

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Bruce Reed, Jr., vs. Todd Ouellette,	Complainant, Respondent.	NOTICE OF DETERMINATION OF PRIMA FACIE VIOLATION AND NOTICE OF AND ORDER FOR PROBABLE CAUSE HEARING
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TO: Bruce Reed, Jr., 1070 Gilmore Avenue, Winona, MN 55987; and Todd Ouellette, Post Office Box 1502, Winona, MN 55987.

On October 16, 2006, Bruce Reed, Jr. filed a Complaint with the Office of Administrative Hearings alleging that Todd Ouellette violated Minnesota Statutes § 211B.06. After reviewing the Complaint and attached exhibits, the undersigned Administrative Law Judge has determined that the Complaint sets forth a *prima facie* violation of Minnesota Statutes § 211B.06.

THEREFORE, IT IS ORDERED AND NOTICE IS GIVEN that this matter is scheduled for a probable cause hearing to be held by telephone before the undersigned Administrative Law Judge at **9:30 a.m. on Monday, November 13, 2006**. The hearing will be held by call-in telephone conference. You must call: **1-888-677-3757** at that time. Follow the directions and enter the numeric pass code "**17629**" when asked for the meeting number. The probable cause hearing will be conducted pursuant to Minnesota Statutes § 211B.34. Information about the probable cause proceedings and copies of state statutes may be found online at www.oah.state.mn.us and www.revisor.leg.state.mn.us.

At the probable cause hearing all parties have the right to be represented by legal counsel or appear on their own behalf without counsel. In addition, the parties have the right to submit evidence, affidavits, documentation and argument for consideration by the Administrative Law Judge. Parties should provide to the Administrative Law Judge all evidence bearing on the case, with copies to the opposing party, before the telephone conference takes place. Documents may be faxed to Judge Eric L. Lipman at 612-349-2665.

At the conclusion of the probable cause hearing, the Administrative Law Judge will either: (1) dismiss the complaint based on a determination that the complaint is frivolous, or that there is no probable cause to believe that the violation of law alleged in the complaint has occurred; or (2) determine that there is probable cause to believe that the violation of law alleged in the complaint has occurred and refer the case to the Chief Administrative Law Judge for the scheduling of an evidentiary hearing. Evidentiary hearings are conducted pursuant to Minnesota Statutes § 211B.35. If the Administrative Law Judge

dismisses the complaint, the complainant has the right to seek reconsideration of the decision on the record by the Chief Administrative Law Judge pursuant to Minnesota Statutes § 211B.34, subdivision 3.

Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, the Administrative Law Judge must be promptly notified. To arrange an accommodation, contact the Office of Administrative Hearings at 100 Washington Avenue South, Suite 1700, Minneapolis, MN 55401, or call 612-341-7610 (voice) or 612-341-7346 (TTY).

Dated: November 7, 2006

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

MEMORANDUM

Respondent Todd Ouellette is a candidate for City Council from Ward 2 of Winona, Minnesota. Mr. Ouellette is challenging incumbent councilman, Gerry Krage, who has filed for re-election.

The Complaint alleges that Respondent Ouellette has violated Minnesota Statutes § 211B.06 by disseminating campaign material that falsely claims that Bruce Reed and Gerry Krage had a “role in extorting over \$100,000 from the American Legion Veterans Association.” The Complainant has attached a copy of a page from Mr. Ouellette’s website that discusses Mr. Krage’s alleged refusal to debate Mr. Ouellette and then states the following:

Maybe He Doesn't Want Me Talking About Bruce Reed's Role In Extorting Over \$100,000 From The American Legion Veteran's Organization?^[1]

Minnesota Statutes § 211B.06 provides, in part:

A person is guilty of a gross misdemeanor who intentionally participates in the 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 question, that is false, and that the person knows is false or communicates to others with reckless disregard of whether it is false.

In reviewing the Complaint to determine whether it sets forth a *prima facie* violation of the statute, this Office is required to credit as true all of the facts that are alleged in the Complaint, provided that those facts are not “patently false” or “inherently incredible.”^[2]

The Complaint alleges Mr. Ouellette has falsely claimed that Reed and Krage extorted money from the American Legion, and has disseminated this claim as part of Ouelette’s campaign for the Winona City Council. If the evidence at a hearing were to establish that the claim is false, and Respondent disseminated this claim with either knowledge of, or a reckless disregard of, the claim’s falsity, those facts would establish a violation of Minnesota Statutes § 211B.06.

It is important to note, however, that the allegations within the Complaint, and the printed excerpts from the Ouellette website that are attached to Complaint, diverge somewhat. The copy of Respondent’s campaign material at issue states only that Bruce Reed had a role in extorting over \$100,000; it does not mention the incumbent councilman, Gerry Krage. Nonetheless, the Administrative Law Judge concludes that the statement is sufficient to state a *prima facie* violation of Minnesota Statutes § 211B.06. Because presumably the import of what Mr. Ouellette sought to communicate to voters was that Mr. Krage is associated with extortionists – the claim is one that touches upon the “personal or political character or acts of a candidate,” and “is designed or tends to elect, injure, promote, or defeat a candidate for nomination or election to a public office”^[3] Accordingly, dismissal of the Complaint at this stage would not be appropriate.

The Administrative Law Judge therefore determines that the Complaint has alleged a *prima facie* violation of the Fair Campaign Practices Act. The allegations will proceed to a probable cause hearing.

E.L.L.

^[1] Attachment to Complaint.

^[2] See, e.g., *Halverson v. Nelson*, OAH Docket No. 4-6301-16282-CV, slip op. at 2 (2004) (<http://www.oah.state.mn.us/aljBase/630116282.primafacie.htm>); compare also, *Elzie v. Commissioner of Pub. Safety*, 298 N.W.2d 29, 32 (Minn. 1980) (Dismissal of a complaint is proper only if it appears to a certainty that plaintiff can introduce no facts consistent with the complaint to support granting the relief requested).

^[3] See, Minn. Stat. § 211B.06 (2004).