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February 9, 2011

Senator Michelle Fischbach, Chair
Senate Rules Subcommittee on Ethical Conduct
226 State Capitol Building
75 Reverend Martin Luther King Jr. Blvd.
St. Paul, MN 55155

RE: In Re Purported Complaint Against Senator Scott Newman

Dear Senator Fischbach:

I was retained by Senator Scott Newman last week to assist him in his effort to respond to the "complaint" that has apparently been filed against him. I have been a practicing attorney in this state for 32 years and have extensive knowledge of election and public law. Moreover, I served 10 years in the Minnesota Senate and am very familiar with the operation of the Senate and its rules.

This matter is set for an initial probable cause hearing in your subcommittee at 3:00 p.m. on February 9.

I have to begin by pointing out that, in order to initiate an investigation under Rule 55.3 of the current Rules of the Senate, the subcommittee must have before it a sworn complaint "under oath". Until midday Tuesday, no such document existed. The letter I have been given a copy of did contain a notary's stamp and signature, but no indication that the statement is intended to be made "under oath," or "penalty of perjury" or any other basic indication of its sworn nature or that its contents are attested to as sworn testimony by its authors.. Rather, the document was couched repeatedly as a "formal request".

An attempt now, apparently, has been made to formally remedy this obvious defect and an "amended" Complaint has now been submitted to your subcommittee. This new "complaint", it should be noted, was received by Senator Newman a mere 24 hours before the scheduled hearing.

This "amended complaint" is also defective.

Basic due process would require two things here: a clear statement of the charges and alleged misconduct as well as a clear statement of the allegedly wrongful conduct.

As best as I can tell from the "complaint", Senator Newman's staff member is alleged to have written an email to a special interest group representative refusing to schedule an appointment with the Senator because she had been identified as part of a group opposing the Senator's election.

For the moment and the sake of argument, let's assume that to be true.

Evidently (although it's not clear) the point of the "complaint" is that such an email from Senator Newman's staff member is a violation of Rule or law. Basic procedural fairness and due process would require that the Complaint itself spell out plainly **which rule**, or **which law** is allegedly being violated. It simply cannot be enough that other members of the Senate can bring a complaint such as this for no other reason that, whatever their motivation, they don't like the way another member of the body dealt with someone who was their own political ally. No specific statute, law or other precedent is invoked.

Instead, the "complaint" suggests that, somehow, the general standards of Rule 56.1 or 56.3 can be invoked here against Senator Newman. But where is the precedent or established standard that suggests that the above-noted staff conduct fails to embody "the ethical conduct as embodied in the Minnesota Constitution, state law and (the Senate's) rule?"

And where is the precedent or established standard that finds such conduct violative of "a rule or administrative policy of the Senate, (or that) violates accepted norms of Senate behavior, (or that) betrays the public trust....or tends to bring the Senate into dishonor or disrepute?"

What evidence, on the face of the "complaint", can be pointed to that shows a violation of a recognized norm or standard?

There is only one answer to these questions, and it's a simple one: no such standard or precedent is in the complaint. Nothing of the sort has even remotely been violated here.

Senator Newman has already repeatedly stated in public and, through me, repeats here that the statement allegedly made by the staff member in the email did not come from him, was not sent with his approval, nor did it in any way reflect the policy of his office in dealing with special interest groups or lobbyists.

He want this point plainly understood, even though it is not relevant for purposes of this complaint.

It cannot be said enough that the email, standing alone, presents no violation of law or Senate rule. Even if Senator Newman had refused to meet with a political opponent, there is nothing in rule or law that he would have violated in doing so.

There is nothing in the "evidence" before your subcommittee that says otherwise.

The Rules require your subcommittee to consider the issue of probable cause. This, under normal practices, would involve a decision on what is known as "the face of the complaint." This would mean that if the allegations contained in the written complaint are taken as true, a violation of Senate rules could have occurred.

Since, as we've pointed out, the conduct alleged, even if true, would not, under any circumstances, constitute a violation of the Senate rules as they have been interpreted to date, the Subcommittee must, in our view, make a determination of "no probable cause" in this matter.

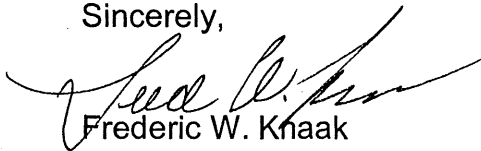
Late on Tuesday, Senator Newman advised me of yet another late correspondence from the complainants in this case. As I understand it, they are requesting testimony from two union representatives and want Senator Newman's staff person available to testify. They have also requested they be allowed to have Senator Latz present as legal counsel and to assist them in any subsequent presentation of their case.

As to the latter point, it is my view that Senator Latz has a conflict of interest. As a member of the Senate, he is part of the body with ultimate disciplinary authority over its members---in this case, Senator Newman. If he intends to act as an attorney in this case, I believe he would need to be excused from participating as a member of the Senate from any subsequent proceedings on the matter. I believe, under the Rules, this would have to occur prior to his participation at this hearing.

I do not see any relevance in testimony at the probable cause hearing itself. It is our view that the entire purpose of these accusations is to cause some form of political embarrassment to Senator Newman. Turning the simple probable cause hearing into an initial trial before a determination as to probable cause is, in our view, a transparent effort to attempt to create legitimacy in a process that, to date, has none.

It would be unfortunate, Senator Fischbach, if this kind of senseless, political game playing were to set the tone for relations among Members for the rest of the session. I would strongly urge that you and the members of your subcommittee promptly, and without hesitation, recognize the absence of any colorable complaint in this matter and dismiss it as being without probable cause.

Sincerely,



Frederic W. Knaak
Attorney at Law

Cc: Senator Newman