

WISCONSIN ELECTIONS COMMISSION

212 EAST WASHINGTON AVENUE, 3RD FLOOR
POST OFFICE BOX 7984
MADISON, WI 53707-7984
(608) 261-2028
ELECTIONS@WI.GOV
ELECTIONS.WI.GOV

ADMINISTRATOR MICHAEL HAAS



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MEMORANDUM

TO: Challengers to Nomination papers and other Interested Parties
2017 Special Elections – Assembly Districts 58 and 66, Senate District 10

FROM: Nathan W. Judnic
Wisconsin Elections Commission
Legal Counsel

DATE: November 21, 2017

SUBJECT: Filing Challenges to Nomination Papers

This memorandum provides information to persons who are considering filing a challenge to the nomination papers of a candidate whose papers are required to be filed with the Wisconsin Elections Commission.

All challenges to nomination papers filed with the Wisconsin Elections Commission for the 2017 Special Elections for Assembly Districts 58 and 66 and Senate District 10 will be considered and determined by the Commission at a special meeting held the week of November 27, 2017. Details for the meeting will be provided once they are finalized.

Challengers should familiarize themselves with the requirements of Wisconsin Statutes Chapter 8, the statutory chapter governing nomination papers and nominations. In addition, administrative rules further explain requirements of nomination papers and the challenge procedure, which can be found in the Wisconsin Administrative Code EL §§ 2.05 - 2.07 and EL ch. 20. Wis. Adm. Code EL §§ 2.05 - 2.07 are the rules governing the treatment and sufficiency of nomination papers and challenges to nomination papers and EL ch. 20 is the rule setting forth the procedures for handling complaints filed with the Commission.

Wis. Adm. Code EL § 2.05 sets forth the standards for determining whether nomination papers comply with Wis. Stat. ch.8 and Wis. Adm. Code EL § 2.07 sets forth the bases for challenges to those nomination papers. Both Wis. Adm. Code EL §§ 2.05 and 2.07 are rules attempting to interpret and clarify statutes; they are not statutes themselves. Because Wis. Adm. Code EL § 2.05(4) provides that "[a]ny information on a nomination paper is entitled to a presumption of validity," any challenge to that information bears the burden of rebutting that presumption.

Complaints challenging nomination papers are filed by complying with Wis. Adm. Code EL § 2.07(2)(a) of the Wisconsin Administrative Code, which reads as follows:

*(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.*

All challenges to nomination papers must be in the form of a verified complaint. Any challenge which is not in the form of a verified complaint will not be considered by the Commission and will be returned to the complainant by the Commission's staff. A verified complaint is a complaint that the complainant swears, under oath, is true based on the personal knowledge or information and belief of the complainant. The oath must be sworn to before a notary or other person authorized to administer oaths.

Complaints may be filed in person or electronically (preferred) by emailing the verified complaint to elections@wisconsin.gov. All challenges must be received by the Commission by 4:30 p.m. on November 24, 2017.

Nomination paper challenge complaints should also follow the methodology provided below:

All challenges must refer to the nomination paper page number as shown on the nomination papers filed with the Wisconsin Elections Commission for each nomination paper, any part of which is challenged. If a nomination paper page does not have a page number, contact the Commission's staff to establish a number for that page. *(For instance: John Smith. Page 1 or Tom Jones Pages 3-12 and 15-23, etc.)*

To be considered by the Commission, a complaint/challenge must establish probable cause to believe that a violation of election law has occurred. The "probable cause" requirement means that a complaint must allege facts, which, if true, would constitute a violation of Wisconsin's elections (not campaign finance) statutes. In the case of challenges to nomination papers, the complaint must allege a violation of Wis. Stats. ch.8, the statutory chapter governing nominations for partisan offices.

According to Wis. Adm. Code EL §§ 2.05(4) and 2.07(3)(a): "Any information which appears on a nomination paper is entitled to a presumption of validity," and "[t]he 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."

New grounds for a challenge which are not raised in an initial complaint, and which are not raised until after the deadline for filing a challenge, will not be considered by the Commission. Grounds which are alleged in a timely-filed complaint but which are based on information and sworn statements to be provided after the deadline for filing challenges to nomination papers also will not be considered.

Challengers should be aware that signatures which have been questioned and not counted by the Commission's staff may be the subject of "rehabilitation." Rehabilitation means that the candidate may have subsequently corrected the deficiency and thereby added the "rehabilitated" signature(s) to the candidate's total number of qualifying signatures. Consequently, challengers cannot rely on staff disqualification of signatures as a final determination and must raise any challenges to such signatures in the same time period in which all other challenges are required to be raised.

Challengers should also be aware that nomination paper challenges are political activity and may not be researched and/or prepared by State employees on State time.

If you have any questions about the challenge process, please contact the Commission staff at (608) 261-2028.