

ELECTION LAW: So you want to be a New Jersey election law attorney?

I. Presenters

A. Robert Ramsey, Esquire, Garden State CLE Senior Instructor

B. Robert D. Herman, Esquire, Certified Criminal Trial Attorney

1. Extensive Campaign Experience

2. Represents Atlantic County Democratic Committee

II. Public Policy- The public must have absolute confidence in the legitimacy and accuracy of the election process.

III. Terms, Definitions and Miscellaneous Issues

A. Franchise- The right to vote.

1. New Jersey Voter Registration Requirements

a. U.S. Citizen.

b. At least 17 years old to register, but must be 18 to vote.

c. County resident for 30 days before the election.

d. A person not serving a sentence of incarceration as a result of a conviction for any indictable offense under the laws of this or another state, or of the United States. Accordingly, people on probation and parole are eligible to vote.

2. Residency Issues

a. If more than one residence, vote where the majority of time is spent. Voting in both locations will result in criminal charges.

b. If the same or more time is spent in another state, but the voter considers himself/herself a New Jersey resident, look at factors such as real estate taxes, driver's license, family ties, etc.

3. Residency Issues- Procedure

a. If the residency issue is raised pre-election, a provisional ballot is used.

b. If it is raised post-election, a complaint is filed.

c. On election day, the issue is addressed by one of the on-call superior court judges.

B. Canvass- The acts of collecting and processing the ballots.

C. Vote by Mail- In New Jersey, a vote by mail is the same as an absentee vote; the terms are interchangeable. Voting by mail was established in New Jersey in response to the COVID-19 pandemic. Prior to the pandemic, several western states were already allowing votes by mail.

D. Ballot- A diminutive ball, *i.e.*, a little ball used in giving votes.

E. Tally- Total votes (noun); accumulating or checking the number of votes for a candidate or issue and coming up with a total (verb).

F. Active v. Inactive Voter

1. Unlike an active voter, an inactive voter has not voted in a certain number of elections, which is generally two successive federal elections.

2. An inactive voter may still vote. He/she simply needs to confirm his/her address at the polling station by use of a form containing an affirmation. If there is a dispute, the ballot is provisional.

G. Number and Locations of Polling Stations- The number and locations of polling stations are determined by each County Board of Elections. In 2020, in consideration of the anticipated increase in voting by mail, a statutory requirement mandating that only 50% of the existing polling stations be maintained was enacted.

H. Challengers- Representatives of the political parties with challenger credentials. Challengers are relied upon by the attorneys to establish whether there are any issues with a particular polling station. Examples of issues (challenges) include, but are not limited to, electioneering and improper behavior by poll workers.

I. Electioneering- When a politician or campaign worker takes part actively and energetically in the activities of a campaign in the polling place, or within 100 feet of its entrance, unless the activity occurs on private property. Election law attorneys, who represent a party/candidate, look for electioneering.

J. Ballot Cure Act- Established in August, 2020 to modify and establish vote by mail procedures.

K. County Superintendent of Elections

1. Appointed by the governor to a five-year term.

2. Principal duty is to ensure the integrity of the vote.

3. Additional Responsibilities

- a. Maintains ballot security, *i.e.*, makes sure no one has access to ballots received.
- b. Investigates election issues.
- c. Canvasses.
- d. Controls the polling machines.

L. Responsibilities of County Clerk

1. Handles registration materials.
2. Processes vote by mail requests.
3. Oversees voters' movements from inactive to active status.
4. Ensures that the ballot is printed correctly.

M. Role of Municipal Court Clerk- Works with the County Board of Elections to designate polling stations.

N. Responsibilities of the County Board of Elections

1. Responsible for poll workers and their training.
2. Staffed by representatives of both major political parties.
3. Responsible for the unofficial tally. (A tally is not official until certified by the County Clerk.)

O. Voter Assistance- Statutory requirement that voters be provided assistance for physical disabilities, language deficiencies, difficulties in understanding the election process, etc.

P. Are children permitted to be in the voting booth? Children are allowed in the voting booth, but they are not permitted to push the buttons.

Q. Clean Voter- A clean voter is a properly registered voter.

R. Is ID required at the polling place? Identification is only required if the voter did not previously submit his/her driver's license number or the last four digits of his/her social security number and/or the State cannot trace the voter.

S. To what extent is the election law attorney involved when the vote is very close? The attorney may file a petition for a recount.

T. Electoral College

1. A vote cast for a presidential candidate is not a direct vote. Rather, the vote is cast for a slate of electors from the Electoral College.

2. The number of electors for each state is equal to its total number of Senators and Representatives in Congress. Accordingly, the Electoral College is made up of 538 electors. (435 for the House, 100 for the Senate, and 3 for the District of Columbia.) To win the presidency, a candidate must secure a simple majority of 270 votes.

IV. Best way to prepare for a career as an election attorney is to read the primer on Election Law published by the State of New Jersey.

V. Rules for Election Attorneys

- A. Election days are very long. The attorneys must have the requisite stamina.
- B. Must maintain professional and courteous relationships with adversaries. Good idea to reach out to adversary 30 days or so prior to the election.
- C. Attitude toward voters and the public should be one of politeness, consideration, and courtesy.
- D. On Election Day, attorneys must expect unpredictability.

VI. Contact Information- For questions about this lecture or election law in general, Mr. Herman may be reached at rdhesq1@msn.com.