

COMMISSIONERS' LEGAL RIGHTS, PETITION LITIGATION, & 2015 COURT CASES

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COMMISSIONERS OF ELECTIONS, ROCKLAND COUNTY**



COMMISSIONERS' LEGAL RIGHTS

- TWO BY TWO: THE BIPARTISAN WAY!
- SAYS WHO? THE NYS ELECTION LAW
- §3-200 (2) EACH BOARD SHALL CONSIST OF TWO ELECTION COMMISSIONERS, EXCEPT THAT THE COUNTY LEGISLATIVE BODY OF A COUNTY HAVING A POPULATION OF MORE THAN ONE HUNDRED AND TWENTY THOUSAND MAY, BY LOCAL LAW, INCREASE THE NUMBER OF COMMISSIONERS TO FOUR, TO BE APPOINTED AS PROVIDED IN THIS TITLE. EACH OF THE MAJOR POLITICAL PARTIES SHALL BE ELIGIBLE TO RECOMMEND APPOINTMENT OF AN EQUAL NUMBER OF COMMISSIONERS.

COMMISSIONERS' LEGAL RIGHTS

- NO SOLOS HERE, ONLY DUETS!
- §3-212 (2) ALL ACTIONS OF THE BOARD SHALL REQUIRE A MAJORITY VOTE OF THE COMMISSIONERS PRESCRIBED BY LAW FOR SUCH BOARD.
- FORWARD MOTION REQUIRES COOPERATION.
- IN ELECTION LAND, WE CANNOT JUST "AGREE TO DISAGREE". WE HAVE THE ELECTION LAW, STATE BOARD, AND RESOURCES TO GUIDE US, BUT SOMETIMES WE NEED A BIT OF A PUSH!

COMMISSIONERS' LEGAL RIGHTS

- COMMISSIONER VS. COMMISSIONER
- WE ALL UNDERSTAND THE REALITY OF OUR EXISTENCE. ONE DEMOCRAT, ONE REPUBLICAN. RECOMMENDED FOR APPOINTMENT BY OUR RESPECTIVE PARTIES.
- WE ADVOCATE FOR OUR CANDIDATES, BUT WE DO SO IN A WAY THAT DOES NOT COMPROMISE THE OATHS WE HAVE TAKEN, THE VALUES WE UPHOLD, AND THE INTEGRITY OF OUR OFFICE.

COMMISSIONERS' LEGAL RIGHTS

- SOMETIMES THE ROAD IS A BIT BUMPY...
- LIKE WHEN OUR CANDIDATES WANT US TO RULE A CERTAIN WAY, DESPITE REALITY!
- WHEN THERE ARE DIFFERENT INTERPRETATIONS AND WE END UP IN COURT.
- 2015 OFFERED A UNIQUE OPPORTUNITY FOR ELECTION LAWYERS: THE WEP!

COMMISSIONERS' LEGAL RIGHTS

- ALL KIDDING ASIDE, THE ROCKLAND WEP BATTLE WAS UNIQUE.
- MOST PROCEEDINGS INVOLVED TIMELY OBJECTIONS AND A SPLIT DECISION BY THE COMMISSIONERS.
- ROCKLAND: NO TIMELY OBJECTIONS. THEY WERE RULED INVALID BY BOTH COMMISSIONERS. GENERAL AND SPECIFICS FILED AT THE SAME TIME, BUT CANDIDATES WERE NOT PROPERLY SERVED BY CERTIFIED MAIL AS OUR PROCEDURES REQUIRE.

COMMISSIONERS' LEGAL RIGHTS

- NO OBJECTIONS? OKAY, JUST GO TO COURT.
- ROCKLAND: COURT PROCEEDING NOT TIMELY FILED. IN FACT, NO PROCEEDING TO INVALIDATE WAS EVER FILED AGAINST THIS CERTIFICATE OF NOMINATION.
- SO, HOW DO STAKEHOLDERS NAVIGATE AROUND THESE ROAD BLOCKS, WHICH CREATE A SIGNIFICANT STANDING ISSUE?
- REPUBLICAN COMMISSIONER BRINGS AN ACTION AGAINST THE DEMOCRATIC COMMISSIONER.
- COUNTY ATTORNEY DIRECTS BOTH COMMISSIONERS TO RETAIN OUTSIDE COUNSEL.

COMMISSIONERS' LEGAL RIGHTS

- HYBRID PROCEEDING: ARTICLE 78 AND ELECTION LAW.
- PETITIONER SEEKS TO SET THE FORM OF THE GENERAL ELECTION BALLOT.
- RESPONDENT BRINGS MOTION TO DISMISS
 - STANDING ISSUE, COMMISSIONER IS NOT PARTY CHAIR, AGGRIEVED CANDIDATE, OR PERSON WHO BROUGHT OBJECTIONS.
 - PETITIONER'S PLEADINGS DEFINE AS 16-104 ACTION, BUT IT IS ACTUALLY A 16-102 ACTION. STATUTE OF LIMITATIONS. TIME BARRED.
 - BOARD OF ELECTIONS COMMISSIONERS LACK STANDING TO COMMENCE PROCEEDINGS UNDER ARTICLE 16 OF THE ELECTION LAW.

COMMISSIONERS' LEGAL RIGHTS

- DECISION:

- PETITIONER SEEKS TO INVALIDATE CERTIFICATE OF NOMINATION, DESPITE DEFINING ACTION AS A BALLOT QUESTION. TIME BARRED.

- PETITIONER DOES NOT HAVE STANDING.

- DECISION CANNOT REACH THE MERITS (RULES AND AFFIDAVIT ISSUES).

COMMISSIONERS ARE TWO PARTS OF ONE WHOLE. THEY MUST ACT JOINTLY.

TWO BY TWO, REMEMBER?

- THIS BRINGS US TO PETITIONS.
- COMMISSIONERS RULE JOINTLY AS A BOARD. WHEN THEY SPLIT, THERE ARE CLEAR GUIDELINES.
- WHAT HAPPENS WHEN THE USUAL PROCESS IS DERAILED?



PETITION CHALLENGES

- PRESUMPTION OF VALIDITY – OR THE BACKBONE OF PETITION REVIEW.
- PRIMA FACIE REVIEW UNLESS OBJECTED TO...
- YOU KNOW THE DRILL: SPLIT VOTE, PRESUMED VALID.
- ONCE THE BOARD RULES, THE PROVERBIAL HORSE HAS LEFT THE BARN. NO APPEAL PROCESS, NO RECONSIDERATION.
- WHAT HAPPENS WHEN THE PETITION REVIEW IS PRE-EMPTED, STALLED, RESTARTED, INTERRUPTED, ETC.?

PETITION CHALLENGES

- ROCKLAND'S STICKY SITUATION CIRCA 2015
- FAMILY COURT RACE – 4 DEMOCRATIC CANDIDATES FILE PETITIONS.
- OBJECTIONS FILED BY CANDIDATE T AGAINST DESIGNATING PETITIONS FOR CANDIDATE N.
- CANDIDATE N GOES TO COURT TO CHALLENGE THE OBJECTIONS. GROUNDS: KEY IS INCORRECT AND SEVERAL CODES ARE MISSING. THEREFORE, CANDIDATE N DOES NOT HAVE ADEQUATE NOTICE OF OBJECTIONS.

KEY TO ABBREVIATIONS USED FOR SPECIFICATIONS OF OBJECTIONS TO DESIGNATING PETITION(S)

PRINCIPAL OBJECTIONS TO WITNESS STATEMENT:

- DSP** - Date of witness statement is prior to date of any signature
- NPN** - No page number or petition page is not sequentially numbered
- SWALT** - Witness Info altered
- SWND** - No date stated in subscribing witness statement
- SWWT** - Wrong town in witness statement (includes names of hamlets and villages)
- NCW** - No county for witness (Notary only)
- SWNT** - No Town in witness statement
- SNS** - signator not sworn (if page witnessed by notary)
- SWNR** - Witness not registered at address stated (based on BoE database)
- SWNE** - Witness not enrolled in proper party.
- SWAP** -- witness has signed another (competing) petition (identify in "Notes" column with title/volume/page/line)

no SWWA
NE
WA - 2/22/05
UC BSA

- NNL** - notary not licensed (based on State Department database)
- NN or WN** - no number of signatures stated, or wrong number stated

PRINCIPAL OBJECTIONS AS TO DATE ENTRY (INCLUDING BOTH WITNESS AND SIGNATOR)

- ALT** - Alteration without initials (date/signature) - or initials other than witness or signer
- ILLD** - Illegible Date
- ND** - No date stated
- F** - Forgery - any date alteration that appears suspect (use judgment, err toward using)
- DE** - date is prior to start of petition period
- DOS** - date out of sequence, i.e. date is earlier than date given for signature of any line on the same sheet, or follows any signature which is also DOS. e.g. if lines 1 and 2 are dated June 10, but line 3 is dated June 9, then line 3 is DOS, and all remaining lines 4-20 are also subject to a DOS objection

2015 JUN 16 P 1:21
 ROCKLAND COUNTY
 BOARD OF ELECTIONS

PRINCIPAL OBJECTIONS AS TO SIGNATURE OR SIGNATOR (NUMBERED LINES)

- ALT** - Alteration without initials (date/signature) - or initials other than witness or signer
- PR** or **PRN** - Signature is printed or not handwritten
- SH** - Similar handwriting [Include Vol #, Page #, Line # of corresponding sig] -- use to flag suspect signatures, when different signatures appear to be in the same hand, especially if handwriting is similar to that of the witness.
- SW** - Signature is that of witness (a witness cannot be a line signator of a sheet which he/she also witnesses)
- F** --Forgery - any signature alteration that appears suspect (use judgment)
- DS** -- signator previously signed the same petition
- SAP** -- signator previously signed a competing petition
- ILLS** - signature illegible, name unrecognizable
- NR** - Signator not registered as stated in BoE records. **NE** - not enrolled in proper party
- NA** -- signator not registered at address given

PRINCIPAL OBJECTIONS AS TO ADDRESS OR MUNICIPALITY (CITY/TOWN) OF SIGNATOR

- AI** - Address illegible or so abbreviated it cannot be identified
- NA** - No address stated (includes objection to use of ditto [""] marks)
- PB** - Postal Box used and not street address
- NT** - No town -- used when the space is blank or contains only ditto [""] marks.
- WT** - Wrong town -- used when the municipality named is not the actual name of the municipality with the given street address or is not the proper name of the municipality. **DD** - Address given is outside the District

PRINCIPAL OBJECTIONS BASED ON RECORDS OR DATABASE SEARCH:

- AI** - Address illegible or so abbreviated it cannot be identified
- NFN** - Multiple possibilities at address
- NR** - Not registered as stated in BoE records
- NRWA** - If registered, the address on the petition is not the same as that on the registration

PETITION CHALLENGES

- NOT A PETITION TO VALIDATE. AN ACTION TO INVALIDATE THE OBJECTIONS. TIMING ISSUE: FILED BEFORE WE COMMENCED REVIEW.
- COURT RULES OBJECTIONS MUST BE REDACTED, 4 CODES REMOVED. ORDERS COUNTY ATTORNEY TO REDACT AND RETURN TO BOARD OF ELECTIONS.
- BOARD STARTS WORKING ON REDACTED OBJECTIONS. UNPRECEDENTED VOLUME OF OBJECTIONS. THE OBJECTIONS FOR THIS ONE CASE FILLS A BINDER.

Actual binder of
objections against
Candidate N, 2015
Family Court.

Photographed at
the Board of
Elections on
January 8, 2015.



PETITION CHALLENGES

- NEXT COURT DATE. WE'RE ALMOST DONE, BUT...
- CANDIDATE T BRINGS A PROCEEDING TO INVALIDATE. ACTIONS ARE COMBINED. RAISES ISSUE RELATED TO CANDIDATE N'S CASE.
- ONE CODE WAS THERE, BUT WAS NOT BOLDED. UH OH...
- JUDGE AGREES. REDACTION MUST BE CHANGED.
- WHAT DOES THIS MEAN FOR US? 2ND PASS THROUGH ON THE SAME PETITIONS!

PRINCIPAL OBJECTIONS AS TO SIGNATURE OR SIGNATOR (NUMBERED LINES)

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PR or **PRN**- Signature is printed or not handwritten

SH - Similar handwriting [include Vol #, Page #, Line # of corresponding sig] -- use to flag suspect signatures, when different signatures appear to be in the same hand, especially if handwriting is similar to that of the witness.

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DS -- signator previously signed the same petition

SAP -- signator previously signed a competing petition

ILLS -- signature illegible, name unrecognizable

NR - Signator not registered as stated in BoE records. **NE** -- not enrolled in proper party

NA -- signator not registered at address given



NE is not bolded.



PETITION CHALLENGES

- BACK TO THE DRAWING BOARD.
- REVIEW ALL PETITION PAGES AGAIN, LOOKING FOR NEW OBJECTIONS.
- ADD BOTH REVIEW SHEETS TOGETHER TO GET NUMBER OF SUSTAINED OBJECTIONS.
- RECIPE FOR DISASTER!
- JUDGE ORDERS BOTH SIDES TO COME TO BOARD TO REVIEW AND COME TO AN AGREEMENT. STIPULATE AS TO THE NUMBER OF VALID SIGNATURES.

PETITION CHALLENGES

- CANDIDATES WORK WITH US.
- BACK TO COURT. CANDIDATE N RENEGES ON STIPULATED NUMBERS AND TRIES TO TURN ORIGINAL ACTION INTO A VALIDATION PROCEEDING.
- CANDIDATE T'S INVALIDATION PROCEEDING MOVES FORWARD. PETITION INVALIDATED.
- CANDIDATE N MOTION TO RENEW AND REARGUE. DENIED.
- CANDIDATE N GOES TO APPELLATE DIVISION, WHICH AFFIRMS THE SUPREME COURT.
- CANDIDATE N 2ND MOTION TO RENEW AND REARGUE. DENIED.

PETITION CHALLENGES

- SEVERAL POINTS RELEVANT TO OUR WORK:
 - EARLY COURT ACTION PRE-EMPTED OUR WORK AND CAUSED SIGNIFICANT ISSUES.
 - ELECTION PERSONNEL ARE HUMAN BEINGS. WE MAKE MISTAKES. IMAGINE HOW HARD IT IS TO RECHECK AND CONTROL FOR THOSE MISTAKES WITH REDACTIONS, CHANGES TO REDACTIONS, REVIEW OF THOUSANDS OF PIECES OF PAPER, AGREEMENTS, DISAGREEMENTS, AND PREVIOUS AGREEMENTS THAT FELL APART!

PETITION CHALLENGES

WHAT KIND OF TIME ARE WE TALKING ABOUT?

302 PETITION PAGES.

OVER 3,500 SIGNATURES.

TYPICAL OBJECTIONS REVIEWED PER PAGE LOOKED SOMETHING LIKE THIS



Specifications of Objections, Democratic Party Designating Committee
Referencing Volume: 1
Reference Page: 7

1.	
2.	
3.	NR; NE; WA; WT; OC
4.	PR; F; NE
5.	NR; NE; WA; WT; OC
6.	NR; NE; WA; WT; OC
7.	PR; F; NE
8.	PR; F; NA
9.	PR; F; NR; NE; WA; WT; OC
10.	
11.	NE
12.	
13.	NE
14.	PR; F; NR; NE; WA; WT; OC
15.	PR; F
16.	NFN; NR; NE; WA; WT; OC
17.	
18.	
19.	
20.	NR; NE; WA; WT; OC

Objection(s) To Witness or Notary Statement: SWALT: signature total

Total Signatures Claimed, This Page	19
Signatures Challenged, This Page	19
Signatures Unchallenged, This Page	0

PETITION CHALLENGES

- COURT PROCEEDINGS INTERRUPTED OUR WORK AND MADE FOR A LOGISTICAL AND ORGANIZATIONAL NIGHTMARE.
- SECOND RENEW AND REARGUE INVOLVED A CALCULATION ERROR. COURT RULED NO NEW INFORMATION; ERROR SHOULD HAVE BEEN FOUND BY CANDIDATE N. BOE CANNOT CHANGE A RULING. LETTER OF THE LAW, YES, BUT WAS THE OUTCOME FAIR TO CANDIDATE N? DID CANDIDATE N SUFFER BECAUSE OF THE PROCESS CREATED WHEN SHE FILED EARLY? IS IT JUST CONSIDERING SHE WAS COUNSELED REPEATEDLY BY THE JUDGE TO RETAIN AN ELECTION EXPERT?