

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES OF THE STATE OF MONTANA

Greenwood v. Morrison, Sherwood, Wilson and Deola  No. COPP 2014-CFP-054	FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN PRACTICE ACT VIOLATION
---	--

On October 31, 2014, Bowen Greenwood, a resident of Helena, Montana, filed a complaint against Morrison, Sherwood, Wilson & Deola, PLLP (MSWD), a law firm located in Helena, Montana. Mr. Greenwood alleged in his complaint that MSWD violated campaign practice laws by failing to register as a political committee.

**ISSUES ADDRESSED BY THIS FINAL DECISION**

The campaign finance issues addressed by this Decision are recusal and registration and timely filing as a political committee.

**DISCUSSION**

The Complaint requests recusal by the Commissioner and then asserts campaign practice violations against MSWD. Each issue is addressed separately below.

1. Recusal is Not Required and Is Not Voluntarily Made

The complaint asserts recusal citing to the requirements of §13-37-111(5)

MCA. The Commissioner, below, also considers recusal under the requirements of §13-37-111(3) MCA. The findings of fact necessary for discussion of the recusal issue are as follows:

Finding of Fact No. 1: Jonathan Motl was a partner for 30 years in the Helena law firms of Reynolds and Motl, Reynolds, Motl and Sherwood, PLLP, and Morrison, Motl and Sherwood, PLLP. These law firms operated as a professional limited liability corporation (PLLP), through a change of name. (Montana Secretary of State website - Business, MSWD archival records).

Finding of Fact No. 2: The lawyers in the law firm partnerships listed in FOF No. 1 were housed in an office building located at 401 N. Last Chance Gulch, Helena, Montana. The office building was owned by a second partnership, called Gulch Association, whose partner/owners consisted of the same lawyers who made up the law partnership. (MSWD archival records).

Finding of Fact No. 3: Through a letter dated May 17, 2013 Montana Governor Steve Bullock appointed Jonathan Motl as Montana Commissioner of Political Practices with work as Commissioner to begin no later than June 10, 2013. (Governor's appointment letter).

Finding of Fact No. 4: Jonathan Motl accepted the Governor's appointment and began work as Commissioner of Political Practices on June 10, 2014. (State of Montana employment records).

Finding of Fact No. 5: At the time of his appointment letter (May 17, 2013), Jonathan Motl was a partner in the Morrison, Motl and Sherwood law firm and in the Gulch Association real estate partnership. (MSWD archival records).

Finding of Fact No. 6: Between May 17, 2013 and June 10, 2013 Jonathan Motl and the law firm of Morrison, Motl and Sherwood worked to meet the requirements imposed on attorneys by the regulating body of the Montana legal profession (the State Bar of Montana) and by Montana law (§13-37-108 MCA). Before June 10, 2013 all clients whom

Jonathan Motl served were notified that Jonathan Motl was leaving the law firm. Jonathan Motl's name was removed from the firm's name and letterhead (the partnership was renamed MSWD) and Jonathan Motl assumed work full-time as the Commissioner of Political Practices. (MSWD archival records).

Finding of Fact No. 7: Effective January 1, 2014, Jonathan Motl sold his entire and complete ownership interest in the law firm partnership and real estate partnership to attorney Brian Miller, of Helena, Montana. Jonathan Motl retained no ownership interest in any of the two partnerships. There are no other associated partnerships or entities connected with the law firm. (MSWD archival records).

Finding of Fact No. 8: The sale and purchase from Motl to Miller of partnership interests described in FOF Nos. 5-7 was modeled after the sale of the same two partnership (law firm and real estate) interests from James Reynolds to John Morrison. This earlier Reynolds to Morrison sale occurred in 2010 following James Reynolds election to the position of District Court Judge for the 1<sup>st</sup> Judicial District, Montana. (MSWD archival records).

Finding of Fact No. 9: The current webpage for MSWD provides a history of the firm, including the role of Jonathan Motl, but succinctly states "In 2013, Jonathan Motl was appointed by Montana Governor Steve Bullock as the State's Commissioner of Political Practices and left the firm." While Jonathan Motl's photo is still posted under attorneys the website makes it clear he is no longer a member of the firm. (MSWD archival records).

The complaint requests that "Motl recuse himself as the Complaint involves his own law firm."

The Complaint does not name Jonathan Motl as a party. The complaint, however, does recite §13-37-111(5) MCA, the statute governing the handling of a campaign practice complaint filed against

the Commissioner. Given the recitation to statute, the Commissioner first considers whether this statute is applicable.<sup>1</sup>

The Commissioner first considers whether naming MSWD constitutes naming Jonathan Motl. In that regard, Jonathan Motl has no ownership interest in MSWD or its affiliated real estate partnership, having sold the same to another attorney. (FOF Nos. 1-9). MWSD is legally separate from the Commissioner, with the Commissioner having no responsibility for any actions of MWSD or for the consequences of those actions. The Commissioner determines that naming MWSD in a complaint does not name Jonathan Motl and therefore does not invoke §13-37-111(5) MCA.<sup>2</sup>

The Commissioner next examines recusal under §13-37-111(3) MCA, the discretionary recusal statute: “If the commissioner determines that considering a matter would give rise to appearance of impropriety or a conflict of interest the commissioner is recused....” The Commissioner, during confirmation and in *Ponte v. Gallik*, COPP-2014-CFP-009,<sup>3</sup> has stated his strong preference to resolve complaints by use

---

<sup>1</sup> This Commissioner referred a prior Matter, *Ponte v. Gallik*, COPP-2014-CFP-009 to the Attorney General, as required by §13-37-111(5) MCA, because a former Commissioner (David Gallik) was named in the complaint. There is no Commissioner, however, named in this Complaint and this Decision determines that there is no possible basis to name a Commissioner.

<sup>2</sup> To any extent legally necessary, this determination constitutes a determination pursuant to 44.10.307(3)(a) ARM that reference to this statute is lacking in fact or law and therefore the complaint does not state a potential violation of a statute or rule. See *Powell v. Motl*, OP-14-0711 Order of the Montana Supreme Court dated November 6, 2014.

<sup>3</sup> *Ponte v. Gallik* was returned by the Attorney General to the Commissioner. In seeking return the Commissioner “specified that for budget reasons the COPP in-house staff would prefer to keep and decide the complaint rather than undergo the cost of outside counsel.”

of in-house counsel. Referring complaints to outside counsel slows down decision-making and costs the agency (and therefore the people of Montana) money, something that the Commissioner seeks to avoid as the agency's budget is limited.

On the other hand the "appearance of impropriety" is an important consideration, particularly in an agency like the COPP whose duties include protection of the public trust. Under most circumstances the appearance of impropriety would cause the Commissioner to recuse from making a Decision concerning MSWD. This Matter, however, presents a very restrictive circumstance. This Commissioner has already considered and applied the very law at issue in this Matter. *See Ponte v. Montana BASE*, COPP-2014-CFP-009. Any Deputized Commissioner would, at a cost of time and money to the public, follow the *Ponte v. Montana BASE* determination in the same manner the Commissioner does below. The Commissioner therefore determines that the time and money expense outweighs the social cost of any negative appearance and, accordingly, declines recusal and makes the Decision in this Matter. This recusal determination is a matter of discretion that may lawfully be exercised by the Commissioner. *See, Powell v. Motl.*

## 2. MSWD Failed to Timely Register and Report as an Incidental Committee

A political committee, whether in the form of an independent, ballot or incidental committee, is required to timely register (§13-37-201 MCA) and

timely file reports of campaign contributions and/or expenditures (§§13-37-225, 226 MCA). The following findings of fact apply:

Finding of Fact No. 10: Montanans for Liberty and Justice registered as a political action committee (PAC) on August 27, 2014. (Commissioner's records).

Finding of Fact No. 11: On October 23, 2014 Montanans for Liberty and Justice filed a campaign finance report, reporting for the period of June 19, 2014 through October 18, 2014. (Commissioner's records).

Finding of Fact No. 12: The October 23, 2014 Montanans for Liberty and Justice campaign finance report included a disclosure of a \$10,000 contribution from MSWD. (Commissioner's records).

Finding of Fact No. 13: MSWD registered as an incidental committee by fax filing a C-2 Statement of Organization form with the COPP on October 31, 2014. That same day MSWD also filed a C-4 campaign finance report for the period of September 23, 2014 to October 31, 2014.<sup>4</sup> In that report, MSWD reported a contribution of \$10,000 to Montanans for Liberty and Justice PAC on September 23, 2014 and an additional in-kind but independent expenditure of \$500 on letters and mailing. (Commissioner's records).

Mr. Greenwood complains that MSWD late filed as an incidental committee and failed to timely report its contribution.

The Commissioner begins analysis by first examining the late reporting issue. The MSWD incidental committee was required to report and disclose its contribution, at the latest, by the 12<sup>th</sup> day preceding the November 4, 2014

---

<sup>4</sup> MSWD filed its October 31, 2014 campaign finance report as its first and "closing" report. The one-report filing approach is accepted by the COPP for incidental committees engaged in one or a limited number of expenditures or contributions within a single reporting period.

election date or by October 23, 2014. (§13-37-226(5) MCA).<sup>5</sup> The incidental committee late reported by filing on October 31, 2014 (FOF No. 13).<sup>6</sup>

The Commissioner, however, has already determined that a principal committee's timely report of a contribution later reported by an incidental committee meets the public disclosure obligation. *Ponte v. Montana Base*. In this Matter the Montanans for Liberty and Justice PAC timely reported the \$10,000 contribution from MSWD, the same \$10,000 that was late reported on the separate incidental committee reported filed by MSWD. Applying the *Ponte v. Montana Base* precedent to this Matter means that MSWD is excused for any late reporting of the \$10,000 but is not excused for, and therefore has late reported, the \$500 of additional in-kind expenditures not reported on the Montanans for Liberty and Justice PAC report.<sup>7</sup>

Sufficiency Finding No. 1: The Commissioner determines that sufficient facts exist to show that MSWD failed to timely report \$500 in in-kind independent expenditures. (Commissioner's records).

The Commissioner next examines the MSWD incidental committee filing itself. The incidental committee filing was required within 5 days of the date that MSWD sent money to the Montanans for Liberty and Justice PAC (§13-37-201 MCA). MSWD sent \$10,000 to the PAC on September 23, 2014 (FOF No. 13) but did not file or register as an incidental committee until October 31,

---

<sup>5</sup> Generally, incidental committees are required to report 2 days earlier than the political action committee. See 44.10.411 ARM.

<sup>6</sup> MSWD filed on the same day that the complaint was filed with the filing occurring immediately after MSWD was informed by COPP staff of the complaint. The COPP staff routinely contacts non-filers informally and formally on an expedited basis in order to encourage filing (and therefore provision of information to the public) at the earliest date.

<sup>7</sup> The \$500 in-kind by MSWD is deemed to be a separate, independent expenditure by MSWD for which Montanans for Liberty and Justice has no obligation of reporting.

2014 (FOF No. 13), over a month after it was required to do so.

In this instance the timely Montanans for Liberty and Justice PAC disclosure does not come into play as the MSWD incidental committee filing added the additional information of the names of the officers of MSWD. This information was important contemporaneous knowledge as Montanans for Liberty and Justice PAC spent funds in a 2014 candidate campaign. Applying the *Ponte v. Montana BASE* precedent, the Commissioner further determines that the self-corrective, but late filing by MSWD does not cure the harm to the public caused by delay in providing required information to the public.<sup>8</sup>

Sufficiency Finding No. 2: The Commissioner determines that sufficient facts exist to show that MSWD failed to timely register as a political committee. (Commissioner's records).

### **ENFORCEMENT OF SUFFICIENCY FINDINGS**

The Commissioner has limited discretion when making the determination as to an unlawful campaign practice. First, the Commissioner cannot avoid, but must act on, an alleged campaign practice violation as the law mandates that the Commissioner ("shall investigate," *see*, §13-37-111(2)(a) MCA) investigate any alleged violation of campaign practices law. The mandate to investigate is followed by a mandate to take action as the law requires that if there is "sufficient evidence" of a violation the Commissioner must ("shall notify", *see* §13-37-124 MCA) initiate consideration for prosecution.

---

<sup>8</sup> The MSWD incidental committee registration form (C-2 form) was scanned upon receipt and made available for public review through the COPP website. The late filing meant that the public was denied access to the information in the registration form during the period of late filing.



Second, having been charged to make a decision, the Commissioner must follow substantive law applicable to a particular campaign practice decision. This Commissioner, having been charged to investigate and decide, hereby determines that there is sufficient evidence (*see* Sufficiency Findings, as set out in this Decision) to show that entities listed in the sufficiency findings in this Decision may have violated Montana's campaign practice laws, including, but not limited to §13-37-201 and all associated ARMs. Having determined that sufficient evidence of a campaign practice violation exists, the next step is to determine whether there are circumstances or explanations that may affect prosecution of the violation and/or the amount of the fine.

The failure to timely file cannot be excused by oversight or ignorance. Excusable neglect cannot be applied to oversight or ignorance of the law. *See* discussion of excusable neglect principles in *Matters of Vincent*, Nos. COPP-2013-CFP-006 and 009.

The Commissioner has applied the principle of *de minimis* to excuse the late reporting by the several incidental committees but does not do so for late filing, as discussed above in this Decision. The Commissioner does not normally accept that failures to file or report be excused as *de minimis*. *See* discussion of *de minimis* principles in *Matters of Vincent*, Nos. COPP-2013-CFP-006 and 009. In particular, the Commissioner has limited discretion to apply *de minimis* to untimely reporting. Reporting is only valid when it is timely accomplished and any delay, much less a failure to file, demonstrates harm. Applying the *Ponte v. Montana Base* precedent the Commissioner does not

apply *de minimis* to either the \$500 late reported in-kind expenditure or to the late filing.

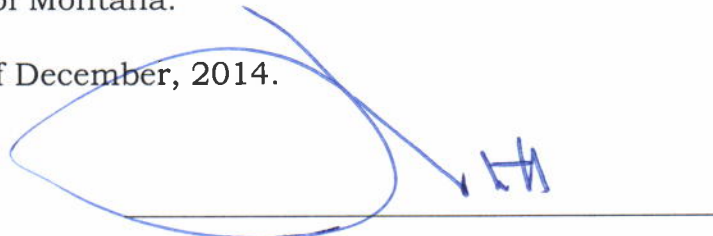
Because there is a finding of violation and a determination that *de minimis* and excusable neglect theories are not applicable, civil/criminal prosecution and/or a civil fine is justified (See §13-37-124 MCA). The Commissioner hereby, through this Decision, issues a “sufficient evidence” Finding and Decision justifying civil prosecution of each of the entities named in a sufficiency finding for late filing. Because of nature of violations (the failure to timely file occurred in Lewis and Clark County) this matter is referred to the County Attorney of Lewis and Clark County for his consideration as to prosecution. §13-37-124(1) MCA. Should the County Attorney waive the right to prosecute [§13-37-124(2) MCA] or fail to prosecute within 30 days [§13-37-124(1) MCA] this Matter returns to this Commissioner for possible prosecution. *Id.*

Most of the Matters decided by a Commissioner and referred to the County Attorney are waived back to the Commissioner for his further consideration. Assuming that this Matter is waived back, the Finding and Decision in this Matter does not necessarily lead to civil or criminal prosecution as the Commissioner has discretion [“may then initiate” See §13-37-124(1) MCA] in regard to a legal action. Instead, most of the Matters decided by a Commissioner are resolved by payment of a negotiated fine. In setting that fine the Commissioner will consider matters affecting mitigation, including the fact that the entities named in the sufficiency findings immediately self-corrected

the deficient filing. In the event that a fine is not negotiated and the Matter resolved, the Commissioner retains statutory authority to bring a complaint in district court against any person who intentionally or negligently violates any requirement of law, including those of §13-37-226 MCA. (See 13-37-128 MCA). Full due process is provided to the alleged violator because the district court will consider the matter *de novo*.

Should this Matter not settle the Commissioner reserves his right, upon return of the Finding by the County Attorney, to instigate an enforcement action on behalf of the people of Montana.

DATED this 18<sup>th</sup> day of December, 2014.



Jonathan R. Motl  
Commissioner of Political Practices  
Of the State of Montana  
P. O. Box 202401  
1205 8<sup>th</sup> Avenue  
Helena, MT 59620