

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Stacey Mounce Arnold,

Complainant,

ORDER ON PROBABLE CAUSE

v.

Karrie Kelly,

Respondent.

This matter came before Administrative Law Judge Barbara J. Case for a probable cause hearing held by telephone on November 4, 2022. The hearing addressed a Fair Campaign Practices Act complaint (Complaint) filed by Stacey Mounce Arnold (Complainant) on October 21, 2022. The hearing record closed at the conclusion of the proceeding.

Complainant¹ and Respondent Karrie Kelly appeared on their own behalf and without legal counsel.

Based on the record and proceedings in this matter, and for the reasons explained in the attached Memorandum, which is incorporated herein, the Administrative Law Judge makes the following:

ORDER

1. There is probable cause to believe Respondent violated Minn. Stat. § 211B.04 (2022). This matter will be referred to the Chief Administrative Law Judge for assignment to a panel of three administrative law judges pursuant to Minn. Stat. § 211B.35 (2022).

2. Based on the parties' agreement, this matter shall be submitted to the assigned panel for a decision based on the Complaint and the record created at the probable cause hearing, without any further evidentiary hearing.

Dated: November 9, 2022



BARBARA J. CASE
Administrative Law Judge

¹ Complainant's husband was also present during the hearing, though he did not provide testimony.

MEMORANDUM

I. Factual and Procedural Background

Respondent is a candidate for Wabasha County Attorney in the general election to be held on November 8, 2022.² The Complaint alleges that Respondent prepared and disseminated campaign material that lack disclaimers required by Minn. Stat. § 211B.04.³

In support of her Complaint, Complainant submitted images of Respondent's lawn sign and screen shots of what appears to be Respondent's campaign Facebook page.⁴ The signs state "Vote! Kelly Let's Karrie On!"⁵ None of the campaign material depicted in the images appears to have a disclaimer in the required form.⁶

On November 3, 2022, Respondent filed several exhibits, including photos of lawn signs of other candidates for various offices, an image that showed three campaign complaints filed by Complainant, two photos of Respondent's lawn signs with disclaimers, screen shots of Respondent's and another candidate's social media pages, and a copy of the 2022 State of Minnesota Campaign Manual.⁷ At the probable cause hearing, some of Respondent's exhibits (labeled 13 through 17) were not admitted into the record.⁸

Complainant asserts that Respondent, as the incumbent candidate, and an attorney, should have known the relevant campaign laws regarding disclaimers.⁹ At the probable cause hearing, Respondent admitted the lack of disclaimers on her campaign materials, which she attributed to "honest mistakes," and noted that other candidates also failed to include disclaimers on their campaign materials.¹⁰ In addition, Respondent suggested that information on page 16 of the 2022 State of Minnesota Campaign Manual is "misleading at best," and draws into question whether the disclaimer requirement violates freedom of speech.¹¹ Respondent distributed 30 lawn signs in support of her campaign.¹² Upon receipt of the Complaint, Respondent affixed disclaimer stickers to all of the signs that she could find and updated her Facebook page to include a disclaimer.¹³

At the close of the probable cause hearing, both parties agreed to submit this matter on the record to a panel of administrative law judges and to waive the evidentiary hearing in the event probable cause was found.¹⁴

² Complaint (Oct. 21, 2022).

³ *Id.*

⁴ *Id.* at Attachments 1-3.

⁵ *Id.*

⁶ *Id.*

⁷ Respondent (Resp't) Exhibits (Exs.) 1-12, 18-20.

⁸ Probable Cause Hearing Digital Recording (Nov. 4, 2022) (on file with the Minn. Office Admin. Hearings).

⁹ Testimony (Test.) of Stacy Mounce Arnold.

¹⁰ Test. of Karrie Kelly.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*; Resp't Exs. 11-12, 18.

¹⁴ Test. of S. Mounce Arnold; Test. of K. Kelly.

II. 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.¹⁵ 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.¹⁶ If the Administrative Law Judge is satisfied that the facts appearing in the record, including reliable hearsay, would preclude the granting of a motion for a directed verdict in a like civil case, the campaign violation complaint should be allowed to proceed.¹⁷

A Judge's function at a probable cause hearing does not extend to an assessment of the relative credibility of conflicting testimony.¹⁸ As applied to these proceedings, a probable cause hearing is not a preview or a mini-version of a hearing on the merits; its function is simply to determine whether the facts available establish a reasonable belief that a respondent has committed a violation.¹⁹

III. Analysis

Under Minn. Stat. § 211B.04, subd. 1, 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.²⁰ The statute requires inclusion of a disclaimer providing the name and address of the committee that prepared and paid for the material, and the disclaimer must read substantially as follows: "Prepared and paid for by the _____ committee _____ (address)."²¹ The address must be either the committee's mailing address or the committee's website, if the website includes the committee's mailing address.²² The statutory requirements "are satisfied for an entire website or social media page when the disclaimer required in subdivision 1 or 2 appears once on the home page of the site."²³

¹⁵ 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).

¹⁶ See *In re Hertman v. Republican Party of Minn.*, No. 15-0320-17530, PROBABLE CAUSE ORDER at 3 (Minn. Office Admin. Hearings, Oct. 2, 2006).

¹⁷ 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).

¹⁸ *State v. Florence*, 239 N.W.2d 892, 903 (Minn. 1976); see also *State v. Hegstrom*, 543 N.W.2d 698, 702 (Minn. Ct. App. 1996), review denied (Minn. Apr. 16, 1996).

¹⁹ *Florence*, 239 N.W.2d at 903.

²⁰ Minn. Stat. § 211B.04, subd. 1(a).

²¹ *Id.*, subd. 1(b).

²² *Id.*

²³ *Id.*, subd. 4.

Campaign material is defined as any material disseminated for the purpose of influencing voting.²⁴ Respondent's lawn signs and her Facebook page promote her candidacy and meet the definition of "campaign material." The material was, therefore, required to include a disclaimer "substantially in the form" provided in Minn. Stat. § 211B.04, subd. 1(b), unless an exemption applies.²⁵

At the probable cause hearing, Respondent indicated that she reviewed the Campaign Manual.²⁶ She pointed out that the manual includes a paragraph following the summary of laws governing "Advertising and Literature Requirements," including 211B.04, which states:

Attention: Minnesota Court of Appeals Decision affecting Minnesota Statutes 211B.04. In April of 2006 the Minnesota Court of Appeals ruled, in *Riley v. Jankowski* (Minnesota Court of Appeals file #A05-1125), that at least in part, Minnesota Statutes 211B.04, which relates to disclaimer requirements, is unconstitutional.²⁷

This paragraph appears at the top of a page and is highlighted in addition to the word "attention" being in bold font.²⁸ Not clearly noted in the manual is that *Riley v. Jankowski* applies to the required identification of anonymous actors.²⁹ Also not stated in the paragraph at page 16 is that the Minnesota Court of Appeals has since reaffirmed that *Riley* dealt with the right of independent actors to speak freely, whereas "[w]ith respect to political candidates, the United States Supreme Court has long recognized the validity of disclosure and disclaimer requirements."³⁰

14 pages after the bolded paragraph, the Campaign Manual recognizes that a "[s]tatute requiring campaign materials to include disclaimer regarding preparation of materials did not impermissibly restrict right to free speech, because statute expressly limited reach to political candidates and campaign committees."³¹ While the Campaign Manual is at least arguably confusing in how it presents the *Riley* ruling's impact on Minn. Stat. § 211B.04, disclaimers are constitutional and required by law.

Respondent admits that her campaign materials lack disclaimers. Based on Respondent's admission and Complainant's submitted photographs, there are sufficient facts in the record to believe that a violation of law has occurred as alleged in the Complaint.

²⁴ See Minn. Stat. § 211B.01, subd. 2 (2022).

²⁵ See Minn. Stat. § 211B.04, subd. 3.

²⁶ Test. of K. Kelly; Resp't Ex. 20 at 16.

²⁷ Test. of K. Kelly; Resp't Ex. 20 at 16. Bold in the original.

²⁸ Resp't Ex. 20 at 16.

²⁹ 713 N.W.2d 379 (Minn. App. 2006), *review denied* (Minn. July 19, 2006).

³⁰ *Lewison v. Hutchinson*, 929 N.W.2d 444, 448 (Minn. Ct. App. 2019).

³¹ Resp't Ex. 20 at 30 (citing *Lewison*, 929 N.W.2d at 444).

IV. Conclusion

There is probable cause to conclude that Respondent violated Minn. Stat. § 211B.04 by failing to include a disclaimer on her lawn signs and Facebook page in the form required. As such, this matter will be set on for further proceedings.

The Chief Administrative Law Judge will assign this matter to a panel of administrative law judges within two weeks. Pursuant to the agreement of the parties, the panel will issue a written decision based on the record made at the probable cause hearing and the filings. The parties will be given the opportunity to submit written argument regarding the penalty, if any, that is appropriate should the panel conclude Respondent violated Minn. Stat. § 211B.04.

B. J. C.