

Peter S. Kosinski
Co-Chair



Douglas A. Kellner
Co-Chair

Anthony J. Casale
Commissioner

40 NORTH PEARL STREET, SUITE 5
ALBANY, N.Y. 12207-2109

Andrew J. Spano
Commissioner

Vacant
Co-Executive Director

Phone: 518/474-8100 Fax: 518/486-4068
<http://www.elections.ny.gov>

Kristen Zebrowski Stavisky
Co-Executive Director

FINAL GUIDANCE: CHAPTER 744 OF THE LAWS OF 2022 CHANGES TO SPECIFICATIONS OF OBJECTIONS

Chapter 744 of the Law of 2022 changed the procedures for ballot access objections, implementing new mandatory requirements. This law has an effective date of March 23, 2023. The new law establishes standardized, uniform, mandatory procedures and notices surrounding the objection process.

I. Presumption of Validity

“Any petition or certificate filed with the office or board charged with the duty of receiving it shall be presumptively valid if it is in proper form and appears to bear the requisite number of signatures, authenticated in a manner prescribed by this chapter.”¹

Facial validity ideally is determined at or near the time the document is filed. If the board “splits,” the document retains its presumption of validity. This determination is commonly called the Prima Facie Review.

The State Board of Elections has promulgated several review forms to document this process. See Appendix A.

II. Standing to Object

Who can object to what? The election law distinguishes between public offices and party positions.

Designating petitions, opportunity to ballot petitions, independent nominating petitions, and certificates for public office: Any registered voter in the relevant political subdivision.

- No party enrollment requirement.
- Residence is not enough. The objector must be registered to vote.

Designating petitions and opportunity to ballot petitions for party positions: Any enrolled voter residing in the relevant political subdivision.

- Must be enrolled in the party.
- Must be registered to vote and reside in the political subdivision.

¹ NYS Election Law 6-154(1)

Examples of party positions:

- State Committee Member
- Judicial Delegate or Alternate Delegate
- County Committee Members

III. The General Objection

General objections can take many forms. The objection could be written out or typed and must contain the following elements:

- Identity of objector.
- Residency of objector.
- Petition and candidates objected to.

The general objection does not need to be notarized and the objector is not required to “serve” the general objection on the candidate or candidates objected to. Sample general objection form and letter are attached as Appendices B and C.

The general objection triggers the right of objector to file specifications of objections within six days following the general objection. The general objection does not need to specify any ground; specifications of objections list the grounds for disqualifying the petition and/or individual signatures.

IV Timing of Objections

General Objection

The general objection is due “within three days after the filing of the petition or certificate to which objection is made...”²

If objecting to a certificate that was required but was not filed, such objection is due within three days after the last day it could have been filed.

Specific Objection

Specifications are due six days after the general objection is filed.

Exceptions

- Objections related to a special election for state legislature follow a different schedule. General objections are due one day after the document objected to is filed and specifications are due within three days thereafter.³
- When a candidate is nominated by an independent nominating petition and thereafter nominated by a party, the independent nominating petition can be objected to “within three days after the filing of such [party] certificate...”⁴

² NYS Election Law 6-154(2)

³ Chapter 164 of the Laws of 2022

⁴ NYS Election Law 6-154(2)

- Village elections (other than those run by County Boards of Election on the same day as the November General Election) follow a different schedule. When the Village Clerk administers the election⁵ or when the County Board administers the village election in March or June⁶, general objections are due one day after the document is received by mail or one day after the last day to file the document, whichever is later. Specifications are due within two days thereafter.

Computation

The day the document is filed or received is day zero. For example:

Filed on Tuesday = Day Zero

Wednesday = Day One

Thursday = Day Two

Friday = Day Three (Deadline)

Petitions Filed by Mail (Outside of New York City)

The general objection is due three days after the board receives (time stamps) the petition or certificate. For example: A petition is timely mailed on the last day to file (Thursday), but arrives at the board within “two business days” (on the following Monday). The General Objection is due three days after the receipt by the board (the next Thursday). The objector cannot be expected to know the petition was originally mailed until he or she receives notice via the board, thus the time is extended.

Saturday, Sunday, Holidays

If the last day to object falls on a weekend day or official holiday, the deadline to object moves to the next business day.

Example A: Petition if filed on Wednesday. The third day is Saturday. The objection deadline shifts to Monday.

Example B: Petition if filed on Thursday. The third day is Sunday. The objection deadline shifts to Monday.

Hours for In Person Filing of Objections

Outside of New York City, objections may be filed in person between 9AM and 5PM on an authorized day to receive filing.

Exceptions:

- The Westchester County Board of Elections is open and receives filings on the last day between 9AM and Midnight.

⁵ NYS Election Law 15-108(10)

⁶ NYS Election Law 6-212

- If a filer “is at the counter” to file before 5PM, but cannot be process until after 5PM, the filing is deemed timely. Timestamp the filing and make a bipartisan annotation (initials) on the filing indicating the filer was in line before 5PM.

Specifications of Objections

Specifications are due six days after the general objections. Unlike the due date for the general objection, the due date for specifications is measured from the filing date with no extension for mailing. Example: The General Objection is mailed (thus filed) on Tuesday and arrives at the board on Wednesday. The specification is due six days from Tuesday, the following Monday.

V Contents of Specifications

Specifications must contain:

- The volume number, page number, and line number for each signature for which an objection is made.
- The objection reason(s) must be clearly stated and objections to a single signature “should be” grouped together.
- “Symbols and/or abbreviations” may be used to state objections if “a sheet explaining the meaning...is attached...”
- The total number of signatures objected to shall be set forth.

Note: Specifications of objections do not require notarization. A sample specification cover sheet is attached as Appendix D. A sample key and specification page are attached as Appendices E and F.

VI Service of Specifications: When and How

It is now **mandatory** that the objector send “a duplicate copy” of the specifications:

- For a petition or certificate for public office – send to each objected to candidate named thereon.
- For a petition for party position – send to either each objected to candidate named thereon or to the first named person on the committee to fill vacancies.
- For an opportunity to ballot petition – send to all members of the committee to receive notices.

Method of Service

There are only two methods permitted for service by an objector on an objected to candidate:

- Personal Delivery; or
- Overnight Mail.

What constitutes overnight mail?

- USPS Priority Express NEXT DAY – Gold Standard
- New York State Election Law 1-106 (3) probably makes overnight, NEXT DAY services from DHL Express, FedEx Overnight, and UPS Next Day sufficient.

Important: Prior law required certified or registered mail. That is no longer the case. **Overnight mail is now required.**

VII Service of Specifications: Deadline

The objector must serve the specifications of objections on the objected to candidate(s) on or before “the date” of filing the objection with the board of elections.

Example: Specifications are filed at the board at 9:05AM, but the service on the required candidate(s) occurs by express mailing done at 10AM the same day. This is acceptable because the service occurred on “the date” when specifications were filed at the board.

VIII Proof of Service

Proof of service that specifications were served on the required person must be filed with the board of elections. The proof may:

- Accompany the specifications; or
- “Be received by the end of two business days following the filing of specifications, whichever is later.”

Warning: If specifications are “filed” by mail, the date of the mailing starts the two-day clock for filing proof of service of specifications of objections. The two days are calculated from the time of mailing, not from when the board receives the specifications.

Form of Proof of Service

Acceptable proofs include either:

An affidavit duly notarized from the person who either personally served the specifications or who duly mailed the specifications by overnight mail (stating who was served, when they were served, what was served, and by what means).

The express mailing slip document from the post office showing that the express mail item was sent to the appropriate persons. This document should evidence receipt by mailing entity and the address and name of the person(s) it was sent to.

IX Board Obligation to Provide Notice

By overnight mail, the board SHALL give notice to the objector and objected to candidate(s) of the date or dates when the board “will consider the specifications filed, board findings, the result

of and research of the specifications, and shall make a determination as to the sufficiency of such petition or certificate.” Chapter 77 of the Laws of 2023 permits boards to notify by electronic correspondence in lieu of overnight mail, provided the candidate or objector consents. A sample notice letter is attached as Appendix G.

Copies of the board’s research on each specification shall accompany such notice. The New York State Board of Elections provides this by an electronic link that allows the persons receiving the notice to download the documents. (WeTransfer.com). Staff worksheet examples are attached as Appendix H.

X Opportunity to Be Heard

The objector, candidates (or their respective agents) must have an “opportunity to be heard” as to the “validity of each specific objection.” The opportunity to be heard “may be by written submission or oral presentation in the discretion of such officer or board.” The board cannot “deny the objector or the candidate or their agents an opportunity to be present when the determination as to validity is made.”

Exception: If the petition fails prima facie review (confirmed by majority vote of the board), no hearing is required. The confirming vote should be done in public.⁷

The board meets to make determinations on specifications. The board can make these determinations at the same meeting it rules on the validity of the petition, or it can be a separate meeting. These meeting(s) must be public, and notice must be provided to the candidates and objectors.

XI Notice of Determination

When a board makes any determination that a petition or certificate is “sufficient or insufficient” the board must provide notice to the candidates (and if there is an objection) to the objector.

The above determination must be sent “forthwith” “by mail”. A sample determination notice is attached as Appendix I.

If the candidate has specified in writing an agent (the writing must provide the name, address, email, and telephone number of the agent), the agent can “represent” the candidate or objector who is to receive determinations on behalf of the candidate or the objector.

⁷ NYS Election Law 6-154(6)

XII Process Flows

