



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

August 6, 2009

David Morton
San Diego County Registrar of Voters
Financial Disclosure Desk
5201 Ruffin Road, Suite I
Santa Diego, CA 92123-1693

Re: Your Request for Informal Assistance
Our File No. I-09-119

Dear Mr. Morton:

This letter responds to your request for advice regarding the campaign statement filing officer duty provisions of the Political Reform Act (the "Act").¹ Because your question seeks general guidance and does not reference any specific proceedings, we are treating your request as one for informal assistance.²

FACTS

You are seeking advice on behalf of the San Diego County Registrar of Voters in your capacity as a staff member who performs filing officer duties for the agency's financial disclosure desk. The San Diego County Registrar of Voters is considering inclusion of the following policies into its Department Policy Manual:

1. "Good Cause" Reasons for Waiving Late Filing Fees.
2. Non-filer Notifications as they Pertain to Campaign Financial Disclosure.
3. Fines and Late Fees as They Pertain to Campaign Financial Disclosure.

¹ 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.

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

You are requesting that Fair Political Practices Commission ("FPPC") staff review these materials and provide comments. In addition to applying the policies for their intended purpose, you anticipate posting them on your website in order to make them readily available.

The three draft policies follow:

Policy 1. "Good Cause" Reasons for Waiving Late Filing Fees

Purpose:

The County of San Diego/Registrar of Voters will consider a request to waive the payment of a fee for filing a campaign disclosure statement late if the request is based on specified "good cause" reasons for late filing.

Procedure:

A written request for waiver must be submitted to the County of San Diego/Registrar of Voters, Financial Disclosure Desk. The waiver request must be signed by the person(s) required by law to file the particular statement or report upon which the late filing fine was assessed.

Definition of Terms:

There are two categories of "good cause" for waiving late filing fees. These causes must relate to the person(s) who are legally required to file the late report or statement.

The persons who these causes relate to are limited to "A person required to file." In the case of a candidate committee, this is the candidate, treasurer, or a person whose participation is essential to the preparation of the statement or report. In the case of all other committees, it is the treasurer, designated record keeper or a person whose participation is essential to the preparation of the statement or report.

FIRST CATEGORY OF GOOD CAUSE

1. INCAPACITATION FOR MEDICAL REASONS

Adequate documentation consists of a signed statement by a board-certified physician, psychologist, therapist, chiropractor, or other medical provider's statement giving the nature of the incapacitation, the date(s) thereof, and the individual's name.

2. HOSPITALIZATION

Adequate documentation consists of a copy of the hospital bill or physician's statement showing the filer's name and the date(s) of the hospitalization.

3. ACCIDENT INVOLVEMENT

If the accident involvement causes the late filing, adequate documentation consists of the police report showing the filer's name, the date and time of the accident, and, if applicable, whether or not the vehicle was disabled. In addition, the filer must provide the County of San Diego/Registrar of Voters office with a written statement explaining how the accident caused the late filing.

4. DEATH

Adequate documentation consists of a copy of the filer's death certificate, published death notice or obituary.

SECOND CATEGORY OF GOOD CAUSE

The second category is defined as unique, unintentional factors beyond the filer's control not stemming from a negligent act or non-action. The factors are:

1. LOSS OR UNAVAILABILITY OF RECORDS

Good cause can be due to the loss or unavailability of records due to a fire, flood, theft, earthquake, or similar reason. Adequate documentation shall consist of a police, fire or insurance report indicating the date of the occurrence and the extent of the loss or damage.

2. Other unique reasons include compelling reasons beyond the filer's control.

Further Information:

The following do not constitute "good cause" and therefore are not grounds for a waiver:

- Not receiving notice of filing requirements
- Not being available to sign forms
- Not sending filing to proper official
- Not knowing where to get forms
- Not having complete information by filing deadline
- Not picking up mail
- Secretarial error
- Not being aware of law or its requirements

The County of San Diego/Registrar of Voters shall have discretionary oversight in regards to reducing fines for certain situations, some of which may not have been covered in this policy.

References:

The County of San Diego/Registrar of Voters policy on fines and waivers is consistent with the current policy of the California Secretary of State's Office (issued in April 1995) and has borrowed additional material from the "San Francisco Ethics Commission's Policy for Late Campaign Disclosure Statements," "State of Michigan Bureau of Elections Good Cause Reasons and Waiver of Late Filing Fees" and "County of Los Angeles Instructions for Waiver of Liability."

Policy 2. Non-filer Notifications as they Pertain to Campaign Financial Disclosure.

Purpose:

To assure that non-filer notifications are issued and appropriately addressed in compliance with the Political Reform Act.

Procedure:

Notify non-filers – Filing officers must promptly notify all persons and known committees which have failed to file a statement required by law in a timely manner.

When, upon reviewing our agency's campaign statement log, we become aware that a candidate, officeholder, or committee has an obligation to file a campaign disclosure statement and has failed to do so, we must notify the candidate, officeholder, or committee of the obligation to file a statement. It is the duty as a filing officer to notify a candidate or committee of his or her filing obligation once it becomes apparent that person has an obligation to file and has failed to do so. Filing officers are not required to conduct an investigation to determine whether a candidate or committee has an obligation to file a statement.

- Officeholders whose salaries are less than \$200 per month are not required to file Form 470 or 460 unless they receive contributions or make expenditures during the six-month period covered by the semi-annual statement.
- Every candidate listed on a ballot must file either a Form 470 or Form 460 by the first pre-election deadline.
- Every committee must file a semi-annual statement in July and January of each year. Some exceptions may apply to judges and non-salaried officeholders.
- If a candidate or officeholder raises \$1,000 or more in a calendar year or had an open committee during the calendar year, he/she *may not* use Form 470.
- Whenever it appears that a person may have a filing obligation, filing officers are encouraged to contact that person to notify him or her of the filing requirements under the Act.
- The failure of a filing officer or filing official to comply with any duty or provide notice of any filing or disclosure obligation shall not affect the duty of a person to file statements and reports disclosing information as required.

We may notify the candidate, officeholder or committee by telephone, written notice, or specific written notice. A record must be kept of the call, written notice or specific written notice.

Two written notifications must be made **before** referring matters to the Fair Political Practices Commission's Enforcement Division. The second notice should include details requesting that the filing of the campaign statement needs to be filed within ten days of the date of the letter (five days if it is a second pre-election statement). A filing officer cannot waive a fine if a statement is filed after the due date set out in *specific written notice*.

Definition of Terms:

Financial Disclosure laws mandate that filings be done according to schedules set by the Political Reform Act via the Fair Political Practices Commission. If deadlines are not met, notifications are to be sent to the filer. Failure to respond to two notifications may result in enforcement referrals being forwarded to the proper authority, the Fair Political Practices Commission, Enforcement Division.

Further Information:

Based on recommendations from the Fair Political Practices Commission

References:

Political Reform Act:

- Government Code Section §81010
- Government Code Section §84200

California Code of Regulations (Office of Administrative Law):

- Cal. Code of Regs. Section §18110
- Cal. Code of Regs. Section §18115

Policy 3. Fines and Late Fees as they Pertain to Campaign Financial Disclosure**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.

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 not 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 day after the filing deadline until the statement or report was filed; however, no liability shall exceed the cumulative amount stated in the late statement or report, or \$100, whichever is greater.

Copies of Statement 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 stated in the late statement or report, or \$100, whichever 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 purpose of the Act. 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 and obtain a judgment in small claims, municipal, or superior court for the purpose of collecting any unpaid monetary penalties, fees, or civil penalties imposed, depending on the jurisdiction amount.

Definition of Terms:

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.

If deadlines are not met fines may be imposed by the Registrar of Voters, Financial Disclosure Desk or enforcement referrals need to be forwarded to the proper authority be it the Fair Political Practices Commission or the County of San Diego / District Attorney.

The Political Reform Act provides that campaign disclosure statements filed late are subject to fines and the County of San Diego/Registrar of Voters, Financial Disclosure Desk will enforce these fines.

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

Analysis

Section 81010 sets out the following duties a filing officer³ 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 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

³ “‘Filing Officer’ means the office or officer with whom any statement or report is required to be filed . . .” (Section 82027.)

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.”

Finally, Section 91013.5 specifies the method for collection of penalties assessed by filing officers:

“(a) In addition to any other available remedies, the commission or the filing officer may bring a civil action and obtain a judgment in superior court for the purpose of collecting any unpaid monetary penalties, fees, or civil penalties imposed pursuant to this title. The action may be filed as a small claims, limited civil, or unlimited civil case, depending on the jurisdictional amount. The venue for this action shall be in the county where the monetary penalties, fees, or civil penalties were imposed by the commission or the filing officer. In order to obtain a judgment in a proceeding under this section, the commission or filing officer shall show, following the procedures and rules of evidence as applied in ordinary civil actions, all of the following:

“(1) That the monetary penalties, fees, or civil penalties were imposed following the procedures set forth in this title and implementing regulations.

“(2) That the defendant or defendants in the action were notified, by actual or constructive notice, of the imposition of the monetary penalties, fees, or civil penalties.

“(3) That a demand for payment has been made by the commission or the filing officer and full payment has not been received.

“(b) A civil action brought pursuant to subdivision(a) shall be commenced within four years after the date on which the monetary penalty, fee, or civil penalty was imposed.”

FPPC Comments

Policy 1. Good Cause Reasons for Waiving Late Filing Fees.

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. The Commission has not adopted a clarifying regulation and thus, the implementation is left to the discretion of the filing officers, so long as the implementation does not exceed the parameters of Section 91013.

Your "good cause" policy for waiving late filing fees states under the Definition of Terms section:

"There are two categories of 'good cause' for waiving late filing fees. These causes must relate to the person(s) who are legally required to file the late report or statement.

"The persons who these causes relate to are limited to 'A person required to file.' In the case of a candidate committee, this is the candidate, treasurer, *or a person whose participation is essential to the preparation of the statement or report.* In the case of all other committees, it is the treasurer, designated record keeper or *a person whose participation is essential to the preparation of the statement or report.*" (Italics added.)

The persons with duties to ensure timely filing of statements are defined in Government Code Section 84100, which requires every recipient committee to have a treasurer. Regulation 18427 sets out in detail the duties of treasurers and candidates with respect to campaign statements. In addition, Regulation 18426.1 specifies that recipient committees may designate an assistant treasurer who may sign and verify campaign statements on behalf of the committee. This regulation further states that treasurers and assistant treasurers shall be jointly and severally liable for any violations for which the Political Reform Act would otherwise hold the treasurer liable. Therefore, candidates, treasurers, and assistant treasurers are legally responsible for the accuracy of the candidate controlled committee records and for the accuracy and completeness of campaign statements in which they sign and file. On this basis, we would recommend that you add "assistant treasurers" to your list of persons "required to file."

However, we think your inclusion of "a person whose participation is essential to the preparation of the statement or report" within the definition of "A person required to file" is technically inaccurate. This is because it may include individuals who are not candidates, treasurers, or assistant treasurers who, as discussed above, are the only persons "required to file" campaign statements and reports under the Act. Therefore, we would recommend that you modify your definition to reflect this. Nevertheless, we think it is appropriately within your discretion as the filing officer to find good cause and, therefore, waive late filing fees, when a committee's late filing results from the acts specified in your policy, even though those acts may have been by "a person whose participation is essential to the preparation of the statement or report." These acts fall within the parameters of Section 91013 and are a justifiable basis for waiving the late filing fee.

Thus, to summarize, although we think it is inaccurate to classify "a person whose participation is essential to the preparation of the statement or report" as "A person required to file," we nevertheless think you can appropriately waive a late filing fee when the late filing is based on certain actions by individuals associated with the committee even though they may not be required to file the campaign statement or report under the Act. All other provisions of the "Good Cause' Reasons for Waiving Late Filing Fees" appear to comply with Regulation 91013.

Policy 2. Non-filer Notifications as they Pertain to Campaign Financial Disclosure.

This policy appears to conform with your duty to notify non-filers and to refer apparent violations of the Act required under Section 81010(c) and (d) and Regulation 91013.

Policy 3. Fines and Late Fees as they Pertain to Campaign Financial Disclosure.

This policy appears to conform with the provisions of Sections 91013 and Section 91013.5.

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

Sincerely,

Scott Hallabrin
General Counsel



Dixie Howard
Assistant Division Chief
Technical Assistance Division

By:

DH:jgl