

STATE OF MINNESOTA  
IN COURT OF APPEALS

OFFICE OF  
APPELLATE COURTS  
JAN 13 2012  
FILED

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In re Designations of Court of Appeals  
Judges for Congressional Districts  
Pursuant to Minnesota Statutes  
Section 480A.02, Subdivision 5.

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**ORDER**

#ADM10-8010

This administrative order concerns the statutory requirement that eight judges of the court of appeals be designated for Minnesota's eight congressional districts and that those judges be redesignated after each reapportionment. *See* Minn. Stat. § 480A.02, subd. 5 (2010). Specifically, this order determines the timing of those redesignations with respect to the presently ongoing reapportionment process.

By way of background, the Minnesota Court of Appeals has nineteen authorized judgeships. Eight judgeships are designated for eight geographic districts, which are derivative of Minnesota's eight congressional districts. *Id.*, subd. 3.<sup>1</sup> To be eligible for election or appointment to a judgeship that is designated for a congressional district, a person must "have resided in that congressional district for at least one year." *Id.* The

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<sup>1</sup>At present, the designations are as follows: Judge Renee L. Worke for the First Congressional District, Judge David Minge for the Second Congressional District, Judge Kevin G. Ross for the Third Congressional District, Judge Edward J. Cleary for the Fourth Congressional District, Judge Jill Flaskamp Halbrooks for the Fifth Congressional District, Judge Thomas J. Kalitowski for the Sixth Congressional District, Judge Roger M. Klaphake for the Seventh Congressional District, and Judge Lawrence B. Stauber, Jr. for the Eighth Congressional District. These designations were established by a May 24, 2002, order of the chief judge of the court of appeals and by subsequent designations by governors when making appointments of judges to fill mid-term vacancies.

legislature's purpose in designating eight judgeships for eight congressional districts, with residency requirements, was "not so that judges would represent the constituents in those districts, but simply to utilize those districts and their boundaries as established benchmarks for providing geographic diversity on the court." *Clayton v. Kiffmeyer*, 688 N.W.2d 117, 125 (Minn. 2004). The other eleven judges of the court of appeals serve at large, "without restriction as to residence." Minn. Stat. § 480A.02, subd. 3. Despite the existence of geographically restricted judgeships, all judgeships of the court of appeals are subject to state-wide elections. *Id.*, subd. 4.

The designation of a court of appeals judge for a congressional district is made when the judge initially takes office, whether by election or appointment. *See id.*, subd. 3. But the designations made at the time of initial election or appointment are not permanent. Rather, the chief judge of this court is obligated by statute to redesignate judges for congressional districts every ten years: "After each reapportionment, the chief judge shall designate a judge for each of the new congressional districts." *Id.*, subd. 5. When redesignating judges for congressional districts, a judge's residence is determined by the place where he or she resided "at the time of original election or appointment." *Id.* A judge who is designated for a particular congressional district "shall continue to be eligible for that seat without regard to any subsequent change of residence." *Id.*, subd. 3.

The statute does not specify precisely when the chief judge should make the redesignations required by section 480A.02, subdivision 5. The statute provides only that the redesignations should occur "[a]fter each reapportionment." *Id.*, subd. 5. Reapportionment occurs not in a single moment but in stages. As a matter of federal law,

the reapportionment process begins on the first day of the regular session of Congress following a decennial census, when the President transmits to Congress the census results and a statement of “the number of Representatives to which each State [will] be entitled.” 2 U.S.C. § 2a(a) (2006). The Clerk of the United States House of Representatives is required to transmit that information to the governor of each state. 2 U.S.C. § 2a(b). Each state then is required to establish a number of congressional districts equal to the number of representatives to which the state is entitled. 2 U.S.C. § 2a(c). As part of the reapportionment process, each state must re-establish its congressional districts to ensure that, despite changes in the quantity and distribution of its population, the districts comply with the constitutional requirement of “one-person, one-vote.” *Georgia v. Ashcroft*, 539 U.S. 461, 488 n.2, 123 S. Ct. 2498, 2515 n.2 (2003).

In Minnesota, it is presumed that the legislature and the governor will enact a law to establish new congressional districts after each decennial census. *See Cotlow v. Growe*, 622 N.W.2d 561, 563 (Minn. 2001). If the legislature and the governor do not do so, the judiciary may take action to ensure that new districts are established within the time required by law. *See Zachman v. Kiffmeyer*, 629 N.W.2d 98, 98 (Minn. 2001). A decade ago, a judicial redistricting panel re-established the boundaries of Minnesota’s congressional districts. *See Zachman v. Kiffmeyer*, No. C0-01-160 (Minn. Spec. Redistricting Panel Mar. 19, 2002) (final order). In 2011, a judicial redistricting panel was appointed by the chief justice to “order implementation of judicially-determined redistricting plans for state legislative and congressional seats only in the event that the Legislature and Governor have not in a timely manner enacted redistricting plans that

satisfy constitutional and statutory requirements.” *Hippert v. Ritchie*, No. A11-152, at 3 (Minn. June 1, 2011) (order). New congressional districts are expected to be established, either by legislation or by court order, by late February 2012, consistent with the legislature’s stated intention to allow counties and municipalities at least 25 weeks to establish precinct boundaries before primary elections. *See* Minn. Stat. § 204B.14, subd. 1a (2010).

However, the congressional districts that are established in early 2012 will not apply immediately to the designations of court of appeals judges for congressional districts. This is a consequence of the Minnesota Supreme Court’s 2004 opinion in *Clayton*. The relevant facts of *Clayton* are as follows. In March 2002, a special redistricting panel established new congressional districts. 688 N.W.2d at 119-20. In April 2002, the governor appointed a lawyer to the court of appeals to occupy a judgeship designated for the Second Congressional District, effective in May 2002. *Id.* at 120. Approximately two years later, in July 2004, the judge’s eligibility for election to his office was challenged on the ground that his residence at the time of his appointment was not within the boundaries of the Second Congressional District as determined by the special redistricting panel in March 2002, even though his residence was within the boundaries of the Second Congressional District as it had existed for the decade preceding his appointment. *Id.* at 120-21, 123.

The supreme court rejected the challenge. The supreme court concluded that designations of court of appeals judges for congressional districts are based on the congressional districts that are in effect at the time of a judge’s election or appointment,

not the congressional districts that later take effect, and the supreme court further concluded that new congressional districts do not take effect until Minnesota's newly elected or re-elected members of Congress take office after the next congressional elections. *Id.* at 124-25. In reaching those conclusions, the supreme court reasoned that "redistricting orders . . . apply to future elections" but "do not change the boundaries with regard to incumbent office holders" because "the redrawn congressional districts do not take effect in terms of sitting office holders until the term of office begins following that next set of elections." *Id.* at 124. The supreme court further reasoned as follows:

[W]hen the successful candidates at the [congressional] election subsequent to redistricting take office, they do so as the representatives of the redrawn districts, and those districts therefore become effective for purposes of holding office at that time, not earlier. Thus, until the congressional representatives elected based on the new boundaries took office, the congressional districts remained configured, for purposes of current officeholders, as they had been prior to the redistricting order. Accordingly, at the time Judge Minge was appointed, the second congressional district was still configured as it had been before the redistricting order, both with respect to the member of congress representing that district and with respect to Governor Ventura's appointment of a judge who resided in that district.

*Id.* at 124. This reasoning is consistent with federal law, which provides that a state is entitled to its previously determined number of congressional representatives "until the *taking effect of* a reapportionment," 2 U.S.C. § 2a(b) (emphasis added), which indicates that the reapportionment process is not complete until the seating of the congressional representatives who have been elected by the residents of the newly drawn congressional districts.

In light of the supreme court's 2004 opinion in *Clayton* and the federal authorities cited above, the proper time for the chief judge to redesignate court of appeals judges for congressional districts is when the newly drawn congressional districts become effective, which will occur after the persons elected to Congress by Minnesotans in November 2012 have taken their seats in Congress. Accordingly, the chief judge will make the required redesignations of court of appeals judges for congressional districts in January 2013. Until that time, the present designations will remain in effect, subject to any future appointments by the governor to fill mid-term vacancies.

**IT IS SO ORDERED.**

**Dated:** January 13, 2012

**BY THE COURT**



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Matthew E. Johnson  
Chief Judge