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SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF SPOKANE

CAROL McGIRK and CATHY
GUNDERSON,
Petitioners
v.
SPOKANE COUNTY, VICKY DALTON
and MARK HAMILTON,
Defendants

NO. 13-2-02011-9
MARK HAMILTON'S
MEMORANDUM OPPOSING
PETITION TO DISQUALIFY

MARK HAMILTON by and through his counsel of record Dustin Deissner
opposes the Petition to Disqualify in this matter as follows.

FACTS

Based upon the accompanying declaration of MARK HAMILTON the facts are as
follows:

- 1. MARK HAMILTON and HELEN HAMILTON resided for a period of time prior
to 2010 at 303 White Road in Spokane County, Precinct 6031.

- 1 2. MARK HAMILTON and HELEN HAMILTON were separated in 2010 and
2 ultimately divorced in 2012.
- 3 3. Prior to completion of the divorce MARK HAMILTON changed his mailing
4 address to that of a neighbor, 321 White Road, as a convenience since the ultimate
5 ownership of the 303 White Road house was at issue in the divorce.
- 6 4. MARK HAMILTON was awarded the 303 White Road property in the divorce,
7 but he left his mailing address at 321 White Road.
- 8 5. As part of the divorce, the attorneys prepared quit-claim deeds to the various
9 properties. This occurred initially in March, 2012, but a dispute arose over which
10 attorney would prepare the deeds, and the form of the deeds, and then they had to
11 be sent to HELEN HAMILTON in Arizona to be signed and notarized. HELEN
12 HAMILTON did not sign her quit claim deed on the White Road property in favor
13 of Mr. HAMILTON until July 23, 2012.
- 14 6. Additionally Mr. And Mrs. HAMILTON were required to sign Real Estate Excise
15 Tax Affidavits for the property he received: those affidavits were drafted and
16 signed by Mr. HAMILTON, probably in late April or early May 2012, but were
17 not dated by him, were then sent to HELEN HAMILTON who signed and dated
18 them 7/23/2012, and then they were submitted for filing on 7/31/2012.
- 19 7. On May 14, 2012 MARK HAMILTON completed a Residential Real Estate
20 Purchase and Sale Agreement for property located 217 W. Pacific in the City of
21 Spokane.
- 22 8. Said agreement gave Mr. HAMILTON the right to possess the property, and he
23 obtained keys to the property that day or the next.
- 24 9. Mr. HAMILTON acquired the property with the express intent of establishing
25 residence within the City of Spokane in order to run for office.

- 1 10. Mr. HAMILTON in fact told the real estate agent he bought from that he intended
2 to immediately live on the property.
- 3 11. Because the transaction was a 'short sale,' there was a delay for approval, and the
4 final closing and provision of deed did not occur until June 18, 2012.
- 5 12. Mr. HAMILTON did use his mailing address, 321 White Road, on the Real Estate
6 Tax Affidavit for the purchase.
- 7 13. Mr. HAMILTON immediately began to occupy the premises on May 14, 2012,
8 beginning the process of cleaning and renovating the structure.
- 9 14. Mr. HAMILTON was not aware of, and is still not aware of any order forbidding
10 occupancy of the house at that time.
- 11 15. Mr. HAMILTON actually slept on the premises on May 15, 2012, on a camp cot,
12 although there were no utilities at the time, and continued to sleep there frequently
13 due to concerns about homeless persons in the area and lack of security.
- 14 16. Mr. HAMILTON was thereafter present at the house at least 6 days per week for
15 some amount of time, during which time he worked on cleaning and renovating.
- 16 17. Mr. HAMILTON slept at the house, in his estimation, an average of 4 days per
17 week during this period.
- 18 18. Power was turned on at the house in June, 2012; since the first billed payment in
19 July, 2012, Mr. HAMILTON has paid \$1,588.54 in electric bills.
- 20 19. Water was turned on at the house in June, 2012; records show charges for water
21 since June, 2012, and since then Mr. Hamilton has paid \$966.25 in water and
22 sewer bills.
- 23 20. At some time thereafter several construction permits were taken out for
24 renovations on the property.
- 25 21. Mr. HAMILTON proceeded to substantially demolish the inside of the house,
26

1 removing sheet rock, insulation and wiring in order to replace them.

2 22. The house had sanitary facilities – sink, tub, toilet – that were usable once water
3 was turned on.

4 23. The house had heat in the form of electric baseboard heaters in the upstairs
5 bedrooms, where Mr. Hamilton slept when he stayed at the house, and a 220 volt
6 construction heater used downstairs to prevent pipes freezing.

7 24. Mr. HAMILTON incurred substantial electric utility bills from the period of June,
8 2012 through the present time to heat the premises during cold weather.

9 25. Mr. HAMILTON incurred water bills during the period of June, 2012 to present.

10 26. Mr. HAMILTON was concerned about the security of the Pacific house due to the
11 high numbers of transients in the area; his mail box was stolen, the house broken
12 into and tools stolen. He believed that mail delivered to the house would not be
13 safe, so he retained his 321 White Road mailing address while he attempted to
14 address those concerns.

15 27. Because of this work Mr. HAMILTON was unable to continue sleeping regularly
16 at the Pacific house: he slept there very little after September, 2012, and not at all
17 after November, 2012.

18 28. Mr. HAMILTON voted in the November, 2012 election using a mail ballot
19 received at his 321 White Road address.

20 29. Mr. HAMILTON realized that he had not corrected his mailing address for voting
21 purposes and in January, 2013, he changed his voter registration to the City of
22 Spokane giving his 217 Pacific address.

23 30. Mr. HAMILTON changed his mailing address for general purposes to the Pacific
24 address on February 1, 2013, having sufficiently secured the location for mail to be
25 safely delivered there.

1 31. The City of Spokane tagged the house as uninhabitable in early May, 2013.

2 32. Shortly thereafter on May 17, 2013, Mr. HAMILTON filed his candidacy for City
3 office.

4 33. Since then Mr. HAMILTON has continued to be present at the house almost every
5 day doing renovation work.

6 34. Mr. HAMILTON is currently temporarily sleeping at his White Road property, but
7 otherwise treats his Pacific Property as his center of domestic activity, getting his
8 mail and even newspaper delivery at that address.

9 35. As soon as the Pacific house passes inspection Mr. HAMILTON will begin
10 sleeping there full time.

12 LEGAL ANALYSIS

13 1. What are the General requirements for Qualification to Appear on the Ballot?

14 A candidate must have been a resident of the city since one year prior to the date of
15 election, and must be registered voter in the city on the date of filing.

16 A. City Law

17 The Spokane City Charter provides at § 6,

18 A person must be a qualified voter of the City of Spokane and **have been a**
19 **resident** of the City, and of the appropriate council district, **for the one year**
20 **immediately preceding the time of filing** as a candidate for, or the time of
appointment to, the office of mayor, council president, or council member.

21 The meaning of this provision is only partially clear.

22 A “qualified voter” certainly includes a voter registered in the City. The Charter is
23 silent as to when that qualification must exist. The phrase, “for one year immediately
24 preceding,” modifies only the requirement of residency. This is clear from the use of the
25 use of the language, “must be” referring to “qualified voter” in present tense, while using

1 “have been,” referring to residency in past tense before adding the modifier, “for one year
2 ...” So a person must presently be a qualified voter when he becomes a candidate, and
3 must have been a resident – undefined – for one year before the time of filing.

4 The latter provision, however, is inconsistent with State law which requires
5 residency only for one year prior to the time of election. State law controls this issue, as
6 well as the definition of “residency.” See Spokane City Charter § 57:

7 At all municipal elections—general, special, and primary—**the manner of**
8 **electing officers** and of submitting questions or propositions to the qualified
9 electors, conducting and voting at elections, opening and closing of polls, keeping
10 the poll lists, duties of election officers, canvassing the votes, declaring the results
11 and certifying the returns, **shall be in accordance with state law.** [Emphasis
12 Added]

13 Thus by the terms of the City Charter itself, State law, not Municipal Charter, must be
14 used to determine residency requirements since State Law addresses residency.

15 **B. State Law Controls as to Residency Period of One Year Prior to**
16 **Election Date**

17 Spokane is a Political Subdivision of the State of Washington as authorized by the
18 Washington Constitution, Art. XI § 10¹. The City has a Charter, but the Charter is subject
19 _____

20 ¹Const Art XI SECTION 10: INCORPORATION OF MUNICIPALITIES.
21 Corporations for municipal purposes shall not be created by special laws; but the legislature, by
22 general laws, shall provide for the incorporation, organization and classification in proportion to
23 population, of cities and towns, which laws may be altered, amended or repealed. Cities and
24 towns heretofore organized, or incorporated may become organized under such general laws
25 whenever a majority of the electors voting at a general election, shall so determine, and shall
26 organize in conformity therewith; and cities or towns heretofore or hereafter organized, and all
27 charters thereof framed or adopted by authority of this Constitution shall be subject to and
28 controlled by general laws. Any city containing a population of ten thousand inhabitants, or more,
shall be permitted to frame a charter for its own government, consistent with and subject to the
Constitution and laws of this state, and for such purpose the legislative authority of such city may
cause an election to be had at which election there shall be chosen by the qualified electors of
said city, fifteen freeholders thereof, who shall have been residents of said city for a period of at
least two years preceding their election and qualified electors, whose duty it shall be to convene
within ten days after their election, and prepare and propose a charter for such city. Such

1 to the laws of the State of Washington. WASH. CONST. Art. XI § 10; RCW 35.22.010,²
2 RCW 35.22.195³. The Washington Constitution at Article XI § 11 expressly states,

3 SECTION 11 POLICE AND SANITARY REGULATIONS. Any county, city,
4 town or township may make and enforce within its limits all such local police,
sanitary and other regulations **as are not in conflict with general laws.**

5 Preemption of Local laws may occur when a local law is in conflict with a State law.

6 *Bellingham v. Schampera*, 57 Wash.2d 106, 111, 356 P.2d 292 (1960) held,

7 In determining whether an ordinance is in 'conflict' with general laws, the test is
8 whether the ordinance permits or licenses that which the statute forbids and

9 _____
10 proposed charter shall be submitted to the qualified electors of said city, and if a majority of such
11 qualified electors voting thereon ratify the same, it shall become the charter of said city, and shall
12 become the organic law thereof, and supersede any existing charter including amendments
13 thereto, and all special laws inconsistent with such charter. Said proposed charter shall be
14 published in the daily newspaper of largest general circulation published in the area to be
15 incorporated as a first class city under the charter or, if no daily newspaper is published therein,
16 then in the newspaper having the largest general circulation within such area at least once each
17 week for four weeks next preceding the day of submitting the same to the electors for their
18 approval, as above provided. All elections in this section authorized shall only be had upon
19 notice, which notice shall specify the object of calling such election, and shall be given as
20 required by law. Said elections may be general or special elections, and except as herein provided
21 shall be governed by the law regulating and controlling general or special elections in said city.
22 Such charter may be amended by proposals therefor submitted by the legislative authority of such
23 city to the electors thereof at any general election after notice of said submission published as
24 above specified, and ratified by a majority of the qualified electors voting thereon. In submitting
25 any such charter, or amendment thereto, any alternate article or proposition may be presented for
26 the choice of the voters, and may be voted on separately without prejudice to others.

27 2

28 Cities of the first class shall be organized and governed according to the law providing for
the government of cities having a population of ten thousand or more inhabitants that
have adopted a charter in accordance with Article XI, section 10 of the state Constitution.

3 3

Any city adopting a charter under Article XI, section 10 of the Constitution of the state of
Washington, as amended by amendment 40, shall have all of the powers which are conferred
upon incorporated cities and towns by Title 35 RCW, or other laws of the state, and all such
powers as are usually exercised by municipal corporations of like character and degree.

MARK HAMILTON'S MEMORANDUM
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1 prohibits, and vice versa.

2 **1. What the General Law Permits or Prohibits**

3 The general law is found at RCW 35A.12.030 governing eligibility to hold elective
4 office:

5 No person shall be eligible to hold elective office under the mayor-council plan
6 unless the person is a registered voter of the city at the time of filing his or her
7 declaration of candidacy and **has been a resident of the city for a period of at
8 least one year next preceding his or her election.** [Emphasis added]

9 This provision runs the one-year residency requirement from the date of election, not
10 filing. RCW 29A.20.021 (formerly RCW 29.15.025(1)) states,

11 (1) A person filing a declaration of candidacy for an office shall, at the time of
12 filing, be a registered voter and possess the **qualifications specified by law** for
13 persons who may be elected to the office. [Emphasis added]

14 It has been argued that the term, “at the time of filing” in conjunction with “qualifications
15 required by law,” means that the one-year residency must have been completed as of the
16 date of filing.

17 Attorney General Christine Gregoire rejected that position in AGO 1997 No. 3,⁴
18 addressing whether the residency requirement under former RCW 29.15.025(1) runs from
19 filing date or election date. She concluded that it runs from the date of election. Her
20 opinion has even more force now since the Legislature redrafted RCW 29.15.025(1) in
21 2004 [Laws of 2004 c 271 § 153] and did not alter the key language, ‘at the time of
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23
24

25 ⁴AGOs are not binding on the Courts but are persuasive authority.
26

1 filing.⁵ The statute was again amended in 2013 and again, did not change that phrase.⁶
2 When amending a statute, the legislature is presumed to know how the courts, *State v.*
3 *Roggenkamp*, 106 P.3d 196, 153 Wn.2d 614 (2005), and AGOs have interpreted it.
4 *Prante v. Kent School Dist. No. 415*, 618 P.2d 521, 27 Wn.App. 375 (1980).

5 Traditional rules of statutory construction require the same conclusion. Statutes
6 must be construed so that all the language is given effect and no portion is rendered
7 meaningless or superfluous. *Kilian v. Atkinson*, 147 Wash.2d 16, 21, 50 P.3d 638 (2002).
8 The court must also avoid constructions that yield unlikely, absurd, or strained
9 consequences. *Id.* Where potentially conflicting acts can be harmonized, the court must
10 construe each to maintain the integrity of the other. *Anderson v. Dep't of Corrections*, 159
11 Wash.2d 849, 858-59, 154 P.3d 220 (2007). Interpreting the phrase, “qualifications
12 required by law” to require a candidate to have begun residency soon enough that he will
13 have one year on the date of election is reasonable, and reconciles the two statutes.

14 So under State Law, residency must be established from a date one year prior to
15 election – in this case, November 2012.

16 2. How City Law Conflicts

17 The State Statute is regulatory rather than prohibitory. *Brown v. City of Yakima*,
18 116 Wn.2d 556, 807 P.2d 353 (1991). Where both a State law and a local ordinance
19 prohibit the same conduct, a local ordinance may be more stringent and prohibit more.
20 But in this case the City ordinance doesn't prohibit conduct, it merely defines the time

21 _____
22 ⁵RCW 29.15.025 stated:

23 A person filing a declaration ~~and affidavit~~ of candidacy for an office shall, at the time of filing,
24 [be a registered voter and] possess the qualifications specified by law for persons who may be
25 elected to the office.” Changes are shown by strikeout of omitted language and brackets and
underlining new language in RCW 29A.

26 ⁶SUBSTITUTE SENATE BILL 5518, Chapter 11, Laws of 2013, 4/17/2013.

1 period required, as does State law – but under City law an individual might be
2 disqualified who is qualified under State Law. An ordinance must yield to a statute on the
3 same subject if a conflict exists such that the two cannot be harmonized. *City of Spokane*
4 *v. J-R Distribs., Inc.*, 90 Wash.2d 722, 730, 585 P.2d 784 (1978). In this case a person
5 who is resident a year prior to election, but not a year prior to filing, cannot run for local
6 office. The ordinance forbids what the statute allows. This cannot be harmonized with
7 the State law and the inconsistent City ordinance must fail..

8 **C. State Law Determines How, factually, Residence Must Be Demonstrated**

9 **1. Whose Burden of Proof**

10 Eligibility for public office is presumed; doubt must be resolved in favor of
11 qualification. *Dumas v. Gagner*, 137 Wn.2d 268, 285, 971 P.2d 17 (1999). Accordingly,
12 *In re Contested Election of Schoessler*, 140 Wn.2d 368 392, 998 P.2d 818 (2000) held,

13 The burden of proof in any case is typically on the plaintiff. That being so, the
14 party contesting an election under RCW 35A.12.030 bears the initial burden of
proving a successful candidate did not satisfy the one-year residence requirement.

15 *Schoessler* also found that a person asserting a change of residence has the burden of
16 proof to show that change. [140 Wn.2d at 384] The context of this case suggests that the
17 initial burden of proof is on the Petitioners, and once met, the burden shifts to Mr.
18 Hamilton.

19 **2. What Must Be Proved – What is “Residency?”**

20 RCW 42.04.020 requires any candidate for office in Washington to be an “elector”
21 in a county. The Washington Constitution, Art. 6 § 1 (amendment 5) requires a candidate
22 to have “lived” in the county for 30 days preceding the election. “Lived in” has the same
23 meaning as “Residence, domicile and place of abode:”

24 Residence in fact, coupled with the purpose to make the place of residence one's
25 home, are the essential elements of domicile, . . . and in every case of change of
domicile, these two things are indispensable and must be shown.

1 *Freund v. Hastie*, 13 Wn.App. 731, 734, 537 P.2d 804 (1975). The intention to establish
2 a residence must relate to a present residence, and residence, once established, is
3 presumed to continue.

4 RCW 29.01.140 defines the word "residence" as:

5 'Residence' for the purpose of registering and voting means a person's permanent
6 address where he physically resides and maintains his abode...."

7 The *Schoessler* decision went into some detail on this issue:

8 Traditional formulas require conjunction of physical presence and intention to
9 remain permanently in the new location to bring about a change of residence.
10 There is usually no question as to the first of these two elements; the conflict is
11 usually confined to the element of intention, that is, whether or not a sufficient
12 intention is shown by the facts. In determining the sufficiency of intention, a
13 proper subject of inquiry is the bona fides of that intention. In other words, do the
14 facts support the self-serving declaration of intention in such a way that the
15 intention can be said to be genuine or bona fide.

16 The *Schoessler* Court at p. 390 went on to say,

17 The meaning of "resident" under RCW 35A.12.030 is measured against the
18 purpose of the one-year residence requirement **to allow "the candidate 'to be
19 exposed to the needs and problems of the people' of the particular city."** The
20 meaning need not achieve "mathematical certainty" but depends upon either a
21 narrow or broad construction of the term.

22 A broad construction is justified when there is some sort of justifiable mistake or
23 confusion as to the status of the place of residence. In *Dumas v. Gagner*, 971 P.2d 17,
24 137 Wn.2d 268 (Wash. 1999) the candidate unquestionably did reside at a house, but the
25 property straddled the District line and the actual house was out of the county. The Court
26 there found that a broad definition of 'residence' best served the purpose of the law in
27 that situation, and focused on the Candidate's good faith belief that she was living within
28 the District. In *Schoessler*, however, there was no question of justifiable mistake: the
issue was whether, factually, Mr. Schoessler actually resided at an address within the
City.

Schoessler focused on the following [140 Wn.2d at 391]:

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- 1 • Is the residence located within or near the District?
- 2 • Did the candidate physically reside at the location?
- 3 • Did the Candidate express an intent to reside there?
- 4 • Did the Candidate act in Good Faith?

5 There is no question in this case that the house Mr. HAMILTON owns on Pacific
6 is within the City of Spokane. The only question is whether Mr. HAMILTON “resided” at
7 the house as a matter of fact.

8 **B. Actual Physical residence**

9 **1. Substitute Service Cases**

10 What is not clear is what quantum of occupancy is required to establish residency.
11 Must the candidate live at the location more than 50% of the time? That specific issue
12 has been addressed in the context of the definition of “usual abode” and “then resident
13 therein” for purposes of abode service of process under RCW 4.28.080.

14 *State v. Hatchie*, 133 Wn.App. 100, fn. 8, 135 P.3d 519 (2006) summarized:

15 Residence as the term is commonly understood is the place where a person lives as
16 either a temporary or permanent dwelling, a place to which one intends to return,
17 as distinguished from a place of temporary sojourn or transient visit. *State v.*
18 *Pickett*, 95 Wash.App. 475, 478, 975 P.2d 584 (1999); see also *Sheldon v. Fettig*,
129 Wash.2d 601, 611, 919 P.2d 1209 (1996) (an individual can maintain more
19 than one "dwelling place[]" or "house of usual abode").

20 *Salts v. Estes*, 133 Wn.2d 160, 165, 943 P.2d 275 (1997) concluded that residence follows
21 a person’s “center of domestic activity” and held,

22 [A] person who actually lives in Chicago can maintain her "center of domestic
23 activity" in Seattle, even if she is there only a few days a month for purposes of
24 Washington's substituted service of process statute.

25 By that measure the percentage of days spent at a residence is irrelevant; for Service of
26 Process the relevant issue is if the service left with a family member is reasonably
27 calculated to come to one's attention within the statutory period for defendant to appear.

1 *Sheldon v. Fettig*, 77 Wash.App. 775, 781, 893 P.2d 1136, review granted, 127 Wash.2d
2 1016, 904 P.2d 300 (1995). Logically in election cases, the question is whether the
3 resident is present enough to gain an understanding of the problems and needs of the
4 locality.

5 **3. Multiple Residences**

6 To be clear, Mr. HAMILTON asserts that the Pacific house was his primary
7 residence for all purposes. But many Washington cases recognize that people may have
8 more than one residence. *Sheldon v. Fettig*, 129 Wash.2d 601, 611, 919 P.2d 1209
9 (1996), interpreting the Substitute Service statutes, which use the phrase, “usual place of
10 abode.” As noted above, “abode,” “domicile” and “residence” have the same meanings.

11 *Sheldon v. Fettig* notes,

12 While we think that most people generally maintain only one house of usual abode
13 for service of process purposes, we recognize under certain circumstances a
14 defendant can maintain more than one house of usual abode. See *Van Buren v.*
15 *Glasco*, 27 N.C.App. 1, 217 S.E.2d 579, 91 A.L.R.3d 820 (1975) (holding that
16 defendant working and spending the work week in South Carolina also maintained
17 a place of usual abode amenable to substitute service in North Carolina where his
18 wife and family lived and where he spent the weekends), overruled on other
19 grounds in *Love v. Moore*, 305 N.C. 575, 291 S.E.2d 141 (1982). In so holding,
20 courts have reasoned that “[i]n a highly mobile society it is unrealistic to interpret
21 [the substitute service statute] as mandating service at only one location where, in
22 fact, a defendant maintains several dwelling places.” *Karlin v. Avis*, 326 F.Supp.
23 1325, 1329 (E.D.N.Y.1971).

24 The policy of the law in Substitute Service cases is to facilitate Plaintiffs’ ability to
25 initiate lawsuits. The policy in election cases is to insure familiarity with local issues. and
26 those cases should apply equally to election situations. The *Schoessler* decision, *In re*
27 *Contested Election of Schoessler*, 140 Wn.2d 368 390-91, 998 P.2d 818 (2000) makes
28 clear that a broad interpretation of the term, “residence,” is appropriate where an
individual acts in good faith and there is a justification for such an interpretation. MARK
HAMILTON submits that a situation where a person may be actually living in multiple

1 residences is such a situation.

2 Either goal is equally served by recognizing that in modern society people often
3 maintain multiple domiciles used at different times. If the Court were to find that Mr.
4 HAMILTON's ties to the 303 White Roads property was such that he still was a
5 "resident" there, it does not preclude him also being a resident in the Pacific House.

6 **3. Insurance Cases**

7 For insurance purposes, "resident" connotes a living arrangement with some
8 degree of permanence. A person does not have to remain physically within the
9 household, however, so long as the person has some regular, permanent attachment to the
10 family household. *Pierce v. Aetna Cas. & Sur. Co.*, 29 Wash.App. at 36-37, 627 P.2d 152
11 (1981). Washington case law, in turn, defines "resides with" as requiring a permanent
12 living arrangement. See *Consumers United Ins. Co. v. Johnson*, 26 Wash.App. 795, 801,
13 614 P.2d 657, *review denied*, 94 Wash.2d 1022 (1980). These cases focus on the idea
14 that to be a resident there has to be both intent and demonstrated permanence, meaning an
15 indefinite commitment to a residence.

16 **APPLICATION OF LAW TO FACTS**

17 **1. DURATION OF RESIDENCY**

18 *Was MARK HAMILTON a "resident" of the City of Spokane one year prior to the*
19 *date of election – November, 2012?*

- 20 • Mr. HAMILTON expressed a subjective intent to reside at the Pacific home at the
21 time of purchase and consistently thereafter.
- 22 • He actually was present at the home as much as possible beginning in May, 2012
23 and ongoing, despite difficulties in residing there due to construction.
- 24 • The house had the minimal requirements for residency: water and power,
25 providing heat.

- 1 • Mr. HAMILTON incurred substantial bills for water and electricity from June,
2 2012 to present.
- 3 • Mr. HAMILTON maintained a convenience mailing address – only a mailbox, not
4 his other house on 303 White Road – in order to insure security for his mail.
- 5 • Mr. HAMILTON has treated the Pacific house as the center of his domestic
6 activity since moving there in May, 2012.
- 7 • Mr. HAMILTON prepared an undated real estate affidavit showing his address as
8 321 White Road – again, a convenience mailing address, not a different house – in
9 April or early May 2012, but the affidavit was not filed by counsel until July.
- 10 • Mr. HAMILTON did vote in the County in November, which was an error, but
11 having received the mailed ballot he simply filled it out.
- 12 • Mr. HAMILTON has since resolved security issues and has changed his mailing
13 address to the Pacific address, where he also receives newspapers.
- 14 • Mr. HAMILTON has temporarily gone to sleep at his other house, while
15 continuing to occupy the Pacific house every day, pending final inspection and
16 occupancy permits.
- 17 • Unlike in Schoessler, there is no indication of Mr. HAMILTON ever lying or
18 acting in anything other than good faith.
- 19 • The policy of the Law is to insure that a Candidate is aware of local needs and
20 local issues, and to let the Voters decide whenever possible, who should be
21 elected. Mr. HAMILTON has been right in the middle of an area of the City with
22 very great needs that he has attempted to address both personally and as part of his
23 candidacy.
- 24 • Mr. HAMILTON spends some time at another house since he can't currently sleep
25 at the Pacific house, but he treats the Pacific house as the center of his domestic
26

1 activities.

2 Does it matter that Mr. HAMILTON doesn't sleep at the Pacific house the
3 majority of the time? The answer is no. None of the tests require him to sleep there as
4 long as he spends time there; that gives him the exposure to local issues and activities that
5 is required for residency under the case law.

6 Mr. HAMILTON has been a resident of the Pacific house since May 2012, well
7 before November, 2012 and continues to be, indefinitely.

8 **2. REGISTERED VOTER**

9 *Was Mr. HAMILTON a registered voter in the City on the date he filed for office,*
10 *May 17, 2013?*

- 11 • MARK HAMILTON was registered as a voter in the City of Spokane in January,
12 2013.
- 13 • MARK HAMILTON filed for office in the City in May, 2013.

14 **CONCLUSION**

15 The definition of "residency" under the law varies depending on the situation
16 involved. For election purposes the policy of the law is to ensure a candidate is living in
17 a community such that he is aware of the issues and needs of the community. For all
18 definitions of "residency" the Law looks to intent and physical presence. The level of
19 physical presence required varies. There is no requirement that a person sleep at his
20 'residence' every night, or even the majority of nights, as long as he is frequently
21 'present' there, 'occupying' the property.

22 In the *Schoessler* case the Candidate lied about his residency and asked a friend to
23 lie for him; then he claimed a room in his business where he slept only once or twice was
24 his 'residence.' By contrast Mr. HAMILTON actually bought the house in the District;
25 actually is present there almost every day, actually pays utilities and when he can, sleeps
26

27 MARK HAMILTON'S MEMORANDUM
28 OPPOSING PETITION TO DISQUALIFY P. 16

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1 there. His mail went to a convenience box, not another house, until he changed addresses.
2 His statements in official documents do not contradict his residence since they were made
3 before he moved. The only thing he did that is arguably inconsistent with residence at the
4 Pacific house, was voting in the County in November 2012. That was simply an error
5 omission: he didn't think to return the ballot and get a different one. That mistake alone
6 does not override all the other indicia of residency.

7 Mr. HAMILTON will have been a resident for more than a year come November.

8 Finally, Mr. HAMILTON need not have been registered as a voter in the City for a
9 year; he just had to be registered when he filed, which he clearly was.

10 MARK HAMILTON is fully qualified to be on the ballot in November, so the
11 voters may decide if he should be elected, not the Court.

12 Respectfully Submitted this June 7, 2013
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Dustin Deissner WSB# 10784
16 Attorney for Mark Hamilton
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27 MARK HAMILTON'S MEMORANDUM
28 OPPOSING PETITION TO DISQUALIFY P. 17

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