

State of Wisconsin \ Government Accountability Board

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MEMORANDUM

TO: All Candidates Subject to a Nomination Papers Challenge
2016 General Election

FROM: Nathan W. Judnic and David P. Buerger
Government Accountability Board
Staff Counsels

DATE: June 1, 2016

SUBJECT: Response Procedures - Candidates Subject to Nomination Papers Challenge

This memorandum concerns candidates whose nomination papers have been challenged and discusses the procedure to be followed in responding to that challenge before the Government Accountability Board.

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 GAB §§ 2.05 - 2.07 and GAB ch. 20. Wis. Adm. Code GAB §§ 2.05 - 2.07 are the rules governing the treatment and sufficiency of nomination papers and challenges to nomination papers and GAB ch. 20 is the rule setting forth the procedures for handling complaints filed with the Board.

Wis. Adm. Code GAB § 2.05 sets forth the standards for determining whether nomination papers comply with Wis. Stat. ch.8 and Wis. Adm. Code GAB § 2.07 sets forth the bases for challenges to those nomination papers. Both Wis. Adm. Code GAB §§ 2.05 and 2.07 are rules attempting to interpret and clarify statutes; they are not statutes themselves. Because Wis. Adm. Code GAB § 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 Government Accountability Board (Board) for the 2016 General Election will be considered and determined by the Board at its June 10, 2016 meeting. The Board's **meeting on June 10, 2016 will begin at 9:00 a.m.** (or as soon thereafter as a quorum is obtained) and is scheduled to be held in the Joint Committee on Finance Hearing Room, 412 East, State Capitol, Madison, Wisconsin 53703. The Board intends to hear all challenges on June 10, 2016.

Both the challenger and the candidate may appear before the Board in person, 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. **A challenged candidate may respond to a challenge by appearing before the Board at its June 10, 2016 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. Adm. Code GAB § 2.07(2)(b).

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 in person, or by representation, before the Board to explain why the challenge ought to be rejected.

Responses are filed by delivering a copy, or preferably emailing it, to the Government Accountability Board at its offices at 212 E. Washington Avenue, 3rd Floor, Madison, Wisconsin 53703 (email: GABnptracker@wi.gov) and by delivering and/or emailing a copy to the complainant who has challenged the nomination papers. The response must contain a statement that a copy of the response has been served on, mailed, or emailed to the complainant. A response that does not contain that statement must be re-submitted containing that statement, and the statement must be true.

Under the Government Accountability Board's rule, Wis. Adm. Code GAB § 2.05(4), Wis. Adm. Code, 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.

To determine whether the deficiencies that are alleged to exist in a challenged candidate's nomination papers may be "repaired" by affidavit, the candidate may contact the Government Accountability Board at (608) 266-8005. Nomination papers may be divided into three sections: The Heading, 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 Heading, may be "repaired" or "rehabilitated" by affidavit.** Correcting affidavits "repairing" or "rehabilitating" deficiencies raised by the complaint, must

be received by the Board by the due date for the response to the complaint (within 3 calendar days of the challenge being filed, Wis. Adm. Code GAB § 2.07(2)(b)).

The deadline for challenges to nomination papers that are filed with the Government Accountability Board is set forth in Wis. Adm. Code GAB § 2.07(2)(a), and is **4:30 p.m., Monday, June 6, 2016**. New grounds for a challenge which were not raised in an initial complaint and which were raised after 4:30 p.m., Monday, June 6, 2016, will not be considered by the Board. Grounds which are alleged based on information and sworn statements provided after 4:30 p.m., Monday, June 6, 2016, 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 27, 2016 – see the attached affidavit of the signatory, Mary Jones.)*

If you have any questions about the Board's meeting to consider the challenges to nomination papers, please contact one of the Board's Staff Counsels at (608) 267-0953 or (608) 267-0951.

Relevant Wisconsin Statutes and Administrative Code Provisions:

Chapter 8, Wis. Stats. <http://www.legis.state.wi.us/statutes/Stat0008.pdf>

Chapter GAB 2, Wis. Adm. Code http://docs.legis.wisconsin.gov/code/admin_code/gab/2.pdf

Chapter GAB 20, Wis. Adm. Code http://docs.legis.wisconsin.gov/code/admin_code/gab/20.pdf