

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES OF THE STATE OF MONTANA

Merwin v. Cooney No. COPP 2020-CFP-052	FINDING OF SUFFICIENCY FACTS TO SUPPORT A CAMPAIGN PRACTICE VIOLATION
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On October 28, 2020, Montana Republican Party Executive Director Spenser Merwin filed a campaign practices complaint against Mike Cooney, a candidate for the office of Montana Governor. The complaint alleged that candidate Cooney failed to timely file a C-5 campaign finance report.

**SUBSTANTIVE ISSUES ADDRESSED**

Timely filing of a campaign finance report.

**FINDINGS OF FACT**

The foundational facts necessary for this Decision is as follows:

Finding of Fact No. 1: Mike Cooney filed a C-1 Statement of Candidate as a Democratic candidate for the office of Governor of Montana with the COPP on July 2, 2019. (Commissioner's Records)

Finding of Fact No. 1A: Candidates for elected office had a C-5 campaign finance report due on or before October 20, 2020, covering the period of September 16, 2020 through at least October 14, 2020. (Commissioner's Records)

Finding of Fact No. 2: Candidate Cooney did not file a C-5 campaign finance report on or before October 20. At 11:35 PM MST on that date, the Cooney campaign emailed COPP Compliance staff indicating the campaign was having issues filing the report in the CERS electronic filing system. (Commissioner's Records)

On October 21, the Cooney campaign emailed COPP Compliance Staff on three occasions regarding additional issues they were having in getting the report filed. Emails were timestamped 9:56 AM, 10:58 PM, and 11:59 PM.

Finding of Fact No. 3: On October 22, 2020, candidate Cooney filed a periodic C-5 campaign finance report, dated September 16, 2020 through October 14, 2020. (Commissioner's Records)

### **DISCUSSION**

Periodic campaign finance reports for Statewide candidates were due in the COPP office no later than Tuesday, October 20, 2020, for the reporting period of September 16 through October 14, 2020. Candidate Cooney filed the campaign's finance report for that period on October 22, 2020 using the CERS<sup>1</sup> online reporting portal. Timely reporting is essential to provide the public, press, and opposing candidates the opportunity to view and review a campaign's finances.

Montana's campaign finance report filing requirements are mandatory: "shall file" (See §13-37-226, MCA). The filing date requirements are date certain. Therefore, any failure to meet a mandatory, date-certain filing date is a violation of §13-37-226 MCA. In this matter, Candidate Cooney failed to timely file the campaign's finance report due on October 20, 2020.

### **FINDINGS**

Sufficiency Finding No. 1: Candidate Cooney failed to timely file the campaign's C-5 financial report, due on or before October 20, 2020. Candidate Cooney filed the periodic C-5 financial report on October 22, 2020, two days after the reporting deadline for Statewide candidates. (FOF No. 3)

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<sup>1</sup> CERS is an acronym for Campaign Electronic Reporting System, the e-filing system used by candidates and political committees to submit campaign finance reports and other required forms to COPP.

This Commissioner hereby determines that sufficient facts exists to show that Candidate Cooney has, as a matter of law, violated Montana's campaign practice laws, specifically Mont. Code Ann. § 13-37-226. Candidate Cooney did file the campaign finance report prior to the receipt of the complaint which will be a mitigating factor in any civil penalty assessed by the COPP.

### **DECISION**

The Commissioner has limited discretion when making the determination as to an unlawful campaign practice. First, the Commissioner "shall investigate" any alleged violation of campaign practices law. Mont. Code Ann. § 13-37-111(2)(a). The mandate to investigate is followed by a mandate to take action; where there is "sufficient evidence" of a violation the Commissioner must ("shall notify," *see id.*, at § 13-37-124) initiate consideration for prosecution.

Second, having been charged to make a decision, the Commissioner must follow substantive law applicable to a particular campaign practice decision. This Commissioner, having been charged to investigate and decide, hereby determines that there is sufficient evidence to show that Mike Cooney violated Montana's campaign practice laws, including, but not limited to the laws set out in the Decision. Having determined that sufficient evidence of a campaign practice violation exists, the next step is to determine whether there are circumstances or explanations that may affect prosecution of the violation and/or the amount of the fine.

The failure to fully and timely report and disclose cannot generally be excused by oversight or ignorance. Excusable neglect cannot be applied to oversight or ignorance of the law as it relates to failures to file and report. *See Matters of Vincent*, Nos. COPP-2013-CFP-006, 009 (discussing excusable neglect principles). Likewise, the Commissioner does not normally accept that failures to file or report be excused as *de minimis*. *Id.* (discussing *de minimis* principles).

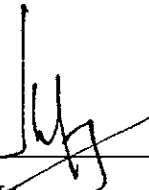
Because there is a finding of violation and a determination that *de minimis* and excusable neglect theories are not applicable to the above Sufficiency Findings, a civil fine is justified. Mont. Code Ann. § 13-37-124. The Commissioner hereby issues a “sufficient evidence” Finding and Decision justifying a civil fine or civil prosecution of candidate Cooney. Because of the nature of the violation, this matter is referred to the County Attorney of Lewis and Clark County for his consideration as to prosecution. *Id.*, at (1). Should the County Attorney waive the right to prosecute (*id.*, at (2)) or fail to prosecute within 30 days (*id.*, at (1)) this Matter returns to this Commissioner for possible prosecution.

Most of the Matters decided by a Commissioner and referred to the County Attorney are waived back to the Commissioner for his further consideration. Assuming that the Matter is waived back, this Finding and Decision does not necessarily lead to civil prosecution as the Commissioner has discretion (“may then initiate” *see id.*) in regard to a legal action. Instead, most of the Matters decided by a Commissioner are resolved by payment of a

negotiated fine. In setting that fine the Commissioner will consider matters affecting mitigation, including the cooperation in correcting the issue when the matter was raised in the Complaint.

While it is expected that a fine amount can be negotiated and paid, in the event that a fine is not negotiated and the Matter resolved, the Commissioner retains statutory authority to bring a complaint in district court against any person who intentionally or negligently violates any requirement of campaign practice law, including those of Mont. Code Ann. § 13-37-226. *See id.*, at § 13-37-128. Full due process is provided to the alleged violator because the district court will consider the matter *de novo*.

DATED this 12<sup>th</sup> day of November 2020.



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