

JEFFREY DUBLIN and STEPHANIE DANIELS, Committee Members Hudson County Democratic Organization,

Plaintiffs,

vs.

HUDSON COUNTY DEMOCRATIC ORGANIZATION and HON. VINCENT PRIETO, *in his capacity as Chairman of the Hudson County Democratic Organization,*

Defendants

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY

DOCKET NO. HUD-L-_____ -18

CIVIL ACTION

**BRIEF IN SUPPORT OF ORDER TO SHOW CAUSE
AND FOR EMERGENT RELIEF**

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PRELIMINARY STATEMENT

Plaintiffs Jeffrey Dublin and Stephanie Daniels (“Plaintiffs”) bring this emergent application to protect their rights as County Committee (“HCDO”) members of the Hudson County Democratic Organization to insure a fair and honest election of the HCDO’s next Chair person.

Plaintiffs maintain that defendants Hudson County Democratic Organization (“HCDO”) and Vincent Prieto (collectively, “Defendants”) are acting in contravention of the Hudson County Democratic Organization bylaws (“Bylaws”). Their violations surround the biennial organizational meeting of the Hudson County Democratic County Organization, which is scheduled for June 12, 2018. During this meeting, votes will be taken for the offices of County Chairman, Vice-Chairman, Recording Secretary and Treasurer. As Defendants’ conduct subverts Plaintiffs’ legitimate rights and interests in having a fair and legitimate election, Plaintiffs request that the Court: (a) compel Defendants to meet and confer with Senator Brian P. Stack and his agents/representatives and Ms. Amy DeGise and her agents/representatives, prior to the June 12, 2018 Organizational Meeting, for the purpose of establishing and clarifying the rules and procedures that will govern the Organizational Meeting; (b) order that prior to the June 12, 2018 HCDO Organizational Meeting, HCDO cure any infirmities contained in its June 7, 2018 Notice, including adding a proper agenda under Defendant’s by-laws; and (c) order that prior to the June 12, 2018 HCDO Organizational Meeting, HCDO must create and convene the three committees (the Credentials Committee, the Committee on Standing Rules, and the Program Committee) required under Roberts’ Rules of Order (as incorporated into the By-laws).

Title 19 of our Election Laws and the HCDO Bylaws mandate that this year's Organizational Meeting takes place on Tuesday, June 12, 2018. Any delay therefore would violate the Bylaws and Title 19. Hence any delay, and an absence of a remedy before June 12th, would impose great prejudice and harm to the Plaintiffs, and all County Committee members of the HCDO, as they would be deprived of the right to choose a new Chairman on the specific date set by statute and the Bylaws. Therefore, this issue must necessarily be treated in an expedited manner.

For the reasons set forth herein, Plaintiffs respectfully request that the Order to Show Cause and relief sought in Plaintiffs' Verified Complaint (the "Complaint") be granted in a summary manner on an expedited basis.

STATEMENT OF FACTS

The relevant facts are set forth in the Verified Complaint, which is submitted to the Court simultaneously herewith for filing (the "Complaint"), are expressly incorporated herein.

LEGAL ARGUMENT

POINT I

PLAINTIFFS' COMPLAINT DEMONSTRATES HIS ENTITLEMENT TO AN EMERGENT ORDER FROM THIS COURT

Pursuant to the New Jersey Rules of Court, a party may obtain temporary and preliminary relief during the pendency of an action through the use of an Order to Show Cause brought in conjunction with a Complaint seeking injunctive relief. R. 4:52-1(a). Giving this matter expedited treatment is necessary given its subject matter, i.e. the imminent June 12, 2018 organizational meeting of the Hudson County Democratic Organization and the voting for positions of County Chairman, Vice-Chairman, Recording Secretary and Treasurer, which will take place at the

meeting. Election disputes have routinely been handled by the courts as expedited proceedings. Under the customary practice and procedure used by the courts in election cases, disputes such as this one are tried and disposed of in an expedited manner. Consequently, and because this is an election matter (albeit a intraparty election), this action should be accorded expedited treatment and Plaintiffs should not be held to meet the standards of Crowe v. DiGioia, 90 N.J. 126 (1982)). See Abernathy v. Garcia, HUD-L-1762-13, Opinion, dated April 19, 2013 (Bariso, A.J.S.C.) (“As plaintiffs correctly assert, election cases typically are disposed of in a summary fashion pursuant to Rule 4:67.”). See Order attached to the Certification of Angelo J. Genova, Esq. (“Genova Cert.”) at Exhibit A; see also In re Ocean County Com’r of Registration for a Recheck of the Voting Machines for the May 11, 2004, Mun. Elections, 379 N.J. Super. 461, 478-79 (App. Div. 2005) (finding that an election dispute was to be treated as a “fast track proceeding”); Murray v. Murray, 7 N.J. Super. 549 (Law. Div. 1950); McCann v. Clerk of City of Jersey City, 167 N.J. 311, 318-19 (2001).

Here, Plaintiffs are entitled to immediate temporary, preliminary, and permanent relief compelling Defendants to meet and confer with announced candidates Senator Brian P. Stack and his agents/representatives and Ms. Amy DeGise and her agents/representatives, prior to the June 12, 2018 Organizational Meeting, for the purpose of establishing and identifying the rules and procedures to govern the Organizational Meeting; ordering that prior to the June 12, 2018 HCDO Organizational Meeting, HCDO cure any infirmities contained in its June 7, 2018 Notice, including adding a proper agenda under Defendant’s by-laws; and ordering that prior to the June 12, 2018 HCDO Organizational Meeting, HCDO create the three committees (the Credentials Committee, the Committee on Standing Rules, and the Program Committee) required under Roberts’ Rules of Order (as incorporated into the By-laws). Title 19 and the Bylaws require the

Organizational Meeting to take place on June 12, 2018, and therefore, expedited review of this matter is necessary given the current date of the meeting scheduled for June 12, 2018 at 7:00 p.m.

Absent this relief, the HCDO will proceed with an election that will undoubtedly be fraught with uncertainty. The absence of rules will invite chaos. The absence of an unbiased means to confirm eligible voters will invite fraud. The failure to hold the election in accordance with the Bylaws and Title 19 is fundamentally improper and contrary to the law and public policy of this State.

POINT II

JUDICIAL INTERVENTION IS WARRANTED BECAUSE DEFENDANTS' ACTIONS ARE IN VIOLATION OF A CONTROLLING STATUTE AND INFRINGE ON THE CLEAR LEGAL RIGHTS OF THE PLAINTIFFS.

In Deamer v. Jones, 42 N.J. 516 (1964), the New Jersey Supreme Court expressed judicial restraint in considering controversies regarding intra-party affairs, saying that courts have historically been reluctant to hear such cases. Id. at 520. However, notwithstanding that restraint, the Court identified two instances when judicial involvement is warranted: (1) when there is a violation of a controlling statute and (2) when there is an infringement of a clear legal right. Ibid. In the present case, Defendants' actions have both violated a controlling statute and infringed on Plaintiffs' clear legal rights. Accordingly, this Court must intercede to avoid the manifest injustice soon to be visited upon Plaintiffs by Defendants who are on a trajectory to conduct an Organizational Meeting without clear rules, without clear guidelines, without protections against mischief and/or fraud and without affording the Plaintiffs and all County Committee voters with fundamental fairness insuring the integrity of the vote.

A. Defendants have violated N.J.S.A. 19:5-3.2

Pursuant to N.J.S.A. 19:5-3.2, “[t]he members of the county committee of a political party shall adopt a constitution and bylaws, **ensuring fundamental fairness and the rights of the members of the county committee in the governance of the county party.**” (emphasis added) This requires, through the creation of a set of governing documents, a level playing field giving all members Notice of the rules and procedures for the governance of the county committee to ensure fair play in the political process. In addition, the members themselves adopt the bylaws, affording them a voice in the process of creating those rules and procedures.

On June 7, 2018, the HCDO Secretary mailed the Notice for the Organizational Meeting (“Notice”) to all HCDO members. (Verified Complaint at ¶15). The Notice failed to comply with the Bylaws as it did not contain an agenda for the meeting.¹ There is no mention whatsoever about the adoption of the Bylaws being an agenda item. This strikes at the very core of N.J.S.A. 19:5-3.2. This statute expressly requires the adoption of bylaws to ensure “fundamental fairness and the rights of the members of the county committee in the governance of the county party.” Defendants have wantonly omitted the adoption of the Bylaws from the Notice. Without this agenda item, HCDO members are not afforded the opportunity to review the Bylaws prior to the Organizational Meeting. This can cause a massive breach in the integrity and sanctity of the political process because those in power can avoid oversight and act in furtherance of their own personal agenda.

In addition, Defendants failed to promulgate any rules and procedures to ensure a fair and open Organizational Meeting and election of officers. Pursuant to Article VI, Section 4 of the Bylaws, “[u]nless otherwise provided in these Bylaws or by statute, all business shall be governed

¹ In contrast to the insufficient notice provided by HCDO, the notice sent out by Union County Democratic Committee, illustrates what a proper notice should look like. See Genova Cert. at Exhibit B.

by Robert's Rules of Order." (Verified Complaint at ¶18). The Bylaws are silent regarding the rules and procedures governing the Organizational Meeting, and therefore, Robert's Rules, incorporated into the Bylaws, must be utilized. (Verified Complaint at ¶19).

Roberts Rules impose an affirmative obligation on the HCDO and Chairman Prieto where the Bylaws are silent. Pursuant to Section 59 of Robert's Rules, there are three committees that must be organized for the purpose of establishing the rules and procedures of a "convention", such as the present Organizational Meeting: (1) the Credentials Committee, which prepares and certifies the list of delegates; (2) the Committee on Standing Rules, which drafts the operating procedures required for a particular convention, including the election of officers; and (3) the Program Committee, which creates the convention program with a suitable order of business. (See relevant portions of Section 59 of Robert's Rules attached to Genova Cert. at Exhibit C). Under Robert's Rules, "a copy of the proposed standing rules should be handed to each person when they register." (See id.) Together, these committees, as well as the required distribution of their standing rules, provide the undergirding necessary to ensure the fair and proper conduct of a convention. Further, these Committees are designed to create, after due deliberations, the rules, format, notice and process to be applied in this election. Here, their absence is deafening and leaves to the Chairperson the absolute unfettered discretion to mandate the process and rules of engagement in the election for his successor. The absence of such rules (which were to have been the product of the Credentials Committee and Standing Rules Committee had each been constituted) invites the Chairperson to conduct the Organizational Meeting on June 12th without a meaningful check on his authority. None of this bodes well for "ensuring fundamental fairness to the governance of the County Committee" contrary to N.J.S.A. 19:5-3.2.

Defendants have failed to constitute and convene any of the above required committees. Without rules and a process created by a Credentials Committee, there is a great risk to the integrity to the election. How and by whom will it be decided those eligible to vote at the Organizational Meeting? What vehicle will be available to challenge ineligible voters? The absence of guidelines to address these questions, among many others, undermines the credibility of the election. Without the Committee on Standing Rules, there will be no set rules and procedures to guide the proceedings, sowing confusion and doubt. Without the Program Committee, members will be unclear on the exact order of business to be conducted, outside of an insufficient agenda.

A request to cure these infirmities without judicial intervention was unsuccessfully made of Defendants. Hoping to discuss the rules and procedures for the Organizational Meeting, and the election of officers, that request was ignored. (Verified Complaint at ¶25). As such, the Organizational Meeting is now shrouded in secrecy, and there is no guarantee that it will be conducted in a free and open manner. Defendants' conduct strikes at the very heart of the intent of N.J.S.A. 19:5-3.2, ensuring neither fundamental fairness nor the rights of HCDO members.

B. Defendants have infringed on Plaintiff's clear legal rights

In Leeds v. Harrison, 7 N.J.Supra. 558 (1950), the Court stated that in a nonprofit corporation, "[t]he certificate of incorporation, constitution and by-laws of a corporation constitute a contract between the corporation and the members as well as between the members inter sese, and the trustees or directors bear a fiduciary relationship to the members which requires them to comply with said certificate and by-laws." Id. at 570 (citing Mayer v. Oxidation Products Co., Inc., 110 N.J.Eq. 141, 159 A. 377; Moore v. Conover, 123 N.J.Eq. 61, 195 A. 833; Grupe v. Rudisill, 101 N.J.Eq. 145, 136 A. 911; Loewenthal v. Rubber Reclaiming Co., 52 N.J.Eq. 440,

28 A. 454; Einstein v. Raritan Woolen Mills, 74 N.J.Eq. 624, 70 A. 295, Costello v. Thomas Cusack Co., 96 N.J.Eq. 83, 124 A. 615).

In the present case, HCDO is a registered New Jersey nonprofit corporation. Therefore, the Bylaws must be considered a contract between HCDO and its members, and the Chairperson and other officers have a fiduciary responsibility to the members. Therefore, any breach of the Bylaws must be considered a breach of the contract between HCDO and its members.

1. Breach of Bylaw Requiring Sufficient Notice of a Meeting

Under Article V, Section 5 of the Bylaws, “written notices of meetings setting forth the place, date, hour, and agenda of meetings shall be mailed by regular mail by the Secretary to all members.” (Verified Complaint at ¶14). Pursuant to Article VI, Section 2 of the Bylaws, for the Organizational Meeting, “the order of business shall be as follows:

- a) Salute to flag;
- b) Adoption of bylaws;
- c) Nominations from the floor;
- d) Election of officers; and
- e) Other business.”

(Verified Complaint at ¶14).

The Notice, however, only makes mention of nominations for the office of Chairperson, Vice-Chairperson, Recording Secretary, and Treasurer; the election for those offices; and other HCDO that may be necessary. The Notice fails to include the adoption of the Bylaws as a part of the agenda, even though it is required to take place under Article VI, Section 2 of the Bylaws. Therefore, the Notice is insufficient and breaches Article V, Section 5 of the Bylaws.

2. Breach of the Bylaw Incorporating Robert's Rules of Order

Pursuant to Article VI, Section 4 of the Bylaws, “[u]nless otherwise provided in these Bylaws or by statute, all business shall be governed by Robert’s Rules of Order.” (Verified Complaint at ¶18). The Bylaws are silent regarding the rules and procedures governing the Organizational Meeting, and therefore, Robert’s Rules, incorporated into the Bylaws, must be utilized. (Verified Complaint at ¶19).

Under Robert’s Rules, there are various types of meetings. Since HCDO members are chosen by Hudson County residents who are members of the Democratic Party, the members represent constituents in election districts throughout and in each municipality in Hudson County. These members deliberate to adopt the Bylaws, elect officers to represent HCDO and conduct other business to establish the policy of HCDO, under Robert’s Rules, the Organizational Meeting must be considered a “convention”. (See relevant portions of Section 58 of Robert’s Rules attached to Genova Cert. at Exhibit D) (pursuant to Section 58 of Robert’s Rules a “convention” is defined as an “assembly of delegates who are chosen as representatives of constituent units to sit as a single deliberative body acting in the name of the entire group.”).

As the Organizational Meeting is a convention, the Credentials Committee, the Committee on Standing Rules, and the Program Committee are required to be convened for the purposes of establishing the formal procedures required. Defendants, however, have not convened these committees. Moreover, Plaintiff’s counsel asked to meet regarding the establishment of rules and procedures for the Organization Meeting, but there has been no response. The failure to establish these committees and create rules and procedures for the Organizational Meeting is a violation of Robert’s Rules of Order and, therefore, breaches Article VI, Section 4 of the Bylaws.

3. Breach of the Bylaw Incorporating Title 19

Pursuant to Article III, Section 7 of the Bylaws, in addition to the duties enumerated in the Bylaws, the Chairperson “shall perform such other functions as may be required of him by ... the statutes of the State of New Jersey.” Thus, New Jersey’s statutes have been incorporated by reference into the Bylaws, and any violation of the statutes is a violation of the Bylaws.

Pursuant to N.J.S.A.19:5-3.2, “[t]he members of the county committee of a political party shall adopt a constitution and bylaws, ensuring fundamental fairness and the rights of the members of the county committee in the governance of the county party.” Defendants violated the Bylaws by failing to provide for the adoption of the bylaws in the Notice’s agenda, establish the requisite committees in order to establish the rules and procedures for the Organizational Meeting and the election of officers, and or even engage in any dialogue with Plaintiffs or Plaintiffs’ counsel regarding those rules and procedures. These breaches do violence to the notion of fundamental fairness by not ensuring a level playing field thereby visiting harm on the rights of HCDO members, in violation of N.J.S.A.19:5-3.2. By violating N.J.S.A.19:5-3.2, Defendants are in breach of Article III, Section 7 of the Bylaws.

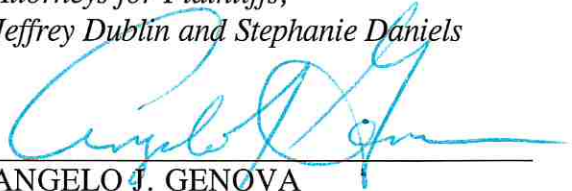
Accordingly, Plaintiff’s fundamental right to the enforcement of its contract with HCDO, manifest by its Bylaws, and Plaintiffs right to be protected against a breach of the fiduciary duty owed by Defendants under that contract, form the bases for this Court’s legitimate exercise of jurisdiction in this matter. This Court consequently should not be hamstrung by principles of judicial restraint, because the claims here fall squarely into one of the two exceptions under Deamer v. Jones,³ *Supra.* allowing for judicial intervention in intra-party matter when there exists an infringement of a clear legal right – here a breach of contract and fiduciary duty.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court grant the preliminary and permanent injunctive relief sought in Plaintiffs' Order to Show Cause.

Respectfully submitted,

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Attorneys for Plaintiffs,
Jeffrey Dublin and Stephanie Daniels



ANGELO J. GENOVA

Dated: June 8, 2018

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