

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

October 6, 2014

Eric Fulton
1627 W. Main St., #357
Bozeman, MT 59715

Re: Complaint against Wilmer/Wheat

Dear Mr. Fulton:

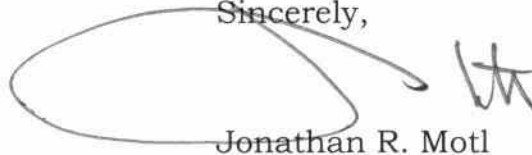
I write in response to your complaint received by this Office on October 3, 2014. Your complaint is directed against a 2010 candidate for Montana public office (Franke Wilmer) and Mike Wheat, listed in her 2010 campaign finance report as a contributor to her 2010 campaign.

I hereby reject and return your complaint to you under the authority of 44.10.307(3)(a) ARM because it does not state a potential violation of a statute or rule. First, the complaint concerns a contribution made and reported by a 2010 candidate during the 6-24-2010 to 10-20-2014 time period. The check was written on September 13, 2010 (Commissioner's records) and therefore your complaint is past the 4 year statute of limitation period (see §13-37-130 MCA). Further, the COPP has already stated it will not be accepting further 2010 complaints. See FN 22, 2014-CFP-007, *Ponte v. Buttrey*.

Second, had the complaint been accepted it would have been looked at and measured by the frivolous complaint standards of *Landsgaard v. Peterson*, COPP-2014-CFP-008. The complaint triggers a review by those standards because it implicates base level contributions protected by the constitution and promoted by Montana policy. Further, the Commissioner's records document that the contribution was made by Debra Wheat, not Mike Wheat, thereby releasing Mr. Wheat entirely and reducing the analysis of that of minor reporting violation by candidate Wilmer subject to a *de minimis* analysis.

In summary, the complaint is rejected and returned on statute of limitations grounds. This Office firmly believes that complaint filing serves the public interest by identifying potentially suspect campaign practices for analysis and review. However, in your case you may be fortunate that this complaint is rejected because, if accepted, your complaint would have been reviewed under the principles discussed above.

Sincerely,

A handwritten signature in dark ink, appearing to be 'JRM', is written to the right of the word 'Sincerely,'. A large, loopy, handwritten mark, possibly a stylized 'M' or a flourish, is written below 'Sincerely,' and extends to the left, partially overlapping the printed name 'Jonathan R. Motl'.

Jonathan R. Motl

Commissioner of Political Practices

The UPS Store

1627 W Main St

Bozeman MT 59715

406 585-8000 phone

406 585-8040 fax

M-F 8:30-6:00 Sat 10:30-3:00

1627 W. Main
357
116 S. 10th
Ave. 59715
Bozeman MT



To: Commissioner of Political Practice Fax #: 406-444-1643

Subject: Formal Complaint

From: Eric Fulton Date: 10/3/2014

Phone #: 406.220.2980





October 1, 2014

RECEIVED

2014 OCT -3 P 2:04

COMMISSIONER OF
POLITICAL PRACTICES

Commissioner Jonathan Motl
Montana Office of Political Practices
P.O. Box 202401
1205 8th Avenue
Helena, MT 59620-2401

Re: Formal Complaint

Dear Commissioner Motl:

It has come to my attention that Montana Legislative Candidate Franke Wilmer (D-Bozeman) reported a contribution to her campaign from a sitting Montana Supreme Court Justice, Mike Wheat, also of Bozeman (address below), during her 2010 run for the Montana House of Representatives. Ms. Wilmer's address is 541 East Mendenhall, Bozeman, MT 59715. The amount of the contribution is significant given the overall limited size of contributions in Montana, and because it is reportable which means the public is given notice of it.

This is a complaint against:

Rep. Franke Wilmer:

While it appears Ms. Wilmer may accept the contribution, what she cannot do, and has, is conceal the true nature of the contributor and fail to accurately and timely report it. At a minimum, she failed to keep her reports timely and accurate. She received significant benefits to her campaign that are now a detrimental issue to Justice Wheat which is all the more reason to vigorously enforce the provisions of Montana law. Integrity, transparency and disclosure depend on it. This conduct erodes public confidence in our elections and our government.

Montana Supreme Court Justice Mike Wheat:

While Justice Wheat is not entirely responsible for the content of the Wilmer reports, he is responsible for correcting them, per the Code of Judicial Conduct, which you do not enforce, but his duties there factor into his knowledge of matters you do enforce. Even more directly, it would appear from the facts that Justice Wheat made a contribution which was properly recorded or he too violated, or aided in the violation of MCA § 13-37-217.

Consequently, it is necessary for the proper resolution of this matter that this complaint names both Rep. Wilmer (D-Bozeman) and Montana Supreme Court Justice Mike Wheat as having violated Montana campaign finance laws. It might also be necessary to involve or make a subsequent complaint to the Montana Judicial Standards Commission for violation of the Montana Code of Judicial Conduct, Canon 3, Rule 3.1(C), and Canon 4, Rule 4, subsections 4.1(A)(1) through (4) and 4.2(A)(1), (2) and (4).

Montana COPP:

It has also come to my attention that you, or someone in your office, may have recently modified the report in such a way so as to change how the contribution was made. It is not clear, however, that any evidence was presented to warrant this change, such as a cancelled check showing who made the contribution.

Allegations, Facts and Complaint:

The report, itself, is still posted through your website and clearly shows a contribution from "Mike Wheat" 930 Stonegate Drive[,] Bozeman[,] MT 59715" in the amount of "\$50" with an occupation for the contributor listed as "Justice MT Supreme Court." The report was filed October 21, 2010 so time is of the essence regarding the pending 4-year statute of limitations which can be tolled if a complaint is filed. Since the report was recently modified or doctor at someone's instruction it is likely that the statute of limitations is no longer an issue, but preserving the claim and having this matter decided quickly is of vital public interest in any event.

Specifically, this complaint alleges that candidate Wilmer either:

1. Failed to keep and maintain accurate reports in violation of MCA §§ 13-37-208 and 13-37-225;
2. Failed to accurately report contributions and include required information in violation of MCA § 13-37-229 and reported the actual contribution almost 4 years late in violation of MCA 13-37-226;
3. Knowingly accepted a contribution in the name of another in violation of 13-37-217; and
4. Caused, or participated in causing, altering of reports filed with your office.

Specifically, this complaint alleges that Justice Wheat:

1. Made or allowed to be made contributions in his name when the true contributor was another violating MCA § 13-37-217; and
2. Caused or participated in causing, by act or omission, negligently or intentionally altering or filing false reports with your office.

Specifically, this complaint alleges that COPP:

1. Violated MCA § 13-37-108; and
2. Caused or participated in causing, by act or omission, negligently or intentionally altering or filing false reports with your office.

Allegation 1 is self-explanatory in that the law is established to, and the public expects, candidates file accurate and timely reports of contributions and expenditures. Accurate reporting shows the public who supports a particular candidate and gives a voter a general sense of who supports or endorses a candidate enough to have their name associated with that candidate. In this case, the contributor reported, Justice Wheat, is well known. Representative Wilmer most likely saw the value in associating herself, and thereby her campaign, with someone of Justice Wheat's stature in the community. Justice Wheat benefits because his seemingly small gesture helps place someone, Ms. Wilmer, in a position of influence in the legislature.

Allegation 2 is substantially similar to Allegation 1 and this statute, MCA § 13-37-226 establishes deadlines for filing reports. Candidates are made aware for these deadlines. The timelines are important for obvious reasons because they let voters know important information before they cast a ballot. Bozeman voters were deprived of this, and since Ms. Wilmer no longer needs the public benefit of listing Justice Wheat as a she is willing to have the report modified. The modification also benefits Justice Wheat as his 2010 contribution is now an issue in his 2014 re-election campaign which he'd obviously prefer not to deal with since it involves a violation of the Montana Code of Judicial Conduct.

Allegation 3 is included, and important, because if Franke Wilmer's reports are true and accurate, but she should have listed Justice Wheat's spouse rather than him—again, conveniently at this point—then she violated—MCA § 13-37-217. This statute traces its existence all the way back to 1912 when Montana enacted the Corrupt Practices Act. It is one of the most significant statutes we have as voters in terms of providing transparency and true disclosure. Specifically, this statute provides that a person may not make a contribution of the person's own money using a name other than their own. Applied to Ms. Wilmer the statute also prohibits her from receiving such a contribution and entering it on her reports as coming from someone other than the person that actually made the contribution. Taking a contribution from Mrs. Wheat and entering it as a contribution from Justice Wheat because of the obvious associated benefits is specifically prohibited under this statute. Now that it has become decidedly inconvenient to continue listing the contribution this way Ms. Wilmer and Justice Wheat, with your help, seek to change it. That is improper on a great many levels.


A person who violates any of the provisions of Montana's campaign finance laws is subject to the civil penalty provisions of MCA § 13-37-128 which provides a penalty of \$500 or three times the amount of contribution or expenditure whichever is greater. A public official adjudicated to have violated the provisions of the code can be removed from office. MCA § 13-35-106.

This type of campaigning is illegal. Representative Wilmer is a veteran campaigner. She teaches political science at the university level. She knows the importance of timely and accurate reporting, and she knows how to influence voters. Much the same could be said regarding Justice Wheat's political experience, and his knowledge of campaign finance requirements from sitting on the bench during this period in history is significant. You have championed the cause of full, accurate and timely public disclosure and transparency in Montana for well over 30 years.

Due to the proximity of the statute of limitations, and other matters herein contained I respectfully request swift action, and, quite frankly, that this matter is best handled by either the Department of Justice or the Gallatin County attorney's office. In that way important information can be timely revealed, and any concerns regarding the statute of limitations can be addressed and preserved.

If additional assistance in the investigation is needed, please contact me. Thanks.

Sincerely,

A handwritten signature in black ink, appearing to read 'Franke Wilmer', is written over a horizontal dashed line.

VERIFICATION

STATE OF MONTANA)

County of Gallatin : ss.
)

Eric Fulton, being first duly sworn, deposes and says as follows:

That she/he is the Complainant in the above entitled case, that she/he has read the complaint, knows the contents thereof, and that the facts and matters contained therein are true, accurate and complete to the best of her/his knowledge and belief. Further, as to any facts which are stated as facts, to which she/he has personal knowledge, the same are hereby verified as being true. Still further the name and signature on the Complaint is the name and signature of:

Eric Fulton
Printed Name of Complainant

[Signature]
Signature of Complainant

On this 5 day of October, 2014, before me, a notary public, personally appeared [Signature], known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she/he executed the same.

[Signature]
Notary Public for the State of Montana
Residing at Bozeman, MT
My commission expires 12-16-2017

