

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

David Meisinger,

Complainant,

vs.

Napier for Council,

Respondent.

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

On September 21, 2016, David Meisinger (Complainant) filed a Complaint with the Office of Administrative Hearings alleging that the Napier for Council Campaign Committee (Respondent) violated Minn. Stat. § 211B.04 (2016) by disseminating campaign material that lacked the required disclaimer.

Following a review of both the Complaint and the documents Complainant submitted in support, the undersigned Administrative Law Judge has determined that the Complaint sets forth a prima facie violation of Minn. Stat. § 211B.04. For the reasons detailed in the Memorandum below, Complainant is permitted to proceed to a probable cause hearing on his claims.

Under Minn. Stat. § 211B.34 (2016), a probable cause hearing must be held no later than three business days after the complaint is assigned, except that for good cause the administrative law judge may hold the hearing no later than seven days after receiving the assignment. The Administrative Law Judge determines that good cause exists to extend the scheduling for the hearing in this matter due to scheduling conflicts within the three-day time period and in order to provide the parties sufficient time to submit materials prior to the hearing.

THEREFORE, IT IS HEREBY 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 **10:30 a.m. on Wednesday, September 28, 2016**. The hearing will be held by call-in telephone conference. At the appointed time, the parties are directed to:

- (a) Telephone **1-888-742-5095**
- (b) Enter the Conference Code: **396 255 8115#**

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 <http://mn.gov/oah> and www.revisor.leg.state.mn.us.

At the probable cause hearing, all parties have the right to be represented by legal counsel or appear on their own behalf. In addition, the parties have the right to submit evidence, affidavits, documentation, and argument for consideration by the Administrative Law Judge. By **4:30 p.m.** on **September 26, 2016**, the parties shall provide to the Administrative Law Judge all evidence bearing on the case, with copies of the same items to the opposing party.

Any document filed with the Office of Administrative Hearings, or any documents that a party wishes to make part of the hearing record, may be filed in one of the following ways: (1) by **e-Filing** through the Office of Administrative Hearings' e-Filing system; (2) by **mail**; (3) by **facsimile** (if less than 50 pages total); or (4) by **personal delivery**. (See 2015 Minn. Laws. Ch. 63, § 7; Minn. R. 1400.5550, subp. 5 (2015)).

The e-Filing system is accessible at: <http://mn.gov/oah/forms-and-filing/efiling/>.

The Office of Administrative Hearings' facsimile number is: (651) 539-0310.

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 (2016).

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 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 P.O. Box 64620, St. Paul, MN 55164-0620, or call 651-361-7900 (voice) or 651-361-7878 (TDD).

Dated: September 23, 2016


JESSICA A. PALMER-DENIG
Administrative Law Judge

MEMORANDUM

David Napier (Napier) is seeking re-election to the West St. Paul City Council in the November 8, 2016 election. Respondent is Napier's campaign committee. The Complainant alleges that Respondent violated Minn. Stat. § 211B.04 by failing to include a disclaimer in the required form on its campaign lawn signs and campaign website. The Complainant asserts specifically that the lack of an address on Respondent's lawn signs and campaign website violates Minn. Stat. § 211B.04(b).

Standard for Prima Facie Determinations

To establish 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 The complaining party must submit evidence or allege facts that, if accepted as true, would be sufficient to prove a violation of Minnesota Statutes, chapter 211A or 211B (2016).²

For purposes of a prima facie determination, the tribunal must accept the facts that are alleged in the Complaint as true, without independent substantiation, provided that those facts are not patently false or inherently incredible.³ A complaint must be dismissed if it does not include evidence or allege facts that, if accepted as true, would be sufficient to prove a violation of chapter 211A or 211B.⁴

Disclaimer Requirement

Minnesota Statutes, section 211B.04 makes it unlawful to prepare or disseminate most types of campaign material without prominently disclosing the person or committee causing the material to be prepared or disseminated. The statute provides, in relevant part:

(a) A person who participates in the preparation or dissemination of campaign material other than as provided in section 211B.05, subdivision 1, that does not prominently include the name and address of the person or committee causing the material to be prepared or disseminated in a disclaimer substantially in the form provided in paragraph (b) or (c) is guilty of a misdemeanor.

(b) Except in cases covered by paragraph (c), the required form of disclaimer is: "Prepared and paid for by the committee, (address)" for material prepared and paid for by a principal campaign committee, or "Prepared and paid for by the committee, (address)" for material prepared and paid for by a person or committee other than a principal campaign committee. If the material is produced and

¹ Minn. Stat. § 211B.32, subd. 3 (2016).

² *Barry and Spano v. St. Anthony-New Brighton Indep. Sch. Dist.* 282, 781 N.W.2d 898, 902 (Minn. Ct. App. 2010).

³ *Id.*

⁴ *Id.*

disseminated without cost, the words “paid for” may be omitted from the disclaimer.

. . .

(d) This section does not apply to fund-raising tickets, business cards, personal letters, or similar items that are clearly being distributed by the candidate.

(e) This section does not apply to an individual or association that is not required to register or report under chapter 10A or 211A.

(f) This section does not apply to the following:

(1) bumper stickers, pins, buttons, pens, or similar small items on which the disclaimer cannot be conveniently printed;

(2) skywriting, wearing apparel, or other means of displaying an advertisement of such a nature that the inclusion of a disclaimer would be impracticable; and

(3) online banner ads and similar electronic communications that link directly to an online page that includes a disclaimer.

. . .

“Campaign material” is defined as “any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election.”⁵ The purpose of the disclaimer requirement is to “identify who or what committee prepared, disseminated and paid for the campaign material.”⁶

Analysis

The Complainant attached images of the challenged campaign lawn signs to his complaint.⁷ The signs state:

Re-Elect
David Napier
City Council Ward III
www.NapierForCouncil.com
Paid for by Napier for Council⁸

⁵ Minn. Stat. § 211B.01, subd. 2.

⁶ *Hansen v. Stone*, OAH Docket No. 4-6326-16911, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER at 4 (Oct. 28, 2005).

⁷ Complaint Exhibit (Ex.) A.

⁸ *Id.*

The Respondent's campaign lawn signs meet the definition of "campaign material" and are required to have a disclaimer "substantially in the form" provided in Minn. Stat. § 211B.04. In *Fine v. Bernstein*, this tribunal held that campaign material referencing a website substantially complied with section 211B.04 even though no street address was provided.⁹ In *Fine*, the website listed on the signs contained the name and street address of the candidate's campaign committee.¹⁰

In this case, Respondent's lawn signs include its website. The Complainant, however, alleges that Respondent's website does not contain its address.¹¹ The Complainant attached a copy of a portion of the content from Respondent's website to the complaint.¹² As noted above, at the prima facie determination stage, the complaint and materials submitted with it must be accepted as true, without independent substantiation. Based on the materials submitted with the complaint, Respondent's website does not provide an address, differentiating it from the website reference that was considered to meet the standard in *Fine*.

Respondent's website also meets the definition of campaign material under § 211B.01, subd. 2. The website does not appear to include an address as required by Minn. Stat. § 211B.04 or to qualify for the exemption provided at section 211B.04(f)(3).

Therefore, Complainant has alleged sufficient facts to support a determination that a prima facie violation of Minn. Stat. § 211B.04 exists with respect to Respondent's lawn signs and website. This claim will proceed to a probable cause hearing as indicated in this Order.

J. P. D.

⁹ See *Fine v. Bernstein*, OAH Docket 12-6326-16910, FINDINGS OF FACT, CONCLUSIONS, AND ORDER at 14 (Nov. 7, 2005) (website address considered substantial compliance); see also *Hansen*, OAH Docket No. 4-6326-16911, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER at 4 (holding email address was sufficient to comply with the statute).

¹⁰ *Fine*, OAH Docket 12-6326-16910, FINDINGS OF FACT, CONCLUSIONS, AND ORDER at 3.

¹¹ Complaint at 2.

¹² Complaint Ex. B.