OAH 23-0325-38553

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Don Bumgarner,

Complainant,

v.

Kau Guannu,

Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

This Fair Campaign Practices complaint (Complaint) is pending before the following panel of three Administrative Law Judges: Suzanne Todnem (Presiding Judge), Ann C. O'Reilly, and Kimberly Middendorf (Panel).

The matter was submitted to the Panel based on the record created at the probable cause hearing and the underlying record, including the Complaint, the Prima Facie Determination, the Probable Cause Order, and written submissions from the parties. The hearing record closed on August 26, 2022.

Don Bumgarner (Complainant) appeared on his own behalf without legal counsel. Kau Guannu (Respondent) appeared on her own behalf, also without legal counsel.

STATEMENT OF THE ISSUES

1. Did Respondent disseminate campaign material that lacked a disclaimer in violation of Minn. Stat. § 211B.04 (2022)?

2. If so, what penalty is appropriate?

SUMMARY OF CONCLUSIONS

Complainant established by a preponderance of the evidence that Respondent violated Minn. Stat. § 211B.04 by disseminating campaign material that lacked a disclaimer. For this violation, a $350 civil penalty is appropriate.

Based on the record and proceedings herein, the undersigned panel of Administrative Law Judges makes the following:

FINDINGS OF FACT

1. Respondent is a candidate for a seat on the Brooklyn Center City Council. She garnered enough votes in the August municipal primary election to advance to the general election to be held on November 8, 2022.

2. In late July 2022, prior to the primary election, Complainant noticed several campaign signs posted throughout Brooklyn Center promoting Respondent's candidacy.[1] The signs state: "Vote Kau Guannu for City Council."[2] The signs do not have a disclaimer.[3]

3. On August 1, 2022, Complainant filed this Complaint against Respondent.[4]

4. By Order dated August 4, 2022, Presiding Administrative Law Judge Suzanne Todnem determined the Complaint alleged a prima facie violation of Minn. Stat. § 211B.04.[5] She set this matter on for a probable cause hearing to be conducted by telephone on August 8, 2022.[6]

5. On August 8, 2022, Respondent submitted an image of what appears to be the lower portion of one of her campaign signs.[7] A disclaimer stating: "Prepared and paid for by the Vote Kau Guannu campaign committee" with the committee's address runs along the very bottom of the sign.[8] The disclaimer appears to be on a sticker affixed to the bottom of the sign.[9] Respondent provided a copy of the image to Complainant by email.[10]

6. After Complainant received the image from Respondent and before the probable cause hearing, he drove around Brooklyn Center and took additional pictures of Respondent's campaign signs posted at various locations throughout the city.[11] The campaign signs pictured do not appear to have any disclaimer language on them.[12]

7. The Administrative Law Judge convened the probable cause hearing at which both parties appeared. During the probable cause hearing, the parties agreed to waive their right to an evidentiary hearing and submit this matter to the Panel for further proceedings based on the record and subsequent written argument.[13]

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[1] Complaint (Aug. 1, 2022).
[2] Complaint, Exhibits (Ex.) A, B and C.
[3] *Id*.
[4] Complaint.
[5] Notice of Determination of Prima Facie Violation and Notice of and Order for Probable Cause Hearing (Aug. 4, 2022).
[6] *Id*.
[7] Respondent's Ex. 1; Testimony (Test.) of Kau Guannu.
[8] Respondent Ex. 1.
[9] *Id*.
[10] Test. of Don Bumgarner.
[11] Complainant's 's Written Submission (Aug. 25, 2022).
[12] Complainant Exs. D–L.
[13] Test. of D. Bumgarner and K. Guannu.

8. During the probable cause hearing, Respondent stated that the image she submitted was a picture of one of her signs with a disclaimer on it.[14] Other than that statement, Respondent did not provide any testimony to rebut Complainant's claims. Instead, Respondent reserved her right to submit written argument to the Panel in the event probable cause was found.[15]

9. By Order dated August 11, 2022, the Presiding Administrative Law Judge found probable cause to believe that Respondent violated Minn. Stat. § 211B.04 by failing to include disclaimers on campaign material.[16] The Chief Administrative Law Judge assigned this matter to the undersigned Panel by Order dated August 16, 2022.[17]

10. The record in this matter closed on August 26, 2022, the deadline for submitting written argument.[18] Complainant submitted a written statement on August 25, 2022.[19] Respondent did not submit any written argument for the Panel to consider by the August 26, 2022, deadline.

Based upon the foregoing Findings of Fact, the undersigned Panel of Administrative Law Judges makes the following:

CONCLUSIONS OF LAW

1. The Panel is authorized to consider this matter pursuant to Minn. Stat. § 211B.35 (2022).

2. Complainant bears the burden of proving the allegations in the Complaint. The standard of proof of a violation of Minn. Stat. § 211B.04 is a preponderance of the evidence.[20]

3. Minn. Stat. § 211B.01, subd. 2 (2022), defines "campaign material" to mean "any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election, except for news items or editorial comments by the news media."

4. Respondent's campaign signs promote her candidacy and are, therefore, campaign material within the meaning of Minn. Stat. § 211B.01, subd. 2.

5. Minn. Stat. § 211B.04 makes it unlawful for a person to participate in the preparation or dissemination of most types of campaign material that does not prominently disclose the person or committee causing the material to be prepared or disseminated.[21]

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[14] Test. of K. Guannu; Ex. 1.
[15] Test. of K. Guanna.
[16] Order on Probable Cause (Aug. 11, 2022). *See also* Amended Probable Cause Order (Aug. 15, 2022).
[17] Notice of and Order for Panel Assignment (Aug. 16, 2022).
[18] *Id*.
[19] Complainant's Written Statement (Aug. 25, 2022).
[20] Minn. Stat. § 211B.32, subd. 4 (2022).
[21] *See* Minn. Stat. § 211B.04, subd. 1(a) and (b).

6. Pursuant to Minn. Stat. § 211B.04, subd. 1(b), 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), in support of ..... (insert name of candidate or ballot question)” for material prepared and paid for by a person or committee other than a principal campaign committee.

7. Respondent’s campaign signs lack disclaimers substantially in the form required by Minn. Stat. § 211B.04, subd. 1(b).

8. Complainant has established by a preponderance of the evidence that Respondent violated Minn. Stat. § 211B.04, subd. 1(b), by preparing and disseminating campaign material lacking a disclaimer substantially in the form required.

9. For this violation, it is appropriate to impose a civil penalty against Respondent in the amount of $350.

10. The attached Memorandum explains the reasons for these Conclusions of Law and is incorporated by reference.

Based on the record herein, and for the reasons stated in the following Memorandum, the Panel of Administrative Law Judges makes the following:

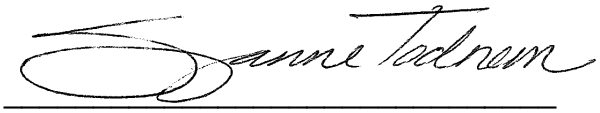
ORDER

1. By **4:30 p.m.** on **Monday**, **October 3, 2022**, Respondent shall pay a civil penalty of $350 for violating Minn. Stat. § 211B.04.

2. The penalty shall be paid by check made payable to: Treasurer, State of Minnesota," and remitted to the Office of Administrative Hearings. The docket number, 23-0325-38553, should be included on the check memo line.

3. By **September 15, 2022**, Respondent shall bring her campaign signs into compliance by affixing the proper disclaimer language to the signs or removing noncompliant signs. Failure to remove the non-compliant signs or bring her signs into compliance by September 15, 2022, could result in additional penalties should another campaign complaint be brought demonstrating non-compliance with this Order.

Dated: August 31, 2022



SUZANNE TODNEM
Presiding Administrative Law Judge

ANN C. O'REILLY
Administrative Law Judge

KIMBERLY MIDDENDORF
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 211B.36, subd. 5 (2022), this is the final decision in this case. Under Minn. Stat. § 211B.36, subd. 5, a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63-.69 (2022).

MEMORANDUM

Under the Fair Campaign Practices Act, it is unlawful to prepare or disseminate most types of campaign material without prominently disclosing the name and address of the person or committee causing the material to be prepared or disseminated.[22] "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."[23] The purpose of the disclaimer requirement is to "identify who or what committee prepared, disseminated and paid for the campaign material."[24]

Respondent's campaign signs meet the definition of "campaign material" and were required to "prominently include" a disclaimer substantially in the form provided in Minn. Stat. § 211B.04, subd. 1(a) and (b). Complainant submitted three images of Respondent's signs with his Complaint.[25] The signs do not have disclaimers included on them.[26] Complainant also testified credibly that after he received Respondent's image of a sign with disclaimer language,[27] he took additional photographs of her signs posted at various locations throughout Brooklyn Center.[28] None of the signs appear to have disclaimers on them.[29]

Respondent's one image of disclaimer language affixed to one of her signs is insufficient to rebut Complainant's evidence. Other than submitting this one image and stating that it shows disclaimer language on her sign, Respondent offered no testimony or explanation in response to the Complaint. Respondent reserved her right to submit written argument to the Panel, but ultimately did not submit any evidence or argument to the Panel.[30]

Complainant established that for at least a few weeks prior to the August 9, 2022, primary election, Respondent had several campaign signs posted throughout Brooklyn Center that lacked the required disclaimer identifying who or what committee prepared and paid for the material. Therefore, Complainant has established by a preponderance of the evidence that Respondent violated Minn. Stat. § 211B.04(b).[31]

To ensure consistency in the application of administrative penalties across types of violations of the Fair Campaign Practices Act, the Office of Administrative Hearings

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[22] *Id*., subd. 1(a), (b).
[23] Minn. Stat. § 211B.01, subd. 2.
[24] *Hansen v. Stone*, No. 4-6326-16911, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER at 4 (Minn. Office Admin. Hearings Oct. 28, 2005).
[25] Complainant Exs. A, B and C.
[26] *Id*.
[27] Ex. 1.
[28] Test. of D. Bumgarner.
[29] Exs. D-L.
[30] The Panel finds Respondent's conduct in this case does not reflect the candor owed a tribunal.
[31] Complainant also argues that Respondent is in violation of Brooklyn Center's temporary sign ordinance. The Panel's jurisdiction, with respect to campaign complaints, is limited to violations of Minnesota Statutes chapters 211A and 211B. Therefore, the Panel did not consider these claims in reaching its decision in this case.

uses a "penalty matrix" to guide decision-making. The matrix categorizes violations based upon the willfulness of the misconduct and the impact of the violation upon voters and is set forth as follows:[32]

Willfulness	Gravity of Violation		
	Minimal/no impact on voters, easily countered	Some impact on several voters, difficult to correct/counter	Many voters misled, process corrupted, unfair advantage created
Deliberate, multiple violations in complaint, history of violations, clear statute, unapologetic	$600 - 1,200	$1,200 – 2,400 and/or Refer to County Attorney	$2,400 – 5,000 and/or Refer to County Attorney
Negligent, ill-advised, ill-considered	$250 - 600	$600 - 1,200	$1,200 – 2,400 and/or Refer to County Attorney
Inadvertent, isolated, promptly corrected, vague statute, accepts responsibility	$0 - 250	$400-600	$600 - 1,200

Because every case is unique, however, the Panel may depart from the presumptive penalty listed in the matrix.[33]

The Panel concludes that Respondent's failure to include a disclaimer on her campaign signs was negligent. Respondent did not provide the Panel with a response or explanation for her noncompliance with election laws. The laws governing campaign practices are not overly burdensome or complex and must be followed by novice and experienced candidates alike. Respondent was not apologetic, did not accept responsibility for the disclaimer violation, and did not indicate that she was taking steps to bring the signs into compliance.

The law requires campaign material include a disclaimer substantially in the form provided under section 211B.04, subd. 1(b). The record shows by a preponderance of the evidence that Respondent's campaign materials were not in compliance. The Panel determines that the penalty assessed is a sufficient sanction to address the violation.

Therefore, the Panel concludes that a civil penalty in the amount of $350 is appropriate for Respondents' violation.

S. T., A. C. O., K. J. M.

[32] *See* Penalty Matrix (https://mn.gov/oah/self-help/administrative-law-overview/fair-campaign.jsp); *Fine v. Bernstein*, 726 N.W.2d 137, 149-50 (Minn. Ct. App.), *review denied* (Minn. 2007).
[33] *Id.*