EVERYTHING YOU NEED TO KNOW ABOUT BECOMING A JUDGE

Suffolk County Bar Association

Franklin H. Williams Judicial Commission

Amistad Black Bar Association

Suffolk County Women's Bar Association

Long Island Hispanic Bar Association

WEDNESDAY, SEPTEMBER 28, 2016

Suffolk County Bar Association
560 Wheeler Road, Hauppauge, NY 11788

12:30 pm–5:00 pm
4.0 CLE Credits, 1.0 Ethics

AGENDA

12:30	**LUNCH/REGISTRATION**
1:00–1:10	**WELCOME/INTRODUCTION**
Speakers	**Adrienne Williams, Esq.,** *Franklin H. Williams Judicial Commission Member, Court Attorney-Referee, Suffolk County Supreme Court* **John R. Calcagni, Esq.,** *President, Suffolk County Bar Association* **Harry Tilis,** *Dean, Suffolk Academy of Law* **Hon. C. Randall Hinrichs,** *Administrative Judge of the 10th Judicial District, Justice of the Supreme Court*
1:10–2:00	**SECURING THE NOMINATION IN SUPREME COURT**
Moderator	**Frank Torres, Esq.,** *President, Long Island Hispanic Bar Association*
Part A Panelists 1:10–1:35	**Hon. William G. Ford,** *New York State Supreme Court Justice, Suffolk County* **Hon. C. Randall Hinrichs** **Hon. Hector D. LaSalle,** *Associate Justice of the Appellate Division, Second Department*
Part B Panelists 1:35 – 2:00	**Hon. Rick Bellando,** *Chairman of the Independent Party for Nassau County* **Hon. John Jay LaValle, Esq.,** *Chairman of the Republican Party for Suffolk County* **Hon. Richard Schaffer, Esq.,** *Chairman of the Democratic Party for Suffolk County*
2:00–2:50	**ELECTION LAW OVERVIEW & RELATED ETHICAL REQUIREMENTS**
Moderator	**Hon. Derrick J. Robinson,** *Acting County Court Judge, Former Chair of the Suffolk County Judicial Screening Committee*
Panelists	**Paul Kenny, Esq.,** *Chief Clerk, Appellate Term, Second Department* **Nicholas Lalota,** *Suffolk County Board of Elections Republican Commissioner* **Hon. Edward P. Borrelli,** *Special Counsel, NYS Unified Court System, Advisory Committee*
2:50–3:00	**BREAK**
3:00–3:30	**Q & A REGARDING EVALUATION PROCESSES**
Moderator	**Maxine S. Broderick, Esq.,** *President, Amistad Black Bar Association*
Panelists	**Dawn Lott, Esq.,** *Women's Bar Association of the State of New York* **William Savino, Esq.,** *Chair of the Independent Judiciary Election Qualification Commission, 10th Judicial District*
3:30–4:20	**MAKING THE BALLOT IN CITY, COUNTY AND FAMILY COURTS**
Moderator	**Hon. Philip Goglas,** *Acting Family Court Judge, Acting County Court Judge*
Panelists	**Hon. Toni A. Bean,** *District Court Judge Acting County Court* **Hon. Bernard Cheng,** *Suffolk County Family Court Judge* **Hon. Patricia Romeo,** *Town Justice of Patchogue Village, New York* **Hon. Andrea Harum Schiavoni,** *Town Justice of Southampton, New York* **Hon. Helen Voutsinas,** *District Court Nassau County*
4:20–5:00	**APPOINTMENT PROCESS FOR NEW YORK STATE COURT OF CLAIMS AND FOR FEDERAL MAGISTRATE JUDGES AND DISTRICT COURT JUDGES**
Moderator	**Linda Morrone, Esq.,** *President, Suffolk County Women's Bar Association*
Panelists	**Hon. Cheryl A. Joseph,** *Court of Claim Acting Supreme* **Hon. Joseph F. Bianco,** *United States, District Court, Eastern District of New York*
5:00–5:10	**CLOSING REMARKS**
Speaker	**Victoria Gumbs Moore, Esq.,** *Member, Amistad Black Bar Association*
5:10	**RECEPTION**

PLANNING COMMITTEE & SPONSORS

Special Thanks to the Program Planning Committee Members

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Member, Franklin H. Williams Judicial Commission

VICTORIA GUMBS MOORE, ESQ.

Member, Amistad Black Bar Association

JANE LACOVA, ESQ.

Executive Director, Suffolk County Bar Association

MEGAN TOMLIN, ESQ.

Vice President of Programs, Suffolk County Women's Bar Association

FRANK TORRES, ESQ.

President, Long Island Hispanic Bar Association

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BIOGRAPHIES

HON. TONI A. BEAN

Toni A. Bean is a native Long Islander born and raised in Amityville, New York. She is the proud mother of a 9-year-old son. She attended Howard University School of Law in 1985.

The foundation upon which her legal career began was at Walker & Bailey in Harlem, New York. There she engaged in private practice with her aunt, the late Cora T. Walker, Esq. Subsequently, Toni joined the firm of Waxman & Wincott, P.C. on Long Island. In February of 2002, she commenced her own legal practice in Amityville, New York specializing in personal injury litigation, real estate transactions and wills and estates.

In June of 2004, Toni was appointed to the bench of the District Court Suffolk County by the County Legislature and elected in November of 2004. She is presently in her second term having been reelected to the bench in November of 2010. In January 2012 she was appointed Acting County Court Judge, presiding over domestic violence matters.

Toni has been involved in many community based organizations. She is Chairperson of the North Amityville Housing and Rehabilitation Association, a Life time member of the Central Long Island Branch NAACP and former member of the Town of Babylon Youth Court Advisory Committee and North Amityville Kiwanis Club. Toni also sits on the Advisory Board of the Town of Babylon Ujima committee.

Toni's multitude of contributions over the years has earned her many recognitions and awards.

HON. RICK BELLANDO

Chairman, Nassau County Independence Party April 2011 – Present

The Independence Party is the 3rd Largest Political Party in the Nation.

HON. JOSEPH F. BIANCO

Judge Bianco was appointed as a United States District Judge in the Eastern District of New York on January 3, 2006, and entered service on that same date.

Judge Bianco obtained his B.A., magna cum laude, at Georgetown University in 1988 and received his law degree in 1991 from Columbia Law School where he was a Kent Scholar and a member of the Law Review. From 1992-1993, he served as a law clerk for the Honorable Peter K. Leisure.

From 1994-2003, Judge Bianco served as an Assistant United States Attorney in the Southern District of New York., where he became Deputy Chief and then Chief of the Organized Crime and Terrorism Unit. In 2003. Judge Bianco left the Department of Justice and became Counsel with Debevoise & Plimpton LLP in its Litigation Department.

Judge Bianco has taught National Security Law courses at Fordham Law School, Hofstra University, and Touro Law Center. He is currently an adjunct professor at St. John's University School of Law, where he teaches courses on National Security, Federal Criminal Practice, and Sentencing.

HON. EDWARD P. BORRELLI

Judge Edward P. Borrelli currently serves as a full-time Special Referee in New York State Supreme Court, 9th Judicial District. He had previously served in that capacity from January 2001 until May 2003. As a Special Referee, Judge Borrelli was also assigned to the Supreme and Family Courts, Orange County and Family Court, Putnam County.

Judge Borrelli also served as Staff Counsel to the UCS Advisory Committee on Judicial Ethics, on the Judiciary/Agency Coordinating Committee, the City and District Court Operations Manual Committee, the Town and Village Justice Software Review Committee and with the City, Town and Village Courts' Resource Center.

Judge Borrelli currently serves as Special Counsel to the Advisory Committee on Judicial Ethics. He was previously a voting member of the Advisory Committee from 2001 to 2006, during which time he served as chair of the Second Department Subcommittee and also as the initial chair of the Judicial Campaign Ethics Subcommittee.

Judge Borrelli received a Juris Doctor degree from New York Law School (1976).

MAXINE S. BRODERICK, ESQ.

Maxine S. Broderick, Esq., the current president of the Amistad Long Island Black Bar Association, concentrates her practice on matrimonial and family law, and maintains an office in Garden City. In addition, Ms. Broderick serves as a Foreclosure Referee, Fee Dispute Arbitrator for the 10th Judicial District, and is a contributing author to "Onward and Upward: Guide For Getting Through New York Divorce & Family Law Issues."

Ms. Broderick is a member of the New York State Bar Association (Family Law Section Diversity Fellow), the Nassau County Bar Association (Chairperson, General, Small and Solo Practice Committee), the Nassau County Women's Bar Association, the Suffolk County Bar Association, National Coalition of 100 Black Women - Long Island Chapter, the Long Island African American Chamber of Commerce and the Hempstead Chapter of the NAACP. Ms. Broderick is a proud graduate of Sacred Heart Academy, Fordham University and Brooklyn Law School.

JOHN R. CALCAGNI, ESQ.

Mr. Calcagni is the President of the Suffolk County Bar Association. John received his undergraduate degree from St. Joseph's College, a Master's degree from the City University of New York, and his law degree from St. John's University, where he was Articles Editor of the St. John's Law Review.

Upon graduating from law school, John joined Willkie Farr & Gallagher as an Associate. Upon leaving Willkie Farr, he became Assistant General Counsel to the Allen Group, Inc., a publically traded company. John entered private practice in 1989 when the Allen Group moved its corporate offices to the Midwest, and since1994 he has continued in private practice as a member of Haley Weinblatt & Calcagni, LLP. He concentrates in the areas of business law, mergers and acquisitions, business succession planning, business dissolutions, contract law, commercial and residential real estate law, internet law, securities law and software licensing. John is a past Dean of the Suffolk County Bar Association's Academy of Law.

For the past 10 years John has been an adjunct professor of business law teaching both "live" and on-line courses in the Graduate Management Studies Department at St. Joseph's College in Patchogue, New York.

Since 1991 John has served as President of the Board of Hands Across Long Island, Inc., a not-for-profit corporation that provides housing, services and support to recipients of mental health services funded by NY State's Office of Mental Health and the Suffolk County Department of Health. In 2014 he was appointed to the Board of Trustees of Nassau-Suffolk Law Services, which provides pro bono legal services to residents of Suffolk and Nassau Counties.

HON. BERNARD CHENG

Judge, Suffolk County Family Court

Judge, Family Court, Suffolk County, Elected, 2011 to 2020

Principal Law Clerk, Suffolk County Court, Riverhead, 2003 to 2010

HON. WILLIAM G. FORD

The Honorable William G. Ford, State Supreme Court Justice, was elected to that Court on November 5, 2015. Prior to his elevation to Supreme Court, he served as an Acting County Court Judge from 2014-2015.

He was first elected to the District Court bench in November 2008. A native Long Islander, he holds a Bachelor's Degree in Political Science from S.U.N.Y. Empire State College where he graduated with honors and was named in "Who's Who" in American Universities and Colleges. Justice Ford earned his law degree at Brooklyn Law School. In January 2014 Judge Ford was appointed an Acting County Court Judge, and for two years was the presiding Judge in the Drug Treatment and Mental Health Treatment Courts in Suffolk County. He has the respect of his colleagues throughout New York and is a past President of the Suffolk County District Court Judges Association.

HON. PHILIP GOGLAS

Judge Philip Goglas currently serves in Family Court, Suffolk County. Judge Goglas was elected to County Court, Suffolk County, from 2015 to 2024. Previously, from 2011 to 2014, Judge Goglas served on the bench in District Court, Suffolk County.

Prior to his election to the bench, from 2003 to 2010, Judge Goglas served as Assistant Town Attorney for the Town of Smithtown. He has also served as a Special Prosecutor for the Village of Islandia and the Village of Lake Grove. Judge Goglas began his career in the courts in Suffolk County as an Assistant County Attorney and in Family Court as Hearing Examiner. Judge Douglass was New York Transit Police Officer.

Judge Goglas received his Juris Doctorate from Brooklyn Law School and his Bachelor of Arts from St. John's Univeristy.

Judge Goglas is a member of the following Associations: NYS County Court Judges Association, NYS Family Court Judges Association, NYS Latino Judges Association, Suffolk County Bar Association and Hispanic National Bar Association. He is also a founding member and past president of the Long Island Hispanic Bar Association.

HON. ANDREA HARUM SCHIAVONI

In 2008, Andrea Schiavoni was elected to serve as Southampton Town Justice and in 2010 was appointed as the first Sag Harbor Village Justice in decades. Judge Schiavoni continues her work on both of these benches and still maintains her private mediation practice of Harum and Harum, as a highly respected Divorce Mediator. Judge Schiavoni is, also, a member of the New York and Florida state Bars, and the Bar of the District of Columbia, and she teaches Continuing Legal Education and lectures around the state as a specialist in alternative dispute resolution.

Having clerked during law school for Florida State Attorney, Janet Reno, in the Narcotics Division, for Chief Juvenile Court Judge William Gladstone in Miami and for the Los Angeles County Public Defender's Office, Andrea Harum Schiavoni began as a civil litigator at her family's veteran, workers compensation firm, and she became president of Harum & Harum, P.A., upon the death of her father in October of 1997. Schiavoni changed the focus of Harum and Harum in 2001 exclusively to that of alternative dispute resolution, working as a mediator and arbitrator from offices in Miami, Florida and Sag Harbor, New York.

HON. C. RANDALL HINRICHS

The Honorable C. Randall Hinrichs was appointed to his present position as Suffolk County District Administrative on March 14, 2011. In that capacity he is responsible for the operation of a court system serving the needs of approximately 1.5 million citizens of Suffolk County. Those responsibilities include the oversight of nearly 1,000 employees and more than 70 judges.

Justice Hinrichs served as the Supervising Judge of the Suffolk County Court from April 25, 2008 until his appointment as District Administrative Judge. He was elected to the County Court bench in 2001 and began his term on January 1, 2002. He was elected to the New York State Supreme Court in 2009 and began his term January 1, 2010.

Before joining the bench, Justice Hinrichs served in the Suffolk County District Attorney's office from March 1982 to December 2001.

Justice Hinrichs serves as an Adjunct Professor in the Criminal Justice Program at Suffolk Community College. He has also lectured at the Suffolk County Bar Association, the Suffolk County Criminal Bar Association, and has addressed forums at the Touro Law Center.

Justice Hinrichs is a graduate of Bucknell University and the State University of New York at Buffalo Law School. He is a member of the New York State and Suffolk County Bar Associations.

HON. CHERYL JOSEPH

Judge Joseph was appointed by Governor Andrew Cuomo to the NYS Court of Claims on May 5, 2015. She currently presides over matrimonial cases in the Supreme Court, Suffolk County. Her professional experience includes the positions of Adjunct Professor of Law at Touro Law Center in Central Islip, Support Magistrate in Family Court (NYC and Suffolk County), Supervising Court Attorney in Queens Family Court, Domestic Violence Court Coordinator for the Center for Court Innovation and Assistant District Attorney in Manhattan.

She received her undergraduate degree magna cum laude, Phi Beta Kappa with a double major in Political Science and Philosophy from New York University's College of Arts and Science in 1993. She received her Juris Doctor degree from New York University School of Law in 1996.

She currently resides in Amityville with her two sons, Bryce age 12 and Ethan age 10.

PAUL KENNY, ESQ.

Paul Kenny was appointed by then Presiding Justice Prudenti to the position of Chief Clerk of the Appellate Term, Second Department in 2007. Mr. Kenny previously served as the Deputy Chief Court Attorney, Kings County Supreme Court Law Department, and as a Court Attorney Referee for matrimonial matters and Supervising Referee for election law matters. Since 1996 Mr. Kenny has served as an Adjunct Assistant Professor (Law & Paralegal Studies Department) for CUNY=s NYC College of Technology in Brooklyn, and lectures regularly on Appellate Term procedure and at the Appellate Division and the NYS Judicial Institute, on election law.

NICHOLAS LALOTA

Mr. Lalota serves as Suffolk County Board of Elections Commissioner. He has been in office from January 2015 to present. His responsibilities include direct oversight responsibility for Federal, State, County and Town elections in a jurisdiction larger than 12 states. As Co-Commissioner, leads 120 full-time employees and manages annual budget of $16 million.

HON. HECTOR D. LASALLE

Associate Justice, Appellate Division, Second Department, appointed by Governor Andrew Cuomo, February 2014 to present. Associate Justice, Appellate Term, Ninth and Tenth Judicial Department, May 2012 to January 2014. Justice, New York State Supreme Court, Tenth Judicial District, elected, 2009 to present.

JOHN JAY LAVALLE

John Jay LaValle is a Regional Vice Chairman of the New York Republican State Committee who has made more than 100 appearances on National Television Programs such as Anderson Cooper 360, At This Hour, Fox and Friends and Fox Business News as a surrogate for the Donald J. Trump Presidential Campaign.

LaValle, an attorney, currently serves as the Chairman of the Republican Committee of New York's Suffolk County – a county with a population larger than 10 states. John Jay LaValle has held several positions in elected office, including Supervisor and Councilman of the Town of Brookhaven (pop. 500,000).

LaValle is a graduate of the University of Maryland and he holds a law degree from Touro Law School. He has three sons - John (11), Jake (9) and Jackson (6). He resides in Port Jefferson, New York.

DAWN LOTT

Ms. Lott is a lifelong resident of Long Island. In 1990 she obtained her Bachelors of Science from Cornell University, School of Industrial and Labor Relations and later went on to receive her Juris Doctorate from Benjamin N. Cardozo School of Law.

As an attorney, the majority of Ms. Lott's legal career has been in private practice with a concentration in the areas of matrimonial, employment and labor and corporate commercial litigation. She was Of-Counsel to the law firm of Bart & Schwartz, LLP and later joined the law firm of Dandeneau & Curto, LLP.

In 2005 the partnership, Dandeneau & Lott, was established where, as partner, she handled employment and labor law, corporate and commercial, and matrimonial litigation in addition to appellate work in Federal and State Courts. Ms. Lott has been in her current position as Executive Director for the Suffolk County Human Rights Commission since April 2016.

Ms. Lott remains active in numerous associations and not-for-profit organizations. She is a current member and Past President of the Amistad Black Bar Association of Long Island which is an affiliate to the National Bar Association.

Currently she serves as the Vice-President of Membership for the Suffolk County Women's Bar Association. In addition, she is a member of the Suffolk County Bar Association, 2nd Vice Chair of the Girl Scouts of Suffolk County and serves on the Board of Directors for the Long Island Head Start.

HON. RICHARD B. LOWE, III

Justice Richard B. Lowe, III is the chair of the Franklin H. Williams Judicial Commission. He currently serves as the Presiding Justice of the New York Supreme Court Appellate Term, First Department, which was established in the First and Second Departments to hear appeals from cases in Civil, Criminal and the Housing Courts of the City of New York, a position he has held since January 2011. Prior to his appointment to the Appellate Term, Justice Lowe served for ten years in the New York Supreme Court Commercial Division, and continues to preside over a number of complex and high profile commercial cases.

Justice Lowe began his legal career in the New York County District Attorney=s Office, eventually being appointed chief of the trials division. After leaving the District Attorney=s Office, Justice Lowe served as Inspector General of the United States Department of Health and Human Services. In 1985, he was appointed Justice Lowe as a Criminal Court Judge, in which position he served until his election to the Supreme Court in 1988. Justice Lowe was re-elected to the Supreme Court in 2002.

Justice Lowe is a Member of the New York State Justice Task Force on Wrongful Convictions: Identification Subcommittee; Statements of the Accused Subcommittee and Discovery Subcommittee; serves on the New York State Advisory Committee on Judicial Conduct and Ethics; Association of Justices of the Supreme Court; President=s Council for Cooper Union; Board of Justices (Board of Directors); Directions for Our Youth (Board of Directors); Project Renewal (Board of Directors); National Association for the Advancement of Colored People (NAACP)(Lifetime Member); Wisconsin Eastern Alumni Scholarship Fund (Board of Directors); and Participant of the Aspen Institute.

VICTORIA GUMBS MOORE, ESQ.

Victoria Moore, received her Bachelor's Degree at St. John's University and her Juris Doctorate at Touro College Jacob D. Fuschberg Law Center. Mrs. Moore started her career in public service by working as the Executive Assistant to the Babylon Town Attorney. In 1998, she joined the staff of NYS Comptroller H. Carl McCall as the Long Island Representative for Intergovernmental Affairs and later served as his Legal Counsel. In 2001, Mrs. Moore began her employment in the NYS Court System were she currently serves as the Principal Law Clerk to the Hon. Theresa Whelan in the Suffolk County Family Court. Mrs. Moore has been a lifelong member of the Union Baptist Church and serves as a board member of the Union Senior Plaza. She is also a member of Alpha Kappa Alpha Sorority Inc., Sigma Psi Omega Chapter. She sits on the Board of Directors for Resurrection House, Inc. and Nassau/Suffolk Law Services. Through the years, Mrs. Moore has held membership and office in various civic and political organizations including the Central Long Island NAACP, the Town of Babylon Democratic Committee, the Suffolk County Women's Bar Association, the Mother's Club of Wheatley Heights, and Sister's in the Struggle. Mrs. Moore serves as a Nassau County Girl Scout Leader.

LINDA MORRONE

Currently acting as the Supervising Court Attorney of the Suffolk County Surrogate John M. Czygier, Jr.'s Law Department, Linda Morrone has been a member of the Law Department since 1997. Prior thereto, she served for five years as Principal Law Clerk to Suffolk County Supreme Court Justice Lawrence Newmark. Ms. Morrone began her career in 1981 as a Trust and Estate Administrator for (then) Chemical Bank, where she was employed for eight years, followed by three years with Citibank's Estate Planning Unit. She is a magna cum laude graduate of Fordham University (B.A. - 1977) and a graduate of the Fordham University School of Law (J.D. - 1980).

She is a committee co-chair, has been an officer and continues to be an active member of the Women's Bar Association of the State of New York. She is currently the President of the Suffolk County Chapter of the Women's Bar Association of the State of New York. In addition, she is on the Board of Directors of the Columbian Lawyers Association of Suffolk County.

HON. DERRICK J. ROBINSON

Hon. Derrick J. Robinson currently serves as Suffolk County District Court Judge, Acting County Court Judge. Prior to becoming a Judge in the Suffolk County District Court of New York State; the Hon. Derrick J. Robinson was appointed to the State of New York, Office of the Attorney General, as an Assistant Attorney Gen-eral. Prior to joining the Office of the Attorney General, Judge Robinson was Chief Deputy Town Attorney for the Town of Brookhaven. Judge Robinson spent 25 years as the Principal Assistant County Attorney in the Suffolk County Attorney's Of-fice, General Litigation Bureau.

Judge Robinson is a member of the New York State Bar Association and a former member of the House of Delegates, the governing body of the State Bar As-sociation. He is a member of the Executive Board and current Treasurer of the Suf-folk County Bar Association and served as Chair of its Judicial Screening Committee. Judge Robinson was the founding president of the Amistad Long Island Black Bar Association. He was sworn in as the SCBA's Secretary in June 2015; making him the first African American on the Executive Board in that organization.

Judge Robinson is a graduate of Howard University in Washington D.C.

Judge Robinson mentors young students to achieve personal growth and academ-ic excellence. He has served on the Board of Directors of Suffolk County Martin Lu-ther King Commission, NACEC, CDC Inc. and Amistad. He is married to Dr. Pame-la C. Allen and is a proud father and grandfather

HON. PATRICIA ROMEO

Judge Romeo is the Town Justice of Patchogue Village, New York.

Patchogue Village Justice Court is one of approximately 2,300 justice courts in the State of New York and is part of the New York State Unified Court System. The Patchogue Village Justice Court predominately presides over offenses alleged to have occurred within the boundaries of the Incorporated Village of Patchogue.

WILLIAM M. SAVINO, ESQ.

William M. Savino was appointed to serve as Chair of the Independent Judicial Election Qualification Commission for the Tenth Judicial District. for a term of service effective January 2013 through December 31, 2015.

The Administrative Board of the Courts established Independent Judicial Election Qualification Commissions in each Judicial District of the State to review the qualifications of candidates running for judicial office. The work of the Commissions promotes greater confidence in the judicial election process and the judiciary as a whole by assuring voters that candidates have been thoroughly screened to ensure that they possess the qualities necessary for effective judicial performance. Since their inception, the Commissions have evaluated hundreds of judicial candidates throughout the State and issued public lists of those candidates found qualified.

RICH SCHAFFER

Rich Schaffer was most recently elected as Babylon Town Supervisor in November 2013. No stranger to leading the Town, he previously served five terms as Supervisor, from 1992 to 2001 and was appointed to the position by the Babylon Town Board in January of 2012.

In his current tenure as Supervisor, Rich's top priorities remain the same: protecting taxpayers and overseeing an efficient and productive government. Rich has been committed to continuing the long-term initiatives of the Bellone Administration, including the landmark community and economic revitalization initiatives, parks and recreation facility improvements, as well as the groundbreaking environmental program, Long Island Green Homes.

Mr. Schaffer is a homeowner in North Babylon and has served as Chairman of the Suffolk County Democratic Committee since September of 2000.

FRANK TORRES, ESQ.

Frank Torres is a trial attorney at Duffy & Duffy with over 30 years of legal experience, where he handles medical malpractice, nursing home litigation and general liability law. Before joining Duffy & Duffy, he was the first lawyer to make partner at Evans, Orr, Pacelli, Norton & Laffan in almost 30 years. He left the firm in 1995 to open his own firm, and eventually joined Levine & Grossman, where he practiced for 10 years.

Passionate about ensuring justice for victims of malpractice, Mr. Torres is a member of the Puerto Rican, Dominican, Hispanic National, Long Island Hispanic, New York State, New York State Trial Lawyers, Nassau, Brooklyn and Bronx County Bar Associations and regularly serves as a moot Court judge at his alma mater, Columbia University School of Law. Additionally, he is a member of the Board of Directors of the Brooklyn Prep Alumni Association, a local charity that provides scholarships to high school children

Frank, who is a 2014 Top Attorney in New York and 2014 and 2015 SuperLawyer, also proudly serves as the President of the Long Island Hispanic Bar Association and served for four years as Board Member of the Puerto Rican Bar Association.

HON. HELEN VOUTSINAS

Judge Helen Voutsinas assumed her position in the District Court on January 1, 2011. She currently serves as the Presiding Judge of the DWI part since July of 2015. She also served as the presiding Judge of the Domestic Violence Misdemeanor part for two years.

Judge Voutsinas born of immigrant parents from the Dominican Republic and Greece. Judge Voutsinas graduated from Our Lady of Mercy Academy. She graduated St. John's University with a Bachelor's in Accounting. She graduated from St. John's Law School with the CALI Excellence Award from the Elder Law Clinic.

Judge Voutsinas began her career at the law firm of Donohue, McGahan, Catalano & Belitsis handling various cases including, personal injury and commercial litigation from inception to trial.

She served as Assistant Town Attorney and Counsel to the Board of Zoning and Appeals for the Town of North Hempstead handling all types of litigation. She left the Town of North Hempstead to serve as Deputy Majority Counsel to the Nassau County Legislature. In 2005, she assumed her role as Principal Law Clerk to the Honorable Steven M. Jaeger. Judge Voutsinas has also served as President to the Nassau County Women's Bar Association. She also co-founded the Nassau Women's Foundation for the purpose of providing scholarships to woman who want to advance their careers by entering the legal profession. In 2015 she served as President of the Nassau County District Court Judges Association

She currently is a Vice President of the Long Island Hispanic Bar Association and on the Board of the New York State Latino Judges Association. In 2002 she was the recipient of the Bessie Ray Geffner Award and 2014 she received the Virginia Duncombe Award from the Nassau County Women's Bar Association

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Suffolk County Bar Association

Franklin H. Williams Judicial Commission

Amistad Black Bar Association

SUFFOLK COUNTY
WOMEN'S BAR ASSOCIATION
of the STATE OF NEW YORK

Suffolk County Women's Bar Association

Long Island Hispanic Bar Association

CONTINUING LEGAL EDUCATION

WEDNESDAY, SEPTEMBER 28, 2016

Suffolk County Bar Association
560 Wheeler Road, Hauppauge, NY 11788

12:30 pm–5:00 pm
4.0 CLE Credits, 1.0 Ethics

EVERYTHING YOU NEED TO KNOW ABOUT BECOMING A JUDGE

SECURING A NOMINATION IN SUPREME COURT

New York Election Law, 2016

Excepts from Article 6

§ 6-106. Party nominations; justice of the supreme court

Party nominations for the office of justice of the supreme court shall be made by the judicial district convention.
(L.1976, c. 233, § 1)

§ 6-124. Conventions; judicial

A judicial district convention shall be constituted by the election at the preceding primary of delegates and alternate delegates, if any, from each assembly district or, if an assembly district shall contain all or part of two or more counties and if the rules of the party shall so provide, separately from the part of such assembly district contained within each such county. The number of delegates and alternates, if any, shall be determined by party rules, but the number of delegates shall be substantially in accordance with the ratio, which the number of votes cast for the party candidate for the office of governor, on the line or column of the party at the last preceding election for such office, in any unit of representation, bears to the total vote cast at such election for such candidate on such line or column in the entire state. The number of alternates from any district shall not exceed the number of delegates therefrom. The delegates certified to have been elected as such, in the manner provided in this chapter, shall be conclusively entitled to their seats, rights and votes as delegates to such convention. When a duly elected delegate does not attend the convention, his place shall be taken by one of the alternates, if any, to be substituted in his place, in the order of the vote received by each such alternate as such vote appears upon the certified list and if an equal number of votes were cast for two or more such alternates; the order in which such alternates shall be substituted shall be determined by lot forthwith upon the convening of the convention. If there shall have been no contested election for alternate, substitution shall be in the order in which the name of such alternate appears upon the certified list, and if no alternates shall have been elected or if no alternates appear at such convention, then the delegates present from the same district shall elect a person to fill the vacancy.
(L.1976, c. 233, § 1. Amended L.1977, c. 876, § 1)

§ 6-126. Conventions; rules for holding

1. The time and place of meeting of a convention shall be fixed, within the times prescribed herein, by a committee appointed pursuant to the rules of the state committee. The room designated for the meeting place of a convention shall have ample seating capacity for all delegates and alternates. Every convention shall be called to order by the chairman of the committee from which the call originates or by a person designated in writing for that purpose by such chairman, or, if he fails to make such designation, then, by a person designated in such manner as the rules of the party shall prescribe. Such chairman or person designated shall have the custody of the roll of the convention until it shall have been organized. No such convention shall proceed to the election of a temporary chairman or transact any business until the time fixed for the opening thereof nor until a majority of the delegates or respective alternates named in the official roll shall be present. The roll call upon the election of a temporary chairman shall not be delayed more than one hour after the time specified in the call for the opening of the convention, provided a majority of delegates, including alternates sufficient to make up such majority by substitution, are present. The person who calls the convention to order shall exercise no other function than that of calling the official roll of the delegates upon the vote for temporary chairman and declaring the result thereof.

2. The temporary chairman shall be chosen upon a call of the official roll. The committees of the convention shall be appointed by the convention, or by the temporary chairman, as the convention may order. Where only one candidate is placed in nomination for any office, the vote may be taken viva voce. When more than one candidate is placed in nomination for an office the roll of the delegates shall be called and each delegate when his name is called shall arise in his place and announce his choice, except that the chairman of a delegation from any unit of representation provided for by party rules, unless a member of such delegation objects, may announce the vote of such delegation. The convention may appoint a committee to nominate candidates to fill vacancies in nominations made by the convention and caused by the death, declination or disqualification of a candidate. The permanent officer shall keep the records of the convention.

3. Repealed.

(L.1976, c. 233, § 1. Amended L.1983, c. 29, § 1; L.1986, c. 378, § 1)

KeyCite Yellow Flag - Negative Treatment
Distinguished by Common Cause Indiana v. Individual Members of the Indiana Election Com'n, 7th Cir.(Ind.), September 9, 2015

128 S.Ct. 791
Supreme Court of the United States

NEW YORK STATE BOARD OF ELECTIONS, et al., Petitioners,
v.
Margarita LÓPEZ TORRES et al.

No. 06–766.
|
Argued Oct. 3, 2007.
|
Decided Jan. 16, 2008.

Synopsis
Background: Judicial candidates, voters, and non-profit organization brought § 1983 action against New York State Board of Elections, alleging that New York's statutory scheme for political parties' nominating candidates for Supreme Court judges violated their political association rights under the First Amendment. The United States District Court for the Eastern District of New York, John Gleeson, J., 411 F.Supp.2d 212, preliminarily enjoined judicial nominating conventions, and ordered that party nominations for judges be settled by direct primary election until State Legislature could enact corrective legislation. The United States Court of Appeals for the Second Circuit, 462 F.3d 161, affirmed. Certiorari was granted.

Holdings: The United States Supreme Court, Justice Scalia, held that:

[1] political party's associational rights did not confer any associational right on individual candidates;

[2] primary elections to choose delegates to parties' judicial nominating conventions imposed reasonable minimum requirements for delegate candidates;

[3] nominating conventions that followed delegate primary elections did not infringe judicial candidates' associational rights; and

[4] alleged existence of "one-party rule" within judicial districts did not infringe judicial candidates' associational rights.

Reversed.

Justice Stevens filed concurring opinion joined by Justice Souter.

Justice Kennedy filed opinion concurring in the judgment, joined in part by Justice Breyer.

West Headnotes (8)

[1] **Constitutional Law**
Political parties in general
Constitutional Law
Nominations;primary elections
Political party has First Amendment associational right to limit its membership as it wishes, and to choose candidate-selection process that will in its view produce nominee who best represents its political platform. U.S.C.A. Const.Amend. 1.

17 Cases that cite this headnote

[2] **Election Law**
Power to regulate
State acquires legitimate governmental interest in assuring fairness of political party's nominating process, enabling it to prescribe what that process must be, when state gives party a role in election process, e.g. by giving party right to have its candidates appear with party endorsement on general-election ballots.

8 Cases that cite this headnote

[3] **Constitutional Law**
Nominations;primary elections
State's power to prescribe political party's use of primaries or conventions to select

nominees who appear on general-election ballot is not absolute, but is limited by party's First Amendment associational right to limit its membership as it wishes; e.g., state may not prescribe procedure that permits non-party members to determine candidate bearing party's standard in general election. U.S.C.A. Const.Amend. 1.

15 Cases that cite this headnote

[4] **Constitutional Law**
Judges
Judges
Appointment or election

Political party's First Amendment associational rights to structure its internal party processes and to select judicial candidates of party's choosing did not extend to individual candidates so as to confer upon candidates any associational right not only to join, but to have certain degree of influence in, party. U.S.C.A. Const.Amend. 1.

9 Cases that cite this headnote

[5] **Constitutional Law**
Judges
Judges
Appointment or election

Feature of New York's statutory scheme for political parties' nominating candidates for Supreme Court judges, consisting of primary elections in each judicial district to choose delegates to parties' nominating conventions, imposed reasonable minimum requirements for delegate candidates, namely 500-signature petition collected during 37 days preceding primary, and thus could not violate independent judicial candidates' individual First Amendment associational rights. U.S.C.A. Const.Amend. 1; N.Y.McKinney's Election Law §§ 6-124, 6-134(4), 6-136(2)(i), (3), 6-158(1).

9 Cases that cite this headnote

[6] **Election Law**
Requisites and sufficiency

Just as states may require persons to demonstrate significant modicum of support before allowing them access to general-election ballot, they may similarly demand minimum degree of support for candidate access to primary ballot.

5 Cases that cite this headnote

[7] **Constitutional Law**
Judges
Judges
Appointment or election

Feature of New York's statutory scheme for political parties' nominating candidates for Supreme Court judges, consisting of nominating conventions at which delegates, chosen in earlier primary elections, selected parties' nominees for general election, did not infringe judicial candidates' First Amendment associational rights, regardless of party leadership's inevitable garnering of more votes for its slate of delegates than any independent candidate could amass for himself; fact that state constitutionally could choose different system, i.e. primary election, did not render convention system unconstitutional. U.S.C.A. Const.Amend. 1; N.Y.McKinney's Election Law § 6-106.

11 Cases that cite this headnote

[8] **Constitutional Law**
Judges
Judges
Appointment or election

Alleged existence of entrenched "one-party rule" within individual New York judicial districts did not constitute infringement of First Amendment associational rights of candidates for state's Supreme Court, and did not justify mandating that state adopt different system for parties' nominating judicial candidates; candidates who failed to obtain major party's nomination via statutory convention procedure could still get on general-election ballot for same district

by providing requisite number of signatures of voters resident in that district. U.S.C.A. Const.Amend. 1; N.Y.McKinney's Election Law § 6-142(2).

9 Cases that cite this headnote

**793 *196 *Syllabus* *

Under New York's current Constitution, State Supreme Court Justices are elected in each of the State's judicial districts. Since 1921, New York's election law has required parties to select their nominees by a convention composed of delegates elected by party members. An individual running for delegate must submit a 500–signature petition collected within a specified time. The convention's nominees appear automatically on the general-election ballot, along with any independent candidates who meet certain statutory requirements. Respondents filed suit, seeking, *inter alia,* a declaration that New York's convention system violates the First Amendment rights of challengers running against candidates favored by party leaders and an injunction mandating a direct primary election to select Supreme Court nominees. The Federal District Court issued a preliminary injunction, pending the enactment of a new state statutory scheme, and the Second Circuit affirmed.

Held: New York's system of choosing party nominees for the State Supreme Court does not violate the First Amendment. Pp. 797 – 801.

(a) Because a political party has a First Amendment right to limit its membership as it wishes, and to choose a candidate-selection process that will in its view produce the nominee who best represents its political platform, a State's power to prescribe party use of primaries or conventions to select nominees for the general election is not without limits. *California* **794 *Democratic Party v. Jones,* 530 U.S. 567, 577, 120 S.Ct. 2402, 147 L.Ed.2d 502. However, respondents, who claim their own associational right to join and have influence in the party, are in no position to rely on the right that the First Amendment confers on political parties. Pp. 797 – 799.

(b) Respondents' contention that New York's electoral system does not assure them a fair chance of prevailing in their parties' candidate-selection process finds no support in this Court's precedents. Even if *Kusper v. Pontikes,* 414 U.S. 51, 57, 94 S.Ct. 303, 38 L.Ed.2d 260, which acknowledged an individual's associational right to vote in a party primary without undue state-imposed impediment, were extended to cover the right to run in a party primary, the New York law's signature and deadline requirements are entirely reasonable. A State may demand a minimum degree of support *197 for candidate access to a ballot, see *Jenness v. Fortson,* 403 U.S. 431, 442, 91 S.Ct. 1970, 29 L.Ed.2d 554. P. 798.

(c) Respondents' real complaint is that the convention process following the delegate election does not give them a realistic chance to secure their party's nomination because the party leadership garners more votes for its delegate slate and effectively determines the nominees. This says no more than that the party leadership has more widespread support than a candidate not supported by the leadership. Cases invalidating ballot-access requirements have focused on the requirements themselves, and not on the manner in which political actors function under those requirements. *E.g., Bullock v. Carter,* 405 U.S. 134, 92 S.Ct. 849, 31 L.Ed.2d 92. Those cases do not establish an individual's constitutional right to have a "fair shot" at winning a party's nomination. Pp. 798 – 800.

(d) Respondents' argument that the existence of entrenched "one-party rule" in the State's general election demands that the First Amendment be used to impose additional competition in the parties' nominee-selection process is a novel and implausible reading of the First Amendment. Pp. 800 – 801.

462 F.3d 161, reversed.

SCALIA, J., delivered the opinion of the Court, in which ROBERTS, C. J., and STEVENS, SOUTER, THOMAS, GINSBURG, BREYER, and ALITO, JJ., joined. STEVENS, J., filed a concurring opinion, in which SOUTER, J., joined, *post*, pp. 801 – 803. KENNEDY, J., filed an opinion concurring in the judgment, in which BREYER, J., joined as to Part II, *post*, p. 803.

Attorneys and Law Firms

Theodore B. Olson, for Petitioners New York State Board of Elections, et al.

Andrew J. Rossman, for Petitioners New York County Democratic Committee, et al.

Frederick A.O. Schwarz, Jr., for Respondents.

Todd D. Valentine, Albany, NY, Randy M. Mastro, Jennifer L. Conn, Gibson, Dunn & Crutcher LLP, New York, NY, Theodore B. Olson, Matthew D. McGill, Michael S. Diamant, Gibson, Dunn & Crutcher LLP, Washington, D.C., for Petitioners New York State Board of Elections, Douglas Kellner, Neil W. Kelleher, Helena Moses Donohue and Evelyn J. Aquila.

Carter G. Phillips, Sidley Austin LLP, Washington, D.C., for the New York Republican State Committee, Thomas C. Goldstein, Amanda R. Johnson, Akin Gump Strauss Hauer & Feld LLP, Washington, D.C., for the New York County Democratic Committee, Steven M. Pesner, Andrew J. Rossman, James P. Chou, **795 James E. d'Auguste, Vincenzo A. DeLeo, Jamison A. Diehl, Michael D. Lockard, Akin Gump Strauss Hauer & Feld LLP, New York, New York, for the New York County Democratic Committee, Edward P. Lazarus, Akin Gump Strauss Hauer & Feld LLP, Los Angeles, California, for the New York County Democratic Committee, Joseph L. Forstadt, Ernst H. Rosenberger, Burton N. Lipshie, David A. Sifre, Stroock & Stroock & Lavan, New York, New York, for Associations of New York State Supreme Court Justices in the City and State of New York Honorable David Demarest, J.S.C., Arthur W. Greig, New York, New York, for the New York County Democratic Committee.

Andrew M. Cuomo, New York, NY, Barbara D. Underwood, Solicitor General, Benjamin N. Gutman, Deputy Solicitor General, Denise A. Hartman, Assistant Solicitor General, for Petitioner Attorney General of the State of New York as Statutory Intervenor.

Paul M. Smith, Jenner & Block LLP, Washington, D.C., Jeremy M. Creelan, Elizabeth Valentina, Carletta F. Higginson, Matthew W. Alsdorf, Joshua A. Block, Jenner & Block LLP, New York, NY, Adam H. Morse, Jenner & Block LLP, Chicago, IL, Frederick A.O. Schwarz, Jr., Burt Neuborne, Deborah Goldberg, James J. Sample Aziz Huq, David Gans, New York, NY, Kent A. Yalowitz, Glynn K. Spelliscy, Joshua Brook, J. Alex Brophy, Yue-Han Chow, Arnold & Porter LLP, New York, NY, for Respondents.

Opinion

Justice SCALIA delivered the opinion of the Court.

***198** The State of New York requires that political parties select their nominees for Supreme Court Justice at a convention of delegates chosen by party members in a primary election. We consider whether this electoral system violates the First Amendment rights of prospective party candidates.

I

A

The Supreme Court of New York is the State's trial court of general jurisdiction, with an Appellate Division that hears appeals from certain lower courts. See ***199** N.Y. Const., Art. VI, §§ 7, 8. Under New York's current Constitution, the State is divided into 12 judicial districts, see Art. VI, § 6(a); N.Y. Jud. Law Ann. § 140 (West 2005), and Supreme Court Justices are elected to 14–year terms in each such district, see N.Y. Const., Art. VI, § 6(c). The New York Legislature has provided for the election of a total of 328 Supreme Court Justices in this fashion. See N.Y. Jud. Law Ann. § 140–a (West Supp.2007).

Over the years, New York has changed the method by which Supreme Court Justices are selected several times. Under the New York Constitution of 1821, Art. IV, § 7, all judicial officers, except Justices of the Peace, were appointed by the Governor with the consent of the Senate. See 7 Sources and Documents of the U.S. Constitutions 181, 184 – 185 (W. Swindler ed.1978). In 1846, New York amended its Constitution to require popular election of the Justices of the Supreme Court (and also the Judges of the New York Court of Appeals). *Id.*, at 192, 200 (N.Y. Const. of 1846, Art. VI, § 12). In the early years under that regime, the State allowed political parties to choose their own method of **796 selecting the judicial candidates who would bear their endorsements on the general-election ballot. See, *e.g.*, Report of Joint Committee of Senate and Assembly of New York, Appointed to Investigate Primary and Election Laws of This and Other States, S. Doc. No. 26, pp. 195–219 (1910). The major parties opted for party conventions, the same method then employed to nominate candidates for other state offices.

Ibid.; see also P. Ray, An Introduction to Political Parties and Practical Politics 94 (1913).

In 1911, the New York Legislature enacted a law requiring political parties to select Supreme Court nominees (and most other nominees who did not run statewide) through direct primary elections. Act of Oct. 18, 1911, ch. 891, § 45(4), 1911 N.Y. Laws pp. 2657, 2682. The primary system came to be criticized as a "device capable of astute and successful manipulation by professionals," Editorial, The State Convention, ***200** N.Y. Times, May 1, 1917, p. 12, and the Republican candidate for Governor in 1920 campaigned against it as "a fraud" that " 'offered the opportunity for two things, for the demagogue and the man with money,' " Miller Declares Primary a Fraud, N.Y. Times, Oct. 23, 1920, p. 4. A law enacted in 1921 required parties to select their candidates for the Supreme Court by a convention composed of delegates elected by party members. Act of May 2, 1921, ch. 479, §§ 45(1), 110, 1921 N.Y. Laws pp. 1451, 1454, 1471.

New York retains this system of choosing party nominees for Supreme Court Justice to this day. Section 6–106 of New York's election law sets forth its basic operation: "Party nominations for the office of justice of the supreme court shall be made by the judicial district convention." N.Y. Elec. Law Ann. § 6–106 (West 2007). A "party" is any political organization whose candidate for Governor received 50,000 or more votes in the most recent election. § 1–104(3). In a September "delegate primary," party members elect delegates from each of New York's 150 assembly districts to attend the party's judicial convention for the judicial district in which the assembly district is located. See N.Y. State Law Ann. § 121 (West 2003); N.Y. Elec. Law Ann. §§ 6–124, 8–100(1)(a) (West 2007). An individual may run for delegate by submitting to the Board of Elections a designating petition signed by 500 enrolled party members residing in the assembly district, or by five percent of such enrolled members, whichever is less. §§ 6–136(2)(i), (3). These signatures must be gathered within a 37–day period preceding the filing deadline, which is approximately two months before the delegate primary. §§ 6–134(4), 6–158(1). The delegates elected in these primaries are uncommitted; the primary ballot does not specify the judicial nominee whom they will support. § 7–114.

The nominating conventions take place one to two weeks after the delegate primary. §§ 6–126, 6–158(5). Each of the 12 judicial districts has its own convention to nominate the ***201** party's Supreme Court candidate or candidates who will run at large in that district in the general election. §§ 6–124, 6–156. The general election takes place in November. § 8–100(1)(c). The nominees from the party conventions appear automatically on the general-election ballot. § 7–104(5). They may be joined on the general-election ballot by independent candidates and candidates of political organizations that fail to meet the 50,000 vote threshold for "party" status; these candidates gain access to the ballot by submitting timely nominating petitions with (depending on the judicial district) 3,500 or 4,000 signatures from voters in that district or signatures from five percent of the number of votes cast for ****797** Governor in that district in the prior election, whichever is less. §§ 6–138, 6–142(2).

B

Respondent López Torres was elected in 1992 to the civil court for Kings County—a court with more limited jurisdiction than the Supreme Court—having gained the nomination of the Democratic Party through a primary election. She claims that soon after her election, party leaders began to demand that she make patronage hires, and that her consistent refusal to do so caused the local party to oppose her unsuccessful candidacy at the Supreme Court nominating conventions in 1997, 2002, and 2003. The following year, López Torres—together with other candidates who had failed to secure the nominations of their parties, voters who claimed to have supported those candidates, and the New York branch of a public-interest organization called Common Cause—brought suit in federal court against the New York Board of Elections, which is responsible for administering and enforcing the New York election law. See §§ 3–102, 3–104. They contended that New York's election law burdened the rights of challengers seeking to run against candidates favored by the party leadership, and deprived voters and candidates of their rights to gain access to the ballot and to associate in choosing their party's candidates. As relevant ***202** here, they sought a declaration that New York's convention system for selecting Supreme Court Justices violates their First Amendment rights, and an injunction mandating the establishment of a direct primary election to select party nominees for Supreme Court Justice.

The District Court issued a preliminary injunction granting the relief requested, pending the New York Legislature's enactment of a new statutory scheme. 411 F.Supp.2d 212, 256 (E.D.N.Y.2006). A unanimous panel of the United States Court of Appeals for the Second Circuit affirmed. 462 F.3d 161 (2006). It held that voters and candidates possess a First Amendment right to a "realistic opportunity to participate in [a political party's] nominating process, and to do so free from burdens that are both severe and unnecessary." *Id.*, at 187. New York's electoral law violated that right because of the quantity of signatures and delegate recruits required to obtain a Supreme Court nomination at a judicial convention, see *id.*, at 197, and because of the apparent reality that party leaders can control delegates, see *id.*, at 198–200. In the court's view, because "one-party rule" prevailed within New York's judicial districts, a candidate had a constitutional right to gain access to the party's convention, notwithstanding her ability to get on the general-election ballot by petition signatures. *Id.*, at 193–195, 200. The Second Circuit's holding effectively returned New York to the system of electing Supreme Court Justices that existed before the 1921 amendments to the election law. We granted certiorari. 549 U.S. 1204, 127 S.Ct. 1325, 167 L.Ed.2d 72 (2007).

II

A

[1] **[2]** **[3]** A political party has a First Amendment right to limit its membership as it wishes, and to choose a candidate-selection process that will in its view produce the nominee who best represents its political platform. ***203** *Democratic Party of United States v. Wisconsin ex rel. La Follette,* 450 U.S. 107, 122, 101 S.Ct. 1010, 67 L.Ed.2d 82 (1981); *California Democratic Party v. Jones,* 530 U.S. 567, 574–575, 120 S.Ct. 2402, 147 L.Ed.2d 502 (2000). These rights are circumscribed, however, when the State gives the party a role in the election process—as New York ****798** has done here by giving certain parties the right to have their candidates appear with party endorsement on the general-election ballot. Then, for example, the party's racially discriminatory action may become state action that violates the Fifteenth Amendment. See *id.*, at 573, 120 S.Ct. 2402. And then also the State acquires a legitimate governmental interest in ensuring the fairness of the party's nominating process, enabling it to prescribe what that process must be. *Id.*, at 572–573, 120 S.Ct. 2402. We have, for example, considered it to be "too plain for argument" that a State may prescribe party use of primaries or conventions to select nominees who appear on the general-election ballot. *American Party of Tex. v. White,* 415 U.S. 767, 781, 94 S.Ct. 1296, 39 L.Ed.2d 744 (1974). That prescriptive power is not without limits. In *Jones,* for example, we invalidated on First Amendment grounds California's blanket primary, reasoning that it permitted non-party-members to determine the candidate bearing the party's standard in the general election. 530 U.S., at 577, 120 S.Ct. 2402. See also *Eu v. San Francisco County Democratic Central Comm.,* 489 U.S. 214, 224, 109 S.Ct. 1013, 103 L.Ed.2d 271 (1989); *Tashjian v. Republican Party of Conn.,* 479 U.S. 208, 214–217, 107 S.Ct. 544, 93 L.Ed.2d 514 (1986).

[4] In the present case, however, the party's associational rights are at issue (if at all) only as a shield and not as a sword. Respondents are in no position to rely on the right that the First Amendment confers on political parties to structure their internal party processes and to select the candidate of the party's choosing. Indeed, both the Republican and Democratic state parties have intervened from the very early stages of this litigation to defend New York's electoral law. The weapon wielded by these plaintiffs is their *own* claimed associational right not only to join, but to have a certain degree of influence in, the party. They contend that New York's electoral system does not go far enough— ***204** does not go as far as the Constitution demands—in ensuring that they will have a fair chance of prevailing in their parties' candidate-selection process.

[5] **[6]** This contention finds no support in our precedents. We have indeed acknowledged an individual's associational right to vote in a party primary without undue state-imposed impediment. In *Kusper v. Pontikes,* 414 U.S. 51, 57, 94 S.Ct. 303, 38 L.Ed.2d 260 (1973), we invalidated an Illinois law that required a voter wishing to change his party registration so as to vote in the primary of a different party to do so almost two full years before the primary date. But *Kusper* does not cast doubt on all state-imposed limitations upon primary voting. In *Rosario v. Rockefeller,* 410 U.S. 752, 93 S.Ct. 1245, 36 L.Ed.2d 1 (1973), we upheld a New York State requirement that a voter have enrolled in the party of his choice at least 30 days before the previous general election in order to vote

in the next party primary. In any event, respondents do not claim that they have been excluded from voting in the primary. Moreover, even if we extended *Kusper* to cover not only the right to vote in the party primary but also the right to run, the requirements of the New York law (a 500–signature petition collected during a 37–day window in advance of the primary) are entirely reasonable. Just as States may require persons to demonstrate "a significant modicum of support" before allowing them access to the general-election ballot, lest it become unmanageable, *Jenness v. Fortson*, 403 U.S. 431, 442, 91 S.Ct. 1970, 29 L.Ed.2d 554 (1971), they may similarly demand a minimum degree of support for candidate access to a primary ballot. The signature requirement here is far from excessive. See, *e.g.*, *Norman* ****799** *v. Reed*, 502 U.S. 279, 295, 112 S.Ct. 698, 116 L.Ed.2d 711 (1992) (approving requirement of 25,000 signatures, or approximately two percent of the electorate); *White, supra*, at 783, 94 S.Ct. 1296 (approving requirement of one percent of the vote cast for Governor in the preceding general election, which was about 22,000 signatures).

[7] Respondents' real complaint is not that they cannot vote in the election for delegates, nor even that they cannot run ***205** in that election, but that the convention process that follows the delegate election does not give them a realistic chance to secure the party's nomination. The party leadership, they say, inevitably garners more votes for its slate of delegates (delegates uncommitted to any judicial nominee) than the unsupported candidate can amass for himself. And thus the leadership effectively determines the nominees. But this says nothing more than that the party leadership has more widespread support than a candidate not supported by the leadership. No New York law compels election of the leadership's slate —or, for that matter, compels the delegates elected on the leadership's slate to vote the way the leadership desires. And no state law prohibits an unsupported candidate from attending the convention and seeking to persuade the delegates to support her. Our cases invalidating ballot-access requirements have focused on the requirements themselves, and not on the manner in which political actors function under those requirements. See, *e.g.*, *Bullock v. Carter*, 405 U.S. 134, 92 S.Ct. 849, 31 L.Ed.2d 92 (1972) (Texas statute required exorbitant filing fees); *Williams v. Rhodes*, 393 U.S. 23, 89 S.Ct. 5, 21 L.Ed.2d 24 (1968) (Ohio statute required, *inter alia*, excessive number of petition signatures); *Anderson v. Celebrezze*, 460 U.S. 780, 103 S.Ct. 1564, 75 L.Ed.2d 547 (1983) (Ohio statute established unreasonably early filing deadline). Here respondents complain not of the state law, but of the voters' (and their elected delegates') preference for the choices of the party leadership.

To be sure, we have, as described above, permitted States to set their faces against "party bosses" by requiring party-candidate selection through processes more favorable to insurgents, such as primaries. But to say that the State can require this is a far cry from saying that the Constitution demands it. None of our cases establishes an individual's constitutional right to have a "fair shot" at winning the party's nomination. And with good reason. What constitutes a "fair shot" is a reasonable enough question for legislative judgment, which we will accept so long as it does not too ***206** much infringe upon the party's associational rights. But it is hardly a manageable constitutional question for judges—especially for judges in our legal system, where traditional electoral practice gives no hint of even the existence, much less the content, of a constitutional requirement for a "fair shot" at party nomination. Party conventions, with their attendant "smoke-filled rooms" and domination by party leaders, have long been an accepted manner of selecting party candidates. "National party conventions prior to 1972 were generally under the control of state party leaders" who determined the votes of state delegates. American Presidential Elections: Process, Policy, and Political Change 14 (H. Schantz ed.1996). Selection by convention has never been thought unconstitutional, even when the delegates were not selected by primary but by party caucuses. See *ibid.*

The Second Circuit's judgment finesses the difficulty of saying how much of a shot is a "fair shot" by simply mandating a primary until the New York Legislature acts. This was, according to the Second ****800** Circuit, the New York election law's default manner of party-candidate selection for offices whose manner of selection is not otherwise prescribed. Petitioners question the propriety of this mandate, but we need not pass upon that here. Even conceding its propriety, there is good reason to believe that the elected members of the New York Legislature remain opposed to the primary, for the same reasons their predecessors abolished it 86 years ago: because it leaves judicial selection to voters uninformed about judicial qualifications, and places a high premium upon the ability to raise money. Should the New York Legislature persist in that view, and adopt something

different from a primary and closer to the system that the Second Circuit invalidated, the question whether *that* provides enough of a "fair shot" would be presented. We are not inclined to open up this new and excitingly unpredictable theater of election jurisprudence. Selection by convention has been a traditional means of choosing party nominees. While a State ***207** may determine it is not desirable and replace it, it is not unconstitutional.

B

[8] Respondents put forward, as a special factor which gives them a First Amendment right to revision of party processes in the present case, the assertion that party loyalty in New York's judicial districts renders the general-election ballot "uncompetitive." They argue that the existence of entrenched "one-party rule" demands that the First Amendment be used to impose additional competition in the nominee-selection process of the parties. (The asserted "one-party rule," we may observe, is that of the Democrats in some judicial districts, and of the Republicans in others. See 411 F.Supp.2d, at 230.) This is a novel and implausible reading of the First Amendment.

To begin with, it is hard to understand how the competitiveness of the general election has anything to do with respondents' associational rights in the party's selection process. It makes no difference to the person who associates with a party and seeks its nomination whether the party is a contender in the general election, an underdog, or the favorite. Competitiveness may be of interest to the voters in the general election, and to the candidates who choose to run *against* the dominant party. But we have held that those interests are well enough protected so long as all candidates have an adequate opportunity to appear on the general-election ballot. In *Jenness* we upheld a petition-signature requirement for inclusion on the general-election ballot of five percent of the eligible voters, see 403 U.S., at 442, 91 S.Ct. 1970, and in *Munro v. Socialist Workers Party,* 479 U.S. 189, 199, 107 S.Ct. 533, 93 L.Ed.2d 499 (1986), we upheld a petition-signature requirement of one percent of the vote in the State's primary. New York's general-election balloting procedures for Supreme Court Justice easily pass muster under this standard. Candidates who fail to obtain a major party's nomination via convention can still get on the general-election ballot for the judicial ***208** district by providing the requisite number of signatures of voters resident in the district. N.Y. Elec. Law Ann. § 6–142(2). To our knowledge, outside of the Fourteenth and Fifteenth Amendment contexts, see *Jones,* 530 U.S., at 573, 120 S.Ct. 2402, no court has ever made "one-party entrenchment" a basis for interfering with the candidate-selection processes of a party. (Of course, the *lack* of one-party entrenchment will not cause free access to the general-election ballot to validate an otherwise unconstitutional restriction upon participation in a party's nominating process. See *Bullock,* 405 U.S., at 146–147, 92 S.Ct. 849.)

****801** The reason one-party rule is entrenched may be (and usually is) that voters approve of the positions and candidates that the party regularly puts forward. It is no function of the First Amendment to require revision of those positions or candidates. The States can, within limits (that is, short of violating the parties' freedom of association), discourage party monopoly—for example, by refusing to show party endorsement on the election ballot. But the Constitution provides no authority for federal courts to prescribe such a course. The First Amendment creates an open marketplace where ideas, most especially political ideas, may compete without government interference. See *Abrams v. United States,* 250 U.S. 616, 630, 40 S.Ct. 17, 63 L.Ed. 1173 (1919) (Holmes, J., dissenting). It does not call on the federal courts to manage the market by preventing too many buyers from settling upon a single product.

Limiting respondents' court-mandated "fair shot at party endorsement" to situations of one-party entrenchment merely multiplies the impracticable lines courts would be called upon to draw. It would add to those alluded to earlier the line at which mere party popularity turns into "one-party dominance." In the case of New York's election system for Supreme Court Justices, that line would have to be drawn separately for each of the 12 judicial districts—and in those districts that are "competitive" the current system ***209** would presumably remain valid. But why limit the remedy to *one*-party dominance? Does not the dominance of two parties similarly stifle competing opinions? Once again, we decline to enter the morass.

* * *

New York State has thrice (in 1846, 1911, and 1921) displayed a willingness to reconsider its method of selecting Supreme Court Justices. If it wishes to return to the primary system that it discarded in 1921, it is free to do so; but the First Amendment does not compel that. We reverse the Second Circuit's contrary judgment.

It is so ordered.

Justice STEVENS, with whom Justice SOUTER joins, concurring.

While I join Justice SCALIA's cogent resolution of the constitutional issues raised by this case, I think it appropriate to emphasize the distinction between constitutionality and wise policy. Our holding with respect to the former should not be misread as endorsement of the electoral system under review, or disagreement with the findings of the District Court that describe glaring deficiencies in that system and even lend support to the broader proposition that the very practice of electing judges is unwise. But as I recall my esteemed former colleague, Thurgood Marshall, remarking on numerous occasions: "The Constitution does not prohibit legislatures from enacting stupid laws."

Justice KENNEDY, with whom Justice BREYER joins as to Part II, concurring in the judgment.

The Court's analysis, in my view, is correct in important respects; but my own understanding of the controlling principles counsels concurrence in the judgment and the expression of these additional observations.

***210** I

When a state-mandated primary is used to select delegates to conventions or nominees for office, the State is bound not to design its ballot or election processes in ways that impose severe burdens on First Amendment rights of expression and political participation. See ****802** *Kusper v. Pontikes,* 414 U.S. 51, 57–58, 94 S.Ct. 303, 38 L.Ed.2d 260 (1973); see also *California Democratic Party v. Jones,* 530 U.S. 567, 581–582, 120 S.Ct. 2402, 147 L.Ed.2d 502 (2000); cf. *Lubin v. Panish,* 415 U.S. 709, 716, 94 S.Ct. 1315, 39 L.Ed.2d 702 (1974); *Bullock v. Carter,* 405 U.S. 134, 144, 92 S.Ct. 849, 31 L.Ed.2d 92 (1972); *Gray v. Sanders,* 372 U.S. 368, 380, 83 S.Ct. 801, 9 L.Ed.2d 821 (1963). Respondents' objection to New York's scheme of nomination by convention is that it is difficult for those who lack party connections or party backing to be chosen as a delegate or to become a nominee for office. Were the state-mandated-and-designed nominating convention the sole means to attain access to the general election ballot there would be considerable force, in my view, to respondents' contention that the First Amendment prohibits the State from requiring a delegate selection mechanism with the rigidities and difficulties attendant upon this one. The system then would be subject to scrutiny from the standpoint of a "reasonably diligent independent candidate," *Storer v. Brown,* 415 U.S. 724, 742, 94 S.Ct. 1274, 39 L.Ed.2d 714 (1974). The Second Circuit took this approach. 462 F.3d 161, 196 (2006).

As the Court is careful to note, however, New York has a second mechanism for placement on the final election ballot. *Ante,* at 797. One who seeks to be a justice of the New York Supreme Court may qualify by a petition process. The petition must be signed by the lesser of (1) 5 percent of the number of votes last cast for Governor in the judicial district or (2) either 3,500 or 4,000 voters (depending on the district). This requirement has not been shown to be an unreasonable one, a point respondents appear to concede. True, the candidate who gains ballot access by petition does not have a party designation; but the candidate is still considered by the voters.

***211** The petition alternative changes the analysis. Cf. *Munro v. Socialist Workers Party,* 479 U.S. 189, 199, 107 S.Ct. 533, 93 L.Ed.2d 499 (1986) ("It can hardly be said that Washington's voters are denied freedom of association because they must channel their expressive activity into a campaign at the primary as opposed to the general election").

This is not to say an alternative route to the general election exempts the delegate primary/nominating convention from all scrutiny. For instance, the Court in *Bullock,* after determining that Texas' primary election filing fees were so "patently exclusionary" on the basis of wealth as to invoke strict scrutiny under the Equal Protection Clause, rejected the argument that candidate access to the general election without a fee saved the statute. 405 U.S., at 143–144, 146–147, 92 S.Ct. 849 ("[W]e can hardly accept as reasonable an alternative that requires candidates and voters to abandon their party affiliations in order to avoid the burdens of the

filing fees"). But there is a dynamic relationship between, in this case, the convention system and the petition process; higher burdens at one stage are mitigated by lower burdens at the other. See *Burdick v. Takushi,* 504 U.S. 428, 448, 112 S.Ct. 2059, 119 L.Ed.2d 245 (1992) (KENNEDY, J., dissenting) ("The liberality of a State's ballot access laws is one determinant of the extent of the burden imposed by the write-in ban; it is not, though, an automatic excuse for forbidding all write-in voting"); Persily, Candidates v. Parties: Constitutional Constraints on Primary Ballot Access Laws, 89 Geo. L.J. 2181, 2214–2216 (2001). And, though the point does not apply here, there are certain injuries (as in *Bullock*) that are so severe they are unconstitutional no matter how minor the burdens at the other stage. As the Court recognized in *Kusper,* moreover, there is an individual ****803** right to associate with the political party of one's choice and to have a voice in the selection of that party's candidate for public office. See 414 U.S., at 58, 94 S.Ct. 303. On the particular facts and circumstances of this case, then, I reach the same conclusion the Court does.

***212** II

It is understandable that the Court refrains from commenting upon the use of elections to select the judges of the State's courts of general jurisdiction, for New York has the authority to make that decision. This closing observation, however, seems to be in order.

When one considers that elections require candidates to conduct campaigns and to raise funds in a system designed to allow for competition among interest groups and political parties, the persisting question is whether that process is consistent with the perception and the reality of judicial independence and judicial excellence. The rule of law, which is a foundation of freedom, presupposes a functioning judiciary respected for its independence, its professional attainments, and the absolute probity of its judges. And it may seem difficult to reconcile these aspirations with elections.

Still, though the Framers did not provide for elections of federal judges, most States have made the opposite choice, at least to some extent. In light of this longstanding practice and tradition in the States, the appropriate practical response is not to reject judicial elections outright but to find ways to use elections to select judges with the highest qualifications. A judicial election system presents the opportunity, indeed the civic obligation, for voters and the community as a whole to become engaged in the legal process. Judicial elections, if fair and open, could be an essential forum for society to discuss and define the attributes of judicial excellence and to find ways to discern those qualities in the candidates. The organized bar, the legal academy, public advocacy groups, a principled press, and all the other components of functioning democracy must engage in this process.

Even in flawed election systems there emerge brave and honorable judges who exemplify the law's ideals. But it is unfair to them and to the concept of judicial independence if ***213** the State is indifferent to a selection process open to manipulation, criticism, and serious abuse.

Rule of law is secured only by the principled exercise of political will. If New York statutes for nominating and electing judges do not produce both the perception and the reality of a system committed to the highest ideals of the law, they ought to be changed and to be changed now. But, as the Court today holds, and for further reasons given in this separate opinion, the present suit does not permit us to invoke the Constitution in order to intervene.

III

With these observations, I concur in the judgment of the Court.

All Citations

552 U.S. 196, 128 S.Ct. 791, 169 L.Ed.2d 665, 76 USLW 4052, 08 Cal. Daily Op. Serv. 554, 2008 Daily Journal D.A.R. 638, 21 Fla. L. Weekly Fed. S 42

Footnotes

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See

United States v. Detroit Timber & Lumber Co., 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

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121 A.D.3d 1283
Supreme Court, Appellate Division,
Third Department, New York.

In the Matter of Dawn DIAMOND, Appellant,
v.
Brian F. DeJOSEPH, as Candidate for the Office of Justice of the Supreme Court for the Fifth Judicial District, et al., Respondents, et al., Respondents. (Proceeding No. 1.)
In the Matter of Philip Annutto, Appellant,
v.
Brian F. DeJoseph, as Candidate for the Office of Justice of the Supreme Court for the Fifth Judicial District, et al., Respondents, et al., Respondents. (Proceeding No. 2.).

Oct. 16, 2014.

Synopsis
Background: Voter and registered Democratic Party member and voter and registered Conservative Party member petitioned to invalidate certificate of nomination for public office of Justice of the Supreme Court. The Supreme Court, Albany County, McDonough, J., dismissed the petitions. Petitioners appealed. Cases were joined together for consideration by the Supreme Court, Appellate Division.

Holdings: The Supreme Court, Appellate Division, held that:

[1] selection of delegates was substantially in accordance with the proportional representation requirement, and

[2] information regarding current composition of assembly districts comprising judicial district or total number of votes attributable to counties or parts thereof that were contained within such districts was required to determine whether there was compliance with proportional representation requirement.

Affirmed.

West Headnotes (3)

[1] **Election Law**
Election and qualification of delegates
Purpose of the proportional representation requirement set forth in Election Law is to ensure that the districts from which the delegates to judicial nominating convention are elected are properly represented in proportion to their voting strength. McKinney's Election Law § 6–124.

1 Cases that cite this headnote

[2] **Election Law**
Election and qualification of delegates
Selection of delegates to judicial nominating convention was substantially in accordance with the proportional representation requirement set forth in Election Law, where 10 delegates were elected out of total of 13 potential delegates. McKinney's Election Law § 6–124.

1 Cases that cite this headnote

[3] **Election Law**
Election and qualification of delegates
Without information regarding current composition of assembly districts comprising judicial district or total number of votes attributable to counties or parts thereof that were contained within such districts determination could not be made as to whether there was compliance with proportional representation requirement, since compliance required comparison of percentage of votes cast to percentage of delegates to judicial nominating convention elected in each assembly district. McKinney's Election Law § 6–124.

1 Cases that cite this headnote

Attorneys and Law Firms

****264** Law Office of John Hoggan, PLLC, Albany (John D. Hoggan Jr. of counsel), for appellants.

Featherstonhaugh, Wiley & Clyne, LLP (Frank G. Hoare of counsel), for Brian F. DeJoseph and others, respondents.

Before: LAHTINEN, J.P., GARRY, EGAN JR., LYNCH and DEVINE, JJ.

Opinion

PER CURIAM.

***1283** Appeals (1) from a judgment of the Supreme Court (McDonough, J.), entered October 7, 2014 in Albany County, which dismissed petitioner's application, in a proceeding pursuant to Election Law § 16–102, to declare invalid the certificate of nomination naming respondent Brian F. DeJoseph as the Democratic Party candidate for the public office of Justice of the Supreme Court for the Fifth Judicial District in the November 4, 2014 general election, and (2) from a judgment of said court, entered October 7, 2014 in Albany County, which dismissed petitioner's application, in a proceeding pursuant to Election Law § 16–102, to declare invalid the certificate of nomination naming respondent Brian F. DeJoseph as the Conservative Party candidate for the public office of Justice of the Supreme Court for the Fifth Judicial District in the November 4, 2014 general election.

These proceedings deal with the judicial nominating conventions that were held by the Democratic and Conservative Parties to select each party's candidate for the public office of Justice of the Supreme Court for the Fifth Judicial District in the November 4, 2014 general election. Respondent Brian F. DeJoseph was selected as a candidate by both parties and separate certificates of nomination were filed with respondent State Board of Elections. Thereafter, petitioner Dawn Diamond, a registered Democratic Party member, and petitioner Philip Annutto, a registered Conservative Party member, filed general and specific objections to the certificate of nomination naming DeJoseph as the Democratic and Conservative Party candidate, respectively; both petitioners are eligible to vote for the public office at issue. Based upon these objections, Diamond and Annutto commenced proceeding Nos. 1 and 2, respectively, seeking ***1284** to invalidate the relevant certificate of nomination and to restrain the State Board from certifying the ballots at issue. Each petitioner challenged the legitimacy of the respective judicial nominating conventions, claiming that such convention was not in compliance with the proportional representation requirement of Election Law § 6–124. Supreme Court rejected this argument and dismissed the respective petitions. Petitioners separately appeal, and these cases have been joined together for consideration by this Court.

[1] Initially, the proportional representation requirement is set forth in Election Law § 6–124, which provides that the number of delegates at a judicial convention "shall be determined by party rules, but the number of delegates shall be substantially in accordance with the ratio, which the number of votes cast for the party candidate for the office of governor, on the line or column of the party at the last preceding election for such office, in any unit of representation, bears to the total vote cast at such election for such candidate on such line or column in the ****265** entire state." The purpose of this requirement is to ensure that the districts from which the delegates are elected are "properly represented in proportion to their voting strength" (*Matter of Azria v. Salerno,* 68 N.Y.2d 887, 889, 508 N.Y.S.2d 933, 501 N.E.2d 582 [1986]; *see Matter of Consuello v. McGrath,* 21 Misc.3d 1112[A], 2008 N.Y. Slip Op. 52057[U], *2, 2008 WL 4595026 [Sup.Ct., Albany County 2008], *affd. for reasons stated below* 55 A.D.3d 1453, 864 N.Y.S.2d 925 [2008], *lv. denied* 11 N.Y.3d 709, 868 N.Y.S.2d 602, 897 N.E.2d 1086 [2008]). It has been recognized, however, that "the statute does not require strict compliance but more generally provides that delegates be chosen 'substantially in accordance with the ratio' " (*Matter of Azria v. Salerno,* 68 N.Y.2d at 889, 508 N.Y.S.2d 933, 501 N.E.2d 582, quoting Election Law § 6–124).

[2] With respect to the Conservative Party challenge (proceeding No. 2), the Fifth Judicial District is comprised of 12 Assembly Districts and, out of a total of 13 potential delegates, 10 were elected. [1] Annutto contends that the proportional representation requirement was not met because no delegates were elected from the 101st, 116th and 121st Assembly Districts and only one delegate was elected from the 120th Assembly District, resulting in an underrepresentation. Annutto further asserts that the one delegate elected from the 118th Assembly District resulted in an overrepresentation. Notwithstanding this

disparity, we cannot say that the composition of the delegates elected to the Conservative Party judicial nominating convention did ***1285** not substantially comply with the proportional representation requirement set forth in Election Law § 6–124. Notably, "most districts [nonetheless] were properly represented in proportion to their voting strength" (*Matter of Azria v. Salerno,* 68 N.Y.2d at 889, 508 N.Y.S.2d 933, 501 N.E.2d 582). In view of this, and recognizing the practical difficulties of achieving perfect representation, we conclude that the selection of delegates was substantially in accordance with the statutory requirement (*compare Matter of Snell v. Young,* 88 A.D.3d 1149, 1151–1152, 931 N.Y.S.2d 201 [2011], *lv. denied* 17 N.Y.3d 715, 2011 WL 5142048 [2011]). We reach the same conclusion with regard to the overrepresentation in the 118th Assembly District. To the extent that Annutto further asserts that Election Law § 6–126(2) was violated because the delegates did not vote on another judicial candidate, this argument is not properly before us as it was not raised in the petition or before Supreme Court (*see Matter of Fotopoulos v. Berman,* 298 A.D.2d 698, 699 n., 749 N.Y.S.2d 577 [2002], *lv. denied* 98 N.Y.2d 616, 752 N.Y.S.2d 2, 781 N.E.2d 914 [2002]; *Matter of Di Lucia v. New York State Bd. of Elections,* 122 A.D.2d 968, 969, 505 N.Y.S.2d 972 [1986], *lv. denied* 68 N.Y.2d 605, 506 N.Y.S.2d 1028, 497 N.E.2d 967 [1986]).[2] Therefore, we conclude that Supreme Court properly dismissed Annutto's petition.

[3] Turning to the Democratic Party challenge (proceeding No. 1), Diamond similarly contends that the proportional representation requirement of Election Law § 6–124 was not satisfied in the election of delegates to the Democratic Party ****266** judicial nominating convention because certain Assembly Districts were underrepresented and others were overrepresented. However, the 2010 gubernatorial election data upon which Diamond relies does not accurately reflect the current composition of the Assembly Districts comprising the Fifth Judicial District or the total number of votes attributable to the counties or parts thereof that are now contained within such districts. Without this information, a proper comparison of the percentage of votes cast to the percentage of delegates elected in each Assembly District cannot be conducted. Given this absence of proof, there is no basis for concluding that there was a lack of compliance with the proportional representation requirement. Consequently, Supreme Court properly dismissed Diamond's petition as well.

ORDERED that the judgments are affirmed, without costs.

LAHTINEN, J.P., GARRY, EGAN JR., LYNCH and DEVINE, JJ., concur.

All Citations

121 A.D.3d 1283, 995 N.Y.S.2d 263, 2014 N.Y. Slip Op. 07082

Footnotes

1 One elected delegate, from the 127th Assembly District, abstained from voting at the convention, and it does not appear that the delegate from the 118th Assembly District—although duly elected—attended the convention.

2 We note that, inasmuch as Annutto withdrew a number of his other objections during oral argument before Supreme Court, we decline to address them.

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121 A.D.3d 1283, 995 N.Y.S.2d
263, 2014 N.Y. Slip Op. 07082

**1 In the Matter of Dawn Diamond, Appellant
v
BRIAN F. DeJOSEPH, as Candidate for the Office of Justice of the Supreme Court for the Fifth Judicial District, et al., Respondents, et al., Respondents. (Proceeding No. 1.) In the Matter of Philip Annutto, Appellant, v Brian F. DeJoseph, as Candidate for the Office of Justice of the Supreme Court for the Fifth Judicial District, et al., Respondents, et al., Respondents. (Proceeding No. 2.)

Supreme Court, Appellate Division,
Third Department, New York
October 17, 2014

CITE TITLE AS: Matter of Diamond v DeJoseph

HEADNOTE

Elections
Certificate of Nomination
Judicial Nominating Convention—Selection of Delegates Substantially in Accordance with Statutory Requirement of Proportional Representation

Law Office of John Hoggan, PLLC, Albany (John D. Hoggan Jr. of counsel), for appellants.
Featherstonhaugh, Wiley & Clyne, LLP (Frank G. Hoare of counsel), for Brian F. DeJoseph and others, respondents.
Per Curiam. Appeals (1) from a judgment of the Supreme Court (McDonough, J.), entered October 7, 2014 in Albany County, which dismissed petitioner's application, in a proceeding pursuant to Election Law § 16-102, to declare invalid the certificate of nomination naming respondent Brian F. DeJoseph as the Democratic Party candidate for the public office of Justice of the Supreme Court for the Fifth Judicial District in the November 4, 2014 general election, and (2) from a judgment of said court, entered October 7, 2014 in Albany County, which dismissed petitioner's application, in a proceeding pursuant to Election Law § 16-102, to declare invalid the certificate of nomination naming respondent Brian F. DeJoseph as the Conservative Party candidate for the public office of Justice of the Supreme Court for the Fifth Judicial District in the November 4, 2014 general election.

These proceedings deal with the judicial nominating conventions that were held by the Democratic and Conservative Parties to select each party's candidate for the public office of Justice of the Supreme Court for the Fifth Judicial District in the November 4, 2014 general election. Respondent Brian F. DeJoseph was selected as a candidate by both parties and separate certificates of nomination were filed with respondent State Board of Elections. Thereafter, petitioner Dawn Diamond, a registered Democratic Party member, and petitioner Philip Annutto, a registered Conservative Party member, filed general and specific objections to the certificate of nomination naming DeJoseph as the Democratic and Conservative Party candidate, respectively; both petitioners are eligible to vote for the public office at issue. Based upon these objections, Diamond and Annutto commenced proceeding Nos. 1 and 2, respectively, seeking ***1284** to invalidate the relevant certificate of nomination and to restrain the State Board from certifying the ballots at issue. Each petitioner challenged the legitimacy of the respective judicial nominating conventions, claiming that such convention was not in compliance with the proportional representation requirement of Election Law § 6-124. Supreme Court rejected this argument and dismissed the respective petitions. Petitioners separately appeal, and these cases have been joined together for consideration by this Court.

Initially, the proportional representation requirement is set forth in Election Law § 6-124, which provides that the number of delegates at a judicial convention "shall be determined by party rules, but the number of delegates shall be substantially in accordance with the ratio, which the number of votes cast for the party candidate for the office of governor, on the line or column of the party at the last preceding election for such office, in any unit of representation, bears to the total vote cast at such election for such candidate on such line or column in the entire state." The purpose of this requirement is to ensure that the districts from which the delegates are elected are "properly represented in proportion to their voting strength" (*Matter of Azria v Salerno*, 68 NY2d 887, 889 [1986]; *see Matter of Consuello v McGrath*, 21 Misc 3d 1112[A], 2008 NY Slip Op 52057[U], *2 [Sup Ct, Albany County 2008], *affd for reasons stated below* 55 AD3d 1453 [2008], *lv denied* 11 NY3d 709 [2008]).

It has been recognized, however, that "the statute does not require strict compliance but more generally provides that delegates be chosen 'substantially in accordance with the ratio' " (*Matter of Azria v Salerno*, 68 NY2d at 889, quoting ****2** Election Law § 6-124).

With respect to the Conservative Party challenge (proceeding No. 2), the Fifth Judicial District is comprised of 12 Assembly Districts and, out of a total of 13 potential delegates, 10 were elected. [1] Annutto contends that the proportional representation requirement was not met because no delegates were elected from the 101st, 116th and 121st Assembly Districts and only one delegate was elected from the 120th Assembly District, resulting in an underrepresentation. Annutto further asserts that the one delegate elected from the 118th Assembly District resulted in an overrepresentation. Notwithstanding this disparity, we cannot say that the composition of the delegates elected to the Conservative Party judicial nominating convention did ***1285** not substantially comply with the proportional representation requirement set forth in Election Law § 6-124. Notably, "most districts [nonetheless] were properly represented in proportion to their voting strength" (*Matter of Azria v Salerno*, 68 NY2d at 889). In view of this, and recognizing the practical difficulties of achieving perfect representation, we conclude that the selection of delegates was substantially in accordance with the statutory requirement (*compare Matter of Snell v Young*, 88 AD3d 1149, 1151-1152 [2011], *lv denied* 17 NY3d 715 [2011]). We reach the same conclusion with regard to the overrepresentation in the 118th Assembly District. To the extent that Annutto further asserts that Election Law § 6-126 (2) was violated because the delegates did not vote on another judicial candidate, this argument is not properly before us as it was not raised in the petition or before Supreme Court (*see Matter of Fotopoulos v Berman*, 298 AD2d 698, 699 n [2002], *lv denied* 98 NY2d 616 [2002]; *Matter of Di Lucia v New York State Bd. of Elections*, 122 AD2d 968, 969 [1986], *lv denied* 68 NY2d 605 [1986]). [2] Therefore, we conclude that Supreme Court properly dismissed Annutto's petition.

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Lahtinen, J.P., Garry, Egan Jr., Lynch and Devine, JJ., concur. Ordered that the judgments are affirmed, without costs. ***1286**

FOOTNOTES

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Footnotes

1 One elected delegate, from the 127th Assembly District, abstained from voting at the convention, and it does not appear that the delegate from the 118th Assembly District—although duly elected—attended the convention.

2 We note that, inasmuch as Annutto withdrew a number of his other objections during oral argument before Supreme Court, we decline to address them.

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SPECIAL COUNSEL

Hon. Edward P. Borrelli*

COUNSEL

Sandra H. Buchanan, Esq.*

Adina Gilbert, Esq.

Juliana Maugeri, Esq.

Laura L. Smith, Esq. *(Chief Counsel)*

John Sullivan, Esq.*

Eugene Colon, Esq.*

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JUDICIAL CAMPAIGN ETHICS HANDBOOK
of the New York State Advisory Committee on Judicial Ethics
(2016 Edition)

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The 2016 Edition of the Handbook was prepared by a subcommittee appointed by Hon. George Marlow, consisting of Sandra Buchanan, Esq., Hon. Edward Borrelli, Josefina Lessey, and Laura Smith, Esq. The 2016 Edition includes opinions issued as of October 22, 2015.

January 2016

FOREWORD

Although many judges and justices of the New York State Unified Court System are chosen through a partisan electoral process, they are prohibited from engaging in political activities, except as authorized by the Rules Governing Judicial Conduct (22 NYCRR Part 100) or other provisions of law. While the Rules prescribe the parameters of ethically permissible political activities, applying those rules in specific situations can be challenging. As a result, incumbent judges and non-judge candidates for judicial office (collectively, "judicial candidates") are encouraged to submit any campaign-related ethics questions to the Judicial Campaign Ethics Center (the "JCEC") to receive guidance about the propriety of various forms of campaign-related political activity. Judges and quasi-judicial officials should submit all other ethics inquiries to the New York State Advisory Committee on Judicial Ethics (the "Committee").

The Advisory Committee on Judicial Ethics

In 1987, the Committee was formed to help New York State judges and justices adhere to the high standards set forth in the Rules. In 1988, the legislature codified the Committee's creation in Judiciary Law §212(2)(l), which provides that whenever a judge acts in accordance with an advisory opinion of the Committee, that act is "presumed proper" for purposes of any subsequent investigation by the New York State Commission on Judicial Conduct. Since then, the Committee has issued between 100 and 250 formal opinions annually in response to questions from judges and justices about the propriety of their own political and other activities. Those opinions set forth the Committee's interpretations of the Rules regulating political activities of judicial candidates, providing guidance for circumstances not specifically governed by a particular rule.

The Judicial Campaign Ethics Center

The New York State Unified Court System established the JCEC in 2004. Among its several roles, the JCEC serves as liaison to a subcommittee of the Committee to issue quick and reliable responses to judicial candidates with campaign-related ethics inquiries and provides campaign ethics training programs for judicial candidates. It also seeks to educate New York State voters about judicial elections. In its role as liaison to the Committee's Judicial Campaign Ethics Subcommittee (the "Subcommittee"), the JCEC provides judicial candidates with responses to campaign-related ethics questions during the campaign to help them avoid actionable misconduct and help ensure that candidates act in a way that will maintain public confidence in the judiciary.

Members of the Subcommittee, who also are members of the Committee, review all written inquiries from judicial candidates. The JCEC sends each inquiring candidate a written response from the Subcommittee by e-mail. To facilitate a rapid response (generally within three business days), judicial candidates should e-mail their inquiries to the JCEC. Please visit our website at http://www.nycourts.gov/ip/jcec/contactus.shtml for details.

Please note that the JCEC responses are not published, and thus apply only to the particular candidate who submitted the inquiry and only for actions taken in connection with that specific campaign. By written agreement with the Commission on Judicial Conduct, a judicial candidate who makes an inquiry and subsequently conforms his/her conduct during that window

period to the advice contained in the JCEC's response is presumed to have acted properly for purposes of any subsequent investigation by the Commission on Judicial Conduct.

The JCEC is only authorized to answer inquiries from a candidate about his/her own proposed conduct and will not answer questions about the conduct of a candidate's opponent or inquiries from third parties. All inquiries, whether by telephone, in writing or via electronic mail are, by law, treated as strictly confidential by the JCEC and the Subcommittee.

The Judicial Campaign Ethics Handbook

To help make the Committee's judicial campaign ethics opinions readily available to those who need them most, we have summarized selected opinions concerning political activities for this Judicial Campaign Ethics Handbook. Although the included opinions address questions frequently asked by judicial candidates about their own permissible political activities, the Handbook is not intended to be an exclusive source for guidance on this subject. There is no substitute for seeking written guidance from the JCEC or the Committee on matters that are not squarely addressed in a black-letter rule or opinion.

In addition, we have included references to opinions issued by the New York State Bar Association ("NYSBA") and the Commission on Judicial Conduct ("CJC"), for informational purposes only. The Advisory Committee was not involved in generating those opinions, and therefore does not necessarily endorse them.

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It is our hope that candidates will seek and follow guidance from the JCEC and the Committee, in order to reduce the risk of public criticism and to promote public confidence in the judiciary.* Although published disciplinary determinations in campaign ethics matters are seldom unanimous – in fact, dissents and concurrences are common – the CJC has nonetheless imposed discipline on successful judge or non-judge candidates in each of the last several years, and has not been receptive to excuses that a candidate was "unaware of the relevant limitations" (2008 CJC Ann. Rep. at 145-50).

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* The CJC has stated that "[a] judge's election is tarnished and the integrity of the judiciary is adversely affected by misconduct that circumvents the ethical standards imposed on judicial candidates and provides an unfair advantage over other candidates who respect and abide by the rules. In such cases, we must consider whether allowing the respondent to retain his or her judgeship would reward misconduct and encourage other judicial candidates to ignore the rules, knowing that they may reap the fruits of their misconduct" (2013 CJC Ann. Rep. at 75-94).

CONTACT INFORMATION

Judicial Campaign Ethics Center (for campaign-related judicial ethics inquiries only)

Address:	Judicial Campaign Ethics Center Attn: Sandra H. Buchanan, Esq. Office of Court Administration 25 Beaver Street, Suite 866 New York, New York 10004
Telephone:	1-888-600-JCEC (5232)
Fax:	1-212-401-9029
E-mail:	jcec@nycourts.gov
Web site:	www.nycourts.gov/ip/jcec

Advisory Committee on Judicial Ethics (for any judicial ethics inquiries)†

Address:	Advisory Committee on Judicial Ethics Attn: Laura L. Smith, Esq., Chief Counsel New York State Unified Court System 25 Beaver Street, Suite 866 New York, NY 10004
Telephone:	1-866-79-JUDGE (58343) or 1-212-428-2504
Fax:	Only with permission of the Chair or Chief Counsel
E-mail:	Not applicable; signed original inquiries are required
Web site:	www.nycourts.gov/ip/acje

Informal Inquiries on Judicial Ethics‡

Chair:	Hon. George D. Marlow (ret.) at 1-866-79-JUDGE (58343) or 1-845-454-2125
Chief Counsel:	Laura L. Smith, Esq. at 1-866-79-JUDGE (58343) or 1-212-428-2504
Special Counsel:	Hon. Edward P. Borrelli, Referee at 1-866-79-JUDGE (58343) or 1-914-824-5329
Staff Counsel:	John J. Sullivan, Esq. at 1-518- 453-8650

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† The Advisory Committee does not accept e-mail inquiries.

‡ In addition to the names listed here, all judicial members of the Committee are also available by telephone for informal inquiries.

JUDICIAL CAMPAIGN ETHICS HANDBOOK

E-Handbook Hints:
* Clicking on underlined opinion numbers provides quick access to referenced opinions.
* Alternatively, to search for these and other opinions, you may go to one of these sites:
  www.nycourts.gov > JUDGES > Ethics Opinions
  www.nycourts.gov/ip/jcec > Handbook, Rules and Opinions > Search Ethics Opinions
  www.nycourts.gov/ip/acje > Search ACJE Opinions > Search Ethics Opinions
* The words "above" or "below" following a section number link to that handbook section.
* You may use **Ctrl** + F (or other shortcuts) to search within this document.

1. Basic Rule: No Partisan Political Activity

The Rules generally prohibit full- or part-time judges, or judicial candidates seeking election to judicial office, from directly or indirectly engaging in any partisan political activity (22 NYCRR 100.5; 100.6[A]; pt. 1200 Rule 8.2[b]). As further explained in Section 3.1, below, one very important exception is that all judges and judicial candidates may at all times be members of political parties.

As discussed in the following sections of this Handbook, the Rules define certain limited permissible political activity and conduct so that an individual can advance his/her own candidacy for elective *judicial* office (22 NYCRR 100.5[A]).

By contrast, as explained further in Section 2.2.7, below, a judge who becomes a candidate for elective *non-judicial* office must resign from judicial office.

The Committee has advised that "[a] judge who is seeking appointment or re-appointment to judicial office is not a 'candidate' (*see* 22 NYCRR 100.0[A]) and does not have a 'window period' of permissible political activity" (Opinion 14-30; *see also* Opinions 15-176; 96-97).

2. Becoming a Candidate

The definition of "candidate" under the Rules (22 NYCRR 100.0[A]) does not require obtaining a political party's nomination or support (*see* Section 2.2, below).

It is often important to determine the date on which an individual becomes a "candidate," as this typically commences the window period during which a judge may engage in limited political activity and a non-judge becomes subject to many of the same limitations. In addition, it triggers financial disclosure obligations for certain candidates (*see* Section 2.4, below).

2.1 Pre-Candidacy Activities

2.1.1 Testing the Waters

A judge may meet privately with the head of a local political committee, political party members and leaders, or may appear privately before a party executive committee at any time to discuss the possibility of becoming a candidate for public office (Opinions 02-34 [judicial candidacy]; 97-65 [Lieutenant Governor]; 93-55 [district attorney]; 91-44 [another judicial office]; 22 NYCRR 100.0[Q]).

Such private preliminary discussions with political leaders or officials about a possible candidacy are not proscribed political activities under the Rules (Joint Opinion 04-143 and 05-05), and a judge need not form a campaign committee before testing the waters (Opinion 94-30). Accordingly, the pendency of a criminal investigation or indictment against a party leader does not render such private discussions impermissible (Joint Opinion 04-143 and 05-05).

By contrast, a judge may not contact community residents before his/her window period begins to determine if they would support the judge's candidacy for judicial office, as such activity "does not involve a 'testing of the waters' about the possibility of receiving backing from a political party, but rather determining what the likelihood is of being supported by the voters themselves" (Opinion 02-34).

2.1.2 Anticipated Vacancies vs Known Judicial Vacancies

Until there is a vacancy in a judicial office, or it is a known fact that a vacancy in such office will occur, a prospective candidate cannot be deemed a candidate for that judicial office (Opinions 08-189; 99-14; 97-45).

In practice, this means that a prospective candidate for an anticipated vacancy may not announce his/her candidacy, allow the solicitation of funds, or engage in other political activity that would otherwise be permissible in furtherance of a judicial campaign, unless and until it is known that there is to be a vacancy and therefore an election to fill it (Opinions 08-189; 97-45).

However, a judge may apply to a political party's judicial screening panel to determine his/her qualifications for a particular judicial office at a time when there are no actual, known vacancies for such office provided (1) there is a good-faith reason to believe there will be a vacancy later in the same election cycle; (2) the judicial screening panel process is available to all potential candidates; and (3) the panel is an official screening panel, such as a standing panel of an existing political party (Opinion 09-40).

As the Committee noted in Opinion 14-178:

> When a judicial vacancy arises at the end of a judge's full term of office, or when a judge's term otherwise ends early by operation of law due to the judge's age, calculation of the window period is relatively straightforward according to the principles outlined above. In such circumstances, there is no doubt a judicial vacancy will occur as of a certain date. Similarly, if a judge has resigned or died, or has been removed from office, there is no doubt a judicial vacancy currently exists. In any of these circumstances, if the judicial office is an elective one, it is certain that an election must be held in a particular year to fill the vacancy (see N.Y. Const., Art. VI, § 21).

In other circumstances, however, there is some uncertainty about whether a vacancy will arise in a particular election year, and whether or not there is a "known judicial vacancy" is a fact-dependent determination. So far, the Committee has addressed a few of these circumstances:

- Scenario: Incumbent announces retirement, but has not yet retired.
    - The fact that the incumbent "has publicly stated that [he/she] is considering retiring from the bench" is not sufficient to establish that there is an actual, known judicial vacancy (Opinion 99-14).
    - An incumbent judge's public announcement that he/she will retire from the bench on a specific date, when coupled with an additional significant and reliable affirmative step to effectuate his/her retirement, is sufficient to create a known judicial vacancy for the purpose of determining when the window period opens and individuals may publicly announce their interest in seeking election to the position (Opinion 15-04).
- Scenario: Incumbent may receive an interim appointment to a higher office, subject to confirmation by the legislature (Opinion 97-45).
- Scenario: Incumbent has been elected to a higher office, but has not yet taken and filed the oath of office (*see* Opinion 14-178).

Candidates are invited to write in for further guidance on their specific circumstances.

2.2 Candidacy and Window Period Defined

Until an individual is an announced candidate (Section 2.2.1, below) for an actual, known opening for elective judicial office (Section 2.1.2, above) within his/her window period (Section 2.2.2, below), he/she may not engage in political activity under the Rules, but may only "test the waters" (Section 2.1.1, above) through private meetings to discuss whether he/she may be able to obtain the support of a political party or leader.

2.2.1 Definition of "Candidate"; Announcement of Candidacy

A candidate is defined as "a person seeking selection for or retention in public office by election" (22 NYCRR 100.0[A]). A person becomes a candidate for public office under the Rules as soon as he or she makes a public announcement of candidacy or authorizes solicitation or acceptance of contributions (*id.*). The definition of "candidate" does not in any way depend on obtaining a political party's nomination or support (*id.*).

Public elections encompassed by the Rules include primary and general elections, partisan and non-partisan elections, and retention elections (22 NYCRR 100.0[N]).

The Rules do not mandate a particular method for declaring oneself a candidate. Sitting judges traditionally write a letter to the Chief Administrative Judge (as the promulgator of the rules) and/or an appropriate local Administrative Judge (as the local representative of the Chief Administrative Judge).[1] However, conduct such as forming a campaign committee, issuing a press

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[1] This tradition is a means for sitting judges to make a formal record of when their window period begins, and may also enable an appropriate administrative office to respond to inquiries about the propriety of political activity by a sitting judge.

release, or meeting with community residents, are examples of alternative ways to publicly manifest one's candidacy for elective judicial office within the meaning of the Rules (Opinions 02-34; 00-11; "Observations and Recommendations," 2001 CJC Ann. Rep. at 21-22).

2.2.2 "Window Period" Defined

The "window period" is the period during which judges and non-judges who seek an elective judicial office may engage in political activity pursuant to Section 100.5 of the Rules Governing Judicial Conduct (Opinion 96-29). There is no geographic limitation on permissible campaign activities during a candidate's window period (Opinions 06-152; 03-122; 95-109).

Calculating the Start of the Window Period. The start of the window period for a particular elective judicial office is nine months before the primary election, judicial nominating convention, party caucus or other party meeting held to nominate candidates for that elective judicial office, or at which a committee or other organization may publicly solicit or support a candidate for that office (22 NYCRR 100.0[Q]).

Thus, to determine the start of the applicable window period, a judicial candidate may either count back nine months from the date of the formal nomination, *i.e.*, the scheduled primary, nominating convention, or party caucus for that judicial office; or (if earlier) count back nine months from the date of an official party meeting at which a candidate for the judicial office will be designated and endorsed, even if that designation is subject to being contested at a subsequent primary; or (if earlier) the date of the commencement of the petition process for that judicial office (Opinions 07-152; 06-152; 05-97; 02-90; 94-97).

The window period for Supreme Court candidates commences nine months prior to the earlier of the following dates: (1) the date of formal nomination by convention; or (2) the date of a recognized party-sponsored caucus or committee meeting within the candidate's judicial district held for the purpose of discussing or considering judicial nominations, even if a resulting designation or endorsement would be subject to a subsequent contest (Opinion 08-196).

If no date for such an official party meeting has yet been set, the candidate may assume that the previous year's official date will be used again for the upcoming party meeting and then count back nine months from that presumed date (Opinions 08-196; 07-152).

In Joint Opinion 14-92/14-94, the Committee took the opportunity to apply these principles to the unusual circumstance where, after a political party held its official designating meeting, it subsequently scheduled a second one:

> The Committee's intention is to allow judicial candidates to count back nine months from the date when "the nomination process ... functionally starts" (Opinion 08-196). Accordingly, a judicial candidate may count back nine months from the date of the earliest official party meeting at which a candidate will be informally designated or endorsed for the position. It is irrelevant that, under some circumstances, the political party may also need to hold additional meetings due to a previously designated candidate's withdrawal or ineligibility, or perhaps due to a vacancy that has

> unexpectedly been created, or other unforeseen circumstances. ... Where a judicial candidate has calculated commencement of the applicable window period in good faith based on a political party's announced meeting schedule, the Committee can see no public interest to be served by calling that determination into question merely because the party has decided to hold additional meetings beyond the one initially announced. Judicial candidates must be able to calculate the start of their window period for a known judicial vacancy and then move forward with their campaigns.

Calculating the End of the Window Period. The end of the window period for a judicial candidate depends on the judicial office sought and whether he/she is a candidate in the general election.

If a candidate for Supreme Court Justice is not a candidate in the general election, the window period ordinarily ends six months after the date of the primary election, convention, caucus or meeting at which he/she would have been nominated (22 NYCRR 100.0[Q]; Opinions 03-122; 01-111; 97-121). When a candidate for Supreme Court Justice formally withdraws his/her name from consideration before the judicial nominating convention takes place, his/her window period ends six months from the date of his/her withdrawal or six months from the date of the nominating convention, whichever is earlier (Opinion 09-194).

The window period for a judicial candidate who submitted his/her name to a party screening panel but did not receive the party's endorsement or nomination, and whose name ultimately did not appear on the ballot for the primary election, ends exactly six months from the last date on which the candidate could have filed an independent nominating petition for the judicial office sought (Opinion 08-53). In such instances, the candidate who did not receive a party's endorsement or nomination may continue to seek direct support from the electorate and file the independent nominating petition with the Board of Elections to place his/her name on the ballot for a primary election (*see id.*).

If he/she is a candidate in the general election, the window period ends precisely six months after the date of the general election (22 NYCRR 100.0[Q]; General Construction Law § 30; Opinions 04-87; 97-121; 97-25; 93-20 [fund-raising event for judge elected on November 3 must take place prior to May 3]; 91-67). A recently elected judge may not attend a political event held "six months and one day after the general election" (Opinion 91-67).

2.2.3 Candidates Who Are Unopposed

Judicial candidates who are running unopposed may participate in permissible campaign activities, such as appearing with other candidates in door-to-door campaigning (Joint Opinion 97-118 and 97-122). However, the Committee has noted that "there may be limitations in certain areas, such as post-election fund-raising" (*id.*); see Section 7.2, below, for discussion.

2.2.4 Repeat Candidates; Candidates Who Are Running Two Years In a Row

Judicial candidates who are running two years in a row, whether for the same judicial position or a different one:

- Must complete the judicial campaign ethics training program for the current election cycle, but may potentially be eligible for a "fast-track" option. Contact the JCEC at 1-888-600-5232 for more information and to register; see also the JCEC's Training FAQs page.

- Must not use campaign funds raised in the current election cycle to pay campaign debts incurred in a prior election cycle. See Section 7.1.2, below.

- Must not transfer or roll over unexpended campaign funds from any prior campaign to the current campaign. See Section 7.1.2, below.

- Should review Opinion 14-148 for guidance about using any unexpended campaign funds during any "overlapping" window period that may exist between two campaigns for the same judicial office. See Section 7.1.3, below.

As always, please reach out to the JCEC for guidance on other issues that may arise.

2.2.5 Candidates Who Currently Hold Non-Judicial Public Office

Non-judge candidates for judicial office who are simultaneously holders of other political offices are given some flexibility to make statements or participate in activities which might otherwise be prohibited for judicial candidates, assuming those statements or acts are necessary as a function of the non-judicial public office (22 NYCRR 100.5[A][1][c]; *cf.* Joint Opinion 00-78 and 00-80 [noting, in light of section 100.5(A)(1)(c), that "we cannot say that, as a matter of judicial ethics, the chief assistant district attorney [who is running in a primary against two incumbent judges] is precluded from appearing in court during the campaign, assuming that such appearances are part of his/her official duties"]).

The Committee has advised that, for the purposes of the Rules Governing Judicial Conduct, a judge "assumes office upon taking and filing his/her oath of office" (Opinion 04-137). Thus, for example, a non-judge who is seeking election to judicial office may remain employed as a police officer until he/she takes and files the oath of office as a judge (Opinion 15-01), and a non-judge who is seeking full-time judicial office may continue to practice law until he/she takes and files the oath of office as a full-time judge (Opinion 98-92).

2.2.6 Candidates for Town or Village Justice Positions

Candidates for election to Town Justice or Village Justice positions are generally subject to the same ethical standards as other judicial candidates throughout their campaigns.

Thus Town and Village Justice candidates, like all other judicial candidates, should review the applicable Rules and consult the Judicial Campaign Ethics Center for guidance as needed.

However, candidates for election to town or village courts are not required to:

- complete the campaign ethics training program approved by the Chief Administrator of the Courts (*see* 22 NYCRR 100.5[A][4][f]) or
- file a financial disclosure statement with the Ethics Commission for the Unified Court System (*see* 22 NYCRR 100.5[A][4][g]).

Of course, because they are held to the same ethical standards as other candidates, Town and Village Justice candidates are encouraged to view the campaign ethics training program online, even though the training is not mandatory for them.

2.2.7 Judge as Candidate for Non-Judicial Office

A judge must resign from judicial office on becoming a candidate for elective non-judicial office, other than that of a delegate in a State constitutional convention (22 NYCRR 100.5[B]).[2] A judge may nonetheless test the waters for non-judicial office by making an appearance before the Executive Committee of a political party for the purpose of being interviewed as a possible candidate for the position of district attorney (Opinion 93-55; *see also* Opinion 97-65). See also Section 2.1.1, above, for further discussion of testing the waters.

2.3 Mandatory Education Program

The Rules require all judicial candidates (except for those seeking town or village justice positions) to attend a mandatory judicial campaign ethics education program (22 NYCRR 100.5[A][4][f]).

The rule provides that all judge and non-judge candidates for elective judicial office "shall complete" the ethics training program "any time after the candidate makes a public announcement of candidacy or authorizes solicitation or acceptance of contributions for a known judicial vacancy, but no later than 30 days after receiving the nomination for judicial office" (*id.*). For candidates running in a primary election, the date of nomination is defined as "the date upon which the candidate files a designating petition with the Board of Elections" (*id.*).

This training program is administered by the JCEC. Contact the JCEC at 1-888-600-5232 for more information and to register; see also the JCEC's Training FAQs page.

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[2] The term "candidate" is defined in the Rules as "a person seeking selection for or retention in public office by election" (22 NYCRR 100.0[A]), and the Committee has cited this definition in the context of Section 100.5(B) (Opinions 10-207; 98-64).

2.4 Mandatory Financial Disclosure

The Rules require all judicial candidates (other than candidates for justice of a town or village court) to file a financial disclosure statement with the Ethics Commission for the Unified Court System within 20 days following the date on which the judge or non-judge becomes a judicial candidate, unless the candidate was already required to file a financial disclosure statement for the preceding calendar year pursuant to Part 40 of the Rules of the Chief Judge (22 NYCRR 100.5[A][4][g]).

The JCEC has prepared an online FAQs page to help candidates determine whether and when they must file (http://www.nycourts.gov/ip/jcec/financialdisclosure.shtml).

For more information, such as what forms to use, what must be disclosed, and where to file, please visit the Ethics Commission's website at http://www.nycourts.gov/ip/ethics, or contact the Ethics Commission at 1-212-428-2899 for more information.

This is different from, and in addition to, the campaign financial disclosure reports required under the Election Law. Contact the Board of Elections for more information about Election Law requirements.

2.5 Independent Judicial Election Qualification Commissions

The independent judicial election qualification commissions were established by the chief administrator of the courts in February 2007 (22 NYCRR 150). All judicial candidates, other than candidates for town or village justice, are invited to submit specified information to one of these commissions for evaluation (22 NYCRR 100.5[A][7]; 22 NYCRR 150 & Appendix A[5][A]; Opinion 07-91). Please visit http://www.ny-ijeqc.org for more information. These independent judicial election qualification commissions are different from, and in addition to, any other screening panels that may be offered by bar associations and political parties or other entities. See Section 3.3.2, below, for further discussion of screening panels and their ratings.

3. Limits on Permissible Political Activity

The Rules distinguish between "conduct integral to a judicial candidate's own campaign" and "ancillary political activity" in support of other candidates or party objectives, in order to address the State's compelling interest in preventing the appearance or reality of political bias or corruption in its judiciary (*Matter of Raab*, 100 NY2d 305, 315 [2003] [upholding sanctions for candidate's improper payments to a political party, anonymous participation in a phone bank for another candidate, and participation in a political party's screening of other candidates]).

3.1 Membership in Political Parties; Voting; Signing Nominating Petitions

All judges and judicial candidates may maintain membership in a political party and identify themselves as a member of a political party, regardless of whether they are in their window period (22 NYCRR 100.5[A][1][ii]; 100.5[A][1][b]; Opinion 91-68). However, a judge may not pay any dues to a political party, even during the window period of his/her election year (Opinion 91-68). The following paragraphs describe activities in which a judge or non-judge may participate at any time. The discussion focuses on judges, however, because it is describing

exceptions to the rule barring judges from participating in political activities outside of their applicable window period.

In any year, whether a judge is or is not standing for election during that year, the judge also may vote in a party primary in which the judge, as a registered party member and voter, is eligible to vote. The Committee advised in 1990 that a judge who is a registered voter/member of a party may attend an official party caucus to nominate political candidates if all eligible registered voters/members are allowed to attend, provided that the vote is by secret ballot and the judge does not participate in the discussion or otherwise indicate a preference in any way for a specific candidate (Opinions 90-153; 90-139). In 2009, the Committee expressly modified these earlier opinions, advising that a judge may attend a political party caucus held for the purpose of nominating and voting for political candidates and may vote for the candidate(s) of his/her choice even if voting is accomplished other than by secret ballot (22 NYCRR 100.5[A][1][ii]; Opinion 09-180).

A judge may sign a nominating petition to place the name(s) of an individual or individuals on an electoral ballot in any year whether the judge is or is not standing for election in that year, as signing an election petition "is an act akin to voting rather than to campaigning" (Opinions 99-125; 89-89).

3.2 Membership in Political Clubs or Organizations

There are different rules for judge and non-judge judicial candidates with respect to membership in a political club or organization.[3]

Sitting judges may not be members, leaders, or officers of political clubs or organizations, whether or not they are in their window period (22 NYCRR 100.5[A][1][a]-[b]; Opinion 96-29 [judge may not serve as a political party's committee person]; 90-88 [judge may not be a member of a Chairman's Club of a county political organization]), and may not pay dues to such organizations (Opinion 91-68).

A *non-judge candidate* for judicial office may be a member of a political organization (22 NYCRR 100.5[A][3]). If the non-judge candidate is elected, he or she must resign from the political club or organization.

Although non-judge candidates may continue to maintain ordinary membership during their campaign, they may not serve as officers in a political club or organization (Opinion 01-44 [non-judge candidate may not retain the position of ward committee person]; 22 NYCRR 100.5[A][1][a]). This means that when a non-judge becomes a candidate for elective judicial

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[3] The term "political organization" is defined in the Rules as "a political party, political club or other group, the principal purpose of which is to further the election or appointment" of persons to public office (22 NYCRR 100.0[M]).

office (22 NYCRR 100.0[A]), he/she must resign any leadership position he/she may have held in any political club or organization.

3.3 Endorsement by Political Organizations and Other Persons and Entities

Personal Involvement of Candidate. A judicial candidate may personally seek and/or accept the support and endorsement of a wide variety of persons and entities, including labor unions, political parties, caucuses, political action committees, politicians and candidates for non-judicial office, and lawyers who appear before the court to which the candidate seeks election or re-election (Opinion 07-24 [labor union]; Joint Opinion 05-23 and 05-24 [non-judicial officials running for elective office]; Opinions 01-44 [Police Benevolent Association and political parties]; 94-86 [New York State Trial Lawyers Association]; 94-30 [members of political committees and "other parties and organizations"]; 93-99 [National Women's Political Caucus and Republican Pro Choice PAC]; 93-52 [single-issue Right to Life party]; 92-19 [lawyer]; 89-125 [political party]). In Opinion 01-44, the Committee expressly rejected the view of NYSBA Opinion 289 (1973), based on former Canon 7(b)(2) of the Code of Judicial Conduct, which prohibited judicial candidates from personally seeking endorsements (Opinion 01-44).

Improper Pressure or Appearance of Impropriety. Any solicitation or acceptance of support or endorsements must be done in a time, place and manner consistent with the impartiality, integrity and independence of the judiciary (22 NYCRR 100.5[A][4][a]). Among other things, the judge must not create the appearance or reality of improper pressure on attorneys who have cases pending before him/her (*compare* Joint Opinion 05-105, 05-108, and 05-109; Opinion 97-99; 2009 CJC Ann. Rep. at 176-80 [disciplinary determination] *with* Opinion 04-94 [judge may accept an offer of support for his/her candidacy from an elected official who recently appeared before him/her on a family court matter, made after the parties and their attorneys resolved the matter by stipulation without the judge's intervention on their first court appearance]). A judge who is a judicial candidate within his/her window period may ask attorneys who regularly appear before him/her to attend a reception and speak to attendees about their experience appearing before the judge, as long as the candidate takes care to avoid any appearance of undue pressure on the attorneys in making this request (Opinion 08-152; *cf.* 2009 CJC Ann. Rep. at 176-80 [disciplinary determination]). A town justice should not ask individual court officers of the town court to publicly support his/her re-election to avoid any appearance of undue pressure, but may solicit endorsements during his/her window period from any organization to which the officers may belong, such as a union or court officers' association (Opinion 11-65).

Improper Pledges or Promises. A candidate must be careful when seeking or accepting an endorsement not to make any commitments, pledges or promises of conduct that are inconsistent with the impartial performance of the adjudicative duties of the office (22 NYCRR 100.5[A][4][d]; Opinions 99-33; 93-99; 93-52 [candidate may not sign a pledge to support a party's platform]; *cf.* Opinion 99-44). (Restrictions on campaign speech are covered in more detail in Section 5, below.) Sitting judges must at all times refrain from public comment about a pending or impending proceeding in any court within the United States or its territories (22 NYCRR 100.3[B][8]). These restrictions on a judicial candidate's speech during the campaign do not preclude the candidate from commenting on measures that would impact the administration of justice, such as, for example, a proposal to build a new courthouse, the adequacy of judicial

salaries, or proposals to relieve calendar congestion. See additional discussion of judicial campaign speech in Section 5, below.

Single-Issue Parties. The mere fact that a political party or any other organization is limited to the single issue suggested in the party's name does not, without more, preclude a judicial candidate's acceptance of the party's endorsement or nomination (Opinions 15-71; 14-113; 93-52; *cf.* Opinion 00-86 ["Clearly, accepting a nomination ... does not necessarily require acceptance of that party's goals, positions, or platform."]).

Other Cautions. In seeking or accepting an endorsement from a non-judicial official or a candidate for non-judicial office, a judicial candidate should take steps, to the extent possible, to avoid the appearance that he/she is, in turn, endorsing another candidate (Joint Opinion 05-23 and 05-24; Opinion 03-64). The rule against endorsing other candidates is described further in Section 3.3.3, below, and 5.5, below.

A judicial candidate may not make any payment to a political party or its committee in order to be considered for endorsement (Opinion 01-21; *cf.* Election Law § 17-162).

Disclosure. Mere endorsement, in and of itself, does not trigger any recusal obligations for a judicial candidate who is a sitting judge. That is, the fact that a particular person or entity was among those endorsing his/her candidacy, without more, does not warrant a conclusion that the candidate's impartiality as a judge might reasonably be questioned and therefore does not mandate disqualification when that person or entity appears before the judge (22 NYCRR 100.3[E][1]; Opinions 07-24 [mere endorsement by a party of the judge's candidacy]; 04-106 [mere attendance of a party or attorney at a fund-raising event for the judge]; 03-64 [mere listing of attorney as a supporter of the candidate]).

However, if a sitting judge is aware that a person or entity who is appearing before him/her has endorsed his/her candidacy, the Committee has advised:

> The judge should disclose the fact that a named party to the litigation endorsed his/her candidacy and should give all counsel and parties the opportunity to be heard. The judge may preside, even if a party objects, provided the judge determines that he/she can be fair and impartial.
>
> In deciding whether to recuse, however, the judge should consider all relevant factors, including, but not limited to: (a) the merits of any objections voiced by the parties or counsel, (b) any additional involvement by the labor union in the judge's campaign, and (c) the period of time since the election. If, after considering all relevant factors, the judge concludes in his/her discretion that the specific circumstances might give rise to an appearance of partiality, the judge should recuse.

(Opinion 07-24.) Other campaign-related disqualifications are covered in Section 8, below.

Declining an Endorsement or Nomination. A judicial candidate is free to decline a nomination, endorsement, or cross-endorsement from any person or entity, as long as the declination is for independent reasons and is not a *quid pro quo* for his/her nomination or endorsement by another person or entity (Opinions 00-86; 93-99; 93-25; Joint Opinion 91-27/91-49 [judicial candidate may not agree to accept one party's designation conditioned on declining any offer of nomination for the same position by another political party]).

If a judicial candidate does not feel that he/she will be able to be fair and impartial in cases involving persons who have endorsed him/her, then he/she must either decline the endorsements, or must recuse from any specific cases in which he/she cannot be fair and impartial (*cf. People v. Moreno*, 70 NY2d 403 [1987]).

3.3.1 Questionnaires

A judicial candidate may answer questionnaires provided by a screening committee, an independent judicial election qualifications commission, a union, the League of Women Voters, or other groups, provided that the questions do not seek to elicit a pledge, promise or commitment inconsistent with the impartial performance of the adjudicative duties of the office (22 NYCRR 100.5[A][4][d][i]-[ii]; Opinions 05-119 [League of Women Voters]; 93-106 [questionnaire from bar association's judicial screening committee]; 93-99 [questionnaires from National Women's Political Caucus and/or the Republican Pro Choice PAC]). A candidate may respond to questions regarding the proper administration of justice, and may make a promise or pledge to perform faithfully and impartially the duties of judicial office (22 NYCRR 100.5[A][4][d][i], [iii]). A judicial candidate may sign a "Statement of Principles" pledging that the candidate intends to use fair campaign practices during his/her campaign (Opinion 05-119). The statements a candidate makes on a questionnaire or in seeking an endorsement are subject to the same ethics rules as the candidate's other campaign statements, as explained further in Section 5, below.

3.3.2 Screening Panels

The Rules Governing Judicial Conduct do not require a judicial candidate to participate in any screening process to determine his/her qualifications for judicial office, whether conducted by a political party, a bar association, or an independent judicial election qualification commission (22 NYCRR 100.5; Opinion 07-91).[4] However, "appearing before a bar association's judicial screening committee is not a prohibited activity" under the Rules (Opinion 94-86 [noting that non-participation "could result in serious repercussions to the judge's candidacy, especially if bar association or screening committee approval is a requirement of the political body nominating or appointing the judge"]). Thus, for example, a judge or non-judge judicial candidate for election to town or village justice may fully participate as a candidate in a local bar association's screening process, subject to generally applicable limitations on judicial campaign speech (Opinion 12-97).

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[4] The independent judicial election qualification commissions were established by the chief administrator of the courts (22 NYCRR 150). Please see Section 2.5, or visit http://www.ny-ijeqc.org for more information.

A judicial candidate may appear before a political party's screening panel (Opinion 11-64). A judge may even apply to a political party's judicial screening panel to determine his/her qualifications for a particular judicial office at a time when there are no actual, known vacancies for such office provided (1) there is a good-faith reason to believe there will be a vacancy later in the same election cycle, (2) the judicial screening panel process is available to all potential candidates, and (3) the panel is an official screening panel, such as a standing panel of an existing political party (Opinion 09-40).

Disqualification is not automatically required if attorneys on the screening committee later appear before the judge as attorneys (Opinion 11-64). See discussion in Section 8.4, below.

A judicial candidate may answer the questions posed in a questionnaire of a bar association's judicial screening committee, subject to the limitations on judicial campaign speech (Opinion 93-106).

The Committee has advised that a judicial candidate's decision about whether to sign a waiver of the privilege of confidentiality at the request of a screening committee is a personal decision, which does not raise a question of judicial ethics (Opinion 94-86).

Providing Names of References. A judicial candidate may provide a party screening panel with the names of individuals "who can meaningfully assess the [candidate's] qualifications, character and temperament" (Opinion 11-64); and, in the Committee's view, the public can only benefit when such individuals are also "familiar with the legal system" (id.).

Attorneys. A judge who is a judicial candidate may provide the names of attorneys who regularly appear before him/her as references (Opinion 97-99).

Judges. A judicial candidate should not ask sitting judges to write to a political party's screening panel directly but, instead, should give the panel names of sitting judges the candidate wishes the panel to contact (Joint Opinion 12-84/12-95[B]-[G], at Question 3; Opinion 11-64 [noting that "sitting judges are not only familiar with the legal system but are likely well-situated to observe conduct that is relevant to a potential judicial candidate's qualifications, competence, character, and temperament" and therefore a candidate may "provide a political party's screening panel with the names of sitting judges as references, if the candidate wishes to do so"]).

Asking Individuals to Provide Information Directly to a Screening Panel. The Committee has addressed two specific situations so far. For other situations not directly covered by these opinions, candidates may seek further guidance from the JCEC or the Committee.

Asking attorneys. A judge who is seeking re-election may request attorneys who regularly appear before him/her to furnish comments or testimony to a bar association's screening committee, but only if such materials are given directly and exclusively to the screening committee and not to the judge (Opinion 97-99).

Asking judges. By contrast, a judicial candidate should not ask sitting judges to write to a political party's screening panel directly but, instead, should give the panel names of

sitting judges the candidate wishes the panel to contact (Joint Opinion 12-84/12-95[B]-[G], at Question 3).[5]

Use of Screening Panel Ratings. A judicial candidate may inform the public that an independent judicial election qualification commission has found the candidate qualified for the judicial position he/she seeks and may publish an exact copy of the commission's press release about such finding (Joint Opinion 07-150 and 07-151). However, if an independent judicial qualifications commission issues only one of two ratings – "qualified" or "not qualified" – a judicial candidate may not state that he/she has received the "highest" or "best" rating from the commission (Opinion 09-162).[6] A judicial candidate may also comment about his/her opponent's rating by an independent judicial qualifications commission as long as his/her comments are accurate and not misleading (Opinion 09-162).

A judicial candidate may also truthfully refer to a local bar association evaluation committee rating of his/her qualifications in his/her campaign materials (Opinion 12-97). The Committee has also recognized, without specifically commenting on the practice, that a local bar association's rating of a candidate may be used by that candidate's organization as an "endorsement" in campaign advertising (Opinions 07-130; 88-100).

A judicial candidate may not, however, participate in the screening of other candidates (*Matter of Raab*, 100 NY2d at 315; Joint Opinion 05-105, 05-108, and 05-109). See also a discussion of campaign-related disqualifications in Section 8, below (Opinions 12-97; 11-64; 10-121).

3.3.3 Limited Endorsement of Judicial Convention Delegate by Supreme Court Candidate in Furtherance of His/Her Own Candidacy

As discussed further in Section 5.5, below, a candidate for judicial office is prohibited from "publicly endorsing or publicly opposing (other than by running against) another candidate for public office" (22 NYCRR 100.5[A][1][e]; *see generally id.* at 100.5[A][1][c], [d], [f]).

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[5] The Committee has emphasized that, to avoid any appearance that a sitting judge is engaging in impermissible political activity by providing comments to a political party's screening panel, "the judge's comments should be made solely in response to a direct request from the [political] party's screening panel and should be addressed only to the requesting panel" (Joint Opinion 12-84/12-95[B]-[G]).

[6] Part 150 was amended in March 2012 to provide that the independent judicial election qualification commissions in all four departments will evaluate judicial candidates "to determine whether they are highly qualified, qualified, or not qualified for the office to which they seek election" (22 NYCRR 150.5[a]). Thus, the independent judicial election qualification commissions can now issue three different ratings.

However, the Committee has advised that a candidate for Supreme Court who seeks a political party's nomination may ask voters to vote in a primary election for the judicial convention delegate who will support his/her nomination, as long as the Supreme Court candidate makes clear that his/her endorsement of the delegate is for the purpose of furthering his/her own candidacy (Opinion 08-157).

This very limited exception has been recognized in light of the specific nature of the judicial convention system for nominating candidates for Supreme Court (*compare* Opinion 97-75 [candidate for town justice may not circulate separate petitions to form a judicial convention and/or to name a delegate to the party's national convention, as in doing so the candidate would be "engaging in partisan political activity unrelated to [his/her] own campaign for elective judicial office"]).

In Joint Opinion 10-101/11-01, in response to inquiries from Supreme Court candidates, the Committee provided further guidance on the practical implications of the narrow exception recognized in Opinion 08-157:

Circulating Petitions. A Supreme Court candidate may circulate petitions listing only the names of the delegate candidates who will support his/her nomination, and no other names, but must make clear that his/her endorsement of such delegates is for the purpose of furthering his/her own candidacy (Joint Opinion 10-101/11-01).

Campaign Literature. A Supreme Court candidate may use his/her own campaign funds to pay for campaign literature or mailings in which the judicial candidate will ask voters to vote in a primary election for the judicial convention delegates who will support his/her nomination, but again the candidate must make clear that his/her endorsement of the delegate candidates is for the purpose of furthering his/her own candidacy (Joint Opinion 10-101/11-01). In such campaign literature or mailings, the Supreme Court candidate may announce and comment on the fact that particular delegate candidates have pledged to support him/her but should not further describe or comment on the delegate candidates' views or stances on issues (*see id.*).

Direct and Indirect Campaign Contributions. A Supreme Court candidate may not make campaign contributions to a delegate candidate's campaign and may not pay for a delegate candidate's own advertisements (Joint Opinion 10-101/11-01).

Must Comply with Applicable Laws and Rules. The campaign activities authorized in Joint Opinion 10-101/11-01 are only ethically permissible "to the extent that they are legally permitted and otherwise performed in compliance with the Rules Governing Judicial Conduct" (*id.*)

3.4 Nominating and Designating Petitions[7]

A judicial candidate may circulate a nominating or designating petition only if the petition includes the candidate's own name as a nominee or designee (Opinions 09-148; 03-42; 98-99; 91-96; 91-94). Judicial candidates may be listed together on a petition with other candidates on their slate (Opinions 03-06; 02-64). Thus, a judicial candidate may circulate a petition for several candidates that includes his/her own name, but may not circulate individual petitions for other candidates (Opinions 09-148; 02-64; 98-99; 91-94).

A judge may sign a petition to place the name(s) of an individual or individuals on an electoral ballot in any year, whether the judge is or is not standing for election in that year (Opinions 99-125; 89-89).

Sitting judges who are judicial candidates have sometimes asked whether they may authenticate nominating petitions. The question of who may authenticate a nominating petition is primarily a legal question (*see, e.g.*, Election Law § 6-132; *Russell v. Board of Elections*, 45 NY2d 800 (1978) ("Given the unambiguous wording of the statute . . ., it is clear that the Legislature intended to restrict the class of officials who are authorized to authenticate a nominating petition."). However, as it appears that a notary public may authenticate petitions of any political party,[8] the Committee has discussed this question in light of certain constitutional restrictions on several categories of judges. Specifically, the Committee has advised that "a judge who is constitutionally barred from holding 'another public office or trust' (NY Const art VI §20[b]) may not serve as a notary public" and therefore cannot witness signatures on his/her petitions as a notary public (Opinions 14-109; 13-111; 03-129). By contrast, a judge who is not subject to this constitutional bar may "hold the office of a Notary Public, and as such, may authenticate a nominating petition of any political party as a Notary Public" (Opinions 03-42 [town or village justices]; 14-107 [city court judges who preside outside of New York City]).[9]

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[7] The Rules do not define the terms "nominating petition" and "designating petition," and the terms appear to be used interchangeably in published ethics opinions. Sample petition forms are available on the Board of Elections web site.

[8] "In lieu of the signed statement of a witness who is a duly qualified voter of the state qualified to sign the petition, the following statement signed by a notary public or commissioner of deeds shall be accepted: ..." (Election Law § 6-132[3]; *see also id.* 6-138[2]; 6-140[2]; 6-204[1]; 6-206[2]).

[9] Article 6, Section 20(b) of the New York State Constitution applies to a "judge of the court of appeals, justice of the supreme court, judge of the court of claims, judge of a county court, judge of the surrogate's court, judge of the family court or judge of a court for the city of New York" (Opinion 13-111). The provision does not apply to a town or village justice (Opinion 03-42), district court judge (Opinion 98-07/98-24), or city court judge outside of New York City (Opinions 14-107; 90-32).

3.5 Attendance at Political Gatherings

During the judicial candidate's window period, the candidate may, unless otherwise prohibited by law or rule, attend and speak at gatherings on behalf of his/her own candidacy (22 NYCRR 100.5[A][2][i]-[v]). The candidate may attend a wide variety of events as part of his/her campaign, including his/her own fund-raising events (Opinion 91-37), fund-raisers for other elected officials (Opinions 03-51; 01-17; 91-94), a fund-raiser sponsored by a not-for-profit advocacy organization that promotes equal rights for gay and lesbians (Opinion 03-45), politically sponsored golf tournaments (Opinion 12-129[A]-[G], at Question 3), or a rally sponsored by civic associations in opposition to a shopping mall project in the candidate's township (Opinion 00-82 [decided without reference to Part 100.5]).[10] However, a judicial candidate must faithfully follow the prohibition against personally soliciting funds and other campaign speech restrictions (22 NYCRR 100.5[A][1][h]; 100.5[A][4][d]). These restrictions are covered in more detail in Section 5, below.

Purchasing Tickets to Politically-Sponsored Events. Judicial candidates may not make contributions to any political organization or candidate (22 NYCRR 100.5[A][1][h]; *see also* Election Law § 17-162). Thus, a judicial candidate may not contribute money to assist in covering the cost of the music at a political fund-raising event (Opinion 88-72 [contribution was not for judge's own campaign]). However, the Rules expressly permit a judicial candidate to purchase two tickets to, and attend, a politically-sponsored dinner or event, including a fund-raising event for other elected officials or candidates (Opinion 01-17; 88-87), subject to certain restrictions to help prevent the appearance of an impermissible political contribution (22 NYCRR 100.5[A][2][v]).

> *Number of tickets*: Judicial candidates may not purchase more than two (2) tickets to a politically-sponsored dinner or event (22 NYCRR 100.5[A][2][v]). A judicial candidate may not purchase an entire table (*i.e.*, more than two tickets), even when the price per ticket falls under the $250 limit (Joint Opinion 06-80 and 06-81).
>
> *Price of tickets*: The ticket price "shall not exceed the proportionate cost" of the event (22 NYCRR 100.5[A][2][v]). A ticket price of $250 or less is deemed to be the proportionate cost of the function (*id.*). Judicial candidates may purchase two tickets for $250 or less, regardless of whether other attendees pay more than $250 per ticket (Joint Opinion 06-80 and 06-81).

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[10] The principle is not unlimited, of course, because a judicial candidate must maintain the dignity of judicial office and act in a manner consistent with the impartiality, integrity and independence of the judiciary (22 NYCRR 100.5[A][4][a]). For example, where an entity organizes and promotes its fund-raiser around a theme exhorting attendees to "repeal or disregard" a particular statute, a judicial candidate should not attend that particular event (Opinion 14-49 ["the theme of simply 'repealing or disregarding' a particular law is profoundly disrespectful of the rule of law, and reflects an attitude which is wholly incompatible with the judicial function"]).

In addition, a judicial candidate may not purchase tickets at a price higher than the price all other attendees are required to pay, because that would be seen as an impermissible political contribution (Opinions 13-60; 12-129[A]-[G]; 03-122 ["The payment may not exceed the cost of the ticket."]; 92-97 [where tickets are offered at multiple prices, the candidate "must purchase those with the lowest price"]; 88-26 [judicial candidate "may purchase the lowest priced dinner ticket to the political club fundraiser, but should not purchase the more expensive tickets denominated as 'Sponsor' or 'Patron'"]; 22 NYCRR 100.5[A][1][h]).

A candidate may not pay more than $250 per ticket unless he or she obtains a statement from the sponsor of the event that the amount paid represents the candidate's proportional cost of the function (22 NYCRR 100.5[A][2][v]).

> *"Pay-What-You-Wish" fund-raiser:* Subject to certain limitations, a judicial candidate may pay to attend a political fund-raiser for which no tickets are sold and no standard admission price has been set (Joint Opinion 13-99/13-100 and 13-101/13-102). If the invitation provides a "list of suggested levels of 'donations' or 'support,'" a judicial candidate "may treat these 'suggested donation' levels as ticket prices and may, therefore, pay the lowest priced suggested donation if it is $250 or less" (Joint Opinion 13-99/13-100 and 13-101/13-102). If the invitation provides no guidance whatsoever to attendees about how much they are expected to pay, a judicial candidate may pay up to $250 to attend the event (Joint Opinion 13-99/13-100 and 13-101/13-102). For situations not directly covered by Joint Opinion 13-99/13-100 and 13-101/13-102, including the question of how much a judicial candidate may pay for two people to attend such an event, please contact the Subcommittee for an opinion.

Use of tickets: A judicial candidate may "purchase two tickets to, and attend, politically sponsored" events (22 NYCRR 100.5[A][2][v]). The Committee has advised that a judicial candidate should not purchase tickets to a political function unless he/she "intends and expects to use" the tickets (Opinion 03-68). It is permissible for a judicial candidate who is unable to attend a politically sponsored function to purchase up to two tickets to the function and send up to two bona fide campaign representatives to attend on his/her behalf (Opinion 07-64).

Source of funds: The Rules do not specify whether personal funds (as opposed to campaign funds) may be used to purchase tickets to political events. However, it appears that both "campaign contributions" and the "personal funds" of judicial candidates may be used to pay for campaign-related goods and services, subject to the fair value rule (22 NYCRR 100.5[A][6]; *cf.* Opinions 08-43 [noting that a campaign may be entirely self-financed]; 03-122 [permitting judicial candidate to substitute a personal check for a committee check, where the event sponsor states that the committee check cannot legally be accepted, as "payment in a legally required manner would not be prohibited"]; Joint

Opinion 98-132 and 98-136 [holding that "reimbursement of personal funds used solely for campaign-related expenses is not prohibited" under the circumstances presented]).

No Involvement in Internal Workings of a Political Party. Although a judicial candidate may attend political functions during his/her window period, he/she may not be involved in the political process other than in furtherance of his/her own campaign or as a voter (*see generally* 22 NYCRR 100.5[A][1]-[2]; *Matter of Raab*, 100 NY2d at 315). Thus, a judicial candidate may not sit in on a political party's interviews of candidates for elective office, even if requested to do so by the party (Opinion 00-64). Similarly, if a judge who is a judicial candidate wishes to attend the national convention of a political party, he/she must do so strictly as a spectator (Opinion 99-156; *see also* Opinion 95-83). A judge who is a judicial candidate also may not accede to the request of a political organization's district leader to comment on a proposed judicial candidate rating system for the political party (Opinion 12-144).

Speaker or Guest of Honor. A judicial candidate must not be a speaker, guest of honor, or award recipient at a politically sponsored event, unless either (a) the event is not a fund-raiser, or (b) the candidate's participation is unannounced prior to the event (Joint Opinion 12-84/12-95[B]-[G], at Question 1). During his/her window period, a judicial candidate may nonetheless attend fund-raising events sponsored by a political organization, be introduced as a judicial candidate, and briefly acknowledge the introduction (Opinions 07-09; 03-51 [candidate may attend Congressman's fund-raiser, but may not accept a Congressional Merit Award at the event]; 01-27 [candidate may attend political party's fund-raiser, but may not accept an award]; 22 NYCRR 100.5[A][1][d]; *see also* 2007 CJC Ann. Rep. at 127-35 [disciplinary determination] [judicial candidate engaged in impermissible political activity by serving as a keynote speaker for a political party's fund-raiser]). A judicial candidate may not permit his/her name to be listed as a "Contributor" on an invitation to a political club's fund-raising dinner (Opinion 88-26).

Political Functions Held After the Election but During the Window Period. A judicial candidate who has been elected as a judge may continue to attend political functions throughout his/her window period, which ends exactly six months after the general election (Opinions 92-29; 91-67 [recently elected judge may not attend political event held "six months and one day after the general election"]; 91-24; 89-136). The judge's campaign committee may purchase these tickets using campaign funds (Opinion 92-29; 91-24.) A recently elected judge may retain a small portion of unexpended campaign funds to pay for tickets and to attend political events during his/her window period (Opinion 07-187).

A judge who was an unsuccessful candidate in a primary election for a different judicial office may also continue to attend political functions throughout his/her window period, which ends exactly six months after the primary election (Opinion 96-124).

See Section 2.2.2, above, for a discussion of how to calculate the window period. See also Section 7.3, below, for a discussion on other post-election conduct.

Political Functions Held After the Window Period. A judge who is no longer a candidate within his/her appropriate window period may not attend a political gathering, or any gathering sponsored by a political organization, even if the gathering is of a laudable, non-political nature ("Observations and Recommendations," 2001 CJC Ann. Rep. at 27; *see also* Opinions 06-71; 97-31; 92-95; 89-26; 88-32). A non-candidate judge may not escort his/her spouse (who is a

candidate for elective office) to political events held for the spouse, even where the judge will not participate in the program or be introduced at the event (*see* 1990 CJC Ann. Rep. at 150-52 [disciplinary determination]; *see also* Opinion 06-147). This restriction has no geographic limitations, insofar as it has been extended to national political conventions or out-of-state events sponsored by a political party organization at a national level (Opinion 99-156; *cf.* Opinion 95-109). A judge who is not a candidate for judicial office, therefore, has an affirmative obligation to inquire regarding the sponsor's identity and purposes of an event in order to avoid inadvertently attending a prohibited political event ("Observations and Recommendations," 2001 CJC Ann. Rep. at 27).

3.6 Attendance at Charitable Gatherings or Events

The Committee has recognized that a judicial candidate may promote his/her candidacy at events that are not politically sponsored, including charitable fund-raisers (Opinion 07-137). For instance, a judicial candidate may purchase an advertisement on a T-shirt that will be distributed to participants in a charitable event, so long as neither the candidate's name nor the prestige of judicial office will be used for fund-raising purposes (Opinion 07-137). However, a candidate may not use campaign funds to make charitable donations unless they directly benefit the campaign, because charitable contributions per se are not a traditional part of the election process and are impermissible under prior opinions, unless they are used to secure campaign-related advertising, goods or services, or to attend charitable events in furtherance of the candidate's campaign (Opinion 07-137; 22 NYCRR 100.5[A][6]). Similarly, a judicial candidate may not permit his/her campaign committee to solicit or accept items for donation to a local charity (Opinion 14-146).

To the extent legally permissible, a judicial candidate may use campaign funds to attend bar association functions or other events that are not hosted by political organizations throughout his/her window period, including in the post-election window period, provided that his/her attendance is in furtherance of his/her campaign for judicial office and the candidate determines that he/she will receive fair value for the expenditure (Joint Opinion 12-84/12-95[B]-[G], at Question 2).

An individual who is not currently a judge may be a speaker or guest of honor at a charitable fund-raising event, even though he/she is a judicial candidate (Opinion 07-90). By contrast, a sitting judge may not be the speaker or guest of honor at a charitable organization's fund-raising events, even during his/her window period (22 NYCRR 100.4[C][3][b][ii]; Opinion 07-90).

4. Fund-Raising and Use of Campaign Funds During the Campaign

A judicial candidate may, of course, contribute to his or her *own* campaign to the extent permitted by the Election Law (Opinions 01-21; 91-68; 22 NYCRR 100.5[A][2]). If the candidate is not soliciting or accepting money from any other person (i.e., if he/she is running an entirely self-funded campaign), he/she is not ethically required to form a campaign committee (Opinion 08-43; *cf.* Opinion 89-05).

However, a judicial candidate may not personally solicit or accept campaign contributions or funds (22 NYCRR 100.5[A][1][h]; 100.5[A][5]; *see also, e.g.,* Opinion 92-43 [recently elected

judge may not personally sell tickets to a political victory celebration]; 2013 CJC Ann. Rep. at 75-94 ["While it is improper for a judicial candidate to personally accept campaign contributions..., a disguised contribution is equally impermissible."]). Therefore, if a candidate wishes to accept any campaign contributions, he/she must form a campaign committee (22 NYCRR 100.5[A][4][c]; 100.5[A][5]). Candidates should, of course, comply with any Election Law requirements with respect to reporting and/or registration of their committee.

4.1 Campaign Committees

A judicial candidate may establish one or more committees of "responsible persons" to solicit and accept reasonable campaign contributions and support from the public (including lawyers), manage the expenditure of funds for the candidate's campaign and obtain public statements of support for the candidacy (22 NYCRR 100.5[A][5]; Opinions 07-135; 95-62).[11] The campaign committee may also conduct the candidate's campaign through media advertisements, brochures, mailings, candidate forums, etc. (22 NYCRR 100.5[A][5]).

Formal Requirements. The Rules Governing Judicial Conduct do not impose any formal filing or registration requirements for the establishment of a campaign committee or designation of a campaign treasurer or finance chair. Such requirements, if any, would be imposed by law or regulation.

Who May Serve on the Campaign Committee. Although the Rules do not set forth a list of qualifications for persons who may serve on a campaign committee, it is the judicial candidate's obligation to make sure that all individuals serving on the campaign committee are "responsible persons" (22 NYCRR 100.5[A][5]; "Observations and Recommendations," 2001 CJC Ann. Rep. at 26-27; *cf.* Opinion 07-64 [noting that a candidate must instruct his/her representative about the limitations on campaign speech and conduct that he/she should observe when acting on the candidate's behalf]). Attorneys may serve on the campaign committee, and a judge who is a candidate for judicial office may personally ask individual attorneys to join his/her campaign committee (Opinion 92-19), although this must be done in a manner consistent with the impartiality, integrity and independence of the judiciary (22 NYCRR 100.4[A][4][a]). In December 2008, a judge was publicly disciplined for requesting support for his/her candidacy from an attorney in his/her courtroom shortly before the attorney was scheduled to appear before the judge (2009 CJC Ann. Rep. at 176-80). For specific issues relating to family and court employees serving on a campaign committee, please see Section 6, below.

When the Committee May Be Formed. The committee may be formed during a candidate's window period. However, if a judicial candidate has run an entirely self-funded campaign, without a campaign committee, he/she may not form a campaign committee after the

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[11] A judicial candidate who wishes to solicit or accept campaign contributions must establish a committee to solicit and accept campaign contributions on his/her behalf (22 NYCRR 100.5[A][1][h]; 100.5[A][2][i]; 100.5[A][4][c]; 100.5[A][5]; Opinions 07-135; 95-62).

election "to recoup costs [he/she] incurred and paid personally during the campaign period" (Opinion 89-05). *See generally* Section 7, below, regarding post-election fund-raising.

No Joint Campaign Committees. Judicial candidates may not establish a joint campaign committee with other candidates, because participation by the candidate, directly or indirectly, in the activities and functioning of the single joint re-election committee constitutes an involvement in a political campaign other than his/her own campaign for judicial office (Opinions 03-06; 02-64; 88-04; *see also* Section 4.2, below, regarding joint fund-raising, and Section 5.5, below, regarding joint campaigning). Similarly, a judicial candidate may not participate in a campaign bank account maintained by a political organization, in which contributions received by the organization on behalf of the judge are mingled with contributions received on behalf of other judicial and non-judicial candidates (Opinion 97-80).

Knowledge of the Identities of Contributors and Amounts Contributed. A judicial candidate may attend his/her own fund-raising event and may actually see and acknowledge individuals in attendance, but the identities of those who contribute to a judicial candidate's campaign should otherwise be kept from the candidate (Opinion 07-88). No candidate for judicial office should attempt to have any listing of contributors made available to him/her, nor may the candidate seek to learn the identity of those who contributed to his/her campaign (Opinions 02-06; 87-27; *see also* NYSBA Opinion 289 [stating that a candidate also should not seek to learn the identity of those who contributed to his/her opponent's campaign]).

A judicial candidate should not personally send a letter to persons who contributed funds to his/her election campaign, because such a letter would clearly signify knowledge of those who contributed (Opinion 02-06). The campaign committee, however, may send a letter thanking contributors for their financial support, provided that the committee sends it within the candidate's window period (Opinion 02-06). Such a letter may even include a direct quote from the candidate expressing thanks, but the campaign committee should make clear in the letter that the candidate has not been informed of the identities of the contributors (*id.*).[12]

Although dinners and other fund-raising affairs are permitted during the window period, it is impermissible to publish a Souvenir Journal with advertisements solicited from various businesses, because "[i]t would be unrealistic to expect that the judge would be unaware of the

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[12] The Committee has recognized that a judge or judicial candidate may inadvertently or incidentally become aware of some of his/her campaign contributors through attendance at fund-raisers (Opinions 07-88; 04-106), through a litigant's decision to seek the judge's disqualification based on campaign contributions (Opinion 10-135), or through reading a newspaper (Opinion 04-106). Such knowledge, inadvertently gained, does not automatically require a judge's disqualification, as long as the judge concludes that he/she can be impartial. *See* Section 8.4. In 2011, the Administrative Board adopted Part 151, a case assignment rule, to help ensure that cases involving a judge's larger campaign contributors are not assigned to the judge for a two-year period (22 NYCRR 151). Part 151 is designed to operate at the administrative level, without any involvement by the judge, parties, or counsel.

names appearing in and contributors to such publication" and "it is conceivable that one or more subscribers would use such Souvenir Journal to convey that they are in a position to improperly influence" the judge (Opinion 87-27).

Permissible Contributors. The campaign committee may solicit and accept reasonable contributions from the public, including lawyers (Opinion 03-06).

The New York State Bar Association has taken the position that a judge's campaign committee may not knowingly solicit or accept contributions from a party to litigation that is before the judge, nor one employed by, affiliated with, or a member of the immediate family of a party to litigation before the judge. In addition, a judicial candidate's campaign committee should not solicit or accept contributions from a party which may reasonably be expected to come before the candidate if elected or from one who has come before the candidate so recently that it manifests an appearance of impropriety (NYSBA Opinion 289).

The campaign committee may accept a campaign contribution from a local elected official, who is not a judge, when the source of the funds is the official's own political campaign committee account (Opinion 02-109).

The committee may also accept campaign contributions from an already existing political committee or a group of lawyers who raise funds on the candidate's behalf, as long as neither the existing political committee nor the group of lawyers uses the judicial candidates' names to raise funds for other non-judicial candidates or for a political party (Opinion 03-06).

4.1.1 Specific Fund-Raising Strategies and Techniques

Permissible Methods of Fund-Raising. Although the Rules do not set forth a list of permissible and impermissible methods for a campaign committee to use in raising funds for the judicial candidate's campaign, any method chosen must be consistent with the dignity, impartiality, integrity and independence of the judiciary (22 NYCRR 100.5[A][4][a]). The Committee has provided guidance on a few specific methods of fund-raising:

Dinners and Fund-Raising Affairs: The campaign committee may hold dinners and other fund-raising events during the window period (Opinion 87-27).

Campaign Committee's Website: The campaign committee may solicit campaign contributions on a website it sponsors, provided that the contributors are directed to send all donations to the campaign committee and not to the candidate himself/herself (Opinion 07-135). The judicial candidate may not solicit campaign contributions on his/her own website (*id.*).

Campaign Committee's Facebook page: The campaign committee may create a Facebook page and make connections with the campaign committees of other candidates on the same slate (Opinion 15-121). The judicial candidate must, however, instruct the campaign committee to refrain from any impermissible speech, such as comments that would create an appearance that the candidate directly or indirectly publicly endorses another candidate or comments on another candidates' qualifications (*id.*).

Raffle: The campaign committee may, if permitted by law, sell raffle tickets and conduct a raffle at a fund-raiser for the candidate (Opinion 07-88). The judicial candidate may be present during the raffle, but must not personally participate in selling tickets (*id.*).

> *Cautionary Note*: Candidates who wish to authorize or permit their campaign committees to raise money by conducting raffles or other games of chance should carefully check applicable statutes and regulations to determine the lawfulness of the proposed activity.[13]

No Souvenir Journals: It is impermissible to publish a Souvenir Journal with advertisements solicited from various businesses, because "[i]t would be unrealistic to expect that the judge would be unaware of the names appearing in and contributors to such publication" and "it is conceivable that one or more subscribers would use such Souvenir Journal to convey that they are in a position to improperly influence" the judge (Opinion 87-27).

Providing Free Admission to a Fund-Raising Event. A judicial candidate may permit other individuals to attend his/her fund-raiser without charge, regardless of whether such individuals are currently seeking election to public office (Joint Opinion 12-84/12-95[B]-[G], at Question 4).

Professional Fund-Raising Consultant. A judicial candidate may not hire a professional fund-raising consultant who will be paid on a percentage or commission basis (Opinion 12-129[A]-[G], at Question 1).

4.2 Joint Fund-Raising

A judicial candidate may not hold a joint fund-raiser with a non-judicial candidate (Opinion 08-40).

Two judicial candidates may participate in a joint fund-raising event if the proceeds are divided equally between the two campaigns, provided neither candidate comments on the other's qualifications or endorses the other (Opinions 01-99; 91-113).

The candidates may not establish a single joint campaign committee, however, as each candidate would then be perceived as a participant in another candidate's campaign, and would readily be seen as endorsing the other candidate (Opinions 03-06; 02-64; 88-04).

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[13] The Board of Elections has posted an online brochure which discusses certain issues regarding door prizes and raffles. The brochure suggests contacting "the NYS Racing and Wagering Board (518-395-5400) or the Attorney General (518-474-7330)" for further information.

A judicial candidate may not participate in a political organization's campaign bank account that would co-mingle the funds contributed to the judge's campaign with contributions received on behalf of other judicial or non-judicial candidates (Opinion 97-80).

For a discussion of joint campaigning see Section 5.5, below.

4.3 Proper Utilization of Campaign Funds

A judicial candidate may expend campaign funds during the window period in any manner consistent with the Rules and the Election Law (Opinion 92-97; *see also, e.g.,* Election Law §§14-130; 17-162). For example, judicial candidates are specifically prohibited from using campaign funds or personal funds to pay for any campaign-related goods or services for which fair value is not received (22 NYCRR 100.5[A][6]).

Campaign contributions may not be used for the private benefit of the candidate or others (22 NYCRR 100.5[A][5]; Election Law §14-130) and thus should not be used for personal expenses unrelated to the campaign (Opinion 89-152). See Section 7.1.2, below, for a discussion of several prohibited uses of campaign funds.

Campaign funds generally should be used in a manner consistent with the contemplation of donors, such as to fund campaign activities and literature, and after the campaign ends, to fund a modest and reasonable victory party within the window period as part of the election cycle (Opinion 87-16). See Section 3.5, above, regarding attendance at political events; see Section 5, below, regarding campaign advertisements.

4.3.1 Special Considerations - Payments to Political Committees and Others

A judicial candidate may not make a payment to a political party in order to be considered for its endorsement (Opinion 01-21; Election Law §§14-130; 17-162).

A judicial candidate may not make a general payment or contribution to a political party or county committee (*Matter of Raab*, 100 NY2d at 315-16 ["The contribution limitation is intended to ensure that political parties cannot extract contributions from persons seeking nomination for judicial office in exchange for a party endorsement."]; 22 NYCRR 100.5[A][5]; Opinions 01-21; 92-97; *cf.* Election Law § 17-162).

Nor may the candidate pay for a share of a political party's headquarters or general campaign mailings, such as those generally encouraging voters to vote for that party's candidates without specifying the names of particular candidates (*Matter of Raab*, 100 NY2d at 316 [candidate sanctioned for, among other things, paying a substantial sum to a political party without verifying that the payment was used to cover expenditures for his own campaign as opposed to other candidates' races or general party needs]; Opinions 01-21 [candidate may not pay $2,500 to party to "support the endorsed candidates for town offices in the payment of campaign expenses"]; 92-97; *cf.* Opinion 91-94 [paying more than the candidate's proportionate share of actual campaign services would constitute an impermissible contribution]).

However, a candidate may reimburse such a committee or organization for his/her proportionate share of the actual campaign costs (Opinions 92-97; 91-94). The Committee has

advised that a candidate for Supreme Court "may reimburse the county committee for expenses it incurred in the preparation and the printing of petitions and distribution for judicial delegates, for postage for notices, audio and refreshment expenses for the judicial convention and for the printing of campaign materials ..., provided that the candidate or the candidate's treasurer on a reasonable basis of fact believes that these expenses are reasonable and actual costs actually and proportionately relating to the candidate's judicial campaign" (Opinion 92-97; *see also* Opinion 01-21; *Matter of Raab*, 100 NY2d at 316).

Payment to Campaign Workers. A judicial candidate may, to the extent legally permissible, compensate responsible persons hired to help the candidate pass petitions and gather signatures or may, where their pay is based on the amount of time spent (Joint Opinion 15-112/15-146). Similarly, a judicial candidate may pay a professional campaign manager on an hourly, or other time basis, or a flat fee for working on the campaign (*see id.*). A candidate may not, however, pay a victory bonus or any other kind of incentive to a campaign worker (*see id.*; Opinion 12-129[A]-[G] [candidate may not hire consultant who will be paid on a percentage or commission basis]).

4.3.2 Post-Election Window Period

A judicial candidate may continue to attend political events and make certain other expenditures using campaign funds throughout his/her window period, even after the general election. The Committee has advised:

> During the six-month post-election Window Period, a judge or candidate for judicial office may use campaign funds for those activities permitted under Section 100.5(A)(2) of the Rules Governing Judicial Conduct and for some expenditures that are considered a "traditional part of the total election process". For example, during his/her Window Period, a judicial candidate may continue to use campaign funds to purchase two tickets to and attend political dinners and other events, "provided that the event's organizer sells tickets to judicial candidates or their campaign committees [at] a price not exceeding $250 per ticket, even if the price per ticket for other attendees exceeds $250". This Committee also has advised that a successful candidate for judicial office may use a small amount of campaign funds for "a modest victory celebration during the six-month post-election period (Window Period)" because it is a "traditional part of the total election process".
>
> At the end of their Window Periods, candidates for judicial office must return any unexpended campaign funds to donors on a pro rata basis.

(Opinion 07-187 [citations omitted]). See Section 7, below, for further discussion of proper post-election handling of unexpended or surplus campaign funds and other post-election conduct.

To the extent legally permissible, a judicial candidate may also use campaign funds to attend bar association functions or other events that are not hosted by political organizations throughout his/her window period, provided that his/her attendance is in furtherance of his/her campaign for judicial office and the candidate determines that he/she will receive fair value for the expenditure (Joint Opinion 12-84/12-95[B]-[G], at Question 2).

A judicial candidate may not use unexpended campaign funds to purchase tickets and a journal advertisement as part of a charitable fund-raising event which will take place after the expiration of the window period (Opinion 99-56 [purchase of tickets for a charitable dinner that will not take place until after the window period expires "amounts to a contribution to the charity and is therefore, in our opinion, an improper expenditure of campaign funds"]).

4.4 Special Considerations - Candidate Who Anticipates Running for Two Positions in the Same Election Cycle

The Committee has advised that funds raised for one judicial campaign may not, after that campaign has concluded, be transferred or retained for use in another judicial campaign, whether for the same or a different office, even if the donors consent (Opinions 01-81; 92-68; 90-06; 88-89). Of particular note, the Committee reasoned that "the contributions were given for the candidate's election to a specific judicial office and not for another office," and that a donor who supported a candidate against one opponent "may not support [him/her] against a different opponent" (Opinions 90-06; 88-89; *cf.* 22 NYCRR 100.5[A][4][a]).

Opinion 12-172 addresses special considerations for a candidate who has accepted a party's nomination for one judicial position, but hopes to receive a nomination for Supreme Court later in the same election cycle. A judicial candidate may not use funds raised for one judicial race to make purchases which are exclusively related to his/her campaign for a different judicial position, but may use those funds to make generically useful purchases which could be used for either judicial campaign (Opinion 12-172).

5. Communications with Voters

Judicial candidates "are encouraged to educate the voting public on the qualities and qualifications that would make them the best candidate for the office sought" and all campaign communications "should be designed to instill confidence in the candidate's ability to fairly and impartially discharge the duties of the office" (Opinion 04-95).

5.1 Form of Advertisements

Any form of media, including but not limited to radio, television, the Internet, newspapers, periodicals, palm cards, lawn signs, flyers, billboards, posters and handbills, may be used in a judicial campaign (*e.g.,* Opinions 07-135; 05-99; Joint Opinion 05-23 and 05-24). A judicial candidate may personally appear in media advertisements and may distribute pamphlets and other literature to support his/her candidacy (22 NYCRR 100.5[A][2][i]-[ii]). The Committee has provided guidance on a few specific methods of advertising:

> *Promotional Items.* A judicial candidate may distribute promotional materials of no more than nominal value, such as pens, pencils, letter openers and the like, to support

his/her candidacy (Opinion 98-97 [noting that "these items have campaign slogans imprinted on them" and thus are treated as campaign literature]; *compare* 2007 CJC Ann. Rep. at 127-35 [candidate disciplined for distributing items of value to voters, such as $5 coupons and drinks at a local bar]).

A judicial candidate may purchase an advertisement on a T-shirt, along with the names or business logos of the other eligible donors, that will be given at no cost to participants in a charitable event, so long as neither the candidate's name nor the prestige of judicial office will be used for fund-raising purposes (Opinion 07-137).

Political Journals. A judicial candidate may use campaign funds to purchase the lowest priced full-page advertisement in a political organization's journal (Joint Opinion 13-99/13-100 and 13-101/13-102; Opinion 99-38 [suggesting the possibility that paying $3,000 for an advertisement might be regarded as an impermissible political contribution]).

However, a judicial candidate may not pay a premium for the increased exposure of an inside cover or other prominent placement of the advertisement (Joint Opinion 13-99/13-100 and 13-101/13-102).

Internet. Although the Committee has not addressed use of many specific forms of internet-based communications in a judicial campaign, the Committee also "has not opined that there is anything per se unethical about communicating using other forms of technology" (Opinion 08-176 [providing general guidelines for a judge's use of online social networks]).

A judicial candidate may include a link from his/her campaign website to a political organization's website which contains information promoting the judicial candidate's campaign (Joint Opinion 12-84/12-95[B]-[G], at Question 5). Specifically, the Committee reasoned that "link[ing] to the website of a political party that has endorsed" the candidate is "a way for the candidate to demonstrate that he/she in fact has obtained the party's support" (id.). The candidate should be careful that his/her link "is not presented in such a way that it appears to vouch for or adopt the content of the political party's website" (id.).

> *Cautionary Note*: The Committee suggests that judicial candidates seek guidance from the Subcommittee before including a link from their campaign website to any other partisan political websites beyond the specific circumstances addressed in the Committee's published opinions (*cf.* "Observations and Recommendations," 2001 CJC Ann. Rep. at 27).

A candidate may include a link on his/her campaign website to newspaper articles about him/her, provided that nothing in the article is misleading and provided the article maintains the dignity of judicial office (Opinion 07-135; 22 NYCRR 100.5[A][4][a]).

A candidate may use an email signature block on his/her personal email which requests non-financial support from voters and provides links to the campaign committee's social media page and campaign website (Opinion 13-126).

Radio. A judicial candidate may be endorsed for re-election in a radio advertisement by a candidate for elective non-judicial office, provided the radio advertisement does not suggest the judicial candidate is endorsing the other candidate (Joint Opinion 05-23 and 05-24).

Photographs with Others. While a judicial candidate may include a photograph taken with a relative in a state trooper uniform, neither the photograph or its context may suggest that the candidate would support law enforcement interests over other parties that may appear before his or her court (Opinion 07-136).

A judicial candidate who is married to a sitting judge may include in his/her campaign literature a photograph of the candidate's family, which includes and identifies the spouse, as long as the spouse's judicial title and position are not mentioned or featured (Opinion 96-07; *cf.* Opinion 06-94).

A judicial candidate may be photographed with other candidates for elective office and use this photograph in his/her campaign, although use by another candidate which "might imply an endorsement by the judge of the candidate is to be avoided, and the judge should take steps to prevent such use to the extent possible" (Opinion 03-64).

A judicial candidate may not use a photograph taken at a social event with an elected local public official who is not part of the candidate's slate and who has not endorsed the candidate, unless the official consents to use of the photograph in the judicial candidate's campaign (Opinion 12-114). The Commission on Judicial Conduct publicly admonished a judicial candidate who depicted one of his/her opponents (three candidates vying for two seats) in his/her campaign literature (2012 CJC Ann. Report at 136-37). The CJC stated that such conduct was deceptive and thus ethically impermissible, given that his/her opponent did not grant the respondent permission to use his/her likeness and the literature appeared to suggest that both candidates were endorsed by a newspaper, when only the opponent received such endorsement (*id.*).

Campaign Signs. It is ethically permissible for a judicial candidate within his/her window period to display campaign signs supporting his/her own candidacy, even if these signs also list other candidates on his/her slate (22 NYCRR 100.5[A][2][ii]-[iv]; Opinion 07-167). However, a judicial candidate should not display a campaign sign that endorses another candidate (22 NYCRR 100.5[A][1][c]-[e]; Opinion 07-167), such as, for example, campaign signs that list only other candidates' names.

Sponsorship of Softball Team. A judicial candidate in his/her window period may promote his/her candidacy at non-politically sponsored events, including a local softball tournament (Opinion 10-80). Although a candidate may not simply donate campaign funds to a softball team (*see* 22 NYCRR 100.5[A][5]; Election Law §14-130), it is permissible to purchase campaign-related advertising in furtherance of the candidate's campaign by sponsoring a softball team (Opinion 10-80). As with any other campaign

expenditures, the candidate should first determine that he/she will obtain fair value for the money expended for such advertisements to avoid any appearance of impropriety (*id.*; 22 NYCRR 100.5[A][6]).

Hosting a Free "Meet and Greet" Event. A judicial candidate may hold a free "meet and greet" event at which modest and reasonable refreshments are served (Opinion 12-129[A]-[G], at Question 2). However, a judicial candidate may not hold a meet-and-greet campaign event at which the candidate's campaign committee will also collect items to be donated to a not-for-profit organization (Opinion 14-146).

5.2 Use of Judicial Title, Robes, and Courthouse

Special Considerations for Candidates Who are Sitting Judges. An incumbent judge may not use the prestige of judicial office to promote his/her candidacy. For example, an incumbent judge may not make a judicial determination calculated to obtain support for his/her candidacy or to further the judge's political interest (22 NYCRR 100.2[A]-[B]; 100.3[B][1]).

Special Considerations for Candidates Who are Seeking a Position they Do Not Currently Hold. Please see "Reference to Position Sought" (in Section 5.3.4, below) for the Commission on Judicial Conduct's views on campaign signs that omit the word "for" between the name of the challenger and the name of the position sought.

Who May Use Judicial Title and Robes. An incumbent judge running for re-election or for election to another judicial position may be identified as "judge" (or "justice," as may be appropriate) on campaign signs and other literature (Opinion 94-50 [part-time town justice]; 22 NYCRR 100.5[A][4][d][iii]). A Housing Court judge, although not a judge of the Unified Court System, is still a judge and thus may refer to himself/herself as a "judge" in campaign literature (Opinion 03-90).

An incumbent judge may circulate campaign literature with a photograph of himself/herself in judicial robes (Opinions 05-101; 03-90).

A judicial candidate may not use the term "re-elect" when seeking an office other than the one in which he/she is currently serving by election (Opinion 94-50 [town justice who received nomination for county court judge]; 22 NYCRR 100.5[A][4][d][iii]). This limitation applies even if the candidate was previously elected to the judgeship sought and, although defeated for re-election, currently holds the office by appointment (Opinion 97-18 [noting that the judge has held the same judicial title on a continuing basis]).

A non-judge judicial candidate who formerly held the position of village justice may use the phrase "former village justice" and may use photographs in which he/she appeared in judicial robes for use with that designation in campaign literature (Opinion 04-16).

A former judge may not, however, be referred to as a "judge" or ask the voters to "re-elect" him/her (Opinion 97-72 [former judge may not use the phrase "Vote for Judge (name)" or "Re-elect Judge (name)"]).

Use of Juror Contact Information. Neither a judge nor the judge's campaign committee may contact jurors, who have served on cases over which the judge has presided, to ask their support in the judge's re-election campaign (Opinion 90-93). A law clerk must refrain from post-trial contact with jurors at all times, including during his/her campaign for judicial office (Opinion 01-36).

Use of Judicial Letterhead or Stationery. A judge should not use court stationery in a re-election campaign, even if the stationery is marked "personal and unofficial" (Joint Opinion 04-143 and 05-05; Opinion 99-155).

Use of Courthouse. Because the courthouse may not be used for political purposes, "care must be taken to avoid using photographs that might convey the impression that the courthouse is being used for political purposes and, in particular, to facilitate the candidacy of a sitting judge" (Opinion 05-101). The judge may not "be filmed inside his/her chambers, or inside the courthouse while asking viewers to vote for him/her" (Opinion 07-139).

Judicial candidates who are incumbent judges are permitted to use photographs depicting them in judicial robes and taken in any public place, or in chambers or the court library, provided that there is no indication of the official nature of the location and administrative permission is obtained (Opinion 05-101; 22 NYCRR 29.1 [requirements for obtaining administrative permission for photographs or videorecording in a courthouse]). Subject to the rules relating to the permissible scope of comment by candidates, the campaign committee of a judge seeking re-election may reproduce excerpts of audio and video recordings and photographs of court proceedings which were authorized by existing rules (Opinion 94-67). With appropriate administrative approval, a judge who is a judicial candidate may use a photograph of himself/herself in a public hallway of the courthouse, in front of the door to his/her chambers (Opinion 07-139; 22 NYCRR 29.1).

Published Courtroom Photographs. A judge who is a judicial candidate may use photographs of himself/herself that a photographer took in the courtroom during a public trial with appropriate administrative permission and that were thereafter published by a newspaper (Opinion 07-135). A judge who is a judicial candidate may also use administratively approved, published photographs of himself/herself hosting visitors to the court while the court was not in session (Opinion 07-137).

Photographs of Swearing In Ceremony. An incumbent judge who is currently a judicial candidate may use a photograph from his/her public swearing-in ceremony held in the town hall that was published as a news item in the local newspaper, provided such use does not in any way imply that the judge who was administering the oath of office endorses the judicial candidate (Opinion 07-89; 22 NYCRR 100.5[A][1][e]).

5.3 Content of Campaign Speech

In general, a judicial candidate must ensure that his/her campaign statements are consistent with the impartiality, integrity, independence and dignity of judicial office (*see* 22 NYCRR 100.5[A][4][a]). Thus, for example, judicial candidates are held to a high standard of truthfulness (22 NYCRR 100.5[A][4][d][iii]; Opinions 12-114; 09-162); must avoid pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of

judicial office (22 NYCRR 100.5[A][4][d][i]-[ii]); and must not publicly endorse or oppose (other than by running against) another candidate (22 NYCRR 100.5[A][1][e]).

A judicial candidate is prohibited from appealing directly or indirectly to the fear, passion or prejudice of the electorate or from appealing purposefully to or against members of a particular race, sex, ethnic group, religion or similar group (NYSBA Opinion 289).

5.3.1 Truthfulness

The Committee has advised that there is "no place for distortions in a judicial campaign" (Opinion 12-114). In a footnote, the Committee also quoted with apparent approval the following language from a published disciplinary decision, which in turn relied on and quoted an earlier Court of Appeals opinion:

> Distortions and misrepresentations have no place in campaigns for judicial office. Judicial candidates for judicial office are expected to be, and must be, above such tactics. It is especially important for judicial candidates to be truthful because judges are called upon to administer oaths and are sworn to uphold the law and seek the truth.

(*id.* n.1 [internal quotation marks and citations omitted]). In its 2015 Annual Report, the Commission on Judicial Conduct emphasized the importance of truthfulness in judicial campaign advertisements, noting that "judges and judicial candidates have a higher obligation [than candidates for non-judicial office] under the Rules" ("Observations and Recommendations," 2015 CJC Ann. Rep. at 22). In addition, the CJC provided the following warning:

> Public confidence in the courts depends on confidence in the integrity of its judges. The integrity of a candidate who runs misleading campaign ads is compromised even before he or she takes the oath of office.
>
> The Commission intends to make honest advertising a better known and appreciated ethical obligation. Judges and judicial candidates have fair warning that violations in the future may result in public discipline more readily than before.

(*id.*).

5.3.2 Pledges and Promises

All judicial candidates must refrain from making improper pledges or promises (*Matter of Watson*, 100 NY2d 290 [2003]; 22 NYCRR 100.5[A][4][d][i]), and any promises of conduct in office must be consistent with the impartial performance of the adjudicative duties of the office (22 NYCRR 100.3[B][9][a]; 100.5[A][4][d][i]-[ii]). A candidate must consider the import of his/her statements in the context of the campaign as a whole to determine whether he/she has articulated a pledge or promise that compromises the faithful and impartial performance of judicial duties (*Matter of Watson*, 100 NY2d 290 [candidate sanctioned for explicit and repeated

statements that he intended to "work with" and "assist" police and other law enforcement personnel if elected to judicial office]).

For example, a judicial candidate may not:

- Make campaign statements indicating a refusal to participate in the lawful and accepted practice of plea bargaining in criminal cases (Opinion 04-95);
- Promise to set up and fund a "legal scholarship" if elected (Opinion 03-28);
- Imply a predisposition to decide particular classes of cases in a particular way (Opinion 93-101);
- Sign a pledge to support a political party's platform (Opinion 93-52).

By contrast, a candidate may sign a "Statement of Principles" pledging that the candidate intends to use fair campaign practices during his/her campaign (Opinion 05-119).

The Commission on Judicial Conduct has publicly admonished a judge for use of campaign literature advertising a lecture the judge planned to give with a "tenant attorney and activist" on how to "beat your landlord, ... and win in court!" (2010 CJC Ann. Rep. at 124-28 [disciplinary determination]). The CJC has also publicly admonished a judge for statements which, when viewed in their entirety, conveyed bias because they "single[d] out a particular class of litigants for special treatment" (2011 CJC Ann. Rep. at 120-24).

Further, if a judicial candidate has made an improper promise during his/her campaign, he/she may be required to disqualify him/herself in certain matters (22 NYCRR 100.3[E][1][f]; *see also* Section 8.2, below).

5.3.3 Public Endorsement or Opposition

The rule against endorsing other candidates is described further in Section 3.3.3, above (special considerations for candidates seeking election to Supreme Court), and 5.5, below (joint campaigning).

5.3.4 Additional Issues and Topics

The Committee has provided guidance on a few specific issues and topics that come up frequently when candidates are considering what to say in their campaign literature.

Comments on Pending or Impending Cases. With very limited exceptions, an incumbent judge may not comment publicly about any proceeding that is pending or impending in any court within the United States or its territories (22 NYCRR 100.3[B][8]). This restriction applies at all times, whether or not the judge is a candidate for judicial office, and both within and outside the window period (Opinion 90-67).

Although non-judge candidates for judicial office are not prohibited from publicly commenting on pending or impending cases, they must exercise caution, with respect to any

particular cases, controversies or issues that are likely to come before the court, to avoid making any commitments that are inconsistent with the performance of the adjudicative office (22 NYCRR 100.5[A][4][d][ii]).

Use of Quotations from Current Judges and Quasi-Judicial Officials. A judicial candidate should not use quotations from letters written by judges or quasi-judicial officials of the Unified Court System in his/her campaign literature, because it would imply that the person quoted was endorsing the judge's election (Opinion 08-64; 22 NYCRR 100.5[A][1][e]).

Use of Campaign Slogans. Judicial candidates may also use campaign slogans that are consistent with the Rules (*e.g.*, Opinion 05-117 ["vote experience not politics"]).

Qualifications. Campaign material may include a truthful, dignified discussion of the candidate's qualifications and the qualifications of his/her opponent(s), as long as the discussion is accurate and not misleading (Opinions 04-16; 90-67; 2007 CJC Ann. Rep. at 115-18 [disciplinary determination]). A judicial candidate may not, in the guise of discussing qualifications, make an otherwise prohibited statement (NYSBA Opinion 289).

A judicial candidate may refer to his/her current and past employment in campaign materials, including service on the staff of sitting judges (Opinion 97-32 [noting that the mere listing of the names and titles of these judges does not constitute impermissible participation by those judges in the judicial campaign]).

A judicial candidate should not use quotations from letters written by judges or quasi-judicial officials of the Unified Court System in his/her campaign literature, because it would imply that the person quoted was endorsing the judge's election (Opinion 08-64; 22 NYCRR 100.5[A][1][e]). However, it is ethically permissible for a judicial candidate to use quotations from letters written by individuals who are not subject to Part 100.5, as long as the candidate ensures that doing so does not mislead the public (Opinion 08-64). Thus, if a judicial candidate wishes to use quotations from letters written in support of his/her nomination for a prestigious award, the candidate should clearly indicate the date and the original purpose for each quotation, and any other information required to ensure that each quotation is presented accurately (*id.*).

Judicial candidates on the same slate may jointly advertise their candidacies and refer to the number of years of judicial experience of each candidate, but may not refer to the total number of years of judicial experience of the candidates collectively (Opinion 99-117). See also Section 5.5, below, for a discussion of joint campaigning.

A judicial candidate may not knowingly make a false statement or misrepresent the identity, qualifications, current position or other fact concerning himself/herself or his/her opponent (22 NYCRR 100.5[A][4][d][iii]). A judicial candidate should take care to ascertain the truth of claims that he/she makes about an opponent, and be careful not to create a false impression of his/her opponent's record by omitting relevant facts (2007 CJC Ann. Rep. at 115-18 [disciplinary determination] [noting that there is no place for distortions in a campaign for judicial office]).

The Commission on Judicial Conduct has publicly admonished a judicial candidate for using campaign literature which "conveyed the erroneous impression that respondent had been

endorsed" by a particular newspaper (2010 CJC Ann. Rep. at 124-28 [disciplinary determination]; *see also* 2012 CJC Ann. Rep. at 130-39 [disciplinary determination]).

The CJC has also disciplined a judicial candidate for stating that as a Supreme Court Justice, he/she "will still be responsible for all pistol permits" in a particular county (2011 CJC Ann. Rep. at 120-24). The CJC found that the representation was "legally incorrect" because it misrepresented the candidate's jurisdiction over pistol permits as exclusive, and also found that this misstatement of law "buttressed" the candidate's overall "biased message" (*id.*).

Use of Screening Panel Ratings. It is also permissible to refer to ratings by screening panels and independent judicial election qualification commissions; see Section 3.3.2, above, for a discussion of relevant opinions.

Opponent's Conduct. The Committee has advised that a judicial candidate may comment on an opponent's conduct, subject to certain limitations (Opinion 12-129[A]-[G], at Question 4). A candidate:

> should take steps to ensure the accuracy of the information he/she includes about any opponent, and make every effort to avoid misleading the public with mere speculation or innuendo. Moreover, any reference to an opponent must be made in a manner which maintains the dignity appropriate to judicial office.

(Opinion 12-129[A]-[G]). During a campaign for judicial office, a candidate may bring to the public's attention the fact that his/her opponent has been publicly admonished or censured by the Commission on Judicial Conduct as long as such reference is made in a manner that maintains the dignity appropriate to judicial office (Opinion 01-98).

By contrast, where a judicial candidate believed that an opponent engaged in unethical conduct, but there was no published finding of misconduct by an official disciplinary body, the Committee advised the inquiring candidate to "take particular care to avoid giving the false impression that such a finding has been issued or is forthcoming" (Opinion 12-129[A]-[G], at n.5). Likewise, where a candidate wished to comment on historical case assignment statistics in the court to which he/she sought election, but there was no published administrative or disciplinary determination that the incumbent judge was "shirking" his/her judicial duties, the Committee advised the inquiring candidate to "carefully consider whether there may be other reasons for a seemingly imbalanced caseload in a particular court" (id.).

Response to Attacks. A judicial candidate may respond to personal attacks or attacks on the candidate's record as long as the response is consistent with the requirements of the rules, i.e., dignified, truthful, etc. (22 NYCRR 100.5[A][4][e]).

Reference to Position Sought. In its 2015 Annual Report, the CJC made the following comment on misleading advertisements it had observed in judicial campaigns:

> Despite having rendered some public disciplines and commenting on this subject previously in our Annual Reports, the Commission continues to see judicial campaign signs and literature phrased in

> such a way as to appear that a challenger already holds the particular office for which he or she is running. For example, the Commission has seen handbills, fliers, campaign posters or other literature that read such as follows -
>
> John Doe
> Family Court Judge[2]
> Election Day - November 3rd
>
> - even though candidate "Doe" may actually be a judge of another (typically lower) court or may not be a judge at all.

("Observations and Recommendations," 2015 CJC Ann. Rep. at 22 [the text of footnote 2 clarifies that use of "Family Court" in the example is merely "illustrative"]). The CJC further advised that "[a]ll judicial candidates should take steps to make certain that all of the literature, signs and ads that call for their election do not state or imply that they are incumbents of any office that they do not presently hold," and warned that "violations in the future may result in public discipline more readily than before" (*id.*).

5.4 Judicial Decisions Affecting Campaign Activities and Comments

5.4.1 "Announce Clause" Restrictions Struck Down

In June 2002, the United States Supreme Court determined that a section of the Minnesota Code of Judicial Conduct known as the "announce clause," which prohibits candidates for judicial election from announcing their views on disputed legal and political issues, violated the First Amendment to the United States Constitution (*Republican Party of Minnesota v. White*, 536 US 765 [2002]).

Although New York's Rules do not include an "announce clause," some precedential authority in New York has restricted campaign statements similar to those previously prohibited by Minnesota's now invalid "announce clause" (Opinion 90-67; NYSBA Opinion 289). Following the U.S. Supreme Court opinion, in July 2002, the New York State Court of Appeals determined that it was not misconduct for a candidate for judicial office to refer to himself/herself as a "law and order" candidate (*Matter of Shanley*, 98 NY2d 310 [2002]).

5.4.2 "Pledge and Promise" Restrictions Remain in Effect

The U.S. Supreme Court specifically refrained from addressing or striking down other language in the Minnesota rules that prohibited a candidate for judicial office from making pledges or promises of conduct in office (*White*, 536 US 765).

In *Matter of Watson*, the Court of Appeals reviewed a Commission on Judicial Conduct determination that an elected judge should be disciplined for improper statements made while he was a non-judge candidate for elective judicial office (100 NY2d 290 [2003]). The CJC had held that these statements gave the appearance that the newly elected judge would not be impartial, would not decide cases on an individual basis, and would be biased against defendants in criminal cases. The statements at issue included: an exhortation to "put a real prosecutor on the bench";

representations that the candidate (then employed as an assistant district attorney) had "proven experience in the war on crime" and could, if elected, use bail and sentencing to make the municipality "very unattractive" for certain criminal defendants; promises to "work with" and "assist" law enforcement personnel if elected to judicial office; and statements that his opponents were to blame for an increase in crime (*Matter of Watson*, 100 NY2d at 296-97, 299).

The Court of Appeals agreed that the campaign statements made by the candidate were improper (*id.* at 299) and upheld New York's limitation on campaign "pledges and promises" against a constitutional challenge. The Court held that New York's Rules do not include a provision analogous to Minnesota's "announce clause" (*id.* at 300) and expressly determined that New York's limitation on campaign "pledges and promises" does not suffer from the same constitutional infirmity that invalidated the "announce clause" (*id.* at 303).

The Court also noted that in order for a statement to be deemed an improper pledge or promise, a candidate need not preface a statement with the phrase "I promise" (*id.* at 298). Rather, statements are deemed improper if they favorably or unfavorably single out a particular party or class of litigants or convey the impression that the candidate will behave in a manner inconsistent with the faithful and impartial performance of judicial duties (*id.* at 298-99).

In light of the above-described cases, candidates for judicial office in New York must take great care not to run afoul of existing restrictions on campaign language. Until there has been a dispositive ruling from a court of final jurisdiction, the only prudent course for a judicial candidate to follow is to adhere to the standards called for within New York's existing Rules as interpreted and applied by the Committee and to seek guidance wherever needed by contacting the JCEC.

5.5 Joint Campaigning

A judicial candidate is prohibited from publicly endorsing or publicly opposing (other than by running against) any other candidate for political or judicial office (22 NYCRR 100.5[A][1][e]). This prohibition includes both direct and indirect endorsement of any other candidate for elective office (22 NYCRR 100.5[A][1]).[14] The Committee has stated that a judicial candidate may not indirectly endorse an incumbent judge who is running for re-election by stating that he/she is the unanimous choice to "join the incumbent" judge on the bench (Opinion 05-117). Judicial candidates on the same slate may jointly advertise their candidacies and refer to the number of years of judicial experience of each candidate, but may not refer to the total number of years of judicial experience of the candidates collectively (Opinion 99-117). Judicial candidates may not make statements directly in support of another candidate (Opinion 91-94), and they are also prohibited from distributing literature on behalf of another candidate (Opinion 91-94), erecting signs on their real property supporting other candidates, displaying "bumper stickers" on their vehicles supporting other candidates, or engaging in similar partisan conduct. (*See* Section

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[14] The Committee has recognized one very limited exception. See Section 3.3.3 (discussing Opinion 08-157 and Joint Opinion 10-101/11-01).

6.2, below, for a discussion of political activity by a judicial candidate's spouse on jointly owned property.)

The judicial candidate's name may, however, appear in media advertisements and may be listed on election materials along with the names of other judicial and non-judicial candidates for elective office as part of a single "slate" of candidates (22 NYCRR 100.5[A][2][iii]-[iv]; Opinions 05-99; 91-94). Thus, a judicial candidate may display campaign signs promoting his or her own candidacy, even if the sign also lists other candidates on the slate (Opinion 07-167), and may similarly distribute joint campaign literature on which his or her name appears (Opinion 91-94).

Two judicial candidates may display campaign lawn signs that have both candidates' names printed on them, but they may not send voters one letter conveying both candidates' qualifications and bearing both candidates' signatures that is printed on letterhead comprising both candidates' names (Opinion 09-176).

Joint Advertising. A judicial candidate may allow a political party to issue joint campaign literature with other candidates for elective office (22 NYCRR 100.5[A][2][iii]; Opinion 01-99). In addition, a candidate may advertise with one or more candidates for elective office, including those running for non-judicial office, provided that the candidate does not endorse any other candidate and pays no more than his or her *pro rata* share of the cost of the advertisements (Opinions 05-99; 01-99; 91-107 [suggesting a disclaimer that neither judicial candidate is endorsing another candidate]).

Use of the Word "Team." A judicial candidate's participation in a joint advertisement, prepared on behalf of a slate of judicial and non-judicial candidates, is not rendered impermissible merely because the advertisement characterizes the slate as a "team" and urges voters to vote for particular row(s) on the ballot on which the slate appears (Joint Opinion 13-137/13-152/13-153).

Use of disclaimer language indicating that the judicial candidate is not publicly endorsing other candidates is not mandatory for any judicial candidate (Joint Opinion 13-137/13-152/13-153).

Joint Appearances. A candidate for Supreme Court who is under consideration for a major political party's nomination may contribute proportionally to the cost of a pre-primary mailing asking minor party voters to vote for a slate of minor party judicial nominating convention delegates who have pledged to support the candidate if he/she ultimately earns a place on the major party's ballot line, provided that the mailing makes clear that the judicial candidate's endorsement is being made solely for the purpose of furthering the judicial candidate's own candidacy and is otherwise consistent with applicable limitations on judicial speech (Joint Opinion 14-133/14-134).

A judicial candidate may appear at gatherings and otherwise campaign with other candidates for elective office (including campaigning door-to-door), but must take great care to ensure that he/she does not endorse or comment on the qualifications of other candidates (22 NYCRR 100.5[A][2][ii]; Opinions 91-94; 90-166).

5.6 Debates

A judicial candidate may participate in a debate with other judicial candidates, as long as he/she adheres to the Rules Governing Judicial Conduct (Opinions 05-119; 94-78). For instance, judicial candidates should be careful to maintain the dignity of judicial office, avoid making pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office, and avoid making statements that commit or appear to commit him/her with respect to cases, controversies or issues that are likely to come before the court (Opinions 05-119; 94-78; 22 NYCRR 100.5[A][4][d]). A sitting judge must not publicly comment on pending or impending matters in the United States or its territories (Opinion 94-78; 22 NYCRR 100.3[B][8]). A judicial candidate may need to make clear to organizers of a debate that, as a candidate for judicial office, he or she must comply with the Rules, and that such compliance may constrain his or her participation in any debate (Opinion 05-119).

6. Involvement of Friends, Family, and Colleagues in Judicial Campaigns

A judicial candidate may personally "seek sign locations and campaign workers" (Opinion 94-30). See also Section 3.3., above, regarding personally seeking non-financial support, Section 4.1, above, regarding campaign committees, and Opinion 11-65 (judge should not ask individual court officer who serve in judge's court for support).

6.1 Judge's Staff Participating in the Judge's Campaign

All nonjudicial court employees, whether or not they are members of a judge's staff, are subject to Part 50 of the Rules of the Chief Judge governing the political activities of non-judicial employees. Court employees should contact the Unified Court System's Office of Court Administration for guidance on how Part 50 applies to their particular circumstances. (Contact: ETHICS HELPLINE: 1-888-28ETHIC.)

Court employees are barred from holding elective office in a political party, club or organization, subject to certain exceptions specified in the rule itself (22 NYCRR 50.5[e]; 100.5[C][1]; Opinions 04-142; 00-108; 99-95; 95-43; 94-35).

Court employees may, in general, attend political fund-raising events (subject to the $500 limit if a personal appointee), pass nominating petitions, attach campaign bumper stickers to their cars, post campaign signs at their residences, hold a non-elected or otherwise permissible positions in a political organization and participate in any other permissible political activity as long as it takes place (a) outside of scheduled work hours and (b) away from the workplace (22 NYCRR 50.1[III][B]; 50.2[c]; 50.5; 100.5[C]; Opinions 12-71; 07-11; 03-111 [circulating, reviewing and drafting petitions]; 94-35 [joining political club]; 93-100 [political bumper stickers and campaign signs]; 93-36 [soliciting and coordinating volunteers, designating persons to organize volunteer efforts, canvassing for signatures on nominating petitions, conducting telephone polls for a candidate]; 91-77 [participating in political campaign of law clerk's spouse]; 90-102; 90-85 [carrying nominating petitions]; 89-101 [attending political fund-raiser]).

They should avoid giving the impression that the judge or the court is involved in political activities (Opinions 10-116; 93-100; 93-36; 90-102).

Court employees may also serve on a judge's campaign committee, subject to certain limitations depending on their roles in the court system (22 NYCRR 100.5[A][4][b]; 100.5[A][5] [members of a campaign committee must be "responsible persons"]; Opinion 04-10 [typist in appellate court may serve as treasurer of trial judge's campaign committee]).

All Staff Members. A judge who is a candidate for judicial office must prohibit his/her staff from doing anything on his/her behalf that he/she would be prohibited from doing himself/herself (22 NYCRR 100.5[A][4][b]). A judge must further, except to the extent permitted by Rule 100.5(A)(5), prohibit his/her staff from taking part in any activity that might be perceived as doing for the candidate what he/she is prohibited from doing under Part 100.5 (22 NYCRR 100.5[A][4][c]).

Personal Appointees. An incumbent judge shall prohibit members of the judge's staff who are the judge's personal appointees (such as the judge's law clerk, personal secretary, etc.) from contributing, directly or indirectly, money or other valuable consideration (e.g., non-monetary contributions) in amounts exceeding $500 in the aggregate during any calendar year, to all political campaigns or other partisan political activity (22 NYCRR 100.5[C][2]; Opinions 12-71; 10-76; 97-103 [judge's part-time law clerk should not donate office space to a political party which, if rented on the open market, could have a value of over $500]; 89-101 [judge's law assistant may attend political fund-raisers, subject to the aggregate calendar year limit]).

The $500 limit does not apply to a staff member's contribution to his/her own campaign (22 NYCRR 100.5[C][2]; Opinion 07-189).

A judge's personal appointee may not personally sell tickets to or promote a fund-raising event of a political candidate, political party or partisan political club (22 NYCRR 50.2[c]; 100.5[A][4][b]-[c]; 100.5[C][3]; Opinion 90-102).

A judge's personal appointee also is prohibited from serving as treasurer of the judge's re-election committee (22 NYCRR 50.2[c]; 100.5[C][3]; Opinions 03-48 [law clerk]; 00-05 [court attorney]).

Quasi-Judicial Employees. Quasi-judicial employees, such as judicial hearing officers, court attorney-referees and support magistrates, are subject to the same limitations on political activity as judges (22 NYCRR 100.6[A]; Opinions 05-14; 00-117; 95-119).

The Committee has advised that principal law clerks who are appointed to serve part-time as SCAR hearing officers during regular court hours as part of their job responsibilities are subject to the same restrictions as sitting judges with respect to political activities (Opinion 13-133).

6.2 Participation of a Judicial Candidate's Family

The Rules define a member of the judicial candidate's family to include "a spouse, child, grandchild, parent, grandparent or other relative or person with whom the candidate maintains a close familial relationship" (22 NYCRR 100.0[H]).

The Rules do not restrict the bona fide, independent political activity of a judicial candidate's spouse or any other member of the judicial candidate's family (Opinion 06-147).

Generally, a spouse or other member of the judicial candidate's family may exercise his/her individual political rights, including circulating and authenticating nominating petitions, attending politically sponsored events, holding office in a political organization, making contributions to political campaigns or organizations and participating in other activities that would not be permissible for the candidate, as long as the actions are those of the family member and not intended to be the indirect political activity of the candidate (Opinions 06-142; 98-142; 98-99). A judge or judicial candidate should, however, make a concerted effort to convince his/her spouse to refrain from referring to him/her when supporting or soliciting support for another candidate, to avoid the appearance that the judge or judicial candidate also supports that candidate (22 NYCRR 100.5[A][1]; Opinion 06-142).

The judicial candidate must, however, encourage family members to adhere to the same standards of political conduct in support of the candidate as apply to the candidate himself/herself (22 NYCRR 100.5[A][4][a]). The judicial candidate must further, except to the extent permitted by Rule 100.5(A)(5), prohibit his/her family from undertaking any activities on the candidate's behalf that the candidate is prohibited from doing himself/herself or which may appear to be the candidate's indirect activity (22 NYCRR 100.5[A][1]; 100.5[A][4][c]; Opinion 98-99). Family members may also serve on a judicial candidate's campaign committee as long as the candidate determines that they are "responsible persons" who will abide by applicable laws and ethics rules (22 NYCRR 100.5[A][5]; *cf.* Opinion 07-64 [noting that a candidate must instruct his/her representative about the limitations on campaign speech and conduct that he/she should observe when acting on the candidate's behalf]). See also Section 4.1, above.

A judicial candidate may permit his/her relatives to serve on his/her campaign committee (Joint Opinion 08-125, 08-147, 08-148 and 08-149). As members of a candidate's campaign committee, a candidate's relatives "may solicit and accept reasonable campaign contributions and support from the public" (22 NYCRR 100.5[A][5]) as long as their actions do not appear to be the candidate's indirect activity (Opinion 98-99 [Vol. Vol. XVII]), and as long as such relatives are careful to keep the donors' identities and the amount of any donation from the candidate (Joint Opinion 08-125, 08-147, 08-148 and 08-149).

Campaign Signs. A judicial candidate should not display campaign signs endorsing another candidate on his/her real property (22 NYCRR 100.5[A][1][c]-[e]), other than a sign listing the candidate as a member of a slate of current candidates (22 NYCRR 100.5[A][2][ii]-[iv]; Opinion 07-167). A judicial candidate should "strongly urge" his/her spouse not to place signs endorsing other political candidates on the real property where the judicial candidate and spouse reside, even if the spouse is the sole titled owner of the property (Opinions 07-169; 99-118; 96-112). Once the candidate has done so, he/she is not required to take further action (Opinion 07-169). A judicial candidate or judge whose spouse is a candidate for public office is not required to discourage the spouse-candidate from placing the spouse's own campaign sign on jointly-owned property (Opinion 06-94).

Political Contributions. Because a judicial candidate may not make political contributions (22 NYCRR 100.5[A][1][h]), if family members of the candidate make political contributions, these should be made from the family member's separate funds (Opinion 95-138). It is inadvisable for a judicial candidate's family member to make a political contribution using a joint bank account, even if the candidate's name is deleted from the check (Opinions 98-111; 96-29).

Any contribution should specify that it is the contribution of the family member and not that of the judicial candidate (Opinion 96-29). If a judicial candidate's spouse has no independent source of income, however, he/she may make political contributions from funds that have been set aside for the spouse's sole discretionary use, again provided that the spouse does not use a check from a joint checking account with the candidate (Opinion 98-111).

7. Post-Election Fund-Raising and Use of Campaign Funds

A judicial candidate who is on the ballot for the general election in November need not cease all campaign conduct immediately after the election. However, some additional restrictions may apply during the post-election window period.

7.1 Unexpended or Surplus Campaign Funds

A judicial candidate may continue to make certain campaign expenditures throughout his/her post-election window period, including the purchase of tickets to events that will take place during the window period. See Section 4.3.2, above.

Please note that there may also be legal issues with respect to repayment of loans after election day (*see* Election Law § 14-114[6]), which the Committee cannot address.

7.1.1 Permissible Uses and Closing of the Campaign Account

Permissible campaign expenditures are discussed in more detail in Section 4.3, above, and 7.3, below. Judicial candidates should make every reasonable effort to return unexpended campaign funds to contributors on a *pro rata* basis at the conclusion of the window period (Opinions 07-187; 93-80; 91-12; 90-06; 89-152; 88-89; 88-59; 87-02; *see also* Opinion 92-94 [funds left over from prior non-judicial campaign]). A judicial candidate who receives a cross-endorsement may even, if he/she wishes, return most of the funds *pro rata* before the election while retaining a small sum for possible use during the window period (Opinion 05-21; see also section 2.2.3, above, regarding unopposed candidates).

Nevertheless, if the remaining unexpended funds are *de minimis* or otherwise so limited that, under the circumstances, returning the balance to contributors will be significantly unworkable or impracticable, unexpended funds may be used to purchase items which the court system or municipality does not otherwise provide, for use by the judge in the performance of judicial duties (Opinions 12-95[A] [funds totaling less than $1,000 are *de minimis* and need not be returned to contributors on a *pro rata* basis]; 06-162). In determining whether it is impracticable to return the unexpended campaign funds to contributors, the judicial candidate may consider factors such as the total number of contributors and the cost of returning the funds (Opinions 07-65; 06-162). A candidate should, to the extent possible, take steps to minimize the risk of uncashed checks that will delay the closing of his or her campaign account (Opinion 07-65). When returning unexpended campaign funds *pro rata* to contributors, however, a candidate may not decline to issue checks under a specific monetary threshold (*e.g.*, $10 or less), even if the funds would be distributed *pro rata* to other contributors (*id.*).

Subject to the considerations set forth in Opinions 07-65 and 06-162, a small amount of unexpended campaign funds may be used to purchase an item such as a modestly-priced laptop, if

it is necessary to the performance of judicial duties and is not otherwise provided by the court system or the municipality (Opinion 06-162). Any items so purchased must be donated to the Unified Court System (Opinions 98-139 [office furniture]; 95-36 [carpeting in chambers]; 93-56 [office equipment]). The donation may be formalized by writing a letter to the local District Administrative Judge identifying the designated items (Opinion 04-06).

It is not appropriate for a judge to use significant amounts of unexpended campaign funds to purchase numerous items, or items which the court system or municipality readily provide (Opinion 06-162 [unexpended campaign funds may not be used to purchase a fax machine, desk or chair for a state-paid judge when such items are provided by the Unified Court System]). Nor may they be used to purchase an item that requires an ongoing service agreement that would be billed to the Unified Court System, such as a cell phone (Opinion 06-162). Unexpended campaign funds may not be used to purchase a television (Opinion 06-162). Some otherwise unexpended campaign funds may, however, be used to finance a "modest and reasonable" post-election victory reception within the window period (Opinions 07-187; 93-19; 89-152; 87-16 [authorizing "a modest reception to which contributors and campaign workers are invited"]). The Committee has noted that "[t]he 'induction', 'robing', or 'victory' party or reception is a traditional part of the total election process and a reasonable expenditure is expected for this purpose by those persons who contributed to the campaign fund" (Opinion 87-16). In 2003, the Commission on Judicial Conduct sanctioned a judicial candidate who spent nearly $20,000 in unexpended campaign funds on an induction reception and dinner for over 250 guests (2004 CJC Ann. Rep. at 153-56 [disciplinary determination]). The CJC concluded that "[t]he amount expended for the dinner was an unreasonably large amount of campaign funds to be spent for a dinner to celebrate respondent's induction as a Supreme Court Justice" (*id.* at ¶11). After the expiration of the window period, a judge may hold a victory party "only if it is financed with the judge's private funds" (Opinion 93-19) (noting that "a victory party is a private party and not a political activity as long as no campaign funds are used to finance the event").

Analogously, an unsuccessful judge or non-judge candidate may also use a *de minimis* amount of campaign funds to host a modest and reasonable social event to say "thank you" to persons who volunteered significant time and/or efforts in support of the candidate's campaign (Opinion 12-129[A]-[G], at Question 5).

Judicial candidates should be aware that the Rules further prohibit the use of campaign funds to pay for any campaign-related goods or services for which fair value is not received (22 NYCRR 100.5[A][6]).

Time Frame for Closing the Campaign Account. Although the Rules do not specify a time-frame for the disposition or return of funds or the closing of the campaign account, it should be done as soon as practicable on expiration of the window period, and in compliance with the requirements of the Election Law (22 NYCRR 100.5[A][2]; 100.5[A][5]; Opinions 07-187; 05-21; 04-87; 01-81). A judge's intention to purchase unspecified items for the courthouse at some indeterminate time in the future is not an adequate basis for leaving the campaign account open beyond the window period (Opinion 04-87).

7.1.2 Prohibited Uses

Unexpended campaign funds may not be used for the private benefit of the candidate or others (22 NYCRR 100.5[A][5]). Thus, campaign funds may not be donated (either directly or through the purchase of gifts) to any:

- Political party or entity (Opinions 90-193; 88-59; 87-02)
- Charitable fund or institution, even if designated in the State tax return (Opinions 08-151; 03-109; 90-04; 87-02)
- Bar association (Opinion 92-29)
- Community legal assistance group (Opinion 93-80)
- Graduates of the drug court program (Opinion 05-132)
- Campaign workers (Opinion 98-06 [even "token gifts"]).

As further explained in Section 7.1.1, above, there are limits on the items that a judge may purchase with unexpended campaign funds even for use in his/her official duties. For instance, a judge should not use unexpended campaign funds to purchase items that require an ongoing service agreement that would be billed to the Unified Court System, items that the court system or municipality readily provide, or items (such as a television) that are not directly necessary to the performance of his/her judicial duties (Opinion 06-162).

Similarly, the Committee has advised that the definition of the window period "makes each campaign finite, allowing no campaign fund-raising action between campaigns. Nor does it permit any coalescence of the funds solicited for one campaign with another campaign" (Opinion 94-21). Accordingly, a judicial candidate may not transfer, use or retain any campaign funds to satisfy debts from past campaigns (Opinions 97-04; 94-21 [repayment of loans made by judge and spouse in prior campaigns]), or for use in any future campaign for any office, judicial or otherwise, including the candidate's anticipated campaign for election or re-election to the same bench or election to a higher judicial office (Opinions 01-81; 92-68; 90-06 [same or other office]; 89-152; 88-89 [higher judicial office]).

Unexpended campaign funds may not be used for another election campaign, even if the donor states that he/she does not want the funds and wishes the judge to use them for another campaign (Opinions 01-81; 91-12; *see also* 2004 CJC Ann. Rep. at 156 [disciplinary determination]). The judicial candidate may not ask donors to allow the unexpended funds to be utilized for any unpaid expenses or outstanding loans generated in any other past campaign or for a potential future campaign (Opinions 97-04; 93-15).

The Committee has also advised that a judicial candidate may not use unexpended campaign funds from a prior non-judicial campaign for a present judicial campaign, for general party use, or for the campaigns of other candidates on the same slate (Opinions 93-15; 92-94).

7.1.3 Candidate Running for the Same Position Two Years in a Row

Applying these principles, the Committee advised in Opinion 14-148 that a judge whose window period for his/her unsuccessful 2014 Supreme Court campaign will overlap with the

window period for his/her upcoming 2015 Supreme Court campaign:

- may not roll over funds from one campaign to the next but must establish a new campaign account for the 2015 campaign;
- may use the remaining 2014 campaign funds for all permissible purposes relating to his/her 2014 campaign during the remainder of his/her 2014 window period, including generically useful purchases which could be used for either campaign; and
- at the conclusion of his/her 2014 window period, must dispose of any remaining 2014 campaign funds in accordance with applicable rules and opinions.

7.2 Post-Election Fund-Raising

Post-election fund-raising, where permitted, must be held within the candidate's window period (Opinion 02-13). Accordingly, a judge must instruct his/her campaign committee not to undertake any fund-raising events after the window period has expired, even if there are unpaid campaign debts (*id.*). The following paragraphs discuss several specific types of post-election fund-raising events for which candidates have sought guidance from the Committee.

Raising Funds to Repay Loans that were Made Before the Election. In addition to the ethical restrictions discussed in the Committee's opinions, please note that there may also be legal issues with respect to repayment of loans after election day (*see* Election Law § 14-114[6]), which the Committee cannot address.

Raising Funds to Satisfy Outstanding Election Debts to Third Parties. A judicial candidate's campaign committee may, within the applicable window period, hold a post-election fund-raising event, the proceeds of which will be used to satisfy outstanding election debts to third parties (Opinions 97-41 [legal obligations of the campaign committee for the recently concluded campaign]; 96-31 [outstanding campaign debts to third parties]; 87-27). It is advisable that the campaign committee disclose that the funds raised will be used to pay off the debts of the campaign (Opinion 03-122). The judicial candidate may attend such a post-election fund-raising event held on his/her behalf (Opinions 03-122; 97-41). To the extent that any such post-election fund-raiser succeeds in raising more funds than necessary to discharge the debts owed to third party creditors, any such excess funds must be returned to the campaign contributors on a *pro rata* basis (Opinion 03-119).

Raising Funds to Reimburse the Candidate or his/her Spouse. The campaign committee may not raise funds after the election to repay loans made to the committee by the candidate or the candidate's spouse, or to permit the candidate to recoup campaign expenses he/she incurred and paid personally during the campaign period (Opinions 05-136; 03-119; 96-31 [repaying loans made by candidate to campaign committee]; 94-21 [Vol. XII] [repaying loans made by candidate and spouse to prior campaigns]; 89-05 [reimbursement for campaign expenses paid by the candidate]). The fact that the campaign treasurer executed a promissory note in return for the candidate's loan to the campaign committee does not change the result (Opinion 05-136).

The campaign committee may not hold a post-election fund-raiser to reimburse a recently elected judge for expenditures personally made by the judge for an induction party (Opinion 90-195).

Raising Funds to Benefit or Reimburse Political Party. The campaign committee may not hold a post-election fund-raiser to reimburse a political leader for campaign costs incurred by the leader, absent a legal obligation to make such reimbursement (Opinion 90-195). A judicial candidate may not authorize a political party to hold a post-election fund-raising event on behalf of the judge, where it is intended that any funds remaining after payment of campaign debts would belong to the political party organization (Opinion 98-146).

Third Party Fund-Raiser Honoring Newly Elected Judge. A newly elected full-time judge may be the honoree of a dinner sponsored by a civic organization where any profits will be transferred to the judge's campaign committee, provided that this event takes place within the judge's window period (Opinion 93-20).

7.3 Other Post-Election Conduct

During the Post-Election Window Period. A recently elected judge may continue to attend political functions throughout his/her window period, which ends exactly six months after the general election (Opinions 92-29; 91-67 [recently elected judge may not attend political event held "six months and one day after the general election"]; 91-24; 89-136). The judge's campaign committee may purchase these tickets using campaign funds (Opinion 92-29; 91-24). A recently elected judge may retain a small portion of unexpended campaign funds to pay for tickets and to attend political events during his/her window period (Opinion 07-187). See also Sections 4.3, above, and 7.1.1, above, for further discussion of post-election use of campaign funds.

A recently elected judge may attend and deliver a presentation on a non-controversial substantive legal topic at a political organization's meeting held within his/her window period (Opinion 97-35).

A judge who was an unsuccessful candidate in a primary election for a different judicial office may also continue to attend political functions throughout his/her window period, which ends exactly six months after the primary election (Opinion 96-124).

After the Window Period. A judge who is no longer a candidate within his/her appropriate window period may not attend a political gathering, or any gathering sponsored by a political organization, even if the gathering is of a laudable, non-political nature ("Observations and Recommendations," 2001 CJC Ann. Rep. at 27). A non-candidate judge may not escort his/her candidate spouse to fund-raising events held for the spouse, even where the judge would not participate in or be introduced at the event (*see* 1990 CJC Ann. Rep. at 150-52 [disciplinary determination]; *see also* Opinion 06-147). The restriction applies to national political conventions or out-of-state events sponsored by a political party organization at a national level (Opinion 99-156; *cf.* Opinion 95-109).

A judge who is not a candidate for judicial office, therefore, has an affirmative obligation to inquire regarding the sponsor's identity and purposes of an event in order to avoid inadvertently attending a prohibited political event ("Observations and Recommendations," 2001 CJC Ann. Rep. at 27). See also generally Section 9, below.

8. Campaign-Related Disqualifications

The Committee has issued many opinions addressing whether disqualification or disclosure is required in specific factual situations, and whether remittal is available. Although there is no substitute for carefully reviewing these opinions and seeking advice from the Committee or Subcommittee on matters not squarely covered by prior opinions, a brief introduction to these concepts may be helpful in understanding the opinions discussed in the present section of the Handbook.

With respect to disqualification, the Committee has advised:

> There are two initial objective tests to determine if disqualification is mandatory: Is disqualification required under a specific provision of the Rules Governing Judicial Conduct (*see* 22 NYCRR 100.3[E][1][a]-[f]) or Judiciary Law § 14? If not, might the judge's impartiality nonetheless "reasonably be questioned" (22 NYCRR 100.3[E][1])? If disqualification is not mandated under either objective test, the judge "is the sole arbiter of recusal" (*People v Moreno*, 70 NY2d 403, 405 [1987]). Of course, if the judge questions his/her own ability to be impartial in a particular matter, then he/she must not preside (*see* Opinion 11-64).

(Opinion 13-47).

Moreover, even where disqualification is mandated, it is possible in many circumstances for the disqualification to be remitted. The Committee has noted that:

> Rule 100.3(F) forbids remittal of disqualification in four scenarios. That is, remittal is prohibited if the judge: (1) has a personal bias or prejudice concerning a party (*see* 22 NYCRR 100.3[E][1][a][i]); (2) knows that he/she served as a lawyer in the matter in controversy (*see* 22 NYCRR 100.3[E][1][b][i]); (3) knows that he/she served as a material witness concerning the matter in controversy (*see* 22 NYCRR 100.3[E][1][b][iii]); or (4) knows that the judge or the judge's spouse, or a person known by the judge to be within the sixth degree of relationship to either of them, or the spouse of such person, is a party to the proceeding (*see* 22 NYCRR 100.3[E][1][d][i]). Because remittal is not available in these circumstances, the judge must disqualify him/herself from the proceeding (*see* Opinion 08-15; 100.3[F]).
>
> In addition, the Committee has advised that remittal is not available if any party is appearing without counsel (*see e.g.* Opinions 12-111; 09-138) or if the judge is unwilling or unable to make full disclosure of the basis for disqualification on the record (*see e.g.* Opinions 12-111; 10-86).
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> * * *
>
> [footnote:] Where permitted, remittal is a three-step process: "First, the judge must fully disclose the basis for disqualification on the record... Second, ... without the judge's participation, the parties who have appeared and not defaulted and their lawyers must all agree that the judge

> should not be disqualified. Third, the judge must independently conclude that he/she can be impartial and be willing to participate in the case. If all three steps are satisfied, the judge may accept remittal of his/her disqualification and must incorporate the parties' and their attorneys' agreement into the record of the proceeding" (Opinion 09-138; 22 NYCRR 100.3[F]).

(Opinion 13-64). The Committee has also advised that disqualification based on a judge's decision to report an attorney to a disciplinary authority is not subject to remittal (Opinion 13-61).

8.1 Campaign Contributions – Legal and Administrative Considerations

Under the Rules Governing Judicial Conduct, the fact that an attorney contributed to a judge's campaign does not, without more, require the judge to disqualify himself/herself when the attorney appears before the judge (Opinions 10-135; 07-26; 04-106; see also Section 8.4, below). However, candidates should be aware that other laws or rules could apply.

The United States Supreme Court addressed legal disqualification of a judge based on expenditures of a campaign supporter in *Caperton v. A.T. Massey Coal Co.*, 556 US 868, 129 S Ct 2252 (2009) (holding that, for due process reasons, recently elected appellate judge should have disqualified himself from presiding over appeal involving corporation whose president and chief executive officer had spent over $3 million in support of the judge's campaign). The Court noted that these expenditures were made following the trial court's entry of a $50 million judgment against the corporation, at a time when it was likely that corporation would be seeking review in the court to which the judge was seeking election. The Court termed *Caperton* an "exceptional" and "extreme" case, which it expected to apply only in "rare instances" (*id.*, 129 S Ct at 2263, 2265, 2267).

As of the date of writing, it appears that there are no published New York State court opinions applying *Caperton* to disqualify judges based on campaign contributions in New York (*see Glatzer v. Bear, Stearns & Co., Inc.*, 95 AD3d 707 [1st Dep't 2012] [noting the "stark contrast" with the facts in *Caperton* and finding no basis to conclude that actual bias or prejudice existed]; *Anderson v. Belke*, 80 AD3d 483 [1st Dep't 2011] [citing *Caperton* for the proposition that "Not every campaign contribution by a litigant or attorney creates a probability of bias that requires a judge's recusal; and this is no 'exceptional case.'"]).[15]

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[15] At least one New York court has applied *Caperton* in requiring disqualification outside the campaign finance context (*see People v. Suazo*, 120 AD3d 1270 [2d Dep't 2014] [citing *Caperton* for the proposition that "'judges are human,' and not immune from 'psychological' and unconscious influences," and holding that a judge improvidently exercised discretion in presiding over a suppression hearing after "it was revealed that one of the People's witnesses was married to the hearing Justice's law clerk"]).

In 2011, the administrative board of the courts adopted Part 151 (22 NYCRR pt 151). The Unified Court System's website states that Part 151 "restricts the assignment of cases where participating litigants, counsel or firms made significant campaign contributions to the assigned judge, for a period of two years from the date the State Board of Elections first publishes a record of the contribution." Please see http://www.nycourts.gov/rules/chiefadmin/151-intro.shtml for additional information and links.

8.2 Pledge or Promise

A judge must disqualify himself/herself in a proceeding if, while a candidate for judicial office, he/she made a pledge or promise of conduct in office that is inconsistent with the impartial performance of the adjudicative duties of the office or made a public statement not in his/her adjudicative capacity that commits the judge with respect to an issue in the proceeding or the parties or controversy in the proceeding (22 NYCRR 100.3[E][1][f]). (Making such a pledge or promise as a judicial candidate is also prohibited directly, as discussed in Sections 5.3.2, above, and 5.4, above.)

8.3 Endorsements

As discussed in more detail in Section 3.3, above, mere receipt of an endorsement, in and of itself, does not trigger any recusal obligations for a judicial candidate, although it may result in disclosure obligations under some circumstances.

8.4 During the Campaign

Opponent. A judge may preside over a case when one of the attorneys representing a party is the judge's opponent in the upcoming election, unless the judge doubts his/her own impartiality (Opinion 11-76; Joint Opinion 00-78 and 00-80 [opponent is chief assistant district attorney]; Opinions 92-82 [opponent is attorney]; 92-57 [opponent is district attorney]); *see also* Opinion 06-12 [opponent is district attorney and has threatened to file an ethics complaint against the judge]). However, the judge should recuse himself/herself when the judge's opponent in an upcoming election is a party in a proceeding before the judge (Opinion 91-110).

Opponent's Supporter. Where a law firm has distributed a letter to the public requesting financial and political support for a judge's opponent in a re-election campaign, the judge need not disqualify himself/herself from matters in which attorneys from that law firm appear before him/her, if the judge believes he/she can be impartial, but the judge should disclose on the record that he/she is aware of the letter and believes he/she can be impartial (Opinion 03-77).

Mere Contributor to or Supporter of Judge's Campaign. A judge running for re-election is not disqualified solely because a party or attorney was present at a fund-raiser held on the judge's behalf and is now appearing before the judge (Opinion 04-106). Knowledge that an attorney contributed to the judge's campaign does not, by itself, require the judge to disqualify himself/herself when the attorney appears before the judge (Opinions 10-135; 07-26; 04-106). Merely being listed as supporting the candidate does not give rise to an inference of partiality (Opinion 03-64).

If attorneys who regularly appear before the judge attend a reception and speak to attendees about their experience appearing before the judge at the judge's request, in support of the judge's candidacy, recusal is not thereafter required, as long as the judge believes he/she can be fair and impartial (Opinion 08-152).

Active Campaign Conduct in Support of Judge. A judge who is running for election should exercise recusal when attorneys who are engaged in fund-raising or in other active conduct in support of the judge's candidacy appear before the judge during the course of the campaign, even for matters the judge considers to be "routine, non-contested or administrative" (Opinions 07-26; 03-64; 01-07 [attorneys involved in planning an initial fund-raiser for the judge, who will not hold any office in the campaign or provide any assistance beyond contacting persons with respect to the initial fund-raiser]; 97-129; 94-12; 89-107 [campaign manager]; *see also Matter of Doyle*, 23 NY2d 656 [2014]).

A judge also must disqualify himself/herself in any matter involving the law firm of the judge's campaign coordinator or campaign finance chair for the duration of the campaign, subject to remittal (Opinions 13-64; 97-129). Disqualification, subject to remittal, is also required for partners or associates of individuals who were involved in planning an initial fund-raiser for the judge (Opinion 01-07). However, a judge need not disqualify himself/herself from a pending class action, where the judge's campaign treasurer is a member of "a large class" solely in an individual capacity rather than as treasurer of the campaign committee (Opinion 91-131).

Screening Panel Member Appears as an Attorney. A judge or non-judge candidate for election to judicial office who appears before a bar association's judicial screening committee does not need to recuse himself/herself from cases in which an attorney who sits on the screening panel appears before the judge in a representative capacity, nor must the judge disclose that fact to opposing counsel (Opinions 12-97; 94-86). A judge who recently appeared before a political party's screening panel may also preside in a matter in which a member of the panel appears as an attorney, in the absence of any other disqualifying factor and assuming the judge can be impartial (Opinion 11-64).

Screening Panel Member Appears as a Party. A judge who is a candidate for judicial office should disqualify him/herself, subject to remittal, from presiding in a case when an attorney who is a member of a political party's candidate screening panel subcommittee that reviewed the judge's application for the political party's endorsement also is a partner in the plaintiff/law firm in the case (Opinion 10-121 [noting that the screening panel member is involved "not as an attorney representing a client but as a partner in a law firm that is the plaintiff in the case"]).

Officer of a Political Party. A judge need not disqualify himself/herself in a proceeding in which an officer of a political party that designated the judge for judicial office is likely to be a material witness, where the official did not play any specific role in the judge's campaign (Opinion 02-108).

Employee of a Political Party. Absent additional factors, a judge is not disqualified solely because one of the litigants, in his/her capacity as a secretarial employee of a political party, answered the telephone when the judge called the political party's headquarters to discuss his/her own candidacy during the applicable window period (Opinion 13-47).

8.5 After the Campaign: The Two-Year Rule

Opponent. A judge need not disqualify himself/herself when a party in a proceeding or the attorney representing a party was the judge's opponent in a prior campaign (Opinions 91-146 [former opponent as litigant]; 90-136 [former opponent as attorney]), unless the judge doubts his/her impartiality.

Minimal Participant. In general, a judge need not disclose or disqualify himself/herself in a matter in which an attorney who appears before the judge publicly supported the judge (Opinion 90-182), or who minimally participated in the judge's campaign by gathering petition signatures (Opinion 90-196) or distributing literature (Opinion 90-196), unless the judge doubts his/her own impartiality (Opinion 07-26).

Similarly, neither disclosure or disqualification is required after the date of the election with respect to attorneys who were involved only in planning an initial fund-raiser for the judge, or who served only as the host of a single fund-raiser or on the committee that was hosting that fund-raiser, as long as they did not hold any office in the campaign or provide any continuing assistance beyond that one fund-raiser (Opinions 03-64; 01-07).

Assuming the judge can be fair and impartial, a judge need not disqualify him/herself when a campaign advisor who was appointed by a county political committee to advise several candidates during a recent election, including the judge, appears before the judge as an attorney, where the advisor did not play an active, significant or pivotal role in the judge's campaign (Opinion 12-28).

More than Minimal Participant, but not a Leadership or Continuing Fund-Raising Role. Where an attorney's participation in a judge's election campaign was more than minimal, but not at the formal leadership level, the judge need not disqualify him/herself when the attorney appears in the judge's court if the judge can be impartial (Opinions 12-164; 09-245).

However, for two years after the election, the judge must disclose the nature and extent of the attorney's involvement in the judge's campaign when that attorney appears before the judge (Opinions 12-164; 09-245).[16] If a party objects to the judge's continued involvement in the matter, disqualification is left to the judge's discretion (Opinions 12-164; 09-245).

The disclosure is personal, involving only the individual attorney who participated in the judge's campaign, and does not extend to his/her partners or associates (Opinion 12-164).

Leadership or Continuing Fund-Raising Role. If attorneys appearing before the judge held leadership positions in the campaign or maintained a continuing fund-raising role throughout the course of the campaign, then the recusal should extend for a two-year period following the

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[16] Where disclosure is mandated in lieu of disqualification, the judge must disqualify him/herself if a party is appearing without counsel (Opinion 12-164 n.1)

election, subject to remittal (Opinions 07-26; 03-64; 97-129 [campaign coordinator or campaign finance chair]; 89-107 [campaign manager]). This applies even if the judge's campaign was unsuccessful (Opinion 06-54).

With respect to other attorneys from the former campaign manager's firm, including an attorney listed as "of counsel" on firm letterhead, the judge must continue to disclose the relationship and should consider recusal if the parties' motions warrant it for a two-year period following the campaign (Opinion 06-54). After two years have elapsed, the judge must continue to disclose but may preside in such matters (Opinions 97-129 [campaign coordinator or campaign finance chair]; 91-129 [campaign treasurer]).

A judge may also need to disqualify himself/herself, under certain circumstances, when a "key member" of his/her campaign committee is called as an expert witness (Opinion 05-77 [advising disqualification in light of the totality and history of the relationship under the facts presented]).

9. Additional Reminders for Sitting Judges

Comments on Candidates. A newly-elected judge may not engage in any political activity in support of his/her former aide who is a candidate for the vacant office created by the judge's recent election (Opinion 98-142). A sitting judge may respond to an inquiry from a political party's screening panel (Joint Opinion 12-84/12-95[B]-[G]) or a bar association screening panel (Opinions 08-160; 07-130) concerning a judicial candidate, or to an inquiry from a screening committee in connection with the reappointment of sitting judges (Opinion 00-124). The judge "should draw from his/her personal knowledge of the potential judicial candidate" and "should neither urge approval nor disapproval of a candidate" (Joint Opinion 12-84/12-95[B]-[G]; Opinion 08-160).

The Committee has emphasized that, to avoid any appearance that a sitting judge is engaging in impermissible political activity by providing comments to a political party's screening panel, "the judge's comments should be made solely in response to a direct request from the [political] party's screening panel and should be addressed only to the requesting panel" (Joint Opinion 12-84/12-95[B]-[G]).

However, a judge may not express an opinion to "members of the bar" or "members of the public" about the qualifications of a judicial candidate (Opinion 10-117; 22 NYCRR 100.5[A][1][e]).

Political Functions Held after the Window Period. A judge who is no longer a candidate within his/her appropriate window period may not attend a political gathering, or any gathering sponsored by a political organization, even if the gathering is of a laudable, non-political nature or is held out-of-state ("Observations and Recommendations," 2001 CJC Ann. Rep. at 27; *see also* Opinions 07-169; 06-147; 99-156; 1990 CJC Ann. Rep. at 150-52 [disciplinary determination]). A judge who is not a candidate for judicial office, therefore, has an affirmative obligation to inquire regarding the sponsor's identity and purposes of an event in order to avoid inadvertently attending a prohibited political event ("Observations and Recommendations," 2001 CJC Ann. Rep. at 27).

A judge must not meet privately with a local political party regarding the inner workings of the court, including its procedures, personnel or decisions (Opinion 13-92).

Political Contributions. A sitting judge may not make political contributions at any time, even to a U.S. presidential candidate or to a federal congressional candidate outside of New York State (Opinion 11-146; 22 NYCRR 100.5[A][1][h]).

A part-time judge who practices law may not permit his/her law firm to make political contributions using the law firm's checking account, "even where the judge is not the signatory on the check" (Opinion 96-29). A part-time judge was disciplined where, among other things, the judge's law firm, apparently without the judge's knowledge, "made $925 in contributions to political candidates and organizations using firm checks issued from the firm business account" (2012 CJC Ann. Rep. at 113-129 ["The onus was on respondent to ensure that [his/her] law firm was in compliance with the ethical rules."]; *see also* 2015 CJC Ann. Rep. at 89-91).

Political Offices. A sitting judge may not hold the position of a political party "committee person" (Opinion 96-29). Similarly, a judge may not serve as a political party's "area chairman in the town" (Opinion 96-29).

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† References to ethics opinions of the New York State Bar Association and annual reports of the Commission on Judicial Conduct are included for informational purposes only. The Advisory Committee on Judicial Ethics was not involved in generating such opinions, and therefore does not necessarily endorse them.

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ELECTION LAW HANDBOOK

Photograph by Hon .Joseph S. Levine of the Brooklyn Bridge

Hon. Lawrence Knipel
Administrative Judge for Civil Matters
Second Judicial District

Hon. Edgar Walker
Presiding Justice
Special Election Part
Supreme Court Kings County
Civil Term

Edited and Updated 1997-2016 by:

Steven Skrzypczak
Court Attorney-Referee

Cynthia Johnson
Associate Court Attorney

David MacDonald
Associate Court Attorney

Eileen McKenna
Associate Court Attorney

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INTRODUCTION

This Election Law Handbook was prepared by, and principally for, the Court Attorneys of the Supreme Court of Kings County who serve as Special Referees (hereinafter "Referee") on election cases.[1]

The first part of the Handbook is devoted to those areas of the law which encompass the work of the referees at the Board of Elections in examining and determining the validity or invalidity of the challenged signatures on a designating petition (This form, reduced in size, is appended hereto, and is followed by a table setting forth the number of signatures required for the various public offices and party positions). Since signatures are challenged or objected to by specifications which consist of symbols or abbreviations, this Handbook is structured, in part, with only slight modifications, along the lines of the typical symbol or abbreviation sheet which accompanies the set of specifications submitted to the Board of Elections by an objector to a designating petition. The prevailing statutory and/or case law, and exceptions thereto, where applicable, are set forth on separate pages for each symbol. In a few instances where we could find no authoritative references, we provide general principles based on our experience, consistent with the election law in other areas.

The balance of this Handbook covers various procedural and substantive aspects of election law proceedings.

This handbook, current through May 2016, is solely intended as a basic reference guide to address some, but not all, potential legal issues that may arise in Election Law proceedings. Various factors including new case law, reevaluation of existing law, the discretion of the Justice sitting in the Election Part as well as the unique facts in individual cases may, on occasion, lead to rulings which differ from statements and decisions presented herein.

The Handbook is not a substitute for independent legal research and analysis. Unrepresented individuals are strongly encouraged to seek the services of a competent attorney.

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[1] We would like to give special thanks to Paul Kenny, Chief Clerk of the Appellate Term, Second Department, for his expert tutelage, guidance and continued efforts in assisting the preparation and distribution of this Handbook.

SCOPE OF REFEREE'S REVIEW OF DESIGNATING PETITIONS

For purposes of review and for the benefit of those who may be assigned as referees for the first time and are not familiar with the procedures of the Board of Elections, we herein below delineate the process that is followed with respect to designating petitions.

The petitions are initially filed with the Board of Elections by or on behalf of the candidate (Election Law § 6-144). The Board of Elections may not *sua sponte* review and invalidate an unchallenged designating petition since a Board's statutory power extends only to a ministerial examination of the facial sufficiency of a petition *(Matter of O'Connor v McGivney*, 144 Misc 2d 396, 397-398). If the petition is challenged, then the challenger or objector must furnish to the Board of Elections a set of specifications containing specific objections (usually consisting of symbols or abbreviations) for each signature challenged (Election Law § 6-154).

The Board of Elections rules upon these specifications, except where the objection is labeled "F" (forgery) or "SH" (similar handwriting). Where the Board sustains (agrees with) a specification, it writes "AS" (as specified) on the appropriate line on the specification sheet, thereby invalidating either the signature, if the specification pertains to a signatory line on the petition sheet, or the entire sheet, if it involves the subscribing witness statement. If the Board does not agree with the specification, then an "NAS" (not as specified) is marked on the appropriate line on the specification sheet, thereby validating either the signatory line or the subscribing witness statement.

In the case of forgeries (F) and similar handwriting (SH), specifications which the Board does not pass upon, it writes “RTB” (return to Board), an inaccurate acronym since it is the court and not the Board of Elections which may then rule upon these objections in the first instance. However, for the referee's purpose, the “RTBs” should be treated the same as “NASs” since they have been counted as valid by the Board by virtue of the way in which the Board calculates its results (i.e., total number of signatures in the petition, less total found invalid, equals total valid signatures).

Based upon the total valid signatures ascertained by the Board of Elections, the petition at that point either has more valid signatures than are required for the position and is therefore validated (i.e., the candidate qualifies to be on the ballot) or the petition has less than the required number of valid signatures and is invalidated (i.e., the candidate is off the ballot).

This determination by the Board of Elections may then be appealed in court by the filing of a validating petition (by the candidate) and/or an invalidating petition (by the objector or challenger) (Election Law § 16-102). If the Board's rulings on the specifications are contested, then the case will be referred to a referee to conduct a "line-by-line" review of these rulings. The referee's starting point is the number of valid signatures found by the Board. When the referee sustains a Board's ruling, this number does not change. It is only when the referee reverses or overturns a Board's ruling marked "AS" and finds that the specification is not as specified and a signature is thus valid that the referee effects an increase in the number of valid signatures. Likewise, it is only when the referee reverses or overturns a Board's ruling marked "NAS" and finds that the signature is invalid that the referee effects a decrease in the number of valid signatures.

It is the candidate's side which will seek to review (and request that the referee overturn) the Board's "AS" rulings of invalidity while the objector will seek to examine (and request that the referee overturn) the Board's "NAS" rulings of validity. However, in order for the referee to consider the "ASs," there must be before the court a validating petition or cross petition (*Matter of Jackson v Stevens*, 185 AD2d 960, 961; *Matter of Elwood v Jackson*, 162 Misc 2d 297, *affd* 207 AD2d 507; *Matter of Rodriguez v Nieves*, 242 AD2d 350), while consideration of the "NASs" requires an invalidating petition or cross petition (*Matter of Suarez v Sadowski*, 48 NY2d 620, 621). Also sufficing for this purpose is a timely served answer in which there is interposed an affirmative defense or counterclaim to validate/invalidate specific signatures previously held invalid/valid by the Board (*Matter of Halloway v Blakely*, 77 AD2d 932 [the court found the answer to be timely where notice of the court proceeding was not received by the respondent until the final day for initiating a proceeding — Election Law § 16-102, subdivision 2 — and the answer was served four days thereafter]; *Matter of Dickerson v Daly*, 196 AD2d 610, 611; *Matter of Bradlow v Board of Elec.*, 144 Misc 2d 793; *see contra*, *Matter of Krueger v Richards*, 59 NY2d 680, 682-683, *affg* 93 AD2d 898, where the Appellate Division held the affirmative defense was untimely in that it was raised for the first time two days after the expiration of the period for instituting a court proceeding and the notice of the petitioner's commencement of the proceeding had been received by the respondent seven days prior to the expiration of the period, and the Court of Appeals also found that the language of the affirmative defense — respondent claimed, without specification, that there were sufficient valid signatures to her petition — was inadequate; *see also*, *Matter of Ford v D'Apice*, 133 AD2d 191). Thus, if a party to the court proceeding has not filed a timely petition or cross petition or served a timely answer with an appropriately-worded affirmative defense or counterclaim, the referee may not review any signatures ruled against that party by the Board of Elections (*Matter of Starr v Board of Elec.*, 89 AD2d 991; *Matter of Ford v D'Apice*, *supra*; *Matter of Jackson v Stevens*, *supra*; *Matter of Dickerson v Daly*, *supra*; *Matter of Isabella v Hotaling*, 207 AD2d 648).

The petition, cross petition or affirmative defense must specify those rulings by the Board of Elections it alleges were erroneous. In *Matter of Green v Mahr* (231 AD2d 480), the Appellate Division, Second Department held that:

> "[T]he appellant's validating petition was insufficiently pleaded as a matter of law. Such a validating petition must specify the individual determinations by the board which the candidate claims were erroneous or the signatures which the candidate claims the board improperly invalidated."

After having ascertained the scope of review based upon the aforesaid principles, the referee then proceeds to consider the Board's rulings on the specifications, usually in the presence of one person from each side, working with a computer and a computer operator furnished by the Board of Elections. Some specifications, for example those involving missing information, alterations, duplications, SAPs, etc., would not require the use of a computer.

During this review, the referee will rule a signatory or subscribing witness invalid only if the reason for invalidity appears as a specification filed against that person, either initially with the Board of Elections or subsequently thereto within the time frame permitted by the court under this court's rules (*Matter of Rivera v Ortiz*, 207 AD2d 516; *Matter of Wooten v Barron*, 242 AD2d 351). By failing to timely file or submit said specifications, the objector has waived the right to raise any new specifications or objections, whether they be additional specifications to a signatory or subscribing witness who has already been objected to or new specifications where that signer or witness had not previously been challenged (*see*, *Matter of Belak v Rossi*, 96 AD2d 1011-1012; *Matter of Brosnan v Black*, 104 AD2d 469, 471, *affd* 63 NY2d 692; *Regan v Starkweather*, 186 AD2d 980, 981; *Matter of Levitt v Mahoney*, 133 AD2d 516; *Matter of Mazza v Board of Elec.*, 196 AD2d 679, 680; *Matter of Fletcher v Barkr*, 196 AD2d 611, 612; *but see*, *Matter of Venuti v Westchester County Bd. of Elections***,** 43 AD3d 482 [2d Dept 2007], *lv denied* 9 NY3d 804 [where the petitioner inaccurately identified the line and/or page numbers of the five signatures in question in presenting his objections to the County Board of Elections, the court held that the petitioner afforded respondent adequate notice as to which signatures were being challenged, and grounds for objecting to those signatures and noted that **"**[t]he Supreme Court . . . has jurisdiction to entertain objections to signatures on designating petitions, even where an objector asserts 'grounds other than those asserted before the Board of Elections'"]; *Matter of DeBerry v Marchant*, 196 AD2d 608, 609 [Appellate Division remitted the case for a review and de novo determination of all of the specifications]; *Brotherton v Suffolk County Bd. of Elections,* 33 AD3d 944 [2 Dept 2006] [Appellate Division, held that trial court could, in determining whether to invalidate designating petition, entertain specific objections to signatures on candidate's nominating

petition that had not been asserted before Board of Elections where the candidate was sufficiently apprised of the grounds for the objections]; *Edelstein v Suffolk County Bd. of Elections,* 33 AD3d 945 [2 Dept 2006] *see also Matter of Starr v Board of Elections of the City of New York,* 89 AD2d 978 [2 Dept 1982]; *Flowers v Wells*, 57 AD2d 636 [2 Dept 1977] ["Special Term has jurisdiction to hear objections to nominating petitions irrespective of whether they were raised before the Board of Elections"] *Matter of Thomas v Blackwell*, 219 AD2d 795).

If an invalidating proceeding is brought by an "aggrieved candidate," i.e., an opposing candidate, whose objections to the designating petition of another are not subject to prior examination by the Board of Elections, the referee will rule on, and be bound by, only those objections or specifications contained in a bill of particulars submitted by the aggrieved candidate within the time period allowed by the court.

Each ruling by the referee should be recorded on the form provided. (This form, reduced in size, is appended hereto.) Upon completion of the review of the specifications at issue, the results are tabulated and an oral report is rendered by the referee to the Justice assigned to the proceeding, using a format similar to that appearing on the Referee's Report to the Court, which is also appended hereto.

The scope of the Referee's review is limited to the specific objection(s) to each signature filed by the objectant; a signature can only be invalidated on the basis advanced by the objectant, even if the Referee becomes aware of a defect not objected to. If an abbreviation key to objections is filed by the challenger to a designating petition, the Referee must consider the specification of objection in the context of the definitions filed therewith. In the absence of such a filing by the party, the Referee is to be guided by the abbreviations and the accompanying definitions published by the New York City Board of Elections (a copy of which is appended hereto).

In no event should the Referee undertake to compare a signature on the designating petition being reviewed, with the signature appearing on the registration record filed by the voter with the New York City Board of Elections. The sole exception to this admonition occurs when the objection to the signature is that it is a "printed" signature (PR). Where a Referee rules the signature a "print", the proponent of the signature may request the Referee to examine the voter's signature to ascertain whether the voter indeed prints his/her signature (*see* PR- print, page 15)

Designating Petition Sec. 6-132, ELECTION LAW

I, the undersigned, do hereby state that I am a duly enrolled voter of the _____ Party and entitled to vote at the next primary election of such party, to be held on _____, 20____; that my place of residence is truly stated opposite my signature hereto, and I do hereby designate the following named person (or persons) as a candidate (or candidates) for the nomination of such party for public office or for election to a party position of such party.

Names of Candidate(s)	**Public Office or Party Position**	**Place of Residence** (also Post Office address, if not identical)

I do hereby appoint (here insert the names and addresses of at least three persons, all of whom shall be enrolled voters of said party),

as a committee to fill vacancies in accordance with the provisions of the election law.

In witness whereof, I have hereunto set my hand, the day and year placed opposite my signature.

Date	**Name of signer** (signature required) (printed name may be added)	**Residence**	**Enter Town or City except in NYC enter County**
1. / / Printed Name ➡			
2. / / Printed Name ➡			
3. / / Printed Name ➡			

(You may use fewer or more signature lines - this is only to show format)

Complete ONE of the following

1) STATEMENT OF WITNESS

I, (name of witness)_____ state: I am a duly qualified voter of the State of New York and am an enrolled voter of the_____ party.
I now reside at (residence address)_____.

Each of the individuals whose names are subscribed to this petition sheet containing (fill in number) _____signatures, subscribed the same in my presence on the dates above indicated and identified himself to be the individual who signed this sheet.

I understand that this statement will be accepted for all purposes as the equivalent of an affidavit and, if it contains a material false statement, shall subject me to the same penalties as if I had been duly sworn.

_____ Date _____ Signature of Witness

WITNESS IDENTIFICATION INFORMATION: The following information for the witness named above must be completed prior to filing with the board of elections in order for this petition sheet to be valid.
Town or city_____ County_____

2) NOTARY PUBLIC OR COMMISSIONER OF DEEDS

On the dates above indicated before me personally came each of the voters whose signatures appear on this petition sheet containing (fill in number)_____ signatures, who signed same in my presence and who, being by me duly sworn, each for himself, said that the foregoing statement made and subscribed by him, was true.

_____ Date _____ Signature and Official Title of Officer Administering Oath

Sheet No.: _____

ES-26a(11/99) SAMPLE PREPARED BY STATE BOARD OF ELECTIONS

LINE NO.	SPECIFICATIONS OF OBJECTIONS TO SIGNATURES	AS	NAS	NJ	RTB	COMMENT	AFF	OVR	+ / -	REASON OR COMMENT	EXC	IN	OUT	AFF	OVR	+ / -
1.																
2.																
3.																
4.																
5.																
6.																
7.																
8.																
9.																
10.																
11.																
12.																
13.																
14.																
15.																
16.																
17.																
18.																
19.																
20.																

RESERVED FOR USE BY THE BOARD OF ELECTIONS ↓↓↓ DO NOT WRITE IN THIS AREA ↓↓↓

RESERVED FOR USE BY COURT APPOINTED REFEREES ↓↓↓ DO NOT WRITE IN THIS AREA ↓↓↓

RESERVED FOR ATTORNEY STIPULATIONS ↓↓↓ DO NOT WRITE IN THIS AREA ↓↓↓

RESERVED FOR DECISION AND ORDER OF SUPREME COURT ↓↓↓ DO NOT WRITE IN THIS AREA ↓↓↓

Specifications of Objections to Witness Statement and Witness Identification Information

Witness Rulings Only →

Number of Signatures Claimed			Invalid Signature Area		AS	NAS/NJ RTB	☐ ASs ☐ NASs, NJs & RTBs ☐ Denovo* ☐ ASs, NASs, NJs & RTBs Simultaneously
Number of Invalid Signatures			Invalid Witness Statement				NAMES OF CANDIDATE(S)
Number of Valid Signatures			NJ				
			RTB				Referee Date

I.D. # KG'01- Sheet #

DESIGNATING PETITIONS: REQUIRED NUMBER OF SIGNATURES

(Election Law § 6-136)

All petitions must be signed by 5% of the enrolled voters of the party residing within the political unit in which the position is to be voted for, or by the number stated below, whichever is less.

House of Representatives	1250	
State Senate	1000	
State Assembly	500	
Borough President	4000	
City Council	450	
Surrogate's Court	4000	
Civil Court:		
Municipal Court District	1500	
Countywide	4000	
Supreme Court - Judicial Convention	500	
State Committee (District Leader)	500	
County Committee	5%	of enrolled voters in Election District

(*see Hargett v Green*, 186 AD2d 803, where the court upheld the Board of Election's determination that an independent nominating petition for Assembly required only 746 signatures, based upon the 5% requirement).

REFEREE'S REPORT TO THE COURT

My name is_____, Special Referee

assigned to review the designating petition of

_____

who is a candidate for

_____

in the _____District in the Democratic/Republican primary to be held on

_____. The matter is before the court on [both] a validating petition [and] an invalidating petition.

_____valid signatures are required in order for the candidate to be placed on the ballot. The Board of Elections found [only] _____valid signatures, or _____ more/less than the number required.

I [and the other Special Referees who worked on the matter] conducted a line-by-line review of the specifications or objections to the designating petition. My/Our findings are as follows:

Of the signatures ruled valid by the Board of Elections (that is, those specifications which are marked NAS, not as specified, or RTB, not actually ruled upon by the Board which are deemed to be valid), I/we found _____ signatures to be invalid, which then reduces the number of valid signatures to _____.

Considering the signatures ruled invalid by the Board of Elections (that is, those specifications which are marked AS, as specified), I/we found _____signatures to be valid, which then increases the number of valid signatures to _____, which is more/less than is required for the position.

Based upon these findings, the candidate has a sufficient/an insufficient number of valid signatures to be placed on the ballot. The validating petition should therefore be granted/denied [and] the invalidating petition should be granted/denied.

AI - ADDRESS INCOMPLETE OR INSUFFICIENT

The full and correct residence address, including the house number, street name, and the county (either "Brooklyn" or "Kings" is acceptable), is required on the signatory line (Election Law § 6-130); omission of any of this information invalidates the signature (*Matter of Lane v Meisser*, 24 AD2d 720, 721; *Stark v Kelleher*, 32 AD2d 663 [2006], *app denied* 7NY3d 707; *see Matter of Stoppenbach v Sweeney*, 98NY2d 431,433; *but see Gonzalez v Lavine,* 32 AD3d 483 [2 Dept 2006] [Second Department held that five signers of a designating petition provided all the required information and were therefore valid even though the signers either omitted or incorrectly listed the hamlet within the town in which they resided. Court held that the information was not required by Election Law § 6-130]).

Although the full and correct address is required on the signatory line, such information does not have to be inserted by the signer. Election Law § 6-134, which contains the rules for designating petitions, states, in relevant part: "A signer need only place his signature upon the petition, and need not himself [or herself] fill in the other required information" (Election Law § 6-134 [7]). This statute is silent as to the sequence in which the signature and the "other required information" must be placed on the petition, as well as whether that information must be inserted in the voter's presence (*see Matter of DiMarino v Maher*, 76 AD3d 653 [2010]).

The subscribing witness statement requires the inclusion thereon of the subscribing witness' correct house number or street name, the omission of which invalidates the entire sheet. Failure to include the witness' county does not, however, invalidate the sheet (*Matter of Loeb v Rivera*, 196 AD2d 617, 618*; see also Arcuri v Hojnacki*, 32 AD3d 658 [3d Dept 2006], *lv denied*, 7 NY3d 707 [2006] *Berkowitz v Harrington,* 307 AD2d 1002 [Second Department held that the failure of the subscribing witness to include the town or city, and the county, in the "Witness Identification Information" section of the petition was insufficient, in and of itself, to warrant invalidation of the petition, particularly where the complete address of the subscribing witness appeared elsewhere on the same page of the designating petition].

The use of abbreviations in the address would not invalidate the signature or the witness statement (Election Law § 6-134, subd 7), nor would the failure to include "Avenue" or "Street," etc.

A signature on a petition sheet shall not be deemed invalid solely because the address provided is the post office box address of the signer provided that proof that such address is the accepted address of such signer is provided to the Board of Elections no later than three days following the receipt of specific objections to such signature (Election Law § 6-134, subd 12). In the absence of said submission to the Board of Elections, a post office box number would not be considered a proper residence address under the statute

and would invalidate the signature (*Matter of Ike v DiPronio*, 96 AD2d 1134; *Matter of Hess v DiPronio*, 96 AD2d 1134) or the entire sheet if used in the subscribing witness statement (*Matter of Liepshutz v Palmateer*, 112 AD2d 1101, 1103, *affd* 65 NY2d 965).

Use of ditto marks or the word "same" to indicate the same residence of prior signer or signers is not an irregularity fatal to the validity of the signature or of the sheet on which the signature appeared *(LeSawyer v Board of Elections*, 207 Misc 12, 16; *Matter of McManus v DeSapio*, 13 Misc 2d 513, 518, *affd* 7 AD2d 613, *affd* 5 NY2d 773).

ALT - ALTERATIONS

An alteration consists of a visible change, erasure or cross out of certain information filled in on the petition sheet by a signer or subscribing witness (*see*, *Matter of Bernstein v Nelson*, 124 Misc 2d 287, 289, *affd* 104 AD2d 462). The alteration shall invalidate a signature *only* when the referee deems it to be a material alteration *and* it has not been initialed by either the signer or the subscribing witness (*see*, *generally*, *Matter of White v McNab*, 40 NY2d 912, 913; *Matter of Jonas v Velez*, 65 NY2d 954, 955; *Matter of Nobles v Grant*, 57 AD2d 600, *affd* 41 NY2d 1048; *Matter of Klemann v Acito*, 64 AD2d 952, 953, *affd* 45 NY2d 796; *Matter of Gartner v Salerno*, 74 AD2d 958, 959; *Matter of Krueger v Richards*, 93 AD2d 898, 899, *affd* 59 NY2d 680; *Matter of Reilly v Scaringe*, 133 AD2d 900, 901; *Matter of Jones v Scaringe*, 143 AD2d 294, 295-296; *Matter of Molloy v Scaringe*, 153 AD2d 782, 783; *Matter of Bestry v Mahoney*, 154 AD2d 889, 890; *see also*, *Matter of Buley v Tutunjian*, 153 AD2d 784, 785, which held that one set of initials was insufficient where there were two alterations on a signatory line). The following guidelines shall be determinative as to whether something constitutes an alteration in the first instance, and if so, whether it is a material alteration.

1) Alteration to Signer's Address Not Material Alteration

An alteration or correction of the signer's address shall not invalidate the signatory line for that reason alone (Election Law § 6-134, subd 6) and therefore no longer has to be initialed in order to be valid. Only a material alteration in the date and/or the signature still must be initialed or else the signatory line will be invalidated. This change in the law affects only the signatory line and not the subscribing witness statement.

2) Tracing

An overwriting or a tracing over where there is no change from what was initially written is not an alteration.

3) Date Column

A) The name of the month written over the number of the month or vice versa is not an alteration on either the signatory line (*Matter of McShane v Coveney*, 37 NY2d 789, 791 ["June" written over "6"]) or the subscribing witness statement (*Matter of Coleman v Boone*, 230 AD2d 872).

B) The month and day are juxtaposed and are then corrected. This is not a material alteration.

C) Any other alteration in month or day is a material alteration

In *Matter of Merrill v Fritz* (120 AD3d 689 [2014]), the designating petition contained numerous instances of unexplained and uninitialed alterations to the dates on numerous signature lines, many of which were contained on petition sheets for which the candidate himself was the subscribing witness. Although the candidate testified at the hearing, the lower court found his testimony regarding his explanation for the uninitialed changes "unreliable, not tenable, and not worthy of belief." As such, the court invalidated his designating petition.

4) Signature Column

A) If the initial signature would not have rendered the signature invalid, then a correction or alteration of same is not a material alteration. For example, "J. Smith" is written first then "John" is written over the letter "J."

B) The crossing out of an unnecessary title, such as "Dr." or "Mrs." is not a material alteration.

5) Subscribing Witness Statement

A) Address

1. A correction of an incorrectly spelled street name is not a material alteration.

2. The crossing out of an “E” or “W” and replaced by the words “East” or “West” is not a material alteration.

3. The crossing out of the house number and its replacement by a different number is a material alteration. Likewise, the crossing out of the name of the street and its replacement by a different name is a material alteration. The crossing out of the word “Street (St.)” and its replacement by the word “Avenue (Ave.)” or vice versa is a material alteration only where there are a street and avenue by the same name.

B) Number of signatures

1. Any un-initialed and unexplained alteration of the number of signatures on the sheet is a material alteration (*see*, *Matter of Gravagna v Bd of Elections of the City of New* York, 22AD3d 776; *Matter of Quinlan v Pierce*, 254 AD2d 690; *Matter of Magee v Camp*, 253 AD2d 573; *Matter of Jonas v Velez*, *supra*, at 955; *Matter of Shoemaker v Longo*, 186 AD2d 979, 980).

In *Matter of Dos Anjos v Carvin*, 87 AD3d 638 (2d Dep't 2011), the court held that the omission of a space for the subscribing witnesses to enter the number of signatures on each page of a designating petition, and the placement of the number of signatures on each page in the margin without initials, did not constitute a material alteration, and thus would not be deemed invalid, where there was no alteration in the number of signatures witnessed, but, rather, the subscribing witnesses merely entered the number of signatures, with no numbers previously entered that could have been altered, and inclusion of the number of signatures in the margin was explained by the witnesses' testimony at a hearing.

C) Miscellaneous Alterations to Subscribing Witness Statement

1. *Matter of McGuire v Gamache,* 22 AD3d 614, *affd* 5 NY3d 444: Where several nominating petition pages of signatures were obtained by a subscribing witness who had stricken from his witness statement without explanation the phrase, “I am also duly qualified to sign the petition,” the court held that the unexplained and uninitialed alteration of the statutorily-prescribed statement was fatal to designating petition “as the omission of part of the required declaration was a substantive departure from the mandates of the statute and not a mere error in form.” (*id.* at 615)

2. In *Matter of Rosmarin v Belcastro* (44 AD3d 1055 [2007]), the Second Department held that a subscribing witness, who failed to initial or date her own crossed-out signature, and made uninitialed changes did not warrant invalidation of the designating petition, where the witness sufficiently explained that she did not know that she was not permitted to sign the designating petition for which she was a subscribing

witness. In so holding, the court stated "where an explanation for the uninitialed change is provided by affidavit or testimony adduced at a hearing, the underlying signatures need not be nullified" (*id.* at 1056 *quoting Matter of Curley v Zacek*, 22 AD3d 954, 957 [2005]; *see Oberman v Romanowski,* 65 AD3d 992 [2009] [where the Second Department held that the candidate (Romanowski) had to be afforded an opportunity in an Election Law proceeding to offer evidence related to the uninitialed alterations to the witness statements on his designating petition sheets]).

3. In *Matter of Grancio v Coveney* (60 NY2d 608, 611), the Court of Appeals declined to invalidate any petition sheets because of an un-initialed alteration in the subscribing witness statement (Mary Hynes signed the sheets as a subscribing witness after the printed name of Eleanor Fries was crossed out in the body of the witnessing clause) on the ground that "there is no evidence that the alteration was made by anyone other than the subscribing witness or that it resulted in any fraud or confusion." The court's decision and rationale are difficult to accept as representing anything other than an aberration from the general rules enunciated above. It may well be that the court did not regard an alteration to the subscribing witness' printed name as a material alteration since her signature was otherwise on the sheet, in which case, the court's holding should be restricted to only that type of alteration. Alternatively, we could view this determination as requiring that the referee in the first instance invalidate the sheet because of the un-initialed alteration, with an opportunity for the candidate to try to overturn this ruling at a hearing before the court by coming forward with evidence "that the alteration was [not] made by anyone other than the subscribing witness" and that that person actually witnessed the taking of the signatures on the sheet.

6) Cover Sheet

Alterations on the cover sheet may be made without being initialed (*Matter of Comstock v Wolf*, 112 AD2d 1061).

DS - DATE IN SUBSCRIBING WITNESS STATEMENT OMITTED

The failure of the subscribing witness to fill in the date in the subscribing witness statement invalidates the entire sheet (*Daverso v Romeo*, 89 AD2d 1054; *but see Etkin v Thalmann*, 287 AD2d 775 [3rd Department permitted petitioner to submit corrected pages with page numbers and number of signatures inserted where such information was inadvertently omitted from original petition]).

DSP - DATE of SUBSCRIBING WITNESS STATEMENT IS PRIOR TO DATE OF SIGNATURE

Where a signature is dated after the date of the subscribing witness statement, that signature, but not the entire sheet, should be invalidated (*Matter of McNulty v McNab*, 96 AD2d 921).

Matter of Stevens v Collins (120 AD3d 696, 697 [2d Dep't 2014]) involved an opportunity to ballot petition where the date of the jurat purporting to authenticate the signatures on Sheet 2 of that petition was "6-16-14," and the signatures were all dated in July, the court found that this discrepancy was fatal to the signatures appearing on that page. The court stated that the notary's testimony that he had "authenticated the signatures on Sheet 2 in July, and that the date marked was an inadvertent mistake, did not serve to correct the defect, inasmuch as the time to file petitions with the Board of Elections, as well as the time to amend or correct such petitions, had expired by the time the hearing was held." Thus, court held that such discrepancy was fatal to the signatures appearing on that page (*see Matter of Quinn v Erie County Bd. of Elections*, 120 AD3d 992 [2014**]** **[**Petition sheet invalidated where date of subscribing witness's authenticating statement was June 7, 2014, i.e., 18 days before the June 25, 2014 date of the signatures collected on that sheet]). An omission may be cured by an affidavit from the subscribing witness provided it was filed with the Board of Elections on or before the last day for filing the petition (*Matter of Esse v Chiavaroli*, 71 AD2d 1046).

DUP - DUPLICATION OF SIGNATURE IN THE PETITION

Where a person has signed the same candidate's petition more than once, only the earlier dated signature shall be valid and the later dated signature shall be invalidated (*see*, *Matter of McShane v Coveney*, 37 NY2d 789, 791). Where both signatures bear the same date, validate one of them (generally, the one appearing first in the petition) and invalidate the other signature; if one of these duplicate signatures is invalidated because of a defect in the subscribing witness statement or for any other reason, then validate the other duplicate signature.

F - FORGERY

The court, and not the referees, will rule on forgery specifications, provided there is testimony with respect thereto by either a handwriting expert or any other witness (e.g., the signer) who would be called to establish that the signature in question had or had not been forged (*see*, *Matter of Rivera v Ortiz*, 207 AD2d 516).

In the case of *Matter of Jaffee v Kelly*, 32 AD3d 485 ([2d Dept 2006] *app den* 7 NY3d 707), the Rockland County Board of Elections determined that two of the signatures on the designating petition in question were invalid since those signatures did not match the signatures on those voters' buff cards. This resulted in less than the total number of valid signatures required for designation and the Board invalidated the designating petition. In a validating proceeding petitioner submitted affidavits from each of the voters in question stating that "this is my valid signature" in the designating petition. Absent any claim of fraud or forgery, the Appellate Court held that Supreme Court erred in determining that the two signatures were invalid and in denying the petition to validate.

In *Matter of Muscarella v Nassau County Bd. of Elections* (87 AD3d 645 [2011]), the petitioner challenged 40 line-by-line court attorney referee rulings which invalidated signatures that were not sufficiently similar to the signatures on the voter registration forms. Although the petitioner submitted 26 affidavits of persons whose signatures had been invalidated, attesting to the validity of their signatures on the designating petition, the Second Department held that since the claims of forgery were raised, the affidavits were not dispositive of the issue of whether the affiants signed the designating petition. In so holding, the court noted that the signatories could have testified either before the Court Attorney Referees or the Supreme Court.

In *Matter of Lord v New York State Bd. of Elections*, 98 AD3d 622 [2012] , the Second Department held that the trial court erred in finding that certain signatures inscribed in script on the designating petition were invalid because the particular signature on the designating petition did not match the signature on record with the Westchester County Board of Elections. The identities of those signatories as registered voters were established by a comparison of the signatures on the designating petition with those of persons whose names appeared in the registration poll ledgers (*see* Election Law § 6-134 [5]; *Matter of Romaine v Suffolk County Bd. of Elections*, 65 AD3d 993, 995 [2009]).

ILL - ILLEGIBLE SIGNATURE

If, because of illegibility, the signature on the petition cannot be matched in any respect with the name of a registered voter residing at the same address, then it should be invalidated (*see*, *e.g*., *Matter of Hall v Heffernan*, 185 Misc 742, 744, *affd* 269 App Div 953, *affd* 295 NY 599).

Subdivision 13 of Election Law § 6-134 now permits a petition to contain below each signature line a place to print the name of the signer. However, this is not a mandatory requirement and the failure to provide such a place or failure to print the name if a space is provided or an un-initialed alteration of the printed name shall not invalidate a signatory line. Also, a signature which is mistakenly put into the space for the printed

name should not be invalidated for that reason alone.

The Referee should not, under any circumstances, examine the signature on record with the Board of Elections to compare it with the purported signature on the designating petition. The Referee should afford the proponent of the signature a reasonable opportunity to provide the name of the signatory (or subscribing witness) and if the identity of the voter can be established to the satisfaction of the Referee (without comparing signatures), the signature should be ruled valid.

NA - NO ADDRESS

The omission of the address of a signatory renders the signature invalid (Election Law § 6-130; *Matter of Liepshutz v Palmateer*, 65 NY2d 965, 966).

The inclusion of an address on the signatory line may be filled in by someone other than the signer or the subscribing witness (Election Law § 6-134, subd 7; *Matter of Zimmerman v Holwell*, 28 AD2d 1000, 1001, *affd* 20 NY2d 833), which may be done after the subscribing witness statement has been completed and signed (*Matter of Bernstein v Nelson*, 124 Misc 2d 287, 289-290).

In *Matter of Collins v New York State Bd. of Elections* (120 AD3d 882 [2014]), preprinted information on candidate's designating petition, completed by a third party, concerning signers' town or city next to the line on which they signed their names did not render petition invalid; statute governing designating petitions did not require that the town or city information be supplied by the signer or a subscribing witness, and there was no claim that information on petition was incorrect. McKinney's Election Law §§ 6–130, 6–134(7).

NCP - PETITION SHEET NOT CONSECUTIVELY NUMBERED
PN - PETITION SHEET NOT NUMBERED

The sheets of any volume of a designating petition must be numbered (Election Law § 6-134, subd 2; *Matter of Braxton v Mahoney*, 63 NY2d 691, 692; *Matter of Holster v Matthews*, 185 AD2d 959, 960), and the numbering must be in consecutive order or the petition will be invalidated (*Matter of Braxton v Mahoney*, *supra*, at 692; *Matter of Holster v Matthews*, *supra*, at 960). Failure to so comply with this numbering requirement may be cured within three (3) days following a determination of non-compliance, in which event the designating petition will not be invalidated (Election Law § 6-132, subd 2). The omission of page numbers on the designating petition may likewise be cured within the three day cure period (*Matter of May v Daly*, 254 AD2d 688; 9 NYCRR 6215.1[a]).

A petition consisting of multiple volumes in which each volume instead of beginning on page 1 had its sheets consecutively numbered from the start of the first volume through the end of the last volume complies with subdivision 2 of § 6-134 of the Election Law (*Matter of Sheehan v Scaringe*, 60 NY2d 795).

Where two successive sheets bear the same number, then only the second of these duplicate numbered sheets is invalidated in its entirety; the entire petition would not be invalidated (*Matter of Frawley v Regan*, 77 AD2d 937, 938).

A designating petition consisted of 685 sheets bound together, each of which was numbered. The page numbers included every number between 1 and 685, no one being assigned more than one sheet, but five or six were not bound in consecutive order. The court held that there was no "substantial violation" of the Election Law (*Matter of Lamula v Power*, 13 NY2d 873).

Inadvertent inclusion of petition sheets of another candidate in respondent's petition is not a substantial violation of the requirement that pages be numbered consecutively (*Kantrowitz v Goldin*, 47 Misc 2d 658, *affd* 24 AD2d 735, *affd* 16 NY2d 841).

The inclusion of two unnumbered sheets where there was a sufficient number of signatures on the regularly numbered sheets did not invalidate the petition (*Matter of Jonas v Black*, 104 AD2d 466, *affd* 63 NY2d 685).

Even though none of the sheets in the petition were numbered, the court did not invalidate the petition where one sheet alone contained a sufficient number of signatures to support the designation (*Matter of Rosen v McNab*, 25 NY2d 798, 799).

Where a sheet labeled "126A" was inserted between the sheets numbered 126 and 127, the court found "no substantial violation of the law requiring that pages be consecutively numbered" and held that the signatures after page 126 were not invalid (*Matter of Codd v Barbaro*, 111 Misc 2d 135, 144).

The inclusion of a duplicate page does not invalidate the entire petition, but merely invalidates the photocopied page (*Matter of Comstock v Wolf*, 112 AD2d 1061, 1062).

A gap in numbering the pages (e.g., skipping from page 10 to page 12), absent some indication that the gap was the result of a fraudulent act rather than inadvertence, does not invalidate the subsequent pages (*Matter of Farrell v Morgan*, 112 AD2d 882,

883; *Rosen v Epstein*, 153 AD2d 723 [skipping from page 190 to 200 held not to be fraudulent]).

ND - NO DATE - SIGNATORY LINE

Election Law § 6-130 requires the date when the signer affixes his/her signature on the signatory line; undated signatures are invalid (*Matter of Parra v Shiffman*, 64 AD2d 934)

In *Matter of DiSanzo v Addabbo* (76 AD3d 655 [2010]), the court held that the signature on a designating petition that was undated, and signatures that were given incorrect dates on which they were affixed to the petition, were required to be invalidated, and, thus, the petition designating the candidate in primary election for party office of State Senator was invalidated, where candidate did not have sufficient signatures (*see* Election Law §§ 6–130, 6–132, 6–136[2], 16–102).

A signature is not rendered invalid by virtue of the failure to include the year, provided the month and date have been inserted (*Matter of Struble v Chiavaroli*, 71 AD2d 1047, *affd* 48 NY2d 613).

The use of ditto marks or a straight line to indicate the same date as the prior line does not render the signature invalid (*Matter of Marion*, 174 Misc 897, 898).

ND-SW - NO DATE - SUBSCRIBING WITNESS STATEMENT

Election Law § 6-132, subdivision 2, requires that the subscribing witness statement be dated; its omission invalidates the entire sheet (*Matter of Klemann v Acito*, 64 AD2d 952, 953, *affd* 45 NY2d 796).

The petition sheet is not rendered invalid by virtue of the failure to include the year, provided the month and date have been inserted (*cf.*, *Matter of Struble v Chiavaroli*, 71 AD2d 1047, *affd* 48 NY2d 613).

NE - NOT ENROLLED IN POLITICAL PARTY

A designating petition can be signed only by persons duly registered and enrolled in the same political party of the primary race therein involved at the time of signing of the petition, as evidenced by the voter registration card (Election Law § 6-132, subd 1;

Goldstein v Carlsen, 59 AD2d 642, 643, *affd* 42 NY2d 993). The signature of a person not so enrolled must be invalidated.

The signatory is considered enrolled as of the date stamped on the voter registration card since the time stamp constitutes prima facie evidence of the time of filing (*Matter of Kinebrew v Williams*, 112 AD2d 1077). If the date on the card is the same as the date on the signatory line, then note the time stamped on the card. If, for example, the card shows 9:00 A.M. and the sheet bears the same date, you may decide that the sheet was signed after the date of enrollment. (Use your discretion with respect to time sequences with a caveat that we do not wish to disenfranchise a signatory.)

A voter failed to mark his party choice when filling out the form for change of address after having been an enrolled Democrat for eight years. He then availed himself of Election Law § 5-306 by filing an appropriate affidavit and thus correcting the error in omitting his enrollment. Under these circumstances, he is deemed to have been enrolled in the party of his choice at the time of the filing or signing of the petition as required by subdivision 1 of § 6-120 of the Election Law. While this case pertained to a candidate's enrollment, § 5-306 is equally applicable to a signer of a petition (*Matter of Delosrios v Santiago*, 89 AD2d 976).

CHANGE OF ENROLLMENT IN POLITICAL PARTY

A newly registered voter who enrolls in a political party is immediately eligible to vote in that party's next primary (*see* Election Law § 5-302). However, when an already registered voter seeks to change his or her enrollment by changing enrollment from one party to another, by deleting his or her enrollment in a party, or by enrolling in a party when previously not enrolled, the change does not become effective until the first Tuesday following the next general election (*see* Election Law § 5-304). Thus, pursuant to the delayed enrollment provision of New York Election Law, a change of party enrollment by either a registered enrolled voter or a registered non-enrolled voter must be filed twenty-five days before the general election to be effective for the primary election the following year (*see* Election Law § 5-304[2], [3]).[2] Individuals who are not registered to

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[2] These subsections state:

(2) The term "change of enrollment" shall apply to applications by a registered voter already enrolled in one party to enroll in a different party, or to delete his enrollment in any party, or an application by a registered voter not enrolled in any party to enroll in a particular party.

(3) A change of enrollment received by the board of elections not later

vote, however, may participate in a primary election as long as they register to vote and enroll in a party twenty-five days before that primary election (*see* Election Law § 5-210[1], [3]).[3]

In *Matter of Coopersmith v Ortutay*, 76 AD3d 651 [2010], the court held that the voter's registration in a new county was a new registration or reregistration, rather than a transfer of registration, and thus was not subject to the waiting period imposed on changes of enrollment; since the voter was not previously registered in the new county, she was properly enrolled in the Independence Party as of the date she registered to vote in such County, even if her registration in prior county had not yet been formally cancelled (*see* Election Law §§ 5–208, 5–302[2], 5–304, 5–402).

NFN - NO FIRST NAME

The use of titles (Dr., Mr., Mrs., Ms., etc.), initials, or an abbreviation for a first name or the complete lack of a first name does not invalidate a signature provided the identity of the voter can readily be established by comparing the name on the petition to that of a registered voter residing at the same address (Election Law § 6-134, subd 5; *Matter of Tani v Luddy*, 32 Misc 2d 53, 54-55; *Matter of McManus v DeSapio*, 13 Misc 2d 513, 522, *affd* 7 AD2d 613, *affd* 5 NY2d 773). If the identity of the signer cannot be

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than the twenty-fifth day before the general election shall be deposited in a sealed enrollment box, which shall not be opened until the first Tuesday following such general election. Such change of enrollment shall be then removed and entered as provided in this article.

[3] These subsections state, in relevant part:

(1) In addition to local registration and veterans' absentee registration as provided in this chapter, any qualified person may apply personally for registration and enrollment, change of enrollment by mail or by appearing at the board of elections on any day, except a day of election, during the hours that such board of elections is open for business.

(3) Completed application forms, when received by any county board of elections and, with respect to application forms promulgated by the federal election commission, when received by the state board of elections, or showing a dated cancellation mark of the United States Postal Service or contained in an envelope showing such a dated cancellation mark which is not later than the twenty-fifth day before the next ensuing primary, general or special election, or delivered in person to such county board of elections not later than the tenth day before a special election, shall entitle the applicant to vote in such election, if he is otherwise qualified.

established by such comparison, then the signature should be invalidated (*Matter of Lane v Meisser*, 24 AD2d 720, 721). A signature consisting only of the first name of the signer is invalid even when accompanied by the full name of the signer printed next to the signature, since the identification of the signer as a registered voter cannot be ascertained by reference to a signature on the petition and that of a person whose name and address appears in the registration poll ledgers (*Matter of Fusco v Miele*, 275 AD2d 426 [2d Dept 2000]).

NR - NOT REGISTERED

A designating petition can be signed only by persons duly registered at the time of the signing of the petition (*Matter of Goldstein v Carlsen*, 59 AD2d 642, 643, *affd* 42 NY2d 993; *Matter of Williams v Pinkett*, 59 AD2d 573; Election Law § 6-132, subd 1). Regardless of whether the ruling of the Board of Elections on an NR objection is AS or NAS, the ultimate burden is on the candidate's side to furnish proof of registration or else the signature must be invalidated (*Matter of Hinton v Howard*, 93 AD2d 897).

In some instances, the candidate will allege that a signatory (or SW) has signed the designating petition under her married name, but is registered under her maiden name. Where the signature contains a hyphenated last name (and therefore includes the maiden name), the signature should be validated. In the event the last name of the signatory differs from that contained in the registration records, the signature should be invalidated. The candidate will be afforded the opportunity to establish before the Court that the signatory and the registered voter are the same person (*see, Matter of Tricario v Power*, 19 AD2d 781, *aff'd* 13 NY2d 886).

In *Matter of Grimm v Board of Elections in City of New York* (35 Misc.3d 1233[A] [2012]), the court held that registered, enrolled voters of the Independence Party who had not voted in an election since 2004 could not be declared inactive for purposes of determining the number of voters whose valid signatures were required to validate a designating petition. In so holding, the court noted that there is no statutory basis for designating a registered, enrolled voter "inactive" within the meaning of the Election Law based upon that voter's having not participated in prior elections for any period of time. Merely not voting for a period of time--no matter how extended a period-- is not a valid basis under the Election Law for the Board to render a voter's status inactive.

In *Matter of Bichotte v Adolphe* (120 AD3d 674 [2014], *lv denied* 23 NY3d 908 [2014]), the Second Department held that signatures witnessed by a person whose Board of Election records indicated that he had an "inactive" voter status were not rendered invalid on that basis inasmuch as he was still a registered voter at the time that he had

obtained the signatures and Election Law § 6-132 (2) does not mandate that subscribing witnesses have an "active" voter status.

Cancellation of Voter Registration

In *Matter of VanSavage v Jones* (120 AD3d 887 [2014], *lv dismissed* 23 NY3d 1045 *and lv denied* 24 NY3d 901 [2014]), the validity of certain petition sheets of a designating petition were challenged on the grounds that the subscribing witness who circulated the sheets was an individual whose voter registration had been cancelled because he did not reside at the address claimed on his registration form, and because he had previously been convicted of a felony. The court held that the signatures collected by the SW in question were valid. In so holding, the court stated "[b]ecause disenfranchisement is a drastic punishment, Election Law § 5-402 requires that a voter's registration may not be cancelled until after a board of elections has notified the voter of its intention to cancel and gives him or her the opportunity to be heard" (*id*. at 889). Since the record demonstrated that the SW was a registered voter during the first two weeks of July 2014, when he collected signatures for the candidate and when they were submitted to the State Board, and that the process for cancelling his registration did not commence until later, July 22, 2014, the court concluded that the SW was a "registered voter" at the relevant time and, therefore, the signatures collected by him were valid (*see* Election Law § 5–402; *see also Matter of Carney v Ward,* 120 AD3d 995 [4th Dept 2014]).

NSO - NUMBER OF SIGNATURES OMITTED

The failure of a subscribing witness to set forth the number of signatures on the sheet as required by Election Law § 6-132, subdivision 2, invalidates the entire sheet (*Matter of O'Brien v Meisser*, 10 NY2d 799; *Matter of Bernhardt v Sachs*, 57 AD2d 598; *Matter of Esse v Chiavaroli*, 71 AD2d 1046; *Matter of Cronk v Ferencsik*, 181 AD2d 754) even though the cover sheet of the petition may have stated the correct number of total signatures contained therein (*Matter of Bernhardt v Sachs*, *supra*; *Matter of Esse v Chiavaroli*, *supra*; *but see Etkin v Thalmann*, 287 AD2d 775 [3rd Department permitted petitioner to submit corrected pages with page numbers and number of signatures inserted where such information was inadvertently omitted from original petition).

In *Matter of Kepert v Tullo* (88 AD3d 826 [2 Dept. 2011]), where the witness statement of a designating petition sheet did not state the number of signatures witnessed, all of the signatures on the subject sheet were deemed invalid, a defect which could not be subsequently cured (*see Matter of Esse v Chiavaroli*, 71 AD2d 1046).

OD - OUT OF DISTRICT

A signatory must reside within the political subdivision (e.g., assembly district, senatorial district) for the race involved in order for the signature to be valid.

However, a subscribing witness need no longer reside within the political subdivision (e.g., assembly district, senatorial district) for the race involved (*Matter of La Brake v Dukes*, 96 NY2d 913, *affirming* 286 AD2d 554; *see also Matter of Popkin v Umane*, 22AD3d 613 [inclusion of out-of-district signatures, without indication of fraud or deception, would not result in invalidation of independent nominating petition]).

P - PENCIL OR NOT IN INK

A petition must be signed in ink (Election Law 6-132, subd 1). Any signature made in pencil shall be ruled invalid (*Matter of Hall v Heffernan*, 185 Misc 742, 744, *affd* 269 App Div 953, *affd* 295 NY 599; *Matter of Marion*, 174 Misc 897, 898).

PD - POST DATED (SIGNATURE DATED AFTER FOLLOWING SIGNATURE)

Where a signature on the petition sheet has a later date than the signatures that follow it, all subsequent signatures on that sheet with an earlier date should be ruled invalid.

However, where there is an obvious error the subsequent signatures should not be invalidated. For example, in *Matter of Kent v Bass* (54 NY2d 776), one of the sheets in a designating petition contained a sequence of signatures dated July 21, 1981, but interspersed within this sequence was a single signature dated 8-21-81. The lower court incorrectly struck not only the signature bearing the 8-21-81 date, but also the two signatures immediately following. These signatures, otherwise valid, bore the date July 21, 1981. In light of the fact that the designating petition was received by the Board of Elections on July 23, 1981, the "8-21-81" date was an obvious error which should not serve to invalidate the two subsequent signatures (*id.*).

PR - PRINTED SIGNATURE

In *Henry v Trotto* (54 AD3d 424 [2008]), the Second Department held that the Supreme Court correctly invalidated signatures that were printed on the designating petitions where signatories had signed their registration forms in script and there was an absence of any credible evidence from them or subscribing witnesses attesting to the identity of those signatories (see Election Law § 5-210 [5] [k] [xi]; § 6-134 [5], [13]; *Matter of Jaffee v Kelly*, 32 AD3d 485 [2006]; *Matter of Rabadi v Galan*, 307 AD2d 1014 [2003]; *Matter of Quercia v Bernstein,* 87 AD3d 652 [2011][court invalidated 2 signatures on designating petition which were made in print, where the signatures did not match the signatures on corresponding registration forms, which were written in script, and there was

no credible evidence from signatories or subscribing witnesses attesting to the identity of the signatories]).

A printed signature on a petition should be ruled invalid unless the voter's signature is similarly printed on the voter registration card, in which case, the printed signature should be ruled valid (*Matter of Hall v Heffernan*, 185 Misc 742, 744, *affd* 269 App Div 953, *affd* 295 NY 599).

While General Construction Law § 46 provides that the term "signature" includes one that is printed (*see*, *Matter of Cotroneo v Monroe County Bd. of Elec.*, 166 Misc 2d 63, 64), the following provision in § 6-134 of the Election Law indicates that a written signature, and not a printed one, is required of the signer:

> "13. In addition to the requirement for the signature, the printed name of the signer may be added, provided that the failure to provide a place to print the name or failure to print a name if a space is provided shall not invalidate the signature or petition."

The Referee should determine, in the first instance, whether the purported signature is, in fact, a "print". If the Referee determines it is not a print, the signature must be validated and no further action is necessary. If it is determined that it is a print by the Referee, the proponent of the signature may request that the Referee examine the voter's signature on the records filed with the Board of Elections to determine whether the voter signs his or her name in that fashion. To prevent fraud and allow for a meaningful comparison of signatures when challenged, the signature on the designating petition should be made in the same manner as on that signor's registration form (*see* Election Law § 6-134 [10]; *see Matter of Lord v New York State Bd. of Elections*, 98 AD3d 622 [2012]).

SAP - SIGNED ANOTHER PETITION ON SAME OR EARLIER DATE

Where a qualified voter signs more than one petition for the same office, only the earlier dated signature may be counted, and where those signatures bear the same date, neither may be counted (*see* Election Law § 6-134, subd 3; *Matter of Lavelle v Gonzalez*, 59 NY2d 670, 671, *affg* 93 AD2d 896; *Matter of Keenan v Chemung County Bd. of Elections*, 43 AD3d 623 [3d Dept 2007] [Individual's signing of two designating petitions for single office rendered later signature on respondent's designating petition not countable, regardless of subsequent invalidation of first petition]; *Matter of Venuti v Westchester County Bd. of Elections,* 43 AD3d 482 [2d Dept 2007]; *Matter of Breslin v*

Sunderland, 218 AD2d 769; *Matter of Ehrlich v Biamonte*, 65 AD3d 990 [2009] [two signatures on candidate's designating petition were invalid where those voters previously had signed a designating petition of another candidate for the same position]). Similarly, signing another petition disqualifies such signatory from signing subsequently as a subscribing witness on another petition for the same office (*see Rue v Hill*, 287 AD2d 781, *lv denied* 97 NY2d 602).

Signatures on a petition which also appeared on a previous petition circulated by another candidate should not be invalidated where the previous petition was not filed with the Board of Elections (*Matter of Ferraro v McNab*, 60 NY2d 601, 603).

Where a subscribing witness previously or on the same day signed another candidate's designating petition for the same office, any subsequent signatures taken by him as a subscribing witness are invalid *(Matter of Goodman v Board of Elec.*, 3l NY2d 763, 764; *Matter of Lavelle v Gonzalez*, *supra*, at 671; *Matter of Gartner v Salerno*, 74 AD2d 958, 959; *Matter of Carroll v McNab*, 59 AD2d 727; *Matter of Bergmann v Berger*, 219 AD2d 599, 600). This rule invalidating subsequently obtained signatures does not apply, however, where the subscribing witness had been a subscribing witness for another candidate but did not sign his petition *(Matter of Sinagra v Hogan*, 97 AD2d 643, 644, *affd* 60 NY2d 811; *Matter of Gartner v Salerno*, *supra*, at 959; *Matter of Bergmann v Berger*, *supra*, at 600).

In *Matter of Master v Davis* (65 AD3d 646 [2009]), the court determined that eight of the signatures on the petition for an opportunity to ballot were invalid on the ground that those voters previously had signed a valid designating petition for a candidate for the same office (*see Matter of Rabadi v Galan*, 307 AD2d 1014; *Matter of Reda v Lefever*, 112 AD2d 1070).

SH - SIMILAR HANDWRITING TO ANOTHER SIGNATURE ON THE SHEET

The court, and not the referees, will rule on similar handwriting specifications, provided there is testimony with respect thereto by either a handwriting expert or any other witness (e.g., the signer) who would be called to establish that the signature in question had or had not been forged (*see*, *Matter of Rivera v Ortiz*, 207 AD2d 516).

SW - SUBSCRIBING WITNESS

Election Law 6-132, subdivision 2 sets forth the required contents of the subscribing witness statement:

1) STATEMENT OF WITNESS

I (name of witness) _____ state: I am a duly qualified voter of the State of New York and am an enrolled voter of the _____party.

I now reside at (residence address)_____
_____.

Each of the individuals whose names are subscribed to this petition sheet containing (fill in number) _____ signatures, subscribed the same in my presence on the dates above indicated and identified himself to be the individual who signed this sheet.

I understand that this statement will be accepted for all purposes as the equivalent of an affidavit and, if it contains a material false statement, shall subject me to the same penalties as if I had been duly sworn.

Date:_____ Signature:
_____

WITNESS IDENTIFICATION INFORMATION: The following information must be completed prior to filing with the board of elections in order for this petition sheet to be valid.

Town or City _____ County _____

This statement, to the extent of the information required above the subscribing witness' signature, including the date, must be fully completed in substantially the form above indicated (Election Law § 6-132, subd 1; *Matter of Alamo v Black*, 51 NY2d 716, 717; *cf.*, *Matter of Sheldon v Aylwar*, 54 NY2d 934, 935; *Matter of Felsen v Scaringe*, 54 NY2d 932, 933-934), and any omission invalidates the entire sheet (*Matter of Sheldon v Sperber*, 45 NY2d 788, 789; *Matter of Alamo v Black*, 51 NY2d 716, 717; *Matter of Moynihan v Street*, 51 NY2d 724; *Ryan v Board of Elec.*, 53 NY2d 515, 517-518; *Matter of Hutson v Bass*, 54 NY2d 772, 774; *Matter of Schnurr v May*, 54 AD2d 533, *affd* 40 NY2d 813; *Matter of Goldstein v Carlsen*, 59 AD2d 642, *affd* 42 NY2d 993; *Vassos v NYC Bd of Elections*, 286 AD2d 463).

However, the "residence address" requested in the first paragraph of the subscribing witness statement need only include the street address and the failure to also include thereafter the word "Brooklyn" does not invalidate the sheet (*Matter of Loeb v Rivera*, 196 AD2d 617, 618).

The omission of any of the "witness identification information" requested below the signature of the subscribing witness ("Town or City" and "County") is not fatal and does not invalidate the sheet (*Matter of Barrett v Brodsky*, 196 AD2d 603 [failure to include town or city]; *Matter of Goodstein v Ross*, 196 AD2d 615 [failure to include town or city]; *Matter of Hurst v Bd of Elections of Broome County*, 265 AD2d 590 [omission of Town or City and County from "witness identification information" where witness' city of residence was clearly set forth on each page of petition]; *see also Matter of Berkowitz v Harrington*, 307 AD2d 1002; *Matter of Cerreto v Sunderland*, 307 AD2d 1004; *Matter of Tully v Ketover*, 10 AD3d 436 [failure of SW to include in Statement of Witness" an apartment number, town or city, a county and a zip code *did not* invalidate signatures on designating petition where witness provided correctly stated street name and house number for his residence]; *Vekiarelis v Del Villar*, 286 AD2d 464).

In *Matter of Powers v Kozlowski* (54 AD3d 540 [2008], *lv. den'd* 11 NY 3d 701), the Fourth Department held that, under the circumstances of that case, where each subscribing witness listed his or her full and complete address on each of the challenged sheets, the fact that the incorrect town was identified under the "Witness identification information" section on the challenged sheets did not warrant invalidation of the signatures. The court reasoned that the insertion of the incorrect town was merely an "inconsequential error" (*see Matter of Curley v Zacek*, 22 AD3d 954, 956 *lv denied* 5 NY3d 714; *Matter of Arcuri v Hojnacki*, 32 AD3d 658, 660, *lv denied* 7 NY3d 707).

In *Matter of VanSavage v Jones* (120 AD3d 887 [2014], *lv dismissed*, 23 NY3d 1045 and *lv denied,* 24 NY3d 901 [2014]), where the "Witness Identification Information" portion of the subscribing witness statement requesting "Town or City" and "County", was left blank, the court held that the error was not a fatal defect. In so holding, the court noted that the subscribing witness provided her complete address in the "Statement of Witness" section on each of the petition pages at issue and her name and complete address also appeared at the top of each page as a member of the committee to fill vacancies. In addition, she submitted an affidavit that stated that she carried the petition pages at issue and that her correct residential address appeared on each page. Thus, absent any indication of fraud or record evidence that the subscribing witness did not reside at the address provided, the court found that the signatures contained on those pages of the petition were valid.

In *Matter of Dalton v Wayne County Bd. of Elections* (65 AD3d 817 [2009]), the court cited to its prior decision in *Matter of Powers v Kozlowski* (54 AD3d 540) and held that "[a]lthough the inclusion of the incorrect town or city of residence in each Witness identification information' section in question was indeed a violation of Election Law § 6-132 (2), we note that the complete address of each subscribing witness was listed in the first paragraph of the STATEMENT OF WITNESS.' " We thus conclude that "[w]here, as here, the Election Law violation does not involve the substantive requirements of witness eligibility' and there is no implication of fraud, resort to strict construction should be avoided if it would lead to injustice in the electoral process or the public perception

of it' " (*Matter of McManus v Relin*, 286 AD2d 855, 856 *lv denied* 96 NY2d 718; *see Powers*, 54 AD3d at 541; *Matter of Pulver v Allen*, 242 AD2d 398, 400, *lv denied* 90 NY2d 805).

In *Matter of Taylor v Clarke* (46 Misc. 3d 1215[A] [N.Y. Sup. Ct. 2014], *affd without opinion at* 120 AD3d 415 [2014], *lv to appeal denied* 23 NY3d 909 [2014]), petitioners argued that all of the signature lines in a petition volume were defective because "Brooklyn NY" was inserted in the county column for each of the signatories in violation of Election Law § 6-130's requirement that the signor indicate the county of his or her residence, which petitioners argued should have been Kings County. The court found that the use of "Brooklyn" was sufficient to identify that the signatories resided in Kings County and that the petition sheets strictly complied with the requirements of Election Law §6-130.

Listing a subscribing witness' address on a designating petition as 11 E. 128th St. when it was actually 17 E. 128th Street is considered minor clerical error. The fact that this error was written on certain sheets containing 71 signatures does not invalidate those petition sheets (*Matter of Hoare v Davis*, 207 AD2d 309).

In *Matter of Hudson v Board of Elections* (207 AD2d 508), failure by a subscribing witness to submit a new buff card reflecting his change of address did not invalidate his sheets in the designating petition. The court found that the evidence showed that he notified the Board of the Elections of the City of New York of his change of address. Each of the subscribing witness' statements accurately reflected his current address (*see also McManus v Relin*, 286 AD2d 855, *lv denied* 96 NY2d 718 [although SW provided wrong address on witness statement, evidence established that witness was in process of moving from one apartment to another when signatures were obtained and provided new address on some designating petitions].

The subscribing witness must have actually obtained, i.e., solicited or be in the presence of the signatories when they signed, the signatures appearing on the sheet. If testimony discloses that someone other than the subscribing witness had taken the signatures, then those signatures or the entire petition sheet or the whole petition, if the court finds a permeation with fraud, will be invalidated (*Matter of Metzger v Eagan*, 24 AD2d 719, *affd* 16 NY2d 837; *Matter of Harry v Liblick*, 119 AD2d 845; *Matter of McHale v Smolinski*, 133 AD2d 520; *see also Ryan v Suffolk Cty Bd of Elections*, 286 AD2d 461 [evidence revealed that several signatures were actually collected by the wife of the subscribing witness]).

Subdivision 9 of section 6-134 of the Election Law codifies the judicially created rules with respect to the subscribing witness statement as to who may insert the information required in said statement and when. This proviso permits a person other than the subscribing witness to complete the required information (*Matter of Barbary v Moss*,

154 AD2d 870, 871), provided that the information appearing *above* his signature is inserted either before the subscribing witness signs the statement or in the presence of such subscribing witness (*see*, *Matter of Brown v Phillips*, 185 AD2d 953, 954, where court held that this statutory section was complied with even though the dates on which the signatories signed the petition was filled in after the subscribing witness had signed the witness statement, but the subscribing witness had initialed the sheets after the dates were inserted). However, the addition of this information subsequent to the signature of the subscribing witness by another in the witness' absence is a nullity, rendering the witnessed signatures on the sheet invalid (*Matter of Sheldon v Sperber*, *supra*, at 789; *Matter of Liepshutz v Palmateer,* 65 NY2d 965, 966; *but see*, *Matter of Brown v Phillips*, *supra*).

An omission may be cured by an affidavit from the subscribing witness provided it was filed with the Board of Elections on or before the last day for filing the petition (*Matter of Esse v Chiavaroli*, 71 AD2d 1046). In *Etkin v. Thalmann* (287 AD2d 775 [3d Dep't 2001]),candidate's combined submissions substantially complied with relevant rules regarding inclusion of number of signatures in subscribing witness statement, and thus candidate's independent nominating petition was valid, although no number of signatures was indicated in statements as originally filed, where candidate, who was subscribing witness, inserted correct number of signatures in blank space of statements on photocopy of previously filed petition and then timely filed photocopy; procedure pursued by candidate eliminated possibility of fraud, and therefore integrity of electoral process was not jeopardized in any way. McKinney's Election Law § 6-134(9 to 11), 16-102.

Signatures which are witnessed by a subscribing witness who had on a previous date or on the same date signed the petition of another candidate for the same office must be invalidated (*Matter of Lavelle v Gonzalez*, 59 NY2d 670). However, a subscribing witness can also be a subscribing witness on another candidate's petition without invalidating either petition (*Matter of Gartner v Salerno*, 74 AD2d 958, 959).

The fact that a sheet was subscribed by two attesting witnesses does not invalidate the sheet (*Matter of Sole v Draffin*, 78 AD2d 573).

There is no requirement in the Election Law that a subscribing witness sign his name on the same day as the signatures are collected (*Matter of Velez v Nieves*, 164 AD2d 931, 932).

The striking from the petition the name of one of the candidates for the City Council after the petition had been signed and attested to by the subscribing witness, rendered the petition invalid as to the remaining candidates on the petition (*Matter of Rodriguez v Sunderland*, 176 AD2d 840).

Notary Public/Commissioner of Deeds

In lieu of the signed statement of a subscribing witness who must be an enrolled voter in the political district involved (*see,* p. 15, *infra*), signatures on a designating petition may be obtained and witnessed by a Notary Public or Commissioner of Deeds, neither of whom is required to be a registered voter or reside in the political district involved (Election Law § 6-132[3]). The following notary/ commissioner statement is to be included on the petition sheet.

"**2) NOTARY PUBLIC OR COMMISSIONER OF DEEDS**

On the dates above indicated before me personally came each of the voters whose signatures appear on this petition sheet containing (fill in number) _____signatures, who signed same in my presence and who, being by me duly sworn, each for himself, said that the foregoing statement made and subscribed by him, was true.

Date:_____

_____

(signature and official title of officer administering oath)"

(Election Law § 6-132[subd 3])

The notary/commissioner must list his official title or affix his notary stamp (*Matter of Burgess v D'Apice*, 112 AD2d 1059, 1060). The failure of the notary/commissioner to date the jurat of authentication on the petition invalidates the entire sheet (*Matter of Weiss v Mahoney*, 49 AD2d 796; *Matter of Sortino v Chiavaroli*, 59 AD2d 644). Of late, the courts have tended to view the formal requirements of the information provided by the notary/commissioner of deeds somewhat liberally. In *Matter of MacKay v Cochran* (264 AD2d 699), the court held that the identity of the notary was sufficient - that the failure to include the notary stamp did not invalidate the sheets of the petition. Moreover, where the signature of the notary appeared on the reverse side of each sheet rather than "appended to the bottom" as required by Election Law § 6-132(1), the court found that it constituted substantial compliance with the statute (*Matter of Bay v Santoianni*, 264 AD2d 488).

If it is established at a hearing either by testimony or by affidavits that a notary/commissioner failed to administer the oath in accordance with the statute, or failed to obtain a similar statement from the signer, the signature is invalid (*Matter of Donnelly v Dowd*, 12 NY2d 651, 652; *Matter of Helfand v Meisser*, 22 NY2d 762; *Matter of Napier v Salerno*, 74 AD2d 960; *Matter of Zunno v Fein*, 175 AD2d 935, 936; *Matter of Boyle v New York City Bd. of Elec.*, 185 AD2d 953; *Matter of Frazier v Leon*, 186 AD2d 99, 100; *Matter of Shoemaker v Longo*, 186 AD2d 979; *Matter of O'Dea v Bell*, 242 AD2d 349; *Leahy v O'Rourke,* 307 AD2d 1008 [court held that the designating petition of Denise K. O'Rourke did not contain a sufficient number of valid signatures where the unrefuted testimony established that the notary public did not administer an oath or affirmation to certain witnesses who were signing petitions in his presence]). Since a notary/ commissioner statement on the petition sheet enjoys a strong presumption of regularity

(*Matter of Ritterspoon v Sadowski*, 48 NY2d 618, 619; *Matter of Napier v Salerno*, *supra*; *Matter of Frazier v Leon*, *supra*; *Matter of O'Dea v Bell*, *supra*), the failure of a notary/commissioner to administer such oath invalidates only the signatures of those signers who testify they were not sworn, but would not invalidate the remaining signatures collected by that notary/commissioner (*Matter of Napier v Salerno*, *supra* [affidavits of 30 signatories insufficient to invalidate remaining signatures taken by that notary]; *Matter of Frazier v Leon*, *supra* [testimony of 38 signatories that they were not sworn insufficient to invalidate remaining 323 signatures taken by the same commissioner of deeds]; *Matter of O'Dea v Bell*, *supra* [the testimony that the Commissioner of Deeds failed to take the oath of 3 of 146 signatories insufficient to invalidate remaining 143 signatures]). Furthermore, the fact that a substantial number of notaries/commissioners failed to administer such oath is not grounds for invalidating the petition in its entirety (*Matter of LaMendola v Mahoney*, 49 AD2d 798; *Graber v Mahoney*, 143 AD2d 502). The failure to identify oneself as a notary or commissioner of deeds was fatal to those petition pages and the signatures thereon (*Matter of Fuentes v Lopez*, 264 AD2d 490).

In *Matter of Imre v Johnson* (54 AD3d 427 [2008]), the Second Department held that the Supreme Court properly invalidated 20 signatures witnessed by two notary publics where the record showed that neither had taken the oaths of these signatories nor obtained any statements from them as to the truth of the statements to which they subscribed their names (*see Matter of Helfand v Meisser*, 22 NY2d 762; *Matter of Donnelly v Dowd*, 12 NY2d 651; *Matter of Leahy v O'Rourke*, 307 AD2d 1008, 1009; *Matter of Merrill v Adler*, 253 AD2d 505; *Matter of Zunno v Fein*, 175 AD2d 935; *Matter of Andolfi v Rohl*, 83 AD2d 890; *see also* CPLR 2309[b]).

In *Matter of Fuchs v Itzkowitz* (120 AD3d 682 [2014], *lv denied*, 23 NY3d 1045 [2014]), the signatures that were witnessed by two notaries public were invalidated where the record demonstrated that neither notary had administered an oath to the signatories "in a form calculated to awaken the conscience and impress the mind of the person taking it in accordance with his [or her] religious or ethical beliefs" (*see* CPLR 2309[b]; *Matter of Bonner v Negron*, 87 AD3d 737, 738; *Matter of Liebler v Friedman,* 54 AD3d 697, 698), nor obtained " 'a statement from each of the signatories as to the truth of the matter to which they subscribed their names' " (*Matter of Bonner*, 87 AD3d at 738, *quoting Matter of Brown v Suffolk County Board of Elections*, 264 AD2d 489, 489). As such, the court held that the signatures to which the notaries attested failed to substantially comply with Election Law § 6–132(3).

In *Matter of Liebler v Friedman* (54 AD3d 697 [2008]), the Second Department found that the Supreme Court properly validated those signatures which were witnessed by a notary public who obtained a statement from each of the signatories affirming the truth of the matter to which they subscribed their names. Court found that the notary public had substantially complied with Election Law § 6-132(3) by administering an oath although signatories were not asked to swear (*see Brown v Suffolk County Bd. of Elections*, 264 AD2d 489; *Matter of Quintyne v Canary*, 104 AD2d 473).

In *Matter of Kutner v Nassau County Bd. of Elections* (65 AD3d 643 [2009]), the Second Department found that although no particular form of oath is required (*see* CPLR 2309[b]), when a notary public is witnessing signatures on an opportunity to ballot petition, which seeks the opportunity to write in the name of a candidate in an uncontested primary, an oath which asked the signatory to swear or affirm, among other things, that he or she designates "the named person(s) on the petition as candidate(s) for the nomination of the party for public office" was sufficient to render the signatures in substantial compliance with Election Law § 6-132(3) (*see Matter of Libeler v Friedman*, 54 AD3d 697,698 [2008]; *Matter of Brown v Suffolk County Bd. of Elections*, 264 AD2d 489 [1999]).

In *LeBron v Clyne* (65 AD3d 801 [2009]), the Appellate Division upheld the Supreme Court's invalidation of designating petitions which were witnessed by notary publics who were not enrolled in the same political party as the designated candidate where the parties stipulated that the signatories were not asked to swear or affirm the truthfulness of their statements by the notaries. Court held that "rather than burdening the process for candidates seeking the nomination of a political party in which they are not enrolled, the provision permitting circulation of petitions by notaries public or commissioners of deeds who are not party members is an additional avenue which expands access to the ballot, while safeguarding the integrity of the election process. Inasmuch as Election Law § 6-132 (3) is narrowly tailored to achieve this goal." The court held that there was no First Amendment violation.

In *Matter of Johannesen v Flynn* (76 AD3d 710 [2010]), the court held that even if the notary canvassers were compensated at a rate other than that set forth in Executive Law § 136 (1) and Public Officers Law § 67 (2), such error would not mandate the invalidation of the signatures witnessed by those notary canvassers. In so holding, the court stated that "[s]uch an error is unrelated to the genuineness of the signature or act witnessed, does not violate the Election Law's prohibition of per-signature payment (*see* Election Law § 17-122 [4]), and does not encourage the notary canvassers to forge signatures not in fact obtained."

In *Matter of MacKenzie v Ghartey* (131 AD3d 638 [2d Dep't 2015], *leave to appeal denied,* 25 NY3d 914 [2015]), the court held that the signatures on candidate's designating petition that were witnessed by notary who neither administered an oath to the signatories in a form calculated to awaken the conscience and impress the mind of the person taking it in accordance with his or her religious or ethical beliefs, nor obtained a statement from each of the signatories as to the truth of the matter to which they subscribed their names, were invalid, and thus candidate's designating petition failed to substantially comply with Election Law notary requirements (*see* CPLR 2309[b]; Election Law § 6-132[3]).

In *Matter of Berney v Bosworth* (87 AD3d 948 [2011]), a proceeding to invalidate candidate's designating petition for primary election for county legislator, Second Department held that trial court committed error in invalidating five signatures on designating petition on ground that date written by notary public was illegible, where evidence at hearing in trial court made it clear on which date the designating petition was notarized. Court stated that "[t]echnical defects in the notarization of a document should not invalidate the official acts of a notary public"(*Id* at 949).

In *Matter of Finn v Sherwood* (87 AD3d 1044 [2011]), the court held that notary substantially complied with Election Law § 6–132(3) where he testified that he introduced himself to each signatory, explained to them what they were signing, and administered to and took an oath from each signatory.

In *Matter of Harte v Faith Kaplan as Com'rs of Sullivan County Bd. of Elections* (87 AD3d 813 [2011]), Third Department held there is no provision in the Election Law that prohibits a candidate from notarizing signatures on his or her own designating petition (*see* Election Law § 6–132[3]).

In *Matter of Boniello v Niagara County Bd. of Elections* (131 AD3d 806 [4th Dep't 2015]), the Fourth Department held that the writing on the date line, consisting only of the numeral "9" was failure of notary to date jurat of authentication on one page of signatures on candidate's designating petition for position of city court judge on political party's primary ballot, and such writing thus was fatal to validity of those signatures (*see* Election Law § 6-132[2, 3]).

In order to constitute a valid oath, it is not necessary that the signatory raise his hand or be asked to solemnly swear or words to that effect; acknowledgment that the signature is his is sufficient (*see*, *People v Coles*, 141 Misc 2d 965, 974).

The Board of Elections may determine whether a Commissioner of Deeds was qualified to act as a subscribing witness since it is a ministerial act (*Matter of Sullivan v New York City Bd. of Elec.*, 224 AD2d 565).

In *Matter of Mertz v Bradshaw* (131 AD3d 794 [3d Dep't 2015]), signatures collected by a Commissioner of Deeds on a petition naming a candidate for public office in a primary election were rendered invalid where the Commissioner of Deeds' failed to administer oath or affirmation to signers as to the truth of their statements elicited prior to signing the petitions (*see* Election Law § 6-132[3], 16-102).

SWM - SUBSCRIBING WITNESS SIGNATURE MISSING

Failure of the subscribing witness to sign the subscribing witness statement invalidates that sheet (*see*, Election Law § 6-132, subd 2, which requires a signature, and *Matter of Alamo v Black*, 51 NY2d 716, 717, which holds that the statutory requirements of this section must be complied with without deviation).

SWNQ -SUBSCRIBING WITNESS NOT RESIDENT OF THE SAME POLITICAL UNIT IN WHICH THE PUBLIC OFFICE IS TO BE VOTED FOR

Until 2001, subdivision 2 of section 6-132 of the Election Law required that the subscribing witness to a designating petition be "a resident of the political subdivision in which the office or position is to be voted for" and the courts held this to be a substantive legislative requirement which may not be relaxed by the courts and, therefore, the signatures contained on a petition sheet witnessed by a non-resident of the political subdivision involved must be invalidated (*Ryan v Board of Elec.*, 53 NY2d 515, 516-517; *Matter of Cola v D'Apice*, 112 AD2d 1060; *Matter of Knapp v Dutchess County Bd. of Elec.*, 242 AD2d 347). However, the Court of Appeals held in *Matter of La Brake v Dukes* (96 NY2d 913, *affirming* 286 AD2d 554) that Election Law § 6-132(2)'s requirement that the subscribing witness be "a resident of the political subdivision in which the office or position is to be voted for" was unconstitutional on its face, as violation of First Amendment rights of political speech and association (U.S.C.A. Const. Amend. 1). In so holding, Court of Appeals adopted the reasoning of the United States Court of Appeals for the Second Circuit that the circulation of designating petitions on behalf of a candidate is "core political speech" (*Lerman v Board of Elections*, 232 F3d 135, 146-149, *cert denied* 533 U.S. 915) and that the residency requirement at issue constitutes a severe burden on such expression (*see also Matter of McGuire v Gamache*, 5 NY3d 444 (2005), *affirming* 22 AD3d 614 [subscribing witness who is otherwise qualified to circulate a nominating petition for independent candidates cannot be disqualified under Election Law § 6-140(1)(b) because the witness resides outside the political subdivision that corresponds to the office or position sought by the candidate (*citing Chou v New York State Bd. of Elections*, 332 F.Supp.2d 510 [U.S.Dist.Ct., E.D.N.Y.2004]; *Matter of Bray v Marsolais*, 21 AD3d 1143]).

SWNR - SUBSCRIBING WITNESS NOT REGISTERED

The subscribing witness must be a duly registered and enrolled voter in the same political party of the primary race therein involved (Election Law § 6-132, subd 2; *Homer v Board of Elections*, 71 AD2d 970, 971; *see also Hochhauser v Grinblat*, 307 AD2d 1007, *aff'g* Sup Ct Kings Cty Index No. 26694/03 [Levine, J]). Regardless of whether the ruling of the Board of Elections on a SWNR objection is AS or NAS, the burden is on the

candidate's side to furnish proof of registration or else the entire sheet must be invalidated (*cf.*, *Matter of Hinton v Howard*, 93 AD2d 897).

In *Maslow v Bd. of Elections* (No. 06-CV-3683, 2008 WL 2185370 [E.D.N.Y. May 23, 2008]), the subscribing witness plaintiffs commenced an action to challenge the rule of defendant the New York City Board of Elections that a candidate collecting signatures on a designating petition must utilize only subscribing witnesses who are registered members of that candidate's party, which is codified at Election Law § 6-132(2) (the "Party-Witness Rule"). The plaintiffs argued that the Party-Witness Rule was unconstitutional in that it violated the Constitution's Equal Protection rights and First Amendment rights to free speech and to associate for the advancement of political beliefs. The Federal District Court, applying the rationale set forth in *N.Y. State Bd. of Elections v Lopez Torres*, 552 US 196, 128 SCt. 791, 797 (2008) concerning competitiveness in the Democratic Party nominating process, rejected plaintiffs arguments and held that the Subscribing-Witness Rule is not unconstitutional, nor did it unconstitutionally deny the plaintiffs an opportunity to participate in the electoral process.

SW-NRES - SUBSCRIBING WITNESS IS NOT RESIDENT AT PLACE STATED

Subscribing Witness Residency

Election Law § 6–132(2) requires that a subscribing witness to a designating petition be a duly qualified voter of the State of New York and an enrolled voter of the same political party as the voters qualified to sign the petition. Election Law § 6–132(2) further requires that a subscribing witness set forth his or her current address in a signed Statement of Witness appended to the bottom of each sheet of a designating petition.

The subscribing witness must currently reside at the address listed in the subscribing witness statement; this issue can only be resolved at an evidentiary hearing before a judge (*Matter of Stark v Friedman*, 122 AD2d 909, 910).

The address set forth on the subscribing witness statement must be a legitimate address for election purposes. If, after a hearing, it is determined that this is not an address to which the subscribing witness has significant and continuing attachments, then those petition sheets signed by that subscribing witness are to be ruled invalid (*Matter of Isabella v Hotaling*, 207 AD2d 648, 650).

Matter of Bichotte v Adolphe (120 AD3d 674 [2d Dept 2014], *lv denied* 23 NY3d 908 [2014]) involved a challenge to signatures witnessed by two subscribing witnesses because the addresses listed for these witnesses on the statement of witness appended to the bottom of the petition sheets did not match the residence address listed on their buff cards as contained in the Board of Elections database. The Second Department held that the fact that the addresses listed for the subscribing witnesses in the Board's records did not match their residence addresses set forth in the signed Statements of Witness did not

establish that either witness was not a "duly qualified voter" under Election Law § 6–132(2), because the statute does not require that the residence address of the subscribing witness match the address on file for that witness with the relevant board of elections (*see* Election Law § 6–132[2]). In so holding, the court noted that an individual's status as a registered voter is unaffected by a change of address within the city or county in which he or she was registered (*see* Election Law §§ 5–208[1]; 5–210[5][a]; *Matter of Robelotto v Burch*, 242 AD2d 397, 398). Therefore, where the address of a subscribing witness, as set forth on the petition, does not match the address on file with the board of elections, that fact alone cannot provide a basis for invalidating the signatures at issue (*see Matter of Hudson v Board of Elections of City of N.Y.*, 207 AD2d 508, 509 [1994]; *see also Matter of Curley v Zacek,* 22 AD3d 954, 957 [2005]; *Matter of Logan-Charles v Rockland County Bd. of Elections*, 131 AD3d 635, 636 [2d Dep't 2015] (noting that Election Law § 6-132(2) requires that a subscribing witness list his or her current address on a designating petition sheet "so as to permit the rapid and efficient verification of signatures within the restrictive time periods imposed by the Election Law and thereby facilitate the discovery of fraud").

Matter of Carney v Ward (120 AD3d 995, 995-996 [2014]) involved a challenge to certain petition sheets witnessed by subscribing witness Olivencia. Petitioner argued that Olivencia did not reside within the state and, thus, was not a duly qualified voter eligible to serve as a subscribing witness. The Supreme Court found that petitioner failed to adduce credible evidence to support this argument and the Fourth Department affirmed noting that the Erie County Board of Elections records indicated that he had been registered to vote from the address listed in the subscribing witness statement on the petition sheets which constituted "presumptive evidence of his [residence] for voting purposes."

SWO - SUBSCRIBING WITNESS NAME OMITTED IN STATEMENT (PRINTED NAME, NOT SIGNATURE)

The form set forth in Election Law § 6-132, subdivision 2, provides a blank for the subscribing witness to state his name in the body of the subscribing witness statement. This section by its terms permits substantial compliance with the statutorily prescribed format (*Matter of Alamo v Black* (51 NY2d 716, 717). Since the name of the subscribing witness is otherwise contained in the statement by way of his signature, the omission of his name in the body of the statement should not invalidate the sheet.

SWS - SUBSCRIBING WITNESS ALSO SIGNATORY ON SAME PETITION SHEET

Where a person acts as a subscribing witness to his own signature, then only his signature on the signatory line is invalidated and not the entire sheet *(Matter of Hall v Heffernan*, 185 Misc 742, 744, *affd* 269 App Div 953, *affd* 295 NY 599).

T - TRACING OR GONE OVER IN INK

Tracing or "going over" does not result in invalidation where there are no inconsistencies in the overwriting (*Matter of McShane v Coveney*, 37 NY2d 789, 791 [in this case, "June" was written over the number "6" in the date and two different pens were used]; *Matter of Schroeder v Smith*, 21 AD3d 511 [tracing of total number of signatures on petition page, which did not change what was originally written, was not material alteration]).

TE - DATED EARLIER THAN

Election Law § 6-134, subdivision 4, provides that: "A signature made earlier than thirty-seven days before the last day to file designating petitions for the primary election shall not be counted."

A signature dated earlier than the first date authorized for signing petitions is invalid (*Matter of Berger v Acito*, 64 AD2d 949, 950; *Matter of Molloy v Scaringe*, 153 AD2d 782, 783-784).

TL - DATED LATER THAN

A signature dated later than the last date authorized for signing petitions is invalid (*cf.*, *Matter of Berger v Acito*, 64 AD2d 949, 950). However, where testimony shows that this was not done for any fraudulent purpose but that it was a mere error, it may be corrected nunc pro tunc and does not invalidate the signature (*Matter of Verity v Cristenfeld*, 70 Misc 2d 310, 312- 313).

WA - WRONG ADDRESS

If the address of the signatory or the subscribing witness is not the same as the address that appears on the computer reflecting the voter registration card, the signature (in the case of a signatory) or the entire sheet (in the case of a subscribing witness) must be ruled invalid (*Matter of Bray v* Marsolais, 21 AD3d 1143; *Matter of Berger v Acito*, 64 AD2d 949, 950; *Matter of Gleason v Longo*, 133 AD2d 289; *Matter of Ramos v Gomez*, 196 AD2d 620, 621; *Matter of Rosado v Board of Elec.*, 218 AD2d 584; *Matter of Hoare v Davis*, 207 AD2d 309 [listing a subscribing witness' address on designating petition as 11 E. 128th Street when it was actually 17 E. 128th Street is considered minor clerical error. The fact that this error was written on certain sheets containing 71 signatures does not invalidate those petition sheets]; *Matter of Hudson v Board of Elec.*, 207 AD2d 508 [failure of subscribing witness to submit a new buff card reflecting his change of address did not invalidate his sheets in the designating petition. The court found that the evidence

showed that he notified the Board of Elections of the City of New York of his change of address. Each of the subscribing witness' witness statements accurately reflected his current address]; *McManus v Relin*, 286 AD2d 855, *lv denied* 96 NY2d 718 [although SW provided wrong address on witness statement, evidence established that witness was in process of moving from one apartment to another when signatures were obtained and provided new address on some designating petitions]). Where an apartment building is alleged to have two different numbers in its address (e.g., 12-14 Clark Street) and only one of these numbers is on the person's voter registration card, then the address on the signatory line on the petition would have to list the same numbered address to be valid unless it is established to the referee's satisfaction that the building has both numbers in its address. The mere representation that this is so is insufficient unless both sides agree or there is other evidence (e.g., the voter registration card or the street directory).

Election Law equates residence with domicile. An individual may choose between two residences for election purpose so long as the individual has a legitimate, significant, and continuous attachment to the residence chosen. Here, the court found that the subscribing witness did not have such attachment and declared signatures witnessed, as well as his own signature, invalid (*Matter of Isabella v Hotaling*, 207 AD2d 648, 650).

In *Stoppenbach v Sweeney* (98 NY2d 431), the court invalidated 48 signatures on designating petition where the signers had entered an incorrect town or city of residence (*see* Election Law §§ 6-130). The court adhered to its precedent in *Matter of Frome v. Board of Elections of Nassau County*, 57 NY2d 741, 742- 743, that compliance with the statute is required, as it constitutes a matter of substance and not of form. In contrast, in *Matter of Curley v Zacek*, 22 AD3d 954, the town or city information contained in the "Witness Identification Information" portion of the subscribing witness statement incorrectly recited the town in which the subscribing witness resided. The record reflected that on each of the sheets in question, the subscribing witness, Ian Thomas, indicated that he resided at "764 Saratoga Road, Apt 20, Gansevoort, New York 12831." Thomas testified that he personally inserted that information on the relevant portion of the subscribing witness statement, and that he personally gathered and witnessed each of the signatures contained on the sheets. Thomas did not, however, fill in the town or city information contained within the witness identification information portion of that statement, and whoever did so incorrectly listed the relevant town or city as either "Gansevoort" or "Saratoga Springs." Noting that the hamlet of Gansevoort lies within the Town of Wilton, Saratoga County, the court held that the mere fact that the unidentified individual who thereafter completed the witness identification information on those sheets failed to appreciate that the hamlet of Gansevoort lies within the Town of Wilton was an inconsequential error that in no way warranted invalidation of the signatures witnessed by Thomas.

In *Matter of Berney v Bosworth* (87 AD3d 948 [2011]), a proceeding to invalidate candidate's designating petition, Second Department held that the trial court committed error in invalidating seven signatures on designating petition on ground that signers' town was listed on petition as "Town of N.H." instead of North Hempstead since the identity

of signers could be established despite abbreviation, because each signer was listed as residing in Great Neck, which was located in Town of North Hempstead (*see* Election Law §§ 6–134[5], 16–102).

In *Matter of Pisani v Kane* (87 AD3d 650 [2 Dept.,2011]), in the "Statement of Witness" section, a subscribing witness improperly listed as his current address a residence at which he no longer resided. The court invalidated the signatures on the sheets signed by the subscribing witness reasoning that the address provided by this subscribing witness could confuse, hinder, or delay any attempt to ascertain or to determine the identity, status, and address of that witness. In so holding, the court noted that "[t]he requirements that a subscribing witness disclose his or her current address and reside in the state protects the integrity of the nominating process by assuring that a subscribing witness is subject to subpoena in a proceeding challenging the petition" (*id*. at 651-652; *see* Election Law § 6–132[2]).

In *Matter of Vescera v Karp* (131 AD3d 1338 [4 Dept., 2015]), the conduct of a candidate, which included signing a lease for an apartment with an address she used in designating petition, and paying the deposit, reflected her intent that the address be her residence, and thus, under Election Law, witness statement using that address did not constitute a material false statement requiring invalidation of designating petition, despite candidate's inability to move into apartment for reasons beyond her control (Election Law § 6-132[2]).

In *Matter of Tischler v Hikind*, (98 AD3d 926 [2 Dept.,2012]), petitioner sought to invalidate a signature on a Conservative Party designating petition. It was undisputed that the signature in question was that of a registered and enrolled voter, residing in the relevant district, however, an incorrect address was placed next to the signature. The subscribing witness submitted an affidavit attesting that he had inserted the incorrect address for the signer. As the subscribing witness is permitted to insert any required information other than the signature, the Supreme Court ruled that the signature was valid inasmuch as it was that of a registered, enrolled Conservative party member residing in the relevant district. Notably, petitioners had failed to object to the signature on the grounds of Wrong Address. The Second Department reversed holding that Election Law §6-130 requires that the name of the signer and residence address must be set forth on the petition, and that the requirements of said statute must be strictly complied with and here the subscribing witness inserted an incorrect address, thus invalidating the signature.

In *Matter of Canary v New York State Bd. of Elections* (131 AD3d 792 [3d Dep't 2015]), the court held that the designating petition of a candidate for party position of delegate to judicial nominating convention was invalid, where a petition signer, in box provided for signer to designate town or city, wrote "village" rather than name of town in which he lived, which did not accurately set forth the town he resided in, and another signer's address was not accurate, constituted ***substantive***, rather than "***technical***" defects,

and did not warrant invocation of remedy of opportunity to ballot upon invalidation of petition (*see* Election Law § 6-130).

WNS - WRONG NUMBER OF SIGNATURES STATED

The prescribed form of the subscribing witness statement set forth in Election Law § 6-132, subdivision 2, provides that the total number of signatures on a petition sheet be stated in the subscribing witness statement (*Matter of Sheldon v Sperber*, 45 NY2d 788, 789).

Understatement

If the total number of signatures is understated in the subscribing witness statement (e.g., where the subscribing witness attests that the sheet contains 9 signatures when in fact there are 10 signatures on the sheet), the entire sheet is not invalidated solely because of such understatement. Instead, only the number so stated shall be counted and the signature(s) at the end of that petition sheet, starting with the last one on the sheet, to the extent of the excess, shall be deemed not to have been filed regardless of their otherwise validity or invalidity (Election Law § 6-134, subd 11).

In fact, where the witness statement of a designating petition sheet does not state the number of signatures witnessed, all signatures on the subject sheet are invalid (*Matter of Kepert v Tullo*, 88 AD3d 826, 827 [2d Dep't 2011];*see Matter of Cronk v Ferencsik*, 181 AD2d 754 [1992]; *Matter of Zunno v Fein*, 175 AD2d 935, 936 [1991]; *Matter of Esse v Chiavaroli*, 71 AD2d 1046, 1046 [1979]; *Matter of Bernhardt v Sachs*, 57 AD2d 598, 598-599 [1977]; *Matter of O'Brien v Meisser*, 14 AD2d 600, 600 [1961], *affd* 10 NY2d 799 [1961]).

Overstatement

Overstatements limit signatures to the number of signatures actually filed (*see Ramos v Lawson*, 298 AD2d 610 [2 Dept. 2002]). In *Ramos*, the subscribing witness set forth that there were 20 signatures on a certain Sheet to a designating petition, although one of the signatures had been crossed out and initialed. The Second Department, *citing Matter of Kogan v D'Angelo*, 54 NY2d 781, 783, held that the remaining 19 signatures on the Sheet could not be invalidated where the evidence before the court did not establish gross irregularity or fraudulent practice with respect to the crossed-out signature (*see also Matter of Brown v Sachs,* 57 AD2d 583 [2d Dept] [The court held that overstatement by one of number of signatures in witness statements (15 instead of 14) does not invalidate the petition where there was no allegation of fraud and there was substantial compliance with the provisions of the Election Law]; *Krueger v Richards,* 93 AD2d 898 [held that Special Term improperly invalidated all of the signatures on sheet 20 of the designating petition where the subscribing witness had inadvertently attested that the sheet contained

15 signatures when, in fact, it contained only 14 signatures, one having been stricken by a properly initialed interlineation”]).

In *Matter of Rancourt v Magill* (87 AD3d 656 [2011]), the court held that the overstatement of signature totals on candidate's petition to appear on primary election ballot for public office was not such a gross irregularity as to warrant invalidation where witnesses attested to 308 signatures, but there were actually 292, which was still more than twice as many signatures necessary for candidate's name to be placed upon ballot, and there were no allegations of fraud. The court noted that the overstatement was mainly due to fact that the pre-printed petition pages were missing the signature line number six (*see also Matter of Rancourt v Kennedy,* 87 AD3d 654 [2 Dept.,2011]).

WSW - WRONG SUBSCRIBING WITNESS SIGNATURE

Where the signature of the subscribing witness is a different name than the printed name in the subscribing witness statement, the entire sheet is invalid.

The subscribing witness statement may only be signed by the person who actually witnessed the signing of the petition by the signatories on the sheet (Election Law § 6-132, subd 2). If the statement is not subscribed by that witness, the entire sheet is invalid; however, this can only be determined at an evidentiary hearing (*see*, *Matter of Bloom v Power*, 21 Misc 2d 885, 889-890, *affd* 9 AD2d 626, *affd* 6 NY2d 1001).

COVER SHEETS

Pursuant to Election Law § 6-134 (2):

> Sheets of a designating petition shall be delivered to the board of elections in the manner prescribed by regulations that shall be promulgated by the state board of elections, provided, however, that the sheets of any volume of a petition shall be numbered. Such regulations shall be no more restrictive than is reasonably necessary for the processing of such petitions by the board of elections. Such regulations shall be binding on the boards of election in each county and in the city of New York. When a determination is made that a designating petition does not comply with such regulations, the candidate shall have three business days from the date of such determination to cure the violation.

The rules adopted by the Board of Elections in the City related to the filing of petitions are as follows:

C. COVER SHEET

C1. A cover sheet must be filed for all petitions containing ten or more sheets in one volume or consisting of more than one volume. The cover sheet SHALL BE FILED SEPARATELY from the petition volume(s). It shall not be attached to any petition volume.

C2. A cover sheet shall accurately and correctly state the following information:

a) the office, the political party's name and district number (where appropriate) for which each designation and nomination is being made;

b) the name and complete residence address of each candidate;

c) the total number of volumes comprising each petition;

d) an identification of the volumes comprising the petition; when multiple volumes are filed, a single cover sheet may be filed consistent with the Regulations of the New York State Board of Elections, 9 NYCRR §6215.2 (a) (2), with the volumes identified by listing the identification number of each volume, either individually or cumulatively;

e) a statement that the petition contains the number, or in excess of the number, of valid signatures, required by the Election Law;

f) a place for the optional designation of a contact person to be notified to correct noncompliance with the Rules (a candidate may be designated as the contact person);

g) when more than one candidate is designated or nominated on the same petition volumes, the candidates may be grouped together on a cover sheet so that the number of volumes comprising the petition need not be repeated;

h) a cover sheet may consist of more than one page;

I) the information contained on the cover sheet must correctly match the information printed on the petition sheet for each candidate.

C3. The names and addresses of candidates for county committee may be set forth by election district of candidacy on a schedule to be annexed to the cover sheet. Such cover sheet/schedule for the position of county committee shall include all the information required by Rule C2, and in addition, a list by election district of the identification numbers or the volume number, and page number where such signatures appear for each election district.

C4. An amended cover sheet must clearly identify the original cover sheet which it is amending by attaching a copy of the original cover sheet which it is amending or attaching a copy of the notice of noncompliance. The amended cover sheet must contain all the information required of a cover sheet. Amended cover sheets must contain the following authentication: "This is to certify that I am authorized to file this amended cover sheet." Said authentication must be signed and dated and shall include the printed name, address, and may include the office telephone number and fax number of said candidate or representative.

C5. An amended cover sheet must be filed on or before the last day to file the petition unless the amended cover sheet is filed to cure a failure to comply with the Rules after the Board has made a determination of non-compliance with these Rules.

C6. The Board shall post conspicuously at the front counter at the place of petition filing during the petition circulation and filing period a sign with the following notices:

> A COVER SHEET IS TO BE FILED SEPARATELY from any petition volume; a cover sheet is not to be attached to any petition volume; All Sheets of each Petition Volume are to be SECURELY FASTENED; All sheets of each Petition Volume are to be SEQUENTIALLY NUMBERED.

D. DETERMINATIONS; CURES PURSUANT TO §6-134 (2) OF THE ELECTION LAW

D1. Within two (2) business days of the receipt of a petition, the Board will review the petition to determine whether the petition complies with the cover sheet and binding requirements of these Rules. Such review shall be limited to matters apparent on the face of the cover sheet, the binding of each petition volume, and the number of petition volumes. Such review and such determination shall be without prejudice to the Board's determination of objections and specifications of objections filed pursuant to the provisions of the Election Law and these Rules.

D2. The Board, pursuant to the provisions of Section 3-212(5) of the Election Law authorizes that a Commissioners' Committee composed of one Commissioner from each of the political parties represented on the Board, designated by the President and Secretary of the Board, who may make such designation by telephone, to make determinations pursuant to this Rule. Notice of the time and place of such meetings shall be posted at the Executive Office and on the Board's website. In the event that the Board determines that a petition does not comply with these Rules, the Board shall forthwith notify the candidate or candidates named on the petition of its determination and the reasons therefore.

D3. Notification of a determination of noncompliance shall be given by written notice by depositing such notice on the day of such determination with an overnight delivery service, for overnight delivery, on the next business day after the determination to the candidate or contact person, if designated, at the address stated on the petition. If the candidate files with the Board written authorization, signed by the candidate, for the Board to give notification by facsimile transmission, then the Board may send such notice by facsimile transmission to the number set forth on the signed written authorization and/or by overnight delivery, on the day of the determination.

D4. A candidate may, within three (3) business days of the date of a determination that the petition does not comply with these Rules, cure the violation of these Rules. Cover sheet deficiencies may be corrected by the filing of an amended cover sheet and/or as directed in the notice of non-compliance. Such cure or correction must be received by the Board no later than the third business day following such determination. Such cure or correction will be reviewed by the Board to determine if it is in compliance with the Election Law and these rules.

D5. If the petition is one for an opportunity to ballot, then the first named person on the committee to receive notices or applicant(s) for the identification number or

numbers under which the petition was filed shall be deemed to be the "candidate" for purposes of these Rules.

D6. Upon expiration of the (3) business days set forth in Rule D4, the Board or a Commissioners Committee established pursuant to Rule D2, shall review the filed attempted cure. If the Board determines that an attempt to cure a defect does not comply with these Rules or the Election Law, the Board shall notify the candidate or candidates named on the petition/cover sheet of its determination and the reasons therefore. The Board shall give written notice of such determination and the fact that the candidate(s) will not appear on the ballot by depositing such notice on the day of such determination with an overnight delivery service, for overnight delivery, on the next business day after the determination to the candidate or contact person, if so designated, at the address stated on the petition, cover sheet and/or amended cover sheet, as applicable.

Election Law § 6-134 (10) provides that:

> The provisions of this section shall be liberally construed, not inconsistent with substantial compliance thereto with the prevention of fraud (emphasis supplied).

Based upon this provision, **substantial compliance** with the cover sheet requirements of the rules and regulations of the New York State Board of Elections and the New York City Board of Elections, and **not strict compliance**, is now the guiding principle (*see Matter of Hayon v Greenfield*, 109 AD3d 920, 921 [2013]; *Matter of Krance v Chiaramonte*, 87 AD3d 669 [2011] *lv denied* 17 NY3d 706 [2011]; *Matter of Magelaner v Park*, 32 AD3d 487 [2006]; *Matter of Pearse v New York City Bd. of Elections*, 10 AD3d 461 [2004]; *Matter of Siems v Lite*, 307 AD2d 1016 [2003]; *Matter of Most v Walker*, 297 AD2d 356, 357 [2002]; *Matter of Ardesia v Seidel*, 242 AD2d 343 [1997])

However, "[w]hile substantial compliance is acceptable as to details of form, there must be strict compliance with statutory commands as to matters of prescribed content" (*Matter of Hutson v Bass*, 54 NY2d 772, 774; *Matter of Engert v McNab*, 60 NY2d 607, 608; *Matter of Wilson v McClean*, 175 AD2d 935; *Matter of Fintz v Poveromo*, 197 AD2d 944, 945). Consequently, under these principles, the failure to include on the cover sheet of the designating petition the information set forth in Election Law § 6-134, subdivision 2 was a matter of content, not form, and the omission of any of this prescribed information was fatal and invalidated the petition (*Matter of Hutson v Bass*, *supra*, at 773; *Matter of Smith v Mahoney*, 60 NY2d 596, 597; *Matter of Golata v Mahoney*, 60 NY2d 597, 598; *Matter of Engert v McNab, supra*, at 608; *Matter of Fintz v Poveromo*, *supra*). Further

court rulings with respect to the cover sheet requirements of Election Law § 6-134, subdivision 2 follow:

<u>Cover Sheet Errors-Ruled to be in Substantial Compliance</u>

1. The title of the public office or party position for which the candidate is running must be included on a cover sheet (*Matter of Smith v Mahoney*, 60 NY2d 596, 597). Since a public office can be described in a variety of ways a rule has developed which allows a description of the office which is sufficiently informative so as to preclude any reasonable probability of confusing or deceiving the signers (*Matter of Liepshutz v Palmateer*, 112 AD2d 1101, *affd* 65 NY2d 965).

2. The names and residence addresses of the candidates must be set forth on the cover sheet (*Matter of Hutson v Bass*, 54 NY2d 772, 773-774 [1981]; *Regan v Starkweather*, 186 AD2d 980 [1992]; *Matter of Brace v Scaringe*, 96 AD2d 1012 [1983]; *see Toporek v Beckwith*, 32 AD3d 684 [2006][stating that even if a cover sheet contained an incorrect address, such a disparity is inconsequential and does not invalidate the designating petition]). This includes members of the County Committee despite a rule promulgated by the Board of Elections of the City of New York which states that such information need not be included on petitions for party office where groups are to be elected (*Matter of Brosnan v Black*, 104 AD2d 469, 470-471 [1984], *affd* 63 NY2d 692 [1984]).

3. Where the cover sheet lists several candidates, the presence of irregularities as to some candidates does not invalidate the petition as to those candidates who are correctly listed (*Matter of Amalfitano v Sadowski*, 51 NY2d 719 [1980]; *Matter of Quintayne v Canary*, 104 AD2d 473, 474 [1984]).

4. A candidate has the right to file an additional or corrected cover sheet provided that it is timely filed (*Matter of Montgomery v Jefferson*, 122 AD2d 907 [1986]).

5. There is no requirement that the cover sheet for male and female members of the County Committee list the candidate's gender (*Matter of Lansner v Board of Elec.*, 143 AD2d 236, 237 [1988]).

6. Election Law § 6-134, subdivision 2 did not require that a cover sheet separately identify or segregate the number of in- and out-of-district signatures, or the number of valid signatures (*Matter of Love v Board of Elec.*, 74 NY2d 799, 801[1989]; *Matter of Rubin v Friedman*, 230 AD2d 875 [1996]; *Matter of Hargett v Green*, 186 AD2d 803, 804 [1992]; *Matter of Garson v Board of Elec.*, 153 AD2d 718, 719 [1989]).

7. Where designating petitions from different political parties were inadvertently stapled together, Supreme Court, Westchester County held that in the interest of justice, the sheets of the designating petitions could be separated, amended cover sheets attached and the petitions filed (*Matter of Fusco v Westchester County Bd of Election*, NYLJ, August 27, 2001 at 31, col 4).

8. In *Pearse v New York City Bd. of Elections* (10 AD3d 461 [2004]) the Second Department held that the petitioner's amended cover sheet was in substantial compliance with the Election Law and the rules promulgated by the Board of Elections where the petitioner was neither notified of the Board's determination nor afforded the opportunity to cure the purported defect, as required by the Rules of the Board of Elections of the City of New York, D2 and E1 (*see* 9 NYCRR 6215.7[b]).

9. In *Matter of Muhammed v Board of Elections in the City of New York* (109 AD3d 424, 424-425 [2013]), the First Department held that it was error for the Board of Elections to remove the candidate from the ballot based upon a purported cover sheet error where the Board failed to provide notice of the specific defect and failed to give her the requisite three days to cure the defect that she was given notice of (see *Matter of Pearse*, 10 AD3d at 461; *Matter of Krance v Chiaramonte*, 87 AD3d 669, 669 [2011]). Here, the Board issued two notices of non-compliance related to cover sheet defects, one which it was stipulated was a nullity because it was undated. The other notice stated that a single cover sheet must be filed with all volumes and correct identification numbers listed and must specify the position being sought. Petitioner timely filed an amended cover sheet fixing these defects. However the Board determined that she would not appear on the ballot because petitioner failed to state the name of the political party she was affiliated with. However, the court found that this defect was the subject of the undated defect letter that had been deemed a nullity and, thus, petitioner never received notice of it nor was she given the requisite three days to cure.

10. In *Matter of Flacks v Board of Elections in the City of N.Y.* (109 AD3d 423, 423-424 [2013]), the First Department reversed the Supreme Court's decision upholding the Board of Elections determination that there was fatal cover sheet error where, due to a scrivener's error, three petition volume numbers were misidentified on an amended cover sheet. The First Department noted that without even considering the misidentified volumes the candidate had submitted five other correctly identified volumes containing five times more that the amount of signatures required. The court further found that the scrivener's error was not a fatal defect and did not in any way defraud or mislead the public and noted that the Board's own ledger correctly identified the petition volumes which had been correctly identified on the original cover sheet.

11. In *Matter of Hayon v Greenfield* (109 AD3d 920 [2d Dep't 2013]), the court held that the amended cover sheet of the designating petition, as it related to candidate Hayon, substantially complied with the requirements of the Election Law and the regulations of the New York State Board of Elections, despite Hayon's listing of two volumes on his amended cover sheet which were not filed as part of his designating petition. In so holding, the court found that Hayon was never actually notified of, and given the opportunity to cure, the purported "extra volumes" defect of the cover sheet, as required by the Rules of the Board (*see* 9 NYCRR 6215.7[b]). The court therefore granted that branch of Hayon's petition which was to validate his designating petition.

Cover Sheet Errors Ruled a Fatal Defect

Failure to File Any Cover Sheet

In *Matter of Armwood v McCloy* (109 AD3d 558 [2d Dep't 2013]), a candidate filed a multi volume petition with the Nassau County Board of Elections but failed to file any cover sheet. The Board notified him of this failure and within the three days he filed an "amended" cover sheet attached to photocopies of his petition sheets. The Supreme Court denied a petition seeking to invalidate the petition sheets due to the failure to submit an initial cover sheet. The Second Department reversed holding that "the candidate's initial failure to file a cover sheet was not a mere technical defect subject to cure pursuant to Election Law § 6-134 (2) and that the failure to file any cover sheet with a multi volume petition frustrates the ability to file general objections in a timely manner as required under the Election Law and undermines the procedural safeguards to prevent fraud and confusion.

Omission of Mandatory Information

Pursuant to the Board of Elections rules, a cover sheet must state that: "The petition contains the number, or in excess of the number, of valid signatures required by the Election Law" (*see Matter of Balberg v Board of Elections in the City of N.Y.*, (109 AD3d 910, 911 [2013]) in which the Second Department upheld the Supreme Court's determination that a petition should not be validated where the cover sheet accompanying a multi-candidate petition failed to include the required check mark next to each candidate's name indicating that the petitions contained the requisite number of signatures. The cover sheet further stated that the absence of a check mark "shall signify that petitions for the candidates set forth in the specified election district are not hereby filed and should be disregarded as void." The Board of Elections thus disregarded the petitions and did not accept them for filing. The Second Department held that this matter did not involve a mere technical defect subject to cure pursuant to Election Law § 6-134.

CANDIDATE INFORMATION

In General

A candidate must be a duly enrolled member of the party whose nomination he seeks (Election Law § 6-120, subd l). Enrollment in a party is based on valid registration. Voter registration in New York is automatically cancelled when a person registers to vote in another state (*Matter of Gorycki v Greenberg*, 122 AD2d 913, 914-915).

Upon conviction of a felony, an incumbent's public office (here, New York State Senator) became vacant by operation of Public Officers Law § 30(l)(e) and he is precluded from seeking election to the unexpired term of the same office (*Matter of Alamo v Strohm*, 74 NY2d 801, 802).

The designating petition must contain the name of the candidate, the public office or party position sought and the candidate's place of residence (Election Law § 6-132, subd 1). The omission of any of this information will invalidate the petition (*Matter of Bayne v Sachs*, 57 AD2d 582, *affd* 41 NY2d 1042; *Matter of Dixler v Orange County Bd. of Elec.*, 112 AD2d 1075; *Matter of Winn v Washington County Bd. of Elec.*, 196 AD2d 674). However, an error in the required information will not necessarily invalidate the petition if the information in the rest of the petition is sufficiently informative so as to preclude any reasonable probability of confusing or deceiving the signers or the Board of Elections (*Matter of Carson v Lomenzo*, 18 NY2d 263, 267 [candidate's name]; *Matter of Donnelly v McNab*, 83 AD2d 896 [office]; *Matter of Martin v Tutunjian*, 89 AD2d 1034 [office]; *Matter of Ferris v Sadowski*, 45 NY2d 815, 817 [address]). The cases contained on the following pages are illustrative of this principle.

The Name of the Candidate

1. A petition erroneously listed Edwin J. Deleski, the Democratic candidate for member of the Assembly as "Edward Deleski." Since the error in the first name appeared to be typographical and those who signed were not deceived about the candidate's identity, there being no other Edward Deleski from Otsego County, the petition was not invalidated (*Matter of Carson v Lomenzo*, 18 NY2d 263; *see also*, *Matter of Harfmann v Sachs*, 138 AD2d 551 [both last name misspelled, Adolf instead of Adolff, and address incorrect, held de minimis]).

2. A designating petition is not invalid because a candidate uses a familiar form of a proper first name instead of the proper name used on his voter registration form. There was sufficient evidence to prove that candidate "Jerry" Dalton was one and the same person as registered voter "Gerald F. Dalton" of the same address (*Matter of Gardner v Mahoney*, 123 AD2d 520; *see also*, *Harfmann v Sachs*, 138 AD2d 551; *Matter of Gumbs v Board of Elec.*, 143 AD2d 235).

In *Matter of Abinanti v Duffy* (120 AD3d 668 [2014]), the Second Department held that the designating petition which did not include the full name of the candidate, Michael K. Duffy, but instead included the name "Mike Duffy" was valid. Court held that, under

the circumstances of this case, the petitioner did not meet his burden of showing that the use of the name "Mike Duffy" was intended to mislead or confuse potential signatories, or did, in fact, mislead or tend to lead to misidentification or confusion on the part of potential signatories as to the candidate's identity. The petition to invalidate the designating petition was therefore denied.

3. A candidate was listed on a petition under her married name, Jacqueline Foster Herring, but registered under her maiden name, Jacqueline Foster, and had previously been elected to the same position under her maiden name. The petition was not invalidated (*Matter of Tricario v Power*, 19 AD2d 781, *affd* 13 NY2d 886).

4. The designation of a candidate as "Mrs." followed by her husband's name (i.e., Mrs. Henry Becker) is invalid, absent proof that the candidate is the same person as the one shown on the register of voters (*Matter of Lane v Meisser*, 24 AD2d 720, 721).

5. The striking from the petition the name of one of the candidates for the City Council after the petition had been signed and attested to by the subscribing witness, rendered the petition invalid as to the remaining candidates on the petition (*Matter of Rodriguez v Sunderland*, 176 AD2d 840).

6. The failure of the candidate to use the suffix "Sr." after her name in order to distinguish her from her daughter with the same first and last names does not invalidate her designating petition since she generally does not use or sign her name with "Sr." and there was no showing of any intent on her part to mislead the signatories (*Matter of Petersen v Board of Elec.*, 218 AD2d 776). Likewise, in *Reagon v LeJeune* (307 AD2d 1015), the Second Department held that the failure to include "Jr." in the candidate's name presented no basis to invalidate the designating petition where there was no showing of any intention on the part of the candidate to confuse, and no showing that any of the voters were confused as to the candidate's identity.

7. In *Matter of Mannarino v Goodbee* (109 AD3d 683 [2013]), the court found that the misspelling of the candidates last name as "Mannaurino" on some petition sheets and on another sheet as "Mannano," did not demonstrate an intention to mislead or confuse signatories regarding the identity or political affiliation of the candidate.

<u>Candidate Name Change on Designating Petition</u>

In *Matter of Eisenberg v Strasser* (307 AD2d 1053, *affd* 100 NY2d 590), the objectors sought a declaration that petitioner-candidate's designating petition was invalid due to his improper registration where the petitioner, a Russian emigrant, claimed to have changed his name from "Anatoly Eyzenberg," to "Tony Eisenberg,"which is the name that appeared on his designating petition. The name change was undertaken just prior to the filing of the designating petition. The Second Department held that there was no reason

to disqualify the candidate for using the name "Tony Eisenberg," rather than "Anatoly Eyzenberg,"on his designating petition. The designating petition, however, was disqualified on residency grounds (*see also Innamorato v Friscia*, 2007 NY Misc LEXIS 457[Richmond Supreme Court]).

Public Office or Party Position

1. The failure of the candidates to list the correct Assembly District from which they were seeking the party positions of County Committee invalidated the petition (*Matter of Roland v Toepfer*, 64 AD2d 963).

2. The petitioner sought to be a candidate for the office of district court judge from the second district for which a vacancy existed, but the petition incorrectly specified the "first" district for which no vacancy existed. The petition was found invalid (*Matter of Kiley v Coveney*, 77 AD2d 941, *affd* 51 NY2d 721).

3. A candidate for the Assembly must list the position sought as "Member of State Assembly, 147th District." Merely listing "147 Assembly District" encompassed not only the public office of Assemblyperson, but also various party positions, and could cause confusion (*Matter of Denn v Mahoney*, 64 AD2d 1007, 1008; see *Hayes v New York State Bd. of Elections*, 32 AD3d 660 [2006][Third Department invalidated a designating petition which described an office sought by candidate only as "127th Assembly District". In so holding, the court found that the office description was not sufficiently informative to satisfy the statutory requirement that designating petition state public office or party position sought by candidate, especially where both member of assembly and delegate to judicial convention were selected from such district. (*see* Election Law § 6-124]).

4. The failure to specify the name of the county from which an Assembly seat was sought was held not to confuse or deceive the voters, and thus the petition was not invalidated (*Matter of Caffery v Lawley*, 21 AD2d 749, *affd* 14 NY2d 768).

5. The failure to specify the name of the city of a city council candidate did not invalidate the petition since the address of the candidate revealed which city was involved (*Matter of Barrett v Scaringe*, 112 AD2d 1095, 1097, *affd* 65 NY2d 946; *Matter of Praete v Van Wart*, 47 Misc 2d 898, 900). Likewise, the failure on the part of the SW to include the town or city and county in which he/she resides in the *Witness Identification* section is insufficient, in and of itself, to invalidate the petition, particularly where the complete address appears elsewhere on the same page of the petition (*Matter of Berkowitz v Harrington*, 307 AD2d 1002).

6. There is no reason to invalidate the petition of one candidate because of failure to have the office he is seeking listed precisely next to his name on top of each page of the petition, where the petition was a joint petition for the same office and this office was clearly typed opposite other candidate's name on top of petition (*Matter of Belak v Rossi*, 96 AD2d 1011).

7. The failure to specify the name of the county from which candidates for county committee sought office was held not to create confusion where the specific election districts and the town (or, in New York City, the Assembly District) in which the positions were located were set forth (*Matter of Johnson v Westall*, 208 Misc 360, 362).

8. The failure to identify the position of Judge of the Civil Court as a countywide seat (as distinguished from a municipal court district seat) does not invalidate the petition, although the court did indicate that the failure to identify the position as a municipal district seat may produce a different result (*Matter of Korman v Strohm*, 145 Misc 2d 34, 35-36, *affd* 153 AD2d 539).

9. The certificate of nomination for a Civil Court judge position in Queens, nominated by the Independence Party, described the office as follows: "Judge of the Civil Court of the City of N.Y., Assigned Vacancy Number 8, Queens County." This description failed to include the fact that the position was for the "Fifth Municipal Court" in Queens. The Appellate Division, Second Department did not invalidate the certificate because of the omission, and said instead that "[t]here was no impairment of the ability of the board of Elections to ascertain the correct vacancy in the office to which the certificate of nomination pertained" (*Matter of Plunkett v Flynn*, 220 AD2d 671 [the result would likely be different if this omission occurred on a designating petition.]).

10. The description of the office as "Council Member" instead of councilman does not invalidate the petition (*Matter of Plunkett v Mahoney*, 176 AD2d 1191).

11. An error in a certificate of nomination which misidentified the position to be filled by the Democratic Party candidate as Town Justice rather than Councilman rendered that certificate invalid. The subsequent untimeliness in filing the corrected certificate of nomination was a fatal defect (Election Law § 1-106, subd 2; *Matter of Hicks v Egan*, 166 AD2d 735).

12. Candidates running for Democratic Party positions of Male and Female Assembly District Leaders from the 46th Assembly District in Kings County had their designating petition invalidated because it failed to set forth the correct name of the party positions they were seeking — State Committee Member (*Matter of Packer v Board of Elec.*, 207 AD2d 513, 514).

13. The description of the position in the designating petition naming candidate for party position of delegate to judicial district convention was specific enough in the absence of the word "convention" (Election Law § 16-102; *Matter of Lozano v Scaringe*, 253 AD2d 404).

14. In *Moskaluk v Simpkins* (54 AD3d 533 [2008], lv. denied 11 NY 3d 701 [2008]), petitioners filed a designating petition nominating them as the Independence Party candidates for the position of delegate and alternate delegate, respectively, to the Independence Party Judicial District Convention, Third Judicial District, from the 108th Assembly District and, further, as the Independence Party candidates for the position of member of the Independence Party State Committee from the 108th Assembly District with the Columbia County Board of Elections. However, because this particular Assembly District was not wholly contained within a single county, the designating petition seeking to nominate a candidate from that district as a delegate to the Independence Party Judicial Convention had to be filed with the State Board of Elections (Election Law § 6-144). Thus, the entire petition was invalidated by the County Board of Elections. Petitioners then sought to validate that portion of the petition pertaining to the Independence Party State Committee. The Third Department found that the Supreme Court properly dismissed petitioners' application to validate solely that portion as the candidacies should not have been combined in the first instance and the petition was thus invalid.

15. In *Matter of Ighile v Board of Elections in City of New York* (66 AD3d 899 [2009]), the Independent nominating petition was invalidated where the candidate described the public office sought as "Public Office City Council," but failed to specify the council district to which the candidate was seeking nomination. Although the candidate listed his address on the petition, he was required to live in particular district at time of election, not at time of petitioning and, therefore, providing his address did not preclude reasonable probability of confusing or deceiving signers, voters, or city's elections board, given fact that there were 16 districts within the county (*see* Election Law §§ 6-140,16-102; Public Officers Law § 3[1]).

16. In *Matter of Hicks v Walsh* (76 AD3d 773 [2010]), court held that the description "New York State Assembly," which appeared directly below the heading "Public Office" on each sheet of individual's designating petition, sufficiently informed the signers and any other interested parties that the individual was seeking election as a member of that body, such that there was no reasonable probability that the absence of specific language, that the office sought was "Member of Assembly," would have caused confusion, so as to require invalidating the petition under election law (*see also Odett v Walsh,* 76 AD3d 771 [2010]; Election Law § 6–132[1]).

17. In *Matter of Thompson v Cohn* (77 AD3d 1016 [2010]), the court found that the Supreme Court properly invalidated an independent nominating petition that failed to nominate a candidate for Lieutenant Governor who could be elected "jointly" with the person running for Governor citing NY Constitution, article IV, § 1, which provides that the Governor and Lieutenant Governor "shall be chosen jointly" every fourth year, "by the casting by each voter of a single vote applicable to both offices." Further, the "persons having the highest number of votes cast jointly for them for governor and lieutenant-governor respectively shall be elected" (NY Const, art IV, § 1]).

18. In *Matter of Sears v Kimmel* (76 AD3d 1113 [2010]), the court upheld the invalidation of a designating petition in which respondent described the office he was seeking as "114th New York State Assembly District." The court held that "[w]here, as here, more than one public office or party position is elected from a particular geographic territory, this Court has held that a geographic description alone "is not sufficiently informative . . . so as to preclude any reasonable probability of confusing or deceiving the signers, voters or board of elections" (*Matter of Hayes v New York State Bd. of Elections*, 32 AD3d at 661 [internal quotation marks and citations omitted]; *see Matter of Bliss v Nobles*, 297 AD2d at 458; *Matter of Dunlea v New York State Bd. of Elections*, 275 AD2d at 590-591).

19. In *Ward v Cruz*, (36 Misc3d, 1236 A [2012]), petitioner sought to invalidate designating petitions purporting to designate respondents Cruz and Lightfoot as candidate for Member of the NYS Assembly. Petitioner argued that Lightfoot's designating petition should be invalidated because it only identified a geographic area and not the name of the public office he was seeking. His petitions stated "New York State Assembly 137th District". The court found that this description was sufficiently informative to the signers to let them know that he was running for election as a member of the NYS Assembly (*see Matter of Hicks*, 76 AD3d 773, 774 [2010].

20. In *Aprea v New York State Bd. of Elections*, (103 AD3d 1059, 1060 [2013]) the court declined to render a declaratory judgment in favor of two petitioners who filed designating petitions for the position of "Committeeman" but informed their respective county boards of elections that they were not seeking a position on the town or county committee, and never stated that they sought a position on the state committee. The court held that petitioners had failed to demonstrate that the law creates a separate position of "Committeeman."

21. In *Matter of Cohn v Suffolk County Bd. of Elections* 109 AD3d 538, 538-539 [2013]) involving the misidentification of the political party name as "Working Family Party" rather than the correct name of "Working Families Party" on the candidate's petitions, the Second Department held that a petition should not be invalidated where "there is no proof of any intention on the part of the candidate or of those who have

solicited signatures on his [or her] behalf to mislead or confuse, and no evidence that the inaccuracy did or would lead or tend to lead to misidentification or confusion on the part of those invited to sign the petition" (*Matter of Ferris v Sadowski*, 45 NY2d 815, 817 [1978]; see *Matter of Shahzad v Montesano*, 98 AD3d 625 [2012]; *Matter of Maloney v Ulster County Bd. of Elections*, 21 AD3d 692, 693[2005].

22. *Matter of Mannarino v Goodbee* (109 AD3d 683 [2013]),involved challenges to the description of the political office being sought, the identification of the political party to which the political office relates and the spelling of petitioner's name on various sheets of the designating petition. Petitioner was running for the office of Member of the City of Albany Common Council from the First Ward. The challenged petition sheets listed the title of the office as either "Member Common Council 1 Ward City of Albany," "Member Common Council Ward 1 City of Albany," "Member of Common Council 1 Ward City of Albany NY" or "Member Common Council 1 Ward City of Albany NY" and even "Council, Council." However the court found that the sheets contained other necessary identifying information so as to avoid confusion. Similarly, the court found that the term "Democratic" which appeared on some sheets as "Demoratic," "Demotatic" and "Demacatic,." as well as the misspelling of the candidates last name as "Mannaurino" and on another as "Mannano," did not demonstrate an intention to mislead or confuse signatories regarding the identity or political affiliation of the candidate.

23. In *Matter of Notholt v Nassau County Bd. of Elections* (131 AD3d 641, 643 [2d Dep't 2015]), the court held that the Supreme Court properly found that the failure to specify the Town or City for the office being sought rendered the description of the public office inadequate where petitioners filed designating petitions for the party positions of Members of the Nassau County Democratic Committee from certain Election Districts within the 20th Assembly District and the geographical boundaries of the 20th Assembly District include Election Districts within both the Town of Hempstead and the City of Long Beach. The numbering of those Election Districts is duplicated such that the 20th Assembly District contains Election Districts numbered 1 through 24 that are situated in the Town of Hempstead and another set of Election Districts also numbered 1 through 24 that are situated in the City of Long Beach. However, the court found that the Supreme Court erred in denying so much of the petition as sought to validate the designating petitions related to Election Districts within the 20th Assembly District which were not duplicated (*see also Matter of Otero-Rodriguez v Nassau County Bd. of Elections*, 131 AD3d 644, 644-645 [2d Dep't 2015]).

Term of Office

If two or more offices having the same title are to be filled for different terms, the terms of office must be included as part of the title of the office (*see* Election Law § 6-134[1]).

In *Matter of Williams v Westchester County Bd. of Elections* (65 AD3d 653 [2009]), the Clerk of the City of Mount Vernon certified that four Council seats were to be filled at the upcoming primary election: three full-term seats expiring on December 31, 2013, and one unexpired-term seat expiring on December 31, 2011. The Second Department held that the trial court properly denied the designating petition for candidates for city council election, where the designating petition omitted terms of office for which each candidate was running (*see* Election Law § 6-134[1]). In so holding, the court stated as follows:

> "we are mindful that voters and signers alike may take into account whether a candidate seeks a full term or the balance of an unexpired term (*see Matter of Weiner v McCord*, 264 AD2d 864, 865-866; *Nocca v Moczydlowski*, 154 AD2d 636, 636), and 'where two identical offices are to be filled but for different terms-a nominating petition which fails to state for which one of the two offices the candidate has been nominated, is fatally defective'" (*Matter of King v McNab*, 14 AD2d 808, 809, *affd*. 10 NY2d 887; *see Matter of Bullock v Van Wart*, 25 NY2d 812, 814, *affg*. 32 AD2d 793, 794).

In *Matter of Lapp v Smolinski* (131 AD3d 805, 806 [4th Dep't 2015]), which involved a candidate seeking to be placed on the ballot for the Republican and Democratic party as a candidate for one of two offices which had different terms. The court upheld the Supreme Court's determination that the designating petitions were "fatally defective"' inasmuch as they omitted the terms of office for which respondent sought to run (*see Matter of Williams v Westchester County Bd. of Elections*, 65 AD3d 653, 654). Election Law § 6-134 (1) provides in relevant part that, "[i]f two or more offices having the same title are to be filled for different terms, the terms of office shall be included as part of the title of the office."

Residence: Errors in Address

1. Where the former address of a candidate who was well known in the community was erroneously listed on his petition for renomination and there was no chance of misidentification or confusion, the petition was not invalidated. There was no proof that

the candidate or those who solicited the signatures intended to mislead or confuse the signers and no evidence that the inaccuracy tended to lead to misidentification or confusion on the part of those signing the petition (*Matter of Ferris v Sadowski*, 45 NY2d 815, 817).

2. An obvious typographical error in the house number (1390 instead of 1392) did not invalidate the petition where the candidate had a unique name, was well known in the community and lived only one house away from the address erroneously given (*Matter of Rosenbaum v Power*, 43 Misc 2d 377, *affd* 21 AD2d 700; *see also*, *Matter of Orlando v Power*, 24 Misc 2d 39).

3. Where a thoroughfare was incorrectly referred to as a "Street" where in fact it was an "Avenue," a petition was not invalidated since there was no possibility that such an address existed (*Matter of McKenna v Power*, 24 Misc 2d 65, 66; *Matter of Pericak v Hooper*, 207 AD2d 1003).

4. The alteration of a single letter in the candidate's typed street address on the petition (Village Lane Road changed to read Village Line Road) was deemed inconsequential since it did not confuse or mislead the signers of a petition, particularly where no such street existed in the district (*Matter of Bachety v Canary*, 112 AD2d 1058).

5. Failure to include the candidate's address on each page of the petition invalidated the entire petition (*Winn v Washington County Bd. of Elec.*, 196 AD2d 674).

6. Error in candidate's designating petition was not sufficiently confusing or misleading to warrant invalidation of petition, although geographic area was described in petition as "15th District" rather than "15th Ward," where petition correctly identified office sought as "Member of Common Council, City of Albany," 15th Ward in Albany formed no part of 15th Legislative District, candidate's address appeared at top of each page of petition, and office sought was sole election currently taking place out of 15th Ward. Court held that, under such circumstances, the mis-description of the geographical area was not likely to cause confusion among the petition signers, the voters or the Albany County Board of Elections (*Coluccio v Fox*, 286 AD2d 552).

7. In *Matter of Maloney v Ulster County Bd. of Elections* (21 AD3d 692) the court held that where the candidate had in error listed his prior address on designating petition, but there was no showing of intent by candidate to mislead or confuse signatories as to his or her identity, nor showing that error would or did tend to mislead or confuse anyone, the designating petition should not be invalidated. Court further held that fact that respondent did not file corrective affidavit after being notified of error was of no consequence since "determinative issue" was whether designating petition was fatally flawed at time it was filed.

8. In *Matter of Shahzad v Montesano* (98 AD3d 625 [2012]), the Second Department declined to invalidate a designating petition although it was undisputed by the parties that the designating petition contained the wrong address of the candidate for the New York State Assembly and said address was located in another Assembly District. The court found that "there was no proof of any intention on the part of the candidate or of those who have solicited signatures on his [or her] behalf to mislead or confuse, and no evidence that the inaccuracy did or would lead or tend to lead to misidentification or confusion on the part of those invited to sign the petition."

Residence: Determination of Candidate's "True Residence"

Election Law § 1-104, subdivision 22, defines "residence" as "that place where a person maintains a fixed, permanent and principal home and to which he, wherever temporarily located, always intends to return" (*Matter of Umland v Board of Elec.*, 143 AD2d 240, 241; *Matter of Geller v Lasher*, 196 AD2d 613, 614).

For most public offices or party positions, the candidate must be a resident of the political subdivision from which he seeks election (NY Const, art III, § 7; Public Officers Law §§ 3, subd 1, and 30, subd [1][d]; *Matter of Riccio v Cairo*, 207 AD2d 545; *but see*, *Matter of Catapano v Goldstein*, 45 NY2d 810, which holds that a Judge of the Civil Court of the City of New York does not have to be a resident of the county from which she was elected; she need only be a New York City resident; *Matter of Corbin v Goldstein*, 64 AD2d 935, 936, which holds that a delegate to a judicial convention, although elected from an assembly district, need only reside in the judicial district).

The question as to when the residency requirement must be satisfied, whether it be as of the date the designating petition is filed with the Board of Elections (*see e.g.*, *Reid v Richards*, 89 AD2d 939) or at some other time, depends upon the applicable statute or constitutional provision (*Matter of Weidman v Starkweather*, 80 NY2d 955, 956). In *Weidman*, which involved a candidate for the Monroe County Legislature, the Court of Appeals said (at 956):

> "Appellant filed a designating petition with the Monroe County Board of Elections as the Democratic candidate for the Monroe County Legislature representing the 8th District. Respondent objected to appellant's petition on the grounds that appellant did not reside in the 8th District at the time the designating petition was filed. He commenced an invalidation proceeding against appellant and the Monroe County Board of Elections, which Supreme Court, Monroe County, dismissed. The

> Appellate Division reversed, granted the petition and invalidated the designating petition. We granted leave to appeal to address the question whether candidates for county legislator must reside in the county in which they seek election at the time they file a designating petition.
>
> Three provisions affect the decision: Public Officers Law § 3(l), Election Law § 6-122 and Monroe County Charter § C2-3(A). Significantly, none of these provisions expressly mandates that a candidate for public office be a resident of the election unit at the time the designating petition is filed.
>
> Election Law § 6-122 simply prohibits a person from being designated or nominated for public office who cannot meet the statutory or constitutional qualifications at the 'commencement of the term of such office.' Public Officers Law § 3(l) adds that candidates satisfy residency requirements as of the time they are elected. Finally, Monroe County Charter § C2-3(A) requires that candidates for County Legislature reside in the County and legislative district in which they seek election at least 30 days prior to the election.
>
> The interplay of these provisions fixes the earliest time for residency at 30 days prior to the election, not as of the time of filing the designating petition. While there might be policy reasons for the latter view, no provision of law so dictates. It is not for the courts but for the Legislature to impose such requirements."

In *Matter of Clark v McCoy*, 196 AD2d 607, the Appellate Division held that a candidate for New York City Council need be a resident of the councilmanic district at the time of the [general] election and there is no requirement that the candidate be a resident of the district at the time of the filing of the petition.

In *Matter of Marino v Board of Elections of Westchester County*, 199 AD2d 505, the Appellate Division, Second Department, held that a candidate for the Yonkers City Council from the Second City Council District was required to have established an actual residence within that District at the time he was elected to the office, i.e., as of Election Day, November 2, 1993, the court citing Public Officers Law § 3(1) and Yonkers City Charter § C4-3. Since the candidate failed to establish by clear and convincing evidence that he was residing within the district as of that date, the court declared that he is ineligible to assume the office.

With respect to members of the New York State Legislature (i.e., State Senators and Members of the Assembly), the New York State Constitution provides, in section 7, article 3 thereof that:

> "No person shall serve as a member of the legislature unless he or she . . . has been a resident . . . of the assembly or senate district for the twelve months immediately preceding his or her election [i.e., by Election Day in November]" (*see*, *Matter of Grieco v Bader*, 43 Misc 2d 245, 246, *affd* 21 AD2d 751; *see also*, *Matter of Thompson v Hayduk*, 45 AD2d 955, 956, *affd* 34 NY2d 980; *Matter of Berman v Weinstein*, 64 AD2d 940, 941-942; *Matter of Markowitz v Gumbs*, 122 AD2d 906, 907; *Matter of Carey v Foster*, 164 AD2d 930; *Matter of Riccio v Cairo*, 207 AD2d 545).

As an exception, this same constitutional provision provides that in a reapportionment year, the requirement of 12 months' residency in the senate or assembly district is not applicable and the candidate need only be a resident of the county for 12 months prior to Election Day (*Matter of Kantrowitz v Goldin*, 47 Misc 2d 658, 659-660, *affd* 24 AD2d 735, *affd* 16 NY2d 841).

The senatorial or assemblyperson candidate must also be a resident of the State of New York for five (5) years preceding the election (NY Const, art III, § 7; *Matter of Carey v Foster*, 164 AD2d 930).

Residency Requirement and Board of Elections' Power

Matter of Scavo v Albany County Bd. of Elections (131 AD3d 796 [3d Dep't 2015] *lv to app den* 25 NY3d 914 [2015]) involved a petitioner who filed a designating petition with the Albany County Board of Elections seeking election to the 9th Legislative District. On the designating petition, petitioner listed an address that was not located within the 9th Legislative District, and he later conceded at the hearing that he had moved out of the 9th Legislative District and into the 8th Legislative District about 11 months earlier. The Board notified petitioner that the designating petition was insufficient due to his failure to comply with the residency requirement contained in Albany County Charter § 202. Petitioner challenged this determination and the court upheld the Board's determination finding that a residency requirement is a matter that "appear[s] upon the face of the petition" and, as such, concerns a ministerial objection within the power of respondent to review (*Schwartz v Heffernan*, 304 NY 474, 480 [1952]; *see Matter of Wicksel v Cohen*, 262 NY 446, 448-449 [1933]; *Matter of Adamczyk v Mohr*, 87 AD3d 833, 835 [2011], *lv denied* 17 NY3d 706 [2011]; *compare Matter of Conti v Clyne*, 120 AD3d 884, 886 [2014], *lv denied* 23 NY3d 908 [2014]; *Matter of Scaturro v Maloney*, 76 AD3d 688, 690 [2010]).

Candidate's True Residence

More often, the residence is challenged by the objector on the ground that it is not the candidate's "true residence," i.e., it is not a legitimate or legal residence within the Election Law definition of "residence" (*Matter of Ferguson v McNab*, 95 AD2d 916, *affd* 60 NY2d 598).

The latter challenge generally arises when a candidate maintains more than one residence. The governing principle in this regard is that a "candidate having two residences may choose the one to which she has legitimate, significant and continuing attachments as her residence for purposes of the Election Law" (*Matter of Hosley v Curry*, 85 NY2d 447; *Matter of Ferguson v McNab*, 60 NY2d 598, 600; *Matter of Gallagher v Dinkins*, 41 AD2d 946, 947, *affd* 32 NY2d 839; *Matter of Berman v Weinstein*, 64 AD2d 940, 941; *Matter of Umland v Board of Elec.*, 143 AD2d 240, 241; *Matter of Geller v Lasher*, 196 AD2d 613, 614). Differentiating between a voting address and domicile residence is apparently not the criterion to be used, so long as the candidate has not newly acquired a voting address in a district in which he has no previous ties other than a desire to run for office from that district. If a person has a second residence in an area where he has roots with significant and legitimate attachments, either familial or through community commitment, has been politically active, has used it as his voting address, received mail and occasionally lived at the residence, he may select that residence as his voting and campaign address (*Matter of Umland v Board of Elec.*, *supra*; *Matter of Bramwell v Garguilo*, 103 Misc 2d 476, 478).

"An existing domicile, whether of origin or selection, continues until a new one is acquired, and a party, as petitioner here, alleging a change in domicile has the burden to prove the change by clear and convincing evidence" (*Matter of Hosley v Curry*, 85 NY2d 447, 451). In *Hosley*, the Court of Appeals concluded that petitioner failed to satisfy the heightened burden by presenting "clear and convincing evidence of respondent's present, definite and honest purpose to abandon the Hamilton County domicile [where he continuously voted since 1978, where his mother lives and he frequently visits and stays overnight, and where he has maintained his driver's license, car registration, notary public commission, and Office of Court Administration registration] and make the Warren County residence [where he actually lives with his wife and daughter who attends school there, where he carries on the normal daily activities of home life, and where he receives all his bills and correspondence] his fixed and permanent home (*supra*, at 452, *revg* 207 AD2d 116).

For a change in domicile to be accomplished, there must be a union of residence in fact and an absolute and fixed intention to abandon the former locality and make the new locality a fixed and permanent home. The party challenging domicile has the burden of proof by clear and convincing evidence (*Matter of Willis v Suffolk County Board of Elections*, 54 AD3d 436 [2008], *lv denied* 11 NY3d 701 [2008]); *see Matter of Rosenthal v Kelly*, 275 AD2d 429 [2000]).

The question of residence is one of fact to be decided in each case at a hearing. The initial burden is upon the petitioner-objector to show that the candidate's address set forth in the petition does not qualify as his true residence.

(a) <u>Held not candidate's residence</u>

In the following cases, the court found that the candidate did not have "legitimate, significant and continuing" attachments with the residence listed on the designating petition.

1. The only significant contact which the Assembly candidate retained with her former residence in Brooklyn, from which she sought election, was her voter registration. During the prior twelve-month period she leased an apartment in Manhattan, was listed in the Manhattan telephone directory, and swore that Manhattan was her permanent address on her application to the Bar and her notary application. She applied for credit cards at this address and received most of her mail (with the exception of alumnae announcements) at the Manhattan address. The act of voting is but one factor which must be demonstrated to show significant contacts (*Matter of Berman v Weinstein*, 64 AD2d 940).

2. The candidate for Community School Board rented an apartment but did not turn on the utilities until after the petition to invalidate was commenced; did not receive any mail at the address of the apartment except for communications from the Board of Elections, did not vote from this residence in the previous general election although she claimed to have been living in this apartment at that time, and slept there only sporadically (*Matter of Gregory v Board of Elec.*, 93 AD2d 894, *affd* 59 NY2d 668).

3. The candidate for Congress never actually resided at the address listed on his designating petition (*Matter of Brigandi v Barasch*, 144 AD2d 177, 178).

4. *See Matter of Ramos v Gomez* (196 AD2d 620) for a list of factors as to why the candidate, who also served as a subscribing witness, did not reside at the address indicated.

5. *See Camardi v Sinawski* (297 AD2d 357 [2d Dept 2002] [Candidate for political party's state committee for assembly district was not a resident of the county containing the assembly district as required under statute governing election of state committee members, where in addition to other indications that he still resided in another county, his driver's license and attorney registration still listed his address as in the other county, he did not change his voter registration to the assembly district county until October 12, 2001, and admitted to voting on November 7, 2000, from the other county while residing in the assembly district county]; *see* McKinney's Election Law §§ 1-104 (22), 2-102 (3).

6. *See Matter of Eisenberg v Strasser* (Sup Ct, Kings County, index No. 26884/03 [Dabiri, J.], *affd* [for the reasons stated by Justice Dabiri with respect to the candidate's residency for voter registration and enrollment requirements] 307 AD2d 1053 [2d Dept 2003], *affd* 100 NY2d 590 [2003]), the court held that the candidate for the public office of Member of the New York City Council from the 47th Council District did not actually reside at the address which he listed as his residence on the designating petition and which he had used for purposes of voter registration. The evidence adduced at trial demonstrated that the address in question was a two-story building with a commercial certificate of occupancy in which the candidate operated a retail meat store on the first floor, and that the candidate had filed plans with the Building Department to renovate the second floor space for commercial use only. Moreover, the candidate's drivers license, car leases, federal tax returns, property deeds, and utility bills demonstrated that another address different than the one listed on the designating petition was the candidate's permanent and principal residence in Kings County.

7. *See Robinson v Sharpe*, 32 AD3d 488 [2d Dept 2006] (Second Department reversed trial court's determination that candidate Wellington Sharpe resided in the 58th Assembly District for the requisite time period prior to election). The Appellate Division held that the fact that Sharpe transferred the deed to a house he had owned on Clarendon

Road, which was in the 58th Assembly District, to his children and cancelled his phone service there, coupled with the fact that he moved into a house that he owned, outside of the 58th Assembly District, at 1400 Schenectady Avenue, where he maintains gas, electric, and telephone service and became president of the Schenectady Avenue Block Association established that his residence was at Schenectady Avenue and not Clarendon Road. Accordingly, the court found that Sharpe did not reside in the 58th Assembly District for the requisite time period.

8. In *Matter of Willis v Suffolk County Bd. of Elections* (54 AD3d 436 [2008], lv denied 11 NY 3d 701 [2008]), the Second Department found that the petitioner showed, by clear and convincing evidence, that respondent-candidate had changed his domicile from New York to Illinois. In reaching this conclusion, the court considered the following factors: Respondent did not own property in New York at the time of the move, nor was he renting a residence. He had not voted in New York since 1992 and there was no evidence that he visited the Shoreham, New York residence frequently while living with his family in Illinois, or that he kept any personal items there. Additionally, there was no proof that respondent received mail at his parents' house in Shoreham, or that he lived in that house for any period of time while living with his family in Illinois, such that he maintained actual and simultaneous use of both his parents' house and his own house in Illinois (cf. *Matter of Gallagher v Dinkins*, 41 AD2d 946 *affd* 32 NY2d 839). Furthermore, respondent changed his attorney registration, filed with the Office of Court Administration, to list his address in Illinois, and never changed it to a New York address (*see Matter of Camardi v Sinawski*, 297 AD2d 357).

(b) <u>Held candidate's true residence</u>

In the following cases the court found that the address listed on the designating petition qualified as the candidate's "true residence" for purposes of the Election Law:

1. A candidate for district leader was a *bona fide* resident of the address set forth in the designating petition until after the last date to file petitions. Shortly after filing, the candidate married and moved to a new address within the assembly district, but in a different election district. The court stated that the signatories were not deceived and that, in any event, he intended to maintain residences at both premises (*Matter of Tricario v Power*, 13 NY2d 836).

2. The candidate maintained two residences, one of which was located in the district from which she sought an assembly seat. The candidate had voted from this address for the past 15 years and was politically active in the community. The fact that her husband and son lived at a different address was not conclusive in determining her residence. A candidate may determine which among several residences shall be her residence for purposes of the Election Law, provided that the selection is based upon

objective conduct and the evidence establishes that she intended and actually did maintain a legal residence in the geographic area from which she sought office (*Matter of Gladwin v Power*, 21 AD2d 665, *affd* 14 NY2d 771).

3. A candidate for borough-wide office owned a home in that borough in which he resided with his wife and six children, and which address he used on his employment records, bank accounts, license as a notary, driver's license, and his children's school records. He registered to vote from his childhood home located in the same borough, which home is now occupied by his father and brother. He received some mail at this address and lived there in the summer when his family was away. The court held that the record was clear that both residences were places where the candidate maintained significant and legitimate attachments, and it was for him to decide which address was to be his voting and campaign address (*Matter of Gallagher v Dinkins*, 41 AD2d 946, *affd* 32 NY2d 839; *see also*, *Matter of Laspesa v Mahoney*, 42 AD2d 1027, *affd* 33 NY2d 720).

4. A candidate for district leader sublet a bedroom in the apartment of another person and used this address for voting purposes and on his petition (*Matter of Sam v Simons*, 89 AD2d 977).

5. The candidate for County Committee from Huntington maintained two residences, one in Huntington and the other in Middle Island. She received mail at both residences. The Middle Island home was maintained because of its proximity to her job. She returned to her Huntington address twice a week, was registered as a voter from that address, and voted as a resident of that address in prior elections. The court held that although she had legitimate and significant ties with both residences, it was evident that she had chosen the Huntington residence from which she was a registered voter as her residence for purposes of the Election Law. "It is clear that [the candidate's] attachment is legitimate and was not contrived for the purpose of running for office in Huntington" (*Matter of Ferguson v McNab*, 96 AD2d 916, *affd* 60 NY2d 598).

6. Mr. Garfield Bobo testified that he is unmarried and that he maintains two residences, 385 Decatur Street and 77 Sullivan Place. The Sullivan Place apartment is located in a more affluent neighborhood and Mr. Bobo states that he finds it more suitable for entertaining acquaintances or guests. He uses it solely for social contacts and for receiving personal mail, while the Decatur address is the place that he always intended to be his official address. The Decatur address appears on his driver's license and his income tax returns. It is his mailing address for his political or other official mail. Of salient importance is that his voting address for at least five years has been listed as 385 Decatur Street. Mr. Bobo asserts he rents one room at the Decatur Street address from Mr. Wellington Sam, who resides in the apartment with Mrs. Sam and their son. For many years, Mr. Bobo has been involved politically and in community activities in the district in which the Decatur Street address is located.

In the same case, another candidate, Donela Jackson, testified that since February 1979 she has resided with her brother in a second-floor apartment at 98 Patchen Avenue. There is no gas service at that address, but Ms. Jackson states that she has electric heaters in her apartment. The house is being repaired at the present time with a gas boiler installation and other plumbing work in process. The two apartments on the second floor were recently painted. The main floor will house the offices of the Bedford-Stuyvesant Improvement Association, a civic group that purchased the building in 1978 from its then owner, Ms. Jackson, treasurer of the association, at the cost of $1. There is no telephone in Ms. Jackson's apartment. It is candidate Jackson's testimony that during the alterations of the house, she resides at times in her mother's home, 64 East 92nd Street and, on some occasions, particularly when her mother was out of the State, Ms. Jackson stayed at her mother's home to keep watch over the property, but that it has always been her intention to keep the Patchen Avenue address, from which she votes, as her legal address. Ms. Jackson, too, has strong roots in the community in which the Patchen Avenue property is located. She has been politically active there for a number of years and has been active in community activities (*Matter of Bramwell v Gargiulo*, 103 Misc 2d 476, 477-478).

7. Petitioners allege intermittent use by candidate and his wife of apartment is insufficient to make them residents of district — Election Law § 1-104(22) defines residence as "that place where a person maintains a fixed, permanent and principal home and to which he [or she], wherever temporarily located, always intends to return"; candidate who has two residences may choose one to which he or she has legitimate, significant and continuing attachments as his or her residence for purposes of Election Law; candidate and his wife have sufficiently demonstrated that they have maintained residence within meaning of Election Law; they have intermittently lived at that address since 1981, have that address listed on their tax returns, pension documents, driver's licenses, and insurance policies, and are listed under that address in telephone directory; they have sufficiently satisfied residence requirements of Election Law (*Matter of Geller v Lasher*, 196 AD2d 613).

8. Petitioner sought to invalidate the designating petition of the incumbent District Attorney Charles J. Hynes, for the public office of Kings County District Attorney, claiming Hynes did not reside in Brooklyn, as required by law, but rather had moved full-time to his Atlantic Ocean property in Queens County. The court dismissed the petition, noting that petitioner came "dangerously close to filing a wholly frivolous petition." Witnesses testified that Mr. Hynes and his wife attended Mass nearly every morning in a Brooklyn church. Also, detectives assigned to the security detail for Mr. Hynes testified that they often escorted him to his Brooklyn residence. A large number of personal records, including bank records, leases and tax returns also supported dismissal of the petition (*Williams v. Cilmi*, 2001 WL 1491142, 2001 N.Y. Slip Op. 40282(U),[Supreme Kings County]).

9.In *Diamondstone v Connor,* 32 AD3d 482 [2 Dept 2006] *app den* 7 NY3d 707[2006] the Second Department affirmed trial court's determination that the candidate resided at the address listed as his residence on his designating petitions (200 Clinton Street) for the 12 months preceding the November 7, 2006 General Election. The court found that the candidate and his life partner had moved to and was physically present at the Clinton Street address on November 1, 2005, with "the intent to remain for a time" and that subsequent actions taken by candidate after that date manifested his intent to change his domicile from the 216 Dean Street address to the apartment at 200 Clinton Street. The trial court considered evidence, *inter alia,* that: candidate and life partner had both changed their voter registration to the Clinton Street address on November 8, 2005 and voted in that election by affidavit ballot; the main land line telephone service was transferred from the Dean Street address to Clinton Street in mid to late November 2005; candidate and life partner sent out approximately 1500 personalized greeting cards in December 2005, which all contained a change of address notification listing the Clinton Street apartment as their new address; candidate hired interior decorator in December 2005 for the Clinton Street apartment; and in January 2006, candidate opened a bank account listing 200 Clinton as his current address, and changed his address on file with a political organization to reflect same.

10. In *Matter of Stavisky v Koo* (54 AD3d 432 [2008]), the Second Department found that respondent candidate was a resident of the senatorial district for which he was a candidate for the requisite time period (12 months preceding the general election). During the hearing, the candidate testified that he did not own the residence at 133-24 41st Avenue (which was located in the 16th Senatorial District), but began residing there in January 2007. The candidate and his wife testified that they spent approximately four to five days per week at the 133-24 41st Avenue address, and only spent their weekends in Port Washington in order to maintain that home. Evidence adduced at the hearing demonstrated that the candidate paid more than $ 24,000 in New York City resident income taxes for tax year 2007, that his driver's license designated his residence as 133-24 41st Avenue since August 2007, and that he has been registered to vote at that residence since at least May 2007.

11. In *Matter of Willkie v Delaware County Bd. of Elections* (55 AD3d 1088, 1090 [2008]), the Third Department found that petitioners demonstrated significant and genuine contacts with Bovina such that their choice of Bovina as their residence for voting purposes should have been honored. Six of the eight petitioners established that they had a home in Bovina and, although they lived and worked in New York City during the week, they spent most weekends and vacations in Bovina. Further, petitioners demonstrated that their ties to Bovina were not a sham for voting purposes, but genuine, long-term contacts created out of a true desire to become part of the Bovina community. For example, Wilkie had owned his home in Bovina since 1985 and listed his Bovina address on two separate bank accounts. Hendricks (and his life partner) purchased their home in Bovina in 1994 and had been registered to vote in Bovina since 1996. Bond-Shapiro maintained a home in Bovina Center, having lived with her boyfriend in his family home since 2002. The

Sprys purchased their Bovina home in 1991 and had been registered to vote in Bovina since that time. Lastly, Robbins purchased his home in Bovina in 1995, listed said address on two separate bank accounts, and had been registered to vote in Bovina since 1996.

12. In *Matter of Weiss v Teachout* (120 AD3d 701 [2014]), the petitioner brought a proceeding seeking to invalidate a petition designating a candidate in primary election for party's nomination for public office of governor. The Second Department upheld Supreme Court's decision (Kings County, Walker, J.), which denied the petition and dismissed the proceeding. The court found that the petitioner failed to establish by clear and convincing evidence that candidate Teachout did not meet the 5 year residency requirements established by Article IV, section 2, of the New York Constitution. The evidence adduced at trial established that Teachout was physically present in New York State with the intent to remain there for a time in that she had continuously maintained a domicile and residence in New York State during the relevant 5 year period, notwithstanding weekend trips, summer vacations and brief sojourns teaching courses in other states. She had also filed New York State income tax returns during the relevant time frame, and had also voted in New York State.

13. In *Matter of Maas v Gaebel* (129 AD3d 178 [2015]), the residency within the meaning of the Election Law was established here for Lake Huntington voters where the cooperative community in which their homes were located was seasonal, operating from mid-May to mid-October of each year, but each of the Lake Huntington voters had owned his or her cooperative home for nearly a decade, and the homes remained accessible year-round. Although the Lake Huntington voters owned or occupied another residence outside of Sullivan County, they each returned to their Lake Huntington homes every year for extended stays from the spring through the fall. Further, each payed proportionate share of local property and school taxes, as well as water and sewer fees. While none of the Lake Huntington voters had ever obtained employment within the Town, enrolled children in the Town's schools or utilized their Lake Huntington address on his or her driver's license, vehicle registrations or tax returns, and all were previously registered to vote outside of Sullivan County, the court found that the evidence presented at the hearing established that their ties to the Town were not a sham for voting purposes, but genuine, long-term contacts created out of a true desire to become part of the Lake Huntington community.

14. In *Matter of Jones v Blake* (120 AD3d 415 [2014]), the petitioner sought to establish that respondent did not satisfy the residency requirements for the public office of Member of the Assembly pursuant to Article 3, section 7 of the New York State Constitution (*see* Const. Art. 3, § 7; Election Law § 1–104[22]). Despite contrary evidence before the court, the candidate's testimony as to his residential intent and the temporary nature of his employment and living arrangements outside New York supported the special referee's determination that the candidate satisfied the residency requirements for the public office of Member of the Assembly. First Department specifically noted that

where there is conflicting evidence, the resolution of the conflict lies within the province of the finder of fact, and should not be disturbed on appeal unless it is obvious that the conclusion could not be reached under any fair interpretation of the evidence.

FRAUD

Introduction

Fraudulent practices may so permeate a designating petition as to invalidate the petition in its entirety even though it contains a sufficient number of valid signatures (*Matter of Aronson v Power*, 22 NY2d 759, 760; *Matter of Lerner v Power*, 22 NY2d 767; *Matter of Mercorella v Benza*, 37 NY2d 792).

Proof

In order to establish that the petition should be invalidated, the petitioner must demonstrate by clear and convincing evidence at a hearing that the designating petition is permeated with fraud (*Matter of Thomas v Simon*, 89 AD2d 952, *affd* 57 NY2d 744; *Matter of Del Pellegrino v Giuliani*, 153 AD2d 724, 725; *Matter of McCrudden v Wilson*, 153 AD2d 726; *Matter of Kelly v Villa*, 176 AD2d 992; *Matter of Miller v Gumbs*, 207 AD2d 512). Mere allegations of fraud without supporting proof are insufficient to invalidate a petition. Where the testimony is vague and uncertain or the charges are founded on mere suspicion, the court will not invalidate a petition. The type and degree of proof required to invalidate an entire petition because of fraud is illustrated by the following cases:

1. Twenty-four persons allegedly collected 920 signatures on one winter night. The court held that in the absence of proof, a mere claim of physical impossibility is insufficient to sustain the petitioner's burden of proof (*Matter of Acosta v Previte*, 39 NY2d 720).

2. A claim that signatures are forged based upon a comparison with the handwriting on the buff cards does not by itself establish such gross irregularity or fraudulent practice as to cause the entire petition to be permeated with fraud (*Matter of Saal v Board of Elec.*, 25 NY2d 793; *Matter of Kogen v D'Angelo*, 54 NY2d 782, 783).

3. The fraudulent activities attributable to one person soliciting signatures was not sufficient to show, as a matter of law, that the entire designating petition is permeated with fraud, especially where as here the candidate was found not to have personally participated in the fraud (*Matter of Meeks v Pruitt*, 185 AD2d 961-962).

Pleading with specificity

A party is required to allege fraud with specificity and the failure to do so mandates dismissal (*Green v Mahr*, 231 AD2d 480; *Ford v D'Apice*, 133 AD2d 191, *Bradley v D'Apice,* 91 AD2d 691). The Kings County Special Election Part Rules require a "complete written offer of proof, in all matters alleging a question of fraud including a statement as to the number of witnesses expected to be called, the identification of each such witness (by name, address, volume, page and line) and the status of such witness, (*i.e.*, candidate, signatory subscribing witness, notary public, etc . . ." (*see Wooten v Barron*, 242 AD2d 351; *Rivera v Ortiz*, 207 AD2d 516; *Fletcher v Barkr*, 196 AD2d 611).

In *Matter of Waugh v Nowicki* (10 AD3d 437), fraud claims seeking designating petition's invalidation were dismissed as insufficiently pleaded. The court, noting that the subject designating petition bore only 159 signatures, concluded that it would not have been too burdensome for the petitioners to identify which signatures were allegedly fraudulent.

In *Matter of Robinson v Edwards* (54 AD3d 682 [2008]), the Second Department held that the Supreme Court should have granted the candidate's motion to dismiss the invalidating petition pursuant to CPLR 3016(b) because the petitioners failed to plead the fraud claims with the requisite specificity, and the petitioners' bill of particulars was insufficiently detailed to apprise the candidate of the allegations being made against her designating petition.

In *Matter of Sasson v Board of Elections in City of N.Y.* (24 Misc3d 1245A [2009] *affd* 65 AD3d 995 [2nd Dept.2009]), the court held that the specificity requirement may be met by "reference in [the] pleading to the objections and specifications of objections filed with respondent Board of Elections, coupled with the general statements in the petition of the types of improprieties on which petitioner intended to base [his] challenge" (*Oberle v Caracappa*, 133 AD2d 202 [1987]). Here, the petition alleged, *inter alia*, that subscribing witnesses permitted people to sign the names of others, signed witness sheets that were not signed in their presence, and created an atmosphere of fraudulent behavior. Additionally, each allegedly forged or questionable signature was identified in the specifications of objections. Although the grounds listed in the petitioner's pleading arguably were asserted in general terms, the specifications were incorporated by reference. Thus, the court held that the pleadings and specification combined together possessed the required specificity, and were sufficient "to apprise the candidate of the allegations being made against [his] designating petition" (*Robinson v Edwards*, 54 AD3d 682 [2008]; *see Hennessey v DiCarlo*, 21 AD3d 505, 506-507 [2005]; *Waugh v Nowicki*, 10 AD3d 437 [2004]; *Oberle*, 133 AD2d at 202).

In *Matter of Felder v Storobin* (100 AD3d 11 [2012]), the Second Department held that the Supreme Court was correct in excluding testimony regarding allegedly fraudulent

signatures that had not been identified in the pleadings.

In *Matter of LaMarca v Quirk* (110 AD3d 808 [2d Dep't 2013]), the petition to invalidate an independent nominating petition satisfied the pleading requirement that a fraud claim be stated in detail where the petition to invalidate alleged that certain signatures were invalid because they had been forged or were fraudulent, and the petition to invalidate incorporated by reference the specific objections raised before the Board of Elections, and those specific objections identified the specific challenged signatures set forth on the independent nominating petition (*see* CPLR 3016[b]).

Candidate Participation

Generally, when candidates participate in or have knowledge of the fraudulent activity, they forfeit their right to a place on the ballot, and the entire petition is invalid irrespective of the presence of the required number of signatures (*Matter of Flower v D'Apice*, 104 AD2d 578, *affd* 63 NY2d 715; *Matter of Villafane v Caban*, 104 AD2d 579; *Matter of Bloom v Power*, 21 Misc 2d 885, 893, *affd* 9 AD2d 626, *affd* 6 NY2d 1001; *Matter of MacDougall v Board of Elec.*, 133 AD2d 198; *Matter of Jones v Scaringe*, 143 AD2d 294, 296; *see Leonard v Pradhan*, 286 AD2d 459, *lv denied* 96 NY2d 718).

(a) Candidate participation found

In the following cases, the courts held that the undisputed evidence established as a matter of law that the candidates' fraudulent acts warranted invalidating their petitions:

1. The candidate acted as a subscribing witness to at least one signature which had actually been taken by another person. The candidate's brother misrepresented to a non-English speaking signer that the petition related to a different candidate. These acts tainted all the petition sheets gathered by the candidate and his brother thus reducing the number of valid signatures to less than that required (*Matter of Haskell v Gargiulo*, 51 NY2d 747, 748).

2. The candidate accompanied a subscribing witness while she obtained 1,047 signatures. At least 146 of these signatures were placed on the petition by persons signing for other members of their families (*Matter of Lerner v Power*, 22 NY2d 767).

3. The candidate knowingly obtained some signatures which were invalid including that of a person who signed another's name. He also admitted that in certain circumstances he did not ask the signers to identify themselves before obtaining their signatures (*Matter of Flower v D'Apice*, 104 AD2d 578, *affd* 63 NY2d 715).

4. Various dates ranging from June 19 through June 27, 1984 were inserted next to 360 signatures on 24 sheets of a petition which contained 2,745 signatures while in fact those signatures were obtained on or after June 28, 1984, the date the blank petitions were delivered to the candidate from the printer. These sheets were collected at the candidate's office, and the candidate himself signed one such sheet as a subscribing witness. Special Term properly imputed fraudulent intent to the candidate and held that the petition was permeated with fraud (*Matter of Hicks v Santiago*, 104 AD2d 471).

5. Twenty-six pages of the candidate's petition were found to be identical to those in another candidate's petitions except for the fact that they had different dates and different subscribing witnesses. The candidate participated in discussions and meetings concerning the petitioning process, and met frequently with her campaign manager who was one of the perpetrators of the fraud. The court found that the level of fraud involved was of such magnitude as to permeate the entire petition (*Matter of Villafane v Caban*, 104 AD2d 579).

6. The candidate signed as subscribing witness two pages of the designating petition, but did not witness the signers affix their signatures to those pages (*Matter of Layden v Gargiulo*, 77 AD2d 933).

7. At a hearing, at least three witnesses testified that although their names and addresses appear on the petition, the signatures were not theirs. Another witness testified that she never signed the petition for the candidate and that the only paper she did sign was a large, white piece of paper which the candidate personally represented to her was a petition for Puerto Rican statehood. Several subscribing witnesses under the control of the candidate who were subpoenaed did not appear at the hearing. In addition, the candidate himself did not appear in court during the entire hearing, even though a process server testified that he had served him with a subpoena. The court found that there was sufficient evidence to support the determination that instances of fraud so permeated the designating petition as to render it invalid (*Matter of Martinez v Olmedo*, 153 AD2d 720-721).

8. The candidate fraudulently induced an individual to sign as a subscribing witness on 10 pages containing 95 signatures when she was not in fact the person who obtained the signatures. Since the candidate herself participated in the fraud, her designating petition should be invalidated whether or not there was a sufficient number of valid signatures independent of those fraudulently procured (*Bynoe v Board of Elec.*, 164 AD2d 929).

9. The evidence revealed that the candidate's campaign was run out of his small apartment, where subscribing petitions were "cleaned up" by his campaign manager. The election board determined that 1,428 of the 2,684 signatures collected on the petition were

fraudulent. The court invalidated the designating petition, finding it "permeated with fraud." The record indicated that the campaign manager substituted enrolled Democrats residing in the district for petition signatories who were not registered voters, resided outside of the district or were not enrolled Democrats. The court found that the candidate was charged with knowledge of the fraud due to his close working relationship with his campaign manager, and the fact that the candidate, although available to testify, did not take the stand to explain how he was able to distance himself from the activities of such an intimate campaign (*Bueno v Bd of Elections of the City of New York*, NYLJ Sept 21, 2001, at 20, col 4 [Supreme Court, Kings County, Feldman, J.]).

10. The Second Department found candidate herself participated in fraud where testimony established that she acted as a subscribing witness to signatures that she did not actually witness, directed another to fill in the number of signatures on pages that that person did not witness, and conceded that she intentionally submitted to the Board of Elections sheets of her designating petition that failed to comply with the requirements of Election Law §6-132 (*Matter of Tapper v Sampel*, 54 AD3d 435 *app den* 11 NY3d 701 [2008]).

11. In *Matter of Cirillo v Gardiner* (65 AD3d 638 [2009]), the Second Department upheld the invalidation of a designating petition where the testimony at the hearing revealed that a subscribing witness did not personally witness and identify all of the signatures to which he attested (*see* Election Law § 6-132[2]; *Matter of Tapper v Sampel*, 54 AD3d 435) and that the candidate had knowledge of the fraudulent manner in which the signatures were procured, and that he approved of such methods, even though there was a sufficient number of valid signatures independent of those fraudulently procured" (*Matter of Drace v Sayegh*, 43 AD3d 481, 482; *see Matter of Leonard v Pradhan*, 286 AD2d 459; *Matter of MacDougall v Board of Elections of City of N.Y.*, 133 AD2d 198).

12. In *Matter of Valenti v Bugbee* (88 AD3d 1056 [3 Dept.2011]) a political party's candidate for office of city mayor signed witness statements on his independent nominating petition despite knowing that those statements were materially false, warranting invalidation of the petition on basis of fraud, where the statements attested that each person whose proxy signatures appeared on the petition signed in candidate's presence, but candidate had not actually witnessed several of the signatures being affixed to the petition by the purported signer in his presence (*see* Election Law § 6–140[1][b]).

13. *Matter of Mattice v Hammond* (131 AD3d 790, 790-791 [3d Dep't 2015]) involved a candidate for the position of delegate to the Conservative Party Judicial Nominating Convention, who submitted a designating petition consisting of four sheets with a total of 38 signatures, 30 more than the eight required to receive the party designation. On each sheet, the candidate signed the subscribing witness statement attesting that each individual who signed his or her name did so in his presence and identified himself or herself as the individual who signed. It is undisputed, however, that three of the signatures on sheet two were signed, in the candidate's presence, by the

spouse of the individual whose signature it was attributed to. The candidate testified that he was unaware at the time that he obtained the signatures that spouses could not sign for each other. The Supreme Court found that the candidate lacked the intent to deceive and declined to invalidate the petition. However, the Appellate Division reversed holding that fraud does not require proof of a "nefarious motive" and that because the candidate participated in the fraud, and regardless of the fact that the designating petition contained a sufficient number of signatures independent of the three signatures that were fraudulently obtained, the designating petition was invalidated.

14. In *Matter of Sgammato v Perillo* (131 AD3d 648, 651 [2d Dep't 2015]), the Second Department upheld the Supreme Court's determination to invalidate a designating petition based upon candidate fraud. Spring was running for the position of Member of the Town Council. His mother, Caren Shapiro, was the subscribing witness for several contested sheets. At the time the signatures were collected, Spring was 17 years old and not yet eligible to register to vote, thus not eligible to witness signatures. At a hearing, they both testified that they were together when the contested signatures were collected. However six witnesses testified that Shapiro was not with Spring when they signed the petition. The Supreme Court found that Spring and Shapiro's testimony was patently incredible and held that Shapiro, the subscribing witness for 147 signatures, had knowingly and fraudulently signed and submitted false witness statements and that Spring was chargeable with knowledge of the fraud. The Appellate Division further found that the designating petition should be invalidated as to the other two candidates appearing on the petition inasmuch as the invalidation of 147 of the 343 signatures collected left them with an insufficient number of valid signatures.

(b) <u>Candidate participation not found</u>

However, the acts of the candidates in the following cases *did not* cause the petitions to be invalidated:

1. The candidate postdated three of the signatures obtained by him as a subscribing witness. In view of the small number of proven incidents of postdating, the court did not find that the candidate's misconduct was of such magnitude as to permeate the remaining 91 valid signatures obtained by the candidate (*Matter of Quinone v Bass*, 45 NY2d 811).

2. The candidate subscribed 189 out of 198 sheets certifying that he witnessed 2,495 of the 2,570 signatures. This was a so-called "street petition." The candidate admitted that several persons were solicited simultaneously with the understanding that he or his father would "witness" all the signatures obtained regardless of whether they personally observed the voter sign the petition. The court held that an inference of fraudulent intent or permeation was not compelled as a matter of law, but was a question of fact (*Matter of Ruiz v McKenna*, 40 NY2d 815).

3. The petitioner alleged that the subscribing witnesses were induced to circulate the petitions by a statement of the candidates for District Leaders that the incumbent Assemblyman was not running for office. The court held that the proof offered by the petitioner was insufficient to establish that any subscriber was actually deceived (*Matter of Litof v Power*, 14 NY2d 762).

4. The candidate admitted that he authenticated a signature which was placed on the petition by the sister of the alleged signer. The court found that the wrongdoing did not invalidate the entire petition (*Matter of O'Donnell v Ryan*, 13 NY2d 885; *see also Matter of Perez v Galarza*, 21 AD2d 508 [petitioners failed to present any evidence that candidate participated in or was chargeable with knowledge of any fraud with respect to one questionable signature]).

5. Nine signatures out of 4,336 were invalidated because they had not been taken by the subscribing witness who was also an attorney and the candidate's campaign manager. The Court of Appeals reversed the decision of the Appellate Division to invalidate on the grounds that there was no proof that the candidate himself personally participated and the facts were insufficient as a matter of law to establish permeation with fraud (*Matter of Rodriguez v Harris*, 51 NY2d 737).

6. In *Matter of Lundine v Hirschfeld* (122 AD2d 977, 979), the court refused to invalidate the petition on the ground of permeation with fraud where there was insufficient evidence that the candidate was personally involved in any wrongdoing. "While the record bears out certain of petitioners' assertions of forgery and other fraudulent activities attributable to Hirschfeld's staff, such misconduct did not rise to the level required to invalidate the entire petition."

7. In *Matter of Perez v Galarza* (21 AD3d 508) the court found no permeation with fraud where only one witness testified that the subscribing witness was not with the candidate when she signed the designating petition, and the petitioners failed to present any evidence establishing that the candidate participated in or was chargeable with the knowledge of any fraud with respect to that signature. Thus, the irregularity in a single signature did not render entire petition permeated with fraud.

8. In *Matter of Grumbach v Orange County Bd. of Elections* (43 AD3d 477 [2d Dept 2007), where one candidate's name was included on the designating petition, without his consent, the court found that such inclusion did not amount to fraud on signatories because he had already consented to run for office on endorsed slate of candidates.

9. In *Matter of Felder v Storobin*, (100 AD3d 11 [2012]), the Second Department held that the Supreme Court properly found that petitioner failed to meet his prima facie burden of demonstrating by clear and convincing evidence that respondent candidate had

committed fraud in the gathering of signatures on his petition. Here, candidate Storobin testified that he inserted the wrong address next to an illegible signature that he had witnessed because he mistakenly believed it belonged to another person on his walk list, who turned out to be deceased. The Second Department held that the trial court properly acted within its discretion in crediting testimony of the signatory and the candidate, and in finding that the voter's signature on the designating petition, alongside the name and residential address of another individual, was careless, but a good–faith, error that did not warrant invalidation of the designating petition. The court noted that the voter's signature was authentic, and there was no evidence that the candidate failed to personally witness its subscription.

In addition, the court deferred to the Supreme' court's assessment that the documentary signature evidence, which included a handwriting expert) was insufficient to satisfy prima facie burden of establishing, by clear and convincing evidence, that any of the 5 contested signatures on candidate's designating petition were fraudulent. In this regard, two contested signatures matched those on voters' registration cards, another signature was incomplete but was consistent with registration card to extent it could be viewed, another signature reflected some differences with signature on voter's registration card, but voter's registration forms were completed and signed two decades earlier, and, even if any signature were written by someone other than identified voter, there was no evidence that candidate had actual knowledge of such circumstances so as to allow court to conclude that he personally engaged in fraud (*id.* at 18).

10. In *Matter of VanSavage v Jones* (120 AD3d 887 [2014], *leave to appeal dismissed*, 23 NY3d 1045 *and leave to appeal denied*, 24 NY3d 901 [2014]), petitioner failed to present clear and convincing evidence that candidate acted fraudulently or did anything that would warrant invalidating entire designating petition naming him Republican Party's candidate for public office of State Senator. Although petitioner presented a handwriting expert who testified that, on various pages on which candidate was subscribing witness, several signatures were written by the same person, the court credited the candidate's testimony that he did not knowingly accept fraudulent signatures.

11. In *Matter of Vincent v Sira* (131 AD3d 787 [3d Dept 2015], *lv denied,* 25 NY3d 914 [2015]), fraud was not found where a candidate altered certain sheets of her designating petition after the sheets had been signed. During the hearing, the candidate testified that, after she had distributed petition sheets to the subscribing witnesses, she realized that several of the petition sheets identified the office that she was seeking as Fulton County Court Judge, with no reference to the office of Surrogate. Although she was able to alert many of the witnesses, who added the words "and Surrogate" to the petition sheets prior to having them sign, the candidate admitted that she added the words "and Surrogate" to several petition sheets after the sheets had been signed. She explained that she realized that the title reference on her petition sheets was not complete after reading the Board's guidelines and decided to add the language to the already signed sheets in order to be more accurate. The court held that the candidate's conduct in adding the language to the signed petition sheets was unauthorized and improper by law (*see* Election

Law § 17-122 [8]), which rendered the signatures on those sheets invalid. The Court, however, held that the petitioner failed to establish by clear and convincing evidence that the candidate's conduct in adding the language to the petition sheets constituted fraud. In so holding, the court noted that the additional language effected no material change and that there was no evidence undermining the accuracy and veracity of the underlying voter signatures (*id.* at 789-790).

c) <u>Trend in candidate participation cases</u>*:*

More recently, the courts have gone a step further, finding candidate participation in the fraud where the candidate "knew or had every reason to know" that many signatures were fraudulently procured (*Matter of Buchanan v Espada*, 230 AD2d 676, *aff'd* 88 NY2d 973 [candidate's fiancé was present during fraudulent activities, as was candidate's attorney, who "appeared to be running the show", giving instructions to signature gatherers]). The court found that the candidate could not simply profess ignorance of or choose to ignore fraud or irregularities in the petitioning process (*id* at 678-679). In *Matter of Saitta v Rivera* (264 AD2d 490), the court, relying on *Buchanan*, found that where the candidate's "campaign coordinator" was closely involved with obtaining fraudulent signatures, the candidate should be charged with knowledge of the fraud (*id* at 490-491; *see also*, *Matter of Schaefer v Perez*, 275 AD2d 430 [in light of candidate's role in gathering signatures determined to be fraudulent, petition found to be permeated with fraud]; *see also*, *Bueno v Bd of Elections of the City of New York*, *supra*, NYLJ Sept 21, 2001, at 20, col 4 [Supreme Court, Kings County]).

Further, where the candidate was "inextricably intertwined in the petitioning process" and actively engaged in gathering signatures, and where the "sometime" campaign manager was closely involved in illegal activities in the petitioning process, the candidate should be charged with knowledge of the fraud (*Matter of Adams v Klapper*, 182 Misc 2d 51, *aff'd for reasons stated in the opinion below*, 264 AD2d 696). Notably, in *Adams*, the court invalidated otherwise valid signatures where such signatures were taken in violation of Election Law § 17-122, which prohibits payment to signature gatherers on a per-signature basis (*id* at 52). In finding candidate participation in the fraudulent practices, the court relied upon the fact that in the face of subpoenas and court directives for campaign officials and the respondent-candidate to appear, those subpoenaed failed to appear. Under the circumstances, the court properly inferred that the testimony of those who failed to appear would have supported petitioner's contentions (*id* at 52-53; *citing Haas v Costigan*, 14 AD2d 809, *aff'd* 10 NY2d 889).

In *Matter of Haygood v Hardwick,* (110 AD3d 931 [2 Dept 2013]), the court found that the candidate, who "was inextricably intertwined in the petitioning process," was chargeable with knowledge of the fraudulent manner in which certain signatures were

procured. Evidence at trial established that two subscribing witnesses, who were paid for the collection of signatures, testified that they each collected and witnessed signatures prior to being registered to vote, and the dates inscribed next to several signatures witnessed by the two subscribing witnesses appeared to have been altered to post-date the subscribing witnesses' eligibility to collect signatures. More importantly, the candidate conceded that he reviewed the pages containing signatures witnessed by one of the subscribing witnesses and noticed incorrect dates, but nonetheless filed those pages with the Board of Elections. Additionally, the evidence showed that the candidate, among other things, personally supervised the campaign workers' payments and assignments, verified their voter registration status, conducted meetings to educate them about the petitioning process, and received and reviewed pages with the signatures they had collected.

Permeation with Fraud

Even though the candidate has not participated in obtaining any of the challenged signatures and has no personal knowledge of any irregularities, a petition may nevertheless be invalidated where there is evidence that a substantial percentage of the signatures were obtained by fraudulent practices (*Matter of Proskin v May*, 40 NY2d 829, 830). Permeation with fraud must be established by the challenger by clear and convincing evidence (*Matter of Thomas v Simon*, 89 AD2d 952, *affd* 57 NY2d 744; *Matter of Miller v Boyland*, 143 AD2d 237).

(a) Permeation with fraud found

The courts found that the following questionable and irregular signature-collecting practices so pervaded the petitions as to warrant their invalidation:

1. 116 out of 220 signatures on a petition which required only 63 signatures were invalidated because of forgeries, fraudulent practices and other irregularities (*Matter of Proskin v May*, 40 NY2d 829, *supra*).

2. 550 out of 962 signatures on a petition requiring 350 signatures were found to be invalid because of forgery, fraudulent practices and other irregularities (*Matter of Golden v Smoler*, 17 NY2d 938).

3. The subscribing witness testified that signatures on ten of his sheets were not signed in his presence. The entire petition consisted of 30 sheets (*Matter of Harry v Liblick*, 119 AD2d 845).

4. In a petition containing 998 signatures, five subscribing witnesses who collected 656 signatures were not, on a number of occasions, in the presence of the signatories; nine sheets contained the signatures of 17 persons who testified that someone other than the subscribing witness witnessed their signatures, two witnesses collected 160 and 106 signatures in a few hours and there were nine clearly forged signatures (*Matter of McHale v Smolinski*, 133 AD2d 520).

5. In *Fischer v Peragine* (10 AD3d 620), designating petition was found to be permeated with fraud where Michael S. Peragine and another county party official were both disqualified from seeking any position in the Independence Party based upon their active involvement in the fraudulent activities (the addition of several party members' names to the nominating petitions without those members' knowledge or consent).

(b) <u>Permeation with fraud not found</u>

In the following cases the courts found that the fraudulent practices did not permeate the petition so as to warrant their invalidation:

1. Although five of the 28 subscribing witnesses practiced fraud in collecting signatures, it is improper to infer that some or all of the other 23 witnesses also engaged in fraudulent activity (*Matter of Nine v Board of Elec.*, 34 NY2d 975).

2. Where a designating petition for Mayor of New York City contained 13,118 signatures, the fact that 3,932 signatures were not genuine did not justify rejection of entire petition where neither the candidate nor those to whom he entrusted work were guilty of any fraud (*Matter of Lefkowitz v Cohen*, 262 App Div 452; *see also*, *Del Pellegrino v Giuliani*, 153 AD2d 724).

3. In a petition which contained a total of 5,373 signatures only 2,667 were found to be valid (2,551 signatures were required to place candidate's name on the ballot). Of these, 410 were found to be forged and 1,104 signatures were deducted for non-compliance by notaries public with the Election Law (*Matter of Pilat v Sachs*, 59 AD2d 515, *affd* 42 NY2d 984).

4. Where three out of the 19 signatures on the petition were not signed in the presence of the subscribing witness, the court held there was no permeation (*Matter of Ferraro v McNab*, 96 AD2d 917, *affd* 60 NY2d 601, 603).

5. *Matter of Rodriguez v Harris*, 51 NY2d 737, 738

Nine signatures out of 4,336 valid signatures were invalid because they had not been taken by the subscribing witness, but this was insufficient as a matter of law to permeate the whole petition.

6. *Matter of Tani v Luddy*, 32 Misc 2d 53, 55 [Sup Ct, Westchester County]

Six signatories testified that they had signed their names, but not in the presence of the candidate who was the subscribing witness on the sheet(s) with their signatures. The candidate testified that he had seen them sign their names, although he had not obtained the signature in every case. He said that he had been accompanied by a friend who had solicited the signature, but that he (the candidate) had been within visual distance. The court held that this was not sufficient to rule the signatures valid and proceeded to invalidate each of the six signatures. The court did not find a permeation of the entire petition or of any of the rest of the signatures taken by the candidate as a subscribing witness.

7. *Matter of Blackford v DeFina*, 196 AD2d 604, 605

[Petitioners] contend 53 signatures on designating petition are invalid because subscribing witness testified he circulated petitions for two different candidates on the same day, yet identically sequenced names contained different collection dates — only 33 signatures were potentially invalid; even if these 33 signatures were invalid, candidate would still have required number of valid signatures; contention that because, in different proceeding, volume of petition was found to be permeated with fraud, other volumes involved herein should similarly be found to be permeated with fraud, is rejected and the proceeding dismissed.

8. *Matter of Klugman v King*, 242 AD2d 346

Fraudulent activities of two subscribing witnesses insufficient to permeate the entire petition, as candidate neither personally participated nor knew about the fraud.

9. *Payne v Fleming*, 286 AD2d 565:

15 signatures in respondent's designating petitions were invalid because those 15 individuals did not sign the petitions in candidate’s presence, and petitioner attached affidavits from those persons in support of that contention. However, because petitioner's challenges to the signatures represented less than 1% of all signatures obtained by the candidate, petitioner failed to meet his burden of proving that candidate’s designating petitions were thereby permeated with fraud.

10. *Ragusa v Roper*, 286 AD2d 516, *lv denied* 96 NY2d 718:

Here, although the Second Department found there were instances of fraud relating to the designating petition in question, it found that the totality of such instances did not rise to the level at which it could be said that the designating petition was permeated with fraud. Nor did it find that the candidates participated in or were chargeable with knowledge of the fraud.

11. *Kraham v Rabbitt*, 11 AD3d 808

Court held that the petitioner failed to establish by clear and convincing evidence that the designating petition was permeated with fraud where the candidate testified during the hearing that she collected the signatures and personally completed the witness statement on each of the challenged pages, and the petitioners, in response, failed to call their purported document examiner to testify at the hearing, or any of the registered voters who signed the pages at issue to testify that the candidate had not in fact witnessed their signatures (*see also Bronson v Cartonia*, 10 AD3d 469, *lv denied* 3 NY3d 603).

12. *Matter of Bonner v Negron*, 87 AD3d 737 [2 Dept.,2011]

Here, the petitioner presented testimony establishing that the candidate (Negron) witnessed six of the signatures on his designating petition in his capacity as a notary public without administering an oath in any form to the signatories or otherwise obtaining from them a statement affirming the truth of the matter to which they subscribed their names. However, the petitioner failed to present any evidence which would rebut the strong presumption of regularity established with respect to the remaining 443 signatures which Negron witnessed in his capacity as a notary public. Furthermore, aside from the testimony pertaining to the six aforementioned signatures, the petitioner did not present any evidence which would rebut Negron's testimony that he obtained a statement from each of the signatories as to the truth of the matter to which they subscribed their names. Although Negron may not have acted in strict compliance with Election Law § 6–132(3) in collecting six of the signatures, the Second Department held that it had not been established that he acted fraudulently or that any irregularities relating to the designating petition rose to the level at which it could be said that the designating petition was permeated with fraud.

13. *Matter of Nolin v McNally*, 87 AD3d 804 [3 Dept.,2011]

No permeation found where the candidate acted as notary and, with respect to two signatories, he failed to ask them to affirm the truth of the matter to which they subscribed and did not introduce himself or confirm their identities until after they had signed the designating petition. The court stated "while [the candidate] McNally may not have acted in strict compliance with the statute in taking the signatures of [two signatories] it has not been established that he acted fraudulently or did anything that would warrant invalidating the entire designating petition" (*id.* at 806).

14. *Matter of Finn v Sherwood*, 87 AD3d 1044 [2 Dept.,2011]

Here, although there were some irregularities relating to the designating petition, the petitioners failed to meet their burden of demonstrating by clear and convincing evidence that it was permeated with fraud or that the candidates participated in or were chargeable with knowledge of any fraud.

15. *Matter of Lavine v Imbroto*, 98 AD3d 620 [2012]

In this case the appellant contended that 4 out of approximately 690 signatures were invalid on the ground of fraud. The court found that the hearing testimony regarding the 4 signatures did not demonstrate by clear and convincing evidence that the entire designating petition was permeated with fraud, and further found that the appellant failed to meet her burden of establishing that the candidate participated in or was chargeable with knowledge of any fraud (*id.* at 621).

16. *Matter of Powell v Tendy*, 131 AD3d 645 [2d Dep't 2015]

The Appellate Division upheld the Supreme Court's finding that a petition was not permeated with fraud where the petition contained 1,241 valid signatures and 1,054 valid signatures were necessary to be placed on the ballot. During a hearing, two witnesses testified that the signatures that appeared on the page of the designating petition shown to them were not their signatures. In addition a forensic handwriting expert testified that 70 signatures on the designating petitions did not match the signatures on the voter registration cards. The Supreme Court considered and discounted the expert testimony and compared the signatures on the petition with the signatures on the voter registration cards and invalidated 52 signatures and found that there was insufficient proof that the petition was permeated with fraud.

<u>Candidate Consent</u>

Where candidates' names are placed on the ballot without their consent, the entire designating petition must be invalidated, since it is misleading or fraudulent to suggest that the various candidates listed together also intended to run together (*Matter of Richardson v Luizzo*, 64 AD2d 942, *affd* 45 NY2d 789; *Matter of Berman v Venturini*, 64 AD2d 940; *Matter of Parilla v Kremar*, 64 AD2d 942; *Matter of Valli v Walker*, 175 AD2d 895; *see also*, *Matter of Lufty v Gangemi*, 35 NY2d 179; *Matter of DeAngelo v DiFilippo*, 196 AD2d 608; *Matter of Hunt v Payton*, 218 AD2d 774 [2d Dept] [only two candidates out of 130 candidates on the designating petition did not give consent, entire petition invalidated]). In *Matter of Wos v Ashworth* (16 Misc.3d 1134[A] [Sup Ct, Rensselaer County 2007]), the court held that the petitioner had demonstrated, by clear and convincing evidence, that respondents Florence Albarelli was named on the designating petition in the absence of her consent and/or a good-faith belief that she was willing to run with the intention of later substituting another candidate. Petitioner also established that such actions misled Conservative Party members presented with the petition. The Court

further held that due to candidate involvement, the petition could not be saved by demonstrating a legally sufficient number of signatures untainted by fraud.

But see, *Matter of Thomas v Simon* (89 AD2d 952, *affd* 57 NY2d 744, where the inclusion of the name of one candidate for the office of delegate to a judicial convention without the candidate's consent on a petition with 25 other candidates did not furnish a basis for invalidating the entire petition; *Matter of Grumbach v Orange County Bd. of Elections***,** 43 AD3d 477 [2d Dept 2007] [inclusion of one candidate's name on designating petition, without his consent, did not amount to fraud on signatories because he had already consented to run for office on endorsed slate of candidates.

In *Matter of Ruck v Green County Board of Elections*, 65 AD3d 808 (2009), the court held that while under certain circumstances the inclusion of an individual on a designating petition without his or her consent has resulted in the invalidation of the entire petition, here the inclusion of Linda L. Overbaugh instead of Linda H. Overbaugh, was inadvertent and there was no intention to confuse or mislead. Thus, under these unique facts, the court merely invalidated the petition as to Overbaugh but not to the other three candidates appearing on the petition.

The consent of the candidates is established where they have signed written consent forms which clearly state that each consented to be a candidate for the party position of Republican Party County Committee Member (*Matter of Gambino v Melillo*, 218 AD2d 771; *Matter of Johnson v Bagliore*, 218 AD2d 775; *Giachetti v Orsin*i, 2001 WL 1568416, 2001 N.Y. Slip Op. 40365(U) [Kings County], *affd* 286 AD2d 457, *lv denied* 96 NY2d 718 [petitioners failed to meet their burden of proof - candidates signed consent forms which explained the implications of signing]).

Where the names of the candidates were inserted on the petition sheets subsequent to the sheets being signed by the voters, the sheets are invalidated as constituting fraud (*Matter of DeAngelo v DiFilippo*, 196 AD2d 608, *supra*).

FILING A DESIGNATING PETITION

Timeliness

Election Law § 6-158. Nominating and designating petitions and certificates, conventions; times for filing and holding.

1. A designating petition shall be filed not earlier than the tenth Monday before, and not later than the ninth Thursday preceding the primary election.

Election Law § 1-106. Filing of papers; when received.

1. All papers required to be filed pursuant to the provisions of this chapter shall, unless otherwise provided, be filed between the hours of nine A.M. and five P.M. If the last day for filing shall fall on a Saturday, Sunday or legal holiday, the next business day shall become the last day for filing. All papers sent by mail in an envelope postmarked prior to midnight of the last day of filing shall be deemed timely filed and accepted for filing when received, except that all . . . petitions of designations . . . required to be filed with the board of elections of the city of New York must be actually received by such city board of elections on or before the last day to file any such petition . . . and such office shall be open for the receipt of such petitions . . . until midnight on the last day to file any such petition . . . Failure of the post office or any other person or entity to deliver any such petition . . . to such city board of elections on or before such last day shall be a fatal defect.

2. The failure to file any petition or certificate relating to the designation or nomination of a candidate for party position or public office or to the acceptance or declination of such designation or nomination within the time prescribed by the provisions of this chapter shall be a fatal defect.

The specific dates of the four days (Monday through Thursday) (*see*, Election Law § 6-158, subd 1) and the hours (*see*, Election Law § 1-106, subd 1) for filing petitions are usually set forth in an official calendar prepared by the Board of Elections of the City of New York. The failure to timely file a petition in accordance therewith is a fatal defect, and courts are without discretionary power to excuse such a defect (*Matter of Bristol v Chiavaroli*, 54 AD2d 72, *affd* 40 NY2d 898;.*Matter of Rutherford v Jones*, 128 AD2d 978; *Matter of Engel v Board of Elec.*, 143 AD2d 291, 292; *Matter of Fintz v Poveromo*, 197

AD2d 944, 945 [16 minutes late]; *Matter of Raimone v Sanchez*, 253 AD2d 506 [absence of a postmark on envelope addressed to Board of Elections containing petitioner's general objections is a fatal defect; *Amo v Orange County Bd of Elections*, 286 AD2d 454 [petitioner's certificate of authorization postmarked one day late constituted a fatal defect]; *but see*, *Matter of Serrano v Cuttita*, 159 AD2d 328, where the court did not invalidate a candidate's certificate of nomination filed at 8:30 A.M. on the last day for filing, and *Matter of Cozzolino v Columbia County Bd. of Elec.*, 218 AD2d 921 [certificate filed at 8 A.M. when the Board opened]). However, this defect may be cured by a timely refiling of the same petition (*Matter of Engel v Board of Elec.*, *supra*, at 293). Additional signatures may not be submitted after the time for filing petitions has expired (*Matter of Gruskin v Flynn*, 248 App Div 936, 937, *affd* 272 NY 578; see *Montes-Amaya v Suffolk County Bd. of Elections*, 33 AD3d 946 [2 Dept. 2006] [the filing of the third volume of a nominating petition was untimely and the signatures thereon were invalidated where the last day to timely file nominating petitions was August 22, 2006, and the Post Office's notation revealed that the third volume was mailed on August 23, 2006, one day too late.]; see also Election Law § 1- 106).

Place for Filing

Election Law § 6-144 requires that all petitions for an office or position to be voted for wholly within the City of New York be filed in the main office of the Board of Elections (located in Manhattan).

The delivery of petitions to an assistant deputy commissioner at a place other than the Board of Elections with the understanding that she would file them in the office of the Board, does not comply with the requirement that they be filed in the office of the Board (*Matter of Gregorio v Harris*, 154 AD2d 889).

PROCEDURE FOR CHALLENGING A PETITION AT THE BOARD OF ELECTIONS

In General

In most cases a challenge to a petition is brought by an "objector" (or "objectors"), usually acting on behalf of a rival candidate, by filing written objections with the Board of Elections in Manhattan (Election Law § 6-154). The general objections must be subscribed by the objector (*Banker v Apfeldorf*, 93 AD2d 848). This is followed by the filing of specifications or specific objections (Election Law § 6-154). The Board then reviews and rules upon the specifications in accordance with the discussion found in the "Scope of Referee's Review of Designating Petitions" section of this Handbook, and

determines whether the designating petition contains enough valid signatures. Either or both the objector and the candidate can then commence a judicial proceeding challenging the Board's rulings (Election Law § 16-102).

Alternately, as happens occasionally, a rival candidate can completely bypass this proceeding before the Board of Elections, and bring a challenge to the designating petition directly into court in the first instance by initiating an "aggrieved candidate" proceeding (Election Law § 16-102, subd 1; *Matter of Martin v Tutunjian*, 89 AD2d 1034). In like manner, "the chairman of any party committee can commence a judicial proceeding without first filing objections with the Board of Elections" (Election Law § 16-102, subd 1; *Matter of Brandshaft v Bivona*, 114 AD2d 529, 530; *Matter of Powers v New York State Bd. of Elec.*, 122 AD2d 970, 971-972).

A designating petition was not held invalid even though the size of the print is smaller than that used in section 6-132 of the Election Law (*Matter of Malone v Tuntunjian*, 152 Misc 2d 153, 154).

Standing (Who May File Objections)

Election Law § 6-154. Nominations and designations; objections to.

> 2. Written objections to any . . . designating petition . . . may be filed by any voter registered to vote for such public office and to a designating petition . . . for party position . . . by any voter enrolled to vote for such party position.

As a general rule, objections to petitions of candidates for public office may be filed by any registered voter qualified to vote for the office in question, irrespective of party affiliation, if the objections are based upon the failure to follow the statutory requirements of the Election Law (*Scoville v Cicoria*, 65 NY2d 972, 974; *Matter of Seaman v Bird*, 176 AD2d 1061, 1062; *Matter of Galow v Dutchess County Bd. of Elec.*, 242 AD2d 344).

In *Matter of Dekom v Trani* (109 AD3d 769 [2d Dep't 2013], *appeal dismissed* 21 NY3d 1052 [2013]), the court held that a petitioner who was seeking invalidation of petitions designating certain individuals as candidates for party positions in primary election lacked standing to challenge the designating petitions with respect to challenged candidates who were not from same election district in which petitioner was enrolled to vote.

However, in order to object to petitions based upon the failure to follow party rules or for claimed defects in party procedure or to the petitions of candidates for party position, the objector must be enrolled in that party and registered to vote for the office in question (*Scoville v Cicoria*, *supra*; *Matter of Malandrino v Board of Elec.*, 175 AD2d 893, 894). Thus, even at the level of county committee, a challenger to a candidate for that position must be an enrolled voter in the same election district (*Lucariello v Niebel*, 72 NY2d 927, 928; *Matter of Collins v Marchi*, 72 NY2d 930; *Matter of Parker v Savago*, 143 AD2d 439, 440; *Matter of Cantatore v Sunderland*, 196 AD2d 606; *Matter of Hintz v Board of Elec.*, 218 AD2d 773; *Matter of Haggerty v Board of Elec.*, 218 AD2d 773; *but see*, *Matter of Heitzner v Neglia*, 196 AD2d 616, 617, where the court held that since the entire designating petition was being challenged, including a slate of county committee members from various election districts, they could all be challenged).

Parties (Who Must Be Served)

Election Law § 6-154. Nominations and designations; objections to

> 2 . . . Such objections shall be filed with the officer or board with whom the original petition or certificate is filed within three days after the filing of the petition to which objection is made . . . When such an objection is filed, specifications of the grounds of the objections shall be filed within six days thereafter with the same office or board and if specifications are not timely filed, the objection shall be null and void. Each such officer or board is hereby empowered to make rules in reference to the filing and disposition of such petition, certificate, objections and specifications.

Rules of the New York City Board of Elections

> "All petitions, general objections, specifications, acceptance, declinations, etc. should be *filed in person* only at the general offices of the Board of Elections, 32 Broadway, 7th floor, New York, New York,
>
> No specifications to any petition will be considered by the Board unless the objector filing the specifications delivers personally or mails (by registered or certified mail) a duplicate copy of the specifications to the first named person on the committee to fill vacancies on the petition objected to prior to filing with the Board of Elections. No extension of time will be permitted by the Board of Elections to file specifications."

As indicated above, the objector need only file general objections with the New York City Board of Elections in Manhattan. However, prior to filing specifications with the Board of Elections in Manhattan, Board rules require that the specifications be served upon the first named person on the committee to fill vacancies (*Matter of Moran v Board of Elec.*, 122 AD2d 908; *Matter of Smith v Marchi*, 143 AD2d 239; *Matter of Maniscalco v Power*, 8 Misc 2d 677, 678). Failure to serve this person renders the challenge null and void *(Matter of Moran v Board of Elec.*, *supra*; *Matter of Maniscalco v Power*, *supra*, at 678-679). The use of certified mail, return receipt requested, is proper (*Matter of Smith v Marchi*, 143 AD2d 239).

<u>Timeliness (Time Requirements for Filing General Objections and Specifications)</u>

Election Law § 6-154. Nominations and designations; objections to

2 . . . Such objections shall be filed with the officer or board with whom the original petition or certificate is filed within three days after the filing of the petition . . . to which objection is made . . . When such an objection is filed, specifications of the grounds of the objection shall be filed within six days thereafter with the same office or board and if specifications are not timely filed, the objection shall be null and void. Each such officer or board is hereby empowered to make rules in reference to the filing and disposition of such petition, certificate, objections and specifications.

Election Law § 1-106. Filing of papers; when received

1. All papers required to be filed pursuant to the provisions of this chapter shall, unless otherwise provided, be filed between the hours of nine A.M. and five P.M. If the last day for filing shall fall on a Saturday, Sunday or legal holiday, the next business day shall become the last day for filing. All papers sent by mail in an envelope postmarked prior to midnight of the last day of filing shall be deemed timely filed and accepted for filing when received except that all . . . petitions of designations and . . . objections and specifications of objections to such . . . petitions required to be filed with the board of elections of the city of New York must be actually received by such city board of elections on or before the last day to file any such petition . . .

> or objection and such office shall be open for the receipt of such petitions . . . and objections until midnight on the last day to file
>
> any such petition, certificate or objection. Failure of the post office or any other person or entity to deliver any such petition . . . or objection to such city board of elections on or before such last day shall be a fatal defect.
>
> The failure to file any petition or certificate relating to the designation or nomination of a candidate for party position or public office or to the acceptance or declination of such designation or nomination within the time prescribed by the provisions of this chapter shall be a fatal defect.

Objections must be filed within three days after the filing of the petition to which objection is made; the time starts to run from the actual date of filing the petition and not the last day on which petitions must be filed (*Matter of Bennett v Justin*, 77 AD2d 960, 961, *affd* 51 NY2d 722; *Matter of Anello v Niagara County Bd. of Elections*, 43 AD3d 638 [4th Dept 2007] [court held that the three-day period within which to file general objections to a designating petition commences when the designating petition is received and accepted for filing by the Board of Elections, not when such petition is postmarked]). Failure to timely file renders the objections null and void.

In like manner, failure to file specifications within six days after the filing of general objections also renders the objections null and void (*Matter of Maneiro v Northrup*, 34 NY2d 963, 964; *Matter of Bush v Salerno*, 51 NY2d 95, 98).

The time limitations set forth in Election Law § 1-106 are mandatory and the judiciary may not fashion exceptions, however reasonable they may seem to appear (*Matter of Seward v Reardon*, 72 AD2d 645; *Matter of Sheehan v Aylward*, 84 AD2d 602, 603, *affd* 54 NY2d 934; *Matter of Persichetti v Bollatto*, 109 AD2d 811; *but see*, *Matter of Van Stockum v Castini*, 218 AD2d 915, 916, where the court held that the filing of the specifications within the same document as the general objections met the six-day time requirement of Election Law § 6-154). For example, where the objections or specifications are not filed within the time period set forth in the statute or the Rules of the Board of Elections, but are filed earlier in the day (8:30 A.M.), the filing is defective (*Matter of Hutchins v Culver*, 104 AD2d 533, 534; *Rutherford v Jones*, 128 AD2d 978, 979; *but see*, *Matter of Serrano v Cuttita*, 159 AD2d 328, for an exception made for a filing on the last day at 8:30 A.M. which the court did not invalidate).

In *Matter of Fedak v Judge* (71 AD3d 892 [2010]), the court held that the filing of general objections at 8:54 A.M., six minutes before the deadline, was not untimely where

the filing was made on a day that was within the applicable period for filing objections and at a time when the Board of Elections was open for business (*see* Election Law § 3-214[3]), and the general objection was accepted for filing by an employee of the Board of Elections. In so holding, the court noted that the filing was not late, but rather occurred before the deadline for the filing of objections.

In *Matter of Rhoades v Westchester County Bd. of Elections* (109 AD3d 561, 561-562 [2013]), the Second Department held that filing a petition for an opportunity to ballot at 9:43 P.M. on July 18, 2013 was a fatal defect inasmuch as Election Law § 1-106 provides that papers shall be filed with the relevant board of elections between the hours of 9:00 a.m. and 5:00 p.m. and that the "failure to file any petition or certificate relating to the designation or nomination of a candidate for party position or public office . . . within the time prescribed by the provisions of this chapter shall be a fatal defect" (Election Law § 1-106 [2]).

Filing the general objections or specifications with the wrong office of the Board of Elections does not extend the time limitations (*Matter of Tobin v May*, 72 AD2d 648).

In computing the time for filing objections and specifications, the day from which the time is reckoned is excluded from the computation, and if the last day of the period falls on a Sunday or legal holiday, the period shall expire on the next regular day (General Construction Law § 20; *Matter of McHoul v Sellick*, 153 AD2d 721; *see also*, *Matter of Lucariello v Commissioners of Chautauqua County Bd. of Elec.*, 148 AD2d 1012).

Specifications mailed to the Board of Elections on the last day for filing them must be postmarked prior to midnight of that last day in order to be considered timely filed (Election Law § 1-106, subd 1; *Matter of Hogan v Goodspeed*, 196 AD2d 675, 676).

An aggrieved candidate (*see*, p. v) is not required to file either objections or specifications with the Board of Elections before commencing in court an invalidating proceeding against an opposing candidate (*Matter of Loucky v Buchanan*, 49 AD2d 797; *Matter of Kantha v Scaglione*, 242 AD2d 345; *Matter of Codd v Barbaro*, 111 Misc 2d 135, 136).

Proof of Service of Papers

Matter of Hernandez v Lafayette (131 AD3d 633, 634 [2d Dep't 2015]) involved the alleged failure to file proof of service of the specifications of objections on the candidate with the Board of Elections. The court noted that "[t]he alleged failure to file proof of service of papers that are required to be served is ***not*** a jurisdictional defect" (*see generally Khan v Hernandez*, 122 AD3d 802).

Binding the Sheets of a Petition

Election Law § 6-134, subdivision 2 formerly provided that "Sheets of a designating petition shall be bound together in one or more volumes" and that "The sheets in each volume shall be numbered consecutively at the foot of each sheet, beginning with number one." These requirements are no longer part of the Election Law statute but, instead, have been included in the New York City Board of Election Designating Petition Rules, as follows:

"**A. GENERAL REQUIREMENTS**

A1. Sheets of a designating petition shall be securely fastened together in one or more petition volumes. The sheets in each petition volume shall be numbered sequentially at the bottom of each sheet.

* * *

D. DETERMINATIONS; CURES
PURSUANT TO § 6-134(2) OF THE ELECTION LAW

D1. Within two (2) business days of the receipt of a petition, the Board will review the petition to determine whether the petition complies with the cover sheet and binding requirements of these Rules. Such review shall be limited to matters apparent on the face of the cover sheet, the binding of each petition volume, and the number of petition volumes. Such review and such determination shall be without prejudice to the Board's determination of objections and specifications of objections filed pursuant to the provisions of the Election Law and these Rules.

D2. In the event that the Board determines that a petition does not comply with these Rules, the Board shall forthwith notify the candidate or candidates named on the petition of its determination and the reasons therefor.

D3. Notification of a determination of noncompliance shall be given by written notice by depositing such notice on the day of such determination with an overnight delivery service, for overnight delivery, on the next business day after the determination to the candidate or contact person, if designated, at the address stated on the petition. Notification shall be given by overnight delivery unless the candidate shall have filed with the Board written authorization, signed by the candidate for the Board to give notification by facsimile transmission. In the event that the candidate shall have authorized notification by facsimile transmission, then the Board shall notify the candidate or the contact person, if designated, by facsimile transmission on the day of the determination to the number set forth by the candidate and shall, in addition, mail a copy of the determination to the candidate.

D4. A candidate may, within three (3) business days of the date of a determination that the petition does not comply with these Rules, cure the violation of these Rules. Cover sheet deficiencies may be corrected by the filing of an amended cover sheet. Such cure or correction must be received by the Board of Elections no later than the third business day following such determination."

The courts had previously held that this binding requirement is one of content rather than form (*Matter of Braxton v Mahoney*, 63 NY2d 691, 692) and strict compliance is therefore required (*Matter of Bouldin v Scaringe*, 133 AD2d 287, 288; *Matter of Jones v Scaringe*, 143 AD2d 294, 295). The use of staples to securely fasten together the petition constitutes proper compliance (*Matter of Jones v Scaringe*, *supra*, at 295), while a spring clip is not sufficient (*Matter of Bouldin v Scaringe*, *supra*, at 288).

As a result of the 1996 amendment to the Election Law, effective April 1, 1997 (L 1996, ch 709, § 3), § 6-134 was repealed in its entirety and replaced by a new § 6-134, which provides in subdivision 10 thereof:

"The provisions of this section shall be liberally construed, not inconsistent with *substantial*

> *compliance* thereto and the prevention of fraud" (emphasis supplied).

Based upon this provision, substantial compliance with the binding requirement of the rules and regulations of the New York City Board of Elections, and not strict compliance, is now the guiding principle (*Matter of Hogan v Goodspeed*, 196 AD2d 675, 677, *affd* 82 NY2d 710).

In *Antoine v Boyland* (21 Misc3d 298 [2008]), the Kings County Supreme Court held that the Board of Elections erred in making an independent determination that the designating petition was fatally defective due to petitioner's failure to include an identification number on his cover sheet in violation of the Board's rules. In so holding, the court, citing a Second Department case, *Matter of Siems v Lite,* 307 AD2d 1016 (2003), *lv dismissed* 100 NY2d 614 (2003), *lv denied* 100 NY2d 510 (2003), reasoned that there was no basis for invalidating the designating petitions under the Boards's rules pertaining to volume identification numbers since those rules are to be liberally construed (*see also Matter of Magelaner v Park*, 32 AD3d 487 [2006]; *Matter of Pearse v New York City Bd. of Elections*, 10 AD3d 461, 462 [2004]).

In *Matter of Zulauf v Martin* (131 AD3d 656 [2d Dep't 2015]), the Second Department held that prospective candidates for town supervisor, town council, town clerk, and county legislature ***substantially complied*** with the pagination requirements under Election Law by curing defects in their designating petitions, by filing complete and exact photocopies of original petitions with addition of page numbers, within the three-day statutory cure period (*see* Election Law 6-134[2]; 9 NYCRR 6215.7[d]).

PROCEDURE FOR COMMENCING A JUDICIAL PROCEEDING

Standing

Election Law § 16-102. Proceedings as to designations and nominations, primary elections, etc.

> 1. The nomination or designation of any candidate for any public office or party position or any independent nomination, or the holding of an uncontested primary election, by reason of a petition for an opportunity to ballot having been filed, or the election of any person to any party position may be contested in a proceeding

> instituted in the supreme court by any aggrieved candidate, or by the chairman of any party committee or by a person who shall have filed objections, as provided in this chapter, except that the chairman of a party committee may not bring a proceeding with respect to a designation or the holding of an otherwise uncontested primary.

A judicial proceeding challenging a designating petition may only be brought by: (1) an aggrieved candidate; (2) the chairman of any party committee; or (3) a person who filed objections pursuant to Election Law § 6-154 (*Matter of Twombley v Hall*, 71 AD2d 939; *Nemayer v Board of Elec.*, 125 Misc 2d 1054, 1056, *affd* 105 AD2d 488). If the petitioner does not qualify under one of these three categories he lacks standing to maintain the proceeding *(Matter of Grogan v Conservative*, 77 AD2d 736, 737; *Matter of Spallone v D'Apice*, 112 AD2d 1080; *Matter of Bell v Butterstein*, 175 AD2d 889; *Matter of Bell v Cosentino*, 175 AD2d 889; *Matter of Galow v Dutchess County Bd. of Elec.*, 242 AD2d 344; *Matter of Vil. of Herkimer Repub. Party*, 119 Misc 2d 801, 806).

Aggrieved Candidate

An *aggrieved candidate* is an opposing candidate for the same public office or party position. However, if a candidate's designating petition has been invalidated by the Board of Elections and he has not commenced a validating proceeding challenging that determination, then he is not considered an aggrieved candidate (*Matter of Novak v Jones*, 19 AD2d 781, 782, *affd* 13 NY2d 883). With respect to a public office, the opposing candidate may be from a different political party if his challenge is based upon a failure to comply with the requirements of the Election Law (*Matter of Liepshutz v Palmateer*, 112 AD2d 1098, 1099-1100, *affd* 65 NY2d 963; *Matter of Martin v Tutunjian*, 89 AD2d 1034; *Matter of McHoul v Sellick*, 153 AD2d 721; *Matter of Ciccotti v Havel*, 186 AD2d 979). Where, however, the challenge involves party rules or the internal affairs of a political party, a candidate from another party lacks standing to bring suit as an aggrieved candidate (*Matter of Wydler v Cristenfeld*, 35 NY2d 719, 720; *Matter of Stempel v Albany County Bd. of Elec.*, 97 AD2d 647, 648, *affd* 60 NY2d 801; *Matter of Friedman v Lefever*, 122 AD2d 903, 904; *Matter of Swarts v Mahoney*, 123 AD2d 520). In *Matter of Fehrman v New York State Bd. of Elections* (10 NY3d 759 [2008]), the Court of Appeals held that a non-member of a political party who sought party's nomination for State Senator did not have standing as an "aggrieved candidate" to challenge party's nomination of rival (*see also Nicolai v Kelleher*, 45 AD3d 960 [3 Dept 2007]). In a proceeding pursuant to Election Law § 16-102(1), *inter alia*, to invalidate the organizational meeting of the Working Families Party County Committee of Suffolk County, the Second Department held that the omission from the petition of allegations that the petitioners were "aggrieved candidates" did not mandate denial of the petition and dismissal of the proceeding (*Klein v Garfinkle*, 12 AD3d 604).

An aggrieved candidate may not bring a validating petition on behalf of a candidate for public office other than himself (*Matter of Williams v Vaughn*, 51 NY2d 725, 726; *but see*, *Matter of Collins v Marchi*, 72 NY2d 930, 931 as to party positions), or bring an invalidating petition against candidates for other public offices or party positions even though they are on the same designating petition (*Scoville v Cicoria*, 65 NY2d 972, 974). Moreover, petitioners cannot maintain a validating petition as to candidates outside of their election district in a representative proceeding (*Matter of Cerreto v Sunderland*, 307 AD2d 1004). With respect to an invalidating proceeding, in *Colaiacovo v Aberle* (10 AD3d 464) the court held that petitioner, as an alternate delegate, was an "aggrieved candidate"[1] who had standing to bring proceeding to invalidate petition designating other candidates for position of delegate or alternate delegate to party nominating convention for primary election.

Chair of a Party Committee

The *chairman of a party committee* may commence a judicial proceeding unless the challenge is to a candidate in an otherwise uncontested primary *(Matter of O'Neill v Board of Elec.*, 71 AD2d 1035, 1036, *affd* 48 NY2d 673; *Matter of Powers v New York State Bd. of Elec.*, 122 AD2d 970, 971-972; *Matter of Davis v Dutchess County Bd. of Elec.*, 153 AD2d 716, 717) or to invalidate a designation (*Matter of D'Alvia v DiGiacomo*, 175 AD2d 891; *Matter of Crawley v Board of Elec.*, 218 AD2d 914, 915). In *Soda v Banks Dahlke*, (10 AD3d 481), Court held that Chairman of county democratic party committee lacked standing to challenge Independence party designation of candidate in Independence party primary election for state assembly. In so holding, the court noted that the plain language of Election Law § 16-102(1) directs that a "chairman of a party committee" may not bring a proceeding to invalidate a designation.

In *Matter of Eaton v Rosenberg*, (109 AD3d 770, 771-772 [2d Dep't 2013]) the Second Department upheld the Supreme Court's determination that petitioner, the Kings County Republican Party Chairman, lacked standing to bring the proceeding under Election Law § 16-102 (1) because of the language in that section which specifically bars a chairman of a party committee from bringing "a proceeding with respect to a designation or the holding of an otherwise uncontested primary" (*see Matter of Maltese v Anderson*, 264 AD2d 457, 457, [2d Dept 1999]; *Matter of D'Alvia v DiGiacomo*, 175 AD2d 891, 891-892 [2d Dept 1991]; *see also Matter of Levine v Turco*, 43 AD3d 618, 619-620 [3d Dept 2007], *lv denied* 9 NY3d 804 [2007]; *Matter of Parete v Turco*, 21 AD3d 691, 692 [3d Dept 2005]).

[1]A designating petition may be challenged by "any aggrieved candidate" (Election Law § 16-102[1]).

Objector

A qualified *objector* must have timely filed proper objections and specifications with the Board of Elections in order to have standing to commence a judicial proceeding (*Matter of Margolis v Larkin*, 39 AD2d 951, 952, *affd* 30 NY2d 876; *Matter of Doran v Scranton*, 49 AD2d 976; *Matter of Seaman v Bird*, 176 AD2d 1061, 1062; *Sgambati v New York City Bd. of Elec.*, 224 AD2d 564; *Matter of Village of Herkimer Repub. Party*, 119 Misc 2d 801, 806), even if the sole objection is as to the candidate's residence (*Matter of Coven v Previte*, 88 Misc 2d 160). The objector must be a member of the same party in order to challenge a candidate for party position or a candidate for public office when the challenge is based upon a failure to follow party rules (*Matter of Scoville v Cicoria*, 65 NY2d 972, 974; *Matter of Hyman v Previte*, 51 AD2d 948). An objector need not be a party member in order to challenge designating petitions of a candidate for public office for failure to follow the statutory requirements of the Election Law (*Matter of Scoville v Cicoria*, *supra*; *Matter of McHoul v Sellick*, 153 AD2d 721).

In *Matter of Hayon v Carrion*, 41 Misc. 3d 356, 357 (N.Y. Sup. Ct. 2013) the court held that the citizen objectors lacked standing to commence the proceeding inasmuch as they were not aggrieved candidates or the chairs of any party committee, and since they failed to file specifications of objections with the Board (*see Matter of Margolis v Larkin*, 39 AD2d 951, 951-952 [1972], affd 30 NY2d 876[1972]; *see also Matter of Nicolai v Kelleher*, 45 AD3d 960, 963-964 [2007]; *Matter of Sgambati v New York City Bd. of Elections*, 224 AD2d 564, 564 [1996]; *Matter of Taylor v Redmond*, 239 App Div 112, 112 [1933]).

In *Matter of Luthmann v Gulino* (131 AD3d 636 [2d Dep't 2015]), *leave to appeal denied,* 25 NY3d 914 [2015]), the petitioner lacked standing to challenge petition designating candidate in primary election for party position of Democratic County Committee member, where petitioner was not enrolled to vote in election district in which candidate resided, and was not enrolled to vote in same assembly district (*see* Election Law § 6-154[2]).

Election Law § 16-102 provides the exclusive remedy for seeking to remove a candidate from the ballot; a proceeding pursuant to Article 78 is improper (*Matter of Ferguson v Cheeseman*, 138 AD2d 852).

Miscellaneous Standing Issues:

(a) *In Breslin v Conners*, 10 AD3d 471, *lv denied* 3 NY3d 603, the court held that an aggrieved candidate had standing to challenge a certificate to fill a vacancy filed by opposing political party substituting successor candidate. The court found that the challenge related to the predecessor candidate's authority under Election Law §§ 6-146

and 6-148 to file a certificate of declination after accepting the designation, and to the timeliness of declination (*see* Election Law § 6-158), not to the internal affairs of the opposing party or the manner or method by which it nominated its candidates.

(b) In *Graziano v County of Albany,* 3 NY3d 475, the Court of Appeals held that, although an action on behalf of a local board of elections can be brought only with the approval of a majority of the board (*see* Election Law § 3-212[2]), a single elections commissioner may initiate legal action against a county to ensure equal representation on behalf of his or her political party.

c) *Matter of Parete v Turco,* 21 AD3d 691: Where the petitioner, Chair of the Ulster County Democratic Committee, commenced a proceeding under Election Law § 16-102 seeking to invalidate the designating petition naming certain Conservative Party candidates for the office of Ulster County Legislator for the 7th Legislative District, the Third Department held that the petitioner lacked capacity to sue by reason of the statutory prohibition found in Election Law § 16-102. Since petitioner lacked capacity to sue, he could not institute a proceeding to invalidate the designating petition and, therefore, none existed in which candidate could intervene.

(d) *Matter of Katagas v Berman,* 21 AD3d 913 [ ]: In two related proceedings, inter alia, pursuant to Election Law § 16-102 (1) to invalidate the October 4, 2004 organizational meeting of the Independence Party County Committee of Nassau County, the court held that two County Committee members had standing to challenge the validity of the organizational meeting of the County Committee.

(e) *Matter of White v Bilal,* 21 AD3d 573: Since candidate failed to timely seek leave to serve cross claims in other candidate's Election Law § 16-102 proceeding, such claims were not properly before the Supreme Court. Furthermore, having failed to obtain leave to proceed on his cross claims after Board of Elections invalidated his designating petition, the candidate no longer had standing as aggrieved candidate to challenge validity of other candidate's designating petition. Nor was candidate entitled to file, nunc pro tunc, papers necessary to commence separate proceeding to invalidate other candidate's designating petition after other candidate withdrew proceeding since he did not timely purchase index number for his cross claim.

(f) In *Matter of Occhipinti v Westchester County Bd. of Elections* (49 AD3d 674 [2008]), the Second Department held that petitioner's status as chairperson of Democratic Party in village did not deprive him of standing in proceeding to invalidate certificate that nominated persons as candidates of Independence Party for public office of village trustee that concerned **caucus**, rather than **primary** election. The court also held that the petitioner, as an objecting non-party voter, had standing to commence this proceeding to

challenge an alleged failure to comply with the statutory requirements governing the nomination of candidates by party caucus, set forth in Election Law § 15-108(2).

(g) In *Matter of MacKay v Johnson* (54 AD3d 428 [2008]), the Second Department found that appellant did not have standing to challenge the substitution of Barbara Donno as the Independence Party candidate because his challenge related to the internal functioning of a political party of which he was not an enrolled member (*see* Election Law § 16-102[1]; *Matter of Stempel v Albany County Bd. of Elections*, 60 NY2d 801, 803; *Matter of Wydler v Cristenfeld*, 35 NY2d 719, 720; *Matter of Nicolai v McKay*, 45 AD3d 965, 966-967; *Matter of Hariton v McNab*, 83 AD2d 898; *see also Matter of Scaturro v Becker*, 76 AD3d 687 [2010]).

(h) In *Matter of Wood v Castine* (66 AD3d 1326 [2009]**),** the Third Department held that the voter lacked standing to bring petition against Democratic and Republican elections commissioners, seeking to compel mailing of military ballots for general election and to invalidate certificate of nomination for town council candidates, where there was no showing that the voter was aggrieved by the alleged mailing failure, and voter, as non-resident, was ineligible to vote for office of town councilperson (*see McKinney's Election Law* §§ 10-108[1], 16-102).

(I) In *Matter of Fehrman v New York State Bd. of Elections* (10 NY3d 759 [2008]), a non-member of political party (Independence Party), who sought party's nomination for State Senator, did not have standing as an “aggrieved candidate” to challenge that party's nomination of a rival candidate. Although the non-member initially asserted that he was the party's candidate, he later abandoned that assertion and instead argued that the Independence party had not validly nominated any candidate. Under these circumstances, the Court of Appeals held that the non-member was not an “aggrieved candidate” within the meaning of Election Law § 16-102.

(j) In *Matter of Goodell v Parment* (76 AD3d 1169 [2010]), the court held that the petitioner was an "aggrieved candidate" and thus had standing to commence a challenge to the certificates of declination and substitution and that such challenge "is not based on an internal party rule" but, rather, concerns the "legislatively mandated requirements of the Election Law [that] 'transcend the mere regulation of the affairs of a political party' " (*quoting Matter of Breslin v Conners*, 10 AD3d 471, 473-474 [2004], *lv denied* 3 NY3d 603 [2004]; *see Matter of Harper v New York State Bd. of Elections*, 34 AD3d 919, 920 [2006]; *see generally Matter of Liepshutz v Palmateer*, 112 AD2d 1098, 1099-1100 [1985], *affd* 65 NY2d 963 [1985]).

(k) In *Matter of Cipriano v Graves* (87 AD3d 636 [2011]), the petitioner commenced a proceeding pursuant to Election Law § 16–102, *inter alia*, to invalidate a petition designating Matthew J. Graves as a candidate in a primary election to be held on

September 13, 2011, for the nomination of the Republican Party as its candidate for the party position of Male Member of the Republican State Committee from the 49th Assembly District. Following the petitioner's commencement of the proceeding, the Board of Elections invalidated the petitioner's own designating petition as a candidate for the same office sought by the respondent. As a result, the Second Department held that the petitioner lost his status as an "aggrieved candidate" and, therefore, no longer had standing to contest the respondent's designating petition.

(l) In *Matter of Dadey v Hunter* (109 AD3d 1078 [2013] [4th dept] 40 Misc. 3d 1236(A), [Onondaga County 2013), the court held that standing is an affirmative defense, which is waived if not specifically raised either as such a defense in an answer or by way of a motion to dismiss (*see also*, *Cipriano v Graves*, 87 AD3d 636 [2d Dept. 2011]).

(m) In *Matter of Goodman v Nassau County Bd. of Elections* (87 AD3d 668 [2011]), the proceeding, pursuant to Election Law § 16-102, *inter alia*, to invalidate a petition designating candidates for public offices of Members of Long Beach City Council office was dismissed as jurisdictionally defective because the petitioners failed to timely serve necessary parties who were candidates whose names appeared on the challenged designating petition.

(n) In *Matter Becker v Shapiro* (110 AD3d 874 [2d Dep't 2013]), the committee to fill vacancies named in the designating petition was not a necessary party to the proceeding, pursuant to Election Law §16-102, to invalidate a petition designating a candidate in a primary election for failure to comply with residency requirement in county charter.

(o) In *Matter of Hardwick v Ward* (109 AD3d 1223 [2013]), eight rival candidates had standing, as aggrieved candidates, to challenge entire certificate of authorization that was issued by a county political party and designated a slate of 18 candidates for various public offices at primary election and general election, even though 10 candidates listed on the certificate of authorization were not seeking the same public office as the rival candidate (*see* Election Law § 16–102[1]).

(p) In *Matter of Scannapieco v Riley* (132 AD3d 705, 705-706 [2015]), the court held that a Commissioner of a County Board of Elections lacked authority to unilaterally commence a proceeding to invalidate candidates for certain public offices as all action require a majority vote of all the commissioners. Importantly, he lacked standing to commence the proceeding pursuant to Election Law §16-102 (1).

Necessary Parties (Who Must Be Named And Served)

The failure to name and serve all necessary party respondents, as specified in the order to show cause commencing the judicial proceeding, is a jurisdictional defect (*Matter of Wohl v Miller*, 63 NY2d 687, 688). All of the commissioners constituting the Board of Elections of the City of New York are necessary parties to such proceedings (*Matter of Gagliardo v Colascione*, 153 AD2d 710; *Vaughn v Withers*, 153 AD2d 712, 713; *but see*, *Holloway v Blakely*, 78 AD2d 528, and *Matter of Hall v Abu*, 185 AD2d 957, 958, where failure to serve an answer/cross application on the Board was not fatal). Who else are necessary parties depends upon whether the judicial proceeding is brought by the candidate to validate his petition, or is commenced by an objector, chairman of a party committee, or an aggrieved candidate to invalidate someone else's designating petition.

In a proceeding to validate, the only other necessary parties are those who filed objections to the particular candidate's designating petition (i.e., "all objectors") and all said proper objectors (*Matter of Green v Mahr*, 231 AD2d 481; *see also Fusco v Westchester County Bd of Elections*, 286 AD2d 456) must be named in the order to show cause and the verified petition commencing the judicial proceeding (*Matter of Brosnan v Black*, 104 AD2d 469, 470) and served with the petition *(Gadsden v Board of Elec.*, 57 NY2d 751, 752; *Matter of Wein v Molinari*, 51 NY2d 717, 718-719; *Matter of Butler v Hayduk*, 37 NY2d 497, 498; *Matter of Plochocki v Onondaga County Bd of Elections,* 21 AD3d 710; *Matter of Crafts v McNab*, 96 AD2d 915, 916; *Matter of Philpotts v Black*, 122 AD2d 909; *Matter of Halley v LaFuente*, 176 AD2d 723, 724; *but see*, *Matter of Straniere v Cutolo*, 42 NY2d 984; *Matter of Hall v Abu*, 185 AD2d 957, 958). Failure to include the objector as a party in both the order to show cause and the petition requires dismissal of the proceeding (*Matter of Sitarek v Board of Elec.*, 143 AD2d 503). Dismissal is also mandated when the objectors, though properly named as parties, are not served in accordance with the order to show cause (*Matter of Marchant v Echaveste*, 186 AD2d 101; *Matter of Quis v Putnam County Bd. of Elections,* 22 AD3d 585 [petitioners' failure to serve necessary parties at the proper address as specified in the order to show cause, warranted dismissal of the proceeding).

A rival candidate is not a necessary party in a **validating** proceeding and need not be named or served (*Matter of Jones v Gallo*, 37 AD2d 793, 794).

In a proceeding to **invalidate**, the rival candidate is, however, a necessary party who must be named and served (*Matter of Hogan v Callahan*, 49 AD2d 714, 715; *Matter of Miranda v Erie County Bd. of Elec.*, 59 AD2d 643; *Matter of Lemishow v Black*, 104 AD2d 460, 462, *affd* 63 NY2d 684; *Application of Murphy*, 82 NYS2d 239, 240; *Swirsky v Smallwood*, 148 AD2d 523).

In *Antoine v Boyland* (21 Misc3d 298 [2008]), the Supreme Court held that the qualified objectors to the designating petition were not necessary parties to the validating proceeding, where the board of elections made an independent determination that the designating petition was fatally defective due to petitioner's failure to include an identification number on his cover sheet, the specifications filed by the qualified objectors failed to reduce the number of valid signatures below the requisite number and no invalidating proceeding had been commenced. Under these unique circumstances, the petitioner's failure to name and serve the qualified objectors was not fatal to the validating petition.

The Committee on Vacancies is not a necessary party in an invalidating proceeding *(Matter of Berman v Board of Elec.*, 68 NY2d 761, 763; *Matter of Arens v Shainswit*, 37 AD2d 274, 276, *affd* 29 NY2d 663; *Mater of Van Lengen v Balabanian*, 50 Misc 2d 652, 653, *affd* 26 AD2d 622; *Matter of Buley v Tutunjian*, 153 AD2d 784; *Matter of Tinari v Berger*, 196 AD2d 622, 623).

Failure to join the Bronx Democratic County Committee, which was considered an indispensable party in a proceeding to strike the name of Jose Serrano as a candidate of the Democratic Party in a special election in a congressional district, resulted in a dismissal of the court proceeding (*Matter of Betancourt v Cuttita*, 159 AD2d 329; *see also Matter of O'Brien v Seneca County Bd of Elections*, 22 AD3d 1036).

Failure to join the Executive Committee of the Suffolk County Committee of the Conservative Party as a necessary party requires dismissal of this court proceeding to invalidate a certificate authorizing someone as a candidate of the party in a special election for member of the Assembly (*Matter of Rizzo v Withers*, 158 AD2d 497, 498; *see also*, *Flores v Kapsis,* 10 AD3d 432**,** *lv denied* 3 NY3d 603 [failure to join Independence Party's State Committee as a party respondent mandated dismissal of proceeding seeking to invalidate certificates of authorization issued by county interim committee purporting to designate candidates for primary election, where state committee's rules made such interim county organizations a committee of the state committee]). In *Matter of Jacobellis v Fonseca* (43 AD3d 484 [2007], *lv denied* 9 NY3d 804), the Executive Committee of the State Committee of the Working Families Party was a necessary party to a proceeding which sought to invalidate designating petitions based on the alleged failure of the Executive Committee to comply with Election Law § 6-108. Thus, the petitioners' failure to join the Executive Committee was jurisdictionally fatal (*see also Matter of Miller v Lapine,* 43 AD3d 480 [2d Dept 2007, *lv denied* 9 NY3d 804]; *Matter of Cornicelli v Scannell*, 307 AD2d 1006; *Matter of Schaffer v Withers*, 186 AD2d 836; *Matter of Regan v New York State Bd. of Elec.*, 207 AD2d 647).

Failure to join the district delegate candidates of a presidential candidate in a proceeding to invalidate the designating petition of said candidate requires dismissal of the proceeding for failure to join these necessary parties (*Matter of Fulani v Smith*, 181 AD2d 940).

Failure to join the Republican State Committee as a party respondent mandated dismissal of a judicial proceeding to invalidate certain candidates for the position of delegate or alternate delegate to the Republican party Judicial District Convention since the petition challenges the method of selection of the candidates (*Matter of Regan v New York State Bd. of Elec.*, 207 AD2d 647, 648).

Order which granted petitioner's application in a proceeding to declare valid designating petition naming petitioner as candidate for office of Member of Congress in primary election affirmed. Respondents (objectors), all of whom filed objections to petitioner's designating petition, contend Supreme Court should have dismissed this proceeding due to petitioner's failure to join individual, who filed separate objections to petitioner's designating petition, and certain county boards of election as necessary parties. Petitioner's alleged failure to join necessary parties was raised in objectors' answer and cross motion to dismiss filed in this proceeding. In validating petitioner's designating petition, Supreme Court implicitly rejected objectors' arguments on this point; hence, issue is properly before the Court. Neither individual nor relevant county boards of election are necessary parties to this proceeding. As to individual, objector is necessary party only where he/she has prevailed before body entertaining objection here, State Board of Elections. Although record is silent regarding whether individual's objections were sustained by the State Board, objectors state in their brief that petitioner's designating petition was invalidated based upon "objections of other objectors," i.e., objections other than those filed by individual, and conceded at oral argument that individual did not prevail before State Board. In view of these concessions, an individual may not be characterized as successful objector and, hence, cannot be deemed a necessary party. With respect to county boards of election, petitioner's designating petition and various objections thereto were filed with State Board. Thus, State Board is responsible for certifying petitioner as candidate for office of Member of Congress and placing his name upon ballot in upcoming primary election. As such, the role assumed by relevant county boards of election here is entirely ministerial and, hence, such boards are not necessary parties (*Matter of Dioguardi v Donohue*, 207 AD2d 922).

In *Matter of Hernandez v Lafayette* (131 AD3d 633, 634-635 [2d Dep't 2015]), the court held that a multi-candidate designating petition is unique to each candidate and thus there is no requirement that objectors join (*i.e.,* name and serve) all listed candidates as a necessary party (*see Matter of Mandell v Board of Elections in City of N.Y.*, 88 NY2d 976, 978; *Matter of Buchanan v Espada*, 88 NY2d 973, 975; *Matter of Schwartz v MacKay*, 286 AD2d 462).

In *Matter of Myers v Baisley* (65 AD3d 649 [2009] *affd* 13 NY 3d 727 [2009]), the court found that in this proceeding to invalidate two petitions for an opportunity to ballot, the aggrieved candidate failed to name and serve the Committee to Receive Notices, as required by Election Law § 6-164 and, thus, the two petitions were invalidated.

In *Matter of Master v Davis* (65 AD3d 646 [2009] *lv to app denied* [2009]), the court held that the seven people who filed designating petitions for the public office of Member of the New York City Council, 33rd Council District, were not necessary parties within the meaning of CPLR 1001(a) and did not need to be served with a petition to invalidate a petition seeking an opportunity to ballot in which the Working Families Party was seeking to put in a write in candidate. These individuals' candidacies would not be affected by any final order relating to this proceeding since their names would have remained on the ballot regardless of the outcome of this proceeding (*see Matter of Master v Pohanka*, 43 AD3d 478, 479).

In *Matter of Cass v Krakower* (65 ADd3d 637 [2009] *affd* 13 NY3d 701[2009]), the court held that the aggrieved candidate's failure to name and serve the Committee to Receive Notices, as required by Election Law § 6-164 required the invalidation of a petition for an opportunity to ballot (*see Matter of Myers v Baisley*, 65 AD3d 649 [2009] [decided herewith]; *Matter of Anderson v Oswego County Bd. of Elections*, 113 AD2d 1019; *cf. Matter of Simon v Power*, 17 NY2d 924).

In *Matter of Dixon v Reynolds* (65 AD3d 819 [2009]), the court upheld the Supreme Court's determination that the proceeding was jurisdictionally defective based on petitioner's failure to join the New York State Independence Party (State Party) as a necessary party (*see* CPLR 1001 [a]; 1003; *Matter of Vasquez v Smith*, 224 AD2d 822, 823; *Matter of Regan v New York State Bd. of Elections*, 207 AD2d 647, *lv denied* 84 NY2d 801) where the petition sought a determination interpreting the State Party's rules, and such determination could have an inequitable effect on the rights of the State Party (*see Vasquez*, 224 AD2d at 823). Additionally, petitioner failed to serve the Erie County Independence Party in accordance with the terms of the order to show cause (*see Matter of Rodriguez v Ward*, 43 AD3d 640, 641)

In *Matter of Masich v Ward* (65 AD3d 817 [2009]), the court held that the Supreme Court properly dismissed the petition seeking to invalidate the certificate authorizing over 100 designating petitions for candidates in Erie County based on the failure to join 102 unnamed candidates whose names appear on the certificate of authorization issued by the New York State Independence Party Executive Committee. Because there was only a single certificate of authorization, the 102 unnamed candidates would have been inequitably affected had the court granted the relief sought in the petition, and petitioners thus were required to join them as necessary parties (*see* CPLR 1001 [a]; 1003]).

Timeliness

Election Law 16-102. Proceedings as to designations and nominations, primary elections, etc.

> 2. A proceeding with respect to a petition shall be instituted within fourteen days after the last day to file the petition, or within three business days after the officer or board with whom or which such petition was filed, makes a determination of invalidity with respect to such petition, whichever is later . . ."

In general, this section requires that a judicial proceeding to validate or invalidate a designating petition must be brought within 14 days from the last scheduled date for filing the petition with the Board of Elections, and failure to do so within this time period is a fatal jurisdictional defect resulting in a dismissal of the proceeding as untimely (*Matter of Miller v Canary*, 133 AD2d 199, 200; *Matter of Moss v D'Apice*, 138 AD2d 436; *Matter of Augustine v D'Apice*, 153 AD2d 714; *Matter of Stempel v Kinley*, 176 AD2d 1063, 1064; *see also*, *Matter of Conservative Party v Schwartz*, 45 AD2d 976, *affd* 34 NY2d 983; *cf.*, *Mackey v Nassau County Dem. Comm.*, 147 AD2d 688, 689; *Matter of Bearak v Laufer*, 196 AD2d 604 [candidate's cross petition untimely]). This applies regardless of the form in which the proceeding is brought. For example, in an Article 78 proceeding seeking to invalidate certain Wilson-Pakula certificates the court found that the actions were time barred because they were not commenced within the applicable 14-day time period as required under Election Law 16-102 (2) (see *Lewis v Garfinkle*, 32 AD3d 548 [2d Dept 2006]; *Independence Party of Orange County, v New York State Board of Elections*, 32 AD3d 804 [2d Dept 2006]; *see Matter of Thomas v Turco*, 43 AD3d 617 [2007][Court held that a proceeding to invalidate a designating petition was untimely in that it was not commenced within 14 days after the last day to file the petition with the board of elections. In so holding, the court noted that the date the certificate of substitution was filed was not the date that triggered the statute of limitations]).

The single exception to this 14-day requirement, which had previously existed by judicial fiat (*see*, *Matter of Pell v Coveney*, 37 NY2d 494, 496; *Matter of Colvin v Romeo*, 59 AD2d 641; *Matter of Fortes v English*, 133 AD2d 193; *Matter of Bessinger v Mahoney*, 153 AD2d 791, 792; *Matter of Bestry v Mahoney*, 154 AD2d 889, 890) was codified by a 1992 amendment to Election Law § 16-102(2). This exception, like the judicially-created exception, is *applicable only to a judicial proceeding to validate* a petition found invalid by the Board of Commissions of the Board of Elections (*Matter of Pericak v Hooper*, 207 AD2d 950, 951) and *not to a proceeding* or cross motion to invalidate a petition ruled valid by the Board (*see*, *Matter of Bruno v Peyser*, 40 NY2d 827, 828; *Matter of Thompson v Wallace*, 45 NY2d 803, 804; *Matter of Blenman v Herron*, 51 NY2d 750, 752; *Matter of Krupczak v*

Mancini, 153 AD2d 785, 786; *Matter of Bessinger v Mahoney*, *supra*, at 792 [cross motion by the objector held untimely when brought after 14-day period]; *Matter of Godzisz v Mohr*, 197 AD2d 839) and allows the candidate to commence the validating proceeding either within the 14-day period or within three business days after the Board issues its determination of invalidity, whichever is later (*see*, *Matter of Eckart v Edelstein*, 185 AD2d 955, 956; *Matter of Pericak v Hooper*, 207 AD2d 950). Thus, if the Board makes its determination on the 12th day or any day thereafter, then the candidate may take advantage of the exception.

Although not expressly provided for in the amendment, under prior case law the exception has been held applicable to a candidate's cross motion or answer in response to an invalidating proceeding (*Matter of Halloway v Blakely*, 77 AD2d 932, 933; *Matter of Rodriguez v Rivera*, 112 AD2d 889, 890-891).

The extension of time permitted prior to the amendment had also been held not applicable where the candidate attempted to commence a validating proceeding within the 14-day period but did so improperly (*Matter of Moss v D'Apico*, 138 AD2d 436; *Matter of Hitt v D'Apico*, 154 AD2d 568, 569). As such, the court cannot permit a petitioner to amend a caption *nunc pro tunc* to correct a defect (failure to include all petitioners) as this would constitute an unwarranted extension of time to commence a proceeding (*Matter of Cerreto v Sunderland*, 307 AD2d 1004). Likewise, the extension of time was held not to apply to a proceeding brought to invalidate a petition that had not been invalidated by board. The court further held that CPLR 306(b) is not applicable to Election Law proceedings (*Matter of Riley v Democratic Party of Owasco*, 21 AD3d 708, *lv denied* 5 NY3d 707).

In *Matter of Gangemi v Board of Elections in the City of N.Y.*, (109 AD3d 541 [2013]) the Second Department upheld the dismissal of a proceeding as untimely where petitioner commenced a proceeding 22 days after the last day to file the designating petition, and 10 business days after the Board of Elections determined that the designating petition was invalid due to petitioner's failure to cure a defect within his designating petition(*see* Election Law § 16-102 [2]; *Matter of McDonough v Scannapieco*, 65 AD3d 647, 648 [2009]; *Matter of Leroy v Board of Elections in City of N.Y.*, 65 AD3d 645, 645-646 [2009]; *Matter of Sayegh v Scannapieco*, 10 AD3d 439 [2004]).

In *Antoine v Boyland* (21 Misc3d 298 [2008]), the court found that petitioner properly commenced a special proceeding to validate his designating petition for the public office of Member of the New York State Assembly pursuant to CPLR 304 without having to file the executed order to show cause and petition with the county clerk. CPLR 304 merely provides that a "**special proceeding is commenced by filing a petition**" (*emphasis added*), and no longer requires that an executed order to show cause be filed with the county clerk in order to commence a special proceeding.

To satisfy the statute all necessary parties must be timely served (*Matter of Macri v D'Apice*, 122 AD2d 905, 906, *affd* 68 NY2d 764; *Klamner v Rockland County Bd. of Elec.*, 133 AD2d 186, 187; *see Matter of Keane v Clark*, 43 AD3d 639 [4th Dept 2007] [designating petition was dismissed as time-barred where petitioners timely filed petition seeking to invalidate designating petition, but failed to serve all of parties with petition within requisite 14-day period]).

The method of service provided for in the order to show cause must be reasonably calculated to give notice to the necessary parties so that receipt or actual delivery of such notice would normally be expected within the 14-day period, or 3 business days, if applicable (*Matter of Contessa v McCarthy*, 40 NY2d 890, 891; *Matter of Elston v Mahoney*, 122 AD2d 969, 970; *Matter of Buhlmann v LeFever*, 83 AD2d 895, 896, *affd* 54 NY2d 775; *Matter of Moore v Milhim*, 109 AD2d 810; *Matter of Baldwin v Scaringe*, 176 AD2d 993; *Matter of Fulani v Barasch*, 166 AD2d 741, 743; *Matter of Barbarita v Hill*, 197 AD2d 740, 741; *Matter of Brown v Starkweather*, 197 AD2d 840; *but see*, *Matter of Berman v Board of Elec.*, 68 NY2d 761, 763, where the court sustained the service which was timely completed, even though the order to show cause erroneously provided for a date four days later, which date would not be timely.). Service by mail is incomplete so long as the person to be served did not actually receive delivery within the required time period (*Matter of Bruno v Peyser*, 40 NY2d 827, 828; *Matter of Thompson v New York State Bd. of Elec.*, 40 NY2d 814, 815; *Matter of Burton v Coveney*, 32 NY2d 842; *Matter of Squitieri v Power*, 25 NY2d 801, 802; *Matter of Moore v Milhim*, *supra*; *Matter of Yellico v Ringer*, 185 AD2d 965, 966). Thus, service by mail alone, be it by certified or regular first class mail, on the 14th day will not satisfy the 14-day requirement and will be regarded as untimely (*Matter of Radda v Acito*, 54 AD2d 531; *Matter of Butler v Gargiulo*, 77 AD2d 939; *Matter of Buhlmann v LeFever*, *supra*, at 896; *Matter of Floyd v Coveney*, 83 AD2d 897; *Matter of Moore v Milhim*, *supra*; *Matter of Elston v Mahoney*, *supra*, 122 AD2d, at 970; *Matter of Yellico v Ringer*, *supra*; *but see*, *Matter of Fuentes v D'Apice*, 122 AD2d 904), even though such mailing was in accordance with the order to show cause (*Matter of Floyd v Coveney*, *supra*; *Matter of Yellico v Ringer*, *supra*; *Matter of Barbarite v Hill*, 197 AD2d 740, 742). Where, however, the mailing is accompanied by a second mode of service and this other method has been timely served, mailing on the last date is not fatal (*Matter of O'Connor v Power*, 30 AD2d 926, *affd* 22 NY2d 889; *Matter of Foris v Power*, 35 AD2d 734; *Matter of Davis v Dutchess County Bd. of Elec.*, 153 AD2d 716; *Matter of Hipps v Sunderland*, 218 AD2d 774; *but see*, *Matter of Zaretsky v Tutunjian*, 133 AD2d 928, 929, where the proceeding was dismissed as untimely because the mailing was made after the 14th day in non-compliance with the order to show cause). It is well-established that serving an order to show cause and petition by ordinary mail on the last day for commencing a judicial proceeding constitutes a jurisdictional defect (*Matter of Nieves v Centeno*, NYLJ, Oct.22, 2002, at 20, col 6; *Floyd v Coveney*, 83 AD2d 897; *see, Buhlmann v LeFever*, 54 NY2d 775; *Moore v Milhim*, 109 AD2d 810).

In *Henry v Trotto* (54 AD3d 424 [2008]), the Second Department held that service of the order to show cause by first-class mail on the next to last day on which service could be made, was reasonably calculated to give notice to the necessary parties within the statutory

time period. Court took notice of a 2006 United States Postal Service report to the United States Government Accountability Office indicating that "Most First-Class Mail is to be delivered in 1 day when it is sent within the local area served by the destinating mail processing center" and "2 days when it is sent within the 'reasonable reach' of surface transportation," i.e., "within a 12-hour drive time. Importantly, the court noted that the respondent never denied receipt of the order to show cause within the statutory period.

The 14-day or 3 business days, if applicable, statutory period may not be extended by the court (*Matter of Loucky v Buchanan*, 49 AD2d 797; *Matter of Kaplan v Meisser*, 195 Misc 6, 7; *Matter of Dyte v Lawley*, 20 Misc 2d 988, 989), nor by the 60-day proviso contained in CPLR 203[b][5] (*Matter of Zaretsky v Tutunjian*, 133 AD2d 928, 929). Thus, even where the order to show cause authorized service on or before the 15th day after the last day to file designating petitions, the petition would be dismissed (*see Matter of Hennessey v DiCarlo*, 21 AD2d 505)

In computing the time for commencing a judicial proceeding, the last day for filing petitions is excluded from the computation, and if the last day of the period falls on a Sunday or legal holiday, the period shall expire on the next regular day (General Construction Law § 20; *Matter of McHoul v Sellick*, 153 AD2d 721; *see also*, *Matter of Lucariello v Commissioners of Chautauqua County Bd. of Elec.*, 148 AD2d 1012). Calculation of the 3-business-days period commences with the first business day after the date of determination of invalidity by the Board of Commissioners (*Matter of Pericak v Hooper*, *supra*, 207 AD2d, at 951). In *Matter of Coschignano v Dane* (21 AD3d 504)the Second Department held that a proceeding to invalidate a petition designating a candidate for the public office of Councilman of the Town of Oyster Bay was untimely under the limitation period set forth under Election Law § 16-102 (2). In so holding, the court rejected petitioner's arguments that either there was no statute of limitations applicable to this proceeding or that the 14-day period should have run from the date of the filing of the certificate of substitution.

Issues with respect to the timeliness of the institution of a judicial proceeding do not go to subject matter jurisdiction and are waived by the candidate's or his attorney's active participation in the proceeding on the merits (*Matter of Gregory v Board of Elec.*, 59 NY2d 681; *Matter of Banks v Larkin*, 39 AD2d 951). An appearance merely to contest personal jurisdiction does not constitute a waiver (*Matter of Miranda v Erie County Bd. of Elec.*, 59 AD2d 643).

The issue of the timeliness of the filing of the petitioner's objections and specifications, if not asserted as an affirmative defense in the answer, results in a waiver of the defense (*Matter of McHoul v Sellick*, 153 AD2d 721).

Candidate's invalidating proceeding was improperly/untimely commenced because of his failure to comply with the CPLR 304 filing requirements. The court nevertheless concluded that the invalidating proceeding should not be dismissed because the objector neither moved to dismiss the proceeding nor raised such an objection in a responsive pleading, i.e., an answer (*Matter of Isabella v Hotaling*, 207 AD2d 648, 649).

In *Matter of McDonough v Scannapieco* (65 AD3d 647 [2009]), the Second Department upheld the denial of a petition to validate, where petitioner failed to complete service on all necessary parties within the Election Law 16-102 [2] time constraints, holding that "language with regard to service contained in the order to show cause that commenced the proceeding 'could not and did not extend the period of limitations within which to institute the proceeding within the meaning of the Election Law'" (*Matter of Marino v Orange County Bd. of Elections*, 307 AD2d 1011, 1012; *see Matter of Kurth v Orange County Bd. of Elections*, 65 AD3d 642 [2009] [decided herewith]; *Matter of Davis v McIntyre*, 43 AD3d 636, 637 [2007]).

In *Matter of Littlewort v Board of Elections in City of New York* (87 AD3d 642 [2011]), the Second Department held that the trial court had erred by denying petitioners' request to present evidence that service of the petition to validate was served on respondent objectors within the statutorily prescribed period, and reversed the dismissal of petitioner's proceeding to validate.

In *Matter of Nunziato v Messano* (87 AD3d 647 [2011]), the Second Department held that persons seeking to invalidate petition designating candidates in primary election had to be given opportunity to present evidence that service on all necessary parties had been completed within period prescribed by Election Law (*see* Election Law § 16–102[2]).

In *Matter of Wilson v Davis* (131 AD3d 655 [2d Dep't 2015]), *lv denied,* 25 NY3d 914 [2015]), the Second Department upheld lower court's decision to not validate signatures on a designating petition purporting to support nomination of candidate for the public office of surrogate, which had been declared invalid by city board of elections. In this case, the candidate did not file any petition to validate signatures, and only made an oral application to the Supreme Court, which did not follow the statutory procedure to validate a designating petition (*see* Election Law § 16-102[2]).

Commencing Judicial Proceeding Prematurely

Any proceeding seeking to remove a candidate's name from the ballot or enjoin a candidate from circulating petitions must be commenced pursuant to the time period set forth in Election Law § 16-102 during the time period set by the court. In *Matter of Cohen v Dear* (NYLJ, July 10, 2003, at 20, col 5), petitioners moved for an order declaring a candidate for City Council ineligible and unqualified to be elected or serve due to a recent amendment to New York City's term limit law. This proceeding was commenced in June during the petitioning process and sought to enjoin the candidate from collecting signatures on his petitions. The court held that a proceeding to declare a party ineligible and unqualified to hold office constitutes a challenge to the designation or nomination of a candidate for public office. As such, such a proceeding must be commenced in accordance with the requirements of Election Law § 16-102 (*Matter of Cohen v Dear*, NYLJ, July 10, 2003, at 20, col 5; *Olma v Dale*, 306 AD2d 905 [2003]; *Matter of Scaringe*, 119 AD2d 327 [1986], *affd* 68 NY2d 885 [1986]). In *Matter of Olma v Dale*, plaintiff sought a declaratory judgement to prohibit the Commissioners of Elections from placing defendant's name on the ballot as a candidate for the Erie County Legislature in the November 2001 election. The court held that the action was subject to the 14-day statute of limitations provided by Election Law § 16-102(2) and § 16-104(3), which provide strict deadlines for any legal proceeding that challenges designating petitions or ballot content. The court stated: "[i]rrespective of how plaintiff frames his claim, his attempt to have Dale's name removed from the ballot constitutes a contest to the designation or nomination of a candidate for public office pursuant to Election Law § 16-102 and a challenge to ballot content pursuant to Election Law§ 16-104 *(see Matter of Scaringe v. Ackerman*, 119 A.D.2d 327, 328-329, *affd* 68 NY2d 885)." As such, plaintiff could not avoid the time limitations of those statutes by initiating this declaratory judgment action that had no statutory basis (*see Scaringe*, 119 AD2d at 329).

In *Ragusa v Board of Election* (57 AD3d 807 [2008]), where the New York City Board of Elections had not yet acted nor made a determination whether to cast or refuse to cast approximately 1,700 ballots found to be preliminarily invalid in a general election for office of state senator, the Second Department held that the Supreme Court lacked jurisdiction to intervene and determine a motion and cross motion to either reject or cast the disputed ballots (*see* Election Law § 16-106; *Mondello v Nassau County Bd. of Elections*, 6 AD3d 18 [2004]).

Method of Service

Election Law § 16-116. Proceedings; provisions in relation thereto.

> A special proceeding under the foregoing provisions of this article shall be heard upon a verified petition . . . and upon such notice to such officers, persons or committees as the court or justice shall direct . . .

Service of the verified petition and accompanying order to show cause may be made pursuant to the methods specified in CPLR 308, including personal service (subds 1 and 2; *Matter of Reilly v Scaringe*, 133 AD2d 900, 901; *Matter of Ciotti v King*, 175 AD2d 889, 890), "nail and mail" (subd 4; *Matter of Tinari v Berger*, 196 AD2d 622, 623 [amended order to show cause]; *Matter of Hipps v Sunderland*, 218 AD2d 774), or as the court may direct (subd 5). The specific method or methods to be employed in a given case are set forth in the order to show cause (Election Law § 16- 116). The method of service provided for in an order to show cause is jurisdictional in nature and must be strictly complied with (*Matter of Del Villar v Vekiarelis,* 59 AD3d 642 [2009]; *Matter of Master v Pohanka*, 43 AD3d 478 [2007], 480; *Matter of Hennessey v DiCarlo*, 21 AD3d 505 [2005]). When a petitioner utilizes a method of service not specifically authorized by the order to show cause, the proceeding must be dismissed as to those parties not properly served (*Matter of Bruno v Ackerson*, 51 AD2d 1051, *affd* 39 NY2d 718 [service upon person of suitable age and discretion improper where order required affixing to door]; *Matter of Fratello v Kruger*, 64 AD2d 937 [placing papers in mailbox improper where order required affixing to door]; *Matter of Butler v Gargiulo*, 77 AD2d 939 [service of three orders to show cause in one envelope improper where order required service in separate envelopes addressed to each candidate]; *Matter of Sahler v Callahan*, 92 AD2d 976, 977 [failure to fill in a date for service by mail had the effect of voiding this method of service]; *Matter of Velez v Smith*, 149 AD2d 753, 754 [delivering to a person of suitable age and discretion in the same house outside the presence of the party to be served improper where order used the term "delivering personally" not personal service]; *Matter of Freiberger v O'Toole*, 2 Misc 2d 191, *affd* 2 AD2d 678 [use of certified mail improper when order simply provided for service "by mail"]; *Matter of Wilson v Bush,* 175 AD2d 934, 935; *Matter of Raphael v Montgomery County Bd. of Elec.*, 175 AD2d 965, 966; *Matter of DeVore v Notice*, 185 AD2d 955; *Matter of Mroz v Maloney*, 185 AD2d 962; *Matter of Caruso v Nassau County Bd. of Elec.*, 186 AD2d 701; *Matter of Zambelli v Dillon*, 242 AD2d 353 [where the order to show cause provided for nail and mail service pursuant to CPLR 308(4) as a last resort if service pursuant to CPLR 308(1) or (2) could not be made with due diligence, the use of nail and mail service there was improper and due diligence was not exercised since no attempt was made to serve the party at his place of employment]; *Matter of Fonvil v Audain*, 131 AD3d 630, 630-631 [2015] [proceeding dismissed for failure to properly or timely serve as directed in the order to show cause]).

If the order to show cause authorizes ***alternative methods of service***, only one method need be employed (*Matter of Reilly v Scaringe*, *supra*, at 901). In *Matter of Grimaldi v Board of Elections of the State of N.Y.*, (95 AD3d 1644 [3rd Dept 2012]), the court held alternative means of service rather than personal service on the last day to commence proceeding was proper where it was in compliance with the service provisions set forth in order to show cause. In that case, the April 30, 2012 order to show cause specifically provided that petitioner was to serve respondent upon that date (the last day to commence a proceeding) by, ***in the alternative***, leaving a true copy with a person of suitable age and discretion at respondent's residence, affixing a copy thereof to the outer door of respondent's residence ***or*** by faxing ***or*** leaving a copy of the order at the office of respondent's counsel. The respondent candidate was served by the latter two methods of service set forth in the order to show cause, and

moved to dismiss the proceeding for improper service arguing that petitioner was improperly allowed to serve him using alternative methods of service. The court denied respondent's motion and held that the service by alternative means was proper. In so holding, the court noted that those methods of service were specifically stated ***in the alternative*** in the order to show cause (*id.* at 1646).

Where petitioner fails to exercise due diligence in attempt to serve potential candidate where no attempt at service was made until the afternoon of the day after the order to show cause was signed, and affidavit of service did not specify exact time pleadings were affixed to candidate's residence, proceeding to invalidate was properly dismissed (*Matter of Hennessey v DiCarlo*, 21 AD2d 505).

Like timeliness, the manner of service does not go to subject matter jurisdiction, and may be waived by participation in the proceeding (*Matter of Gregory v Board of Elec.*, 59 NY2d 668, 670).

The petitioner/candidate may not personally serve the respondents in a validating proceeding, and the proceeding will be dismissed by reason of such defective service (*Matter of Wein v Thomas*, 51 NY2d 862; *Sloan v Graham*, 10 AD3d 433, *lv denied* 3 NY3d 603, *cert den* 125 SCt 1403 [in a proceeding pursuant to Election Law § 16-102 to validate a petition designating Samuel H. Sloan as a candidate, the court denied the petition and dismissed the proceeding on the ground that the service was improperly made by the petitioner himself upon the respondents in violation of CPLR 2103[a]; *see also Sloan v Knapp*, 10 AD3d 434).

Where service is to be made by certified or registered mail, the addition of return receipt requested does not constitute a fatal deviation (*cf.*, *Matter of Smith v Marchi*, 143 AD2d 239).

The order to show cause commencing the invalidating proceeding was not jurisdictionally defective because it omitted the name of the court and county in which it was issued and before which it was returnable, since that information was contained in the annexed verified petition (*Matter of Osorio v Leventhal*, 80 NY2d 898).

Service of the order to show cause and verified petition is complete even though the designating petition was not annexed to the papers (*Matter of Previdi v Mathews*, 185 AD2d 962, 963).

In *Matter of Stern v Garfinkle* (22 AD3d 694), a petition was dismissed for lack of jurisdiction in proceeding to declare invalid certain absentee ballots cast in primary election

where the order to show cause provided for personal service by a particular date. Although the space provided for indicating date by which alternative service, i.e., overnight mail, was to be made was left blank, the petitioner served the order to show cause by overnight mail. The court held that the absence of a date by which overnight mail service was to be made had the effect of striking the provision for alternative service. Since the petitioner did in fact serve by alternative service (overnight mail), the court dismissed the petition for lack of jurisdiction on the ground that the mode of service utilized by petitioner was not in strict compliance with order to show cause.

In *Matter of Gorman v Board of Elections in City of New York* (76 AD3d 658 [2010]), the Second Department affirmed the dismissal of a petition where the petitioner failed to establish that he timely complied with the service requirements set forth in the order to show cause. Petitioner failed to timely submit to the trial court an affidavit of service indicating compliance with the service provision of the order to show cause with respect to the objector.

In *Matter of Haggerty v Queens County Republican Committee* (92 AD3d 681, 681 [2012]), the petitioner's proceeding was dismissed as untimely where petitioner failed to strictly comply with the service provisions of the order to show cause, which is jurisdictional in nature (*see* Election Law § 16–116; *Matter of Gorman v Board of Elections in City of N.Y.*, 76 AD3d 658, 658 [2010]).

In *Matter of Rotanelli v Board of Elections of Westchester County* (109 AD3d 562, 562-563 [2013]), the Second Department reiterated that the method of service provided for in an order to show cause is jurisdictional in nature and must be strictly complied with. In *Rotanelli*, "the subject order to show cause provided that service thereof and of "the papers upon which it [was] granted" upon the candidate was to be effectuated by (1) "sending the same by overnight, next-day delivery by UPS, FEDEX or the U.S. Postal Service on or before the 22nd day of July, 2013"; "or" (2) "by personal delivery of the same to [Ivy Reeves] on or before July 23, 2013, no later than 7:00 p.m." No attempt at personal delivery was made and copies of both the order to show cause and petition to invalidate were not delivered to Reeves's address until July 24, 2013. Here, petitioners submitted evidence that, at 9:30 p.m. on July 22, 2013, they deposited a prepaid United States Postal Service "Priority Mail Express" envelope containing these documents in a mail slot located inside a publicly accessible vestibule of a post office, after the post office had closed. The record established that an envelope deposited at that time would not have been collected, scanned, and prepared for delivery by postal employees until 7:00 a.m. on the following day, thus petitioners failed to establish strict compliance with the service provisions contained in the order to show cause.

In *Matter of Dekom v Moroney* (110 AD3d 800 [2013]), the petitioner's failure to personally deliver order to show cause and supporting papers to any respondent in proceeding under Election Law to invalidate organizational meeting of party committee in accordance

with order to show cause, which provided for respondents to be served pursuant to rule requiring personal delivery of process, rendered service ineffective to confer personal jurisdiction over respondents.

In *Matter of Wilson v Bowman* (121 AD3d 1402 [2014] *lv denied*, 24 NY3d 1000), the Third Department held that the method of service employed—affixing the order to show cause and papers to candidate's residence and mailing the same on ***the last day permitted*** for commencing a proceeding—was ***not a method of service reasonably calculated to give timely notice***. Since service was not completed within the time limit set forth in Election Law § 16–102(2), the proceeding was dismissed. Court noted that its prior decision in *Matter of Grimaldi v Board of Elections of the State of N.Y.*, (95 AD3d 1644 [2012]) was distinguishable because in that case, the court concluded that service by affixing the papers to the respondent's residence and either faxing or leaving a copy at the office of the respondent's counsel on the last day to commence a proceeding was permissible. The court stated that it did not permit affixing the papers to a residence and mailing the same on the last day to commence (*id.* at 1645–1646).

In *Matter of Streng v Westchester County Bd. of Elections* (131 AD3d 652 [2d Dep't 2015]), the court held that the delivery of a petition to invalidate petition designating candidate for public office in primary election to the candidate's 18 year old stepdaughter, at candidate's residence, and overnight mailing of petition to candidate's residence, complied with order to show cause, which provided for service upon candidate to be made by personal delivery, or a combination of any two of the following three methods: (1) mailing a copy, no later than July 23, 2015, to candidate's residence by United States Postal Service (hereinafter USPS) guaranteed overnight delivery or an equivalent delivery service, (2) affixing a copy to the outer or inner door of candidate's residence by July 23, 2015, or (3) delivering a copy to a person of suitable age and discretion at candidate's residence by July 23, 2015. Pursuant to Election Law §16-102 (2), the last day to timely commence the proceeding was July 23, 2015, and in an affirmation of service, the petitioners' attorney stated that he went to the candidate's residence on July 22, 2015, and delivered the papers to candidate's 18-year-old stepdaughter, and on July 23, 2015, he mailed a copy of the papers to candidates's residence by USPS guaranteed overnight delivery.

In *Matter of Conti v Clyne* (120 AD3d 884 [2014], *lv denied*, 23 NY3d 908 [2014]), the court held that the Candidate's papers, for his petition to annul determination of county board of elections invalidating designating petition, were deemed filed, in compliance with governing requirements, when candidate delivered them to county clerk, even though papers were not physically placed in clerk's case file, and clerk's failure to provide date-stamped copy of papers to candidate when they were delivered was ministerial error in method of filing that could be overlooked (*see* CPLR 304, 2001, 2102).

In *Matter of Angletti v Morreale* (131 AD3d 808 [4th Dep't 2015] *order* aff'd, 25 NY3d 794 [2015]), the petitioner sought to invalidate a certificate of substitution designating candidate as substitute party candidate for county legislator office to fill vacancy created by the candidate. The court held that the petitioner had effectuated "actual delivery" of commencement papers by affixing them to candidate's front door within the deadline set forth for service by the court, although the mailed commencement papers were not received on or before that deadline. Court held that the petitioner strictly complied with the court's service directions.

Failure to Produce Affidavits of Service

In *Matter of Brown v Sanders* (120 AD3d 676 [2014], *lv denied* 23 NY3d 908 [2014]), the petitioner's failure to produce affidavits of service establishing that he served the respondents with copies of the order to show cause and supporting papers warranted dismissal of the petition, *inter alia*, to invalidate the designating petition (*see* CPLR 306).

Specificity of Petition Required

A validating petition must specify the individual determinations by the Board of Elections that the candidate claims were erroneous, or the signatures that the candidate claims the Board improperly invalidated (*see* CPLR 3013*; Matter of Krueger v Richards*, 59 NY2d 680, 682 [1983]; *Matter of Fischer v Suffolk County Bd. of Elections*, 55 ADd3d 759, 760 [2008]; *Jannaccio v Board of Elections of City of New York,* 297 AD2d 355 [2000][validating petition denied where it was not sufficiently particularized to give the Supreme Court and the parties notice of the Board's determinations which were claimed to be erroneous or the signatures that the candidates claimed were improperly invalidated]; *see also Maelaner v Jannaccio,* 297 AD2d 355 [2002] [same]; *Jennings v Bd of Elections in the City of New York*, 32 AD3d 486 [2006]; *Matter of Green v Mahr*, 231 AD2d 480, 481-482 [1996]).

However, in *Matter of Bodkin v Garfinkle* (21 AD3d 571 [2005]), the court held that petitioner's petition to validate designating petition was sufficiently specific were the Suffolk County Board of Elections did not specify what objections were sustained, and made only a determination that the designating petition was invalid, without providing the candidates with the basis for that determination.

In *Romaine v Suffolk County Bd. of Elections* (65 AD3d 993 [2009]), an application to invalidate petitions designating individual as candidate in party primary elections for public office of city council member was dismissed for legal insufficiency, where alleged defects were not set forth in or incorporated into the pleadings as specific objections, and candidate was not otherwise sufficiently or fairly apprised of which signatures were being challenged and the grounds for those challenges (*see* Election Law § 16-102).

In *Matter of Master v Davis* (65 AD3d 646 [2009]), the Second Department held that the petition to invalidate sufficiently apprised the appellants of the grounds for the objections so that they could adequately prepare a defense even without considering the allegations contained in the petitioners' verified bill of particulars (*see Matter of Venuti v Westchester County Bd. of Elections*, 43 AD3d 482, 484; *Matter of Brotherton v Suffolk County Bd. of Elections*, 33 AD3d 944; *Matter of Edelstein v Suffolk County Bd. of Elections*, 33 AD3d 945, 946; cf. *Matter of Belak v Rossi*, 96 AD2d 1011, 1011-1012; *Matter of Levitt v Mahoney*, 133 AD2d 516).

In *Matter of Murray v Suffolk County Bd. of Elections* (98 AD3d 624 [2012]), the Second Department upheld the dismissal of a petition to invalidate where the petition was insufficiently detailed to apprise respondent candidate of the allegations being made against his designating petition.

In *Matter of Lacorte v Cytryn* (109 AD3d 544, 545 [2013], *affd* 21 NY3d 1022 [2013]), the Second Department held that a validating petition must be sufficiently particularized to give notice of which determinations were claimed to be erroneous or which signatures were improperly invalidated by the Board of Elections (*see Matter of Jennings v Board of Elections of City of N.Y.*, 32 AD3d 486, 486-487 [2006]; *Matter of Jannaccio v Board of Elections of City of N.Y.*, 297 AD2d 355 [2002]).

In *Matter of Sasson v Board of Elections in City of N.Y.* (24 Misc3d 1245A [2009] *affd* 65 AD3d 995 [2009]), the court held that the specificity requirement may be met by "reference in [the] pleading to the objections and specifications of objections filed with respondent Board of Elections, coupled with the general statements in the petition of the types of improprieties on which petitioner intended to base [his] challenge"(*Oberle v Caracappa*, 133 AD2d 202 [1987]).

<u>Specificity of Bill of Particulars Required</u>

In *Matter of Wooten v Barron* (242 AD2d 351 [1997]), the Second Department held that the bill of particulars was not sufficiently specific to meet the requirements of the rules for petitions “alleging a question of fraud” where respondent failed to list all of the witnesses expected to be called, to identify them by “name, address, volume, page, and line”, and to note the status of each witness.

Verification of Petition

Election Law § 16-116. Proceedings; provisions in relation thereto.

> A special proceeding under the foregoing provisions of this article shall be heard upon a verified petition . . . The petition in any such proceeding instituted by the state or other board of elections shall be verified by the persons specified in accordance with rules promulgated by the state board of elections . . .

The Election Law requirement of a verified petition is a jurisdictional condition precedent to commencing a proceeding and failure to comply therewith requires dismissal of the proceeding (*Matter of Goodman v Hayduk*, 45 NY2d 804; *Matter of Tenneriello v Board of Elec.*, 63 NY2d 700, 701; *see Frisa v O'Grady*, 297 AD2d 394 [2d Department]; *see also McCall v Matondo*, 297 AD2d 397, *lv denied* , 98 NY2d 610; *Matter of Callahan v Russo*, 123 AD2d 518; *Matter of Sitarek v Board of Elec.*, 143 AD2d 503; *Vaughn v Withers*, 153 AD2d 712; *Matter of Haberstro v Scholl*, 213 AD2d 1082).

The petition must be verified within the statutory 14-day period for commencing the proceeding, and the lack of verification may not be cured by amendment nunc pro tunc after said period (*Matter of Goodman v Hayduk*, 64 AD2d 937, 938, *affd* 45 NY2d 804; *Matter of O'Connell v Ryan*, 112 AD2d 1100; *see Frisa v O'Grady*, 297 AD2d 394 [2d Department - verification requirement cannot be cured by amendment]; *Matter of Foley v Grasso*, 114 AD2d 585).

In *Matter of Niebauer v Board of Elections in City of New York* (76 AD3d 660 [2010]), the Second Department upheld the trial's court's dismissal of petition since it was not verified as mandated by Election Law § 16-116 (*see Matter of Alper v Hayduk*, 71 AD2d 935 [1979]; *but see Matter of Rose v Smith,* 220 AD2d 922 [1995] [holding that courts need not dismiss section 16-102 actions for failure to verify absent any showing of prejudice]). In so holding, the court noted that "Section 16-116 of the Election Law requires that a special proceeding brought under article 16 of the Election Law shall be "heard upon a verified petition" (*see Matter of Goodman v Hayduk*, 45 NY2d 804, 806 [1978]) . . . which is jurisdictional in nature and cannot be cured by amendment (*see Matter of Frisa v McCarthy*, 298 AD2d 457, 458 [2002]; *Matter of Frisa v O'Grady*, 297 AD2d 394, 395 [2002])."

In *Matter of Rodriguez v Westchester County Bd. of Elections* (47 Misc.3d 956 [N.Y. Sup. 2015]), a proceeding seeking to declare null and void each nomination for village office was held procedurally defective for lack of verified petition, and thus jurisdictionally barred,

where the petition lacked initial verification signed by voter and lacked valid attorney verification justifying or explaining why attorney made statements in petition rather than voter. The petition was also not notarized (*see* CPLR 3020[d][3], 3021; Election Law § 16–116]).

The question of who may verify the petition is governed by CPLR 3020 (*Matter of Tenneriello v Board of Elec.*, *supra*, at 701) which provides *inter alia* that the verification may be made by the petitioner (CPLR 3020[d]) or under certain circumstances by his attorney (CPLR 3020[d]3).

An attorney may verify the petition only where he has an office in a county other than the one in which the petitioner resides (CPLR 3020[d]3; *Matter of Tenneriello v Board of Elec.*, *supra*, at 701), and is not a party to the proceeding (*Matter of Village of Herkimer Repub. Party*, 119 Misc 2d 801, 807).

In *Matter of Angletti v Morreale* (131 AD3d 808, 810 [4th Dep't 2015]), the court held that even though the verification of petitioner's attorney was improper because petitioner was in "the county where the attorney has his office" . . . "any defect in the verification of the petition should be ignored inasmuch as [respondent] failed to demonstrate that [he] was substantially prejudiced by the alleged defect"' (*Matter of Perez v Perez*, 71 AD3d 1496, 1496 *lv denied* 14 NY3d 714).

Verification by a single petitioner "united in interest" with others named as petitioners is sufficient to satisfy the statutory requirements (CPLR 3020[d]; *Matter of Seda v Richards*, 89 AD2d 952, 953; *Matter of Sedita v Smolinski*, 89 AD2d 1052, 1053; *Matter of McKinney v Relin*, 197 AD2d 839). Petitioners/candidates are united in interest where they share the same designating petition even though "there are differences in the types of office sought and the political subdivision in which the election is being pursued" (*Matter of Seda v Richards*, *supra*, at 953; *see Matter of Notholt v Nassau County Bd. of Elections*, 131 AD3d 641, 642 [2d Dep't 2015]; *Matter of Lansner v Board of Elections of City of N.Y.*, 72 NY2d 929).

The form for verification of an election proceeding is the one set forth in CPLR 3021 (*Matter of Alper v Hayduk*, 71 AD2d 935; *Frisa v McCarthy*, 298 AD2d 457, [2 Dept 2002] Court held that an *acknowledged* petition cannot be considered properly verified as mandated by Election Law § 16-116]).

Failure to timely raise the defense of a lack of verification or defective verification results in a waiver of this objection (CPLR 3022; *Matter of Ladore v Mayor & Trustees of Vil. of Port Chester*, 70 AD2d 603, 604). In *Master v Pohanka* (44 AD3d 1050 [2d Dept 2007]), the Second Department held that a political party committee waived their objection to an

allegedly defective verification of petition to invalidate since they failed to exercise due diligence with respect to providing notice that they elected to treat the petition as a nullity due to the allegedly defective verification. The court also noted that there had been no allegation that a substantial right of the appellants would have been prejudiced by the allegedly defective verification.

Generally, petitioner will retain the original executed copy of the verified petition for filing with the court and serve conformed copies upon the respondents (*Matter of Scaringe v Kinley*, 154 AD2d 836, 837).

Verification of Bill of Particulars

In *Thomas v Eugene* (41 Misc. 3d 418, 420-421 [N.Y. Sup. Ct. 2013]), the court held that since the special election part rules did not require that the bill of particulars be verified, petitioner's failure to verify her bill of particulars did not render it defective.

REQUIREMENT OF SEPARATE INDEX NUMBER

In *Matter of Brown v Smith* (76 AD3d 939 [2010]), the Second Department held that the appellant failed to properly commence a separate proceeding to validate his designating petition by not purchasing a second index number (*see Matter of White v Bilal*, 21 AD3d 573, 574[2005]; *Matter of Mennella v Deputy Chief Admin. Judge, N.Y.C. City Cts.*, 302 AD2d 530, 530-531[2003]; *Matter of Pal v Aponte*, 237 AD2d 443, 444 [1997]).

OPPORTUNITY TO BALLOT

A political party may seek an "opportunity to ballot" for either a public or party position where an ostensibly viable candidacy is nullified by fatal defects, "technical" in nature, that "leave the political party without a designated candidate for a given office" (*Matter of Harden v Board of Elec.*, 74 NY2d 796, 797; *Matter of Plunkett v Mahoney*, 76 NY2d 848; *Matter of Hochberg v D'Apice*, 112 AD2d 1067, 1068, *affd* 65 NY2d 960; *Matter of Gray v Hochberg*, 175 AD2d 892). If the opportunity to ballot is granted, the position is placed on the ballot without the name of any candidate and the voter would have the opportunity to cast a write-in vote for any person they choose.

The Election Law provides two ways in which a candidate may be nominated to run in a primary. The first is via the traditional designating petition route pursuant to Election Law §§ 6-130 and 6-132. The second method is by a petition for an opportunity to ballot in which the number of enrolled members of a political party equal to that required to designate a candidate for that office files a petition with the Board of Elections requesting the opportunity to write in the name of a candidate or candidates for such office or position (Election Law § 6-164). Upon receipt of a sufficient petition, such office or position is "deemed" contested and voters are given the opportunity to write in the candidate of his or her choice.

A petition for an opportunity to ballot is subject to objections and court review in much the same manner as a designating petition (Election Law § 6-164). Election Law § 16-102 gives the Supreme Court the authority to order an opportunity to ballot in the interest of justice where the party has manifested the "intention . . . to nominate some candidate" (*Matter of Hunting v Power*, 20 NY2d 680, 681). It is important to note that only petitions annulled because of *technical* defects are subject to an application for an opportunity to ballot. The remedy is not available where the designating petition is invalidated because it lacks the requisite number of valid signatures (*Matter of Harden v Board of Elec.*, *supra*; *Matter of Gray v Hochberg*, *supra*; *Matter of Bowen v Ulster County Bd of Elections*, 21 AD3d 693). Examples of such technical defects include where the proponent of a designating petition failed to serve an objector thereby leaving no valid designation (*Matter of Brown v Ulster County Bd. of Elec.*, 48 NY2d 614, 615); or where two candidates withdrew their respective designating petitions and stipulated that the petitions were invalid because of technical defects and would leave the party without a designated candidate (*Matter of McCall v Hynes*, 196 AD2d 618, 619; *see also*, *Venezia v Albanese*, 153 AD2d 723).

Opportunity to ballot has been denied where designating petitions have been rejected for *substantive* rather than *technical* defects. For example in *Van Stockum v Castine* (218 AD2d 915), the court found that the failure to timely file a certificate of authorization required by the Election Law was not a mere technicality but was rather a fatal defect to the designating petition (*see also*, *Plunkett v Mahoney*, *supra*). Petition for opportunity to ballot would also be denied where the designating petition was invalidated on allegations of irregularities including fraud (*Della Badia v D'Apice*, 133 AD2d 190) or where more than half of the signatures on the petition were of persons who resided out of the district or were not enrolled in the Democratic Party (*Weingarten v D'Apice*, 153 AD2d 726). In *Lent v Katz* (307 AD2d 1009), the court invalidated the petition for an opportunity to ballot on the ground that it failed to designate a "Committee to Receive Notices"(*see* Election Law § 6-134[8]). In so holding, the court noted that the "Committee to Receive Notices ... remains an essential element of an opportunity to ballot petition," and that "the complete absence of any such Committee is a fatal defect."

In *Matter of DiNonno v Castioni* (43 AD3d 476 [2d Dept 2007], *lv denied* 9 NY3d 804 [2007]), the petitioners challenged two signature sheets, one for each candidate, on the ground that the notary's signature was stapled to these sheets instead of "appended [to] the bottom" of each sheet as required by the Election Law (Election Law § 6-132 [2]). The Second Department affirmed the Supreme Court's finding that there was not a substantial deviation from the statutory requirement so as to warrant invalidation of the signatures and the opportunity to ballot petitions.

A party establishes its intention to nominate a candidate "by submitting a facially valid designating petition which has otherwise failed to be sustained . . ." (*Matter of Quaglia v*

LeFever, 143 AD2d 237). Election Law § 6-158 prescribes the time within which one must petition to write in the name of an undesignated candidate. That section provides that a candidate must make a request for an opportunity to ballot not later than the eighth Thursday preceding the primary election.

In *Landry v Mansion* (65 AD3d 803 [2009]), the court noted that courts have the authority, as justice requires, to order an opportunity to ballot, which is "designed to give effect to the intention manifested by qualified party members to nominate some candidate, where that intention would otherwise be thwarted by the presence of technical, but fatal defects in designating petitions, leaving the political party without a designated candidate for a given office" (*Matter of Harden v Board of Elections in City of N.Y.*, 74 NY2d 796, 797[1989]; see *Matter of Hunting v Power*, 20 NY2d 680, 681 [1967]; *Matter of Bowen v Ulster County Bd. of Elections*, 21 AD3d 693, 694-695 [2005]; *Matter of Santoro v Kujawa*, 133 AD2d 534, 534 [1987], *lv denied* 70 NY2d 724 [1987]; *Matter of Garrow v Mitchell*, 112 AD2d 1104, 1105 [1985], *lv denied* 65 NY2d 607 [1985]).

Election Law §§ 6-164 and 6-166 collectively require that an Opportunity to Ballot petition shall set forth the names of persons constituting a "Committee to Receive Notices" and that "[a]ll required notices shall be served on the members of the committee named in the petition." In *Matter of Cass v Krakower* (13 NY3d 118 [2009]**),** the petition to invalidate an opportunity to ballot petition was dismissed where petitioner, the aggrieved candidate, failed to serve or provide any notice of the present proceeding to the Committee to Receive Notices (*see also Matter of Myers v Baisley*, 13 NY3d 727 [2009] [petition to invalidate an opportunity to ballot petition dismissed where the aggrieved candidate failed to name and serve the Committee to Receive Notices, as required by Election Law § 6-164]); *Matter of Fasoldt v Bugbee*, 13 NY2d 726 [2009]).

In *Matter of Cassar v Larsen* (109 AD3d 560, 560-561 [2013]), the Second Department held that a committee to receive notices is an "essential element" of an opportunity to ballot thus the failure to designate such a committee is a "fatal defect" requiring the invalidation of a petition seeking an opportunity to ballot which does not contain such a committee (*Matter of Werner v Castiglione*, 286 AD2d 553, 554 [2001]; *see Matter of Pagones v Irizarry*, 87 AD3d 648, 649; *Matter of Lent v Katz*, 307 AD2d 1009 [2003]; *Matter of Ferlicca v Starkweather*, 219 AD2d 795 [1995]; *see also Matter of Markel v Smolinski*, 89 AD2d 1052 [1982]).

The court in *Schultz v Farkas* (36 Misc 3d 1231A) held that since Committees to receive Notices play a role in defending against efforts to invalidate Opportunity to Ballot petitions, it is reasonable to infer that they must also possess the capacity to allege counterclaims and initiate affirmative litigation aimed at validating OTB petitions (*see Matter of Straniere v Cutolo*, 59 AD2d 572, 572 [2d Dept 1977], *affd* 42 NY2d 984).

Matter of Roberts v Work (109 AD3d 681, 681-682 [3d Dep't 2013]) involved a challenge to an opportunity to ballot which the Supreme Court had granted after a candidate had stipulated that the petition he had submitted for the Democratic Party nomination for Ulster County Legislator for the 12th Legislative District lacked the requisite number of signatures to be placed on the ballot. The Third Department held that an opportunity to ballot should be granted "only where the defects which require invalidation of a designating petition are technical in nature and do not call into serious question the existence of adequate support among eligible voters" The court noted that here the Supreme Court failed to hold a hearing at which it could be determined whether the signatures were invalidated for technical or substantive reasons and thus, denied the request for an opportunity to ballot.

In *Matter of Hall v Dussault* (109 AD3d 679 [3d Dep't 2013]), a designating petition was invalidated due to errors committed by two subscribing witnesses, which resulted in the invalidation of the signatures they witnessed and rendered the petition lacking the requisite number of signatures. The Third Department granted a request for an opportunity to ballot holding that the signatures in the designating petition had been invalidated due to a technical irregularity which did not call into question the fact that there was adequate support among the voters for the candidate.

MISCELLANEOUS DISCOVERY/ TRIAL/ CALENDAR ISSUES

Adjournments

In *Matter of Fonvil v Alexandre* (87 AD3d 640 [2011]), the Second Department held that the trial court providently exercised its discretion when it denied petitioner's application made during the hearing for an adjournment to secure the attendance of certain witnesses. In so holding, the court pointed out the petitioner's lack of due diligence in securing the attendance of those witnesses and, more importantly noted that proceedings pursuant to the Election Law "require immediate action" because they are "subject to severe time constraints" (*id.* at 640; *see Matter of Master v Pohanka*, 44 AD3d 1050, 1052 [2007]; *Matter of Tenneriello v Board of Elections in City of N.Y.*, 104 AD2d 467, 468 [1984, *affd*. 63 NY2d 700 [1984]).

Discovery

The Rules for the Special Election Part require, in connection with petitions "alleging a question of fraud" that a complete offer of proof/bill of particulars be served and filed on the return date of the court petition. Such offer of proof must, at minimum, contain a statement as to the number of witnesses expected to be called, the identification of each such witness (by name, address, volume, page and line) along with the status of each such witness (i.e. candidate, signatory, subscribing witness, notary public, etc) (*see*, *Matter of Wooten v Barron*, 242 AD2d 351; *Matter of Rivera v Ortiz*, 207 AD2d 516; *see also*, *Matter of Fletcher*

v Barker, 196 AD2d 611; *Mandell v Board of Elections*, Kings Sup Ct, index number 24724/96 [Garry, J.], *aff'd*, 230 AD2d 877).

Representation by Counsel

In *Matter of Eaton v Rosenberg* (109 AD3d 770, 771-772 [2013]), the Second Department upheld the Supreme Court's determination that counsel who appeared before the Supreme Court and filed answers on behalf of the candidates had the authority to represent all of the candidates involved in a multi-candidate petition and to move on their behalf to dismiss the underlying petitions (*see generally Hamilton v Wright*, 37 NY 502, 505[1868]; *Siegel v Kentucky Fried Chicken of Long Is.*, 108 AD2d 218, 225-226, [1985], *affd* 67 NY2d 792 [1986]; *Buxbaum v Assicurazioni Generali*, 34 NYS2d 480, 482 [1942], *affd* 264 App Div 855 [1942]).

Burden of Proof

While the burden of proof is generally on the petitioner, where an objector attacks the registration of signatories to a petition, the candidate must produce evidence of registration even if the Board of Elections did not uphold the objection (*Matter of Hinton v Howard*, 93 AD2d 897). Likewise, the burden shifts to the respondent where subpoenaed witnesses fail to appear in the face of evidence of irregularities (*see*, *Haas v Costigan*, 14 AD2d 809, *aff'd* 10 NY2d 889).

In *Matter of Grimaldi v Board of Elections of State* (95 AD3d 1644 [2012]), which involved an action to validate a designating petition purporting to nominate petitioner as political party's candidate in primary election, the Third Department held that the trial court did not abuse its discretion when it refused to accept into evidence a belatedly offered and uncertified copy of an allegedly up-to-date "Street Finder" to support respondent's claim that state board of elections certification of signatures was improper because it was allegedly using an out-of-date district map.

In *Matter of Fall v Luthmann* (109 AD3d 540, 541 [2013]), the Second Department upheld the Supreme Court's determination that certain signatures contained in a designating petition were invalid where petitioner, with the exception of the written statement of one signatory, failed to submit any evidence, in the form of affidavits or otherwise, showing that the challenged signatures were valid.

Adverse Inference

In *Haas v Costigan,* 14 AD2d 809 [1961] *affd.* 10 NY2d 889 [1961], where there was proof of gross irregularities and fraudulent practices as to a large number of specific signatures on many designating petition sheets, the Second Department held that it became the moral and legal duty of the challenged candidates, even in the absence of a subpoena, to produce the subscribing witnesses who were presumed to be under their control, and that the failure to do so justified the conclusion adverse to the candidates with respect to the remaining signatures on the petition sheets. In other words, the court may make conclusions adverse to a candidate with respect to the remaining signatures based upon the candidate's failure to offer evidence of the legality of such remaining signatures.

In *Martinez v Olmedo* (153 AD2d 720 [1989]), the court held that the petition designating a candidate in a primary election was properly invalidated based on fraud where at least three witnesses testified that the signatures on the petition bearing their names were not theirs, another witness whose name appeared thereon testified that the only paper she signed was represented to be a petition for Puerto Rican statehood, and several subscribing witnesses under the candidate's control, as well as the candidate himself, did not appear at the hearing, although subpoenaed. The court found that there was sufficient evidence to support the determination that instances of fraud so permeated the designating petition as to render it invalid.

In *Bennett v Phillips* (175 AD2d 934 [1991], *appeal denied* 78 NY2d 856 [1991]), the Second Department, citing *Matter of Haskell v Gargiulo*, 51 NY2d 747 (1980), held that the Supreme Court correctly drew an adverse inference from the appellant's failure to produce numerous subscribing witnesses.

In *Previdi v Matthews* (186 AD2d 101 [1992]), the Second Department held that the court improperly struck two pages of the designating petition on which three invalid signatures appeared, where the irregularities were not the result of fraud on the part of either of the two subscribing witnesses, one of whom was a candidate. The court held that only the invalid signatures should have been stricken, leaving the candidate with more than the minimum number of signatures required.

In *Adams v Klapper* (182 Misc. 2d 51 [1999], *order aff'd*, 264 AD2d 696 [2d Dep't 1999]), the court held that the failure of a subpoenaed candidate to appear and refute the evidence that some of the signatures on a designating petition nominating him or her for the primary election for a public office were notarized by his or her nephew supports an adverse inference against the candidate, in a proceeding challenging the designating petition.

In *Matter of Lavine v Imbroto* (98 AD3d 620 [2012]), no adverse inference was drawn against the candidate based on the failure of certain subscribing witnesses to appear at the

hearing where the subpoenas with respect to each of those subscribing witnesses were improperly served (*see* CPLR 308, 2303 [a]; *cf. Serraro v Staropoli*, 94 AD3d 1083 [2012]).

In *Matter of Haygood v Hardwick* (110 AD3d 931 [2 Dept 2013]), where there was evidence of irregularities and fraudulent practices as to signatures on the pages attested to by two subscribing witnesses, the petitioners were entitled to an inference that said witnesses, who were presumed to be under the candidate's control and failed to appear at the hearing, would have testified adversely to the candidate's position.

PLEADINGS

Pursuant to CPLR 402, the pleadings in a special proceeding are limited to a petition, answer and reply to a counterclaim asserted. Any other pleading (i.e., a cross claim) requires leave of court (*Matter of Kopten v Austin*, 5 AD3d 515).

Leave to Amend Pleadings

Matter of Nagubandi v Polentz (131 AD3d 639, 641 [2d Dep't 2015]) involved candidate Nagubandi, who filed a designating petition and then objections and specification of objections were filed against the petition. Nagubandi then commenced a proceeding to validate the designating petition, contending only that the specifications of objections failed to comply with 9 NYCRR 6204.1(a)(3), in that they did not explain the meaning of some of the abbreviations that were used to set forth objections to signatures. She later moved to amend her petition seeking to validate the designating petition to assert that certain signatures on the designating petition were improperly invalidated by the Board of Elections. The Supreme Court denied the motion as untimely and improperly filed without leave of the court (*see* Election Law § 16-102; CPLR 402). This determination was upheld by the Appellate Division which further found that the Supreme Court was correct in finding that Nagubandi was precluded from objecting to the Board's determinations in a counterclaim as her specifications in support of the counterclaim did not timely apprise the court and the parties of her specific challenges to the Board's determinations.

Leave to Assert a Cross Claim to Validate

In *Matter of Aguirre v Hernandez* (131 AD3d 716, 716-717 [2d Dep't 2015]) the court held that the Supreme Court properly dismissed a cross claim to validate a designating petition where the candidate failed to seek leave to interpose the cross claim, thus it was not properly before the court (*see* CPLR 402). The court noted that the cross claim was, in actuality, an improper and untimely attempt to commence a proceeding to validate his designating petition (*see* Election Law § 16-102; *Matter of MacKenzie v Ghartey*, 131 AD3d 638 [2d Dept 2015]; *Matter of Kiernan v New York State Bd. of Elections*, 95 AD3d 1242, 1243 [2012]; *Matter of Brown v Smith*, 76 AD3d 939, 940 [2010]; *Matter of White v Bilal*, 21 AD3d 573, 574 [2005]; *Matter of Dickerson v Daly*, 196 AD2d 610, 611 [1993]).

Amended Pleadings

In *Matter of MacKay v Johnson* (54 AD3d 428 [2008]), the Second Department held that the Supreme Court properly amended the caption to designate Barbara Donno as a petitioner in election law proceeding to invalidate petition, as she was the individual designated by the Executive Committee of the NYS Independence Party as its candidate for State Senator in the 7th Senatorial District. The court reasoned that "[d]efects, mistakes, and irregularities in pleadings are to be ignored by the court absent a showing of prejudice".

Calendar Issues

In *Bradley v Evans* (297 AD2d 392 [2 Dept 2002]), the court held that the record demonstrated confusion as to whether the title and/or index number of this proceeding was read when the calendar was called on the return date of the order to show cause by which it was commenced. Court found that, since the pro se candidate was in the courtroom at the time the calendar was called and intended to participate in the proceedings, he was not in default, and even if he was, the record indicates that his default was not intentional or the result of bad faith (*see Matter of Santiago v. Santiago*, 275 AD2d 429; *Krebs v Cabrera*, 250 AD2d 736, 737; *Key Bank of Southeastern N.Y. v Lammers*, 191 AD2d 615, 616).

MISCELLANEOUS ELECTION ISSUES

SPECIAL ELECTIONS

Filling Vacancies in Elective Offices

In *Barron v Board of Elections* (11 NY3d 745 [2008]), the Court of Appeals reversed the decision of the Appellate Division, Second Department (53 AD3d 510), holding that no special election would be held to fill the vacancy created by Assembly member's felony convictions, but instead, the office would remain vacant for the remainder of the member's unexpired term and would be filled at next general election for the term commencing on January 1st, where the vacancy occurred after April 1st in the last year of the Assembly member's term of office, and no special session of the Legislature had been called (*see* Public Officers Law § 42[4]).

Special Election Due to Unexpected Vacancy

Within three days of a vacancy in the New York City Council, the mayor, pursuant to section 25(b)(1) and 25(b)(6) of the New York City Charter, is required to shall issue a proclamation proclaiming the date for a special election to fill such vacancy. Election Law § 6-158[9] provides that the last day to file a petition is 12 days after the “issuance” of the Mayor’s proclamation. In the *Matter of Nieves v Centeno*, NYLJ, Oct.22, 2002, at 20, col 6) petitioner and respondent disagreed over when the proclamation was deemed issued. Petitioner argued that it was not deemed issued until it was received by the City Clerk while

respondent claimed that it was deemed issued when signed by the mayor. The court found that, under Charter § 25(b)(1), the proclamation is deemed "issued" as of the date it is signed by the Mayor.

In *Matter of Alessi v Pataki* (21 AD3d 1141), the candidates on the ballot for the primary election for a vacated Assembly seat applied, in a combined proceeding pursuant to Election Law § 16-102 and action for declaratory judgment, for review of the determination of the governor scheduling a special election on the same day as the scheduled primary to fill such vacancy and sought, among other things, to enjoin the special election and continue the scheduled primary. Holding that the Governor had the authority to schedule the special election to fill vacancy in the Assembly, the Third Department stated as follows:

> Where, as here, a vacancy in an elective office occurs before September 20, Public Officers Law § 42(1) provides that such vacancy "shall be filled at the general election held next thereafter, unless otherwise provided by the constitution, *or unless previously filled at a special election*" (emphasis added). Because the subject vacancy is not one that can be filled by appointment for a period extending to or beyond December 31, 2005 (*see* N.Y. Const., art. XIII, § 3; *Matter of Mitchell v. Boyle*, 219 N.Y. 242, 245, 114 N.E. 382 [1916]), Public Officers Law § 42(3) provides that "the governor may in his discretion make proclamation of a special election to fill such office ... which shall be not less than thirty nor more than forty days from the date of the proclamation." (*Matter of Alessi,* 21 AD3d 1142)

The court further stated that, notwithstanding the time restriction on the Governor's authority, Public Officers Law § 42(3) "affords him considerable discretion in deciding if and when to issue such a proclamation" (*id.* at 1142). Moreover, the court concluded that "[w]hether a special election of the character of the one under consideration shall be held, *and if so when*, involves a matter of executive discretion, in which case the court lacks the right or the authority to interfere (*id.* at 1143). Thus, the court's judicial review is limited to whether the Governor is empowered to act, not how he discharges that authority (*id*.).

In *McMahon v Oswego County Bd. of Elections*, (38 Misc 3d 203 [2012]) a case involving a vacancy that occurred on September 3, 2012, when George Williams, the Oswego County Clerk, died creating a vacancy in the position. Petitioner sought to invalidate certain certificates of nomination and to enjoin the placing of two names on the official ballot and voting machines as candidates for county clerk. Petitioner argued that New York County Law §400 (7) provided that a vacancy in the office of County Clerk is initially filled by the governor, by appointment and then filled for a full term at the next general election, held not less than three months after the vacancy occurs. The court found, *inter alia*, that Public Officers Law § 42(1) and County Law § 400(7) evinced the Legislature's intent to apply a September 20th deadline to vacancies in public office, subject to the specific provisions in

N.Y. Const. art. XIII, § 3 and, since this vacancy occurred prior to September 20th, the vacancy was to be filled at the next general election.

Validity of Party Nomination of Candidate in Special Election

In *New York State Working Families Party State Committee v Berman* (11 AD3d 646 [2004]) certificate of nomination naming candidate for office to be filled at special election for county legislature that was submitted by ***State*** Executive Committee of Working Families Party, and not certificate submitted by ***County*** Executive Committee, was valid, since it was made in manner prescribed by the rules of that party (*see* Election Law § 6-114 which provides that "Party nominations for an office to be filled at a special election shall be made in the manner prescribed by the rules of the party".

Special Election Party Name

In *DiResto v Cornell* (59 AD3d 643 [2009]), a case involving a Special Election to fill a vacant City Council seat, a candidate ran on the "Families First Party." The Board of Elections invalidated the independent nominating petition pursuant to Election Law §6-138 (3) (a) finding that the party name selected included part of the name of an existing political party. The Supreme Court granted the candidate's petition to validate giving him two days to file a certificate with the Board of Elections selecting a new name. The Second Department reversed holding that "although Election Law § 6-138 authorizes a board of elections to permit a candidate to select a new name for an independent body making the nomination when the original name selected for an independent body conflicts with a previously-filed independent nominating petition for the same office (*see* Election Law § 6-138[3][b]), there is no authorization for a board of elections to grant a candidate the opportunity to select a new name when, as here, the original name selected for an independent body includes the name or part of a name of an existing party" (*see* Election Law § 6-138[3][a], [b]; *Carey v Chiavaroli*, 97 AD2d 981 [1983]; *Matter of McCarthy v Lawley*, 35 AD2d 126, 129 [1970]; *see generally Matter of Carr*, 94 AD 493, 496 [1904]).

TERM LIMITS OF NEW YORK CITY ELECTED OFFICIALS

Section 1138 of the New York City Charter provides that a person that has previously served as a council member for two or more consecutive terms is not eligible to be elected or serve unless and until one full term or more has elapsed. Charter §25 (a), as amended by Local Law 27 of 2002, states that a single two-year term does not constitute a full term for purposes of §1138 of the Charter. In *Dear v Board of Elections of City of New York* (Kings Sup Ct, index number 26449/03 [Levine, J.], *affd* 307 AD2d 1006), the Court held that Noach Dear, who was elected to serve as a council member for two four-year terms commencing on January 1, 1994 and January 1, 1998, respectively, is not eligible to serve as a council member for the term commencing on January 1, 2004, because only one two-year term has elapsed since he left office on December 31, 2001. The court concluded that the New York City Charter § 25(a), as amended by Local Law No. 27 (2002) of City of New York, and New York City Charter § 1138 precluded Dear from running for office of City Council again until

2005, and that these provisions, as applied to him, did not violate his constitutional rights, as he did not have a fundamental right to be a candidate (*see Matter of Roth v Cuevas*, 158 Misc.2d 238, 252, *affd.* 197 AD2d 369, *affd.* 82 NY2d 791).

In *Molinari v Bloomberg* (564 F.3d 587[2009]), the United States Court of Appeals, Second Circuit, held that: a local law to amend sections 1137 and 1138 of the New York City Charter to change the term limits for New York City elected officials (Mayor, Comptroller, Public Advocate, Borough President and City Council) from no more than two consecutive terms to no more than three such terms implicated no First Amendment rights; did not violate substantive due process rights; and that New York Municipal Home Rule Law, which required a referendum to enact any local law that changed the "membership" of a legislative body, did not require a referendum to enact a local law extending such term limits for city officials.

TERM LIMITS OF COUNTY OFFICIALS

In *Matter of Hoerger v Spota* (109 AD3d 564 [2d Dep't 2013], *order aff'd*, 21 NY3d 549 [2013]), where the terms of office for county district attorneys were established by NYS Constitution and state law, the court held that the Suffolk County lacked authority to restrict the number of consecutive years that a person could serve as district attorney for the county, such as would warrant the invalidation of petitions designating incumbent as candidate for district attorney for county, based on county term limit law. In so holding, the court stated that the office of district attorney was not a local office falling within the ambit of the New York State Constitution and home-rule statute. The court further held that even if it was, the county government's ability to place restrictions on a district attorney's terms of office was preempted by the state's Constitution and law.

CANVASSING OF PAPER BALLOTS

Election Law §9-209 (2) (d) provides that paper ballots are to be counted by two Board of Elections inspectors (one Democrat and one Republican known as "the board of inspectors"). The board of inspectors determines whether the information accompanying the ballot is sufficient to allow it to be counted and any party lawfully present can object to the casting or canvassing or the refusal to cast or canvass any ballot. In the event that the two inspectors agree not to sustain an objection, an indorsement to that effect must be placed on the envelope , and the ballot is removed from the envelope and counted. It was argued by both candidates in a Special Election to fill a City Council vacancy that this process did not provide for meaningful judicial review of an objection because once a ballot has been counted it can no longer be linked to a particular envelope. The court in the *Matter of O'Keefe v Gentile*, (757 NYS2d 689) determined that the proper procedure in such situation would be to require the Board of Elections to make a copy of the ballot before it is counted and seal it back inside the ballot envelope in order to effectively preserve it for judicial review.

In *King v Smith* (308 AD2d 556), the Second Department held that the Supreme Court properly directed the New York City Board of Elections (hereinafter the Board of Elections) to implement certain procedures to preserve for judicial review those paper ballots which are

counted over an objection by a candidate or her representative. Specifically, the court held that if an objection of the candidate or her representative is not sustained, one of the inspectors must open the original mailing envelope, photocopy the ballot, insert the photocopy in the envelope, and reseal the envelope in order to preserve for judicial review those paper ballots (*see* Election Law § 16-112).

A petition seeking examination or preservation of the ballots must set forth facts which will give grounds for a belief that irregularities, discrepancies, or errors have, in fact, occurred (*see Matter of Fingar v Martin* (68 AD3d 1435 [2009]). In *Matter of Fingar*, the voters sufficiently alleged challenges to absentee ballots, which grounds included that signatures on absentee ballots did not match specimens on the voters' registration forms, that there was inadequate information on absentee applications, and that information on certain applications included incorrect or untrue information.

CASTING OF BALLOTS

In *Matter of Abramo v Kadet* (66 AD3d 1532 [2009]), although five votes were recorded on the statement of canvass for the Independence Party candidates, the poll book established that only two Independence Party voters signed the registration poll records. Under these circumstances, the Fourth Department held that the failure of three of the five voters to sign the registration poll records required the invalidation of all five of those ballots (*see* Election Law § 8-304).

ABSENTEE AND AFFIDAVIT BALLOTS

Absentee Ballots

Election Law § 8–400(1) provides that a voter may be qualified to cast an absentee ballot if he or she will be "unavoidably absent from the county of ... residence" on election day, is "unable to appear personally at the polling place ... because of illness or physical disability," including due to treatment at a hospital, or is detained in jail awaiting trial or in prison after conviction for a nonfelony offense. Pursuant to Election Law § 8-400(3), the application for an absentee ballot when filed must contain in each instance the following information:

> (1) applicant's full name, date of birth, and residence address, including the street and number, if any, rural delivery route, if any, mailing address if different from the residence address and his or her town or city and an address to which the ballot shall be mailed;
>
> (2) a statement that the applicant is a qualified and registered voter;]

(3) a statement, as appropriate, that on the day of such election, the applicant expects in good faith to be in one of the following categories:

(a) absent from the county of his or her residence, or if a resident of the city of New York absent from said city; provided, however, if the applicant expects to be absent from such county or city for a duration covering more than one election and seeks an absentee ballot for each election, he or she must state the dates when he or she expects to begin and end such absence;

(b) unable to appear at a polling place because of illness or physical disability or duties related to the primary care of one or more individuals who are ill or physically disabled;

© an inmate or patient of a veteran's administration hospital; or

(d) detained in jail awaiting action by a grand jury or awaiting trial or confined in jail or prison after a conviction for an offense other than a felony and stating the place where he or she is so detained or confined.

Upon receipt of an absentee ballot application, the local board of elections determines "upon such inquiry as it deems proper whether the applicant is qualified to vote and to receive an absentee ballot," which may include conducting an investigation into the accuracy of the information provided (Election Law § 8–402[1], [2]). If the board determines the application is acceptable, the absentee ballot is forwarded to the voter (Election Law § 8–402).

Pursuant to Election Law § 7–122, the ballot is enclosed in an envelope bearing an affirmation that must be signed by the voter, as follows:

"I do declare that I am a citizen of the United States, that I am duly registered in the election district shown on the reverse side of this envelope and I am qualified to vote in such district; that I will be unable to appear personally on the day of the election for which this ballot is voted at the polling place of the election district in which I am a qualified voter because of the reason given on my application heretofore submitted; that I have not qualified nor do I intend to vote elsewhere, that I have not committed any act nor am I under any impediment which denies me the right to vote.

> I hereby declare that the foregoing is a true statement to the best of my knowledge and belief, and I understand that if I make any material false statement in the foregoing statement of absentee voter, I shall be guilty of a misdemeanor" (Election Law § 7–122[8]).

Matter of Gross v Albany County Board of Elections (3 NY3d 251 [2004]) stemmed from a special election which was required by a federal court order in an action challenging the Albany County Legislature's redistricting plan under the Voting Rights Act of 1965. A federal judge had ordered the Board of Elections to abide by Article 8 of the New York Election Law and provide absentee ballots **only** to voters who filled out an application stating the reason they would be unavailable to vote at the polls. Instead, the board sent an absentee ballot to everyone who applied for one for the canceled 2003 election. The Court of Appeals held that the absentee ballots at issue were invalid under the Election Law, regardless of the fact that they were submitted in good faith by qualified, eligible voters. In so holding, the Court expressed regret that voters would be disenfranchised through no fault of their own but noted that "despite the absence of fraud or intentional misconduct, the fact remains that the voters who cast the ballots at issue were not determined to be 'duly qualified electors' under the absentee ballot scheme." (*id*. at 260).

Review of Absentee Ballot Applications by Board of Elections

Election Law § 8-402 governs action on the application itself and provides in relevant part at § 8–402(1):

> "Upon receipt of an application for an absentee ballot the board of elections shall forthwith determine upon such inquiry as it deems proper whether the applicant is qualified to vote and to receive an absentee ballot, and if it finds the applicant is not so qualified it shall reject the application after investigation as hereinafter provided."
>
> The permitted investigation may be ordered "whenever [the Board of Elections] is not satisfied from an examination of an application for an absentee ballot that the applicant is entitled to such a ballot ..." (Election Law § 8–402 [2]).
>
> Any investigation is to be completed to permit the applicant enough time to receive and return the absentee ballot itself, should the application be granted. If the investigation cannot be completed in time, but the voter is duly registered, an absentee ballot shall be sent out to allow for the ballot's timely return (Election Law § 8–402[4]).

When an application for an absentee ballot is denied, the board "shall immediately notify the applicant giving him the reason for such rejection" (Election Law § 8–402[5]).

In *Matter of Jacobs v Biamonte* (15 Misc. 3d 223 [Sup 2007]*, aff'd,* 38 AD3d 777 [2d Dep't 2007), where petitioners sought broad disclosure of all applications for an absentee ballot, the Appellate Division upheld the trial court's determination that "Election Law § 8-402 is both specific and limiting" and that petitioner was only entitled to inspect a listing of the names of all applicants receiving absentee ballots with their addresses, assembly districts and election districts.

In *Hermann v Dutchess County Bd. of Elections* (112 AD3d 860 [2d Dep't 2013], *leave to appeal denied*, 22 NY3d 860 [2014]), an absentee ballot application that informed the Board of Elections that the voter had a "*permanent* illness or physical disability" gave the Board a basis upon which to determine that the voter was entitled to vote as an absentee in the general election, permitting the absentee ballot to be cast and canvassed (*see* Election Law § 8–400[3][c][ii]). However, the court found that another absentee ballot application which had requested an absentee ballot for the calendar year 2012 based solely on that voter's duty relating to the primary care of a disabled individual, but did not indicate that the disabled individual was *permanently* disabled (*see* Election Law § 8-400 [3] [c] [ii]), should not be cast and canvassed because it was not evident from the absentee ballot application that the disabled individual referred to in that application would still be disabled in 2013 or indicate that the voter's duty to care for the disabled individual would continue for the calendar year 2013.

<u>Residency Challenge to Absentee Ballot</u>

In *Matter of Fingar v Martin* (*Matter of Fingar v Martin,* 68 AD3d 1435 [2009]), court held that a residency challenge to an absentee ballot should have been made pursuant to the procedure to challenge the *issuance* of the absentee ballots and *not* after those ballots have been cast (*see* Election Law § 8-402 [review of application]; *see also Matter of Messina v Albany County Bd. of Elections*, 66 AD3d 1111, 1114 n [2009], *lv denied* 13 NY3d 710 [2009]).

<u>Judicial Proceedings Contesting the Casting or Canvassing of Ballots</u>

Election Law § 16-106 vests Supreme Court with subject matter jurisdiction in a proceeding "instituted" by a "candidate" to "contest[ ]" "[t]he casting or canvassing or refusal to cast . . . void or canvass absentee . . . ballots" (Election Law § 16-106 [1]), provided that it is brought "within twenty days" after the "election" or the Board's "alleged erroneous . . . determination" (Election Law § 16-106 [5]).

Necessary Party

In *Matter of Meyer v Whitney* (132 AD3d 1062 [3d Dep't 2015]), the voter was not necessary party in a proceeding, pursuant to Election Law 16-106 contesting his absentee ballot, although ballot was declared invalid due to his lack of residency in county, where the candidate challenging the ballot did not challenge the voter's registration either in the petition or at the evidentiary hearing, but instead sought to preclude that voter's absentee ballot from being counted (*see* Election Law § 16–106).

In *Matter of Alessio v Carey* (10 NY3d 751 [2008]), the Court of Appeals held that the Board's invalidation of seven absentee ballots during its canvass of paper ballots one week after election was held could be challenged within 20 days of that allegedly erroneous determination. Since petitioner complied with Election Law § 16-106(5) by timely instituting the proceeding within twenty days of that determination, the Court of Appeals held that the Supreme Court was vested with subject matter jurisdiction over this proceeding and with the authority to "direct a recanvass or the correction of an error" (*see* Election Law § 16-106[4]).

Matter of Stern v Garfinkle (22 AD3d 695 [2d Dep't 2005]): Noting that Election Law § 16-106 gives the Supreme Court jurisdiction over "challenged" absentee ballots, the court held that the petitioner failed to demonstrate that he challenged the absentee ballots at issue in accordance with the provisions of the Election Law (*see* Election Law §§ 8-502, 8-506; *see Matter of Dorman v Scaringe*, 222 AD2d 887, 887-888 [1995]; *Matter of Gates v Scaringe*, 105 AD2d 543 [1984]; *see generally Matter of Cosgrove v Jensen*, 252 AD2d 555 [1998]).

Sufficiency of Petition Contesting the Casting or Canvassing of Ballots

In *Messina v Albany County Bd. Of Elections* (66 AD3d 1111[2009], *lv denied*, 13 NY3d 710 [2009]), the Candidate's petition, seeking to declare invalid certain absentee ballots in political party's primary election for town supervisor position, did not sufficiently put county election board, other candidate, or elections commissioners on notice of his argument that ballots were void ab initio, and thus candidate was barred from raising that argument at hearing on his petition. The petition merely stated that ballots should not have been issued because identity requirements of Election Law were not complied with and included generalized claims that the board was unable to determine the validity of the individual ballots (*see also* Election Law §§ 8-303, 16-102, 16-106, 16-112)

In *Matter of Malone v Rockland County Bd. of Elections* (110 AD3d 723 [2d Dep't 2013]), respondents in proceeding to, *inter alia*, invalidate absentee ballots cast in primary election for nomination of party's candidate for town's superintendent of highways did not receive adequate notice of allegations supporting petition, warranting its dismissal; allegations in petition in support of fraud claim were not sufficiently specific, and petition failed to allege that absentee ballot applications did not comply with statute identifying information to be provided in such applications (*see* Election Law §§ 8–400[3][c][I], 16–106; CPLR 3016[b]).

Challenges to Absentee and/or Affidavit Ballots

In a proceeding pursuant to Election Law § 16–106 for judicial review of the canvassing of ballots, the Supreme Court has the authority to "direct a recanvass or the correction of an error, or the performance of any duty imposed by law" (Election Law § 16–106[4]). "A vote for any candidate or ballot measure shall not be rejected solely because the voter failed to follow instructions for marking the ballot.... A mark is considered valid when it is clear that it represents the voter's choice and is the technique consistently used by the voter to indicate his or her selections" (9 NYCRR 6210.13[A][2], [3]; *see Matter of Stewart v Chautauqua County Bd. of Elections*, 14 NY3d 139, 149 [2010]; *Matter of Mondello v Nassau County Bd. of Elections*, 6 AD3d 18, 23–24 [2004]).

Election Law § 9–112 provides, in pertinent part:

> "1. The whole ballot is void if the voter (a) does any act extrinsic to the ballot such as enclosing any paper or other article in the folded ballot or (b) defaces or tears the ballot except that a ballot card which is in perforated sections shall not be void because it has been separated into sections or © makes any erasure thereon or (d) makes any mark thereon other than a cross X mark or a check V mark in a voting square, or filling in the voting square, or (e) writes, other than in the space provided, a name for the purpose of voting; except that an erasure or a mark other than a valid mark made in a voting square shall not make the ballot void, but shall render it blank as to the office, party position or ballot proposal in connection with which it is made. No ballot shall be declared void or partially blank because a mark thereon is irregular in form. The term "voting square" shall include the voting space provided for a voter to mark his or her vote for a candidate or ballot proposal."

> "2. A cross X mark or a check V mark, made by the voter, in a voting square at the left of a candidate's name, or the voter's filling in such voting square, or punching a hole in the voting square of a ballot intended to be counted by machine, shall be counted as a vote for such candidate."

Crooked or retraced lines or other voting marks which are irregular in form are not grounds for invalidating a ballot in whole or in part (*see* Election Law § 9–112[1]; *Matter of Fallon v Dwyer*, 197 NY 336 [1910]). Further, Election Law § 9–112(2) explicitly states that the filling in of a voting square shall be counted as a valid vote. " '[A]n indistinguishable scribble' rather than 'a cross X mark or a check V mark' " satisfies the requirements of the Election Law and shall not render the ballot void in whole or in part (*Matter of Carola v Saratoga County Bd. of Elections*, 180 AD2d 962, 965).

"The law is well settled that inadvertent marks on a ballot do not render the ballot void in whole or in part" (*Matter of Mondello v Nassau County Bd. of Elections*, 6 AD3d 18, 24 [2 Dep't 2004]). However, extraneous marks on ballots that could serve to distinguish the ballot or identify the voter, as opposed to inadvertent marks, will render a ballot blank as to the relevant office if the mark is confined to the voting square pertaining to that office, or render a ballot invalid as a whole if the mark appears outside of the voting square (*see* Election Law § 9-112[1]; *Matter of Mondello,* 6 AD3d at 25; *Matter of Boudreau v Catanise*, 291 AD2d 838, 839 [2002]; *Matter of Carney v Davignon*, 289 AD2d 1096, 1096 [2001]; *Matter of Nicolaysen v D'Apice,* 100 AD2d 501, 502 [1984]; *see generally Matter of Gross v Albany County Bd. of Elections*, 3 NY3d 251, 255-258 [2004]).

Miscellaneous Cases: Extraneous Markings

In *Matter of Young v Fruci* (112 AD3d 1138 [3d Dep't 2013] *leave to appeal denied*, 22 NY3d 1037 [2013]), the court held that written words deliberately placed on challenged absentee ballots by voters in town supervisor election, so that markings could have distinguished ballots and marked them for identification, rendered ballots invalid in their entirety. In this case, on one absentee ballot, in box for "Proposal Number Four," apparent "Yes" vote was crossed out and words "No vote" were written below box, along with letters that appeared to be initials, and on second absentee ballot, in box for "Proposal Number Five," there was horizontal line drawn through both "Yes" and "No" boxes with words "NO VOTE" handwritten next to boxes.

In *Matter of Kelley v Lynaugh* (112 AD3d 862 [2 Dept.,2013], *leave to appeal denied*, 22 NY3d 860 [2014]), the Second Department made the following determinations:

> Absentee ballot cast in county board election was invalid, where the inconsistent and extraneous markings on the absentee ballot rendered it impossible to determine the voter's intent (*see* 9 NYCRR 6210.13[A][2], [3]; *Kelley v Lynaugh*, 112 AD3d 862 [2d Dep't 2013]);

Absentee ballots cast in county board election were valid, where the markings used by each voter clearly and consistently indicated his or her choice on the ballot (*see* 9 NYCRR 6210.13[A][2], [3]);

Absentee ballot cast in county board election was valid, even though envelope was initially signed by another voter, who lived at the same address as designated voter and cast her own absentee ballot, where the other voter's signature was crossed out and the proper voter's signature was inscribed above it (*see* 9 NYCRR 6210.13[A][2], [3]). The court found that the proper voter's signature on the absentee ballot envelope containing the ballot corresponded to the signature found in her voter registration record. Under these circumstances, the court ruled that the absentee ballot was valid;

Absentee ballot cast in county board election was invalid, where the signature on the envelope in which that absentee ballot was submitted did not correspond to the signature on the voter's registration poll record (*see* Election Law §§ 8–506[1], 9–104[1], 9–209[2][a][i][C]).

In *Matter of Brilliant v Gamache* (25 AD3d 605 [2d Dep't 2006]), where an action was brought to declare invalid certain absentee ballots cast in general election held for public office of town council member, the Second Department held that: (1) the check mark made with pen on absentee ballot in box labeled "Democratic" was an extraneous mark that invalidated the ballot in that the check mark appeared to be intentional and could have served to distinguish the ballot or identify voter (*see* Election Law § 9-112[1]); (2) the pen mark characterized as "***underlining***" that appeared on absentee ballot beneath names of three candidates for public office of state supreme court justice did not invalidate the entire ballot inasmuch as the mark appeared to be inadvertent; and (3) the ***food stains*** that appeared on absentee ballot, which also appeared inadvertent, did not invalidate the ballot.

Miscellaneous cases involving challengers to Affidavit/Absentee Ballots

In *Panio v Sunderland,* 4 NY3d 123 The Court of Appeals addressed the validity of the following categories of challenged absentee and affidavit ballots, not yet counted:

1. Affidavit Ballots Cast at Correct Polling Place But Wrong Election District

Court held that the affidavit ballots tendered by voters who appeared at the **correct polling place** but the **wrong election district** could be counted. Finding that the casting of an affidavit ballot at the correct polling site but at the wrong election district is usually the result of *ministerial error* on the part of the election workers, the court reasoned that because there is a lower risk of fraud with affidavit voting, "imposing such a minimal requirement of

directing a voter to the correct election district within the same polling site will not invite impermissible deviation from statutory requirements devised to ensure fair elections."

2. Affidavit Ballots Cast at Wrong Polling Place and Wrong Election District

Court held that the affidavit ballots tendered by voters who appeared at the wrong polling place, and thus the wrong election district could **not** be counted. In so holding, the Court reasoned that the voters at issue erred in going to the wrong polling place, and that such error cannot be attributed to the ministerial error of election workers. Further, the Court stated that it would be unreasonable to require poll workers to ensure that voters are at their correct polling site.

3. Absentee Ballots Cast by Poll/Election Workers

The Court held that the absentee ballots cast by poll workers **should** be counted. In so holding, the Court stated as follows:

Election Law § 11-302 allows poll workers to vote by "special ballot" if they provide a "written statement" indicating that they "will be unable to appear at the polling place for such election district on the day of an election" because of their duties as election workers. Election Law § 11-302, however, does not prescribe the form of such written statements.

Since it was ministerial error for the Board of Elections to direct that poll workers apply for special ballots using absentee ballot applications, and since the poll workers' applications contained the substance of the required statement--that they were working the polls on Election Day--their votes must be counted.

4. Affidavit ballots that were enclosed in envelopes that did not identify the election district for which they were tendered

Court held that these affidavit ballots should be counted since there were no claims that they were not properly cast in the first instance, or that they were unidentifiable upon reaching the Board of Elections. The evidence in the record revealed that upon removing the ballots from their respective election district bags, the poll workers discovered that the election district had not been indicated on the individual ballot envelopes. Some Board workers then affixed to the envelopes yellow "Post-it Notes" containing the missing information, which later became dislodged.

5. Affidavit ballots cast by voters who were denied the opportunity to vote by machine where other voters had allegedly signed the poll ledgers in their place

Court excluded these affidavit ballots finding reasoning that the possibility of fraud was manifest in this situation where votes had already been cast in the names of these voters. Further, the Court noted that the exclusive remedy available to the voters in this situation was to seek a court order allowing the voter to vote (*see* Election Law § 16-108[3]).

In *Matter of Hoyt v Dewitt* (18 Misc.3d 540 [Sup Ct, Tompkins County 2007]), the court held that an affidavit ballot cast by a voter at the polling place on election day, **November 6, 2007**, in the presence of board personnel was not invalid where the date set forth in three locations on the affidavit ballot envelope was **November 7, 2007.** The court reasoned that because Election Law § 8-302 (3) (e) (ii), in setting forth the requisite information for the envelope to be provided by the election inspectors to the voter, omits any reference to the date of the affidavit, an erroneous date cannot serve as the basis for invalidation of the ballot.

In *Matter of Stewart v Chautauqua County Bd. of Elections* (14 NY3d 139 [2010]), the Court of Appeals invalidated affidavit ballot on the ground that voter was not a resident of voting district. The Court held that the voter did not have dual residences in Chautauqua and Cattaraugus Counties. Although voter testified that she stayed at the Chautauqua County house for three consecutive summers and hoped to return for a fourth, she further testified that she did not own the home, did not pay rent, might not be permitted to return because her aunt could decide to sell the property before the next summer, that the electrical supply was shut off as of August 2009, and that the house had no running water or heat source. The record also establishes that the voter resided in the Cattaraugus County apartment. Notably, when asked how long she intended to reside at the Cattaraugus County apartment, she testified that she hoped to stay there "permanent[ly]." Court held that voter's physical presence at her Cattaraugus County apartment, coupled with her expressed intent to remain there permanently, sufficed to establish that as her residence, and that she lacked "significant and continuing" attachments to the Chautauqua County address sufficient to create a bona fide second residence for the purpose of voting.

Matter of Amedore v Peterson (102 AD3d 995 [2013]), *lv. denied* 20 NY3d1006 [2013]), involved an election for NYS Senator from the 46th Senate District involving candidates Amedore and Tkaczyk. Following the election, the candidates were only several votes apart. The parties commenced a proceeding to preserve the ballots and to determine the validity of certain affidavit, absentee and special ballots cast. The court ruled as follows:

> *Special Ballots*- The Third Department found that the Supreme Court erred in sustaining the objections to 53 special ballots cast by Ulster County election inspectors on the ground that the special ballots were returned to the Ulster Board of Elections more than two weeks prior to the election. The Third Department found that Election Law §11-312 was not violated. This section directs a board of elections to provide the special ballot within the two weeks prior to election day, it does not direct a voter to return the ballot within that period. The statute instead only directs that a completed ballot be returned not later than the close of the polls on election day. The clear language of the statute provides that the two-week time period applies only to the provision of the ballot and not its return by the voting election inspectors.

Affidavit Ballots- The court found that 26 of the 209 objected to absentee ballots contained all of the statutorily required information and directed that said ballots be counted.

Absentee Ballots - The court overruled objections to certain absentee ballots where the objector failed to overcome the presumption that the individuals who cast such absentee ballots resided where they were registered to vote from.

In *Matter of Schiener v Sessler* (37 Misc. 3d 1207[A] [N.Y. Sup. Ct. 2012]), which involved a primary election for the Republican party nomination for Livingston County District Attorney, the unofficial result of the September 19, 2012 canvas was that Schiener received 1880 votes and Sessler received 1879 votes. After oral argument on September 26, 2012, five absentee and one special ballots were in dispute. The court resolved the disputed ballots as follows:

Special Ballot- the first ballot in question was a special ballot that had been requested by a poll worker on September 12th at 4:20 PM. The worker was told that the Livingston County Board of Elections had closed at 4 PM but that he could apply for and receive a special ballot the next day which he did at 8:12 a.m. Election Law § 11-302 provides that applications for special ballots for board of election employees "must be mailed to the board of elections not later than the seventh day before the election for which a ballot is first requested or delivered to such board not later than the day before such election" (§ 8-400[2][c]). However, the court found that the poll worker had substantially complied with the statutory directive and ordered that his ballot be counted.

Absentee Ballot- The next two disputed ballots were absentee ballots with stray marks, the court directed that the ballot markings clearly indicated the voters' selection of candidate Sessler, a third absentee ballot had only a cross mark under Schiener's name but no mark in the appropriate box, and thus, was not counted. Finally, the court declined to count two unsealed envelopes containing ballots as they were in violation of Election Law §9-209 (2) (a) (I) (A).

In Smith v Sullivan (38 Misc. 3d 727 [2012]), involving a special election for the office of County Legislator, the candidates were separated by four (4) votes and sought the disqualification and nullification of certain ballots. Initially the court found that Sullivan's petition sufficiently identified the claimed ballot defects in order to give adequate notice to Smith regarding which ballots were sought to be disqualified and why. The court rendered the following rulings:

Extraneous Marks- The court found that a ballot that had the word "Abandon" written on it should be counted as the testimony proffered by counsel for the Board of Elections revealed that this was a term of art used where ballots are completed and cannot be associated with a voter and are found on a voting machine unattended and are then placed into an "Abandoned Ballot Bag." The court found that this was not a case where a voter had deliberately placed words on a ballot rendering it void (*citing Matter of Mondello* 6 AD3d 18 [2004]).

The court disqualified portions of a ballot where the voter had drawn a diagonal line across the names of two candidates for Justice of the Supreme Court. The court held that the ballot was only void as to this office and not to the other offices on the ballot, even though the voter had voted for the same candidates on both the Republican and Conservative line, the court noted that the voting machine would only record one of the votes for any candidate where a voter attempted to vote twice for the same candidate.

Voters Given the Wrong Ballot- Smith also sought to have certain voters who received the wrong ballots be allowed to cast affidavit ballots, which the court declined to do as it would have impermissibly extended the casting and counting of ballots.

Special Ballots- The court found that the special ballots given to two election workers should be disqualified because the voter's special ballot application failed to indicate the reason that the special ballot was required.

Absentee Ballots-The court disqualified several absentee ballots because the applications for said ballots failed to indicate the reason that the voter was requesting an absentee ballot and, thus, the application was incomplete and any vote cast pursuant to such a deficient application cannot be counted as it is a fatal defect.

Handwriting Expert- Finally, the court found that a handwriting expert's affidavit and testimony were insufficient to establish that the signature on certain applications for absentee ballots was not the same as the signature contained in the Statement of Absentee ballot. The court found that his testimony regarding his comparison of these signature with those on the voter's buff card was not adequate to demonstrate that the signatures were not made by the same person.

Signature on Absentee Ballot Application/Envelope

The permissive use of titles, initials or customary abbreviations of given names by the signers of, or witnesses to, an absentee ballot application form or an absentee ballot envelope, shall not invalidate such voter's signature or witness's signature as long as the signature on the ballot application/envelope corresponds to the signature on the registration poll record (see Election Law§ 8-400[6]). In *Matter of Smith v Babcock* (110 AD3d 837 [2d Dept 2013]), the Second Department held that the lower court properly determined that the signature on the envelope containing the subject absentee ballot at issue sufficiently corresponded to the signature on the voter's registration poll record (*see* Election Law §§ 8-400 [6]; 8-506 [1]).

In *Matter of Stewart v Rockland County Bd. of Elections*, 112 AD3d 866 [2d Dep't 2013]), an absentee voter's use of his initials in lieu of his full signature on that absentee ballot envelope satisfied Election Law provisions governing marking of such ballots (*see* Election Law §§ 8–400[6], 8–410). The court further held that certain absentee ballots should not be cast and canvassed, since the signatures on the envelopes in which those absentee ballots were submitted did not correspond to the signatures on the voters' registration poll records (*see* Election Law §§ 8-506 [1]; 9-209 [2] [a] [i] [C]; *Matter of Johnson v Martins*, 79 AD3d 913, 920-921 [2010], *affd* 15 NY3d 584 [2010]; *Matter of Kolb v Casella*, 270 AD2d 964 [2000]).

MILITARY BALLOTS

In *Carney v Niagara County Bd. of Elections* (8 AD3d 1085 [2004]), court held that Military ballot should have been opened and counted where the county board of elections, through clerical error, failed to date/time stamp a military ballot envelope that was timely filed (*see* Election Law § 9-209[2]).

OPTICAL SCAN BALLOTS

In *Matter of Stewart v Chautauqua County Bd. of Elections* (14 NY3d 139 [2010]), ballots that were unsuccessfully scanned through optical scan voting machine were required to be manually counted by bipartisan team of election inspectors and added to the canvass, where ballots were not left in privacy booth and were completed by voters who left ballots at machines without ensuring they had been scanned (*see* 9 NYCRR 6210.13[A]). Court found that the ballots clearly indicated the voters' selections for candidates and, therefore, should have been counted.

EMERGENCY BALLOTS

In *Smajic v Oneida County Bd. of Elections* (66 AD3d 1529 [2009]), the emergency ballots cast in primary election for office of city councilman contained improper marks and, thus, were void where four of the voters wrote their names on the ballots, and the fifth voter wrote the name of a candidate for another office on the ballot, which could have identified that voter (*see* Election Law § 9-112[1][d]).

MANUAL AUDIT

In *Matter of Johnson v Martins* (15 NY3d 584 [2010]), the court discussed Election Law § 16-113--the statute which sets forth the circumstances under which the Supreme Court "may direct a manual audit of the voter verifiable audit records." and allowed the court to direct a manual audit where the evidence showed a discrepancy indicating "a substantial possibility" that the result of the election could change (*see* Election Law § 16-113 [2]). In this case, the court found no need for a full manual audit where the discrepancy rate was significantly below the margin of victory, such that there was no substantial likelihood that the result of the election would be altered by the conduct of a full manual audit, and there was no evidence that the discrepancies arose from any flagrant irregularity in the election process.

In *Matter of Slisz v Bejyer* (92 AD3d 1238 [4th Dept. 2012]), the court held that a defeated candidate for the city council, who had lost by 1 vote, had sufficiently alleged a likelihood of a material discrepancy between a manual audit tally and the voting machine or system tally of votes cast in the election, as required to state a cause of action for manual audit of voter verifiable audit records of all ballots cast in the election. Where the defeated candidate alleged limitations in scanning devices used to tally votes that prevented devices from detecting all marks that should be deemed valid votes, the court found that there was a substantial possibility that the successful candidate, as reflected in voting machine or system tally, could change if the manual audit were conducted (*see* Election Law § 16–113[2]).

STATE AND LOCAL COUNTY COMMITTEE AUTHORITY

Matter of Peluso v Erie County Independence Party, 66 AD3d 1329 (2009). After remand from Court of Appeals,[2] the Fourth Department held that the rules of the local County Committee of the Independence Party were invalid to the extent that they conflicted with the rules of the State Committee of that party relating to the nomination and authorization of candidates. The court reasoned that the State Committee's rules vested the State Committee's Executive Committee with exclusive power to act with respect to the issuance of

[2] Court of Appeals held that the declaration sought by petitioners that the rules of the local county committee of a political party were invalid and contrary to the rules of the state committee was not an advisory opinion (*see Peluso v Erie County Independence Party*, 13 NY3d 139 [2009]).

authorizations in the county, thereby stripping the County Committee of that authority (*see* McKinney's Election Law § 6-120[3]).

Challenges to Validity of County Committee

In *Matter of Kosowski v Donovan* (18 NY3d 686 [2012]), the Court of Appeals held that a petition challenging the validity of a county committee of a political party must be commenced within ten (10) days after the organizational meeting of the committee, at the latest. The court stressed that this applies to meetings that only select party officers as well as party meetings that select candidates for public office (*see* Election Law § 16–102[2]).

SUPREME COURT'S AUTHORITY/JURISDICTION

Challenges to General Election

In *Matter of Flood v Schopfer* (20 AD3d 417 [2005]), the Appellate Division, Second Department held that the Supreme Court lacked jurisdiction to order a new village election for the Mayor of the Village of Irvington on the ground of alleged irregularities, which included a malfunctioning voting machine, failure to provide paper ballots, and the inability of certain registered voters to cast votes. Noting that "[a]ny action [the] Supreme Court takes with respect to a general election challenge 'must find authorization and support in the express provisions of the [Election Law] statute' (*Matter of Delgado v Sunderland*, 97 NY2d 420, 423 [2002])," the court held that where the irregularities alleged include a malfunctioning voting machine, the "proper vehicle for challenging the results and contesting title to the public office of the purported winner is a quo warranto action,"commenced by the Attorney General once the purported winner has taken office (*id*. at 418).

In *Sellers v LaPietra* (871 NYS2d 877), the court held that it lacked subject matter jurisdiction, in a declaratory judgment and Article 78 proceeding, over petitioners' claims for a preliminary injunction enjoining county board of elections and its officials from certifying results of election for position of village trustee, declaration that successful candidate was not a village resident, declaration that successful candidate was not qualified to serve as village trustee, and declaration that a vacancy existed in the position, where petitioners did not commence a pre-election action challenging successful candidate's residency within time allowed by the Election Law §§6-154 and 16-102. Furthermore, the court noted that it was unable to summarily cancel, set aside or annul a general election.

In *Matter of Skartados v Orange County Bd. of Elections* (81 AD3d 757 [2011]), the court held that under Election Law § 16-106, a court is only granted the power "(1) to determine the validity of protested . . . paper ballots and protested or rejected absentee ballots and to direct a recanvass or correction of any error in the canvass of such ballots, and (2) to review the canvass and direct a recanvass or correction of an error or performance of any required duty by the board of canvassers" (*Matter of Corrigan v Board of Elections of Suffolk County*, 38 AD2d 825, 827 [citations omitted]; *see Matter of Delgado v Sunderland*, 97 NY2d

420, 423). Thus, the court upheld a Supreme Court determination not to cast and canvass 40 affidavit ballots as the record established the ballots were invalid as a result of the failure on the part of the individual voters to accurately complete them.

In *Matter of Reed v Walsh* (101 AD3d 1661, 1662 [2012]), the trial court had granted a petition to validate a designating petition and denied respondents's motion to vacate that order. The Fourth Department held that the appeal was moot inasmuch as the general election had already taken place and the court lacked the authority to "remove the successful candidate from office or order a new general election" (*id.* at 1662*, citing Matter of Hanington v Coveney*, 62 NY2d 640, 641 [1984]).

Form and Content of Ballot

Pursuant to Election Law § 16-104 the Supreme Court has the authority to decide issues regarding the form and content of any ballot, or portion thereof, to be used in an election. In *Innamorato v Friscia* (2007 N.Y. Misc. LEXIS 457 (N.Y. Misc. 2007) the Richmond County Supreme Court granted an application to change a candidate's name from his proper name to his nickname on the machine ballots and stand-by paper ballots only, for a special election. The court held that such relief has been routinely granted by the Board of Elections and the court perceived no reason why appropriate relief should not have been granted. In the instant case, it appears that the relief was granted by a vote of 4-3, however, three of the Commissioners were not present at the hearing and this was short of the six votes contemplated by Election Law § 3-212(5), when ten Commissioners are in attendance. The court found that of paramount concern was access to the voting public who were entitled to vote for the candidate of their choice, and there was no evidence that the candidate was trying to defraud the voting public.

Challenge to Special Town Election

In *Matter of Parietti v Town of Ramapo* (129 AD3d 1088, 1089 [2015]), petitioners commenced a proceeding pursuant to Election Law article 16, in effect, *inter alia*, for judicial inspection of absentee ballots and affidavit ballots cast in connection with a special election that was conducted on September 30, 2014, pursuant to Town Law § 81 to determine certain propositions. Petitioners alleged various irregularities, *inter alia*, in the notices and instructions pertaining to the absentee ballots and affidavit ballots, and requested judicial inspection of those ballots. The Supreme Court issued a temporary restraining order directing the Town to preserve all ballots and prohibiting it from canvassing the ballots or announcing any results. Thereafter, the court issued a final order granting the petition to the extent of inspecting the language on the subject absentee ballot applications, and determining that there were certain irregularities in the instructions. The court additionally invalidated the special election, directed that the ballots not be counted and the results of the special election not be announced, ordered the destruction of all ballots, and directed the Town to conduct a new special election. The destruction of the ballots was stayed pending appeal.

On appeal, the Second Department reversed the order, denied that branch of the petition which sought inspection of the instructions and notices on the absentee ballot applications and dismissed the proceeding. The court held that the Supreme Court did not have authority, under the Election Law, to invalidate a special town election conducted pursuant to Town Law § 81(2), and that Election Law § 16-112 does not provide authority for the court to inspect absentee ballot applications with respect to a special town election such as this. Rather, the court noted that the authority to invalidate the special election may be exercised by the court in the context of a hybrid proceeding pursuant to CPLR article 78 to review a determination made by the Town based on the results of the referendum and action for a declaratory judgment. In this case however, the Second Department held that such a hybrid proceeding was premature, since the appropriate officials had not canvassed the vote and determined the results of the special election pursuant to the Election Law and the Town Law, and thus court could not ascertain whether the petitioners had been aggrieved, or whether the alleged irregularities in the electoral process had any impact on the outcome of the election (*see* Town Law § 81(2); Election Law § 16-112).

Cross Claims

In *Kiernan v New York State Bd. of Elections* (95 AD3d 1242 [2 Dept, 2012]), the petitioner Matthew J. Kiernan commenced a proceeding to invalidate the designating petition of respondent Anthony Eric Tolda. The petitioner, however, failed to serve copies of the order to show cause and petition upon the New York State Board of Elections (hereinafter the Board) consistent with the directives contained in the order to show cause. When the board subsequently administratively invalidated Tolda's designating petition on the basis that it was not timely filed with the Board, Tolda served a verified answer, in which he asserted a cross claim against the Board to validate his designating petition. Tolda never sought leave of the court to file his cross claim. The Supreme Court treated Tolda's cross claim to validate his designating petition as a cross petition to validate his designating petition and, *inter alia,* granted the "cross petition." On appeal, the Second Department reversed and held that since the Supreme Court lacked jurisdiction to entertain the proceeding commenced by Kiernan, the cross claim asserted in that proceeding also should have been dismissed (*see Krisalis v Mount Sinai Hosp*., 63 AD3d 887 [2009]; *McMullen v Arnone*, 79 AD2d 496, 499 [1981]). In so holding, the Second Department noted that Tolda did not take any of the procedural steps necessary to commence an independent proceeding pursuant to Election Law § 16–102 for that relief, and did not comply with the service of process requirements applicable to such proceedings.

CANCELLATION OF ENROLLMENT IN POLITICAL PARTY

Election Law § 16-110(2) assigns the task of determining whether a voter "is ... in sympathy with the principles" of his or her political party to a leader of that party--the County Committee Chair--and limits courts to deciding whether this determination is "just" In

McCarthy v Conroy, 13 Misc.3d 1215(A) (Supreme Court, Kings County 2006), the court held that the hearing officer's determination that respondents' enrollment in the Independence Party should be revoked was not a "just"determination where insufficient evidence was presented to demonstrate respondents' lack of party sympathy. In so holding, the court noted that there was no evidence of a recent statement or action, or any statement or action for that matter, that could be attributed to any of the respondents that demonstrate that they were out of sympathy with the ideals of the Independence Party (*see MacKay v Conroy*, 13 Misc 3d 1214A; *MacKay v Mandell*, 2006 NY Misc Lexis 2330; *but see Farrell v Morrissey*, 32 AD3d 1362 [4th Dept 2006] [court presumed that voters were not in sympathy with party's principles where the voters failed to appear at political party hearing to determine whether they were in sympathy with party's principles, failed to appear at court hearing, and failed to offer any defense to petition seeking to cancel their enrollment in party]).

In *Matter of Walsh v Abramowitz* (78 AD3d 852 [2010]), a case involving the cancellation of Conservative Party enrollments in Suffolk County, the Second Department held that the Supreme Court is obligated to direct that the enrollment of those members of a political party be cancelled if it appears from the proceedings before the chairperson of the party, and other proofs, if any, presented, that the determination is "just" (Election Law § 16-110[2]). The Supreme Court's role in the proceeding is to ensure that the chairperson reached the determination on the basis of sufficient evidence, and did not consider inappropriate factors (*see Matter of Rivera v Espada*, 98 NY2d 422, 429 [2002]). The Second Department found that the Supreme Court properly directed that the appellants' enrollments in the Conservative Party be cancelled as it had properly considered, among other things, the appellants' failure to testify at hearings held before a Conservative Party subcommittee investigating whether the appellants were in sympathy with the Conservative Party's principles, which gave rise to a presumption that the appellants were not in sympathy with those principles (*see Matter of Farrell v Morrissey*, 32 AD3d 1362, 1363 [2006]; *Matter of Zuckman v Donohue*, 274 AD 216, 218 [1948] *affd* 298 NY 627 [1948]; *see also In Matter of Walsh v Verdi*, 28 Misc3d 1237 [2010] [the Supreme Court dismissed a petition to cancel the enrollment of 633 respondents from membership in the Conservative Party of Suffolk County holding that there was a total failure of proof that the notices advising the enrolled voters of a scheduled hearing were actually mailed]).

In *Matter of Walsh v Verdi* (89 AD3d 740 [2 Dept. 2011]), the Second Department upheld dismissal of a proceeding pursuant to Election Law § 16-110 (2) to cancel the enrollments of certain individuals in the Conservative Party, where the petitioner did not offer sufficient proof that members received the requisite notice of the hearing. Pursuant to CPLR 16–110(2), to determine whether certain members of that party are not in sympathy with that party's principles, those members must receive notice of such hearings, in person or by mail, at least two days before the hearing.

In *Matter of Rhoades v Westchester County Bd. of Elections* (115 AD3d 958 [2 Dept. 2014]), the court held that the petitioner chairperson's determination that the respondents were not in sympathy with the Party's principles because they failed to appear at any time at the week-long subcommittee hearing and failed to answer the petition or otherwise appear in the proceeding was "just".

CHALLENGE TO RESULTS OF GENERAL ELECTION (ERRONEOUS VOTING MACHINE COUNT)

In *Matter of Rettaliata-Tepe v Katz* (46 AD3d 850 [2007], *lv denied* 9 NY3d 818), where the subject voting machine recorded 40 votes more than maximum possible number based upon poll roster book and the machine's public counter, the Second Department concluded that evidence pointed to human error, a failure to properly "zero-out" the voting machine before it was used by voters in the general election, rather than tampering, as cause of the overcount, and determined that even if all of the 40 extra votes were cast for a certain candidate and should thus be deducted from her vote total, she would still be the winner by four votes. The court refused to order a new election where there was no allegation that the subject voting machine was tampered with between canvass and recanvass.

CERTIFICATE OF ACCEPTANCE

Timeliness

In *Matter of Davis v Walsh* (21 Misc 3d 567 [2008]), the Supreme Court held that the failure to timely file a certificate of acceptance was a fatal defect that cannot be cured or excused (*see* e.g., *Matter of Monroe v Lomenzo*, 40 AD2d 727 [1972] *affd* 31 NY2d 705 [1972]; *Matter of Esiason v Washington County Bd. of Elections*, 220 AD2d 878 [1995]; *Hockley v Westchester County Bd. of Elections,* 66 AD3d 898 [2009], *lv denied* 13 NY3d 710 [2009] [failure to file the required certificate of acceptance constitutes a "fatal defect" and "the judiciary is foreclosed from fashioning any exceptions to this requirement, however reasonable they might appear"]; *see also* Election Law 1-106[2]).

In *Matter of Gallo v Turco* (131 AD3d 785 [3d Dep't 2015]), the Third Department held that the petitioner failed to timely file acceptance certificates and designations in accordance with the Election Law. Even though certificates were deposited in postal mailbox on date that was the deadline for petitioners to file certificates, and envelopes contained postage stamp bearing same date, the envelopes containing the certificates were ***postmarked on a date after*** deadline had passed (*see* Election Law § 1-106[1], [2] [the postmark date is the date that controls for purposes of determining if papers sent by mail have been timely filed]).

In Matter of Meehan v Giunta (74 AD3d 972 (2010), the court held that certificates of acceptance filed with the village clerk by independent body's nominees for the offices of mayor and member of the board of trustees were not valid since they were not acknowledged as required by Election Law § 6-146 (1), even though article of the Elections Law governing village elections contained no express requirement that acceptances be acknowledged. In so holding, the court noted that the remaining provisions of the Election Law not inconsistent with the article governing village elections continued to apply in village elections, and that the provision of the Election Law requiring that a certificate of acceptance be acknowledged by the candidate was not inconsistent with the provisions of the village elections article (*see* Election Law §§ 6–146[1], 15–100).

In *Matter of Finn v Sherwood (*87 AD3d 1044 [2011]), Second Department held that the error on candidate's certificate of acceptance, referencing general election rather than primary election, did not warrant invalidation of candidate's designating petition in primary election for town office, since certificate otherwise contained candidate's complete and correct name and his correct address, contained the correct political party and the correct office, and was duly acknowledged by notary public (*see* Election Law §§ 6–146[1],16–102).

In *Matter of Maher v New York State Bd. of Elections* (120 AD3d 891, 893 [2014]), the court held that the requirements governing the execution and filing of a certificate of acceptance under Election Law § 6-146 (1) are separate and distinct from the rules governing the form and content of a designating petition as set forth in Election Law § 6-134 (1) (*cf. Moncayo v Withers*, 154 AD2d 598, 598 [1989]*, lv denied* 74 NY2d 614 [1989]) and, therefore, respondent was not required to include—on his certificate of acceptance—the term of the office that he was seeking and the fact that he had included an incorrect term of office did not render his certificate of acceptance defective inasmuch as it included all of the required information and there was no confusion as to the office he was seeking as there was only one office to be filled in the upcoming election. In so holding, the court noted that the certificate of acceptance set forth respondent's name and address, identified the relevant political party, specified the office for which he was accepting the underlying designation and was duly notarized.

CERTIFICATE OF DECLINATION

In *Matter of Goodell v Parment* (76 AD3d 1169 [2010]), the court held that a certificate of declination that was left with an election commissioner with the understanding that he would officially file it, did not comply with the statutory requirement that it be filed in the office of the board and, thus, was untimely filed and otherwise was not filed in accordance with the customary procedures of the Board and with Election Law §§ 6-144 and 6-146, thus it was invalid and "no vacancy was created within the meaning of the Election Law and the certificate of substitution of another candidate was also void."

In *Matter of Angletti v Morreale* (131 AD3d 808 [4th Dep't 2015], *order aff'd*, 25 NY3d 794 [2015]), where a candidate created the vacancy by his own declination as a party candidate for county legislature office, the court held that the Election Law did not allow the candidate to be designated to fill vacancy as substitute designee for that same position created by his own declination. In so holding, the court noted that the Election Law plainly contemplates that the candidate designated to fill a vacancy shall be a person other than the person originally named.

CERTIFICATE OF NOMINATION

In *Matter of Williams v McDonough* (44 AD3d 1087 [2007]), the Third Department held that it was error to invalidate a certificate of nomination on the ground that a meeting to nominate the respondent was not held after the primary election as required by Election Law § 6-116. The court found that there was no premature or untimely filing of the nomination certificate and that the timing of the meeting was an inconsequential violation which did not raise an implication of any fraud which would warrant invalidation of the nomination.

In *Matter of Snell v Young* (88 AD3d 1149 [3 Dept. 2011]), the court held that the petitioner, who was a duly-registered member of the Independence Party who filed objections to party's nominations for judicial office, had standing to petition to declare invalid the party's certificate of nomination. The court further held that the Independence party did not comply with the statutory requirements of substantial proportionality in the selection of delegates to judicial nominating convention (*id.* at 1152; *see* Election Law § 6–124).

In *Matter of McCormack v Jablonski* (132 AD3d 921, 922-923 [2d Dep't 2015]), the Appellate Division upheld the Supreme Court's decision granting a petition seeking to invalidate a certificate of nomination which did not "contain . . . [a]n affidavit containing a statement by the presiding officer and secretary of the committee that they are such officers and the statements in the certificate are true," as required by Election Law § 6-128(1)(g). The court noted that strict, and not just substantial, compliance is required "with statutory commands as to matters of prescribed content" (*Matter of Hutson v Bass*, 54 NY2d 772, 774; *see also Matter of Dadey v Czarny,* 132 AD3d 1427 [4th Dep't 2015]).

In *Matter of Grasso v Cleveland* (132 AD3d 1059, 1061[3 Dept 2015]), the court held that a new political party's failure to include with certificate of nomination the required affidavit containing statement by presiding officer and secretary of political party's committee that they were such officers and that statements in certificate were true was fatal to certificate naming party's purported candidates for certain public offices, even though language in the challenged certificate of nomination , which included statements that party's presiding officer and secretary executed document before notary and that document, with party's rules attached thereto, was accurate and complete. In so holding, the court stated that "the omission of such

a statement constitutes a substantive departure from the mandates of the statute and not a mere error in form" (*see* Election Law § 6–128[1][g],[2],[3]).

In *Matter of Donovan v Cabana* (132 AD3d 919 [2d Dep't 2015]), the Second Department denied a petition to invalidate a certificate of nomination naming various candidates for certain public offices and held that the rules filed by the political party (Women's Equality Party) did not create a question or conflict relating to rules or rule-making body, under Election Law, even though political party filed two sets of rules, where second set of rules explicitly stated that it superseded and replaced any document previously filed by party (*see* Election Law § 6-128 [4]).

In *Matter of Delabio v Allen* (131 AD3d 1340 [2015]), a voter commenced a proceeding, under Election Law, seeking to invalidate a certificate nominating candidate for county legislature on Women's Equality Party (WEP) in general election. The Supreme Court enjoined issuance of the certificate of nomination unless and until majority of candidates certified a set of rules. On appeal, the Fourth Department held that injunctive relief, preventing county board of elections from placing candidate's name on ballot in general election and prohibiting three political groups from making nominations in the name of Women's Equality Party (WEP) unless under rules certified by majority of statewide candidates, was not warranted since the voter had an adequate remedy to challenge the certificate of nomination under Election Law which, the court noted could be decided without reaching issue of whether groups' rules were valid (*see* Election Law § 6-128[4], 16-102).

CERTIFICATE OF AUTHORIZATION/WILSON-PAKULA

In *Master v Pohanka* (10 NY3d 620), the court held that Election Law §6-120 (3) allows a political party's state committee to vest itself with the authority to issue certificates of authorization (also known as Wilson-Pakula certificates) for county, city or local public offices noting that except when expressly governed by legislation, the internal organization and authority of a political party are governed by the party rules. However, in *Matter of Conroy v State Committee of the Independence Party of New York* (10 NY3d 896), the court recognized the exception to this rule where a "designation or nomination is for an office to be filled by all the voters of the city of New York" in such case, the "authorization must be by a majority vote of those present at a joint meeting of the executive committees of each of the county committees of the party within the city of New York."

The joinder of several public offices in a single certificate of authorization opens the certificate to an attack by a rival candidate for any of the offices set forth in the certificate of

authorization. In *Matter of Hardwick v Ward* (109 AD3d 1223 [4th Dept 2013], *leave to appeal denied* 22 NY3d 851[2013]), eight rival candidates had standing, as aggrieved candidates, to challenge entire certificate of authorization that was issued by county political party and designated slate of 18 candidates for various public offices at primary election and general election, even though 10 candidates listed on certificate of authorization were not seeking same public office as any rival candidate.

In *Jarosz v Spano* (65 AD3d 991 [2009]), the Second Department held that the plaintiffs waived their challenges to the certificate of authorization of political party's candidate for public office where plaintiffs, without objection, participated in, voted at, and filed proxies at meeting during which candidate was nominated (*see* Election Law § 6-120[3]).

In *Matter of Potanovic v French* (65 AD3d 650 [2009]), the Second Department found that the Supreme Court properly invalidated certain Wilson-Pakula certificates (*see* Election Law 6-120 [3]) where the rules and regulations of the Conservative Party of Dutchess County established that the Town Committee has the right to nominate or designate a nonparty candidate for a town office, but that candidate must be authorized by the County Committee during a Wilson-Pakula meeting (*see* Election Law § 6-120[3]; *Matter of Conroy v State Comm. of the Independence Party of New York*, 10 NY3d 896, 897; *Matter of Master v Pohanka*, 10 NY3d 620, 625-626). Here the Town Committee nominated and designated its nonparty candidates and filed Wilson-Pakula certificates with the Dutchess County Board of Elections without seeking to have the nonparty candidates authorized by the County Committee.

In *Haight v Knapp* (88 AD3d 921 [2011]), the court held that a cause of action to invalidate Wilson–Pakula certificates filed by independent political party, authorizing certain persons who were not previously enrolled members of party to appear as candidates on ballot in county's general election, accrued, and 7-day limitations period began to run, on date party filed the Wilson–Pakula certificates (*see* Election Law § 16–102[2]). While noting that the untimely filing of a certificate of authorization constitutes a “fatal defect” (Election Law § 1–106[2]), the court found that a timely proceeding challenging, as untimely, the otherwise presumptively valid Wilson–Pakula certificate authorizing the candidacies had not been commenced.

In *Matter of Bankoski v Green* (109 AD3d 690, 690-691 [2013]), petitioner, a registered Conservative, commenced a proceeding objecting to the legality of Wilson-Pakula authorizations issued to two enrolled Republicans by the Chautauqua County Conservative Party’s Executive Committee rather than by the full County Committee. Pursuant to Election Law § 6-120 [3] the County Committee is the default "party committee" empowered to issue Wilson-Pakula certificates for the county offices at issue. Petitioner argued that the rules and

regulations of the County Committee did not effectively delegate that authority to the Executive Committee and therefore the Executive Committee lacked the power to issue the Wilson-Pakula certificates. The Court disagreed citing the rules which provided when the County Committee "was not actually in session, the Executive Committee shall have, possess, and exercise all the rights, powers, privileges, and duties which the County Committee may have, possess, and exercise." The Court found that since the County Committee was "not actually in session" when the authorizations were issued, they were validly issued by the Executive Committee.

In *Matter of New York State Comm. of the Independence Party v Mohr* (109 AD3d 692, 694 [4th Dep't 2013]), the Fourth Department held that the lower court erred in finding that the Interim County Organization (ICO) of the Erie County Independence Party had the authority to issue Wilson-Pakula authorizations since the Executive Committee was vested with the authority to issue such authorizations in Erie County, thereby stripping the ICO of this authority.

In *Matter of Farrell v Reid* (131 AD3d 628 [2d Dep't 2015]), the court held that two certificates of designation were considered as a single document, where they contained the signatures of the party officers necessary to satisfy the requirements of Election Law § 6-120(3). The fact that the signature of presiding officer at political party meeting, in which candidate was authorized to appear on ballot as candidate for nomination for public office, appeared on separate page of certificate authorizing candidate to appear on ballot for primary election from signature of secretary of meeting, did not cause the certificate to be invalid, under Wilson-Pakula law because Election Law § 6-120 (3) did not require that signatures of presiding officer and secretary appear on same document.

CERTIFICATE OF DISQUALIFICATION

A nominated candidate who seeks to disqualify himself or herself (*see* Election Law § 6-148[1]), must present a legal basis for doing so (*see generally Matter of Aurelio v Cohen*, 266 App.Div. 603, 606 [1943], *affd.* 291 NY 645). One such basis may be that the candidate will not satisfy the residency requirement at the time of the general election (*see Matter of Keith v King*, 220 AD2d 471, 471-472 [1995]; *Matter of Clark v McCoy*, 196 AD2d 607 [1993]). In *Matter of Justice v Gamache* (45 AD3d 508 [2007]), the Second Department held that certificates of disqualification filed with the county election board by nominated candidate of three different parties for at-large city council seat were valid and were not permeated with fraud where a fair reading of those documents revealed that the candidate indicated he would no longer be able to satisfy the residency requirement at time of general election, a statement that was supported by evidence presented.

CERTIFICATE OF SUBSTITUTION

Election Law § 6-148 (4) requires a certificate of substitution to be signed by a majority of the committee to fill vacancies and to include, appended thereto, an affidavit of the persons signing the certificate that they were a majority of such committee. This statute addresses matters of prescribed content for which strict compliance is required (*see Matter of Hutson v Bass*, 54 NY2d 772, 774 [1981]; *Matter of Landry v Mansion*, 65 AD3d 803, 805 [2009]; *Matter of Justice v Gamache*, 45 AD3d 508, 511 [2007]).

In *Matter of Ricard v Redlich* (43 AD3d 1203 [3d Dept 2007]), the court invalidated a certificate of substitution naming respondent as candidate for office of Member of Town Council, where the certificate was signed by only one member of a three-person committee to fill vacancies, and was not signed by a majority of that committee as required by Election Law § 6-148 (2).

In *Matter of Justice v Gamache* (45 AD3d 508 [2007]), the Second Department invalidated a certificate of substitution filed by one party nominating another candidate to fill a vacancy created by the first candidate's disqualification where the certificate was not accompanied by the substitute candidate's affidavit of consent, and although the party attempted to cure the defect three days later by filing the affidavit from candidate consenting to nomination. In so holding, the court noted that the document was not "appended" to the completed certificate of substitution as required by Election Law § 6-148(5).

In *Matter of Terranova v Fudoli* (66 AD3d 1530 [2009]), the certificate of substitution was not accompanied by an appropriate authorization pursuant to Election Law § 6-120(3). The Fourth Department held that the petitioner's failure to file such authorization invalidated the certificate of substitution with respect to the Independence Party ballot line. A person not enrolled in a party may not be designated as a candidate of that party without such authorization (*see Matter of Independence Party State Comm. v New York State Bd. of Elections*, 297 AD2d 459, 460 [2002]).

In *Cotten v Green County Board of Elections* (65 AD3d 810, [2009]) the court held no vacancy within the meaning of the Election Law was created when a designating petition was invalidated by the court (see *Matter of Elgin v Smith*, 10 AD3d 483, 484-485[2004]; *Matter of Leemhuis v State of New York, Bd. of Elections*, 186 AD2d 863 [1992], *affg for reasons stated below* 155 Misc 2d 531 [1992]; *Matter of Nowik v Jablonski*, 133 AD2d 874, 875 [1987]) and thus a certificate of substitution filed by a Committee to Fill Vacancies was properly invalidated (*see Matter of Turdik v Bernstein*, 87 AD3d 748 [2011]; *Matter of Harper v New York State Bd. of Elections*, 34 AD3d 919, 920 [2006]; *Matter of Nowik v Jablonski*, 133 AD2d at 875).

In *Matter of Landry v Mansion* (65 AD3d 803 [2009], the court upheld the granting of a petition to invalidate a certificate of substitution where the Committee to Fill Vacancies was statutorily required to file a certification of substitution signed by a majority of the Committee, stating that the replacement candidate was chosen by that majority, and the certificate filed failed to comply with this provision, holding that the certificate actually filed here, which satisfied none of these requirements, failed to strictly comply with the statutory regulations.

In *Matter of Griffin v Torres* (131 AD3d 631, 632 [2015]), the political party's certificate of substitution was invalidated where it failed to strictly comply with Election Law requirements, where committee to fill vacancies submitted two certificates stapled together and included two defective affidavits that contained only one name and one signature of committee members, neither of whom was capable of affirming that they collectively constituted a majority of that committee.

POWER AND DUTY TO FILL VACANCIES

Election Law § 6–148(3) provides, in relevant part, that "[a] vacancy in a nomination made at a primary ... may be filled by a majority of the members of the party committee or committees last elected in the political subdivision in which the vacancy occurs."

In *Matter of Becker v Shapiro* (110 AD3d 874 [2d Dep't 2013]), the Second Department held that the County legislature candidate's disqualification from the primary election at the time of his nomination, pursuant to a residency provision in county charter, created a vacancy made in a *nomination* at a primary, as opposed to a vacancy in a *designation*, requiring substitution to be made by a majority of the members of the party committee, not by the committee to fill vacancies named in the designating petition (*see Matter of Venditto v Roth,* 110 AD3d 908 [2d Dep't 2013]; Election Law § 6–148[3]).

In *Matter of Angletti v Morreale* (131 AD3d 808, 812 [4th Dep't 2015] *affd* 25 NY3d 794 [2015]), the court held that a person who creates a vacancy by his or her own declination cannot thereafter be designated by the committee to fill vacancies as the substitute designee for the very same position (*see Matter of Garfinkel v Power*, 208 Misc 719, 720 *affd* 286 App Div 957; *see generally Curtin v Mahoney*, 52 AD2d 716, 716-717)

ELIGIBILITY/RESTRICTIONS OF DESIGNATION OR NOMINATION

Election Law § 6-122 provides in relevant part that:

> "[a] person shall not be designated or nominated for a public office or party position who (1) is not a citizen of the state of New York; (2) is ineligible to be elected to such office or position; or (3) who, if elected will not at the time of commencement of the term of such office or position, meet the constitutional or statutory qualifications thereof."

In *Matter of Li v Meehan* (52 AD3d 544 [2008]), petitioners commenced a proceeding pursuant to Election Law § 6-122 seeking to disqualify respondent, a United States postal employee, as candidate for public office of Mayor based on his alleged violation of the Hatch Act (5 USC § 7323), which prohibits federal employees from "run[ning] for the nomination or as a candidate for election to a partisan political office" (5 USC § 7323 [a] [3]). The Second Department held that even if the United States postal employee were considered to be running for a partisan political office and found to be in violation of the Hatch Act, the fact that he was employed by the federal government did not disqualify him under Election Law § 6-122. In so holding, the court noted that the Hatch Act does not disqualify any individual from running for public office, but rather provides for removal or suspension from public employment of any federal employee who runs for nomination or as candidate for election to partisan political office.

In *Matter of Ighile v Board of Elections in City of New York* (66 AD3d 899 [2009], the Independent nominating petition was invalidated where the candidate described the public office sought as "Public Office City Council," but failed to specify the council district to which the candidate was seeking nomination. Although the candidate listed his address on the petition, he was required to live in particular district at time of election, not at time of petitioning and, therefore, providing his address did not preclude reasonable probability of confusing or deceiving signers, voters, or city's elections board, given fact that there were 16 districts within the county (*see* Election Law §§ 6-140,16-102; Public Officers Law § 3[1]).

CANDIDATE NOMINATED BY MORE THAN ONE PARTY OR BY MORE THAN ONE PARTY AND ONE OR MORE INDEPENDENT BODIES

Pursuant to Election Law § 7-104 (4)(c), the name of a candidate that has been nominated by two or more major parties "shall appear only in each row or column containing generally the names of candidates for other offices nominated by . . . such part[ies]" The candidate is not entitled to an additional row or column under the emblem of an independent body. Rather, the independent body's name may appear in the voting square associated with

the candidate on one of the political parties' ballot lines (*see* Election Law § 7-104 [4] [c]). An exception to this rule is set forth in Election Law § 7-104 (5), which provides that "the name of a person who is nominated for the office of governor, or state senator, or member of assembly, shall appear on the ballot as many times as there are parties or independent bodies nominating him or her."

In *Matter of Cahill v Kellner* (121 AD3d 1160 [2014]), the Third Department held that the Election Law § 7–104(4)(c) provision prohibiting candidates nominated by two or more major parties from receiving additional row or column on ballot under emblem of independent body did not violate candidates' constitutional rights to freedom of speech and association, even though independent body's nominees for governor and lieutenant governor, who were also nominated by two or more major parties, received separate rows on the ballots. In so holding, the court noted that the legitimate state interest underlying Election Law § 7-104, as identified by the Court of Appeals in *Matter of Battista v Power* (16 NY2d 198 [1965]), is "a continuing legislative policy of preventing the major party candidates from pre-empting the whole ballot through the device of setting up independent political bodies" (*Matter of Battista v Power*, 16 NY2d at 201; *see* U.S.C.A. Const.Amends. 1, 14; Election Law § 7–104[4][c]).

NEW PRIMARY ELECTION ORDERED

Election Law § 16–102(3) authorizes the Court to order "the holding of a new primary election . . . where it finds there has been such fraud or irregularity as to render impossible a determination as to who rightfully was nominated or elected."

In *Matter of Piazza v Rockland County Bd. of Elections* (17 Misc.3d 1111[A], [Sup Ct Rockland County 2007]), the court directed that a new primary election be held for the Independence Party for the 17th Rockland County Legislative District where the petitioners met their burden of proof and established there were sufficient irregularities in the primary as to render impossible a determination as to who rightfully was nominated (*see* Election Law §16-102[3]).

INTERNAL PARTY RULES AMENDMENTS

Courts have consistently held that "[i]nternal issues arising within political parties are best resolved within the party organization itself and judicial involvement should only be undertaken as a last resort" (*Bachmann v Coyne*, 99 AD2d 742 [1984]; *see Bloom v Notaro*, 67 NY2d 1048, 1049 [1986]). However, although political parties are afforded wide latitude in adopting rules for party governance, such rules cannot conflict with statutory directives (*Matter of Kahler v McNab*, 48 NY2d 625 [1979]; *see Matter of Independence Party State*

Comm. of the State of New York , 28 AD3d 556 [2006]; *Keukelaar v Monroe County Bd. of Elections*, 307 AD2d 1073, 1074 [2003]; *Bachmann v DeFronzo*, 164 AD2d 926, 928 [1990]; *Matter of Lugo v Board of Elections*, 123 Misc 2d 764 [1984]).

In *Matter of Conroy v State Comm. of Independence Party of New York* (43 AD3d 832 [2007]), the Appellate Division upheld the Supreme Court's decision to invalidate amendments to internal party rules which conflicted with various provisions of the Election Law. The amendments purported to vest the State Committee of the Independence Party of New York with; the power to remove and recall members and officers of any County Committee or Interim County Organization without cause; the authority to institute removal proceedings against members and officers of county level organizations for disloyalty or corruption and to fill vacancies within those committees or organizations. The court found that said amendments directly contravened Election Law §§ 2-100, 2-104, 2-106, 2-112, 2-116 and 2-118.

In *Matter of Conroy v State Comm. of Independence Party of New York* (43 AD3d 834 [2007]), the Appellate Division held that an amendment adopted by the State Committee of the Independence Party which empowered the Executive Committee of the State Committee to issue certificates authorizing the designation or nomination of non-enrolled members of the Independence Party as it related to citywide elections in the City of New York was inconsistent with the procedures set forth in Election Law § 6-120 (3) and was therefore invalid.

In *DiCaprio v Kosiur* (42 AD3d 867 [2007]), the court held that Election Law § 6-114 provides that "[p]arty nominations for an office to be filled at a special election shall be made in the manner prescribed by the rules of the party." The Independence Party had a rule which provided that the executive committee of the State Independence Party Committee makes nominations for special elections unless a described exception applies. The first exception is where the public office falls within a county that has an Independence Party county committee and that committee has rules for filling vacancies. The second is where the public office falls within more than one county and each county has an Independence Party county committee with rules for filling vacancies, all of which are the same. The court held that since the office vacated in this case fell within two counties, only one of which had its own party committee, that committee was authorized to nominate the candidate. There was no violation of the members' voting rights or exclusion from their participation in the nomination process although they resided in the county without the committee.

JUDICIAL NOMINATING CONVENTION

In *Matter of Brouillette v Cerio* (55 AD3d 1039 [2008]), the Third Department found that Independence Party's judicial nomination convention was scheduled in violation of both Election Law § 6-126 (1) and the Independence Party's rules, thus certificate of nomination

naming respondent as party's candidate for Justice of the Supreme Court was invalid. Although chair of party's executive committee had delegated scheduling authority to another individual, the individual was not a member of the state executive committee, as expressly required by the party's own rules (*see* Election Law §§ 6-126(1), 16-102).

In *Matter of Consuello v McGrath* (21 Misc3d 1112[A] *affd for reasons stated below* 55 AD3d 1453 [2008], *lv denied* 11 NY3d 709 [2008]), the court found that judicial nominating convention held by Working Families Party which nominated respondent had a sufficient number of delegates to constitute a quorum. The court held that in calculating the total number of eligible delegates under Election Law §6-134, the statute's requirement for proportional representation takes precedence over the Working Families party's rules. Moreover, the statute does not compel strict compliance "but more generally provides that delegates be chosen substantially in accordance with the ratio'." (*see Matter of Azria*, 68 NY2d 887, 889 [1986]).

JUDICIAL RECUSAL

In *Matter of MacKay v Johnson* (54 AD3d 428 [2008]), the Second Department found that Supreme Court had providently exercised its discretion in denying Johnson's application for recusal of judge assigned to matter, where he failed to provide proof of any of the statutory disqualifications under Judiciary Law § 14, and did not prove any bias or prejudice by Justice Lally (*see Vest v Vest*, 50 AD3d 776, 777).

In *Matter of Imre v Johnson* (54 AD3d 427 [2008]), the Second Department held that absent a legal disqualification under Judiciary Law § 14, a trial judge is the sole arbiter of the need for recusal, and his or her decision is a matter of discretion and personal conscience. Here, the appellant failed to set forth demonstrable proof of bias sufficient to warrant the conclusion that the Supreme Court Justice's refusal to recuse herself was an improvident exercise of discretion (*see Schwartzberg v Kingsbridge Hgts. Care Ctr., Inc.*, 28 AD3d 465, 466 [2006]; *Modica v Modica*, 15 AD3d 635, 636 [2005]; *Matter of Firestone v Siems*, 272 AD2d 544, 545 [2000]).

CHALLENGING TITLE TO PUBLIC OFFICE

In *Matter of Rothschild v Monsey Fire Dist.* (2011 NY Slip Op 50176U, 4 [N.Y. Sup. Ct. 2011]), a case involving alleged irregularities surrounding the election of a fire commissioner, the Supreme Court held that an "action in the nature of quo warranto by the Attorney-General, now statutorily embodied in section 63-b of the Executive Law, is the

exclusive means of . . . trying title to public office,"and that said power can be used only after the alleged usurper has take office" (*see Flood v Schopfer*, 20 AD3d 417 [2005]).

SINGLE PETITION FOR MORE THAN ONE OFFICE OR POSITION

In 2009, Election Law § 6-134[1] was amended to provide as follows: "[a] designating petition may designate candidates for nomination for one or more different public offices or for nomination for election to one or more party positions or both, but . . . petitions for the same public office or party position in different political subdivisions may not be combined in the same petition" Thus, a designating petition may designate candidates for nomination for one or more public offices or for nomination for election to one or more party positions, or both, but designations or nominations for which the petitions are required to be filed in different offices may not be combined in the same petition (49 NY Jur Elections 282).

The Second Department applied this revised statute finding that it was not violated where none of the signature sheets designating Marc S. Alessi as a candidate of the Independence Party for the public office of Member of the Assembly, First Assembly District, purported to designate multiple candidates "for the same public office or party position in different political subdivisions" (*see Matter of Losquadro v Suffolk County Bd. of Elections*, 77 AD3d 667 [2010]; nor was a violation found in *Matter of Liguori v Ambro*, 77 AD3d 664 [2010] where the court similarly found that none of the signature sheets designating Ambro as a candidate for the public office of County Court Judge purported to designate multiple candidates "for the same public office or party position in different political subdivisions".

SIMULTANEOUSLY RUNNING FOR TWO OFFICES

In *Matter of Parobek v Mascia*, (98 AD3d 836 [2012]), petitioner sought to prevent respondent from simultaneously running for two offices. The Fourth Department held that respondent was not simultaneously running for two offices inasmuch as he had been elected to the position of Tenant Member of the Board of Commissioners of the Buffalo Municipal Housing Authority in June and was now running in the Democratic primary election for New York State Assembly on September 13, 2012. The court found that there was no conflict preventing respondent from performing the duties of the two positions because as a Member of the Assembly he would have no authority or involvement with the Buffalo Municipal Housing Authority.

DUAL NOMINATIONS

In *Matter of Ward v Mohr* (109 AD3d 694 [4th Dep't 2013]), the court held that an individual who had been designated by the party as a candidate for town councilman was not disqualified from that designation by his subsequent designation as candidate for county legislator. In that case, the individual failed to file declination of his designation as candidate for town councilman within the prescribed time, and thus his name had to remain on ballot as candidate for that position, thereby making him ineligible to be designated as candidate for county legislator (*see* Election Law § 6–122, 6–158(2); County Law § 411).

WAIVER OF RIGHT TO APPEAL

In *Matter of Burkwit v Olson* (98 AD3d 1236 [2012]), after a challenge to a party caucus the lower court ordered a new caucus for the nomination of Republican party candidates for the position of Williamson Town Justice. Petitioner moved for leave to amend to join other necessary parties and sought after a prior appeal, a candidate filed an amended order to show cause and an amended petition, seeking the same relief that he had originally requested. The chairs and the party argued that the candidate violated Election Law § 16-102(2) by failing to commence another proceeding challenging the second caucus. The appellate court found, however, that the candidate had already commenced the proceeding to challenge the first caucus, which resulted in the order directing that the new caucus be held. On appeal, the candidate did not challenge the results of the second caucus but instead challenged the order on the ground that the trial court lacked the authority to order the new caucus. Thus, the candidate properly appealed from the order and was not required by § 16-102(2) to bring a separate proceeding. However, having accepted the benefit of the second caucus, the candidate waived his right to appeal from that part of the order directing that the second caucus be held. The candidate also lacked standing to appeal from that part of the order inasmuch as he was not aggrieved thereby.

NO RIGHT TO APPEAL ORDER DENYING APPLICATION TO SIGN ORDER TO SHOW CAUSE

In *Matter of Mele v Rockland County Bd. of Elections* (108 AD3d 633 [2013]), the Second Department declined to grant leave to appeal an order denying an application to sign an order to show cause. The court held that no appeal lies as of right from such an order (*see* CPLR 5701 [a]; *Matter of Englese v Strauss*, 83 AD3d 705 [2011]; *Khanal v Sheldon*, 74 AD3d 894, 895 [2010]; *Matter of Astoria Gas Turbine Power, LLC v Tax Commn. of City of N.Y.*, 14 AD3d 553, 554 [2005], *affd* 7 NY3d 451 [2006]).

NOMINATING PETITION (SUBSCRIBING WITNESS REQUIREMENT)

The 2009 amendment to Election Law § 6-140(1)(b) completely eliminated the requirement that a subscribing witness be qualified to sign the nominating petition itself. Thus, pursuant to the amended section 6-140(1)(b), a subscribing witness to a nominating petition is only required to be a duly qualified voter of the state (*see* Election Law § 6–140[1][b]; *DiPietro v New York State Bd. of Elections*, 30 Misc.3d 449 [2010]).

ELIGIBILITY FOR OFFICE

Matter of Rivers v Davis (131 AD3d 646, 646-647 [2d Dep't 2015]) involved a challenge to a designating petition submitted by respondent for the office of the Mayor of Mount Vernon. Respondent had been convicted of two misdemeanor violations of 26 USC § 7203 ("Willful failure to file return, supply information, or pay tax) several months prior. Petitioner alleged that respondent was not eligible to run due to the misdemeanor convictions. However, the court found that "[a]lthough the Public Officers Law precludes a person who stands convicted of certain misdemeanors from holding public office for a period of five years from the date of conviction, the federal offense at issue here was not among those enumerated misdemeanors (*see* Public Officers Law § 3[1-a][ii]). Thus, the court refused to invalidate the designating petition.

Supreme Court of the State of New York
County of Kings:

Petitioner(s) - against - Respondent(s)	SPECIAL ELECTION PART Index No. Calendar No. HON. EDGAR WALKER

The following papers numbered 1 to used in this proceeding

Order to Show Cause and Petition Annexed .....
Stipulation of Reference .....
Other Papers.....

Name of Candidate/s	Office	District

Upon the foregoing papers in this proceeding brought pursuant to Article 16 of the Election Law to declare the Nominating/Designating petition purporting to nominate/designate the above named person/s for the above-mentioned office in the Primary Election to be held on September , 200,

[ADD TEXT HERE]

AND the petition herein is ,

AND IT IS ORDERED that the respondent Board of Elections in the City of New York shall the ballot for the aforesaid Primary Election the name(s) of the above-mentioned named candidates.

E N T E R,

J. S. C.

Dated:

Supreme Court of the State of New York
County of Kings:

Petitioner(s) - against - Respondent(s)	SPECIAL ELECTION PART Index No. Calendar No. HON. EDGAR WALKER

The following papers numbered 1 to used in this proceeding

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Other Papers.....

Name of Candidate/s	Office	District

Upon the foregoing papers in this proceeding brought pursuant to Article 16 of the Election Law to declare the opportunity to ballot petition purporting to nominate/designate the above named person/s for the above-mentioned office in the Primary Election to be held on September , 200.

AND upon this matter having been referred to _____, Special Referee to hear and report.

AND upon the hearing before said Special Referee and the report having been rendered, and upon oral argument,

AND the candidate having been found to have _____ valid signatures,

THE report of the Special Referee is confirmed,

AND the petition herein is ,

AND IT IS ORDERED that the respondent Board of Elections in the City of New York shall the ballot for the aforesaid Primary Election the name(s) of the above-mentioned named candidates.

E N T E R,

_____

J. S. C.

Supreme Court of the State of New York
County of Kings: Special Election Part 1

Petitioner(s) - against - Respondent(s)	STIPULATION By: WALKER, J. Index No. Calendar No.

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned attorneys for petitioner(s) and respondent(s), respectively, herein as follows:

1) The appointment of Supreme Court Attorneys as Special Referees to hear and report as to all issues raised in this proceeding is hereby consented to.

2) The filing of the Special Referee's oath is waived.

3) The report of the Special Referee may be made orally to a Justice of this Court in the presence of counsel.

4) The filing of a transcript of the minutes of the hearing is waived.

5) The Referee may use certified copies of the designating petitions and specifications of objections if necessary.

Dated:

_____

Attorney(s) for Petitioner(s)

_____

Attorney(s) for Respondent(s)

SO ORDERED:

_____

J. S. C.

Supreme Court of the State of New York
County of Kings:

Petitioner(s) - against - Respondent(s)	SPECIAL ELECTION PART Index No. Calendar No. HON. EDGAR WALKER

The following papers numbered 1 to used in this proceeding

Order to Show Cause and Petition Annexed .....
Other Papers.....

Name of Candidate/s	Office	District

Inasmuch as the Special Referees are to commence or are continuing line-by-line review of rulings rendered by the New York City Board of Elections in connection with the above-captioned proceeding, it is hereby

ORDERED, that the Board of Elections, County of Kings remain open on , from AM until PM.; it is further,

ORDERED, that all parties are directed to supply at least persons authorized to participate in the line-by-line review.

J. S. C.

Dated:

Administrative Rules of the Unified Court System & Uniform Rules of the Trial Courts

Rules of the Chief Administrative Judge

PART 100. Judicial Conduct

Preamble100.0 **Terminology**100.1 **A judge shall uphold the integrity and independence . . .**100.2 **A judge shall avoid impropriety and the appearance . . .**100.3 **A judge shall perform the duties of judicial office . . .**100.4 **A judge shall so conduct the judge's extra-judicial . . .**100.5 **A judge or candidate for elective judicial office shall . . .**100.6 **Application of the rules of judicial conduct**

Preamble

The rules governing judicial conduct are rules of reason. They should be applied consistently with constitutional requirements, statutes, other court rules and decisional law and in the context of all relevant circumstances. The rules are to be construed so as not to impinge on the essential independence of judges in making judicial decisions.

The rules are designed to provide guidance to judges and candidates for elective judicial office and to provide a structure for regulating conduct through disciplinary agencies. They are not designed or intended as a basis for civil liability or criminal prosecution.

The text of the rules is intended to govern conduct of judges and candidates for elective judicial office and to be binding upon them. It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity and the effect of the improper activity on others or on the judicial system.

The rules are not intended as an exhaustive guide for conduct. Judges and judicial candidates also should be governed in their judicial and personal conduct by general ethical standards. The rules are intended, however, to state basic standards which should govern their conduct and to provide guidance to assist them in establishing and maintaining high standards of judicial and personal conduct.

Section 100.0 Terminology.

The following terms used in this Part are defined as follows:

(A) A "candidate" is a person seeking selection for or retention in public office by election. A person becomes a candidate for public office as soon as he or she makes a public announcement of candidacy, or authorizes solicitation or acceptance of contributions.

(B) "Court personnel" does not include the lawyers in a proceeding before a judge.

(C) The "degree of relationship" is calculated according to the civil law system. That is, where the judge and the party are in the same line of descent, degree is ascertained by ascending or descending from the judge to the party, counting a degree for each person, including the party but excluding the judge. Where the judge and the party are in different lines of descent, degree is ascertained by ascending from the judge to the common ancestor, and descending to the party, counting a degree for each person in both lines, including the common ancestor and the party but excluding the judge. The following persons are relatives within the fourth degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, first cousin, child, grandchild, great-grandchild, nephew or niece. The sixth degree of relationship includes second cousins.

(D) "Economic interest" denotes ownership of a more than de minimis legal or equitable interest, or a relationship as officer, director, advisor or other active participant in the affairs of a party, except that

(1) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities unless the judge participates in the management of the fund or a proceeding pending or impending before the judge could substantially affect the value of the interest;

(2) service by a judge as an officer, director, advisor or other active participant in an educational, religious, charitable, cultural, fraternal or civic organization, or service by a judge's spouse or child as an officer, director, advisor or other active participant in any organization does not create an economic interest in securities held by that organization;

(3) a deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit union, or a similar proprietary interest, is not an economic interest in the organization, unless a proceeding pending or impending before the judge could substantially affect the value of the interest;

(4) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities.

(5) "De minimis" denotes an insignificant interest that could not raise reasonable questions as to a judge's impartiality. (E) "Fiduciary" includes such relationships as executor, administrator, trustee, and guardian.

(F) "Knowingly", "knowledge", "known" or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

(G) "Law" denotes court rules as well as statutes, constitutional provisions and decisional law.

(H) "Member of the candidate's family" denotes a spouse, child, grandchild, parent, grandparent or other relative or person with whom the candidate maintains a close familial relationship.

(I) "Member of the judge's family" denotes a spouse, child, grandchild, parent, grandparent or other relative or person with whom the judge maintains a close familial relationship.

(J) "Member of the judge's family residing in the judge's household" denotes any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household.

(K) "Nonpublic information" denotes information that, by law, is not available to the public. Nonpublic information may include but is not limited to: information that is sealed by statute or court order, impounded or communicated in camera; and information offered in grand jury proceedings, presentencing reports, dependency cases or psychiatric reports.

(L) A "part-time judge", including an acting part-time judge, is a judge who serves repeatedly on a part-time basis by election or under a continuing appointment.

(M) "Political organization" denotes a political party, political club or other group, the principal purpose of which is to further the election or appointment of candidates to political office.

(N) "Public election" includes primary and general elections; it includes partisan elections, nonpartisan elections and retention elections.

(O) "Require". The rules prescribing that a judge "require" certain conduct of others, like all of the rules in this Part, are rules of reason. The use of the term "require" in that context means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control.

(P) "Rules"; citation. Unless otherwise made clear by the citation in the text, references to individual components of the rules are cited as follows:

"Part"-refers to Part 100.

"Section"-refers to a provision consisting of 100 followed by a decimal (100.1).

"Subdivision"-refers to a provision designated by a capital letter (A).

"Paragraph"-refers to a provision designated by an arabic numeral (1).

"Subparagraph"-refers to a provision designated by a lower-case letter (a).

(Q) "Window Period" denotes a period beginning nine months before a primary election, judicial nominating convention, party caucus or other party meeting for nominating candidates for the elective judicial office for which a judge or non-judge is an announced candidate, or for which a committee or other organization has publicly solicited or supported the judge's or non-judge's candidacy, and ending, if the judge or non-judge is a candidate in the general election for that office, six months after the general election, or if he or she is not a candidate in the general election, six months after the date of the primary election, convention, caucus or meeting.

(R) "Impartiality" denotes absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintaining an open mind in considering issues that may come before the judge.

(S) An "independent" judiciary is one free of outside influences or control.

(T) "Integrity" denotes probity, fairness, honesty, uprightness and soundness of character. "Integrity" also includes a firm adherence to this Part or its standard of values.

(U) A "pending proceeding" is one that has begun but not yet reached its final disposition.

(V) An "impending proceeding" is one that is reasonably foreseeable but has not yet been commenced.

Historical NoteSec. filed Feb. 1, 1996 eff. **Jan. 1, 1996**. Amended (D) and (D)(5) on **Sept. 9, 2004**. Added (R) - (V) on **Feb. 14, 2006**

Section 100.1 A judge shall uphold the integrity and independence of the judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Part 100 are to be construed and applied to further that objective.

Historical NoteSec. filed Aug. 1, 1972; renum. 111.1, new added by renum. and amd. 33.1, filed Feb. 2, 1982; repealed, new filed Feb. 1, 1996 eff. Jan. 1, 1996.

Section 100.2 A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

(A) A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

(B) A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment.

(C) A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

(D) A judge shall not hold membership in any organization that practices invidious discrimination on the basis of age, race, creed, color, sex, sexual orientation, religion, national origin, disability or marital status. This provision does not prohibit a judge from holding membership in an organization that is dedicated to the preservation of religious, ethnic, cultural or other values of legitimate common interest to its members.

Historical NoteSec. filed Aug. 1, 1972; renum. 111.2, new added by renum. and amd. 33.2, filed Feb. 2, 1982; repealed, new filed Feb. 1, 1996 eff. Jan. 1, 1996.

Section 100.3 A judge shall perform the duties of judicial office impartially and diligently.

(A) **Judicial Duties in General.** The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply.

(B) **Adjudicative Responsibilities.**

(1) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism.

(2) A judge shall require order and decorum in proceedings before the judge.

(3) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control.

(4) A judge shall perform judicial duties without bias or prejudice against or in favor of any person. A judge in the performance of judicial duties shall not, by words or conduct, manifest bias or prejudice, including but not limited to bias or prejudice based upon age, race, creed, color, sex, sexual orientation, religion, national origin, disability, marital status or socioeconomic status, and shall require staff, court officials and others subject to the judge's direction and control to refrain from such words or conduct.

(5) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon age, race, creed, color, sex, sexual orientation, religion, national origin, disability, marital status or socioeconomic status, against parties, witnesses, counsel or others. This paragraph does not preclude legitimate advocacy when age, race, creed, color, sex, sexual orientation, religion, national origin, disability, marital status or socioeconomic status, or other similar factors are issues in the proceeding.

(6) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers concerning a pending or impending proceeding, except:

(a) Ex parte communications that are made for scheduling or administrative purposes and that do not affect a substantial right of any party are authorized, provided the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and the judge, insofar as practical and appropriate, makes provision for prompt notification of other parties or their lawyers of the substance of the ex parte communication and allows an opportunity to respond.

(b) A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and a copy of such advice if the advice is given in writing and the substance of the advice if it is given orally, and affords the parties reasonable opportunity to respond.

(c) A judge may consult with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.

(d) A judge, with the consent of the parties, may confer separately with the parties and their lawyers on agreed-upon matters.

(e) A judge may initiate or consider any ex parte communications when authorized by law to do so.

(7) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

(8) A judge shall not make any public comment about a pending or impending proceeding in any court within the United States or its territories. The judge shall require similar abstention on the part of court personnel subject to the judge's direction and control. This paragraph does not prohibit judges from making public statements in the course of their official duties or from

explaining for public information the procedures of the court. This paragraph does not apply to proceedings in which the judge is a litigant in a personal capacity.

(9) A judge shall not:(a) make pledges or promises of conduct in office that are inconsistent with the impartial performance of the adjudicative duties of the office;(b) with respect to cases, controversies or issues that are likely to come before the court, make commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.

(10) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

(11) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity.

(12) It is not a violation of this Rule for a judge to make reasonable efforts to facilitate the ability of unrepresented litigants to have their matters fairly heard.

(C) **Administrative Responsibilities.**

(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

(2) A judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered. A judge shall not appoint or vote for the appointment of any person as a member of the judge's staff or that of the court of which the judge is a member, or as an appointee in a judicial proceeding, who is a relative within the fourth degree of relationship of either the judge or the judge's spouse or the spouse of such a person. A judge shall refrain from recommending a relative within the fourth degree of relationship of either the judge or the judge's spouse or the spouse of such person for appointment or employment to another judge serving in the same court. A judge also shall comply with the requirements of Part 8 of the Rules of the Chief Judge (22 NYCRR Part 8) relating to the Appointment of relatives of judges. Nothing in this paragraph shall prohibit appointment of the spouse of the town or village justice, or other member of such justice's household, as clerk of the town or village court in which such justice sits, provided that the justice obtains the prior approval of the Chief Administrator of the Courts, which may be given upon a showing of good cause.

(D) **Disciplinary Responsibilities.**

(1) A judge who receives information indicating a substantial likelihood that another judge has committed a substantial violation of this Part shall take appropriate action.

(2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a substantial violation of the Code of Professional Responsibility shall take appropriate action.

(3) Acts of a judge in the discharge of disciplinary responsibilities are part of a judge's judicial duties.

(E) **Disqualification.**

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) (i) the judge has a personal bias or prejudice concerning a party or (ii) the judge has personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) the judge knows that (i) the judge served as a lawyer in the matter in controversy, or (ii) a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or (iii) the judge has been a material witness concerning it;

(c) the judge knows that he or she, individually or as a fiduciary, or the judge's spouse or minor child residing in the judge's household has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other interest that could be substantially affected by the proceeding;

(d) the judge knows that the judge or the judge's spouse, or a person known by the judge to be within the sixth degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding;(ii) is an officer, director or trustee of a party;(iii) has an interest that could be substantially affected by the proceeding;

(e) The judge knows that the judge or the judge's spouse, or a person known by the judge to be within the fourth degree of relationship to either of them, or the spouse of such a person, is acting as a lawyer in the proceeding or is likely to be a material witness in the proceeding.

(f) the judge, while a judge or while a candidate for judicial office, has made a pledge or promise of conduct in office that is inconsistent with the impartial performance of the adjudicative duties of the office or has made a public statement not in the judge's adjudicative capacity that commits the judge with respect to(i) an issue in the proceeding; or(ii) the parties or controversy in the proceeding.

(g) notwithstanding the provisions of subparagraphs (c) and (d) above, if a judge would be disqualified because of the appearance or discovery, after the matter was assigned to the judge, that the judge individually or as fiduciary, the judge's spouse, or a minor child residing in his or her household has an economic interest in a party to the proceeding, disqualification is not required if the judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.

(2) A judge shall keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse and minor children residing in the judge's household.

(F) **Remittal of Disqualification.** A judge disqualified by the terms of subdivision (E), except subparagraph (1)(a)(i), subparagraph (1)(b)(i) or (iii) or subparagraph (1)(d)(i) of this section, may disclose on the record the basis of the judge's disqualification. If, following such disclosure of any basis for disqualification, the parties who have appeared and not defaulted and their lawyers, without participation by the judge, all agree that the judge should not be disqualified, and the judge believes that he or she will be impartial and is willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

Amended 100.3 (B)(9)-(11) & (E)(f) -(E)(g) **Feb. 14, 2006**

Amended 100.3 (B)(9)-(11) & (E)(f) -(E)(g) **Feb. 14, 2006**

Added 100.3(b)(12) effective **Mar. 26, 2015**

Section 100.4 A judge shall so conduct the judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations

(A) **Extra-Judicial Activities in General.** A judge shall conduct all of the judge's extra-judicial activities so that they do not:

(1) cast reasonable doubt on the judge's capacity to act impartially as a judge;

(2) detract from the dignity of judicial office; or

(3) interfere with the proper performance of judicial duties and are not incompatible with judicial office.

(B) **Avocational Activities.** A judge may speak, write, lecture, teach and participate in extra-judicial activities subject to the requirements of this Part.

(C) **Governmental, Civic, or Charitable Activities.**

(1) A full-time judge shall not appear at a public hearing before an executive or legislative body or official except on matters concerning the law, the legal system or the administration of justice or except when acting pro se in a matter involving the judge or the judge's interests.

(2)(a) A full-time judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy in matters other than the improvement of the law, the legal system or the administration of justice. A judge may, however, represent a country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities.

(b) A judge shall not accept appointment or employment as a peace officer or police officer as those terms are defined in section 1.20 of the Criminal Procedure Law.

(3) A judge may be a member or serve as an officer, director, trustee or non-legal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice or of an educational, religious, charitable, cultural, fraternal or civic organization not conducted for profit, subject to the following limitations and the other requirements of this Part.

(a) A judge shall not serve as an officer, director, trustee or non-legal advisor if it is likely that the organization

(i) will be engaged in proceedings that ordinarily would come before the judge, or(ii) if the judge is a full-time judge, will be engaged regularly in adversary proceedings in any court.

(b) A judge as an officer, director, trustee or non-legal advisor, or a member or otherwise:

(i) may assist such an organization in planning fund-raising and may participate in the management and investment of the organization's funds, but shall not personally participate in the solicitation of funds or other fund-raising activities;(ii) may not be a speaker or the guest of honor at an organization's fund-raising events, but the judge may attend such events. Nothing in this subparagraph shall prohibit a judge from being a speaker or guest of honor at a court employee organization, bar association or law school function or from accepting at another organization's fund-raising event an unadvertised award ancillary to such event;(iii) may make recommendations to public and private fund-granting organizations on projects and programs concerning the law, the legal system or the administration of justice; and(iv) shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation, but may be listed as an officer, director or trustee of such an organization. Use of an organization's regular letterhead for fund-raising or membership solicitation does not violate this provision, provided the letterhead lists only the judge's name and office or other position in the organization, and, if comparable designations are listed for other persons, the judge's judicial designation.

(D) **Financial Activities.**

(1) A judge shall not engage in financial and business dealings that:

(a) may reasonably be perceived to exploit the judge's judicial position;

(b) involve the judge with any business, organization or activity that ordinarily will come before the judge; or

(c) involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.

(2) A judge, subject to the requirements of this Part, may hold and manage investments of the judge and members of the judge's

family, including real estate.

(3) A full-time judge shall not serve as an officer, director, manager, general partner, advisor, employee or other active participant of any business entity, except that:

(a) the foregoing restriction shall not be applicable to a judge who assumed judicial office prior to July 1, 1965, and maintained such position or activity continuously since that date; and

(b) a judge, subject to the requirements of this Part, may manage and participate in a business entity engaged solely in investment of the financial resources of the judge or members of the judge's family; and

(c) any person who may be appointed to fill a full-time judicial vacancy on an interim or temporary basis pending an election to fill such vacancy may apply to the Chief Administrator of the Courts for exemption from this paragraph during the period of such interim or temporary appointment.

(4) A judge shall manage the judge's investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge shall divest himself or herself of investments and other financial interests that might require frequent disqualification.

(5) A judge shall not accept, and shall urge members of the judge's family residing in the judge's household not to accept, a gift, bequest, favor or loan from anyone except:

(a) a gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law, the legal system or the administration of justice;

(b) a gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member of a judge residing in the judge's household, including gifts, awards and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;

(c) ordinary social hospitality;

(d) a gift from a relative or friend, for a special occasion such as a wedding, anniversary or birthday, if the gift is fairly commensurate with the occasion and the relationship;

(e) a gift, bequest, favor or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under section 100.3(E);

(f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges;

(g) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants; or

(h) any other gift, bequest, favor or loan, only if: the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge; and if its value exceeds $150.00, the judge reports it in the same manner as the judge reports compensation in Section 100.4(H).

(E) **Fiduciary Activities.**

(1) A full-time judge shall not serve as executor, administrator or other personal representative, trustee, guardian, attorney in fact or other fiduciary, designated by an instrument executed after January 1, 1974, except for the estate, trust or person of a member of the judge's family, or, with the approval of the Chief Administrator of the Courts, a person not a member of the judge's family with whom the judge has maintained a longstanding personal relationship of trust and confidence, and then only if such services will not interfere with the proper performance of judicial duties.

(2) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a

fiduciary capacity.

(3) Any person who may be appointed to fill a full-time judicial vacancy on an interim or temporary basis pending an election to fill such vacancy may apply to the Chief Administrator of the Courts for exemption from paragraphs (1) and (2) during the period of such interim or temporary appointment.

(F) **Service as Arbitrator or Mediator.** A full-time judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.

(G) **Practice of Law.** A full-time judge shall not practice law. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to a member of the judge's family.

(H) **Compensation, Reimbursement and Reporting.**

(1) *Compensation and Reimbursement.* A full-time judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this Part, if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

(a) Compensation shall not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same activity.

(b) Expense reimbursement shall be limited to the actual cost of travel, food and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse or guest. Any payment in excess of such an amount is compensation.

(c) No full-time judge shall solicit or receive compensation for extra-judicial activities performed for or on behalf of: (1) New York State, its political subdivisions or any office or agency thereof; (2) a school, college or university that is financially supported primarily by New York State or any of its political subdivisions, or any officially recognized body of students thereof, except that a judge may receive the ordinary compensation for a lecture or for teaching a regular course of study at any college or university if the teaching does not conflict with the proper performance of judicial duties; or (3) any private legal aid bureau or society designated to represent indigents in accordance with article 18-B of the County Law.

(2) *Public Reports.* A full-time judge shall report the date, place and nature of any activity for which the judge received compensation in excess of $150, and the name of the payor and the amount of compensation so received. Compensation or income of a spouse attributed to the judge by operation of a community property law is not extra-judicial compensation to the judge. The judge's report shall be made at least annually and shall be filed as a public document in the office of the clerk of the court on which the judge serves or other office designated by law.

(I) **Financial Disclosure.** Disclosure of a judge's income, debts, investments or other assets is required only to the extent provided in this section and in section 100.3(F), or as required by Part 40 of the Rules of the Chief Judge (22 NYCRR Part 40), or as otherwise required by law.

Historical NoteSec. filed Aug. 1, 1972; amd. filed Nov. 26, 1976; renum. 111.4, new added by renum. and amd. 33.4, filed Feb. 2, 1982; repealed, new filed Feb. 1, 1996; amds. filed: Feb. 27, 1996; Feb. 9, 1998 eff. Jan. 23, 1998. Amended (C)(3)(b)(ii).

Section 100.5 A judge or candidate for elective judicial office shall refrain from inappropriate political activity.

(A) **Incumbent Judges and Others Running for Public Election to Judicial Office.**

(1) Neither a sitting judge nor a candidate for public election to judicial office shall directly or indirectly engage in any political activity except (i) as otherwise authorized by this section or by law, (ii) to vote and to identify himself or herself as a member of a political party, and (iii) on behalf of measures to improve the law, the legal system or the administration of justice. Prohibited political activity shall include:

(a) acting as a leader or holding an office in a political organization;

(b) except as provided in Section 100.5(A)(3), being a member of a political organization other than enrollment and membership in a political party;

(c) engaging in any partisan political activity, provided that nothing in this section shall prohibit a judge or candidate from participating in his or her own campaign for elective judicial office or shall restrict a non-judge holder of public office in the exercise of the functions of that office;

(d) participating in any political campaign for any office or permitting his or her name to be used in connection with any activity of a political organization;

(e) publicly endorsing or publicly opposing (other than by running against) another candidate for public office;

(f) making speeches on behalf of a political organization or another candidate;

(g) attending political gatherings;

(h) soliciting funds for, paying an assessment to, or making a contribution to a political organization or candidate; or

(i) purchasing tickets for politically sponsored dinners or other functions, including any such function for a non-political purpose.

(2) A judge or non-judge who is a candidate for public election to judicial office may participate in his or her own campaign for judicial office as provided in this section and may contribute to his or her own campaign as permitted under the Election Law. During the Window Period as defined in subdivision (Q) of section 100.0 of this Part, a judge or non-judge who is a candidate for public election to judicial office, except as prohibited by law, may:

(i) attend and speak to gatherings on his or her own behalf, provided that the candidate does not personally solicit contributions;

(ii) appear in newspaper, television and other media advertisements supporting his or her candidacy, and distribute pamphlets and other promotional campaign literature supporting his or her candidacy;

(iii) appear at gatherings, and in newspaper, television and other media advertisements with the candidates who make up the slate of which the judge or candidate is a part;

(iv) permit the candidate's name to be listed on election materials along with the names of other candidates for elective public office;

(v) purchase two tickets to, and attend, politically sponsored dinners and other functions, provided that the cost of the ticket to such dinner or other function shall not exceed the proportionate cost of the dinner or function. The cost of the ticket shall be deemed to constitute the proportionate cost of the dinner or function if the cost of the ticket is $250 or less. A candidate may not pay more than $250 for a ticket unless he or she obtains a statement from the sponsor of the dinner or function that the amount paid represents the proportionate cost of the dinner or function.

(3) A non-judge who is a candidate for public election to judicial office may also be a member of a political organization and continue to pay ordinary assessments and ordinary contributions to such organization.

(4) A judge or a non-judge who is a candidate for public election to judicial office:

(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the impartiality, integrity and independence of the judiciary, and shall encourage members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as apply to the candidate;

(b) shall prohibit employees and officials who serve at the pleasure of the candidate, and shall discourage other employees and officials subject to the candidate's direction and control, from doing on the candidate's behalf what the candidate is prohibited from doing under this Part;

(c) except to the extent permitted by Section 100.5(A)(5), shall not authorize or knowingly permit any person to do for the candidate what the candidate is prohibited from doing under this Part;

(d) shall not:

(i) make pledges or promises of conduct in office that are inconsistent with the impartial performance of the adjudicative duties of the office;

(ii) with respect to cases, controversies or issues that are likely to come before the court, make commitments that are inconsistent with the impartial performance of the adjudicative duties of the office;

(iii) knowingly make any false statement or misrepresent the identity, qualifications, current position or other fact concerning the candidate or an opponent; but

(e) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate subparagraphs 100.5(A)(4)(a) and (d).

(f) shall complete an education program, either in person or by videotape or by internet correspondence course, developed or approved by the Chief Administrator or his or her designee any time after the candidate makes a public announcement of candidacy or authorizes solicitation or acceptance of contributions for a known judicial vacancy, but no later than 30 days after receiving the nomination for judicial office. The date of nomination for candidates running in a primary election shall be the date upon which the candidate files a designating petition with the Board of Elections. This provision shall apply to all candidates for elective judicial office in the Unified Court System except for town and village justices.

(g) shall file with the Ethics Commission for the Unified Court System a financial disclosure statement containing the information and in the form set forth in the Annual Statement of Financial Disclosure adopted by the Chief Judge of the State of New York. Such statement shall be filed within 20 days following the date on which the judge or non-judge becomes such a candidate; provided, however, that the Ethics Commission for the Unified Court System may grant an additional period of time within which to file such statement in accordance with rules promulgated pursuant to section 40.1(i)(3) of the Rules of the Chief Judge of the State of New York (22 NYCRR). Notwithstanding the foregoing, compliance with this subparagraph shall not be necessary where a judge or non-judge already is or was required to file a financial disclosure statement for the preceding calendar year pursuant to Part 40 of the Rules of the Chief Judge. This requirement shall not apply to candidates for election to town and village courts.

(5) A judge or candidate for public election to judicial office shall not personally solicit or accept campaign contributions, but may establish committees of responsible persons to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law. Such committees may solicit and accept reasonable campaign contributions and support from the public, including lawyers, manage the expenditure of funds for the candidate's campaign and obtain public statements of support for his or her candidacy. Such committees may solicit and accept such contributions and support only during the Window Period. A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or others.

(6) A judge or a non-judge who is a candidate for public election to judicial office may not permit the use of campaign

contributions or personal funds to pay for campaign-related goods or services for which fair value was not received.

(7) Independent Judicial Election Qualifications Commissions, created pursuant to Part 150 of the Rules of the Chief Administrator of the Courts, shall evaluate candidates for elected judicial office, other than justice of a town or village court.

(B) **Judge as Candidate for Nonjudicial Office.** A judge shall resign from judicial office upon becoming a candidate for elective nonjudicial office either in a primary or in a general election, except that the judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention if the judge is otherwise permitted by law to do so.

(C) **Judge's Staff.** A judge shall prohibit members of the judge's staff who are the judge's personal appointees from engaging in the following political activity:

(1) holding an elective office in a political organization, except as a delegate to a judicial nominating convention or a member of a county committee other than the executive committee of a county committee;

(2) contributing, directly or indirectly, money or other valuable consideration in amounts exceeding $500 in the aggregate during any calendar year to all political campaigns for political office, and other partisan political activity including, but not limited to, the purchasing of tickets to political functions, except that this $500 limitation shall not apply to an appointee's contributions to his or her own campaign. Where an appointee is a candidate for judicial office, reference also shall be made to appropriate sections of the Election Law;

(3) personally soliciting funds in connection with a partisan political purpose, or personally selling tickets to or promoting a fund-raising activity of a political candidate, political party, or partisan political club; or

(4) political conduct prohibited by section 50.5 of the Rules of the Chief Judge (22 NYCRR 50.5).

Historical NoteSec. filed Aug. 1, 1972; renum. 111.5, new added by renum. and amd. 33.5, filed Feb. 2, 1982; amds. filed: Dec. 21, 1983; May 8, 1985; March 2, 1989; April 11, 1989; Oct. 30, 1989; Oct. 31, 1990; repealed, new filed; amd. filed March 25, 1996 eff. March 21, 1996. Amended (A)(2)(v).

Amended 100.5 (A)(2)(v), (A)(4)(a), (A)(4)(d)(i)-(ii), (A)(4)(f), (A)(6), (A)(7) on **Feb. 14, 2006**

Added 100.5 (A)(4)(g) on **Sept. 1, 2006**

Amended 100.5 (A)(4)(g) on **Sept. 1, 2006**

Amended 100.5 (A)(4)(f) on **Oct. 24, 2007** [**previous version**]

Section 100.6 Application of the rules of judicial conduct.

(A) **General Application.** All judges in the unified court system and all other persons to whom by their terms these rules apply, e.g., candidates for elective judicial office, shall comply with these rules of judicial conduct, except as provided below. All other persons, including judicial hearing officers, who perform judicial functions within the judicial system shall comply with such rules in the performance of their judicial functions and otherwise shall so far as practical and appropriate use such rules as guides to their conduct.

(B) **Part-Time Judge.** A part-time judge:

(1) is not required to comply with sections 100.4(C)(1), 100.4(C)(2)(a), 100.4(C)(3)(a)(ii), 100.4(E)(1), 100.4(F), 100.4(G), and 100.4(H);

(2) shall not practice law in the court on which the judge serves, or in any other court in the county in which his or her court is located, before a judge who is permitted to practice law, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto;

(3) shall not permit his or her partners or associates to practice law in the court in which he or she is a judge, and shall not permit the practice of law in his or her court by the law partners or associates of another judge of the same court who is permitted to practice law, but may permit the practice of law in his or her court by the partners or associates of a judge of a court in another town, village or city who is permitted to practice law;

(4) may accept private employment or public employment in a federal, state or municipal department or agency, provided that such employment is not incompatible with judicial office and does not conflict or interfere with the proper performance of the judge's duties.

(5) Nothing in this rule shall further limit the practice of law by the partners or associates of a part-time judge in any court to which such part-time judge is temporarily assigned to serve pursuant to section 106(2) of the Uniform Justice Court Act or Section 107 of the Uniform City Court Act in front of another judge serving in that court before whom the partners or associates are permitted to appear absent such temporary assignment.

(C) **Administrative Law Judges.** The provisions of this Part are not applicable to administrative law judges unless adopted by the rules of the employing agency.

(D) **Time for Compliance.** A person to whom these rules become applicable shall comply immediately with all provisions of this Part, except that, with respect to sections 100.4(D)(3) and 100.4(E), such person may make application to the Chief Administrator for additional time to comply, in no event to exceed one year, which the Chief Administrator may grant for good cause shown.

(E) **Relationship to Code of Judicial Conduct.** To the extent that any provision of the Code of Judicial Conduct as adopted by the New York State Bar Association is inconsistent with any of these rules, these rules shall prevail.

Historical NoteSec. filed Aug. 1, 1972; repealed, new added by renum. 100.7, filed Nov. 26, 1976; renum. 111.6, new added by renum. and amd. 33.6, filed Feb. 2, 1982; repealed, new filed Feb. 1, 1996 eff. Jan. 1, 1996.

Amended 100.6(E) **Feb. 14, 2006**

Added 100.6(B)5 on **Mar. 24, 2010**

EVERYTHING YOU NEED TO KNOW ABOUT BECOMING A JUDGE

Evaluation Processes and Judicial Screening

New York's IJEQCs - http://www.ny-ijeqc.org/index.shtml

The Independent Judicial Election Qualification Commissions (IJEQCs) are a statewide network of independent screening panels for judicial candidates. The screening process is designed to ensure that voters are provided with as much information as possible about the qualifications of candidates for judicial office. In accordance with Part 150 of the Rules of the Chief Administrative Judge establishing the IJEQCs and Opinion 07-91 of the Advisory Committee on Judicial Ethics, participation in the screening process is voluntary.

The Commissions were established in February 2007, by the Chief Administrative Judge, in each New York State judicial district. Each IJEQC is responsible for reviewing the qualifications of candidates within its respective judicial district who are seeking public election to New York State Supreme Court, County Court, Surrogate's Court, Family Court, New York City Civil Court, District Court or City Court.

There is an office for the IJEQCs in each of the four Judicial Departments which provides information and accepts applications. Contact and general information about the Commissions is available in a brochure.

For biographical information about judicial candidates, consult the Voter Guide, available about 2 weeks before the general election.

Applicant Name:

Independent Judicial Election Qualification Commission

Questionnaire For Candidates For Elected Judicial Office

1. Have you ever been known by any other name (other than a recognizable nickname)?

   Yes No

If yes, specify the name(s) and year(s) of name change and/or the years during which the other name or names were used:

2. Identify the Court and, where applicable, Judicial District, County, or City for which you are a candidate:

3. Date and Place of Birth:

4. Country of Citizenship:

5. (a) Current Home Address (Street, Apt, City, State, Zip):

   (b) Current Home Telephone:

   (c) Cell Phone Number:

   (d) Number of years at current address:

   If less than one year, previous address(es) during the past year:

6. (a) Current Business Address (Street, Apt, City, State, Zip):

   (b) Current Business Telephone:

   (c) Preferred E-Mail Address:

Applicant Name:

7. Did you serve in the armed forces? Yes No

If yes, give the following information: (Multiple lines allowed in each field)

Date(s) of Service	Branch of Service	Nature of Discharge

8. List in ***reverse*** chronological order (Most Recent Job First) all employment and periods of unemployment since graduation from law school. (If law school attendance did not commence within a few months following completion of undergraduate course study, list also employment and periods of unemployment between college and law school.):

Name of Firm or Employer	Address	Name of Supervisor	Dates of Employment (month/year)	Nature of Employment

Reason for Leaving

Reason for Leaving

Reason for Leaving

Reason for Leaving

Reason for Leaving

Applicant Name:

9. Have you ever held public office, elected or appointed, other than those listed in answer to Question 8 above? Yes No

If yes, state position held, dates of service, and whether the office was attained by election or appointment:

10. Have you ever been engaged, on your own account or with others, in any business or profession, part-time or full-time, other than those listed in your answer to Question 8 above? Yes No

If yes, list below:

Type of Business or Profession	Name of Employer	Address	Position Held	Dates (mo./yr.)

Reason for Termination of Business

Reason for Termination of Business

Reason for Termination of Business

Reason for Termination of Business

11. (a) In addition to either a marriage, law, notary public, and/or driver's license, have you ever been issued any other license? Yes No

If yes, describe the license and list the initial issue and last renewal date(s).

(b) Has any license, including a license to practice law, a license as a notary public, or a driver's license, ever been revoked or suspended? Yes No

If yes, describe the circumstances:

Applicant Name:

12. College and professional schools (other than law schools) attended:

School	Location	Degree	Honors	Dates Attended	Date of Graduation

13. Law school(s) attended:

School	Location	Degree	Honors	Dates Attended	Date of Graduation

14. (a) **For Attorneys:** For your most recent biennial registration period, did you satisfy New York State's mandatory continuing legal education requirement ? Yes No

If no, describe the circumstances:

(b) **For Judges:** For your most recent biennial registration period, did you satisfy the requirement of attendance at training and education courses [22 NYCRR §17.3]? Yes No

If no, describe the circumstances:

15. For Attorneys: Have you complied with all registration requirements for lawyers in the state of New York and any other jurisdiction in which you are licensed to practice law? Yes No

If no, describe the circumstances:

Applicant Name:

16. Have you completed, or are you enrolled in, the education program on judicial campaign ethics required of all candidates for elected judicial office [22 NYCRR §100.5(A)(4)(f)]? Yes No

If no, explain why:

17. Have you filed a financial disclosure statement with the Ethics Commission for the Unified Court System [22 NYCRR §100.5(A)(4)(g)]? Yes No

If no, explain why:

18. List all courts in which you are admitted or have ever been admitted to practice, together with dates of admission:

(a) New York (give Judicial Department): **Date of Admission:**

(b) All other Federal and State Courts: **Date of Admission:**

19. List all areas of law in which you have concentrated or have substantial experience for any sustained period of time:

20.(a) Have you ever resigned from a position as, or for other reasons ceased to be, a member of the bar or bench of any state or court in any jurisdiction? Yes No

If yes, describe the circumstances:

(b) Have you ever resigned from a position as, or for other reasons ceased to be, a member of a governmental body, a hearing officer or magistrate, or an occupant of any other similar position?

If yes, describe the circumstances: Yes No

Applicant Name:

21. Have you ever been the subject of a complaint filed with, or are there any charges pending against you, before any disciplinary committee, commission, or government agency, arising from your official or professional responsibilities? Yes No

If yes, describe the circumstances and provide a copy of any disposition. (Do not include complaints or charges subsequently dismissed as unproven or unmeritorious:

22. (a) Have you ever been found by a court to have committed legal malpractice, or are there any claims of legal malpractice currently pending against you in any court? Yes No

If yes, describe the circumstances:

(b) If you are or were a member of a firm or organization that was found to have committed legal malpractice, or that has claims currently pending against it that it had committed legal malpractice, describe the nature of the finding or claim if it related to a case or matter on which you worked and state whether your conduct was the subject of the finding or claim:

(c) Have you, or your firm or organization, ever settled a case alleging the commission of acts constituting legal malpractice where your conduct was the subject of the allegations? C Yes r No

If yes, describe the circumstances:

23. Have you, your firm, your employer or any of your clients ever been cited for contempt or otherwise had a sanction imposed upon you (or them), as a result of conduct in any judicial or administrative proceeding? Yes No

If yes, describe:

24. Have you ever been convicted of, or are there current charges pending against you of, any offense or crime other than a non-moving traffic violation (including proceedings in the armed forces)? C Yes O No

If yes, describe the nature and outcome of each case:

Applicant Name:

25. In relation to any conduct, act or omission on your part or done with your knowledge, has any Federal, State, City or other governmental agency, or a grand jury initiated or completed an investigation of you or of any law firm, corporation, business, partnership, joint venture, governmental agency or other similar entity with which you are, or were at the relevant time, affiliated? Yes No

If yes, describe each investigation and its outcome:

26. In the past ten years, have you been involved as a party to any litigation (criminal, civil, or administrative), other than an action you have identified in answer to any previous question? O Yes r No

If yes, describe, including the disposition of the matter:

27. Have you ever had an order of protection issued against you, or have you ever been listed in the Domestic Violence Registry, or the Sex Offender Registry? Yes No

If yes, explain:

28. Are there any unsatisfied judgments, tax warrants, tax liens or mechanics' liens outstanding against you, or property you own or have an interest in? Yes No

If yes, describe:

29. Are you in default of any court order, including maintenance or child support decrees? Yes No

If yes, describe:

30. Has any petition in bankruptcy ever been filed by or against you? O Yes r No

If yes, describe:

31. Have you timely filed all required Federal, State, and City income tax returns appropriate to your place of residence? Yes No

If no, explain:

Applicant Name:

32. Has any Federal, State, City or other taxing authority found that you failed to pay adequate taxes, penalties, and/or other charges for any tax year? Yes No

If yes, describe:

33. A judge is expected to be on the bench or otherwise handling legal matters for at least seven hours per day, five days per week. At times, a judge's responsibilities may require him/her to be on the bench or at work into the evenings and on weekends. Are you able to perform these tasks on your own, or with reasonable accommodation? Yes No

If no, describe the circumstances:

34. A judge may be required to handle emergency applications, cope with media scrutiny, issue quick decisions, deal with fractious litigants, recall significant amounts of information, and otherwise respond to extremely stressful situations. Are you able to perform these tasks on your own, or with reasonable accommodation? Yes No

If no, describe the circumstances:

35. Do you currently use any illegal drugs, abuse alcohol, or abuse any prescription drugs? Yes No

If yes, describe:

36. Has an employer or supervisor ever counseled you regarding, or expressed concern about, your absenteeism? r Yes r No

a. If yes, describe the frequency of the absenteeism complained of:

b. Was the situation rectified? r Yes r No

If yes, explain how:

37. Do you know of any factors that would adversely affect your ability to competently serve as a judge, to comply with a judge's ethical responsibilities, or to complete the day-to-day responsibilities that a judge is required to assume? Yes No

If yes, describe:

Applicant Name:

38. Are you a member of any bar association or professional organization? Yes No

If yes, give the following information for each association or organization:

Name of Association	Dates of Membership	Committee Service

39. Describe any significant community activities in which you have engaged:

40. Have you written articles for publication? Yes No

If yes, give the name and date of the publication and the title of each article published in the past five years, and list any other publications that you deem significant:

41. Have you had any teaching experience in law or related fields? Yes No

If yes, describe:

42. Have your qualifications for public office previously been reviewed by any bar or other professional association? Yes No

If yes, identify the organization, state the date of the review, and detail all findings by the organization:

Applicant Name:

ATTACH THE FOLLOWING SCHEDULES TO THIS QUESTIONNAIRE. AS TO EACH SCHEDULE, SPECIFY THE QUESTION NUMBER TO WHICH IT APPLIES

In answering questions about your litigation experience, you may include adversarial proceedings before a court, an administrative tribunal or an arbitrator or other forum for alternate dispute resolution. In addition, you should count as "trials" all adversarial evidentiary hearings involving presentation of witness testimony.

43. ***For attorneys:*** Attach a statement specifying [If you are unable to give the exact number for a category, provide your best estimate]:

(a) the types (i.e., civil, criminal or administrative) and number of each type of trials you have conducted in the past ten years;
(b) the number of the cases in category (a) of this question that ended in a verdict or judgment or ruling by the trier of fact;
(c) the number of cases listed in category (a) of this question that were tried before a jury;
(d) the courts or other tribunals in which the cases were tried;
(e) the number and types of appeals briefed in the past ten years;
(f) the number of appeals argued and the courts in which the arguments were heard;
(g) the number and types of dispositive motions you have litigated in the past ten years;
(h) the number of dispositive motions you have argued and the courts or other tribunals in which the arguments were heard;
(i) the title and citation of reported cases in the last ten years in which you conducted the trial, wrote the brief and/or argued the appeal, or wrote the papers on the dispositive motion.

44. ***For attorneys:*** Submit a list of the last ten trials, dispositive motions, or appeals in which you have actively and substantially participated in any state or federal court at the trial or appellate level, including the title of the case, the index, docket or indictment number, the court in which the case was heard, a concise description of the nature of the case, the date of the trial or oral argument, the name, address and telephone number of each adversary and co-counsel, and the name(s) of the judge(s) who presided at trial or sat on the appellate panel.

45. (a) ***For attorneys:*** Attach a statement describing your legal experience other than litigation. Include in that statement a general description of the last ten matters you handled and the names, addresses and telephone numbers of the lawyers, other than your associates, employees, partners, co-tenants, supervisors or employers, with whom you worked on each of those ten matters. For example, judicial law clerks should list the attorneys with whom they have had substantial contact. Similarly, law professors should list attorneys, judges and/or other law professors who are familiar with their work.

(b) ***For attorneys:*** Submit a minimum of three recent examples of your legal writing, and if you are not the sole author of the example, please explain your role in its preparation.

Applicant Name:

46. ***For judges:*** Submit a list of your ten most recent opinions with the citation to each or a copy thereof if not published.

47. ***For judges:*** Submit a list of the last ten trials or appeals over which you have presided, including the title and dates of each case, a brief description of the nature of each case, and the names, addresses and telephone numbers of the attorneys involved.

48. ***For judges:*** Approximately how many judicial decisions, opinions or orders have you issued over the last ten years? Approximately how many of those decisions/opinions/orders were appealed? Affirmed? Reversed? Modified? .

Provide full citations to any of your decisions/opinions/orders that were reversed or modified on appeal. Please provide copies of any unreported decisions/opinions/orders that were subsequently reversed or modified

49. For all candidates: Submit a list of the names, addresses and telephone numbers of any judges, public officials, attorneys or any other persons whom you suggest the Commission contact with respect to your candidacy.

50. ***For all candidates:*** Please specify any additional information that is reasonable to expect that the Commission would want to know when it considers your qualifications for the office you seek.

51. ***For all candidates***: Please complete and submit to the Commission an original, signed release for the Grievance Committees and, as appropriate, The Commission on Judicial Conduct. These releases are included as Appendices "A" and "B" (respectively) to the Questionnaire.

##

I ACKNOWLEDGE BY MY SIGNATURE THAT THE ANSWERS I HAVE GIVEN ARE TRUE AND COMPLETE AND RECOGNIZE MY CONTINUING OBLIGATION DURING THE EVALUATION PROCESS TO CORRECT AND SUPPLEMENT MY ANSWERS IN ORDER TO ENSURE THAT THEY REMAIN TRUE AND COMPLETE.

_____ _____

Date Signature

JUDICIAL SCREENING **SAMPLE NOTICE**

By Executive Order No. 15, Governor Andrew M. Cuomo established Judicial Screening Committees to evaluate the qualifications of candidates for appointment or designation to judicial office throughout New York State, and to recommend to the Governor those persons who are highly qualified to hold judicial office.

The Judicial Screening Committees are currently accepting applications for the following positions:

Additional Justices of the New York Supreme Court. Appellate Division(for all four Departments)

Applicants must be elected New York State Supreme Court Justices.

Judge of the New York State Court of Claims

Applicants must reside in New York State, be admitted to practice law in New York for at least ten years, and be attorneys in good standing.

Interested candidates should submit an original and fifteen copies of their application and supplemental materials to the address below.

For more information, please contact the New York State Judicial Screening Committees at (518)474-1289 or email: james.finke@exec.ny.gov.

New York State Judicial Screening CommitteesState CapitolRoom 239Albany, New York 12224(518) 474-1289(518) 473-5153 – Fax

State Committee MembersFirst Department Committee MembersSecond Department Committee MembersThird Department Committee MembersFourth Department Committee Members

New York State Judicial Screening Committees

State CapitolRoom 239Albany, New York 12224(518) 474-1289

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John A. Cirando *Owner, D.J. & J.A. Cirando, Esqs.*

Vincent E. Doyle, III *Partner, Connors & Vilardo LLP*

John Elmore *Senior Trial Counsel and Managing Attorney, Brown Chiari*

Ken Manning *Partner, Phillips Lytle LLP*

Makau W. Mutua *Professor, University of Buffalo Law School and The World Bank*

Edward J. Nowak *Former Public Defender*

Anne Beltz Rimmler *Partner, Paul William Beltz, PC*

Philip G. Spellane *Member, Harris Beach LLP*

SUFFOLK COUNTY BAR ASSOCIATION BYLAWS

ARTICLE X
JUDICIAL SCREENING COMMITTEE

SEC. 1. POLICIES OF THE BAR ASSOCIATION

A. Selection of justices, judges and those dealing with the administration of justice, The Association shall recommend for election or appointment to judicial office and those offices dealing with the administration of justice as are provided for in this Article, only those who in their character, integrity, temperament and professional ability and reputation have affirmatively demonstrated their special qualifications for these positions, and shall recommend against the election or appointment for office those persons who do not affirmatively demonstrate these qualifications.

SEC. 2. DUTIES AND GUIDELINES

The Judicial Screening Committee (the Committee) shall:

A. Implement the policies of the Association and make recommendations to the Board of Directors, to the public, the appointing officer and to the political party which submitted the candidate's name, concerning the election or appointment of persons to judicial office and those offices dealing with the administration of justice as are provided for in this Article.

B. In furtherance thereof, the Committee shall perform the following functions:

(1)Recommend the election or appointment of qualified candidates for judicial office or those offices dealing with the administration of justice as are provided for in this Article, wherein the incumbent serves in the County of Suffolk. Such offices shall include, but not be limited to, the District Attorney of Suffolk County, Justice of the Supreme Court, Suffolk County, Judge of the Suffolk County Court, the Surrogate of Suffolk County, Judge of the Family Court of Suffolk County, Judge of the District Court of Suffolk County and Justice of Town and Village Justice Courts within Suffolk County, and shall also include the office of Family Court Hearing Examiner in the Family Court of Suffolk County to the extent permitted by law or by agreement.

(2)Consider the qualifications of any person described in Section 2(B)(1) hereof and of any person whose name may be submitted to the Association by any officer charged with the duty of making an appointment or nomination or by any political party as a proposed or prospective candidate for election or appointment to any judicial office or other office dealing with the administration of justice as provided for in this Article.

(3)Recommend against the election or appointment of candidates who are found "Not Approved at This Time" to hold judicial office or other office dealing with the administration of justice as provided for in this Article.

(4)Discourage political considerations from outweighing fitness in the election or appointment of candidates for judicial office or other office dealing with the administration of justice as provided for in this Article; recommend to have elected or appointed thereto only those who are willing to forego pursuits, whether of a business, political, or other nature, that may interfere with the free and fair consideration of issues presented for adjudication and actively oppose the election or appointment of unfit candidates.

(5)Where requested by the Board of Directors, the Committee shall implement, supervise and administer any program which may be adopted by the Board of Directors concerning the monitoring of the courts of Suffolk County in order to assist the Bar and the Bench to upgrade the overall qualifications and efficiency of the trial bench in Suffolk County, and to undertake such other duties as directed by the Board of Directors.

(6)The term "candidate," as it appears in this Article, shall be deemed to include any person appearing before the Committee for screening.

SEC. 3. MEMBERSHIP

A. The Committee shall consist of twenty-five (25) Active Members of the Association, of recognized standing, judgment and independence, each of whom shall serve for a term of three years or until his or her successor is appointed. The terms of the members shall be staggered.

B. Of the twenty-five (25) members, five (5) will be members of the Suffolk County Criminal Bar Association whose nomination shall in the first instance be made by that organization to the President of the Association. The nominees recommended by the Suffolk County Criminal Bar Association must be Active Members of the Association.

C. The members of the Committee shall be appointed by the President of the Association subject to the approval of the Board of Directors. In making appointments to the Committee, the President shall give consideration to persons who represent a broad cross section of the Bar, who reflect the gender and racial diversity of the legal profession, who have achieved distinction and experience in the practice of law, who are experienced in litigation, who have performed outstanding service to the public and the Bar and who have pledged to faithfully discharge their obligations to the Committee and to keep the confidences of the Committee.

D. The Committee shall henceforth operate on a calendar year basis. Members of the Committee shall be appointed for three year terms commencing on January 1st and expiring on December 31st of the year in which their three year term expires.

E. No person shall be appointed to the Committee who is or will be, during his or her term, a member of any other committee which is directly or indirectly charged with the duty of screening, interviewing, nominating or recommending for appointment candidates for judicial office and/or those offices dealing with the administration of justice as are provided for in this Article. Nor shall any person be appointed to the Committee who is or will be, during his or her term, a member of the executive committee of any political party. Any member of the Committee who becomes a member of any of the above-mentioned committees or groups shall forthwith cease to be a member of the Committee.

F. No person who holds judicial office or is a personal appointee of a judge or justice shall be eligible for appointment to the Committee.

G. No person who seeks appointment or election to any judicial office or other office dealing with the administration of justice as provided for in this Article, or intends to support the candidacy of any such person, shall be eligible for appointment to the Committee. Any member of the Committee who seeks such appointment or election or who intends to support the candidacy of any person shall forthwith cease to be a member of the Committee. The qualifications for office of any member who is disqualified from Committee membership by the provisions of this paragraph shall be considered by the Board of Directors of the Association.

H. Subject to the approval of the Board of Directors, the Chair of the Committee shall be appointed by the President of the Association from among the members of the Committee to serve for a term of one year. No person shall be appointed Chair who has not served as a member of the Committee for at least one full year immediately preceding the beginning of his or her term as Chair. In no event shall any Chair be appointed for more than two consecutive terms.

I. Vacancies on the Committee shall be promptly filled by appointment of the President of the Association, subject to approval by the Board of Directors. Two unexcused absences by a member of the Committee within any one year, as determined by the President of the Association, shall constitute a vacancy for that seat. A member who is appointed to fill a vacancy shall serve for the unexpired term of such vacancy.

J. Fourteen (14) members of the Committee shall constitute a quorum. Except as otherwise provided in this Article, a majority vote of those present and voting shall determine any ballot, motion, resolution or other business. However, prior to the commencement of the hearing, where the Committee deems it appropriate, a candidate may waive in writing the requirement of this section insofar as it deals with a required quorum, and may empower the Committee to proceed with those members who are present although not constituting a quorum.

K. No member of the Committee shall abstain from any vote at any time, but any member of said Committee shall disqualify himself or herself from voting if the member and the candidate, or any other candidate for that office, are related by blood or marriage or are associated in the practice of law or business venture, or for any other good cause. Any such disqualification shall be recorded in the minutes of the meeting.

L. Any Member of the Committee shall be disqualified from representing any candidate before the Committee for a period of three (3) years after the termination of that member's service on the Committee.

M. Any Officer or Director of the Association shall be disqualified from representing any candidate before the Committee for a period of three (3) years after the termination of that Officer or Director's term.

SEC. 4. MEMBER'S DUTY OF FIDELITY

A. No member of the Committee shall make any advance commitment concerning how he or she will vote at any Committee meeting concerning the qualifications of any person to be considered by the Committee.

B. Except as herein otherwise specifically provided, all discussions among members of the Committee, both at Committee meetings or otherwise, pertaining to the qualifications of persons to be considered by the Committee shall be completely confidential and no member of the Committee shall disclose to anyone not a member of the Committee, any action taken by the Committee or any statement made at a Committee meeting or otherwise pertaining to the qualifications of any person whose name has been submitted to, or has been considered by, the Committee.

C. It shall be a violation of the duty of fidelity that a member owes to the other members of the Committee and to the public trust he or she undertakes upon becoming a member of the Committee, for any member to make a commitment or disclosure in violation of this section. Any member who, after having been given an opportunity to be heard, is found to have made such a commitment or disclosure shall be subject to immediate removal as a member of the Committee by the President of the Association.

D. At any time if there is any appearance of impropriety, a member shall disclose such appearance of impropriety and recuse himself or herself as a member of the Committee considering a given candidate and other candidates for the same office. In default thereof, the Chair of the Committee shall have the power to disqualify said member from consideration of a candidate's qualifications, as well as from consideration of the qualifications of other candidates for the same office. Service on any present or prior political committee of the candidate, or active involvement in any prior or present campaign of the candidate, or any such relationship with the candidate shall require recusal from consideration of the candidate's qualifications, as well as from consideration of the qualifications of other candidates for the same office.

SEC. 5. PROCEDURE, QUESTIONNAIRE AND INTERVIEW

A. All requests for review of the qualifications of a candidate pursuant to this Article shall be submitted to the Association three weeks prior to the date on which the official action of appointment, nomination or designation is to occur, or as soon thereafter as is practicable. Upon receipt of a request, the candidate shall forthwith be furnished with a questionnaire, together with a copy of Article X of the Bylaws of the Association relating to the Committee and of the rules and regulations, if any, of the Committee. The candidate shall also be furnished with a list of the members of the Committee. The candidate shall deliver twenty-five (25) copies of the completed

questionnaire to the offices of the Association within one week after receiving the same together with all pertinent exhibits and materials and a list of the names and addresses of witnesses if any, who shall appear in his or her behalf. The candidate shall thereafter be notified by the Committee of the date on which his or her interview will be conducted.

B. To be eligible for consideration by the Committee, a candidate shall be required to complete a questionnaire, the form and content of which shall be proposed by the Committee and approved by the Board of Directors, regarding his or her background and experience and to submit to an interview by the Committee. Such interview shall be limited to one office, unless circumstances exist requiring a wider scope.

C. Except as provided in subparagraph S, the Committee shall not pass on the qualifications of any person whose name is submitted pursuant to this Article, unless such person shall first authorize the Committee, in writing, to make inquiry and obtain the release of any information pertaining to the candidate from any person, committee or organization and shall further consent, in writing, to a full disclosure to the Committee of the proceedings had before it relating to such person. The candidate shall also acknowledge in writing that he or she has received, read and understands a copy of Article X of the Bylaws of the Association governing the Committee.

D. The Committee shall investigate the background, experience and other qualifications of each candidate whose name shall be submitted to it pursuant to this Article. If prior to an interview any member of the Committee becomes aware of any specific complaint against a candidate, he or she shall inform the Chair thereof. The Chair shall give notice of the complaint to the candidate as soon as possible prior to his or her interview.

E. In performing its functions, the Committee shall have the right to confer with any individual, association, committee or political organization and, in the case of candidates for appointment or nomination for election to office, with the public official in whom the power of appointment or of nomination for election to such office may be vested.

F. The Committee is empowered to conduct hearings, elicit information and to consider any related information which it deems necessary to properly perform its functions. The candidate shall have the right to be present during all hearings with respect to his or her candidacy and to question all witnesses. In making its determination, the Committee shall consider only subject matter discussed in the presence of the candidate.

G. Where a candidate has been interviewed by the Committee during a previous one (1) year period, the Committee may, in its discretion, dispense with an additional interview. However, an affidavit updating the information contained in the candidate's questionnaire shall be required.

H. Any candidate who has been considered by the Committee on a date more than one (1) year prior, but no more than three (3) years prior, to the submission of his or her name for the same or another office must complete a new questionnaire and be reinterviewed by the Committee, unless a one-third vote of the Committee decides otherwise.

I. No candidate shall be presumed to be qualified for office, and the burden shall be upon the candidate to affirmatively establish his or her qualifications which shall be evaluated as provided in this Article.

J. No tape recording or transcript shall be made of the proceedings before the Committee, or of the deliberations of the Committee.

K. A member of the Committee shall be disqualified from voting at the request of a candidate if, in the discretion of the Chair, prejudice or other good cause exists requiring the disqualification of such member. If a member of the Committee is disqualified by a candidate, that member shall not take part in the interview, deliberations or voting with respect to such candidate. However, such member may reveal any information to the Committee which is relevant to the qualifications of such candidate. Any disqualification or request for disqualification and the grounds therefor, pursuant to this subparagraph, shall be recorded by the Chair of the Committee in his or her report.

L. The vote of the Committee shall be by secret written ballot, the form and content of which shall be proposed by the Committee and approved by the Board of Directors.

M. The voting ballots of the Committee and the report of its Chair shall be prepared in such form as to consider the following specific criteria and procedures in determining the qualifications of any candidate:

(1)**TEMPERAMENT**, including patience, respect for lawyers, litigants and others, and freedom from hostility, arrogance and prejudice of any kind.

(2)**CHARACTER AND INTEGRITY**, including candor, impartiality, respect for and adherence to ethical standards and conduct.

(3)**LEGAL SCHOLARSHIP**, including educational background, attendance at seminars and other continuing legal education efforts and, where the candidate is or has been a judge or justice, the level of scholarship exhibited by the candidate in the discharge of that judicial office or offices.

(4)**PROFESSIONAL ABILITY AND REPUTATION**, including litigation experience, length and nature of law practice, active participation in professional associations and, where the candidate is or has been a judge or justice, prior judicial performance.

(5)In recommending the selection of a candidate for election and/or appointment to a Town or Village Justice Court, where there is no legal requirement that the office be held by an attorney admitted to practice law in the State of New York, such lawyer and non-lawyer candidates shall be evaluated by the criteria set forth above with the following modifications:

(a) The criterion of "Legal Scholarship," shall be "Scholarship," which shall Include a candidate's educational background and academic experience and

(b) The criterion of "Professional Ability and Reputation" shall be "Ability and Reputation," which shall include a candidate's reputation and experience in the candidate's business or profession and in civic and governmental affairs.

N. Upon the conclusion of its deliberations, the Committee shall first consider, by separate vote, the candidate's qualifications with respect to character and integrity. The ballot shall require each Committee member to vote on character and integrity as follows:

(1) Qualified; or

(2) Not Approved at This Time

A vote of "Qualified" shall be cast if the Committee member determines that the candidate possesses affirmative qualities with respect thereto; a vote of "Not Approved at This Time" shall be cast if the Committee member determines that the candidate has failed to demonstrate that he or she possesses affirmative qualities with respect to candor, impartiality and respect for and adherence to ethical standards and conduct.

If the candidate fails to receive a super-majority of two-thirds of the Committee members voting on the character and integrity criterion (hereinafter referred to as a "passing vote"), the candidate shall be found "Not Approved at This Time" for the office then under consideration. Notwithstanding, the Committee shall also consider the remaining three criteria and the ballot shall require that each member of the Committee cast a separate vote for either "Qualified" or "Not Approved at This Time" with respect to each. If the candidate receives a simple majority of the votes cast with respect to each of the three remaining criteria, and provided the candidate has received the super-majority of votes with respect to the character and integrity criterion, the candidate shall be found "Qualified" for the office under consideration. Otherwise, the candidate shall be found "Not Approved at This Time" for such office.

O. The ballot shall require each member of the Committee to state in writing his or her reasons for each and every vote of "Not Approved at This Time."

P. The Committee shall make a prompt report to the President of the Association as to its findings, which report shall consist of a written statement of the voting scores obtained by the candidate, and that the candidate was found "Qualified" or "Not Approved at This Time," and the grounds therefor shall not be stated unless the candidate's rating is "Not Approved at This Time," in which case a clear written opinion of the majority as to the basis of the rating shall also be submitted to the President, and to the candidate upon his or her request.

Q. A finding of "Qualified" shall be forthwith reported by the President of the Association to the candidate and to the appointing officer or political party, if any, who may have submitted the name of the candidate.

R. A finding of "Not Approved at This Time" shall be forthwith reported by the President of the Association to the candidate only and within forty-eight (48) hours thereafter to the appointing officer or political party, if any, which submitted the name, unless the candidate has in the interim withdrawn as such candidate. The Committee's written report shall be available to the appointing officer or political party upon authorization of the candidate. The name of any person which has been submitted to the Committee pursuant to this Article may be withdrawn at any time only by the candidate. However, such candidate's questionnaire and the records of all proceedings shall be retained at the office of the Association.

S. If any candidate fails or refuses, without good cause, to submit his or her name for consideration by the Committee and to complete a questionnaire, or to appear for an interview, such candidate shall be classified "Not Approved at This Time" and the Committee shall make a prompt report to the President of the Association setting forth its finding and the grounds therefor, Such report shall include a summary of the efforts made to contact the candidate, together with copies of letters and summaries of telephone and personal conversations in support thereof. Upon receipt of such report, the President of the Association shall, within forty-eight (48) hours, notify the candidate in writing of the finding of the Committee and the grounds for its report. Such notice shall be served upon the candidate and his or her sponsor, if any, at his or her last known address listed in the Association directory or at the New York State or Suffolk County Board of Elections and shall be delivered either by certified mail, return receipt requested, or by telegram or mailgram or personally, in the discretion of the President of the Association. If within forty-eight (48) hours of the service of such notice, the candidate fails to show good cause for his or her failure and/or refusal to comply with this Article, then the President of the Association, unless for good cause he or she extends the time, shall issue a release to appropriate news media which shall notify the Bar and the public at large of the finding of the Committee, the grounds therefor, and such factual background as the President may deem necessary.

T. In the event that the name of a candidate from another county is submitted to the Association for consideration by the Committee, the Committee may, in lieu of the procedure outlined in this Article, review the finding of the Bar Association in the candidate's county of residence, and adopt it in whole or in part.

U. The Committee may formulate and adopt rules of procedure for the orderly conduct of its business consistent with the Bylaws of the Association and subject to approval of the Board of Directors.

SEC. 6. REHEARING AND APPEALS

A. Upon notification of the Committee's findings, any candidate found to be "Not Approved at This Time" may request a rehearing before the Committee provided such request is received by the Secretary of the Association at its offices within forty-eight (48) hours of such notification. A request for a rehearing must be in writing and demonstrate with specificity that there is good cause to conduct a rehearing. Good cause must be demonstrated by a showing that the candidate has additional evidence which was not, despite the exercise of reasonable diligence, presented to the Committee at the original hearing, or that the Committee overlooked or misconstrued evidence presented at the original hearing. Such a

rehearing will be scheduled within five (5) days of that date, only if one-third of the members of the Committee who initially made said finding agree to conduct a rehearing,

B. Any candidate found "Not Approved at This Time" following a hearing or rehearing, may appeal the Committee's finding to the Board of Directors by filing within five (5) days of notification thereof a written notice of appeal with the President of the Association at the offices of the Association. In such event, the President shall not report the finding of the Committee as to such candidate to any person or organization, until determination of the appeal.

C. At least five (5) days notice by first-class mail of the time and place of the appeal shall be given to the candidate and he or she shall forthwith be furnished with a copy of Article X of the Bylaws. The candidate's questionnaire and the written report of the Committee shall be submitted to the Board of Directors for its consideration.

D. The Chair of the Committee or his or her designee shall attend and other members of the Committee may attend the hearing of the appeal.

E. In hearing and determining an appeal, the Board of Directors shall act by quorum as provided for in Article V, Section 4 of the Bylaws. Any Director who is a member of the executive committee of any political party, who holds judicial office or is a personal appointee of a judge or justice, who is seeking election or appointment to judicial office or who intends to support the candidacy of such a person shall recuse himself or herself from the appeal and shall not take part in the argument, deliberations or voting with respect to such candidate.

F. The candidate may appear in person and shall be entitled to the assistance of counsel. He or she will be permitted to make a statement and shall answer any question posed by a member of the Board of Directors. The Committee Chair or designee shall also be permitted to make a statement and shall answer any questions posed by a member of the Board of Directors.

G. In light of the high standards required for appointment to the Committee, as prescribed by Section 3, Paragraphs A and C of this Article, the determinations of the Committee shall be accorded substantial deference. Therefore, on appeal, the Board of Directors shall not render a *de novo* determination of the candidate's qualifications for office, and shall not substitute its judgment for that of the Committee. No determination of the Committee shall be reversed by the Board of Directors unless found, by clear and convincing evidence, to be arbitrary, capricious or not supported by a rational basis.

H. As used in Paragraph G, the terms arbitrary, capricious or not supported by a rational basis shall mean without sound basis in reason and without regard to the facts or evidence submitted. As used in Paragraph G, the term clear and convincing evidence shall mean that quantum of evidence which makes that which must be proved highly probable.

I. An appeal to the Board of Directors shall not be an adversarial proceeding. No live witnesses nor new evidence or materials shall be offered or considered by the Board of

Directors in connection with the appeal. Review by the Board of Directors shall be limited to the submissions that were before the Committee, and the Board of Directors shall not consider circumstances or evidence that may have come to light after the Committee's determination.

J. Any member of the Committee who attends, other than the Chair or his/her designee, may not participate.

K. The Board of Directors shall, upon conclusion of the appeal, by written ballot, vote to affirm or reverse the finding of the Committee in accordance with the standard of review prescribed in Section 6 of this Article. The ballot shall require each member of the Board of Directors to state in writing the reasons for his or her vote. The determination of the Board of Directors shall be reported in writing by the President of the Association to the candidate and thereafter to the sponsor or the appointing officer of the political party which submitted such name, and to the Chair of the Committee. The report of the President shall be accompanied by copies of the written ballots cast by the members of the Board of Directors.

L. All proceedings of the Board of Directors, in connection with the hearing and determination of appeals by candidates for judicial office pursuant to this section, shall be strictly confidential.

SEC. 7. PUBLICATION OF FINDINGS OF THE ASSOCIATION

In the event a candidate who has been found "Not Approved at This Time" is nevertheless designated or nominated as a candidate for the office for which he or she was interviewed, or refused to be interviewed, the findings and written opinion of the Association, as well as any other information authorized for release by the Board of Directors, shall be released to the media by the President of the Association.

SEC. 8. CERTIFICATION OF JUDGES AND JUSTICES

A. From time to time, the Association may be asked by the Administrative Board of the Courts or its designee to render an opinion and/or comments as to the qualifications of a judge or justice to be certified for continued judicial service pursuant to Article VI, Section 25 of the Constitution of the State of New York, Sections 114 and 115 of the Judiciary Law and resolution of the Administrative Board of the Courts.

B. In the event such a request is received by the Association, it shall be referred to the Committee, which shall conduct proceedings in accordance with Section 5 of this Article insofar as those provisions are applicable and appropriate. A finding that the judge or justice is "Qualified" shall be promptly reported by the Committee to the President of the Association, who shall promptly report that finding to the candidate and to the Administrative Board of the Courts or its designee. A finding that the judge or justice is "Not Approved at This Time" shall be promptly reported by the Committee to the President of the Association, who shall promptly report that finding to the candidate only, and within forty-eight (48) hours thereafter to the Administrative Board of the Courts or its designee unless the candidate has in the interim withdrawn his or her candidacy for certification.

C. In the event that the Committee renders a report that the judge or justice is "Not Approved at This Time", the judge or justice shall have the right to seek rehearing and appeal which shall, insofar as is applicable and appropriate, be conducted in accordance with Section 6 of this Article.

EVERYTHING YOU NEED TO KNOW ABOUT BECOMING A JUDGE

MAKING THE BALLOT

[Judges and justices; qualifications; eligibility for other office or service; restrictions]
§20. a. No person, other than one who holds such office at the effective date of this article, may assume the office of judge of the court of appeals, justice of the supreme court, or judge of the court of claims unless he or she has been admitted to practice law in this state at least ten years. No person, other than one who holds such office at the effective date of this article, may assume the office of judge of the county court, surrogate's court, family court, a court for the city of New York established pursuant to section fifteen of this article, district court or city court outside the city of New York unless he or she has been admitted to practice law in this state at least five years or such greater number of years as the legislature may determine.
b. A judge of the court of appeals, justice of the supreme court, judge of the court of claims, judge of a county court, judge of the surrogate's court, judge of the family court or judge of a court for the city of New York established pursuant to section fifteen of this article who is elected or appointed after the effective date of this article may not:
(1) hold any other public office or trust except an office in relation to the administration of the courts, member of a constitutional convention or member of the armed forces of the United States or of the state of New York
in which latter event the legislature may enact such legislation as it deems

appropriate to provide for a temporary judge or justice to serve during the period of the absence of such judge or justice in the armed forces;
(2) be eligible to be a candidate for any public office other than judicial office or member of a constitutional convention, unless he or she resigns from judicial office; in the event a judge or justice does not so resign from judicial office within ten days after his or her acceptance of the nomination of such other office, his or her judicial office shall become vacant and the vacancy shall be filled in the manner provided in this article;
(3) hold any office or assume the duties or exercise the powers of any office of any political organization or be a member of any governing or executive agency thereof;
(4) engage in the practice of law, act as an arbitrator, referee or compensated mediator in any action or proceeding or matter or engage in the conduct of any other profession or business which interferes with the performance of his or her judicial duties.
Judges and justices of the courts specified in this subdivision shall also be subject to such rules of conduct as may be promulgated by the chief administrator of the courts with the approval of the court of appeals.
c. Qualifications for and restrictions upon the judges of district, town, village or city courts outside the city of New York, other than such qualifications and restrictions specifically set forth in subdivision a of this section, shall be prescribed by the legislature, provided, however, that the legislature shall require a course of training and education to be completed by justices of town and village courts selected after the effective date of this article who have not been admitted to practice law in this state. Judges of such courts shall also be subject to such rules of conduct not inconsistent with laws as may be promulgated by the chief administrator of the courts with the approval of the court of appeals. (Amended by vote of the people November 8, 1977; November 6, 2001.)

JUSTICE COURT MANUAL

Attached are excerpts from the Manual
For the entire document go to:
http://www.nycourts.gov/courts/townandvillage/FinalJusticeCourtManualforUSCsite.pdf

II. Overview of the Justice Court System

A. New York State's Town and Village Courts

Within New York's complex judicial system are nearly 1,300 Town and Village Justice Courts.[1] Justice Courts are governed by the Uniform Justice Court Act ("UJCA"), first enacted in 1967, as well as a host of other statutes, executive-branch regulations, and rules enacted by the State Judiciary.

Most of New York's town and villages operate a Justice Court. Together New York's nearly 2,200 Town and Village Justices handle almost two million cases per year. Justice Courts vary in their number of justices, volume and types of cases, hours and frequency of scheduled court dates, number of non-judicial employees, and costs of operation. Many factors shape these aspects of Justice Court operations, some of which are matters of local discretion.

In general, Justice Courts are empowered to hear both civil and criminal cases, but are courts of limited jurisdiction in that they adjudicate only certain types of civil and criminal cases. On the civil side, Justice Courts hear money actions that do not exceed $3,000, with very narrow exceptions.[2] On the criminal side, Justice Courts are local criminal courts with the same jurisdiction as the New York City Criminal Courts, District Courts and City Courts outside New York City, with the power to adjudicate misdemeanor and petty offenses, and arraign defendants in felony cases before they are transferred to a superior court (usually the County Court).[3]

While Justice Courts have limited jurisdiction, they are integral parts of New York's Unified Court System comprising the Judicial Branch of New York State government.[4] As such, each Justice Court is responsible for administering justice consistent with the Constitution and its separation of powers, as well as applicable statutes and court rules, and subject to the general oversight of the Chief Judge and Chief Administrative Judge. Every Town and Village Justice, and every municipal official interacting with the local Justice Court, shares responsibility for ensuring the effectiveness of the Justice Court under our Constitution, the UJCA, and other statutes that govern aspects of Justice Court operations – including the Judiciary Law, Civil Practice Law & Rules ("CPLR"), Criminal Procedure Law ("CPL"), Real Property Actions and Proceedings Law ("RPAPL"), Vehicle and Traffic Law ("VTL"), General Municipal Law ("GML"), Town Law, and Village Law.

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1 There is frequent confusion regarding the term "court of record." While technically Justice Courts are not currently courts of record, *see* N.Y. Const., art. VI, § 1(b); Judiciary Law § 2, all Justice Court proceedings are subject to electronic recording and the Criminal Procedure Law applies in all criminal courts whether or not the court is of record. *See* CPL 10.10.

2 *See generally* UJCA § 202.

3 *See generally* UJCA § 2001; CPL 10.30.

4 *See* NY Const, art VI, § 1(a); Judiciary Law § 1; UJCA § 102.

B. What are the Functions of the Town and Village Courts?

Town and Village Courts play vital roles in the New York State Unified Court System. These courts have jurisdiction and hear both civil and criminal matters.

A court's powers are limited by its subject matter jurisdiction. Jurisdiction is the legal term that describes the authority of a court to hear and determine certain types of cases and its power over individuals, legal entities, and property that are the subject of actions before it. Justice Courts derive most of their basic civil and criminal subject matter jurisdiction from UJCA §§ 201-203, 2001, and CPL 10.30.

1. Civil Actions and Proceedings

The civil jurisdiction of Town and Village Courts includes the power to hear actions seeking monetary awards up to $3,000, and small claims proceedings for awards up to $3,000. Town and Village Courts are perhaps best known for their small claims parts. Small claims proceedings are intended to provide a low-cost, simplified, and informal procedures for individuals to resolve disputes involving limited monetary claims. Often litigants choose not to be represented by attorneys in small claims matters. Upon the commencement of a small claims action, the court is required to furnish every claimant with "A Guide to Small Claims in the NYS City, Town and Village Courts."[5] Copies of this booklet may be obtained by contacting the Office of Justice Court Support or online at http://www.nycourts.gov/courts/townandvillage/pdfs/SmallClaimsHandbook.pdf

Justice Courts' civil jurisdiction also extends to actions and proceedings to recover money or chattel[6] where the amount of the money at stake or the value of the property to be recovered does not exceed $3,000, exclusive of costs and interest.[7] Justice Courts also have jurisdiction over summary proceedings to:

- Recover possession of real property located in whole or in part within the town or village for which the Justice Court presides;
- Remove tenants from such real property; and
- Render judgment for rent due without regard to the amount in controversy.[8]

Violations of town or village local laws or resolutions, which are subject to civil penalties not exceeding $3,000 per event, also can be heard in the local Justice Court. Justice Courts, however, do not have the power to grant provisional remedies, such as injunctive powers, relative to town and village ordinances.

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[5] *See* UJCA § 1803 (b).

[6] Chattel is personal property as distinguished from real property.

[7] *See* UJCA § 202.

[8] *See* UJCA § 204; RPAPL § 701.

2. Criminal Actions and Proceedings

In addition to their civil jurisdiction, Justice Courts are authorized to handle criminal cases involving the prosecution of misdemeanors, violations and traffic infractions allegedly committed within the geographic boundaries of the town or village for which the Justice Court presides.[9] Justice Courts have exclusive trial jurisdiction over petty offenses, which consist of violations and traffic infractions, but superior courts have jurisdiction over petty offenses when charged in an indictment that also charges a crime.[10] Justice Courts share their trial jurisdiction over misdemeanors with superior criminal courts (i.e. County Court or Supreme Court), which can divest (i.e. take control of) cases from Justice Courts under certain circumstances.[11] Justice Court procedure in criminal actions and proceedings is subject to the Criminal Procedure Law.[12]

Town and Village Justices comprise the largest corps of New York judicial officials who are potentially on-call 24 hours a day to arraign criminal charges and issue orders of protection or enter certain emergency orders when Family Court is not in session. In cases involving domestic violence, Town and Village Justices have jurisdiction to issue temporary orders of protection during off-hours.

3. Traffic and Parking Violations

i. Adjudicating "Traffic Infractions"[13]

While traffic infractions are not crimes and their penalties are not criminal in nature,[14] the Criminal Procedure Law classifies traffic infractions as "petty offenses."[15] Therefore, traffic infractions *must* be heard before a

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9 *See* UJCA § 2001; CPL 10.30.

10 *See* CPL 10.20(c). Petty offenses are not crimes.

11 *See* CPL 10.30.

12 *See People v Hickey*, 40 NY2d 761 (1976) (Justice Courts are local criminal courts and, as such, possess trial jurisdiction of all offenses other than felonies and preliminary jurisdiction over all offenses, subject to divestiture by a superior court); *People v Lindsly*, 99 AD2d 99 (2d Dept. 1984), *appeal withdrawn* 62 NY2d 987 (any conflict between CPL and UJCA in connection with Justice Court criminal jurisdiction is resolved in favor of the latter). In general, the jurisdiction of Justice Courts and the disposition of fines and penalties for violations of rules and regulations of State agencies contained in the NYCRR is the same as for violations of the pertinent statutes themselves. *See* Ops St Comp No. 80-10.

13 When dealing with parking and traffic tickets, terminology can be confusing. A violation of any provision of the Vehicle and Traffic Law or any local law, ordinance, order, rule, or regulation adopted pursuant to the Vehicle and Traffic Law is a "traffic infraction." *See* VTL § 1800. State law may declare that the violation is a misdemeanor or felony. "Traffic infractions" include "traffic violations" and "parking violations." "Parking violations" are violations of parking, stopping, or standing restrictions. VTL § 155. "Traffic violations" constitute all other "traffic infractions."

14 *See* VTL § 155.

15 *See* CPL 1.20 (39).

court with jurisdiction for the location in which the case arises.[16] Municipal clerks do not have authority or jurisdiction to accept pleas or assess fines on traffic tickets or parking tickets in lieu of a judge. Traffic and parking tickets issued in a town or village must be made returnable before the local Justice Court having jurisdiction in the location where the alleged infraction occurred.

ii. Traffic Violations Bureau

A town or village may, by local law or ordinance, authorize the Justice Court having jurisdiction over traffic cases arising in the town or village to establish a traffic violations bureau to assist in disposing traffic and parking infractions.[17] A traffic violations bureau may be authorized to accept guilty pleas to violations of traffic and parking laws, ordinances, rules, and regulations. A traffic violations bureau cannot accept guilty pleas to speeding offenses, misdemeanors, or felonies;[18] these matters must come before the court itself. Persons who plead not guilty to traffic infractions are entitled to a trial under the procedures set forth in the CPL and VTL.[19]

Where a town or village establishes a traffic violations bureau, the Justice Court must pre-designate the exact fines to be paid for the cases heard in the traffic violations bureau.[20] The pre-determined fine must be within the statutory fine limitations for the offense. In general, a person convicted of a traffic infraction is punishable by a fine of not more than $150 for the first conviction, not more than $300 for a second conviction on a violation committed within 18 months of the first conviction, and not more than $450 for a third conviction based on a violation committed within 18 months after the first conviction.[21] Penalties on conviction for a traffic infraction established by local law, ordinance, order, rule, or regulation are prescribed by the locality but cannot exceed the maximum amounts set forth in the Vehicle and Traffic Law.[22] Tickets returnable in a traffic violations bureau must include applicable schedules of penalties so a defendant may resolve the matter by mail.[23]

If a person charged and personally served with a traffic infraction, returnable before a town or village traffic violations bureau, does not appear, the traffic violations bureau may cause a complaint to be entered with the

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16 *See* CPL 10.30 (1) (a).

17 *See* GML § 370.

18 *See* GML § 371 (1).

19 *See* CPL 340.40. For hearing procedures on actions arising under Vehicle and Traffic Law article 2-A, *see* VTL § 227.

20 *See* GML § 372.

21 *See* VTL § 1800.

22 *See generally* Ops Atty Gen No. 93-62.

23 *See* 15 NYCRR 91.5 (j) ("appropriate information relating to the disposition of matters in the traffic violations bureau shall be placed on the reverse [of the uniform traffic ticket]").

Justice Court and a warrant issued for the individual's arrest.[24] Note that a traffic violations bureau may only cause an arrest warrant to be issued where the person was personally served with a ticket.[25]

4. State Laws Granting Justice Court Jurisdiction

In addition to the general civil and criminal jurisdiction given Justice Courts, other State laws grant Justice Courts jurisdiction in specific cases. For example:

- The Agriculture and Markets Law confers jurisdiction to conduct proceedings to destroy or securely confine dangerous dogs.[26]
- The Environmental Conservation Law ("ECL") grants jurisdiction over certain alleged offenses committed against the environment.[27]
- The Social Services Law ("SSL") grants jurisdiction over special proceedings to terminate admission agreements of residents of adult homes.[28]
- The General Business Law ("GBL") grants jurisdiction over cases alleging unlawful use of milk cans.[29]
- The Mental Hygiene Law ("MHL") confers jurisdiction upon Town and Village Justices in limited circumstances to commit someone with serious mental illness who appears to be a danger to themselves or others.[30]

5. Provisional Remedies, Process, and Search Warrants

The only provisional remedy available to Justice Courts is an order to seize chattel under certain circumstances.[31] Justice Courts may also issue injunctions and orders of contempt for unique chattel. Injunctions and orders of contempt should be exercised sparingly, and the chattel should truly be "unique."

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[24] *See* GML § 371 (3).

[25] *See id*; *compare* CPL 120.20 (no arrest warrant if summons can be issued and court is satisfied that defendant will respond).

[26] *See* Agriculture and Markets Law § 121; *In Re Foote*, 129 Misc. 2 (Co. Ct. Livingston Co. 1927) (designating dog matter as neither criminal action nor civil action, but special civil proceeding).

[27] *See* ECL 71-0513 (granting jurisdiction over offenses specified in ECL 71-0501 and ECL article 71, titles 5 through 15 and title 33. For penalties in ECL cases, *see* ECL 71-0507).

[28] *See* SSL § 461-h.

[29] *See* GBL § 271.

[30] *See* MHL § 9.43.

[31] *See* UJCA § 209.

Where Justice Courts have jurisdiction over an action or proceeding, they may send their processes and other mandates for service or execution to any part of the county or, in some instances, an adjoining county.[32] Likewise, Justice Courts may compel the attendance of witnesses, order the conditional examination of witnesses within,[33] inquire into the sanity of a criminal defendant, and dismiss the prosecution of an action in like fashion as any other local criminal court. Justice Courts may issue search warrants, which may be executed only according to their terms and only within the county or an adjoining county.[34]

6. Contempt of Court

Like other courts, Justice Courts have the power to punish contempt of court. The principal contempt category relevant here is summary contempt, committed in the view and presence of the judge while holding court.[35] Summary contempt is a criminal contempt that is invoked sparingly, based only on egregious behavior. The conduct must directly tend to interrupt the court's proceedings, or to impair the respect due to its authority. Other instances of contempt in Justice Court may be connected with recovery of unique chattel or disobedience of a properly issued and served subpoena to appear before the Justice Court, or failure to comply with properly issued Information Subpoenas in the context of a small claims judgment.[36]

7. Marriages and Oaths

The Domestic Relations Law ("DRL") authorizes Town and Village Justices to solemnize marriages.[37] This solemnization authority extends statewide for all Town and Village Justices.[38] Town and Village Justices also may administer oaths anywhere in the county in which they are selected.[39]

8. Special Considerations for Justice Courts within the District of a District Court

The general jurisdiction of Justice Courts set forth in the UJCA does not fully apply to Justice Courts located in Nassau County and the western part of Suffolk County, because these locations are served by District Courts.

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32 *See* NY Const, art VI, § 1 (c); CPL 130.40; UJCA §§ 403, 1803, 2005.

33 *See* CPL Art 660; UJCA § 2005.

34 *See id.*; *see also* CPL 690.20; *People v Hickey*, 40 NY2d 761 (1976) (Justice Courts lack authority to issue a search warrant directed at persons or premises located outside its territorial jurisdiction unless affidavits which form the basis for issuance of warrant allege that an offense was committed within the geographic jurisdiction of the court).

35 *See* Judiciary Law § 750; UJCA § 210.

36 *See* UJCA § 1812 (d).

37 *See* DRL § 11 (3).

38 *See* DRL § 11 (6). If a Town or Village Justice seeks to perform a marriage within the City of New York, they must first register their name and address with the Clerk of the City of New York. See DRL §11-b.

39 *See e.g.* Real Property Law § 298 (3).

Pursuant to State law, all powers, duties, and jurisdiction of Town Justice Courts in those areas were transferred to the District Court of the county, and the offices of Town Justice in those several towns were abolished.[40] All powers, duties, and jurisdiction of Village Justice Courts in Nassau County were transferred to the Nassau District Court, except that these Village Justice Courts retain jurisdiction over violations of village local laws and ordinances, as well as VTL violations allegedly committed within the village except for where the charge is operating a vehicle while intoxicated or impaired.

C. General Oversight by the State

Every Justice Court interacts with and is responsible to multiple State entities. Justice Courts must report fine and fee receipts to the Office of the State Comptroller ("OSC"), and its criminal proceedings to the Division of Criminal Justice Services ("DCJS"). The financial reporting obligations are described in the Office of the State Comptroller's Justice Court Fund Handbook for Town and Village Justices and Court Clerks ("OSC Handbook").
(https://www.osc.state.ny.us/localgov/pubs/jch.pdf)

While each Justice Court is subject to limited oversight by its local town or village board (*See Section III* of this Manual), the Chief Judge and Chief Administrative Judge, as chief judicial officers of the Unified Court System, exercise administrative control over the Justice Courts.[41] For this reason, Justice Courts also are subject to the Rules of the Chief Judge and the Chief Administrative Judge, and participate in programs of the Office of Court Administration ("OCA") designed to support the Justice Courts consistent with the general operational autonomy of each town and village sponsoring a Justice Court. These include, for instance, OCA's provision of computers, Judiciary email systems, online databases, court manuals, and other resources, at no cost to the locality.

Each county in which a Justice Court presides has a Supervising Judge appointed by the Chief Administrative Judge to serve as a conduit of information between the Justice Courts and the statewide Unified Court System. Supervising Judges can help Justice Courts and their local Justices answer questions and mediate disputes that affect the operation of the local justice system. A list of Supervising Judges for the Justice Courts can be found at http://www.nycourts.gov/admin/directory.shtml

D. Other Justice Court Stakeholders

A Justice Court's operation often brings its Justices, and the municipal officials of the town or village sponsoring the Justice Court, into contact with a variety of key participants in the Justice Courts. Each Justice Court therefore is a "hub" of activity, a forum that brings together these many participants in the justice system. Often the operations of one of these participants can impact the cost, schedule, or overall effectiveness of the Justice Court itself and/or other participants in the local justice system. For that reason, it behooves Justice Courts, court managers, and local governments sponsoring Justice Courts to be cognizant of these dynamics,

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[40] *See* Uniform District Court Act ("UDCA") § 2402. Note another Uniform District Court Act ("UDCA") § 2402 exists for Suffolk County.

[41] *See* NY Const, art VI, §§ 1 (a); 28; Judiciary Law §§ 211-212.

and seek assistance from local Supervising Judges and/or municipal attorneys to resolve issues arising among them that can support improved cost-effectiveness.

6. Judicial Ethics

All trial judges and justices, including Town and Village Justices, must comply with the Chief Administrative Judge's Rules Governing Judicial Conduct (22 NYCRR 100). The Advisory Committee on Judicial Ethics ("ACJE") was formed in 1987 to help New York State's judges and justices adhere to the high standards set forth in the Rules. In 1988, the New York State Legislature codified the ACJE's creation, stating that any action a judge takes in accordance with a formal advisory opinion of the ACJE is "presumed proper" for purposes of any subsequent investigation by the New York State Commission on Judicial Conduct.[141] Each year, the ACJE issues over 100 formal opinions in response to questions from judges, justices, and quasi-judicial officers about the propriety of their own conduct. Those opinions set forth the ACJE's interpretations of the Rules Governing Judicial Conduct, providing New York State's judicial and quasi-judicial officers with guidance for those circumstances that are not specifically governed by a particular rule.
Please visit http://www.nycourts.gov/ip/acje/index.shtml for information about obtaining a formal opinion and informal guidance from the ACJE, and to research the ACJE's published opinions.

7. Judicial Campaign Ethics

In response to recommendations of the New York State Commission to Promote Public Confidence in Judicial Elections, the ACJE established a five-judge Judicial Campaign Ethics Subcommittee which works closely with the Judicial Campaign Ethics Center ("JCEC") to review and respond to ethical inquiries from judicial candidates about their own prospective campaign conduct on an expedited basis. Judicial candidates, whether or not they are sitting judges, may e-mail their inquiries to the JCEC at contactjcec@courts.state.ny.us. Additionally, all judges must be in compliance with the "Hatch Act". http://www.osc.gov/hatchact.htm

[141] *See* Judiciary Law § 212 (2) (l).

Running for Judicial Office:
Getting on the Ballot in New York

Matthew J. Clyne

I. Overview

Designation vs. Nomination:

In New York, with one notable exception, judicial candidates are elected.[1] To be elected, a candidate's name must appear on the ballot. This is accomplished in one of five (5) ways: 1) the designation (primary election) process; 2) party nominating caucus; 3) opportunity to ballot; 4) independent (non-party) nomination; and 5) judicial convention.

Most candidates seeking county-wide judicial office are nominated by political parties and all receive their party nominations by way of the designation (primary election) process. The same is true for judicial candidates running in cities and, for the most part, large suburban towns. A person is "designated", i.e., "proposed", as a candidate for nomination by a political party by filing with the relevant board of elections (state or county) a "designating petition" containing the requisite number of signatures by enrolled members of the party in question. If more than one candidate files a designating petition, the party nomination is determined at the primary election. If only one candidate files a designating petition which is not invalidated, there is no primary and the candidate is deemed nominated, and his or her name will appear on the ballot in the general election. The form of the designating petition is governed by Election Law § 6-132; the rules governing the collection of signatures are set forth in 6-134; and the signature requirements, in terms of numbers, are contained in 6-136.

With respect to town elections, except in counties having a population of more than 750,000 inhabitants, the political parties are permitted to nominate their candidates directly, at a party nominating caucus, rather than at the primary election, if the rules of the county committee so provide, unless the members of the county committee from a given town adopt, by a two-thirds vote, a rule providing that the party candidates for town offices shall be nominated at the primary election (6-108[1]).[2]

With respect to village elections, party nominations are made at a party nominating caucus except if the rules of the county committee provide that party nominations for village offices be made at a village primary election (15-108[2]).

A non-designated candidate may secure a party nomination through the primary election process by filing a petition for an opportunity to ballot, pursuant to Section 6-

[1] The exception pertains to nominations to the Court of Appeals. Such nominations are made directly by the Governor, from a list of candidates recommended by a 12-member Commission on Judicial Nomination, subject to Senate confirmation (NY Const., Art. VI, §2[c],[d],[e]).

[2] In counties having a population of more than 750,000, party nominations for town offices must be made at the primary election.

166 of the Election Law, thereby creating a primary election wherein such candidate's name does not appear on the ballot. He or she must convince a sufficient number of enrolled members of the party in question to write in his or her name in a space provided for that purpose on the ballot. If successful, such candidate receives the party nomination. The obvious logistical hurdles involved in such an endeavor effectively limit its utility to local elections, usually with respect to nominations by one or more of the minor parties.

For non-party nominations, one may also get his or her name on the general election ballot by circulating and filing an independent nominating petition (see, 6-138, 6-140, 6-142). However, independent nominating petitions are rarely used outside of a village or town due to a variety of factors, the principal one being poor ballot position.

Candidates for State Supreme Court are nominated by political parties at the judicial district convention (6-106, 6-124, 6-126), chosen by delegates who qualify as such by filing with the relevant board of elections designating petitions. The delegates are selected from each assembly district or part thereof within the judicial district. The number of delegates and alternates, if any, is determined by party rule but they must be apportioned, generally, by the vote cast for the party's candidate for governor in the preceding gubernatorial election.

Political Calendar:

All nominations for judicial office are subject to the political calendar. The political calendar is, in the case of nominations obtained through the designation process or secured at a party nominating caucus, keyed to the date of the primary election;[3] and, in the case of nominations obtained by way of an independent nominating petition or secured at a judicial convention, keyed to the general election.[4] The following dates are relevant:

- First date to circulate a party designating petition - 37 days before the last day to file designating petitions for the primary (6-134[4]).
- Last day to file designating petition – not later than the ninth Thursday preceding the primary election (6-158[1]).
- First date to hold a party nominating caucus – not earlier than the first day on which designating petitions for the fall primary election may be signed (6-108[1]).

[3] In New York, the primary election is held on the first Tuesday after the second Monday in September, "unless otherwise changed by an act of the legislature" (Election Law § 8-100[1][a]).

[4] In New York, the general election is held on the Tuesday next succeeding the first Monday in November (Election Law § 8-100[1][c]).

- Last day to file certificate of nomination from a party nominating caucus - not later than 7 days after the fall primary election (6-158[6]).
- First date to circulate an independent nominating petition – not earlier than 6 weeks prior to the last day to file independent nominating petitions (6-138[4])
- Last day to file independent nominating petition – not later than 11 weeks preceding the general election (6-158[9]).
- Dates for holding a judicial district convention – not earlier than the third Monday in September preceding the general election and not later than the fourth Monday in September preceding such election (6-158[5])[5]

Mandatory Nature of Filing Dates:

Equally as relevant to the candidate, party operative or practitioner is the following statutory prescription regarding late filings:

> The failure to file any petition or certificate relating to the designation or nomination of a candidate for party position or public office or to the acceptance or declination of such designation or nomination within the time prescribed by the provisions of this chapter shall be a fatal defect (1-106[2]).

Self-Policing of Petitions:

Each candidate bears the responsibility to police his or her own petitions. Because of the short timeline for securing a designation or nomination, any document intended to be filed with the board of elections should be scrutinized carefully with respect to its legal sufficiency before the filing, when corrections thereto can still be made, rather than after he filing, when very few corrections can be made. Equally as important, each candidate should monitor the document subsequent to its filing to determine whether any objections thereto have been interposed. In that regard, it should be observed that the boards of election are under no statutory obligation to inform a candidate of any deficiency regarding his or her nomination (Matter of Hicks v. Egan, 166 AD2d 735, 736 [2nd Dept., 1990]).

Judicial Review:

Any petition filed with the board of elections is "presumptively valid" if it is in proper form and appears to bear the requisite number of signatures (6-154[1]). This so-

[5] A certificate of party nomination made at a judicial district convention must be filed not later than the day after the last day to hold convention, and the minutes of such convention must be filed within seventy-two hours after adjournment of the convention.

called presumption of validity is one of the weakest presumptions in the law and relates more to the duty of the board to accept the petition for filing than to any inference of legal sufficiency. The sufficiency of the petition can be challenged on many grounds, and the board's determination as to its validity or invalidity is itself subject to review in a summary proceeding commenced pursuant to Article 16 of the Election Law.

II. Party Nominations

Party Nominating Caucus:

As previously stated, party nominations at the town or village level may, subject to party rule, be secured by way of a party nominating caucus. A town or village caucus is the functional equivalent of a primary and affords the enrolled members of a political party the opportunity to nominate a candidate for a public office within the town or village.

The caucus is convened by "proper party authorities" upon 10-days' notice posted and filed with the town or village clerk, as the case may be, and the board of elections, and either by newspaper publication once within the town or village, as the case may be, at least one week and not more than two weeks preceding the caucus, or by posting in ten public places (town) or six public places (village), as the case may be. The caucus is run by a chairman and secretary who, at the conclusion thereof, issue a certificate of party nomination, which is filed with the board of elections, in the case of a town, or with the village clerk, as the case may be. In the case of a village, there shall be filed, together with the certificate of nomination, a list of enrolled members of the party who participated in the caucus (see, generally, 6-108; 15-108). The failure to comply with the caucus notification requirements invalidates the nomination (Matter of Seaman v. Bird, 176 AD2d 1061, 1062 [3rd Dept., 1991]; Matter of Feldman v. Bulloch, 144 AD2d 102, 103-104 [3rd Dept., 1988] ["Time limitations in the Election Law are mandatory"]).

A person seeking to challenge the validity of the party nomination may file an objection thereto within the time prescribed therefor (three days in the case of a certificate of party nomination filed with the board of elections, and no later than one day following the last day upon which such certificate may be filed, in the case of a certificate filed with a village clerk) (6-154[2]; 15-108[10]). Written specifications of the grounds of the objection must be filed within six days of the filing of the general objection with the board of elections or within two days after the filing of the general objection with the village clerk. The failure to file such written specifications within the time prescribed therefor renders the original objection null and void (id).

Three (3) observations are in order regarding the filing of objections: 1) any voter entitled to vote for the public office or party position in question may file an objection (6-

154[2]).[6] The objection not only forces a determination by the board of elections[7] it also confers upon the objectant standing to commence an Article 16 proceeding for judicial review of the board's determination; 2) the board of elections is authorized to adopt local rules of practice regarding the filing and disposition of petitions, certificates, objections and specifications (6-154[2]); consequently, would be a good idea to make inquiry regarding the existence and application of any such rules (see, Young v. Thalmann, 286 AD2d 550 [3rd Dept., 2001]); and 3) the issue of standing is somewhat nuanced where the candidate or objectant is a non-party member. In such a case, a distinction is made between challenges to a nomination predicated upon an alleged failure to comply with statutory requirements governing the nomination, where standing will be found (see, Matter of Occhipinti v. Westchester County BOE, 49 AD3d 674, 675 [2nd Dept., 2008]), and challenges to a nomination made by a non-party candidate or objectant predicated upon an alleged failure to comply with the internal operating protocols of a political party, in which event standing will not be found (see, Nicolai v. Kelleher, 45 AD3d 960, 961-963 [3rd Dept., 2007]).

Opportunity to Ballot:

A person seeking the nomination of a party may circulate a petition for an opportunity to ballot (6-166). This is simply a petition, akin to a designating petition, requesting the opportunity, at a primary election, to write in the name or names of an undesignated candidate or candidates for public office or party position. It is usually employed where the candidate is not a member of the party in question and has no reasonable expectation of receiving the party's authorization to appear as a candidate on the primary ballot.[8] But it can also be employed as a last-minute strategy to force a primary after one knows whose name will appear on the ballot or after it becomes obvious that a designating petition will be ruled invalid or, more commonly, where there is a declination by a candidate who filed a designating petition.[9] The OTB petition has no practical application to judicial races since candidates for judicial office can secure a party nomination without being members of the party and without party authorization.

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[6] Such a voter must reside in the political subdivision where the office or position is being contested and, in the case of a party position, such voter must be enrolled as a member of the party (see, Lucariello v. Niebel, 72 NY2d 927, 928 [1988]).

[7] It should be noted in that regard that the board of elections rules upon objections filed with a village clerk (15-108[10]).

[8] See the section below for an explanation of the requirement of party authorization for non-party members.

[9] This is so because the last day to file a petition for an opportunity to ballot is one week later than the last day to file a designating petition, or two weeks later in the case of a declination (compare 6-158[1] with 6-158[4]).

Party Designations:

It should be noted preliminarily that the designation process pertains exclusively to party nominations. Thus, a candidate seeking the nomination of a political party other than by way of a nominating caucus or convention circulates a petition seeking to be "designated" (proposed) for nomination by enrolled members of a given political party who register their support (approval) by signing the designating petition. It stands to reason that any such candidate should be an enrolled member of the party in question. And that is the general rule, embodied in Section 6-120(1), which provides, in material part, that a designating petition shall be valid only if the person so designated is an enrolled member of the party referred to in said designating petition. If a candidate is seeking the designation of a party in which he or she is not enrolled, such candidate must receive a formal authorization by the party committee constituted within the relevant political subdivision, or by such other committee as the party rules my provide. This authorization is evidenced by a certificate which must be filed with the relevant board of elections not later than four days after the last day to file the designating petition (6-120[3]).

There are three important exceptions to the requirement that a candidate seeking the designation of a political party must be enrolled in that party or receive its authorization to run. The restriction does not apply to a newly-created political party designating or nominating candidates for the first time, to candidates nominated by party caucus, or to candidates for judicial office (6-120[4]). Thus, to receive a party designation, a candidate for judicial office need not be an enrolled member of the party in question nor does such a candidate need party authorization. He or she may secure a place on the primary ballot simply by filing the requisite number of signatures on a party designating petition.

A related exception pertaining to candidates for judicial office concerns the statutory requirement that a non-party-member candidate formally accept a party designation by filing a certificate of acceptance with the board of elections (6-146[1]) within the time prescribed therefor.[10] The failure to file such a certificate renders the designation or nomination "null and void" (6-146[1]). However, a candidate for judicial office who receives a party designation or nomination, otherwise than at a primary election[11] is not required to file a certificate of acceptance, since the statute, by its terms, only applies to public offices "other than a judicial office" (id).

[10] In the case of a designation, "not later than the fourth day after the last day to file such designation" (6-158[2]; in the case of a party caucus nomination, "not later than the third day after the last day to file the certificate of such party nomination" (6-158[7]).

[11] See 6-146(4) for the special rules of acceptance and declination for candidates nominated without designation for public office at a primary election.

The general rules pertaining to designating petitions are found in Sections 6-132, 6-134 and 6-136 of the Election Law. Annexed hereto is a copy of a sample designating petition prepared by the NYS Board of Elections and posted on its website. Designating petitions which mirror the sample prepared by the State Board of Elections are deemed to meet the statutory requirements as to form set forth in Section 6-132 of the Election Law (6-132[4]).

Challenges to a designating petition often start with an attack upon the sufficiency of the description of the public office or party position. One can certainly wonder how such an issue could even arise, yet it is a recurring theme. The general test is whether the description is "sufficiently informative so as to preclude any reasonable probability of confusing or deceiving the signers, voters or board of elections" (Matter of Levine v. Turco, 43 AD3d 618, 621 [3rd Dept., 2007] [internal citations and quotations omitted]). An example of an insufficient description can be found in Matter of Sears v. Kimmel, 76 AD3d 1113 [3rd Dept., 2010]), where a candidate for a seat in the NYS Assembly described the public office as "114th New York State Assembly District". Compare the result in Sears with the ruling in Liepshutz v. Palmateer, 112 AD2d 1101 (3rd Dept., 1985), where the court determined that the designation of the office being sought as "County Judge" without making reference to the county in which the office was being sought (Greene County) was sufficiently descriptive so as not to create a "reasonable probably of confusing or deceiving the signers, voters or board of elections" (112 AD2d at 1102, quoting Matter of Donnelly v. McNab, 83 AD2d 896 [2nd Dept., 1981], and cases cited therein). The basis for the court's ruling in Liepshutz was that the voting public could figure out the county where the candidate was running by his address, which was listed on the petition. Compare that result with Matter of Ighile v. NYC BOE, 66 AD3d 899 (2nd Dept., 2009), where the court invalidated the petition because the candidate, who was seeking a seat on the New York City Council, failed to identify the council district. Suffice it to say that this type of inquiry is one which is easily avoided.

It should be noted parenthetically that, in many instances, multiple offices are combined in the same petition. This arises most frequently in the case of town-wide or county-wide offices where it makes sense to combine the offices to cut down on the number of petitions. While, in such a case, the designating petition is treated as unique to each candidate (see, Matter of Buchanan v. Espada, 88 NY2d 973, 975 [1996]), the corollary rule is that joining multiple offices in one petition opens it to attack by a rival candidate for any of the offices set forth in the designating petition (Matter of Colaiacovo v. Aberle, 10 AD3d 464, 465-466 [3rd Dept., 2004]).

In reviewing individual signatures on a designating petition, the first point of inquiry concerns the date the signatory affixes his or her name to the petition. Section 6-130 provides that the sheets of a designating petition must set forth in every instance

the name of the signer, his or her residence address, town or city (in the City of New York, the county), and the date when the signature is affixed. The date is critical for two reasons, the first being that it is essential to determine the period during which the petition was circulated, so as to ensure compliance with the political calendar, and the second being to ensure proper application of the rule, expressed in 6-134(3), that if a voter shall sign any petition or petitions designating a greater number of candidates for public office or party position than the number of persons to be elected thereto, his signatures, if they bear the same date, shall not be counted upon any petition, and if they bear different dates shall be counted in the order of their priority of date, for only so many designees as there are persons to be elected. Consequently, the failure to affix a date to the signature results in the invalidation of that signature (Matter of DiSanzo v. Addabbo, 76 AD3d 655, 656 [2nd Dept., 2010]).

With respect to the qualifications of the signatory, each voter signing a designating petition must be an enrolled member of the party whose petition is being circulated, must reside in the political subdivision corresponding to the public office identified in the petition, and must not have previously signed a competing petition. Moreover, the signature affixed to the designating petition must correspond with the signature on the voter's registration application filed with the board of elections. In that regard, it is not permissible for a voter to use a printed signature as opposed to one written in script, if the voter signed his or her voter registration application in script (Matter of Lord v. NYSBOE, 98 AD3d 622, 623 [2nd Dept., 2012]; Matter of Henry v. Trotto, 54 AD3d 424, 426 [2nd Dept., 2008]).

As stated, a voter may not sign a designating petition if he or she has previously signed a competing petition, and this is so even where the prior designating petition is invalidated (Keenan v. Chemung County Board of Elections, 43 AD3d 623, 624 [3rd Dept., 2007], lv denied, 9 NY3d 804).

The statute also requires that the city or town wherein the signatory resides be indicated on the petition sheet. The failure to so indicate invalidates the signature (Matter of Stoppenbach v. Sweeney, 98 NY2d 431, 433 [2002]; Matter of Stark v. Kelleher, 32 AD3d 663, 664 [3rd Dept., 2006]).

The signatures on a designating petition are authenticated by way of the attestation of a "subscribing witness", who signs a subscribing witness statement at the bottom of the petition. The subscribing witness merely certifies that each of the individuals who signed the petition sheet did so in the presence of the witness on the dates indicated and identified himself or herself to be the person who signed the sheet. The subscribing witness must be an enrolled member of the political party whose petition is being circulated and must reside in the State of New York. The party

enrollment requirement is substantive in nature (Matter of Hochhauser v. Grinblat, 307 AD2d 1007 [2nd Dept., 2003].

The subscribing witness also certifies the number of signatures witnessed. Pursuant to 6-134(11), if the number of signatures on any petition sheet is understated in the witness statement, such petition sheet will be deemed to contain the number so indicated, and any signatures in excess of such number are deemed not to have been filed. Thus, if the subscribing witness omits to insert the number of signatures witnessed, the entire sheet is deemed not to have been filed. This result obtains since the statement of a subscribing witness setting forth the total number of signatures on a sheet of a designating petition is "essential to the integrity of the petition process" (Matter of Jonas v. Velez, 65 NY2d 954, 955 [1985]; Matter of Quinlin v. Pierce, 254 AD2d 690, 691 [4th Dept., 1998]).

Any uninitialed or unexplained alteration made to the subscribing witness statement invalidates the sheet (Matter of Jonas v. Velez, supra; Matter of Abraham v. Ward, 43 AD3d 1271, 1272 [4th Dept., 2007]). However, if the proponent of the petition can demonstrate, by affidavit or testimony adduced at a hearing, an adequate explanation for the uninitialed change, the underlying signatures need not be nullified (Matter of Curley v. Zacek, 22 AD3d 954, 957 [3rd Dept., 2005]).

One final note on designating petitions is in order, and that relates to the statutory provision for a committee to fill vacancies. Such a committee is authorized to fill a vacancy caused by the death, declination or disqualification of the designee, or by a tie vote at a primary (6-148[1]). The vacancy is filled by a majority of the committee to fill vacancies shown upon the face of the petition or certificate of nomination (6-148[2]). The committee does so by filing a certificate of substitution. Thus, a candidate who did not circulate a designating petition (or receive a prevailing vote at a nominating caucus) can receive a party nomination through simple appointment by a committee to fill vacancies. However, a committee to fill vacancies may act only if the designating petition itself is valid (Matter of Owens v. Sharpton, 45 NY2d 794, 796 (1978); Matter of Hunter v. NYSBOE, 32 AD3d 662, 663 [3rd Dept., 2006]).

Objections:

Any voter entitled to vote for a public office or party position may challenge a designating petition or certificate of nomination, or a certificate of substitution relating thereto, by filing a general objection to such petition or certificate within three days of the filing of the petition or certificate to which objection is made (6-154[2]). This is so even though the objectant is not enrolled in the same party as the designee or nominee, provided, however, that the challenge is not directed to the internal affairs or operating functions of such party but, rather, to legislatively mandated requirements of the

Election Law (see, generally, Matter of Breslin v. Connors, 10 AD3d 471 [3rd Dept., 2004]).

As previously noted, written specifications upon the general objection must be timely filed or the objection is null and void. The filing of objections with the board of elections confers standing upon the objectant to commence an Article 16 proceeding for judicial review of the board's determination or to invalidate the petition or certificate at issue in the event that the board fails to rule on the objections in a timely manner. And, as previously indicated, each board of elections is authorized to adopt its own rules of practice in regard to the filing and disposition of petitions, certificates, objections and specifications (6-154[2]).

III. Judicial Review

Commencement:

Article 16 of the Election Law provides the procedural mechanism to judicially challenge or judicially validate a candidacy, whether such candidacy arises by way of designation, nominating caucus or judicial district convention.

It is important to realize that proceedings commenced pursuant to Article 16 are summary proceedings which, because of the short political calendar, are geared toward expeditious resolution. They are commenced upon a verified petition[12] and upon "such notice...as the court or justice shall direct" (16-116). In other words, they must be initiated by way of show cause order rather than a notice of petition. In that regard, it should be noted that the method of service provided for in the show cause order is jurisdictional in nature and must be strictly complied with (Matter of Nunziato v. Messano, 87 AD3d 647, 647 [2nd Dept., 2011]; Matter of Hennessey v. DiCarlo, 21 AD3d 505, 505 [2005]), a fact which takes on increased significance in light of the rule that the failure to join all necessary parties in an Article 16 proceeding is jurisdictionally fatal (Flores v. Kapsis, 10 AD3d 432, 433 [2nd Dept., 2004]; Quis v. Putnam County BOE, 22 AD3d 585 [2nd Dept., 2005]; Matter of McGrath v. Abelove, 87 AD3d 803, 804 [3rd Dept., 2011]). "Necessary parties" are those whose interests might be "inequitably affected" (Matter of Wood v. Castine, 66 AD3d 1326, 1328 [3rd Dept., 2009]), and includes those who filed objections in the board of elections (Matter of Gadsen v. NYCBOE, 57 NY2d 751, 752 [1982]; Matter of Plochocki v. Onondaga County BOE, 21 AD3d 710, 710-711 [4th Dept., 2005]). Thus, a petitioner raising a challenge to a designating petition pursuant to Article 16 must commence the proceeding and complete service upon all the necessary parties within the limitations period (Matter of Nunziato v. Messano, supra, at 648).

[12] A requirement which is jurisdictional in nature (see, Matter of Niebaurer v. NYCBOE, 76 AD3d 660 [2nd Dept., 2010]).

Filing with the Clerk:

To properly commence the proceeding, the petition must be filed with the county clerk, who is the clerk of the Supreme Court (CPLR 304[c]). At the time of filing, the papers shall be date-stamped by the clerk, who shall file them and maintain a record of the date of the filing and who shall return forthwith a date-stamped copy to the filing party (except where the filing is by electronic means) (id). In Matter of Mendon Ponds Neighborhood Assn. v. Dehm, 98 NY2d 450 (2002), the court held that the filing of the initiatory papers with the Supreme Court clerk, as opposed to the county clerk, constitutes a fatal jurisdictional defect which required dismissal of the proceeding. Although the Mendon Ponds case leaves no room for doubt as to the statutory prescription regarding filing with the county clerk, a recent decision of the Third Department raises questions regarding the effect of a failure to actually file the papers with the county clerk (see, Matter of Conti v. Clyne, Slip Op., decided 08/21/2014 [Case # 519471]). This is an issue which a candidate does not want litigated.

Standing:

Standing to commence an Article 16 proceeding with respect to the nomination or designation of any candidate for public office or party position is governed by Election Law §16-102(1), which provides, in relevant part, that such a proceeding may be instituted by any aggrieved candidate, or by the chairman of any political committee, or by a person who shall have filed objections, except that the chairman of a party committee may not bring a proceeding with respect to a designation or the holding of an otherwise uncontested primary. As a practical matter, most Article 16 proceedings are commenced by candidates or those who filed objections. The standing issue usually arises within the context of a challenge by a non-party member to the internal designating or nominating protocols of a political party, either with respect to the issuance of a certificate of authorization (a so-called Wilson-Pakula certificate), the conduct of a nominating caucus, or the proceedings at a judicial convention. As a general proposition, a non-party member may not challenge the internal operations of a political party relating to a designation or nomination unless the alleged deficiency pertains to a legislatively mandated requirement of the Election Law (e.g., a mandatory filing date) which transcends the mere regulation of the affairs of a political party (see, Matter of Breslin v. Connors, 10 AD3d 471, 473-474 [3rd Dept., 2004]).

Limitations Period:

The limitations period for challenging or seeking to validate a petition is set forth in Section 16-102(2) of the Election Law, which provides, in relevant part, that a proceeding with respect to a petition shall be instituted within fourteen days after the last day to file the petition, or within three business days after the officer or board with whom

or which such petition was filed makes a determination of invalidity with respect to such petition, whichever is later.

The 14-day limitations period must be considered within the context of the objection process. Let's suppose that a designating petition is filed with the board of elections on the last day to file (a common practice). If a general objection thereto is filed on the third day after the filing of the petition, and specifications thereof are filed six days later, a period of nine days has elapsed, leaving only five days for the board to make a determination of the objection and, more importantly, leaving only five days within which to commence an Article 16 proceeding to invalidate, in the event the petition is sustained by the board. If the petition is invalidated by the board, the candidate whose petition was invalidated must commence his or her validation proceeding in Supreme Court within three business days of the board's determination or within fourteen days from the last day to file the petition, whichever period is later. In either case, there is a very small window of opportunity to commence the proceeding, usually a matter of days.

It should be noted that the three-business-day extension only pertains to situations where the petition has been invalidated; where a petition has been sustained, a proceeding to invalidate is subject to the 14-day limitations period, measured from the last day to file the petition. It should also be noted that the 14-day limitations period obtains irrespective of whether the board renders a determination, since a proceeding pursuant to Election Law § 16-102 is not a proceeding to challenge a determination by a board of elections but a proceeding to challenge the petition itself (Matter of Sorensen v. Hill, 43 AD3d 1201, 1202 [3rd Dept., 2007], citing Matter of Cheevers v. Gates, 230 AD2d 948, 950 [3rd Dept., 1996]).

Dated: September 9, 2014

FROM THE BAR TO THE BENCH

National Association of Women Judges
NYS Bar Association Task Force on Increasing Diversity
Judge Peters' remarks October 30, 2003

I know that you all agree with me that it is critical that there be wide diversity within the judiciary. As Judge Kaye has reminded us "diversity is important not because people's brains are microscopically different, but because it is essential that we have the rich perspective of different life experiences in the vital role of adjudicating our fellow citizens' disputes. A diverse bench gives the public a feeling of inclusion in our justice system which allows an individual to place trust and faith in the system and not feel alienated from it.

If you take a look at the judges you know I think you will find that most everyone has had some experience in a semi-public arena. Either they worked for the district attorney's office, the public defender, the county attorney, corporation counsel or as a law clerk.

Also, if you are interested in serving on the judiciary, it is critical that you acquire a name in your community. You can become involved in high profile litigation (that's what I did/Culhane McGivern), get active in civic, professional and religious organizations or get involved in political parties.

My career began when I ran for family court in the County of Ulster. I became an a candidate only because noone else wanted to. No democrat had ever been elected a family court judge in ulster county so it was not difficult to get the democratic

nomination. Getting elected was a whole different matter.

Whatever position you begin from, be it private practice or public service, if you want to become a judge there are certain prerequisites that I believe are critical. First, you should set an example in whatever position you hold: be timely; be prepared; treat lawyers, litigants and judges alike with the respect they deserve. Second, remain scrupulously ethical: never set aside your principles when engaging in decision making in the political arena. As Lillian Helman reminded the world "I will never cut my conscience to fit this year's fashions." and third, if you are elected or if you are employed in public service remain continuously aware of the fact that your job is to serve the public. It is not the reverse.

If you choose to run for office consider accepting each and every public speaking engagement from anyone who asks you to appear unless appearing before that group is inconsistent with your ethics. Even if you are not a candidate for judicial office, accept speaking engagements. Discuss the law, the concepts of justice we live and work by on a daily basis, the needs of the community you live in, the critical nature of the electoral process and the judiciary.

If you are truly interested in public office, never ignore the press when they come calling. I spent nine years as a family court judge and while I was prohibited from discussing any information about a particular case I was hearing, I always returned the phone calls from the press. I always spoke with the reporter. And instead of talking about the particular case he or she wanted to know about I talked in general about the

problems of family court, the caseload difficulties we face, the problems in our community with regard to crack addiction, alcohol services, the problems of domestic violence, anything I could think to talk about that would help educate the reporter -- never lose an opportunity to discuss with the press the needs of our justice system -- always take advantage of it.

If you really want to run for judicial office and you really want to win you need to do some serious soul searching. Sit down with a couple of people you truly trust that you know you will listen to and then say "I promise I won't hate you. Tell me the worst things about me you can think of." Listen carefully to what they say. Ask them about your position in the community. What is your reputation for truthfulness, are you considered reliable, are you considered timely. What about your personality, how do you approach people. Is there something that turns people off. Listen to everything they say, and don't run for office until you have resolved whatever difficulties they brought to your attention.

And don't seek the nomination for judicial office unless you intend to accept it. I mean that seriously. I sought the nomination and an appointment to the supreme court by Governor Cuomo when I was sitting on the family court bench. If I was nominated by the governor, sworn in as a supreme court justice and then lost the contested election, I knew I'd be out of a job. As a single parent of a five-year-old that was a difficult future to face, but I was willing to accept that risk. Remember, don't run for office unless you are both willing to win and willing to lose. You can't assume you will be cross-endorsed -- I never have been. When you run for office whatever office it is, run as if you're going to lose.

When I ran for supreme court I had only one line on the voting ballot. All of my opponents, all white men, had more than one and they had a distinct financial advantage. I ran as if I was going to lose and never stopped moving to meet every voter that I could possibly interact with.

There are several advantages to entering the judiciary at a local level rather than a county or district level. First of all many of these positions are part-time, courts are held at night, and you can maintain a private practice or employment elsewhere while at the same time gaining judicial experience. Or, you can focus upon family obligations and still maintain a legal presence in the community. This is also an opportunity to gain confidence and learn whether or not the judiciary is the direction you want to go in.

If you seek countywide office you will be nominated at the judicial nominating convention in your county but if you seek to serve on the supreme court you will have a different experience altogether. You will be nominated at a judicial convention for the judicial district in which you sit. The number of delegates and alternates are determined by party rules. Often, the date of the convention is a closely guarded secret and is usually held late in September. This gives you only a short period of time to raise money and get your name known in a massive geographic district. Usually, you will need to know before the convention is held whether you have the votes to win the nomination.

Remember, whatever you do, do it with dignity. The first time I tried to win the nomination for supreme court in this judicial district it became apparent that I did not have the votes. The nominees were all going to be white males. I had two choices, one

was to be angry and walk away in a huff and the other was to act in a dignified manner and accept the fact that it was not my time in history. Since I was the first woman to be nominated in the history of the convention I made sure that when I withdrew my name from candidacy I did it with the view that I was not just withdrawing my name but that I was the first woman ever to do so. I chose my words carefully. I explained that in the spirit of party unity I was withdrawing my candidacy. It became clear to me later that it was not just my words but my approach to the situation that later enabled me to run as the first woman candidate for justice of the supreme court in the 301 year history of the Third Judicial District.

In creating a campaign committee make sure that you have two types of people: one, the rich and/or powerful people who will give you their names and their money and two, the people who aren't rich or powerful but will do everything else. I was blessed with a brilliant, dedicated law clerk, shari gold, who worked only part-time for me at the time so she was able to manage my campaign. And I was also blessed with a core of dedicated volunteers.

If you choose to run you must be aware that campaigning for public office is the most demanding, exhausting and financially draining activity you will ever engage in. It is more challenging than law school or child rearing. Despite having experienced campaigning for countywide office in a very hotly contested race here in ulster county, I never knew what I was in for when running district wide. I campaigned in seven counties, worked full-time and raised a family. And while I was often overworked and

exhausted, I tried my best to continue to express my appreciation for those individuals who worked on my campaign. They weren't being elected, I was trying to be elected. They were volunteers and deserved continuous appreciation for their efforts.

Remember that if you decide to run for office you will probably use up your life savings, and that one person will win and one person will lose: it may be you.

When you do run there are certain basic rules that hopefully you will follow. The first is that no matter what happens during your campaign, you must always remember that when you begin throwing dirt, you start losing ground. Don't lower yourself to the level of a candidate who runs a dirty campaign, particularly in the judicial arena since you might find yourself before the commission on judicial conduct. And remember that when you are running for office, if you are a female, the effect of your candidacy is not just personal to you, it affects the impression people have about women in general. I'm not saying this is a good thing but it's reality. The truth is when a white male runs for office and loses, he just loses. And if he wins and does a poor job, he just does a poor job. But when a woman or a member of an ethnic minority runs everybody remembers the good things that person did and the bad things whether they won or whether they lost. We women act not just for ourselves but for those who came before us and those that will come after us and we must always remember this.

Attorneys running for judicial office are governed by rules of judicial conduct. I do not intend, during the short time we're spending together, to discuss this litigation in this arena. I also don't intend to review each and every rule of judicial conduct so that, if

you run for judicial office you are aware of the constraints upon your activity. Rather, I suggest you keep abreast of developments in this litigated arena, and, if you are running for public office, that you study the rules as well as the reports of the commission on judicial conduct concerning individuals who have been disciplined for violation of the rules, and that you become aware of the fact that in certain communities committees exist to deal with violations of the rules during a campaign.

It is an extraordinary privilege to sere as a member of the judiciary. If you love the law and you love public service consider the judiciary.

REPUBLICAN DESIGNATING PETITION
SUFFOLK COUNTY, NEW YORK

(Designating Petition - Pursuant to Section 6-132 of the Election Law)

I, the undersigned, do hereby state that I am a duly enrolled voter of the Republican Party and entitled to vote at the next primary election of such party, to be held on September __, 20__; that my place of residence is truly stated opposite my signature hereto, and I do hereby designate the following named person (or persons) as a candidate (or candidates) for the nomination of such party for public office or for election to a party position of such party.

Name of Candidate	Public Office	Place of Residence (Also Post Office address, if not identical)
John Q. Candidate	County Court Judge	123 ABC Street, Anytown, NY 11111 *(mailing address: PO Box 123, NY 11111)*
Mary Smith-Candidate	Family Court Judge	456 WXYZ Ave., Othertown, NY 11111

I do hereby appoint:

XXXX **NAME** XXXX - XXXXXXXXXXXXXXX **ADDRESS** (include mailing address)XXXXXXXXXXX
XXXX **NAME** XXXX - XXXXXXXXXXXXXXX **ADDRESS** (include mailing address)XXXXXXXXXXX
XXXX **NAME** XXXX - XXXXXXXXXXXXXXX **ADDRESS** (include mailing address)XXXXXXXXXXX

as a committee to fill vacancies in accordance with the provisions of the election law.
In witness whereof, I have hereunto set my hand, the day and year placed opposite my signature.

Date	Name of Signer *(Signature Required)*	Residence	Town
1. . 20		. NY	
2. . 20		. NY	
3. . 20		. NY	
4. . 20		. NY	
5. . 20		. NY	
6. . 20		. NY	
7. . 20		. NY	
8. . 20		. NY	
9. . 20		. NY	
10. . 20		. NY	
11. . 20		. NY	
12. . 20		. NY	
13. . 20		. NY	
14. . 20		. NY	
15. . 20		. NY	
16. . 20		. NY	
17. . 20		. NY	
18. . 20		. NY	
19. . 20		. NY	
20. . 20		. NY	

Complete ONE of the following

1) Statement of Witness

I, (name of witness) _____ state: I am a duly qualified voter of the State of New York and am an enrolled voter of the Republican Party. I now reside at (residence address) _____
_____, NY.
Each of the individuals whose names are subscribed to this petition sheet containing (fill in number) _____ signatures, subscribed the same in my presence on the dates above indicated and identified himself or herself to be the individual who signed this sheet.
I understand that this statement will be accepted for all purposes as the equivalent of an affidavit and, if it contains a material false statement, shall subject me to the same penalties as if I had been duly sworn.

_____ , 20__ _____
Date Signature of Witness

Witness Identification Information: The following information for the witness named above must be completed prior to filing with the board of elections in order for this petition sheet to be valid.

Town of _____ County of **Suffolk**

2) Notary Public

On the dates above indicated before me personally came each of the voters whose signatures appear on this petition sheet containing (fill in number) _____ signatures, who signed same in my presence and who, being by me duly sworn, each for himself or herself, said that the foregoing statement made and subscribed by him or her, was true.

_____ , 20__ _____
Date Notary Public

Sheet No.: _____
(do not fill in)

REPUBLICAN DESIGNATING PETITION
SUFFOLK COUNTY, NEW YORK
Town of Brookhaven

(Designating Petition - Pursuant to Section 6-132 of the Election Law)

I, the undersigned, do hereby state that I am a duly enrolled voter of the Republican Party and entitled to vote at the next primary election of such party, to be held on September __, 20__; that my place of residence is truly stated opposite my signature hereto, and I do hereby designate the following named person (or persons) as a candidate (or candidates) for the nomination of such party for public office or for election to a party position of such party.

Name of Candidate	Public Office	Place of Residence (Also Post Office address, if not identical)
John Q. Candidate	District Court Judge 6th District Town of Brookhaven	123 ABC Street, Brookhaven, NY 11719 *(mailing address: PO Box 123, Brookhaven NY 11719)*

I do hereby appoint:

XXXX **NAME** XXXX - XXXXXXXXXXXXXXX **ADDRESS** (include mailing address)XXXXXXXXXXX
XXXX **NAME** XXXX - XXXXXXXXXXXXXXX **ADDRESS** (include mailing address)XXXXXXXXXXX
XXXX **NAME** XXXX - XXXXXXXXXXXXXXX **ADDRESS** (include mailing address)XXXXXXXXXXX

as a committee to fill vacancies in accordance with the provisions of the election law.
In witness whereof, I have hereunto set my hand, the day and year placed opposite my signature.

Date	Name of Signer *(Signature Required)*	Residence	Town
1. . 20		. NY	BROOKHAVEN
2. . 20		. NY	BROOKHAVEN
3. . 20		. NY	BROOKHAVEN
4. . 20		. NY	BROOKHAVEN
5. . 20		. NY	BROOKHAVEN
6. . 20		. NY	BROOKHAVEN
7. . 20		. NY	BROOKHAVEN
8. . 20		. NY	BROOKHAVEN
9. . 20		. NY	BROOKHAVEN
10. . 20		. NY	BROOKHAVEN
11. . 20		. NY	BROOKHAVEN
12. . 20		. NY	BROOKHAVEN
13. . 20		. NY	BROOKHAVEN
14. . 20		. NY	BROOKHAVEN
15. . 20		. NY	BROOKHAVEN
16. . 20		. NY	BROOKHAVEN
17. . 20		. NY	BROOKHAVEN
18. . 20		. NY	BROOKHAVEN
19. . 20		. NY	BROOKHAVEN
20. . 20		. NY	BROOKHAVEN

Complete ONE of the following

1) Statement of Witness

I, (name of witness) _____ state: I am a duly qualified voter of the State of New York and am an enrolled voter of the REPUBLICAN Party. I now reside at (residence address) _____
_____, NY.

Each of the individuals whose names are subscribed to this petition sheet containing (fill in number) _____ signatures, subscribed the same in my presence on the dates above indicated and identified himself or herself to be the individual who signed this sheet.

I understand that this statement will be accepted for all purposes as the equivalent of an affidavit and, if it contains a material false statement, shall subject me to the same penalties as if I had been duly sworn.

_____ , 20__ _____
Date Signature of Witness

Witness Identification Information: The following information for the witness named above must be completed prior to filing with the board of elections in order for this petition sheet to be valid.

Town of **Brookhaven** County of **Suffolk**

2) Notary Public

On the dates above indicated before me personally came each of the voters whose signatures appear on this petition sheet containing (fill in number) _____ signatures, who signed same in my presence and who, being by me duly sworn, each for himself or herself, said that the foregoing statement made and subscribed by him or her, was true.

_____ , 20__ _____
Date Notary Public

Sheet No.: _____
(do not fill in)

DEMOCRATIC DESIGNATING PETITION OF SUFFOLK COUNTY, NY

Designating Petition – Pursuant to Sec. 6-132 of the Election Law of New York

I, the undersigned, do hereby state that I am a duly enrolled voter of the Democratic Party and entitled to vote at the next primary election of such party, to be held on September 10, 2013; that my place of residence is truly stated opposite my signature hereto, and I do hereby designate the following named person (or persons) as a candidate (or candidates) for the nomination of such party for public office or for the election to a party position of such party.

NAME OF CANDIDATE(S)	PUBLIC OFFICE	PLACE OF RESIDENCE (Also Post Office Address if not identical)
John McManmon	Member of Assembly, 2nd Assembly District	486 Church Lane, PO Box 2185 Aquebogue NY 11931-2185
NAME OF CANDIDATE(S)	**PARTY POSITION**	**PLACE OF RESIDENCE (Also Post Office Address if not identical)**
Marjorie E Acevedo	Delegate to the 10th Judicial District Convention, 2nd Assembly District	60 Dogwood Drive, Wading River NY 11792-1602
Marc S Alessi	Delegate to the 10th Judicial District Convention, 2nd Assembly District	1 Gridley Road, Shoreham NY 11786
Lori A Cassar	Delegate to the 10th Judicial District Convention, 2nd Assembly District	31 Helme Avenue Miller Place NY 11764-3212
Susan Collins-Tuthill	Delegate to the 10th Judicial District Convention, 2nd Assembly District	25 Winding Path #16, Manorville NY 11949-9718
Michael Comando	Delegate to the 10th Judicial District Convention, 2nd Assembly District	80 N Railroad Avenue, Jamesport NY 11947, PO Box 244, S Jamesport NY 11970
Michael L Conroy	Delegate to the 10th Judicial District Convention, 2nd Assembly District	19 Barbara Ann Street, Manorville NY 11949-3001
Jean M Griffiths	Delegate to the 10th Judicial District Convention, 2nd Assembly District	7 Pardam Knoll Road, Miller Place NY 11764-2136
James W Langhorn	Delegate to the 10th Judicial District Convention, 2nd Assembly District	4568 Middle Country Road, Calverton NY 11933
Bryan Lilly	Delegate to the 10th Judicial District Convention, 2nd Assembly District	36 Lower Cross, Shoreham NY 11786-9513
Jeanne C O'Rourke	Delegate to the 10th Judicial District Convention, 2nd Assembly District	486 Church Lane, PO Box 2185, Aquebogue NY 11931
Jason A Cassar	Alternate Delegate to the 10th Judicial District Convention, 2nd Assembly District	31 Helme Avenue Miller Place NY 11764-3212
Elizabeth A Gaudin	Alternate Delegate to the 10th Judicial District Convention, 2nd Assembly District	1 Fairway Drive, Rocky Point NY 11778-9440
James McManmon	Alternate Delegate to the 10th Judicial District Convention, 2nd Assembly District	486 Church Lane, PO Box 2185, Aquebogue NY 11931
Laurence Passell	Alternate Delegate to the 10th Judicial District Convention, 2nd Assembly District	11 Highland Down, Shoreham NY 11786-1526
Gretchen A Penn	Alternate Delegate to the 10th Judicial District Convention, 2nd Assembly District	1 Gridley Road, Shoreham NY 11786
Joshua P Slaughter	Alternate Delegate to the 10th Judicial District Convention, 2nd Assembly District	28 Dawn Drive, Shirley NY 11967-1746
Kimberly A Tabor	Alternate Delegate to the 10th Judicial District Convention, 2nd Assembly District	495 Sigsbee Road, Mattituck NY 11952-1867
Arthur J Tillman	Alternate Delegate to the 10th Judicial District Convention, 2nd Assembly District	665 Harbor View Avenue, Mattituck NY 11952-1135
Lawrence M Tuthill, Jr	Alternate Delegate to the 10th Judicial District Convention, 2nd Assembly District	230 Columbia Road, Southold NY 11971-3712
Vincent G Villella	Alternate Delegate to the 10th Judicial District Convention, 2nd Assembly District	10 Ravine Road, Wading River NY 11792-1321

I do hereby appoint: Richard H. Schaffer – 105 Village Line Road, Babylon NY 11702-1510
James W. Langhorn – 4568 Middle Country Road, Calverton, NY 11933
Robert Stricoff - 58 Savannah Walk, PO Box 4309, Oak Beach NY 11702-4309

all of whom are enrolled voters of the Democratic Party, as a committee to fill vacancies in accordance with the provisions of the Election Law.
IN WITNESS WHEREOF, I have hereunto set my hand, the day and year placed opposite my signature.

Date	Name of Signer (signature required)	Residence	Town
1. ,2013		,NY	Southold
2. ,2013		,NY	Southold
3. ,2013		,NY	Southold
4. ,2013		,NY	Southold
5. ,2013		,NY	Southold
6. ,2013		,NY	Southold
7. ,2013		,NY	Southold
8. ,2013		,NY	Southold
9. ,2013		,NY	Southold
10. ,2013		,NY	Southold
11. ,2013		,NY	Southold
12. ,2013		,NY	Southold
13. ,2013		,NY	Southold
14. ,2013		,NY	Southold
15. ,2013		,NY	Southold
16. ,2013		,NY	Southold
17 ,2013		,NY	Southold
18. ,2013		,NY	Southold
19. ,2013		,NY	Southold
20. ,2013		,NY	Southold

STATEMENT OF WITNESS

I, *(name of witness)*_____state: I am a duly qualified voter of the State of New York and am an enrolled voter of the Democratic Party.
I now reside at (residence address)_____
_____,NY.

Each of the individuals whose names are subscribed to this petition sheet containing (fill in number) _____ signatures, subscribed the same in my presence on the dates above indicated and identified himself/herself to be the individual who signed this sheet.
I understand that this statement will be accepted for all purposes as the equivalent of an affidavit and, if it contains a material false statement, shall subject me to the same penalties as if I had been duly sworn.

Date:_____, 2013

_____
Signature of Witness

WITNESS IDENTIFICATION INFORMATION: The following information for the witness named above must be completed prior to filing with the Board of Elections in order for this petition sheet to be valid.
Witness resides in the **Town of Southold, County of Suffolk**

AD 2 – Southold

THIS PETITION MUST BE SIGNED IN INK

Sheet No. _____
(DO NOT FILL IN)

DEMOCRATIC DESIGNATING PETITION OF SUFFOLK COUNTY, NY

Designating Petition – Pursuant to Sec. 6-132 of the Election Law of New York

I, the undersigned, do hereby state that I am a duly enrolled voter of the Democratic Party and entitled to vote at the next primary election of such party, to be held on September 13, 2016; that my place of residence is truly stated opposite my signature hereto, and I do hereby designate the following named person (or persons) as a candidate (or candidates) for the nomination of such party for public office or for the election to a party position of such party.

NAME OF CANDIDATE	PUBLIC OFFICE	PLACE OF RESIDENCE (Also Post Office Address if not identical)
Anthony S. Senft Jr.	County Court Judge	64 River Road, Great River NY 11739
Martha L. Luft	Family Court Judge	72 Sandy Court, Riverhead NY 11901
Kathy G. Bergmann	Family Court Judge	381 Montauk Hwy, Speonk NY 11972 PO Box 537, Remsenburg NY 11960
Frank A. Tantone	Family Court Judge	267 McConnell Avenue, Bayport NY 11705

I do hereby appoint: Richard H. Schaffer – 105 Village Line Road, Babylon NY 11702-1510
James W. Langhorn – 4568 Middle Country Road, Calverton NY 11933
Deborah B. Monaco – 6 Laurel Drive, Smithtown NY 11787-3907

all of whom are enrolled voters of the Democratic Party, as a committee to fill vacancies in accordance with the provisions of the Election Law.
IN WITNESS WHEREOF, I have hereunto set my hand, the day and year placed opposite my signature.

Date	Name of Signer (signature required)	Residence	Town
1. ,2016		,NY	Babylon
2. ,2016		,NY	Babylon
3. ,2016		,NY	Babylon
4. ,2016		,NY	Babylon
5. ,2016		,NY	Babylon
6. ,2016		,NY	Babylon
7. ,2016		,NY	Babylon
8. ,2016		,NY	Babylon
9. ,2016		,NY	Babylon
10. ,2016		,NY	Babylon
11. ,2016		,NY	Babylon
12. ,2016		,NY	Babylon
13. ,2016		,NY	Babylon
14. ,2016		,NY	Babylon
15. ,2016		,NY	Babylon
16. ,2016		,NY	Babylon
17 ,2016		,NY	Babylon
18. ,2016		,NY	Babylon
19. ,2016		,NY	Babylon
20. ,2016		,NY	Babylon

STATEMENT OF WITNESS

I, *(name of witness)* _____ state: I am a duly qualified voter of the State of New York and am an enrolled voter of the Democratic Party.

I now reside at *(residence address)* _____

_____ ,NY.

Each of the individuals whose names are subscribed to this petition sheet containing (fill in number) _____ signatures, subscribed the same in my presence on the dates above indicated and identified himself/herself to be the individual who signed this sheet.
I understand that this statement will be accepted for all purposes as the equivalent of an affidavit and, if it contains a material false statement, shall subject me to the same penalties as if I had been duly sworn.

Date: _____, 2016

_____
Signature of Witness

WITNESS IDENTIFICATION INFORMATION: The following information for the witness named above must be completed prior to filing with the Board of Elections in order for this petition sheet to be valid.
Witness resides in the **Town of Babylon, County of Suffolk**

Suffolk County **THIS PETITION MUST BE SIGNED IN INK** **Sheet No.** _____
(DO NOT FILL IN)

EVERYTHING YOU NEED TO KNOW ABOUT BECOMING A JUDGE

Appointment Processes

September 2014

Judges Administrative Manual

Chapter 8: Appointment of Judges

Part A: *Appointment of Article III Judges*

Part B: *Appointment and Reappointment of Bankruptcy Judges*

Part C: *Appointment and Reappointment of Magistrate Judges*

Part A: Appointment of Article III Judges

Section 1: Article III of the United States Constitution
Section 2: Appointment
Section 3: Steps in the Selection, Nomination, and Appointment Process
Section 4: Assistance Provided by the Judicial Services Office

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Section 1: Article III of the United States Constitution

Article III of the United States Constitution vests the judicial power of the United States in the federal courts. Federal judges appointed under Article III hold their judicial offices during good behavior without diminution in pay. U.S. Const. art. III, § 1. As a result, the Constitutional provision essentially confers a lifetime appointment upon "Article III" judges.

Four types of judges are appointed under Article III:

- Supreme Court justices;
- circuit court judges;
- district court judges; and
- judges of the Court of International Trade.

Section 2: Appointment

The President appoints Article III judges with the advice and consent of the Senate. U.S. Const. art. II, § 2. Aside from the Constitutional nomination and confirmation process, there are no formal requirements for being an Article III judge.

Section 3: Steps in the Selection, Nomination, and Appointment Process

3.1 Consultation

Presidents historically consult with a state's U.S. senators about whom to nominate for district court vacancies within a state. The senators may develop a formal screening process to evaluate candidates before recommending one or several people for a nomination.

For vacancies in the courts of appeals, Presidents typically exercise more discretion in identifying candidates. Nonetheless, they frequently consult with elected officials in a bid to build support for a potential nominee. When building support for a circuit judge, presidents may confer with elected officials from each state within the circuit or in the state where the judicial vacancy originated.

The judiciary analyzes caseload statistics, judicial workloads and the case related activities of the courts to recommend new judgeships to Congress. Aside from this statistical analysis and reporting, the courts play no role in the selection, nomination, or appointment of Article III judges.

Individual federal judges may be asked to comment on the fitness of prospective judicial nominees. Judges should consider several provisions of the Code of Conduct for United States Judges as they determine an appropriate level of involvement in any selection process. The Committee on Codes of Conduct published Advisory Opinion No. 59, *Providing Evaluation of Judicial Candidate to Screening or Appointing Authority*, to provide judges with direction on some of the important considerations.

3.2 Background Investigation and Questionnaire

The Federal Bureau of Investigation prepares background investigations for potential nominees. The Department of Justice sends potential nominees a detailed questionnaire on their personal and professional history, the contents of which may be made public. The Department may also arrange to interview and advise a potential nominee during the selection process.

3.3 Initial Selection

When the background investigation, questionnaire, and interview are complete, the information is forwarded to the White House. At this point, the president makes a selection and the nominee is notified.

3.4 Senate Judiciary Committee

After the nomination is transmitted to the Senate, it is referred to the Senate Judiciary Committee. The committee requests its own detailed questionnaire on the nominee's personal and professional history, including disclosure of any speeches or written works the nominee has published. The Judiciary Committee will normally hold a hearing to directly question the nominee. Occasionally, other witnesses may also testify or submit statements in favor of or in opposition to the nomination. The Senate Judiciary Committee votes on whether to report the nomination to the full Senate for its consideration.

3.5 Action by the Senate and the President

The full Senate will typically consider a reported nomination and vote on whether to grant its advice and consent to the nomination. Once the Senate votes, and if the nominee is confirmed, the Senate notifies the President in writing.

After receiving the consent of the Senate, the President will sign a commission appointing the nominee as a judge on a specific court. The President may sign a judge's commission on the same day as the Senate confirmation vote or there may be a delay of days or weeks, depending on the President's schedule.

3.6 Oath of Office and Entry on Duty

Upon learning with certainty that the President has signed a nominee's commission, the judge may enter on duty as soon as the court administers the oath of office and completes the associated appointment papers (provided by the Department of Justice). The forms should then be delivered to Judges Compensation and Retirement Division in the Human Resources Office at the Administrative Office (AO).

3.7 Additional Information

Additional information on ethical considerations related to the nomination process is available from the judges on the Committee on Codes of Conduct, the AO's Office of General Counsel at 202-502-1100, or by contacting the AO's Judicial Services Office Duty Attorney at (202) 502-1800 or by sending an e-mail to the Duty Attorney Mailbox.

Additional guidance on the appointment of Article III judges, including a discussion of the paperwork to be completed by new Article III judges, can be found in the Guide, Vol. 3, Ch. 2.

Questions concerning the appointment forms may be directed to the AO's Judicial Services Office at 202-502-1800, or Judges Compensation and Retirement Division in the Human Resources Office at the Administrative Office (AO) at 202-502-1880.

Section 4: Assistance Provided by the Judicial Services Office

4.1 Judicial Nominee Program

The AO's Judicial Services Office works to address the needs of Article III judges and chambers staff. In that role, the division assists Article III judge-nominees with many administrative and procedural issues that they may encounter.

The Judicial Services Office sponsors a one-day Judicial Nominee Orientation Program for nominees once the Senate announces a date for their confirmation hearing. The orientation programs are scheduled to take advantage of the nominees' presence in Washington for the confirmation hearing and will typically be scheduled for the day following the hearing.

The Judicial Nominee Orientation Program allows subject matter experts to brief the nominees on issues they will likely encounter as new judges. The experts present material and answer the nominees' questions on court and judicial administration, chambers staffing, judges' pay and benefits (including health and life insurance plans, retirement, and survivor annuities), court and personal security issues, ethics rules and regulations, and other matters. The AO provides a package of frequently requested materials and references to the nominees and all materials are shipped to the nominees' offices following the orientation session. Included in the materials are the following booklets:

- *Getting Started as a Federal Judge* (Judges Information Series No. 1). This publication is intended to address questions and concerns often posed by new Article III judges.
- *Senior Status and Retirement for Article III Judges* (Judges Information Series No. 4). This publication analyzes the retirement and other benefits available to Article III judges, and explains the consequences of remaining in active service, taking senior status, retiring from office, or resigning from office.
- *Risk of Personal Liability for Federal Judges* (Judges Information Series No. 7). This monograph discusses the nature of the personal liability risk faced by justices and judges of the United States Courts.
- *Compendium of Chief Judge Authorities* (Judges Information Series No. 8). This publication provides a reference to the statutory and other

sources of chief judge authority, including authorities derived from the court as a whole and the circuit judicial council.

- *Brief Guide to Judges' Travel* (Judges Information Series No. 9). A summary of the travel regulations applicable to judges of the United States Courts.

4.2 New Chief Judges

The Judicial Services Office offers a two-day Chief Judge Orientation Program to new appellate and district court chief judges. The program helps familiarize new chief judges with their administrative responsibilities and explains the management and program support services offered by the AO. It also allows new chief judges to meet the AO subject matter experts who work on the administrative issues that chief judges oversee. The program is designed to offer a flexible format and focus on issues of concern for the participants.

The Judicial Services Office offers a daylong follow-up session to the Chief Judge Orientation Program. A chief judge will typically schedule the follow-up program six months to a year after the initial program. During the follow-up program, chief judges can speak with AO staff about specific issues that have arisen during their tenure and further develop discussion on issues that arose during their initial chief judge programs.

4.3 Duty Attorney Service

A duty attorney is on-call during business hours to respond to inquiries from Article III judges, court staff, and the public. The duty attorney provides a single point of contact in the AO for a wide range of issues and can assist courts with questions on the appointment process, nominees, chief judge issues, or judiciary policy. Direct questions on these topics or other areas of concern should be directed to the Judicial Services Office at (202) 502-1800, or email sent to the Duty Attorney Mailbox.

Part B: Appointment and Reappointment of Bankruptcy Judges

Section 5: Designation and Appointment; Vacancies
Section 6: Judicial Conference Regulations
Section 7: Submitting Forms; Background Reports; Record of Appointment
Section 8: Disposition of Records
Section 9: Willingness to Accept Reappointment
Section 10: Holdover Periods
Section 11: Assistance Provided by the Judicial Services Office
Section 12: Additional Information on Appointment and Reappointment

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Section 5: Designation and Appointment; Vacancies

5.1 Designation

Bankruptcy judges are judicial officers of the district courts. The active bankruptcy judges in each judicial district constitute a unit of the district court known as the bankruptcy court. 28 U.S.C. § 151.

5.2 Appointment

Bankruptcy judges are appointed to 14-year terms of office by the court of appeals in which the district court is located. 28 U.S.C. § 152. When a vacancy occurs in a bankruptcy judgeship before the end of the term, the successor bankruptcy judge is appointed for a new 14-year term.

5.3 Vacancies

The Judicial Conference policy requires notice to the Bankruptcy Committee and the AO's Director when a bankruptcy judge retires, resigns, or dies creating a vacancy. *Guide*, Vol 3, Ch 3 § 330 . Before the court of appeals begins the process to fill the vacancy and based upon this notice, the Judicial Services Office will provide relevant, up-to-date data to the circuit council to assist it in assessing whether to fill the vacancy.

Section 6: Judicial Conference Regulations

Judicial Conference regulations address the selection, appointment and reappointment of bankruptcy judges. The regulations are maintained in the *Guide to Judiciary Policy,* and include provisions that address:

- qualifications for appointment as a bankruptcy judge; *Guide*, Vol. 3, § 320.10;
- publishing notice of bankruptcy judgeship vacancies; *Guide*, Vol. 3, § 320.20;
- the role of judicial councils in assisting the courts of appeals in the appointment process by evaluating potential nominees and recommending qualified applicants, including the authority of councils to appoint "merit selection panels" to examine applicants and report on the qualifications of recommended nominees; *Guide*, Vol. 3, § 320.30;
- the court of appeals appointment of qualified nominees to bankruptcy judgeships; *Guide*, Vol. 3, § 320.40; and
- procedures for considering incumbent bankruptcy judges for reappointment; *Guide*, Vol. 3, § 320.50.

Section 7: Submitting Forms; Background Reports; Record of Appointment

7.1 Completing Forms Following Selection

Soon after notification of the selection, the nominee will receive the following forms from the Judicial Services Office:

- SF-86, Questionnaire for National Security positions, including any continuation and instruction sheets, such as SF-86A and the immigration addendum form;
- Ten Supplemental Questions for SF-86;
- FD-258, Federal Bureau of Investigation Fingerprint Card;
- PER 111, Request for Consumer Report Information; and
- PER 112, Internal Revenue Service Tax Check Waiver.

Upon completion, the forms should be returned to the Judicial Services Office.

7.2 Completing Background Reports

a. Judicial Conference Regulations

The person selected for appointment is subject to background reviews by the Federal Bureau of Investigation (FBI) and the Internal Revenue Service (IRS). These requirements are discussed in the *Guide*, Vol. 3, § 320.40.20.

b. Procedure Following Receipt of Reports

The FBI and IRS reports are normally completed in 12 to 14 weeks. Upon receipt, the AO sends the reports by overnight mail to the chief judge of the circuit court of appeals. A blank Form AO 79B (Appointment of United States Bankruptcy Judge) is included for the court of appeals' use.

Occasionally, the AO will receive a partial, or incomplete, investigation report from the FBI. The AO sends the partial report to the chief judge of the circuit court of appeals by overnight mail, with a notation that it is a partial report. When the FBI transmits the remaining portion of the report, the AO sends the material to the chief judge of the circuit court of appeals via overnight mail.

c. Appointment Following Completion of Reports

An appointment may not be made until the FBI and IRS reports are complete and received by the chief judge of the appointing circuit court of appeals. Once the chief judge has received and reviewed the complete FBI and IRS reports, the court may proceed with the appointment.

7.3 Order of Appointment and Oath of Office Forms

Upon the appointment of a new bankruptcy judge, the clerk of the circuit court of appeals should complete and submit to the Judicial Services Office the following documents:

- an original and a certified true copy of Form AO 79B (Appointment of United States Bankruptcy Judge), which includes the Oath of Office as United States Bankruptcy Judge; 28 U.S.C. § 453 and 5 U.S.C. §3331; and
- two certified true copies of the circuit court Order of Appointment; *Guide*, Vol. 3, § 320.40.40.

The Judicial Services Office will forward these forms to the Judges Compensation and Retirement Division for entry into the payroll system. A judge code will be promptly issued upon receipt of these forms.

7.4 ID Card

An ID card is automatically provided to newly appointed bankruptcy judges upon receipt of the appointment papers. Questions about ID cards may be directed to the clerk's office, or to the Judicial Services Office at (202) 502-1800.

Section 8: Disposition of Records

Upon the submission by the merit selection panel of the report, accompanying documents, and application materials on the recommended nominees to the judicial council of the circuit, the circuit executive is directed to retain the documents of all other applicants (i.e., all individual applicants not recommended by the panel) until the appointment of a bankruptcy judge. Immediately after a bankruptcy judge is appointed, the circuit executive should either return all materials to the respective applicants (but for the recommended nominees) or dispose of materials (i.e., shredding) in keeping with the confidentiality requirement of the Judicial Conference regulations. *Guide*, Vol. 3, § 320.30.30. The circuit executive is directed to retain the panel report and all material related to the recommended nominees as confidential records.

Section 9: Willingness to Accept Reappointment

Bankruptcy judges willing to accept reappointment should notify the chief judge of their circuit six to nine months before the end of their term. This does not preclude the court of appeals from requiring a bankruptcy judge to provide as much as twelve months written notification to the chief judge of the circuit of the bankruptcy judge's willingness to accept reappointment to the position. *Guide*, Vol 3, § 320.50.10.

If willing to accept reappointment, an incumbent bankruptcy judge under age 65 at the expiration of the term, should indicate that willingness by completing form PER-0074 (Notice of Willingness to Accept Reappointment). Under the Judicial Retirement System, a bankruptcy judge who voluntarily leaves office before age 65 is assessed a retirement penalty. If the incumbent bankruptcy judge is willing to accept reappointment but is not reappointed, the timely filing of the PER 74 form with the chief will meet the terms of 28 U.S.C. § 377(b) and prevent the assessment of the penalty.

Section 10: Holdover Periods

An incumbent bankruptcy judge may remain in office with approval of the judicial council of the circuit, up to 180 days after expiration of the term or the date of appointment of a successor, whichever is earlier. 28 U.S.C. § 152 (a)(1).

Section 11: Assistance Provided by the Judicial Services Office

The Judicial Services Office serves as the principal point of contact for addressing the needs and concerns of, and facilitating the prompt delivery of services to, bankruptcy judges and their staffs.

In that role, the office assists newly appointed bankruptcy judges with many of the administrative, procedural, and other questions that arise during the establishment of their offices. Shortly after a bankruptcy judge is selected, the office sends a welcome letter and indicates the availability of helpful materials to the new judge. Included are the following pamphlets:

- *Getting Started as a Federal Judge* (Judges Information Series No. 1). This publication is intended to address questions and concerns of new bankruptcy judges.
- *Retirement Benefits for Bankruptcy Judges and Magistrate Judges* (Judges Information Series No. 5). This publication provides a summary description and analysis of retirement, disability, and health and survivorship benefits for bankruptcy judges.

The Judicial Services Office also participates in an orientation program for new bankruptcy judges sponsored by the Federal Judicial Center.

A duty attorney is on-call during business hours to respond to inquiries from bankruptcy judges, court staff, and the public. The duty attorney provides a single point of contact in the AO for a wide range of issues and can assist courts with questions on the appointment process, bankruptcy judgeship applicants, chief judge issues, or judiciary policy. Direct questions on these topics and other areas of concern to the Judicial Services Office at (202) 502-1800.

Section 12: Additional Information on Appointment and Reappointment

The AO has prepared a booklet entitled *The Selection, Appointment and Reappointment of United States Bankruptcy Judges* (Judges Information Series No. 3) to assist the merit selection panels and the judicial councils as they carry out their responsibilities in the appointment process. It explains the statutes and regulations governing appointment and reappointment, suggests procedures that panels and councils may wish to follow, and contains sample notices and forms used in the process. The booklet is also available from the Judicial Services Office in hard copy.

Part C: Appointment and Reappointment of Magistrate Judges

Section 13: Designation, Appointment, and Vacancies
Section 14: Judicial Conference Regulations
Section 15: Submitting Forms, Background Reports, and Record of Appointment
Section 16 Disposition of Records
Section 17: Willingness to Accept Reappointment
Section 18: Holdover Appointments
Section 19: Judicial Services Office Assistance
Section 20: Additional Information on Appointment and Reappointment

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Section 13: Designation, Appointment, and Vacancies

13.1 Designation

Magistrate judges are judicial officers of the United States district courts.

13.2 Appointment

The district judges of each district court appoint magistrate judges in the number and at the locations determined by the Judicial Conference. 28 U.S.C. § 631(a).

Appointments of full-time magistrate judges are for a term of eight years. Appointments of part-time magistrate judges are for a term of four years. 28 U.S.C. § 631(e). When a magistrate judge is appointed to an unexpired term, the appointment is for a new four-year or eight-year term, rather than the completion of the unexpired term.

13.3 Vacancies

All magistrate judge position vacancies are subject to review by the full Magistrate Judges Committee unless the committee chair decides, based on a recent survey of the relevant district, that the vacancy may be filled without full committee involvement. Chapter 6, Part C of this manual describes the process and timing of filling a magistrate judge vacancy.

When a magistrate judge retires, resigns, or dies before the end of the term, the AO's Judicial Services Office should be notified as soon as possible.

The procedure to fill a magistrate judge position vacancy begins when the court notifies

the Judicial Services Office of a current or upcoming vacancy and of its intention to fill the position. Once the court obtains approval from the circuit judicial council to fill the position, the full Magistrate Judges Committee or its chair determines whether the court may proceed to fill the vacancy.

The policy for reviewing magistrate judge position vacancies does not apply to reappointments of incumbents to additional terms.

Section 14: Judicial Conference Regulations

The district courts select magistrate judges under standards and procedures established by the Judicial Conference. 28 U.S.C. § 631(b)(5). The Conference has adopted regulations that address the appointment and reappointment of magistrate judges. The regulations are included in the *Guide to Judiciary Policy*. They include provisions that address:

- qualifications required for appointment as a magistrate judge Guide, Vol 3, § 420.10;
- publishing notice of magistrate judge position vacancies Guide, Vol 3, § 420.20;
- the creation, membership, and duties of "merit selection panels" that assist district courts by evaluating and recommending persons for appointment as magistrate judges Guide, Vol 3, § 420.30;
- the appointment by the district courts of qualified persons to magistrate judgeships Guide, Vol 3, § 420.40;
- the selection of part-time magistrate judges Guide, Vol 3, § 420.50; and
- the reappointment of magistrate judges Guide, Vol 3, § 420.60.

Section 15: Submitting Forms, Background Reports, and Record of Appointment

15.1 Completing Forms Following Selection

Soon after notification of selection, the Judicial Services Office sends the nominee the following forms:

- SF-86, Questionnaire for National Security Positions, including any continuation sheets, such as SF-86A;
- Ten Supplemental Questions for SF-86;
- Supplemental Instructions for Completing SF-86;
- FD-258, Federal Bureau of Investigation Fingerprint Card;

- PER 111, Request for Consumer Report Information; and
- PER 112, Internal Revenue Service Tax Check Waiver.

Upon completion, the nominee should return the forms to the Judicial Services Office.

15.2 Completing of Background Reports

a. Conference Regulations

The selectee is subject to background reviews by the Federal Bureau of Investigation and the Internal Revenue Service. These requirements are discussed in the Guide, Vol 3, § 420.40.20.

b. Procedure Following Receipt of Reports

The FBI and IRS normally complete their reports in 12 to 14 weeks. Upon receipt, the AO sends the reports by overnight mail to the chief judge of the district court with form AO 79A (Appointment of United States Magistrate Judge).

Occasionally, the FBI will transmit a partial, or incomplete, investigation report. When the AO receives such a report, the Judicial Services Office sends it by overnight mail to the chief judge of the district court. When the FBI transmits the final, completed report, the Judicial Services Office sends it to the chief judge either by overnight mail or by email as soon as the Judicial Services Office receives it.

c. Appointment Following Completion of Reports

An appointment may not be made until the FBI report is complete and the chief judge of the appointing district court receives it. Once the chief judge has received and reviewed the complete FBI and IRS reports and the position is funded, the court may proceed with the appointment.

In the relatively rare instance where the IRS report has not been completed in a timely manner, the court may waive that report, provided it has taken steps to verify that the nominee has properly filed tax returns. The FBI report may not be waived.

15.3 Order of Appointment and Oath of Office Forms

The clerk of the district court should complete and submit the following documents to the Judicial Services Office upon the appointment of a new magistrate judge:

- The original of Form AO 79A (Appointment of United States Magistrate Judge). This form includes the Oath of Office as United States Magistrate Judge. 28 U.S.C. § 453 and 5 U.S.C. § 3331; and
- One copy of the district court Order of Appointment. Guide, Vol 3, § 420.40.30.

The Judicial Services Office will forward these forms to the Judges Compensation and Retirement Division for entry into the payroll system. Under the AO's automated payroll system, all paperwork must be received in advance of the payroll deadline date for a new magistrate judge to be paid timely for that month.

15.4 ID Card

Newly appointed magistrate judges automatically receive an ID card after submission of the appointment papers. Questions about ID cards may be directed to the clerk's office or to the Judicial Services Office at (202) 502-1800.

Section 16: Disposition of Records

Immediately after a magistrate judge's appointment, the chair of the merit selection panel should either return all materials to the respective applicants or dispose of materials (i.e., by shredding) in keeping with the confidentiality requirement of the Judicial Conference regulations. Guide, Vol. 3, § 420.30.30(b).

Section 17: Willingness to Accept Reappointment

Magistrate judges willing to accept reappointment should notify the chief judge of their court six to nine months before the end of their term. Full-time magistrate judges who will be under age 65 at the expiration of a term should indicate a willingness to accept reappointment by completing a Form PER 74 (Notice of Willingness to Accept Reappointment). Under the Judicial Retirement System, a magistrate judge who voluntarily leaves office before age 65 is assessed a retirement penalty. If the incumbent magistrate judge is willing to accept reappointment but is not reappointed, the timely filing of the PER 74 form with the chief will meet the terms of

28 U.S.C. § 377(b) and prevent the assessment of the penalty.

Section 18: Holdover Appointments

The appointing court may extend a magistrate judge in office beyond the expiration of the term of office, by a majority vote of the judges of the appointing district court and with the approval of the judicial council, until a successor is appointed or for 180 days after the date of the expiration of the magistrate judge's term, whichever is earlier. 28 U.S.C. § 631(f).

Section 19: Judicial Services Office Assistance

The Judicial Services Office serves as the principal focal point for addressing the needs of and facilitating the prompt delivery of services to magistrate judges and their staffs.

In that role, the office assists newly selected magistrate judges with many of the administrative, procedural, and other questions that arise during the establishment of their offices. Shortly after a magistrate judge is selected, the office sends a package of helpful materials to the new judge. Included in the materials are the following pamphlets:

- *Getting Started as a Federal Judge* (Judges Information Series No. 1). This publication is intended to address questions and concerns often posed by new magistrate judges; and
- *Retirement Benefits for Bankruptcy Judges and Magistrate Judges* (Judges Information Series No. 5). This publication provides a summary description and analysis of retirement, disability, and health and survivorship benefits for magistrate judges.

The Judicial Services Office also participates in an orientation program for new magistrate judges sponsored by the Federal Judicial Center.

A duty attorney is on-call during business hours to respond to inquiries from magistrate judges, court staff, and the public. The duty attorney provides a single point of contact in the AO for a wide range of issues and can assist courts with questions on the appointment process, magistrate judge applicants, or judiciary policy. Direct questions on these topics or other areas of concern to the Judicial Services Office at (202) 502-1800.

Section 20: Additional Information on Appointment and Reappointment

The AO has published a booklet entitled *The Selection, Appointment, and Reappointment of United States Magistrate Judges* (Judges Information Series No. 2), which has been approved by the Judicial Conference Committee on the Administration of the Magistrate Judges System.

The booklet serves as a guide to assist the district courts and members of merit selection panels in selecting and appointing magistrate judges. It is designed to familiarize panel members with the role of magistrate judges in the federal court system, to explain the laws and regulations that govern the selection of magistrate judges, and to suggest procedures the panel might wish to follow in performing its duties. Included in the publication is a "Time Line For Reappointment of Magistrate Judges" that has been approved by the Magistrate Judges Committee as a guide for district courts, as well as a number of sample forms and notices used in the application process. The booklet is also available from the Judicial Services Office in hard copy.

Guide to Judiciary Policy

Vol 3: Judges

Ch 2: Appointment of Article III Judges

§ 210 Overview
§ 210.10 Selection, Nomination and Appointment Process

§ 220 Appointment Paperwork
§ 220.10 Forms

§ 230 Oath of Office
§ 230.10 Administering the Oath of Office
§ 230.20 Public Requests for Copies of Judge's Oath of Office

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§ 210 Overview

(a) Article III judges include justices of the United States Supreme Court and judges of the U.S. courts of appeals, the U.S. district courts, and the U.S. Court of International Trade. They are appointed under Article III of the Constitution and are entitled to hold office "during good Behaviour," effectively for life.

(b) A vacancy in an Article III judgeship is created by the death, disability, elevation, impeachment, resignation, or retirement of a judge of one of these courts. From time to time, Congress also creates additional judgeships for these courts.

§ 210.10 Selection, Nomination and Appointment Process

The judiciary does not play a role in the recruitment, selection, nomination, or appointment process for Article III judges. Under the Constitution, Article III judges are appointed by the President with the advice and consent of the Senate. The President signs a commission to appoint an individual as a "judge of the United States," as defined in 28 U.S.C. § 451.

Last substantive revision (Transmittal GR-10) November 20, 2009
Last revised (minor technical changes) March 16, 2015

§ 220 Appointment Paperwork

§ 220.10 Forms

(a) After a nominee has been confirmed and the President has signed the commission, the Department of Justice will send the new judge a package of forms that includes the oath of office, an appointment affidavit, and a "declaration of appointee" form.

(b) Once these forms are executed, the judge should return the originals to the Judges Compensation and Retirement Division (JCRD) of the Human Resources Office at the Administrative Office of the U.S. Courts (AO) at the following address:

Judges Compensation and Retirement Division
Administrative Office of the U.S. Courts
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E.
Washington, DC 20544

(c) JCRD must receive the executed oath of office before a judge can be placed on the judiciary payroll. **Note:** To expedite payroll processing, a copy of the oath of office should be sent, via email, to: AOdb_JCRSO/DCA/AO/USCOURTS. New judges should also advise JCRD of the proper mailing address for official mail.

(d) Certified copies of the appointment forms must also be sent to the Department of Justice.

§ 220.20 [Reserved]

§ 230 Oath of Office

(a) Every federal judge must take the statutory oath of office before exercising the judicial authority of the United States.

(b) The oath is a combination of the judicial oath of office required of every justice and judge of the United States under 28 U.S.C. § 453, and the general oath administered to all federal government officials, set forth in 5 U.S.C. § 3331.

> I, [INSERT FEDERAL JUDGE'S NAME], do solemnly swear (or affirm) that I will administer justice without respect to persons, and

> do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all duties incumbent upon me as [INSERT OFFICE] under the Constitution and laws of the United States; and that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

§ 230.10 Administering the Oath of Office

The oath of office may be administered by any official authorized by federal or state law to administer oaths and affirmations, including a justice or judge of the United States. New judges should consult with the chief judge of the court for any local court traditions and to select an appropriate individual to administer the oath.

§ 230.20 Public Requests for Copies of Judge's Oath of Office

(a) It is the formal policy of the AO — endorsed by the Judicial Branch Committee of the Judicial Conference — not to release a copy of a particular judge's signed oath of office in response to public requests for such a document. Instead, JCRD will send the requester a standard response letter confirming that the judge took the oath, the date the oath was taken, and the court to which the judge was appointed.

(b) Requests for the executed oath of office of a judge's staff member will be treated the same as requests for a judge's oath with appropriate revisions to the response letter. The affected judge or staff member will be sent a copy of the response letter.

Guide to Judiciary Policy

Vol 3: Judges

Ch 3: Selection, Appointment, and Reappointment of Bankruptcy Judges

§ 310 Overview

§ 320 Judicial Conference Regulations
- § 320.10 Qualifications of U.S. Bankruptcy Judges
- § 320.20 Public Notice of Bankruptcy Judgeship Vacancies
- § 320.30 Merit Selection Panel
- § 320.40 Selection of Nominees and Appointment of U.S. Bankruptcy Judges
- § 320.50 Reappointment of U.S. Bankruptcy Judges

§ 330 Bankruptcy Judicial Vacancy Notification

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§ 310 Overview

(a) Bankruptcy judges are appointed to 14-year terms of office by the courts of appeals of their respective circuits. **See:** 28 U.S.C. § 152(a). The judicial councils of the circuits assist by evaluating potential nominees and recommending qualified candidates to the courts of appeals under regulations prescribed by the Judicial Conference. **See:** § 120 of the Bankruptcy Amendments and Federal Judgeship Act of 1984, as amended by Pub. L. No. 99-554 (1986) and Pub. L. No. 104-317 (1996).

(b) To implement the Bankruptcy Amendments and Federal Judgeship Act of 1984, the Judicial Conference promulgated regulations for selecting and appointing bankruptcy judges at its September 1984 session (JCUS-SEP 84, pp. 70-71). It later amended the regulations in 1985 (JCUS-MAR 85, pp. 22-23); 1988 (JCUS-SEP 88, pp. 60-61); 1996 (JCUS-MAR 96, p. 11); 1997 (JCUS-MAR 97, p. 13); 2000 (JCUS-SEP 00, pp. 43-44); 2001 (JCUS-MAR 01, pp. 9-10); and in both 2006 sessions (JCUS-MAR 06, pp. 9-10); (JCUS-SEP 06, p. 8). At the September 2000 session, the Conference revised the introductory provision to the regulations as follows:

> Bankruptcy judges exercise highly important judicial powers and responsibilities as officers of the U.S. district courts. It

is therefore imperative that only highly qualified individuals be selected as bankruptcy judges. To that end, and in accordance with §§ 120(a) and (b) of the Bankruptcy Amendments and Federal Judgeship Act of 1984, as amended by § 303 of the Federal Courts Improvement Act of 1996, the following regulations for the selection, appointment, and reappointment of bankruptcy judges are promulgated by the Judicial Conference of the United States. These regulations set forth procedural guidelines that create no vested rights for any incumbent or prospective bankruptcy judge. (JCUS-SEP 00, pp. 43-44).

(c) In 1996, separate from the appointment regulations and as part of the bankruptcy judicial resource survey process, the Judicial Conference adopted a policy to require notification prior to filling a bankruptcy judgeship vacancy. (JCUS-SEP 96, pp. 50-51).

§ 320 Judicial Conference Regulations

§ 320.10 Qualifications of U.S. Bankruptcy Judges

§ 320.10.10 Minimum Qualifications

To be qualified for appointment as U.S. bankruptcy judges, nominees must meet the following standards:

(a) They must be members in good standing of the bar of the highest court of at least one state, the District of Columbia, or the Commonwealth of Puerto Rico, and members in good standing of every other bar of which they are members.

(b) They must:

(1) possess, and have a reputation for, integrity and good character;

(2) possess, and have demonstrated, a commitment to equal justice under the law;

(3) possess, and have demonstrated, outstanding legal ability and competence;

(4) indicate by their demeanor, character, and personality that they would exhibit judicial temperament if appointed or reappointed; and

(5) be of sound physical and mental health sufficient to perform the essential duties of the office.

(c) They must not be related by blood or marriage to a judge of the appointing court of appeals or judicial council of that circuit, or to a judge of the district court to be served, within the degrees specified in 28 U.S.C. § 458, at the time of the initial appointment.

§ 320.10.20 Additional Qualifications

(a) Unless the council determines that special conditions exist, they must have been engaged in the active practice of law for a period of at least five years. The judicial council may consider as substitute experience for the active practice of law the following, including any combination thereof:

(1) Judge of a state court of record or other state judicial officer;

(2) U.S. magistrate judge, referee in bankruptcy, bankruptcy judge, or other federal judicial officer;

(3) Attorney for federal or state agencies;

(4) Law clerk to any judge or judicial officer (limited to two years); or

(5) Other legal experience which is suitable as a substitute in the opinion of the majority of the judicial council.

(b) A judicial council may establish additional qualification standards appropriate for a particular position, taking into account the specific responsibilities anticipated for that position.

§ 320.20 Public Notice of Bankruptcy Judgeship Vacancies

§ 320.20.10 Publication

Prior to the selection of nominees, public notice of the vacancy shall be published in sources that will reach a wide audience of qualified applicants. These sources may include, but are not limited to the following:

- a general local newspaper or similar publication;
- a bar journal, newsletter, or local legal periodical;
- bar association web sites;
- government web sites; and
- other resources relied upon by legal professionals.

§ 320.20.20 Contents of Notice

The public notice shall describe the nature of the position and the procedures for submission of applications, including the name and address of the person to whom applications should be submitted. The notice should specify that applications are to be submitted only by the potential nominee personally, indicating the person's willingness to serve if selected.

§ 320.20.30 Filing of Notice

The public notice shall be filed and posted in the offices of the clerk of the court of appeals, the clerk of the district court, and the bankruptcy clerk, and a copy of the notice shall be provided to the Director of the Administrative Office at the time an appointment is made.

§ 320.30 Merit Selection Panel

§ 320.30.10 Establishment of Panel

Before nominations are made, the council may appoint a merit selection panel which shall recommend for nomination individuals whose character, experience, ability, and commitment to equal justice under the law fully qualify them to serve as U.S. bankruptcy judges. The council may authorize the chief judge of the circuit to appoint panels under this section.

§ 320.30.20 Membership

(a) The panel shall be composed of a chairman and other members appointed by majority vote of the judicial council. The panel shall have no fewer than three members, including the chairman.

(b) Members of the panel shall receive no compensation for their service, but may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law.

(c) Each member of the panel shall be a resident of the circuit within which the appointment is to be made.

(d) No person shall be considered as a nominee while serving as a member of the panel or for a period of one year after completion of such service.

§ 320.30.30 Duties

(a) The chairman shall have such duties as the judicial council may assign.

(b) All information made available to the members of the panel in the performance of their duties, including the names of potential nominees and the identities of individuals recommended by the panel, shall be kept in strict confidence except as provided in § 320.30.40 of these regulations.

(c) Decisions of the panel shall be by majority vote of all the members.

(d) The panel shall examine the applications of all potential nominees and may, in its discretion, personally interview potential nominees. The panel shall make an affirmative effort to identify and give due consideration to all qualified candidates, without regard to race, color, age (over 40), gender, religion, national origin, or disability.

(e) The panel shall determine those individuals among the potential nominees who meet all of the standards set forth by these regulations for appointment as U.S. bankruptcy judges and shall designate those individuals whom the panel considers best qualified.

(f) The panel shall submit a report to the council as provided in the following section.

§ 320.30.40 Panel Report

The panel shall within ninety days after its creation report to the judicial council the results of its activities, unless otherwise directed. The report of the panel shall specify five to ten persons the panel has determined as best qualified and shall have attached to it all written information received by or prepared by the panel concerning the recommended nominees. The council may accept a list containing fewer than five names for good cause shown by the panel in its report.

§ 320.30.50 Alternative to Panel

If the council does not appoint a panel under § 320.30.10, the council or a subcommittee of the members of the council may perform the duties set forth in § 320.30.30.

§ 320.40 Selection of Nominees and Appointment of U.S. Bankruptcy Judges

§ 320.40.10 Selection of Nominees

The judicial council shall submit a list of at least three nominees to the court of appeals unless otherwise directed by the court. The council shall select nominees from the list provided by the panel. However, a judicial council may, by majority vote, reject the first list submitted by the panel. The judicial council may require that the finalists selected

complete a preliminary disclosure statement prior to the list being forwarded to the court of appeals. The disclosure statement shall be filed with the judicial council in such manner as it may direct and it shall be considered confidential. If such a list is rejected, the panel shall submit a second list from which the judicial council shall then select its nominees. If a panel is not appointed under § 320.30.10, the judicial council shall select its nominees from the applicants for the position.

§ 320.40.20 FBI and IRS Reports

The name of the person selected by the court of appeals for appointment shall be submitted to the Director of the Administrative Office, who shall request background reports by the Federal Bureau of Investigation (FBI) and the Internal Revenue Service (IRS). However, if the nominee has been the subject of such reports prior to appointment to the present position, the requirement for further background reports may be waived on request by the court of appeals.

§ 320.40.30 Filing of Preliminary Disclosure Statement by Nominee

A nominee for a bankruptcy judgeship may be required by the court of appeals to complete a preliminary disclosure statement after being selected for appointment by the court of appeals and prior to preparation of the background reports by the FBI and IRS. The disclosure statement shall be filed with the court of appeals in such manner as it may direct and it shall be considered confidential.

§ 320.40.40 Order of Appointment

An order of appointment may be issued by the court of appeals following receipt by the court of the information obtained from the FBI and IRS. If in the judgment of the court the IRS report has not been completed in a timely manner, it may waive the report provided that it has taken steps to insure itself that the nominee has filed returns as required.

§ 320.40.50 Oath of Office

The appointee shall, prior to entering on duty, take the oath or affirmation prescribed by 28 U.S.C. § 453, as well as the constitutional oath of office prescribed by 5 U.S.C. § 3331.

§ 320.40.60 Record of Appointment

The appointment of the bankruptcy judge shall be entered of record in the court of appeals and the pertinent district court or courts, and notice of such appointment shall be given at once by the clerk of the court of appeals to the Director of the Administrative Office.

§ 320.50 Reappointment of U.S. Bankruptcy Judges

§ 320.50.10 Methods

(a) Pursuant to the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988, not earlier than nine months and not later than six months before the date on which the term of a bankruptcy judge expires, a bankruptcy judge who is willing to accept reappointment shall provide written notification of willingness in official forms to the chief judge of the circuit. This does not preclude the court of appeals from requiring a bankruptcy judge to provide as much as twelve months written notification to the chief judge of the circuit of such bankruptcy judge's willingness to accept reappointment to the position.

(b) The court of appeals shall decide whether or not to reappoint the incumbent judge before considering other potentially qualified candidates. In making this decision, the court of appeals shall take into consideration the professional and career status of the incumbent, and whether the incumbent has performed the duties of a bankruptcy judge according to the high standards of performance regularly met by U.S. bankruptcy judges and demonstrated those characteristics and qualifications specified in § 320.10.10 and § 320.10.20(b) of these regulations.

§ 320.50.20 Procedures for Soliciting Public Comment

(a) Public Notice

Within 60 days of the notification of the incumbent's willingness to accept reappointment pursuant to § 320.50.10(a), the circuit executive shall cause to be published a public notice in sources that will reach a wide audience of persons qualified to comment. These sources may include, but are not limited to the following: a general local newspaper or similar publication; a bar journal, newsletter, or local legal periodical; bar association web sites; government web sites; and other resources relied upon by legal professionals. The notice shall state that the court of appeals is considering the reappointment of the incumbent bankruptcy judge to a new term of office. The notice shall describe the duties of the position, state the date of expiration of the incumbent's current term of office, and invite comments from members of the bar and public. The comment period shall not exceed 45 days. The notice shall include the name and address of the circuit executive to whom comments shall be submitted. A copy of the notice shall be filed and posted in the office of the clerk of the bankruptcy court and a copy shall be provided to the Director of the Administrative Office.

(b) Public Comments

No later than 10 days after the deadline for submission of comments from members of the bar and public, the circuit executive shall submit such comments to the court of appeals.

§ 320.50.30 Decision of the Court of Appeals

(a) Not later than 60 days after the court of appeals receives from the circuit executive the comments of the members of the bar and public, and after due consideration of those comments, the active judges of the court of appeals shall vote whether to reappoint the incumbent.

(b) If a majority of the active judges of the court of appeals votes to reappoint the incumbent, the incumbent shall be reappointed.

(c) If a majority of the active judges of the court of appeals votes not to reappoint the incumbent, the incumbent shall not be reappointed. The court shall so notify the incumbent and proceed with the selection procedures prescribed in § 320.10, § 320.20, § 320.30, and § 320.40 of these regulations. The incumbent shall not be considered for appointment under the selection procedures set forth in § 320.10, § 320.20, § 320.30, and § 320.40 of these regulations.

(d) Whenever a majority of the active judges of the court of appeals cannot agree upon the reappointment of an incumbent bankruptcy judge pursuant to section § 320.50.30(b) or (c), the chief judge of such court shall make that decision. If, in the exercise of such authority, the chief judge should decide not to reappoint the incumbent, the court shall follow the applicable procedures set forth in § 320.50.30(c) of these regulations.

§ 320.50.40 Extension of Time Periods

In appropriate cases the chief judge of the court of appeals may determine to extend any of the time periods stipulated in this chapter by not more than 45 days. If the chief judge extends any time periods, the judge whose reappointment is affected by such extension shall be notified. The extension of time periods does not preclude the court from using the provision of 28 U.S.C. § 152(a)(1), which permits a bankruptcy judge, with the approval of the circuit judicial council, to continue to perform the duties of the office until the earlier of the date that is 180 days after the expiration of the term or the date of the appointment of a successor.

§ 320.50.50 Order of Appointment

Upon the reappointment of an incumbent bankruptcy judge, an order of appointment shall be issued by the court of appeals.

§ 320.50.60 Oath of Office

Upon the reappointment of an incumbent bankruptcy judge, the reappointee shall take the judicial oath or affirmation prescribed by 28 U.S.C. § 453, as well as the constitutional oath of office prescribed by 5 U.S.C. § 3331.

§ 320.50.70 Record of Appointment

Upon the reappointment of an incumbent bankruptcy judge, the reappointment shall be entered of record in the court of appeals and the pertinent district court or courts, and notice of such reappointment shall be given at once by the clerk of the court of appeals to the Director of the Administrative Office.

§ 330 Bankruptcy Judicial Vacancy Notification

Prior to initiating the process for filling a bankruptcy judgeship, the chief judge for the circuit, or the circuit executive by designation, must notify the Judicial Conference Committee on the Administration of the Bankruptcy System and the Administrative Office that the court of appeals for the circuit is considering whether to fill a vacant bankruptcy judgeship so that relevant, up-to-date data can be provided to facilitate the court's decision.

Guide to Judiciary Policy

Vol 3: Judges

Ch 4: Selection, Appointment, and Reappointment of Magistrate Judges

§ 410 Overview

§ 420 Judicial Conference Regulations
- § 420.10 Qualifications of United States Magistrate Judges
- § 420.20 Public Notice
- § 420.30 Merit Selection Panel
- § 420.40 New Appointments of Magistrate Judges
- § 420.50 Selection of Part-Time Magistrate Judges
- § 420.60 Reappointment of Magistrate Judges
- § 420.70 Appointments to Combination Positions

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§ 410 Overview

(a) The judges of each district court appoint magistrate judges in the number and at the locations determined by the Judicial Conference. **See:** 28 U.S.C. § 631(a). Magistrate judges must be selected by the district courts under standards and procedures promulgated by the Judicial Conference. **See:** 28 U.S.C. § 631(b)(5).

(b) The Judicial Conference regulations establishing the standards and procedures for appointing and reappointing magistrate judges were first promulgated at the Conference's 1980 session (JCUS-MAR 80, p. 32). The Conference later amended the regulations at its 1981 (JCUS-MAR 81, p. 29), 1982 (JCUS-SEP 82, pp. 93-94), 1986 (JCUS-SEP 86, p. 77), 1992 (JCUS-SEP 92, p. 75), 1996 (JCUS-MAR 96, p. 30), 1997 (JCUS-MAR 97, p. 29), 1998 (JCUS-SEP 98, p. 82), 1999 (JCUS-MAR 99, p. 29), 2000 (JCUS-SEP 00, p. 60), 2001 (JCUS-SEP/OCT 01, p. 65), 2004 (JCUS-MAR 04, p. 23), 2006 (JCUS-SEP 06, p. 29), 2007 (JCUS-SEP 07, p. 29), 2008 (JCUS-MAR 08, p. 23 and JCUS-SEP 08, pp. 29-30), 2009 (JCUS-SEP 09, p. 25), 2010 (JCUS-MAR 10, pp. 21-22), 2011 (JCUS-MAR 11, pp. 30-31), and 2013 (JCUS-SEP 13, p. 29) sessions.

(c) Full-time magistrate judges are appointed to 8-year terms of office by the judges of each respective United States district court. **See:** 28 U.S.C.

§ 631(e). Part-time magistrate judges are appointed to 4-year terms of office by the judges of the court. **See:** 28 U.S.C. § 631(e). The selection and reappointment regulations refer in several places to the actions of a majority vote of the district judges. The Federal Judiciary Administrative Improvements Act of 2010 amended Title 28, United States Code, section 631(a) by repealing section 504 of the Court Security Improvement Act of 2007. This solved a conflict regarding which senior judges can vote on magistrate judge appointments. Now, under 28 U.S.C. § 296, those senior judges with a 50 percent workload may participate in court governance activities generally, including magistrate judge appointments.

(d) The Judicial Conference accordingly adopted the following introductory instruction to the selection and appointment regulations at its March 2011 session (JCUS-MAR 11, p. 30):

> References to district judges in § 420.30.10, § 420.30.20(a), § 420.40.10, § 420.60.20, and § 420.60.30(c) of these regulations include all active district judges and those senior judges who performed in the preceding calendar year an amount of work equal to or greater than the amount of work an average judge in active service on that court would perform in six months, and who elect to exercise such powers.

§ 420 Judicial Conference Regulations

§ 420.10 Qualifications of United States Magistrate Judges

§ 420.10.10 Minimum Qualifications

To be qualified for appointment or reappointment as a U.S. magistrate judge, a person must:

(a) Be, and have been for at least five years, a member in good standing of the bar of the highest court of a State, the District of Columbia, the Commonwealth of Puerto Rico, the Territory of Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands of the United States.

(b) Have been engaged in the active practice of law for a period of at least five years. The court may consider as substitute experience for the active practice of law the following, including any combination thereof:

(1) Judge of a state court of record or other state judicial officer.

(2) U.S. magistrate judge, bankruptcy judge, or other federal judicial officer.

(3) Attorney for federal or state agencies.

(4) No more than two years as a law clerk to any judge or judicial officer or as a staff attorney or pro se law clerk in a court.

(5) Other types of substantial legal experience (subsequent to receipt of a law degree or license to practice law), not included in (1) through (4) above, which is suitable as a substitute in the opinion of the majority of the court.

(c) Be competent to perform the duties of the office, of good moral character, emotionally stable and mature, committed to equal justice under the law, in good health, patient, courteous, and capable of deliberation and decisiveness when required to act on his or her own reason and judgment.

(d) Not be related by blood or marriage to a judge of the appointing court or courts, within the degrees specified in 28 U.S.C. § 458, at the time of the initial appointment.

(e) In the case of an initial appointment, not be seventy years of age or older.

[**Note:** For information on continuation and reappointment of magistrate judges upon attaining age 70, **see:** 28 U.S.C. § 631(d).]

§ 420.10.20 Additional Qualifications

A district court may establish additional qualification standards appropriate for a particular magistrate judge position, taking into account the specific responsibilities anticipated for that position. In no event, however, may the additional qualification standards be inconsistent with the court's policy as an equal opportunity employer.

§ 420.20 Public Notice

§ 420.20.10 Publication

Before the selection of a magistrate judge, whether a new appointment or a reappointment, a public notice must be published in sources that will reach a wide audience of qualified applicants. These sources may include, but are not limited to, the following: a general local newspaper; a widely circulated local legal periodical; bar association web sites; government web sites; and other resources relied upon by legal

professionals. To encourage applications from all qualified individuals, the court is encouraged to transmit the public notice to state and local bar associations and interest groups that focus on women and minorities. The court should also consider utilizing national publications and the judiciary's JNet Job Vacancies site.

§ 420.20.20 Contents of Notice

Except as provided in § 420.60.30, the public announcement must describe the duties of the position, the pertinent qualification standards, and the procedures for submission of applications, including the name and address of the person to whom applications should be submitted. The notice should specify that applications are to be submitted only by the applicant personally, indicating the person's willingness to serve if selected.

§ 420.20.30 Filing of Notice

The public notice must be filed and posted in the office of the clerk of court and a copy must be provided to the Director of the Administrative Office.

§ 420.30 Merit Selection Panel

§ 420.30.10 Establishment of Panel

Before the appointment or reappointment of a U.S. magistrate judge, the court, by majority vote of the district judges, must appoint a merit selection panel which will recommend to the court for consideration individuals whose character, experience, ability, and commitment to equal justice under the law fully qualify them to serve as a U.S. magistrate judge. The panel must be established by an order of the court specifying the names of the members, whether each is a lawyer or a nonlawyer, and the effective date of the panel's appointment. A copy of the court's order appointing the merit selection panel must be submitted to the Director of the Administrative Office at the time the order is entered and prior to any action by the panel. (For information on the participation of senior judges in the appointment of magistrate judges, **see:** § 410(c) and (d).)

§ 420.30.20 Membership

(a) The panel must be composed of a chairperson and other members appointed by majority vote of the district judges of the court. The panel must have no fewer than seven members, including the chairperson. (For information on the participation of senior judges in the appointment of magistrate judges, **see:** § 410(c) and (d).)

(b) Members of the panel may receive no compensation for their service, but may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law.

(c) The panel must consist of lawyers and other members of the community. At least two members of the panel must be non-lawyers. Each member of the panel must be a resident of the district within which the appointment is to be made, or, if a nonresident, have significant ties to the community of the district. No active, senior, or recalled federal judge, retired Article III judge, or other district court officer or district court employee may be appointed as a member of the panel. This prohibition does not preclude U.S. attorneys and assistant U.S. attorneys, and federal defenders and assistant federal defenders from serving on the panel.

(d) One year must elapse between the earlier of when a former merit selection panel submitted its report to the court or when the member of that panel now seeking a position resigned, and the date by which applications for a subsequent vacancy are due to be submitted to the court, for that former panel member to be considered for the subsequent magistrate judge position. The Committee on the Administration of the Magistrate Judges System is authorized to grant waivers to this provision on an individual case basis.

(e) To further efforts to achieve diversity in all aspects of the magistrate judge selection process, the court is encouraged to appoint a diverse merit selection panel.

§ 420.30.30 Duties

(a) The chairperson will have such duties as the court may assign.

(b) Except as provided in § 420.30.40 of these regulations, all information made available to the members of the panel in the performance of their duties, including the names of applicants and the identities of individuals recommended by the panel, must be kept in strict confidence by the panel and the court, provided, however, that applicants may, upon request, waive the confidentiality requirements to allow the court or the panel to publicize the applicants' names in order to solicit comments from the bar and the public.

(c) Decisions of the panel must be by majority vote of all the members.

(d) The panel must examine all applications and may, in its discretion, personally interview applicants. The panel must make an affirmative effort

to identify and give due consideration to all qualified applicants without regard to race, color, age (40 and over), gender, religion, national origin, or disability.

(e) The panel must determine, from among the applicants, those individuals who meet all of the standards set forth by these regulations for appointment as a U.S. magistrate judge, and must designate those individuals whom the panel considers best qualified.

(f) The panel must submit a report to the court as provided in the following section.

§ 420.30.40 Panel Report

If an appointment is to be made to a vacant or newly created position, the panel must report to the court the results of its activities within 90 days after its creation unless otherwise directed by the court. The report of the panel must specify the five applicants the panel has determined as best qualified and have attached to it all written information received by or prepared by the panel concerning the recommended applicants. The court may accept a list containing fewer than five names for good cause shown by the panel in its report.

§ 420.40 New Appointments of Magistrate Judges

§ 420.40.10 Selection from List and Majority Decision of Judges

The district judges must select from the list provided by the panel. However, if no applicant receives a majority vote of the district judges, the court must request a second list of five names. The court is then free to select from either list. If, again, no applicant receives a majority vote, the chief judge must make the selection for the court from either list. (For information on the participation of senior judges in the appointment of magistrate judges, **see:** § 410(c) and (d).)

§ 420.40.20 FBI and IRS Reports

The name of the person selected by the court for appointment to either a full-time or a part-time magistrate judge position must be submitted to the Director of the Administrative Office, who must request full-field background reports, with a 15-year scope, by the Federal Bureau of Investigation (FBI) and background reports by the Internal Revenue Service (IRS). A part-time magistrate judge, who was the subject of a full-field FBI investigation before appointment to the part-time position, is required to undergo a second full-field investigation before appointment to a full-time position. The Committee on the Administration of the Magistrate Judges System is authorized to grant waivers under this section, on an individual case basis, in circumstances involving

high turnover and recruitment problems due to isolated locations of certain part-time magistrate judge positions.

§ 420.40.30 Order of Appointment

An order of appointment may be issued by the district court following receipt by the court of the information obtained from the FBI and the IRS. If in the judgment of the court the IRS report has not been completed in a timely manner, it may waive the report provided that it has taken steps to ensure that the applicant selected by the court for appointment has filed returns as required.

§ 420.40.40 Oath of Office

The appointee must, prior to entering on duty as magistrate judge, take the oath or affirmation prescribed by 28 U.S.C. § 453, and the constitutional oath prescribed by 5 U.S.C. § 3331.

§ 420.40.50 Record of Appointment

The appointment of a magistrate judge must be entered of record in the district court, and notice of such appointment must be given at once by the clerk of that court to the Director of the Administrative Office.

§ 420.50 Selection of Part-Time Magistrate Judges

§ 420.50.10 Alternative Procedures

The provisions of §§ 420.10 through 420.40 of these regulations will apply to the selection and appointment of a part-time magistrate judge; except that, in the case of the appointment of a part-time magistrate judge whose authorized annual salary is less than one-third of the maximum salary authorized for a full-time magistrate judge:

(a) The court may, in lieu of the requirements of § 420.30.20 concerning the membership of merit selection panels, appoint a panel of less than seven members, but not less than three members. The panel must be established by an order of the court specifying the names of the members, whether each is a lawyer or a nonlawyer, and the effective date of the panel's appointment. A copy of the court's order appointing the merit selection panel must be submitted to the Director of the Administrative Office at the time the order is entered and prior to any action by the panel. Federal judges, including circuit judges, senior, retired, and recalled judges, and other district court officers or district court employees may serve on the panel, although at least two members of the panel must be from outside the federal judiciary.

(b) The court may, in lieu of the requirement of § 420.30.40 that the panel submit to the court a list of five names, authorize the panel to determine the size of the list submitted to the court.

(c) The court may waive the bar membership requirements of § 420.10.10 if the appointing court and the Judicial Conference have determined that no qualified individual who is a member of the bar is available to serve at a specific location as provided in 28 U.S.C. § 631(b)(1).

§ 420.60 Reappointment of Magistrate Judges

§ 420.60.10 Qualifications

The provisions of § 420.10 of these regulations apply to the reappointment of U.S. magistrate judges, except that the court may waive the bar membership requirement of § 420.10.10 for the reappointment of a part-time magistrate judge as provided in 28 U.S.C. § 631(b)(1).

§ 420.60.20 Alternative Selection Methods

Before the expiration of an incumbent magistrate judge's term of office, the court must determine, by majority vote of the district judges, whether it wishes to consider the reappointment of the incumbent. In the event that there is no concurrence of a majority of the judges of the court, the chief judge must make the determination, as provided in 28 U.S.C. § 631(a). (For information on the participation of senior judges in the appointment of magistrate judges, **see:** 28 U.S.C. § 296; Guide, Vol 3, § 410(c) and (d).) The court should give due consideration to the professional and career status of the position of U.S. magistrate judge.

(a) If the court determines not to reappoint the incumbent, it must so notify the incumbent and must follow the initial selection procedures set forth in §§ 420.20 through 420.50 of these regulations. Under these procedures, no comments may be sought on the incumbent magistrate judge's performance or reappointment, and the incumbent magistrate judge may not apply for the position.

(b) If the court desires to consider the reappointment of the incumbent, it must follow the selection procedures set forth in § 420.60.30 of these regulations.

§ 420.60.30 Procedures

If the court desires to consider the reappointment of an incumbent magistrate judge, it must follow the procedures in this section:

(a) Public Notice

The court must cause to be published a public notice stating that it is required by law to establish a panel of citizens to consider the reappointment of the incumbent magistrate judge to a new term of office. The public notice must be published in sources that will reach a wide audience of members of the public qualified to comment. These sources may include, but are not limited to, the following: a general local newspaper; a widely circulated local legal periodical; bar association web sites; government web sites; and other resources relied upon by legal professionals. The notice must describe the duties of the position, state the date of expiration of the incumbent's current term of office, and invite comments from members of the public. The notice must include the name and address of the person to whom comments should be submitted. A copy of the notice must be filed and posted in the office of the clerk of court and a copy must be provided to the Director of the Administrative Office.

(b) Merit Selection Panel

Before the reappointment of a magistrate judge, the court must establish a panel as prescribed in § 420.30.20, or § 420.50.10(a), as the case may be, of these regulations. The panel must review the incumbent's current service as magistrate judge and other experience, the comments from members of the bar and public, and other evidence of the incumbent's good character, ability, and commitment to equal justice under the law. The panel must report to the court within ninety days after its creation, unless otherwise directed by the court, whether the incumbent is recommended for reappointment.

(c) Decision of the Court

After due consideration of the report of the panel, the court must determine whether to reappoint the incumbent by majority vote of all district judges. In the event that there is no concurrence of a majority of the judges of the court, the chief judge must make the determination, as provided in 28 U.S.C. § 631(a). (For information on the participation of senior judges in the appointment of magistrate judges, **see:** 28 U.S.C. § 296; Guide, Vol 3, § 410(c) and (d).) If the court decides not to reappoint the incumbent, it must so notify the incumbent and proceed anew with the selection procedures prescribed in §§ 420.20 through 420.50 of these regulations.

§ 420.70 Appointments to Combination Positions

The court may consider the selection of an incumbent clerk or deputy clerk of court to fill a combination magistrate judge/clerk or deputy clerk of court position, in the same manner as prescribed in § 420.60 for reappointment.

SECTION 1

Court of Claims Judge
Appointment Process

I. GENERAL OVERVIEW

A. New York State Constitution article VI, § 9 (see attached)

Appointed by the Governor and affirmed by the New York State Senate for a term of nine years. Authorized eight judges, but permits the legislature to increase that number or reduce it to six or seven judges.

B. Court of Claims Act § 2 (see attached)

Sets forth the number of judges, terms, the designation of one judge to be presiding judge, and the qualifications to becoming a judge of the Court of Claims. Over time, the legislature has increased the number of judicial positions utilizing different letter designations, (a) through (e). Typically, only judges appointed under (a) hear cases justiciable in the Court of Claims for money damages against the State of New York. Judges appointed under (b) through (e) are usually made acting Supreme Court justices who hear criminal or other civil cases. The terms for these judicial positions run from the effective date of the legislation creating the position.

II. THE APPLICATION PROCESS

A. The Judicial Screening Committee provides public notice of open positions on its website and in major newspapers (see example of public notice attached).

B. Application (copy attached).

Requires applicant to sign waivers to obtain records regarding applicant's professional disciplinary record, information from state and local bar associations, IRS, Department of Taxation and Finance, credit reports, criminal records, and other court records.

Complete background investigation, and fingerprinting, is performed by the New York State Police.

C. Applicant is interviewed by the Judicial Screening Committee regarding background and qualifications. Committee determines whether applicant is qualified. The names of highly qualified applicants are forwarded onto the governor for nomination.

III. NOMINATION AND SENATE APPROVAL

A. Notification of nomination and date for interview with Senate Judiciary Committee. If Senate Judiciary Committee approves of candidate, it makes a recommendation to the full Senate. Senate then votes on whether or not to confirm the governor's nominee.

New York State Constitution

Article 6, Section 9: [Court of claims; composition; appointment of judges; jurisdiction]

The court of claims is continued. It shall consist of the eight judges now authorized by law, but the legislature may increase such number and may reduce such number to six or seven. The judges shall be appointed by the governor by and with the advice and consent of the senate and their terms of office shall be nine years. The court shall have jurisdiction to hear and determine claims against the state or by the state against the claimant or between conflicting claimants as the legislature may provide.

Court of Claims Act

Section 2

2. Such court shall consist of (a) twenty-seven judges, who shall be appointed by the governor, by and with the advice and consent of the senate; (b) such number of additional judges not exceeding seventeen to and including December thirty-first, nineteen hundred eighty-two, and not exceeding fifteen on and after January first, nineteen hundred eighty-three, as shall be appointed by the governor, by and with the advice and consent of the senate; (c) such number of additional judges not exceeding nineteen as shall be appointed by the governor, by and with the advice and consent of the senate prior to December thirty-first, nineteen hundred eighty-two; (d) such number of additional judges not exceeding thirty-two as shall be appointed by the governor, by and with the advice and consent of the senate; (e) such number of additional judges not exceeding twelve as shall be appointed by the governor, by and with the advice and consent of the senate, provided that no more than five of such judges shall be appointed prior to July first,

nineteen hundred ninety.

3. The term of each judge hereafter appointed shall be nine years, provided, however, that the existing terms of present judges shall continue until the expiration thereof.

4. Whenever the term of office of a judge shall expire, or his office become vacant from any cause, his successor shall be appointed for the unexpired term. Notwithstanding the provisions of section five of the public officers law, a judge of the court of claims shall hold over and continue to discharge the duties of his office, after the expiration of the term for which he shall have been appointed, until his successor shall have been chosen and qualified but after the expiration of such term the office shall be deemed vacant for the purpose of choosing his successor.

5. Repealed.

6. By an order to be filed in the office of the secretary of state, the governor shall designate one of the judges as presiding judge, who shall act as such during his term, and thereafter upon the appointment of his successor, the governor shall designate such successor or any other judge of the court as presiding judge, who shall act as such during his term.

7. A judge of the court of claims must be an attorney and counselor-at-law admitted to practice in the courts of this state, of at least ten years' experience in practice.

8. Whenever in any other statute reference is made to the board of claims or any officer thereof, the same shall be deemed to refer to and mean the court of claims or an officer thereof. A determination of the board of claims heretofore rendered shall have the same force and effect and be subjected to the same procedure as provided in this act for a judgment.

WestlawNext

New York Bill Jacket, 1996 A.B. 11324, Ch. 731
Legislative History *(Approx. 11 pages)*

NY Bill Jacket, 1996 A.B. 11324, Ch. 731
Image 1 within document in PDF format.

New York Bill Jacket, 1996 Assembly Bill 11324

1996
Governor of New York
219th Legislature, 1996 Regular Session

Illegible text characters in the source data are indicated by three asterisks (***).

APPROVAL # 131

CHAPTER 731

LAWS OF 1996 _____ MEMORANDUM NO. _____

SENATE BILL _____ ASSEMBLY BILL 11324

_____ _____

11324

IN ASSEMBLY

July 12, 1996

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Weinstein) -- (at request of the Governor) -- read once and referred to the Committee on Judiciary

AN ACT to amend the court of claims act, in relation to additional judges and repealing subdivision 5 of section 2 of such act relating thereto

DATE RECEIVED BY GOVERNOR:

12/24/96

ACTION MUST BE TAKEN BY:

12/31/96

DATE GOVERNOR'S ACTION TAKEN:

JAN 30 1997

SENATE VOTE _____ Y _____ N HOME RULE MESSAGE _____ Y _____ N

DATE _____ BILL IS DISAPPROVED

ASSEMBLY VOTE _____ Y _____ N DATE _____

DATE _____ _____
COUNSEL TO THE GOVERNOR

STATE OF NEW YORK

11324

IN ASSEMBLY

July 12, 1996

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [ ] is old law to be omitted.

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Weinstein) -- (at request of the Governor) -- read once and referred to the Committee on Judiciary

AN ACT to amend the court of claims act, in relation to additional judges and repealing subdivision 5 of section 2 of such act relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 2 of section 2 of the court of claims act, as amended by chapter 209 of the laws of 1990, is amended to read as follows:

2. Such court shall consist of (a) [eighteen] twenty-two judges, who shall be appointed by the governor, by and with the advice and consent of the senate; (b) such number of additional judges not exceeding seventeen to and including December thirty-first, nineteen hundred eighty-two, and not exceeding fifteen on and after January first, nineteen hundred eighty-three, as shall be appointed by the governor, by and with the advice and consent of the senate; (c) such number of additional judges not exceeding nineteen as shall be appointed by the governor, by and with the advice and consent of the senate prior to December thirty-first, nineteen hundred eighty-two; (d) such number of additional judges not exceeding twenty-three as shall be appointed by the governor, by and with the advice and consent of the senate, prior to December thirty-first, nineteen hundred eighty-six; (e) such number of additional judges not exceeding [eight] twelve as shall be appointed by the governor, by and with the advice and consent of the senate, provided that no more than five of such judges shall be appointed prior to July first, nineteen hundred ninety.

§ 2. Subdivision 4 of section 2 of the court of claims act, as amended by chapter 500 of the laws of 1982, is amended to read as follows:

4. [Except as provided by subdivision five hereof, whenever] Whenever the term of office of a judge shall expire, or his office become vacant from any cause, his successor shall be appointed for the unexpired term. Notwithstanding the provisions of section five of the public officers law, [except as provided by subdivision five hereof] a judge of the court of claims shall hold over and continue to discharge the duties of his office, after the expiration of the term for which he shall have been appointed, until his successor shall have been chosen and qualified but after the expiration of such term the office shall be deemed vacant for the purpose of choosing his successor [provided, however, that a judge appointed prior to January first, nineteen hundred eighty-two pursuant to paragraph (b) of subdivision two of this section shall not hold over and continue to discharge the duties of his office for a period to exceed one year].

§ 3. Subdivision 5 of section 2 of the court of claims act is REPEALED.

§ 4. This act shall take effect immediately; provided that section one of this act shall take effect April 1, 1997.

CHAPTER 731

APPROVAL #131

STATE OF NEW YORK

EXECUTIVE CHAMBER

ALBANY 12224

January 30, 1997

MEMORANDUM filed with Assembly Bill Number 11324, entitled:

"AN ACT to amend the court of claims act, in relation to additional judges and repealing subdivision 5 of section 2 of such act relating thereto"

APPROVED

I am pleased to sign into law this Governor's Program Bill. The bill increases the number of "traditional" judges of the Court of Claims (those who preside over actions against the state) from eighteen to twenty-two; authorizes four additional judges under paragraph (e) of subdivision 2 of section 2 of the Court of Claims Act; and amends section 2 in other respects to prevent the expiration of the terms of the judges of the Court of Claims appointed under paragraph (b) of subdivision 2.

Despite the outstanding efforts of the Office of Court Administration, the Presiding Judge

of the Court of Claims and all the judges of the Court of Claims appointed under paragraph (a) to hear cases against the state, a serious backlog of such cases currently exists. By authorizing the appointment of four additional judges under paragraph (a), the bill will enable the Court to reduce and eventually eliminate the backlog.

Although great progress has been made recently in the war against crime, the bill recognizes that the judiciary must have adequate resources to accomplish its fundamental mission of doing justice. The four additional judges the bill authorizes me to appoint under paragraph (e) will benefit all New Yorkers. Finally, neither the judiciary nor the public can afford the loss of the judges previously appointed under paragraph (b).

The bill is approved.

A11324 Rules (Weinstein)

BILL NUMBER: A11324

PURPOSE:

The bill is designed to ensure an adequate number of judges of the court of claims, by preventing the termination of the offices of the fifteen judges appointed pursuant to paragraph (b) of subdivision 2 of section 2 of the court of claims act and by authorizing the appointment of eight additional judges.

SUMMARY OF PROVISIONS:

Section 1 of the bill amends paragraphs (a) and (e) of subdivision 2 of section 2 of the court of claims act, by authorizing the appointment by the governor of eight additional judges -- four pursuant to paragraph (a) and four pursuant to paragraph (e). Section 2 of the bill makes conforming amendments to subdivision four of section 2 of the court of claims act, in light of section 3 of the bill, which repeals subdivision 5.

Section 4 of the bill states that the bill takes effect immediately, except that section 1 takes effect on April 1, 1997.

EXISTING LAW:

Current law authorizes the appointment of eighteen "traditional" judges -- those presiding over actions against the state -- pursuant to paragraph (a) of subdivision 2 of section 2 of the court of claims act, and the appointment of eight judges pursuant to paragraph (e) of such subdivision. Pursuant to subdivision 5 of section 2 of the court of claims act, upon the expiration (in the years 2000 and 2001) of the terms of office of the fifteen judges appointed pursuant to paragraph (b) of subdivision 2, a successor may not be appointed and thus the number of judges of the court of claims must be reduced accordingly.

STATEMENT IN SUPPORT:

A number of judges of the court of claims have been assigned to administrative positions in the unified court system. Partly for this reason, there are at present an insufficient number of judges to handle expeditiously the high volume of actions against the state in the court of claims and the high volume of felony criminal cases. Moreover, the ability of our criminal courts to render swift justice would be threatened if successors cannot be appointed when the terms of the judges appointed pursuant to paragraph (b) expire in the years 2000 and 2001.

BUDGET IMPLICATIONS:

None in the current fiscal year.

TEN-DAY BILL

B-201 BUDGET REPORT ON BILLS Session Year: 1996

Introduced by: Rules

SENATE ASSEMBLY

No. No. A.11324

Law: Court of Claims Act Sections: Subdivision 2, 4 & 5 of Section 2

Division of the Budget recommendation on the above proposal:

Approve: __ Veto: __ No Objection: x No Recommendation: __

1. Subject and Purpose:

The purpose of this Governor's program bill is to authorize the appointment of eight additional Court of Claims judges and to make permanent fifteen currently temporary judgeships.

2. Summary and Provisions:

Effective April 1, 1997, section 1 of this bill amends paragraphs (a) and (e) of subdivision 2 of section 2 of the Court of Claims Act, by authorizing the Governor to appoint eight additional judges to the Court of Claims: four pursuant to paragraph (a), increasing the number of authorized traditional Court of Claims judges from eighteen to twenty-two; and four pursuant to paragraph (e), increasing the number of supplementary judges from eight to twelve.

Effective immediately, section 2 and section 3 of this bill would allow the appointment of successors to the fifteen judges whose seats would currently expire in 2000 and 2001.

3. Legislative History:

None

4. Arguments In Support:

There are at present an insufficient number of judges to expeditiously handle the high volume of actions against the State in the Court of Claims. Over the past six years the backlog of cases pending in the Court of Claims has risen by 22 percent. As of August 31, 1996, the number of cases pending was 5,889. Creating four new traditional judgeships in the Court of Claims would enable the court to address these long term problems.

Sections 2 and 3 of this bill are needed since the ability of our criminal courts to render swift justice would be threatened if the fifteen judgeships currently scheduled to expire in the years 2000 and 2001 were not continued.

5. Arguments In Opposition:

It could be argued that the creation of the four new Court of Claims judgeships that would be assigned to hear felony criminal cases in the Supreme Court - Criminal Term, is not justified by rising caseloads statewide. Although the criminal caseload in selected districts (i.e. 4th, 6th, 7th and 8th) is increasing, on a statewide basis new felony criminal filings have been declining in recent years.

6. Other State Agencies Interested:

Office of Court Administration supports this bill.

7. Other Interested Groups:

None known.

8. Budgetary Implications:

The Office of Court Administration (OCA) estimates that the full annual State costs associated with this bill are $5.1 million a year. Of this amount, $1.6 million is required to fund the four paragraph (a) judges and their staff of sixteen (four each) and $3.5 million is required to fund the four paragraph (e) judges and 48 staff (12 each). It is anticipated that the Office of Court Administration will absorb these costs.

9. Recommendation:

This bill would add eight additional Court of Claims judges and make 15 temporary judgeships permanent. We believe that there is ample opportunity for the Office of Court Administration to absorb the bill's $5 million cost within existing resource levels. Accordingly, we have no objection to this bill becoming law.

December 18, 1996

STATE OF NEW YORK

SECTION 2

Judicial Screening

JUDICIAL SCREENING

By Executive Order No. 15, Governor Andrew M. Cuomo established Judicial Screening Committees to evaluate the qualifications of candidates for appointment or designation to judicial office throughout New York State, and to recommend to the Governor those persons who are highly qualified to hold judicial office.

The Judicial Screening Committees are currently accepting applications for the following positions:

Additional Justices of the New York Supreme Court. Appellate Division (for all four Departments)

Applicants must be elected New York State Supreme Court Justices.

Judge of the New York State Court of Claims

Applicants must reside in New York State, be admitted to practice law in New York for at least ten years, and be attorneys in good standing.

Interested candidates should submit an original and fifteen copies of their application and supplemental materials to the address below.

For more information, please contact the New York State Judicial Screening Committees at (518)474-1289 or email: **james.finke@exec.ny.gov**.

Print Form

APPOINTMENTS QUESTIONNAIRE
CONFIDENTIAL

This Appointment Questionnaire is designed to gather detailed information from potential judicial appointees. Please complete this questionnaire using additional sheets as necessary. Every question must be answered. If a question is inapplicable, write N/A in the answer space provided. Please submit an original and fifteen (15) copies of the Appointment Questionnaire, fifteen (15) copies of your resume, and fifteen (15) copies of legal writing sample(s) or decisions. The materials do not need to be bound. If you decide to bind them, please do not bind the original. Please return the completed material to:

James Finke
Executive Chamber
State Capitol
Executive Chamber, Room 239
Albany, New York 12224

FULL NAME _____

HOME ADDRESS _____

SOCIAL SECURITY NUMBER _____

HOME TELEPHONE NUMBER _____

BUSINESS TELEPHONE NUMBER _____

FAX NUMBER _____

PAGER OR CELLULAR PHONE NUMBER _____

EMAIL ADDRESS _____

POSITION OR AREA OF SPECIALIZATION FOR WHICH YOU WISH TO APPLY:

_____

I. BIOGRAPHICAL INFORMATION

A. Date of Birth _____

B. Place of Birth _____

C. Mother's Name _____

1. Place of Birth _____
2. Current Address _____
3. Occupation _____

D. Father's Name _____

1. Place of Birth _____
2. Current Address _____
3. Occupation _____

E. Have you changed your name other than through marriage?

◯ YES ◯ NO

F. Have you used a name other than the one given above?

◯ YES ◯ NO

If yes, please set forth the name (s) and explain why:

_____

_____

G. Are you a U.S. citizen?

◯ YES ◯ NO

H. If you are not a U.S. citizen, do you have a permanent resident alien status?

◯ YES ◯ NO

II. MARITAL STATUS

A. ◯ SINGLE ◯ LEGALLY SEPARATED

◯ MARRIED ◯ DIVORCED

B. If you are currently married, provide the following:

1. Spouse's Name _____

a. Date of Birth _____

b. Place of Birth _____

c. Current Address _____

d. Occupation _____

e. Employer Name and Address _____

_____

2. Date of Current Marriage _____

3. State and County from which marriage certificate was issued

_____

C. If you are formerly married, provide the following for each marriage:

1. Spouse's Name _____

   a. Date of Birth _____

   b. Place of Birth _____

   c. Current Address _____

   d. Occupation _____

2. Spouse's Name _____

   a. Date of Birth _____

   b. Place of Birth _____

   c. Current Address _____

   d. Occupation _____

D. If any prior marriage(s) ended in divorce, annulment or separation, provide the following:

1. Court or Agency where Filed _____

2. Civil Index Number _____

3. Date Filed _____

4. Grounds for Divorce, Annulment, or Separation

_____

E. Child Support and/or Maintenance Obligations

1. Do you have any child support and/or maintenance obligations?

   ◯ YES ◯ NO ◯ N/A

2. Are you current in all of your child support and/or maintenance obligations?

   ◯ YES ◯ NO ◯ N/A

3. Are there any legal proceedings in any court pending against you for non-payment of child support and/or maintenance obligations?

◠ YES ◠ NO ◠ N/A

4. Are there any judgments against you in any court for non-payment of child support and/or maintenance obligations?

◠ YES ◠ NO ◠ N/A

F. Have you ever had an order of protection entered against you in a Family Court proceeding?

◠ YES ◠ NO ◠ N/A

If yes, please explain.

_____

_____

G. Identify your children and provide their respective dates of birth, current address, current occupation and current employer.

Name _____

Date of Birth _____

Address _____

Occupation/Employer _____

Name _____

Date of Birth _____

Address _____

Occupation/Employer _____

Name _____

Date of Birth _____

Address _____

Occupation/Employer _____

Name _____

Date of Birth _____

Address _____

Occupation/Employer _____

H. Please identify any other children whom you are legally responsible for or whom you deduct as dependents on your federal tax return.

_____

_____

_____

_____

I. Please identify any other person whom you are legally responsible for or whom you deduct as dependents on your federal tax return.

_____

_____

III. RESIDENCES

A. List each address and dates of occupancy at which you have lived for the last five years.

_____

_____

_____

_____

_____

1. Please list the persons living in your household (name, age, relationship)

_____

_____

_____

_____

_____

B. If you own your current residence, please provide the following:

1. Mortgage Holder _____
2. Address of Mortgage Holder _____
3. Amount of Mortgage _____
4. Monthly Payment _____

C. If you rent your current residence, please provide the following:

1. Monthly Rental _____

2. Name of Landlord _____

IV. EMPLOYMENT

A. Name of Present Employer _____

Address _____

Date Employment Commenced _____

Position or Title _____

Annual Salary or Wage _____

Typical Bonus _____

B. If you are self-employed or the owner of a business, please provide the name of your business(es) along with the taxpayer identification number(s).

_____

_____

C. Are you now or have you been at any time within the last four (4) years an independent consultant/contractor? If yes, list your clients over the past four (4) years, including periods of consultancy or contract.

_____

_____

_____

_____

_____

D. Please provide the following information with respect to your employers over the last twenty (20) years:

1. Name _____

Address _____

Dates Employed _____ to _____

Final Position or Title _____

Final Annual Salary _____

Typical Bonus _____

2. Name _____

Address _____

Dates Employed _____ to _____

Final Position or Title _____

Final Annual Salary _____

Typical Bonus _____

3. Name _____

Address _____

Dates Employed _____ to _____

Final Position or Title _____

Final Annual Salary _____

Typical Bonus _____

4. Name _____

Address _____

Dates Employed _____ to _____

Final Position or Title _____

Final Annual Salary _____

Typical Bonus _____

E. Involuntary Terminations

1. Have you ever been fired from any job for any reason?

◯ YES ◯ NO

If yes, please explain.

_____

_____

2. Have you ever resigned from any job after being informed that your employment would be terminated?

◯ YES ◯ NO

If yes, please explain.

_____

_____

3. Have you ever had an employment discrimination charge brought against you that has been substantiated by a court of law, administrative agency, arbitrator's decision, or grievance committee finding?

◯ YES ◯ NO

If yes, specify when, by whom and what was the outcome?

_____

_____

V. LEGAL EXPERIENCE

A. Bar Admissions

1. List all bars and courts in which you are admitted or have ever been admitted to practice, other than on a pro hac vice basis, and dates of admission.

_____

_____

_____

_____

2. Have you ever resigned from a position as, or for other reasons ceased to be, a member of the bar of any state or court in any jurisdiction? If yes, describe the circumstances.

_____

_____

_____

_____

3. Have you complied with all registration requirements for lawyers in any jurisdiction in which you are licensed to practice law? If not, describe the circumstances.

_____

_____

_____

_____

4. For your most recent New York State biennial registration period, did you satisfy the mandatory continuing legal education requirement? If not, describe the circumstances.

_____

_____

_____

_____

B. Prior Legal Experience

1. General

   a. List all areas of law in which you have concentrated or have had substantial experience for any sustained period of time and the periods during which you have done so.

   _____

   _____

   _____

   _____

   _____

   b. Prior to admission to any Bar, did you work as a paralegal, clerk, etc.? If yes, give the dates, names and addresses of the entity and people you worked for.

   _____

   _____

   _____

   _____

   _____

2. Litigation

   a. List on a separate piece of paper, with dates, the ten most recent cases in which you have participated during the past five years. State the names, present address and telephone numbers of the attorneys in each such case.

   b. List on a separate piece of paper, with dates, any noteworthy cases in which you have participated. A case could be noteworthy because of its legal significance, or press attention. Include citations to relevant decisions or publicity.

   c. What percentage of your litigation in the last five years was:

      (i) Civil? _____

      (ii) Criminal? _____

   d. State the approximate number of personal appearances you have made in any court during the last five years.

      Number: _____

      (i) What percentage of such appearances was in:

         (i) Supreme Court? _____

         (ii) County Court?

         (iii) Family Court? _____

(iv) District Court? _____

(v) Federal Court? _____

(vi) Other Courts (indicate the type(s) of courts)? _____

e. State the number of trials you have participated in during the past five years, indicating whether you were sole, associate, or chief counsel.

Number: _____

_____

_____

_____

(i) What percentage of your trials in the last five years was:

Jury? _____

Non-jury? _____

f. State the number of appeals you have participated in during the past five years, giving the names of the appellate courts and a general description of subject matter.

Number: _____

_____

_____

_____

(i) List on a separate piece of paper, citations to opinions in the ten most recent appeals in which you have participated during the past five years. Please provide copies of any such written opinions that were not reported.

3. Non-Litigation Representation

a. List on a separate piece of paper, with dates, the ten most recent significant non-litigation legal representations you have participated in during the past five years. State the names, present address and telephone numbers of the attorneys you recall were involved in each such representation.

4. Disciplinary Actions, Malpractice, and other Misconduct

a. Have you ever been disciplined by, or do you have any charges currently pending before any disciplinary committee, commission, or government agency arising out of your official or professional responsibilities? If yes, describe the circumstances.

_____

_____

_____

b. Have you, or any firm or organization that you have ever been a member of, ever been found to have committed legal malpractice, ever settled a case alleging the commission of acts constituting legal malpractice, or is any such legal malpractice claim currently pending? If yes, and if it related to a case or matter on which you worked, describe the finding, settlement or claim and state whether your conduct was the subject of the finding, settlement or claim.

_____

_____

_____

_____

_____

c. Have you, your firm, your employer or any of your clients ever been cited for contempt or otherwise had a sanction imposed upon you or them as a result of your conduct in any judicial or administrative proceeding? If yes, describe the circumstances.

_____

_____

_____

_____

d. Have you ever been sued by a client? If yes, describe the circumstances.

_____

_____

_____

_____

C. Judicial Experience

1. Prior Judicial Experience
   a. List all judicial positions that you have held and all dates that you held such positions.

_____

_____

_____

_____

_____

b. Have you ever resigned from a position as, or for other reasons ceased to be, a member of the bench of any court in any jurisdiction? If yes, describe the circumstances.

_____

_____

_____

_____

c. List all elective or non-elective judicial positions for which you have applied or sought election. Specify the position, the applicable jurisdiction, the relevant dates, and whether you received the position.

_____

_____

_____

_____

d. Have your qualifications for any judicial position previously been reviewed by any committee, Bar Association or other group, including this Committee? If yes, state the position for which you were reviewed, the name and address of the group, the dates you appeared before the group, and the rating, if any, which you were given.

_____

_____

_____

_____

e. Have you ever withdrawn a request that you be reviewed as a candidate for any judicial office by any group? If yes, describe the circumstances.

_____

_____

_____

_____

f. List on a separate piece of paper, with dates, any noteworthy cases over which you have presided. A case could be noteworthy because of its legal significance or press attention. Include citations to relevant decisions and/or publicity.

2. Current Judicial Office Holders (Including Judicial Hearing Officers and Referees)

a. For the most recent New York State biennial registration period, did you satisfy the requirement of attendance at training and education courses? If not, describe the circumstances.

_____

_____

_____

_____

b. State the approximate number of cases you hear per year.

Number: _____

(i) What percentage of these cases is:

(i) Civil? _____

(ii) Criminal? _____

(ii) List on a separate piece of paper, with dates, the ten most recent cases over which you have presided. State the names, present addresses and telephone numbers of the attorneys in each such case. If your ten most recent cases are exclusively civil or criminal in nature, add to the list your three most recent cases from the other side of the docket, regardless of date.

c. State the approximate number of trials over which you preside per year.

Number: _____

(i) What percentage of these trials was:

(i) Civil? _____

(ii) Criminal? _____

(ii) percentage of these trials was:

(i) Jury? _____

(ii) Non-jury? _____

d. State the approximate number of miscellaneous hearings or in-court proceedings over which you preside per year.

Number: _____

(i) What percentage of these hearings/proceedings was:

(i) Civil? _____

(ii) Criminal? _____

e. State the approximate number of motions and applications determined by you per year.

Number: _____

(i) What percentage of these hearings/proceedings was:

(i) Civil? _____

(ii) Criminal? _____

f. State the approximate number of appeals taken in cases over which you presided. State the percentage of these appeals that were affirmed, the percentage that were reversed, and the percentage that were modified.

Number: _____

Percentage affirmed: _____ Percentage reversed: _____ Percentage Modified: _____

a. What percentage of these appeals was:

(i) Civil? _____

(ii) Criminal? _____

b. For criminal appeals, what percentage was:

(i) Taken after plea? _____

(ii) Taken after judgment? _____

c. For civil cases, what percentage was:

(i) Taken after judgment in a jury case? _____

(ii) Taken after judgment in a non-jury case? _____

d. List on a separate piece of paper all your decisions which have been reversed upon appeal, giving citations for every written opinion at every level, including your opinion. Please provide copies of any of your written opinions that were not reported.

g. State the approximate number of interlocutory civil appeals taken in cases over which you presided. State the percentage of these appeals that were affirmed and the percentage that were reversed, and the percentage that were modified.

Number: _____

Percentage affirmed: _____ Percentage reversed: _____ Percentage Modified: _____

h. List on a separate piece of paper citations to all published opinions that you have written in the last three years. If the opinions are not published at this time, please provide copies of at least five recent unpublished opinions. If the names and addresses of all counsel in each case are not shown in the opinion, please supply those names and addresses if they are available to you.

3. Current and Former Appellate Judges

a. List on a separate piece of paper citations for all your opinions (including dissenting or concurring opinions) that you authored as an Appellate Judge. If the opinions are not published at this time, please provide copies of all such unpublished opinions.

b. List on a separate piece of paper citations to any decision reversing or modifying any of the opinions listed above. If the decisions are not published at this time, please provide copies of all such unpublished decisions.

D. Teaching and Lecturing Experience

1. Have you engaged in teaching law? If yes, state when, where, and the subjects taught.

_____

_____

_____

_____

2. Have you lectured or participated as a panelist at any schools or seminars conducted by any bar association or other organization of the legal profession? If so, specify dates and details.

_____

_____

_____

_____

E. Judicial Capacity

1. Do you know of any factors that would adversely affect your ability to serve competently as a judge, to comply with a judge's ethical responsibilities, or to complete the day-to-day responsibilities that a judge is required to assume that could not be overcome by a reasonable accommodation? If yes, describe the circumstances.

_____

_____

_____

VI. GOVERNMENT SERVICE

A. Identify any experience in or association with any local, state or federal governmental entity (including advisory, consultative, honorary or other part-time service or positions). Specify the dates of such service.

_____

_____

_____

B. Identify all elective public offices which you have sought and/or held. Specify the dates of such service.

_____

_____

_____

C. Are you currently receiving or are you currently entitled to receive any pension benefit from any governmental entity?

◠ (Y) ◠ (N)

D. Are you currently receiving or are you currently entitled to receive any disability benefits?

◠ (Y) ◠ (N)

E. If your answer to question C or D of this section is yes, please identify the governmental entity and specify when you began to receive or were entitled to receive such benefits.

_____

_____

F. If you are receiving or are entitled to receive benefits from any governmental entity, please identify your retirement system and registration number.

_____

_____

G. Are you or any member of your household now receiving or applying for public assistance?

◠ (Y) ◠ (N)

H. Have you ever been removed from public employment or asked to resign for disciplinary reasons?

◠ (Y) ◠ (N)

If yes, set forth the circumstances.

_____

_____

_____

VII. EDUCATIONAL BACKGROUND

A. High School

1. Name and address of last high school attended

_____

2. Dates attended _____ to _____

3. Did you graduate? ◠ YES ◠ NO

4. Please identify any other high schools that you attended

_____

5. If you have an equivalency diploma, please specify when it was obtained

_____

B. College

1. Name and address of last undergraduate college attended

_____

2. Dates attended _____ to _____

3. Did you graduate? ◠ YES ◠ NO

   a. Type of Degree _____

   b. Major Field _____

   c. Approximate Rank in Class _____

4. List any scholarships, fellowships, honorary degrees or any other awards that you received.

_____

_____

_____

5. Please identify any other colleges that you attended. Specify the dates of attendance and any degrees obtained.

_____

_____

_____

_____

C. Graduate or Professional School

1. Name and address of school (if more than one, use a separate sheet to answer this question)

_____

2. Dates attended _____ to _____

3. Did you graduate? ◠ YES ◠ NO

   a. Type of Degree _____

   b. Major Field _____

   c. Approximate Rank in Class _____

4. List any scholarships, fellowships, honorary degrees or any other awards that you received.

_____

_____

D. Were you ever expelled, suspended, placed on probation, or subject to any other disciplinary action while attending any of the colleges, professional schools or other institutions that you listed in sections "B" and "C" above?

◠ YES ◠ NO

If yes, please explain the circumstances.

_____

_____

VIII. PROFESSIONAL CERTIFICATIONS

A. Please identify all professional licenses and certifications that you hold or have ever held. Specify the dates and the conferring authorities.

_____

_____

B. Has any professional license or certification ever been suspended or revoked?

◠ YES ◠ NO

If yes, please explain the circumstances.

_____

_____

C. Have you ever been the subject of any proceeding, inquiry or investigation by any professional association, including any bar association, of which you are a member?

◯ YES ◯ NO

If yes, please explain the circumstances.

_____

_____

D. Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or been the subject of a complaint to, any court, administrative agency, bar association, disciplinary committee, or other professional group? If so, please give the particulars.

◯ YES ◯ NO

_____

_____

IX. MILITARY SERVICE

A. Have you ever served in the military?

◯ YES ◯ NO

B. If yes, please list highest rank, branch of service, dates of service and type of discharge.

_____

_____

C. Are you a member of the Reserves or National Guard?

◯ YES ◯ NO

If yes, when does your obligation end?

_____

X. ORGANIZATIONAL AFFILIATIONS

A. Identify any professional/business organizations of which you are a member. Specify the name and address of the organization, the dates of your membership and any title that you hold in the organization.

_____

_____

_____

_____

B. Identify all memberships and offices held in and services rendered to all political parties or election committees during the past ten (10) years. If you received compensation, please provide the particulars.

_____

_____

_____

_____

C. Identify any civic, educational or charitable organizations of which you are a member. Specify the name and address of the organization, the dates of your membership and any title that you hold in the organization.

_____

_____

_____

_____

D. List any office, trusteeship, directorship, partnership, or position of any nature, whether compensated or not, that you hold with any firm, corporation, association, partnership, or other organization other than the State of New York. Include compensated honorary positions; do NOT list membership or uncompensated honorary positions. If the listed entity was licensed by any state or local agency, was regulated by any state regulatory agency or local agency, or, as a regular and significant part of the business or activity of said entity, did business with or had matters other than ministerial matters before any state or local agency, list the name of any such agency. If you received compensation, please provide the particulars.

_____

_____

_____

_____

_____

E. List any office, trusteeship, directorship, partnership, or position of any nature, whether compensated or not, held by your spouse with any firm, corporation, association, partnership, or other organization other than the State of New York. Include compensated honorary positions; do NOT list membership or uncompensated honorary positions. If the listed entity was licensed by any state or local agency, was regulated by any state regulatory agency or local agency, or, as a regular and significant part of the business or activity of said entity, did business with, or had matters other than ministerial matters before any state or local agency, list the name of any such agency. If your spouse received compensation, please provide the particulars.

_____

_____

_____

_____

_____

F. Identify any fraternal organizations of which you are a member. Specify the name and address of the organization, the dates of your membership and any title that you hold in the organization.

_____

_____

G. Identify any recreational/leisure organizations (e.g., country club, yacht club, tennis club) of which you are a member. Specify the name and address of the organization, the dates of your membership and any title that you hold in the organization.

_____

_____

_____

H. To your knowledge, are you or have you ever been a member of any organization that restricted admission on the basis of race, color, religion, age, sexual orientation, national origin, disability, or marital status?

◯ YES ◯ NO

If yes, please describe.

_____

_____

_____

I. Have you ever been associated with any person, group or business venture that could be used to impugn or attack your character and qualifications for the position to which you seek to be appointed?

◠ YES ◠ NO

If yes, please describe.

_____

_____

_____

XI. PUBLISHED WORKS, SPEECHES AND AWARDS

A. Published Works

Identify the titles, publishers and dates of books, articles, reports or other opinion statements which you have written (even under another name) that have been published. Please submit a copy of any book, article, report or other published opinion statement.

_____

_____

_____

_____

_____

_____

B. Speeches

Identify the title of any speech that addresses a topic related to the position for which you are applying and that you have delivered during the last four (4) years. Please include the date of delivery and the audience. If the speech has been reduced to writing or transcribed, please submit a copy.

_____

_____

_____

C. Honors and Awards

Identify all honors and awards that you have received in the past ten (10) years. Please include the date you received the award and the conferring organization.

_____

_____

_____

_____

_____

XII. REFERENCES

A. Please identify three (3) individuals who know you well in your business and/or professional life over the last five (5) or more years.

1. Name _____

   Residence Address _____

   Home Telephone _____

   Employer or Business Name _____

   Business Address _____

   Business Telephone _____

   Years Known _____

2. Name _____

   Residence Address _____

   Home Telephone _____

   Employer or Business Name _____

   Business Address _____

   Business Telephone _____

   Years Known _____

3. Name _____

   Residence Address _____

   Home Telephone _____

   Employer or Business Name _____

   Business Address _____

   Business Telephone _____

   Years Known _____

B. Please identify three (3) individuals who know you well in your personal life and who are not related to you.

1. Name _____

   Residence Address _____

   Home Telephone _____

   Employer or Business Name _____

   Business Address _____

   Business Telephone _____

   Years Known _____

2. Name _____

   Residence Address _____

   Home Telephone _____

   Employer or Business Name _____

   Business Address _____

   Business Telephone _____

   Years Known _____

3. Name _____

   Residence Address _____

   Home Telephone _____

   Employer or Business Name _____

   Business Address _____

   Business Telephone _____

   Years Known _____

XIII. CONFLICT OF INTEREST INQUIRIES

A. Are you or any of your immediate family members (i.e., spouse/domestic partner and children or parents and siblings, as applicable to your circumstances.) related to any State of New York official or employee?

◯ YES ◯ NO

If yes, please provide details.

_____

_____

_____

B. Are you or any of your immediate family members related to any United States government official or employee?

◯ YES ◯ NO

If yes, please provide details.

_____

_____

_____

C. Are you or any of your immediate family members related to any official or employee of a municipal subdivision of the State of New York?

◯ YES ◯ NO

If yes, please provide details.

_____

_____

_____

D. During the past five (5) years, have you or any other immediate family members received any compensation or been involved in any financial transactions with the State of New York, any of its agencies, public authorities, public corporations or public educational institutions (i.e., SUNY, CUNY)?

◯ YES ◯ NO

If yes, please provide details.

_____

_____

_____

E. During the past five (5) years, have you or any immediate family members received any compensation or been involved in any financial transactions with the United States government, any of its agencies, public authorities or public corporations?

◠ YES ◠ NO

If yes, please provide details.

_____

_____

_____

F. During the past five (5) years, have you or other immediate family members received any compensation or been involved in any financial transactions with any local government or municipal subdivision of the State of New York, any of their agencies, public authorities or public corporations?

◠ YES ◠ NO

If yes, please provide details.

_____

_____

G. During the past five (5) years, have you or other immediate family members received any compensation or been involved in any financial transactions with any State of New York official in his/her personal capacity?

◠ YES ◠ NO

If yes, please provide details.

_____

_____

_____

H. Please describe any business relationship, dealing or financial transaction which you have had during the past five (5) years, whether for yourself, or on behalf of a client, or acting as an agent, which you believe may constitute an appearance of impropriety or may result in a potential conflict of interest in the position for which you seek appointment. If none, please so state.

_____

_____

_____

I. Describe any business relationship, dealing or financial transaction which any immediate family member has had during the past five (5) years, whether for himself/herself, or on behalf of a client, or acting as an agent, which you believe may constitute an appearance of impropriety or may result in a potential conflict of interest in the position for which you seek appointment. If none, please so state.

_____

_____

_____

J. Does any member of your immediate family hold an employment position that is related in any way to the position that you seek? If so, please identify the employer, the position and the length of time it has been held.

_____

_____

_____

K. Describe briefly any lobbying activity that you have engaged in during the past ten (10) years for the purpose of influencing any legislative or administrative action within the State of New York.

NOTE: "Lobbying activity" includes any activity performed as an individual or agent of another individual or of any organization that involves direct communication with an official in the executive branch, the legislative branch, or any public authority, agency or educational institution of New York State government.

_____

_____

_____

L. Have you registered as a lobbyist with the Temporary Commission on Lobbying?

◯ YES ◯ NO

If yes, please explain.

_____

_____

M. Describe briefly any lobbying activity that any member of your immediate family has engaged in during the past ten (10) years for the purpose of influencing any legislative or administrative action within the State of New York.

_____

_____

_____

N. Please describe any other matter in which you have been involved which may be incompatible or in conflict with the discharge of the duties of the position that you seek, or any matter which may impair or tend to impair your independence of judgment or action in the performance of your duties. If there is none, please so state.

_____

_____

_____

O. Outside Employment

1. Do you have any commitments or agreements to pursue outside employment, with or without compensation, while you may be employed by the State of New York?

◯ YES ◯ NO ◯ N/A

If yes, please explain.

_____

_____

2. Do you intend to sever all connections with your present employer or business firm, association or organization if you are appointed to the position you seek?

◯ YES ◯ NO ◯ N/A

If no, please explain.

_____

_____

_____

XIV. FINANCIAL MATTERS

A. Liens or Judgments

1. Are there any liens or judgments against you or any business in which you are an owner, officer, director or partner?

◠ YES ◠ NO

If yes, please explain.

_____

_____

_____

2. Has a collection proceeding ever been instituted against you by any federal, state, or local taxing authority; or any other government entity?

◠ YES ◠ NO

If yes, please explain.

_____

_____

_____

B. Tax Liabilities

1. Are you or any business in which you are an owner, officer, director or partner in arrears with regard to any tax obligations to federal, state and local authorities?

◠ YES ◠ NO

If yes, please explain.

_____

_____

_____

2. Are there any tax liens currently assessed or pending against you, any business in which you are an owner, officer, director or partner, or any real property in which you have a beneficial or legal interest?

◠ YES ◠ NO

If yes, please explain.

_____

_____

_____

3. Have your city, state or federal income tax returns been the subject of any audit, investigation, warrant or inquiry resulting in the assessment of a penalty?

◠ YES ◠ NO

If yes, please explain.

_____

_____

_____

4. Within the last five (5) years, have you employed any domestic or household help?

◠ YES ◠ NO

a. If you employed domestic or household help, did you file the appropriate reports with the taxing authorities and pay withholding taxes?

◠ YES ◠ NO ◠ N/A

If no, please explain.

_____

_____

_____

b. If you employed domestic or household help, have you verified that any domestic or household help that you employed are U.S. citizens or documented aliens?

◠ YES ◠ NO ◠ N/A

If no, please explain.

_____

_____

_____

C. Student Loans

1. Are you, your spouse or any of your unemancipated children in arrears on the repayment of any student loan(s)?

◠ YES ◠ NO

If yes, please provide the name of the lender, the amount that is currently overdue and the length of time of the delinquency.

_____

_____

_____

2. Have you, your spouse or any of your unemancipated children ever defaulted on a student loan?

◠ YES ◠ NO

If yes, please provide the name of the lender, the amount of the default and the disposition of the loan.

_____

_____

_____

D. Bankruptcies

1. Have you, your spouse or any corporation, firm, partnership or other business enterprise or non-profit organization or other institution in which you or your spouse have served as an owner, officer, director, trustee or partner ever filed a petition for bankruptcy under the U.S. Bankruptcy Code?

◠ YES ◠ NO

If yes, please explain.

_____

_____

_____

2. Have you, your spouse or any corporation, firm, partnership or other business enterprise or non-profit organization or other institution in which you or your spouse have served as an owner, officer, director, trustee or partner ever been adjudicated a bankrupt under the U.S. Bankruptcy Code?

◯ YES ◯ NO

If yes, please explain.

_____

_____

_____

3. Have you, your spouse or any corporation, firm, partnership or other business enterprise or non-profit organization or other institution in which you or your spouse have served as an owner, officer, director, trustee or partner ever been the subject of a receivership proceeding?

◯ YES ◯ NO

If yes, please explain

_____

_____

_____

_____

_____

_____

E. Gifts:

1. List each source of gifts EXCLUDING campaign contributions, in EXCESS of $1,000, received during the past five years by you or your spouse or unemancipated child, EXCLUDING your gifts from a relative. INCLUDE the name and address of the donor. The term "gift" does not include reimbursements. Indicate the value and nature of each such gift.

☐ NONE

Self Spouse Or Child	Name Of Donor	Address	Nature Of Gift	Category Of Value Of Gift*

*VALUE/AMOUNT CATEGORIES A - UNDER $5,000 B - $5,000 TO UNDER $20,000 C - $20,000 TO UNDER $60,000 D - $60,000 to under $100,000 E - $100,000 TO UNDER $250,000 F - $250,000 or over

F. Agreements

1. Describe the terms of, and the parties to, any contract, promise, or other agreement betweeen you and any person, firm, or corporation with respect to the employment of you after leaving office or position.

☐ NONE

2. Describe the parties to and the terms of any agreement providing for continuation of benefits to you in EXCESS of $1,000 from a prior employer OTHER THAN the State. (This includes interests in or contributions to a pension fund, profit-sharing plan, or life or health insurance, buy-out agreements; severance payments; etc.)

☐ NONE

_____

_____

_____

_____

_____

G. Other Income, Assets and Liabilities:

1. List below the nature and amount of any income in EXCESS of $1,000 from EACH SOURCE for you and your spouse for the most recent taxable year. Nature of income includes, but is not limited to, all income from compensated employment, whether public or private, directorships and other fiduciary positions, contractual arrangements, teaching income, partnerships, honorariums, lecture fees, consultant fees, bank and bond interest, dividends, income derived from a trust, real estate rents, and recognized gains from the sale or exchange of real or other property. Income from a business or profession and real estate rents shall be reported with the source identified by the building address in case of real estate rents and otherwise by the name of the entity and not by the name of the individual customers, clients or tenants, with the aggregate net income before taxes for each building address or entity. The receipt of maintenance received in connection with a matrimonial action, alimony and child support payments shall not be listed.

☐ NONE

Self/Spouse	Source	Nature	Category of Amount*

*VALUE/AMOUNT CATEGORIES
A - UNDER $5,000
B - $5,000 TO UNDER $20,000
C - $20,000 TO UNDER $60,000
D - $60,000 to under $100,000
E - $100,000 TO UNDER $250,000
F - $250,000 or over

2. List the sources of any deferred income (not retirement income) in EXCESS of $1,000 from each source to be paid to you following the close of this calendar year, other than deferred compensation reported above. Deferred income derived from the practice of a profession shall be listed in the aggregate and shall identify as the source, the name of the firm, corporation, partnership or association through which the income was derived, but shall not identify individual clients.

☐ NONE

Self/Spouse	Source	Nature	Category of Amount*

*VALUE/AMOUNT CATEGORIES
A - UNDER $5,000
B - $5,000 TO UNDER $20,000
C - $20,000 TO UNDER $60,000
D - $60,000 to under $100,000
E - $100,000 TO UNDER $250,000
F - $250,000 or over

3. List below the type and market value of securities held by you or your spouse from each issuing entity in EXCESS of $1,000 at the close of the most recent taxable year, including the name of the issuing entity exclusive of securities held by the reporting individual issued by a professional corporation. Whenever an interest in securities exists through a beneficial interest in a trust, the securities held in such trust shall be listed ONLY IF you have knowledge thereof except where you or your spouse has transferred assets to such trust for his or her benefit in which event such securities shall be listed unless they are not ascertainable by you because the trustee is under an obligation or has been instructed in writing not to disclose the contents of the trust to you. Securities of which you or your spouse are the owner of record but in which you or your spouse has no beneficial interest shall not be listed. Indicate percentage of ownership ONLY if you or your spouse holds more than five percent (5%) of the stock of a corporation in which the stock is publicly traded or more than ten percent (10%) of the stock of a corporation in which the stock is NOT publicly traded. Also list securities owned for investment purposes by a corporation more than fifty percent (50%) of the stock of which is owned or controlled by you or your spouse. For the purpose of this item, the term "securities" shall mean mutual funds, bonds, mortgages, notes, obligations, warrants and stocks of any class, investment interests of any class, investment interests in limited or general partnership and certificates of deposits (CDs) and such other evidences of indebtedness and certificates of interest as are usually referred to as securities. The market value for such securities shall be reported only if reasonably ascertainable and shall not be reported if the security is an interest in a general partnership that was listed in Item G(A) or if the security is corporate stock, NOT publicly traded, in a trade or business of you or your spouse.

☐ NONE

Self/Spouse	Issuing Entity	Type of Security	Percentage of Corporate Stock Owned or Controlled*	Category of Market Value**

* If more than 5% of publicly traded stock, or more than 10% of stock not publicly traded, is held.
** Category of Market Value as of the close of the most recent taxable year.

VALUE/AMOUNT CATEGORIES
A - UNDER $5,000
B - $5,000 TO UNDER $20,000
C - $20,000 TO UNDER $60,000
D - $60,000 to under $100,000
E - $100,000 TO UNDER $250,000
F - $250,000 or over

4. List below the location size, general nature, acquisition date, market value and percentage of ownership of any real property in which any vested or contingent interest in EXCESS of $1,000 is held by you or your spouse. Also list real property owned for investment purposes by a corporation more than fifty percent (50)% of the stock of which is owned or controlled by you or your spouse. Do NOT list any real Property which is the primary or secondary personal residence of you or your spouse, except where there is a co-owner who is other than a relative.

☐ NONE

Self/Spouse/ Corporation	Location	Size	General Nature	Acquisition Date	Percentage of Ownership	Category of Market Value*

VALUE/AMOUNT CATEGORIES
A - UNDER $5,000
B - $5,000 TO UNDER $20,000
C - $20,000 TO UNDER $60,000
D - $60,000 to under $100,000
E - $100,000 TO UNDER $250,000
F - $250,000 or over

5. List below all notes and accounts receivable, other than from goods or services sold, held by you at the close of the most recent taxable year and other debts owed to you at the close of the most recent taxable year in EXCESS of $1,000 including the name of the debtor, type of obligation, date due and the nature of the collateral securing payment of each, if any, excluding securities.

☐ NONE

Name of Debtor	Type of Obligation, Date Due, and Nature of Collateral, if any	Category of Amount*

VALUE/AMOUNT CATEGORIES	A - UNDER $5,000	C - $20,000 TO UNDER $60,000	E - $100,000 TO UNDER $250,000
	B - $5,000 TO UNDER $20,000	D - $60,000 to under $100,000	F - $250,000 or over

6. List below all liabilities of you and your spouse, in EXCESS of $5,000 as of the date of filing of this application, other than liabilities to a relative. Do NOT list liabilities incurred by, or guarantees made by, you or your spouse or by any proprietorship, partnership or corporation in which you or your spouse has an interest, when incurred Or made in the ordinary course of the trade, business or professional practice of you or your spouse. Include the name of the creditor and any collateral pledged by you or your spouse to secure payment of any such liability. You shall not list any obligation to pay maintenance in connection with a matrimonial action, alimony or child support payments. Any loan issued in the ordinary course of business by a financial institution to finance educational costs, the cost of home purchase or improvements for a primary or secondary residence, or purchase of a personally owned motor vehicle, household furniture or appliances shall be excluded. If any such reportable liability has been guaranteed by any third person, list the liability and name the guarantor.

☐ NONE

Name of Creditor Or Guarantor	Type of Liability and Collateral, if any	Category of Amount*

VALUE/AMOUNT CATEGORIES	A - UNDER $5,000	C - $20,000 TO UNDER $60,000	E - $100,000 TO UNDER $250,000
	B - $5,000 TO UNDER $20,000	D - $60,000 to under $100,000	F - $250,000 or over

XV. GENERAL MATTERS

A. Criminal Convictions

Have you ever been convicted of or entered a plea of guilty or nolo contendere or forfeited collateral for any felony, misdemeanor or violation other than for minor traffic violations?

◠ YES ◠ NO

If yes, please explain.

_____

_____

_____

B. Investigatory Actions

Have you ever been the subject of any inquiry or investigation by a federal, state or local agency (other than for routine background investigations for employment purposes)?

◠ YES ◠ NO

If yes, please explain.

_____

_____

_____

C. Contempt

Have you ever been cited for contempt of any court, legislative, civil or criminal investigative body or grand jury?

◠ YES ◠ NO

If yes, please explain.

_____

_____

_____

D. Driver's License

1. Please list driver's license number and issuing state.

_____

2. Has your driver's license ever been suspended or revoked?

◠ YES ◠ NO

If yes, please explain.

_____

_____

_____

E. Parking Tickets

Do you have any outstanding parking tickets from any jurisdiction in New York which have remained unpaid for more than thirty (30) days?

◠ YES ◠ NO

If yes, please explain.

_____

_____

_____

F. Civil Litigation

1. Have you or any business in which you are an owner, officer, director or partner ever been a plaintiff or a defendant in a civil lawsuit?

◠ YES ◠ NO

If yes, please specify the nature of the action, its title and index number or civil action number, and the disposition or status of the case.

_____

_____

2. For current past judicial office holders or other public officers, have you ever been named as a defendant in a lawsuit in your official capacity?

◠ YES ◠ NO

If yes, please specify the nature of the action, its title and index number or civil action number, and the disposition or status of the case.

_____

_____

3. Is any person or entity currently threatening to sue you or any business in which you are an owner, officer, director or partner?

◠YES ◠NO

If yes, please specify the name and address of the claimant and explain any pertinent details.

_____

_____

_____

4. Are you or have you ever been a party in interest in any administrative agency proceeding or lawsuit that is related in any way to the position that you seek?

◠YES ◠NO

If yes, please explain and provide the title of any litigation, its index number or civil action number and the disposition or status of the case.

_____

_____

5. Has any business in which you, your spouse, an immediate family member or business associate are or were an owner, officer, director or partner been a party to any administrative agency proceeding or lawsuit that is related in any way to the position that you seek?

◠YES ◠NO

If yes, please explain and provide the title of any litigation, its index number or civil action number and the disposition or status of the case.

_____

_____

G. Compliance with Health and Safety Statutes

1. Do you, your spouse or immediate family member own or have any interest in any real property which during the time of such ownership has been cited for health or environmental violations by federal, state, or local authorities?

◠YES ◠NO

If yes, please explain.

_____

_____

_____

2. Do you, your spouse or immediate family member own or have any interest in any real property which during the time of such ownership has been condemned or closed by federal, state or local authorities?

◯ YES ◯ NO

If yes, please explain.

_____

_____

_____

3. Do you, your spouse or immediate family member own or have any interest in any real property which during the time of such ownership has been identified as containing hazardous materials?

◯ YES ◯ NO

If yes, please explain.

_____

_____

_____

H. Are you registered to vote?

◯ YES ◯ NO

I. Have you voted consistently over the past ten (10) years or since you graduated from high school?

◯ YES ◯ NO

J. Are you willing to relocate within the State of New York if you receive an appointment?

◯ YES ◯ NO ◯ N/A

XVI. FUTURE INTENTIONS

A. Do you expect to serve the full term for which you may be appointed?

◯ YES ◯ NO

If no, please explain.

_____

_____

_____

B. As far as can be foreseen, do you intend to resume employment, affiliation or practice with your previous employer, business firm, association or organization after completing government service?

◠ YES ◠ NO ◠ N/A

If yes, please explain.

_____

_____

C. Has anyone offered to employ you after you leave government service?

◠ YES ◠ NO ◠ N/A

If yes, please explain.

_____

_____

XVII. ADDITIONAL INFORMATION AND DISCLOSURES

A. Is there any information not otherwise elicited by this questionnaire which would affect, favorably or unfavorably, your eligibility for the judiciary? If so, please set it forth.

_____

_____

_____

B. Appointees as well as candidates for appointment may be subject to scrutiny by the public and the media. Accordingly, please set forth any additional disclosures that you believe should be considered with your application.

_____

_____

_____

AUTHORIZATION AND RELEASE OF PERSONAL INFORMATION AND CERTIFICATION

I understand that if I accept an offer of employment, any false statement on this questionnaire may result in dismissal. I further understand that this questionnaire is not an offer of employment, nor does it obligate the Cuomo administration in any way.

The Cuomo administration and its individual members and advisors and the State of New York are authorized to make any investigation of my background that they deem appropriate. They are hereby authorized to investigate any criminal activity, court records, and/or credit reports through any law enforcement, investigative or credit agencies or bureaus of their choice.

I hereby release from liability the Cuomo administration and its individual members and advisors, the State of New York and all persons supplying information in connection with this appointments questionnaire, and I further release such persons and agencies from any obligation to provide me with notification of such disclosure.

I certify that I have reviewed the information in this questionnaire and that to the best of my knowledge the information I have supplied is complete, true and accurate.

Do you consent to a copy of this questionnaire being reviewed by the Judiciary Committee of the New York State Senate if you are nominated for the position you seek?

◯ YES ◯ NO ◯ N/A

Dated: _____ _____

Signature

PLEASE KEEP A COPY OF THIS FORM FOR YOUR RECORDS

CONSENT, AUTHORIZATION AND RELEASE

I, _____ hereby authorize any investigative or professional standards or disciplinary committee, firm, company, governmental agency, law enforcement agency, court, association, institute, board or any public or private authority to provide information, copies or inspection of any and all records, documents or other data relating to me in its possession to: the Governor of the State of New York, his agents and employees and the New York State Senate Committee on Finance, its agents and employees.

The undersigned further authorizes the Commission on Judicial Conduct or any attorney disciplinary, review or sanctioning body or committee to provide information, copies or inspection of any and all records, documents, data and or complaints, including but not limited to formal and/or informal inquiries, petitions or letters of grievance, including investigations or inquiries which may be pending or closed and those which have been dismissed or otherwise deemed erased as a matter of law, relating to me in its possession to: the Governor of the State of New York, his agents and employees and the New York State Senate Committee on Finance, its agents and employees.

The undersigned further authorizes any bar association, group, committee or organization which has interviewed and/or rated me as a candidate for any office, including a judicial office, to provide information relating to or copies or inspection of any and all records and documents relating to me in its possession to: the Governor of the State of New York, his agents and employees and the New York State Senate Committee on Finance, its agents and employees.

I hereby release, discharge, exonerate and hold harmless the Governor of the State of New York, his agents and employees and the New York State Senate Committee on Finance, its agents and employees and any person or entity furnishing information from any and all liability of every nature and kind arising out of the furnishing, inspection, receipt and disposition of such documents, records, and other information and understand that by my execution of this waiver that all information provided to said persons or bodies shall be kept strictly confidential but shall not abrogate or otherwise suspend the right or ability of the herein named persons or bodies from sharing any and all information with the appropriate law enforcement or disciplinary committee, body or entity.

A signed facsimile copy of this Consent and Authorization shall be adequate authority to provide either access to or copies of all of the heretofore described records, documents and information.

_____ _____
Signature Date

STATE OF NEW YORK }

COUNTY OF _____

On the _____ day of _____, 20____, before me came _____, to me personally known and who acknowledged to me that he/she has voluntarily executed the above Consent, Authorization and Release.

_____
Notary Public

FOR OFFICIAL USE ONLY
☐ IT-201 (long form)
☐ IT-200 (short form)
☐ IT-100 (fast form)

TO: State of New York
Department of Taxation and Finance
W. A. Harriman Campus
Albany, New York 12227

I, _____, authorize the Department of Taxation and Finance to examine any of my personal income tax returns for any year, including any schedules and attachments to those returns, for the purpose of ascertaining the correctness of those returns, schedules and attachments. I also authorize the Tax Department to inspect any correspondence, including protests, I may have had with the Department concerning those returns, schedules or attachments. If the Department of Taxation and Finance determines that any return, schedule, or attachment is incorrect in any detail, or information in any correspondence or protest might affect my personal income tax liability for past or future years, I authorize the Department of Taxation and Finance to disclose those returns, schedules, attachments and correspondence as well as any information learned during an investigation of personal income tax liability, to the Counsel to the Governor or his designee and to discuss its findings with said Counsel or such designee. I will commence no claim against the State of New York, the Department of Taxation and Finance and its officers if they make this disclosure according to this release.

My social security number is _____

_____
(Signature)

REMARKS

_____

_____

_____

_____

ACKNOWLEDGEMENT

STATE OF NEW YORK)
) SS.:
COUNTY OF _____

On this _____ day of _____ 20____ before me personally came _____, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

_____
NOTARY PUBLIC

Print Form

State Committee Members
First Department Committee Members
Second Department Committee Members
Third Department Committee Members
Fourth Department Committee Members

New York State Judicial Screening Committees
State Capitol
Room 239
Albany, New York 12224
(518) 474-1289
(518) 473-5153 – Fax

New York State Judicial Screening Committees

State Capitol
Room 239
Albany, New York 12224
(518) 474-1289

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