

## CHAPTER 17

### ABSENTEE ELECTION MANAGER

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#### **17.1 The Office of Absentee Election Manager**

Each county has an absentee election manager (AEM). The circuit clerk of the county is, at their option, the AEM.

If the circuit clerk declines the duties of the AEM, the appointing board must appoint a person qualified by training and experience to be the AEM. § 17-11-2.

The AEM must also be a qualified elector of the county. Circuit clerks who are candidates for office cannot serve as absentee election manager when they have opposition. § 17-11-13. Further, a member of the board of registrars cannot serve as an AEM due to the common law of incompatibility of offices. *Scott v. Strobach*, 49 Ala. 477 (1873); AG AO 88-00156.

A circuit clerk may, however, serve as absentee election manager if a family member is a candidate, even, for instance, if the circuit clerk is retiring and a family member is running for the clerk's office. AG AO 88-00156.

When the circuit clerk is opposed as a candidate for office, the clerk must certify to the appointing board that they are disqualified from serving as the AEM for that election. The appointing board must then appoint a replacement. § 17-11-13. The person appointed shall be qualified by training and experience, a qualified elector of the county, and must not be a candidate for election. § 17-11-2.

### **17.1.1 Office**

The county commission must designate the place or office where the duties of the AEM are to be performed. This place or office must be open on the days and during the hours kept by the circuit clerk. § 17-11-2. Usually, the hours kept by the AEM are the same as the hours during which the courthouse is open.

### **17.1.2 Compensation**

The county commission determines the amount of compensation to be paid to the AEM for their services during the election. The AEM can be compensated during the 55-day period prior to the election, the day of election, and for the seven-day period following the election during which ballots under the Uniformed and Overseas Citizens Absentee Voting Act may be returned. However, the total number of days worked may not exceed 46 days. Act No. 2019-415; § 17-11-14. However, when there are not 45 days between the date of the first election and the run-off election, the AEM can only be compensated for the number of days between these elections, for the day of the run-off election, and for the seven-day period following the runoff election. Act No. 2019-415; AG AO 88-00434. Compensation shall be at least \$50 per day or the same as an inspector as set forth in §17-8-12. An absentee election manager is entitled to receive an additional \$25 per day compensation from the state for completion of a local election school or being certified as a qualified poll worker by the judge of probate. §§ 17-8-12 and 17-11-14. This amount is the total compensation allowed the AEM for duties in all elections held on the same day. Compensation is to be paid from the county treasury. § 17-11-14. The expenses for elections are generally split between the county and the state. Additional compensation of election officials for completing the election school is paid exclusively by the state. AG AO 2007-94.

An absentee election manager who has also completed or taught at a local election school is entitled to \$125 per day, which is the same compensation as an inspector. AG AO 2010-080.

## **17.2 Absentee Balloting Process**

As one might expect, all duties of the AEM support the absentee ballot election process. These duties include obtaining ballots, processing applications for absentee ballots, sending absentee ballots, receiving absentee ballots, noting the names of absentee voters on the list of qualified electors, maintaining a list of absentee voters, and delivering absentee ballots to the appropriate poll workers.

### **17.2.1 Obtaining Ballots**

The judge of probate must deliver to the AEM a sufficient number of absentee ballots, envelopes and other necessary supplies at least 55 days before the election and, for primary run-off elections, not more than 14 days after the first primary. § 17-11-12; Act No. 2019-318. The judge of probate is required to print absentee ballots for all elections. AG AO 88-00286. The entity supplying the materials must ship to the county or municipality and the Secretary of State an itemized and signed statement showing a description and quantity of each item so shipped or delivered. All unused absentee election materials must be returned by the absentee election manager to the sheriff, along with an itemized signed statement showing the description and quantity of each item of absentee election material not utilized by the county or municipality in the election. § 17-11-19; Act No. 2019-507.

Absentee ballots are to be printed with a designation specific to its ballot style and a pre-printed serial number unique within that ballot style. The list of qualified voters shall identify the correct ballot style designations for each voter. The administrative rules on the printing of designations and serial numbers on absentee ballots are included in the appendix.

The forms of official absentee ballots, affidavits, and envelopes are specified by the Code. §§ 17-11-6 through 17-11-9. Each ballot should be accompanied by two envelopes -- a small, plain one in which the ballot is sealed and a second larger envelope with the voter's affidavit printed on it for the voter to sign and place the smaller envelope inside. § 17-11-9. In the past, another envelope was required for submitting photo identification, however necessary identification must now be submitted with voters' absentee ballot applications. Act 2019-507.

If there is more than one ballot style in the county (for example, when candidates run by district), care must be taken to prevent absentee voters

from voting in the wrong district races. Separate ballots are printed for each district. The AEM must check the ballot style assigned to each applicant, and send the appropriate ballot, based upon the districts in which the voter resides.

### **17.2.2 Regular Absentee Ballots**

Applications for regular absentee ballots must be filed by qualified electors with the AEM not less than five days before the election. § 17-11-3(a).

A qualified voter can apply for an absentee ballot that can be cast by mail, commercial carrier, or hand delivery if they meet any of the following conditions. § 17-11-3:

- (a) The voter expects to be out of the county or the state on Election Day;
- (b) The voter has any physical illness or infirmity which prevents his or her attendance at the polls;
- (c) The voter expects to work a shift which has at least ten hours which coincide with the hours the polls are open at his or her regular polling place;
- (d) The voter is enrolled as a student at an educational institution located outside the county of his or her personal residence that prevents his or her attendance at the polls;
- (e) The voter is a member of, or spouse or dependent of a member of the armed forces of the United States, or is similarly qualified to vote absentee pursuant to the federal Uniform and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff;
- (f) The voter has been appointed as an election officer or named as a poll watcher at a polling place other than his or her regular voting place;
- (g) The voter is a caregiver for a family member to the second degree of kinship by affinity or consanguinity, if the family member is confined to his or her home; or,
- (h) The voter is incarcerated in prison or jail and has not been convicted of a felony crime of moral turpitude.

Applications shall be in a form prescribed and designed by the Secretary of State, but handwritten applications may also be submitted if they

include sufficient information to identify the applicant. § 17-11-4; Act 2019-507.

Under Act 2019-507, absentee ballot applications must now be accompanied by a copy of current, valid photo identification, unless the voter is otherwise exempt from the identification requirement. If an absentee ballot application arrives on or after the eighth day before the election without identification, the ballot must be issued as a provisional ballot. §§ 17-9-30(c) and 17-10-2; Act 2019-507. However, the law does not provide for what the absentee election manager (AEM) should do if an application lacking identification arrives *before* the eighth day prior to the election. The practice under prior law involved sending notice to applicants who failed to provide identification, but that language has since been repealed in the new law. This new law does not explicitly require that any notice be sent to these applicants. However, the Secretary of State as authorized by § 17-1-3 has provided uniform guidance for AEM's to notify applicants that their application has been denied for lack of identification, in order to allow them an opportunity to correct their applications. This guidance does not specify how applicants may be notified, but the Secretary of State recommends sending notice via U.S. mail.

Alabama law does not prohibit an individual from obtaining and distributing blank absentee ballot applications. AG AO 84-00402.

The AEM may receive an absentee ballot request on a form distributed by the federal government to members of the armed services and to Americans living overseas. The Federal Postcard Application for Registration and Absentee Ballot may be treated as both an application for registration to vote and an application for an absentee ballot. § 17-11-3(b).

However, the AEM does not have authority to register people to vote. Therefore, if a person who applies on a Federal Post Card Application is not included on the list of qualified electors, the application should be sent to the board of registrars. If the board decides to register the applicant, the AEM can then process the absentee application.

Each applicant must sign the absentee ballot application. If a signature is made by mark, a witness to the signature must also sign. Applicants may also receive assistance in filling out the application if they desire. § 17-11-4.

Completed absentee ballot applications must be personally handed to the AEM by the applicant or received by the AEM by U.S. mail or commercial carrier or, in the case of an emergency absentee ballot, by the applicant's designee. § 17-11-4; Act 2019-507.

### **17.2.3 Emergency Absentee Ballots**

Voters requiring emergency treatment from a licensed physician within five days of an election may apply for an emergency absentee ballot. The attendant physician shall describe and certify the circumstances of the emergency to the absentee election manager on the form designed by the Secretary of State. The ballot must be returned no later than noon on the day the election is held. § 17-11-3(c).

Any registered elector may also vote by an emergency absentee ballot if any of the following situations arise:

- (a) The elector is required by his or her employer under unforeseen circumstances within five days before an election to be unavailable at the polls on election day.
- (b) The elector is a caregiver of a person who requires emergency treatment by a licensed physician within five days before an election.
- (c) A family member to the second degree of kinship by affinity or consanguinity of an elector dies within five days before an election

The voter must apply for the emergency ballot no later than the close of business one day prior to the election by filling out an emergency absentee ballot application designed by the Secretary of State. The voter must sign an affidavit swearing that they were not aware of the situation constituting an emergency prior to five days before the election (i.e., the regular absentee application deadline). After voting the ballot, the voter or voter's designee in cases of medical emergency must hand the ballot to the absentee election manager. § 17-11-3(d).

### **17.2.4 Permanent Absentee Voter List**

In 2019, the Legislature passed Act 2019-359 which provides for a permanent absentee voter list for voters who have a permanent disability which prevents his or her attendance at the polls on election day. Any

voter placed on this list will have an absentee ballot mailed to them before each election held during the calendar year.

To be placed on the permanent absentee voter list, the voter must submit an absentee ballot application for the permanent absentee voter list. The application must be signed and notarized by the primary physician for the person with the disability.

A voter with a permanent disability must apply for the permanent absentee voter list on an annual basis. However, for an election cycle that begins in one year and continues into the subsequent year, the permanent absentee ballot application shall be valid for the whole election cycle.

Applications for the permanent absentee voter list for federal, state, and county elections are submitted to the county absentee election manager. Applications for the permanent absentee voter list for municipal election are submitted to the absentee election manager for the town or city.

The Secretary of State has adopted rules to implement the provisions of Act 2019-359. Admin. Code r. 820-2-12ER.

### **17.2.5 Sending Absentee Ballots**

After an application has been received, the AEM must furnish the absentee voter with an absentee ballot if the applicant's name appears on the official list of qualified electors no later than the next business day once ballots are available for ballots requested to be mailed. § 17-11-5(a). However, a ballot shall not be issued to an applicant whose name does not appear on the state voter registration list as a qualified elector. §17-11-9.

The prospective absentee voter must submit valid photo identification with the absentee ballot application. If they do not do not provide the identification by eight days before the election the absentee ballot must be issued as a provisional ballot. Act 2019-507.

The AEM must send a provisional ballot and related reidentification materials to an applicant who submits an absentee ballot application within eight days of an election but fails to include a valid form of photo identification for voting. The absentee voter must submit a valid form of photo identification when they return the absentee ballot or provide the identification to the board of registrars no later than 5:00 p.m. on the Friday after election. Act 2019-507.

The AEM must also send a provisional ballot and related reidentification materials to an applicant whose name appears in a voting place within the state voter registration list but does not appear on the list for the voting place in which they seek to vote. Ala. Code § 17-11-9. An applicant whose name does not appear on the state voter registration list is not entitled to an absentee ballot. § 17-11-9.

When the AEM mails a provisional absentee ballot to the voter, it should include:

- (a) Information on why the ballot is a provisional ballot;
- (b) A written explanation that photo identification must be provided by the Friday after the election at 5:00 p.m.;
- (c) A written explanation that if photo identification is not provided by the deadline, the vote will not be counted;
- (d) A voter reidentification form and an affirmation of provisional voter form;
- (e) An explanation of how the voter can later determine if their ballot was counted, and if it was not counted, why; and
- (f) A third envelope for identification as specified by § 17-11-9. § 17-10-2 and 17-11-9.

The AEM may not accept multiple applications which are mailed in one envelope. However, the AEM may accept applications which have mistakenly been mailed to the board of registrars. AG AO 82-00551.

An absentee ballot should only be sent to the applicant's or voter's residence address or, upon written request of the voter, to the address where the voter regularly receives mail, or by handing the absentee ballot to the voter. § 17-11-5. An absentee ballot should not be sent to the voter via a third party except under the medical emergency provisions described above.

If the AEM has reasonable cause to believe that the applicant has given a fraudulent address on the application for the absentee ballot, the election manager shall turn over the absentee ballot application to the district attorney. § 17-11-5.

### **17.2.6 Receiving Absentee Ballots**

After marking the ballot and subscribing the required oath or affidavit, the absentee voter must seal the ballot in the plain envelope provided. Then, the voter seals the plain envelope in the larger envelope and completes the affidavit on the larger envelope. The sealed ballot may either be forwarded to the AEM by U.S. mail or commercial carrier or it may be handed to the AEM in person by the voter. § 17-11-9 and Act 2019-507. A third party is prohibited from delivering an absentee ballot to the AEM except pursuant to the emergency medical provisions.

Sealed absentee ballots must be safely kept by the AEM until they are delivered to the absentee ballot poll workers at noon on the day of the election. § 17-11-10.

### **17.2.7 Delivery of Absentee Ballots**

When absentee ballots are returned, the AEM retains them in the unopened affidavit envelopes until noon on Election Day when the AEM can begin delivering them to the absentee election poll workers. § 17-11-10.

No absentee ballot shall be opened or counted if received by the absentee election manager by mail or commercial carrier, unless postmarked as of the date prior to the day of the election and received through the mail or by commercial carrier by noon the day of election, or, if received by hand delivery, to the absentee election manager not later than the close of the last business day preceding the election or if delivered by the medical emergency designee, by noon on the day of the election. However, ballots submitted by military or overseas voters should be accepted if postmarked as of the day of the election and received by mail or commercial carrier no later than noon seven days after the election. § 17-11-18(b).

### **17.2.8 List of Qualified Electors**

The official list of qualified electors must be given to the AEM by the judge of probate from a printout from the state voter registration list, at least 35 days before a municipal election and at least 55 days before all other elections. The Secretary of State may further provide for electronic access to the list for optional use by the AEM. The AEM must then underline the names of voters who have applied for an absentee ballot and must immediately write beside each of their names the word “absentee” or

identify applicants for absentee ballots electronically to the state voter registration list. § 17-11-5.

Before the polls open at any election on Election Day, the AEM shall effectuate the delivery to the poll workers at each polling place a list showing the name and address of every person whose name is on the list of qualified electors for that polling place and who applied for an absentee ballot. The names of these absentee voters must be identified as “absentee” on the official list of voters from the state voter registration list for that polling place before they are delivered to the polling places. § 17-11-5. Now with an online computerized voter registration, absentee voters may be entered directly on the polling list before they are delivered to the polling places.

### **17.2.9 List of Absentee Voters**

A list of absentee voters must be maintained on a daily basis by the AEM. The list should include the name, residence (if not redacted pursuant to § 17-4-33(b)), polling place, and the date application was received for each absentee voter. § 17-11-5. After the absentee ballot is returned by the voter, the AEM shall record the receipt of the absentee ballot on the list of absentee voters.

The list of voters who applied for an absentee ballot is not a public record until the day after the election, when the list is provided to the board of registrars. § 17-11-5(b); Act No. 2019-507. The AEM may not give a person access to the applications for absentee ballots even after the election, unless pursuant to a Court Order. This information is not a matter of public record and should be considered privileged information the same as voter registration applications. Further, the list of absentee voters must be maintained in the office of the circuit clerk for 60 days after the election, at which time it shall be filed with the judge of probate. § 17-11-5.

### **17.2.10 Absentee Poll Workers**

Absentee poll workers are appointed by the appointing board as are other poll workers. For every election the number of absentee poll workers consists of one inspector and at least three clerks. § 17-11-11(a).

Absentee poll watchers may also be appointed just as the watchers are appointed. § 17-11-11(b).

Beginning at noon on election day, the absentee election manager must deliver the sealed affidavit envelopes to the election officials. The election officials then follow this procedure:

- (a) The election officials call the name of each voter casting an absentee ballot with poll watchers present. § 17-11-10.
- (b) The election officials review the affidavits to certify that each applicant has identified a place of residence, reason for voting absentee and the affidavit is signed. *Williams v. Lide*, 628 So. 2d 531 (Ala. 1993). In addition, the affidavit must be either notarized or witnessed by two witnesses or, in the case of a military or overseas voter, is witnessed by two witnesses. No poll worker or election official shall open an affidavit envelope if the affidavit printed thereon is unsigned by the voter, lacks the voter's address, lacks the reason for voting absentee or if the ballot is not properly witnessed or notarized. § 17-11-10. Additionally, no affidavit envelope should be opened if the notary public or witness is also a candidate on the ballot with opposition. § 17-11-7(c) and Act 2019-507. An absentee ballot that is rejected because the affidavit is incomplete or not properly witnessed or notarized **shall not** be converted to a provisional ballot. There is no statutory authority by which the board of registrars can approve the counting of an absentee ballot with a deficient affidavit envelope.
- (c) The election officials separate the ballot envelopes from affidavit envelopes. The plain envelope is deposited into the sealed ballot box.
- (d) Ballots identified as provisional absentee ballots are counted separately.
- (e) The election officials then remove the ballots from the blank ballot envelopes and insert them into the electronic ballot tabulator. The procedure for counting the absentee ballots in electronic voting equipment is generally the same as for poll workers in precincts. The tabulation of results may not be finalized until the polls close.

All applications and affidavits for an absentee ballot should be preserved in case of a contest or in the event that an investigation by the district attorney reveals evidence which would warrant some prosecutorial action.  
AG AO 80-00551

### **17.2.11 Absentee Provisional Ballots**

A prospective absentee voter who does not submit valid photo identification with their absentee ballot application within the eight days prior to the election shall be issued a provisional absentee ballot. The voter must submit the missing identification when they return the provisional absentee ballot or must submit the missing identification to the board of registrars no later than 5:00 p.m. on the Friday after the election. If the photo identification is not provided by the absentee voter, then the provisional absentee ballot must not be counted. § 17-10-2; Act 2019-507.

Where the absentee ballot becomes provisional as a result of an absentee precinct inspector having knowledge that the person is not entitled to vote, the same procedures as previously described are followed and the inspector shall provide two copies of the challenge to the AEM. § 17-10-2. However, the AEM must also mail one copy of the challenge statement to the voter by first class mail no later than the day after the election along with the following: a written explanation of the procedure used by the board of registrars in verifying and certifying provisional ballots and an address and phone number by which the provisional voter may respond.

All individuals casting absentee provisional ballots are to be provided a written explanation of how they may ascertain whether or not the provisional ballot was counted and, if not counted, the reason. § 17-10-2.

### **17.3 Military and Overseas Absentee Voting**

The Secretary of State, by rule, prescribes standardized military and overseas voter registration applications and applications for absentee ballots adopted by the United States government for use. The Secretary of State also, by rule, prescribes the application for absentee voting which permits voters to identify themselves as a military and overseas voter. An application for an absentee ballot is valid through the end of the calendar year in which the application is filed. However, if an election cycle begins in one calendar year and continues into the subsequent calendar year, the absentee application shall be valid for all elections within that election cycle. § 17-11-5(d).

The federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), as amended by the Military and Overseas Voter

Empowerment Act (MOVE), requires absentee election managers to issue UOCAVA voters an absentee ballot no later than the 45<sup>th</sup> day prior to an election for federal office if the UOCAVA voter's absentee ballot application was received no later than the 45<sup>th</sup> day prior to the election. Under this act, UOCAVA voters also have the option of receiving their blank absentee ballot electronically or by mail.

In 2011, the Legislature established the Alabama Electronic Overseas Voting Advisory Committee to determine if secure electronic absentee voting for overseas voters is feasible and, if so, to assist in the implementation thereof. This committee and the Secretary of State are charged with the adoption of rules for conducting overseas absentee electronic voting, including the requirements for the request, receipt, voting, returning and processing an overseas absentee ballot. §§ 17-11-40 to 51. The Committee determined that secure electronic absentee voting for military and overseas voters is feasible. Therefore, UOCAVA voters located outside the territorial limits of the United States also have the option of returning their voted absentee ballot electronically if they requested electronic delivery of their blank absentee ballot pursuant to the Military and Overseas Voter Empowerment Act. § 17-11-40, et. seq.

For additional information on voting by military personnel and citizens residing overseas, see Chapter 7.

