

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES OF THE STATE OF MONTANA

Matter of Howell v. Stamey No. COPP-2014-CFP-003	Summary of Facts and Finding of Sufficient Evidence to Show a Violation of Montana's Campaign Practices Act
---	--

On January 24, 2014, Victoria Howell, publisher of the Bitterroot Star in Stevensville, filed a complaint against Richard Stamey, a 2010 legislative candidate for House District 89, and Valerie Stamey, treasurer of his campaign. Ms. Howell alleged one or both of the Stameys were in violation of:

1. Filing a false report; and,
2. Making a false statement within a report or false swearing.

Ms. Howell provided statutory citations for each allegation.

**SUBSTANTIVE ISSUES ADDRESSED**

The substantive areas of campaign finance law addressed by this decision are: 1) False swearing in connection with a campaign finance report; 2) Unsworn falsification in connection with a campaign finance report; and, 3) Campaign finance report filing.

## DISCUSSION

This Matter involves a pattern of conduct by Richard Stamey and Valerie Stamey. The foundation facts related to that pattern of conduct are as follows:

Finding of Fact No. 1: On February 26, 2010, Richard Stamey filed a C-1-A Statement of Candidate Form with the COPP. The form listed Richard Stamey as a 2010 candidate for Republican nomination for election as a legislative representative from House District 89 (HD 89), Ravalli County. Valerie Stamey was listed as treasurer of the campaign. (Commissioner's records).

Finding of Fact No. 2: On June 2, 2010, Candidate Richard Stamey ran 2 campaign advertisements (ads) in the Bitterroot Star Newspaper. One campaign ad ran within a special election insert. The cost of that ad was \$115 which was pre-paid by Richard Stamey on May 20, 2010. The other campaign ad ran within the regular section of the paper. The cost of that ad was \$162.75, which was billed to the Stamey campaign. (Invoice and advertisements provided by the Bitterroot Star).

Finding of Fact No. 3: On June 8, 2010, the Legislative Primary election was held. Richard Stamey was defeated in the HD 89 Republican primary election. (Montana Secretary of State (SOS) website).

Finding of Fact No. 4: Richard Stamey was required to file a campaign finance report pre-primary (by May 28, 2010) and another report post-primary (by June 28, 2010). Richard Stamey missed both reporting deadlines. (Commissioner's records).

Finding of Fact No. 5: Bitterroot resident Gary MacLaren filed a complaint with the COPP in June of 2010 alleging violations by Richard Stamey of the Montana Campaign Practices Act. Richard Stamey answered the complaint on July 6, 2010 and later filed his only campaign finance report on July 15, 2010. (Commissioner's records).

Finding of Fact No. 6: On July 27, 2011 the COPP issued its Decision, *MacLaren v. Stamey* (Commissioner Gallik). The Decision found multiple violations of the Montana Campaign Practices Act, including the late filing of financial reports. *Id.* (Commissioner's records).

Finding of Fact No. 7: Following the release of the *MacLaren v. Stamey* Decision, the staff of the Commissioner's Office attempted to resolve the Decision and the underlying campaign finance reports with Richard Stamey and Valerie Stamey. (Commissioner's records.)

## I. DISCUSSION

Richard Stamey was a candidate for the Montana House, HD 89, in the Republican primary election. Valerie Stamey was listed as the treasurer for Richard Stamey's HD 89 legislative campaign. FOF No. 1. Richard Stamey signed and filed his original candidate registration form (called a C-1-A by this Office) on February 26, 2010. *Id.* The primary election took place on June 8, 2010. FOF No. 3.

Richard Stamey's C-1-A form improperly invoked the "less than \$500" non-filing privilege provided under Montana law, as that privilege does not apply to legislative candidates. §13-37-226(3) MCA. Even if Richard Stamey was confused on this point, by the start of May of 2010 the Stamey campaign's own campaign finance reports show that the campaign had exceeded \$500 in expenditures. Under Montana law the Stamey campaign was required to timely file a campaign finance report 12 days before the election and 20 days after the election. *Id.*

The Stamey campaign did not timely file either of the required reports. In addition, newspaper ads published against Stamey's election opponent caused the opponent to file a complaint against Richard Stamey. FOF No. 5. On July 15, 2010 (after the complaint was filed) the Stamey campaign filed its first campaign report. The report was signed by Valerie Stamey as treasurer. The campaign finance report is very brief, showing 4 contributions and 6

expenditures. Nevertheless the report managed to violate nearly every applicable campaign practice law. The report was untimely, listed contributions in excess of limits and showed \$162 more in expenditures than in contributions without showing where that debt remained. (Commissioner's records).

The Commissioner found against the Stamey campaign: *MacLaren v. Stamey*, COPP-2011-CFP-12 (Commissioner Gallik). Both before and after the date of the Decision (issued July 27, 2011) the Commissioner and staff attempted to resolve the issues involved with the Stameys, talking primarily to Valerie Stamey. The Stameys claimed they were campaign novices who were suffering from health and financial problems and asked for mitigation. After consideration of these several representations mitigation was applied and the fine amount was reduced to \$100, so long as the Stameys also resolved the campaign debt allowing the filing of the closing campaign report.<sup>1</sup> (Commissioner's staff notes).

The above discussion sets the stage for the September 29, 2011 filing of the closing report by the Stamey campaign. The closing report is certified by Richard Stamey and signed by Valerie Stamey. The closing report claims that on September 1, 2011, the Bitterroot Star gave an in-kind credit to the Stamey campaign allowing the campaign to thereby file its closing report.<sup>2</sup> The closing report is a public document, as are all other campaign finance reports filed by

<sup>1</sup> Normally the Commissioner resolves Decisions through a signed settlement Agreement. Such an agreement was presented to the Stameys, but was never returned to the Commission.

<sup>2</sup> The \$125 credit did not resolve the entire debt amount shown by the July 15, 2010 Stamey campaign report. The Commissioner's Office accepted the closing report as signed and filed by Richard and Valerie Stamey.

candidates or committees. The Bitterroot Star reviewed the closing report while writing a story on the continuing political involvement of Richard and Valerie Stamey in Ravalli County politics. Ms. Howell, publisher of the Bitterroot Star, then filed the complaint in this matter.

The Commissioner has reviewed the complaint of Ms. Howell. The Bitterroot Star is a weekly newspaper operating out of Stevensville, Montana, with a news focus and circulation covering the Bitterroot Valley. (Homepage, Bitterroot Star). The Commissioner takes administrative notice that in a paper of this size the publisher has intimate knowledge of all activity. When interviewed by the Commissioner's Investigator, the publisher explained that the Stamey campaign had a debt of \$162.75 from the 2010 campaign<sup>3</sup> and that the bill for that debt was sent on a monthly basis to the Stamey household through all of 2011. The publisher stated that the Stamey's campaign debt was never forgiven nor has any other such campaign debt ever been forgiven for any other candidate. (Commissioner's interview records). When asked, the Stameys were unable to produce any document or evidence that could have led them to reasonably believe that the Bitterroot Star had forgiven the debt.

Based on the above discussion the Commissioner determines that the closing report filed by the Stamey campaign, as witnessed by Richard Stamey and signed by Valerie Stamey, was false.

### **Campaign Practice Law Violations**

The Stamey campaign may have acted such to trigger multiple

---

<sup>3</sup> This number reconciles the debt shown by the July 15, 2010 campaign finance report filed by the Stamey campaign.

campaign violations. Most of these violations, however, are tied to the earlier MacLaren campaign practice Decision and that Decision arguably progressed through settlement.<sup>4</sup> The only violations that will be considered in this Decision are those connected with the closing campaign finance report filed by Richard Stamey and Valerie Stamey.

1. False Swearing and Unsworn Falsification

Ms. Howell urges the Commissioner to apply §45-7-202 MCA, the false swearing statute, to measure the campaign practice effect of the verification and signature of Richard Stamey and Valerie Stamey, respectively, on the closing campaign report filed in regard to the 2010 HD 89 campaign. The false swearing statute appears in Title 45, not Title 13, as such it is linked to the criminal code. Yet, it is a separate chapter (Chapter 7) within Title 45 and that chapter is entitled “Offenses Against Public Administration.”

The Commissioner’s Office requires that a number of documents submitted to it by candidates or committees be signed. A signature makes the document official and serves the overall purposes of transparency and public discourse stemming from formal provision of information clearly understood to be final and available to the public. The Commissioner takes administrative notice that these statements, made in good faith, can contain errors. The remedy for these errors is a

---

<sup>4</sup> The Commissioner’s Office took its earlier Decision, *MacLaren v. Stamey*, COPP-2011-CFP-12, through a partial settlement. While a settlement agreement was not signed, a fine payment was accepted and closing report was filed. This Decision therefore focuses solely on the closing report.

traditional campaign finance complaint followed by an investigation and a Decision, then followed by Settlement, if sufficient facts are found to show a failure to timely or fully report. *See Tuninga v. Bullock*, COPP-2012-CFP-26 (Deputy Commissioner Dufrechou) for a representative complaint, Decision and Settlement.

Montana law defines the offense of false swearing as follows:

A person commits the offense of false swearing if the person knowingly makes a false statement under oath or equivalent affirmation or swears or affirms the truth of a statement previously made when the person does not believe the statement to be true and:

- (a) the falsification occurs in an official proceeding;
- (b) the falsification is purposely made to mislead a public servant in performing an official function; or
- (c) the statement is one that is required by law to be sworn or affirmed before a notary or other person authorized to administer oaths.

Section 45-7-202(1) MCA.

The Commissioner takes administrative notice that since the false swearing statute requires a person to knowingly make a false statement, the statute does not generally apply to *unintentional* errors in campaign finance reports normally filed with this Office. Stated another way, candidates and committees should stand assured that the treatment of errors in normal campaign practice reports filed with this office will remain the same before and after this Decision. The finding in this Decision is limited by the facts and analysis set out below.

Campaign finance reports that are filed by candidates, committees and lobbyists are required by statute to be "verified as true and correct by the oath

or affirmation of the individual filing the report”, § 13-37-231, MCA. While a candidate’s or treasurer’s signature constitutes their personal oath, there is no general requirement that signatures on documents submitted to the Commissioner also be notarized. Nor should there be given the volume of documents submitted.

The Stamey campaign closing report, being unnotarized, is best classified and treated as an unsworn document. The makes the false swearing statute less appropriate and makes another statute, § 45-7-203(1) MCA, the appropriate measure of the actions of Richard Stamey and Valerie Stamey. In that regard, Montana law defines the offense of unsworn falsification to authorities as follows:

- “...with the purpose to mislead a public servant in performing an official function, the person:
- (a) makes any written false statement that the person does not believe to be true;
  - (b) purposely creates a false impression in a written application for any pecuniary or other benefit by omitting information necessary to prevent statements from being misleading;
  - (c) submits or invites reliance on any writing that the person knows to be forged, altered, or otherwise lacking in authenticity; or
  - (d) submits or invites reliance on any sample, specimen, map, boundary mark, or other object that the person knows to be false.

§ 45-7-203(1) MCA.

Here, the closing campaign finance report filed by Richard and Valerie Stamey “invite[d] reliance on a[] writing that the person[s] knows to be... lacking in authenticity” “with the purpose to mislead a public servant in performing an official function”, *id.* The closing report was filed as a condition of settlement of the campaign finance practices act violations which were found



after an investigation and enumerated in a decision by Commissioner Gallik on July 27, 2011. The Commissioner determines and finds that there are sufficient facts to show that Valerie Stamey and Richard Stamey engaged in unsworn falsification, as measured by the above applied language of § 45-7-203 MCA, when they affirmed and signed, respectively the September 29, 2011 closing report and filed it with the Office of the Commissioner of Political Practices. Specifically, the Commissioner determines that: the closing report was false; without any supporting basis in fact; it was made as a part of the settlement of the *MacLaren v. Stamey*, COPP-2011-CFP-0012 matter; and it was made for the purpose of misleading the Commissioner's staff (Mary Baker) who relied on the closing report for completion of the conditions of settlement. (Commissioner's records, Ms. Baker interview.)

Montana law also provides that a person commits the offense of deceptive election practices including false swearing, unsworn falsification, or tampering with public records or information when they "knowingly cause[] a false statement, certificate, or return of any kind to be signed", § 13-35-207(3), MCA. A violation of deceptive election practices is punishable as provided by §§ 45-7-202, 203 or 208 MCA.

In making this Decision the Commissioner notes that prior Commissioners have simply applied §13-35-207(3) MCA to measure false swearing without first applying the arguably stricter measure of §45-7-203 MCA. *See Motta v. Laslovich*, November 18, 2009 (Commissioner Unsworth) and *Molnar v. Doty*, April, 2006 (Commissioner Higgins). This Decision found unsworn

falsification, but did so through application of the stricter measure of §45-7-203 MCA. The *Motta* and *Molnar* Decisions, even by applying a less strict measure, did not find false swearing and therefore are not affected by this Decision.

## 2. Failure to Report/Disclose

Richard Stamey and Valerie Stamey were required by law to disclose in campaign finance reports: “the amount and nature of debts and obligations owed...” §13-37-230(1)(f) MCA. The Commissioner has continuing authority to “investigate the source and authenticity of any contribution or expenditure listed in any report or statement filed pursuant to this chapter.” §13-37-123 MCA. The Commissioner determines and finds sufficient facts to show that Richard and Valerie Stamey failed to resolve a campaign debt (wrongly listing it as a contribution) to the Bitterroot Star on the September 29, 2011 closing report for Richard Stamey’s 2010 HD 89 campaign.

## **II. ENFORCEMENT**

The Commissioner has limited discretion when making the determination as to an unlawful campaign practice. First, the Commissioner cannot avoid, but must make, a decision 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.

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 Valerie Stamey and Richard Stamey have each, as a matter of law, violated Montana's campaign practice laws, including §§13-35-207 (including incorporation of §45-7-203 MCA) and 13-37-230 MCA. Having determined that a campaign practice violation has occurred, 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.

A Commissioner is given discretion ("may", see §13-37-124(1) MCA) in regard to adjudication of a violation. Adjudication may be avoided if the legal concepts of *de minimis* or excusable neglect apply.

The concept of a *de minimis* exception to civil enforcement of a violation of Montana's campaign practice law is set out and defined by the 9<sup>th</sup> circuit court of appeals in *Canyon Ferry Rd. Baptist Church of E. Helena, Inc. v. Unsworth*, 556 F. 3d 1021, 1028-29 (9<sup>th</sup> Cir. 2009). The Commissioner has further applied *de minimis* to an expenditure by an incidental committee, *Raffiani v. Montana Shrugged*, COPP-2010-CFP-17. To a degree this Office has applied the incidental committee *de minimis* standards to candidate election expenditures. See *In the Matter of the Fitzpatrick Complaint*, COPP-CFP-2011-014.

The Commissioner does not apply *de minimis* to above described failures of Richard and Valerie Stamey. *De minimis* does not apply because the limited

amount of money (\$162.75) is not the focus of the complaint nor is it the issue addressed by this Decision. The holding of public office in Montana is a public trust. §2-2-103 MCA. An electoral campaign is the first step that a candidate takes toward gaining a position accompanied by such a duty of public trust. Accordingly, a campaign is an appropriate lens on the qualities and abilities of a candidate to accept and accommodate the requirements of public trust. Richard and Valerie Stamey had a five month period of time (February 26 through June 26, 2010) when, as candidate and treasurer, they were required to timely and openly disclose the contributions and expenditures that were propelling Richard Stamey's bid for public office. Richard and Valerie Stamey did not rise to the task of meeting indices of public trust, but instead failed in multiple ways and in multiple instances. These failures far exceed any *de minimis* standard.

The Commissioner now considers excusable neglect. As discussed in detail in *Matters of Vincent* Nos. CPP-2013-CFP-006 and 009 intent and motive are not considered in an excusable neglect consideration. Specifically it is noted that a showing of excusable neglect generally requires justification for error beyond mere carelessness or ignorance of the law. *Empire Lath & Plaster, Inc., v. American Casualty Co.*, 256 Mont. 413, 417, 847 P.2d 276, 278 (1993). The Commissioner need not long consider this excusable neglect issue. There are sufficient facts to show that Valerie and Richard Stamey acted with intent, not neglect. The violations in this Matter are not appropriate for application of an excusable neglect theory.

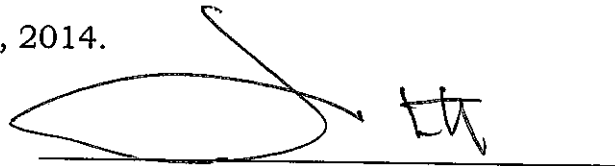
Because there is a finding of violation and a determination that *de minimis* and excusable neglect theories are not applicable, civil prosecution and/or a civil fine is justified (See §13-37-124 MCA). This Commissioner has, through this decision, issued a “sufficient evidence” Finding and Decision justifying civil prosecution under §13-37-124 MCA. The final closing report that is the subject of this Matter was made in Lewis and Clark County, meaning that County has venue for an allegation of a campaign practice violation. See §13-37-124 MCA. The Commissioner will now submit this Matter to (or “notice to”) the Lewis and Clark County attorney for his review for appropriate civil action. §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 adjudication. *Id.* In the event this Matter does not settle, full due process is provided to the alleged violator because the district court will consider the matter *de novo*.

In regard to a fine reached in lieu of adjudication, the Commissioner has discretion to determine if mitigation is appropriate to reduce a fine based on the explanation of why a violation occurred or circumstances of payment. See *In the Matter of the Complaint of MacLaren*, COPP-2011-CFP-12. Mitigation means “abatement or diminution of a penalty or punishment imposed by law.” *Black’s Law Dictionary, Revised 4<sup>th</sup> Addition*. The Commissioner determines that mitigation is not appropriate in this Matter, given the sufficiency of facts showing knowledge and intent.

## CONCLUSION

Based on the preceding Discussion as Commissioner I find and decide that there is sufficient evidence to show that Richard Stamey and Valerie Stamey violated Montana's campaign practices laws, including §§13-35-207 and 13-37-230 MCA, and that a civil penalty action under § 13-37-128, MCA is warranted along with the penalties, including jail, under §45-7-205 MCA. The Commissioner further notes that Valerie Stamey is a candidate for public office and her candidacy, should she nominated in a primary election, could be challenged by any elector under §13-36-101 MCA should this Matter be successfully adjudicated by the Commissioner.

DATED this 5<sup>th</sup> day of February, 2014.

A handwritten signature in black ink, appearing to read 'Jonathan R. Motl', is written over a horizontal line. The signature is stylized and somewhat cursive.

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  
Phone: (406)-444-4622