

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES

---

In the Matter of the Complaints	)	<b>SUMMARY OF FACTS</b>
Against Robert T. Fanning	)	<b>AND</b>
	)	<b>STATEMENT OF FINDINGS</b>

---

On April 27, 2012, Edwin X. Berry filed a complaint against Robert T. Fanning and Fanning's gubernatorial campaign, alleging the following:

- Failure to keep campaign account current;
- Illegal candidate reimbursements;
- Failure to file campaign finance reports;
- Failure to file campaign reports in a timely manner;
- Failure to report expenditures.

**SUMMARY OF FACTS**

1. Robert T. Fanning was a candidate for Governor in the 2012 election cycle. Mr. Fanning was defeated in the primary election.
2. On December 12, 2011 Mr. Fanning filed a C-1 Statement of Candidate with the Montana Commissioner of Political Practices (COPP). The C-1 indicated Mr. Fanning intended to seek the office of Governor in the 2012 election, and designated himself as the Treasurer of his campaign. His campaign was known as Fanning for Governor 2012.
3. After he filed his C-1 form, COPP provided Mr. Fanning with a copy of a candidate finance report calendar for statewide candidates, showing the filing deadlines for the campaign finance reports that a candidate for Governor was required to file. Mr. Fanning's first report was due January 5, 2012, with subsequent reports due March 10, April 10, May 21, May 31, 2012, as well as a closing report.
4. The complainant, Edwin X. Berry, contends that he was Mr. Fanning's campaign manager. According to the complaint Mr. Berry resigned as campaign manager on January 25, 2012 after he challenged some of Mr. Fanning's reported expenses and Mr. Fanning refused to provide clarification to him.

5. On January 5, 2012, Mr. Fanning faxed the front page only of his campaign finance report. A COPP staff member called Mr. Fanning to inquire about the rest of the report. Mr. Fanning indicated he would fax the rest of the report "later." The staff member advised Mr. Fanning that pursuant to Montana law the form is required to be filed electronically, and that filing the report late could result in a formal complaint. Mr. Fanning did not file the rest of the report on January 5, 2012.
6. On January 18, 2012, COPP Program Supervisor Mary Baker sent Mr. Fanning a follow-up email inquiring about the January 5<sup>th</sup> campaign finance report. Mr. Fanning responded approximately twenty minutes later, explaining his failure to file the report:

I have been on the road for seven days a week for what seems to have been eternity and had been briefed for the gubernatorial debate tomorrow fourteen hours a day. When I get Lorna Kuney her four grand retainers you will be receiving this stuff like clockwork. Your continued forbearance on the detail sheet is appreciated...Your humble & faithful servant, Bob.

7. On February 17, 2012, COPP Investigator Julie Steab contacted Mr. Fanning regarding his failure to file the report that was due January 5, 2012. Ms. Steab called Mr. Fanning on his cell phone. She introduced herself and explained that the purpose for the call was to find out when COPP could expect the rest of the January 5<sup>th</sup> report. Mr. Fanning immediately became defensive. He told Ms. Steab that COPP would receive the report when "he gets around to it," and that he "is very busy and has been in the library all week." Ms. Steab explained to Mr. Fanning that he could be at risk of having a complaint filed against him, and that COPP was merely attempting to help him avoid a complaint by ensuring that he complies with the reporting requirements. Mr. Fanning said he would get the report filed by March 1. As the conversation continued Mr. Fanning became increasingly agitated. He said COPP could just send an investigator to his house and sort through all of his receipts, and prepare the report for him "if COPP wanted it that badly." Ms. Steab again tried to explain to Mr. Fanning that COPP was trying to ensure that he complies with reporting requirements, but Mr. Fanning stated it was obvious to him that COPP was selectively enforcing the law. Mr. Fanning stated that he would bring the report in to the COPP office for filing on March 1, 2012.
8. Later that same day, Mr. Fanning called Ms. Steab back, introducing himself as "Bob Fanning in the library," and asked whether she had just called him about his report. Ms. Steab confirmed that she had called him and that she was the

person with whom he had spoken. Mr. Fanning became very angry and stated, "this is harassment." He launched into a diatribe regarding the operation of the COPP office, and speculated that an unidentified person from Missoula had contacted COPP to complain about his campaign. Ms. Steab said did not know who Mr. Fanning was talking about, but she told him that COPP had received phone calls from individuals asking about his campaign report (which was weeks overdue). Mr. Fanning again accused Ms. Steab of harassing him, reiterated that he would bring the report in on March 1, and hung up.

9. On March 5, 2012, Mr. Fanning visited the COPP office, with some bank statements and a small plastic bag full of receipts and invoices. He stated that COPP could get the login information from Mr. Berry for his Piryx account and PayPal account.<sup>1</sup> Commissioner Murry, Julie Steab, and Mary Baker all met with Mr. Fanning. Ms. Baker agreed to attempt to piece together a draft campaign report from the bank statements and receipts Mr. Fanning had brought with him. Ms. Baker agreed to work with Mr. Fanning to try to bring his campaign into compliance, but advised him that after this report he would have to either hire a treasurer to work on the reports or file them himself. Ms. Baker and Ms. Steab worked with Mr. Berry to get the necessary login information to access the Piryx and PayPal accounts in order to complete the report.
10. On March 9, 2012, Ms. Baker sent an email to Mr. Fanning with an attached draft campaign finance report for his review. Ms. Baker advised that there was a lot of detail missing, such as contributor occupation, employer, and addresses, as well as expenditure details. Mr. Fanning stated he would come back to the COPP office so that they could go over the report together. Mr. Fanning suggested that during that visit he could also receive a lesson in the online report filing service. Mr. Fanning later called back and requested that COPP file the report as it was. Although it was missing the information listed above, the report was filed on March 14, 2012.
11. On March 14, 2012 a woman named Cindy Medicine Hawk called COPP and said she had been contracted to "clean up" Mr. Fanning's reports. Ms. Baker sent her the report and all correspondence so that she could file an amended report. Ms. Baker advised Ms. Medicine Hawk that an amended C-1 that designated her as treasurer had to be filed. COPP subsequently received no further contact from Ms. Medicine Hawk.
12. April 5, 2012, Mr. Fanning called after receiving a reminder from COPP that a report was due April 10, 2012. He requested a copy of his March report and a

---

<sup>1</sup> Piryx and PayPal both permit donors to send money directly to a campaign's account through the Internet.

blank reporting form for him to complete and file. Later that same day Ms. Baker emailed Mr. Fanning and Ms. Medicine Hawk the March report and a blank form.

13. April 24, 2012 Mr. Fanning emailed Ms. Baker and stated that he intended to complete the April report, but that he was on the road. The report filed on March 14<sup>th</sup>, 2012 is the only report ever filed by or for the Fanning for Governor 2012 campaign.
14. On April 27, 2012, Edwin X. Berry filed a formal campaign finance complaint against Fanning for Governor 2012. COPP accepted the complaint and sent a copy of the complaint to Mr. Fanning by certified mail that same day, inviting Mr. Fanning to submit a response by May 18, 2012. After receiving the complaint Mr. Fanning drove from Pray, Montana to the COPP office, bringing with him copies of bank statements and receipts. Mr. Fanning did not provide a written response to the complaint.
15. The complaint alleges that Mr. Fanning used his campaign account to pay for personal expenses. A review of the bank documents that Mr. Fanning provided shows the following expenditures made from his campaign account:

1. Porter's Automotive	\$1950.00
2. All Serve Tire	895.50
3. Western Drug	54.31
4. Park Electric Corp.	245.49
5. Red Box	1.20
6. Red Box	<u>2.40</u>
<b>Total:</b>	<b>\$3,148.90</b>

16. Mr. Fanning admitted that he inadvertently wrote a check for \$54.31 on his campaign account, using the money for prescriptions. He contends that he reimbursed the campaign account for this amount, but there is no corresponding deposit in the bank statements to verify Mr. Fanning's contention.
17. The complaint alleges that Mr. Fanning withdrew more funds than allowed under Mont. Code Ann. § 13-37-215, Montana's law permitting petty cash funds for campaigns. Although records provided by Mr. Fanning disclose that he occasionally withdrew funds to pay a bill or reimburse a volunteer, no evidence was disclosed tending to establish any violations of the petty cash statute.
18. Bank documents provided to COPP by Mr. Fanning show bank activity on the campaign account through April 5, 2012. As of that date it appears Mr. Fanning had raised \$13,146 and spent \$11,466.49. It also appears that Mr. Fanning spent

\$1,684 of his own funds.

### STATEMENT OF FINDINGS

There is sufficient evidence to find that Mr. Fanning and Fanning for Governor 2012 violated several campaign finance statutes and rules, as set forth below.

**13-37-225. Reports of contributions and expenditures required.** This statute requires a candidate to file periodic reports disclosing contributions and expenditures. Mr. Fanning and Fanning for Governor 2012 did not file any of the required reports that were due by the dates listed in Fact 3. Only one report was filed, on March 14, 2012. That report was compiled by COPP staff based on information that Mr. Fanning provided to COPP. Although Mr. Fanning signed off on the report, it is incomplete because it does not include the detailed information described in Fact 10.

**13-37-226(1). Time for filing reports.** This statute establishes deadlines for candidates to file reports with COPP. Those deadlines were provided to Mr. Fanning when he filed his C-1 Statement of Candidate form. See Fact 3. The first report, due January 5, 2012, was not filed until March 14, 2012 (69 days late), and it was not prepared by Mr. Fanning. Mr. Fanning never filed any reports that were due on subsequent deadlines, including a closing report.

**13-37-229. Disclosure of contributions received.** A report is required to disclose, for each person's aggregate contributions over \$35, the contributor's full name, mailing address, occupation, and employer. Many of the addresses, occupations and employers are missing from the one report that was filed, and it is unknown how many others are simply not reported at all.

**13-37-230. Disclosure of expenditures made.** This statute requires a candidate to disclose expenditures made by the campaign, including the full name and address of the payee, as well as details regarding any loans, debts incurred, and other information. COPP used bank statements and copies of receipts provided by Mr. Fanning to compile the March 14, 2012 report. See Facts 9 and 10. However, much of the detail required by the statute is missing because it could not be obtained from the information provided by Mr. Fanning. There is also evidence that some campaign expenses were never reported.

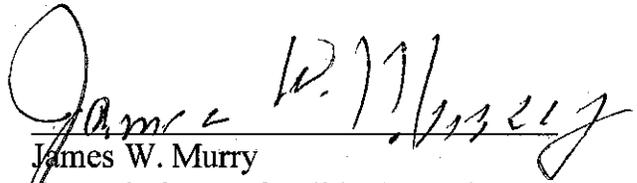
**13-37-208. Treasurer to keep records.** This statute requires a campaign treasurer to keep detailed accounts of contributions received and expenditures made. The accounts must be current within not more than 10 days after the date of receiving a contribution or making expenditure. Mr. Fanning and Fanning for Governor 2012 failed to comply with the requirements of this statute.

**13-1-101(11)(a). Definitions – Expenditure.** In Montana an “expenditure” is defined as “a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value made for the purpose of influencing the results of an election.” This definition evinces a clear legislative intent that payments from a campaign account must be used for campaign purposes, and not for personal expenses unrelated to the campaign. The complaint alleges that Mr. Fanning made some payments out of his campaign account for personal expenses unrelated to the campaign. See Facts 15 and 16. Mr. Fanning admitted that he inadvertently paid for a prescription using funds from his campaign account, but contends he reimbursed the account for that payment. Fact 16. Based on Mr. Fanning’s failure to file campaign finance reports and failure to maintain complete and accurate campaign records, it is not possible at this time to determine whether Mr. Fanning may have improperly made payments from his campaign account for personal expenses unrelated to the campaign. If information establishing such payments comes to light I reserve the right to take appropriate enforcement action based on the violation.

### CONCLUSION

There is sufficient evidence to conclude that Robert T. Fanning and the Fanning for Governor 2012 campaign violated Montana campaign financial reporting and disclosure laws, and that a civil penalty action under Mont. Code Ann. § 13-37-128 is warranted.

DATED this 23 day of April, 2013.

  
James W. Murry  
Commissioner of Political Practices