

SUBSTITUTION DUE TO WITHDRAWAL

by Atty. Edward G. Gialogo

Through substitution, a qualified person may still run in the forthcoming May 13, 2019 elections even if he did not file his COC during the period of filing (October 11-17, 2018) prescribed by the Commission on Elections (COMELEC). Also, the current COMELEC rules appear to allow a withdrawing candidate to substitute another withdrawing candidate.

Under Section 77 of the Omnibus Election Code, substitution of candidates is allowed in case of withdrawal, death, or disqualification. As per COMELEC Resolution No. 10430, substitution can be done up to mid-day of Election Day except when it is due to withdrawal for which the COMELEC has fixed an earlier deadline of November 29, 2018.

The COMELEC's power to set an earlier deadline for substitution due to withdrawal was upheld by the Supreme Court in the case of *Federico vs. COMELEC*, G.R. No. 199612, January 22, 2013, wherein the Court said that ***"unlike death or disqualification, withdrawal is voluntary. Generally, a candidate has sufficient time to ponder on his candidacy and to withdraw while the printing has not yet started. If a candidate withdraws after the printing, the name on the substitute candidate can no longer be accommodated in the ballot and a vote for the substitute will just be wasted."***

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In general, the requisites for a valid substitution due to withdrawal are:

- There must be an official candidate of a registered or accredited political party;
- The official candidate must have withdrawn his COC not later than November 29, 2018;
- The substitute candidate must belong to, and certified by, the same political party of the official candidate who has withdrawn his COC; and
- The substitute candidate must have filed his COC and CONA for the office affected not later than November 29, 2018.

1. OFFICIAL CANDIDATE OF A REGISTERED OR ACCREDITED POLITICAL PARTY

Basically, this means that a withdrawing candidate should not be an independent candidate. Otherwise, substitution is not allowed. Normally, a candidate is not considered independent if he has filed his COC together with a valid Certificate of Nomination and Acceptance (CONA) from a registered political party.

It should be noted, however, that a candidate with CONA may still be deemed as an independent candidate if, among others, the one who signed the CONA was not authorized by the political party or the political party nominated more than the number of candidates required to be voted for in a particular elective position (*e.g. one political party nominated two or more candidates for Mayor of the same municipality*). The other instances when a candidate shall be deemed as an independent candidate are enumerated in Section 25 of COMELEC Resolution 10420.

2. SUCH OFFICIAL CANDIDATE MUST HAVE WITHDRAWN HIS COC NOT LATER THAN NOVEMBER 29, 2018

Withdrawal is done by **PERSONALLY** filing a sworn Statement of Withdrawal (five original copies) with the COMELEC office where the COC was filed. The COMELEC will not accept a Statement of Withdrawal if it is filed by a person other than the withdrawing candidate himself or if filed by mail, electronic mail, or facsimile. A sample Statement of Withdrawal (Annex "H" of Resolution 10420) may be downloaded from the COMELEC website.

3. THE SUBSTITUTE CANDIDATE MUST BELONG TO, AND CERTIFIED BY, THE SAME POLITICAL PARTY OF THE OFFICIAL CANDIDATE WHO HAS WITHDRAWN HIS COC

In the case of *Sinaca v. Mula*, G.R. No. 135001, September 27, 1999, the Supreme Court ruled that there is no law which requires the substitute candidate to be a member of the political party of the substituted candidate for a certain period of time.

"Even the fact that EMMANUEL only became a member of the LAKAS party after the disqualification of TEODORO, will not affect the validity of the substitution. There is nothing in the Constitution or the statute which requires as a condition precedent that a substitute candidate must have been a member of the party concerned for a certain period of time before he can be nominated as such. Section 77 of the Omnibus Election Code only mandates that a substitute candidate should be a person belonging to and certified by the same political party as the candidate to be replaced."

4. THE SUBSTITUTE CANDIDATE MUST HAVE FILED HIS COC AND CONA FOR THE OFFICE AFFECTED NOT LATER THAN NOVEMBER 29, 2018

The substitute candidate should accomplish the prescribed COC form and file it (together with CONA) with the appropriate COMELEC office. In case the substitute candidate cannot personally file his COC and CONA, the filer must have a sworn Authority to File Certificate of Candidacy (Annex "G" of COMELEC Resolution 10420).

WITHDRAWING CANDIDATE AS A SUBSTITUTE

In 2013 elections, there was a rule that *"a person who has withdrawn his Certificate of Candidacy for a position shall not be eligible, whether as a substitute candidate or not,*

for any other position.” (Resolution 9518, September 11, 2012) That rule cannot be found in the COMELEC guidelines for 2016 and 2019 elections. Hence, it appears that a withdrawing candidate may substitute another withdrawing candidate as long as the requisites discussed above are complied with.

In this regard, it can be remembered that in 2015 (in preparation for 2016 elections), then Davao City Mayor Rodrigo Duterte initially filed his COC as Mayor of Davao City. Later, he withdrew his candidacy for Mayor and filed another COC as a substitute candidate for the withdrawing presidential aspirant nominated by PDP-Laban.

In boxing, a dominant fighter can be defeated through a single lucky punch from an otherwise losing opponent. Same with elections, candidates should never be complacent at any stage. Especially at this point when, because of substitution, there is no certainty yet as to who the opposing candidate is.

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