



Voter Challenges

DE Reference Guidelines 0009 (Updated 03/2020)

These guidelines are for reference only. They are not to be construed as legal advice or representation. For any particular set of facts or circumstances, refer to the applicable state, federal law, and case law, and/or consult a private attorney before drawing any legal conclusions or relying upon this information.

In the event of a voter challenge, the law (Section 101.111, Florida Statutes) should be applied as follows:

CHALLENGER

- The challenger can only challenge a voter in the challenger's own county.
- The challenger must sign a statutory oath.
- Each challenge must be separately completed.
- A challenger commits a 1st degree misdemeanor if challenge is frivolous.
- A challenge provided in advance to the Supervisor of Elections or made at the polls is to be given to the election board of the challenged voter's precinct.

CHALLENGES CAN BE FILED IN ADVANCE

- A challenge can be filed up to 30-days in advance.
- A challenge is election specific, i.e., it can only apply to the election in which it is filed.

CHALLENGED VOTER

- Voter must be provided a copy of the challenge before voting.
- Voter can only vote a provisional ballot with a few exceptions:
 - If a challenge is based on the voter's residential address, the challenged voter may still be able to vote a regular ballot if the: (1) voter is only making an in-county address change, (2) the precinct to which the voter has moved his or her legal residence is within a county that uses an electronic database as a precinct register at the polling place, or (3) the voter is an active uniformed services member or family member. The voter must first execute an address change affidavit.
 - If the challenge is based on the voter's signature, the challenged voter must first execute a signature affidavit before voting a regular ballot.
- Voter voting provisionally must be given written instructions and notice of rights including opportunity to provide proof of eligibility until 5 pm. local time two days after Election Day. (section 101.048, Fla. Stat.)

Counting Provisional

- The statutory presumption is for the canvassing board to count a provisional ballot UNLESS a preponderance of the evidence shows that the person is otherwise not entitled to vote (i.e., not registered, not eligible (felon, adjudicated mentally incompetent, etc.), voted in the wrong precinct, already voted, or evidence of fraud, signature does not match even after opportunity to cure).
- The decision is based on review of the challenged person's provisional ballot certificate and affirmation, the challenger's written oath, and any other evidence provided either by the challenged person, the challenger and/or the supervisor of elections.

THE VOTER CHALLENGE LAW DOES NOT ADDRESS CHALLENGES TO VOTE-BY-MAIL BALLOT VOTERS.

- Any attempt to apply a challenge filed under Section 101.111, Florida Statutes, to vote-by-mail ballot voters should ensure that the voters are accorded the same due process as challenged voters at the polls whether election day or during early voting (i.e., timely notice of the challenge, copy of the written challenge, and written of right to present additional evidence to the supervisor).
- Section 101.68(1) and (2), Florida Statutes, allows an elector or candidate present at a canvassing meeting to file a protest or challenge with the canvassing board about a vote-by-mail ballot. The challenge must be based on a defect of the vote-by-mail ballot certificate and must occur before the vote-by-mail ballot has been removed from the envelope.

THE VOTER CHALLENGE PROCESS SHOULD NOT INTERFERE WITH THE VOTING PROCESS FOR OTHER VOTERS AND THE ORDERLY OPERATION OF THE POLLING PLACE.