

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Michelle MacDonald, individually and for
MacDonald Law Firm, LLC; Family
Innocence, a nonprofit dedicated to
keeping families out of court; Golden Rule
Mediation & Arbitration Services,

Complainants,

vs.

Republican Party of Minnesota, Executive
Committee; Keith Downey; Patricia
Anderson; Patrick Burns; and Douglas
Seaton,

Respondents.

**ORDER FINDING NO
PRIMA FACIE VIOLATION
AND DISMISSING COMPLAINT**

TO: Parties.

On September 4, 2014, Michelle MacDonald filed a Campaign Complaint with the Office of Administrative Hearings alleging that the Republican Party of Minnesota, the Party's Executive Committee, Keith Downey, Patricia Anderson, Patrick Burns, and Doug Seaton violated Minn. Stat. §§ 211B.06 and 211B.10 with respect to her candidacy for Minnesota Supreme Court Justice.

The Chief Administrative Law Judge assigned this matter to the undersigned Administrative Law Judge pursuant to Minn. Stat. § 211B.33.

After reviewing the Complaint and the attached documents, and for the reasons set out in the attached Memorandum, the Administrative Law Judge finds that the Complaint fails to set forth a *prima facie* violation of the Fair Campaign Practices Act.

ORDER

IT IS ORDERED:

That the Complaint filed by Michelle MacDonald against the Republican Party of Minnesota, Executive Committee; Keith Downey; Patricia Anderson; Patrick Burns; and Douglas Seaton is **DISMISSED**.

Dated: September 9, 2014

s/James E. LaFave
JAMES E. LAFAVE
Administrative Law Judge

NOTICE

Under Minn. Stat. § 211B.36, subd. 5, this Order is the final decision in this matter. A party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69.

MEMORANDUM

The Complainant Michelle MacDonald is the Republican-endorsed candidate for Associate Justice – Seat 3 on the Minnesota Supreme Court.

The Complaint alleges that the Respondents violated Minn. Stat. §§ 211B.06 and 211B.10 by disseminating false campaign material with respect to her personal and political character, and by attempting to induce her to refrain from being a candidate.

To allege a prima facie violation of the Fair Campaign Practices Act, the Complainant must allege sufficient facts to show that a violation of law has occurred.¹ <http://www.oah.state.mn.us/aljBase/032019823.primafacie.htm> - [ftn4](#)

To set forth a prima facie case that entitles a party to a hearing, the party must either submit evidence or allege facts that, if accepted as true, would be sufficient to prove a violation of Minnesota Statutes chapters 211A or 211B.² For purposes of a prima facie determination, the tribunal must accept the facts that are alleged as true.³

¹ Minn. Stat. § 211B.32, subd. 3.

² *Barry, et al., v. St. Anthony-New Brighton Independent School District, et al.*, 781 N.W.2d 898, 902 (Minn. App. 2010).

³ *Id.*

A complaint must be dismissed if it does not include evidence or allege facts that, if accepted as true, would prove a violation of Minnesota Statutes chapters 211A or 211B.⁴

The Administrative Law Judge will address each of the Complainant's allegations below.

False Campaign Material (Minn. Stat. § 211B.06)

The Complainant alleges that the Republican Party of Minnesota (RPM), the RPM Executive Committee, RPM Chair Keith Downey, and RPM Judicial Election Committee Chair Douglas Seaton violated Minn. Stat. § 211B.06 by disseminating to RPM delegates and officers a memorandum that Ms. MacDonald claims contained false material concerning her personal and political character and her actions.

The memorandum was prepared by "a group of conservative lawyers" and was addressed to the RPM Executive Committee.⁵ The memorandum expresses the author's "deep concern" about Ms. Macdonald's candidacy.⁶ It identifies Ms. MacDonald's "lack of respect for law enforcement and the rule of law," citing her upcoming criminal trial on allegations of third-degree refusal to take a sobriety test, fourth-degree DWI, and resisting arrest. The memorandum also asserts that Ms. MacDonald is unfit to sit on the State's highest court.⁷

RPM Chair Downey attached the memorandum to correspondence he sent to all RPM Delegates, Basic Political Operating Units, and Congressional District officers.⁸

Minn. Stat. § 211B.06 provides in relevant part:

A person is guilty of a gross misdemeanor who intentionally participates in the preparation, dissemination, or broadcast of paid political advertising or campaign material with respect to the personal or political character or acts of a candidate, or with respect to the effect of a ballot question, that is designed or tends to elect, injure, promote, or defeat a candidate for nomination or election to a public office or to promote or defeat a ballot question, that is false, and that the person knows is false or communicates to others with reckless disregard of whether it is false.

⁴ *Id.*

⁵ Complaint Ex. 8.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

Over the years, the Minnesota Supreme Court has interpreted the statute to be directed against false statements of fact and not against unfavorable deductions or inferences based on fact.⁹

While the Complainant attached a copy of the memorandum to her complaint, she failed to identify any particular statement in the material that she maintains is false and violative of Section 211B.06.

Even if Ms. MacDonald had sufficiently pled a Section 211B.06 claim by identifying what statement was false and why, the claim must be dismissed.

Just prior to the filing of the subject complaint, a panel of the U.S. Court of Appeals for the Eighth Circuit, in *281 Care Committee v. Arneson*,¹⁰ ruled that Minn. Stat. § 211B.06 violates the First Amendment of the U.S. Constitution and is not enforceable. Moreover, the panel concluded that there is no way to narrowly construe the statute to avoid the constitutional violation. The Court concluded that Section 211B.06 is not narrowly tailored to achieve the state's asserted interest in preserving fair and honest elections and preventing a fraud on the electorate. The Court found the statute to be simultaneously unconstitutionally overbroad and underinclusive, and held that counterspeech is the better (if imperfect) solution for achieving the state's asserted goal in truthful campaigns.¹¹

Ms. MacDonald has not outlined which items in the memorandum are false statements of fact and the statute under which she seeks protection is not enforceable. For these reasons, Ms. MacDonald's false campaign material claim fails.

Inducing or Refraining from Candidacy (Minn. Stat. § 211B.10)

Minn. Stat. § 211B.10 has three subdivisions. Each subdivision provides protection from a particular constraint on citizen participation in the political process.

From Ms. McDonald's pleading it is not at all clear which of the statutory protections she wishes to invoke in this case. Notwithstanding this lack of clarity, none of the provisions of Minn. Stat. § 211B.10 apply in this instance. This is true even if all of the facts alleged in the Complaint are deemed to be true without further proof.

Minn. Stat. § 211B.10, subd. 1, prohibits the conferring of a "reward," or the promise of a future reward, which is given as an inducement to cease being a candidate for public office. The Complaint does not allege that Mr. Burns, or anyone else, gave Ms. McDonald items of value, or promised to do so, in return for her withdrawal as a candidate for office.

⁹ *Kennedy v. Voss*, 304 N.W.2d 299 (Minn. 1981); *Bundlie v. Christensen*, 276 N.W.2d 69, 71 (Minn. 1979) (interpreting predecessor statutes with similar language); *Bank v. Egan*, 240 Minn. 192, 194, 60 N.W.2d 257, 259 (1953); *Hawley v. Wallace*, 137 Minn. 183, 186, 163 N.W. 127, 128 (1917).

¹⁰ 2014 W.L. 4290372 (8th Cir. 2014).

¹¹ *Id.*

This case is thus different than the one presented in *Naumann v. Stai*.¹² In that case, the Complaint alleged that the Respondent withdrew as a candidate for Mayor of Harris, Minnesota, after two city residents offered the Respondent \$400 in cash, favorable zoning treatment for the candidate's business and appointment to another City office.¹³

Ms. MacDonald has not alleged a violation of Minn. Stat. § 211B.10, subd. 1.

Minn. Stat. § 211B.10, subd. 2, prohibits political party units from imposing, or threatening to impose, "any fine, sanction, or other penalty, [to] attempt to coerce an individual who does not have the party unit's official endorsement ... from filing as a candidate for office."¹⁴ Neither of these features is present in this case.

Ms. MacDonald is the endorsed candidate of the Republican Party of Minnesota for Seat 3 of the Minnesota Supreme Court and she submitted her affidavit of candidacy three days before she received that endorsement.¹⁵ By contrast, all of the claimed misconduct by Republican Party officials, if true, occurred after Ms. MacDonald successfully completed her filing for office. Ms. MacDonald has not alleged a violation of Minn. Stat. § 211B.10, subd. 2.

Minn. Stat. § 211B.10, subd. 3, prohibits employers from retaliating against any employee who is a public official for requesting time off from work in order to attend meetings related to the employee's public office. Ms. MacDonald is not a public official and has not alleged an employer-employee relationship with any Respondent.

For all of these reasons, Ms. MacDonald has failed to allege a *prima facie* violation of Minn. Stat. § 211B.10.

Accordingly, Ms. MacDonald's complaint is dismissed in its entirety.

J. E. L.

¹² OAH Docket No. 8-6312-17565-CV, 2006 W.L. 2952733 (October 9, 2006) (Order on *Prima Facie* Review).

¹³ *Id.*

¹⁴ Minn. Stat. § 211B.10, subd. 2.

¹⁵ *Compare*, 2014 State General Election Candidate Filings (Associate Justice - Supreme Court, Seat 3) (May 28, 2014) with Complaint, at 3, ¶ 9.