

An Overview of the Supreme Court's Guidance on "Residences" and "Domiciles"

The below excerpt from Leathers v. Warmack, 341 Ark. 609 (2000)(citations omitted) is a summary of the Arkansas Supreme Court's guidance on the distinction between "residence" and "domicile" In short, "domicile" has a broader meaning and includes residence. A person can generally have one domicile but can have more than one residence. These are ultimately fact-based distinctions that would depend on the particular facts of a situation. The below excerpt from Leathers provides more detail:

Under our case law, the distinction between the terms "domicile" and "residence" is often subtle; however, this court has consistently held that the terms are not synonymous. A person's "residence" is the place of actual abode, not a home that a person expects to occupy at some future time. This court has defined "place of abode" as "something more than a place of temporary sojourning," implying a degree of permanence. "[A] given place may be a 'place of abode' of a party, though he may be actually absent therefrom for a long period of time." No particular length of time is necessary to establish residence. Rather, the key consideration is whether the place is an "established abode, fixed permanently for a time for business or other purpose, although there may be an intent existing all the while to return at some time or other to the true domicile[.]" Each case must be decided on its own facts.

On the other hand, this court has long recognized that "domicile has a broader meaning than residence, and includes residence." Thus, "domicile" requires an actual residence plus the intent to remain in a particular place. No word, it is said, is more nearly synonymous with domicile than home, and it is generally agreed that a man can have but one home or domicile, but that he may have more than one place of residence." Thus, like residence, no particular length of time is required to establish one's domicile, "but there must be residence attended by such circumstances surrounding its acquirement as to manifest a bona fide intention of making it

a fixed and permanent place of abode." The intent to abandon one's domicile and take up another must be ascertained from all the facts and circumstances of the particular case. The factfinder is not bound to accept claims of intent when the circumstances point to a contrary conclusion; they cannot prevail unless borne out by acts. "When acts are inconsistent with a person's declarations, the acts will control, and declarations must yield to the conclusions to be drawn from the facts and circumstances proved."

Arkansas Law Pertaining to the Alteration of a Signature on a Petition or Canvasser Affidavit after Notarization

Arkansas Code § 7-9-103(c)(2) states that a person acting as a canvasser, notary, sponsor, or agent of a sponsor commits a Class A misdemeanor if the person "prints a name, address, or birth date other than his or her own on a petition unless the signer requires assistance due to disability" and the signature is otherwise valid. Additionally, under Arkansas Code § 7-9-127(a)(1) and (2), a person commits a Class A misdemeanor if the person knowingly "changes a signature other than his or her own signature on a petition" or "erases or otherwise removes a signature other than his or her signature on a petition". These statutes do not seem to limit offenses to a particular point in time in the initiative process. Whether a violation of these statutes occurred would depend upon the particular facts of the situation.

Arkansas Code § 7-9-109 provides that each petition containing signatures shall be verified by a canvasser's affidavit. That affidavit requires the canvasser's current residence and must be notarized. A canvasser who knowingly makes a false statement on a petition verification form is guilty of a Class D felony. A canvasser who witnesses signatures on a petition part but knowingly allows another canvasser who did not witness all signatures on a petition part to execute a false verification affidavit with respect to that petition part commits a Class D felony. A sponsor, sponsor's agent, or representative commits a Class D felony if a sponsor, sponsor's agent, or representative knowingly pays a canvasser for petitioner signatures on a petition part not personally witnessed by that paid canvasser or knowingly submits to the Secretary of State a petition part where the verifying canvasser has not witnessed each signature on that petition part.

7-9-103. Signing of petition — Penalty for falsification — Notice of suspected forgery.

(a)(1)(A) A person who is a registered voter of this state may sign his or her own name and print his or her own name, address, birth date, and the date of signing on an initiative or referendum petition in his or her own proper handwriting, and not otherwise, to order an initiative or referendum vote upon a proposed amendment or a proposed or referred act.

(B) If a person signing a petition under subdivision (a)(1)(A) of this section requires assistance due to disability, another person:

- (i) May print the name, address, birth date, and the date of signing; and
- (ii) Shall sign and print his or her name in the margin of the petition.

(2)(A) A person who is a registered voter of a municipality or county of this state may sign his or her own name and print his or her own name, address, birth date, and the date of signing on an initiative or referendum petition in his or her own proper handwriting, and not otherwise, to order an initiative or referendum vote upon a proposed or referred ordinance.

(B) If a person signing a petition under subdivision (a)(2)(A) of this section requires assistance due to disability, another person:

- (i) May print the name, address, birth date, and the date of signing; and
- (ii) Shall sign and print his or her name in the margin of the petition.

(3) A person who is under eighteen (18) years of age shall not act as a canvasser.

(4) A person shall not act as a paid canvasser on a statewide initiative or referendum petition if the sponsor has not provided the information required under § 7-9-601 to the Secretary of State before the person solicits signatures on a petition.

(5) A person shall not act as a canvasser unless he or she is a citizen of the United States.

(6) A person shall not act as a canvasser unless he or she is a resident of this state.

(b) A person commits a Class A misdemeanor if the person knowingly:

- (1) Signs a name other than his or her own name to a petition;
- (2) Signs his or her name more than one (1) time to a petition;
- (3) Signs a petition when he or she is not legally entitled to sign the petition;
- (4) Prints a name, address, or birth date other than his or her own on a petition unless the signer

requires assistance due to disability and the person complies with this section; or

(5) Prints the date of signing for another person unless the signer requires assistance due to disability and the person complies with this section.

(c) A person commits a Class A misdemeanor if the person, acting as a canvasser, notary, sponsor, or agent of a sponsor:

- (1) Signs a name other than his or her own to a petition;
- (2) Prints a name, address, or birth date other than his or her own on a petition unless the signer

requires assistance due to disability and the person complies with this section;

(3) Solicits or obtains a signature to a petition knowing that the person signing is not qualified to sign the petition;

(4) Knowingly pays a person any form of compensation in exchange for signing a petition as a petitioner;

(5) Accepts or pays money or anything of value for obtaining signatures on a petition when the person acting as a canvasser, sponsor, or agent of a sponsor knows that the person acting as canvasser's name or address is not included on the sponsor's list filed with the Secretary of State under § 7-9-601;

(6) Knowingly misrepresents the purpose and effect of the petition or the measure affected for the purpose of causing a person to sign a petition;

(7) As a canvasser, knowingly makes a false statement on a petition verification form;

(8) As a notary, fails to witness a canvasser's affidavit by witnessing the signing of the instrument in person and either personally knowing the signer or being presented with proof of identity of the signer; or

(9) As a sponsor, files a petition part with the official charged with verifying the signatures knowing that the petition part contains one (1) or more false or fraudulent signatures unless each false or fraudulent signature is clearly stricken by the sponsor before filing.

(d) When the official charged with verifying the signatures has reasonable grounds to believe that one (1) or more signatures on a petition is forged, the official shall report the suspected forgery and basis for suspecting forgery to:

(1) The Division of Arkansas State Police, in the case of a statewide petition; or

(2) The prosecuting attorney of the county, in the case of a local petition.

7-9-127. Interference with initiative petitions and proposed measures.

(a) Upon conviction, a person commits a Class A misdemeanor if the person knowingly:

(1) Changes a signature other than his or her own signature on a petition;

(2) Erases or otherwise removes a signature other than his or her signature on a petition;

(3) Intentionally destroys or discards a signature other than his or her own signature on a petition;

(4) Pays a person any form of compensation in exchange for not signing a petition as a petitioner;

(5) Accepts or pays money or anything of value for the purpose of not obtaining signatures on a petition when the person is included on the sponsor's list filed with the Secretary of State under § 7-9-601;

(6) Misrepresents the purpose and effect of the petition or the measure affected for the purpose of causing a person to not sign a petition when acting as a canvasser; or

(7) Pays a person any form of compensation in exchange for destroying a signature on a petition.

(b) A person may be charged with a Class A misdemeanor for each violation under subsection (a) of this section.

(c)(1) A ballot question committee organized to support a ballot initiative may destroy or discard signatures or petitions collected as a result of its efforts if:

- (A) The reason for the destruction or discard is documented; or
- (B) The petition did not obtain enough signatures to qualify to appear on the ballot.

(2) Actions taken by a ballot question committee under subdivision (c)(1) of this section shall not be considered a violation of this section.

7-9-109. Form of verification — Penalty for false statement.

(a) Each petition containing signatures shall be verified in substantially the following form by the canvasser's affidavit thereon as a part thereof: I, **(print name of canvasser)**, being duly sworn, state that each of the foregoing persons signed his or her own name to this sheet of the petition in my presence. To the best of my knowledge and belief, each signature is genuine and each signer is a registered voter of the State of Arkansas, _____ County, or City or Incorporated Town of _____. At all times during the circulation of this signature sheet, an exact copy of the popular name, ballot title, and text was attached to the signature sheet. My current residence address is correctly stated below.

Signature _____

Current residence _____

Indicate one: _____ Paid Canvasser _____ Volunteer/Unpaid Canvasser

Subscribed and sworn to before me this _____ day of _____, 20_____

Signature _____

Clerk, Notary, Judge, or J.P.

Seal _____”.

(b) Forms herein given are not mandatory, and if substantially followed in any petition it shall be sufficient, disregarding clerical and merely technical errors.

(c)(1) Petitions shall not be disqualified due to clerical or technical errors made by a clerk, notary, judge, or justice of the peace when verifying the canvasser's signature.

(2) Petitions shall not be disqualified for failure of a clerk, notary, judge, or justice of the peace to sign exactly as his or her name appears on his or her seal if the signature of a clerk, notary, judge, or justice of the peace is sufficient to verify his or her name.

(d) A canvasser who knowingly makes a false statement on a petition verification form required by this section shall be deemed guilty of a Class D felony.

(e) A canvasser who witnesses signatures on a petition part but knowingly allows another canvasser who did not witness all signatures on a petition part to execute a false verification affidavit with respect to that petition part commits a Class D felony.

(f) A sponsor, sponsor's agent, or representative commits a Class D felony if a sponsor, sponsor's agent, or representative:

(1) Knowingly pays a canvasser for petitioner signatures on a petition part not personally witnessed by that paid canvasser; or

(2) Knowingly submits to the Secretary of State a petition part where the verifying canvasser has not witnessed each signature on that petition part.