**Section 125.425 Civil Penalty Assessments**

a) A report required to be filed within a specified time pursuant to Code Section 9‑10 is delinquent if not received by the Board on or before the due date. Reports received via U.S. mail are deemed received by the Board as of the date stamped by Board staff on the documents submitted.

b) If a report is or continues to be delinquent, it is subject to a civil penalty as set out in subsection (d).

c) When a report required by Code Section 9-10(b) is delinquent, the Board will provide the committee a notice of delinquency. For all violations of Code Section 9-10, within 365 days of the violation, the Board will send by first class mail a notice of violation to the chair and the treasurer of each delinquent political committee with an order assessing a civil penalty calculated in accord with subsection (d). The notice of violation and order shall also be sent by certified mail to that committee's address. The notice of violation shall state that the Board has issued a civil penalty that will be final unless the committee shows cause during an appeal in accord with subsection (g) why the penalty should not be assessed.

d) The Board will calculate the civil penalty for delinquent filings under Code Section 9-10 and subsection (c) of this Section as follows:

1) If the committee's total receipts, total expenditures, and balance remaining at the end of the reporting period for which the delinquent report was due are each $10,000 or less, the political committee will be assessed a fine of $10 per business day for the first violation, $25 per business day for the second violation, $50 per business day for the third violation, and $75 per business day for the fourth and each subsequent violation, to a maximum of $250 for the first violation, $500 for the second violation, $1,000 for the third violation, and $1,500 for the fourth and each subsequent violation.

2) If the committee's total receipts, total expenditures, or balance remaining at the end of the reporting period for which the delinquent report was due exceeds $10,000, the political committee will be assessed a fine of $20 per business day for the first violation, $50 per business day for the second violation, $100 per business day for the third violation, and $150 for the fourth and each subsequent violation, to a maximum of $500 for the first violation, $1,000 for the second violation, $2,000 for the third violation, and $3,000 for the fourth and each subsequent violation.

3) For the purposes of subsection (d)(1)-(2):

A) calculation of a committee's total receipts shall include in-kind contributions in addition to monetary contributions; and

B) calculation of a committee's balance remaining at the end of the reporting period shall include the value of any investments held by the committee.

4) If the delinquent filing is a quarterly report, the Board will assess a civil penalty even if a committee has no receipts or expenditures to disclose on the quarterly report. No civil penalty shall be assessed against a committee if the quarterly report is mailed and postmarked at least 3 days prior to the filing deadline unless the committee has been previously notified by the Board it must file its reports electronically under Code Section 9-28.

5) If the report at issue is a Schedule A-1 (report of contributions of $1,000 or more), a civil penalty for a violation of Code Section 9-10(c) may not exceed the amount of the contribution.

6) If the report at issue is a Schedule B-1 (report of independent expenditures of $1,000 or more), a civil penalty for a violation of Code Section 9-10(e) may not exceed the amount of the independent expenditure.

e) The Board will calculate other civil penalties as follows:

1) If the delinquently filed report is a Statement of Organization (Form D-1), the Board will assess a civil penalty of $50 for each business day that the report remains unfiled after its due date. The penalties shall not exceed $5,000.

2) If a committee receives a contribution or transfer in violation of Code Section 9-8.5, the civil penalty will be calculated as 150% of the amount of the contribution or transfer that exceeded the contribution limitations, except that if in the Board's opinion the violation was committed inadvertently or negligently, the civil penalty will be reduced to 10% of the calculated civil penalty for a first violation and 50% of the calculated civil penalty for a second violation.

3) If an independent expenditure committee makes a contribution in violation of Code Section 9-8.6(d), the Board will assess a fine equal to the amount of any contributions received in excess of the contribution limits for that particular contributor, during the two years preceding the date of the first contribution made in violation of the Act during a given quarterly reporting period.

f) In addition to the civil penalties provided for in Code Section 9-10(g), a committee or organization required to report under the Election Code may, for violations of provisions of Article 9 of the Election Code other than delinquent filing, be assessed a civil penalty under the provisions of Code Section 9-23 and this subsection (f). The Board will calculate civil penalties in accordance with subsections (d) and (e). A committee that violates both Code Section 9-10 and an order of the Board may be liable for separate penalties for each violation. In cases of alleged violation of an order of the Board brought under the provisions of Code Section 9-23, the Board will mail to each committee or organization alleged to be in violation of a Board order notice of a proposed civil penalty calculated in accord with the terms of this Part, which proposed penalty shall become effective without further proceedings unless the committee or organization receiving the notice appeals the proposed civil penalty.

g) Appeals. A political committee assessed a civil penalty under Code Sections 9-3, 9-8.15, 9-8.5, 9-8.6, 9-8.10, or 9-10 or that has received notice of a proposed civil penalty for violation of a Board order under Code Section 9-23 may:

1) submit, within 30 calendar days after the mailing of the assessment notice, a request for waiver of appearance and either a written notice of appeal, if submitted by an attorney for the committee, or an appeal affidavit, if submitted by the candidate, chair, or treasurer of the committee, in the form provided by the Board. The notice of appeal or appeal affidavit must state with specificity the reasons for the late filing or violation of the Board order, as the case may be, to show why a civil penalty should not be assessed. Any basis for appeal not stated in the notice of appeal or appeal affidavit may be deemed waived. An appeal affidavit shall either be in writing, made under oath and upon penalty of perjury sworn to before a notary public or any person authorized to administer oaths, or be made pursuant to Section 1-109 of the Code of Civil Procedure [735 ILCS 5]. A Committee submitting a waiver of appearance must submit all evidence supporting its appeal with its notice of appeal or appeal affidavit; or

2) submit, within 30 calendar days after the mailing of the assessment notice, a request for hearing and either a written notice of appeal, if submitted by an attorney for the committee, or an appeal affidavit, if submitted by the candidate, chair, or treasurer of the committee, in the form provided by the Board, stating with specificity the reasons for the late filing or violation of the Board order, as the case may be, to show why a civil penalty should not be assessed. Any basis for appeal not stated in the notice of appeal or appeal affidavit may be deemed waived. An appeal affidavit shall either be in writing, made under oath and upon penalty of perjury sworn to before a notary public or any person authorized to administer oaths, or be made pursuant to Section 1-109 of the Code of Civil Procedure; or

3) pay, within 30 days after the mailing of the assessment notice, the civil penalty assessed. If notice of appeal or appeal affidavit is filed, with or without waiver of appearance, the civil penalty shall not be due until the appeal is determined by the Board.

4) to be considered timely, an appeal must either be received by the Board within 30 calendar days after the date on the assessment notice or mailed to the Board and postmarked within 30 calendar days after the date on the assessment notice. If the envelope containing an appeal is received after the 30 day period and lacks a postmark, or if the postmark is illegible, the appeal shall not be considered timely filed and will be returned to the sender, if possible.

h) An appeal filed pursuant to subsection (g)(1) or (g)(2) by the political committee shall be assigned to a Hearing Officer, who will provide notice and a hearing to the committee, if requested, or if the Hearing Officer determines a hearing is necessary to understand the applicable facts. A Hearing Officer may seek clarification or supporting evidence from the committee regarding the basis for appeal, provided such clarification or evidence is limited and specific to the scope of the defense contained within the notice of appeal or appeal affidavit. Upon the conclusion of the hearing, the Hearing Officer shall issue a written report that includes findings of fact, conclusions of law, and a recommendation whether or not to grant the appeal. If the committee waived its right to hearing, and no hearing was held, the Hearing Officer's report, findings of fact, conclusions of law, and recommendation shall be based solely upon the notice of appeal or appeal affidavit and any supplementary evidence simultaneously submitted with it.

i) The standard of review for an appeal filed pursuant to subsection (g)(1) or (g)(2) is whether the committee has demonstrated by a preponderance of the evidence that the assessment was in error. Error may be shown by proving the committee did not violate Article 9, the Board's assessment was incorrect, an affirmative defense is applicable, or other meritorious basis exists to grant the appeal.

j) Post-Appeal Hearing Defense or Evidence

1) Any defense and any accompanying evidence upon which the appeal is based that is presented to the Board following an appeal hearing, either by personal appearance before or a written appeal submitted to a Hearing Officer, shall be limited to the defense and evidence that was presented at the appeal hearing. The defense and evidence shall include, but not be limited to, interpretation of statute and rules, consideration of written or oral testimony tendered at the appeal hearing and consideration of documentary evidence tendered at the hearing.

2) Any defense and accompanying evidence that was not known, and could not reasonably be expected to have been known, by the respondent at the time of the appeal hearing may be presented to the Board. The Board may, upon motion or on its own motion, remand the defense and evidence back to the original Hearing Officer, or may submit it to a new Hearing Officer for consideration. If an issue exists as to the applicability of this exception, the Board will rule upon the issue immediately after presentation of the disputed defense and evidence. The respondent in the case shall be given an opportunity to demonstrate to the Board that the disputed defense and evidence was not known at the time of the appeal hearing and the respondent should not have been expected to have been aware of the defense and evidence at the time of the appeal hearing.

3) Nothing in this Part shall be construed to prevent the respondent from being represented by counsel at the presentation before the Board when the counsel did not represent the respondent at the appeal hearing. Counsel shall be licensed to practice law in the State of Illinois as required by Section 125.60.

k) In addition to deciding whether to grant the appeal using the standard in subsection (i), the Board will consider the following factors in determining whether to waive or reduce a fine:

1) Whether the committee made an attempt to disclose the contribution, and any attempts made to correct the violation;

2) Whether the violation was inadvertent, knowing, or intentional;

3) Whether the violation is attributed to a clerical or computer error;

4) The amount of the contribution or total contributions in the report;

5) Whether the violation arose from a discrepancy between the date the contribution was reported and the date the contribution was received by a political committee;

6) The number of days the report was submitted late; and

7) Any prior violations, including past violations of any committee composed of the one or more of the same officers, or for the same purpose or for the support of the candidacy of the same person, irrespective of office, as the committee currently being assessed a civil penalty.

l) If a political committee or organization required to report under the provisions of Article 9 that is subject to a civil penalty fails, within the time required, to make payment in full of the assessed civil penalty, then the Board will work with the Attorney General to proceed with efforts at collection pursuant to the Illinois State Collection Act of 1986 [30 ILCS 210]. The Board will not hear an appeal of a civil penalty imposed for delinquent filing or the violation of a Board order if neither a request for waiver of appearance and notice of appeal or appeal affidavit nor a request for hearing and notice of appeal or appeal affidavit is filed within the time required. If notice of appeal or appeal affidavit is received and is not accompanied by either a request for hearing or waiver of appearance, a hearing may be scheduled at the Hearing Officer's discretion.

m) Notwithstanding any provision of this Section to the contrary, the Board will stay the enforcement of any civil penalty in cases of first time violation of a filing deadline. If a committee that has not violated Code Section 9-10 in more than two years is assessed a penalty for multiple Schedule A-1 violations that the committee confirms were part of a single deposit, the violations may be stayed. The stay shall continue only so long as no subsequent violations of Article 9 or of Board orders occur. Violation of Article 9 or a Board order will cause the civil penalty otherwise stayed to become due and may expose the committee or organization to further liability in accord with this Section.

n) For the purpose of this Section, second and subsequent violations are deemed to occur with reference to the time the first violation occurred, not when a hearing, if any is required, concerning the first violation is held. The Board may consider two or more allegations of violations at the same hearing, treating the first as an initial violation and the remaining as subsequent violations, imposing appropriate civil penalties for each. For the purposes of this Section, a violation is considered to have occurred on the first day a report is delinquent (see subsection (a)).

o) Notwithstanding any other provision of this Section:

1) if an active political committee or organization violates Code Section 9-10 no more than once during a two year period, it shall, after two years have lapsed following the violation date, be considered as never having violated Code Section 9-10. For a single violation, the two year period begins to run with the date of the violation. If an active political committee or organization is assessed more than one civil penalty and has paid all assessed civil penalties, it shall be considered for assessment purposes as not having violated Code Section 9-10 if it is assessed no other civil penalty during a two year period following receipt of payment by the Board;

2) if a committee or organization is assessed a single penalty under Code Section 9-10 and subsequently files a final report pursuant to Code Section 9-5 or has filed a final report pursuant to Code Section 9-5 prior to the assessment, during the two year period beginning with the date of the violation, any successor committee or organization shall be considered, for assessment purposes, as not having violated Code Section 9-10 if it is assessed no other penalty;

3) if a committee or organization is assessed more than one penalty under Code Section 9-10 and subsequently files a final report pursuant to Code Section 9-5 or has filed a final report pursuant to Code Section 9-5 prior to the assessment, and the political committee or organization has not paid the civil penalties, any successor committee or organization that subsequently pays all civil penalties due shall be considered as never having violated Code Section 9-10 if, for two years from the date of receipt of payment by the Board, the successor committee or organization is assessed no other civil penalty;

4) if a committee or organization is assessed more than one penalty under Code Section 9-10 and subsequently files a final report pursuant to Code Section 9-5 or has filed a final report pursuant to Code Section 9-5 prior to the assessment, and the political committee or organization has not paid the civil penalties, the two year period shall begin with the date of the final Board order, unless the final report is filed subsequent to the date of the final Board order, in which case the two year period shall begin with the date the final report is received by the Board. If no successor committee is formed during that period, the committee shall be considered for assessment purposes as not having violated Code Section 9-10.

p) Upon notice by the Hearing Officer or upon request by any party, the Hearing Officer may direct parties or their attorneys to appear at a specified time and place for a conference, either during or prior to any hearing, for purposes including, but not limited to:

1) the formulation and simplification of issues;

2) the necessity or desirability of amending the assessment notice for the purpose of clarification or correction;

3) the possibility of stipulations concerning material facts;

4) the limitations of the number of witnesses;

5) other matters as may aid in the simplification of evidence and the disposition of the proceeding.

(Source: Amended at 47 Ill. Reg. 5503, effective March 30, 2023)