

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Will Rossbach,

Complainant,

ORDER ON MOTION
IN LIMINE

vs.

Erik Hjelle and Erik Hjelle & Associates,
Inc.,

Respondents.

The above-entitled matter came before the panel of Administrative Law Judges on April 21, 2006, on the Complainant's motion in limine. Respondents filed a response to the motion on April 21, 2006, and the record with respect to the motion closed on that date.

Jay Benanav and Luke Kuhl, Attorneys at Law, Weinblatt and Gaylord, PLC, 111 East Kellogg Boulevard, St. Paul, MN 55101, represented Will Rossbach ("Complainant"). Jill Clark, Attorney at Law, 2005 Aquila Avenue North, Golden Valley, MN 55427, represented Erik Hjelle and Erik Hjelle & Associates, Inc. ("Respondents").

Based upon all of the files, records, and proceedings herein, and for the reasons set out in the attached Memorandum,

IT IS ORDERED:

That Complainant's motion in limine is DENIED. Respondents may present evidence relevant to their claim that the Complainant filed the Complaint in bad faith.

Dated: April 28, 2006

/s/ Barbara L. Neilson

BARBARA L. NEILSON

Presiding Administrative Law Judge

Steve M. Mihalchick

STEVE M. MIHALCHICK

Administrative Law Judge

Beverly Jones Heydinger/by KDS

BEVERLY JONES HEYDINGER

Administrative Law Judge

MEMORANDUM

The Complainant is currently a member of the Maplewood City Council. In the November 2005 election he ran unsuccessfully for Mayor of Maplewood. Respondent Erik Hjelle was a candidate for Maplewood City Council and was elected to the City Council on November 8, 2005. He also owns his own insurance business, Erik Hjelle & Associates, Inc. (Hjelle & Associates).

On March 6, 2006, the Complainant filed a Complaint with the Office of Administrative Hearings alleging that Erik Hjelle, Hjelle & Associates, and the Maplewood Firefighters Association violated various provisions of Minnesota Statutes Chapters 211A and 211B governing campaign laws. By Order dated March 7, 2006, Presiding Administrative Law Judge Barbara Neilson determined that the Complaint set forth prima facie violations of Minn. Stat. §§ 211A.12 and 211B.13 on the part of Respondent Erik Hjelle for allegedly accepting corporate contributions from Hjelle & Associates, and a prima facie violation of Minn. Stat. § 211B.15 on the part of Respondent Hjelle & Associates for allegedly making a corporate contribution to Hjelle's campaign. Judge Neilson dismissed all of the other allegations in the Complaint and also dismissed the Maplewood Firefighters Association as a party.

On March 21, 2006, Respondents brought a motion for summary disposition based on the principles of collateral estoppel and *res judicata*. In addition to these arguments, the Respondents also alleged that the Complainant filed the Complaint in bad faith. In support of this claim, the Respondents attached an affidavit of Respondent Hjelle in which he states the Complainant threatened to file continuous complaints against him in order to "financially drain" him and force him to quit the City Council.^[1] By Order dated April 10, 2006, the panel of Administrative Law Judges denied Respondents' motion for summary disposition. In the Memorandum attached to the Order, the panel strongly encouraged the parties to stipulate that this matter would be decided on the record established in *Koppen v. Maplewood Firefighters Association, Inc. and Erik Hjelle*^[2] and that the hearing be limited to relevant testimony concerning the gravity and willfulness of any violation as it relates to penalty and whether the Complaint was filed in good faith. On April 17, 2006, the parties submitted a stipulation as to exhibits and testimony from the *Koppen* case.

Complainant now moves the Panel to limit the evidentiary hearing to evidence and testimony concerning the gravity and willfulness of Respondents' violations of campaign law and to exclude evidence and testimony regarding the Complainant's intent or motives for filing the Complaint. The Complainant argues that his purpose or intent for filing the Complaint should not be an issue in the hearing. In addition, the Complainant maintains that whether a complaint is "frivolous" is a legal question wholly unrelated to the subjective intent of the Complainant. According to the Complainant, a complaint is frivolous only when it lacks legal merit. Because in this matter, the Complaint has survived both a prima facie determination and a motion for summary disposition, the Complainant argues that it cannot be found to lack legal merit or be frivolous. Therefore, the

Complainant asserts that Respondents' evidence regarding Complainant's motives for filing the Complaint should be excluded as irrelevant.

The Respondents argue simply that because there has already been a ruling that the panel will consider whether the Complaint was filed in good faith, that ruling is now the law of the case.

Minn. Stat. § 211B.36, subd. 3, provides that if the Panel determines that a complaint is frivolous, it may order the Complainant to pay the Respondent's reasonable attorney's fees and the costs of the office in this proceeding. Contrary to the Complainant's argument, frivolous claims may include those lacking a good faith investigation of the facts^[3] or those filed in bad faith. For example, when reviewing an award of attorney fees under Minn. Stat. § 549.21, the Minnesota Court of Appeals defined bad faith as "a frivolous claim which increases the opponent's costs, an unfounded position taken to delay the action or harass the opponent, or fraud upon the Court."^[4] Likewise, a prior Administrative Law Judge panel denied a complainant's request for attorney's fees in part because Respondent's motion for reconsideration was found not to be "frivolous or brought in bad faith."^[5] Thus, the panel concludes that because section 211B.36, subd. 3, authorizes an award of costs and attorney fees as a sanction for filing a frivolous complaint, it may consider Respondents' evidence that the Complaint was not filed in good faith, particularly in light of Respondents' specific allegation that the Complainant threatened to use the campaign complaint process to harass and financially harm Respondent Hjelle.

Moreover, in petitions filed under Minn. Stat. § 204B.44 alleging errors or omissions on ballots, the Minnesota Supreme Court has noted (but declined to rule on) arguments that the petitions were filed in bad faith. In *Clayton v. Kiffmeyer, et al.*,^[6] for example, a voter filed a petition asking the court to order the removal of a candidate's name from the ballot for failure to meet residency requirements. Respondents sought dismissal of the petition in part on grounds that it was brought in bad faith "for political purposes to manipulate the election process" and laches.^[7] The Court denied the voter's petition, but declined to rule on the bad faith argument because of the time constraints involved in a ballot challenge. The Court stated:

A ruling on either bad faith or the laches argument in this case would appear to require determination of disputed facts. Because of the need for an expeditious ruling, we deem it more beneficial to an orderly and fair electoral process to address the merits, rather than incur the delay inherent in a fact-finding proceeding.^[8]

Thus, the Court did not find the bad faith argument to be irrelevant; it just declined to consider the issue in light of the need for expediency.

The Complaint in this matter involves an election that occurred in November of 2005. Respondents allege they have direct evidence that the Complainant filed the Complaint in bad faith to harass and "financially drain" Respondent Hjelle. Unlike *Clayton*, which required an expeditious ruling on a

ballot challenge, no such time constraints are present here where the election at issue has long since passed.

In addition, the fact that the Complaint “survived” a *prima facie* determination and motion for summary disposition does not necessarily mean that the Complaint is not frivolous. A *prima facie* determination involves an initial review by an Administrative Law Judge in which the facts alleged in the Complaint are assumed to be true. The motion for summary disposition in this matter was based on principles of collateral estoppel and *res judicata*, not on the merits. Neither decision binds the panel to a determination that the Complaint has legal merit and is not frivolous. However, a complaint must be entirely unfounded before the panel may determine that the Complainant asserted a frivolous or bad faith claim.^[9] Therefore, Respondents have a substantial burden to meet in order to succeed on their claim that the Complaint was filed in bad faith and is therefore frivolous.

Because section 211B.36, subd. 3, authorizes an award of costs and attorney fees as a sanction for the filing of a frivolous complaint, the panel will allow Respondents the opportunity to present evidence as to whether the complaint was filed in good faith. Complainant’s motion in limine is denied.

B.L.N., S.M.M., B.J.H.

^[1] Affidavit of Erikl Hjelle at ¶ 5, Attachment A to Respondents’ Motion to Dismiss.

^[2] OAH Docket No. 7-6361-16947-CV (March 1, 2006).

^[3] See, Minn. Stat. § 176.225, subd. 1.

^[4] *Radloff v. First Am. Nat’l Bank*, 470 N.W.2d 154, 156 (Minn. App. 1991), *review denied* (Minn. July 24, 1991) (defining “bad faith” as “a frivolous claim which increases the opponent’s costs, an unfounded position taken to delay the action or harass the opponent, or fraud upon the Court.”)

^[5] *Johnson v. Levitz and Levitz for City Council Campaign*, OAH Docket No. 22-6381-16304-CV (February 28, 2005).

^[6] 688 N.W.2d 117 (Minn. 2004).

^[7] 688 N.W.2d at 121.

^[8] 688 N.W.2d at 122-23. See also *Olson v. Zuehlke, Peysar, Kiffmeyer, and Solberg*, 652 N.W.2d 37, 39 n. 2 (Minn. 2002); *Lundquist v. Leonard, Kiffmeyer, and Tilley*, 652 N.W.2d 33, 36 n. 2 (Minn. 2002).

^[9] *Accord, Block v. Target Stores, Inc.*, 458 N.W.2d 705, 713 (Minn. App. 1990), *review denied* (Minn. September 28, 1990) (complaint must be entirely unfounded before it is proper to award attorney fees based upon making a frivolous or bad faith claim.)