

PDC Non-Enforcement of C4 Reporting Deadlines

Written Comment by Conner Edwards for August 25, 2022 PDC Meeting

Background

Last month, while discussing the agency's proposal to increase the number of C4s due the month before the election, I brought up the fact that the agency does not actively or meaningfully enforce the requirement that filers timely file C4 reports. This month, I wanted to provide additional context and background for those remarks.

Since last month, I have taken two steps to highlight this problem in the hope the agency will address it.

First, I reached out to campaign finance authorities in neighboring states (Oregon, Idaho, Alaska, Hawaii) as well as Federal Election Commission (FEC) to learn how they enforce the requirement to timely file campaign finance reports. Their written responses are appended to this document. It appears that these campaign finance authorities (for the most part¹) do not share the PDC's passive approach towards enforcing the timely file requirement for C3/C4 report equivalents.

Second, I recently filed 15 complaints against candidates/committees from past election cycles that failed to timely file pre-election C4 reports before they appeared on the ballot. My expectation is that every single one of these complaints (while meritorious) will be dismissed via the use of a "warning letter" (a dismissal of the complaint in which no monetary penalty is levied against the respondent). In other states, if a filer fails to timely file a report (especially if they fail to file a required report before the election) a monetary fine is typically issued. These fines serve as a deterrent for would-be late filers.

So, what do I mean exactly when I say that the agency does not actively or meaningfully enforce the requirement that filers timely file C4 reports? Here is my two-part answer.

Part One: What is "active enforcement"?

This is best illustrated through an example. A great example would be how the PDC enforces the requirement that candidates and elected officials file C1s (candidate registrations) and F1s (personal financial affairs statements).

Agency staff actively track which individuals are required to comply with these requirements. When individuals fail to live up to their legal obligations, reminders are sent asking them to file. When the reminders do not have the desired effect, the agency subjects the individuals who are required to file to financial penalties. That is what active enforcement looks like. So far, so good.

¹Because Oregon utilizes a unique transaction-based reporting system as opposed to a fixed-date style reporting system, active enforcement against Oregon filers who fail to file any reports would be hampered: the agency has no way of knowing if a filer is just failing to file reports or if they legitimately don't have any transactions. However, if/when the entity files a late transaction report, the agency has an automatic process to fine them unlike the PDC, so I believe this qualifies as partial active enforcement.

However, after a campaign has filed its C1, the agency appears to assume a completely passive posture towards the campaign. The agency appears to do nothing to make sure that the campaign files subsequent required reports such as C3s and C4s.²

A recent example of the agency's passive attitude towards reporting deadlines can be found by looking at the reporting history of 2022 Thurston County Auditor candidate Sal Militello (R), see also PDC Complaint #111239 (filed by former Olympia City Councilmember Joe Hyer on 8/2/22). Responsible for the administration of elections, County Auditor is a particularly important office, especially in the current political climate.

Candidate Militello first filed his C1 back in January of 2022, well before May's filing week. Militello filed a handful of reports on April 16th and *then did not file a single subsequent report until over two weeks AFTER the August primary election in which he appeared on the ballot as a candidate*. Militello was required to file a C4 covering the month of May, a 21-day pre-election report (covering all of June and part of July), and a 7-day report (covering all remaining activity in the latter part of July up to 7 days before the 8/2 primary). He filed none of those reports by the appropriate due date, waited until AFTER the election occurred, and only filed the reports in response to a savvy member of the public who noted the deficiency and filed a complaint.

So, what was the bottom-line result here? Members of the public were deprived of the opportunity to view information that they were entitled to see before casting their vote in the August primary. Contributions that should have been reported were not reported. This is not an isolated occurrence, and all of the 15 complaints I recently filed are regarding factually similar situations where candidates failed to file required reports prior to elections on which they appeared on the ballot.

Of course, blame for the failure to timely file reports lays with the candidate for failing to comply with the law. But our analysis shouldn't stop there. The agency could have and should have intervened when this candidate and other candidates fail to file reports that their campaign are required by law to file. The agency is failing to do this, and the public's access to information about campaign finance activity is suffering as a result.

Part Two: What is "meaningful enforcement"?

Put bluntly, "meaningful enforcement" of C4 reporting deadlines means that the actions taken by the agency in response to late filers are sufficiently "scary" enough to intimidate filers into complying with the law.

Put even more bluntly, it means actually fining campaigns that fail to comply with reporting deadlines. By and large, this is not happening.

Outside of complaints that are brought to the Commission where PDC staff are the complainants (group enforcement regarding late C1/F1 filings), it is relatively rare for the agency to fine filers for any reason whatsoever. It is even rarer for the Commission to issue a fine for late C3/C4 filing. Over the last year, I've listened to every single regular Commission meeting from the very beginning of the meeting to the very bitter end. I don't think I recall a single case that was even brought to the Commission where late

² See Sean Flynn's response to my e-mail that is also appended to this document.

C3 or C4 reporting was alleged. A quick, targeted search in the agency's "Enforcement Cases" page using "Area of Law: RCW 42.17A.235 & Status: Violation Found By Commission" seems to confirm this.

This is not because all campaigns are filing their reports on time. Neither is it because no-one is filing complaints regarding late C3s/C4s. Rather, it is because agency staff seem heavily inclined to outright dismiss complaints that correctly identify respondents who engage in late reporting or other types of violations.

Agency staff often dismiss meritorious complaints via the use of "warning letter". These letters meekly ask the respondent (oftentimes after the election is concluded and the respondent has ceased all election-related activity anyways) to please not violate the law again. In theory, warning letters are only supposed to be used to dismiss minor violations³. In practice, they are often used to dismiss major violations.

Agency staff seem to feel comfortable dismissing meritorious complaints because there is no appeals process by which complainants can object to how the agency dismissed their complaint and present their case directly to the Commissioners.

The other way the agency can fine filers for late reporting is through a Statement of Understanding or SOU. A quick, targeted search using "Area of Law: RCW 42.17A.235 & Status: Statement of Understanding" reveal a mere 10 cases opened after 1/1/20 and adjudicated via SOU for late C3 or C4 reporting. The fines issued are generally miniscule in comparison to the violations and could not reasonably be interpreted as being a proper incentive for filers to comply with filing deadlines, especially when the cost of hiring a professional to prepare the required reports would exponentially exceed the penalty imposed by the agency.

So why do agency staff dismiss so many meritorious complaints alleging violation of C3/C4 filing deadlines and other legal requirements? I strongly suspect that agency personnel would like to take stronger action against violators but that they are hampered by a lack of resources and a time intensive complaint adjudication process. By dismissing a large number of meritorious complaints, the agency creates a disincentive for would-be complainants to file complaints alleging small to medium level campaign finance violations. After all, if you know that the agency is likely to dismiss your complaint, why bother to file a complaint to begin with? By creating this disincentive, the agency is able to somewhat effectively manage its caseload and avoid a large influx of complaints relating to late filing.

This disincentive brings me to my next point, addressing those who may believe that the agency's passive approach to enforcing C4 deadlines is sufficient. That it's OK to leave it up to members of the public to find violations and to wait for them to file a complaint before the agency does anything. Consider what would realistically be required for someone to notice a significant violation and file a complaint as eventually happened in the Sal Militello case. Realistically, the following criteria would have to be met: 1) the complainant would actually have to know the appropriate reporting periods and deadlines, 2) the complainant would have to be able to successfully navigate the website to know the reports hadn't been filed, 3) the complainant would have to have some level of faith that the agency would engage in some meaningful action in response to the complaint, and 4) the complainant would have to not fear reprisal or other negative effects from coming forward.

³ WAC 390-37-060(1)(d)

In Thurston County, an area with a much higher than usual familiarity with PDC requirements, it took over 3 months of no reports being filed and a primary election for those criteria to be met and a complaint to be filed.

Conclusion

As I hope I have successfully shown in the foregoing (and from the attached), this agency does not currently engage in the active or meaningful enforcement of C4 deadlines. Other states do engage in active and meaningful enforcement of these types of deadlines and should serve as a model to the PDC.

If the agency ultimately decides to move forward with its proposal to increase the number of pre-elections C4 filing periods, you can expect me to submit a new APA rulemaking petition. The language of this proposed rule will be modeled on the practices and penalty schedules of other campaign finance authorities that already practice the active and meaningful enforcement of contribution and expenditure reporting deadlines. If the agency rejects this petition and also refuses to take other steps to begin actively and meaningfully enforcing C4 reporting deadlines, I think the Legislature can and should draw the conclusion that the PDC is either unable or unwilling to enforce existing C4 deadlines and imposing additional C4 deadlines on filers would not be warranted until the non-enforcement issue is addressed.

Best,

Conner Edwards
Campaign Treasurer
(425) 533-1677 cell

P.S. I apologize for so often coming across as being critical of the agency. Truth be told, this agency is doing some great things and I don't acknowledge that as much as I should. But the purpose of public comment is not to pat the agency on the back and say "well done" but to meaningfully critique the agency's actions when warranted and to advocate for needed changes. Pushing the agency to actively and meaningfully enforce filing deadlines (as other campaign finance authorities do) is one of those changes. If anyone reading this feels that I am not doing as good of a job of offering substantive criticism and advocating for positive changes as I could be, I encourage you to drop me a quick e-mail at CG.Edwards53@gmail.com to let me know how I can do better.

I try to be as accurate as possible in my written comments. If anyone reading this feels I have gotten something wrong, I would ask you to please give me an opportunity to respond, to fully explain what I have written, and for me to provide additional evidence if needed. If it turns out that I am wrong about something I have said, I am prepared to admit I'm wrong. You can use the above e-mail address for that as well.

PDC enforcement of late C4s

Flynn, Sean (PDC) <sean.flynn@pdc.wa.gov>
To: Conner Edwards <cg.edwards53@gmail.com>

Mon, Aug 1, 2022 at 11:00 AM

Hi Conner.

Thanks for your question. I'm not sure what you're getting at, but I can try to answer the questions and assumptions you propose here. I think I need to clarify our process. Yes, we "actively investigate" C-4 reporting requirements. Investigations do not "initiate enforcement," but are part of the enforcement process.

We also "actively enforce" C-4 requirements on a quite frequent basis. You can check our website to review all the cases resolving issues regarding C-4 requirements. Of course, those cases usually are not contested and often resolved by agreement or warning once the respondent has filed the appropriate report(s).

I am guessing what you may be asking about is whether the PDC initiates complaints alleging failure to timely file a C-4 report in the same way that we initiate group enforcement actions for C-1/F-1 filers. We do not have such a process for C-4 reporting requirements. The PDC always has been a complaint-driven agency. Agency resources can dictate how enforcement activity is conducted and current group enforcement takes considerable amount of time. Outside of enforcement actions and investigation, the Commission has prioritized developing an audit program to assist with promoting compliance among PACs, including timely filing reports, which they are considering for expansion.

I hope that helps.

Sean Flynn

General Counsel

Public Disclosure Commission

www.pdc.wa.gov

Office (360) 664-2736

Cell (360) 789-9225

Shining light on Washington politics since 1972

From: Conner Edwards <cg.edwards53@gmail.com>

Sent: Friday, July 29, 2022 5:50 PM

To: Bradford, Kim (PDC) <kim.bradford@pdc.wa.gov>; Young, Kurt (PDC) <kurt.young@pdc.wa.gov>; PDC <PDC@pdc.wa.gov>; Lavallee, Peter (PDC) <peter.lavallee@pdc.wa.gov>; Flynn, Sean (PDC) <sean.flynn@pdc.wa.gov>; Hodgson, Kendra (PDC) <kendra.hodgson@pdc.wa.gov>

Subject: PDC enforcement of late C4s

External Email

Hello:

I had a question that I was hoping someone at the PDC could answer.

Does the PDC actively investigate candidates and committees to determine whether or not they have timely filed the C4 reports that they are required by law to file, initiating enforcement actions when the candidates/committees have failed to do so?

I'm almost certain that the PDC doesn't actively enforce the "timely" requirement for C4s (like it does with late/missing C1s/F1s), but I just wanted to reach out to confirm this.

If at all possible, I'd appreciate it if someone could answer me by 5:00 PM on Tuesday, August 2nd, 2022.

Thank you and have a great weekend.

Best,

Conner Edwards



RE: Question on late-filed FEC reports

no-reply@fec.gov <no-reply@fec.gov>
Reply-To: "no-reply@fec.gov" <no-reply@fec.gov>
To: cg.edwards53@gmail.com

Tue, Aug 9, 2022 at 8:30 AM

Thank you for contacting the Federal Election Commission.

The FEC's Administrative Fine Program assesses civil money penalties for late and non-filed reports. Fines are established by a pre-existing formula.

Most reports that committees file are covered under the Administrative Fine Program. This includes semi-annual, quarterly, monthly, pre-election, 30-day post-general and special election reports, as well as 48-Hour Notices.

If the Commission finds "reason to believe" (RTB) a committee failed to file on time, the FEC will notify that committee in writing of the finding and the penalty amount. These letters are sent to the committee and its treasurer at the address listed on the committee's most recent Statement of Organization (Form 1).

Committees have 40 days to either pay the fine or submit a written challenge. The Commission will then make the appropriate final determination.

More information on the FEC's Administrative Fine Program can be found at <https://www.fec.gov/legal-resources/enforcement/administrative-fines/>

Should you have further questions, please do not hesitate to contact staff in the Information Division at 202-694-1100 or 1-800-424-9530 (prompt 6).

FEC Information Division

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===== ORIGINAL MESSAGE =====

From: cg.edwards53@gmail.com
Sent: 2022-08-06 07:44:38
Subject: Question on late-filed FEC reports

Hello,

I was trying to look through the FEC's website and I had this question:

If a federal candidate required to report with the FEC and appearing on the 2022 general election ballot fails to timely file a pre-general or quarterly report by the appropriate deadline, is that something that the FEC would actively notice and potentially investigate/fine the candidate for missing the deadline?

Or would it be dependent on a member of the public to notice the report had not been filed and file a complaint?

--

Best,

Conner Edwards
(425) 533-1677 cell

Ref:MSG0223356



Question on Late Reporting for Candidates

Elections <elections@sos.idaho.gov>

Wed, Aug 3, 2022 at 2:10 PM

To: Conner Edwards <cg.edwards53@gmail.com>, Elections <elections@sos.idaho.gov>

Conner,

Do you have a specific candidate in mind that you are curious about? Are they a statewide or state candidate or a county candidate?

To help you understand the process: the SOS is over statewide, state and most judicial candidates. The County Elections are over county, city, special district candidates and Magistrate Judges. There is a \$500 threshold code that applies to county, city, special district and all judicial candidates (IC 67-6608). **SOS candidates all file monthly reports in the year of their election** and annual reports in off election years (IC 67-6607). County and Judicial candidates that reach the \$500 threshold also file monthly in an election year once that threshold is met and yearly in non-election years if that threshold was met.

At the SOS we send a courtesy reminder email to our candidates and political committees that they have an upcoming report due on the 10th. If applicable, we send an email on the 11th notifying them of the missed due date as prescribed by Idaho Code 67-6625A. Code allows for a 48hr grace period so we start fining \$50 a day beginning on the 13th (not counting the day they file). We then email them a fine notice when they file their past due report.

The complaints we receive are usually regarding incorrect filings or code violations as **we consistently monitor our campaign finance account filings**. We have on a few occasions been made aware of entities that fall within the definition of a political committees that have not created accounts and we work with them to get them into compliance. Hopefully this addresses your question. If not, what is your specific concern or complaint?

Sheryl

From: Conner Edwards <cg.edwards53@gmail.com>

Sent: Wednesday, August 3, 2022 2:14 PM

To: Elections <elections@sos.idaho.gov>

Subject: [External] Question on Late Reporting for Candidates

Hello:

I live in Moscow, ID, and I had this question about how the SOS's office operates.

If a candidate is required to file a monthly campaign finance report (C-2) because they are running for election, and the SOS's office notices that the candidate has failed to do so, does the SOS's office do anything to 1) remind the candidate of their filing obligation, or 2) take steps to fine that candidate for their failure to file?

Or would the SOS's office wait for a member of the public to file a complaint before it does anything?

Best,

Conner Edwards



ALASKA RESPONSE

Conner Edwards <cg.edwards53@gmail.com>

Late Reporting

Lucas, Tom R (DOA) <tom.lucas@alaska.gov>
To: "cg.edwards53@gmail.com" <cg.edwards53@gmail.com>

Tue, Aug 9, 2022 at 5:45 PM

Mr. Edwards,

Staff checks to see if any reports due have not been filed. If not, we send a notice of delinquency telling the candidate to file the report because penalties are accruing. Once the report is filed late, staff assesses a penalty.

If you have any questions or desire further information, please do not hesitate to contact me.

Thomas R. Lucas
Campaign Disclosure Coordinator

Alaska Public Offices Commission
2221 E. Northern Lights Blvd., Rm. 128
Anchorage, Alaska 99508
Phone: (907) 276-4176
Fax: (907) 276-7018

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From: Conner Edwards <cg.edwards53@gmail.com>
Sent: Thursday, August 4, 2022 1:44 AM
To: Public Offices Commission, Alaska (DOA sponsored) <doa.apoc@alaska.gov>
Subject: Late Reporting

You don't often get email from cg.edwards53@gmail.com. [Learn why this is important](#)

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Hello:

I was looking at the Alaska Public Office Commission (APOC) website and I had this question:

If a state candidate appearing on the 2022 general election ballot fails to timely file a 30 day or 7 day Campaign Finance Report by the appropriate deadline, is that something that APOC would actively notice and potentially investigate/fine the candidate for missing the deadline?

Or would it be dependent on a member of the public to notice the report had not been filed and file a complaint?

--

Best,

Conner Edwards
(425) 533-1677 cell



HAWAII RESPONSE

Conner Edwards <cg.edwards53@gmail.com>

Question on late reporting penalties

Hawaii Campaign Spending Commission <csc@hawaii.gov>
To: Conner Edwards <cg.edwards53@gmail.com>

Thu, Aug 4, 2022 at 2:09 PM

Mr. Edwards,

The Commission does send a Notice of Late Report to candidates who fail to timely file their disclosure reports. These candidates can also be found on our website (<https://ags.hawaii.gov/campaign/cc/notice/>). The Commission may assess a fine in accordance to the applicable Hawaii Revised Statutes ("HRS").

If you have any further questions, please give our office a call at 808-586-0285.

Mahalo,

Janelle Tanna

Elections Assistant

Hawaii Campaign Spending Commission

[235 S. Beretania Street, Room 300](#)

[Honolulu, Hawaii 96813](#)

Phone: (808) 586-0285

Fax: (808) 586-0288

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From: Conner Edwards <cg.edwards53@gmail.com>

Sent: Thursday, August 4, 2022 10:21 AM

To: Hawaii Campaign Spending Commission <csc@hawaii.gov>

Subject: [EXTERNAL] Question on late reporting penalties

Hello:

I was looking at the Campaign Spending Commission's website, and I had this question:

If a state candidate appearing on the 2022 general election ballot fails to timely file a 1st or 2nd Preliminary General Report by the appropriate deadline, is that something that CSC would actively notice and potentially investigate/fine the candidate for missing the deadline?

Or would it be dependent on a member of the public to notice the report had not been filed and file a complaint?

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Best,

Conner Edwards

COVID-19: Information and Latest Updates



State of Hawaii
Campaign Spending Commission

HAWAII FINE SCHEDULE

[Home](#) » [Legal Resources](#) » Schedule of Fines for Violations of Hawaii Revised Statutes, Chapter 11, Part XIII

SCHEDULE OF FINES FOR VIOLATIONS OF HAWAII REVISED STATUTES, CHAPTER 11, PART XIII

Approved June 23, 2021

SCHEDULE OF FINES¹

	HAWAII REVISED STATUTES (HRS) – Escheat to Hawaii Election Campaign Fund	HRS – Fine to General Fund	HRS – Administrative Catch-All Fine to General Fund §11-410
<u>REGISTRATION</u>			
A. Electronic Filing Form (HRS §11-321) 1 – Not File 2 – Late File or Not Amend/Correct	N/A	N/A	1 – \$50 2 – \$25
B. Organizational Report (HRS §§11-321, 322, 323) 1 – Not File 2 – Late File or Not Amend/Correct (within 10 days)	N/A	N/A	1 – \$100 2 – \$50
<u>REPORTING</u>			
A. Disclosure Reports (HRS §11-340)	N/A	1 – N/A	1 – 1 st time → \$500 2 nd time → \$750

<p>1 – Not File 2 – Late File</p>		<p>2 – \$50/day (first 7 days); \$200/day thereafter provided that in aggregate, the fine shall not exceed 25% of total amount of contributions/expenditures (whichever is greater) for the period covered by the report</p> <p>– Minimum fine is \$200 if more than 4 days late</p> <p>*Publish on Commission’s website names of candidate committees and non-candidate committees that fail to file (HRS §11-340(f))</p>	<p>3rd time → \$1,000 2 – Fine N/A if paid fine (HRS §11-410(h)) & no criminal referral (HRS §11-412(g))</p>
<p>(Candidate & Noncandidate Committees) Reports Due 10 Days Before an Election (HRS §11-340(c))</p> <p>1 – Not File 2 – Late File</p>	<p>N/A</p>	<p>1 – N/A</p> <p>2 – Not to exceed \$300/day provided that in aggregate, the fine shall not exceed 25% of total amount of contributions/expenditures (whichever is greater) for the period covered by the report</p> <p>– Minimum fine is \$300</p> <p>*Publish on Commission’s website (HRS §11-340(f))</p>	<p>1 – 1st time → \$500 2nd time → \$750 3rd time → \$1,000 – Fine N/A if paid fine (HRS §11-410(h)) & no criminal referral (HRS §11-412(g))</p>
<p>(Candidate & Noncandidate Committees) Late Contributions Report (HRS §§11-333(c), 335(d), 338)</p> <p>1 – Not File 2 – Late File</p>	<p>N/A</p>	<p>N/A</p>	<p>1 – \$750 2 – \$500</p>
<p>(Noncandidate Committees – Only Super PACs) Late Expenditure Report (HRS §§11-337(b), 338(c))</p>	<p>N/A</p>	<p>N/A</p>	<p>1 – \$750 2 – \$500</p>



Question on late campaign finance reports

SOS Orestar-Support * SOS <Orestar-Support.SOS@sos.oregon.gov>
To: "cg.edwards53@gmail.com" <cg.edwards53@gmail.com>

Thu, Aug 4, 2022 at 10:52 AM

The schedule of filing deadlines can be found on page 20 in the manual found here: <https://sos.oregon.gov/elections/Documents/campaign-finance.pdf>

If the transaction is filed after the deadline, you will receive a late message when you file "this transaction may be considered late". Late (described on page 67) and insufficient filings are then subject to the penalty matrix (1/2% x amount x # of days late, not to exceed 10%).

If the Secretary of State determines that a committee is in violation of Oregon election law because late and/or insufficient transactions were filed and the total calculated penalty is \$50 or more, the Elections Division will create a case and issue a proposed penalty notice. If the total amount is less than \$50 we just dismiss the penalties.

Does that help clarify the question?

ORESTAR Support Team

From: Conner Edwards <cg.edwards53@gmail.com>
Sent: Thursday, August 4, 2022 2:20 AM
To: SOS Elections * SOS <Elections.SOS@sos.oregon.gov>; MORRIS Ben * SOS <Ben.MORRIS@sos.oregon.gov>
Subject: Question on late campaign finance reports

Hello:

I was just reading pg. 67-70 of the Oregon Campaign Finance Manual (<https://sos.oregon.gov/elections/Documents/campaign-finance.pdf>) and I'm not sure I fully understood something I read about the SOS's enforcement procedures, so I wanted to ask this question:

Generally speaking, if a candidate misses a filing deadline and files a late report for a transaction (let's say they filed a week later than required by law), would that be something that the agency would notice and potentially start an investigation/issue a monetary penalty for? Would it be any different if the report was filed a full month later than required?

Or would a member of the public have to notice the late reporting and file a complaint to start the enforcement/penalty process?

--

Best,

Conner Edwards