

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Eaton v. McClafferty No. COPP 2018-CFP-045	DISMISSAL OF COMPLAINT BASED ON APPLICATION OF PRINCIPLE OF EXCUSABLE NEGLECT
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On September 28, 2018, Jake Eaton of Billings filed a campaign practices complaint against Edith McClafferty of Butte. The complaint alleged that candidate McClafferty failed to provide the proper level of reporting detail to describe ten expenditures made by her 2016 campaign, and that she failed to report one obligation owed by the campaign as a debt.

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: Edith (Edie) McClafferty filed a hard-copy C-1 Statement of Candidate as a candidate for SD 38 in Silver Bow County with the COPP on June 19, 2015. All 2016 campaign financial reports were timely filed by candidate McClafferty. (Commissioner's Records.)

DISCUSSION

The Complaint asserts that candidate McClafferty failed to report one debts and ten expenditures reported by the McClafferty campaign failed to include sufficient detail. The Commissioner addresses each of the allegations.

The complaint alleges the campaign failed to report an obligation in the amount of \$109.01 as a campaign debt.

Finding of Fact No. 3: The November 1, 2016 campaign finance report included one fundraiser contribution to the campaign from candidate McClafferty for 'Pay back the Campaign for stationary and badge' at \$109.01

The alleged 'debt' referenced by the complaint was reported under Schedule A in the Fundraisers section by candidate McClafferty (FOF No. 3). This transaction was reported as a contribution, meaning money coming into the campaign account. This was not a transaction of money leaving the campaign as either a direct expenditure or a debt owed. On campaign finance reports, Schedule A is used to report all contributions received by a candidate. The purpose provided notes that candidate McClafferty was reimbursing the campaign for personal use of items purchased by and for the campaign. The campaign itself was not obligated to provide payment or compensation for this activity, it would not be considered a debt, and candidate McClafferty was under no obligation to report it as such. Candidate McClafferty's reporting a reimbursement to the campaign for items used for personal use was correctly entered into Schedule A and does not qualify as a campaign debt. The COPP would provide guidance that such transactions should be reported as a

candidate contribution, however, this transaction was: timely reported; identified the candidate as the contributor; included detail as to the purpose and amount; and, the campaign reported the transaction as a contribution. The allegation is hereby dismissed.

The complaint further alleges failure to sufficiently detail ten expenditures. The Commissioner dismisses the allegation of two expenditure entries requiring additional detail as *de minimis*, as information excluded does not substantially affect disclosure (*see* Table 0).

Table 0: The Commissioner determines the following two entries requiring additional detail are dismissed as *de minimis*.

Entity	Date	Purpose	Amount
Walmart	11/06/2015	Thank You Cards	\$13.94
Walmart	11/06/2015	Thank You Cards	\$18.97

Candidate McClafferty reported expenditures on her 2016 campaign finance reports in the following detail:

Finding of Fact No. 4: On her initial campaign finance report covering all activity from January 30, 2016 through May 2, 2016, candidate McClafferty did not provide the required level of detail to describe campaign expenditures on two occasions (*see* Table 1).

Table 1: Expenditures as reported by candidate McClafferty on her January 30, 2016 through May 2, 2016 C-5 campaign financial report prior to this Complaint being filed that did not contain all required reporting detail.

Entity	Date	Purpose	Amount
U.S. Postmaster	11/15/2015	STAMPS	\$98.00
U.S. Postmaster	11/15/2015	Stamps	\$147.00

Finding of Fact No. 5: On her periodic campaign finance report covering all activity from May 3, 2016 through May 21, 2016, candidate McClafferty did not provide the required level of detail to describe campaign expenditures on one occasion (*see* Table 2).

Table 2: Expenditures as reported by candidate McClafferty on her May 3, 2016 through May 21, 2016 C-5 campaign financial report prior to this Complaint being filed that did not contain all required reporting detail.

Entity	Date	Purpose	Amount
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U.S. Postmaster	05/20/2016	STAMPS	\$94.00
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Finding of Fact No. 6: On her periodic campaign finance report covering all activity from June 23, 2016 through September 29, 2016, candidate McClafferty did not provide the required level of reporting detail to describe campaign expenditures on three occasions (see Table 3).

Table 3: Expenditures as reported by candidate McClafferty on her June 23, 2016 through September 29, 2016 C-5 campaign financial report prior to this Complaint being filed that did not contain all required reporting detail.

Entity	Date	Purpose	Amount
Pit Printers	08/08/2016	Water Bottle Labels	\$110.00
Pit Printers	09/28/2016	POSTCARDS	\$235.00
Thomas Apparel	08/26/2018	T-Shirt Printing	\$185.00

Finding of Fact No. 7: On her periodic campaign finance report covering all activity from September 30, 2016 through October 22, 2016, candidate McClafferty did not provide the required level of reporting detail to describe campaign expenditures on one occasion (see Table 4).

Table 4: Expenditures as reported by candidate McClafferty on her September 30, 2016 through October 22, 2016 C-5 campaign financial report prior to this Complaint being filed that did not contain all required reporting detail.

Entity	Date	Purpose	Amount
Pit Printers	10/13/2016	Postcards and Bulk Mailing	\$909.78

Finding of Fact No. 8: On her periodic campaign finance report covering all activity from October 23, 2016 through November 28, 2016, candidate McClafferty did not provide the required level of reporting detail to describe campaign expenditures on one occasion (see Table 5).

Table 5: Expenditures as reported by candidate McClafferty on her October 23, 2016 through November 28, 2016 C-5 campaign financial report prior to this Complaint being filed that did not contain all required reporting detail.

Entity	Date	Purpose	Amount
Legislative Services	11/16/2016	Stationary & Envelope	\$94.76

The expenses described in the foregoing tables require 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, does the listing 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 candidate McClafferty’s 2016 campaign finance report failed to disclose sufficient detail describing a campaign expenditure (FOF Nos. 4-8).

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 McClafferty will be dismissed for the same reasons and pursuant to the same two safeguards.

As Representative McClafferty has amended and filed her 2016 campaign finance reports with the detail information as requested during this investigative period,¹ it is unnecessary to set the contingency found in *Eaton v. Dunwell*, 2018-CFP-018. The Commissioner hereby excuses (dismisses) Representative McClafferty from a campaign practice violation for the deficiencies in detail identified above based on the principle of excusable neglect.

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,

¹ The Commissioner notes that Representative McClafferty has provided the expenditure detail as required as part of his complaint response and has amended his campaign’s 2016 finance reports to fulfill the requirements set out by the Commissioner for dismissal.

hereby determines that there is sufficient evidence, as set out in this Decision, to show that McClafferty'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 the findings of violation are excused by application of excusable neglect principles, this Matter is dismissed in its entirety.

DATED this 15 day of November 2018.



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