

**BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES
STATE OF MONTANA**

**In the Matter of the
Complaint of Mary Jo Fox
Against Brad Molnar**

)
)
)

**DECISION
AND FINAL ORDER**

Hearing Examiner William Corbett issued a Proposed Decision and Order in this matter on March 9, 2010. Based on the record, the exceptions and supporting briefs filed by the parties, and oral arguments, the following Final Decision is issued pursuant to § 2-4-623, MCA.

The Proposed Decision is affirmed and adopted in part, modified in part, and explained and expanded, as hereinafter set forth:

- The hearing examiner's dismissal of Respondent's Motion to Dismiss is affirmed;
- The hearing examiner's dismissal of Respondent's challenge to the Complainant's standing is explained and affirmed;
- The hearing examiner's determination that Respondent's solicitation and receipt of the payments from NorthWestern Energy and PPL Montana were unlawful gifts under the Code of Ethics is affirmed;
- The hearing examiner's determination that Respondent violated the Code of Ethics by unlawfully using State resources for political purposes is affirmed. There were five violations, as described in Part VII, pages 24-26;
- The Respondent's belated allegation that the hearing examiner is biased against the Respondent is discussed and rejected in Part I, pages 12-15;
- The Respondent's belated allegation that the undersigned Commissioner is part of a vendetta and political conspiracy against the Respondent is discussed and rejected in Part II, pages 15-19;
- A substantive typographical error in the Proposed Decision has been corrected and highlighted with a footnote on page 28;

- Issues related to construing the “gift ban” are discussed and revised in Part V on pages 20-22;
- The hearing examiner’s “per violation” penalty assessment of \$5,750 pursuant to § 2-2-136(2), MCA is affirmed in Part XI on pages 29-30.
- The hearing examiner’s assessment of costs is affirmed and those costs are further specified in Part XII on pages 30-31. Respondent is ordered to pay the State of Montana a total of \$14,945 as partial reimbursement of the costs in this matter. The assessment results from the legal clarity of the violations, Respondent’s refusal to acknowledge any wrongdoing, his evasiveness, his attacks on the complainant and the hearing examiner, and his role in unnecessarily delaying the completion of this proceeding;
- The hearing examiner’s denial of complainant's request for attorney fees and costs is affirmed and explained in Part XIII on pages 31-32;
- Substantive and editorial changes were made throughout this final decision.

BACKGROUND

During 2008, Mary Jo Fox, hereinafter referred to as “Complainant,” filed a series of complaints with the Montana Commissioner of Political Practices against Public Service Commissioner Brad Molnar, hereinafter referred to as “Respondent.” William L. Corbett, a University of Montana law professor, was appointed hearing examiner.

The Respondent, a former Montana State Legislator, has twice been elected to the Montana Public Service Commission (PSC). He serves District 2, which includes Billings and southeastern Montana. The alleged offenses were committed during the Respondent’s first term on the PSC.

Summary of the Complaints

Unlawful Gifts

A complaint dated June 12, 2008 alleged that, since filing as a candidate for re-election to the Montana Public Service Commission in District 2, the Respondent, an incumbent PSC Commissioner, “has gone door-to-door in his district distributing a brochure that was printed using gifts of at least \$2,000 provided by at least two corporate entities, both of whom are regulated by the Public Service Commission.”

The complaint alleges violations of § 2-2-104(1)(b), MCA, the Montana Code of Ethics, which prohibits a public officer from accepting “a gift of substantial value. . . that would tend to improperly influence a reasonable person to depart from the faithful and impartial discharge of the person’s public duties.”

In his September 15, 2008 Answer to the Complaint, the Respondent denied all of the complaint’s allegations.

Unlawful Use of State Resources

Three separate complaints allege that the Respondent unlawfully used state resources. In relevant part, the Montana Code of Ethics prohibits a public officer from using public time, facilities, equipment, supplies, personnel, or funds for the officer’s election or private business purpose. (§ 2-2-121(2)(a), MCA (private business purpose); § 2-2-121(3)(a), MCA (election).)

- A complaint dated October 9, 2008 alleged that the Respondent used his PSC e-mail address, PSC phone number, and PSC computer in his 2008 re-election campaign.
- A complaint dated October 16, 2008 alleged that the Respondent used a PSC cell phone for personal business purposes.
- A complaint dated October 27, 2008 alleged that the Respondent used his state e-mail to solicit support for his 2008 re-election campaign (the Great Falls Rotary solicitation), and to arrange to attend a political campaign event (Miles City Bucking Horse Sale).

In his answers, the Respondent denied all of these allegations.

Respondent’s Motion to Dismiss

On January 24, 2009, prior to the hearing, Respondent moved to dismiss the complaints on the grounds that Complainant did not have legal standing to pursue ethics complaints against him. Both parties filed briefs and were afforded the opportunity of oral argument.

In an April 2, 2009 written decision, the hearing examiner denied the motion, but made allowance for the Respondent to renew his motion at the fact hearing. Both parties were afforded the right to present evidence on the standing issue at the hearing. At and after the November 2009 hearing, the Respondent renewed his standing motion. The Complainant

presented testimony regarding her interest in the Respondent's alleged ethical misconduct at the November hearing.

Respondent's Motion to Disqualify Complainant's Counsel

On June 16, 2009, Respondent named Complainant's attorney as a witness for the hearing, and thereafter sought to disqualify Complainant's attorney from representing the Complainant at the hearing. Respondent alleged that Complainant's attorney was prohibited from serving as an advocate under Rule of Professional Responsibility 3.7.¹ Respondent's argument was that Complainant, her attorney, and others engaged in a conspiracy to oppose Respondent's re-election campaign, and that evidence about this alleged conspiracy was material to the charges against him.

Complainant objected to the disqualification attempt, asserting her attorney had no relevant or necessary evidence to offer at the hearing regarding the ethics complaints.

On September 16, 2009, the hearing examiner issued a written decision, denying Respondent's disqualification motion. The hearing examiner held that the existence or non-existence of a conspiracy to undermine Respondent or his recent re-election campaign is not relevant or material to the narrow charges against him, and that accordingly, Complainant's attorney had no necessary or relevant information to provide as evidence at the hearing.

Additionally, the hearing examiner determined that disqualifying the Complainant's attorney would "work substantial hardship" on her. However, to assure a full record in the event of an appeal, the hearing examiner ruled that Respondent could make an offer of proof at the hearing regarding the alleged conspiracy and its relevance and materiality to the proceedings.

The Hearing and Post Hearing Briefs

The hearing in this matter was held November 4 through November 6, 2009. The hearing examiner presided at the hearing and the Commissioner personally attended the entire hearing. On December 8, 2009, the parties filed timely post hearing briefs.

¹ Rules of Professional Conduct prohibit a lawyer from acting as counsel at a trial in which the lawyer is likely to be called as a witness.

Proposed Decision and Exceptions to the Proposed Decision

The hearing examiner's Proposed Decision was issued on March 9, 2010. Exceptions to the hearing examiner's Proposed Decision were filed timely on April 12, 2010, and responses on April 28, 2010.

Supplemental Briefs and Final Oral Arguments

The parties were ordered on May 13, 2010 to file supplemental briefs regarding whether § 2-2-136(2), MCA, permits imposition of penalties and sanctions "per violation" as recommended in the hearing examiner's Proposed Decision. Supplemental briefs were timely filed by both parties on June 4, 2010. Respondent's request for oral arguments was granted and oral arguments were held on June 15, 2010. Respondent and his attorney appeared in person at the hearing in Helena. Complainant and her attorney appeared via the *VisionNet* telecommunication service (per their request). This matter was deemed fully submitted for a final decision by the Commissioner upon completion of the oral arguments on June 15, 2010.

APPLICABLE LAW

The Montana Code of Ethics states that holding public office is a public trust created by the confidence that the electorate reposes in the integrity of public officers to carry out their individual duties for the benefit of the people of Montana. (§ 2-2-103, MCA.) The Respondent, as a Montana Public Service Commissioner, is a public officer within the meaning of this and other Montana statutes concerning the duty of public trust. (§ 2-2-102(8), MCA.) A violation of the rules of public trust is a violation of the Montana Code of Ethics and subjects that public officer to legal sanctions. (§ 2-2-136 (2), MCA.) The Montana Commissioner of Political Practices has jurisdiction over alleged violations of the Code of Ethics by public officials. (§ 2-2-136(1)(a), MCA.)

Law Prohibiting Receipt of Gifts

The Montana Code of Ethics prohibits a public officer from accepting "a gift of substantial value. . . that would tend to improperly influence a reasonable person to depart from the person's faithful and impartial discharge of the person's public duties." (§ 2-2-104(1)(b), MCA.) A gift of "substantial value" is a gift of "\$50 or more." (§ 2-2-102(3), MCA.)

There are three exceptions to § 2-2-104(1)(b), MCA:

- First, an item returned by the public officer within 30 days of receipt is not considered a gift. (§ 2-2-102(3)(b)(i), MCA.)
- Second, if the item is “educational material directly related to official governmental duties,” it is not a gift. (§ 2-2-102(3)(b)(iii), MCA.)
- Third, a gift that is “educational activity that:
 - does not place or appear to place the recipient under obligation;
 - clearly serves the public good; and
 - is not lavish or extravagant,” (§ 2-2-102(3)(b)(v), MCA.)

Prohibiting Use of Public Resources for a Private Business or Political Purpose

A public officer is prohibited from using “public time, facilities, or equipment for private business purposes or electoral purposes.” (§ 2-2-121 (2), (3), MCA.)

Sanctions

If a public officer violates either of the above prohibitions, he may be subject to an “administrative penalty of not less than \$50 or more than \$1,000,” and assessed “the costs of the proceeding against [him].” (§ 2-2-136(2), MCA.) Alternatively, if there is a finding that no violation was committed, the Complainant may be assessed the “costs of the proceeding.” (Id.)

FACTS

The facts in the Proposed Decision are adopted and incorporated into this final decision, but with the following revisions:

- The facts have been numbered for reference;
- Footnotes are added;
- Fact 9 has been expanded with references to the hearing transcript.

The relevant facts upon which this final decision is based follow.

Solicitation and Receipt of Unlawful Gifts

1. NorthWestern Energy, PPL Montana, and Wal-Mart are all corporations. The Montana Public Service Commission (PSC) is a quasi-judicial governmental agency whose decisions affect hundreds of thousands of Montana individuals and businesses with

respect to hundreds of millions of dollars in utility rates.² NorthWestern Energy is a corporation that is regulated by the PSC. PPL Montana is a corporation that, while not regulated by the PSC, appears in contested matters before the PSC as a party and as a witness, and is affected by decisions of the PSC.

2. The Respondent is an elected representative on the PSC from Montana District 2. As such, the Respondent, along with the other elected members of the commission, makes decisions affecting the welfare and economic viability of NorthWestern Energy and PPL Montana.
3. “Brown Out” programs have been used to demonstrate that energy savings result when people voluntarily turn off their lights for a proscribed time. The Respondent testified that he decided to organize a Brown Out program in Billings, the largest community in his PSC District, so that Billings residents would participate and discover that voluntary efforts result in substantial energy savings.
4. The record shows Respondent campaigned for re-election to the PSC in the summer of 2007. (See Findings 21 and 22.) Respondent officially announced his candidacy in March of 2008. Respondent’s first reported campaign expenditure occurred, according to his campaign finance report, in February 2008.
5. During the fall of 2007, when NorthWestern Energy was appearing before the PSC, the Respondent approached NorthWestern Energy officer William Thomas during a break in the proceedings and made a solicitation for Brown Out money. Thereafter, the Respondent had telephone conversations and meetings with William Thomas to obtain the money. Both Thomas and the Respondent testified that the Respondent specified \$1,000 as being the amount he needed, and that Thomas agreed to give him that amount on behalf of NorthWestern Energy.

² Respondent’s attorney objected to this finding in his Notice of Exceptions to Proposed Decision. He wrote, “(w)here there were no facts [Hearings Examiner] furnishes them. He makes wild statements about the function of the PSC and the number of person’s lives it affects.” (Exception 11, page 9.) I note that the numbers presented here are derived from the testimony of Respondent presented during the first day of hearing. In response to questioning as to whether decisions the PSC makes about Northwestern Energy involve substantial amounts of money. . . “(m)illions, right?”, Respondent replies, “Actually, I’m in a death-grip battle with them right now. I’m trying to stop them on a billion dollar project.” (Transcript page 49, lines 12 – 20 and page- 50, lines 1 – 15.) The finding is included here to illustrate that Respondent’s position is one of significance to many people and involves significant revenue.

6. Ultimately, NorthWestern gave the Respondent two \$1,000 checks. The second of the two checks was given after the Billings Brown Out, and the Respondent returned that check.³
7. Also during the fall of 2007, Respondent acknowledges he contacted PPL Montana and solicited money for his Billings Brown Out program. Additionally, he visited two Billings Wal-Mart stores and asked for money for the Brown Out program. Store managers responded by giving him cash taken from store cash registers. The Respondent testified that he did not remember exactly how much Wal-Mart cash he received, but estimated it at \$400.⁴
8. The Respondent deposited the first \$1,000 check he received from NorthWestern Energy and a \$1,000 check he received from PPL Montana into his personal checking account. He testified he placed in his pocket the \$400 in cash he received from Wal-Mart, which he used to pay Brown Out expenses as they arose.
9. There is sparse accounting in the hearing record of the “little over \$3,000” Respondent claims he spent on the Brown Out program. Complainant’s Exhibit C, offered and accepted into evidence, includes estimates from a Billings printing company for printing various quantities of the Brown Out brochure (Fox Exhibit C-5). Complainant also introduced a copy of the printing company’s invoice for \$1648.46 for 30,000 Brown Out brochures (Fox Exhibit D), and a copy of Respondent’s canceled personal check made payable to the print company in the same amount, \$1648.46. (Fox Exhibit F-2.)

Respondent offered only documentation of the reimbursement of \$1,000 to NWE from his personal checking account. (Molnar Exhibit K-4.) Respondent’s proposed Exhibit D included the printing estimate and the cancelled check for printing. It also included a statement from the *Laurel Outlook* newspaper for \$24.40, listing three invoice numbers. The statement did not describe or reference the Brown Out event. E-mails included in Respondent’s proposed Exhibit D related only to the PPL check (see facts 7 and 8), the printing estimate, and radio public service announcements (PSAs). While Respondent’s proposed Exhibit D was presented as part of a pre-hearing exchange of possible

³ Respondent’s solicitation and receipt of the second \$1,000 from NorthWestern is not part of the complaints decided in this matter. It is referenced only as background, and is not a basis for a finding of a violation of law.

⁴ Respondent’s solicitation and receipt of money from Wal-Mart were not part of the Complaints (see pages 2-3), and are referenced herein only for the purpose of completeness.

exhibits, it was not offered into evidence. There was no testimony by the Respondent that the PSA invoice was paid by the Respondent or that the PSAs were part of the Brown Out event. The only substantive accounting of Brown Out expenditures introduced into the hearing record was the invoice for the printing of the brochures and the Respondent's personal check written for the \$1648.46 brochure printing bill. On questioning from his attorney, Respondent alleged:

"(b)ut I know that I spent a lot of time looking up receipts and making copies and mailing them off to somebody. I'm thinking he's [Commissioner of Political Practices] got all the receipts that I've had. They asked for them and I remember putting them in a big manila envelope and mailing them off, and they would verify these numbers, to the best of my ability (sic)."

Q: (Peterson) "So what you're telling us is that you submitted all the receipts and all the backup information with this to the Commissioner of Political Practices?"

A: "Everything I could find. I think the only thing I couldn't find – and until this, I couldn't remember why I couldn't find it – was Wal-Mart. And that was just me signing the till and they give me some money, so that's why I couldn't find anything. (Transcript, Page 503, Lines 14 – 25 and Page 504, Lines 1 – 2.)

...

Q: (Cross examination by Guthals) "And are you testifying that you provided the Commissioner of Political Practices with receipts that showed expenses equaling a little over \$3,000?"

A: "I put everything in a large legal-sized envelope and mailed it off. That's what I'm testifying to. He asked for it and that's what I sent."

Q: "And did those receipts add up to \$3,000?"

A: "They were a little over."

Q: "Are those receipts included here in your Exhibit K?"

A: "I don't believe so."

Q: "Do you have those receipts with you?"

A: "No." (Transcript, Page 588, Lines 1 – 13.)

10. The Billings Brown Out took place on December 6, 2007. The brochure used to promote the event contained a picture of the Respondent, listed him as the first of many "Major Supporters," and in large bold print said:

**PUBLIC SERVICE COMMISSIONER
BRAD MOLNAR
invites you to join your
neighbors and take part in the
GREAT BILLINGS BROWNOUT
December 6th 7-8 pm**

11. In the spring of 2008, months after the Billings Brown Out, while Respondent was campaigning for re-election door-to-door, he used some of the Brown Out brochures as campaign materials. He testified that if he knocked on a residence door and no-one answered, he left a brochure at the home.
12. When NorthWestern Energy, which was listed on the brochure as a major supporter, learned that Respondent was using the Brown Out brochures in his campaign, it demanded repayment of the \$2,000 it had given him. (By that time, NorthWestern had delivered the second of its \$1,000 checks.)
13. The City of Billings, Billings School District 2, and the Billings Chamber of Commerce, all three of which were also listed on the Brown Out brochure as major supporters, also demanded that Respondent stop using the Brown Out brochure in his campaign, stating they did not endorse or support political candidates.
14. Instead of discontinuing his use of the Brown Out brochures, Respondent placed an adhesive sticker on the brochure, covering the names of the Billings Chamber of Commerce and the City of Billings, but not School District 2. The adhesive sticker read:

**The “Brown out” may be over.
But the energy tips are still good!
BRAD MOLNAR
Your Conservation Candidate For
Public Service Commissioner**

15. Pursuant to the request of NorthWestern Energy for the return of their \$2,000 in contributions, the Respondent sent them a personal check for \$1,000 and returned the second \$1,000 check he had just recently received, but not yet deposited. The second \$1,000 was to be used by Respondent to produce another energy conservation program, this time in other PCS District 2 communities.

Use of State Resources

Improper Use of State E-mail and Telephone Facilities

16. Respondent testified that he drafted and had printed a letter dated July 21, 2008 for use in his re-election campaign. (Fox Exhibit B-1) The “campaign” nature of the letter is

not in dispute. The letter solicited contributions for his campaign, and listed his PSC e-mail address and his PSC telephone number.

17. Additionally, during this same period of time, the Respondent used his state government e-mail address on his 2008 election political website.
18. The Respondent testified that the use of his PSC e-mail address and phone number in these materials was an oversight, and challenges whether the campaign letter was ever used in that form. He asserts that it may have been altered, but offered no proof.

Improper Use of State Cell Phone

19. During his first term on the PSC, the Respondent placed an advertisement in a newspaper soliciting a roommate to share a Helena residential unit that he leased. The Respondent testified his former roommate had moved and he needed someone to share the rent. When the former roommate moved, the phone was disconnected. Faced with no Helena residential phone number for prospective roommates to contact him, Respondent listed in his advertisement the phone number of his state-owned PSC cell phone. He also recorded a voice mail message on that phone for prospective roommates to leave a message.

Improper Use of State Computer Facilities

20. The final complaint alleges that the Respondent used the state computer system, his state-issued laptop computer, and the state e-mail system for his political purposes.
21. During the summer of 2007, Respondent exchanged emails with an individual concerning a speaking engagement for the Respondent with the Great Falls Rotary Club. Great Falls is outside the Respondent's PSC District. In the e-mail exchange, the Respondent and the Great Falls Rotary representative arranged for the Respondent to make a noon Rotary presentation on August 14, 2007. The initial e-mails between the two concerned typical speaking arrangements, including speaking topics, location, and directions. The Respondent made the presentation as scheduled. There was nothing improper or illegal in this initial e-mail exchange.
22. Three days after the presentation, the Respondent e-mailed his Great Falls Rotary contact expressing his belief that the meeting was fun, and that he had received quite a

bit of positive feedback after the presentation. Then the message took on a political tone. Respondent wrote:

As you know, my position is an elected one and I'm up next election cycle. And earned media is free media. Would it be possible for you, or one of the others that seemed to enjoy my talk, to drop an editorial to the papers listed below? Just a simple thing about how lucky they are to have a commissioner that is so darn knowledgeable and willing to travel on his own dime to educate the public....Please?

The three newspapers that the Respondent listed are papers located in his PSC District – the *Billings Gazette*, the *Billings Times* and the *Laurel Outlook*.

23. On May 12, 2008, the Respondent composed a campaign press release on his state-issued computer and sent the press release by using the state e-mail system. The next day, he composed a campaign editorial for a Billings news outlet, again using his state-issued computer, and sent it to the outlet using the state's e-mail system. On that same day, he composed another e-mail on his state-issued computer to the same news outlet regarding a campaign debate with his opponent.
24. During this same time, the Respondent used his state-issued computer and the state e-mail system for e-mail communications to arrange to attend the Miles City Bucking Horse Sale and parade. Once at the Bucking Horse Sale, Respondent, wearing a campaign t-shirt, participated in the parade, along with other Republican candidates.⁵

CONCLUSIONS OF LAW AND APPLICATION OF LAW TO FACTS

I. Respondent's Allegations that the Hearing Examiner is Biased

Respondent accuses the hearing examiner of bias and prejudice. No evidence was introduced regarding this issue at the three day hearing, and no motion was made to disqualify the hearing examiner as provided in § 2-4-611(4), MCA. (*See, e.g.*, Respondent's April 12, 2010 Exceptions, pages 4-5.) These accusations came after the hearing examiner ruled that the Respondent engaged in unethical conduct – the accusations were not based on facts in the

⁵ Respondent asserted at Hearing (Transcript page 101, lines 16 – 23) and again in his Response Brief to Charging Party's Exceptions (page 3, lines 1 – 6) that the subject e-mail communications were for a personal and recreational purpose – “You know, I took my girlfriend because we were going to the dance, and I needed a place to stay. (Transcript page 541, lines 2 – 7.) However, Complainant's Exhibit A-5 (a photo) and related testimony (transcript page 98, lines 8 – 25, page 99, and page 100, lines 1-3) establish the political nature of Respondent's appearance at the event. Other than the Respondent's assertions, no contrary evidence was introduced.

record, not timely made, and not supported by an affidavit of personal bias as required by § 2-4-611(4), MCA.

Respondent's allegations of bias are based on the unsubstantiated contention that the hearing examiner has made political contributions exclusively to Democratic Party candidates. The Respondent repeatedly describes the hearing examiner as a "Democratic operative."

The allegations, if true, could have been determined and documented by the Respondent by reviewing publicly-available information in campaign finance reports. Such information was available to the Respondent long before the hearing in this matter began. (See the discussion of Corbett's political contributions in the following paragraphs.) The Respondent did not move to disqualify the hearing examiner before or during the hearing pursuant to § 2-4-611(4), MCA. The Respondent did not present any evidence substantiating his allegations of prejudice at any stage of this proceeding.

I take administrative notice of the publicly available campaign finance reports documenting the hearing examiner's political contributions to candidates as set forth in Attachment 1 to this final decision. Respondent's unsubstantiated assertion that Corbett has only made political contributions to Democrats is false.

Corbett made political contributions to six candidates before 2001. Publicly available information does not indicate that Corbett has made any political contributions since the year 2000. Four of the six candidates received political contributions from Corbett in 1992, 1994, and 1996. All were Democrats, including U.S. Senate candidate Jack Mudd, a former dean of the University of Montana Law School, with whom Corbett was an associate dean.

Two candidates who received contributions from Corbett in 1996 and 2000, Chief Justice Karla Gray and Justice Charles Erdmann, were not partisan candidates.⁶ However, former Justice Erdmann was appointed to the Supreme Court by Republican Governor Marc Racicot and Erdman's Republican Party affiliations before his appointment to the Court were well documented during his legal and public service career. Similarly, former Chief Justice Gray, who was an attorney and lobbyist for the Montana Power Company before her election as Chief Justice, was never perceived as a Democratic Party partisan during her distinguished service as Chief Justice.

⁶ Montana Supreme Court candidates cannot, by law, run partisan campaigns based on party affiliation. Political parties are prohibited from endorsing and contributing to Supreme Court candidates. (See § 13-35-231, MCA.)

I also take administrative notice of the fact that Corbett's employment history includes a two year stint as legal counsel for United States Senator Cliff Hansen, a Wyoming Republican.

Finally, there is no evidence that the hearing examiner made political contributions to any of the respondent's PSC or legislative opponents. Such contributions by Corbett could have been sufficient grounds to select someone else to serve as hearing examiner in this matter. But respondent has not alleged that Corbett made political contributions to any of his opponents, and there is no indication in Attachment 1 that Corbett ever made such contributions.

Corbett has had a distinguished 39-year legal career, including 34 years as a professor of administrative law, alternative dispute resolution, labor law, and employment discrimination law at the UM Law School. (*See* the summary of Corbett's professional career in Attachment 2 to this final decision.) But it was his demonstrated impartiality and fairness in making proposed decisions in the politically-charged and contentious ethics complaints against Governors Martz and Schweitzer that was the basis for his hiring in this matter. This service best answers the Respondent's unjustified categorization of Corbett as a Democratic Party operative.

Corbett was first selected to serve as a hearing examiner in ethics proceedings by Commissioner Linda Vaughey, who was appointed by Republican Governor Marc Racicot. Corbett presided over an ethics complaint filed against Republican Governor Judy Martz by the Montana Democratic Party. (*See Matter of the Complaint of the Montana Democratic Party Against Governor Judy Martz*, September 25, 2002.) Corbett ruled that Governor Martz, a Republican, did not violate Montana's code of ethics when she and her husband purchased land from ARCO. Commissioner Vaughey concurred in Corbett's Proposed Decision.

In 2006, I was appointed to serve as Commissioner by Democratic Governor Brian Schweitzer. The Montana Republican Party subsequently filed an ethics complaint alleging that Governor Schweitzer had violated the code of ethics by producing and airing radio announcements featuring the Governor, in violation of § 2-2-121(4), MCA. I hired Corbett to serve as hearing examiner in the Schweitzer ethics proceeding. In response to a summary judgment motion filed by Governor Schweitzer, Corbett ruled that the current Democratic Governor had violated § 2-2-121(4), MCA, which prohibits a public officer from using state funds for advertisements and public service announcements featuring the public official after

he or she becomes a candidate. (See *Matter of the Complaint of the Montana Republican Party Against Governor Brian Schweitzer*, April 2008.) I concurred in Corbett’s determination that the Governor had violated the code of ethics and the Governor appealed my decision to District Court. (See *Governor Brian Schweitzer v. Montana Republican Party and Dennis Unsworth*, December 2, 2009 Order, Cause No. BDV-2009-70, First Judicial District, Lewis and Clark County.)

The pending ethics proceeding involving the Respondent is Corbett’s third ethics proceeding. Like Commissioner Vaughey, I hired Corbett to serve as hearing examiner because of his expertise in contested case proceedings. Under the Respondent’s theory of partisan bias, Corbett must have been mistaken when he ruled in favor of a Republican, Governor Martz, and against a Democrat, Governor Schweitzer.

Copies of all documents related to the hiring of Hearing Examiner Corbett are being mailed to the Complainant and Respondent with this Final Decision. These documents consist of an e-mail and the draft contract that was attached to the e-mail. They are sent in reply to an *ex parte* request from Respondent’s attorney dated March 25, 2010 and previously disclosed.⁷ No written rule, regulation or policy was the basis for the selection, other than the procedure described in the noted e-mail – approval of a formal contract by the state’s Legal Services Review Committee.

II. The Respondent’s Vendetta and Concerted Effort Allegations.

The Respondent also accuses the undersigned Commissioner of being part of a “concerted effort to defeat Molnar in the [2008] election for the public service commission” and engaging in a “vendetta” against the Respondent in his post-hearing briefs. (See, e.g., Respondent’s Exceptions, pages 3-4 and 7-9.) These allegations, like the unsubstantiated and untimely bias and prejudice allegations against the hearing examiner, were made for the first time after the Proposed Decision was issued. The allegations against the Commissioner are not based on any evidence in the record.

Respondent’s vendetta and conspiracy allegations against me are premised on speculation and inferences about four events:

- 1) my decision to hire Corbett to serve as hearing examiner in this matter;
- 2) my appointment as Commissioner by a Democratic Governor, Brian Schweitzer;

⁷ The request in that March 5, 2010 letter for “each and every response made by Commissioner Molnar to the initial claims. . .” was the subject of correspondence between all the parties on or about September 9, 2008. All requested disclosures were made at that time, and therefore aren’t being repeated here.

- 3) the “whole concerted effort” to combine eight of the Complainant’s allegations into one proceeding “to magnify the penalty” assessed against the Respondent and allow me to say “it was the largest ethics fine ever”; and
- 4) the Respondent’s perceived unfair treatment by the Commissioner’s office in considering and processing the Complainant’s numerous ethics and campaign finance complaints against the Respondent.

My decision to hire Corbett as hearing examiner has been fully discussed in Part I. Any further discussion will have to occur if the Respondent seeks judicial review of this final decision.

Respondent’s assertion that my appointment as Commissioner by Governor Brian Schweitzer means that I am automatically one of the “operatives of the Democratic political machine. . .” (respondent’s Exceptions, page 7) apparently ignores that I granted partial summary judgment in favor of the Montana Republican Party and against Governor Schweitzer in the *Matter of Schweitzer*, and that I was subsequently sued by the Governor. (*Schweitzer v. Republican Party and Unsworth*.)

I fully understand and support the strict statutory prohibitions against political activity while serving as Commissioner. Pursuant to § 13-37-108, MCA, I cannot participate in political campaigns, make contributions to candidates or political committees, or even attend an event at which political fund-raising is occurring during my term as Commissioner. I have not been involved in any political campaigns during my tenure. I was not involved in any effort to defeat Molnar in 2008 or in any of the campaigns by Respondent’s opponents in his previous political campaigns. Respondent’s allegations that I am involved in a concerted Democratic Party effort to punish the Respondent for winning the 2008 PSC race are untrue, and not supported by even a smidge of evidence in the record.

Respondent’s claim that the hearing examiner and I conspired to combine eight of the Complainant’s allegations into one ethics proceeding to “magnify” the administrative penalty is untrue, pure speculation, and without merit. The prehearing record in this matter establishes that there was discussion of consolidating the Complainant’s four separate ethics complaints into one proceeding as early as December of 2008. Following a May 28, 2009 scheduling conference, the hearing examiner issued an order formally consolidating all four complaints against the respondent into this proceeding. Nothing in the record suggests that the Respondent objected to the hearing examiner’s June 1, 2009 hearing order, which

included formal notice that the four complaints would be consolidated into one proceeding. Not until after the hearing examiner's proposed decision was issued in March of 2010 did the Respondent allege, without substantiation, that consolidation was part of a conspiracy to magnify the civil penalty.

After the Proposed Decision was issued, I responded to a specific question from a news reporter about the \$5750 administrative penalty recommended by the hearing examiner. I researched the administrative penalty recommendations made in previous ethics cases and confirmed that Corbett's recommended administrative penalty was the "largest penalty ever recommended in a state ethics case." While I've been counseled that my comment during such a proceeding may have been inappropriate, it was a fact-based response to a specific question from a reporter. It was not an indication of predisposition to accept the hearing examiner's penalty recommendation, or any other recommendation in the Proposed Decision.

Respondent's vendetta and conspiracy assertions are in part based on what he believes to be unfair treatment he received from my office after the Complainant filed her initial campaign finance and practices complaint. Unfortunately, the Respondent refuses to acknowledge the significant substantive and procedural differences between the investigation and prosecution of campaign finance complaints filed under Title 13, MCA, and the Commissioner's role as the final decision-maker after a contested case hearing held under the Code of Ethics, Title 2, Chapter 2, MCA.

When a valid campaign finance complaint is accepted under Title 13, MCA, the Commissioner's office investigates the complaint allegations and issues a decision indicating whether a civil penalty action is warranted.

- A campaign finance investigation is not a contested case proceeding under the Montana Administrative Procedure Act (MAPA).
- The Complainant and the Respondent do not have the right to conduct discovery.
- After the Commissioner's investigation, a decision is issued in which it is determined whether violations of Montana's campaign finance statutes and rules have occurred.
- If violations are determined to have occurred, either the appropriate county attorney or the Commissioner may initiate a civil penalty action in District Court.

Conversely, a valid Code of Ethics complaint filed under Title 2, Chapter 2, MCA, is not investigated by the Commissioner:

- Instead, the ethics complaint triggers an informal contested case proceeding in which the Complainant is responsible for prosecuting and proving the allegations in the complaint.
- The Commissioner’s role is to make a final decision after the parties have had an opportunity to conduct formal discovery and present evidence in a contested case (adversarial) hearing.
- The Commissioner cannot engage in *ex parte* communications unless all parties are given notice of and an opportunity to participate in discussions involving issues that are the subject of a complaint. (See § 2-4-613, MCA.)
- The Commissioner’s final decision may be appealed to District Court.

Consistent with the distinct and separate procedures just discussed, Respondent was given the opportunity to informally respond to the Complainant’s campaign finance complaints. I take administrative notice that Complainant’s initial campaign finance complaint against the Respondent contained allegations of wrong-doing in regard to the Respondent’s Brown Out fundraising and brochure. It was in response to these campaign finance allegations, not the subsequent Code of Ethics complaint filed under Title 2, MCA, that Brad Molnar was asked to respond and make related records ready for possible inspection pursuant to § 13-37-208, MCA. (See Attachment 3 to this final decision.) Respondent’s hand-delivered reply (Fox Exhibits C-1 to C-7) included only the printing estimate referenced above (Fox Exhibit C-5) and did *not* include receipts or any accounting of expenses incurred for the Brown Out event.

Finding of Fact 9 includes testimony in which Respondent asserts he “spent a lot of time looking up receipts and making copies and mailing them off to somebody.” Respondent then testified that he was “thinking” that the Commissioner “got all of the receipts that I’ve had” and that he mailed copies of all the receipts he had to the Commissioner’s office. On cross-examination by Complainant’s counsel, Respondent admitted that Respondent’s Exhibit K did not include the receipts that would add up to “a little over” \$3,000 of Brown Out expenditures.⁸ Respondent then testified that he didn’t

⁸ Respondent’s Exhibit K includes only three of the six items hand-delivered to the CPP office by Respondent, items marked C-1, C-2 and C-3 in Complainant’s exhibits. The final item in Respondent’s Exhibit K is a copy

have those receipts with him at the hearing. Neither the Respondent nor his legal counsel offered to retrieve the missing receipts documenting Brown Out expenditures or present the copies that Respondent testified had been made (fact 9) for introduction at the hearing. The only hearing exhibits that confirm the Respondent's claimed expenditures for Brown Out events establish that Respondent paid \$1648.46 for 30,000 Brown Out brochures. Respondent offered no documentary evidence, such as cancelled checks, to substantiate any Brown Out expenditures that exceeded the \$1648.46 spent to print the Brown Out brochures.

It seems inconceivable that the Respondent did not understand the legal significance of his failure to introduce original receipts, or copies, documenting his claimed total Brown Out expenditures of a "little over" \$3,000. Such documentation could help answer the allegations of impropriety arising from his acceptance of the NorthWestern and PPL Montana payments – checks made out to the Respondent personally and deposited into his personal checking account. Though Respondent might argue it was implied in his testimony on the final day of hearing, Respondent did not testify that the receipts were no longer available – that they had been provided, and the Commissioner's office had lost or misplaced them. It is equally significant that Respondent did not offer into evidence records, such as additional cancelled checks from his personal checking account or credit card statements, that could have documented his claimed total expenditure of a "little over" \$3,000 on Brown Out materials and events.

Receipts or additional checking account records could have helped eliminate any inference that the Respondent spent the money he received from NorthWestern and PPL Montana on something other than Brown Out materials and events.

The Respondent knows how to win political campaigns. But political campaigns are often won, or lost, based on innuendo and unproven allegations. An ethics proceeding is not a political campaign. Allegations must be substantiated via affidavit or evidence, and the filing of timely motions. The Respondent and his counsel did neither.

III. The Complaints Were Sufficient to Place Respondent on Notice

Throughout this proceeding, the Respondent argued that the originally filed complaints failed to provide him with adequate notice of the charges. The Respondent did not make this

of the front and back of the cancelled \$1000 check with which Respondent reimbursed NorthWestern Energy (see Fact 15) and a single entry from an accounting ledger with a hand-written note that says "Reimburse to NWE." Complainant's Exhibit C includes all six items.

allegation the subject of a motion to dismiss or motion for summary judgment, but the allegation continued.

As the hearing examiner noted in his Proposed Decision, this argument may have been in part caused by the fact that the Complainant has cited and relied on Montana statutes and factual allegations that are outside the originally filed complaints. However, this decision is based exclusively on the allegations related to Title 2, MCA, in the originally-filed complaints. As a matter of fact and law, these complaints were adequate to place the Respondent on notice of the charges against him. This decision does not stray beyond the originally filed charges.

IV. Solicitation and Acceptance of Gifts

The evidence supports the conclusion that the Respondent, as an elected official to the Montana PSC, is a “Public Officer” within the meaning of the Montana Code of Ethics. A “public officer” is defined as “any state officer” (§ 2-2-102(8), MCA) and a “state officer” includes “all elected officers and directors of the executive branch of state government ...” (§ 2-2-102(11), MCA).

As a public officer, the Respondent is prohibited, under proscribed circumstances, from accepting a gift of \$50 or more. (§ 2-2-104 (1)(b); § 2-2-101(3), MCA.) The money the Respondent received from NorthWestern and PPL each exceeded \$50.

Finally, it is concluded that the money the Respondent received from NorthWestern and PPL Montana constituted gifts within the meaning of the Code of Ethics.

V. The Respondent Received Gifts

The word “gift” as used in the Montana Code of Ethics was intended by the Montana Legislature not as a technical or specialized word, but a word of ordinary meaning. *Webster’s 3rd New International Dictionary* defines a gift as “something that is voluntarily transferred from one person to another without compensation.” As the hearing examiner noted, this definition has been adopted and used in previous cases before the Office of the Commissioner of Political Practices. (See *Matter of the Complaint of L. David Frazier Against Barb Charlton and Mark Simonich*, March, 2005, page 7. “(a) gift means something is voluntarily transferred by one to another without compensation or value that is far less than the item, or service received”); and *Matter of Martz*, supra, pages 16-17. “(a) ‘gift’ is something voluntarily transferred by one to another without compensation” or transferred “without ‘full’ or ‘adequate’ value received in exchange.”)

In the instant case, the Respondent solicited money. Money was given. The donors, Northwestern Energy and PPL Montana, were told by the Respondent how he intended to use the money – on the Brown Out program. But the donors were not given anything of value in exchange for the money given. While the purpose for which the money was given may be legitimate, the money given was a “gift,” because nothing was given in return.

While the donors may be able to deduct the amount of the gift on their taxes or, in the case of NorthWestern, it may be included in the expenses for which it is reimbursed, all this is irrelevant. At the time the money was given, it was a gift to Respondent. What the donors would report to others to account for the money given is irrelevant under the Montana Code of Ethics.

However, the Montana Code of Ethics provides that not all gifts in excess of \$50 are unlawful. One exception is that a gift received but unused and returned within 30 days is not considered a gift. This exception does *not* apply here, because Respondent did not return the \$1,000 that NorthWestern Energy originally gave him or the \$1,000 given to him by PPL Montana within 30 days of receipt. (§ 2-2-102(3)(b)(i), MCA.)

Another exception under the Code of Ethics is that gifts of \$50 or more are not unlawful if the gift is “educational material directly related to [recipient’s] official governmental duties” or is “educational activity that. . . does not place or appear to place the recipient under obligation; clearly serves the public good; and is not lavish or extravagant.” (§2-2-102(b)(iii) & (v)(a)(b)(c), MCA.)

The Respondent argues that the \$1,000 checks he received from NorthWestern Energy and PPL Montana were *for Brown Out materials* and that those materials were educational and directly related to his official duties as a PSC Commissioner. Under those circumstances, he argues, the checks are not a “gift” under the Code of Ethics. Next, he argues that if the brochures were not “educational materials” they, or the money spent to print them, qualify under the second exception as a gift *for “educational activity.”*

I disagree. NorthWestern Energy and PPL Montana did not give the Respondent educational materials. They did not give him “educational activity.” They gave him checks – essentially, cash. What Respondent did in turn with the gift – what he used it for – is not relevant within the terms of the statute.

To accept Respondent’s rationale and claim that the Brown Out materials qualify under the exceptions found in §2-2-102(b)(i)(ii)(iii)(iv) and (v), MCA, one must insert the word “for” ahead of each exception – the word is not there. Without it, we have a simple definition: a gift of substantial value is “(a) gift with a value of \$50 or more for an individual.” The exceptions are a gift promptly returned, food or beverages consumed at certain types of events, awards publicly presented, and educational activity (within certain enumerated constraints). Insertion of the word “for” to effectuate the Respondent’s interpretation⁹ of the exceptions to the definition of “gift of substantial value” is contrary to a fundamental rule of statutory construction – a judge may not insert what has been omitted or omit what has been inserted.

VI. The Gifts of Money Were Unlawful

Having concluded that the Respondent received gifts from NorthWestern and PPL Montana, were those gifts prohibited by § 2-2-104, MCA?

The answer depends upon whether the receipt of such gifts “would tend to improperly influence a reasonable person to depart from the faithful and impartial discharge of the person’s public duties.” (§ 2-2-104(1)(b)(i), MCA.) This standard does not ask whether the gifts caused the Respondent to depart from the faithful and impartial discharge of his public duties (subjective standard), but whether the gifts would “tend” to improperly influence a reasonable person in the Respondent’s position (objective standard).

I concur with the hearing examiner – the solicitation and receipt of gifts by the Respondent from NorthWestern, an entity over which he exerts economically-significant regulatory authority, and PPL Montana, an entity that regularly appears before the PSC, would “tend to improperly influence” a regulator.

The Legislature enacted the Code of Ethics to comply with the Montana constitutional directive to provide a code prohibiting conflict between public duty and private interest. (See the Statement of Purpose of the Code of Ethics, §2-2-102, MCA)

The Legislature, in enacting the code, recognized that public office is a “public trust, created by the confidence that the electorate reposes in the integrity of public officers.” If the public’s trust in its officials, particularly officials who wield significant regulatory

⁹ The hearing examiner’s Proposed Decision included the same error discussed here, inserting the word “for”, though that word does not appear in the statute. (Proposed Decision, pages 5, and 13-15.)

authority, wanes, the strength of government and its ability to provide protection, stability and welfare for the governed will also wane.

Public trust will not survive in the context of reasonable mistrust. Here the evidence supports the conclusion that the Respondent's solicitation and receipt of monetary gifts from NorthWestern and PPL Montana would "tend" to improperly influence a reasonable person in the Respondent's position.

I'm compelled to emphasize this illustrative and insightful passage from hearing examiner Corbett's Proposed Decision:

"A regulator who views those regulated as the source of current and future money gifts would be influenced by the transaction. The Latin maxim *quid-pro-quo* – something given for something given – is unmistakable. It is reasonable to conclude that an elected regulator who solicits money from the regulated will look for and find some way to repay the implied obligation. The repayment may not amount to a large gesture. It may be a quick look away, a nod of the head, or the acknowledgment one team player gives another. But the fact that they are in it together will not be forgotten, and in some way, maybe some small way, the gift will be acknowledged. While individual intentions and motivations may remain strong to the contrary, the opportunity of a small deviation or slight hesitation from the faithful and impartial discharge of public duty may result. The deviation or hesitation may be so small that no one in the room will notice, and even the parties may not fully recognize the departure from public duty, but there it will be – the *quid pro quo*."

I conclude that Respondent's receipt of the monetary gifts from NorthWestern and PPL Montana violated § 2-2-104(1)(b)(i), MCA. This conclusion is reinforced by the facts surrounding the solicitation and receipt of these payments.

- The checks from NorthWestern and PPL Montana were made payable to "Brad Molnar" personally, not to a separate fund or account established for the purpose of documenting and tracking Brown Out donations and expenditures.
- Respondent deposited the Brown Out checks in his personal checking account, commingling the payments from NorthWestern and PPL Montana with his personal funds.
- These payments were made to an elected official who sits on a regulatory board with legal authority to take actions that may affect the donors. Respondent solicited

money from NorthWestern Energy during a break in a PSC proceeding in which NorthWestern was appearing.

As the hearing officer aptly noted, the instant case record is not sufficiently complete to support a broad rule, but a fair question is whether there is *ever* a situation when an individual regulator may solicit and receive money from an individual or entity subjected to his regulation without some appearance of wrongdoing.

VII. Use of State Facilities for Political Purposes

The Montana Code of Ethics provides in relevant part that a “public officer. . . may not use public time, facilities, equipment, supplies, personnel, or funds to solicit support for. . . the election of any person to public office.” (§ 2-2-121(3)(a), MCA.) The evidence is clear regarding the following:

- The Respondent produced a re-election campaign letter that listed his state PSC e-mail address and his PSC telephone number.
- He used his state government e-mail address for his 2008 election political website.
- He used the state computer system, his state-issued laptop computer, and the state e-mail system for campaign correspondence with a Billings news outlet.
- He also solicited Great Falls Rotary members to write favorable letters about him to newspapers in his PSC district.¹⁰
- Finally, he conducted correspondence over the state’s e-mail system to attend the Miles City Bucking Horse Sale, an event the record shows he attended for political purposes.

The use of public facilities and equipment to solicit support for his re-election, for campaign contributions, to state his opposition to the election of his opponent, and to arrange accommodation to attend a public event for campaign purposes are prohibited by § 2-2-121(3)(a), MCA.

¹⁰ Respondent asserted in his sworn testimony that this solicitation was for speaking engagements, not political endorsements. In particular, he asserts the statement “free media is earned media” could be construed as such. (Transcript, Page 590, Lines 6 – 23.) I find the e-mail quoted in Finding 22 on page 11 of this final decision speaks for itself, and the meaning is clear – after noting that his position is “an elected one and I’m up next cycle,” Molnar makes an unsolicited, unambiguous request for a favorable editorial stating “(h)ow lucky they are to have a commissioner ... so darn knowledgeable and willing to travel on his own dime to educate the public...Please?” He asks that said endorsement be sent, not to newspapers in the area of the speaking engagement or statewide, but to those in his home PSC district. (Fox Exhibit A-1.)

Regarding the campaign letter and his official campaign website, the Respondent testified that when he discovered the problem, he took corrective action. He also argues that when such minor violations are the subject of a complaint, the violation is normally addressed informally by the Office of the Commissioner of Political Practices.

As the hearing examiner noted, there is nothing minor about the violations. A re-election campaign document and website that directs citizens to contact the candidate at their official state office is exactly what the Code of Ethics was designed to prohibit.

The hearing examiner concluded correctly that there was no evidence in the record that the Respondent attempted to dispose of the campaign-related complaints informally. However, I take administrative notice that records in the Commissioner's office (Attachment 4) show that the Respondent was contacted informally four times by the Commissioner's staff regarding his political campaign. One contact, a call logged on October 1, 2008 included a caution about using a state e-mail address for campaign purposes (in reference to the letter in Fox Exhibit B-1).

Informal notification by the Commissioner's office of informal public inquiries or informal complaints is standard office practice. (See testimony of Mary Baker; Transcript, Page 601, Lines 10 to Page 604, Line 9.) The informal process does not, however, replace or supersede the process provided for in Title 13, MCA, when a formal campaign finance complaint is filed. The informal campaign complaint process also does not replace, supersede, address, or resolve formal Code of Ethics complaint allegations under Title 2, Chapter 2, MCA. (See pages 17-18 of this final decision.) As part of the informal process, candidates are typically cautioned that a formal complaint may be filed, and that if a formal complaint is accepted, a finding of violation can result in a penalty.

The Respondent alleges that the campaign letter (Fox Exhibit B-1) has, in some way, been altered, by the Complainant. Absent the Respondent's vague testimony that he thought the document has been altered,¹¹ there is no evidence of an alteration, or that the Complainant had any complicity in any alteration. The name in the salutation is simply omitted. The alleged alteration has nothing to do with the unlawful conduct. Even if an alteration occurred to the body of the campaign letter, the letter listed the Respondent's official PSC office telephone number and his PSC e-mail address. It is this use of his official telephone

¹¹ Transcript, page 111, Line 14 to Page 113, Lines 9.

and e-mail address in a campaign document that is the subject of this proceeding, not the text of the document.

Finally, the Respondent cites a PSC rule and another state rule, 2.13.102, ARM, that he asserts allows state officers and employees an occasional use of the state's telecommunication system. While this may be true, the rule referenced does not permit state officials to use state equipment or resources *for political purposes*. Indeed, if the cited rule permitted such a use, it would be invalid because it would be inconsistent with the Code of Ethics and § 13-35-226(4), MCA.

The State Legislature makes it quite clear in the Code of Ethics that state resources are not to be used for political or personal business purposes. The unlawful use of state resources for political and personal business purposes is within the jurisdiction of the Commissioner of Political Practices (§ 2-2-136, MCA) and within the limited scope of this inquiry.

VIII. Improper Use of State Cell Phone for Private Business Purposes

A public officer is prohibited from using “public time, facilities, equipment, supplies, personnel, or funds for the officer’s . . . private business purpose.” (§ 2-2-121(2)(a), MCA.)

However, the Respondent's very limited use of a state-owned cell phone to assist in finding a Helena roommate does not violate the Code of Ethics prohibition of using state resources for a “private business purpose.” (§ 2-2-121(2)(a), MCA.)

The Respondent turned to the state cell phone only when he discovered that his private Helena phone had been disconnected. His use of the state phone was limited to this one instance, and unlike the other uses, it was not for electoral purpose. The use was to assist him in maintaining Helena housing so that he could continue to perform his duties as Laurel, Montana, based representative on the PSC. While his use of the state phone had an economic component, to save him rent money by having a roommate, this savings does not constitute a “business purpose” under the Code of Ethics. Indeed, this one-time limited use is best classified as occasional personal use, and is not within the prohibitions of the Code of Ethics.

IX. The Complainant has Standing

The Respondent's motion to dismiss the complaints based on Complainant's lack of standing is again dismissed. The Complainant is a Montana resident and resides in PSC District 2, the district that the Respondent represents. She actively participates in political activities, and is keenly interested in the ethical conduct of Montana public officials, particularly those who represent her. In 2008, she was actively associated with the campaign of the Respondent's opponent for the District 2 PSC seat. The Complainant has sufficient interest in the ethical conduct of elected officials that represent the geographical region in which she resides.

Respondent's standing arguments are based on *Fleenor v. Darby School District* (2006 MT 31, 331 Mont. 124, 128 P. 3d 1048.) As stated in Justice Nelson's concurring opinion in *Cut Bank Public Schools v. Cut Bank Pioneer Press* (2007 MT 115, page 40, 337 Mont. 229, 160 P. 3d) the *Fleenor* standing decision has been "misunderstood and over-read." The "standing problem" in *Fleenor* was, in reality, a "pleading problem" according to Justice Nelson. *Fleenor*'s "complaint and amended complaint were so poorly drafted that she failed to allege any personal injury or stake in the litigation" according to Justice Nelson. (*Id.*, page 42.) Justice Nelson noted that "the threshold for standing is not high, but it does – and must – exist" and the decision in *Fleenor* "was very careful to say that and only that." (*Id.*, citing *Fleenor*, pages 11-12.)

Complainant's interest conforms to the interest the Legislature recognized in allowing an individual to file Code of Ethics complaints. Code of Ethics complaints against elected public officials often arise in the context of an electoral campaign or an anticipated campaign. This fact alone does not create a standing problem and, in fact, buttresses the Complainant's standing in this matter. As a resident of the PSC district represented by the Respondent and a campaign worker for the Respondent's opponent in the 2008 election, the Complainant stated a sufficient personal stake and injury to have standing to file the ethics complaint decided in this decision.

Respondent's challenge to Complainant's standing is related to two other assertions:

- 1) that Complainant filed her ethics complaints against Respondent to gain political advantage for the Respondent's 2008 opponent, political motives that "should cast serious doubt on their veracity;" and

- 2) the Commissioner and the hearing examiner must “give deference to the decision of the court of public opinion” because the Respondent won his 2008 bid for re-election.” (See, e.g., Respondent’s Exceptions, pages 3, 5-6, and 19; and Respondent’s Response Brief to Charging Party’s Exceptions, page 7.)

Both arguments are without merit.

Respondent cites *Matter of Complaint Against Dave Galt, Director, Montana Department of Transportation*, July 2004 for the proposition that ethics complaints filed by campaign managers or workers must be given little credence because such complaints are filed for political reasons and have little merit. *Matter of Dave Galt* is not controlling in this matter. Unlike the complaint in *Matter of Dave Galt*, Complainant’s allegations in the instant case had merit and did not misstate applicable law under the Code of Ethics. Most of Complainant’s allegations were substantiated in an evidentiary hearing in which both parties were represented by legal counsel. Even though Complainant’s ethics complaints were filed, in part, for political purposes, the Complainant met her burden and standard of proof in this matter.

Respondent’s corresponding suggestion that winning the 2008 election precludes the Commissioner or the hearing examiner from ruling on the serious ethics violations alleged by the Complainant is a fascinating but totally meritless contention. Ethical standards are, according to the Respondent, trumped by an election win, no matter how egregious and unlawful a public officer’s conduct might be. Thankfully, it is not the controlling law in Montana, or the United States.

X. The Respondent’s Motion to Disqualify Claimant’s Counsel

The Respondent’s motion to disqualify opposing counsel is dismissed as well. The Respondent’s conspiracy theory and the potential role of opposing counsel is not relevant or material¹² to the charged Code of Ethics violations.

¹² In the hearing examiner’s Proposed Decision, this phrase read “(i)s *not irrelevant or material* to the charged Code of Ethics violations.” The typographical error and resulting ambiguity were the subject of comments in both the Complainant’s exceptions and the Respondent’s response to exceptions. It is corrected here, consistent with dismissal of the Respondent’s motion to disqualify opposing counsel.

RELIEF SOUGHT

Because Respondent's conduct violated the Montana Code of Ethics, Complainant's requested relief and possible sanctions against the Respondent under § 2-2-136(2), MCA, must be determined.

XI. The "Per Violation" Issue

The Code of Ethics provides that "if the commissioner determines that a violation. . . occurred. . . an administrative penalty of not less than \$50 or more than \$1,000," and "costs of the proceeding" may be imposed. (§ 2-2-136 (2), MCA.) I have carefully considered the parties' arguments regarding the "per violation" issue in their supplemental briefs and make the following administrative penalty determinations.

The Respondent's misconduct is not isolated or insignificant. Of particular concern is his solicitation and receipt of substantial monetary gifts from NorthWestern Energy and PPL Montana. The hearing examiner recommended that the Respondent pay two separate administrative fines of \$1,000 each for the original gifts the Respondent received from NorthWestern Energy and PPL Montana. While the number of such gifts and the donors of the gifts exceed two, the originally filed complaint referenced only two such gifts and this proceeding did not venture beyond the originally filed complaint.

Regarding violations of the Code of Ethics for using state resources in his re-election campaign, the hearing examiner recommended that the Respondent pay an administrative fine of \$750 for each of five separate violations:

- 1) the campaign letter;
- 2) the political website;
- 3) the Great Falls Rotary solicitation for a campaign letter;
- 4) the e-mails to the Billings general circulation newspaper (the three e-mails were combined and treated as one violation by the hearing examiner); and
- 5) the Bucking Horse Sale campaign arrangements.

I concur in the hearing examiner's determination of the number of Ethics Code violations committed by the Respondent and the amount of the administrative penalty that should be assessed for each violation. The Respondent's solicitation of gifts from NorthWestern and

PPL Montana are the most egregious and warrant imposition of a maximum administrative penalty of \$1,000 for each violation (\$2,000 total). I also concur in the hearing examiner's determination that the Respondent's improper use of state resources in his 2008 re-election campaign justifies a \$750 administrative penalty for each of the five violations (\$3,750 total).

My assessment of an administrative penalty against the Respondent recognizes that each ethical violation he committed, as proven and determined in this proceeding, involves separate acts of misconduct. Just as someone who violates a criminal law (e.g., driving while intoxicated) or a civil penalty statute (e.g., committing insurance or investment fraud) can be prosecuted and punished for each separate offense, a public officer or public employee who violates the Code of Ethics can be punished via imposition of an administrative penalty of not less than \$50 or more than \$1,000 for each separate act of unethical conduct.

Complainant persuasively argues in Part IV of her supplemental brief that interpreting § 2-2-136(2), MCA, to allow public officials to continuously and repeatedly violate the Code of Ethics and pay only a "minimal single penalty for so doing" would discourage Montana citizens from filing ethics complaints "for the chance that the public officer may be fined only \$50 to \$1,000 regardless of the number of offenses committed." (Id., page 9.)

I note that the Respondent's political party supports this interpretation of the administrative penalty provision in § 2-2-136(2), MCA. The Montana Republican Party has asserted in *Matter of Schweitzer* that the Commissioner may assess an administrative penalty for each separate recording and airing of the radio announcements at issue in the Governor's pending ethics proceeding. (The penalty phase of the Governor's pending ethics proceeding has not yet been held, and no final decision has been made regarding the number of violations or the appropriate administrative penalty to be assessed in *Matter of Schweitzer*.)

Based on the number and severity of the violations, and Respondent's refusal to acknowledge any wrongdoing – let alone poor judgment – it is ordered that the Respondent, Public Service Commissioner Brad Molnar, pay a total administrative penalty of \$5,750 pursuant to § 2-2-136(2), MCA.

XII. Imposition of Costs

Respondent is also liable for a portion of the costs of this proceeding. Pursuant to § 2-2-136(2), MCA, and the recommendation of the hearing examiner, I have determined that the amount paid by this office to the hearing examiner and the court reporter for services

rendered in conducting the informal contested case proceeding in this matter is assessed against Respondent as partial reimbursement for the State of Montana's costs.

Corbett was paid a total of \$12,325 as hearing examiner in this matter. The court reporter was paid a total of \$2,620 to attend and provide a verbatim transcript of the three-day hearing. (The billing statements and schedule of payments made to Corbett and the court reporter are in Attachment 5 to this final decision.) Respondent is hereby ordered to pay the State of Montana a total of \$14,945 as partial reimbursement of the costs in this matter. This assessment is based on:

- 1) the number of violations committed by the respondent,
- 2) the factual and legal clarity of the violations,
- 3) Respondent's refusal to acknowledge any wrongdoing,
- 4) his evasiveness,
- 5) his attacks on the complainant,
- 6) his belated and unsubstantiated attacks on the hearing examiner,
- 7) his role in unnecessarily delaying the completion of this proceeding, and
- 8) the substantial total expenses incurred by the State of Montana in conducting this ethics proceeding.

This assessment of costs does not include substantial additional public funds expended by my office to conduct this ethics proceeding and issue a final decision.

XIII. Complainant's Request for Attorney Fees and Costs

Complainant's request for attorney fees and her costs incurred in this matter is denied for the following reasons.

The Code of Ethics does not presently provide for the award of such fees and costs to the prevailing party. Montana follows the American rule, which states that a party in a civil action is generally not entitled to attorney fees absent a specific contractual or statutory provision. (*Montanans for the Responsible Use of the School Trust v. State of Montana (Montrust)*, 1999 MT 263, page 61, 296 Mont. 402, 989 P. 2d 800; and *Matter of Dearborn Drainage Area (Matter of Dearborn)*, 240 Mont. 39, 42, 782 P 2d 898, 899 (1989).)

From 1995 until 2001, the Code of Ethics did allow attorney fees and costs to be awarded to the prevailing party. The 1995 legislation authorized a district court but not the Commissioner to award "costs and attorney fees to the prevailing party" if the Commissioner's initial ethics decision and the subsequent decision of the now defunct

Ethics Commission ¹³ was appealed. (See § 16, subsection 4, Chapter 562, 1995 L. of Montana and § 2-2-137, MCA 1995.) The attorney fees provision, which was included in the statutes specifying the make-up and powers of the Commission, was subsequently repealed by the 2001 amendments to the Code of Ethics. (See Senate Bill 205, 2001 Montana Legislature, and Section 6, Chapter 122, L. 2001.)

Complainant next asserts she is entitled to the award of her attorney fees and costs based on the “private attorney general doctrine” recognized in *Montrust, supra*. The private attorney general doctrine is an “equitable exception” to the American rule. As Commissioner, whose powers are proscribed and limited by the Legislature, I do not have legal authority to grant equitable relief awarding attorney fees under the Montana Code of Ethics.

The Complainant’s request for attorney fees and costs must also be denied because none of the complaints she filed in this matter included a request for an award of attorney fees and costs. Like the Respondent’s belated accusations of bias, the Complainant’s request for attorney fees and costs was not timely filed.

ORDER

An ORDER is issued in conformity with this final decision.

DATED this 13th day of September 2010.



Commissioner of Political Practices

Notice: This is a final decision in a contested case. The parties have the right to seek judicial review of this decision pursuant to the provisions of Montana Code Annotated §§ 2-4-701 through 2-4-711.

Copies: Ken Peterson, Counsel for Brad Molnar
Joel Guthals, Counsel for Mary Jo Fox
William Corbett, Hearing Examiner

¹³ The 1995 legislation created a five-member Ethics Commission to review ethics decisions by the Commissioner. No one was ever appointed to serve on the Commission, arguably because restrictions placed on its members. Commission members could not be a public official, a candidate, a lobbyist or a lobbyist’s principal, or the immediate family member of a public official, a candidate, or a lobbyist or a lobbyist’s principal. (See § 17, subsection 2, Chapter 562, L. 1995.) The 2001 Legislature, at the request of then Commissioner Linda Vaughney, repealed the statutes creating and enumerating the powers of the Commission. The attorney fees provision in § 2-2-137, MCA 1995, was also repealed. (See SB 205, 2001 Montana Legislature.)

MISSOULA, Montana (MT) Political Contributions by Individuals

Important note: This list is based on the data made publicly available by the Federal Election Commission. City-Data.com has made no additional attempt to verify the accuracy or validity of the names on this list and it cannot individually remove or update any of the information. Please direct any inquiries or corrections to the FEC. City-Data.com will periodically update this list based on the data made available by the FEC. Note that it is possible for multiple persons to share the same name. Unintentional errors are possible.

WILLIAM L CORBETT (UNIVERSITY OF MONTANA), (Zip code: 59802) \$1000 to JACK MUDD FOR U S SENATE on 02/28/94

WILLIAM L CORBETT (UNIVERSITY OF MONTANA), (Zip code: 59802) \$1000 to JACK MUDD FOR U S SENATE on 09/28/94

WILLIAM L CORBETT (UNIVERSITY OF MONTANA), (Zip code: 59802) \$700 to SCHUSTER FOR CONGRESS on 06/27/94

WILLIAM L CORBETT (UNIVERSITY OF MONTANA), (Zip code: 59802) \$750 to SCHUSTER FOR CONGRESS on 09/29/94

Read more: <http://www.city-data.com/elec2/94/elec-MISSOULA-MT-94.html#ixzz0nHrO8ye7>

Attachment 1

Page 2

CORBETT, WILLIAM | Follow The Money - Windows Internet Explorer

http://www.followthemoney.org/database/StateGlance/contributor.phtml?d=1773522431

File Edit View Favorites Tools Help

Google Search Share Sidewiki Check AutoFill Sign In

Favorites Suggested Sites Free Hotmail Web Slice Gallery

CORBETT, WILLIAM | Follow The Money

Montana 1996

- Overview
- Candidates
- Contributors
- Ballot Measures
- Party Committees
- General Election Results
- Data Sources

Time Machine

Take a trip through our data! Select a different year and see how giving compares across cycles. Or, select another state altogether.

Montana 2010

ARONOFSKY, DAVID J
MISSOULA, MT
\$150

ASHABRANER, BURNS R

STATE contributions in Montana 1996 (including identified employees): **\$39,585**

Related Reports

Policy Lock-Down: Prison Interests Court Political Players
Companies involved in building, financing and operating private prisons gave \$3.3 million over two election cycles, channeling nearly two-thirds of the money to candidates and party committees in states with some of the toughest sentencing laws. This report looks at overall giving, as well as contributions by the companies and their lobbyists in 10 states: Arizona, California, Colorado, Florida, Indiana, Mississippi, Oklahoma, Pennsylvania, Tennessee and Texas.

Home > Montana 1996 > Contributors > CORBETT, WILLIAM

Overview | Candidates | Contributors | Ballot Measures | Party Committees | General Election Results | Data Sources

Contributor Summary

CORBETT, WILLIAM

Total Given to Date: **\$400 (2 records)**

Contributor Type: **Individual**

Address: **MISSOULA, MT**

Employer: **STATE**
Employers Listed: **U OF M**

Occupations Listed: **TEACHER**



Government Agencies/ Education/ Other Schools & colleges

Contributions to Candidates

Results: 1-2 of 2

TABLE 2: Contributions to Candidates

Candidate	Office	Election Status	Party	Records	Total	
ERDMANN, CHARLES E	SUPREME COURT	Lost - General Election	NONPARTISAN	1	\$200	See Records
MAZUREK, JOSEPH P	ATTORNEY GENERAL	Won	DEMOCRAT	1	\$200	See Records

[return to top](#)

Error on page.

Internet

100%

start

Inbox - Mi...

Oracle Ap...

Oracle De...

CORBETT,...

Document...

Internet

3:27 PM

CORBETT, WILLIAM L | Follow The Money - Windows Internet Explorer

http://www.followthemoney.org/database/StateGlance/contributor_phtml?id=1764658838

File Edit View Favorites Tools Help

Google ation on Money in State Politics Skip to Search Share Sidewiki Check AutoFill Sign In

Home Explore Research & Reports About Our Data Newsroom Services About Us

STATE POLITICS the money

We've made it comprehensive and easy! Follow the money now.

Support Our Work | Contact | Help | Privacy Policy | Site Map

Home > Montana 1992 > Contributors > CORBETT, WILLIAM L

Overview | Candidates | Contributors | Ballot Measures | Party Committees | General Election Results | Data Sources

Contributor Summary

CORBETT, WILLIAM L

Total Given to Date: **\$100 (1 records)**

Contributor Type: **Individual**

Address: **MISSOULA, MT**

Occupations Listed: **PROFESSOR**

Government Agencies/Education/Other
Education
Schools & colleges

return to top

Montana 1992
Overview
Candidates
Contributors
Ballot Measures
Party Committees
General Election Results
Data Sources

Time Machine
Take a trip through our data! Select a different year and see how giving compares across cycles. Or, select another state altogether.

Montana 2010
Campaign Finance Widget

Error on page. Internet 100%

start Inbox - Mi... Oracle Ap... Oracle De... CORBETT,... Document... 3:27 PM

overall giving, as well as contributions by the companies and their lobbyists in 10 states: Arizona, California, Colorado, Florida, Indiana, Mississippi, Oklahoma, Pennsylvania, Tennessee and Texas.

See a Problem?
Let us know.

Industry Influence
See how this giving from this industry compares to previous election cycles. Click here.

Other Resources

Contributions to Candidates

Results: 1-1 of 1

FILTER JUMP

TABLE 2: Contributions to Candidates

Candidate	Office	Election Status	Party	Records	Total
MAZUREK, JOSEPH P	ATTORNEY GENERAL	Won	DEMOCRAT	1	\$100 See Records

return to top

Error on page. Internet 100%

start Inbox - Mi... Oracle Ap... Oracle De... CORBETT,... Document... 3:28 PM

Attachment 1
Page 4

Report Date:09/13/10									
Election Year 2000									
Contributor/Candidate	Office	Party	Candidate Type	Nominated	Elected	Primary In-Kind	General In-Kind	Primary Cash	General Cash
Copps, Shannon									
Bullock, Stephen	Attorney General	Democrat	Statewide	N	N	\$0.00	\$0.00	\$50.00	\$0.00
Total Contributions:						\$0.00	\$0.00	\$50.00	\$0.00
Corbett, Bob									
Dawson, Patrick	Public Service Commission District N	Democrat	State District	Y	N	\$0.00	\$0.00	\$0.00	\$100.00
Total Contributions:						\$0.00	\$0.00	\$0.00	\$100.00
Corbett, Connie									
Courtney, James	County Commissioner	Republican	County	Y	Y	\$0.00	\$326.30	\$0.00	\$0.00
Total Contributions:						\$0.00	\$326.30	\$0.00	\$0.00
Corbett, Margaret									
MoGrath, Mike	Attorney General	Democrat	Statewide	Y	Y	\$0.00	\$0.00	\$0.00	\$25.00
Total Contributions:						\$0.00	\$0.00	\$0.00	\$25.00
Corbett, Mary									
Gray, Karla	Supreme Court Chief Justice	Non-Partisan	Statewide	Y	Y	\$0.00	\$0.00	\$250.00	\$50.00
Total Contributions:						\$0.00	\$0.00	\$250.00	\$50.00
Corbette, William									
Gray, Karla	Supreme Court Chief Justice	Non-Partisan	Statewide	Y	Y	\$0.00	\$0.00	\$250.00	\$50.00
Total Contributions:						\$0.00	\$0.00	\$250.00	\$50.00
Corbitt, Pat									
Courtney, James	County Commissioner	Republican	County	Y	Y	\$0.00	\$100.00	\$0.00	\$0.00
Total Contributions:						\$0.00	\$100.00	\$0.00	\$0.00
Corboy, Philip									
Trieweller, Terry	Supreme Court Chief Justice	Non-Partisan	Statewide	Y	N	\$0.00	\$0.00	\$200.00	\$0.00
Total Contributions:						\$0.00	\$0.00	\$200.00	\$0.00

Attachment 2

William L. Corbett

Professor, University of Montana
Missoula, Montana

William L. Corbett is a Law Professor, Attorney and Arbitrator. Professor Corbett brings a wealth of practice experience, having been an arbitrator and trial attorney with the National Labor Relations Board in Washington, D.C.

Corbett represented the National Labor Relations Board before the U.S. Courts of Appeals and U.S. District Courts from 1971-74 and served as Legal Counsel to the United State Senate from 1974-76.

A native of Wyoming, Corbett obtained his J.D. degree from the University of Wyoming School of Law and his LL.M. from Harvard University School of Law. He joined the University of Montana School of Law in 1976 and currently teaches Alternative Dispute Resolution, Administrative Law, Labor Law, and Employment Discrimination. He is the author of numerous articles on arbitration, including an article regarding the rules of evidence in the arbitration hearing. Corbett is a member of the National Academy of Arbitrators and various permanent arbitration panels. Professor Corbett is the author of *Dispute Resolution Handbook, State Bar of Montana and Non-Jury Trial Handbook: Bench Trials, Administrative Hearings and Arbitrations (forthcoming)*.

COMMISSIONER OF
POLITICAL PRACTICES



STATE OF MONTANA

DENNIS UNSWORTH
COMMISSIONER
TELEPHONE (406) 444-2942
FAX (406) 444-1643

1205 EIGHTH AVENUE
PO BOX 202401
HELENA, MONTANA 59620-2401
www.politicalpractices.mt.gov

May 20, 2008

CERTIFIED MAIL
Return Receipt Requested

Brad Molnar
440 Cloverview
Helena MT 59601

Subject: Complaint received May 15, 2008; Mary Jo Fox

The enclosed complaint alleges that you violated campaign finance and practices laws and regulations. The complaint appears to conform to the requirements of ARM 44.10.307(2).

Your written response to the complaint by June 13, 2008 will assist me in making a determination whether the complaint is sufficient under ARM 44.10.307(3) to proceed with an investigation. If the complaint is dismissed based on one or more of the deficiencies described in that rule, you will be notified, and the basis for the dismissal will be explained.

If an investigation is conducted, it will be necessary to review all relevant documents and to interview individuals with knowledge of the campaign activities described in the complaint. To facilitate my investigation, please collect and prepare for possible review all documents, including computer communications and other documents in your possession or the possession of any of your agents, representatives, attorneys, or assigns concerning the campaign at issue in the complaint. Please notify me by June 25, 2008 that these documents have been collected and are ready for inspection. § 13-37-208, MCA requires that the treasurer for each candidate and political committee preserve campaign account documents for a minimum period of four years.

As Commissioner, I am authorized to inspect records, accounts and books held by a candidate or political committee, administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, bank account statements, or any other records that are relevant or material for the purpose of conducting an investigation (§ 13-37-111, MCA).

Your preservation and production of all such documents is essential. (See enclosure.)

If an investigation is conducted, upon its completion a summary of facts and statement of findings will be prepared and a copy will be sent to you.

A handwritten signature in black ink, appearing to read "Dennis Unsworth".

Dennis Unsworth
Commissioner

Enclosures -2

Attachment 3

CANDIDATE: Bradley Molnar OFFICE: PSC - Yellowstone
 TREASURER: Peggy Bergdahl TELEPHONE: (H) 252 5537 (W) _____
 CIRCLE ONE: Contested Uncontested NOMINATED? (circle one) YES NO ELECTED? (circle one) YES NO

Reporting Period	PRIMARY CASH		GENERAL CASH		IN-KIND		PRIMARY EXPEND.		GENERAL EXPEND.		CASH BALANCE	
	This Report	Total-To-Date	This Report	Total-To-Date	Primary	General	This Report	Total-To-Date	This Report	Total-To-Date	Primary	General
8/5 - 3/2/08	-	-	5905	5905	-	1500	-	-	1209 ³¹	1209 ³¹	-	41695 ³¹
3/22 - 4/22/08	-	-	0	5905	-	-	-	-	0	1209 ³¹	-	41695 ³¹
4/1 - 9/23/08	-	-	13485	21390	-	-	-	-	15,716 ⁵⁸	116,925 ⁷⁶	-	41165 ²⁴
Closing 10/1/08	-	-	1105 ²³	22,995 ²²	-	-	-	-	1069 ⁴⁶	22,990 ²²	0	0

NOTES: (Document all contact with candidate and/or treasurer)

10/1/08 - Spoke to Brad - Wanted to know about how he filed. Advised that he can name his campaign whatever he wants + address must be included. *MB*
 C = closing. Cautioned about use of state email.

Blank

Page 1 of 2

Baker, Mary

From: Baker, Mary
Sent: Thursday, May 15, 2008 8:46 AM
To: Molnar, Brad
Cc: Unsworth, Dennis
Subject: RE: Court documents and disclaimers

I must have misunderstood. I thought you were looking for federal court documents. In any case, our file is not complete and the source for those documents is the court, not CPP.

In regard to the brochures we were told that the brochure lacked a disclaimer, as you know that may be the subject of a formal complaint. If it is, you'll be informed and offered an opportunity to respond. In addition, the law requires that we be informed if campaign materials are distributed without a disclaimer. See 13-35-225(5), MCA. That is the reason I mentioned it. We do our best to try and keep all candidates in compliance and it is our common practice to inform candidates when we are notified of an article that appears to be out of compliance.

Have a great weekend and we'll be in touch soon.

Mary Baker
Program Supervisor
Commissioner of Political Practices
(406) 444-7416

From: Molnar, Brad
Sent: Wednesday, May 14, 2008 3:13 PM
To: Baker, Mary
Subject: FW: Court documents and disclaimers

From: Molnar, Brad
Sent: Wednesday, May 14, 2008 2:45 PM
To: Baker, Mary
Subject: RE: Court documents and disclaimers

Mary,

The Doty v Molnar started at your offices and ended in the Mt. Supreme Court. It never went to Federal court.

The brochure in question was printed five months before I filed for office and seven months before it became a question. It was never intended to be a campaign piece. Still not sure that it was as it referenced a past event and does not ask anyone to vote for me or indicate endorsements. Nor were any handed to individuals. Actually none of the entities listed, to the best of my knowledge, endorses anyone. Nor have they ever. This is accurately portrayed in the article.

What the newspaper article did not mention was that when the reporter called and we talked he asked how many brochures I had left. I answered, "Nine." He asked if I intended to distribute them and I said, "No." Not counting those there are seven other

5/15/2008

Blank

Page 2 of 2

inaccuracies or misleading statements in the article. One of the most important, to you, is that the Mary Jo Fox mentioned in the article is actually the fund raiser for PSC candidate Ron Tussing. This thing is a very elaborate political stunt that seeks to involve your office.

Anyway, I have no more brochures to distribute (Having them reprinted would have been stupid and not contemplated by the law). And I paid for them with my own money. Are we done now or should I prepare a full statement of response?

Brad Molnar

From: Baker, Mary
Sent: Wednesday, May 14, 2008 1:31 PM
To: Molnar, Brad
Cc: Unsworth, Dennis
Subject: Court documents and disclaimers

Hi Brad,

I did some research regarding your question on the Doty v. Molnar federal court documents. Our records may not be complete. We advise that you or your attorney obtain copies of federal court documents from the federal courts.

Also, we have gotten copies of a brochure and it appears that it isn't in compliance with 13-35-225, MCA.

13-35-225, MCA requires that all campaign materials include the name and complete address of the candidate or the candidate's campaign. If the candidate's election is partisan, the communication must state the candidate's party affiliation or include the party symbol. No dissemination should be made of material that is out of compliance. Once the communication is corrected please submit a copy to our office for your file.

Let me know if you have any questions

Thanks

Mary Baker
Program Supervisor
Commissioner of Political Practices
(406) 444-7416

5/15/2008



COMMISSIONER OF
POLITICAL PRACTICES

STATE OF MONTANA

DENNIS UNSWORTH
COMMISSIONER
TELEPHONE (406) 444-2942
FAX (406) 444-1643

1205 EIGHTH AVENUE
P.O. BOX 202401
HELENA, MT 59620-2401

TO: Candidate for State District Office

FROM: Kym Trujillo
Data Tech.

DATE: February 15, 2008

Your Statement of Candidate (form C-1) was recently received and is in good order. If any changes occur at any time respecting the information provided on the statement, please file an amended form C-1 with this office *and with your county election administrator*.

On receiving your form C-1, we provided additional reporting materials to your campaign treasurer. A copy of our letter is attached.

The following additional materials are not enclosed due to budget constraints, however, the materials are available and can be downloaded from our website at www.politicalpractices.mt.gov. If Internet services are not available to you, the materials can be mailed to you upon request.

- Campaign Finance and Practices laws and rules
- Ethics laws and rules
- Candidate accounting and reporting manual
- 2008 calendar of reporting dates
- Information on required disclaimers

Anytime you have questions or concerns, please let us know.

Fox v. Molnar CPP Expenses		
Invoice Date	Amount Paid	Description
6/14/2010	\$3,026.27	Post hearing briefs, preparation of proposed decision & order, ex parte (paying only amount remaining on contract - see e-mail)
11/23/2009	\$4,973.73	Pre-hearing, hearing, and travel expenses
11/24/2009	\$2,620	Cheryl Romsa - court reporting
Total FY10 Expenses:	\$10,620.00	
6/25/2009	\$4,325	Execute contract, scheduling conferences, ex parte communications
Total FY09 Expenses:	\$4,325	
Total Cost:	\$14,945.00	

William L. Corbett
Attorney, Mediator, Arbitrator, Hearings Officer
6614 Siesta Dr.
Missoula, MT 59802

CC

STATEMENT

June 14, 2010

Re: *Fox v. Molnar*

[This bill is anticipated to be my final statement on this matter, and covers the period after the administrative hearing and includes the following activities: study of post-hearing briefs, further research & study, preparation of my proposed decision & order, and recent contacts with the Commissioner and party counsel concerning potential ex-parte matters with the tribunal since my proposed decision & order. I am billing all my time at the agreed rate of \$100 per hour. I am declaring all my time, but acknowledge my conversations with the Commissioner regarding the limited amount of money that remains available for this case. Thus, while I state my full hours, I expect that there will be some compromise and adjustment of the total dollar amount set forth in this statement.]

Total hours in study of post-hearing briefs, research & further study, drafting the final proposed decision & order, and its distribution: 40 hours.

Discussion with Commissioner & Letter to both counsels regarding potential ex-parte communications: 2 hours.

Total hours: 42 @ \$100 per hour

Total amount billed: \$4,200

3020.27

Baker, Mary

From: Unsworth, Dennis
Sent: Tuesday, June 22, 2010 1:13 PM
To: Baker, Mary
Subject: RE: Corbett
Attachments: RE: Fox v. Molnar

Yes I did. Sorry. Read that in Portland on Friday and forgot to forward to you. He said "of course." (attached) So we'll just pay him the balance in the contract.

From: Baker, Mary
Sent: Tuesday, June 22, 2010 1:00 PM
To: Unsworth, Dennis
Subject: Corbett

Did you hear anything back from Corbett?

Mary Baker
Program Supervisor
Commissioner of Political Practices
406-444-7416
mabaker@mt.gov

STATEMENT

William L. Corbett
Attorney at Law
6614 Siesta Dr.
Missoula, MT 59802

CC Y

TAX Identification No. 520-46-6312

November 23, 2009

Fox v. Molnar

Billing Period June 23, 2009 to Date.

PROFESSIONAL SERVICES (all time is billed @ \$100 per hour):

Pre-Hearing Hours:

Hearing for Original pre-hearing schedule—2 hours.
Original pre-hearing order—2 hours.
Review of correspondence regarding Guthals' decision to recuse himself--- 1 hour.
Research on recusal—3 hours.
Hearing on Guthals' decision to recuse himself—1 ½ hour.
Correspondence regarding recusal and obtaining substitute counsel—1/2 hour.
Hearing reinstating Guthals as counsel—2 hours.
Decision reinstating Guthals as counsel----2 hours.
Final Scheduling Order----2 hours.
Hearing on party subpoenas —1 ½ hour.
Final Preparation for Hearing (rereading of Complaints, Answers, Orders, etc)—2 hours.
Communications with Commissioner and the Commissioner's Office since 6/23/09)—1 hour.

Total Hours Pre-Hearing 20.50

Hearing Hours:

Hearing--- Jan 7 (7 hours), 8th (8 hours), & 9th (4 ½ hours)— 19.50
Travel to Helena & Return to Missoula--- 6.00

TOTAL HOURS: **46 hours**

46 HOURS x \$100 per hour

\$4,600.00

EXPENSES (associated with above professional services):

Postage:

\$ 7.50

Expenses Associated with Helena Hearing:

Lodging & Meals (3 nights and 3 days):

287.73

Milage for travel (Missoula to Helena & Return)

78.50

TOTAL EXPENSES:

\$373.73

TOTAL AMOUNT BILLED (\$4,600 + 373.73)

\$4,973.73

*OK to Pay
D. W. [Signature]
11/23/09*

**C
R
C
R**

CHERYL ROMSA COURT REPORTING

P. O. BOX 1278

HELENA, MONTANA 59624-1278

(406) 449-6380

(800) 452-0599



DATE: November 24, 2009

Bill To:
Dennis Unsworth
Commissioner of Political Practices
1205 Eighth Avenue
Helena, MT 59601

For:
Molnar vs. Fox – Ethics Hearing

DESCRIPTION	DATE	TRANSCRIPT	AMOUNT
Transcript of the Proceedings – Vol. I	11/4/2009	Orig. & Copy	\$ 952.00
Transcript of the Proceedings – Vol. II	11/5/2009	Orig. & Copy	940.00
Transcript of the Proceedings – Vol. III	11/6/2009	Orig. & Copy	728.00
TOTAL			\$2,620.00

THANK YOU FOR YOUR BUSINESS!

*OK to pay
12/1/09
11/24/09*

William L. Corbett
Attorney
6614 Siesta Drive
Missoula, MT 59802

Tax Identification No. 520-46-6312

June 25, 2009

STATEMENT

Fox v. Molnar

07/17/08	Execute Contract of Employment w/Commissioner	½ hour
07/28/08	Appointed Hearings Officer. Received file from Commissioner's Office-- Review of File.	2 hours
08/05/08	Access, Review & File Law & Procedure relative to the dispute.	3 hours
08/05/08	Plan & Execute Notice of Hearing for 09/04/08.	2 hours
08/18/08	Receipt of Notice of Appearance from Joel Guthals attorney for Petitioner.	
08/19/08	Plan and Execute Notice of Scheduling Conference for 08/25/09.	2 hours
08/13-08/08	Discussion w/ Commissioner & Jim Scheier re: Open Hearing. Right of Confidentiality & Disclosure of Documents to the Press.	2 hours
August 08	Respondent hires Ken Peterson as Attorney.	
August 08	Telephone Scheduling Conference: Sept. 4, hearing is vacated to allow counsel time to prepare.	1 hour
10/7, 17, 28/08	Three Additional Complaints filed against Respondent.	
12/29/08	Respondent Answers the three additional Complaints.	

Mid January 09	Telephone Scheduling Conference w/counsel All four Complaints are consolidated for hearing.	2 hours
01/24/09	Respondent's motion to dismiss all complaints.	
04/02/09	Hearing Examiner's Decision on Motion to Dismiss--- Read & Study all briefs, Research the law, & Write the Decision.	20 hours
May 28/09	Telephone Scheduling Conference w/counsel for June 25 & 26 hearing.	2 hours
06/10/09	Issue regarding certain listed hearing witness & disqualification of petitioner's counsel.	
06/07/09	Notice for 06/23/09, Hearing on Identified Witnesses.	1 hour
06/18/09	Memo to counsel re: disqualification of counsel.	4 hours
06/23/09	Telephone Conference w/ Counsel—Petitioner's Counsel withdraws. New counsel for petitioner To be appointed in approx. 2 weeks.	2 hours
Total Hours to Date:		43 1/4

Republican Party v. Schweitzer

This billing consists of time since the Commissioners Order Granting Partial Summary Judgment, Granting Motion to Strike, and Prehearing Order (dated: November 14, 2008). My prior bill on this case was up through November 4, 2008.

11/ 20/08	Study the Commissioner's Order and the parties' briefs.	4 hours
	Execute Order for Pre-Hearing Scheduling Conference.	1 hour
	Conduct Pre-hearing Scheduling Conference.	2 hours
12/12/08	Respondent Objections to Scheduling Order.	
	Execute Decision on Respondent's Objections to Scheduling Order.	4 hours