

THE FIRST JUDICIAL DISTRICT OF PENNSYLVANIA, PHILADELPHIA COUNTY
IN THE COURT OF COMMON PLEAS

In Re:	: March Term, 2009
Nominating Petition of:	:
R. SETH WILLIAMS, Candidate	: No. 02799
for Philadelphia District Attorney in the	:
May 2009 Democratic Primary	:
	:
	: Control# 09032856
Objection of John O'Rourke and	:
Jason Stein	:

FINDINGS and ORDER

The matters before this Court are the Objections to the Nominating Petition of R. Seth Williams, Candidate for the Office of District Attorney of Philadelphia in the May Democratic Primary Election.

It is undisputed that Mr. Williams received in excess of \$10,000 from his Campaign Committee in the calendar year of 2008 and he did not list this receipt of expenses on his Statement of Financial Interest (SFI), filed on March 10, 2009 along with his Nominating Petition. (Exhibit C1-A).

In his SFI, Mr. Williams listed five (5) sources of income, and, as stated above, this did not include any "expenses" received from his Campaign Committee.

Mr. Williams filed an Amended Statement of Financial Interest on March 20, 2009. He did not include as a source of income, "expenses" received from his Campaign Committee. He did offer a statement in this amended form that said he, "does not believe that reimbursements from the Campaign under the Public Official and Employees Ethics Act (Ethics Act)" must be reported, the Act only requires "(a)ny money or thing of value received or to be received as a claim on future services or in recognition of services rendered in the past."

Prior to proceeding on to other issues, a discussion of the Candidate's proposed definition of the term *income* is critical, as it will inform what proceeds herein.

A full reading of the statutory definition of *income* in the Ethics Act shows that the

definition is more inclusive than the Candidate's reading allows. In, **In Re: Nomination Petition of Kerry Benninghoff**, 578 Pa. 402; 852 A.2d 1182 (2004), our Supreme Court had before it an Election case in which the candidate's SFI was under challenge. In Footnote 5 of the Opinion, the Court cited the full definition of income, found in 65 Pa. C.S. § 1102:

5. The provision as a whole provides as follows:

“Income.” Any money or thing of value received or to be received as a claim on future services or in recognition of services rendered in the past, whether in the form of a payment fee, salary, expense, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain, reward, severance payment, proceeds from the sale of a financial interest in a corporation, professional corporation, partnership or other entity resulting from termination or withdrawal therefrom upon assumption of public office or employment or any other form of recompense or any combination thereof. The term refers to gross income and includes prize winnings and tax-exempt income. The term does not include gifts, governmentally mandated payments or benefits, retirement, pension or annuity payments funded totally by contributions of the public official or employee, or miscellaneous, incidental income of minor dependent children.

65 Pa. C.S. § 1102, **Benninghoff**, *Id.*

This same statutory definition of income is found in the instructions which accompany the SFI form. See Exhibit C1-B, Page 2, Block 10:

Direct or Indirect Sources of Income:

List the name and address of each source of \$1,300 or more of gross income regardless of whether such income is received solely by you or jointly by you and another individual such as spouse. “Income” includes any money or thing of value received or to be received as a claim on future services or in recognition of services rendered in the past, whether in the form of a payment, fee, salary, expense, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain, reward, severance payment, proceeds from the sale of a financial interest in a corporation, professional corporation, partnership or other entity resulting from termination/withdrawal therefrom upon assumption of public office or employment or any other form of recompense or combination thereof. The term refers to gross income; it includes prize winnings and tax-exempt income but does not include gifts, governmentally mandated payments or benefits, retirement, pension or annuity payments funded totally by contributions of the public official or employee, or miscellaneous, incidental income of minor dependent

children. If you did not receive ANY reportable income, check “NONE.”

The definition of income begins with the following declarative statements connected with the disjunctive preposition, “or.”

“*Income*, includes any money or anything of value received or to be received as a claim on future services or in recognition of services rendered in the past” (Emphasis supplied) The definition then goes on to state the various forms that “money” or “anything of value” may take. These include items such as “interest,” “dividends,” “capital gain,” “allowance,” “forbearance” and most importantly for our purposes, the category of “expense.”

Under the candidate’s interpretation of the definition of *income*, such would be limited to “any money or thing of value received or to be received as a claim or future services, or in recognition of services rendered in the past.”

If the Court were to accept this proposed definition, it would exclude from *income* the class of items mentioned above, such as interest, dividends, capital gains, which are not dependent upon or related to the value of services, past or future.

In, **In Re: Nomination Petition of Paulmier**, 594 Pa. 433; 937 A.2d 364 (2007), a case which looms large in the Court’s analysis, our Supreme Court had occasion to visit the issue of the use of the conjunction, “or” as a matter of statutory construction. In **Paulmier**, the Court was determining what source of income a candidate had to disclose on his SFI. At issue was the phrase, “any direct or indirect contribution of income from an individual or business.” *Id.* The “or” the Court focused on was the one between “individual or business.” First, it acknowledged that “or” is a conjunction, “used to connect words, phrases or clauses representing alternatives (*The Random House Dictionary*). In other words, “or” is disjunctive. It means one or the other of two or more alternatives.” *The Merriam Webster Online Dictionary* goes one step further to define disjunctive as, “expressed by mutually exclusive alternatives joined by ‘or.’”

Considering this, it is clear that the definition of *income* as proposed by the Candidate, is not the one that the Legislature defined. If one accepts the Candidate’s offering, the definition of income would hypothetically be read, “Income-Money or a thing of value received and is either a claim on future services or recognition of past services.” Clearly, this is not what the Legislature enacted as is reflected in the stated definition. In **Paulmier**, we are reminded that:

1 Pa. C.S. § 1921(a). The best evidence of legislative intent

is the words used by the General Assembly. If the words are clear and free from all ambiguity, the letter of the law is not to be disregarded under the pretext of pursuing its spirit. 1 Pa. C.S. § 1921(b). Only when the Legislature uses words that are not explicit will this Court turn to other factors to ascertain its intent. 1 Pa. C.S. § 1921(c) We are to construe the words of a statute according to the rules of grammar and according to their common and approved usage. 1 Pa. C.S. § 1903(a). Further, the Legislature instructs that in ascertaining its intent, we may presume that it did not intend a result that is absurd unreasonable or impossible of execution. 1 Pa. C.S. § 1922(1).

Paulmier, 937 A.2d at 372.

Having now concluded that the statutory definition of “Income” as contained in the Ethics Act, required the Candidate to report the receipt of, in excess of \$10,000 from his Campaign Committee, as “expenses,” the focus shifts to whether such omission is amendable.¹

This analysis begins with a review of the **Benninghoff** case recently decided by our Supreme Court. In **Benninghoff**, the Court had before it a challenge to the Nominating Petition of a candidate seeking reelection to the position of Representative in the General Assembly. The challenge there (as here), was to Block 10 of the Statement of Financial Interest. The candidate did not list his income from his public office as a Member of the General Assembly in Block 10 of the SFI. He did identify in Block 4 his “job title” as “State Representative” and in Block 5 he identified that he was an “Official or Employee” of “Legislative District 171” and in Block 6 he listed “State Representative” as his “occupation or profession.” The Commonwealth Court, sitting as a Court of original jurisdiction, sustained the objections finding that the omission of the income in Block 10 was a “fatal defect” and struck the nominating petition, based upon the defective SFI.

The candidate appealed to the Supreme Court. There, the Court looked at the SFI and found that the omission in Block 10 of the candidate’s source of income, would do no more than disclose the same information that was contemporaneously supplied in three other places in the SFI. This caused the Supreme Court to render the following holding:

We find that Benninghoff substantially complied with the requirements of the Ethics Act in submitting his Financial Statement. Listing the General Assembly or the Commonwealth as a direct source of income in Box 10 would

¹ The Court notes that the Candidate did file an Amended Statement of Financial Interest on March 20, 2009. Exh.R-4. The Court further notes that this Amended SFI did not list the receipt of money in excess of \$10,000 from his Campaign Committee as a receipt of “expenses” as is required by the Act.

not disclose anything that is not already disclosed by Benninghoff's submissions in Boxes 4, 5 and 6. Additionally, Section 1105(b), which enumerates what information is required on the Financial Statement, does not specifically require the information regarding sources of income to be listed in Box 10 of the form. While we recognize that Section 1105(1) indicates that the Financial Statement "shall be on a form prescribed by the Commission," and that the use of a form in this regard provides an orderly way in which the Commission can obtain the required information, where, as here, all of the information required by Section 1105(b)(5) can be facially obtained from the information provided on the form as a whole, we conclude that it is fully appropriate to permit an amendment to the form to duplicate, or triplicate, in Box 10, what is already plainly stated in Boxes 4, 5 and 6.

Benninghoff, 852 A.2d at 1187.

This holding announced what would become the "substantial compliance" standard and reflected the Supreme Court's desire to move away from the "per se" rule of "fatality" reflected in the line of cases identified as, **In Re Nomination Petition of Anastasia**, 827 A.2d 373 (Pa.2003) and its progenies, **In Re Nomination Petition of Littlepage**, 909 A.2d 1235; 589 Pa. 455 (2006) and **In Re Nomination Petition of Braxton**, 874 A.2d 1143; 583 Pa. 35 (2005).

Our Supreme Court again considered the issues raised in **Benninghoff** which are at issue in this matter in the **Paulmier** case. In **Paulmier**, the candidate listed his occupation in Block 6 of the SFI as "Housing Specialist" and in Block 10 of the form his source of income as "rental income."

The Trial Court struck his name, citing **Braxton**. On appeal, the Commonwealth Court affirmed the Trial Court citing **Braxton** and referencing **In Re Anastasia; In Re Benninghoff** and **In Re Littlepage**. (**Paulmier**, 937 A.2d at 367).

In **Paulmier**, our Supreme Court analyzed the Ethics Act and the Pa. Election Code, which it said must be read *in pari materia*, and found that the "per se" rule of fatality was inconsistent with both acts read together and announced the demise of the "per se" fatality rule.

With this holding this Court specifically overrules our *per curiam* order in **Anastasio**, 827 A.2d at 373, as well as its progeny such as **Littlepage**, 909 A.2d at 1235 and **In re Braxton**, 874 A.2d at 1143. We note that because the Election Code and Ethics Act are *in pari materia*, the consideration of the language of the Ethics Act alone, which undergirds the *per se* rule in the Anastasio line of caselaw

was in error.

Paulmier, 937 A.2d 445.

The Court went further and affirmed the holding and rationale of **Benninghoff**.

This divergence is irreconcilable, and so this Court now affirms that the Benninghoff rationale is correct, because as we stated above, the Ethics Act and the Election Code are *in pari materia*, and therefore, the language of each act should be considered together.

Paulmier, 937 A.2d 445

Understanding that the “per se” fatality rule evidenced by the **Anastasio** line of cases is no longer the law of Pennsylvania and that the **Benninghoff/Paulmier** line is now the law, this analysis must go one step further to understand when a timely filed SFI may be amended.

In both **Benninghoff** and **Paulmier**, the candidates’ SFI included the sources of income in multiple places on the forms, albeit in a manner which appeared to trigger the “per se fatality” rule. The holdings of the Supreme Court in both cases identified these as “technical defects” subject to timely amendments.

Thus, based on the foregoing, we hold that where, as here, a candidate has substantially complied with the requirements of the Ethics Act and there is a technical defect appearing on the face of a candidate’s Financial Statement, such a defect is subject to the candidate’s amendment.

Benninghoff, 852 A.2d at 1189.

... even if there are defects on the face of the form, so long as that candidate subsequently amends the form to correct the defect and comes into compliance with the Act in a timely manner. In other words, all defects related to the content of disclosures on a timely filed statement of financial interest are subject to timely amendment.

Paulmier, 937 A.2d at 445.

Therefore, it is implicitly clear that when there is an “omission” of such source of income, there is no deficiency on the face of the form and therefore the form is not amendable.

Thus, the Court held: “Anastasio did *not* file his financial statement in accordance with the provisions of the chapter.” (emphasis in original). Because of the “errors of omission” admittedly contained on Anastasio’s Financial Statement, there was no basis for any reviewer to ascertain whether Anastasio did, in fact, have supplemental income or income from employment sources.

Anastasio contended that he confused “regular income” and

“supplemental income,” and thought only the former had to be reported. The Commonwealth Court’s opinion does not reveal how Anastasio defined these terms, or how he contended they affected his situation. Regardless, as noted in this Opinion, there is a vast distinction between Benninghoff’s Financial Statement wherein he disclosed an employment position for which he receives a statutorily mandated and published salary and reported supplemental income, and Anastasio’s utter failure to designate anything.

Benninghoff, 852 A.2d at 1188.

This analysis is consistent with the analysis employed in other Election Code cases; **In Re Nomination Petition of Koiber**, 26 Pa. Commw. 50; 362 A.2d 484 (1976), a properly completed circulator affidavit on a nominating petition lacking a notary stamp was amendable as the defect was apparent on its face; **In Re Nomination Petition of Fowler**, 132 Pa. Commw. 639; 574 A.2d 127 (1990), an otherwise properly completed candidate’s affidavit, lacking the candidate’s signature, was subject to amendment by allowing the candidate to affix her signature as defect was apparent on its fact; **In Re Nomination Petition of Payton**, 945 A.2d 281, 2008 Pa. Commw. LEXIS 130 (2008), the Court held that omitted affidavits left nothing to amend as defect was not apparent on its face.

In summary, the Candidate failed to report the receipt of expenses in excess of \$10,000 from his campaign as required by law and such failure must render his Nominating Petition fatally defective.

Therefore, considering the above and the record as a whole, the Objections to R. Seth Williams, Candidate for Philadelphia District Attorney in the May 2009 Primary Election are granted and the aforesaid Nominating Petition is stricken.

The Philadelphia County Board of Elections is Ordered not to place the name of R. Seth Williams on the 2009 May Primary Ballot for the Office of District Attorney for Philadelphia County.

BY THE COURT:

March 27, 2009

DATE

ALLAN L. TERESHKO, J.

cc:

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