

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Eaton v. Dudik No. COPP 2018-CFP-030	DISMISSAL OF COMPLAINT BASED ON APPLICATION OF PRINCIPLE OF EXCUSABLE NEGLECT
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On July 23, 2018, Jake Eaton of Billings, Montana filed a complaint against Representative Kimberly Dudik of Missoula, Montana for failing to sufficiently detail expenditures on her 2016 campaign finance reports.

SUBSTANTIVE ISSUES ADDRESSED

This decision addresses the sufficiency of expense detail when reporting campaign expenditures and services. This Complaint will be dismissed for the same reasoning and analysis set forth in *Eaton v. Dunwell*, COPP-2018-018.

FINDINGS OF FACT

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: Montana's 2016 general election was held on Tuesday, November 8, 2016. (Montana Secretary of State.)

Finding of Fact No. 2: Kimberly Dudik filed a hard-copy C-1 Statement of Candidate as a candidate for HD 94 in Missoula County with the COPP on January 13, 2016. (Commissioner's Records.)

Finding of Fact No. 3: Kimberly Dudik timely filed the required C-5 campaign finance reports throughout the 2016 election cycle. (Commissioner's Records.)

DISCUSSION

The Complaint asserts that a number of expenditures reported by candidate Dudik failed to include sufficient detail. The Commissioner thus examines candidate Dudik's campaign finance reports. Representative Dudik reported expenditures on her 2016 campaign finance reports in the following detail:

Finding of Fact No. 4: Candidate Dudik's 2016 campaign finance reports show 5 expenditures that lack sufficient detail (see Tables Nos. 1, 2). (Commissioner's Records.)

Table 1: Debts as reported by candidate Dudik on her June 25, 2016 through September 29, 2016 Periodic campaign finance report that did not contain the required level of reporting detail. Report was Amended and filed January 12, 2018.

Entity	Date	Purpose	Amount
Artcraft Printers	08/31/2016	Mailer printing	\$454.20

Table 2: Debts as reported by candidate Dudik on her September 30, 2016 through October 22, 2016 Periodic campaign finance report that did not contain the required level of reporting detail. Report was filed October 27, 2016.

Entity	Date	Purpose	Amount
King Design & Sign	10/04/2016	Printing of mailer	\$475.00
Mike's Print and Copy	10/10/2016	Printing Walkcards	\$1,650.00
The Directory	10/03/2016	MAILING	\$1,144.74
The Directory	10/10/2016	MAILING	\$1,293.15

The expenses described in the foregoing Tables required additional detail. Such generic expenditure descriptions are more akin to a list or category than a description and do not provide the "purpose, quantity, subject matter" of the expense which are the details required to be reported by 44.11.502(7), ARM. Nor, do the listings meet Montana's statutory requirement of detail required for expenditures to consultants, or other persons who perform services for or on behalf of a candidate; the law requires that such expenditures "must be itemized and described in sufficient detail to disclose the specific services

performed by the entity to which payment or reimbursement was made.”

§ 13-37-229(2)(b), MCA.

Sufficiency Finding No. 1: There are sufficient facts to show that Dudik 2016 campaign finance reports failed to disclose sufficient detail describing campaign expenditures (FOF No. 4).

Similar problems of insufficient detail in expenditure reporting under the current rules and statutes was first substantively addressed on October 3, 2016 in *MDP v. MRLCC*, COPP-2016-CFP-029, by then-Commissioner Jonathan Motl. While MRLCC’s lack of expenditure reporting detail was a violation, such a finding was, at the time (2016 election cycle) a further application of the rule and statute at issue. Thus, the violation was dismissed under the “excusable neglect” principle:

[G]iven the first time nature of this determination and the likelihood that there are other candidates and committees in a similarly deficient reporting status.

Id., at 7.

The Commissioner incorporates herein by reference the in-depth review of the *MDP v. MRLCC* decision recently set out in *Eaton v. Dunwell*, 2018-CFP-018. This Complaint against Representative Dudik will be dismissed for the same reasons and pursuant to the same two safeguards.

First, no later than November 15, 2018, Representative Dudik is directed to file amended campaign finance reports providing the required “sufficient detail” for the specific expenditures noted in this decision. Second, contingent on amended campaign finance reports being filed, the Commissioner hereby excuses (dismisses) Representative Dudik from a campaign practice violation

for the deficiencies identified above based on the principle of excusable neglect.¹

DECISION

The Commissioner has limited discretion when making the determination as to an unlawful campaign practice. First, the Commissioner “shall investigate” any alleged violation of campaign practices law. §13-37-111(2)(a), MCA. The mandate to investigate is followed by a mandate to take action; if there is “sufficient evidence” of a violation the Commissioner must (“shall notify,” *see* §13-37-124, MCA) initiate consideration for prosecution.

Second, having been charged to make a decision, the Commissioner must follow substantive law applicable to a particular campaign practice decision. This Commissioner, having been charged to investigate and decide, hereby determines that there is sufficient evidence, as set out in this Decision, to show that Dudik’s 2016 campaign practices violated Montana’s campaign practice laws, including, but not limited to the laws set out in the Decision. Having determined that sufficient evidence of a campaign practice violation exists, the next step is to determine whether there are circumstances or explanations that may affect prosecution of the violation and/or the amount of the fine.

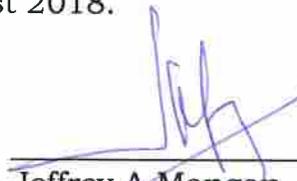
The failure to fully and timely report and disclose cannot generally be excused by oversight or ignorance. Excusable neglect cannot be applied to oversight or ignorance of the law as it relates to failures to file and report. *See*

¹ The Commissioner notes that Representative Dudik has agreed to amend the campaign’s 2016 finance reports to fulfill the requirements set out by the Commissioner for dismissal.

discussion of excusable neglect principles in *Matters of Vincent*, Nos. COPP-2013-CFP-006, 009. In this Matter, however, application of excusable neglect is appropriate for the reasons set out above and is therefore applied to dismiss Sufficiency Finding No. 1.

Because the findings of violation are excused by application of excusable neglect principles, this Matter is dismissed in its entirety.

DATED this 15th day of August 2018.



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