

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

In the matter of)	
Tommy Herbert, Circulator)	Administrative
)	Order #25-005

MEMORANDUM OPINION AND ORDER

Introduction

This matter came before the District of Columbia Board of Elections (“the Board”) at a hearing convened on March 3, 2025. It is an enforcement proceeding with respect to fraudulently entered signatures on a nominating petition submitted by Kevin Rapp (“the Candidate”) in support of his candidacy for the office of At-large Member of the Council in the November 5, 2024 General Election (“the General Election”). The signatures at issue were entered by Tommy Herbert, one of the Candidate’s circulators. Chairman Gary Thompson and Board member Karyn Greenfield presided over the hearing. The Board’s General Counsel was also present.

Background

On August 7, 2024, the Candidate submitted a nominating petition to appear on the ballot in the contest for the office of At-large Councilmember (“the Petition”). After the Petition was accepted by the Board’s staff and posted as required by law, a D.C. voter submitted a timely challenge to the Petition’s signatures. In a cover sheet accompanying his itemized petition challenge, this challenger identified alleged forged signatures. Notably, the challenger claimed that four of sixteen sheets circulated by Mr. Herbert contained forgeries.

As a circulator, Mr. Herbert had executed a standard affidavit at the bottom of each Petition sheet that he circulated whereby he swore that he “personally witnessed the signing of each signature” on the Petition. This attestation appeared under instructions that provide: “As the

circulator of this petition sheet, you must personally witness the signing of each signature that appears on this petition.”

Following resolution of the challenge and the conclusion of the 2024 election cycle, the Board’s Office of General Counsel (“OGC”) launched an investigation into the alleged forgeries. The enforcement proceeding was based on the violations of law suggested by the suspect signatures. Mr. Rapp and Mr. Herbert appeared at a pre-hearing before OGC.¹ During the pre-hearing conference, Mr. Rapp explained that he had engaged Mr. Herbert to collect signatures and paid him a nominal amount for each signature and/or petition sheet that Mr. Herbert turned in. He explained that he had instructed Mr. Herbert on how to properly gather signatures. He also stated that with the press of time to file his petition, he did not notice that four sheets submitted by Herbert were suspect. Mr. Herbert corroborated Mr. Rapp’s statements. When the OGC attorney presiding over the pre-hearing conference asked Mr. Herbert about the suspect signatures and noted that Mr. Herbert’s handwritten signature in the circulator section of those sheets was similar to the suspect signatures, Mr. Herbert indicated that the individuals who he had approached had actually signed the petition. Subsequently, however, when the OGC attorney explained that the matter might be resolved through a stipulated agreement, Herbert acknowledged that he was responsible for the sheets and expressed regret that his actions might have caused trouble for Mr. Rapp. While OGC offered Mr. Herbert a stipulated agreement, he did not respond to that offer.

Following the conclusion of OGC’s investigation, this matter was set for the Board’s March 3, 2025 meeting. Mr. Herbert was notified of the Board hearing through an email address

¹ At pre-hearing conferences, OGC routinely advises individuals under investigation of their right to counsel and against self-incrimination and that was done in this case.

that he had agreed, during the pre-hearing conference, to use for purposes of communicating the matter. He did not, however, appear.²

At the Board hearing, the OGC attorney assigned to the matter briefed the Board on the facts and the statements offered at the pre-hearing conference. After hearing from the OGC attorney, the Board's Chair asked the General Counsel for her recommendation. The General Counsel recommended that a \$150.00 civil fine be imposed on Mr. Herbert. The Board Chair moved that the General Counsel's recommendation be adopted and that motion was seconded and passed unanimously.

Discussion

The law requires circulators to witness signers entering their signatures on petitions and it imposes serious criminal sanctions for failing to do so. *See* D.C. Official Code §1-1001.08(b)(3) (requiring that petition circulators “[p]ersonally witness[] each person sign the petition”); D.C. Official Code § 22-2405(b) (prohibiting willfully making false statements to D.C. government entities). In addition, we are authorized, upon the recommendation of the General Counsel, to impose civil penalties of up to \$2,000 for each violation of the election laws. D.C. Official Code §1-1001.18(a)-(b).

The record establishes that Mr. Herbert violated these provisions. The four sheets at issue contained clear evidence, even from a lay perspective, of signatures written in the same hand and in a hand that was similar to Mr. Herbert's. During the pre-hearing conference Mr. Herbert offered no plausible explanation for evidence of forgery and, rather, implicated himself by expressing regret that his actions were detrimental to Candidate Rapp. That said, it does not appear that there was any malicious or nefarious intent here. Mr. Herbert obtained no substantial financial gain and

² The Board may proceed in the absence of a party. 3 DCMR § 403.4.

seems to have intended to support Candidate Rapp without fully appreciating the consequences of his actions.

Conclusion

In light of the General Counsel’s recommendation and the record in this matter, it is hereby:

ORDERED that the recommendation of the General Counsel is **ACCEPTED**, and that Mr. Herbert is directed to pay a civil fine of \$150.00 by no later than April 30, 2025.³

Date: March 7, 2025



Gary Thompson
Chairman
Board of Elections

³ **Payment must be made by check or money order made out to the “D.C. Treasurer.”** It may be mailed to the attention of the General Counsel at the Board’s offices (1015 Half Street, Suite 750, S.E., Washington, D.C. 20003) or hand delivered at that address.