

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: The Nomination Petitions of :
Dustin Morris as Democratic :
Candidate for Democratic State : No. 196 M.D. 2022
Committee :
 :
Objection of: Jacque Whaumbush :

MEMORANDUM AND ORDER

AND NOW, this 8th day of April, 2022, upon consideration of the application of Candidate Dustin Morris (Candidate) to dismiss Objector’s petition to set aside Candidate’s nomination petition and Objector’s failure to provide proof of service on the Secretary of the Commonwealth, it is hereby ORDERED that Candidate’s application to dismiss is GRANTED and that Objector’s petition to set aside Candidate’s nomination petition (Petition to Set Aside) is DISMISSED.

Section 977 of the Election Code provides, in pertinent part:

All nomination petitions and papers received and filed within the periods limited by this act shall be deemed to be valid, unless, within seven days after the last day for filing said nomination petition or paper, a petition is presented to the court specifically setting forth the objections thereto, and praying that the said petition or paper be set aside. A copy of said petition shall, within said period, be served on the officer or board with whom said nomination petition or paper was filed. . . . The office of the Prothonotary of the Commonwealth Court and the office of the Secretary of the Commonwealth and the various offices of prothonotary of the court of common pleas shall be open between the hours of eight-thirty

o'clock A.M. and five o'clock P.M. ... on the last day to file objections to nomination petitions.

25 P.S. § 2937 (emphasis added). This seven-day deadline is mandatory; if an objector does not serve his petition to set aside on the Secretary of the Commonwealth within seven days after the last day for filing nomination petitions, the petition to set aside the nomination petition is void and cannot be considered by the courts. *In re Lee*, 578 A.2d 1277, 1278-79 (Pa. 1990); *In re Boyd*, 41 A.3d 920, 923-24 (Pa. Cmwlth. 2012), *aff'd without op.*, 42 A.3d 374 (Pa. 2012); *In re Emenheiser*, 896 A.2d 1288, 1289 (Pa. Cmwlth. 2006).

The last day for filing nomination petitions to be placed on the May 17, 2022 primary election ballot for the office of member of a state party committee was March 28, 2022, and the deadline for filing objections to such nomination petitions was April 4, 2022. *In re: Petitions for Review Challenging the Final 2021 Legislative Reapportionment Plan*, (Pa., No. 569 Judicial Administration Docket, filed March 16, 2022). Candidate timely filed a nomination petition for the office of member of the Democratic State Committee. Objector timely filed the Petition to Set Aside in Commonwealth Court on April 4, 2022. Objector, however, has not shown that he served the Petition to Set Aside on the Secretary of the Commonwealth by that April 4, 2022 deadline.

On April 4, 2022, the Court issued an order that scheduled a hearing on the Petition to Set Aside for 9:30 a.m. on Thursday April 7, 2022 and required

Objector to offer proof at the hearing that he timely served the Petition to Set Aside on the Secretary of the Commonwealth. Scheduling and Case Management Order ¶1(A),(D). On April 5, 2022, Candidate filed the instant application to dismiss, seeking to dismiss the Petition to Strike on the ground that Objector did not timely serve the Secretary of the Commonwealth. With this application to dismiss, Candidate submitted evidence that the Secretary of the Commonwealth's records show that Objector had not served the Secretary of the Commonwealth as of 8:30 a.m. on April 5, 2022, the day after the deadline. Exhibit A to Application to Dismiss at 5. Objector did not respond to the application to dismiss or file any proof of service showing that he served the Secretary of the Commonwealth in response to the application to dismiss.

On April 6, 2022, Objector filed an application for a continuance seeking to delay the hearing until Monday April 11, 2022 because he had a medical appointment that prevented him from appearing at the April 7, 2022 hearing. Objector's Application for Continuance. That same afternoon, this Court entered an order continuing the hearing to Monday, April 11, 2022, at 9:30 a.m., but ordering Objector to file his proof of service showing that he timely served the Secretary of the Commonwealth by the original 9:30 a.m. April 7, 2022 deadline. This Court specifically stated in this order:

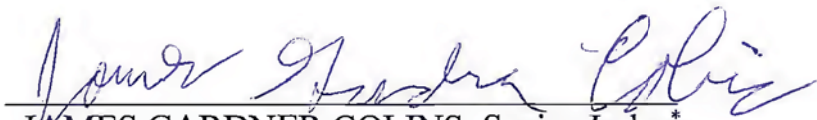
It is further ORDERED that Objector file with this Court by 9:30 a.m. on Thursday, April 7, 2022 proof of service

of the Objection Petition on the Secretary of the Commonwealth showing the date and method of such service. Failure to file such proof of service by said deadline shall result in dismissal of the Objection Petition.

4/6/22 Continuance Order. Objector did not file any proof of service by that deadline and as of the end of the day Thursday April 7, 2022 had not done so.

Because Objector has not shown that he served the Petition to Set Aside on the Secretary of the Commonwealth within seven days after the last day for filing nomination petitions, under Section 977 of the Election Code Candidate's nomination petition must be deemed valid and Objector's Petition to Set Aside must be dismissed. *Lee*, 578 A.2d at 1278-79; *Boyd*, 41 A.3d at 923-24; *Emenheiser*, 896 A.2d at 1289. The name of Dustin Morris shall be permitted to appear on the ballot as a candidate for the office of member of the Democratic State Committee in the primary election of May 17, 2022. The Chief Clerk of the Commonwealth Court is directed to send a copy of this Order to the Secretary of the Commonwealth.

The hearing set for Monday, April 11, 2022 at 9:30 a.m., in Courtroom Number 636, City Hall, Philadelphia, Pennsylvania, is CANCELLED.


JAMES GARDNER COLINS, Senior Judge*

* Retired Senior Judge temporarily assigned to the Commonwealth Court.

IN THE SUPREME COURT OF PENNSYLVANIA

IN RE: TEMPORARY MODIFICATION : No. 571 Judicial Administration Docket
OF THE RULES OF APPELLATE :
PROCEDURE ARISING UNDER THE :
PENNSYLVANIA ELECTION CODE :

ORDER

PER CURIAM

AND NOW, this 5th day of April, 2022, in order to expedite the appellate process regarding appeals from challenges to nomination petitions for **any and all** candidates running for office in the May 17, 2022 General Primary Election, Pa.R.A.P. 903(c)(1)(ii), providing for a ten-day appeal period from an order in any matter arising under the Pennsylvania Election Code, is **TEMPORARILY MODIFIED** to provide for a five-day appeal period.

Additionally, Pa.R.A.P. 107 is **TEMPORARILY SUSPENDED** to the extent it specifies that weekends and holidays are to be excluded from calculating the five-day appeal period.

In appeals arising under the Election Code that fall within this order, appellants shall file briefs within twenty-four hours after filing their notice of appeal and jurisdictional statement. Appellees' briefs are due within twenty-four hours of the filing of appellants' briefs. Further, Pa.R.A.P. 2113 (regarding reply briefs) is **TEMPORARILY SUSPENDED** in these matters; no reply briefs will be permitted.

Notices of appeal, jurisdictional statements, and briefs shall be filed electronically when counsel or the litigants have a PACFile account. Otherwise, counsel or the litigants shall contact the relevant filing office during normal business hours to make alternative arrangements to ensure that the filing office actually receives the submissions by the applicable deadline.

Pa.R.A.P. 1931(a) and (c) (regarding the deadline for transmittal of the record when complete) are **TEMPORARILY SUSPENDED** in these matters, and the record shall be transferred as soon as practicable. The lower court may transmit partially completed records in the interest of facilitating prompt resolution of any appeal in these matters.

Applications for reconsideration or reargument will not be entertained by this Court on election matters falling under this order.

Any court deciding a matter that arises under the Pennsylvania Election Code in relation to the May 17, 2022 General Primary Election shall append a copy of this order to its decision.

A True Copy Nicole Traini
As Of 04/05/2022

Attest: 
Chief Clerk
Supreme Court of Pennsylvania