

CHAPTER 45. CONTESTS OF ELECTION
SUBCHAPTER 3. RECOUNTS
PART 1. RECOUNTS FOR COUNTY OFFICE

230:45-3-1. Filing for recount; petition, deposit required [REVOKED]

(a) ~~A recount of the ballots cast in an election may be requested by any candidate in the election. [26:8-109] A recount of the ballots cast in an election on questions may be requested under the circumstances described in 230:45-3-33 by any registered voter who voted in the election. A person requesting a recount in a county, school district, municipal or other local election shall file a written petition with the Secretary of the County Election Board before 5 p.m. Friday following the election. [26:8-109] A person requesting a recount in a state election shall file a written petition with the Secretary of the State Election Board before 5 p.m. on Friday following the election. [26:8-109]~~

(b) ~~A petition requesting a recount shall specify the precincts and absentee ballots to be recounted. [26:8-111(A)] The petition also shall specify whether the ballots shall be recounted manually. [26:8-111(A)] Failure to specify a manual recount in the petition shall result in the ballots being recounted by electronic voting device. [26:8-111(A)]~~

(c) ~~A petition requesting a recount shall be accompanied by a deposit in the form of either a cashier's check or a certified check. The amount of the deposit for an electronic recount shall be \$600 per county. [26:8-111(A)] The amount of the deposit for a manual recount shall be \$600 for the first 3,000 ballots to be recounted plus \$600 for each additional 6,000 ballots, or fraction thereof, to be recounted per county. [26:8-111(A)] A petition requesting a manual recount filed with the State Election Board shall be accompanied by a deposit in the amount required by this subsection for the quantity of ballots to be recounted plus an additional \$300.~~

(d) ~~A petition requesting a recount of ballots in a question election in which no candidates are involved and a majority is required for approval also shall be accompanied by an appropriate number of signatures of registered voters who voted in the election as outlined in 230:45-3-35. [26:8-111(B)]~~

(e) ~~A petition requesting a recount of ballots in a question election in which no candidates are involved and more than a majority is required for approval also shall be accompanied by the appropriate number of signatures of voters who voted in the election as outlined in 230:45-3-33(b).~~

230:45-3-2. Procedure for Secretary

(a) At least one week prior to an election, the Secretary of the County Election Board shall consult with the other two members of the County Election Board to set a tentative date and time for a recount hearing to be held if necessary. The Secretary also shall consult with the county's District Judge concerning the tentative date and time of a recount hearing.

(b) Upon receipt of a recount petition, the Secretary shall observe the following procedure:

(1) Contact the District Judge or Associate District Judge of the county to verify the time that the recount can begin in the District Courtroom.

(2) Enter the appropriate information about the recount in ~~ΘEMS~~MESA. Write the cause number assigned to the recount by ~~ΘEMS~~MESA on the recount petition.

(3) Issue an order setting the date, time and place of the recount. See 230:45-3-3. Provide a sufficient number of copies of the order to the contestant to have served on the other candidate or candidates involved in the recount. See 230:45-3-4.

(4) Notify other members and/or alternate members of the County Election Board.

(5) If a manual recount has been requested, select and train a sufficient number of Counters to conduct the recount.

(A) Regular Precinct Inspectors, Judges or Clerks may serve as Counters for a manual recount. Employees of the County Election Board also may serve as Counters.

(B) At least two different political parties shall be represented among the Counters for a manual recount. [26:8-114(B)]

(C) Counters at a manual recount shall be registered voters in the county. [26:8-114(B)]

(D) Counters at a manual recount may not be employed by nor related within the third degree by either consanguinity or affinity to a candidate involved in the recount.

Counters also may not be related by either consanguinity or affinity to any member of the County Election Board.

230:45-3-3. Written order required [REVOKED]

~~The Secretary shall issue a written order setting the date and time for the recount.~~

~~[26:8-111(A)] The recount must begin not less than three days, nor more than ten days, after the petition is filed. [26:8-111(A)] The Secretary shall set the date, whether or not he is able to contact the District Judge or Associate District Judge.~~

230:45-3-4. Service of notice [REVOKED]

~~The petitioner for a recount must arrange for a copy of his petition and a copy of the~~

~~Secretary's recount order to be served on any candidate, or candidates, involved in the recount.~~

~~[26:8-111(A)] The procedure is identical to the service procedure outlined in 230:20-5-6.~~

230:45-3-5. Sheriff to provide security [REVOKED]

~~It is the duty of the County Sheriff to provide security for the ballot transfer boxes for all~~

~~elections from election night until the county's final election results are certified or until the~~

~~ballot transfer boxes are delivered to the District Courtroom, whichever is later. [26:8-110] The~~

~~Secretary shall inform the Sheriff when there will be an election.~~

230:45-3-6. District Judge's duties [REVOKED]

~~At the time of the recount in the District Courtroom, it is the duty of the presiding District~~

~~Court Judge to determine whether or not the ballots have been preserved according to law.~~

~~[26:8-112] If the presiding Judge determines that the ballots have not been preserved according to law, then no recount can be held. [26:8-112]~~

230:45-3-7. County Election Board assumes jurisdiction [REVOKED]

If the presiding District Court Judge determines that the ballots have been preserved according to law, then the County Election Board assumes jurisdiction to begin the recount as requested in the petition. See 230:45-3-9. [26:8-112]

230:45-3-8. Candidate may appoint agent [REVOKED]

Each candidate affected by the recount may commission one agent to represent him at each place where a count is being made. [26:8-113] The commission must be filed in writing with the Secretary of the County Election Board. The agent has full authority to act on behalf of the candidate he represents in the absence of the candidate. [26:8-113]

230:45-3-9. Conducting the recount [REVOKED]

The County Election Board shall open the ballot transfer box from each requested precinct or for absentee ballots individually and shall assign the ballot cards to the person assigned to operate the voting device if this is an electronic recount, or to a group of Counters if this is a manual recount. [26:8-114] In the event that provisional ballots were counted in a precinct included in the recount, the provisional ballots shall be recounted with the precinct ballots. The ballots shall be counted as outlined in 230:45-3-52 for an electronic recount. The ballots shall be counted as outlined in 230:45-5-11, 230:45-5-12 and 230:45-5-19 for a manual recount. Disputed ballots shall be referred to the County Election Board, and its decision shall be final in all cases. [26:8-114] Each candidate affected by the recount is entitled to have a Watcher present at each place where a count is being made. [26:8-114]

230:45-3-10. All ballots must be counted [REVOKED]

When a recount in a particular precinct is initiated, all ballots in the precinct, including any counted provisional ballots, must be counted. [26:8-116.1] The recount shall not be terminated by any party involved in it until all ballots for the precinct being recounted have been counted. [26:8-116.1] *This provision shall apply to all elections.* [26:8-116.1]

230:45-3-11. Stopping the recount [REVOKED]

Should the petitioner, at any time during the recount proceeding, desire that the recount be terminated, he may announce the same to the County Election Board. [26:8-116] However, should any other candidate desire that the recount continue, he or his agent may petition the Board immediately in writing, asking that the recount continue. [26:8-116] The petition must be accompanied by a cashier's check or certified check in an amount equal to the deposit made by the petitioner to conduct the recount. [26:8-116] In such event, the recount shall continue without delay until all ballots in the contested race in the county have been counted. [26:8-116]

30:45-3-11.1. Securing the ballots [REVOKED]

After the recount is completed, the ballots shall be replaced in the original ballot transfer box or boxes. The Secretary shall seal the transfer box with a long State Election Board seal. The

members of the County Election Board, including the Secretary, shall sign the seal. If ballots from the precinct are to be involved in another recount at a later time, the ballot transfer box shall be returned to the custody of the County Sheriff.

230:45-3-12. When the recount is finished

When the recount is complete, the County Election Board shall recess its meeting and shall reconvene in the County Election Board office. ~~The Secretary or an employee of the County Election Board shall enter the results from the recounted precincts into AERO manually and then shall request and print the appropriate number of copies of the Certification Report. The Secretary shall follow the instructions provided by the State Election Board enter the recounted results manually in MESA so that Official Certification Reports can be printed. The~~ When these reports have been printed and proofed, the County Election Board members ~~then~~ shall certify the recounted election results as outlined in 230:35-3-91. [26:8-115]

230:45-3-12.1. Recount results in tie [REVOKED]

~~In the event that a recount results in a tie vote, the tie shall be resolved as outlined in 230:35-3-92.~~

230:45-3-14. Expenses of recount [REVOKED]

~~(a) Actual expenses of the recount shall be entered in OEMS and a Record of Expense shall be requested and printed at the conclusion of the recount. Lawful expenses of a recount include the following items:~~

- ~~(1) Expense of service performed by the County Sheriff or County Clerk. [26:8-117]~~
- ~~(2) Mileage and per diem for County Election Board members, including the Secretary. [26:8-117]~~
- ~~(3) Salaries for Counters for a manual recount. Counters shall be reimbursed at the same rate as a Precinct Judge or Clerk. [26:8-114; 8-117] However, County Election Board employees who act as Counters in a manual recount shall not receive such reimbursement.~~
- ~~(4) Reimbursement for the Court Reporter, Judge and witnesses, if any. [26:8-117]~~

~~(b) The Record of Expense for the recount shall be provided to the person who shall bear the expense of the recount. See 230:45-3-15.~~

PART 5. RECOUNTS FOR MULTI-COUNTY ELECTIONS

230:45-3-27. Filing for recount in multi-county election

In the case of a recount involving an entity such as a multi-county school district or a multi-county municipality, the petition is filed with the Secretary of the parent control(parent) County Election Board. A deposit, as outlined in 230:45-3-1(c), for each county in the multi-county entity in which either regular ballots or absentee ballots are to be recounted must accompany the petition.

230:45-3-28. Recounting responsibility delegated

Upon receipt of a recount petition in a multi-county election, the Secretary of the parent control(parent) County Election Board shall delegate the responsibility for actual conduct of the recount to the appropriate affected County Election Board. Such recounts are held as outlined in 230:45-3-7 through 230: 45-3-12.1. A written claim for expenses as outlined in 230:45-3-14 shall be filed immediately with the parent control(parent) County Election Board. The parent control(parent) County Election Board shall reimburse the affected County Election Board for the expenses of the recount from the deposit. ~~A~~ An Official Certification Report from MESA showing the results of the recount shall be transmitted immediately to the parent control(parent) County Election Board, along with any deposits that have been filed during the recount as outlined in 230:45-3-12.

PART 7. RECOUNTS FOR QUESTION ELECTIONS

230:45-3-33. Recounts for question elections [REVOKED]

~~(a) Recounts are authorized for elections on questions or issues when no candidates are involved and only a majority of the votes cast is required for approval under the following circumstances only: [26:8-111(B)]~~

~~—(1) If 15,000 or more total votes are cast in the election and the margin between votes for and votes against is 150 votes or less, a recount may be requested. [26:8-111(B)(1)]~~

~~—(2) If 14,999 or fewer votes are cast in the election and the margin between votes for and votes against is 1% or less of the total votes cast for the question, a recount may be requested. [26:8-111(B)(2)]~~

~~(b) Recounts are authorized for elections on questions or issues when no candidates are involved and more than a majority of the votes cast is required for approval under the following circumstances only: [26:8-111(C)]~~

~~—(1) The margin of votes between those for the question and the number required for approval is 150 or less and 15,000 or more total votes are counted for and against the question.~~

~~—(2) The margin of votes between those for the question and number required for approval is 1% or less of the total number of votes cast on the question when 14,999 or fewer total votes are cast for and against the question.~~

230:45-3-35. Petition required

(a) An individual who is a registered voter and who [26:8-111(B)(2)] voted in the election may request a recount in the election for a question or issue by filing a petition with the Secretary of the County Election Board as outlined in 230:45-3-1. [26:8-109; 8-111(B)(2)] In the case of a multi-county election, the petition shall be filed with the parent control(parent) County Election Board. The petition must meet the following requirements:

(1) The petition must be signed by 150 registered voters who voted in the election if the total

number of votes cast for and against the question was 15,000 or more. [26:8-111(B)(2)]

(2) The petition must be signed by a number of registered voters who voted in the election equal to 1% or more of the total votes cast if the total number of votes cast for and against the question was 14,999 or fewer. [26:8-111(B)(2)]

(b) The number of signatures required is the same whether the question requires only a majority or more than a majority for approval.

230:45-3-36.1. Petitions verified

Within 24 hours of receiving a petition requesting a recount of the results of a question election, the Secretary of the County Election Board shall determine whether the petition contains a sufficient number of valid signatures. The 24-hour period shall not include Saturday, Sunday or legal holidays. The Secretary shall follow these steps to determine the validity of signatures on the petition.

(1) Photocopy the petition pages and use the photocopy during the verification process.

(2) Determine the minimum number of valid signatures required. See 230:45-3-35.

(3) Count the total signatures on the petition. Note the total number of signatures in the upper left corner of the first page.

(4) Use ~~ΘEMS-MESA~~ to verify that each person who signed the petition is a registered voter. Write the voter ID number and precinct number beside the voter's name on the petition.

(A) If a signer's name is not found in ~~ΘEMS-MESA~~, look in the Central File and the restricted records status file. If the signer's name is not found in either of these files, the person is not registered. Strike through the person's name on the photocopy.

(B) If the signer's name is found in the Central File or in the restricted records status file, note the voter ID number and the precinct number beside the name on the petition.

(5) Refer to the appropriate Precinct Registry to verify that the voter voted in the election.

(A) If the voter did not sign the Precinct Registry, check absentee voting records to determine whether the voter cast an absentee ballot in the election.

(B) If the voter did not vote in the election strike through the name on the petition.

(6) After verifying each signature on the petition as outlined in steps (4) and (5), count the number of valid signatures.

(A) If there are at least the minimum required number of valid signatures, the petition is valid. Proceed with arrangements for the recount.

(B) If there are fewer than the minimum required number of valid signatures, the petition is not valid. Notify the person who filed the petition that it has been determined to be invalid and that the recount cannot be conducted.

230:45-3-37. Deposits required [REVOKED]

~~A petition requesting a recount in a question election shall be accompanied by a deposit, as outlined in 230:45-3-1(c), for each county affected by the petition. [26:8-111(B)(2)]~~

230:45-3-38. Petitioner may commission agent and Watcher [REVOKED]

~~An individual requesting a recount in a question election is authorized to commission in~~

~~writing no more than one agent to act in his behalf in each county affected by the recount. [26:8-113] The commission shall be filed with the Secretary of the County Election Board. The individual requesting the recount also *is entitled to have a Watcher present at each place where a count is being conducted.* [26:8-114] A Watcher for a question recount functions in the same manner as a Watcher for a candidate recount as outlined in 230:45-5-4. Persons who oppose the recount are not entitled to commission either agents or Watchers.~~

PART 9. RECOUNTS WITH ELECTRONIC VOTING DEVICES

230:45-3-48. Voting devices shall be tested [REVOKED]

~~If a recount is to be conducted using electronic voting devices, a sufficient number of voting devices shall be randomly selected for use in the recount. The voting devices to be used in an electronic recount shall be tested for accuracy. See 230:50-3-64 through 230:50-3-70. [26:8-114(A)] The testing procedures shall be completed prior to the beginning of the recount hearing. All candidates, or their agents, affected by the recount shall be entitled to witness the testing procedure. [26:8-114(A)] After all testing procedures have been completed, the memory pack shall be initialized to erase the testing totals. All materials used and produced during testing shall be available for inspection during the recount hearing. The testing materials shall be retained as outlined in 230:50-3-70.~~

230:45-3-50. Voting devices, ballot boxes and memory packs ballots delivered to Courtroom

~~The voting device or devices to be used to conduct an electronic recount shall be prepared for the recount in advance of the recount hearing and shall be delivered to the District Courtroom at the time that the recount hearing is to begin. One ballot box for each device also shall be delivered to the Courtroom. ~~In the event that the County Election Board possesses voting device testing stands that allow for the separation of ballots that are counted by the device from those that are not counted, such testing stands may be used in place of the ballot boxes. The Secretary of the County Election Board shall personally deliver the memory packs to be used in the recount to the District Courtroom at the time the recount hearing is to begin.~~~~

230:45-3-51. Operation of voting device during an electronic recount

~~The Secretary of the County Election Board shall designate an employee of the County Election Board to operate the each voting device used during an electronic recount. If necessary, Precinct Inspectors also may be designated to operate voting devices during an electronic recount.~~

230:45-3-52. Preparation of voting device

~~When it is time to begin the recount, the person designated to operate the voting device shall prepare open the polls on the voting device. ~~The following procedure shall be observed: and~~~~

prepare it to count ballots. See 230:35-5-???.

- (1) The ballot box or testing stand and the voting device shall be positioned near an electrical outlet.
- ~~(2) If a ballot box is being used, the person assigned to operate the voting device shall demonstrate to all assembled witnesses that the ballot box is empty. See 230:35-5-32(3). After this demonstration, the ballot box shall be assembled as outlined in 230:35-5-32(4)-(6), except that the ballot box shall not be locked.~~
- ~~(3) The voting device shall be placed on top of the ballot box or testing stand.~~
- ~~(4) The panel on the back of the voting device shall be unlocked.~~
- ~~(5) The memory pack for the first precinct to be recounted shall be installed.~~
- ~~(6) The voting device shall be plugged into the electrical outlet. The Zero Printout will begin to print immediately. The Zero Printout tape shall not be torn off the voting device.~~
- ~~(7) The person operating the voting device shall verify that the red and green lights on the front panel of the device are both on.~~

230:45-3-53. Instructions for electronic recount

(a) **Preparing to count.** ~~The~~ When the Judge rules that the ballots have been properly preserved and that the recount can be performed, the Secretary shall break the seal on the each ballot transfer box from the appropriate the first precinct to be recounted. In the event that ~~the~~ a ballot transfer box contains ballots from more than one entity, the person operating the voting device shall the Secretary shall assign each opened ballot transfer case to a County Election Board employee or to a Precinct Official to sort and separate the ballot cards ballots containing the race or question to be recounted. All other ~~ballot cards~~ ballots for that precinct shall be replaced in the ballot transfer box. The Secretary shall break the seal on the ballot transfer box for the next precinct to be recounted as soon as all the ballots from the first precinct have been sorted and shall assign the opened transfer case to a County Election Board employee or a Precinct Official to sort and separate the ballots to be recounted. This process shall be repeated as necessary until all the ballots to be recounted have been sorted and separated for counting.

(b) **Counting the ballots.** After the preparations described in (a) of this Section have been completed, the Secretary shall transfer the ballots to the person assigned to operate the voting device shall to begin to feed processing the ballots one at a time into through the voting device. If the voting device returns a ballot, the ~~override key operator~~ shall be used to accept the ballot and continue. See 230:35-5-162. A Watcher may object in writing to actions taken by the person operating the voting device. After all the ballots for the first precinct have been processed through the voting device, the person operating the voting device shall obtain the Totals Printout remove the ballots from the ballot box and returned them to the ballot transfer box for the precinct. The operator then shall accept ballots for the next precinct from the Secretary and immediately shall begin processing them. See 230:35-5-75.1. ~~The Totals Printout shall be torn off the voting device and shall be signed by the person who operated the voting device and by the County Election Board members. The procedure described in this Subsection shall be repeated for all additional precincts to be recounted. More than one precinct may be counted simultaneously if sufficient voting devices and memory packs have been prepared, tested and delivered to the courtroom.~~

(c) **Concluding the recount.** After the Totals Printout has been obtained, the person operating

~~the voting device shall unplug the device and remove the memory pack. If a ballot box was used, the device shall be lifted off the box and the ballot box shall be opened and the ballots removed. The ballots shall be replaced in the original ballot transfer box. The ballots shall be secured as outlined 230:45-3-11.1. When all the ballots for all precincts included in the recount have been recounted, the operator of each voting device used shall close the polls on the voting device and shall print the Detail Report and the Tally Report. Additional copies of the Tally Report shall be printed as directed by the Secretary. The County Election Board meeting shall be recessed and the members and employees of the County Election Board immediately shall return to the County Election Board office to update the election results in MESA (see 230:45-3-??), print Official Certification Reports, and to certify the results of the recounted race or question.~~

(d) Securing the ballots. After the recount is completed, the ballots shall be replaced in the original ballot transfer box or boxes. The Secretary shall seal the transfer box with a long State Election Board seal. The members of the County Election Board, including the Secretary, shall sign the seal. The ballots shall be returned the County Election Board office to be stored with other election materials for required retention period for the election. However, if any ballots will be involved in another recount at a later time, the ballot transfer box shall be returned to the custody of the County Sheriff until time for that recount to occur.

SUBCHAPTER 5. INSTRUCTIONS FOR COUNTERS FOR MANUAL RECOUNT

PART 1. GENERAL GUIDELINES

230:45-5-1. Location and materials for Counters

Tables shall be provided in the District Courtroom for the Counters. The following materials shall be arranged on each counting table. A complete set of these materials shall be provided for each group of Counters.

- (1) Two Tally Sheets for each type of ballot.
- (2) Four ~~red-and-blue-leaded~~ pencils.
- (3) One pencil sharpener.
- (4) Paper clips.

(5) ~~INSTRUCTIONS FOR COUNTERS FOR MANUAL RECOUNT~~ Instructions for Counters for Manual Recount.

- (6) Two erasers.

230:45-5-4. Watchers [REVOKED]

Each candidate involved in the recount is entitled to have a Watcher present at each place where a count is being made. ~~[26:8-114] Watchers shall be limited to challenging, in writing, any decision made by the Counters with regard to counting of a ballot. [26:8-114] Such challenge shall be made immediately to the County Election Board. [26:8-114]~~

PART 3. PROCEDURE FOR COUNTING

230:45-5-11. Preparing to count

(a) The Secretary shall break the seal on each ballot transfer box from each requested precinct or for absentee ballots and assign the box or boxes to a group of four Counters. [26:8-114(B)] If only one group of four Counters is used, the ballot transfer box for only one precinct shall be opened at a time.

(b) In the event that the ballot transfer box contains ~~ballot cards~~ ballots for more than one entity, the Counters shall sort and separate the ballot cards containing the race or question to be recounted. All other ~~ballot cards~~ ballots shall be replaced in the ballot transfer box.

230:45-5-12. Instructions for counting

After the preparations described in 230:45-5-11 have been completed, the Counters shall begin to count the ballots. The following procedure shall be observed to count the ballots.

(1) The Caller and Stacker shall examine each ballot.

(2) The ballot shall be examined for each party, the office to be recounted and the name of the candidate voted upon. The caller shall announce the vote recorded on the ballot. For example, the Caller shall say "One vote for John Doe."

(3) The Stacker shall agree with the Caller, or the ballot cannot be counted for that (4) The first Tallyer shall repeat the name of the candidate and the number (from one to five) of the vote that is being recorded for that candidate.

(5) The second Tallyer shall agree with the first Tallyer, or the recording shall stop and shall not continue until the Tallyers are in agreement.
candidate.

(6) If more than one candidate has been marked in a "vote for one" race that is being recounted, the Caller shall announce an overvote in the race. If more than the designated number of candidates has been marked in a race allowing multiple votes, the Caller shall announce an overvote in the race.

(7) The Tallyers shall record an overvote in the space provided on the Tally Sheet for overvotes when one is announced by the Caller.

(8) If no candidate has been marked in the race being recounted, the Caller shall announce an undervote.

(9) The Tallyers shall record an undervote in the space provided on the Tally Sheet for undervotes when one is announced by the Caller.

~~(6)~~ (10) In recording the votes, the Tallyers shall use the tally method; i.e., votes shall be recorded in segments of five, from one to five, or from one to "tally." The fifth vote shall be shown by a slash line through the other four votes.

~~(7)~~ (11) When a ballot has been counted ~~completely~~, the Caller shall hand the ballot to the Stacker, who shall stack the ballots in ~~two~~ the appropriate ballot transfer ~~boxes~~ box.

~~(8)~~ (A) The Stacker shall stack ~~separately~~ ballots that cannot be counted, ~~including voted ballots that have been mutilated and ballots that have not been marked in any manner. These uncounted ballots shall be stacked in one~~ a ballot transfer box, ~~and the~~

(B) The Stacker shall stack all counted ballots ~~shall be stacked in a separate ballot transfer box. When the count is completed, the uncounted ballots shall be banded with a rubber band and returned to the ballot transfer box with the counted ballots.~~

~~(9)~~ When all of the ballots in the first count have been counted, the Stacker shall write;

~~"End of First Count" on the back of the last ballot in each stack. Thereafter, a similar notation shall be made for the end of the second count, third count and so on.~~

~~(10) At the end of each count, the Tallyers shall verify that their totals are in agreement. If their totals do not agree, no further ballots shall be counted until their totals are in agreement.~~

230:45-5-12.1. Breaks in counting

Counters shall be entitled to take breaks from counting periodically during the recount to prevent fatigue. When it is necessary for Counters to break, the Caller shall designate the end of the count ~~as outlined in 230:45-5-12(10)~~ and the Stacker shall write "End of first count" on the back of the last ballot in each stack. Thereafter, a similar notation shall be made for the end of the second, third count, and so on. At the end of each count and before the Counter leave the courtroom, the Tallyers shall verify they their totals are in agreement. If their totals do not agree, no additional ballots shall be counted when they return from their break until the Tallyers totals are in agreement. When Counters break from counting, the members of the County Election Board and the County Sheriff or Deputy shall remain in the District Courtroom to protect the ballots until all Counters have returned and resumed the count.

PART 5. RULES FOR COUNTING

230:45-5-19. Counters shall observe rules

When manually recounting ballots that were originally counted by electronic voting devices, the law concerning the counting of ballots by voting devices shall be applied to the manual count. Counters shall observe the following rules in counting all ballots:

- (1) Ballots must be marked in ~~ink or in pencil~~ either blue or black ink. If not, they cannot be counted.
- (2) Any marking in the voting target shall be a valid marking. The voting target is the ~~space between the head and tail of the arrow~~ rectangle that appears ~~beside to the left of~~ each candidate's name, ~~beside~~ each option on a question, and ~~beside a~~ each party emblem in ~~each~~ the "straight party" voting option.
- (3) If there is any writing on the ballot, the ballot still can be counted for any office or question thereon.
- (4) Any mark extending outside the voting target into another voting target cannot be counted.
- (5) Marks used to designate the intention of the voter shall not be counted if they are not located in the voting target. [26:7-127(3)]
- (6) Failure to vote for any candidate for a particular office shall not invalidate valid markings for candidates or other offices on the same ballot. [26:7-127(5)]
- (7) A valid marking in the voting target beside the emblem of a political party shall be counted as a vote for each candidate of that party on the ballot. [26:7-127(6)] ~~It is possible that more than one ballot on a ballot card may include the "straight party" voting option. In this case, a valid marking in the voting target beside a party emblem shall be~~

~~counted only for those candidates included in that ballot.~~

(8) If a valid marking is marked in the voting target beside emblems of two or more parties, then the ballot cannot be counted for any partisan candidate on that ballot.

[26:7-127(6)]

(9) If a valid marking is marked in the voting target beside the emblem of Political Party A, and a valid marking is marked in the voting target beside the name of a candidate of Political Party B, then one vote shall be recorded for each candidate of Political Party A except for the office in which the vote was recorded for the individual candidate of Political Party B. [26:7-127(6)] That individual candidate of Political Party B shall receive one vote. Such a ballot is valid ~~and shall not be considered mutilated.~~ In counting such a split ticket ballot, because a vote for the candidate shall supersede the vote for the party.

(10) If valid markings are made in the voting targets ~~opposite~~ beside the names of two candidates for the same office, the ballot cannot be counted for any candidate for that office. An overvote shall be recorded for this race. However, the ballot may be counted for candidates for other offices which are validly marked.

(11) If a ballot has not been marked for any candidate in a particular race or question, it cannot be counted no vote shall be counted for any candidate in the race and an undervote shall be recorded for the race. If a ballot is completely blank and no votes have been marked for any race or question, no votes shall be recorded for any race or question on the ballot. An undervote shall be recorded for every race and question on the ballot.

(12) Ballots that have been torn shall be counted if it is possible to determine how the voter marked the ballot.

230:45-5-20. Examples of counting ballots [REVOKED]

~~Examples of commonly marked ballots are contained in Appendices A-G of this Chapter. The text describes how each ballot shall be counted, together with the applicable rule. The examples in Appendices A through G of this Chapter are not exhaustive, but show some of the most common ways that ballots are marked and counted. Each ballot that is counted shall be examined on its own merit and counted according to 230:45-5-19.~~

APPENDIX A. CORRECTLY MARKED BALLOT [REVOKED]

~~Ballot 1~~

~~One Vote Counted For: Will Rogers; Robbers Cave State Park; Friendly; 1988 Sooner Basketball; Garth Brooks; Jim Thorpe; Gilcrease Museum~~

~~230:45-5-19(3)~~

APPENDIX B. STRAIGHT PARTY [REVOKED]

~~Ballot 2~~

~~One Vote Counted For Each Republican: George Bush/Dan Quayle; Jerry Hill; Jerry D. Brown;~~

~~Kevin Farmer; Don Nichols~~

~~230:45-5-19(8)~~

APPENDIX C. BALLOT MARKED OUTSIDE VOTING TARGET, Example 1
[REVOKED]

~~Ballot 3~~

~~Ballot Marked Outside Voting Target~~

~~Votes Not Counted for State Questions 643, 645, 646, 648, 649, 650 and County Question One "Yes" Vote Counted for State Question 647~~

~~230:45-5-19(6)~~

APPENDIX D. WRITING ON BALLOT [REVOKED]

~~Ballot 4~~

~~One Vote Counted For: Will Rogers; Quartz Mountain Art Institute; Friendly; Shangri-La Resort; Reba McEntire; 1990 Lawton Eisenhower H.S. Football~~

~~230:45-5-19(8) and (4)~~

APPENDIX E. SPLIT TICKET [REVOKED]

~~Ballot 5~~

~~One Vote Counted For: Bill Clinton/Al Gore; Mike Synar; Cody L. Graves; David L. Thompson; Thomas D. Ledgerwood II~~

~~230:45-5-19(10)~~

APPENDIX F. BALLOT MARKED OUTSIDE VOTING TARGET, Example 2
[REVOKED]

~~Ballot 6~~

~~No Votes Counted: Ballot Marked Outside Voting Target~~

~~230:45-5-19(6)~~

APPENDIX G. UNUSUAL MARKING INSIDE VOTING TARGET [REVOKED]

Ballot 7

~~One "No" Vote Counted For Each Question~~

230:45-5-19(3)