

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Mark Frederickson,

Complainant,

NOTICE OF AND ORDER FOR
EVIDENTIARY HEARING

vs.

Carla Nelson and Nelson Volunteer
Committee,

Respondents.

TO: Ken Moen, Attorney at Law, 202 Riverside Building, 400 South Broadway, Rochester, MN 55904; Jeanne Danaher, Attorney at Law, 3255 Trading Post Trail, Afton, MN 55001; and Brian McDaniel, Attorney at Law, 13115 Gable Lane, Apple Valley, MN 55124.

On August 11, 2006, Mark Frederickson filed a Complaint with the Office of Administrative Hearings alleging the Respondents violated Minn. Stat. § 211B.06 by placing the word "Reelect" on campaign material (lawn signs, press releases, web page). On August 14, 2006, Administrative Law Judge Richard C. Luis determined that the Complaint set forth a prima facie violation of Minn. Stat. § 211B.06. On August 17, 2006, a probable cause hearing was conducted by telephone conference call, and by Order dated August 22, 2006, the Administrative Law Judge found that there is probable cause to believe that the Respondents violated Minn. Stat. § 211B.06.

THEREFORE, NOTICE IS HEREBY GIVEN that this 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), Bruce Johnson and Kathleen Sheehy. The address of the Administrative Law Judges is 100 Washington Square, Suite 1700, 100 Washington Avenue South, Minneapolis, MN 55401-2138. The Administrative Law Judges may be reached at telephone number 612-341-7600 and the Office's fax number is 612-349-2665.

IT IS FURTHER ORDERED AND NOTICE IS HEREBY GIVEN that this matter is scheduled for an evidentiary hearing to be held on **Tuesday, September 5, 2006** at 10:00 a.m. **No appearance is required** because the parties have agreed to use the probable cause record for the final decision. Should either party decide that they want to appear and submit further evidence at the evidentiary hearing, they must submit their request in writing to Administrative Law Judge Richard C. Luis and copy opposing counsel by **4:30 p.m. on Wednesday, August 30, 2006**. In the event of such a request by either party, the parties will be required to exchange copies of their witness lists and all exhibits they intend to offer at the hearing by 9:00 a.m. on Friday, September 1,

2006. The parties will also be required to provide three copies of their witness and exhibit lists to Presiding Judge Richard C. Luis by 9:00 a.m. on September 1, 2006.

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

Pursuant to an agreement of the parties during the probable cause hearing, the panel will make its decision based on the testimony presented and the record created at that hearing,¹ unless, by **4:30 p.m. on August 30, 2006**, either party requests to appear at the evidentiary hearing and submit further evidence.

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.

¹ The probable cause hearing record includes the tape recording of the hearing, and Complainant's three exhibits: 1. photographs of Respondents' lawn signs, which were attached to the Complaint; 2. photographs of parade participants wearing T-shirts with the message "Reelect Carla Nelson," which was attached to the Complaint; and 3. the four-page Complaint, which was filed on August 11, 2006.

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 find that a statement made in a paid advertisement or campaign material violated section 211B.06.
- (4) The panel may impose a civil penalty of up to \$5,000 for any violation of chapter 211A or 211B.
- (5) 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: August 28, 2006

/s/ Raymond R. Krause
RAYMOND R. KRAUSE
Chief Administrative Law Judge