



WISCONSIN ELECTIONS COMMISSION

Administering Wisconsin's Election Laws

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Absentee Witness Signature Requirement Guidance COVID-19

Priority

High Priority

Date

March 29, 2020 - 2:00pm

To

Wisconsin County Clerks

Wisconsin Municipal Clerks

City of Milwaukee Election Commission

Milwaukee County Election Commission

From

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Attachment	Size
Absentee Witness Guidance.pdf	216.32 KB

This memo is also attached to this larger page of public health resources for clerks: <https://elections.wi.gov/node/6787>

Over the last week WEC staff and clerks have been contacted by many voters who are concerned about how they will fulfill the absentee ballot witness requirement when voting by mail. Below please find an outline of the requirement, concerns considered, and a proposed process. This process was developed by WEC staff in consultation with a public health official. Please use this guidance to assist voters with how they can engage a witness for their absentee ballot in a way that helps to keep the voter, witness, and clerk safe.

Overview

When voting an absentee ballot by mail each voter must have someone 'witness' their return envelope before they mail their ballot back for counting. The witness can be anyone of the voter's choosing, but they need to be an adult, U.S. citizen. The witness provides their signature and address on the return,

certification envelope. This process serves as verification that the voter who requested the ballot is the person who actually received and voted the ballot.

Issue

Voters who are quarantined or self-isolating due to COVID-19 are reporting concern over having someone witness their ballot. Concerns range from finding someone available to serve in this role to concern over quarantined voters having contact with other citizens in order to meet this requirement.

Current Guidance

All voters casting an absentee ballot by mail need to find a witness to observe the process of the voter marking their ballot (not observe the selections made on the ballot) and who can provide the required signature and information on the certificate envelope. There are no exemptions in the law for the witness requirement. All voters, including regular voters, indefinitely confined voters, and military and overseas voters must provide a witness signature. This guidance was affirmed by the Wisconsin Elections Commission at their March 27 meeting. Please note the absentee ballot witness requirement during the COVID-10 pandemic is currently being challenged in federal court, *Gear, et al. v. Knudson, et al.*, 3:20-cv-00278, (Western District of Wisconsin).

Where direct interaction is being avoided due to COVID-19, we have suggested the following options:

- A family member, friend or neighbor may watch the voter mark their ballot through a window, open door or other physical barrier.
- Other options for witnesses in these situations include, mail delivery persons, grocery or food delivery persons, and medical professionals.
- Spouses or roommates can always witness each other's ballots.
- This process can be done via video chat like Skype or Facetime with the ballot left outside of the door or in a mailbox for the witness to sign and provide their address after the fact. The ballot could even be mailed to the witness (who observed by video chat) after it is marked and sealed in the envelope so they can sign it.
- Voters may also be able to drive to a meet up spot to observe/witness through their vehicle windows.

Process Developed with Public Health Official Guidance

WEC staff worked with a public health official to conceptualize a process for voters to safely achieve the witness signature requirement for their absentee ballot. These steps assume the voter is self-isolating or quarantined. Many of these processes are also outlined in the hospitalized elector memo. The recommended process follows these steps:

1. Voter receives their absentee ballot by mail.
2. Before retrieving their ballot, the voter should wash or sanitize their hands and take extra care not to cough on balloting materials.
3. The voter opens their absentee materials envelope and places the certificate envelope outside their door, in a mailbox, etc. where a person who is providing supplies or services can access it. If possible, the voter should put the certificate envelope and leave it untouched for 24 hours before the witness handles it.
4. When someone arrives to provide the voter with supplies or services, they ask them to be a witness for their ballot. The witness should be prepared to watch the voter mark their ballot through a window or by video chat.
5. Before the voter marks their ballot and before the witness signs the certificate, they should both wash or sanitize their hands and take extra care not to cough on ballot materials.
6. The voter marks their ballot in view of the witness, but with a physical barrier between them or by

video chat.

7. The witness signs the absentee certificate envelope and provides their required information. The witness then leaves the signed certificate on the door step, in a mailbox, etc. for the voter to retrieve.
8. The voter washes or sanitizes their hands and then retrieves the signed certificate envelope.
9. The voter takes extra care not to cough on balloting materials and places the marked ballot into the envelope. The voter signs and completes the required fields on the certificate envelope.
10. The voter mails the marked ballot and completed certificate envelope.
11. By the time the clerk receives the ballot any potential contamination will be degraded, and the clerk and poll worker should follow their instructions for processing ballots.

6.87(4)(b)1 Witness Requirement Statute

The absent elector, in the presence of the witness, shall mark the ballot in a manner that will not disclose how the elector's vote is cast. The elector shall then, still in the presence of the witness, fold the ballots so each is separate and so that the elector conceals the markings thereon and deposit them in the proper envelope. If a consolidated ballot under s. 5.655 is used, the elector shall fold the ballot so that the elector conceals the markings thereon and deposit the ballot in the proper envelope. If proof of residence under s. 6.34 is required and the document enclosed by the elector under this subdivision does not constitute proof of residence under s. 6.34, the elector shall also enclose proof of residence under s. 6.34 in the envelope. Except as provided in s. 6.34 (2m), proof of residence is required if the elector is not a military elector or an overseas elector and the elector registered by mail or by electronic application and has not voted in an election in this state. If the elector requested a ballot by means of facsimile transmission or electronic mail under s. 6.86 (1) (ac), the elector shall enclose in the envelope a copy of the request which bears an original signature of the elector. The elector may receive assistance under sub. (5). The return envelope shall then be sealed. The witness may not be a candidate. The envelope shall be mailed by the elector, or delivered in person, to the municipal clerk issuing the ballot or ballots. If the envelope is mailed from a location outside the United States, the elector shall affix sufficient postage unless the ballot qualifies for delivery free of postage under federal law. Failure to return an unused ballot in a primary does not invalidate the ballot on which the elector's votes are cast. Return of more than one marked ballot in a primary or return of a ballot prepared under s. 5.655 or a ballot used with an electronic voting system in a primary which is marked for candidates of more than one party invalidates all votes cast by the elector for candidates in the primary.

[clerks](#)

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