

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES OF THE STATE OF MONTANA

Greenwood v. Hoklin et. al.  No. COPP 2014-CFP-032	Decision and Finding of Sufficient Facts Showing a Certain Violation of the Montana Campaign Practices Act
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Bowen Greenwood is a resident of Helena, Montana. Mr. Greenwood is executive director of the Montana Republican Party. Mr. Greenwood filed a complaint on behalf of the Montana Republican Party.

Stephen Hoklin is a resident of Billings, Montana. Mr. Hoklin is the nominee of the Democratic Party in the 2014 general election to the Montana legislature for House District 45 (HD45). On August 4, 2014 Mr. Greenwood filed a complaint against Candidate Hoklin alleging failure to file a required campaign finance report.

**INTRODUCTION**

This Complaint, and in particular the timing of the complaint, implicates two particular duties of the Commissioner of Political Practices. These duties are first discussed and then applied to achieve a result in this Decision.

## 1. Duty to Investigate

The Commissioner is charged to be proactive in investigating violations of Montana's campaign practice act. The Commissioner is generally charged to investigate "...all of the alleged violations of election laws..." §13-37-111(1) MCA. The Commissioner is specifically charged ("shall") to investigate "failures to file any statements" and further charged to investigate "any other alleged violation" set out in a complaint. §13-37-111(2)(a) MCA.

Mr. Greenwood's complaint against one 2014 general election candidate (Candidate Hoklin, HD 45) requires the Commissioner to investigate that particular complaint and further implicates the Commissioner's duty to investigate all comparable failures to file by other 2014 general election candidates. Accordingly, the Commissioner, by Notice, expanded the reach of the Greenwood complaint to all other 2014 general election candidates who failed to file required campaign finance reports.<sup>1</sup>

## 2. Duty to Remove Non-Filing Candidate From the Ballot

The Montana Campaign Practice Act imposes on the Commissioner a particular, mandatory duty to determine those candidates who failed to file campaign finance reports and then provide a candidate disqualification notification to the appropriate election administrator because: "a [non-filing] candidate's name may not appear on the official ballot." §13-37-126(3)(a) MCA. This candidate disqualification notification, for the 2014 general election, must

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<sup>1</sup> The Commissioner will, at a later date, issue a further Decision identifying those defeated 2014 primary election candidates who did not file required campaign finance reports. This Decision identifies, and is limited to, 2014 candidates who prevailed in the primary election and are now candidates in Montana's 2014 general election.

be made by the Commissioner no later than August 14, 2014.<sup>2</sup> Because of this pending deadline the Commissioner has expedited this Decision so it can provide another layer of notice to non-filing candidates stating that they must file missing campaign finance reports if they wish to remain on the ballot.

### 3. The Reach of the Notice

The following 2014 candidates for state and local office (42 in total) have been noticed and included within the reach of the Greenwood complaint and this Decision.

Terence Gill 760 Grave Creek Rd Eureka, MT 59917	Mary Murphy PO Box 1512 Livingston, MT 59047	Catie Henderson 212 Lakeshore Dr Kalispell, MT 59901	Stephen Hoklin 3114 Brayton Street Billings, MT 59102
Clarissa Cerovski 612 North 32 <sup>nd</sup> St Billings, MT 59101	Jeffrey Hill 3855 Avenue D Billings, MT 59102	Joshua Austill 2224 U.S. Hwy 87 East, Trailer 100 Billings, MT 59101-6607	Karen Lynch PO Box 123 Emigrant, MT 59027
Richard Tenneson Jr 1471 Colorado Gulch Dr. Helena, MT 59601	Nicholas Taffs 2765 Wylie Drive # 79 East Helena, MT 59635	Nick Schwaderer PO Box 370 Superior, MT 59872	Lila Evans PO Box 302 Browning, MT 59417
Evan Bowser 1509 12 <sup>th</sup> Ave. S. Great Falls, MT 59405	Bill Harris PO Box 205 Winnett, MT 59087	Vince Ricci PO Box 266 Laurel, MT 59044	Theresa Manzella PO Box 1100 Hamilton, MT 59840
Carolyn Berkram PO Box 1225 Cut Bank, MT 59427	Steven Eschenbacher 309 Mt LNDG Polson, MT 59860	Virgil A. Fulton PO Box 1905 Colstrip, MT 59323	Brian Gallup PO Box 293 E. Glacier Park, MT 59434
Dan Happel PO Box 243 Pony, MT 59747	Kathy Harris PO Box 598 Thompson Falls, MT 59873	Debby Hernandez 1667 Old Sorrel Trail Billings, MT 59105	Tandi Jespersen PO Box 211 Ekalaka, MT 59324
Neil Kittelmann PO Box 22 Ekalaka, MT 59324	Dale Magone 1745 Quartz Loop Rd Superior, MT 59872	Robert McCandless PO Box 420027 Haugan, MT 59842	Christopher Miller PO Box 835 Philipsburg, MT 59888

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<sup>2</sup> This date is derived by reading the deadlines of §13-37-126(3)(b)(iii) together with the timeline of §13-12-201 MCA.

Jack Morris  
15 W. 6<sup>th</sup> Ave.,  
Powerblock – 3<sup>rd</sup> Floor  
Helena, MT 59601

Robert Pallas  
PO Box 112  
Lavina, MT 59046

Ralph Patch  
PO Box 221  
Wolf Point, MT 59201

Peter Rapkoch  
955 Teton Ave.  
Shelby, MT 59474

Daniel Rice  
PO Box 728  
Miles City, MT 59301

Helen Roderque  
103 MT View Dr S  
Anaconda, MT 59711

David Rossi  
Po Box 194  
Glendive, MT 59330

Jay Sheffield  
758 Hutton Dr  
Libby, MT 59923

Kacey Smart  
PO Box 372  
Virginia City, MT 59755

Frank Smith  
PO Box 729  
Poplar, MT 59255

Mark Sullivan  
100 Aspen Dr  
Kalispell, MT 59901

William Wilson  
208 25<sup>th</sup> Ave. NE  
Great Falls, MT  
59404

Kimberly Yarlott  
407 9<sup>th</sup> St. Square  
Hardin, MT 59034

Loren Young  
13705 CR 351  
Fairview, MT 59221

## DISCUSSION

Mr. Greenwood's complaint alleges that Candidate Hoklin failed to file a campaign finance report. The Commissioner is required to investigate ("shall investigate")(44.10.307(3) ARM) Mr. Greenwood's complaint. This particular investigation required only examination of in-place data, as all of the necessary information was on file at the COPP. Based on this investigation, the following findings of fact are made:

Finding of Fact No. 1: On March 18, 2014 Stephen Hoklin filed the necessary candidacy forms (C-1 and D-1) with the COPP. Mr. Hoklin ran for and received the Democratic Party nomination as its candidate for HD 45. Mr. Hoklin remains a candidate for election as the Representative from HD 45. (Commissioner's Records)

Finding of Fact No. 1(a): Mr. Hoklin failed to file any campaign finance reports with the COPP. (Commissioner's Records)

Montana's campaign finance report filing requirements are mandatory: "shall file" (see §13-37-226 MCA). Montana law requires that legislative candidates file their campaign finance report "on the 12<sup>th</sup> day preceding the date on which an election is held.." and on 20<sup>th</sup> day after the election §13-37-226(3) MCA. In 2014 that 12<sup>th</sup> day preceding the primary election was May 22,

2014 and 20<sup>th</sup> day after the election was June 23, 2014. Candidate Hoklin's campaign, however, failed to file either report. The Commissioner objectively determines that Candidate Hoklin has failed to file campaign finance reports as required by law.

A. Fifteen Additional Legislative Candidates

There are currently 232 legislative (house and senate) candidates vying for 2014 election to the Montana legislature. The Notice accompanying the complaint in this Matter identified 16 of those 2014 legislative candidates, including Candidate Hoklin, as having failed to file required campaign finance reports.

The Commissioner determines that Candidate Hoklin failed to file the required campaign finance reports (*see* FOF Nos. 1, 1(a)). The following comparable findings of fact are made as to the remaining 15 legislative candidates:

Finding of Fact No. 2: On March 13, 2014 Terence Gill filed the necessary candidacy form C-1 (statement of candidate) but failed to file a D-1 (business disclosure statement) with the COPP. Mr. Gill ran for and received the Democratic Party nomination as its candidate for SD 1. Mr. Gill remains a candidate for election as the Senator from SD 1. (Commissioner's Records)

Finding of Fact No. 2(a): Mr. Gill failed to file the Form D-1 and failed to file any campaign finance reports with the COPP. (Commissioner's Records)

Finding of Fact No. 3: On March 17, 2014 Mary Murphy filed the necessary candidacy forms (C-1 and D-1) with the COPP. Ms. Murphy ran for and received the Democratic Party nomination as its candidate for SD 30. Ms. Murphy remains a candidate for election as the Senator from SD 30. (Commissioner's Records)

Finding of Fact No. 3(a): Ms. Murphy failed to file any campaign finance reports with the COPP. (Commissioner's Records)

Finding of Fact No. 4: On March 13 and March 17, 2014 Catie Henderson filed the necessary candidacy forms (C-1 and D-1) with the COPP. Ms. Henderson ran for and received the Democratic Party nomination as its candidate for HD 7. Ms. Henderson remains a candidate for election as the Representative from HD 7. (Commissioner's Records)

Finding of Fact No. 4(a): Ms. Henderson failed to file any campaign finance reports with the COPP. (Commissioner's Records)

Finding of Fact No. 5: On March 17 and March 18, 2014 Clarissa Cerovski filed the necessary candidacy forms (C-1 and D-1) with the COPP. Ms. Cerovski ran for and received the Democratic Party nomination as its candidate for HD 53. Ms. Cerovski remains a candidate for election as the Representative from HD 53. (Commissioner's Records)

Finding of Fact No. 5(a): Ms. Cerovski failed to file any campaign finance reports with the COPP. (Commissioner's Records)

Finding of Fact No. 6: On February 11, 2014 Jeffrey Hill filed the necessary candidacy form C-1 (statement of candidate) but failed to file a D-1 (business disclosure statement) with the COPP. Mr. Hill ran for and received the Libertarian Party nomination as its candidate for HD 54. Mr. Hill remains a candidate for election as the Representative from HD 54. (Commissioner's Records)

Finding of Fact No. 6(a): Mr. Hill failed to file the Form D-1 and failed to file any campaign finance reports with the COPP. (Commissioner's Records)

Finding of Fact No. 7: On January 24, 2014 Joshua Austill filed the necessary candidacy forms (C-1 and D-1) with the COPP. Mr. Austill ran for and received the Libertarian Party nomination as its candidate for HD 56. On July 31 Mr. Austill filed a written withdrawal as a candidate for election as the Representative from HD 56. (Commissioner's Records)

Finding of Fact No. 7(a): Mr. Austill failed to file any campaign finance reports with the COPP. (Commissioner's Records)

Finding of Fact No. 8: On March 17, 2014 Karen Lynch filed the necessary candidacy forms (C-1 and D-1) with the COPP. Ms. Lynch

ran for and received the Democratic Party nomination as its candidate for HD 59. Ms. Lynch remains a candidate for election as the Representative from HD 59. (Commissioner's Records)

Finding of Fact No. 8(a): Ms. Lynch failed to file any campaign finance reports with the COPP. (Commissioner's Records)

Finding of Fact No. 9: On March 12, 2014 Richard Tenneson, Jr. filed the necessary candidacy forms (C-1 and D-1) with the COPP. Mr. Tenneson ran for and received the Republican Party nomination as its candidate for HD 79. On July 25, 2014 Mr. Tenneson filed a written notice of withdrawal as a candidate for election as the Representative from HD 79. (Commissioner's Records)

Finding of Fact No. 9(a): Mr. Tenneson failed to file any campaign finance reports with the COPP. (Commissioner's Records)

Finding of Fact No. 10: On February 28, 2014 Nicholas Taffs filed the necessary candidacy forms (C-1 and D-1) with the COPP. Mr. Taffs ran for and received the Libertarian Party nomination as its candidate for HD 78. Mr. Taffs remains a candidate for election as the Representative from HD 78. (Commissioner's Records)

Finding of Fact No. 10(a): Mr. Taffs failed to file any campaign finance reports with the COPP. (Commissioner's Records)

Finding of Fact No. 11: On January 6 and January 21, 2014 Nicholas Schwaderer filed the necessary candidacy forms (C-1 and D-1) with the COPP. Mr. Schwaderer ran for and received the Republican Party nomination as its candidate for HD 14. Mr. Schwaderer remains a candidate for election as the Representative from HD 14. (Commissioner's Records)

Finding of Fact No. 11(a): On May 21, 2014 Mr. Schwaderer filed his pre-election C5 campaign finance report. On June 23, 2014 Mr. Schwaderer fax filed his post-election report. On August 8, 2014 Mr. Schwaderer refiled his post-election campaign finance report with the COPP. (Commissioner's Records)

Finding of Fact No. 12: On March 17, 2014 Lila Evans filed the necessary candidacy forms (C-1 and D-1) with the COPP. Ms. Evans ran for and received the Republican Party nomination as its candidate for HD 16. Ms. Evans remains a candidate for election as the Representative from HD 16. (Commissioner's Records)

Finding of Fact No. 12(a): On May 23, 2014 Ms. Evans filed her pre-election C5 campaign finance report. On June 24, 2014 Ms. Evans filed her post-election campaign finance report. (Commissioner's Records)

Finding of Fact No. 13: On March 17, 2014 Eva Bowser filed the necessary candidacy forms (C-1 and D-1) with the COPP. Mr. Bowser ran for and received the Democratic Party nomination as its candidate for HD 19. Mr. Bowser remains a candidate for election as the Representative from HD 19. (Commissioner's Records)

Finding of Fact No. 13(a): On May 28, 2014 Mr. Bowser filed his pre-election C5 campaign finance report but Mr. Bowser failed to file his post-election campaign finance report with the COPP. (Commissioner's Records)

Finding of Fact No. 14: On March 4, 2014 Bill Harris filed the necessary candidacy forms (C-1 and D-1) with the COPP. Mr. Harris ran for and received the Republican Party nomination as its candidate for HD 29. Mr. Harris remains a candidate for election as the Representative from HD 29. (Commissioner's Records)

Finding of Fact No. 14(a): On May 30, 2014 Bill Harris filed his pre-election C5 campaign finance report but Mr. Harris failed to file his post-election campaign finance report with the COPP. (Commissioner's Records)

Finding of Fact No. 15: On August 13, 2014 and January 14, 2014 Vince Ricci filed the necessary candidacy forms (C-1 and D-1) with the COPP. Mr. Ricci ran for and received the Republican Party nomination as its candidate for HD 55. Mr. Ricci remains a candidate for election as the Representative from HD 55. (Commissioner's Records)

Finding of Fact No. 15(a): On May 20, 2014 Mr. Ricci filed his pre-election C5 campaign finance report. On August 7, 2014 (after receiving a copy of Greenwood complaint) Mr. Ricci filed his post-election campaign finance report with the COPP. (Commissioner's Records)

Finding of Fact No. 16: On May 1, 2014 Theresa Manzella filed the necessary candidacy forms (C-1 and D-1) with the COPP. Ms. Manzella ran for and received the Republican Party nomination as its candidate for HD 85. Ms. Manzella remains a candidate for election as the Representative from HD 85. (Commissioner's Records)

Finding of Fact No. 16(a): On May 22, 2014 Ms. Manzella filed her pre-election C5 campaign finance report but Ms. Manzella failed to file her post-election campaign finance report with the COPP. (Commissioner's Records)

The Commissioner hereby determines that the above facts are sufficient facts to support the following findings:

Sufficiency Finding No. 1: Candidates Schwaderer, Evans and Ricci have filed the required campaign finance reports. (see FOF Nos. 11, 11(a), 12, 12(a), 15 and 15(a)).

Sufficiency Finding No. 2: Candidates Austill and Tenneson have stated their intention to withdraw as candidates. (see FOF Nos. 7, 7(a), 9 and 9(a)).

Sufficiency Finding No. 3: Candidates Hoklin, Gill, Murphy, Henderson, Cervski, Hill, Lynch, Taffs, Bowser, Harris, and Manzella failed to file forms D-1 and/or campaign finance reports. (see FOF Nos. 1, 1(a), 2, 2(a), 3, 3(a), 4, 4(a), 5, 5(a), 6, 6(a), 8, 8(a), 10, 10(a), 11, 11(a), 12, 12(a), 13, 13(a), 14, 14(a), 16, 16(a)).

This Decision begins with 216 candidates for the 2014 Montana legislature who filed the required campaign finance reports and are not subject to removal from the ballot. The Commissioner hereby determines that Candidates Schwaderer, Ricci and Evans have also filed the required campaign finance reports (SF No. 1) and remain on the ballot with the other 216 legislative candidates who had already filed their campaign finance reports.<sup>3</sup>

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<sup>3</sup> Candidates Schwaderer and Ricci filed their missing post-election campaign finance reports immediately after receiving a copy of the Greenwood complaint, with accompanying Notice. Candidate Schwaderer and Candidate Evans had actually timely filed their post-election campaign finance report, doing so by fax filing. The Commissioner apologizes for erroneously including Candidates Schwaderer and Evans on the list of non-filing candidates.

Several non-filing candidates have told the COPP staff that they did not believe they needed to file campaign finance reports because they had no contributions or expenditures. That very information, however, should be provided to the public, rather than kept private with the candidate and Montana law so requires: “(campaign finance reports) must be filed...even though no contributions or expenditures have been received or made...” §13-37-228 MCA. Accordingly, the Commissioner further determines that the 13 legislative candidates identified above who have not yet filed the required campaign finance reports (SF Nos. 2 and 3) are subject to removal from the ballot, as discussed below. The Commissioner includes Candidates Austill and Tenneson in this determination until such time as the Secretary of States accepts the withdrawal forms submitted by the candidates.<sup>4</sup>

The Commissioner further determines that, with the exception of Candidate Evans and Schwaderer (FOF Nos. 11, 11(a), 12 and 12(a)), each of the above discussed legislative candidates who preserves 2014 general election candidacy by filing will have done so by a late filing of their campaign finance reports. This late filing issue is discussed further, below.

#### B. 26 Local Government Candidates

There were 653 candidates vying for 2014 election to various local

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<sup>4</sup> In past elections the withdrawal forms submitted by candidates have sometimes proven deficient. In the event that the candidate withdrawal forms are not accepted by Montana’s Secretary of State then the Commissioner’s back-up removal will take the name of these two candidates off the ballot.

government positions.<sup>5</sup> The Notice accompanying the complaint in this Matter identified 26 of those 2014 local government candidates as having failed to file required campaign finance reports. The Commissioner makes the following findings of fact in regard to those 26 candidates.

Finding of Fact No. 17: On January 10, 2014 Carolyn Berkram filed the necessary candidacy forms (C-1-A) with the COPP. Ms. Berkram ran for and received the Democratic Party nomination as its candidate for Glacier County Attorney. Ms. Berkram remains a candidate for election as the county attorney for Glacier County. (Commissioner's Records)

Finding of Fact No. 17(a): On May 20, 2014 Ms. Berkram filed her pre-election C5 campaign finance report but Ms. Berkram failed to file her post-election campaign finance report with the COPP. (Commissioner's Records)

Finding of Fact No. 18: On March 12, 2014 Steven Eschenbacher filed the necessary candidacy forms (C-1-A) with the COPP. Mr. Eschenbacher ran for and received the Republican Party nomination as its candidate for Lake County Attorney. Mr. Eschenbacher remains a candidate for election as the county attorney for Lake County. (Commissioner's Records)

Finding of Fact No. 18(a): On May 27, 2014 Mr. Eschenbacher filed his pre-election C5 campaign finance and on July 22, 2014. Mr. Eschenbacher filed his post-election campaign finance report. (Commissioner's Records)

Finding of Fact No. 19: On March 10, 2014 Virgil Allen Fulton filed the necessary candidacy forms (C-1-A) with the COPP. Mr. Fulton ran for and received the Republican Party nomination as its candidate for Rosebud County Coroner. Mr. Fulton remains a candidate for election as the coroner for Rosebud County. (Commissioner's Records)

Finding of Fact No. 19(a): Mr. Fulton filed an original C-1-A Mr. Fulton and checked Box C, certifying that he planned to receive and expend funds over \$500. On July 31, 2014 Mr. Fulton filed an

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<sup>5</sup> This is the number of candidates as of the time of the 2014 primary elections. There may be fewer for the general election. All 26 local government candidates addressed by this Decision are currently general election candidates.

amended C-1-A changing to a “B” box to reflect that he did not receive or expend any funds. (Commissioner’s Records)

Finding of Fact No. 20: On March 7, 2014 Brian Gallup filed the necessary candidacy forms (C-1-A) with the COPP. Mr. Gallup ran for and received the Republican Party nomination as its candidate for Glacier County Commissioner District 2. Mr. Gallup remains a candidate for election as a County Commissioner for Glacier County. (Commissioner’s Records)

Finding of Fact No. 20(a): On May 22, 2014 Mr. Gallup filed a pre-election C5 campaign finance report listing “no transactions in period” but Mr. Gallup failed to file his post-election campaign finance report with the COPP. (Commissioner’s Records)

Finding of Fact No. 21: On January 13, 2014 Dan Happel filed the necessary candidacy forms (C-1-A) with the COPP. Mr. Happel ran as a non-partisan candidate for Madison County Commissioner. Mr. Happel remains a candidate for election as a County Commissioner for Madison County. (Commissioner’s Records)

Finding of Fact No. 21(a): On June 9, 2014 Mr. Happel filed his pre-election C5 campaign finance report but Mr. Happel failed to file his post-election campaign finance report. (Commissioner’s Records)

Finding of Fact No. 22: On April 2, 2014 Kathy Harris filed the necessary candidacy forms (C-1-A) with the COPP. Ms. Harris ran as a non-partisan candidate for Sanders County Coroner. Ms. Harris remains a candidate for election as the coroner for Sanders County. (Commissioner’s Records)

Finding of Fact No. 22(a): On May 20, 2014 Ms. Harris filed her pre-election C5 campaign finance report but Ms. Harris failed to file her post-election campaign finance report with the COPP. Ms. Harris immediately filed a post primary C5 report with the COPP on August 7, 2014, once advised of the complaint. (Commissioner’s Records)

Finding of Fact No. 23: On March 18, 2014 Debby Hernandez filed the necessary candidacy forms (C-1-A) with the COPP. Ms. Berkram ran for and received the Republican Party nomination as its candidate for Yellowstone County Auditor. Ms. Hernandez remains a candidate for election as the auditor of Yellowstone County. (Commissioner’s Records)

Finding of Fact No. 23(a): On May 17, 2014 Ms. Hernandez filed her pre-election C5 campaign finance report but Ms. Hernandez failed to

file her post-election campaign finance report with the COPP. Ms. Hernandez immediately filed a post primary C5 report with the COPP on August 7, 2014, once advised of the complaint. (Commissioner's Records)

Finding of Fact No. 24: On January 9, 2014 Tandi Jesperson filed the necessary candidacy forms (C-1-A) with the COPP. Ms. Jesperson ran as a non-partisan candidate Sanders County Justice of the Peace. Ms. Jesperson remains a candidate for election as the Justice of the Peace for Sanders County. (Commissioner's Records)

Finding of Fact No. 24(a): On May 19, 2014 Ms. Jesperson filed her pre-election C5 campaign finance report but Ms. Jesperson failed to file her post-election campaign finance report with the COPP. Ms. Jesperson immediately filed a post primary C5 report with the COPP on August 7, 2014, once advised of the complaint. (Commissioner's Records)

Finding of Fact No. 25: On March 4, 2014 Neil Kittelmann filed the necessary candidacy forms (C-1-A) with the COPP. Mr. Kittelmann ran as an Independent candidate for Carter County Sheriff/Coroner. Mr. Kittelmann remains a candidate for election as the Sheriff/Coroner for Carter County. (Commissioner's Records)

Finding of Fact No. 25(a): On May 21, 2014 Mr. Kittelmann filed his pre-election C5 campaign finance report but Mr. Kittelmann failed to file his post-election campaign finance report with the COPP. Mr. Kittelmann immediately filed a post primary C5 report with the COPP on August 7, 2014, once advised of the complaint. (Commissioner's Records)

Finding of Fact No. 26: On January 27, 2014 Dale Magone filed the necessary candidacy forms (C-1-A) with the COPP. Mr. Magone ran as a non-partisan candidate for Mineral County Justice of the Peace. Mr. Magone remains a candidate for election as the Justice of the Peace for Mineral County. (Commissioner's Records)

Finding of Fact No. 26(a): Mr. Magone failed to file any campaign finance reports with the COPP. (Commissioner's Records)

Finding of Fact No. 27: On January 9, 2014 Robert McCandless filed the necessary candidacy forms (C-1-A) with the COPP. Mr. McCandless ran as a non-partisan candidate for Mineral County Commissioner. Mr. McCandless remains a candidate for election as a commissioner of Mineral County. (Commissioner's Records)

Finding of Fact No. 27(a): Mr. McCandless sent a copy of an expense sheet on May 19, 2014, but failed to file the proper C5 campaign finance reports with the COPP. (Commissioner's Records)

Finding of Fact No. 28: On January 13, 2014 Christopher Miller filed the necessary candidacy forms (C-1-A) with the COPP. Mr. Miller ran for and received the Republican Party nomination as its candidate for Granite County Attorney. Mr. Miller remains a candidate for election as the county attorney for Granite County. (Commissioner's Records)

Finding of Fact No. 28(a): On May 31, 2014 Mr. Miller filed his pre-election C5 campaign finance report but Mr. Miller failed to file his post-election campaign finance report with the COPP. (Commissioner's Records)

Finding of Fact No. 29: On March 10, 2014 Jack Morris filed the necessary candidacy forms (C-1-A) with the COPP. Mr. Morris ran as a non-partisan candidate for Broadwater County Attorney. Mr. Morris remains a candidate for election for Broadwater County Attorney. (Commissioner's Records)

Finding of Fact No. 29(a): On May 27, 2014 Mr. Morris filed his pre-election C5 campaign finance report but Mr. Morris failed to file his post-election campaign finance report with the COPP. (Commissioner's Records)

Finding of Fact No. 30: On April 2, 2014 Robert Pallas filed the necessary candidacy forms (C-1-A) with the COPP. Mr. Pallas ran for and received the Republican Party nomination as its candidate for Golden Valley County Sheriff. Mr. Pallas remains a candidate for election as the Sheriff of Golden Valley County. (Commissioner's Records)

Finding of Fact No. 30(a): On May 21, 2014 Mr. Pallas filed his pre-election C5 campaign finance report but Mr. Pallas failed to file his post-election campaign finance report with the COPP. (Commissioner's Records)

Finding of Fact No. 31: On January 21, 2014 Ralph Patch filed the necessary candidacy forms (C-1-A) with the COPP. Mr. Patch ran as a non-partisan candidate for Roosevelt County Attorney. Mr. Patch remains a candidate for election for Roosevelt County Attorney. (Commissioner's Records)

Finding of Fact No. 31(a): On May 23, 2014 Mr. Patch filed his pre-election C5 campaign finance report but Mr. Patch failed to file his post-election campaign finance report with the COPP. (Commissioner's Records)

Finding of Fact No. 32: On March 17, 2014 Peter Rapkoch filed the necessary candidacy forms (C-1-A) with the COPP. Mr. Rapkoch ran as a non-partisan candidate for Toole County Justice of the Peace. Mr. Rapkoch remains a candidate for election for Toole County Justice of the Peace. (Commissioner's Records)

Finding of Fact No. 32 (a): On June 12, 2014 Mr. Rapkoch filed a pre-election C5 campaign finance report but Mr. Rapkoch failed to file his post-election campaign finance report with the COPP. (Commissioner's Records)

Finding of Fact No. 33: On January 13, 2014 Daniel Rice filed the necessary candidacy forms (C-1-A) with the COPP. Mr. Rice ran for and received the Republican Party nomination as its candidate for Custer County Attorney. Mr. Rice remains a candidate for election for Custer County Attorney. (Commissioner's Records)

Finding of Fact No. 33(a): On May 20, 2014 Mr. Rice filed his pre-election C5 campaign finance report but Mr. Rice failed to file his post-election campaign finance report with the COPP. Mr. Rice amended his C-1-A report on August 7, 2014 to reflect Box B, to not exceed \$500. (Commissioner's Records)

Finding of Fact No. 34: On April 2, 2014 Helen Roderque filed the necessary candidacy forms (C-1-A) with the COPP. Ms. Roderque ran as a non-partisan candidate for Deer Lodge County Commissioner. Ms. Roderque remains a candidate for election for Deer Lodge County Commissioner. (Commissioner's Records)

Finding of Fact No. 34(a): On March 19, May 12, 2014 and May 23, 2014, Ms. Roderque filed pre-election campaign finance reports but Ms. Roderque failed to file her post-election campaign finance report with the COPP. (Commissioner's Records)

Finding of Fact No. 35: On February 28, 2014 David Rossi filed the necessary candidacy forms (C-1-A) with the COPP. Mr. Rossi ran for and received the Democratic Party nomination as its candidate for Dawson County Sheriff. Mr. Rossi remains a candidate for election for Dawson County Sheriff. (Commissioner's Records)

Finding of Fact No. 35(a): On May 28, 2014 Mr. Rossi filed his pre-election C5 campaign finance report but Mr. Rossi failed to file his post-election campaign finance report with the COPP. (Commissioner's Records)

Finding of Fact No. 36: On July 22, 2014 Jay Sheffield filed the necessary candidacy forms (C-1-A) with the COPP. Mr. Sheffield ran as a non-partisan candidate for Lincoln County Justice of the Peace. Mr. Sheffield remains a candidate for election as the Lincoln County Justice of the Peace. (Commissioner's Records)

Finding of Fact No. 36(a): Mr. Sheffield failed to file any campaign finance reports with the COPP. (Commissioner's Records)

Finding of Fact No. 37: On January 10, 2014 Kacey Smart filed the necessary candidacy forms (C-1-A) with the COPP. Ms. Smart ran as a non-partisan candidate for Madison County Clerk of Court. Ms. Smart remains a candidate for election for Madison County Clerk of Court. (Commissioner's Records)

Finding of Fact No. 37(a): On May 21, 2014 and June 2, 2014, Ms. Smart filed pre-election campaign finance reports but Ms. Smart failed to file her post-election campaign finance report with the COPP. (Commissioner's Records)

Finding of Fact No. 38: On February 7, 2014 Frank Smith filed the necessary candidacy forms (C-1-A) with the COPP. Mr. Smith ran as a non-partisan candidate for Roosevelt County Commissioner. Mr. Smith remains a candidate for election for Roosevelt County Commissioner. (Commissioner's Records)

Finding of Fact No. 38(a): On May 21, 2014 Mr. Smith filed his pre-election C5 campaign finance report but Mr. Smith failed to file his post-election campaign finance report with the COPP. Mr. Smith immediately filed a post primary C5 report with the COPP on August 7, 2014, once advised of the complaint. (Commissioner's Records)

Finding of Fact No. 39: On January 13, 2014 Mark Sullivan filed the necessary candidacy forms (C-1-A) with the COPP. Mr. Sullivan ran as a non-partisan candidate for Flathead County Justice of the Peace. Mr. Sullivan remains a candidate for election as the Flathead County Justice of the Peace. (Commissioner's Records)

Finding of Fact No. 39(a): On August 4, 2014 Mr. Sullivan filed a pre and post primary report with the COPP. (Commissioner's Records)

Finding of Fact No. 40: On March 14, 2014 William Wilson filed the necessary candidacy forms (C-1-A) with the COPP. Mr. Wilson ran for and received the Democratic Party nomination as its candidate for Cascade County Commissioner. Mr. Wilson remains a candidate for election as a Cascade County Commissioner. (Commissioner's Records)

Finding of Fact No. 40(a): Mr. Wilson failed to file any campaign finance reports with the COPP. (Commissioner's Records)

Finding of Fact No. 41: On January 10, 2014 Kimberly Yarlott filed the necessary candidacy forms (C-1-A) with the COPP. Ms. Yarlott ran as a non-partisan candidate for Big Horn County Clerk and Recorder. Ms. Yarlott remains a candidate for election for Big Horn County Clerk and Recorder. (Commissioner's Records)

Finding of Fact No. 41(a): On May 22, 2014 Ms. Yarlott filed a pre-election campaign finance report but Ms. Yarlott failed to file her post-election campaign finance report with the COPP. Ms. Yarlott immediately filed a post primary C5 report with the COPP on August 7, 2014, once advised of the complaint. (Commissioner's Records)

Finding of Fact No. 42: On January 16, 2014 Loren Young filed the necessary candidacy forms (C-1-A) with the COPP. Mr. Young ran for and received the Republican Party nomination as its candidate for Richland County Commissioner. Mr. Young remains a candidate for election as a Richland County Commissioner. (Commissioner's Records)

Finding of Fact No. 42(a): On May 19, 2014 Mr. Young filed a pre-election C5 campaign finance report for the period of March 1 to May 18, 2014. On June 24, 2014, Mr. Young filed a C5 campaign finance report for the period of March 27 to May 23, 2014. Mr. Young advised COPP staff on August 7, 2014 that his report did reflect post primary contributions and expenditures, but he erred in the reporting date period on page 1 and told staff he would amend his report by August 8, 2014. (Commissioner's Records)

The Commissioner hereby determines that the above facts are sufficient facts to support the following findings

Sufficiency Finding No. 4: Candidates Eschenbacher, Fulton, Harris, Hernandez, Jespersion, Kittelmann, Rice, Smith, Sullivan, Yarlott, and Young have filed the required campaign finance reports

[see FOF Nos. 18, 18(a), 19, 19(a), 22, 22(a), 23, 23(a), 24, 24(a), 25, 25(a), 33, 33(a), 38, 38(a), 39, 39(a), 41, 41(a), 42, and 42(a)].

Sufficiency Finding No. 5: Candidates Berkram, Gallup, Happel, Magone, McCandless, Miller, Morris, Pallas, Patch, Rapkoch, Roderque, Rossi, Sheffield, Smart, and Wilson failed to file campaign finance reports. (see FOF Nos. 17, 17(a), 20, 20(a), 21, 21(a), 26,, 26(a), 27, 27(a), 28, 28(a), 29, 29(a), 30, 30(a), 31,31(a), 32, 32(a), 34, 34(a), 35, 35(a), 36, 36(a), 37, 37(a), 40, 40(a), ].

This Decision begins with notice of non-filing of 26 candidates for election to local government positions in the 2014 general election. The Commissioner hereby determines that 11 of these candidates have filed the required campaign finance reports (SF No. 4) and 15 of these candidates (SF No. 5) remain as having failed to file the required campaign finance reports.

Several non-filing candidates have told the COPP staff that they did not believe they needed to file campaign finance reports because they had no contributions or expenditures. That very information, however, should be provided to the public, rather than kept private with the candidate and Montana law so requires: “[campaign finance reports] must be filed...even though no contributions or expenditures have been received or made...” §13-37-228 MCA. Accordingly, the Commissioner further determines that the 15 local government candidates identified above who have not yet filed the required campaign finance reports (SF No. 5) are subject to removal from the ballot, as discussed below.

The Commissioner further determines that each of the above discussed local government candidates who preserves 2014 general

election candidacy by late filing will be subject to the late filing penalty, as discussed below.

### **ENFORCEMENT OF SUFFICIENCY FINDINGS**

The Commissioner has limited discretion when making the determination as to an unlawful campaign practice. First, the Commissioner cannot avoid, but must act on, an alleged campaign practice violation 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” 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 (see Sufficiency findings, as set out in this Decision, to show that each of the campaigns, as the facts deem appropriate may have violated Montana’s campaign practice laws, including, but not limited to §§13-37-226, 228 MCA and all associated ARMs. 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 timely file cannot be excused by oversight or ignorance. Excusable neglect cannot be applied to oversight or ignorance of the law. *See*

discussion of excusable neglect principles in *Matters of Vincent*, Nos. COPP-2013-CFP-006 and 009.

Likewise, the Commissioner does not accept that failures to file can be excused as *de minimis*. See discussion of *de minimis* principles in *Matters of Vincent*, Nos. COPP-2013-CFP-006 and 009. In particular Commissioner has limited discretion to apply *de minimis* to untimely reporting. Reporting is only valid when it is timely accomplished and any delay, much less a failure to file, demonstrates harm.

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) as well as any other action the Commissioner is directed to take. In this Matter that “other action” is removal of a candidate’s name from the ballot, as directed by §13-37-126 MCA.

The Greenwood complaint specifically requested that Candidate Hoklin’s name be “removed from the 2014 general election ballot” as a result of his failure to file. **The Commissioner hereby directs Candidate Hoklin and each of the candidates listed in sufficiency findings Nos. 2, 3 and 5 must file the missing D-1 and/or campaign finance reports with COPP no later than 5:00 PM Wednesday, August 13, 2014.** Montana law requires the Commissioner notify the appropriate election administrator that “a [non-filing] candidate’s names may not appear on the official ballot” (§13-37-126(3) MCA) in the event that the report filing is not accomplished by this time. The Commissioner will make this notification on August 14, 2014 for any candidate

who fails to file reports as directed above.

The Commissioner hereby, through this decision, also issues a “sufficient evidence” Finding and Decision justifying civil prosecution of each candidate listed herein (Candidates Evans and Schwaderer excepted) for late filing of a report 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 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*

*no*vo.

The Commissioner notes that when an elected candidate assumes a public office he or she also assumes the ethics and public trust responsibilities that accompany assumption of a public office. Candidacy does not have associated ethics and public trust responsibility, but it does have the responsibility of transparency made by reporting and disclosure. A candidate cannot claim the “right” to run for public office without accepting the accompanying responsibility to report and disclose the amount and sources of contributions, as well as the detail of the expenditures that make up the candidate’s campaign. This transparency responsibility of a candidate, in the form of reporting and disclosure, has been determined to be so important that under Montana law a candidate who fails to file campaign finance reports is deemed unworthy to be on the ballot.

The COPP staff is charged by the people of Montana with the task of insuring and enforcing report filing. The COPP staff first work on this task by identifying and contacting non-filing candidates to encourage filing of reports. In fact, it was a secondary such contact by COPP staff with the political parties that led to the Complaint in this Matter.<sup>6</sup>

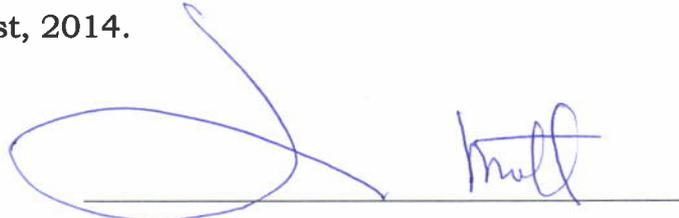
It is presumed that some of the 42 candidates intend to remain as candidates. Indeed, within 24 hours of receiving the complaint and Notice a number of the 42 candidates contacted the COPP and took steps to file the

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<sup>6</sup> COPP staffer Kym Trujillo contacted the political party offices to notify the office of candidates who had not filed reports so the party could encourage their candidates to file the missing reports.

missing reports. In the end, though, if a Candidate ignores the mandate of law, ignores notices such as the Greenwood complaint and still does not file the required reports the Commissioner must remove that candidate from the ballot.

DATED this 8<sup>th</sup> day of August, 2014.



Jonathan R. Motl  
Commissioner of Political Practices