

From: [Hamilton, Lucas](#)
To: [Molnar, Bradley](#)
Subject: RE: [REDACTED] Fielder \$
Date: Monday, August 4, 2025 1:41:00 PM
Attachments: [REDACTED]
[image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[REDACTED]
[2024 09 23 Memo re Legal Fees.pdf](#)
[2024 11 25 Letter to Rhoades.docx](#)

Pres. Molnar,

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] I wrote back on June 23 to explain that we had already denied a demand from VP Fielder's attorney for the state to pay for his work, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED] My recommendations on that issue remain as stated in the attached memo regarding legal fees and my letter in response to her attorney's demand (which is also attached for reference).

As always, please let me know if you have any questions or concerns about the above or the attached.

Thanks,
Lucas

Lucas Hamilton

Chief Legal Counsel
Montana Public Service Commission
406.444.6970
lucas.hamilton@mt.gov

From: Molnar, Bradley <bmolnar@mt.gov>
Sent: Sunday, August 3, 2025 2:59 PM
To: Hamilton, Lucas <Lucas.Hamilton@mt.gov>
Subject: [REDACTED] Fielder \$

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Brad



Brad Molnar
Commission President
Montana Public Service Commission
☐ Main line 406.444.6199
☐ brad.molnar@mt.gov ☐ <http://psc.mt.gov/>

Montana Public Service Commission



James Brown, President
Jennifer Fielder, Vice President
Tony O'Donnell, Commissioner
Randall Pinocci, Commissioner
Dr. Annie Bukacek, Commissioner

November 25, 2024

Via U.S. Mail

Quentin Rhoades
Rhoades & Erickson PLLC
430 Ryman Street
Missoula, MT 59802

Mr. Rhoades,

I have received your letter dated October 30, 2024, regarding legal fees incurred by Jennifer Fielder in the matter of *Montana Conservation Voters, et al., v. Jacobsen*, Cause No. DV-25-2023-0000702-CCR, Montana First Judicial District Court, Lewis & Clark County. After a review of the facts and laws outlined in your letter, the relevant briefing, and the Court's Order on Motion to Quash ("Order"), my client, the Department of Public Service Regulation ("Department"), has decided to decline to pay the requested fees and costs.

In your letter, you assert that "PSC management took the position that the PSC did not consider any communications between the Commissioners and Senator Regier about the redistricting bill as communications between the senator and the executive branch." From this, you reason that Mrs. Fielder's decision to retain your services and oppose the subpoena was "in compliance with PSC management's position" and "under the [PSC]'s theory." This reasoning ignores several important facts, including:

1. On August 16, 2024, you contacted plaintiffs' counsel to ask whether the subpoena was served on Mrs. Fielder in a personal or official capacity.¹ On the same day, Plaintiffs' counsel confirmed that the subpoena was being served in her personal capacity.²
2. On August 21, 2024, you represented to plaintiffs' counsel that Mrs. Fielder "has never communicated with Senator Regier in her capacity as a public service commissioner."³
3. On August 24, 2024, you correctly advised counsel for plaintiffs that, if they sought to depose Mrs. Fielder in her capacity as a Commissioner, they would need to serve a

¹ Principal Br. in Supp. of Jennifer Fielder's Mot. to Quash Subpoena & Subpoena Duces Tecum, Ex. JOF 001-16.

² *Id.* at 15.

³ *Id.* at 12.

subpoena on the Public Service Commission and speak with its counsel.⁴

4. In an email dated August 27, 2024, you noted that Plaintiffs' counsel identified two topics for Mrs. Fielder's deposition: (1) "PSC district maps" and (2) "her campaigns."⁵
5. In a sworn affidavit signed on August 29, 2024, Mrs. Fielder stated that she "had no communication with anyone in [her] official capacity as a Commissioner discussing SB 109."⁶ She acknowledged that the Commission took no position on SB 109.⁷ Accordingly, when she spoke to Sen. Regier about SB 109, she "did so as a private citizen."⁸ Further, she asserted that information related to her campaigns was confidential, and a deposition on the subject would impair strategy and tactics she intended to use in her bid for reelection.⁹

The fact that the communications between Mrs. Fielder and Sen. Regier were made in an unofficial, personal capacity was not a "position" or "theory" formulated by Department management. It is an undisputed fact that Mrs. Fielder has asserted in a sworn statement. Further, Plaintiffs' clear intention was to question Mrs. Fielder about her personal, political interest in how redistricting affects her campaigns, which undeniably fell outside the scope of Mrs. Fielder's official duties.

Nothing in the Court's Order on Motion to Quash retroactively altered the nature of Mrs. Fielder's communications with Sen. Regier. The Court held that the capacity in which Mrs. Fielder communicated was Sen. Regier was irrelevant to the waiver of the legislative privilege: "Whether Fielder and Bukacek were speaking to Senator Regier as *friends, candidates, constituents, or officials*, knowing disclosure of privileged information to a person who is a member of the Executive branch, *no matter what other hats they may wear*, is a waiver of that privilege."¹⁰ Contrary to your assertion, the Court did not find that all of Mrs. Fielder's actions are, "*ipso facto*, official." Instead, the Court held that Sen. Regier's "communications with Bukacek and Fielder about SB 109 or PSC redistricting are not protected by legislative privilege, *no matter the capacity in which they were communicated*."¹¹

Given the Court's analysis of legislative privilege, your analogy to a car accident is inapposite. As you noted, an employer is generally liable for torts committed by employees acting within the course and scope of their employment. Conversely, liability for an accident that occurs outside the course and scope of employment will not be imputed to the employer. The status of the employee when the accident occurs is central to the employer's liability. The same cannot be said of the Court's legislative privilege analysis. The Court made clear that Mrs. Fielder's status—as a friend, candidate, constituent, or official—is immaterial. In short, the rule governing waiver of the legislative privilege is nothing like the rule on an employer's tort liability.

While the capacity in which the communications were made is irrelevant to the waiver of the legislative privilege, it remains relevant to the Department. Your letter cites Mont. Code Ann. §

⁴ *Id.* at 8.

⁵ *Id.* at 3.

⁶ Principal Br. in Supp. of Jennifer Fielder's Mot. to Quash Subpoena & Subpoena Duces Tecum, Ex. JOF 003-2.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 3.

¹⁰ Order on Motion to Quash 6:8–12 (emphasis added).

¹¹ Order on Motion to Quash 6:24–7:2.

2-9-305 for the proposition that it is the policy of the State to defend any civil action arising from actions within the course and scope of a government employee's office or employment. Based on the undisputed, sworn statement of Mrs. Fielder, her actions with respect to SB 109 were not within the course and scope of her office or employment. The fact that Sen. Regier cannot assert the legislative privilege with respect to his personal communications with Mrs. Fielder does not mean the Department is obligated to defend and indemnify Mrs. Fielder for her private conduct. It would be inconsistent with public policy for the State to defend and indemnify every executive branch official for actions that are not within the course and scope of the official's duties.

The absence of a legislative privilege does not mean that the Department is presumed to be responsible for the statements of Commissioners acting as private citizens. This distinction is particularly important when it comes to political activities.¹² Using Department funds to defend the political activities of a Commissioner would violate the statutory prohibition against using public resources to support the nomination or election of any person to public office.¹³

The Department offered to provide a defense to the deposition only after it was clear the deposition would address only official knowledge and conduct. As noted in your letter, Plaintiffs' counsel represented to the Court that they sought to examine Mrs. Fielder *as a Commissioner*, "about the geography and political make-up" of her district and the impact of redistricting on her district. This was a reversal from Plaintiffs' prior representations that they wanted to examine Mrs. Fielder in her personal capacity and ask questions about her campaigns.

Your efforts on Mrs. Fielder's behalf successfully prevented Plaintiffs from asking questions about Mrs. Fielder's political knowledge and strategies. Consistent with Mrs. Fielder's objections and Plaintiffs' new focus on her official knowledge, the Court substantially limited the scope of the deposition. Plaintiffs were permitted to examine Commissioners about:

(1) any communications they had with Senator Regier regarding SB 109 specifically or district boundaries for PSC districts related to the 2023 legislative session; (2) the demographic, social, cultural, and economic makeup of their districts, including the various interests and interest groups found in their district or that are influential in their district; (3) how their work on the PSC and their service to their constituents is affected by demographic, social, and economic makeup of their districts; and (4) how changes in the district boundaries, including in the various proposed maps for SB 109, impact the makeup of their districts, how they perform their duties on the PSC, and how they serve their constituents.¹⁴

Three of the four Court-approved examination topics pertained to information Mrs. Fielder gained through the performance of her official duties. Equally important, the Court expressly prohibited Plaintiffs from inquiring about campaigns, electoral strategy, prospects for reelection, and other political matters.¹⁵

The Court's Order fundamentally changed the purpose and scope of the deposition. Under these circumstances, the Department offered to retain a State attorney to defend the deposition, since it

¹² See, e.g., Mont. Code Ann. § 2-2-122 (prohibiting the use of public resources for political purposes).

¹³ *Id.*

¹⁴ Order on Motion to Quash 13:20–14:4.

¹⁵ *Id.* at 12:4–15.

would focus on Mrs. Fielder's official knowledge and activities, as opposed to her personal, political knowledge and activities.

Finally, I disagree with your assertion that the Department and the public have benefited from your legal services. Although Mrs. Fielder's efforts to quash her deposition subpoena were only partially successful, they uniquely benefited Mrs. Fielder by barring any questions about her personal, political knowledge or activities. The Department has no interest in protecting or defending the private, political activities of elected officials. The Department and the public received no benefit from Mrs. Fielder's efforts to quash the subpoena. Because your representation uniquely benefitted Mrs. Fielder, she should remain liable for the associated costs and fees.

If you would like to discuss any of the above in greater detail, please feel free to call me at 406-444-6970.

Respectfully,

Lucas Hamilton
Chief Legal Counsel
Montana Public Service Commission
Department of Public Service Regulation