

STATE OF ILLINOIS)

) SS

COUNTY OF COOK)

BEFORE THE COUNTY OFFICERS ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF OBJECTIONS
TO THE NOMINATION PAPERS OF CANDIDATES FOR
OFFICES FROM DISTRICTS OR DIVISIONS
WHICH ARE COTERMINOUS WITH OR LESS THAN THE
COUNTY OF COOK AND STATE OF ILLINOIS

OBJECTION OF:

Karla Katz Oberholtzer to the nomination) 19 COEB JUD 05
papers of Caroline Patricia Jamieson, as a)
candidate for the Democratic Party)
Nomination for the office of Judge of the)
Circuit Court of Cook County, (Colleen)
Sheehan vacancy) to be voted upon at the)
March 17, 2020 General Primary Election.)

DECISION

The duly constituted COUNTY OFFICERS ELECTORAL BOARD, consisting of the HONORABLE KAREN A. YARBROUGH, by Sisavanh Baker, HONORABLE KIMBERLY FOXX, by Jessica M. Scheller , and HONORABLE DOROTHY BROWN, by Meridith Hammer, organized by law in response to a Call issued by the HONORABLE KAREN A. YARBROUGH, Chair of said Electoral Board, for the purpose of hearing and passing upon of objections to the nomination papers of candidates to offices which are coterminous with or less than the County of Cook having convened on January 6, 2020 in the Pedway Room, Lower Level of the Cook County Administration Building, in the City of Chicago, County of Cook and State of Illinois, and having heard the objections to the petitions in the above entitled matter, finds that:

1. The said Electoral Board has been legally constituted according to the laws of the State of Illinois;
2. Objections to the nomination papers of the candidate herein were duly filed;
3. A Call to the hearing on said objections was duly issued and was caused to be served upon the members of the Electoral Board, the objector and the candidate, by mail and by personal service as provided by Statute;
4. An initial public hearing was held on these objections on Monday, December 16, 2019;
5. There were present at said hearing the following persons, among others:

HONORABLE KAREN A. YARBROUGH, by Sisavanh Baker, HONORABLE KIMBERLY FOXX,
by Jessica M. Scheller, and HONORABLE DOROTHY BROWN, by Meridith Hammer;
6. The Electoral Board voted to adopt Rules and to authorize the Chair to assign this matter to a Hearing Officer as set forth in the record of this case;
7. All evidence tendered by the parties appearing at the hearing(s) held in this case by the assigned Hearing Officer was heard and considered by the Hearing Officer, and a record, including the presence of the parties and/or their counsel, was made of the hearing(s);
8. All arguments made at the hearing(s) held in this case were considered by the Hearing Officer;
9. The Hearing Officer submitted to the Electoral Board a Recommendation including, *inter alia*, findings and conclusions of fact and law;
10. The Electoral Board received and considered the Recommendation of the Hearing Officer and the record of this case;
11. If a hearing before the Electoral Board was held pursuant to the Rules, the Board heard and considered the arguments presented at the hearing;
12. The Electoral Board, composed as set forth below, HEREBY MAKES THE FOLLOWING FINDINGS:

This matter was assigned to a Hearing Officer who conducted proceedings and considered the filings and arguments of the parties through counsel and issued a Report and Recommended Decision in this matter. The Report and Recommended Decision of the Hearing Officer is adopted and made a part of this Decision of the Electoral Board.

The Electoral Board finds and concludes that the nomination papers of the Candidate comply with the mandates of section 7 – 10.2 of the Illinois Election Code. Consistent with the reasoning and precedent of this Electoral Board's decisions in the case of *Harris v Orr* 17 COEB JUD 18 and *Featherston v Kowalski McDonald* 17 COEB CC 03, the Candidate's use of the name Jamieson does not constitute a name change requiring the listing of "formally known as" on the nomination papers.

The objection of Karla Katz Oberholtzer to the nomination papers of Caroline Patricia Jamieson is OVERRULED.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the objections of Karla Katz Oberholtzer to the nomination papers of Caroline Patricia Jamieson as a candidate for nomination of the Democratic Party to the office of Judge of the Circuit Court of Cook County, (Colleen Sheehan vacancy) to be voted upon at the March 17, 2020 General Primary Election are overruled, and the name of Caroline Patricia Jamieson as a candidate for nomination of the Democratic Party to the office of Judge of the Circuit Court of Cook County (Colleen Sheehan vacancy) to be voted upon at the March 17, 2020 General Primary Election SHALL be printed on the ballot for the General Primary Election to be held on March 17, 2020.

DATED, at Chicago, Illinois January 6, 2020.


KAREN YARBROUGH, Chair

by:


Sisavanh Baker

KIMBERLY FOXX, Member

by:

the undersigned dated for the record

Jessica M. Scheller

DOROTHY BROWN, Member

by:


Meridith Hammer

NOTICE: Pursuant to §10-10.1 of the Election Code (10 ILCS 5/10-10.1) a party aggrieved by this decision who wishes to seek judicial review of this decision must file a petition for judicial review with the Clerk of the Circuit Court of Cook County within 5 days after service of the decision of the Electoral Board.

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND
PASSING UPON OBJECTIONS TO THE NOMINATION PAPERS FOR CANDIDATES FOR
THE OFFICE OF JUDGE OF THE CIRCUIT COURT OF COOK COUNTY, STATE OF
ILLINOIS, TO BE VOTED UPON AT THE MARCH 17, 2020 GENERAL PRIMARY
ELECTION.

| | | |
|-----------------------------|---|----------------------|
| KARLA KATZ OBERHOLTZER, |) | |
| |) | |
| Objector, |) | |
| |) | |
| v. |) | No. 2019 COEB JUD 05 |
| |) | |
| CAROLINE PATRICIA JAMIESON, |) | |
| |) | |
| Candidate. |) | |

HEARING OFFICER'S REPORT AND RECOMMENDED DECISION

The County Officers Electoral Board assigned this matter to the hearing officer and it was first heard on December 17, 2019. The Objector appeared through her attorney, Luke Casson; the Candidate appeared through her attorney, Scott Erdman, for whom Bonnie Miller appeared at the initial hearing. Candidate filed a Motion to Strike and Dismiss Objector's Petition and Objector filed a Response. Candidate filed a "Motion to Strike Objecto's [sic] 'Response to the Motion to Strike' as Not Timely Filed" and Objector responded with a "Motion to Strike Candidate's 'Motion to Strike Objecto's [sic] Motion to Strike as Not Timely Filed.'" On December 24, 2019, the parties presented oral arguments on Candidate's Motion to Strike and Dismiss and Candidate's Motion to Strike Objector's Response, at which time all parties appeared through counsel. Following oral arguments, Objector filed Objector's Motion to Supplement the Record to which Candidate did not formally respond but she did send a brief email to all parties opposing the motion. Objector then filed a Motion to Strike Candidate's Ex Parte Communications and Entry of Barring Order or, in and [sic] Alternative, Waiver. The Hearing Officer took all motions and responses with the case-in-chief.

PRIMARY ISSUE PRESENTED

Whether Candidate's use of her maiden name on her nomination papers violates 10 ILCS 5/7-10.2 and her name should not appear on the ballot.¹

ANALYSIS

Candidate's Motion to Strike:

In her petition, Objector argues that because Candidate used two different names in the three years prior to the last day for filing nominating petitions, the mandates of §7-10.2 of the Election Code apply. Objector contends that the statute requires Candidate's nomination papers to include a "formerly known as" listing of all prior names and a candidate's affidavit stating her previous names and the date of each name change. In her motion to strike the petition, Candidate disagrees and states that because Candidate was simply using her given name on her nominating papers, the statute does not apply.

This is not a case of first impression. This Board has previously considered the provisions of §7-10.2 and consistently found that the purpose of the statute is to stop candidates from using new names acquired outside of the ordinary name changes that occur in life. *See Harris v. Orr*, 17 COEB JUD 18 (Dec. 2018); *Featherston v. Kawolski McDonald*, 17 COEB CC03 (Feb 20, 2018). In *Harris*, the Board considered remarkably similar facts to the present case. In *Harris*, a judicial candidate used her maiden name on her nominating papers, but had been known to use her spouse's surname in the past. The Board held:

In our opinion, the purpose of the statute in question is to force Candidates who have recently acquired new names in processes outside of the "ordinary" name changes that occur in life, to divulge those former names. The Candidate, herein, does not fit into that class of Candidates. *Harris*, 17 COEB JUD 18 (Dec., 2018)

¹The parties agreed that there was no need for an evidentiary hearing and the Hearing Officer could make a recommendation based on the law.

§7-10.2 of the Election Code does set forth requirements for those who acquire new names within three years of filing nominating petitions, but it expressly permits candidates to use their given names.² It also exempts name changes resulting from adoption, marriage, divorce or annulment.³ As the candidate now before the Board states, the name she used on her nominating papers is her given name and not a new name acquired outside of the ordinary name changes that occur in life. Objector's contention that because Candidate had previously run for office using her spouse's surname, she is now somehow precluded from using her birth name, is simply not supported by the statute or this Board's prior decisions. In fact, in the absence of relevant case law ruling otherwise, should the County Officers Electoral Board now adopt Objector's prayer, the Candidate could be entitled to assert that the Board had deviated from past practice, in violation of *Briscoe v. Kusper*, 435 F.2d 1046 (7th Cir. 1971).

Furthermore, in her Response to Candidate's Motion to Strike, Objector wanders far afield of her initial petition and alleges that Candidate does not have a right to ballot access because she engaged in fraudulent or deceptive activity by using her maiden name. As Objector did not raise these matters in her initial petition, they will not be considered. The law is clear that Objector may not amend her petition (*See Cook County Officers Electoral Board Rules of Procedure*, Rule 9; *Weber v. Winnebago County Officers Electoral Board*, 966 N.E.2d 462, 467 (2nd Dist., 2012)). The only matter Objector raised in her petition (and the only matter of which

² §7-10.2. In the designation of the name of a candidate on a petition for nomination or certificate of nomination the candidate's given name or names, initial or initials, a nickname by which the candidate is commonly known, or a combination thereof, may be used in addition to the candidate's surname.

³ ...but these requirements do not apply to name changes resulting from adoption to assume an adoptive parent's or parents' surname, marriage to assume a spouse's surname, or dissolution of marriage or declaration of invalidity of marriage to assume a former surname. §7-10.2

Candidate received notice) is whether she was required to adhere to the name change provisions set out in §7-10.2.

“[B]allot access is a substantial right and not lightly to be denied.” *Nolan v. Cook County Officers Electoral Board*, 329 Ill.App.3d 52, 53 (2002)(quoting *Reyes v. Bloomingdale Township Electoral Board*, 265 Ill. App. 3d 69, 71 (1994)). The Election Code is designed to balance a candidate's right to have his name appear on the ballot with the need to preserve the integrity of the petition process and to encourage qualified voters' participation. *Siegel v. Lake County Officers Electoral Board*, 385 Ill.App.3d 452, 460 (2008). In light of this Board's decisions regarding the use of prior names, coupled with the Candidate's right to have her name appear on the ballot, the Hearing Officer will recommend that Objector's Petition be overruled.

**Candidate's Motion to Strike Objector's Response as Not Timely Filed and
“Objector's Motion to Strike Candidate's Motion to Strike Objector's Response:”**

Candidate filed a Motion to Strike Objector's Response to his preliminary Motion to Strike because Objector filed her response more than three hours after it was due. Rule 5 of the Rules of Procedure adopted by the Cook County Officers Electoral Board expressly requires that responses to preliminary motions to strike shall be filed by 5:00 p.m. on the second business day after the initial hearing. In addition, at the initial hearing, the Hearing Officer clearly instructed Objector to file her response brief by 5:00 p.m. Without a request for more time and without contacting the Board or the Hearing Officer, Objector filed her brief at 8:37 p.m.

While a three and one half hour delay may not seem like a serious matter, the rules of this Board are not to be taken lightly – they are not suggestions. Candidate was well within her right to move to strike Objector's Response. As all practitioners in this area of law are aware, the rationale for short deadlines and working on weekends and holidays is that electoral board hearings must

be set and the cases resolved in a very expeditious manner. Filing deadlines, like statutes of limitations, can operate harshly with respect to those who fail to meet the deadline. The Hearing Officer will not recommend that Objector's Response brief be stricken, but strongly cautions the Objector that the Board does not countenance late filings. The Hearing Officer will recommend that Objector's "Motion to Strike Candidate's Motion to Strike Objector's Response" be denied.

Objector's Motion to Supplement the Record:

Following oral argument, Objector filed a motion to supplement the record to include portions of §7-10.2's legislative history and Illinois Senate commentary. Candidate opposed the motion in a very brief email to all parties. While the name change issue had already been fully briefed and argued before Objector filed his motion, the information he seeks to impart is a public record. The Hearing Officer will recommend that this record include the legislative excerpts Objector provided.

Objector's Motion to Strike Candidate's Ex Parte Communications and Entry of Barring Order, Or, In And [sic] Alternative, Waiver.

In what appears to be a motion for sanctions against Candidate's counsel, Objector has filed a motion, as titled above. First, the record is clear that Candidate's counsel has not engaged in *ex parte* communication either with this Board or with the Hearing Officer. On their face, Candidate's email communications have been appropriately copied to the Board and to the Hearing Officer. Objector's protestations are incorrect. Next, in her latest motion, Objector has raised numerous spurious and serious accusations that have no place in these proceedings. Objector's unfounded personal attacks on Candidate's counsel and others must stop. For the record, Objector's latest accusations and motion for a barring order exceed the Board's jurisdiction, including Objector's prayer that the Board:

1. Strike the Candidate's papers in response to the Objection (presumably, Objector is referring to the Candidate's initial Motion to Strike);
2. Make a finding against the Candidate for compromising the integrity of the Electoral Board as a default for the misconduct of the Candidate's counsel; and,
3. Make a finding of waiver of any right Candidate has to respond to the Motion to Supplement the Record.

None of the foregoing concerns fall within the purview of the Board. In *Wiseman v. Elward*, 5 Ill.App.3d 249 (1st Dist. 1972), the Court ruled that the powers of the electoral board are limited to those granted in §10-10 of the Election Code which relates, generally, to the form, condition and timing of a candidate's nomination papers. See also, *Nader v. Illinois State Board of Elections*, 354 Ill.App.3d 335 (1st Dist. 2004). Objector's motion for sanctions against Candidate's attorney falls outside the scope of §10-10 and the Hearing Officer recommends that the motion be denied. See also *Delay v. Board of Election Commissioners*, 312 Ill. App. 3d 206, 209 (2000)(an electoral board "is a creature of statute and may exercise only those powers conferred upon it by the legislature).

RECOMMENDATION

In light of the foregoing, it is my recommendation that the objection of Karla Katz Oberholtzer be **overruled** and that the nominating papers of Caroline Patricia Jamieson, for nomination to the office of Judge of the Circuit Court of Cook County, State of Illinois, be deemed **valid** and that the name of Carolina Patricia Jamieson be printed on the ballot for said office at the March 17, 2020 primary election.

Respectfully submitted,

/S/ Sally H. Saltzberg

Sally H. Saltzberg
Hearing Officer
12/30/19