

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES OF THE STATE OF MONTANA

Yecny v. Schulz No. COPP 2016-CFP-027	FINDING OF SUFFICIENT FACTS TO SUPPORT A CAMPAIGN PRACTICE ACT VIOLATION
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On September 15, 2016, Jane Yecny of Sheridan, Montana filed a complaint against David Schulz of Sheridan, Montana for failing to properly report and disclose certain campaign contribution information.

**Discussion**

The Complaint alleges that Mr. Schulz, as a 2016 Candidate for public office in Montana, failed to timely report and disclose expenses and contributions involved in his campaign for election to public office.

Finding of Fact No. 1: Madison County operates under a County Commission form of government with three county commissioners elected, each from one of three districts. The County seat, and Commissioners' office, is located in Virginia City, Montana. (Madison County Website.)

Finding of Fact No. 2: David Schulz currently serves as a Madison County Commissioner from District 1. (Madison County Website.)

Finding of Fact No. 3: Daniel Allhands, David Schulz and Ellis Thompson were 2016 primary election candidates for election to Madison County Commissioner, District 1. The candidates received 2016 primary election votes as follows: Allhands (463), Schulz (441) and Thompson (199). As the two top primary election vote getters Candidates Allhands and Schulz pass on as candidates in the 2016 general election for Madison County Commissioner, District 1. (Montana Secretary of State (SOS) webpage, 2016 primary election results.)

Under Montana law a candidate for local government office, including Candidate Schulz, does not need to file campaign finance reports with the COPP, so long as campaign financial activity (that is both expenses and contributions) does not exceed \$500. §13-37-226(3), MCA. Candidate Schulz initially checked the box (B Box) on his Statement of Candidacy pledging to spend under \$500. Candidate Schulz, however, exceeded the \$500 limit and the Complaint asserts that he failed to timely file the campaign finance reports required once the \$500 limit was exceeded.

Finding of Fact No. 4: Candidate Schulz did not file a May 3, 2016 campaign finance report. (COPP records.)

Finding of Fact No. 5: Candidate Schulz filed a campaign finance report on May 26, 2016 disclosing \$1680 in contributions and \$390 in expenditures. The expenditure is dated May 15, 2016. (COPP records.)

Finding of Fact No. 6: Candidate Schulz did not timely file the campaign finance report due June 27, 2016. (COPP records.)

Finding of Fact No. 7: The COPP informed Candidate Schulz on June 28, 2016 of his failure to file (see FOF No. 6) and his treasurer (Matt Hill) responded by filing a campaign finance report on July 18, 2016. The July 18, 2016 campaign finance document reports contributions and expenditures through June 22, 2016. (COPP records.)

Reporting and disclosure is required so that the public and opposing candidate understand the contribution and expenditure of funds used in support of a particular candidacy. Candidate Schulz exceeded \$500 in campaign expenditures and was therefore required to provide such reporting and disclosure. §13-37-226(3), MCA.

As a local government candidate required to report, Candidate Schulz's reports were required at the times specified in §13-37-226(2), MCA. Those times were the 12<sup>th</sup> day preceding an election and the 20<sup>th</sup> day after an election.<sup>1</sup> Montana's 2016 primary election was held June 7, 2016 thus requiring Candidate Schulz file a 12 day pre-primary election report (due May 26, 2016) and a 20 day post-primary election report (due June 27, 2016).

Sufficiency Finding No. 1: The Commissioner finds that there are sufficient facts to show that Candidate Schulz did not timely file the campaign finance report due June 27, 2016, but instead late filed the report by 21 days. (FOF Nos 6 and 7)

The Commissioner notes that Candidate Schultz's campaign finance reports were current at the date the Complaint was filed. The Commissioner further notes that Candidate Schulz's corrective late filing stemmed solely from a reminder from the COPP's staff. These will factors in the mitigation of the fine assessed in this Matter.

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<sup>1</sup> Section §13-37-226(2), MCA also requires a 35 day pre-election report; however, Candidate Schulz did not exceed the \$500 amount until May 15, 2016 (FOF No. 5), which was after the 35<sup>th</sup> day filing date. Thus, the first report due from Candidate Schulz was the 12 days pre-primary election report.

## **ENFORCEMENT OF SUFFICIENCY FINDINGS**

The Commissioner has limited discretion when making the determination as to an unlawful campaign practice. First, the Commissioner “shall investigate” any alleged violation of campaign practices law. §13-37-111(2)(a), MCA. 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 there is sufficient evidence, as set out in this Decision, to show that Candidate Schulz’s 2016 campaign for election to the Madison County Commission from District 1 violated Montana’s campaign practice laws, including, but not limited to the laws set out in the Decision. Having determined that sufficient evidence of a campaign practice violation exists, the next step is to determine whether there are circumstances or explanations that may affect prosecution of the violation and/or the amount of the fine.

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

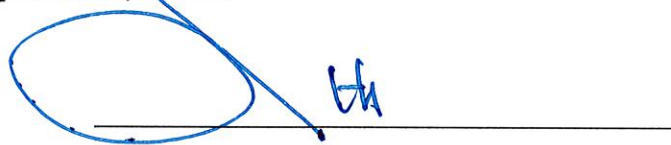
that failures to file or report be excused as *de minimis*. See discussion of *de minimis* principles in *Matters of Vincent*, Nos. COPP-2013-CFP-006, 009.

Because there is a finding of violation and a determination that *de minimis* and excusable neglect theories are not applicable to Sufficiency Finding 1, civil/criminal prosecution and/or a civil fine is justified. §13-37-124, MCA. The Commissioner hereby issues a “sufficient evidence” Finding and Decision justifying civil prosecution of Candidate Schulz. Because of the nature of the violations (the failure to report and disclose 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 candidate named in the sufficiency finding was forthright in describing his campaign activity.

While it is expected that a mitigated fine amount will be negotiated and paid, in the event that a fine is not negotiated and the Matter resolved, the Commissioner retains statutory authority to bring a complaint in district court against any person who intentionally or negligently violates any requirement of campaign practice law, including those of §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*.

DATED this 22nd day of September, 2016.



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