

**STATE OF MINNESOTA  
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD**

.....  
**March 6, 2020  
St Croix Room  
Centennial Office Building**  
.....

**MINUTES**

The meeting was called to order by Chair Moilanen.

Members present: Flynn, Haugen, Leppik, Moilanen, Rosen (arrived during chair's report), Swanson

Others present: Sigurdson, Engelhardt, Olson, Pope, staff; Hartshorn, counsel

**MINUTES** (February 5, 2020)

After discussion, the following motion was made:

|                         |  |
|-------------------------|--|
| Member Leppik's motion: | To approve the February 5, 2020, minutes as drafted. |
|-------------------------|--|

|                 |                                    |
|-----------------|------------------------------------|
| Vote on motion: | Unanimously passed (Rosen absent). |
|-----------------|------------------------------------|

**CHAIR'S REPORT**

**A. 2020 meeting schedule**

The next Board meeting is scheduled for 10:30 a.m. on Wednesday, April 1, 2020.

**B. Chair's update**

Chair Moilanen told members that he had discussed two issues with Board staff since the last meeting. The first issue was whether staff salaries and job classifications reflected the actual work being performed. Chair Moilanen said that because staff salaries comprised most of the Board's budget, he believed that it would be appropriate to review those salaries and the job classifications as part of the upcoming budget review. Chair Moilanen next said that because the Board had additional time to work on its lobbyist legislative proposal, he had asked staff to look at lobbyist regulations in other states and to present a report on that topic at the April meeting.

**EXECUTIVE DIRECTOR REPORT**

In response to questions from members, Mr. Sigurdson first addressed preparations for the COVID-19 situation. Mr. Sigurdson said that staff was ensuring that the Board's Continuity of Operations Plan (COOP) was up to date. Mr. Sigurdson told members that in the event of a pandemic, the COOP provided for one or two staff members to come into the office with everyone else working from home.

Mr. Sigurdson said that in the fall, staff had tested the plan by working from home for a morning and that everyone had been able to connect to the office computers. Mr. Sigurdson also noted that if necessary, a Board meeting could be held by telephone as long as one member was physically present at the meeting site.

Mr. Sigurdson next told members that lobbyist principal reports were due on March 16<sup>th</sup>. Mr. Sigurdson also said that he would be giving monthly updates on the progress of the project to move the Campaign Finance Reporter (CFR) software to the internet. Mr. Sigurdson stated that the online software was being developed in-house and was a bit, but not a lot, behind schedule. Mr. Sigurdson said that because information entered into the current version of CFR would be imported into the new online version, no one would have to double enter any transactions due to a delay in the rollout.

Mr. Sigurdson then said that he had sent the letter approved by the Board at the February meeting to all members of the legislature. He also had met with two legislators about the lobbying proposal and had informed them that the proposal was being held until fall for further development. Mr. Sigurdson stated that he had testified about a bill that would allow candidates to use campaign funds to buy security systems and to classify those expenses as a cost of serving in office. Mr. Sigurdson said that he was concerned that the list of security systems for which campaign funds could be used included the phrase "including but not limited to." Mr. Sigurdson stated that this language was very broad and could open the door to expenses that were only remotely related to security. Finally, Mr. Sigurdson said that he had not heard anything from the Governor about when appointments would be made to the two open positions on the Board. Mr. Sigurdson said that because the deadline for legislative approval of the two appointments made last summer was quickly approaching, he planned to ask the legislature to move forward with hearings on those two appointments.

Chair Moilanen then discussed in more detail his request that staff examine and report on lobbyist regulations in other states. Chair Moilanen said that he believed that this request was appropriate given the additional time that the Board now had to look at this issue. Chair Moilanen stated that he expected to learn more about who is included in the definition of lobbyist in other states and whether other states charge lobbyist registration fees. Chair Moilanen also expressed frustration with the pace of the appointment process.

### **OPTIONS FOR CIVIL PENALTIES IN CONCILIATION MATTERS**

Ms. Engelhardt presented members with a memorandum regarding this matter that is attached to and made a part of these minutes. Ms. Engelhardt told members that the civil penalty issue had been presented at the October meeting but that members had wanted to delay any final decisions until all members were present. Ms. Engelhardt reviewed the three options in the memo and the examples illustrating each approach. The three options were as follows: 1) to not impose any civil penalty for a first offense, 2) to impose a civil penalty equal to the excess contribution received, and 3) to impose a civil penalty equal to the amount of the excess contribution but to require payment only of \$100 or 25% of the penalty, whichever was greater, and to stay the remaining 75% of the penalty until the end of the next election cycle. Ms. Engelhardt explained that under option 3, any penalty that was less than \$100 would have to be paid in full. Ms. Engelhardt also stated that any stayed amounts would be due immediately if the committee committed a second violation.

Members then expressed their opinions and concerns about the options presented. Members were mindful of the Board's obligation to always consider the factors in Minnesota Statutes section 14.045 when imposing a penalty but understood staff's need for direction regarding the initial penalty to recommend in a proposed decision. Based on comments from the Board, staff understood that option 3 would be an appropriate starting point for proposed penalties in recommended decisions. The Board then will consider the statutory factors when reviewing that recommendation and, based on that consideration, adjust the penalty as appropriate for each case.

## **ENFORCEMENT REPORT**

### **A. Consent items**

#### **1. Administrative termination of lobbyist Bruce Miller (584)**

Mr. Olson told members that the Minnesota Farmers Union has asked that the lobbyist registration of Mr. Miller be terminated due to Mr. Miller's death on November 9, 2019. Mr. Olson said that Board staff had administratively terminated Mr. Miller's lobbyist registration as of that date. A reporting lobbyist for the Farmers Union had filed a lobbyist disbursement report inclusive of Mr. Miller covering the most recent reporting period. A representative from the Minnesota Farmers Union attended the meeting but did not address the Board.

#### **2. Retroactive termination of lobbyist Ronald Harnack (1853)**

Mr. Olson told members that Mr. Harnack recently had filed a lobbyist termination statement that listed a termination date of December 31, 2018. Mr. Harnack had stated that he had not engaged in lobbying at all in 2019. Mr. Olson said that Board staff had terminated Mr. Harnack's lobbyist registration as of December 31, 2018. Mr. Olson stated that a reporting lobbyist for the same principal had filed lobbyist disbursement reports covering 2019 that were inclusive of Mr. Harnack so there would be no need for Mr. Harnack to file disbursement reports covering that period regardless of whether the termination was retroactive to the end of 2018.

After discussion, the following motion was made:

Member Rosen's motion: To approve the items on the consent agenda.

Vote on motion: Unanimously passed.

**B. Waiver requests**

| Name of Candidate or Committee            | Late Fee & Civil Penalty Amount | Reason for Fine          | Factors for waiver and recommended action  | Board Member's Motion | Motion                               | Vote on Motion      |
|---|---------------------------------|--------------------------|--|-----------------------|--------------------------------------|---------------------|
| Kerry Brick (Investment Advisory Council) | \$5 LFF                         | Annual EIS               | Official retired and moved out of state in September 2019. Email address on file was official's work address. First notice mailed to MN address was not received at new address until late February. He received second notice in early February informing him EIS was late. EIS was due 1/27/2020 and filed 2/11/2020. RECOMMENDED ACTION: Waive  | Member Rosen          | To approve the staff recommendation. | Unanimously passed. |
| Michael Kanner (Petrofund Board)          | \$40 LFF                        | Annual EIS               | Official retired and was no longer Commissioner's designee to Petrofund Board in August 2019. Board staff did not have official's personal contact info at the time, but later obtained home address and mailed letter. When letter was received, EIS was filed. EIS was due 1/27/2020 and filed 2/21/2020. RECOMMENDED ACTION: Waive  | Member Rosen          | To approve the staff recommendation. | Unanimously passed. |
| Rekoe Howard (4461)                       | \$275 LFF                       | 2nd 2019 lobbyist report | Lobbyist was hospitalized near time when report was due on 1/15/2020. Report filed 1/31/2020. RECOMMENDED ACTION: Waive  | Member Rosen          | To approve the staff recommendation. | Unanimously passed. |
| Leech Lake PAC (40889)                    | \$225 LFF                       | 2019 year-end            | Leech Lake Band experienced cyber attack 1/27/2020, resulting in loss of access to internet, email, and accounting systems for extended period of time. Report was filed 2/13/2020, listing an ending cash balance of \$14,923. RECOMMENDED ACTION: Waive  | Member Rosen          | To approve the staff recommendation. | Unanimously passed. |
| Maren Schroeder (4539)                    | \$50 LFF                        | 2nd 2019 lobbyist report | Lobbyist was filing lobbyist disbursement report for first time and initially thought report was due 1/31/2020 rather than 1/15/2020, because that's when campaign finance reports were due and she is treasurer for candidate committee. Report was filed 1/17/2020 disclosing no disbursements during reporting period. Lobbyist states fee would cause economic hardship. RECOMMENDED ACTION: Waive | Member Rosen          | To approve the staff recommendation. | Unanimously passed. |

|   |  |  |  |                                |   |                                       |
|---|--|--|--|--------------------------------|---|---------------------------------------|
| <p>Scott Klein<br/>       (Two Rivers<br/>       WD)</p>                  | <p>\$110<br/>       LFFs<br/>       \$500 CP</p> | <p>Original<br/>       and<br/>       annual<br/>       EIS</p>                              | <p>Official was appointed in January 2019. Board staff received notice of appointment months later and sent letters in August, September, October, and December 2019, and January 2020. Original EIS was due 10/14/2019 and annual was due 1/27/2020. Both statements were filed 2/12/2020. Amount owed includes \$100 LFF and \$500 CP for original EIS and \$10 LFF for annual EIS. Official is a farmer who was busy dealing with extended harvest season in late 2019 and initially thought he was not required to file because he was appointed not elected.<br/>       RECOMMENDED ACTION: Waive CP leaving balance of \$110 owed for LFFs</p> | <p>Member<br/>       Rosen</p> | <p>To approve the<br/>       staff<br/>       recommendation.</p> | <p>Unanimously<br/>       passed.</p> |
| <p>Rebecca<br/>       Peichel for<br/>       House<br/>       (17125)</p> | <p>\$850<br/>       LFFs</p>                     | <p>2017,<br/>       2018,<br/>       and<br/>       2019<br/>       year-<br/>       end</p> | <p>No-change statements were filed 2/2/2018, 2/26/2019, and 2/24/2020, resulting in LFFs of \$50, \$425, and \$375, respectively. Committee has not had any financial activity since 2011 and has a cash balance of \$500. Treasurer has filed termination report and mailed check for \$500 to the Board. RECOMMENDED ACTION: Reduce LFFs to total of \$500.</p>  | <p>Member<br/>       Rosen</p> | <p>To approve the<br/>       staff<br/>       recommendation.</p> | <p>Unanimously<br/>       passed.</p> |

**C. Informational Items**

**1. Payment of late filing fee for 2019 year-end report of receipts and expenditures**

Lisa Neal-Delgado for State Representative, \$25

**2. Partial payment of late filing fee for September 2018 report of receipts and expenditures**

Minnesota Gun Owners Political Action Committee, \$500

**3. Payment of late filing fee for 2018 pre-primary report of receipts and expenditures**

Minnesota Gun Owners Political Action Committee, \$1,000

**4. Payment of late filing fee for June 2018 report of receipts and expenditures**

Minnesota Gun Owners Political Action Committee, \$1,000

**5. Partial payment of late filing fee for 2018 April report of receipts and expenditures**

Minnesota Gun Owners Political Action Committee, \$500

**6. Payment of late filing fee for 2016 year-end report of receipts and expenditures**

Meyer (Christopher John) for Minnesota, \$500

**7. Payment of late filing fee for lobbyist disbursement report due 1/15/2020**

William King, \$25  
Gary Wertish, \$50

**8. Payment of late filing fee for lobbyist principal report due 3/15/2019**

Minnesota State Cattlemen's Association, \$100

**9. Payment of late filing fee for 2019 annual EIS**

Landon Olson, \$5

**10. Payment of civil penalty for 2017 annual EIS**

Dan Schoen, \$250

**11. Payment of late filing fee for 2017 annual EIS**

Dan Schoen, \$25

**12. Forwarded anonymous contribution**

Connie Bernardy Volunteer Team (House), \$50

**LEGAL COUNSEL'S REPORT**

Mr. Hartshorn presented members with a legal report that is attached to and made a part of these minutes. Mr. Hartshorn told members that the Meyer matter had been dismissed and that the Schoen matter had been resolved. Mr. Hartshorn had nothing else to add to the legal report.

**OTHER BUSINESS**

There was no other business to report.

**EXECUTIVE SESSION**

The chair recessed the regular session of the meeting and called to order the executive session. Upon recess of the executive session, the chair had the following to report into regular session:

Findings, conclusions, and order in the matter of the Funk (Thomas) for Senate committee

There being no other business, the meeting was adjourned by the chair.

Respectfully submitted,



Jeff Sigurdson  
Executive Director

Attachments:

Memorandum regarding options for civil penalties in conciliation matters

Legal report

Findings, conclusions, and order in the matter of the Funk (Thomas) for Senate committee



# MINNESOTA CAMPAIGN FINANCE BOARD

**Date:** February 28, 2020

**To:** Board Members

**From:** Megan Engelhardt  
Assistant Executive Director

**Subject:** **Review of guidelines for civil penalties in conciliation matters**

In 2019, Board members asked staff to provide possible options for imposing civil penalties in certain circumstances, specifically when a committee has exceeded a contribution limit or accepted a prohibited contribution. When such a violation occurs, the committee must always return the excess and/or improper contribution and, in most cases, is also ordered to pay a separate civil penalty. The information below was submitted to the Board in a memorandum prior to the October 2, 2019, Board meeting. While the Board discussed the various options, a final decision was not reached and the Board recommended bringing the matter back when all members would be present. Staff is requesting that the Board review the guidelines below again and select an option to use for the conciliation agreements that will be presented to the Board in 2020.

Although the Board considers each case on its own merits, many of the violations considered by the Board are very similar. Consequently, the penalties imposed for those violations also are very similar.<sup>1</sup> In recent years, the Board typically has imposed a civil penalty in the amount of the excess and/or improper contribution. The Board has required immediate payment of 25% of the imposed civil penalty and has stayed payment of the remaining 75% of the penalty until the end of the next election segment on the condition that the committee have no similar violations

---

<sup>1</sup> Minnesota Statutes section 14.045 states factors to be used by agencies when they have discretion over the amount of a fine. The statute provides as follows:

(a) If a statute or rule gives an agency discretion over the amount of a fine, the agency must take the following factors into account in determining the amount of the fine:

- (1) the willfulness of the violation;
- (2) the gravity of the violation, including damage to humans, animals, and the natural resources of the state;
- (3) the history of past violations;
- (4) the number of violations;
- (5) the economic benefit gained by the person by allowing or committing the violation; and
- (6) other factors that justice may require.

(b) For a violation after an initial violation, the following factors must be considered in addition to the factors in paragraph (a):

- (1) similarity of previous violations to the current violation to be penalized;
- (2) time elapsed since the last violation;
- (3) number of previous violations; and
- (4) response of the person to the most recent previous violation identified.



during that time. If the committee has another similar violation, then the outstanding civil penalty is due immediately. If the committee has no other similar violations by the end of the next election segment, the outstanding civil penalty is waived. In situations where the amount of the excess and/or improper contribution was \$50 or less, no part of the civil penalty has been stayed.

Here are some examples that will help illustrate the different options.

Example 1: The Jane Smith for House committee accepted a contribution from an individual in the amount of \$1,200 in 2018. The individual contribution limit for a house candidate was \$1,000. The Jane Smith for House campaign committee did not return the excess \$200 to the individual within 90 days of depositing the check and therefore the contribution was deemed accepted.

Example 2: The John Doe for Senate committee accepted a total of \$8,100 from political committees, political funds, and lobbyists in 2018. The aggregate special source limit for a senate candidate was \$6,600. The John Doe for Senate campaign committee did not return any of the excess \$1,500 to the political committees, political funds, or lobbyists within 90 days and therefore all the contributions were deemed accepted.

Example 3: The Jill Jackson for House committee accepted \$10,300 from political party units and terminating principal campaign committees in 2018. The aggregate political party unit and terminating principal campaign committee contribution limit for a house candidate was \$10,000 in 2018. The Jill Jackson for House committee did not return any of the excess \$300 to the political party units or terminating principal campaign committees within 90 days and therefore all the contributions were deemed accepted.

Example 4: The Mike Anderson for Senate committee accepted \$50 from Bob's Coffee, LLC. The Mike Anderson for Senate committee did not return the \$50 corporate contribution to Bob's Coffee, LLC within 90 days and therefore the contribution was deemed accepted.

Example 5: The Joe Hanson for Governor committee accepted \$1,000 from an unregistered association without obtaining the required disclosure statement. The Joe Hanson for Governor committee did not return any of the \$1,000 contribution to the unregistered association within 90 days and therefore the contribution was deemed accepted.

Example 6: The Anne Williams for House committee accepted \$400 from a registered lobbyist during the session. The Anne Williams for House committee did not return the \$400 contribution to the lobbyist within 90 days and therefore the contribution was deemed accepted.

**Option 1: No civil penalty imposed and the excess and/or improper contribution returned.**

Board staff agree that generally most committees, lobbyists, corporations, and unregistered association have no intent to violate the law and are disappointed to discover a violation. This option would recognize that lack of intent by not imposing a civil penalty but would prevent the candidate committee from benefiting from the excess and/or improper contribution. The option of no civil penalty would only apply to a first violation; any subsequent violations would have a civil penalty.

Example 1: The conciliation agreement for the Jane Smith for House committee requires proof that the committee returned the excess contribution of \$200 to the individual.

Example 2: The conciliation agreement for the John Doe for Senate committee requires proof that the committee returned the excess \$1,500 to the political committees, political funds, and lobbyists.

Example 3: The conciliation agreement for the Jill Jackson for House committee requires proof that the committee returned the excess \$300 to political party units and terminating principal campaign committees.

Example 4: The conciliation agreement for the Mike Anderson for Senate committee requires proof that the committee returned the \$50 to Bob's Coffee, LLC. Bob's Coffee, LLC also has conciliation agreement that agrees to violation.

Example 5: The conciliation agreement for the Joe Hanson for Governor committee requires proof that the committee returned \$800 to the unregistered association. Unregistered association also has conciliation agreement that agrees to violation.

Example 6: The conciliation agreement for the Anne Williams for House committee requires proof that the committee returned \$400 to lobbyist. Lobbyist also has a conciliation agreement that agrees to violation.

**Option 2: Civil penalty is one times the excess and/or improper amount and return the excess and/or improper contribution.** Although a committee's violation may be unintentional, the committee still has violated Chapter 10A. This option treats all violations equally in that the amount of the civil penalty is exactly the amount of the excess and/or improper contribution.

Example 1: The conciliation agreement for the Jane Smith for House committee requires proof that the committee returned the excess contribution of \$200 to the individual and imposes a civil penalty of \$200. Individual also has conciliation agreement that agrees to imposition of a civil penalty of \$200.

Example 2: The conciliation agreement for the John Doe for Senate committee requires proof that the committee returned the excess \$1,500 to special source contributors and imposes a civil penalty of \$1,500.

Example 3: The conciliation agreement for the Jill Jackson for House committee requires proof that the committee returned the excess \$300 to political party units and terminating principal campaign committees and imposes a civil penalty of \$300.

Example 4: The conciliation agreement for the Mike Anderson for Senate committee requires proof that the committee returned the \$50 to Bob's Coffee, LLC and agrees to a civil penalty of \$50. Bob's Coffee, LLC also has conciliation agreement that agrees to a civil penalty of \$50.

Example 5: The conciliation agreement for the Joe Hanson for Governor committee requires proof that the committee returned \$800 to the unregistered association and agrees to a civil penalty of \$800. Unregistered association also has a conciliation agreement that agrees to a civil penalty of \$800.

Example 6: The conciliation agreement for the Anne Williams for House campaign committee requires proof that the committee returned \$400 to lobbyist and agrees to a civil penalty of \$400. Lobbyist also has a conciliation agreement that agrees to a civil penalty of \$400.

**Option 3: Civil penalty is one times the excess and/or improper amount with a minimum payment of \$100 or 25% of the penalty (whichever is greater); remaining 75% of civil penalty stayed; and return excess and/or improper contribution.** Option 3 is similar to recent penalties imposed by the Board, but it sets a minimum amount that must be paid to prevent committees with violations involving large contributions from paying less in civil penalties than committees with similar violations involving smaller amounts due to the 75% stay.

Example 1: The conciliation agreement for the Jane Smith for House committee requires proof that the committee returned the excess contribution of \$200 to the individual and imposes a civil penalty of \$200 with \$100 of the civil penalty due immediately and \$100 stayed until January 1, 2023. If the committee has another similar violation before January 1, 2023, the outstanding civil penalty is due immediately. If the committee does not have another similar violation before January 1, 2023, the outstanding civil penalty is waived.

Individual also has a conciliation agreement that imposes a civil penalty of \$200 with \$100 of the civil penalty due immediately and \$100 stayed until January 1, 2023. If the individual has another similar violation before January 1, 2023, the outstanding civil penalty is due immediately. If the individual does not have another similar violation January 1, 2023, the outstanding civil penalty is waived.

Example 2: The conciliation agreement for the John Doe for Senate committee requires proof that the committee returned the excess \$1,500 to special source contributors and imposes a civil penalty of \$1,500 with \$375 of the civil penalty due immediately and \$1,125 stayed until January 1, 2023. If the committee has another similar violation before January 1, 2023, the outstanding civil penalty is due immediately. If the committee does not have another similar violation before January 1, 2023, the outstanding civil penalty is waived.

Example 3: The conciliation agreement for the Jill Jackson for House committee requires proof that the committee returned the excess \$300 to political party units and terminating principal campaign committees and imposes a civil penalty of \$300 with \$100 of the civil penalty due immediately and \$200 stayed until January 1, 2023. If the committee has another similar violation before January 1, 2023, the outstanding civil penalty is due immediately. If the committee does not have another similar violation before January 1, 2023, the outstanding civil penalty is waived.

In this example 25% of the \$300 civil penalty should be \$75; however we are recommending a minimum payment to make sure that a committee with a similar violation but a smaller excess does not pay more than a committee with a larger excess.

Example 4: The conciliation agreement for the Mike Anderson for Senate committee requires proof that the committee returned the \$50 to Bob's Coffee, LLC and imposes a civil penalty of \$50. Bob's Coffee, LLC also has conciliation agreement that imposes a civil penalty of \$50.

In this example, there is no stay of a portion of the civil penalty because the civil penalty of \$50 is less than the minimum payment.

Example 5: The conciliation agreement for the Joe Hanson for Governor committee requires proof that the committee returned \$800 to the unregistered association and imposes a civil penalty of \$800 with \$200 of the civil penalty due immediately and \$600 stayed until January 1, 2023. If the committee has another similar violation before January 1, 2023, the outstanding civil penalty is due immediately. If the committee does not have another similar violation before January 1, 2023, the outstanding civil penalty is waived.

The unregistered association also has a conciliation agreement that imposes a civil penalty of \$800 with \$200 of the civil penalty due immediately and \$600 stayed until January 1, 2023. If the unregistered association has another similar violation before January 1, 2023, the outstanding civil penalty is due immediately. If the unregistered association does not have another similar violation before January 1, 2023, the outstanding civil penalty is waived.

Example 6: The conciliation agreement for the Anne Williams for House committee requires proof that the committee returned \$400 to lobbyist and imposes a civil penalty of \$400 with \$100 of the civil penalty due immediately and \$300 stayed until January 1, 2023. If the committee has another similar violation before January 1, 2023, the outstanding civil penalty is due immediately. If the committee does not have another similar violation before January 1, 2023, the outstanding civil penalty is waived.

Lobbyist also has a conciliation agreement that imposes a civil penalty of \$400 with \$100 of the civil penalty due immediately and \$300 stayed until January 1, 2023. If the lobbyist has another similar violation before January 1, 2023, the outstanding civil penalty is due immediately. If the lobbyist does not have another similar violation before January 1, 2023, the outstanding civil penalty is waived.

### **Conclusion and action**

Staff requests that the Board provide guidance on which approach to use with conciliation agreements starting with violations that were discovered as part of the filing of the 2019 year-end reports.

**CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD  
March 2019**

**ACTIVE FILES**

| Candidate/Treasurer/<br>Lobbyist | Committee/Agency             | Report Missing/<br>Violation  | Late Fee/<br>Civil Penalty              | Referred<br>to AGO | Date S&C<br>Served<br>by Mail | Default<br>Hearing Date | Date<br>Judgment<br>Entered | Case Status   |
|----------------------------------|------------------------------|---|---|--------------------|-------------------------------|-------------------------|-----------------------------|---|
| Chilah Brown<br>Michele Berger   | Brown (Chilah) for<br>Senate | Unfiled 2016 Year-<br>End Report of<br>Receipts and<br>Expenditures<br><br>Unpaid late filing fee<br>on 10/31/16 Pre-<br>General Election<br>Report | \$1,000 LF<br>\$1,000 CP<br><br>\$50 LF | 3/6/18             | 8/10/18                       |                         |                             | Board is working<br>on the matter.<br>Placed on hold.           |
| Katy Humphrey,<br>Kelli Latuska  | Duluth DFL                   | Unfiled 2016 Year-<br>End Report of<br>Receipts and<br>Expenditures   | \$1,000 LF<br>\$1,000 CP                | 3/6/18             | 8/10/18                       |                         |                             | Board is working<br>on the matter.<br>Placed on hold.<br>3/5/19 |
| Dan Schoen                       |                              | 2017 Annual<br>Statement of<br>Economic Interest  | \$100 LF<br>\$1,000 CP                  | 1/28/19            | 3/27/19                       |                         |                             | Placed on hold by<br>Board.                                     |

**CLOSED FILES**

| Candidate/Treasurer/<br>Lobbyist | Committee/Agency    | Report Missing/<br>Violation  | Late Fee/<br>Civil Penalty | Referred<br>to AGO | Date S&C<br>Served<br>by Mail | Default Hearing<br>Date | Date<br>Judgment<br>Entered | Case Status           |
|----------------------------------|---------------------|---|----------------------------|--------------------|-------------------------------|-------------------------|-----------------------------|-----------------------|
| Christopher John<br>Meyer        | Meyer for Minnesota | Fees and Penalty for<br>late filing of 2016<br>Year-End Report of<br>Receipts and<br>Expenditures | \$1,000 LF<br>\$1,000 CP   | 7/28/17            | 9/6/17                        | 1/24/2020               | 2/20/2020                   | Settled;<br>dismissed |

**STATE OF MINNESOTA  
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD**

**FINDINGS, CONCLUSIONS, AND ORDER**

IN THE MATTER OF THE FUNK (THOMAS) FOR SENATE COMMITTEE

**Background**

The Funk (Thomas) for Senate committee is the principal campaign committee of Thomas Funk, a candidate for Minnesota Senate District 47. In January 2020 Mr. Funk contacted Board staff and self-reported that his committee disseminated two campaign material mailers that lacked the disclaimer for campaign material. Mr. Funk stated that the disclaimer text was accidentally deleted during the committee's process of editing the design of those two mailers. Mr. Funk reported that each mailer was sent to approximately 505 individuals and that the total amount spent on designing, printing, and disseminating the two mailers was \$1,231.95. Mr. Funk explained that his committee discovered the error on its own, and that the disclaimer was included on a subsequent mailer. Mr. Funk provided copies of the campaign mailers to the Board.

**Analysis**

Minnesota Statutes section 211B.04, subdivision 1, requires candidates to include a disclaimer on campaign material that prominently states "Prepared and paid for by the . . . committee, . . . (address)". Campaign material is defined in Minnesota Statutes section 211B.01, subdivision 2, as "any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election, except for news items or editorial comments by the news media."

Determining whether the Funk committee violated this statute requires little analysis; the candidate notified the Board of the violation and an examination of the two campaign mailers confirms that the required disclaimer is missing. What requires more analysis is determining an appropriate penalty given the facts of this particular violation. In determining the penalty for a violation of the disclaimer requirement in Minnesota Statutes section 211B.04 the Board considers factors such as those listed below.

*Is it clear who is responsible for the campaign material, and is information provided that would allow an individual to contact the responsible committee?* In this case the mailers lacking the required disclaimer were delivered through the U.S. postal system. Both mailers provide the return address, "TOM FUNK FOR MN SENATE 7985 Acorn Cir Victoria, MN 55386." This is the same address provided for the committee when the committee was registered with the Board. Additionally, both mailers provide the website and Facebook page addresses for the committee. The committee's website and Facebook page contain the disclaimer required by Minnesota Statutes section 211B.04, subdivision 1.

*Is this the first violation by the committee of the relevant disclaimer requirement?* The Funk (Thomas) for Senate committee registered with the Board on August 1, 2019. The committee has no prior violation of Minnesota Statutes section 211B.04, subdivision 1.

*What was the cost of the campaign material and how widely distributed was the campaign material lacking the required disclaimer?* In this case the distribution and cost of the campaign material was relatively limited; approximately 505 individuals were sent the two mailers at a total cost of \$1,231.95.

*Did the committee self-report the violation?* The Funk (Thomas) for Senate committee notified the Board of the violation and provided all requested information.

The Board may impose a civil penalty of up to \$3,000 for a violation of Minnesota Statutes section 211B.04, subdivision 1. Based on the analysis of the factors listed above, however, the Board has determined that a \$100 penalty is appropriate for the violation in this case.

**Based on the above background and analysis, the Board makes the following:**

#### **Findings of Fact**

1. The Funk (Thomas) for Senate committee prepared and disseminated two campaign material mailers promoting Mr. Funk's candidacy for the purpose of influencing voting at an election.
2. The two mailers did not include disclaimer text in the format provided by Minnesota Statutes section 211B.04, subdivision 1.
3. The two mailers were each disseminated to approximately 505 individuals.
4. The total cost to produce and disseminate the two mailers was \$1,231.95.
5. The Funk (Thomas) for Senate committee discovered its error in omitting the disclaimer text from the two mailers, self-reported the apparent violation to the Board, and included the disclaimer in a subsequent campaign material mailer.

**Based on the above analysis and findings of fact, the Board makes the following:**

#### **Conclusions of Law**

1. The two mailers prepared and disseminated by the Funk (Thomas) for Senate committee were campaign material under Minnesota Statutes section 211B.01, subdivision 2.
2. The Funk (Thomas) for Senate committee violated Minnesota Statutes section 211B.04, subdivision 1, when it prepared and disseminated two mailers without the required disclaimer.

**Based on the above findings of fact and conclusions of law, the Board issues the following:**

**Order**

1. A civil penalty in the amount of \$100 is assessed against the Funk (Thomas) for Senate committee for violating the disclaimer requirement in Minnesota Statutes section 211B.04.
2. The Funk (Thomas) for Senate committee is directed to forward to the Board payment of the civil penalty, by check or money order payable to the State of Minnesota, within 30 days of the date of this order.
3. If the Funk (Thomas) for Senate committee does not comply with the provisions of this order, the Board's executive director may request that the attorney general bring an action on behalf of the Board for the remedies available under Minnesota Statutes section 10A.34.
4. The Board investigation of this matter is concluded and hereby made a part of the public records of the Board pursuant to Minnesota Statutes section 10A.022, subdivision 5.

/s/ Robert Moilanen  
Robert Moilanen, Chair  
Campaign Finance and Public Disclosure Board

Date: March 6, 2020