

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Eaton v. Jessica Karjala No. COPP 2017-CFP-012	FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN PRACTICE ACT VIOLATION and DISMISSAL OF ALLEGED VIOLATIONS
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On November 30, 2017, Jake Eaton filed a campaign practices complaint against Jessica Karjala, a 2016 candidate for election. The complaint alleges that candidate Karjala coordinated with the Independent Committee Neighbors for Responsible Legislators (NFRL) to help create and disseminate Independent Expenditure advertisements made by NFRL meant to benefit her campaign, that candidate Karjala coordinated with NFRL, Treasurer Karen Jarussi, and Gene Jarussi to request their participation in performing ‘opposition research’ on candidate Karjala’s opponent that would benefit her campaign, and that candidate Karjala failed to report the services or information provided in association with this ‘opposition research’ as either in-kind contributions received or as expenditures made by the campaign.

SUBSTANTIVE ISSUES ADDRESSED

The decision addresses the proper reporting of campaign expenditures and contributions. Committee coordination is also addressed in the decision.

FINDINGS OF FACT

The foundational facts necessary for this Decision is as follows:

Finding of Fact No. 1: Jessica Karjala filed a C-1 Statement of Candidate for MT House of Representatives on September 11,

2015. An amended version filed on June 16, 2016 clarified the specific district sought as House District 48. (Commissioner's Records.)

Finding of Fact No. 2: Robert Saunders filed a C-1 Statement of Candidate for House District 48 on October 19, 2015. (Commissioner's Records.)

Finding of Fact No. 3: Montana State District candidates were required to file C-5 campaign financial reports on May 3 (covering the beginning of the campaign through at least April 28), May 26 (April 29-May 21), June 27 (May 22-June 22), October 4 (June 23-September 29), October 27 (September 30-October 22), and November 28 (October 23-November 23) of 2016. (Commissioner's Records.)

Finding of Fact No. 4: COPP Compliance staff emailed either candidate Karjala, campaign Treasurer Suzn Gehring, or both on four (4) separate occasions asking that detailed expenditure and contribution information be provided and correctly reported. The COPP never received any correspondence from either party in response to these requests, and the campaign finance reports have yet to be amended with the requested information. (Commissioner's Records.)

DISCUSSION

The Complaint alleges that candidate Karjala coordinated with Independent Committee Neighbors for Responsible Legislators and its Treasurer Karen Jarussi.

Part 1: Coordination:

As defined by §13-1-101(10), MCA, coordinated expenditures are "made in cooperation with, in consultation with, at the request of, or with the express prior consent of a candidate or political committee or an agent of a candidate or political committee". Both Karen Jarussi and candidate Karjala stated in response to this complaint that candidate Karjala was in no way involved in the formation of NFRL as a committee or its activities.

Finding of Fact No. 5: On April 20, 2018, Deputy Commissioner of Political Practices Kirsten K. Madsen released an Order Dismissing Complaint in *Eaton v. Gene Jarussi*, No. COPP 2018-CFP-010. (Commissioner's Records.)

Finding of Fact No. 6: On April 27, 2016, Commissioner of Political Practices Jeffrey A. Mangan released the decision in *Eaton v. NFRL*, No. COPP 2018-CFP-011, which in part dismissed alleged violations of coordination between Independent Committee Neighbors for Responsible Legislators (NFRL), Treasurer Karen Jarussi, and candidate Jessica Karjala. (Commissioner's Records.)

The allegation of coordination involving an alleged opposition research trip to San Antonio, Texas and related expenses is fully addressed in *Eaton v. Gene Jarussi*, No. COPP 2018-CFP-010 (FOF No. 4). The Commissioner incorporates and adopts the findings and decision in *Eaton v. Gene Jarussi* and hereby dismisses the alleged violation in this matter.

The allegation of coordination involving NFRL and its Treasurer Karen Jarussi is fully addressed in *Eaton v. NFRL*, No. COPP 2018-CFP-011 (FOF No. 6). The Commissioner incorporates and adopts the findings and decision in *Eaton v. NFRL* and hereby dismisses the alleged violation in this matter.

Part 2: Campaign Finance Violations

Once a complaint is filed the Commissioner "shall investigate any other alleged violation ..." §13-37-111(2)(a), MCA. This investigative authority includes authority to investigate "all statements" and examine "each statement or report" filed with the COPP. §13-37-111, 123 MCA. The Commissioner is afforded discretion in exercising this authority. *Powell v. Motl*, OP-07111, Supreme Court of Montana, November 6, 2014 Order.

In reviewing Candidate Karjala's campaign finance reports from the 2016 election cycle, the Commissioner found several potential expenditure reporting violations.

Finding of Fact No. 7: Candidate Karjala's 2016 campaign finance reports contained 21 debt entries that did not contain the

appropriate debt reporting detail as required. See Tables 1-3. (Commissioner's Records.)

Finding of Fact No. 8: Candidate Karjala reported one campaign debt for \$3,250.00 one her October 3, 2016 finance report. This debt was removed from all subsequent Amended versions of this report without explanation. (Commissioner's Records.)

Table 1¹: All Debt information provided on candidate Karjala's October 3, 2016 financial report.

Entity	Purpose	Date Debt Incurred	Amount
Artcraft	Mailings	10/01/16	\$335.00
Artcraft	Mailings	10/01/16	\$322.00
Artcraft	Mailings	10/01/16	\$224.00
Artcraft Printers	MAILERS	09/27/16	\$328.00
Artcraft Printers	MAILERS	09/27/16	\$328.00
Artcraft Printers	MAILERS	09/27/16	\$328.00
Artcraft Printers	MAILERS	09/27/16	\$328.00
Billings Times	Remittance Envelopes	08/01/16	\$152.00
Billings Times	Yard Signs	08/17/16	\$451.07
Element L Design	Campaign Mail Expense	09/20/16	\$850.00
Home Depot	Supplies for Signs	09/03/16	\$195.00
Jarussi, Karen C.	Fundraiser	09/19/16	\$120.00
MTS*	Mailings	10/03/16	\$3,250.00

*Entry not listed on amended version of this report filed November 25, 2016, the most recent version of the report filed. Information was also not listed on any subsequent financial reports.

Table 2: All Debt information provided on candidate Karjala's October 28, 2016 financial report (amended and filed November 25, 2016).

Entity	Purpose	Date Debt Incurred	Amount
Artcraft Printers	CAMPAIGN ADS	11/03/16	\$800.00
Billings Times	SIGNS	10/10/16	\$888.00
MTS	MAILING	10/07/16	\$1,761.30
Pincolini, Elizabeth A	Donation	10/10/16	\$75.00

¹ All information contained in the tables are as provided in the original report (blanks, question marks, etc.)

Table 3: All Debt information provided on candidate Karjala’s November 25, 2016 financial report.

Entity	Purpose	Date Debt Incurred	Amount
MDLCC	Design fee	11/04/16	\$50.00
Montana Senior News	CAMPAIGN ADS	11/03/16	\$192.20
MTS	MAILERS	11/25/16	\$1,978.88
Office Depot	OFFICE SUPPLIES	11/02/16	\$256.87
USPS	POSTAGE	11/04/16	\$658.00

Candidate Karjala failed to properly report debt or expenditure information over the course of several reports. 44.11.502(b), ARM, states that “A candidate or political committee shall report the full name and mailing address (and occupation and principal place of business, if any) of each person to whom a debt or obligation is owed at the end of a reporting period, including the amount, date contracted, and purpose of each debt and obligation owed to each person” (emphasis added). 44.11.506, ARM is to be applied pursuant to §13-37-219, MCA, meaning that debts owed by a candidate or committee are to be reported the same as any other expenditure. As such, candidates must report “the full name, mailing address, occupation, and principal place of business, if any, of each person to whom expenditures have been made by the committee or candidate during the reporting period, including the amount, date, and purpose of each expenditure and the total amount of expenditures made to each person”, and that “Reports of expenditures made to a consultant, advertising agency, polling firm, or other person that performs services for or on behalf of a candidate or political committee must be itemized and described in sufficient detail to disclose the specific services performed by the entity to which payment or reimbursement was made”, as per §13-37-229(2)(a)(i) and (b), MCA (emphasis added).

As discussed in past Decisions, most notably *MDP v. MRLCC*, COPP-2016-CFP-029, candidates for elected office are required to describe expenditure activities using “a word or words in their campaign finance report that provide ‘sufficient detail to disclose the specific services’ covered by the

expenditure”, and these descriptions must include the quantity or quantities of items or services provided.

On the October 3, 2016 financial report, candidate Karjala reported 13 debts where the Purpose information provided did not meet the reporting criteria laid out in §13-37-229. Further, a Candidate Karjala reported a campaign debt in the amount of \$3,250.00 to MTS. This debt was removed from all subsequent versions of the report and not reported as paid. As true and correct reporting is essential, an explanation is necessary and required. (See Table 1.)

Candidate Karjala’s October 28, 2016 financial report contained 4 instances of debts owed by the campaign not being reported with the required amount of detail, and the November 25, 2016 financial report contained 5 such instances. (See Tables 2,3.) All told, candidate Karjala’s financial reports contain 22 instances where debts have not been properly reported over three separate campaign finance reports (FOF Nos. 6, 7).

In reviewing Candidate Karjala’s campaign finance reports from the 2016 election cycle, the Commissioner found several potential contribution reporting violations.

Finding of Fact No. 9: Candidate Karjala’s 2016 campaign finance reports contained 47 reported contributions that did not contain the required detail information, including ‘Name’, ‘Occupation’ and ‘Employer’ as required (See tables 4-7). (Commissioner’s Records.)

Table 4: Fundraiser contributions improperly reported by candidate Karjala on her April 25, 2016 campaign finance report

Contributor Name	Amount	Occupation*	Employer*
Bale, Mike	\$150.00		
Bessette, Russ	\$170.00		
BESSETTE, TERESA	\$170.00		
Cellmer, Maynard	\$100.00		
Critelli, Dennis	\$50.00		
Demaray, Nicholas	\$170.00		
Dickinson, Scott	\$50.00		

Frickle, Amanda J	\$35.00		
Steinmetz, Jesse	\$100.00		
Sulser, Jay	\$50.00		
Veis, Christopher	\$50.00		

*All entries reported under Fundraisers section of report, no Occupation or Employer information provided

Table 5: Fundraiser contributions improperly reported by candidate Karjala on her June 28, 2016 campaign finance report

Contributor Name	Amount	Occupation*	Employer*
Bell, Molly	\$100.00		
Cobb, Patrick	\$100.00		
Cromley, Brent	\$150.00		
Jarussi, Gene R	\$170.00		
Mermel, Gary	\$100.00		
Miller, Paul	\$170.00		
Miner, Barbara	\$100.00		
Miner, Noel	\$100.00		
Schiavon, Sandra	\$100.00		
SPLINTER, OLIVIA	\$100.00		
TAPIA, LIONEL	\$100.00		
Tapia, Vicki	\$100.00		

*All entries reported under Fundraisers section of report, no Occupation or Employer information provided

Table 6: Individual Contributor information for contributors of \$35.00 that did not properly report Occupation/Employer information as required on candidate Karjala's June 28, 2016 financial report.

Contributor Name	Amount of Contribution	Occupation	Employer
Act Blue	\$67.23		
Act Blue	\$48.02		
Baucus, Zeno B.	\$50.00	?	?
Bracy, Philomina J	\$50.00	?	?
Cote, Tyler B	\$50.00	UNKOWN	UNKNOWN
Ellis, Janet H	\$170.00	.?	?
Erickson, Kriss A	\$100.00	.?	.?
Gorton, C David	\$170.00	..?	.?

Gulick, Barbara J	\$50.00	?	?
MacDonald, Margaret E	\$35.00	..?	?
Mcmanus, Nancy J	\$100.00	.?	??
McMurtry, Valerie	\$40.00	?	?
Montana Credit Union ADVO	\$75.00		
Ryan, Marilyn J	\$75.00	?	?
Sessions, Addison N	\$75.00	.?	.?
Tooley, Charles F	\$25.00 (\$75.00 aggregate in General)	?	?
Toth, Dustin E	\$40.00	?	?
Tully, Thomas M	\$75.00	??	.?
Wanzenreid, David E	\$50.00	?	?

Table 7: Individual Contributor information for contributors of \$35.00 that did not properly report Occupation/Employer information as required on candidate Karjala's October 3, 2016 financial report.

Contributor Name	Amount	Occupation	Employer
Crants, Duane+	\$75.00	UNKNOWN	UNKNOWN
Keuhn, Frank+	\$35.00	Unknown	UNKNOWN
Larson, Lane L	\$100.00	Owner	self
Mcgehee, James+	\$50.00	UNKNOWN	UNKNOWN
Sigel, Ross	\$100.00	Engineer Consultant	S?.....

+Information noted by campaign as being requested on second amended version of report filed on October 4, 2016.

Candidate Karjala failed to correctly report Individual Contributions received by the campaign on multiple occasions. Candidates are required to report "the full name, mailing address, occupation, and employer, if any, of each person who has made aggregate contributions, other than loans, of \$35 or more to a candidate or political committee, including the purchase of tickets and other items for events, such as dinners, luncheons, rallies, and similar fundraising events", as per §13-37-229(b), MCA.

On the April 25, 2016 Initial campaign finance report, candidate Karjala did not report the required information for contributors of \$35 or more on 11

occasions, listing these contributions as Fundraisers instead, with no occupation or employer information provided. (See Table 4.)

On the June 28, 2016 report, candidate Karjala improperly reported individual contributors of \$35 or more under the 'Fundraisers' section on 12 occasions and did so without reporting the required occupation and employer information. Accurate occupation and employer information was not provided on 19 separate occasions on candidate Karjala's June 28, 2016 campaign finance report under the 'Individual Contributors' section of the campaign finance report. Additionally, it appears the entries for 2 contributions through Act Blue were not reported as required by ARM 44.11.408 (2) including identifying contributor information and the proper reporting of associated fees. Undisclosed contributions are prohibited §13-37-21, MCA. Amended versions of this report did not provide the information as required under §13-27-229(b), MCA. (See Tables 5, 6.)

On the October 3, 2016 campaign finance report, candidate Karjala improperly reported individual contributors of \$35 or more on 5 occasions without reporting the required occupation and employer information. (See Table 7.)

FINDINGS

The Commissioner examined the reporting of expenditures as required by Candidate Karjala on her campaign finance reports.

Sufficiency Finding No. 1: There are sufficient facts to show that Candidate Karjala failed to properly report debts on 21 occasions. (FOF Nos.7, 8)

The Commissioner finds Candidate Karjala failed to properly report the level of detail, including purpose, quantity, and subject matter as required when reporting campaign debts, violating Montana's campaign finance law.

The Commissioner examined the sufficiency of individual contribution detail reporting as required by Candidate Karjala's campaign finance reports.

Sufficiency Finding No. 2: There are sufficient facts to show that the NFRL committee finance reports failed to provide sufficient detail describing individual contribution on 47 occasions. (FOF No. 9)

Candidate Karjala failed to properly report individual contributions with detail such as Name, Occupation, and Employer information on 24 occasions, and improperly reported 23 individual contributions of \$35 or more under the 'Fundraiser' report tab, failing to properly report 'Occupation' 'Employer' and other information, violating Montana's campaign finance law.

The Commissioner's office requested amended reports on 4 occasions (FOF No. 4) from Candidate Karjala and/or the campaign Treasurer to remedy errors and issues discovered by COPP Compliance Specialists. The campaign did not respond or amend any campaign finance report following receipt of the inspection messages. The Commissioner will take the failure to amend as requested into account when determining any potential fine or penalty in this matter.

As part of any settlement in this matter, the Commissioner will require the proper reporting of the contributions and expenditures involved in matter as discussed in the decision, including donating the amount of any contributions found to be anonymous to charity.

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. The law requires that where 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 to show that Candidate Karjala 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 Matters of Vincent*, Nos. COPP-2013-CFP-006, 009 (discussing excusable neglect principles). Likewise, the Commissioner does not normally accept that failures to file or report be excused as *de minimis*. *See Matters of Vincent*, Nos. COPP-2013-CFP-006, 009 (discussing *de minimis* principles).

Because there is a finding of violation and a determination that *de minimis* and excusable neglect theories are not applicable to the above

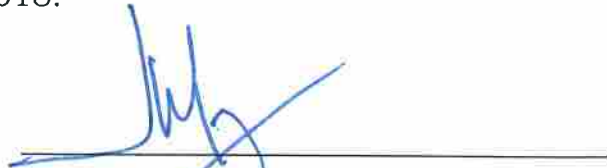
Sufficiency Findings, a civil fine is justified. § 13-37-124, MCA. The Commissioner hereby issues a “sufficient evidence” Finding and Decision justifying a civil fine or civil prosecution of Candidate Karjala. Because of the nature of the violations (the failure to report and disclose occurred in Lewis and Clark County), this matter is referred to the County Attorney of Lewis and Clark County for his consideration as to prosecution. § 13-37-124(1), MCA. Should the County Attorney waive the right to prosecute (§ 13-37-124(2), MCA) or fail to prosecute within 30 days (§ 13-37-124(1) MCA) 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* § 13-37-124(1), MCA) 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 cooperation in correcting the reports at issue when the matter was 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 cited above. *See* § 13-37-128, MCA. Full due

process is provided to the alleged violator because the district court will consider the matter *de novo*.

DATED this 21st day of April 2018.



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