

TO: Michigan Independent Citizens Redistricting Commission
FROM: Fink Bressack
RE: Notice to Vacate Meeting Procedures
DATE: January 18, 2024

MEMO

Section 6(3)(e) of Article 4 of the Michigan Constitution provides that a Commissioner may be removed from office “[a]fter written notice and an opportunity for the commissioner to respond, a vote of 10 of the commissioners finding substantial neglect of duty, gross misconduct in office, or inability to discharge the duties of office.”

The latest version of the Michigan Independent Citizens Redistricting Commission Rules of Procedure provides the framework to address the Notice to Vacate. Fink Bressack, as MICRC General Counsel, recommends that the Commission adopt the following amendments to the MICRC Rules of Procedure, pursuant to Section 14.2 of the Commission’s rules, to ensure a fair and efficient process.

Vote to Proceed to Notice Under Subsection 3(e) Meeting

Amended Section: Additional subsection between Section 3.4(E)(4) and Section 3.4(E)(5)

Recommended language:

If the responding member files a written reply with the Commission under Section 3.4(E)(4), the Commission must vote to proceed to a special meeting to address the *Notice Under Section 3(e)*.

- a) To give the Commission time to evaluate the *Notice to Vacate* and the responding member’s written response, the vote to proceed to a special meeting must occur at least 7 days after the responding member has filed their written response.
- b) A majority of Commissioners must vote in favor of holding a designated special meeting to address the *Notice Under Section 3(e)*.
- c) If the vote to proceed to a designated special meeting fails, the *Notice Under Section 3(e)* is rejected and the responding member retains their seat.
- d) If the responding member fails to file a written response by the deadline established by the Commission under Section 3.4(E)(4), the Commission must still vote to proceed to a special meeting to address the *Notice Under Section 3(e)*.

Explanation: The inclusion of a preliminary vote based upon the initiating party’s *Notice* and the responding member’s written response improves the fairness and efficiency of the *Notice Under Section 3(e)* process. By creating an initial voting threshold that is lower than the 10 votes required to vacate a Commission seat, the Commission can avoid forcing members to address frivolous allegations at a public hearing and save the Commission significant money in attorneys’ fees that could result from holding a complete *Notice Under Section 3(e)* meeting.

The proposed amendment is compliant with Article IV Section 6(3)(e) of the Michigan Constitution because it provides the responding member the opportunity to provide a written response, and if necessary, an oral response at a special meeting.

Notice to Vacate Meeting Procedure Proposal

Amended Section: Additional subsection between Section 3.4(E)(5) and Section 3.4(E)(6).
Remove Section 3.4(E)(9)

Recommended language:

The meeting to address the allegations in the *Notice Under Section 3(e)* shall be conducted pursuant to the following:

- a) Opening Remarks. Each party (initiating and responding) may offer Opening Remarks of up to five minutes. If the initiating party has more than one member, the initiating party may divide the time amongst themselves. The initiating party will go first.
- b) Presentation of Notice. The initiating party has up to 20 minutes to present the grounds on which the responding member's office should be declared vacant under Section 6(3)(e) of Article 4 of Michigan's 1963 Constitution. If the initiating party has more than one person, the members of the initiating party may choose to divide their time in whatever manner they choose.
- c) Presentation of Response to Notice. The responding member shall have up to 20 minutes to address the allegations contained in the Notice. If applicable, the responding member's counsel may present the response to the allegations in lieu of the responding member.
- d) Question and Answer Period. After the initiating party and responding member's Presentation, the chair will open the floor for a 30-minute questioning and answering session for commissioners. All members of the Commission may participate in this portion of the Proceedings. All questions must be addressed through the Chair and directed to the initiating party, the responding member, or both the initiating party and the responding member. Questions and answers should be germane to the proceedings and shall pertain only to the written documents provided by the initiating and responding parties. The 30-minute questioning and answering session may be extended by a majority vote of Commissioners.
- e) Closing Remarks. Each party (initiating and responding) may offer Closing Remarks of up to five minutes. If the initiating party has more than one member, the initiating party may divide the time amongst themselves. The initiating party will go first.
- f) Discussion of the Commission. After the conclusion of the Question and Answer Period, the Commission shall discuss the *Notice*. The responding member may not participate in the discussion or resolution of the matter by the Commission.
- g) Decision by the Commission. After discussion at the meeting and in consideration of the written materials filed with regard to the *Notice Under Section 3(e)*, the Commission shall take formal action on such Notice. A vote of 10 of the

commissioners is required to find substantial neglect of duty, gross misconduct in office, or inability to discharge the duties of office. If the vote carries, the vacancy shall be effective immediately and, as a self-governing body, not subject to any appeal.

Conduct of Meeting to Address the *Notice Under Section 3(e)*

Amended Section: Amends Section 3.4(E)(8)

Recommended language: The meeting to address the Notice is not a quasi-judicial proceeding, therefore the Michigan Rules of Court of 1985 and the Michigan Rules of Evidence are inapplicable. The Chairperson, as the presiding officer under Section 3.4(E)(7), is responsible with enforcing the Commission's Rules of Procedure Relating to Decorum and Civility under Sections 11.1 to 11.5. Prior to commencing a special meeting to address a *Notice Under Section 3(e)*, the Commission shall select a parliamentarian for the proceeding. The Commission's General Counsel or his or her designee shall serve as parliamentarian, pursuant to Section 4.6 of the Commission's Rules.

Explanation: Much of the existing text in Section 3.4(E)(8) is unnecessary if the above procedure is formally adopted as an amendment to the Commission's Rules. The recommended language retains an existing clarification on the governing rules for a *Notice* meeting and emphasizes other sections of the Commission's Rules relevant to the *Notice* meeting.