

Guide to Representing Yourself & Staying on the Ballot in N.Y.C.

Many candidates will incur some legal obstacle on their way to gaining a place on the ballot. It may be founded in a large error, but more often it is something small. Chances are, if you think you followed the rules and did everything right, you were probably pretty close. This obstacle by no means ends your candidacy. Following this guide can help put you on the ballot and save you costly lawyer's fees.

Scenario 1: You receive a "Preliminary Determination of Noncompliance"

What: Letter from the Board of Elections

Where: Will be sent by mail or fax to the person designated on the cover sheet that you filed with your petition.

When: Issued within two days of filing your petition at the Board of Elections.

Why: Indicates a curable error in the cover sheet or binding requirements of a petition, in accordance with the Rules established by the Board of Elections

Recommended Response:

Step 1: Remedy cover sheet error(s) within three business days by filing an amended cover sheet. A blank amended cover sheet is attached at the end of this document for your convenience.

- a) An amended cover sheet must clearly identify the original cover sheet or have a copy of the original cover sheet attached.
- b) The amended cover sheet must contain all of the information required in the original cover sheet.
- c) The amended cover sheet must contain the following authentication: "This is to certify that I am authorized to file this amended cover sheet." This authentication must be signed and dated, and include: the printed name, address, and office telephone and fax number of the candidate or representative.

Step 2: File your amended cover sheet with the Board of Elections. If the Board determines that the attempt to amend the cover sheet does not comply with the Rules or the Election Law, the Board will notify the candidate/contact person of the reason(s) why. A letter will be sent via an overnight delivery service or fax to the candidate/contact person on the next business day.

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Scenario 2: You are notified about a “Preliminary Finding of a Prima Facie Defect”

- What:* Letter from the Board of Elections
- Where:* Will be sent by mail or fax to the person designated on the cover sheet that you filed with your petition.
- When:* Issued within two days of filing your petition at the Board of Elections.
- Why:* Indicates a non-curable error in the coversheet, petition or binding requirements.

Common Prima Facie Defects

- Candidate not registered or not eligible to vote
- Petition on its face, appears to have insufficient signatures to qualify candidate for the ballot
- No Certificate of Acceptance filed
- Over-designation

Recommended Response:

- Step 1:* Gather information or evidence to contest or refute the Board of Elections’ preliminary findings.
- Step 2:* Please skip ahead to **Scenario 3: Step 3** and continue from there for information about appearing at your hearing.

Scenario 3: Objections are filed against your petition

- What:* Letter from the Board of Elections
- Where:* Will be sent by mail or fax to the person designated on the cover sheet that you filed with your petition.
- When:* Issued within three days of filing your petition at the Board of Elections.
- Why:* Indicates that an opposing candidate or voter living within your district has filed an objection with the Board of Elections, alleging errors, fraud and/or forgery in your petitions.

Recommended Response:

- Step 1:* Immediately get copies of and review the “Specifications of Objections” (call the Board of Elections to see if this has been filed) and the “Clerk’s/Council’s Report.” The “Clerk’s/Council’s Report” is a review of the objections by the Chief Clerk, Deputy Clerk, Executive Director, and General Council that will be presented for assessment by the Board of Elections at the end of the hearing, but is available to you 24 hours prior to the hearing. If there is no fax number included in the contact information that you provided on the cover sheet with your petitions, copies of these documents can only be obtained by contacting the Chief Clerk or Deputy Chief Clerk at the Borough Office of the Board of Elections.
- Step 2:* Prepare to refute, line-by-line, the objections in both the “Specifications of Objections” and those in the “Clerk’s/Council’s Report.” Reference the Table on this

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page to translate the abbreviations used in objection specifications. To prove the validity of signatures, go to the Office of the Board of Elections and use their computers to print copies of official voter records for each of the contested voters. Be prepared to pay as much as 25¢ per page printed.

Step 3: Take note of the time and date of your hearing. Plan to arrive on time or early. Remember: this is your only chance to have yourself put back on the ballot. Hearings can run long so plan to be at the Board of Elections for at least a couple hours.

Step 4: In preparation for speaking at your hearing, on or before the day of the hearing, obtain and fill out the “Notice of Appearance” form or the “Notice of Authorization” form. Both forms can be obtained from the Candidate Records Unit of the Board of Elections.

a) If the candidate is having an attorney appear on his/her behalf, the attorney must fill out a “Notice of Appearance” form. This form must include the current address, telephone, and fax number of the attorney, and must be carried to the podium in court by the attorney before he/she may address the court.

b) If an individual, other than an attorney (including the candidate), is representing candidate, he/she must file a “Notice of Authorization” form that must be signed by the candidate and carried to the podium in court by the speaker before he/she may address the court.

Step 5: At the hearing, your case will be called in front of the Commissioners of the Board of Elections. At this point in time you, your attorney or your representative will go to the podium. If you agree with the assessments made in the “Clerk’s/Counselor’s Report,” (or Prima Facie defect if working on **Scenario 2**) ask the Commissioners to accept it (thereby validating your petition). If you disagree with the “Clerk’s/Counselor’s Report,” present your evidence, including copies of official voter records. Ask that the “Clerk’s/Counselor’s Report” be considered, taking into account the information that you presented and your petitions be validated, or ask that the verdict be postponed for a subsequent hearing.

Scenario 4: You receive an “Order to Show Cause” to invalidate your petitions

What: You are served court papers.

Where: Will be sent by mail or fax to the person designated on the cover sheet that you filed with your petition.

When: Generally issued within three days following the deadline for filing petitions.

Why: Indicates that an opposing candidate or voter living within your district has filed an objection with the New York State Supreme Court, alleging errors, fraud and/or forgery in your petitions.

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Recommended Response:

- Step 1:** Take note of the date of your court hearing as scheduled in your court papers. Plan to arrive early. Remember: if you or an attorney do not show up, the judge may accept that as a sign that you are not refuting the objections made.
- Step 2:** Prepare to refute, line-by-line, the objections in the OSC. In addition, you may wish to submit an Affidavit of Opposition, formally requesting that the OSC be denied. A sample Affidavit of Opposition is attached at the end of this document for your convenience. To prove the validity of signatures, go to the Office of the Board of Elections and use their computers to print copies of official voter records for each of the contested voters. Be prepared to pay as much as 25¢ per page printed.
- Step 3:** Arrive at court with an attorney or prepared to represent yourself. Bring a notarized written statement authorizing a representative to speak on your behalf.
- Step 4:** If a Board of Elections hearing is also scheduled, ask the Judge to postpone the hearing until after the Board of Elections has decided their hearing.
- Step 5:** Return to court on the new hearing date.

Commonly Used Abbreviations Found in Objection Specifications

AI	Address is illegible or so abbreviated it cannot be identified.	SAP v._ p._ l_	Signed another petition for the same office on same or prior date designating another as candidate, at petition volume identification #____ page __, line__.
ALT	Alteration (date/signature)		
DI	Date incomplete	SW	Signature is that of the subscribing witness to the page
DUP v._ p._ l_	Duplicate of same signature located in the petition at volume identification # __, page __, line__	SWALT	Subscribing Witness information altered (not initialed)
DSP	Date of witness statement is prior to date of signature	SWNQ	Subscribing witness not qualified
F	Forgery	SWNR	Subscribing witness not registered, as stated
ILLS	Illegible signature	SWDI	Date incomplete in subscribing witness statement
ILLD	Illegible date	SWA	No address or wrong address stated in subscribing witness statement
NA	No address stated	SWND	No date stated in subscribing witness statement
ND	No date stated	SWNN	Name of subscribing witness omitted from body of subscribing witness statement
NFN	No first name\name is so abbreviated it cannot be identified	SWNS	Signature of subscribing witness omitted
NPN	No page number	SWNSO	Number of signatures omitted from subscribing witness statement
NR	Not registered	SWWNS	Wrong number of signatures stated in subscribing witness statement
OD	Out of the district of the contest	SWTE	Date of signature is prior to first day for circulating petitions
P	Pencil or not in ink	SWTL	Date of signature is subsequent to last day for circulating petitions
PR	Signature is printed or not handwritten		
SH	Similar handwriting		
TE	Date of signature is prior to first day for circulating petitions		
TL	Date of signature is subsequent to last day for petitioning		

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- a) If the Board of Elections has decided to validate your petition, present a copy of the "Clerk's/Council's Report." If the report is accepted, the burden now lies on the objector to prove that the signatures are invalid. Provide evidence contrary to the objector's evidence.
- b) If the Board of Elections invalidates your petition, the objector (in most cases) will drop the case. You are now tossed off the ballot. For more information please continue on to **Scenario 5**.

Useful Legal Terms & Definitions

<u>Affidavit</u>	A formal sworn statement of fact, signed by the declarant and witnessed by a notary public
<u>Ex Parte</u>	From or on one side only, with the other side absent or unrepresented
<u>Order to Show Cause</u>	A type of court order that requires one or more of the parties of a case to justify, explain, or prove something to the court.
<u>Petitioner</u>	The party who initiates a lawsuit before a court.
<u>Prima Facie</u>	Used to denote evidence at first appearance; at first view, before investigation
<u>Pro Se</u>	Means "for self"; is applied to someone who represents himself (or herself) without a lawyer in a court proceeding
<u>Respondent</u>	One who answers or defends in various proceedings; the party in the proceeding who is required to respond to the petition, oral arguments, and legal briefs of the petitioner.
<u>Serve</u>	Give someone a summons, a legal document compelling him or her to appear before

Scenario 5: You are tossed off the ballot by order of the Board of Elections

- What:* The Board of Elections has made a decision to invalidate your petition.
- Where:* At a hearing of the Board of Elections (notification sent by mail).
- When:* It is issued at the hearing, by verbal proclamation.
- Why:* Indicates that you were removed from the ballot, for a variety of possible reasons having to do with your petition, as decided by the Board of Elections.

Recommended Response:

- Step 1:* If you feel this decision was made in error, you can prepare a counter "Order to Show Cause" with the New York Supreme Court within three days to validate your petition, reinstate invalidated signatures, and reverse the decision. It is recommended that you seek the assistance of a lawyer to help with this process.
- a) Arrange the papers listed below in the following order. This is the original set of Order to Show Cause papers, which will go to the judge.

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- 1st – Order to Show Cause (OSC)
- 2nd – Verified Petition
- 3rd – Exhibits A, B, C, D and so on
- 4th – Litigation Back

- b) Make **2** copies of the original set of OSC papers. Staple each set together in the order listed above.
- c) Make **3** copies, (front and back), of the Request for Judicial Intervention (RJI). The original RJI will go to the judge.
- d) Collect \$305 to pay all filing fees (\$210 for general filing, and \$95 for RJI filing). The fees may be paid by cash, Visa or MasterCard, or postal money order.

Step 2: File the papers to start your case.

- a) Go to the County Clerk's Office, 60 Centre St, Room 141B in the basement. Bring the following:
 - i. \$210 filing fee
 - ii. The original set of OSC papers and 2 copies
 - iii. The original RJI and 2 copies
 - iv. Application for Index Number and Index Purchase Cover Sheet
- b) Give the cashier the following:
 - i. One copy of the original set of OSC papers (not the original)
 - ii. Application for Index Number and Index Purchase Cover SheetThe cashier will give you a receipt with your **Index Number** (case number) on it.
- c) Write your Index Number on the OSC, Verification Petition, RJI and Petition Back.
- d) Go to the Ex Parte Office, Room 315 on the 3rd floor. Give the Clerk the following:
 - i. Original set of OSC papers
 - ii. Original RJI and one copy
 - iii. Index Number Receipt
- e) The Clerk in Room 315 will send you to the Cashier in Room 160 on the 1st floor to pay the \$95 RJI filing fee. The cashier will stamp the original papers and keep the copy of the RJI
- f) Return to Room 315. Give the Clerk the original set of OSC papers and the original RJI.
- g) Ask the Clerk when you should come back to pick up the signed papers, after a judge has approved them.
- h) When the OSC is signed, the judge will pick the return date, time and courtroom. Also the type of service and the date when copies of the OSC papers and RJI must be served on the respondent.

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Step 3: Replace your copy of the original OSC papers with a new copy, one signed by the Judge.

- a) Make enough sets of copies of the OSC papers (the signed OSC, Verified Petition, Exhibits, Litigation Back) and the RJI to satisfy the following:
 - i. One copy *must* be filed in the County Clerk's Office, Room 141B, at the Law and Equity counter before service of the OSC papers. The statute of limitations is satisfied when a copy of the OSC, signed by the Judge, is filed in room 141B.
 - ii. One copy for each respondent (and, if necessary, one copy for respondent's attorney)

Note: As a courtesy, you should also serve the New York City Law Department (Corporation Council).

Step 4: Serve copies of the OSC, RJI, Notice of Petition papers and the Affidavit of Service

- a) *You cannot serve your own papers.* You must have someone, over the age of 18 and not involved in the case, serve your papers for you. This person must give one copy of the signed set of the OSC, Notice of Petition and RJI to each respondent (and their attorney, if necessary), by personal service or the type of service directed by the Judge.
- b) The server fills out and signs an Affidavit of Service *in front of a notary*.

Step 5: Go to Court on the Return Date

- a) The petitioner *must* be on time on the return date to submit the original Affidavit of Service or the petition may be denied.
- b) The respondent may appear, oppose your OSC and submit answering papers with proof of service. The case may be adjourned. After "oral argument" (if required) and submission of all allowed papers, the Judge will issue a written decision, usually within two months.

Step 6: Check to see if a decision has been made. This is *your* responsibility, and may be done in one of the following ways:

- a) Access the New York State Unified Court System Internet web site at www.nycourts.gov from home or the N.Y. Public Library
- b) Use a public access court computer located in Rooms 119, 311 and 141B.
- c) Check the case file, under the Index Number, in the County Clerk's Office Record Room, Room 103B in the basement at 60 Centre St, from 9:00am to 3:00pm.

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AMENDED COVER SHEET FOR DESIGNATING PETITION

(**** Original Cover Sheet to be Attached ****)

Name of Party:

NAME OF CANDIDATE	PARTY POSITION	PLACE OF RESIDENCE

Total Number of Volumes in Petition: _____

Identification Numbers: _____

The petition contains the number, or in excess of the number, of valid signatures required by the Election Law.

Contact Person to Correct Deficiencies:

Name: _____

Residence Address: _____

Phone: _____

Fax: _____

(Include if notice by fax desired)

I hereby authorize that notice of any determination made by the Board of Elections be transmitted to the person named above:

Candidate or Agent

"This is to certify that I am authorized to file this amended cover sheet."

Signature

Date

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

----- x

In the Matter of the Application of

_____,'

Plaintiff,

AFFADAVIT
IN OPPOSITION

Index No. _____

-against-

and THE BOARD OF ELECTIONS IN THE CITY OF NEW YORK,

Defendants,

----- x

STATE OF NEW YORK)
COUNTY OF _____) ss.:

_____, Defendant,

being duly sworn, hereby deposes and says:

1. At all times hereinafter mentioned, _____, Defendant, was and is a duly qualified voter of the State of New York, residing at and entitled to vote from _____, in the County of _____, City and State of New York, and that said address is in the _____ District.

2. At all times hereinafter mentioned, _____, Defendant, was and is a duly enrolled member of the _____ Party.

3. _____, Defendant, is in all respects qualified and eligible for the designation of _____ Party nominee for the PARTY POSITION of _____ from the _____ District, _____ County, New York State, which he/she seeks and is eligible to serve in said office.

4. On or about _____, a Designating Petition was duly filed in the office of the Board of Elections of the City of New York designating _____ as a candidate for the aforesaid party position in the Primary Election to be held _____, and which bears the identification number, _____.

5. Said Designating Petition was and is in due and proper form, and contains the requisite number of signatures of duly enrolled voters residing in the _____ District, in the County of _____, New York State, for which the designation was made, and said petition is otherwise valid, proper, sufficient and legally effective.

6. After the filing of the said Designating Petition as aforesaid, _____, Plaintiff, purportedly filed a written objection in the office of the Board of Elections in the City of New York and an Order to Show Cause to invalidate said Designating Petition on false grounds.

7. Said objections and Order to Show Cause, including all allegations made therein, are without merit, as a matter of fact and as a matter of law.

8. Upon knowledge and belief, Plaintiff has not and will not submit any evidence by way of Affidavits, oral testimony and documentary evidence to substantiate their objections.

WHEREFORE, THE UNDERSIGNED RESPECTFULLY REQUESTS THE WITHIN ORDER TO SHOW CAUSE BE DENIED.

(name)

Sworn to before me this

_____ day of _____, 20--

Notary Public/Court Employee