

**LOUISIANA STATE BOARD
OF ETHICS**

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NO. 2007-CA-1219

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COURT OF APPEAL

VERSUS

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FOURTH CIRCUIT

**ROBERT MURRAY AND THE
HON. ARTHUR A. MORRELL,
COMMISSIONER OF
ELECTIONS FOR THE
PARISH OF ORLEANS**

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STATE OF LOUISIANA

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BELSOME, J., DISSENTS WITH REASONS.

I respectfully dissent from the majority's opinion. The trial judge correctly noted the limited time available to contest the election qualifications of a candidate. In doing so, she acknowledged the latest date and time a hearing should commence. The trial judge further noted that Mr. Murray contacted the court that morning before the hearing, sometime prior to 9:00 a.m.

Unfortunately, the record is vague with respect to when the Criminal Clerk of Court, Arthur Morrell, entered the hearing. While Mr. Morrell's appearance is not noticed on page one of the transcript, he participates at page seven of the ten page transcript. If service of process is correlative of notice then these facts indicate notice. The facts presented in this case are distinguishable from those of *Darnell v. Alcorn*, 1999-2405 (La.App. 4 Cir. 1999), 757 So.2d 716, which the majority relied upon. These facts support sufficient notice. Mr. Murray was fully aware of the proceedings and Mr. Morrell was present at the hearing. Given the limited parameters that exist when contesting candidacy, we should not encourage parties to avoid service that would defeat an election contest. Therefore, I do not agree with the majority's opinion.

Additionally, I reiterate my concern as set forth in *Louisiana State Board of Ethics v. Garrett*, 2006-0263 (La.App. 4 Cir. 3/21/06), 929 So.2d 176. The question as to whether La. R.S. 18:492 (A)(5) can pass constitutional muster still

remains. Again, as in *Garrett*, a constitutional challenge to the statute has not been raised and therefore cannot be explored by this Court. Thus, based on the record in this case I dissent.