STATE OF MINNESOTA
CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD

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July 5, 2016
Room G-31
Minnesota Judicial Center

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MINUTES

The meeting was called to order by Chair Sande.

Members present: Flynn, Oliver, Rosen (participating by telephone), Sande

Others present: Goldsmith, Sigurdson, Fisher, Pope, staff; Eller, counsel

MINUTES (May 27, 2016)

After discussion, the following motion was made:

Member Oliver's motion:	To approve the May 27, 2016, minutes as drafted.
Vote on motion:	A roll call vote was taken. All members voted in the affirmative.

CHAIR'S REPORT

Board meeting schedule

The next Board meeting is scheduled for August 2, 2016.

Chair's appointment to the bench

Chair Sande said that he recently had been appointed to serve as a judge on the Hennepin County District Court and that he therefore would no longer be able to serve on the Board. Chair Sande said that his resignation would be effective July 8, 2016.

EXECUTIVE DIRECTOR TOPICS

Office operations, website redevelopment

Mr. Goldsmith told members that since the last meeting, staff had been busy with compliance and software training and that three training sessions were scheduled to be held in Greater Minnesota. Mr. Goldsmith said that lobbyist disbursement reports were due in June and that approximately 99% of those reports were filed using the online reporting system. Mr. Goldsmith also stated that the website project was progressing and that the beta release was planned for mid-July.

Waiver of imposition of late filing fees for reports filed late as a result of agency hardware outage

Mr. Goldsmith presented members with a memorandum on this matter that is attached to and made a part of these minutes. Mr. Goldsmith told members that a hardware failure had prevented some candidates, committees, and party units from submitting their economic interest statements and campaign finance reports on time. Mr. Goldsmith said that he had assured filers that no late filing fees would be assessed against anyone whose late filing was related to the hardware failure. Because the Board has adopted a formal policy stating that late filing fees accrue as they are incurred, Mr. Goldsmith asked the Board to formally ratify his assurance.

After discussion, the following motion was made:

Member Flynn's motion: To adopt the following resolution:

RESOLVED, That no late filing fees will be assessed for late filings related to the Board's systems hardware failure that occurred the week-end of June 11 and was resolved by mid-day June 14. The Executive Director is directed to review each potential late filing fee accruing during or shortly after this period and to note in the file of each individual or committee whose late filing resulted from the hardware failure that no late filing fee is assessed.

Vote on motion: A roll call vote was taken. All members voted in the affirmative.

Planning and process for executive leadership succession

Mr. Goldsmith told members that he planned to step down as executive director as soon as his replacement could be named. Mr. Goldsmith said that he hoped to continue working for the Board temporarily as a part-time employee to assist with projects such as completion of the new website. Members discussed the processes used to hire previous executive directors, the processes that could be used to fill the current vacancy, Assistant Director Sigurdson's interest in the executive director vacancy, and whether the vacancies on the Board itself affected the application of the open meeting law to the process. Members Sande, Rosen, and Flynn decided to speak separately with Mr. Sigurdson and to report their opinions regarding the Board's next steps at the August meeting. Chair Sande clarified that he would speak with Mr. Sigurdson before his resignation from the Board was effective.

ENFORCEMENT REPORT

A. Discussion items

1. Request to withdraw committee registration – Committee to Re-Elect Judge John C. Hoffman

Mr. Fisher told members that this candidate had mistakenly registered an independent expenditure political committee on 4/27/2016 while intending to form a principal campaign committee. Mr. Fisher said that because the candidate never had received any contributions, a committee registration was

never required. Mr. Fisher stated that the candidate was asking the Board to permit the withdrawal of the committee's registration.

Member Rosen disclosed that his law firm had a matter pending before Judge Hoffman but that Member Rosen was not involved in that matter and that the existence of the matter would have no effect on Member Rosen's vote on the request.

After discussion, the following motion was made:

Member Flynn's motion:	To grant the Committee to Re-Elect Judge John C. Hoffman's request to withdraw its registration.
Vote on motion:	A roll call vote was taken. All members voted in the affirmative.

2. Request for a payment plan – Freeborn County DFL

Mr. Fisher told members that the Freeborn County DFL incurred a $400 late filing fee on its 2015 year-end report. The Board had denied a waiver request for this late filing fee at its April meeting. Mr. Fisher said that the waiver request was summarized at that meeting as follows:

> Individual was concerned that report would be complicated and waited until their job's busy season was over to file report.

Mr. Fisher said that the treasurer now was requesting a payment plan of $200 to be paid on 7/15/2016 and $200 to be paid on 8/15/2016 because she planned to pay the late filing fee personally.

After discussion, the following motion was made:

Member Oliver's motion:	To grant the Freeborn County DFL's request for a payment plan.
Vote on motion:	A roll call vote was taken. All members voted in the affirmative.

3. Staff request for administrative termination – Vote Chris Kellett Committee

Mr. Fisher told members that this committee failed to file its 2015 year-end report of receipts and expenditures despite repeated staff efforts to obtain the required filing. Mr. Fisher said that the committee was last active in 2012 and had since reported no change statements showing a balance of $176.29 in 2013 and 2014. Mr. Fisher said that because staff had been unable to reach the candidate or the committee's treasurer and because the committee's last reported cash balance was near the $100 threshold required for committee termination, staff was asking the Board to administratively terminate the committee's registration as of 12/31/2014 with a cash balance in excess of $100.

After discussion, the following motion was made:

Member Rosen's motion:	To grant the staff request to administratively terminate the registration of the Vote Chris Kellett Committee.

Vote on motion: A roll call vote was taken. All members voted in the affirmative.

C. Waiver requests

Roll call votes were taken on all motions. The results are listed in the "Vote on Motion" column.

Name of Candidate or Committee	Late Fee & Civil Penalty Amount	Reason for Fine	Factors for waiver	Board Member's Motion	Motion	Vote on Motion
Tony Spector	$100 LFF	4/11/2016 EIS	Official was dealing with significant health issues at the time of the filing. (The waiver has not been provided with the Board's materials due to the personal information provided).	Member Rosen	To waive the late filing fee.	Passed unanimously.
Minn African American Political Comm	$600 LFF	4/14/2016 1st Quarter	Treasurer was experiencing significant health issues around filing deadline.	Member Rosen	To waive the late filing fee.	Passed unanimously.
Fish & Wildlife Legislative Alliance	$250 LFF	3/15/2016 Principal	Lobbyist responsible for filing mistakenly believed he had filed prior to deadline. On deadline he began experiencing major health issues and needed medical treatment. Report was filed on 3/29/2016.	Member Rosen	To waive the late filing fee.	Passed unanimously.
Dave Peterson for 32B	$225 LFF	2/1/2016 Year-end	Candidate attempted to terminate committee by email on 1/15/2016 and attempted to file year-end report with a letter on 2/1/2016. Letter was insufficient to be considered a report. Candidate requests a waiver of the late filing fee because committee was only active for a short period of time (reg. on 7/31/2015) and committee has since terminated. Committee raised and spent only $350 in 2015.	Member Rosen	To waive the late filing fee.	Passed unanimously.
Mitchell Pearlstein	$25 LFF	6/15/2016 Lobbyist	Individual had never filed a lobbyist report online previously (although the lobbyist for whom she was filing had previously filed online electronic reports). Report was saved on 6/15 but not submitted until day after deadline, following notice by staff.	No motion.		
Road PAC of Minn	$25 LFF	6/14/2016 May Report	Report was uploaded at 4:30am on 6/15/2016. No new transactions were reported after 1st Quarter report.	No motion.		
TakeAction Political Fund	$25 LFF	6/14/2016 May Report	Deputy treasurer emailed Board staff after the office closed on the filing deadline with a question regarding filing. Fund states that they delayed filing to prevent having to later amend the report.	No motion.		

Informational Items

A. Payment of a late filing fee for 2015 year-end report of receipts and expenditures:

Dale Helm for Representative, $100
Hubbard County RPM, $200
Minneapolis Municipal Retirement Assoc., $175

B. Payment of a late filing fee for special election end-cycle report of receipts and expenditures:

Andy Aplikowski for Minn, $25

C. Payment of a late filing fee for 2016 1ST quarter report of receipts and expenditures:

Minn Gun Owners PAC, $25
Printing Industries PAC, $100
Sierra Club Political Committee, $25
Taxpayers League MN Victory Fund, $25

D. Payment of a late filing fee for 2014 3rd and 5th report of receipts and expenditures:

Local 28 Political Fund, $1,450

E. Payment of a late filing fee for annual economic interest statement:

Glenn Hahn, Dodge SWCD, $100 (and $100 civil penalty)
Mike Hanson, Shell Rock WD, $100
Jamie Olson, House Research, $100 (and $100 civil penalty)
Jeremy Neren, Cottonwood SWCD, $10

F. Payment of a late filing fee for candidate economic interest statement:

Cindy Pugh for Minn, $5

G. Payment of a late filing fee for the 2015 annual report of lobbyist principal:

Izaak Walton League – MN, $100
linq3, $25
MN Assn of Exterior Specialists, $75
Our Lady of Lourdes Catholic Church, $125
Phoenix Myth LLC, $25
Teach for America, $50

H. Payment of a late filing fee for January 15, 2016, lobbyist disbursement report:

Joseph Lally, Delta Dental MN, $125
James Niland, SEIU Local 284, $50

I. Payment of a civil penalty for misuse of committee funds:

Tim Manthey, $100 payment

J. Payment of a civil penalty for exceeding campaign spending limit:

(Joe) Atkins for State Representative, $10,532.64

K. Payment of a civil penalty for exceeding the special source aggregate limit:

Rob Ecklund for 3A, $125

DISCUSSION OF PROBABLE CAUSE DETERMINATION IN THE COMPLAINT PROCESS

Mr. Goldsmith presented members with a memorandum in this matter that is attached to and made a part of these minutes. Mr. Goldsmith told members that the memorandum was a starting point for the long-term discussion of this issue.

LEGAL COUNSEL'S REPORT

Christie Eller attended the meeting in place of Nathan Hartshorn. Ms. Eller presented members with a report that is attached to and made a part of these minutes. Ms. Eller had nothing to add to the submitted report.

OTHER BUSINESS

Mr. Goldsmith told members that the items listed after the word "Note" on the agenda had been deferred from other meetings and would be placed on future agendas for discussion. The deferred topics are the Board meeting start time, receivables management, audio/video streaming of Board meetings, criteria for initiation of investigations, and the rulemaking petition.

There was no other business to report.

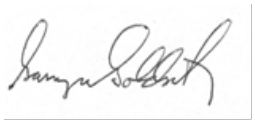
EXECUTIVE SESSION

The Chair recessed the regular session of the meeting and called to order the executive session. Upon recess of the executive session, the regular session of the meeting was called back to order and the Chair reported the following matters into regular session:

A probable cause determination in the matter of the Minnesota DFL State Central Committee and Various Candidates

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

Respectfully submitted,



Gary Goldsmith
Executive Director

Attachments:
Memorandum regarding the waiver of imposition of late filing fees for reports filed late as a result of agency hardware outage
Memorandum regarding probable cause determination in the complaint process
Legal report
Probable cause determination in the matter of the Minnesota DFL State Central Committee and Various Candidates

Minnesota

Campaign Finance and Public Disclosure Board

Date: June 15, 2016

To: Board members

From: Gary Goldsmith, Executive Director **Telephone:** 651-539-1190

Re: Hardware failure and late filings

When staff arrived at the Board offices Monday June 13, we found that we had no internet connectivity and limited connectivity to internal resources. Our IT staff quickly isolated the problem to our firewall, which is a hardware box. The firewall unit was off and would not power on. For outside clients, the main effect of this failure was that online filing applications did not work. This included the online economic interest statement filing system as well as the system that receives transmissions of electronic reports from our Campaign Finance Reporter software.

While staff worked on re-provisioning an older unit, we contacted the vendor, with whom we had an assurance plan. We learned that the older unit could not be re-provisioned. However, the vendor sent us a new replacement unit overnight. By 1:00 PM Tuesday, we were back up and running.

However, some candidate economic interest statement filings fell due on Monday and Tuesday and political committee or fund and certain party unit reports were due Tuesday. In some cases we received calls from people trying to file on Monday because they were going out of town after filing.

The Executive Director assured filers that no late filing fees would be assessed for people whose late filings were related to the system outage. Because the Board has a formally adopted policy that late filing fees accrue as they are incurred, the Executive Director's assurance is conditioned on ratification by the Board. If the Board does not ratify the Executive Director's approach, late filers will be notified and late filing fees applied.

Because the exception from automatic application of late filing fees applies only for filers who were late due to the hardware failure, a limited resolution would be in order. The following would implement the Executive Director's recommended approach:

RESOLVED,

That no late filing fees will be assessed for late filings related to the Board's systems hardware failure that occurred the week-end of June 11 and was resolved by mid-day June 14. The Executive Director is directed to review each potential late filing fee accruing during or shortly after this period and to note in the file of each individual or committee whose late filing resulted from the hardware failure that no late filing fee is assessed.

Minnesota

Campaign Finance and Public Disclosure Board

Date: June 28, 2016

To: Board members

From: Gary Goldsmith, Executive Director **Telephone:** 651-539-1190

Re: Analysis of probable cause determinations

Introduction
This memorandum is not a statement of settled law or procedure. Rather, it is a staff analysis of various questions and issues surrounding the concept of a Board determination of probable cause in the context of determining whether a submitted complaint should be investigated. The purpose of this memo is to present possible approaches related to the probable cause determination. It is expected that discussion and application of these principals in actual matters will lead to further clarification of this topic.

The requirement for a probable cause determination
Under the current statutory scheme for investigations of complaints filed by third parties, a two-step process is required before an investigation may be undertaken. These two steps protect people from having to respond to complaints that do not have sufficient merit to warrant an investigation.

The first step, the prima facie determination, is undertaken by the Chair with advice and consultation by staff, but without input from the complainant or the respondent. As currently applied by the Board, this step involves an examination of the complaint itself without reference to external sources with the possible exception of materials in the Board records. The purpose of this first step is to determine if the complaint alleges a violation and whether that violation, if it exists, is within the Board's jurisdiction. Prior to the 2014 statutory amendments, this step was achieved using the Board's administrative rule which stated that the Board was not required to investigate frivolous complaints.

At the prima facie determination stage, for example, an alleged violation of a contribution limit in a local election would be dismissed because the Board does not have jurisdiction over local elections. In matters that have actually been decided by the Chair, complaints have been dismissed where the allegations of the complaint are clearly contradicted by evidence submitted as part of the complaint. An example is a complaint that alleged that a candidate was subjected to "physical coercion." The complaint included references to actual video recordings of the alleged physical coercion, which videos clearly showed that there was no physical contact or coercion.

The second step in accepting a complaint for investigation is the probable cause determination. The relevant statutes and rules require that if the Chair makes a determination that the complaint alleges a prima facie violation, the matter is then taken up by the full Board.

Section 10A.022, subd. 3(2) states:

> If a determination is made that the complaint alleges a prima facie violation, the board shall, within 45 days of the prima facie determination, make findings and conclusions as to whether probable cause exists to believe the [should read "an"] alleged violation that warrants a formal investigation has occurred.

The statutes do not define what constitutes "probable cause" nor do they specify anything regarding the sufficiency of evidence or burden of proof, or what the Board may consider when making a probable cause determination.

The Board's administrative rules provide some guidance regarding process. Rule 4525.0210, subpart 4, states that if the Board finds that probable cause does not exist to believe that a violation has occurred, the Board must order dismissal of the matter.

Subpart 5 of the same rule provides that if the Board finds that probable cause exists, it must then determine whether a formal investigation is warranted. If the Board concludes that a formal investigation is not warranted, it may initiate an informal investigation in the form of a staff review or it may dismiss the matter.

Although the rules contemplate that the Board will make a finding either that there is probable cause to believe a violation occurred or a finding that there is no probable cause, it is possible, particularly with a Board of fewer than six members, that there may not be four votes for either finding. In such a case, the statute would control. The statute provides that an investigation ensues only if the Board makes a finding that probable cause exists. Therefore, the failure to make such a finding, even in the absence of a finding that probable cause does *not* exist, precludes the undertaking of an investigation.

In any case where the Board cannot make a finding of probable cause by the required four votes, the matter should be formally dismissed by motion and order. However, even without a specific Board order to that effect, the matter could not proceed because the statutory requirement for a probable cause determination would not be met. A dismissal at the probable cause determination stage is without prejudice, so a complainant is permitted to file an amended complaint intended to remedy the shortcomings of the original complaint and the matter would go through the process again.

The posture of a matter before the Board for a probable cause determination

A matter comes before the Board for a probable cause determination only as the result of a filed complaint. It is important to recognize this fact and to understand that the complaint process provides a means by which a third-party complainant can initiate the Board's investigative process.[1] Chapter 10A does not provide for or require a prima facie or probable cause determination when the Board initiates an investigation on its own motion. It is possible that the reason for the difference in approach is to provide additional protections when the Board's authority is invoked by a third party, who is often an opponent or an official of an opposing political party.

[1] It is possible that the thresholds for proceeding on a complaint may be more stringent than the standards under which the Board could initiate an investigation on its own. This point will be fully explored in an analysis to be provided at a future Board meeting.

What is "probable cause"

The question of exactly what conclusion the Board must reach to find that probable cause exists is not readily answered by statute or rule. Neither Chapter 10A nor the associated administrative rules address the definition or any standards that might help the Board understand what it must believe in order to say that probable cause exists to believe that a violation has occurred.

The phrase "probable cause" is most often used in the criminal context where the state is attempting to limit a person's liberty right through incarceration or where a police officer limits a person's liberty through arrest. While there are a few uses of the phrase in civil settings, neither the cases nor the statutes provide a specific definition. Nevertheless, under Chapter 10A, the Board is required to find probable cause before it may initiate an investigation based on a complaint and, as a result, the Board must come to some understanding of what constitutes this "probable cause".

A review of the Senate Judiciary Committee hearings in 2014, when the prima facie determination and probable cause determination requirements were established, provides some insight into understanding the Chapter 10A probable cause concept.[2]

Through the testimony, the legislature understood the Board's ability to dismiss frivolous complaints. This ability was preserved through the prima facie determination concept. However, the legislature understood that the pre-2014 statutes and rules did not provide a process by which the Board could examine the complaint at a somewhat deeper level to determine whether an investigation should be undertaken. Rather, the statutes at that time required investigation of *all* non-frivolous complaints.

The probable cause determination concept provides the Board with that additional level of discretion. In the 2014 Judiciary Committee hearing Senator Latz, Committee Chair, in examining the idea of having both a prima facie determination and a probable cause determination, noted that if there are to be two procedures, there must be some separate standard (separate from a prima facie determination on the complaint) in which the probable cause hearing would bring in more information than is on the face of the complaint. He stated that "I'm trying to determine what the purpose of having the [probable cause determination] hearing would be unless it is to allow additional information to become a part of the Board's determination." In other words, he recognized, as the Board has recognized in previous discussions of the topic, that the probable cause determination is something more than a prima facie determination made by the full Board.

Although not directly applicable, a brief review of the Minnesota appellate courts' consideration of probable cause in the criminal context may provide some guidance.

Under Minnesota's traffic laws, a police officer may require a breath test if the officer has probable cause to believe that a person was driving when impaired by alcohol. In *State v. Shimota,* A14-1981 (2016), the Minnesota Court of Appeals upheld a challenged jury instruction on what constitutes probable cause to justify a breath test. The instruction related to the conditions for requiring a breath test, the first of which was the probable cause requirement. The upheld instruction stated:

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[2] The first hearing was March 20, 2014. The audio is available at http://www.media.leg.mn:8080/ramgen/saudio/2014/cmte_jud_032014a.MP3?usehostname beginning at 3:13:55. The hearing was continued to the next day. The audio for the continued hearing is at https://www.leg.state.mn.us/senatemedia/saudio/2014/cmte_jud_032114.MP3, beginning at 1:56:20.

> First, a peace officer had probable cause to believe that the defendant drove a motor vehicle while under the influence of alcohol. “Probable cause” requires objective facts. You should evaluate the totality of the circumstances from the view point of a reasonable officer, and you may consider the experience and training of the officer. Probable cause requires an honest and strong suspicion by the officer that the Defendant was driving a motor vehicle while under the influence of alcohol.

State v. Prax A03-1517 Court of Appeals (2004) addressed the issue of whether a police officer had probable cause to arrest a person for impaired driving, which led to a search and the discovery of methamphetamine. The Court stated that

> Probable cause to arrest exists when, under the totality of facts and circumstances, “a person of ordinary care and prudence would entertain an honest and strong suspicion that a crime has been committed. Probable cause, therefore, requires something more than mere suspicion but something less than the evidence necessary for conviction. (Internal citations omitted.)

It is interesting to note that *Shimota*, which came some 12 years after *Prax*, does not refer to the "person of ordinary care and prudence" when examining the officer's determination of probable cause, but rather allows consideration of the actions "from the view point of a reasonable officer" and allows consideration of the experience and training of the officer.

The Supreme Court, in *State v. Lester,* A14-0431 (2016) expounded on the concept of a probable cause finding in the following discussion, which related to a search of a vehicle under the principal that the vehicle may be searched if there is probable cause to believe that the vehicle contains contraband.

> Probable cause exists when there are facts and circumstances sufficient to warrant a reasonably prudent person to believe that the vehicle contains contraband.
>
> Probable cause is an objective inquiry that depends on the totality of the circumstances in each case. It is a common-sense, nontechnical concept that involves the factual and practical considerations of everyday life on which reasonable and prudent people, not legal technicians, act.
>
> In addition, the totality of the circumstances includes reasonable inferences that police officers draw from facts, based on their training and experience, because police officers may interpret circumstances differently than untrained persons. (Internal quotes and citations omitted).

Later in the opinion, the *Lester* court reiterated that the experience of the person making the probable cause determination may be taken into consideration when deciding if the determination is to be upheld, saying:

> [P]robable cause incorporates the intuitions of the officer because an officer’s training and experience is the lens through which the fact-finder must evaluate the reasonableness of an officer’s determination of probable

> cause[.] [P]olice may draw inferences and deductions that might elude an untrained person. (Internal quotes and citations omitted.)

Applying precedent and legislative history to the Board's probable cause determination.

Based on the two-step statutory process and the legislative history it seems clear that the probable cause determination involves a deeper look at the complaint than does the prima facie determination. The statutory reference to the "opportunity to be heard" at the probable cause determination, which includes the opportunity to submit written materials, is consistent with this understanding.

Borrowing from the concept of the probable cause determination in criminal matters, it also seems logical to conclude that at least some examination of the evidence underlying the complaint must be undertaken at the probable cause determination stage. This leads to the conclusion that the opportunity to be heard in a probable cause determination must incorporate the right of respondent to offer information about the evidence that would be presented to rebut the complaint should an investigation be undertaken.

However, it must also be recognized that the probable cause determination is *not* a substitute for the investigation itself. With that understanding, it follows that the probable cause determination is not going to be a complete presentation and evaluation of the evidence in support of and in opposition to the complaint. More likely, it is an evaluation of whether there *is* evidence to support opposing positions so that an investigation is needed.

Borrowing again from the criminal jurisprudence and considering approaches provided for evaluation of complaints in the civil court systems, staff draws some parallels and proposes some tentative approaches to various scenarios.

1. A probable cause determination made on the basis of the complaint alone – no appearance by respondent.

At the prima facie violation stage, the Chair gives every benefit of interpretation to the complainant. Inferences that the complainant urges are accepted if they are plausible. On this basis, a complaint that relates to a subject that is under the Board's jurisdiction will often result in a determination that the complaint states a prima facie violation. This is because this initial stage, undertaken without input from the complainant or the respondent, is intended to only eliminate complaints which clearly have no merit.

At the probable cause determination stage, the Board may consider, in addition to the complaint itself, its own knowledge and experience with Chapter 10A and with the range of filings commonly seen by the Board. Individual Board members put themselves in the shoes of the reasonable campaign law administrator. The Board may reject inferences that the complainant suggests if they are not reasonable in the view of the Board's experience with Chapter 10A.

The Board must make an objective inquiry that depends on the totality of the circumstances raised by the complaint and the Board's own experience. The determination is based on a common-sense, non-technical approach that involves the factual and practical considerations of everyday life on which reasonable and prudent people, not legal technicians, act.

In the absence of a countervailing offer of evidence provided by a respondent, the Board may assume that reasonable inferences that they draw from the alleged facts are true. In evaluating whether an inference is reasonable, Board members rely on their political and Board experience, with the result that they may interpret circumstances differently than persons not involved with political or administrative regulation processes would.

Even though the complaint is unanswered under this scenario, the Board must still determine independently that its allegations and the reasonable inferences drawn from them raise a sufficient suspicion that a violation has occurred to proceed with an investigation. In order to find probable cause, the complaint must give rise to something more than mere suspicion but something less than the evidence necessary to make a finding of a violation.

2. Probable cause determination based on complaint and submissions by the parties. It is expected that in most probable cause determinations, the respondent will submit information as part of the statutory opportunity to be heard. In some cases, the complainant may provide a submission beyond the original complaint.

In such a situation, the Board could undertake a two-part examination of probable cause. Initially, the Board could examine the complaint and complainant's additional submissions to determine if they would support a finding of probable cause on their own. This examination would be essentially the same as discussed in scenario 1, above. If the complaint and complainant's other submissions are insufficient to support a finding of probable cause, then the complaint (or such counts of the complaint for which probable cause cannot be found) would be dismissed without the need for review of the respondent's submission.

On the other hand, if the complaint and complainant's submissions are not insufficient to support a finding of probable cause, then the complaint must be considered in the full context of the materials before the Board, which would include respondent's submissions. In other words, in a matter where the respondent submits materials, it is possible to dismiss an insufficient complaint without resort to respondent's submission, but it is not permissible to find that the complaint *does* support a probable cause determination without considering all of the information submitted.

Presently, the Board has no administrative rules or guidance as to the scope of what a respondent (or for that matter a complainant) may submit. Given the open-ended opportunity to be heard, it is anticipated that respondents will sometimes submit both legal arguments and information that purports to show what the evidence would be should an investigation be undertaken.

It is important to keep in mind that the purpose of the probable cause determination is not to make a final determination on whether a violation has occurred. Rather, it is to determine whether the complaint, viewed in the context of any responses, presents allegations that are strong enough to support a conclusion that there is probable cause to believe that an alleged violation occurred.

If the respondent's submission at the probable cause determination stage addresses the alleged facts, at least two scenarios could arise.

First, the response may contradict the allegations of the complaint by providing a statement indicating that contrary evidence is available and would be offered in an investigation. In that case, it would *not* be up to the Board to decide at the probable cause determination stage which information is true. That decision would be made as part of the final determination in the course of an investigation. An example of a complaint that presents this scenario would be a complaint that alleges a particular fact (as opposed to a legal conclusion) and is followed by a response that asserts that witness testimony contradicting the asserted fact would be presented during an investigation. A fact question would arise as the result of conflicting fact allegations and an investigation would be required to examine which set of alleged facts is true.

Second, it is possible that the response offers factual assertions that do not directly contradict the allegations of the complaint, but explains the respondent's version of the facts in a way that is consistent with the allegations but does not result in a violation. An example would be a complaint that alleges limited facts and relies primarily on inferences to reach the conclusion that a violation has occurred. A response that explains away those inferences could remove the question of fact. Both the allegations of the complaint and the explanations of the response could be true. In such a case, the response may make the inferences that the complainant urged the Board to accept unreasonable. In this situation it may be appropriate to dismiss the complaint on the basis that it does not meet the probable cause requirement.

Conclusion

The approaches discussed in this document suggest that at the probable cause stage, where there are evidentiary submissions by both the complainant and the respondent, the Board's role is not to decide whose "facts" are true, but to decide whether the two sets of allegations raise a significant question of fact that controls whether a violation occurred or not. If a significant question of material fact does arise, a finding of probable cause should be made and the question would typically be resolved through an investigation.

Revised: 6/28/16

CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD
July, 2016

ACTIVE FILES

Candidate/Treasurer/ Lobbyist	Committee	Report Missing/ Violation	Late Fee/ Civil Penalty	Referred to AGO	Date S&C Served by Mail	Default Hearing Date	Date Judgment Entered	Case Status
	North East Social	2013 Lobbyist Principal Report 2014 Lobbyist Principal Report-Late filing	$1,000/$1,000 $475/$100	10/13/2015	12/31/2015			Personal service placed on hold by the Board

CLOSED FILES

Candidate/Treasurer/ Lobbyist	Committee	Report Missing/ Violation	Late Fee/ Penalty	Referred to AGO	Date S&C Served by Mail	Default Hearing Date	Date Judgment Entered	Case Status
Derrick Lehrke	Derrick Lehrke for House	Principal Campaign Committee Amended 2014 Year-End Report of Receipts and Expenditures	$1,000	8/3/2015	9/ 21/2015 10/6/2015	3/31/16	5/9/16	Summary Judgment received April 6, 2016 Closed
Evan Rapp	Evan Rapp Volunteer Committee	Fund reimbursement	$928.50/$928.50	10/13/2015				Closed

State of Minnesota
Campaign Finance and Public Disclosure Board

Probable Cause Determination

In the matter of the complaint of the Republican Party of Minnesota, regarding the Minnesota DFL State Central Committee, the DFL House Caucus, the DFL Senate Caucus, and various candidates:

On May 9, 2016, the Minnesota Campaign Finance and Public Disclosure Board received a complaint submitted by Keith Downey, Chair of the Republican Party of Minnesota, regarding the Minnesota DFL State Central Committee, the DFL House and Senate Caucuses, Mark Dayton for a Better Minnesota, and multiple DFL endorsed candidates for House and Senate, some of whom were named and some not.

The complaint alleges that respondents violated Minnesota Statutes section 10A.27, subdivision 2, a section limiting the amount of contributions that a principal campaign committee may accept from political party units, and section 10A.20, subdivision 3, a section detailing the information required to be contained in reports filed with the Board.

The complaint alleges that the respondents violated the aforementioned statutes because the Minnesota DFL State Central Committee (the DFL) hired and paid for certain individuals' employment, each of whom worked for the benefit of one or two individual candidates. The complaint argues that because the individuals worked for the benefit of fewer than three candidates, the payments made to the individuals do not qualify as multicandidate political party unit expenditures pursuant to Minnesota Statutes section 10A.275, subdivision 1(5), and, thus, constitute in-kind contributions from the DFL to the various candidates' committees.

The complaint further alleges that the reports filed with the Board by the DFL and the candidates' committees do not disclose the alleged in-kind contributions and that, in some instances, these in-kind contributions caused committees to exceed the limit on contributions from political party units.

At the prima facie determination stage, the Board Chair concluded that the complaint was sufficient to state a prima facie violation of Chapter 10A with respect to the Minnesota DFL State Central Committee, Mark Dayton for a Better Minnesota, and the various legislative candidate committees. The Chair concluded that the complaint did not state a prima facie violation with respect to the DFL Senate Caucus or the DFL House Caucus.

Relevant Statutes
Section 10A.022, subdivision 3(2), provides that when the Board Chair makes a finding that a complaint raises a prima facie violation, the full Board must consider whether the complaint establishes probable cause to believe that the alleged violation(s) occurred. In the present matter, the alleged violations occur if, as alleged, the expenditures by the DFL are not multi-candidate expenditures but, rather, constitute contributions to the various candidates.

An expenditure qualifies as a multi-candidate expenditure, which is not a contribution to the benefitted candidates, if the expenditure is for party unit staff services that benefit three or more candidates. Minn. Stat. § 10A.275, subd. 1 (5).

Thus, if the subject expenditures benefited only one or two candidates, as complainant asserts, they will not be multi-candidate expenditures, resulting in reporting violations and possible contribution limits violations.

In considering matters involving application of statutes, the Board applies the language of the statute using its plain meaning and such interpretations as may be required to carry out the legislative intent in enacting the provision. With regard to the plain language of the statute, the Board notes that the statute does *not* require that the staff member "work for" three candidates or "support" three candidates. Rather, the language requires that the services provided by the staff member "benefit" three or more candidates. The plain language permits multi-candidate expenditure classification based on staff services that may not directly support a particular candidate but, nevertheless, benefit that candidate.

The Board assumes that the "benefit" to the candidate may be either a direct or an indirect benefit. The benefit need not be so specific that an exact monetary value can be assigned to it. However, the benefit must not be so esoteric that it cannot be described.

The Board also recognizes its longstanding approach to multi-candidate expenditures, under which each individual service by a staff member need not benefit all three candidates simultaneously nor must the benefit of the services be substantially equal between the candidates. The Board finds no reason to deviate from its previous understanding that party units have a fairly wide latitude within which staff services will meet the three-or-more-candidate benefit requirement.

The complaint acknowledges the statutory requirements for multi-candidate expenditures and alleges that the work of the subject employees did not meet the requirement that it benefit three or more candidates. In support of this position, complainant alleges that the subject employees "publicly claim to have directly benefited one or two candidates and not the required three."

With respect to the above statement, the Board makes two observations. First, the fact that a person posts on a social media page that the person worked for one or two candidates does not establish that the services did not also benefit others. Second, the complainant states that the employees claim to have "directly benefited one or two candidates and not the required three." To the extent that complainant is relying on a statutory requirement that the multi-candidate expenditure exception requires the employee's work to "directly benefit" three or more candidates, that reliance is misplaced, as the statute does not include the word "directly."

The probable cause standard

At the prima facie determination stage, the Chair viewed the complaint in the light most favorable to the complainant and accepted all inferences that were not entirely unreasonable. Applying that standard, the Chair found that the complaint alleged prima facie violations.

The probable cause determination, which is now undertaken by the full Board, requires a deeper examination of the complaint and a higher standard for assertions that may be accepted. Additionally, at the probable cause determination stage, the respondent has the opportunity to submit arguments against the determination. In this matter, the respondent DFL Party submitted both legal and factual information; including offers of the facts that respondent expects to prove if an investigation is undertaken. Although complainants are permitted to provide an additional submission at the probable cause determination stage, complainant in this matter did not do so.

A probable cause determination is not a complete examination of the evidence on both sides of the issue. Rather, it is a determination of whether a complaint raises sufficient questions of fact which, if true, would result in the finding of a violation. A probable cause finding requires something more than mere suspicion but less than actual proof.

It is up to the complainant to establish probable cause. Failure to do so will result in dismissal of any alleged violations for which probable cause is not established. In deciding whether probable cause is established, the Board may apply its own experience and perspective regarding campaign finance law and the operation of campaigns.

Respondent DFL submissions

The DFL submitted a declaration from David Zoll indicating that he is an attorney with the law firm of Lockridge Grindal Nauen and that the firm presented training sessions for DFL staff members on June 4 and June 30, 2014. He states that he prepared the materials for the presentations and participated in the presentations. According to Mr. Zoll, the training sessions covered the topic of multi-candidate expenditures and the characteristics necessary to make a staff activity a multi-candidate expenditure.

Although Mr. Zoll's declaration states that the training was provided "for DFL party staff," the declaration does not affirmatively state that each employee whose actions are the subject of the complaint attended the training.

Mr. Zoll also indicates that the DFL provided a memorandum from the party chair to each employee performing multi-candidate expenditures explaining what multi-candidate expenditures are and requiring that the employee perform work in a way that meets the requirements to classify the work as a multi-candidate expenditure.

According to the memorandum the party's multi-candidate expenditure effort to support its endorsed candidates was referred to as the "coordinated campaign." The party's response acknowledges that this coordinated campaign was an effort that used the multi-candidate

expenditure concept of funding, which permits party unit staff efforts to be undertaken in coordination with the benefitted candidates.

According to Mr. Zoll, each employee working in the multi-candidate expenditure program was required to acknowledge receipt and understanding of the chair's memorandum. Copies of memos relating to some of the staff members involved in this matter were provided.[1]

The DFL also submitted various declarations of staff members. The Board considers these declarations to be offers of the proof that the DFL intends to provide should an investigation be undertaken. As such, they have a weight similar to allegations of the complaint. The declarations, their attachments, and the analysis memorandum submitted by the DFL are a part of the record of this matter.

The declarations of Alexandra Kopel and Alyssa Siems Roberson related to their work specifically, but also to the general way that the DFL operates its multi-candidate expenditure program. As such, these declarations bear on all of the allegations of the complaint. These declarations, considered in the context of the attachments and the analysis provided by the DFL suggest that the DFL fully understood the nature of and limitations on multi-candidate expenditures. In order to maintain the multi-candidate expenditure status of its staff services, the DFL indicates that its employees and the volunteers they recruited always mentioned other candidates on the DFL ticket in door-knock or telephoning activities.

The DFL response, taken as a whole, asserts that in both legislative races and constitutional office races, the DFL took steps to make sure that its employees knew what the requirements for multi-candidate expenditures were and developed programs to ensure that people working on the coordinated campaign understood what multi-candidate expenditures were and were mindful of the requirement that their work must benefit three or more candidates.

The response materials assert that in voter interactions, the employees mentioned other candidates whose names would be on the ballot. The response also indicates that field organizers oversaw the installation and management of lawn signs, which benefitted three or more candidates.

In general, the DFL asserts that its multi-candidate expenditure operation at the legislative level worked from the legislative candidate up to constitutional office candidates, ensuring that whatever legislative candidate was the primary beneficiary of staff services, other candidates seeking higher offices also benefitted. The DFL further asserts that when the primary beneficiary was a constitutional officer, the party included legislative candidates in its efforts

[1] Memos acknowledging their understanding of multi-candidate expenditures and agreeing to ensure that their work qualified under the multi-candidate expenditure standard were provide for Jaime Makepeace, Christopher Vaaler, Maxwell Hall, Megan Nelson, Jennie Maes, Kyle Olson, Jamel Lundy, Julian Dahlquist, and Alexandra Kopel. The Board notes that the acknowledgment signed by Mr. Dahlquist post-dates his activity in 2012. In addition to the evidentiary value of these acknowledgments with respect to the employee's work, they serve as evidence that the DFL understood the multi-candidate expenditure concept and intended that the employees working under the multi-candidate expenditure model performed services that qualified as multi-candidate expenditures.

based on where the constitutional office effort was being undertaken. These assertions are supported by offers of proof in the form of various declarations.

Because the response materials will be a part of the public record supporting this probable cause determination, each submission will not be individually discussed in this document.

Board analysis

In reviewing the complaint as a whole, the Board recognizes that each allegation follows the same pattern. With respect to each named employee, the complaint refers to one or more statements posted on a social media or web page (or in one case in an employment notice) by a DFL staff member. In each case, the posting identifies some limited number of campaigns, candidates, or districts for which the person provided services. In each case, the number is fewer than three.[2] For each employee, complainant concludes that the statement of the staff member supports a conclusion that the individual provided services that benefited *only* the specific candidates or candidates in the specific districts mentioned.

That the persons named in the complaint were employees of the DFL is not in dispute. Neither is it disputed that the employees made the social media postings alleged in the complaint. The question before the Board, then, is not whether these facts are true, but whether, in the context of the record, they support the inference that the various employees' services benefited *only* the candidates they specifically referenced.

The Board notes that the social media postings are high-level statements lacking any significant detail about what was actually done by the employees. Even a cursory examination of the postings suggests that the employees were more interested in providing a biographical snapshot of their activities than in describing technical-legal nuances of their employment and work.

Even if the information posted is generally accurate as far as it goes, the social media statements do not say that the employee's services benefited *only* those candidates specifically named. While this inference, which complainant urges the Board to accept, may have been minimally sufficient to withstand a prima facie determination, it is not likely sufficient to support the more rigorous probable cause determination.[3]

In addition to the conclusions to be drawn from the totality of the DFL response, a few items merit specific comment.

In support of its allegations regarding the work of Julian Dahlquist, complainant submitted an online posting for DFL jobs which indicated that the successful candidate would execute a field plan for a specific Senate candidate. However, this statement does not rule out a determination

[2] Copies of the various social media or other web pages were submitted with the complaint as exhibits B through M. Because they will become a part of the public record of this determination, they are not explained in detail in this document.

[3] Because the DFL submitted a response in this matter, it is not necessary for the Board to decide whether the complaint, in the absence of a response, would support a finding of probable cause.

that the employee performed services that also benefitted other candidates or, for that matter, that the field plan itself incorporated activities that benefitted the associated House candidates.

In fact, the declaration of Alyssa Siems Roberson states that each Senate field organizer was assigned to a senate district. She states that the voter contact done by and under the direction of the field organizer was "done on behalf of the entire DFL ticket." She also states that each field organizer worked with both of the House candidates and the Senate candidate in the district to organize door knocking and telephoning activities "to identify voters' preferences and to persuade voters to support DFL-endorsed candidates."

The complaint also alleged that the services of three individuals, identified as "Political Director" or "Regional Political Director" for the Mark Dayton for a Better Minnesota committee were in-kind contributions rather than multi-candidate expenditures, using the same social media model and urging the same inference as it did for its other allegations.

The overall DFL response rebuts the inference that the individuals supporting the Governor's committee benefited only the Governor. The declaration of Jaime Makepeace is directly relevant to her activities in the position of political director and to the activities of the two individuals who identified themselves as regional political directors for the Dayton campaign.

Makepeace's declaration asserts that her duties included coordinating efforts of the Governor's committee with other candidates' committees so as to leverage the Governor's profile in assistance to these other candidates. The regional directors, whom she supervised, assisted in these same duties, which benefitted both the Governor's committee and the various legislative candidates in the regions.

In the present matter, the stated facts are not in dispute. The sole question is whether the inference urged by complainant; that the social media postings are sufficient to raise a real question as to whether the various staff services benefitted three or more candidates; raises a significant question of material fact that should be resolved through an investigation. The Board concludes that the inference is not reasonable in the context of the full record and that no issue requiring an investigation is raised.

Based on the above analysis, the Board makes the following:

Findings of fact

1. The complaint is based on social media postings of various DFL employees in which each employee indicates that he or she provided services for certain named candidates or in certain specified districts.

2. The complaint alleges that the services of these employees were in-kind contributions from the DFL to the supported candidates because they did not fall within the multi-candidate expenditure exception for services that benefit three or more candidates.

3. To reach its conclusion that violations occurred, complainant draws the inference that the naming of specific candidates or districts on an employee's social media page supports a conclusion that the employee provided services that benefitted *only* the named candidates or candidates running in the named districts.

4. Respondent DFL provided offers of proof tending to establish the services of the employees benefitted three or more candidates.

5. The offer of proof by the DFL did not contradict the facts offered by complainant; rather, they contradicted the asserted inference.

Based on the analysis and facts, the Board makes the following:

Conclusions of law

1. The complaint, when viewed in the context of the record before the Board, does not give rise to any significant question of material fact.

2. The inference that would be required to support a finding of violations, namely that an employee's listing of specific beneficiaries of the employees services means that the employee's services did not also benefit other candidates, is insufficient to raise a significant question of material fact when considered in the context of the complete record.

3. The complaint fails to establish probable cause to believe that the alleged violations occurred.

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

Order

The complaint of the Republican Party of Minnesota regarding the Minnesota DFL State Central Committee and several of its candidates is dismissed.

Christian M. Sande, Chair
Campaign Finance and Public Disclosure Board

Dated: July 5, 2016