

2019 BEST PRACTICES GUIDE FOR

MUNICIPAL RECOUNTS



WEST VIRGINIA SECRETARY OF STATE'S OFFICE
ELECTIONS DIVISION

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Recount Process

Timeline for Recounts

The declaration of results, announcement of the 48-hour recount period, and bond requirement for demanding a recount all occur at the completion of canvass. For canvassing procedures and forms, please refer to the 2019 Best Practices Guide for Municipal Canvass.

The board of canvassers sets the amount of bond for a recount “in a reasonable amount with good sufficient surety” but not to exceed three-hundred dollars (\$300.00). The recount bond amount shall be determined during the canvass procedures before any recount request is received. W. Va. Code § 3-6-9(h).

The declaration of results starts a 48-hour countdown, during which time a candidate or eligible person may request a recount. Saturdays, Sundays and legal holidays are excluded when computing the 48-hour period.

At the end of the 48-hour period*:

- All election races and ballot questions for which a recount has not been requested must be certified at the end of the 48-hour recount request period; or
- If there is a recount request, the end of the 48-hour period begins a new 48-hour notification period. Within this new 48-hour period, an official notice of the date, time and locations of the recount is served to persons involved.

Within 24 hours after the notice of recount is served, the person served with the notice has the opportunity to notify the board *in writing* that they intend to preserve their right to demand a recount of precincts not requested in the original recount request, or continue the recount if it is stopped by a requestor at any point, who shall also furnish the same bond.

The date of a recount shall be set by the board of canvassers, and can be no sooner than three (3) days after the notice of recount is served to the persons involved.

Requesting a Recount

The recount request must be received in writing by the municipal recorder for municipal elections within the 48-hour period following canvass.

Who can request a recount?

- To request a recount for an **elected office**, the person making the request must be a **candidate** for that same elected office.
- To request a recount for a **special issue election**, the person must be a **voter** of the jurisdiction of the election or the governing board.

What must be in the written request for a recount?

The written request for a recount must include:

1. The name of the candidate requesting a recount;
2. The office or issue to be recounted;
3. If it is an issue, the voter's name and address;
4. All the precincts to be recounted;
5. Any specific precincts which are not to be hand counted; and
6. The bond as required.

Other candidates involved in the recounted race have the opportunity to reserve the right to continue the recount. The candidate who wants to reserve this right must respond to the recount notice within 24 hours and post the same bond amount, and the same holds true for issue recounts.

What must be in the written request to preserve the right to continue a recount?

The request to preserve the right to recount has to be filed in writing to the municipal recorder and must state the following:

1. The name of the candidate(s), eligible person, or governing board filing the request to preserve the right to recount;
2. The intention to preserve the right to request the recount of precincts not originally requested; and
3. The intention to preserve the right to continue the recount should the initiating person stop the recount.

The candidate(s), eligible person, or the governing board filing the request to preserve the right to recount must pay bond in the same amount as the bond required of the original candidate or eligible person requesting the recount.

IMPORTANT: If the person requesting a recount requests only specific precincts to be recounted, that candidate cannot afterwards add other precincts to the list to be recounted. The request for a recount shall include all precincts covered by that election unless the person filing the request specifies otherwise. The person requesting a recount or preserving the right to demand a continuation of the recount may specify precincts which are not to be hand counted.

Notification of Recount

If a recount is demanded within the proper time period, then the board of canvassers has 48 hours to send notice to all candidates who filed for the office in which a recount has been demanded. The recount notice must state:

1. Date of the recount (cannot be earlier than 3 days after notice is served on all parties);
2. Time of the recount;
3. Place of the recount; and
4. Information in the original recount request.

The recount notice must be delivered by the sheriff of the county or the sheriff's designee. In a municipality, it must be delivered by the appropriate municipal police officer. The recount notice has to be delivered to the requestor in person (or to the members of the governing board that officially requested a special issue election in person). The sheriff or the sheriff's designee or municipal police officer who delivers the notice must record how, to whom and the time each notice is delivered.

If a candidate or board member cannot be found, the notice may be given to the spouse of the candidate or board member or to some other family member over the age of 16. If the notice is given to a person other than the candidate or board member, the municipal police officer must inform the person receiving the notice of its purpose and meaning. If no one can be found to receive the notice, it must be posted on the front door of the usual place of residence of the candidate or board member.

If a sheriff or municipal police officer fails to make the recount notice delivery, he is penalized twenty dollars (\$20.00).

Recount Preparation

The recount shall take place in the town hall for a municipal election.

In addition to serving the recount notices on each of the parties in the race for which the recount has been requested (or to the governing board that officially requested the special issue election in which the recount has been requested), the board of canvassers must also post the notice on the door of the place where the recount is to be held.

The municipal governing body oversees the recount for a municipal election. All procedures must be conducted under the supervision of a quorum of the board.

A member of the board can still serve on the board even if the recount is for her/his office, but only in a supervisory role.

Example:

There is a recount in a city council race, and the sitting council person was running for reelection. That council person may still serve in a *supervisory* role during the recount, but may not assist with the recount. However, if the election goes to a contest, that individual **MUST** recuse himself/herself.

*Others who **may** assist in a recount:*

- Municipal Recorder/Clerk
- Municipal Recorder staff
- Others hired to assist with recount

*Those who **may not** assist in a recount:*

- Candidate of office involved in recount
- Immediate family of candidate of office involved in recount
- Member of governing board which requested a special issue election
- Any board member's immediate family which requested a recount
- Any voter that requested the recount of a special election or his immediate family

The recount teams consist of 4 people – 2 to count, and 2 to tally. **Each team of 2 must be of opposite political parties.**

Everyone working in the recount proceedings must be deputized in writing and take an oath that they will faithfully perform their duties.

Recount Materials

Paper Ballots

1. Ballots
 - a. Voted
 - b. Provisional (Challenged)
 - c. Early and Absentee
 - i. Absentee ballots not counted after polls closed
 - ii. Applications for mail-in/faxed absentee ballots
 - iii. Poll slips used for early voting
 - iv. Precinct list of absentee and early voters
 - v. Military and overseas absentee material
 - d. Spoiled
 - e. Unused
2. Ballot and Poll Ticket Stubs
3. Poll Books and other official registration records
4. Tally sheets for the hand count
5. Certificates and oaths for those participating
6. Statements of Ballots Used
7. Ballot Boxes
8. Precinct return certificates
9. Cumulative Returns
10. Official list of write-in candidates (if applicable)
11. List of ballots sent to each precinct --- including a list of actual ballot numbers

Conducting the Recount

A quorum of the board of canvassers must be present at all times during the recount of the ballots and the recount is conducted under their supervision. If a quorum of the board of canvassers is not present, the recount is recessed until a quorum is present or stands adjourned until the next business day. The presiding officer of the governing body acts as the presiding officer of the board.

Before starting the recount, the board determines the order in which the precincts will be recounted, either by random drawing or using a sequential order beginning with the lowest number and continuing to the highest number. The determined order should meet with the agreement of the parties to the recount or their designated representatives.

At the appropriate time, the paper ballots and the record of the tally of votes for all election precincts are brought before the board. **Only the board, the clerks, the employees of the clerk and persons specifically employed to assist in the recount can handle election materials.** NO ONE ELSE is permitted to touch the election materials at any time. However, a reasonable number of the general public are allowed to attend and observe the recount. The board should hold the recount in a room of sufficient size and satisfactory arrangement to permit observation.

Everyone who has requested the recount or preserved the right to continue the recount (or an officially designated representative) and a reasonable number of the general public are allowed to attend and observe the recount. The official representative of a candidate (or eligible person) must have a written and signed statement from the candidate, voter or governing board member designating him or her as the official representative. The name of the representative must be included in the statement. Each candidate or eligible person may appoint only one official representative to act for him or her.

The candidates, voter or governing board (or official representatives) have the right to observe the recount proceeding, including observing each ballot as it is read in a hand count process. They may view and examine the tally sheets and ballots, but may not handle the election material. **If you have a way to project the ballot images onto a monitor, screen or wall so that it can be easily seen by anyone observing the recount, it will help eliminate the need for candidates, etc., to be watching over the shoulders of the recount teams.**

The candidate or eligible person (or his or her representative) has the right to question any ballot during the recount. If a ballot is questioned, the deputized team (all 4 members) must reexamine that ballot and vote on the voter's intent on that ballot. If a majority of the team cannot agree on the intent of the voter's markings, it remains questioned and the votes for that ballot are *not* recorded.

Any ballot that is questioned is to be marked to provide for its identification at any future contest of the election. The ballots can be marked in numerical or alphabetical order, or they can be tracked by the candidate questioning the ballot plus a number (ex: Smith 1, Jones 1, Smith 2, etc.).

The evidence considered at a recount is only what can be viewed on the election material as it exists or from relevant evidence from the election commissioners, poll clerks or other persons present at the election. The board may not consider extraneous evidence. **Numerous court cases have determined that it is inappropriate for additional evidence to be presented during the recount. Only evidence presented during the canvass can be considered.**

When ballots are being hand counted, one of the deputized teams reads the ballots together. The votes are read aloud so that the deputized team that is recording the vote can hear. Each member of the recording team marks separate tally sheets. The recording team should compare their vote count on a scheduled basis (*e.g.* after every 20 ballots) in order to catch errors.

If a recount has been requested in more than one elected office or special issue, each deputized team may handle only one elected office or special issue recount proceeding at a time until that recount is completed. After a recount of a particular elected office or special issue is completed, the teams that worked with the completed recount can be assigned to work with a recount of another elected office or special issue.

In addition to only counting one office (or special issue) at a time, each team works with only one precinct at a time. The precinct materials cannot be mixed. If more than one team is required to efficiently complete the recount, it is imperative that the teams are made up of the appropriate party affiliations. The canvassing board should determine the number of teams required in advance to allow for time to assemble the appropriate individuals. State law does not limit the number of teams that can be utilized; this is important when dealing with a countywide recount.

For challenged ballots, each precinct's ballots are handled the same way they were during the canvass. The same procedures shall be in place to maintain the secrecy of the ballots and to preserve them for any future contest.

Each precinct can only be recounted one time. However, if after recounting a precinct, the results do not match the canvass results, the ballots and tallies can be checked at that time in order to discover any error in reading the ballots or marking and computing the tally figures.

The person who requested the recount has the right to stop the recount at the conclusion of any precinct by withdrawing his or her request. When that happens, any person (or governing board) that has preserved the right to continue may exercise that right.

The costs of the recount are paid by the candidate or voter asking for the recount, as long as it continues at his or her request. However, if the outcome of the election is reversed at the conclusion of the recount, costs shall not be assessed. This amount may be more than the bond that was set at canvass.

Example: Candidate Smith asks for a recount and the result changes after 2 precincts so he stops the recount. Because the result changed, Smith is not charged. Candidate Jones had reserved the right to continue the recount and exercises that right. After 4 more precincts are recounted, the result changes again. Jones stops the recount and also owes nothing because, again, the result changed. Smith cannot restart the recount because he already stopped it.

The recount is not complete until the board puts the ballots in a sealed package and signs across the seal. The sealed packages are kept by the municipal recorder. When the recount is complete, the board takes official action to certify the result of the election as it is determined by the recount.

