

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Ward v. Marceau No. COPP 2022-CFP-008	FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN PRACTICE ACT VIOLATION
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On April 28, 2022, John Ward of Helena, Montana filed a campaign practices complaint against Marci Marceau of Great Falls. The complaint alleged that candidate Marceau failed to disclose certain expenditures made by her campaign on C-5 campaign finance reports filed with the COPP, and that candidate Marceau failed to file from D-1 within the required reporting period.

SUBSTANTIVE ISSUES ADDRESSED

The proper and timely reporting of campaign activity by a candidate.

FINDINGS OF FACT

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: Marci Marceau filed a C-1 Statement of Candidate as a candidate for election to House District 26 in Cascade County with the COPP on July 26, 2021. (Commissioner's Records.)

Finding of Fact No. 1A: Candidate Marceau filed a D-1 Business Disclosure Statement with the COPP on February 8, 2022. (Commissioner's Records.)

Finding of Fact No. 2: Included with this complaint were pictures of a bench advertisement, two (2) separate campaign banners, and a campaign door hanger supporting candidate Marceau. (Commissioner's Records.)

Finding of Fact No. 2A: On May 11, 2022, candidate Marceau delivered her formal response in this matter to the COPP via email. The email message indicated that all materials referenced in this complaint had been obtained from vendors Outlaw Graphic and Great Falls Bench Advertising. Candidate Marceau further indicated that she had previously incurred obligation/s from those vendors for provision of specific material/s or service/s but “I did not enter anything into debts. I didn’t think I had debts as I did not receive a bill yet” but “It was explained to me to enter the service rendered in the debt column when it is recorded, then pay the bill when received”. The response also included two (2) invoices received by candidate Marceau: the first from vendor Outlaw Graphics, dated May 5, 2022, which detailed \$1,300.00 in services provided: door hangers (2 separate obligations of \$250.00 each-\$500.00 total), post cards (\$340.00), bench ads (\$130.00), banners (\$180.00), poster (\$75.00), and business cards (\$75.00) (see Attachment 1); the second from vendor Great Falls Bench Advertising, dated March 23, 2022, which detailed \$440.00 in services provided: the purchase of bench advertisements (2 separate obligations of \$160.00- \$320.00 total) and production costs for the material (\$120.00) (see Attachment 2). (Commissioner’s Records.)

Finding of Fact No. 3: On October 4, 2021, candidate Marceau timely filed an initial C-5 campaign finance report, dated July 26, 2021 through September 30, 2021. This report does not list any expenditures made or debts owed to vendors Outlaw Graphic or Great Falls Bench Advertising, nor include any entries (contributions received, expenditures made, or debts owed) pertaining to the campaign’s acquisition of any bench advertisements, campaign banners, or campaign door hangers. (Commissioner’s Records.)

Finding of Fact No. 4: On January 3, 2022, candidate Marceau timely filed a periodic C-5 campaign finance report, dated October 1, 2021 through December 31, 2021. Most recently amended on May 9, 2022, this report does not list any expenditures made or debts owed to vendors Outlaw Graphic or Great Falls Bench Advertising, nor include any entries (contributions received, expenditures made, or debts owed) pertaining to the campaign’s acquisition of any bench advertisements, campaign banners, or campaign door hangers. (Commissioner’s Records.)

Finding of Fact No. 5: On March 18, 2022, candidate Marceau timely filed a periodic C-5 campaign finance report, dated January 1, 2022 through March 15, 2022. This report does not list any

expenditures made or debts owed to vendors Outlaw Graphic or Great Falls Bench Advertising, nor include any entries (contributions received, expenditures made, or debts owed) pertaining to the campaign's acquisition of any bench advertisements, campaign banners, or campaign door hangers. (Commissioner's Records.)

Finding of Fact No. 5A: On May 9, 2022, candidate Marceau filed an amended version of her January 1, 2022 through March 15, 2022 C-5 report. This amended version of the report included four (4) debts owed by candidate Marceau that had not previously been disclosed pertaining to the campaign's acquisition of bench campaign posters, campaign banners, and campaign door hangers, all to vendor Outlaw Graphics, including: one in the amount of \$75.00 dated February 11, 2022, with Purpose described as "Posters for Speeches Giving"; one in the amount of \$250.00 dated February 1, 2022 with Purpose described as "Door hangers" (additional Quantity of "2500 Door Hanging" was also provided); and one in the amount of \$180.00 dated February 10, 2022 with Purpose described as "2 Banners". A fourth debt owed to Outlaw Graphics in the amount of \$75.00 dated May 10, 2022 with Purpose described as "BUSINESS CARDS 100 QUANTITY" was also included on this version of the report. (Commissioner's Records.)

Finding of Fact No. 6: On April 19, 2022, candidate Marceau timely filed a periodic C-5 campaign finance report, dated March 16, 2022 through April 20, 2022. This report does not list any expenditures made or debts owed to vendors Outlaw Graphic or Great Falls Bench Advertising, nor include any entries (contributions received, expenditures made, or debts owed) pertaining to the campaign's acquisition of any bench advertisements, campaign banners, or campaign door hangers. (Commissioner's Records.)

Finding of Fact No. 6A: On May 11, 2022, candidate Marceau filed an amended version of her March 16, 2022 through April 20, 2022 C-5 report (ending date was changed to April 15, 2022 on this amended version of the report). This amended version of the report included three (3) debts owed by candidate Marceau that had previously been disclosed pertaining to the campaign's acquisition of bench campaign posters, campaign banners, and campaign door hangers, including: one to vendor Great Falls Bench Advertising in the amount of \$440.00 dated March 23, 2022 with Purpose described as "Bench advertising 2 benches"; one to vendor Outlaw Graphics in the amount of \$130.00 dated March 23, 2022 with Purpose described as "lamented bench ads / 2 benches"; and one to vendor Outlaw Graphics in the amount of \$340.00 dated March

25, 2022 with Purpose described as "10000 Post Cards 4x6". (Commissioner's Records.)

Finding of Fact No. 7: On May 20, 2022, candidate Marceau timely filed a periodic C-5 campaign finance report, dated April 16, 2022 through May 15, 2022. This report does not list any debts owed to vendors Outlaw Graphic or Great Falls Bench Advertising, nor include any entries (contributions received, expenditures made, or debts owed) pertaining to the campaign's acquisition of campaign door hangers. (Commissioner's Records.)

DISCUSSION

The complainant in this matter alleges that candidate Marceau failed to timely and properly report certain campaign expenditures in violation of applicable Montana campaign finance rules/laws and failed to timely file a D1 Business Disclosure statement. The Commissioner examines the allegations in this matter.

Reporting Campaign Expenditures/Debts

The first allegation raised by the complainant in this matter is that candidate Marceau failed to timely or properly report certain campaign expenditure activities. Specifically, the complaint references campaign bench advertisements, campaign banner/s, and a campaign door hanger utilized by the Marceau campaign as campaign expenditure activities that candidate Marceau failed to properly include on C-5 campaign finance reports.

Candidate Marceau's formal response to this complaint indicated that all materials referenced in this matter were obtained from vendors Outlaw Graphics and Great Falls Bench Advertising (FOF No. 2A). The response further indicated that candidate Marceau did not pay for any material at the time it was obtained, "as I [candidate Marceau] did not receive a bill from them

[vendors Outlaw Graphics and Great Falls Bench Advertising] yet”. This would qualify each as a debt owed by candidate Marceau, 44.11.502(2), ARM.

Applicable Montana campaign finance law and rules provide that candidates are required to report debts owed. Specifically, Mont. Code Ann. §13-37-229(2)(a)(vi), requires candidates report “the amount and nature of debts and obligations owed by a ... candidate” during each reporting period. 44.11.502(2), ARM, adds that “An obligation to pay for a campaign expenditure is incurred on the date the obligation is made, and shall be reported as a debt of the campaign until the campaign pays the obligation by making an expenditure” (emphasis added). In other words, candidates are required to disclose debts owed, in full, as debts owed at the time incurred.

Bench advertisements

The first material referenced by the complaint is a campaign bench advertisement displayed in Great Falls, MT supporting candidate Marceau (FOF No. 2). In her response to this complaint, candidate Marceau indicated her campaign had incurred debts pertaining to campaign bench advertisements from vendors Great Falls Bench Advertising in the amount of \$440.00 and Outlaw Graphics in the amount of \$130.00 (FOF No. 2A). An associated invoice received by candidate Marceau from vendor Great Falls Bench Advertising and amended campaign finance reports filed by the campaign indicate each obligation was incurred on March 23, 2022 (see Table 1).

Table 1: Debts owed by candidate Marceau to vendors Great Falls Bench Advertising (top) and Outlaw Graphics (bottom) pertaining to campaign bench advertising

Description	Date Incurred	Date Reported by candidate Marceau	Amount Owed
Bench Advertisement- 19 th St & 8 th Ave No	03/23/2022	05/11/2022	\$160.00
Bench Advertisement- 38 th St & 2 nd Ave No	03/23/2022	05/11/2022	\$160.00
Bench Advertisements- Production Costs	03/23/2022	05/11/2022	\$120.00
			\$440.00

Oracal Intermediate Calendared PVC W/Lam bench ads	03/23/2022*	05/11/2022	\$130.00
			\$130.00

*Date used by candidate Marceau when reporting the activity as a debt on the March 16, 2022 through April 15, 2022 C-5 campaign finance report.

As each obligation was incurred on March 23, 2022, candidate Marceau was required to disclose as debts owed on the March 16, 2022 through April 15, 2022 C-5 campaign finance report, which did not occur prior to the filing of this complaint (FOF No. 6). Candidate Marceau failed to timely and properly disclose debts owed for bench advertisements to vendor Great Falls Bench Advertising in the amount of \$440.00 and Outlaw Graphics in the amount of \$130.00, Mont. Code Ann. §13-37-229(2)(a)(vi), and 44.11.502(2), ARM.

The Commissioner notes candidate Marceau did file an amended version of her March 16, 2022 through April 15, 2022 campaign finance report disclosing the campaign's acquisition of campaign bench advertisements as debts owed by the campaign on May 11, 2022, after her receipt of the complaint (FOF No. 6A).

Campaign banner/s

The second material referenced by the complaint are campaign banner/s supporting candidate Marceau (FOF No.2). In her response to this complaint, candidate Marceau indicated her campaign had incurred debts pertaining to campaign banner/s from vendor Outlaw Graphics in the amount of \$180.00 (FOF No. 2A). Amended C-5 campaign finance reports filed by candidate Marceau indicate the campaign incurred this obligation on February 10, 2022 (see Table 2).

Table 2: Debts owed by candidate Marceau to vendor Outlaw Graphics pertaining to campaign banners

Description	Date Incurred	Date Reported by candidate Marceau	Amount
Campaign Banners- 2	02/10/2022*	05/11/2022	\$180.00
			\$180.00

*Date used by candidate Marceau when reporting the activity as a debt on the January 1, 2022 through March 15, 2022 C-5 campaign finance report.

As the obligation was incurred on February 10, 2022, candidate Marceau was required to disclose it as a debt owed on the January 1, 2022 through March 15, 2022 C-5 campaign finance report, which did not occur prior to the filing of this complaint (FOF No. 5). Candidate Marceau failed to timely and properly disclose a debt owed for campaign banners to vendor Outlaw Graphics in the amount of \$180.00, Mont. Code Ann. §13-37-229(2)(a)(vi) and 44.11.502(2), ARM.

The Commissioner notes candidate Marceau did file an amended version of her January 1, 2022 through March 15, 2022 campaign finance report disclosing the campaign's acquisition of campaign banner/s as debts owed by

the campaign on May 11, 2022, following receipt of the complaint, (FOF No. 5A).

Campaign Door Hangers

The final material referenced by the complaint is a door hanger material supporting candidate Marceau (FOF No. 2). In her response to this complaint, candidate Marceau indicated her campaign had incurred two (2) separate debts pertaining to campaign door hangers from vendor Outlaw Graphics, each in the amount of \$250.00 (FOF No. 2A). Amended C-5 campaign finance reports filed by candidate Marceau indicate the campaign incurred the first obligation on February 2, 2022 (see Table 3).

Table 3: Debts owed by candidate Marceau to vendor Outlaw Graphics pertaining to campaign door hangers

Description	Date Incurred	Date Reported by candidate Marceau	Amount
Door Hangers- 2,500	02/01/2022*	05/11/2022	\$250.00
Door Hangers- 2,500^			\$250.00
			\$500.00

*Date used by candidate Marceau when reporting the activity as a debt on the January 1, 2022 through March 15, 2022 C-5 campaign finance report.

^ Item has not been disclosed as a debt owed by candidate Marceau on any C-5 campaign finance reports filed with COPP (FOF No. 5A).

Because the obligation was incurred on February 2, 2022, candidate Marceau was required to disclose as a debt owed on the January 1, 2022 through March 15, 2022 C-5 campaign finance report, which did not occur prior to the filing of this complaint (FOF No. 5). Candidate Marceau failed to timely and properly disclose one (1) debt owed for campaign door hangers to

vendor Outlaw Graphics in the amount of \$250.00, Mont. Code Ann. §13-37-229(2)(a)(vi) and 44.11.502(2), ARM.

The Commissioner notes candidate Marceau did file an amended version of her January 1, 2022 through March, 2022 campaign finance report disclosing the campaign's first door hangers obligation as a debt owed by the campaign on May 11, 2022, after her receipt of the complaint, (FOF No. 5A).

Door Hanger 2

As of May 25, 2022, candidate Marceau has not disclosed the second campaign door hanger obligation of \$250.00 owed to vendor Outlaw Graphics on any C-5 campaign finance report/s filed with COPP, including the May 20, 2022 report (FOF No. 7, Table 3). In this instance, candidate Marceau has failed to report an obligation incurred by her campaign in totality, in violation of Mont. Code Ann. §13-37-229(2)(a)(vi). The obligation was clearly incurred prior to May 10, 2022 (the date noted on the invoice provided by Outlaw Graphics), meaning it was required to be included on one of the March 20, April 20, or May 20 C-5 campaign finance reports. Candidate Marceau has failed to include this second door hanger obligation on any of those reports as filed with COPP.

Other items: campaign post cards, poster, and business cards

While not specifically referenced by the complaint, COPP review of invoices included by candidate Marceau in her formal response and amended campaign finance reports filed by her campaign indicate the campaign utilized vendor Outlaw Graphics to obtain additional campaign materials, specifically

campaign post cards in the amount of \$340.00, a campaign poster in the amount of \$75.00, and campaign business cards in the amount of \$75.00 (FOF No. 2A). Amended C-5 campaign finance reports filed by candidate Marceau indicate the campaign incurred an obligation for campaign post cards on February 11, 2022, an obligation for a campaign poster on March 25, 2022, and an obligation for campaign business cards on an unknown date (included on amended versions of the March 16, 2022 through April 15, 2022 report filed on May 11, 2022 by candidate Marceau) (see Table 4).

Table 4: Debts owed by candidate Marceau to vendor Outlaw Graphics pertaining to campaign post cards, poster, and business cards

Description	Date Incurred	Date Reported by candidate Marceau	Amount
Post Cards- 10,000	02/11/2022*	05/11/2022	\$340.00
Poster	03/25/2022**	05/11/2022	\$75.00
Business Cards	05/10/2022**	05/11/2022	\$75.00

*Date used by candidate Marceau when reporting the activity as a debt on the January 1, 2022 through March 15, 2022 C-5 campaign finance report.

** Date used by candidate Marceau when reporting the activity as a debt on the March 16, 2022 through April 20, 2022 C-5 campaign finance report.

As the campaign post cards obligation was incurred on February 11, 2022, candidate Marceau was required to disclose it as a debt owed on the January 1, 2022 through March 15, 2022 C-5 campaign finance report, which did not occur prior to the filing of this complaint (FOF No. 5). Candidate Marceau failed to timely and properly disclose a debt owed for campaign post cards to vendor Outlaw Graphics in the amount of \$340.00, Mont. Code Ann. §13-37-229(2)(a)(vi) and 44.11.502(2), ARM.

The Commissioner notes candidate Marceau did file an amended version of her January 1, 2022 through March 15, 2022 campaign finance report disclosing the campaign's post cards obligation as a debt owed by the campaign on May 11, 2022, after her receipt of the complaint (FOF No. 5A).

As the campaign poster obligation was incurred on March 25, 2022, candidate Marceau was required to disclose it as a debt owed on the March 16, 2022 through April 15, 2022 C-5 campaign finance report, which did not occur prior to the filing of this complaint (FOF No. 6). Candidate Marceau failed to timely and properly disclose a debt owed for a campaign poster to vendor Outlaw Graphics in the amount of \$75.00, Mont. Code Ann. §13-37-229(2)(a)(vi) and 44.11.502(2), ARM.

The Commissioner notes candidate Marceau did file an amended version of her March 16, 2022 through April 20, 2022 campaign finance report disclosing the campaign's acquisition of the campaign poster as a debt owed by the campaign on May 11, 2022, after her receipt of the complaint (FOF No. 6A).

According to amended campaign finance reports filed by candidate Marceau, the campaign business card obligation was incurred during the period of March 16, 2022 to April 15, 2022 (FOF No. 6A). This would mean that candidate Marceau was required to disclose the obligation as a debt owed on the March 16, 2022 through April 15, 2022 C-5 campaign finance report, which did not occur prior to the filing of this complaint (FOF No. 6). Candidate Marceau failed to timely and properly disclose a debt owed for campaign

business cards to vendor Outlaw Graphics in the amount of \$75.00, Mont. Code Ann. §13-37-229(2)(a)(vi) and 44.11.502(2), ARM.

The Commissioner notes candidate Marceau did file an amended version of her March 16, 2022 through April 15, 2022 campaign finance report disclosing the campaign's acquisition of campaign business cards as a debt owed by the campaign on May 11, 2022, after her receipt of the complaint (FOF No. 6A).

Candidate Marceau failed to timely and properly report debts owed to vendors Outlaw Graphics and Great Falls Bench advertising. Candidate Marceau failed to properly and timely report a debt owed to Great Falls Bench Advertising for an election communication. Candidate Marceau failed to properly and timely report a debt owed to Outlaw Graphics for the following election communications: bench advertising graphic; campaign banners; campaign door hangers (2), campaign post cards; campaign poster; and campaign business cards.

Sufficiency Finding No. 1: Candidate Marceau failed to timely and properly report seven (7) campaign debts to Outlaw Graphics

Sufficiency Finding No. 2: Candidate Marceau failed to timely and properly report one (1) campaign debts to Great Falls Bench Advertising.

The Commissioner determines there are sufficient facts to determine the candidate Marceau failed to properly and timely report seven (8) campaign debts as required by Montana campaign finance law.

Business disclosure statement

The second allegation made by the complainant in this matter is that candidate Marceau “failed to report a form D-1 within the required reporting period”. COPP notes that form D-1 is the Business Disclosure Statement, a required document that must be filed by all candidates for election to a statewide or state district office under Montana’s Code of Ethics, Mont. Code Ann. §2-2-106.

The D-1 Business Disclosure Statement is required under Montana’s Code of Ethics rather than any campaign finance or practices law/s or rule/s. Neither Montana campaign finance law or Montana ethics law provides a specific enforcement mechanism for candidates who are not elected officials or state employees. Candidates must however, ensure all statements and reports required by Mont. Code Ann. §13-337-126 are filed by the date required by statute to be included on the ballot. In 2022, the primary notification date for the Commissioner to submit to the Montana Secretary of State the names of all candidates who did not submit all required statements and reports was March 22, 2022.

In this matter candidate Marceau filed a D-1 business disclosure statement with the COPP on February 8, 2022 (FOF No. 1A). The complainant included the D-1 as filed by candidate Marceau with the complaint. As the allegation is not included under any campaign finance or practices rules or laws under the Commissioner’s jurisdiction, and because candidate Marceau filed form D-1 with the COPP prior to March 22, 2022, there is no further

enforcement action the Commissioner can take. The allegation is hereby dismissed.

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 candidate Marceau 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

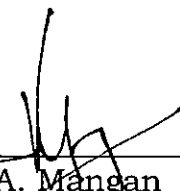
neglect principles). Likewise, the Commissioner does not normally accept that failures to file or report be excused as *de minimis*. *Id.* (discussing *de minimis* principles).

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 Marceau. 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. § 13-37-229(2)(a)(vi) and 44.11.502(2), ARM. *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 31st day of May 2022.



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