



# Wisconsin Elections Commission

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August 12, 2024

Ann Sloane  
W761 Whitmore Rd.  
Park Falls, WI 54552

Crystal Cowling  
Town of Fifield Clerk  
P.O. Box 241  
Fifield, WI 54524

Sent via email to: [annmariesloane@gmail.com](mailto:annmariesloane@gmail.com); [rledonne@staffordlaw.com](mailto:rledonne@staffordlaw.com); [dpoland@staffordlaw.com](mailto:dpoland@staffordlaw.com); [sgoettsche@staffordlaw.com](mailto:sgoettsche@staffordlaw.com); [fifield@tn.fifield.wi.gov](mailto:fifield@tn.fifield.wi.gov)

**Re: In the Matter of Ann Sloane v. Crystal Cowling (Case No. EL 24–74)**

Dear Ms. Sloane and Clerk Cowling:

This letter is in response to the verified complaint submitted by Ann Sloane (Complainant) to the Wisconsin Elections Commission (Commission), which was filed to challenge actions taken by Town of Fifield Clerk Crystal Cowling (Respondent). The complaint pertains to alleged abuse of discretion regarding a recall petition and challenge that was submitted against the Complainant and which was found sufficient by the Respondent.

The Commission has reviewed the complaint and response. The Commission provides the following analysis and decision. In short, the Commission finds that the Complainant did not show probable cause to believe that a violation of law or abuse of discretion occurred.

## Commission Authority and Role in Resolving Complaints Filed Under Wis. Stat. § 5.06

Under Wis. Stats. §§ 5.05(1)(e) and 5.06(6), the Commission is provided with the inherent, general, and specific authority to consider the submissions of the parties to a complaint and to issue findings. In instances where no material facts appear to be in dispute, the Commission may summarily issue a decision and provide that decision to the affected parties. This letter serves as the Commission’s final decision regarding the issues raised in this complaint.

The Commission’s role in resolving verified complaints filed under Wis. Stat. § 5.06, which challenge the decisions or actions of local election officials, is to determine whether a local official acted contrary to applicable election laws or abused their discretion in administering applicable election laws.

Complaints “. . . shall set forth such facts as are within the knowledge of the complainant to show probable cause to believe that a violation of law or abuse of discretion has occurred or will occur.” Wis. Stat. § 5.06(1). Probable cause is defined in Wis. Admin. Code § EL 20.02(4) to mean “the facts and reasonable inferences that together are sufficient to justify a reasonable, prudent person, acting with caution, to believe that the matter asserted is probably true.”

*Wisconsin Elections Commissioners*

Ann S. Jacobs, chair | Marge Bostelmann | Don M. Millis | Carrie Riepl | Robert Spindell | Mark L. Thomsen

*Administrator*  
Meagan Wolfe

### Complaint Allegations

On July 26, 2024, the Complainant filed a sworn complaint with the Commission pursuant to Wis. Stat. § 5.06, alleging that the Respondent did not properly follow Wis. Stats. §§ 11.0901(1) and 9.10(2)(b) and (d), and Wis. Admin. Code §§ ETH 6.02(1), EL 20.03(1) and (5), EL 2.11(1) and (2), and EL 2.07(2) concerning a finding of sufficiency for a recall petition after administering an associated challenge. The Complainant alleges that she received a certificate of sufficiency concerning the recall petition filed against her on July 18, and that she believes “the process has been mishandled and the sufficiency of the petition is in question.”

The Complainant alleges that the petition should have been deemed insufficient due to a “materially false representation” on the CF-1 campaign finance registration form, and states that the reason for the recall is “fatally vague and does not meet the requirements of Wisconsin Statutes.” Regarding the reason for the recall, the Complainant alleges that:

After reviewing board minutes and my personnel file, there are no official or unofficial statements to support any unethical or abuse of power behavior. To that end, for a second time, the petitioners failed to identify any specific actions related to the responsibilities of my position to justify the recall. Anyone who signed the petition, as well as myself, would be guessing or relying on verbal statements from the MFGA/David Ebert recall committee.

The Complainant also alleges that the response was not verified and included an amended registration statement that was not timely submitted, as well as alleging that the initial registration statement for the petition was improperly submitted. The Complainant alleges that the Respondent finding the petition sufficient after the Respondent’s written statement that the challenge filings were “equally persuasive” was a denial of due process, and that the Respondent has not justified finding the petition sufficient.

The complaint includes and refers multiple times to the challenge filings that were submitted to and considered by the Respondent and appears to rely on those filings for support. Therefore, this decision letter will summarize those filings as well.

First, the challenge to the petition cites Wis. Admin. Code § ETH 6.02 and argues that the petition is invalid because the MFGA/David Ebert recall committee registered a CF-1 form with the Ethics Commission that checked the box in section C3. for “oppose” instead of “support.” The challenge calls this a “materially false representation” and argues that because “the registration statement was falsely certified” the registration of the committee was invalid. The argument continues by stating that because the initial registration was invalid and because Wis. Stat. § 9.10(2)(d) prohibits the circulation of a recall petition before registration, that the signatures on the petition are also invalid.

Second, the challenge cites Wis. Stat. § 9.10(2)(b), which states that the petition must contain a “statement of the reason for the recall which is related to the official responsibilities of the official,” and argues that the statement on the petition fails to meet this standard. The challenge alleges that:

[t]he petition merely says that the petitioner has lost confidence in Town Supervisor Sloane’s ability to perform her duties, citing “[u]nethical behavior and abuse of power,” but provides no further detail. Indeed, neither the petition nor the Town itself have ever presented Town Supervisor Sloane with a list of her official responsibilities, let alone a list of any alleged official shortcomings. Thus, casually and vaguely alleging unethical behavior and abuse of power is simply inadequate under the express terms of the statute.

The challenge argues that the requirement concerning the statement for the reason for the recall that was added in 1990 narrowed the purposes that could drive a recall to protect local officials from “personal, family, or discriminatory reasons” and argues that merely alleging “unethical behavior and abuse of power without more specificity and without explaining which official responsibilities are at issue” is insufficient. The challenge also alleges that the Complainant was denied due process by the Respondent allowing the recall petition to proceed.

The petitioner’s rebuttal argues that the challenge did not challenge the recall petition but rather the registration statement and argues that such a challenge does not relate to any insufficiency of the petition itself. The rebuttal cites Wis. Admin. Code § ETH 6.02(2) and argues that a registration statement that is “substantially compliant” may be accepted, and that the officer shall notify the filer of the issue and allow 15 days to address it. The rebuttal alleges that the recall committee did not have a treasurer and did not and will not “solicit, hold, or disburse any funds.” The rebuttal alleges that the original CF-1 form was corrected. The rebuttal also alleges that the instruction form for the CF-1 does not provide definitions for the meaning of “support” and “oppose,” which “leaves their meaning open to subjective interpretation.” The rebuttal also argues that box C3 is not “used in any way to support or oppose the overall recall effort,” but rather to form the recall committee. The rebuttal states that the C3 box can be interpreted to mean that the filer opposes the officeholder or that the filer opposes the recall effort and alleges that the recall committee checked oppose to show opposition to the candidate being recalled. The rebuttal also alleges that the CF-1 was “submitted with the Intent to Circulate form.” The rebuttal alleges that the committee submitted an amended form with the “support” box checked.

The rebuttal also addresses the reason statement. The rebuttal alleges that the town found the statement sufficient when the registration statement was submitted, and that the Respondent, Deputy Clerk Kleinschmidt, and County Clerk Gottwald confirmed that finding. The rebuttal also argues that the form itself does not provide sufficient space to “enumerate the particulars” of the reason. The rebuttal alleges, though does not describe, that there are documented instances of unethical behavior and abuse of power, and that “the reasons are not vague for the majority of those involved in circulating the petition.” The rebuttal also alleges that “it is not the recall committee’s responsibility to provide a town official with a list of their duties” and alleges that the town did provide the Complainant with a town officer handbook.

The challenge reply alleges that the rebuttal was not verified under Wis. Admin. Code § EL 2.11. It reiterates the allegation that the registration was insufficient and highlights the argument that Wis. Stat. § 9.10(2)(d) requires a registration before any signatures can be collected on the petition. The reply argues that the rebuttal admits that the registration was incorrect and that the committee was informed that the CF-1 should have had the “support” box checked instead of the “oppose” box. The reply also reiterates the argument that the statement of the reason for the recall was insufficient, and states that the rebuttal does not “identify any specific alleged official failings” and alleges that the handbook described in the rebuttal does not identify specific duties. The reply also argues that the time to challenge any aspect of the petition or recall process is during the challenge period, and that any initial approval of the petition can be challenged at that time.

### Response

On August 2, 2024, the Respondent submitted her response. The Respondent alleges that a registration statement was not filed along with the intent to initiate a recall document, and that the Petitioner filed the registration statement after being contacted. The respondent alleges that she reviewed the challenge filings and the two arguments contained in the challenge, and that she “found all filings to be equally persuasive.” She alleges that 139 signatures were required to initiate a recall for that office, and that 196 gross and 187 valid signatures were submitted. The response states that “with the number of signatures and the error being corrected, it was sufficient

to certify a recall election.” The Respondent also states that she does not “know those involved in this matter on a personal level” and that she has “remained objective throughout this process.”

### Reply

The reply argues that the response fails address the legal grounds raised in the complaint, and that the statement about the challenge filings being “equally persuasive” is “both unsupported and erroneous.” The reply reiterates the allegation that the petition should be rejected because the registration was invalid because the CF-1 had the “oppose” box checked instead of the “support” box. Because the committee registered went on to circulate and support a recall petition, the reply argues that the “oppose” selection was a “materially false representation.” The reply also reiterates the argument that the challenge rebuttal was not verified and should have been rejected. The reply alleges that Respondent’s statement that the rebuttal allowed the petitioner to correct any errors was incorrect, because an error regarding registration would need to be corrected before any signatures are collected. The reply reiterates the argument that the reason provided for the recall on the petition was “fatally vague.” The reply argues that the Respondent allowing “the recall to proceed without adequate notice of the reasons underlying the recall petition, thus requiring Petitioner Sloane to stand for election to the office she currently holds, deprived Complainant Sloane of due process of law.”

The reply also includes a new argument that was not mentioned in any other filing. The reply alleges that four signatures on page 9 are invalid, stating that lines 1 through 4 were altered from 4 (April) to 5 (May) without being initialed. The reply alleges that either the electors signed in April, which would be too early to be counted, or the circulator corrected the incorrect date written by the electors.

### Discussion

First, the complaint and original challenge argue that any signatures collected before a proper registration are invalid and that this registration was invalid. It is correct that registration must occur before signatures are collected. The complaint cites Wis. Stat. § 9.10(2)(d), which states that:

No petition may be offered for filing for the recall of an officer unless the petitioner first files a registration statement under s. 11.0902 with the filing officer with whom the petition is filed. The petitioner shall append to the registration a statement indicating his or her intent to circulate a recall petition, the name of the officer for whom recall is sought and, in the case of a petition for the recall of a city, village, town, town sanitary district, or school district officer, a statement of a reason for the recall which is related to the official responsibilities of the official for whom removal is sought. No petitioner may circulate a petition for the recall of an officer prior to completing registration. The last date that a petition for the recall of an officer may be offered for filing is 5 p.m. on the 60th day commencing after registration. After the recall petition has been offered for filing, no name may be added or removed. No signature may be counted unless the date of the signature is within the period provided in this paragraph.

This section makes clear that the failure to register would invalidate any signatures collected on a petition. Further, the opportunity to allege a failure to register is during the challenge period. A challenge may be brought under Wis. Stat. § 9.10(2)(e)2. that signatures were collected outside of the circulation period, and because the circulation period is 60 days after registration, the failure to register would mean a failure to begin the circulation period. Therefore, signatures could be struck in a challenge if the burden was met by showing that registration did not take place.

The Commission finds that the registration did take place. Regarding the argument that initial recall registration statement was invalid, the complaint and challenge cite Wis. Admin. Code § ETH 6.02(1), which states in relevant part:

Any registration filed with a filing officer under ss. . . . 11.0901, 11.0902, and 11.0903, [concerning recall committees] Stats., which is insufficient as to essential form, information or attestation shall be rejected by such officer and shall be promptly returned if possible to the proposed registrant indicating the nature of the insufficiency. The proposed registrant shall be informed that the attempted registration is not effective.

The Elections Commission does not administer, and cannot enforce, Wis. Admin. Code § ETH 6.02(1). Whether or not the Respondent should have returned the CF-1 form to the Petitioner under Wis. Admin. Code § ETH 6.02(1) or accepted the form and informed the Petitioner of a need to rectify the problem under Wis. Admin. Code § ETH 6.02(2) is a question for the Ethics Commission and not the Elections Commission. The only question for the Elections Commission under its statutes and rules is whether a registration statement under Wis. Stat. § 11.0902, which is linked by cross-reference to Wis. Stat. § 11.0903, was filed with the filing officer and whether a statement of intent was filed along with the CF-1. A statement of intent was not provided in any of the complaint filings, which included the challenge, the complaint and challenge do not appear to allege that it was missing, and the rebuttal alleges that it was provided, and thus the Commission will not address that aspect of the registration.

The Petitioner provided the Respondent with a completed CF-1 form that shows the committee name, the name of a credit union, and the treasurer, and describes that the official subject to recall is Ann Sloane. In context, it is clear that the registration was intended to support the recall election against Ann Sloane, as would have been identified on the Intent to Circulate form. On its face, the best reading of the CF-1 would appear to be that “oppose” in box C.3 means oppose the recall election, but it would also be possible to read that box as supporting or opposing the official. The Commission also notes that “support” or “oppose” does not appear to be a required piece of information under Wis. Stat. § 11.0903. It also does not appear that this recall committee would be required to submit any reports under Wis. Stat. § 11.0904, which is where the language about support or oppose appear to originate, because the Committee, as alleged, has not accepted or spent any money.

The Commission does not make any determination concerning whether this committee was required to register with the Ethics Commission in addition to the local filing officer or whether the form itself complies with campaign finance laws and rules administered by the Ethics Commission. The Elections Commission finds only that the form complies with the requirements of Wis. Stat. § 9.10(2)(d) by proving the information required by Wis. Stat. § 11.0902(1), and, by cross reference, Wis. Stat. § 11.0903, neither of which list “support” or “oppose” as a required element. The Commission, assuming that an Intent to Circulate was filed at the same time, finds that the Respondent did not abuse her discretion in accepting the original CF-1 form, which is the only form at issue regarding registration. Had the form been insufficient, the error could not have been corrected during a rebuttal because the registration must be complete before signatures can be collected.

Second, the complaint and challenge argue that the statement for the reason for the recall was insufficient, and cite Wis. Stat. § 9.10(2)(b), which states that:

A recall petition for a city, village, town, town sanitary district, or school district office shall contain a statement of a reason for the recall which is related to the official responsibilities of the official for whom removal is sought.

Regarding the reason for the recall, while it is true the requirement that the reason be “related to the official responsibilities” was added and narrowed the ability to initiate a recall, other requirements were removed that significantly broadened the ability to initiate a recall. Prior to the amendment discussed in the challenge, Wis. Stat. § 9.10(2)(b) (1987–88) stated that a local recall petition “shall contain the grounds which constitute the cause and the cause upon which removal is sought.” Cause was defined in Wis. Stat. § 17.16(2) (1987–88) as “inefficiency, neglect of duty, official misconduct or malfeasance in office.” Further, instead of a local official making the final determination of sufficiency, under the old statutory structure, the circuit court for the county had to determine whether or not the petition stated cause for the recall, but the court could not determine the truth or falsity of the grounds. Now, the petition need only state a reason, which is not further defined, the circuit court does not review a petition, and there is not a statute requiring the local filing officer to make an affirmative finding related to that reason. Now, the *only* requirement is that the reason be “related to the official responsibilities of the official.”

This requirement divides into two elements. First, each petition page needs to contain “a statement of the reason for the recall.” Second, that reason must be related to the official responsibilities of the official. The first element is clearly met. The requirement is not to state cause or a reason with specificity or even a good reason but simply to state “a reason.” The petition states a “loss of confidence in Ann Sloane’s ability to perform her duties as Fifield Town Supervisor, including unethical behavior and abuse of power.” While this statement is vague, it is nonetheless a reason.

Merriam-Webster’s online dictionary defines “reason” as “a statement offered in explanation or justification,” “a rational ground or motive,” “the thing that makes some fact intelligible,” and “a sufficient ground of explanation or of logical defense.”<sup>1</sup> The statement given meets these definitions. The statement is straightforwardly offered as the explanation, justification and motive for the petition, and it makes intelligible the petitioner’s interest in seeking the recall. The statement is not a logical defense, but it is a ground of explanation for the recall. As for sufficiency, that corresponds to the second element.

The relationship between the reason given for the recall and the official responsibilities of the office is vague. However, the reasons are, on the face of the petition still “related” to the official responsibilities. The statute does not require specificity, but only a relationship between the reason and the official responsibilities of the office. The petition states, without a clear subject for the sentence, a “loss of confidence in Ann Sloane’s ability to perform her duties as Fifield Town Supervisor, including unethical behavior and abuse of power.” The statement does not relate to any “personal, family, or discriminatory” reasons, but rather to town supervisor duties. Any government official needs to be able to perform the duties of her office and needs to behave ethically and not abuse the power of the office. These reasons, though vague, relate to government offices generally. A clerk’s duty to review the petition does not extend to making a determination on the truth or falsity of the statement. However, the statement does raise the vague questions of whether or not the Complainant is able to perform her duties, and whether she is performing them ethically or abusing the powers conferred by the office. The Commission finds that the Respondent did not abuse her discretion in finding the petition containing this statement to be sufficient.

Whether the petitioner or the town presented the Complainant with a list of her official responsibilities is not required or relevant. The duties of a town supervisor are largely statutory, though each town will have unique governing responsibilities. In any case, a supervisor will know her own job duties, and residents may have their own ideas about how those duties ought to be carried out. Apparently, the petitioner found other residents who agreed with the petitioner’s perception. The Commission makes no determination regarding the truth of the

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<sup>1</sup> Reason, MERRIAM-WEBSTER.COM, <https://www.merriam-webster.com/dictionary/reason> (last visited August 12, 2024).

claims. They are indeed vague, but local residents may evaluate the claims and decide for themselves whether or not to sign the petition on that basis.

The due process argument raised in the complaint and challenge is not well developed, but the Commission will briefly address it. The challenge was not a criminal proceeding or even a disciplinary adjudicative proceeding and the truth or falsity of the claims against the Complainant were not at issue in the proceeding. It was an administrative process to determine whether or not a recall election would be held, at which the incumbent would automatically be a candidate. In this case, the Complainant received the opportunity to challenge the petition and did challenge it. The outcome of that process as determined by the Respondent was not what the Complainant sought, but that does not mean due process was denied. In the record, the Complainant was afforded the same process to challenge a recall petition that any incumbent should receive under Wis. Stat. § 9.10(4)(a). The Commission does not find a due process issue in the challenge process, and it would be unable to order a more thorough process than that defined in Wis. Stat. § 9.10(4)(a).

The Respondent's finding of sufficiency states that: "[a]fter reviewing the challenge, the rebuttal, and the reply, all being equally persuasive, the Clerk find the petition to be sufficient." The Complainant takes issue with the "equally persuasive" language. The Commission agrees that this statement could be clearer and address the particulars discussed in the challenge filings. However, the Commission does not find an abuse of discretion or a violation of Wis. Stat. § (4)(a). The Commission recommends that the Respondent discuss at least the clear and convincing evidence standard provided in Wis. Admin. Code § 2.07(4) as it relates to the allegations raised in any future challenge. While a local filing officer is required to state the particulars creating any insufficiency under Wis. Stat. § 9.10(4)(a), the filing officer is merely required state a determination of sufficiency in a certificate attached to the petition. That statement was included in this complaint and is sufficient.

The complaint also alleges that the challenge rebuttal should have been rejected for being unsworn. The Commission is in the process of promulgating administrative rules to update and clarify Wis. Admin. Code Chapter EL 2. However, it does not appear that Wis. Admin. Code § EL 2.11(3) requires a rebuttal to be verified, and the reply is not addressed at all in that section. Wis. Admin. Code § EL 2.11(1) applies to the standards established in EL 2.07 for the filing officer's review of the challenge rather than the filing standards. The filing standards for the challenge itself are linked to Wis. Admin. Code Chapter EL 20 by Wis. Admin. Code § EL 2.11(2)(a), but the response is not addressed in that section. Finally, Wis. Admin. Code § EL 2.11(3) expressly addresses responses and merely links it to the governing statute and does not state that the response be verified. This stands opposed to the express statement in Wis. Admin. Code § EL 2.07 that "[t]he 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." Each response procedure is addressed in its own section and contains different requirements. It is not clear why the State Elections Board, which was a predecessor of the Commission, did not require the response, which must be taken to mean the rebuttal in this context, to be verified, but it is clear that it individually listed the requirements for this type of response, and did not require it to be verified. Thus, the Commission cannot find that the Respondent abused her discretion in accepting the response as an unsworn document.

Finally, the reply alleges that the Respondent should have struck 4 additional signatures beyond the 9 she allegedly struck during her review. These challenges do not appear to have been submitted during the challenge process, and are thus not timely. In any case, the Commission finds that the Respondent properly applied the presumption of validity under Wis. Admin. Code § EL 2.05(4). The Complainant could have challenged those signatures with an affidavit showing that the signatures were gathered outside the circulation period, but without a challenge supported by clear and convincing evidence, the clerk properly determined that the signatures were facially valid.

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Commission Decision

Based upon the above review and analysis, the Commission does not find probable cause that the Respondent violated the cited statutes or rules or abused her discretion in finding the recall petition sufficient.

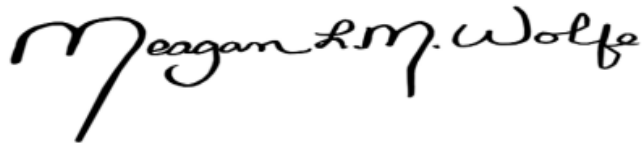
Right to Appeal – Circuit Court

This letter constitutes the Commission's resolution of this complaint. Wis. Stat. § 5.06(2). Pursuant to Wis. Stat. § 5.06(8), any aggrieved party may appeal this decision to circuit court no later than 30 days after the issuance of this decision.

If any of the parties should have questions about this letter or the Commission's decision, please feel free to contact me.

Sincerely,

**WISCONSIN ELECTIONS COMMISSION**

A handwritten signature in black ink that reads "Meagan Wolfe". The signature is written in a cursive style with a large initial "M".

Meagan Wolfe  
Administrator

cc: Commission Members