

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

Frank Zampatori

Challenger

v.

Ronald King

Candidate

Administrative Hearing
No. 00-010

Re: Resolution of Adverse
Determination of Eligibility

MEMORANDUM OPINION AND ORDER

I. **BACKGROUND.**

Mr. Ronald King seeks to be a candidate for the position of Ward 6 Member of the Democratic State Committee. Mr. King's candidacy is part of a four-person slate. On February 23, 2000, Ronald King reported to the Board of Elections and Ethics at approximately 4:30pm attempting to submit his nominating petitions and to sign the necessary election documents. Amidst the confusion that invariably accompanies the filing deadline at the Board, Mr. King was mistakenly under the impression that he in fact filled out his Declaration of Candidacy since he was administered an oath by a Board staff member as the provision requires. However, Mr. King's receipt of qualifying documents failed to verify that he submitted his declaration, and the declaration is not in the Board's records. Mr. King attributes his omission to the crowded conditions in the Office at the time, and a complete misunderstanding of exactly what he was required to submit.

On February 28, 2000, Ms. Kathryn Fairley—the registrar of voters—notified all the members of Mr. King's Slate of this adverse determination of eligibility. Notwithstanding her determination, Ms Fairley posted the nominating petition for public inspection during the challenge period. Mr. Frank Zampatori challenged the slate on the ground that Mr. King failed to file a Declaration of Candidacy. Ms. Fairley further informed slate members of their right to appeal the determination or request the Board waive any formal error, pursuant to District regulations §§ 603.1 and 1705.6(c) respectfully. The slate members requested a waiver of formal error pursuant to §1705.6(c).

On March 9, 2000, The Board convened to decide whether a waiver of formal error was merited in light of the circumstances. Mr. King, along with the other members of the Slate appeared pro se. The Board proceeded with the hearing pursuant to D.C. Mun. Regs. tit. 3 §403.1.

II. DISCUSSION

Pursuant to District of Columbia Municipal Regulation title 3 §601.5, “[e]ach candidate shall swear or affirm upon oath before a District notary or Board official that the information provided in the Declaration [of Candidacy] is true to the best of the candidate’s knowledge.” Mr. King failed to the Declaration.

The *Mosley v. Board of Elections of the District of Columbia*, 283 A.2d 210 (D.C. 1971) (per curiam) decision articulated a clear inquiry for the waiver of a “formal error” by the Board of Elections. *Mosley* is akin to the instant case because it concerns a candidate that also submitted their nominating petition with formal errors. Specifically, the Board found that certain of the candidate’s forms omitted the initiation date, which was required to comply with the Board’s regulations at the time, *Mosley* at 210. The court identified the procedural flaw in the petition and ascertained the purpose of the corresponding regulation in an effort to glean the nature of the flaw. The court found that this provision was designed to prevent any candidate from having an unfair advantage in the solicitation of signatures, *Id.* at 211. The court went on to find that “[s]ince the Board found that it did not distribute the forms to potential candidates until after it was legally permissible to obtain signatures, it concluded that the omission of the dates constituted merely a ‘formal error.’” The Court concluded its inquiry with an applicable standard for waiver: “no assertion that the nominating process was obstructed or polluted in any way, nor that substantive harm to any other candidate flowed from the [formal error].” *Id.* at 211

In the instant case, the Board of Elections and Ethics conducted the “formal error” procedure articulated by the District of Columbia Court of Appeals and now codified at D.C. Mun. Regs. tit. 3 §1705.6(c). Specifically, §1705.6(c) grants the Board discretion to waive any formal error. First and foremost the Board was concerned with the underlying purpose of the Declaration of Candidacy. The Board’s General Counsel explained that the aim of the provision is to ensure the electorate is presented with the nominating petition of people who have evinced the intent to become a candidate. Clearly, Mr. King and his fellow slate members have evinced an intent to be candidates as evidenced by their good faith effort to submit the documents by the 5:00pm deadline on February 23, 2000. Even further, Mr. King has complied with all other procedural matters relating to his candidacy much like the candidate in *Mosley*.

The aforementioned standard for waiver articulated by *Mosley*, when applied to Mr. King’s scenario, suggests a waiver in the instant case is appropriate. The *Mosley* standard concentrates on the effect of the error with respect to the integrity of the nominating process as a whole, placing particular emphasis on substantive harm to any other candidate. In this case, the nominating process has been preserved because Mr. King in fact wants to be a candidate—thereby preserving the aim of the omitted prerequisite. Although Mr. King’s candidacy was challenged by Mr. Zampatori, the omission was relatively minor when considering the slate obtained the requisite number of signatures for ballot access. When faced with the Hobson’s choice of either disqualifying the entire four-member slate for the ministerial failing of one, or waiving the formal error of Mr. King, the Board has reluctantly selected to waive the error.

However, the Board formally admonishes Mr. King for his lack of proper attention to his receipt of qualifying documents, which would have alerted him of his omission.

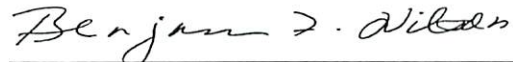
The Board expressed disdain for Mr. King's lack of due diligence in his efforts to comply with its regulation—coupled with a concern such a waiver would theoretically establish an unwelcome precedent or perception that the Board is willing to overlook infractions of its regulations. The Board's reluctance to waive is deeply rooted in the command of the *Mosley* decision requiring the Board exercise close supervision over the nominating and electoral process to ensure that its regulations are met. *Mosley* at 211. Additionally, since a registered voter challenged the King candidacy, the Board finds itself hard pressed to resolve the issue while satisfying both parties. However, the Board, in performing the *Mosley* inquiry, concluded a mere technical error that did not affect the process or other candidates did not require a result as harsh as exclusion for the entire slate.

III. CONCLUSION

Accordingly, the Board, having granted the respondent's request for a waiver of formal error pursuant to D.C. Mun. Regs. tit. 3 §1705.6(c) and necessarily denying Mr. Zampatori's challenge to this candidacy, it is hereby

ORDERED, that Mr. King and the remaining members of the Slate be granted ballot access to the May 2, 2000 Presidential Preference Primary Election.

March 17, 2000



Benjamin F. Wilson, Chairman
D.C. Board of Elections & Ethics

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Order was mailed via first class mail this 17 day of March, 2000 to: Charles Burger, 405 6th Street NE 20003; Julie Jones, 225 9th Street NE 20002; Ronald King, 2330 Good Hope Road, SE 20020; Sheila White, 517 K Street NE 20002.



Rudolph McGann Jr.
Law Clerk
D.C. Board of Elections & Ethics.