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TO: **Candidates, Political Campaigns, Political Parties, Political Committees and Other Interested Persons**

FROM: **Minnesota Attorney General's Office**

DATE: **May 19, 2014**

RE: **Minnesota's Automatic Dialing-Announcing Device Law**

This Memorandum is to provide guidance to candidates, political campaigns, political parties, political committees, and others concerning Minnesota's automatic dialing-announcing device law. It is similar to Memoranda first issued by the Minnesota Attorney General's Office ("AGO") in 2004.

Minnesota's ADAD Law

A copy of Minnesota's automatic dialing-announcing device law, which is contained at Minn. Stat. §§ 325E.26-.31, is attached.

The law provides as follows:

> A caller shall not use or connect to a telephone line an automatic dialing-announcing device unless: (1) the subscriber has knowingly or voluntarily requested, consented to, permitted, or authorized receipt of the message; or (2) the message is immediately preceded by a live operator who obtains the subscriber's consent before the message is delivered.

Minn. Stat. § 325E.27 (2012). An "automatic dialing-announcing device," or "ADAD," is defined as "a device that selects and dials telephone numbers and that, working alone or in conjunction with other equipment, disseminates a prerecorded or synthesized voice message to the telephone number called." Minn. Stat. § 325E.26, subd. 2 (2012). "Caller" includes "a person, corporation, firm, partnership, association, or legal or commercial entity who attempts to contact, or who contacts, a subscriber in this state by using a telephone or a telephone line." *Id.* at subd. 3. "Subscriber" is defined as "a person who has subscribed to telephone service from a telephone company or the other persons living or residing with the subscribing person." *Id.* at subd. 5.

Minn. Stat. § 325E.27 (2012) does not apply to "messages to subscribers with whom the caller has a current business or personal relationship."

The attached law also contains other provisions relating to the use of ADADs in Minnesota. For example, all ADADs (to the extent their use is not prohibited) must be designed and operated to disconnect within ten (10) seconds after termination of the telephone call by the subscriber. Minn. Stat. § 325E.28 (2012). ADADs may not be used before 9:00 a.m. or after

9:00 p.m. Minn. Stat. § 325E.30 (2012). In addition, where an ADAD message is immediately preceded by a live operator, the operator must make certain disclosures to the subscriber. *See* Minn. Stat. § 325E.29 (2012).

The constitutionality of the ADAD statute has been upheld by the Minnesota Supreme Court and the Eighth Circuit Court of Appeals. *See State v. Casino Mktg. Group, Inc.,* 491 N.W.2d 882 (Minn. 1992) and *Van Bergen v. State of Minnesota,* 59 F.3d 1541 (8th Cir. 1995) (upholding constitutionality of ADAD statute in challenge by political candidate).

Enforcement of ADAD Law

The AGO is authorized to enforce the ADAD law and seek a court order to enjoin violations of it. *See, e.g.*, Minn. Stat. §§ 8.31, 325E.31. In 2004, the AGO adopted the following policy:

Upon receiving a verified and substantiated complaint that the above law has been violated, this Office will promptly contact the campaign that had allegedly violated the law and advise it of the alleged ADAD violations. Upon thereafter receiving verified and substantiated complaints from at least three or more individuals involving an identified committee, this Office may ask the committee to sign an Assurance of Discontinuance. If the committee does not do so promptly, the Office may file a lawsuit and seek a temporary restraining order ("TRO") to enjoin further violations of the law.

In order for a complaint to be verified and substantiated, the complainant must sign an affidavit that documents the following:

1) The date and time the subscriber received the ADAD message;

2) Where available (i.e., when left on an answering machine), a recording of the text of the message;

3) Substantiation of the identity of the caller;

4) A statement that the subscriber (which includes persons living or residing with the subscriber) did not knowingly or voluntarily request, consent to, permit, or authorize receipt of the message;

5) A statement that the message was not immediately preceded by a live operator who obtained the subscriber's consent (or the consent of a person living or residing with the subscriber) before the message was delivered; and

6) A statement that the subscriber (which includes other persons living or residing with the subscriber) does not have a current business or personal relationship with the caller.

The policy adopted in 2004 required at least three signed affidavits to balance the legitimate enforcement of the statute with "the potential for mischief by political opponents." This Office intends to continue the same general policy in 2014.

Attachment