

# WISCONSIN ELECTIONS COMMISSION

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## MEMORANDUM

**DATE:** January 5, 2017

**TO:** Wisconsin County Clerks  
Milwaukee County Election Commission  
Wisconsin Municipal Clerks  
City of Milwaukee Election Commission

**FROM:** Michael Haas  
Administrator

Nathan W. Judnic  
Legal Counsel

**SUBJECT:** Withdrawal of Nomination Papers after Qualifying for Ballot Access

Commission staff has received calls from county and municipal clerks inquiring about whether a candidate who has properly filed nomination papers and qualified for the ballot can withdraw their nomination papers to remove their name from the ballot. The statutory language which addresses this question is clear, and states that “[a]ny person who files nomination papers and qualifies to appear on the ballot may not decline nomination. The name of that person shall appear upon the ballot except in the case of death of the person.” Wis. Stat. § 8.35(1) (emphasis added). Based on this statutory language, the Commission staff has advised that once an individual has filed nomination papers with a filing officer, and has qualified for ballot placement, nomination papers or other ballot access documents cannot be withdrawn to remove a person’s name from the ballot.

Commission staff previously published an answer to a Frequently Asked Question (FAQ) on this very question which can be found here: <http://elections.wi.gov/node/105> The answer to the FAQ was prepared by the staff of the Commission’s predecessor agency, but the statute has not changed and Commission staff believes the answer is still correct. The answer states that “Once a candidate qualifies for ballot status, her name appears on the ballot. The candidate cannot withdraw and have her name removed. Only in case of death of the candidate can the name be removed from the ballot. S. 8.35, Wis. Stats. The candidate can make a statement to notice to the electors that she no longer wishes to seek the office by election, but her name will appear on the ballot. Should the candidate win the election, she may decline to hold that office. This creates a vacancy that is filled following the provisions of Ch. 17.”

Generally, once ballot access documents including nomination papers have been physically transferred to the filing officer, they are considered filed for purposes of Wis. Stat. § 8.35(1). If all ballot access documents have been filed, the individual qualifies for ballot access, and their name will appear on the ballot (with the exception of death of the individual). Although in a slightly different context (retention of records), Wis. Stat. § 7.24 supports the interpretation that once nomination

papers have been transferred and accepted by the filing officer, they are filed. Wis. Stat. § 7.24 states that “[t]he filing of a nomination paper...or other form or statement with the appropriate official or agency responsible for accepting such materials under chs. 5 to 12 irrevocably transfers the legal title to such official or agency, regardless of the sufficiency of the filing. The official or agency shall retain all election materials until destruction or other disposition is authorized under s. 7.23.” At the State level, once a candidate appears at the Commission’s office with their nomination papers (or papers are received by mail) and submits them to be stamped as received, their papers are considered filed, and they can no longer change their mind or request that their papers be returned to remove their name from the ballot.

Local filing officers are ultimately tasked with determining if all ballot access documents have been filed by a candidate seeking office. If all proper ballot access documents have been filed, the candidate’s name “shall appear” on the ballot per Wis. Stat. § 8.35(1). If a complaint were to be filed against a local election official with the Commission under Wis. Stat. § 5.06 for failure to place a candidate’s name on a ballot who filed all required ballot access documents, the Commission’s analysis as to whether the official’s decision was contrary to law, or was an abuse of discretion would begin with this statute.