

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES OF THE STATE OF MONTANA

<i>Delgado v. Salomon</i> No. COPP-2014-CFP-029	Finding of Sufficient Facts to Show a Violation of Montana's Campaign Practice Act
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Frank Delgado is a resident of St. Ignatius, Montana. Dan Salomon is a resident of Pablo, Montana. Mr. Delgado and Mr. Salomon were both candidates in the 2014 Republican primary election for nomination as the Republican candidate for the Montana House from House District 93 (HD93). On June 6, 2014, Mr. Delgado filed a complaint against Mr. Salomon alleging violations of Montana's campaign practices law.

**SUBSTANTIVE ISSUES ADDRESSED**

The substantive areas of campaign finance law addressed by this decision are: filing dates and excusable neglect.

**FINDING OF FACTS**

The facts necessary for this Decision are as follows:

Finding of Fact No. 1: In the 2014 primary election, four Candidates were on the ballot for HD 93, Lake County: Frank Delgado (Republican), Daniel Salomon (Republican), Susan Evans (Democrat) and James Steele, Jr. (Democrat). (Commissioner's records, Secretary of State's Website).

Finding of Fact No. 2: On June 3, 2014, a primary election was held. Daniel Salomon defeated Frank Delgado for the Republican nomination and Susan Evans defeated James Steele, Jr. for the Democratic nomination. Mr. Salomon and Ms. Evans will go on to the general election in November. (Secretary of State's Website).

Finding of Fact No. 3: All 2014 legislative candidates were required to file their first campaign finance report (through a Form C-5) with the Commissioner of Political Practices Office (COPP) no later than 5:00 P.M., May 22, 2014. §13-37-226 MCA. (Commissioner's records).

Finding of Fact No. 4: On June 3, 2014, COPP staff sent an email reminder to all legislative candidates who still had not filed their report. That email message went to Candidate Salomon as his report due May 22, 2014, had not been filed with the COPP. (Commissioner's records, Investigative notes).

Finding of Fact No. 5: That same day (June 3, 2014), COPP staff received a voicemail from Candidate Salomon advising that he thought he had timely submitted his C5 campaign finance report to the COPP by a filing routed through the Lake County Elections Office on March 21, 2014. (Commissioner's records, Investigative notes).

Finding of Fact No. 6: Candidate Salomon also mailed a copy of his C5 campaign report to the COPP. The C5 report was mailed on June 3, 2014 and accepted for filing by the COPP on June 5, 2014. There was no prior fax filing of Candidate Salomon's C-5 report, making June 5, 2014 as the date of first filing. (Commissioner's records, Investigative notes).

Finding of Fact No. 7: Kathie Newgard, Elections Administrator for Lake County, verified that Mr. Salomon's C5 report was filed with Lake County on May 21, 2014 prior to the May 22, 2014 deadline. (Commissioner's records, Investigative notes).

Finding of Fact No. 8: Ms. Newgard confirmed that her Office had agreed to fax, and thought it had faxed, a copy of the report to the COPP. The Commissioner's investigator observed the notation made on the first page of Candidate Salomon's C5 report handwritten by a Lake County Elections clerk that read, "Faxed 5/21 at 10:45". (Investigative notes).

Finding of Fact No. 9: The Commissioner's investigator interviewed a clerk at the Lake County Elections Office who stated that another clerk sent the fax of Mr. Salomon's C5 campaign finance report to the COPP on May 21, 2014. Once their office was notified of the complaint against Candidate Salomon, they called the clerk at home to verify that she did indeed send the fax

for Candidate Salomon as dated. (Commissioner's records, Investigative notes).

### **DISCUSSION**

As a 2014 primary election candidate, Mr. Salomon was required to file a pre-election campaign finance report showing campaign contributions and expenditures (Report) on or by May 22, 2014. (§13-37-226(3) MCA). Mr. Salomon was required by law to file the Report with the COPP. (§13-37-225 MCA). Mr. Salomon was not required to file a Report with the local election administrator. *Id.*

Candidate Salomon filed a copy of the Report with the Lake County Election Administrator. (FOF No. 7). A filing with the local election administrator does not equate to filing with the COPP as the local election administrator does not accept, post and make the Report available to the public, as does the COPP through its website. Nor, did the attempt at fax filing assist candidate Salomon as "a faxed report is timely filed if the original of the report is filed within five days after the fax transmission." 44.10.401(2)(b) ARM.<sup>1</sup>

In this Matter there was no successful fax filing of the Report. (FOF No. 6). Even giving allowance for a third party attempt to fax file, candidate Salomon did not file the original Report within five days of claimed date of fax filing thereby negating any benefit from the failed attempt. Candidate Salomon was 14 days late in filing the Report with the Commissioner. (FOF

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<sup>1</sup> The Commissioner has excused as *de minimis* the failure to follow a fax filing with an original filing, if a fax copy was actually filed and the fax copy transmitted clearly enough to allow scanning and posting of a readable copy for public view.

Nos. 3 and 6).

### **FINDING OF CAMPAIGN PRACTICE VIOLATION**

The Commissioner has limited discretion when making the determination as to an unlawful campaign practice. The Commissioner cannot avoid, but must make, a decision as the law mandates that the Commissioner (“shall investigate”, see §13-37-111(2)(a) MCA) investigate any alleged violation of campaign practices law. The mandate to investigate is followed by a mandate to take action as the law requires that if there is “sufficient evidence to justify a civil...prosecution” of a violation the Commissioner must (“shall notify”, see §13-37-124 MCA) initiate consideration for prosecution.

Having been charged to make a decision, the Commissioner must follow substantive law applicable to a particular campaign practice decision. In this Matter Montana’s campaign finance report filing requirements are mandatory: “shall file” (see §13-37-226 MCA). The filing date requirements are date certain. Therefore, any failure to meet a mandatory, date-certain filing date is a violation of §13-37-226 MCA.

This Commissioner, having been charged to investigate and decide, hereby determines that sufficient evidence exists to show that candidate Salomon has, as a matter of law, committed a violation of Montana’s campaign practice law, specifically §13-35-226 MCA. The Commissioner now considers whether the principles of excusable neglect or *de minimis* apply to this Matter.

Candidate Salomon provided proof of a clerical oversight (failure to successfully fax) by the local election administrator and further demonstrated

prompt correction once the oversight was discovered (Finding of Fact Nos. 6-9). Candidate Salomon, however, filed with the wrong office and he did not correct, or even attempt to confirm, the claimed fax filing within the five day period allowed by law. While some of these actions weigh toward mitigation, taken as whole these actions show mere carelessness or ignorance of the law and that is not sufficient to justify excusable neglect. *Empire Lath & Plaster, Inc. v. American Casualty Co.*, 256 Mont. 413, 417, 847 P.2d 276, 278 (1993).<sup>2</sup>

Turning to a second level of analysis, on one hand candidate Salomon did timely file a copy of the campaign report at the local election administrator's office. Further, the campaign reporting delay at the COPP was limited to 14 days. These two factors could be argued to limit harm to the public such that the violation should be excused as *de minimis*. See discussion of *de minimis* principles in *Matters of Vincent*, Nos. COPP-2013-CFP-006 and 009. On the other hand, the Commissioner has limited discretion to apply *de minimis* to untimely reporting. Reporting is only valid when it is timely accomplished and any delay demonstrates harm, as shown by the 24 hour reporting that is required for certain contributions and expenditures. There needs to be special circumstances to apply *de minimis* to late reporting and those do not exist when the failure to report on time and at the correct office is

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<sup>2</sup> Prior Commissioners have applied the excusable neglect principle to excuse prosecution of late filing by a period of 1 day (see *Womack v. Jenks*, COPP- CFP-2013-023); 11 days (see *In the Matter of the Washburn Complaint*, COPP-CFP-2013-002) and by a period of 17 days (see *In the Matter of the Complaint Against CMRG*, decided February 21, 2002). But, to get to this application there must first be a showing of excusable neglect. This Commissioner has explained and narrowed the use of the excusable neglect principle. See the Discussion in *Matters of Vincent*, Nos. COPP-2013-CFP-006 and 009. As explained, above, excusable neglect does not apply based on the facts of this Matter.

is due to just plain, simple human error or ignorance.

The Commissioner notes that this example demonstrates why candidates are best advised to electronically file campaign finance reports with the COPP. The COPP's new electronic reporting system allows for verification, posting and public access to information that lessens the type of confusion demonstrated by this actions described in this Decision. Candidates for the legislature are encouraged to attempt electronic filing.<sup>3</sup>

Because there is a finding of violation and a determination that *de minimis* and excusable neglect theories are not applicable, civil/criminal prosecution and/or a civil fine is justified (See §13-37-124 MCA). The Commissioner hereby, through this decision, issues a "sufficient evidence" Finding and Decision justifying civil prosecution under §13-37-124 MCA. Because of nature of violations (the failure to timely report 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. *Id.*

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 this Matter is waived back, the Finding and Decision in this

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<sup>3</sup> The COPP homepage, under the featured on-line services service bar, sets out step by step instructions guiding a candidate through the electronic filing process.

Matter does not necessarily lead to civil or criminal 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 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 law, including those of §13-37-226 MCA. (See 13-37-128 MCA). Full due process is provided to the alleged violator because the district court will consider the matter *de novo*.

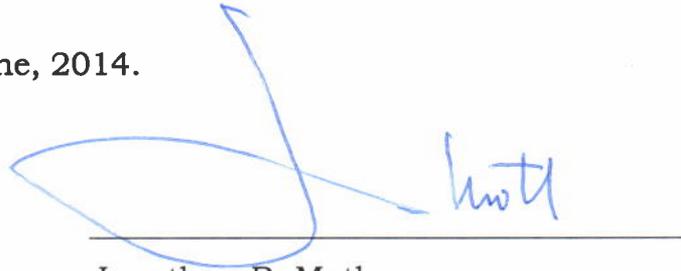
At the point this Matter is returned for negotiation of the fine or for litigation, mitigation principles will be considered. See discussion of mitigation principles in *Matters of Vincent*, Nos. COPP-2013-CFP-006 and 009. The Commissioner notes that Candidate Salomon showed cooperation and willingness to explain the oversight in a manner that accepted responsibility. Further, the error was corrected promptly when brought to the attention of candidate Salomon. That cooperation and corrective action will be recognized as factors supporting mitigation

### **CONCLUSION**

Based on the preceding discussion as Commissioner I find and decide that there is sufficient evidence to show that candidate Salomon violated Montana’s campaign practices laws, by filing a report 14 days late. This

Matter is submitted to the County Attorney of Lewis and Clark County as the next step in enforcement of the Decision.

DATED this 18<sup>th</sup> day of June, 2014.



Jonathan R. Motl  
Commissioner of Political Practices  
Of the State of Montana