

STATE OF MINNESOTA

IN SUPREME COURT

C9-85-1506

In re Eighth District
Judicial Vacancy

Terminating Judicial Position in the
Eighth Judicial District
Transferring Judicial Position to the
Tenth Judicial District

WHEREAS, pursuant to the provisions of Minnesota Statutes § 2.722, subd. 4 (1985, 1990), the Supreme Court is authorized to continue, abolish, or transfer judicial positions which are vacated upon the death, resignation, retirement, or removal from office of incumbent judges after consultation with judges and attorneys in the affected judicial district; and

WHEREAS, Governor Rudy Perpich notified the Supreme Court that a vacancy will occur in the Eighth Judicial District as a consequence of the disability retirement of the Honorable Richard A. Bodger effective October 31, 1990; and

WHEREAS, after notice given, a public hearing was held in the Swift County Courthouse, Benson, Minnesota at 2:00 PM, on October 29, 1990, the purpose of which was to consult with judges and attorneys of the affected judicial district to determine whether the continuation of the judicial position being vacated by the retirement of Judge Bodger is necessary for effective judicial administration; and

WHEREAS, having considered the application of the weighted caseload study to the judicial needs of the Eighth Judicial District and the arguments made regarding the aforementioned judgeship and chambers designation within the district and having attached a memorandum which addresses these issues, by a divided court,

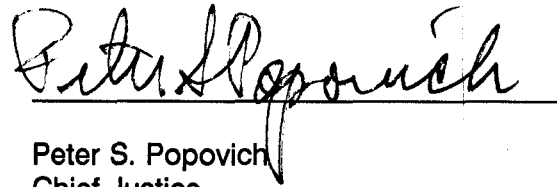
IT IS HEREBY ORDERED THAT:

1. The vacancy in the judicial position occasioned by the retirement of the Honorable Richard A. Bodger be, and hereby is, terminated in the Eighth Judicial District.
2. The judicial position terminated in the Eighth Judicial District by the operation of this order be, and hereby is, transferred to the Tenth Judicial District, effective immediately, and

3. The vacancy transferred to the Tenth Judicial District be, and hereby is, certified to the Governor as a district court judgeship chambered in Washington county to be filled in the manner provided by law.

Dated: November 30, 1990.

BY THE COURT



A handwritten signature in cursive script, reading "Peter S. Popovich", is written over a horizontal line. The signature is positioned above the printed name and title.

Peter S. Popovich
Chief Justice

OFFICE OF
APPELLATE COURTS

NOV 30 1990

FILED

MEMORANDUM

On October 29, 1990, after public notice, this court conducted a hearing in the Swift County Courthouse in Benson, Minnesota, to determine whether to continue a vacancy occasioned by the retirement of Judge Richard A. Bodger. Chief Justice Peter S. Popovich and Associate Justice Alexander M. Keith, liaison to the Eighth Judicial District, presided at that hearing.

As we have stated previously, our overriding concern must be that all citizens of the state have adequate access to judicial resources.

The Supreme Court is charged with the responsibility under Minnesota Statutes § 2.722, subdivision 4, of determining the proper allocation of judicial resources to allow for the effective administration of justice throughout the State of Minnesota. The principle we have followed is that judicial positions should be allocated in accordance with a rational method of demonstrated need. The tool we have relied on in assessing the need for judicial resources is the weighted caseload analysis.

We have previously expressed our confidence in the weighted caseload study's ability to objectively and systematically measure the need for judicial resources. The legislature has also shown confidence in the method by creating thirty-one new trial court judgeships since 1983 based upon findings of the weighted caseload study. We have also repeatedly expressed our intention to consider other factors in determining whether a judicial vacancy should be continued in place, abolished, or transferred. We have to date held nine hearings on twelve judicial vacancies, and have transferred five judicial positions.

Since 1980, the first time a weighted caseload study was undertaken, the Eighth district has shown a need for ten judges to handle the caseload. In 1980, a total of fourteen judges were chambered in the district. In 1982, a county court judgeship in Lac Qui Parle county was eliminated in the district upon the elevation of Judge John Weyrens to the district court. In 1985, this court granted a request by Judge Jon Stafsholt to move his chambers from Traverse to Grant county and held a hearing in Litchfield in October, 1985 regarding a vacancy in Meeker county arising due to the retirement of Judge Cedric Williams and ordered:

- (1) that county court boundaries be made coterminous with district court boundaries, to provide for more flexible judicial assignments, and to address the imbalance of county and district court judges,
- (2) that the judicial position vacated by Judge Cedric Williams in Meeker county be transferred to the Fourth district, and
- (3) that the chambers of Judge John Claeson be transferred from Pope to Meeker county.

This decision left a total of twelve judges in the district.¹

In May, 1986, this court held a hearing in Willmar to consider the vacancies created by the retirements of Judge Frederick Ostensoe of Yellow Medicine county and Judge John Claeson of Meeker county.² We ordered:

- (1) that the chambers of Judge John Weyrens be transferred to Meeker county,
- (2) that the vacancy in Meeker county be continued in the district and chambered in Kandiyohi county, and
- (3) that the vacancy in Yellow Medicine county be continued in place.

We found that, although criticisms made of the weighted caseload study were largely without merit, the locality had met the court's stated burden of demonstrating compelling reasons for the continuation of the judgeships.³ We stated:

"We find that the burden has been met as to the two vacancies currently at issue. It is clear that as a result of the reduction of two judgeships since 1980, there has been some increase in travel of the district's judges not accounted for by the weighted caseload analysis. Similarly, the district's lack of support staff, particularly law clerks, is recognized as reducing its judicial productivity by some degree."⁴

In August, 1986 we transferred the chambers of Judge Keith Davison from Stevens to Traverse County to better deploy available judgeships.

Contrary to testimony presented at the October 29 hearing, this court did not in 1986 determine that twelve judgeships were required in the Eighth district. Rather, our decision to leave the judgeships in place at that time was due to the particular location of the vacancies in question along with additional considerations involving the effective administration of justice in the district, including:

1. Recent loss of judgeships - The judicial complement in the Eighth district was 17 judges as recently as 1978. Through judicial district redistricting and county court election district redistricting, this had been reduced to thirteen in 1985. In 1985, this court reduced the complement to twelve via the sunset and transfer legislation. We

¹ *In re Eighth Judicial District County Court Vacancy*, Order of November 20, 1985.

² *In re Eighth District County Court Vacancies*, Order of June 20, 1986.

³ 1986 order, page 11.

⁴ In 1986, there were three law clerks for twelve judges. Currently the Eighth district has reached the statutory cap of one law clerk for every two judges, which applies to all greater Minnesota judicial districts, except the Seventh, which has one law clerk for each 1.5 judges.

determined that the district needed some time to adjust to this loss of judgeships, and to implement an efficient assignment plan.

2. Deployment of judgeships - We noted in 1986 that the deployment of judgeships in the Eighth district was less than ideal. Three counties in the district had two chambered judgeships, even though two of the counties by themselves warranted less than one judge. Meanwhile, four counties had no resident judge. The 1986 vacancies afforded an opportunity to improve the deployment of judicial resources within the district.

3. Effects of a two-tiered court system - One factor resulting in an inefficient deployment of judicial resources within the district in 1986 was the presence of separate county court and district court benches.

4. Dated weighted caseload system - Although the weighted caseload study is updated each year, the measurements of judicial travel were completed in 1980, prior to the loss of two judgeships by the district. New measurements of judicial travel as well as all judicial time were scheduled to be undertaken later in 1986.

5. Judicial access - Our overriding concern, as we have stated, must be that all citizens have adequate access to judicial resources. This is particularly critical for law enforcement personnel, persons seeking injunctive relief, orders for protection, etc.

6. Level of support services - In particular, it was felt that the lack of adequate law clerk staff could adversely impact judicial productivity.

Since 1986, the district has been operating with the same contingent of twelve judges, the deployment of judges in the district has been improved, time to absorb the loss of judgeships and develop an efficient assignment plan has been permitted, the courts have been reorganized into a unified trial bench, the weighted caseload study has been updated, judicial access for emergency purposes has been improved through the introduction and availability of facsimile transmission, and the statutory maximum of law clerks has been achieved.

Weighted caseload results for the Eighth District

Table 1 shows weighted caseload results for counties of the Eighth district. For the twelve months ending June 30, 1990, the judge need for the district was 9.0 judges while the judge need in Swift county was 0.6 judges. Since 1986, judge need in Swift county has declined by 0.2 judges, or 25%. Judge need for the district as a whole has remained constant since 1986.

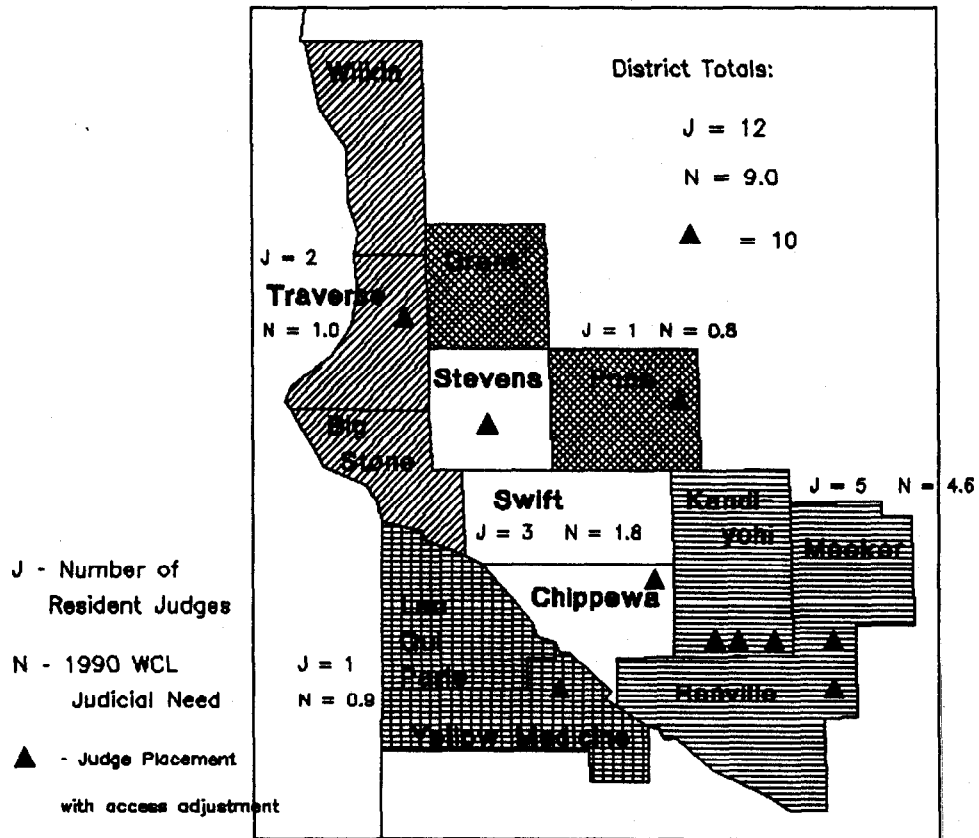
For those districts which have surplus judicial resources according to the weighted caseload study, an additional analysis is undertaken which considers the geographical location of judges and need for judicial resources within smaller assignment circuits within the district. This analysis, known as the "access adjustment", represents an attempt to provide an

Table 1. Judicial Need for Eighth District Counties 1986-1990

County	Actual	WCL Judicial Need						Access Adj	1990 Excess
		1986	1987	1988	1989	Yr End 3/31/90	Yr End 6/30/90		
6 Big Stone	0	0.3	0.3	0.3	0.3	0.3	0.3	0	
12 Chippewa	1	0.8	0.7	0.8	0.7	0.7	0.7	1	
26 Grant	1	0.4	0.4	0.3	0.3	0.3	0.3	0	
34 Kandiyohi	3	2.0	1.9	2.0	2.4	2.4	2.5	3	
37 Lac Qui Parle	0	0.4	0.4	0.4	0.4	0.4	0.4	0	
47 Meeker	1	0.9	0.9	1.0	1.0	1.1	1.1	1	
61 Pope	0	0.6	0.6	0.6	0.6	0.6	0.6	1	
65 Renville	1	0.9	0.9	0.9	0.8	0.9	1.0	1	
75 Stevens	1	0.5	0.5	0.6	0.5	0.5	0.5	1	
76 Swift	1	0.8	0.7	0.7	0.7	0.6	0.6	0	
78 Traverse	1	0.2	0.2	0.3	0.3	0.2	0.2	1	
84 Wilkin	1	0.4	0.5	0.4	0.4	0.4	0.5	0	
87 Yellow Medicine	1	0.5	0.5	0.5	0.4	0.4	0.5	1	
Total	12	8.8	8.6	8.5	8.8	8.9	9.0	10	2

optimal placement of judges within the district so that judges and chambers are matched as closely as possible to the workload of the judicial district. According to this analysis shown in Figure 1 below and as presented by the State Court Administrator's Director of Research and Statistics, ten judgeships are required to meet the workload needs of the district.

Figure 1. Judicial Need in Assignment Clusters



The district is divided into five clusters, and judicial need is summed for all counties in each cluster. The solid triangles in Figure 1 denote judicial placements under an optimized assignment plan requiring ten judges to meet the district's workload. On this basis, the Director of Research and Statistics found two excess judicial positions in either Wilkin or Traverse county and in Swift county.

Preliminary 1990 census population figures are available and are shown in Table 2.

Table 2. Census Data for Eighth District Counties

County	1980 Census	Prelim. 1990 Census	Pct Change
Big Stone	7,716	6,284	-19%
Chippewa	14,941	13,201	-12%
Grant	7,171	6,241	-13%
Kandiyohi	36,763	38,587	5%
Lac Qui Parle	10,592	8,911	-16%
Meeker	20,594	20,780	1%
Pope	11,657	10,736	-8%
Renville	20,401	17,607	-14%
Stevens	11,322	10,630	-6%
Swift	12,920	10,701	-17%
Traverse	5,542	4,463	-19%
Wilkin	8,454	7,512	-11%
Yellow Medicine	13,653	11,653	-15%
Total	181,726	167,306	-8%

As Table 2 indicates, population levels have declined in all counties of the Eighth district since 1980, except Kandiyohi and Meeker counties. For the district as a whole, population has declined by 8%, while Swift county has declined by 17%. While growth in the eastern border counties is expected, population projections overall for the district do not provide a basis for expecting an increased judge need over the current weighted caseload figures.⁵

⁵ Preliminary census figures for 1990 are well below population projections for the period 1990-2010 prepared from the 1980 census figures by the State Demographer's Office.

Other factors which could mitigate the weighted caseload

A number of factors were raised in testimony and written submissions which could affect judgeship needs beyond that accounted for by the weighted caseload results.

1. Perception of Rural Bias

Testimony was presented about a perception of "rural bias" in the weighted caseload study and, indeed, in much of state policy regarding economic, social and political issues. We can only note that not all rural districts in the state are shown to have excess judicial resources by the weighted caseload study. The Third and Ninth districts are shown to have adequate judicial resources. In addition, the First, Seventh and Tenth districts, which are largely rural, are shown to need more judges than they currently have.

The weighted caseload takes into account travel and "dead time" factors relating to the peculiarities of conducting judicial business in rural areas. Specialization in urban areas did not result in higher productivity for metro judges, according to the 1986 weighted caseload survey.⁶ Consequently, it is not true that uniform weights benefit the metro areas due to specialization.

2. Difference Between Access Adjustment Need and Raw Judge Need

Testimony was offered which characterized the access adjustments in the Eighth district as being less generous than those of other rural districts, specifically the Third and Fifth districts. What is important here is not the absolute difference between access adjustment and actual need, but rather the percentage difference.⁷

With twelve judges chambered, the Eighth district has a surplus judicial complement of 33% over the raw weighted caseload need of 9.0 judges. This compares to surplus needs of 18% in the Fifth district and 7% in the Third district, where we have previously held hearings on excess judicial positions and have transferred or abolished positions.

If the access adjustment criterion remained at ten, and ten judges were chambered in the Eighth district, the level of surplus would be 11%. If the access adjustment were increased to 11 judges, the surplus would be 22%.

⁶ In fact, the contrary was found to be true. In the most specialized areas in the metro area, including family, probate and juvenile, judges actually took longer, on average, to dispose of cases.

⁷ Testimony suggested that the total judge need in the Eighth district should first be rounded up from 9.05 judges to 10, prior to making the access adjustments. For weighted caseload purposes, rounding to the next whole judgeship at the district level integer has always been done at a fractional value greater than 0.5.

3. Size of District

Testimony at the hearing discussed the size of the district in square miles and the number of square miles served per judge in the district. We point out that, while the Eighth district is large and sparse, it is neither the largest nor sparsest district in the state. That distinction goes to the Ninth district, which has one-third more area per resident judge than the Eighth district. The Ninth district is shown to be adequately staffed by the weighted caseload study.

4. Judicial Travel

Much testimony and written material was submitted pointing to the extensive travel demands on judges in the Eighth district. Yet, we are somewhat puzzled by the amount of travel in the district. In reviewing the October, 1990 schedule, there appears a very significant amount of cross district travel beyond that which would appear necessary to service counties without a resident judge or normal judge removal activity. Nevertheless, assuming that all travel currently done is required and that all travel of the district is spread only among the non-Kandiyohi judges, the maximum amount of travel time attributable to the Eighth district in excess of the weighted caseload allowances would be 0.75 judge. Even if one judgeship were transferred from the district, the increased travel time for the district would not exceed 0.85 judge.⁸

5. New Prison

Testimony was presented which indicated that a new, private prison facility housing offenders from out-of-state will be constructed in Appleton in Swift county. The facility will initially consist of 492 beds, with plans to double after two years. According to testimony, additional civil and criminal cases may be expected as a result of this prison. Unfortunately, data were not available on the impact of such private prisons in other locales. Nevertheless,

⁸ Written materials submitted by the Sixteenth District Bar Association indicated that the twelve judges actually traveled a total of 8,160 miles in a four-week period. Averaging across the nine non-Willmar judges, this is an average of 45 miles per day. At an average speed of 45 miles an hour, this is an average of 60 minutes per day. Since the weighted caseload allows an average of 32 minutes per day, this is an additional 28 minutes per day. Over an entire year, assuming 197 work days per judge per year, this amounts to 0.75 FTE judge.

Assuming that one judge were transferred from the district, and eight non-Willmar judges traveled the same amount as twelve judges currently do, the additional judge time involved in travel would be 0.85 FTE judge.

These estimates are generous, since the mileage used is for all judges in the district while the averages are across the non-Willmar judges, and since the assignment schedule used to prepare these mileage estimates was not a four-week schedule, but rather a five-week schedule, with all judges in the district assigned to chambers during the fifth week.

the potential for some increased caseload appears possible if this prison is constructed.

6. State Funding Pilot Project

The Eighth district is serving as the pilot district and carries the administrative burden associated with working out the problems in state funding. The court acknowledges and appreciates the additional efforts required of the Eighth district as a result of this project. However, the major changes involved in this transition have been made and we expect the level of judge involvement in administrative matters to return to more normal levels in the near future.

Conclusion

When determining the fate of a judicial vacancy we have expressed our policy of consulting the weighted caseload analysis first and, if the position is unnecessary, placing upon the locality the burden of demonstrating that additional factors exist which would justify continuing the position in question. We conclude, by a divided court, that in the case of the Eighth District vacancy, this burden has not been met. Excess judicial resources in the district exist which can be rotated into Swift county to deal with the caseload.

We recognize that the district will need to adjust assignments to effectively deploy its resources to meet the judicial need. We urge the judges of the district to consider changes in some chambers locations to better match judicial resources with the judicial workload.⁹ Specifically, we have pointed out that too many judges are chambered in the northern part of the district. If a judge is willing to move to Swift county, the supreme court can, after consulting with the judges of the district, designate new chambers location.¹⁰ This would solve the caseload needs in Swift county. Alternatively, if no judge is willing to be chambered in Swift county, a rotation scheme can be implemented where judges in the counties of Traverse, Stevens and Chippewa are assigned to Swift county on a regular basis. Upon the next vacancy which occurs in the northern part of the district, it would be our intent to move the chambers of the vacant judgeship to Swift county. The next mandatory retirement in the northern counties occurs in Traverse county in 1993.

We further direct that the access adjustment be increased to show a need for eleven judges in the district. A judicial complement of eleven judges provides an excess of judicial resources in the amount of two judgeships or 22% over the raw weighted caseload indication of need. This two judge access adjustment adequately compensates for the most generous appraisal of additional travel needs which would result from the reduction of one judgeship and provides an additional judgeship to account for time-critical judicial activities in counties without a resident judge.

⁹ Figure 1 above suggests alternative chambers locations.

¹⁰ M.S. § 480.22.

The basic principle underlying our decision is that judicial positions should be allocated and deployed in accordance with a rational method of demonstrated need. This guiding philosophy underlies the action taken in the order accompanying this memorandum.