

Selection and Election of Judges in Minnesota

Objective: To better understand the process by which judges are selected and the role of judicial independence in our system of government

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THE BASICS: A quick review of judge selection in Minnesota

There are two basic kinds of courts, and they operate very differently. The [trial courts](#) are where witnesses testify, evidence is presented, and a jury or judge determines the facts and outcome of a case. In Minnesota we also call these District Courts. An appeals court will hear a case if one side or the other claims that the process used in the trial court did not follow the law. Only lawyers testify during an appeal. In Minnesota we have two levels of appeal, the [Court of Appeals](#) and the [Minnesota Supreme Court](#). So in all, we need 257 District Court judges, 16 Court of Appeals judges, and 7 Supreme Court justices. (Other [special courts](#) also exist as part of the executive branch)

According to the [Minnesota Constitution](#), all of these positions are to be filled by election, and the term of office is six years ([Article VI, section 7](#)). But the constitution also provides that the governor may appoint a judge when a vacancy occurs ([Art. VI, sec. 8](#)). By far the majority of judges who leave the bench do so at some time during their term, thus allowing the governor to appoint a successor. Therefore, most judges first get the job by being appointed. Once appointed, however, the judge must run for election in the next general election if he or she wants to keep the position. This means that every six years, someone can challenge a sitting judge in the election, so the citizens ultimately have the responsibility of keeping or replacing a judge. This also means that judges have to conduct an election campaign.

(For more information, visit the [Minnesota State Court System](#) website, or view a document entitled [The Minnesota Judiciary: A Guide for Legislators](#) by the House Research Department.)

SOME QUESTIONS

Given the process in Minnesota, some questions need to be addressed:

1. If the governor appoints a judge, can the governor simply appoint people who are friends and who might favor the governor's point of view on the law? What process does the governor use?
2. How do I as a voter make a good decision about a judge; how should I choose?
3. If a judge has to run a campaign, could someone influence that judge by giving money to the campaign?

4. During a campaign, can a judge seek votes by promising to make certain rulings?

JUDICIAL INDEPENDENCE

These questions center on a critical concept called “**Judicial Independence.**” Understanding this concept is vital to understanding the importance of the selection process for judges.

From the [American Judicature Society’s](#) (AJS) web site, this [explanation of judicial independence](#) is available:

Judicial independence is a concept that expresses the ideal state of the judicial branch of government.

The concept encompasses the idea that individual judges and the judicial branch as a whole should work free of ideological influence.

Scholars have broken down the general idea of judicial independence into two distinct concepts:

1) Decisional independence - Decisional independence refers to a judge’s ability to render decisions free from political or popular influence based solely on the individual facts and applicable law.

2) Institutional, or branch, independence. - Institutional independence describes the separation of the judicial branch from the executive and legislative branches of government.

The AJS also identifies what they see as [threats to judicial independence](#). (Among other interesting information, you can also order a [free “Judicial Independence” button](#).)

So how are judges selected in Minnesota so as to maintain Judicial Independence?

THE APPOINTMENT PROCESS

In the past, judges were appointed by the governor pretty much at will. Governor Albert Quie (1979-1983) and Governor Rudy Perpich (1983-1990) used commissions to assist them in their selection of judges. In 1991, the legislature established the Judicial Merit Selection Commission. Its role is to recruit and evaluate candidates to fill district court judgeships. The commission must evaluate candidates on the following criteria: integrity, maturity, health (if job related), judicial temperament, diligence, legal knowledge, ability, experience, and community service. The exact composition of the commission can be found at http://www.courts.state.mn.us/cio/jud_select.doc, but basically the majority of the 49 commissioners are appointed by the governor and the rest by the Supreme Court.

There are two limitations to note about this commission. First, it is employed *only* in the selection of the 257 trial court judges. The 16 Appeals Court and 7 Supreme Court positions are still handled independently by the governor. Also, the commission can forward a list of nominees for consideration, but the governor still makes the appointment and so can choose to ignore the commission’s recommendations.

THE ELECTION PROCESS

The citizens of Minnesota hold ultimate authority over whether a judge will remain on the bench through the election process. But judgeship elections are very different from standard political elections.

Dating back to the turn of the 20th century, judicial elections must be nonpartisan according to Minnesota law. This means that candidates cannot be identified as having a political party affiliation during the campaign or on the ballot.

The Supreme Court has also instituted rules concerning the activities of judicial candidates. They cannot seek endorsements from political parties, nor personally solicit money for their campaign or for any other reason. The rules also restrict what they can say during a campaign. For example, candidates cannot state their views on disputed legal issues, or imply how they might rule on certain types of cases. The [Minnesota Code of Judicial Conduct](#) includes other restrictions.

Candidates can campaign, and voters can base decisions on the same criteria that the Merit Selection Commission uses (integrity, maturity, health (if job related), judicial temperament, diligence, legal knowledge, ability, experience, and community service).

Judicial elections are held at the same time as general elections; November of even-numbered years.

Selection and Election of Judges in Minnesota

STUDENT STUDY GUIDE

Name _____

1. What are the three types of courts in Minnesota?
2. What is the total number of judgeships in Minnesota?
3. What is the term of office for all judges in Minnesota?
4. How do most judges first become a judge?
5. Summarize the questions raised in part II. Use 2-5 words to identify the main idea of each question.
 - A.
 - B.
 - C.
 - D.
6. If a judicial system has judicial independence:
 - A. On what grounds does a judge make a decision?
 - B. What kinds of things should not influence a judge's decision?
7. Now think about the four questions raised earlier. How does the selection and election process in Minnesota attempt to address those questions and maintain judicial independence?
 - A.
 - B.
 - C.
 - D.

CHOOSING A JUDGE ACTIVITY

PROCEDURE

1. Introduce activity by asking students to pretend that they are the governor and that a judicial vacancy has occurred in one of the district courts. Ask the students whom they would choose to be the new judge. (Answers will range from "my best friend" to "a highly respected lawyer.")
2. Explain to students that under Minnesota law, a Commission on Judicial Selection, consisting of lawyers and non-lawyers who are appointed by the governor's office and the Supreme Court, makes recommendations for vacancies occurring in the district courts. The governor may select from the recommended individuals but is not required to do so. (These individuals will be lawyers. All judges in Minnesota must be lawyers.) This procedure is not used for vacancies occurring in the Court of Appeals or in the Supreme Court. For these vacancies, the governor may use whatever procedure he or she wishes. Most often, the governor creates a committee to help identify judge candidates.
3. Ask students to read the first half of the **Student Handout: JUDICIAL SELECTION PROCESS**. Discuss the questions presented.
 - A. Should the new judge be a friend? Governors can appoint persons they know. Is this a good idea? Why or why not?
 - B. Should an independent group make recommendations to the governor? What are the advantages? (No appearance of partisanship.) What are the disadvantages? (Will the independent group make quality recommendations? What is to prevent them from recommending friends?)
 - C. If an independent group is to decide, who should belong to the group? Lawyers? People who are not lawyers?
4. Have students, working independently or in small groups, read the **Student Handout: JUDICIAL SELECTION PROCESS** and select the characteristics that they think are required, recommended, undesirable, and unnecessary. Discuss as a large group.
 - A. Remind students that the Commission on Judicial Selection makes recommendations for district (trial) court judgeships. Should the characteristics of an Appeals Court or Supreme Court justice be different?
 - B. Have students complete the last task on the **Student Handout: JUDICIAL SELECTION PROCESS** and write a profile of the ideal candidate for a Supreme Court Justice position.
 - C. Optional Activity: Based on the profile and criteria the students established earlier, have students write interview questions that would allow them to fairly assess how well a candidate fits their profile.
5. Instruct students that they are the governor. A vacancy has recently occurred in the Supreme Court. The Supreme Court is currently comprised of six judges (seven when all positions are filled), two are women and four are men. There is one African American on the Supreme Court. Most of the members of the court will be retiring in the next ten years. (In Minnesota, judges must retire when they reach the age of 70 years old.)

6. Distribute **Student Handout: YOU DECIDE**. Working in small groups, have students select one of the five candidates to appoint to fill the vacancy. Ask students to defend their selections by referring to the criteria established earlier.

7. Optional Activity: Select five students to role play the candidates and perform an interview with a student portraying the governor. The questions used in the interview should come from those written earlier.

Student Handout: JUDICIAL SELECTION PROCESS

Judges in the Minnesota court system are elected to six-year terms. However, most often judges will retire in the middle of their terms. When this happens, the state's governor has the authority under the Minnesota Constitution to appoint replacements. A replacement judge is then up for election the first election that occurs at least one year after the date of appointment. This gives the judge an opportunity to become familiar with the job and provides the people with enough information to evaluate the judge during the election. A judge who is running for election does not declare a political party because judges are non-partisan.

The selection process used by a governor is often the subject of controversy. Should the new judge be a friend? Should an independent group make recommendations to the governor? If so, who should belong to the group? Lawyers? People who are not lawyers? What personality traits and experiences should be viewed as important?

You have been appointed to an advisory group that will be recommending persons to the governor. Read the characteristics listed below and categorize them under the most appropriate heading: essential requirements, desirable qualities, undesirable qualities, and unnecessary qualities

1. female
2. old and wise
3. Republican
4. pro peace
5. fair
6. radical
7. determined
8. youthful
9. pro environment
10. collegial
11. good campaigner
12. aggressive
13. self-reliant
14. honest
15. good looking
16. clear thinker
17. concise writer
18. child of immigrant
19. male
20. single parent
21. good health
22. conservative
23. humane
24. traditional
25. well educated
26. Democrat
27. liberal
28. controversial
29. judicial experience
30. family-oriented
31. supports welfare
32. handicapped
33. trustworthy
34. risk-taker
35. helpful
36. religious
37. loyal
38. brilliant mind
39. eminent legal scholar
40. good fundraiser
41. trial attorney
42. U.S. Citizen
43. independent thinker
44. strict constructionist
45. eloquent speaker
46. supports abortion
47. supports foreign aid
48. opposes school prayer
49. member of a minority group
50. opposes higher taxes
51. civil rights activist
52. holder of public office
53. business background
54. community-minded
55. distinguished lawyer
56. follows party line
57. middle-of-the-road
58. tough on crime
59. DWI conviction

Essential Requirements	Desirable Qualities	Undesirable Qualities	Unnecessary Qualities

Write a profile of the ideal candidate for a Supreme Court justice position. List the elements (criteria) of the profile in order of importance.

Student Handout: YOU DECIDE

You are the governor of Minnesota. Under the Minnesota Constitution, you have the power to appoint judges to fill vacancies. A vacancy has occurred in the Supreme Court. A list of five finalists is on your desk. You must decide which person to appoint to the position.

Candidate 1: Sue Johnson

Sue has been a lawyer for 25 years. She is 53 years old. She is active in the area of family law (child custody and support, divorce, adoption). She grew up in a small town in southern Minnesota and now practices in a neighboring town. Sue has been the chair of several community organizations and has received the volunteer of the year award in her town. She has also been named as a WCCO Good Neighbor.

Candidate 2: Byron Wright

Byron is the county attorney for one of the heavily populated counties. In this role, he is often quoted in the media as he tries to solve many serious crimes including murder. Because he spends all of his time working, he has little time for volunteer work. However, he is very active in his church. Before beginning his 6 years as county attorney, he worked for the public defender's office for 15 years. Byron is 46 years old.

Candidate 3: Stephen Blum

Stephen is a lawyer in private practice in Minneapolis. The areas of law he works in most often are environmental and agricultural law. Stephen has been practicing law for 31 years. He spends much of his spare time representing poor people and people who feel that their First Amendment right to practice their religion has been infringed. Stephen is 58 years old.

Candidate 4: Tibetha Cunningham

Tibetha is an African American lawyer in St. Paul. Although she has only been practicing 10 years, she has developed a reputation for being a top personal injury lawyer (representing people who have been injured). She spends most of her time in the courtroom trying cases. She is active in the Minnesota Women Lawyers' Association and actively recruits other women of color to go to law school. Tibetha is 46 years old.

Candidate 5: Bouy Hey

Bouy is a lawyer who has been practicing for 11 years. He lives in a community with other Southeast Asians. He escaped from Cambodia in the 70s and settled in Minnesota where he went to college and law school. Bouy has devoted his practice to helping other Asians in their efforts to get jobs, buy houses, educate their children, and live happy lives. Bouy is very well respected in his community and has become the spokesperson for the Southeast Asians. Bouy is 49 years old.

RESOURCES

Minnesota Courts System www.courts.state.mn.us

The Minnesota Judiciary: A Guide for Legislators www.house.leg.state.mn.us/hrd/pubs/judiciary.pdf

American Judicature Society www.ajs.org

Minnesota Code of Judicial Conduct www.northstar.state.mn.us/ebranch/judstnds/canon2.html

For the Record: 150 Years of Law & Lawyers in Minnesota, Minnesota Bar Association, 1999, available at most county law libraries

Minnesota Constitution www.house.leg.state.mn.us/cco/rules/mncon/preamble.htm

Fairness and Freedom: Courts as a Forum for Justice, Minnesota Center for Community Legal Education www.ccle.fourh.umn.edu/fairness.html