



STATE OF CONNECTICUT  
STATE ELECTIONS ENFORCEMENT COMMISSION

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***Resolution and Order Denying Petition for  
Declaratory Ruling Concerning Candidate Qualifications for  
Probate Judge in Accordance with General Statutes § 45a-18 (e)***

Pursuant to General Statutes §§ 4-176 (e) and 9-7b and Connecticut Agency Regulations § 9-7b-65 (c), it is hereby resolved and ordered that the State Elections Enforcement Commission (the “Commission”) will not issue a declaratory ruling in response to the Petition for Declaratory Ruling filed by Attorney Vincent M. Marino on behalf of Rosa Rebimbas (the “Petitioner”). The reasons for the Commission’s actions are set forth below.

The Petition for Declaratory Ruling was filed on July 26, 2022. The Petition alleges that on April 22, 2021 Peter E. Mariano, current holder of the office of Probate Judge in the 21<sup>st</sup> District and candidate for that office in the August 9, 2022 primary, was placed on inactive status as a member of the Connecticut Bar until further order of the court. *See* Order of the Superior Court, Judicial District of Waterbury (Agati, J.) (attached to the Petition as Exhibit B).<sup>1</sup> It is further alleged that this order was in response to a *Petition for Inactive Status and Appointment of Trustee* filed by the Office of the Chief Disciplinary Counsel. The Petitioner further alleges that on February 7, 2022, Attorney Mariano’s Application for Reinstatement was filed, but that the matter is still pending as of the date Petitioner filed for Declaratory Ruling with the Commission.

As a result of the order of inactive status regarding Mariano’s membership to the Connecticut Bar, Petitioner asserts that Mariano is ineligible to be a candidate for Probate Judge, may not fund a campaign for that office, cannot have been endorsed and may not participate in a primary. The only legal citation for these propositions provided by the Petitioner is General Statutes § 45a-18 (e), which according to the Petitioner requires that in order to maintain office “each judge of probate elected for a term that begins on or after January 5, 2011, shall be a member of the bar of the state of Connecticut . . . .”<sup>2</sup>

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<sup>1</sup> Petitioner Rebimbas is Mariano’s opponent in the primary.

<sup>2</sup> General Statutes § 45a-18 (e) provides in full: “Each judge of probate elected for a term that begins on or after January 5, 2011, shall be a member of the bar of the state of Connecticut, except that the requirements of this subsection shall not apply to any judge of probate who was in office on January 4, 2011, for the period such judge of probate continues to serve as a judge of probate on and after January 5, 2011, without a break in service.”

The Petition specifically requests the Commission address three questions in a declaratory ruling:

- 1) Can the campaign named “Mariano for Probate” fund the election of Peter E. Mariano for the office of Judge of Probate for the 21<sup>st</sup> Probate District when he was not qualified to be a candidate on the date that he was endorsed?
- 2) Since the Democrat Town Committees endorsed an ineligible candidate for the office of Judge of Probate for the 21<sup>st</sup> Probate District, is that endorsement void *ab initio* and does that now become a vacancy on the ballot leaving the endorsed Republican candidate to run unopposed?
- 3) Since Mr. Mariano is not qualified to be a candidate for judge of probate, is he entitled to primary the endorsed Republican candidate? Should the primary scheduled for August 9, 2022 be cancelled?

The Petition continues and, in its last paragraph, also states the following, which the Commission presumes to be a fourth request for a declaratory ruling:

We request that you issue an opinion stating that Peter E. Mariano is not qualified to be a candidate for the office of Judge of Probate for the 21<sup>st</sup> Probate District.

With respect to the first itemized request in the petition, because the Petitioner seeks a declaratory ruling on the past action of third parties, the Commission’s regulations preclude issuance of such declaratory ruling. “The Commission shall not issue a declaratory ruling when the subject of the petition concerns actions of a third party which have occurred.” Regs., Conn. State Agencies § 9-7b-63. Nevertheless, the regulations may afford the Petitioner another remedy: where a petitioner requests a declaratory ruling based on a third party’s past conduct, “the Commission shall notify the petitioner of the complaint procedure as contained in Section 9-7b-25 of the regulations of Connecticut state agencies.” Regs., Conn. State Agencies § 9-7b-63.

The regulations instruct, in relevant part:

- (a) All complaints shall be in writing and sworn to under oath by the individual submitting same and should include the following components:
  - (1) The legal name, address and telephone number of each such individual.
  - (2) A concise and explicit statement of facts bearing upon the violation asserted, including, but not limited to, the items that follow:

- (A) The date of the alleged violation of any provision of the General Statutes pertaining to or relating to any election, primary or referendum and the appropriate statutory reference or references, if known.
- (B) The identity of the person alleged to have committed such violation.
- (C) The identity of any other person who may have knowledge of the facts asserted in the complaint.
- (D) Any other document or real evidence bearing upon the violation alleged in the complaint.

Regs., Conn. State Agencies § 9-7b-25. The Commission's website contains a link to the Affidavit of Complaint, which contains relevant instructions.<sup>3</sup> It should be noted that the provision of this information is not an acknowledgement of the Commission's jurisdiction over the facts asserted by the Petitioner.

Because the Petitioner in their first request seeks a ruling based on allegations about the past conduct of third parties, the Commission denies the Petitioner's request for a declaratory ruling.

With respect to the second and third requests for the Commission to issue a declaratory ruling interpreting the application of election administration laws under Title 9 of the General Statutes as they apply to endorsements and primaries, these types of election administration compliance and interpretation questions of prospective application do not fall within the jurisdiction of the Commission. General Statutes § 9-7b (a) (14) and (17) vests this Commission with the authority to issue advice regarding the requirements of Chapters 155 and 157 of the General Statutes. The issues raised in the Petitioner's second and third requests may fall under the jurisdiction of the Office of the Secretary of the State.<sup>4</sup>

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<sup>3</sup> Also noted is a complaint filed July 21, 2022 by Rosa Rebimbas against her opponent Peter Mariano's candidate committee. This complaint alleges reporting violations by the Mariano for Probate committee in its July quarterly filing but does not allege that Mariano has violated the law by raising and spending in a candidate committee when he allegedly cannot hold the office for which he is campaigning.

<sup>4</sup> General Statutes § 9-3 provides that:

The Secretary of the State, by virtue of the office, shall be the Commissioner of Elections of the state, with such powers and duties relating to the conduct of elections as are prescribed by law and, unless otherwise provided by state statute, the Secretary's regulations, declaratory rulings, instructions and opinions, if in written form, and any order issued under subsection (b) of this section, shall be presumed as correctly interpreting and effectuating the administration of elections and primaries under this title, except for chapters 155 to 158, inclusive, and shall be executed, carried out or implemented, as the case may be, provided nothing in this section shall be construed to alter the right of appeal provided under the provisions of chapter 54.

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Similarly, to the extent that the Petitioner makes a request for a ruling that, based upon the Superior Court's Order and General Statutes § 45a-18 (e) Mariano is unqualified to be a Judge of Probate candidate, such an interpretation is not within the jurisdiction of the Commission either. No part of Title 45a of the General Statutes is within the Commission's jurisdiction and it may only initiate proceedings for a declaratory ruling on a matter within its jurisdiction. *See* General Statutes § 4-176 (a).

Because the Petitioner in their second, third and fourth requests seeks a ruling outside the jurisdiction of the Commission to issue a declaratory ruling, the Commission denies these requests as well.

For the reasons set forth above, the Commission declines to issue a declaratory ruling.

Adopted this 3<sup>rd</sup> day of August, 2022 at Hartford, Connecticut by a vote of the Commission.



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Stephen T. Penny, Chairperson  
By Order of the Commission