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Requirements for non-
official witnessing of
voter registration forms
and absentee ballots

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You have asked for assistance in determining the requirements for nonofficial witnessing of absentee by mail ballots and voter registration forms. You have indicated that the absentee by mail voter's certificate currently provides a date line only for the voter, while the registration form provides a date line for the person registering and for both witnesses. Based on our review of the pertinent statutes, we recommend that the registration form and the voter's certificate on the absentee by mail envelope be revised. We also address your question regarding use of post office boxes and general delivery addresses to establish residency in certain rural precincts.

Absentee Ballots

A voter who votes absentee by mail must sign a voter's certificate

in the presence of an official listed in this subsection who shall sign as attesting official and shall date the signature. If none of the officials listed in this subsection is reasonably accessible, an absentee voter shall sign the voter's certificate in the presence of two persons over the age of 18, who shall sign as witnesses and attest to the date on which the voter signed the certificate in their presence, and, in addition, the voter shall provide the certification prescribed in AS 09.63.020.

AS 15.20.081(d). This statute does not require the voter to date the voter's certificate, but does require the official or nonofficial witnesses to attest to the date on which the voter signed the certificate in their presence. 1/ For nonofficial

1/ The Alaska Supreme Court has held, and the division's regulations 6 AAC 25.570(f) and (h) and 6 AAC 25.620(c) provide, that failure of an official witness to state the date of attestation will not cause the ballot to be rejected if it can be determined that the ballot was voted on or before election day. Finkelstein v. Stout, 774 P.2d 786, 788 (Alaska 1989); Hammond v.

witnesses, this could be accomplished by language on the form such as

We the undersigned witnesses, who are over the age of 18, attest that this certificate was signed by the voter, in our presence, on

Date

Witness

Witness

The statute requires the voter to provide additional certification as prescribed in AS 09.63.020. That certification must include a statement of the date and place of execution of the certificate, of the fact that a notary public or other official empowered to administer oaths is unavailable, and that "I certify under penalty of perjury that the foregoing is true." Although the voter must date the certificate required by AS 09.25.020, there is no requirement that the date be the same as the date the ballot is witnessed. The certificate may be dated the same day as the attestation by the witnesses, or after that date, up to and including the date of the election.

Voter Registration

A person who requests registration to vote must supply the date of application for registration (AS 15.07.060(a)(6)) and must also date the certification required by AS 09.63.020. When registration is by mail, the person must execute the form before one of the persons listed in AS 15.07.070(b), or, if none of those officials is reasonably accessible, "the person shall have the forms witnessed by two persons over the age of 18 years, and, in addition, shall provide the certification required by AS 09.63.020." Unlike the provisions of AS 15.20.081(d) for absentee voting by mail, AS 15.07.070(b) does not require either official or non-official witnesses to date the form. Only the applicant must date the registration form.

Hickel, 588 P.2d 256, 269 (Alaska 1978). This may also apply to absentee ballots on which nonofficial witnesses fail to state the date of attestation. However the court has held that absentee ballots signed by nonofficial witnesses who dated the certificates on different days should not be counted, since the different dates on the certificates rebut the presumption of compliance with the legal requirement of signing of the certificate in the presence of the two witnesses. Finkelstein, at 790-92.

You have also asked whether witnessing is required for a voter to make changes in registration information already on file with the division. Under AS 15.07.090(c), the division must transfer a voter's registration from one precinct to another or from one district to another upon request by the voter. Although the statute does not require the voter to re-register in order to accomplish the change, AS 15.05.020(10) requires execution of an affidavit in order to change voting residence. If a notary public is unavailable to witness the affidavit, the voter may support the affidavit by providing certification allowed by AS 09.63.020.

No statute specifically addresses the requirements for change of other registration information, such as change of address within the same precinct, change of name, or change of party affiliation. The only statutes that require re-registration are AS 15.07.090(b), which requires re-registration by voters whose registration has been purged, and AS 15.05.030, which allows felons to register upon unconditional discharge.

Case law is not particularly helpful. In Willis v. Thomas, 600 P.2d 1079, 1086 (Alaska 1979), a person filled out a timely application to register but did not provide her complete address. On election day, she filled out a new registration form including her full address. Although the court noted the apparent policy of the division of elections to date corrections of minor defects in registration back to the original date of registration, the court held that the supplying of the correct information on election day did not cure the defect. "[T]here are limits to the extent to which defects in registration can be ignored or 'cured' after the fact. ... It is difficult to see how the omission of the voter's complete address can be considered a 'minor' omission. Election officials could not have told from the information given what district or precinct Ms. Elliott should be voting in. This is obviously an important piece of information, which goes to the very purpose of the registration requirement."

Willis is not directly on point, because it deals with changes in information to cure a defective original registration, rather than changes in information after registration has already been validly accomplished. What is instructive is that the court focused on the purposes behind the registration requirement.

In Fischer v. Stout, 741 P.2d 217, 224 (Alaska 1987), the challengers argued that a voter had originally registered by an absentee ballot application and that the absentee ballot was an unwitnessed registration, so her vote could not be counted. The court disagreed, noting that it was clearly stated on the ballot application that the voter was just updating her registration, and thus no witnessing was required. Since there was no proof that the voter was not officially registered at the time she filed the absentee ballot application, the court ordered that the vote was

correctly counted.

It is not clear from the facts what kind of "update" had occurred; i.e., whether the voter added or changed information regarding her name, address, or party affiliation, or whether the voter just wanted to make sure her registration was current, with no change in information. However, the court's language on this point suggests that updates of some voter information may be accomplished without the witnessing that is required for original registration.

Norma Jean Johnson, project coordinator for the division, has advised us that it is the division's policy to make changes in voter information (other than information for which there are statutory requirements) based on written, unwitnessed requests by the voters. The division checks the signature, social security number, or voter identification number provided by the voter against division records to assure that it matches information on file with the division.

The purpose of registration is (1) to assure that the voter has the necessary qualifications and (2) to prevent fraudulent voting. See 25 Am. Jur. 2d Elections §§ 95-115 (1966). A person who has registered has already established qualification to vote. The identification required by the division serves to prevent fraudulent changes in voter information. Absent statutory requirements to the contrary, we believe that the procedure used by the division for changes in voter information that are not specifically addressed statutorily is adequate.

Post Office Box as Proof of Residency

Finally, you have asked whether AS 15.07.064 permits voters in single-precinct rural areas to establish voting residence by providing a post office box number or general delivery address. That statute was enacted in 1990 to allow rural voters in single-precinct areas to establish residency in a particular village or city without having to provide a precise residential address. See our 1990 bill review for SB 547, Ch. 115, SLA 1990 (June 7; no. 883-90-0155), a copy of which is attached.

Please let us know if you need further advice in these matters.

VBR:ck

Enc.