



To: Billy Y. Urquia, City Clerk

From: Cristina M. Suárez, City Attorney *CMS*

RE: Candidate Oath and Affidavit for Use of Nickname on Ballot

Date: February 23, 2023

During your review of Mr. Ariel Fernandez's candidate qualification for the office of Coral Gables Commissioner, Group V, you alerted our office to concerns regarding certain documents you received on Monday, February 20, 2023, specifically the Affidavit for Use of a Nickname on Ballot (the "Affidavit for Use of Nickname") and the Candidate Oath stating the name the candidate wishes to use on the ballot. You found that the Candidate Oath, along with the Affidavit for Use of Nickname, is deficient on its face. Our office has reviewed the Candidate Oath and Affidavit for Use of Nickname in consultation with special counsel and agrees they are deficient.

The Candidate Oath indicates that Mr. Fernandez would like his name to appear as "Ariel Fernandez, "Gables Insider"" on the ballot. While the Candidate Oath indicates a preference for **Ariel Fernandez, "Gables Insider,"** a separate document submitted by Mr. Fernandez, the Statement of Candidate, indicates his name as **Ariel Fernandez "Gables Insider"** (without a comma between the legal name and the purported nickname). The Affidavit for Use of Nickname submitted by Mr. Fernandez, asserting that his nickname is Gables Insider, states that he is generally known by this nickname or has used it as part of his legal name. Along with the Affidavit for Use of Nickname, Mr. Fernandez attached four documents consisting of three emails that appear to be sent to info@gablesinsider.com and directed to "Gables Insider," as well as a print-out of comments to links available at <https://gablesinsider.com> and directed to "Gables Insider."

In reviewing these documents, our office looked to relevant Florida Department of State, Division of Elections notices, opinions, guidelines, and relevant case law. Case law and previous Florida Division of Elections opinions and guidance indicate that a nickname is to be printed on a ballot along with one's legal name when the nickname is one by which the person is generally known or one that the person has used as part of his or her legal name.¹

¹ See DE 18-10: Petitions; Candidate Qualifying- Married Candidate Using Only Husband's Last Name on Ballot when Candidate Petitions Contained the Candidate's Name as a Hyphenated Maiden Name and Husband's Last Name (June 21, 2018).

A February 26, 2010 Notice to All Candidates issued by the Division of Elections (the “2010 DE Notice”) sets forth general guidance for candidates wishing to use nicknames on ballots.² The 2010 DE Notice notes that prior Division of Elections opinions recognize “that a qualifying officer may require the candidate to make a satisfactory showing that the candidate is generally known by the nickname, or the nickname has been used as part of the candidate’s legal name before a nickname is printed on the ballot.”³

Furthermore, while the Florida Department of State Division of Elections opinions and case law have considered the permissible use of a nickname, a distinction is made for “descriptive information,” such as titles like “Dr.” or “M.D.,” that can only be used when two persons of the same or similar name seek the same office. “Descriptive information” has been interpreted by the Florida Division of Elections to include “descriptive terms, titles, degrees, certifications, or associations, or similar information next to the candidate’s name.”⁴ Indeed, courts have consistently rejected the use of descriptive information on ballots.⁵

Traditionally, and in past elections in the City, shortened version of legal names have been allowed to be used on the ballot, such as, for example, “Tim” would be allowed for Timothy. The City does not permit, and has not permitted, the use of “descriptive information,” such as titles like Dr. or M.D., that are not a part of a person’s name unless there are two persons of the same or similar name seeking the same office.

Consistent with Division of Elections guidance, the qualifying officer, in this case, the City Clerk, may require the candidate to make a satisfactory showing that the candidate is generally known by the nickname or that it has previously been used as part of the candidate’s legal name. At your request, our office has reviewed the documents submitted by Mr. Fernandez and finds that the information submitted, on its face, is not sufficient to indicate that Mr. Fernandez is generally known by that name or indicates past use as a legal name. Rather, the emails submitted along with

² The 2010 DE Notice emphasizes that candidates should contact their qualifying officer “well in advance of the qualifying period to find out what the qualifying officer’s requirements are to allow your nickname to be printed on the ballot.”

³ See also Division of Elections Advisory Opinion 86-06 (May 1, 1986) regarding use of nicknames on ballots. (“Election officials, however, may be justified in refusing to print on the ballot a candidate’s nickname when it is not shown that the nickname was ever used by the candidate as part of his legal name, and such officials may be equally justified in refusing to print on the ballot a candidate’s choice of a name which has not been adopted by him or her and under which the candidate has not transacted private and official business.”).

⁴ See DE 12-06 Ballots- Descriptive terms, titles, degrees, certifications, or associations with candidate’s name (May 24, 2012); see also 2010 Division of Elections Notice (“[E]ven if a candidate is commonly referred to as ‘Doctor,’ ‘Professor,’ or ‘Colonel,’ those titles would not be allowed as a nickname or as a part of a nickname unless such descriptive information is reasonably necessary to avoid confusion among candidates.”)

⁵ See e.g., *Al Lewis v. N.Y. State Bd. of Elections*, 254 A.D. 2d 568 (N.Y. Sup. Ct. 1998) (rejecting use of descriptive term on official ballot despite candidate’s claim he is generally known in the community as “Grandpa” due to his role in a 1960s television series); *Weiler v. Ritchie*, 788 N.W. 2d 879 (Minn. 2010) (rejecting use of “Doc” as nickname on official ballot).

the Affidavit for Use of Nickname appear to be sent to info@gablesinsider.com and provide no indication that Mr. Fernandez, the individual, is “generally known” as “Gables Insider.” The print-out of what appear to be a collection of comments to various links on <https://gablesinsider.com> also do not establish a satisfactory showing that Mr. Fernandez, the individual, is generally known as “Gables Insider.” Moreover, it is this office’s understanding that “Gables Insider” is the title of a digital publication that Mr. Fernandez co-founded and that the references submitted along with his affidavit are communications directed to that publication, not to him individually. Further, to the extent that “Gables Insider” is a descriptive term based on Mr. Fernandez’s association with the digital publication, use of the descriptive term is not permissible because it is not reasonably necessary to avoid confusion among candidates. Not only did the documentation submitted by Mr. Fernandez not make any such showing that the descriptive term is necessary to avoid confusion, but also, as of this date, there is no other candidate for the office of Coral Gables Commissioner, Group V with a same or similar name as Mr. Fernandez.

In conclusion, given the information provided by the candidate, as well as relevant opinions and case law, we agree with you that it does not appear that Mr. Fernandez has sufficiently shown his previous use of the alleged nickname “Gables Insider,” that at most “Gables Insider” would be a descriptive term and the limited circumstances for use outlined above are not present in this instance.

This opinion is issued pursuant to 2-252(e)(1) of the City Code.