CHAPTER 12

JUDGE OF PROBATE

Summary of Contents:

12.1   The Office of Judge of Probate

The judge of probate is an elected county official and is the county's chief election official.   § 17-1-3.   Judges of probate are the only officials with a role in each of the nine election duties required by law.   The presiding judge of the circuit court handles the election functions of the judge of probate if the judge of probate is unable to serve.   § 17-9-2.

12.2   Appointment and Training of Precinct Election Officials (Poll Workers)

12.2.1 Notice of Election

At least 14 days before each election, the judge of probate must give proper notice of the election.   This is done either by publishing a notice

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in a county newspaper of general circulation, or if there is none, by posting a written notice at the courthouse door and at three other public places in the county.   § 17-9-5.

All notices of election must include the date of the election, and the offices and subjects to be considered.   § 17-9-5.   The notice of election requirements does not apply to proposed amendments to the Constitution. *In re Opinions of the Justices*, 192 So. 905 (Ala. 1939).

12.2.2 Notice of Special Elections

The judge of probate must give a notice of special elections by proclamation stating the time, place, and object of the election.   This proclamation must be given immediately whenever the following occur: (1) the judge of probate receives a writ of election directing a special election to be held; or (2) the judge of probate receives a notice of a special election for representatives in Congress and elections for any state or county offices.   § 17-15-5.   In addition, the judge of probate must notify the sheriff and clerk of the circuit court of the special election within three days after receiving notification.   § 17-15-6.   Requirements for the form of notice for a special election are the same as for a regular election.

12.3   Candidates

The judge of probate orders the printing of ballots.   §§ 17-6-47 and 17-13-5.   The method of qualifying differs between primary and general elections.   Candidates in primary elections qualify with the appropriate party official.   Independent candidates in general elections qualify with the judge of probate for county elections and the Secretary of State for state and federal offices.   Commencing with the 2018 election cycle, the judge of probate will only receive financial reports from campaign committees for municipal candidates.   § 17-5-9.

12.3.1 Qualifying for the Primary

An officially recognized political party, is defined as one which received more than 20 percent of the entire vote cast in any county during the last general election,   § 17-13-40 Such parties have ballot access and can conduct a primary or put names in nomination for the general election through caucus, convention, mass meeting, or other assembly.   §

17-13-50.   If a political party has received 20 percent of the entire vote cast in the state during the last general election, it is officially recognized as a political party in all counties even if the party did not reach 20 percent in every county.   § 17-13-40.

The judge of probate normally receives notification of parties entering a primary from the Secretary of State.   When a primary affects only one county, the party chair of that county may notify the Secretary of State and send a copy of the notice directly to the judge of probate.   § 17-13-46. If a dispute arises between factions of a party concerning use of the party's emblem, the judge of probate must inform the state party chair, who must notify the judge of probate within 10 days as to which faction is entitled to the emblem.   § 17-6-32.

All candidates for nomination to public office or for election to a party office shall file their declaration of candidacy with the *state* party chair (if they seek any office other than county office) or with the *county* party chair (if they seek a county office), not later than 5:00 p.m., 116 days before the date of such primary.   § 17-13-5(a).

For *county* offices, the *county* party chair certifies to the judge of probate the names of all candidates for nomination of election not later than 5:00 p.m., 82 days before the primary.   § 17-13-5(b).

For offices *other* than county offices, the *state* party chair certifies the names of primary candidates to the Secretary of State no later than 5:00 p.m., 82 days before the primary.   § 17-13-5(b).   The Secretary of State then certifies the names of the opposed candidates for nomination to federal, state, legislative, circuit or district offices to the judge of probate of every county in which the election is to be held no less than 74 days before the primary.   § 17-13-5(b).

The judge of probate of each county shall then have the ballots prepared for the primary election.   § 17-13-5(c).   Note that if the candidate is unopposed in a race during a primary, the candidate's name does not appear on the primary ballot, and the candidate is declared the winner of the nomination.

In order to have their names printed on the primary ballot, candidates must be legally qualified to hold the offices they seek, eligible to vote in the primary election, and possess the political qualifications prescribed by the party.   § 17-13-6.   The judge of probate must not cause the name of a

legally unqualified candidate for primary election to appear on the ballot. AG AO 82-00497.

Any person whose name has been placed in nomination for a county office may withdraw from any primary if they notify the judge of probate at least 76 days before the election for county offices. Notification must be made to the Secretary of State for offices other than county offices. § 17-6-21

12.3.2 Qualifying for the General Election

The following persons are entitled to have their names printed on the appropriate ballot for the general election, if they are qualified:

(a)   Candidates nominated by primary election and certified by the chair and secretary of the canvassing board of the party holding the primary. Such nominations must be filed with the judge of probate (for county offices) or with the Secretary of State (in all other cases) on the day after the last day for contesting the primary election. § 17-9-3(a)(1).

(b)   Candidates nominated by any caucus, convention, mass meeting, or other assembly of any political party or faction and certified in writing by the chair and secretary of the nomination caucus, convention, and mass meeting or assembly. Such nominations must be filed with the judge of probate (for county offices) or the Secretary of State (in all other cases) on or before 5:00 p.m. on the day of the first primary election. § 17-9-3(a)(2).

(c)   Independent candidates for a specified office with a written petition signed by three percent of qualified voters in the county or district in which the office is situated who cast ballots for office of Governor in the last general election and filed with the judge of probate (for county offices) or the Secretary of State (in all other cases) on or before 5:00 p.m. on the day of the first primary election. §§ 17-9-3(a)(3) and 17-9-3(b).

The probate court is responsible for verifying the signatures on a petition for a person to run as an independent candidate for county office. Petition requirements are the same as for minor parties. The board of

registrars may, however, agree to verify the signatures for the probate court if it desires.   AG AO 83-00057.

Any persons whose names have been placed in nomination may withdraw from any primary or secondary election if they notify the judge of probate at least 76 days before the election for county offices.   The notification deadline for persons who do not wish to accept nomination in a general election is 76 days before the date of the election.   Notification must be made to the probate judge for county office and the Secretary of State for offices other than county offices.   The notification must be in writing and must be notarized.   § 17-6-21.

A candidate who has already appeared in a party primary and lost cannot be placed on the general election ballot as an independent candidate or as the nominee of another political party in the same election cycle.   § 17-9-3-(b).

12.3.3 Minor Parties

Political parties that do not reach the statutory thresholds for ballot access can reach the ballot through the petition process.   The judge of probate is responsible for verifying the signatures on a petition for minor party ballot access in county offices.   The board of registrars may, however, agree to verify the signatures for the probate court if it desires.

The number of qualified electors required to sign the petition shall equal or exceed three percent of the total number of registered voters who voted for the office of Governor during the last gubernatorial election of the county for a countywide office or of a district for an office to be filled by the electors of a district.   § 17-6-22.

The Secretary of State must notify the judge of probate of statewide and district candidates who have qualified for the general election ballot.   § 17-13-18.

The judge of probate may inquire into nominations by political parties. If the judge, after inquiry, deems the nominations not consistent with the statutes controlling nominations, they do not have to place the name(s) on the ballot.   The matter then may be decided in the circuit court.   § 17-9-3.   *Kinney v. House*, 10 So. 2d 167 (Ala. 1942).

In the case of nominations from political parties, the judge must keep the certificates and petitions on file for six months.   § 17-9-4.

The notification deadline for persons who do not wish to accept nomination in a general election is 76 days before the date of the election for county offices.   Notification must be made to the probate judge for county office and the Secretary of State for offices other than county offices.   The notification must be in writing and must be notarized.   § 17-6-21.

12.4   Role under Fair Campaign Practices Act

Beginning with the 2018 election cycle, the Fair Campaign Practices Act (FCPA) gives the judge of probate the responsibility for accepting campaign disclosure reports from municipal candidates only.   § 17-5-9. In the case of municipal races where the municipality is located in more than one county, the candidates' disclosure reports should be filed in the county where the city hall of the municipality is located.   § 17-5-9(c).

The Secretary of State provides FCPA forms to the judge of probate for distribution to candidates (copies are included in the appendix).   § 17-5-11.   Filing guides and other educational materials about campaign disclosure can also be obtained from the Secretary of State.

Copies of the records received by the judge of probate must be preserved for public inspection.   § 17-5-10.   A judge of probate can charge the person requesting the copies for the expense of the copying.   § 17-5-11(2).

A reporting calendar is included in Chapter 1 of this handbook.   FCPA records are deemed filed on time if they are delivered in person or received in the mail by the reporting deadlines or, in the case of registered or certified mail, the postmark is no later than the required filing date. The filing must be properly addressed with the postage prepaid.   § 17-5-10.

12.4.1 Organization of Principal Campaign Committee for Local Candidates

A candidate for municipal office shall file a statement of organization for a principal campaign committee with the judge of probate within five days

of becoming a candidate for office. The FCPA defines a candidate as one who has either qualified for nomination or election with a political party, filed an independent candidate petition, or raised or spent more than $1,000 toward bringing about their nomination or election. § 17-5-2(a)(1).

The form must list two to five people serving on the committee, along with their acceptance. However, candidates can simply name themselves as the person serving as the committee. The candidate can update the form to reflect changes caused by vacancies or death. § 17-5-4.

If candidates name themselves as the committee, they must also designate a person to dissolve the committee if the candidate dies or is otherwise incapacitated. If the appointed person cannot serve, the judge of probate will designate the candidate's personal representative to dissolve the committee. All the funds that exist at the time of the candidate's death or incapacity will be disposed of as provided in Section 17-5-7. § 17-5-4(c).

12.4.2 Organization of Local Political Action Committee

A political action committee, formed to influence a county or local election or proposition, must file an organization of political action committee form with the Secretary of State. This form must be filed within 10 days of receiving $1,000 in contributions or making $1,000 in expenditures. The information must include names of officers, addresses and purpose of the committee when registering the committee electronically with the Secretary of State. §§ 17-5-5 and 17-5-9.

12.4.3 Reports of Contributions and Expenditures

Principal campaign committees in municipal elections file reports of contributions and expenditures at various times with the judge of probate during an election cycle. A local political action committee seeking to influence a municipal election must file reports of contributions and expenditures at various times with the Secretary of State. Further requirements of the FCPA can be found in Chapter 20 of this book. § 17-5-9.

12.5   Poll Workers (Precinct Election Officials)

The appointment of poll workers is the responsibility of the appointing board.   The judge of probate is a member and chair of this board.   §§ 17-8-1 and 17-1-3.

The judge of probate cannot serve on the appointing board if they are a candidate for an office with opposition in that election or is otherwise disqualified from serving on the appointing board.   § 17-8-3.

After the appointing board has done its work, the judge of probate must notify workers of their appointment by mail and must publish a list of the appointees in a newspaper of general circulation published in the county. § 17-8-2.

12.5.1 Poll Workers' School

The judge of probate has the responsibility to conduct an election school, which must be conducted at least five days before a general or primary election.   The judge of probate shall also notify such election officials of the time and place of the holding of such school of instruction, and shall also publish notice at least 48 hours before the same is to be held.   § 17-8-9.

The judge of probate also notifies poll workers of the time and place where the school of instruction will be held.   A notice of their training must also be published in a newspaper of local circulation at least 48 hours before the school is held.   The notice of the school may be combined with the notice of appointment.   Poll workers may not serve at the polls if they are not duly instructed within 60 days before the election, except that uninstructed persons may be appointed to fill vacancies created by unexpected absences.   § 17-8-9.

In compliance with *Harris v. Siegelman*, 700 F.Supp. 1083 (M.D. Ala. 1988), the Secretary of State developed and administered a training and certification program for poll workers.   The court order connected with this case has since expired, but the Alabama Secretary of State's office and the Alabama Probate Judges Association have agreed that the training program, in some form, should continue.

The election school will cover federal and state law on election procedures and voting rights.   The election schools will emphasize the operation of

voting equipment and any unique local circumstances while reviewing basic election procedures. The judge of probate should include in their training the requirement that inactive voters must complete a voter identification (update) form prior to voting. § 17-4-9. A school is not required before a run-off primary because the polls are staffed by the same people who worked in the first primary.

A poll worker who attends the election school is entitled to an additional $25 per day upon completion of the local election school unless a local act provides otherwise. § 17-8-12.

12.6   Precinct Boundaries

The tasks of drawing precinct boundaries, selecting polling places, and assigning groups of voters to ballot boxes or voting machines is the responsibility of the county commission. In some counties, the judge of probate automatically participates in these functions because they chair the county commission. Even in other counties, the judge of probate often provides information and advice on these matters because of his or her experience and expertise. § 17-6-2.

12.7   Ballots

The judge of probate orders the printing of ballots although it is an expense of the county. §§ 17-6-47 and 17-13-4. Candidates must meet certain qualifications in order for their names to appear on the ballot. State law prescribes the form of the ballot. §§ 17-6-20 through 17-6-33. *State v. Deason*, 88 So. 2d 674, 678 (Ala. 1956). The major ballot requirements are summarized as follows:

(a)   Alabama uses a party column ballot. § 17-6-24;

(b)   The parties are listed in alphabetical order, and independent candidates are listed after all parties. §§ 17-6-24 and 17-6-27;

(c)   Party emblems which have been submitted to and approved by the Secretary of State are to be printed on the ballot. §§ 17-6-29 through 17-6-32;

(d)   On general election ballots, there shall be spaces for write-in votes. § 17-6-27;

(e)   In presidential elections, the names of presidential and vice presidential candidates, not their electors, shall be printed on the ballot.   § 17-14-32; and,

(f)   In primary elections, there shall be one ballot for each party, and each ballot shall contain a pledge of support for that party.   § 17-13-8.   The Alabama Republican Party has obtained an injunction preventing this pledge from being placed on its ballot materials.   *Alabama Republican Party v. State of Alabama*, No. 90-0267-BH, (Ala. Feb. 7, 1991).

The judge of probate determines the number of ballots and provides the ballots to the polling places.   §§ 17-6-47 and 17-13-9.

12.8   Testing Precinct Ballot Counters

The judge of probate shall have each precinct ballot counter tested to ascertain whether it will accurately count the votes cast.   This test will be conducted with the county chair of each party which has candidates in the election.   This rule also provides for a random sample machine test. APA 307-X-1-.04.

12.9   Voting Supplies

A number of supplies other than ballots are needed at the polling place on election day.   See Chapter 8 for a complete description of these supplies. The judge of probate delivers the election supplies and lists to the sheriff of the county at least three days before the day of the election, and it is the duty of the sheriff to deliver the same, together with ballots, to the officers (precinct election officials) of the election, at the place provided by law for holding the election, and not later than one hour before the polls are scheduled to open on election day.   §§ 17-6-47 and 17-13-9.

12.10   Voter Registration

The voter registration duties of the judge of probate fall into three general categories: National Voter Registration Act responsibilities; assisting the board of registrars in maintaining an accurate file of registered voters; and preparing and maintaining a list of qualified electors for public record.

12.10.1 National Voter Registration Act of 1993

Under the National Voter Registration Act, probate court offices that issue driver's licenses conduct "motor voter" registration in Alabama.   In this program, voter registration services are to be offered sometime during the application, re-application, or change-of-address process for a person's driver's license.   Probate offices issuing licenses are required to offer the applicant the same level of assistance that it would provide the applicant for the driver's licensing process.   42 U.S.C. 1973gg-3; Ala. Code § 17-4-60(b); Ala. Admin. Code rr. 820-2-2-.03 and 820-2-2.04.

Individuals may accept or decline the offer of voter registration services, and their decision will not have any impact on the delivery of other services or benefits provided by the probate office.   Individuals may not be rewarded or penalized for their decision to register to vote or not to register to vote through this program. 42 U.S.C. 1973 gg-3(c)(2)(D).

Judges of probate who issue driver's licenses do not make any determination of a person's eligibility to register to vote.   § 17-3-52. Determination of eligibility is the jurisdiction of the board of registrars.

Voter registration in probate offices is conducted using a computerized, electronic process tied into the driver's licensing system and the statewide voter registration file.   Therefore, voter registration applications are transmitted to the boards of registrars electronically.   The boards then process the electronic applications to determine each applicant's eligibility or ineligibility to register to vote.   This process is more efficient than the former paper-based process.   It mitigates the possibility of errors previously experienced due to illegibility, which promotes accuracy in the voter list.   It also provides the voter registration applications to the boards in a more timely manner, which is particularly important when closer in time to the deadline for registering to vote in an election.

12.10.2 Voter File Maintenance

Both the judge of probate and board of registrars must keep a copy of the list open for public inspection.   § 17-4-2.   Voters' names can be legally added or removed only by official action of the board of registrars.   The judge of probate has electronic access to the list of registered voters in their county.   § 17-4-2.   This list must be provided to any judge of probate who does not already have access to the list, within seven (7) days

of the request and at no charge. If online access is available, the judge of probate shall be granted immediate access.   § 17-4-32.

12.10.2.1 Notice of Mental Incompetence.   The judge of probate must furnish the board of registrars a monthly list of any residents 18 years of age or older who have been declared mentally incompetent.   § 17-4-4. The board must then strike these names from their file of registered voters. § 17-4-3.   Because the power to declare a person incompetent rests with the judge of probate and not with the board, the board must remove the names of such persons upon notification by the judge, and the board may not subsequently reinstate them unless they have been declared competent by the judge.   § 17-3-56.

12.10.2.2 Statement of Residence for Precinct Assignment.   The board of registrars assigns registrants to precincts.   This appears to be a purely ministerial function based upon the person's domicile and the precinct boundaries established by the county commission.   Ambiguity occurs only if the registrant's dwelling falls on a precinct or county boundary. In this case, the person must establish a precinct or county of domicile or both by filing a statement in the probate office of the county selected.   § 17-3-33.

12.10.2.3 Re-identification Forms from the Polling Place. After elections, the list of qualified electors that was used at each polling place and the voter re-identification forms are delivered to the board of registrars, who use them to update their records.   § 17-9-15.   The list is then returned to the judge of probate.   These lists contain information which will be useful to the board of registrars in developing voter histories or correcting their records, in giving an indication of who has voted and, especially, updating records with any names which were added at the polling place because the person either presented a certificate or voted a provisional ballot.   § 17-4-9.

12.10.3 The List of Qualified Electors

The list of qualified electors is produced by the judge of probate from information submitted by the board of registrars.   The list is to be published and corrected before the primary election.   It is then delivered to the polling place.

12.10.3.1 Preparing the List of Qualified Electors.   Any changes in registration (new registrations, reidentifications, or deletions) must be

provided by the board of registrars to the Secretary of State. §§ 17-4-2 and 17-4-36. The state voter registration system certifies the list of qualified voters as true and correct as of the date printed. The board delivers the list to the judge of probate. The board should certify to the judge of probate when the list of qualified electors is complete and ready for printing. From this list (in either print or electronic form), the judge of probate prepares and prints a current alphabetical list of qualified electors. An electronic archive in the database for the state voter registration list is simultaneously recorded with the printing of each county's lists of qualified voters. Each printed list of qualified voters must contain a printed certification generated by the state voter registration system establishing that the contents of the list are correct as of the time and date when it was printed. § 17-4-2. If the board of registrars adds names to the list of qualified electors between the time of notification to the judge of probate that said list is complete and the date of the election, the board of registrars should notify the judge of probate of such additions and a supplemental list of qualified voters should be prepared and distributed by the judge of probate to the affected precincts.

The list of qualified voters provided by the judge of probate, pursuant to § 17-4-2, should contain identifying information from the board of registrars in addition to the name of the qualified elector. AG AO 98-00144.

12.10.3.2 Clerical Assistance. The judge of probate is authorized to employ clerical help for the purpose of preparing the list of qualified electors. The judge of probate may be paid from the county treasury for the expense of preparing the lists, but in an amount not to exceed five cents per name. § 17-3-60. Except where compensation has been removed by local act, judges of probate are entitled to five cents per name irrespective of whether they are on the fee system or salaried. Opinion of the Justices, 407 So.2d 122 (Ala. 1981). Funds received by the judge of probate for compilation of the voter list accrues to the judge not the county treasury. AG AO 80-0176 (1980). Further, when the judge of probate furnishes a list and makes copies of this list, they are entitled to compensation for only one list. However, if the judge of probate actually prepares and furnishes two separate lists, they are entitled to compensation for both lists. 115 AG Op. 123 (Hon. Clyde Teas, 1964); AG AO 85-00067. The judge of probate must provide certification that the judge is the proper person to receive the compensation. If instead the judge's assistants prepared the list, then certification from the judge and the assistants will allow them to be compensated for the work. AG AO 93-00057. Note, however, that any allowable expenses by the county in

holding and conducting a presidential preference primary are reimbursed by the state. § 17-13-100.

In counties having a population between 100,000 and 350,000, the judge of probate may employ a clerk to assist the board of registrars. The clerk's duties are to submit to the board a revised election list of the county by placing all persons in their proper wards or precincts and by eliminating the names of persons who are deceased, fictitious, non-residents or are convicted of a disqualifying criminal offense. § 17-3-60.

12.10.3.3 Providing the Official List of Qualified Voters to the Absentee Election Manager. The judge of probate must provide the official list of qualified electors to the absentee election manager at least 55 days before an election. For municipal election, the time is 35 days. § 17-11-5. The Secretary of State may also provide for electronic access to the list. § 17-11-5.

12.10.3.4 Publishing and Correcting the List. Alabama law provides electors an opportunity to discover and correct errors in the list of qualified electors. Twenty days before the regularly scheduled primary, or earlier, the judge of probate must publish the following in some newspaper of general circulation in the county.

  (a)   the alphabetical list of qualified electors divided either by county, precinct, district or subdivision wherein each elector is registered to vote, and the effective date of that list. § 17-4-1 and AG AO 83-00372;

  (b)   a statement that the published list contains all the names on the list of qualified electors that was certified by the board of registrars; and,

  (c)   a statement that anyone whose name was omitted has 10 days to correct the situation with the board of registrars. § 17-4-1.

The Code only refers to names that were "inadvertently omitted," but qualified people who have never registered before will also have the opportunity to have their names added to the voting list by registering after the 20th day, but not later than the 15th day before an election.

If any names are added by the board of registrars, these are to be published on or before the seventh day preceding the primary. § 17-4-1.

Finally, if a person's name is mistakenly left off the list and for some reason the problem is not corrected in time, the voter may cast a provisional ballot.   § 17-10-2.

12.10.3.5 Sending Copies to the Polling Places. The judge of probate must deliver or cause to be delivered to the poll workers at each polling place the official list of qualified electors immediately preceding the election.   The delivered list must contain only the names of persons qualified to vote at that polling place.   However, the lists for other polling places may also be delivered for purposes of information only. §§ 17-4-2 and 17-13-9.

Both the judge of probate and the board must keep a current copy of the list open and subject to public inspection.   § 17-4-2.   The names and voting precincts of registered voters but not their addresses on file in the probate office are a matter of public record available for inspection.   AG AO 80-00343.

12.11   Voting Place Administration

The judge of probate, as the county's chief election official, is the primary source of advice and direction for poll workers on Election Day.

The judge of probate, as chief election official in the county, has responsibility for training poll workers which makes them the logical authority for answering all sorts of questions that occur on election day. Many judges of probate tell poll workers to call them with any problem so they can take the appropriate action or call other officials as necessary.

12.12 Canvassing Responsibility

The judge of probate's canvassing responsibility in general, special, and amendment elections results from membership on the canvassing board as one of its three members.   § 17-12-15.

In the event the judge of probate is a candidate with opposition, the appointing board shall select a replacement.   § 17-12-15.

The judge of probate receives one copy of the sealed election returns from each polling place and retains it as a public record for at least one year

from the election date for use in case the original is lost. § 17-12-11.
The judge of probate receives from the canvassing board on the second
Friday after the election the results of county elections, records them,
posts a copy at the courthouse, and immediately transmits a copy to the
Secretary of State by fax or other electronic transmission. §§ 17-12-15
and 17-12-16.

The judge of probate receives from the canvassing board the results of
statewide and district elections and forwards them immediately to the
Secretary of State where they must be opened, counted and certified
within 22 days. § 17-12-17. Returns for the following offices are
forwarded to the Governor for the speaker of the house to certify:
Governor; Lieutenant Governor; Attorney General; Auditor; Secretary of
State; Treasurer; and Commissioner of Agriculture and Industries. §
17-12-19. Returns for other state and district offices are forwarded to the
Secretary of State. § 17-12-21.

12.13   Validation of Election Results

The judge of probate participates in the post-election validation process by
receiving and maintaining records of the election, recording the results of
county elections, and hearing election contests for certain offices.

12.13.1 Receiving and Maintaining Records

After an election, the judge of probate receives and maintains records
which may be of use in a recount, pre-contest discovery or in contests
themselves. One certificate of result from each polling place must be
maintained for public record. § 17-12-11. In addition, the lists of
qualified electors must be preserved for public inspections and use in
contests. §§ 17-12-20, 17-16-43, and 17-13-77. The results of contests
of primary elections must be recorded as well. § 17-13-86.

12.13.2 Recording the Results of County Elections

The judge of probate receives from the canvassing board the results of
county elections and records them in a book provided for that purpose. §
17-12-16. This recording of results by the judge of probate constitutes
the only form of certification of election available in Alabama county
elections.

12.13.3 Hearing Contests

(a) **District or Circuit Judges.** The judge of probate receives the filing, issues summons, and hears the contest of general elections for district or circuit judge. § 17-16-54. See Chapter 14 for details of contests.

(b) **Judge of Probate and County Officials.** Judge of probate, sheriff, tax assessor, tax collector, county treasurer, circuit clerk, and other county officials' contests are filed in the circuit clerk's office in the county where the election was held. The contest is treated as a civil matter and heard without a jury. § 17-16-56.

(c) **Appeals from Contests.** Appeals from contests held before a judge of probate or circuit judge are directly to the Supreme Court. § 17-16-61.

12.14   Judge of Probate's Election Day Responsibilities*

12.14.1 Checklist

(a) Arrive at Courthouse - 6:00 - 6:30 A.M. to respond to polling officials' initial set-up problems with voting equipment and paperwork so as to ensure timely opening of polls at 7:00 A.M.

(b) Designate specific, previously trained employees to handle election day complaints and questions from election officials and voters.

(c) Select trained vote counting machine trouble-shooters to respond to situations that precinct election officials cannot handle.

(d) Document and keep a log of each question or problem that occurs on election day noting the time and how it was resolved.

(e) Judge of probate may decide to visit polling places throughout the county on election day. Revised Title 17 allows the judge to visit without being accompanied by the sheriff or deputy. § 17-9-50.

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*Provided by Retired Judge of probate Richard I. "Rip" Proctor, Lawrence County and supplemented by Joe McEarchern, Chief Clerk, Mobile County.

(f)   Prepare for tabulation of votes from precincts prior to closing of polls: set up tabulation equipment; screen for public; and go through dry-run to be sure everything is operating properly.

(g)   Organize Election Central for receiving memory cards, election materials and ballots after closing of polls; meet with sheriff, board of registrars, circuit clerk, and party officials to ensure orderly transfer.

(h)   Make results of election available to Secretary of State (amendments only in primary), candidates, media and general public.

12.14.2 Common Polling Place Problems

Though not comprehensive, this list provides citations to laws concerning a wide variety of common polling place problems.

(a) Appointed poll workers cannot serve or fail to appear on election day.   § 17-8-6.

(b) List of registered voters does not contain name of potential voter – election official or voter should call judge of probate or board of registrars to determine reason – If left out by mistake, voter may present a Certificate of Eligibility from board of registrars complete an update form and be added to list – If voter does not have Certificate must vote provisional ballot.   § 17-10-3.

(c) Voter Poll List – Separate list for each party – also separate list for voting on constitutional amendment only.   § 17-13-8.

(d) (I) Inactive beside voter's name – Voter must re-identify by filling out Voter Update Form before being allowed to vote. § 17-4-13.

(e) "Absentee" beside voter's name – A person who has applied for an absentee ballot must vote a provisional ballot.   An absentee ballot cannot be turned in at the polls on election day.   § 17-11-5.

(f) Voting machine breaks down or power failure – Emergency Balloting Procedure must be followed until machine is repaired or replaced (Administrative Rules).

(g) Election Officials Duties – § 17-8-1.

   (1) Inspector – In charge of the voting place and serves as the returning officer. Also performs the duty of challenger of voters.

(2) Registration List Clerk – Finds name of voter on voter registration list and highlights names of voters who vote from List.

(3) Poll List Clerk – Requires voters to sign poll list and prints voter's name on clerk's list to identify the signature. Also, hands the ballot to voter.

(4) Ballot Clerk – Tends voting machine to assist voter as necessary to deposit the ballot.

(h) All voters who are in line at the time of closing the polls are entitled to vote.   § 17-12-1.

(i) After closing of polls and locking of the machines against voting, the press may be allowed in the polling place to observe the counter numbers, tally of votes, etc. (AG AO 2002-242).

(j) Poll Watchers – Each party having candidates nominated may appoint a watcher, in writing, signed by county executive chair or committee member or a candidate for office and present to the inspector of the precinct.   §§ 17-8-7 and 17-13-11.   Watchers may not have a video camera in the polling place – intimidation of voters (Justice Dept. ruling).

(k) Party Declaration on Election Day – Voter can only participate in one primary – must declare their intention to vote in a specific primary prior to signing poll list and receiving ballot. § 17-13-7.

(l) Campaigning on election day is legal – Must be at least 30 feet away from front door of polling place – No loitering is permitted within 30 feet of polling place. § 17-9-50.

(m) Voter permitted to wear campaign hats, shirt, buttons, etc. into polling place to vote but must leave immediately after casting ballot. Watcher may not wear campaign materials. AG AO 93-00118.

(n) No campaign materials may be left in voting place after voter leaves – Inspector should discard.

(o) Write-In votes not permitted in Primary Election.   § 17-6-28.

(p) Sample Ballots brought into polling place – (legal under Justice Department ruling).

(q) Assistance in Voting – No oath required – Voter does not have to state reason; Voter must only sign proper column on Voters Poll

List; Anyone can assist voter except employer or agent of employer or union agent; This is voter's choice. § 17-9-13.

(r) Time Limit on Voting – Five minute time limit if voter is holding up other voters, except if voter needs assistance another five minutes is allowed. If no one is waiting in line the voter may have as much time as necessary to vote. § 17-9-13.

(s) Spoiled Ballot – If voters accidentally mark or deface the ballot they may return it to an inspector and exchange it for another ballot. § 17-9-14

(t) Automatic Recount does not apply to Primary Elections (General Elections only). § 17-16-20. Administrative procedures for electronic vote counting systems provide method for asking for recount in primary election by petitioning the county canvassing board within 48 hours after official canvass. Attorney General's opinion states that you cannot unseal ballots for re-count except during official contest.