BEFORE THE COMMISSIONER OF POLITICAL PRACTICES (COPP)

SHEILA HOGAN **v.** **LOGAN OLSON (candidate for Montana Attorney General)**	**COPP-2024-CFP-018** **SUMMARY OF RELEVANT FACTS AND DECISION AS TO OLSON QUALIFICATIONS AND MCA § 13-35-207 APPLICABILITY**

PROCEDURAL BACKGROUND AND COMPLAINT

On May 8, 2024, Sheila Hogan of Helena, MT, filed the above-named campaign practices complaint against Logan Olson, Republican candidate for the position of Attorney General in the State of Montana. As Commissioner, I review and process complaints under Mont. Code Ann. (MCA) § 13-37-111 (2023), and Admin. R. Mont. (ARM) 44.11.106. (2023). I can also decide certain matters by declaratory ruling, when "doubt exists as to how a statute or a rule administered by an agency affects the party's legal rights," and a party makes such a request, based on ARM 44.11.102. ARM 1.3.226. The complaint against candidate Olson alleges, inter alia, that Mr. Olson submitted a false declaration to Montana's Secretary of State because he signed a Declaration for Nomination and Oath of Candidacy (declaration or oath) when filing as a candidate for Montana Attorney General. The oath included in the declaration affirms that Mr. Olson is qualified, or will be qualified, by the time of the election, to serve in the position of Attorney General. Ms. Hogan alleges that Mr. Olson does not meet the constitutionally prescribed requirements he attested to in the oath.

Ms. Hogan's complaint additionally asserts that Mr. Olson is not a "legitimate candidate" because he filed to run for the nomination at the bidding of Montana's current Attorney General, Austin Knudsen, in order to provide Knudsen with a contested primary which would allow him to accept contributions for both the

primary and general elections, essentially allowing him to collect twice the amount from each contributor than would be permitted if there was not a contested primary. MCA § 13-37-216. To that end, Ms. Hogan concurrently filed a complaint alleging the same violations by Attorney General Knudsen.

I determined that the complaints met the basic filing requirements of ARM 44.11.106 and requested responses from Mr. Olson and Attorney General Knudsen. Both respondents timely filed responses on May 28 and May 20, 2024, respectively. While Mr. Olson's response addressed some issues regarding his eligibility, both respondents asserted that Ms. Hogan's complaint should be dismissed under ARM 44.11.106(2)(b)(iii) because her complaint failed to include specific citations to all statutes or rules alleged to have been violated.

Upon further review, I determined that additional information was necessary in order to fully resolve the matters presented. Therefore, in accordance with the discretion provided to me by ARM 44.11.106(4), I sent communications to the parties on May 29, 2024, informing them that I was requesting additional information under the aforementioned rule. Mr. Olson and Ms. Hogan both provided the additional information before the noon deadline on May 31, 2024.

Additionally, I determined that certain issues in the submitted complaints may be appropriate for determination by a declaratory ruling. This was done in *Wanzenreid v. Graybill.* COPP-2020-CFP-0002 *decided as* COPP-2020-DR-001. Therefore, concurrently with my requests for additional information, I invited the complainant and both respondents to petition COPP for a declaratory ruling in accordance with ARM 44.11.102(1) and ARM 1.3.226 *et seq.* Ms. Hogan's May 31, 2024, response to my request for supplemental information also included a request for these issues to be determined by declaratory ruling. Ms. Hogan's May 31, 2024, response, submitted as an amended complaint, contains the requested information and a request for a declaratory ruling.

Upon consideration of the provided responses, and review of the applicable statutes and rules, I determined no further information was necessary in order to

determine if Mr. Olson was qualified to serve as Attorney General and whether he engaged in deceptive election practices as contained in MCA § 13-35-207(4). Consequently, in order to resolve this matter expeditiously and efficiently, I chose to decide these two specific issues through the conventional complaint process under MCA § 13-37-111. I conveyed that decision to the parties on May 31, 2024. Ms. Hogan presents other issues that may be more appropriately addressed by a separate declaratory ruling as the issues involve a determination of statutes and rules within my jurisdiction or authority that resolves uncertainty for the parties.

As to Mr. Olson's qualifications, I have determined the legal provisions are unambiguous and therefore a declaratory ruling is not appropriate. In *Ankney v. Montana Democratic Party*, the commissioner refused to issue a declaratory ruling because the petitioner did not meet the requirements since there was no ambiguity with respect to the statutes or rules that need be declared. COPP-2020-DR-002. The same is true here, at least with respect to Mr. Olson's qualifications. In *Graybill,* the commissioner did grant a declaratory ruling request because certain statutes and rules were ambiguous. *Graybill* is instructive here because it resolved certain ambiguities that may have presently applied to Mr. Olson. Therefore, as to Mr. Olson's qualifications and potential violation of MCA § 13-35-207(4), Ms. Hogan's request for a declaratory ruling is denied. I reserve the right to determine whether a declaratory ruling is appropriate for all other issues Ms. Hogan presents.

I will now determine whether Mr. Olson supports his claim that he meets the constitutionally prescribed qualifications for the position of Attorney General. Central to this discussion is whether Mr. Olson can establish himself as a person who was admitted to practice law in Montana, and who has engaged in the active practice thereof for at least five years before election. If Mr. Olson cannot establish himself as qualified, I must then determine whether Mr. Olson engaged in deceptive practices under MCA § 13-35-207, with respect to the Oath of Candidacy he submitted to the Montana Secretary of State on March 11, 2024. This involves deciding the issues presented as follows:

ISSUES

1. When can Mr. Olson maintain he was admitted to practice law in Montana?
2. Can Mr. Olson maintain he was engaged in the active practice of law for at least five years before election?
3. If Mr. Olson cannot establish his qualifications, did he violate MCA § 13-35-207 by signing the Declaration for Nomination and Oath of Candidacy?

ASSERTIONS AND SUMMARY OF FACTS

Facts asserted by the complainant.

In her initial complaint Ms. Hogan asserts the following:

Mr. Olson graduated from law school in May of 2020 and was admitted to the State Bar of Montana in September 2020. Therefore, Mr. Olson does not meet the qualifications to serve as the Attorney General of the State of Montana and consequently, the oath Olson filed with the Secretary of State is a false declaration. The qualifications for Attorney General are explored at length in the following discussion, but the relevant portion, as it relates to Ms. Hogan's complaint, is the requirement that a candidate be engaged in active practice for five years before the election.

Pursuant to ARM 44.11.106(4), I requested additional information from Ms. Hogan. Specifically, I asked that Ms. Hogan to provide citation to each rule or statute alleged to have been violated in accordance with ARM 44.11.106(2)(b)(iii).

In response to my request for additional information Ms. Hogan alleges violations of the following:

MCA § 13-35-207 – Deceptive election practices. This is alleged in ¶¶ 20-23 of the complaint. Ms. Hogan alleges additional violations which will be addressed separately.

Facts asserted by the respondent.

In his initial response provided to COPP, Mr. Olson asserted the following:

Mr. Olson maintains he meets the five-year requirement to serve as Attorney General. The essence of Mr. Olson's response is that he, like Ms. Hogan, counts his

four years of active admission to the Montana State Bar, but Mr. Olsen, unlike Ms. Hogan, also counts his one year of practice under the Montana Student Practice Rule. Put another way, Olson counts (2019-2020) while Hogan does not. To support his position, Mr. Olson provides that he was admitted to practice law in Montana under the Student Practice Rule in September 2019 and that he represented multiple clients through his work for ASUM Legal Services and as a student associate working for O'Toole Law Firm. The Student Practice Rule, which allows students to practice law under specific circumstances and with the supervision of a member of the Montana Bar, is considered at length in the legal framework section to follow. During his time with ASUM Legal Services, Mr. Olson made appearances in Missoula County District Court and Missoula Municipal Court and worked on cases in Missoula County Justice Court and Ravalli County District Court.

After his initial response, pursuant to MCA 44.11.106(4), I asked Mr. Olson to provide information supporting his assertion that he qualifies for Attorney General based on his work under the Student Practice Rule. I informed Mr. Olson that I needed to "determine if [his] work under the Student Practice Rule meets the definition of 'active practice' and whether [he] fulfilled the requirements of the Student Practice Rule." Specifically, I requested any supporting information and suggested this may include: "number of hours worked, dates employed, the name of any court in which [he] filed an appearance, and the name of [his] supervising attorney(s). COPP Docket, Letter to Mr. Olson dated May 29, 2024.

In reply to the 44.11.106(4) request for additional information, Mr. Olson provided this additional information:

Mr. Olson completed six total credit hours working for ASUM Legal Services during the 2019 autumn semester and the 2020 spring semester for a total of 312 hours worked. During this time, Mr. Olson met with clients, communicated with opposing counsel, requested and reviewed evidence, researched legal issues, drafted and filed legal documents, executed plea agreements and appeared in court. Mr. Olson's initial response referenced being a "student associate" at O'Toole Law Firm

but he did not address this in his supplemental response or provide any supporting documentation.

Facts confirmed by COPP.

Mr. Olson was admitted to the practice of law under the Student Practice Rule in September 2019. University of Montana Student Services provided COPP with a copy of the Dean's Certificate. The required certificate from the Dean is dated September 4, 2019. ASUM Legal Services affirmed that Mr. Olson earned six credits, which would require 312 hours worked, and filed appearances in Missoula County District Court and Missoula Municipal Court. *COPP Records.*

Mr. Olson was admitted to the Bar on September 30, 2020, and has worked for O'Toole Law Firm from September 2020 until the present. Mr. Olson also currently serves as the Daniels County Attorney. *Id.*

On March 11, 2024, Mr. Olson formally filed as a Republican candidate for election to the office of Attorney General with Montana's Secretary of State by filing a Declaration for Nomination. In doing so, Mr. Olson provided under oath that he meets the constitutionally prescribed qualifications for Attorney General. *Id.*

On March 14, 2024, Mr. Olson filed a C-1 Statement of Candidate as a Republican candidate seeking election to the office of Attorney General with COPP. *Id.* On the C-1, Katie Winetta of Helena, MT is listed as the campaign treasurer. *Id.* Mr. Olson also filed a D-1 Business Disclosure Statement with COPP on March 14, 2024. *Id.* Subsequently, Mr. Olson has timely filed all required C-5 campaign finance reports. To date, Mr. Olson has reported two debts owed, one in the amount of $1,508.76 to Standard Consulting described as "Reimbursement for filing fee," and the second in the amount of $ 1,500.00 to Burnt Timber Consulting, LLC, for "Bookkeeping and Compliance for Primary Election." *Id.* No other contributions or expenditures have been reported by Olson's campaign.

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LEGAL AUTHORITES AND FRAMEWORK

Qualifications for Attorney General.

The Montana Constitution provides specific requirements that individuals must meet in order to hold certain offices in the government's executive branch. Specifically, the Constitution states:

> No person shall be eligible to the office of governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, or auditor unless he is 25 years of age or older at the time of his election. In addition, each shall be a citizen of the United States who has resided within the state two years next preceding his election. Mont. Const. Art. VI, § 3 (1).

As to the office of Attorney General, the Constitution adds this qualification:

> Any person with the foregoing qualifications is eligible to the office of attorney general if an attorney in good standing admitted to practice law in Montana who has engaged in the active practice thereof for at least five years before election. *Id.* (2).

The only Montana case or COPP decision which interprets the qualifications for Attorney General is *Wanzenreid v. Graybill*, COPP-2020-DR-0001, where the commissioner issued the following declaratory ruling:

> According to the assertions of the delegates in support of the attorney general eligibility requirements: a candidate must have been admitted to the Montana Bar for a period of at least 5 years, engaged in the active practice of law for at least 5 years, and a resident of Montana for the two years preceeding election. *Graybill* at 9.

Mr. Weizenreid did not question whether Mr. Graybill met the residency requirement or whether he had been a member of the Bar for five years. Rather, Mr. Weizenreid sought to disallow time spent as a judicial clerk and time spent practicing law outside of Montana from the time calculated to meet the 5-year active practice of law requirement for Attorney General. The commissioner determined that practice outside the state of Montana applied to the active practice requirement, and additionally relied on the Supreme Court rules as contained in

the approved by-laws of the Montana State Bar addressing admission on motion, to determine that service as a judicial clerk meets the definition of active practice. *Id.*, 12.

Rules for Admission to the Bar.

In the Rules for Admission to the Bar, Rule V addresses admission on motion and provides a definition of active practice:

> 1. "Active practice of law" means active and continuous engagement or employment in the performance of legal services and includes the following activities if performed or treated as performed while the applicant was admitted in active status:
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> a. representation of one or more clients in the practice of law;
> b. service as a lawyer with a United States local, state, territorial, or federal agency, including military service with any branch of the United States military;
> c. teaching at a law school formally accredited by the American Bar Association;
> d. service as a judge in a local, state, territorial, or federal court of record of the United States;
> e. service as a judicial law clerk in a local, state, territorial, or federal court of record of the United States, which service was performed after admission to practice in the jurisdiction in which the service was performed;
> f. service as in-house counsel provided to the applicant's employer or its organizational affiliates, which service was performed after admission to practice in the jurisdiction in which the service was performed;
> g. service as a lawyer in Montana pursuant to temporary admission by order of the Montana Supreme Court; or
> h. any combination of the above.
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> MT R Admission to the Bar, Rule V, § D.

As stated above "active practice of law" means "active and continuous engagement or employment of legal services." In *Graybill*, the commissioner needed only rely on subsection 1 to determine that service as a judicial law clerk is included, but there is a subsection 2, which is important with respect to Mr. Olson. Subsections 1 and 2 are directly tied together, and subsection 2 provides as follows:

> 2. "Engagement or employment in the performance of legal services" means that during each of the required five years in the durational period, the applicant spent at least one thousand hours per year engaged in one or more of the activities listed in Rule V.D.1. *Id.*

The Montana Supreme Court addressed the commissioner's declaratory ruling in *Graybill* to some degree, holding that:

> [U]pon review of the pertinent constitutional language, the COPP's declaratory ruling, and this Court's own rules defining the "active practice of law," we are not persuaded that our extraordinary intervention in the election process is necessary to prevent constitutional error. *Montana Republican Party v. Graybill*, No. OP 20-0388, 2020 WL 4669446, at 2 (Mont. Aug. 11, 2020).

It is particularly relevant to note that "this Court's own rules" refers not exclusively to Rules of the Supreme Court, but also to the Montana Bar by-laws. The Montana Constitution reserves to the Supreme Court, the right to "make rules governing. . .admission to the bar and the conduct of its members." Mont. Const. art. VII, § 2 (3). *See also*, *Kradolfer v. Smith*, 246 Mont 210, 805 P.2d 1266 (1990). The Montana Supreme Court appoints an organizational committee to propose by-laws and ultimately must approve their adoption. *Application of President of Montana Bar Ass'n*, 163 Mont. 523, 528, 518 P.2d 32, 34 (1974). In fact, the Montana Supreme Court created the Montana State Bar to regulate the admission to practice law and still approves all changes to the Montana State Bar by-laws, reserving the ultimate authority to regulate the practice of law in Montana to the Court.

Judicial Qualifications.

While judicial qualifications are not at issue here, the Montana Supreme Court's analysis of "admitted to the practice of law," when applied to a judicial candidate whose Bar membership had been inactive, provides a useful framework. *Cross v. VanDyke*, 375 Mont. 535 (2014).

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The Montana Constitution provides:

> A citizen of the United States who has resided in the state two years immediately before taking office is eligible to the office of the supreme court justice or district court judge if admitted to the practice of law in Montana for at least five years prior to the date of appointment or election. Mont. Const. art. VII, § 9 (1).

In *VanDyke*, the Court held that time as a member of the bar in 'inactive' status nonetheless applied to the requirement that a judge be "admitted to the practice of law in Montana for at least five years." *VanDyke,* ¶ 34. In reaching this determination, the Court considered "a key relevant distinction between the qualifications for judicial officers and the qualifications for Attorney General." *Id.* ¶ 18. The distinction the Court refers to is the difference between the requirement that a judge be "admitted to the practice of law" and the requirement that "a candidate for Attorney General must have "engaged in the active practice thereof." *Id.*

In *VanDyke,* the Court considered discussion among the Constitutional Delegates when drafting the Constitutional requirements for judicial and executive officers and concluded that for judicial officers, "the delegates chose an approach with more "elasticity and flexibility," abandoning requirements for "active practice" or "experience with the law in Montana." *Id.* ¶ 27. The Court further states "the convention transcripts make clear that the delegates understood and intended the difference between the qualifications for Attorney General and the qualifications for Supreme Court Justice." *Id.* ¶ 28. In reaching this conclusion, the Court references "the principle that, when interpreting the Constitution, 'if possible, effect must be given to every section and clause.'" *Id.* ¶ 17, quoting *Martien v. Porter*, 68 Mont. 450, 464, 219 P. 817, 819. *VanDyke* clearly elucidates that the drafters of the Montana Constitution intended that "the active practice thereof" be given full weight when applied to the qualifications for Attorney General.

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Admitted to the practice of law.

Finally, the Montana Supreme Court has analyzed the meaning of "admitted to the practice of law" in considering a five-year requirement for the position of county attorney as dictated by statute.

> A person is not eligible for the position of full-time county attorney in counties that have a population in excess of 30,000 unless the person is a citizen of the United States and has resided in the state 2 years immediately before taking office and has been admitted to the practice of law for at least 5 years before the date of election or appointment. MCA § 7-4-2701 (1).

In *Shapiro v. Jefferson Cnty.*, the Court determined that "admitted to the practice of law" is distinct from admission to the Montana Bar. 278 Mont. 109, 923 P.2d 543, (1996). The *Shapiro* Court concluded that the statutory definition of "practicing law" was not preconditioned by admission to the bar, and that admission under the Student Practice Rule qualified as "admitted to the practice of law." *Id.* 115, 547.

The Student Practice Rule, adopted by the Supreme Court in 1975, provides for practice by law students under specific protocols,

> In order to make an appearance pursuant to this rule, the law student must: 1. Be duly enrolled in a law school approved by the American Bar Association. 2. Have completed legal studies amounting to at least two-thirds of the total credit hours required for graduation. 3. Be certified by the dean of the law school as being of good character and competent legal ability and as being adequately trained to perform as a legal intern, et al. *University of Montana, Alexander Blewett III School of Law, Student Handbook*, 129 (2022-2023).

In *Shapiro* the court held "Section 37–61–201, MCA, does not require that one must be admitted to the State Bar of Montana in order to be "deemed practicing law," and accordingly applied time worked under the Student Practice Rule in qualifying a bar admittee of only four years as Jefferson County Attorney. *Id.* 114, 546. "We hold, therefore, that this Court's order, which provides for the certification of student attorneys, combined with the dean of the law school's certification of

students to act as student attorneys, provide the guidelines for 'admission' of a student attorney to the practice of law." *Shapiro,* 115, 547. In *Shapiro*, the Court did not address "active practice" or determine how much work the person did under the rule because this was not at issue. The *Shapiro* Court only had to establish the date of admission because, in fact, that was the only qualification requirement. That is not the case here.

DISCUSSION

The legal authorities outlined above provide a useful framework which the following discussion applies to Logan Olson's qualifications for the office of Attorney General. Regarding the issues addressed in this decision, my authority applies only to whether Mr. Olson signed a false declaration under MCA § 13-35-207. Nevertheless, in order to make that determination, I must first consider whether the facts support Mr. Olson's assertion that he is qualified. This is the approach I determined appropriate in *Senecal v. Decker* when evaluating declarations and residency, which is also a qualification for elected office. COPP-2024-CFP-003. The same approach works here.

The complainant makes no assertion that Mr. Olson does not meet the age, citizenship, or residency requirements set forth by the Constitution. Likewise, I see no reason to question these requirements as they relate to Mr. Olson. Mr. Olson was admitted to the State Bar of Montana on September 30, 2020. His membership is listed as "Active Attorney," and he currently serves as the Daniels County Attorney. The complaint asserts only that Mr. Olson was not "an attorney in good standing admitted to practice law in Montana who has engaged in the active practice of law for at least five years before election," as required by Mont. Const. Art VI, Part VI, § 3(2). *Amended Complaint* ¶¶ 20-23. Having determined that Mr. Olson is an "attorney in good standing admitted to practice law in Montana," this discussion will focus exclusively on whether Mr. Olson has been engaged in the "active practice thereof for at least five years before election."

As determined by the commissioner in *Graybill,* to calculate a date for when Mr. Olson is qualified, I use the date of the general election rather than the primary election. *Graybill,* COPP-2020-DR-001, 6. I determine this well-reasoned and correct. This is important because it establishes the durational period for determining the date of admission and active practice. Mr. Olson must be qualified to hold the office of Attorney General by November 5, 2024.

Admission and Practice.

Having determined the applicable election, I must next determine if, by November 5, 2024, Mr. Olson will be an attorney "admitted to practice law in Montana who has engaged in the practice thereof for at least five years." Mont. Const. Art. VI, § 3(2).

The Montana Supreme Court has not specifically considered the qualifications for Attorney General in this particular circumstance, but the Court has considered what it means to be *admitted to practice* and has provided by rule what it means to be engaged in *active practice.* The distinction between these two terms is significant. "Different language is to be given different construction." *Gregg v. Whitefish City Council,* 2004 MT 282, ¶ 38 (2004). In *VanDyke,* the Court bases much of its analysis on the Constitutional Delegate's intentional use of different terminology in setting forth the qualifications for Attorney General and judicial nominees. ¶¶ 25-27. I must do the same here.

Mr. Olson relies on the assertion that he has been admitted to practice law for five years as the dispositive element determining his qualifications for Attorney General. However, the constitutional requirements do not specify "admitted to practice for five years," but "admitted to practice law in Montana who has engaged in the "active practice thereof for at least five years." Mont. Const. Art. VI, § 3(2). One can certainly not engage in the active practice of law if not admitted to practice (unless practicing unlawfully), but one can be admitted to the practice of law and still not be engaged in active practice. *See VanDyke.* The simple fact that there is an

option for Bar members of "inactive status" that does not nullify their Bar membership confirms this finding.

1. Mr. Olson can establish that he will have been admitted to the practice of law for five years preceding the November election.

COPP, the complainant, and Mr. Olson, all agree that he was admitted to the Montana Bar on September 30, 2020, but this does not necessarily dictate when he was "admitted to practice" under Montana Law. The respondent contends that he was actually admitted to the practice of law in September of 2019 when he began to practice under the Student Practice Rule. This is true. *Shapiro* allows Mr. Olson to use the Student Practice Rule to determine when he was admitted to practice law in Montana.

In *Shapiro v. Jefferson Cnty.*, the Court drew a distinction between "admitted to the practice of law" and "admitted to the State Bar" and determined the two are indeed distinctive. 278 Mont. 109, 923 P.2d 543, (1996). Here, the Court considered whether a newly appointed county attorney (Valerie Wilson) could use practice performed under the Student Practice Rule, prior to her admission to the Montana State Bar, to meet the qualification of "admitted to the practice of law for at least 5 years prior to the date of appointment." *Id.*

In determining that the individual in question met the five-year requirement, the Montana Supreme Court held Montana law "does not require that one must be admitted to the State Bar of Montana in order to be 'deemed practicing law.'" *Id.* 115, 547, *See also VanDyke*, 2014, MT 193, ¶ 30, 379 Mont. 535, 332 P.3d 215. The *Shapiro* Court went on to clarify, "this Court's order, which provides for the certification of student attorneys, combined with the dean of the law school's certification of students to act as student attorneys, provide the guidelines for 'admission' of a student attorney to the practice of law." *Id.* 115, 547.

Mr. Olson asserts that he was "admitted to practice law in Montana under the Student Practice Rule in September 2019." *Response, 1.* Based on the Court's holding in *Shapiro,* COPP does not dispute this assertion. As stated above, Mr. Olson worked for ASUM Legal Services during his third year of law school at the University of Montana. During each of the 2019 fall semester and 2020 spring semester, Mr. Olson was enrolled for three (3) credit hours, spending approximately 156 hours per semester engaged in the practice of law. To engage in this program, Mr. Olson was provided a Dean's Certificate which enabled him to practice under the Student Practice Rule.

Applying the facts provided by Mr. Olson and by COPP's own investigation, Mr. Olson was admitted to practice law in Montana in September 2019, approximately five years and two months before the 2024 general election. I determine that by November 5, 2024, Mr. Olson will have been admitted to the practice of law in Montana for at least five years.

Mr. Olson's response suggests that the inquiry ends here, based entirely on *Shapiro.* However, this position lacks merit because the *Shapiro* ruling specifically addressed admission rather than active practice since active practice is not a qualification for the position of county attorney. Admission was also the only requirement the Court needed to address in *VanDyke,* because Mr. VanDyke was seeking a judicial position. County attorneys and judges have the same qualification requirements. Similarly, in *Graybill,* although the entire qualification requirements were mentioned, the commissioner and the Court addressed admission and not active practice. In *VanDyke,* the question presented was whether time in 'inactive' status counted when calculating the time VanDyke had been admitted to the bar, and in *Graybill* the question presented was whether legal work outside the State of Montana and work as a law clerk within the State, were applicable when calculating the five-year requirement for active practice.

As previously discussed, the statutory requirements for county attorney require "admission to the practice of law" for five years preceding election. Neither county attorney nor judicial qualifications "require five years active practice of law."

Consequently, additional analysis is necessary as the length of time Mr. Olson has been admitted to practice in Montana, is not relevant to whether he has achieved eligibility for the position of Attorney General by "engaging in the active practice" of law for the requisite five years.

2. Mr. Olson cannot support his claim that he "engaged in the active practice thereof" for five years preceding the general election, based on the information provided in his response to the complaint or information obtained through COPP's investigation.

The only applicable definition of "active practice" is provided by the Rules for Admission to the Bar of Montana as adopted by the Montana Supreme Court in accordance with the authority established pursuant to Article VII, Section 2 of the Montana Constitution when adopting rules for admission by motion. The rule specifies that an applicant "must have been admitted to and engaged in the active practice of law for at least five of the seven years preceding application to Montana and proceeds to provide an in-depth definition of the "active practice of law." MT R Admission to the Bar Rule V, § D. This definition is provided in detail in the *Relevant Law* section above.

While this rule is specific to applicants for admission by motion to the Montana Bar, it is the only definition provided by Montana law and directly applies to the present circumstances. I point out that Mr. Olson himself asserts and relies on this rule in his responses. Mr. Olson seeks a constitutional office and given the importance of the office he seeks it is fundamentally fair to hold him to the standard being applied to a Bar applicant with respect to the rule.

For the purposes herein, the relevant definitions provided by the rule are: *active practice of law*, "which means active and continuous engagement or employment in the performance of legal services," and *employment in the*

performance of legal services, which for purposes of the rule means that "during each of the required five (5) years in the durational period, the applicant spent at least one thousand (1,000) hours per year engaged in one or more of the activities listed." *Id.*(D)(1)(2) *emphasis added.*

In Mr. Olson's initial response, he indicated that between September 2019 and September 2020 he worked for ASUM Legal Services and as a student associate at O'Toole Law Firm, and uses this time under the Student Practice Rule, as the basis for his admission to practice. *Response*, 2. It follows that provisions providing for admission to practice must also be used to establish whether he was not only admitted, but also engaged in the active practice thereof.

The rule for admission by motion provides "service as a lawyer in Montana pursuant to temporary admission by order of the Montana Supreme Court" qualifies as active practice. MT R Admission to the Bar Rule V, § D(1)(g). Admission under the student practice rule is "temporary admission." Black's Law Dictionary defines "temporary" as "[l]asting for a time only; existing or continuing for a limited (usu. short) time; transitory." *Black's Law Dictionary* (11th ed. 2019). The *American Heritage Dictionary* defines "temporary" as "[l]asting, used, serving, or enjoyed for a limited time." (5th ed. 2022). Admission under the Student Practice Rule is temporary because it is limited in duration by the expiration of the certification provided by the law school dean, which expires after twelve months or admission to the bar, whichever comes first. *University of Montana, Alexander Blewett III School of Law, Student Handbook*, 130 (2022-2023).

In accordance with the above, time practicing while temporarily admitted under the Student Practice Rule by order of the Supreme Court, is among the list of hours Mr. Olson can use to determine whether he engaged in "active practice." *Id.* As previously indicated, Mr. Olson must also establish his active practice under subsection 2, which means that "during each of the required five years in the durational period, the applicant spent at least one thousand hours (1,000) per year engaged in one or more of the activities listed in Rule V.D.1." Rules for Admission to

does not necessarily mean Mr. Olson violated MCA § 13-35-207. While an action or activity may appear to be a violation, I must also establish that the alleged violator acted with the requisite mental state in order to conclude criminal prosecution is warranted. See *Seward v. Andrick,* COPP-December 13, 2004. Therefore, in order for me to find that Mr. Olson violated a statute under Title 13, chapter 35, I must have evidence that he acted with the mental state of purposely or knowingly required by the criminal code. MCA § 45-2-103, *see also Scott v. Doyle,* COPP-May 31, 2011.

Like *Decker, James v. Maedje,* and other complaints support the proposition that individuals must knowingly violate provisions of MCA § 13-35-207. COPP-2000-CFP-Oct./2000, *see also Hagan.* In *Maedje,* Cajun James alleged Rick Maedje violated Montana law when filing his declaration to run for county commissioner. Like Olson, Maedje submitted a declaration providing that he possessed the qualifications to run for a particular office. James provided Maedje a handbook, which Maedje read. The handbook referenced MCA § 7-4-2104, which includes the two-year residency requirement to run for the board of county commissioners. Maedje sought clarification of the requirement by contacting a state legislator, a private attorney, and the local election administrator. The election administrator referred Maedje's questions to the Lincoln County Attorney, but the County Attorney could not sufficiently answer Maedje's inquiry because there were too many variables that ultimately needed to be decided by a court. Maedje remained on the ballot and won the primary election. James challenged Maedje's nomination in district court and Maedje subsequently withdrew. The state district court dismissed James' complaint after Maedje's withdrawal. James then filed a complaint with COPP.

The commissioner did not evaluate whether Maedje was a resident of Lincoln County but did address his circumstances with respect to MCA § 13-35-207. The commissioner addressed the fact that Title 13, chapter 35, references Montana's criminal code and is intended to supplement that code. Accordingly, MCA § 45-2-

101 was used to determine whether Maedje acted knowingly. MCA § 45-2-101(35) defines "knowingly" as follows:

> A person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when the person is aware of the person's own conduct or that the circumstances exist. A person acts knowingly with respect to the results of conduct described by a statute defining an offense when the person is aware that it is highly probable that the results will be caused by the person's conduct. When knowledge of the existence of a particular fact is an element of an offense, knowledge is established if a person is aware of a high probability of its existence.

MCA § 45-2-101(65) defines "purposely" as:

> A person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is the person's conscious object to engage in the conduct or to cause that result. When a particular purpose is an element of the offense, the element is established although the purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense.

To establish that Olson, or anyone else for that matter, violated MCA § 13-35-207, it is necessary to prove that, acting with one of the above mental states, he either made a false statement under oath or filed a false written statement, knowing the information in the statement was not true. This needs to be intentionally deceptive. In *Maedje*, the commissioner determined the evidence did not support such a conclusion. "Maedje believed he was eligible to run for county commissioner when he filed his declaration for nomination." *Maedje,* 6. After he reviewed the handbook, he was concerned that he "might" not meet the two-year residency requirement, but nobody he contacted could provide a definitive answer to his inquiries. Maedje withdrew to avoid costly litigation, not because he believed he was not qualified. On this basis, the commissioner determined there was insufficient evidence to justify a criminal prosecution of Maedje.

In *Pinocci v. Hagan* the commissioner reached the same conclusion. Hagan provided an address on his declaration that he owned land and where he intended

to build, but he lived in a condominium which was located elsewhere. Hagan even intended to "start building at [the address on his declaration] any day." *Hagan,* 9. Hagan regarded and intended the address on his declaration as his home. *Id.* In Hagan's view any other address would have been temporary while the address on his declaration is permanent and fixed. Weighing necessary facts and Hagan's explanations, the commissioner ultimately determined there were "not sufficient facts to show that Candidate Hagan had the necessary intent to falsify his residency. . .when he filed his declaration...." *Hagan,* 10. The commissioner dismissed the complaint in full, contingent on Hagan promptly acting to change his address. *Id,* 11.

In *Decker*, I determined Mr. Decker was in much the same position as Maedje and Hagan. To support a claim that Mr. Decker violated MCA § 13-35-207 when he submitted his declaration, I needed to prove that he not only acted knowingly and purposely, but that he did so falsely or knew all or part of his declaration was false. A common definition of "false" means "contrary to fact or truth or fact" and "intentionally deceptive." *American Heritage Dictionary* (5th ed. 2022). Based on the facts before me, I could not determine that Mr. Decker acted in an intentionally deceptive manner. This was true even though I could not find support for Mr. Decker's claim of residency.

In *Galt v. Davidson,* COPP-2004-CFP-May/2004, the commissioner determined that gubernatorial candidate Pat Davidson's running mate David Mihalic did not meet the residency qualification to run for office, but the commissioner refused to pursue a violation of MCA § 13-35-207, because Mr. Milhalic believed he established residency when he purchased a Missoula home in September 2002. Respondents sought legal advice to form this conclusion. The commissioner determined that continuing to file tax returns in another state, and not filing Montana tax returns, was a disqualifying event, but each candidate could support their belief with factual evidence, which was persuasive to the

commissioner in reaching the determination not to pursue a violation of MCA § 13-35-207.

COPP has rarely found violations of MCA § 13-35-207. Although not a residency or qualification matter, I recently issued a decision in *Peterson Jr. v. Schreibeis*, where I did find the respondent had the required mental state to justify enforcement as a violation of MCA §§ 13-35-226(4) and 228. COPP-2023-CFP-012. In *Matter of Howell v. Stamey*, the commissioner found sufficient evidence to support a violation of MCA 13-35-207 and to find prosecution justified, based on a falsely swearing to the veracity of a campaign finance report. COPP-2014-CFP-003.

In *Schreibeis,* the response clearly indicated the act in question - the sending of a coercive email - was done knowingly and purposely. He made no assertion that the email was accidently or inadvertently sent to employees, and furthermore states it was completely in his purview as superintendent. *Schreibeis*, 15. While Schreibeis may have indeed felt his actions were within his duties, "ignorance of the law is no excuse." *State v. Tichenor*, 2002 MT 311, ¶ 46, 313 Mont. 95, 105, 60 P.3d 454, 462. I did not need to conclude that Superintendent Schreibeis knew he was violating the law, only that he knowingly or purposely engaged in the described conduct – sending the email. Knowingly or purposely sending the email fulfilled the mental state requirement to find that Superintendent Schreibeis violated MCA §§ 13-35-228 and 226(4).

In *Howell v. Stamey*, the candidate certified a closing report signed by his treasurer (who was also the candidate's wife and a candidate herself), which he undoubtably knew was false. COPP-2014-CFP-003. When asked to supply supporting information, Mr. Stamey was unable to do so while the complainant was able to supply convincing evidence that the report was false. *Id.* 5. Not only did the Stameys attempt to mislead COPP, they also falsely claimed a legitimate debt had been forgiven and made no effort to reconcile the debt. *Id.* In *Stamey*, the commissioner determined the facts showed that the Stameys invited reliance on a

writing they knew was untrue with the purpose of misleading a public servant in performance of an official function. *Id.* 8-9.

Although there is evidence to support the conclusion that Mr. Olson knowingly signed a false declaration, there is also evidence to the contrary. Based on the facts presently before me I must conclude that Olson's situation is more like those found in *Decker*, *Maedje,* or *Hagan*, than *Schreibeis* or *Stamey*.

Before filing his declaration, Mr. Olson had an obligation to assess whether he met the requirements for attorney general. He asserts *Shapiro* and applies it to both admission and active practice despite the clear wording of the constitutional provision. Unlike others who have run afoul of the prohibition on false declarations in MCA § 13-35-207, as it relates to statutory or constitutional qualification provisions, I must take note of the fact Mr. Olson is an attorney and as such is uniquely qualified to analyze and determine his own qualifications.

However, when Mr. Olson registered (seemingly at the last minute) with the Secretary of State, he would have likely read the qualifications as they present them: "25 years of age, U.S. Citizen, reside in state 2 years preceding general election, admitted to practice law in Montana for 5 years prior to date of election." Montana Secretary of State website, sosmt.gov, last visited June 11, 2024. This description of the qualifications omits "actively engaged in the practice of law" as an additional qualification.

Despite the apparent deficiencies in Mr. Olson's argument, the evidence indicates that, like Maedje, he researched the qualifications, at least on a superficial level. Olson relies on *Shapiro* and the Student Practice Rule to support his contention that he was admitted to practice in August of 2019. While Mr. Olson's reliance is misplaced, it is not unreasonably so, and he correctly applies *Shapiro* to his date of admission.

Ms. Hogan asserts that Mr. Olson did not meet the basic constitutional requirements to run for Attorney General in 2024, and that the requirements to run for that office included, an attorney in good standing admitted to practice law in

Montana who has engaged in the active practice thereof for at least five years before the election. *Hogan, Amended Complaint and Request for DR* ¶ 22. Hogan specifically states, "Olson will not have been engaged in the active practice of law in Montana at the time of the 2024 election." *Id.*

Olson addresses Mr. Hogan's allegation by relying on the Montana Supreme Court definition of the active practice of law. *Olson Response*, May 28, 2024. He correctly points to "active and continuous" to support his contention that he is "admitted in active status" and relies on definitions proved by the rules on admission by motion by indicating his "representation of one or more clients in the practice of law." *Olson Response,* 1. However, Mr. Olson failed to apply the additional and distinct active practice requirement, which was clearly present as a qualification when he submitted his declaration. After acknowledging subsection 1 (active and continuous engagement or employment), he completely ignores subsection 2, which defines "continuous engagement or employment" as requiring 1,000 practice hours per year. Obviously, subsection 1 and subsection 2 appear right next to each other in the same rule and must be interpreted and applied as a whole.

While this is a significant oversight, it appears to be just that – an oversight. It does not include any egregious actions which are on par with *Schreibeis* or *Stamey*. If the requisite mental state here was negligently, I would likely reach a different conclusion and find Mr. Olson in violation of MCA § 13-35-207.

The evidence here, while pointing to a hasty and minimally researched decision on the part of Mr. Olson, does not allow me to conclude that Mr. Olson knowingly made a false declaration in violation of MCA §13-35-207.

While under the current circumstances I would not find evidence to support a violation of MCA § 13-35-207, it is worth noting that if I do find a violation based on a false Oath of Candidacy, another provision of Montana election law leaves me unable to pursue enforcement. Generally, when I find there is sufficient evidence to support a violation, I next determine if prosecution is justified. If so, I am statutorily mandated to notify the affected county attorney, allowing the county

attorney the opportunity to prosecute the offending party or return the matter to me. MCA §§ 13-37-124, 128. However, under the present circumstance, if indeed a violation occurred, the ability of myself or a county attorney to prosecute Mr. Olson or anyone else for a false declaration is frustrated if not made impossible by the language contained in MCA § 13-10-201(4) which not only prescribes the language that must be contained in a declaration for nomination but additionally states; "The candidate affirmation in this oath is presumed valid unless proven otherwise in a court of law." My ability to pursue enforcement of a false declaration is impacted by the presumption stated in MCA § 13-10-201(4). See *Decker*, 5, 31. Without action by a court of law, an Oath of Candidacy is presumed valid and COPP is unable to enforce a violation, even where patently false declarations are at issue.

SUMMARY

This decision addresses the specific issue as to whether Mr. Olson meets the qualifications for Attorney General as created by the Montana Constitution. Mr. Olson is at least 25 years of age, a citizen of the United States, and has been a resident of Montana for at least two years preceding the November 2024 election. Mr. Olson is also an attorney in good standing admitted to practice law in Montana. However, Mr. Olson has not been "engaged the active practice thereof for at least five years" prior to the upcoming election. Therefore, Mr. Olson does not meet the requirements to serve as Attorney General of the State of Montana.

Although Mr. Olson's legal argument supporting the assertion that he is qualified to serve as attorney general is faulty, he does offer a reasonable argument and supports it with verifiable facts. Therefore, the balance of the evidence indicates that he may indeed have concluded he met the qualifications for attorney general and does not indicate that he knowingly submitted a false declaration. Mr. Olson was aware of his conduct and that there were certain specific requirements regarding whether he was qualified. Mr. Olson consciously engaged in conduct and formed conclusions that upon further inspection would have demonstrated to Mr.

Olson that he was incorrect. But, ultimately, like other commissioners, I cannot reach a finding that Mr. Olson knew his declaration was untrue or that he intentionally acted deceptively. While I could comfortably render a determination Mr. Olson acted negligently here, a cannot support a claim he intentionally submitted his declaration knowing it was false.

CONCLUSION

Mr. Olson does not meet the qualifications set forth by the Montana Constitution for the position of Attorney General of the State of Montana, but the evidence does not support a finding that Mr. Olson knowingly violated MCA § 13-35-207. This allegation has been considered as described above and is hereby dismissed in its entirety.

Dated this 12th day of June, 2024

Chris J. Gallus

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