

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA**

CHARLES DAVID HOOD,

Plaintiff,

vs.

CASE NO. 2016 CA 001145

DEPARTMENT OF STATE, DIVISION OF
ELECTIONS, and A. "KATHLEEN" MCNEILLY,

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff, CHARLES DAVID HOOD ("Plaintiff" or "Hood"), files this Complaint for Declaratory Judgment and Injunctive Relief, and in support says:

1. This is an action for declaratory relief pursuant to section 86.021, Florida Statutes, that Defendant A. "Kathleen" McNeilly ("McNeilly") is not a qualified candidate and should be removed from the ballot for the August 30, 2016, primary election for Circuit Judge, Seventh Circuit, Group 13. Injunctive relief directing the Department of State, Division of Elections, to remove McNeilly as a candidate from the ballot for the 2016 election.

2. Plaintiff Hood is a qualified elector in Volusia County, Florida, entitled to vote in the 2016 election for Circuit Judge, Seventh Circuit, Group 13. Plaintiff is also a properly qualified candidate for election to the office of Circuit Judge, Seventh Circuit, Group 13.

3. The qualifying period for circuit judges in Florida was Noon, May 2, 2016 to Noon, May 6, 2016. The filing officer for circuit judges is the Department of State, Division of Elections ("Department of State").

4. The Department of State is an agency created by section 20.10, Florida Statutes (2015). The Division of Elections is a sub-unit of the Department of State, charged with the responsibilities of administering Florida's election laws, including provisions of law relating to

qualifying for nomination and election to state and federal office provided in section 99.061, Florida Statutes (2015).

5. The Department of State is charged with the duty, under section 99.061(6), Florida Statutes (2015), to notify supervisors of elections of the names of duly qualified candidates for nomination or election who have qualified with the Department of State. Under this section, the Department of State will be notifying supervisors within a few days after the qualifying period for other candidates ends on June 24, 2016.¹

6. McNeilly filed qualifying papers as a candidate for Circuit Judge, Seventh Circuit, Group 13, on May 4, 2016, at 7:58 A.M. The papers were apparently mailed by the candidate to the Division of Elections.

7. As part of her qualifying papers, McNeilly filed an *Appointment of Campaign Treasurer and Designation of Campaign Depository for Candidates*, Form DS-DE 9 (“*Appointment*”), on May 4, 2016, at 7:58 A.M. *See attached, Exhibit 1.*

8. On the *Appointment* form, McNeilly designated Mark Andrew James (“James”), as her Campaign Treasurer, and SunTrust Bank, in Deland, Florida, as her primary campaign depository. McNeilly and James each signed the *Appointment* form on May 3, 2016. McNeilly listed “7th Circuit, Group 13.” in Box 6 of the form (Office Sought).

9. McNeilly filed a second *Appointment of Campaign Treasurer and Designation of Campaign Depository for Candidates*, Form DS-DE 9, on May 5, 2016, at 10:39 A.M. McNeilly listed “Circuit Court Judge, 7th Circuit, Group 13.” in Box 6 of the form (Office Sought). *See attached, Exhibit 2.*

10. Along with her qualifying papers, McNeilly included a check for the filing fee in the amount of \$5,843.20. The check was drawn on a SunTrust bank account and appears to be a “counter” or “starter” check (Check No. 98) for an account titled “A. KATHLEEN MCNEILLY CAMPAIGN”.

¹ The qualifying period for U.S. Senate, U.S. Representative, State Senator, State Representative, County offices and special districts is Noon, June 20, 2016 to Noon, June 24, 2016.

See attached, Exhibit 3.

11. McNeilly's qualifying check is dated *May 3, 2016*, and appears to be signed by the Campaign Treasurer, Mark Andrew James.

12. In an April 1, 2016, *Memorandum, Candidates for Circuit Court Judge*, Kristi Reid Bronson, Division of Elections, explained, "a candidate qualifying by the fee method must submit a properly executed campaign check signed by the treasurer or deputy treasurer in the amount of \$5,843.20. *See attached, p. 3, Exhibit 4.*

13. Page 7 of the Division of Elections' *Candidate & Campaign Treasurer Handbook* ("*Handbook*") clearly states, Form DS-DE 9 "Is considered 'filed' only when the filing officer receives the form (not upon mailing) **and** determines that the form is complete." *See attached, Exhibit 5.* The *Handbook* also states that Form DS-DE 9 "Shall be filed with the filing officer **prior** to opening the campaign account." *See p. 7, Exhibit 5.*

14. McNeilly filed her first *Appointment of Campaign Treasurer and Designation of Campaign Depository for Candidates*, Form DS-DE 9, on May 4, 2016, at 7:58 A.M. Her check, dated May 3, 2016, was presented at the same time as her *Appointment* form, but was drawn on a SunTrust bank account that was clearly opened on or before May 3, 2016.

15. Qualifying for judicial office is governed by section 105.031, Florida Statutes. Subparagraphs 105.031(5)(a)1., 2. , Florida Statutes, provide, in pertinent part:

(5) ITEMS REQUIRED TO BE FILED.—

(a) In order for a candidate for judicial office or the office of school board member to be qualified, the following items must be received by the filing officer by the end of the qualifying period:

1. Except for candidates for retention to judicial office, a properly executed check drawn upon the candidate's campaign account in an amount not less than the fee required by subsection (3) or, in lieu thereof, the copy of the notice of obtaining ballot position pursuant to s. 105.035. If a candidate's check is returned by the bank for any reason, the filing officer shall immediately notify the candidate and the candidate shall, the end of qualifying notwithstanding, have 48 hours from the time such notification is received, excluding Saturdays, Sundays, and legal holidays, to pay the fee with a cashier's check purchased from funds of

the campaign account. Failure to pay the fee as provided in this subparagraph shall disqualify the candidate.

4. The completed form for the appointment of campaign treasurer and designation of campaign depository, as required by s. 106.021. In addition, each candidate for judicial office, including an incumbent judge, shall file a statement with the qualifying officer, within 10 days after filing the appointment of campaign treasurer and designation of campaign depository, stating that the candidate has read and understands the requirements of the Florida Code of Judicial Conduct.

(Emphasis added.)

16. Subsection 106.021(1), Florida Statutes, provides, in pertinent part:

Each person who seeks to qualify for nomination or election to, or retention in, office shall appoint a campaign treasurer and designate a primary campaign depository before qualifying for office.

A person may not accept any contribution or make any expenditure with a view to bringing about his or her nomination, election, or retention in public office, or authorize another to accept such contributions or make such expenditure on the person's behalf, unless such person has appointed a campaign treasurer and designated a primary campaign depository.

(Emphasis added.)

17. McNeilly opened her campaign account at SunTrust Bank on or before May 3, 2016. She did not designate a primary campaign depository nor appoint a campaign treasurer before opening her campaign account. Section 106.021, Florida Statutes, prohibits a candidate from accepting contributions or making expenditures until the candidate has appointed a treasurer and designated a campaign depository.²

18. Florida law requires a candidate to file an *Appointment of Campaign Treasurer and Designation of Campaign Depository* form *before* the candidate presents a campaign check

² Section 105.031(5) does not expressly mention this prohibition, but it does refer to section 106.021, Florida Statutes. Notably, McNeilly also accepted a campaign contribution when she opened her campaign account with a deposit.

to pay a qualifying fee with the Division of Elections. McNeilly failed to comply with this requirement. As such, the check she presented to the Division of Elections on May 4, 2016, was not a “properly executed check drawn upon the candidate’s campaign account” as required by section 105.031(5)(a)1., Florida Statutes.

19. Plaintiff acknowledges the 2006 decision in *Schurr v. Sanchez-Gronlier*, from the Third District Court of Appeal. *Schurr v. Sanchez-Gronlier*, 937 So. 2d 1166 (3rd DCA 2006). The trial court in *Schurr* declined to remove candidate Sanchez-Gronlier from the ballot, explicitly recognizing the fact that Sanchez-Gronlier’s qualifying check was presented for payment two minutes after the appointment of treasurer and designation of campaign depository was filed. 937 So. 2d at 1169. However, in this case, McNeilly’s qualifying check was presented at the same time as her *Appointment* form (and before the candidate’s second *Appointment* form).

20. “Strict compliance with the statutory procedure established by section 99.061, Florida Statutes, for qualifying as a candidate is a condition precedent to the exercise of the rights and privileges of candidacy.” *State ex rel. Taylor v. Gray*, 25 So. 2d 492 (Fla. 1946), *citing*, *State ex rel. Vining v. Gray*, 17 So. 2d 228 (Fla. 1941). Likewise, strict compliance with the qualifying procedures set out in section 105.031, Florida Statutes, must also be a condition precedent to the exercise of the rights and privileges of a judicial candidacy.

21. Plaintiff as an elector in and a candidate for this judicial election would be irreparably harmed if Defendant McNeilly is permitted to continue as a candidate for election when she failed to comply with qualifying requirements of section 105.031, Florida Statutes.

22. The requirements in section 105.031, Florida Statutes, and the guidance provided by the Division of Elections are clear. McNeilly did not file her Form DS-DE 9 before she

opened her campaign account and submitted a qualifying check to the Division. As such, McNeilly's check was not "properly executed." *s. 105.031(5), F.S.* Therefore, the Department of State should de-certify McNeilly as a qualified candidate and not include her name on the ballot for the August 30, 2016, primary election.

23. This is an action for declaratory and injunctive relief pursuant to chapter 86, Florida Statutes. This Court has jurisdiction.

24. Venue is proper in Leon County, Florida.

25. Time is of the essence in the resolution of this dispute because of the impending deadlines in the certification of candidates, and for the preparation of the ballots for the 2016 election cycle.

WHEREFORE, Plaintiff requests that this Court enter judgment as follows:

A. Declare that Defendant McNeilly is not a properly qualified candidate for election to the office of Circuit Judge, Seventh Circuit, Group 13;

B. Enter an injunction requiring Defendant Department of State, Division of Elections, to de-certify Defendant McNeilly as a properly qualified candidate for the 2016 election, and not list McNeilly on any ballot for election to Circuit Judge, Seventh Circuit, Group 13; and

C. Granting such other relief as the Court deems proper.

Respectfully submitted this 23rd day of May 2016.

/s/ Emmett "Bucky" Mitchell, IV
Emmett "Bucky" Mitchell, IV, Esq.
Florida Bar No. 0976687
Coates Law Firm, PL
115 East Park Avenue, Suite 1
Tallahassee, FL 32301
850-681-1029 (telephone)
850-681-7080 (fax)
bmitchell@rcoateslaw.com

Attorney for Plaintiff Hood

EXHIBIT 1

**APPOINTMENT OF CAMPAIGN TREASURER
AND DESIGNATION OF CAMPAIGN
DEPOSITORY FOR CANDIDATES**

(Section 106.021(1), F.S.)

(PLEASE PRINT OR TYPE)

RECEIVED
DEPARTMENT OF STATE

2016 MAY -4 AM 7:58

DIVISION OF ELECTIONS
TALLAHASSEE, FL

NOTE: This form must be on file with the qualifying officer before opening the campaign account.

OFFICE USE ONLY

1. CHECK APPROPRIATE BOX(ES):

Initial Filing of Form Re-filing to Change: Treasurer/Deputy Depository Office Party

2. Name of Candidate (in this order: First, Middle, Last)

A. "KATHLEEN" MCNEILLY

3. Address (include post office box or street, city, state, zip code)

Mainstreet Center 101 N. Woodland Blvd, Suite A307, DeLand, FL 32720
P.O. Box 1952, DeLand, FL 32721-1952

4. Telephone

(386) 736-4741

5. E-mail address

akmcneilly200@yahoo.com

6. Office sought (include district, circuit, group number)

7th Circuit, Group 13

7. If a candidate for a nonpartisan office, check if applicable:

My intent is to run as a Write-In candidate.

8. If a candidate for a partisan office, check block and fill in name of party as applicable: My intent is to run as a

Write-In *Judicial* No Party Affiliation _____ Party candidate

9. I have appointed the following person to act as my Campaign Treasurer Deputy Treasurer

10. Name of Treasurer or Deputy Treasurer

Mark Andrew James, Esquire

11. Mailing Address

P.O. Box 3776

12. Telephone

(386) 453-9692

13. City

DELAND

14. County

VOLUSIA

15. State

FL

16. Zip Code

32721-3776

17. E-mail address

markjamesesq@gmail.com

18. I have designated the following bank as my Primary Depository Secondary Depository

19. Name of Bank

SUNTRUST

20. Address

302 E. NEW YORK AVE

21. City

DELAND

22. County

VOLUSIA

23. State

FL

24. Zip Code

32724

UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE READ THE FOREGOING FORM FOR APPOINTMENT OF CAMPAIGN TREASURER AND DESIGNATION OF CAMPAIGN DEPOSITORY AND THAT THE FACTS STATED IN IT ARE TRUE.

25. Date

MAY 3, 2016

26. Signature of Candidate

X Kathleen McNeilly

27. Treasurer's Acceptance of Appointment (fill in the blanks and check the appropriate block)

I, MARK ANDREW JAMES, ESQUIRE, do hereby accept the appointment

(Please Print or Type Name)

designated above as: Campaign Treasurer Deputy Treasurer.

May 3, 2016

Date

X Mark Andrew James

Signature of Campaign Treasurer or Deputy Treasurer

EXHIBIT 2

RECEIVED
DEPARTMENT OF STATE

2016 MAY -5 AM 10: 39

DIVISION OF ELECTIONS
TALLAHASSEE, FL

**APPOINTMENT OF CAMPAIGN TREASURER
AND DESIGNATION OF CAMPAIGN
DEPOSITORY FOR CANDIDATES**

(Section 106.021(1), F.S.)

(PLEASE PRINT OR TYPE)

NOTE: This form must be on file with the qualifying officer before opening the campaign account.

OFFICE USE ONLY

1. CHECK APPROPRIATE BOX(ES):

Initial Filing of Form Re-filing to Change: Treasurer/Deputy Depository Office Party

2. Name of Candidate (in this order: First, Middle, Last)

A. "KATHLEEN" McNEILLY

3. Address (include post office box or street, city, state, zip code)

Mainstreet Center 101 N. Woodland Blvd, Suite A307, DeLand, FL 32720
P.O. Box 1952, DeLand, FL 32721-1952

4. Telephone

(386) 736-4741

5. E-mail address

akmcneilly200@yahoo.com

6. Office sought (include district, circuit, group number)

Circuit Court Judge, 7th Circuit, Group 13

7. If a candidate for a nonpartisan office, check if applicable:

My intent is to run as a Write-In candidate.

8. If a candidate for a partisan office, check block and fill in name of party as applicable: My intent is to run as a

Write-In No Party Affiliation _____ Party candidate.

9. I have appointed the following person to act as my Campaign Treasurer Deputy Treasurer

10. Name of Treasurer or Deputy Treasurer

Mark Andrew James, Esquire

11. Mailing Address

P.O. Box 3776

12. Telephone

(386) 453-9692

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14. County

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15. State

FL

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20. Address

302 E. NEW YORK AVE

21. City

DELAND

22. County

VOLUSIA

23. State

FL

24. Zip Code

32724

UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE READ THE FOREGOING FORM FOR APPOINTMENT OF CAMPAIGN TREASURER AND DESIGNATION OF CAMPAIGN DEPOSITORY AND THAT THE FACTS STATED IN IT ARE TRUE.

25. Date

MAY 4, 2016

26. Signature of Candidate

X Kathleen McNeilly

27. Treasurer's Acceptance of Appointment (fill in the blanks and check the appropriate block)

I, A. KATHLEEN McNEILLY, do hereby accept the appointment
(Please Print or Type Name)

designated above as: Campaign Treasurer Deputy Treasurer.

May 4, 2016
Date

X Kathleen McNeilly
Signature of Campaign Treasurer or Deputy Treasurer

EXHIBIT 3

RECEIVED
DEPARTMENT OF STATE

2016 MAY -4 AM 7:58

DIVISION OF ELECTIONS
TALLAHASSEE, FL

A. KATHLEEN MCNEILLY
CAMPAIGN
101 N. Woodland Blvd Suite A307
DELAND FL 32720
PO BOX 3776 DELAND FL 32721-3776

98

DATE 5/3/2016

BEFORE MAILED OR DEPOSITED

PAY TO THE ORDER OF Department of State \$ 5,843 ²⁰/₁₀₀
Five Thousand eight hundred forty three and ²⁰/₁₀₀ DARS



ACH RT 081000104

MEMO

[Handwritten Signature]
Treasurer

[Redacted area]



FLORIDA DEPARTMENT of STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

MEMORANDUM

TO: Candidates for Circuit Court Judge
FROM: Kristi Reid Bronson, Chief *ARB*
Bureau of Election Records
DATE: April 1, 2016
SUBJECT: Qualifying

Qualifying will be held from **Noon, May 2, 2016 – Noon, May 6, 2016**, for all judicial candidates, including write-in candidates. By law, the Division of Elections may accept and hold qualifying papers beginning April 18, 2016. **It is a candidate’s responsibility to ensure that qualifying papers are timely received in this office and are complete.** All qualifying fees and paperwork must be received and complete by **Noon (Eastern Time), May 6, 2016**, for a candidate to be qualified. Our location and mailing address is:

**Division of Elections
The R.A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250**

THINGS TO REMEMBER:

1. Any candidate oath, financial disclosure form, or qualifying check filed with the Division prior to **April 18, 2016**, is not valid for qualifying. Please submit new documents to the Division not later than the close of qualifying.
2. **Do not use old forms as required information has changed.** Current forms are available on the Division’s website at: <http://dos.myflorida.com/elections/forms-publications/forms/>
3. Forms DS-DE 26 and 26A, and CE 6 require notarization. Review these documents carefully to ensure that they have been properly notarized.

**Division of Elections
R.A. Gray Building, Suite 316 • 500 South Bronough Street • Tallahassee, Florida 32399
850.245.6240 • 850.245.6260 (Fax) dos.myflorida.com/elections/**



4. Candidates may submit qualifying papers by hand-delivery or mail. The Division does not accept qualifying papers via facsimile or email. **All documents must have original signatures.**
5. **Attention:** Time is of the essence in qualifying as a candidate. In order to be deemed timely filed with the Division of Elections, qualifying items must actually be received at the Division's physical location as specified above by the close of the qualifying period. The U.S. Postal Service does not deliver mail directly to the Division of Elections. The U.S. Postal Service's designated hours for mail pick-up do not correspond to the qualifying deadline. **To ensure that the qualifying items are timely submitted, a candidate or someone on his or her behalf should hand-deliver directly to the Division or use a commercial express courier delivery service that delivers directly to the Division.**
6. Qualifying fees must be paid by a properly executed check payable to the Department of State or Secretary of State and drawn upon the candidate's campaign account.
7. The check must be signed by the treasurer or a deputy treasurer. **(A check signed by a candidate who has not been designated as the treasurer or deputy treasurer is not valid for qualifying.)**
8. **Personal checks, cashiers' checks, cash, and money orders are not valid for qualifying.**
9. Type or print your name the way you wish it to appear on the ballot under "Oath of Candidate" on the Judicial Office Candidate Oath form **(DS-DE 26 or 26A)**. A candidate's name as it is to appear on the ballot may not be changed after the end of qualifying.
10. Please provide a telephone number and email address on your Judicial Office Candidate Oath form **(DS-DE 26 or 26A)** where you can be reached during the day and after normal working hours. The Bureau will make every effort to contact you if there is a problem with your paperwork.
11. To check your qualifying status, go to: <http://dos.elections.myflorida.com/candidates/CanList.asp>.
12. The qualifying fee cannot be returned to a candidate unless the candidate withdraws, in writing, **before** the close of qualifying. The withdrawal statement must contain the candidate's signature. A fax withdrawal (fax: 850.245.6260) or a scanned copy of the withdrawal attached to an email addressed to elecrecords@dos.state.fl.us is acceptable.

WHAT TO FILE

All judicial candidates must file the following forms no later than the close of qualifying:

1. Appointment of Campaign Treasurer and Designation of Campaign Depository **(Form DS-DE 9)**. If this form has previously been filed with the Division, you do **not need to file it again.**

2. Judicial Office Candidate Oath (**Form DS-DE 26 or 26A**).
3. Full and Public Disclosure of Financial Interests (**2015 CE Form 6**). A public officer who has filed a full and public disclosure or statement of financial interests for the year 2015 with the Commission on Ethics prior to qualifying for office may file a copy of that disclosure at the time of qualifying.



In addition to the three forms referenced above, a candidate qualifying by the fee method must submit a properly executed campaign check signed by the treasurer or a deputy treasurer in the amount of **\$5,843.20**.

ADDITIONAL FILING REQUIREMENTS

1. Although not required for qualifying, each candidate must file a Statement of Candidate (**DS-DE 84**) and a Statement of Candidate for Judicial Office (**DS-DE 83**) with the Division of Elections within 10 days after filing the Appointment of Campaign Treasurer and Designation of Campaign Depository. Willful failure to file this form is a violation of Chapter 106, Florida Statutes.
2. Section 106.07, Florida Statutes, requires you and your campaign treasurer to file reports of all contributions received and all expenditures made. You may find the Calendar of Reporting Dates at: <http://dos.myflorida.com/elections/candidates-committees/campaign-finance/>.
3. In addition, Section 106.141, Florida Statutes, requires that each candidate who withdraws his or her candidacy, becomes unopposed, or is eliminated or elected to office, within 90 days, dispose of the funds on deposit in his or her campaign account and file a termination report reflecting the disposition of all remaining funds.

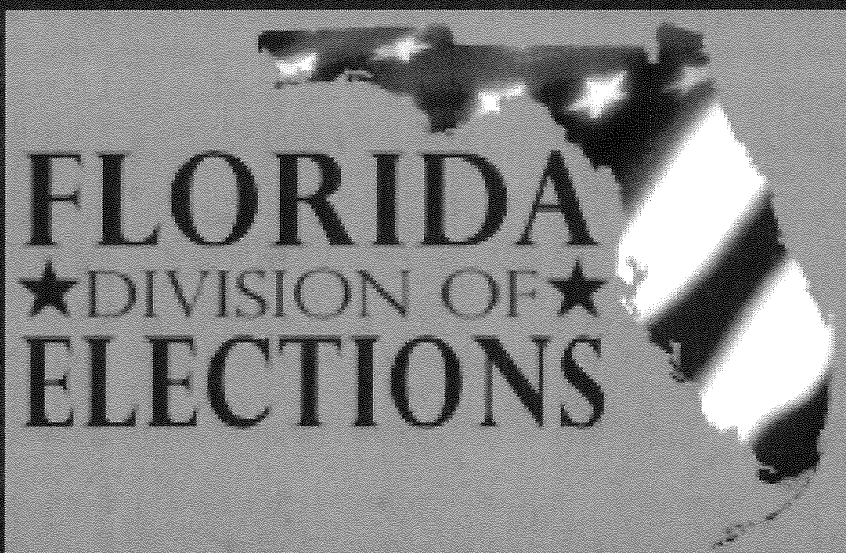
If you have any questions, please call the Bureau of Election Records at **850-245-6280**.

KRB/mcc

EXHIBIT 5

**2016
Candidate
& Campaign
Treasurer
Handbook**

Florida Department of State
Division of Elections
R. A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, FL 32399-0250
850.245.6240



(Rev. 01/22/16)

Chapter 5: Becoming a Candidate

A candidate is a person who:

1. Seeks to qualify for nomination or election by means of the petition process;
2. Seeks to qualify for election as a write-in candidate;
3. Receives contributions or makes expenditures, or consents for any other person to receive contributions or make expenditures, with a view to bring about his or her nomination or election to, or retention in, public office;
4. Appoints a treasurer and designates a primary depository; or
5. Files qualification papers and subscribes to a candidate's oath as required by law.
6. This definition does **not** include an individual seeking a publically elected position for a political party executive committee.

(Section 106.011(3), F.S.)

What to File

Form DS-DE 9, Appointment of Campaign Treasurer and Designation of Campaign Depository for Candidates, is the first document that must be filed with the filing officer to become a candidate. At the same time, the candidate must designate the office for which he or she is running. A candidate can appoint a campaign

treasurer and designate a campaign depository at any time, but **no later** than the date the candidate qualifies for office, and before any contributions are received, any expenditures are made, and any signatures are obtained on a candidate petition. Nothing prohibits a person from announcing their intention to become a candidate prior to filing Form DS-DE 9, ***as long as no contributions are received, no expenditures are made, and no signatures are obtained on a candidate petition.*** Individuals seeking a publically elected position on a political party executive committee are also required to file Form DS-DE 9. (See Chapter 8, Campaign Treasurers.)

* Form DS-DE 9:

- Is considered "filed" only when the filing officer receives the form, (not upon mailing) **and** determines that the form is complete.
- * • Shall be filed with the filing officer **prior** to opening the campaign account.
- Shall be filed with the filing officer **prior** to the candidate accepting any contributions or making any expenditures, or authorizing another to accept contributions or make expenditures on the person's behalf.
- Shall be filed with the filing officer **prior** to obtaining signatures on a DS-DE 104, Candidate Petition.

Form DS-DE 84, Statement of Candidate, must be filed with the filing officer within 10 days after filing Form DS-DE 9. This form states that the candidate has been provided access to read and understand the requirements of Chapter 106, F.S. The