2 Electoral Boards

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I. [2.1] SCOPE OF CHAPTER

This chapter concerns the organization, hearings, and decisions of electoral boards. The Election Code, 10 ILCS 5/1-1, *et seq.,* governs electoral board practice and procedure. *See* 10 ILCS 5/10-8 through 5/10-10.1. Under Illinois law, these boards are the initial forums for hearing and deciding most challenges to candidacies. Filings for nomination and for election to party offices are governed by Articles 7, 8, and 10 of the Election Code for established political parties, General Assembly seats, and "other cases," respectively. Sections 10-8 through 10-10.1 of the Election Code are made applicable to Article 7 and Article 8 nominations by Election Code §§7-12.1 and 8-9.1, and they also apply to the filling of vacancies in nomination under Election Code §§7-61, 8-17, and 10-11, to challenges to nominations made by a caucus, and to party office nominations by Election Code §7-13. What follows is a guide on how these boards operate and on the law that controls and guides those operations.

In general, the principles in this chapter also apply to challenges to petitions to place questions of public policy or referenda on the ballot. Election Code §28-4 makes §§10-8 through 10-10.1 of the Election Code applicable "insofar as may be practicable" to all but court-filed objections to referenda. 10 ILCS 5/28-4. For ease of expression, the practices and rules are set out as if they apply only to candidacy challenges. However, the reader should bear in mind that the points made herein will usually apply to referenda challenges as well.

II. ORGANIZATION OF ELECTORAL BOARDS

A. [2.2] Organizing Electoral Boards

Electoral boards are not permanent public bodies. They come into existence to resolve certain specific disputes within a short time, await review of their decisions, and then dissolve. Sections 2.3 – 2.13 below deal with how the electoral board is convened. Sections 2.14 – 2.17 below discuss the issue of board membership.

1. [2.3] Presumption of Validity of Nominating Papers

It is long-standing law in Illinois that a properly filed nominating petition "in apparent conformity with the provisions of" the Election Code is legally valid unless it is challenged through the filing of an objection. 10 ILCS 5/10-8. *See Swiney v. Peden,* 306 Ill. 131, 137 N.E. 405 (1922); *Geer v. Kadera,* 173 Ill. 2d 398, 671 N.E.2d 692, 219 Ill.Dec. 525 (1996); *Libbra v. Madison County Regional Board of School Trustees,* 346 Ill. App. 3d 867, 806 N.E.2d 265, 268 – 269, 282 Ill.Dec. 290 (5th Dist. 2004); *People ex rel. Klingelmueller v. Haas,* 111 Ill. App. 3d 88, 443 N.E.2d 782, 66 Ill.Dec. 856 (3d Dist. 1982). The "apparent conformity" element of this rule was long honored by being ignored. This policy relieved election authorities of the burden of examining the nominating petitions submitted to them for legal compliance. But the apparent conformity doctrine was given new life by *North v. Hinkle,* 295 Ill.App.3d 84, 692 N.E.2d 352, 229 Ill.Dec. 579 (2d Dist. 1998). The *North* court held that it was proper for a municipal clerk to refuse to certify the names of candidates who did not file statements of candidacy as a part of their nomination papers. The court maintained that "[t]here must be a gatekeeper to turn away nominating papers that do not

even purport to conform to the law." 692 N.E.2d at 356. *See also Segneri v. Ruhl,* 2021 IL App (2d) 210036, ¶20, 189 N.E.3d 479, 454 Ill.Dec. 218 (clerk "serves as a 'gatekeeper' to the ballot certification process"); *Jenkins v. McIlvain,* 338 Ill.App.3d 113, 788 N.E.2d 62, 272 Ill.Dec. 758 (1st Dist. 2003) (authority to refuse certification when statements of economic interests were not in same calendar year as petition and petitions were not bound); *Pate v. Wiseman,* 2019 IL App (1st) 190449, ¶¶32 – 33, 143 N.E.3d 248, 436 Ill.Dec. 753 (nominating papers to fill vacancies in nomination were facially defective when contained resolutions purporting to fill vacancies of withdrawn candidates by remaining candidates, who had no authority); *Druck v. Illinois State Board of Elections,* 387 Ill.App.3d 144, 899 N.E.2d 437, 326 Ill.Dec. 220 (1st Dist. 2008) (finding that nomination papers that on face lack number of signatures required for ballot access are not in "conformity" with Election Code). While *North* may empower election officials to reject nomination papers, every other potential party can attack a nominating petition only through the filing of an objection pursuant to §10-8 of the Election Code. Moreover, if the alleged defect in the nomination papers is not apparent on their face, only an objection can effectuate their invalidation. A clerk may even withdraw certification after initially certifying an issue for the ballot if he or she changes his or her mind and belatedly determines that the petition is not in apparent conformity with the requirements of the applicable law. *Haymore v. Orr,* 385 Ill. App. 3d 915, 897 N.E.2d 337, 325 Ill.Dec. 89 (1st Dist. 2008).

Election officials have become more active in reviewing nomination papers for apparent conformity in recent years. The Illinois State Board of Elections, Chicago Board of Election Commissioners, Cook County Clerk, Will County Clerk, and Lake County Clerk have all adopted standards of review for nomination papers to determine if they are in apparent conformity with the law. These (and other policies implemented by other election authorities and local election officials) may include cases in which the candidate must provide proof of professional credentials and fails to do so. *See* 35 ILCS 200/2-45(e). A decision to refuse to certify nomination papers based on apparent conformity can be subject to challenge by mandamus. *See Pate, supra; Welch v. Educational Officers Electoral Board for Proviso High School District 209,* 322 Ill. App. 3d 568, 750 N.E.2d 222, 255 Ill.Dec. 641 (1st Dist. 2001). *See also Reynolds v. Conti,* 132 Ill. App. 2d 505, 270 N.E.2d 505 (1st Dist. 1971); *Smagala v. Wadas,* No. 89 Co 64 (Cook Cnty. Cir. 1989). Certain actions have been deemed to overstep a clerk's authority under "apparent conformity." *See McHenry Township v. County of McHenry,* 2022 IL 127258, ¶90, 201 N.E.3d 550, 460 Ill.Dec. 543 (finding statutory language of §28-5 of Election Code did not authorize county clerk to refuse certification of referendum question due to possible violations of §28-7); *Makula v. Victorine,* 2021 IL App (1st) 201298-U. *But see Segneri, supra,* 2021 IL App (2d) 210036 at ¶¶23 – 28, 32 (rejecting challenger's mandamus action against results of caucus when they failed to file objection to be heard first by electoral board).

Certain challenges are barred by estoppel. 10 ILCS 5/28-2(f) estops a challenge to the form of a petition to place a backdoor referendum on the ballot when the form is supplied by the unit of government whose act is challenged by the referendum. In *Brennan v. Kolman,* 335 Ill.App.3d 716, 781 N.E.2d 644, 269 Ill.Dec. 847 (1st Dist. 2002), the court upheld such an estoppel.

See Illinois State Board of Elections, 2024 CANDIDATE'S GUIDE, Preface (October 6, 2023), available at www.elections.il.gov, for more information regarding apparent conformity. See also Cook County Clerk's Apparent Conformity Details, available at https://www.cookcountyclerk il.gov/elections/current-elections/apparent-conformity-details.

2. [2.4] Filing of Objector's Petition

An electoral board is brought into being by the filing of an objector's petition to a candidate's nominating papers. (A single nominating petition may be filed for more than one candidate, and more than one objector may appear on an objector's petition, but the singular form of both is used throughout this chapter). Under §10-8, an objector must file "an objector's petition together with 2 copies thereof," giving election authorities the power to reject a filing that does not contain an original and two copies of the objector's petition. 10 ILCS 5/10-8. Section 10-8 does not require a municipal clerk or local election official to issue a receipt showing how many copies were tendered in addition to the original petition filed. *Zurek v. Petersen,* 2015 IL App (1st) 150508, 33 N.E.3d 853, 393 Ill.Dec. 109. Generally, an objection is required to be filed in the same place as the nominating papers to which it objects. 10 ILCS 5/10-8. However, if the original place of filing was the main office of the Illinois State Board of Elections in Springfield, the objection may be filed in the board's permanent branch in Chicago. *Dugan v. Cook County Officers Electoral Board,* 119 Ill.2d 555, 520 N.E.2d 637, 117 Ill.Dec. 286 (1988) (reversing in part *Dugan v. Cook County Officers Electoral Board,* 166 Ill.App.3d 459, 519 N.E.2d 1064, 116 Ill.Dec. 849 (1st Dist. 1988), and adopting Justice White's dissent therein as court's rationale). *See also Bush v. City of Champaign Electoral Board,* 271 Ill.App.3d 991, 649 N.E.2d 565, 208 Ill.Dec. 509 (1995) (in contrast to State Board of Elections, where local election official had only one location, objection filing had to be made there).

a. [2.5] Qualifications of Objector

Election Code §10-8 provides that "[a]ny legal voter of the political subdivision or district in which the candidate . . . is to be voted on . . . having objections to any . . . nomination papers or petitions filed, shall file an objector's petition" in the appropriate office. 10 ILCS 5/10-8. Thus, the only statutory qualification for an objector is registration in the relevant area. If a candidate wishes to challenge the qualifications of an objector, the challenge is in the nature of an affirmative defense; and the objector need not prove his or her standing as part of a prima facie case. *Morton v. State Officers Electoral Board,* 311 Ill.App.3d 982, 726 N.E.2d 201, 203, 244 Ill.Dec. 605 (4th Dist. 2000); *Dunham v. Naperville Township Officers Electoral Board,* 265 Ill.App.3d 719, 640 N.E.2d 314, 203 Ill.Dec. 655 (2d Dist. 1994); *Wollan v. Jacoby,* 274 Ill.App.3d 388, 653 N.E.2d 1303, 210 Ill.Dec. 841 (1st Dist. 1995); *Hagen v. Stone,* 277 Ill.App.3d 388, 660 N.E.2d 189, 213 Ill.Dec. 932 (1st Dist. 1995).

b. [2.6] Content of Objector's Petition

Election Code §10-8 provides:

> **The objector's petition shall give the objector's name and residence address, and shall state fully the nature of the objections to the certificate of nomination or nomination papers or petitions in question, and shall state the interest of the objector and shall state what relief is requested of the electoral board.** 10 ILCS 5/10-8.

The objector functions, in effect, as if he or she were the plaintiff in an ordinary civil suit. The candidate whose nomination papers or certificate of nomination is objected to is, in turn, analogous

to a defendant. Whether a given objector's petition has properly set forth the objector's name and address have both been subject to litigation. In *Morton v. State Officers Electoral Board,* 311 Ill.App.3d 982, 726 N.E.2d 201, 244 Ill.Dec. 605 (4th Dist. 2000), the name of an objector was found to be adequately stated for the purpose of the objector's petition, even though it did not include the suffix "Jr." that was included in the name under which the objector was registered. The failure to give a complete street address — one that includes at least the name of the street of the objector's residence — can lead to the objector's petition being stricken. *Pochie v. Cook County Officers Electoral Board,* 289 Ill. App. 3d 585, 682 N.E.2d 258, 224 Ill.Dec. 697 (1st Dist. 1997). The name and address of an objector are important because this information is essential in determining whether the objector is, as required, a registered voter in the appropriate jurisdiction or district.

The relief requested of the electoral board almost always will be the sustaining of the objection and the invalidation of the nomination petition. The stated interest of the objector usually will be that he or she wishes to see that the election laws are upheld and that only properly qualified candidates appear on the ballot. The objector need say no more than that about his or her interest, and such an interest is valid. *Wollan v. Jacoby,* 274 Ill. App. 3d 388, 653 N.E.2d 1303, 1306, 210 Ill.Dec. 841 (1st Dist. 1995), citing ELECTION LAW §2.6 (IICLE®, 1991, Supp. 1995). The objector need not prove his or her interest as part of the case. *Hagen v. Stone,* 277 Ill.App.3d 388, 660 N.E.2d 189, 213 Ill.Dec. 932 (1st Dist. 1995); *Harned v. Evanston Municipal Officers Electoral Board,* 2020 IL App (1st) 200314, ¶19, 178 N.E.3d 1138, 449 Ill.Dec. 287 ("There is no requirement that an objector use specific language when disclosing their 'interest' in an objected-to petition. Instead, the question is whether the objection makes clear on its face that the objector has such an interest.").

The great variable from one objector's petition to another will occur at the point at which the petition must "state fully the nature of the objections." 10 ILCS 5/10-8. These objections may be factually based, based on a point of law, or a combination of the two.

An objection based in law should be stated concisely and clearly, but not argued, in the objector's petition. If the objection is based on a statutory provision, this provision should be cited and set out, if not too lengthy. Caselaw citation is not required, but if the objection is principally based on a single, leading case, its citation may be helpful.

By far the most common fact-based objection is that the candidate's petition lacks the requisite number of valid signatures to qualify for a place on the ballot. Assuming that the candidate has turned in more signatures than is required, it is incumbent on the objector pursuing this type of objection to set forth for each signature challenged a basis for the challenge sufficiently detailed to allow for a defense against the allegation. It may be asserted that the signer is not a registered voter, that the signer resides outside the district in question, or that the signature is not genuine. If the objector is contesting scores, or even hundreds, of signatures, a type of objection, such as "not registered" can be keyed to the individual signatures objected to in a table attached as an exhibit to the objection. Such an appendix recapitulation can be made up on a separate sheet for each sheet of the petition, with the particular objection for any given signature symbolized by an "X" or checkmark on a line corresponding to the line on the petition sheet where the signature appears.

While not required by the Election Code, each objector's petition should have a caption analogous to what one would find on a complaint, setting forth the name of the electoral board, the objector, the candidate, the office sought with the political party, if appropriate, and the election in question. There is no requirement that the objector's petition be sworn to or verified.

c. [2.7] Time of Filing Objector's Petition

The time limits for the filing of objections have been the subject of a surprising amount of litigation and statutory response. Originally, the Election Code had called for the objections to be filed within five days of the last day for the filing of nominating petitions. Because the last day for nominating petitions was customarily a Monday, the deadline for objections was on the following Saturday. Saturday is not a normal business day, and this fact caused complications. Objectors went to court to keep clerks' offices open a full day on the final Saturday. *People ex rel. Washington v. Kusper,* No. 78 Co 3 (Cook Cty.Cir. 1978); *Pouncey v. Wilkerson,* No. 78 Co 346 (Cook Cty.Cir. 1978). The appellate courts then rejected arguments that objectors should get the benefit of the general rule of law that postpones Saturday duties to the following normal business day. *See Mierswa v. Kusper,* 121 Ill. App. 3d 430, 459 N.E.2d 1110, 1112, 77 Ill.Dec. 14 (1st Dist. 1984), citing Ill.Rev.Stat. (1981), c. 1, ¶1012 (now 5 ILCS 70/1.11). The legislature responded to *Mierswa* by enacting P.A. 84-370 (eff. Jan. 1, 1986), which amended 10 ILCS 5/10-8 to read "five business days," which was generally read to extend the deadline to the Monday following the petition-filing deadline. Finally, in 1989, the Election Code was amended by P.A. 86-873 (eff. Sept. 8, 1989), adding former §1-5, which provided that when the last day for "any act" was a Saturday, Sunday, or holiday, this day did not count in the computation of time to perform an act. Thus, it appeared to be settled that the last day was always extended to the last non-weekend non-holiday. Even this change, however, did not settle the issue completely, as evidenced by *Bush v. City of Champaign Electoral Board,* 271 Ill.App.3d 991, 649 N.E.2d 565, 208 Ill.Dec. 509 (4th Dist. 1995). In an attempt to do so, the legislature, in P.A. 89-653 (eff. Aug. 14, 1996), deleted §1-5 and added §1-6 to establish that a "State holiday" as defined in §1-6(b), as well as Saturday and Sunday, extends the deadline for "petitions of objection to nominating papers." 10 ILCS 5/1-6. The enactment of P.A. 96-1008 (eff. July 6, 2010), saw the end of the special objection period that applied to township and ward committeepersons in Cook County. Formerly calculated as "81 days prior to the primary," it now conforms to the "within 5 business days after the last day for filing nomination papers" standard. 10 ILCS 5/7-13. See 10 ILCS 5/10-8 (objections must be made in writing "within 5 business days after the last day for filing the certificate of nomination or nomination papers or petition for a public question"). Finally, the Election Code defines "business day" as "any day in which the office of an election authority, local election official or the State Board of Elections is open to the public for a minimum of 7 hours." 10 ILCS 5/1-3(22). S*ee also Sims v. Municipal Officers Electoral Board for Village of Riverdale,* 2021 IL App (1st) 210168, ¶¶21 – 24, 190 N.E.3d 901, 454 Ill.Dec. 919 (involving dispute as to whether Christmas Eve was included in "business day" calculation for filing objections with local election official but in which record did not sufficiently contain evidence or argument regarding issue for court to be able to consider appellant's argument that objection was not timely); *Patel v. Natzke, et al.,* No. 20-EB-QPP-01 (Chicago Electoral Board, 2020) (closing of Chicago Board of Election offices outside of official holiday was permissible and extended objection filing deadline).

This may have resolved the issue of which day was the last day to file an objector's petition, but, apparently, the issue of which hour was the last hour to file was still open. In *Hamm v. Township Officers of Township of Bremen Electoral Board,* 389 Ill. App. 3d 827, 907 N.E.2d 433, 329 Ill.Dec. 842 (1st Dist. 2009), that particular issue was addressed. In *Hamm,* the court, affirming the electoral board and reversing the circuit court, held that an objector's petition was timely filed when an objector, having arrived at the township clerk's office after it had closed on the last filing day at 4:00 p.m., encountered the clerk himself in the parking lot and "returned to the Township Office [with] the Clerk, [who] opened the office, allowed the objector entrance and file-stamped the objection at approximately 4:45 p.m." 907 N.E.2d at 435. Looking past the idiosyncratic facts of *Hamm,* it does suggest that any objector's petition bearing a time stamp from the last day of filing (or before) is timely filed, irrespective of the hour indicated in the time stamp.

Even the timely filed petition may still run into trouble, however. If the objector's petition does not bear a filing date stamp or other notation showing when it was filed with the election official, the electoral board may want to make a record, by way of a finding based on evidence, admission, or stipulation, when the petition was filed, lest its deliberations suffer the fate of those in *Thomas v. Powell,* 289 Ill.App.3d 143, 681 N.E.2d 145, 224 Ill.Dec. 163 (1st Dist. 1997). In *Thomas,* the court dismissed the appeal on its own motion when it found no indication by way of a stamp on the objector's petition or other evidence of the date of the petition's filing. 681 N.E.2d at 146. Without this in the record, the appellate court decided that the board and the trial court lacked jurisdiction. 681 N.E.2d at 147 – 148. However, when the receipt of filing and proper time stamp are evidenced, absent other evidence, compliance may be inferred by a reviewing court. *See Zurek v. Petersen,* 2015 IL App (1st) 150508, ¶¶7 – 13, 33 N.E.3d 853, 393 Ill.Dec. 109 (finding only reasonable inference created by acceptance of filed objector's time of filing); *Sims, supra,* 2021 IL App (1st) 210168 at ¶¶17 – 24 (discussing importance of developing record before electoral board and, absent evidence to contrary, electoral board and reviewing courts "must infer compliance" when objections "have been accepted by the officer charged with that function" as held in *Zurek*).

An objector's petition may not be amended after it is filed. *Reyes v. Bloomingdale Township Electoral Board,* 265 Ill.App.3d 69, 638 N.E.2d 782, 202 Ill.Dec. 914 (electoral board decision reversed because board allowed objection to be amended), *vacated in part,* 265 Ill. App. 3d 69 (2d Dist. 1994). *Cf. Stein v. Cook County Officers Electoral Board,* 264 Ill. App. 3d 447, 636 N.E.2d 1060, 201 Ill.Dec. 628 (1st Dist. 1994). The rationale for this is that electoral board hearings must be set and cases resolved in an expeditious manner. Allowing amended objectors' petitions, which would allow new objections to be made after the five-business-day deadline, would militate strongly against this. *See Weber v. Winnebago County Officers Electoral Board,* 2012 IL App (2d) 120051, 966 N.E.2d 462, 359 Ill.Dec. 141, for a reaffirmation of the non-amendment rule and for its discussion of a seeming exception in *Siegel v. Lake County Officers Electoral Board,* 385 Ill. App. 3d 452, 895 N.E.2d 69, 324 Ill.Dec. 69 (2d Dist. 2008). *See also Solomon v. Scholefield,* 2015 IL App (1st) 150685, ¶21, 30 N.E.3d 480, 391 Ill.Dec. 210. Likewise, the Election Code "does not authorize an electoral board to raise its own objections to nominating petitions *sua sponte.*" *Delay v. Board of Election Commissioners of City of Chicago,* 312 Ill. App. 3d 206, 726 N.E.2d 755, 759, 244 Ill.Dec. 780 (1st Dist. 2000). *See also Wiesner v. Brennan,* 2016 IL App (2d) 160115, ¶¶17 – 18, 53 N.E.3d 371, 403 Ill.Dec. 317; *Samuelson v. Cook County Officers Electoral Board,* 2012 IL App (1st) 120581, ¶¶14 – 15, 969 N.E.2d 468, 360 Ill.Dec. 658; *Mitchell v. Cook County Officers*

Electoral Board, 399 Ill.App.3d 18, 924 N.E.2d 585, 338 Ill.Dec. 379 (1st Dist. 2010) ("The plain language of [§10-8] leads us to conclude the Board is to consider the objections before it. There is nothing to indicate a duty or responsibility on the part of the Board to *sua sponte* raise issues or objections. That is the unique province of the objector").

The electoral board is there to adjudicate; it may not take on additional or prosecutorial roles better suited to a party.

3. [2.8] Determination of Proper Electoral Board

After the objector's petition is filed, it is up to the election authority, local election official, or Illinois State Board of Elections to transmit the appropriate papers to the chair of the electoral board. See 10 ILCS 5/10-10. To do so, the authority must look to §10-9 of the Election Code, 10 ILCS 5/10-9, to determine the proper electoral board and who is to serve as its chair and other members.

a. [2.9] Specially Composed Boards

Electoral boards are generally temporary bodies, called into existence to settle cases and then disbanded. These boards are generally made up ex officio of elected officials from the district in which the candidate is seeking election. Such a board is usually composed of the chief executive and the clerk of the district, along with the longest-serving legislator. Section 10-9 of the Election Code provides that if the unit of government involved has no specified electoral board and is, thus, a "special district" as defined by §10-9, then jurisdiction falls to the county officers electoral board. 10 ILCS 5/10-9. For a detailed explanation of electoral board membership, see §§2.14 – 2.17 below.

b. [2.10] Ex Officio Boards

While the majority of electoral boards are ad hoc bodies, convened to pass on certain specific matters, the Election Code recognizes the expertise of the permanently organized election authorities by providing that they be ex officio electoral boards. The Election Code provides that the members of the Illinois State Board of Elections make up an electoral board for state offices and other offices elected from multicounty districts. 10 ILCS 5/10-9. The members of any board of election commissioners form the municipal officers electoral board for a city, and the electoral board for appropriate districts "wholly within" its jurisdiction. *Id*. In Cook County, a municipal board of election commissioners has jurisdiction over legislative, representative, and congressional districts if any part is within its territory (except for candidates for State Senate). 10 ILCS 5/10-9(6); 10 ILCS 5/10-9(2.5) (amended by P.A. 103-0467, eff. Aug. 4, 2023). If a county has established a county board of election commissioners under Article 6A of the Election Code, this board acts as the county officers electoral board. 10 ILCS 5/10-9(6). (Currently, there are no county boards of election commissioners in Illinois.)

c. [2.11] Transmission of Papers

The Election Code sets forth a fairly detailed schedule of when and how the relevant papers are to make their way from the election authority to the electoral board chair. Upon receipt of an

objector's petition, the election authority or local election official must note the date and time of receipt on the petition and send the original objection and nominating petition to the chair of the electoral board before noon of the second business day following by registered mail or by receipted personal delivery. 10 ILCS 5/10-8. Delivery can be made to the chair's "authorized agent." *Id.* The chair then has 24 hours to issue a call to the initial electoral board meeting to be held not "less than 3 nor more than 5 days" after the chair received the papers. 10 ILCS 5/10-10. The required contents of the call are set out in §10-10 of the Election Code. The courts have held that an electoral board does not lose jurisdiction over a matter simply because of failure to hold an initial hearing within the five-day limit set out in §10-10. *Maske v. Kane County Officers Electoral Board,* 234 Ill. App. 3d 508, 600 N.E.2d 513, 175 Ill.Dec. 582 (2d Dist. 1992); *Craig v. Electoral Board of Oconee Township,* 207 Ill.App.3d 1042, 566 N.E.2d 775, 152 Ill.Dec. 898 (5th Dist. 1991); *Havens v. Miller,* 102 Ill.App.3d 558, 429 N.E.2d 1292, 57 Ill.Dec. 929 (1st Dist. 1981); *Shipley v. Stephenson County Electoral Board,* 130 Ill.App.3d 900, 474 N.E.2d 905, 85 Ill.Dec. 945 (2d Dist. 1985). *See also Bean v. Board of Election Commissioners for City of Chicago Electoral Board,* 2023 IL App (1st) 230239-U, ¶23 ("this court has held that a lack of strict compliance does not deprive the Board of jurisdiction where the aggrieved party receives some notice of the proceedings"). Similarly, a shortcoming in the board's notice of hearing, or "call" as §10-10 designates it, will not deprive the board of jurisdiction over a matter. *Johnson v. Theis,* 282 Ill.App.3d 966, 669 N.E.2d 590, 218 Ill.Dec. 447 (2d Dist. 1996), *abrogated by Bettis v. Marsaglia,* 2014 IL 117050, 23 N.E.3d 351, 387 Ill.Dec. 659. *See also Bean, supra,* 2023 IL App (1st) 230239-U at ¶23. The key is that the parties in question have actual notice and opportunity to appear to present their cases.

The emergency legislation passed in the light of the COVID-19 pandemic allows for service of objections by e-mail in lieu of personal or certified mail service. 10 ILCS 5/2B-45. This legislation sunset January 1, 2021. Absent further legislative changes, election authorities have since expanded the use of written "waivers" that excuse the formality and level of service required by statute. So long as notice is actually provided, measures to increase efficiency and speed at which copies and notices may be sent should be encouraged. An election authority may wish to procure such a waiver from candidates and objectors when they file their respective papers with the election authority's office.

4. [2.12] Call of First Meeting

The chair of the electoral board is empowered to call the members of the board to a session and to inform the objector and candidate of the meeting. The Election Code provides for a dual system of delivery of the call: certified mail and service by the sheriff of the county. 10 ILCS 5/10-10. There is some question about the need for service of the call on the parties to establish "jurisdiction" over the parties, or at least over the candidate. At least one court has analogized the position of the candidate to that of a defendant in a court case. *Greene v. Board of Election Commissioners of City of Chicago,* 112 Ill. App. 3d 862, 445 N.E.2d 1337, 68 Ill.Dec. 484 (1st Dist. 1983). In *Greene,* the candidate argued that the board did not have jurisdiction over him because he was not properly served. Indeed, he filed, or attempted to file, what he termed a "special and limited" appearance to contest the board's jurisdiction. 445 N.E.2d at 1341. (Note that "special and limited" appearances were abolished in Illinois court practice by P.A. 91-145 in 2000). However, the case turned on the fact that the candidate actively participated in the hearing before the board; the court found that this participation constituted a waiver of whatever jurisdictional infirmity might have existed.

The court in *Greene* was correct, as far as it went, but the court left open the question of what, if anything, is required to establish the board's jurisdiction over the parties. While the board owes the parties a good-faith effort to provide them with notice, a candidate does not stand in the same relationship to the board as a defendant does to a court. A candidacy is voluntarily undertaken, and a candidate must be ready to defend the petition against attack. The candidate, unlike a court defendant, is not a stranger to the process and must be willing to adhere to the tight time frame allotted to the board. It is thus counterproductive to insist on the formal service of process model of the courts, lest a candidate frustrate the entire system merely through avoidance of service. The Election Code directs service by certified mail and through the sheriff. There is no indication in the Election Code that personal service is required or that mail service alone would not be adequate. Indeed, the courts have held that if the mail notice is received, that is sufficient notice. *Havens v. Miller,* 102 Ill. App. 3d 558, 429 N.E.2d 1292, 1296 – 1297, 57 Ill.Dec. 929 (1st Dist. 1981); *Shipley v. Stephenson County Electoral Board,* 130 Ill. App. 3d 900, 474 N.E.2d 905, 85 Ill.Dec. 945 (2d Dist. 1985). For some local electoral boards, service is effectuated via certified mail and personal service by a local police officer. Undoubtedly, the prudent course is to place the call with the sheriff for service, as well as to use certified mail. However, if the board can satisfy itself that all parties have had actual, demonstrable notice of its hearing that can be placed on the record, there is no reason to wait for the formal process of personal service to be completed.

Boards have set up procedures for parties, usually through counsel, to pick up the call and objector's petition and file an appearance before the board, eliminating the need for going through the service procedure. Because of the expedited nature of the proceedings, parties or their attorneys may consent to waive formal service and obtain copies of the objections, call, and related documents by e-mail service.

As a result of the COVID-19 pandemic, the Illinois legislature passed special amendments to the Election Code applicable only through the sunset of P.A. 101-642 on January 1, 2021. Included in these amendments was a provision that election authorities who gave proper notice could require both candidates and objectors to provide an e-mail address at which service of copies of objections, the call of the board, and other documents would be provided in lieu of service by certified mail or sheriff service. 10 ILCS 5/2B-45. While this legislation has since sunsetted, maintaining this as a voluntary practice recognizes the reality that almost everyone who files as a candidate, or files objections to a candidate's nomination papers, has access to the Internet and e-mail. Making electronic service the norm for service or jurisdiction of electoral boards permanently would be a commonsense change for future permanent legislation, especially in light of the court system move to mandatory electronic filing as well.

5. [2.13] Place of Initial Meeting

P.A. 95-872 (eff. Jan. 1, 2009) has all but completely remade the aspect of the law dealing with the place of initial meeting. The requirement that most electoral boards initially meet in "the county courthouse," which had been in the law since the advent of electoral boards, was abolished for all boards except electoral boards for county officers. The portion of §10-10 of the Election Code relevant for most boards provides that:

> **the Municipal Officers Electoral Board, the Township Officers Electoral Board, and the Education Officers Electoral Board may meet at the location where the governing**

body of the municipality, township, or school or community college district, respectively, holds its regularly scheduled meetings, if that location is available. 10 ILCS 5/10-10.

As for electoral boards county officers, in most counties, the efficient course is to comply literally with the county courthouse provision, but in Cook County, it has been common to ask the chief judge to designate a convenient meeting place as a place of holding court, as set forth by Cook County Circuit Court General Order No. 21 (G).

When the Illinois State Board of Elections is acting as an electoral board, it may meet "in the Capitol Building or in the principal or permanent branch office of the State Board." 10 ILCS 5/10-10.

B. Electoral Board Membership

1. [2.14] Statutory Designation of Elected Officials

Electoral board membership is determined by the statutory prescriptions of §10-9 of the Election Code. In most cases, the members of the board are elected political officials of the jurisdiction in which the objection was filed. For example, a county officers electoral board ordinarily will consist of the county clerk, the clerk of the circuit court, and the state's attorney for the county. 10 ILCS 5/10-9(2), 5/10-9(2.5). Each of these statutory members may designate an individual to serve in his or her stead. 10 ILCS 5/10-9(3). A municipal board will consist of the mayor (or village president), the clerk, and the longest-serving trustee. It is similar for township and educational officers electoral boards. 10 ILCS 5/10-9(4), 5/10-9(5). Only county officers may appoint designees. Section 10-9 of the Election Code also specifies who will serve as chair of the board. If the electoral board is one of the ex officio boards, then its chair and members become the chair and members of the electoral board. If a member of a board is disqualified from serving, §10-9 provides an order of succession and eventually requires the appointment of public members by the Chief Judge of the Circuit Court for the county wherein the electoral board hearing is being held.

2. [2.15] Disqualification of Members

For years, the law recognized only one basis for disqualifying a designated public official from membership on the electoral board: if the official was a candidate for an office involved in the objection, then he or she must step aside and be replaced by the designated substitute if the substitute was not ineligible. 10 ILCS 5/10-9 ("In the event that any member of the appropriate board is a candidate for the office with relation to which the objector's petition is filed, he shall not be eligible to serve on that board and shall not act as a member of the board.°.°.°."). However, because of the obvious due process implications, the courts have expanded the bases for disqualification. In *Anderson v. McHenry Township,* 289 Ill. App. 3d 830, 682 N.E.2d 1133, 225 Ill.Dec. 56 (2d Dist. 1997), the court recognized that a direct pecuniary interest in the outcome of a case created the same class of conflict as running for the office in question. Thus, in *Anderson,* elected township officials could not sit on a board to hear objections to a petition to dissolve the township, which would end the officials' right to receive a salary. When the courts find a clear affront to the due-process right of a litigant to an impartial decision-maker, they will require

that an electoral board member withdraw. The court in *Zurek v. Franklin Park Officers Electoral Board,* 2014 IL App (1st) 142618, 22 N.E.3d 90, 387 Ill.Dec. 208, followed *Anderson* in disqualifying incumbent public officials from sitting on a board considering objections to a term limits referendum petition. In *Girot v. Keith,* 212 Ill.2d 372, 818 N.E.2d 1232, 289 Ill.Dec. 29 (2004), a city clerk who was a member of the municipal officers electoral board was also called to give testimony as to the condition of a candidate's petition when it was filed with her office. The court found this situation to be too great a "risk of bias." 818 N.E.2d at 1239. In a different situation, the court in *Kaemmerer v. St. Clair County Electoral Board,* 333 Ill.App.3d 956, 776 N.E.2d 900, 267 Ill.Dec. 528 (5th Dist. 2002), required recusal. In *Kaemmerer,* identical objections were filed against four candidates for county offices chosen to fill vacancies in nomination, apparently in separate objector's petitions. The first involved a candidate for county clerk, but the incumbent clerk, a candidate for reelection, was an electoral board member. The clerk recused himself and was replaced (as 10 ILCS 5/10-9 directs) by the county treasurer. However, the incumbent treasurer also was a candidate for reelection, and the same objections made against the county clerk candidate had also been made against the treasurer candidate. This appeared to leave the treasurer free to rule on these objections, albeit when they were made against another candidate. The electoral board overruled an objection to the participation of the treasurer, but the court found this maneuver unacceptable, even though it did follow a literal application of the Election Code. Despite these changes, the usual attempts made to disqualify members on other bases (*e.g.,* political party membership, past association with the parties, etc.) have been uniformly rejected by the courts. *In re Objection of Cook to Referendum Petition of Pierce,* 122 Ill. App. 3d 1068, 462 N.E.2d 557, 78 Ill.Dec. 438 (5th Dist. 1984); *Ryan v. Landek,* 159 Ill. App. 3d 10, 512 N.E.2d 1, 111 Ill.Dec. 97 (1st Dist. 1987); *Ayers v. Martin,* 223 Ill. App. 3d 397, 584 N.E.2d 1028, 165 Ill.Dec. 594 (4th Dist. 1991); *Muldrow v. Barron,* 2021 IL App (1st) 210248, ¶¶33 – 34, 191 N.E.3d 171, 455 Ill.Dec. 212.

The Cook County Circuit Court has found that a common financial interest between candidates and electoral board members may require disqualification of the electoral board members, and the appointment of public members. In *Ochoa v. Town of Cicero Electoral Board,* Spec. Ord. No. 2012-90 (Dec. 14, 2012), the statutory board members belonged to the same political funding and financing organization as the objected-to candidates. Relying on Local Rule 21 and §10-9 of the Election Code, the judge, at the request of the objectors, disqualified the statutory members and appointed three public members to constitute the board. See §2.16 below. However, simply showing some past political contributions between litigants and/or electoral board members will not suffice to meet this standard *See Muldrow, supra,* 2021 IL App (1st) 210248 at ¶¶5, 34. Electoral board members cannot evade its statutorily mandated service based purely on accusations and insinuations alone. See Cook County Circuit Court General Order No. 21: ("However electoral board members do not have a disqualifying interest because they may be political allies or opponents of a party in a case or merely because they are familiar with the facts of the case. Neither may a statutory member cause a vacancy to be filled by this General Order by a personal preference or convenience of that statutory member not to sit or merely because a party has requested such disqualification").

There is no statutory authority for other electoral board members to remove another member. As such, disqualification or recusal must come from the individual officer or by action of the Circuit Court. See Cook County Circuit Court General Order No. 21.

3. [2.16] Judicial Appointment of Public Members

As noted in §2.14 above, §10-9 of the Election Code provides for a limited succession of members to a vacancy on an electoral board. On those occasions when a vacancy cannot be filled by any of the officials named by the statute, the chief judge of the circuit is empowered to appoint a "public member" to fill the vacancy. 10 ILCS 5/10-9. If the public member serves in place of the chair, he or she becomes the chair. If all board members must step aside, the chief judge designates which of the public members will serve as chair. The Election Code sets out no specific procedure for procuring the appointment of public members. In Cook County, appointment of public members is governed by Cook County Circuit Court General Order No. 21.

4. [2.17] Immunity of Electoral Board Members

At least one court has held that members of the Illinois State Board of Elections, when acting as the State Electoral Board, are entitled to quasi-judicial absolute immunity from claims against them under 42 U.S.C. §1983. *Tobin for Governor v. Illinois State Board of Elections,* 268 F.3d 517 (7th Cir. 2001). *Tobin* would appear to be precedent for extending immunity to members of other electoral boards.

III. CONDUCT OF HEARINGS

A. [2.18] Initial Meeting

The compressed time schedule of §10-10 of the Election Code, 10 ILCS 5/10-10, is aimed at ensuring the prompt calling of the first meeting of the electoral board. Like any public proceeding, however, this initial meeting requires a certain amount of preparation beforehand.

1. Preparation

a. [2.19] Docket of Cases and Scheduling Sessions

The cases for which the chair of the electoral board has issued a call make up the docket of the board. The custom is for an electoral board to number its cases, much like a court does. The Cook County Officers Electoral Board has used a numbering system on the order of, *e.g.,* 22-COEB-SEN-1. The Chicago Board of Election Commissioners has styled its cases, *e.g.,* 22-EB-ALD-1. A small docket may require no more than a series like 22-1, 22-2, etc. An electoral board may find itself confronting a docket of a single case or one of over a hundred cases. Once the docket grows beyond a handful of matters, clearly some scheduling or spacing of the cases must occur. However, even the board that has only two cases must consider scheduling. The board should consider whether it wants to force all participants in later cases to sit through all proceedings in its first case before their own matters are reached. The State of Illinois, Cook County, and Chicago Electoral Boards have adopted a process of a general initial meeting at which rules are adopted and cases are assigned to individual hearing officers at particular times.

b. [2.20] Draft Rules of Procedure

The electoral board must adopt rules. A tentative set of these rules should be ready for the board's inspection and adoption at the initial meeting. See 10 ILCS 5/10-10 ("The electoral board on the first day of its meeting shall adopt rules of procedure for the introduction of evidence and the presentation of arguments and may, in its discretion, provide for the filing of briefs by the parties to the objection or by other interested persons"). *See Muldrow v. Barron,* 2021 IL App (1st) 210248, ¶24, 191 N.E.3d 171, 455 Ill.Dec. 212 (in which electoral board adopted rules governing admission of evidence that were upheld on judicial review). The "standard" Rules of Procedure use by the Cook County Officers Electoral Board are available at https://www.cookcountyclerkil.gov/sites/default/files/pdfs/Adopted%20Rules%20of%20Procedure%20Cook%20County%20Officers%20Electoral%20Board%202023.pdf (case sensitive), and the Rules of Procedure for the Board of Election Commissioners of the City of Chicago are available at https://app.chicagoelections.com/documents/general/m2023%20rules%20of%20procedure%20draft.pdf. The Chicago and Cook County Board (and the State Officers Electoral Board) include a copy of its proposed rules with their call. This ensures that all parties are aware of them even before the initial hearing.

In addition to rules of procedure and rules of evidence, a board may wish to adopt rules for an important procedure that often occurs outside of the board's presence — the registration records examination. Certain factual allegations, such as forged signatures, are best tested by a comparison of the petition to the permanent registration cards held by the election authority. In many cases, the most efficient way for the board to accomplish this is to order that the parties appear at the offices of the election authority for such a comparison, which is conducted by the authority's personnel. This is the registration record check. After the check is concluded, the board will receive a report of its result from the election authority. The parties should be provided with a means of taking exception to the report. See, *e.g.,* Rule 8 of the Rules of Procedure for the Board of Election Commissioners of the City of Chicago; Rule 8 of the Rules of Procedure Adopted by the Cook County Officers Electoral Board, or Rule 9 of the Rules of Procedure Adopted by the State Officers Electoral Board. The board will rule on a party's exceptions and then may receive the results of the registration record check, modified or not as the board rules, as its own findings on the objections.

The electoral board has wide discretion as to the content of any rule it adopts. *See Carnell v. Madison County Officers Electoral Board,* 299 Ill.App.3d 419, 701 N.E.2d 548, 233 Ill.Dec. 698 (5th Dist. 1998). An electoral board's rules are presumed valid and will not be set aside by a reviewing court unless the challenger establishes that the rules were arbitrary, unreasonable, or capricious. *Ghiles v. Municipal Officers Electoral Board of City of Chicago Heights,* 2019 IL App (1st) 190117, ¶16, 125 N.E.3d 1138, 430 Ill.Dec. 120. *See also Walker v. Hernandez,* 2023 IL App (1st) 230264-U, ¶68 ("a tribunal is generally free to adopt whatever rules it deems proper, but at the very least, a rule must reasonably apprise those subject to the rule of its requirements, particularly if the penalty for noncompliance with those requirements is forfeiture or waiver"); *Corbin v. Schroeder,* 2021 IL App (2d) 210090-U, ¶14 ("A reviewing court must give deference to the election board's application of its rules unless its decision was arbitrary or unreasonable.").

c. [2.21] Retention of Board Counsel

There is no requirement that an electoral board retain legal counsel. However, it is recommended that a board retain counsel, even if one or more of the board members are attorneys.

Many electoral boards consist of statutorily required elected officials, many of whom are not attorneys. The board may simply ask that the lawyer for its unit of government act as its own counsel, or it may wish to retain a different attorney. In any event, counsel can take over a great many of the preliminary duties of the board, such as preparation of the call, the docket, and the draft rules. The attorney can advise the board during the hearings and deliberations, prepare its written decisions, and represent it in court on judicial review. It is recommended to include the scope and role of the electoral board's attorney within the rules of procedure, including authorizing the electoral board's attorney to represent the electoral board on judicial review.

d. [2.22] Providing for a Record

Because of the possibility of judicial review, an electoral board should ensure that a verbatim transcript of its proceedings will be made by a certified shorthand reporter. Either a court reporter should attend the board's sessions, or a recording of the sessions should be made for later transcription. Failure to preserve a record of the hearing also means that the board will not be able to refer to a "record" in its decision (as in "based on the evidence as set forth in the record, we determine"). Thus, the board will be faced with the burden of reciting in the decision each and every occurrence, remark, or detail relied on in reaching its rulings. The procedure of issuing a ruling on the record and referring to the record in the board's written decision was upheld in *Lockhart v. Cook County Officers Electoral Board,* 328 Ill. App. 3d 838, 767 N.E.2d 428, 262 Ill.Dec. 968 (1st Dist. 2002). In *Lockhart,* the electoral board chair had "stated that due to the need for expedition, the Electoral Board's written decision would not recite its analysis in full, but would instead rely upon the analysis in the hearing transcript." 767 N.E.2d at 430. The *Lockhart* court found:

> **[T]he record contains a four page written decision which references the hearing record containing the findings made by the Electoral Board at the conclusion of the hearing. We reject petitioner's argument that the decision of the Electoral Board was deficient for failure to articulate written findings. Based on the totality of the circumstances, including the complete record, the findings of the Electoral Board were sufficient.** 767 N.E.2d at 431.

Section 10-10.1 of the Election Code explicitly recognizes the duty of an electoral board to cause to be created a record of its proceedings. Specifically, the §10-10.1(a) provides that "the electoral board shall cause the record of proceedings before the electoral board to be filed with the clerk of the court on or before the date of the hearing on the petition or as ordered by the court" whenever judicial review proceedings are initiated under. 10 ILCS 5/10-10.1(a). Failure to file an adequate record can lead to a voiding of the electoral board's actions. *See Lawrence v. Williams,* 2013 IL App (1st) 130757, 988 N.E.2d 1039, 370 Ill.Dec. 683. See also §2.74 below.

e. [2.23] Open Meetings Act

Electoral boards are subject to the provisions of the Open Meetings Act, 5 ILCS 120/1, *et seq.,* which, in general, means that an agenda for each electoral board meeting must be posted in writing at the site of the meeting and the parent agency's main office at least 48 hours before the meeting

begins. 5 ILCS 120/2.02(a). When a board recesses, it should announce the time and place of its reconvening. *Id.* After a recess of more than 24 hours, without an announcement of the reconvened meeting or if the agenda is going to change, a notice of the next meeting should be posted 48 hours before the meeting begins. *Id.*

While most quasi-adjudicative bodies are free to go into executive session to discuss evidence received at a hearing, the Open Meetings Act specifically exempts "local electoral boards" from the "quasi-adjudicative body" definition. 5 ILCS 120/2(d). While electoral boards are subject to the Open Meetings Act, mere failure to meet the provisions of the Act, without more, does not invariably invalidate the actions of the board. *Powell v. East St. Louis Electoral Board,* 337 Ill.App.3d 334, 338 – 339, 785 N.E.2d 1014, 271 Ill.Dec. 820 (5th Dist. 2003) (noting that while the court "would not condone violations of the Open Meeting Act," it was "unwilling to remand on the basis of such an error").

However, failure to observe Open Meetings Act requirements can lead to a voiding of the decision of an electoral board, especially when the Open Meetings Act was not strictly followed when taking "final action" (*i.e.,* rendering the electoral board's decision). In *Lawrence v. Williams,* 2013 IL App (1st) 130757, 988 N.E.2d 1039, 370 Ill.Dec. 683, the board failed to vote on and to serve its decision in a public meeting (see §2.69 below) and failed to provide the trial court with a record that included transcripts of all of its hearings on the case (see §2.74 below).

2. Initial Meeting Activities

a. [2.24] Convening the Meeting

When the time set forth in the call arrives, the chair of the electoral board should call the members of the board to order. The chair may introduce himself or herself and the members, explain how they came to be on the board, state the purpose of the meeting, and deal with any other preliminary matters. This is primarily a matter of style and tone, but the value of these things at a public meeting is obvious.

b. [2.25] Adoption of Rules

The Election Code specifically instructs the electoral board to "adopt rules of procedure for the introduction of evidence and the presentation of arguments" at its first meeting. 10 ILCS 5/10-10. Ideally, the electoral board has heeded the earlier admonition in this regard and has draft rules ready for adoption. The board can call for comment on the rules at its initial hearing before their adoption, although this step is not required. Allowing comments might mitigate against a later protest as to lack of fairness in the rules. *See Ghiles v. Municipal Officers Electoral Board of City of Chicago Heights,* 2019 IL App (1st) 190117, ¶30, 125 N.E.3d 1138, 430 Ill.Dec. 120 (noting that candidate had not objected to rules when announced).

c. [2.26] Call of Docket

Depending on the size and structure of the board's docket of cases, it is usually wise to call the entire docket at the first meeting. This establishes the presence of all the relevant parties and effectively puts them on notice as to their duty to be ready to proceed. It may also bring to light any difficulties that may have occurred in notifying parties.

d. [2.27] Scheduling of Individual Cases

If the board has more than one objection, some scheduling is required. The passive approach is simply to call the cases seriatim and to take up matters as they come. A more active approach is to quickly ascertain, perhaps during the initial call of the docket, the nature of the individual cases. If a matter can be resolved only by a registration records check and such a check will be dispositive, or nearly so, it is more efficient to call that case out of order, if need be, issue the registered records check order, and set the case for a continued hearing at a later date. This activity can be assigned to hearing officers if the board choses to use them.

e. [2.28] Appointment of Hearing Officers

The Cook County Officers Electoral Board, the Illinois State Board of Elections, and the Board of Election Commissioners for the City of Chicago appoint hearing officers to hold hearings in cases. The exact role of a hearing officer may vary from board to board, but in general, the hearing officer rules on motions, takes testimony and other evidence, oversees the registration records check, and makes recommendations as to findings of fact and rulings of law. The hearing officer's findings are reviewable by the parent body, which will make the final rulings in each case. The use of hearing officers by the State Board was upheld by the court in *Keats v. Illinois State Board of Elections,* No. 90 MR 33 (Sangamon Cty.Cir. 1990), and has not proved to be controversial since.

B. Hearing Cases

1. [2.29] Appearances by Parties

Electoral boards often adopt rules that mimic those governing the circuit courts. Most boards adopt a rule allowing objectors and candidates to appear either in person or by counsel. This common-sense rule acknowledges the possibility that a hearing may be lengthy and extend well beyond a single session and the fact that a party present by counsel is adequately represented and protected.

2. [2.30] Intervention by Nonparties

The Election Code states that the board "in its discretion" may hear, in the form of briefs, from "other interested persons." 10 ILCS 5/10-10. Because the candidate and the objector are necessary parties, this must refer to some other party. The Election Code says nothing more on the subject. This appears to bestow a conditional right to intervene parallel to that set out in the Code of Civil Procedure, 735 ILCS 5/1-101, *et seq.* See 735 ILCS 5/2-408(b). No reported cases contain any indication of participation before an electoral board by other than the parties.

3. Preliminary Motions

a. [2.31] Motions

Most boards adopt a rule that allows the candidate to attack the sufficiency of the objector's petition before the objector's case-in-chief. These motions generally are restricted to the four

corners of the objector's petition and are modeled on motions under 735 ILCS 5/2-615. Like §2-615 motions, these are generally known as "motions to strike." Motions to strike need not be directed at the objector's entire petition. When an objector has offered multiple bases for attacking the nominating papers, a motion to strike may properly attack only one or some of these grounds. The granting or denial of a partial motion to strike can simplify the remaining case before the board. Certain other affirmative matters may (and often must) be raised in a preliminary motion as well and take the form of motions to dismiss similar to those under §2-619 (or a "combined motion" under §2-619.1). An electoral board's rules will often define the allowed scope for these preliminary motions.

(1) [2.32] Issues of law

A motion to strike asserts that one or more parts of the objection are insufficient, as a matter of law, to support the granting of the relief requested, *i.e.,* the removal of the candidate from the ballot. Nonlawyers often have difficulty understanding this concept. Typically, it is explained as a "So what?" standard, or more elaborately, as an "even if this allegation is true (and we assume, for this purpose, that it is true), it does not matter because the allegation has no legal consequence" test. For example, an objection might allege that the petitions are defective because the circulator of the petition sheets was not a registered voter. However, the law no longer requires a circulator to be registered. 10 ILCS 5/7-10, 5/8-8, 5/10-4. *See Krislov v. Rednour,* 226 F.3d 851 (7th Cir. 2000), *cert. denied,* 121 S.Ct. 1085 (2001). Thus, because what is alleged — the use of a non-registered circulator — is not improper, the allegation should be stricken as insufficient as a matter of law.

(2) [2.33] Issues of undisputed fact

If an objection raises an issue of fact that appears to be capable of easy resolution (through, for example, the presentation of a certified copy of a government record), the issue may appear in a motion to strike. This makes the motion more closely resemble a §2-619 motion (see 735 ILCS 5/2-619) but should not hinder consideration of the motion. Similarly, an issue of fact that is essential to the legal theory of the motion to strike may be undisputed. For example, a candidate's address or duration of residency may be agreed on by the parties, but the legal effect of the agreed-on fact may be in dispute.

b. Deciding Motions

(1) [2.34] Memoranda

The Election Code authorizes the electoral board to receive written briefs should it desire. 10 ILCS 5/10-10. The stumbling block is one of timing. Even as tight a schedule as two or three days for each side may delay a decision on the issue for a week. Should the outcome not be dispositive, the bulk of the case may still lie before the board. One of the best reasons for promptly scheduling and hearing cases is that this will allow enough time to fully develop the record without unduly delaying the board's decision. A board may find it efficient to move a case along parallel tracks, scheduling a registration records check while simultaneously setting a briefing schedule for motions. Moreover, even though a motion to strike may be decided early in a case, it can be decided, when convenient or effective, with the case-in-chief or after the determination of certain factual issues.

(2) [2.35] Argument

Regardless of whether the electoral board asks for written briefs, it will benefit from entertaining the oral arguments of the parties or their counsel. If nothing more, it provides the board with the opportunity to question the parties about their positions and provides the parties with adequate due process.

(3) [2.36] Timing of decision

Once the motion has been argued, the electoral board faces one more procedural matter before reaching the merits of the motion. The board, as noted in §2.34 above, may choose to take the motion with the case, deferring a decision on it until after the case-in-chief is heard. Although this course offers certain obvious advantages, it is not always available. If it appears that the need for a registration records check or an extensive evidentiary hearing turns on the resolution of the motion, then the board should consider resolving the issues raised in the motion to strike.

(4) [2.37] Effect of granting motion

By granting a motion to strike, the electoral board determines that one or more of the grounds raised in the objection are, as a matter of law, insufficient to justify giving the relief sought. Granting the motion disposes of these issues and removes them from the case. Denying a motion to strike will have a different result, depending on the basis of the original objection. If the objection was factually based, denying the motion declares that there is a possible legal effect to the alleged fact. (Of course, it still must be proven in the case-in-chief before the allegation can have any effect.) If the objection is based on a certain legal theory, the board, by denying the motion to strike, agrees that the theory is correct. In a case involving no factual dispute, the board's decision on the motion to strike effectively decides the case.

4. Presentation of Parties' Cases-in-Chief

a. Issues of Fact

(1) [2.38] Evidence

If the board follows the Election Code command to adopt rules for the presentation of evidence, the board likely will find it convenient to adopt a standard of "generally following the rules that obtain in the Circuit Court of _____, Illinois." No board can evolve an entire set of evidentiary rules unique to its own needs and circumstances; it will need to adopt some already existing standard such as the Illinois Rules of Evidence. On the other hand, electoral board hearings need not be as formal as a court proceeding, and the board's rules, like those of any administrative tribunal, need not adhere strictly to a court's evidentiary rules.

(2) [2.39] Testimony

The electoral board is explicitly granted the power to "administer oaths and to subpoena and examine witnesses." 10 ILCS 5/10-10. Only rarely will a board member actually conduct an

examination. Boards follow the customs of the courts and allow the parties to conduct the examinations and elicit the testimony. This will require the board's presiding member to function in a capacity similar to that of a judge, ruling on testimonial and evidentiary objections. Some electoral board rules allow the board's attorney to rule on evidentiary objections during a witness's testimony, subject to appeal to the entire electoral board. However, as in a trial court, there may be situations when board members, as triers of fact, desire additional testimony regarding an area into which the parties are reluctant to go. In such a case, a limited inquiry, followed by the opportunity for further questions by the parties, does not seem to be improper.

(3) [2.40] Affidavits

As a practical matter, it is usually not possible to obtain live testimony from dozens of witnesses in the context of an electoral board hearing. Boards recognize this and generally allow for the use of affidavits as a substitute for live testimony in certain circumstances, such as issues regarding the genuineness of a petition signature or the identity or physical characteristics of a petition circulator. Given the compressed time schedule and limited discovery opportunities of electoral board cases, electoral boards can require the added trustworthiness that comes from having any admissible affidavit be sworn before a notary public. This approach has the additional benefit of avoiding the problems that arose in *Mashni Corp. v. Laski,* 351 Ill. App. 3d 727, 814 N.E.2d 879, 286 Ill.Dec. 653 (1st Dist. 2004) (disallowing use of statements certified under §1-109 of Code of Civil Procedure, 735 ILCS 5/1-109). At least one court, relying on *Mashni,* has explicitly found that §1-109 is not applicable in electoral board proceedings. *Caldwell v. Board of Election Commissioners,* 2012 COEL 2 (Cook Cty.Cir. 2012). The Cook County Officers Electoral Board, for example, has a provision in its rules requiring notarized affidavits. Cook County Officers Electoral Board Rule 8. It is advisable that the electoral board's rules include a provision regarding admissibility and standards for affidavits. *See Muldrow v. Barron,* 2021 IL App (1st) 210248, ¶24, 191 N.E.3d 171, 455 Ill.Dec. 212.

(4) [2.41] Subpoenas

The Election Code provides an electoral board with subpoena power. Issuance of a subpoena for testimony or documents by the chair of an electoral board is proper only upon a vote by the majority of its members. 10 ILCS 5/10-10. As a practical matter, this means that a board that employs hearing officers must establish a procedure to get board approval for the issuance of subpoenas intended to produce evidence or witnesses for hearings conducted by the hearing officers. Service of the subpoenas may be made by the sheriff or any other person. The board may seek enforcement of its subpoenas in circuit court. 10 ILCS 5/10-10. It has been held that boards need not issue subpoenas in respect to areas outside of the board's proper area of inquiry, "whether a candidate's nomination petition complies with the requirements of the Election Code." *Nader v. Illinois State Board of Elections,* 354 Ill. App. 3d 335, 819 N.E.2d 1148, 1156, 289 Ill.Dec. 348 (1st Dist. 2004) (upholding State Board of Elections' denial of subpoenas to inquire into how objections were compiled).

(5) [2.42] Documents and physical evidence

Other than testimony, an electoral board may receive evidence in the form of tangible items, and these too may be the subject of a subpoena. While a board need not adhere rigidly to the rules

of evidence that pertain in court, tangible evidence should not be received without a certification, in the case of a document, or without supporting testimony, in the case of a document or some other object. The board should see that the respective parties label and order their exhibits. This greatly contributes to a clear record.

(6) [2.43] Registration record check

By far, the most common factual issues raised before electoral boards concern matters of registration and the genuineness of signatures. Some of these matters can be resolved at a hearing, such as whether a voter's address is outside of the appropriate district, but it can be impractical at a hearing to compare a large number of challenged petition signatures to the originals on the registration cards. The board should send these allegations to a registration record check as described in §2.20 above. Alternately, if only a small number of signatures need to be checked, the board may be able to make arrangements with the election authority to have the original registration cards, or their computerized counterparts under Election Code §§4-33, 5-43, and 6-79, produced at a hearing. 10 ILCS 5/4-33, 5/5-43, 5/6-79.

b. [2.44] Issues of Law

Disputed matters of law can also be presented to the board as part of the parties' cases. These matters come before the board in the form of assertions of legal rules, accompanied by citation to authority, logic, common sense, etc., as support.

(1) [2.45] Constitutional claims

The scope of the jurisdiction of electoral boards has been interpreted to bar their consideration of constitutional challenges. *Wiseman v. Elward,* 5 Ill. App. 3d 249, 283 N.E.2d 282 (1st Dist. 1972); *Delgado v. Board of Election Commissioners of City of Chicago,* 224 Ill.2d 481, 865 N.E.2d 183, 186, 309 Ill.Dec. 820 (2007). The proper procedure for an electoral board faced with a constitutional claim is to take the statute or regulation in question before it as constitutional and adjudicate the case accordingly. The parties can contest the constitutional issue in court on judicial review. *Burns v. Municipal Officers Electoral Board of Village of Elk Grove Village,* 2020 IL 125714; *Phelan v. County Officers Electoral Board,* 240 Ill.App.3d 368, 608 N.E.2d 215, 181 Ill.Dec. 142 (1st Dist. 1992), *rev'd on other grounds sub nom. Bonaguro v. County Officers Electoral Board,* 158 Ill.2d 391 (1994). Nonetheless, raising any constitutional questions at the electoral board level will preserve them for judicial review and ensure that the charge of waiver cannot later be leveled against the party. *See Moon v. Rolson,* 189 Ill. App. 3d 262, 545 N.E.2d 247, 249 – 250, 136 Ill.Dec. 723 (1st Dist. 1989). It should be kept in mind, however, that adjudication of a party's federal constitutional claims in state court will bar their later consideration by an inferior federal court. *England v. Louisiana State Board of Medical Examiners,* 375 U.S. 411, 11 L.Ed.2d 440, 84 S.Ct. 461 (1964).

(2) [2.46] Scope of electoral board's powers

The Election Code defines the task of the electoral board regarding a challenge to a petition as follows:

> **The electoral board shall take up the question as to whether or not the . . . nomination papers or petitions are in proper form, and whether or not they were filed within the time and under the conditions required by law, and whether or not they are the genuine . . . nomination papers or petitions which they purport to be . . . and in general shall decide whether or not the . . . nominating papers or petitions on file are valid or whether the objections thereto should be sustained.** 10 ILCS 5/10-10.

In *Wiseman v. Elward,* 5 Ill.App.3d 249, 283 N.E.2d 282, 288 – 289 (1st Dist. 1972), the court ruled that the powers of the electoral board are limited to those granted in §10-10 of the Election Code.

(3) [2.47] Mandatory-directory distinction and substantial compliance

The Election Code contains a plethora of instructions and directives to a prospective candidate. If the failure to satisfy every jot and tittle of the Election Code were fatal, then few candidacies would survive. Perhaps sensing this, the courts have interpreted the provisions of the Election Code in ways that excuse certain shortcomings. First, it must be determined whether a particular provision of the Election Code is mandatory or directory. If a provision is mandatory, then it must be complied with. If a provision is found to be merely directory, then failure to comply is, in contrast, not fatal to a petition. Even if a provision of the Election Code is mandatory, strict compliance is not always required. In certain cases, substantial compliance with a mandatory provision will suffice. Although certain approaches to determining whether a provision is mandatory have been articulated by a number of courts, the standard nonetheless remains evasive. More than one court has stated, "Whether an enactment is directory or mandatory depends on the legislative intention, to be ascertained from the nature and object of the act and the consequences which would result from any given construction." *Ballentine v. Bardwell,* 132 Ill. App. 3d 1033, 478 N.E.2d 500, 503, 88 Ill.Dec. 185 (1st Dist. 1985), citing *Village of Mundelein v. Hartnett,* 117 Ill. App. 3d 1011, 454 N.E.2d 29, 73 Ill.Dec. 285 (2d Dist. 1983). The *Ballentine* court was in turn quoted in *Serwinski v. Board of Election Commissioners of City of Chicago,* 156 Ill. App. 3d 257, 509 N.E.2d 509, 510 – 511, 108 Ill.Dec. 813 (1st Dist. 1987).

(a) [2.48] Mandatory

The courts will find a requirement of the Election Code to be mandatory if the Code states that it is mandatory. A provision can also be mandatory if it goes to the integrity of the election process. *Serwinski v. Board of Election Commissioners of City of Chicago,* 156 Ill. App. 3d 257, 509 N.E.2d 509, 108 Ill.Dec. 813 (1st Dist. 1987). Also, a provision is mandatory if the Election Code prescribes the penalty for violating it. *Simmons v. DuBose,* 142 Ill. App. 3d 1077, 492 N.E.2d 586, 97 Ill.Dec. 150 (1st Dist. 1986); *Havens v. Miller,* 102 Ill.App.3d 558, 429 N.E.2d 1292, 1297, 57 Ill.Dec. 929 (1st Dist. 1981).

In *Jackson-Hicks v. East St. Louis Board of Election Commissioners,* 2015 IL 118929, 28 N.E.2d 170, 390 Ill.Dec. 1, the Illinois Supreme Court reversed an electoral board's decision that there was substantial compliance to place on the ballot a candidate who failed to file the minimum number of signatures required for the office of mayor under §10-3 of the Election Code. The court rejected the mayoral candidate's argument that the word "may" in §10-3 indicates a permissive or

directory reading of that provision, finding that, when read as a whole, the word "may" does not apply to that section's numerical signature requirement but to the question of whether independent candidates are allowed to use the nomination process to be placed on the ballot. Under the statute, a candidate can be placed on the ballot if their nomination papers contain "not less than" the minimum number of signatures determined by a "specific mathematical formula." 2015 IL 118929 at ¶37. Strict compliance with this mandatory minimum requirement is required: "[a] candidate either meets that minimum threshold or does not. There is no close enough." *Id. See also Corbin v. Schroeder,* 2021 IL 127052, ¶45, 182 N.E.3d 754, 450 Ill.Dec. 942 (extending holding of *Jackson-Hicks* and refusing to allow "estoppel" argument made by candidates who were given incorrect, lower signature minimum calculations by local election official).

(b) [2.49] Substantial compliance

As noted in §2.47 above, certain mandatory provisions can be satisfied by substantial compliance with the requirement. If there is no statement in the Election Code that a provision is mandatory or that a process is voided by failure to follow the provision and if it is not related to the honesty and integrity of the process, then, absent fraud or some other irregularity, the provision can be satisfied by substantial compliance. *People ex rel. Meyer v. Kerner,* 35 Ill.2d 33, 219 N.E.2d 617, 620 (1966). The analysis in *Samuelson v. Cook County Officers Electoral Board,* 2012 IL App (1st) 120581, ¶20, 969 N.E.2d 468, 360 Ill.Dec. 658, is instructive. Substantial compliance has been found when information missing in one part of a petition is contained in another part. *Lewis v. Dunne,* 63 Ill.2d 48, 344 N.E.2d 443 (1976); *Schumann v. Kumarich,* 102 Ill. App. 3d 454, 430 N.E.2d 99, 102 – 103, 58 Ill.Dec. 157 (1st Dist. 1981); *Panarese v. Hosty,* 104 Ill. App. 3d 627, 432 N.E.2d 1333, 60 Ill.Dec. 434 (1st Dist. 1982); *Madden v. Schumann,* 105 Ill. App. 3d 900, 435 N.E.2d 173, 61 Ill.Dec. 684 (1st Dist. 1982); *Madison v. Sims,* 6 Ill. App. 3d 795, 286 N.E.2d 592 (1st Dist. 1972). In finding substantial compliance, the courts often state that the failure to comply is a technicality or that the deviation is technical in nature. *Panarese, supra,* 432 N.E.2d at 1335 – 1336; *Madden, supra,* 435 N.E.2d at 176. Reviewing the caselaw shows that, in any given instance, a court may not be clear or consistent in distinguishing between what is directory and what can be satisfied by substantial compliance.

For a time, there was a modest flurry of cases on the issue of substantial compliance, beginning in 2003, with the Fifth District's interpretation of an Illinois Supreme Court case. In *Powell v. East St. Louis Electoral Board,* 337 Ill. App. 3d 334, 785 N.E.2d 1014, 1017, 271 Ill.Dec. 820 (5th Dist. 2003), the court maintained that "the argument that substantial compliance is sufficient was specifically rejected by the Illinois Supreme Court in *DeFabio v. Gummersheimer,* 192 Ill.2d 63, 66, 248 Ill.Dec. 243, 733 N.E.2d 1241 (2000)." The Fifth District made a similar holding in *Knobeloch v. Electoral Board for City of Granite City, Illinois,* 337 Ill. App. 3d 1137, 788 N.E.2d 130, 132 – 133, 272 Ill.Dec. 826 (5th Dist. 2003). However, this reading of *DeFabio,* which appears on its face to be an unremarkable case regarding the disposition of uninitialed ballots in an election contest, has not been shared by other districts. First, in *Bergman v. Vachata,* 347 Ill. App. 3d 339, 807 N.E.2d 558, 563, 282 Ill.Dec. 934 (1st Dist. 2004), the First District took specific note of the holding in *Knobeloch* and stated that it did "not agree with" its reading of *DeFabio.* Then, the Second District, taking specific note of both *Powell* and *Knobeloch,* declared that "[w]e agree with the First District's interpretation" of *DeFabio. Jakstas v. Koske,* 352 Ill. App. 3d 861, 817 N.E.2d 200, 204, 288 Ill.Dec. 75 (2d Dist. 2004), citing *Bergman, supra.* The Second District continued its

criticism of the *Powell* interpretation of *DeFabio* in Justice O'Malley's concurrence in *Siegel v. Lake County Officers Electoral Board,* 385 Ill. App. 3d 452, 895 N.E.2d 69, 324 Ill.Dec. 69 (2d Dist. 2008), in which he maintained unambiguously that "*Powell* misread [*DeFabio v.*] *Gummersheimer* when it cited it for the proposition that courts must strictly enforce all provisions of the Election Code in all instances." 895 N.E.2d at 80. While the Illinois Supreme Court never directly commented on these cases, it has observed that "our appellate court has recognized that, in certain circumstances, substantial compliance can satisfy even a mandatory provision of the Election Code." *Jackson-Hicks v. East St. Louis Board of Election Commissioners,* 2015 IL 118929, ¶36, 28 N.E.2d 170, 390 Ill.Dec. 1. *But see Corbin v. Schroeder,* 2021 IL 127052, ¶45, 182 N.E.3d 754, 450 Ill.Dec. 942 ("Everything that we said in *Jackson-Hicks* about the substantial-compliance approach to section 10-3's signature requirement applies with equal force to the reliance/estoppel approach to that same requirement employed in *Merz* and *Atkinson* and adopted by the Electoral Board in this case.").

(c) [2.50] Directory

A provision of the Election Code is directory if the "provision is one the observance of which is not necessary to the validity of the proceeding. . . . No universal rule can be given to distinguish between directory and mandatory provisions. The controlling question in this as in all other rules of construction is, what was the intent of the Legislature?" *People ex rel. Agnew v. Graham,* 267 Ill. 426, 108 N.E. 699, 703 (1915), cited in *Havens v. Miller,* 102 Ill. App. 3d 558, 429 N.E.2d 1292, 1297, 57 Ill.Dec. 929 (1st Dist. 1981), *Serwinski v. Board of Election Commissioners of City of Chicago,* 156 Ill. App. 3d 257, 509 N.E.2d 509, 510, 108 Ill.Dec. 813 (1st Dist. 1987), and *Shipley v. Stephenson County Electoral Board,* 130 Ill. App.3d 900, 474 N.E.2d 905, 907, 85 Ill.Dec. 945 (2d Dist. 1985). For example, the courts have found provisions to be directory when they do not specify sanctions for failure to follow them. *Peoples Independent Party v. Petroff,* 191 Ill. App. 3d 706, 548 N.E.2d 145, 138 Ill.Dec. 915 (5th Dist. 1989). Because there are no fixed rules as to what directory is, a determination will need to be made whenever there is no controlling precedential authority.

c. [2.51] Argument

Argument, or closing argument, is that portion of the case during which the parties or their attorneys directly address the board, summarize their cases, criticize the case of the other side, and generally make their cases to the members. Allowing argument is an essential step in the process. The Election Code specifically provides that the board adopt a rule for "the presentation of arguments." 10 ILCS 5/10-10. The objector, as the party with the burden of proof, argues first and should be afforded the opportunity of rebuttal after the candidate's argument.

IV. BOARD DECISION AND JUDICIAL REVIEW

A. [2.52] Electoral Board Decision

The paramount duty of the electoral board is to render a decision on the objections before it. It is a fact of electoral board life that the board has only two alternatives regarding any objection to a

candidacy — to sustain it or to overrule it. No partial or compromise outcome is possible. If sufficient objections are sustained in the aggregate, the candidate will be removed from the ballot.

1. [2.53] Majority of Members

The Election Code specifically sets out that the decision of the board shall be by a "majority" of its members. 10 ILCS 5/10-10. The majority of a fully populated three-member board is, of course, two, and even a board that is short a member will require two votes to render a decision. *See Dugan v. Cook County Officers Electoral Bd.,* 119 Ill.2d 555, 520 N.E.2d 637, 117 Ill.Dec. 286 (1988) (reversing in part *Dugan v. Cook County Officers Electoral Board,* 166 Ill.App.3d 459, 519 N.E.2d 1064, 116 Ill.Dec. 849 (1st Dist. 1988), and adopting Justice White's dissent therein as court's rationale). Presumably, an evenly split board cannot sustain an objection because it lacks the statutorily commanded majority. The State Electoral Board, the only board with more than three members, must get votes from five of its eight members to sustain an objection. *Schober v. Young,* 322 Ill. App. 3d 996, 751 N.E.2d 610, 256 Ill.Dec. 220 (4th Dist. 2001), illustrates how the courts handle review of a decision of the Illinois State Board of Elections when an objection fails simply because of the failure of the board to have five votes to sustain. In *Schober,* the objection was overruled notwithstanding a 4-2 vote in favor of sustaining it. *See also Patton v. Illinois State Board of Elections,* 2018 IL App (1st) 180425-U, ¶34 (vacating and dismissing claim of candidate on judicial review from a 4-to-4 State Officers Electoral Board decision because candidate was not "aggrieved" as split decision resulted in name remaining on ballot).

a. [2.54] Dissent

The Election Code is silent about written dissents to electoral board decisions, although its specification of a majority clearly contemplates the possibility of a dissenting member of the board. As a matter of practice, these members have published dissents to board decisions. *See In re Objections to Harold Washington Party,* No. 90-COEB-2 (Cook Cty. Electoral Board 1990).

b. [2.55] Concurrence

Because the sustaining of a single objection is enough to remove a candidate from the ballot, a member may find that he or she is part of a majority on one issue but in disagreement on others. Because such a member agrees with the outcome — removal of the candidate — he or she cannot accurately be said to dissent from the board's decision. Regardless of whether such a member elects to author a competing written decision, he or she is most accurately described as concurring in the decision.

2. Drafting the Decision

a. [2.56] Requirement of Written Decision

An electoral board must render a written decision. The Election Code prescribes that the decision state the objections that were sustained. 10 ILCS 5/10-10. A written decision is also necessary to form the basis of any action for judicial review. It is not uncommon, however, for a board that has reached a decision on an objection to orally announce its determination at the close

of its session. This does not diminish the board's duty to issue a written ruling. Further, such an announcement cannot be said to start the running of the judicial review filing period. The caselaw indicates that the period starts to run from the date of the issuance of the written decision. *Dooley v. McGillicudy,* 63 Ill. 2d 54, 345 N.E.2d 102 (1976); *Kozel v. State Board of Elections,* 126 Ill. 2d 58, 533 N.E.2d 796, 127 Ill.Dec. 714 (1988). Moreover, not having a written decision makes it impossible for the board to comply with the statutory command to serve the parties with the decision at a board meeting. See §2.69 below.

b. [2.57] Role of Counsel

When the electoral board has retained counsel, it is common for counsel to sit in on the deliberations of the board, to answer questions, and to be available as a resource on the law. The board often assigns to counsel the task of putting its decision in written form. This allows time to put the decision in proper form and to gather and cite any legal precedents on which the board has relied.

c. [2.58] Recitations

Electoral board decisions often resemble court orders, in that they set forth certain essential preliminary matters before reaching the substance of the issues before the electoral board.

d. [2.59] Jurisdiction, Membership, Call, Etc.

The preliminary matters in the decision may address the constitution of the electoral board; the filing of the objector's petition; the issuance of the call; the date of the hearing; the presence or absence of board members, the board's counsel, the objector or his or her counsel, and the candidate or his or her counsel; the taking of evidence and testimony; and the receipt of oral or written argument by counsel.

e. [2.60] Disposition of Preliminary Matters

If a preliminary motion was made, the decision should recite its disposition. It is possible, of course, that a motion disposes of the entire case, as when a motion to strike the entire objector's petition is granted. In such a case, this portion of the decision becomes the main body of the board's opinion. Because preliminary motions are matters of law and, possibly, undisputed fact, the electoral board should set forth the legal rationale, including legal authorities relied on (and suggested authority rejected), that supports its decision. If the board takes the motion with the case-in-chief and the motion and case concern the same fundamental issue, the two may be discussed jointly.

f. [2.61] Adoption of a Hearing Officer's Recommendation

As the use of hearing officers has become more common, procedures have been developed for boards to consider and adopt the findings and recommendation of the hearing officer as its own findings and decision. An integral part of this procedure is the potential opportunity for parties to object to the findings and recommendation of the hearing officer before the board. Boards have

adopted rules to embody this. See, *e.g.,* Rule 11 of the Rules of Procedure Adopted by the Cook County Officers Electoral Board; Rule 20 of the Rules of Procedure for the Board of Election Commissioners of the City of Chicago; Rule 5 of the Rules of Procedure Adopted by the State Board of Elections. The rules of a board will routinely recite that only the board itself has the power to make and issue a decision by specifically withholding that power from hearing officers and by setting out procedures for issuing a decision that requires the board itself to act. *See* Rules 3 and 12 of the Rules of Procedure Adopted by the Cook County Officers Electoral Board; Rules 2(a) and 21 of the Rules of Procedure for the Board of Election Commissioners of the City of Chicago; Rules 5 and 12 of the Rules of Procedure Adopted by the State Board of Elections.

g. [2.62] Objections Sustained or Overruled

The essential portion of a board decision addresses "which objections, if any, it has sustained." 10 ILCS 5/10-10. In addition, the board is to state its "findings" in writing. *Id.* As noted in §2.22 above, however, stating the reasons on the record and referring to the record in the decision has passed judicial muster.

(1) [2.63] Findings of fact

Most objections, especially those dealing with petition signatures, concern issues of fact. Numerical findings may be stated in summary form, such as, "For the reasons set forth in the record, the Board finds that candidate's petition has 607 valid signatures." Other factual findings should be set out clearly and directly, with reference made to the evidence in the record that the board relied on in making its findings. The board (or its hearing officer) is the only body that will actually hear the testimony and see the witnesses. Moreover, the courts are quite deferential to a board's findings of fact and will overturn them only if they appear from the record to be against the manifest weight of the evidence. *Cinkus v. Village of Stickney Municipal Officers Electoral Board,* 228 Ill.2d 200, 886 N.E.2d 1011, 319 Ill.Dec. 887 (2008); *Wicker v. Town of Cicero Municipal Officers Electoral Board,* 247 Ill.App.3d 200, 617 N.E.2d 297, 187 Ill.Dec. 89 (1st Dist. 1993); *McCullough v. LaVelle,* 141 Ill.App.3d 983, 491 N.E.2d 82, 96 Ill.Dec. 268 (1st Dist. 1986); *Benjamin v. Board of Election Commissioners,* 122 Ill. App. 3d 693, 462 N.E.2d 626, 78 Ill.Dec. 507 (1st Dist. 1984). However, when a court is reviewing a decision of the Illinois State Board of Elections and the board had not been able to muster a five-vote majority, then the board is not owed any manifest weight deference. *Schober v. Young,* 322 Ill. App. 3d 996, 751 N.E.2d 610, 256 Ill.Dec. 220 (4th Dist. 2001). Courts have indicated that the burden of proof rests with the objector. *Sims v. Municipal Officers Electoral Board for Village of Riverdale,* 2021 IL App (1st)210168, ¶15, 190 N.E.3d 901, 454 Ill.Dec. 919. *See also Watson v. Electoral Board of Village of Bradley,* 2013 IL App (3d) 130142, ¶46, 890 N.E.2d 401, 371 Ill.Dec. 501; *Daniel v. Daly,* 2015 IL App (1st) 150544, ¶28, 31 N.E.3d 379, 391 Ill.Dec. 703; *Hagen v. Stone,* 277 Ill.App.3d 388, 660 N.E.2d 189, 213 Ill.Dec. 932 (1st Dist. 1995); *Fortas v. Dixon,* 122 Ill. App. 3d 697, 462 N.E.2d 615, 78 Ill.Dec. 496 (1st Dist. 1984). *Cf. Watkins v. Burke,* 122 Ill.App.3d 499, 461 N.E.2d 625, 78 Ill.Dec. 41 (1st Dist. 1984).

Findings should further ensure that they comply with the electoral board's own rules. For example, with respect to individual signature objections, many boards adopt rules that state that the "ruling made by the clerk shall be deemed valid" and requires the challenging party to present

additional evidence beyond that of the registration record reviewed during the records examination in order to rebut the record clerk's findings; such a requirement and procedure has been expressly approved and reviewing courts are not to conduct their own review of the individual handwriting comparisons. *See Corbin v. Schroeder,* 2021 IL App (2d) 210090-U, ¶¶19 – 22.

(2) [2.64] Rulings of law

Resolution of questions of fact will not dispose of a case. The board must then face the issue of the legal effect of its factual findings. In some instances, this is straightforward. If a valid petition for an office requires a minimum of 600 legal and proper signatures, the legal effect of a finding that a petition has 607 such signatures should be clear. The scope of review given to rulings of law by the courts is independent and is not deferential. *Cinkus v. Village of Stickney Municipal Officers Electoral Board,* 228 Ill.2d 200, 886 N.E.2d 1011, 319 Ill.Dec. 887 (2008); *Havens v. Miller,* 102 Ill.App.3d 558, 429 N.E.2d 1292, 1298, 57 Ill.Dec. 929 (1st Dist. 1981); *Serwinski v. Board of Election Commissioners of City of Chicago,* 156 Ill.App.3d 257, 509 N.E.2d 509, 511 – 512, 108 Ill.Dec. 813 (1st Dist. 1987). A review is de novo, the electoral board's interpretation of the Election Code is entitled to some deference, as it is the entity charged with interpreting the Election Code. *Rita v. Mayden,* 364 Ill.App.3d 913, 847 N.E.2d 578, 301 Ill.Dec. 568 (1st Dist. 2006). *See also Gercone v. Cook Count Officers Electoral Board,* 2022 IL App (1st) 220724-U, ¶26.

(3) [2.65] Standards of review

Members of electoral boards and counsel to such boards should be aware of the Illinois Supreme Court's decision in *Cinkus v. Village of Stickney Municipal Officers Electoral Board,* 228 Ill.2d 200, 886 N.E.2d 1011, 1017 – 1019, 319 Ill.Dec. 887 (2008), insofar as it delineates the standards of review that are to be applied to various types of findings made by boards. There is no substitute for reading the full text of this part of *Cinkus,* but it is summarized neatly as follows by the court in *Cullerton v. DuPage County Officers Electoral Board,* 384 Ill. App. 3d 989, 894 N.E.2d 774, 775 – 776, 323 Ill.Dec. 748 (2d Dist. 2008):

> **The standards for review of an electoral board decision are essentially identical to those applicable to review of an administrative agency decision. . . . An electoral board's findings of fact are deemed *prima facie* true and correct and will not be overturned on appeal unless they are against the manifest weight of the evidence. . . . An electoral board's decisions on questions of law, however, are not binding on a reviewing court, which will instead review such questions under the nondeferential *de novo* standard of review. . . . An electoral board's rulings on mixed questions of law and fact — questions on which the historical facts are admitted, the rule of law is undisputed, and the only remaining issue is whether the facts satisfy a statutory standard — will not be disturbed on review unless clearly erroneous. [**Citations omitted.**]**

(4) Defaults

(a) [2.66] By candidate

In *Naples v. Community College District 504 Education Officers Electoral Board,* No. 87 Co 319 (Cook Cty.Cir. 1987), the court ruled that due process barred an electoral board from defaulting a candidate and removing her from the ballot on the sole basis that she failed to appear at the board's hearing on the objection to her petition. In response to this ruling, it is common to find provisions in the rules adopted by electoral boards to deal with candidates who fail to appear. For example, Rule 4 of the Rules of Procedure Adopted by the Cook County Officers Electoral Board states: "If a candidate . . . fails to appear for the initial hearing at which appearance is required, a decision in the nature of a default judgment may be entered and the objections contained in the objector's petition shall be confessed against the candidate, but only upon a determination by the Board that the objector's petition sets forth *valid grounds* and makes a colorable claim, for the removal of the candidate's name from the ballot." [Emphasis added.] A board may adopt a higher standard for defaulting a candidate, such as requiring that a *prima facie* showing be made before sustaining an objection.

(b) [2.67] By objector

Unlike a candidate, an objector appears to have no protection against being defaulted by an electoral board for failing to appear at the board's hearing. This difference is not surprising. The electoral board was called into existence to hear and pass on the petition filed by the objector. If an objector fails to appear to press the case, the board literally has nothing to decide on because no one is before it seeking relief.

h. [2.68] Signature and Date

As a matter of custom, the signature of an electoral board member on a copy of the board's decision testifies to his or her agreement with it. Dating the decision is useful in that it establishes the date of the decision for the purpose of calculating the period for seeking judicial review under §10-10.1 of the Election Code. The decision should be signed by the board members who actually participated in making the decision. *Rita v. Mayden,* 364 Ill. App. 3d 913, 847 N.E.2d 578, 301 Ill.Dec. 568 (1st Dist. 2006). Provision can be made in the rules of a board to specifically allow a decision to be signed in counterparts. Cook County Officers Electoral Board Rule 11 is such a rule.

In *Lawrence v. Williams,* 2013 IL App (1st) 130757, 988 N.E.2d 1039, 370 Ill.Dec. 683, the court invalidated the actions of an electoral board when the board's written decision was circulated for signatures and never voted on as such during an open meeting with a quorum present. Likewise, in *Howe v. Retirement Board of Firemen's Annuity & Benefit Fund of Chicago,* 2013 IL App (1st) 122446, ¶26, 996 N.E.2d 664, 374 Ill.Dec. 969, the court invalidated a decision of a firefighters' pension board handled in a similar manner, stating: "No public body in Illinois subject to the Open Meetings Act can take final action by merely circulating some document for signature and not voting on it publicly." Therefore, once the board has reached a consensus, it should, if necessary, recess for preparation of a written decision to be voted on when the board reconvenes publicly, with notice to all parties and in compliance with the Open Meetings Act.

i. [2.69] Service of Decision

P.A. 96-1008 (eff. July 6, 2010) completely remade the service requirements for electoral board decisions. In relevant part, its amendment to §10-10 of the Election Code is:

> **A copy of the decision shall be served upon the parties to the proceedings in open proceedings before the electoral board. If a party does not appear for receipt of the decision, the decision shall be deemed to have been served on the absent party on the date when a copy of the decision is personally delivered or on the date when a copy of the decision is deposited in the United States mail, in a sealed envelope or package, with postage prepaid, addressed to each party affected by the decision or to such party's attorney of record, if any, at the address on record for such person in the files of the electoral board.** 10 ILCS 5/10-10.

The most direct way of dealing with this requirement is to convene a session of the electoral board for the purpose of serving a copy of the decision on the parties, usually through their attorneys, on the record in open session. This procedure also allows the board to put on record the absence of a party and to announce that a copy of the decision will be mailed to the absent party at the address the board has for that party in its files on that particular day.

With five days for judicial review filing, it is particularly important to be sure that service of the electoral board's decision is according to the law. Failure to properly execute the decision and serve the parties can lead to a judicial voiding of the electoral board's actions. *See Lawrence v. Williams,* 2013 IL App (1st) 130757, 988 N.E.2d 1039, 370 Ill.Dec. 683.

j. [2.70] Retention of Papers Pending Judicial Review

The electoral board is the custodian of the original nominating petition and objector's petition until the period for filing for judicial review expires. If no petition for review is filed, the board is to return these papers by registered or certified mail, along with a "certified copy of its ruling," to the election authority from which they came. 10 ILCS 5/10-10.

B. [2.71] Judicial Review

In the past, the decision of an electoral board was final and could be attacked in court only on the basis of fraud, etc. In 1967, however, the provision for judicial review as a matter of right (10 ILCS 5/10-10.1) was added to the Election Code, effective July 1, 1967. 1967 Ill. Laws 597. Although mandamus has been used in the past to attack an electoral board decision, the courts subsequently have made it clear that when judicial review is available, mandamus cannot be used to appeal an electoral board decision. *In re Objection of Russo to Petition for Public Question Referendum,* 331 Ill. App. 3d 111, 770 N.E.2d 1287, 264 Ill.Dec. 591 (2d Dist. 2002).

1. [2.72] Filing Period

The Election Code calls for the party "aggrieved" by the board's decision to file a petition "within 5 days after" the date of the board's decision. 10 ILCS 5/10-10.1(a). This is jurisdictional.

A single objector who seeks review of a number of decisions from a single electoral board may file all of them in a single petition for judicial review. *Hagen v. Stone,* 277 Ill. App. 3d 388, 660 N.E.2d 189, 213 Ill.Dec. 932 (1st Dist. 1995). *But see Ervin v. Alsberry,* 2017 IL App (1st) 170398, ¶24, 74 N.E.3d 473, 412 Ill.Dec. 6. The term "after" in §10-10.1 means just that. Filing a petition for judicial review before the electoral board has issued its decision in writing does not vest the circuit court with subject-matter jurisdiction to hear the case. *Forcade-Osborn v. Madison County Electoral Board,* 334 Ill.App.3d 756, 778 N.E.2d 768, 268 Ill.Dec. 502 (5th Dist. 2002). In *Forcade-Osborn,* the appellate court dismissed the appeal because it could have no jurisdiction to hear the case when the circuit court had no jurisdiction. (The "*dicta*" in *Forcade-Osborn* that was "extinguished" by the decision in *Wisnasky-Bettorf v. Pierce,* 2012 IL 111253, ¶24, 965 N.E.2d 1103, 358 Ill.Dec. 624, did not go to this portion of the case). *See also McDonald v. Cook County Officers Electoral Board,* 2018 IL App (1st) 180406, ¶19, 117 N.E.3d 218, 426 Ill.Dec. 801. The filing period ends after the 5 days — there are no extensions for electronic filing or other problems. *See Bean v. Board of Election Commissioners for City of Chicago Electoral Board,* 2023 IL App (1st) 230239-U, ¶¶16 – 17 (affirming dismissal of petition for judicial review for lack of subject matter jurisdiction when petition was accepted for e-filing on day after judicial review filing period).

2. [2.73] Service of Petition on Parties

Service of the petition for judicial review is by registered or certified mail on the electoral board and the "other parties." 10 ILCS 5/10-10.1(a). The board needs to know whether a petition was filed in order to know whether to return the original nominating petition and objector's petition to the election authority from which they came or to retain them for presentation to the court. Failure to serve the petition for judicial review on the appropriate parties and to file proof of service with the clerk of the circuit court defeats jurisdiction in the circuit court. *Hough v. Will County Board of Elections,* 338 Ill. App. 3d 1092, 789 N.E.2d 795, 273 Ill.Dec. 621 (3d Dist. 2003). The issues of who must be named and served and how service is to be had have spawned litigation. For many years, the issue of whether individual members of the electoral board are necessary parties was litigated. *See Russ v. Hoffman,* 288 Ill. App. 3d 281, 681 N.E.2d 519, 224 Ill.Dec. 204 (1st Dist. 1997). In *Bettis v Marsaglia,* 2014 IL 117050, 23 N.E.3d 351, 387 Ill.Dec. 659, the Illinois Supreme Court ruled conclusively that service on the electoral board as an entity was not necessary to confer jurisdiction for judicial review of an electoral board decision when the individual electoral board members were served. Likewise, courts held that when an objector seeks judicial review, the candidate is a necessary party and must be named and served within the ten-day period (now five-day period) set out in §10-10.1 of the Election Code. *Allord v. Municipal Officers Electoral Board for Village of South Chicago Heights,* 288 Ill. App. 3d 897, 682 N.E.2d 125, 224 Ill.Dec. 564 (1st Dist. 1997). The *Allord* court also held that, in contradistinction, the county clerk, as the election authority, did not have to be named for jurisdiction to attach. Despite *Allord,* the prudent practitioner will want to name and serve the relevant election authorities responsible for ballot printing, especially if a stay is to be sought. Moreover, a petition for judicial review may not be amended after the filing deadline to correct defects in naming necessary parties. *Bill v. Education Officers Electoral Board of Community Consolidated School District No. 181,* 299 Ill. App. 3d 548, 701 N.E.2d 262, 233 Ill.Dec. 619 (1st Dist. 1998). The validity of this holding of *Bill, supra,* was not affected by *Bettis v. Marsaglia,* 2014 IL 117050, 23 N.E.3d 351, 387 Ill.Dec. 659.

In the case of county officers electoral boards that make use of the provision of §10-9 that allows an office-holder to appoint a designee, the office-holder need not be served if he or she did not participate in the proceedings. *Rita v. Mayden,* 364 Ill. App. 3d 913, 847 N.E.2d 578, 301 Ill.Dec. 568 (1st Dist. 2006).

The litigation on this seemingly cut-and-dried technical issue continued for some time until the Illinois Supreme Court brought clarity to it in *Bettis, supra.* Acknowledging the split in the appellate courts over the ambiguous meaning of §10-10.1(a), the court held that service on the individual members of an electoral board constitutes service on the board as an independent entity. *Id.* More to the point, the *Bettis* court held that, "[a]lthough proceedings under the Election Code are in the nature of administrative review, the Administrative Review Law applies only where it is adopted by express reference, and there is no express adoption of the Administrative Review Law for electoral board decisions." 2014 IL 117050 at ¶30. Following up on that, it cited a minimalist set of requirements for a valid judicial review petition:

> **As the appellate court has noted numerous times, section 10-10.1(a) sets forth four explicit jurisdictional prerequisites:**
>
> > **"[The petitioner] must (1) file his challenging petition with the clerk of the court within five days after the Board's service of its decision; (2) serve copies of the petition on the Board and the other parties to the proceedings by registered or certified mail within five days after the Board's service of its decision; (3) state in that petition why the Board's decision should be reversed; and (4) file proof of service with the clerk of the court."** 2014 IL 117050 at ¶31, quoting *Rivera v. City of Chicago Electoral Board,* 2011 IL App (1st) 110283, ¶22, 956 N.E.2d 20, 353 Ill.Dec. 500.

Finally, the *Bettis* court endorsed an analysis that makes the jurisdictional requirements of judicial review as sparse as possible: "If the legislature intends any other prerequisites for the exercise of jurisdiction over petitions for review of electoral board decisions, it is up to the legislature to set them forth. The courts may not add to or subtract from the requirements listed in the statute." 2014 IL 117050 at ¶32. Following suit, the First District in *Solomon v. Ramsey,* 2015 IL App (1st) 140339, 41 N.E.3d 649, 397 Ill.Dec. 238, applied *Bettis, supra,* to find that service on the electoral board as an entity satisfied §10-10.1(a), dismissing the contention that duplicative service on the board's individual members was necessary. Although the *Bettis* court rejected the holding in *Nelson v. Qualkinbush,* 389 Ill. App. 3d 79, 907 N.E.2d 400, 329 Ill.Dec. 809 (1st Dist. 2009), that service on the board in addition to its individual members was necessary, the *Nelson* court's holding on proof of service remains intact. Specifically, the *Nelson* court held that failure to file proof of service — in the form required by Supreme Court Rule 12(b)(3) — within ten days (now five days) of filing the petition for judicial review deprives the court of subject-matter jurisdiction. 907 N.E.2d at 410. The inadequacy of serving attorneys — rather than parties — is pointed out by *Rivera v. City of Chicago Electoral Board,* 2011 IL App (1st) 110283, 956 N.E.2d 20, 353 Ill.Dec. 500, in which the court upheld a finding of lack of jurisdiction in the circuit court when the aggrieved party served the attorneys of the opposing parties and the electoral board, instead of the parties themselves. Likewise, even after *Bettis, supra,* the failure to use certified or registered mail — as opposed to ordinary, first-class mail — for service is fatal. *Bey v. Brown,* 2015 IL App (1st) 150263, 28 N.E.3d 888, 390 Ill.Dec. 235.

3. Electoral Board's Role in Judicial Review

a. [2.74] The Record — Original Filings and Record of Proceedings

As noted in §2.22 above, now that §10-10.1 of the Election Code includes a specific statutory command regarding production of the record, a board must be sure that it has a system to produce its record in a timely fashion. 10 ILCS 5/10-10.1. This is especially important because the court is limited in its consideration to the record made before the electoral board. *Wiseman v. Elward,* 5 Ill.App.3d 249, 283 N.E.2d 282 (1st Dist. 1972). The record usually will consist of the original candidate petitions, the original objector's petition, exhibits received as evidence at the hearing, and a transcript of the hearing itself. (If certain original registration records were produced at the hearing, these will have been returned to the appropriate election authority, but photocopies should be kept to be included in the record.) The board must be prepared to tender its record to the court no later than the initial hearing date on the petition for judicial review; often the exact filing deadline is set at an initial case status hearing for the petition for judicial review or presentment of a motion to expedite consideration of same. In Cook County, the courts have been known to order a recalcitrant electoral board to file a record and transcript at its own expense. *Clay v. Maywood Electoral Board,* No. 89 Co 56 (Cook Cty.Cir. 1989). Failure to file an adequate record can lead to a voiding of the electoral board's actions. *See Lawrence v. Williams,* 2013 IL App (1st) 130757, 988 N.E.2d 1039, 370 Ill.Dec. 683.

b. [2.75] Defending Electoral Board Decision

In an objection, the real parties in interest are the candidate and the objector. The same is true on judicial review. However, as in other forms of administrative review, the electoral board as the "agency" will be named as a party. While the caselaw indicates an electoral board lacks the ability to prosecute an appeal of a circuit court judgment (see §2.78 below), as a nominal defendant an electoral does have standing to defend its decision in circuit court, including the filing of a brief in support of its decision. *See Zurek v. Franklin Park Officers Electoral Board,* 2014 IL App (1st) 142618, ¶55, 22 N.E.3d 90, 387 Ill.Dec. 208; *Muldrow v. Barron,* 2021 IL App (1st) 210248, ¶37, 191 N.E.3d 171, 455 Ill.Dec. 212 (granting electoral board's motion to join party's brief). In many instances, a circuit court may find it useful to have argument by counsel for the electoral board in support of its decision.

c. [2.76] Role of Counsel

Because the electoral board will be named as a respondent in the judicial review petition, its attorney should file an appearance before the court and act as the board's representative during the review procedure. Even if the board takes only a passive role in a case, the board's attorney can see to it that the court and the parties timely receive the board's record and transcript.

4. [2.77] Reconvening Electoral Board

Once an electoral board has rendered a decision on a matter, it has lost jurisdiction over the case, and it may not grant a rehearing of the case or amend its decision. *Kozel v. State Board of Elections,* 126 Ill.2d 58, 533 N.E.2d 796, 127 Ill.Dec. 714 (1988); *Caldwell v. Nolan,* 167

Ill.App.3d 1057, 522 N.E.2d 175, 118 Ill.Dec. 720 (1st Dist. 1988); *Delk v. Board of Election Commissioners of City of Chicago,* 112 Ill.App.3d 735, 445 N.E.2d 1232, 68 Ill.Dec. 379 (1st Dist. 1983). However, a court may order a case remanded to the board for further consideration. *Delk, supra*; *Muldrow v. Municipal Officers Electoral Board for City of Markham,* 2019 IL App (1st) 190345, ¶18, 144 N.E.3d 533, 437 Ill.Dec. 421. An appellate court may also order the trial court to conduct further proceedings. *Caldwell, supra.*

5. [2.78] Appellate Review

The order of the circuit court granting or denying judicial review is appealable as is any final order in a civil case. *See Boyd v. Ford,* 133 Ill. App. 3d 626, 479 N.E.2d 337, 340 – 341, 88 Ill.Dec. 724 (5th Dist. 1985). *See also Lenehan v. Township Officers Electoral Board of Schaumburg,* 2013 IL App (1st) 130619, 988 N.E.2d 1003, 370 Ill.Dec. 647, citing S.Ct. Rule 301. In *Boyd, supra,* the Fifth District Appellate Court, which had originally resisted this proposition, changed its position, concluding that its earlier decisions had been "improvidently decided." However, it has been held that an electoral board cannot take such an appeal on its own. *Kozenczak v. DuPage County Officers Electoral Board,* 299 Ill.App.3d 205, 700 N.E.2d 1073, 233 Ill.Dec. 365 (2d Dist. 1998). The *Kozenczak* court acknowledged that many of these appeals had been taken before its decision but said that the electoral boards' standing in those cases had not been challenged. In *Bendell v. Education Officers Electoral Board for School District 148,* 338 Ill.App.3d 458, 788 N.E.2d 173, 272 Ill.Dec. 869 (1st Dist. 2003), the First District explicitly adopted the position of the *Kozenczak* court. This, however, has not prevented at least one board from participating in an appeal when there was another party that was empowered to take the appeal. *See Harmon v. Town of Cicero Municipal Officers Electoral Board,* 371 Ill.App.3d 1111, 864 N.E.2d 996, 309 Ill.Dec. 755 (1st Dist. 2007). As a practical matter, it is rarely the case that a board seeks an appeal on its own. Either an aggrieved objector or candidate takes the case up and the board may follow. The analysis in *Zurek v. Franklin Park Officers Electoral Board,* 2014 IL App (1st) 142618, 22 N.E.3d 90, 387 Ill.Dec. 208, shows how this will usually be the case.

It is now settled law that the higher courts review on appeal the electoral board decision and not the ruling or rulings of the lower courts. *Cinkus v. Village of Stickney Municipal Officers Electoral Board,* 228 Ill. 2d 200, 886 N.E.2d 1011, 319 Ill.Dec. 887 (2008).