

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES (COPP)

CRIS YELLOWTAIL v. DARLEAN NEWMAN (Montana SD 36 candidate)	COPP-2024-CFP-046 DECLARATION OF MERIT OF COMPLAINT RESOLUTION AND DISMISSAL OF COMPLAINTS BY PROMPT REMEDIAL ACTION BY THE RESPONSIBLE PARTY
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COMPLAINT

On October 22, 2024, Cris Yellowtail of Anaconda, MT filed a campaign practices complaint against Montana State Senate, District 36 candidate Darlean Newman. The complaint alleged that Mrs. Newman failed to include the full ‘paid for by’ attribution statement or partisan affiliation on campaign communications as required.

ISSUES

Attribution and partisan affiliation on campaign communications, Montana Code Annotated (MCA) § 13-35-225(1) and (2).

FINDING OF FACTS

The facts necessary for a determination in this matter are as follows:

Finding of Fact No. 1: On November 16, 2023, Darelene Newman of Wise River, MT filed a C-1 Statement of Candidate as a candidate seeking election to the Montana Senate, District 36 with COPP. On the C-1, candidate Newman indicated she was a Republican party candidate. Candidate Newman also indicated partisan affiliation as a Republican party candidate when formally filing with Montana’s Secretary of State’s office (Commissioner’s Records.)

Finding of Fact No. 2: On October 22, 2024, COPP received the original signed and notarized copy of this complaint. In reviewing the complaint, Commissioner Gallus determined it was merited, as the campaign communications referenced in the complaint did not appear to include the “paid for by” attribution statement or candidate Newman’s partisan affiliation as a Republican. (Commissioner’s Records.)

Finding of Fact No. 2.1: The morning of October 23, 2024, via both email and telephone call, COPP notified candidate Newman of this formal attribution complaint, providing both a copy of the complaint and written correspondence from Commissioner Gallus explaining that it was merited. The Commissioner’s written correspondence notified candidate Newman that “You will need to add appropriate attribution and partisan affiliation to all materials lacking this, and provide photographic evidence or related documentation to COPP showing this addition” within 2 business days. (Commissioner’s Records.)

Finding of Fact No. 2.2: The afternoon of October 23, 2024, via email message, candidate Newman provided COPP with pictures of four (4) campaign banners or related material relevant to this complaint. Each material included an attribution statement of “Paid for by Darlean Newman for MT SD 36. PO Box 113, Anaconda, MT 59711. Angela Bennin, Treasurer”. (Commissioner’s Records.)

Finding of Fact No. 2.3: The afternoon of October 24, 2024, in response to additional notice provided by COPP that the materials did not appear to state any relevant partisan affiliation, candidate Newman provided COPP with photographs of the relevant material with an “R” added.

DISCUSSION

Under Montana law “all election communications, electioneering communications, and independent expenditures must clearly and conspicuously include the attribution "paid for by" followed by the name and address of the person who made or financed the expenditure for the communication.” Montana Code Annotated (MCA) § 13-35-225(1). In partisan elections, communications must also “state the candidate's party affiliation or include the party symbol.” MCA § 13-35-225(2). Administrative Rule of Montana (ARM) 44.11.601(4)(a) allows candidates to meet this partisan affiliation requirement by stating the full name of the political party (Democrat, Libertarian, or Republican), the capitalized first letter (“D”, “L”, or “R”, or the recognized party symbol (donkey symbol, Statue of Liberty symbol, or elephant symbol).

Montana law requires an accelerated review (“as soon as practicable”) of a campaign practice complaint alleging an attribution violation, MCA § 13-35-225(5). In this matter, COPP immediately reviewed the complaint and determined the allegations were merited, as the materials referenced did not appear to include the required attribution statement (FOF No. 2). Consequently, agency staff contacted Mrs. Newman via both telephone and email message “as soon as practicable” to provide notification of the attribution deficiencies (FOF No. 2.1). Mrs. Newman was immediately responsive regarding these attribution deficiencies, and contacted COPP via email the same day to notify the agency that the materials did carry an attribution statement of “Paid for by Darlean Newman for MT SD 36. PO Box 113, Anaconda, MT 59711. Angela Bennin, Treasurer” at the time the complaint was submitted (FOF No. 2.2). Mrs. Newman further worked with COPP to come into compliance with the partisan affiliation requirements by adding an “R” to each material (FOF No. 2.3).

The law governing complaints of failure to properly attribute political communications provides precise directions to the Commissioner:

1. The Commissioner is to immediately assess the merits of the attribution complaint, MCA § 13-35-225(5). The Commissioner found merit to the attribution complaint and hereby memorializes that finding.
2. The Commissioner shall notify the individual of the merit finding, requiring the individual to bring the material into compliance, MCA § 13-35-225(6)(a). In this matter, COPP notified Mrs. Newman of the attribution deficiency via email and telephone correspondence on October 23, 2024.

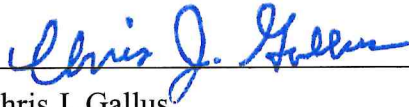
3. The individual financing the material is provided 2 business days to bring the material into attribution compliance, MCA § 13-35-225(6)(a)(i). In this matter, Mrs. Newman took appropriate actions to fully attribute the material within this two business day period.

Under Montana law, a candidate with an attribution deficiency is relieved of a campaign practice violation, provided they promptly carry out the attribution correction. I determine that Mrs. Newman has met this duty by immediately notifying COPP that an attribution statement was included on each material, providing photographic evidence to support this assertion, and working with the agency to add relevant partisan affiliation to each material. Based on the present factors Mrs. Newman is relieved of a campaign practice violation under Mont. Code Ann. §13-35-225(6).

It is debatable whether the attribution statement originally included with these materials is “clear and conspicuous” as required under MCA §13-35-225(1) and related Administrative Rules of Montana (ARM) 44.11.601(3). While each material meets three (3) of the five (5) specifications outlined in *Campbell v. Brown* (2008) (specifications later formally adopted by COPP by Rule, via 44.11.601(3))- the attribution language is set apart from the other contents of the communication, it is printed with a reasonable degree of color contrast from the rest of the material, and is printed on the side containing the campaign message- they are deficient in the other (2)- readers or observers (notably complainant Yellowtail and COPP when initially presented with the submitted complaint) have had difficulty in locating and reading the attribution language, and it is not of sufficient size and type to be clearly readable by most readers. However, until such time as the Montana Legislature provides a formal definition or baseline for the terms “clear and conspicuous,” which even in the context of *Campbell v. Brown* and the formal adoption of ARM 44.11.601(3) remain somewhat subjective terms, I decline to find or pursue a violation on these grounds.

Normally, the Commissioner first provides decisions to the parties and then the public on the following day. The Legislature, however, has set very tight timelines on this sort of attribution complaint. Accordingly, the Commissioner provides this decision to the parties and public on the day issued.

DATED this 24th day of October, 2024.



Chris J. Gallus
Commissioner of Political Practices
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