

# Accounting and Reporting Manual for Candidates and Treasurers



## Commissioner of Political Practices

1209 8th Ave.  
PO Box 202401  
Helena, MT 59620

Phone: 406-444-3919  
Fax: 406-444-1643  
[www.politicalpractices.mt.gov](http://www.politicalpractices.mt.gov)

Contact us via email: [cpphelp@mt.gov](mailto:cpphelp@mt.gov) or  
[cppcompliance@mt.gov](mailto:cppcompliance@mt.gov)

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## Table of Contents

<b>Introduction</b>	4
<b>PART 1: CAMPAIGN ACCOUNTING</b>	
Campaign Treasurer	5
Appointment	5
Certification	5
Keeping Accounts	6
Campaign Depository	6
Designation	6
Certification	6
Campaign Receipts	7
Contribution defined	7
Designation of Primary and General election contributions	7
Depositing contributions	7
Statement of contributions	8
Contributions by check	8
Cash contributions	8
Recording contributions	8
Contributor card	9
Loans	10
Candidate's funds	10
Mass collections from fundraising events	10
In-kind contributions	11
Interest, rebates, and refunds	12
Earmarked contributions	12
Donations/items not considered contributions	13
Limitations on Contributions	13
Unlimited contributions	13
Contribution limits	13
Individual and political committee limitations	14
Aggregate political party committee limitations	14
Aggregate Independent limitations for state legislative candidates	15
Illegal Contributions	15
Corporate contributions	15
Business contributions	16
Anonymous contributions	16
Money laundering	17
Contributions from foreign nationals prohibited	17
Campaign Debts and Loans	17
Campaign Expenditures	18

Petty cash fund	19
Payroll account	20
Savings account	20
Bank service charges	20
Limitations on Expenditures	20
Surplus campaign funds	20
Coordination	21

## PART 2: CAMPAIGN REPORTING

Statements and Reports	22
Obtaining Forms	22
Business Disclosure Statement	22
Who must file Candidate Campaign Finance Reports	22
Report periods and due dates	22
Failure to file statements/reports	23
Closing reports	23
Preparing Statements	23
Form C-1 Statement of Candidate	23
Form C-1-A Statement of Candidate	24
Form D-1 Business Interest	25
Preparing Reports	25
Required forms	25
Form C-5. Candidate Campaign Finance Report (and C-5 Schedules)	25
Name, Address, Campaign name, and Office Sought	26
Reporting Period	26
Summary Report	26
Certification	26
Form C-5. Schedule A: Receipts	27
Candidate's Personal Contributions	27
Loans	27
Interest, Rebates, Refunds, Other Miscellaneous Receipts, and Fundraisers	27
Independent Committee Contributions	27
Political Party Committee Contributions	28
Incidental Committee Contributions	28
Other Political Committee Contributions	28

Individual Contributors of \$35 or Less	28
Individual Contributors of \$35 or More	28
Personal Use	29
Form C-5. Schedule B: Expenditures	29
Petty Cash	29
All Other Expenditures	30
Form C-5. Schedule C: Debts and Loans Not Yet Paid	30
Form C-7. Notice of Pre-Election Contributions	30
Form C-118. Disposition of Surplus Campaign Funds	31
<b>PART 3. REQUIRED ATTRIBUTIONS, DISCLAIMERS &amp; NOTICES</b>	
Attribution	33
Clean Campaign Act	35
Complaints	36
Following Receipt	36
Investigation	36
Resolution	36
Enforcement	36
Closure	37
Footnotes/References	38
<b>PART 4. SAMPLE ELECTRONIC FORMS</b>	
C1/C1-A	
C-5	
C-7	
D-1	

# Introduction

This manual is intended to be a practical guide to campaign finance accounting and reporting procedures for candidates running for elective office, the treasurers of their campaigns, and others involved in the election process.

Montana law, Title 12, chapter 37, MCA, provides for public disclosure of contributions and expenditures made to influence elections; therefore, accurate disclosure of those transactions requires:

- 1) An understanding of the laws and rules; and
- 2) The maintenance of detailed accounts from which periodic finance reports can be prepared.

**Part 1, CAMPAIGN ACCOUNTING**, discusses the responsibilities of campaign treasurers, outlines basic record maintenance practices and accounting principles, defines and provides examples of campaign contributions and expenditures, and describes contribution limitations as well as contributions that are illegal to receive.

**Part 2, CAMPAIGN REPORTING**, identifies the different statements and reporting forms required for filing, who must file them, how the various forms are to be completed, and when and where these forms are to be filed.

On-line reporting will be **required** for all statewide candidate campaigns, state district candidates (legislature, district court judge, and public service commission), and all political committees.

CERS (Campaign Electronic Reporting System) is a user-friendly system that aides in tracking things like total-to-date, contribution limits, and other required reporting information. Users will receive notifications of missing required information prior to filing a report. This step could reduce the headache of having to deal with the formal complaint process during your busy campaign season. <https://camptrackext.mt.gov/CampaignTracker/dashboard>

Candidates by definition are not committees 13-1-101 (30)(c), MCA

This manual *is not a substitute* for the laws and rules governing campaign finance and practices. Specific citations are noted throughout the manual. If precise legal language is required, users of this manual need to consult Montana Code Annotated (MCA) and Administrative Rules of Montana (ARM).

## PART 1: CAMPAIGN ACCOUNTING

### CANDIDATE/EXPLORATORY STATEMENTS

#### C-1 (pg 23) C-1-A (pg 24)

All 2018 candidates for Montana public office with the exception of those associated with certain school districts as well as certain special districts, are required to file (or register) as a candidate with the COPP, 13-37-206, MCA; also see Footnotes/References section on pg 38. This registration with the COPP is not set at a definite date but is instead triggered by certain actions of the individual that demonstrate they are a candidate for public office. In general, under Montana law an individual becomes a candidate for public office for COPP reporting and disclosure purposes when he or she declares a candidacy (thereby triggering expenses) or when he or she solicits or accepts campaign contributions. Specifically, Montana law requires an individual to file or register as a candidate with the COPP (that is file a form C-1) within 5 days of the first date that the individual solicits or accepts contributions to, or makes expenditures for, his or her campaign. §13-37-201 read with §13-1-101(8)(b) MCA.

#### Appointment

A Statement of Candidate form (either Form C-1 or C-1-A) certifies a candidate's treasurer and depository and provides other information required by the Commissioner of Political Practices, 13-37-201 and 205, MCA.

### CAMPAIGN TREASURER

Each candidate for public office *must* appoint a campaign treasurer, 13-37-201 and 203, (MCA). The only exceptions are for certain school districts and certain special districts.<sup>1</sup>

#### Certification

While a candidate bears the ultimate responsibility for the administration and conduct of the campaign, the treasurer, as the candidate's agent, performs the important functions of depositing and disbursing funds, keeping accurate accounts, and administering the financial affairs of the campaign reporting. A candidate may also appoint himself or herself as treasurer or deputy treasurer. The treasurer must be registered to vote in Montana, 13-37-203, MCA.

The appointment of a treasurer is one of the first steps in the organization of any campaign. The name of the treasurer must be certified to the Commissioner of Political Practices, 13-37-201. MCA; see also Part 2, Campaign Reporting section of this manual.

Timely certification is important for several reasons. First, the treasurer is prohibited from performing any duty until a certification statement is filed. Second, the candidate's name cannot be printed on the ballot until all statements and reports are properly filed, 13-37-126, and 13-37-127, MCA.

Only an appointed and certified treasurer or an appointed and certified deputy treasurer<sup>2</sup> may make deposits and draw checks on the campaign account, 44.10.503, ARM. Some candidates find it convenient to appoint themselves as deputy treasurers so that they, in addition to their treasurers, may draw checks on their

campaign accounts. In order to make deposits or write checks on the campaign account, a candidate *must be* either the treasurer or deputy treasurer.

If more than one person is depositing funds or writing checks on the campaign account, obviously closer management and communication is required in order to ensure accurate accounting as well as timely preparation and filing of campaign finance reports.

### Keeping accounts

The campaign treasurer must keep detailed accounts and the accounts must be:

...current within not more than 10 days of receiving a contribution or making an expenditure, except that accounts shall be current as of the 5<sup>th</sup> day before the date of filing a report. . . 13-37-208(1), MCA.

In addition to accounting and reporting duties required by law, the campaign treasurer for a candidate is required to preserve campaign accounts and reports for a minimum of four years or for the length of the term of office, whichever is longer, 13-37-208(3), MCA and 13-37-231(2), MCA

## CAMPAIGN DEPOSITORY

### Designation

Each campaign must designate one campaign depository. This depository may be a bank, a credit union, a savings and loan association, or a building and loan association; however, this depository must be authorized to transact business in Montana and must offer accounts on which the equivalent of a check may be drawn. Accounts must be completely separate from any personal accounts, although they can be in the same depository, 13-37-205, MCA.

It is essential that *all* monetary receipts—including a candidate's own funds—be deposited in the campaign account and that all money spent must be drawn on the designated depository by check, debit card, wire transfer, or other electronic means that clearly identifies the person receiving the payment. (The only exception is the petty cash fund.) Proper use of the campaign checking account will make record keeping and reporting much easier.

### For primary and general accounts

All funds must first be deposited into the campaign checking account. **If you believe that you will be collecting contributions for the general election period during the primary election period, those funds are required to be maintained in a separate account (this can be a savings account). The separation of the contributions based on the election type will make tracking and reporting much easier for the treasurer.**

### Certification

Immediately after designating a primary campaign depository and after appointing a campaign treasurer, a candidate must complete and file a Statement

of Candidate, Form C-1 or C-1-A (see pages 23-24) with the Commissioner of Political Practices, either online using CERS (Campaign Electronic Reporting System) or a hard copy, 13-37-201, MCA.

## CAMPAIGN RECEIPTS

Contributions from supporters are the principal source of receipts. A contribution is defined by law, in part, as “an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to support or oppose a candidate or ballot issue. . .” 13-1-101(9), MCA.

Contributions received by a candidate prior to and on the day of a primary election are presumed as primary election contributions and are subject to the aggregate contribution limits for the primary election.

***During a primary election period, a candidate in a contested primary may receive contributions designated by the contributors as for the general election; however, those contributions are subject to the contribution limits for the general election and must be maintained in a separate account. General election contributions may not be used until after the primary election. If a candidate has accepted general election contributions and, thereafter, loses a contested primary election or finds that his/her campaign is uncontested in the primary, all general election contributions must be refunded to contributors.***

*In-kind contributions designated for the general election may not be accepted during the primary election period, 44.11.403, ARM.*

Contributions received by a candidate after the day of the primary election are presumed general election contributions and are subject to the aggregate contribution limits for the general election<sup>3</sup>. A candidate *may* continue to receive contributions designated by the contributor as primary election contributions after the primary election and subject to the contribution limits *but only for the purpose of retiring primary election debt*, 44.11.224(2)(d), ARM. (For information regarding contribution limits, see pages 13 through 15 of this manual.)

All monetary contributions (cash or checks) received by anyone involved with a campaign must be transmitted to the treasurer (or deputy treasurer), and deposited within five days after the contribution is received, 13-37-207. This includes contributions made through a payment gateway or on-line service provider such as Bitcoin, Paypal, or Square Up. An electronic contribution shall be reported as



received **within the reporting period that it is received by the online service provider** regardless of whether the contribution has actually been received, 44-11-408. The treasurer must then deposit all funds within five business days of receipt of payment from the third party provider, ARM 44.11.408. This includes money that candidates contribute to their own campaigns.

### **Statement of contributions**

Prior to the time a deposit to the campaign account is made, the treasurer is required to prepare a statement showing the amounts received from each contributor, 13-37-207(2), MCA. This statement, the receipt form for cash contributions deposited at the same time, and a deposit slip for the deposit must be kept together as part of the campaign records maintained by the treasurer.

### **Contributions by check**

Checks are preferable to contributions of cash. A simple list of the names of contributors and the amounts contributed would be a satisfactory method of maintaining a record of contributions received by checks; however, the easiest and best way to satisfy the statement of contributions requirement is to make photocopies of checks as they are received. This ensures that contributions are properly credited and also preserves useful information for the campaign.

### **Cash contributions**

Receipts must be written for any contributions of currency and coin of \$25 or more. Cash receipts must show:

- 1) The contributor's full name
- 2) Complete mailing address (a post office box is acceptable)
- 3) Occupation
- 4) Employer
- 5) The exact amount received
- 6) Date of receipt and
- 7) The name of the individual who received the contribution on behalf of the candidate, 44.11.407, ARM.

While receipts are required only for cash contributions of \$25 or more, the best practice is to write a receipt for all cash contributions whenever possible. In this way, a treasurer can determine if or when an individual's contributions reach reporting thresholds. Written receipts also will assist candidates in identifying the sources of funds contributed to their campaigns. Contributions and expenditures can be easily recorded in CERS and saved to be filed to COPP on reporting day.

### **Recording contributions**

Statewide and State District campaigns are required to electronically file, using the Campaign Electronic Filing Service (CERS), their reports with the office, and should become familiar with the system on the website to determine how to best keep their records (44.10.301(1)(a)(b)(i)(ii)(iii), ARM. State District candidates

that believe they qualify for a waiver from electronic filing may submit a written request to the COPP. The Commissioner may provide a waiver if the candidate establishes that they cannot file electronically for reasons such as they do not have reasonable access to the technology necessary to file electronically, ARM, 44.11.302.

In addition to the Statement of Candidate and its supporting documents, a campaign treasurer must keep a detailed accounting of all contributors. Any system of record keeping may be used as long as it maintains the information required by law and necessary for filing reports.

Campaigns may find a computer spreadsheet or card file is a helpful way to maintain information on contributors and their individual contributions so that contribution limits are not exceeded. Such a system will have a record or card for each contributor, giving the full name, complete mailing address, occupations, employer, date of receipt, amount, and nature of donation (currency, check, loan, in-kind, dinner ticket, fundraiser purchase, etc.).

### Contributor card

Brown, Charles 225 17th Avenue Anywhere, MT 59000			Owner Charlie's Pizza Place
			Total to date
2/3/18	\$25	check	\$25
3/7/18	\$10	cash at fundraiser	\$35
5/5/18	\$50	check	\$85
5/2/18	\$45	in-kind: painting by Yoda for auction	\$130

Or, your spreadsheet might look like this:

Contributor Card (Sample)			
Name:	Brown, Charles		
Address:	225 17th Avenue		
City/State	Anywhere, MT 59000		
Occupation:	Owner		
Employer:	Charlie's Pizza Place		
Date:	Amount	Type	Total to date
2/3/2018	\$35.00	check	\$35.00
3/4/2018	\$10.00	cash at fundraiser	\$45.00
5/5/2018	\$35.00	in-kind: pizza/volunteers	\$80.00
5/2/2018	\$50.00	in-kind: paint & signs	\$130.00

## Loans

By definition, any loan to a campaign is a contribution, ARM, 44.11.405. So all contribution limits apply. A loan of \$500 to a legislative candidate is illegal (exceeds the contribution limit), unless it's a loan from the candidate to his or her own campaign (no limits on what a candidate can give or loan their own campaign). Example: if an individual loans a statewide campaign \$500, and \$300 is repaid, that individual's contribution is then \$200 (assuming no further contributions are made).

Again, either a card or a computer entry must be made showing the full name, complete mailing address, occupation and employer of the lender, and the date and amount of the loan. *Candidates as committee is not allowed.*

## Candidate's funds

Many candidates contribute their own money to their campaigns. A candidate has the choice of recording and reporting his or her own donations as either "a contribution" or "a loan," depending on whether or not the candidate wishes to be reimbursed from the campaign account for personal contributions. If the candidate expects to be repaid from the campaign account at a later date, these donations should be recorded and reported as loans. Some candidates use personal funds to purchase goods or services for their campaigns; this activity is discouraged unless it is used on a very limited basis (See COPP website for recent decisions). Multiple personal in-kind candidate campaign contributions leads to a hard to read campaign finance report which often leads to a COPP complaint by a member of the public who has difficulty deciphering the information in the report. Best practice is to deposit all contributions, including candidate contributions, into the designated depository. If a candidate cannot avoid spending some funds out of personal means for the campaign, then we recommend depositing the funds into the account and run all transactions through the campaign account.

## Mass collections from fundraising events

Mass collections from fundraising events (such as passing the hat or selling campaign pins, raffle tickets, or baked goods) also need to be recorded and reported.

The treasurer may account for proceeds from such fundraising activities by recording:

- 1) The date of the event,
- 2) The approximate number of people attending,
- 3) A description of the event, and

- 4) The total amount of contributions received, 44.11.406, ARM.

There is, however, an *exception to this rule*. If an individual donates \$35 in the aggregate or more, the donation or purchase must be recorded and reported individually. We recommend using a contribution envelope that requests basic contact information to ensure an accurate tracking of individual aggregate limits. In addition, anonymous contributions are illegal. Even proceeds collected from Pass the Hat or raffle types of events are required to be recorded. In some cases an individual could attend a Pass the Hat fundraiser and contribute \$25 then attend a second fundraiser and contribute another \$25. The second fundraiser contribution triggers the requirement to detail the total to date for the contributor on the next report. This, again, is why it is imperative that the source of the contribution is always documented.

### **In-kind contributions**

In-kind contributions must be accounted for and reported in the same manner as other contributions. The in-kind item or service must be identified. The term “in-kind contribution” means the furnishing of services, property, or rights without charge or at a charge which is less than fair market value to a candidate or political committee for the purpose of supporting or opposing any candidate, ballot issue or political committee as defined provided in 44.11.702, ARM.

Frequently, in-kind contributions come in the form of services for which charges usually are made but which are rendered to the campaign free of charge or at lesser amount than is customary.

If something is sold to the campaign at less than fair market value, the difference must be recorded as an in-kind contribution.

**Example:** The fair market value of a mailing that your graphic designer friend, who volunteers to do your campaign mailing, it costs him \$1.25 per mailing, but your friend only charges you \$.50 per mailing. The \$.75 per mailing difference is an in-kind contribution that needs to be reported by the campaign.

Certain small in-kind contributions, such as food brought to a potluck dinner or small items donated to a garage sale, need not be reported, although the campaign may wish to keep a record of them.

Sometimes goods donated to a campaign are intended to be sold; an art auction fundraiser is a common example. In this example, the fair market value of the donated piece of art is recorded and reported as an in-kind contribution by the donor. The purchaser of the art at the auction also makes a contribution to the

campaign in the amount paid for the item. This information must be recorded and reported as well. Keep in mind, any non-incorporated business or entity that makes an in-kind contribution to a candidate, including auction items, raffle prizes, or gift certificates will have reporting and disclosure requirements to the COPP.

For guidance on determining the fair market value of an in-kind contribution refer to the below administrative rule:

- 44.11.403, ARM** (1) A candidate or political committee shall report an in-kind contribution on the appropriate reporting schedule and shall describe what was received consistent with the reporting requirements specified in ARM 44.11.402.
- (2) A candidate who makes personal expenditures benefitting his or her campaign shall also report and disclose the expenditures as in-kind contributions or loans to the campaign; see ARM 44.11.501.
- (3) The total value of the services, property, or rights contributed in-kind shall be deemed to have been consumed in the reporting period in which received.
- (4) The value of an in-kind contribution shall be determined as follows:
- (a) It shall be reported as its fair market value at the time of the contribution;
  - (b) It shall be reported as the difference between the fair market value at the time of the contribution and the amount charged the contributee;
  - (c) It shall be reported as the actual monetary value or worth at the time of the contribution; or
  - (d) If due to extraordinary circumstances none of these provisions would be appropriate or no reasonable fair market value can be established, it shall be sufficient to report a precise description of such in-kind contribution so received.
- (5) Upon receiving or making an in-kind contribution, its value shall be calculated and reduced to writing, reflecting the calculation method used under (4) and the writing shall be retained by the treasurer and available for inspection as provided by 13-37-111, 13-37-208, and 13-37-209, MCA. The value shall also be reported consistent with ARM 44.11.502.

### **Interest, rebates, and refunds**

A receipt of interest earned on a checking or savings account is not considered a contribution to a campaign. Other receipts to a campaign might include rebates and refunds, although they are not contributions. However, they all must be recorded and reported so accounts will balance.

### **Earmarked contributions**

An earmarked contribution, which is legal, is one received from a person other than the original donor. An earmarked contribution must be recorded and reported

*regardless of amount* in the name of the person who originally provided the contribution. In addition, the name of the person who passed the contribution along must be recorded and reported. See Part 2, Campaign Reporting section of this manual.

**Example:** An earmarked contribution would be money sent to a state political committee by a national political committee with the stipulation that it be equally divided among designated candidates.

### **Donations/items not considered contributions**

Some things are not included in the legal definition of “contribution.” For instance, any services provided by *individuals* who volunteer their time without compensation need not be recorded or reported, 13-1-101 (9) (b)(i), MCA.

**Example:** Homemade food brought to a potluck dinner.

## **LIMITATIONS ON CONTRIBUTIONS**

### **Unlimited contributions**

There is no limit on the amount a candidate may contribute to his or her own campaign. Keep in mind that expenditures for personal use are those that have no direct connection with or effect upon, expenditures to support or oppose a candidate’s campaign.

**Example:** Personal use items are normal living needs, food or clothing that are not specifically required for a campaign activity, costs for travel, lodging, or registration for a conference that does not serve a campaign interest, ARM 44.11.608.

If your campaign decides that a laptop is needed for keeping up with campaign e-mails, this is likely an allowable expenditure. However, please note that purchasing real property with a value of \$50 or higher will require you to dispose of the real property at the end of the campaign by one of the following ways:

- Sale of the property at fair market value;
- Donation of the property under one of the options set out in ARM 44.11.702.

The disposal of such real property must be reported on the closing report required by ARM 44.11.306, including the date of disposition or donation, the name and address of the purchaser or donee, and the description of the property.

**Contribution Limits** The passage of Initiative 118 in 1994 limited the amount that individuals (other than the candidate), political committees—both independent committees and political party committees—may contribute to a candidate, 13-37-216, MCA.

Limitations are not for the entirety election cycle but are applied to EACH election: primary and general, if there is a contested primary.

**“Election” is defined as:** The general election OR a primary election that involves two or more candidates for the same nomination. If there is not a contested primary, there is only one election to which the contribution limits apply. If there is a contested primary, then there are TWO elections to which the contribution limits apply, 13-37-216(5), MCA.

**Individual and political committee limitations**

An individual or political committee may contribute the following amount for an election:

Governor/Lt. Governor	\$680
Other statewide offices	\$340
All other public offices	\$180

These limits include **both** monetary and in-kind contributions effective upon publication of rules.

**Aggregate political party committee limitations**

Political party committee means a political committee formed by a political party organization and includes all county and city central committees. Some examples are the Montana State Democratic Party, Gallatin County Republican Action Club, or Helena Republican Women.

Contributions to candidates by political party committees are subject to the following **aggregate limits from ALL political party committees:**

Governor/Lt. Governor	\$24,500
Other statewide offices	\$8,850
Public Service Commission	\$3,550
State Senate	\$1,450
Other public offices	\$900

These limitations apply to **EACH** election: the contested primary and the general. These limitations include **BOTH** monetary and in-kind contributions, and are subject to change pending Court action.

**Example:** A candidate for the Secretary of State with a contested primary can receive \$8,850 per election from a political party committee or

multiple political party committees. In other words, the candidate can receive one \$8,850 check or multiple smaller checks that add up to the \$8,850. When the candidate has reached the \$8,850 aggregate for political party contributions they cannot accept any more political party contributions. It is important for the campaign to track the political party contributions to avoid exceeding the limits. See exception, ARM 44.11.225(3).

### **Aggregate Independent limitations for state legislative candidates**

Independent committee means a political committee organized for the primary purpose of receiving contributions and making expenditures that support or oppose various candidates and/or issues over a continuing period of time, 13-1-101(23).

A limitation is imposed on state legislative candidates as to the *total* contributions they may receive from *all* political committees (other than political party committees), 13-37-218, MCA. This limitation is commonly referred to as the total independent committee contributions. Independent committee contribution limits are subject to change based on an inflation factor and are published by the Commissioner as an administrative rule prior to the time legislative candidates begin their campaigns, 44.11.226, ARM.

For the 2018 election cycle, the aggregate limit (total) a legislative candidate can receive from all independent committees is \$2,850 for Senate candidates and \$1,750 for House candidates. **NOTE: These limits are for the entire election cycle (include both primary and general in the limit).** In-kind contributions are counted in these aggregate limits.

For the most current information on contribution limits, visit [www.politicalpractices.mt.gov](http://www.politicalpractices.mt.gov)

## **ILLEGAL CONTRIBUTIONS**

### **Corporate contributions**

While corporations are allowed to make independent expenditures related to a candidate, they are prohibited from making direct corporate contributions to a candidate, 13-35-227, MCA. Earmarked contributions by a corporation to a person as a contribution designated for a candidate's campaign are also prohibited.

*If a corporate check is deposited inadvertently, a refund must be made immediately upon discovery.* The practice of photocopying all checks coming into



the campaign is especially helpful in this instance. A photocopy of the refund check should be sent promptly to the Commissioner of Political Practices.

Most candidates and large corporations know this; however, some supporters may unwittingly write contribution checks on their business accounts. In such cases, the treasurer of the candidate or the political committee receiving the contribution will have to verify whether it is an individual or corporate contribution. Looking at the check itself will not reveal in every case whether it is drawn on a corporate account—for instance, many corporations are designated in ways other than the familiar “Inc.”

Many campaigns coordinate their campaign activities with political party committees or other non-incorporated entities. The coordinated election activity is required to be within the statutory contribution limits.

**Example:** The Firefighter PAC and Charlie Brown’s campaign work together on an advertisement that advocates for Charlie Brown’s campaign. Charlie can accept up to the limit as a contribution from the Firefighter PAC. Any excess cost beyond the limit will have to be paid by the campaign.

## **Business Contributions**

Corporations however, are strictly prohibited from coordinating with any candidate or political committee that support or opposes a candidate. For example, Charlie Brown and Lucy’s Services, Inc. is prohibited from working on an election activity together. (For further guidance on coordination see pg. 21) Any check deposited by a campaign treasurer that is drawn on a business account and that is verified not to be a corporate account nonetheless must be recorded (and reported as necessary) in the name of the individual(s) actually making the contribution—not in the name of the business. Unless it is from an incidental committee; see page 28 of this manual. The treasurer of the candidate or the political committee receiving the contribution must verify exactly who is making the contribution.

The best practice for a candidate, a committee that supports or opposes candidates, or a political party is to accept only personal checks.

## **Anonymous contributions**

Anonymous contributions are illegal in Montana, 13-37-217, MCA.

Detailed information on contributors of **less than the threshold reportable amount of \$35 need not be disclosed on reporting forms; however, campaign**

**records must maintain the contributions and the contributor.** Contributions must be refused when the source is not known or when the person offering money wishes not to be known. Pass the hat types of fundraisers tend to often be misunderstood. All contributions are required to have a source.

**Example:** If a contributor attends four pass the hat events and puts \$15 in the hat each time, the contributor has exceeded the aggregate of \$35 which requires detailed reporting.

We recommend using an envelope for the attendees to put their cash in. The envelope should at least include the names of the attendees. This small step can avoid some complicated accounting for your campaign. If your campaign does inadvertently receive an anonymous contribution the best thing to do is to donate it to an organization, and maintain a record of the donation.

Use of an intermediary to pass funds along from a third party as a means of concealing the identity of the true donor is illegal. A campaign may not knowingly accept a contribution in a name other than that of the person who is the actual contributor, 13-37-217, MCA.

Federal law prohibits foreign nationals from making contributions in connection with any state, local, or federal election. Contributions cannot be made directly, or through any other person. Further, no person may solicit, accept, or receive such a contribution. If your campaign receives a check with a foreign address, it could be that of a US citizen that is oversees for military purposes, etc. The campaign should note that on the report so that the staff at the COPP knows that your campaign researched the contribution to ensure that it is not a foreign national.

## CAMPAIGN DEBTS AND OBLIGATION

Reporting of campaign debts and obligations is one of the most commonly missed requirement during the reporting process. **A candidate shall report the full name and mailing address of each person or entity to whom a debt or obligation is owed at the end of a reporting period, including the amount, date contracted, and purpose of each debt. If the exact amount is unknown at the time, the estimated amount shall be reported.** (44.11.506, ARM)

**Example:** Debts and obligations that shall be reported are candidate loans or contracted campaign materials through a vendor where payment is expected later.

All debt or obligations must be in writing at the **time it is incurred** and must be signed by the parties and **retained for inspection**.

## CAMPAIGN EXPENDITURES

### Campaign filing Fee

An expenditure is defined in law as “a purchase, payment, distribution, loan advance, promise, pledge, or gift of money or anything of value made by a candidate or political committee to support or oppose a candidate or ballot issue,” 13-1-101 (17) (a), MCA. As such, an expenditure means just about anything a campaign expends in support of or in opposition to a candidate or ballot issue with a few exceptions; services, food, or lodging provided in a manner that are not considered contributions, and personal necessities for the candidate or the candidate’s immediate family. *Campaigns must use campaign funds to pay the filing fee.* This can be reported as a candidate contribution or a loan to the campaign, if the candidate pays filing fee out of personal account.

All money spent must be by check, debit card, wire transfer or other electronic means that clearly identifies the person receiving payment drawn on the campaign account—except for the money from petty cash, 44.11.502(5), ARM. The person who draws the check must be an appointed treasurer or an appointed deputy treasurer who has been certified to the Commissioner of Political Practices.

A small campaign might be able to note all expenditures in its checkbook, but a larger campaign might need to introduce cards or ledgers—manually or electronically—to maintain accounting control.

**Example:** An expenditure card might be prepared for each recipient of campaign checks. The cards or ledgers could then be organized by categories of expenses that would assist the campaign in knowing where its resources are being spent and would be helpful in preparing reports.

With computer capabilities, the tasks of recording, aggregating and reporting expenditures are made easier. In any case, expenditures must be recorded showing each person or business to whom an expenditure is made including:

- 1) The full name,
- 2) The complete mailing address,
- 3) The date,

- 4) The amount, and
- 5) **The purpose must include the quantity, the subject matter**, as appropriate for each expenditure and must **be detailed enough to distinguish among expenditures for similar purposes**. For example, two expenditures for direct mail advertisements should not both be reported as “Flyers,” ARM 44.11.502.

**Note:** A common mistake is the reporting of consultants. **Reports of expenditures made to a consultant**, advertising agency, polling firm, etc. **must be itemized and must be described in sufficient detail** to disclose the specific services performed, 13-37-229(b), MCA.

A petty cash fund is permitted. A statewide campaign may establish a \$100 petty cash fund that may be replenished to that figure each week.

For other campaigns, a \$25 petty cash fund is allowed which also may be replenished to that amount each week. In both cases, money from the fund may be spent for office supplies, transportation expenses, postage stamps and other small necessities in an amount less than \$25.

Petty cash may not be used for the “purchase of time, space, or services from any communications medium,” 13-37-215, MCA.

Each time an expenditure is made from the petty cash fund, a receipt voucher must be completed showing:

- 1) The date money was withdrawn
- 2) The exact amount taken and by whom
- 3) The name of the person or vendor to whom paid, and
- 4) The purpose (office supply stores have petty cash fund receipt vouchers.)

When the fund begins to run low, it may be replenished—but not more often than once a week—by drawing another check for the amount of the total of the vouchers.

**Example:** if a \$100 fund is down to \$8.73 then the total of the vouchers for money expended should be \$92.27. A petty cash check for the amount of \$92.97 could then be written to bring the fund back to \$100. The vouchers should be attached to the canceled check and maintained as part of the permanent records of the campaign, 44.10.503 (3) (a), ARM.

The total of petty cash expenditures to be recorded and eventually reported will be the total of checks written to petty cash.

### **Payroll account**

Large campaigns that employ salaried staff may find a separate payroll account helpful. Such an account may be established in the same depository as the regular campaign account.

In calculating a payroll, the campaign treasurer would include the gross salary of staff, the employer's contribution to Social Security (FICA), workers' compensation, unemployment insurance, and any other employer liability. The total of the payroll would then be deposited periodically into the payroll account (for campaigns using such an account) by a check drawn on the regular account. As such, this check is not an expenditure but a transfer of funds. Checks would then be drawn on the payroll account to pay staff members the net amounts due to them.

The amounts for employee withholding, along with the amounts for employer obligations, would remain in the payroll account until these funds were required to be remitted to state and federal revenue departments. As checks are drawn on the payroll account, each amount would be recorded as a campaign expenditure.

While a payroll account introduces more complexity to campaign accounting, its use conforms to basic accounting principles and has the benefit of keeping dedicated money out of the regular account.

### **Savings account**

Funds not currently needed by a campaign may be deposited into savings or other interest-bearing accounts or may be used to purchase certificates of deposit. To do so, a check would be drawn on the campaign checking account. This would not be reported as an expenditure.

### **Bank service charges**

Bank services charges (if any) are typically not paid by a check drawn on the campaign account; however, bank service charges should be recorded in the accounts to ensure balanced books and should be reported as expenditures on financial reports.

## **LIMITATIONS ON EXPENDITURES**

### **Surplus campaign funds**

Surplus campaign funds must be disposed of within 120 days after the time of filing the closing campaign report, 13-37-240, MCA. Surplus campaign funds cannot be contributed to another campaign, including the candidate's own future campaign, nor can they be used for personal benefit.

**“Personal benefit” is defined as:** “a use that will provide a direct or indirect benefit *of any kind* to the candidate or any member of the candidate’s immediate family,” 13-37-240 (2), MCA.

## Coordination

An expenditure that is deemed to be “coordinated” between a candidate and another entity or person is treated as though it is a contribution to and/or expense by the candidate’s own committee. Contributions to a candidate are limited in amount from any source and prohibited completely from a corporate source. (*See* §§13-35-227, 13-37-216, MCA). Because a coordinated third party election expense is deemed to be a contribution to a candidate it becomes subject to the limits and prohibition of these laws.

A third party, including a corporation, can participate in an election through an independent expenditure. An independent election expenditure is subject only to reporting and attribution and is not subject to contribution limits or bans. The Courts, in upholding coordination findings, have recognized that there is a temptation to go past an independent expenditure and coordinate:

Independent expenditures “are poor sources of leverage for a spender because they might be duplicative or counterproductive from a candidate’s point of view” (*FEC v. Colo. Republican*, 533 US 431 at 446 (2001)). By contrast, expenditures made after a ‘wink or nod’ often will be “as useful to the candidate as cash,” *Id.* at 442 and 446. For this reason, Congress has always treated expenditures made “at the request of suggestion of” a candidate as coordinated.

An example of a sufficiency finding that found coordination was Commissioner Vaughey’s decision in *Little v. Progressive Missoula*, July 22, 2004. The Commissioner, identified crossover activity, finding that members of the Progressive Missoula (PM) steering committee were directly involved in the candidate’s campaign (Allison Handler). Further, the Commissioner found specific evidence showing that Handler and the individual committee members knew of the negative attack role that Progressive Missoula would play in support of the candidate’s campaign. The Commissioner found that certain barriers between the Handler campaign and Progressive Missoula, including a letter of reproach from Progressive Missoula to Handler, were artifices designed to disguise the real cooperation. The Commissioner found that the PM’s expenditures for flyers opposing candidate K. were made with “...prior knowledge, consent and encouragement of Handler...” Thus they were coordinated expenditures.

## PART 2: CAMPAIGN REPORTING

### STATEMENTS AND REPORTS

Statewide and state district candidates are required to file their reporting forms electronically. The on-line service is available on the Commissioner of Political Practices' website [www.politicalpractices.mt.gov](http://www.politicalpractices.mt.gov). (CERS) The Campaign Electronic Reporting Service can be accessed from the homepage. The website also offers guidance for electronic reporting. The friendly staff is always available to answer questions and assist in navigating these services. On-line training videos are available to assist in navigating you through the online reporting steps.

#### Obtaining Forms

A candidate may obtain a **Statement of Candidate** (C-1 or C-1-A) form from the office or website of the Commissioner of Political Practices or from a county election administrator. **Candidate Campaign Finance Report** forms and other reporting forms may also be accessed on the Commissioner's website.

#### Business Disclosure Statement (Form D-1)

All state district, including district court judges, and statewide, including Supreme Court Justice, candidates are required to file a Business Disclosure Statement (Form D-1) with the COPP within 5 days of official filing with the Secretary of State as a candidate or appointment to office.

#### Who must file Candidate Campaign Finance Reports

The campaign finance report filing requirements of MCA Title 13, chapter 37, apply to all candidates *with the exception* of county, municipal, and school candidates spending *less than \$500* in all elections in a campaign, 13-37-226 (4), MCA; see also page 25 of this manual. All other candidates must file periodic reports disclosing campaign contributions and expenditures as well as other information required by law, 13-37-229 and 230, MCA.

A candidate uses Form C-5, Candidate Campaign Finance Report, to report their campaign's financial activities. A candidate also uses a special notice (Form C-7) for large contributions received close to Election Day. See pages 25 through 31 of this manual.

#### Report periods and due dates

The time periods covered by reports as well as the due dates for filing vary, depending upon whether a campaign is statewide, state district, or local, 13-37-226 and 13-37-228, MCA.

For clarification, a specific calendar of reporting periods with due dates is developed for each category of campaign prior to the election cycle. Reporting calendars are available at [politicalpractices.mt.gov](http://politicalpractices.mt.gov).

Please note, in addition to the regularly scheduled reports that are due, contributions and/or expenditures that are received close to an election have additional reporting obligations that are triggered by the campaign itself. See 13-37-226 (1)(d), (2)(d), (3)(d), (4) and (5)(b).

### **Failure to file statements/reports**

If a candidate fails to file statements and reports as required by law, the candidate's name "may not be printed on the official ballot for an election," 13-37-126(1), MCA. Further, even if elected, a candidate will not receive a certificate of election unless the statements and reports have been properly and timely filed. Without a certificate of election, an individual may not assume the powers and duties of office, 13-37-127, MCA.

### **Closing Reports**

Closing reports must be filed when all debts and obligations are satisfied and no further campaign activity is anticipated following an election. Some campaigns have continued to make expenditures after the election that are not campaign related. This is not allowable. If all of the debts and obligations of the campaign have been met, the closing report has been submitted and there is still a balance in the campaign account the campaign has several options to choose from to dispose of the surplus funds or property:

1. If your campaign was successful then you can establish a constituent services account. Constituent services accounts require some reporting as well. For more information on reporting requirements for constituent services accounts see Administrative Rules of Montana 44.11.703 – 44.11.711. Some helpful guidance is also available on the COPP website.
2. Surplus campaign funds can be returned to the contributors, so long as the refunds will not violate the personal benefit or campaign contribution limitations in 13-37-240 and 13-37-402, MCA.
3. Donate the funds to any organization or entity, so long as the donation does not violate the personal benefit provisions.

## **PREPARING STATEMENTS**

### **STATEMENT OF CANDIDATE**

#### **FORM C-1**

This is the form that *all candidates for statewide and state district offices* in Montana must complete and file. (County, municipal, and school candidates use form C-1-A and that form is discussed in the next section.)



Form C-1 is designed to be self-explanatory; but instructions for filing are provided.

If any changes occur after the original statement has been filed, a candidate must file an amended form providing the new information. For example, a candidate may remove a campaign treasurer, or change a campaign depository whenever desired. These changes or a change of address or telephone number, should be filed within five days after a change is made, 13-37-204, MCA; 44.11.303(2), ARM.

## FORM C-1-A

This is the form that *all candidates for county, municipal and school offices* must complete and file, with the exception of certain school districts and certain special districts. See note 1, Footnotes/References section, on page 38.

All information concerning the completion and filing of Form C-1 is applicable to completion of Form C-1-A, and the section above pertaining to the completion of Form C-1 should be consulted when completing Form C-1-A.

In addition, Form C-1-A has an Affidavit of Reporting status section concerning anticipated campaign contributions or expenditures, and this affidavit must be completed by the candidate, 44.11.304, ARM.

Candidates for county, municipal, and school offices are required to file campaign finance reports:

. . . only if the total amount of contributions received or the total amount of funds expended for all elections in a campaign, exceeds \$500. . . . 13-37-226(3), MCA.

Accordingly, a candidate will complete the affidavit section by marking Box B if funds received or incurs expenses, *are not expected to exceed \$500*; or marking Box C if funds received or expenses incurred, *are expected to exceed \$500*. If the candidate marks Box C and then finds that there is no need to spend any funds, an amended filing needs to be filed. If you mark Box C, you will be required to file the campaign finance report whether you accepted contributions and spent funds or not.

If a candidate completes the affidavit by marking Box B and later either contributions or expenditures exceeds \$500, **within five** days the candidate must file with the Commissioner of Political Practices a Candidate Campaign Finance Report (Form C-5), 44.10.407(2), ARM, as well as an amended C-1 or C-1-A Form.

## FORM D-1

All state district, including district court judges, and statewide, including Supreme Court Justice, candidates are required to file a Business Disclosure Statement (Form D-1) with the COPP within 5 days of official filing with the Secretary of State as a candidate or appointment to office. In accordance with Montana Code Annotated 2-2-106, the form must include the following:

Name, address, and type of business of the individual;

- Type of business in which currently engaged or formerly engaged prior to election or appointment;
- Each present or past employing entity from which benefits, including retirement benefits, are currently received by the individual;
- Each business, firm, corporation, partnership, and other business or professional entity or trust in which the individual holds an interest;
- Each entity in which the individual is an officer or director, including not for profit entities; and
- All real property, other than a personal residence, in which the individual holds and interest; real property may be described by general description.

## PREPARING REPORTS

### Required Forms

All statewide and state district candidates are required to file their statements and forms electronically using the Campaign Electronic Filing Service (CERS). Local candidates have the option of using the electronic filing service or submitting paper forms. Large contributions from a single source received between the last reporting day including in the pre-election report and election day are to be reported on Form C-7. Following the filing of a closing report, the disposition of surplus campaign funds is to be reported on Form C-118. These forms and instructions (along with other pertinent information) are available on the Commissioner's website.

## CANDIDATE CAMPAIGN FINANCE REPORT

### FORM C-5

#### Designation

Indicate if the report is an original filing or an amended filing by checking the appropriate box.

**Name, Address,  
Campaign Name  
and Office Sought**

The full name of the candidate as it will appear on the ballot should be entered together with his or her complete mailing address, the campaign name, and a complete description of the office being sought.

**Reporting Period**

The time period covered by the report (initial and periodic) include up to the fifth day before the due date of the appropriate report. All accounts must be current up to the fifth day before the report due date. A closing report covers the period from the last report to the final closing of books of the candidate. *All campaign debts must be paid before a closing report can be filed*, 13-37-228(3), MCA.

**Summary Report**

This part of the report summarizes only cash transactions for the reporting period and *does not include in-kind contributions*. The summary documents totals from the schedules of Form C-5. Care must be exercised when transferring totals from schedules to the Cash Summary to ensure totals from “Primary” and “General” columns are accurately entered.

Line 1 in the summary, CASH IN BANK, is the ending balance of the previous report (or zero if this is the initial report). Any discrepancy between the previous ending balance and the beginning balance for the current reporting period must be explained. Please note that the beginning balance (cash in bank) includes *all* accounts and funds (checking, savings, payroll, money market, and certificates of deposit).

Line 2, RECEIPTS for the reporting period, is added to CASH IN BANK. The resulting Subtotal is then entered.

Line 3, EXPENDITURES for the reporting period, is entered and then subtracted from the Subtotal, resulting in the ending balance CASH IN BANK, line 4. This balance should correspond with the candidate’s accounts as of the closing date of the reporting period; that is, the fifth day before the report is due.

**Certification**

Electronic filing through the Campaign Electronic Filing Service (CERS) does not require that you follow-up with a signed hard copy of the report. Each campaign is given an access id and each campaign sets up a secure username and password. If your campaign has been granted a waiver from filing electronically an original signature by an officer whose name is on the Statement of Candidate on file is required.

## Form C-5

### Schedule A: Receipts

#### Candidate's Personal Contributions

As indicated, this space is to record a candidate's own contributions to the campaign—both monetary and in-kind; however, if the candidate expects to be reimbursed from the campaign account for his or her contributions, the contributions should be recorded and reported as a "loan," ARM, 44.11.405.

#### Loan

Any loan, of whatever amount, made to the campaign during the reporting period is recorded here—even if the loan is repaid during the same reporting period. (Any repayment for a loan would be reported in Schedule B as expenditure.) The date of the loan also is required.

#### Interest, Rebates, Refunds, Fundraisers, and other Misc. Receipts

This section is used to report all types of receipts, some of which are not actual contributions. The most common of these are interest earned from the campaign's account, rebates, and refunds. (An example of a rebate would be a ten percent rebate given by a vendor for a bill that was promptly paid.)

Total receipts from a fundraiser for receipts of less than \$35 should also be reported here. These fundraiser receipts may be lumped together and reported with:

- 1) The date of the fundraiser,
- 2) A description of the fundraising event, and
- 3) The approximate number of people attending.

Each fundraising event should be reported separately. Any expenses associated with a fundraiser should be reported in Schedule B as an expenditure.

#### Independent Committee Contributions

All contributions received from political committees, except political parties, regardless of amount, including both monetary and in-kind, should be reported here. The *full registered name* of the political committee should be used and the complete mailing address and the date the contribution was received must be reported. Use this portion of Schedule A to report any *earmarked committee contributions*, of whatever amount, in the name of the original donor.

Candidates should be aware of the limitations on amounts that may be received from any committees, 13-37-216(2), MCA; and see pages 13 through 15 of this manual.

Legislative candidates must keep in mind the *aggregate* limitations they may receive from all political committees, 44.11.226, ARM; and see pages 14 and 15 of this manual.

**Political Party  
Committee  
Contributions**

All contributions received from political party committees, regardless of amount, including both monetary and in-kind, should be reported here. The *full name* of the political party committee should be used and the complete mailing address and the date the contribution was received must be reported. Use this portion of Schedule A to report any *earmarked committee contributions*, of whatever amount, in the name of the original donor. See coordination on page 21.

**Incidental  
Committee  
Contributions**

All contributions received from incidental committees, regardless of amount, including both monetary and in-kind, should be reported here. The *full registered name* of the incidental committee should be used and the complete mailing address and the date the contribution was received must be reported. Use this portion of Schedule A to report any *earmarked committee contributions*, of whatever amount, in the name of the original donor. Again, incidental committee contributions are discouraged. Often time's small businesses are not aware of the reporting requirements for committees so they end up filing late. This is why it is always better to accept personal checks.

**Other Political  
Committee  
Contributions**

All contribution received from any other political committees, regardless of amount, including both monetary and in-kind, should be reported here. The *full name* of the committee should be used and the complete mailing address reported. Use this portion of Schedule A to report any *earmarked committee contributions*, of whatever amount, in the name of the original donor. There are very few in this category, most all of the political committees fall under independent or party classifications.

**Individual  
contributors of \$35  
or less**

Contributions of \$35 or less (both monetary and in-kind) will now be inputted the same as any individual contribution over \$35 using the CERS online service. The individual contributor's information: name, address, occupation and employer will be entered and CERS will then keep track in case that contributor exceeds the \$35 contribution mark. The system will then give a Total Contributions > \$35 on the filed report.

**Individual  
contributors of \$35  
or More**

All contributions from individuals (both monetary and in-kind) of \$35 or more should be reported here. Note: only one name is to be listed for each contribution. A contribution drawn on a joint checking account should not be reported in the names of the individuals printed on the check but should be reported in the name of the person who signed the check, unless there is written authorization by the parties to split the contribution. If the amount of the contribution written on the check is to be split, the amount should be divided and reported as two separate contributions.

Contributions for the specific reporting period should be listed in the appropriate “primary” or “general” column, with aggregate totals for each individual shown in the last column. (If an individual has made only one contribution of \$35 or more, then the “Total to Date” column would be the same amount.)

It is important to show aggregate totals for individual contributions, not only because the law requires such information but also to ensure that legal limitations are not exceeded. The good news is that the CERS (Campaign Electronic Reporting Service) will keep track of the aggregate totals for you.

## **Personal Use**

Expenditures for personal use are those that have no direct connection with, or effect upon, expenditures to support or oppose candidates or issues, and those that would exist irrespective of a candidate’s campaign or an individual’s involvement in a candidate’s campaign. Campaign expenditures are those that support or oppose a candidate or issue, ARM 44.11.608.

Some examples of prohibited personal use of campaign contributions is paying for normal living needs of the candidate or the candidate’s immediate family, purchasing food or clothing unrelated to the campaign, attending conferences that do not serve a campaign interest, or covering the costs of travel or lodging that is not specifically related to a campaign activity.

Some allowable campaign expenditures include:

1. Reimbursements to a candidate, staff, or volunteers, for goods or services purchased for campaign expenditures;
2. Gifts or bonuses of less than \$250 in a calendar year to campaign staff.

If real property is purchased by a candidates’ campaign, the property must be sold or donated according to ARM 44.11.306. For specific details on how to determine fair market value of property purchased by a candidate’s campaign refer and how to properly report it, see ARM 44.11.608.

## **FORM C-5**

### **SCHEDULE B: EXPENDITURES**

#### **Petty Cash**

The total of all checks written to petty cash for the period should be reported in this section. No further itemization of petty cash expenditures is required on the reporting form; however, receipt vouchers for money spent should be attached to checks drawn to replenish the fund. The inspection staff will check the amount allowed to be spent on petty cash items according to the reporting period. If the amount reported exceeds the allowed dollar amount, you will be asked to amend

the report and itemize the difference. Petty cash items are meant to be small purchases such as parade candy or minor office supplies.

### **All other expenditures**

All other expenditures of the candidate must be listed giving the full name and complete mailing address to whom paid, as well as purpose, date, and amount. **The purpose has to be specific and include quantity and subject matter.**

Several expenditures to the same payee may be listed under one entry for the payee, but dates and amounts must be itemized.

Payments made on loans also should be reported as expenditures as well as any bank service charges appearing on an account statement. As with the instructions for receipts, all expenditures should be reported in the appropriate “primary” or “general” election column.

### **Form C-5**

#### **Schedule C: Debts and Loans Not Yet Paid**

Show unpaid debts of whatever amount. The full name and complete mailing address of the individual or business to whom the debt is owed, the nature of the debt or loan, the date incurred, and whether the obligation is for the primary or the general election must be reported. Debts and obligations must continue to be reported so long as they remain outstanding. Unpaid loans are also reported here.

If the exact amount of a debt or obligation is not known, the estimated amount must be reported, 44.10.525(2), ARM.

**Example:** if the campaign has purchased printed materials, but an invoice has not yet been received and paid before the end of the reporting period, the amount (or the estimated amount) of the campaign’s outstanding obligation must be reported.

### **FORM C-7**

#### **NOTICE OF PRE-ELECTION CONTRIBUTIONS**

A Form C-7 should be filed to report any large contributions to a candidate from a single source **ONLY FOR THE PERIOD** between the last reporting day included in the pre-election report and Election Day.

- Any statewide candidate must file a Form C-7 if \$200 or more is received from a single source between the 20<sup>th</sup> day before an election and the date

of the election; this report must be filed within 2 business days of receipt of the contribution.

- Any other candidate (including legislative candidates) must file a Form C-7 if \$100 or more is received from a single source between the 17<sup>th</sup> day before an election and the date of the election; this report must be filed within 2 business days of receipt of the contribution, 13-37-226, MCA.

Please note that all information reported on Form C-7 must be included on the next C-5 report that is filed. C-7 forms that are filed electronically using CERS will automatically be included in the subsequent C-5 Finance Report. There is no need to delete the C-7 after it has been filed. CERS incorporates the information in to the next required finance report.

## FORM C-118

### DISPOSITION OF SURPLUS CAMPAIGN FUNDS

Within 120 days of filing a closing campaign finance report, a candidate must dispose of any surplus campaign funds, 13-37-240(1), MCA.

Within 135 days of filing a closing campaign report, Form C-118 must be filed reporting the disposition of the surplus funds, 44.11.702), ARM. This supplemental report must be accompanied by copies of all receipts from all recipients of any surplus campaign funds, 44.11.702(4), ARM.

A candidate may not contribute surplus funds to another campaign, including the candidate's own future campaign, or use the funds for personal benefit. "Personal benefit" means a use that will provide a direct or indirect benefit *of any kind* to the candidate or any members of the candidate's immediate family, 13-37-240(2), MCA.

Examples of permissible uses of surplus campaign funds are:

- a) The return of funds to a contributor;
- b) Donation of the funds to an organization; and/or
- c) Upon election, use of the funds to establish an account to serve constituents.

If you have a constituent services account (constituency account), or intend to open one, you're strongly encouraged to study the statutes and rules applicable to these accounts. See our website or contact the Commissioner's office for a copy. Montana law restricts the use of these funds to certain activities, requires detailed



accounting, and periodic reports. These restrictions and requirements are spelled out in the rules and described in a “Frequently Asked Questions” handout available on website.

## Part 3: Required Attribution, Disclaimers & Notices

### Attribution

Campaign materials must include a “Paid for by...” attribution statement (sometimes called a “disclaimer.”) Communications that advocate the success or defeat of a candidate, political party or ballot issue are all covered by the requirement. Those communications include, but are not limited to, TV or radio, newspapers, billboards, direct mail (brochures, postcards), posters, bumper stickers, yard signs, and websites, 13-35-225(1), MCA and ARM 44.11.601(3), and provides additional guidance/requirements for how to appropriately attribute campaign materials:

All election materials are required by 13-35-225, MCA, to clearly and conspicuously include the appropriate attribution language. To ensure compliance with this statutory directive, the Commissioner established the following requirements and specifications:

1. (a) For election materials financed by a candidate or a candidate’s campaign, the attribution must include either:
  - The name and address of the candidate; or
  - The name and address of the candidate’s campaign.
- (b) An attribution using the name of the candidate’s campaign number include the first and last name of the candidate if the name of the campaign does not include at least the candidate’s last name.
- (c) Additional information, such as the name of the campaign treasurer, may be included within the attribution language, but it is not required.

Examples of an appropriate attribution for a candidate are:

Paid for by John Smith  
P.O. Box 1000  
Helena, MT, 59605

Or

Paid for by Smith for Senate  
P.O. Box 20000  
Helena, MT 59605

2. (a) For written election materials, including but not limited to those published, broadcast, or otherwise disseminated through print media or digital media, as defined in these rules:

- The reader or observer should have no difficulty locating and reading the attribution language;
- The attribution language should be of sufficient type size to be clearly readable by the recipient or reader of the communication;
- The language should be contained in a printed area or segment set apart from the other contents of the election materials;
- The language should be printed with a reasonable degree of color contrast between the background and the printed statement; and
- In the case of yard signs or other campaign signs, the attribution language should appear on the side of the sign that contains the campaign message.

(b) For broadcast election materials, including but not limited to those published, broadcast, or otherwise disseminated through broadcast media or digital media, as defined by these rules:

- The attribution language for broadcast election communications containing audio content shall be spoken in the communication;
- The attribution language for broadcast election materials containing visual content shall be displayed in the communication. The language may simultaneously be spoken, but it is not required.

(c) In partisan candidate elections, election communications and electioneering communications financed by a candidate or a political committee organized on the candidate's behalf must state either the candidate's party affiliation or include the candidate's party symbol.

- To meet the party affiliation disclosure requirement, election materials should state the name or a reasonable and comprehensible abbreviation of the name of one of the qualified political parties in Montana: "Democrat," "Libertarian," or "Republican."
- To meet the party symbol disclosure requirement, election materials should include either the symbol for one of the qualified political parties in Montana or the capitalized first letter of one of the parties. Acceptable symbol designations are:
  - Democrat: the donkey symbol or "D";
  - Libertarian: the Statue of Liberty symbol or "L"; or

- Republican: the elephant symbol or "R."
- The commissioner may determine that other language or a symbol included within a particular election material complies with the statutory directive, as long as there is some objective basis for the use of the language or symbol and the identity of the party is readily discernable.
- The party affiliation or symbol may appear with the attribution language, or within the body of the message content in the election materials.

(d) Printed election material that contains information about another candidate's voting record must include all the information specified in 13-35-225, MCA. The signed statement referred to in the statute may consist of a facsimile of an actual hand signature or an electronic signature. An acceptable electronic signature will be in the following format: "/s/ John Smith." An electronic signature that appears on written election materials shall have the same effect as an actual hand signature or a facsimile of a hand signature.

Examples:

Paid for by John Williams  
PO Box 1234  
Helena, MT 59601

Paid for by Jones for County Commissioner  
PO Box 7894  
Townsend, MT 59845

## Clean Campaign Act

The "Clean Campaign Act" requires candidates and committees supporting candidates to provide opposing candidates with copies of new campaign advertising that is intended to be distributed within the 10 days prior to an election. The copies must be provided at the time the material is published, broadcast, disseminated, or otherwise made available to the public. The law applies to any campaign advertising in print or broadcast media, see 13-35-402, MCA.

The date used to determine the date "intended for public distribution for material distributed by:

1. Print media is the date of the postmark

2. If no postmark is provided on the mailing, the date the mailing is mailed or “dropped,” as reported by the mail distributor, is the equivalent of the postmark date.
3. Broadcast media, digital media, or published material is “at the time” the material is published or broadcast or disseminated to the public. “At the time” is defined in, 44.11.607(b)(i), ARM. It means at or before the earliest date and time the message is scheduled to be published, broadcasted, or disseminated to the public.

The requirement **does not** apply if:

1. Identical material was already published or broadcast, or
2. The material does not identify or mention the opposing candidate.

## **Formal Complaints**

Anyone who believes a violation of campaign finance and practices laws or rules has occurred can file a complaint with the COPP. The complaint must describe in detail the alleged violation, attach evidentiary material, and must be signed and notarized. The laws and rules under the Commissioner’s jurisdiction can be found on the COPP website. Additional information and fillable complaint forms are also available on the COPP website.

### **Following receipt**

The Commissioner reviews the complaint and is required to either accept, dismiss, or reject the complaint within 5 business days. Both the complainant and the subject of the complaint will be notified if the complaint has been accepted. The subject of the complaint is offered an opportunity to respond in writing.

### **Investigation**

Once a complaint is accepted the investigator analyzes documents, collects evidence, and interviews witnesses as needed. There is no set time frame for the length of an investigation. Some complaints can be investigated and decided within 48 hours while others can take up to six months. The COPP’s legal team does everything within their power to respond to all complaints in a timely way and during the applicable election cycle. Some respondents prefer to retain legal representation at his or her own expense; this is not required, however.

### **Resolution**

Once an investigation is completed and the necessary legal research has been done, the Commissioner will issue a formal *Summary of Facts and Findings*. A copy of the decision is sent to the complainant and the respondent.

### **Enforcement**

If the Commissioner determined that there is sufficient evidence to justify enforcement, the county attorney is notified and is sent a copy of the decision. The county attorney is afforded 30 days to either accept jurisdiction or waive the right to enforce. If the county attorney waives the right to enforce, the Commissioner then either works with the respondent to settle or file a case in district court. The legal team works extremely hard at settling these matters and

the majority of the cases settle. Respondents who promptly respond to allegations and correct the activity if needed are taken in to consideration when the Commissioner determines settlement terms. The Commissioner understands that mistakes happen and the majority of Montana's candidates and political committees are attempting to comply.

## Closure

Campaign finance and practices complaints are publically available. The COPP maintains a complaint docket on their website. The *Summary of Facts and Findings* and the final resolution is also available on the COPP website.

## FOOTNOTES/REFERENCES

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<sup>1</sup> An excepted school district is “(1) a first-class district located in a county having a population of less than 15,000; (2) a second- or third-class district; or (3) a county high school district having a student enrollment of less than 2,000.” Excepted *special* districts include, but are not limited to, “a conservation district, a weed management district, a fire district, a community college district, a hospital district, an irrigation district, a sewer district, a transportation district, or a water district,” 13-37-2506, MCA.

<sup>2</sup> Several deputy treasurers may be appointed, but no more than one in each county in which a candidate or committee takes part in an election.

<sup>3</sup> For more complete information on secondary depositories and access to them by deputy treasurers, see 13-37-202 and 13-37-205, MCA

<sup>4</sup> Money borrowed from a lending institution is considered to be from the person who is the obligor on the note and not from the lending institution itself, 44.11.405, ARM.

# COMMISSIONER OF POLITICAL PRACTICES



## STATE OF MONTANA

JEFFREY A. MANGAN  
COMMISSIONER  
TELEPHONE (406) 444-2942  
FAX (406) 444-1643

1209 EIGHTH AVENUE  
PO BOX 202401  
HELENA, MONTANA 59620-2401  
[www.politicalpractices.mt.gov](http://www.politicalpractices.mt.gov)

## COPP Candidate Forms Guide

The following is a list of report forms available to candidates from the Office of the Commissioner of Political Practices and a brief description of what each form is and where and when the form must be filed:

**-C1 Statement of Candidate:** Form C1 is the Statement of Candidate form for candidates for statewide or state district (House, Senate, PSC, and District Judges) seats. Form C-1 must be filed within five (5) days after receiving or spending money, appointing a campaign treasurer, or filing for office, whichever occurs first.

**-C-1A Statement of Candidate:** Form C-1A is the Statement of Candidate for county, municipal, or school candidates. All county and municipal candidates must file form C-1A; all candidates campaigning for school trustee offices in first-class districts located in counties with populations of 15,000 and more or in county high school districts having student enrollments of 2,000 or more must file a Form C-1A. Form C-1A must be filed within five (5) days after receiving or spending money, appointing a campaign treasurer, or filing for office, whichever occurs first. Candidates for these offices may currently designate themselves a 'A' box (no money, including personal funds, may be spent/received), 'B' box (less than \$500 will be cumulatively raised and spent), or 'C' box (more than \$500 raised/spent).

**-C3 Code of Fair Campaign Practices:** Form C-3 is the Code of Fair Campaign Practices. Candidates may sign and return the C3 to the COPP at any time, but it is a voluntary form and is not required.

**-C5 Candidate Campaign Finance Report:** Form C-5 is the candidate campaign finance reporting form, and must be filed by all candidates who have filed a C1 running for statewide or state district office as well as all county, municipal, and school candidates that have designated themselves 'C' box candidates on the C-1A. The C5 reports must detail all contributions received and expenditures made by a campaign during a specific timeframe. C5's are to be filed periodically according to the reporting calendar, which varies according to office sought and election date and is available on the COPP website here: <http://politicalpractices.mt.gov/calendars>.

**-C-7 Notice of Pre-Election Contributions:** Form C-7 is the Notice of Pre-Elections Contributions and must be filed:

- any statewide candidate must file a Form C-7 if \$200 or more is received from a single source between the 10th day before an election and the date of the election;
- any other candidate or political committee must file a Form C-7 if \$100 or more is received from a single source between the 17th day before an election and the date of the election.



The timeframe for C-7's to be filed is as follows:

- Statewide candidates must file within 24 hours after receipt of a contribution of \$200 or more.
- All other candidates or political committees must file within 48 hours after receipt of a contribution of \$100 or more.

**-C8 Constituent Services Reporting Form:** Form C-8 is the Constituent Services Reporting form, where any expenses made from an established Constituent Services account must be reported. C-8 reports are to be filed quarterly with the COPP, and are established by filing form C-118C (please see below).

**-C-118 Disposition of Surplus Campaign Funds:** Form C-118 is the Disposition of Surplus Campaign Funds and is the form that details or documents how candidates for public office who filed C-5 campaign finance reports disposed of any and all surplus campaign funds. Within 120 days of filing a closing C5 campaign finance report, a candidate must dispose of surplus campaign funds; form C-118 must be filed by a candidate within 135 days after the closing C5 is filed.

**-C-118C Establishing a Constituent Services Account:** Form C-118C is the form that allows an official who has been elected for public office to create a constituent services account (please see the following guide for more information on constituent services accounts:

<http://www.politicalpractices.mt.gov/Portals/144/5campaignfinance/ConstituentServicesFAQs.pdf>).

Following the filing of a closing campaign finance report, all candidates with surplus campaign funds are required to file either a Form C-118 or C-118C, pursuant to Montana Code Annotated § 13-37-240. A candidate that has been elected and has chosen to open a constituent services account must file a Form C-118C.

**-D1 Business Disclosure Statement:** Form D1 is the Business Disclosure Statement, and must be filed by: statewide or state district elected officials; candidates for statewide or state district offices; department directors; and any individual appointed to fill any of these positions. The dates by which form D1 must be filed are:

- Statewide or state district elected officials or department directors: prior to December 15 of each even-numbered year;
- Candidates for statewide or state district offices: within five (5) days of the time the candidate files for office (with the Secretary of State); and
- Individual appointed to any of the above offices: at the earlier of the time of submission of the person's name for confirmation or the assumption of office.

Please see form D1 on the website for more information on what is to be reported on the D1.

# Addendum 1

## Candidate/Campaign Contribution Guidance

As per 13-1-101(31)(c), MCA, “A candidate and the candidate's treasurer do not constitute a political committee”. If a candidate chooses to contribute money or in-kind services to another candidate for office, that contribution would be considered an individual contribution and would be subject to contribution limits. If the contribution was made from the candidate’s personal bank account, the entity receiving the contribution would need to document the contributing candidate’s full name, mailing address, occupation, and employer, as with all individual contributions. A contribution of this nature would be reported as such:

John Doe

123 Main St.

Anytown, MT 12345

Mechanic, Joe’s Auto Body

If the contribution was made from the candidate’s campaign account, the contributing candidate’s campaign committee name would need to be used, and would be reported as:

John Doe for HD1

123 Main St.

Anytown, MT 12345

Mechanic, Joe’s Auto Body

If the candidate making the contribution is a sitting Legislator and the contribution has been made from their current campaign account, it is acceptable to list their occupation as Legislator/Senator/Representative.

Once a candidate has contributed up to the applicable contribution limit from either their personal or campaign account, they would have maxed out their allowable contributions, and could not make a second contribution to the same candidate from the other account.

An advisory opinion from the COPP furthering detailing this matter is currently pending.