

**DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS**

Robin Marlin  
Complainant,

Administrative Hearing  
No. 19-033

v.

Villareal Johnson  
Respondent.

Re: Appeal from ANC 7B Resolution  
on Qualifications of Commissioner  
for ANC SMD 7B05

**MEMORANDUM OPINION AND ORDER**

**Introduction**

This matter came before the District of Columbia Board of Elections (“the Board”) on May 29, 2019 pursuant to an appeal under D.C. Code § 1-309.06(f)(3) from a resolution issued by Advisory Neighborhood Commission (“ANC”) 7B that found that no vacancy existed in the office of Advisory Neighborhood Commissioner for Single Member District (“SMD”) 7B05, which is currently held by Mr. Villareal Johnson (“the Resolution”). The appeal was brought by Ms. Robin Marlin, a qualified elector, who claims that the Resolution declaring no vacancy is defective because Commissioner Villareal Johnson was not a registered voter in the Ward or SMD from which he sought election at the time he filed his Declaration of Candidacy to run for the office during the 2018 November General Election. Board Chairman D. Michael Bennett and Board Members Dionna Lewis and Michael Gill presided over the hearing; Chairman Bennett and Member Lewis were physically present at the hearing, while Member Gill participated via teleconference. Both Ms. Marlin and Commissioner Johnson appeared before the Board *pro se*.

## **Statement of Facts**

On June 26, 2018, Commissioner Johnson filed a change of address form with the Board, changing his address from 2814 Erie Street SE, #A40, Washington, D.C. - an address located within ANC SMD 7B05 - to 2411 33<sup>rd</sup> Street SE., Washington D.C, an address that is also located within ANC SMD 7B05. On July 9, 2018, Commissioner Johnson filed a Declaration of Candidacy (“the Declaration”) to run for the office of Advisory Neighborhood Commissioner in ANC SMD 7B05. In the Declaration, Commissioner Johnson indicated he lived at 2411 33<sup>rd</sup> Street SE, that he has lived there since May of 2018, and that he lived at 2814 Erie Street SE, #A40 from March of 2015 through May of 2018. On August 8, 2018, Commissioner Johnson filed a nominating petition in support of his candidacy with the Board.

On November 6, 2019, Commissioner Johnson was elected to the office of Advisory Neighborhood Commissioner in ANC SMD 7B05, garnering 359 votes. Ms. Marlin, who opposed him in the contest, garnered 340 votes.

On December 18, 2018, Ms. Marlin submitted a request for investigation into the legitimacy of Commissioner Johnson’s candidacy for the office of Advisory Neighborhood Commissioner in SMD 7B05. The request stated that

it was brought to [Ms. Marlin’s] attention by Mr. Mudd personally on November 25, 2018 ... that Mr. Villareal Johnson did not: (a) reside/move in at this address until the weekend of Saturday June 30, 2018 thru the next weekend of July 8, 2018 thereby moving in after paying 1<sup>st</sup> month’s rent for July 1, 2018 in full to officially begin/activate on his rental lease agreement; and (b) Mr. Mudd stated to [Ms. Marlin] that Mr. Johnson was not allowed to move into 2411 33<sup>rd</sup> Street until sometime after June 30, 2018 once the final amount due for the rental deposit agreement had been met/paid in full by [Commissioner Johnson] to [Mr. Mudd].

Based upon this information, Ms. Marlin concluded that Commissioner Johnson was an “invalid candidate” at the time that he obtained his ballot access documents from, and filed them with, the Board. The request was accompanied by a notarized letter from Mr. Mudd which reads: “To Whom

It May Concern: My name is Paul Mudd and I am over the age of eighteen. I own a house at 2411 33<sup>rd</sup> Street SE, Washington, DC 20020. In June 2018 I signed a lease with Villareal Johnson for this property. Sincerely, Paul Mudd.”

On January 9, 2019, the Registrar commenced an investigation into the claims Ms. Marlin raised regarding Commissioner Johnson’s residency. On that same date, the Registrar sent Commissioner Johnson a letter notifying him of Ms. Marlin’s challenge to his residency, and giving him 30 days to respond to the claims raised in the challenge. Commissioner Johnson did not present any evidence regarding his residence in response to the Registrar’s request.

On February 1, 2019, the Registrar sent correspondence to Commissioner Johnson and Ms. Marlin explaining that her determination regarding Commissioner Johnson’s residency was inconclusive because Commissioner Johnson failed to timely file proof of residency. The correspondence further stated that “no changes to [Commissioner Johnson’s] voter registration will be made.” The Registrar forwarded her determination to the Chairperson of ANC 7B so that it could hold a vacancy hearing pursuant to 1-309.06(f)(2) to determine whether a vacancy existed in ANC SMD 7B05.

On April 4, 2019, ANC 7B held a special meeting regarding the matter. Thereafter, the ANC issued the Resolution, which expressed its finding that no vacancy existed in SMD 7B05 because Commissioner Johnson “has provided to the Commission his Driver’s license issued on September 1, 2016, where the address states that he lives within Single Member District 7B05” and because “[the Board] determined in a letter signed by [the Registrar] dated February 1, 2019 [that] ‘the law clearly states, a challenge based upon a change of residence is impermissible.’” On April 26, 2019, the ANC transmitted the Resolution to the Board. On May 14, 2019, Ms. Marlin sent email correspondence to the Board formally challenging the validity of the Resolution.

The OGC scheduled a pre-hearing conference in this matter on May 24, 2019. Neither party attended the pre-hearing conference.

On May 29, 2019, during its regular monthly Board meeting, the Board held a hearing on Ms. Marlin's appeal from the Resolution. During the hearing, Ms. Marlin reasserted her position that, while Commissioner Johnson's Declaration of Candidacy stated he moved to 2411 33<sup>rd</sup> Street SE in May of 2018, Commissioner Johnson did not sign a lease at that residence until June of 2018. Ms. Marlin also asserted that she never had an opportunity to examine the evidence that Commissioner Johnson submitted to ANC 7B in support of his residency at 2411 33<sup>rd</sup> Street SE.

In support of his claim of residency at 2411 33<sup>rd</sup> Street SE, Commissioner Johnson provided his D.C. Department of Motor Vehicles ("DMV")-issued driver's license and a Pepco Notice of Utility Service dated May 21, 2018, both of which list his residence address at 2411 33<sup>rd</sup> Street SE.

### **Analysis**

Pursuant to D.C. Official Code § 1-309.05 (a)(1),

No person shall be a member of an Advisory Neighborhood Commission unless he:

- (A) Is a registered qualified elector actually residing in the single-member district from which he was elected;
- (B) Has been residing in such district continuously for the 60 days immediately preceding the day on which he files the nominating petitions as a candidate as such a member[.]

Therefore, in order for an Advisory Neighborhood Commissioner to properly hold that office in a particular ANC SMD, the Commissioner must, among other things, actually reside in the ANC SMD, and must have resided in that ANC SMD since the 60<sup>th</sup> day before the day they filed their nominating petition as a candidate for that office. In Commissioner Johnson's case, because he

filed his nominating petition on August 8, 2018, he was required to have resided in ANC SMD 7B05 since June 9, 2018.

Ms. Marlin alleges that Commissioner Johnson is not qualified to hold the office of Advisory Neighborhood Commissioner in ANC SMD 7B05 because he did not reside in that SMD for the requisite period of time prior to seeking ballot access as a candidate for that office in the November 2018 General Election. Because Ms. Marlin is challenging Commissioner Johnson's qualifications to hold the office of Advisory Neighborhood Commissioner in ANC SMD 7B05 on residency grounds, she bears the affirmative duty of establishing the truth of her assertion.<sup>1</sup> Ms. Marlin has not met this burden.

It is important to note at this juncture that Ms. Marlin believes that D.C. Official Code § 1-309.05 (a)(1)(B) means that an Advisory Neighborhood Commissioner must have resided in the ANC SMD for 60 days prior to *picking up* their ballot access documents. That is not the case. The 60-day period is counted from 60 days before the candidate *files* their ballot access documents. This means that, in order to prevail in this matter, Ms. Marlin must establish that Commissioner Johnson has not resided in ANC SMD 7B05 continuously since June 9, 2018, the 60<sup>th</sup> day immediately preceding the day on which he filed his nominating petition as a candidate for the office of Advisory Neighborhood Commissioner in ANC SMD 7B05.

In support of her claim that Commissioner Johnson is not qualified to hold the office of Advisory Neighborhood Commissioner in ANC SMD 7B05, Ms. Marlin relied primarily on the notarized letter of Commissioner Johnson's former landlord, Mr. Mudd, who is now deceased.

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<sup>1</sup> 3 DCMR 424.1 ("The party who asserts the claim bears the affirmative duty of establishing the truth of the assertion.").

However, the letter, which indicates on its face that Mr. Mudd and Commissioner Johnson entered into a lease agreement regarding 2411 33<sup>rd</sup> Street SE in June 2018, does not support a finding that Commissioner Johnson does not meet the residency qualifications necessary to serve as Advisory Neighborhood Commissioner for ANC SMD 7B05. In addition, the Board notes that Commissioner Johnson's Declaration of Candidacy indicates that his residence address prior to 2411 33<sup>rd</sup> Street SE - 2814 Erie Street SE, #A40 - is located within ANC SMD 7B05. Accordingly, it appears that, at all times pertinent to this matter, Commissioner Johnson resided within the SMD from which he was elected. Ms. Marlin has offered no evidence to negate this finding.

In support of his residency at 2411 33<sup>rd</sup> Street SE at all times pertinent to this matter, Commissioner Johnson presented his D.C. Driver's License and a Pepco Notice of Utility Service that indicates a start of service date of May 21, 2018, both of which list his address as 2411 33<sup>rd</sup> Street SE. Ms. Marlin did not offer any evidence that negated the legitimacy of the documentary evidence Commissioner Johnson produced.

**Conclusion**

For the foregoing reasons, the Board finds that Ms. Marlin has not established that Commissioner Johnson is not qualified to hold the office of ANC Commissioner in ANC SMD 7B05 because he did not reside at 2411 33<sup>rd</sup> Street SE for the requisite period of time prior to filing his ballot access documents. Therefore, the Board finds that the Resolution issued by ANC 7B is valid.

Date: June 21, 2019



D. Michael Bennett  
Chairman,  
Board of Elections