

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Greenwood v. Hoklin et. al. No. COPP 2014-CFP-032	Supplemental Decision and Finding of Sufficient Facts Showing a Certain Violation of the Montana Campaign Practices Act
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This Decision supplements that certain Decision issued by this Office dated August 8, 2014. That August 8, 2014 Decision was based on a complaint filed by Bowen Greenwood against 2014 legislative candidate Stephen Hoklin. The reader is directed to the August 8, 2014 Decision for a discussion as to the law and circumstances underlying this supplemental Decision.

INTRODUCTION

The August 8, 2014 Decision identified certain 2014 Montana candidates for state and local office (42 in total) who were potentially subject to removal of candidacy and/or a late filing fine for failing to file required campaign finance statements or reports. The COPP deadline for removal of candidates for failure to file is August 14, 2014. By this Decision the Commissioner determines those candidates who did not correct filing deficiencies following the notice

provided by the August 8, 2014 Decision.

A. SIXTEEN LEGISLATIVE CANDIDATES

1. Candidate Hoklin

Findings of Fact August 8 Decision

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).

Findings of Fact Supplemented

Finding of Fact No. 1(b): Mr. Hoklin filed his missing (pre and post primary) reports in a single filing on August 12, 2014. (Commissioner's records).

Finding of Fact No. 1(c): Mr. Hoklin late filed his pre-election 2014 campaign finance report by 82 days and his post-election campaign finance report by 50 days. (Commissioner's records).

2. Candidate Gill

Findings of Fact August 8 Decision

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 form (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).

Findings of Fact Supplemented

Finding of Fact No. 2(b): Mr. Gill filed his Form D-1 (with the first and last names inverted) on March 14, 2014. Mr. Gill filed his missing (pre and post primary) reports in a single filing on August 12, 2014. (Commissioner's records).

Finding of Fact No. 2(c): Mr. Gill late filed his pre-election 2014 campaign finance report by 82 days and his post-election campaign report by 50 days. (Commissioner's records).

3. Candidate Murphy

Findings of Fact August 8 Decision

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).

Findings of Fact Supplemented

Finding of Fact No. 3(b): Ms. Murphy filed her missing (pre and post primary) reports in a single filing on August 12, 2014. (Commissioner's records).

Finding of Fact No. 3(c): Ms. Murphy late filed her pre-election 2014 campaign finance report by 82 days and her post-election campaign finance report by 50 days. (Commissioner's records).

4. Candidate Henderson

Findings of Fact August 8 Decision

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).

Findings of Fact Supplemented

Finding of Fact No. 4(b): Ms. Henderson filed her missing (pre and post primary) reports in a single filing on August 12, 2014. (Commissioner's records).

Finding of Fact No. 4(c): Ms. Henderson late filed her pre-election 2014 campaign finance report by 82 days and her post-election campaign finance report by 50 days. (Commissioner's records).

5. Candidate Cerovski

Findings of Fact August 8 Decision

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).

Findings of Fact Supplemented

Finding of Fact No. 5(b): Ms. Cerovski filed her missing (pre and post primary) reports in a single filing on August 13, 2014. (Commissioner's records).

Finding of Fact No. 5(c): Ms. Cerovski late filed her pre-election 2014 campaign finance report by 83 days and her post-election campaign finance report by 51 days. (Commissioner's records).

6. Candidate Hill

Findings of Fact August 8 Decision

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).

Findings of Fact Supplemented

Finding of Fact No. 5(b): Mr. Hill filed his missing D-1 and (pre and post primary) reports in a single filing on August 14, 2014. (Commissioner's records).

Finding of Fact No. 5(c): Mr. Hill late filed his D-1 and his pre-election 2014 campaign finance report by 84 days and his post-election campaign finance report by 52 days. (Commissioner's records).

7. Candidate Austill

Findings of Fact August 8 Decision

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 letter notifying the COPP that he intended to withdraw his name 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).

Findings of Fact Supplemented

Finding of Fact No. 7(b): The Commissioner's office attempted multiple contacts with Mr. Austill. Mr. Austill did not file the missing documents. (Commissioner's records).

8. Candidate Lynch

Findings of Fact August 8 Decision

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).

Findings of Fact Supplemented

Finding of Fact No. 8(b): Ms. Lynch filed her missing (pre and post primary) reports in a single filing on August 12, 2014.

(Commissioner's Records)

Finding of Fact No. 8(c): Ms. Lynch late filed her pre-election 2014 campaign finance report by 82 days and her post-election campaign finance report by 50 days. (Commissioner's records).

9. Candidate Tenneson Jr.

Findings of Fact August 8 Decision

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).

Findings of Fact Supplemented

Finding of Fact No. 9(b): Mr. Tenneson prepared his missing (pre and post primary) reports but specifically instructed COPP staff to accept and file the reports no sooner than August 22, 2014, as for medical reasons he wished to be removed from the 2014 ballot. (Commissioner's records).

Finding of Fact No. 9(c): Mr. Tenneson failed to file his campaign finance reports. (Commissioner's records).

10. Candidate Taffs

Findings of Fact August 8 Decision

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).

Findings of Fact Supplemented

Finding of Fact No. 10(b): The Commissioner's office attempted multiple contacts with Mr. Taffs. Mr. Taffs did not file the missing documents. (Commissioner's records).

11. Candidate Schwaderer

Findings of Fact August 8 Decision

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).

Findings of Fact Supplemented

Finding of Fact No. 11(b): The Commissioner's office mistakenly placed Mr. Schwaderer on the list of candidates who had failed to file required campaign finance reports. Mr. Schwaderer was neither delinquent nor tardy in his filings. (Commissioner's records).

12. Candidate Evans

Findings of Fact August 8 Decision

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)

Findings of Fact Supplemented

Finding of Fact No. 12(b): The Commissioner's office mistakenly placed Ms. Evans on the list of candidates who had failed to file required campaign finance reports. Ms. Evans was not delinquent in her filings. Ms. Evans was one day late in filing her post-election report but, given the error in including her on the non-filing list, any consequence of that filing is excused as *de minimus*. (Commissioner's records).

13. Candidate Bowser

Findings of Fact August 8 Decision

Finding of Fact No. 13: On March 17, 2014 Evan 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).

Findings of Fact Supplemented

Finding of Fact No. 13(b): Mr. Bowser filed his missing post primary reports in a single filing on August 8, 2014. (Commissioner's records).

Finding of Fact No. 13(c): Mr. Bowser late filed his post-election campaign finance report by 46 days. (Commissioner's records).

14. Candidate Harris

Findings of Fact August 8 Decision

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 Mr. 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).

Findings of Fact Supplemented

Finding of Fact No. 14(b): Mr. Harris filed his missing post primary report on August 12, 2014. (Commissioner's records).

Finding of Fact No. 14(c): Mr. Harris late filed his post-election campaign finance report by 50 days. (Commissioner's records).

15. Candidate Ricci

Findings of Fact August 8 Decision

Finding of Fact No. 15: On August 13 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).

Findings of Fact Supplemented

Finding of Fact No. 15(b): Mr. Ricci filed his missing post primary report on August 7, 2014. (Commissioner's records).

Finding of Fact No. 15(c): Mr. Ricci late filed his post-election campaign finance report by 45 days. (Commissioner's records).

16. Candidate Manzella

Findings of Fact August 8 Decision

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).

Findings of Fact Supplemented

Finding of Fact No. 16(b): Ms. Manzella filed her missing post primary report on August 8, 2014. (Commissioner's records).

Finding of Fact No. 16(c): Ms. Manzella late filed her post-election campaign finance report by 46 days. (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 and Evans timely filed and timely reported and should not have been included in the Notice nor in any investigation. (see FOF Nos. 11 and 12, including subparts).

Sufficiency Finding No. 2: Candidates Austill, Tenneson and Taffs have failed to file required reports.¹ (see FOF Nos. 7, 9 and 10, including subparts).

Sufficiency Finding No. 3: Candidates Hoklin, Gill, Murphy, Henderson, Cerovski, Hill, Lynch, Bowser, Harris, Ricci and Manzella have late failed their campaign finance reports. (see FOF Nos. 1, 2, 3, 4, 5, 6, 8, 13, 14, 15 and 16, including subparts).

¹ Of these, Messrs. Austill and Tenneson attempted to withdraw as candidates.

TWENTY SIX LOCAL GOVERNMENT CANDIDATES

The Commissioner makes the following findings of fact in regard to those 26 candidates.

17. Candidate Berkram

Findings of Fact August 8 Decision

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)

Findings of Fact Supplemented

Finding of Fact No. 17(b): Ms. Berkram filed her missing post primary report on August 8, 2014. (Commissioner's records).

Finding of Fact No. 17(c): Ms. Berkram late filed her post-election campaign finance report by 46 days. (Commissioner's records).

18. Candidate Eschenbacher

Findings of Fact August 8 Decision

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).

Findings of Fact Supplemented

Finding of Fact No. 18(b): Mr. Eschenbacher filed his post primary report on July 22, 2014. (Commissioner's records).

Finding of Fact No. 18(c): While Mr. Eschenbacher filed before the notice and therefore should not have been included in the investigation, he still late filed his post-election campaign finance report by 29 days. (Commissioner's records).

19. Candidate Fulton

Findings of Fact August 8 Decision

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): When Mr. Fulton filed an original C-1-A, Mr. Fulton checked Box C certifying that he planned to receive and expend funds over \$500. On July 31, 2014 Mr. Fulton filed an amended C-1-A changing to a "B" box to reflect that he did not receive or expend any funds. (Commissioner's records).

Findings of Fact Supplemented

Finding of Fact No. 19(b): Mr. Fulton filed his "no funds" designation on July 31, 2014, after the May 22 and June 23 deadlines for filing pre-election and post-election reports. (Commissioner's records).

Finding of Fact No. 19(c): While Mr. Fulton filed before the notice and therefore should not have been included in the investigation, using the date of the "B" box designation he still late filed his pre-election campaign practice reports by 70 days and his post-election campaign finance report by 36 days. (Commissioner's records).

20. Candidate Gallup

Findings of Fact August 8 Decision

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).

Findings of Fact Supplemented

Finding of Fact No. 20(b): Mr. Gallup filed his missing pre-primary and post-primary election reports on August 12, 2014. (Commissioner's records).

Finding of Fact No. 20(c): Mr. Gallup late filed his pre-election campaign finance report by 82 days and his post-election campaign finance report by 50 days. (Commissioner's records).

21. Candidate Happel

Findings of Fact August 8 Decision

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).

Findings of Fact Supplemented

Finding of Fact No. 21(b): Mr. Happel filed his missing post-primary election report on August 8, 2014. (Commissioner's records).

Finding of Fact No. 21(c): Mr. Happel late filed his pre-election campaign finance report by 18 days and his post-election campaign finance report by 46 days. (Commissioner's records).

22. Candidate Harris

Findings of Fact August 8 Decision

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).

Findings of Fact Supplemented

Finding of Fact No. 22(b): Ms. Harris filed her missing post-primary election report on August 7, 2014. (Commissioner's records).

Finding of Fact No. 22(c): Ms. Harris late filed her post-election campaign finance report by 45 days. (Commissioner's records).

23. Candidate Hernandez

Findings of Fact August 8 Decision

Finding of Fact No. 23: On March 18, 2014 Debby Hernandez filed the necessary candidacy forms (C-1-A) with the COPP. Ms. Hernandez 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).

Findings of Fact Supplemented

Finding of Fact No. 23(b): Ms. Hernandez filed her missing post-primary election report on August 7, 2014. (Commissioner's records).

Finding of Fact No. 23(c): Ms. Hernandez late filed her post-election campaign finance report by 45 days. (Commissioner's records).

24. Candidate Jespersion

Findings of Fact August 8 Decision

Finding of Fact No. 24: On January 9, 2014 Tandi Jespersion filed the necessary candidacy forms (C-1-A) with the COPP. Ms. Jespersion ran as a non-partisan candidate Sanders County Justice of the Peace. Ms. Jespersion 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. Jespersion filed her pre-election C5 campaign finance report, but Ms. Jespersion failed to file her post-election campaign finance report with the COPP. Ms. Jespersion immediately filed a post primary C5 report with the COPP on August 7, 2014, once advised of the complaint. (Commissioner's records).

Findings of Fact Supplemented

Finding of Fact No. 24(b): Ms. Jespersion filed her missing post-primary election report on August 7, 2014. (Commissioner's records).

Finding of Fact No. 24(c): Ms. Jespersion late filed her post-election campaign finance report by 45 days. (Commissioner's records).

25. Candidate Kittelmann

Findings of Fact August 8 Decision

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).

Findings of Fact Supplemented

Finding of Fact No. 25(b): Mr. Kittelmann filed his missing post-primary election report on August 7, 2014. (Commissioner's records)
Finding of Fact No. 25(c): Mr. Kittelmann late filed his post-election campaign finance report by 45 days. (Commissioner's records).

26. Candidate Magone

Findings of Fact August 8 Decision

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).

Findings of Fact Supplemented

Finding of Fact No. 26(b): Mr. Magone filed his missing pre-and post-primary election reports on August 11, 2014. (Commissioner's records).

Finding of Fact No. 26(c): Mr. Magone late filed his pre-election campaign finance report by 81 days and his post-election campaign finance report by 49 days. (Commissioner's records).

27. Candidate McCandless

Findings of Fact August 8 Decision

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).

Findings of Fact Supplemented

Finding of Fact No. 27(b): The Commissioner's office attempted multiple contacts with Mr. McCandless. Mr. McCandless did not file the missing documents. (Commissioner's records).

28. Candidate Miller

Findings of Fact August 8 Decision

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).

Findings of Fact Supplemented

Finding of Fact No. 28(b): Mr. Miller did not prevail in the primary (FOF No. 28 is erroneous) but he filed his post-primary election report on August 11, 2014. (Commissioner's Records)

Finding of Fact No. 28(c): Mr. Miller late filed his post-election campaign finance report by 49 days. (Commissioner's records).

29. Candidate Morris

Findings of Fact August 8 Decision

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).

Findings of Fact Supplemented

Finding of Fact No. 29(b): Mr. Morris filed his post-primary election report on August 13, 2014. (Commissioner's records).

Finding of Fact No. 29(c): Mr. Morris late filed his post-election campaign finance report by 51 days. (Commissioner's records).

30. Candidate Pallas

Findings of Fact August 8 Decision

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).

Findings of Fact Supplemented

Finding of Fact No. 30(b): Mr. Pallas filed his post-primary election report on August 11, 2014. (Commissioner's records).

Finding of Fact No. 30(c): Mr. Pallas late filed his post-election campaign finance report by 49 days. (Commissioner's records).

31. Candidate Patch

Findings of Fact August 8 Decision

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).

Findings of Fact Supplemented

Finding of Fact No. 31(b): Mr. Patch filed his post-primary election report on August 7, 2014. (Commissioner's records).

Finding of Fact No. 31(c): Mr. Patch late filed his post-election campaign finance report by 45 days. (Commissioner's records).

32. Candidate Rapkoch

Findings of Fact August 8 Decision

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).

Findings of Fact Supplemented

Finding of Fact No. 32(b): Mr. Rapkoch filed his post-primary election report on August 11, 2014. (Commissioner's records).

Finding of Fact No. 32(c): Mr. Rapkoch late filed his post-election campaign finance report by 49 days. (Commissioner's records).

33. Candidate Rice

Findings of Fact August 8 Decision

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).

Findings of Fact Supplemented

Finding of Fact No. 33(b): Mr. Rice is a candidate for county attorney of Prairie County, not Custer County. Using the August 7 date of the "B" box designation, Mr. Rice late filed his post-election campaign finance report by 45 days. (Commissioner's records).

34. Candidate Roderque

Findings of Fact August 8 Decision

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).

Findings of Fact Supplemented

Finding of Fact No. 34(b): Ms. Roderque filed her post-primary election report on August 12, 2014. (Commissioner's records).

Finding of Fact No. 34(c): Ms. Roderque late filed her post-election campaign finance report by 50 days. (Commissioner's records).

35. Candidate Rossi

Findings of Fact August 8 Decision

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).

Findings of Fact Supplemented

Finding of Fact No. 35(b): Mr. Rossi filed his post-primary election report on August 13, 2014. (Commissioner's records).

Finding of Fact No. 35(c): Mr. Rossi late filed his post-election campaign finance report by 51 days. (Commissioner's records).

36. Candidate Sheffield

Findings of Fact August 8 Decision

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).

Findings of Fact Supplemented

Finding of Fact No. 36(b): Mr. Sheffield filed his original C-1-A on January 9, 2014 and checked an "A" box on that form. On July 22, 2014 Mr. Sheffield amended his C-1-A form by checking the "C" box, stating he would spend more than \$500. Mr. Sheffield was required to file a campaign finance report with 5 days (See 44-10-407 ARM) of filing the July 22, 2014 amended C-1-A. Mr. Sheffield filed his campaign finance report on August 8, 2014.

(Commissioner's records).

Finding of Fact No. 36(c): Mr. Sheffield late filed his campaign finance report by 12 days. (Commissioner's records).

37. Candidate Smart

Findings of Fact August 8 Decision

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).

Findings of Fact Supplemented

Finding of Fact No. 35(b): Ms. Smart filed her post-primary election report on August 8, 2014. (Commissioner's records).

Finding of Fact No. 34(c): Ms. Smart late filed her post-election campaign finance report by 46 days. (Commissioner's records).

38. Candidate Smith

Findings of Fact August 8 Decision

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).

Findings of Fact Supplemented

Finding of Fact No. 38(b): Mr. Smith filed his post-primary election report on August 8, 2014. (Commissioner's records).

Finding of Fact No. 38(c): Mr. Smith late filed his post-election campaign finance report by 46 days. (Commissioner's records).

39. Candidate Sullivan

Findings of Fact August 8 Decision

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).

Findings of Fact Supplemented

Finding of Fact No. 39(b): Mr. Sullivan filed his pre-and post-primary election reports on August 4, 2014. (Commissioner's records).

Finding of Fact No. 39(c): Mr. Sullivan late filed his pre-election campaign finance report by 74 days and his post-election campaign finance report by 42 days. (Commissioner's records).

40. Candidate Wilson

Findings of Fact August 8 Decision

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).

Findings of Fact Supplemented

Finding of Fact No. 40(b): Mr. Wilson attempted to withdraw and wishes to withdraw. Mr. Wilson began his attempts prior to the primary election. (Commissioner's records).

41. Candidate Yarlott

Findings of Fact August 8 Decision

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).

Findings of Fact Supplemented

Finding of Fact No. 41(b): Ms. Yarlott filed her post-primary election report on August 8, 2014. (Commissioner's Records).

Finding of Fact No. 41(c): Ms. Yarlott late filed her post-election campaign finance report by 45 days. (Commissioner's records).

42. Candidate Young

Findings of Fact August 8 Decision

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).

Findings of Fact Supplemented

Finding of Fact No. 42(b): Mr. Young filed his correction to his post-primary election report on August 11, 2014. (Commissioner's records).

Finding of Fact No. 42(c): Mr. Young's corrections removed what amounts to a transcription error and any reporting violations are excused as *de minimis*. (Commissioner's records).

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

Sufficiency Finding No. 4: Candidate Young has corrected a transcription error and is released from further reach of this Decision. (FOF No. 42, including subparts)

Sufficiency Finding No. 5: Candidates McCandless and Wilson have failed to file required reports. (FOF Nos. 27 and 40, including subparts).²

Sufficiency Finding No. 6: Candidates Berkram, Eschenbacher, Fulton, Gallup, Happel, Harris, Hernandez, Jesperson, Kittelmann, Magone, Miller, Morris, Pallas, Patch, Rapkoch, Rice, Roderque, Rossi, Sheffield, Smart, Smith, Sullivan, and Yarlott late filed campaign finance reports. (see FOF Nos. 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, and 41, including subparts).

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

² Candidate Wilson wishes to withdraw and has attempted to do so.

appropriate may have violated Montana's campaign practice laws, including, but not limited to §§13-37-126, 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. In this Matter the Commissioner hereby takes the following actions:

1. Legislative Candidates Austill, Tenneson and Taffs along with local

government candidates McCandless and Wilson are hereby removed from the 2014 Montana election ballot for failure to file required campaign finance reports (see SF Nos. 2 and 5), as directed by §13-37-126 MCA.³ Candidates Austill, Tenneson and Wilson would prefer to withdraw from the election and if the election administrator determines that they have successfully withdrawn then they should be so designated. If Candidates Austill, Tenneson and Wilson have not withdrawn then they hereby removed from the ballot by application of §13-37-126 MCA.

2. Candidates Austill, Tenneson, Taffs, McCandless and Wilson may not appear as a candidate on the ballot of any future election after the 2014 election until they file any missing reports for the 2014 election. §13-37-126 MCA.
3. Legislative Candidates Hoklin, Gill, Murphy, Henderson, Cerovski, Hill, Lynch, Bowser, Harris, and Manzella along with local government candidates Berkram, Eschenbacher, Fulton, Gallup, Happel, Harris, Hernandez, Jespersion, Kittelmann, Magone, McCandless, Miller, Morris, Pallas, Patch, Rapkoch, Rice, Roderque, Rossi, Sheffield, Smart, Smith, Sullivan, and Yarlott have late filed their campaign finance reports. These people remain on the ballot as candidates, but each is subject to the campaign practice violation discussion set out below.

³The Commissioner makes this notification today (August 14, 2014, see attached letter) to the appropriate election administrators.

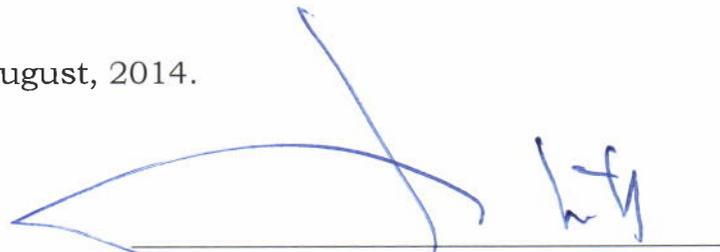
The Commissioner hereby, through this decision, issues a “sufficient evidence” Finding and Decision justifying civil prosecution of each candidate listed above for late filing of a report under §13-37-124 MCA. Because of nature of violations (the failure to timely report occurred in Lewis and Clark County) 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 novo*.

The Commissioner notes that the increasing amounts of money in

Montana's candidate elections has added increased emphasis on insuring that all candidates' campaign finance reports and statements are timely filed. Montana laws, including §13-37-126 MCA, are sufficient to allow the COPP to act to ensure such timely filing.⁴ The Commissioner intends to take action in future elections, such as compiling and listing campaign statement and report filing by candidates (or lack thereof) for review by the public and press. The Commissioner notes that work requires considerably more effort in regard to local government candidates because there is no central listing or posting of local government candidates. This requires COPP staff (usually Mary Baker) to deal individually with the 56 local election administrators in order to ensure that local government candidates have actually filed their required C-1A forms with the COPP.

DATED this 14th day of August, 2014.



Jonathan R. Motl
Commissioner of Political Practices

⁴ Montana law requires that the Commissioner act before and after the primary and general election to insure that each required candidate statement and report has been filed with the COPP and is therefore available for review by the public and press.

Before the primary and general election Section 13-37-126 MCA requires that the Commissioner notify the election administrator of the name of any candidate who has failed to file a statement or report as “[t]he name of the candidate may not appear on the official ballot” upon such failure.

After the primary and general election Section 13-37-127 MCA requires that Commissioner provide a statement of reporting compliance for each candidate before that candidate can receive a certificate of nomination (primary) or election (general).