

Information
About

Filing a Complaint

Under
the
Election
and
Campaign
Finance
Law



State Elections Board

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Filing Complaints

Under the Election and Campaign Finance Law

This manual provides information for individuals who would like to file a complaint about possible violations of Wisconsin election and campaign finance laws. Citizens with complaints about the political process have several possible avenues open for resolving their concerns. This document describes who to contact about political concerns, where to file complaints, how to prepare a complaint, and what happens to the complaint once it is filed.

Filing Complaints with the State Elections Board

Complaints about campaign finance activities relating to campaigns for state office are filed with the State Elections Board. The Board also handles complaints concerning candidates' qualifications to appear on the ballot for state office. In addition, the Elections Board has compliance review authority over certain decisions of local election officials.

The Elections Board has adopted a set of rules describing the process for filing complaints relating to Wisconsin Election and Campaign Law. These rules are set out in chapter 10 of the Wisconsin Administrative Code. This pamphlet describes the process for filing complaints. Individuals should also review the administrative rules in ElBd., Chapter 10, Wis. Adm Code.

A complaint alleging a violation of **Wisconsin's campaign finance law** should be filed as soon as the complainant has enough information to believe a violation occurred. s.5.05(3), Stats. There is a three-year statute of limitations on prosecution of campaign finance violations.

Challenges to **nomination papers of candidates for state and federal office** must be filed no later than three business days after the deadline for filing nomination papers. The Board has developed a set of administrative rules relating to the requirements for preparing nomination papers and election-related petitions, as well as more detail on the challenge process. ElBd., Chapter 2, Wis. Adm. Code.

An elector who has a complaint about the **decision of a local election official** may address his concerns by filing a complaint with the Elections Board to have the official's decision reviewed. s.5.06, Stats. The Board's jurisdiction in this area provides for review of local election officials' decisions which are contrary to law or an abuse of discretion. The decision-making areas which may be reviewed by the Board include nominations, qualifications of candidates, voting qualifications, including residence, ward division and numbering, recall, ballot preparation, election administration, or conduct of elections. A complaint challenging a decision of a local election official as contrary to law or an abuse of discretion must be filed promptly so as not to prejudice the rights of the other party. A complaint relating to nominations, qualifications of candidates, or ballot preparation must be filed not later than ten days after the complainant knew or should have known that a violation of law or

an abuse of discretion occurred. An individual must file a complaint with the Elections Board before commencing any court action involving the complaint. s.5.06, Stats.

How to Prepare a Complaint

A complaint filed with the State Elections Board must be in written form and sworn to under oath. The complaint must contain a caption, a statement, and a verification. A sample form is included with this manual.

The most important part of the complaint is the statement. The statement requires five elements:

1. Identify the person making the complaint (complainant), including the complainant's name, address, and telephone number.
2. Identify the person or committee that is the subject of the complaint. This statement should provide as much information about the person as possible, including name, address, telephone number, and what position the person holds.
3. Specify the particular provision of law that is the basis for the complaint. If the statute cannot be identified by number, the complainant should describe as specifically as possible the law that the complainant believes to have been broken.
4. State in detail the facts that lead the complainant to believe a violation of law occurred. This part of the statement should identify who was involved, what happened, where it happened, when it occurred, and who says so. The statement should contain sufficient details to establish probable cause that a violation of law occurred. This means that the alleged facts and the reasonable inferences based on those facts would lead a reasonably prudent person to believe that the matter asserted is probably true.

In other words, this part of the complaint is where the complainant tells his or her "story" and explains why they believe that "story" is true. The more supporting information that can be provided, the better.

If the facts of the complaint are based on the personal knowledge of someone other than the complainant, attach an affidavit from that person (or those persons) to the complaint. A complaint may not be based on statements made to the complainant by persons whose affidavit is not attached to the complaint.

5. As a matter of basic fairness, the Board requires the complainant to either mail or personally serve on the person or party complained against a copy of the complaint, before filing the complaint with the Board. A statement that this has been done should be included in the complaint. All subsequent pleadings filed by either the complainant or the respondent must also be served on or mailed to the opposite party or parties.

What Happens Once the Complaint Is Filed

When the Elections Board receives a complaint, it is reviewed by the executive director or legal counsel to determine if the complaint is filed on time, is sufficient as to form, and establishes probable cause that a violation occurred. If the complaint does not meet these standards, the complaint will be returned to the complainant specifying the deficiency and the information needed to cure the defect.

If the complaint meets these standards, the Board staff will promptly request the respondent, the person who allegedly violated the law, to provide a sworn, written answer to the complaint. Upon receiving the answer, the staff will promptly request a sworn, written reply to the answer. After reviewing the information provided, the Elections Board staff will determine if more information is necessary. Specific written questions may be asked of the parties. The staff may also contact other persons and review related documents.

After all the information is gathered, the Board's Executive Director will determine whether to decide the matter himself, pursuant to the authority delegated to him by the Elections Board, or whether to refer the matter to a regular meeting of the Board. If the Executive Director does decide the matter, the decision will be mailed to each of the parties. Either party may appeal that decision to the appropriate circuit court.

If the matter is referred to the Board, the staff will present the complaint to the Board with a recommendation for appropriate action to take on the complaint. A copy of the staff report will be mailed to the complainant and respondent before the Elections Board meeting, to give each person an opportunity to respond, attend the meeting, and make an appearance before the Elections Board. At the meeting, the Board will hear and consider both the personal comments about the complaint presented during the meeting and the staff report. The Board will then decide what action to take in the case. The Board's decision will be mailed to the complainant and the respondent.

The Board will resolve the complaint as quickly as possible. However, some cases may take longer than others, especially if the case is complex.

Filing Complaints with Local Election Officials

An individual may file a complaint about the conduct of local elections with the town, village, city, county, or school district clerk responsible for administering the election. A complaint challenging the sufficiency of nomination papers must be filed no later than three days after the filing deadline. The Elections Board has promulgated administrative rules that describe the challenge procedure. ElBd 2.07, Wis. Adm. Code. Complaints about other election administration issues should follow the format for filing complaints with the Elections Board. An individual with a complaint about the conduct of a local election should contact the local clerk.

Filing Complaints with the District Attorney

The district attorney is responsible for enforcing the campaign finance law as it applies to local campaigns. The district attorney is also responsible for enforcing election regulations with criminal penalties such as vote fraud, electioneering, or election bribery. An individual with a complaint in these areas should contact the district attorney of the county where the alleged violation occurred. The district attorney has sole discretion whether to prosecute a complaint filed with the district attorney's office.

Complaints About Political Signs

Complaints about the placement of political advertising in highway right-of-ways should be directed to Joseph Maassen, General Counsel, at the State Department of Transportation (608-266-8810).

Complaints Under Federal Law

The Federal Election Commission (800-424-9530) is responsible for handling complaints concerning campaign finance involving federal elections. The United States Department of Justice investigates federal criminal violations relating to elections (202-514-1421).

Recall

Wisconsin law contains specific provisions for initiating the recall of elected officials. These provisions include requirements setting forth the time frame and format for challenging the sufficiency of recall petitions. The Elections Board has prepared an informational manual on the recall of local elected officials entitled, *Recall of Local Elected Officials* (Rev. 2/94). An individual contemplating the recall of a local elected official should review this document. The rules for recalling state and federal officials are significantly different from those for recalling local officials. s. 9.10, Wis. Stats. Contact the Elections Board for more information.

Recount of Election Results

Wisconsin law specifies how election results can be reviewed through a recount. The Elections Board has developed a manual describing the recount process entitled, *Election Recount Procedures* (Rev 4/91). An individual interested in a recount should contact the Elections Board for a copy of the manual. s. 9.01, Wis. Stats.

Election-Related Disputes

The political process often generates a number of concerns which cannot be addressed through a system of formal complaints. Voters are encouraged to raise issues directly with candidates. These issues could involve more than a particular political stance on an issue. It may involve a candidate's conduct. Often the campaign arena is the best forum for resolving election-related disputes. Many election complaints are settled at the ballot box on election day.

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Election and Campaign Finance Complaint

Before _____
(the State Elections Board, district attorney, or local filing officer)

The Complaint of _____, complainant,
against _____, respondent.

I, _____, allege that:
(Insert the complainant's name)

1. Identify yourself.
2. Identify the person or committee you are filing the complaint against.
3. This complaint is under _____.
(Insert the applicable section(s) of law in Chs. 5-12, Stats., if known.)
4. State in detail the facts that establish probable cause to believe a violation occurred. Use as many pages as needed.
5. A copy of this complaint has been:
☐ sent by first class mail.
☐ personally served on the respondent before it was filed.

Verification

I, _____, being first duly sworn, on oath, state that the allegations in this complaint are true based on my personal knowledge except those allegations stated on information and belief, which I believe to be true.

(Date)

(Complainant's signature)

STATE OF WISCONSIN }

(County of notarization) County } §

Subscribed and sworn to before me this ____ day of _____, 19____.

NOTARY SEAL

(Signature of person authorized to administer oaths)

My commission expires _____ or ☐ is permanent.

☐ Notary Public or _____
(Official title, if not a notary)