

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

James R. Nelson,
Complainant,

ORDER OF DISMISSAL

v.

Amie Erickson,
Respondent.

On February 13, 2012, James R. Nelson filed a Complaint with the Office of Administrative Hearings alleging that Amie Erickson violated two different provisions of the Fair Campaign Practices Act. Mr. Nelson alleged that Ms. Erickson violated Minn. Stat. § 211B.04 by failing to include a disclaimer on the campaign material that she prepared and circulated. He likewise alleged that Ms. Erickson violated Minn. Stat. § 211B.06 because claims that she made in the campaign material were false.

The Chief Administrative Law Judge assigned this matter to the undersigned Administrative Law Judge on February 13, 2012. A copy of the complaint and attachments were sent by U.S. mail to the Respondent on February 14, 2012.

After reviewing the Complaint and attached documents, the undersigned Administrative Law Judge has determined that the complaint does not set forth a *prima facie* violation of either section 211B.04 or 211B.06.

Based upon the Complaint and the accompanying filings, and for the reasons set out in the attached Memorandum,

IT IS ORDERED THAT:

The Complaint filed by James R. Nelson against Amie Erickson for violation of Minn. Stat. §§ 211B.04 and 211B.06 is **DISMISSED WITHOUT PREJUDICE** to re-filing. Within 60 days of the date of this Order, Mr. Nelson may revise and file a subsequent Complaint on these alleged violations without paying an additional filing fee.

Dated: February 16, 2012

s/Eric L. Lipman
ERIC L. LIPMAN
Administrative Law Judge

MEMORANDUM

The Complaint concerns the contents of a certain letter that was drafted and circulated while James R. Nelson was a candidate for election to the Frazee-Vergas School Board. The Complaint asserts that the letter was circulated without the disclaimer required by Minn. Stat. § 211B.04 and that it contains false statements in violation of Minn. Stat. § 211B.06.

Required Disclaimers

Minn. Stat. § 211B.04 makes it unlawful to prepare or disseminate certain types of campaign material without prominently including the name and address of the “person or committee causing the material to be prepared or disseminated” However, so as to leave room for the types of anonymous pamphleteering that are protected by the First Amendment, the disclaimer requirements do not apply to “an individual or association who acts independently of any candidate, candidate's committee, political committee, or political fund and spends only from the individual's or association's own resources a sum that is less than \$2,000 in the aggregate to produce or distribute campaign material that is distributed at least seven days before the election to which the campaign material relates.”¹

For purposes of a *prima facie* determination, the Complainant must detail the factual basis to support a claim that the violation of law has occurred.² In this case, Mr. Nelson has not alleged that the letter circulated in his community was done in concert with a “candidate, candidate's committee, political committee, or political fund” or that \$2,000 or more was spent in preparing and distributing this item. Without such an averment, the Complaint does not allege sufficient facts to support a *prima facie* determination that Minn. Stat. § 211B.04 was violated.

False Literature Claims

Minn. Stat. § 211B.06, subd. 1, prohibits the preparation, dissemination or broadcast of false campaign material that the person knows is false or communicates with reckless disregard of whether it is false. The statute bars:

preparation, dissemination, or broadcast of paid political advertising or campaign material with respect to the personal or political character or acts of a candidate, or with respect to the effect of a ballot question, that is designed or tends to elect, injure, promote, or defeat a candidate for nomination or election to a public office or to promote or defeat a ballot

¹ Compare, Minn. Stat. § 211B.04 (f) with *McIntyre v. Ohio Elections Comm'n*, 514 U. S. 334, 341-42 (1995); *Riley v. Jankowski*, 713 N.W.2d 379, 404-05 (Minn. App) review denied (Minn. 2006); *Minnesota Citizens Concerned for Life, Inc. v. Kelley*, 219 F.Supp.2d 1052, 1068-69 (D. Minn. 2003).

² Minn. Stat. § 211B.32, subd. 3.

question, that is false, and that the person knows is false or communicates to others with reckless disregard of whether it is false.

In this context, the term “reckless disregard” follows the “actual malice” standard announced in the case of *New York Times v. Sullivan*.³ Based upon this standard, a Complainant has the burden to show that the Respondent prepared or disseminated the campaign material knowing that it was false, or did so with reckless disregard of whether it was true or false.⁴

As noted above, for purposes of a *prima facie* determination, a Complainant must detail the factual basis for his claim that the violation of law has occurred.⁵

Here, Mr. Nelson did not allege which statements were false. He merely asserts that the letter written by Ms. Erickson letter includes false statements, without providing any further detail. Moreover, the Complaint does not assert that the Respondent, Ms. Erickson, either knew that the claims in the letter were false, or entertained serious doubts as to the accuracy of those claims, when the letter was circulated.

At a minimum, the Complaint must allege sufficient facts from which knowledge of the falsity of the statement, or a reckless disregard of that falsity, can be inferred. The Complaint does not meet this standard.

Conclusion

The Complaint has not alleged sufficient facts to support a *prima facie* determination that either Minn. Stat. §§ 211B.04 or 211B.06 was violated.

For these reasons, the Complaint is dismissed without prejudice to re-filing. Within 60 days of the date of this Order, Mr. Nelson may revise and file a subsequent Complaint on these alleged violations without paying an additional filing fee.

E. L. L.

³ *New York Times v. Sullivan*, 376 U.S. 254, 279-80 (1964).

⁴ *See, St. Amant v. Thompson*, 390 U.S. 727, 731 (1968); *Garrison v. Louisiana*, 379 U.S. 64, 74 (1964). *See also, Riley v. Jankowski*, 713 N.W. 2d 379, 400-02 (Minn. App.) *review denied* (Minn. 2006).

⁵ Minn. Stat. § 211B.32, subd. 3.