



# 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

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## MEMORANDUM

**TO:** All Candidates Subject to a Nomination Papers Challenge  
2020 General Election

**FROM:** Nathan W. Judnic, Attorney/Senior Election Specialist

**DATE:** June 1, 2020

**SUBJECT:** Response Procedures - Candidates Subject to Nomination Papers Challenge

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**This memorandum concerns candidates whose nomination papers have been challenged and discusses the procedure to be followed in responding to that challenge before the Wisconsin Elections Commission.**

**The Commission recommends reviewing the published manual titled “Common Nomination Paper Challenges” prior to responding to a challenge. The manual generally outlines the challenge process, but also includes prior Commission decisions on common challenges. This manual can be found here:**

**<http://elections.wi.gov/publications/manuals/common-nomination-paper-challenges>**

Candidates 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. Wis. Admin. Code EL §§ 2.05 - 2.07 are the rules governing the treatment and sufficiency of nomination papers and challenges to nomination papers.

Wis. Admin. Code EL § 2.05 sets forth the standards for determining whether nomination papers comply with Wis. Stat. Ch. 8 and Wis. Admin. Code EL § 2.07 sets forth the bases for challenges to those nomination papers. Both Wis. Admin. Code EL §§ 2.05 and 2.07 are rules attempting to interpret and clarify statutes; they are not statutes themselves. Because Wis. Admin. 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.

All challenges to nomination papers filed with the Wisconsin Elections Commission for the 2020 General Election will be considered and determined by the Commission at its June 10, 2020 meeting. The Commission’s **meeting on June 10, 2020 will begin at 10:00 a.m.** (or as soon

*Wisconsin Elections Commissioners*

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Administrator  
Meagan Wolfe

thereafter as a quorum is obtained) and is scheduled to be a teleconference/videoconference only via Zoom Meeting. The Commission intends to hear all challenges on June 10, 2020.

Both the challenger and the candidate may appear before the Commission and/or by representation and be heard on the challenge. The challenger and the candidate will each receive 5 minutes for his or her presentation. If you choose to appear before the Commission, additional details on appearing via Zoom Meeting will be provided. **A challenged candidate may respond to a challenge by appearing before the Commission at its June 10, 2020 meeting even if the candidate has not filed a verified written response.**

A challenged candidate may file a verified written response to a challenge. Written verified responses are due not later than 4:30 p.m., 3 days after the challenge to your nomination papers is filed pursuant to Wis. Admin. Code EL § 2.07(2)(b). Pursuant to Wis. Stat. § 990.001(4), should the deadline to file a verified written response to a challenge fall on a Saturday or Sunday which the Commission does not have regular business hours, the verified written response may be filed not later than 4:30 p.m. the following Monday. Most challenges to nomination papers are filed on June 4, therefore due to the deadline to respond falling on a Sunday, your response would be due on Monday, June 8 – although Commission staff recommend filing your response as soon as it is complete.

Just as all challenges to nomination papers must be in the form of a verified complaint, a written response to a challenge should also be verified. A verified response is a response that the respondent (or other affiant) swears, under oath, is true based on the personal knowledge or information and belief of the respondent (or other affiant). The oath must be sworn to before a notary or other person authorized to administer oaths. In addition to filing a written response, a challenged candidate may appear, or by representation, before the Commission to explain why the challenge ought to be rejected. As mentioned above, appearances before the Commission will take place via Zoom Meeting on June 10, 2020.

**Responses are filed by delivering a copy, or preferably emailing it, to the Wisconsin Elections Commission at its offices at 212 E. Washington Avenue, 3<sup>rd</sup> Floor, Madison, Wisconsin 53703 (email: [elections@wi.gov](mailto:elections@wi.gov)) and by delivering and/or emailing a copy to the complainant who has challenged your nomination papers. If the response is emailed, please identify it as a challenge response in the subject line of the email. The response must contain a statement that a copy of the response has been served on, mailed, or emailed to the complainant. Due to the short timeframes involved, it is important that candidates provide a copy of their response to the complainant at the same time it is filed with the Commission.**

#### Correcting Affidavits

Under the Wisconsin Elections Commission rule, Wis. Admin. Code EL § 2.05(4), some, not all, nomination paper deficiencies may be “repaired” or “rehabilitated” by a correcting affidavit of the circulator, the signatory, or the candidate:

*(4) Any information which appears on a nomination paper is entitled to a presumption of validity. Notwithstanding any other provision of this chapter, errors in information contained in a nomination paper, committed by either a signer or a circulator, may be corrected by an affidavit of the circulator, an affidavit of the candidate, or an affidavit of a person who signed the nomination paper. The person giving the correcting affidavit shall have personal knowledge of the correct information and the correcting affidavit shall be filed with the filing*

*officer not later than three calendar days after the applicable statutory due date for the nomination papers.*

The due date for filing a correcting affidavit is “not later than three calendar days after” the due date for filing nomination papers, which is **June 4, 2020**. **Due to tight timeframes, it is important for candidates to review their nomination papers thoroughly prior to the June 4, 2020 deadline and file any necessary correcting affidavits.** To determine whether deficiencies exist in a candidate’s nomination papers that may be “repaired” by correcting affidavit, the candidate may contact the Wisconsin Elections Commission at (608) 266-8005.

Nomination papers may be divided into three sections: The Header, in which the candidate, the party, the office sought, and the date of the election are identified; the Signatory section, in which the district’s electors affix and date their signature and address; and the Certificate of Circulator, in which the circulator of the paper certifies the facts of circulation and affixes and dates his or her signature. **Only defects or deficiencies in the Signatory section and the Certificate of Circulator, and not deficiencies in the Header, may be “repaired” or “rehabilitated” by affidavit.**

The deadline for challenges to nomination papers that are filed with the WEC is set forth in Wis. Admin. Code EL § 2.07(2)(a), and is **4:30 p.m., Thursday, June 4, 2020**. New grounds for a challenge which were not raised in an initial complaint and which were raised after 4:30 p.m., Thursday, June 4, 2020, will not be considered by the Commission. Grounds which are alleged based on information and sworn statements provided after 4:30 p.m., Thursday, June 4, 2020, also will not be considered.

A written response to a challenge should identify the nomination paper page and line number of the signature that has been challenged and must rebut the reasons for the challenge. *(For instance: the signature on nomination paper Page #2, Line 7, which has been challenged as outside the circulation period was actually obtained on May 30, 2020 – see the attached affidavit of the signatory, Mary Jones.)*

If you have any questions about the Commission’s meeting to consider the challenges to nomination papers, please contact Nathan W. Judnic at 608-267-0953 ([nathan.judnic@wisconsin.gov](mailto:nathan.judnic@wisconsin.gov)).

#### **Relevant Resources:**

Wis. Stat. Ch. 8: <http://docs.legis.wisconsin.gov/statutes/statutes/8>

Wis. Adm. Code EL Ch. 2: [https://docs.legis.wisconsin.gov/code/admin\\_code/el/2](https://docs.legis.wisconsin.gov/code/admin_code/el/2)

Common Nomination Paper Challenges Manual:

<http://elections.wi.gov/publications/manuals/common-nomination-paper-challenges>