

State of Wisconsin \ Government Accountability Board

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MEMORANDUM

DATE: March 11, 2011

TO: All Interested Persons and Committees Involved With Recall Efforts

FROM: Kevin J. Kennedy
Director and General Counsel
Government Accountability Board

SUBJECT: **Meaning of “Offer to File” Recall Petition
Complete Dates Required for Each Individual Recall Petition Signature**

Government Accountability Board staff have received numerous inquiries regarding the meaning of “offer to file” a recall petition and clarification of signature date requirements on recall petition sheets. In addition, the Board has started receiving individual original recall petition sheets from circulators, likely not part of an organized recall effort. This Memorandum shall provide further clarification in response to these inquiries and concerns.

I. Meaning of “Offer to File” Recall Petition:

After a recall petition has been “offered for filing,” no name may be added or removed. §9.10(2)(d), Wis. Stats. In the Board’s recall manual entitled “Recall of Congressional, County and State Officials” (June 2009), the following definition is provided for “offered for filing”:

Submitting the petition to the filing officer for review for certificate of sufficiency or insufficiency (note: the filing officer should not accept partial petitions and make partial determinations of sufficiency until such time as the petitioner is submitting the petition for a complete review for sufficiency and the filing officer is prepared to make the sufficiency determination.)

The importance of offering a petition for filing cannot be understated. If a recall petitioner states an intent to the filing officer that he or she is offering the petition for filing, the circulation period for the petition ends and the sufficiency review and challenge procedures found in §9.10(3)(b), Wis. Stats., are triggered. Once the petition for recall is offered for filing, the filing officer is prohibited from accepting additional signature sheets, which is different than the procedure for nomination papers where supplemental signatures are accepted up until the statutory deadline for the filing of nomination papers. Whatever is submitted to the filing officer at the time the recall petition is offered for filing is all that will be reviewed for sufficiency. Incomplete petitions offered for filing could result in a certification of insufficiency and require the petitioner to begin the process anew.

Please be sure to inform your circulators of this legal matter and make sure that only an authorized representative of a recall committee presents himself or herself to the Board to offer the recall petition for filing. Please also communicate to your circulators the need to return petition sheets to the relevant recall committee and petitioner to assemble them for filing. As the Board receives individual original recall petition sheets, staff will attempt to return the originals to the senders, provided we have a legible address to do so.

II. Complete Dates Required for Each Individual Recall Petition Signature

Sec. 9.10(2)(e)1., Wis. Stats., clearly states that an individual signature on a petition sheet may not be counted if the signature is not dated. This statutory language likely arose from a Wisconsin Supreme Court decision entitled *Baxter v. Beckley*, 212 N.W. 792, 192 Wis. 397 (Wis. 1927). In the *Baxter v. Beckley* case, the Wisconsin Supreme Court rejected petition signatures that contained no year after the date of signing. In effect, the month and day was present, but not the year of signing. The G.A.B. staff opines that this statutory language and case law requires full dates to appear for every signature on recall petition sheets. This is an exception from the application of GAB Sec. 2.05(13), Wis. Adm. Code, which permits a filing officer to count signatures when identical dates for different electors are indicated by ditto marks or equivalents. As you may know, pursuant to GAB Sec. 2.09(1) and (5), Wis. Adm. Code, the regulations for the treatment and sufficiency of nomination papers found in GAB Sec. 2.05, Wis. Adm. Code, are incorporated by reference and apply to recall petitions. However, the language of GAB Sec. 2.05(13), Wis. Adm. Code, cannot override the specific language found in a statute, particularly Sec. 9.10(2)(e)1., Wis. Stats. This means that while a ditto mark or equivalent is acceptable for identical residential information on recall petition sheets, the same is not true for dates. The actual complete date (month, day and year) are required for each and every signature on recall petition sheets.

However, the G.A.B. staff opines that there is nothing in Sec. 9.10, Wis. Stats., which overrides the ability for a circulator or signer of a recall petition sheet to rehabilitate missing dates (ditto marked or equivalent included) by way of a correcting affidavit in compliance with GAB Sec. 2.05(4), Wis. Adm. Code. In addition, since a correcting affidavit by someone with personal knowledge of the correct information can be completed within 3 days of the day that the recall petition is offered for filing, the G.A.B. staff also opines that a circulator with personal knowledge may likewise correct missing or incomplete date or other information prior to offering the recall petition for filing. The G.A.B. staff has always advised that circulators may pre-populate all information but signatures on nomination papers and other petitions, including recall petitions, as well as enter all information but the signature for signers, so long as the circulator has personal knowledge of the correctness of the information entered.