

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Eaton v. Hill Smith No. COPP 2018-CFP-022	DISMISSAL OF COMPLAINT BASED ON APPLICATION OF PRINCIPLE OF EXCUSABLE NEGLECT FINDING OF SUFFICIENT FACTS SUPPORT A CAMPAIGN FINANCE VIOLATION
--	---

On June 15, 2018, Jake Eaton of Billings filed a campaign practices complaint against Ellie Hill Smith of Missoula. The complaint alleged that candidate Hill Smith failed to properly report three campaign expenditures made by her 2016 campaign and did not provide the proper level of reporting detail.

SUBSTANTIVE ISSUES ADDRESSED

This decision addresses the sufficiency of expense detail when reporting campaign expenditures and services, and the timely reporting of campaign finance reports. A portion of 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 fact necessary for the Decision is as follows:

Finding of Fact No. 1: Ellie Hill Smith filed a hard-copy C-1 Statement of Candidate as a candidate for HD 90 in Missoula County with the COPP on October 27, 2015. (Commissioner's Records.)

DISCUSSION

The Complaint asserts that expenditures and loans reported by candidate Hill Smith failed to include sufficient detail. The Commissioner thus examines candidate Hill Smith's campaign finance reports. Representative Hill Smith reported expenditures on her 2016 campaign finance reports in the following manner:

Finding of Fact No. 2: On her Initial campaign finance report covering all activity through April 28, 2016, candidate Hill Smith did not properly report nor provide the required level of detail to describe campaign expenditures on one occasion (see Table 1). (Commissioner's Records.)

Table 1: Expenditures as reported by candidate Hill Smith on her 10/27/2015-04/28/2016 campaign finance report that did not contain the required level of reporting detail.

Entity	Date	Purpose	Amount
*	04/26/2016	Postage and Printing	\$340.00

*Because expenditure was entered in Petty Cash tab, no Entity information was provided

Finding of Fact No. 3: On her campaign finance report covering all activity through May 21, 2016, candidate Hill Smith did not properly report nor provide the required level to describe campaign expenditures on one occasion (see Table 2). (Commissioner's Records.)

Table 2: Expenditures as reported by candidate Hill Smith on her 04/29/2016-05/21/2016 campaign finance report that did not contain the required level of reporting detail.

Entity	Date	Purpose	Amount
*	05/20/2016	Postage and mailing	\$670.00

*Because expenditure was entered in Petty Cash tab, no Entity information was provided

Finding of Fact No. 4: On her campaign finance report covering all activity through September 30, 2016, candidate Hill Smith did not properly report nor provide the required level of detail to describe campaign expenditures on one occasion (see Table 3). (Commissioner's Records.)

Table 3: Expenditures as reported by candidate Hill Smith on her 06/23/2016-09/30/2016 campaign finance report that did not contain the required level of reporting detail.

Entity	Date	Purpose	Amount
*	09/30/2016	Direct Mailing	\$670.00

*Because expenditure was entered in Petty Cash tab, no Entity information was provided

The expenses described in the foregoing Tables require reporting in the appropriate expenditure category and require additional detail. Candidate Hill Smith reported the expenditures under the ‘Petty Cash’ category rather than the ‘Other Expenditures’ category in CERS¹. As part of this decision, candidate Hill Smith will be required to amend her campaign finance reports to properly report the above expenditures in the appropriate category. Additionally, 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 Hill Smith 2016 campaign finance reports failed to disclose sufficient detail describing campaign expenditures (FOF No. 2 - 4).

¹ CERS is an acronym for Campaign Electronic Reporting System, the e-filing system used by candidates and political committees to submit campaign finance reports and other required forms to COPP.

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 of the 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 allegation against Rep. Hill Smith will be dismissed for the same reasons and pursuant to the same two safeguards.

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 portion of the complaint against Representative Hill Smith will be dismissed for the same reasons and pursuant to the same two safeguards.

First, no later than November 15, 2018, Representative Hill Smith is directed to file amended campaign finance reports providing both the proper category and 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 Hill

Smith from a campaign practice violation for the deficiencies identified above based on the principle of excusable neglect.

Once a complaint is filed, the Commissioner “shall investigate any other alleged violation” Mont. Code Ann. § 13-37-111(2)(a). This investigative authority includes authority to investigate “all statements” filed with COPP, inspect a variety of records and require their production for purposes of the investigation, and examine “each statement or report” filed with the COPP. *Id.*, §§ 13-37-111, -123. The Commissioner is afforded discretion in exercising this authority. *Powell v. Motl*, OP-07111, Supreme Court of Montana, November 6, 2014 Order.

Finding of Fact No. 5: State District candidates had required financial reports due on or before May 3 (covering all activity from the start of the campaign through at least April 28), May 26 (April 29 through at least May 21), June 27 (May 22 through at least June 22), October 4 (June 23 through at least September 29), October 27 (September 30 through at least October 22), and November 28 (October 23 through November 23 or the closing of the campaign, whichever was first), 2016. (Commissioner’s Records.)

Finding of Fact No. 6: Candidate Hill Smith filed her campaign finance report covering all activity from the initiation of her campaign to April 28, on May 10, five business days after the required due date of May 3, 2016. (Commissioner’s Records.)

Finding of Fact No. 7: Candidate Hill Smith filed her campaign finance report covering all activity from April 29 through June 22 on August 3, twenty-seven business days after the required due date of June 27, 2016. (Commissioner’s Records.)

Finding of Fact No. 8: Candidate Hill Smith filed her campaign finance report covering all activity from June 23 to September 29 on October 6, two business days after the required due date of October 4, 2016. (Commissioner’s Records.)

Finding of Fact No. 9: Candidate Hill Smith filed her Closing campaign finance report for election year 2016 on December 5, five business days after the required due date of November 28, 2016. (Commissioner's Records.)

Montana campaign finance law is specific as to the proper dates State District candidates are required to file campaign finance reporting with the COPP:

Mont. Code Ann. § 13-37-226(2)

(2) Candidates for a state district office, including but not limited to candidates for the legislature, the public service commission, or a district court judge, and political committees that receive contributions or make expenditures to support or oppose a particular state district candidate or issue, unless the political committee is already reporting under the provisions of subsection (1), shall file reports as follows:

- (a) on the 35th and 12th days preceding the date on which an election is held;
- (b) within 2 business days after receiving a contribution of \$100 or more if received between the 17th day before the election and the day of the election;
- (c) not more than 20 days after the date of the election; and
- (d) on the 10th day of March and September of each year following an election until the candidate or political committee files a closing report as specified in 13-37-228(3).

While Candidate Hill Smith filed all required 2016 campaign finance reports, four of the campaign's finance reports were submitted late (FOF Nos. 5-9), in violation of Mont. Code Ann. § 13-37-226.

Sufficiency Finding No. 2: There are sufficient facts to show that the Hill Smith campaign failed to timely submit four 2016 campaign finance reports (FOF Nos. 5-9).

Candidate Hill Smith failed to timely submit campaign finance reports as required on four occasions during the 2016 election cycle. The Commissioner finds Candidate Hill Smith violated Montana campaign finance law.

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 the Decision, to show that Candidate Hill Smith’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*

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 there is a finding of violation and a determination that *de minimis* and excusable neglect theories are not applicable to Sufficiency Finding No. 2, a civil fine is justified. § 13-37-124, MCA. The Commissioner hereby issues a “sufficient evidence” Finding and Decision justifying a civil fine or civil enforcement of Candidate Hill Smith. Because of the nature of the violation, this matter is referred to the County Attorney of Lewis & Clark County for his consideration as to prosecution. *Id.*, at (1). Should the County Attorney waive the right to prosecute (*id.*, at (2)) or fail to prosecute within 30 days (*id.*, at (1)) this Matter returns to this Commissioner for possible prosecution.

Most of the Matters decided by a Commissioner and referred to the County Attorney are waived back to the Commissioner for his further consideration. Assuming that the Matter is waived back, this Finding and Decision does not necessarily lead to civil prosecution as the Commissioner has discretion (“may then initiate” *see id.*) in regard to a legal action. Instead, most of the Matters decided by a Commissioner are resolved by payment of a negotiated fine. In setting that fine the Commissioner will consider matters affecting mitigation, including the timely reporting of the expenditure and cooperation in correcting issues raised in the Complaint.

While it is expected that a fine amount can be negotiated and paid, in the event that a fine is not negotiated and the Matter resolved, the Commissioner retains statutory authority to bring a complaint in district court against any person who intentionally or negligently violates any requirement of campaign practice law, including those of § 13-37-226, MCA. *See id.*, at § 13-37-128. Full due process is provided to the alleged violator because the district court will consider the matter *de novo*.

DATED this 17th day of August 2018.



Jeffrey A Mangan
Commissioner of Political Practices
Of the State of Montana
P. O. Box 202401
1209 8th Avenue
Helena, MT 59620
Phone: (406)-444-3919