



Local Government Section MCLE Meeting

Location: Attorney Resource Center

Date: October 25, 2018

11:45 AM – Noon

Welcome/Introductions

Sean Conway, Section Chair

Noon – 1:00 PM

Program

Nuts & Bolts: Advising Local Election Officials in Advance of the 2019 Consolidated Primary and Consolidated Elections.

Ross Secler of Odelson & Sterk, Ltd.

Speaker's Bio

Ross D. Secler focuses his practice representing municipalities, school districts, and townships in addition to his wide array of experience in election and political law, counseling clients through the strategic, legal, and regulatory frameworks governing political campaigns, organizations, and candidates, which includes litigation before the Circuit, Appellate, and Supreme Courts. Ross is currently working directly with a number of municipal clerks as they prepare for the upcoming municipal election cycle.

Ross's practice also includes serving as prosecutor or hearing officer for traffic and local ordinance violations. He is admitted to practice in the U.S. District Court for the Northern District of Illinois, the Seventh Circuit U.S. Court of Appeals, and the Supreme Court of the United States.

Ross grew up in the Northwest suburbs of Chicago where he attended Adlai E. Stevenson High School. After receiving his undergraduate degree from Colgate University, he earned his Juris Doctor at Loyola University Chicago School of Law. Before joining Odelson & Sterk, Ross was the founding partner of an election law firm in Chicago where Ross represented municipal, statewide, judicial, county-wide, Congressional, US Senate, and US Presidential candidates. Ross has also served as a member of the Standing Rules Committee for a National Nominating Convention.



Ross recently ended his term as Chairman of the Election Law Committee of the Chicago Bar Association and is also a member of the Association's Legislative Committee. He is a member of the Illinois State Bar Association and the Decalogue of Society of Lawyers. In 2018, Ross was named as one of the 2018 Rising Stars of Illinois by Super Lawyers.

Presentation Summary

The presentation will focus on local, municipal elections and how to advise elected officials and candidates through the ballot access process and layout.

Next Meeting: TBD

DCBA Events: Oct. 25th – Ask a Lawyer Help Desk seeking attorney volunteers at the DuPage Judicial Center, Room 2017. 1:00 p.m. – 4:30 p.m.

November 14th- Lawyer Lending a Hand-Annual Coat Drive Sorting, Bar Center, Classroom

Bring a friend campaign- bring ONE attorney (who is not already a DCBA member) to a DCBA event, [a Happy Hour or one of our CLE programs](#), and receive one point. Bring FIVE different friends and collect 5 points. When you reach five points, you'll automatically receive a \$25 DCBA Credit. The non-member must complete the bottom portion of the [Bring A Friend card](#) and submit it to a DCBA staff at the event for point(s) to be recorded. Receive one point per non-member; bringing the same person multiple times counts for only one point. Bring A Friend cards can be found at the event you and your non-member friend are attending, the Attorney Resource Center, or the Bar Center. (The DCBA member receives a point whether or not the non-member joins)



Earn CLE Online!

DCBA OnDemand CLE is Now Powered by IICLE The Illinois Institute for Continuing Legal Education (IICLE®) and the DuPage County Bar Association (DCBA) are excited to offer a new IICLE®Share collaboration to provide DCBA members a high quality and reliable online learning experience. Members can find the link to The Illinois Institute for Continuing Legal Education (IICLE) on the DCBA website under “Legal Community” → OnDemand CLE → Online CLE Catalog

View & Print All CLE Certificates through the DCBA Website:

Manage Profile -> Professional Development (under content & features) and choose the icon to the left of each meeting to print your certificate directly or choose to have them emailed to you to save to your computer (you MUST be logged in to view this feature)



“Nuts & Bolts”

**Advising Local Election Officials in Advance of the
2019 Consolidated Primary & Consolidated
Elections**

Ross D. Secler
ODELSON & STERK, LTD.
Attorneys at Law
3318 W. 95th St.
Evergreen Park, IL 60805



INTRODUCTION



**Local Government Elections are growing
more and more contentious, competitive,
and complicated**

**As attorneys advising local governments, it is vital
to have a competent level of understanding and
experience with election-related laws (and/or to
know where and how to ask for help)**

INTRODUCTION

Why?

"Politics ain't beanbag"

- ❖ Elections are inherently political.
- ❖ Elections are inherently personal.
- ❖ Elections can get dirty.



- ❖ GOAL: Have a sufficient understanding and familiarity with ballot access and election-related legal requirements in order to be able to identify and advise clients with respect to same

3

INTRODUCTION

Overview

- ❖ General Information about the upcoming, 2019 Consolidated Elections
- ❖ Applicable laws
 - ❖ Election Code
 - ❖ Governing Statute of Local Government
- ❖ Ballot Access
- ❖ Electoral Boards and Petition Objections
- ❖ Other Election-Related Issues

4



**ODELSON
STERK, LTD**
ATTORNEYS AT LAW

2019 CONSOLIDATED ELECTION INFORMATION

Requirements governing the nominating petition process will be determined based upon the type of office sought (i.e. level of government), where that office is (i.e. what form of local government is in place and what rules/requirements apply), and the political party (if any) is the candidate seeking nomination affiliated with.

The following are *some* offices that *may* be up for election in 2019:

- Municipal
 - May be Partisan or Nonpartisan
 - Both Consolidated Primary Election & Consolidated Election may apply
 - Very important to know the specific form of municipal government and how the municipal elections are conducted
- Park District
 - Difference between “Commissioner” and “Trustee”
 - Nonpartisan
 - Consolidated Election only
- Library
 - Important to know whether “District” or a local, municipal/township library
 - Nonpartisan
 - Consolidated Election only
- Boards of Education & Community College Districts
 - Nonpartisan
 - Consolidated Election only

Community College Districts

- Nonpartisan
- Consolidated Election only

The minimum petition signature requirements vary depending on office sought and neither the “local election official,” the County Clerk, nor the State Board of Elections has any obligation to provide those calculations

5



**ODELSON
STERK, LTD**
ATTORNEYS AT LAW

2019 CONSOLIDATED ELECTION INFORMATION

“My municipality only runs nonpartisan elections for municipal office”



Maybe...

- ❖ Many municipalities believe that their elected officials run on a “nonpartisan” basis but, in reality, they do not.
- ❖ This affects when petitions must be filed, how the ballot must be certified, and whether you are able to provide complete, accurate information to your constituents.
- ❖ Also, nonpartisan, *non-municipal* candidates usually have DIFFERENT filing requirements

6



2019 CONSOLIDATED ELECTION INFORMATION

“Independent” Candidates: Individuals who are not candidates of any political party in a partisan election.

- a) In most municipalities, candidates run in partisan elections with candidates seeking the nomination of established political parties, independent candidates, or as candidates of “new” political parties.
- b) The type of party affiliation will determine the requisite nominating petition filing window in addition to the number of signatures required in order for the candidate to appear on the ballot.
- c) Established party candidates file petitions for nomination at the February, Consolidated Primary Election.
- d) Independent and New Party candidates file directly for the April, Consolidated Election.

7



2019 CONSOLIDATED ELECTION INFORMATION

Nonpartisan Candidates: Individuals who seek elected municipal office in municipalities that have abolished party-labels

- MUNICIPAL:
 - Nonpartisan, Municipal candidates file nominating petitions to appear on the February, Consolidated Primary Election ballot.
 - If enough candidates (including write-in candidates) file to appear on the ballot for a given office, the February primary election must be conducted for that office and the top-2 vote getters move on to the April, Consolidated Election.
- OTHER NONPARTISAN:
 - Candidates file *directly* for the April, Consolidated Election

8



2019 CONSOLIDATED ELECTION INFORMATION

**IMPORTANT DATES FOR FEBRUARY 26, 2019
CONSOLIDATED PRIMARY ELECTION CANDIDATES:**

First day to circulate nominating petitions:	<u>Tuesday, August 28, 2018</u>
First day to file petitions with the Local Election Official:	<u>Monday November 19, 2018</u>
Last day to file petitions with the Local Election Official:	<u>Monday November 26, 2018</u>
Last day to file objections to nominating petitions:	<u>Monday December 3, 2018</u>
Last day for simultaneous petition filer lottery:	<u>Wednesday December 5, 2018</u>
Ballot Certification Date for February 26, 2019 Consolidated Primary Election:	<u>Thursday December 20, 2018</u>
Last day to file notarized Declaration of Intent to be a Write-in Candidate for the February 26, 2019 Consolidated Primary Election:	<u>Thursday December 27, 2018</u>

9



2019 CONSOLIDATED ELECTION INFORMATION

**IMPORTANT DATES FOR APRIL 2, 2019
CONSOLIDATED ELECTION CANDIDATES:**

First day to circulate nominating petitions:	<u>Tuesday, September 18, 2018</u>
First day to file petitions with the Local Election Official:	<u>Monday December 10, 2018</u>
Last day to file petitions with the Local Election Official:	<u>Monday December 17, 2018</u>
Last day to file objections to nominating petitions:	<u>Monday December 24, 2018</u>
Last day to conduct ballot position lottery for December 10-17 candidate filings:	<u>Wednesday December 26, 2018</u>
Ballot Certification of Independent & New Party Candidates:	<u>Thursday January 24, 2019</u>
Last day to file notarized Declaration of Intent to be a Write-in Candidate for the April 2, 2019 Consolidated Election:	<u>Thursday January 31, 2019</u>
Certification of Established Party Candidates (Post-Consolidated Primary Election):	<u>Tuesday March 26, 2019</u>

10

GENERAL 2019 MUNICIPAL ELECTION INFORMATION

Are those really the dates?

Yep.

Clerks (local election officials) should maintain customary office hours during the petition-filing period and should ensure adequate staffing to **quickly** comply with petition copy requests.

Post notice of any City-declared holidays where the office will be closed!

(e.g. Thanksgiving Day or any modified opening times for Christmas Eve)

11

BALLOT ACCESS REQUIREMENTS

Candidate Qualifications

- | | |
|---------------------------------------|--|
| ❖ Residency | ❖ Compatible offices? |
| ❖ Age | ❖ Any restrictions on other employment? |
| ❖ Special license or certification? | ❖ No arrearages/non-payment of municipal fines |
| ❖ Voter registration and citizenship? | ❖ Compliance with any local ethics laws |
| ❖ Party Affiliation | ❖ Compliance with campaign finance laws |
| ❖ No felonies or infamous crime(s) | ❖ Holding incompatible office(s) |

12



BALLOT ACCESS REQUIREMENTS

Nomination Papers

Generally, to run for political office in Illinois, you must prepare and file several documents. Collectively referred to as “nomination papers,” these documents include:

- ❖ Statement of Candidacy
- ❖ Receipt of filing for the Statement of Economic Interests
- ❖ Nominating Petitions
- ❖ Loyalty Oath (optional)
- ❖ Code of Fair Campaign Practices (optional/rare)
- ❖ Petition signature deletion sheets (optional)

13



BALLOT ACCESS REQUIREMENTS

- ❖ When a candidate files petitions, the Local Election Official office should issue a filing **receipt** in addition to a notice of the candidate’s obligation to file and comply with campaign finance disclosure requirements. Note that campaign finance disclosure documents are filed with the Illinois State Board of Elections.
- ❖ Additionally, Local Election Officials should be advised to comply with FOIA requests for nominating petition copies immediately or as soon as possible given the very tight deadlines. If a local government charges for copies, it must be charged uniformly and equally to all requestors, including incumbents.

14

Should we advise that Clerks prepare and provide sample petition forms?

GENERALLY, NO. (See next slide)

If anything, refer to the Illinois State
Board of Elections Candidate Guide and
sample forms

X... BIND HERE ...X

10 ILCS 5/10-3.1, 10-4, 10-5.1
105 ILCS 5/9-10

Suggested
Revised July 2018
CC No. P-5

**CONSOLIDATED PETITION FOR NOMINATION
NONPARTISAN CANDIDATE**
CITY OF _____

We, the undersigned, qualified voters in the City of _____ in the County of _____ and State of Illinois, and residing at the places set opposite our respective names, do hereby petition that the following person shall be placed upon the ballot as a candidate for: (a) the nomination to the office of _____ at the Consolidated Primary Election to be held on the 25th day of February, 2019 or (b) if by operation of law no primary election is required, for election to set office and term at the Consolidated Election to be held on the 2nd day of April, 2019.

Name _____	Phone _____
Address _____	City _____ Zip _____
Office _____	District _____ (if applicable)

*FULL TERM *UNEXPIRED TERM
(Please check Full Term or Unexpired Term above)

If required pursuant to 10 ILCS 5/10-5.1, complete the following (this information will appear on the ballot):
FORMERLY KNOWN AS _____ UNTIL NAME CHANGED ON _____
(Last or names during the last 2 years) (Last date of last name change)

VOTER PRINTED NAME	VOTER SIGNATURE	STREET ADDRESS OR RR NUMBER	CITY/VILLAGE	COUNTY
1. _____	_____	_____	_____	Illinois
2. _____	_____	_____	_____	Illinois
3. _____	_____	_____	_____	Illinois
4. _____	_____	_____	_____	Illinois
5. _____	_____	_____	_____	Illinois
6. _____	_____	_____	_____	Illinois
7. _____	_____	_____	_____	Illinois
8. _____	_____	_____	_____	Illinois
9. _____	_____	_____	_____	Illinois
10. _____	_____	_____	_____	Illinois

STATE OF ILLINOIS } SS
COUNTY OF _____

I, _____ (Candidate's Name), do hereby certify that I reside at _____ of _____ (City or Village or Unincorporated Area) in _____ County, Illinois, that I am 18 years of age or older (or I am 17 years of age and qualified to vote in Illinois), that I am a citizen of the United States, and that the signatures on this sheet were signed in my presence, not more than 90 days preceding the last day for filing of the petitions and are genuine and that to the best of my knowledge and belief the persons so signing were at the time of signing the petition registered voters of the political division in which the candidate is seeking elective office, and that their respective residences are correctly stated as above set forth.

(Candidate's Signature) _____

Signed and sworn to (or affirmed) by _____ before me, this _____ day of _____, 20____.
(Name of Clerk) (day) (month) (year)

BALLOT ACCESS REQUIREMENTS

❖ Statement of Candidacy

- ❖ The Election Code requires candidates file a "Statement of Candidacy" in which the candidate attests to certain facts.
- ❖ CRITICAL, MANDATORY REQUIREMENT
- ❖ Requirements/Contents (10 ILCS 5/7-10, 5/10-5)
- ❖ Must be SIGNED by candidate and properly NOTARIZED

❖ Statement of Economic Interests (or Receipt of Filing)

- ❖ Timely filing of Statement and/or Receipt is MANDATORY;
- ❖ Required to timely file Statement (proper form) itself for the correct office, in the correct office, and for correct year;

❖ Loyalty Oath (optional);

- ❖ "Code of Fair Campaign Practices" Statement (very optional)

17

BALLOT ACCESS REQUIREMENTS

Petition Sheets



- ❖ Petitions are required to demonstrate that candidates for public office enjoy a "modicum of support in the community."
- ❖ The Election Code specifies the required form and elements for petition sheets
 - ❖ Generally considered **mandatory** and not directory.
 - ❖ Failure to adhere to these requirements is the main source of objections resulting in a candidate being denied ballot access. Requirements/Contents. (10 ILCS 5/7-10; 10 ILCS 5/10-5).

18

BALLOT ACCESS REQUIREMENTS

Petition Sheets – Cont’d.

- ❖ Proper Heading
- ❖ Voters’ Signatures
 - ❖ A petition signer must be a registered voter (from the address shown opposite his/her signature) in the political subdivision (municipality) or district (ward) in which the candidate is seeking nomination or election.
- ❖ Circulators & the Circulator’s Affidavit
 - ❖ Main “safeguard” against petition fraud;
 - ❖ Circulator must be at least 18 years old and must be a U.S. citizen;
 - ❖ Circulator may NOT be a circulator for candidates of more than one political party;
 - ❖ Circulator Affidavit: Completed after circulation and must be *properly* notarized.

19

BALLOT ACCESS REQUIREMENTS

Other potentially fatal petition defects to consider . . .

- | | |
|--|---|
| <ul style="list-style-type: none"> ❖ Improper pagination; ❖ Non-uniformity of content or size of signature sheets; ❖ Inconsistency in designation of office, its term/duration; ❖ Filing photocopies of signature sheets; ❖ Fraud <ul style="list-style-type: none"> ❖ “Pattern of fraud and false swearing and disregard for mandatory requirements of the Election Code” ❖ Fraud in notarization process ❖ Note: Local prosecutor appetite for bringing perjury charges | <ul style="list-style-type: none"> ❖ Lack of notarization; ❖ Failure to sign Statement of Candidacy; ❖ Improper ballot name; ❖ Insufficient number of total signatures filed; ❖ Failure to file all sheets simultaneously; ❖ Failure to “neatly fasten” and securely bind nominating papers “in book form”; ❖ Non-timely filing; ❖ Failure to timely withdraw candidacy for incompatible offices. |
|--|---|

20



BALLOT ACCESS REQUIREMENTS

Other Candidate Documents/Things to Consider

Not necessarily related to getting on the ballot, but carry huge political and legal implications:

- ❖ Campaign Financial Disclosures (Local Election Official must give “Notice of Obligation” to file campaign finance reports and to comply with campaign finance laws)
- ❖ Ethics Reports & Rules (If applicable)

21



BALLOT ACCESS REQUIREMENTS

Petition Signature Requirements

- ❖ Candidates for elected, local office must submit nominating petitions with the requisite number of signatures of qualified, registered voters residing in a given district or political subdivision. These requirements differ based on the office sought, and the type of local government election.
- ❖ Signature requirements are calculated using the election results/data from the last preceding election where the Unit of Local Government (or political subdivision) voted as a unit to elect an officer.
- ❖ It is strongly advised that the Local Election Officials (or the Local Governments in general) refrain from issuing specific signature requirement information to prospective candidates or the public at-large.
- ❖ The best practice is generally to simply provide copies of (or access to) previous election results.

22

BALLOT ACCESS REQUIREMENTS

Petition Signature Requirements

Petition requirements for Candidates seeking elected municipal office are generally governed by the Illinois Election Code as follows:

- ❖ **Democratic Party Candidates:** Not less than 0.5% of the “qualified primary electors” of the Democratic Party from his or her municipality or ward;
- ❖ **Republican Party Candidates:** Not less than 0.5% of the “qualified primary electors” of the Republican Party from his or her municipality or ward;
- ❖ **Independents & Some Nonpartisan Candidates:** Not less than 5%, nor more than 8% (or 50 more than the minimum, whichever is greater) of the number of persons who voted at the most recent Consolidated Election (within the municipality or a given ward);
- ❖ **New Party Candidates:** Not less than 5% of the total number of persons who voted at the last regular election for municipal officers.

23

ADDITIONAL LOCAL ELECTION OFFICIAL DUTIES

- As a preliminary note, the Local Election Official’s office (or any local government official) should **refrain** from providing petition forms, samples, packets, or even the signature requirements.
- No advice, *particularly legal advice*, should be provided by the Local Government at any time to candidates/prospective candidates. Government officials and employees should **not** notarize **any** candidate’s documentation.

24

ADDITIONAL DUTIES

Simultaneous Filing Lottery

- ❖ First-day simultaneous filings (a lottery for the top spots on the ballot):
 - ❖ Applies to petitions filed by persons waiting in line at the Clerk's office as of the normal opening hour on the first day for petition filing.
 - ❖ All petitions filed by mail and received in the first mail delivery or pickup on the first day of filing shall also be deemed simultaneously filed as of the opening hour of the Clerk's office as well.
- ❖ All petitions received thereafter shall be deemed filed in their order of actual receipt, *except* if two or more petitions are received within the final hour of the filing period.
- ❖ Last-day simultaneous filings (a second lottery for the bottom spots on the ballot):
 - ❖ If two or more petitions are filed within the last hour of the filing deadline, they shall be deemed simultaneously filed.

25

ADDITIONAL DUTIES

Simultaneous Filing Lottery

- ❖ Timing and notices for simultaneous-filing lotteries:
 - ❖ Simultaneous-filing lotteries shall be conducted within 9 calendar days following the last day of the petition-filing period.
 - ❖ The Clerk must give 7 days' advance written notice of the time and place of the lottery to the chairman of each political party, and to each organization of citizens within the municipality that was entitled to have poll-watchers present at the next preceding election (i.e. the November 6, 2018 General Election).
 - ❖ The Clerk must post in a conspicuous, open and public place at the entrance of the office a notice of the time and place of the lottery.
- ❖ Procedures for simultaneous-filing lotteries:
 - ❖ The Clerk is required to conduct the lottery in a fair and impartial manner, following procedures that have been pre-approved by the State Board of Elections.
 - ❖ The State Board of Elections has established pre-approved procedures for simultaneous-filing lotteries that, if followed by the Clerk, fulfill the duty to obtain prior approval of the lottery procedures.
 - ❖ These pre-approved procedures are contained in the State Board of Election's administrative rules and are (or will be) available on the State Board's website in the "Local Election Official's Handbook."

26

ADDITIONAL DUTIES

Ballot Certification & “Apparent Conformity”

- ❖ Local Election Official must certify to the election authority the names of all candidates, the elected positions they are seeking, and any public questions that are filed in “apparent conformity” with the Election Code’s mandatory requirements.
- ❖ If nominating petitions, on their face, are not in “apparent conformity” with Election Code requirements, the Clerk has the authority to refuse to certify the candidate’s name to the ballot. If this occurs, the candidate should be given the opportunity to address the issue before an electoral board.
- ❖ **Extreme caution should be exercised before refusing certification.**
- ❖ Examples of where this type of action could be taken is where a candidate does not file a Statement of Candidacy or files petition sheets with very few (or no) signatures that are clearly below the statutorily required minimum.

27

ADDITIONAL DUTIES

Petition Objections & Electoral Boards

The Local Election Official will play a vital role in the administration (and service on) any electoral board that may need to be convened to hear and pass upon objections to nominating petitions.



28

ADDITIONAL DUTIES

Petition Objections & Electoral Boards

Objection Filing

- ❖ Objections to nomination papers and referenda petitions must be filed in the office of the Local Election Official where the petitions were filed within 5 business days of the close of the petition-filing period.
- ❖ “Business day” is defined by the Election Code 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.”
- ❖ Objections must be in writing, and the objector must file **an original** objector’s petition along with **two (2) copies**. If an objector does not bring the requisite copies to file, the Clerk’s office should NOT accept the objection for filing.

29

ADDITIONAL DUTIES

Petition Objections & Electoral Boards



Objection Transmittal, Service, & Formation of Electoral Board

- ❖ When the Local Election Officials’ office receives an objection filing, the office must note (stamp) the day and hour upon the objector’s petition and then, not later than 12:00pm (noon) on the 2nd business day after receipt of the objection, transmit by registered mail or receipted personal delivery the nomination papers or petitions to the chairperson of the electoral board and to the candidate at the address shown on his or her nomination papers.

30

ADDITIONAL DUTIES

Petition Objections & Electoral Boards

Objection Transmittal, Service, & Formation of Electoral Board

- ❖ Within 24 hours of receipt of the objector's petition, the Electoral Board Chairperson must send a "call" by registered or certified mail to, and by personal service made by the county sheriff on:
 - ❖ Each of the electoral board members;
 - ❖ Electoral Board Membership determined by type of local government
 - ❖ Municipal – Municipal Officers Electoral Board
 - ❖ School Board and "Special Districts" – County Officers Electoral Board
 - ❖ "Special District" = any political subdivision other than counties, municipalities, townships, school, and community college districts
 - ❖ the Objector; and
 - ❖ the Candidate or the principal proponent (or his attorney) of a referendum petition.

31

ADDITIONAL DUTIES

Objections & Electoral Boards

Objection Transmittal, Service, & Formation of Electoral Board

- ❖ While the call should always be served by registered or certified mail, it is also valid to have all electoral board members, objectors and candidates or proponents sign a waiver of service, if possible to attain.



32

ADDITIONAL DUTIES

Electoral Board Hearing

- ❖ The electoral board's first meeting and initial hearing of an objector's petition shall be not less than 3, nor more than 5, calendar days after the Chairperson's receipt of the objections.
- ❖ During its initial hearing, the electoral board must adopt Rules of Procedure.

33

ADDITIONAL DUTIES

Electoral Board Hearings

- ❖ The electoral boards have limited jurisdiction and are charged "to hear and pass upon the question as to . . ."
 - ❖ whether the nomination petitions are in proper form;
 - ❖ whether petitions were filed within the time and under the conditions required by law; and
 - ❖ other issues necessary to determining whether the papers or petitions are legally valid.
- ❖ The electoral board must issue a final decision **in writing**, and the final decision must be served upon the objector and candidate or proponent in person during a public meeting that complies with the Open Meetings Act.
 - ❖ (i.e., there must be a quorum of the board members present).

34

ADDITIONAL ISSUES

“Use of Public Funds”

There is an absolute prohibition against the use of any public, local government resources or funds to support or oppose an elected official, any political campaign, or any question of public policy.

- ❖ Section 9-25.1 of the Election Code
 - ❖ No “public funds” can be used to “urge any elector to vote for or against any candidate or proposition”
 - ❖ Not only is the use of public funds to support a candidate’s retention or election prohibited, doing so is a Class B misdemeanor for the first offense.
- ❖ The State Officials Employees Ethics Act
 - ❖ Restricts the use of public property for personal reasons
 - ❖ Generally means that municipal employees and officers are prohibited from performing any prohibited political activity on “compensated time” and from intentionally misappropriating any governmental property or resources by engaging in activity for the benefit of any campaign for elective office.

35

ADDITIONAL ISSUES

Municipal Regulation of Political Signs



- ❖ Pursuant to the Election Code, state law generally regulates electioneering on polling place property on an election day.
 - ❖ “Campaign free zones” (10 ILCS 5/17-29)
 - ❖ What constitutes an “election day”?

36

ADDITIONAL ISSUES

Municipal Regulation of Political Signs

- ❖ Municipal Code prohibits municipalities from imposing time restrictions for displaying political signs on residential property. (65 ILCS 5/11-13-1(12))
 - ❖ Cannot limit the time that people are allowed to display political signs on their property (e.g. requiring removal a certain number of days after an election).
 - ❖ Municipalities can impose reasonable size restrictions.
 - ❖ Does not apply to prohibitions against political signs on public property and rights of way – these restrictions are legal (except during election days at polling places).

37

CONCLUSION

There are many other issues and nuances that local governments will face as the 2019 Consolidated Elections approach.

The most important first step is to be prepared and ensure that you are giving competent, experienced advice at the earliest possible point in the process.



Good luck!

38

Disclaimers

Please note that the Supreme Court of Illinois does not recognize certifications of specialties in the practice of law and the certificate, award or recognition is not a requirement to practice law in Illinois. The information contained in these materials or said during presentation is for general purposes only and should not be interpreted to indicate a certain result will occur in your specific legal situation.

***NOTHING CONTAINED HEREIN IS INTENDED AS
LEGAL ADVICE AND DOES NOT CREATE AN
ATTORNEY-CLIENT RELATIONSHIP.***

***You are strongly advised to consult with competent
legal counsel in relation to any aspect of what has
been discussed.***

39



Prepared & Presented By:

**Ross D. Secler
ODELSON & STERK, LTD.
3318 W. 95th Street
Evergreen Park, Illinois 60805
Office: (773) 424-5678; Fax: (708) 741-5070
rsecler@odelsonsterk.com**

* * *

40



“Nuts & Bolts”
Advising Local Election Officials in Advance of the 2019 Consolidated Primary & Consolidated Elections

Ross D. Secler
 Odelson & Sterk, Ltd.
 Attorneys at Law
 3318 W. 95th St.
 Evergreen Park, IL 60805



INTRODUCTION



ELECTIONS

Local Government Elections are growing more and more contentious, competitive, and complicated

As attorneys advising local governments, it is vital to have a competent level of understanding and experience with election-related laws (and/or to know where and how to ask for help)



INTRODUCTION

Why?

“Politics ain’t beanbag”

- ❖ Elections are inherently political.
- ❖ Elections are inherently personal.
- ❖ Elections can get dirty.



❖ **GOAL:** Have a sufficient understanding and familiarity with ballot access and election-related legal requirements in order to be able to identify and advise clients with respect to same



**ODELSON
STERK, LTD.**
ATTORNEYS AT LAW

INTRODUCTION

Overview

- ❖ General Information about the upcoming, 2019 Consolidated Elections
- ❖ Applicable laws
 - ❖ Election Code
 - ❖ Governing Statute of Local Government
- ❖ Ballot Access
- ❖ Electoral Boards and Petition Objections
- ❖ Other Election-Related Issues

4



**ODELSON
STERK, LTD.**
ATTORNEYS AT LAW

2019 CONSOLIDATED ELECTION INFORMATION

Requirements governing the nominating petition process will be determined based upon the type of office sought (i.e. level of government), where that office is (i.e. what form of local government is in place and what rules/requirements apply), and the political party (if any) is the candidate seeking nomination affiliated with.

The following are some offices that *may* be up for election in 2019:

- Municipal
 - May be Partisan or Nonpartisan
 - Both Consolidated Primary Election & Consolidated Election may apply
 - Very important to know the specific form of municipal government and how the municipal elections are conducted
- Park District
 - Difference between "Commissioner" and "Trustee"
 - Nonpartisan
 - Consolidated Election only
- Library
 - Important to know whether "District" or a local, municipal/township library
 - Nonpartisan
 - Consolidated Election only
- Boards of Education & Community College Districts
 - Nonpartisan
 - Consolidated Election only
- Community College Districts
 - Nonpartisan
 - Consolidated Election only

The minimum petition signature requirements vary depending on office sought and neither the "local election official," the County Clerk, nor the State Board of Elections has any obligation to provide those calculations

5



**ODELSON
STERK, LTD.**
ATTORNEYS AT LAW

2019 CONSOLIDATED ELECTION INFORMATION

“My municipality only runs nonpartisan elections for municipal office”



Maybe...

- ❖ Many municipalities believe that their elected officials run on a “nonpartisan” basis but, in reality, they do not.
- ❖ This affects when petitions must be filed, how the ballot must be certified, and whether you are able to provide complete, accurate information to your constituents.
- ❖ Also, nonpartisan, *non-municipal* candidates usually have DIFFERENT filing requirements

6



**2019 CONSOLIDATED
ELECTION INFORMATION**

“Independent” Candidates: Individuals who are not candidates of any political party in a partisan election.

- In most municipalities, candidates run in partisan elections with candidates seeking the nomination of established political parties, independent candidates, or as candidates of “new” political parties.
- The type of party affiliation will determine the requisite nominating petition filing window in addition to the number of signatures required in order for the candidate to appear on the ballot.
- Established party candidates file petitions for nomination at the February, Consolidated Primary Election.
- Independent and New Party candidates file directly for the April, Consolidated Election.

7



**2019 CONSOLIDATED
ELECTION INFORMATION**

Nonpartisan Candidates: Individuals who seek elected municipal office in municipalities that have abolished party-labels

- MUNICIPAL:
 - Nonpartisan, Municipal candidates file nominating petitions to appear on the February, Consolidated Primary Election ballot.
 - If enough candidates (including write-in candidates) file to appear on the ballot for a given office, the February primary election must be conducted for that office and the top-2 vote getters move on to the April, Consolidated Election.
- OTHER NONPARTISAN:
 - Candidates file *directly* for the April, Consolidated Election

8



**2019 CONSOLIDATED
ELECTION INFORMATION**

**IMPORTANT DATES FOR FEBRUARY 26, 2019
CONSOLIDATED PRIMARY ELECTION CANDIDATES:**

First day to circulate nominating petitions:	<u>Tuesday, August 28, 2018</u>
First day to file petitions with the Local Election Official:	<u>Monday November 19, 2018</u>
Last day to file petitions with the Local Election Official:	<u>Monday November 26, 2018</u>
Last day to file objections to nominating petitions:	<u>Monday December 3, 2018</u>
Last day for simultaneous petition filer lottery:	<u>Wednesday December 5, 2018</u>
Ballot Certification Date for February 26, 2019 Consolidated Primary Election:	<u>Thursday December 20, 2018</u>
Last day to file notarized Declaration of Intent to be a Write-in Candidate for the February 26, 2019 Consolidated Primary Election:	<u>Thursday December 27, 2018</u>

9



2019 CONSOLIDATED ELECTION INFORMATION

**IMPORTANT DATES FOR APRIL 2, 2019
CONSOLIDATED ELECTION CANDIDATES:**

First day to circulate nominating petitions:	Tuesday, September 18, 2018
First day to file petitions with the Local Election Official:	Monday December 10, 2018
Last day to file petitions with the Local Election Official:	Monday December 17, 2018
Last day to file objections to nominating petitions:	Monday December 24, 2018
Last day to conduct ballot position lottery for December 10-17 candidate filings:	Wednesday December 26, 2018
Ballot Certification of Independent & New Party Candidates:	Thursday January 24, 2019
Last day to file notarized Declaration of Intent to be a Write-in Candidate for the April 2, 2019 Consolidated Election:	Thursday January 31, 2019
Certification of Established Party Candidates (Post-Consolidated Primary Election):	Tuesday March 26, 2019

10



GENERAL 2019 MUNICIPAL ELECTION INFORMATION

Are those really the dates?

Yep.

Clerks (local election officials) should maintain customary office hours during the petition-filing period and should ensure adequate staffing to **quickly** comply with petition copy requests.

Post notice of any City-declared holidays where the office will be closed!
(e.g. Thanksgiving Day or any modified opening times for Christmas Eve)

11



BALLOT ACCESS REQUIREMENTS

Candidate Qualifications

- ❖ Residency
- ❖ Age
- ❖ Special license or certification?
- ❖ Voter registration and citizenship?
- ❖ Party Affiliation
- ❖ No felonies or infamous crime(s)

- ❖ Compatible offices?
- ❖ Any restrictions on other employment?
- ❖ No arrearages/non-payment of municipal fines
- ❖ Compliance with any local ethics laws
- ❖ Compliance with campaign finance laws
- ❖ Holding incompatible office(s)

12



BALLOT ACCESS REQUIREMENTS

Nomination Papers

Generally, to run for political office in Illinois, you must prepare and file several documents. Collectively referred to as “nomination papers,” these documents include:

- ❖ Statement of Candidacy
- ❖ Receipt of filing for the Statement of Economic Interests
- ❖ Nominating Petitions
- ❖ Loyalty Oath (optional)
- ❖ Code of Fair Campaign Practices (optional/rare)
- ❖ Petition signature deletion sheets (optional)

13



BALLOT ACCESS REQUIREMENTS

- ❖ When a candidate files petitions, the Local Election Official office should issue a filing **receipt** in addition to a notice of the candidate's obligation to file and comply with campaign finance disclosure requirements. Note that campaign finance disclosure documents are filed with the Illinois State Board of Elections.
- ❖ Additionally, Local Election Officials should be advised to comply with FOIA requests for nominating petition copies immediately or as soon as possible given the very tight deadlines. If a local government charges for copies, it must be charged uniformly and equally to all requestors, including incumbents.

14

Should we advise that Clerks prepare and provide sample petition forms?

GENERALLY, NO. (See next slide)

If anything, refer to the Illinois State Board of Elections Candidate Guide and sample forms



BALLOT ACCESS REQUIREMENTS

Petition Sheets – Cont’d.

- ❖ Proper Heading
- ❖ Voters’ Signatures
 - ❖ A petition signer must be a registered voter (from the address shown opposite his/her signature) in the political subdivision (municipality) or district (ward) in which the candidate is seeking nomination or election.
- ❖ Circulators & the Circulator’s Affidavit
 - ❖ Main “safeguard” against petition fraud;
 - ❖ Circulator must be at least 18 years old and must be a U.S. citizen;
 - ❖ Circulator may NOT be a circulator for candidates of more than one political party;
 - ❖ Circulator Affidavit: Completed after circulation and must be properly notarized.

19



BALLOT ACCESS REQUIREMENTS

Other potentially fatal petition defects to consider . . .

❖ Improper pagination; ❖ Non-uniformity of content or size of signature sheets; ❖ Inconsistency in designation of office, its term/duration; ❖ Filing photocopies of signature sheets; ❖ Fraud ❖ “Pattern of fraud and false swearing and disregard for mandatory requirements of the Election Code” ❖ Fraud in notarization process ❖ Note: Local prosecutor appetite for bringing perjury charges	❖ Lack of notarization; ❖ Failure to sign Statement of Candidacy; ❖ Improper ballot name; ❖ Insufficient number of total signatures filed; ❖ Failure to file all sheets simultaneously; ❖ Failure to “neatly fasten” and securely bind nominating papers “in book form”; ❖ Non-timely filing; ❖ Failure to timely withdraw candidacy for incompatible offices.
--	---

20



BALLOT ACCESS REQUIREMENTS

Other Candidate Documents/Things to Consider

Not necessarily related to getting on the ballot, but carry huge political and legal implications:

- ❖ Campaign Financial Disclosures (Local Election Official must give “Notice of Obligation” to file campaign finance reports and to comply with campaign finance laws)
- ❖ Ethics Reports & Rules (If applicable)

21



BALLOT ACCESS REQUIREMENTS

Petition Signature Requirements

- ❖ Candidates for elected, local office must submit nominating petitions with the requisite number of signatures of qualified, registered voters residing in a given district or political subdivision. These requirements differ based on the office sought, and the type of local government election.
- ❖ Signature requirements are calculated using the election results/data from the last preceding election where the Unit of Local Government (or political subdivision) voted as a unit to elect an officer.
- ❖ It is **strongly advised** that the Local Election Officials (or the Local Governments in general) refrain from issuing specific signature requirement information to prospective candidates or the public at-large.
- ❖ The best practice is generally to simply provide copies of (or access to) previous election results.

22



BALLOT ACCESS REQUIREMENTS

Petition Signature Requirements

Petition requirements for Candidates seeking elected municipal office are generally governed by the Illinois Election Code as follows:

- ❖ **Democratic Party Candidates:** Not less than 0.5% of the "qualified primary electors" of the Democratic Party from his or her municipality or ward;
- ❖ **Republican Party Candidates:** Not less than 0.5% of the "qualified primary electors" of the Republican Party from his or her municipality or ward;
- ❖ **Independents & Some Nonpartisan Candidates:** Not less than 5%, nor more than 8% (or 50 more than the minimum, whichever is greater) of the number of persons who voted at the most recent Consolidated Election (within the municipality or a given ward);
- ❖ **New Party Candidates:** Not less than 5% of the total number of persons who voted at the last regular election for municipal officers.

23



ADDITIONAL LOCAL ELECTION OFFICIAL DUTIES

- As a preliminary note, the Local Election Official's office (or any local government official) should **refrain** from providing petition forms, samples, packets, or even the signature requirements.
- No advice, *particularly legal advice*, should be provided by the Local Government at any time to candidates/prospective candidates. Government officials and employees should **not** notarize **any** candidate's documentation.

24



ADDITIONAL DUTIES

Simultaneous Filing Lottery

- ❖ First-day simultaneous filings (a lottery for the top spots on the ballot):
 - ❖ Applies to petitions filed by persons waiting in line at the Clerk's office as of the normal opening hour on the first day for petition filing.
 - ❖ All petitions filed by mail and received in the first mail delivery or pickup on the first day of filing shall also be deemed simultaneously filed as of the opening hour of the Clerk's office as well.
- ❖ All petitions received thereafter shall be deemed filed in their order of actual receipt, *except* if two or more petitions are received within the final hour of the filing period.
- ❖ Last-day simultaneous filings (a second lottery for the bottom spots on the ballot):
 - ❖ If two or more petitions are filed within the last hour of the filing deadline, they shall be deemed simultaneously filed.

25



ADDITIONAL DUTIES

Simultaneous Filing Lottery

- ❖ Timing and notices for simultaneous-filing lotteries:
 - ❖ Simultaneous-filing lotteries shall be conducted within 9 calendar days following the last day of the petition-filing period.
 - ❖ The Clerk must give 7 days' advance written notice of the time and place of the lottery to the chairman of each political party, and to each organization of citizens within the municipality that was entitled to have poll-watchers present at the next preceding election (i.e. the November 6, 2018 General Election).
 - ❖ The Clerk must post in a conspicuous, open and public place at the entrance of the office a notice of the time and place of the lottery.
- ❖ Procedures for simultaneous-filing lotteries:
 - ❖ The Clerk is required to conduct the lottery in a fair and impartial manner, following procedures that have been pre-approved by the State Board of Elections.
 - ❖ The State Board of Elections has established pre-approved procedures for simultaneous-filing lotteries that, if followed by the Clerk, fulfill the duty to obtain prior approval of the lottery procedures.
 - ❖ These pre-approved procedures are contained in the State Board of Election's administrative rules and are (or will be) available on the State Board's website in the "Local Election Official's Handbook."

26



ADDITIONAL DUTIES

Ballot Certification & "Apparent Conformity"

- ❖ Local Election Official must certify to the election authority the names of all candidates, the elected positions they are seeking, and any public questions that are filed in "apparent conformity" with the Election Code's mandatory requirements.
- ❖ If nominating petitions, on their face, are not in "apparent conformity" with Election Code requirements, the Clerk has the authority to refuse to certify the candidate's name to the ballot. If this occurs, the candidate should be given the opportunity to address the issue before an electoral board.
- ❖ **Extreme caution should be exercised before refusing certification.**
- ❖ Examples of where this type of action could be taken is where a candidate does not file a Statement of Candidacy or files petition sheets with very few (or no) signatures that are clearly below the statutorily required minimum.

27



**ODELSON
STERK, LTD.**
ATTORNEYS AT LAW

ADDITIONAL DUTIES

Petition Objections & Electoral Boards

The Local Election Official will play a vital role in the administration (and service on) any electoral board that may need to be convened to hear and pass upon objections to nominating petitions.



28



**ODELSON
STERK, LTD.**
ATTORNEYS AT LAW

ADDITIONAL DUTIES

Petition Objections & Electoral Boards

Objection Filing

- ❖ Objections to nomination papers and referenda petitions must be filed in the office of the Local Election Official where the petitions were filed within 5 business days of the close of the petition-filing period.
- ❖ "Business day" is defined by the Election Code 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."
- ❖ Objections must be in writing, and the objector must file **an original** objector's petition along with **two (2) copies**. If an objector does not bring the requisite copies to file, the Clerk's office should NOT accept the objection for filing.

29



**ODELSON
STERK, LTD.**
ATTORNEYS AT LAW

ADDITIONAL DUTIES

Petition Objections & Electoral Boards



Objection Transmittal, Service, & Formation of Electoral Board

- ❖ When the Local Election Officials' office receives an objection filing, the office must note (stamp) the day and hour upon the objector's petition and then, not later than 12:00pm (noon) on the 2nd business day after receipt of the objection, transmit by registered mail or receipted personal delivery the nomination papers or petitions to the chairperson of the electoral board and to the candidate at the address shown on his or her nomination papers.

30



ADDITIONAL DUTIES

Petition Objections & Electoral Boards

Objection Transmittal, Service, & Formation of Electoral Board

- ❖ Within 24 hours of receipt of the objector's petition, the Electoral Board Chairperson must send a "call" by registered or certified mail to, and by personal service made by the county sheriff on:
 - ❖ Each of the electoral board members;
 - ❖ Electoral Board Membership determined by type of local government
 - ❖ Municipal – Municipal Officers Electoral Board
 - ❖ School Board and "Special Districts" – County Officers Electoral Board
 - ❖ "Special District" = any political subdivision other than counties, municipalities, townships, school, and community college districts
 - ❖ the Objector; and
 - ❖ the Candidate or the principal proponent (or his attorney) of a referendum petition.

31



ADDITIONAL DUTIES

Objections & Electoral Boards

Objection Transmittal, Service, & Formation of Electoral Board

- ❖ While the call should always be served by registered or certified mail, it is also valid to have all electoral board members, objectors and candidates or proponents sign a waiver of service, if possible to attain.



32



ADDITIONAL DUTIES

Electoral Board Hearing

- ❖ The electoral board's first meeting and initial hearing of an objector's petition shall be not less than 3, nor more than 5, calendar days after the Chairperson's receipt of the objections.
- ❖ During its initial hearing, the electoral board must adopt Rules of Procedure.

33



**ODELSON
STERK, LTD.**
ATTORNEYS AT LAW

ADDITIONAL DUTIES

Electoral Board Hearings

- ❖ The electoral boards have limited jurisdiction and are charged “to hear and pass upon the question as to . . .”
 - ❖ whether the nomination petitions are in proper form;
 - ❖ whether petitions were filed within the time and under the conditions required by law; and
 - ❖ other issues necessary to determining whether the papers or petitions are legally valid.
- ❖ The electoral board must issue a final decision **in writing**, and the final decision must be served upon the objector and candidate or proponent in person during a public meeting that complies with the Open Meetings Act.
 - ❖ (i.e., there must be a quorum of the board members present).

34



**ODELSON
STERK, LTD.**
ATTORNEYS AT LAW

ADDITIONAL ISSUES

“Use of Public Funds”

There is an absolute prohibition against the use of any public, local government resources or funds to support or oppose an elected official, any political campaign, or any question of public policy.

❖ Section 9-25.1 of the Election Code ❖ No “public funds” can be used to “urge any elector to vote for or against any candidate or proposition” ❖ Not only is the use of public funds to support a candidate’s retention or election prohibited, doing so is a Class B misdemeanor for the first offense.	❖ The State Officials Employees Ethics Act ❖ Restricts the use of public property for personal reasons ❖ Generally means that municipal employees and officers are prohibited from performing any prohibited political activity on “compensated time” and from intentionally misappropriating any governmental property or resources by engaging in activity for the benefit of any campaign for elective office.
---	---

35



**ODELSON
STERK, LTD.**
ATTORNEYS AT LAW

ADDITIONAL ISSUES

Municipal Regulation of Political Signs



- ❖ Pursuant to the Election Code, state law generally regulates electioneering on polling place property on an election day.
 - ❖ “Campaign free zones” (10 ILCS 5/17-29)
 - ❖ What constitutes an “election day”?

36



**ODELSON
STERK, LTD.**
ATTORNEYS AT LAW

ADDITIONAL ISSUES

Municipal Regulation of Political Signs

- ❖ Municipal Code prohibits municipalities from imposing time restrictions for displaying political signs on residential property. (65 ILCS 5/11-13-1(12))
 - ❖ Cannot limit the time that people are allowed to display political signs on their property (e.g. requiring removal a certain number of days after an election).
 - ❖ Municipalities can impose reasonable size restrictions.
 - ❖ Does not apply to prohibitions against political signs on public property and rights of way – these restrictions are legal (except during election days at polling places).

37



**ODELSON
STERK, LTD.**
ATTORNEYS AT LAW

CONCLUSION

There are many other issues and nuances that local governments will face as the 2019 Consolidated Elections approach.

The most important first step is to be prepared and ensure that you are giving competent, experienced advice at the earliest possible point in the process.



Good luck!

38

Disclaimers

Please note that the Supreme Court of Illinois does not recognize certifications of specialties in the practice of law and the certificate, award or recognition is not a requirement to practice law in Illinois. The information contained in these materials or said during presentation is for general purposes only and should not be interpreted to indicate a certain result will occur in your specific legal situation.

NOTHING CONTAINED HEREIN IS INTENDED AS LEGAL ADVICE AND DOES NOT CREATE AN ATTORNEY-CLIENT RELATIONSHIP.

You are strongly advised to consult with competent legal counsel in relation to any aspect of what has been discussed.

39



**ODELSON
STERK, LTD.**
ATTORNEYS AT LAW

Prepared & Presented By:

Ross D. Secler
ODELSON & STERK, LTD.
3318 W. 95th Street
Evergreen Park, Illinois 60805
Office: (773) 424-5678; Fax: (708) 741-5070
rsecler@odelsonsterk.com
* * *

40
