



Wisconsin Elections Commission

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March 3, 2023

Scott Beatty
N3056 Shore Dr.
Marinette, WI 54143

Denise Wiedemeier
W2435 Old Peshtigo Rd.
Marinette, WI 54143-9444

Sent via email: beattysr63@gmail.com and topclerk@townofpeshtigo.org

Re: Scott Beatty v. Denise Wiedemeier (EL 23–06)

Dear Mr. Beatty and Clerk Wiedemeier,

This decision letter is in response to the verified Complaint submitted by Scott Beatty (Complainant) to the Wisconsin Elections Commission (Commission), which was filed in reply to actions taken by an election official during a nomination paper challenge. The Complaint alleges that the Town of Peshtigo Clerk, Denise Wiedemeier (Respondent), erred by dismissing the Complainant’s nomination paper challenge against Cindy Baur (Candidate).

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.”

The Commission has reviewed the Complaint, Response, Reply, and all supporting documentation. The Commission provides the following analysis and decision. In short, the Commission has determined that while the Complainant has not shown probable cause that his nomination paper challenge was improperly dismissed, he has shown errors in the Respondent’s processes for reviewing nomination papers and challenges to nomination papers, which warrant an order by the Commission to update these processes for future nomination papers and challenges.

Summary of Complaint, Response, and Reply

The Complainant alleges that he filed a nomination paper challenge against Cindy Baur’s nomination papers with the Respondent on Friday, January 26, 2023, and that the Respondent “witnessed my signature, signed the document and stamped received.” The challenge alleged that three pages of signatures on the Candidate’s nomination papers included signatures that were dated after the date of the circulator’s signature, making them invalid under Wis. Admin. Code

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EL §§ 2.05(14) and 2.05(15)(b). After receiving a response to the challenge on January 9, the Respondent then dismissed the challenge on January 12, stating that the challenge was not notarized or sworn, and further that she herself did not administer an oath for the challenge.

The Complainant states that “it is my understanding and belief that there is no Oath to be given upon the signature but rather the statement therein is the intended Oath and Clerk Wiedemeier’s task was to sign the document asserting that she witnessed my signature on that date thereby declaring the stated Oath” and further that “it is evident by Clerk Wiedemeier’s signature on the filed Nomination Paper Challenge with the stamped date of January 6, 2023 . . . that she was in receipt of the paperwork on that date even if, unbeknownst to me, she signed on the incorrect line and did not indicate her Official Title as directed.” The Complainant also alleges that the Respondent and the Candidate are friends leading him to “question if that misstep was intentional.”

The supporting documents provided with the Complaint will be examined in detail below in the Commission Findings section.

The Response alleges that “I, (Denise Wiedemeier) did not administer an Oath. I stamped it ‘received’ and signed as is our policy in our office,” also explaining that, prior to January 1, 2023, she was the deputy clerk. The Respondent also denied that any personal relationship with the candidate affected her actions.

In the reply, the Complainant reaffirms his arguments that that his challenge should not have been dismissed and that he correctly identified invalid signatures on the Candidate’s nomination papers. He also states that “[i]f there was indeed an oath that Clerk Wiedemeier should have given me at the time of witnessing my signature I do not believe that to be my responsibility to guide her on how to properly do her job.”

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

Under Wis. Stat. §§ 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 by Scott Beatty’s 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.

Commission Findings

The Commission will first examine the relevant documents provided with the filings before addressing the merits of the Complaint.

Supporting evidence provided with the Complaint shows that the Complainant signed the nomination paper challenge under a sentence stating that “I, Scott Reed Beatty, being first duly sworn on oath state that I personally read the above complaint, and that the above allegations are true based on my personal knowledge and, as to those stated on information and belief, I believe them to be true.” Below that signature, the section provided for a notary was not filled out, but the line stating “other official” was checked and signed by Denise Wiedemeier. There is also a date stamp on the document that says:

RECEIVED
JAN 06 2023
TOWN OF PESHTIGO

Other supporting documents are Candidate Baur’s Declaration of Candidacy, which appears to have also been signed by the Respondent but in this case, the lines listing a county and stating the date the document was “subscribed and sworn” were filled out, and the line the Respondent signed said underneath “signature of person authorized to administer oaths” and the box for “other official” was checked and “Top Deputy Clerk” was written on the line. Another Declaration of Candidacy filed by another candidate was also signed in the same manner by the Respondent. The Commission does not have any arguments related to Declarations of Candidacy before it to decide, and is merely noting the different ways in which the same notarial certificates were filled out on different documents.

The question before the Commission is whether the Respondent improperly dismissed the Complainant’s nomination paper challenge. The Commission must find that there is not probable cause to believe that this nomination paper challenge was improperly dismissed.

The Complainant’s original challenge was not in the form of a “verified complaint” as required by Wis. Admin. Code § EL 2.07(1) & (2)(a). Both the Respondent and the Complainant agree that no oath was administered, and that the Respondent only signed the document and stamped it received. The Complaint alleges that the Respondent, “witnessed my signature, signed the document and stamped received.” It does not allege that anyone swore an oath regarding the document. The Respondent states that she, “did not administer an Oath. I stamped it “received” and signed as is our policy in our office.” The Complainant’s Reply then adds, “[i]f there was indeed an oath that Clerk Wiedemeier should have given me at the time of witnessing my signature I do not believe that to be my responsibility to guide her on how to properly do her job.” Thus, there is not an argument before the Commission that any oath was administered, and the original challenge document shows that the short form notarial certificate (Wis. Stat. § 140.16) was not completed.

Because the challenge was not properly verified as required by Wis. Admin. Code § EL 2.07(1) & (2)(a), the Commission must find that the dismissal of the challenge was not improper. However, given the nomination paper and challenge issues raised in this complaint, the Commission will also issue an order to the Respondent to conform her future conduct to what is required by Wis. Admin. Code EL 2.

First, challenges to nomination papers must be verified. The short form certificate for a notarial act found at the bottom of the challenge document at issue provides what is needed for a notary or other authorized official to verify a document. The Respondent stated that she “signed as is

our policy in our office.” Such a signature by a town clerk on a short form certificate intended for notarial acts is improper and likely to create confusion, as occurred in this case. The Commission orders the Respondent to change the policy of signing challenges in the space provided for notarial acts if no notarial act has been performed. Stamping the document received is clearly different from a notary stamp, but the Commission recommends stamping the top of the document to avoid any confusion with a notary stamp. Developing a written acknowledgement showing that a challenge was received could be one way to carry out this order.

The Commission also strongly recommends that a municipal clerk who receives a challenge complaint review the complaint to ensure it has been properly verified, and to let any challenger who has filed an unsworn document know that the challenge must be verified before it will be reviewed. Similarly, the Commission recommends that anyone filing a challenge complaint against nomination paper signatures should have the document notarized by a public notary before filing it with the municipal clerk.

Finally, the Commission will address part of the process of reviewing nomination papers under Wis. Admin. Code Chapter EL 2. Wis. Admin. Code § EL 2.05(3) requires local filing officers to review nomination papers for “facial sufficiency.” As relevant to this Complaint, Wis. Admin. Code § EL 2.05(14) states that “[n]o 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.” Wis. Admin. Code § EL 2.05(15)(b) further states that a signature on a nomination paper may not be counted when “[t]he signature is dated after the date of certification contained in the certificate of circulator.”

Under the initial facial sufficiency review required by Wis. Admin. Code § EL 2.05(3), the signatures circled in the unsworn challenge should have been flagged by the Respondent as facially invalid due to the date of the signature being dated after the date of certification contained in the certificate of circulator. The Commission orders the Respondent, regarding all future nomination papers received, to apply Wis. Admin. Code § EL 2.05(14) & (15)(b) during the initial facial review of the nomination papers. The Commission also strongly recommends attempting to contact candidates who have turned in a significant number of facially invalid signatures so that the candidate may attempt to address any correctable errors using a correcting affidavit.

In this case, the Respondent should have reviewed the nomination papers filed by the candidate either as they were filed or within several days (the papers were filed well in advance of the January 3 deadline) and attempted to notify the candidate (who was also the circulator) that date of the certificate of circulation is earlier than some of the signatures collected. The candidate then would have had roughly a week to supply a correcting affidavit under Wis. Admin. Code § EL 2.05(4) swearing that the signatures were collected in-person by the candidate/circulator on the dates shown. It is a common issue for a circulator to sign before instead of after witnessing electors sign the nomination papers. It is also generally a correctable issue as long as the circulator did in fact witness the signatures and is able to provide a correcting affidavit.

Altogether, this complaint shows a string of interconnected failures. The Candidate failed to properly certify her nomination papers. The Respondent failed to properly review the filed nomination papers for facial sufficiency, and thus failed also to notify a candidate of a generally

correctable issue. Finally, the Complainant failed to properly verify his challenge complaint against those signatures, though the Respondent's signature on the short form notarial certificate also contributed to this issue.

Because the original challenge complaint was not properly verified, the Commission resolves the question before it by finding that no probable cause was shown that the original challenge complaint was improperly dismissed. Due to the procedural issues raised in this complaint, the Commission has gone further and ordered the Respondent to ensure that the issues in reviewing nomination papers and reviewing challenges against nomination papers are addressed.

Commission Decision

Based upon the above review and analysis, the Commission does not find probable cause to believe that a violation of law or abuse of discretion has occurred with regard to the dismissal of Mr. Beatty's challenge to Cindy Baur's nomination papers, but does find probable cause that the nomination paper review and challenge period were not administered according to the governing statutes and rules. The Commission thus orders the Respondent to amend her procedures for reviewing nomination papers and administering challenges in a manner consistent with this decision letter.

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 have questions about this letter or the Commission's decision, please feel free to contact me.

Sincerely,

A handwritten signature in black ink that reads "Meagan Wolfe". The signature is written in a cursive, flowing style.

Meagan Wolfe
Wisconsin Elections Commission Administrator

cc: Commission Members