NO. 19CI-5702

JEFFERSON CIRCUIT COURT
DIVISION ONE (1)

JOSEPH L. JACKSON

PLAINTIFF

v.

ORDER

DANIEL CAMERON, et al.

DEFENDANTS

* * * * * *

On September 17, 2019, Plaintiff Joseph L. Jackson filed this action, including a motion to disqualify Daniel Cameron as a candidate for Kentucky Attorney General in the upcoming general election on November 15, 2019. The action was tried summarily, as required by KRS 118.176(2). On October 7, 2019, the Court conducted a hearing (DR-157) during which testimony was presented and arguments of counsel were made.

Findings of Fact

1. In March 2011, Mr. Cameron graduated with honors from the Brandeis School of Law at the University of Louisville. *See* Ex. 2 to Pl.'s Compl.

2. On October 21, 2011, Mr. Cameron was admitted as a member of the Kentucky Bar. *See id.*

3. Between September 2011 and September 2013, Mr. Cameron served as a federal judicial law clerk for Judge Gregory Van Tatenhove, United States District Court for the Eastern District of Kentucky. *See* Ex. 3 to Pl.'s Compl. Mr. Cameron testified that his duties included conducting legal research, writing draft opinions, and advising Judge Van Tatenhove on various issues pertaining to the matters before him. During his clerkship, Mr. Cameron was generally prohibited from engaging in the private practice of law under

guidelines published by the Federal Judicial Center. *See* Ex. 4 to Pl.'s Compl. The guidelines, however, allowed Mr. Cameron to provide outside legal services if he received permission from Judge VanTatenhove. *See id.* Mr. Cameron testified that on one occasion he prepared estate planning documents for his father after first seeking and receiving permission from Judge Van Tatenhove.

4. From September 2013 until February 2015, Mr. Cameron practiced law at Stites & Harbison PLLC in Louisville, Kentucky. *See* Ex. 3 to Pl.'s Compl.; Def.'s Resp., p. 2.

5. From March 2015 until June 2017, Mr. Cameron served as legal counsel to United States Senate Majority Leader Mitch McConnell. *See* Ex. 3 to Pl.'s Compl.; Def.'s Resp., p. 2. According to Mr. Cameron, this role involved "advis[ing] [Mr. McConnell's] office on legal and ethical issues," "work[ing] closely with key federal judicial nominations," and "handl[ing] a robust legislative portfolio, including drug abuse prevention, law enforcement and criminal justice matters." Def.'s Resp., p. 2.

6. Since June 2017, Mr. Cameron has practiced law at Frost Brown Todd, LLC in Louisville, Kentucky. *See* Ex. 3 to Pl.'s Compl.

7. On January 22, 2019, Mr. Cameron declared as a Republican candidate for Attorney General of the Commonwealth of Kentucky. *See* Ex. 1 to Pl.'s Compl. In May 2019, Mr. Cameron won the Republican primary with 132,409 votes statewide. *See* https://elect.ky.gov/results/2010-2019/Documents/2019PrimaryCertifiedResults.pdf. According to Mr. Cameron, he has run on a platform of "reestablishing the credibility of the Office of Attorney General and returning the office to its core function as the Commonwealth's preeminent law enforcement department." Def.'s Resp., pp. 2-3.

8. On September 17, 2019, one day after the deadline for printing ballots for the general election expired, Mr. Johnson filed this action seeking to disqualify Mr. Cameron as a candidate for Attorney General on the ground that he has not been a "practicing attorney" for eight years as required by § 92 of the Kentucky Constitution. *See* Pl.'s Compl., ¶¶14, 16, 19.

9. On September 20, 2019, Mr. Cameron filed a response in opposition to Mr. Jackson's motion to remove his name from the ballot for Attorney General. Mr. Cameron contends that he is qualified to serve as Attorney General because he will have been a licensed attorney for more than eight years by the time of the general election. *See* Def.'s Resp., p. 1.

Standard of Review

Mr. Jackson asks the Court to enter an order finding that Mr. Cameron is not a bona fide candidate for Attorney General and directing the Kentucky Secretary of State and the State Board of Elections, both of which have been named as defendants to this action, to remove his name from the ballot for the upcoming general election. Because the deadline for printing ballots has already passed, Mr. Jackson requests that this order compel the State Board of Elections to direct the county boards of election, county clerks, and program administrators to remove Mr. Cameron's name from any ballot templates and to re-print any ballots already prepared without his name. Mr. Jackson also asks the Court to enter a binding declaration of rights finding that Mr. Cameron is not a qualified candidate for Attorney General.

Mr. Jackson's motion to remove Mr. Cameron's name from the ballot is governed by KRS 118.176. The full text of the statute states as follows:

> (1) A "bona fide" candidate means one who is seeking nomination in a primary or election in a special or regular election according to law.

(2) The bona fides of any candidate seeking nomination or election in a primary or in a special or regular election may be questioned by any qualified voter entitled to vote for the candidate or by an opposing candidate by summary proceedings consisting of a motion before the Circuit Court of the judicial circuit in which the candidate whose bona fides is questioned resides. An action regarding the bona fides of any candidate seeking nomination or election in a primary or in a special or regular election may be commenced at any time prior to the regular election. The motion shall be tried summarily and without delay. Proof may be heard orally, and upon motion of either party shall be officially reported. If the Circuit Judge of the circuit in which the proceeding is filed is disqualified or absent from the county or is herself or himself a candidate, the proceeding may be presented to, heard and determined by the Circuit Judge of any adjoining judicial circuit.

(3) In any action or proceeding under this section the burden of proof as to the bona fides of a candidate shall be on the person challenging the bona fides of a candidate.

(4) If the court finds the candidate is not a bona fide candidate it shall so order, and certify the fact to the board of elections, and the candidate's name shall be stricken from the written designation of election officers filed with the board of elections or the court may refuse recognition or relief in a mandatory or injunctive way. The order of the Circuit Court shall be entered on the order book of the court and shall be subject to a motion to set aside in the Court of Appeals. The motion shall be heard by the Court of Appeals or a judge thereof in the manner provided for dissolving or granting injunctions, except that the motion shall be made before the court or judge within five (5) days after the entry of the order in the Circuit Court, and may be heard and tried upon the original papers, and the order of the Court of Appeals or judge thereof shall be final.

(5) No person shall approach the Circuit Judge for the purpose or view of influencing his or her decision on the motion pending before the Circuit Judge or to be tried by him or her.

KRS 118.176.

Mr. Jackson's request for declaratory relief falls under KRS 411.040. That statute allows a court to determine a litigant's rights before actual harm occurs. *Commonwealth v. Ky. Ret. Sys.*, 396 S.W.3d 833, 839 (Ky. 2013). Under the statute, a plaintiff may ask for a declaration of rights, either alone or with other relief, in any court having general jurisdiction "wherein it is made to appear that an actual controversy exists." KRS 414.040. For purposes of the statute, an

"actual controversy" is a controversy over the present rights, duties, and liabilities of adverse parties. *Foley v. Commonwealth*, 306 S.W.3d 28, 31 (Ky. 2010). The controversy must be real, substantial, and posed so that the court may determine the legal relations of the parties and render a specific adjudication of their rights. *Id.* Assuming that an "actual controversy" exists, the court may make a binding declaration of rights "whether or not consequential relief is or could be asked." KRS 418.040.

Analysis

§ 92 of the Kentucky Constitution simply states that "[t]he Attorney-General shall have been a practicing lawyer eight years before his election." Ky. Const. § 92. Mr. Jackson contends that Mr. Cameron does not satisfy § 92's "practicing lawyer" requirement because his service as a federal judicial law clerk does not constitute the practice of law. Mr. Cameron argues in response that he does meet the requirement in § 92 because he will have been licensed to practice law in the Commonwealth of Kentucky for more than eight years by the date of the general election on November 5, 2019, and that his service as a federal judicial law clerk may count toward the eight-year requirement in § 92.

Courts in Kentucky have long been cautious in applying eligibility requirements to candidates for public office. *See, e.g., Howton v. Morrow*, 106 S.W.2d 81, 82 (Ky. 1937). They have held that "provisions in statutes or Constitutions imposing restrictions upon the right of a person to hold office should receive a liberal construction in favor of his [or her] eligibility." *Id.* In assessing the eligibility of a candidate to hold public office, a court must give due weight to the "right of the people to exercise freedom of choice" in electing their representatives. *McGinnis v. Cossar*, 18 S.W. 2d 988, 989 (Ky. 1929). When statutory construction is uncertain, a court must resolve any doubt or ambiguity in the provision imposing the restriction in favor of

the candidate. *See Heleringer v. Brown*, 104 S.W.3d 397, 403 (Ky. 2003).

As far back as 1937, Kentucky's then-highest court had the opportunity to consider what it meant to be a "licensed practicing attorney" in assessing the qualifications of a candidate for circuit court clerk under section 100 of the Kentucky Constitution. *See Howton*, 106 S.W.2d at 82. The Court determined that a "licensed practicing lawyer" was a licensed lawyer who practiced law and defined "practicing law" as follows:

> It is too obvious for discussion that the practice of law is not limited to the conduct of cases in courts. According to the generally understood definition of the practice of law in this country, it embraces the preparation of pleadings, and other papers incident to actions and special proceedings, and the management of such actions and proceedings on behalf of clients before judges and courts, and, in addition, conveyancing, the preparation of legal instruments of all kinds, and, in general, all advice to clients, and all action taken for them in matters connected with the law. An attorney at law is one who engages in any of these branches of the practice of law.

Id. (internal quotation marks and citation omitted). This definition of "practicing law" is similar but slightly more specific than the way in which the Kentucky Supreme Court defines the "practice of law" in Supreme Court Rule (SCR) 3.020. That rule defines the "practice of law" as "any service rendered involving legal knowledge or legal advice, whether of representation, counsel or advocacy in or out of court, rendered in respect to the rights, duties, obligations, liabilities, or business relations of one requiring the services." SCR 3.020. SCR 3.022 further specifies that "[l]awyers may engage in the practice of law in Kentucky . . . as employees of a United States government agency or department." SCR 3.022(b).

The Court is not aware of any published decision in which a court has considered what "practicing lawyer" means for purposes of section 92 of the Kentucky Constitution. One unpublished decision, however, is instructive. In 1995, a voter filed a lawsuit challenging the qualifications of a young Democratic candidate for Attorney General. *See Staton v. Chandler*,

No. 95-CI-201 (Woodford Cir. Ct. Sept. 1, 1995), attached as Ex. A to Def.'s Resp. The voter contended that the candidate had not been a "practicing lawyer" for eight years because during a portion of that time he had served as Kentucky's Auditor of Public Accounts, which, according to the voter, did not qualify as "practicing law." *See id.* at pp. 1-2. The circuit court rejected the voter's argument and held that the candidate was qualified to serve as Attorney General because he had been *licensed* to practice law for eight years. *See id.* at p. 3 ("While the plaintiff argues that this Court should establish what constitutes the practice of law, it is the Opinion of this Court that the drafters of the Constitution have established that one who has been licensed to practice law for eight years meets that standard."). The voter appealed the circuit court's ruling to the Court of Appeals, which affirmed the decision and, in doing so, stated as follows:

> The trial court found that the constitution established a broad standard of eight years as an attorney as a qualification for one to serve in the position of Attorney General and found that one who has been licensed to practice law for eight years meets that standard. We believe that the trial court was correct in this interpretation. There simply is no other standard available for defining the practice experience required under Section 92.
>
> . . .
>
> Such an interpretation is also consistent with protecting the rights of the citizens to choose their elected officials. The constitution establishes only the broadest qualifications. Evaluation of the character and experience of candidates is left to the electorate.

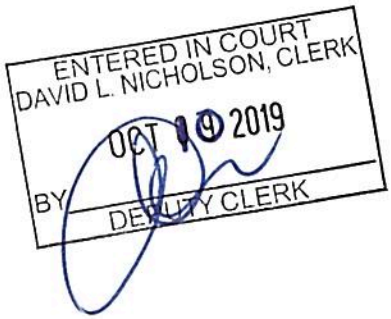
Staton v. Chandler, No. 95-CA-2416 at pp. 3-4 (Ky. App. Sept. 15, 1995), attached as Ex. B to Def.'s Resp. The Supreme Court later denied the voter's motion for discretionary review, which had the effect of allowing the court of appeals' decision to stand. *See Staton v. Chandler*, No. 95-SC-817-D (Ky. Jan. 11, 1996).

The Court is persuaded by the reasoning of the Woodford Circuit Court and the Court of Appeals in *Staton.* Their approach to defining "practicing lawyer" for purposes of § 92 is appealing because it is simple and minimizes the need for judicial intervention in popular elections. While one might argue that it disregards "practicing" as a qualification for a licensed lawyer to serve as Attorney General, it is nevertheless consistent with longstanding principles of Kentucky law that favor a liberal construction of eligibility requirements lacking a clear and precise meaning. *See Heleringe*r, 104 S.W.3d at 403. The Court finds that because Mr. Cameron will have been a *licensed* lawyer for more than eight years by the time of the general election, he is qualified under § 92 of the Kentucky Constitution to run for and serve as Attorney General.

The Court also holds that the two years of Mr. Cameron's service as a federal judicial law clerk may count toward the eight-year requirement in § 92 of the Kentucky Constitution. There is no meaningful distinction between the professional responsibilities Mr. Cameron performed as a federal judicial law clerk and his responsibilities as legal counsel for Senate Majority Leader McConnell. Both positions involved "service rendered involving legal knowledge or legal advice . . . ." SCR 3.020. In fact, a federal judicial law clerk provides legal services to his or her judge requiring an extraordinary level of legal research and analysis. The Court believes that *Howton* and SCR 3.020 provide a reasonable definition of "practicing lawyer" that satisfies the purpose behind § 92.

Conclusion

For the foregoing reasons, Mr. Jackson's motion to remove Mr. Cameron's name from the ballot and his request for declaratory relief are DENIED. This Order is final and appealable, there being no just cause for delay.



BARRY WILLETT
JEFFERSON CIRCUIT COURT JUDGE

Date Signed: 10/10/19

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