

COMMISSIONER OF
POLITICAL PRACTICES



STATE OF MONTANA

JONATHAN R. MOTL
COMMISSIONER
TELEPHONE (406) 444-2942
FAX (406) 444-1643

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

February 4, 2014

Senator Dee Brown
Chairperson
State Administration and Veterans' Affairs Interim Committee
PO Box 201706
Helena, MT 59620-1706

Dear Senator Brown:

I write in response to your email dated February 2, 2014, but received on February 3, 2014 at 2:23 PM. I respond to each of your questions as follows:

1. Campaign Practice Decision Progress and Priorities

The Office will have 32 campaign practice complaints remaining on its docket at the time of Thursday's meeting. The current docket lists 34 campaign practice complaints, but we will have released 2 more Decisions by Thursday's meeting, reducing that number to 32.

Of the 32 remaining complaints on the docket: 5 are stayed pending a US Supreme Court ruling on contribution limits; 2 are now in draft Decision phase; and, 13 concern 2010 elections and therefore will, because of statute of limitations concerns, need to be resolved by Decision by the end of March of 2014. The remaining 12 complaints are primarily centered on the 2012 election cycle. We expect to have those 12 complaints resolved by the end of June of 2014. There will be new complaints filed, of course, and resolution of the currently filed 2012 complaints may lead to further complaints as was the case when work started on the 2010 complaints. Because of new complaints filed we expect the docket to fall to and then remain at about 10 complaints.

As of Thursday's meeting I will have served 8 months as Commissioner. During the past 8 months the Office released 44 Decisions covering 45 campaign practice complaints. Each Decision is listed on the website. Since 2009 (with the exception of a brief period in early 2012), the COPP docket has had 40 or more pending campaign finance complaints. There were 48 pending complaints at the time I began work as Commissioner. During the time I have served as Commissioner 29 new campaign finance complaints were filed. The 44 Decisions issued to date (resolving 45 complaints) exceeded the new complaints filed by 16 and therefore reduced the overall docket from 48 to 32 pending complaints. I expect that this progress will continue and the overall complaint docket number will drop below 20 by end of March of 2014. A docket of less than 20 is comparable to 2004, the end of Commissioner Vaughey's term as Commissioner. More importantly it means that Decisions are prompt thereby providing guidance to candidates, rather than just assessing fines.

2. Advisory Opinions

Your letter did not inquire as to advisory opinions. Advisory opinions are, in our judgment, a useful adjunct to other forms of establishing precedent, such as Decisions or administrative regulations, because they are published for public review, prospective, and involve less procedure. We see the advisory opinions as completely replacing private letters (which are not subject to public review), lessening the need for Decisions and being less costly than a rule making procedure. We have issued three advisory opinions in 2014 and a 4th such opinion will be in process by the time of the SAVA hearing.

3. Reopening Former Complaints/Decisions

Your letter asked about plans to "reopen cases already settled." There are no such plans. We have taken no such action. Any "case" resolved by settlement is likely a final resolution of that Matter; deemed to be so by law, precedent and justice.

If your question is directed to reopening complaints or Decisions on which there was no settlement, then we have done so twice. We reopened the *Madin v. Sales* dismissal and the *Washburn v. Murray* Decision. These appear on the current docket as the complaint *Madin v. Sales*, COPP-2010-CFP-029 and on the Decision record as *Washburn v Murray*, COPP-2010-CFP-019. There were no settlements in either Matter and the Commissioner is allowed

(more accurately charged by law) to reopen unresolved Matters when better or new evidence of a violation is determined.

In addition, and under the same reasoning, the Office worked with complainants to expand existing complaints to cover campaigns of 6 additional 2010 candidates: **Docket** *Bonogofsky v. Wittich*, COPP-2010-CFP-031; *Bonogofsky v. Prouse*, COPP-2010-CFP-033; *Bonogofsky v. Wagman*, COPP-2010-CFP-035; **Decisions** *Bongofsky v. Boniek*, COPP-2010-CFP-027; *Ward v. Miller*, 2010-CFP-027, and *Clark v. Bannan*, COPP-2010-CFP-023. Still further, the Commissioner filed four complaints against third party entities associated with candidate campaigns: *Commissioner v. WTP, et. al.*, COPP-2010-CFP-026, 028, 030, 032. Two complaints were advanced as originally filed: *Bonogofsky v. Kennedy*, COPP-2010-CFP-015, and the *Washburn v. Murray* matter cited above.

Finally, a recent complaint filed with this Office (*Howell v. Stamey*, COPP-2014-CFP-003] raises the issue of false swearing connected with the settlement of a prior complaint. The complaint was accepted and a Decision is forthcoming.

4. Enforcement Action (including lawsuits)

There are currently 22 pending Decisions that will require enforcement by settlement or adjudication. Two of the 22 Decisions are currently in adjudication in state district court (*Ward v. Miller* and *Washburn v. Murray*). The Commissioner's office is represented in those lawsuits by in-house counsel Jonathan Motl and Jaime MacNaughton. The Office's existing legal staff will issue Decisions and then switch to litigation to enforce the Decisions. At this time there is no pre-session supplemental budgeting requested or anticipated. The litigation, as much of litigation does, may become more pronounced over time and additional staff and litigation funds will likely be requested from the 2015 Legislature.

5. Defending Constitutional and other Challenges

The Office is currently being represented by the Attorney General's office in four court cases involving challenges to the constitutionality of certain campaign practice laws: *WTP v. Gallik* (Motl); *Sanders County Republican Central Committee v. Fox*; *Lair v. Murray*; and *Monforton v. Motl*. Each of these cases are listed on the legal memo prepared by Ginger Aldrich.

The additional case not in the Aldrich memo is *LeFer v. Murry and State of Montana*, USDC Billings Division, Cause No. CV-13-06-BLG-DWM; Appealed to the Ninth Circuit in *LeFer v. Murry and the State of Montana*, Ninth Circuit Court of Appeals, Cause No. 13-35963. Jaime MacNaughton represents the Commissioner's Office in this case. At this time there is no pre-session supplemental budgeting requested or anticipated.

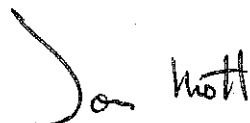
6. Other Legal Matters and Outside Counsel

The Office, following my employment, continued and completed all existing Deputy Commissioner contracts. We have entered into one new such contract: Jay Dufrechou as Deputy Commissioner for the Decision in *Page-Nei v. Reynolds, Hester, and O'Brien*, COPP-2013-CFP-020, because of the Commissioner's conflict with a former client. At this point the docket of complaints requires no further engagement of a deputy commissioner.

The Office has now completed and terminated all outside counsel contracts existing at the time of my employment. The Office has entered into one new such contract. Curt Drake, attorney at law, has been retained to represent the Office in a grievance hearing filed by a former employee. The Office is responsible for the first \$5,000 of Mr. Drake's fees with tort claims assuming payment after the \$5,000 limit is reached. The Office has a small personal services vacancy savings (about \$12,000) and used \$5,000 of that amount to cover its part of Mr. Drake's fees. At this time there is no pre-session supplemental budgeting requested or anticipated.

The Office primary legal cost (other than for in-house legal counsel Jaime MacNaughton) is for the agency legal services of Jim Scheier. Those services will be used to the full extent of budget. It is again noted that the cost of legal services is not fully reflected as the Commissioner is also working as office legal counsel for a substantial portion of his time. At this time there is no pre-session supplemental budgeting requested or anticipated.

Sincerely,



Jonathan Motl
Commissioner of Political Practices
State of Montana