

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Judy Lindsay, Campaign Chair for the
Lindner for State Rep. Committee,
Complainant,

ORDER DISMISSING COMPLAINT

vs.

Joyce Peppin and the Peppin Volunteer
Committee,
Respondent.

On April 21, 2005, Judy Lindsay, Campaign Chair for the Lindner for State Rep. Committee filed a Complaint with the Office of Administrative Hearings against Joyce Peppin and the Peppin Volunteer Committee. The Complaint alleges violations of Minn. Stat. § 211B.06, which prohibits false political advertising and false campaign material. The Complaint alleges that a letter sent by Peppin's Campaign Manager, Katie Nadeau, falsely attributed certain "abusive behavior" to Arlon Lindner.

The Chief Administrative Law Judge assigned the matter to the undersigned Administrative Law Judge on April 21, 2005. A copy of the Complaint was sent by facsimile and United States mail to Respondent on the same date.

After reviewing the Complaint and supporting materials, the Administrative Law Judge finds that the Complaint does not set forth a claim against Respondent that, if proven, would constitute a violation of Minn. Stat. § 211B.06.

Based upon the Complaint and the supporting filings, and for the reasons set forth below,

IT IS ORDERED: that the Complaint filed by Judy Lindsay, Campaign Chair for the Lindner for State Rep. Committee, is DISMISSED.

Dated this 26th day of April 2005.

/s/ Allan W. Klein
ALLAN W. KLEIN
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 it may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69.

MEMORANDUM

This matter arises out of a campaign for State Representative in House District 32A, which concluded with the election of Joyce Peppin on November 2, 2004. Ms. Peppin was the endorsed candidate of the Republican party in this election. Former State Representative Arlon Lindner ran as an independent candidate in the election. Prior to November, 2004, Mr. Lindner had been the Republican endorsed candidate and had served six terms as State Representative. In 2004, he lost the Republican party's endorsement to Ms. Peppin. The events complained of arose during the 2004 election.

Shortly before the November 4 election, Judy Lindsay, as Campaign Chair for the Lindner for State Representative Committee, filed a Complaint with the Office of Administrative Hearings alleging that Katie Nadeau and the Joyce Peppin Volunteer Committee had violated Minn. Stat. § 211B.06 by making two false statements in a letter which Nadeau had prepared and disseminated to Peppin supporters on October 17, 2004. After a finding of a prima facie violation and a probable cause hearing, that complaint went to hearing before a three-judge panel, which concluded that the Complaint should be dismissed.^[1] During the hearing, and in post-hearing submissions, the complainant argued that a third statement in the Nadeau letter was also false. Because this third statement was not identified in the Complaint, and was not considered in the prima facie and probable cause determinations, the panel ruled it to

be outside of the scope of the hearing and did not consider it. It is that third statement in the October 17, 2004, letter that is at issue in this proceeding.

The facts behind the letter are set forth in detail in the Findings of Fact, Conclusions, Order and Memorandum issued by the three-judge panel in *Lindsay I*. Basically, a Lindner campaign volunteer, Daniel Jaeger, approached persons with Peppin lawn signs and engaged them in conversation and attempted to convince them to exchange their Peppin sign for a Lindner sign. Having learned of these contacts, and believing that additional ones might be forthcoming, Katie Nadeau, Peppin's campaign manager, decided to send a letter to the approximately 350 people who had put up lawn signs for Joyce Peppin. The letter, dated October 17, 2004, begins by thanking the people for having a lawn sign, warns them that they may be confronted by a Lindner campaign worker, and informs them that if they feel threatened, they should contact the police. The letter includes the following paragraph (emphasis added):

When I became involved in this campaign, Joyce explained the work we needed to do to reach all the voters on her behalf but no one ever anticipated that our key supporters – you – would have to deal with *abusive behavior by our opponent*. It has been this campaign's first line of offense to put forward the absolute best choice for State Representative – Joyce Peppin. Just as important, Joyce has kept her campaign focused on the issues, not negative campaigning.

The letter goes on to assert the virtues of Joyce Peppin, and closes by again thanking the people for their support.

The Complaint alleges that the italicized segment is false because it suggests that it was Mr. Lindner, himself, who engaged in "abusive behavior." The Complaint includes excerpts from the transcript of the *Lindsay I* hearing that make it clear that neither Ms. Peppin nor Ms. Nadeau accused Lindner, himself, of abusive behavior. Both Ms. Peppin and Ms. Nadeau testified that Arlon Lindner, himself, had not been abusive, and Ms. Peppin referred to him as "a very mild-mannered person" who does not engage in abusive behavior.

This Complaint is dismissed because a fair reading of the letter makes it clear that the reference to “abusive behavior” was directed at Lindner campaign personnel, not Arlon Lindner himself. This can best be understood by reviewing the four paragraphs which precede the quotation at issue. They are as follows:

As Joyce Peppin’s campaign manager, I want to personally thank you for sharing your support through the placement of a lawn sign on your property. Joyce has over 400 locations in the district and as the election gears up in these final days, we continue to receive sign requests!

Unfortunately, as a number of you have discovered, making such a public statement of support for Joyce can result in an uncomfortable and even harassing confrontation from our opponent Arlon Lindner’s campaign personnel. We have received multiple calls from Peppin supporters who have been pressured at their homes by a Lindner supporter asking them to defend their decisions to support Joyce. One of these exchanges resulted in Mr. Lindner’s worker being escorted off the property by a police officer.

I sincerely hope that you have not been subjected to these campaign tactics by Arlon Lindner, but it is necessary to warn you that these underhanded tactics are occurring so you will be prepared if it continues to happen. These very personal confrontations by the Lindner campaign cannot be ignored. While we do not think you are in any danger, if a Lindner supporter knocks on your door and pressures you to explain your support, please contact your local authorities if you feel threatened and also contact me so we can keep an accurate record of these events.

In hopes of putting a stop to this behavior, I have personally spoken to Mr. Lindner regarding this issue. Unfortunately, he is taking no responsibility for such actions of his workers and I was led to conclude that he authorizes such activity.

When I became involved in this campaign, Joyce explained the work we needed to do to reach all of the voters on her behalf but no one ever anticipated that our key supporters – you – would have to deal with abusive behavior by our opponent. It has been this campaign's first line of offense to put forward this absolute best choice for State Representative – Joyce Peppin. Just as important, Joyce has kept her campaign focused on the issues, not negative campaign.

The Administrative Law Judge believes that the references to “campaign personnel,” “a Lindner supporter,” “Mr. Lindner’s worker,” “the Lindner campaign,” “a Lindner supporter,” and “actions of his workers” all precede the reference to “abusive behavior by our opponent.” There is but one reference to “Arlon Lindner” in addition to the one at issue in this Complaint. There is an inadequate basis to claim that the letter accused Mr. Lindner, himself, of abusive behavior. Although the letter does not name Mr. Jaeger by name, it is clear that in the context of the letter as a whole that the behavior was perpetrated by a Lindner campaign worker, not Lindner himself. Because the Complaint fails to identify a prima facie violation of Minn. Stat. sec. 211B.06, it is dismissed.^[2]

A.W.K.

^[1] That proceeding will be referred to as *Lindsay I.*

^[2] Having reached this conclusion, the Administrative Law Judge does not decide another issue with this Complaint, which is whether “abusive behavior” is a matter of opinion or perception that is incapable of being proven true or false.