



2020 CONTEST OF CANDIDACY HEARINGS

PROCESS AND PROCEDURES

BOARD MEMBERS

3 Board Members will participate in each hearing via Cisco Webex.

The Alternates will also attend via Cisco Webex, but will only participate if a member recuses or cannot serve during a contest.

If a Member or Alternate plans to recuse from a Cause, please notify counsel and the Secretary prior to the meeting so we can announce this during the Docket Call.

2020 CONTESTS OF CANDIDACY



11 Petitions for Contests of Candidacy were filed with the Secretary.

1 Petition has been withdrawn.

10 Contests of Candidacy are scheduled to be heard by the Board on Tuesday, April 21, 2020.

AUTHORITY OF THE BOARD (26 O.S. § 5-126)

The petition may be heard without formal pleadings being filed in answer or reply.

The election board shall have the authority to issue subpoenas and compel the attendance of witnesses and the production of evidence.

Such election board shall have the authority to receive the testimony of witnesses under oath (administered by the secretary of the board).

At the conclusion of the hearing, the board shall render its decision and the vote of the individual members in writing.

The decision of such board shall in all cases be final.

MOTIONS OF THE BOARD

Motion sustain the petition and strike the Contestee as a candidate from the ballot.

Motion to deny the petition and retain the Contestee as candidate on the ballot.

[RARE] Motion that the Contestee be allowed to amend the Contestee's Declaration of Candidacy to conform to law.

PETITIONS AND ANSWERS

Deadline for
Petitions was
Tuesday, April 14
at 5:00 p.m.

Petitioner must
provide Proof of
Service from
Sheriff.

Contestees must
post \$250
deposit (Cashiers
Check) to answer.

If appearing in
person, Contestee
may present
deposit at time of
hearing.

If appearing
remotely,
Contestee must
present deposit
by 5PM Monday.

PETITION (26 O.S. § 5-120)

A petition must allege that the contestee was not qualified by law to become a candidate for the office for which a Declaration of Candidacy was filed.

A petition must contain the reasons the candidate is not qualified.

Reasons not appearing on the face of the petition shall be considered waived and shall not be grounds for a contest.

BURDEN OF PROOF & DEFAULT (26 O.S. § 5-130)

The burden of proof shall be upon the petitioner to sustain the allegations in his petition.

Failure of the contestee to appear or answer shall be deemed to place him in default, and shall constitute an admission of the allegations of the petition.

When a default occurs, if the board determines that the factual allegations of the petition constitute appropriate grounds for disqualification, such contestee's candidacy shall be stricken.

DOCKET CALL

After the announcement of each contest, we will ask if the Petitioner is in attendance (either in-person or remotely), and the Petitioner will be asked to provide the Sheriff's proof of service to the Contestee.

We will then ask if the Contestee is in attendance, and the Contestee will be required to submit his or her deposit in the form of a cashier's check for \$250 made payable to the State Election Board.

The Board will consult with the Secretary and counsel on the order.

HEARINGS



FINDINGS AND ORDERS

The Board's Legal Counsel drafts the Findings and Order for each Cause.

The Chair signs each Findings and Order.

Petitioner and Contestee will be sent Findings and Order for their Cause.

MAJOR LEGAL ISSUES BEFORE THE BOARD

Residency in the
District

Registered
Voter in the
District

14 O.S. § 80.8

“To file as a candidate for the Senate in any senatorial district, a person must have been a registered voter in the district and a resident residing within such district for the six-month period immediately preceding the first day of the filing period as provided in Section 5-110 of Title 26 of the Oklahoma Statutes.”

14 O.S. § 108

“To file as a candidate for the House of Representatives in any representative district, a person must have been a registered voter in such district and a resident residing within such district for at least six (6) months immediately preceding the filing period prescribed by law.”

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ADDITIONAL COMMENTS BY LEGAL COUNSEL

Assistant Attorney General Thomas Schneider (The Board's Legal Counsel)

Vice-Deputy Attorney General Niki Batt (Counsel to the Board for 2020 Contests Hearings)

BURDEN OF PROOF

Petitioners must prove by greater weight of the evidence that the allegations set forth in their petition are true.

“Greater Weight of Evidence” means that you must be persuaded, considering all the evidence in the case, that the proposition, or allegation(s), on which such party has the burden of proof is more probably true than not true. See Okla. Civ. J. I. 3.1.

BUT, it does not mean the number of witnesses testifying to a fact, but means what seems to you more convincing and more probably true.

In short, you are asking yourself the following question: “What does the totality of the evidence show or indicate?”

OBJECTIONS AND EXCLUSION OF EVIDENCE

In short, strict rules of evidence are not necessarily applicable to an administrative hearing. See *McDonald's Corp. v. Oklahoma Tax Commission*, 1977 OK 74, 563 P.2d 635.

Parties may still object to the introduction of evidence in an administrative proceeding.

Counsel will advise the Chair on whether to sustain or overrule objections.

As previously indicated, this is an administrative proceeding. You “may admit and give probative effect to evidence which possess probative value commonly accepted by reasonably prudent persons . . .” 75 O.S. § 310(1).

The State Election Board can exclude “**incompetent, irrelevant, immaterial, and unduly repetitious** evidence.” *Id.*

ROLE OF COUNSEL/BOARD ADVISOR

SEB Members and Alternates possess unique statutory discretion.

Counsel can tell you what the law is.

The scope of our questions, if any, will be limited.

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QUESTIONS?