \$10 per day, up to a maximum of \$100. Furthermore, no portion of the liability may be waived if the Statement is not filed within five (5) days after the Commission, as your filing officer, has sent you specific written notice of the filing requirement.

Therefore, please remit promptly to this office a check or money order in the amount of \$\_\_\_\_\_, made payable to the "State of California." The full amount will be deposited in the General Fund of the State of California.

Very truly yours,

Michael Bennett  
Executive Director

MB:plh

cc: \_\_\_\_\_ Clerk

LETTER C (request for reason that justifies waiver)

Date

Name  
Address  
City, State

Dear \_\_\_\_\_:

According to records of the Fair Political Practices Commission, your Statement of Economic Interests, which was due \_\_\_\_\_, was filed \_\_\_\_\_ days late. Government Code Section 91013 provides that any person who files a Statement after its deadline is liable in the amount of \$10 per day, up to a maximum of \$100.

If there is a reason that justifies your filing late, please inform the Commission of that reason in writing within twenty (20) days so that a waiver of your fine may be considered. Waivers have been granted to late filers who, because of an extreme emergency, found it impossible to file on or prior to their deadline but filed as soon as possible thereafter. If such an emergency is asserted full details must be provided. Waivers also have been granted to late filers whose clerk has written the Commission verifying that the clerk erroneously or misleadingly advised the filer - by notifying the filer of an erroneous filing date, for example.

If no such reason for late filing exists, please remit within twenty (20) days of receipt of this letter a check or money order in the amount of \$\_\_\_\_\_ made payable to the "State of California." The full amount will be deposited into the General Fund of the State of California.

If you have any questions, please contact me.

Very truly yours,

Dawn Wiser

DW:plh

cc: \_\_\_\_\_ Clerk

LETTER D (request for reason that justifies waiver from  
"ten days prior to assuming office" violators)

Date

Name  
Address  
City, State

Dear \_\_\_\_\_:

The Fair Political Practices Commission has received your Statement of Economic Interests executed on \_\_\_\_\_. The Political Reform Act provides that every person who is appointed to the office you hold shall file a Statement of Economic Interests not less than ten (10) days prior to assuming office (Government Code Sections 87200, 87202). It further provides that if a Statement is filed after its deadline, the late filer is liable in the amount of \$10 per day, up to a maximum of \$100 (Government Code Section 91013). Since you filed your Statement \_\_\_\_\_ days late, you are subject to a fine of \$\_\_\_\_\_.

If there is a reason that justifies your filing late, please inform the Commission of that reason in writing within twenty (20) days of receipt of this letter so that a waiver of your fine can be considered. If no such reason exists, please remit to this office within the same twenty (20) day period a check or money order in the amount of \$\_\_\_\_\_, made payable to the "State of California." The full amount will be deposited into the General Fund of the State of California.

Sincerely,

Dawn Wiser

DW:plh

cc: \_\_\_\_\_ Clerk

LETTER E (fining non-respondents)

Date

Name  
Address  
City, State

Dear \_\_\_\_\_:

On \_\_\_\_\_, the Fair Political Practices Commission informed you that you were subject to a fine for late filing your Statement of Economic Interests which was due \_\_\_\_\_. You were requested, within twenty (20) days of receipt of this letter, either to remit \$\_\_\_\_\_, the full amount of the fine, or to provide the Commission with a reason which might justify waiver of the fine. We have received no communication from you to this date.

Pursuant to Government Code Section 91013, your fine is due. You are therefore required to remit promptly to this office a check or money order in the amount of \$\_\_\_\_\_, made payable to the "State of California." The full amount will be deposited in the General Fund of the State of California.

Very truly yours,

Michael Bennett  
Executive Director

MB:plh

cc: \_\_\_\_\_ Clerk

LETTER F (granting waiver to incumbents)

Date

Name  
Address  
City, State

Dear \_\_\_\_\_:

This is in regard to your request for waiver of a fine for late filing your Statement of Economic Interests which was due \_\_\_\_\_.

According to guidelines approved by the Fair Political Practices Commission and in light of all information available to the staff, your fine is hereby waived. The Commission expects that you will make every effort to file promptly in the future.

Very truly yours,

Michael Bennett  
Executive Director

MB:plh

cc: \_\_\_\_\_ Clerk

LETTER G Granting waiver to filers (to have left office)

Date

Name  
Address  
City, State

Dear \_\_\_\_\_:

This is in regard to your request for waiver of a fine for late filing your Statement of Economic Interests which was due \_\_\_\_\_.

According to guidelines approved by the Fair Political Practices Commission and in light of all information available to the staff, your fine is hereby waived.

Very truly yours,

Michael Bennett  
Executive Director

MB:plh

cc: \_\_\_\_\_ Clerk

LETTER H (denying waiver)

Date

Name  
Address  
City, State

Dear \_\_\_\_\_:

This is in regard to your request for waiver of a fine for late filing your Statement of Economic Interests which was due \_\_\_\_\_.

According to guidelines approved by the Fair Political Practices Commission, and in light of all information available to the staff, waiver of your fine cannot be approved. You are therefore required to remit promptly to the Commission a check or money order in the amount of \$\_\_\_\_\_, made payable to the "State of California." The full amount will be deposited into the State's general fund.

You may appeal this decision to the full Commission by submitting a request for an appeal to Chairman Daniel H. Lowenstein within twenty (20) days of receipt of this letter.

Very truly yours,

Michael Bennett  
Executive Director

MB:plh

cc: \_\_\_\_\_ Clerk

GUIDELINES FOR IMPOSING AND WAIVING FINES  
REGARDING STATEMENTS OF ECONOMIC INTERESTS

(These guidelines do not apply to campaign statements.)

The Executive Director will consider late filings on a case-by-case basis but will generally apply these guidelines when imposing and waiving fines with respect to officials who file Statements of Economic Interests after their deadlines. Application of these guidelines assumes good faith on the part of the filer and relatively immaterial consequences resulting from the late filing. Deliberate late filing or late filing where the lateness is material will be dealt with independent of these guidelines.

I. Fines will be imposed on these late filers:

- A. Filers who fail to file with their clerk or the Commission five days after specific notice of non-filing was sent (post marked) from the Commission.
- B. Filers who fail to provide an excuse in response to the Commission's certified letter requesting an excuse statement that justifies waiver of a fine.
- C. Filers who do not qualify for a waiver pursuant to the guidelines set out in II and III below.

II. Waivers will be granted to late filers who file no later than five days after specific written notice has been sent by the Commission and who are included in one or both of the following groups:

- A. Filers whose clerk or another appropriate official

verifies in writing that the clerk or official erroneously or misleadingly advised the filer, e.g., notified the filer of an erroneous filing date.

- B. Filers who, because of illness, injury, personal tragedy or similar legitimate reasons, found it impossible to file on or prior to their deadline but filed as soon as possible thereafter. (Full details of the emergency must be provided.)

III. If the late filer has filed within five days after notice has been sent by the Commission, some combinations of two or more of the below-listed excuses may justify waiver. In composing combinations which justify waiver, a stricter standard will be applied to persons who filed late on another occasion during the two years immediately prior to the late filing under consideration.

- A. Filer received no prior notification of the filing requirement.
- B. Filer was necessarily out of town on business prior to and on the filing deadline.
- C. Filer filed diligently as soon as becoming aware of the filing obligation.
- D. Filer or someone on filer's behalf wrote to the Commission prior to the filing deadline indicating that the filing would be late and why.
- E. Filer has left office.
- F. Filer filed no later than twenty-four (24) hours after the filing deadline.



OFFICE OF THE ATTORNEY GENERAL

Department of Justice

555 CAPITOL MALL SUITE 350

SACRAMENTO 95814

916/445-9555

July 25, 1977

Mr. Michael Bennett  
Executive Director  
Fair Political Practices Commission  
P. O. Box 807  
1100 K Street Building  
Sacramento, California 95814

Re: Partial Waiver of Fines  
Our CV 77/87 IL

Dear Mr. Bennett:

You have requested an opinion on the following question:

May a filing officer, when waiving fines pursuant to Government Code section 91013, waive a portion of the fine to which a late filer is liable?

The conclusion is:

When waiving fines pursuant to Government Code section 91013, a filing officer may waive a portion of the fine to which a late filer is liable.

ANALYSIS

The Political Reform Act of 1974 (Gov. Code § 81000 et seq.) requires the filing of various reports and statements by persons - such as candidates, lobbyists, public officials - who are regulated by its provisions. See Gov. Code § 81005. Such reports and statements are filed with appropriate "filing officer[s]" (Gov. Code §§ 81005, and 82027) who, among other things, are to determine whether the required documents have been properly filed and are to notify promptly all persons who have failed to file a report or statement at the time required by the Act. Gov. Code § 81010.

Government Code section 91013 provides that:

"(a) If any person files an original statement or report, after any deadline imposed by this act he 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 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 five days 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 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 five days after the officer has sent specific 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 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.)

Thus, with regard to original statements or reports, the filing officer has some discretion with respect to not enforcing the \$10 a day late filing penalty ". . . if . . . the late filing was not willful and that enforcement . . . will not further the purposes of the act." However, no liability can be waived if the late filer fails to file within five days after the filing officer has sent specific notice of the filing requirement.

You ask whether or not a filing officer, when waiving fines pursuant to this section, can waive a portion of the fine to which a late filer is liable. For the following reasons, it is our opinion that a partial waiver is permissible.

First, authority to waive the total fine implies the authority to waive a part of the fine. It is a maxim of jurisprudence that "[t]he greater contains the less . . . ." Civil Code § 3536. Thus, it has been held that the authority of a commission to revoke a license includes the lesser power of suspension (See, Reynolds v. State Board of Equalization, 29 Cal.2d 137, 140-141 (1946)) and the power of a school board to dismiss a teacher includes the power to suspend temporarily. Goldsmith v. Board of Education, 66 Cal.App. 157, 164 (1924).

Second, the ability to partially waive fines appears to be in accord with the Legislature's intent in amending this section to provide for some filing officer flexibility with respect to the enforcement of such fines. Originally, Government Code section 91013 provided for no discretion with respect to late filing penalties. <sup>1/</sup> The amendment of this section in Statutes of 1975, Chapter 915, section 8 to provide for some measure of discretion by the filing officer evidences a clear intent that the Legislature believed it desirable for the filing officer to possess some flexibility in assessing late filing penalties. We do not think the Legislature intended to replace one rigid system, with no discretion, with a second rigid system which requires either a total waiver or none at all. On the contrary, the manifest intent appears to have been to provide the filing officer with maximum flexibility, which reasonably includes the authority to partially waive fines.

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1. Prior to its amendment by Statutes of 1975, Chapter 915, section 8, Government Code section 91013, as adopted by the voters on June 4, 1974, provided that:

"If any person files a statement or report, or a copy of a statement or report, after any deadline imposed by this act, he shall, in addition to any other penalties or remedies established by this act, be liable to the filing officer or other officer with whom the copy is required to be filed for the amount of ten dollars (\$10) per day after the deadline until the statement or report is filed. The officer shall deposit any funds received under this section into the general fund of the jurisdiction of which he 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."

This Office held that under virtually identical language in the previous Waxman-Dymally Campaign Disclosure Act (now

Third, in many instances, a partial waiver of the late filing penalty would be the only way that a filing officer could fairly and impartially exercise his discretion. In 1 FPPC Opinions 188 (No. 75-084, Dec. 3, 1975), the FPPC said, at pages 189 and 190:

"The requirement of impartiality in the determination of late penalties means that the filing officer may not base his decision on his personal relationship with the filer, the political party of the filer, or similar personal biases. However, the filing officer may consider illness, injury, personal tragedy or similar legitimate reasons for a late filing. Moreover, nothing prohibits the filing officer from establishing guidelines for waiving late penalties or from requiring a written explanation for a late filing."

It is readily apparent that "legitimate reasons" may sometimes justify part but not the total delay in the filing of a statement or report. In other instances, a filing officer might reasonably determine that while enforcement of the total accrued penalty would be oppressive and not ". . . further the purposes of the act . . .," the enforcement of a partial penalty - rather than waiving the fine altogether - would best promote respect for the Act's need for timely compliance with its terms.

In closing, it is our opinion that in those situations where Government Code section 91013 permits a filing officer to waive late filing penalties, he may waive all or a portion of the fine.

Very truly yours,

EVELLE J. YOUNGER  
Attorney General

*Floyd D. Shimomura*  
FLOYD D. SHIMOMURA  
Deputy Attorney General

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1 cont.

inoperative, Stats. 1975, Ch. 145, § 1), there was no discretion for a filing officer to waive fines. 58 Ops. Cal. Atty. Gen. 203, 210 (1975). This earlier provision was also amended to provide for discretion. Stats. 1974, Ch. 979, § 3. See, Los Angeles County Democratic Central Committee v. County of Los Angeles, 61 Cal. App. 3d 335 (1976).