



Wisconsin Elections Commission

212 East Washington Avenue | Third Floor | P.O. Box 7984 | Madison, WI 53707-7984
(608) 266-8005 | elections@wi.gov | elections.wi.gov

DATE: For the April 10, 2020 Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Meagan Wolfe, Administrator
Wisconsin Elections Commission

SUBJECT: Circulation of Nomination Papers – 2020 General Election

Commission staff is receiving questions about the fast approaching start date for the circulation of nomination papers by candidates looking to run for partisan office in the fall. There have been questions about whether any of the statutory processes or procedures will be changed or modified for the upcoming circulation period because of the current public health emergency related to COVID-19.

Statutory and Administrative Rule Framework, Commission Guidance

- “Nomination papers may be circulated no sooner than April 15 preceding the general election and may be filed no later than 5 p.m. on June 1 preceding the partisan primary, except as authorized in this subsection.” Wis. Stat. § 8.15(1).
- “Only one signature per person for the same office is valid. In order for the signature to be valid, each signer of a nomination paper shall legibly print his or her name in a space provided next to his or her signature and shall list his or her municipality of residence for voting purposes, the street and number, if any, on which the signer resides, and the date of signing.” Wis. Stat. § 8.15(2).
- “All signers on each separate nomination paper for all state offices, county offices, and the offices of U.S. senator and representative in congress shall reside in the jurisdiction or districts which the candidate named on the paper will represent, if elected.” Wis. Stat. § 8.15(3).
- “The certification of a qualified circulator stating his or her residence with street and number, if any, shall appear at the bottom of each nomination paper, stating he or she personally circulated the nomination paper and personally obtained each of the signatures; he or she knows they are electors of the ward, aldermanic district, municipality or county, as the nomination papers require; he or she knows they signed the paper with full knowledge of its content; he or she knows their respective residences given; he or she knows each signer signed on the date stated opposite his or her name; and, that he or she, the circulator, is a qualified elector of this state, or if not a qualified elector of this state, is a U.S. citizen age 18 or older who, if he or she were a resident of this state, would not be disqualified from voting under s. 6.03; that he or she intends to support the candidate; and that he or she is aware that falsifying the certification is punishable under s. 12.13 (3) (a). The circulator shall indicate the date that he or she makes the certification next to his or her signature.

Wisconsin Elections Commissioners

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Administrator
Meagan Wolfe

The certification may be made by the candidate or any qualified circulator.” Wis. Stat. § 8.15(4)(a).

- “Nomination papers shall be accompanied by a declaration of candidacy under s. 8.21. If a candidate for state or local office has not filed a registration statement under s. 11.0202 (1) (a) at the time he or she files nomination papers, the candidate shall file the statement with the papers. A candidate for state office shall also file a statement of economic interests with the ethics commission under s. 19.43 (4) no later than 4:30 p.m. on the 3rd day following the last day for filing nomination papers under sub. (1), or no later than 4:30 p.m. on the next business day after the last day whenever that candidate is granted an extension of time for filing nomination papers under sub. (1).” Wis. Stat. § 8.15(b).
- “Each nomination paper shall have substantially the following words printed at the top: I, the undersigned, request that the name of (insert candidate's last name plus first name, nickname or initial, and middle name, former legal surname, nickname or middle initial or initials if desired, but no other abbreviations or titles) residing at (insert candidate's street address) be placed on the ballot at the (general or special) election to be held on (date of election) as a candidate representing the (name of party) so that voters will have the opportunity to vote for (him or her) for the office of (name of office). I am eligible to vote in (name of jurisdiction or district in which candidate seeks office). I have not signed the nomination paper of any other candidate for the same office at this election.” Wis. Stat. § 8.15(5)(a).
- “Each candidate shall include his or her mailing address on the candidate's nomination papers.” Wis. Stat. § 8.15(5)(b).
- The number of required signatures on nomination papers shall be as follows:
 - Statewide offices – not less 2000, nor more than 4,000
 - Representative in Congress – not less 2000, nor more than 4,000
 - State Senator – not less than 400, nor more than 800
 - Representative to the Assembly – not less than 200 nor more than 400
 - District Attorney (county over 100,000 in population) – not less than 500, nor more than 1000
 - District Attorney (county less than 100,000 in population) – not less than 200, nor more than 400
 - County Offices (county over than 100,000 in population) – not less than 500, nor more than 1000
 - County Offices (county less than 100,000 in population) – not less than 200 nor more than 400

Wis. Stat. § 8.15(6)(a)-(e).

- A candidate may not run in more than one party’s primary at the same time. No filing official may accept nomination papers for the same person in the same election for more than one party. A

person who files nomination papers as the candidate of a recognized political party may not file nomination papers as an independent candidate for the same office at the same election. Wis. Stat. § 8.15(7)

- Nomination papers shall be filed: For state offices and the offices of U.S. senator and representative in congress, in the office of the commission. For county offices, in the office of the county clerk or board of election commissioners.

Wis. Stat. § 8.15(a) and (b).

The Commission’s Administrative Rules, [Chapter EL 2](#), provides the rules for treatment and sufficiency of nomination papers as well as the challenge procedures and standards for those papers. Among other nomination papers standards, Ch. EL 2 states that candidates have the obligation to circulate and file nomination papers that comply with all applicable statutes and rules, that nomination papers shall be presumed valid, and that substantial compliance with the rules is required for signatures to be counted. Additionally, [Chapter EL 6](#), which deals with Commission procedures for filing of certain documents states that nomination papers “may not be filed with the filing officer by facsimile or email process” and that nomination papers shall not be considered filed with the filing officer “until the signed original of each nomination paper” are received in the offices of the filing officer. Wis. Admin. Code Ch. § EL 6.04(2).

In addition to the statutory and administrative rule requirements, the Commission also provides a ballot access checklist for candidates and prescribes samples form, including the nomination paper form for partisan candidates, EL-168. <https://elections.wi.gov/candidates/state/partisan>

The Commission also publishes a “Determining Sufficiency of Nomination Papers” review guide and video for filing officials to use which is helpful for candidates to review to ensure the nomination papers they submit will be accepted as sufficient.
<https://elections.wi.gov/publications/video/NomPaperReviewGuidance>

Finally, the Commission publishes a Common Nomination Paper Challenge Manual that outlines common issues that appear on a candidate’s papers that are challenged, and how these have been ruled on in the past. Similar to the nomination sufficiency guidance document, this manual is helpful for candidates as they circulate and review nomination papers they have collected.
<https://elections.wi.gov/publications/manuals/common-nomination-paper-challenges>

Commission’s Statutory Authority

The Commission is an administrative agency, tasked with administering Chapters 5-10, 12, Wis. Stats. and other laws relating to elections and election campaigns. Wis. Stat. § 5.05(1). As the Commission has discussed in great depth recently in light of the COVID-19 public health emergency and the recently conducted election on April 7, the Commission does not have the authority to change provisions and requirements set forth in state statute.

Commission staff continues to receive questions from candidates on whether there are plans to modify the statutorily prescribed procedures for preparing, circulating and filing nomination papers for the fall election. Candidates are concerned for their own health, the health of their circulators and the health of the individuals signing the pages. Candidates are also concerned that due to the current health guidance on social distancing, door to door solicitation, hand hygiene, the use of face coverings for close contact and the overall reluctance of individuals to leave their homes just to sign a nomination paper, they will be unable to collect the required number of signatures to get on the ballot.

Commission staff believes that without legislative changes, an order of the Governor under his emergency powers to manage a health crisis or an order of a court, the Commission must enforce the nomination paper procedures contained in statute. For example, the request has been made by several candidates to “waive the nomination paper signature requirement” all together or “reduce the number of signatures required.” Those requirements are explicitly provided in Chapter 8 of the statutes.

Discussion

Single Signed and Circulated Nomination Papers: During the recall elections in 2011 and 2012, the former Government Accountability Board interpreted the circulator and signer provisions of Chapter 8, to allow for “single signed and circulated” petitions. Essentially, a person who wanted to sign a petition, or in this case a nomination paper, could download the form from a website or access it from email, complete the signature portion (signature, printed name, address, date), complete the circulator’s certification at the bottom and then mail or hand deliver the form to a representative that was organizing the effort. The WEC has not specifically addressed “single signed and circulated” petitions previously, but no laws related to this practice have changed and there have been no objections to this procedure previously, therefore Commission staff believes this could be used by candidates running for office in the fall. There is no doubt it takes much more effort and organization to obtain signatures using this process, but it would certainly limit the amount of in-person/face-to-face contact that normally occurs during the circulation of nomination papers.

Electronic Signatures

Commission staff has previously advised, based on its interpretation of Chapter 8 and Wis. Admin. Code Chs. 2 and 6 that only wet signatures from signers and circulators, obtained on paper nomination sheets were acceptable. See generally, Wis. Stat. § 8.15(2); Wis. Admin. Code § EL 2.05(2), (14); Wis. Admin. Code § EL 6.04(2).

The Commission could revisit the staff’s interpretation of these statutes and administrative code provisions to permit a signer to attach an electronic signature to a nomination paper to reduce the amount of in-person/face-to-face contact that normally occurs during the circulation of nomination papers. State law does recognize electronic versions of a signature on documents as a legal signature. Wis. Stat. § 137.15 states:

137.15 Legal recognition of electronic records, electronic signatures, and electronic contracts.

- (1) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.
- (2) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.
- (3) If a law requires a record to be in writing, an electronic record satisfies that requirement in that law.
- (4) If a law requires a signature, an electronic signature satisfies that requirement in that law.

Wis. Stat. § 137.11(8) defines an electronic signature:

- (8) “Electronic signature” means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

So, while the Commission could advise that a signature electronically applied to a nomination paper could be accepted as valid, staff still believes the administrative code requires the nomination paper that contains that signature to be filed with the filing officer as a hard copy original.

It is possible, that the “single signed and circulated” page could be accomplished more easily if the Commission allowed the individual to apply an electronic version of their signature to a page that they are downloading from a website. The electronic signature and circulator’s certification could be completed on the page and provided to the candidate to include with their original hard copy filing of their papers. However, staff believes the Commission should not permit electronic signatures of a circulator other than an individual signing as a circulator on their own “single signed and circulated” page. While the Statutes permit recognizing the validity of a circulator’s electronic signature, staff believes such a policy would undermine the requirement of the circulator’s certification and the presumed validity of the circulator’s signature.

Commission staff has also heard from some individuals that have recommended that the Commission develop a technology solution for candidates to collect and submit nomination papers through an online portal or other submission system. Commission staff believe this is not a project that could be designed, developed and completed prior to the start of nomination paper signatures being circulated on April 15. Additionally, the Commission currently requires nomination papers to be submitted by hard copy filing of the papers, and any shift in that policy would need to be discussed in greater detail before such a change was implemented.

Social Distancing, Health Guidance for Circulation of Papers

Commission staff believes much of the same health practices and guidance recently issued for conducting an in-person election and obtaining an absentee witness signature on an absentee ballot would apply to collecting signatures, including six feet of distance between a signer and the circulator, enforcing hand hygiene before and after signing, single use writing utensils and regular cleaning of materials used in the circulation process like clipboards.

Public Health Guidance for Elections COVID-19: <https://elections.wi.gov/node/6787>

Absentee Witness Signature Requirement Guidance COVID-19: <https://elections.wi.gov/node/6790>

Recommendations:

- 1) The Commission reaffirms that it does not have the statutory authority to change or modify current statutory procedures related to the circulation of nomination papers for the 2020 General Election.
- 2) In light of the COVID-19 public health emergency, the Commission reaffirms the use of “single signed and circulated” nomination papers to limit the amount of in-person/face-to-face contact that normally occurs during the circulation of nomination papers.
- 3) In light of the COVID-19 public health emergency, the Commission advises that individuals who apply an original electronic signature to a nomination paper have the same legal effect as a handwritten “wet” signatures and shall be counted if it otherwise meets all other legal requirements. Electronic signatures are not permitted for circulators other than for a signer executing a “single signed and circulated” nomination paper.