

WISCONSIN ELECTIONS COMMISSION

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MEMORANDUM

DATE: November 2, 2016

TO: Wisconsin County Clerks
Wisconsin Municipal Clerks
Milwaukee County Election Commission
City of Milwaukee Election Commission

FROM: Michael Haas
Administrator

Ross Hein
Elections Supervisor

SUBJECT: Spoiling Absentee Ballots Guidance

WEC staff has been receiving numerous calls and emails asking for clarification on absentee voters changing their mind and requesting to spoil their ballot. It is likely you have or will receive questions from your voters as this topic has been recently discussed by candidates and the media. It may be that the interest in the option is much greater than actual cases of absentee ballots that are spoiled. Absentee voters can request to spoil their absentee ballot and have another ballot issued as long as the appropriate deadline to request an absentee ballot has not passed. Once that deadline has passed, a returned absentee ballot cannot be changed and the voter cannot be issued another ballot on Election Day.

Staff recently issued a [press release](#) to the media and conveyed the following points about spoiling ballots:

- After a voter has been issued an absentee ballot at the clerk's office or by mail, they can request to spoil that ballot and receive a new one in the event the voter makes a mistake or changes their mind. Voters have until the absentee ballot request deadlines to spoil their absentee ballot.
- After a voter has been issued a ballot at the polling place, they can request to spoil their ballot as long as the ballot has not been cast, and receive a new one.
- A voter, whether voting by absentee ballot in the clerk's office or by mail, or at the polling place, can receive up to three ballots (the first two are spoiled). This has been the law in Wisconsin for many years.

- When voting by mail, spoiling a ballot requires contacting the clerk's office and requesting a new ballot. Whether or not the ballot has been returned to the clerk, the deadline to do this is Thursday, November 3.
- Voters may also go to the clerk's office and make the request for a new ballot in person. The deadline to request a new absentee ballot is the last day the clerk offers in-person absentee voting. For most clerks that is Friday, November 4, but voters should contact their municipal clerk for scheduled hours.
- **Absentee voters cannot spoil their ballot at their polling place on Election Day.** [2011 Wisconsin Act 227](#) changed the law and that option is no longer permitted. If an absentee ballot has been returned to the clerk, or is in the mail, a voter cannot spoil their returned ballot at the polling place and request a new one.

There appears to be some confusion about whether voters that have returned an absentee ballot and request to spoil that ballot on Election Day can obtain a new ballot. State law prohibits voters who return an absentee ballot from receiving and voting a new ballot at the polling place on Election Day. Absentee voters that have not returned an absentee ballot (whether the original ballot or a re-issued ballot) to the clerk may have the opportunity to be issued a ballot on Election Day.

Care should be taken in relying only on the poll book to determine whether an absentee ballot has been issued or re-issued. If the poll book is printed prior to receiving a valid request to spoil a ballot, the information will not appear on the poll book. Since the absentee ballot log should be printed only after the completion of absentee voting, the log should be consulted to determine whether a voter's ballot has been returned. If so, the voter may not spoil the ballot and receive another one. (If the voter insists that the log is incorrect, the inspector should attempt to confirm with the municipal clerk whether the ballot was spoiled by the deadline.)

If the absentee log indicates that an absentee ballot has been issued but has not been returned, election inspectors should ask the voter whether they returned (placed their absentee ballot in the mail) or personally delivered the absentee ballot. If the voter says yes, the voter is prohibited from spoiling that ballot on Election Day. If the voter says no, they can be issued a ballot and vote at the polling place. See page 94 of the [Election Day Manual](#) for further guidance and a helpful flow chart regarding this process.

In short, the deadline for most voters to change their mind and spoil an absentee ballot will be the end of this week unless your office will be holding in-person absentee hours over the weekend.

Legal Citations

Wis. Stat. § 6.80(2)(c) states that "An elector who by accident or mistake, spoils or erroneously prepares a ballot may receive another, by returning the defective ballot, but not to exceed 3 ballots in all." This law has always applied to absentee voters as well as voters on Election Day, but there has been more attention regarding this option over the last couple of weeks.

Wis. Stat. § 6.86(5) directs clerks to issue a new ballot to voters who return a damaged or spoiled ballot and specifies that any request for a replacement ballot must be made within the applicable time limits to request an absentee ballot.

Wis. Stat. § 6.86(6) states that “An elector who mails or personally delivers an absentee ballot to the municipal clerk is not permitted to vote in person at the same election on election day.”

Please contact the WEC Help Desk at (608) 261-2028 or elections@wi.gov if you have any questions.