

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Jack Shepard,

Complainant,

**ORDER WAIVING FILING FEE**

vs.

Teresa Collett and the Collett for  
Congress Campaign,

Respondents.

Jack Shepard filed a Complaint in this matter on August 20, 2010. Mr. Shepard also submitted a notarized Affidavit for Proceeding *In Forma Pauperis*.

Pursuant to Minnesota Statutes § 211B.32, subd. 5(b), the Office of Administrative Hearings may waive the payment of the filing fee, if the individual seeking a waiver of the fee files an affidavit stating that the individual is financially unable to pay the fee.

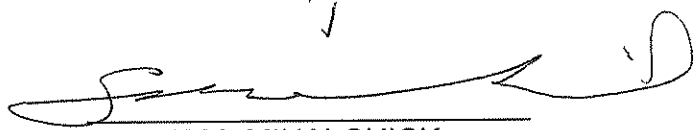
Based upon the affidavit filed by Mr. Shepard and pursuant to the 2010 poverty guideline income levels for Minnesota, the Administrative Law Judge finds that the Complainant qualifies for a waiver of the filing fee.

**ORDER**

IT IS ORDERED:

That payment of the \$50 filing fee in this matter is waived.

Dated this 23rd day of August 2010.



STEVE M. MIHALCHICK  
Administrative Law Judge

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Jack Shepard,

Complainant,

vs.

Teresa Collett and the Collett for  
Congress Campaign,

Respondents.

**NOTICE OF DETERMINATION OF  
PRIMA FACIE VIOLATION  
AND  
NOTICE OF AND ORDER FOR  
PROBABLE CAUSE HEARING**

On August 20, 2010, Jack Shepard filed a Campaign Complaint with the Office of Administrative Hearings alleging that Teresa Collett and the Collett for Congress Campaign violated Minnesota Statutes § 211B.06 by preparing and disseminating false campaign material. 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 **10:00 a.m. on Friday, August 27, 2010**. The hearing will be held by call-in telephone conference. You must call: **888-742-5095** at that time. When the system asks for your numeric pass code, enter "**4102568198#**" on your phone and you will be connected to the conference. 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](http://www.oah.state.mn.us) and [www.revisor.leg.state.mn.us](http://www.revisor.leg.state.mn.us).

At the probable cause hearing all parties have the right to be represented by legal counsel, by themselves, or by a person of their choice if that choice is not otherwise prohibited as the unauthorized practice of law. 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 emailed to Judge Mihalchick at [Steve.Mihalchick@state.mn.us](mailto:Steve.Mihalchick@state.mn.us) or faxed to 651-361-7936.

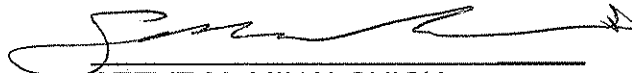
At the conclusion of the probable cause hearing, the Administrative Law Judge will either: (1) dismiss the complaint based on a determination that the complaint is frivolous, or that there is no probable cause to believe that the violation of law alleged in the complaint has occurred; or (2) determine 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.

**A failure by the Complainant to participate and appear by telephone at this probable cause hearing may result in a finding that the Complainant is in default and that the Complaint should be dismissed. A failure by the Respondent to participate and appear by telephone at this probable cause hearing may result in a finding that the Respondent is in default and that the Complainant's allegations contained in the Complaint may be accepted as true, and that the Presiding Administrative Law Judge may dispose of the Complaint according to Minn. Stat. § 211B.35, subd. 2.**

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 P.O. Box 64620, St. Paul, MN 55164-0620, or call 651-361-7900 (voice) or 651-361-7878 (TDD).

Dated: August 24, 2010



STEVE M. MIHALCHICK  
Administrative Law Judge

#### MEMORANDUM

The Complainant, Jack Shepard, was a candidate in the August 10, 2010, Republican primary for United States House of Representatives Fourth Congressional District of Minnesota. His opponent, Respondent Teresa Collett, won the Republican primary election by obtaining approximately 67% of the vote.

The Complaint alleges that Ms. Collett and her campaign committee, Collett for Congress Campaign, disseminated false campaign material regarding his candidacy in violation of Minn. Stat. § 211B.06. Specifically, the Complaint alleges that statements in the Respondents' campaign material that Dr. Shepard "has stated publicly that if he is successful in the Republican primary, he will withdraw from the race to ensure that Betty McCollum returns to Congress in January" are false. The Complainant maintains that

he never made such statements and that he had no intention of dropping out of the race. The Complainant contends that Respondents disseminated these statements knowing they were false to defeat his candidacy.

Minnesota Statutes § 211B.06 prohibits the preparation and dissemination of false campaign material with respect to the personal or political character or acts of a candidate. In order to be found to have violated this section, a person must intentionally participate in the preparation or dissemination of campaign material that the person knows is false or communicates with reckless disregard of whether it is false. Campaign material is “any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election.”<sup>1</sup>

As interpreted by the Minnesota Supreme Court, Section 211B.06 is directed against false statements of specific facts.<sup>2</sup> It does not prohibit inferences or implications, even if misleading. However, the statement that must be proved false is not necessarily the literal phrase published but rather what a reasonable reader would have understood the author to have said.<sup>3</sup>

To set forth a *prima facie* case that entitles a party to a hearing, the party must either submit evidence or allege facts that, if unchallenged or accepted as true, would be sufficient to prove a violation of chapter 211A or 211B.<sup>4</sup> For purposes of a *prima facie* determination, the tribunal must accept the facts alleged as true and the allegations do not need independent substantiation.<sup>5</sup> A complaint must be dismissed if it does not include evidence or allege facts that, if accepted as true, would be sufficient to prove a violation of chapter 211A or 211B.<sup>6</sup>

The statements at issue in Respondents' campaign material are capable of being proven true or false. They also refer to the character or acts of a candidate for election to office, and as such, come within the purview of Minn. Stat. § 211B.06. The Administrative Law Judge finds that the Complainant has alleged sufficient facts to support finding a *prima facie* violation of Minn. Stat. § 211B.06. This allegation will proceed to a probable cause hearing as ordered.

### S.M.M.

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<sup>1</sup> Minn. Stat. § 211B.01, subd. 2.

<sup>2</sup> *Kennedy v. Voss*, 304 N.W.2d 299, 300 (Minn. 1981); See, *Bundlie v. Christensen*, 276 N.W.2d 69, 71 (Minn. 1979) (interpreting predecessor statutes with similar language); *Bank v. Egan*, 60 N.W.2d 257, 259 (Minn. 1953); *Hawley v. Wallace*, 163 N.W. 127, 128 (Minn. 1917).

<sup>3</sup> *Jadwin v. Minneapolis Star and Tribune*, 390 N.W.2d 437, 441 (Minn. App. 1986), citing *Old Dominion Branch No. 496, National Assoc. of Letter Carriers v. Austin*, 418 U.S. 264, 284-86 (1974); *Greenbelt Coop. Publishing Assoc. v. Bresler*, 398 U.S. 6, 13-14 (1970). See also *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 16-17 (1990); *Hunter v. Hartman*, 545 N.W.2d 699, 706 (Minn. App. 1996).

<sup>4</sup> *Barry, et al., v. St. Anthony-New Brighton Independent School District, et al.*, 781 N.W.2d 898, 902 (Minn. App. 2010).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*