

# Court of Appeals, State of Michigan

## ORDER

In re Amy Miller

Docket No. 364659

LC No. 2023-118418-CZ

Colleen A. O'Brien  
Presiding Judge

Mark J. Cavanagh

Kathleen Jansen  
Judges

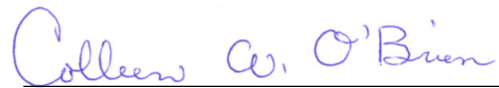
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The motion for immediate consideration is GRANTED.

Pursuant to MCR 7.206(D)(4) and MCR 7.216(A)(7), the Genesee County Board of Commissioners is ENJOINED from proceeding to appoint anyone to the County Commissioner position vacated by re-elected incumbent commissioner Clemons until the circuit court addresses the merits of plaintiff's action for mandamus or until further order of this Court. Once a county commissioner position becomes vacant due to resignation "the vacancy must be filled by appointment within 30 days by the county board of commissioners." MCL 46.412(1). If the county board of commissioners does not fill that vacancy within the 30 days provided, "that vacancy shall be filled by a special election" "called by the county board of commissioners." MCL 46.413(1). The use of the words "shall" and "must" indicates a mandatory directive from the Legislature. *Burton v Reed City Hospital*, 471 Mich 745; 691 NW2d 424 (2005); *Vyletel-Rivard v Rivard*, 286 Mich App 13; 777 NW2d 722 (2009). The facts before this Court indicate that Mr. Clemons accepted appointment to a new office on December 6, 2022, at which point his county commissioner's seat became vacant. The Board did not fill that vacancy by appointment within 30 days, so at this time it appears that the Board must call a special election to fill that vacancy.

The motion for writ of superintending control and motion for leave to reply to the answer are DENIED as moot.

We do not retain jurisdiction.

  
Presiding Judge



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

January 25, 2023  
Date

  
Chief Clerk