

IN THE SUPREME COURT OF FLORIDA

Case No.

SC08-1717

FILED
THOMAS D. HALL

2008 SEP 11 P 9:50

CLERK SUPREME COURT

PEDRO DIJOLS, as candidate for the
Broward County Judge Circuit Group 3,

Petitioner,

v.

KURT S. BROWNING, as Secretary
of State, State of Florida, in his official
capacity,

Respondent.

EMERGENCY PETITION FOR WRIT OF QUO WARRANTO

Pursuant to Rule 9.100, Fla.R.App.P., Petitioner, PEDRO DIJOLS, as candidate for Broward County Judge Circuit Group 3, respectfully petitions the Supreme Court for a writ of quo warranto directed to the Respondent, KURT S. BROWNING, as Secretary of the State of Florida, and states:

**I.
BASIS FOR INVOKING JURISDICTION**

This Court has jurisdiction to issue a writ of quo warranto under Article V Section 3(b)(8) of the Florida Constitution, and Rule 9.030(a)(3) of the Florida Rules of Appellate Procedure. Quo warranto is the proper remedy in

that it is “available for the purpose of determining the title or right to a public office and to oust an incumbent who has unlawfully usurped or intruded into the office or is unlawfully holding it.” *See Maloney v. Kirk*, 212 So. 2d 609, 618 (Fla. 1968).

Although the district courts of appeal and circuit courts also have a general constitutional power to issue writs of quo warranto, the petition in this case was properly filed in the Supreme Court. Article V Section 3(b)(8) of the Florida Constitution provides that the Supreme Court shall have jurisdiction to issue writs of quo warranto to state officers, and the Respondent in this case, the Secretary of State, State of Florida, is a state officer under the provisions of Article V section 18 of the Florida Constitution. Thus, jurisdiction to issue a writ of quo warranto lies in the Supreme Court.

On September 5, 2008, Petitioner also filed an action in the circuit court pursuant to § 102.168, Fla. Stat. (2008), as well as a Petition for Writ of Quo Warranto and Mandamus, to compel Dr. Brenda Snipes, as the Supervisor of Elections for Broward County, and/or the Broward County Canvassing Board, to disqualify Mardi Anne Levey a/k/a Mardi Levey Cohen as a candidate for Broward County Judge Circuit Group 3, and

remove her from the November, 2008 election ballot.¹ (A.1) Dr. Brenda Snipes, the Supervisor of Elections for Broward County, is scheduled to have the ballots for the November, 2008 general election printed this week. As of the date of this Petition, the assigned judge in the circuit court action has not scheduled the statutorily mandated hearing, required to be held “immediately” after the filing of the action contesting the election. Petitioner has also filed a Motion to Recuse all Judges in the 17th Judicial Circuit based on the fact that all the judges in the 17th Judicial Circuit are colleagues of both Petitioner and Defendant, Mardi Levey Cohen’s husband, Judge Dale Cohen. Because the matter of reassignment will be before this Court, Petitioner respectfully asks this Court to take up this original action and expedite this matter so that the election ballots can be printed in a timely manner.

Moreover, Petitioner is in doubt as to whether the circuit court can fashion the appropriate relief because the Broward County Canvassing Board has already certified the primary election results to KURT S. BROWNING, Secretary of State, State of Florida and there may not be

¹ An Appendix accompanies this Petition and is referenced as “(A. __).” Substantially all of the documents included in the Appendix are public records for which this Court may take judicial notice.

jurisdiction to compel the Secretary of State to act in accordance with any ruling of the circuit court.

II. STATEMENT OF THE FACTS

Petitioner PEDRO DIJOLS, was a candidate for Circuit Judge in Broward County, seeking election in Circuit Group 3. Mardi Anne Levey a/k/a Mardi Levey Cohen, was also a Candidate for Circuit Judge in Broward County, seeking election in Circuit Group 3. In 2005, PEDRO DIJOLS, after a distinguished career as a statewide prosecuting attorney and state attorney, was appointed to the Circuit Bench of the 17th Judicial Circuit Court, by then Governor Jeb Bush and has been serving since his appointment in 2005. Under the Florida Constitution, PEDRO DIJOLS, as an appointed judge, was required to run for re-election. Two candidates elected to enter the race and challenge PEDRO DIJOLS: Bernard Isaac Bober, a Broward County Public Defender; and Mardi Anne Levey, an attorney who practices law under the name “Mardi Levey Cohen” and/or “Mardi L. Cohen.”

A. Mardi Anne Levey Failed to Run Under the Name Name by Which She Conducts Private and Official Business

Under Florida election law, a candidate is required to run under the name by which he or she transacts private and official business. *See Planas*

v. Planas, 937 So. 2d 745 (Fla. 3d DCA 2006), *citing* Division of Election Opinion 86-06 and C.J.S. Elections § 161. Mardi Anne Levey has willfully failed to abide by this requirement, and is in violation of Florida election law. Mardi Anne Levey conducts both her private affairs and official business under the name, “Mardi Levey Cohen” and/or “Mardi L. Cohen.” Mardi Anne Levey worked at the State Attorney’s Office from 2002 through 2006. While working at the State Attorney’s office, Mardi Anne Levey transacted business as “Mardi L. Cohen.” Copies of her Resume, Employment Application, Commitment to Employ, Oath of Loyalty, and Letter of Resignation all list her name as “Mardi L. Cohen. (A. 2-6) Copies of her W2 forms for the years 2002, 2003, 2004, 2005 and 2006 conclusively demonstrate that Mardi Anne Levey transacted her private affairs and official business as “Mardi L. Cohen.” (A. 7) After leaving the State Attorney’s Office, Mardi Anne Levey went into private practice, practicing as “Mardi L. Cohen,” and naming her firm “Law Office of Mardi L. Cohen, P.A.” A print out of her firm’s website and its 2008 Annual Report both list her name as “Mardi L. Cohen.” (A. 8-9) Mardi Anne Levey’s social security card reads “Mardi L. Cohen.” (A. 10) In 2006, Mardi Anne Levey ran unsuccessfully for Circuit Court Judge under the name “Mardi Levey Cohen.” A print out of the 2006 Candidate Tracking

System and a copy of a mailing from her unsuccessful 2006 campaign, demonstrate that she ran as “Mardi Levey Cohen.” (A. 11-12) Computer searches of websites such as Google, Yahoo, Broward County Public Records, and State of Florida-Official Records provide no indication that Mardi Anne Levey has used her maiden name, “Levey,” since her marriage to her husband Judge Dale Cohen over twenty years ago. Mardi Anne Levey did not file a petition to change her name prior to entering the race for the Group 3 judicial seat. The Clerk of the 17th Judicial Circuit has issued a Certificate of the Clerk verifying this information. (A. 13) In the current issue of the Florida Bar Journal, as well as on the Florida Bar Website and her, the name Mardi Anne Levey is not listed. (A. 14, 15) “Mardi L. Levey” is on her Florida Bar Membership card. (A. 16) Mardi Levey Cohen is listed in the Florida Bar Journal at the address used by Mardi Anne Levey for this election. *Id.*

Notwithstanding the fact that Mardi Anne Levey conducted her private affairs and official business as “Mardi L. Cohen” or “Mardi Levey Cohen” for over twenty years, she appeared on the August 2008 ballot as “Mardi Anne Levey,” as demonstrated on the print out of the 2008 Candidate Tracking System. (A. 17) The candidate has a valid Florida driver’s license under the name of Mardi Levey Cohen as evidenced by the printout from the

State of Florida – Department of Highway Safety and Motor Vehicles. (A. 18)

B. Procedure Regarding Recount of August 2008 Election Results

After the primary election, the initial election results indicated that Bernard Isaac Bober came in first, receiving approximately 38% of the votes. The race for second, however, was extremely close. PEDRO DIJOLS and Mardi Anne Levey both received approximately 30% of the votes. The “unofficial” vote count revealed that only 111 votes separated the two candidates. Because the 111 vote difference between PEDRO DIJOLS and Mardi Anne Levey resulted in a victory of less than $\frac{1}{2}$ of 1%, a mandatory recount was conducted in accordance with § 102.141(7), Fla. Stat. on Saturday, August 30, 2008. The results of the mandatory recount on Saturday August 30, 2008 dictated that a manual recount be performed in accordance with § 106.166(1), Fla. Stat. on Sunday, August 31, 2008. Section 102.166(5)(a), Fla. Stat., provides the procedures by which the county canvassing board and parties must follow during the manual recount process. Under the statute, the county canvassing board appoints counting teams of at least two electors who are joined by the candidates’ representatives. In addition, the statute prohibits a candidate from being a member of the counting team. The Code of Judicial Conduct prohibits a

sitting judge from endorsing any candidate. Canon 7 (A)(1)(b) of the Code of Judicial Conduct.

C. Impropriety Surrounding the Recount

Mardi Anne Levey attended the first stage of the recount at the Broward County Supervisor of Election's Office. She did not record her appearance as Mardi Anne Levey. Instead, on the sign-in sheet, she recorded her appearance under the name "Mardi Cohen," but identified herself as "candidate." (A. 19) The candidate on the ballot, however, was "Mardi Anne Levey," not "Mardi Cohen." The candidate's confusion regarding her own name is highly indicative of the potential for confusion among the voters of Broward County as to who was actually running for the Group 3 judicial seat. Mardi Anne Levey's husband, Dale Cohen, a circuit court judge in Broward County, joined her and recorded his appearance on the sign-in sheet as "Judge." *Id.* On August 31, 2008, Mardi Anne Levey and her husband attended the second stage of the recount proceedings - the manual recount. This time, Judge Dale Cohen, signed in as an "observer." (A. 20) Mardi Anne Levey did not list her appearance as "Mardi Cohen" as she did the previous day, but signed in as "Mardi Levey." She did not identify herself as a candidate. During the manual recount proceedings, Judge Dale Cohen improperly participated in the proceedings as an observer

for Mardi Anne Levey a/k/a Mardi L. Cohen, by sitting before the counting team as they reviewed the ballots deemed questionable. Furthermore, Judge Dale Cohen sat before the canvassing board during their review of contested or questionable ballots. This impropriety was further exacerbated by the fact that two of the three members of the canvassing board reviewing the ballots are colleagues of Judge Dale Cohen as sitting county court judges in the 17th Judicial Circuit and again Judge Cohen acted as the designated observer during the process before the canvassing board. Although not a candidate in the election, as a sitting Broward County circuit court judge, Judge Dale Cohen's participation in the manual recount proceedings was in direct violation of Canon 7 (A)(1)(b) of the Code of Judicial Conduct, which prohibits a sitting judge from publicly endorsing another candidate for office. It is also a violation of Canons 2(A) and 2(B) which require that a judge promote the impartiality of the judiciary and not let familial relationships influence the judge's conduct. There is also a strong indicia of misconduct on the part of the candidate, Mardi Anne Levey, who was present in the public audience while her husband, Judge Cohen, was observing the canvassing board review of contested ballots. Judge Dale Cohen's participation in the recount is not the only instance where Mardi Anne Levey has misused the power of her husband's office for personal

gain. “Mardi Levey Cohen” has recently been the subject of a Florida Bar investigation for alleged violations of the Rules Regulating the Florida Bar regarding her inclusion of a picture of her husband, Judge Dale Cohen, in his judicial robe on her firm website in an effort to advertise her law practice. (A. 21) This matter is currently pending and undoubtedly prompted Mardi Anne Levey to change her name on the ballot in an effort to avoid public scrutiny.

D. The Results

The manual recount resulted in Bernard Isaac Bober receiving 36,729 votes (38.32%), Mardi Anne Levey receiving 29,599 votes (30.88%) and PEDRO DIJOLS receiving 29,527 votes (30.80%). The canvassing board thereafter certified the election results. Petitioner, PEDRO DIJOLS, lost the second position and the right to participate in the November run off by 72 votes. In accordance with the Florida Constitution, Mardi Anne Levey is slated to face Bernard Isaac Bober in the general election in November. Mardi Anne Levey, however, must be removed from the November ballot due to her intentional violation of Florida election law and her willful deception of the voters of Broward County. Mardi Anne Levey’s improper use of her husband’s office is also grounds to invalidate the election results. Rather than acting as a neutral, disinterested party, as is required by Canon 7

(A)(1)(b) of the Code of Judicial Conduct, Judge Dale Cohen participated in the manual recount proceedings by acting as an observer during his colleague's screening of "over and under votes" and as an observer on behalf of his wife, Mardi Anne Levey (not Marty Cohen), before the BROWARD COUNTY CANVASSING BOARD.

III. NATURE OF RELIEF SOUGHT

Mardi Anne Levey has violated election law and has used her husband's office for an improper purpose. She has therefore unlawfully usurped or intruded into the November 2008 run off, and Petitioner, PEDRO DIJOLS, is rightfully entitled to be a candidate in the Group 3 judicial election in November 2008. For these reasons, PEDRO DIJOLS respectfully submits that the court should issue a writ of quo warranto removing Mardi Anne Levey, as a candidate in the Group 3 election in November 2008.

IV. ARGUMENT

Under Florida election law, a candidate is required to run under the name by which he or she transacts private and official business. *See Planas v. Planas*, 937 So. 2d 745 (Fla. 3d DCA 2006), *citing* Division of Election Opinion 86-06 and C.J.S. Elections § 161. Mardi Anne Levey engaged in

misconduct by appearing on the August ballot as “Mardi Anne Levey” and not as “Mardi Levey Cohen” or “Mardi L. Cohen,” which is the name by which she transacts private and official business. Furthermore, Mardi Anne Levey was ineligible to run for the Group 3 judicial seat as that is not the name by which she transacts private and official business. Mardi Anne Levey further engaged in misconduct by misusing the office of her husband, Judge Dale Levey, in having him participate in the statutorily mandated recount conducted on August 30, 2008 and the statutorily mandated manual recount on August 21, 2008, in violation of the Code of Judicial Conduct.

For these reasons, Petitioner, PEDRO DIJOLS, respectfully submits that the Court should issue a writ of quo warranto.

EMERGENCY PETITION FOR WRIT OF MANDAMUS

Pursuant to Rule 9.100, Petitioner, PEDRO DIJOLS, respectfully petitions this court for a writ of mandamus (1) compelling Respondent, KURT S. BROWNING, Secretary of State, State of Florida, to disqualify MARDI ANNE LEVEY and remove her from the November 2008 ballot; and (2) compelling the BROWARD COUNTY CANVASSING BOARD to recertify the election and allow PEDRO DIJOLS to participate in the run off against Bernard Isaac Bober in the November 2008 general election.

I. BASIS FOR JURISDICTION

This court has jurisdiction to issue a writ of mandamus under Article V Section 3(b)(8) of the Florida Constitution and Rule 9.030(b)(3) of the Florida Rules of Appellate Procedure. Mandamus is the proper remedy as (1) the duty to remove Mardi Anne Levey from the November ballot is a ministerial duty; (2) compel recertification of the election results is also a ministerial duty.

II. NATURE OF RELIEF SOUGHT

The nature of the relief sought by this petition is a writ of mandamus compelling Respondent, KURT S. BROWNING, as Secretary of State to remove Mardi Anne Levey from the November ballot due to her failure to comply with Florida election law, and further, compelling the Broward County Canvassing Board to recertify the election and award PEDRO DIJOLS the second seat enabling him to participate in the November run off.

III. ARGUMENT

The will of the electorate must be protected, so must the sanctity of the ballot and the integrity of the election. *Matter of Protest Election Returns and Absentee*, 707 So.2d 1170 (Fla. 3d DCA1998). Courts cannot ignore fraudulent conduct which is purposefully done to foul the election or corrupt

the ballot. *Id.* Because Mardi Anne Levey failed to use the name by which she transacts private and official business in running for the Group 3 judicial seat, she has violated Florida election law and participated with her husband and circuit court judges in violation of the judicial canons. Thus, Mardi Anne Levey should be removed from the November ballot.

For this reason, Petitioner, PEDRO DIJOLS, seeks a writ of mandamus compelling Respondent, KURT S. BROWNING, to remove Mardi Anne Levey as a candidate in the Group 3 election in November 2008 and compel the Broward County Canvassing Board to recertify the election.

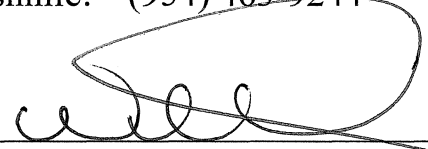
CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the foregoing was filed with the Clerk of the Court and copies furnished to the process server for service upon the Defendant on the 11th day of September, 2008.

CERTIFICATE OF TYPE SIZE AND STYLE

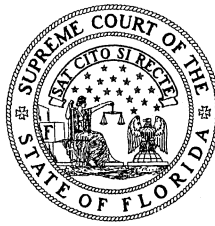
The undersigned counsel certifies that the type and style used in this brief is 14 point Times New Roman.

CONRAD & SCHERER, LLP
Counsel for Petitioner
633 South Federal Highway
Fort Lauderdale, FL 33301
Telephone: (954) 462-5500
Facsimile: (954) 463-9244

By: 
WILLIAM R. SCHERER, III
Florida Bar No. 041671

-and-

BRUCE S. ROGOW
500 E. Broward Blvd. - Suite 1930
Fort Lauderdale, FL 33394
Telephone: (954) 767-8909
Facsimile: (954) 764-1530



Supreme Court of Florida

Office of the Clerk
500 South Duval Street
Tallahassee, Florida 32399-1927

THOMAS D. HALL
CLERK
TANYA CARROLL
CHIEF DEPUTY CLERK
GREGORY J. PHILO
STAFF ATTORNEY

PHONE NUMBER (850) 488-0125
www.floridasupremecourt.org

ACKNOWLEDGMENT OF NEW CASE

September 11, 2008

RE: PEDRO DIJOLS, ETC. vs. KURT S. BROWNING, ETC.

CASE NUMBER: SC08-1717

The Florida Supreme Court has received the following documents reflecting a filing date of 9/11/2008.

Emergency Petition for Writ of Quo Warranto (Original and seven copies)
Petitioner's Motion For Expedited Review (Original and seven copies)
Notice of Emergency Relief Regarding Petition for Writ of Quo Warranto and Mandamus (Original and seven copies)
Appendix to Emergency Petition for Writ of Quo Warranto and Mandamus
(Original and seven copies)

Filing Fee: Paid in Full Receipt Number: R2008-1009494

The Florida Supreme Court's case number must be utilized on all pleadings and correspondence filed in this cause. Moreover, ALL PLEADINGS SIGNED BY AN ATTORNEY MUST INCLUDE THE ATTORNEY'S FLORIDA BAR NUMBER.

**FOR GENERAL FILING INFORMATION AND ADMINISTRATIVE ORDER
NO. AOSC04-84, PLEASE VISIT THE CLERK'S OFFICE WEBSITE AT
<http://www.floridasupremecourt.org/clerk/index.shtml>**

jj
cc:
BRUCE S. ROGOW
WILLIAM R. SCHERER, III
LYNN C. HEARN