

Contest of Candidacy Information Sheet

Any candidate (referred to as petitioner) may contest the candidacy of any other candidate (referred to as contestee) for the same office by filing a written petition with the Secretary of the County Election Board who accepted the Declaration of Candidacy. In the event a candidate is unopposed, a petition contesting the candidacy may be filed by any registered voter who is eligible to vote for that office. A contest of candidacy petition must be filed no later than 5 p.m. on the second day following the close of the filing period. The petition must list the reasons alleged by the petitioner that the contestee is not qualified by law to become a candidate.

The petition must be accompanied by a deposit in the form of a certified check or cashier's check. Personal checks and cash will not be accepted. The check must be in the amount of Two Hundred Fifty Dollars (\$250.00), and it must be made out to the "Secretary of the County Name County Election Board." An optional Petition for Contest of Candidacy form is available from the County Election Board.

Serving Notice

The County Election Board Secretary will set a hearing date for the contest. Once the hearing is scheduled, it is the petitioner's responsibility to have a copy of the petition and a copy of the notice served on the contestee.

The petitioner takes a copy of the petition, the Notice of Hearing, and the Return of Service form provided by the County Election Board Secretary to the Sheriff of the county in which the contestee resides. An employee of the Sheriff's office is required to serve the petition and the Notice on the contestee within 24 hours from the time the County Election Board Secretary received the petition. For example, if the contest of candidacy petition was filed at 3 p.m. on Friday, the contestee must be served by 3 p.m. on Saturday. The Sheriff must provide the petitioner with written confirmation that service either was or was not performed. The petitioner presents the Return of Service form at the hearing when the County Election Board asks for proof of service.

If the Sheriff is unable to serve the contestee, this is indicated on the Return of Service form. The petitioner then serves the contestee's copies of the notice and petition on the County Election Board Secretary at the contest of candidacy hearing. By law, the County Election Board Secretary is the constructive service agent for all candidates who file Declarations of Candidacy with him or her, and the candidates are presumed to have accepted such constructive service when they file their Declarations.

Burden of Proof

The petitioner must prove the allegations in the petition. However, a contestee who does not appear to answer the petition is deemed to be in default and is considered to have admitted the allegations in the petition. If the allegations are sufficient to disqualify the contestee, the Board shall strike the candidacy and remove the candidate's name from the ballot.

Contestee May Appear or Answer

The contestee may appear at the hearing and/or may file a written answer to the allegations in the petition only after posting a deposit of \$250 in the form of a cashier's check or a certified check. The purpose of the contestee's appearance and/or written answer is to explain why his or her candidacy is valid.

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Counsel

Candidates may be represented by counsel but are not required to be.

At the Hearing

More than one contest may be scheduled at the same time and place. If this is the case, the County Election Board members will announce at the beginning of the hearing the order in which the contests will be heard.

The petitioner will be asked to make an opening statement to the Board. The contestee then will be asked to make an opening statement. The contestee may waive, reserve or make an opening statement. The County Election Board may place a time limit on opening statements.

Following the opening statements, the parties will present witnesses and evidence. Witnesses will be called to the witness stand. The petitioner, the contestee and the County Election Board members will have the opportunity to question witnesses.

After all witnesses have been presented, the Secretary will ask for closing statements. The petitioner speaks first and then the contestee. The County Election Board also may place a time limit on closing statements.

The Secretary may ask the District Attorney to advise the Board on the applicable law. The Board members then have a chance to ask the District Attorney, counsel or the parties any final questions.

The County Election Board members will decide either to retain or to strike the candidacy. The decision is made by a motion, second, and a roll call vote.

Decision of the Board

If the petitioner's allegations are not sufficient to disqualify the contestee, the candidate's name will be retained on the ballot. If the Board members determine that the contestee's Declaration of Candidacy can be amended to conform to the law, they may order the contestee to make the amendment. If the Board members determine that the contestee is not qualified to become a candidate for the office, they may order that the candidacy be stricken. In this case, the contestee's filing fee is forfeited.

The County Election Board's decision is final.

Costs of the Hearing

If the contestee does not appear or if the contestee's name is retained on the ballot, the costs of the contest hearing are deducted from the petitioner's deposit. Any remaining balance is refunded to the petitioner. If the contestee appears or answers but the candidacy is stricken, costs of the contest hearing are deducted from the contestee's deposit, and any balance is refunded.

If you have any questions, please contact the County Election Board at CEB Telephone Number.