

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

CASE TYPE: CIVIL/OTHER

Paul Wikstrom,

Court File No. 62-CV-24-7378

Hon. Leonardo Castro

Contestant,

v.

**CONTESTEE'S RESPONSE TO
CONTESTANT'S MOTION FOR
DEFAULT JUDGMENT AND
MOTION IN LIMINE**

Curtis Johnson,

Contestee.

I. INTRODUCTION

Contestee submits this response in opposition to Contestant's motion for a default judgment and motion in limine. Both motions are without merit and should be denied.

II. ARGUMENT**A. Contestant's Motion for Default Judgment Should be Denied.**

Default judgements under Minnesota Rule of Civil Procedure 55 are permitted, "when a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend within the time allowed therefor by these rules or by statute." The Minnesota Court of Appeals has held that "otherwise defend" includes filing a Rule 12 or other defensive motion. *Black v. Rimmer*, 700 N.W.2d 521, 525 (Minn. App. 2005). Contestee Johnson filed a motion to dismiss Contestant's election contest on the basis that it was barred by laches and improper under the election contest laws. This was a "defensive motion," and as such, there is no basis for the Court to enter a default judgment in this matter.

Contestant's argument that Chapter 209's use of the word "answer" forecloses the ability of a Contestee to move to dismiss or prohibits the Court from deciding threshold issues prior to

determining if an evidentiary hearing is warranted, is also without merit. The Minnesota Supreme Court has specifically stated that Contestees may move to dismiss to challenge the legal sufficiency of an election contest. *Bergstrom v. McEwen*, 960 N.W.2d 556, 562-63 (Minn. 2021). That is precisely what Contestee did here.

Finally, there is no prejudice to Contestant in this matter. Contestee filed his motion to dismiss on the seventh day after the contest was filed, and included with it a detailed declaration that responded to the substance of the factual allegations made in the contest, putting Contestant on notice of Contestee's defenses in this matter, and serving as the functional equivalent of an Answer. Moreover, Contestant's argument that failing to file an Answer deprived Contestant of Contestee's witnesses and exhibits is simply incorrect. That information would not have been provided in an Answer, and the Contestee is providing that information today, consistent with the Court's order, which Contestant did not object to. There is no prejudice to Contestant.¹ Contestant's motion for a default judgment should be denied in its entirety.

B. Contestant's Motion in Limine Should Be Denied.

The Contestant must prove by clear and convincing evidence that Contestee failed to reside in the district for the six months preceding the election. *See Monaghan v. Simon*, 888 N.W.2d 324, 331 (Minn. 2016). Contestant's motion in limine apparently seeks to prevent the admission of evidence regarding Contestee's residency status during the final 30 days prior to the election, because Contestee's motion to dismiss did not specifically cite Minn. Stat. § 204B.06, subd. 1(3),

¹ Contestant's arguments regarding prejudice and delay also ring hollow when it was Contestant that made a statement to the press that he "suspected since May that Johnson didn't live in the Rice Street apartment complex" (*see* Notice of Contest, Ex. 5, *Roseville area candidate for Minnesota House challenged by opponent on residency* (Oct. 23, 2024)), but failed to begin investigating until the end of August, and further failed to raise this matter with the Court until after he lost the election.

which prescribes the form that the affidavit of candidacy shall take, including the statement that the candidate will have maintained residence in the district from which the candidate seeks election for 30 days before the general election. Contestee's motion and declaration addressed Contestee's residency status during the entire six-month period leading up to the general election, which is the relevant, constitutionally-prescribed period of time that a prospective legislator must maintain residency in the district he or she seeks to represent. *See* Minn. Const. Art. IV, § 6. The thirty days mentioned in the affidavit of candidacy are, of course, subsumed within those six months. There is no reason to exclude evidence regarding the final thirty days before the election, nor will the Court be confused by the inclusion of such evidence, which obviously is relevant to demonstrating Contestee's residence in the district throughout the entire six-month period. The motion in limine should be denied.

III. CONCLUSION

For the foregoing reasons, Contestant's motion for a default judgment and motion in limine should be denied.

Dated: December 3, 2024

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