



## FLORIDA DEPARTMENT *of* STATE

**RICK SCOTT**  
Governor

**KEN DETZNER**  
Secretary of State

April 9, 2012

The Honorable Jerry Holland  
Supervisor of Elections, Duval County  
105 E. Monroe Street  
Jacksonville, Florida 32202-3215

RE: DE 12-03 Petitions – Format and Verification  
of Candidate Petitions -- §§ 99.095 and 99.097,  
Florida Statutes

Dear Supervisor Holland:

This letter responds to your request for an advisory opinion. As the Duval County Supervisor of Elections, you desire to know if you may verify signatures as valid on candidate petitions where the candidate has placed additional text and markings on the forms used for circulating to registered voters. In particular, a candidate has altered the prescribed candidate petition form, DS-DE 104 (Eff. 10/10),<sup>1</sup> which was incorporated by reference in Florida Administrative Code Rule 1S-2.045, by adding three items within the borders of the prescribed form: (1) a number in the right hand portion of the form (on the forms provided with the request for this opinion, the number was a six-digit number); (2) a two-inch bar code in the center of the form next to the entry for the candidate's desired office; and (3) a three and ¾-inch box with the text of "Paid for by (name of candidate) for Congress" typed on the last line of the prescribed form between the text of "Rule 1S-2.045, F.A.C." and "DS-DE 104 (Eff. 10/10)." The entries do not obscure any of the required entries or text on the DS-DE 104.

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<sup>1</sup> The current version of DS-DE Form 104 has an effective date of September 2011 (09/11); however, Rule 1S-2.045(7), Fla. Admin. Code (Dec. 5, 2011), provides, "Any candidate petition form which contains the substantive requirements of subsections (3) and (5) and which was approved by the Division of Elections prior to the effective date of this rule may continue to be used and circulated for signature gathering until July 16, 2012." The DS-DE 104 (Eff. 10/10) was approved by the Division and incorporated into Rule 1S-2.045, Fla. Admin. Code (Nov. 7, 2010).



The short answer to your inquiry is that a supervisor of elections may verify a signature as valid on a candidate petition form only if the form is the one prescribed by Rule 1S-2.045 in its exact wording and format without any changes in its text and format, except the form may be reduced or enlarged proportionally in size as a whole document. The additional items placed on the candidate petition form noted in your request represent changes in the text and format of the form; therefore, the signatures on these petitions cannot be verified as valid.<sup>2</sup>

Section 99.095(2)(c), Florida Statutes (2011), provides that the format of the candidate petition which excuses a candidate from paying the qualifying fee and party assessment “shall be prescribed by the division and shall be used by the candidate to reproduce petitions for circulation.” Section 99.097(1)(b), Florida Statutes (2011), directs: “Rules and guidelines for petition verification shall be adopted by the Department of State.” In response to the statutory directives and pursuant to applicable rulemaking procedures in Chapter 120, Florida Statutes, the Division of Elections promulgated Florida Administrative Code Rule 1S-2.045 to prescribe the rules and format for the candidate petition, DS-DE 104.

In an effort to make the implementation of election laws uniform throughout the state, Rule 1S-2.045 specifically addresses what is required for the candidate petition form and for signature verification. The rule provides in relevant part for the purposes of your inquiry:

- a. “[T]he format of a candidate petition shall be in accordance with DS-DE 104.”<sup>3</sup>
- b. Candidate petition forms “must be reproduced for use by candidates in their exact wording and formats without any changes in their texts or formats, except the forms may be reduced or enlarged proportionally in size as a whole document.”<sup>4</sup>
- c. “No signature on a candidate petition form shall be counted toward the number of signatures required unless it is on the candidate petition form prescribed by the Division in this rule.”<sup>5</sup>
- d. As a specific example of what will make a candidate petition invalid, the current rule provides that it will be invalid if “[t]he petition is in a different format than the applicable candidate petition form incorporated by reference in this rule.”<sup>6</sup>

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<sup>2</sup> The conclusions expressed in this opinion only relate to items added to or deleted from the four corners of the candidate petition form within the borders of the form itself. Any matters placed outside the borders of the prescribed form would not be changing the text or format of the form.

<sup>3</sup> Rule 1S-2.045(3)(a), Fla. Admin. Code. This provision was in the prior 2010 version of the rule and is in its current version.

<sup>4</sup> Rule 1S-2.045(3)(b), Fla. Admin. Code. This provision was in the prior 2010 version of the rule and is in its current version.

<sup>5</sup> Rule 1S-2.045(5)(d), Fla. Admin. Code. This provision was in the prior 2010 version of the rule and is in its current version.

<sup>6</sup> Rule 1S-2.045(5)(i)8., Fla. Admin. Code. This provision was not in the 2010 version of the rule.

Also, section 99.097(3)(a), Florida Statutes (2011), provides, “If all other requirements for the petition are met, a signature on a petition shall be verified and counted as valid for a registered voter if, after comparing the signature on the petition and the signature of the registered voter in the registration system, the supervisor is able to determine that the petition signer is the same as the registered voter ....” (*Emphasis supplied.*) Those “other requirements” would include requirements for petition verification that have been promulgated pursuant to the Division’s rulemaking authority granted by the same statute.

Applying the above requirements to the candidate petition form specified in your inquiry results in the DS-DE 104 used by the candidate as not being the one “prescribed by the Division” and not being in its exact wording and format. In particular, the text and format of the form has been changed by the addition of the three items. This conclusion stems from applying the common meanings of “text” and “format.” “Text” means “the original words and form of a written or printed work” or “a work containing such text;” and “Format” means “the shape, size, and general makeup (as of something printed)” with its synonyms being “arrangement,” “configuration,” and “layout.”<sup>7</sup> The candidate petition forms you provided represent changes in the text and format of the prescribed form because the candidate has added words, graphics, and numbers; plus, the candidate has altered its general make-up, layout, and configuration. Because candidates were making various changes in the candidate petition form used in the 2008 and 2010 election cycles, which generated questions from several supervisors of elections and which also led to litigation<sup>8</sup> about the propriety of the changed forms being used, the Division incorporated into the 2010 version of Rule 1S-2.045 the language that required the prescribed candidate petition form be “in their exact wording and formats without any changes in their text or formats.” The intent of creating a standard form with an exact wording and format was not only to make the candidate petition process uniform, but to add clarity to the process for both candidates and supervisors of elections.

It is incumbent upon the candidate to follow applicable law and rules when seeking to qualify as a candidate for public office. When used to avoid paying the required filing fee, the candidate petition form is a candidate qualifying form. Like other qualifying forms, a candidate must use and file the correct candidate petition form to properly qualify for the office being sought. As the executive agency responsible for prescribing the candidate petition form and the rule for petition verification, the Division believes that the rule speaks for itself and any application of the judicial doctrine of substantial compliance is insufficient to overcome the specific mandates of the rule and the applicable law when a candidate uses a form that is not prescribed by the Division.<sup>9</sup>

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<sup>7</sup> *Merriam-Webster Online Dictionary* (2012).

<sup>8</sup> *See, e.g., Mann v. Harrington*, Case No. 10-CA-1679, Fla. 20th Cir. Ct. (2010) (The court ruled that a form substantially similar, but not on the candidate petition form as prescribed by the Division of Elections, was valid as a candidate petition form.) The language of the statute and rule has changed since the *Mann* case. *See infra* note 9 and accompanying text.

<sup>9</sup> *See* the discussion on the substantial compliance doctrine in a candidate qualifying context in *Division of Elections Opinion* 09-01 (May 18, 2009). What distinguishes the present situation

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SUMMARY

A supervisor of elections may verify a signature as valid on a candidate petition form only if the form is the one prescribed by Florida Administrative Code Rule 1S-2.045 in its exact wording and format without any changes in its text and format, except the form may be reduced or enlarged proportionally in size as a whole document.

Sincerely,



Dr. Gisela Salas  
Director, Division of Elections

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from the one existing in that opinion where substantial compliance may have been applicable is that the candidate in the 2009 opinion used the proper form whereas the current candidate did not use the proper form as prescribed and did not meet “all other requirements for the petition” as mandated by § 99.097(3)(a), Fla. Stat. (2011) (this requirement became effective on May 19, 2011 via Ch. 2011-40, § 19, Laws of Fla. (2011)). The Division believes that the effect of this statutory change, along with the present wording of Rule 1S-2.045, negates the application of the doctrine of substantial compliance for candidate petitions when a candidate submits a petition that is not on a prescribed form that meets all the requirements of the applicable law and rule.