

## **RULES OF PRACTICE AND PROCEDURE IN ADJUDICATORY HEARINGS BEFORE THE RHODE ISLAND BOARD OF ELECTIONS**

*These Rules of Practice and Procedure (hereinafter the “Rules”) are adopted pursuant to R. I. Gen. Laws §§ 17-7-1 et seq., and relate to any and all adjudicatory hearings held before the State Board of Elections (“the Board”) in connection with any complaint filed with the Board, unless otherwise specifically exempted by law, regulation, or order of by the Board.*

*Said rules and regulations are adopted in accordance with the Administrative Procedures Act, (R. I. Gen. Laws. §42-35-1, et seq.) and are available for public inspection at the offices of the Rhode Island Board of Elections, 50 Branch Avenue, Providence, Rhode Island.*

### **A. Definitions**

When used in these Rules, the following words, except as otherwise required by the context, shall have the following meaning:

“Board” means the State Board of Elections as defined in R. I. Gen. Laws § 17-7-5.

“Local Board” means any of the boards of canvassers for each of the cities and towns of the State of Rhode Island.

“State or local election official” means the Board, Secretary of State, a clerk of any city or town board of canvassers, or any individual member, employee, officer agent, or appointee thereof.

“Complainant” means the person who files a complaint with the Board under the terms of these Rules.

“Executive Director” means the Executive Director of the Board.

“Legal Counsel” means legal counsel to the Board.

“Party” or “Parties” means each Person named or added to a complaint pending before the Board.

“Respondent” means a Party who is the subject of a complaint.

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### **A. Definitions (cont.)**

“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.

### **B. Rules Of Procedure**

#### ***1. Complaint***

Each and every complaint filed with the Board shall contain a short and plain statement of the claim showing that the complainant is entitled to relief and a demand for a remedy to which the complainant alleges to be entitled. All complaints must:

- a) Be in writing, sworn to under oath and under penalty of perjury, signed by the complainant, and notarized on a form provided by the Board or on any other paper or form that complies with each of the requirements of these Rules.
- b) Include the full name, telephone number, and mailing address of the complainant.
- c) Include a description of the alleged violation of law or regulation sufficient to apprise the Board and respondent of the nature and specifics of the complaint.
- d) If a hearing on the record is requested, the complaint must state so.
- e) The completed and verified complaint shall be filed with the Board and shall certify that a copy of the complaint was provided via U.S. mail to each respondent.
- f) A complaint shall be filed no later than ninety (90) days from the occurrence of the actions or events that form the basis for the complaint, or, if later, within ninety (90) days after the Complainant knew, or with the exercise of reasonable diligence, should have known of those actions or events.
- g) A complaint shall be deemed to have been filed on the day that the original signed and notarized document is actually received and filed with the Board.

#### ***2. Response***

Each respondent shall provide a written response within seven (7) days of receipt of the complaint, unless a shorter or longer period of time is specifically permitted by the Board. The written response of each respondent shall be filed and served as provided by herein for complaints. Each respondent shall also have the right to request in writing that a hearing be held.

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### **B. Rules Of Procedure (cont.)**

#### **3. Parties**

Each Party must have an interest relating to the subject of the action. Every action shall be brought and defended in the name of the real party in interest. The capacity to be admitted as a Party shall be determined by the law of this state and shall be decided by the Board.

#### **4. Intervention in Pending Matter**

Upon timely application to the Board, anyone shall be permitted, as a matter of right, to intervene in a matter pending before the Board where wither (1) a statute or other law confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the issue which is the subject of the hearing before the Board and the applicant is so situated that disposition of the matter may as a practical matter impair or impede the applicants' ability to protect that interest, unless the applicant's interest is adequately represented by existing parties. Upon timely application to the Board, anyone may, at the discretion of the Board, be permitted to intervene where either (1) a statute or other law confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main matter pending before the Board have a question of law or fact in common. 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 in accordance with the requirements prescribed herein.

#### **5. Pre-hearing Conferences**

The Executive Director or Legal Counsel to the Board may, with reasonable written notice to the representatives of the Parties, require that all Parties or their counsel to attend a pre-hearing conference to consider the following:

- a) the simplification or clarification of the issues;
- b) the possibility of obtaining stipulations, admissions, agreements on documents or similar agreements which will avoid unnecessary evidentiary proceedings;
- c) the identification of witnesses and the limitation of the number of witnesses;
- d) the possibility of agreement disposing of all or any of the issues in dispute;
- e) the consideration of outstanding motions;
- f) the status of settlement negotiations, if any;

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### **B. Rules Of Procedure: #5 Pre-hearing Conferences (cont.)**

- g) the use of pre-filed testimony, where appropriate;
- h) any matters of discovery, including limitation of date requests, document requests, or other discovery or resolving disputes as to the scope of discovery;
- i) scheduling of hearings; and
- j) such other matters as may aid in the disposition of the proceeding.

All Parties shall attend the pre-hearing conference fully prepared to discuss all matters involved in the proceedings. Failure of any Party or 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.

### **6. *Representative***

Except as may be otherwise provided by law or specifically permitted by the Board, 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.

### **7. *Filing of Pleadings and Other Documents***

All pleadings and other documents filed with the Board shall, wherever possible, state the file number 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 of the actual filing. The original copy 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, he/she has full power and authority to do so. 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 sole discretion of the Board.

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### **B.** **Rules Of Procedure (cont.)**

#### **8.** ***Service***

- a) Service upon Parties and Others. A copy of all pleadings and other documents filed in any proceeding governed by these Rules shall be served upon all other Parties.
- b) 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.
- c) 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.

#### **9.** ***Time***

- a) Computation. Computation of any time period referred to in these Rules 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.
- b) Extensions of Time. It shall be within the discretion of the Executive Director, Legal Counsel to the Board, or the Board for good cause shown, to extend any time limit. All requests for extensions of time shall be made by motion before the expiration of the applicable time period.

#### **10.** ***Motions***

- (a) General. Any Party may request of the Board any order or other action not inconsistent with law or these Rules. The types of motions made shall be those which are permissible under these Rules and the Superior Court Rules of Civil Procedure.

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### **B. Rules Of Procedure: #10 Motions (cont.)**

- b) Presentation/Objections to Motions. Motions may be made in writing at any time before or after the commencement of a pre-hearing conference or hearing. Each motion shall set forth the grounds for the desired order or action and state whether oral argument is requested. Unless another period of time is prescribed by the Board, a Party opposing said motion must file a written objection to said motion within ten (10) days from the filing of said motion, and shall, if desired, request oral argument. All motions and objections shall be accompanied by a written memorandum specifying the legal and factual basis in support of the Party's position.
- c) Action on Motion. The Board, or its Executive Director or Legal Counsel shall determine if oral argument on the motion is warranted, and shall give notice of the time and place for such argument. The Board may rule on a motion with or without oral argument, as it deems appropriate. The Board may act on a motion when all Parties have responded thereto, or the deadline for response has passed, whichever comes first.

The Executive Director or Legal Counsel may also rule on any motion filed with the Board, including dispositive motions, provided however, that said ruling shall be in the form of a Recommendation and Order to the Board. Within ten (10) days from the filing of any Report and Recommendation, a Party to such action may file a motion with the Board to reconsider said Report and Recommendation. The Board shall then review the Report and Recommendation and take whatever action it deems appropriate, including but not limited to a modification, rejection or adoption of said Report and Recommendation. In the event that no Party opposes the Report and Recommendation within the allotted time, said decision shall be deemed final with respect to the pending case.

### ***11. Discovery***

- a) Procedure. If permitted by the Board, any Party, by written request served upon all other Parties, may request another Party to produce for inspection, copying or photocopying a document, object or tangible thing which is relevant to the subject matter of the hearing. Any such request for discovery shall be submitted within the time specified by the Board for conducting discovery. Any Party wishing to object to discovery requests shall do so within fourteen (14) days from the date that said requests are served upon a Party or his or her counsel.

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### **B. Rules Of Procedure: #11 Discovery (cont.)**

- b) Hearing Delay. No hearing shall be continued to permit the completion of discovery unless specifically ordered by the Board.

### **12. *Subpoenas***

Subpoenas requiring the attendance and testimony of witnesses and to compel the production and examination of papers, books, accounts, documents, records, certificates and other evidence that may be necessary or proper for the determination and decision of any question before the Board may be issued by the Board upon application of any Party. Except as may be otherwise provided by law, in cases where a subpoena is disobeyed, the Board may hold the responding Party in contempt or take any other action that the Board deems appropriate.

### **13. *Evidence***

- a) Rules of Evidence. Irrelevant, immaterial or unduly repetitious evidence shall be excluded in all proceedings. While the rules of evidence and procedure as applied in civil cases in the Superior Court shall be followed to the extent practicable, the Board shall not be bound by such rules. Evidence not otherwise admissible may be admitted, unless precluded by statute, when necessary to ascertain facts not reasonably susceptible of proof under the rules, if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. The rules of privilege recognized by law shall apply. Objections to evidentiary offers may be made and shall be noted in the record.

### **14. *Conduct of Hearings***

- a) Order of Proceedings. Except as otherwise required by law or the Board, each Party may make an opening statement at the beginning of the hearing which shall summarize the Party's position and set forth the evidence that shall be introduced in support thereof. Any such openings shall be limited to no more than ten (10) minutes, unless otherwise provided by the Board. The Board shall designate the order of presentation. Under normal circumstances, the moving Party shall first present his or her case.
- b) Rights of Parties. Parties shall have the right to present evidence, arguments and make motions and may, at the discretion of the Board, cross-examine witnesses.
- c) Record of Proceedings. A complete record of the proceedings shall be recorded on audio tape or by stenographic record.

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### **B. Rules Of Procedure: #14 Conduct of Hearings (cont.)**

- d) 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.
- e) Close of Proceedings. At the conclusion of the evidence, the Board may permit the Parties to present oral arguments and/or submit written briefs. The Board may also direct that proposed findings of fact and conclusions of law be submitted by the Parties. The record in the proceeding shall close after oral argument, the deadline for the filing of the briefs or upon such date as may be set by the Board. No evidence shall be admitted thereafter, unless otherwise ordered by the Hearing Officer. The Board may in any case require either Party, with appropriate notice to the other Party, to submit additional evidence in any matter relevant to the hearing.
- f) Waiver of Hearing. In any proceeding, if the Parties agree to waive a hearing, the Board may dispose of the matter upon the pleadings and other submittals of the Parties and may also refer the matter to its Executive Director or Legal Counsel for a Report and Recommendation.

### ***15. Administrative Dismissals of Complaints***

The Executive Director or Legal Counsel may dismiss the complaint, and issue a final determination, if the complaint does not comply with the requirements set forth in these regulations or, if it is determined that the complaint does not, on its face, allege a violation of law or regulation that is under the subject matter of the Board. If no jurisdiction exists, the Executive Director or Legal Counsel shall so notify the complainant in writing. The Executive Director or Legal Counsel may dismiss the complaint, and issue a final determination, if the complaint is not filed within ninety (90) days from the date that the alleged violation occurred.

### ***16. Consolidation of Complaints***

The Executive Director may consolidate multiple complaints into a single proceeding if the complaints relate to the same actions or events giving rise to the complaint, or if the complaints raise common questions of law or fact.

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### **B. Rules Of Procedure (cont.)**

#### ***17. Reconsideration***

At any time after the issuance of a final order in any case, any Party may petition the Board to reconsider a final order. The petitioner shall file his/her motion within ten (10) days of the issuance of the final order and shall set forth the grounds upon which he/she relies. The Board may grant a motion for reconsideration within its discretion and shall order such relief as it deems appropriate.

#### ***18. Appeals***

Any final decision by the Board is subject to the discretionary review by the Rhode Island Supreme Court through a petition for a writ of certiorari.

#### ***19. Default***

If any Party to a proceeding fails to answer a complaint, plead, appear at a pre-hearing conference or hearing or otherwise fails to prosecute or defend an action as provided by these Rules, the Board may enter a default judgment against the defaulting Party, take such action based on the pleadings and/or other evidence as the Board Officer deems appropriate in his/her sole discretion or take such other action as the Board deems appropriate in his/her sole discretion.

These rules and regulations are adopted this 7<sup>th</sup> day of March 2006 pursuant to the Administrative Procedures Act (R.I.G.L. 42-35-1, *et seq.*).

By Order of  
Rhode Island Board of Elections

Roger N. Begin, Chairman