DISTRICT OF COLUMBIA
BOARD OF ELECTIONS AND ETHICS

Mary Williams, Complainant, v. Sidney McMahan, Respondent.	Administrative Hearing No. 06-005 On Appeal to the Full Board Re: Challenge to Petition to Recall Mary Williams

MEMORANDUM OPINION AND ORDER

Introduction

This matter came before the Board of Elections and Ethics on September 26, 2006, and October 4, 2006. It is an appeal filed pursuant to D.C. CODE § 1-1001.05(g) of a decision rendered by a one-member panel of the Board on August 9, 2006, that was subsequently memorialized in Order No. 06-004 on August 14, 2006. Board member Charles R. Lowery, Jr. presided over the initial hearing and rendered the decision. In the instant appeal to the full Board, Chairman Wilma A. Lewis and Board members Dr. Lenora Cole and Charles R. Lowery, Jr. presided over the hearing, at which the Complainant Mary Williams ("Williams") appeared *pro se*, and the Respondent Sidney McMahan ("McMahan") was represented by counsel.

McMahan requested that Board member Dr. Cole recuse herself based on his allegation that certain statements made by Dr. Cole reflected personal bias or prejudice toward him.[1] Dr. Cole declined to recuse herself on the grounds that she has no bias

[1] At a prior hearing on July 31, 2006, regarding a challenge by Williams to the residency of McMahan, Dr. Cole admonished Williams and counsel for McMahan to conduct themselves with respect

towards McMahan; that she could impartially render a decision in this matter; and that her impartiality could not "reasonably be questioned." Cannon 3(c)(1), Code of Judicial Conduct; *Morrison v. D.C. Board of Zoning Adjustment*, 422 A.2d 347 (D.C. 1980). Thus, all three Board members participated in the deliberation of this matter.[2]

Background

A Notice of Intention to Recall Mary Williams, Advisory Neighborhood Commissioner for Single Member District 6D03 was filed with the Board on May 4, 2006 by Sidney McMahan, a registered voter residing in Advisory Neighborhood Commission Single Member District 6D03. Williams filed a response to McMahan's statement on May 15, 2006. Pursuant to D.C. CODE § 1-1001.17(e), the Board prepared and provided to McMahan an original double-sided petition form that he adopted as his own at a special Board meeting on May 17, 2006.[3]

On July 14, 2006, McMahan submitted a petition in support of the recall of Williams which contained eleven petition sheets. Ten of the eleven petition sheets consisted of two separate pages stapled together[4] and the remaining petition sheet was a

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for each other and in a civil and professional manner. At the hearing on September 26, 2006, counsel for McMahan alleged disparate treatment by Dr. Cole in her admonishment to the parties. Dr. Cole questioned his remarks and spoke to the Board's integrity. She also indicated that she would be reviewing the transcript from the earlier hearing. McMahan used those remarks as the basis for requesting that Dr. Cole recuse herself. McMahan initially submitted his request to the Board by letter, but at the hearing on October 4, 2006, he withdrew the letter to correct typographical errors. McMahan never submitted a revised or corrected letter to the Board. In any event, the Board addresses McMahan's request.

[2] Dr. Cole was absent for approximately two hours of the hearing on October 4, 2006. However, she reviewed the transcript of the portion of the proceedings that transpired during her absence.

[3] At that same meeting, McMahan was informed, pursuant to D.C. CODE § 1-1001.17(g), that the deadline for submitting signatures in support of the recall would be July 14, 2006. McMahan was also provided the numerical signature requirement for the recall – 109 signatures of registered voters residing in Single Member District 6D03 – which was based, pursuant to D.C. CODE §1-1001.17(h)(3), on the Board's official count as of April 30, 2006.

[4] In other words, ten of the petition sheets were unlike the form approved by the Board and adopted by McMahan, which consisted of a single sheet of paper – double-sided – with the grounds for the recall,

single, double-sided sheet.[5] The Board's Registrar of Voters accepted the petition submitted by McMahan.

The Board posted the recall petition for the mandatory ten-day challenge period pursuant to D.C. CODE § 1-1001.17(k)(2). Although the original petition sheets submitted by McMahan were available for public inspection upon request during the challenge period, the copies of the petition sheets that were posted for public inspection or provided to the public for use in possible challenges were copied by Board staff as double-sided copies.

On July 25, 2006, Williams filed a challenge to the recall petition in which she challenged 53 of the 150 signatures, alleging that: 1) Signers of the petition were not registered to vote at the address listed on the petition; 2) Signers of the petition were not registered to vote in Single Member District 6D03; and 3) Signatures and printed names appearing on the petition sheets were illegible. In addition, Williams alleged that certain petition sheets should be deemed invalid because the circulators "deliberately concealed the purpose and response statement from those asked to sign the petition." Mary C. Williams' "Challenges to Recall Signatures" (filed July 25, 2006) at 1. [6]

The Registrar of Voters reviewed the challenges and determined that 27 of the 53 challenges made to individual signatures were valid and 26 were invalid, leaving the

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Williams' response and five lines for signatures on the front side, and fifteen lines for signatures and the circulator's declaration on the back side. Instead, the ten petition sheets consisted of two separate sheets of paper stapled together with the aforementioned information printed on one side of each of the separate sheets.

[5] The eleventh petition sheet was in the form approved by the Board and adopted by McMahan.

[6] At the subsequent hearing on August 9, 2006, Williams submitted unsworn written statements from signatories asserting that they were misled with respect to the subject matter of the recall and wished to have their names removed from the petition.

petition with 123 signatures. Following a hearing on August 9, 2006, and upon consideration of all of the evidence presented, including the results of the Registrar's review, the single-member panel of the Board concluded that McMahan's recall petition met the statutory requirements for certification to the ballot.[7] At the conclusion of the hearing, the General Counsel of the Board announced that the time period for filing an appeal of the decision of the one-member panel to the full Board or directly to the Court of Appeals was 30 days.

Williams filed her appeal on September 8, 2006 – 30 days after the August 9, 2006 decision – asserting that ten of the eleven petition sheets submitted by McMahan were not formatted double-sided as required by statute, and that those sheets should therefore be deemed invalid. Williams maintained that this particular issue had not been raised earlier because the copies of the petition sheets that she had been provided by Board staff were double-sided copies. McMahan's principal response was that the Board lacks jurisdiction to hear this appeal because Williams did not file her appeal to the full Board within the ten days prescribed by the Board's regulations for reconsideration or rehearing. *See* D.C. Mun. Regs. tit. 3, § 429.

A hearing was scheduled for this matter on September 26, 2006. On September 22, 2006, McMahan filed an Emergency Petition for a Writ of Prohibition with the District of Columbia Court of Appeals seeking an Order from the Court to prevent the Board from taking any action on Williams' appeal. The Court of Appeals denied the writ by Order entered on September 25, 2006, stating that "Petitioner has failed to show either a clear right to issuance of the writ or that he has no other alternative means of relief."

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[7] The August 9, 2006 decision was subsequently memorialized in Order No. 06-004 on August 14, 2006.

McMahan v. District of Columbia Board of Elections and Ethics, No. 06-OA-32 (D.C. 2006).

At the subsequent hearing before the Board on September 26, 2006, during which the Board was apprised of the issues presented, the Board established a briefing schedule to allow the parties to brief both the jurisdictional issue and the merits of the appeal. Pursuant to D.C. CODE § 1-1001.05(g), the Board also decided by unanimous vote that it would hear the matter *de novo*. Following briefing by the parties, a day-long hearing was conducted on October 4, 2006, which included both oral argument and live testimony. Upon consideration of all the evidence presented, including the record of earlier related proceedings, the Board now renders its findings and conclusions.

Analysis

The sole issue raised by Williams on appeal is whether the Board should have accepted the ten petition sheets submitted by McMahan, each of which consisted of two separate sheets of paper that were stapled together. Williams maintains that these petition sheets were not double-sided as required by D.C. CODE § 1-1001.17(e), and thus were not in the proper form to be accepted by the Board. The Board recognizes that this issue is one that should properly have been resolved by the Registrar of Voters at the time the petition sheets were submitted, pursuant to D.C. CODE § 1-1001.17(i), rather than being raised in the first instance and addressed, as here, in the context of a challenge pursuant to D.C. CODE § 1- 10001.17(k)(2). Before seeking to address that omission, however, the Board must first address a threshold issue that was raised by McMahan during the course of this challenge proceeding concerning the time frame within which an appeal to the full Board from a one-member panel of the Board must be filed.

A. The Board's Authority to Adjudicate This Matter

Before the Board may reach the merits of Williams' appeal, it must first address the question whether it may hear the appeal at all, in view of McMahan's contention that the Board lacks jurisdiction over the matter because Williams failed to timely file her appeal of the August 9, 2006 one-member panel decision.[8]

The full Board is authorized to review decisions rendered by a one-member panel pursuant to D.C. CODE § 1-1001.05(g), which provides in pertinent part: "An appeal from a decision of any such 1 member panel may be taken to either the full Board or to the District of Columbia Court of Appeals, at the option of any adversely affected party." However, the statutory provision does not contain a time frame for filing an appeal to the full Board.

McMahan maintains that the provision in the Board's regulations governing motions for reconsideration provides the governing time frame for an appeal from a one-member panel to the full Board. The regulation states in pertinent part:

> A motion for reconsideration, rehearing, or re-argument of a final decision in a contested case proceeding under §423 may be filed by a party within ten (10) days of the order having become final. The motion shall be served upon all other parties. The Board shall not receive or consider any motion for reconsideration, rehearing, or re-argument of a final decision in a contested case proceeding that is filed prior to the order having become final.

D.C. Mun. Regs. tit. 3, § 429.1. McMahan therefore alleges that since Williams filed her appeal after the ten-day period provided in D.C. Mun. Regs. tit. 3, § 429 had expired,

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[8] Williams asserts that McMahan's jurisdictional argument was rendered moot by the denial by the District of Columbia Court of Appeals of his Emergency Petition for a Writ of Prohibition. The Board disagrees. Rather than a substantive ruling on the merits of McMahan's jurisdictional argument, the Court's denial of McMahan's Petition reflects a refusal by the Court to adjudicate the issue prior to presentation of the argument to the Board. Thus, McMahan is not precluded from proffering his jurisdictional argument to the Board, and the Board is not prohibited from entertaining the same.

"[t]he ability of the Board to exercise jurisdiction over this . . . challenge passed as well." Sidney McMahan's Opposition to Mary Williams Motion for *En Banc* Review at 2.

In support of his assertion that the ten-day filing deadline precludes Williams' appeal, McMahan relies on *Smith v. D.C. Rental Accommodations Com'n*, 411 A.2d 612 (D.C. 1980). *Smith* involved a petition for review of a Rental Accommodations Commission order and held that the landlord's cross appeal from the decision of the Rent Administrator was untimely and should not have been considered by the Commission. However, *Smith* is inapplicable because here, unlike in *Smith*, there is no *statutory* authority that prescribes a ten-day period for an appeal from a one-member panel to the full Board.

Nor does the Board agree that its regulation that governs "motion[s] for reconsideration, rehearing, or re-argument" was intended to apply to an appeal to the full Board from a one-member panel. There is a distinction that the Board makes between a request for "reconsideration, rehearing or re-argument" in D.C. Mun. Regs. tit. 3, § 429.1 on the one hand, and an appeal pursuant to D.C. CODE § 1-1001.05(g) on the other. The former contemplates a request by an aggrieved party directed to the *same body* that rendered the decision to exercise its *discretion* to hear the matter again,[9] while the latter contemplates a review *as of right* by a different body.[10] That these two opportunities for review of a decision are not the same is further reflected in the different treatment accorded to the decisions that are being "reconsidered" on the one hand, or "appealed" on

[9] In this regard, a motion for reconsideration under the Board's regulations requires that the motion "shall state specifically the respects in which the final decision is claimed to be erroneous, the grounds of the motion, and the relief sought." D.C. Mun. Regs. tit. 3, § 429.2.

[10] Although the appeal is internal to the Board, it nonetheless goes from a one-member panel of the Board to the full Board.

the other. D.C. Mun. Regs. tit. 3, § 429.4 dictates that motions for reconsideration *do not stay* final Board decisions unless the Board orders otherwise,[11] while the filing of an appeal under D.C. CODE § 1-1001.05(g) *automatically stays* the decision of a one-member Board panel pending a final decision of the Board.[12] Thus, contrary to McMahan's contention, the Board finds that D.C. Mun. Regs. tit. 3, § 429 was not intended to and does not govern appeals from one-member panels of the Board to the full Board pursuant to D.C. CODE § 1-1001.05(g).

Having determined that the ten-day deadline prescribed by section 429.1 does not apply to Williams' appeal, the fact remains that D.C. CODE § 1-1001.05(g) is completely silent concerning the deadline by which appeals under that provision must be filed. Since the statute does not provide a time period for filing an appeal, the Board – pursuant to its regulatory authority – should have promulgated regulations governing the appeals process. Such regulations should have been promulgated many years ago, following the enactment of the statutory provision, which -- as part of the District of Columbia Election Act Amendments of 1976, D.C. Law 1-79 -- became effective on September 2, 1976. No such regulations were ever promulgated. This regulatory deficiency will be rectified by the Board through rulemaking.[13]

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[11] D.C. Mun. Regs. tit. 3, § 429.4 states: "Neither the filing nor the granting of the motion shall stay a decision unless the Board orders otherwise."

[12] "If an appeal is taken from a decision of a 1 member panel to the full Board, the decision of the 1 member panel shall be stayed pending a final decision of the Board." D.C. CODE §1-1001.05(g).

[13] The Board is unaware of any instances in which the time frame for filing an appeal to the full Board from a one-member panel of the Board has been raised by a party. The Board recognizes, however, that the time period for an appeal should always be clearly stated. A statutory or regulatory time period within which to file an appeal places all parties on notice as to their respective rights and duties. The Board does not believe that the timeliness of an appeal under §1-1001.05(g) should be determined *ad hoc* or on a case by case basis.

It is in this context that the timeliness of Williams' appeal must be determined. At the conclusion of the August 9 hearing before the one-member panel, the Board's General Counsel announced that the period for filing an appeal to either the full Board or directly to the D.C. Court of Appeals pursuant to D.C. Code § 1-1001.05(g) was 30 days. However, although 30 days is the standard time period for appealing a final decision of the Board to the Court of Appeals pursuant to D.C. CODE § 2-510(a) and D.C. App. R. 15(a)(2),[14] a challenge to a recall petition is governed by D.C. Code § 1-1001.08(o)(2), which provides that an appeal to the Court of Appeals must be filed within 3 days.[15] Thus, the General Counsel erred in his attempt to make the time period for an appeal to the full Board comparable with the relevant time period for an appeal to the Court of Appeals.

Although the Board is *not* now adopting a 30-day time period for appeals from a one-member panel to the full Board in the context of a challenge to a recall petition, the Board is influenced *under the particular circumstances here* by certain salient facts: 1) the General Counsel announced at the conclusion of the August 9, 2006 hearing that the period for filing an appeal to the full board was 30 days; 2) Williams subsequently contacted the General Counsel to confirm that she had 30 days within which to appeal the

[14] D.C. CODE § 2-510(a) provides that "[a] petition for review shall be filed in such Court within such time as such Court may by rule prescribe and a copy of such petition shall forthwith be served by mail by the clerk of the Court upon the Mayor or upon the agency, as the case may be." D.C. App. R. 15 (a)(2) in turn provides that "[u]nless an applicable statute provides a different time frame, the petition for review must be filed within 30 days after notice is given, in conformance with the rules or regulations of the agency, of the order or decision sought to be reviewed."

[15] D.C. CODE § 1-1001.17(k)(2) provides that "[t]he provisions of § 1-1001.08(o)(2) shall be applicable to a challenge and the Board may establish any necessary rules and regulations consistent that concerns the process of the challenge." D.C. Code § 1-1001.08(o)(2) in turn provides that "[w]ithin 3 days after announcement of the determination of the Board with respect to the validity of the nominating petition, either the challenger or any person named in the challenged petition as a nominee may apply to the District of Columbia Court of Appeals for a review of the reasonableness of such determination."

one-member panel decision and the General Counsel responded in the affirmative; and 3) Williams relied on this information in filing her appeal.[16] Under the circumstances here, this reliance, coupled with the absence of a clear and explicit statutory or regulatory deadline for the filing of the appeal to the full Board, leaves the Board with no appropriate choice other than to remedy the Board's failure to adopt appropriate regulations and Williams' legitimate reliance on the Board's General Counsel's opinion by finding that her appeal within the 30 days was timely. *See In re Canvass of Absentee Ballots of Nov. 4, 2003 General Election*, 843 A.2d 1223, 1229 (Pa. 1996) ("[W]hen an administrative body acts negligently, improperly or in a misleading way (unintentionally or otherwise), there is a breakdown in the agency's operations and when actions are taken by individuals based on the administrative body's acts, those individuals cannot be held responsible."); *In re Twenty-Sixth Election District* 41 A.2d 657, 659 (Pa 1945) (Court may invoke equity jurisdiction to allow untimely appeal when election Board affirmatively misled petitioner, who was entirely without fault); *Gwinner v. Lehigh & D.G.R. Co.*, 1867 WL 7503 (Pa. 1867) (Where a party has been prevented from appealing by fraud, or by the wrongful or negligent act of a court official, the Court has the power to extend the time for taking an appeal); *McElhaney v. Holland*, 5 A. 731 (Pa. 1866) (Appeals from Justices of the Peace have been allowed *nunc pro tunc* when the delay was caused by the negligence of the justice).[17]

The Board views the statute's silence on the time frame for filing an appeal, the absence of governing regulations, and Williams' reliance on the information given her by

[16] McMahan challenges Williams' assertion of reliance, arguing that she had an obligation to determine on her own the proper time frame within which to file her appeal. Under the circumstances here, however, including the absence of any specified time frame, the Board rejects McMahan's argument.

the Board's General Counsel as more than sufficient good cause to exercise its authority to adjudicate this matter. Indeed, if the Board were to refuse to hear the matter, Williams would undoubtedly be prejudiced, having lost her opportunity to bring her case before the full Board through no fault of her own.[18] For these reasons, the Board will exercise its authority in this matter to entertain the appeal submitted by Williams on September 8, 2006.

B. Proper Form of the Petition

Williams raises for review on appeal before the full Board the issue whether the Board should have accepted McMahan's petition. Williams asserts that ten of the petition sheets were not in the proper form because they consisted of two sheets of paper stapled together rather than a single double-sided sheet as mandated by D.C. CODE § 1-1001.17(e). Williams stated that she was not aware of the alleged violation because she was given copies of the petition that were not formatted as the originals.[19] This issue turns on whether McMahan's petition was submitted in the proper form to be accepted by the Board.

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17 Even if D.C. Mun. Regs. tit. 3, § 429 and the ten-day time period set forth therein were deemed to apply to the instant matter, the Board – given the circumstances here – would arrive at the same conclusion.

18 McMahan asserted that he and his counsel were told by a Board staff attorney that Williams had ten days within which to appeal under D.C. Mun. Regs. tit. 3, § 429 and that the time had expired. The staff attorney denied that he so informed McMahan and his counsel. McMahan further asserted that in view of the information given by the staff attorney, he stopped preparing for the possibility of a *de novo* hearing before the full Board under D.C. Code § 1-1001.05(g), and was thus prejudiced.

The Board need not resolve the conflicting testimony in view of the General Counsel's unequivocal statement at the conclusion of the August 9, 2006 hearing regarding the 30-day time frame for appeal and Williams' reliance to her detriment. Further, the Board rejects McMahan's claim of prejudice in view of the more than ample time that he had to brief the issues presented and prepare for the hearing.

19 The fact that Williams was given copies of the petition sheets that were not formatted as the originals was stipulated to by the parties at the October 4, 2006 hearing.

D.C. CODE § 1-1001.17(e) is clear and precise in describing the proper form for recall petitions:

> Upon filing with the Board the notice of intention of recall and the elected officer's response, the Board shall prepare and provide to the proponent an original petition form which the proposer shall formally adopt as his or her own form. *The proponent shall print from the original blank petition sheets* on white paper of good writing quality of the same size as the original. *Each recall petition sheet shall be double-sided* and consist of numbered lines for 20 names and signatures with residence address (street numbers), and, where applicable, the ward numbers[.]

(emphasis added).[20] The statute further provides: "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: ... (2) The petition is not the proper form established in subsection (e) of this section[.]" D.C. CODE § 1-1001.17(i)(2).[21]

It is well established that "the primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that he has used." *Peoples Drug Stores, Inc. v. District of Columbia*, 470 A.2d 751, 753 (D.C.1983). Moreover, when the words in a statute have a plain and obvious meaning, "an improbable or different meaning will not be imposed by construction." *Department of Industrial Relations v. Little Mfg. Co.*, 44 So.2d 587, 588 (Ala. 1950). As the D.C. Court of Appeals noted in *Bates v. Board of Elections and Ethics*, 625 A.2d 891, 894 (D.C. 1993):

> [T]he virtually unanimous authority holds that words of common use are generally construed according to the natural, plain and ordinary meaning, and that where a word has a fixed technical meaning it is to be taken in

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[20] The essence of the statutory provision is also reflected in the Board's regulations: "Each petition sheet shall be printed on white paper of good writing quality of the same size as the original petition form approved by the Board and shall be double-sided." D.C. Mun. Regs. tit. 3, § 1101.1.

[21] This statutory provision is also mirrored in the Board's regulations: "The Board shall refuse to accept a recall petition or individual petition pages for filing when it determines the following: ... (b) The petition sheet(s) is (are) not in the form certified by the Board in accordance with § 1101." D.C. Mun. Regs. tit. 3, § 1104.2(b).

> that sense. *Francis J. McCaffrey*, Statutory Construction § 12, at 39 (1953); see *Barbour v. D.C. Department of Employment Services*, 499 A.2d 122, 125 (D.C.1985) ("words of a statute must be construed by their common meaning and their ordinary sense") (citations omitted); *Stuart v. American Security Bank*, 494 A.2d 1333, 1338 (D.C.1985) ("words in a statute are to be construed according to 'their ordinary sense and with the meaning commonly attributed to them'") (citation omitted).

While McMahan argues form over substance, the Board must adhere to the plain meaning of the statute. In the instant case, the plain meaning of the term "double-sided" does not contemplate the stapling of two sheets of paper together with information printed on one side of each sheet. Rather, the well-understood meaning of the term contemplates a single sheet of paper with information printed on the front and back sides of the sheet. That this is the intended meaning is confirmed by the statutory requirement that the proponent of the recall measure "print from the original blank petition sheet" prepared by the Board and formally adopted by the proponent as his own. *See* D.C. CODE § 1-1001.17(e). The form in question that was provided by the Board and that McMahan adopted as his own at a Special Board meeting on May 17, 2006, was a single double-sided sheet with printed information on both sides of the sheet.

There is good reason for having the mandatory requirements at issue here in the applicable statute and regulations, and for scrupulously enforcing the requirements. The recall petitions contain the pertinent information about the reasons for recall and the incumbent's response on the front side of the petition sheet, with signature lines on both the front and back of the sheet. The single, double-sided sheet helps to facilitate the opportunity for each signatory to read the assertions of both parties to the recall measure. If the Board were to allow a proposer of initiatives and recalls to submit separate sheets stapled together rather than a single double-sided sheet, the Board would have no

guarantee that the page containing the respective positions of the proponent and the incumbent was in fact circulated, or that the actual version of such page that was adopted by the Board was circulated. It is conceivable that a circulator intent on violating the law could circulate only the second page and not the first, or could circulate an edited or totally different version of page one and later staple the correct version of page one to a page two filled with signatures for submission to the Board. Although the Board is not suggesting that such was the case here,[22] the fact that such possibilities exist counsels in favor of strict and consistent enforcement of the "double-sided" requirement for petition sheets set forth in the applicable statute and regulations.

In short, both the plain language of the applicable statute and the Board's regulations are very clear, and neither contemplates an interpretation of "double-sided" that permits the use of two pieces of paper stapled together as constituting one petition sheet. The statute and regulations are equally clear that the Board "*shall*" refuse to accept petition sheets that are not in the proper form. Accordingly, the ten petition sheets in question should have been rejected by the Registrar of Voters upon submission, and the Board will correct that omission by rejecting them now.

Conclusion

Whereas the Board, pursuant to D.C. CODE § 1-1001.17(i), is required to review recall petitions upon submission for statutory defects and refuse to accept petitions for further processing if they are found to be defective, the Board finds that the ten petition sheets that consisted of two separate sheets stapled together do not satisfy the requirement in D.C. CODE § 1-1001.17(e) that the "petition sheet[s] shall be double

[22] At the August 9, 2006 hearing before the one-member panel, Williams alleged that the statements reflecting the purpose of the recall and her response were concealed from signers. This issue was not raised

sided[.]" Accordingly, the Board rejects the ten petition sheets in question, with the result that McMahan's petition to recall Williams has an insufficient number of signatures to qualify for the ballot.

McMahan may appeal the Board's rejection of his petition sheets within three (3) days to the Court of Appeals of the District of Columbia pursuant to D.C. CODE §§ 1-1001.17(k)(2) and 1-1001.08(o)(2).

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on appeal, and the full Board makes no findings with regard thereto.

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

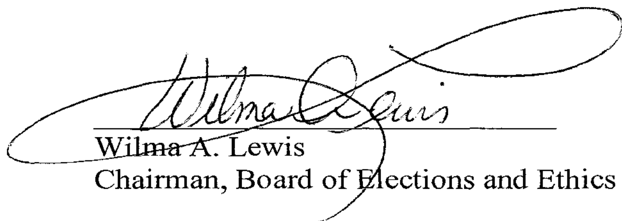
ORDERED:

1. That the August 9, 2006 decision of the one-member panel, memorialized in Order No. 06-004 dated August 14, 2006, is set aside to the extent that it conflicts substantively with this Memorandum Opinion and Order;

2. That the Board rejects, as not being in the proper form pursuant to D.C. CODE § 1-1001.17(i)(2), the ten petition sheets submitted by Sidney McMahan, each of which consisted of two separate sheets stapled together, rather than a single double-sided sheet as required by D.C. Code § 1-1001.17(e); and

3. That the petition to recall Mary Williams, Advisory Neighborhood Commissioner for Single-Member District 6D03, is rejected for having an insufficient number of signatures to qualify for the ballot pursuant to D.C. CODE § 1-1001.17(I)(5).

November 7, 2006



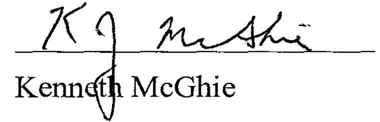
Wilma A. Lewis
Chairman, Board of Elections and Ethics

Dr. Lenora Cole
Member, Board of Elections and Ethics

Charles R. Lowery, Jr.
Member, Board of Elections and Ethics

<u>**CERTIFICATE OF SERVICE**</u>

I hereby certify that a copy of the foregoing order was hand-delivered this 8th day of November, 2006 to Mary Williams, 1257 Carrollsburg Place SW, Washington, D.C. 20024 and Sidney McMahan, c/o Kirk Smith, 18 Third Street, NE, Washington, D.C. 20002.



Kenneth McGhie