

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Corey Wright,

ORDER FOR DISMISSAL

Complainant,

vs.

Tim Sumner,

Respondent.

This matter came on for an evidentiary hearing on December 9, 2024, before the following panel of Administrative Law Judges: Joseph C. Meyer (Presiding Judge), Jessica A. Palmer-Denig, and Christa L. Moseng (collectively, the Panel).

The proceedings were convened to consider a Fair Campaign Practices Complaint (Complaint) filed on November 4, 2024. The Complaint alleges that Tim Sumner (Respondent) violated Minn. Stat. § 211A.04 (2024) by failing to include a disclaimer on lawn signs in connection with Respondent's campaign for Beltrami County Commissioner District 4 in the general election held on November 5, 2024.

Shortly before the hearing, Corey Wright (Complainant) notified the Panel that he was unable to attend the evidentiary hearing. He did not request a continuance. The Panel convened the hearing as scheduled. Complainant did not appear at the hearing. Respondent appeared on his own behalf and without legal counsel.

The burden of proving the allegations in the Complaint is on the Complainant.¹ Because Complainant did not appear at the hearing to submit any evidence or argument into the evidentiary hearing record, a majority of the Panel makes the following:

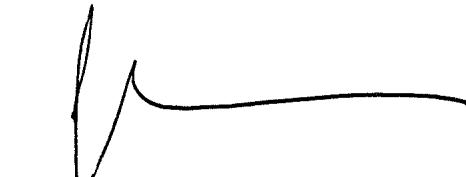
¹ Minn. Stat. § 211B.32, subd. 4 (2024).

ORDER

The Complaint is **DISMISSED**.

Dated: December 19, 2024


JESSICA A. PALMER-DENIG
Administrative Law Judge


CHRISTA L. MOSENG
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 211B.36, subd. 5 (2024), 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 (2024).

MEMORANDUM

The legislature has established a process for the adjudication of complaints alleging violations of Minnesota's laws relating to campaign financial reports and unfair campaign practices.² Depending on the timing of the complaint, the process may include both a *prima facie* determination and a probable cause hearing.³ When a complaint passes both of these preliminary examinations, the parties have a right to a hearing before a panel of three administrative law judges.⁴ The legislature placed the burden of proof on the complainant, who must prove the allegations in the complaint by a preponderance of the evidence.⁵

The availability of a final evidentiary hearing and the placement of the burden of proof are safeguards of procedural due process for litigants. While testimony and other evidence may be received at a probable cause hearing, the probable cause hearing does not fulfill the same function as the final evidentiary hearing. At an evidentiary hearing, the panel is not bound by determinations made earlier in the case and the process afforded to parties is more rigorous. The Probable Cause Order issued in this case recognized this distinction, noting that: "A judge's function at a probable cause hearing does not extend

² See Minn. Stat. §§ 211A.01 – .14, 211B.01 – .37 (2024).

³ Minn. Stat. §§ 211B.33, .34.

⁴ Minn. Stat. § 211B.35.

⁵ Minn. Stat. § 211B.32, subd. 4.

to an assessment of the relative credibility of conflicting testimony,” and that “a probable cause hearing is not a truncated version of a hearing on the merits.”⁶ At an evidentiary hearing, the parties have a right to cross-examine the witnesses who offer testimony, a right not afforded to the parties at the probable cause hearing in this case. Further, the parties may obtain a subpoena to compel the production of documents or the presence of a witness for the hearing.⁷

At the probable cause hearing here, Respondent was asked whether he waived his right to an evidentiary hearing and if he would agree to proceed to a final determination based on the record established during the *prima facie* and probable cause phases of the case. Respondent did not agree. Therefore, Respondent had a right to a full evidentiary hearing at which Complainant would be put to his burden to prove the allegations in the Complaint. Respondent would have had a right to cross-examine Complainant and offer his own evidence in response to Complainant’s case.

Complainant, however, did not appear at the evidentiary hearing. A party who does not appear foregoes the right to present evidence or argument to support a final determination on the merits. Because Complainant had the burden of proof, his failure to appear meant that he could not sustain his evidentiary burden. As a result, a majority of the Panel determined that Complainant had not met the burden of proof required and that the matter must be dismissed.

The majority of the Panel has considered the approach taken by the dissenting Presiding Administrative Law Judge. The Presiding Administrative Law Judge explains that, even in the absence of Complainant’s participation in the hearing, he would have allowed Respondent to present a case and then made a final determination based on that evidence and the record during prior proceedings. The majority respectfully disagrees with this approach.

The majority recognizes that the dissenting Presiding Administrative Law Judge would have allowed Respondent to present his case at the hearing, suggesting that Respondent would have had a sufficient opportunity to be heard. The majority believes that this approach creates several problems. By failing to appear, Complainant avoided having to present any further evidence and argument for Respondent to challenge and Complainant deprived Respondent of his right to cross-examination. Complainant also avoided live testimony that might yield credibility determinations or clarifying questions by members of the Panel who did not participate in earlier stages of the proceeding. Even if Respondent presented his own evidence and argument, a proceeding along those lines skips over essential components of an evidentiary hearing.

The majority is also concerned that this approach disadvantages pro se litigants, who make up the large majority of parties in campaign cases. When a respondent is

⁶ Probable Cause Order (Nov. 21, 2024).

⁷ See Minn. Stat. § 14.51 (2024) (providing that a subpoena may be issued in “any matter being heard by the Office of Administrative Hearings.”).

represented by counsel and a complainant with the burden of proof fails to appear, a motion for dismissal will soon follow. Pro se litigants may not understand the procedural avenues available to them. If offered a chance to present their case by a panel of judges, they may feel compelled to say something even if doing so is contrary to their interests. The stakes in these matters are not small. The Office of Administrative Hearings may impose a penalty up to \$5,000 for a campaign case violation,⁸ and a panel may refer the complaint to the appropriate county attorney for consideration of criminal charges.⁹ Allowing a respondent to present a case after a complainant fails to appear, without any warning as to the consequences, may be a trap for an unwary and unsophisticated litigant.

The majority notes that the dissent's approach relies on the character of this case and the specific evidence presented at the probable cause hearing. Procedural principles are intended to apply across the board without regard to the factual or legal context of any particular case. The dissent also contends that the public interest is served by deterring violations of Minnesota's campaign finance laws. While that is an important consideration, the majority accords greater weight to the public interest served by close adherence to the procedural framework and due process protections of the evidentiary hearing process. As a fundamental principle, a complainant must appear and meet the assigned burden of proof prior to the imposition of consequences for a respondent. Because Complainant did not appear he failed to meet his burden, and the majority determines dismissal is required.

J. P. D., C. L. M.

DISSENT

I respectfully dissent from the Panel's decision to dismiss this proceeding. Instead, I would have allowed the Respondent to present evidence. Then, I would have considered that evidence, in conjunction with the sworn complaint and the sworn testimony offered at the probable cause hearing, to reach a decision on the merits of this matter.

Certainly, the Complainant failed to appear at the evidentiary hearing, and the Complainant bears the burden of proof.¹⁰ That said, Minn. Stat. § 211B.36, subd. 1 allows the Panel to consider any evidence submitted until the record is closed, including affidavits and documentation.

Dismissal is a permissible remedy when a complainant fails to appear for an evidentiary hearing. In many cases, the absence of a complainant will result in a hearing record that is inadequate to evaluate the merits of a complaint. But where, as here, the proceeding involves a single, straightforward allegation of a violation of the disclaimer requirement under Minn. Stat. § 211A.04, and the record includes a photograph of the

⁸ See <https://mn.gov/oah/self-help/administrative-law-overview/fair-campaign.jsp> (last visited Dec. 13, 2024).

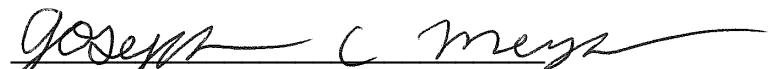
⁹ Minn. Stat. § 211B.35, subd. 2(e).

¹⁰ Minn. Stat. § 211B.32, subd. 4.

campaign material at issue and sworn testimony by both parties,¹¹ the record is sufficient to evaluate whether, based on the record as a whole, a complainant has met their burden to prove that a violation occurred. As these proceedings serve a deterrent purpose for violations of Minnesota's campaign laws,¹² the public interest is served by ruling on the merits when a complaint is properly before the Panel and the Panel has the record to do so. I would have done so here. As the Respondent did not present evidence at the proceeding and the Panel is dismissing the complaint, I offer no opinion as to whether a violation has occurred.

J. C. M.

Dated: December 19, 2024



JOSEPH C. MEYER
Presiding Administrative Law Judge

¹¹ The Respondent did not have the opportunity to cross-examine the Complainant at the probable cause hearing. Accordingly, if the Panel had evaluated the record as I suggest, it would also have had to consider the due process implications when deciding what, if any, weight to give to the Complainant's probable cause testimony. That being said, Minn. Stat. § 211B.36, subd. 1, explicitly allows the Panel to consider affidavits, which are sworn statements also not subject to cross-examination.

¹² The remedies authorized by Minn. Stat. § 211B.35, subd. 2, including a reprimand, civil penalty, and referral to a county attorney for criminal enforcement, are exclusively deterrent and punitive.