OAH 82-0325-39619

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Bruce Honningford,

Complainant,

v.

Dana Minion,

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: Barbara J. Case (Presiding Judge); Christa L. Moseng; and Kristien R. E. Butler (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 December 13, 2023.

Bruce Honningford (Complainant) appeared on his own behalf, without legal counsel. Brian F. Rice, Rice, Walther & Mosley, LLP, appeared on behalf of Dana Minion (Respondent).

STATEMENT OF THE ISSUES

1. Did Respondent fail to report his campaign contributions in violation of Minn. Stat. § 211A.02, subd. 2(4) (2022)?

2. Did Respondent disseminate campaign material that lacked a disclaimer substantially in the form required by Minn. Stat. § 211B.04 (2022)?

3. If so, what penalty is appropriate?

SUMMARY OF CONCLUSION

Complainant established by a preponderance of the evidence that Respondent violated Minn. Stat. §§ 211A.02 and 211B.04. For these violations, a $250 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 ran unsuccessfully as a candidate for the Minnetonka City Council Ward 1 seat in the general election held on November 7, 2023.[1]

2. Candidates are required to file an initial campaign financial report within 14 days after exceeding $750 in campaign contributions or expenditures.[2]

3. Respondent filed an initial campaign financial report on August 9, 2023.[3] The report governs the reporting period of August 6 through August 8, 2023. Respondent identified no contributions received and listed $336 in campaign expenditures.[4]

4. Respondent filed a second campaign financial report on October 25, 2023. The report governs the reporting period of August 8, 2023, through October 25, 2023.[5] Respondent listed a total of $200 in contributions received, and $4,695.97 in campaign expenditures.[6]

5. Respondent self-financed his campaign.[7] Except for the $200 in contributions he received, Respondent used personal credit cards, cash, and direct transfers to pay for all his campaign's expenditures.[8]

6. Respondent did not report his own financial contributions to his campaign.[9]

7. Respondent's two campaign financial reports filed before the general election indicate he made approximately $5,000 in campaign expenditures and received only $200 in contributions.[10] Respondent's campaign financial reports do not indicate who or what entity was the financial source for Respondent's campaign expenditures.[11]

8. Prior to the general election, Respondent maintained a campaign website promoting his candidacy for Minnetonka City Council at the domain DanaMinion.com.[12] The home page of Respondent's campaign website did not include a disclaimer substantially in the form required. Instead, at the bottom of Respondent's campaign website's home page was the statement: "Dana Minion for Minnetonka Ward 1" along

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[1] Complaint at 2.
[2] *See* Minn. Stat. § 211A.02, subd. 1.
[3] Exhibit (Ex.) 9 (copy of page 3 of Respondent's campaign financial report filed August 9, 2023). Respondent's complete campaign financial report may be found on the City of Minnetonka's website at: Initial Report v3_0.pdf (minnetonkamn.gov).
[4] *Id*.
[5] Ex. 10 (copy of page 3 of Respondent's campaign financial report filed October 25, 2023). Respondent's complete campaign financial report may be found on the City of Minnetonka's website at: Pre-Election Report v3_0.pdf (minnetonkamn.gov).
[6] *Id*.
[7] Testimony (Test.) Dana Minion.
[8] *Id*.; Respondent's correspondence (Nov. 27, 2023); Respondent's closing statement (Dec. 13, 2023).
[9] Test. of D. Minion. *See* Exs. 9, 10.
[10] Exs. 9, 10.
[11] Exs. 9, 10.
[12] Complaint, Ex. 1.

with the email and telephone number for Respondent's campaign committee.[13] The disclaimer did not state "prepared and paid for by" and does not include the committee's mailing address.[14]

9. During October of 2023, Respondent prepared and disseminated campaign flyers and lawn signs that lacked disclaimers substantially in the form required. The material included Respondent's campaign website's domain address (DanaMinion.com) but did not indicate who or what committee prepared and paid for the material.[15]

10. On or about October 26, 2023, Respondent placed a campaign advertisement in a local newspaper.[16] The advertisement lacked a disclaimer.[17]

11. On November 3, 2023, Complainant filed this Complaint against Respondent.[18] Complainant alleged that: (1) Respondent violated campaign financial reporting requirements under Minn. Stat. § 211A.02; (2) Respondent intentionally concealed campaign contributions in violation of Minn. Stat. § 211A.06 (2022); and (3) Respondent disseminated campaign material and maintained a campaign website that lacked proper disclaimers in violation of Minn. Stat. § 211B.04.[19]

12. By Order dated November 7, 2023, Presiding Judge Barbara J. Case determined the Complaint supported finding prima facie violations of Minn. Stat. §§ 211A.02, subd. 2, 211A.06, and 211B.04.[20]

13. Following notification of the Complaint, Respondent updated his campaign website to include a proper disclaimer on its home page.[21]

14. Presiding Judge Case set this matter on for a probable cause hearing to be conducted by telephone on November 9, 2023.[22]

15. The Presiding Judge convened the probable cause hearing at which both parties appeared. During the probable cause hearing, Respondent conceded that he did not report his own financial contributions to his campaign and that he disseminated campaign material that lacked disclaimers substantially in the form required.[23] Respondent stated that he did not realize he was required to report his own contributions and he believed the contact information he included on his campaign material was sufficient to comply with the disclaimer requirement.[24]

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[13] *Id*.
[14] *Id*.
[15] Exs. 2, 3.
[16] Complaint at 3; Ex. 8.
[17] Ex. 8.
[18] Complaint.
[19] *Id*.
[20] Notice of Determination of Prima Facie Violation and Notice of and Order for Probable Cause Hearing (Prima Facie Order) (Nov. 7, 2023).
[21] Test. of D. Minion. *See* Respondent's closing statement at 1 (Dec. 13, 2023).
[22] Prima Facie Order.
[23] Test. of D. Minion.
[24] *Id*.

16. Following the probable cause hearing, the parties notified the Presiding Judge that they were willing to waive an evidentiary hearing and submit this matter to the Panel for further proceedings based on the record and subsequent written argument.[25]

17. By Order dated November 15, 2023, the Presiding Judge found probable cause to believe that Respondent violated Minn. Stat. § 211A.02, by failing to report contributions made to his campaign. The Presiding Judge also found probable cause to believe Respondent violated Minn. Stat. § 211B.04, by failing to include a disclaimer on his campaign website and other material substantially in the form required. The Presiding Judge dismissed Complainant's section 211A.06 claim.[26]

18. The parties were given a deadline of November 29, 2023, to inform the Presiding Judge whether they were willing to waive the evidentiary hearing and submit the matter to the assigned Panel based on the record with subsequent written argument.[27] By that date, both parties informed the Presiding Judge that they were willing to waive the evidentiary hearing and have this matter decided by the Panel on the record.[28]

19. On or about December 4, 2023, Respondent filed amended initial and pre-election campaign financial reports with the City of Minnetonka's filing officer.[29] Respondent's amended pre-election report governs the reporting period of August 8, 2023, through October 25, 2023.[30] The amended report includes an attachment listing all of Respondent's campaign contributions and expenditures and states that Respondent contributed $4,303.76 of the campaign's $4,503.76 total contributions by paying for campaign expenses using cash, direct transfers, or a personal credit card.[31]

20. The Chief Administrative Law Judge assigned this matter to the undersigned Panel by Order dated December 4, 2023.[32]

21. The record in this matter closed on December 13, 2023, the deadline for submitting written argument.[33]

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).

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[25] Complainant's correspondence (Nov. 28, 2023); Respondent's correspondence (Nov. 27, 2023).
[26] Order on Probable Cause (Nov. 15, 2023).
[27] *Id*.
[28] Complainant's correspondence (Nov. 28, 2023); Respondent's correspondence (Nov. 27, 2023).
[29] Respondent's closing statement (Dec. 13, 2023).
[30] *Id*.; *See* https://www.minnetonkamn.gov/home/showpublisheddocument/13537/638375611688900000.
[31] *Id*.
[32] Notice of and Order for Panel Assignment (Dec. 4, 2023).
[33] *Id*.

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.[34]

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.[35]

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.[36] 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.[37]

5. Minn. Stat. § 211A.02, subd. 2, governs the information a candidate or committee is required to include in a campaign financial report. Candidates or committees are required to report their total cash on hand, the total amount of contributions and disbursements, and the amount, date, and purpose of each disbursement.[38]

6. A "contribution" is defined as "anything of monetary value that is given or loaned to a candidate or committee for a political purpose."[39] A "disbursement" is defined as "money, property, office, position, or any other thing of value that passes or is directly or indirectly conveyed, given, promised, paid, expended, pledged, contributed, or lent."[40]

7. Respondent's payment by credit cards, cash, and direct transfers to individuals or vendors for campaign-related expenses was a contribution to his campaign.

8. Respondent violated Minn. Stat. § 211A.02, subd. 2(4), by failing to report his own financial contributions to his campaign.

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

10. 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."

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[34] Minn. Stat. § 211B.32, subd. 4 (2022).
[35] 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).
[36] Minn. Stat. § 211A.02, subd. 1(a).
[37] *Id*.
[38] *Id*., subd. 2(3)-(5).
[39] Minn. Stat. § 211A.01, subd. 5.
[40] *Id*., subd. 6.

11. Respondent's campaign website, campaign flyers, and campaign advertisement promoted his candidacy and are, therefore, campaign material within the meaning of Minn. Stat. § 211B.01, subd. 2.

12. 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 prominently discloses the person or committee causing the material to be prepared or disseminated.[41]

13. 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.

14. The purpose of the disclaimer requirement is to "identify who or what committee prepared, disseminated and paid for the campaign material."[42]

15. 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.[43]

16. Campaign websites are also required to include a disclaimer on the home page.[44]

17. Respondent's campaign website lacked a disclaimer substantially in the form required under Minn. Stat. § 211B.04.

18. Respondent's campaign material did not include a disclaimer indicating who or what committee prepared and paid for the material.

19. Complainant established by a preponderance of the evidence that Respondent violated Minn. Stat. § 211B.04, subd. 1(b), by preparing and disseminating campaign material, including a campaign website, flyers, and lawn signs, that lacked disclaimers substantially in the form required.

20. For this violation, it is appropriate to impose a civil penalty against Respondent in the amount of $150. This amount reflects a $50 penalty for each of the three forms of campaign material (website, flyers, and lawn signs) Respondent disseminated that lacked proper disclaimers.

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

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[41] *See* Minn. Stat. § 211B.04, subd. 1(a) and (b).
[42] *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).
[43] Minn. Stat. § 211B.04, subd. 1(b).
[44] *Id*., subd. 4.

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, January 22, 2024,** Respondent shall pay a civil penalty of $250 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, 82-0325-39619, should be included on the check memo line.

Dated: December 18, 2023

BARBARA J. CASE
Presiding Administrative Law Judge

CHRISTA L. MOSENG
Administrative Law Judge

KRISTIEN R. E. BUTLER
Assistant Chief 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.[45] 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.[46]

Respondent concedes that he failed to indicate on his campaign financial reports the contributions he made to his own campaign by paying expenditures with personal credit cards, cash, or direct transfers.

In his written submission Respondent states that he was unaware he was required to report his own contributions. He maintains that his error in reporting was due to a misunderstanding and was not an attempt to conceal financial information. Respondent also notes that the "generic" campaign finance reporting form used by the city of Minnetonka, which is similar to the one used by other local governments throughout the state, does not include a section for reporting loans for self-funded candidates. By contrast, Respondent points out that the Campaign Finance and Public Disclosure Board uses a detailed multiple-page financial reporting form for state office candidates that includes spaces for reporting loans or credit extensions for self-funded candidates.[47] Respondent argues that the reporting form used by Minnetonka is an inaccurate reporting tool, particularly for self-funded candidates, and contributed to Respondent's misunderstanding and ultimate noncompliance.[48]

Respondent states that, since the filing of this Complaint, he has amended his campaign financial reports and has now fully disclosed all his expenditures and how the expenses were paid.[49] He contends that his error in reporting was simply not having an adequate place on the form that made clear where he should report his own contributions to his campaign. Respondent urges that Panel to assess only a $25 penalty given that campaign financial report form lacks an appropriate place for candidates to list their own campaign contributions.[50]

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[45] *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).
[46] Minn. Stat. § 211A.02, subd. 1(a).
[47] Respondent's correspondence (Nov. 27, 2023), Exs. A, B (campaign financial reporting forms).
[48] *Id*.
[49] *Id*.; Respondent's closing statement (Dec. 13, 2023).
[50] Respondent's correspondence (Nov. 27, 2023).

Complainant urges the Panel to reject Respondent's claim that the campaign financial report form is vague. He notes that the instructions make clear that candidates must itemize all contributions from a single source that exceed $100. Complainant argues that Respondent should have known to report his own contributions of almost $5,000.

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.

The Secretary of State's Office prepares campaign financial report forms required by section 211A.02.[51] The forms are the reporting templates used by candidates seeking election to county, municipal, school district, and other political subdivision offices.[52] The report form, like the one used by the city of Minnetonka, directs candidates to attach a separate sheet itemizing all contributions from a single source of more than $100.[53] Respondent could and should have listed himself on a separate sheet as a campaign contributor of more than $100 and itemized his contributions as the form directs.

Although Respondent failed to report his own contributions, he did timely file his reports and list his expenditures. Nothing in the record suggests that Respondent intended to conceal that he was the source for approximately $4,300 in expenditures. Nevertheless, the statutes governing campaign financial reporting are clear and must be followed by novice and experienced candidates alike. Respondent failed to identify his campaign contributions in violation of section 211A.02, subd. 2(4).

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.[54] 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.[55] The purpose of the disclaimer requirement is to inform the electorate about election-related spending[56] by identifying "who or what committee prepared, disseminated and paid for the campaign material."[57]

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[51] *See* Minn. Stat. § 211A.04.
[52] *See* Minn. Stat. § 211A.01, subd. 3.
[53] Minnetonka's form erroneously states that contributors of more than $50 must be listed. Minn. Stat. § 211A.02, subd. 2(6) requires contributions of more than $100 from a single source be identified.
[54] *Id*., subd. 1(a), (b).
[55] *Id*.
[56] *See Lewison v. Hutchinson*, 929 N.W.2d 444, 448-49 (Minn. Ct. App. 2019).
[57] *Hansen v. Stone*, No. 4-6326-16911, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER at 4 (Minn. Office Admin. Hearings Oct. 28, 2005).

Respondent's website, flyers, lawn signs and newspaper advertisement 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 material included his campaign website domain name but lacked the "prepared and paid for" language and mailing address.

Respondent concedes that he failed to include the exact prescribed words "Prepared and Paid for by the Minion Campaign Committee (address)."[58] However, Respondent notes he did include identifying indicia and contact information that allowed the public to go to his website and connect the campaign material to him. Respondent maintains there was no attempt to deceive the public as to who was preparing and disseminating the material.[59] Respondent argues that, as a first-time candidate, the penalty for this violation should be no more than $25.[60]

Complainant urges the Panel to assess a far greater penalty and emphasizes that Respondent violated the disclaimer requirement multiple times by maintaining a campaign website that lacked a disclaimer, disseminating lawn signs and flyers that lacked proper disclaimers, and by placing a newspaper advertisement without a disclaimer. Complainant contends that Respondent's conduct should be viewed as at least six violations of the statutory requirement.

Section 211B.04 requires campaign material to have a disclaimer "substantially" in the form provided. The statute requires the disclaimer to identify who or what entity prepared and paid for the material and to include either a mailing address or website address. By providing this specific direction, the Legislature has indicated the information required for substantial compliance. Respondent's campaign websites, flyers, lawn signs and advertisement did not substantially comply with the disclaimer requirement. The public is not obligated to piece together identifying indicia through the internet to determine who is responsible for campaign material. Because Respondent did not include disclaimers on his campaign material substantially in the form required, Respondent violated Minn. Stat. § 211B.04, subd. 1(b).

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:[61]

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[58] Respondent's correspondence (Nov. 27, 2023).
[59] *Id*.
[60] *Id*.
[61] *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).

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.[62]

The Panel concludes Respondent's failure to report his own contributions on his campaign financial reports was inadvertent. Respondent has since amended his campaign financial reports by listing himself as a contributor and identifying the expenditures he paid for by credit cards, cash, or direct transfers. There is no evidence that Respondent's failure to identify his contributions had any impact on voters. The Panel notes that Respondent lost the election and received only 14 percent of the vote.[63]

Based on the record, the Panel finds Respondent's failure to include disclaimers on his campaign material in compliance with section 211B.04, subdivision 1(b), was likewise inadvertent and had little to no impact on voters. While the material was 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 $100 for his reporting violation. The Panel determines that a penalty of $150 is a sufficient sanction to address the violation related to Respondent's campaign material. In his closing statement, Respondent asks the Panel's permission to take down his campaign website and "other public facing items."[64] The Panel has no jurisdiction related to maintaining those sites.

The Panel concludes that a civil penalty in a total amount of $250 is appropriate for Respondent's violations.

B. J. C., C. L. M., K. R. E. B.

[62] *Id.*
[63] Test. of D. Minion; *See* Index - Election Results (mn.gov).
[64] Respondent's closing statement (Dec. 13, 2023).