



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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M-94-07

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TO: City and Town Clerks
Boards of Election Commissioners

FROM: Michael J. Sullivan, Director *MJS*

SUBJECT: Municipal Non-filers

The campaign finance law requires the director of OCPF, after referral by a local election official, to assess a civil penalty for any late filed report, statement or affidavit (collectively referred to herein as "report")¹. The penalty is assessed against the candidate personally in the case of a late filed candidate or candidate committee report and against the treasurer personally in the case of a late filed report by any other political committee, such as a ballot question committee.

This memorandum describes the procedure that local election officials should follow in order to comply with the relevant statutes and regulations.

I. Notification of "Delinquent Person" - Local election officials must inspect campaign finance reports within thirty (30) days of the required reporting date and other reports within sixty (60) days. If a candidate or political committee treasurer has not filed a required report, or if the report "does not conform to law"² the election official must, "in writing, notify the delinquent person." See M.G.L. c. 55, § 28.

In addition, Section 29 provides:

Upon failure to file a statement, report or affidavit within ten days after receiving the notice under section twenty-eight, the city or town clerk . . . shall notify the director [of OCPF] thereof and shall furnish him with copies of all papers related thereto.

¹ In practice, the report most often filed late for which referral is appropriate is the campaign finance report (CPF Form M102), which is filed by municipal candidates, ballot question committees and PACs. The model letters attached to this Memorandum address the late filing of these reports. The relevant statutes and regulations, however, also require that other reports, statements and affidavits be filed in a timely manner and specify that penalties may be imposed if the reports, statements or affidavits are filed late. These other reports, statements and affidavits include, for example, Reports of Independent Expenditures (CPF Form M 18A), and Reports of Ballot Question Expenditures by Corporation, Organization or Individual (CPF Form M22).

² A report would not "conform to law" if it is not substantially complete.



After receiving such notification, if the director of OCPF determines, based on the material forwarded by the local election official, that the report was filed late, the law requires the director to assess a penalty of \$25 per day, from the date the report was originally due with the local election official, up to a maximum of \$5,000 for each report. The director, however, may waive the penalty for good cause. See M.G.L. c. 55, § 3, and 970 CMR 2.14. The director may refer the person or committee to the Attorney General, to compel filing and payment of the penalty.

II. Implementation - In order to insure that the correct steps are taken, local election officials should follow the procedure outlined below:

1. We strongly encourage local election officials to notify candidates and treasurers as early as reasonably possible before a report is due of their responsibility to file campaign finance reports. As you know, reports are due eight days before each primary, preliminary or general election, 30 days after an election if it is a town or special election; and on January 20 of each year. A sample pre-filing letter is enclosed as Appendix "A."

2. If a candidate's report is not filed when due, written notification must be sent by the local election official to the candidate. If a ballot question committee or PAC's report is not filed when due, the notification must be sent to the committee's treasurer. The notice must indicate that the candidate or, in the case of a ballot question committee or PAC, the treasurer, has 10 days to file the required report or the candidate or treasurer will be referred to OCPF and will be subject to civil penalties.³ We recommend sending the notification by certified mail, return receipt requested, if possible. If the candidate or treasurer files a report within the 10-day period, the matter should not be referred to OCPF. A sample notification letter is enclosed as Appendix "B."

3. If the candidate or treasurer does not file within 10 days of receipt (the reason we recommend certified mail) as required, the local election official may then forward to OCPF copies of:

- (1) the pre-filing letter (if any),
- (2) the 10-day notification letter,
- (3) the certified mail receipt and return (if any),
- (4) the portion of the ballot containing the candidate's name or the ballot question, if applicable, and
- (5) the statement of organization of the political committee (Form CPF M101), if any, and
- (6) if a candidate is filing a January 20th report because the candidate's most recent report showed a balance or liabilities, a copy of the front page of the most recent report.

A sample referral letter is enclosed as Appendix "C."

Finally, it is very important to let OCPF know once a candidate or political committee who has been referred to OCPF has filed its report with you, since a penalty may not be assessed for any period after a report is filed, i.e., the clock stops! Such notification should be in writing. For your convenience, I have enclosed a sample letter as Appendix "D."

If you have any questions regarding this memorandum, or any other campaign finance matter please do not hesitate to contact this office. You may also refer to the office's website at www.mass.gov/ocpf.

³ If a treasurer of a municipal PAC or ballot question committee does not file a report when due, the notice should be sent to the treasurer of the committee. If the treasurer does not respond, the treasurer should be referred to OCPF.

APPENDIX "A"

Date of Notice: _____

Subject: Campaign Finance Report Due

Due Date: _____

Dear Candidate or Treasurer:

The campaign finance law, M.G.L. c. 55, requires you and all other candidates and committees in the upcoming municipal election to file a campaign disclosure report (Form CPF M102), a copy of which is enclosed. All reports must be filed with this office on or before _____ [Choose one: eight days before primary/preliminary/general/special election; 30 days after town or special election; Jan. 20, 20__].

Your report must disclose all campaign finance activity (all funds and in-kind contributions received, expenses paid and liabilities incurred) from the day following the ending date of the last report filed by you through _____ [ten days before due date or Dec. 31 for year-end report].

Please ensure that your report is complete before filing. Reports that do not conform to the law cannot be accepted by this office and must be returned to you for correction. Your report must include the candidate's and treasurer's original signatures in ink, and must be received by this office no later than the close of business on the due date above. By law, a postmark is not acceptable.

IMPORTANT: The campaign finance law mandates that a CIVIL PENALTY OF \$25 PER DAY UP TO \$5,000 be assessed personally against the candidate for any report that is filed after the due date and upon referral to the Office of Campaign and Political Finance. In addition, failure to file the report as required will subject you to referral to the Attorney General.

If you do not have a political committee organized on your behalf and you have not received any contributions (including from your own personal funds), made any expenditures or incurred any liabilities during this reporting period, and you do not have a previous campaign balance, you may, if you choose, simply sign an M102-0 affidavit form stating those facts. The M102-0 form is available at this office.

If you have any questions about your filing requirements or any other campaign finance matter, please do not hesitate to contact this office.

Sincerely,

[name of clerk/election official]

APPENDIX "B"

DATE

Candidate or Treasurer's Name
Street Address/P.O.Box
City, State ZIP

10-DAY FINAL NOTICE

Dear Candidate or Treasurer:

As a candidate for municipal office you were required to file a campaign finance report **(FORM CPF M102)** on or before [DATE REPORT DUE]. As of the date of this letter, our records indicate that this report has not yet been filed.

The campaign finance law, M.G.L. c. 55, requires me to notify the director of OCPF if your campaign finance report is not filed **within 10 days of receipt of this letter**. In addition, in accordance with section 3 of chapter 55, if the director of OCPF determines that a campaign finance report is late the law requires the director to assess a penalty of twenty-five dollars per day up to a maximum penalty of \$5,000 for each late report.

The penalty is assessed **personally** against the candidate of a candidate's committee or the treasurer of any other political committee such as a ballot question committee. The penalty may not be paid by the political committee.

If you do not file the above-referenced report **within 10 days of receipt of this letter** this office will notify the director of OCPF as required by law.

Sincerely,

[Name of election official]

Enclosure

APPENDIX "C"

DATE

Michael J. Sullivan, Director
Office of Campaign and Political Finance
One Ashburton Place - 4th Floor
Boston, MA 02108

Dear Mr. Sullivan:

In accordance with M.G.L. c. 55, §§ 28 and 29 I am referring to you the following candidates, treasurers of political committees or other persons who have failed to file campaign finance reports, statements or affidavits as required by law.

NAME	ADDRESS
_____	_____
_____	_____
_____	_____
_____	_____

For your information and records I have enclosed copies of the following materials (check as applicable):

- Pre-filing letter
- Notification letter (Required by § 28)
- Certified mail and return receipt
- Ballot containing the candidate's name, or ballot question, if applicable
- Committee statement of organization (Form CPF M101)
- Front page of the most recent report.

If you have any questions or require additional information please do not hesitate to contact me.

Sincerely,

[Name of election official]

Enclosures

APPENDIX "D"

DATE

Michael J. Sullivan, Director
Office of Campaign and Political Finance
One Ashburton Place - 4th Floor
Boston, MA 02108

Dear Mr. Sullivan:

The candidate or committee treasurer indicated below was reported to your office for failure to file certain campaign finance reports. The referral date and report due date has also been noted for your reference.

CANDIDATE NAME: _____

TREASURER NAME: _____

COMMITTEE NAME: _____

REFERRAL DATE: _____

REPORT DUE: _____

Please be advised that the report(s) of said candidate or treasurer was filed with this office on

Sincerely,

[Name of election official]