



Minnesota's Judiciary

Keeping It Strong, Fair and Impartial

Outline

1. Minnesota courts rank highly nationally and in recent surveys of Minnesotans, as qualified, fair and impartial.
2. Minnesota's judiciary is held accountable in several important ways, including through appeals of lower court decisions, oversight by the State Board on Judicial Standards and the Judicial Council, and removal in individual cases.
3. In recent times most Minnesota judges are selected after being evaluated by a non-partisan Merit Selection Commission, which forwards names to the Governor. Judges go through elections every six years.
4. Times are changing across the country, with multimillion dollar state judicial campaigns and the involvement of special interest groups in those campaigns.
5. Why is this a problem? Because the role of a judge is different from the role of traditional politicians. As explained by Justice Alan Page, "a judge's role is to interpret the law fairly and ensure due process to every litigant."
 - A strong judiciary is accountable to the Constitution and the law, not politicians or the majority (or we would lose individual rights).
 - **The most important question is...** When YOUR case comes to trial, what kind of judge do you want? Do you want a judge deciding your case based on who has contributed to the judge's campaign? Or on the facts and the law?
6. Quie Commission and Minnesota State Bar Association recommendations on possible changes to judicial selection: selection through merit selection commission and appointment by Governor, and later performance evaluation reviews.

Quie Commission: retention through retention elections (with recommendation on ballot by performance evaluation commission).

MSBA Assembly: prefers retention by reappointment after performance evaluation, but is not opposed to retention elections.
7. The Legislature reviewed these and other options in 2008, and will review the options again in the future.
8. In sum, here are a few key points:
 - **Don't** be surprised if you hear generalized criticisms of Minnesota's highly regarded judiciary in the next few years.
 - **Don't** be misled – Our founders set up a separate judicial branch, with judges in a separate, less political role. Judges serve as a check on the other branches, to intervene if necessary to protect all of our rights.
 - **Do** ask that candidates for judge focus on impartiality, fairness, experience and integrity.
 - Think of the kind of judge you want to hear YOUR case. What system best preserves that kind of judge?
 - Any system should ensure courts are fair, free from influence, and accountable to the Constitution and the law.



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Detailed Talking Points

1. **Intro:** Imagine yourself in a boat on one of Minnesota's lakes. Minnesota's lakes are some of our state's best assets. Minnesota's highly regarded fair and impartial judiciary is another of our state's best assets. Preserving assets like our judiciary and our lakes helps all of us.

2. **Background** on Minnesota's judiciary – why do we say it is such an important asset?
 - Minnesota courts rank highly nationally. In a 2007 U.S. Chamber of Commerce Survey of Corporate Counsel, Minnesota courts rank:
 - No. 2 nationally for fairness of the litigation environment
 - No. 3 nationally for impartiality, competence and fairness

 - In a 2006 survey of Minnesotans, between 80 and 94 percent of Minnesota residents surveyed consider Minnesota judges:
 - Qualified
 - Fair
 - Dedicated to facts and law
 - Honest and trustworthy
 - Impartial

 - Minnesota's judiciary is held accountable in several important ways:
 - Appeals
 - The Board on Judicial Standards
 - Oversight by the Minnesota Judicial Council
 - Limited terms
 - A judge can be removed in individual cases

3. **Judicial Selection in Minnesota**
 - The quality of justice in Minnesota depends on the quality of its judges; and the quality of judges depends on the system by which they are selected.
 - How has Minnesota traditionally selected its judges?
 - Most judges come through a non-partisan Merit Selection Commission. The Merit Selection Commission evaluates integrity, judicial temperament, experience, legal knowledge, etc.
 - The Commission forwards names to the Governor, who selects names from that list.

 - Minnesota judges stand for election every 6 years.

 - Until recently, judges could not:
 - Raise campaign funds directly
 - Seek political party endorsement
 - Pre-judge cases by stating views on topics that might come before them in court

 - For nearly 100 years, Minnesota has elected its judges on a non-partisan ballot.

4. In the words of a famous songwriter, “The Times They Are a-Changin.”

- Republican Party v. White: Recent decisions by the U.S. Supreme Court and the 8th Circuit Court of Appeals, based on freedom of speech arguments, are changing judicial elections in Minnesota and across the country.
- With the new standards set out under the White decisions, judges and their challengers, may:
 - Seek endorsements from political parties;
 - Announce positions on social and political issues;
 - Personally solicit campaign contributions; and
 - Attend political gatherings.
- What’s wrong with partisan judicial elections? A LOT!!
- To see Minnesota’s future, we only need to look to a state that *ALREADY* has partisan judicial elections: Texas. There:
 - Some judges expect contributions from law firms.
 - Campaign checks are handed to judges during court proceedings.
 - Half of Texas judges surveyed say that contributions influenced their decisions.
 - When asked what one thing they would change about the Texas court system, judges most often mentioned judicial selection. Attorneys named partisan election of judges as the court system’s most significant weakness.
- How is Texas’s judiciary rated?
 - The 2006 U.S. Chamber of Commerce Survey of Corporate Counsel (which was cited earlier regarding Minnesota’s judiciary, in the same categories, including judicial impartiality and competence): Texas ranked in the bottom 10. Another state with partisan elections, Illinois, is ranked in the bottom 5 nationally.
- The times are changin’ across the country. Here’s from a 2004 Justice at Stake report: *“A perfect storm of hardball TV ads, millions in campaign contributions and bare-knuckled special interest politics is descending on a growing number of Supreme Court campaigns...The time for warnings has come and gone: every state that elects judges needs to act, quickly, before the new politics of judicial elections undermines the impartiality and independence of their courts.”*
- Evidence of this: Since 2004, Supreme Court races in 14 states broke records, with multi-million dollar judicial election campaigns.
 - 2007 – Wisconsin – \$6.2 million, much of which was spent by special interest groups through independent ads and mailings.
 - Nov. 2007 – Pennsylvania Supreme Court elections – \$5.4 million.
- Just Across the River
 - In a “racially charged” 2008 reelection campaign in Wisconsin between Louis Butler, the state’s first black Supreme Court Justice, and lower court Judge Mike Gabelman, false and misleading accusations were lobbed against both candidates. The incumbent, Butler, lost the race.
 - An ad sponsored by the Gabelman campaign was compared to the famous “Willie Horton” ad of the 1988 Presidential Campaign in that it accused Butler of being responsible for freeing a rapist and allowing him to commit another sexual assault. Left out of the ad was that Butler had been a public defender representing the accused, lost, and the man did not commit his next crime until after he had been paroled.
 - Gabelman was accused by an outside special interest group of securing his lower court position by contributing \$1,250 to the then Governor’s campaign. This charge was never sustained.

- Outside interest groups outspent the candidates nearly 10-1 on TV ads, and there was over \$3 million spent on TV ads during the campaign.

-Source: *Annenberg Political Fact Check*

(http://www.factcheck.org/judicial-campaigns/judgment_day_in_wisconsin.html)

- The Bottom Line: In those states, in the public's mind, Justice is for Sale.
- Warning signs in Minnesota:
 - At least one special interest group has said that it intends to unseat a Minnesota Supreme Court Justice.
 - Certain groups are making generalized attacks on Minnesota's well-qualified judiciary.


5. Why is this a problem?

- Justice Alan Page of the Minnesota Supreme Court explains this well:

“The judiciary simply cannot be impartial or trusted when party politics encourages judges to behave as traditional politicians...[O]ur role is distinctly different. Whereas executive and legislative officials commit themselves to enacting their political agendas, a judge's role is to interpret the law fairly and ensure due process to every litigant.”
- Recognize: Good judges must set aside their influences, and often must rule against what they believe.
- Demanding to know in advance how a judge will rule asks him/her to ignore their oath to be fair.
- A strong judiciary is accountable to the Constitution and the law, not politicians or the majority (or we would lose individual rights).
- A judiciary that isn't fair and impartial threatens to undermine your individual rights and freedoms, and your ability to get a fair trial.
- You may ask, why should I care?
 - Nearly everyone has contact with Minnesota's court system at some point in their lives: Traffic tickets, business disputes, divorce, child custody or support, adoptions, a child in juvenile court, dispute with an employer or dispute with an employee, a real estate matter, or small claims court.
- **The most important question is...**When YOUR case comes to trial, what kind of judge do you want? Do you want a judge deciding your case based on who has contributed to the judge's campaign? Or on the facts and the law?

6. So what's the solution?

- From a Pioneer Press editorial in 2006: “If Minnesota wants to ensure a state judiciary untainted by money-glutted, free-for-all partisan elections, the state must alter the way judges are chosen.”
- The Quie Commission was formed to look at judicial selection. It had 32 members, and was chaired by former Republican Governor Al Quie (who had started the Merit Selection Commission process for judges many years ago). The Quie Commission:
 - Took public input; held hearings across the state; heard experts, both from Minnesota and outside the state; and issued recommendations in March 2007
- Quie Commission Recommendations
 - Mandatory appointment by the Governor of all judges – including appellate judges – from a slate of candidates nominated by a merit selection commission

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- Comprehensive performance evaluation of all sitting judges so that the public has information about the performance of its judges
 - Renewal of judicial terms through retention elections, where citizens have the right to vote to retain all judges
 - Performance evaluation results (qualified/not qualified) are printed on the ballot so that the public can cast informed votes.

These recommendations would require a constitutional amendment

■ **Minnesota State Bar Association Assembly Recommendations**

- Agreed with Quie Commission that judges should be selected through a merit selection process, and appointed by the Governor
- Differed on retention: MSBA Assembly prefers that renewal of judges' terms should be by reappointment, following recommendations from a diverse performance evaluation commission
- Performance evaluation commission would be chosen by multiple appointing authorities (executive, legislative, bench and bar association) that check and balance each other
- The MSBA prefers renewal by reappointment, but is not opposed to retention elections

■ **Other Options**

- Some groups, as well as some judges, are in favor of the existing system of judicial appointment and judicial elections
- Other judges are in favor of changes to the current system for judicial selection and retention

■ **Minnesota's legislature reviewed these and other options in 2008, and is expected to revisit these options again in the future.**

■ **Rhode Island is an example of a state that was successful in reforming its judicial selection system, moving from elections to a merit selection system for selecting judges at all levels.**

■ **What Can You Do?**

- Ask local attorneys or judges to speak to groups in your community
- As opinion leaders, talk with family and friends
- Talk to your elected representatives about preserving the asset we have in Minnesota's judiciary
- **Ask that candidates for judge focus on impartiality, fairness, experience and integrity.**

■ **In sum, remember two key points:**

- Think of the kind of judge you want to hear YOUR case. What system best preserves that kind of judge?
- Any system should ensure courts are fair, free from influence, and accountable to the Constitution and the law.

■ ***Thank you! Questions?***

A Public Education Project
of the Minnesota State Bar Association Judiciary Committee
For more information, contact Nancy Mischel at nmischel@mnbar.org
or see www2.mnbar.org/committees/judiciary/index.htm.