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TITLE 410 – Board of Elections

CHAPTER 20 – ELECTIONS

SUBCHAPTER 00 – N/A

PART 22 – Rules of Practice and Procedure Regarding Appeals from Rulings by Local Boards of Canvassers

22.1 Purpose

To outline Appellate Procedure from Rulings by Local Boards of Canvassers.

22.2 Authority

These Rules of Practice and Procedure Regarding Appeals from Rulings by Local Boards of Canvassers (hereinafter the “Rules of Appellate Procedure”) are adopted pursuant to R.I. Gen. Laws § 17-7-1, *et seq.*, and in accordance with the Administrative Procedures Act, (R.I. Gen. Laws § 42-35-1, *et seq.*). All regulations are available for public inspection at the offices of the Rhode Island Board of Elections, 50 Branch Avenue, Providence, Rhode Island.

22.3 Definitions

- A. “Board” means the State Board of Elections, as defined in R.I. Gen. Laws § 17-7-5.
- B. “Board of canvassers” means any of the boards of canvassers for each of the cities and towns in the State of Rhode Island.
- C. “Party” or “Parties” means each person named or added to a matter pending before the Board of Elections.
- D. “Petitioner” means the Party who brings an appeal from a decision, order or final action taken by a local board of canvassers.
- E. “Respondent” means a Party whose rights are affected or adjudicated in the underlying matter and who seeks to uphold the Board of Canvassers’ action that is the subject of the appeal.
- F. “Regular business hours” means the regular business hours of the Board and, unless otherwise specified, shall be 8:00 a.m. to 4:00 p.m. Monday through Friday.

22.4 Scope of Rules of Appellate Procedure

These Rules of Appellate Procedure shall govern any and all appeals to the Board of Elections from any decision, order, decree or other final action taken by a Board of Canvassers, unless otherwise specifically exempted by law, regulation or order by the Board.

22.5 Suspension of Rules

- A. The Board recognizes that certain matters pertaining to elections are governed by accelerated deadlines under both Rhode Island and federal law. Consequently, upon a good cause determination, the Board may suspend any or all of the requirements set forth in these Rules of Appellate Procedure on application by a Party, or its own motion, and may order proceedings to be accelerated, in accordance with any and all deadlines imposed under applicable Rhode Island and federal law.
- B. The Board shall notify the parties of the suspension of any rule, including time periods. Said notice by the Board shall be provided to the parties either electronically or in writing.

22.6 Procedure for Filing Appeal - 20 Days

- A. Filing
 - 1. Each and every appeal must be filed with the Board within twenty (20) days following the date of the order, decision, decree or other final action taken by a Board of Canvassers. Upon a showing of excusable neglect, the Board may extend the time for filing the notice of appeal for good and sufficient reason upon a motion made by any person.
 - 2. An appeal shall be deemed to have been filed when the signed, original appeal is received and filed with the Board. Each appeal must include the following:
 - a. a written statement signed by the Petitioner, or if represented, by his or her legal counsel, that summarizes the order, decision, decree or other final action appealed from, the date that such order or decree was entered by the Board of Canvassers, and a concise summary of the reasons for appealing said action by the Board of Canvassers;
 - b. a copy of said order or decree, if available, from the Board of Canvassers;
 - c. the full name, telephone number and mailing address of the Petitioner and, if represented, legal counsel to Petitioner;

- d. a brief but concise description of the alleged error of law or regulation, sufficient to apprise the Board and any Respondent of the nature of said appeal; and
- e. a certification that a copy of said appeal was mailed to each and every Respondent known to Petitioner.

B. Response

Each Respondent shall be permitted to file a written reply within seven (7) days following the receipt of the appeal, unless a shorter or longer period of time is specified by the Board. Said Response shall briefly set forth each legal argument in support of the action taken by the Board of Canvassers.

C. Parties

Any person who has a particularized and legally protected interest that has been directly affected by a Board of Canvassers decision or action shall have standing to appear as either a Petitioner or Respondent. The capacity to be admitted as a Party shall be determined by the Board, in accordance with the law of the State of Rhode Island. The Board shall confer standing liberally where the Board determines that a matter of substantial public interest is implicated.

D. Intervention in Pending Matter

1. Upon timely application, the Board will determine whether a person shall be permitted, as a matter of right, to intervene in a matter pending before the Board where:
 - a. a statute or other law confers an unconditional right to intervene; or
 - b. when the applicant claims an interest relating to the issue which is the subject of the appeal before the Board and the applicant is so situated that disposition of the matter may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.
2. Upon timely application to the Board, anyone may, at the discretion of the Board, be permitted to intervene where either:
 - a. a statute or other law confers a conditional right to intervene; or
 - b. when an applicant's claim or defense and the main matter pending before the Board have a question of law or fact in common; or

- c. for the purpose of filing an amicus brief to aid the Board in its consideration of any legal issue that arises in a matter pending before the Board.
3. A person desiring to intervene shall serve a motion to intervene upon the parties to the matter pending before the Board and shall file said motion with the Board.

E. Pre-hearing Conferences

1. Legal Counsel to the Board may, with reasonable written notice to the representatives of the Parties, require that all Parties or their counsel attend a pre-hearing conference to consider the following:
 - a. the simplification or clarification of the issues on appeal;
 - b. the possibility of obtaining stipulations, admissions, agreements on documents or similar agreements which will avoid unnecessary evidentiary proceedings;
 - c. the possibility of agreement disposing of all or any of the issues in dispute;
 - d. the consideration of outstanding motions;
 - e. scheduling of hearings; and
 - f. such other matters as may aid in the disposition of the appeal.
2. All Parties shall attend the pre-hearing conference fully prepared to discuss all matters involved in the proceedings. Failure of any Party or, if represented, his or her attorney, to attend the pre-hearing conference may constitute a waiver of all objections to any order or ruling issued as a result of the pre-hearing conference unless good cause is shown.

F. Appearances by Legal Counsel

1. Except as may be otherwise provided by law, no person may appear in a representative capacity, other than members in good standing of the Bar of the State of Rhode Island. All attorneys must conform to the standards of ethical conduct required of practitioners before the courts of Rhode Island.
2. Counsel for each Party shall file with the Board a written appearance, setting forth his or her name, office address, email address, telephone number and Rhode Island Bar number. A copy of the appearance shall be served upon every other Party or, where a Party is represented, upon said Party's counsel of record.

3. No person who is not an attorney of the Supreme Court of the State of Rhode Island shall be permitted to act as an attorney for any Party in any proceeding, hearing or other matter pending before the Board, unless granted leave to do so in accordance with the requirements of this state, including those set forth in Article II of the Rhode Island Supreme Court Rules.

G. Filing Requirements

1. All memoranda and other documents filed with the Board shall include the file number (if one has been assigned by the Board), the title of the proceeding and the name of the Party on whose behalf the filing is made. No filings may be made by telecopier or facsimile. All papers shall be filed during Regular Business Hours. The Board's date stamp shall be the presumptive date and time of the filing. The original of each pleading shall be signed and dated by the Party on whose behalf the pleading is made or by the Party's authorized representative. This signature constitutes a certification that the individual has read the document, knows the contents thereof and to the best of his/her knowledge that such statements are true, that it is not interposed for delay, and that if the pleading has been signed by an authorized representative, s/he has full power and authority to do so.
2. All pleadings shall be liberally construed and errors or defect therein which do not mislead or affect the substantial rights of the Parties involved may be disregarded at the discretion of the Board.

H. Service

1. Service upon Parties and Others. A copy of all memoranda and other documents filed in any proceeding governed by these Rules shall be served upon all other Parties.
2. Manner of Service. Service under these Rules shall be made upon a Party or upon the Party's attorney, if any appearance has been entered, by first class mail postage prepaid, certified mail or hand delivery to his or her place of business, home address or other address supplied by the Party in the pleadings. Service by mail is complete upon mailing.
3. Certificate of Service. There shall accompany and be included in the original of each pleading filed with the Board a certificate of service showing service on all Parties.
4. The Board may authorize electronic service in specific cases and with a specified protocol for service on all Parties.

I. Time

1. Computation. Computation of any time period referred to in these Rules of Appellate Procedure shall begin with the first day following the act which initiates the running of the time period (including Saturday, Sunday and legal holidays). The last day of the time period so computed is to be included unless it is a Saturday, Sunday or legal holiday or any other day on which the Board is closed, in which case the period shall run until the end of Regular Business Hours of the next following business day.
2. Extensions of Time. It shall be within the discretion of the Board, for good cause shown, to extend any time limit for any deadline imposed by these Rules of Appellate Procedure.

J. Stay Pending Appeal to Board of Elections

Upon appropriate motion, or by its own authority, the Board may order a suspension or modification of any decision, order or decree made by a Board of Canvassers, during the pendency of an appeal. If upon motion, the moving Party shall set forth the reasons for the requested stay and the facts relied upon, including any harm or prejudice that may be suffered under the order entered by the Board of Canvassers.

K. Record on Appeal

1. Except as otherwise provided, the Board shall notify the Board of Canvassers of the appeal. The Board of Canvassers shall then transmit to the Board, within five (5) days of receipt of said notice, the original papers and exhibits filed in the underlying matter, including any electronic recording of the proceeding. The Board of Canvassers shall also transmit to the Board a copy of the written order, decision, decree or other document that reflects the decision or action taken by the Board of Canvassers.
2. A Petitioner or Respondent may also submit a stenographic transcript of the Board of Canvassers proceedings. The costs associated with the preparation of stenographic transcript(s) shall be assumed by the requesting Party, unless otherwise ordered by the Board.
3. In the event that no electronic recording of the underlying hearing before the Board of Canvassers was made, or if a transcript is unavailable, the Petitioner may submit a summary of the underlying proceedings, and evidence from the best available means, including the Petitioner's recollection. Said statement shall be served upon all Respondent(s), who may serve objections or propose amendments thereto within ten (10) days after service. Thereafter, the statement and any objection or proposed amendments thereto, shall be considered by the Board and included in the record on appeal.

4. The Parties have the option to prepare a Statement of the Case that sets forth an agreed statement of facts and proceedings below. If the Parties consent to its submission, the Statement of the Case may be considered by the Board as the record on appeal.

L. Briefing Schedule and Submissions

1. Unless an abbreviated or extended schedule is entered by the Board, the Petitioner shall file within ten (10) days of his or her appeal a memorandum that contains:
 - a. A complete and concise statement of the facts and prior proceedings before the Board of Canvassers;
 - b. The identification of those errors claimed;
 - c. A recitation of the questions raised and the basis for Petitioner's contention that the order, decree or other action by the Board of Canvassers was in error; and
 - d. The presentation of the relief sought by Petitioner.
2. Thereafter, unless the time is either abbreviated or extended by the Board, Respondent(s) shall file his or her opposition memorandum to Petitioner's appeal within ten (10) days after the brief of Petitioner has been filed.
3. The Board reserves the right to modify or eliminate any briefing requirement or other requirement set forth herein, on the basis of a person's financial status or due to exigent circumstances. Otherwise, any Party that fails to comply with any of the requirements or deadlines set forth herein shall not be heard or considered by the Board.

M. Oral Arguments

1. The Board shall determine if oral argument on the appeal, or any motion, is warranted, and shall give notice of the time and place for such argument. The Board may rule on the appeal or any motion, with or without oral argument, as it deems appropriate. The Board may act on the appeal and any motion when all Parties have responded thereto, or the deadline for response has passed, whichever comes first.
2. During the hearing(s) by the Board on any appeal or any motion, the Party's legal counsel or if unrepresented, the Party, may be granted permission by the Board to present oral argument in support of the appeal or in opposition to said appeal. The Petitioner shall present oral argument first and, unless otherwise ordered by the Board, be permitted ten (10) minutes for said argument. Thereafter, each Respondent shall be allowed ten (10) minutes to rebut, unless otherwise ordered by the Board.

3. In any proceeding, if the Parties agree to waive a hearing, the Board may dispose of the matter upon the memoranda and other submittals of the Parties and may also refer the matter to its Legal Counsel for a Report and Recommendation.

N. Standard of Review

1. Where a Board of Canvassers has made a final decision based upon a complete record, including the opportunity for the parties to present evidence, cross-examine witnesses and make objections, motions and oral arguments, then the Board shall review the decision with deference and shall not disturb findings of fact that are based upon competent evidence to support the Board of Canvassers' conclusions. Further, where a Board of Canvassers ruling is based upon its assessment of credibility, the Board shall not disturb said credibility finding unless the Board determines that said finding was clearly in error.
2. Where a Board of Canvassers decision is not based upon a complete record or without an opportunity for the parties to present evidence, cross-examine witnesses, make objections, motions and oral arguments, then the Board shall either remand the matter for further evidentiary hearing or shall allow the parties to supplement the record with testimony and evidence during its own proceedings. In the event that the Board conducts its own evidentiary hearing, it shall make its factual and legal determinations de novo, without deference to the rulings made by the Board of Canvassers.
3. For matters based upon a review of a statute, regulation, ruling or other legal document, the Board shall make its own legal conclusions, without deference afforded to any legal determinations reached by a Board of Canvassers.

O. Record of Proceedings

A complete record of the proceedings shall be recorded electronically and/or by stenographic means by the Board.

P. Public Hearings

Except as required by law, all hearings are to be open to the public. Any person who is not a Party to a proceeding may, in the discretion of the Board, be permitted to make oral or submit written statements on any issues relevant to the proceeding.

Q. Reconsideration

Upon the issuance of a final order by the Board in any case, a Party may petition the Board to reconsider a final order. The Party shall file his/her motion within five

(5) days of the issuance of the final order and shall set forth the grounds upon which s/he relies. The Board may grant a motion for reconsideration within its discretion and shall order such relief as it deems appropriate.

R. Final Order by Board of Elections

Unless otherwise afforded by law, any order or decision entered by the Board may be subject to discretionary review by a petition to the Rhode Island Supreme Court. Otherwise, said order or decision entered by the Board shall be final.