

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT
CASE TYPE: CIVIL

Destiny Dusosky,

Court File No. _____

Plaintiffs,

v.

**PLAINTIFF'S
CIVIL COVER SHEET**

Michelle Fischbach,

Defendant.

Date Case Filed: **January 12, 2018**

This civil cover sheet must be filed by the initial filing lawyer or party, if unrepresented by legal counsel, unless the court orders all parties or their legal counsel to complete this form. Once the initial civil cover sheet is filed, opposing lawyers or unrepresented parties who have not already been ordered to complete this form may submit their own cover sheet within ten days after being served with the initial cover sheet. See Rule 104 of the General Rules of Practice for the District Courts.

If information is not known to the filing party at the time of filing, it shall be provided to the Court Administrator in writing by the filing party within seven (7) days of learning the information. Any party impleading additional parties shall provide the same information to the Court Administrator. The Court Administrator shall, upon receipt of the completed certificate, notify all parties or their lawyers, if represented by counsel, of the date of filing the action and the file number assigned.

ATTORNEYS FOR PLAINTIFF	ATTORNEYS FOR DEFENDANT
LOCKRIDGE GRINDAL NAUEN P.L.L.P. Charles N. Nauen, #121216 David J. Zoll, #0330681 Arielle S. Wagner, #0398332 100 Washington Avenue South, Suite 2200 Minneapolis, MN 55401 Tel: (612) 339-6900 Fax: (612) 339-0981 cnnauen@locklaw.com djzoll@locklaw.com aswagner@locklaw.com	

(Attach additional sheet for additional attorneys / parties)

Note: If either Plaintiff or Defendant gets an attorney, the attorney's name, address, telephone number and attorney ID number must be given in writing to the Court Administrator immediately.

1. Provide a concise statement of the case including facts and legal basis:

Plaintiff Destiny Dusosky brings this action seeking an order declaring that now-Lieutenant Governor Fischbach is prohibited from holding the office of state senator after she became lieutenant governor and enjoining her from continuing to exercise the powers and duties of such office including voting on matters before the Minnesota Senate.

On January 2, 2018, United States Senator Al Franken resigned from the Office of United States Senator for Minnesota thus creating a vacancy in that office. Minnesota Statutes Section 204D.28, subdivision 11 provides that, in the event of a vacancy in the Office of United States Senator for Minnesota, the Governor may appoint a successor to fill the vacancy until a special election is held to fill the office for the remainder of the term. On January 3, 2018, Governor Mark Dayton appointed Lieutenant Governor Tina Smith to fill the vacancy created by Senator Franken's resignation. Now-United States Senator Tina Smith resigned from the Office of Lieutenant Governor effective at 11:59 p.m. on January 2, 2018 thus creating a vacancy in that office.

Minnesota Constitution Article V, Section 5 states that the "last elected presiding officer of the senate shall become lieutenant governor in case a vacancy occurs in that office." At the time of now-United States Senator Smith's resignation from the office of lieutenant governor, state Senator Michelle Fischbach was the President of the Minnesota Senate and, thus, the last elected presiding Officer of the Senate. Pursuant to Minnesota Constitution Article V, Section 5, state Senator Fischbach became lieutenant governor to fill the vacancy in the office created by now-United States Senator Tina Smith's resignation. Now-Lieutenant Governor Fischbach assumed the office of lieutenant governor immediately upon the resignation of now-United States Senator Tina Smith.

Article IV, Section 5 of the Minnesota Constitution states that “No senator or representative shall hold any other office under authority of the United States or the state of Minnesota, except that of postmaster or of notary public.” Accordingly, now-Lieutenant Governor Michelle Fischbach is prohibited from holding the office of state senator for Senate District 13 and exercising the duties of such office.

Plaintiff Destiny Dusosky will be deprived of representation in the Minnesota Senate due to now-Lieutenant Governor Fischbach’s attempt to continue to hold the office of state senator for Senate District 13 notwithstanding that she is prohibited from doing so by the Minnesota Constitution.

Plaintiff is adversely affected by now-Lieutenant Governor Fischbach’s unconstitutional attempt to hold the offices of state senator and lieutenant governor simultaneously and is entitled under Minn. Stat. § 555.02 to request the Court to enter a declaration that now-Lieutenant Governor Fischbach is prohibited from continuing to hold the office of state senator for Senate District 13 and exercising the powers of such office. Moreover, because now-Lieutenant Governor Fischbach is prohibited by the Minnesota Constitution from continuing to hold the office of state senator for Senate District 13, Plaintiff requests that the Court enter an order enjoining now-Lieutenant Governor Fischbach from doing the same—including enjoining now-Lieutenant Governor Fischbach from voting on any matters before the Minnesota Senate.

2. Date Complaint was served: **Plaintiff will complete service of the Complaint and file proof of service with the Court as soon as possible.**

3. For Expedited Litigation Track (ELT) Pilot Courts only:

a. the parties jointly and voluntarily agree that this case shall be governed by the Special Rules for ELT Pilot. Date of agreement: _____

b. The court is requested to consider excluding this case from ELT for the following reasons: _____

Note: ELT is mandatory in certain cases, and where mandatory, exclusion may also be sought by timely motion under the Special Rules for ELT Pilot.

c. Anticipated number of trial witnesses: _____

d. Amount of medical expenses to date: _____

e. Amount of lost wages to date: _____

f. Identify any known subrogation interests: _____

4. Estimated discovery completion within **0** months from the date of this form.

5. Disclosure / discovery of electronically stored information discussed with other party?

No. Plaintiff’s counsel does not believe any discovery will be necessary.

If Yes, list agreements, plans, and disputes : **N/A.**

6. Proposed trial start date: **Plaintiffs' counsel believes that the dispute will be resolved through dispositive motion practice. In the event that trial is necessary, Plaintiff's counsel request that it be scheduled to occur at the earliest practicable date.**

7. Estimated trial time: **1 Day** (estimates less than a day must be stated in hours).

8. Jury trial is:

waived by consent of Plaintiff Destiny Dusosky pursuant to Minn. R. Civ. P. 38.02.
(specify party)

requested by _____ (NOTE: Applicable fee must be enclosed) (specify party)

9. Physical/mental/blood examination pursuant to Minn. R. Civ. P. 35 is requested:

Yes **No**

10. Identify any party or witness who will require interpreter services, and describe the services needed (specifying language, and if known, particular dialect): **None known at this time.**

11. Issues in dispute: **Plaintiff's counsel believes that the only issue in dispute will be the question of whether now-Lieutenant Governor Fischbach may retain the office of state senator and continue to exercise the powers of such office after assuming the office of lieutenant governor.**

12. Case Type / Category: **Civil** (NOTE: select case type from Form 23, Subject Matter Index for Civil Cases, appended to the Minnesota Rules of Civil Procedure).

13. Recommended Alternative Dispute Resolution (ADR) mechanism: **None.**

(See list of ADR processes set forth in Minn. Gen. R. Prac. 114.02(a))

Recommended ADR provider (known as a "neutral"): **N/A**

Recommended ADR completion date: **N/A**

If applicable, reasons why ADR not appropriate for this case: **The only issue in dispute involves the interpretation and operation of the Minnesota Constitution. The dispute cannot be resolved through mediation or other form of ADR.**

By signing below, the attorney or party submitting this form certifies that the above information is true and correct.

Submitted by:

s/Charles N. Nauen

Charles N. Nauen, #121216
LOCKRIDGE GRINDAL NAUEN P.L.L.P.
100 Washington Avenue South, Suite 2200
Minneapolis, MN 55401
Tel: (612) 339-6900
Fax: (612) 339-0981
Email: cnauen@locklaw.com

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