

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Bruce Reed Jr.,

Complainant,

vs.

ORDER

Todd Ouellette,

Respondent.

An Affidavit of Prejudice was filed by the Respondent in the above matter on November 20, 2006, which seeks the disqualification of the presiding Administrative Law Judge, Eric Lipman.

Bruce Reed, Jr. ("Complainant"), 1070 Gilmore Avenue, Winona, MN 55987, represents himself without counsel. Todd Ouellette ("Respondent"), Post Office Box 1502, Winona, MN 55987, represents himself without counsel.

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

IT IS ORDERED:

1. That the Respondent's request to remove or disqualify Administrative Law Judge Eric Lipman based on the Affidavit of Prejudice is DENIED.
2. That this matter will proceed to a probable cause hearing at 9:30 a.m. on Wednesday, November 22, 2006.

Dated: November 21, 2006

/s/ Bruce H. Johnson for

RAYMOND R. KRAUSE
Chief Administrative Law Judge

MEMORANDUM

This is a Fair Campaign Practices Act complaint involving Respondent's alleged dissemination of false campaign material prior to the November 7, 2006, election for Winona City Council. Respondent ran unsuccessfully as a candidate for City Council from Ward 2 of Winona, Minnesota. He was challenging incumbent councilman, Gerry Krage, who was re-elected.

The Respondent has filed an Affidavit of Prejudice seeking the removal or disqualification of Administrative Law Judge Eric Lipman, who is presiding over this matter. In his Affidavit of Prejudice, the Respondent states that Administrative Law Judge Lipman has possible conflicts of interest due to his prior employment positions as Governor Pawlenty's State Sex Offender Policy Coordinator, Governor Pawlenty's Acting General Counsel, and former Senator Rod Grams' political director. The Respondent maintains that during the time when Judge Lipman was the State Sex Offender Policy Coordinator and Governor Pawlenty's Acting General Counsel, the Respondent was:

“using Minnesota's PEG channels to criticize the Governor for his selection of Chuck McLean as a possible judicial appointee even though MacLean is notorious for protecting pedophiles arrested in Winona County.”

The Respondent also states that during the time when Judge Lipman was former Senator Grams' political director, Respondent was “doing radio, TV and newspaper interviews criticizing Senator Grams for not dealing with weapon proliferation and veterans issues.” Finally, the Respondent states that Administrative Law Judge Lipman is a “political appointee” and Respondent continues “to air TV programs around the state on local PEG channels criticizing political judges.”

The Respondent appears to be arguing that his criticisms of Governor Pawlenty and former Senator Grams on public cable access television shows, and his criticisms generally of “political judges,” creates a conflict of interest for Administrative Law Judge Lipman that renders him disqualified from presiding over this matter.

Affidavits of Prejudice are considered under Minn. Rule pt. 1400.6400, which provides that:

Upon filing in good faith by a party of an Affidavit of Prejudice, the Chief Judge shall determine the matter as part of the record ... A judge must be removed upon an affirmative showing of prejudice or bias. A judge may not be removed merely because of rulings on prior case.

The burden of establishing bias or other disqualifying interests rests on the party challenging the Judge.^[1] In this case, the facts have not been presented by affidavit to affirmatively show any prejudice or bias on the part of Judge Lipman. The alleged prejudice appears to be based on Respondent's speculation that Judge Lipman is aware of Respondent's criticisms of his past employers and that these criticisms have rendered Judge Lipman biased against the Respondent. Judge Lipman has indicated, however, that he was unfamiliar with the Respondent prior to the filing of this campaign complaint and was unaware of any of Respondent's criticisms of Governor Pawlenty and Senator Grams prior to the filing of his Affidavit of Prejudice.

Bias or prejudice, to be disqualifying, must stem from an extra-judicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case.^[2] Even in a criminal context, the fact that a judge is familiar with the defendant from a prior criminal trial is not an affirmative showing of prejudice requiring removal.^[3]

Because the Respondent has failed to affirmatively demonstrate prejudice or bias on the part of Administrative Law Judge Lipman, his request to remove or disqualify Judge Lipman from presiding over this matter is denied.

R.R.K.

^[1] *Schweiker v. McClure*, 456 U.S. 188, 196 (1982).

^[2] *In Re Estate of Lange*, 398 N.W.2d 569, 573 (Minn. App. 1986) (discussing comparable provision in Minn. R. Civ. P. 63.02).

^[3] *State v. Yeager*, 399 N.W.2d 648, 652 (Minn. App. 1987).