

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

In Re: Petition to Recall Marion Barry, D.C. Council Member, Eighth Ward.
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Administrative Hearing  
No. 08-001

Re: Rejection of Petition to  
Recall Marion Barry D.C.  
Councilmember Ward Eight.

**MEMORANDUM OPINION AND ORDER**

This matter came before the District of Columbia Board of Elections and Ethics (“Board”) pursuant to D.C. CODE § 1-1001.17(k)(2) on Friday, January 11, 2008, and involved the rejection of a Petition to Recall Marion Barry, District of Columbia Council Member, Eighth Ward. The proposer of the recall measure, Mr. W. Cardell Shelton, appeared *pro se*, and Councilmember Barry did not make an appearance. Pursuant to D.C. MUN. REGS. tit. 3 § 403.4 (1998), the Board proceeded *ex parte*. Board Chairman Charles R. Lowery, Jr., Esq. and Board Member Dr. Lenora Cole presided over the hearing.

A Notice of Intention to Recall Council Member Barry was filed on Monday, December 31, 2007 by Mr. Shelton, a registered voter residing in the District of Columbia. Councilmember Barry did not avail himself of the opportunity to file with the Board a response to Mr. Shelton’s statement pursuant to D.C. CODE § 1-1001.17 (d)(2).

The Acting Registrar of Voters, Sylvia Goldsberry-Adams prepared and provided the Board an original petition form for the proposer to formally adopt as his own pursuant to D.C. CODE § 1-1001.17(e). However, the District of Columbia Office of Campaign Finance (“OCF”) informed the Board that Mr. Shelton had failed to file with OCF the

financial disclosure statement required by D.C. CODE § 1-1001.17(i)(1), which provides that:

“Upon the submission of a recall petition by the proposer to the Board, the Board shall refuse to accept the petition upon any of the following grounds: (1) Except in the case of a recall petition for an Advisory Neighborhood Commissioner, the financial disclosure statement of the proposer has not been filed pursuant to §§ 1-1102.04 and 1-1102.06.”<sup>1</sup>

Each proposer must file with the Director of the Office of Campaign Finance a verified statement of contributions within ten (10) days after its organization, pursuant to D.C. CODE §§ 1-1101.01(5),<sup>2</sup> 1-1102.04(a),<sup>3</sup> 1-1102.06(d),<sup>4</sup> and 3 D.C. Mun. Regs. tit.

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<sup>1</sup> See also D.C. MUN. REGS tit. 3 § 1100.11 that provides:

“For the purposes of this chapter, the term “financial disclosure statement,” in accordance with D.C. CODE §[1-1001.17(i)(1) (2006 Repl. Vol.)], shall consist of the following:

- (a) The statement of organization, under D.C. CODE §1-[1102.04 (2006 Repl. Vol.)]; and
- (b) The report(s) of receipts and expenditures, under D.C. CODE §1-[1-1102.06 (2006 Repl. Vol.)].”

<sup>2</sup> D.C. CODE § 1-1101.01(5) states:

“The term ‘political committee’ means any proposer, individual, committee (including a principal campaign committee), club, association, organization, or other group of individuals organized for the purpose of, or engaged in: promoting or opposing a political party, promoting or opposing the nomination or election of an individual to office, or promoting or opposing any initiative, referendum, or recall.”

<sup>3</sup> D.C. CODE § 1102.04(a) states in relevant part:

“Each political committee shall file with the Director a statement of organization within 10 days after its organization.”

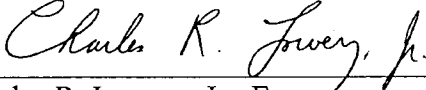
<sup>4</sup> D.C. CODE § 1102.06(d) states:

“In the case of reports filed by a committee or committees on behalf of initiative, referendum, or recall measures under this section, such reports shall be filed on such dates as the Board may by rule prescribe, but in no event, shall more than 4 separate reports be required during the consideration of a particular initiative, referendum, or recall measure by any political committee or committees collecting signatures, or supporting or opposing such measures.”

3 § 1110.10.<sup>5</sup> In the instant case, Mr. Shelton filed his Notice of Intent to Recall with the Board on December 31, 2007. However, Mr. Shelton failed to file the requisite financial disclosure statement by Thursday, January 10 2008.<sup>6</sup> Therefore, the Board must reject Mr. Shelton's petition to recall Councilmember Barry.

Accordingly, it is hereby **ORDERED** that the Board rejects the petition to recall Council Member Barry<sup>7</sup> because Mr. Shelton failed to file the financial disclosure statement required by D.C. CODE § 1-1001.17(i)(1).

January 24, 2008  
Date

  
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Charles R. Lowery, Jr., Esq.  
Chairman Board of Elections & Ethics

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<sup>5</sup> D.C. MUN. REGS tit. 3 § 1100.10 provides:

“The proposer of a recall measure for any elected officer, other than a member of an Advisory Neighborhood Commission, shall file a financial disclosure statement with the Office of Campaign Finance prior to the submission of a petition supporting the measure for filing.”

<sup>6</sup> Although the D.C. Code and regulations contemplate rejection of a recall measure upon submission of a petition supporting the measure for filing, the proposer cannot, at this time, cure the defect in the petition because more than ten days have lapsed since the organization of the political committee supporting the recall effort.

<sup>7</sup> D.C. CODE § 1-1001.17(j)(1) provides:

“If the Board refuses to accept the recall petition when submitted to it, the proposer submitting such petition to the Board may appeal, within 10 days after the Board's refusal, to the Superior Court of the District of Columbia for a writ in the nature of mandamus to compel the Board to accept such recall petition. The Superior Court of the District of Columbia shall expedite the consideration of the matter. If the Superior Court of the District of Columbia determines that the petition is legal in form and apparently meets the requirements established under this section, it shall issue an order requiring the Board to accept the petition as of the date of submission.”

**CERTIFICATE OF SERVICE**

I hereby certify that a copies of the foregoing order were hand-delivered on Thursday, January 24, 2008 to W. Cardell Shelton, 115 Upsal Street, S.E. Washington D.C. 20032 and Hon. Marion Barry, Councilmember, Ward Eight 1350 Pennsylvania Ave., NW, Suite 400 Washington D.C. 20004.

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