

Chris J. Gallus  
GALLUS LAW FIRM  
1423 Otter Road  
Helena, MT 59602  
406-459-8676  
galluslaw@gmail.com

Arthur V. Wittich  
Emily S. Stark  
WITTICH OGBURN, P.C.  
602 Ferguson Ave., Ste 5  
Bozeman, MT 59718  
406-585-5598  
406-585-2811 fax  
artw@law-advisor.com  
stark@law-advisor.com

*Attorneys for Plaintiff*

GALLATIN COUNTY CLERK  
OF DISTRICT COURT  
JENNIFER BRANDON

2014 JAN 17 PM 4 34

FILED  
BY \_\_\_\_\_ KP  
DEPUTY

MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT, GALLATIN COUNTY

\*\*\*\*\*

RONALD MURRAY, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
JONATHAN MOTL, Montana )  
Commissioner of Political Practices, )  
 )  
Defendant, )

Cause No. DU-14-36A

ACTION FOR  
DECLARATORY RELIEF

*(1) Summons Issued*

COMES NOW, Plaintiff, Ronald Murray, by and through his counsel, Chris J. Gallus of Gallus Law Firm and Arthur V. Wittich of Wittich Ogburn, P.C., and alleges and avers as follows:

.....  
.....

Action for Declaratory Relief

/

## INTRODUCTION

1. Plaintiff Ronald Murray ("Murray" or "Plaintiff"), a resident of Gallatin County, was a candidate for Montana House District No. 69 in 2010.
2. Murray is a party to a case decided by the Montana Commissioner of Political Practices.
3. This action is for declaratory relief arising under numerous Montana statutes, administrative rules, and practices of the Montana Office of Political Practices.
4. It is filed against Jonathan Motl as Defendant in his capacity as the unconfirmed appointee of Commissioner of Political Practices ("Motl" or "Defendant").
5. Plaintiff challenges the practices of Defendant as unlawful and seeks a declaration of his legal rights.
6. Contrary to law, administrative rules, and all actions taken by any and all previous Commissioners, appointee Motl violated Mont. Code Ann. § 13-37-124, when, after making a sufficiency finding following an investigation, he failed to consult and cooperate with the Gallatin County Attorney as required by law.
7. Defendant's acts deprive Plaintiff, and other persons of or residing in his County, of the right to have such matters considered by the Gallatin County Attorney, who is empowered to investigate alleged violations of campaign finance laws pursuant to Mont. Code Ann. § 13-37-125; to seek withholding of names from nomination (Mont. Code Ann. §§ 13-37-126 and 127); and impose, negotiate, settle, or share in penalty proceeds awarded in any successful civil suits under Mont. Code Ann. § 13-37-128.
8. Under Mont. Code Ann. § 13-37-129, the proper local court may take into account the seriousness of a violation and the degree of culpability.

9. A respondent can also request that any civil action be decided by a jury.

(Constitution of the State of Montana Art. 11 Sec. 26).

10. Referral of sufficiency findings to the improper county attorney affects Murray's fundamental rights to appear and argue before a jury composed of voters from Gallatin County—his peers.

**JURISDICTION AND VENUE**

11. This court has jurisdiction under the Uniform Declaratory Judgments Act, Mont. Code Ann. § 27-8-101 et. seq., as specifically enumerated in Mont. Code Ann. § 27-8-201. Plaintiff respectfully requests this Court declare actions taken by Defendant violate the rights of Plaintiff as herein contained.

12. Venue is proper because the Plaintiff resides in Gallatin County, Mont. Code Ann. § 25-2-126(1), and all alleged violations occurred in Gallatin County.

**FACTS**

13. In June 2013, Governor Bullock appointed Helena attorney Jonathan Motl to the position of Montana Commissioner of Political Practices. Motl remains an appointee to that position but his appointment has not been confirmed by the Montana Senate as required by law.

14. The Commissioner of Political Practices (“Commissioner”) has the authority to investigate complaints that are properly filed with his office, subject to the duty to abide by the provisions of Mont. Code Ann. Title 13, Chapters 35 and 37 and rules adopted to carry out these provisions.

.....

.....

15. These laws specifically include, by legislative design, provisions requiring the Commissioner to work in consultation and cooperation with Montana's elected County Attorneys (*see* Mont. Code Ann. § 13-37-124 and ARM 44.10.101(2)(a)).
16. County Attorneys retain their own investigative powers independent from the Commissioner (*see* Mont. Code Ann. § 13-37-125).
17. The boundary of House District 69 was entirely within Gallatin County and was where the election occurred.
18. No portion of House District 69 is contained in Lewis and Clark County.
19. Soon after the 2010 primary election, Murray's opponent, Ted Washburn, filed a complaint against Murray with the prior Montana Commissioner of Political Practices.
20. Then Commissioner, James Murry, rendered a decision on the Washburn complaint on January 28, 2013.
21. Following a complete investigation of the complaint, Commissioner Murry rendered a sufficiency decision that some minor campaign finance violations occurred.
22. Plaintiff Murray fully cooperated in the investigation, and supported the conclusion that some minor violations occurred.
23. Pursuant to Montana law, Commissioner Murry sent his sufficiency findings to the Gallatin County Attorney.
24. The Gallatin County Attorney returned the matter to Commissioner Murry, so that Commissioner Murry could proceed with a civil action or enter into settlement with Plaintiff Murray.
25. Thereafter, Plaintiff Murray awaited a proposed settlement meeting, or a suggested fine amount.

26. While Murray was awaiting a response, Commissioner Murry withdrew his nomination from consideration by the State Senate and a new Commissioner, Jonathan Motl, the Defendant, was subsequently appointed to the position.

27. On November 13, 2013, Motl then took the unprecedented action to re-open, or set aside, Commissioner Murry's decision, and created a new complaint.

28. Motl conducted a new investigation and thereafter rendered a new decision on December 18, 2013, finding additional significant violations.

29. All of Motl's unprecedented actions occurred while Murray was waiting for settlement discussions to occur so the initial decision could be resolved.

30. Despite clear Montana law, and clearly established precedent, Motl sent his decision to the Lewis and Clark County Attorney instead of returning the file to the Gallatin County Attorney.

31. Defendant Motl's actions are contrary to law and practice. Specifically, Mont. Code Ann. § 13-37-124, which provides:

**Consultation and cooperation with county attorney.** (1) Except as provided in 13-35-240, whenever the commissioner determines that there appears to be sufficient evidence to justify a civil or criminal prosecution under chapter 35 of this title or this chapter, *the commissioner shall notify the county attorney of the county in which the alleged violation occurred and shall arrange to transmit to the county attorney all information relevant to the alleged violation.* If the county attorney fails to initiate the appropriate civil or criminal action within 30 days after receiving notification of the alleged violation, the commissioner may then initiate the appropriate legal action.

(2) A county attorney may, at any time prior to the expiration of the 30-day time period specified in subsection (1), waive the right to prosecute, and the waiver authorizes the commissioner to initiate the appropriate civil or criminal action.

....

(4) If a prosecution is undertaken by the commissioner, all court costs associated with the prosecution must be paid by the state of Montana, and all fines

and forfeitures imposed pursuant to a prosecution by the commissioner, except those paid to or imposed by a justice's court, must be deposited in the state general fund.

(Emphasis added.)

32. The plain language of the statute mandated that Defendant Motl notify and refer Plaintiff Murray's case to the Gallatin County Attorney, because Gallatin County is the County in which any alleged violation occurred.

33. Motl's position that merely finding new reporting violations, that should have been filed with his Helena office, allows him to choose to proceed in Lewis and Clark County is nothing short of legally absurd. To take that position, Motl needs to insert discretionary provisions into the existing statute that do not exist. Not even a district court judge is permitted such an indulgence (*see* Mont. Code Ann. § 1-2-101).

34. The Administrative Rules of Montana further support the requirement that the Commissioner work *with the* County Attorney. ARM 44.10.101(2)(a) provides:

The Commissioner of Political Practices is to establish clear and consistent requirements for the full disclosure and reporting of the sources and disposition of funds used in Montana to support or oppose candidates, political committees, or issues, and *in conjunction* with the county attorneys, to enforce the election and campaign finance laws as specified in Title 13, chapters 35 and 37, MCA. The powers and duties of the Commissioner are provided in Title 13, chapter 37, part 1, MCA.

(Emphasis added.)

35. Importantly, Mont. Code Ann. § 13-37-125 provides each County Attorney with independent investigative authority to address violations of Title 13, Chapters 35 and 37:

**Powers of county attorney to investigate.** (1) *Nothing in chapter 35 of this title or this chapter prevents a county attorney from inspecting any records, accounts, or books that must be kept pursuant to the provisions of chapter 35 of this title or this chapter that are held by a political committee or candidate involved in an election to be held within the county. However, the inspections must be conducted during reasonable*

office hours.

(2) A county attorney may:

- (a) administer oaths and affirmations;
- (b) subpoena witnesses and compel their attendance;
- (c) take evidence; and
- (d) require the production of any books, correspondence, memoranda, bank account statements of a political committee or candidate, or other records that are relevant or material for the purpose of conducting any investigation pursuant to the provisions of chapter 35 of this title or this chapter.

(Emphasis added.)

36. In fact, Motl's position regarding his supposed discretion under Mont. Code Ann. § 13-37-124 eliminates the independent investigative authority of the county attorney in Mont. Code Ann. § 13-37-125.

37. The express language of Mont. Code Ann. § 13-37-125 does not permit the Lewis and Clark County Attorney to use independent investigative powers regarding the claims by Defendant, because the candidate (Murray) was not involved in an election held within his County. As to House District No. 69 and Murray, only the Gallatin County Attorney can perform that function.

38. When interpreting statutes, both courts and Motl must act in a way that gives meaning to all provisions (*see* Mont. Code Ann. § 1-3-232). Motl flagrantly violated the letter and intent of the law by choosing the wrong county attorney to refer alleged violations for the penalty phase.

39. It appears that Motl's actions are a new policy, because, to Plaintiff's knowledge, Motl now refers all matters pertaining to candidates where alleged violations coincided with reporting deficiencies to the Lewis and Clark County Attorney instead of the proper local county attorney.

40. In Murray's case Motl has found attribution deficiencies, illegal corporate contributions, coordination, and record keeping failures, all of which occurred in Gallatin County.

41. Even the reporting violations that Motl maintains allow him to choose Lewis and Clark County as the venue would presumably have *occurred* in Gallatin County because those same reports should have been filed with the Gallatin County election administrator, as required by Mont. Code Ann. § 13-37-335 in 2010. Lastly, those same reporting violations grow from the new allegations related to the campaign's coordination and corporate contributions.

42. As a consequence of these statutes, it is clear Motl should have referred Murray's matter to the Gallatin County Attorney. In fact, all previous Commissioners have referred decisions to the proper local county attorney, as here, Commissioner Murry correctly referred the first Washburn v. Murray decision to the Gallatin County Attorney.

43. There are also instances where Commissioners sent their sufficiency findings to more than one county attorney when it was alleged that violations occurred in more than one county. (See Motl v. Montanans in Action, et al, 2009.) However, the local county attorney still had a role in the disposition of the matter. But that did not happen in this case.

44. If the Lewis and Clark County Attorney prosecuted the Plaintiff's action, the proceeding would take place in Lewis and Clark County rather than Gallatin County, where the alleged violations occurred and Murray resides, all to Murray's detriment and in violation of his legal rights.

...

**PRAYER FOR RELIEF**

WHEREFORE, Murray asks this court to:

1. Declare that Defendant Motl failed to comply with Montana law by referring Murray's second sufficiency finding to the Lewis and Clark County Attorney rather than the Gallatin County Attorney.

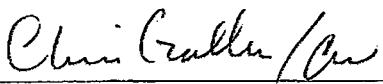
2. Declare that mandating referral to Lewis and Clark County impaired Murray's rights and interests established under Mont. Code Ann. § 13-37-129, such as allowing a Gallatin County Court to take into account the seriousness of a violation and the degree of Murray's culpability, and Murray's ability to request that any civil action be decided by a jury.

3. Declare that Defendant Motl deprived Plaintiff, and all citizens of Gallatin County, of the right to have their election related matters considered by the Gallatin County Attorney, who is empowered to investigate alleged violations of campaign finance laws pursuant to Mont. Code Ann. § 13-37-125; to seek withholding of names from nomination ( Mont. Code Ann. 13-37-126 and 127); and impose and negotiate settlement, or share in penalty proceeds awarded in any successful civil suits under Mont. Code Ann. § 13-37-128.

4. Order that Defendant Motl pay Plaintiff's costs and attorney fees under, Mont. Code Ann. § 27-8-311, or any other applicable authority; and

5. Grant any and all additional relief this Court deems just and equitable.

Respectfully submitted this 17<sup>th</sup> day of January, 2014.

  
Chris J. Gallus  
Attorney for Plaintiff