

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Eaton v. Olsen No. COPP 2018-CFP-035	DISMISSAL OF COMPLAINT BASED ON APPLICATION OF PRINCIPLE OF EXCUSABLE NEGLECT FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN FINANCE VIOLATION
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On August 17, 2018, Jake Eaton of Billings filed a campaign practices complaint against Andrea Olsen of Missoula. The complaint alleged that candidate Olsen improperly used campaign funds to pay her Montana filing fee to run for elected office and failed to provide the proper level of reporting detail to describe three debts owed and four expenditures made by her 2016 campaign.

SUBSTANTIVE ISSUES ADDRESSED

This decision addresses the sufficiency of expense detail when reporting campaign expenditures and services. A portion of this Complaint will be dismissed for the same reasoning and analysis set forth in *Eaton v. Dunwell*, COPP-2018-018. The proper and timely opening of a constituent account is also addressed. The decision also addresses the proper and timely closing of a

campaign account and the proper filing of a constituent account.

FINDINGS OF FACT

The foundational fact necessary for the Decision is as follows:

Finding of Fact No. 1: Andrea Olsen filed a hard-copy C-1 Statement of Candidate as a candidate for House District 100 in Missoula County with the COPP on January 14, 2016. Candidate Olsen timely filed all 2016 campaign financial reports. (Commissioner's Records.)

DISCUSSION

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

Finding of Fact No. 2: On her periodic campaign finance report covering all activity from June 24 through October 4, 2016, candidate Olsen did not provide the required level of detail to describe debts owed by the campaign on three occasions (see Table 1). (Commissioner's Records.)

Table 1: Debts as reported by candidate Olsen on her periodic 06/24/16-10/04/16 campaign financial report that do not contain the required level of reporting detail. Report was filed October 4, 2016.

Entity	Date	Purpose	Amount
Artcraft Printers	09/29/2016	Walk Card Printing & Shipping	\$914.84
Leslie Van Stavern Millar II	09/22/2016	Invites, Art Use, and Entertainment	\$175.00
UC Bookstore	07/19/2016	Paper	\$58.98

*Reported as a Loan

Finding of Fact No. 3: On her periodic campaign finance report covering all activity from October 5 through October 27, 2016, candidate Olsen did not provide the required level of detail to describe campaign expenditures on one occasion (see Table 2). (Commissioner's Records.)

Table 2: Expenditures as reported by candidate Olsen on her periodic 10/05/16-10/27/16 campaign financial report that do not contain the required level of reporting detail. Report was filed October 27, 2016.

Entity	Date	Purpose	Amount
Westridge Creative	10/20/2016	MAILING to all Absentee Voters in HD100	\$972.50

*Debt owed by the campaign

Finding of Fact No. 4: On her periodic campaign finance report covering all activity from October 28 through November 28, 2016, candidate Olsen did not provide the required level of detail to describe campaign expenditures on three occasions (see Table 3). (Commissioner’s Records.)

Table 3: Expenditures as reported by candidate Olsen on her periodic 10/28/16-11/28/16 campaign financial report that do not contain the required level of reporting detail. Report was Amended and filed November 29, 2016.

Entity	Date	Purpose	Amount
Legislative Services Division	11/15/2016	Supplies	\$74.33
USPS	11/28/2016	POSTAGE	\$337.00
Westridge Creative	11/10/2016	Mailing	\$635.00

The expenses and loans 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, 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.” Mont. Code Ann. § 13-37-229(2)(b).

Sufficiency Finding No. 1: There are sufficient facts to show that Olsen 2016 campaign finance reports failed to disclose sufficient detail describing campaign expenditures and debts (FOF Nos. 2-4).

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 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 Complaint against Representative Olsen will be dismissed for the same reasons and pursuant to the same two safeguards.

First, no later than February 15, 2019, Representative Olsen 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 Olsen from a campaign practice violation for the deficiencies identified above based on the principle of excusable neglect.¹

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

The complaint also alleges candidate Olsen improperly reported the \$15.00 campaign filing fee as an expenditure on her 2016 campaign finance report. In 2016, the issue of filing fees was confusing, which led to an advisory opinion by Commissioner Motl and subsequent clarifying legislation in 2017 explicitly requiring a campaign to report a candidate's filing fee as a campaign expenditure. While the allegation raised was a potential violation during the candidate's 2016 campaign, finding a candidate in violation of a 2016 \$15.00 error during the 2018 campaign at a time when the law now affirmatively provides for reporting such a filing fee would not serve a public purpose. The allegation is hereby dismissed.

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.

Upon review of the Olsen campaign 2016 campaign finance reports, it was discovered Representative Olsen did not file the proper paperwork to move the 2016 campaign's \$1,710.84 ending balance to a constituent account.

Finding of Fact No. 5: Representative Olsen had not filed a closing C-5 campaign finance report covering any dates after November 28, 2016, a C-118 Disposition of Surplus Campaign Funds Statement,

or a C-118C establishing a Constituent Services Account. (Commissioner's Records.)

Finding of Fact No. 6: On September 17, 2018, Representative Olsen filed an amended version of her October 28, 2016 through November 28, 2016 campaign finance report to reflect a leftover cash in bank balance of \$1,710.84. (Commissioner's Records.)

Finding of Fact No. 7: On September 17, 2018, Representative Olsen emailed the COPP C-118 and C-118C forms for election year 2016. The C-118C form showed candidate Olsen had deposited \$1,710.84 in surplus 2016 campaign funds into a constituency account. C-8 Constituent Account financial reports are due to the COPP quarterly (on or before April 10, July 10, October 10, January 10) of each year until the account is closed. (Commissioner's Records.)

Finding of Fact No. 8: Representative Olsen did not file a C-8 Constituent Report on or before April 10, 2017. (Commissioner's Records.)

Finding of Fact No. 9: Representative Olsen did not file a C-8 Constituent Report on or before July 10, 2017. (Commissioner's Records.)

Finding of Fact No. 10: Representative Olsen did not file a C-8 Constituent Report on or before October 10, 2017. (Commissioner's Records.)

Finding of Fact No. 11: Representative Olsen did not file a C-8 Constituent Report on or before January 10, 2018. (Commissioner's Records.)

Finding of Fact No. 12: Representative Olsen did not file a C-8 Constituent Report on or before April 10, 2018. (Commissioner's Records.)

Finding of Fact No. 13: Representative Olsen did not file a C-8 Constituent Report on or before July 10, 2018. (Commissioner's Records.)

Finding of Fact No. 14: On November 20, 2018, Representative Olsen emailed the COPP an amended C-118 dating the transfer from the campaign account to the constituent account to March, 2017. (Commissioner's Records.)

Representative Olsen submitted the proper organization forms to create a constituent account on September 17, 2018, amended November 20, 2018 (FOF No. 7, 14). Candidate Olsen failed to file a closing campaign financial report once all obligations were fully paid (FOF No. 5), in violation of Mont. Code Ann. §13-37-228(3), MCA. Further, upon transferring the balance to a constituent account, Representative Olsen failed to properly and timely file the required paperwork associated with the disposal of surplus funds into a constituent account, a violation of Mont. Code Ann. §13-37-240(1). Additionally, Mont. Code Ann. §13-37-402(4), requires that “The holder of a constituent services account shall file a quarterly report with the commissioner”. Representative Olsen failed to provide constituent account quarterly reports on six occasions (FOF Nos. 8-13), a violation of Montana campaign finance law.

Sufficiency Finding No. 2: There are sufficient facts to show that the Olsen campaign failed to file its 2016 closing campaign finance report and subsequent establishment of a constituent services account record.

Sufficiency Finding No. 3: There are sufficient facts to show that Representative Olsen failed to file six quarterly constituent services account reports.

Candidate Olsen failed to properly close her 2016 campaign finance account, failed to file her record of the establishment of a constituent services account, and failed to provide quarterly constituent services account reports as required by Montana law. The Commissioner finds Candidate Olsen 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 Olsen’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 Nos. 2 and 3, 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 Olsen. 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 § 13-37-228, § 13-37-228, § 13-37-240 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 20th day of November 2018.



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