

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Troy Kenneth Scheffler,

Complainant,

v.

Rosemary Franzen,

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: Jessica A. Palmer-Denig (Presiding Judge); James E. LaFave; and Barbara J. Case (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 final written submissions from the parties. The hearing record closed on November 10, 2022.

Troy Kenneth Scheffler (Complainant) appeared on his own behalf, without legal counsel. R. Reid LeBeau II, The Jacobson Law Group, appeared on behalf of Rosemary Franzen (Respondent).

STATEMENT OF THE ISSUES

1. Did Respondent fail to timely file her initial campaign financial report in violation of Minn. Stat. § 211A.02, subd. 1(a) (2022)?
2. Did Respondent disseminate campaign material that lacked a disclaimer substantially in the form required in violation of Minn. Stat. § 211B.04 (2022)?
3. If so, what penalty is appropriate?

SUMMARY OF CONCLUSIONS

Complainant established by a preponderance of the evidence that Respondent violated Minn. Stat. §§ 211A.02 and 211B.04 (2022). For these violations, a \$150 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 was the incumbent candidate seeking re-election to the Crow Wing County Commission for District 4, in the general election held on November 8, 2022.¹

2. Respondent has served as the Crow Wing County Commissioner for District 4 for almost 16 years, having first been elected to the office in 2006.²

3. On August 26, 2022, Respondent made a campaign disbursement in the amount of \$1,065.97 for “door hangers.”³ Door hangers are campaign material meant to be hung on the doors of residents’ homes.⁴ Respondent ordered 5,000 door hangers and received them approximately one week later.⁵

4. Respondent’s door hanger was a two-sided campaign piece promoting her candidacy.⁶ It included a partial disclaimer on one side that said: “Prepared and Paid for by Volunteers for Franzen.”⁷ The other side of the door hanger displayed a picture of Respondent with her spouse, provided background information on Respondent, and included a statement at the bottom of the piece indicating: “If you have questions or concerns, please call me at [telephone number], or email me at [email address].”⁸

5. Respondent disseminated approximately 2,500 door hangers beginning in early September 2022.⁹

6. Candidates are required to file an initial campaign financial report within 14 days after exceeding \$750 in campaign contributions or expenditures.¹⁰ In her prior campaigns, Respondent did not reach the threshold that triggers the reporting requirements.¹¹

7. On October 3, 2022, Respondent filed her initial campaign financial report.¹² The report covers the period from August 26, 2022, through October 3, 2022.¹³ The report identifies a total of \$600 in contributions received and one disbursement in the amount of \$1,065.97, for the door hangers ordered on August 26, 2022.¹⁴

¹ Complaint (Oct. 10, 2022).

² *Id.*

³ *Id.* at Exhibit (Ex.) 1 (campaign financial report).

⁴ *Id.* at Ex. 5 (image of both sides of the door hanger).

⁵ Testimony (Test.) of Rosemary Franzen.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ See Minn. Stat. § 211A.02, subd. 1.

¹¹ Test. of R. Franzen.

¹² Complaint, Ex. 1 (campaign financial report).

¹³ *Id.*

¹⁴ *Id.*

8. On October 10, 2022, Complainant filed this Complaint against Respondent.¹⁵ Complainant alleged that Respondent violated campaign financial reporting requirements under Minn. Stat. § 211A.02 and disseminated campaign material that lacked proper disclaimers in violation of Minn. Stat. § 211B.04.¹⁶

9. By Order dated October 12, 2022, Presiding Judge Jessica A. Palmer-Denig determined the Complaint alleged prima facie violations of Minn. Stat. §§ 211A.02, subd. 1(a), and 211B.04.¹⁷

10. Judge Palmer-Denig set the matter on for a probable cause hearing to be conducted by telephone on October 18, 2022.¹⁸

11. The Presiding Judge convened the probable cause hearing at which both parties appeared. During the probable cause hearing, Respondent conceded that she failed to file her initial campaign financial report within 14 days of making a disbursement of more than \$750.¹⁹

12. At the close of 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.²⁰

13. By Order dated October 21, 2022, the Presiding Judge found probable cause to believe that Respondent violated Minn. Stat. § 211A.02, by failing to timely file her campaign financial report. The Presiding Judge also found probable cause to believe Respondent violated Minn. Stat. § 211B.04, by failing to include a disclaimer on her door hangers substantially in the form required.²¹

14. The Chief Administrative Law Judge assigned this matter to the undersigned Panel by Order dated November 1, 2022.²²

15. The record in this matter closed on November 10, 2022, the deadline for submitting written argument.²³

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

¹⁵ Complaint.

¹⁶ *Id.*

¹⁷ Notice of Determination of Prima Facie Violation and Notice of and Order for Probable Cause Hearing (Oct. 12, 2022). In this Order, the Presiding Judge dismissed Complainant's alleged violation of Minn. Stat. § 211A.02, subd. 2(6), for failing to support finding a prima facie violation.

¹⁸ *Id.*

¹⁹ Test. of R. Franzen.

²⁰ *Id.*; Test. of Troy Kenneth Scheffler.

²¹ Order on Probable Cause (Oct. 21, 2022). In this Order, the Presiding Judge also dismissed Complainant's claim that Respondent alleged violated section 211B.04 relating to the disclaimer that appeared on Respondent's campaign lawn signs.

²² Notice of and Order for Panel Assignment (Nov. 1, 2022).

²³ *Id.*

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. §§ 211A.02 and 211B.04 is a preponderance of the evidence.²⁴

3. Under Minn. Stat. § 211A.02, subd. 1, candidates or committees who receive contributions or make disbursements of over \$750 in a calendar year must file financial reports with the appropriate filing officer.²⁵

4. A candidate or committee who receives contributions or makes disbursements of more than \$750 in a calendar year must submit an initial report to the filing officer within 14 days after the candidate or committee receives or makes disbursements of more than \$750.²⁶ Thereafter, the candidate or committee shall continue filing the reports listed in Minn. Stat. § 211A.02, subd. 1(b), until a final report is filed.²⁷

5. Respondent exceeded \$750 in campaign expenditures on August 26, 2022, when she ordered the door hangers. Respondent was required to file an initial campaign financial report by September 9, 2022.

6. Respondent violated Minn. Stat. § 211A.02, subd. 1(a), by failing to file her initial campaign financial report within 14 days after she made expenditures exceeding \$750.

7. For this violation, it is appropriate to impose a civil penalty against Respondent in the amount of \$50.

8. 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.”

9. Respondent’s door hangers promoted her candidacy and are, therefore, campaign material within the meaning of Minn. Stat. § 211B.01, subd. 2.

10. Under Minn. Stat. § 211B.04, it is unlawful for a person to participate in the preparation or dissemination of most types of campaign material unless that material

²⁴ Minn. Stat. § 211B.32, subd. 4 (2022).

²⁵ The “filing officer” is the officer authorized to accept affidavits of candidacy or nominating petitions for an office. See Minn. Stat. § 211A.01, subd. 7 (2022).

²⁶ Minn. Stat. § 211A.02, subd. 1(a).

²⁷ *Id.*

prominently discloses the person or committee causing the material to be prepared or disseminated.²⁸

11. 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.

12. The purpose of the disclaimer requirement is to “identify who or what committee prepared, disseminated and paid for the campaign material.”²⁹

13. The address in a disclaimer must be either the committee’s mailing address or the committee’s website, if the website includes the committee’s mailing address.³⁰

14. The disclaimer on the door hangers Respondent distributed does not contain a mailing address or identify a website where the address can be found.³¹

15. Complainant 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.

16. For this violation, it is appropriate to impose a civil penalty against Respondent in the amount of \$100.

17. 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:

²⁸ See Minn. Stat. § 211B.04, subd. 1(a) and (b).

²⁹ *Hansen v. Stone*, OAH No. 4-6326-16911, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER at 4 (Minn. Off. Admin. Hearings Oct. 28, 2005).

³⁰ Minn. Stat. § 211B.04, subd. 1(b).

³¹ Complaint, Ex. 5.

ORDER

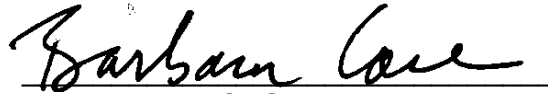
1. By **4:30 p.m. on Friday, December 16, 2022**, Respondent shall pay a civil penalty of \$150 for violating Minn. Stat. §§ 211A.02 and 211B.04.

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, 71-0325-38723, should be included on the check memo line.

Dated: November 16, 2022


JESSICA A. PALMER-DENIG
Presiding Administrative Law Judge


JAMES E. LAFAVE
Administrative Law Judge


BARBARA J. CASE
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

I. Campaign Financial Reporting (Minn. Stat. § 211A.02)

Minn. Stat. § 211A.02, imposes reporting requirements on candidates or committees who receive contributions or make disbursements of over \$750 in a calendar year in order to fully inform voters about the sources of election-related spending.³² Minn. Stat. § 211A.02, subd. 1(a), requires a candidate or committee who receives contributions or makes disbursements of more than \$750 in a calendar year to submit an initial report to the filing officer within 14 days after the candidate or committee receives or makes disbursements of more than \$750. Thereafter, the candidate or committee must continue making reports listed in Minn. Stat. § 211A.02, subd. 1(b), until a final report is filed.³³

Respondent concedes that she failed to file her initial campaign financial report within 14 days after she made a disbursement of more than \$750, as required under section 211A.02, subdivision 1(a). Respondent purchased the campaign door hangers on August 26, 2022.³⁴ Her campaign financial report should have been filed by September 9, 2022. Instead, Respondent filed her report more than three weeks later, on October 3, 2022.³⁵

During the probable cause hearing, Respondent explained that, in her prior campaigns, she did not reach the threshold for contributions or expenditures that triggers reporting, and she was unaware of the filing deadlines.³⁶ Respondent stated that she asked another Crow Wing County Commissioner when campaign financial reports were due to be filed and that person told her reports were due by October 24, 2022.³⁷

Complainant contends Respondent's explanation that she was unaware of the reporting deadlines is not believable.³⁸ Complainant notes that all candidates are provided a Campaign Manual with the relevant campaign laws when they file for office.³⁹ In addition, Complaint points out that Respondent is an experienced candidate and has held office for more than 15 years.⁴⁰

³² See *Citizens United v. Federal Elections Comm'n*, 558 U.S. 310 (2010) (rejecting both facial and as-applied challenges to federal disclosure and disclaimer requirements).

³³ Minn. Stat. § 211A.02, subd. 1(a).

³⁴ Complaint Ex. 1.

³⁵ *Id.*

³⁶ Test. of R. Franzen.

³⁷ *Id.*

³⁸ Complainant's Written Argument at 3 (Nov. 10, 2022).

³⁹ *Id.*

⁴⁰ *Id.* Complainant also raises new allegations of possible reporting violations by Respondent related to her campaign for election to the Crow Wing County Commission in 2006. Those allegations are not before this Panel and were not considered, and in any event are well beyond the one-year statute of limitations for filing complaints. See Minn. Stat. § 211B.32, subd. 2 (2022) (complaints must be filed within one year after the act or failure to act that is the subject of the complaint, unless the act or failure to act involves fraud, concealment, or misrepresentation that could not be discovered during that one-year period).

The campaign financial reporting requirements exist to promote transparency in the financing of political campaigns. Compliance with the statutory reporting requirements is necessary to ensure that members of the public know what groups and individuals are providing significant financial support to a candidate's campaign. Along with other information about the candidate, information on a candidate's funding sources helps voters make informed choices. In addition, documentation of expenditures ensures transparent accounting by campaigns.

Although not timely filed, Respondent's report was still made more than one month before the general election. Voters had ample time to review the report prior to voting. Respondent was transparent in disclosing her \$1,065.97, expenditure for the campaign material. Nothing in the record suggests that Respondent's reporting of her campaign contributions and expenditures was inaccurate. Nevertheless, the statutes governing campaign financial reporting are clear and must be followed by novice and experienced candidates alike. Respondent's initial campaign financial report was filed late in violation of section 211A.02, subdivision 1(a).

II. Disclaimer Requirement (Minn. Stat. § 211B.04)

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.⁴¹ The address in a disclaimer must be either the committee's mailing address or the committee's website, if the website includes the committee's mailing address.⁴² The purpose of the disclaimer requirement is to "identify who or what committee prepared, disseminated and paid for the campaign material."⁴³

Respondent's door hangers meet the definition of "campaign material" and were required to include a disclaimer substantially in the form provided in Minn. Stat. § 211B.04, subds. 1(a) and (b). Respondent's door hangers included a partial disclaimer indicating the material was "Prepared and Paid for by Volunteer for Franzen," but the disclaimer failed to include a mailing or website address.

Complainant urges the Panel to find a violation. Complainant maintains that Respondent's partial disclaimer stating that the door hangers were prepared and paid for by "Volunteers for Franzen" was confusing because it suggests Respondent had a campaign committee.⁴⁴ Complainant notes that Respondent reported the cost of the door hangers on her own candidate report rather than on a committee report.⁴⁵

⁴¹ *Id.*, subd. 1(a), (b).

⁴² *Id.*

⁴³ *Hansen v. Stone*, No. 4-6326-16911, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER at 4 (Minn. Office Admin. Hearings Oct. 28, 2005).

⁴⁴ Complainant's Written Argument at 1-2.

⁴⁵ *Id.*

Respondent argues that the door hangers substantially complied with the disclaimer requirement.⁴⁶ The door hangers expressly indicated that the material was: “Prepared and Paid for by Volunteers for Franzen.” The other side of the door hanger depicted Respondent and her spouse, contained information about Respondent, and directed that voters could contact Respondent by telephone or email if they had questions or concerns. Respondent contends that a reader could reasonably infer that Respondent disseminated the material. Moreover, Respondent asserts that, as a long-serving incumbent candidate in a small county, she is well known in the community. According to Respondent, the average reader would know how to reach her even without an address included on the material.⁴⁷

Respondent further maintains that her campaign material is similar to material that this tribunal found to be substantially compliant in *Gadsen v. Kiffmeyer*.⁴⁸ In that case, the campaign material at issue was designed to look like a newspaper with articles describing Representative Kiffmeyer’s work on legislative matters.⁴⁹ The front page prominently displayed Representative Kiffmeyer’s campaign website address and the website included the disclaimer, “Paid for by Mary Kiffmeyer Campaign.”⁵⁰ The panel found that the material substantially complied with the disclaimer requirement despite lacking a specific statement saying who or what committee prepared and paid for it.⁵¹ Respondent maintains that her failure to include an address on her door hangers does not preclude a finding of substantial compliance with the statute.⁵²

Alternatively, Respondent argues that should the Panel find a violation, it should find the omission was inadvertent and not an attempt to deceive voters.⁵³ Respondent emphasizes the fact that she included a picture of herself with her telephone number and email address, and that she urged voters to contact her if they had questions or concerns.⁵⁴

The Panel concludes that the statute requires the disclaimer to include either a mailing or website address. By providing this specific direction, the Legislature has already indicated the information required for substantial compliance regarding the inclusion of an address. Because she did not include an address on her door hangers, Respondent’s disclaimer did not substantially comply with Minn. Stat. § 211B.04, subd. 1(b).

⁴⁶ Respondent’s Arguments at 2-3 (Nov. 8, 2022).

⁴⁷ *Id.*

⁴⁸ OAH No. 3-0320-21609, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER (Minn. Office Admin. Hearings, Nov. 1, 2010).

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Respondent’s Arguments at 2-3.

⁵³ *Id.* at 4.

⁵⁴ *Id.*

III. Penalty Assessment

To ensure consistency in the application of administrative penalties across types of violations of the Fair Campaign Practices Act, the Office of Administrative Hearings 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:⁵⁵

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.⁵⁶

The Panel concludes Respondent’s failure to timely file her initial campaign financial report was an inadvertent error, and there is no evidence that this issue had any impact on voters. The Panel concludes that Respondent’s failure to include a disclaimer on her campaign material in compliance with section 211B.04, subdivision 1(b), was likewise inadvertent and had little to no impact on voters. While the door hangers were not in technical compliance with the statute, there is no evidence that any person was confused or unsure about who prepared and paid for the material.

The Panel concludes that Respondent should pay a penalty of \$50, related to the reporting violation. The Panel determines that a penalty of \$100 is a sufficient sanction to address the violation related to Respondent’s door hangers.

Therefore, the Panel concludes that a civil penalty in a total amount of \$150 is appropriate for Respondent’s violations.

J. P. D., J. E. L., B. J. C.

⁵⁵ 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).

⁵⁶ *Id.*