

STATE ELECTION BOARD OF THE
STATE OF OKLAHOMA

IN THE MATTER OF CONTEST OF THE)
CANDIDACY OF **ORENTHHEL DENSON**)
FOR THE OFFICE OF DISTRICT JUDGE,)
DISTRICT 7, OFFICE 3, STATE OF)
OKLAHOMA.)

CAUSE NO. 2014-02

AMENDED ORDER

The above-styled cause was heard by the Election Board of the State of Oklahoma on April 21, 2014, meeting pursuant to lawful notice.

The following members of the State Election Board ("Board") were present: Steve Curry, Chairman; Tom Montgomery, Vice-Chairman; Diana Spurlock, Member. Also present were Paul Ziriak, Secretary, and counsel for the Board, Neal Leader, Senior Assistant Attorney General, and Jan Preslar, Assistant Attorney General. Also present, but not participating, were alternate Board members Dr. Tim Mauldin and Jerry Buchanan.

Petitioner Donald L. Deason was personally present and was represented by counsel, Mack Martin. Contestee Orenthel Denson appeared, pro se.

Mr. Denson answered the contest and presented a cashier's check in the amount of \$250.00 as prescribed in 26 O.S. 2011, § 5-129.

The Board received proof of personal service made on Mr. Denson by the Oklahoma County Sheriff.

The Board conducted the hearing. After considering all evidence and testimony offered and admitted, and after hearing arguments of Mr. Martin and Mr. Denson, the Board makes the following order:

1. Mr. Deason timely filed his Declaration of Candidacy for District Judge, District 7, Office 3, during the April 9-11, 2014, filing period.
2. Mr. Denson timely filed his Declaration of Candidacy for District Judge, District 7, Office 3, during the April 9-11, 2014, filing period.

3. The allegations contained in the petition of Mr. Deason are that Mr. Denson is not qualified by law to become a candidate for District Judge, District 7, Office 3, because Orenthel Denson has a name similar to the incumbent, Donald L. Deason, and failed to follow the requirements of 26 O.S. 2011, §5-107.

4. 26 O.S. 2011, §5-107 provides in pertinent part:

No person may become a candidate for any office enumerated in Section 26-5-102¹ of this title whose name is identical to the name of the incumbent or of any publicly announced candidate for such office, or similar thereto, where it appears that the identity or similarity of names is used for the purpose of confusing the voters. Any person desiring to become a candidate for one of said offices whose name is identical or similar to the name of the incumbent or of any publicly announced candidate for said office shall observe the following procedure.

The potential candidate shall file a preliminary Declaration of Candidacy with the Secretary of the State Election Board between the hours of 8 a.m. on Monday and 5 p.m. on Friday of the third week prior to the beginning of the regular filing period. The preliminary Declaration of Candidacy shall be accompanied by a cashier's or certified check in the amount of Two Hundred Fifty Dollars (\$250.00).

When such a preliminary Declaration of Candidacy is filed the Secretary of the State Election Board shall immediately set the matter for hearing and shall cause at least five (5) days' notice to be given by publication in one issue of a newspaper of general circulation in the state so that any person may object to said filing and be heard thereon at said hearing.

At said hearing the candidate may present proof and testimony of his good faith. The burden of proof shall be upon the candidate to show that his candidacy is in good faith and is not intended to confuse the voters.

After a full and complete hearing the State Election Board shall render its decision, and if it finds that he is acting in good faith and not for the purpose of confusing the voters, said candidate shall be permitted to file a Declaration of Candidacy during the regular filing period, and his deposit shall be returned to

¹ 26 O.S.2011, §5-102 provides, "Candidates for United States Senator, United States Representative, state officer, State Senator, State Representative, district judge, associate district judge and district attorney shall file Declarations of Candidacy with the Secretary of the State Election Board. "

him. If the Board finds that said candidate's candidacy is designed for the purpose of confusing the voters, he shall not be permitted to file as a candidate, and the balance of his deposit, after the costs of the hearing are deducted, shall be returned to him.

(Footnote added.)

5. Mr. Deason argued that his name, "Orenthel Denson", is not similar to the incumbent's name, "Donald L. Deason", and therefore he was not required to follow the procedure set forth in 26 O.S. 2011, §5-107, which includes filing a preliminary Declaration of Candidacy three weeks prior to the regular filing period.

6. 26 O.S. 2011, §5-130 provides: "The burden of proof shall be upon the petitioner to sustain the allegations in his petition."


7. The Board finds that Orenthel Denson's name is not similar to the incumbent's name, Donald L. Deason, and therefore the requirements of 26 O.S. 2011, §5-107 are not triggered. The hearing conducted by the Board was not a hearing on a preliminary filing of a Declaration of Candidacy under 26 O.S. 2011, §5-107. Consequently, any evidence as to Mr. Denson's good faith or lack thereof is irrelevant.

8. Mr. Deason has therefore failed to sustain his burden of proof that Orenthel Denson's name is similar to Donald L. Deason's name, thereby triggering the requirements of 26 O.S. 2011, §5-107. Mr. Deason's petition is therefore denied and Mr. Denson's name will appear on the ballot as a candidate for District Judge, District 7, Office 3.

9. Costs are assessed to Mr. Deason, pursuant to 26 O.S. 2011, §5-131.

Done this 21st day of April, 2014, by a vote of 3-0 of the Election Board of the State of Oklahoma.

OKLAHOMA STATE ELECTION BOARD



STEVE CURRY, CHAIRMAN