

Please Read: Written Comment for February Meeting (APA Rulemaking Proposal)

C

[Conner Edwards](#)

reported via email

7 hours ago (Tue, 20 Feb 2024 at 1:28 AM)

To: "PDC Support" <pdcc@pdcc.wa.gov>, " Isserlis Nancy (PDC Commissioner) " <nancy.isslerlis@pdcc.wa.gov>

+4 more

External Email

Commissioners:

Attached, please find my written comment for February's regular meeting of the PDC.

If you typically cannot find the time to read my written comments, I would really encourage you to please read this one in particular. It was designed to answer some of the questions that I anticipated you might have relating to my APA rulemaking proposal.

The attached written comment also responds to staff's memo of February 15, 2024, which recommends that you deny the APA rulemaking proposal without even considering it.

I strongly encourage you to make a decision (one way or another) on the APA rulemaking proposal based on the merits of the proposal. Ignoring this proposal and delaying discussion of this issue until March will harm the efforts to address the widespread problems related to late/non-filed C3/C4 reports.

--

Best,

Conner Edwards
Professional Campaign Treasurer
(425) 533-1677 cell

Questions and Answers re: APA Rulemaking Petition

Q: What would your APA Rulemaking Petition accomplish?

If adopted, this rule change petition would accomplish the following:

- a) Establish a policy of automatically sending out a schedule to filers (at the time they file a registration) that contains a tentative schedule of filing deadlines for contribution and expenditure reports.
- b) Establish a policy of automatically sending e-filing reminders to filers prior to the day on which reports are due.
- c) Establish a policy of automatically sending e-filing notices to filers who have not filed the report pursuant to the tentative schedule of filing deadlines. These notices would ask the filer to select a valid reason for why the report was not filed. If no valid reason for failing to file the report applies, the notice would instruct the filer to file the report immediately.
- d) Establish a policy whereby the agency would publish the responses it received from filers who failed to file a report pursuant to the tentative schedule. This would allow members of the public to understand why that filer is not filing reports pursuant to the schedule.

Q: What is the problem that you are hoping to address with your APA rulemaking petition?

Making sure that candidates and political committees file timely and accurate reports disclosing contributions and expenditures is the most important responsibility of all campaign finance agencies, including the PDC. Unlike other states (and the federal government), the PDC currently has no framework for making sure that candidates and committees are filing contribution (C3) and expenditure (C4) reports on time.

No-one is well served by the agency's lack of a coherent system for enforcing filing deadlines, not candidates, not political committees, not PDC staff, and especially not the public. This must change.

Q: How does the lack of a framework for enforcing filing deadlines negatively impact candidates?

Candidates and committees are hurt because they do not receive automated filing reminders letting them know of upcoming deadlines. When candidates and committees do miss a filing deadline, they are further disadvantaged because they do not receive timely notification from the agency that a deadline has been missed. This, in turn, deprives them of the opportunity to cure the problem in a timely manner.

Additionally, the current reality is that many candidates devote a large amount of time/money/energy into complying with disclosure laws. These candidates often compete against candidates that ignore the rules. There are virtually never meaningful consequences for candidates who ignore the rules, unlike in other states and on the Federal level. This effectively creates an advantage for the candidates that are not following the rules.

Q: How does the lack of a framework for enforcing filing deadlines negatively impact the PDC staff?

PDC staff are hurt because ultimately it is the filer assistance team and enforcement team that suffer the most when there is a high degree of filer noncompliance. We are seeing that especially in the last few months as the massive degree of noncompliance over the last 5 years has been brought to light through the hundreds of PDC complaints that have been filed against noncompliant filers. PDC staff are hurt because they do not have a standardized, automated process for dealing with late reports, unlike other state campaign finance agencies and the Federal Elections Commission. The lack of a standardized, automated process for dealing with late/non-filed reports means that staff must deal with each complaint in an individualized, highly labor-intensive way. This system is simply unsustainable.

To avoid the work associated with bringing a complaint before the Commission, agency staff have leaned heavily on the “warning letter dismissal” to deal with the problem of late C3 and C4 filings. These letters are effectively outright dismissals of complaints where a candidate has demonstrably committed a violation. While it is obviously far more expedient for staff to handle valid complaints by simply dismissing them, it perpetuates a regulatory environment where there are no consequences for failing to file reports on time.

This, in turn, increases the rate of filer noncompliance. This creates a much higher volume of work for the filer assistance and enforcement team who then have to deal with the complaints that come in as a result.

Q: How does the lack of a framework for enforcing filing deadlines negatively impact the public?

The harm to the public that results from the lack of a meaningful framework for enforcing C3/C4 filing deadlines is the most significant harm of all.

Put simply, this problem negatively impacts the public because it means that they are often not able to view the campaign finance information that state law entitles them to be able to access. When candidates/committees don’t timely file reports, members of the public have no way of accessing this information.

The harm is especially great when voters are denied information about campaign contributions and expenditures to which they are entitled to view prior to casting their vote.

Q: Could your rulemaking proposal be accomplished within existing statutory authorities and agency resources?

Yes. This is exactly why I brought this proposal forward. Agency leadership staff have advanced a litany of excuses for why the agency cannot tackle this problem, but the two most prominent (and

inaccurate) excuses are that the agency lacks both the resources and the statutory authority to address this issue. While no single strategy will completely eliminate noncompliance, I believe that this strategy can significantly reduce noncompliance without requiring the agency to impose mandatory penalties. Most filers want to comply with filing deadlines but, because of the complicated reporting schedule, it is not always clear to them when a report is due. The most frequent reason I see cited by PDC complaint respondents for why they didn't file reports is that: a) they did not know when the report was due, and b) they thought they had filed the report but had not completed the final step to transmit that report to the agency's website. This proposal addresses these issues.

This proposal requires no additional statutory authorities to implement: in essence this proposal would merely: a) establish a policy of sending certain communications to filers (filing schedule, filing reminders), b) give filers the opportunity to provide reasons for why they haven't filed reports by a given deadline, and c) publish the response (that filers provide) on the agency's website so that members of the public can view them and understand why reports are not being filed. None of this would require additional statutory authority for the agency.

Additionally, this proposal would not require additional agency resources. Once the system was set up, it would require no staff time to implement because all of the tasks would be performed on an automated basis by computers. This proposal would require only a modest amount of effort to set up the system initially, but this would not require additional resources. It would likely only mean that the work to implement relatively superficial improvements to the lobbyist reporting interface would be delayed by a handful of months. Since the legislative session will soon be over anyways, it would not harm the public if that work were delayed temporarily while this system to improve C3 and C4 reporting is implemented. If you asked James Guthholm about this, I believe he would confirm this. The technological principles associated with implementing this proposed policy are not terribly complicated or unique.

Q: Does your proposal involve the use of Artificial Intelligence (AI)?

Absolutely not. This proposal has nothing to do with AI and I do not support the agency using AI in any way, shape, or form.

Q: Staff have prepared a memo which recommends that we decline to consider your proposal and that we only consider staff proposals at the upcoming strategic planning meeting. Why shouldn't we follow this recommendation?

For two main reasons.

First, agency leadership staff have appeared to take the position that it is simply not possible for the agency to tackle the issue of late-filed/non-filed C3s/C4s within existing statutory authorities or existing agency resources.

I am offering this proposal to show that that notion is false: that the agency has significant tools at its disposal to improve the rates of filer compliance. If staff believe that my APA proposal is unworkable, they should identify with specificity the reasons for that conclusion at February's public meeting. Staff should not be allowed to effectively "bury" a valid proposal simply because they don't like it.

Second, and perhaps more importantly, RCW 42.17A.110(1) contains a prohibition that would prevent the agency from being able to implement rules for the 2024 election cycle if the rules are not made effective as of June 30, 2024.

If the agency wanted to try to use its regular rulemaking authority under RCW 34.05 (the Administrative Procedures Act) to create rules to address the problems with widespread noncompliance re: timely filing of C3/C4s, my understanding¹ is that the agency would have to vote to initiate the process prior to the agency's March regular meeting. This is because it takes a significant amount of time under the APA's timeline requirements for rules to go from a proposal to actually taking effect. ²

Regardless of the decision that you as Commissioners makes on the APA petition, you all should consider asking John Meader and Sean Flynn this question: "if we decided to initiate rulemaking on this or any other subject, what is the last day on which we could do so if we wanted the rule to take effect before June 30, 2024 so that it could be effective for the 2024 election cycle."?

Q: What is so special about the upcoming "strategic planning session" when compared to regular meetings? Why is that staff are recommending that we not take up this issue at a regular meeting but instead wait until the "strategic planning session"? What difference does it make?

As far as I can tell, there is absolutely nothing special about a "strategic planning session" other than: a) there will likely be no opportunity for members of the public to provide comment, and b) members of the public will likely be unable to review recordings of the meeting.

In the staff memo, staff reiterated the concept that: "*the appropriate place to discuss policy and enforcement matters, the tradeoffs between alternative approaches, as well as the use of the agency's limited resources, is within the agency's strategic planning process.*"

This is ridiculous. Why is it that the agency would only be able to discuss these things at a "special" meeting that is held once every 1-2 years? Why shouldn't the Commission be allowed to discuss these issues and take meaningful action at the regular monthly meetings?

Q: Why did you feel the need to propose this policy through the APA's rulemaking process? Don't you trust the agency leadership staff to present viable solutions to address this problem?

Because I have precisely zero confidence that agency leadership staff are planning to tackle this problem in any meaningful way.

Why?

First, because I started raising these issues repeatedly with the agency over a year ago, and no actions were taken, despite commitments to the contrary.

¹ It is entirely possible that my understanding is wrong: Sean Flynn would be far more knowledgeable than me on this subject, but my understanding is based on his explanation of the process back in March of 2022.

² Based on this OCR flow chart: <https://leg.wa.gov/CodeReviser/Documents/registerflowchart.pdf>

Secondly, because human beings tend to oppose policy proposals which would increase their overall portfolio of responsibilities. I am certainly no exception to this rule: in fact, as Director Lavallee correctly pointed out at last month's meeting, I typically show up to PDC meetings to oppose policy proposals which would impose further burdens on campaign treasurers.

Agency leadership staff are also not an exception to this rule. Agency leadership staff do not want to be responsible for proactive efforts to ensure that the filing community is filing C3 and C4 reports on time because it would impose an additional burden on the agency. Agency leadership staff oppose this concept even though other state campaign finance authorities (and the Federal Elections Commission) are already successfully doing this.

Because of their firm opposition to this idea, at the upcoming strategic planning session, agency leadership staff (Director Lavallee, Deputy Director Bradford, BG Sandahl, etc.) will shrewdly use every persuasive weapon available to them to convince you as the Commissioners to not take action to address the significant problem with late/non-filed C3 and C4 reports.

First, they will attempt to argue (against the enormous – and growing - weight of evidence) that there isn't actually a significant problem with late/non-filed C3 and C4 reports under the current system.³ Then, they will argue that the agency is powerless to address the problem because of a lack of statutory authority or financial resources.⁴

Frankly, I don't blame them. As mentioned above, it is in our nature as human beings to oppose additional burdens being placed on us, and this is likely the same dynamic that plays out with staff at various regulatory agencies all across the country. If I were in their shoes, I would almost certainly do exactly the same thing that they have been doing and will continue to do.

But, as Commissioners who were appointed to exercise oversight over the PDC, you have an obligation to use your own common sense and your own good judgement to recognize that there is a significant problem and that it cannot be ignored any longer.

The first step towards resolving this problem is adopting the APA rulemaking petition at Thursday's meeting. I encourage you to do so.

Waiting until March to take action will not accomplish anything.

³ You can expect to hear [more] of the following: *"this is only a problem in small jurisdictions", "this is only a problem where a candidate is unopposed", "this is only a problem for candidates who had no activity to report anyways", "this is only a problem for the filers who didn't check the 'mini-reporting' option when they should have", "voters have no interest in campaign finance data for these types of races anyways",* etc. etc. etc. These arguments are simply inaccurate, and I will address them one-by-one prior to the strategic planning session.

⁴ You can expect to hear [more] of the following: *"we just don't have the statutory authority to impose penalties as easily as they do in other jurisdictions", "we are simply hamstrung by a lack of resources", "we shouldn't even ask filers to provide a reason for why they haven't filed because maybe they haven't had any activity and aren't required to file", "we can only address these problems if we can get greater statutory authority from the Legislature/millions of additional dollars in the budget".* These arguments are also simply inaccurate, and I will address them one-by-one prior to the strategic planning session.



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](#)

CAUTION: This email originated from outside the State of Alaska mail system. Do not click links or open attachments unless you recognize the sender and know the content is safe.

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