

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Doug Baker,

Complainant,

vs.

**ORDER JOINING COMPLAINTS AND
NOTICE OF AND ORDER FOR
EVIDENTIARY HEARING**

Ken Tschumper, Ken Tschumper for
Minnesota House, Dennis DeKeyrel, and
Precision Plus, Inc.,

Respondents.

TO: Parties on the attached service list.

Procedural History

On September 12, 2012, Doug Baker filed a Campaign Complaint with the Office of Administrative Hearings alleging that Ken Tschumper, Dennis DeKeyrel and Precision Plus, Inc., violated Minn. Stat. §§ 211B.04, 211B.06, and 211B.15 in connection with Mr. Tschumper's campaign for the Minnesota House of Representatives District 28B seat. By Order dated September 17, 2012, Administrative Law Judge Richard Luis found the Complaint alleged sufficient facts to support finding *prima facie* violations of Minn. Stat. §§ 211B.04 and 211B.15, but failed to set forth a *prima facie* violation of § 211B.06. The § 211B.06 allegation was dismissed.

On September 26, 2012, following a probable cause hearing, Administrative Law Judge Luis issued an Order finding that the Complainant had shown probable cause to believe Respondents Ken Tschumper and Dennis DeKeyrel violated Minn. Stat. § 211B.04 with respect to the disclaimer on radio advertisements promoting Mr. Tschumper's campaign. The Administrative Law Judge also determined that the Complainant had shown probable cause to believe that Respondents Dennis DeKeyrel and Precision Plus, Inc. violated Minn. Stat. § 211B.15, subd. 2, by contributing money to pay for advertising time promoting Mr. Tschumper's candidacy.

On September 27, 2012, Doug Baker filed another Campaign Complaint alleging that Ken Tschumper and the Tschumper for Minnesota House campaign committee violated Minn. Stat. § 211B.13, subd. 2, by accepting a prohibited corporate contribution, and that Dennis DeKeyrel violated Minn. Stat. § 211B.15, subd. 13, by aiding and abetting a violation of § 211B.15. By Order dated September 28, 2012, Administrative Law Judge Richard Luis determined that the Complaint alleged sufficient facts to support finding *prima facie* violations of Minn. Stat. 211B.13, subd. 2 and

211B.15, subd. 13. Following a probable cause hearing, Administrative Law Judge Luis determined that the Complainant established probable cause to believe that the Tschumper for Minnesota House campaign committee violated Minn. Stat. § 211B.13, subd. 2, and that Mr. DeKeyrel violated Minn. Stat. § 211B.15, subd. 13, by aiding and abetting a violation of Minn. Stat. § 211B.15, subd. 2 (prohibited corporate contribution). Administrative Law Judge Luis also found that there was no probable cause to believe that Mr. Tschumper knowingly violated Minn. Stat. § 211B.13, subd. 2, and that allegation was dismissed as against Mr. Tschumper.

Consolidation of Complaints

Pursuant to Minn. Stat. § 211B.33, subd. 4, the Chief Administrative Law Judge may direct that two or more complaints be joined for disposition if the allegations in each complaint are of the same or similar character, or are based on the same act or failure to act. After reviewing Mr. Baker's complaints, the Chief Administrative Law Judge has determined that the allegations set forth in the complaints are of the same or similar character, and based on the same acts.

THEREFORE, IT IS HEREBY ORDERED that the Complaints filed by Doug Baker against the above-named Respondents be joined for disposition. The Complaints are consolidated into OAH Docket No. 0320-23108.

Appointment of Panel and Scheduling of Evidentiary Hearing

NOTICE IS HEREBY GIVEN that this consolidated matter has been assigned to a panel of three Administrative Law Judges for an evidentiary hearing. The assigned Administrative Law Judges are: Richard C. Luis (Presiding Judge), Jeanne M. Cochran and Kirsten M. Tate. The Office of Administrative Hearings is located at 600 North Robert Street, in St. Paul. All mail to the Office should be addressed to: Office of Administrative Hearings, P.O. Box 64620, St. Paul, MN 55164-06120. The Administrative Law Judges may be reached at 651-361-7900. The Office's fax number is 651-361-7936.

IT IS FURTHER ORDERED AND NOTICE IS HEREBY GIVEN that this matter is scheduled for an evidentiary hearing to be held on **Tuesday, October 23, 2012**, at **9:30 a.m.**, at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, MN 55101.

The parties shall exchange copies of their witness lists and any exhibits they intend to offer at the hearing by **4:30 p.m. on Friday October 19, 2012**. The parties shall provide three copies of their witness lists and premarked exhibits to Presiding Judge Richard Luis by 4:30 p.m. on October 19, 2012.

The hearing has been ordered pursuant to the authority granted to the Chief Administrative Law Judge by Minn. Stat. § 211B.35, subd. 1. The hearing will be conducted pursuant to Minn. Stat. §§ 211B.35 and 211B.36. Information about the evidentiary hearing and copies of state statutes and rules may be obtained online at

www.oah.state.mn.us and www.revisor.leg.state.mn.us. The Office of Administrative Hearings conducts proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota Supreme Court.

HEARING PROCEDURES

At the evidentiary hearing, all parties have the right to be represented by legal counsel, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law. In addition, the parties have the right to submit evidence, affidavits, documentation and argument for consideration by the Administrative Law Judges. The panel may consider any evidence and argument submitted until the hearing record is closed. The panel may continue a hearing to enable the parties to submit additional testimony. All hearings must be open to the public.

WITHDRAWAL OF COMPLAINT

At any time before an evidentiary hearing begins, a complainant may withdraw a complaint. After the evidentiary hearing begins, however, a complaint filed may only be withdrawn with the permission of the panel.

COSTS

If the panel determines the complaint is frivolous, it may order the complainant to pay the respondent's reasonable attorney fees and to pay the costs of the office in the proceeding in which the complaint was dismissed.

BURDEN OF PROOF

The burden of proving the allegations in the complaint is on the complainant. The standard of proof of a violation of section 211B.06, relating to false statements in paid political advertising or campaign material, is clear and convincing evidence. The standard of proof of any other violation of chapter 211A or 211B is a preponderance of the evidence.

DISPOSITION OF COMPLAINT

At the conclusion of the evidentiary hearing, the panel must determine whether the violation alleged in the complaint occurred and must make at least one of the following dispositions:

- (1) The panel may dismiss the complaint.
- (2) The panel may issue a reprimand.
- (3) The panel may impose a civil penalty of up to \$5,000 for any violation of chapter 211A or 211B.

(4) The panel may refer the complaint to the appropriate county attorney.

The panel must dispose of the complaint within three days after the hearing record closes, if an expedited probable cause hearing was required by section 211B.33; or within 14 days after the hearing record closes, if an expedited probable cause hearing was not required by section 211B.33.

JUDICIAL REVIEW

A party aggrieved by a final decision on a complaint filed under section 211B.32 is entitled to judicial review of the decision as provided in Minn. Stat. §§ 14.63 to 14.69.

Dated: October 12, 2012

s/Raymond R. Krause

RAYMOND R. KRAUSE
Chief Administrative Law Judge

cc: Administrative Law Judge Richard Luis
Administrative Law Judge Jeanne Cochran
Administrative Law Judge Kirsten Tate
Diane Nordstrom, Docket Clerk