

ALASKA PUBLIC OFFICES COMMISSION
MINUTES
REGULAR COMMISSION MEETING
APRIL 23-24, 2009

A regular meeting of the Alaska Public Offices Commission came to order at 9:03 a.m. on Thursday, April 23, 2009. The meeting was held at 2221 E. Northern Lights Blvd. Rm. 128, Anchorage, Alaska.

Brackets [] indicate an agenda item number and that an information packet is included in the meeting binders.

Asterisk * indicates no information was included in the meeting binders.

In Attendance:

COMMISSION: Elizabeth Hickerson - Chair
Kathleen Frederick – Vice chair
Public Member Commissioner (Vacant)
Shirley Dean – Commissioner
Kathleen (Kate) Ballenger – Commissioner

Staff:

Holly R. Hill – Executive Director
Chris Ellingson – Assistant Director
Jerry Anderson - Associate Attorney
Jeff Berliner - Investigator
Patty Ware – Project Coordinator Juneau Office
Kim Wilson- Paralegal II
Vullnet Greva- Paralegal II
Joan Mize- Paralegal I (Juneau Branch) (Telecon)
Wynona Sampson- Administrative Clerk II
Maria Bulfa- Recording Secretary

Attendees:

Rachael Petro - Deputy Commissioner, Dept. of Admin.
Anand Dubey - Director Enterprise Technology, Dept. of Admin.
Staci Augustus - Procurement Specialist, Dept. of Admin.,
(Telecon)
Tom Dosik – Assistant Attorney General, Dept. of Law
Bill Milks – Assistant Attorney General, Dept. of Law
Scott Kendall, Tim McKeever – Attorneys, 09-01-CD Respondents
Renewable Resources Coalition Inc., Alaskans for Clean Water
Inc., and Robert Gillam
Matt Singer – Attorney, 09-01-CD Complainants: Pebble Ltd.
Partnership, Pebble Mines Corp., Resource Development Council
Kevin Clarkson – Attorney, 08-16 and 08-17-CD, Respondent AK
Republican Party
Paula Vrana – Assistant to Kevin Clarkson
Randy Ruedrich – Respondent, Chair, AK Republican Party

Gene Brokaw – Respondent, 08-16-CD
Witnesses, 08-16-CD: Paul Bauer, Debra Bauer, Robin Phillips,
Lester Parker.
Steve Colligan
Ken Jacobus
Thomas Amodio – Attorney, 08-16-CD, Complainant AK
Democratic Party (Telecon)
Sue Hull - Respondent 08-17-CD
Myrna Maynard
Ken Erickson – Witness, 08-17-CD

Public Comment Attendees:

Theresa Obermeyer
Paul Kendall
Phil Isley
Andree McLeod

ON RECORD 9:03 a.m.

Chair Hickerson introduced herself and the commission members present.

Approval of Agenda

The Commission approved the meeting agenda as revised.

Chair Hickerson and the commission members acknowledged Christina Ellingson's forthcoming retirement on April 30, 2009 and her dedication to the agency. Chair Hickerson presented the citation written by APOC staff and approved by the Legislature.

Approval of Minutes [1]

The commission approved February 11-12 and March 18 & 23, 2009 meeting minutes as revised.

Discussion of Mitigation Criteria [2]

Ms. Ware presented an updated draft of the proposed mitigation criteria that the Commission had previously discussed at the February Commission meeting.

Following the discussion, the Commission asked Ms. Ware to make recommended changes on the Mitigation Criteria and present the revision on April 24, 2009.

OFF RECORD 10:02 a.m.

BREAK

ON RECORD 10:15 a.m.

HEARING AGENDA

08-16-CD, Alaska Democratic Party v. Alaska Republican Party, Randy Ruedrich, Chair and Gene Brokaw

The Commission heard a Motion to Dismiss and a Motion to Expand Time

Attorney Tom Amodio appeared telephonically and gave testimony on behalf of **Alaska Democratic Party**. **The Commission granted the Request to Appear Telephonically.**

Kevin Clarkson, **Alaska Republican Party, Randy Ruedrich, Chair and Gene Brokaw**, appeared and gave testimony for the Motion to Dismiss and Motion to Expand Time.

Tom Dosik appeared on behalf of staff.

OFF RECORD 10:27 a.m.

Deliberation

ON RECORD 10:37 a.m.

The Commission denied the Motion to Dismiss because there are material facts at issue to be discussed by the Commission.

The Commission granted Motion to Expand Time for Hearing. The Commission asked both parties to propose a hearing schedule and present it for Commission approval.

Consent Agenda Request to Reduce or Waive Civil Penalty Assessments for the Late Lobbyist or Employer of Lobbyist Report [5]

After reviewing the consent agenda for late Lobbyist or Employer of Lobbyist Reports, Commissioners Hickerson, Dean and Ballenger all disclosed associations with the Alaska Women's Lobby. Commissioner Hickerson disclosed an affiliation with the Alaska Primary Care Associates and Commissioner Ballenger disclosed an association with AVEC. Commissioner Dean recused herself from hearing the matter related to Alaska Women's Lobby. Commissioners Hickerson and Ballenger determined that their affiliations would not affect their decision making.

The following Employer of Lobbyists and Lobbyists were not included in the consent agenda process, at the direction of the Commission:

- Cindy Spanyers
- AK Primary Care Association- Employer of lobbyist
- AK Village Electric Cooperative, Inc
- AK Women's Lobby
- Catholic Social Services

- City of Palmer
- City of Sand Point
- Kodiak Island Borough

Commissioner Frederick made a motion to adopt the remaining items on the consent agenda and accept the staff recommendation as presented.

Commissioner Dean seconded the motion.

The Commission voted 4 to 0 in favor of the motion.

OFF RECORD 10:46 a.m.
BREAK
ON RECORD 11:00 a.m.

HEARING AGENDA

08-17-CD David Valentine v. Alaska Republican Party, Randy Ruedrich, Chair, Sue Hull

Kevin Clarkson, attorney for Alaska Republican Party, and Randy Ruedrich appeared and spoke for the Respondents.

Tom Dosik appeared on behalf of Staff, and Jeff Berliner was sworn in to give testimony on the information contained in his investigation report.

Sue Hull appeared and was sworn in to give testimony on the allegations against her.

OFF RECORD 12:43 p.m.
LUNCH
ON RECORD 2:10 p.m.

Ms. Hill presented the Executive Director's report.

Procurement Specialist, Staci Augustus was present telephonically to answer questions regarding the FY10 budget.

Mr. Berliner presented the complaint status report.

The commission considered authorizing Ms. Hill to rewrite PCN 02-1316 to accommodate auditing duties in a position administering Public Official Financial Disclosure Laws.

Commissioner Dean made a motion to give Ms. Hill authority to rewrite PCN 02-1316 as proposed.

Commissioner Frederick seconded the motion.

The Commission voted 4 to 0 in favor of the motion.

Commissioner Ballenger made a motion to give Ms. Hill authority to use the FY09 operating funds for hiring a Hearing Officer and Contract Investigator and the remainder applied to the Insight Project.

Commissioner Frederick seconded the motion.

The Commission voted 4 to 0 in favor of the motion.

With no objection, the Commission approved the FY 10 commission meeting dates as proposed, with changes for August 20-21.

OFF RECORD 2:45 p.m.

BREAK

ON RECORD 2:48 p.m.

Ms. Ware, APOC Juneau Branch Administrator, was present in-person and gave presentation to the staff and commission members on the status of the Insight Project.

OFF RECORD 3:35 p.m.

BREAK

ON RECORD 3:40 p.m.

Consent Agenda Request to Reduce or Waive Civil Penalty Assessments for the Late Lobbyist or Employer of Lobbyist Report (cont.) [5]

RESPONDENT:	Cindy Spanyers
STATUS:	Lobbyist
LATE REPORT:	2008 August Special Session Monthly Report

MAXIMUM CIVIL PENALTY: **\$150**

Affiant's Statement of Mitigating Facts:

- Ms. Spanyers stated that she did not work the Special Session.
- She attempted to file the report in August prior to leaving on vacation and getting transferred to a separate duty station.
- She did not remember to go back into the system until APOC staff sent a reminder in October.
- The system does not allow you to pre-file reports and work ahead of deadlines.

Staff Analysis of Facts for Commission Review

- Ms. Spanyers is employed by APEA/AFT; 2008 was her second year as a lobbyist.
- APOC staff originally thought filers would be able to complete the August Special Session report earlier than September since the session only lasted until August 6. However, the system is set up not to allow filers to submit a report until the first day of the month in which it is due (September 1).
- Although affiant apparently tried to file the report in August and was not able to do so, staff recommended upholding the maximum civil penalty since there were no mitigating circumstances.

Staff Recommendation Based on Standard Mitigation Criteria

- Uphold the maximum civil penalty assessment of \$150.

During the discussion, the commission found under lobbying statute a lobbyist must submit a report on the first day of each month after the legislative special session (AS 24.45.081), and under the lobbyist regulation, a lobbyist must file a zero report.

Commissioner Frederick moved to accept staff recommendation to uphold the full penalty of \$150.

Chair Hickerson seconded the motion for the purpose of discussion.

REASONS FOR THE DECISION:

The Commission voted 3-1 to uphold the maximum civil penalty because there were no mitigating circumstances under the mitigation criteria for waiver or reduction of the penalty.

The Commission voted 3 to 1 in favor of the motion.

RESPONDENT:	AK Primary Care Association
STATUS:	Employer of Lobbyist: Retained Shelly Hughes, Jeffrey Logan, Regan Mattingly
LATE REPORT:	2008 2 nd and 3 rd Quarter Employer of Lobbyist report
MAXIMUM CIVIL PENALTY:	\$220 2nd Quarter Lobbyist Report \$390 3rd Quarter Lobbyist Report \$610 Total maximum for both reports

Commissioner Hickerson disclosed on the public record that Primary Care Association is one of her health care providers, and it will not affect her in making any decision regarding this matter.

Affiant's Statement of Mitigating Facts:

2nd Quarter Report:

- The filer completed the report by the deadline in the electronic filing system but did not understand that it was not filed with APOC until the final “**sign and submit**” button was pushed. The Report was sitting in the “**pending forms**” folder rather than “**submitted forms.**”
- Filer learned more about the electronic filing process at the APOC lobbyist training on 1/8/09, including the need to do the final “**submit**” for filing.

3rd Quarter Report:

- Filer needed to report expenditures for a September 8, 2008 legislative reception on the employer report. The hotel bill sent by the vendor, however, included charges for another non-lobbying related function and membership meeting, so filer was unable to determine the cost of the lobbying related event needed for the report.
- Filer waited to file her report until she had the itemized bill from the vendor but this was not received until after the filing deadline so she was unable to file timely.
- In future cases of this kind, filer will file the report timely using an estimated amount and then submit an amendment if necessary once the itemized bill arrives.

Staff Analysis of Facts for Commission Review

2nd Quarter Report:

- This was a common error/misunderstanding on the part of numerous filers in Insight for much of 2008 and for new Insight filers in 2009. It is not immediately apparent when completing the form to continue clicking “next” to ensure that the form is “submitted.” Because of this common confusion, this was addressed explicitly in this year’s lobbyist training during the Insight filing discussion.
- Under mitigation criteria, filer qualifies for 100% reduction of the maximum penalty due to confirmed technical issues: Filer misunderstanding between completion of a report in the electronic system and how to ensure the completed report was “submitted” or electronically signed. This standard was used for multiple appeals heard at the February commission meeting with the same circumstances.

3rd Quarter Report:

- Filer appears to have delayed the filing of the 3rd quarter report in an attempt to be thorough and accurate. Although the affiant had received a bill from the vendor, the bill apparently included charges for another non-lobbying related function and membership meeting, so the filer was unable to determine the cost of the lobbying related event for the employer report, Schedule B.
- Filer did not contact APOC to ask whether she should file an estimated amount or file late. She did discuss this with Ms. Ware during the lobbyist training and was advised to report the information she had rather than file a late report even if this meant filing an amendment later.

Staff's Recommendation Based on Standard Mitigation Criteria

Criteria for a 100% waiver:

- Staff error confirmed technical issues on the 2nd quarter report.

Criteria for 50% reduction of the maximum civil penalty:

- Staff found unique circumstances on the 3rd quarter report: affiant had not received the itemized bill from vendor needed to complete schedule B.

Commissioner Frederick made a motion to uphold the maximum civil penalty of the 3rd quarter report of \$390.

Commissioner Ballenger seconded the motion.

REASONS FOR THE DECISION:

2nd Quarter Report: The Commission voted 4-0 to waive the 2nd Quarter assessed civil penalty for the following reasons:

- Staff error (confirmed technical issues): Filer misunderstanding between completion of a report in the electronic system and how to ensure the completed report was “submitted” or electronically signed.

3rd Quarter Report: The Commission voted 4-0 to uphold the maximum civil penalty of \$390 for the 3rd Quarter assessed civil penalty for the following reasons:

- Does not meet any Mitigation Criteria for waiver or reduction.
- Filer should have filed report and amended later as necessary.

The Commission voted 4 to 0 in favor of the motion.

RESPONDENT:	Alaska Village Electric Cooperative Inc., (AVEC)
STATUS:	Employer of Lobbyist: Retained Lawrence Markley
LATE REPORT:	2008 1 st Quarter Employer Lobbyist of Report
MAXIMUM CIVIL PENALTY:	\$1,830

Commissioner Ballenger stated for the record that she was once a board member of the Kodiak Electric Association and knows the participating individual members of AVEC. She did not believe that would affect her decision making.

Affiant’s Statement of Mitigating Facts:

- The 1st Quarter was to have been electronically filed. Between lobbyist Larry Markley and Meera Kohler, the signer of the report and CEO of AVEC, and their travel schedule, adding the person who did the report and getting a new electronic signature could not be done.
- APOC approved the filer faxing the report to the Juneau office on April 29, 2008.
- The 2nd Quarter report, which had no expenses, was filed by fax on 7/24/08, with approval because AVEC was in the middle of a computer conversion, Ms. Kohler was traveling, and Mr. Markley could not get on the new system.
- On October 30, 2008, he was finally able to file electronically for the 3rd Quarter report and at that time, the system made him re-file all reports electronically.
- AVEC is a rural electric cooperative that is owned by and services its member in remote Alaska villages. The cooperative has been incorporated since 1967 and has never been late filling Employer of Lobbyist reports. He requested a waiver.

Staff Analysis of Facts for Commission Review

- There is no paper 1st Quarter Employer of Lobbyist report in the file. The faxed paper copy of the 2nd Quarter report was received on 04/27/08.
- APOC staff called Ms. Hanson with AVEC to see if they retained a copy of the 1st Quarter report that they faxed or a fax confirmation sheet.
- It is possible there could have been a potential technical error with the APOC fax machine or a filing error on part of APOC staff. APOC staff did not start keeping detailed phone logs or fax activity reports until July 2008.
- Given the excellent filing history of the affiant, it appears unlikely that they simply did not file the report, particularly since they were timely with the other quarters of this year. Additionally, the paper copy of the 1st quarter report provided by AVEC is signed and dated 4/29/09, lending further support to the probability the report was completed timely, but did not reach APOC due to a potential technical error with the fax. Under mitigation criteria, staff recommends a 50% reduction due to potential technical error.

Staff's Recommendation Based on Standard Mitigation Criteria

- Based on the standard mitigation criteria, staff recommends that the civil penalty be reduced by 50% to \$915, due to potential technical error at APOC.

Commissioner Dean made a motion to accept the staff recommendation of 50% reduction of the assessed civil penalty.

Commissioner Frederick seconded the motion.

During the discussion, the commission agreed that there was a confirmed technical issue when the affiant was sending the report to APOC.

Commissioner Dean withdrew her motion.

Commissioner Frederick withdrew her second.

Commissioner Frederick made a motion to waive the assessed civil penalty, due to a malfunction of fax machine.

Commissioner Ballenger seconded the motion.

The commission voted 4-0 to waive the civil penalties for the 2008 1st Quarter Employer of Lobbyist Report.

REASONS FOR THE DECISION:

- Staff Error – Confirmed technical difficulty.
- Report filed timely, but due to malfunction of fax machine was not received.

The Commission voted 4 to 0 in favor of the motion.

RESPONDENT:	Alaska Women’s Lobby
STATUS:	Employer of Lobbyist: Retained Caren Robinson Lobbyist
LATE REPORT:	2007 4 th Quarter Employer Lobbyist Report
MAXIMUM CIVIL PENALTY:	\$3,260

Commissioner Dean recused herself from participation because she has close association with Caren Robinson, lobbyist for AWL and Ms. Morton, volunteer for Respondent.

Chair Hickerson and Commissioner Ballenger both disclosed associations with the Alaska Women’s Lobby but did not feel this would affect their decision making.

Affiant’s Statement of Mitigating Facts:

- Affiant asserts the report was hand delivered to APOC by Ms. Morton during January 2008 and gave “the woman working at the desk immediately to the left after you enter the door.” Filer did not ask for a receipt since the report was timely filed and she did not think this was necessary.
- The report was a zero report.
- Ms. Morton was not aware that the Women’s Lobby post office box was not being monitored and apologized for the delay in responding to the mail notices that the report had not been filed. However, Ms. Morton filed her 2008 reports electronically and spoke to Ms. Ware directly on at least 3 occasions in spring of 2008, in addition to receiving APOC email reminders. Ms. Morton wonders why she was not informed of the missing report through one of these avenues of communications.

- Filer believes the report may have been misplaced or possibly misfiled. She notes APOC had changes in office staff, a busy period with the start of legislative session, transition to electronic filing. She asserts the APOC staff who received the report took it back to the filing cabinets and put it in a drawer.
- As soon as Ms. Morton heard about the missing report (from Ms. Robinson, not through APOC), she immediately filed the report.
- The Alaska Women’s Lobby has no problem with the public having knowledge about and access to their work. The Women’s Lobby is a volunteer group of individuals who raise funds to advance the right of women and children, and it would be a hardship on the employer to raise additional fund to pay this penalty.

Staff Analysis of Facts for Commission Review

- APOC has no record of the report having been delivered or filed. There is no paper copy in the 2007-2008 employer file and staff checked back to the 2004 employer files to ensure the report was not misfiled. The office did archive several years’ worth of lobbyist and employer files in the spring of 2008 so it is possible the report was inadvertently placed in the wrong year. Affiant apparently did not keep a copy of the report so there is no way to independently verify its completion.
- It is unclear which staff member may have been given the report. The Juneau office did have a nonpermanent clerk helping in the office sitting to the immediate left of the door but she did not start until February 15, 2008 which is later than the filer asserts the report was delivered. It is possible the report was handed to the administrative assistant in the office at the time, but she no longer works at APOC.
- APOC mailed two delinquency notices, one on 3/4/08 and the second on 8/21/08. There was no response to the 1st notice. The 8/21/08 second notice was returned to APOC with a stamp that read “return to sender - unable to forward” but this was not received until 12/16/08. Affiant states the key to the post office box is rotated among group members and during the period of time when notices were mailed, the box was not being monitored or checked for mail.

Staff’s Recommendation Based on Standard Mitigation Criteria

- Based on the standard mitigation criteria, staff recommended that the civil penalty be reduced by 50% to \$1,630, due to potential technical error at APOC.

Commissioner Frederick moved to accept staff recommendations and assess 50% of \$3,260 to a \$1,630 civil penalty for filing late on the 2007 4th Quarter report.

Commissioner Ballenger seconded the motion.

REASONS FOR THE DECISION:

The Commission voted 3-0 to reduce by 50% the assessed civil penalty for the following reasons:

- Potential technical error at APOC (possible staff loss or misfiling of the report).

The Commission voted 3 to 0 in favor of the motion.

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RESPONDENT: **Kodiak Island Borough**

STATUS: Lobbyist and Employer of Lobbyist:
Retained Mark Hickey Lobbyist

LATE REPORT: 2008 2nd Quarter Lobbyist Report

MAXIMUM CIVIL PENALTY: **\$120**

Commissioner Ballenger stated for the record that she is part of the Kodiak Island Borough, knows the principals involved and recused herself from participation.

Affiant's Statement of Mitigating Facts:

- Unique circumstances surrounded the tardiness in mailing the July 2008 APOC report by 12 days. The Kodiak Island Borough Clerk's office experienced a higher level of office activity surrounding the administration of two state elections in August and November and a municipal election in October. While elections are a routine responsibility in the Clerk's office, three elections with record participation, and local issues created "unique" challenges.
- Kodiak Island Borough filing history shows deadline requirements are taken seriously with regard to accuracy and timeliness. Additional measures have been instituted for future reporting under any circumstances.

Staff Analysis of Facts for Commission Review

- Filer is an experienced filer and has an excellent reporting history.
- APOC staff does recognize that the election cycle was hectic for 2008, but cannot agree that this should be considered a "unique circumstance" for not filing the 2nd Quarter Employer of Lobbyist report. This more appropriately falls under the list of reasons listed for upholding the civil penalty at the maximum amount. For this reason, staff recommends the penalty be upheld.

Staff's Recommendation Based on Standard Mitigation Criteria

- Based on the standard mitigation criteria, staff recommends that the civil penalty be upheld at the assessed amount of \$120. Affiant unable to file due to a busy schedule.

Commissioner Frederick made a motion to accept staff's recommendation and to assess the full civil penalty of \$120.

Commissioner Dean seconded the motion.

REASONS FOR THE DECISION:

The Commission voted 3-0 to uphold the maximum assessed civil penalty because the matter did not meet mitigation criteria for a waiver or reduction of the penalty.

The Commission voted 3 to 0 in favor of the motion.

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Public Comment Period

Appearances by: Phil Isley, Paul Kendall, Theresa Obermeyer, Andree McCleod

Mr. Isley ran in the 2009 Anchorage Mayoral Election, presented the Commission with an e-mail that he previously sent via APOC Executive Director Hill to the Governor relating to group/organization social events for the Anchorage Mayoral candidates.

His concerns were as follows:

- Why do only the top six candidates get special treatment from media organizations? Why do you allow somebody to run under a \$5,000 exemption if the media does not even recognize you as a candidate unless you have \$100,000 in campaign income?
- He received an invitation to attend one event where he was told he could observe because only the top six candidates – the top moneymakers – were allowed to speak.
- Another concern is polling calls. He received 3 polling calls and asking who he would be voting for out of the top three candidates.

The commission advised Mr. Isley that some of the issues are outside the commission jurisdiction. The commission suggested Mr. Isley contact APOC via email with his concerns and that he may request an advisory opinion.

Mr. Kendall, a candidate in the 2009 Anchorage Mayoral Election, presented the Commission with similar concerns over the candidates being treated differently depending on how much money they raise.

Ms. Obermeyer asked why the Alaska Permanent Fund Board members' Public Official Financial Disclosure are not published on the APOC Web site.

Ms. McLeod raised questions about the governor's disclosures:

- Would you ask Gov. Palin to submit the appropriate amendments to her report instead of waiting for a complaint?
- Why did Gov. Palin not completely disclose gifts she received last year? There have been reports of hundreds of thousands of dollars worth of clothes, hair and make-up services that she and the family received yet

they are missing from the report, although the travel costs are included. On the campaign trail, Gov. Palin was still in the role of governor and must abide by Alaska financial disclosure laws, and APOC should request a full accounting of those clothes, hair and make-up services.

- Even if they were given away, gifts that she and her family did receive must be accounted for in the report. Why are gifts missing from Gov. Palin's APOC disclosure report?
- There have been reports that Bristol Palin's fiancé Levi Johnston lived at the Palin household in 2008.
- Why is the dollar amount of gifts and/or discounts missing from Todd Palin's list of gifts received from his Iron Dog sponsors?
- Why is the dollar amount missing from Gov. Palin's report of legal fee debts? Should not that debt be more detailed and be listed case by case?
- There is talk of a legal trust fund forming for Gov. Palin, her family and state officials. There should be a law addressing the legality of such a coordinated fund for public officials. There is the potential that 500,000 people on Gov. Palin's Facebook site could contribute an average of \$100 toward such a fund, totaling \$50 million.

Ms. McLeod said she does not now intend to file a complaint over these issues.

OFF RECORD 5:10 p.m.

Break

ON RECORD 5:15 p.m.

RESPONDENT:	Catholic Social Services
STATUS:	Employer of Lobbyist Report
LATE REPORT:	2008 1 st Quarter Lobbyist Report
MAXIMUM CIVIL PENALTY:	\$220

Affiant's Statement of Mitigating Facts:

- In February of 2008 I attended the Key Campaign for the first time.
- When Respondent got back to the office, things were crazy and were short-handed.
- Respondent forgot to file the report when it was due, and Respondent apologizes.

Staff Analysis of Facts for Commission Review

- 2008 was the first year that an Employer/Reimbursing Entity of a representational lobbyist was provided with a special registration form to file for group and legislative fly-ins. This form indicated that the employer/reimbursing entity needed to file reports with APOC under AS 24.45.061, 2AAC 50.511 and 2 AAC 50.512.

- Staff worked from the end of April to the beginning of May 2008 to organize and file forms submitted in February and March 2008. Reports had been received by APOC from some organizations, but were stacked in a basket labeled “To Be Filed-Misc.”
- An e-mail was sent on May 5, 2008 to those entities that APOC staff did not find a report for while organizing and filing forms and reports. On May 22, 2008 a second e-mail was sent to the entities that APOC had not received reports from indicating that reports were due immediately to avoid additional penalties.
- There was a lack of understanding/training of new process for representational lobbyist registration and what “reports” were required, especially for first time filers.
- Based on the lack of reports filed for representational employers in prior years and on significant feedback received at last year’s first in-person lobbyist training, it is staff’s observation that representational rules were enforced in prior years.
- Last year APOC implemented a “group registration form” for representational lobbyists coming to Juneau for legislative fly-ins. While this eased the burden for those entities already familiar with the process, some filers misinterpreted this as the only form required, omitting the employer expense reimbursement report.
- Even though Ms. O’Donnell admits that she forgot to file, staff recommends a 100% waiver under the mitigation criteria of staff error – change of reporting procedure without notifying filers. The same criteria for representational employers was used at the February 2009 Commission.

Staff’s Recommendation Based on Standard Mitigation Criteria

- Based on the application standard mitigation criteria, staff recommends 100% waiver due to staff error – change of reporting procedure without notifying filers.

Commissioner Dean made a motion to adopt staff’s recommendation of 100% waiver of the assessed civil penalty.

Commissioner Ballenger seconded the motion.

REASONS FOR THE DECISION:

- Staff error – Change of reporting procedure without notifying filers.

The Commission voted 4 to 0 in favor of the motion.

RESPONDENT:

City of Palmer

STATUS:

Lobbyist and Employer of Lobbyist:
Retained Lobbyist Ashley Reed

LATE REPORT:

2008 1st/2nd Quarter Lobbyist Report

MAXIMUM CIVIL PENALTY:

\$960 1st Quarter Report
\$ 40 2nd Quarter Report

\$1,000 Total civil penalty

Affiant's Statement of Mitigating Facts:

1st Quarter/2nd Quarter Report (Same Statement for both):

- The city originally hired Mr. Reed not to lobby but to track certain bills and notify the city as necessary, then the city manager would speak with legislators on the issues.
- The city manager changed the contract with Mr. Reed in the middle of the legislative session and asked him to lobby for the City on one piece of legislation.
- The city manager thought that city governments were exempt from filing APOC reports. When notified of the requirement to file, the city contacted APOC to set up an electronic filing system account to facilitate future timely filings.

Staff Analysis of Facts for Commission Review

1st and 2nd Quarter Report:

- APOC sent out form letters to filers in late June and early July 2008 reminding them of the need to set up electronic accounts in the Insight reporting system as part of the transition from paper to electronic filing. Letters were sent based on two criteria: 1) those who had filed paper reports for the first part of the calendar year and 2) those who had an APOC record of a lobbyist registration.
- There was no hard paper copy of the letter that was sent to the city of Palmer but the filer's affidavit states the city was notified that it needed to file. APOC has a list of all labels generated for the form letter, including one for Palmer.
- City representative Dean Baugh contacted APOC 7/29/08 in response to the letter. Staff phone log reflects a technical assistance session of 30 minutes helping the filer set up an electronic Insight account and explaining the electronic registration process.
- Staff emailed the lobbyist and lobbyist's assistant that same day urging them to create the electronic lobbyist registration so this could be electronically executed and the employer would file his reports.
- Under mitigation criteria, filer qualifies for a 50% reduction of the maximum penalty (for both reports) due to being a new filer.
- Staff further recommends that the employer not be penalized for anything later than 7/31 since the filer was ready to complete the report the day he talked to staff (7/31) but was unable to do so until the lobbyist submitted his registration in Insight (8/4). This would result in a reduction of \$60 in addition to 50% reduction criteria for the 1st Quarter report and would result in a waiver for the 2nd Quarter report, since filing it on 7/31 is by the filing deadline.

Staff's Recommendation Based on Standard Mitigation Criteria

- Based on the application standard mitigation criteria, staff recommends 100% waiver due to staff error/confirmed technical issues on the 2nd quarter report.
- Based on the application standard mitigation criteria, staff recommends 50% reduction due to inexperience filer for the 1st quarter report.

Commissioner Ballenger made a motion to adopt staff's recommendation, a 100% waiver of the 2nd quarter report and 50% reduction of the 1st quarter report and an extra \$60 reduction of the assessed civil penalty.

Commissioner Frederick seconded the motion.

REASONS FOR THE DECISION:

The Commission voted 4-0 to reduce by 50% the 1st Quarter assessed civil penalty for the following reasons:

- Inexperienced filer
- Reduced an extra \$60 due to filer inability to submit report for lack of lobbyist registration being electronically submitted in Insight.

The Commission voted 4-0 to waive the 2nd Quarter assessed civil penalty for the following reasons:

- Staff error/ confirmed technical issues with Insight.

The Commission voted 4 to 0 in favor of the motion.

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RESPONDENT:	City of Sand Point
STATUS:	Employer of Lobbyist Report: Retained Mark Hickey as Lobbyist
LATE REPORT:	2008 2 nd Quarter Report
MAXIMUM CIVIL PENALTY:	\$680 2008 2nd Quarter Report

Affiant's Statement of Mitigating Facts:

- Respondent has no excuse for late filing except to explain that the last contractual payment to the lobbyist was May 1. Because Respondent had no further lobbying activity after that date, Respondent simply forgot to calendar the required quarterly APOC report.
- Respondent discovered this when they filed the 3rd Quarter report in early October; both reports were sent on the same day.
- It has been the practice of APOC to send out a courtesy reminder via email at the end of each quarter in order to keep this oversight from happening. Has this courtesy been dropped? And if it has, one would think that APOC would notify the filer that it had not submitted reports in a timely manner in order that these penalties do not grow to such punitive amounts. The City of Sand Point found and immediately corrected the oversight without any prompting from APOC.

- While the Insight program is a quick and easy method to file, there are several recurring issues/problems, including totals for Schedule B reports not carrying over to subsequent reports, difficulty with the online training course, inability to print Insight reports without information being cut off and periods of inability to file reports due to glitches in the system.

Staff Analysis of Facts for Commission Review

- APOC did not have report capabilities in Insight to determine delinquencies or late reports until late 2008. The majority of notices to late filers were mailed in December and early January based on the Insight delinquency reports.
- Filer is correct in the APOC staff has been sending courtesy reminders via email to lobbyists and employers reminding them of deadlines. An email was sent to lobbyists on July 3, 2008 reminding them to file June Special Session and 2nd Quarter reports, but apparently staff did not send an email to employers of lobbyists reminding them of the 2nd Quarter report due date. This was an oversight and not discovered until staff reviewed information to respond to this filer's appeal.
- Under mitigation criteria this qualified for a 100% waiver due to staff error. Staff did not follow normal protocol and email a reminder to filers. Lobbyists received a courtesy reminder but employers did not, resulting in inequitable treatment. For this reason, staff recommends a waiver of penalty.

Staff's Recommendation Based on Standard Mitigation Criteria

- Based on the application of standard mitigation criteria, staff recommends 100% waiver due to staff error, emailing reminders to some filers and not others.

Commissioner Dean moved to adopt staff's recommendation of 100% waiver due to staff error.

Commissioner Ballenger seconded the motion.

REASONS FOR THE DECISION:

- Staff error, emailing courtesy reminders to some filers and not others, resulting in inequitable treatment.

The Commission voted 4 to 0 in favor of the motion.

Commissioner Dean made a motion to recess.

Commissioner Ballenger seconded the motion.

The Commission voted 4 to 0 in favor of the motion.

The commission recessed until Friday, April 24, 2009 at 9:00 am.

OFF RECORD 5:45 p.m.