

# The Board of Canvassers





## COMELEC Code of Conduct For Members of Boards of Canvassers

In accepting my appointment as BOC member of Municipality/City/District/Province

\_\_\_\_\_ ,

I \_\_\_\_\_

Print Name

Hereby agree to commit myself to:

1. Uphold the Constitution of the Republic of Philippines that bestows the people with the right to free and fair elections (Article II Sec. 1, 1987 Constitution of the Philippines).
2. Uphold the right of all citizens of Philippines to have the right to participate in the political life and state administration directly or through (the election of) representatives (Article V, Suffrage, 1987 Constitution of the Philippines).
3. Comply with all laws and regulations of the Republic of the Philippines.
4. Treat all persons, national authorities, candidates, political parties and other bodies with respect and impartiality.
5. Not engage in any behaviour that would favour, or appear to favour, or to provide advantage to any political party or candidate.
6. Conduct all activities with transparency.
7. Respect the rights of watchers, media, candidates and political parties and candidate proxies to monitor the process.
8. Refrain from making personal or political comments to voters, the media or to other interested parties.
9. Ensure that the principles governing fair and free election activity are upheld at all times.

IN WITNESS WHEREOF

I hereby affix my signature on this \_\_\_\_\_ day of May 2007

\_\_\_\_\_

Printed Name and Signature

# Overview of Canvassing

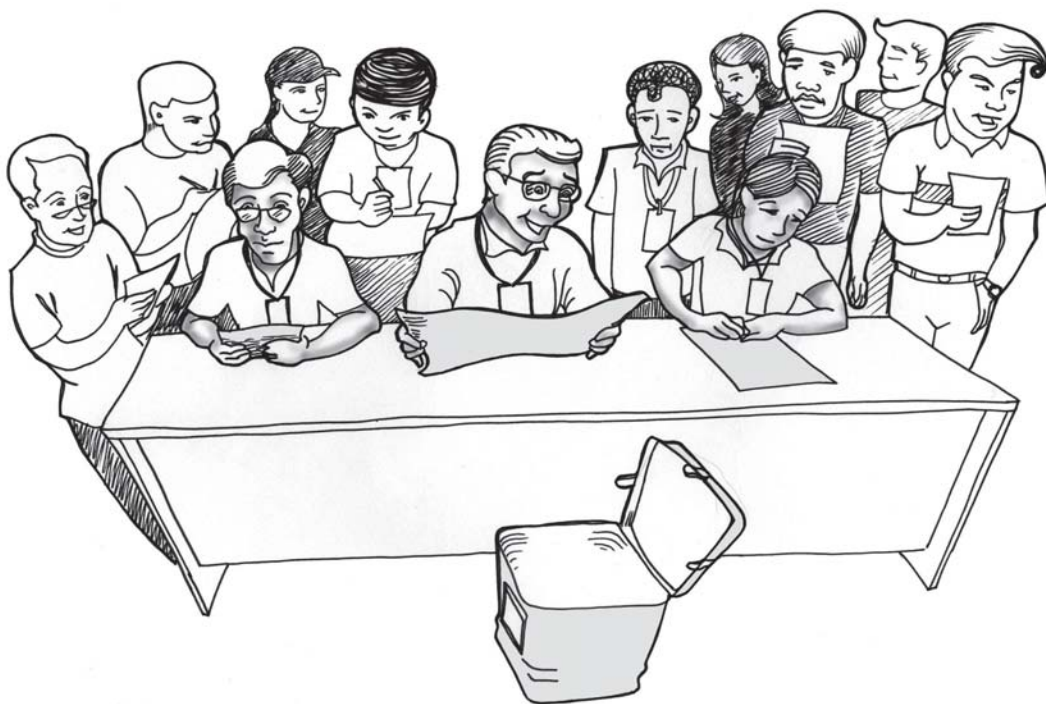
## What is Canvassing?

Canvassing is the act of manually counting and tabulating the election results from official Election Returns or Certificates of Canvass submitted by the Boards of Election Inspectors or Municipal/City/District Boards of Canvassers to their respective Boards of Canvassers. COMELEC canvasses and proclaims winners for the Senate and House of Representatives, while Congress, sitting jointly, has final canvass and proclamation responsibilities for the Presidential and Vice Presidential races.

The two guiding principles of canvassing are:

1. Canvass of proceedings is administrative and summary in nature.
2. All Election Returns/Certificates of Canvass are accepted as valid and shall automatically be included in the canvass unless there is convincing proof of tampering, alteration or falsification.

Boards of canvassers are legally created bodies, which canvass all votes on Election Returns/Certificates of Canvass submitted to it by the respective BEIs. Their powers are generally limited to adding the vote tallies from the Election Returns and declaring the resulting winners of the election. This primer deals with normal procedures, problems and legal challenges typically encountered during canvassing. However, more difficult legal challenges do occur, which are not clearly covered by these procedures. For these cases, the examples of jurisprudence provided in Annex VIII should be used as a guide for Election Officers. When in doubt, refer to the two guiding principles, above!



## Why Do We Canvass?

Canvassing tabulates the results of the precincts/municipalities/cities/districts/provinces in an open and transparent manner in order to ensure accuracy of results and as a safeguard against manipulation, fraud or errors during the counting process. By being open to candidates and their watchers and allowing objections to be raised and ruled upon, the act of canvassing provides maximum transparency and legitimacy to the vote counting process.

## Who Does the Canvassing?

Boards of Canvassers are established in the following hierarchy:

1. Municipal/City Board of Canvassers (1,609)
  - a. Chairperson (Election Officer)
  - b. Vice-Chairperson (Municipal/City Treasurer)
  - c. Member (most senior district school supervisor)

2. District Boards of Canvassers (legislative districts of Metro Manila only)
  - a. Chairperson (lawyer from the COMELEC)
  - b. Vice-Chairperson (ranking prosecutor of the district)
  - c. Member (most senior district school supervisor).
3. Provincial Board of Canvassers (80)
  - a. Chairperson (Provincial Election Supervisor)
  - b. Vice-Chairperson (Provincial Fiscal)
  - c. Member (Provincial Superintendent of Schools)
4. COMELEC En Banc (1)

Congress, in joint public session, also serves as a Board of Canvassers for the Presidential and Vice-Presidential contests.

### Substitutions

In case of non-availability, absences, disqualification or incapacity of:

- Chairperson – Commission shall appoint a ranking lawyer of the Commission.
- Other members of the Board as follows:

#### 1. Municipal Board of Canvassers

- a. Municipal administrator
- b. Municipal assessor
- c. Clerk of Court nominated by the Executive Judge
- d. Any other available appointive municipal official

#### 2. City Board of Canvassers

Officials in the city corresponding to those enumerated as substitutes for the members of the Provincial Board of Canvassers (below).

#### 3. Provincial Board of Canvassers

- a. Provincial Auditor
- b. Register of Deeds
- c. Clerk of Court nominated by the Executive Judge of the Regional Trial Court.
- d. Any available appointive provincial employee

### When and Where Does Canvassing Take place?

The Board of Canvassers shall convene at 6:00 pm of Election Day at the place designated by the Commission, which is usually the session hall of the respective Sanggunians, and as such the Board of Canvassers and the support staff should meet at the session hall by 5:00 pm in order to prepare for canvassing.

Subject to reasonable exceptions, the Board of Canvassers must complete their canvass within **thirty-six hours in municipalities, forty-eight hours in cities and seventy-two hours in provinces** (Sec. 231, Art. XIX, B.P. 881).

### Composition and Duties of BOCs

Boards of Canvassers have three members: Chair, Vice Chairperson and Member. Their duties are as follows:

#### *Chair*

- Organize the work of the BOC and supporting committees
- Issue the Notices to the Candidates, citizen's arm, political parties, and other members of the Board five days prior to Election Day
- Read out the results of the Election Returns
- Announce the Board's decisions on objections raised

#### *Vice Chair*

- Support the Chairperson in all of his or her duties as required

**Member/Secretary**

- Support the Chairperson and Vice Chairperson as required
- Keep the minutes and record the proceedings of the Board and any incidents during canvassing

**Supporting Committees to the BOC (to be hired 15 days before E-Day)**

Fifteen days before canvassing, the Chairperson of the BOC shall determine the human resources required to support the work of the BOC. In all cases, additional staff are under the supervision of the Board and cannot be an employee of the Office of the Provincial Governor, City/Municipal Mayor or their corresponding Sanggunians. For every one hundred (100) Election Returns, the Board may appoint the following support staff:

1. **Canvassing Committee** (3 members; appointed by the BOC). Description of Duties: To conduct canvassing for up to 100 Election Returns under the supervision of the Board
2. **Reception and Custody Group** (3 members; appointed by the BOC). Description of Duties: The Reception and Custody Group receives the ballot boxes and records seal serial numbers and Precinct numbers of the security envelopes in the Logbook
3. **Tabulators** (2 members; appointed by the BOC). Description of Duties: Prepare the Statement of Votes (as described below)

In addition to the above staff, the Board may also want to consider employing staff to carry out the following functions and duties:

- Audit and Verification
- Custody of ballot boxes
- Tally Board or Multi Media Operators
- Stenographer

Note: The above duties can be combined in different staff members.

**Duties of Chairman of the BOC Before Election Day**

**Fifteen (15) days before E-Day**

1. Hire all staff needed to support the BOC (see guidelines for hiring above).
2. Inspect the session hall, which is usual venue for canvassing, ensuring that the following standards are met:
  - a. Size of the hall – Will it provide sufficient space for all watchers and candidates to observe the canvassing, without compromising the process or crowding the BOC and its support staff?
  - b. Lighting facilities – Is there sufficient and reliable lighting to canvass during evening hours?
  - c. Electrical outlets – Are outlets conveniently positioned for all necessary equipment? Are they sufficient in number? Are extension cords or multiple outlets required?
  - d. Power supply – Can it carry the electrical load of all required equipment (should be assessed by a qualified electrician). Is a back-up energy source required?
  - e. Contact Security Personnel

(Remember: Requests for change of venue are addressed to the COMELEC En Banc directly.)

3. If the session hall is satisfactory:
 

Inform the Secretary of the Sanggunian in writing, that you will be using the session hall for canvassing and that the same should be available beginning one day before Election Day until canvassing and proclamation is completed.

**No Later than Five (5) days before E-Day, the Chairman of the BOC shall:**

1. Brief all support staff in their roles and responsibilities
  - a. Organize the layout of the canvassing venue, which shall be held in the session hall of the Sangguniang Panlalawigan/Panlungsod/Bayan, unless otherwise stated by the Commission (produce layout sketches for seating, tables, ballot boxes, etc.)

2. Send written notices of the meeting of the board to:
  - a. All members of the Board
  - b. All Candidates and political parties fielding candidates whose votes will be canvassed
  - c. Citizens' Arm
3. State in the notice the following information:
  - a. Composition of the BOC
  - b. Date, time and place of canvassing
  - c. Number of sub-canvassing committees – so that they can have sufficient watchers
  - d. That the candidate has the right to be present and to counsel during the canvass
4. Obtain proof of notice to each member, candidate, party and citizen's arm organization.

#### **Modes of Service of Notice:**

Notice of meetings of the Board may be served in a number of ways (personal services or by registered mail). However it is mandatory that proof of service of notice to each member, candidate, party and organization be attached to records of the canvassing board meetings.

#### **Public Notification**

Notices of canvassing shall be posted in the Office of the Election Officer or Provincial Election Supervisor, and in conspicuous places in the building where the canvass will be held. Similar notices shall also be given for subsequent meetings unless notice has been given in open session. If notice is given in open session, it shall be noted in the minutes of the proceedings by the Secretary.

#### **Personal service**

Service of notice may be hand-delivered to the member, candidate, chairperson of political party and citizen's arm. Recipients shall sign and date the receipt.

#### **Service by mail**

Service of notice may be sent by registered mail. Be sure to attach the registry receipt and copy of the notice to the minutes of the proceedings.

## **Duties of Board of Canvassers During Canvassing**

### **Duties of City/Municipal/District Board of Canvassers**

1. Canvass the Election Returns/Certificate of Canvass (COC) for President, Vice-President, Senators, Members of the House of Representatives, Party-List and for elective provincial and city or municipal officials
2. Prepare in seven (7) copies, the **Certificates of Canvass (CEF No. 20)** for the President, Vice-President, Senators, Members of the House of Representatives, Party-List and elective provincial officials and distribute them as follows:
  - a. 1<sup>st</sup> copy to the Provincial Board of Canvassers
  - b. 2<sup>nd</sup> copy to the Election Records and Statistics Department of COMELEC
  - c. 3<sup>rd</sup> copy to the Chairman of the Board
  - d. 4<sup>th</sup> copy to the Citizen's Arm
  - e. 5<sup>th</sup>, 6<sup>th</sup>, and 7<sup>th</sup> copies to the top three political parties in the respective constituency
3. Prepare the **Certificate of Canvass and Proclamation of Winning Candidates for City/Municipal/District Offices (CEF No. 24 & 25)** and distribute as follows:

#### **City/District Offices**

- a. Secretary of the Sangguniang Panlungsod
- b. Chairman of the Board
- c. Election Records and Statistics Department of COMELEC
- d. City Treasurer

- e. Provincial Election Supervisor
- f. Regional Election Director
- g. Each of the winning candidates proclaimed; and
- h. One copy for posting on the bulletin board of the city hall

**Municipal Offices**

- a. Sangguniang Bayan
- b. Chairman of the Board
- c. Election Records and Statistics Department of COMELEC
- d. Secretary of the Sangguniang Panlalawigan
- e. Provincial Election Supervisor
- f. Regional Election Director
- g. Municipal Treasurer
- h. Each of the winning candidates proclaimed; and
- i. One copy for posting on the bulletin board of the city hall

4. Proclaim the winning candidates for city/municipal/district offices.

**Duties of Provincial Board of Canvassers**

1. Canvass the Certificates of Canvass for President, Vice-President, Senators, Members of the House of Representatives, Party-List and for elective provincial officials
2. Prepare in seven (7) copies, the **Certificates of Canvass (CEF No. 21)** for the President, Vice-President, Senators, and Party-List and distribute them as follows:
  - a. 1st copy to the Congress (only for Presidential and Vice-Presidential contests)
  - b. 2nd copy to the COMELEC
  - c. 3rd copy to the Chairman of the Board
  - d. 4th copy to the designated Citizen's Arm
  - e. 5th, 6th, and 7th copies to the top three political parties in the respective constituency
3. Prepare the **Certificate of Canvass and Proclamation of Winning Candidates for the House of Representatives and Provincial Offices (CEF No. 22 & 23)** and distribute as follows:
  - a. 1<sup>st</sup> copy to the Election Records and Statistics Department of COMELEC
  - b. 2<sup>nd</sup> copy to the Chairman of the Board
  - c. 3<sup>rd</sup> copy to the Candidate proclaimed
  - d. 4<sup>th</sup> copy for posting on the bulletin board of the provincial capital
4. Proclaim the winning candidates for the House of Representatives and Provincial Offices.

**Canvassing Rights and Responsibilities of Candidates/Parties and Watchers**

Candidates, or their designated representatives (watchers and/or legal counsel) have the following **rights**:

- To be informed of the date and time of canvassing and composition of the BOC five days prior to the Canvassing Day through notification in the local newspaper or personal service by mail.
- To have one watcher with alternate per independent candidate or party per Canvassing Committee
- To observe the canvassing process in a manner that does not interfere with the work of the BOC
- To raise objections to the BOC to any irregular Election Returns/COCs.
- To submit a written objection to the BOC simultaneous to the oral objection to any irregular Election Returns/COCs and to have a written ruling within 24 hours.
- To obtain a certified copy of the Certificate of Canvass.

Candidates, or their designated representatives (watchers and or legal counsel) have the following **responsibilities**:

- To respect the summary and administrative nature of the work of the BOC and not make trivial or spurious objections
- To provide evidence to support all objections or allegations of impropriety

- To respect the decisions of the BOC
- To graciously accept the legitimate results of the canvass

Candidates, or their designated representatives **may not**:

1. Falsely accuse any member of the BOC
2. Interfere in the proceedings of canvassing
3. Commit any act or utterance with the intent of disturbing the proceedings
4. Handle any Election Return/COC

### **BOC Checklist of what to bring to Canvassing**

1. Omnibus Election Code, RA 6646, RA 7166, COMELEC General Instructions on Canvassing, and Election Handbook (these notes)
2. Project of Precincts
3. Certified list of the serial numbers of the Election Returns given by the treasurer to the different precincts.
4. Empty ballot boxes with three padlocks and a self-locking fixed length seal (one ballot box set for every 15 Election Returns).
5. Two (2) copies of Logbooks
6. Manila envelopes (for copies of notice, appointments of watchers and lawyers)
7. Copies of form for "Appointment of Watchers and Entry of Appearance of Lawyers". Entry of appearance should be with conformity of client.
8. Folders containing Proof of Service of notice (COMELEC form).
9. Forms containing spaces for Data of voters and ballots, serial no. of paper seals, etc (from Election Officer; see Annex VII)
10. Ruler – to help accurately complete the Statement of Votes
11. Pentel pens – red and blue
12. Empty cartons for the Reception Committee for general storage purposes
13. Liquid eraser, stamp pad, ballpoint pens, paper clips, paste, masking tape
14. Flashlights, rechargeable lamp, coffee, face towel, wet tissue
15. Canvassing forms (Statement of Votes – CE Form No. 20-A, Certificate of Canvass – CE Form No. 25, and Certificate of Canvass and Proclamation – CE Form No. )
16. Adding machine with tape

### **House Rules**

1. Candidates or their counsel may examine election returns but not touch them. (Sec. 25, R.A. 6646)
2. Legal objections must be brief, concise and specific.
3. Only one counsel can speak for any candidate. (Sec. 25, R.A. 6646) (Secretary should record the name of the lead counsel)
4. Remember that canvassing is summary and administrative in nature. The Board will not countenance dilatory tactics.
5. Everybody is requested to stay in the places assigned to them.
6. The Board will not tolerate any act or utterance, which would interrupt or disturb the proceedings
7. Security personnel (PNP, AFP or any other governmental or private security agency) must remain at least 50m from the canvassing room unless ordered by the Board in writing to stay within the immediate premises. (Emergencies do not require a written order.)

### **Prohibited Act**

"Any person who in the presence or within the hearing of any board of election inspectors or board of canvassers during any of its meetings, conducts himself in such a disorderly manner as to interrupt or disrupt the work or proceedings to the end of preventing said body from performing its functions, either partly or totally" (Sec. 261, (bb) (4), B.P. 881)

**In no instance shall the ballot box be reopened** to place therein or take out therefrom any document or article except to retrieve copies of the election returns which will be needed in any canvass. In such excepted instances, the members of the Board of Election Inspectors and watchers of the candidates shall be notified of the time and place of the opening of said ballot box: (Sec. 220, B.P. 881)

## Canvassing Procedures

Organize the Canvassing Room before the start of the official work of the BOC – prior to Election Day, if possible. All members of the BOC, Canvassing Committees and support staff should be in the canvassing room at 5:00 pm of Election Day.

1. The Board shall maintain a **logbook** of all election returns/certificates of canvass received and canvassed, including time of receipt, date of canvass and condition of envelope.
2. Canvassing shall commence at 6:00 pm on Election Day at the designated canvassing site with the following official statements by the Chairperson of the BOC:

“The municipal/city/district board of canvassers is now convened to canvass the election returns coming from the different precincts of this municipality/city/district.”

(For the PBOC, substitute Election Returns with “Certificate of Canvass.”)

“The Board of Canvassers is composed of (names of Chairperson, Vice Chairperson and Secretary/Member). The Board is assisted by (number) Canvassing Committees and a support staff.”

“May we request the lawyers to submit their “Entry of Appearance” and the Watchers, their Appointment to the Secretary/Member of the Board.”

“Candidates, please have your names recorded by the Secretary.”

**Each Election Return is to be canvassed in turn, as they are received by the BOC. The BOC will meet every day until the canvass is completed.**

3. The Reception Committee receives the envelopes containing the Election Return or Certificate or Canvass, as the case may be, and checks its serial number against the List of Serial Numbers.
4. Upon receipt of the envelopes containing the ER/COC, the BOC will examine the condition of each envelope and its paper seal. The Secretary will record this in the Logbook.
5. The Chairperson from the BOC will now read from each envelope for Election Return all of the data listed on the envelope (see Annex VII). The Secretary will record this information in the Minutes of Canvassing.
6. The Chairperson of the BOC will open the envelope and examine the condition of the ER/COC. The Secretary will record this in the Minutes of Canvassing.
7. The BOC will then canvass the ER/COC and the Secretary will enter in the Minutes of Canvassing the following information:
  - Election Return serial number
  - Precinct number
  - Name of Barangay
  - Number of registered voters, voters actually voted, ballots in compartment for valid ballots, excess ballots, marked ballots, spoiled ballots, unused ballots
8. The Chairman of the BOC now reads out the number of votes obtained for each candidate by precinct/municipality/city. This data is recorded by the Tabulators in the Statement of Votes.
9. Immediately after an ER/COC has been canvassed, the Chairperson will write the word “canvassed” in red pentel pen on the right top margin of the election returns and the date and time when it was canvassed and sign it. (Subject to change by a resolution of the Commission.)

10. Return the canvassed returns to its envelope and deposit it in the ballot box intended for the purpose. When the ballot box is filled up, label it indicating the precinct nos. of the Election Returns in said ballot box.

The BOC shall meet continuously from day to day until the canvass is completed, and may adjourn only for the purpose of awaiting the other ERs or COC.

11. After all of the ERs/COCs have been canvassed, the Tabulator(s) will prepare a summary of the votes obtained by each candidate by entering therein all the sub-totals contained in each page of the Statement of Votes, record the grand total of votes obtained by each candidate by adding all the sub-totals, and accomplish the certification portion of the Statement of Votes.
12. Based on the Statement of Votes, the BOC will prepare either a Certificate of Canvass (COC) or Certificate of Canvass and Proclamation of the Winning Candidate, as the case may be, and distribute the copies in the manner prescribed.
13. During temporary adjournment of the BOC, furnish the Commission in Manila by the fastest means of communication a provisional total of votes canvassed so far for each candidate for each office, and making available the data contained therein to the mass media and other interested parties.
14. After completion of the canvass and the preparation of the Certificate of Canvass of Votes and/or Certificate of Canvass of Votes and Proclamation of the Winning Candidate, proclaim the winning candidates.
15. If applicable, the Certificate of Canvass with the Statement of Votes attached will be forwarded to the provincial BOC.

#### Grounds for Pre-Proclamation Controversies: (Sec. 17 of RA 7166)

Questions affecting the composition or proceedings of the board of canvassers may be initiated in the board or directly with the Commission. However, matters raised under Sections 233, 234, 235 and 236 of the Omnibus Election Code in relation to the preparation, transmission, receipt, custody and appreciation of the election returns, and the certificates of canvass shall be brought in the first instance before the board of canvassers only.

**(Sec. 233 OEC). When the election returns are delayed, lost or destroyed.** – In case its copy of the election returns is missing, the board of canvassers shall, by messenger or otherwise, obtain such missing election returns from the board of election inspectors concerned, upon prior authority of the Commission, may use any of the authentic copies of said election returns or certified copy of said election returns issued by the Commission, and forthwith direct its representative to investigate the case and immediately report the matter to the Commission.

The board of canvassers, notwithstanding the fact that not all the election returns have been received by it, may terminate the canvass and proclaim the candidates elected on the basis of the available election returns if the missing election returns will not affect the results of the election.

**(Sec. 234 OEC). Material defects in the election returns.** – If it should clearly appear that some requisites in for or data had been omitted in the election returns, the board of canvassers shall call for all the members of the board of election inspectors concerned by the most expeditious means, for the same board to effect the correction: *Provided*, That in case of the omission in the election returns of the name of any candidate and/or his corresponding votes, the board of canvassers shall require the board of election returns and affix therein their initials: *Provided, further*, That if the votes omitted in the returns cannot be ascertained by other means except by recounting the ballots, the Commission, after satisfying itself that the identity and integrity of the ballot box have not been violated, shall order the board of election inspectors to open the ballot box, and, also after satisfying itself that the integrity of the ballots therein has been duly preserved, order the board of election inspectors to count the votes for the candidate whose votes have been omitted with notice thereof to all candidates for the position involved and thereafter complete the returns.

The right of a candidate to avail of this provision shall not be lost or affected by the fact that an election protest is subsequently filed by any of the candidates.

**(Sec. 235 OEC). When election returns appear to be tampered with or falsified.)** – If the election returns submitted to the board of canvassers appear to be tampered with, altered or falsified after they have left the hands of the board of election inspectors, otherwise not authentic, or were prepared by the board of election inspectors under duress, force, intimidation, or prepared by persons other than the member of the board of election inspectors, the board of canvassers shall use the other copies of said election returns and, if neces-

sary, the copy inside the ballot box which upon previous authority given by the Commission may be retrieved in accordance with Section 220 hereof. If the other copies of the returns are likewise tampered with, altered, falsified, not authentic, prepared under duress, force, intimidation, or prepared by persons other than the members of the board of election inspectors, the board of canvassers or any candidate affected shall bring the matter to the attention of the Commission. The Commission shall then, after giving notice to all candidates concerned and after satisfying itself that nothing in the ballot box indicate that its identity and integrity have been violated, order the opening of the ballot box and, likewise after satisfying itself that the integrity of the ballots therein has been duly preserved shall order the board of election inspectors to recount the votes of the candidates affected and prepare a new return which shall then be used by the board of canvassers as basis of the canvass.

**(Sec. 236 OEC). Discrepancies in election returns.** – In case it appears to the board of canvassers that there exists discrepancies in the other authentic copies of the election returns from a polling place or discrepancies in the votes of any candidate in words and figures in the same return, and in either case the difference affects the results of the election, the Commission, upon motion of the board of canvassers or any candidate affected and after due notice of all candidates concerned, shall proceed summarily to determine whether the integrity of the ballot box had been preserved, and once satisfied hereof shall order the opening of the ballot box to recount the votes cast in the polling place solely for the purpose of determining the true result of the count of votes of the candidates concerned.

### Common problems and actions to be taken to resolve them

*Problem:* Documents and articles omitted or erroneously placed inside the ballot box by the BEI.

*Solution:* The missing documents or articles should be delivered to the BOC together with the Ballot Box to the Election Officer or BOC, with a written explanation of the problem. The ballot box shall be not be opened.

*Problem:* ALL Copies of the Election Return are locked in the ballot box.

*Solution:* In this case, the members of the BEI and watchers of the candidates shall be notified of the time and place of the opening of the ballot box to remove the required copy of the Election Returns.

*Problem:* Election Return is **delayed, lost or missing**.

*Solution:* The BOC's Reception Committee should immediately contact the Election Officer to investigate any delayed or missing Election Returns. Unless there are transportation problems, all Election Returns should be received on Election Night. Election Officers will have to explain any unreasonable delays and should have all necessary arrangements in place to ensure speedy delivery of Election Returns.

*Problem:* There is a **material defect** in the Election Return.

*Solution:* This will not affect canvassing unless the defect is such that the Election Return is illegible or it is not an original copy. In these cases, the copy of the Election Return from the BEI Chairperson should be retrieved.

*Problem:* The Election Return appears to be **tampered** with or **falsified**.

*Solution:* In these cases, the copy of the Election Return from the BEI Chairperson should be retrieved.

*Problem:* There are **discrepancies** in the Election Return.

*Solution:* If the discrepancy is an obvious error of math, it will be corrected by the designated BOC member neatly crossing out the error and writing in the correction beside the former number (so that the original error is still legible). The BOC member shall initial beside the correction. This correction shall be done in full view of all watchers present. If the discrepancy is not an error of math, the Chairperson of the BEI shall be called to resolve the situation.

### Examples of Spurious or Trivial Complaints

The following problems are minor in nature as they do not demonstrate deliberate malfeasance or significantly affect the result:

- a. Lack of inner and outer paper seals.
- b. Failure to close the entries with the signature of the BEI's
- c. Lack of date and time of receipt by the Board of Canvassers of the Election Returns

- d. Lack of authority of the person receiving the returns.
- e. Lack of signatures of petitioners' watchers – Sec. 12 of R.A. 6646 provides that a watcher shall sign the election returns if he is available. If he is not or is unwilling to sign them, any other watchers present may be required to sign (Baterina).
- f. Absence of the required number of padlocks of the ballot box containing the election return.

These problems should be noted in the Minutes of Proceedings, but do not require further action.

### Disposition of Contested Election Returns

Election Returns may be challenged if there are reasonable grounds to doubt their legitimacy. Within twenty-four hours of submitting an objection to an Election Return, the **objecting party shall submit evidence** in support of his/her objection to be attached thereto.

Within twenty-four-hours of the presentation of the objection, any party may file a **written verified opposition** to the objection in the form prescribed by the Commission attaching supporting evidence.

The Chairperson of the Board shall **enter evidence into the records** of the Board by signing the back of each page thereof.

The steps to contesting election returns are as follows:

1. **Oral objection** to the Chairperson of the Board at the time the questioned election return is presented for inclusion in the canvass. The objection should be recorded in the minutes and the time it was made indicated.
2. **Simultaneous with the oral objection**, the objecting party shall submit his written objection in the form prescribed by the Commission.
3. **The canvassing of the contested return may be deferred** if there are alleged (serious) material defects, such as the Election Return was produced under duress, statistical improbability of results, or manifest errors. The Board will proceed to canvass uncontested returns.
4. The Board shall summarily rule on the objection. Either ruling on prescribed form.
5. The Party adversely affected shall immediately inform the Board if he **intends to appeal**. The Board shall set aside contested returns.
6. After all uncontested returns have been canvassed and the contested returns ruled upon, the Board shall suspend the canvass. **Within forty-eight hours** there from, the party adversely affected shall file with the Board a **written and verified notice of appeal**; within an inextensible period of **five (5) days** thereafter, appeal may be taken to the Commission.
7. **Upon receipt of notice of appeal**, the Board shall make a **report to the Commission**. Elevating records and evidence submitted. The Board shall furnish parties copies of the report.
8. **The Commission shall decide summarily** the appeal **within seven (7) days** from the receipt of records and evidence.
9. The decision is **executory after a lapse of seven (7) days from receipt by losing party**.
10. The Board shall not proclaim any winner unless authorized by the Commission.

Contested composition or proceedings of the Board must be filed immediately when the Board begins to act as such or at the time of the appointment of the member whose capacity to act as such is objected to. (Sec.5 (b). COMELEC Rules of Procedure). The Party adversely affected by the ruling of the Board may appeal the matter to the Commission within **three (3) days** from ruling. The Commission shall summarily decide within **five (5) days** from filing.

### Petition to correct manifest errors

Manifest errors are those that are gross procedural mistakes, such as:

- a. A copy of the election return or certificate of canvass was tabulated more than once
- b. Two or more copies of the election returns of one precinct or two or more copies of certificate of canvass were tabulated separately.
- c. There had been a mistake in the copying of the figures into the statement of votes or into the certificate of canvass.
- d. So-called returns from non-existent precincts were included in the canvass.

Petitions for manifest errors must be filed not later than five (5) days following the date of proclamation and must implead all candidates who may be adversely affected thereby (Sec. 5 (b) COMELEC Rules of Procedure). This has been qualified by the Supreme Court when it said in the case of *Aguam vs. COMELEC*, G.R. No. L-28955,

May 28, 1968, dela Llena vs. COMELEC, G.R. No. 152080, January 28, 2003, that the phrase “date of proclamation” means the date when a **valid** proclamation was made.

If a proclamation was made despite a manifest error, which would alter the results, then the proclamation is not valid.

### Partial Proclamation

Notwithstanding the pendency of any pre-proclamation controversy, the Commission may summarily order the proclamation of other winning candidates whose election will not be affected by the outcome of the controversy.

### Effect of Commencement of Term

“All pre-proclamation cases pending before the Commission shall be deemed terminated at the beginning of the term of the office involved and the rulings of the Boards of Canvassers concerned shall be deemed affirmed. However, proceedings may continue when on the basis of the evidence thus presented, the Commission determines that the petition appears meritorious and accordingly issues an order for the proceeding to continue or when an appropriate order has been issued by the Supreme Court in a petition for certiorari.” – Sec. 16, R.A. 7166.

The Commission normally issues an Omnibus Resolution listing of the cases, which would continue despite the commencement of term.

### Procedure for Resolving Petitions

The Board may *motu proprio* or upon verified petition by any candidate, political party etc. after due notice and hearing, correct the errors committed. Order for correction must be in writing. Aggrieved party may appeal to the Commission within 24 hours from promulgation.

If the manifest error is discovered after proclamation, the Board or any interested/ affected candidate, political party, etc. shall file a verified petition to correct manifest error with the Commission.

## Jurisprudence for Canvassing Objections Frequently Raised

1. **Illegal composition of the Board** – Refer to Sec. 20, R.A. 6646 and Sec. 8, Rule 27 Comelec Rules of Procedure
2. **Illegal Substitution** – Refer to Sec. 21, R.A. 6646
3. **Lack of notice**

“It is of judicial notice that candidates will post watchers from the time the polls open to observe the voting and counting of votes. With more reasons that they will post watchers, during the canvassing with or without notice.” (Quilala vs. Comelec, G.R. No. 82726, August 13, 1990)

This ruling will not apply if the venue of canvassing is transferred to another town or city.

Lack of notice is an election offence. – Sec. 261 (aa) (1) B.P. 881

4. **Material defects in the election returns**

- a. Lack of inner and outer paper seals.
- b. Failure to close the entries with the signatures of the BEI's
- c. Lack of date and time of receipt by the Board of Canvassers of the election returns.
- d. Lack of authority of the person receiving the returns.

These are not material defects but formal defects. They do not affect the genuineness and authenticity of the Election Returns. (Baterina vs. Comelec, G.R. Nos. 95347-49, January 6, 1992)

- e. Lack of signatures of petitioners' watchers – Sec. 12 of R.A. 6646 provides that a watcher shall sign the election returns if he is available. If he is not or is unwilling to sign them, any other watcher present may be required to sign (Baterina)

It is very clear that the signature of the watcher is not indispensable.

- f. Absence of the required number of padlocks of the ballot box containing the election returns.

"A losing candidate's allegation that the absence of the required number of padlocks puts into question the integrity of the election returns is not tenable where she did not allege or prove that the election returns showed on their face tampering or alteration" (Navarro v. Comelec, G.R. No. 150799, February 3, 2003).

#### 5. Obviously manufactured or not authentic

"The returns in this case shows nothing on its face from which the canvassers might conclude that it does not speak the truth. It is only when it is compared with the certificate of the election registrar that a discrepancy appears as to the number of registered voters. The return therefore is by no means "obviously manufactured" so as to justify its exclusion. (Demafiles vs. Comelec, 21 SCRA 1462)

"Returns are obviously manufactured where they show a great excess of votes over what could have been legally cast." (Ututalum v. Comelec, 181 SCRA 335)

However in the case of Anni vs. Izquierdo, the Supreme Court said, "where a candidate received 14,195 votes in 147 precincts involved and his maximum possible number of votes was 10,863 of which 5,407 were positively identified as valid votes and the remaining 6,525 votes on which experts could not give an opinion must also be counted concededly as valid votes for him, the differential of 3,332 votes cannot be said to be greatly excessive to justify the rejection of the returns."

A conclusion that an election returns is obviously manufactured or false and consequently should be disregarded in the canvass must be approached with extreme caution and only upon the most convincing proof lest innocent voters might be disenfranchised. (Anni vs. Izquierdo, 57 SCRA 692).

Please emphasize to your Board of Election Inspectors that: "any member of a board of election inspectors who has made possible the casting of more votes than there are registered voters," commits an election offense. (Sec. 261 (z) (10) B.P. 881)

#### 6. Statistical Improbability

Where there is a uniformity of tally in favor of candidates belonging to one party and the systematic blanking of the opposing candidates such as to make the fraud palpable from the return itself, there is no other reasonable conclusion than that the returns were obviously manufactured, contrary to all statistical probabilities and were as utterly improbable and clearly incredible as to win the sweepstakes ten times." (Lagumbay vs. Comelec, 16 SCRA 175)

It does not apply where a candidate simply obtains an overwhelming majority as against another. (Ilarde v. Comelec, 31 SCRA 1970)

Petitioner claimed that the returns were obviously manufactured because he garnered zero votes in three precincts, which was allegedly statistically improbable. To this claim, the case of Sanki v. Comelec, 21 SCRA 1392 is worth reiterating: "The bare fact that candidates for public office had received zero votes is not enough to make the returns statistically improbable. (Ocampo v. Comelec, G.R. 136282, February 15, 2000)

The Supreme Court warned that the doctrine on statistical improbability must be viewed restrictively, the utmost care being taken lest in penalizing the fraudulent and corrupt practices, which indeed is called for, innocent voters become disenfranchised, a result which hardly commends itself. (Velayo vs. Comelec, G.R. No. 135613, March 9, 2000)

#### 7. Discrepancies between word, figures and tallies

"In case of discrepancies between words and figures, words will prevail by force of law. In case of discrepancies between tallies and words, tallies will prevail, not by force of law but by the logic of the situation. (Ruben Canoy vs. Comelec, and the City Board of Canvassers of Cagayan de Oro City)

However, Section 8(m) Rule 27 of the Comelec Rules of Procedure, provides among others:

In case it appears that there exists discrepancies in the votes of any candidate in words and figures and the difference affects the results of the elections, the Commission upon motion of the Board with notice to the candidates affected shall order the re-opening of the ballot box and conduct a recount.

I submit that the ruling of the Supreme Court in the case of Ruben Canoy vs. Comelec should prevail not only because it has the force of law, but logic and reason would show that the first record of the votes obtained was thru the "taras".

#### **8. Omission of requisites in form or data**

Board shall call the BEI to effect the correction or supply the missing data, affix their initials.

If what is omitted is the name of the candidate and/or his corresponding votes, board shall make a report to the Commission. Commission shall order the board to open the ballot box and recount the votes with notice to all candidates affected. (Sec. 9(k) of Comelec Rules of Procedure) (Lee vs. Comelec, G.R. No. 157004, July 4, 2003.)

If there is an incomplete data, e.g. number of registered voters, number of votes cast, number of valid votes, the Board shall summon the BEI to supply the missing data. (Sec. 234, B.P. 881)

A canvass and proclamation made notwithstanding such patent defects in the returns which may affect the result of the elections without awaiting remedies is null and void. (Purísima vs. Salonga, 12SCRA 704, Lee vs. Comelec, G.R. No. 157004, July 4, 2003)

It is hereby recommended that the BEI shall be present during the canvassing and that they shall be paid by the treasurer their per diems upon certification by the board that their election returns have been canvassed.

#### **9. Preparation of election returns under duress, threats, and intimidation....**

"A pre-proclamation controversy is limited to an examination of the election returns on their face. There must be "tell-tale signs of the threats on the face of the election returns." (Dipatuan vs. Comelec, 185 SCRA 86, 93)

The board need not go beyond the face of the returns, and investigate alleged irregularities. Where the resolution of the issues would require the board "to pierce the veil of the election returns that appear prima-facie regular, the remedy is an election protest.