



# Wisconsin Elections Commission

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November 1, 2021

Jay Stone  
10501 82<sup>nd</sup> St.  
Pleasant Prairie, WI 53138

Wisconsin Elections Commission Respondents  
212 E. Washington Avenue, Third Floor  
Madison, WI 53707-7984

**Re: Complaint Filed with Wisconsin Elections Commission  
EL 21-41 (Jay Stone v. Nathan Judnic, et al.)**

Dear Complainant Stone:

I am in receipt of the complaint filed with the Wisconsin Elections Commission (“WEC” or “Commission”) against the Wisconsin Elections Commission and certain staff members, received on October 26, 2021. The administrative rules governing the WEC’s processing of complaints require that I review the complaint and determine whether it is sufficient as to form and states probable cause. Wis. Admin. Code § EL 20.04(1).

This writing serves as formal notice to the the complainant that I have determined the complaint is not sufficient as to form and fails to state probable cause. As such, I am returning the complaint to you without prejudice pursuant to Wis. Stat. § 5.06 and Wis. Admin. Code § EL 20.04(1) and (2).

Sufficiency as to Form

It is my intention to provide additional information, beyond what I would normally provide when dismissing a complaint, in hopes that it will provide necessary information to enable you to grasp the responsibilities that you have under statute as a complainant. What is more, these responsibilities have previously been explained to you by Attorney Judnic, yet you continue to file improper complaints that are also insufficient as to form. Those submissions regularly fail to allege a specific violation of Wisconsin Statute Chapters 5-10 and 12. Please consider the following:

- The most recent complaint filing (EL 21-41; “Complaint”) alleges that WEC staff attorneys investigating a complaint against their own supervisor is a conflict of interest. You are correct in that assertion, and in most situations it would be the proper course of action to avoid such a situation, as will be explained in more detail below. WEC staff attorneys have, on several occasions, recused themselves from complaints against the agency administrator or Commission members. The Wisconsin Department of Justice assesses such recusal requests and determines whether they will represent the Commission or authorize the use of independent counsel from a private law firm. This type of recusal is necessary under the Wisconsin Rules of Professional Conduct for Attorneys. I contacted the Wisconsin State Bar Association’s confidential ethics hotline to ensure I could ethically review this complaint against a coworker, while also discussing the actions taken leading up to this point. There is no conflict. Additionally, the Complaint’s arguments that Attorney Judnic improperly failed to recuse himself are based on flawed reasoning and the omission of key facts.
  - The Complaint’s allegations are based on your perception that Attorney Judnic improperly failed to recuse himself from your prior complaint against Administrator Wolfe filed on September 6, 2020 (“September Complaint”). Attorney Judnic would have recused himself,

*Wisconsin Elections Commissioners*

Ann S. Jacobs, chair | Marge Bostelmann | Julie M. Glancey | Dean Knudson | Robert Spindell | Mark L. Thomsen

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Administrator  
Meagan Wolfe

- in accordance with agency practice and ethical requirements, had the September Complaint been sufficient as to form and stated probable cause. The September Complaint, as well as the current Complaint, completely fail to allege a violation of Wisconsin Statute Chapters 5-10 and 12, nor are any potential statutory violations inherently decipherable from the allegations/facts. You have previously stated that you did raise a proper allegation of an election law violation (*e.g.* Wis. Stat. s. 5.06). Wisconsin Statute s. 5.06 is the procedural statute that details how a complaint is to be filed and considered. A complaint is not sufficient as to form and probable cause when it simply references Wis. Stat. s. 5.06. Rather, you must allege that a specific factual occurrence constitutes a violation of election laws, and then cite the provisions of law that you believe were violated, or at least present a fact set that clearly indicates which statutory provisions were alleged to have been broken (*e.g.* I believe John Doe violated Wis. Stat. s. 12.11 when he gave Jane Smith \$100 not to vote in the most recent election; I believe John Doe violated Wisconsin's laws against election bribery by providing money to a potential voter in exchange for that person not voting in the last election, etc.). The September Complaint, as well as the current Complaint, fail to make sufficient allegations under Wisconsin election statutes. They likely would not have been dismissed without further consideration had they followed proper protocols and been sufficiently clear. This is evidenced by the fact that you have filed other complaints subsequent to the September Complaint, and those filings are proceeding through the decision-making processes at the WEC without being dismissed based upon insufficiency or probable cause considerations.
- You have also alleged that you received disparate treatment, because other complaints which alleged the same or similar facts/violations were allowed to proceed. Those complaints were sufficient based upon an initial assessment of form and probable cause. The submissions then moved forward to the next stage of consideration for that reason. The September Complaint was insufficient in ways that those were not. There was no disparate treatment.
  - Please also consider that Wis. Stat. s. 5.05(1) states, "The elections commission shall have the responsibility for the administration of chs. 5 to 10 and 12 and other laws relating to elections and election campaigns, other than laws relating to campaign financing." Based upon this provision, and similar statutory requirements, the Commission is limited in its ability to consider complaints beyond the provisions of Chapter 5-10 and 12 of the Wisconsin Statutes. The Commission's ability to provide recourse is also limited by statute. Consider Wis. Stat. s. 5.06(1) which provides that the Commission may order that an official, "...be required to conform his or her conduct to the law, be restrained from taking any action inconsistent with the law or be required to correct any action or decision inconsistent with the law or any abuse of the discretion vested in him or her by law." This restricts the Commission's ability to provide recourse beyond administrative orders, statutory compliance orders, or certain other statutorily-authorized actions. That recourse is, again, limited to Chapters 5-10 and 12.
    - The Complaint is not only insufficient as to form or probable cause, but it also alleges legal/ethical violations and demands certain forms of relief that are beyond the statutory authority of the Commission to consider. As such, the Complaint is also insufficient based upon those considerations.
    - The Complaint is further insufficient in that it, and the immediately preceding complaint from which you argue Attorney Judnic failed to recuse himself, are both based upon an improper and non-statutory appeal process. Wisconsin Statute s. 5.06(8) states, "Any election official or complainant who is aggrieved by an order issued under sub. (6) may appeal the decision of the commission to circuit court for the county where the official conducts business or the complainant resides no later than 30 days after issuance of the order. Pendency of an appeal does not stay the effect of an order unless the court so orders." To resubmit the same complaint to the Commission again, or a substantially similar version of it, without resolving the deficiencies outlined in the Commission's correspondence is not the proper method of filing or appealing a complaint. The circuit court appellate rights provided in Wis. Stat. s. 5.06(8) are a complainant's

sole recourse related to the Commission's decisions, unless the complainant resubmits the complaint with factual or legal additions that remedy the deficiencies of form and/or probable cause.

- Please also consider that Wis. Stat. s. 757.19(2)(b) states, "Any judge shall disqualify himself or herself from any civil or criminal action or proceeding when one of the following situations occurs— When a judge is a party or a material witness, except that a judge need not disqualify himself or herself if the judge determines that any pleading purporting to make him or her a party is false, sham or frivolous."
  - Applying that same logic to an administrative adjudicator, decision maker, or analyst, a commissioner or attorney with delegated decision-making authority need not recuse themselves from a complaint process that is frivolous. As stated above, the refiled version of the September Complaint, and the subsequent allegations of bias, failure to recuse, malice, and animosity are completely unsupported by fact or supporting law. The Commission need not reconsider its previous decisions or further consider the Complaint. Despite repeated efforts to explain all of this to you, primarily by Attorney Judnic, you continually fail to conform your complaint activity to the law, and instead have now resorted to unsubstantiated and frivolous personal attacks/filings. The Commission need not address this further, and only provides the above analysis in an effort to, yet again, document staff efforts to try and inform you of legal responsibilities and complaint deficiencies.
- Please note that the members of the Commission are advised on all complaint activity, and they receive Wis. Stat. s. 5.06 complaint materials and replies in real time, even if certain components of the process are formally delegated to staff. As such, the Commissioners have been notified of each of your allegations, reviewed the Complaint materials, and were given the opportunity to consider this correspondence before it was sent. They will also receive a formal record of this message having been sent to you. These processes are not an arbitrary staff decision.

### Conclusion

I am returning the complaint, without prejudice pursuant to Wis. Admin. Code § EL 20.04(3), as it is not sufficient to form or probable cause. As required by that provision, I have specified the defects in the complaint. As to the information which would be appropriate to cure the defect, please review the analysis above and consider the guidance already offered by staff, including Attorney Judnic. Since the complaint is improper as to form and does not state probable cause as to a violation of law under the authority of the Commission to consider, the complaint has not been accepted as proper by the Commission under its administrative rules. Please note that the continued filing of frivolous claims, or the refiling of the same complaints without the substantiation required by law, may result in the Commission disregarding such frivolous claims or otherwise taking any lawful action necessary to prevent your continued disregard of Wis. Stat. Chapter 5.

The Commission now considers this matter closed.

Sincerely,



Jim Witecha  
Staff Attorney  
Wisconsin Elections Commission  
cc: Members, Wisconsin Elections Commission