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INDEPENDENT NOMINATING PETITION RULES FOR 2010 SPECIAL ELECTIONS

Adopted: December 22, 2009

These Rules are adopted by the Board of Elections in the City of New York pursuant to Election Law § 6-154 (2). Everyone is urged to consult the Election Law and Regulations of the New York State Board of Elections, 9 NYCRR §6215 as well as these Rules.

DEFINITIONS:

Petition - A “petition” is all of the sheets, which may be filed with the Board in one or more volumes, together with any required cover sheet, which nominate the same candidate for a particular public office. ¹

Petition Volume - A “petition volume” is the securely fastened grouping of petition sheets for one or more candidates or group of candidates.

Cover Sheet - A “cover sheet” is the form (as set forth in Rule C of these Rules) to be filed with the Board which summarizes what petition volume or volumes comprise the petition for each candidate for a particular public office or party position.

A. GENERAL REQUIREMENTS

- A1. Sheets of a nominating 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.
- A2. All papers required to be filed pursuant to Section 1-106 of the Election Law shall, unless otherwise provided, be filed in person between the hours of 9:00 a.m. and 5:00 p.m. at the Executive Office of the Board of Elections, 32 Broadway, 7th Floor, Borough of Manhattan, New York, N.Y. 10004. 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. The Board of Elections shall be open for the receipt of any document from 9:00 a.m. until Midnight on the last day to file any such document. Failure of any person or entity to

¹ In accordance with the Decision and Order entered by the U.S. District Court for the Eastern District of New York in *Chou v. New York State Board of Elections* [332 F. Supp. 2d 510 (2004)] which held that the requirement that the witness to an independent nominating petition be a resident of the political subdivision wherein the candidate is seeking election is unconstitutional and the representations made to the Court therein by the Board of Elections in the City of New York, the Board of Elections will not entertain any specification of objection in this regard even if the subscribing witness utilizes the language set forth on the sample form prescribed the State Board of Elections pursuant to the Election Law, which does not conform to the Court's Order and the witness resides outside of the applicable political subdivision.

deliver any such document to the Board of Elections on or before the last day to file same shall be a fatal defect.

- A3. (1) The order of ballot for a SPECIAL ELECTION (held at a time other than the General Election) shall be determined for Independent Nominations by the first candidate to file a cover sheet, if required, and a sufficient number of signatures to qualify that candidate to appear on the ballot.
- (2) The order of ballot for the GENERAL ELECTION shall be determined for Independent nominations by the first candidate for the highest office for which an independent nominating petition has been filed (following the customary order of offices on the General Election Ballot) appearing on that General Election ballot to file a cover sheet, if required, and a sufficient number of signatures to qualify that candidate to appear on the ballot.
- A4. Any determination regarding the name and/or emblem of independent bodies shall be made using the standard set forth in Rule A3.

B. IDENTIFICATION NUMBERS

- B1. No one is required to apply for a petition volume identification number before filing any petition volume. However, any person may apply for a petition volume identification number by submission of an Identification Number Application Form. Identification Number Application Forms are available at the Candidate Records Unit, 32 Broadway, 7th Floor, New York, NY. If a petition volume identification number has been assigned before the petition volume is filed, the petition volume identification number must appear prominently on the top of the petition volume, on any cover sheet, and on each copy of the lists of candidates submitted with the petition volume. The Board requests that petition volume identification numbers **not** be placed on the petition volume's binding.
- B2. The Board will inscribe petition volume identification numbers on all application forms. These forms will be retained in a binder for public inspection.

- B3. A pre-assigned petition volume identification number shall be used only by the candidate/s or applicant/s named in the application. Petition volume identification numbers are not transferable or assignable.
- B4. A pre-assigned petition volume identification number shall be used only for the election event for which the application is made.
- B5. Whenever a petition volume is filed without a pre-assigned petition volume identification number, the Board will assign a petition volume identification number at the time the petition volume is filed.

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 contain the following information:
 - a) the office, the independent body's name and district number (where appropriate) for which each 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 shall 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 in the petition on the cover sheet;
 - 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 and to receive copies of any specifications of objections (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.

- C3. An amended cover sheet must clearly identify the original cover sheet, which it is amending, or attach a copy of the original cover sheet, which it is amending. 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.
- C4. 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.

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 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 and/or the cover sheet, as applicable. 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.

D5. If the Board determines that an attempt to cure a defect does not comply with these Rules or the Election Law, the Board shall, upon expiration of the three (3) business days set forth in Rule D4, 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. 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.

E. PRIMA FACIE MATTERS

- E1. The Board of Elections reviews each Cover Sheet and Petition to insure compliance with the New York State Election Law. On occasion, the Board determines that it appears that a Cover Sheet and/or Petition, on its face, fails to comply with the requirements of the New York State Election Law and is not subject to a cure under Section 6-134(2) of the Election Law. In that event, the Board shall notify the candidate or designated contact person in writing, of the Board's preliminary finding of a Prima Facie defect and advise the candidate/contact person that he/she may appear at the commencement of the Board's hearings on said petitions to contest such preliminary finding. Such review, preliminary finding and final determination shall be without prejudice to the Board's subsequent determination of objections and specifications of objections filed pursuant to the provisions of the Election Law and these Rules.
- E2. In accordance with the provisions of Section 6-138(3) (a) of the Election Law, the name selected for the independent body shall not include the name or part of the name or an abbreviation of the name or part of the name, nor shall the emblem or name of such a configuration as to create the possibility of confusion with the emblem or name of a then existing political party. The inclusion of such name is a fatal prima facie defect. (See: DiResto v. Cornell, Appellate Division, 2nd Department, February 20, 2009.)

F. EXAMINATION AND COPYING OF PETITIONS

- F1. The Commissioners of the Board, or in their absence, the Executive Director, Deputy Executive Director, the Chief Clerks, Deputy Chief Clerks or such other staff as may be designated by the Executive Director, shall control the requisition, examination and copying of any document filed with the Board in order to assure that candidates, objectors or potential objectors and their representatives have an equal and fair opportunity to examine or copy such documents consistent with the needs of the Board to process petitions and specifications of objections.
- F2. Any person may obtain a copy of any document filed with the Board upon written application and payment of 25¢ per page.

- F3. No document shall be unfastened or taken apart (except by authorized employees of the Board of Elections) while examining the document; nor shall pen and ink or indelible pencil be used while examining documents. Red pencil only is to be used while examining any document. No other writing instrument may be used while examining any filed document.

G. GENERAL OBJECTIONS

- G1. A general objection to a petition must be filed at the Executive Office of the Board of Elections, 32 Broadway, 7th Floor, New York, N.Y. 10004. The last day for filing general objections shall be three days after the latest date on which any part of such petition or cover sheet was filed, even if said petition or cover sheet is subsequently not claimed by the candidate(s) appearing thereon. NOTE: The Board reserves the right to conduct an inquiry into the fact and circumstances of the filing of any document and the application of rule G1.
- G2. In the event an amended cover sheet is filed to cure noncompliance with these Rules after the last day to file a petition, the general objection and specifications filed in support of such general objection shall address only issues raised by the amended cover sheet. Such a general objection and specifications are without prejudice to any other issues addressed in any timely filed general objection and supporting specifications which are addressed to the petition. In order to expedite a determination by the Board, objectors are urged to file specifications of an objection addressed to an amended cover sheet filed to cure after a determination of noncompliance at the time when the general objection is filed.
- G3. The general objection shall state the name and address of the objector and candidate and public office on the petition to which the objection is addressed and shall be signed by the objector.
- G4. The general objection shall include a place for the optional designation of a contact person to receive notice of any rulings on the objection. The general objection should include any telephone numbers and fax numbers, which can be used to provide notice regarding rulings on the objection.

H. SPECIFICATIONS OF OBJECTIONS

- H1. Specifications of objections shall state the name and address of the objector and the candidate and public office on the petition to which the objection is addressed and shall be signed by the objector. The specifications of objections shall be prepared using ink. The specifications of objections shall be securely fastened together in one or more volumes. The specification of objections in each and every volume shall be numbered sequentially at the bottom of each page of the specification.
- H2. The specifications shall include the name and mailing address of any contact person other than the objector to receive notice of any rulings on the specifications designated in the general objection. The specifications should include any telephone numbers and fax numbers, which can be used to provide notice regarding rulings on specifications. The specifications may indicate separate numbers to be used on the Saturday and Sunday prior to the date scheduled for Commissioners' hearings.
- H3. When an objector files an objection, which presents a factual issue, which cannot be determined from documents on file with the Board, the specification(s) must set forth the factual allegations with particulars. The objector shall submit with the specification(s), copies of any documents or affidavits that are required in order for the Board to rule on the issue.
- H4. If the specifications of objections claim that there are an insufficient number of valid signatures, the specifications must state the total number of signatures contained in the petition and the total number of signatures, which the objector claims to be invalid.
- H5. Any specific objection to an individual signature or witness statement shall set forth the Board-assigned petition volume identification number, page number and line number and shall set forth with specificity the nature of each objection to that signature or witness statement.

H6. The following abbreviations are acceptable:

AI	Address illegible or so abbreviated it cannot be identified.
ALT	Alteration (date/signature)
DI	Date incomplete
DUP v._p._l_	Duplicate of same signature located in the petition at volume identification # ____, page ____, line __
DSP	Date of witness statement is prior to date of signature
F	Forgery
ILLS	Illegible signature
ILLD	Illegible date
NA	No address stated
ND	No date stated
NFN	No first name\name is so abbreviated it cannot be identified
NPN	No page number –petition page not sequentially numbered
NR	Not registered as stated in BOE records
OD	Out of the district of the contest
P	Pencil or not in ink
PR	Signature is printed or not handwritten
SH	Similar handwriting
TE	Date of signature is prior to first day for circulating petitions
TL	Date of signature is subsequent to last day for circulating petitions or subsequent to date of witness signature
SAP v._ p._ l_	Signed another petition for the same office on same or prior date designating another as candidate, at petition volume identification #____ page ____, line____.
SW	Signature is that of the subscribing witness to the page
SWALT	Subscribing Witness information altered (not initialed)
SWNQ	Subscribing witness not qualified
SWNR	Subscribing witness not registered, as stated
SWDI	Date incomplete in subscribing witness statement
SWA	No address or wrong address stated in subscribing witness statement
SWND	No date stated in subscribing witness statement

SWNN	Name of subscribing witness omitted from body of subscribing witness statement
SWNS	Signature of subscribing witness omitted
SWNSO	Number of signatures omitted from subscribing witness statement
SWWNS	Wrong number of signatures stated in subscribing witness statement
SWTE	Date of signature is prior to first day for circulating petitions
SWTL	Date of signature is subsequent to last day for circulating petitions
WA	Wrong address stated on petition

Objectors may use other abbreviations or symbols as long as they are clearly defined in the specifications.

- H7. Objectors are warned not to include in the specifications broad, non-specific or generic claims or claims which are not supported by documents filed with the Board. The Board may dismiss the entire objections as frivolous if specifications include such claims.
- H8. Because the Board believes that the appropriate forum for determination of allegations of forgery or fraud is in an invalidating proceeding commenced in the Supreme Court pursuant to Election Law §16-102, the Board does not ordinarily rule on such allegations. In the rare case where an objector seeks to obtain a ruling from the Board on an issue of fraud, or on a factual issue which cannot be determined from documents already filed with the Board (such as petitions, registration records, party call, party rules, etc.), the specifications must set forth the factual allegations with particularity. The objector should submit with the specification(s) copies of any documents or affidavits that are required in order for the Board to rule on the issue. Notwithstanding such a submission, the Board will generally decline to rule on any allegation of fraud.
- H9. Before filing specifications with the Board, the objector must serve a copy of the specifications personally or by certified mail upon the candidate designated in the petition objected to for public office.

- H10. Specifications of objections must be filed within six (6) days after the filing of general objections, in person, at the Executive Office, Board of Elections, 32 Broadway, 7th Floor, New York, N.Y. 10004. The Executive Office will be open during the period for filing objections and specifications until midnight of each day (except Saturday and Sunday) to permit the filing of such papers in person. The Election Law does not authorize the extension of time for filing objections or specifications.
- H11. Proof of service of specifications (which must identify the specification it is related to by including the borough and General Objection/Specification number or attaching a copy of the first page of the specification) must be filed in person at the Executive Office, Board of Elections, 32 Broadway, 7th Floor, New York, N.Y. 10004, no later than the day after specifications are filed. The Board will issue a receipt for proof of service upon filing.
- H12. Upon receipt of Specifications of Objection in a borough office, the Chief Clerk and Deputy Chief Clerk (or their designees) shall review said specifications of objections on their face and determine if said specifications appear to be frivolous or if the objectors lack standing to file such specifications. Upon such a preliminary determination by the Chief Clerk and Deputy Chief Clerk, they shall refer their preliminary determination to the Board's Executive Committee for all specifications of objections relating to petitions for Citywide Office or the respective Borough's Commissioners' Committee for specifications of objections relating to petitions for all other offices and/or positions for review. If the appropriate Commissioners' Committee confirms that the specifications of objection appear to be frivolous or that the objector(s) lack standing to file such specifications, they shall confirm the preliminary determination of the Chief Clerk and Deputy Chief Clerk and direct that the specifications of objections not be worked by the borough office staff. Such findings and confirmation thereof shall be reported to the full Board of Commissioners at the commencement of the hearings for their review.

I. CLERKS'/COUNSEL'S REPORT

- I1. The Chief Clerk and Deputy Chief Clerk of each borough shall assign staff to examine the specifications of objections and to prepare a report to the Commissioners on the objections.

12. As soon as the borough office has prepared the report to the Commissioners, the borough office shall fax copies of the summary report (without line-by-line rulings) to the contact persons designated on the petition cover sheet and on the specifications to receive notices at the fax number indicated. Candidates or objectors who are unable to receive faxes must check with the Chief Clerk or Deputy Chief Clerk of the respective borough office if the candidate or objector wishes to review the Clerks' Report prior to the Commissioners' hearing.
13. At least twenty-four hours before each date for Commissioners' hearings, each borough office shall prepare a list of Clerks' Reports, which have not been completed and shall immediately provide a copy to the Executive Office and shall make the list available. The Commissioners' hearing on Clerks' Reports included on the list will be automatically postponed from the immediate hearing date to the next hearing date scheduled by the Commissioners unless there is consent from the objector and the candidate to rule on the Clerks' Report as scheduled.
14. Once the borough office has prepared the report to the Commissioners, the original specifications of objections with the line by line rulings of the clerks will be made available for examination or copying by the objector, candidate or representative, provided that the specification is not being used by the clerks for the review of any other specifications of objections.
15. The rules regarding examination and copying of petitions shall also apply to specifications of objections showing the clerks' line by line rulings. The use of independent nominating petitions and specifications by the clerks for the preparation of their report shall have priority over any request for examination or copying by any objector, candidate or their representative.
16. In the event that the specifications of objection present legal rather than or in addition to factual issues, said specifications of objections shall be referred to the Office of the General Counsel of the Board who shall assign staff to examine such specifications of objections and prepare a report to the Commissioners on the legal issues raised in the specifications. The notice and inspection provisions found in Sections 12, 14 and 15 of these Rules shall apply to such Counsel's Report.

J. HEARINGS

- J1. The Commissioners shall render a ruling on specifications of objections after they receive the Clerks' Report or Counsel's Report, Candidates or objectors who wish to be heard by the Commissioners should review the Clerks'/Counsel's Report and individual line-by-line rulings prior to the Commissioners' hearing. Candidates or objectors shall present to the Commissioners a list of exceptions which identifies with specificity each ruling by the clerks which is claimed to be erroneous. In view of the short deadlines and urgency of obtaining final rulings by the Board, the Board may reject any application for an extension of time to review the Clerks'/Counsel's Report when the candidate or objector received notice of the Clerks'/Counsel's Report at least 24 hours prior to the hearing (*including* weekends and holidays), or the candidate or objector failed to designate a fax number for the receipt of notice.
- J2. Attorneys appearing on behalf of a candidate or objector must file a Notice of Appearance on the Board prepared form, which includes a current address, telephone number and fax number.
- J3. An individual, other than an attorney, (including a candidate or objector), representing a candidate or an objector must file a Notice of Authorization that must be signed by said candidate or objector. Notices of Appearance and/or Authorization can be obtained from the Candidate Records Unit.
- J4. The hearings held by the Board shall be transcribed by a professional reporter and/or recorded. Any person may obtain a copy of the transcript or recording by making a written request to the Executive Director or Deputy Executive Director (or their designees) and paying the applicable fee.
- J5. Whenever there is not a quorum of Commissioners present on any day scheduled for Commissioners' hearings, a committee of the Commissioners shall rule on the Clerks' Reports. The committee is constituted pursuant to Election Law §3-212 (5). The committee shall consist of the largest equal number of Commissioners from each of the political parties represented on the Board who are available and designated by the President and Secretary of the Board, who may make such designation by telephone. In the absence of the President or the Secretary, the Commissioner of the same political party with the greatest length of

service on the Board who is available shall make such designation. The President and Secretary, or senior Commissioners present shall attempt to confer with the other Commissioners of the same political party before making such designation. The committee shall serve only for that hearing date, or until a quorum of the full Board is present, whichever is shorter, unless the full Board shall provide otherwise.

- J6. The Board may reconsider any determination or the determination of any committee of the Board. In such event, the Board will provide notice to any objector, candidate and representative.

- J7. Pursuant to the provisions of Section 6-154(3) of the Election Law, the Board shall give written notice to each candidate the Board determines will not appear on the ballot for failure to comply with the requirements of the Election Law and/or these rules. If that determination is made upon specific objections, the objector shall be given written notice that the candidate(s) will not appear on the ballot. The Board shall give such 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 at the address stated on the petition and the objector at the address stated on the objection.

NOTICE:

THE SAMPLE FORMS LISTED BELOW (PREPARED BY THE NEW YORK STATE AND OR CITY BOARD OF ELECTIONS) FOLLOW THESE RULES:

- ❑ **INDEPENDENT NOMINATING PETITION SHEET;**
- ❑ **COVER SHEET;**
- ❑ **AMENDED COVER SHEET;**
- ❑ **GENERAL OBJECTION;**
- ❑ **SPECIFICATIONS OF OBJECTION;**
- ❑ **CERTIFICATE OF ACCEPTANCE;**
- ❑ **CERTIFICATE OF DECLINATION;**
- ❑ **CERTIFICATION OF AUTHORIZATION;**
- ❑ **CERTIFICATE OF SUBSTITUTION BY COMMITTEE TO FILL VACANCIES AFTER DECLINATION, DEATH OR DISQUALIFICATION;**
- ❑ **CERTIFICATE OF SUBSTITUTION BY PARTY COMMITTEE AFTER DECLINATION, DEATH OR DISQUALIFICATION.**
- ❑ **NOTICE OF APPEARANCE AND/OR AUTHORIZATION FOR PETITION HEARINGS. DEATH OR DISQUALIFICATION.**
- ❑ **SAMPLE SPECIFICATIONS OF OBJECTION WORKSHEET**

Copies of the:

- ❖ Election Law of the State of New York, and the
- ❖ Rules and regulations of the State Board of Elections

are available for purchase at the front counter, 32 Broadway, 7th floor, New York, N.Y. 10004.

The Election Law and State Board Rules and sample forms can also be viewed and downloaded from the State Board of Elections website:

<http://www.elections.state.ny.us/law/elaw.pdf>

Please note that these Rules were adopted unanimously by the Commissioners of Elections in the City of New York, at their public meeting held on Tuesday, December 22, 2009.