

Anita Y. Milanovich
MILANOVICH LAW, PLLC
100 E Broadway St.
Butte, MT 59701
Ph.: 406/589-6856
Email: aymilanovich@milanovichlaw.com
Counsel for Montana Family Foundation

**Montana First Judicial District Court
Lewis and Clark County**

| | | |
|--|--|---|
| Commissioner of Political Practices; v. Montana Family Foundation; | <i>Plaintiff,</i> <i>Defendant.</i> | Civil Case No. BDV-2016-323 Motion to Dismiss with Prejudice |
|--|--|---|

Pursuant to Mont. R. Civ. P. 7 and 41(b), Defendant Montana Family Foundation (“the Foundation”) respectfully moves that this Court grant its *Motion to Dismiss with Prejudice*. In support of its Motion, the Foundation files the accompanying brief with affidavit and states as follows:

1. The Complaint in this action was filed on April 6, 2016. (Doc. 1.)
2. Mont. R. Civ. P. 4 requires service to be effectuated within three years of filing a case for this Court to have jurisdiction over a defendant. Mont. R. Civ. P. 4(t).
3. The Foundation has never been served a summons or complaint in this matter. (Laszloffy Aff. ¶ 4.) Insufficient service of process has occurred in violation of the rules, so the Court lacks jurisdiction over the Foundation. Mont. R. Civ. P. 12(b)(2); Mont. R. Civ. P. 12(b)(5). The Complaint must be dismissed. Mont. R. Civ. P. 41(b).

4. Moreover, the Complaint alleges that the Foundation engaged in campaign finance violations in 2012, over seven years ago. (Doc. 1.)
5. A lawsuit alleging campaign finance violations must be filed in the district court within four years of the alleged violation occurring. MCA § 13-37-130.
6. Because the Complaint cannot be timely refiled, it must be dismissed with prejudice. Mont. R. Civ. P. 41(b).

WHEREFORE, the Foundation respectfully moves that the Court grant its *Motion to Dismiss with Prejudice*.

Dated: May 8, 2019

Respectfully submitted,



Anita Y. Milanovich
MILANOVICH LAW, PLLC
100 E Broadway St.
Butte, MT 59701
Ph.: 406/589-6856
Email: aymilanovich@milanovichlaw.com
Counsel for Montana Family Foundation

Anita Y. Milanovich
MILANOVICH LAW, PLLC
100 E Broadway St.
Butte, MT 59701
Ph.: 406/589-6856
Email: aymilanovich@milanovichlaw.com
Counsel for Montana Family Foundation

**Montana First Judicial District Court
Lewis and Clark County**

| | | |
|--|--|--|
| Commissioner of Political Practices; v. Montana Family Foundation; | <i>Plaintiff,</i> <i>Defendant.</i> | Civil Case No. BDV- 2016-323 Brief Supporting Defendant's Motion to Dismiss Action with Prejudice |
|--|--|--|

Over three years ago, Plaintiff Commissioner of Political Practices (“COPP”) filed a complaint against Defendant Montana Family Foundation (“the Foundation”) alleging campaign violations occurred in 2012. (Doc. 1.) Because neither a summons nor complaint has been served on the Foundation within the past three years for these alleged violations that occurred over seven years ago, this action must be dismissed with prejudice.

Argument

I. Insufficient Service of Process Deprives this Court of Jurisdiction Over the Foundation, Warranting Dismissal.

Mont. R. Civ. P. 4(t) requires service in any civil action to occur within 3 years after filing a complaint. *Id.* at 4(t)(1). Failure to serve within that 3 year period results in mandatory dismissal. *Id.* See *In re Estate of Corrigan*, 2014 MT 337, ¶ 16 (“The District Court was required to dismiss

the case and the TRO for failure to perfect service after May 28, 2011.”). This is because the “court acquires personal jurisdiction only by personal service of process on the adverse party or if the party submits to the jurisdiction of the court by voluntary appearance.” *Nolan v. Riverstone Health Care*, 2017 MT 63, ¶ 10 (2017). Consequently, “[s]trict compliance with the rules for service of process is mandatory.” *Id.* at ¶ 12.

This action was filed on April 6, 2016, over three years ago. As the docket reflects, the COPP never secured a summons or attempted to serve the Foundation with the complaint in this action. This is confirmed by the Foundation’s President and agent Jeff Laszloffy. (Laszloffy Aff. ¶ 4.)

Because insufficient service of process occurred, the Court lacks personal jurisdiction over the Foundation. The Court must dismiss this action. Mont. R. Civ. P. 12(b)(2) (lack of personal jurisdiction); Mont. R. Civ. P. 12(b)(5) (insufficient service of process); Mont. R. Civ. P. 41(b) (involuntary dismissal for failure to prosecute or comply with court rules).¹

II. The Time to File A Lawsuit Against the Foundation Has Expired, Warranting Dismissal With Prejudice.

Mont. R. Civ. P. 4(t) generally states that any complaint not served within 3 years of its filing must be dismissed without prejudice. Mont. R. Civ. P. 4(t)(1). The Rule is not crafted to address and resolve other statutes of limitations that may be implicated as a result of dismissal under the Rule.

In the context of alleged campaign finance violations, like those at issue here, actions are subject to a four year statute of limitations, running from the date of “the occurrence of the facts

¹ This is the second time in less than a year that dismissal has been pursued against the COPP for failing to properly effectuate service. In *COPP v. Nat. Right to Work Comm.*, No. DDV-2014-351 (1st Jud. Dist., filed May 7, 2014), the COPP admitted it failed to properly serve the National Right to Work Committee and so agreed the matter needed to be dismissed. (*See Order on Pending Motions*, attached as Ex. A, at 7.) The Court there held that the dismissal must be with prejudice because “the Supreme Court has held that dismissal for failure to serve the summons within three years is to be a dismissal with prejudice.” (*Id.* at 9.)

that give rise to the action.” MCA § 13-37-130. The COPP’s complaint against the Foundation alleges campaign finance violations from the 2012 primaries, well over seven years ago. Once this matter is dismissed under Rule 4(t)—which it must be, *see supra* Part I—this statute of limitations prohibits the COPP from refiling this action. Consequently, the Court must dismiss this action with prejudice.

Montana has a saving statute, MCA § 27-2-407, which affords a plaintiff a one year extension of a statute of limitations after dismissal in certain contexts. In particular, it states:

If an action is commenced within the time limited for the action and a judgment is reversed on appeal without awarding a new trial or the action is terminated in any other manner than by a voluntary discontinuance, a dismissal of the complaint for neglect to prosecute the action, or a final judgment upon the merits, the plaintiff or, if the plaintiff dies and the cause of action survives, the plaintiff’s representative may commence a new action for the same cause after the expiration of the time limited and within 1 year after a reversal or termination.

In applying the saving statute, the Montana Supreme Court has held that it “is to be applied in cases where an action has been commenced and, *without plaintiff’s fault*, there has been a failure to reach a determination of the merits and the statute of limitations has run during the pendency of such action.” *Williams v. Zortman Mining*, 275 Mont. 510, 914 P.2d 971, 974 (1996) (emphasis added). Here, the COPP failed to timely serve the Foundation within the three years authorized under Rule 4(t). With the COPP at fault, the savings statute’s one year extension is unavailable to the COPP.

Moreover, in the context of failing to serve a party, the Montana Supreme Court has held that the saving statute (formerly section 93-2708, R.C.M. 1947) “does not operate to save a claim where the failure to have summons issued within the statutory period of limitations has occurred, . . .” *Equity Supply Co. v. Dist. Court*, 159 Mont. 34, 41, 494 P.2d 911, 914-15 (1972), *overruled on other grounds by First Call v. Capital Answering Serv.*, 271 Mont. 425, 898 P.2d 96, 97

(overruling *Equity Supply* insofar as it also held that former Rule 41(e) dismissals were only with prejudice where the statute of limitations had run)¹; see also *Cox v. Rocky Mt. Bank*, 2003 MT 173N, ¶ 10 (“We conclude § 27-2-407, MCA, does not operate to ‘save’ a claim dismissed under Rule 41(e).”). The policy reasons are clear:

[D]elay in prosecution should not be tolerated, and is not under our law Any other interpretation would make Rule 41, M. R. Civ. P., and its subdivisions meaningless and they would simply become technical defects which could be endlessly corrected upon being called to the attention of the Court.

Equity Supply, 159 Mont. at 41. Here, if COPP were allowed to refile under the saving statute, it could keep the lawsuit alive endlessly without pursuing the case in court, simply refiling the case ad nauseam. This would not only render Rule 4(t) superfluous, it would defeat the purpose of statutes of limitations, which are in place to “suppress fraudulent and stale claims which it is sought to enforce after a lapse of time, during which witnesses have died or removed and the evidence touching the transaction has faded from memory or has been destroyed.” *Baldwin v. Fourteenth Judicial Dist.*, 142 Mont. 64, 67 (1963).

The savings statute does not apply to the COPP’s cause of action against the Foundation. The COPP cannot refile this action. So this Court’s dismissal should be with prejudice.

(See *Order on Pending Motions*, attached as Ex. A, at 8-9.)

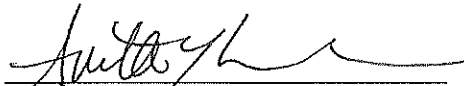
¹ *First Call* concluded that all former Rule 41(e) dismissals, i.e., dismissals for lack of process and service of process, were with prejudice even if the statute of limitations had not run. *First Call*, 271 Mont. 425. The rule was replaced with now former Rule 4E in 2000, which expressly stated that dismissals were without prejudice. See MCA § 25-20, Parts II and VI (2001) (adding Rule 4E and deleting Rule 41(e), respectively, pursuant to Sup. Ct. Ord. Sept. 28, 1999, with an effective date of Jan. 1, 2000). Former Rule 4E became Rule 4(t) in 2011. See MCA § 25-20 (2011) (revising the Rules pursuant to Sup. Ct. Ord. No. AF 07-0157, April 26, 2011).

Conclusion

For the foregoing reasons, this Court must dismiss this action with prejudice. The Foundation's *Motion to Dismiss with Prejudice* should be granted.

Dated: May 8, 2019

Respectfully submitted,



Anita Y. Milanovich
MILANOVICH LAW, PLLC
100 E Broadway St.
Butte, MT 59701
Ph.: 406/589-6856
Email: aymilanovich@milanovichlaw.com
Counsel for Montana Family Foundation