

WISCONSIN STATE
LEGISLATURE
COMMITTEE HEARING
RECORDS

2001-02

(session year)

Assembly

(Assembly, Senate or Joint)

**Committee on
Campaigns &
Elections
(AC-CE)**

File Naming Example:

Record of Comm. Proceedings ... RCP

- > 05hr_AC-Ed_RCP_pt01a
- > 05hr_AC-Ed_RCP_pt01b
- > 05hr_AC-Ed_RCP_pt02

Published Documents

> Committee Hearings ... CH (Public Hearing Announcements)

> **

> Committee Reports ... CR

> **

> Executive Sessions ... ES

> **

> Record of Comm. Proceedings ... RCP

> **

*Information Collected For Or
Against Proposal*

> Appointments ... Appt

> **

> Clearinghouse Rules ... CRule

01hr_CRule_02-071_AC-CE_pt01

> Hearing Records ... HR (bills and resolutions)

> **

> Miscellaneous ... Misc

> **

NOTICE

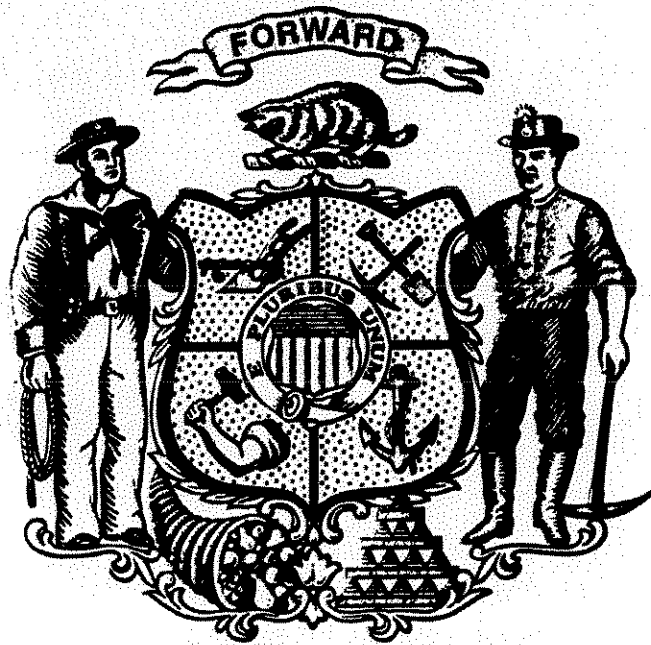
This notice is to inform you that the proposed rule-making of the State Elections Board, appearing in Clearinghouse Rule 02-071, creating chapter ElBd 9, is submitted to the presiding officer of each house of the legislature. This submission includes the proposed rule, the Legislative Council's staff's report and the Elections Board's report. In addition, the Elections Board is placing in the Wisconsin Administrative Register a notice that the proposed rules have been submitted to the presiding officer of each house.

Dated June 24, 2002

STATE ELECTIONS BOARD



George A. Danst
Legal Counsel



DATE: July 1, 2002
TO: Terri Griffiths
Committee on Campaigns and Elections
FROM: Patrick Fuller, Assembly Assistant Chief Clerk
RE: Clearinghouse Rules Referral

The following Clearinghouse Rule has been referred to your committee.

CLEARINGHOUSE RULE 02-071

AN ORDER to create chapter EIBd 9, relating to the procedure for challenging the ballot of an elector at a polling place.

Submitted by **Elections Board.**

Report received from Agency on **June 24, 2002.**

To committee on **Campaigns and Elections.**

Referred on **Monday, July 1, 2002.**

Last day for action - **Wednesday, July 31, 2002.**

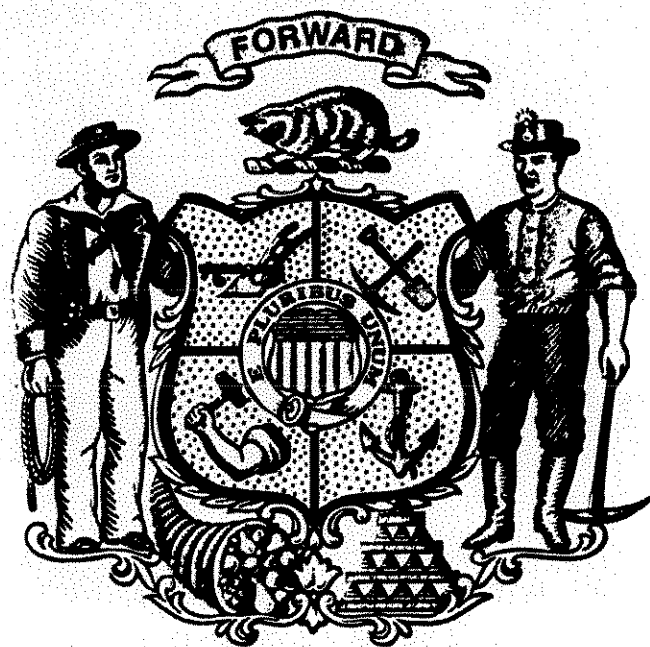
Under section 227.19 (4) of the Wisconsin Statutes, your committee has 30 days to take action or get an extension. The day **after** the official referral date is day one of your review period. Therefore, the 30th day should fall four weeks and two days after the referral date. For example, for Clearinghouse Rules referred on a Monday, a Wednesday would be your 30th day. For Clearinghouse Rules referred on a Tuesday, a Thursday would be your 30th day. For Clearinghouse Rules referred on a Wednesday, a Friday would be your 30th day. For Clearinghouse Rules referred on a Thursday or Friday, your 30th day would fall on a weekend. Therefore, your time would expire on the next working day (Monday) as provided for in s. 990.001 of the Wisconsin Statutes. Also, if the 30th day falls on a legal holiday, time would expire on the next working day.

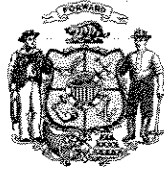
Section 227.19 **requires** you to notify each member of your committee that you have received this Clearinghouse Rule. Although some committee chairs do so, you are not required to send a copy of the text of the rule to each member at this time. Your notice could state that members should contact you if they wish to receive a hard copy of the rule. **(Please note that the text of Clearinghouse Rules beginning with the prefix "01" is now available online in the Clearinghouse Rules infobase in FOLIO.)** Please put a copy of your official notification memo in the rule jacket.

Three copies of the Clearinghouse Rule and its accompanying documents are contained in the jacket. If you wish to have your Legislative Council attorney review the Clearinghouse Rule, send him/her a copy. I only need one copy remaining in the jacket when you report it out of committee at the end of the review period.

The identical process is happening simultaneously in the Senate. Keep track of their action on the rule.

For assistance with the Clearinghouse Rule process, please consult Ken Stigler (6-2406) or your Legislative Council attorney. If you wish to learn more on this subject, read section 227.19 of the Wisconsin Statutes or part 2 of the *Administrative Rules Procedures Manual* written by the Revisor of Statutes Bureau and the Wisconsin Legislative Council staff.





Rep. Steve Freese 115 West

Wisconsin Speaker Pro Tempore
Representative Stephen J. Freese

TO: Members of the Assembly Committee on Campaigns and Elections

Rep. Bonnie Ladwig, Vice-Chair Rep. David Travis
Rep. Jeff Stone Rep. Mark Pocan
Rep. Jeff Fitzgerald

FROM: Representative Stephen Freese, Chair

DATE: July 3, 2002

RE: Clearinghouse Rule 02-071

On July 1, 2002, the following clearinghouse rule was referred to the Assembly Campaigns and Elections Committee:

Clearinghouse Rule 02-071, relating to the procedure for challenging the ballot of an elector at a polling place.

The deadline for committee action on this rule is **Wednesday, July 31, 2002**. If you are interested in requesting a hearing and/or submitting comments, please do so prior to the deadline date.

Attached is the proposed rule and report of the State Elections Board for your reference.

Fifty-First Assembly District

Capitol Office: P.O. Box 8952 • Madison, Wisconsin 53708-8952
(608) 266-7502 • Toll-Free: (888) 534-0051 • Fax: (608) 261-9474 • Rep.Freese@legis.state.wi.us
District: 310 E. North • Dodgeville, Wisconsin 53533 • (608) 935-3789

REPORT
OF
STATE ELECTIONS BOARD

Clearinghouse Rule 02-071
Rules Chapter EIBd. 9
Wisconsin Administrative Code

Chapter EIBd. 9

1. Findings of fact:

The State Elections Board finds that, in ss.6.92 and 6.93, Stats., the legislature has required the board to promulgate a rule establishing the questions that shall be asked prospective electors whose eligibility to vote has been challenged under those sections. The board further finds that the procedure for challenging electors at a polling place has to be codified in a rule to provide clear direction to election inspectors on the steps to be taken when an elector is challenged at a polling place.

The Elections Board also finds that the legislature has directed it to promulgate rules to regulate the conduct of elections and to ensure the proper administration of the laws applicable to elections. The Board finds that a rule establishing a challenge procedure and establishing the questions to be asked of a challenged elector will facilitate compliance with Wisconsin's elections law with respect to assuring the eligibility of those voting at an election and bolster public confidence in the integrity of elections.

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 interprets ss.6.02, 6.03, 6.92, 6.93, 6.935, 6.94, and 6.95, 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 codifies the method used to process the ballot of a challenged elector, including the creation of a written record for each challenge. The rule also establishes what shall be included in that written record.

2. Conclusion and recommended action:

The State Elections Board unanimously concludes that chapter EIBd. 9 should be created. The creation of this rule is necessary to establish the procedure for challenging ballots at a polling place and to establish the questions that may be asked to determine a

challenged elector's voting qualifications. The Board recommends promulgation of this rule.

3. Explanations of modifications to the proposed rule:

The State Elections Board makes no substantive modifications to this rule.

4. List of persons appearing at the public hearing:

No public hearing was held. The rule was submitted pursuant to the 30-day notice procedure of s.227.16(2)(e), Stats. No person who will be affected by the rule filed a petition for a public hearing within the 30-day period provided by that statute.

5. Response to Legislative Council staff report:

The State Elections Board adopts the Legislative Council's staff's comments and has incorporated the suggested changes in the rule with the following exceptions: challenged ballots will continue to be marked for identification before the ballot is issued to the challenged elector to avoid having a challenged elector deposit an unmarked, challenged ballot in the ballot box before the inspectors are aware that the ballot should have been marked.

Respectfully submitted,

June 24, 2002

STATE ELECTIONS BOARD


George A. Dunst, Legal Counsel

WISCONSIN ADMINISTRATIVE CODE

STATE ELECTIONS BOARD

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; (7) 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. EIBd 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; (7) 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. EIBd 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. EIBd 9.05.
- (5) If the challenge is not withdrawn after the person offering to vote has answered the questions under s.EIBd 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

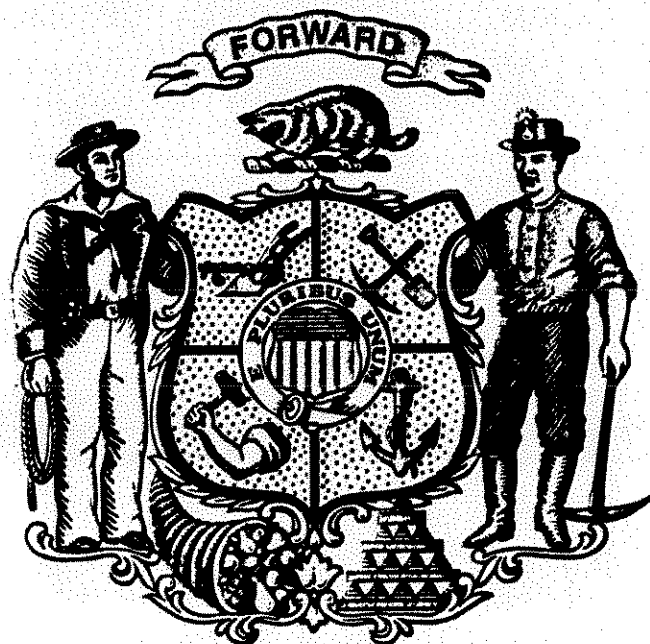
The vote of any absent elector may be challenged for cause by an inspector or by an elector and the inspectors shall have all the power and authority given them under ss.ElBd 9.01 and 9.02 to hear and determine the legality of the ballot the same as if the ballot had been voted in person. One of the 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.





WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Richard Sweet
Clearinghouse Assistant Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 02-071

AN ORDER to create chapter EIBd 9, relating to the procedure for challenging the ballot of an elector at a polling place.

Submitted by **ELECTIONS BOARD**

05-24-2002 RECEIVED BY LEGISLATIVE COUNCIL.

06-17-2002 REPORT SENT TO AGENCY.

RS:RJC



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

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CLEARINGHOUSE RULE 02-071

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

General Comment

Because newly created ss. EIBd 9.01 and 9.02 are very similar in their structure, the following comments relating to s. EIBd 9.01 also apply to s. EIBd 9.02.

2. Form, Style and Placement in Administrative Code

a. The treatment clause in SECTION 1 of the rule could be simplified by indicating that "Chapter EIBd 9 is created to read:". In addition, a title to the newly created chapter needs to be provided.

b. In s. EIBd 9.01 (intro.), because the term "cause" is used in several places throughout the entire rule, the definition of that term should be placed in a separate section which defines the term for the entire chapter. In the alternative, it would seem to make some sense, for purposes of clarity, to simply provide in a provision applicable to the entire chapter that "an elector or inspector has cause to challenge a person as being unqualified to vote if the challenging elector or inspector knows or suspects that any one of the following criteria applying to the person: (1) the person is not a citizen; (2) the person is not at least 18 years of age; (3) the person is not a resident of the election district; (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 placed a bet or wager on the election outcome; or (7) the person has voted previously in the same election." Finally, the phrase "the following procedure shall be followed," or a substantially similar phrase, should be inserted immediately preceding the colon.

c. If the language of s. EIBd 9.01 (2) is retained, the subdivisions of par. (d) should conclude with question marks. Also, in par. (d) 1., the phrase "or extended supervision" should be inserted after the word "parole."

d. Generally, section titles should be written with an initial capital letter and in bold print. [See s. 1.05 (2) (b), Manual.] The entire rule should be reviewed for proper use of titles.

4. Adequacy of References to Related Statutes, Rules and Forms

a. In s. EIBd 9.01 (2), the subunits numbered a. to d. should be renumbered as pars. (a) to (d).

b. In s. EIBd 9.01 (3), the rule directs readers to "see s. 9.05 of this chapter." First, this direction should not be placed in a parenthetical expression. Second, the cross-reference should be worked into the substantive provision of the rule. For example, in the substantive provision of the text, the cross-reference could be included as follows: ". . . but a written record of the procedural steps taken, up to the withdrawal, shall be preserved in accordance with s. EIBd 9.05." Lastly, internal cross-references should not refer to a particular provision "of this chapter." Instead, the cross-reference should refer to "s. EIBd 9.05." This last comment applies throughout the rule.

c. In s. EIBd 9.01 (4), the rule provides for a certain procedure if a challenge is not withdrawn after the person offering to vote "has answered the questions." What questions are these? An appropriate cross-reference, perhaps to sub. (2), should be provided.

d. In s. EIBd 9.01 (5), the rule refers to the "oath or affirmation of eligibility." What oath or affirmation is this referring to? An appropriate cross-reference, perhaps to the oath or affirmation under sub. (4), should be included.

e. Section EIBd 9.01 (6) conditions certain actions upon the challenged person refusing to answer any relevant questions put to him or her "under this chapter." A more specific cross-reference should be provided. For example, is this referring to the questions under sub. (2)? In addition, the rule also refers to "voting qualification requirements." What requirements are these? An appropriate cross-reference should be provided. These comments also apply to s. EIBd 9.01 (7).

f. In s. EIBd 9.03, the last occurrence of the notation "ss." should be replaced by the notation "s." because of the use of the disjunctive word "or."

g. Section EIBd 9.04 provides that inspectors have "all the power and authority given to them." What power and authority and by whom is it given? An appropriate cross-reference should be provided. For example, is this referring to the power of inspectors under s. EIBd 9.01? The rule needs to be clarified. Finally, the rule refers to "s. 9.01 (2) of this chapter." This should be a reference to "s. EIBd 9.01 (2)."

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. EIBd 9.01 (intro.), the phrase “the challenged elector is not at least 18 years of age” should not be used in a parenthetical expression. Generally, parenthesis should be avoided. If the material is important to the thought or concept expressed in the rule, the material should be set apart with commas, not parentheses. Otherwise, the material should be placed, if necessary, in an explanatory note following the rule itself. [s. 1.01 (6), Manual.] But see comment 2. b., above.

b. In s. EIBd 9.01 (1), why does the oath use the word “truthfully” rather than the word “truly”? [See ss. 6.92 and 6.925, Stats.]

c. In s. EIBd 9.01 (2) (a), the term “citizen” should not be capitalized.

d. In s. EIBd 9.01 (3), the use of the term “is” should be changed to the phrase “shall be.” In addition, the beginning of the sentence should be modified to make it clear that the inspector is the one withdrawing the challenge. For example, the first clause could be rewritten substantially as follows: “If the inspector withdraws his or her challenge”

e. Section EIBd 9.03 provides that before giving the elector a ballot, the inspector must write on the back of the ballot the serial number of the challenged person. It is noted that s. 6.94, Stats., indicates that such information must be noted on the ballot “before depositing” the ballot. Is there a reason for this discrepancy?

f. In s. EIBd 9.04, the rule indicates that the vote of an absent elector shall be challenged for cause. By whom may such a vote be challenged? The second sentence of the provision appears to indicate that it is an elector who challenges the absentee elector’s ballot. May an inspector also make such a challenge? The rule should be clarified.