

IN THE SUPREME COURT OF ARKANSAS

RECEIVED
APPEALS

2014 APR -7 A 10:19

IN RE H.G. FOSTER

H. G. FOSTER

PETITIONER

V.

MARK MARTIN, in his official capacity as
Secretary of State
DUSTIN MCDANIEL, in his official capacity
as Attorney General

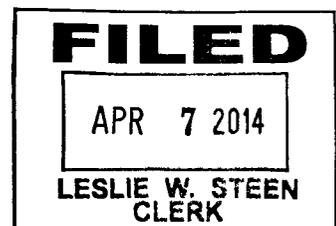
RESPONDENTS

PETITION FOR WRIT OF *QUO WARRANTO* OR OTHER RELIEF

Comes now Petitioner Harry G. (H.G.) Foster, and for his Petition for Writ of *Quo Warranto* or Other Relief states:

PARTIES

1. Petitioner H.G. Foster, is currently serving as a circuit judge of the Twentieth Judicial Circuit (Faulkner, Searcy and Van Buren counties) by gubernatorial appointment in January, 2013 to expire on December 31, 2014. He is also a candidate for the judgeship of another division of that court. He is also a defendant in a lawsuit filed in Pulaski County Circuit Court challenging his right to assume the authority of the position of Circuit Judge in January, 2015, should he win in election in May, 2014 and thus, inferentially, his right to exercise the authority



of Circuit Judge at this time. *Doralee Chandler v. Mark Martin, Secretary of State, et al*, Pulaski Cir. 60CV-14-1285).¹ A certified copy of the amended complaint in *Chandler v. Martin* is lodged with this Court as a partial record.

2. Respondent Mark Martin, the Secretary of State of Arkansas, is assigned by the Arkansas Constitution and statutes with the responsibility of administering the election laws of the State of Arkansas. He is sued in his official capacity only.

3. Respondent Dustin McDaniel, the Attorney General of Arkansas, is assigned by statute the responsibility of pursuing writs of quo warranto on behalf of the State. He is sued in his official capacity only.

JURISDICTION AND STANDING

4. Foster submits that this Court has original jurisdiction of this petition under each of the following provisions of the Arkansas Constitution and law:

(a) Amendment 80 § 2 grants this Court original jurisdiction to issue writs of *quo warranto* to all persons holding judicial office.

(b) Amendment 28 grants this Court the power to regulate the practice of law, which this Court has performed by promulgation, inter alia, of the PROCEDURES OF THE SUPREME COURT REGULATING PROFESSIONAL CONDUCT OF ATTORNEYS AT LAW

¹ As of the preparation of this petition, the case has not been scheduled for hearing.

and the RULES GOVERNING ADMISSION TO THE BAR.

(c) Amendment 80 § 4 grants this Court "superintending control over all courts of the state."

(d) Amendment 80 § 2 grants this Court the power to issue and determine any and all writs necessary in aid of its jurisdiction.

5. The General Assembly has enacted Ark. Code Ann. § 16-118-105, which by its terms is "in lieu of the writs of scire facias and quo warranto, or of information in the nature of a quo warranto, actions may be brought to vacate or repeal charters and prevent the usurpation of an office or franchise." Despite the "in lieu of" language, this Court has termed an action under the statute a writ of *quo warranto*. *Pederson v. Stracener*, 354 Ark. 716, 128 S.W.3d 818 (2003); *Magnus v. Carr*, 350 Ark. 388, 86 S.W.3d 867 (2002). This statute provides that an action may be instituted either by the state or the "the party entitled to the office or franchise, to prevent the usurper from exercising the office or franchise." The Attorney General is required to act on behalf of the State.

6. Foster submits that he has standing to pursue a petition for writ of *quo warranto* and, upon decision thereof, that this Court declare that he is not disqualified from holding the office of circuit judge currently and that he is not disqualified from holding the office of circuit judge should he be elected in 2014.

Should Foster not be found to have standing on that basis, he seeks a order requiring the Attorney General to pursue this action.

FACTS AND BASIS FOR RELIEF

7. Amendment 80 § 16 provides that all persons serving as circuit judges must have been “licensed attorneys” for at least six (6) years “immediately preceding the date of assuming office.”

8. Rule VII (C) of the RULES GOVERNING ADMISSION TO THE BAR provides, in part, that "Failure to pay the annual license fee provided in subsection A of this Section shall automatically suspend the delinquent lawyer from the practice of law in Arkansas." Such suspensions are **not** suspensions under the PROCEDURES OF THE ARKANSAS SUPREME COURT REGULATING PROFESSIONAL CONDUCT OF ATTORNEYS AT LAW. Under Section 22 of the Procedures "former attorneys" include those lawyers "on suspension pursuant to these Procedures." Thus, suspension for nonpayment of license fees does not render that person a “former attorney.”

9. Foster has been a licensed attorney in Arkansas since 1977 and served as the elected prosecuting attorney of the Twentieth Judicial Circuit from 1987 through 2006. However, due to oversights and misunderstandings on four occasions since 2009 his license was suspended for nonpayment of dues for brief periods of time.

10. Foster therefore seeks a declaration that he has been a licensed attorney

for the requisite six years under a proper interpretation of Amendment 80. This declaration may be as a writ of *quo warranto*/ Ark. Code Ann. § 16-118-105 or as a finding under this Court's mandate to regulate the practice of law, its superintending jurisdiction or its power to issue writs in exercise of its jurisdiction.

REASONS WHY THIS COURT SHOULD DECIDE THE ISSUE AT THIS TIME.

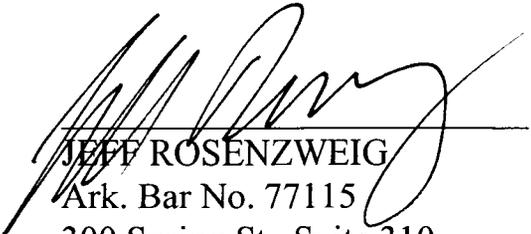
11. This Court is surely aware that the issue of whether a license fee delinquency within six years vitiates a judge's qualifications under Amendment 80 has arisen several times since the closing of the filing period for the 2014 judicial elections. For instance, this Court designated the Hon. John W. Cole to serve as a special judge in *Hulse v. Martin*, Pulaski Cir. 60CV-14-980. In addition to the *Hulse* matter challenging the qualifications of a candidate and the pending case, *Chandler v. Martin*, involving Foster, the pending lawsuits include *Williams v. Martin*, Pulaski Cir CV 14-1282 (challenging the qualifications of judicial candidate Angela Byrd) and *Kelly v. Martin*, Pulaski Cir 60CV 14-1297, challenging the qualifications of Circuit Judge Timothy D. Fox. The Court may also be aware of news reports of other judges and judicial candidates in similar or identical licensure circumstances.

12. Rule 1-2 of the Rules of the Supreme Court and Court of Appeals recognizes that matters of "substantial public interest" are within the discretionary

jurisdiction of this Court. Cases involving the Arkansas Constitution, elections and regulation of the practice of law and the judiciary are required to be in this Court. Because of the important public interests involved, the possibility of inconsistent findings among the various circuit courts, because of the short time before the election, because it is appropriate that the electorate know at the time of voting whether a candidate is legally qualified to serve, and because Foster's status to currently serve must be resolved expeditiously, this Court should accept and decide this case on the merits and decide whether or not a suspension for failure to timely pay a license fee disqualifies a person from serving as a judge.

WHEREFORE, Foster prays that this Court assume jurisdiction of this matter through *quo warranto* or one of other bases as set forth in this petition; that the Court issue the appropriate writs and orders to determine this matter; that the Court hold on the merits that Foster is not disqualified to currently serve as circuit judge as a result of licensure fee suspensions and that those suspensions do not disqualify him to serve if elected in 2014; and for all other relief sought in this petition or which the Court may find appropriate.

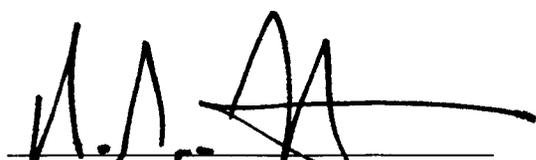
H. G. FOSTER


JEFF ROSENZWEIG
Ark. Bar No. 77115
300 Spring St. Suite 310
Little Rock, AR 72201
(501) 372-5247

Attorney for Petitioner

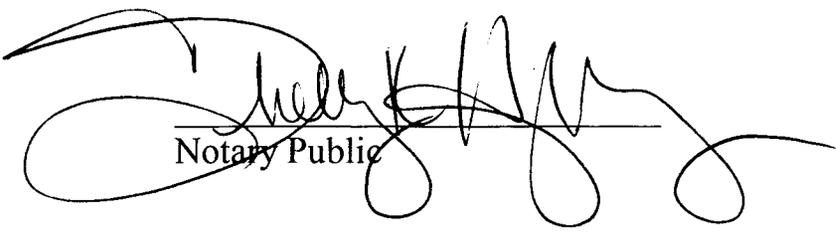
VERIFICATION

The foregoing information is true to the best of my knowledge, information and belief.

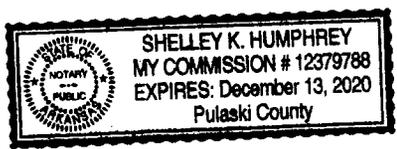

H. G. FOSTER

STATE OF ARKANSAS
COUNTY OF PULASKI

SUBSCRIBED AND SWORN TO before me this 7th day of April, 2014.


Notary Public

My commission expires: 12-13-20



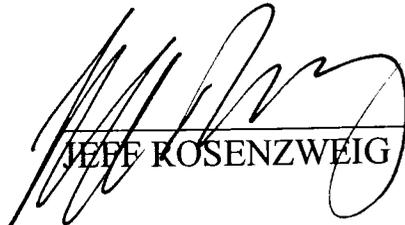
CERTIFICATE OF SERVICE

I, Jeff Rosenzweig, hereby certify that I have served a copy of the foregoing on the following persons this 7th day of April, 2014.

Hon. Mark Martin
Secretary of State
State Capitol
Little Rock, AR 72201

Hon. Dustin McDaniel
Attorney General
323 Center St.
Little Rock, AR 72201

Lucien Gillham
Attorney for Doralee Chandler
310 W Conway St
Benton, AR 72015


JEFF ROSENZWEIG

IN RE H.G. FOSTER
FOSTER V. MARTIN, SEC. OF STATE AND MCDANIEL, ATTY. GEN.
PETITION FOR WRIT OF QUO WARRANTO OR OTHER RELIEF

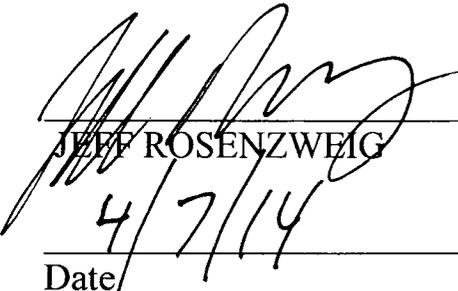
CERTIFICATE OF COMPLIANCE AND IDENTIFICATION OF PAPER
DOCUMENTS NOT IN PDF FORMAT

Certification: I hereby certify that:

I have submitted and served on opposing counsel an unredacted and, if required, a redacted PDF document(s) that comply with the Rules of the Supreme Court and Court of Appeals. The PDF document is identical to the corresponding parts of the paper document from which it was created as filed with the court. To the best of my knowledge, information, and belief formed after scanning the PDF documents for viruses with an antivirus program, the PDF documents are free of computer viruses. A copy of this certificate has been submitted with the paper copies filed with the court and has been served on all opposing parties.

Identification of paper documents not in PDF format:

The following original paper documents are not in PDF format and are not included in the PDF document(s): None



JEFF ROSENZWEIG

4/7/14

Date