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REVISED GUIDANCE: CHAPTER 744 OF THE LAWS OF 2022 CHANGES TO SPECIFICATIONS OF OBJECTIONS

Chapter 744 of the Law of 2022 changed the procedures for ballot access objections, implementing new mandatory requirements. This law has an effective date of March 23, 2023. The new law establishes standardized, uniform, mandatory procedures and notices surrounding the objection process.

I. Presumption of Validity

“Any petition or certificate filed with the office or board charged with the duty of receiving it shall be presumptively valid if it is in proper form and appears to bear the requisite number of signatures, authenticated in a manner prescribed by this chapter.”¹

Facial validity ideally is determined at or near the time the document is filed. If the board “splits,” the document retains its presumption of validity. This determination is commonly called the Prima Facie Review.

The State Board of Elections has promulgated several review forms to document this process. See Appendix A.

II. Standing to Object

Who can object to what? The election law distinguishes between public offices and party positions.

Designating petitions, opportunity to ballot petitions, independent nominating petitions, and certificates for public office: Any registered voter in the relevant political subdivision.

- No party enrollment requirement.
- Residence is not enough. The objector must be registered to vote.

Designating petitions and opportunity to ballot petitions for party positions: Any enrolled voter residing in the relevant political subdivision.

- Must be enrolled in the party.
- Must be registered to vote and reside in the political subdivision.

¹ NYSElection Law 6-154(1)

Examples of party positions:

- State Committee Member
- Judicial Delegate or Alternate Delegate
- County Committee Members

III. The General Objection

General objections can take many forms. The objection could be written out or typed and must contain the following elements:

- Identity of objector.
- Residency of objector.
- Petition and candidates objected to.

The general objection does not need to be notarized and the objector is not required to “serve” the general objection on the candidate or candidates objected to. A sample general objection letter is attached as Appendix B.

The general objection triggers the right of objector to file specifications of objections within six days following the general objection. The general objection does not need to specify any ground; specifications of objections list the grounds for disqualifying the petition and/or individual signatures.

IV Timing of Objections

General Objection

The general objection is due “within three days after the filing of the petition or certificate to which objection is made...”²

If objecting to a certificate that was required but was not filed, such objection is due within three days after the last day it could have been filed.

Specific Objection

Specifications are due six days after the general objection is filed.

Exceptions

- Objections related to a special election for state legislature follow a different schedule. General objections are due one day after the document objected to is filed and specifications are due within three days thereafter.³

² NYSElection Law 6-154(2)

³ Chapter 164 of the Laws of 2022

- When a candidate is nominated by an independent nominating petition and thereafter nominated by a party, the independent nominating petition can be objected to “within three days after the filing of such [party] certificate...”⁴
- Village elections (other than those run by County Boards of Election on the same day as the November General Election) follow a different schedule. When the Village Clerk administers the election⁵ or when the County Board administers the village election in March or June⁶, general objections are due one day after the document is received by mail or one day after the last day to file the document, whichever is later. Specifications are due within two days thereafter.

Computation

The day the document is filed or received is day zero. For example:

Filed on Tuesday = Day Zero
 Wednesday = Day One
 Thursday = Day Two
 Friday = Day Three (Deadline)

Petitions Filed by Mail (Outside of New York City)

The general objection is due three days after the receives (time stamps) the petition or certificate. For example: A petition is timely mailed on the last day to file (Thursday), but arrives at the board within “two business days” (on the following Monday). The General Objection is due three days after the receipt by the board (the next Thursday). The objector cannot be expected to know the petition was originally mailed until he or she receives notice via the board, thus the time is extended.

Saturday, Sunday, Holidays

If the last day to object falls on a weekend day or official holiday, the deadline to object moves to the next business day.

Example A: Petition if filed on Wednesday. The third day is Saturday. The objection deadline shifts to Monday.

Example B: Petition if filed on Thursday. The third day is Sunday. The objection deadline shifts to Monday.

Hours for In Person Filing of Objections

Outside of New York City, objections may be filed in person between 9AM and 5PM on an authorized day to receive filing.

⁴ NYSElection Law 6-154(2)

⁵ NYSElection Law 15-108(10)

⁶ NYSElection Law 6-212

Exceptions:

- The Westchester County Board of Elections is open and receives filings on the last day between 9AM and Midnight.
- If a filer “is at the counter” to file before 5PM, but cannot be process until after 5PM, the filing is deemed timely. Time stamp the filing and make a bipartisan annotation (initials) on the filing indicating the filer was on line before 5PM.

Specifications of Objections

Specifications are due six days after the general objections. Unlike the due date for the general objection, the due date for specifications is measured from the filing date with no extension for mailing. Example: The General Objection is mailed (thus filed) on Tuesday and arrives at the board on Wednesday. The specification is due six days from Tuesday, the following Monday.

V Contents of Specifications

Specifications must contain:

- The volume number, page number, and line number for each signature for which an objection is made.
- The objection reason(s) must be clearly stated and objections to a single signature “should be” grouped together.
- “Symbols and/or abbreviations” may be used to state objections if “a sheet explaining the meaning...is attached...”
- The total number of signatures objected to shall be set forth.

Note: Specifications of objections do not require notarization.

VI Service of Specifications: When and How

It is now **mandatory** that the objector send “a duplicate copy” of the specifications:

- For a petition or certificate for public office – send to each objected to candidate named thereon.
- For a petition for party position – send to either each objected to candidate named thereon or to the first named person on the committee to fill vacancies.
- For an opportunity to ballot petition – send to all members of the committee to receive notices.

Method of Service

There are only two methods permitted for service by an objector on an objected to candidate:

- Personal Delivery; or
- Overnight Mail.

What constitutes overnight mail?

- USPS Priority Express NEXT DAY – Gold Standard
- New York State Election Law 1-106 (3) probably makes overnight, NEXT DAY services from DHL Express, FedEx Overnight, and UPS Next Day sufficient.

Important: Prior law required certified or registered mail. That is no longer the case. **Overnight mail is now required.**

VII Service of Specifications: Deadline

The objector must serve the specifications of objections on the objected to candidate(s) on or before “the date” of filing the objection with the board of elections.

Example: Specifications are filed at the board at 9:05AM, but the service on the required candidate(s) occurs by express mailing done at 10AM the same day. This is acceptable because the service occurred on “the date” when specifications were filed at the board.

VIII Proof of Service

Proof of service that specifications were served on the required person must be filed with the board of elections. The proof may:

- Accompany the specifications; or
- “Be received by the end of two business days following the filing of specifications, whichever is later.”

Warning: If specifications are “filed” by mail, the date of the mailing starts the two-day clock for filing proof of service of specifications of objections. The two days are calculated from the time of mailing, not from when the board receives the specifications.

Form of Proof of Service

Acceptable proofs include either:

An affidavit duly notarized from the person who either personally served the specifications or who duly mailed the specifications by overnight mail (stating who was served, when they were served, what was served, and by what means).

The express mailing slip document from the post office showing that the express mail item was sent to the appropriate persons. This document should evidence receipt by mailing entity and the address and name of the person(s) it was sent to.

IX Board Obligation to Provide Notice

By overnight mail (chapter amendment pending to allow notice by electronic communication by consent), the board SHALL give notice to the objector and objected to candidate(s) of the date or dates when the board “will consider the specifications filed, board findings, the result of and research of the specifications, and shall make a determination as to the sufficiency of such petition or certificate.”

Copies of the board’s research on each specification shall accompany such notice. The New York State Board of Elections provides this by an electronic link that allows the persons receiving the notice to download the documents. (WeTransfer.com).

X Opportunity to Be Heard

The objector, candidates (or their respective agents) must have an “opportunity to be heard” as to the “validity of each specific objection.” The opportunity to be heard “may be by written submission or oral presentation in the discretion of such officer or board.” The board cannot “deny the objector or the candidate or their agents an opportunity to be present when the determination as to validity is made.”

Exception: If the petition fails prima facie review (confirmed by majority vote of the board), no hearing is required. The confirming vote should be done in public.⁷

The board meets to make determinations on specifications. This can be done at the same meeting it rules on the validity of the petition or it can be a separate meeting. These meeting(s) must be public, and notice must be provided to the candidates and objectors.

XI Notice of Determination

When a board makes any determination that a petition or certificate is “sufficient or insufficient” the board must provide notice to the candidates (and if there is an objection) to the objector.

The above determination must be sent “forthwith” “by mail”.

If the candidate has specified in writing an agent (the writing must provide the name, address, email, and telephone number of the agent), the agent can “represent” the candidate or objector who is to receive determinations on behalf of the candidate or the objector.

⁷ NYSElection Law 6-154(6)

Certificate for Designation or Nomination

(Section 6-156)

Reviewed by: _____ and _____ Date: ____ / ____ / ____

Timely Yes No

Correct Board Yes No

Proper # Designated Yes No

Party Name Yes No

Candidate Name Yes No

Candidate Address Yes No

Office & District Yes No

Signed Yes No

(by Presiding Officer & Secretary)

Committee Rule Attached Yes No

(if necessary)

Other _____

In compliance Not in compliance

Acceptance

(Section 6-146)

Reviewed by: _____ and _____ Date: ____ / ____ / ____

Candidate

Office/District

Party

Timely

Yes

No

Candidate Name

Yes

No

Office & District

Yes

No

Party Name

Yes

No

Signed

Yes

No

Acknowledged

Yes

No

Other _____

In compliance

Not in compliance

Authorization

(Section 6-120)

Reviewed by: _____ and _____ Date: ____ / ____ / ____

Candidate

Office/District

Party

Timely

Yes

No

Candidate Name

Yes

No

Office & District

Yes

No

Party Name

Yes

No

Signed

(by Presiding Officer & Secretary)

Yes

No

Acknowledged

Yes

No

Other _____

In compliance

Not in compliance

Substitution

(Section 6-148)

Reviewed by: _____ and _____

Date: ____ / ____ / ____

Candidate

Office/District

Party

Timely

Yes

No

Old Candidate Name

Yes

No

New Candidate Name

Yes

No

New Candidate Address

Yes

No

Office & District

Yes

No

Cause of Vacancy

Yes

No

Signed

(by Majority of Committee)

Yes

No

Affidavit of Signatories

Yes

No

Consent Appended

Yes

No

Consent Signed
& Acknowledged

Yes

No

Other _____

In compliance

Not in compliance

Declination

(Section 6-146)

Reviewed by: _____ and _____ Date: ____ / ____ / ____

Candidate

Office/District

Party

Timely

Yes

No

Candidate Name

Yes

No

Office & District

Yes

No

Party Name

Yes

No

Signed

Yes

No

Acknowledged

Yes

No

Other _____

In compliance

Not in compliance

Objection

Candidate Name _____

Office & District _____

Objector Name _____

Party _____

General Objection:

Petition Filed _____

Objection Due _____

Objection Filed _____

Objection Postmarked _____

of Signatures on Petition _____

Objector Has Standing? Yes No

Reviewed by: _____ and _____

Date: ____ / ____ / ____

In compliance

Not in compliance

Specific Objection:

Specifications Due _____

Specs Filed _____

Specs Postmarked _____

Specs Timely? Yes No

Match Objector? Yes No

Proof of Service? Yes No

Reviewed by: _____ and _____

Date: ____ / ____ / ____

In compliance

Not in compliance

Appendix B: Sample General Objection Letter

Date: _____

NYS Board of Election
40 North Pearl St, Suite 5
Albany, NY 12207

Objector Address: _____

Objector Telephone: _____

Objector Email: _____

The objector, being a duly qualified voter and pursuant to the provisions of the New York State Election Law, hereby objects to the (Designating/Opportunity to Ballot Petition/Independent Nominating Petition/Certificate of Nomination, etc.) which was filed with the New York State Board of Elections on or about _____, which purports to name the following as a candidate(s) in the Primary Election to be held on _____ for the office indicated.

Candidate(s) Name: _____

Public Office: _____

Political Party: _____

Take notice that I will specify the basis of my general objection within the time provided by law.

Objector Signature: _____