

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

Bandele McQueen,
Complainant,

v.

Jacque Patterson,
Respondent.

Administrative Hearing
No. 11-002

Re: Challenge to Nominating
Petition of Jacque Patterson,
Candidate, At-Large Member of the
Council of the District of Columbia

MEMORANDUM OPINION AND ORDER

INTRODUCTION

This matter came before the District of Columbia Board of Elections and Ethics (“the Board”) on March 9, 2011. It is a challenge to the nominating petition of Jacque Patterson (“the Respondent”) as a candidate for the office of At-Large Member of the Council of the District of Columbia filed by Bandele McQueen (“the Complainant”) pursuant to D.C. CODE § 1-1001.08(o) (2006). Board Member Charles Lowery presided over the hearing.¹ The Complainant sent a representative, Mr. Rashid Mathus, and the Respondent, who was also present, was represented by Scott E Thomas, Esq. of Dickstein Shapiro LLP.

BACKGROUND

On February 16, 2011, the Respondent submitted a nominating petition for the office of At-Large Member of the Council of the District of Columbia that contained a

¹ See D.C. CODE § 1-1001.05(g) (2006), which allows Board cases to be heard by a 1 member panel.

total of 3,408 signatures. On February 19, 2011, the petition was posted for inspection, pursuant to D.C. CODE § 1-1001.08(o)(1) (2006), for a 10-day challenge period.²

On February 28, 2011, the Complainant filed a challenge to the nominating petition in which he challenged 1,904 of the 3,408 signatures. Each signature was challenged on a specific ground or grounds as required by the Board's regulations. Among the grounds upon which the Complainant sought to disqualify signatures in Respondent's petition were that: 1) the signer's voter registration was designated inactive at the time of signing the petition; 2) the individual signers, according to the Board's records, are not registered to vote at the address listed on the petition at the time the petition was signed; 3) the individual signers are not duly registered voters; 4) the signature is not dated; 5) the petitions do not include the address of the signers; 6) the petitions do not include the printed or typed name of the signer where the signature is not sufficiently legible for identification; 7) the circulators of the petition sheets were not registered qualified electors of the District of Columbia at the time the petitions were signed; and 8) the signature is a duplicate.

Consistent with Board practice, the Board's Office of the General Counsel held a pre-hearing conference concerning the Complainant's challenge on March 7, 2011. During the pre-hearing conference, Karen Brooks, the Registrar of Voters ("Registrar") rendered her preliminary determination report, which was based upon her review of the

² 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.

challenge. This report encapsulated the Registrar's determination that 1,191 of the 1,904 challenges to the Respondent's nominating petition were valid, leaving the Candidate with 2,217 valid signatures. The minimum requirement of signatures for this office is 3000 pursuant to D.C. CODE §1-1001.8(j)(1)(B)(2006). Accordingly, the Registrar concluded that the Respondent needed 783 more valid signatures for ballot access.³

The discussions during the pre-hearing conference focused on the Respondent's concerns regarding: 1) the validity of the challenge to the nominating petition due to the complainant's omission of the challenged signatories' names as mandated pursuant to D.C. Mun. Regs. Tit. 3 § 410.3(c); and 2) the validity of specific challenges where the complainant devised a coding system that conflated the signatory not being registered to vote at the address on the petition⁴ with the signatory not being registered.⁵

At the conclusion of the pre-hearing conference, the Respondent indicated that he wished to proceed with a hearing before the Board wherein he would challenge the propriety of the Registrar accepting the challenge notwithstanding the omission of challenged signatories' names.

On March 9, 2011, the Board held a hearing on the complainant's challenge. During the presentation of his case, the Respondent through his Counsel opined that the Board is obligated to follow its own rules regarding the filing of a nominating petition. Specifically, D.C. Mun. Regs. Tit. 3 § 410.3(c) states: "a pleading which sets forth a challenge to a nominating petition . . . shall contain the following: the name(s), if legible,

³ Of those valid challenges, 565 were address changes that could be cured pursuant to D.C. CODE § 1-1001.08(o)(3)(B); however, curing all of them would not have brought the candidate to 3,000 valid signatures.

⁴ D.C. Mun. Regs. Tit. 3 § 1607.5(b).

⁵ D.C. Mun. Regs. Tit. 3 § 1607.5(c).

sheet and line number(s) of any challenged signature(s) and the basis for the challenge(s).” Respondent’s Counsel urged the Board to disallow the entire challenge because the Complainant failed to list any of the names of the challenged signatures and provided only the sheet and line number of each challenged signature. In support of this proposition, Respondent cited *Dankman v. D.C. Brd. of Elections and Ethics*, 443 A.2d 507, (1981) (hereinafter “*Dankman*”). Moreover, Respondent took issue with the challenges under §§1607.5(b), (c) being notated as one challenge as opposed to separate ones—thereby conflating the two and leading to some confusion over which challenge was lodged for each particular signatory.

In response, Complainant’s representative asserted that the challenger was leery of misspelling signatories’ names, and opted to forgo including each name on the advice of prior successful challengers. The Complainant assumed the Respondent would know exactly which signatory was challenged by each unique petition sheet and specific line number. Furthermore, the Complainant did not know whether a particular signatory was un-registered or alternatively registered at a different address, and he accordingly joined those challenges so as to not omit the proper challenge.

II. DISCUSSION

Under the Board’s General Rules of Pleadings, D.C. Municipal Regulations title 3 §410.3(c) requires challenges to nominating petitions include the name(s) if legible. The Respondent contends that the nominating petition challenge cannot be deemed valid if the pleadings do not provide the actual names corresponding to challenged signatures.⁶ The purpose of the regulation, like all pleadings, is to provide notice of the issues involved to

⁶ Statement for Jacques Patterson for the Record (Patterson Stmtnt.) at p. 1.

enable parties to prepare their cases so that they might participate effectively in the hearings. In the opinion of the Board, that purpose was met by indicating the specific line and page number of the signature being challenged and the basis for the challenge. The challenge was not a *Rubik's Cube* as the Respondent asserts. The challenge was type written and categorized numerically by page number and corresponding lines on each page at issue. Furthermore, the challenge included a key coding system provided to the Respondent, which specifically corresponded with the Board's regulations for disallowing signatures under 3 DCMR § 1607.5. The Registrar had no difficulty discerning which signatures were challenged and the specific defects alleged with the key provided, and she conducted her determination in the ordinary course. Moreover, the Respondent was provided a copy of the Registrar's preliminary determination during the Pre-Hearing conference indicating which signatures were at issue and which signatures could be cured for address changes.⁷

Although the Respondent takes issue with the Complainant's combination of defects in certain instances, the regulations governing the general rules of pleading allows this. D.C. Mun. Regs. tit. 3 § 410.12 provides: "A party may set forth two (2) or more statements of a charge, challenge, or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses." Clearly, the Complainant availed himself of this option when joining "not registered" and "not registered at the listed address." While not required to do so, the Complainant provided a reasonable explanation for his action during the hearing—namely that he did not want to

⁷ Although the Complainant combined the defects "not registered" with "not registered at the address on the petition," the Registrar first investigated whether a registered voter existed with the corresponding name, if so, then she ascertained whether the address matched.

inadvertently raise the incorrect defect when he was unsure which defect was applicable. All pleadings are to be liberally construed in the interests of justice, and no defect in pleading should impair substantial rights that are at issue in the instant case. The Board's regulations reflect this sentiment because "[n]o technical forms of pleadings or motions shall be required," D.C. Mun. Regs. tit. 3 § 410.11. During the hearing, the Respondent did not dispute the Registrar's findings other than the procedural due process attack on the challenge itself.

The Respondent's reliance on *Dankman* is sorely misplaced because the spirit of the challenge process was met in the instant case and the Respondent was aware of the signatures at issue. In *Dankman*, the Board disallowed signatures collected by unregistered circulators in contravention to its own rule, and the Court opined,

The possible sins of the circulator are not to be visited upon the electors who signed petition sheets in good faith. The clear phrasing of the regulation does not contain a single qualifier-not for inadvertence, not for reasonable belief about a circulator's status, and not for the quantity of signatures called into question. Accordingly, we cannot conclude that the Board's interpretation of its rule was reasonable.

Dankman at 514. The plain reading of the regulation at issue was clear: "The failure of the circulator of an initiative or referendum petition to be a registered qualified elector will not invalidate the signature of an otherwise registered qualified elector." *formerly* D.C. Mun. Reg. tit 3 §1008.9.⁸ The Board was accordingly admonished for not adhering to its own regulations in that case where the language was clear and unequivocal. In the

⁸ This regulation has since been repealed and replaced by virtue of Supreme Court precedent dispensing with a registration requirement for circulators. *see generally Buckley v. American Constitutional Law Foundation, Inc., et al.*, 525 U.S. 182 (1999). D.C. Mun. Regs. tit. 3 § 1009.9(g) has supplanted any allowance for circulator defects relating to age and residency: "A Signature shall not be counted as valid in any of the following circumstances: The circulator of the petition sheet was not a resident of the District of Columbia and at least eighteen (18) years of age at the time the petition was signed.

instant case, the mandate for including the name in the challenge subjectively hinges upon legibility. The Respondent noted discomfort with appending potentially wrong names to the petition, and opted to preclude names on the advice of previously successful challenges before the Board. The situation presented in the instant case has nothing to do with registered signatories who signed in good faith; rather, the signatories themselves had defects.

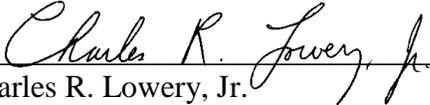
Allowing the Respondent on the ballot with the knowledge that he is below the threshold amount for ballot access by 783 signatures would demonstrate a miscarriage of the Board's duty under the law. D.C. CODE §1-1001.8(j)(1)(B) (2006) requires 3,000 qualified registered voters' signatures for ballot access, and the Respondent has simply not collected this minimum amount of valid signatures. Moreover, the Board is authorized to waive any harmless error that does not prejudice the parties: "[t]he Board may, for good cause shown, waive any of the provisions of this chapter if, in the judgment of the Board, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law." D.C. Mun. Reg. tit 3 §400.5.⁹ Although the Board's regulations call for inclusion of the names of any signature challenged on a petition, the qualifier is legibility. It is eminently reasonable to accept the Complainant's reasoning for omitting names when provided with the exact line and page number where each name is located on the petition. Furthermore, there is no restriction based in the D.C. Code precluding such action, and the Respondent did not raise any such law during his oral presentation or written submission.

⁹ See also *Mosley v. Board of Elections and Ethics of the District of Columbia*, 283 A.2d 210, 211 (omission of date from nominating petition was only "formal error" and was capable of being waived by the Board of Elections).

III. CONCLUSION

In view of the foregoing, it is hereby ORDERED that the challenge to the nominating petition of Jacque Patterson, candidate for the office of At-Large Member of the Council, is upheld, and that Patterson be denied ballot access in the April 26th, 2011 Special Election.

March 15, 2011



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