

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

David Meisinger,

Complainant,

vs.

Patrick Armon for City Council,

Respondent.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER**

The above-entitled fair campaign practices complaint (complaint) is pending before the following panel of three administrative law judges: Jim Mortenson (Presiding Judge), James E. LaFave, and Jeanne M. Cochran.

The matter was submitted to the panel based on the record created at the probable cause hearing and the underlying record, including the Complaint, the Prima Facie Determination, the Probable Cause Order, and written submissions from the parties. The record closed on October 17, 2016.

David Meisinger (complainant) appeared on his own behalf without counsel. Patrick Armon appeared on behalf of Patrick Armon for City Council (respondent).

STATEMENT OF THE ISSUES

1. Did the complainant demonstrate that respondent violated Minn. Stat. § 211B.04(b) (2016) by failing to include a disclaimer on his campaign material substantially in the form required by the statute?
2. If so, what penalty is appropriate?

SUMMARY OF CONCLUSIONS

The complainant established by a preponderance of the evidence that respondent failed to include a disclaimer on his campaign material substantially in the form required under Minn. Stat. § 211B.04(b). For this violation, the panel concludes a civil penalty of \$100 is appropriate.

Based on the record and proceedings herein, the undersigned panel of administrative law judges make the following:

FINDINGS OF FACT

1. Patrick Armon is seeking re-election to the West St. Paul City Council in the November 8, 2016 election. Respondent, Patrick Armon for City Council, is Mr. Armon's campaign committee.

2. Respondent prepared and disseminated campaign lawn signs and created a campaign Facebook page that did not include disclaimers substantially in the form provided by Minn. Stat. § 211B.04(b).¹ The lawn signs stated only: "Paid for by Patrick Armon for City Council."² No address was included. Prior to the complaint being filed, respondent's Facebook page, <https://www.facebook.com/PatArmonforWSP/>, did not include a disclaimer in any form.³

3. Complainant, David Meisinger, filed this complaint against respondent on September 21, 2016.

4. Sometime shortly after the complaint was filed, respondent added the required disclaimer to his campaign Facebook page and to all of his lawn signs.⁴

Based upon the foregoing findings of fact, the undersigned panel of administrative law judges makes the following:

CONCLUSIONS OF LAW

1. The administrative law judge panel is authorized to consider this matter pursuant to Minn. Stat. § 211B.35 (2016).

2. Minnesota Statutes, section 211B.01, subdivision 2 (2016), defines "campaign material" to mean "any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election, except for news items or editorial comments by the news media."

3. Respondent's lawn signs and Facebook page are campaign material within the meaning of Minn. Stat. § 211B.01, subd. 2.

4. Minnesota Statutes, section 211B.04 (2016) provides in relevant part:

(a) A person who participates in the preparation or dissemination of campaign material other than as provided in section 211B.05, subdivision 1, that does not prominently include the name and

¹ Complaint Exhibits (Ex.) A and B.

² Complaint Ex. B.

³ Complaint Ex. A.

⁴ Testimony (Test.) of Patrick Armon and written submission dated September 30, 2016 (Ex. C).

address of the person or committee causing the material to be prepared or disseminated in a disclaimer substantially in the form provided in paragraph (b) or (c) is guilty of a misdemeanor.

(b) Except in cases covered by paragraph (c), the required form of disclaimer is: “Prepared and paid for by the committee, (address)” for material prepared and paid for by a principal campaign committee, or “Prepared and paid for by the committee, (address), in support of (insert name of candidate or ballot question)” for material prepared and paid for by a person or committee other than a principal campaign committee. If the material is produced and disseminated without cost, the words “paid for” may be omitted from the disclaimer.

* * *

5. Complainant bears the burden of proving the allegations in the complaint. The standard of proof of a violation of Minn. Stat. § 211B.04 is a preponderance of the evidence.⁵

6. Respondent’s lawn signs and campaign Facebook page did not include a disclaimer substantially in the form required by Minn. Stat. § 211B.04(b).

7. Complainant has established by a preponderance of the evidence that respondent violated Minn. Stat. § 211B.04(b) by failing to include the required disclaimer on its lawn signs and Facebook page.

8. Based on the above violation, it is appropriate to impose a civil penalty in the amount of \$100.

9. The attached memorandum explains the reasons for these conclusions and is incorporated by reference.

Based on the record herein, and for the reasons stated in the following memorandum, the panel of administrative law judges makes the following:

⁵ Minn. Stat. § 211B.32, subd. 4 (2016).

ORDER

IT IS ORDERED:

That having been found to have violated Minn. Stat. § 211B.04, respondent Patrick Armon for City Council shall pay a civil penalty of \$100 by December 15, 2016.⁶

Dated: October 19, 2016



JIM MORTENSON
Presiding Administrative Law Judge



JAMES E. LAFAVE
Administrative Law Judge



JEANNE M. COCHRAN
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 211B.36, subd. 5 (2016), this is the final decision in this case. Under Minn. Stat. § 211B.36, subd. 5, a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63-.69 (2016).

MEMORANDUM

The Fair Campaign Practices Act⁷ defines campaign material to mean “any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election, except for news items or editorial comments by the news

⁶ The check should be made payable to “Treasurer, State of Minnesota” and sent to the Office of Administrative Hearings, P.O. Box 64620, St. Paul MN 55164-0620.

⁷ Minn. Stat. §§ 211B.01-.37 (2016).

media.”⁸ Campaign material is required, under Minn. Stat. § 211B.04(a) and (b), to include a disclaimer identifying the name and address of the person or committee that prepared or disseminated the material. The purpose of the disclaimer requirement is to “identify who or what committee prepared, disseminated and paid for the campaign material.”⁹

The panel finds that respondent’s lawn signs and campaign Facebook page were prepared and disseminated for the purpose of influencing voting and meet the definition of campaign material under section 211B.01, subdivision 2.¹⁰ The materials promoted Mr. Armon’s candidacy in the upcoming election for West St. Paul City Council.¹¹

The panel notes that Minn. Stat. § 211B.04(d) provides that the disclaimer requirement does not apply to “fund-raising tickets, business cards, personal letters, or similar items that are clearly being distributed by the candidate.” The panel concludes, however, that the exemption for items “clearly distributed by the candidate” does not apply to campaign signs as they may be prepared and distributed by any number of individuals or groups engaged in influencing voting.

The Panel finds that complainant has established by a preponderance of the evidence that respondent violated Minn. Stat. § 211B.04(b) by not including a disclaimer on his campaign material substantially in the form required by the statute. The panel concludes further that the violation was negligent with minimal impact on the upcoming election. In addition, the Panel notes that once this Complaint was filed, respondent added the appropriate disclaimer to his lawn signs and Facebook Page.

When the panel determines a violation of the Fair Campaign Practices Act occurs, it “must make at least one of the following dispositions:”

- (a) The panel may dismiss the complaint.
- (b) The panel may issue a reprimand.
- (c)
- (d) The panel may impose a civil penalty of up to \$5,000 for any violation of chapter 211A or 211B.
- (e) The panel may refer the complaint to the appropriate county attorney.¹²

The Panel concludes that a civil penalty in the amount of \$100 is appropriate in this case. There is no evidence the violation was deliberate or that it had any impact on

⁸ Minn. Stat. § 211B.01, subd. 2.

⁹ *Hansen v. Stone*, OAH Docket No. 4-6326-16911 FINDINGS OF FACT, CONCLUSIONS AND ORDER (Oct. 28, 2005) at 4.

¹⁰ Complaint Exs. A, B; Ex. C.

¹¹ Complaint Exs. A, B; Ex. C.

¹² Minn. Stat. § 211B.35, subd. 2.

voters. In addition, respondent accepted responsibility and quickly corrected the error. Nevertheless, campaign committees are expected to adhere to the clear and unambiguous disclosure requirements, which includes placing a disclaimer with an address of the campaign committee on its campaign material such as signs and webpages. This should have been done prior to a complaint, and respondent is appropriately fined \$100 for this failure.

J. R. M., J. E. L., J. M. C.