2016 Supervisor's Handbook on Candidate Qualifying

Florida Department of State
Division of Elections
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Explanation

The information contained in this publication is intended as a quick reference guide only. To the extent that this Handbook covers material beyond that contained in law or rule, the Division of Elections offers such material to supervisors merely as guidelines. This publication is not a substitute for the Florida Election Code or applicable constitutional and rule provisions, the text of which controls. Chapters 97-106, Florida Statutes, the Constitution of the State of Florida and Division of Elections opinions and rules should be reviewed in their entirety for complete information regarding qualifying.

If further assistance is necessary, Supervisors may request an advisory opinion from the Division under Section 106.23(2), F.S.

The following statutes and rule regarding candidate qualifying should be reviewed in their entirety:

Sections 99.012, 99.061, 99.092, 99.0955, 99.096, 105.031, and 105.035, F.S., and Rule 1S-2.0001 F.A.C.

Please direct any procedural questions to the Bureau of Election Records at 850.245.6280. Any legal questions about your role as a qualifying officer may be directed to the General Counsel's Office at 850.245.6536.

This publication is available at: http://soe.dos.state.fl.us/

All other Division forms and publications are available on the Division's website at: http://dos.myflorida.com/elections/

Chapter 1: Responsibilities of a Qualifying officer

What is the scope of my responsibility as a qualifying officer?

Pursuant to Section 99.061(7)(c), F.S., the qualifying officer performs a ministerial function in reviewing qualifying papers.

In determining whether a candidate is qualified, the qualifying officer shall review the qualifying papers to determine whether all items required have been properly filed and whether each item is complete on its face, including whether items that must be verified have been properly verified pursuant to Section 92.525(1)(a), F.S.

The qualifying officer may not determine whether the contents of the qualifying papers are accurate.

Further, any question as to the truth or accuracy of matters stated in a candidate's qualifying papers becomes a judicial question if and when an appropriate challenge is made in the courts. (*State ex rel Shevin v. Stone*, 279 So.2d 17 (Fla.1972))

(See Appendix A)

Chapter 2: Resign-to-Run

What is the "resign-to-run" law?

The "resign-to-run" law is found in Section 99.012(3), F.S. The "resign-to-run" law essentially prohibits an elected or appointed "officer" from qualifying as a candidate for another state, district, county, or municipal public office if the terms or any part of the terms overlap with each other if the person did not resign from the office the person presently holds.

As a qualifying officer am I responsible for enforcing the "resign-to-run" law?

No. It is not the responsibility of the qualifying officer to ensure compliance with the "resign-to- run" law. The best practice is to inform a candidate regarding the "resign-to-run" law if you are aware that the requirements would apply to him.

A qualifying officer **cannot**:

- Refuse to qualify a candidate even when the officer knows that the person has not complied with the requirements of the law; or

- Remove a candidate's name from the ballot if the qualifying officer becomes aware after qualifying closes that the candidate has not complied with the "resign-to-run" law.

A court must order the removal of the name of a candidate who does not comply with the "resign-to-run" law from the ballot.

(Section 99.012(5), F.S.)

Are there any exceptions to the "resign-to-run" law?

Yes. The "resign-to-run" law does not apply to (a) political party offices, or (b) persons serving without salary on an appointed board or authority. Also, portions of the "resign-to-run" law do not apply to federal officers or candidates for federal office.

An "officer" is a person, whether elected or appointed, who has the authority to exercise the sovereign powers of the state pertaining to an office recognized under the State Constitution or laws of the state. With respect to a municipality, an "officer" means a person, whether elected or appointed, who has the authority to exercise municipal power as provided by the State Constitution, state laws, or municipal charter.

(Section 99.012(1), F.S.)

Florida case law further explains that an "officer" is one who exercises some portion of the sovereign power, either in making, executing or administering the laws and who derives his or her position from a duly and legally authorized election or appointment, whose duties are continuous in nature and defined by law, not contract.

Examples of "officers" include, but are not limited to: mayors, city and county commissioners, state legislators, supervisors of elections, sheriffs, property appraisers, judges, school board members, superintendents of school, state attorneys and public defenders, municipal fire chiefs, medical examiners, and elected hospital board and airport authority members.

If an officer must resign under the "resign-to- run" law, when must the officer resign and when must the resignation take effect?

- The resignation must be submitted in writing at least 10 days prior to the first day of qualifying for the office the person intends to seek.
    - For May qualifying, the resignation must be filed no later than **April 22, 2016**.
    - For June qualifying, the resignation must be filed no later than **June 10, 2016**.
- The resignation must take effect no later than the earlier of the following dates:
    - The date the officer would take office, if elected; or.
    - The date the officer's successor is required to take office.

If a school board member will not seek re-election at the next general election and wishes to qualify to run for state representative, does the school board member have to submit a resignation under the resign-to-run law?

Yes. Section 100.041, F.S., reflects that the term of office of a state representative begins upon election for a term of two years and the term of office for a school board member begins on the second Tuesday following the general election for a term of four years. Therefore, the term as a school board member, if elected as a state representative, will not expire until two weeks after the state representative takes office. This two week overlap requires the school board member to submit a resignation under the resign-to-run law at least 10 days prior to qualifying as a candidate as a state representative.

What can an officer do if he missed the deadline for submitting the resignation 10 days prior to the beginning of the qualifying period?

If the officer still wishes to run for office, the officer may submit his resignation to take effect immediately or to take effect on a date prior to qualifying for office. In this situation, the officer qualifies as a non-officeholder and the "resign- to-run" law does not apply.

(Section 99.012(3)(g), F.S.)

To whom must the resignation be submitted?

For **elected** district, county, or municipal officers, the resignation must be submitted to the officer before whom he qualified for the office he or she holds, with a copy to the Governor and the Department of State.

For **appointed** district, county, or municipal officers, the resignation must be submitted to the officer or authority which appointed him or her to the office he or she holds, with a copy to the Governor and the Department of State.

All other officers must submit their resignations to the Governor with a copy to the Department of State.

Governor and Department of State contact information:

The Honorable Rick Scott, Governor
The Capitol
400 South Monroe Street
Tallahassee, Florida 32399-0001
850.488.7146
Email: Rick.Scott@MyFlorida.com

Kristi Reid Bronson, Chief Bureau of Election Records
R.A. Gray Building,
Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250
Fax: 850-245-6259 or 850-245-6260
Email: Kristi.Bronson@DOS.MyFlorida.com

Can the officer later revoke the resignation?

No, once submitted, the resignation is irrevocable.

(Section 99.012(3)(b), F.S.)

What happens to an elected officer's term of office if he or she submits a resignation under the "resign-to-run" law?

Except as noted in the next paragraph, when an elected official resigns, it creates a vacancy in office to be filled by election. The election is held to fill the office for the remaining unexpired term. So, if an officer had two years left in a four-year term of office on the effective date of his resignation, persons would qualify as a candidate for the office and, if elected, would serve the two years remaining in the former officer's term.

If the officer resigning under the "resign-to-run" law occupies an elective charter county office or elective municipal office, the vacancy created by the resignation may be filled for that portion of the remaining unexpired term in the manner specified by the county or municipal charter, as applicable.

May a person qualify to run for more than one office?

No. Section 99.012(2), F.S., prohibits persons from qualifying for more than one federal, state, district, county, or municipal office if the terms or any part thereof run concurrently with each other. For example: (a) a person may not qualify in Florida to run for more than more than one U.S. House of Representatives seat at a time; or (b) a person may not qualify for both a state office and a county office if the terms or any part of the two offices overlap.

Does the "resign-to-run" law apply to federal officers?

No. The "resign-to-run" portion of Section 99.012, F.S., only applies to state, district, county, and municipal officers. However, as stated in the answer to the prior question, Section 99.012(2), F.S., prohibits persons from qualifying for more than one federal, state, district, county, or municipal office if the terms or any part thereof run concurrently with each other. Thus, a federal officer would not have to resign prior to qualifying for a state, district, county, or municipal office. For example, a U.S. Senator from Florida with two years left on his or her Senate term could qualify to run for Governor of Florida without resigning

because the "resign-to-run" law does not apply to federal officers; however, the senator could not qualify for re-election to the U.S. Senate from Florida and also qualify for Governor of Florida because the terms of office would overlap.

Does the "resign-to-run" law require a state, district, county, or municipal officer to resign before running for federal office?

No. The "resign-to-run" law prohibits an officer from qualifying as a candidate for another state, district, county, or municipal public office if the terms or any part overlap with each other unless the officer submits a resignation from the office the person presently holds. Therefore, the "resign-to-run" law would not preclude a sitting state, district, county, or municipal officer from qualifying as a candidate for *federal* office without resigning from the office the person presently holds as long as the officer does not also qualify for re-election to his or her present office.

How does the "resign-to-run" law relate to the "Hatch Act?"

The state resign-to-run law is entirely separate from the federal "Hatch Act." The federal Hatch Act (5 U.S.C. §§ 1501- 1508) applies to executive branch state and local employees who are principally employed in connection with programs financed in whole or in part by loans or grants made by the United States or a federal agency.

The Hatch Act prohibits a state, county, or municipal employee from being a candidate for public office in a partisan race *if the employee's salary is completely funded with federal dollars*. It is only when the covered employee's entire salary is paid from federal funds that the employee would have to resign *under the Hatch Act* before becoming a candidate for partisan office; however, an employee's conduct is also subject to the laws of the state and the regulations of the employing agency, so the employee should check with his or her supervisor, personnel office, or the agency's general counsel to determine what state or local law or agency rules or policies may apply regarding the employee's political activities. (A partisan election means one in which any candidate will be listed on the ballot as a candidate for a political party, for example, the Republican or Democratic Party.)

Governors, Lieutenant Governors, mayors, elected heads of executive departments, and individuals holding elective office are specifically exempt from the Hatch Act prohibition of being a candidate for public office. So, the Hatch Act prohibits state, county and municipal employees seeking public office in a partisan election, not an elected officer seeking re-election or election to another office.

Questions about the Hatch Act may be directed to:

Hatch Act Unit
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
Tel: (800) 85-HATCH or (800) 854-2824
(202) 254-3650
Website:
https://osc.gov/Pages/HatchAct.aspx

Requests for Hatch Act advisory opinions may be made by e-mail to: hatchact@osc.gov

Who can I contact about questions concerning Florida's "resign-to-run" law?

Contact the:

Department of State
Office of General Counsel
Telephone: 850.245.6536
Email: generalcounsel@dos.state.fl.us

Chapter 3: Qualifications for Office

When must qualifications for office be met?

Generally, the statutory oath a person is required to take upon qualifying for office refers to qualifications applicable **when the term of the office he or she seeks begins.** (*State ex rel. Fair v. Adams*, 139 So.2d 879 (Fla. 1962), *Davis ex rel. Taylor v. Crawford*, 116 So. 41 (Fla. 1928), *State ex rel. Knott v. Haskell*, 72 So. 651 (Fla. 1916)

(see Appendix B - DE Opinion 94-04 and Appendix C – DE Opinion 92-10)

However, exceptions to this general rule exist for certain offices. For example, bar membership for county court judges and residency requirements for school board members and write-in candidates must be met at the time of qualifying.

Bar membership for judges:

- Circuit Court Judge – at the time of assuming office (see cases cited above and *In re the Advisory Opinion to the Governor*, 192 So.2d 757 (Fla.1966)).

- County Court Judge – **prior to qualifying.**
  (see Section 34.021(1), F.S., and Newman v. State, 602 So.2d 1351, Fla. 3d DCA 1992)

NOTE: If the county has a population of 40,000 or less, the county court judge candidate need only be a member in good standing of the Florida Bar – no requirement for any length of bar membership.
(Art. V., s.8, Fla. Const.; 34.021(1), Fla. Stat.)

Residency requirements:

- Unless otherwise provided for constitutionally, legislatively, or judicially, the residency requirement for an office must be met at the time of assuming office.
  (See Appendix D.)

- School board and write-in candidates must meet the residency requirements **at the time of qualifying**.

Age requirements: at the time of assuming office **(see Appendix C - DE Opinion 92-10)**.

How is residency determined?

Ultimately, whether a candidate or office holder is a resident is a determination for a court and not for a qualifying officer. A key element of residency is the intent of the individual.
(See Appendix E - DE Opinion 80-27 and Appendix F - DE Opinion 93-05.)

No single piece of evidence is decisive in determining residency. A person's legal residence is wherever a person intends to make a permanent domicile, which can be factually supported. Examples of evidence that may be considered in determining whether legal residency has been established include driver's license, tax receipts, bank accounts, homestead exemption documents, the relocation of personal effects, and the purchase or rental of property.

If I have questions regarding residency requirements, who should I contact?

Questions regarding residency that are stated in the Florida Elections Code may be addressed to the:

Department of State,
Office of General Counsel
Telephone: 850.245.6536
Email: generalcounsel@dos.state.fl.us

Any questions regarding residency requirements not otherwise expressly stated in the Florida Election Code should be addressed to the Florida Attorney General's Office:

http://myfloridalegal.com/opinions

If I know that a candidate will not meet one or more of the qualifications for office upon taking office if elected, can I, as the qualifying officer, refuse to qualify the candidate or refuse to put the candidate's name on the ballot?

No. A qualifying officer's duties are ministerial in nature. (Section 99.061(7)(c), F.S.) Any question as to a candidate's eligibility becomes a judicial question if and when an appropriate challenge is made in the courts. (*State ex rel Shevin v. Stone*, 279 So.2d 17 (Fla.1972))

(see Appendix A)

BEST PRACTICE: Inform the candidate of the concerns and allow the candidate to take any necessary action.

Chapter 4: Qualifying Documents

General Information

In order to qualify a candidate:

- You must have timely received all of the required documents;
- Each of the required documents must be "complete on its face;"
- Each of the required documents that must be verified must have been "properly verified" pursuant to section 92.525(1)(a), *i.e.,* by an authorized officer who affixed his or her official seal and signature.

You cannot however, determine whether the contents of any of the documents are accurate; you must essentially assume that the contents are true. If any of these requirements are not met, then you can conclude that the candidate failed to qualify. For example, if a required document is missing an entry, then it is not "complete on its face." If Form DS-DE 24 is missing the signature of the Notary, then it is not "complete on its face" or "properly verified."

You should be aware however, that a court reviewing your decision to not qualify a candidate might disagree if the candidate "substantially complied" with the requirements. Substantial compliance generally means that the candidate met all legal requirements but did not meet some technical requirement. On the other hand, substantial compliance can also be used to support your decision to qualify a candidate that may have only substantially complied. Discuss this issue with your attorney.

(See Appendix O - DE Opinion 09-01.)

When can a qualifying officer begin accepting qualifying documents?

Section 99.061(8), F.S., provides that a qualifying officer may accept and hold qualifying papers beginning 14 days prior to the first day of qualifying period.

- For May qualifying, begin accepting paperwork on **April 18, 2016.**
- For June qualifying, begin accepting paperwork on **June 6, 2016.**

Qualifying documents can be postmarked prior to these dates; however, they cannot be used for qualifying purposes if **received** prior to the above referenced dates.

Upon receiving the documents, review them for completeness and notify the candidate of problems or discrepancies. If there are no problems, put the documents aside and on the first day of qualifying, process and update the candidate as "qualified."

If I receive documents by mail after the close of qualifying that are postmarked prior to the last day of qualifying, do I qualify the candidate if all the paperwork is correct?

No. Section 99.061(7)(a), F.S., provides that in order for a candidate to be qualified, all qualifying documents must be received by the qualifying officer by the end of the qualifying period.

What documents must a candidate submit in order to be properly qualified?

See Rule 1S-2.0001, F.A.C., for a listing of current versions of qualifying forms or view them at:

http://dos.myflorida.com/elections/forms-publications/forms/

CE Forms 1 and 6 are Commission on Ethics forms, which may be found at:

http://www.ethics.state.fl.us

Partisan Office:

- **DS-DE 9** – Designation of Campaign Treasurer and Campaign Depository
- **Candidate Oath** (one of the following)
  - **DS-DE 24** – Party Affiliation Candidate
  - **DS-DE 24 B** – No Party Affiliation Candidate
  - **DS-DE 24A** – Write-in Candidate
- **CE Form 6 or 1** (as applicable) – Financial Disclosure
- **Qualifying Fee** (unless qualifying by the petition method or as a write-in candidate)

Non-Partisan Office (Other than School Board and Judicial):

- **DS-DE 9** – Designation of Campaign Treasurer and Campaign Depository
- **Candidate Oath** (one of the following)
  - **DS-DE 25** – Nonpartisan Candidate
  - **DS-DE 24A** – Write in Candidate
- CE Form 6 or 1 (as applicable) – Financial Disclosure
- **Qualifying Fee** (unless qualifying by the petition method or as a write-in candidate)

School Board:

- **DS-DE 9** – Designation of Campaign Treasurer and Campaign Depository
- **Candidate Oath** (one of the following)
  - **DS-DE 25A** – Nonpartisan School Board Candidate
  - **DS-DE 24F** – Write-in Candidate
- **CE Form 6 or 1** (as applicable) – Financial Disclosure
- **Qualifying Fee** (unless qualifying by the petition method or as a write-in candidate)

Judicial Office:

- **DS-DE 9** – Designation of Campaign Treasurer and Campaign Depository
- **Judicial Office Candidate Oath** (one of the following)
  - **DS-DE 26**
  - **DS-DE 26A** - Write-In Candidate
- **CE Form 6** – Financial Disclosure
- **Qualifying Fee** (unless qualifying by the petition method or as a write-in candidate)

Are faxed or emailed copies of the qualifying documents acceptable?

No. All documents must be original documents with original signatures.

EXCEPTION: A public officer who has filed the full and public disclosure or statement of financial interests for the year 2015 with the Commission on Ethics prior to qualifying for office **may file a copy** of that disclosure at the time of qualifying. All other candidates must file an **original 2015** financial disclosure form with the qualifying officer.

Is the Statement of Candidate required to be filed in order to be properly qualified?

No. Although not required for qualifying, each candidate must file a Statement of Candidate (DS-DE 84) with the Division within 10 days after filing the Appointment of Campaign Treasurer and Designation of Campaign Depository (DS-DE 9). Willful failure to file these forms is a violation of Chapter 106, Florida Statutes.

Is the Statement of Judicial Candidate required to be filed in order for a judicial candidate to be properly qualified?

No. Although not required for qualifying, each judicial candidate must file a Statement of Judicial Candidate (DS-DE 83) with the qualifying officer within 10 days after filing the Appointment of Campaign Treasurer and Designation of Campaign Depository (DS-DE 9). Willful failure to file this form is a violation of Chapter 105, F.S.

What do I do if a candidate does not submit all of the required documents or the documents are incomplete?

Section 99.061(7)(b), F.S., provides that the qualifying officer shall make a reasonable effort to notify a candidate of missing or incomplete documents if the documents are received *prior* to the last day of qualifying.

Document your efforts to contact the candidate and any conversations with the candidate.

If the complete or correct documents are not submitted prior to the end of qualifying, the candidate should not be qualified.

If a candidate is standing in line to qualify at noon, but the papers have not been accepted, do I still accept the paperwork after the end of qualifying?

Yes. If the candidate is in line prior to the end of qualifying, accept the paperwork. Note in the file that although the documents were time-stamped after the end of qualifying, the candidate was waiting to have the documents processed prior to the close of qualifying.

BEST PRACTICE: Have someone announce a countdown to the noon closing time for qualifying. At noon, announce that qualifying is closed and do not let anyone else come into the line after the announcement.

If a candidate comes in right before the end of qualifying and has not opened a campaign account and insists on paying the qualifying fee with something other than a campaign check, do I accept the qualifying papers?

Yes. A qualifying officer must put on file the documents that are submitted. However, you should not qualify the candidate. The qualifying fee must be paid with a check drawn on the candidate's campaign account, unless the candidate is a special district candidate.

(Section 99.061(7)(a), F.S.)

Chapter 5: Candidate/Party Oath

The candidate oath states "print name as you wish it to appear on the ballot." May a candidate use a nickname on the ballot?

A nickname may be printed along with one's legal name if the candidate is generally known by that name or the name is used as part of his or her legal name.

(See Appendix G - DE Opinion 86-06 and Appendix H - DE Opinion 09-05.)

The Division of Elections requires a candidate to notify the Division of the candidate's intent to use a nickname on the ballot.

(See Appendix I - Memo to Candidates and Affidavit.)

May a candidate use descriptive information on the ballot?

No. A candidate may not use descriptive information such as Dr., Reverend, Colonel, Esquire, M.D., etc., *unless* two persons of the same name, or whose names are so similar as to reasonably cause confusion, seek the same office.

On the candidate oath, may a candidate just indicate a first or last name?

No. Based upon the following language from DE 86-06 **(see Appendix G - DE Opinion 86-06)**, it is the Division of Elections' interpretation that a candidate cannot designate only a first or last name as the name he desires to have written in on a ballot as a write-in candidate:

Under common law principles, not abrogated by Florida law, a name consists of one Christian or given name and one surname, patronymic or family name; therefore, the name printed on the ballot ordinarily should be the Christian or given name and surname, 29 C.J.S. Elections §161. In Florida, a person's legal name is his Christian or given name and family surname, *Carlton vs. Phalan*, 100 Fla. 1164, 131 So. 117 (1930).

(Emphasis supplied.)

Applying the common law principles and the Florida case law, when the oath form says to print the "name," it must be the Christian or given name and surname.

Can a married woman use her maiden name on the ballot?

Yes. In Florida, a woman does not lose her birth given name upon marriage.

(See Appendix N – Levy v. Dijols, 990 So.2d 688 (Fla. 4th DCA 2008))

A candidate misspells his or her name on the loyalty oath or changes his or her mind about how the name is to appear on the ballot after the close of qualifying. If the candidate submits something in writing, do I change the way the name appears on the ballot?

No. Section 99.061(7)(b), F.S., states: "A candidate's name as it is to appear on the ballot may not be changed after the end of qualifying."

If the candidate oath is missing an applicable district, group or seat number, is it acceptable for qualifying?

No. Section 99.061(7)(a)2., F.S., requires the district, group, or seat number, if applicable.

If the candidate does not provide the county in which he or she is registered to vote on the candidate oath, is the candidate oath acceptable for qualifying?

No. This information is required by Section 99.021(1)(a)1., F.S.

If the candidate does not provide a political party on the Statement of Party, is it acceptable for qualifying?

No. This information is required by Section 99.021(1)(b)1., F.S.

If the candidate oath is not notarized, is it acceptable for qualifying?

No. Section 99.061(7)(a)2., F.S., requires the candidate oath to be verified under oath or affirmation pursuant to Section 92.525(1)(a), F.S., which requires it to be taken or administered before an officer authorized under Section 92.50, F.S., to administer oaths, and contain a jurat authenticated by the officer's signature and seal.

Chapter 6: DS-DE 9 - Appointment of Campaign Treasurer and Designation of Campaign Depository

If box 6 of the DS-DE 9 does not include the district, circuit, or group number, is it acceptable for qualifying?

No. Section 106.021(1)(a), F.S., provides, in part, that if the candidate is running for an office which will be grouped on the ballot with two or more similar offices to be filled at the same election, the candidate must indicate for which group or district he or she is running.

Examples:

- County Court Judge, **Group 3**
- County Commissioner, **District 2**

Chapter 7: Financial Disclosure Forms

Qualifying occurs prior to the deadline for office holders to file their 2015 financial disclosure documents. Can I accept a copy of an incumbent's 2014 financial disclosure documents?

No. A candidate must file the financial disclosure statement that covers the candidate's taxable year immediately preceding the qualifying date. **(See Appendix J - CEO 82-72).** Thus, for the 2016 qualifying period, a candidate must file the **2015** financial disclosure documents.

Is a copy of the Form 6 Financial Disclosure acceptable?

A copy is acceptable only if a public officer has filed the full and public disclosure or statement of financial interests for the year 2015 with the Commission on Ethics prior to qualifying for office. If the candidate has not filed the 2015 Form 6 with the Florida Commission on Ethics, the candidate must file an original with the qualifying officer.

Candidates who are non-incumbents must file an **original** 2015 Form 6 with the qualifying officer.

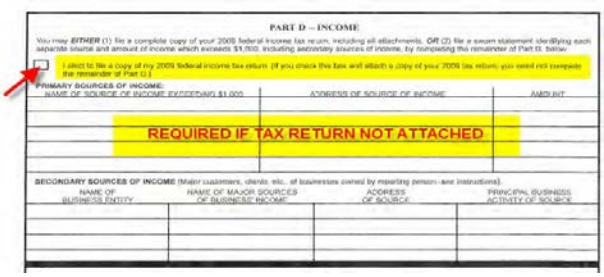
Is a copy of the Form 1 Statement of Financial Interests acceptable?

A copy is acceptable only if a public officer has filed a financial disclosure statement for 2015 with the Commission on Ethics or the Supervisor of Elections prior to qualifying for office. If the candidate has not filed a 2015 financial disclosure form with the Commission on Ethics or a supervisor of elections, the candidate must file an original with the qualifying officer.

Candidates who are non-incumbents must file an **original** 2015 Form 1 with the qualifying officer.

Part D of the Form 6 Financial Disclosure requires a candidate to complete this portion of the form or indicate that the candidate will attach a copy of the candidate's 2015 federal income tax return. If the box is checked and the income tax return is not attached, is the form still acceptable?

No. If the box is checked, the candidate must attach a copy of his 2015 federal income tax return in order to be qualified. If the box is not checked, then Part D of the form must be filled out.



If a candidate has a question about how to fill out the financial disclosure forms, should my staff or I try to assist the candidate?

No. Questions regarding how to complete Form 6 or Form 1 financial disclosure forms should be directed to the Florida

Commission on Ethics at 850.488.7864 or you can direct the candidate to the Commission's website:

http://www.ethics.state.fl.us/

If the Form 1 or the Form 6 is not signed by the candidate, is the form acceptable for qualifying?

No. The form must be signed by the candidate.

Transmittal of CE Form 6 to Florida Commission on Ethics

When a candidate has qualified for office, the qualifying officer shall forward an electronic copy of the CE Form 6 to the Florida Commission on Ethics no later than July 1. (Section 112.3144(2), F.S.)

Chapter 8: Notarization

Who can notarize qualifying documents?

In Florida:

- A Florida notary; or
- A Florida judge, clerk, or deputy clerk of a court of record:

Note: The acknowledgment shall be authenticated by the signature and seal of the person administering the oath. When the acknowledgment is taken before any judge, clerk or deputy clerk of court of record, the seal of such court may be fixed as the seal of the judge or clerk.

(See Section 92.50(1), F.S.)

In another state:

- A notary or justice of the peace in that state; or
- A judge, clerk or deputy of a court of record in that state.

(See Section 92.50(2), F.S.)

In a foreign country:

- Judge or justice of a court of last resort;
- foreign notary;
- Any minister, consul general, charge d'affaires, or consul of the United States resident in such country.

(see Section 92.50(3), F.S.)

Commissioned Officer of the United States Armed Forces

Oaths, affidavits, and acknowledgements may be taken or administered within or without the United States by or before any commissioned officer in active service of the Armed Forces of the United States with the rank of second lieutenant or higher in the Army, Air Force or Marine Corps or ensign or higher in the Navy or Coast Guard *when the person required or authorized to make and execute the oath, affidavit, or acknowledgment is a member of the Armed Forces of the United States, the spouse of such member or a person whose duties require the person's presence with the Armed Forces of the United States.*

A certificate endorsed upon the instrument which shows the date of the oath, affidavit, or acknowledgment and which states in substance that the person appearing before the officer acknowledged the instrument as the person's act or made or signed the instrument under oath shall be sufficient for all intents and purposes. The instrument shall not be rendered invalid by the failure to state the place of execution or acknowledgment.

(See Section 92.51, F.S.)

Chapter 9: Qualifying Fees/Checks

May I accept cash, a money order, cashier's check, or a personal check from a candidate to pay the qualifying fee?

No. The qualifying fee must be paid by check drawn on the campaign account.

EXCEPTION: A special district candidate may pay the $25 qualifying fee using any of the above methods.

May I accept a cashier's check if it is drawn on the campaign account to pay the qualifying fee?

No. The candidate must pay the qualifying fee using a campaign check.

If a candidate submits a qualifying check that is less than the amount of the qualifying fee, may I accept a second check that equals the difference?

No. The qualifying fee must be paid with one check that is not less than the fee required. Have the candidate submit one new check for the total amount.

If the amount of the qualifying check is more than the qualifying fee, may I accept the check?

Yes. The qualifying fee has to be ***not less than*** the fee required. Therefore, a check in an amount that is more than the qualifying fee is acceptable.

If the qualifying check has different amounts in the numeric portion and the written portion, may I accept the check?

The amount in the written portion controls the value of the check. Therefore, if the amount in the written portion is not less than the qualifying fee, you may accept the check even though the written and the numeric amounts differ.

(See Section 673.1141, F.S.)

BEST PRACTICE: If there is time, have the candidate provide a new check or make the correction.

If the qualifying check is signed by the candidate, but the candidate has not designated himself a treasurer or deputy treasurer, may I accept the check?

No. Section 106.11(1)(b)4., F.S., provides that a campaign check must contain the signature of a treasurer or deputy treasurer.

If the qualifying check is not dated, may I accept the check?

Yes. Under Florida's Uniform Commercial Code, if an instrument is undated, its date is the date of its issue. The term "issue" means the first delivery of an instrument by the maker for the purpose of giving rights on the instrument to any person. Therefore, for purposes of qualifying, an undated check is a negotiable instrument with its date being the date it is delivered to the qualifying officer.

(See Section 673.1131, F.S.)

BEST PRACTICE: Even though the check is

acceptable, if there is time, it is best to have the candidate provide a new check.

If the qualifying check is a starter or other check and the candidate has not typed or hand-written "Campaign Account," or words to that effect, on the check may I accept the check?

Yes. Pursuant to Section 99.061(7)(c), F.S., you have no authority to determine whether the account is a campaign account.

Best Practice: If the check is hand delivered by the candidate or treasurer, ask the person if the check is a campaign check. If the person indicates that it is a campaign check, have the person write "campaign account" on the check.

If the candidate or treasurer is not on hand to verify that it is a campaign check, call and request something in writing from the candidate or treasurer indicating that the qualifying check is drawn on the campaign account. The Division of Elections accepts this information by fax or email as long as it contains a signature from the candidate or treasurer.

The qualifying fee is based upon the annual salary of the office as of July 1, 2015. If there is a salary change in the interval before qualifying, does this change the qualifying fee?

No. Regardless of whether the salary is increased or decreased, the qualifying fee is based upon what it was as of July 1, 2015.

EXCEPTION: if a salary change is made retroactive, and is therefore, in effect as of July 1, 2015, the salary would be based upon the new amount.

What are my responsibilities as a qualifying officer if the qualifying check is returned by the bank?

If a judicial or school board candidate's check is returned by the bank for any reason, the qualifying officer shall immediately notify the candidate and the candidate shall, the end of qualifying notwithstanding, have 48 hours from the time such notification is received, excluding Saturdays, Sundays, and legal holidays, to pay the fee with a cashier's check purchased from funds of the campaign account. Failure to pay the fee as provided in this subparagraph shall disqualify the candidate.

(Section 105.031(5), F.S.)

All candidates, other than judicial and school board candidates, have until the end of qualifying to pay the fee with a cashier's check purchased with funds from the campaign account. If the candidate does not provide a cashier's check prior to the end of qualifying, the candidate is disqualified.

(Section 99.061(7), F.S.)

If the candidate withdraws after submitting complete qualifying papers, do I return his qualifying fee?

In order to have the qualifying fee returned, the candidate must withdraw **prior** to the last date to qualify.

(See Section 99.092(1), F.S.)

Have the candidate submit the withdrawal in writing with his signature.

The document may be mailed, hand-delivered, faxed, or emailed as long as it is signed and received prior to noon on the last day of qualifying.

(See Rule 1S-2.0001, F.A.C.)

If the candidate dies prior to the election, do I return the qualifying fee?

Yes. The qualifying fee is returned to the candidate's beneficiary. The beneficiary should submit a request in writing for the return of the qualifying fee.

If the candidate submits the qualifying fee but for other reasons fails to qualify, do I return the qualifying fee to the candidate?

Yes. Return the check to the candidate along with a letter explaining why the candidate did not qualify.

If a candidate pays the qualifying fee drawn on a campaign account that was opened prior to filing the DS-DE 9, does this mean that the check is not a "properly executed campaign check" as required by Chapter 99 and 105, F.S.?

No. It is a violation of Section 106.021, F.S., but it does not disqualify the candidate.

If a special district candidate has opened a campaign depository and is collecting and spending money, is the special district candidate required to pay the qualifying fee with a check drawn on the campaign account?

No. Section 99.061(7)(a), F.S., provides in pertinent part, that the filing fee for a special district candidate is not required to be drawn upon the candidate's campaign account.

Chapter 10: Reporting Qualified Candidates to the Division of Elections

How do I report the names of the candidates who qualified to the Division?

Section 99.092(2), F.S., provides that "[t]he Supervisor of Elections shall, immediately after the last day for qualifying, submit to the Department of State a list containing the names, party affiliations, and addresses of all candidates and the office for which they qualified."

This information is reported using the Electronic DS-DE 80 system available in the SOE Portal at the following website:

https://soesecure.elections.myflorida.com/SOEAdminServices/

Chapter 11: Distribution of Qualifying Fees

Where are the fees that I collect from candidates distributed?

County Judge and School Board Candidates:

4% qualifying fees (1% election assessment and 3% filing fee), forward to the Florida Elections Commission.

(See Section 105.031(3), F.S.)

Partisan Candidates:

1% election assessment, forward to the Florida Elections Commission.

5% (3% filing fee and 2% party assessment), forward to the state executive committee of the political party of the candidate.

(Section 99.061(2), F.S.)

NPA Candidates Filing for a Partisan Office:

1% election assessment, forward to the Florida Elections Commission.

3% filing fee, deposit in the general revenue fund of the county.

(See Section 99.0955(2), F.S.)

Special District Candidates:

$25 filing fee, deposit in the general revenue fund of the county.

*(See Section 189.04(1)(c), F.S., and **Appendix M - Department of State Memo dated April 22, 2010**.)*

Petition Candidates:

Waived petition signature verification fees **(if applicable)** disbursed by the candidate to the Supervisor, forward to the Department of State.

(See Section 106.141(6), F.S.)

Note: Send reminders to petition candidates after they become unopposed, eliminated, or elected reminding them that prior to disposing of excess campaign funds they must reimburse any waived petition signature verification fees.

See below for a sample memo and letter to petition candidates used by the Division of Elections.

FLORIDA DEPARTMENT of STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

MEMORANDUM

TO: 2016 General Election Petition Candidates

FROM: Kristi Reid Bronson, Chief
Bureau of Election Records

DATE: November ____, 2016

SUBJECT: Closing Out Your Campaign Account and Filing Your Termination Report

---

Candidates must dispose of all funds on deposit in the campaign account pursuant to the provisions of Section 106.141, Florida Statutes, within 90 days of the election. Therefore, your termination report (TR) must be filed using the Electronic Filing System (EFS) no later than **January ____, 2017**. You are not required to close the campaign prior to the due date; however, you must have written checks disposing of all surplus funds by this date. You may file your report at any time prior to the deadline once you have disposed of all funds.

If you submitted petitions to a supervisor of elections and did not pay to have signatures verified because you filed an undue burden oath, you must reimburse the county for verifying the signatures pursuant to Section 106.141(7), Florida Statutes. Please contact any supervisor of elections that verified signatures for your campaign to determine the amount that must be reimbursed.

If you have any questions, please contact this office at 850-245-6280.

KRB/

VIVA FLORIDA

Division of Elections
R.A. Gray Building, Suite 316 • 500 South Bronough Street • Tallahassee, Florida 32399
850.245.6240 • 850.245.6260 (Fax) dos.myflorida.com/elections
Promoting Florida's History and Culture VivaFlorida.org

FLORIDA DIVISION OF ELECTIONS

What address do I use when submitting fees to the Florida Elections Commission?

Florida Elections Commission
107 West Gaines Street
Collins Building, Suite 224
Tallahassee, Florida 32399-1050

Are there forms to use for transmitting the various types of fees to the Florida Elections Commission?

Forms are available on the Florida Elections Commission's website:

http://www.fec.state.fl.us/

There are three types of forms for county fee remittance:

- County Candidate One Percent Remittance Fee Form
- County Judicial Candidate Fee Remittance Form
- County School Board Candidate Fee Remittance Form

If I have questions regarding the forms or fees that are forwarded to the Florida Elections Commission, who should I call?

Business Manager
Florida Elections Commission
850.922.4539

Appendices

Appendix A

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Supreme Court of Florida.
STATE of Florida ex rel. Robert L. SHEVIN, Attorney General, et al., Relators,
v.
Richard (Dick) STONE, Secretary of State, State of Florida, et al., Respondents,

No. 42664.
Aug. 10, 1972.

Original proceeding in mandamus to compel Secretary of State to withdraw his certification of certain individuals as candidates for House of Representatives. The Supreme Court, Dekle, J., held inter alia, that county constable and clerk of criminal court, whose offices were terminating by virtue of a constitutional amendment voted upon favorably by People subsequent to 'resign to run' law, acted in good faith and with good cause in not timely entering their resignations prior to time they sought candidacy for House of Representatives; accordingly, they could continue as candidates upon forth with tendering their resignations which, in accordance with statute, were not to be effective later than date upon which they would assume office if elected.

Petition for alternative writ of mandamus denied.

Boyd, J., concurred in part and dissented in part and filed opinion.

Roberts, C.J., dissented and filed opinion.

McCain, J., did not participate.

[1] Courts 106 ⚿209(2)

106 Courts
106VI Courts of Appellate Jurisdiction
106VI(A) Grounds of Jurisdiction in General
106k209 Procedure in General
106k209(2) k. In Issuance of Writs. Most Cited Cases

In proceeding wherein relators sought mandamus to compel Secretary of State to withdraw his certification of qualification of candidates for various public offices, Supreme Court would sua sponte dismiss portion of petition relating to the chairman of a city planning and zoning board as a challenger to an incumbent for state legislature, where incumbent elected to pursue her remedy in district court, which denied relief on ground that mandamus was an inappropriate remedy, and then invoked jurisdiction of circuit court, so that litigation was presently being entertained in a court of competent jurisdiction, thus ousting jurisdiction of Supreme Court. F.S.A. § 99.012; F.S.A.Const. art. 5, § 4.

[2] Mandamus 250 ⚿174

250 Mandamus
250III Jurisdiction, Proceedings, and Relief
250k174 k. Determination of Issues and Questions. Most Cited Cases

In mandamus proceeding wherein relator sought to compel Secretary of State to with-

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draw his certification of qualification of certain individuals as candidates for House of Representatives, Supreme Court would sua sponte dismiss portion of petition relating to a city councilman's eligibility as a candidate, where Attorney General upon oral argument voluntarily withdrew his assertions as to councilman and conceded that councilman had complied with the law, was qualified as a candidate, and should remain on the ballot. F.S.A. § 99.012; F.S.A.Const. art. 5, § 4.

[3] Elections 144 ⚿126(4)

144 Elections
144VI Nominations and Primary Elections
144k126 Nomination by Primary Election
144k126(4) k. Qualifications of Voters and Candidates. Most Cited Cases

Sheriffs and Constables 353 ⚿13

353 Sheriffs and Constables
353I Appointment, Qualification, and Tenure
353I(B) Constables
353k13 k. Resignation, Suspension, or Removal. Most Cited Cases

County constable's letter of resignation which was delivered to clerk of circuit court in constable's district and which was in turn forwarded to Governor and Secretary of State was sufficient to satisfy statutory requirements, particularly in view of fact that later copies of resignation were received and accepted by Governor without complaint or objection, and constable was not disqualified as a candidate for House of Representatives by reason of fact that he held an office, term of which ran concurrently, in part, with term of office which he sought. F.S.A. §§ 15.13, 99.012(2); F.S.A.Const. art. 2, § 5(a); art. 3, § 15(d); art. 5, § 1 et seq.

[4] Elections 144 ⚿126(4)

144 Elections
144VI Nominations and Primary Elections
144k126 Nomination by Primary Election
144k126(4) k. Qualifications of Voters and Candidates. Most Cited Cases

County constable and clerk of criminal court, whose offices were terminating by virtue of a constitutional amendment voted upon favorably by People subsequent to "resign to run" law, acted in good faith and with good cause in not timely entering their resignations prior to time they sought candidacy for House of Representatives; accordingly, they could continue as candidates upon forthwith tendering their resignations which, in accordance with statute, were not to be effective later than date upon which they would assume office if elected. F.S.A. §§ 15.13, 99.012(2); F.S.A.Const. art. 2, § 5(a); art. 3, § 15(d); art. 5, § 1 et seq.

[5] Elections 144 ⚿126(4)

144 Elections
144VI Nominations and Primary Elections
144k126 Nomination by Primary Election
144k126(4) k. Qualifications of Voters and Candidates. Most Cited Cases

Municipal Corporations 268 ⚿150

268 Municipal Corporations

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268V Officers, Agents, and Employees
268V(A) Municipal Officers in General
268k150 k. Resignation or Abandonment. Most Cited Cases

Where mayor of city, though resigning prior to time required, did not forward copies to Governor and Secretary of State until after deadline, but subsequent receipt of copies of resignation within a reasonable time was consistent with provisions of court rules for mailing of copies, with related matters of transmitting notice and with reason and logic, purpose of notice was adequately served, was within comprehension of requirement and intention of "resign to run" law, mayor was not disqualified as a candidate for House of Representatives by reason of holding an office, term of which ran concurrently, in part, with term of office which he sought. F.S.A. §§ 15.13, 99.012(2); F.S.A.Const. art. 2, § 5(a); art. 3, § 15(d), art. 5, § 1 et seq.

[6] Elections 144 ⚿126(4)

144 Elections
144VI Nominations and Primary Elections
144k126 Nomination by Primary Election
144k126(4) k. Qualifications of Voters and Candidates. Most Cited Cases

Although Attorney General denied timely receipt of copies of mayor's resignation by appropriate officials, namely, Governor and Secretary of State, where, without dispute, actual resignation was actually made to an effective body, namely, city commission, and copies were timely mailed, mayor was not disqualified as a candidate for House of Representatives by reason of holding an office, term of which ran concurrently, in part, with term of office which he sought. F.S.A. §§ 15.13, 99.012(2); F.S.A. Const. art. 2, § 5(a); art. 3, § 15(d); art. 5, § 1 et seq.

[7] Elections 144 ⚿126(4)

144 Elections
144VI Nominations and Primary Elections
144k126 Nomination by Primary Election
144k126(4) k. Qualifications of Voters and Candidates. Most Cited Cases

Duty of Secretary of State under constitution and statute pertaining to qualifications of individuals to run for public office does not extend to substance or correctness or enforcement of a sworn compliance with the law, and once candidate states his compliance under oath, Secretary's ministerial determination of eligibility for office is at an end, and any challenge to correctness of candidate's statement of compliance is for appropriate judicial determination upon any challenge properly made. F.S.A. § 101.252; F.S.A.Const. art. 2, § 5(a); art. 3, § 15(d); art. 5, § 1 et seq.

***19** Robert L. Shevin, Atty. Gen., and Daniel S. Dearing, Chief Trial Counsel, Dept. of Legal Affairs, Tallahassee, for relators.

DEKLE, Justice.

The original jurisdiction of this Court has been invoked by petition for writ of mandamus directed to The Honorable Richard Stone, Secretary of State, [FN1] and various co-respondents. Relator Robert L. Shevin, Attorney General, and co-relators seek to have Respondent Stone withdraw his certification of qualification of the candidacies of

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the co-respondents[FN2] on the ground of failure to comply with the requirements of Fla.Stat. s 99.012, F.S.A., the so-called 'resign to run' law. We have heard all interested parties upon oral argument at a session of the Court specially called for such purpose in view of the urgency of the questions presented and the importance thereof to the people of the State of Florida in the impending elections and to the parties.

FN1. Fla.Const. art. V, s 4, F.S.A.: 'The supreme court may issue writs of mandamus . . . when a state officer, board, . . . is named as respondent . . .'

FN2. GEORGE H. BROWN, JR., Constable, District 9, Duval County, qualified as a candidate for Member of the House of Representatives, District 20;

JOHN P. KING, Clerk, Criminal Court of Record, Duval County, qualified as a candidate for Member of the House of Representatives, District 17;

TEMPERANCE E. WRIGHT, Chairman, City of Miami Planning and Zoning Board, qualified as a candidate for Member of the House of Representatives, District 106;

FRANK PATE, Mayor of the City of Port St. Joe, qualified as a candidate for County Judge, Gulf County;

RICHARD A. PRICE, Constable, District 5, Pinellas County, qualified as a candidate for Member of the House of Representatives, District 59;

WILLIAM F. MILLER, Councilman, City of Boca Raton, qualified as a candidate for Member of the House of Representatives, District 83;

CHARLES W. BOYD, Mayor, Pembroke Pines, qualified as a candidate for Member of the House of Representatives, District 96.

WRIGHT-MILLER

[1] At the outset, this Court must sua sponte dismiss that portion of the petition relating to the Reverend Temperance E. Wright as a challenger to incumbent Gwendolyn S. Cherry for the State Legislature in Dist. 106 (Hialeah). Mrs. Cherry elected to pursue her remedy in the District Court of Appeal, First District, on August 1, 1972. The District Court denied relief in an opinion filed August 4, 1972, Case No. R-422, styled State ex rel. Cherry v. Stone, Secretary of State, and Temperance E. Wright, 265 So.2d 56 (Fla.App.1st 1972), on the ground that mandamus was an inappropriate remedy. Mrs. Cherry then invoked the jurisdiction of the Circuit Court of Leon County and, since that ***20** litigation is now being entertained in a court of competent jurisdiction, the jurisdiction of this Court has, necessarily, been ousted.

[2] The Attorney General upon oral argument voluntarily withdrew the assertions as to Respondent Miller and conceded that he had duly complied with the law, was qualified as a candidate for the House of Representatives and should remain on the ballot.

Respondent Richard Stone, as Secretary of State, is charged under Fla.Stat. s

15.13,[FN3] F.S.A., with 'general supervision and administration of the election laws,' which laws include Fla.Stat. s 99.012(2), F.S.A., providing as follows:

> FN3. 'The secretary of state shall have general supervision and administration of the election laws, corporation laws and such other laws as are placed under his office by the legislature and shall keep records of same.'
>
> See State ex rel. Fair v. Adams, 139 So.2d 879 (Fla.1962); State ex rel. Taylor v. Gray, 157 Fla. 229, 24 So.2d 492 (1946).

'(2) No individual may qualify as a candidate for public office who holds another elective or appointive office, whether state, county or municipal, the term of which or any part thereof runs concurrent with the term of office for which he seeks to qualify without resigning from such office not less than ten days (10) prior to the first day of qualifying for the office he intends to seek. Said resignation shall be effective not later than the date upon which he would assume office, if elected to the office to which seeks to qualify, the expiration date of the term of the office which he presently holds, or the general election day at which his successor is elected, whichever occurs earliest. With regard to elective offices, said resignation shall create a vacancy in said office thereby permitting persons to qualify as candidates for nomination and election to that office in the same manner as if the term of such public officer were otherwise scheduled to expire; or, in regard to elective municipal or home rule charter county offices, said resignation shall create a vacancy which may be filled for the unexpired term of the resigned officer in such manner as provided in the municipal or county charter. This does not apply to political party offices.'

By way of caveat we note that the 1971 session of the Legislature in 'An act relating to Transportation,' Ch. 71-373, tacked on a s 10 amending s 99.012, effective October 1, 1971, to provide as follows:

'No person who serves as a member of any appointive board or authority without salary shall be in violation of this section by reason of holding any such office.'

None of respondents is in this category.

BROWN-PRICE-KING

Respondents Brown, Price and King presently hold offices as set out Supra, footnote 2, whose terms run concurrently, in part, with the terms of the offices which they seek. Members of the House of Representatives take office upon election.[FN4] Election Day is November 7, 1972. Their present offices terminate by virtue of new Article V, Fla.Const., F.S.A., on January 1, 1973. These three respondents contend that it is unnecessary for them to resign, maintaining that:

> FN4. Fla.Const. art. III, s 15(d), F.S.A.

(1) The reasons for resigning are not present in their cases, particularly in that no successors to their present posts (which are terminating) are to be elected, so that they need not step aside to make way for the election of successors;

(2) Their present offices are not those which might be used to advance their can-

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didacy for the Legislature;

*21 (3) It would be a useless and unnecessary act to resign in these circumstances;

(4) It would be an economic loss to the taxpayers and result in confusion to have successors appointed for the 54 days remaining from election on Nov. 7 to Jan. 1, if successful in their bids for office.

[3] Additionally, Constable Price DID in fact timely resign on June 30. Respondents Brown and King have not resigned. Relator Shevin concedes Price's tender of a letter of resignation but contends that the fact that the resignation was delivered to the Clerk of Circuit Court in Constable Price's district in St. Petersburg (who in turn forwarded it on July 5 to the Governor and Secretary) did not comply literally with the requirements of the statute. We view the resignation as sufficient in these circumstances to satisfy the statute, particularly in view of the further admitted fact that later copies of the resignation WERE received and the Governor accepted the resignation without complaint or objection.

Accordingly, Constable Price should remain on the ballot.

[4] As to Brown and King, the reasons above recited by them for not resigning where they understood the law not to apply, are cogent and persuasive as to why the 'resign to run' law should not apply in these unusual circumstances, where their offices are terminating by virtue of a new constitutional amendment (Article V) voted upon favorably by the people subsequent to the resign to run law. This superceding action by the people's vote changes the circumstances applying to these terminating offices of Brown and King. These respondents acted in good faith and with good cause in not timely entering resignations in these particular instances with the doubt which existed in their cases. They still offer to resign if deemed necessary.

We accordingly hold as to Brown and King that they may continue as candidates upon forthwith tendering their resignations which (in accordance with the statute) 'shall be effective not later than the date upon which he would assume office, if elected to the office to which he seeks to qualify.' The other contingent effective times in the statute do not apply in these new circumstances brought about by Article V. These officers (respondents) could not, of course, hold more than one elective office and thus must submit resignations as outlined.[FN5]

FN5. Fla.Const. art. II, s 5(a), F.S.A.

BOYD

[5] Respondent Boyd, Mayor of Pembroke Pines (Hollywood, Florida, area) is in a position similar to Respondent Price in that he resigned prior to the time required, i.e., June 28, BUT did not forward copies to the Governor and Secretary until AFTER the July 1 deadline to resign. Subsequent receipt of copies of the resignation within a reasonable time, however, is consistent with the provisions of court rules for the mailing of copies, with related matters of transmitting notice and with reason and logic. Such transmission will not void or nullify a timely resignation. The purpose of the notice is thereby adequately served and is within the comprehension of the statute's requirement and intention with respect to this provision.

Accordingly, Respondent Boyd did satisfy the resign statute and is entitled to remain upon the election ballot as a candidate for the House of Representatives, Dist. 96.

PATE

[6] This brings us to the last of the respondents, Mayor Frank Pate of the City *22 of Port St. Joe as a candidate for County Judge, Gulf County. He asserts full compliance. The Attorney General simply denies timely receipt of copies of the Mayor's resignation by the appropriate officials, namely, the Governor and Secretary of State. Without dispute the actual resignation to the Effective body (City Commission of Port St. Joe) was timely made on June 27. Copies were timely mailed (June 30).

Our same remarks above on the forwarding of the resignation to the Governor (and his acceptance of it) with copy to the Secretary apply here also. We find no deficiency which would deny this candidate (Pate) a place on the ballot.

The Attorney General urges that with the change in the statute (former s 331, Revised General Statutes (1920) in effect at the time of Davis v. Crawford, 116 So. 45 (Fla.1928)) to present s 101.252 in 1953, the Secretary is vested with the responsibility of determining 'who has qualified as prescribed by law'; ergo, the Secretary shall determine who has properly 'resigned to run'. It is not a simple administrative determination.

[7] The resign law is not Secretary Stone's to administer by such a determination, any more than the campaign spending law. His charge under the constitution and statute does not extend to the substance or correctness or enforcement of a sworn compliance with the law-with 'matters in pais', as it were. Once the candidate states his compliance, under oath, the Secretary's ministerial determination of Eligibility for the office is at an end. Any challenge to the correctness of the candidate's statement of compliance is for appropriate judicial determination upon any challenge properly made, as here.

Accordingly, the several respondents, having satisfied the resign to run statute (with Brown and King forthwith presenting their resignations as aforesaid), the grounds for issuance of the writ of mandamus to remove their names from the ballot fail. The names of respondent candidates BROWN, PRICE, KING, BOYD and PATE shall remain upon the ballot as previously and correctly heretofore certified by Respondent Secretary.

The petition for the alternative writ of mandamus is hereby denied.

In view of the expediency required within the limited time available, the privilege of filing rehearings is dispensed with and this opinion is immediately effective.

It is so ordered.

ERVIN, CARLTON and ADKINS, JJ., concur.
BOYD, J., concurring in part and dissenting in part with opinion.
ROBERTS, C.J., dissenting with opinion.
McCAIN, J., not participating.
BOYD, Justice (concurring in part and dissenting in part).

I concur in that part of the opinion leaving the names of Pate, Price and Boyd on the ballot. They submitted resignations in good faith efforts to comply with the law, but their letters were not sent to the Governor and

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Secretary of State in a timely manner. This does not comply with the letter of the law but seems to satisfy the basic legislative intent. At this late date in the election campaigns, names of candidates should not be stricken from the ballot ***23** whenever there is substantial compliance with law as in these resignations.

I dissent to that part of the opinion leaving the names of Brown and King on the ballot. They have clearly violated the letter and spirit of the law since their terms as constables would end fifty-four days after they would take office as legislators, if elected. This would be a clear overlapping of the terms of office. Since they did not resign and still hold their offices, there should be no basis to retain them on the ballot.

I agree with the majority opinion disposing of Miller and Wright.

As a general rule the law contemplates the Secretary of State is to accept qualifying instruments from anyone who swears he is eligible and pays the qualifying fees. This rule should not be construed to require the Secretary of State to place the name of a person on the ballot who is obviously not eligible and when such lack of eligibility is known to him as the state's chief elections officer. The burden of litigating the matter should be upon the one seeking to qualify.

The Attorney General is properly bringing this action as the Attorney for the State. Few matters in a democracy can be of greater importance to the people than those relating to qualifications of candidates for public office.

Accordingly, I concur in part and dissent in part.

ROBERTS, Chief Justice (dissenting).

The Resign-to-Run law was enacted by the legislature and its constitutionality has been upheld by this Court.

In my opinion, it is the responsibility of this Court to follow the law as written and I, therefore, must respectfully dissent from the majority view.

Fla. 1973.
State ex rel. Shevin v. Stone
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END OF DOCUMENT

Appendix B

DE 94-04 - March 3, 1994

When Qualifications for Selected Offices Must Be Met; Residency
§§ 99.021 and 230.10, F.S.; DE 78-31 and DE 92-10

TO: The Honorable Peggy Rae Border, Supervisor of Elections, Flagler County, Post Office Box 901, Bunnell, Florida 32210-0901

Prepared by: Division of Elections

This is in response to your request for an advisory opinion regarding residency. You are the Supervisor of Elections for Flagler County and, pursuant to Section 106.23(2), Florida Statutes, the Division has authority to issue this opinion to you.

You ask when must a candidate meet the residency requirements for the office of school board member?

The answer to this question is found at Section 230.10, Florida Statutes, which provides that a candidate for school board must be a resident of the school board member residence area from which he seeks election at the time he qualifies.

Since the Division's jurisdiction to render opinions is limited to Chapters 97-106, Florida Statutes, we have no authority to interpret Section 230.10, Florida Statutes. However, Section 99.021, Florida Statutes, does require that all candidates, at the time of qualifying as candidates for public office, subscribe to an oath that they are qualified electors of their county. In order to be a qualified elector, one must be a resident of Florida and the county wherein he registers to vote.

The Division has issued several opinions on residency; none of these has specifically dealt with when one must meet a residency requirement. However, we have opined that unless otherwise provided constitutionally, legislatively or judicially, the qualifications one must possess for public office, which would include residency, are effective at the commencement of the term of office. Op. Div. Elect. 92-10 (June 24, 1992).

Consistent with the foregoing, the following is a list of locally elected public officers and the time at which their residency must be established:

County Commissioners:	At the time of election. State v. Grassi, 532 So. 2d 1055 (Fla. 1988); Op. Div. Elect. 92-10 (June 24, 1992).
School Board	At the time of qualifying. § 230.10, Fla. Stat.

City Commission:	At the time of assuming office, unless provided otherwise by city charter or ordinance. Op. Div. Elect. 92-10 (June 24, 1992).
Judges:	At the time of assuming office. Compare by analogy Advisory Opinion to the Governor, 192 So. 2d 757 (Fla. 1966); Ops. Div. Elect. 78-31 (August 3, 1978), and 92-10 (June 24, 1992).
County Constitutional Officers:	At the time of assuming office. Compare by analogy Advisory Opinion to the Governor, supra; Op. Div. Elect. 92-10 (June 24, 1992).

Consequently, we remain of the opinion that the qualifications one must possess for public office are effective at the commencement of the term of office unless provided otherwise constitutionally, legislatively or judicially.

SUMMARY

The qualifications one must possess for public office, which would include residency, are effective at the commencement of the term of office unless otherwise provided constitutionally, legislatively or judicially.

Appendix C

DE 92-10 - June 24, 1992

Preregistration and Subsequent Qualification for Office
Sections 97.041 and 99.021, F.S.

TO: Honorable Cora Sue Robinson, Supervisor of Elections, Gulf County, 1000 Fifth Street, Port St. Joe, Florida 32456

Prepared by: Division of Elections

This is in response to your request for an advisory opinion regarding a person who, after preregistering to vote, is seeking to qualify for an elected public office. You are the Gulf County Supervisor of Elections and pursuant to Section 106.23(2), Florida Statutes, the Division of Elections has authority to render this opinion to you.

Substantially, you ask:

> Whether a person, who will not be 18 years old until five days after the close of the qualifying period, may preregister to vote and qualify for the office of county commissioner?

Section 97.041, Florida Statutes, provides that persons are allowed to preregister to vote on or after their seventeenth birthday for any election occurring on or after their eighteenth birthday. Thus, a person cannot be a qualified elector until he is 18 years of age.

Section 99.021, Florida Statutes, provides that as a part of the qualification process, a person must swear to an oath or affirmation that, among other things, he is a qualified elector of his county.

It is well settled in Florida that the statutory oath a person is required to take upon qualifying for office refers to qualifications applicable when the term of the office he seeks begins. State ex rel. Fair v. Adams, 139_So.2d_879 (Fla. 1962), Davis ex rel. Taylor v. Crawford, 116_So._41 (1928), State ex rel. Knott v. Haskell, 72 So. 651 (1916). Therefore, a person who will be a qualified elector when his term of office begins may qualify for the office of county commissioner.

Finally, we note that the qualifications for county commissioner are found in Article VIII, Section 1 (e), Florida Constitution. No minimum age requirement is provided for this office, and the legislature may not impose any additional qualifications. State v. Grassi, 532 So.2d 1055, 1056 (Fla. 1988).

SUMMARY

A person who is 17 years of age and who will not be 18 years of age and a qualified elector until five days after the close of the qualifying period may, nevertheless, qualify for the office of county commissioner. The candidate's qualifying oath that he is a qualified elector of his county refers to qualifications at the commencement of the term of office.

A person who is 17 years of age and who will not be 18 years of age and a qualified elector until five days after the close of the qualifying period may, nevertheless, qualify for the office of county commissioner. The candidate's qualifying oath that he is a qualified elector of his county refers to qualifications at the commencement of the term of office.

Appendix D

FLORIDA DIVISION OF ELECTIONS

Guidelines for Determining When Residency Qualifications for Elected Office Must be Met

DE Reference Guide 0008 (Updated 07/2014)

These guidelines are for reference only. They are not to be construed as legal advice or representation. For any particular set of facts or circumstances, refer to the applicable state, federal law, and case law, and/or consult a private attorney before drawing any legal conclusions or relying upon this information.

Residency requirements – General Overview

- **In general.** Unless otherwise provided for constitutionally, legislatively or judicially, any residency requirement for an elected office must be met at the time of assuming office. (For example, the Governor must have resided in the state for 7 years by time of election. *See* s. 5, Art. IV, Fla. Const.)
- **Oath.** State law requires that all candidates at the time of qualifying subscribe to an oath (s. 99.021, F.S.) that they are qualified electors of their county. In order to be a qualified elector, one must be a resident of Florida and the county wherein he or she registers to vote. The oath also provides that the candidate is qualified for the office being sought. However, this oath is considered prospective in nature – it becomes effective at the time of assuming office, unless otherwise provided for constitutionally, legislatively or judicially. *See Davis v. Crawford*, 116 So. 41 (Fla. 1928); *State v. Haskell*, 72 So. 651 (Fla. 1916).
- **Continuous residency.** Any residency requirement for an office is a continuous one. Failure to maintain the residency throughout the term results in vacancy in office. *See* generally s. 3, Art. X, Fla. Const. and s. 114.01(1)(g), F.S. In absence of a statute, constitutional provision or municipal ordinance that establishes a residency requirement, failure to maintain residency alone does not trigger a vacancy in office. *See* AGO 75-113; AGO 88-11 (exception for redistricting).

Residency requirements – Specific Offices

- **The following represent situations where the law addresses when residency requirements must be met for candidates and elected officials.**

City Commissioner

- **At the time of assuming office, unless provided otherwise by city charter or ordinance.**
- *See* DE 94-04; DE 92-10; *Nichols v. State,* 177 So.2d 467 (Fla. 1965) & *Marina v. Leahy*, 578 So.2d 382 (Fla. 3rd DCA 1991)(re: reasonable durational residency requirements).

Congressional Members (U.S. Senators and U.S. Representatives)

- Must be an inhabitant of the state when elected. (ss. 2 & 3, Art.1., U.S. Constitution)
- States have no authority to add residency requirements to federal offices.
- Questions about residency relating to a U.S. Senator or U.S. Representative should be directed to the respective Congressional chamber which has *exclusive* jurisdiction over the qualifications including the residency of its membership. *See* s. 5, Art. I., U.S. Constitution.
- Addresses: Clerk of U.S. House of Representatives, U.S. Capitol, Room H154, Washington, DC 20515–6601; phone: (202) 225–7000; Secretary of the Senate, United States Senate, Washington, D.C. 20510; phone: (202) 224-3121.

County Commissioner

- **At the time of election.**
- *See State v. Grassi*, 532 So.2d 1055 (Fla. 1988); s. 1(e), Art. VIII, Fla. Const.; DE 92-10, DE 94-04; & AGO 74-293.

➢ **CONSTITUTIONAL COUNTY OFFICERS (*E.G.*, CLERK OF COURT, SUPERVISOR OF ELECTIONS, PROPERTY TAX APPRAISER, SHERIFF, *ETC.*)**

- **At the time of assuming office.**
- By analogy, *see Advisory Opinion to Governor*, 192 So.2d 757 (Fla. 1966); DE 90-30, DE 92-10, & DE 94-04 (no minimum residency requirements set out in Florida Constitution but there may be county charters that mandate some durational residency).

➢ **GOVERNOR, LIEUTENANT GOVERNOR, AND CABINET MEMBERS**

- **At the time of election.**
- Must be resident of State for preceding seven years. *See* s. 5, Art. IV, Fla. Const.

➢ **JUDGES**

- **At the time of assuming office.**
- By analogy, see *Advisory Opinion to Governor,* 192 So.2d 757 (Fla. 1966); DE 94-04, & DE 78-31; s. 8, Art. V, Fla. Const. (justice/judge must be elector of state and reside in territorial jurisdiction of court).

➢ **LEGISLATORS (STATE SENATORS AND REPRESENTATIVES)**

- **At the time of election.**
- A legislator assumes office on Election Day (*Ruiz v. Farias*, 43 So. 3d. 124, 127 (Fla. 3DCA 2010)).
- *See* s. 15, Art. III, Fla. Const. (for qualifications, including residency). A legislator must be resident of district 'from which elected' and be a resident in state for two years prior to election.
- Further questions about residency should be directed to the respective Florida legislative chamber which has *exclusive* jurisdiction over the qualifications of its members. Senate and House Joint Rule 7.1, which addresses residency, in part, provides: "A member shall be a legal resident and elector of his or her district at the time of election and shall maintain his or her legal residence within that district for the duration of his or her term of office. While a member may have multiple residences, he or she shall have only one legal residence." Each member must file a written statement of residency with the respective chamber.
- Addresses: Speaker of the House, Florida House of Representatives, 402 South Monroe Street, Tallahassee, FL 32399-1300; phone: (850) 717-5000; President of the Senate, Florida Senate, 404 S. Monroe Street, Tallahassee, FL 32399-1100; phone: (850) 487-5229.

➢ **SCHOOL BOARD MEMBER**

- **At the time of qualifying.**
- *See* ss. 1001.34 & 1001.361, F.S..; and DE 82-02 & 94-04. Note: s. 1000.361 was formerly 230.10, F.S.

➢ **SCHOOL SUPERINTENDENT**

- **At the time of assuming office.**
- *See* DE 94-04; s. 1001.463, F.S.., failure to maintain residency results in vacancy (implies residency requirement); s. 5, Art. IX, Fla. Const. (4-yr term); s. 1001.46, F.S. (elected); s. 1001.461, F.S. (appointed).

➢ **WRITE-IN CANDIDATE**

- **At the time of qualifying.** (s. 99.0615, F.S.)

RESIDENCY QUESTIONS

- Any questions regarding residency requirements for officials *not* expressly stated in the Florida Election Code should be addressed to the Florida Attorney General's Office.

Sources: Advisory opinions for Division of Elections (http://election.dos.state.fl.us/); Attorney General Opinions (http://myfloridalegal.com); statutes, constitutions, and case law.

Appendix E

A statute addressed in this opinion has changed. Please consult current Florida law.

DE 80-27 - August 21, 1980

Residence Requirement For A County Commission Candidate

To: Mr. Jay A. Smith, Assistant Mayor, City of Vero Beach, Vero Beach, Florida

Prepared by: Division of Elections

This is in response to your request for advisory opinion pursuant to Section 106.23(2), Florida Statutes (1979). Your questions can be restated:

1. Must a candidate for the county commission in Indian River County District 5 be a resident of the district for which he qualifies as a candidate?
2. Is the residency requirement of Section 99.032, Florida Statutes (1979), met by a candidate who is a guest in someone's home in the district?

Section 99.032, Florida Statutes (1979), states:

> A candidate for the office of county commissioner shall at the time he qualifies, be a resident of the district from which he qualifies.

Quite clearly, the law sets forth a district residency requirement for a county commission candidate. The law expressly requires residence at the time of qualifying.

The members of the board of county commissioners are elected by the voters of the entire county, but a commissioner must reside in each of the commission districts. Article VIII, Section 1 (e), Florida Constitution of 1968. It was to insure compliance with this constitutional provision that the Legislature enacted Section 99.032, Florida Statutes (1979). The residency requirement is a continuous requirement as the Constitution provides that a "failure to maintain the residence requirement when elected or appointed" causes a vacancy to occur. Article X, Section 3, Florida Constitution of 1968. See DE Opinion 78-19 (March 21, 1978).

The courts have construed the term resident (residency) on numerous occasions. The generally accepted definition of residence is synonymous with domicile, "that place in which habitation is fixed, without any present intention of removing therefrom." Berry v. Wilcox, 44 Neb. 82, 62 N.W. 249 (1895), cited in Op. Atty. Gen. 070-97 (August 3, 1970). Florida law equates the phrase "legal resident" with permanent resident, domicile or permanent abode, as distinguished from temporary residence. Bloomfield v. City of St. Petersburg, 82 So. 2d 364 (Fla. 1955).

The key element of residency is the intent of the individual. Permanent residence is wherever a person intends to make a permanent domicile, which can be factually supported. Such factual support may be voter's registration, driver's licenses, tax receipts, receipt of mail or activities normally indicative of home life. See Op. Atty. Gen. 063-31 (March 20, 1963). All of the foregoing do not prove place of

legal residency but may be used as evidence of that fact. Accordingly, whether a candidate who is a guest in a home has established a residence there depends on the surrounding circumstances and the intent of the person.

The Division of Elections is without authority to look beyond a candidate's qualifying papers to determine a person's eligibility as a candidate. The Supreme Court has stated:

> Once the candidate states his compliance, under oath, the Secretary's ministerial determination of eligibility for the office is at an end. Any challenge to the correctness of the candidate's statement of compliance is for appropriate judicial determination upon any challenge properly made . . .State ex. Rel. Shevin v. Stone, 279 So. 2d 17, 22 (Fla. 1972).

This decision applies to supervisors of election as well. See DE Opinion 78-30 (August 3, 1978). Had there been a discrepancy in the qualifying papers between the actual place of residency and the district residence area, the supervisor could have invoked the notification procedures of Section 99.061(5), Florida Statutes (1979). But if there was no discrepancy on the face of the papers, the supervisor is without authority to question the candidate's statement of compliance. Any other challenge to the candidate's eligibility to be on the ballot is a matter for the appropriate judicial tribunal.

Appendix F

A statute addressed in this opinion has changed. Please consult current Florida law.

DE 93-05 - June 23, 1993

Residency
§§ 97.041(2), 97.051 and 97.091(1), F.S.

TO: The Honorable David C. Leahy, Supervisor of Elections, Dade County, 111 Northwest First Street, Suite 1910, Miami, Florida 33128-1962

Prepared by: Division of Elections

This is in response to your request for an advisory opinion regarding legal residency of an individual who asked to be registered as a voter in Dade County. The Division of Elections has authority pursuant to Section 106.23(2), Florida Statutes, to issue advisory opinions relating to the Florida Election Code, Chapters 97-106, Florida Statutes, to several categories of persons, including supervisors of elections.

According to your letter and subsequent conversations with this office, an individual has moved his personal belongings from Broward County to Dade County and is now living with his mother in Dade County. This person is engaged in divorce proceedings and his spouse remains in the marital home in Broward County. He has stated his intent to permanently remain at the residence to which he has moved in Dade County and has asked to register to vote in Dade County. Based on the foregoing, you ask whether, pursuant to Section 97.091(1), Florida Statutes, the individual is a legal resident of Dade County or Broward County.

It is the opinion of the Division that, for the purpose of registering to vote, an individual has established legal residency in a county when he physically moves to the county with the intent of making that county his permanent home.

Section 97.091(1), Florida Statutes, is inapplicable to the above-described factual scenario. That section applies only where a person temporarily moves outside his county of legal residence and remains a voter in the county of his legal residence. Here, the person has moved permanently and asked to register to vote in the county in which he has established his new legal residence. Under these circumstances, the person would need to reregister as a voter in accordance with Sections 97.041 and 97.051, Florida Statutes.

No provision of the Florida Election Code defines legal residency. However, this office and Florida courts have consistently construed legal residence to mean a permanent residence, domicile, or permanent abode, rather than a residence that is temporary. See, Op. Div. Elect. Fla. 80-27 (August 27, 1980); Walker v. Harris, 398 So. 2d 955 (Fla. 4th DCA 1981); and Cruickshank v. Cruickshank, 420 So. 2d 914 (Fla. 1st DCA 1982).

In Bloomfield v. City of St. Petersburg Beach, 82 So. 2d 364 (Fla. 1955), the Florida Supreme Court stated:

> [W]here a good faith intention is coupled with an actual removal evidenced by positive overt acts, then the change of residence is accomplished and becomes effective. This is so because legal residence consists of the concurrence of both fact and intention. The bona fides of the intention is a highly significant factor.

Legal residence is, therefore, determined by looking to where a person intends to make a home permanent and to whether factual evidence exists to corroborate that intent.

In making this determination, no single piece of evidence, such as homestead exemption, is decisive. As directed in Ogden v. Ogden, 33 So. 2d 870, 873 (1947), "the best proof of one's domicile [legal residence] is where he says it is."

This is not to say, however, that proof of legal residence simply depends on a person's subjective intent. Instead, the establishment of legal residence depends on a variety of acts or declarations, all of which must be considered and weighed on a case-by-case basis. Examples of evidence which may be considered in determining whether legal residency has been established include driver's license, tax receipts, mail receipts, bank accounts, the relocation of personal effects, and the purchase or rental of property.

SUMMARY

An individual has established legal residency for voter registration purposes in a county when he physically moves to the county with the intent of making that county his permanent home.

Appendix G

DE 86-06 - May 1, 1986

Ballot Name;
Use of Nickname
Section 99.021, Florida Statutes

To: Honorable Ann Robinson, Supervisor of Elections, Indian River County, 1840 - 25th Street, Suite N-109, Vero Beach, Florida 32960-3394

Prepared by: Division of Elections

This is in response to your request for an advisory opinion pursuant to Section 106.23(2), Florida Statutes, regarding the use by a candidate as defined by the Florida Election Code, Chapters 97-106, Florida Statutes, of his or her proper name or nickname for appearance on the ballot.

Section 99.021, Florida Statutes, requires each candidate to include in his or her oath of candidacy the name as the candidate wishes it to appear on the ballot and directs certification of the name by the qualifying officer to the appropriate supervisor of elections so that the name may thus be printed on the ballot. Under common law principles, not abrogated by Florida law, a name consists of one Christian or given name and one surname, patronymic or family name; therefore, the name printed on the ballot ordinarily should be the Christian or given name and surname, 29 C.J.S. Elections §161. In Florida, a person's legal name is his Christian or given name and family surname, Carlton vs. Phalan, 100 Fla. 1164, 131 So. 117 (1930).

However, it has been determined that any name by which a candidate is known is sufficient on a ballot, and a person is legally permitted to have printed on the ballot the name which the candidate has adopted and under which he or she transacts private and official business, 29 C.J.S. Elections §161.

With regard to the use of nicknames, the Florida Attorney General determined many years ago that there appears to be no objection to including the nickname of a candidate by which he or she is generally known, along with the candidate's name, on the ballot.

Descriptive information such as a title (for example, Dr. or M.D.), although not part of a person's name, is permissible only when two persons of the same name or whose names are so similar as to reasonably cause confusion, seek the same office. See State vs. Murphy, 122 Ohio St. 620, 174 N.E. 252 (1930).

Election officials, however, may be justified in refusing to print on the ballot a candidate's nickname when it is not shown that the nickname ever was used by the candidate as part of his legal name, and such officials may be equally justified in refusing to print on the ballot a candidate's choice of a name which has not been adopted by him or her and under which the candidate has not transacted private and official business. See C.J.S. Elections §161.

In summary, ordinarily a candidate must use his or her Christian or given name and surname, unless it

can be shown that the candidate is known by another name which he or she has adopted and under which he or she transacts private and official business. In addition, a candidate may use a legitimate nickname and, where confusion would result, the candidate may use a descriptive designation.

Appendix H

FLORIDA DEPARTMENT of STATE

CHARLIE CRIST
Governor

KURT S.BROWNING
Secretary of State

July 15, 2009

Ms. Priscilla A. Thompson
City of Miami
Office of the City Clerk
3500 Pan American Drive
Miami, Florida 33133

RE: DE 09-05
Qualifying – Role of Qualifying Officer;
Candidate nickname; §§ 99.021(1), 99.061(7),
100.3605(1), and 104.011(1), Florida Statutes

Dear Ms. Thompson:

This letter responds to your request for an advisory opinion. You are the City Clerk for the City of Miami and serve as the filing officer for municipal candidates submitting qualification paperwork for Miami's municipal elections; therefore, the Division has the authority to issue you an opinion pursuant to section 106.23(2), Florida Statutes (2008).

You ask essentially the following questions:

1. Does the filing officer have the authority to reject qualification papers which on their face appear in proper order and which comply with applicable qualifying requirements if an opposing candidate challenges the veracity of the documents' contents?

2. What level of scrutiny must a filing officer apply to ascertain whether a prospective candidate legitimately has a nickname that is eligible for placing on the ballot?

You also ask a third question: "Is the City Clerk, when acting as both the election officer and notary, compelled to ascertain the veracity of the statements sworn to by the prospective candidate before she notarizes the candidate's documents?" To the extent that this question asks about a notary public's duty, the Division of Elections does not have the authority to respond because an answer would involve an interpretation of chapter 117, Florida Statutes (2008). The Division's authority is limited to provide advisory opinions about Florida's Election Code (chapters 97 - 106, Florida Statutes). If your third question is not adequately addressed in the Division's response to Question #1, you may wish to request an opinion from Florida's Attorney

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Telephone: (850) 245-6500 • Facsimile: (850) 245-6125
www.dos.state.fl.us

General regarding a notary public's duty to verify the accuracy of the information being notarized.

With regard to Question #1, the short answer is "no."

Your letter states that a candidate asked you to disqualify an opposing candidate because the opposing candidate had filed an affidavit of financial hardship "despite [his] ownership in a home conservatively valued at $750,000 as evidenced in his Statement of Financial Interests."

Under section 99.061(7), Florida Statutes (2008), in order for a candidate to be qualified for office, certain items must be received by the filing officer before the qualifying period ends. Such items include the candidate oath required by s. 99.021(1), Florida Statutes (2008), in which the candidate must appear before an officer authorized to administer oaths, and either swear or affirm, among other statements, "that he or she is qualified to hold the office to which he or she desires to be nominated or elected." Prior opinions by the Division of Elections,[1] the Attorney General,[2] and the Florida Supreme Court[3] consistently state that a filing officer to whom candidates submit their qualifying papers performs a purely ministerial function and that the filing officer must accept completed qualifying papers submitted under oath or affirmation. The most relevant and succinct pronouncements come from the Florida Supreme Court which has twice addressed the Secretary of State's role as the filing officer for candidates for the Florida House of Representatives (which we believe is analogous to the role of other filing officers for candidates under the Election Code). First, the court stated:

> [T]he Secretary of State is without authority to pass judgment on questions dehors[4] the filing instruments concerning the qualifications of candidates. That is a question that can only be decided by a court of competent jurisdiction.[5]

Thereafter, the court stated:

> Once the candidate states his compliance, under oath, the Secretary's ministerial determination of eligibility for the office is at an end. Any challenge to the correctness of the candidate's statement of compliance is for appropriate judicial determination upon any challenge properly made. . . .[6]

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[1] *Division of Elections Opinion* 04-05 (May 27, 2004); *Division of Elections Opinion* 00-09 (August 22, 2000); *Division of Elections Opinion* 82-22 (August 31, 1982); *Division of Elections Opinion* 80-27 (August 21, 1980); and *Division of Elections Opinion* 78-305 (August 3, 1978).
[2] *Op. Att'y Gen.* Fla. 76-130 (1976); *Op. Att'y Gen.* Fla. 74-293 (1974); *Op. Att'y Gen.* Fla. 72-224 (1972); and *Op. Att'y Gen.* Fla. 58-231 (1958).
[3] Shevin v. Stone, 279 U.S. 17 (Fla. 1972); Cherry v. Stone, 265 So. 2d. 56 (Fla. 1972); *Hall v. Hildebrand*, 168 So. 531 (Fla. 1936); and *Davis v. Crawford*, 116 So. 41 (Fla. 1928).
[4] "Dehors" is a French term used to mean "outside" or "beyond the scope of." *Black's Law Dictionary* (8th ed. 2004).
[5] *Cherry v. Stone*, 265 So. 2d 56, 58 (Fla. 1972).
[6] *Shevin v. Stone*, 279 So. 2d 17, 22 (Fla. 1972).

We adhere to these opinions. A filing officer governed by Florida's Election Code may not reject qualifying documents when they appear complete on their face and are properly executed under oath or affirmation. An opposing candidate's recourse to question the correctness of an opposing candidate's qualifications is to challenge the qualifications in a competent court of law.

The rationale explained above would not allow you as the qualifying officer to go beyond the four corners of the financial hardship affidavit submitted as part of the candidate's qualifying paperwork in determining the veracity of the underlying facts in the affidavit. However, our response to Question #1 is necessarily limited to the application of the Election Code and may not cover the particular duties of a municipal filing officer specified by a municipal charter or ordinance. Section 100.3605, Florida Statutes (2008), permits a municipality to change the applicability of any provision of the Election Code that does not expressly apply to municipalities. Section 100.3605(1) states:

> The Florida Election Code, chapters 97-106, shall govern the conduct of a municipality's election in the absence of an applicable special act, charter, or ordinance provision. No charter or ordinance provision shall be adopted which conflicts with or exempts a municipality from any provision in the Florida Election Code that expressly applies to municipalities.

As an attachment to your request, you included provisions of Miami's municipal charter and code. The Division of Elections has no authority to interpret provisions of a municipal charter or code; therefore, the Division does not render an opinion regarding whether your charter and code impose any greater duty on you than that placed upon a filing officer governed solely by Florida's Election Code.

Regarding Question #2, the short answer is that a filing officer may require a candidate to make a satisfactory showing that the candidate has been generally known by the nickname or the candidate has used the nickname as part of the candidate's legal name.

Your request for an advisory opinion states that a candidate had listed his name on the candidate oath form as he desired it to appear with "Ambassador" between his first and last names, with the candidate indicating that "Ambassador" was his nickname, not a title. An opposing candidate questioned the appropriateness of this nickname being included on the ballot alleging that you had no proof before you that the candidate used this nickname.

The Election Code and Florida case law are silent regarding the definition or the wording of a candidate's name, except section 99.021, Florida Statutes (2008), which instructs the candidate as part of the candidate's oath to "please print name as you wish it to appear on the ballot." This statement seemingly provides the candidate with freedom to determine how he or she wants the name to appear. However, we believe the definition of "name" in the statute should be given its ordinary and usual meaning, that is, the designation by which the person is commonly known and

others call him or her.[7] Therefore, the name should not be one made up solely for purposes of the election.[8]

In *Division of Elections Opinion* 86-06 (May 1, 1986), we opined that

> it has been determined that any name by which a candidate is known is sufficient on a ballot, and a person is legally permitted to have printed on the ballot the name which the candidate has adopted and under which he or she transacts private and official business, 29 C.J.S. Elections §161.
>
> *With regard to the use of nicknames*, the Florida Attorney General determined many years ago that *there appears to be no objection to including the nickname of a candidate by which he or she is generally known, along with the candidate's name, on the ballot*. [*Op. Att'y Gen. Fla.* 51-343 (1951).] . . .
>
> *Election officials, however, may be justified in refusing to print on the ballot a candidate's nickname when it is not shown that the nickname ever was used by the candidate as part of his legal name,* and such officials may be equally justified in refusing to print on the ballot a candidate's choice of a name which has not been adopted by him or her and under which the candidate has not transacted private and official business. See C.J.S. Elections §161.
>
> In summary, ordinarily a candidate must use his or her Christian or given name and surname, unless it can be shown that the candidate is known by another name which he or she has adopted and under which he or she transacts private and official business. In addition, *a candidate may use a legitimate nickname* . . . . [*Emphasis supplied.*]

We adhere to these statements. Notwithstanding the historical view that the filing officer performs a ministerial function, the 1986 opinion recognized that a filing officer may require a candidate to make a satisfactory showing that he or she is generally known by the nickname or that the candidate has used the nickname as part of his or her legal name. As discussed with respect to Question #1, a municipality may by charter or ordinance prescribe more specific duties for the filing officer in municipal elections regarding the verifications of nicknames. *See* § 100.3605(1), Fla. Stat. (2008).

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[7] 26 Am. Jur. 2d *Elections* § 293 (2009).

[8] *See, e.g., Planas v. Planas*, 937 So. 2d 745 (Fla. 3DCA 2006), where the court disqualified a candidate when he chose a name for ballot designation that was similar to the name by which the incumbent was widely known and which name had not been adopted or used by the candidate to transact private and official business. The court held that a candidate's use of "a stratagem clearly intended to deceive and confuse voters with the incumbent ... simply cannot be permitted."

SUMMARY

A filing officer governed by Florida's Election Code may not reject qualifying documents when they appear complete on their face and are executed under oath or affirmation. An opposing candidate's recourse to question the correctness of an opposing candidate's qualifications when the opponent has sworn or affirmed that he or she is qualified to hold the office is to challenge the qualifications in a competent court of law.

Before a candidate's nickname is printed on the ballot, a filing officer may require a candidate to make a satisfactory showing that the candidate has been generally known by the nickname or the candidate has used the nickname as part of the candidate's legal name.

Notwithstanding the above statements, a municipality may by charter or ordinance under section 100.3605(1), Florida Statutes (2008), prescribe more specific duties for the municipal filing officer regarding the verification of a candidate's qualifying papers or use of a nickname in its elections.

Sincerely,

Donald L. Palmer
Director, Division of Elections

Appendix I

FLORIDA DEPARTMENT *of* STATE

CHARLIE CRIST
Governor

DAWN K. ROBERTS
Interim Secretary of State

IMPORTANT NOTICE

TO: All Candidates Qualifying with the Division of Elections

FROM: Donald L. Palmer, Director
Division of Elections

DATE: May 11, 2010

SUBJECT: Use of Nickname on Ballot

NOTICE TO CANDIDATES QUALIFYING WITH THE DIVISION OF ELECTIONS[1]

The candidate oath form that must be filed during the qualifying period requires you to designate your "name as you wish it to appear on ballot." Case law and Division of Elections Opinions 86-06 and 09-05 permit a nickname to be printed on the ballot along with one's surname when the nickname is one by which the person is generally known or one that the person has used as part of his or her legal name. For example, if John Jones is generally known as Bo Jones, permissible designations on the ballot may be John "Bo" Jones, John (Bo) Jones, Bo Jones, or John Jones. The Division of Elections opinions recognize that a qualifying officer may require the candidate to make a satisfactory showing that the candidate is generally known by the nickname or the nickname has been used as part of the candidate's legal name before a nickname is printed on the ballot.

If you plan to designate a nickname on your candidate oath form other than a generally recognized shortened version of your legal name (e.g., "Rob" or "Bob" for Robert, "Bill" for William, "DJ" for David Joseph, *etc.*), you should provide notice of your intention to the Division of Elections well in advance of the qualifying period and make a satisfactory showing that you are generally known by the nickname or that you have used the nickname as part of your legal name. Failure to provide such information in advance may result in

[1] If you are a candidate who does not qualify with the Division of Elections and you desire to have your nickname printed on the ballot, you should contact your qualifying officer well in advance of the qualifying period to find out what the qualifying officer's requirements are to allow your nickname to be printed on the ballot.

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the Division not having sufficient time during the qualifying period to determine if the nickname may be printed the ballot.

Attached to this Notice is an example of an Affidavit that also mentions supporting documentation that you may consider submitting to the Division of Elections in advance to show that the nickname is legitimate.

NOTE: Division of Elections Opinion 86-06 states: Descriptive information such as a title (for example, Dr. or M.D.), although not part of a person's name, is permissible only when two persons of the same name or whose names are so similar as to reasonably cause confusion, seek the same office." Therefore, ordinarily, even if a candidate is commonly referred to as "Doctor," "Professor," or "Colonel," those titles would not be allowed as a nickname or as a part of a nickname unless such descriptive information is reasonably necessary to avoid confusion among candidates.

KRB/kfg

Sample Affidavit for Use of Nickname on Ballot

AFFIDAVIT OF (Insert legal name of candidate)

STATE OF FLORIDA

COUNTY OF _____

BEFORE ME, the undersigned authority, personally appeared (insert legal name of candidate), who being first duly sworn or placed under affirmation, says:

1. My legal name is _____. I am over the age of eighteen (18) and the contents of this affidavit are true and correct.

2. I am a candidate for the office of _____.

3. My nickname is _____. I am generally known by this nickname or have used it as part of my legal name. I have not created the nickname to mislead voters. I plan to designate this nickname on my candidate oath as the name I wish to have printed on the ballot when I submit the candidate oath form during the qualifying period for the above office.

4. Attached are (insert #) documents that show that my nickname is one by which I am generally known or is one that I have used as a part of my legal name: (list the title of any documents or affidavits from other persons reflecting that the candidate is generally known by the nickname or that it has been used as part of the candidate's legal name).

Further, affiant sayeth not.

_____

Signature of Affiant

_____

Printed/Typed Name of Affiant

Sworn to and subscribed before me this ____ day of _____ 20___ by (insert legal name of candidate).

_____

(SEAL) Notary Public

_____

Printed Name

Personally known _____ or Produced Identification _____

Type of Identification Produced _____

Appendix J

CEO 82-72 -- September 20, 1982

FINANCIAL DISCLOSURE

DISCLOSURE PERIOD TO BE USED BY A MUNICIPAL CANDIDATE IN FILING FINANCIAL DISCLOSURE

To: Mr. David M. Carr, Attorney for Tampa City Council

SUMMARY:

A candidate for a 1983 city election who qualifies after January 1, 1983 is required to file Form 1, Part 1, Statement of Financial Interests, as reflecting his financial interests for the tax year ending December 31, 1982, rather than for the tax year ending December 31, 1981. The disclosure period for which a statement of financial interests is to be filed is defined in Section 112.312(8), Florida Statutes, to mean the taxable year immediately preceding the date on which the disclosure statement is required to be filed. As most individuals' taxable year is the calendar year, a candidate's statement of financial interests should be based on the most recently completed calendar year. Similarly, an incumbent who qualifies as a candidate for a 1983 city election after January 1, 1983 should file a new disclosure form reflecting his financial interests for the year ending December 31, 1982, rather than a copy of the disclosure form previously filed for the tax year ending December 31, 1981.

QUESTION 1:

Is a candidate for the 1983 City of Tampa election who qualifies after January 1, 1983 required to file Form 1, Part 1, Statement of Financial Interests, as reflecting his financial interests for the tax year ending December 31, 1982 or for the tax year ending December 31, 1981?

The financial disclosure law applicable to elected municipal officials and candidates for elective municipal office, Section 112.3145, Florida Statutes, is based upon the concept of a "disclosure period." That term is defined in Section 112.312(8), Florida Statutes, as follows:

> 'Disclosure period' means the taxable year for the person or business entity, whether based on a calendar or fiscal year, immediately preceding the date on which, or the last day of the period during which, the financial disclosure statement required by this part is required to be filed.

For the vast majority of individuals, the taxable year will be the calendar year ending on December 31. Section 441, U.S. Internal Revenue Code. Therefore, when a statement of financial interests is filed, the statement should include the most recently completed calendar year.

Accordingly, when a candidate files a statement of financial interests (Form 1, Part 1) as part of his qualifying papers after January 1, 1983, the statement should reflect the candidate's financial interests for the calendar year ending December 31, 1982 -- the most recently completed calendar year.

QUESTION 2:

May an incumbent who qualifies as a candidate for the 1983 City of Tampa election after

January 1, 1983 file a copy of the disclosure form previously filed for the tax year ending December 31, 1981, or must the incumbent file a new disclosure form reflecting his financial interests for the year ending December 31, 1982?

In our view, this question is substantially the same as the first question you have posed. Since the "disclosure period" for which the candidate will be filing will be the most recently completed calendar year, a new financial disclosure form reflecting financial interests for the tax year ending December 31, 1982 should be filed with the candidate's qualifying papers.

Appendix K

FLORIDA DEPARTMENT of STATE

CHARLIE CRIST
Governor

KURT S. BROWNING
Secretary of State

May 18, 2009

Mr. Solomon Odenz
City Clerk, City of North Miami Beach
City Hall
17011 N. E. 19th Avenue
North Miami Beach, Florida 33162-3100

RE: DE 09-01
Qualifying – City Council Candidate;
Mistaken Group Number Designation
§ 99.061, Florida Statutes

Dear Mr. Odenz:

This letter responds to a request for an advisory opinion, submitted by the City Attorney on your behalf, regarding whether you should qualify a candidate to run for City Council when the candidate mistakenly placed the incorrect group number on his Oath of Candidate form. Because you are a local official with election-related duties and you have a question about compliance with Florida's election laws, the Division has the authority to issue you an opinion pursuant to section 106.23(2), Florida Statutes (2008).

According to the request for an opinion, the City of North Miami Beach is governed by the qualifying provisions of the state's Election Code. *See* section 100.3605(1), Florida Statutes (2008). The request further relates that, before the qualifying period, a candidate for City Council opened a campaign account and filed the Appointment of Campaign Treasurer and Designation of Campaign Depository for Candidates (Form DS-DE 9) listing the office of "Councilperson – Grp 5." The "Grp 5" designation was also on the Statement of Candidate (DS-DE 84) filed the same date. However, on the first day of qualifying, the candidate submitted his Loyalty Oath and Oath of Candidate, specifying that he was a candidate for "Councilman, Grp 6." The candidate had not filed another Form DS-DE 9 amending the group designation. The City Clerk discovered the discrepancy in the group designations on the qualifying papers after the qualifying period ended. Upon being notified of the conflicting group designation, the candidate immediately submitted a written statement to the filing officer stating that he "made a mistake on the loyalty oath. Please correct to say Group 5."

Based upon the foregoing facts, you essentially ask the following question:

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Has the candidate qualified as a candidate for City Council?

The short answer is that the decision whether to qualify the candidate rests with the qualifying officer, upon consultation with counsel, in light of the considerations identified in case law discussed below.

Section 99.061(7), Florida Statutes (2008), requires that before a candidate may be qualified, certain items must be received by the filing office. Two of those items are: (1) the candidate's oath "which must contain the name of the candidate as it is to appear on the ballot; the office sought, including the district or group number if applicable . . . .; and (2) the completed form for the appointment of campaign treasurer and designation of campaign depository . . . ." Section 106.021, Florida Statutes (2008), requires that a group number also be placed on the appointment of campaign treasurer and designation of campaign depository form, if applicable.

In the present situation, the candidate filed the proper forms which were complete on their face, but they specified conflicting group numbers for the seat; therefore, the question arises whether the candidate's post-qualification period submission to clarify the inconsistency is effective to make him qualified for City Council, Group 5. The Florida Supreme Court has stated:

> Once the deadline for filing has passed no further alterations or changes can be made in a candidate's qualification papers. This court has uniformly held that a candidate's qualification papers must be completed and filed within the time prescribed by statute, and that any errors or omissions cannot be corrected after the filing deadline has passed. See State ex rel. Taylor v. Gray, 25 So. 2d 492 (Fla. 1946); State ex rel. Vinning v. Gray, 17 So. 2d 288 (Fla. 1944).

Battaglia v. Adams, 164 So. 2d. 195, 199 (Fla. 1964). The court has squarely placed the responsibility upon the candidate to exercise due care in submitting his qualifying papers. *State ex rel. Taylor v. Gray*, 25 So. 2d 492, 406 (Fla. 1946). The Division echoed this position in *Division of Elections Opinion* 82-22 (August 31, 1982): "Thus, the qualifying officer . . . has no authority to take any action on errors in qualifying papers after the qualifying period has ended. Any corrections or changes subsequent to the closing of the qualifying period must be made by appropriate challenge through a judicial forum. See *State ex rel. Shevin v. Stone*, 279 So. 2d 17 (Fla. 1972); DE 78-30, dated August 3, 1978."

While these authorities seemingly created a bright-line standard for qualification determinations, other decisions have muddied the waters. In *State ex rel. Siegendorf v. Stone*, 266 So. 2d 345 (Fla. 1972), the Secretary of State, as the qualifying officer, accepted qualifying papers submitted by a candidate for county judge, even though the oath form did not completely describe the office for which the candidate was attempting to qualify. The oath form reflected that the candidate was seeking election to office of "Judge (group) 3," but did not indicate that the candidate was qualifying for the office of county judge, nor did it specify the county. The Secretary determined which judicial office the candidate was seeking through a process of elimination based upon the amount paid as the qualifying fee. The candidate's

opponent filed suit to have the judicial candidate removed from the ballot. The court upheld the Secretary's action because the decisions of public administrators made within the area of their responsibilities "will be upheld, if factually accurate and absent some compelling circumstances, clear error or overriding legal basis." *Id.* at 346. The *Siegendorf* court also stated, "[l]iteral and 'total compliance' with statutory language which reaches hypersensitive levels and which strains the quality of justice is not required to fairly and substantially meet the statutory requirement to qualify as a candidate for public office." *Id.* The Division has interpreted this language in the context of the *Siegendorf* facts as giving deference to the qualifying officer's administrative determination of whether the paperwork met the qualifying requirements, but not that the qualifying officer must qualify a candidate who submits deficient qualifying papers.

However, last year, the First District Court of Appeal relied on the *Siegendorf* language to retreat from the literal compliance approach of qualifying paperwork when it overruled the Secretary's determination that a candidate's paperwork was deficient. In *Browning v. Young*, 993 So. 2d 64 (Fla. 1st DCA 2008), the required disclosure of financial interests form was not properly notarized. The court held that because the notarization requirement appeared only on the form itself and the qualifying statute contained no express notarization requirement, the candidate could not be disqualified on the basis of an improper notarization. The court likened the case to *Siegendorf* and stated that the Secretary of State does not have "discretion to reject filing papers that have some technical defect but nevertheless meet all the requirements of the law." *Id.* The court expressed certainty that the supreme court would have ruled differently in *Siegendorf* if the error had "affected the legal sufficiency of the qualifying papers in the case" and that "[s]ubstantial compliance, as the term is used in *Siegendorf,* is the functional equivalent of legal compliance." *Young,* 933 So. 2d at 67. Thus, it appears the *Young* court interpreted *Siegendorf* as requiring a qualifying officer to accept filing papers that contain a "technical defect" so long as the paperwork "substantially complies" with the qualifying requirements and the defect does not "affect[] the legal sufficiency of the qualifying papers." Unless or until this ruling is clarified, qualifying officers and their counsel must attempt to apply these principles to the myriad circumstances presented during each candidate qualifying period.

To be sure, reasonable minds may differ regarding what constitutes "a technical defect," "substantial compliance," or "legal sufficiency." In the present case it may be argued, as in *Siegendorf*, that additional information in the candidate's qualifying file (*e.g.*, the group 5 designations on two other forms) make it apparent that the candidate was seeking to qualify for City Council, group 5, not group 6, and that the paperwork should not be rejected due to this purely "technical defect." On the other hand, it may be argued that the paperwork is not "legally sufficient" because the candidate failed to file an oath which, by statute, "must contain . . . the office sought, including the district or group number if applicable," *see* § 99.061(7)(a)2, Florida Statutes (2008). Given the fact-based nature of this analysis, the wide room for differences of opinion, and the fact that the qualifying officer's decisions are subject to judicial review in the event of a legal challenge, it is not appropriate for the Division to opine on these questions beyond identifying the appropriate factors to be considered. Each

qualifying officer, in consultation with legal counsel, must conduct an analysis of the considerations identified in *Siegendorf* and *Young* on a case-by case basis, and be prepared to defend the determination if it is challenged in court.

In view of the foregoing, you as the qualifying officer, with advice and assistance from your City Attorney, should determine whether the candidate is qualified after a thorough consideration of the facts, the applicable statutes, and case law.

SUMMARY

When there is an error or omission in qualifying papers, the qualifying officer must determine whether the paperwork nevertheless substantially complies with the qualifying requirements and whether the defect affects the legal sufficiency of the qualifying papers. This determination must be made on a case-by-case basis taking into account all the specific facts presented, with the advice and assistance of counsel. If the paperwork substantially complies with the qualifying requirements and the paperwork meets all the requirements of the law, the qualifying officer should qualify the candidate.

Sincerely,

Donald L. Palmer
Director, Division of Elections

cc: Darcee Siegel, Esq., City Attorney, City of North Miami Beach

Appendix L

Westlaw

993 So.2d 64, 33 Fla. L. Weekly D2125
(Cite as: 993 So.2d 64)

H

District Court of Appeal of Florida,
First District.
Kurt S. **BROWNING**, in his official capacity as Florida Secretary of State, Appellant,
v.
Regina **YOUNG**, Appellee.
No. 1D08-3748.

Sept. 5, 2008.
Rehearing Denied Oct. 29, 2008.

Background: Potential candidate for state House of Representatives sought writ of mandamus to direct Secretary of State to place her name on the ballot. The Circuit Court, Leon County, John C. Cooper, J., granted the petition. Secretary of State appealed.

Holding: The District Court of Appeal, Padovano, J., held that potential candidate's financial interest disclosure form complied with election laws, despite notary public's acknowledgement of the form without specifying name of county.

Affirmed.

West Headnotes

[1] Mandamus 250 ⚿187.2

250 Mandamus
250III Jurisdiction, Proceedings, and Relief
250k187 Appeal and Error
250k187.2 k. Decisions Reviewable and Proper Mode of Review. Most Cited Cases
When mandamus is used in the circuit court as an appellate remedy to review judicial or quasi-judicial actions of lower tribunals, further review in the district court of appeal is by certiorari and not by a plenary appeal.

[2] Mandamus 250 ⚿188

250 Mandamus
250III Jurisdiction, Proceedings, and Relief
250k188 k. Certiorari to Review Proceedings. Most Cited Cases
Circuit court's final order granting writ of mandamus to compel Secretary of State to place on ballot the name of potential candidate for state House of Representatives was an order in an original civil proceeding in the circuit court, such that the District Court of Appeal could review the matter by appeal rather than by certiorari; mandamus was not employed in the circuit court as an appellate remedy, but rather as a civil remedy to compel a public official to discharge a ministerial duty.

[3] States 360 ⚿28(1)

360 States
360II Government and Officers
360k24 Legislature
360k28 Members
360k28(1) k. In General. Most Cited Cases
Financial interest disclosure form of potential candidate for state House of Representatives was in legal compliance with state election laws, though notary public who acknowledged form filled in blank space for name of county with "Florida" rather than the county name; state constitution and election laws required that public disclosure of financial interests be a sworn statement without specifying method of attestation, and Commission on Ethics requirement that form be notarized was not pursuant to statute. West's F.S.A. Const. Art. 2, § 8; West's F.S.A. §§ 92.525, 99.061(5), 112.3144.

[4] Officers and Public Employees 283 ⚿18

283 Officers and Public Employees
283I Appointment, Qualification, and Tenure
283I(C) Eligibility and Qualification
283k18 k. Eligibility in General. Most Cited Cases
Literal and total compliance with statutory language which reaches hypersensitive levels and

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which strains the quality of justice is not required to fairly and substantially meet the statutory requirement to qualify as a candidate for public office.

[5] Elections 144 ⚿126(1)

144 Elections
144VI Nominations and Primary Elections
144k126 Nomination by Primary Election
144k126(1) k. In General. Most Cited

Mandamus 250 ⚿74(3)

250 Mandamus
250II Subjects and Purposes of Relief
250II(B) Acts and Proceedings of Public Officers and Boards and Municipalities
250k74 Elections and Proceedings Relating Thereto
250k74(3) k. Announcing Candidacy, Placing Names on Ballot, and Filing and Certifying Ticket. Most Cited Cases
If the qualifying papers submitted by a candidate comply with the election laws, the elections official has a duty to accept them, and mandamus will lie to enforce that duty.

***64** Bill McCollum, Attorney General, Ashley E. Davis, Assistant Attorney General, and Russell S. Kent, Special Counsel for Litigation, Office of the Attorney General, Tallahassee, for Appellant.

***65** John S. Mills of Mills Creed & Gowdy, P.A., Jacksonville; Clyde M. Collins, Jr., and Max Story, Jacksonville, for Appellee.

PADOVANO, J.

Regina Young seeks election to the Florida House of Representatives. She filed her qualifying papers with the Secretary of State within the time allowed by law, but there was an error on the Commission on Ethics Full and Public Disclosure of Financial Interest Form, more commonly known as the CE-6 Form. The notary public who verified Young's signature on the form neglected to write the word "Duval" in the blank for the county in which the form was signed. Instead, the notary wrote the word "Florida."

Based on this defect, the Secretary of State determined that Young was not qualified to run for the House of Representatives. He declined to place her name on the ballot, and she then sought relief in the courts by mandamus. The trial judge held a hearing on the petition and concluded that Young had substantially complied with the Florida election laws. Accordingly, the judge granted the petition and directed the Secretary to place Young's name on the ballot. The Secretary seeks review in this court.

[1][2] The order is one that is reviewable by appeal. Mandamus is now frequently used in the circuit court as an appellate remedy to review judicial or quasi-judicial actions of lower tribunals. When that is the case, further review in the district court of appeal is by certiorari and not by a plenary appeal. *See Sheley v. Fla. Parole Comm'n,* 703 So.2d 1202 (Fla. 1st DCA 1997), *approved,* 720 So.2d 216 (Fla.1998). However, mandamus was employed here in the way it was originally intended, as a civil remedy to compel a public official to discharge a ministerial duty. The petitioner was not seeking appellate review of a judicial or quasi-judicial decision. Because the final order granting mandamus in this case is an order in an original civil proceeding in the circuit court, we review the order by appeal. *See Weeks v. Golden,* 764 So.2d 633 (Fla. 1st DCA 2000).

[3] The question presented to the trial court was whether Ms. Young's papers were in substantial compliance with the Florida election laws. This was not a question that could be resolved in the trial court by the exercise of discretion. Nor does the answer turn on the facts. Everything the trial court needed to know about the alleged error is shown on the face of the form itself. The issue is whether Ms. Young's qualifying papers meet the requirements of election laws, despite the alleged deficiency identified by the Secretary. Because this is an issue of law, we review the trial court's decision by the de

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novo standard.

We begin with the text of the statute. Section 99.061(5), Florida Statutes provides that "each candidate for a constitutional office shall file a full and public disclosure of financial interests," pursuant to Article II, section 8, of the Florida Constitution. This provision of the Constitution refers to a public disclosure of financial interests as a "sworn statement" but it does not specify a required method of attestation. No further direction is given on this point in the statute. Section 99.061(5) does not expressly require that a candidate's signature on the financial disclosure form must be notarized or that it must be verified in a particular way.

The financial disclosure form requires a notary acknowledgment, but that is not the only method of attestation the Commission on Ethics might have chosen to satisfy the "sworn statement" requirement in Article II, section 8. ***66**Section 92.525, Florida Statutes provides that a document may be verified in two different ways: (1) by signing it before an officer such as a notary public, or (2) by including a self-verification form stating that the document is signed under the penalty of perjury. The full text of the form for the latter method of verification is set out in section 92.525(2). It does not require a statement of the county in which the document is signed.

We do not suggest that the Commission on Ethics should have chosen a different method of verification. The point is that the method selected is not the equivalent of a statutory requirement. The Secretary is bound by the statute, not the form. Likewise, we are bound by the statute. If we were to construe the statute to require that a financial disclosure form be verified by a particular method, we would be creating a requirement that was not set by the Legislature. This we may not do under the separation of powers provision in Article II, section 3, of the Florida Constitution. *See Sloban v. Fla. Bd. of Pharmacy,* 982 So.2d 26 (Fla. 1st DCA 2008).

It is noteworthy that section 99.021, Florida Statutes (2007), describes in detail the proper method of acknowledging a candidate's signature on the candidate oath form. An approved form of the candidate oath is incorporated into the text of the statute. This form includes the typical notary acknowledgment showing that it was signed and verified in Florida and it has a blank to write in the county in which it was signed. The Legislature could have incorporated a specific verification requirement such as this in section 99.061(5), for the execution of a financial disclosure form but did not.

The Secretary argues that the notary requirement need not be set out in the statute because it is an essential part of a form created by the Commission on Ethics at the direction of the Legislature. This argument unfolds in a number of steps. Section 99.061 (5) requires a candidate to submit a financial disclosure form in order to qualify for office. Section 112.3144, Florida Statutes (2007), sets out in detail the required contents of a financial disclosure form. This statute does not state that the form must be notarized, but section 112.3147, Florida Statutes (2007), provides that the information a public official or candidate must disclose shall be on a form prescribed by the Florida Commission on Ethics. The final step is one not found in the statutes, but it is not in dispute. The form the Commission prepared at the direction of the Legislature does, in fact, require a notary public acknowledgment in the usual form with a space for the county.

We could read this sequence of statutes to mean that section 99.061(5) requires a notary acknowledgment on a financial disclosure form. However, if we hold that the failure to notarize a financial disclosure form disqualifies a candidate, we must be prepared to accept the proposition that the Florida Legislature meant to delegate to the Commission on Ethics not only the responsibility to prepare a form, but also the power to add a mandatory condition that must be met in order qualify for public office. *See Sloban,* 982 So.2d at 29-31 (discussing the separation of powers provision in the context of a delegation of authority). That proposition is not

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certain.

It is more likely, in our view, that the Legislature meant to provide some degree of uniformity by ensuring that the information required by section 112.3144 be provided in the same way by every candidate on the same form. Candidates are required to have the form notarized in the manner required by the Commission on Ethics, but it is not at all clear that this procedural element can be elevated to a ***67** mandatory condition to be met in order to qualify for public office.

We have dealt so far with the question whether the failure to notarize a candidate's signature on a financial disclosure form can disqualify the candidate, but, of course, the case is much better for Ms. Young. She did have her signature notarized. There is no question that she signed the form, that she appeared in person before the notary public, that she was placed under oath, that she attested to the truth of the information in the form, or that the notary public was authorized to acknowledge her signature. Although the form was signed in Florida, the line for the applicable county was not filled out correctly, and as a result it is not known precisely where in Florida it was signed.

Despite this defect in the verification, the form provided all of the financial information that is required by section 112.3144. There is no contention here that Ms. Young failed to report some of her financial interests or that she otherwise failed to make a full and complete public disclosure of her finances. For this reason we conclude that the financial disclosure form she filed is in compliance with the statutory requirements and that the error in omitting the county does not disqualify her from public office.

The supreme court addressed a similar issue in *State ex rel. Siegendorf v. Stone,* 266 So.2d 345 (Fla.1972). In that case, the Secretary of State accepted qualifying papers submitted by a candidate for county judge, even though the oath form did not accurately describe the office for which the candidate was attempting to qualify. All that was written on the oath form was that the candidate was seeking election to office of "Judge (group) 3." It did not indicate that the candidate was qualifying for the office of county judge, nor did it specify the county. However, it was apparent from other information the candidate provided that he was seeking election to the office of county judge in Dade County.

[4] On these facts, the supreme court held that the candidate had substantially complied with the election laws and that his name should remain on the ballot. As the court explained, "Literal and 'total compliance' with statutory language which reaches hypersensitive levels and which strains the quality of justice is not required to fairly and substantially meet the statutory requirement to qualify as a candidate for public office." *Siegendorf,* 266 So.2d at 346.

The Secretary argues that mandamus is not the appropriate remedy to enforce a claim of substantial compliance. This argument is based in part on the observation in *Siegendorf* that the job of Secretary of State is one that necessarily involves the exercise of some judgment. However, this observation does not support an argument that the Secretary of State has discretion to reject filing papers that have some technical defect but nevertheless meet all of the requirements of the law. We have no doubt that the supreme court would have issued a writ of mandamus in *Siegendorf* if the error had been one that affected the legal sufficiency of the qualifying papers in that case. Substantial compliance, as the term is used in *Siegendorf,* is the functional equivalent of legal compliance.

[5] We reversed an order granting a writ of mandamus in *Sancho v. Joanos,* 715 So.2d 382 (Fla. 1st DCA 1998), but that case is distinguishable. There, the issue was whether an elections supervisor has a duty to inform a candidate of any unmet requirements before the close of the qualifying period. We held that such a duty exists with respect to qualifying papers that are submitted for filing, but that the

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official accepting the papers has no *68 obligation to advise the candidate that he or she must take additional steps to meet all of the requirements. Some of the requirements (for example, whether the candidate currently holds an office he or she must resign) might not even be known to the elections official. The elections official is not required to act as legal advisor for a candidate. But it is an entirely different matter to argue that an elections official may exercise discretion to deny qualifying papers. If the qualifying papers submitted by a candidate comply with the election laws, the elections official has a duty to accept them, and mandamus will lie to enforce that duty.

For these reasons, we affirm the decision by the trial court. In the present case, as in *Siegendorf,* we conclude that the candidate complied with the election laws and that she is entitled to have her name on the ballot.

Affirmed.

VAN NORTWICK and THOMAS, JJ., concur.
Fla.App. 1 Dist.,2008.
Browning v. Young
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END OF DOCUMENT

Appendix M

Department of State Memorandum

Office of the General Counsel

TO: Kristi Bronson
Chief, Bureau of Election Records

FROM: Gary J. Holland
Assistant General Counsel

DATE: April 22, 2010

RE: Filing Fee for Community Development District

You have inquired about the proper disposition of the $25 filing fee for candidates seeking to be elected to the Board of Supervisors for a Community Development District (CDD).

Section 190.003(6), Florida Statutes (2009), defines Community Development District as "a local unit of special-purpose government which is created pursuant to [chapter 190] and limited to the performance of those specialized functions authorized by [chapter 190]. . . . ." Candidates for a CCD board qualify under s. 99.061. § 190.006(3)(c), Fla. Stat. (2009). Thus, a CDD candidate qualifies as a special district candidate by either paying the $25 election fee or qualify by the petition process. § 99.061(3), Florida Statutes (2009).

Section 189.405(1)(c), Florida Statutes (2009), provides that a special district candidate's $25 filing fee is to be paid "to the general revenue fund of the qualifying officer to help defray the cost of the election." However, s. 189.405(6), Florida Statutes (2009), expressly states that the provisions of section 189.405 do not apply to CDDs. Chapter 190, Florida Statutes, entitled "Community Development Districts," contains specific differences in the election procedures for a CDD as opposed to other special district elections; therefore, it is understandable why s. 189.405, Florida Statutes does not apply to CDDs. However, chapter 190, Florida Statutes, contains no provision about where the CDD candidate's filing fee is to go. This appears to be an inadvertent omission.

Because the Florida statutes are silent on the issue and in the absence of other specific applicable directives, it is appropriate to apply the general qualifying fee disposition provisions for special districts to CDD candidates. Therefore, the CDD candidate qualifying fee should be treated like that of any other special district candidate, *i.e.*, it is to be paid "to the general revenue fund of the qualifying officer to help defray the cost of the election."

Appendix N:

Mardi Anne LEVEY, as candidate for Broward County Judge, Circuit Group 3, Appellant,

v.

Pedro DIJOLS, as candidate for Broward County Judge, Circuit Group 3, Dr. Brenda C. Snipes, in her official capacity as Supervisor of Elections for Broward County, Florida, Bernard Isaac Bober, as candidate for Broward County Judge, Circuit Group 3, and the Broward County Canvassing Board, which consists of Sharon Zeller, Linda Pratt, Jack Tuter, Kathleen Ireland, Lee Jay Seidman, Lois Wexler, Appellees.

No. 4D08–3780.

District Court of Appeal of Florida, Fourth District.

Sept. 24, 2008.

Background: Third-place finishing candidate in a primary election for judicial office brought a post-primary-election challenge. The Seventeenth Judicial Circuit Court, Broward County, Richard Yale Feder, J., struck the second-place finisher's name from the general election ballot for using her maiden name, and second-place finisher appealed.

Holdings: The District Court of Appeal, May, J., held that:

(1) married female candidate using her maiden name was qualified, for purposes of constitutional requirements, and

(2) married female candidate was not prohibited by statute from using her maiden name when signing oath and running for judicial office.

Reversed.

1. Judges ⇐4

Any statute that restricts eligibility to run for judicial office beyond the requirements of the Florida Constitution is invalid. West's F.S.A. Const. Art. 5, § 8.

2. Officers and Public Employees ⇐18

Fundamental to our system of government is the principle that the right to be a candidate for public office is a valuable one and no one should be denied this right unless the Constitution or an applicable valid law expressly declares him to be ineligible. West's F.S.A. Const. Art. 5, § 8.

3. Elections ⇐269

Extreme care must be given to post-election challenges to avoid disenfranchising voters; barring fraud, unfairness, or disenfranchisement of voters, it is too late to attack the validity of an election after the people have voted.

4. Elections ⇐126(4)
Judges ⇐4

Female candidate running in nonpartisan primary judicial election was eligible, for purposes of constitutional requirements, although running under and filing an oath using her maiden name; she was an elector in Florida, resided within the territorial jurisdiction of the court, and had been a member of the Florida Bar for the preceding five years. West's F.S.A. Const. Art. 5, § 8.

5. Judges ⇐5

The statutory requirement of filing an oath cannot impose additional eligibility requirements for judicial office to those set out in the Florida Constitution. West's F.S.A. § 105.031(4)(b).

6. Judges ⇐5

The term "name" in the context of statute requiring the taking of an oath in order to run in a nonpartisan judicial election connotes any legal form of name the person is entitled to use and have printed on the ballot. West's F.S.A. § 105.031(4)(b).

See publication Words and Phrases for other judicial constructions and definitions.

7. Names ⇐20

In Florida, a woman does not lose her birth-given name upon marriage. West's F.S.A. § 105.031(4)(b).

8. Elections ⇐271

Because only a limited right to contest an election existed at common law, the grounds that may be raised to contest an election are constrained to those that are expressly permitted by statute. West's F.S.A. § 102.168(3).

9. Elections ⇐126(4)
Judges ⇐4, 5

Married female candidate was not prohibited from using her maiden name when signing oath and running for judicial office by statutory provisions for qualifying as candidate in nonpartisan judicial primary election, where no evil purpose to her choice of name and no fraud or misconduct on her part were established. West's F.S.A. § 102.168(3).

Lewis J. Levey of Levey, Filler, Rodriguez, Kelso & De Bianchi, LLP, Miami, for appellant.

William R. Scherer and Janine McGuire of Conrad & Scherer, LLP, Fort Lauderdale and Bruce S. Rogow, Fort Lauderdale, for appellee, Pedro Dijols.

Burnadette Norris–Weeks of Burnadette Norris–Weeks, P.A., Fort Lauderdale, for appellee, Dr. Brenda C. Snipes.

MAY, J.

Mardi Anne Levey, the second-place finisher in a primary election for judicial office, appeals a trial court order that granted the third-place finisher, Pedro Dijols, post-primary-election challenge. The trial court ordered Levey's name stricken from the general election ballot and replaced with Dijols because she used her maiden name instead of her married name in her qualifying oath and in the election. Levey argues the trial court erred in its application of Florida law. We agree and reverse.

Facts

On May 2, 2008, Mardi Anne Levey filed to run for Circuit Court Judge in Broward County, Florida. *See* § 105.031, Fla. Stat. (2007). In qualifying to run for office, Levey used her maiden name Mardi Anne Levey instead of her married name Mardi Levey Cohen, which she had used for multiple legal purposes since her marriage in 1986. Pedro Dijols, the incumbent judge, and Bernard Isaac "Bernie" Bober, had previously filed to run for the same seat. Because two or more candidates had filed, the names of the three candidates were listed on the ballot for the August 26, 2008 primary election. § 105.051(b), Fla. Stat. (2007).

Bober received about 38% of the approximately 100,000 votes cast. After a machine and manual recount, it was determined that Levey had received 72 more votes than Dijols. The Broward County Canvassing Board certified the results. Because Bober had not received a majority of the votes, Bober and Levey were to be placed on the ballot for the November 4, 2008 general election. § 105.051(1)(b).

On September 5, 2008, Dijols filed a complaint contesting the results of the primary election under section 102.168, Florida Statutes (2007). The complaint alleged that Levey engaged in misconduct by having her maiden name "Mardi Anne Levey" placed on the ballot instead of "Mardi Levey Cohen" and that she was ineligible to run for the judicial seat because she did not use that name to conduct private and official business. The complaint further alleged that Levey had not acted in good faith and for honest purposes.

The complaint sought a writ of mandamus to compel the Broward County Supervisor of Elections and the Canvassing Board to remove Levey from the ballot for the general election and to recertify the election results with Dijols as the candidate to face Bober in the general election. In addition, the complaint sought a declaration that Levey had violated election laws by running under her maiden name and that she was not a properly qualified candidate for the Group 3 election seat. The complaint simultaneously requested a writ of *quo warranto* directed at the Supervisor of Elections and the Canvassing Board, alleging that Levey had violated election law and misused her husband's office.[1]

At the hearing, Dijols admitted into evidence a packet of documents to show that Levey had consistently used the name Mardi Cohen since her marriage in 1986. She had used the name Mardi L. Cohen in her resume and application with the state attorney's office where she was previously employed. The application, Commitment to Employ, and Oath of Loyalty were signed Mardi L. Cohen, as was her letter of resignation from the state attorney's

1. Levey's husband is Circuit Court Judge Dale Cohen. Dijols filed a motion to recuse all the Broward County Circuit Judges. The Chief Judge of the Seventeenth Judicial Circuit arranged for a retired Miami-Dade Circuit Court Judge to hear the case without objection. The hearing was held on September 17, 2008.

office. The name Mardi L. Cohen appeared on her W2 forms for that employment.

Her law office, which she took over after her husband took the bench, is named: "Law Office of Mardi L. Cohen P.A." A photo copy of Levey's social security card showed it was issued to Mardi L. Cohen and signed Mardi Levey Cohen.

In 2006, Levey qualified and campaigned for the Group 58 Broward Circuit Court seat under the name Mardi Levey Cohen. She was defeated in the general election after successfully making it to the "run off" after the primary election. Levey is listed in the Florida Bar Journal, and admitted to the Florida Bar, under the name Mardi Levey Cohen. Her Florida Bar license is labeled and signed: Mardi Levey Cohen. She is registered with the Florida Department of Highway Safety and Motor Vehicles as Mardi Levey Cohen.

Levey testified and readily conceded that she used the name Mardi Levey Cohen, and Mardi L. Cohen, extensively since her marriage in 1986. She explained, however, that she never abandoned the name Levey, always used the name Levey, and merely appended Cohen to the end of her name after her marriage. She had used the name Mardi Anne Levey throughout high school and college. When she attends school and camp reunions, she uses and is known by the name Mardi Levey. She testified that she is known by many people in Florida and the community as Mardi Levey because she has never separated Mardi and Levey.

Levey spent approximately $217,000 dollars promoting the name Mardi Levey Cohen in her 2006 campaign. All of her campaign brochures, signs, buttons, and other materials promoted Mardi Levey Cohen. She explained that she received a lot of criticism for using her husband's last name in the 2006 election to allegedly attempt to ride on her husband's coattails. When she decided to run for judge in this election, she decided not to drag her husband and his name into the election and chose to run on her own merits under her maiden name, which is the name on her birth certificate. Countering Levey's explanation for using her maiden name, Dijol's counsel argued that Levey had deceptively used her maiden name because she had lost in the 2006 election under the name Mardi Levey Cohen.

Dijols testified that he became aware on May 1, 2008 that Mardi Anne Levey had qualified as a candidate against him and that she had run as Mardi Levey Cohen in 2006. He consulted with lawyers and others about bringing a challenge to Levey's choice of name, but he interpreted section 102.168 as requiring an unsuccessful candidate to wait until after an election before filing a complaint. Dijols believed that an unsuccessful candidate had ten days after the certification of the results to challenge an election.

The trial court did not attach any "evil purpose" to Levey's choice of name and found that she had NOT used the name with the intent to commit fraud. Nevertheless, because she had qualified under a name that she had not used in her private and official business the trial court found that the use of her maiden name was "not permitted" and ordered her removed from the ballot. To reach its conclusion, the trial court relied on *Planas v. Planas*, 937 So.2d 745 (Fla. 3d DCA 2006) and *McLaughlin v. Cuyahoga Co. Bd. of Elections*, 156 Ohio App.3d 98, 804 N.E.2d 1004 (2004). The trial court ordered Levey stricken from the ballot for the general election and ordered that Dijols be placed on the ballot as the second candidate. He directed the Canvassing Board to do whatever was necessary to correct the ballot.

As to Levey's argument that Dijol's had waived any challenge to her choice of name by not bringing an action before the primary election, the trial court found:

> Whether or not the plaintiff here should have filed on May 1st or immediately thereafter this action, I don't think constitutes *laches* or waiver because there was no way of knowing at that time which candidate was going to win.
>
> And if Ms. Cohen did not win, there would have been a lawsuit in this courthouse that was unnecessary. The law permits waiting to within the ten days after the result is certified. I don't consider that an unreasonable delay or prejudicing the parties here.

Analysis

[1, 2] There are two truisms about Florida's election law concerning judicial races. One, eligibility to run for judicial office is controlled by Article V, section 8 of the Florida Constitution. Any statute that restricts eligibility beyond the requirements of the Florida Constitution is invalid. *Miller v. Mendez*, 804 So.2d 1243, 1246 (Fla.2001). "Fundamental to our system of government is the principle that the right to be a candidate for public office is a valuable one and no one should be denied this right unless the Constitution or an applicable valid law expressly declares him to be ineligible." *Treiman v. Malmquist*, 342 So.2d 972, 975 (Fla.1977) quoting *Ervin v. Collins*, 85 So.2d 852, 858 (Fla.1956); citing *Pasco v. Heggen*, 314 So.2d 1 (Fla. 1975).

[3] And two, extreme care must be given to post-election challenges to avoid disenfranchising Florida's voters. *Fladell v. Palm Beach County Canvassing Bd.*, 772 So.2d 1240, 1242 (Fla.2000). "[B]arring fraud, unfairness, disenfranchisement of voters, etc., it is too late to attack the validity of an election after the people have voted." *Polly v. Navarro*, 457 So.2d 1140, 1143–44 (Fla. 4th DCA 1984). These two truisms lead us to the inevitable conclusion in this case.

[4] Article V, section 8 of the Florida Constitution defines a person's "eligibility" to serve as a circuit court judge. It requires that a candidate be an elector of this state and reside in the territorial jurisdiction of the court. The Constitution also requires that a candidate for circuit court judge have been a member of the Florida Bar for the preceding five years. The Florida Constitution does not specify what name a candidate must use on a ballot.

[5] "Qualifying" to run in a non-partisan judicial election is controlled by section 105.031, Florida Statutes (2007). To qualify, a candidate must file an oath substantially in the form provided by statute. § 105.031(4)(b), Fla. Stat. (2007). "The statutory requirement of filing an oath cannot impose additional eligibility requirements for judicial office to those set out in the Florida Constitution." *Mendez*, 804 So.2d at 1246 citing *State v. Grassi*, 532 So.2d 1055 (Fla.1988).

The question here is not whether Mardi Anne Levey is eligible. She is. She is an elector in this state, resides within the territorial jurisdiction of the court, and has been a member of the Florida Bar for the preceding five years, albeit under the name of Mardi Levey Cohen. The question to resolve is whether she properly qualified to run in the election. The single challenge to her "qualifying" is whether Levey could use her maiden name on the oath required by section 105.031(4)(b).

Section 105.031(4)(b) instructs the candidate to "please print name as you wish it to appear on the ballot." The term "name" is not defined within the statute or in any other Florida statute pertaining to elections. Significantly, the oath does not

require candidates to print any particular name, not the name as it appears on their driver's license, voter's registration, nor Florida Bar license.

Black's Law Dictionary defines a "name" as: "A word or phrase identifying or designating a person or thing and distinguishing that person or thing from others." Black's Law Dictionary 1048 (8th ed. 2004). Merriam–Webster's Online Dictionary defines a "name" similarly: "a word or phrase that constitutes the distinctive designation of a person or thing."

[6, 7] In the context of this statute, the term "name" connotes any legal form of name the person is entitled to use and have printed on the ballot. Mardi Anne Levey is a form of Levey's name. It is the name that appears on her birth certificate. In Florida, a woman does not lose her birth-given name upon marriage. *Davis v. Roos*, 326 So.2d 226 (Fla. 1st DCA 1976).

[8] Because only a limited right to contest an election existed at common law, the grounds that may be raised to contest an election are constrained to those that are expressly permitted by section 102.168(3), Florida Statutes (2007). *See McPherson v. Flynn*, 397 So.2d 665, 668 (Fla.1981). In 1999, the legislature amended section 102.168(3) to enumerate specific grounds for contesting an election. Ch. 99–339, § 3, at 3548, Laws of Fla. Section 102.168 permits an unsuccessful candidate to contest "the certification of election or nomination of any person to office" within ten days after the results of the election have been certified. Fla. Stat. § 102.168(1)-(2). The statute requires the candidate to set forth the grounds that allegedly establish the candidate's right to the contested office or the grounds for "setting aside the result of the election." § 102.168(3).

[9] In his complaint, Dijols raised two grounds for contesting the primary election: (1) fraud or misconduct under section 102.168(3)(a); and (2) "ineligibility of the successful candidate for the nomination or office in dispute" under section 102.168(3)(b). As we have explained, Levey is "eligible" under the Florida Constitution. Dijol's challenge to the use of her maiden name goes to the propriety of her "qualifying." Because the statutory provisions for qualifying do not require a person to use a specific name and the trial court found no evil purpose to Levey's choice of name and no fraud or misconduct on her part, Dijols failed to establish a right to a nomination or office and did not establish a basis for setting aside the result of the primary election under section 102.168(3), Florida Statutes (2007).

The two cases relied upon by the trial court do not support its conclusion. In *Planas v. Planas*, 937 So.2d 745 (Fla. 3d DCA 2006), the Third District Court of Appeal found that the candidate's use of the initials "J.P." was an attempt to deceive the voting public by making it appear that the candidate, Juan E. Planas, was another well-known incumbent "J.C. Planas." *Id.* at 746. *Planas* held that the candidate could not use a nickname which he had never before used and which he adopted for the election in an apparent attempt to deceive voters.

The second case relied upon by the trial court was *McLaughlin v. Cuyahoga County Board of Elections*, 156 Ohio App.3d 98, 804 N.E.2d 1004 (2004). There, McLaughlin was disqualified from appearing on the ballot for an upcoming election because she had used her maiden instead of her married name, which she had used since her marriage. *Id.* at 1005. The Ohio court concluded that McLaughlin had abandoned her maiden name, that she designated herself under her maiden name to secure an advantage in the election, and that her failure to list her married name

on her declaration of candidacy disqualified her from appearing on the ballot. *Id.* at 1007.

While *McLaughlin* is factually similar to this case, its application of Ohio law renders it unpersuasive, much less binding. The *McLaughlin* court applied a specific Ohio statute that required candidates to list any former names on their declaration of candidacy if the person had changed names in the past five years. The statute made an exception for a woman's use of her married name, but that exception did not apply to a woman's use of her maiden name. *Id.* at 1006. Thus, McLaughlin's failure to list her married name, in addition to her maiden name, established the statutory basis for removing her from the ballot. Florida has no similar statutory provision.[2]

Because we find the trial court misapplied Florida law, we need not reach the issues of waiver, estoppel, and laches. We note, however, that a substantial number of cases in Florida hold that remedies are available to challenge whether a candidate has properly "qualified" to appear on a ballot, and to seek removal of that candidate's name from the ballot, BEFORE the election is held. *See Miller v. Mendez*, 804 So.2d 1243 (Fla.2001); *Schurr v. Sanchez–Gronlier*, 937 So.2d 1166 (Fla. 3d DCA 2006); *Miller v. Gross*, 788 So.2d 256 (Fla. 4th DCA 2000); *Smith v. Crawford*, 645 So.2d 513 (Fla. 1st DCA 1994); *Marina v. Leahy*, 578 So.2d 382 (Fla. 3d DCA 1991); *McClung v. McCauley*, 238 So.2d 667 (Fla. 4th DCA 1970); *White v. Stargel*, 2006 WL 5509526 (Fla.2d Cir.Ct.2006). *See also State ex rel. Siegendorf v. Stone*, 266 So.2d 345 (Fla.1972); *State ex rel. Haft v. Adams*, 238 So.2d 843 (Fla.1970); *Eastmoore v. Stone*, 265 So.2d 517 (Fla. 1st DCA 1972); *State ex rel. Cherry v. Stone*, 265 So.2d 56 (Fla. 1st DCA 1972).

The challenge in this case comes AFTER election officials had approved the candidate's choice of name for use on the ballot, AFTER the ballots for the primary were printed, AFTER the primary was held, and AFTER the electors had voted in sufficient number to place Levy in the position of finishing second.

In *Winterfield v. Town of Palm Beach*, 455 So.2d 359 (Fla.1984), the Supreme Court of Florida observed:

> In preserving elections in the face of post-election challenges to pre-election irregularities, this Court has found that a party is estopped from voiding an election where he was on notice of the irregularity before the election. 'The aggrieved party cannot await the outcome of the election and then assail preceding deficiencies which he might have complained of to the proper authorities before the election.' *Pearson v. Taylor*, 159 Fla. 775, 776, 32 So.2d 826, 827 (1947) (post-election challenge to sufficiency of petition which lead to election).

Id. at 362. *See also Speigel v. Knight*, 224 So.2d 703, 706 (Fla. 3d DCA 1969) The general view, and that adopted in Florida, is that "barring fraud, unfairness, disenfranchisement of voters, etc., it is too late to attack the validity of an election after the people have voted." *Baker v. State ex rel. Caldwell*, 122 So.2d 816, 826 (Fla. 2d DCA), *cert. denied*, 122 So.2d 777 (Fla. 1960). *See Polly v. Navarro*, 457 So.2d 1140, 1143–44 (Fla. 4th DCA 1984).

Conclusion

The trial court erred in its application of Florida's statutory and case law to the

2. We note that no case has invalidated the results of a primary or general election based on the name of the candidate designated to be placed on the ballot in qualifying paperwork. The challenge in both Planas and McLaughlin came before any election had taken place.

facts of this case. Levey was eligible to run for office, pursuant to Article V, section 8 of the Florida Constitution. Levey filed an oath in accordance with the requirements of section 105.031(4)(b), Florida Statutes (2007). The voters voted, the votes were counted, and Levey finished second. Her name should appear on the ballot for the general election as she was one of the two candidates receiving the highest number of votes. § 105.051(1)(b).

We therefore reverse the trial court's order. Levey's name shall appear on the ballot for this seat in the November 4, 2008 election. If the Supervisor of Elections cannot correct the ballots to reflect today's decision, then a notice to the voters similar to the one approved in *Cobb v. Thurman*, 957 So.2d 638 (Fla. 1st DCA 2006), may be necessary.

Because of the time constraints for preparing the ballots for the upcoming election, no motion for rehearing will be entertained, and this decision will become effective immediately.

POLEN and KLEIN, JJ., concur.

Appendix O:

FLORIDA DEPARTMENT of STATE

CHARLIE CRIST
Governor

KURT S. BROWNING
Secretary of State

May 18, 2009

Mr. Solomon Odenz
City Clerk, City of North Miami Beach
City Hall
17011 N. E. 19th Avenue
North Miami Beach, Florida 33162-3100

RE: DE 09-01
Qualifying – City Council Candidate;
Mistaken Group Number Designation
§ 99.061, Florida Statutes

Dear Mr. Odenz:

This letter responds to a request for an advisory opinion, submitted by the City Attorney on your behalf, regarding whether you should qualify a candidate to run for City Council when the candidate mistakenly placed the incorrect group number on his Oath of Candidate form. Because you are a local official with election-related duties and you have a question about compliance with Florida's election laws, the Division has the authority to issue you an opinion pursuant to section 106.23(2), Florida Statutes (2008).

According to the request for an opinion, the City of North Miami Beach is governed by the qualifying provisions of the state's Election Code. *See* section 100.3605(1), Florida Statutes (2008). The request further relates that, before the qualifying period, a candidate for City Council opened a campaign account and filed the Appointment of Campaign Treasurer and Designation of Campaign Depository for Candidates (Form DS-DE 9) listing the office of "Councilperson – Grp 5." The "Grp 5" designation was also on the Statement of Candidate (DS-DE 84) filed the same date. However, on the first day of qualifying, the candidate submitted his Loyalty Oath and Oath of Candidate, specifying that he was a candidate for "Councilman, Grp 6." The candidate had not filed another Form DS-DE 9 amending the group designation. The City Clerk discovered the discrepancy in the group designations on the qualifying papers after the qualifying period ended. Upon being notified of the conflicting group designation, the candidate immediately submitted a written statement to the filing officer stating that he "made a mistake on the loyalty oath. Please correct to say Group 5."

Based upon the foregoing facts, you essentially ask the following question:

R. A. Gray Building • 500 South Bronough Street • Tallahassee, Florida 32399-0250
Telephone: (850) 245-6500 • Facsimile: (850) 245-6125
www.dos.state.fl.us

Has the candidate qualified as a candidate for City Council?

The short answer is that the decision whether to qualify the candidate rests with the qualifying officer, upon consultation with counsel, in light of the considerations identified in case law discussed below.

Section 99.061(7), Florida Statutes (2008), requires that before a candidate may be qualified, certain items must be received by the filing office. Two of those items are: (1) the candidate's oath "which must contain the name of the candidate as it is to appear on the ballot; the office sought, including the district or group number if applicable . . . .; and (2) the completed form for the appointment of campaign treasurer and designation of campaign depository . . . ." Section 106.021, Florida Statutes (2008), requires that a group number also be placed on the appointment of campaign treasurer and designation of campaign depository form, if applicable.

In the present situation, the candidate filed the proper forms which were complete on their face, but they specified conflicting group numbers for the seat; therefore, the question arises whether the candidate's post-qualification period submission to clarify the inconsistency is effective to make him qualified for City Council, Group 5. The Florida Supreme Court has stated:

> Once the deadline for filing has passed no further alterations or changes can be made in a candidate's qualification papers. This court has uniformly held that a candidate's qualification papers must be completed and filed within the time prescribed by statute, and that any errors or omissions cannot be corrected after the filing deadline has passed. See State ex rel. Taylor v. Gray, 25 So. 2d 492 (Fla. 1946); State ex rel. Vinning v. Gray, 17 So. 2d 288 (Fla. 1944).

Battaglia v. Adams, 164 So. 2d. 195, 199 (Fla. 1964). The court has squarely placed the responsibility upon the candidate to exercise due care in submitting his qualifying papers. *State ex rel. Taylor v. Gray*, 25 So. 2d 492, 406 (Fla. 1946). The Division echoed this position in *Division of Elections Opinion* 82-22 (August 31, 1982): "Thus, the qualifying officer . . . has no authority to take any action on errors in qualifying papers after the qualifying period has ended. Any corrections or changes subsequent to the closing of the qualifying period must be made by appropriate challenge through a judicial forum. See *State ex rel. Shevin v. Stone*, 279 So. 2d 17 (Fla. 1972); DE 78-30, dated August 3, 1978."

While these authorities seemingly created a bright-line standard for qualification determinations, other decisions have muddied the waters. In *State ex rel. Siegendorf v. Stone*, 266 So. 2d 345 (Fla. 1972), the Secretary of State, as the qualifying officer, accepted qualifying papers submitted by a candidate for county judge, even though the oath form did not completely describe the office for which the candidate was attempting to qualify. The oath form reflected that the candidate was seeking election to office of "Judge (group) 3," but did not indicate that the candidate was qualifying for the office of county judge, nor did it specify the county. The Secretary determined which judicial office the candidate was seeking through a process of elimination based upon the amount paid as the qualifying fee. The candidate's

opponent filed suit to have the judicial candidate removed from the ballot. The court upheld the Secretary's action because the decisions of public administrators made within the area of their responsibilities "will be upheld, if factually accurate and absent some compelling circumstances, clear error or overriding legal basis." *Id.* at 346. The *Siegendorf* court also stated, "[l]iteral and 'total compliance' with statutory language which reaches hypersensitive levels and which strains the quality of justice is not required to fairly and substantially meet the statutory requirement to qualify as a candidate for public office." *Id.* The Division has interpreted this language in the context of the *Siegendorf* facts as giving deference to the qualifying officer's administrative determination of whether the paperwork met the qualifying requirements, but not that the qualifying officer must qualify a candidate who submits deficient qualifying papers.

However, last year, the First District Court of Appeal relied on the *Siegendorf* language to retreat from the literal compliance approach of qualifying paperwork when it overruled the Secretary's determination that a candidate's paperwork was deficient. In *Browning v. Young*, 993 So. 2d 64 (Fla. 1st DCA 2008), the required disclosure of financial interests form was not properly notarized. The court held that because the notarization requirement appeared only on the form itself and the qualifying statute contained no express notarization requirement, the candidate could not be disqualified on the basis of an improper notarization. The court likened the case to *Siegendorf* and stated that the Secretary of State does not have "discretion to reject filing papers that have some technical defect but nevertheless meet all the requirements of the law." *Id.* The court expressed certainty that the supreme court would have ruled differently in *Siegendorf* if the error had "affected the legal sufficiency of the qualifying papers in the case" and that "[s]ubstantial compliance, as the term is used in *Siegendorf,* is the functional equivalent of legal compliance." *Young,* 933 So. 2d at 67. Thus, it appears the *Young* court interpreted *Siegendorf* as requiring a qualifying officer to accept filing papers that contain a "technical defect" so long as the paperwork "substantially complies" with the qualifying requirements and the defect does not "affect[] the legal sufficiency of the qualifying papers." Unless or until this ruling is clarified, qualifying officers and their counsel must attempt to apply these principles to the myriad circumstances presented during each candidate qualifying period.

To be sure, reasonable minds may differ regarding what constitutes "a technical defect," "substantial compliance," or "legal sufficiency." In the present case it may be argued, as in *Siegendorf,* that additional information in the candidate's qualifying file (*e.g.*, the group 5 designations on two other forms) make it apparent that the candidate was seeking to qualify for City Council, group 5, not group 6, and that the paperwork should not be rejected due to this purely "technical defect." On the other hand, it may be argued that the paperwork is not "legally sufficient" because the candidate failed to file an oath which, by statute, "must contain . . . the office sought, including the district or group number if applicable," *see* § 99.061(7)(a)2, Florida Statutes (2008). Given the fact-based nature of this analysis, the wide room for differences of opinion, and the fact that the qualifying officer's decisions are subject to judicial review in the event of a legal challenge, it is not appropriate for the Division to opine on these questions beyond identifying the appropriate factors to be considered. Each

qualifying officer, in consultation with legal counsel, must conduct an analysis of the considerations identified in *Siegendorf* and *Young* on a case-by case basis, and be prepared to defend the determination if it is challenged in court.

In view of the foregoing, you as the qualifying officer, with advice and assistance from your City Attorney, should determine whether the candidate is qualified after a thorough consideration of the facts, the applicable statutes, and case law.

SUMMARY

When there is an error or omission in qualifying papers, the qualifying officer must determine whether the paperwork nevertheless substantially complies with the qualifying requirements and whether the defect affects the legal sufficiency of the qualifying papers. This determination must be made on a case-by-case basis taking into account all the specific facts presented, with the advice and assistance of counsel. If the paperwork substantially complies with the qualifying requirements and the paperwork meets all the requirements of the law, the qualifying officer should qualify the candidate.

Sincerely,

Donald L. Palmer
Director, Division of Elections

cc: Darcee Siegel, Esq., City Attorney, City of North Miami Beach