

**ORDER OF
STATE ELECTIONS BOARD**

To create EIBd ch. 9, relating to challenges to a ballot at a polling place.

ANALYSIS:

Statutory authority: s.5.05(1)(f), s.5.93 and s.227.11(2)(a), Stats.

Statutes interpreted: ss.6.02, 6.03, 6.92, 6.93, 6.935, 6.94, and 6.95, Stats.

The rule interprets ss.6.02, 6.03, 6.92, 6.93, 6.935, 6.94, and 6.95, Stats. The rule establishes the procedure for and the method by which an elector's ballot is challenged at a polling place and the method by which the elector's eligibility to vote is tested. The rule also codifies the method used to process the ballot of a challenged elector, including the creation of a written record for each challenge.

Section 6.92 of the Wisconsin Statutes provides that the Elections Board shall determine, by rule, the questions which are appropriate to test a person's qualifications to vote if that person is challenged as unqualified at a polling place. EIBd ch. 9 establishes those questions based on the voting qualification provisions of ss.6.02 and 6.03, Stats. The rule establishes the specific procedure whereby an inspector or an elector may challenge a voter's qualifications at a polling place; the procedure for determining the voter's eligibility to vote; and the procedure for identifying, by mark, and voting the challenged voter's ballot. The rule also establishes what shall be included in the written record that must be made by the polling place inspectors for each challenge.

Pursuant to the authority vested in the State of Wisconsin Elections Board by ss.5.05(1)(f), 5.93, and 227.11(2)(a), Stats., the Elections Board hereby creates Rules EIBd 9.01, 9.02, 9.03, 9.04, 9.05, and 9.06 interpreting ss.6.02, 6.03, 6.92, 6.93, 6.935, 6.94, and 6.95, Stats., as follows:

SECTION 1. Chapter EIBd 9, Challenges at a polling place, is created to read:

ELBD 9.01 Inspector making challenge

Any inspector may challenge for cause any person offering to vote whom the inspector knows or suspects is not a qualified elector. An inspector has cause to challenge a person as being unqualified to vote if the challenging inspector knows or suspects that any one of the following criteria apply to the person being challenged: (1) the person is not a citizen of the United States; (2) the person is not at least 18 years of age; (3) the person

has not resided in the election district for at least 10 days; (4) the person has a felony conviction and has not been restored to civil rights; (5) the person has been adjudicated incompetent; (6) the person has voted previously in the same election. If a person is challenged as unqualified by an inspector, the following procedure shall be followed:

- (1) One of the inspectors shall administer the following oath or affirmation of veracity to the person: "You do solemnly swear (or affirm) that you will fully and truly answer all questions put to you regarding your place of residence and qualifications as an elector of this election."
- (2) The inspector shall then ask only those of the following questions which are appropriate to test the person's qualifications based on the cause for the challenge:
 - (a) Are you a United States citizen?
 - (b) Are you at least 18 years of age?
 - (c.) For at least the 10 days before this election, have you resided in, or been a resident of, the ward or election district from which you seek to vote?
 - (d) Are you currently disqualified from voting for any of the following reasons:
 1. A felony conviction for which you are still serving probation or are on parole or extended supervision?

2. A judge's ruling that you are incapable of voting?
 3. Having made a bet or wager on this election?
 4. Having voted previously in this election?
- (3) If the challenge is withdrawn by the inspector, the challenge procedure shall be halted, but a written record of the procedural steps taken, up to the withdrawal, shall be preserved in accordance with s. ELBd 9.05.
- (4) If the challenge is not withdrawn by the inspector after the person offering to vote has answered the questions asked under sub.(2), one of the inspectors, before issuing the ballot, shall administer to the challenged elector the following oath or affirmation of eligibility: "You do solemnly swear (or affirm) that: you are 18 years of age; you are a citizen of the United States; you are now and for 10 days have been a resident of this ward except under s. 6.02 (2); you have not voted at this election; you have not made any bet or wager or become directly or indirectly interested in any bet or wager depending upon the result of this election; you are not on any other ground disqualified to vote at this election."
- (5) If the person challenged refuses to take the oath or affirmation of eligibility under sub.(4), the inspectors shall not issue a ballot to the person challenged.
- (6) If the person challenged refuses to answer fully any relevant questions put to him or her by the inspector under sub.(2), or the answers to the questions given by the person indicate that the person does not meet the voting qualification requirements of ss.6.02 and 6.03, Stats., the inspectors shall not issue a ballot to the person challenged.
- (7) If the person challenged answers fully all relevant questions put to the elector by the inspector under sub.(2), takes the oath or affirmation of eligibility under sub.(4), fulfills the registration requirements, where applicable, and the answers to the questions given by the person indicate that the person meets the voting qualification requirements of ss.6.02 and 6.03, Stats., the challenged elector shall be issued a ballot and the voting procedure under s. ELBd 9.03 shall be followed.

ELBD 9.02 Elector making challenge in person

Any elector may challenge for cause any person offering to vote whom the elector knows or suspects is not a qualified elector. Any elector who abuses the right to challenge under s.6.925, Stats., may be subject to sanctions available to inspectors under s.7.41(3), Stats. An elector has cause to challenge a person as being unqualified to vote if the challenging elector knows or suspects that any one of the following criteria apply to the person being challenged: (1) the person is not a citizen of the United States; (2) the person is not at least 18 years of age; (3) the person has not resided in the election district for at least 10 days; (4) the person has a felony conviction and has not been restored to civil rights; (5) the person has been adjudicated incompetent; (6) the person has voted previously in the same election. If a person is challenged as unqualified by an elector, the following procedure shall be followed:

- (1) One of the inspectors shall administer the following oath or affirmation of veracity to the challenging elector: "You do solemnly swear (or affirm) that you will fully and truly answer all questions put to you regarding the challenged person's place of residence and qualifications as an elector of this election."
- (2) The inspector shall ask the challenger if he or she is an elector and then ask only those of the following questions which are appropriate to determine the qualifications of the challenged elector:
 - (a) Why do you believe that the challenged elector is not a United States citizen?
 - (b) Why do you believe that the challenged elector is not at least 18 years of age?
 - (c) Why do you believe that the challenged elector has not, for at least the 10 days before this election, resided in, or been a resident of, the ward or election district from which he or she seeks to vote?
 - (d) For which of the following reasons, and why, do you believe the challenged elector is currently disqualified from voting:
 1. A felony conviction for which the challenged elector is still serving probation or is on parole or extended supervision?.
 2. A judge's ruling that he or she is incapable of voting?.
 3. Having made a bet or wager on this election?.

4. Having voted previously in this election?.

- (3) One of the inspectors shall then administer the oath or affirmation of veracity to the challenged elector under sub.(1) and ask the challenged elector only the questions under s. ElBd 9.01(2) which are appropriate to test the elector's qualifications based on the cause for the challenge.
- (4) One of the inspectors shall then ask the challenging elector if he or she withdraws the challenge. If the challenge is withdrawn by the challenging elector, the challenge procedure shall be halted, but a written record of the procedure up to the withdrawal shall be preserved in accordance with s. ElBd 9.05.
- (5) If the challenge is not withdrawn after the person offering to vote has answered the questions under s.ElBd 9.01(2), one of the inspectors, before issuing the ballot, shall administer to the challenged elector the following oath or affirmation of eligibility: "You do solemnly swear (or affirm) that: you are 18 years of age; you are a citizen of the United States; you are now and for 10 days have been a resident of this ward except under s. 6.02 (2); you have not voted at this election; you have not made any bet or wager or become directly or indirectly interested in any bet or wager depending upon the result of this election; you are not on any other ground disqualified to vote at this election."
- (6) If the person challenged refuses to take the oath or affirmation of eligibility under sub.(5), the inspectors shall not issue a ballot to the person challenged.
- (7) If the person challenged refuses to answer fully any relevant questions put to him or her by the inspector under sub.(2), or the answers to the questions given by the person indicate that the person does not meet the voting qualification requirements of ss.6.02 and 6.03, Stats., the inspectors shall not issue a ballot to the person challenged.
- (8) If the person challenged answers fully all relevant questions put to the elector by the inspector under s. ElBd 9.01(2), takes the oath or affirmation of eligibility under sub.(5), fulfills the registration requirements, where applicable, and the answers to the questions given by the person indicate that the person meets the voting qualification requirements of ss.6.02 and 6.03, Stats., the challenged elector shall be issued a ballot and the voting procedure under s. ElBd 9.03 shall be followed.

ELBD 9.03 Voting procedure for challenged electors

Whenever the inspectors under ss. 6.92 to 6.94, Stats., determine to receive the vote of a person who has been challenged, they shall give the elector a ballot. Before giving the elector the ballot, the inspectors shall write on the back of the ballot the serial number of the challenged person corresponding to the number kept at the election on the registration or poll list, or other list maintained under s. 6.79, Stats. If lever or direct record voting machines are used in the municipality where the person is voting, the person's vote may be received only upon an absentee ballot furnished by the municipal clerk which shall have the corresponding serial number from the registration or poll list or other list maintained under s. 6.79, Stats., written on the back of the ballot before the ballot is deposited. The inspectors shall indicate on the voter list the reason for the challenge. The challenged ballots shall be counted under s. 5.85 or 7.51(2)(c), Stats.

ELBD 9.04 Challenging the absent elector

The vote of any absent elector may be challenged for cause by an inspector or by an elector and the inspectors shall have all the power and authority given them under ss.ElBd 9.01 and 9.02 to hear and determine the legality of the ballot the same as if the ballot had been voted in person. One of the inspectors shall administer the following oath or affirmation of veracity to the elector challenging the absentee elector's ballot: "You do solemnly swear (or affirm) that you will fully and truly answer all questions put to you regarding the challenged person's place of residence and qualifications as an elector of this election"; and shall ask the challenger if he or she is an elector and then shall ask only those questions provided in s. ElBd 9.01(2) of this chapter which are appropriate to test the qualifications of the challenged elector.

ELBD 9.05 Recording the challenge

The inspectors shall make a written record of all challenges at the polling place, whether or not a ballot is issued to the challenged elector. The written record shall contain the name and address of the challenger; the name, address and serial number of the challenged elector; the cause for the challenge; the questions asked of the elector and the elector's responses to those questions. The written record also shall contain the questions asked of the challenger; the challenger's responses to those questions and whether or not the challenge was withdrawn. The record shall note whether or not the challenged elector took the oath or affirmation of eligibility.

ELBD 9.06 Review by a board of canvassers

The municipal board of canvassers may decide any challenge when making its canvass under s. 7.53, Stats. If the returns are reported under s. 7.60, Stats., a challenge may be reviewed by the county board of canvassers. If the returns are reported under s. 7.70, Stats., a challenge may be reviewed by the chairperson of the board or the chairperson's designee. The decision of any board of canvassers or of the chairperson or chairperson's designee may be appealed under s. 9.01, Stats. The standard for disqualification specified in s. 6.325, Stats., shall be used to determine the validity of challenged ballots.

INITIAL REGULATORY FLEXIBILITY ANALYSIS:

The creation of this rule does not affect business.

FISCAL ESTIMATE:

The creation of this rule has no fiscal effect.

This rule shall take effect on the first day of the month following its publication in the Wisconsin Administrative Register pursuant to s. 227.22(2), Stats.