

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Mark Frederickson,

Complainant,

vs.

Carla Nelson and Nelson Volunteer
Committee,

Respondents.

NOTICE OF DETERMINATION OF
PRIMA FACIE VIOLATION
AND
NOTICE OF AND ORDER FOR
PROBABLE CAUSE HEARING

**TO: Mark Frederickson, 900 17th Avenue NE, Rochester, MN 55906; and
Carla Nelson, 931 22nd Avenue SW, Rochester, MN 55902.**

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). After reviewing the Complaint and attached documents, the undersigned Administrative Law Judge has determined that the complaint sets forth a prima facie violation of § 211B.06.

THEREFORE, IT IS ORDERED AND NOTICE IS GIVEN that this matter is scheduled for a probable cause hearing to be held by telephone before the undersigned Administrative Law Judge at **9:00 a.m. on Thursday, August 17, 2006**. The hearing will be held by call-in telephone conference. **A staff attorney will notify you of the number to call and the code to enter in order to participate in the telephone conference.** The probable cause hearing will be conducted pursuant to Minn. Stat. § 211B.34. Information about the probable cause proceedings and copies of state statutes may be found online at www.oah.state.mn.us and www.revisor.leg.state.mn.us.

At the probable cause 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 Judge. Parties should provide to the Administrative Law Judge all evidence bearing on the case, with copies to the opposing party, before the telephone conference takes place. Documents may be faxed to Judge Luis at 612-349-2665.

At the conclusion of the probable cause hearing, the Administrative Law Judge will either: (1) dismiss the complaint based on a determination that the complaint is frivolous, or that there is no probable cause to believe that the violation of law alleged in the complaint has occurred; or (2) determine that there is probable cause to believe that the violation of law alleged in the complaint has occurred and refer the case to the Chief Administrative Law Judge for the scheduling of an evidentiary hearing. Evidentiary hearings are conducted pursuant to Minn. Stat. § 211B.35. If the Administrative Law Judge dismisses the complaint, the complainant has the right to seek reconsideration of the decision on the record by the Chief Administrative Law Judge pursuant to Minn. Stat. § 211B.34, subd. 3.

Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, the Administrative Law Judge must be promptly notified. To arrange an accommodation, contact the Office of Administrative Hearings at 100 Washington Avenue South, Suite 1700, Minneapolis, MN 55401, or call 612/341-7610 (voice) or 612/341-7346 (TTY).

Dated: August 14, 2006

/s/ Richard C. Luis
RICHARD C. LUIS
Administrative Law Judge

MEMORANDUM

Carla Nelson was elected to the office of State Representative, District 30A in 2002. She was defeated in her bid for reelection by Tina Liebling in 2004. She is now challenging Ms. Liebling for the same seat in the upcoming election. The Complaint alleges that Respondents use of the term “reelect” on Ms. Nelson’s campaign lawn signs, web page, and press releases violates Minn. Stat. § 211B.06. According to the Complainant, only incumbents may use the term “reelect.”

Minn. Stat. § 211B.06, subd. 1, prohibits intentional participation:

... [i]n 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.

The Complaint alleges that since Ms. Nelson is not the incumbent, her use of the term "reelect" in relation to her candidacy for the House District 30A seat in the current election is a false statement within the meaning of Minn. Stat. § 211B.06, subd. 1.

The term "reelect" appears only once in the Fair Campaign Practices Act, at Minn. Stat. § 211B.03, which provides:

A person or candidate may not, in the event of redistricting, use the term "reelect" in a campaign for elective office unless the candidate is the incumbent of that office and the office represents any part of the new district.

Although Section 211B.03 is directed to situations involving redistricting, its language implies that only incumbents can be reelected. Because Ms. Nelson is not the incumbent, the Complainant has made a prima facie showing that Respondents' use of the term "reelect" violated the prohibition against false campaign material found at Minn. Stat. § 211B.06.

This matter will proceed to a probable cause hearing.

R.C.L.