

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

Antonio Montes,

Complainant,

v.

Cleve Mesidor,
Respondent.

Administrative Hearing
No. 07-003

Re: Challenge to Nominating
Petition of Cleve Mesidor,
Candidate for Ward 7 Member
of the D.C. Council

MEMORANDUM OPINION AND ORDER

Introduction

This matter came before the Board of Elections and Ethics on March 16 and 20, 2007. It is a challenge to Cleve Mesidor's Nominating Petition filed by Antonio Montes pursuant to D.C. CODE § 1-1001.08(o)(1) (2006). Chairman Wilma A. Lewis and Board member Dr. Lenora Cole presided over the initial hearing on March 16, 2007. The hearing was continued until March 20, 2007, to permit fair opportunity for the parties to respond to an amended report from the Registrar of Voters ("Registrar") resulting from an oversight brought to her attention at the initial hearing. On March 20, 2007, the full Board reconvened with Chairman Wilma A. Lewis and Board members Dr. Lenora Cole and Charles R. Lowery, Jr. presiding over the hearing. The Complainant, Antonio Montes ("Montes"), was represented by counsel, and the Respondent, Cleve Mesidor ("Mesidor"), appeared *pro se*.

Background

On February 21, 2007, Mesidor, a qualified elector, submitted a Nominating Petition for the office of Ward Seven Member of the District of Columbia Council.

Mesidor's nominating petition contained 753 signatures.¹ On February 24, 2007, the petition was posted for inspection, pursuant to D.C. CODE § 1-1001.08(o)(1), for a 10-day challenge period.²

On March 5, 2007, Montes filed a challenge to the petition in which he challenged 283 of the 753 signatures, alleging that: 1) Signers of the petition were not registered to vote; 2) Signers of the petition were not registered to vote at the address listed on the petition; 3) Signers of the petition were not registered to vote in Ward 7; 4) Signatures and printed names appearing on the petition sheets were illegible; 5) Signers of the petition were not registered under the same name, or the names on the petition sheet were inconsistent with records in the District of Columbia Voter Registry; and 6) Signers of the petition did not list their full address.

The Registrar initially rejected three petition sheets containing 59 signatures³ because the original signatures on the Circulator's Affidavits were deleted with white-out and replaced with Mesidor's signature. This action left Mesidor with 694 signatures remaining on her petition. Because 18 of the 283 challenges filed by Montes were to

¹ At the March 16, 2007 hearing, the Registrar of Voters erroneously reported that the petition contained 759 signatures. A subsequent verification of the number of signatures by the Registrar, in conjunction with the Office of the General Counsel, revealed that 753 signatures were submitted. The correction was reported at the beginning of the hearing on March 20, 2007.

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.

³ At the hearing on March 16, 2007, the Registrar erroneously reported that there were 60 signatures on the three petition sheets at issue rather than 59 signatures. The correction was reported at the beginning of the March 20, 2007 hearing.

signatures contained on the three excluded petition sheets, the Registrar considered the remaining 265 challenged signatures in making her preliminary determination of sufficiency. The Registrar rejected 190 of the 265 remaining challenged signatures, which left Mesidor with 504 signatures.

During the initial hearing on March 16, 2007, the Registrar indicated that Mesidor would be given credit for four additional signatures of individuals who had filed change of address forms with the Board during the first 10 days of the period designated for resolving challenges to the petition pursuant to D.C. CODE § 1-1001.08(o)(3)(B) (2006). Accordingly, the Registrar raised the number of valid signatures to 508. However, Montes, by and through his counsel, asserted that a fourth petition sheet had alterations on the Circulator's Affidavit similar to the three that had been rejected by the Registrar, and inquired why the Registrar did not reject that sheet as well. The Registrar acknowledged the oversight and concurred that the fourth petition sheet should also be rejected for the same reason. In light of this development, the Board continued the hearing until March 20, 2007, to allow the Registrar to amend her original determination, and to provide the parties with fair opportunity to respond to the Registrar's amended findings.

On March 20, 2007, the Board reconvened to make a determination of the validity of the challenged nominating petition. The Registrar amended her findings by excluding the 16 signatures on the additional page on which the circulator's signature was deleted with white-out and replaced with a new signature. This action lowered Mesidor's total

number of presumptively valid signatures to 492 -- eight below the requisite number for ballot access.⁴

During the hearing, the parties raised numerous challenges to the Registrar's revised findings. Specifically, Mesidor challenged the Registrar's rejection of the 75 presumptively valid signatures on the four altered petition sheets, asserting that Montes did not specify that particular defect in his challenge to the nominating petition. Additionally, Mesidor challenged the Registrar's determinations with respect to individual signatures: Clarice Boyd, Tijuana Cain Parker, Mr. Mrs. Raspberry, Mrs. Lee,⁵ Sean Hamm, Sonia Simmons, Shanita Brown, Gilbert Brown, J.E. Warren, Yolanda Deloatch, and Carolyn Lyon. Mesidor asserted that she was able to find these signatories on the voting roll notwithstanding the alleged non-registration or the alleged illegibility of the signatures on the nominating petition.

For his part, Montes disputed the Registrar's rejection of his challenge to the signatures of four individuals that he alleged were either not registered pursuant to D.C. MUN. REGS. tit. 3 § 1607.5(c) (2007) or not registered to vote in the ward from which the candidate seeks election pursuant to D.C. MUN. REGS. tit. 3 § 1607.5(f) (2007).⁶ Montes further challenged the Registrar's determinations with respect to four additional individual signatures: Dawn Gaither, Leona Kinard, Regina M. Mosley, and Vincent Brown.

⁴ D.C. CODE § 1-1001.08(j)(1)(B) (2006) states in relevant part: "In the case of a person who is a candidate for the office of member of the Council[, the nominating petition must be] signed by 500 voters who are duly registered . . . in the ward from which the respondent seeks election."

⁵ During the hearing, Mesidor withdrew her challenge to the Registrar's determination to reject this signature.

⁶ During the hearing, Montes withdrew his challenge with respect to these four individuals.

The Board first addressed the four altered petition sheets that were rejected by the Registrar. The Board then proceeded to determine the validity of each individual signature challenged by the parties. Each party was given an opportunity to provide argument in support of their respective positions. After careful deliberation, the Board determined that the four altered petition sheets should be rejected; the challenges to Dawn Gaither, Leona Kinard, Regina M. Mosley, Vincent Brown, Clarice Boyd, Tijuana Cain Parker, Sonia Simmons, Shanita Brown, Gilbert Brown, Yolanda Deloatch and Carolyn Lyon should be rejected; and the challenges to Mr. Mrs. Raspberry and J.E. Warren should be upheld. This left Mesidor with 500 signatures – the requisite number for ballot access.

Analysis

The Four Altered Circulator Affidavits

The Board traditionally has interpreted its legal responsibility under D.C. CODE § 1-1001.08(o) as authorizing it to address only the alleged defects in an otherwise presumptively valid nominating petition that are timely challenged in a complaint by a registered qualified elector. *See Crawford v. Board of Elections for the District of Columbia*, 325 A.2d 451 (D.C. 1974). While the Board continues to adhere to this general principle, it believes that, in the context of a timely challenge by a complainant, the general principle does not preclude the Board from addressing, *sua sponte*, clear defects on the face of a petition, of which it becomes aware, that go to the heart of the electoral process.⁷ This case presents such a circumstance.

⁷ *See, e.g., Crawford v. Board of Elections*, 325 A.2d at 452 (application of general rule presumes “a nominating petition which on its face satisfies the requirements of [§ 1-1001.08(i)(1)] and which is duly signed and certified by each person circulating the petition”

The integrity of the circulator process depends upon the validity of the Circulator Affidavit. “A genuine and complete affidavit . . . undergirds the presumptive validity of voter signatures on a petition.” *Williams v. District of Columbia Board of Elections and Ethics*, 804 A.2d 316, 319 (D.C. 2002). In the instant case, however, four petition sheets were rejected by the Registrar because the original signatures of the circulators were deleted with white-out and replaced with another signature – that of Mesidor. The presumptive validity of the signatures was thus necessarily called into question by the alteration of the Circulator Affidavits.

Mesidor relied principally on her own testimony to explain the irregularity in the signing of the four petition sheets in question. She testified that in reviewing the petition sheets prior to submission to the Board, she determined that she had circulated more petition sheets than those that were in her group of sheets. Thus, she reviewed the petition sheets signed by other circulators and determined -- by looking at the dates on which the signatories had signed these four sheets -- that she had, in fact, circulated those petition sheets.⁸ She then back-dated her signature on the Circulator’s Affidavits of the four petition sheets in question to correspond with the dates on which the signatories had signed the petition sheets, and her alleged circulation of the petition sheets.

Mesidor identified three individuals – Angelica Adams, Michael Warren, and Crystal Cook – as the individuals who allegedly had inadvertently signed the four petition sheets she had circulated. She further testified that Angelica Adams was her intern, and that Ms. Adams had circulated petition sheets that were ultimately excluded from the

⁸ Mesidor specifically denied that it was by recognizing the names that appeared on the petition sheets that she was able to identify these additional sheets as circulated by her.

submission to the Board upon Mesidor's discovery that Ms. Adams was not a registered qualified elector of the District of Columbia, and thus not qualified under the law to circulate petitions. *See* D.C. CODE § 1-1001.08(b)(2) (2006).

Mesidor offered no corroborating testimony or other evidence upon which the Board could properly place any weight to support her contention that the whited-out and substituted signatures reflected acceptable corrections to the Circulator Affidavits.⁹ The absence of corroborating evidence was compounded by the fact that, upon close examination of the original petition sheets, the Board determined that the whited-out signature on *each of the four petition sheets* was that of Angelica Adams – the individual identified by Mesidor as ineligible by law to serve as a circulator. In the Board's view, this fact -- which was both inconsistent with Mesidor's testimony and troubling in light of Ms. Adams' ineligibility to serve as a circulator -- rendered the absence of corroborating evidence fatal. Accordingly, the Board determined that the four petition sheets containing the altered Circulator Affidavits should be rejected.

MONTES CHALLENGES

Montes challenged Dawn Gaither's signature (Sheet 5, Line 8) because the signatory provided the wrong quadrant for her street address (NW instead of NE). The Registrar denied the challenge because the individual is registered to vote in Ward 7 at the address given, except for the quadrant, and the signature in the voter registry appeared to match the signature on the petition. Upon review, the Board agreed and upheld the Registrar's determination to reject the challenge.

⁹ Of the 79 total signatories on the four petition sheets, Mesidor presented a single, unsworn statement signed by an individual who claimed that she signed a petition sheet circulated by Mesidor. No weight was

Montes challenged Leona Kinard's signature (Sheet 8, Line 10) because the person registered in Ward 7 at the given address was Leona Hensen. The Board examined the signature and found that, although the surname was different, the signature of the first name on the petition sheet appeared to match that in the voter registry, with the distinctiveness of the "L" in Leona being significant.¹⁰ Accordingly, the Board upheld the Registrar's determination to reject the challenge.

Montes challenged Regina M. Mosley's signature (Sheet 10, Line 14) because the voter roll indicated that her name was deleted. The Registrar explained that this was a duplicate registration for Regina M. Mosely and that she was, in fact, still validly registered in Ward 7. The Registrar presented both the old and the current registration cards to the Board and to the parties for review. The status of Regina M. Mosely under registration number 000087525 indicated "deleted," while under registration number AB0142584, the status indicated "active." The latter confirmed the active status of Ms. Mosley's registration. Accordingly, the Board upheld the Registrar's determination to reject the challenge.

Montes challenged Vincent Brown's signature (Sheet 14, Line 16) because he found it to be illegible. The Registrar denied the challenge because both the printed name and signature are clearly legible. During the hearing, Montes stated that he inadvertently noted the wrong signature line in his challenge, and that he intended to challenge line 17

given to this statement by the Board under the circumstances here in evaluating the evidence proffered by Mesidor in support of her justification for the four altered Circulator Affidavits.

¹⁰ The Board, of course, does not condone or seek to encourage registered voters to neglect their obligation to update their voter records with change of name information. To the contrary, it is the voter's responsibility to provide such updates. In the instant context, however, the Board determined that, in the interests of seeking to avoid the disenfranchisement of voters – especially given the signature match of the first name -- the challenge should be rejected.

rather than line 16. D.C. CODE § 1-1001.08(o)(1) requires that all challenges must concisely specify the alleged defects in the petition and be filed within a designated ten-day period. Because Montes failed to do so with respect to the claimed “intended challenge,” the Board upheld the Registrar’s determination to reject the challenge.

MESIDOR CHALLENGES

Mesidor challenged the Registrar’s rejection of Clarice Boyd’s signature (Sheet 1, Line 17) as not registered. This individual printed the name Robin Boyd but signed as Clarice Boyd. The voter registry indicates that there is a Clarice M. Boyd registered in Ward 7. The Board examined the signature and found that it appeared to match the signature on Ms. Boyd’s voter registration card. Accordingly, the Board denied the Registrar’s determination and counted the signature as valid for the purpose of ballot access.

Mesidor challenged the Registrar’s rejection of Tijuana Cain Parker’s signature (Sheet 10, Line 20) as not registered. The Registrar originally upheld this challenge because Montes had indicated in his challenge that the first name on the petition was Tyrone instead of Tijuana. Mesidor asserted that the first name was Tijuana. There is, in fact, a Tijuana Cain Parker registered at the address given whose signature appeared to match the one on the petition. Accordingly, the Board denied the Registrar’s determination and counted the signature as valid for the purpose of ballot access.

Mesidor challenged the Registrar’s rejection of a signature for “Mr. Mrs. Raspberry” (Sheet 12, Line 2). The Registrar originally upheld this challenge because it appears that someone attempted to sign for more than one party on one signature line. Mesidor asserted that she should get at least one signature counted towards ballot access.

The Registrar noted that four individuals with the Raspberry surname are registered at the given address: Derrin Reynold, Emma Jean, Leslie Romaine, and Joseph Ray. Additionally, the Board noted the signatory appeared to have signed as “J. Raspberry,” and the signature for Joseph R. Raspberry in the voter registry did not appear to match. Consequently, the Board could not verify, based on the signature alone, who actually signed the petition. Accordingly, the Board upheld the Registrar’s determination and excluded the signature for the purpose of ballot access.

Mesidor challenged the Registrar’s rejection of Sean Hamm’s signature (Sheet 12, Line 16) as not registered. The Registrar originally upheld this challenge because Montes had indicated in his challenge that the last name on the petition was Harmon instead of Hamm. Mesidor asserted that the last name was Hamm, and there is a Sean Hamm registered at the address given whose signature on the voter registry appeared to match the one on the petition. In response to this information, Montes conceded the challenge. Accordingly, the Board denied the Registrar’s determination and counted the signature as valid for the purpose of ballot access.

Mesidor challenged the Registrar’s rejection of Sonia Simmons’ signature (Sheet 17, Line 1) as not registered. The Registrar originally upheld this challenge, but she subsequently found the individual registered under the name of Sonia Powell-Simmons. The signatures on both the voter registry and nominating petition were signed as “Sonia R Simmons,” and appeared to match. Accordingly, the Board denied the Registrar’s determination and counted the signature as valid for the purpose of ballot access.

Mesidor challenged the Registrar’s rejection of Shanita Brown’s signature (Sheet 19, Line 8) as illegible. Mesidor asserted that the name was Shanita Brown, and there is

a Shanita Brown registered at the address given. Although the signatory signed the nominating petition "S. Brown," the signature appeared to match the corresponding portion of the signature in the voter registry. Accordingly, the Board denied the Registrar's determination and counted the signature as valid for the purpose of ballot access.

Mesidor challenged the Registrar's rejection of Gil Brown's signature (Sheet 22, Line 11) as illegible. Mesidor asserted that the signatory was Gilbert Brown. There is a Gilbert Brown registered at the address given whose signature appeared to match the corresponding portion of the signature in the voter registry. Accordingly, the Board denied the Registrar's determination and counted the signature as valid for the purpose of ballot access.

Mesidor challenged the Registrar's rejection of J.E. Warren's signature (Sheet 24, Line 6) as not matching the address on the voter registry. Mesidor asserted that the first name was Alice, but the Registrar believed the signature was for a J.E. who is not registered at the address on the petition. Upon examination, the Board concluded that the signature appeared to be J.E. Warren rather than Alice Warren. Accordingly, the Board upheld the Registrar's determination and excluded the signature for the purpose of ballot access.

Mesidor challenged the Registrar's rejection of Yolanda Deloatch's signature (Sheet 24, Line 8) as illegible. Mesidor asserted that the name was Yolanda Deloatch, and there is a Yolanda Deloatch registered at the address given. The signature in the voter registry appeared to match the signature on the nominating petition. Accordingly, the

Board denied the Registrar's determination and counted the signature as valid for the purpose of ballot access.

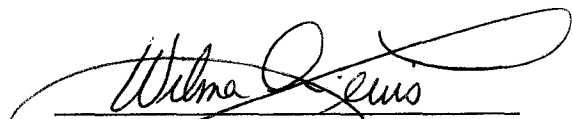
Mesidor challenged the Registrar's rejection of Carolyn Lyon's signature (Sheet 26, Line 5) as illegible. Mesidor asserted that the name was Carolyn Lyon, and there is a Carolyn Lyon registered at the address given whose signature on the voter registry, appeared to match the one on the petition. Additionally, the Board noted that Carolyn Lyon is the only person residing at that address who is registered to vote. Accordingly, the Board denied the Registrar's determination and counted the signature as valid for the purpose of ballot access.

In sum, the Board determined that Mesidor should be credited with eight additional signatures for the purpose of ballot access: Clarice Boyd, Tijuana Cain Parker, Sean Hamm, Sonia Simmons, Shanita Brown, Gilbert Brown, Yolanda Deloatch, and Carolyn Lyon. These eight signatures plus the 492 signatures with which the Registrar credited Mesidor totals 500 signatures -- the requisite number of signatures needed for ballot access.

Based on the Board's findings and conclusions, it is hereby:

ORDERED that Ms. Cleve Mesidor be **GRANTED** ballot access in the Special Election to fill the vacancy in the office of Ward 7 Member of the District of Columbia Council in recognition of the fact that she has garnered 500 signatures of voters who are duly registered to vote pursuant to D.C. CODE § 1-1001.08(j)(1)(B) (2006).

March 28, 2007



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