

## SUPREME COURT RECOUNT PLAN

### Introduction:

This document shall be used for the statewide recount of the Office of Wisconsin Supreme Court Justice for the April 5, 2011 Spring Election. This Supreme Court Recount Plan supplements and clarifies certain items of the Government Accountability Board's manual entitled Election Recount Procedures, dated September 2008 (revised May 20, 2009). The Election Recount Procedures manual as supplemented by this Supreme Court Recount Plan shall govern the statewide recount. Where the Supreme Court Recount Plan conflicts with the Election Recount Procedures manual, the Supreme Court Recount Plan controls. The procedures set forth in the Election Recount Procedures manual as modified by the Supreme Court Recount Plan shall assist with ensuring a uniform recount process statewide.

**Please note that pages 5 and 8 of this Recount Plan contain changes resulting from the Board's teleconference with County Clerks on April 25, 2011. The current version of this Plan is dated April 26, 2011, and the new sections are marked with an “\*”.**

## **RULES FOR OBSERVERS**

Boards of Canvassers shall implement rules for observers as follows:

1. Pursuant to s. 9.01 (1) (b) 11., Stats., the recount of any election shall be open to any interested member of the public including candidates and their counsel.
2. Observers and candidates' representatives and assistants shall conform their conduct to the following requirements and the Boards of Canvassers shall exercise its authority to regulate conduct of observers and candidates' representatives and assistants.
  - A. The Boards of Canvassers may limit observers to a designated area. If there is not room for all observers to view the ballots as they are being counted, visual preference shall be given to the candidates or their representatives.
  - B. If any observer engages in any loud, boisterous, or otherwise disruptive behavior that, in the opinion of a Board of Canvassers, threatens the orderly conduct of the count, the Board of Canvassers shall issue a warning and, if the observer does not cease the offending conduct, order the observer's removal
  - C. Observers shall be permitted to use a video or still camera inside the recount location unless it is disruptive or interferes with the administration of the recount.
  - D. Questions and challenges shall be directed to the member of the Boards of Canvassers designated to receive questions and challenges or objections. Observers may not ask questions of the Boards of Canvassers. Only the designated representative of the candidates may ask questions of or make challenges or objections to the Boards of Canvassers. Candidates may designate serial representatives, but only one at any given time shall be designated to address the Boards of Canvassers.
  - E. Candidates' designated representatives may have assistants monitoring tabulators' activities. These assistants are permitted to ask clarifying questions regarding poll list reconciliation and may request that ballots are set aside for further review during the ballot sorting process. If the assistants desire to make a challenge or objection, the assistants shall

bring the matter to the attention of the candidates' respective designated representative that is permitted to ask questions of or make challenges or objections to the Boards of Canvassers.

F. All observers, candidates' representatives and assistants, and volunteers shall sign in before entering the recount room and out before leaving the recount room. Representatives of the candidates and their assistants, as well as the media, shall wear distinguishing name tags.

G. Observers should refrain from engaging in excess conversation or making noise that is distracting to the Boards of Canvassers or tabulators. Excess conversation and noise that is determined by the Boards of Canvassers to be distracting to the process shall result in first a warning to the offender(s) and if another violation occurs, ejection from the recount room.

H. As recount room size dictates, Boards of Canvassers may reasonably and fairly limit the number of observers present.

3. The following items CANNOT be carried into the recount room:
  - Purses
  - Briefcases
  - Coats
  - Pencils or Pens with Black or Blue Ink
4. The Boards of Canvassers and Tabulators are the ONLY people authorized to touch the ballots and elections materials in ANY way.
5. Coffee, water, and other drinks may be in the recount room, but shall NOT be allowed to sit on tables in the ballot counting area or the vicinity of any election or recount materials.
6. Food items in the recount room are allowed, but must not be noisy, shall be disposed of properly, and in no circumstances may food items go beyond the boundary line marked on the recount room floor.
7. Anyone creating a disturbance, failing to follow the above rules, or failing to follow other rules as established by a Board of Canvassers, shall first receive a warning and if another violation occurs, shall be ejected from the recount room.

## RECOUNT PROCESS

- I. The G.A.B. manual entitled Election Recount Procedures, dated September 2008 (revised May 20, 2009), and this Supreme Court Recount Plan shall be present in the recount room. The Election Procedures Manual as modified by this Supreme Court Recount Plan shall be the only recount manual and plan used as a references for the statewide recount. Where the Supreme Court Recount Plan conflicts with the Election Recount Procedures manual, the Supreme Court Recount Plan controls.

Boards of Canvassers and candidates' representatives shall provide notice to and consult with the G.A.B. regarding any significant procedural concerns or objections throughout the recount process. Any telephone calls or emails to the Government Accountability Board Help Desk shall be routed to the recount team.

- II. Recount Checklists—Supplies and Materials, Tabulating Equipment and DRE Ballots
  - A. Prior to convening the recount, the County Clerk or designee shall ensure that sufficient supplies and materials are available. See “General Checklist of Supplies and Materials Needed for the Recount,” Election Recount Procedures, Appendix Page 7. See attached.
  - B. Prior to recounting a reporting unit, the County Clerk or designee shall ensure that all the election materials are present and offer a verbal report to the Boards of Canvassers. See “Election Materials from Each Reporting Unit,” Election Recount Procedures, Appendix Page 7. See attached.
  - C. By stipulation of the candidates, the Dane County Circuit Court has ordered that any reporting unit having ballots tabulated on Optech Eagles on Election Day shall have those ballots hand counted in the recount.
  - D. Pursuant to §§5.90 and 9.01(1)(b)6., Wis. Stats., all other reporting units having ballots tabulated on automatic tabulating equipment on Election Day shall have those ballots counted on similar automatic tabulating equipment in the recount, excluding those ballots set aside for further review and determination of voter intent by the Boards of Canvassers. This requirement applies regardless of the number of votes tabulated by the automatic tabulating equipment on Election Day. In addition, this

- E. All tabulating equipment shall be programmed to read and tally only the race for the Office of the Wisconsin Supreme Court Justice.
  - F. For any reporting unit having used Direct Record Electronic (DRE) voting equipment on Election Day, the Boards of Canvassers or designee shall separate individual voter records by cutting the paper record to facilitate the recount of the individual ballots, while at the same time preserving the confidentiality of the individual electors' votes. One vendor has recommended caution and noted the following:
    - 1. Be certain that only the OFFICIAL results tape is used. Cutting additional ballots from a TEST election paper trail will be very confusing.
    - 2. The voter record or paper trail must be cut in such a way as to preserve the integrity of the original ballot. Things such as "voided" ballots or paper roll changes will have to be taken into consideration.
- \* As an alternate method, the Boards of Canvassers may retain the voter verified paper record in its original format. Canvass Board Members shall take all appropriate precautions to ensure confidentiality of individual electors' votes. This includes limiting access to the poll list at the time of reconciliation of the ballots to prevent identification of individual votes. Additionally, after the recount proceedings are complete, if any open record requests are made to view the voter verified paper trail, the paper record shall be copied and individual electors' votes shall be separated by cutting the copied record.

### III. Election Materials for Each Reporting Unit

- A. The County Clerk or designee shall bring the election materials to the recount room.
- B. The County Clerk or designee shall distribute the forms to be used by the tabulators.
- C. The County Clerk or designee shall reset the voting equipment, as necessary.
- D. The Board of Canvassers or designee shall announce the reporting unit being counted.

- E. The Board of Canvassers or designee shall inspect the ballot containers and verify that the tamper evident serial number on ballot container matches the seal number written on the Inspectors' Statement (GAB 104)/Seal Documentation Record and Ballot Container Certification (GAB 101).
  - F. The Board of Canvassers or designee shall open the ballot containers.
  - G. The Board of Canvassers or designee shall remove all election materials and ballots.
  - H. The Board of Canvassers or designee shall provide the poll lists and ballots to the tabulators.
- IV. Simultaneous Review, Poll List Reconciliation, Hand Count Procedure, and Record Keeping

- A. Recount Checklists (actual steps for recounting votes) for reporting units having hand counted paper ballots, optical scan voting equipment, or direct recording electronic (DRE)/touch screen voting equipment are found in the Election Recount Procedures at Appendix Pages 8-10. See attached. These Recount Checklists identify the process of conducting the recount and shall be followed, except as specifically modified herein. A checklist identifying each municipality, reporting unit, and date of completion shall be completed by the Board of Canvassers or designee for each reporting unit and attached to the recount minutes.

Regardless of the method of tabulation, the first 10 steps of each of the Recount Checklists are identical and are to be conducted simultaneously, using tabulators as necessary.

- B. Comparing and reconciling poll lists shall be conducted in public during the recount and in the following fashion:
  - 1. Two teams of people shall take the duplicate poll lists for each reporting unit and count the number of voters and the number of absentee voters for each letter of the alphabet, recording those numbers and then tallying it and comparing the sum to the last voter number assigned.
  - 2. The two teams shall compare the results, correcting any errors made in counting or addition and noting any discrepancies between the two lists as well as the resolution of them.
  - 3. In addition, the two teams shall identify and compare any notations

on the poll lists, such as “assisted,” or “challenged,” “provisional,” and note any discrepancies between the two lists as well as the resolution of them.

4. The two teams shall then choose three random pages and compare them to ensure they are the same, noting any discrepancies and the resolution of them.
5. The two teams shall sign their reconciliation sheets identifying the total number of voters, discrepancies and resolutions, and present them to the Canvass Board for approval.

C. Hand Count Procedure

For any reporting unit that was hand counted on Election Day and any reporting unit having been tabulated on the Optech Eagle on Election Day, the following procedures shall apply:

1. Ballots shall be divided between two teams of tabulators. As ballots are sorted to determine the number of ballots, each team of tabulators will sort the ballots into stacks of 25 by candidate and write-in.
2. Upon completing the review of the ballots, the teams shall switch stacks and confirm the accuracy of the first count.
3. Candidates’ designated representatives or assistants may request that tabulators set aside ballots for further review and determination of voter intent by the Boards of Canvassers.
4. The Boards of Canvassers shall count the numbers of stacks of ballots for each candidate and tally the totals. The Boards of Canvassers shall then review the ballots set aside for further review and determination of voter intent and tally those votes for each candidate after making the determination of voter intent.
5. Unless a write-in vote is determined to be a vote for a candidate and tallied as such, all other write-in votes shall be tallied together as an aggregate scattering.
6. The Boards of Canvassers shall record the results on duplicate tally sheets (GAB 105). The Boards of Canvassers shall enter a numerical number (i.e. Kloppenburg 125, Prosser 125, write-in

scattering 25) for vote totals from the stacks of ballots for each candidate on the tally sheet. The Boards of Canvassers shall separately tally the votes for ballots set aside for further review and determination of voter intent, i.e. hash marks. These tally sheets shall be clearly labeled that they are for the recount. The recount vote totals shall be recorded in the minutes.

D. Record Keeping

1. Detailed recount minutes must be maintained throughout the recount process, from the time it convenes to the time it ends.
2. Documentation of the use of substitute ballots shall be specifically recorded in the recount minutes.
3. All objections or other concerns made by the candidates' representatives must be recorded in the recount minutes, including summaries of arguments by the candidates' representatives and the final disposition by the Canvass Board.
4. Notices to and consultations with the G.A.B. shall be recorded in the recount minutes.
5. The Canvass Board or designee shall clearly mark any exhibit and adequately identify the exhibit by number and brief description in the recount minutes.
- \*6. The County Clerk or designee shall provide an email communication at the end of each day listing the reporting units completed that day and a tally of the votes received for each candidate and the scattering votes which were counted that day. The email communication shall be in the format provided by the Government Accountability Board.
- \*7. Upon completion of recount for all reporting units within the county, the County Clerk or designee shall amend the election results in the Canvass Reporting System.
8. The recount minutes shall be delivered to the Government Accountability Board promptly upon completion of the recount, with copies provided to the candidates' representatives.