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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 Effectiveness of the  
September 13, 2023 Letter of Resignation of  
W. Marvin Dulaney as President of ASALH

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 as to whether the September 13, 2023 letter of resignation as President of ASALH that was submitted by W. Marvin Dulaney to the Secretary of ASALH and rescinded by letter dated September 14, 2023 was effective so as to terminate his status as President of ASALH as of September 13, 2023.

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.

In addition to the foregoing, I have examined and relied upon the following documents:

- a. The Constitution and Bylaws of ASALH (Revised September 2020)
- b. District of Columbia Department of Licenses and Consumer Protection records re ASALH
- c. D.C. Code section 29-401, et seq.
- d. Robert's Rules of Order Newly Revised (12<sup>th</sup> Edition)
- e. September 13, 2023 letter of resignation as President of ASALH
- f. September 14, 2023 letter rescinding letter of resignation of ASALH
- g. Minutes of the September 2023 Annual ASALH Business meeting

# RUBIN, WINSTON, DIERCKS, HARRIS & COOKE, LLP

October 17, 2023

Page 2

## Short Answer to Question:

The September 13, 2023 letter of resignation as President of ASALH submitted by W. Marvin Dulaney to the Secretary of ASALH, and rescinded on September 14, 2023 was NOT effective to terminate his status as President of ASALH.

## Relevant Authorities:

ASALH is a not-for-profit membership corporation that is validly existing and in good standing under the laws of the District of Columbia. D.C. Code section 29-401, et seq. (also known as the District of Columbia Non-Profit Corporation Act of 2010) at section 29-401.02(26) defines a membership corporation to be:

(26) “Membership corporation” means a nonprofit corporation whose articles of incorporation or bylaws provide that it must have members.

ASALH meets the statutory definition of a membership corporation pursuant to its articles of incorporation, its Constitution (see Article II), and its Bylaws (Sections 4 and 5).

The ASALH Constitution provides at Article III, Section 2a that “The President shall be elected by the members of the Association ...”.

The ASALH Bylaws provide at Section 1 that “All Annual or Ad Hoc Meetings of the Association and all meetings of the Executive Council shall be conducted according to *Robert’s Rules of Order, Newly Revised*.” Paragraph 1 of the ASALH Bylaws also provides that “The Parliamentarian **shall** advise and assist the President in the conduct of the meetings of the Executive Council and the Annual or Ad Hoc meetings of the Association and shall perform such additional duties as are appropriate to the office.” *Emphasis supplied*.

D.C. Code section 29-406.07 provides that:

- (a) A director may resign at any time by delivering a signed notice in the form of a record to the chair of the board of directors or to an executive officer or the secretary of the corporation.
- (b) A resignation shall be effective when the notice is delivered unless the notice specifies a later effective time.

## RUBIN, WINSTON, DIERCKS, HARRIS & COOKE, LLP

October 17, 2023

Page 3

D.C. Code section 29-406.07 provides that:

**(a)** A director may resign at any time by delivering a signed notice in the form of a record to the chair of the board of directors or to an executive officer or the secretary of the corporation.

**(b)** A resignation shall be effective when the notice is delivered unless the notice specifies a later effective time.

D.C Code section 29-401.50 controls the activities of member governed corporations and provides at D.C. Code section 29-401.50(a) that:

**(a)** For the purposes of this section, the term “member-governed corporation” means a membership corporation incorporated under or subject to this chapter which:

**(1)** Provides in its articles of incorporation or bylaws that it is a member-governed corporation; or:

**(2)** Meets the following conditions:

**(A)** It holds regular meetings not less frequently than annually;

**(B)** Its activities and affairs are governed by its members; and

**(C)** The board of directors, if any, has only those powers delegated by the articles of incorporation, bylaws, or members.

D.C Code section 29-401.50(d) provides at subsections (6) and (12) as follows:

**(d)** The articles of incorporation or bylaws of a member-governed corporation may contain any of the following provisions:

**(6)** Providing that the resignation of a director under § 29-406.07 is not effective until approved by the members;

**(12)** Providing that the resignation of an officer under § 29-406.43 is not effective until approved by the members.

## RUBIN, WINSTON, DIERCKS, HARRIS & COOKE, LLP

October 17, 2023

Page 4

D.C. Code section 29-401.50(e) provides as follows:

(e) If a member-governed corporation adopts a specified generally accepted parliamentary authority in its bylaws, rules in the specified parliamentary authority and in special rules of order adopted as provided in the parliamentary authority shall be treated as provisions of the bylaws for the purposes of this chapter, except to the extent such rules are inconsistent with explicit provisions of the articles of incorporation or the bylaws. The rules of any such adopted parliamentary authority shall be presumed to be fair to the members pursuant to § 29-405.08(c).

Robert's Rules of Order Newly Revised, 12<sup>th</sup> ed. ("RONR") provides at section 32.5 that:

If a member who has accepted an office, committee assignment or other duty finds that he is unable to perform it, he should submit his resignation. A resignation is submitted in writing, addressed to the secretary or appointing power; alternatively, it may be submitted during a meeting either orally or in writing . . . The chair, on reading or announcing a resignation, can assume a motion "that the resignation be accepted.

RONR provides at section 32.6 that:

... the duties of a position must not be abandoned until a resignation has been accepted and becomes effective, or at least until there has been a reasonable opportunity for it to be accepted.

RONR provides at FAQ #18 that:

A resignation is a request by the member that he be excused from his duties, and he may withdraw this request at any time before the chair, at a meeting, states the question on its acceptance. *RONR, 12<sup>th</sup> ed., 32:1-8, and 33:12-18.*

Analysis:

While it might initially appear that either D.C. Code section 29-406.07 or 29-406.43 would answer the question of if or when the letter of resignation of a director or officer of a non-profit corporation became effective, neither does in this case. That is because neither D.C. Code section 29-406.07, nor section 29-406.43 applies to the letter of resignation that was submitted by Mr. Dulaney. Neither applies because ASALH is a membership governed corporation (see D.C. Code section 29-401.50(a)), and the language of sections 29-406.07 and

## RUBIN, WINSTON, DIERCKS, HARRIS & COOKE, LLP

October 17, 2023

Page 5

29-406.43 of the D.C. Code only apply to non-profit corporations that are not membership governed corporations.

As noted above, ASALH is a not-for-profit membership corporation that is validly existing and in good standing under the laws of the District of Columbia. ASALH is subject to the jurisdiction of the D.C. Non-Profit Corporation Act, i.e., D.C. Code section 29-401, et seq. ASALH is a membership corporation as defined by D.C. Code sections 401.02(26) and 401.50(a), and by its to its articles of incorporation, its Constitution (see Article II), and its Bylaws (Sections 4 and 5).

ASALH is obligated to act in conformity with the D.C. Non-Profit Corporation Act, its Constitution and Bylaws, and RONR.

On September 12, 2023, W. Marvin Dulaney was the duly elected President of ASALH. On September 13, 2023, Mr. Dulaney submitted his letter of resignation as President of ASALH to the Secretary of ASALH. On September 14, 2023, Mr. Dulaney sent a letter to the Secretary of ASALH rescinding his letter of resignation of September 13, 2023.

D.C. Code sections 29-401.50(d)(6) and 29-401.50(d)(12) provide that the articles of incorporation or bylaws of the membership corporation may include a provision that the resignation of a director or officer is not effective until approved by its members. The Bylaws of ASALH include such a provision at Section 1 of the ASALH Bylaws.

D.C. Code section 29-401.50(e) provides that if a membership corporation such as ASALH adopts parliamentary rules such as RONR, those rules shall be treated as provisions of the bylaws of ASALH for the purposes of the D.C. Non-Profit Corporation Act, except to the extent that the RONR rules are inconsistent with explicit provisions of the articles of incorporation or the bylaws of ASALH. RONR are additions to the ASALH bylaws, and RONR are not inconsistent with any of the provisions of the ASALH articles of incorporation or bylaws.

Read together, sections 29-401.02(26), 29-401.50(a), 29-401.50(d)(6), 29-401.50(d)(12), and 29-401.50(e) provide the legal authority for ASALH to require in its bylaws, as supplemented by RONR, that the resignation of a director or an officer be effective upon approval by the members of ASALH.

Mr. Dulaney's resignation as President of ASALH was submitted to the Secretary of ASALH as required by RONR. *RONR* 32:5. Mr. Dulaney's resignation as President of ASALH was not presented to the membership of ASALH for a vote to accept his resignation as President of ASALH as required by RONR and as allowed by the D.C. Code. See *RONR*

## RUBIN, WINSTON, DIERCKS, HARRIS & COOKE, LLP

October 17, 2023

Page 6

32:6 and *D.C. Code section 29-401(d)(12)*. Mr. Dulaney's letter of resignation was not presented to the Executive Council for approval. Mr. Dulaney's letter of resignation was not presented to the ASALH membership for approval. The membership of ASALH at no time voted to accept the resignation of Mr. Dulaney as required by RONR and allowed by the D.C. Code. See *RONR 32.5* and *D.C. Code section 29-401.50(e)*. RONR provides that until his letter of resignation was formally presented to the ASALH membership, and the letter of resignation is formally accepted by vote at a meeting of the membership, Mr. Dulaney remains President of ASALH with all the duties and authority that comes with the office. See *RONR 32:6*.

Additionally, a letter of resignation can be submitted between meetings as was the case with Mr. Dulaney's letter of resignation. *RONR FAQ #18*. As noted above, a letter of resignation is a request to be excused from the duties of an office, and it may be withdrawn at any time before a motion for acceptance has been presented to the membership. *RONR 32:6*. Mr. Dulaney submitted a letter rescinding his letter of resignation as President of ASALH the very next day and before his letter of resignation was presented to the ASALH membership for a vote to accept the resignation as required by RONR. Because Mr. Dulaney's letter of resignation was rescinded before it was presented to either the ASALH Executive Council or to the ASALH membership for a vote to accept it, Mr. Dulaney remains President of ASALH with all the duties and authority that comes with the office.

### Conclusion

Based on the foregoing, it is my opinion that the September 13, 2023 letter of resignation of W. Marvin Dulaney as President of ASALH was not effective to terminate his duties as President because it was not presented to either the ASALH Executive Council for approval, or to the ASALH membership for approval. Additionally, because the September 13, 2023 letter of resignation of W. Marvin Dulaney as President of ASALH was rescinded by Mr. Dulaney before it was presented to either the ASALH Executive Council for approval, or to the ASALH membership for approval, his letter of resignation is no longer a matter that could be acted upon by either the ASALH Executive Council, or the ASALH membership.

**RUBIN, WINSTON, DIERCKS, HARRIS & COOKE, LLP**

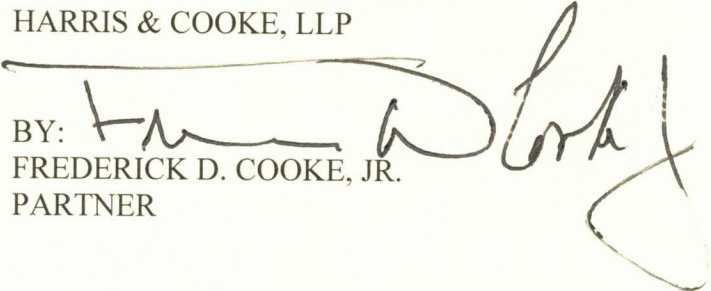
October 17, 2023

Page 7

This opinion letter has been provided solely for the benefit of the addressee, at its request, and no other person or entity shall be entitled to rely hereon without the express written consent of Rubin, Winston, Diercks, Harris & Cooke, LLP. This opinion letter shall not be quoted in whole or in part, used, published or otherwise referred to or relied upon in any manner, including, without limitation, any other document.

Sincerely,

RUBIN WINSTON DIERCKS  
HARRIS & COOKE, LLP

BY:   
FREDERICK D. COOKE, JR.  
PARTNER