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**CLIENT UPDATE**

**APPOINTMENTS TO BOARD OF COUNTY CANVASSERS**

The Board of County Canvassers is a four-member board established in every County to canvass election results and conduct recounts. MCL 168.24a(1), (2). Members of the Board of County Canvassers are appointed for four-year terms of office beginning on November 1, following their appointment. MCL 168.24a(7). The County Clerk shall notify members of the Board of County Canvassers of their appointment within five days of being appointed.

Of the members first appointed, one member of each of the political parties represented on the board of county canvassers shall be appointed for a term of 4 years and one member of each political party shall be appointed for a term of two years, such that all terms expire on October 31 of an odd-numbered year. MCL 168.24a(7).

Members of the Board of County Canvassers must be qualified electors of the County. However, no elected official is eligible for membership on the Board of County Canvassers. If any member of the Board of County Canvassers, during their term of office, becomes a candidate for any elective public office, their seat on the Board of County Canvassers becomes vacant. MCL 168.24b.

Under MCL 168.24c(1), the selection of the members of a Board of County Canvassers is made from each of the two political parties casting the greatest number of votes for Secretary of State at the preceding general November election. A political party cannot be represented by more than two members of the Board of County Canvassers at any one time.

The appointment procedure commences when the county committee of each political party, not later than September 1 of each odd numbered year, submits to the County Clerk the names of three people for each position to which the party is entitled. In any county having two or more congressional districts, the chairs of the congressional district committees act as the county committee. MCL 168.24c(2). Within 10 days after convening its annual meeting (which includes the ability to make the appointment on the day of the annual meeting, once convened), the County Board of Commissioners elects by ballot to each position, one of the three people nominated. MCL 168.24c(3). Failure of the County Board of Commissioners to appoint a nominee within 10 days after convening its annual meeting results in a vacancy for the upcoming term. MCL 168.24c(4). The annual meeting required by MCL 46.1 must be held each year after September 14, but before October 16. MCL 46.1(1).

If a vacancy occurs in the membership of the Board of County Canvassers, the County Clerk gives notice of the vacancy to the chair of the county committee of the political party entitled to fill the vacancy. MCL 168.24d(1). The committee of the political party entitled to fill such vacancy, within 10 days after receiving information concerning the vacancy, shall nominate three people for the position, and submit the list of nominees to the County Clerk. MCL 168.24d(2). The County Clerk then appoints one of the people nominated to serve for the balance of the unexpired term. MCL 168.24d(3), (4).

Both the County Board of Commissioners and the County Clerk, before electing or appointing a nominee to the Board of County Canvassers, may request that a nominee provide any of the following background information in order to determine whether the nominee is both qualified for and interested in the position:

- (a) A letter signed by the nominee indicating an interest in serving on the Board of County Canvassers and indicating an intent to discharge the duties of the position on the Board of County Canvassers to the best of his or her ability;
- (b) Prior election experience including canvassing elections; and
- (c) Information on whether the nominee has been convicted of a felony or election crime.

MCL 168.24c(3); MCL 168.24d(3).

One of the purposes for requesting background information is to avoid the potential of the County Board of Commissioners or County Clerk appointing individuals who are unqualified or otherwise have no interest in serving, but who have, nonetheless, had their names submitted for consideration, potentially without their prior knowledge or consent. All nominees may be interviewed about their background, to ensure their willingness and qualifications to serve.

As the nominations for these appointments are made by the political party committees, they are expected to be of a political nature, and thus should not be rejected on a political basis.

Summary Checklist:

1. The selection of the members of the Board of County Canvassers is required to be made from the list of three nominees submitted to the County Clerk by each of the two political party committees, i.e., neither the Board of Commissioners nor the County Clerk may reappoint an incumbent who was not nominated by the political party committee for the position to be filled. The County Board and the County Clerk must appoint a nominee from the lists submitted by the political party committees.
2. Two members (one from each party) are selected every odd-numbered year for four-year terms that commence on November 1, and expire on October 31 of an odd-numbered year. MCL 168.24a(7).
3. The County Board of Commissioners must make its selection within 10 days of convening its annual meeting. MCL 168.24c(3).

4. The Board of Commissioners has a narrow 10-day window of opportunity to appoint two members to the County Board of Canvassers for a new 4-year term commencing on November 1 of an odd numbered year. MCL 168.24c(3).
5. That 10-day window of opportunity commences upon the convening of the County Board's annual meeting, which must be held each year after September 14, but before October 16. MCL 46.1(1).
6. The County Board's statutory annual meeting in September/October is separate and distinct from the County Board's organizational meeting at which it elects a Board Chair and Vice-Chair, which must take place at the first meeting of the County Board of Commissioners in a year in which a Chairperson or Vice-Chairperson, respectively, is to be elected, which is typically in January. MCL 46.3(4).
7. The list of nominees to fill the seats for the new term must be provided by the county political party committee to the County Clerk by September 1 of each odd-numbered year. MCL 168.24c(2). This deadline ensures that the County Board will receive the list of nominees before its annual meeting is held sometime in mid-September through mid-October.
8. Once the annual meeting is convened, the 10-day window commences. If the 10-day window expires without the County Board electing the nominees to a new term, the County Board loses its right to make the appointment for those seats, i.e., the County Board lacks the statutory authority to make the appointment.
9. MCL 168.24c(4) provides that the failure of the County Board to appoint the nominees for a position on the Board of Canvassers within the 10-day window shall result in a vacancy in the position, i.e., a vacancy in the upcoming 4-year term, which vacancy shall be filled as provided in MCL 168.24d for the filling of vacancies.
10. MCL 168.24d calls for the County Clerk to fill all vacancies on the Board of Canvassers, which would include the vacancies resulting from the County Board's failure to timely make the appointment for the new term commencing on November 1.
11. Although the County Clerk's filling of vacancies is for the balance of the unexpired term, MCL 168.24d(4), the vacancy resulting from the failure of the County Board to make a timely appointment is for the balance of prospective new term from the date of the appointment.
12. Upon a vacancy, the County Clerk must immediately notify the county political committee chairperson of their entitlement to fill the vacancy, by submitting three nominees within 10 days. The County Clerk then has 10 days following receipt of the list of nominees in which to appoint one of the nominees. MCL 168.24d(1)-(3). This time frame is intended to allow

for the vacancy resulting from the County Board's failure to make the appointment in a timely manner to be filled in advance of the November election.

Note: The Clerk's appointment could end up being after the election if #13 below.

13. If there is not a suitable qualified and interested nominee, the Clerk may notify the county political committee chairperson that a vacancy continues to exist, and request another list of nominees.
14. The County Clerk (as well as the County Board) has the statutory authority to request a statement of interest from a nominee, and may also ask the nominee about their prior election experience and whether the nominee has been convicted of a felony or election crime. MCL 168.24d(3)(a)-(c).
15. The authority to request a letter of interest and to inquire about election experience and convictions of a felony or election crime is expressly provided by statute, MCL 168.24d(3)(a)-(c), and is unaffected by a civil rights law (MCL 37.2205a) by which an employer is barred from asking a prospective employee about misdemeanor arrests that did not result in a conviction. The members of the Board of County Canvassers are not employees of the County, and the allowable question regarding convictions is limited to convictions for either a felony or an election crime, not arrests for misdemeanors that did not result in a conviction.
16. As the nominees for these appointments are made by the political party committees, they are expected to be of a political nature, and thus should not be rejected on that basis.

Please do not hesitate to contact either Mattis Nordfjord ([mnordi@cstmlaw.com](mailto:mnordi@cstmlaw.com)) or Timothy Perrone ([tperrone@cstmlaw.com](mailto:tperrone@cstmlaw.com)) if you have any questions.

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