

MEETING OF THE
COMMISSIONERS OF ELECTIONS
IN THE CITY OF NEW YORK
HELD ON TUESDAY, APRIL 16, 2013
AT 1:30 P.M.
42 BROADWAY, 6th FLOOR, COMMISSIONERS' HEARING ROOM
NEW YORK, NY 10004

PRESENT: President Frederic M. Umane

Commissioners Araujo, Dent, Guastella, Michel, Shamoun, Sipp

Dawn Sandow, Deputy Executive Director

Pamela Perkins, Administrative Manager

Steven H. Richman, General Counsel

Raphael Savino, Deputy General Counsel

John Ward, Finance Officer

Valerie Vazquez, Director, Communications and Public Affairs

Steven Ferguson, Director, Management Information Systems

Giacomo Kmet, Temporary Contract Attorney, OGC

Anibal Luque, Temporary Contract Attorney, OGC

Kenneth M. Moltner, Counsel to the Commissioners

Steven B. Denkberg, Counsel to the Commissioners

GUEST: Monica Bartley, CIDNY

John D. Smith

Kate Doran, LWV

Cathy Gray

K. Loving, CFB

Rachel Fauss, Citizens Union

Will Colegrove, for Council Member Gale Brewer

Adam Collyer, Corporation Counsel

Alan Flacks, Member of NY County Democratic Committee

President Umane called the meeting to order at 1:40 P.M.

President Umane held a moment of silence for the victims of the Boston Marathon tragedy.

President Umane recognized Alan Flacks, a member of the public, who inquired about the health of John Wolf who is an employee at the Executive Office. President Umane stated that the Board cannot discuss an employee's health at a public meeting. Ms. Perkins stated that she will speak to Mr. Flacks after the meeting is adjourned.

President Umane requested to add item to the agenda concerning a legal matter and to discuss a Manhattan personnel matter in Executive Session.

Commissioner Dent moved to adopt the minutes of the April 9, 2013 meeting. Commissioner Araujo seconded the motion, which was unanimously adopted.

Mr. Richman recalled that he distributed the draft Designating and Opportunity to Ballot Petition Rules for the September 10, 2013 Primary Election to the Commissioners at the previous meeting. Mr. Richman

stated that these rules are identical to the adopted and pre-cleared Rules for the 2012 Primary Election with the following addition of Rule K1. Rule K1 incorporates the policy statement and recommended provision for inclusion in any proposed Order to Show Cause that was adopted by the Commissioners on June 18, 2012. Mr. Richman recited the Commissioners Statement concerning the interpretation of Rule H1. He stated, "The Board has determined that a specification of objection, which is prepared and submitted to the Board using ink, which includes a photocopy and/or computer generated copy as well as any other form of permanent marking is not susceptible to fraud and constitutes compliance with the provision of Rule H1." Mr. Richman requested for the Commissioners' approval of the Designating and Opportunity to Ballot Petition Rules. President Umame explained the rules to the newly appointed Commissioners. Commissioner Dent moved to approve the Designating and Opportunity to Ballot Petition Rules for the September 10, 2013 Primary Election. Commissioner Araujo seconded the motion, which was unanimously adopted. Mr. Richman stated that he will submit the Rules to the U.S. Department of Justice (DOJ) for approval. Once the DOJ approves the Rules, they will be posted on the Board's website; hard copies of the booklet will be available to the public at no cost.

Mr. Richman recalled that he distributed the draft Petition Filing Calendar for the September 10, 2013 Primary Election at the previous meeting. He recommended that the Commissioners schedule hearings on Designating Petition Matters beginning on Tuesday, July 30, 2013 at 10 A.M. and continue through Friday, August 2, 2013, if necessary. With respect to the OTB Petition Matters, Mr. Richman recommended they be scheduled on Tuesday, August 6, 2013 at 1:30 P.M. Commissioner Araujo moved to approve the Petition Filing Calendar for the September 10, 2013 Primary Election. Commissioner Dent seconded the motion, which was unanimously adopted. Mr. Richman stated that he will post the Calendar on the Board's website today and hard copies will be available at all Front Counters. Commissioner Araujo requested for the approved Rules and Calendar to be posted prominently on the Board's Homepage.

Commissioner Michel inquired about Petition Rules training and Campaign Financial Disclosure training. Mr. Richman stated that the State Board is scheduled to conduct a Campaign Finance Seminar in the City Board's Executive Office in late June. The City Board conducts a separate training session concerning the Designating and Opportunity to Ballot Petition Rules which is scheduled to be conducted in late June/early July.

Mr. Richman noted that the City Board's training session is not required by law.

President Umane recognized Katherine Loving, a representative of the NYC Campaign Finance Board (CFB), who stated that the CFB would be happy to cooperate and share any of the Board's information to provide good communication to all throughout the upcoming busy election cycle.

President Umane stated that he recently circulated a memorandum from the Office of the General Counsel (OGC) concerning the NYS Election Law's lever voting machines rules and electronic voting machines paper ballot rules. He stated that there are benefits and burdens with these two (2) sets of rules. President Umane stated that the OGC researched the Board's Commissioners' Minutes and no specific Commissioners' policy decision on this matter was found. He stated that he would like to clarify this issue for purposes of fundamental fairness to all candidates. He began discussion on this topic with a Commissioners' decision at a later date. President Umane explained the statutory provisions for lever machines (Section 7-104). He stated that if a candidate is on two (2) of the parties with ballot status then he/she is not allowed to have a third ballot position

as a candidate of an independent body. The candidate is entitled to be a candidate on as many lines of these parties with ballot status that endorse him/her, but not independent bodies. For example, if a Democrat was running on the Democratic and Working Families lines, and he/she wanted to have an independent line, then he/she would have to solicit signatures for an independent petition, and then that name of that independent body would appear on either the Democratic or Working Families lines (set by the candidate), not appear on a separate column or line. President Umane explained the statutory provisions relating to Election Day paper ballots (Section 7-106). This section allows the candidate as many independent lines that he/she gets by petitioning. There is no requirement for candidate rotation under the Election Day paper ballot statute. The Election Day ballot provision is advantageous for the Board because the lever machine statute requires each ballot order of candidates be rotated in each Election District (ED). In 2010, when the Board implemented the poll site optical scanning voting system, it followed the lever machine statute with rotation. It took an extraordinary amount of time to test each scanner. Testing ran approximately fourteen (14) hours for each scanner to check all the different ballot styles for each poll site. Mr. Richman recalled that the Commissioners deemed the City Board to be governed by the Election Day

paper ballot statute following the 2010 Primary Election. Not rotating the ballot order greatly reduced the amount of time needed for testing. Mr. Richman stated that a bill was introduced by the Assembly to mandate rotation on Election Day paper ballots, but there has been no action on this bill. He stated that other county boards of elections follow the lever machine statute. President Umane urged that this Board adopt a uniform and consistent policy prior to the start of petitioning. In addition, setting such a policy would enable candidates to collect signatures for independent nominating petitions. Commissioner Sipp inquired if the independent nominations would affect the readability of the ballot. Mr. Richman stated that additional nominations could affect the ballot. It could require the Board to use a two-page ballot and the font size could be changed. Mr. Savino reported that the State Board is seeking to establish a statewide uniform rule. It is the State Board staff's position that Sections 7-104 and 7-106 should be read together.

President Umane recognized Alan Flacks, a member of the public, who inquired about the Board's concept to determine the rotation on the ballot for the Primary Election. Mr. Richman stated that the Board conducts a public random draw of ballot lots using a "BINGO" type device.

Mr. Ferguson presented the draft proposed schedule for publication of election materials for the September 10, 2013 Primary Election. He distributed copies of the draft to the Commissioners. Mr. Ferguson stated that since production needs to commence prior to the receipt of DOJ pre-clearance, it is the recommendation to produce only a sufficient number of copies of each publication to meet actual needs. Mr. Ferguson stated that once DOJ pre-clearance is received, the standard level of production will begin. Based on the projected completion date of April 20, 2013 for the NYC Department of City Planning's file creation, the re-synchronization of all voter records and updates to poll site locations, staff plans to begin production of the following materials starting May 1, 2013:

- Maps of the new City Council Districts (reflecting ED boundary changes);
- Enrollment Books – by party and political subdivision (either AD or County);
- Political Calendars for each borough;
- Street Finders for each borough.

Mr. Ferguson requested approval from the Commissioners to proceed with the proposed publication schedule. Commissioner Guastella moved to

approve Mr. Ferguson's publication schedule. Commissioner Dent seconded the motion, which was unanimously adopted.

Mr. Richman noted that the Board's DOJ submission for the Bronx, Brooklyn and Manhattan AD Reports were Express Mailed to the DOJ for approval. Copies of the letters are in the agenda.

Mr. Ward presented the Comparative Expenditures Report dated April 16, 2013. A copy of the report is in the agenda.

President Umane recognized Alan Flacks, a member of the public, who requested for the Commissioners to modify Rule C2 in the Petition Rule Book. Mr. Flacks stated that all addresses on the petitions should include the apartment #, if it applies. President Umane stated that the Commissioners could modify the rule that apartment #'s are optional, but not as a requirement. He stated that more requirements make it harder for a person to get on the ballot. There was no motion to modify the Board's Petition Rule Book.

President Umane moved to convene an Executive Session to discuss personnel, litigation and investigation matters. Commissioner Araujo seconded the motion, which was unanimously adopted.

Following Executive Session, the open public meeting resumed and President Umane reported on the action taken in Executive Session:

- I. The full Board of Commissioners unanimously adopted the Queens Commissioners' Committee's recommendation to terminate Anthony Pignataro, a Voting Machine Technician in the Queens Voting Machine Facility, effective immediately. Mr. Pignataro was hired as a VMT when lever machines were used at the Board. The new optical scan voting equipment requires significant skills to effectively maintain and operate it. Mr. Pignataro has not been able to master the training provided and to make the necessary adjustments.

Commissioner Dent moved to adjourn the meeting. Commissioner Sipp seconded the motion, which was unanimously adopted.

The next stated meeting of the Commissioners is scheduled for

Tuesday, April 23, 2013 at 1:30 P.M.