

Clearinghouse Rule 25-064

DRAFT ORDER OF THE WISCONSIN ELECTIONS COMMISSION PERMANENT RULE

The Wisconsin Elections Commission adopts the following order to repeal and replace ss. EL 2.05 and 2.07 relating to procedures for nomination paper challenges.

The statements of scope for this rule, SS 091-23, was approved by the Office of Wisconsin Governor Tony Evers on September 28, 2023, published in Register No. 814B, on October 30, 2023, and in Register No. 815A1, on November 6, 2023, and approved by the Wisconsin Elections Commission on December 19, 2023.

RULE ANALYSIS

1. Statutes Interpreted:

Sections 8.10(2)(b), 8.15(5)(a), and 8.20(2)(a), Stats.

2. Statutory Authority:

Sections 5.05(1), 8.07, and 227.11(2)(a), Stats.

3. Explanation of Agency Authority

Section 5.05(1), Stats., established the statutory authority and framework for regulation and administration of elections. It specifically states: “[t]he elections commission shall have the responsibility for the administration of chs. 5 to 10 and 12 and other laws relating to elections and election campaigns, other than laws relating to campaign financing.” Section 5.05(1)(f), Stats., allows the Commission to “Promulgate rules under ch. 227 applicable to all jurisdictions for the purpose of interpreting or implementing the laws regulating the conduct of elections or election campaigns, other than laws regulating campaign financing, or ensuring their proper administration.”

Section 8.07, Stats., authorizes the Commission to “promulgate rules under this chapter for use by election officials in determining the validity of nomination papers and signatures thereon.”

Section 227.11(2)(a), Stats., authorizes an agency to promulgate rules interpreting the statutes administered by the agency.

4. Related Statutes:

Sections 8.04, 8.10, 8.15, 8.20, and 8.50, Stats.

5. Plain Language Analysis:

Sections 8.04, 8.10, 8.15, 8.20, and 8.50 of Wisconsin state statutes lay out some basic grounds for nomination paper sufficiency. Rule EL 2.05 addresses the treatment and sufficiency of nomination papers, and rule EL 2.07 lays out the process for challenges to nomination papers. However, the current rule EL 2.07 includes cross-references to other types of complaint processes that are not relevant or applicable to ballot access. The current rule also includes ambiguous language

regarding the grounds for challenges to nomination papers. The proposed administrative rule would amend prior EL 2.07 to remove cross-references to other complaint procedures, and would supplement the existing procedures for challenges to nomination papers. The proposed rule would also clarify ambiguous language throughout EL 2.07, and would also update the relevant provisions of EL 2.05 so that they are consistent with the new amended rule EL 2.07. Finally, the proposed rule would also incorporate existing Commission guidance and address common issues relating to the sufficiency of nomination papers.

6. Summary of, and Comparison With, Existing or Proposed Federal Regulations:

There are no existing or proposed federal statutes or regulations that address challenge procedures for nomination papers filed in Wisconsin.

7. Summary of Comments Received During Preliminary Comment Period and at Public Hearing on Statement of Scope

No members of the public attended the November 9, 2023, public meeting to offer comments on the statement of scope for the proposed rule. The Commission received a variety of written comments from the public regarding the scope statements for the challenge procedures for nomination papers. All of the comments received for the nomination paper statements of scope address subjective grounds for those types of challenges that are outside the scope statements, such as character. Subjective criteria such as “character” is not within the proposed rulemaking scope of any of the scope statements. No comments offered any suggested changes. The Commission reviewed the written comments and voted to approve the scope statement as written on December 19, 2023.

8. Comparison with Similar Rules in Illinois, Iowa, Michigan, and Minnesota

Illinois law is very similar to the expanded procedures that would be effectuated by the proposed administrative rule. Illinois law requires candidates to file “Statements of Candidacy” and “Nominating Sheets” of signatures. Individuals may file “petition objection cases” to challenge the sufficiency of nominating sheets. Objection petitions must include an original and two copies, and are filed with the State Board of Elections, the election authority, or local election official with whom the nomination petition was filed. Once the objection is received, the filing officer transmits it no later than noon on the second business day to the chair of the proper electoral board and to the candidate who filed the nominating sheets. Within 24 hours of the receipt of the objecting petition, the appropriate electoral board notifies the objector and the candidate the day, hour and place at which the electoral board will hear the objection. The appropriate electoral board must meet not less than three nor more than five days after receipt of the objecting petition. At the first day of the meeting, the electoral board adopts rules and procedures for the introduction of evidence and the presentation of arguments and may, in its discretion, provide for the filing of briefs by the parties to the objection or by other interested persons. Within five days of the electoral board’s decision, the candidate or objector aggrieved may petition for judicial review in the appropriate circuit court. The circuit court will then hear and decide the judicial review petition within 30 days.

Iowa law is very similar to current Wisconsin practices under the existing administrative rules. Iowa law requires candidates to file an “Affidavit of Candidacy” and “Nomination Petitions” with the appropriate filing officer. Nomination papers are inspected for completeness before they are accepted for filing. Iowa law permits challenges, called “objections,” to both nomination papers

and affidavits of candidacy. Objections must be made in writing, and can be brought by anyone who would have a right to vote for the candidate for office. Objections are filed with the officer with whom the nomination papers are filed. When an objection is filed, notice is mailed within 72 hours to the candidate. Objections filed with the state commissioner are decided by the State Objections Panel, comprised of the Secretary of State, State Auditor, and Attorney General. Objections filed with the county commissioner are considered by three county officers. Objections filed with the city clerk are considered by the mayor, clerk, and one city council member. Objections relating to incorrect or incomplete information shall be sustained.

Michigan law has a few different procedures for nomination paper review, but their challenge process is substantively similar to Wisconsin's current practice. Michigan law requires candidates to file "Nomination Petitions" and an "Affidavit of Candidacy." Michigan law permits candidates for its Legislature to pay a filing fee in lieu of filing nomination papers; those candidates cannot be challenged for insufficient signatures. Michigan utilizes a petition sampling procedure to evaluate the validity of ballot signatures. Board of Elections staff utilize a single-step random sampling process using specially designed software. Once generated, the sample list is distributed for challenges. BOE staff review the sample signatures twice for sufficiency, and again if they are challenged. Challenges may be filed up to seven days following the filing deadline. The challenge must specify each signature being challenged and why. To challenge anything other than specific signatures, a full written description of what is being challenged must be submitted. Challenges are filed with the appropriate filing officer. The Board or county clerk is responsible for resolving any challenges and certifying qualified candidates the ballot.

Minnesota ballot access law and procedure are very different from Wisconsin for both the current rules and proposed rules. Minnesota requires candidates to submit an "Affidavit of Candidacy," and most major party candidates choose to pay a filing fee to the appropriate filing officer in lieu of filing "Nomination Petitions." For the minority of candidates who do file nomination papers, Minnesota filing officers examine nomination petitions for sufficiency and substantial compliance. There are different verifying procedures for major party and minor party candidates. Instead of an administrative challenge or process, Minnesota allows individuals to file a petition for the correction of errors, omissions, or wrongful acts for ballot access. The petition is filed in court, which then immediately sets a hearing on the matter. The court then issues its findings and a final order.

9. Summary of Factual Data and Analytical Methodologies

Commission staff did not perform empirical analysis for this rule, but the rule was proposed as a result of feedback provided by candidates, their representatives, and the public. Commission staff informally collected anecdotal evidence, which highlighted a concern that current ballot access procedures were vague and insufficient to address procedural issues in recent years.

10. Analysis and Supporting Documents used to Determine Effect on Small Business

There is no anticipated effect on small business. A full economic impact analysis is not required for an emergency rule pursuant to Wis. Stat. § 227.24(1)(e)2., but staff did prepare the required fiscal estimate. No specific analysis was performed for the fiscal estimate, nor were any supporting documents generated, because there is no anticipated effect on any fiscal liabilities and revenue, and no anticipated costs to be incurred by the private sector.

11. Agency Contact Person:

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12. Place where comments are to be submitted and deadline for submission.

Comments could be submitted to angela.obrien@wisconsin.gov. The deadline for comments concerning the Economic Impact Statement was June 24, 2024. Comments on the rule text are due by 4:30 p.m. on September 17, 2025.

RULE TEXT**SECTION 1. Sections EL 2.05 and EL 2.07 are repealed and recreated to read:****EL 2.05 Treatment and Sufficiency of Nomination Papers****(1) Definitions.** In this section:

(a) **“Address”** means the street and number, if any, and municipality for voting purposes, all of which must be accurate. Neither apartment number nor state and ZIP Code is required.

(b) **“Affidavit”** means a document sworn to before a person authorized to administer oaths, or a document declared pursuant to s. 887.15, Stats.

(c) **“Certification”** means a sworn statement, or declaration pursuant to s. 887.015, under applicable Wisconsin law confirming that the circulator met and complied with all requirements under s. 8.15(4)(a) Stats.

(d) **“Calendar Day”** includes every day of a given time period, including Saturdays, Sundays, and legal holidays.

(e) **“Clear, satisfactory, and convincing evidence”** is defined as in Wis JI-Civil 205 to mean evidence which when weighed against that opposed to it clearly has more convincing power to a reasonable degree of certainty. A “reasonable certainty” means persuasion based upon a rational consideration of the evidence. Absolute certainty is not required, but a guess is not enough to meet this burden of proof. If Wis JI-Civil 205 is amended, the definition in this paragraph shall be interpreted to be consistent with that amendment. Clear, satisfactory, and

convincing evidence cannot be shown by bare assertions unsupported by a sworn affidavit or declaration.

(f) “Correcting Affidavit” as used in this rule shall include declarations pursuant to s. 887.015, Stats.

(g) “Elector” means an eligible voter of the State of Wisconsin, as determined by the qualifications of ss. 6.02 and 6.03, Stats., for the election in which the candidate is seeking ballot access.

(h) “Facially Sufficient” means that the information provided is substantially compliant with proper format and does not bear any indicia of facial invalidity. Indicia of facial invalidity means that at least one element of required information is missing, illegible, or obviously incorrect.

(i) “Filing officer” means the Wisconsin Elections Commission for any federal or state office or referendum, the county clerk for any county office or referendum, the municipal clerk or the board of election commissioners for a municipal office or referendum, and the school district clerk for a school board office or referendum.

(j) “Header” refers to the portion of the nomination paper required by ss. 8.10(2)(b) and 8.15(5)(a), Stats., that contains the candidate’s name; candidate’s residential address; candidate’s municipality for voting purposes; candidate’s mailing address, including state and ZIP code, if different than their residential address; type of election; election date; office sought; name of jurisdiction or district in which candidate seeks office. If the race is for a partisan office, the header shall include the political party of the candidate. If the race is for a non-partisan office, the header shall not include the political party of the candidate.

(k) “Local Filing Officer” means a filing officer other than the Wisconsin Elections Commission.

(l) “Nickname” has the meaning set forth in s. 5.02(12m), Stats., and means a familiar or shortened form of a proper name by which an individual is commonly known.

(m) “Nomination Paper” means a petition to collect eligible signatures from persons who wish to nominate a candidate for an upcoming election. Nomination Papers must meet the requirements set forth in ss. 8.10 and 8.15, Stats., and the administrative code.

(n) “Printed Name” means a handwritten name that is sufficiently legible, such that the signer’s name can be discerned by the filing officer.

(o) “Qualified Circulator” has the meaning given by s. 5.02(16g), Stats., and means a qualified elector of this state or any U.S. citizen age 18 or older who, if he

or she were a resident of this state, would not be disqualified from voting under s. 6.03, Stats.

(p) “Signature” means a tangible symbol made by a signer or their designee as authorized by s. EL 2.05(6)(b), that evidences the signing of a nomination paper.

(q) “Signer” means a person who chooses to place their signature and related information on a nomination paper to support a candidate seeking ballot access. No person under the age of 18 may sign nomination papers. Age is determined on the date of signature, not based on the date of the election.

(r) “Substantial compliance” means actual compliance in respect to every reasonable objective of the statute. Substantial compliance with a statute is not shown unless it demonstrates intent to fully comply with the statute and that the purpose of the statute is shown to have been served.

(s) “Voting Municipality” means that municipality that a signer is eligible to vote in for an election held on the date of signing as determined by the filing officer.

(2) Purpose. This section is promulgated pursuant to the direction of, and under the authority granted by, s. 8.07, Stats., and is to be used by filing officers in determining the validity of all nomination papers and the signatures and information on those papers.

(3) Filing Nomination Papers.

(a) Candidate responsibility. Each candidate for public office bears responsibility for assuring that their nomination papers are prepared, circulated, signed, and filed in compliance with applicable statutory provisions and requirements under the administrative code.

(b) Physical possession. In order to be timely filed, all nomination papers shall be in the physical possession of the filing officer by the statutory deadline. Physical possession means the filing officer must have taken possession of the original nomination papers. No other format is acceptable.

(c) Numbering pages. Each of the nomination papers should be numbered, before they are filed, and the numbers should be assigned sequentially, beginning with the number “1”. Notwithstanding any other provision of this chapter, neither the absence of a page number nor incorrect or non-consecutive numbering will invalidate the page or the signatures on that page.

(4) Sufficiency of Nomination Papers, General

(a) Reviewing number of signatures. The filing officer shall review all nomination papers filed with him or her, up to the maximum number permitted by the statute applicable to the relevant office, to determine the facial sufficiency of the papers filed. The filing officer shall utilize the procedure in ss. 8.10(7) and

8.15(9), Stats. for determining the maximum number of signatures necessary to establish whether the candidate has collected enough valid signatures. In determining facial sufficiency, the filing officer may consult maps, directories, and other extrinsic evidence to ascertain the correctness and sufficiency of information on a nomination paper, where circumstances and the time for review permit. Nothing in this provision shall constitute a defense against a challenge to the sufficiency of nomination papers. Facial review completed by a filing officer before the filing deadline is done as a courtesy only and does not bind a filing officer to a final determination of ballot access.

(b) Presumption of validity. Any facially sufficient information which appears on a nomination paper is entitled to a presumption of validity.

(c) Substantial compliance. Where any required item of information on a nomination paper is incomplete, the filing officer shall accept the information as complete if there has been substantial compliance with applicable statutes and the administrative code.

(d) Removing signatures. After a nomination paper has been signed, but before it has been filed, a signature may be removed by the signer or the circulator. After a nomination paper has been filed, no signature may be added or removed. After a nomination paper has been filed, it may be amended, or an error or omission corrected, only through a valid correcting affidavit.

(5) Correcting affidavits. Notwithstanding any other provision of this chapter, errors or omissions 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 the signer. The person giving the correcting affidavit shall certify that they have personal knowledge of the correct information. Defects in the header of a nomination paper may not be changed or amended by affidavit after the paper has been circulated.

(a) Deadline. Any correcting affidavit shall be filed with the filing officer not later than 5 p.m. central time on the third calendar day after the applicable statutory due date for when a challenge to nomination papers may be filed. Correcting affidavits may be submitted electronically. If a correcting affidavit is submitted on a Saturday, Sunday, or legal holiday, it must be submitted via facsimile transmission or electronic mail directly to the filing officer.

(b) Correcting nomination papers not necessary. If a correcting affidavit is submitted, it amends the affected nomination papers on its own, and it is not necessary for the filing officer to edit or mark the nomination papers to be consistent with the changes in the affidavit.

(c) Determination. The filing officer shall determine whether any correcting affidavit resolves the identified error or omission.

(d) No new signatures. Correcting affidavits may not provide new or additional signatures or signature pages in addition to what was originally submitted to the filing official.

(6) Sufficiency of Nomination Papers, Signature Lines

(a) Number of signatures. Nomination papers shall contain at least the minimum required number of signatures from the circuit, county, district or jurisdiction which the candidate seeks to represent.

(b) Who may sign. A signer shall sign his or her own name unless unable to do so because of physical disability. A signer unable to sign because of physical disability shall be present when another person signs on behalf of the signer and shall specifically authorize the signing.

(c) No signing for spouses. A person may not sign for his or her spouse, or for any other signer, even when they have been given a power of attorney by that signer, unless s. EL 2.05(6)(b) applies.

(d) Only one signature per signer. Except as provided in s. EL 2.05(6)(d)(1)., only one signature per signer for the same office is valid.

(1) Exception. Where a signer is entitled to vote for more than one candidate for the same office, that signer may sign the nomination papers of as many candidates for the same office as the signer is entitled to vote for at the election.

(e) Accompanying information. Each signature on a nomination paper shall be accompanied by the signer's address, printed name, and date of signature.

(f) Ditto marks or "same." A signature shall be counted when identical residential information or dates of signature for different signers are accurately indicated by ditto marks, another form of punctuation, or if an adjacent signer writes "same" or similar words to indicate that the residential information or signature dates are identical.

(g) Impact of circulator signature. No individual signature on a nomination paper may be counted if the signature is dated after the date that the circulator completed and signed the certification contained on the nomination paper. Any signature that is dated on or before the date of the circulator certification may be counted even if it appears on the same page as signatures dated after the circulator certification. The circulator shall provide their residential address. No signature on the page may be counted when the residential address of the circulator cannot be

determined by the information given on the nomination paper. No signature may be counted if the date of circulator certification is incomplete or incorrect.

(h) Invalid individual signatures. An individual signature on a nomination paper may not be counted when any of the following occurs:

(1) Missing date. The date of the signature is missing, unless the date can be determined by reference to the dates of any of the other signatures on the paper, including those dates above or below the signature.

(2) Dated after circulator certification. The signature is dated after the date on which the circulator signed the certification.

(3) Missing or incomplete address. The address of the signer is missing or incomplete, unless the address can be determined by the information provided on the nomination paper. If the signer has abbreviated the name of their municipality, the address is substantially compliant provided the municipality can be determined from other information contained on the nomination paper.

(4) Unqualified elector. The signer has been adjudicated not to be a qualified elector on the grounds of incompetency or limited competency as provided in s. 6.03(3), Stats., or was not, for any other reason, a qualified elector at the time of signing the nomination paper.

(5) Improper residence. The signer resides outside the circuit, county, district or jurisdiction that the candidate seeks to represent.

(6) Legibility. If the filing officer cannot discern the signer's first and last name, after reviewing both the signature and printed name, it is illegible pursuant to s. 8.10 (4) (b) or s. 8.15 (2), Stats., and shall not be counted. The filing officer is not required to consult extrinsic sources of information to attempt to discern the signer's name but may do so in their discretion if it assists in discerning a possible name.

(7) Nicknames and initials. If the signer has used a nickname or initials for their first or middle name, whether in their printed name or their signature, the printed name or signature is substantially compliant provided the printed name or signature complies with s. EL 2.05(h)(6). No nickname or initial is considered substantially compliant for the signer's last name.

(i) Death of the signer. The death of a signer after a nomination paper has been signed does not invalidate the signature.

(7) Sufficiency of Nomination Papers, Header.

(a) Office title and district designation. As to Office title and district designation, the header of a nomination paper is sufficient as long as the filing officer finds that the signers could determine the office and district the candidate was pursuing based solely upon information provided in the header.

(b) Election date. When the date of the election is entirely missing from the header of any nomination paper, the filing officer shall not count any of the signatures on the page. Incomplete or incorrect election dates can be found substantially compliant as long as the filing officer finds that signers could have determined based solely upon information provided in the header that the nomination papers corresponded with the correct election date.

(c) Candidate name. The candidate shall provide their last name and first name. They may provide a nickname or initial for their first or middle name. In addition to their name, they may provide a former legal surname. The candidate may not provide any other abbreviations or titles.

(d) Candidate address. A candidate must provide their residential address, their mailing address, if different from their residential address, and their voting municipality in the header of each nomination paper. The residential address must be the street address where the candidate resides; no other address is acceptable in lieu of a residential address.

(e) Candidate information or advertising. The filing officer shall accept nomination papers which contain biographical data or campaign advertising. A nomination paper is substantially compliant if it does not contain the disclaimer specified in s. 11.1303(2), Stats.

(8) Sufficiency of Nomination Papers, Other Issues

(a) Gender not required. Failure to provide an indicator of a candidate's gender in the header does not invalidate any nomination papers.

(b) Missing date of circulator. If the date of circulator certification is incomplete or incorrect, the nomination paper is not substantially compliant, and no signatures on that page may be counted, subject to s. EL 2.05(5).

EL 2.07 Challenges to Nomination Papers

(1) Definitions. All definitions set forth in s. EL 2.05 are incorporated herein by reference. In this section:

(a) "Business Day" means any calendar day except Saturday and Sunday, and except the following business holidays: New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving, and Christmas.

(b) **“Challenge”** means that filing before a filing officer made by a person or organization contesting the legal sufficiency of a candidate’s nomination papers.

(c) **“Challenger”** means the person or organization filing a challenge.

(d) **“Rebuttal affidavit”** means an affidavit submitted by a challenger addressing those arguments or facts raised by the challenged candidate in the candidate’s response to the challenge.

(f) **“Rebuttal”** means a filing or submission by the challenger addressing those arguments raised by the challenged candidate in the candidate’s response to the challenge.

(g) **“Response”** means a filing or submission by a challenged candidate to rebut the allegations made in a challenge.

(h) **“Verified”**: A document is verified when it is sworn to before a person authorized to administer oaths or declared pursuant to s. 887.015, Stats.

(2) Challenge Filed with Filing Officer. Any challenge to the sufficiency of nomination papers brought under this section shall be filed with the appropriate filing officer. The filing officer shall apply the standards in s. EL 2.05 to determine the sufficiency of nomination papers with the exception of s. EL 2.05(4)(b). The filing officer shall make filed nomination papers available for public inspection, either physically or electronically, within 1 business day of when they are filed.

(3) Procedure and Timeline. Unless otherwise specified, this subsection contains the exclusive procedure by which challenges to nomination papers may be brought.

(a) Form of challenges to nomination papers. A challenge is a short, plain statement of the basis upon which the challenger seeks to invalidate any signature(s) on one or more nomination papers. All factual allegations upon which the challenge relies must be verified by one or more persons who certify that they possess personal knowledge of the facts alleged therein. Individuals other than the challenger may support a challenge with sworn affidavits or declarations pursuant to s. 887.015, Stats. A brief or summary of the legal standards applicable to a challenge and their application to the alleged facts may be filed simultaneously with, or as a part of, the challenge and any affidavits or declarations pursuant to s. 887.015, Stats. The brief or summary need not be verified, but if it is prepared by an attorney, that attorney must sign the brief and that signature should meet the requirements of s. 802.05, Stats.

(b) Deadlines for filing a challenge. Any challenge shall be filed by 5 p.m. on the third calendar day after the filing deadline for the challenged nomination papers. The challenge must be in the physical or electronic possession of the filing officer

by 5 p.m. on the challenge deadline. If a challenge is submitted on a Saturday, Sunday, or legal holiday, it must be submitted via facsimile transmission or electronic mail. Challenges received after 5 p.m. on the challenge deadline shall not be accepted.

(c) Filing challenges to nomination papers.

(1) Filing challenges electronically to nomination papers. A challenger may choose to file a challenge electronically. The filing officer will make instructions for filing challenges electronically publicly available no less than 24 hours before the challenge deadline. Challenges that are filed electronically must conform to those instructions. If the challenge and all supporting materials are filed in electronic form, the filing officer shall electronically transmit a copy of the challenge to the challenged candidate within 4 hours of the deadline for filing of the challenge complaint. Along with a copy of the challenge, the filing officer shall also provide the challenged candidate with notice of the response deadline, notice of how and when the challenged candidate may file rebuttal, as well as notice that the procedures governing nomination paper challenges are covered by this chapter.

(2) Filing challenges in paper form to nomination papers. If the challenge and supporting materials are filed in paper form, the filing officer shall deliver a copy to the challenged candidate, either in paper or electronic form, no later than noon the day after the challenge is filed. Along with a copy of the challenge, the filing officer shall also provide the challenged candidate with notice of the response deadline, notice of how and when the challenged candidate may file rebuttal, as well as notice that the procedures governing nomination paper challenges are covered by this chapter.

(d) Clear, convincing, and satisfactory evidence. The challenge shall be established by clear, convincing, and satisfactory evidence, presented in the sworn challenge, an accompanying affidavit, or exhibits, which demonstrate that the nomination papers are not substantially compliant. The filing officer must review the evidence submitted when deciding the challenge.

(e) Candidate response. A response to a challenge is a short, plain statement of the basis upon which the challenged candidate asserts that any challenged signature(s) on one or more nomination papers, or the nomination papers themselves, are sufficient. All factual allegations upon which the response relies must be verified by one or more persons with personal knowledge of the facts alleged therein. Individuals other than the challenged candidate may support a response with additional affidavits (Correcting Affidavits). A brief or summary of the legal standards applicable to the challenged signatures or pages and the application of those legal standards to the alleged facts may be filed simultaneously with the response and any affidavits. The brief or summary need not be verified, but if it is

prepared by an attorney that attorney must sign the brief and that signature should meet the requirements of s. 802.05(1), Stats.

(f) Candidate response deadline. If the challenged candidate elects to file a response to the nomination papers, that response shall be filed by the candidate challenged by 5 p.m. of the third calendar day after the date the challenge was filed. The response must be in the physical or electronic possession of the filing officer by 5 p.m. of the response deadline. If a response is submitted on a Saturday, Sunday, or legal holiday, it must be submitted via facsimile transmission or electronic mail. Responses received after 5 p.m. on the response deadline shall not be accepted. If the challenged candidate elects to file a response and any correcting affidavits electronically, the filing officer shall electronically transmit a copy of those materials to the challenger within 4 hours of the deadline for filing those materials; if the challenge and supporting materials are filed in paper form, the filing officer shall deliver a copy to the challenger, either in paper or electronic form, no later than noon the day after those materials are filed.

(g) Challenger rebuttal. If a challenged candidate files a response and one or more correcting affidavits, the challenger may file a short rebuttal brief and one or more rebuttal affidavits. If the challenger elects to file a rebuttal brief and rebuttal affidavits, those materials shall be filed by the challenger within 24 hours of the filing officer's transmission of the response and/or correcting affidavits. A rebuttal brief need not be verified, but if it is prepared by an attorney, that attorney must sign the brief and that signature should meet the requirements of s. 802.05, Stats. The rebuttal brief and/or rebuttal affidavits must be in the electronic possession of the filing officer within 24 hours from the filing officer's transmission of the response and/or any correcting affidavits. Any rebuttal brief and any rebuttal affidavits must be submitted via facsimile transmission or electronic mail. Paper copies of rebuttal briefs and rebuttal affidavits will not be accepted. Rebuttal briefs and rebuttal affidavits received after the applicable deadline shall not be accepted.

(h) Filing officer decision. After the deadline for filing any rebuttal brief and rebuttal affidavits, but not later than the date for certifying candidates to the ballot, the filing officer shall decide the challenge. In deciding the challenge, the filing officer may elect to hold a hearing if the filing officer deems that such a hearing would assist them in adjudication of the challenge; however, a filing officer is not required to hold a hearing.

(i) Hearing. If the filing officer elects to hold a hearing, the procedures for the hearing shall accord with this section. The hearing should be noticed in advance and open to the public in compliance with ss. 19.81 - 19.98, Stats. The filing officer shall conduct the hearing in a manner that affords the same offered rights and opportunities to all parties. If the filing officer elects to accept oral presentations from the parties or their assigned representative, the same opportunity must be afforded to all parties. Factual evidence should not be received at a hearing unless

the filing officer elects to swear in witnesses, in which case all witnesses must be sworn in.

(4) Burdens. The initial burden is on the challenger to establish any deficiency in the challenged candidate's nomination papers. If the challenger makes an initial showing by clear, satisfactory and convincing evidence that establishes one or more of the challenged candidate's nomination papers is deficient, the burden shifts to the challenged candidate to establish the sufficiency of their nomination papers by clear, satisfactory and convincing evidence.

(5) Basis for challenges. A challenge to the sufficiency of nomination papers may be brought on one or more of the grounds in this subsection. The challenge should specify one or more of the following ground or grounds:

(a) Signature line. Any aspect of individual signature lines of signers may be challenged, including the form of the signature itself, the information provided by the signer, the signer's eligibility to sign the nomination paper, and the fact that a signer signed one candidate's nomination papers more than once or signed the nomination papers of more than one candidate for the same office. The filing officer should rely upon s. EL 2.05 when determining challenges to signature line. If a challenger establishes that the information provided by a signer is not substantially compliant, the signer's signature may not be counted. The invalidity or disqualification of one or more signatures by a signer on a nomination paper does not necessarily affect the validity of any other signatures by signers on that nomination paper.

(b) Header. Any aspect of the header of the nomination paper, as defined by s. EL 2.05(1)(j). The filing officer should rely upon s. EL 2.05 when determining challenges to the header. If the filing officer sustains a challenge to the header of a nomination paper, none of the signatures on that page may be counted.

(c) Circulation. Any aspect of how a candidate circulated their nomination papers. A challenge may be brought against any aspect of how a circulator circulated a candidate's nomination papers, including the signature, date of signature, certification, or eligibility of the circulator. A challenge brought against the certification includes a challenge that a circulator did not comply with any of the statements contained within the certification. The filing officer should rely upon s. EL 2.05 when determining challenges to the circulator of nomination papers. Improper circulation negates all signatures on any page that was not properly circulated and certified.

(d) Filing. Any aspect of how a candidate filed their nomination papers. Improper filing negates all signatures on nomination papers so filed.

(6) Decision of filing officer. If the filing officer elects not to hold a hearing, the filing officer must promptly issue a written decision on the challenge and a signed order

memorializing their disposition of the challenge not later than the date for certifying candidates to the ballot. If the filing officer elects to hold a hearing and announces an oral ruling during that hearing, any party seeking to appeal from the filing officer's adjudication of a challenge decided at the hearing may submit a proposed order, memorializing the filing officer's ruling, to the filing officer for adoption and signature. The filing officer shall promptly transmit all signed orders to the challenger and the challenged candidate electronically. The filing officer may draft and sign their own order rather than using a version proposed by any party.

(7) Appeal. Any order of a local filing officer disposing of a challenge may be appealed to the commission pursuant to ss. 5.05 or 5.06, Stats. The party aggrieved by the filing officer's decision shall notify the commission of its intent to appeal within 48 hours of receipt of the filing officer's signed order. The commission administrator, in consultation with the commission chair, shall establish a briefing schedule that will allow for commission decision before the deadlines for ballot printing. Any signed order of the commission disposing of a challenge or adjudicating an appeal from a local filing officer's order disposing of a challenge may be appealed to a circuit court pursuant to s. 5.06 (8), Stats.

SECTION 2 EFFECTIVE DATE. This rule takes effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2), Stats.