

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

Kathleen Cruse, <u>et al.</u>)	
)	
Complainant,)	
)	Administrative Hearing
v.)	No. 00-002 A
)	
William Starrels,)	Re: Challenge to Nomination Petition
)	
Respondent.)	
)	

MEMORANDUM OPINION AND ORDER

This matter came before the Board of Elections and Ethics on Thursday, March 9, 2000 and involved a challenge to the candidacy of William Starrels, candidate for the office of Advisory Neighborhood Commissioner in ANC Single-Member District 2E06. The challenge was brought by Kathleen McCormack and Karen Cruse. The Board was represented by Chairman Benjamin F. Wilson and members Dr. Lenora Cole Alexander and Stephen Callas. The Challengers themselves were not present, but were represented by Austin Graff. The Candidate appeared pro se.

I. Background.

On January 18, 2000, the District of Columbia Board of Elections and Ethics (hereinafter "the Board") received a resignation letter from Advisory Neighborhood Commission ("ANC") Single-Member District ("SMD") 2E06 Commissioner Jonda McFarlane. The Board transmitted a notice of vacancy with respect to that resignation to the Office of Documents and Administrative Issuances on January 21, 2000 for publication in the January 28, 2000 issue of the D.C. Register. On that same date, the Board sent a notice of the vacancy to the affected ANC.

On January 31, 2000, William Starrels ("Respondent") picked up qualifying documents

with respect to the office of ANC Commissioner for single-member District 2E06, and at that time filed a Declaration of Candidacy. The qualifying documents obtained by the Respondent indicated that the circulation period began on January 31, 2000 and would end on February 22, 2000, and that the challenge period would begin on February 25, 2000 and would end on March 2, 2000.

Due to inclement weather in the District, the D.C. Register was not published on Friday, January 28, 2000 as was anticipated. Instead, it was published on Wednesday, February 2, 2000.

On Monday, February 7, 2000, the Respondent filed a nominating petition containing 31 signatures. Of these signatures, 5 were filed on January 31, 2000 and the remaining 26 were obtained on or after February 2, 2000, the date of the actual publication of the D.C. Register.

On March 2, 2000, Austin B. Graff, on behalf of Kathleen McCormack and Karen Cruse (“Complainants”), filed a challenge to the Respondent’s nominating petition on the grounds that: 1) the Respondent’s Declaration of Candidacy, filed on January 31, 2000, is invalid because it was filed prior to the existence of a vacancy in ANC 2E06; 2) the Respondent failed to file a new Declaration of Candidacy by the filing deadline; 3) the petition sheets submitted by the Respondent are invalid because they were issued and circulated prior to the existence of the vacancy, and; 4) the petition contained the signatures of four individuals who are not registered at the address listed by them on the petition.

II **Analysis.**

A. **Declaration of Candidacy.** 3 D.C.M.R. § 1308.2(a) states that “[a] petition of a candidate may not be finally accepted by the Board unless [t]here has been filed with the Board a Declaration of Candidacy executed in accordance with the provisions of [Chapter 13] and

Chapter 6 of [Title 3].” This Declaration of Candidacy must be filed within 21 days of the date on which the Board makes nominating petitions available. See 3 D.C.M.R. § 1308.4.

Nominating petitions are not to be made available prior to the date upon which a vacancy is declared. See D.C. Code § 1-257(d)(6)(A); see also 3 D.C.M.R. § 1300.4. Because the vacancy in ANC 2E06 did not exist until February 2, 2000, nominating petitions should not have been made available until that time, and no Declaration of Candidacy should have been issued or accepted until that time. Therefore, the Declaration of Candidacy submitted by the Respondent on January 31, 2000 is invalid.

This determination notwithstanding, the Board can find no persuasive justification upon which to allow this result to stand. The Board submitted the notice of the vacancy in ANC 2E06 to the Office of Documents and Administrative Issuances on January 21, 2000 for publication in the January 28, 2000 issue of the D.C. Register. Unaware of the fact that the D.C. Register had not yet been published, the Board made petition sheets and Declarations of Candidacy available on January 31, 2000. The Respondent picked up petition sheets and completed and filed a Declaration of Candidacy on that date, and there is no indication that he did so in anything other than good faith. Nonetheless, it is the case that when the Respondent filed his Declaration of Candidacy, he did so in error. It must be determined at this point whether or not this error is one which the Board is permitted to waive pursuant to its discretionary power under 3 D.C.M.R. § 1308.2.¹

¹ 3 D.C.M.R. § 1308.2 provides that “[a] petition of a candidate may not be finally accepted by the Board unless . . . [t]here has been filed with the Board a Declaration of Candidacy executed in accordance with the provisions of [Chapter 13] and Chapter 6 of [Title 3]; . . . *Provided, that the Board, in its discretion, may waive any formal error.*” (Emphasis added.)

In determining whether or not a particular act on the part of a candidate constitutes formal error which may be waived by the Board, the D.C. Court of Appeals has examined the purpose of the provision that the candidate is said to have violated and considered whether or not that purpose has been undermined as a result of the candidate's actions. See Mosley v. Board of Elections of District of Columbia, 283 A.2d 210 (D.C. 1971). The purpose of the Declaration of Candidacy is to facilitate a determination with respect to a candidate's eligibility to hold a particular office, as well as to evidence an intent on the part of the prospective candidate to seek a particular office.

There is no allegation that the Respondent is not eligible to serve as an ANC Commissioner, nor is there an allegation that he, in truth, does not intend to seek that office. Rather, the only allegation proffered by the Complainants with respect to the Declaration of Candidacy is that it was prematurely filed. It simply can not be said that "the nominating process was obstructed or polluted in any way, [or] that substantive harm to any other candidate flowed" as a result of the Respondent's premature filing of the Declaration of Candidacy. Id. For this reason, the Respondent's action constitutes a formal error which may be waived by the Board, and the Board sees fit to exercise its authority to waive this error in this instance.²

B. Nominating Petition. D.C. Code § 1-257(d)(2) states that "[a] vacancy is deemed to exist upon the publication of a notice of the vacancy in the D.C. Register. See also 3 D.C.M.R. § 1300.1(a). Due to a delay in the publication resulting from inclement weather, the D.C. Register was not published until February 2, 2000. Accordingly, the vacancy in ANC 2E06 did

² Contrary to the assertions of the Complainants' representative, the Board's ability to waive any formal error is not limited only to errors concerning nominating petitions; it may also waive errors with respect to the filing of Declarations of Candidacy.

not officially exist until that date, and all of the signatures collected by the Respondent before that date must, according to D.C. law, be deemed invalid.

However, with only one exception³, the signatures collected on or after that date are without defect. Contrary to the assertions of the Complainants, there is no basis in the law upon which to invalidate the signatures collected by the Respondent on February 2, 2000. The Complainants correctly note that D.C. Code § 1-257(d)(6)(A) provides that “[w]ithin 5 business days after the date that the Board declares a vacancy, the Board shall make available petitions for the purpose of obtaining the signatures of registered qualified electors within the affected single-member district.” However, the Complainants are mistaken as to the import of this provision. This provision does not serve to set a date before which nominating petitions are not to be made available; D.C. Code § 1-257(d)(2) exists for that purpose. Rather, this provision merely dictates a deadline by which the Board must, by law, make nominating petitions available to persons interested in filling an ANC vacancy.⁴ See also 3 D.C.M.R. § 1300.4. Consequently, the 11 signatures collected by the Respondent on February 2, 2000, as well as 14 of the 15 signatures collected thereafter, are valid. The Respondent has, therefore, met the 25-signature minimum

³ The Registrar of Voters’ preliminary determination indicated that, of the 4 challenges made to signatures contained on the Respondent’s nominating petition, only 1 of them -- that belonging to Catherine Miller -- was upheld, on the grounds that she was not a registered voter.

⁴ In the event that the notice of the vacancy had been published in the D.C. Register on January 28, 2000, the Board would have been required to make nominating petitions available by February 4, 2000. Because the actual publication date was February 2, 2000, the Board was required to make nominating petitions available by February 9, 2000.

requirement to fill the vacancy in ANC 2E06. See D.C. CODE § 1-257(d)(6)(C).⁵

III **Conclusion.**

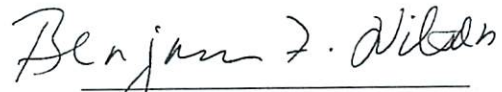
The Board finds that the Complainants have failed to offer any persuasive justification as to why it should not exercise its discretion to waive the formal error committed by the Respondent with respect to the filing of his nominating petition and the qualifying documents submitted in support thereof.

Accordingly, it is this 15th day of March, 2000,

ORDERED that the Respondent submit a new Declaration of Candidacy to the Board, and further;

ORDERED that the Respondent be appointed to the vacant ANC position in ANC 2E06 at the next regularly scheduled meeting for that ANC.

March 17, 2000



Benjamin F. Wilson

D.C. Board of Elections and Ethics

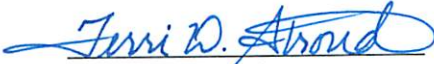
⁵ It should be noted that we do not have here a situation in which the Respondent was unfairly given an extended period of time in which to circulate and file his nominating petition. The Respondent was on notice that, because he picked up his nominating petition on January 31, 2000, his filing deadline was February 22, 2000. Moreover, the Respondent circulated and filed his petition all within an 8-day period. Nor do we have a situation where another candidate was unfairly limited to a circulation period which was shorter than that allowed the Respondent. In fact, no other candidate picked up qualifying documents for the purpose of attempting to fill the vacancy in ANC 2E06. If another candidate had picked up qualifying documents on or after February 2, 2000, their filing deadline would have been February 23, 2000.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing order was delivered by hand this 17th day of March, 2000 to the following parties:

William Starrels
1045 31st Street, NW
Apt. 502
Washington, DC 20007

Austin Graff
2905 N Street, NW
Washington, DC 20007


Terri D. Stroud