

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Don Fuller,

Complainant,

vs.

ORDER OF DISMISSAL

Minnesota Supreme Court Associate  
Justice Alan Page and Marc Kaplan,  
Treasurer, Alan Page for Justice Re-  
election Committee,

Respondents.

On September 13, 2004, Don Fuller filed two Complaints with the Office of Administrative Hearings alleging violations of Minn. Stat. § 211B.06 by Minnesota Supreme Court Associate Justice Alan Page and Mark Kaplan, Treasurer, Alan Page for Justice Re-election Committee. The Complaints were consolidated by the Chief Administrative Law Judge. Both Complaints allege the creation, publication and dissemination of false campaign material.

The Chief Administrative Law Judge assigned the matter to the undersigned Administrative Law Judge on September 13, 2004, under Minn. Stat. § 211B.33. A copy of the Complaint was sent by facsimile transmission and United States mail to the Respondents on the next day.

After reviewing the Complaint and supporting materials, the Administrative Law Judge finds that the Complaint does not set forth a claim that, if proven, would constitute a violation of Chapter 211A or 211B, and specifically Minn. Stat. § 211B.06. The Complaint is also determined to be frivolous and costs are therefore assessed.

Based upon the Complaint and the supporting filings and for the reasons set out in the attached Memorandum,

**IT IS HEREBY ORDERED:**

1. That the Complaints filed by Don Fuller against Justice Alan Page and Mark Kaplan are DISMISSED.
2. That Don Fuller must pay the costs of the Office of Administrative Hearings in this matter.

Dated this \_\_\_\_\_ day of September 2004.

/s/ George A. Beck  
GEORGE A. BECK  
Administrative Law Judge

### NOTICE

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

### MEMORANDUM

Don Fuller, a retired military judge who resides in California, filed a complaint against Justice Alan Page and his campaign committee. He alleges a violation of Minn. Stat. § 211B.06, that prohibits dissemination of intentionally false campaign material.

However, Mr. Fuller has failed to identify any particular statements or material that he believes to be false. Rather, he argues that Justice Page and his campaign committee have failed to disclose what Mr. Fuller believes is unlawful discrimination by the Page Educational Foundation, in that it awards scholarships only to students of color. Mr. Fuller believes that Justice Page's campaign materials should state that he is a racial segregationist. Minn. Stat. § 211B.06 prohibits intentionally false claims, but does not mention omissions. Discrimination claims are appropriately raised in other forums. Mr. Fuller also alleges violations of the Code of Judicial Conduct, which the Office of Administrative Hearings has no jurisdiction to address. Because the Complaint fails to identify a prima facie violation of Minn. Stat. Ch. 211B, it must be dismissed.

Minn. Stat. § 211B.36, subd. 3 provides that if the assigned Administrative Law Judge determines that a complaint is frivolous, the Complainant may be ordered to pay the costs of the office in this proceeding. A frivolous complaint is one which is unworthy of serious attention or trivial.<sup>[1]</sup> Because Mr. Fuller failed to identify any false material and used this election complaint process to raise issues properly considered elsewhere, his complaint is properly classified as trivial and costs have been assessed.

**G.A.B.**

<sup>[1]</sup> American Heritage College Dictionary (4<sup>th</sup> Ed. 2002).