

**BEFORE THE ARKANSAS STATE BOARD OF ELECTION
COMMISSION/STAFF**

**PUBLIC HEARING
IN THE MATTERS OF:
Rules for Nonpartisan Office Filing Fees
Rules for Poll Worker Training
Rules for Reimbursement of Expenses for
State Funded Elections
Rules on Poll Watchers, Vote Challenges,
and Provisional Voting
Rules for Voter Identification
Rules for Appointment of Certified Election
Monitors**

Wednesday, July 17, 2013

10:00 a.m., Central Daylight Time

State Board of Election Commissioners'
Board Room
501 Woodlawn Drive, Suite 401N
Little Rock, Arkansas

**DEES COURT REPORTING
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Attendance:

Mr. Justin Clay, Director
Tim Humphries, Esq., Legal Counsel

Also Attending:

Mr. Stuart Soffer, Commissioner

Ms. Ginna Watson, Garland County Election
Commission

Ms. Twila Brown, Garland County

Other Unidentified Attendees/Public

Cheryl D. Dees, C.C.R., The Court Reporter, on
behalf of Dees Court Reporting

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Cheryl D. Dees, C.C.R.

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Cheryl D. Dees, C.C.R.

1 P R O C E E D I N G S

2 MR. CLAY: Okay, we will go ahead
3 and get started.

4 Welcome, and thank you for joining
5 us at the State Board of Election
6 Commissioners' Public Hearing on our
7 Proposed Rules.

8 My name is Justin Clay, and this is
9 Tim Humphries. We are staff here with the
10 State Board of Election Commissioners. We
11 have Commissioner Stu Soffer joining us.
12 And we also have Ms. Cheryl Dees, with
13 Dees Court Reporting. She is going to be
14 helping us out in transcribing the events
15 of today.

16 I hope everyone signed in and had an
17 opportunity to get an agenda.

18 Just kind of a quick overview of how
19 we foresee this going. We have six sets
20 of Proposed Rules. The staff is going to
21 briefly explain each rule and then open up
22 that rule to public comments. We are
23 going to kind handle each one
24 individually.

25 Cheryl D. Dees, C.C.R.
If you do have a comment, please go

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up to the podium and state your name, your organization, if applicable, the rule you're commenting on, and then your comments. And we will go from there.

So with that, we will go ahead and get started.

The first rule on the agenda is **Rules for Nonpartisan Office Filing Fees.**

The proposed changes that we are making to this rule are a result of legislation that was passed during the 2013 Legislative Session. Act 1110 required prosecutors, prosecuting attorneys, to run as nonpartisan offices, and Act 1286 dealt with district judges, who they file with and as well as the filing period for nonpartisan offices.

So this rule reflects those changes. The State Board of Election Commissioners is required to set filing fees for nonpartisan office, and now we are required to set filing fees for the Office of the Prosecuting Attorney. Our proposal is to set that filing fee at three percent (3%) of the annual salary. That is

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consistent with other filing fees for nonpartisan offices.

I believe that's all of the changes that are being proposed for that rule. So we will open it up to comments for our proposed rules on nonpartisan office filing fees.

(Brief Pause) (No audible response)

Okay, seeing no comments, we will move on to the next item, which is **Rules for Poll Worker Training**.

The proposals to this rule, or the proposed changes to this rule would establish what we call an advanced training program for poll workers. This is a similar process that we have for our training programs with County Election Commissioners, basically, saying that experienced poll workers who have been certified by the Board previously, are eligible to attend what we call an advanced training program, which will cover legislative updates and other relevant changes and information pertinent to them.

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This rule also addresses a legislative change stemming from Act 1457, which requires that all poll workers be trained prior to regularly scheduled elections, so our rule reflects that change. Or our proposed rule, yeah, reflects that change and has other changes in language for clarity with existing legislation.

Does anyone have a comment that they would like to make on our proposed rules for poll worker training? Yes, ma'am?

MS. GINNA WATSON: Ginna Watson, Garland County Election Commission.

I see under "204 Compensation," ...et cetera, that poll worker training attendance up to a maximum of six eligible poll workers per precinct.

We have a 173 precincts, so we can have six times a 173 poll workers, and you will pay for that, for their training?

MR. CLAY: (Nodding)

Very good. I am pleased to see that.

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MR. CLAY: Yes.

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MS. WATSON: Okay is a biggie, and I thank you, and all our two hundred and fifty-plus poll workers thank you. Okay.

MS. BROWN: Twila Brown, Garland County.

Under "201," the "Qualifications," "Number Four," states that *...must not have been found guilty of pled guilty or nolo contendere to any violation of election laws.*

I'd like to know how we are supposed to know this, because I don't believe misdemeanors are coded in the voter registration file, and many of the election violations are, in fact, misdemeanors, rather than felonies.

MR. CLAY: Thank you. Does anyone else have a comment on our Proposed Rules for Poll Worker Training?

(No audible response) (Brief Pause)

MR. CLAY: Okay. Seeing none, we will move on to **Proposed Rules for Reimbursement of Expenses for State Funded Elections.**

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What the Board is proposing to do

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with this rule is removing an auxiliary funding category that the Board established in 2011. Basically, prior to the 2012 election cycle, new expenses were eligible for reimbursement; however, there was no way to anticipate the budgeting needs of exactly what those new expenses would be, so this new category was created. It's called an Auxiliary Category. And a mechanism was put in place that allowed for all of the other expenses to be funded or reimbursed, and if funds were available after those expenses were reimbursed, we would then fund the auxiliary expenses.

After the 2012 election cycle, it was found that we were, in fact, able to fund those expenses and now have an idea of how to budget for them. So this separate funding category is no longer necessary. All of these expenses will just be rolled in with the other preexisting funding categories.

So, we are removing language associated with that. That's what we're

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doing.

Does anyone have any comment on this Proposed Rule, the **Rules for Reimbursement for Expenses for State Funded Elections?**

(No audible response) (Brief Pause)

MR. CLAY: Okay. Seeing none, we will move on to **Rules on Poll Watchers, Vote Challenges, and Provisional Voting.**

Tim, I'll let you explain this one.

MR. HUMPHRIES: Okay. **Agenda Items Number Four and Five** are related, so I am going to talk about both of those and invite you to comment about both of those.

They're both related to the new voter I.D. requirement that was enacted in the last Session, Act 595, 2013. And the **Rules for Voter Identification, Number Five**, on our agenda, are all new rules that deal with procedures that are sort of required to implement Act 595, and our changes in our **Rules for Poll Watchers, Vote Challenges, and Provisional Voters** are also changes that are related to procedures for dealing with the provisional ballots that might be cast as

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a result of Act 595.

You will recall that Act 595 imposed a new voter identification requirement. It now requires for most voters who go to the polls to vote, that they bring with them proof of identity, and that proof of identity is a very specific kind of identification document that is spelled out in these Rules and in that Act, in the definitions.

It also requires, it also imposes a new identification requirement for absentee voters, and that identification requirement is spelled out in these Rules and in the Act. And so what these Rules do is establish procedures. For instance, in the **Voter I.D. Rules, Item Number Five**, it sets out procedures for poll workers to assess the validity of proof of identity when it is presented to them at the polling place. It also provides procedures for Election Commissions and County Clerks to assess the validity of proof of identity. When that's brought back to them after the election, it's

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1 another provision of Act 595 that if a
2 voter comes to the polls without P.O.I.--
3 I'll refer to *proof of identity* as
4 "P.O.I.-if a voter comes to the polls
5 without P.O.I., they have a grace period.
6 They have until the noon of the Monday
7 following the election to bring it to the
8 County Clerk or to the Election
9 Commission. And these rules on voter I.D.
10 set out procedures to do that and for the
11 Clerk and the C.V.C. to evaluate that,
12 that identity.

13 I think the main provision in the
14 Provisional Voting Rules that deal on
15 that, has to do...it's in "906," and it's
16 the notice that is going to be required to
17 provisional voters when they fail...well,
18 to all provisional voters, there is going
19 to be a significant change on that. This
20 rule would require election poll workers
21 to hand over a notice to the voter,
22 telling them when they may...when and
23 where and to whom they may bring back
24 their P.O.I., if they don't have it. It
25 will also tell them the date of a hearing,

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if they're a provisional voter, as to whether or not their ballot is going to count and to bring evidence to the Election Commission that they are a registered voter or that they did present P.O.I. and some other information that is in addition to what is required now.

So that's just a basic outline of what the Rules are. We would appreciate any comments that you might have on them.

MR. CLAY: So we are hearing comments now on **Rules on Poll Watchers, Vote Challenges, and Provisional Voting**, as well as our **Proposed Rules for Voter Identification**.

MS. GINNA WATSON: It's me again.

MR. CLAY: Please go ahead...

MS. GINNA WATSON: Ginna Watson, Garland County Election Commission.

MR. CLAY: Thank you.

MS. GINNA WATSON: Currently, when one of our voters has a provisional ballot, we have a slip of paper about one-fourth as large as a sheet (indicating), telling the voter that they will be

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notified of a public hearing that will be held, and they will be notified with a letter, telling them whether or not their vote counts. Is that still sufficient, or are you proposing that we go into the mechanics of provisional voting and an explanation of bringing their P.O.I. in on Monday after the election on Tuesday, and what time, are you proposing we put all of that into our notice?

MR. HUMPHRIES: Yes. These rules would require you to put in the notice the address of the Clerk's Office, the dates and times of any scheduled meetings for the County Board of Election Commissioners, of course, the deadline for bringing P.O.I. back to the County Clerk or to the County Election Commission.

MS. GINNA WATSON: Oh, we're just about going to have to expand on our letterhead to a sheet to give them with all this information on it, to replace what we currently provide.

MR. HUMPHRIES: I would think so.

MS. GINNA WATSON: Okay.

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MR. HUMPHRIES: That's not a requirement here, obviously, but as a practical...

MS. GINNA WATSON: (Interjecting) Yes.

MR. HUMPHRIES: ***matter, that's what you are going to wind up doing.

MS. GINNA WATSON: Thank you.

COMMISSIONER STUART SOFFER: I have a question. Commissioner Stuart Soffer.

Are we, as a State Board, going to provide a standardized, recommended standardized notice?

MR. HUMPHRIES: Yes. That's part of what we do. That will be in the Commissioner's Handbook that goes out, sort of a standard recommended form to use with that notice.

MS. TWILA BROWN: Twila Brown, Garland County.

A couple of comments. First of all, the very first paragraph, "900-A," talks about *in the courthouse*, and many of our counties do not count absentee ballots in the courthouse, so I think that phrase

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needs to be stricken.

And also I'd like to ask a question, and we might need some clarification on this. We now cannot...well, first of all, there is another requirement that states that anybody that is requesting a recount must do that on the third, prior to the third day of, of initial...of unofficial, the first unofficial results. Do you anticipate any change in that? Because, frankly, right now, if it's more than five votes, you know, we would never recommend that they, that they do that. Less than that, you know, our machines are becoming so accurate.

This number of provisional ballots that will be held until the following Monday is far beyond that three days and could definitely make a difference in whether...in what...that decision, so I think that aspect, although it's not specifically addressed in this, needs to be...we need to take a look at that provision.

Cheryl D. Dees, C.C.R.
MR. CLAY: Okay.

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MS. TWILA BROWN: If you would.

MR. HUMPHRIES: Okay.

MR. CLAY: Anybody else?

(No audible response) (Brief Pause)

MR. CLAY: **Voter I.D. or Provisional
Ballot Rules?**

(No audible response) (Brief Pause)

MR. CLAY: Last call. (Brief Pause)

Okay.

MS. GINNA WATSON: I am not asking you are you going to pay the increased cost, you know, of course.

MR. HUMPHRIES: Oh. For primaries.

MR. CLAY: Our last rule is regarding **Appointment of Certified Election Monitors**. The Board is, currently has guidelines for appointing certified election monitors.

COMMISSIONER SOFFER: Can we back up a second? Her comment about paying for the notice, isn't there something in the Law or something in effect where the Secretary of State pays for certain costs? I believe it's mailing the letter to voters, *Cheryl D. Dees, C.C.R.* provisional voters now, that their

1 votes were either counted or discounted,
2 isn't there something for reimbursement by
3 the Secretary of State out there, related?

4 MR. HUMPHRIES: There might be. I'm
5 not sure. We can talk about that later.

6 COMMISSIONER SOFFER: Okay.

7 MS. GINNA WATSON: The way I
8 understand this, we are going to have to
9 have a letter specific to that certain
10 election, like we can't just do a standard
11 form. It has to go to each election.

12 MR. HUMPHRIES: Well, there are two
13 things, there are two kinds of notices
14 here. One of them is the notice that the
15 voter is handed at the polls, if they vote
16 a provisional ballot.

17 MS. GINNA WATSON: Uh-huh.

18 MR. HUMPHRIES: There is a new
19 requirement here...

20 MS. GINNA WATSON: (Interjecting)
21 Yes.

22 MR. HUMPHRIES: ***that they be
23 handed a notice that has all this
24 information on it. And then there is a
25 separate requirement for all those voters

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that they be informed whether or not their vote was counted and the reason why not, and again informing them about the hearing, the date of the hearing and those kinds of things.

MS. GINNA WATSON: Yeah.

MR. HUMPHRIES: And that's a separate notice that goes out by mail, and that's what I think Commissioner Soffer is referring to when...

MS. GINNA WATSON: (Interjecting) Okay. We,...

MR. HUMPHRIES: ***he talks about...

MS. GINNA WATSON: (Interjecting) We already do that.

MR. HUMPHRIES:
(Inaudible/simultaneous speaking) to get reimbursed.

MS. GINNA WATSON: And we do turn it in as an expense, but now if we have to have separate forms for each particular election, notifying the provisional voter that they may come back on Monday, and this is what to bring with them, et cetera. Cheryl D. Dees, C.C.R. That was my question covering the

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increase in cost.

MR. CLAY: Okay, thank you. Any other comments on our Proposed Rules for **Provisional Voting or Voter Identification?**

MS. GINNA WATSON: I didn't know we were covering voter identification.

MR. CLAY: Yes, ma'am.

MS. GINNA WATSON: Okay. Let me go back up.

MR. HUMPHRIES: **Voter I.D. or Provisional Voting.**

MS. TWILA BROWN: Do you anticipate (unintelligible from audience)...

MR. CLAY: Will you talk...

MR. HUMPHRIES: If you have got questions like that, we can talk after the meeting.

MS. GINNA WATSON: Ginna Watson, Garland County Election Commission.

Just for clarification, on "Three, A, B, C, D," or "Three-A,"--no, that wasn't it--there is a list that says, "Acceptable identification is..." and it doesn't have on there employee's

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identification badge, but that does not have a picture. And in my written statements that I have sent in, I had asked that you put, "...and," and then the next one, "...and, ...and, ...and," so that we had the requirement for a photo. It was very explicit if you put *and* in there, and I sent it in to you, addressed in red, hoping to get your attention that an employee badge will not do it, and a photograph. A carrying of a hand gun license will not do it, because not all licenses have a photo, so I was trying to connect all of that so that when the voter comes in with their license to carry, and it does not have a photo, they're going to argue with us, so we needed to tie all those together, that even though they have each one of these, an employee's badge, et cetera, it still needs a photo. And I'm just trying to prevent great arguments at the polls.

So, and Twila, I think you mentioned something to talk about.

Cheryl D. Dees, C.C.R.
COMMISSIONER SOFFER: I want to

1 respond to one thing, because we have been
2 over ground before with regards to a
3 conceal and carry permit. "When carrying
4 a concealed hand gun, the licensee must
5 possess this license, along with an
6 official form of photo identification."
7 So that's an invalid point, if I may, with
8 all due respect.

9 Where is the word *badge* on here? I
10 might...

11 MR. HUMPHRIES: Well, it's there,
12 but let me just kind of get the...

13 MS. GINNA WATSON: (Interjecting)
14 The statement in here says...

15 COURT REPORTER: Wait, wait. One at
16 a time.

17 MR. HUMPHRIES: Hold on, hold on
18 just a second. Let me just get the focus
19 back.

20 MS. GINNA WATSON: Okay.

21 MR. HUMPHRIES: Let's just take the
22 comment, and we can deal with...I can talk
23 to you about some of those issues...

24 MS. GINNA WATSON: (Interjecting)
25 Okay. Cheryl D. Dees, C.C.R.

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MR. HUMPHRIES: ***later on. Let's not deal with that now.

COMMISSIONER SOFFER: Okay.

MR. HUMPHRIES: Does anybody else have any comments on the **Voter I.D. Rules or Provisional Voting Rules?**

(No audible response) (Brief Pause)

MR. HUMPHRIES: Are we ready to go on to the **Monitors?**

MR. CLAY: Sure. Our final proposed rule is **Rules for Appointments of Certified Election Monitors.**

Currently, the Board has guidelines on appointing election monitors. We are, in large part, adopting those existing guidelines and formalizing them as a rule. There are a few changes to our guidelines, mainly, to reiterate or clarify procedures for, that the Board has the responsibility of appointing certified election monitors, upon appropriate request from individuals.

Does anyone have any comments on our **Proposed Rules for Appointment of Certified Election Monitors?**

Cheryl D. Dees, C.C.R.
(No audible response) (Brief Pause)

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MR. CLAY: Okay. I guess we will maybe give you one more chance here. Does anyone have any additional comments on any of the rules that we have discussed here today?

(Brief Pause) (No audible response)

MR. CLAY: Okay, seeing none, we would like to thank you for attending this public comment, public hearing. I would remind everyone that written comments are due at 4:30 p.m., July 23rd. So that's the deadline to submit written comments on our Proposed Rules. However, please, please don't feel like you have to be beholding to that deadline. If at anytime after that, you have comments about our Proposed Rules or anything else, please let us know. We are willing and eager to work with you in any possible way that we can to improve our procedures and the conduct of our elections.

So thank you all for joining us, and I guess we are adjourned.

WHEREUPON, the Public Hearing in the above-entitled matter was concluded at Cheryl D. Dees, C.C.R.

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10:28 a.m., on Wednesday, July 17, 2013,
and further, the staff and attendees saith
not.

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Cheryl D. Dees, C.C.R.

C E R T I F I C A T E

STATE OF ARKANSAS)

COUNTY OF PULASKI)

I, Cheryl D. Dees, a Certified Court Reporter of Little Rock, Pulaski County, Arkansas, in and for the aforementioned county and state, do hereby certify that I recorded all the testimony taken in the hearing before the staff of the Arkansas State Board of Election Commission, in the matter of Proposed Rules, at Little Rock, Arkansas, on July 17, 2013; that said stenomask recording has been reduced to typewritten form by me or under my personal supervision with the aid of computerized means, and the foregoing pages, numbered 1 through 24, are a true and correct transcription of all evidence introduced, comments made, and proceedings had in said hearing.

In accordance with Rule 30(e) of the Arkansas Rules of Civil Procedure, at the time and place of the hearing, review of the transcript was not requested by any party to this matter.

I FURTHER CERTIFY that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was taken; and, further, that I am not a relative or employee of

1 any attorney or counsel employed by the parties
2 hereto, nor financially interested, or otherwise, in
3 the outcome of this action; and that I have no
4 contract with the parties, attorneys, or persons with
5 an interest in the action that affects or has a
6 substantial tendency to affect impartiality, that
7 requires me to relinquish control of an original
8 deposition transcript or copies of the transcript
9 before it is certified and delivered to the custodial
10 attorney, or that requires me to provide any service
11 not made available to all parties to this action.

12 **WITNESS MY HAND AND SEAL,** as such Court
13 Reporter, 18th day of July, 2013.

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CHERYL D. DEES
CERTIFIED COURT REPORTER
Certificate LS # 43

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