

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Margaret J. Tilley,

Complainant,

NOTICE OF AND ORDER FOR
EVIDENTIARY HEARING

vs.

James Swift,

Respondent.

TO: Alan W. Weinblatt, Weinblatt & Gaylord, PLC, Suite 300 Kellogg Square, 111 East Kellogg Boulevard, St. Paul, MN 55101, and James Swift, 1125 Westbury Path, Eagan, MN 55123.

On October 4, 2004, a complaint was filed with the Office of Administrative Hearings alleging a violation of Minn. Stat. chapter 211A or 211B. An Administrative Law Judge found by Order dated October 12, 2004 that there is probable cause to believe that Respondent violated Minn. Stat. § 211B.06.

THEREFORE, NOTICE IS HEREBY GIVEN that this matter has been assigned to a panel of three Administrative Law Judges for an evidentiary hearing. The assigned Administrative Law Judges are: Beverly Jones Heydinger (presiding Judge), George Beck, and Steve Mihalchick. The address of the Administrative Law Judges is 100 Washington Square, Suite 1700, 100 Washington Avenue South, Minneapolis, MN 55401-2138. The Administrative Law Judges may be reached at telephone number 612-341-7600 and the Office's fax number is 612-349-2665.

IT IS FURTHER ORDERED AND NOTICE IS HEREBY GIVEN that this matter is scheduled for an evidentiary hearing to be held on October 18, 2004, at 1:30 p.m. **No appearance is required** because the parties have agreed to use the probable cause record for the final decision. The hearing has been ordered pursuant to the authority granted to the Chief Administrative Law Judge by Minn. Stat. § 211B.35, subd. 1. The hearing will be conducted pursuant to Minn. Stat. §§ 211B.35 and 211B.36. Information about the evidentiary hearing and copies of state statutes and rules may be obtained online at www.oah.state.mn.us and www.revisor.leg.state.mn.us. The Office of Administrative Hearings conducts proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota Supreme Court.

HEARING PROCEDURES

Pursuant to an agreement of the parties, the panel will make its decision based on the testimony presented and the record created at the probable cause hearing.^[1] However, Complainant may seek to subpoena a copy of Respondent's questionnaire response in order to introduce it as evidence. A subpoena request form may be

obtained online at www.oah.state.mn.us. In addition, the parties have the right to submit written argument for consideration by the Administrative Law Judges. **Any written argument must be submitted by 9:00 a.m. on Monday, October 18, 2004.**

WITHDRAWAL OF COMPLAINT

At any time before an evidentiary hearing begins, a complainant may withdraw a complaint. After the evidentiary hearing begins, however, a complaint filed may only be withdrawn with the permission of the panel.

COSTS

If the panel determines the complaint is frivolous, it may order the complainant to pay the respondent's reasonable attorney fees and to pay the costs of the office in the proceeding in which the complaint was dismissed.

BURDEN OF PROOF

The burden of proving the allegations in the complaint is on the complainant. The standard of proof of a violation of section 211B.06, relating to false statements in paid political advertising or campaign material, is clear and convincing evidence. The standard of proof of any other violation of chapter 211A or 211B is a preponderance of the evidence.

DISPOSITION OF COMPLAINT

At the conclusion of the evidentiary hearing, the panel must determine whether the violation alleged in the complaint occurred and must make at least one of the following dispositions:

- (1) The panel may dismiss the complaint.
- (2) The panel may issue a reprimand.
- (3) The panel may find that a statement made in a paid advertisement or campaign material violated section 211B.06.
- (4) The panel may impose a civil penalty of up to \$5,000 for any violation of chapter 211A or 211B.
- (5) The panel may refer the complaint to the appropriate county attorney.

The panel must dispose of the complaint within three days after the hearing record closes, if an expedited probable cause hearing was required by section 211B.33; or within 14 days after the hearing record closes, if an expedited probable cause hearing was not required by section 211B.33.

JUDICIAL REVIEW

A party aggrieved by a final decision on a complaint filed under section 211B.32 is entitled to judicial review of the decision as provided in Minn. Stat. §§ 14.63 to 14.69.

Dated October 12, 2004

/s/ Raymond R. Krause
RAYMOND R. KRAUSE
Chief Administrative Law Judge

^[1] The record consists of the parties' testimony and Exhibit 1 (October 1, 2004, *Pioneer Press* article.)