1 of 1 DOCUMENT

*** Current through December 23, 2011, and through D.C. Act 19-265 ***
*** Annotations current through December 1, 2011 ***

DIVISION I. GOVERNMENT OF DISTRICT
TITLE 1. GOVERNMENT ORGANIZATION
CHAPTER 10. ELECTIONS
SUBCHAPTER I. REGULATION OF ELECTIONS

GO TO DISTRICT OF COLUMBIA CODE ARCHIVE DIRECTORY

D.C. Code § 1-1001.11 (2012)

§ 1-1001.11. Recount; judicial review of election [Formerly § 1-1314]

(a) (1) The Board shall recount the votes cast in one or more voting precincts, if, within 7 days after the Board certifies the results of an election for an office, a candidate for that office petitions the Board in writing and specifies the precincts in which the recount shall be conducted. Before beginning the recount, the Board shall prepare an estimate of the costs and inform the petitioner of the anticipated number of hours needed to complete the recount and the cost per hour. The costs of the recount shall not include any payments associated for salaried election officials. If the petitioner chooses to proceed with the recount, the petitioner shall deposit the amount of $ 50 per precinct included in the recount. If the result of the election is changed as a result of the recount, the deposit shall be refunded. If the result is not changed, the Board shall determine the actual cost of the recount. The petitioner shall be liable for the actual cost of the recount and the Board may collect that cost from the deposit made with the petition.

(2) If in any election for President and Vice President of the United States, Delegate to the House of Representatives, Mayor, Chairman of the Council, member of the Council, President of the Board of Education, or member of the Board of Education, the results certified by the Board show a margin of victory for a candidate that is less than one percent of the total votes cast for the office, the Board shall conduct a recount. The cost of a recount conducted pursuant to this paragraph shall not be charged to any candidate.

(3) In the case of an initiative or referendum measure placed on the ballot pursuant to § 1-1001.16, or a recall measure placed on the ballot pursuant to § 1-1001.17, the Board shall conduct a recount if the difference between the number of votes for and against the initiative, referendum, or recall measure is less than one percent of the total votes cast.

(4) The Board shall issue regulations prescribing the procedures for the Board to:

(A) Provide notice of a recount to candidates for an office subject to a recount;

(B) Conduct a recount and certify the official result of an election, initiative, referendum, or recall measure which is the subject of the recount; and

(C) Ensure that each candidate for an office subject to a recount may designate watchers to be present while the recount is conducted, or in the case of an initiative, referendum, or recall measure, ensure that members of the public may be present while the recount is conducted.

(b) (1) Within 7 days after the Board certifies the results of an election, any person who voted in the election may petition the District of Columbia Court of Appeals to review the election. The Court's authority to review the results of an election shall include initiative, referendum, and recall measures as well as elections for a particular office.

(2) In response to such a petition, the Court may set aside the results certified and declare the true results of the election, or void the election in whole or in part. To determine the true results of an election, the Court may order a recount or take other appropriate action, whether or not a recount has been conducted or requested pursuant to subsection (a) of this section. The Court shall void an election only if it:

(A) Determines that the candidate certified as the winner of the election does not meet the qualifications required for office; or

(B) Finds that there was any act or omission, including fraud, misconduct, or mistake serious enough to vitiate the election as a fair expression of the will of the registered qualified electors voting in the election.

(3) If the Court voids an election, it may order a special election, which shall be conducted in such a manner, and at such time, as the Board may prescribe.

(4) The decision of the Court in any case brought pursuant to this subsection shall be final and may not be appealed.

(5) The Court shall have the authority to require the losing party to reimburse the prevailing party for reasonable attorneys' fees and other costs associated with the case, but shall not exercise this authority if it finds that the reimbursement would impose an undue financial hardship on the losing party.

HISTORY: Aug. 12, 1955, 69 Stat. 703, ch. 862, § 11; Apr. 22, 1968, 82 Stat. 106, Pub. L. 90-292, § 4(8); Dec. 23, 1971, 85 Stat. 793, Pub. L. 92-220, § 1(22); 1973 Ed., § 1-1111; Aug. 14, 1973, 87 Stat. 313, Pub. L. 93-92, § 1(20); Aug. 18, 1978, D.C. Law 2-101, § 2, 25 DCR 257; Sept. 13, 1980, D.C. Law 3-93, § 2, 27 DCR 3497; 27 DCR 1981 Ed., § 1-1315; Mar. 16, 1982, D.C. Law 4-88, § 2(q)-(s), 29 DCR 458; June 28, 2002, D.C. Law 14-168, § 2, 49 DCR 4478; Feb. 4, 2010, D.C. Law 18-103, § 2(i), 56 DCR 9169.

NOTES: EFFECT OF AMENDMENTS. --D.C. Law 14-168 rewrote the section.
The 2010 amendment by D.C. Law 18-103 rewrote (a)(1), which formerly read: "The Board shall recount the votes cast in one or more voting precincts, if within 7 days after the Board certifies the results of an election for an office, a candidate for that office petitions the Board in writing and specifies the precincts in which the recount shall be conducted. The candidate shall deposit a fee of $50 for each precinct included in the recount. If the result of the election is changed as a result of the recount, the fee deposited by the petitioner shall be refunded."

EMERGENCY LEGISLATION. --For temporary amendment of (a)(1), see § 2(i) of the Omnibus Election Reform Emergency Amendment Act of 2009 (D.C. Act 18-236, November 30, 2009, 56 DCR 9154).

LEGISLATIVE HISTORY OF LAW 2-101. --See note to § 1-1001.01.

LEGISLATIVE HISTORY OF LAW 3-93. --Law 3-93 was introduced in Council and assigned Bill No. 3-300, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 3, 1980 and June 17, 1980, respectively. Signed by the Mayor on July 9, 1980, it was assigned Act No. 3-215 and transmitted to both Houses of Congress for its review.

LEGISLATIVE HISTORY OF LAW 4-88. --See note to § 1-1001.01

LEGISLATIVE HISTORY OF LAW 14-168. --Law 14-168, the "Election Recount and Judicial Review Amendment Act of 2002," was introduced in Council and assigned Bill No. 14-269. The Bill was adopted on first and second readings on Mar. 5, 2002, and Apr. 9, 2002, respectively. Signed by the Mayor on Apr. 30, 2002, it was assigned Act No. 14-357 and transmitted to both Houses of Congress for its review. D.C. Law 14-168 became effective on June 28, 2002.

LEGISLATIVE HISTORY OF LAW 18-103. --See note to § 1-1001.02.

LexisNexis 50 State Surveys, Legislation & Regulations

1. Ballot Counting

2. Voter Registration

ANALYSIS Certification of results Declaration of election results Evidentiary hearing Harmless error Judicial review Jurisdiction Petition to challenge certification Presumptive eligibility Purpose of judicial review

CERTIFICATION OF RESULTS.

Where an objective review of the record demonstrated that the petitioners had fallen short of proving that any of the challenged voters made a willful and knowing misrepresentation to the Board of Elections with intent to deceive the Board and induce it to permit them to vote unlawfully, the decision of the Board certifying the result of the election was affirmed. Allen v. District of Columbia Bd. of Elections & Ethics, App. D.C., 663 A.2d 489 (1995).

DECLARATION OF ELECTION RESULTS.

Electors could not rely on the claim of partisan campaigning to set aside the results of the Board of Education election, under D.C Code § 1-1001.11 (b), where there was no claim of a nomination by a political party or a filing for election under party designation; thus, the candidate did not appear on the ballot as part of any slate, and her conduct did not violate D.C Code § 1-204.95 [repealed], where its terms only extend to an individual who holds the office of member of the Board of Education as opposed to a candidate for election to the Board. Hawkins v. Butler-Truesdale, App. D.C., 584 A.2d 1241, 1990 D.C. App. LEXIS 329 (1990).

EVIDENTIARY HEARING.

When a challenger loses a voter registration challenge before the precinct captain and wants a review of that decision, that challenger must be afforded an evidentiary hearing unless the issues raised can be disposed of directly by the court as a matter of law. Scolaro v. District of Columbia Bd. of Elections & Ethics, App. D.C., 691 A.2d 77 (1997).

A challenger may await election board certification of the election and then seek timely review of the election, at which time the reviewing court will then refer the matter for an evidentiary hearing either to the Superior Court or to the Election Board itself. Scolaro v. District of Columbia Bd. of Elections & Ethics, App. D.C., 691 A.2d 77 (1997).

HARMLESS ERROR.

Any error on part of special master, in failing to expressly address challenges to special ballots, was harmless in light of uncontroverted evidence that outcome of election in petitioner's single member district would be unaffected. Scolaro v. District of Columbia Bd. of Elections & Ethics, App. D.C., 717 A.2d 891 (1998).

JUDICIAL REVIEW.

The time limit specified for seeking review of certification of election results by the District of Columbia Board of Elections and Ethics (Board) is mandatory and jurisdictional; although petitioner, a write-in candidate, did not receive a packet of candidate information provided by the Board, the Board certified the results in accordance with routine procedure at its regularly scheduled monthly public meeting, giving petitioner reasonable notice and rendering his judicial appeal subject to dismissal as not timely filed. White v. District of Columbia Bd. of Elections & Ethics, App. D.C., 537 A.2d 1133, 1988 D.C. App. LEXIS 45 (1988).

JURISDICTION.

The court's jurisdiction to review an election is independent of its general jurisdiction to review orders and decisions of public agencies, and thus is not subject to the usual limitation on review of "contested cases." Scolaro v. District of Columbia Bd. of Elections & Ethics, App. D.C., 691 A.2d 77 (1997).

PETITION TO CHALLENGE CERTIFICATION.

With respect to a petition under D.C. Code § 1-1001.11(b)(1), a candidate's election did not violate D.C. Code § 1-204.01(d)(3) because while the candidate allegedly campaigned as a Democrat although he had registered as having an independent (no party) affiliation, the use of the term of "affiliation" in related statutes appeared to delimit its meaning to party affiliation as shown by formal registration; the District of Columbia Board of Elections and Ethics was not required to look behind a candidate's affiliation to determine his or her actual allegiance. Kabel v. D.C. Bd. of Elections & Ethics, 962 A.2d 919, 2008 D.C. App. LEXIS 492 (2008).

A petition brought pursuant to subsection (b) must contain a concise statement of claims and must identify facts showing an entitlement to relief and, therefore, a petition to challenge an election certification was insufficient and was properly dismissed where the petition alleged merely that there was a violation of the election process. Jackson v. D.C. Bd. of Elections & Ethics, App. D.C., 770 A.2d 79, 2001 D.C. App. LEXIS 91 (2001).

PRESUMPTIVE ELIGIBILITY.

Evidence was insufficient to overcome student voters' presumptive eligibility to vote, where probative value of student directory listings concerning students' permanent residences was slight, and neither list of first-year students' residences in university housing nor out-of-state driver's licenses was sufficiently probative of students' domiciliary intent. Scolaro v. District of Columbia Bd. of Elections & Ethics, App. D.C., 717 A.2d 891 (1998).

PURPOSE OF JUDICIAL REVIEW.

"Single-winner" conception was ill-adapted to the context of a primary election in which the candidates won delegates in proportion to their votes as, in such an election, the single candidate who received the highest number of votes might not be entitled to win all the delegates; hence there might be multiple winners, and, where that was the electoral design, the single-winner conception was not calculated to elicit the "true results" of the election but instead vitiated the election as a fair expression of the will of the voters, allowing the election to be set aside under § 1-1001.11(b)(2). Best v. D.C. Bd. of Elections & Ethics, 852 A.2d 915, 2004 D.C. App. LEXIS 297 (2004).

In an action brought under former D.C. Code § 1-1111 (now § 2-225.06), challenging the refusal of the Board of Elections and Ethics (Board) to count 8,617 ballots cast in the 1976 presidential primary, the language of the statute was held to be crystal clear in authorizing the District of Columbia Court of Appeals to review the Board's certification of any election, and in reviewing the results the voter's wish would be determined, to a reasonable certainty, with the prime purpose of keeping the franchise to vote open to as many people as possible; results of election were set aside and the Board was ordered to count the disputed ballots. Gollin v. District of Columbia Board of Elections & Ethics, App. D.C., 359 A.2d 590, 1976 D.C. App. LEXIS 309 (June 23, 1976).