

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

Mary Williams

Complainant,

v.

Sidney McMahan

Respondent.

Administrative Hearing

No. 06-004

Re: Challenge to Petition to
Recall Mary Williams

MEMORANDUM OPINION AND ORDER

This matter came before the Board of Elections and Ethics pursuant to D.C. CODE § 1-1001.17(k)(2) on Wednesday, August 9, 2006, and involved a challenge filed by Mary Williams to a recall petition filed by Sidney McMahan. The Respondent was represented by counsel, and the Complainant duly authorized William Day to represent her in her absence pursuant to Title 3 DCMR § 403.2. Pursuant to D.C. CODE § 1-1001.05(g) the Board heard the case by a one (1) member panel. Board member Charles Lowery presided over the hearing.

A Notice of Intention to Recall Mary C. Williams, Advisory Neighborhood Commissioner for Single Member District 6D03 was filed on Thursday, May 4, 2006 by Sidney W. McMahan, a registered voter residing in Advisory Neighborhood Commission Single Member District 6D03. Mary C. Williams filed a response to Mr. McMahan's statement with the Board on Monday, May 15, 2006. The Board prepared and provided to the proponent an original petition form, which Sidney McMahan adopted at a special board meeting conducted on Wednesday, May 17, 2006. At that same meeting, the

proposer, Sidney McMahan was notified that the deadline to submit the signatures in support of the recall was Friday, July 14, 2006 D.C. CODE § 1-1001.17(g). Sidney McMahan was also provided the signature requirement for the recall. The signature requirement was 109 signatures of registered voters in Single Member District 6D03. This figure was based on the Board's official count as of April 30, 2006 pursuant to D.C. CODE § 1-1001.17(h)(3).

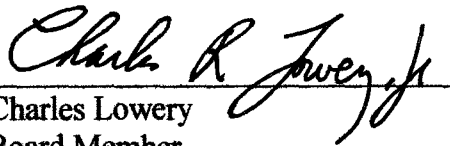
On Friday, July 14, 2006, Sidney McMahan submitted the petition in support of the recall of Mary C. Williams, Advisory Neighborhood Commissioner for Single Member District 6D03. The recall petition was posted by the Board for challenge for the mandatory 10-day period pursuant to D.C. CODE § 1-1001.17(k)(2), and Mary C. Williams filed a challenge to the recall petition and signatures contained in the petition on Tuesday, July 25, 2006. The Registrar of Voters conducted a preliminary review of the petition challenge and found that Mr. McMahan submitted a total of 150 signatures in support of the recall. Challenger Williams filed challenges to 53 signatures, enumerated by line and page number alleging the petition defects, as required by Title 3 DCMR § 1108.2 for the following reasons: 1) Signers not registered to vote at the address listed on the petition; 2) Signers not registered to vote in the single member district; and 3) Signature and printed name are ineligible. The Registrar's review of the challenges indicated 27 of the 53 challenges made to individual signatures were valid, and 26 were invalid, leaving the petition with 123 signatures.

During the hearing, Challenger Williams filed written statements from signatories who claimed that they were misled with respect to the subject matter of the recall and wished to have their names removed. First, with respect to their statements that they

were misled, none of the statements were sworn to or given under oath, and none of the affiants were present to assess their credibility or be cross-examined. The circulators in question, Messrs. McMahan and Ron McBee both testified under oath and were subject to cross-examination by the Board and Ms. Williams' representative as to circumstances surrounding the signatures. The Board, in considering the un-sworn affidavits against the live under-oath testimony of the circulators, must give more weight to the witnesses that it had an opportunity to access and cross-examine. Second, with respect to the requests that signatures be removed, Title 3 DCMR § 1106.13 provides: "[a] registered voter may submit a written notarized request to the Board to disallow the voter's signature from being counted on the petition; provided, that the request is received by the Board prior to the time the petition is filed." The Complainant failed to have the letters notarized and they were submitted on the day of the challenge as opposed to prior to the filing of the petition. The Board thus finds that the affiants, having submitted unnotarized affidavits subsequent to the filing of the petition, do not meet the requirement pursuant to Title 3 DCMR § 1106.13 to have their names removed from the petition. Mr. McMahan's petition meets the statutory requirement for certification to the ballot and should be certified as sufficient to be placed on the ballot.

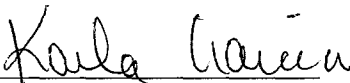
Accordingly, it is hereby **ORDERED** that the Board certifies the petition as numerically sufficient. An election must be held for the purpose of the recall. Pursuant to D.C. Official CODE § 1-1001.17(l), the Board shall conduct an election in Advisory Neighborhood Commission Single Member District 6D03 at the November 7, 2006 General Election.

August 14, 2006
Date


Charles Lowery
Board Member,
Board of Elections and Ethics

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing order was hand-delivered this August 14, 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.



Karla Garcia