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## CHAPTER 18 RECALL PROCESS

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**PUBLIC OFFICIALS SUBJECT TO RECALL:** All elective officers in the state, except judicial officers, are subject to recall by the voters of their respective districts. An officer who is being recalled may continue to perform the duties of his or her office until the result of the recall election is certified.

In an instance where a recall petition is filed against a local clerk or any other local public official responsible for handling duties associated with the administration of the recall election, Michigan election law directs the county clerk to appoint “some other impartial public officer having knowledge of the election laws involved” to perform the duties. Michigan election law further provides that a public officer appointed to handle the election related duties of a public official subject to recall “shall receive no additional compensation for his services.”

Michigan election law stipulates that a recall petition shall not be filed against an official 1) during the first six months or last six months of the officer’s term of office, if the term of office is two years or less; or 2) during the first and last years of the officer’s term of office, if the term of office is more than two years.

**CLARITY/FACTUAL REVIEW:** Michigan election law requires the Board of State Canvassers (for state and county-level offices, except for County Commissioners) or County Election Commission (for all other offices) to review the language of a recall petition *before* the petition is circulated. Thus, a “clarity/factual review” is the starting point of each and every recall effort launched in Michigan. Procedural steps for the clarity/factual review are as follows:

***Filings and Submission Barred During Certain Time Periods:***

- *Petition Submission for Clarity/Factual Hearing:* Recall petition language cannot be submitted to the Board of State Canvassers or Board of County Election Commissioners for clarity/factual hearing purposes during the first and last six months of the official’s term of office.
- *Petition Filing:*
  - *Officials Serving Term of Office for Two Years or Less:* Recall petition cannot be filed during the first and last six months of the term of office (MCL 168.951(1), 168.952b)
  - *Officials Serving Term of Office for More than Two Years:* Recall petition shall not be filed during the first and last year of the term of office. (MCL 168.951(1))

Sponsors of a recall effort submit the petition language to the Board of State Canvassers for state and county-level offices (except County Commissioner); or the County Election Commission established in the *county where the officer resides* (for all other offices). The County Election Commission is composed of the county clerk, county treasurer and chief judge of probate. The reasons must appear on a recall petition form. The individual submitting the recall language must be registered to vote in the electoral district represented by the officer. (A separate submission must be made for each officer whose recall is sought.)

**Recall Petitions Filed at the County Level:** If the county clerk is disqualified from the review as explained below, the language is submitted to another member of the Commission. In all cases, the Commission member accepting the petition language issues a receipt to the filer of the language which shows the filer’s name, address, phone number, and the date of the filing. The Commission member retains a copy of the receipt for the Commission’s records.

- A member of the Commission who is involved in the preparation of the recall petition language or who is the elected official whose recall is sought is disqualified from ruling on the clarity/factual

nature of the petition. In the absence or disqualification of the county clerk, the Commission may select one of the county clerk's deputies to act in the county clerk's place. In the absence or disqualification of the county treasurer or the chief judge of probate, the members of the Commission who are present appoint some other county officer to act in the absence of the disqualified member's place.

- Two Commission members must be present at a meeting to transact business.

**Notification Requirements and Scheduling of Meeting:** Within 24 hours after a member of the County Election Commission receives a recall petition from a filer, the Commission must notify the officer whose recall is sought of 1) the filing of the petition language and the date of the filing 2) the contents of the petition language and 3) the time, date and place of the Commission's meeting to review the language for clarity and factuality. Official notice of the time, date and place of the Commission's meeting is also sent to the filer of the language. (Scheduling of the Commission's meeting is discussed below.)

- Notices may be sent by first-class mail. Mailed notices must be postmarked before the 24-hour period allowed for notification expires. County clerks who use first-class mail to comply with the notification requirement should sign and keep on file an affidavit which affirms that the notices were issued as required within the allowed 24 hour period.
- The Commission is required to meet *sometime between the 10<sup>th</sup> and 20<sup>th</sup> day after the filing of recall language* to conduct the review. As the 24-hour notification deadline allows the Commission little time to reach agreement on the time, date and place of their meeting, the Commission should make prior arrangements to allow for immediate scheduling. For example, it could be agreed that if all Commission members are not available to immediately set the meeting after recall language has been filed, a meeting on the 11<sup>th</sup> day after the filing would automatically be set by the clerk.
- Notice of the scheduled meeting must be posted at least 18 hours in advance of the meeting to comply with the Open Meetings Act.

**Conduct of Meeting:** When the required meeting is held, the function of the Commission is to "determine whether each reason for the recall stated in the petition is factual and of sufficient clarity to enable the officer whose recall is sought and the electors to identify the course of conduct that is the basis for the recall." The officer whose recall is sought and the sponsors of the petition may appear at the meeting and present arguments on the clarity and factual nature of the petition language.

- Michigan election law stipulates that each reason for the recall “shall be based upon the officer’s conduct during his or her current term in office.”
- The Commission does *not* have the authority to rule on the reasons for recall as only the *clarity and factual nature* of the recall language is subject to the Commission’s review.
- Michigan Election Law stipulates that “if any reason for the recall is not factual or of sufficient clarity, the entire recall petition shall be rejected.” (MCL 168.952(3)).
- After the meeting, the members of the Commission must provide a copy of their determination on the clarity and factual nature of the recall language to the filer of the language and the officer whose recall is sought. If the Commission approves the recall language, a copy of the approved language must be forwarded to the filing official who will later receive the signed recall petition sheets. (Note: In certain circumstances, the language of a recall petition will be reviewed for clarity and factuality in one county – and the recall petition will be filed in a neighboring county. It is the Commission’s responsibility to ensure that the proper filing official receives a copy of the approved language and notice of the date the language was approved.)
- Failure of the Commission to hold the required review meeting by the 20<sup>th</sup> day after the submission of a recall petition constitutes a determination that the language is of sufficient from a clarity and factual standpoint. The Commission may *not* use this provision to avoid its responsibility to hold a clarity/factual review.
- NOTE: After filing a recall petition and after a recall election, no additional recall petitions may be filed against the same incumbent of that office during the term for which he or she is elected.

**Appeal Process:** The Commission’s ruling on the clarity and factual nature of the recall language may be appealed by the officer whose recall is sought or by the sponsors of the recall petition to the Circuit Court in the county where the clarity/factual determination was made. The appeal must be filed within 10 days after the Commission’s determination.

If a determination by the Commission is appealed, the recall petition is not valid for circulation and shall not be circulated until a determination of whether each reason is clear and factual is made by the Circuit Court or until 40 days after the date of the appeal, whichever is sooner. A petition is not valid for circulation if at any time a Circuit Court determines that each reason on the recall petition is not sufficiently clear and factual.

If the Commission fails to meet to review the clarity and factuality of the language by the 20<sup>th</sup> day after the filing of the language, an appeal may be filed on the 21<sup>st</sup> day through the 30<sup>th</sup> day after the filing of the language.

A recall petition is valid for 180 days after either of the following, **whichever occurs later**:

- Clarity/factuality approval by the Commission
- Clarity/factuality approval by the Circuit Court (if Commission decision is appealed), or 40 days after the date of appeal.

**PREPARATION AND CIRCULATION OF RECALL PETITIONS:** As soon as the County Election Commission approves the petition for clarity/factuality and any appeal to Circuit Court has concluded (or 40 days has elapsed since the filing of the appeal), the petition sponsors are free to circulate their petition.

**The Petition Form:** Recall petitions must conform to the specifications prescribed by the Secretary of State.

- There are two types of recall petition forms approved for use: one form is designed for the recall of state, city, township and school officers; the other form is designed for the recall of village officers. The county clerk is required to supply blank recall petition forms upon request.
- A separate petition must be circulated for each officer who is being recalled.
- The reasons for the recall printed on the recall petition must be the reasons approved by the County Election Commission.

**Circulation of Recall Petitions:** Recall petitions are circulated within the district represented by the officer whose recall is sought.

- Circulators of recall petitions must be at least 18 years of age, a citizen of the United States and a resident of the state. A circulator of a recall petition does not have to be registered to vote.
- Before a recall petition can be circulated, the circulator must complete the “heading” of each petition sheet by filling in 1) the county and city or township where the sheet will be circulated, or 2) the village where the sheet will be circulated. The sheet may not be circulated outside of the

county, city, township or village specified in the heading. (NOTE: Recall petitions shall not be circulated on a "countywide" basis.) The circulator must also include in the heading the name of the officer whose recall is sought, the title of the office, and the office district (if appropriate).

- A circulator shall *not* leave a recall petition unattended in a public place; all signatures must be signed in the presence of the circulator.
- The circulator must complete and date the "circulator's certificate" on the petition sheet after gathering the last signature he or she intends to collect on the sheet. Signatures on a sheet which are dated after the date on the circulator's certificate are not counted.

**Signers of Recall Petitions:** Signers of recall petitions must be registered to vote in the electoral district of the official whose recall is sought.

- Each signer must list his or her signature, address, zip code and the date of signing. If the recall petition is circulated within a city or school district that crosses county lines, each signer must be instructed to execute his or her signature on a petition sheet bearing the name of his or her county of residence in the heading.
- All signatures must be signed in the presence of the circulator.
- A signer is not permitted to sign for anyone else. For example: an individual may not sign for his or her spouse.

**Number of Signatures Required:** The number of signatures needed to trigger a recall election is 25% of the votes cast in the officer's district for *all* candidates for the office of Governor in the last gubernatorial election. Upon written request, the county clerk is required to supply the minimum number of valid signatures needed on the petition. The figure must be calculated and delivered to the requestor within five days after the county clerk's receipt of the request. (If the fifth day falls on a Saturday, Sunday or holiday, the county clerk has until the following business day to honor the request.)

**Signature "Ripeness":** Signatures on a recall petition dated more than 60 days before the filing of the petition are invalid. (NOTE: legislation enacted in late 2012 significantly shortened this period from 90 to 60 days.)

**ACCEPTANCE OF RECALL PETITIONS:** After the sponsors of a recall effort have collected more than the required number of signatures on their petition, the petition filing takes place.

**Filing Location:** Petitions seeking the recall of the following officers are filed with the *county clerk* of the county in which the *greatest number of registered voters in the electoral district reside*: county commissioners; township, city and village officers; and school officials.

Petitions seeking the recall of the following officers are filed with the *Department of State's Bureau of Elections*: United States Senator; United States Representative, State Senator; State Representative; elective state officers (except Secretary of State); and elective county officers (except county commissioners). Recall petitions seeking the recall of the Secretary of State are filed with the Governor.

**Time of Filing:** As stated earlier, Michigan election law stipulates that a recall petition shall not be filed against an official 1) during the first six months or last six months of the officer's term of office, if the term of office is two years or less; or 2) during the first and last years of the officer's term of office, if the term of office is more than two years.

**Supplemental Filings Not Permitted:** The petition must be complete when it is filed; the filer cannot submit additional petition sheets at a later hour or date.

**Notification of Officer:** The county clerk must notify the officer whose recall is sought of the filing of the recall petition. If the officer can be contacted by phone, the county clerk should immediately call after the filing has been made. Written notification must be forwarded to the officer no later than the business day following the date of the filing. The written notice must 1) include the date of the filing 2) inform the officer of the right to examine the petition and purchase copies if desired and 3) inform the officer of the right to challenge signatures on the petition and the deadline for signature challenges.

## CHECKING RECALL PETITION

**Preliminary Check by County Clerk:** As soon as a recall petition is filed, the county clerk has *seven calendar days* to examine it to determine 1) if the petition is in the proper form and 2) the number of signatures contained on the petition sheets.

- The county clerk does not count any signatures on a petition sheet if:

- 1) The form of the petition is improper.
  - 2) The circulator's certificate is not filled in or is improperly completed. (A circulator's certificate which does not include a zip code or contains an improper zip code is acceptable.)
  - 3) The heading is not filled in or is improperly completed.
  - 4) The sponsor's language on the sheet differs from the language approved and forwarded by the County Election Commission responsible for the clarity/factual review.
- The county clerk does not count *individual signatures* on a petition sheet if:
    - 1) The signer did not enter his or her complete address or the date of signing. (A signature which does not include a zip code or which shows an improper zip code is acceptable.)
    - 2) The signer dated the signature after the date appearing on the circulator's certificate.
    - 3) The signature was obtained before the date the County Election Commission approved the recall language.
    - 4) The signature was obtained more than 60 days before the date the recall petition was filed.
    - 5) The signer used ditto marks in the address entry or the date entry. (Ditto marks are acceptable in the zip code entry.)
    - 6) The signer's residential address or the date of signing appears to have been entered by someone other than the signer. (This standard does not apply to the zip code entry.)
  - One or more "invalid" signatures on a petition sheet do not affect other "valid" signatures on the sheet; "valid" signatures are always counted.

***After the Completion of the Preliminary Check:*** If the form of the petition is improper or the petition lacks the minimum number of signatures needed to trigger a recall election, the county clerk notifies the sponsor of the recall effort in writing of the insufficiency of the petition. Copies of the notice are sent to the officer whose recall was sought.

If the form of the petition is proper and the petition thus far appears to contain the minimum number of signatures needed to trigger a recall election, the county clerk forwards the petition sheets which passed the preliminary check to the clerk of the city, township or village where the sheets were circulated. Upon receiving the petition sheets, the local clerk checks to see if the signers and



circulators of the petition are properly registered. (NOTE: If the officer's district covers more than one city or township, the county clerk divides the sheets and forwards them as necessary. Petition sheets are *not* sent to school districts for registration checks; registrations on petitions seeking the recall of school officials are checked by city and township clerks.) When forwarding petition sheets to local clerks, the county clerk:

- 1) Sends the original petition sheets. (A copy of the petition is secured in the clerk's office.)
- 2) Instructs the clerks to check the registrations of the circulators of the sheets and the signers *who were not eliminated in the preliminary check*. (Invalid signatures can be indicated by "coding" them along the left-hand margin of the petition sheet.)
- 3) Instructs the clerks to complete the "Clerk's Certificate" on the reverse side of each petition sheet after making the registration checks required on the sheet.
- 4) Advises the clerks of the period of time they are allowed by law to complete the registration checks (see below.)

**Registration Checks:** Local clerks are required to verify that each signer was registered to vote in the proper jurisdiction on the date of signing within 15 days after the receipt of the petition sheets. The checks may be made against the jurisdiction's original registration records or against the jurisdiction's QVF list. When making the registration checks the local clerk places check marks before the names of signers and circulators who are 1) registered voters of the city or township 2) residents of the electoral district of the official whose recall is sought and 3) were not eliminated by the county clerk under the preliminary check.

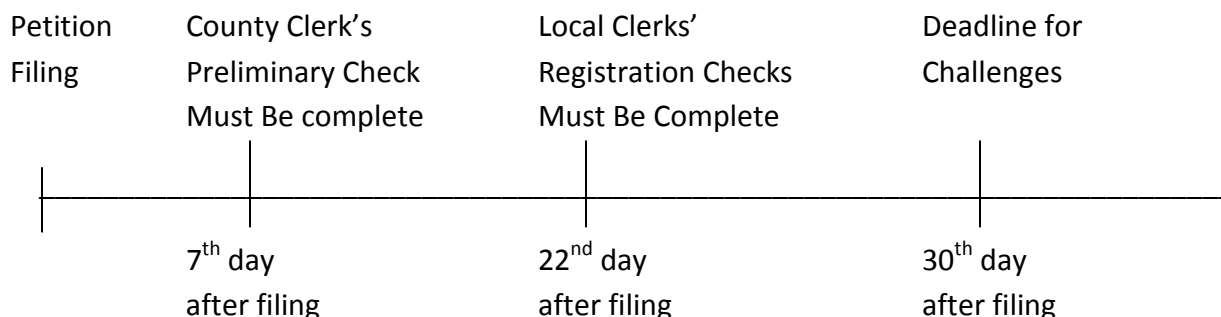
After making the checks required on a petition sheet, the local clerk completes the "Clerk's Certificate" on the reverse side of the sheet. After the signatures on all petitions have been checked, the local clerk returns the sheets to the county clerk.

**SIGNATURE CHALLENGES:** The officer whose recall is sought may challenge 1) the authenticity of a signature on the recall petition or 2) the registration of an elector whose name appears on the recall petition. Challenges must be submitted in writing within 30 days after the date the petition was filed to the county clerk who accepted the filing. A challenge must contain specific reference to the signature(s) being questioned on the petition.

Upon receiving a written signature challenge from the officer involved, the county clerk:

- 1) Forwards each challenged signature, *not already excluded from the signature count*, to the appropriate city or township clerk.
- 2) Instructs the city or township clerk to check the challenged signatures against the jurisdiction's registration records. (The checks may be made against the jurisdiction's original registration records or against the jurisdiction's QVF list. If the authenticity of a signature is questioned under a challenge, the clerk must compare the signature on the petition against the signature appearing on the signer's original registration record.)
- 3) Asks for immediate return of the result of the signature checks. (Local clerks must put their findings *in writing*. The county clerk may wish to design and provide a form for this purpose.)

It merits note that an officer whose recall is sought may inspect the recall petition and the registration record as soon as the petition is filed to determine whether he or she wishes to file signature challenges. In addition, Michigan election law stipulates that an officer whose recall is sought must have *at least eight calendar days* after the local clerks complete the initial registration checks to review the clerks' findings and file challenges if desired. As shown by the time line illustrated below, the deadlines set for the county clerk's preliminary check of the petition and the local clerks' initial registration checks must be met to provide the officer with the minimum eight days allowed for a final review for challenges.



**FINAL PETITION REVIEW BY COUNTY CLERK:** After the city and township clerks have returned all petition sheets to the county clerk – and all signature challenges have been resolved – the county clerk reviews the recall petition a final time to determine if it contains the minimum number of valid signatures needed to initiate a recall election. The county clerk's final review must take place on or before the 35<sup>th</sup> day after the petition filing date.

- If the recall petition does not have the minimum number of valid signatures required the county clerk notifies the sponsor of the recall effort of the insufficiency of the petition. Copies of the notice are kept in the county clerk's files and sent to the officer involved.
- If the recall petition contains the minimum number of valid signatures required, the election official with whom the recall petition was filed must call a special election to be conducted on the next regular election date that meets the following criteria: 1) is at least 95 days after the date the recall petition was filed, and 2) falls on the May or November regular election date. (Note the stipulation of the May or November election date is a recent law change that went into effect in late 2012).

## RECALL ELECTION CANDIDATES

- Legislative changes took effect in late 2012 which essentially changed the concept of a recall election from a two-election process (if the recall was successful) to combining the concepts of a recall election and a special election to fill the possible resulting vacancy. That is, there is now a single recall election to fill the partial (remaining) term of office for the official subject to the recall, with the incumbent automatically made a candidate in the election unless he/she withdraws within 10 days after the filing of the recall petition. There is one election and the candidate who receives the highest vote total becomes the elected candidate.
- If the recall election involves a partisan office, nominations for the recall election are made by the county political party committee specified by law (MCL 168.973a). If the incumbent candidate declines to be a candidate at the recall election, the incumbent's political party shall nominate a candidate for that office.
- If the recall election involves a nonpartisan office, candidates seeking election in the recall election must file a nonpartisan nominating petition containing at least 10% of the required number of signatures for the electoral district (MCL 168.544f or 168.303 [school board]) or a \$100 filing fee.
- The party nominations or nonpartisan petitions must be filed by 5:00 p.m. on the tenth day after the call for the recall election. A primary is *not* held.
- A candidate without political party affiliation who wishes to seek a partisan office can gain access to the recall election ballot by filing a qualifying petition. The petition must be filed with the appropriate filing official by 5:00 p.m. on the tenth day after the call for the recall election. The petition must contain at least 10% of the number of signatures required under MCL 168.544f.

## PREPARATION AND PRODUCTION OF BALLOTS

- The County Election Commission of each county where the recall election will be conducted is responsible for the production of the ballots.
- In all cases, the counties, cities and townships involved in the conduct of the recall election must bear the costs of the election. The costs are not subject to reimbursement by the state.

## CANVASS AND CERTIFICATION OF RECALL ELECTION

- The *Board of State Canvassers* is responsible for canvassing and certifying a recall primary and recall general election involving a state officer or county officer (except county commissioner).
- Special recall elections involving a county commissioner or any other local officer are canvassed and certified on the county level.
- The candidate receiving the highest number of votes in the recall election is elected for the remainder of the term.

NOTE: An additional detailed summary of the major steps and timelines involved in the recall process is available on the Bureau of elections website at [www.michigan.gov/elections](http://www.michigan.gov/elections), under Information for Election Administrators.