

## MICHIGAN ELECTION LAW (EXCERPT)

### Act 116 of 1954

#### CHAPTER XX

#### JUDGE OF PROBATE

##### **168.431 Judge of probate; eligibility.**

Sec. 431. A person is not eligible to the office of judge of probate unless the person is a registered and qualified elector of the county in which election is sought by the filing deadline or the date the person files the affidavit of candidacy, as provided in section 16 of article VI of the state constitution of 1963, is licensed to practice law in this state except as provided in section 7 of the schedule and temporary provisions of the state constitution of 1963, and, at the time of election, is less than 70 years of age.

**History:** 1954, Act 116, Eff. June 1, 1955;—Am. 1963, 2nd Ex. Sess., Act 58, Imd. Eff. Dec. 27, 1963;—Am. 1982, Act 505, Eff. Mar. 30, 1983;—Am. 1999, Act 218, Eff. Mar. 10, 2000;—Am. 2018, Act 120, Eff. Dec. 31, 2018.

**Popular name:** Election Code

##### **168.432 Candidates for probate judge; nomination at general nonpartisan primary election; omission.**

Sec. 432. A general nonpartisan primary election shall be held in every county of this state on the Tuesday succeeding the first Monday in August preceding every general November election at which judges of probate are to be elected, at which time the qualified and registered electors may vote for nonpartisan candidates for the office of judge of probate. If upon the expiration of the time for filing petitions or incumbency affidavits of candidacy for the primary election of said probate judges in any county it shall appear that there are not to exceed twice the number of candidates as there are persons to be elected, then the county clerk shall certify to the county board of election commissioners the name of such candidate for probate judge whose petitions have been properly filed and such candidate shall be the nominee for the judge of probate and shall be so certified. As to such office, there shall be no primary election and this office shall be omitted from the judicial primary ballot.

**History:** 1954, Act 116, Eff. June 1, 1955;—Am. 1963, 2nd Ex. Sess., Act 58, Imd. Eff. Dec. 27, 1963.

**Popular name:** Election Code

##### **168.433 Judge of probate; candidate; nominating petitions; validity of filed petitions; filing for election to more than 1 probate judgeship; withdrawal; office designation; receipt of incorrect or inaccurate information from county clerk or secretary of state; equitable relief; challenge.**

Sec. 433. (1) Except as otherwise provided in this subsection, to obtain the printing of the name of a person as a candidate for nomination for the office of judge of probate upon the official nonpartisan primary ballots, there must be filed with the county clerk of each county nominating petitions containing the signatures, addresses, and dates of signing of a number of qualified and registered electors residing in the county as determined under section 544f or by the filing of an affidavit according to section 433a. In the case of a probate court district, to obtain the printing of the name of a person as a candidate for nomination for the office of judge of probate upon the official nonpartisan primary ballots, there must be filed with the secretary of state nominating petitions containing the signatures, addresses, and dates of signing of a number of qualified and registered electors residing in the probate court district as determined under section 544f or by the filing of an affidavit according to section 433a. The county clerk or, in the case of a probate court district, the secretary of state shall receive nominating petitions up to 4 p.m. on the fifteenth Tuesday before the August primary. The provisions of sections 544a and 544b apply.

(2) Nominating petitions filed under this section are valid only if they clearly indicate for which of the following offices the candidate is filing, consistent with section 435a(2):

(a) An unspecified existing judgeship for which the incumbent judge is seeking election.

(b) An unspecified existing judgeship for which the incumbent judge is not seeking election.

(c) A new judgeship.

(3) A person who files nominating petitions for election to more than 1 probate judgeship has not more than 3 days following the close of filing to withdraw from all but 1 filing.

(4) In a primary and general election for 2 or more judgeships where more than 1 of the categories in subsection (2) could be selected, a candidate shall apply to the bureau of elections for a written statement of office designation to correspond to the judgeship sought by the candidate. The office designation provided by the secretary of state must be included in the heading of all nominating petitions. Nominating petitions

containing an improper office designation are invalid.

(5) The secretary of state shall issue an office designation of incumbent position for any judgeship for which the incumbent judge is eligible to seek reelection. If an incumbent judge does not file an affidavit of candidacy by the deadline, the secretary of state shall notify all candidates for that office that a nonincumbent position exists. All nominating petitions circulated for the nonincumbent position after the deadline must bear an office designation of nonincumbent position. All signatures collected before the affidavit of candidacy filing deadline may be filed with the nonincumbent nominating petitions.

(6) If a candidate for nomination for the office of judge of probate receives incorrect or inaccurate written information from the county clerk or, in the case of a probate court district, the secretary of state concerning the number of nominating petition signatures required under section 544f and that incorrect or inaccurate written information is published or distributed by the county clerk or, in the case of a probate court district, the secretary of state, the candidate may bring an action in a court of competent jurisdiction for equitable relief. A court may grant equitable relief to a candidate under this subsection if all of the following occur:

(a) The candidate brings the action for equitable relief within 6 days after the candidate is notified by the county clerk or, in the case of a probate court district, the secretary of state that the candidate's nominating petition contains insufficient signatures.

(b) The candidate files an affidavit certifying that he or she contacted and received from the county clerk or, in the case of a probate court district, the secretary of state incorrect or inaccurate written information concerning the number of nominating petition signatures required under section 544f.

(c) The county clerk or, in the case of a probate court district, the secretary of state published or distributed the incorrect or inaccurate written information concerning the number of nominating petition signatures required under section 544f before the filing deadline under subsection (1).

(d) The county clerk or, in the case of a probate court district, the secretary of state did not inform the candidate at least 14 days before the filing deadline under subsection (1) that incorrect or inaccurate written information concerning the number of nominating petition signatures required under section 544f had been published or distributed.

(7) If a court grants equitable relief to a candidate under subsection (6), the candidate must be given the opportunity to obtain additional nominating petition signatures to meet the requirements under section 544f. The additional nominating petition signatures obtained by a candidate must be filed with the county clerk or, in the case of a probate court district, the secretary of state no later than 4 p.m. on the fifth business day after the date that the court order granting equitable relief is filed.

(8) The nominating petition signatures filed under this section are subject to challenge as provided in section 552.

**History:** 1954, Act 116, Eff. June 1, 1955;—Am. 1955, Act 271, Imd. Eff. June 30, 1955;—Am. 1957, Act 293, Eff. Sept. 27, 1957;—Am. 1963, 2nd Ex. Sess., Act 58, Imd. Eff. Dec. 27, 1963;—Am. 1976, Act 3, Imd. Eff. Feb. 3, 1976;—Am. 1982, Act 149, Imd. Eff. May 6, 1982;—Am. 1990, Act 7, Imd. Eff. Feb. 12, 1990;—Am. 1990, Act 32, Imd. Eff. Mar. 21, 1990;—Am. 1996, Act 583, Eff. Mar. 31, 1997;—Am. 1999, Act 218, Eff. Mar. 10, 2000;—Am. 2009, Act 208, Imd. Eff. Jan. 4, 2010;—Am. 2012, Act 276, Eff. Aug. 16, 2012;—Am. 2018, Act 120, Eff. Dec. 31, 2018.

**Popular name:** Election Code

#### **168.433a Incumbent probate court judge; affidavit of candidacy.**

Sec. 433a. (1) Any incumbent probate court judge may become a candidate in the primary election for the office of which he or she is an incumbent by filing with the county clerk, or in case of a probate district with the secretary of state, an affidavit of candidacy not less than 134 days before the date of the primary election. However, if an incumbent judge of probate was appointed to fill a vacancy and the judge entered upon the duties of office less than 137 days before the date of the primary election but before the fifteenth Tuesday before the primary election, the incumbent judge may file the affidavit of candidacy not more than 3 days after entering upon the duties of office.

(2) The affidavit of candidacy must contain statements that the affiant is an incumbent probate court judge of the county or district of which election is sought, that he or she is domiciled within the county or district, and that he or she will not attain the age of 70 years by the date of election, and must contain a declaration that he or she is a candidate for election to the office of probate court judge.

**History:** Add. 1963, 2nd Ex. Sess., Act 58, Imd. Eff. Dec. 27, 1963;—Am. 1970, Act 10, Imd. Eff. Mar. 31, 1970;—Am. 1999, Act 218, Eff. Mar. 10, 2000;—Am. 2012, Act 276, Eff. Aug. 16, 2012;—Am. 2018, Act 120, Eff. Dec. 31, 2018.

**Popular name:** Election Code

#### **168.434 Candidates for nomination; withdrawal; notice.**

Sec. 434. After the filing of a nominating petition or affidavit of candidacy by or in behalf of a proposed

candidate for the office of judge of probate, the proposed candidate is not permitted to withdraw unless he or she serves a written notice of withdrawal on the secretary of state or his or her duly authorized agent. The notice must be served not later than 3 days after the last day for filing nominating petitions if a nominating petition was filed for the proposed candidate, and not later than 3 days after the last day for filing affidavits of candidacy if an affidavit of candidacy was filed for the proposed candidate. If the third day falls on a Saturday, Sunday, or legal holiday, the notice of withdrawal may be served on the secretary of state or his or her duly authorized agent at any time on or before 4 p.m., eastern standard time, on the next secular day.

**History:** 1954, Act 116, Eff. June 1, 1955;—Am. 1963, 2nd Ex. Sess., Act 58, Imd. Eff. Dec. 27, 1963;—Am. 1999, Act 218, Eff. Mar. 10, 2000.

**Popular name:** Election Code

#### **168.435 Candidates for judge of probate court; declaration of nominees; certification of nominations; death or disqualification of candidate.**

Sec. 435. (1) The candidates for the office of judge of probate receiving the largest number of votes at any primary election, to a number equal to twice the number of places to be filled as set forth in the report of the board of county canvassers, based on the returns from the various election precincts or as determined by the board of county canvassers as the result of a recount, shall be declared the nominees for the office at the next November election. The board of county canvassers shall certify the nominations to the county election commission.

(2) If, after the deadline for filing nominating petitions under section 433, there are fewer candidates for nomination or nominees for the office of judge of probate than there are persons to be elected because of the death or disqualification of a candidate more than 65 days before the general November election, then a person, whether or not an incumbent, may qualify as a nominee for that office at the general November election by filing nominating petitions with the county clerk or, in case of a probate district, with the secretary of state in the manner required by section 433. However, the filing shall be made before 4 p.m. on the twenty-first day following the death or disqualification of the candidate or 4 p.m. on the sixtieth day preceding the general November election, whichever is earlier, and the minimum number of signatures required is 1,000 or 1/2 the minimum number required under section 433, whichever is less.

(3) The county clerk or, in case of a probate district, the secretary of state shall certify the nomination of each person who qualifies as a nominee under subsection (2) to the board of election commissioners specified by section 687 for the general November election.

**History:** 1954, Act 116, Eff. June 1, 1955;—Am. 1990, Act 32, Imd. Eff. Mar. 21, 1990.

**Popular name:** Election Code

#### **168.435a Primary and general election for 2 or more probate judgeships; listing categories of candidates on ballot; death or disqualification of incumbent judge; application of subsection (2); incumbent judge as candidate; printing designation of office on ballot.**

Sec. 435a. (1) In the primary and general election for 2 or more probate judgeships, each of the following categories of candidates shall be listed separately on the ballot, consistent with subsection (2):

(a) The names of candidates for the judgeship or judgeships for which the incumbent is seeking election.

(b) The names of candidates for an existing judgeship or judgeships for which the incumbent is not seeking election.

(c) The names of candidates for a newly created judgeship or judgeships.

(2) If the death or disqualification of an incumbent judge triggers the application of section 435(2), then for the purposes of subsection (1) and section 433(2), that judgeship shall be regarded as a judgeship for which the incumbent judge is not seeking election. The application of this subsection includes, but is not limited to, circumstances in which the governor appoints an individual to fill the vacancy and that individual seeks to qualify as a nominee under section 435(2).

(3) In the primary or general election for a judge of probate, any incumbent judge who is a candidate shall have printed upon the ballot under the name of the candidate the designation of that office.

**History:** Add. 1982, Act 149, Imd. Eff. May 6, 1982;—Am. 1990, Act 32, Imd. Eff. Mar. 21, 1990.

**Popular name:** Election Code

#### **168.436 Judge or judges of probate; election in probate court district and county; death or disqualification of nominee.**

Sec. 436. (1) Except as otherwise provided in this section, a judge or judges of probate shall be elected in each probate court district created pursuant to law and each county at the general November election in which judges of probate are to be elected as provided by law. Each probate court district created pursuant to law and

each county shall have that number of judges of probate as provided by law.

(2) If there are fewer nominees for the office of judge of probate than there are persons to be elected because of the death or disqualification of a nominee less than 66 days before the general November election, then a person shall not be elected at that general November election to any office of judge of probate for which there is no nominee.

**History:** 1954, Act 116, Eff. June 1, 1955;—Am. 1963, 2nd Ex. Sess., Act 58, Imd. Eff. Dec. 27, 1963;—Am. 1982, Act 149, Imd. Eff. May 6, 1982;—Am. 1990, Act 32, Imd. Eff. Mar. 21, 1990.

**Popular name:** Election Code

#### **168.436a-168.436c Repealed. 1982, Act 149, Imd. Eff. May 6, 1982.**

**Compiler's note:** The repealed sections pertained to election of probate judges in single-judge counties, two-judge counties, and multi-judge counties.

**Popular name:** Election Code

#### **168.436d Probate judges; time of election.**

Sec. 436d. Elections for judges of probate shall be held in November immediately prior to the expiration of the terms of office of probate judges.

**History:** Add. 1963, 2nd Ex. Sess., Act 58, Imd. Eff. Dec. 27, 1963.

**Popular name:** Election Code

#### **168.437 Probate judges; certificate of election by board of county canvassers.**

Sec. 437. The board of county canvassers shall determine which candidate or candidates for the office of judge of probate received the greatest number of votes and shall declare such candidate or candidates duly elected. The said board shall forthwith make and subscribe on its statement of returns a certificate of such determination and deliver the same to the county clerk.

**History:** 1954, Act 116, Eff. June 1, 1955.

**Popular name:** Election Code

#### **168.438 Probate judges; certificate of election.**

Sec. 438. The county clerk shall file in his office and preserve the original statement and determination of the board of county canvassers of the results of the election and shall forthwith execute and cause to be delivered to the person or persons thereby declared to be elected to the office of probate judge a certificate of election, certified by him and under the seal of the county.

**History:** 1954, Act 116, Eff. June 1, 1955.

**Popular name:** Election Code

#### **168.439 Probate judges; term of office.**

Sec. 439. With the exception of certain judges elected in 1964, the term of office for judge of probate shall be 6 years commencing at 12 noon January 1 next following his election, and shall continue until a successor shall have been elected and qualified.

**History:** 1954, Act 116, Eff. June 1, 1955;—Am. 1963, 2nd Ex. Sess., Act 58, Imd. Eff. Dec. 27, 1963.

**Popular name:** Election Code

#### **168.440 Probate judges; oath of office.**

Sec. 440. Every person elected to the office of judge of probate, before entering upon the duties of his office, shall take and subscribe to the oath as provided in section 1 of article 11 of the state constitution, and file the same with the county clerk.

**History:** 1954, Act 116, Eff. June 1, 1955;—Am. 1963, 2nd Ex. Sess., Act 58, Imd. Eff. Dec. 27, 1963.

**Popular name:** Election Code

#### **168.441 Probate judges; resignation, notice.**

Sec. 441. Any person duly elected to the office of judge of probate who desires to resign shall file a written notice containing the effective date of such resignation with the court administrator and a copy with the governor and secretary of state.

**History:** 1954, Act 116, Eff. June 1, 1955;—Am. 1963, 2nd Ex. Sess., Act 58, Imd. Eff. Dec. 27, 1963.

**Popular name:** Election Code

#### **168.442 Probate judges; vacancy, creation.**

Sec. 442. The office of probate judge shall become vacant upon the happening of any of the following events before the expiration of the term of office: The death of the incumbent; his resignation; his removal from office; his ceasing to be an inhabitant of the county for which he shall have been elected or appointed, or within which the duties of his office are required to be discharged; his conviction of any infamous crime, or of any offense involving a violation of his oath of office; the decision of a competent tribunal declaring his election or appointment void; or his neglect or refusal to take and subscribe to the constitutional oath of office and deposit the same in the manner and within the time prescribed by law.

**History:** 1954, Act 116, Eff. June 1, 1955.

**Popular name:** Election Code

**168.443 Probate judges; impeachment; removal from office, service of charges, hearing; notice of vacancy.**

Sec. 443. Any person holding the office of judge of probate may be removed from office upon conviction in impeachment proceedings for the reasons and in the manner set forth in section 7 of article 11 of the state constitution, or the governor shall remove any judge of probate upon a concurrent resolution of 2/3 of the members elected to and serving in each house of the state legislature, and the cause for such removal shall be stated at length in such resolution, as provided in the constitution of this state. Such person shall be served with a written notice of the charges against him and be afforded an opportunity for a hearing thereon. When a vacancy shall occur in any of the said offices, a notice of such vacancy and the reason why the same exists shall, within 10 days after such vacancy occurs, be given in writing by the secretary of state to the court administrator with a copy to the governor.

**History:** 1954, Act 116, Eff. June 1, 1955;—Am. 1963, 2nd Ex. Sess., Act 58, Imd. Eff. Dec. 27, 1963.

**Popular name:** Election Code

**168.444 Judge of probate; appointment to fill vacancy; election of successor; term.**

Sec. 444. (1) If a vacancy occurs in the office of judge of probate, the governor shall appoint a successor to fill the vacancy. Except as otherwise provided in section 435a(2), the person appointed by the governor shall be considered an incumbent for purposes of this act and shall hold office until 12 noon of January 1 following the next general November election at which a successor is elected and qualified.

(2) Except as otherwise provided in section 435(2), if the vacancy occurs more than 7 days before the nominating petition filing deadline as provided in section 433 for the general November election that is not the general November election at which a successor in office would be elected if there were no vacancy, the person appointed shall hold office only until a successor is elected at the next general November election in the manner provided for in this chapter for the election of judges of probate. The person elected shall hold office for the remainder of the unexpired term.

**History:** 1954, Act 116, Eff. June 1, 1955;—Am. 1957, Act 236, Eff. Sept. 27, 1957;—Am. 1963, 2nd Ex. Sess., Act 58, Imd. Eff. Dec. 27, 1963;—Am. 1970, Act 10, Imd. Eff. Mar. 31, 1970;—Am. 1990, Act 7, Imd. Eff. Feb. 12, 1990;—Am. 1990, Act 32, Imd. Eff. Mar. 21, 1990;—Am. 1999, Act 218, Eff. Mar. 10, 2000;—Am. 2014, Act 94, Imd. Eff. Apr. 3, 2014.

**Popular name:** Election Code

**168.445 Probate judges; primary or election, recount of votes.**

Sec. 445. The votes cast for any candidate for judge of probate at any primary or election shall be subject to recount as provided in chapter 33 of this act.

**History:** 1954, Act 116, Eff. June 1, 1955.

**Popular name:** Election Code

**168.446 Probate judges; not subject to recall.**

Sec. 446. Judicial officers are not subject to recall as provided in section 8 of article 2 of the state constitution.

**History:** 1954, Act 116, Eff. June 1, 1955;—Am. 1963, 2nd Ex. Sess., Act 58, Imd. Eff. Dec. 27, 1963.

**Popular name:** Election Code