

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS AND ETHICS**

Donald Padou,

Complainant,

v.

Angel S. Alston.

Respondent.

Administrative Hearing

No. 08-09

Re: Challenge to Nominating
Angel S. Alston,
Advisory Neighborhood Commissioner
Single Member District 5A03

MEMORANDUM OPINION AND ORDER

Introduction

This matter came before the Board of Elections and Ethics on October 1, 2008. It is a challenge to the Nominating Petition of Angel S. Alston (“Alston”) as a candidate for the office of Advisory Neighborhood Commissioner, (ANC) Single Member District 5A03 filed by Donald Padou (“Padou”) pursuant to D.C. CODE § 1-1001.08(o)(1) (2006). Chairman Errol R. Arthur and Board members Dr. Lenora Cole and Charles R. Lowery, Jr. presided over the hearing. The Complainant sent his wife as his representative to read his written statement into the record, but he did not send a written authorization pursuant to 3 D.C.M.R. §403.2, and the Board accordingly proceeded *ex parte*. The Respondent appeared *pro se*, but she was accompanied by her circulator, Ms. Elaine Alston.

Background

On September 5, 2008, Alston submitted a Nominating Petition for the office of ANC 5A03 containing two (2) petition sheets with thirty (30) signatures. On September

8, 2008, the petition was posted for inspection, pursuant to D.C. CODE § 1-1001.08(o)(1) (2006), for a 10-day challenge period.¹

On September 17, 2008, Padou filed a challenge to the petition in which he challenged 12 of the 30 signatures. Each signature was challenged on a specific ground or grounds as required by the Board's regulations. Specifically, Padou challenged signatures on the following basis: 1) 3 D.C.M.R. §§ 1607.4 and 1607.5(d) signatures are invalid because the dates have been altered by someone other than the signer; 2) Signatures are invalid because the dates are invalid; and 3) 3 D.C.M.R. § 1607.5(b) Signers of the petition were not registered to vote at the address listed on the petition. The Registrar of Voters' ("Registrar") review of the challenges referencing the Municipal Regulations concluded that five (5) of the challenges to Alston's nominating petition were valid while seven (7) were invalid—leaving the Candidate with twenty-five (25) signatures. The minimum requirement of signatures for this office is twenty-five (25) pursuant to D.C. CODE § 1-309.05(b)(1)(b) (2006). Accordingly, the Registrar concluded the Candidate had secured enough signatures on her nominating petition for ballot access. Padou decided to pursue the matter before the Board and sent his wife as his representative.

¹ D.C. CODE § 1-1001.08(o)(1) (2006) states in relevant part:

The Board is authorized to accept any nominating petition for a candidate for any office as bona fide with respect to the qualifications of the signatures thereto if the original or facsimile thereof has been posted in a suitable public place for a 10-day period beginning on the third day after the filing deadline for nominating petitions for the office. Any registered qualified elector may within the 10-day period challenge the validity of any petition by written statement signed by the challenger and filed with the Board and specifying concisely the alleged defects in the petition.

During the hearing, Alston objected to Mrs. Padou's presence as Padou's representative because he did not provide any written authorization. In response, Mrs. Padou assured the Board she was merely seeking to read Padou's written letter into the record refuting the Registrar's findings. Mrs. Padou further asserted that her husband spoke to Mr. Rudolph McGann, a staff attorney in the General Counsel's office, who assured him he could have a representative, but her husband made no mention of a written authorization. The Board called Mr. McGann to testify about the matter, and he asserted that he did apprise Padou of the representation option. However, Mr. McGann asserted that he did in fact tell Padou that any such authorization for representation must be in writing. The Board decided to disallow Mrs. Padou's representation and proceed *ex parte*, but his written statement remained a part of the record and was considered in the Board's determination of the matter.

Analysis

The Complainant Bears the Burden of Proof.

Pursuant to title 3 D.C.M.R. §424.1, "The party who asserts the claim bears the affirmative duty of establishing the truth of the assertion. In the instant matter, Mr. Padou asserts that Ms. Alston secured signatures that were not dated as required by 3 D.C.M.R. §§ 1607.4 and 1607.5(d). The Board's date requirement is specifically utilized to ensure that candidates circulate their petitions during the allotted time to do so. If a candidate were to circulate nominating petitions for a longer period than stipulated, that candidate would have an unfair advantage over candidates who followed the regulations and adhered to the prescribed time limit. Padou raised the case of *Moore v. Board of Elections and Ethics*, 319 F.Supp. 437 (D.D.C. 1970) to support the contention that

“some time limit is required as a practical matter to assure that only qualified signatures are obtained and the petitions reflect current attitudes of voters.” Id. at 440-41. However, that case dealt with a declaratory action seeking to grant an Independent candidate the ability to circulate petitions simultaneously with primary candidates. The Court reasoned: “To allow plaintiff to secure signatures simultaneously with primary candidates, as he requests, would discriminate in his favor, since his petition must be filed later than those of primary candidates, and would lead to a most confused situation.” Id. at 441.

In the instant scenario, Ms. Alston did not circulate petitions outside of the circulation period, because she picked up her petitions and resubmitted them during the circulation period. The *Moore* case presented an Independent candidate who requested to circulate outside the prescribed period for Direct Access to the Ballot, which was summarily denied by the Board and upheld by the Federal District Court. The scenario presented here is entirely distinguishable because Alston’s petitions were issued by the Board’s staff on September 4, 2008, and she resubmitted the nominating petition on September 5, 2008. As the person making the claim, Padou bears the responsibility to present evidence to support the truth of the matter asserted. Padou appropriately raised the nominating petition itself as evidence of his assertions, and it was incumbent on Ms. Alston to refute these allegations against her nominating petition. Granted, Alston’s petitions appear to be altered in certain respects as Padou asserted in his written response to the Registrar’s findings,² and some dates appear to be signed in 2005, but Ms. Alston

² Padou raised signature 4 on sheet 1 as having a non-existent date; signatures 8 and 9 on Sheet 2 as being dated outside of the time period: 8-5-05; signature 3 Sheet 1 as being outside of the time period: 9-15-05; signatures 1-3 Sheet 2 as being altered from 8-05-08 to 9-05-08.

and her circulator, Elaine Alston testified under oath about the circumstances of the perceived irregularities.

The circulator's function with respect to nominating petitions in the District of Columbia—as well as in every jurisdiction that utilizes nominating petitions for ballot access—is to ensure integrity in the collection of signatures. Primarily, the nominating process is intended to ensure a prospective candidate has some modicum of support from the duly registered voters the candidate wishes to represent. With respect to nominating a candidate for ballot access, the circulator is engaged to collect genuine signatures of duly elected voters. More poignantly the circulator ensures the signatures were collected in a timely manner free from fraud or undue influence. Alston first apologized for using a pen that barely had ink, and she noted that the copies provided for the challenge process did not accurately reflect the changes made on the original petition.³ For example, signature 8 and 9 on sheet 2, actually wrote “08,” but because the pen lacked ink, the date appeared on the copies as “05.” Alston further explained that her community consists of elderly voters who inadvertently signed August 5 because—as people are wont to do at the beginning of a new month—they merely forgot that the month had changed. When Alston recognized the error, she stated that she went back to the signatories to have them correct the month.⁴

³ The copied nominating petition sheets did not show the markings made on the original petition where efforts were made to get the pen to work. Moreover, dates that appeared to be 9-50-08 and 9-15-08 were actually explained as two signatories from the same household originally placing 9-10-08—not realizing the correct date—and then correcting the date.

⁴ Although Mr. Padou asserts that all changes should be corrected with initials to identify alterations made by the signer, there is no statutory or regulatory requirement to do so. The Board's policy has always been that a circulator can fill in all the requisite information except the voter's signature. *See* D.C. CODE § 1-1001.08(b)(3) and 3 D.C.M.R. §1604 that require only that the circulator personally circulated the petition; personally witnessed the signing of each signature; determined that each signer is a registered voter registered in the single-member district from which the candidate seeks election; and that the circulator is a

In sum, the Board affirmed the decision of the acting Registrar of Voters with respect to the upheld challenges referencing the unregistered voters because both parties did not take issue with her findings. With respect to the date challenges, Padou presented no additional evidence to contradict Mses. Alstons' explanations of the perceived irregularities with the dates of the seven remaining signatures at issue. Candidate Alston, based on the Board's findings and conclusions, it is hereby:

ORDERED that Angel S. Alston be **GRANTED**

Ballot Access in the November 4, 2008 General Election for the office of Advisory Neighborhood Commissioner, (ANC) Single Member District 5A03.

October 7, 2008



Errol R Arthur
Chairman, Board of Elections and Ethics

Lenora Cole
Member, Board of Elections and Ethics

Charles R. Lowery, Jr.
Member, Board of Elections and Ethics

registered voter. Accordingly, even if the circulator corrected the address, the signature would still be deemed valid by the Board.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing order was hand-delivered this 7th day of October, 2008 to Don Padou, 1335 Lawrence St. NE, Washington, D.C. 20017 and Angel S. Alston, 4707 6th Place NE, Washington, D.C. 20017.
