

1 BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
2 STATE OF MONTANA

3 IN THE MATTER OF THE CIVIL |
4 PENALTY IMPOSED AGAINST THE
5 MONTANA ASSOCIATION FOR
6 REHABILITATION

6 FINDINGS OF FACT, CONCLUSIONS OF LAW,
7 ORDER, AND MEMORANDUM OPINION

8 These informal contested case proceedings were filed before the Commissioner
9 of Political Practices (Commissioner) to consider the appeal of the principal referenced
10 above. Pursuant to the provisions of § 5-7-306, MCA, the principal appealed the
11 Commissioner's assessment of a civil penalty imposed as the result of the principal's
12 late filing of a lobbying financial disclosure report (lobbying report).

13 Mary Baker, Program Supervisor for the Commissioner's office, and Robert
14 Snizek, President of the principal association, were sworn and provided testimony.
15 MAR Exhibits 1 and 2 and COPP Exhibits 1 and 2 were admitted into evidence without
16 objection.

17 Based on the evidence presented at the hearing and the applicable law, the
18 Commissioner makes the following findings of fact, conclusions of law, order, and
19 memorandum opinion.

20 FINDINGS OF FACT

21 1. The Montana Association for Rehabilitation (MAR) is a principal registered
22 with the Commissioner's office. Robert Snizek is the President of MAR. (Snizek
23 testimony; MAR Exhibit 1).

24 2. The 2003 Montana Legislature passed House Bill 38 and the governor signed
25 it into law. The law took effect on February 18, 2003. House Bill 38, now codified as
26 § 5-7-306, MCA, establishes civil penalties that are required to be assessed against any
27 person who fails to file lobbying reports within the time required by law.

1 3. MAR's initial 2007 lobbying report was required to be filed no later than
2 February 15, 2007. (Baker testimony).

3 4. On January 29, 2007 the office of the Commissioner sent an email to all principals,
4 including MAR. The email advised principals that a lobbying report covering the month of
5 January, 2007 was required to be filed by February 15, 2007. The email referenced the
6 appropriate form that was required to be filed, known as a form L-5A, and noted that it was
7 available for download on the Commissioner's website. (Baker testimony; COPP file).

8 5. On March 6, 2007 the Commissioner's office sent an email to MAR stating that
9 January lobbying finance reports were required to be filed by February 15, 2007, and that
10 MAR's report had not been received. The email stated that a civil penalty amounting to \$50
11 per day started being assessed on February 16, 2007, and that the daily penalty would continue
12 until the report was filed or the penalty reached \$2,500. (Baker testimony; COPP Exhibit 1).

13 6. On May 7, 2007 the Commissioner's office sent a letter to Robert Snizek,
14 advising him that because MAR's January, 2007 report was not filed by the required
15 due date of February 15, 2007, a civil penalty in the amount of \$2,500 had been
16 assessed against the principal. The letter also advised Mr. Snizek that if MAR wished
17 to contest the assessment of the penalty it could file a written request for a hearing
18 before the Commissioner. (Baker testimony; Exhibit COPP 2).

19 7. MAR's January report was filed on May 3, 2007. (Baker testimony).

20 8. Mr. Snizek submitted a written request for a hearing to the Commissioner's
21 office. (COPP File.)

22 9. At the hearing Mr. Snizek offered the following testimony. MAR is a small,
23 nonprofit organization that helps people with disabilities find jobs. All members of
24 MAR are unpaid volunteers. MAR has a total budget for calendar year 2007 of
25 approximately \$23,400. MAR would experience an extreme financial burden if it is
26 required to pay a civil penalty of \$2,500. MAR paid Charlie Briggs \$3,000 to conduct
27 lobbying activities during the 2007 Montana legislative session. (Snizek testimony).

1 10. Mr. Snizek testified that he was not familiar with the filing requirements for
2 lobbying reports. He was not the President of MAR during the previous regular session
3 of the Montana Legislature in 2005, and he did not consult with the previous president
4 to ascertain what the filing requirements are.

5 11. Mr. Snizek testified that he did not receive the emails from the
6 Commissioner's office referenced in Findings of Fact 4 and 5. He testified that he is
7 meticulous about checking his emails, and he is certain he did not receive either the
8 January 29th or the March 6th email. Mr. Snizek confirmed that his organization had
9 provided the correct email address to the office of the Commissioner. He said that had
10 he received prior notice that a lobbying report was due by February 15th, or timely
11 notice that it was overdue shortly after February 15th, he would have promptly filed the
12 form. Mr. Snizek criticized the Commissioner's office for communicating with
13 principals exclusively through emails, and he also contended that the emails that were
14 sent should at least have been accompanied by a request for an electronic receipt.

15 12. Mr. Snizek requests a waiver or reduction of the civil penalty based on the
16 following factors:

- 17 • MAR is a small nonprofit composed entirely of volunteers;
- 18 • MAR has a limited budget; and
- 19 • The Commissioner's office should have made more of an effort to contact MAR
20 once it determined that MAR's report was overdue. (Snizek testimony).

21 13. The Commissioner's office routinely communicates with principals by
22 email, rather than sending hard copy letters or memos, for several reasons. Several
23 years ago the Governor's office encouraged state agencies to reduce the costs of
24 communication to the extent possible. In addition, the Commissioner's office is
25 required to monitor and communicate with over 700 principals. Over time it has found
26 that email is an efficient and cost effective means of fulfilling those responsibilities.
27 (Baker testimony).

1 MEMORANDUM OPINION

2 Although MAR's January 2007 lobbying disclosure financial report was filed
3 late, I find there are mitigating circumstances that justify a reduced civil penalty in this
4 matter.

5 First, I must emphasize that the fact that MAR is a nonprofit voluntary
6 organization with a relatively small budget is not a sufficient mitigating circumstance to
7 justify a waiver of or reduction in the civil penalty. The law establishing filing
8 requirements applies uniformly to small organizations and large, wealthy organizations
9 or corporations.

10 Mr. Snizek testified that he had no knowledge or experience related to the
11 reporting requirements for principals. This alone does not excuse the late filing of a
12 lobbying financial disclosure report, because principals have an obligation to become
13 familiar with the filing requirements and the due dates for filing reports. However,
14 Mr. Snizek also testified that he did not receive either the January 29, 2007 reminder
15 email advising principals that the initial report was due on February 15th, or the March
16 6, 2007 email advising that MAR's report was late and that a \$50 a day civil penalty
17 was being assessed. I found Mr. Snizek to be a credible witness.

18 Although the Commissioner's office has no legal obligation to do so, it typically
19 sends a "reminder" email to principals approximately two weeks prior to the due date
20 for the January report. For reasons that are unknown, Mr. Snizek apparently did not
21 receive the January 29th email. In addition, he testified that he did not receive the
22 March 6th email advising him that MAR's report was late and that a \$50 a day civil
23 penalty was therefore being assessed. Had Mr. Snizek been made aware on March 6th
24 that MAR already owed a substantial penalty, and that an additional \$50 penalty was
25 being assessed each day, his organization may very well have been able to substantially
26 reduce its liability by filing the report shortly after March 6th. These actions would
27 have conceivably resulted in a much smaller fine of about \$750.

1 Mr. Snizek's testimony was instructive, and highlighted an opportunity for the
2 Commissioner's office to improve compliance without adding an unreasonable
3 procedural or processing burden. Unless unknown circumstances preclude it, an
4 additional notice will be sent via regular mail to that normally small group that fails to
5 file after receiving multiple email notices.

6 Consideration of the circumstances described above leads me to conclude that a
7 reduced civil penalty is appropriate in this particular case. However, I urge principals
8 to carefully review and understand the statutory filing requirements to ensure that they
9 are in full compliance with the law and to avoid the assessment of civil penalties.

10 ORDER

11 THEREFORE, IT IS HEREBY ORDERED that MAR shall pay a reduced civil
12 penalty of \$750 to this office no later than September 28, 2007.

13 DATED this 9th day of August, 2007.

14
15 

16 _____
17 Dennis Unsworth
18 Commissioner of Political Practices

19 NOTICE: This is a final decision in a contested case. You have the right to seek judicial review
20 of this decision pursuant to the provisions of §§ 2-4-701 through 2-4-711, MCA.

21 CERTIFICATE OF SERVICE

22 I hereby certify that I caused a true and accurate copy of the foregoing
23 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER to be mailed to:

24 Mr. Robert Snizek, President
25 Montana Association for Rehabilitation
26 975 Solita Drive
27 Billings, MT 59105

28 DATED: _____

29 _____
30 Mary Baker
31 Program Supervisor