

# COMMISSIONER OF POLITICAL PRACTICES



## STATE OF MONTANA

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### Campaign Practice Complaint Filing

Candidates and political committees involved in elections in Montana are expected to conduct open, transparent and fair elections, as measured by Montana's contribution limit and reporting/disclosure laws. Anyone who believes a violation of campaign finance and practices laws or rules has occurred can file a complaint with the Commissioner of Political Practices.

There is a complaint form available on the COPP website. The information that should be included in the complaint is detailed in an administrative rule, 44.11.106, ARM. A copy of that rule is also published on the COPP website.

The complaint requirements are simple and plainly stated at 44.11.106, ARM. Most complaints are accepted by the COPP. For example, in 2016 there were 95 complaints lodged with the COPP and 81 were accepted for filing.

If you have difficulty locating the complaint form or ARM, please call or e-mail the COPP staff and we will assist you:

(406) 444-2942  
[cpphelp@mt.gov](mailto:cpphelp@mt.gov)  
<http://politicalpractices.mt.gov>

### Acceptance or Rejection of a complaint

The Commissioner will accept or reject a complaint within five business days of the day it is received or "lodged" with the COPP. If the complaint is rejected (generally for lack of jurisdiction) it will be returned to the person who filed it. If the complaint is accepted it becomes public information and is immediately posted to the COPP website under the COPP "complaint docket."

Upon acceptance of the complaint, a copy is sent to the person filed against (the "respondent"). The person filing also receives a letter notifying that the complaint has been accepted. A complaint, once accepted, is assigned an identifying number, and that number will be used to identify any public information related to the complaint. Specifically, the complaint, agency decision and final resolution (whether by settlement or judgement) will be posted for public review under the same identifying number on the COPP website.

### COPP Decision on a Complaint

The COPP is an administrative agency of the State of Montana. The COPP is provided certain investigative and decision-making authority under Montana law. That authority is vested in the Commissioner of Political Practices, a Montana public official who is appointed by the Governor and confirmed by the Montana Senate.

Once a complaint is received an investigator will review the facts and provide a report to the Commissioner, who will then prepare a decision. A decision issued by the Commissioner is an agency decision of certain effect as it is limited to a finding of sufficient or insufficient facts to show a campaign practice violation occurred. This is a commonly misunderstood area of COPP authority and it will be discussed further, below.

There is no set timeframe in which the Commissioner will act to make a decision. A decision may be made quickly (within days) if all needed information can be taken from publically filed documents. A decision which requires a reply by the respondent and investigation of third party documents will require longer time to draft, write and issue.

### **COPP Dismissal of a Complaint**

A little less than one-half of the complaints filed with the COPP are dismissed because the Commissioner determines that insufficient facts exist to show that a campaign practice violation occurred. A “dismissal” of a complaint is made in the form of a formal decision which is published on the COPP website alongside the complaint.

A COPP agency decision finding insufficient facts and dismissing a complaint resolves the complaint entirely. There is no appeal possible from a dismissal because the agency dismissal decision simply says there is no further enforcement action to be taken in court and does not grant or deny rights or privileges in a manner that allows for a review.

### **COPP Finding of Sufficient Facts**

A little over one-half of COPP agency decisions find sufficient facts (“sufficiency decision”) to show that a campaign practice violation occurs. These decisions, like dismissal decisions, are published to the COPP website alongside the complaint.

A COPP sufficiency decision is prepared through a drafting, vetting and editing process that results in a thorough review of facts and law necessary to the finding of sufficient facts. On most occasions, the respondent to the complaint will reach a settlement with the Commissioner, paying a fine to resolve the social debt caused by the campaign practice violation. This “settlement agreement” will completely resolve the complaint. A copy of any such settlement agreement is posted to the COPP website alongside the complaint and decision to which the settlement agreement relates.

A failure to settle triggers the backup function of a sufficiency decision. Once a sufficiency decision is issued, the Commissioner, on behalf of the people of Montana, steps into the shoes of the original complainant with the sufficiency decision allowing the Commissioner to judicially enforce the finding. Specifically, a sufficiency decision, under law, allows a county attorney or the Commissioner to file a civil enforcement action in a Montana district court. The COPP took this step beginning in 2014, filing over 20 enforcement actions (the first such in the history of the COPP). A dozen enforcement actions have now been resolved, most by settlement but three through litigation involving a court or jury trial.

### **Representation by Counsel**

A respondent may be represented by an attorney at any stage in the agency proceeding, although it is not required. A COPP enforcement action, filed in a state district court, begins normal due process with the Commissioner becoming the plaintiff and the respondent the defendant, each represented by counsel.