

# CITY OF RHINELANDER



City Clerk's Office

Home of the Hodag

## DECISION ON CHALLENGE REGARDING NOMINATION PAPERS

TO: Scott Counter

FROM: Val Foley, City Clerk/Filing Officer *VF*

DATE: January 11, 2018

A verified complaint was filed on January 5<sup>th</sup>, 2018 challenging the validity of the nomination papers you filed as a candidate for Mayor in the City of Rhinelanders. Specifically, the complaint alleges that many of your signatures on nomination papers are invalid because state law provides that individual signatures on a nomination paper may not be counted if the signature is dated after the date of certification contained in the certificate of the circulator.

Your nomination papers consist of six (6) sheets which were either circulated by you or by someone else with a total of fifty-one (51) signatures. The complaint alleges that on Page 2, Page 3, Page 4, and Page 5 of those papers, the date of the "Certification of the Circulator" is prior to many or all of the Elector's signatures. Wis. Stat. §8.10(3)(k) requires that you provide "not less than 50 nor more than 100" signatures for the office of the Mayor. Because of the errors in the circulation date on the "Certification of the Circulator", I have determined that you have substantially less than fifty (50) valid signatures required as a candidate for Mayor. As you do not have sufficient signatures, your name will not appear on the ballot.

Pursuant to Wisconsin Administrative Code EL 2.07, I, as the local filing officer, "shall review any verified complaint concerning the sufficiency of nomination papers of a candidate for local office..." and "shall apply the standards in EL 2.05 to determine the sufficiency of nomination papers, including consulting extrinsic sources of evidence under EL 2.05(3)." EL 2.07(1).

As the filing officer for the City of Rhinelanders pursuant to the Wisconsin Statutes and Administrative Code, I have the responsibility of deciding the complaint after the deadline for filing the response to the challenge, but before the date for certifying candidates to the ballot. EL 2.07(2)(b). Furthermore, I must review all evidence brought by the challenger, as well as review the evidence and response to the challenge, and the burden of proof applicable to establishing or rebutting a challenge is clear and convincing evidence. EL 2.07(3)(d)(4).

In making this decision, I have reviewed the Wisconsin Statutes, the Wisconsin Administrative Code, documents written and published by the Wisconsin Elections Commission (and formerly the Government Accountability Board) that are available on their website regarding challenges to nomination papers, and the circulatory form itself. I have also reviewed the challenge and your response.

Wis. Stat. § 8.10(3)(k), as attached hereto, requires that “for city offices in 4<sup>th</sup> class cities, not less than 50 nor more than 100 for city-wide offices” signatures are required on nomination papers.

The *Nomination Paper for Nonpartisan Office* has “Instructions for Preparing Nomination Papers for Nonpartisan Office” printed on the back of each document. Under the heading of “Signature of Circulator” it states:

The circulator should carefully read the language of the Certification of the Circulator. The Circulator must personally present the nomination paper to each signer. The nomination paper may not be left unattended on counters or posted on bulletin boards. The circulator’s complete residential address including municipality of residence must be listed in the certification. **After** obtaining signatures of electors, the circulator must sign and date the certification.

I have attached these instructions to this decision. Please note that several provisions in this particular instruction are bolded and include mandatory language.

Furthermore, Wisconsin Administrative Code Chapter EL 2.05(14), as attached hereto, indicates that “no signature on a nomination paper shall be counted unless the elector who circulated the nomination paper completes and signs the certificate of circulator and does so after, not before, the paper is circulated.” (Mandatory language.) Additionally, EL 2.05(15)(b), also attached hereto, indicates that “an individual signature on a nomination paper may not be counted when that signature is dated after the date of certification contained in the certificate of the circulator.”

Additionally, I also reviewed the *Nomination Paper Challenges* written and published by the Wisconsin Government Accountability Board (dated March, 2016 and attached hereto) and the updated *Nomination Paper Challenges* written and published by the Wisconsin Elections Commission (dated January, 2018 and attached hereto). These written documents summarize previous decisions of the State Elections Board, the Government Accountability Board and the Wisconsin Elections Commission related to the most common challenges to nomination papers and other election petitions. These documents state that they are intended to itemize and consolidate previous decisions which local filing officers can *rely on* as precedent regarding general legal questions and principles. Section 2(b) of those documents (located on Page 4) summarize “Circulator Date and Signature” challenges pursuant to Wis. Stat. §§8.10(3) and 8.15(4)(a). The Elections Commission’s analysis states:

The circulator may correct errors in the certificate of the circulator, such as the circulator failed to sign or otherwise complete the certificate, or entered inadvertently erroneous data (for instance: the circulator dated the certificate before circulation, not after). If the circulator has not corrected those errors by affidavit by the correction deadline, the challenge must be approved and the signatures on those pages struck. Recommendations to this effect been approved in prior cases. (Mandatory language.) (Emphasis added.)

Similarly, Page 8 of that document indicates that “staff has struck ... signatures pursuant to the Commission’s administrative rules that provide that a signature may not be counted if it is dated after the date of the certificate of the circulator” when analyzing the challenge that the elector’s signature is dated after the date of the circulator’s certification.

Pursuant to Wisconsin Administrative Code Chapter EL 2.04(4), errors in information contained in a nomination paper, committed by either a signer or a circulator, may be corrected by an affidavit of the circulator, affidavit of the candidate or an affidavit of a person who signed the nomination paper. The person giving the correcting affidavit shall have personal knowledge of the correct information and the correcting affidavit shall be filed with the filing officer not later than three (3) calendar days after the applicable statutory due date for the nomination papers. I have attached Chapter EL 2 of the Wisconsin Administrative Code to this document.

In this case, you did not submit correcting affidavits.

Finally, I reviewed your response dated January 8, 2018. In your response, you provide two reasons as to why you believe that you have the required amount of signatures and believe that the "spirit of the law of Wisconsin" was met. Several of the cited paragraphs above have mandatory language that require a finding that most of the signatures are not valid. Because I sustain the challenge, you do not have fifty (50) valid signatures and your name will not be placed on the ballot for Mayor of the City of Rhinelander.

districts, may call special elections for any purpose authorized by law. If an election is called for a special referendum, the election shall be noticed under s. 8.55.

History: 1979 c. 32; 1989 a. 192; 2017 a. 59.

**8.07 Validity of nomination papers.** The commission shall promulgate rules under this chapter for use by election officials in determining the validity of nomination papers and signatures thereon.

History: 1983 a. 484; 1989 a. 359; 2015 a. 118 s. 266 (10).

Cross-reference: See also ss. EL 2.05 and 2.07, Wis. adm. code.

**8.10 Nominations for spring election.** (1) Candidates for office to be filled at the spring election shall be nominated by nomination papers, or by nomination papers and selection at the primary if a primary is held, except as provided for towns and villages under s. 8.05. Unless designated in this section or s. 8.05, the general provisions pertaining to nomination at the partisan primary apply.

(2) (a) Nomination papers for offices to be filled at the spring election may be circulated no sooner than December 1 preceding the election and may be filed no later than 5 p.m. on the first Tuesday in January preceding the election, or the next day if Tuesday is a holiday, except as authorized in this paragraph. If an incumbent fails to file nomination papers and a declaration of candidacy by the time prescribed in this paragraph, all candidates for the office held by the incumbent, other than the incumbent, may file nomination papers no later than 72 hours after the latest time prescribed in this paragraph. No extension of the time for filing nomination papers applies if the incumbent files written notification with the filing officer or agency with whom nomination papers are filed for the office which the incumbent holds, no later than 5 p.m. on the 2nd Friday preceding the latest time prescribed in this paragraph for filing nomination papers, that the incumbent is not a candidate for reelection to his or her office, and the incumbent does not file nomination papers for that office within the time prescribed in this paragraph.

(b) Each nomination paper shall have substantially the following words printed at the top:

I, the undersigned, request that the name of (insert candidate's last name plus first name, nickname or initial, and middle name, former legal surname, nickname or middle initial or initials if desired, but no other abbreviations or titles), residing at (insert candidate's street address) be placed on the ballot at the (spring or special) election to be held on (date of election) as a candidate so that voters will have the opportunity to vote for (him or her) for the office of (name of office). I am eligible to vote in the (name of jurisdiction or district in which candidate seeks office). I have not signed the nomination paper of any other candidate for the same office at this election.

(c) Each candidate shall include his or her mailing address on the candidate's nomination papers.

(3) The certification of a qualified circulator under s. 8.15 (4) (a) shall be appended to each nomination paper. The number of required signatures on nomination papers filed under this section is as follows:

(a) For statewide offices, not less than 2,000 nor more than 4,000 electors.

(am) For court of appeals judges, not less than 1,000 nor more than 2,000 electors.

(b) For judicial offices not specified in pars. (a), (am), and (c), not less than 200 nor more than 400 electors.

(c) For judicial offices in counties over 500,000 population, not less than 1,000 nor more than 2,000 electors.

(cm) For county executives in counties over 500,000 population, not less than 2,000 nor more than 4,000 electors.

(cs) For comptrollers in counties with a population of at least 750,000, not less than 500 nor more than 1,000 electors.

(d) For county executives in counties between 100,000 and 500,000 population, not less than 500 nor more than 1,000 electors.

(e) For county executives in counties under 100,000 population, not less than 200 nor more than 400 electors.

(f) For supervisors in counties over 500,000 population, not less than 200 nor more than 400 electors.

(g) For supervisors in counties between 100,000 and 500,000 population, not less than 100 nor more than 200 electors, except as provided in sub. (3m).

(h) For supervisors in counties under 100,000 population, not less than 20 nor more than 100 electors.

(hm) For members of the metropolitan sewerage commission in districts over 1,000,000 population, not less than 1,000 nor more than 2,000 electors, in districts over 200,000 but not over 1,000,000 population, not less than 200 nor more than 400 electors, and in districts not over 200,000 population, not less than 100 nor more than 200 electors.

(i) For city offices in 1st class cities, not less than 1,500 nor more than 3,000 electors for city-wide offices, not less than 200 nor more than 400 electors for alderpersons elected from aldermanic districts and not less than 400 nor more than 800 electors for members of the board of school directors elected from election districts.

(j) Except as provided in par. (jm), for city offices in 2nd and 3rd class cities, not less than 200 nor more than 400 electors for city-wide offices and not less than 20 nor more than 40 electors for alderpersons elected from aldermanic districts.

(jm) For city offices in 2nd and 3rd class cities, not less than 100 nor more than 200 electors for alderpersons who are not elected from aldermanic districts.

(k) For city offices in 4th class cities, not less than 50 nor more than 100 for city-wide offices and not less than 20 nor more than 40 electors for alderpersons elected from aldermanic districts.

(km) For school district officer in any school district which contains territory lying within a 2nd class city, not less than 100 nor more than 200 electors.

(ks) For school district officer in any school district which does not contain territory lying within a 1st or 2nd class city, if nomination papers are required under s. 120.06 (6) (a), not less than 20 nor more than 100 electors.

(L) For other offices, not less than 20 nor more than 100 electors.

(3m) The county board of any county having a population of at least 100,000 but not more than 500,000 may provide by ordinance that the number of required signatures on nomination papers for the office of county supervisor in the county is not less than 50 nor more than 200 electors. A county that enacts such an ordinance may repeal the ordinance at a later date. Any ordinance changing the number of signatures under this subsection takes effect on November 15 following enactment of the ordinance.

(4) (a) All signers on each nomination paper shall reside in the jurisdiction or district which the candidate named on the paper will represent, if elected.

(b) Only one signature per person for the same office is valid. In addition to his or her signature, in order for the signature to be valid, each signer of a nomination paper shall legibly print his or her name in a space provided next to his or her signature and shall list his or her municipality of residence for voting purposes, the street and number, if any, on which the signer resides, and the date of signing.

(5) Nomination papers shall be accompanied by a declaration of candidacy under s. 8.21. If a candidate has not filed a registration statement under s. 11.0202 (1) (a) at the time he or she files nomination papers, the candidate shall file the statement with the papers. A candidate for state office or municipal judge shall also file a statement of economic interests with the ethics commission



## Chapter EL 2

## ELECTION RELATED PETITIONS

EL 2.05 Treatment and sufficiency of nomination papers.  
EL 2.07 Challenges to nomination papers.

EL 2.09 Treatment and sufficiency of election petitions.  
EL 2.11 Challenges to election petitions.

Note: Chapter EIBd 2 was renumbered chapter GAB 2 under s. 13.92 (4) (b) 1., Stats., and corrections made under s. 13.92 (4) (b) 2. and 7., Stats., Register April 2008 No. 628. Chapter GAB 2 was renumbered Chapter EL 2 under s. 13.92 (4) (b) 1., Stats., Register June 2016 No. 726.

**EL 2.05 Treatment and sufficiency of nomination papers.** (1) Each candidate for public office has the responsibility to assure that his or her nomination papers are prepared, circulated, signed, and filed in compliance with statutory and other legal requirements.

(2) In order to be timely filed, all nomination papers shall be in the physical possession of the filing officer by the statutory deadline. Each of the nomination papers shall be numbered, before they are filed, and the numbers shall be assigned sequentially, beginning with the number "1". Notwithstanding any other provision of this chapter, the absence of a page number will not invalidate the signatures on that page.

(3) The filing officer shall review all nomination papers filed with it, up to the maximum number permitted, to determine the facial sufficiency of the papers filed. Where circumstances and the time for review permit, the filing officer may consult maps, directories and other extrinsic evidence to ascertain the correctness and sufficiency of information on a nomination paper.

(4) Any information which appears on a nomination paper is entitled to a presumption of validity. Notwithstanding any other provision of this chapter, errors in information contained in a nomination paper, committed by either a signer or a circulator, may be corrected by an affidavit of the circulator, an affidavit of the candidate, or an affidavit of a person who signed the nomination paper. The person giving the correcting affidavit shall have personal knowledge of the correct information and the correcting affidavit shall be filed with the filing officer not later than three calendar days after the applicable statutory due date for the nomination papers.

(5) Where any required item of information on a nomination paper is incomplete, the filing officer shall accept the information as complete if there has been substantial compliance with the law.

(6) Nomination papers shall contain at least the minimum required number of signatures from the circuit, county, district or jurisdiction which the candidate seeks to represent.

(7) The filing officer shall accept nomination papers which contain biographical data or campaign advertising. The disclaimer specified in s. 11.1303 (2), Stats., is not required on any nomination paper.

(8) An elector shall sign his or her own name unless unable to do so because of physical disability. An elector unable to sign because of physical disability shall be present when another person signs on behalf of the disabled elector and shall specifically authorize the signing.

(9) A person may not sign for his or her spouse, or for any other person, even when they have been given a power of attorney by that person, unless sub. (8) applies.

(10) The signature of a married woman shall be counted when she uses her husband's first name instead of her own.

(11) Only one signature per person for the same office is valid. Where an elector is entitled to vote for more than one candidate for the same office, a person may sign the nomination papers of

as many candidates for the same office as the person is entitled to vote for at the election.

(12) A complete address, including municipality of residence for voting purposes, and the street and number, if any, of the residence, (or a postal address if it is located in the jurisdiction that the candidate seeks to represent), shall be listed for each signature on a nomination paper.

(13) A signature shall be counted when identical residential information or dates for different electors are indicated by ditto marks.

(14) No signature on a nomination paper shall be counted unless the elector who circulated the nomination paper completes and signs the certificate of circulator and does so after, not before, the paper is circulated. No signature may be counted when the residency of the circulator cannot be determined by the information given on the nomination paper.

(15) An individual signature on a nomination paper may not be counted when any of the following occur:

(a) The date of the signature is missing, unless the date can be determined by reference to the dates of other signatures on the paper.

(b) The signature is dated after the date of certification contained in the certificate of circulator.

(c) The address of the signer is missing or incomplete, unless residency can be determined by the information provided on the nomination paper.

(d) The signature is that of an individual who is not 18 years of age at the time the paper is signed. An individual who will not be 18 years of age until the subject election is not eligible to sign a nomination paper for that election.

(e) The signature is that of an individual who has been adjudicated not to be a qualified elector on the grounds of incompetency or limited competency as provided in s. 6.03 (3), Stats., or is that of an individual who was not, for any other reason, a qualified elector at the time of signing the nomination paper.

(16) After a nomination paper has been filed, no signature may be added or removed. After a nomination paper has been signed, but before it has been filed, a signature may be removed by the circulator. The death of a signer after a nomination paper has been signed does not invalidate the signature.

(17) This section is promulgated pursuant to the direction of s. 8.07, Stats., and is to be used by election officials in determining the validity of all nomination papers and the signatures on those papers.

History: Emerg. cr. 8-9-74; cr. Register, November, 1974, No. 227, eff. 12-1-74; emerg. r. and recr. eff. 12-16-81; emerg. r. and recr. eff. 6-1-84; cr. Register, November, 1984, No. 347, eff. 12-1-84; r. and recr. Register, January, 1994, No. 457, eff. 2-1-94; CR 00-153: am. (2), (4), and (14), r. (15), renum. (16), (17), and (18) to bc (15), (16) and (17), and am. (15) (b) as renum., Register September 2001 No. 549, eff. 10-1-01; correction in (7) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

**EL 2.07 Challenges to nomination papers.** (1) The elections commission shall review any verified complaint concerning the sufficiency of nomination papers of a candidate for state office that is filed with the elections commission under ss. 5.05 and 5.06, Stats.; and the local filing officer shall review any verified complaint concerning the sufficiency of nomination papers of a candidate for local office that is filed with the local fil-



ing officer under s. 8.07, Stats. The filing officer shall apply the standards in s. EL 2.05 to determine the sufficiency of nomination papers, including consulting extrinsic sources of evidence under s. EL 2.05 (3).

(2) (a) Any challenge to the sufficiency of a nomination paper shall be made by verified complaint, filed with the appropriate filing officer. The complainant shall file both an original and a copy of the challenge at the time of filing the complaint. Notwithstanding any other provision of this chapter, the failure of the complainant to provide the filing officer with a copy of the challenge complaint will not invalidate the challenge complaint. The filing officer shall make arrangements to have a copy of the challenge delivered to the challenged candidate within 24 hours of the filing of the challenge complaint. The filing officer may impose a fee for the cost of photocopying the challenge and for the cost of delivery of the challenge to the respondent. The form of the complaint and its filing shall comply with the requirements of ch. EL 20. Any challenge to the sufficiency of a nomination paper shall be filed within 3 calendar days after the filing deadline for the challenged nomination papers. The challenge shall be established by affidavit, or other supporting evidence, demonstrating a failure to comply with statutory or other legal requirements.

(b) The response to a challenge to nomination papers shall be filed, by the candidate challenged, within 3 calendar days of the filing of the challenge and shall be verified. After the deadline for filing a response to a challenge, but not later than the date for certifying candidates to the ballot, the elections commission or the local filing officer shall decide the challenge with or without a hearing.

(3) (a) The burden is on the challenger to establish any insufficiency. If the challenger establishes that the information on the nomination paper is insufficient, the burden is on the challenged candidate to establish its sufficiency. The invalidity or disqualification of one or more signatures on a nomination paper shall not affect the validity of any other signatures on that paper.

(b) If a challenger establishes that an elector signed the nomination papers of a candidate more than once or signed the nomination papers of more than one candidate for the same office, the 2nd and subsequent signatures may not be counted. The burden of proving that the second and subsequent signatures are that of the same person and are invalid is on the challenger.

(c) If a challenger establishes that the date of a signature, or the address of the signer, is not valid, the signature may not be counted.

(d) Challengers are not limited to the categories set forth in pars. (a) and (b).

(4) The filing officer shall examine any evidence offered by the parties when reviewing a complaint challenging the sufficiency of the nomination papers of a candidate for state or local office. The burden of proof applicable to establishing or rebutting a challenge is clear and convincing evidence.

(5) Where it is alleged that the signer or circulator of a nomination paper does not reside in the district in which the candidate being nominated seeks office, the challenger may attempt to establish the geographical location of an address indicated on a

nomination paper, by providing district maps, or by providing a statement from a postmaster or other public official.

History: Emerg. cr. 8-9-74; cr. Register, November, 1974, No. 227, eff. 12-1-74; emerg. r. and recr. eff. 12-16-81; emerg. r. and recr. eff. 6-1-84; cr. Register, November, 1984, No. 347, eff. 12-1-84; emerg. am. (1), (4) to (6), eff. 6-1-86; am. (1), (4) to (6), Register, November, 1986, No. 371, eff. 12-1-86; r. and recr. Register, January, 1994, No. 457, eff. 2-1-94; CR 00-153: am. (2) (a) and (b), Register September 2001 No. 549, eff. 10-1-01; reprinted to restore dropped copy in (2) (b), Register December 2001 No. 552; correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register April 2008 No. 628; correction in (1), (2) (b) made under s. 13.92 (4) (b) 6., Stats., and correction in (1), (2) (a) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

**EL 2.09 Treatment and sufficiency of election petitions.** (1) Except as expressly provided herein, the standards established in s. EL 2.05 for determining the treatment and sufficiency of nomination papers are incorporated by reference into, and are made a part of, this section.

(2) In order to be timely filed, all petitions required to comply with s. 8.40, Stats., and required by statute or other law to be filed by a time certain, shall be in the physical possession of the filing officer not later than the time set by that statute or other law.

(3) All petitions shall contain at least the number of signatures, from the election district in which the petition was circulated, equal to the minimum required by the statute or other law establishing the right to petition.

(4) Only one signature per person for the same petition, is valid.

(5) This section applies to all petitions which are required to comply with s. 8.40, Stats., including recall petitions, and to any other petition whose filing would require a governing body to call a referendum election.

History: Cr. Register, January, 1994, No. 457, eff. 2-1-94; correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

**EL 2.11 Challenges to election petitions.** (1) Except as expressly provided herein, the standards established in s. EL 2.07 for determining challenges to the sufficiency of nomination papers apply equally to determining challenges to the sufficiency of petitions required to comply with s. 8.40, Stats., including recall petitions, and to any other petition whose filing requires a governing body to call a referendum election.

(2) (a) Any challenge to the sufficiency of a petition required to comply with s. 8.40, Stats., shall be made by verified complaint filed with the appropriate filing officer. The form of the complaint, the filing of the complaint and the legal sufficiency of the complaint shall comply with the requirements of ch. EL 20; the procedure for resolving the complaint, including filing deadlines, shall be governed by this section and not by ch. EL 20.

(b) The complaint challenging a petition shall be in the physical possession of the filing officer within the time set by the statute or other law governing the petition being challenged or, if no time limit is specifically provided by statute or other law, within 10 days after the day that the petition is filed.

(3) The response to a challenge to a petition shall be filed within the time set by the statute or other law governing that petition or, if no time limit is specifically provided by statute or other law, within 5 days of the filing of the challenge to that petition. After the deadline for filing a response to a challenge, the filing officer shall decide the challenge with or without a hearing.

History: Cr. Register, January, 1994, No. 457, eff. 2-1-94; correction in (1), (2) (a) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.



## INSTRUCTIONS FOR PREPARING NOMINATION PAPERS FOR NONPARTISAN OFFICE

This is a sample nomination paper form. It conforms to the statutory requirements for nomination papers for nonpartisan office. All information concerning the candidate must be completed in full before circulating this form to obtain signatures of electors. All information concerning the signing electors and the circulator must be completed in full before filing with the appropriate filing officer. This form may be reproduced in any way. A candidate's picture and biographical data may also be added to this form. The Government Accountability Board has determined that no disclaimer or other attribution statement is required on nomination papers. Candidates are advised to send a sample of their completed form the filing officer for review before circulation.

**Page Numbers** - Number each page consecutively, beginning with "1", before submitting to the filing officer. A space for page numbers has been provided in the lower right-hand corner of the form.

**Candidate's Name** - Insert the candidate's name. A candidate may use his or her full legal name, or any combination of first name, middle name, and initials or nickname with last name. The Government Accountability Board has determined that, absent any evidence of an attempt to manipulate the electoral process, candidates are permitted to choose any form of their name, including nicknames, by which they want to appear on the ballot.

No titles are permitted. In addition, names such as "Red" or "Skip" are permitted, but names which have an apparent electoral purpose or benefit, such as "Lower taxes," "None of the above" or "Lower Spending" are not permitted. It is also not permissible to add nicknames in quotes or parentheses between first and last names. For example, John "Jack" Jones or John (Jack) Jones are not acceptable, but John Jones, Jack Jones or John Jack Jones are acceptable.

**Candidate's Residence** - If a candidate's municipality of residence is different from the municipality used for mailing purposes, both must be given. Indicate if the municipality of residence is a town, village, or city.

**Date of Election** - Insert the date of the election. If the nomination paper is being circulated for a spring election, the date is the first Tuesday in April. If the election is a special nonpartisan election, the date of the special election must be listed.

**Title of Office** - The name of the office must be listed along with any branch, district, or seat number that clearly identifies the office the candidate is seeking. If necessary, the name of the jurisdiction that identifies the office, such as Dane County Circuit Court Judge, Branch 3, must also be listed.

**Name of Jurisdiction** - The nomination papers must also indicate the municipality or jurisdiction in which the signing electors are qualified to vote, as it relates to the office sought by the candidate named on the nomination paper. For example, for a statewide office the jurisdiction is the State of Wisconsin. Others may be the county, town, village, city, aldermanic district, school district, or town sanitary district, as required.

**Signatures and Printed Name of Electors** - Only qualified electors of the jurisdiction or the district the candidate seeks to represent may sign the nomination papers. Each signer must also legibly print their name. Each elector's municipality of residence must be listed on the nomination paper along with the mailing address, including any street, fire or rural route number, box number (if rural route) and street or road name. The Street & Number or Rural Route section for each elector's address is split into two lines. The first line is for the street address. The second line is for the municipality for mailing purposes. The Municipality of Residence listed for each signing elector must clearly identify the town, village or city where the elector's voting residence is located. A post office box number alone does not show where the elector actually resides. The date the elector signed the nomination paper, including month, day and year, must be indicated. Ditto marks that follow correct and complete address or date information are acceptable. The circulator may add any missing or illegible address or date information before the papers are filed with the filing officer.

**Signature of Circulator** - The circulator should carefully read the language of the *Certification of Circulator*. THE CIRCULATOR MUST PERSONALLY PRESENT THE NOMINATION PAPER TO EACH SIGNER. THE NOMINATION PAPER MAY NOT BE LEFT UNATTENDED ON COUNTERS OR POSTED ON BULLETIN BOARDS. The circulator's complete address (including municipality of residence) must be listed in the certification. After obtaining signatures of electors, the circulator must sign and date the certification.

**Other Instructions** - Candidates and circulators should review Ch. GAB §§ 2.05, 2.07, Wis. Adm. Code.

- **Original nomination papers** must be in the physical custody of the appropriate filing officer by the filing deadline. A postmark on the filing deadline is not sufficient. Nomination papers cannot be faxed to the filing officer. Ch. GAB § 6.04(2), Wis. Adm. Code.
- Nomination papers with the required number of signatures must be filed with the appropriate filing officer no later than 5:00 p.m. on the first Tuesday in January (or the next day if the first Tuesday is a holiday) before the spring election. Special elections may have different filing deadlines. Check with the filing officer.
- In order for a candidate's name to be placed on the ballot, a candidate must file a *Campaign Registration Statement* (GAB-1), a *Declaration of Candidacy* (GAB-162), and *Nomination Papers* (GAB-169) containing the appropriate number of signatures for the office sought no later than the filing deadline. Wis. Stat. § 8.10(3). Candidates for state office and municipal judge must also file a statement of economic interests with the Government Accountability Board by the third business day after the nomination paper filing deadline. Wis. Stat. § 19.43. If any one of these required forms is not filed by the deadline, the candidate's name will not be placed on the ballot. Wis. Stat. § 8.30.
- If a candidate or circulator has any questions, he or she should contact the filing officer.

# NOMINATION PAPER CHALLENGES

March 2016



**Wisconsin Government  
Accountability Board**  
P.O. Box 7984  
Madison, WI 53707-7984

Phone: (608) 261-2028  
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E-mail: [gab@wi.gov](mailto:gab@wi.gov)  
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## INTRODUCTION

Parties wishing to challenge nomination papers of state and federal candidates file such challenges with the Government Accountability Board (G.A.B.). Parties wishing to appeal a decision of a local election official regarding nomination papers or challenges related to local candidates may also file a complaint with the G.A.B. In either case, parties are reminded that the Board may, if it finds, by a preponderance of the evidence, that a challenge or complaint is frivolous, order the complainant to forfeit up to the greater of \$500 or the expenses incurred by the G.A.B. in investigating the complaint.

The requirements and standards related to nomination papers and challenges to nomination papers are governed generally by Ch. 8, Wis. Stats, and GAB Ch. 2, Wis. Admn. Code. Pursuant to Wis. Admn. Code GAB §2.05(5), “where a required item of information on a nomination paper is incomplete, the filing officer shall accept the information as complete if there has been substantial compliance with the law.” Furthermore, any information on a nomination paper is entitled to a presumption of validity. Wis. Admn. Code GAB § 2.05(4). Both challenges and responses must be verified (notarized) and may include supporting documentation. The burden is on the challenger to establish, by clear and convincing evidence, any insufficiency of the nomination papers and if the challenger does so, the burden then shifts to the challenged candidate to establish that the nomination papers or any challenged signatures are sufficient. Wis. Admn. Code GAB §§ 2.07(2) and (3).

Over the years, G.A.B. staff and the Board have analyzed numerous types of challenges and developed a consistent methodology for resolving the most common challenges that have been filed. This document should hopefully help candidates and political parties concentrate their efforts on challenges with a supportable legal basis, and reduce the filing of frivolous challenges or those involving legal issues which have been well settled.

While challenges are not limited to those described in the administrative rules, there are two general categories of challenges – challenges to the header of the nomination papers or the circulator information which may result in declaring all signatures contained on that page of the nomination papers to be invalid, and challenges to individual signatures which do not affect the validity of other signatures on the nomination papers.

***Please Note:*** This document summarizes previous decisions of the State Elections Board and the Government Accountability Board related to the most common challenges to nomination papers and other election petitions. It is intended to itemize and consolidate previous decisions which state and local filing officers may rely on as precedents regarding the general legal questions and principles involved. However, the facts of individual circumstances and challenges vary, and the application of these principles will be determined on a case by case basis.

*This Manual will be revised periodically to incorporate additional common issues which arise and are addressed by the G.A.B.*



requirement that the circulator indicate the type of municipality of residence. The Board has approved these recommendations.

Challenge: The circulator's address, required by Wis. Stat. §§ 8.10(3), 8.15(4)(a), is insufficient because the circulator has not indicated the municipality of residence.

Analysis: Staff has recommended finding substantial compliance for papers missing the municipality in the circulator's address where the circulator is the candidate and where the missing information is supplied by reference to other information on the same page (e.g., the candidate's address in the nomination paper heading). Staff has typically struck signatures on pages in which the circulator was someone other than the candidate, and the certification of circulator did not include the circulator's municipality. Staff has determined that the circulator's 'residence' should include the name of their municipality for it to substantially comply with the statutory requirement. The Board has previously approved these recommendations.

#### **b. Circulator Date and Signature**

Challenge: The date of certification is incomplete or incorrect, as required by Wis. Stat. §§ 8.10(3), 8.15(4)(a).

Analysis: The circulator may correct errors in the certificate of the circulator, such as the circulator failed to sign or otherwise complete the certificate, or entered inadvertently erroneous data (for instance: the circulator dated the certificate before circulation, not after). If the circulator has not corrected these errors by affidavit by the correction deadline, the challenge must be approved and the signatures on those pages struck. The Board has approved staff recommendations to this effect.

### **3. Elector Signatures**

Only one signature per person for the same office is valid. In addition to his or her signature, in order for the signature to be valid, each signer of a nomination paper shall legibly print his or her name in a space provided next to his or her signature and shall list his or her municipality of residence for voting purposes, the street and number, if any, on which the signer resides, and the date of signing. Wis. Stat. §§ 8.10(4)(b), 8.15(2).

#### **a. Multiple Signatures**

Challenge: The elector has signed nomination papers for more than one candidate for the same office.

Analysis: Where the elector has signed another candidate's papers prior to the signature on the challenged papers, the later signatures should be struck. The Board has approved this recommendation.

#### **b. Signature**

Challenge: The elector has "signed" with a printed name.

Analysis: Staff has allowed signatures where the name has been printed. Wis. Admn. Code GAB § 2.05(8) requires that the elector "sign his or her own name;" the rule does not require that the

# NOMINATION PAPER CHALLENGES

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## Introduction

Parties wishing to challenge nomination papers of state and federal candidates file such challenges with the Wisconsin Elections Commission (WEC). Parties wishing to appeal a decision of a local election official regarding nomination papers or challenges related to local candidates may also file a complaint with the WEC. In either case, parties are reminded that the Board may, if it finds, by a preponderance of the evidence, that a challenge or complaint is frivolous, order the complainant to forfeit up to the greater of \$500 or the expenses incurred by the WEC in investigating the complaint.

The requirements and standards related to nomination papers and challenges to nomination papers are governed generally by Ch. 8, Wis. Stats, and EL Ch. 2, Wis. Admn. Code. Pursuant to Wis. Admn. Code EL §2.05(5), “where a required item of information on a nomination paper is incomplete, the filing officer shall accept the information as complete if there has been substantial compliance with the law.” Furthermore, any information on a nomination paper is entitled to a presumption of validity. Wis. Admn. Code EL § 2.05(4). Both challenges and responses must be verified (notarized) and may include supporting documentation. The burden is on the challenger to establish, by clear and convincing evidence, any insufficiency of the nomination papers and if the challenger does so, the burden then shifts to the challenged candidate to establish that the nomination papers or any challenged signatures are sufficient. Wis. Admn. Code EL §§ 2.07(2) and (3).

Over the years, WEC staff and its governing body have analyzed numerous types of challenges and developed a consistent methodology for resolving the most common challenges that have been filed. This document should hopefully help candidates and political parties concentrate their efforts on challenges with a supportable legal basis, and reduce the filing of frivolous challenges or those involving legal issues which have been well settled.

While challenges are not limited to those described in the administrative rules, there are two general categories of challenges – challenges to the header of the nomination papers which may result in declaring all signatures contained on nomination papers using that header to be invalid, and challenges to individual signatures which do not affect the validity of other signatures on the nomination papers.

***Please Note:*** This document summarizes previous decisions of the State Elections Board, the Government Accountability Board and the Wisconsin Elections Commission related to the most common challenges to nomination papers and other election petitions. It is intended to itemize and consolidate previous decisions which state and local filing officers may rely on as precedents regarding the general legal questions and principles involved. However, the facts of individual circumstances and challenges vary, and the application of these principles will be determined on a case by case basis.



## **2. Circulator Information**

### **a. Circulator Address**

Challenge: The circulator's address, required by Wis. Stat. §§ 8.10(3)(a) or 8.15(4)(a), is insufficient because the circulator has not indicated type of municipality of residence (e.g., "Town of" or "City of").

Analysis: Staff has recommended dismissing these challenges. Wis. Stat. §8.15(4)(a) (Wis. Stat. § 8.10(3) incorporates the standard in § 8.15(4)(a)) states in the relevant portion that "the certification of a qualified circulator stating his or her residence with street and number, if any, shall appear at the bottom of each nomination paper, stating he or she personally circulated the nomination paper and personally obtained each of the signatures." There is no separate requirement that the circulator indicate the type of municipality of residence. This recommendation has been approved in prior cases.

Challenge: The circulator's address, required by Wis. Stat. §§ 8.10(3), 8.15(4)(a), is insufficient because the circulator has not indicated the municipality of residence.

Analysis: Staff has recommended finding substantial compliance for papers missing the municipality in the circulator's address where the circulator is the candidate and where the missing information is supplied by reference to other information on the same page (e.g., the candidate's address in the nomination paper heading). Staff has typically struck signatures on pages in which the circulator was someone other than the candidate, and the certification of circulator did not include the circulator's municipality. Staff has determined that the circulator's 'residence' should include the name of their municipality for it to substantially comply with the statutory requirement. This recommendation has been approved in prior cases.

### **b. Circulator Date and Signature**

Challenge: The date of certification is incomplete or incorrect, as required by Wis. Stat. §§ 8.10(3), 8.15(4)(a).

Analysis: The circulator may correct errors in the certificate of the circulator, such as the circulator failed to sign or otherwise complete the certificate, or entered inadvertently erroneous data (for instance: the circulator dated the certificate before circulation, not after). If the circulator has not corrected these errors by affidavit by the correction deadline, the challenge must be approved and the signatures on those pages struck. Recommendations to this effect have been approved in prior cases.

## **3. Elector Signatures**

Only one signature per person for the same office is valid. In addition to his or her signature, in order for the signature to be valid, each signer of a nomination paper shall legibly print his or her name in a space provided next to his or her signature and shall list his or her municipality of residence for voting purposes, the street and number, if any, on which the signer resides, and the date of signing. Wis. Stat. §§ 8.10(4)(b), 8.15(2).



**e. Signature Date**

**Challenge:** The date of the elector's signature, as required by Wis. Stat. §§ 8.10(4)(a), 8.15(2), is incomplete or missing.

**Analysis:** Wis. Admn. Code EL § 2.05(15)(a) allows for a signature to survive an incomplete date challenge if "the date can be determined by reference to the dates of other signatures on the paper." In the past, the Board policy has required that signatures on the first and last line of a nomination paper contain the complete date information, and not allowed missing date information on those lines to be determined by reference to the dates of other signatures on the page. However, in the context of a court case challenging the Board's application of Wis. Admn. Code EL § 2.05(15)(a), the WI Department of Justice (DOJ) has advised that the Board's interpretation of that rule was too restrictive in that it required incomplete dates to be "bracketed" by complete dates. The DOJ recommended that the Board equally apply the principle of determining missing date information by reference to other information on the page, even if the incomplete date appeared on the first or last signature line. This recommendation has been approved in prior cases.

**Challenge:** The elector's signature is dated after the date of the circulator's certification.

**Analysis:** Staff has struck these signatures pursuant to the Commission's administrative rules that provide that a signature may not be counted if it is dated after the date of the certificate of the circulator. Wis. Admn. Code EL § 2.05(15)(b).