

Memo

To: SAVA Committee
Re: Litigation update
From: Jeffrey Mangan
Date: July 17, 2017

I write in response to the request for an update of litigation involving the COPP. This information supplements the most recent memo dated January 1, 2017.

Enforcement Actions Brought by COPP Listed in Order of Date of Resolution

All Judgments and Settlement Agreements Listed Below Are Posted For Public Review on the COPP Homepage Website

1. *COPP v. Sales*, BDV-2014-283, 1st Judicial District Lewis and Clark County (Judge Sherlock). Settled 12/19/14 with settlement posted on the COPP website: \$500 fine and statement describing third party involvement as detrimental to Montana elections. Fine is paid and deposited into general fund.
 - 1.a. *Sales v. Motl*, DV-13-300A, 13th Judicial District Court, Gallatin County. Cause dismissed for lacking justiciable controversy on Sept 22, 2014.
2. *COPP v. Miller* BDV-2014-62, 1st Judicial District Lewis and Clark County (Judge Sherlock). Settled 1/23/15 with Order of Dismissal of lawsuit posted on the COPP website. The Order directs that Miller pay a fine of \$4,000 and be banned from running for public office for a period of 4 years (1/23/19). Fine is paid and deposited into general fund.
3. *COPP v. Boniek* XADV-2014-202, 1st Judicial District Lewis and Clark County (Judge Pinski, by substitution). After pre-trial motions were decided, a penalty stage trial was held in a Great Falls courtroom on June 2, 2015 before the Honorable Judge Pinski. On August 13, 2015 the Court entered its 24 page Order finding quid pro corruption by Boniek and assessing \$54,000 in fines. The Order has been entered as a Judgment and is in collection.
4. *COPP v. Prouse* DDV-2014-250, 1st Judicial District Lewis and Clark County (Judge Reynolds). Default entered 11/21/14 and a default judgment hearing was held before Judge Reynolds. On January 5, 2016 the Court entered its 15 page Order finding quid pro corruption by Prouse and assessing \$59,000 in fines. The Order has been entered as a Judgment and is in collection.
5. *COPP v. Wittich* BDV-2014-251, 1st Judicial District Lewis and Clark County (Judge Dayton). Approximately 30 pre-trial trial motions, third party claims, counterclaims and appeals disposed of prior to a jury trial. The jury trial was held March 28 through April 1, 2016 with the jury returning a verdict against Mr. Wittich on April 1, 2016. On June 17, 2016 the Court issued its Order

determining that Wittich be assessed a penalty of \$68,232.58 together with trial costs of \$15,919.70 for a total judgment amount of \$84,152.28. Judgment was entered against Mr. Wittich and his motion for a new trial was denied through an Order issued on September 19, 2016. Mr. Wittich has announced his intention to appeal. The Judgment has been docketed in Gallatin County, Mr. Wittich's county of residence.

Mr. Wittich appealed to the Montana Supreme Court Cause No. DA-16-0695, and the appeal is fully briefed. The appeal has been classified for a 5 Judge panel and we expect a determination before the end of the year. There is a supercedeas bond for \$105,000 securing the stayed judgment owed by Mr. Wittich to the people of Montana.

6. *COPP v. Kennedy*, BDV-2014-234 1st Judicial District Lewis and Clark County (Judge Pinsky). Case settled after the Wittich jury trial. Settlement agreement signed September 1, 2016 with Mr. Kennedy paying a fine amount of \$19,599 and signing a statement acknowledging he wrongfully accepted paid personal services of individuals employed by National Right to Work or affiliated corporations. Fine is paid and deposited into general fund.
7. *COPP v. Murray*, BDV-2014-170 1st Judicial District Lewis and Clark County (Judge Sherlock). A settlement along the lines of *COPP v. Kennedy* has been reached, with \$6,000 cash payment and \$13,599 provided by public service rather than cash. The settlement was posted to the COPP website on October 14, 2016. The \$6,000 fine was deposited into the general fund.
 - 7a. *Murray v. Motl*, No. DV-14-36A, 18th Judicial District Gallatin County Dismissed 9/22/14; transferred to 1st JD on motion from COPP (SC dismissed appeal) and will be resolved as part of the main trial. Case Dismissed by Judge Holly Brown on Order issued August 21, 2015
8. *COPP v. Kitts*, CDV-2015-754, 1st Judicial District Court, Lewis and Clark County. The case was settled through litigation for \$1,500 which has been paid and deposited in the general fund (January 25, 2016). The District Court complaint was voluntarily dismissed with prejudice.
9. *COPP v. Lair, Faw and Baird* ADV-2014-352, 1st Judicial District Lewis and Clark County (Judge Menahan). The case was settled through litigation, for \$1,500 which has been paid and deposited in the general fund (April 27, 2017). The District Court complaint was voluntarily dismissed with prejudice.
10. *COPP v. Montana Conservative Coalition*, BDV-2016-204, 1st Judicial District Court, Lewis and Clark County. The case was settled through litigation for \$5,350 which has been paid and deposited in the general fund (July 10, 2017). The District Court complaint was voluntarily dismissed with prejudice.

Remaining In Litigation Status

11. *COPP v. Bannan* BDV-2014-178 1st Judicial District Lewis and Clark County (Judge Seeley). The case was set for a jury trial, both sides filed asking for a non-jury trial date, awaiting new scheduling conference with District Court.
 - 8a. *Bannan v. Motl*, No. DV-14-143B 18th Judicial District Gallatin County
The Court granted COPP's Motion for Summary Judgment, and the case was dismissed on March 23, 2017, Judge Holly Brown.
12. *COPP v. Wagman* BDV-2014-267 1st Judicial District Lewis and Clark County (Judge Sherlock). A 5 day non jury trial has been set for July 18, 2018, the case is in discovery at this time.
 - 11a. *Wagman v. Motl* No. DV-2014-53 6th Judicial District Park County transferred to 1st JD on motion from COPP and will be resolved as part of the main trial. Affirmed by the Supreme Court on Appeal, June 23, 2015.
13. *COPP v. NRTW and WTP et. al.* DDV-2014-351 1st Judicial District Court, Lewis and Clark County (Judge Reynolds). There is no current trial schedule in this matter. Rob Farris Olsen and Scott Peterson have been appointed Special Attorney Generals, and MacNaughton remains on as counsel of record.
14. *COPP v. National Gunowners Alliance*, BDV-2014-353 1st Judicial District Court Lewis and Clark County (Judge McMahan). There is no current trial schedule in this matter. MacNaughton is sole counsel of record.
15. *COPP v. Montana Prolife Coalition & Dr. Bukacek*, ADV-2016-213, First Judicial District Court, Lewis and Clark County (Judge Menahan). Mark Mackin has been appointed Special Attorney General, and MacNaughton remains on as counsel of record. The case has not yet been set for trial.
16. *COPP v. Ken Miller*, CDV-2016-322, First Judicial District Court, Lewis and Clark County (Judge Seeley). MacNaughton is the sole counsel of record. The case has not yet been set for trial.
17. *COPP v. Montana Family Foundation*, BDV-2016-323, First Judicial District Court, Lewis and Clark County (Judge McMahan). MacNaughton is the sole counsel of record. The case has not yet been set for trial and is expected to settle in the near future.
18. *COPP v. Pinocci*, Cause No ADV-2016-393, First Judicial District Court, Lewis and Clark County (Judge Menahan). MacNaughton is the sole counsel of record. The case has not yet been set for trial.
19. *COPP v. Ponte*, Cause No. BDV-2016-392, First Judicial District Court, Lewis and Clark County (Judge McMahan). MacNaughton is the sole counsel of record. The case has not yet been set for trial.

20. *COPP v. Montana Growth Network*, Cause No. CDV-2016-395, First Judicial District Court, Lewis and Clark County (Judge Seeley). Gene Jarussi has been appointed Special Attorney General, and MacNaughton remains on as counsel of record. The case is in discovery.

21. *COPP v. Rollan Roberts II*, Cause No. CDV-2016-396, First Judicial District Court, Lewis and Clark County (Judge Seeley). MacNaughton is the sole counsel of record. The case has not yet been set for trial.

22. *COPP v. Montana Trappers Assoc. and Montanans for Effective Wildlife Management*, Cause No. ADV-2016-641, First Judicial District Court, Lewis and Clark County (Judge Menahan). MacNaughton is the sole counsel of record. The case has not yet been set for trial.

The COPP anticipates having to file five additional district court enforcement actions in the next six months, but is actively attempting to settle the matters without proceeding to litigation.

Actions Brought Against The COPP

1. *Powell v. COPP*, OP14-0711 and OP14-0664. Original proceedings brought against the COPP at the Montana Supreme Court seeking a determination that the COPP lacked discretionary authority to carry out its duties under statute. The Supreme Court denied the petition on October 17, 2014 affirming the COPP's discretionary authority to carry out proper agency functions.
2. *Montanans for Community Development v. COPP 6:14-cv-00055 US District Court for the District of Montana*. The plaintiffs (represented by the James Bopp law firm) mount a constitutional challenge to entire reporting, disclosure and enforcement system established by Montana law and engaged in by the COPP. The US District Court denied preliminary injunction on 10/22/14 and the 9th circuit denied emergency motion for injunction on 10/30/14. The matter has now been fully briefed on cross motions for summary judgment. The Court has not yet issued its Order on summary judgment.
3. *Lair v. COPP 9th circuit Court of Appeals 12-35809 and 35889*. The 9th circuit reversed a 2012 Federal District Court Order finding Montana's contribution limits as unconstitutional. The Case was returned to the Montana Federal District Court (Judge Lovell). On May 17, 2016 issued its ruling in summary judgment finding that Montana's statutory limits on contributions to candidates were unconstitutionally low. The current Montana contribution limits were adopted in 1994 by an Initiative vote and the Commissioner responded by adopting the pre-1994 contribution limits. Those pre-1994 limits were imposed for the 2016 elections and the Federal Court Decision is under appeal to the 9th circuit, fully briefed and awaiting court determination.

4. *Skattum v. Motl*, No. DV-14-32 6th Judicial District, Park County. Skattum (represented by Wittich law firm) filed a “false claims” lawsuit challenging the COPP’s authority to issue and manage expert witness fee contracts. The COPP successfully removed venue to the 1st Judicial District: *Skattum v Motl No. ADV-2014-739*. On January 12, 2016 the Court (Judge Menahan) issued an eight page Order dismissing the claim. On August 23, 2016 the Montana Supreme Court affirmed the district court dismissal, ending the litigation.
5. *Buell v. Motl and Fox* No. DV-15-144 12th Judicial District (Hill County). The COPP moved venue to the 1st Judicial District, Cause No. DDV-2016-561. The case challenges the Commissioner’s discretionary authority to decide whether an ethics complaint filed against the Commissioner has any basis in law before assigning the complaint to the Attorney General. The COPP is represented in this case by Jaime MacNaughton, in-house counsel, case has been scheduled for oral arguments in August.
6. *MGN v. COPP* No. DV-16-06 22nd Judicial District, Carbon County. The case challenges the COPP’s use of agency authority to issue a subpoena. No trial schedule yet.
7. *LeFer v. COPP*, No. 13-35963 9th Circuit Court of Appeals. The 9th circuit dismissed LeFer’s appeal leaving intact the District Court’s Order dismissing LeFer’s complaint and imposing sanctions on the LeFers for filing the case.
8. *Essman v. Motl*, OP 16-0522. An original proceeding for extraordinary relief filed in Montana Supreme Court challenging the authority of the COPP to issue a status letter, as directed by statute, removing those candidates from the ballot who had failed to file required statements or reports with the COPP. On September 13, 2016 the Montana Supreme Court denied all aspects of the filing and determining that the duties carried out by the COPP were “duly performed.”
9. *Benson v. McCullough, et. al. CV 16-97-H-SPW*. A federal court action challenging the constitutionality of Montana’s law governing a candidate’s use of political party affiliation during election for a non-partisan political office. Case was voluntarily dismissed without prejudice by Ms. Benson on May 22, 2017.
10. *National Assn for Gun Rights v. Motl*, CV-16-23-H-DLC and *Kantorowicz v. Motl*, CV-16-03-H-DLC. Federal court actions striking 13-35-225(3), MCA, the vote disclosure requirement passed into law by the 2015 Montana legislature. Motions for summary judgment fully briefed, awaiting Court's decision.
11. *Stopsetemfreesandefur.com Committee v. Motl*, No. DV-16-1700, 13th Judicial District Court, Yellowstone County. The case was dismissed as moot. MacNaughton was sole counsel of record.
12. *Tschida v. Motl*, Cause No. CV-16-102-H-BMM. A federal court action challenging the constitutionality of the state statute providing for confidentiality

of ethics complaints. Depositions set for August, recent second amended complaint filed.

13. *Lawrence, et al. v. COPP*, Nineteenth Judicial District Court, Lincoln County (Judge Wheelis) – Petition for Judicial review and request for declaratory relief filed Jan 2016. COPP voluntarily appeared and has filed a Motion to Change Venue to Lewis and Clark County, the motion is in briefing at this time. MacNaughton is sole counsel of record.