

**TRANSCRIPT OF CHAMPAIGN COUNTY ELECTORAL OFFICERS - HEARINGS OF  
PAT DEVANEY VS. FRANK CALABRESE  
APRIL 22, 2008 AT 9:30 A.M.**

1 CHAIR SHELDEN: It's nine-thirty. I'm going to call this meeting of the Champaign  
2 County Electoral Officers Board to order. Call the roll. For the Circuit Clerk, Linda Frank,  
3 we have Fred Wilkinson.

4 MEMBER WILKINSON: Here.

5 CHAIR SHELDEN: And for the State's Attorney, we have Steve Ziegler.

6 MR. ZIEGLER: Yes.

7 CHAIR SHELDEN: And, and I am Mark Shelden, Champaign County Clerk and  
8 so we have our representatives of the three statutory people to be on this Board.

9 Appearances, entries of appearance. I have one from, Mr., is it U-ee?

10 MR. UHE: U-ee.

11 CHAIR SHELDEN: U-ee. Okay. For the plaintiff?

12 MR. MALONEY: I'll state mine orally. I'm for Mr. Calabrese. My name's John  
13 Maloney.

14 CHAIR SHELDEN: Okay.

15 MR. MALONEY: At the lawfirm of Maloney, Parkinson, and Berns.

16 CHAIR SHELDEN: Okay.

17 MR. MALONEY: 135 W. Main, Urbana.

18 CHAIR SHELDEN: And I didn't give you a . . . I gave you an agenda not a . . .  
19 Can I, can I have you fill this out John so that we got it all on record.

20 MR. MALONEY: This thing.

21 CHAIR SHELDEN: Oh yeah, yeah, good. That way we know . . . I guess we can

22 give this to Mr. Uhe. I guess. Okay, you've all received a copy of the rules. Any  
23 questions about the rules? I'm not really particularly free to change them although they  
24 can be modified or clarified at times.

25 MR. MALONEY: Copy of the rules? I'm sorry.

26 CHAIR SHELDEN: Yeah, let me see if I've got an extra copy here. Yeah, if you  
27 want to have one of those. So, rules aren't to be changed however they can be . . . we  
28 can vote to not follow them I suppose. So, Mr. Uhe did you have any questions about  
29 them?

30 MR. UHE: No questions about the rules.

31 CHAIR SHELDEN: Okay, just to kinda clarify too, what I kind of perceive today to  
32 be and . . . I'm not sure if the others here on the Board would agree. But, I think we just  
33 want to set kind of a schedule for when we are gonna be doing things and kinda lay out  
34 a plan to arrive at a final decision on this. So that's kinda my goal here. So, you got  
35 copies of the rules, there's been no questions. And if you have questions and you want  
36 to call me certainly your free to do that at any time. Reading the objection, I note that  
37 there are some factual statements here. Are there things that . . . is there evidence that  
38 needs to be submitted . . . or are there things that can be stipulated to here, or, were  
39 are we at on, on some of these factual assertions?

40 MR. MALONEY: Thank, thank you your Honor. The, the, the first matter is, I think  
41 I'd like to make a motion, on . . . it would appear form the reading, the plain reading of  
42 the petition, that this matter, the objection is based on the fact that it was not a  
43 appropriate certificate of representative committee organization that, that he was able to  
44 view. That certificate of representation of committee organization is one not of the

45 candidates but of, of the parties. I, I'm here representing Mr. Calabrese and I think that,  
46 that, that this committee does not have appropriate standing to decide a matter of,  
47 versus the party. There may be some other definite in this or some other objection but  
48 it's, it seems to me that the party . . . this is an objection to his candidacy and this  
49 petition is directed toward the, to whether the party complied. And I, I, I, I note that the,  
50 there's no time limitation here on whether or not the party necessarily has properly  
51 complied. So I don't, the factual, any factual matters, are gonna be directed toward the,  
52 toward the factual matters of something that the party did and any legal matters are  
53 going to be directed towards something that the party did and not Mr. Calabrese. So, I  
54 don't think that there's any standing to bring this particular petition on this particular  
55 grounds in front of this committee.

56 CHAIR SHELDEN: Mr. Uhe you have a comment about . . .

57 MR. UHE: Yes, would you like me to address the motion?

58 CHAIR SHELDEN: Well, it's not a written motion so . . . presuming that, if a,  
59 probably, pursuant to our rules a motion such as that would have to be in writing but, if  
60 you wanna, maybe, address that notion.

61 MR. UHE: I would be happy . . .

62 CHAIR SHELDEN: Had a motion but a notion.

63 MR. UHE: Happy to do that. As you may know your Honor, the Election Code  
64 provides a process for filling vacancies in nomination. What it specifies, is that in a case  
65 where no candidate's name appeared on the ballot for a party that a Representative  
66 District Committee must be convened, organized, and then must meet in accordance  
67 with the rules of law to fill the vacancy. The objection here is permitted by the code

68 where there's some question and dispute as to the validity of the nominating papers  
69 filed by the candidate. The candidate's nomination is only valid if the process, and if the  
70 committee, that purports to nominate the candidate was validly constituted as  
71 authorized under law. And under Section 8-5 of the Election Code which contains  
72 mandatory provisions under the appellate court precedent. That committee must have  
73 organized, must have in this case, because we got a representative district entirely  
74 within a county must have elected two members from the county central committee in  
75 addition to the chairman of the republican county central committee. Those three  
76 members constituting the committee, they then, according to the law, must have elected  
77 a chairman and secretary and then immediately forwarded those names and addresses  
78 to the State Board of Elections. Now the evidence here, we believe, is that, that, that no  
79 such evidence of organization was ever filed with the Board of Elections at the time that  
80 the, that the nomination papers were required to be filed.

81 CHAIR SHELDEN: Okay, you're welcome to submit that . . . motion and . . . it  
82 can be responded to. I think it is a general . . . rule on these . . . and others may want to  
83 comment but I . . . I think many Electoral Boards have sat and decided on issues of the  
84 validity of the creation of the committees and there processes over time. So, it would  
85 certainly be a line of reasoning or something we might want to look at if you want to look  
86 at it and submit it as a motion I guess that would be fine. I don't think we're gonna rule  
87 on something like that today

88 MR. MALONEY: Just for the record, I will point out that the, this is quoting the  
89 same section of the law, "The Electoral Board shall take up the question as to whether  
90 or not the Certificate of Nomination or nomination papers or petitions are in proper

91 form.” This, this particular exhibit that he says is missing is not part of the nomination  
92 papers or petitions, so . . . we don’t need to have . . . a motion to determine that. It’s not  
93 a part of it, it’s not a part of it, it’s not a part of the petition.

94 CHAIR SHELDEN: Well, if only it was that easy.

95 MR. MALONEY: I will put it in writing.

96 CHAIR SHELDEN: Please. Yes. How, how are we going to resolve the factual  
97 points here or is there . . . ?

98 MR. UHE: May I propose your Honor, we would be prepared to stipulate that,  
99 that no certificate of organization document as Mr. Maloney suggests may exist. It was  
100 not filed with the State Board of Elections prior to the expiration of the deadline for filing  
101 papers to nominate candidates. If that’s a stipulation that he’s prepared to make then  
102 we’d be happy to do that . . .

103 MR. MALONEY: Well, well, if he . . .

104 MR. UHE: because I don’t believe we really have factual matters that are  
105 intergrueled to the, to the resolution of this case. It’s a question of law.

106 MR. MALONEY: Well, well, if he will stipulate . . .

107 CHAIR SHELDEN: Excuse me, just a moment.

108 MR. ZIEGLER: If I’m, if I’m understanding correctly the, the, what Mr. Maloney is  
109 raising is first a question of whether this Board has jurisdiction to deal with the issue and  
110 second of whether or not the proper parties have been brought before this issue. And  
111 my first concern is that before we do anything else that we get past that question. If the  
112 proper parties are not joined and if the jurisdiction of the Board is not proper, then, if we  
113 don’t get past that issue we, we basically don’t have any business dealing with other

114 issues. My suggestion would be to give Mr. Mulney time, Mr. Maloney time, court  
115 excuse me, to put his, his motion or his propositions on that in writing. Give a brief time  
116 for a response and then we can decide whether we believe we actually have the proper  
117 parties and the proper jurisdiction and then schedule any evidentiary.

118 MR. MALONEY: And I'd like an oral argument on that too if I could.

119 CHAIR SHELDEN: Mm, hmmm.

120 MR. MALONEY: If it's, if it's acceptable.

121 CHAIR SHELDEN: Yeah, yeah, that's not . . . not unreasonable I guess.

122 MR. MALONEY: In regard to his last, last comment, I do have some comment on  
123 that. I suggested about a stipulation. If he, if he, if you want to stipulate to the . . . I don't  
124 think there's any stipulations necessary because the election code at 10 ILCS/5-8-7 is  
125 pretty clear, it says, "Immediately upon completion of the organization the chairman  
126 shall forward the State Board of Elections the name and addresses of . . . to the . . . will  
127 forward it." There's no requirement under the law that it has to, that this, this mailing of  
128 this petition, has to be before the end of the deadline before filing begins.

129 CHAIR SHELDEN: Perhaps, we're getting arguments here that . . . I'm just . . .  
130 here's . . . you know . . . I guess . . . if, if Mr. Maloney wants to pursue this line of  
131 reasoning about the, I guess, the jurisdiction of this Board on this matter . . . then . . .  
132 then I guess we can do that. I'm trying, trying to think about my calendar and things that  
133 I . . . I wanted . . . I had originally anticipated maybe doing final arguments on this the  
134 second week of May and now I'm finding that this will, this particular motion is going to  
135 probably maybe change that or maybe not change that. If we don't, if we don't deal with  
136 the, the hearing, or the, both of these at the same time we're gonna, we're gonna set

137 ourselves back a little bit which isn't a huge deal but because we are not under a huge  
138 time crunch here, other than the fact that I'm sure Mr. Calabrese would like to know  
139 whether or not he's a candidate or not. So, other than his stomach . . . you don't want to  
140 hear this. Where're we at now . . . we're at the . . . twenty-second today and the week of  
141 May fifth is kinda out for me, so . . . Fred do you know what your week of May  
142 nineteenth is like?

143 MEMBER WILKINSON: I'm open.

144 MR. UHE: Your Honor, if it is at all possible, may I ask if it's possible to schedule  
145 this in June only because I'm involved in the, in the legislative process and our, our May  
146 schedule's going to be very busy during, during most of those weeks.

147 MR. MALONEY: That's, that's, that's unacceptable. I need to have it earlier than  
148 that. We have to get some closure on this. I can, I can put a . . .

149 CHAIR SHELDEN: Here's what, here's what, here's what, I guess, that, if I can  
150 maybe suggest that we, when can you, when can you plead, do a brief for arguments  
151 on the, on your particular first issue of your motion?

152 MR. MALONEY: I can, I can probably have that done. I'm gonna be going to  
153 Tennessee until next Sunday. I can, I can, I can finish that today, and get that on file or  
154 send it . . . .

155 CHAIR SHELDEN: You'll get a motion on . . .

156 MR. MALONEY: I can put this together, it's pretty simple. I'll do this, this  
157 afternoon and get it out.

158 CHAIR SHELDEN: The motion itself and the particular, and the arguments . . .

159 MR. MALONEY: So we can have the hearing, we can have the hearing on it, you

160 said you were scheduling the first week of May for the hearing on that if that's possible?

161 CHAIR SHELDEN: No, the first week of May doesn't work for me and the second  
162 week doesn't work. And so, and so . . .

163 MR. ZIEGLER: Actually the Friday of that second week I'm almost guaranteed to  
164 be here. That's . . .

165 CHAIR SHELDEN: I guess, then the question becomes whether or not we want  
166 to do something next week on this motion.

167 MEMBER WILKINSON: Well, he, he needs time to respond.

168 CHAIR SHELDEN: Right, exactly. That's why I'm trying to . . . What's you're  
169 thoughts on a response? I don't like the idea of taking this to June. So, and I understand  
170 your particular conflict but that's what Mr. Devaney knew . . .

171 MR. UHE: Sure.

172 CHAIR SHELDEN: when he hired you. So, . . .

173 MR. UHE: Sure. You know we can respond within a week if that's acceptable?

174 CHAIR SHELDEN: Well, in a week, if he, if we get, I mean, in theory we could  
175 you know have something May first or second on this, on this motion, you know we  
176 could do orals on the motion. What does anybody think about that idea?

177 MR. MALONEY: On May first?

178 CHAIR SHELDEN: or second?

179 MR. MALONEY: or second?

180 MR. ZIEGLER: May first the legislature will be in.

181 MR. UHE: May second would be better.

182 CHAIR SHELDEN: Right.

183 MR. MALONEY: I'll make it available or have an attorney available to argue the  
184 second.

185 CHAIR SHELDEN: Okay, we are going to try to find a courtroom on May second.  
186 So, so, Mr. Maloney, we'd like it to be a good motion. So, we'll give you till the end of  
187 tomorrow to do that.

188 MR. MALONEY: I'll be in Tennessee by the end of tomorrow. But, so, I'll have it  
189 done today.

190 CHAIR SHELDEN: Okay. And then, and then, Mr. Uhe can you respond by the  
191 end of business on Tuesday the twenty-ninth?

192 MR. UHE: Yes.

193 CHAIR SHELDEN: Okay. And, and then, at nine-thirty again. I think nine o'clock  
194 sometimes is busy so that's why I'm doing nine-thirty. Nine-thirty we'll set this for oral  
195 arguments on this particular motion. Anybody else have any other surprises for us right  
196 now?

197 MR. UHE: No. If your Honor, if the, if another attorney joins me on the case, is it  
198 acceptable to file an appearance with, with that paper once filed or would you like an  
199 appearance filed now?

200 CHAIR SHELDEN: You can do it anytime. I'm not particular. I mean just don't,  
201 don't, don't say, "Oh yeah, this guy was joining me and he never got this stuff."

202 MR. UHE: Oh no, no, no. No. Not, not at all. Just to help with our schedule.

203 CHAIR SHELDEN: Yeah. If somebody just walks in the door and says, "I'm  
204 appearing on behalf of you guys," then that's fine. We are not gonna accept any  
205 excuses.

206 MR. UHE: Okay. Sure. Sure. Well, then if it's okay, if i can approach, then I'll  
207 enter the appearance of Michael Kasper.

208 CHAIR SHELDEN: How about to each of us, I've got, everything by e-mail is fine  
209 for me. Let's . . . and I've got Mr. Wilkinson's e-mail and our's so maybe I can . . .  
210 immediately when I get back to the office I'll e-mail everyone to make sure and  
211 everyone can confirm they, they're getting this stuff. Mr. Kasper doesn't have an e-mail  
212 on here but . . .

213 MR. UHE: [mkasper@ftok.com](mailto:mkasper@ftok.com)

214 CHAIR SHELDEN: ftok.com

215 MR. MALONEY: Who's mkasper?

216 CHAIR SHELDEN: Mike Kasper is another appearance.

217 MR. MALONEY: Oh. I apologize for the . . .

218 CHAIR SHELDEN: Yeah.

219 MR. MALONEY: I'll read the rules.

220 CHAIR SHELDEN: Oh, that's alright. No, no. We're just gonna try to . . . well the  
221 rules on this particular . . . I'm not worried about . . . and if you've got other appearances  
222 or others that will appear on your behalf that's fine too. But, you'll have/we'll have this  
223 whole e-mail thing and everyone will know whose in the loop on things and they can . . .

224 MR. UHE: Does your Honor, anticipate then that this hearing on May second  
225 would be solely to address the question of jurisdiction of the body and at that point we  
226 would address next steps and next issues?

227 CHAIR SHELDEN: Mm, hmm . . . yeah. Yeah. And . . . and . . . and . . . yeah and  
228 at that point we, we'd rule on that particular motion and then we would take the next

229 step.

230 MR. UHE: Okay.

231 MR. MALONEY: Thank you your Honor.

232 CHAIR SHELDEN: Is there any other business to come before this Board?

233 MR. UHE: Not at this time.

234 CHAIR SHELDEN: We're adjourned till May second.