



I Demand a Recount: Options for Local Michigan Candidates on November 9

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After devoting tremendous time, money, and effort to a political campaign, coming in second place - particularly by a close margin - is disappointing, to say the least. While the nation's eyes are on the race for the White House or any of the hotly contested Senate and House seats, candidates for local office, such as school board or library board candidates, may face even closer election results, where a mere handful of votes determine the outcome. This leads to the question: can I demand a recount?

The Michigan Election Law provides that a candidate who believes there has been "fraud or mistake" in the canvass or return of the votes "may petition for a recount of the votes cast for that office in any precinct or precincts." MCL 168.862. The petition for a recount must be a written, notarized statement which specifies the office or question involved; alleges that the canvass of the vote cast for the office or on the question is in error; and identifies the precincts in which a recount of the votes cast is desired. The petition should also allege the nature of the mistake or fraud.

Time is of the essence. Under the Michigan Election Law, "[r]ecount petitions shall be filed within 6 days after the original canvass has been completed by the board of county canvassers." MCL 168.866. A deposit is also required; the amount of the deposit depends on the number of precincts challenged and the number of votes separating the winning candidate from the candidate seeking the recount. MCL 168.867. The petition and deposit for recount of a local election must be timely submitted to the appropriate Clerk of the County Board of County Canvassers. See MCL 168.866. (Note: recount petitions for some offices must be filed with the Secretary of State. Seek specific legal advice if you filing a petition.)

If all of the requirements are met, then the Clerk will advise the opposing candidate(s), who will have an opportunity to object to the recount petition and have a hearing before the Board of County

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Canvassers. If the Board proceeds with a recount after any such hearing, then the recount will be conducted pursuant to the procedures established by law. MCL 168.869-871.

Is a recount worthwhile? This question must be answered on a case-by-case basis, but generally, a narrower margin of votes suggests a higher likelihood that a recount could change the results. That is, a candidate who loses by one or two votes is likely in a better position than a candidate who loses by 20 or 30 votes. In any event, if a candidate is considering filing a recount petition, the candidate should seek legal guidance as soon as possible following the election to ensure that the requirements of the statute are followed.

Questions?

Foster Swift's election lawyers can help. **Visit our practice page** or **contact Laura J. Genovich** with questions. We draft recount petitions and provide other legal assistance to candidates, committees, and other interested parties.

This article contains general information and should not be relied upon as legal advice.
