

MEETING OF THE
COMMISSIONERS OF ELECTIONS
HELD ON WEDNESDAY, JULY 20, 2011
AT 1:30 P.M.
42 BROADWAY, 6th FLOOR, EVS CONFERENCE ROOM
NEW YORK, NY 10004

PRESENT: President Juan Carlos "J.C." Polanco

Commissioners Araujo, Dent, Schacher, Sipp, Stupp

Dawn Sandow, Deputy Executive Director
Pamela Perkins, Administrative Manager
Steven H. Richman, General Counsel
Raphael Savino, Director, Campaign Finance Enforcement
John Ward, Finance Officer
Dorothy Delayo, Director, Personnel
John Naudus, Senior System Analyst, EVS
John O'Grady, Chief Voting Machine Technician
Beth Fossella, Coordinator, Voter Registration
Troy Johnson, Coordinator, Candidate's Record Unit
Richard Byrne, Summer Law Student Intern, OGC
Daniel Dugan, Summer Law Student Intern, OGC
Giacomo Kmet, Temporary Attorney, OGC
James Barron, Temporary Attorney, OGC
Charles S. Webb, III, Counsel to the Commissioners
Steven B. Denkberg, Counsel to the Commissioners

GUEST: Joseph G. Garber
Rima McCoy, CIDNY
Todd Urosevich, ES&S
John Smith
Alan Flacks, Member of NY County Democratic Committee

President Polanco called the meeting to order at 1:35 P.M.

Commissioner Araujo moved to adopt the minutes of the June 12, 2011 meeting. Commissioner Stupp seconded the motion, which was adopted unanimously.

Commissioner Araujo moved to adopt the minutes of the June 19, 2011 meeting. Commissioner Dent seconded the motion, with Commissioner Sipp abstaining. The motion was not adopted. Commissioner Sipp withdrew his abstention. The motion was adopted.

Commissioner Stupp requested to add an item to the agenda.

Mr. Denkberg requested to discuss a litigation matter in Executive Session.

President Polanco noted that Ms. Sandow and Ms. Perkins joined the meeting.

Commissioner Stupp reported on the compensation for the Poll Workers for training and the performance incentive. She stated that Mr. Richman sent an email on July 13, 2011 to the Commissioners advising that in preparing the U.S. Department of Justice (DOJ) pre-clearance

submission relating to the request to change the approved plan relating to the number of eligible voters per scanner, he reviewed the Board's DOJ pre-cleared submission. (A copy of Mr. Richman's email is attached.) In the submission, the Board provided that the compensation for the six (6) hour training program is \$100 per Poll Worker. Under Section 3-212 (2) of the NYS Election Law, in order to change the status quo as set forth in the pre-cleared submission, the Commissioners will have to direct (by majority vote) that the pre-cleared provision be modified to whatever they direct. Commissioner Stupp stated that he also advised that the performance incentive was not included as part of the Board's submission to DOJ. A majority of the Commissioners set the award for the 2010 election cycle at \$100. President Polanco requested a clear explanation for purposes of Commissioner Stupp's motion. Mr. Richman stated that the training class is set for six (6) hours at a pay rate of \$100. He recalled that at last week's meeting, Ms. Rahmouni's request failed (in a vote with 3 in favor, 4 opposed) which would not constitute a change in the Board's policy. Mr. Richman stated that if anyone wishes to change the compensation paid to the Poll Workers for training for the six (6) hour course then they would need a motion to direct that change. If it passes, then it has to be submitted to the DOJ. Mr. Richman reported that the performance incentive does not directly effect how the Poll Workers perform with the

voters so the Board did not include it in the pre-clearance submission. The performance incentive was designed by the Board to get people to go to class, pass the class, and work two (2) election events. He stated that each year it was set. In 2009, prior to the new voting system, it was set at the rate of \$35 and in 2010, with the new voting system, it was set at \$100. Mr. Richman stated that the Commissioners have to set the rate for the 2011 election cycles. Ms. Sandow clarified that the incentive bonus was given to the Poll Workers who went to training, passed the class and worked both elections. Mr. Richman stated that Ms. Rahmouni misspoke at the previous meeting. She asked to keep the training stipend at \$100, but staff did not realize it was already in the pre-cleared submission. She also asked for the performance incentive to be \$100 this year, but did not receive six (6) votes. Commissioner Sipp asked what the pay was last year. Ms. Sandow reported that the training stipend and performance incentive were \$100 each. Mr. Richman stated that the performance incentive is discretionary determination for the Commissioners. President Polanco clarified that the motion would be to adopt the performance incentive at \$100 for 2011. He recalled that he made a point last year and last week with the Public Education Campaign to tell the Poll Workers about the new voting machines and to try to get the best people to work with the Board. He stated that the incentive is a great idea to award the

Poll Workers who have dedicated themselves to learn the new voting system to ensure successful elections. President Polanco urged his fellow Commissioners to consider granting the \$100 performance incentive, which is Commissioner Stupp's motion. Commissioner Araujo asked what the performance incentive would total. Mr. Ward stated that the training will be approximately \$2.8 million. He noted that the Poll Worker would have to work two (2) events to receive the performance incentive and the Bronx and Staten Island might not have Primary Elections this year so he cannot determine the numbers yet. Ms. Sandow asked what the Board is saving by not having a Primary Election in the Bronx and Staten Island. Mr. Ward replied approximately \$4 million. Commissioner Dent asked what the Poll Workers would receive at an hourly rate if they are paid the \$100. She stated that it is not a great deal of pay for all of the work that the Poll Workers have to do for the two (2) events. Mr. Richman replied that it is approximately \$3.00 an hour. Commissioner Araujo clarified this is just a bonus incentive to work both elections and that the Poll Workers are getting paid for their time working as well. He inquired how the pay is determined. Mr. Richman replied that the Executive Order was set by the Mayor in 1999 for \$200 for Poll Workers and \$300 for Coordinators for each day. Commissioner Araujo stated that the Board does not have control over the pay. He asked how much the Poll Workers are getting paid hourly.

Mr. Richman replied that they are receiving approximately \$11.00 an hour. Commissioner Araujo clarified that the bonus incentive would be an additional \$3.00 an hour. Commissioner Sipp asked what effect the switch from using OTPS funds to PS funds has on the Board with exceeding the budget with City Council. He also asked for the justification of the bonus incentive and if the Board would be covered for it. Mr. Ward stated that the funds are in PS and historically the Board has been “made whole” in the PS account. He noted that this is the first year using PS. Mr. Richman explained the rationale of the bonus. He stated that it was debated last year extensively during the Poll Worker program. Mr. Richman stated that given the responsibilities added to the Poll Workers, it is vital that the Board has Poll Workers at the poll sites that went to the training classes, passed the tests, and worked both events. He stated that it is an incentive to get the same Poll Workers back to the Board. Mr. Richman stated that it was done as an incentive, not as a bonus. He noted that this year there are three (3) events, but the Poll Workers would not get an extra performance incentive. Mr. Richman added that the term “performance incentive” was repeatedly used in the Board’s Testimony to the City Council. President Polanco stated that he does not want untrained Poll Workers at the poll sites. He would like experienced Poll Workers who passed the training and tests. President Polanco stated that he does not want the City Council to

question the Poll Worker's experience. He felt that providing the performance incentive would help Poll Worker recruitment and asked Mr. Richman for a point of information because he did not want the motion to fail. Mr. Richman stated that the Commissioners can do an informal vote with a show of hands. Commissioner Stupp withdrew her motion. The Commissioners did an informal vote. President Polanco noted that the motion would fail and postponed the matter for next week's meeting. Commissioner Stupp requested for this item to be added on the agenda. Ms. Sandow stated that she will notify the Borough Office Managers that the training stipend remains at a rate of \$100 and the performance incentive will be decided next Tuesday.

Mr. Richman reported on the selection of method for determining ballot order by lot for the September 13, 2011 Primary Election. A copy of his memorandum is in the agenda. Mr. Richman stated that the provisions of Section 7-116 (6) of the NYS Election Law requires rotation of candidates' names in the Primary Election is not applicable since that require is only applicable to the "ballot on the voting machine." The Board will be utilizing Election Day Paper Ballots and will have to comply with certain statutory and regulatory provisions. The Board does not have the obligation anymore to have mandatory rotation in Primary Elections.

Mr. Richman stated that it will result in a savings with the preparation of the test deck and the timing involved. He noted that the General Election ballot is set by statute. Mr. Richman stated that the other 57 New York counties choose the Primary Election ballot order by a random lot. Commissioner Araujo inquired how this would affect the Special Elections. Mr. Richman replied that a Special Election is run as a General Election. He added that it would only apply for Primary Elections either for Public Office or party position within a Primary, if it is being contested. Commissioner Araujo moved to table this matter for one (1) week because both Manhattan Commissioners are not present and he would like to do more research. President Polanco seconded the motion, which was adopted unanimously.

Mr. Richman presented the draft Independent Nominating Petition Rules for the November 8, 2011 General Election. Copies of the memorandum and draft rules are in the agenda. Mr. Richman noted that Jerry Koenig suggested some editorial modifications for Rule A3 and the General Election Ballot which were incorporated. Commissioner Araujo asked if any other changes were made to the rules. Mr. Richman replied no. Commissioner Araujo moved to adopt the Independent Nominating Petition Rules with the amendment for the November 8, 2011 General

Election. Commissioner Schacher seconded the motion, which was adopted unanimously. Mr. Richman stated that he will submit the Rules immediately to the U.S. Department of Justice for pre-clearance for the one (1) change.

Mr. Richman noted that there will be a Commissioners' Cover Sheet Review (CSR) Committee meeting today with Commissioner Stupp and Commissioner Araujo. Commissioner Araujo volunteered to attend the meetings for the week. Commissioner Araujo requested to move the CSR meeting to 1:00pm on Friday. Mr. Richman requested for Republican Commissioners to volunteer for the Thursday, Friday and Monday meetings. President Polanco volunteered for Thursday, Commissioner Schacher volunteered for Friday, and Commissioner Stupp volunteered for Monday. Mr. Richman stated that a public notice will be posted on the Board's website.

Mr. Richman announced that Giacomo Kmet, the Board's temporary legal attorney, has been formally admitted today by the Appellate Division - Second Judicial Department. The Commissioners congratulated Mr. Kmet.

Mr. O'Grady reported on the number of registered voters per scanner. He distributed copies of his report to the Commissioners. Mr. O'Grady recalled that he presented this item at last week's meeting and was directed to provide the voter turnout for the 2007 Primary and General Elections. He requested to increase the number of voters per scanner per poll site for 4,000. Commissioner Stupp asked to discuss printing less paper ballots. Ms. Sandow stated that matter is on the agenda.

Mr. O'Grady reported that the Board is working on permanent improvements with public schools and reported that there is an outstanding bill for \$227,000 from the NYC Department of Education (DOE). Mr. O'Grady distributed copies of the email from then Executive Director Mr. Gonzalez to the Commissioners. He reported that the DOE kept their public schools open that are used for polling places from September 9 – 13, 2010 in order for the Board to deliver the voting equipment needed for the September 14, 2010 Primary Election. In good faith, the DOE kept their public schools open for the Board during the Jewish holidays. Mr. O'Grady asked direction from the Commissioners. He stated that the Board has a good relationship with the DOE and they worked very hard to keep the schools open. He reported that Board staff has verified DOE's bill with the delivery receipts. Ms. Sandow stated that

this matter has been brought before the full Board in November 2010 and the Commissioners voted not to pay the bill because they were not informed of this matter. She stated that Mr. O'Grady received an email from the DOE earlier this month asking if the Board would reconsider to pay the bill. Ms. Sandow reported that the Board will have to close out the FY11 invoices in mid-August. Mr. O'Grady added that the Board uses the DOE public schools for training sites as well. Commissioner Schacher asked what the \$227,000 was used for and if it was reasonable. Mr. O'Grady replied that it was for DOE's staff's overtime during the four (4) day Jewish holiday. He stated that each site provided a paper bill and was verified with the delivery receipts. Commissioner Sipp inquired why this item was not on the agenda. Executive Management apologized and stated that they asked for Mr. O'Grady to discuss it. Commissioner Sipp stated that there was a long discussion on this issue previously and felt that they should not address this issue again today. Ms. Sandow stated that the Board has until mid-August to discuss this item. Commissioner Schacher requested for a break down of the invoice for the Commissioners. Commissioner Araujo requested for a copy of the Commissioners' Meeting Minutes concerning the DOE invoice when it is put on the agenda again. Ms. Sandow stated that the Board had to deploy the voting machines in time for the 2010 Primary Election, but there was the 9/11 Remembrance

Day and the Jewish holidays. Then Executive Director Mr. Gonzalez asked Salvatore Calderone, Director of Finance for the DOE, to keep the public schools open so the Board can deliver the voting machines into the night. She believed that Executive Management did not have a copy of Mr. Gonzalez's email when the Commissioners initially voted on the matter. She noted that the Commissioners were not consulted to give the authority to leave the public schools open. Ms. Sandow stated that they brought it to the Commissioners attention again because of the email from the DOE. She stated that they will send the Commissioners' Meeting Minutes and a spreadsheet of the invoice to the Commissioners for next Tuesday. Commissioner Stupp asked Mr. Ward where this money would come from if they voted to pay it. Mr. Ward replied the FY11 OTPS allocation. Commissioner Stupp asked if the Board has the funds. Mr. Ward replied yes.

Mr. Johnson reported on the 2011 Petition Filing. He reviewed the count of petition volumes filed by county, candidacy totals, records of nominations for election, and record of objections filed. Copies of his detailed reports are in the agenda. Commissioner Araujo inquired if there is only one (1) objection filed for the Special Election for Assembly 23, 27, 54, 73 and Congress 9 for Queens County. Mr. Johnson replied yes.

Mr. Richman noted that there are Prima Facie Defects for the Special Election on page 45 in the agenda which will be discussed at Tuesday's Hearing. Mr. Richman noted that there might be a problem with the Special Election filing because the deadline to file Specification on the General Objections listed on pages 46 and 47 is Monday at midnight and the Hearing is schedule for Tuesday at 1:30pm. He stated that if anyone perfects their Specifications then they will move forward with the Hearings on Prima Facie matters on Tuesday and ask to set another meeting for the Specifications either late Wednesday or Thursday because there is a statutory deadline to mail the military ballots on Friday. Commissioner Araujo requested that if it is necessary to conduct the hearings on Wednesday for Queens County then he would like to appoint the respective Commissioners to hear the matter. Mr. Richman stated that Kings County might be involved as well and suggested to make that determination at Tuesday's meeting. Ms. Sandow suggested sending an email on Monday night so the Commissioners will know in advance.

Ms. Fossella reported on the total number of 2010 September Primary Election invalid affidavit enrollments changes per Section 5-304 of the NYS Election Law. Ms. Fossella stated that the Borough Office staff emailed her the total numbers. The information follows:

<u>Borough</u>	<u># of Enrollments</u>	<u># of Party Changes</u>
Manhattan	1,280	1,100
Brooklyn	1,605	1,096
Bronx	729	550
Queens	1,462	811
Staten Island	365	221

Ms. Fossella reported that all changes were completed by June 29, 2011. She distributed copies of her report to the Commissioners.

Ms. Fossella reported on the request for Special Election ballot stamps for the Borough Offices. She stated that the Borough Office Chief and Deputy Chief Clerks requested six (6) stamps for their office. They suggested stamping the outside of the mail envelope, outside the return envelope and the ballot envelope. Mr. Richman stated that the Borough Offices will be mailing out forty-five (45) days before the Special Election and thirty-two (32) days before the Primary Election. The stamps would assist the Borough Office staff to identify the Primary and Special Election materials. It will also provide information to the voters. Commissioner Araujo moved to authorize the purchase of six (6) Special Election ballot stamps per Borough Office as presented by Ms. Fossella. Commissioner Stupp seconded the motion, which was adopted unanimously.

Mr. Ward presented the Vacancy Report dated July 19, 2011. A copy of the report is in the agenda.

Mr. Ward presented the Personal Services (PS) Spending Plan for Fiscal Year (FY) 2012. A copy of his report is in the agenda. Commissioner Dent asked if the numbers indicated on the spreadsheet are in thousands. Mr. Ward replied yes. Commissioner Sipp asked if the numbers indicated on the spreadsheet reflect the Presidential Primary as well. Mr. Ward replied yes. President Polanco moved to adopt the PS Spending Plan for FY12. Commissioner Araujo seconded the motion, which was adopted unanimously.

Mr. Ward reported on the recommended modifications in the OMB allocation for Other Than Personal Services (OTPS) to fund the Presidential Primary and expense items approved by the Office of Management and Budget (OMB). He distributed copies of his report to the Commissioners. Mr. Ward explained the OTPS Object Codes.

President Polanco recognized Alan Flacks, a member of the public, who questioned the postage object code. Mr. Ward replied that the postage is for citywide mailing. He stated that the general mailing in

August is First Class and the second additional mailing does not have to be First Class which will save funds.

Commissioner Schacher moved to approve the recommended modifications in the OMB allocation for Other Than Personal Services (OTPS) to fund the Presidential Primary and expense items approved by the Office of Management and Budget (OMB). President Polanco seconded the motion, which was adopted unanimously.

President Polanco requested to add Mr. Sattie to the agenda regarding absentee ballots.

Mr. Sattie reported on the schedule for absentee ballot printing for Special Elections. He distributed copies of his memorandum. Mr. Sattie stated that he reviewed each contest to see where the Board can print the Military and Special Federal ballots where applicable to comply with the Federal MOVE Act. He proposed that where there are no Objections and no Prima Facie to begin printing those Military and Special Federal absentee ballots and to post them the Board's website, to fax them (if necessary), and to mail them. He stated that once the Commissioners rule on the Objections and Prima Facie issues then he would begin the same

process immediately. Mr. Sattie reported that New York County (73rd Assembly District), Kings County (9th Congressional District), and Queens County (9th Congressional District) have no objections and no outstanding issues so the Board can begin printing. He reported that Kings County (54th Assembly District) and Queens County (23rd & 27th Assembly Districts) have outstanding issues and recommended to hold off on printing until the Hearings. Commissioner Stupp asked if there is a date when they would start printing and mailing the ballots. Mr. Sattie stated that if his plan is approved then he hopes to receive the ballots by Friday and start the mailing. Once this is approved then he would make sure the Borough Offices are prepared with their envelopes to begin stuffing with the ballots. The Borough Offices can mail the ballots the same day they receive them. Commissioner Stupp asked if there are any restrictions on how far in advance the Board can mail them. Mr. Richman replied no. He added that July 29, 2011 is the deadline to mail the ballots. Ms. Sandow reported that the Borough Offices already started to prepare their absentee envelopes. Commissioner Araujo asked if this would affect the printing if they go to court. Mr. Richman replied no. Commissioner Stupp confirmed that the Military and Special Federal ballots have to be postmarked by July 29, 2011. Commissioner Araujo moved to adopt the schedule for

absentee ballot printing for the 2011 Special Elections. Commissioner Stupp seconded the motion, which was adopted unanimously.

President Polanco recognized Alan Flacks, a member of the public, who asked if the drawing of lots for the Primary Election will be in public. President Polanco replied that item is tabled for next week. Mr. Flacks asked how he can obtain copies of the meeting's handouts which are adopted at the meetings. Mr. Richman stated that it is public record and can be FOIL'ed.

Mr. Sattie distributed a proposed ballot layout for the September 13, 2011 Special Election to the Commissioners. He stated that all statutory requirements are included on the ballot. Mr. Sattie stated that it is six (6) columns across, the instructions, "See instructions on the other side," are on top of the ballot in all four (4) languages, the instructions are on the back of the ballot, and the oval position is in the top left-hand corner of the boxes. If there is an Independent Nominating Petition then that candidate would appear on the column below in the far right-hand corner. It was noted that the Commissioners' names will be updated on the ballot as well. Commissioner Dent was concerned that the font size is still too small. President Polanco acknowledged her comment and asked if

there is anything legally the Board can do to increase the size. Mr. Richman replied no. President Polanco moved to approve the layout of the September 13, 2011 Special Election ballot. Commissioner Araujo seconded the motion, which was adopted unanimously.

Mr. Sattie reported that Commissioner Stupp raised the concern previously about ordering a certain amount of paper ballots. Last year, the Board ordered 110% of registered voters for each Election District for poll site ballots. In addition, they ordered one hundred (100) ballots per Election Districts as back-ups if there were any issues at the poll sites, plus a similar percentage of affidavit ballots. Mr. Sattie replied that he reviewed the number of voter turnout for the 2010 General Election which was 31% and the 2007 General Election turnout was 10%. Mr. Sattie discussed this matter with Executive Management, the General Counsel and Managers, and proposed to print 75% eligible voters of the poll site ballots which includes the back-up ballots and 10% of eligible voters for affidavit ballots. He stated that it is a significant decrease and the savings will be approximately \$1 million. Commissioner Araujo asked how much the ballots cost last year. Mr. Sattie replied \$15 million which included test ballots and all other ballots. Commissioner Dent asked Mr. Richman how many ballots the Board has to keep. Mr. Richman replied 100% of the

used and unused. There is a proposal that has not been sent to the Governor yet that will allow to dispose of non-federal election years any unused ballot packages. Commissioner Araujo asked if the ballot packs will be a total of fifty (50) ballots. Mr. Sattie replied yes. Commissioner Stupp asked if the ballots are still 52 cents each. Mr. Sattie replied yes; 52 cents for affidavits ballots, 52 cents for 14" poll site ballots, and 17" & 19" poll site ballots are 65 cents. President Polanco stated that is very expensive. He asked for Ms. Sandow's opinion on this matter. Ms. Sandow stated that all of the Managers calculated the voter turnout and eligible voters and decided the determination for 75%. Mr. Richman stated that there are no firm statutory or regulatory requirements on the number of ballots. Commissioner Sipp was concerned that the Board will not have enough ballots. Mr. Sattie stated that he is confident that the Board will have enough ballots. Mr. Richman stated that this is for the 2011 Primary, Special and General Elections only; it does not include the Presidential Primary Election. Commissioner Stupp asked what would happen if they did run out of ballots. Mr. Sattie replied that the Board has a printer that is capable of printing a limited amount of ballots. Commissioner Dent moved to adopt the recommendation regarding the number of ballots for the September 13, 2011 Primary Election and

November 8, 2011 General Election. Commissioner Araujo seconded the motion, which was adopted unanimously.

President Polanco recognized Joseph Garber, a member of the public, who stated that he was a dedicated Poll Worker in the past and would like to work for the Board again. Mr. Richman stated that Poll Workers are appointed by the Board upon the recommendation by the two (2) major political parties in each county. He advised Mr. Garber to fill out an application called the "white form," but he would not be guaranteed to work in his neighborhood, if appointed.

President Polanco asked if there is any progress on moving the Primary Election date. Mr. Richman reported that a conference was held before Judge Sharpe last Wednesday. He requested for an updated progress report from the State Board in sixty (60) days. There is a Senate bill which would make it effective 2012 to the last Tuesday in August and the current Assembly bill would make it effective for 2013 to the last Tuesday in June. The Governor has not submitted a program bill yet.

President Polanco recognized Alan Flacks, a member of the public, who requested for a copy of the sample Special Election ballot and inquired

about a new Executive Director. Ms. Delayo reported that there have not been any additional resumes for the position of Executive Director.

President Polanco announced that there will be a Commissioners' Cover Sheet Review after the meeting is adjourned.

President Polanco moved to convene an Executive Session to discuss personnel and litigation matters, which was adopted unanimously.

Following the Executive Session, the open public meeting resumed and President Polanco reported that there was no action taken in Executive Session.

President Polanco moved to adjourn the meeting, which was adopted unanimously.

The next stated meeting of the Commissioners is scheduled for Tuesday, July 26, 2011 at 1:30 P.M.