



---

---

## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

---

---

**Ronald Sklansky**  
*Clearinghouse Director*

**Richard Sweet**  
*Clearinghouse Assistant Director*

**Terry C. Anderson**  
*Legislative Council Director*

**Laura D. Rose**  
*Legislative Council Deputy Director*

### 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 questions 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.