

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Jacquelyn Wehking,

Complainant,

v.

**PROBABLE CAUSE ORDER**

Kim Schroeder,

Respondent

This matter came before Administrative Law Judge James E. LaFave for a probable cause hearing held by telephone conference call on November 3, 2016. The matter was convened to consider a complaint filed under the Fair Campaign Practices Act on October 31, 2016. The probable cause hearing record was held open until 4:30 p.m. on November 3, 2016, to allow the parties to submit additional evidence.

Jacquelyn Wehking (Complainant) appeared on her own behalf and without legal counsel. Kim Schroeder (Respondent or Schroeder) appeared on her own behalf without legal counsel.

Based upon the record and all the proceedings in this matter, and for the reasons set forth in the attached Memorandum incorporated herein, the Administrative Law Judge makes the following:

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. There is probable cause to believe that the Respondent violated Minn. Stat. § 211B.04 (2016) by failing to include a disclaimer in the form required on campaign material.

2. This matter is referred to the Chief Administrative Law Judge for assignment to a panel of three administrative law judges pursuant to Minn. Stat. § 211B.35 (2016).

3. Pursuant to the parties' agreement during the probable cause hearing to waive the evidentiary hearing, this matter shall be submitted to the assigned panel of judges based on the filings and the record created at the probable cause hearing.

4. The parties will be provided an opportunity to submit written argument regarding what penalty, if any, should be imposed if the panel concludes that a violation of Minn. Stat. § 211B.04 occurred.

Dated: November 7, 2016

  
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JAMES E. LAFAVE  
Administrative Law Judge

## MEMORANDUM

### Factual Background

The complaint alleged that the Respondent violated Minn. Stat. § 211B.04 by failing to include a disclaimer on her campaign signs.

During the probable cause hearing, Schroeder admitted that she failed to include a disclaimer substantially in the form required by section 211B.04 on her campaign signs. Schroeder explained that she is a “write-in” candidate, that this is her first election and that she did not obtain the campaign manual issued by the Secretary of State’s Office. However, she testified that the day after she received notice of the Complaint, she immediately took action and affixed stickers bearing the proper disclaimer on all of her campaign signs.

The parties agreed during the probable cause hearing to submit this matter on the record to a panel of administrative law judges and waive the evidentiary hearing in the event probable cause was found.

### Legal Standard

The purpose of a probable cause hearing is to determine whether there are sufficient facts in the record to believe that a violation of law has occurred as alleged in the complaint.<sup>1</sup> The administrative law judge must decide whether, given the facts disclosed in the record, it is fair and reasonable to require the respondent to address the claims in the complaint at a hearing on the merits.<sup>2</sup> If the administrative law judge is satisfied that the facts appearing in the record, including reliable hearsay, would

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<sup>1</sup> See *Weinberger v. Maplewood Review*, 668 N.W.2d 667, 664 (Minn. 2003) (“[I]n civil cases probable cause constitutes a *bona fide* belief in the existence of the facts essential under the law for the action and such as would warrant a person of ordinary caution, prudence and judgment, under the circumstances, in entertaining it”) (quoting *New England Land Co. v. DeMarkey*, 569 A.2d 1098, 1103 (Conn. 1990)) (internal punctuation omitted); see also *State v. Florence*, 239 N.W.2d 892, 903-04 (Minn. 1976) (explaining operation of probable cause standard in criminal context).

<sup>2</sup> See *In re Hortman v. Republican Party of Minn.*, No. 15-0320-17530, PROBABLE CAUSE ORDER at 3 (Minn. Office Admin. Hearings, Oct. 2, 2006).

preclude the granting of a motion for a directed verdict in a like civil case, a campaign violation complaint should proceed.<sup>3</sup>

## Analysis

Minnesota Statutes, section 211B.04 requires a person who participates in the preparation or dissemination of “campaign material” to include the name and address of the person or committee causing the material to be prepared or disseminated.<sup>4</sup> The disclaimer is required to provide the name and address of the candidate’s committee that prepared and paid for the signs and must read substantially as follows: “Prepared and paid for by the \_\_\_\_\_ committee \_\_\_\_\_ (address).”<sup>5</sup> Campaign material is defined in relevant part as any material disseminated for the purpose of influencing voting.<sup>6</sup>

Respondent’s campaign signs promote her candidacy, meet the definition of “campaign material,” but lacked a disclaimer substantially in the form required by Minn. Stat. § 211B.04.

## Conclusion

Based on the record presented, the Administrative Law Judge concludes that the Complainant has demonstrated probable cause to believe that Respondent violated Minn. Stat. § 211B.04 with respect to her campaign signs. It is reasonable to allow a panel of three administrative law judges to determine whether Respondent violated Minn. Stat. § 211B.04, and if so, what penalty is appropriate.

An order assigning this matter to a panel of administrative law judges will be issued within two weeks. The matter will be submitted to the panel on the record made at the probable cause hearing and the filings. The parties will be given the opportunity to submit written argument concerning what penalty, if any, is appropriate should the panel conclude respondent violated Minn. Stat. § 211B.04.

**J. E. L.**

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<sup>3</sup> In civil cases, a motion for a directed verdict presents a question of law regarding the sufficiency of the evidence to raise a fact question. The court must view all the evidence presented in the light most favorable to the adverse party and resolve all issues of credibility in the adverse party’s favor. See, e.g., Minn. R. Civ. P. 50.01; *Midland National Bank v. Perranoski*, 299 N.W.2d 404, 409 (Minn. 1980); *LeBeau v. Buchanan*, 236 N.W.2d 789, 791 (Minn. 1975).

<sup>4</sup> Minn. Stat. § 211B.04(b).

<sup>5</sup> *Id.*

<sup>6</sup> Minn. Stat. § 211B.01, subd. 2 (2016).