

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES OF THE STATE OF MONTANA

Williams v. Andersen No. COPP 2014-CFP-035	Finding of Sufficient Facts to Show a Violation of Montana Campaign Practice Laws
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On September 5, 2014, Christopher Williams, a resident of Missoula, MT filed a complaint against Marie Andersen, a resident of Missoula, MT and a current 2014 candidate for Missoula County Justice of the Peace. The Williams complaint alleged that Candidate Andersen failed to disclose to the public the cost of a campaign flyer mailed to Missoula County residents prior to the 2014 primary election. In addition to the Williams complaint, the Commissioner will be addressing a fundraiser Candidate Andersen held at the Datsopoulos, MacDonald & Lind offices on August 27, 2014. See recent Decisions, *Clark v. Datsopoulos, MacDonald & Lind P.C. and T.J. McDermott*, COPP-2014-CFP-033A and B.

**SUBSTANTIVE ISSUES ADDRESSED**

The substantive areas of campaign finance law addressed by this decision are campaign expense reporting and in-kind contributions.

## **SUMMARY OF RELEVANT FACTS**

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: The Missoula County Justice of the Peace position is a non-partisan position with a term of 4 years. Amy Blixt is the current Justice of the Peace for Department 1. Ms. Blixt was appointed as interim justice on April 1, 2014, but did not file for election to the Office. (Missoula County Elections Office, Missoulian newspaper article March 14, 2014).

Finding of Fact No. 2: On March 10, 2014, Marie Andersen filed as a non-partisan candidate for Missoula County Justice of the Peace, Department 1. (Commissioner's records).

Finding of Fact No. 3: On June 3, 2014, a primary election was held in Missoula County. Five candidates were on the 2014 primary ballot for Missoula County Justice of the Peace, Department 1: Marie Andersen, Matthew Lowy, Beverly Smith, Matt Erikson and Harlan Wells. Candidate Andersen received 5,985 votes, Candidate Lowy received 5,568 votes, Candidate Smith received 2,746 votes, Candidate Erikson received 2,006 votes and Candidate Wells received 1,151 votes. Candidate Andersen and Candidate Lowy are running against each other in the November 2014 general election. (Montana Secretary of State's (SOS) Website).

## **DISCUSSION**

Ms. Andersen was a candidate for elected office in the 2014 Missoula County primary election. (FOF Nos. 2 and 3). The complaint filed in this Matter alleges that Candidate Andersen failed to timely report the expense of a primary election campaign flyer. The Commissioner, under the authority of §13-37-111(2)(a) MCA, further addresses the issue of in-kind contributions provided by a Missoula law firm.

### 1. Failure to Timely Report Certain Campaign Expenses

The complaint included a copy of an oversize, glossy, post-card style campaign flyer promoting Candidate Andersen. The complaint alleged that

Candidate Andersen failed to report the cost of the flyer. The Commissioner has examined the campaign flyer and determined that it promoted the election of Candidate Andersen.

Montana law required that Candidate Andersen file campaign finance reports “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 the 12<sup>th</sup> day preceding the June 3 primary election was May 22, 2014 and 20<sup>th</sup> day after the election was June 23, 2014. (Commissioner’s 2014 filing schedule).

Candidate Andersen’s campaign finance reports must include “all contributions received and all expenditures made...” (§13-37-208 MCA) within the reporting period. Still further, Candidate Andersen’s campaign treasurer “shall keep detailed accounts of all contributions received...” (§13-37-208(1)(a) MCA). Candidate Andersen then “shall file periodic reports of contributions...” (§13-37-225(1) MCA), according to the schedules set out above. This system, if followed, provides transparency and fairness to the public, voters and the opposing candidate.

The Commissioner makes the following findings of fact in regard to this portion of the complaint:

Finding of Fact No. 4: The glossy, oversize postcard style campaign flyer is attributed as “Paid for by Andersen for Justice of the Peace.” (Commissioner’s records).

Finding of Fact No. 5: On May 21, 2014, Candidate Andersen filed a pre-primary C-5 campaign finance report with the COPP for the period of April 22, 2014 to May 16, 2014. Candidate Andersen reported \$1,882.52 in contributions (including \$1,312.52 in candidate contributions), four contributors totaling \$490, and \$80

in contributions of \$35 or less. Candidate Andersen reported three expenditures totaling \$652.44 (\$100 to Art & Image Creative in Missoula, MT for advertising, \$239.92 to *Bank of America*, Dallas TX for advertising and \$312.52 to the Missoula County Clerk & Recorder for a filing fee. (Commissioner's records).

Finding of Fact No. 6: On June 20, 2014, Candidate Andersen submitted a post-primary C-5 campaign finance report for the period of May 17 to June 20, 2014. Candidate Andersen reported \$495 in primary election contributions and \$4,015 in general election contributions. Candidate Andersen reported \$1,366.06 in primary election expenditures and \$58.99 in general election expenditures. Candidate Andersen reported the expenditures as: \$1,366.06 to American Express, Dallas, TX for "signs and advertising" and \$58.99 to Bank of America, Dallas, TX for "postage and supplies." (Commissioner's records).

Finding of Fact No. 7: On September 17, 2014, Candidate Andersen submitted an additional voluntary C-5 campaign finance report for the period of June 21, 2014 to September 8, 2014. That report, among other items, reported a certain \$8,211.82 in expenditures towards the general election: Pyramid Printing (campaign postcard and mailings), 8/13/14 for \$2,640.87; Shane Cavaliere (postcard design), 9/8/14 \$487.50; The Directory (postcard mailing), 8/13/14 for \$5,083.45. (Commissioner's records).

Finding of Fact No. 8: The Commissioner's investigator determined the following:

- A. **"The Directory"** in Missoula, MT mailed 16,183 post-card style flyers on May 8, 2014 for which it invoiced Candidate Andersen \$5,083.45 (Invoice #44412) on May 8, 2014 with payment by Candidate Andersen posted June 19, 2014.
- B. **"Shane Cavaliere, LCC"** in Missoula, MT confirmed that he designed the flyer for Marie Andersen for the cost of \$487.50 with payment by Candidate Andersen received on July 20, 2014.<sup>1</sup>
- C. **"Pyramid Printing"** in Missoula, MT printed the post-card flyers for Marie Andersen and sent the printed flyers on May 7, 2014 to "The Directory" for mailing. Candidate Andersen was invoiced \$2,640.87 on May 7, 2014 and paid that amount by a May 30, 2014 credit card post for the printing. (Investigative notes).

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<sup>1</sup> The June and July payment dates do not change the pre-primary expense reporting obligation as Candidate Andersen was required to report the unpaid cost as a debt (see this Decision, pages 5-6).

Finding of Fact No. 9: The 2014 primary election absentee ballots were mailed to Missoula county voters on May 5, 2014. (Missoula County Elections Calendar).

Finding of Fact No. 10: The glossy postcard campaign flyer was mailed to 16,183 Missoula county voters, including the complainant, on May 8, 2014. (Investigator's notes, Commissioner's records).

Finding of Fact No. 11: The \$8,211.82 in costs for the 16,183 glossy postcard campaign flyer was not reported on Candidate Andersen's pre-primary (FOF No. 5) or post-primary (FOF No. 6) campaign finance reports. (Commissioner's records).

Candidate Andersen's failure to timely and accurately report the \$8,211.82 in pre-primary election expenditures does not comport to the requirements of Montana law. Under Montana law [13-37-226(3) MCA] Candidate Andersen was required to file her pre-primary election report on May 22, 2014 reporting all contributions and expenses through May 17, 2014. The Directory and Pyramid expenses were invoiced on May 7, 2014 (FOF Nos. 8A, 8C) and the Shane Cavaliere expense had to be known because it was the design precursor to layout and printing. Montana statutes [§13-37-230(1)(f) MCA] require the reporting and disclosure of "the amount and nature of debts and obligations owed...". Montana regulations, at 44.10.535 ARM, add that "[i]f the exact amount of a debt or obligation is not known, the estimated amount owed shall be reported."

Candidate Andersen has no pre-primary reporting argument even as to the Shane Cavaliere expense (which was paid July 20, 2014) as past Commissioners have rigorously applied these laws requiring that campaigns "estimate their debts when they are incurred", not after an election when the

bill is paid. *Akey v. Clark*, March 26, 1999 (Commissioner Vaughey); because “the public has a right to full disclosure of all debts and estimated debts incurred by a candidate during the appropriate reporting periods.” *Ream v. Bankhead*, September 10, 1999 (Commissioner Vaughey). This reporting of debt covers services, advertisements campaign expenses in general (*Wilcox v. Raser*, May 26, 2010 (Commissioner Unsworth)) and even the expenses owed musicians (*Hardin v. Ringling* 5, December 17, 2012 (Commissioner Murry)).

In this Matter Candidate Andersen’s pre- and post-primary campaign finance reports presented her primary campaign as low budget (less than \$2,500) in contributions, funding a yard-sign style campaign costing around \$2,000. See FOF Nos. 5, 6. Those reports were disingenuous. In fact, Candidate Andersen engaged in a self-funded, large scale direct mail primary election campaign (FOF No 8) that should have been, but was not, reported on her pre-election campaign finance report. The pre-primary direct mail campaign was sophisticated, not accidental, as it was timed to drop immediately after absentee ballots went out (FOF Nos. 8 and 9). The lack of reporting meant that the public and opposing candidates could not appreciate the full scale of Candidate Andersen’s actions and acted/voted without that information.

Sufficiency Finding No. 1: The Commissioner determines that sufficient facts exist to show that the Candidate Andersen failed to disclose and report \$8,211.82 in primary election contributions/expenses as required by §§13-37-229, 230 MCA.

Sufficiency Finding No. 2: The Commissioner determines that sufficient facts exist to show that the Candidate Andersen failed to timely disclose

and report \$8,211.82 in primary election contributions/expenses on her pre-primary (May 22, 2014) election report as required by §13-37-226 MCA.

## 2. Filing a False Campaign Finance Report

The Complaint in this Matter was filed on September 5, 2014. On September 17, 2014 Candidate Andersen filed or caused to be filed an out-of-cycle campaign finance report. The next required campaign finance report for Candidate Andersen's 2014 election was the 12 days pre-general or October 23, 2014 campaign finance report.<sup>2</sup>

Candidate Andersen used her September 17, 2014 filing to report and disclose, among other items, the \$8,211.82 in primary election contributions/expenses that are the subject of SF Nos. 1 and 2.<sup>3</sup> Candidate Andersen reported the \$8,211.82 in expenses as incurred/paid in August or September of 2014 as general election expenses. FOF No. 7. Neither of these representations was or is true. The expenses were incurred in May of 2014 (and paid in May, June and July of 2014), not August or September. FOF No. 8. Further, the expenses were incurred for the primary election, not the general election.

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<sup>2</sup> Candidate Andersen could have filed a report amending her pre-primary or post-primary reports to show an untimely reported expense but instead chose to file a new report wherein she reported the \$8,211.82 as a general election expense, ostensibly timely reported because an August or September expense need not be reported until the pre-general campaign finance report.

<sup>3</sup> Candidate Andersen filed her September 17, 2014 campaign finance electronically, doing so in a process that required an e-pass, secured access ID and, finally, a check in the certification box. By checking the certification box Candidate Andersen met the requirement of Montana law (§13-37-231 MCA) that the campaign finance report is "verified as true and correct by the oath or affirmation of the individual filing the report." Regardless of who filed the report it is Candidate Andersen who is deemed responsible for verification. §13-37-231 MCA.

Sufficiency Finding No. 3: The Commissioner determines that sufficient facts exist to show that the Candidate Andersen engaged in the prohibited campaign practice of false swearing when she filed her September 17, 2014 report and thereby violated §13-35-207 MCA.

3. Datsopoulos, MacDonald and Lind

The Missoula law firm of Datsopoulos, MacDonald and Lind (DM&L) became involved with Candidate Andersen’s campaign. The Commissioner makes the following foundational finding as to this involvement:

Finding of Fact No. 12: On August 24, 2014, Candidate Andersen advertised a fundraiser on her campaign Facebook page. It read: “Campaign Meet & Greet Fundraiser, August 27 at 5:30pm in MDT.” When a member of the public double clicks on the bolded link titled “Campaign Meet & Greet Fundraiser” it will take them to another page that reads, “Join me Wednesday August 27<sup>th</sup> at a fundraiser for my campaign hosted by Datsopoulos, MacDonald and Lind.” Candidate Andersen advertised the event on August 24<sup>th</sup> and August 26<sup>th</sup>. As of the date of this Decision, the Facebook posting still remains on Candidate Andersen’s campaign Facebook page.

(Marie Andersen campaign Facebook Page:  
<https://www.facebook.com/pages/Marie-Andersen-for-Justice-of-the-Peace/612460698848080>, Marie Andersen response, DM&L response)

The Commissioner has dealt with the DM&L involvement in 2014 elections in the recent Decision: *Clark v. Datsopoulos, MacDonald & Lind P.C. and T.J. McDermott*, COPP-2014-CFP-033 A and B.<sup>4</sup> The reader is directed to those Decisions for a dissection of the possible campaign practice violations stemming from the involvement of a corporate entity in the campaign of a candidate for public office. With one exception that discussion will not be repeated in this Matter because the findings already made, above, are so

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<sup>4</sup> This Decision does not set out separate findings in regard to DM&L as it is expected that comprehensive remedies involving the law firm will be reached in the *Clark v. Datsopoulos, MacDonald & Lind P.C. and T.J. McDermott* matter.

significant on their own that additional violations will not substantially increase the social debt consequences to Candidate Andersen.

The discussion area that needs to be revisited is that of the necessity of DM&L operating as a political committee. As emphasized in the *Clark v. Datsopoulos, MacDonald & Lind P.C. and T.J. McDermott* Decision, the people of DM&L may act individually or together, in this case that action being support of Candidate Andersen. However, If DM&L people act together they must register with the COPP as a political committee as Montana law requires registration as a political committee once two or more people act together to make a contribution or expenditure in support of a candidate. (§13-1-101(22) MCA).

A political committee, is required to timely register (§13-37-201 MCA) and timely file reports of campaign contributions and/or expenditures (§§13-37-225, 226 MCA). This system, if followed, provides transparency and fairness to the public, voters and the opposing candidate. The political committee system also provides a simple and efficient entity for the people of DM&L to use to make contributions as an adjunct to and consistent with the existing corporate structure of the DM&L law firm.

## **ADJUDICATION**

The Commissioner has limited discretion when making the determination as to an unlawful campaign practice. First, the Commissioner cannot avoid, but must make, a decision as the law mandates that the Commissioner (“shall

investigate,” *see*, §13-37-111(2)(a) MCA) investigate any alleged violation of campaign practices law. The mandate to investigate is followed by a mandate to take action as the law requires that if there is “sufficient evidence” of a violation the Commissioner must (“shall notify”, *see* §13-37-124 MCA) initiate consideration for adjudication.

This Commissioner, having been charged to investigate and decide, hereby determines that sufficient evidence exists to show that the Candidate Andersen violated Montana’s campaign practice laws, including but not limited to §13-35-207, §§13-37-225, 226, 229, 230 MCA. Having determined that there is sufficient evidence to show a campaign practice violation has occurred, the next step is to determine whether there are circumstances or explanations that may affect adjudication of the violation and/or the amount of the fine.

Candidate Andersen’s decision to act was by choice and deliberate. Excusable neglect cannot be applied to the failures in this Matter. *See* discussion of excusable neglect principles in *Matters of Vincent*, Nos. COPP-2013-CFP-006 and 009. Likewise, the actions are too significant to be excused as *de minimis*. *See* discussion of *de minimis* principles in *Matters of Vincent*, Nos. COPP-2013-CFP-006 and 009. With the above analysis in mind, this Matter is also not appropriate for application of the *de minimis* theory.

Because there is a sufficiency finding of violation and a determination that *de minimis* and excusable neglect theories are not applicable, civil adjudication and/or a civil fine is justified (*see* §13-37-124 MCA). This

Commissioner hereby, through this decision, issues a “sufficient evidence” Finding and Decision justifying civil adjudication under §13-37-124 MCA. This matter concerns a failure to report and disclose that occurred at the COPP offices in Helena, Montana (Lewis and Clark County). Accordingly this Decision will now be submitted to (or “noticed to”) the Lewis and Clark County attorney for his review for appropriate civil action. *See* §13-37-124(1) MCA.<sup>5</sup> Should the County Attorney waive the right to adjudicate (§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 adjudication. *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 adjudication 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.

The above said, this Matter appears as a serious attempt by Candidate Andersen to avoid campaign practice requirements carried out through a series of actions separated by time. First, Candidate Andersen failed to report contributions (her own funds) and expenditures (the direct mail campaign) in her pre-primary and post-primary campaign finance reports. Then, when a complaint was filed, Candidate Andersen listed a false date of payment for

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<sup>5</sup> Notification is to “...the county attorney in which the alleged violation occurred...” §13-37-124(1) MCA.

these expenses and falsely represented the expenses as being for the general election rather than the primary election. This series of events, in the judgment of this Commissioner, will be difficult to explain during settlement discussions. Without some explanation or justification this Matter remains so serious that it cannot settle but will need to progress to a Court for determination of the consequences of the violations, including possible removal from elected office under §13-35-106 MCA. In that regard, the Commissioner has statutory authority to bring a complaint in district court against any person who intentionally or negligently violates any requirement of Chapter 37, including those of §13-37-226. (See §13-37-128 MCA). Full due process is provided to the alleged violator because the district court will consider the matter *de novo*.

### **CONCLUSION**

Based on the preceding discussion as Commissioner, I find and decide that there is sufficient evidence to show that Candidate Andersen violated Montana's campaign practice laws, as set out above. This matter is hereby submitted to [or "noticed to"] the Lewis and Clark County Attorney for his review for appropriate civil action.

DATED this 16<sup>th</sup> day of October, 2014.



Jonathan R. Motl  
Commissioner of Political Practices