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October 17, 2023

W. Marvin Dulaney, PhD, President
Association for the Study of
African American Life and History
301 Rhode Island Avenue, NW
Suite 2044
Washington, D.C. 20001

Re: Legal Opinion Concerning the Authority of the
Executive Council of ASALH to Remove Candidates
Placed on the ASALH Election Ballot By the ASALH
Nominating Committee

Dear Dr. Dulaney:

This firm has been engaged as special counsel to the Association for the Study of African American Life and History (ASALH), a not-for-profit membership corporation organized under the laws of the District of Columbia. ASALH has requested an opinion regarding the authority of the ASALH Executive Council under the provisions of the ASALH Constitution and Bylaws to remove from the ASALH Election Ballot candidates who have been placed on the ASALH Election Ballot by the ASALH Nominating Committee.

For the purpose of rendering this opinion, I have made such legal and factual inquiries, such investigations of law, and examined documents and certificates and such other items as I deemed relevant or necessary for the purposes hereof.

Short Answer to Question:

Neither the ASALH Constitution, nor the ASALH Bylaws provide the ASALH Executive Council with the authority to remove candidates placed on the ASALH Election Ballot by the ASALH Nominating Committee.

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Relevant Authorities:

The ASALH Constitution at Article III, Section 2f)4 sets out the responsibilities of the ASALH Executive Council:

The Executive Council shall be responsible for the general activities of the Association, and shall act for the Association when it is not in session. The Council shall appoint such officers as it deems necessary to carry out the objectives of the Association. The Council shall determine job descriptions and salaries for appointed officers. The Council may appoint such committees as it deems necessary. The Council shall submit a written report of its activities at each annual meeting of the Association.

The ASALH Constitution also provides at Article V Elections that:

The Executive Council shall determine the manner and the time of elections. Elections shall be managed according to the following process:

February - By the first Friday preceding the February meeting of the Executive Council, the Chair of the Nominating Committee shall announce to the membership the intent to receive nominations for open offices within the Association.

April – The Chair of the Nominating Committee shall receive nominations through the second Friday of each April. Nominations must address candidates standing within the Association, service to the Association as well as other qualification that are consistent with the objectives of the Association.

May – The Chair of the Nominating Committee shall send a slate of nominees to the Executive Council in May prior to its June meeting.

July – The Executive Director of the Association shall distribute an appropriate ballot to the membership by the first week in July. All ballots shall be marked and returned to the Association's headquarters before the first week of August. Ballots shall be tallied, verified and results reported to the Chair of the Nominating Committee within working five (5) days of the return deadline.

August – By the last Friday in August the Chair of the Nominating Committee shall have announced election results to the total membership according to the following sequence: First, to the Nominees; second, to the members of the Executive Council; and third, to the General Membership.

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The functions of the ASALH Executive Council are defined at Section 2f(3) of the ASALH Bylaws to be:

(3) Functions.

The Executive Council shall:

- (a) Implement the policies established by the Business Session of the Association;
- (b) Appoint the following officers: Executive Director, Editor of the *Journal of African-American History*, Editor of the *Black History Bulletin*, and members of the Editorial Board;
- (c) Determine the time and place of Annual Meetings;
- (d) Charter branches of the Association
- (e) Receive all reports of the Executive Director, the Editor of the *Journal of African-American History*, and the Editor of the *Black History Bulletin*, the Secretary, the Treasurer, and the Standing Committees and transmit reports, such as may be appropriate, to the Business Session of the Association;
- (f) Set salaries of the Executive Director and other appointive personnel;
- (g) Resolve conflicts that may arise between the President and the Executive Director regarding their respective spheres of authority;
- (h) Remove from office any appointed officer whom it deems to be derelict or ineffective in discharging assigned duties or who is guilty of malfeasance in office;
- (i) Remove as chair of an appointed committee anyone who is derelict in carrying out the duties of the office.
- (j) Approve an annual operating budget that shall be designed to achieve the objectives of the Association.

The ASALH Bylaws at Section 6 declare the ASALH Nominating Committee to be a standing committee. Section 6Ab of the ASALH Bylaws provides as follows:

b. Nominating Committee

- i. The Nominating Committee shall consist of five (5) members. It shall nominate by ballot two candidates for each of the following offices: President, Vice President for Membership, Vice President for Programs, Secretary, and Treasurer. It shall present preferably two or more names for each position on the Executive Council. In making the nominations for membership on the Executive

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Council, the Nominating Committee, as far as possible, shall accord representation to its membership in the branches, the public and private elementary and secondary schools, colleges and universities, and professionals within the corporate community.

The Nominating Committee also shall give strong consideration to service to this Association. All nominees for offices in the Association must be members in good standing.

The Nominating Committee shall strictly adhere to the election process and schedule as set forth in the Constitution of the Association. One hundred members of the Association may present a petition for a candidate for any office open to election, provided that such petition, accompanied by a nominee's written acceptance, is presented to the Nominating Committee before it prepares the ballot. Candidates so nominated shall be identified on the ballot as a "candidate by petition."

Analysis

The responsibilities of the ASALH Executive Council are set out at Article III, Section 2f)4 of the ASALH Constitution, and the functions of the ASALH Executive Council are set out at paragraph 2f(3) of the ASALH Bylaws. Article V of the ASALH Constitution sets out the ASALH elections process and the role of the ASALH Executive Council in ASALH elections process.

Nowhere in the language of the ASALH Constitution or the ASALH Bylaws is there any mention of authority being granted to the ASALH Executive Council to make any change to the nominations made by the ASALH Nominating Committee.

Article III of the ASALH Constitution defines the qualifications for election to the ASALH Executive Council "... a member of the Association in good standing ...". At Section 2f)1. That is the only qualification for election for election to the ASALH Executive Council. In removing the names of two candidates for election to the Executive Council that were submitted by the Nominating Committee, the ASALH Executive Council does not assert the candidates were not members in good standing of ASALH. .

Paragraph 6Ab of the ASALH Bylaws gives the sole authority within ASALH for nominating candidates for election to the Executive Council to the ASALH Nominating Committee. That section of the Bylaws does not provide for approval of the nominations by the Executive Council. Nowhere in the ASALH Constitution or Bylaws is there any language that directs or suggests that the ASALH Executive Council has any veto authority over the nominations made by the ASALH Nominating Committee.

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Paragraph 6Ab of the ASALH Bylaws directs the Nominating Committee to "... to strictly adhere to the election process ..." as set forth in the ASALH Constitution. There is nothing in the ASALH election process set out in the ASALH Constitution (see Article V of the ASALH Constitution) that authorizes the ASALH Executive Council to veto any nomination made by the ASALH Nominating Committee. The ASALH Nominating Committee would be in breach of its fiduciary duty to adhere strictly to the election process set out in the ASALH Constitution if the committee were to acquiesce in the ASALH Executive Council's unilateral veto of any nomination made by the ASALH Nominating Committee. Similarly, the President of ASALH would be in breach of his fiduciary duty to ASALH if he were to acquiesce in the unauthorized intrusion into the ASALH election process by the ASALH Executive Council.

It is well established by the District of Columbia Court of Appeals that the bylaws of an organization are contractual in nature and that the objective law of contracts provides that the written language embodying the terms of an agreement governs the rights and liabilities of the parties. See *Wash. Auto. Co. v. 1828 L St. Assocs.*, 906 A.2d 869, 876 (D.C. 2006). Neither the ASALH Constitution, nor the ASALH Bylaws include any language that would give the ASALH Executive Council the authority to delete or revise the list of candidates for election to the ASALH Executive Council that is required to be prepared and submitted by the ASALH Nominating Committee.

ASALH may well want to amend its bylaws to give such authority to the ASALH Executive Council, but that authority does not currently exist.

Conclusion

Based on the foregoing, it is my opinion that the ASALH Executive Council had no authority under the ASALH Constitution or the ASALH Bylaws to remove the names of Daryl Scott and Moses Massenburg from the list of candidates for election to the ASALH Executive Council that was submitted by the ASALH Nominating Committee. Further, it is my opinion that President Dulaney acted appropriately in directing the ASALH Nominating Committee to reinstate the names of Daryl Scott and Moses Massenburg to the list of candidates for election to the ASALH Executive Council. Finally, it is my opinion that the election of Daryl Scott to the ASALH Executive Council is valid in that he met the qualifications for election to the ASALH Executive Council, i.e., he was "a member of the Association in good standing".

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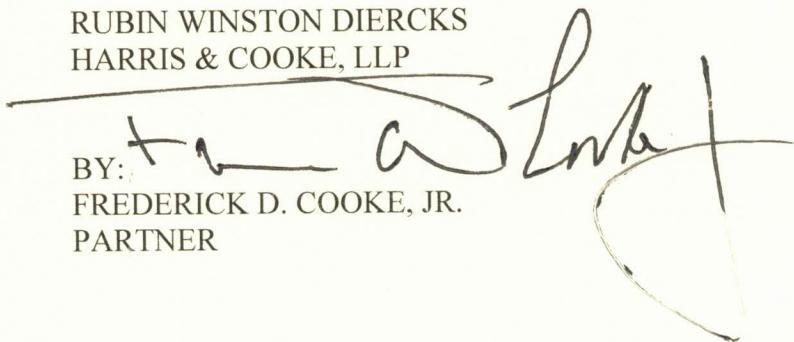
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Sincerely,

RUBIN WINSTON DIERCKS
HARRIS & COOKE, LLP

BY: 
FREDERICK D. COOKE, JR.
PARTNER