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Contributing Author

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FEATURE

JUDICIAL APPOINTMENTS IN THE VENTURA ADMINISTRATION

Gov. Jesse Ventura will appoint approximately 40 judges during his term, if history bears true. He recognizes the importance of this constitutional duty. Most judges he appoints will serve much longer than the governor's term. His record in the first months of his administration shows his commitment to a nonpartisan, merit-selection process. This article outlines the judicial selection process in the Ventura administration.

THE JUDICIAL SELECTION PROCESS

The judicial selection process begins when the Minnesota Supreme Court certifies a vacancy in the district court. When he receives the certification, the governor announces the vacancy and designates a period during which applications may be submitted.

Applications and letters of recommendation are referred to the Commission on Judicial Selection. The commission reviews the applications and determines which candidates the commission will interview. The commission typically selects eight to 12 candidates to interview for each vacancy.

The interviews are conducted in the judicial district in which the vacancy exists. The commission also reviews letters of recommendation and considers reference checks performed by commission members. At the close of the interviews, the commission deliberates and selects three finalists.

Governor Ventura then considers the applications and recommendations, interviews each of the finalists, and makes his decision. Shortly thereafter, the governor announces his appointment. From certification of vacancy

until announcement of appointment, the process can last from 60 to 90 days.

THE COMMISSION ON JUDICIAL SELECTION

The Legislature established the Minnesota Commission on Judicial Selection in 1990. The commission's mission is to recruit, screen, and recommend to the governor candidates for appointment to the district courts and Workers' Compensation Court of Appeals.

While the commission consists of 49 members, only 13 members meet to deliberate on any district court vacancy. The 13 consist of nine at-large members and four members from the judicial district in which the vacancy exists. Of the nine at-large members, the governor appoints seven, including the chair. At least two of the seven must be nonattorneys. The Supreme Court appoints the other two at-large members, one of whom must be a nonattorney. Of the four members from the judicial district, the governor appoints two, one of whom must be a nonattorney, and the Supreme Court appoints two, one of whom must be a nonattorney.

The commission generally consists of trial lawyers and nonattorney members who are leaders in their communities. The commission members have varied backgrounds and perspectives.

THE AT-LARGE MEMBERS ARE:

- George W. Soule, Chair, Minneapolis. Civil trial lawyer with Bowman and Brooke, LLP, Minneapolis.

- Lurline Baker-Kent, Woodbury. Director, Center for Excellence in Urban Teaching, Hamline University, St. Paul.
- Joanne Benson, St. Paul. President, Business Immersion School, St. Paul.
- Annamarie A. Daley, Medina. Civil trial attorney with Robins, Kaplan, Miller & Ciresi, LLP, Minneapolis.
- Alan C. Eidsness, St. Louis Park. Family and business lawyer with Henson & Efron, PA, Minneapolis.
- Helen M. Meyer, Edina. Plaintiffs' personal injury lawyer with Meyer & Associates, PA, St. Louis Park.
- David Bradley Olsen, Eagan. Civil litigation and intellectual property lawyer with Henson & Efron, PA, Minneapolis.
- Richard L. Pemberton, Fergus Falls. Trial lawyer with Pemberton, Sorlie, Rufer & Kershner, PLLP, Fergus Falls.
- Kathleen Sheran, Mankato. President, Mankato City Council.

MEMBERS FROM THE FOURTH JUDICIAL DISTRICT ARE:

- Roxanne Givens Copeland, Bloomington.
- John Kostouros, Minneapolis. Education consultant, John Kostouros & Associates, Minneapolis.
- Janice M. Symchych, Plymouth. Corporate white collar and civil fraud defense lawyer with Dorsey & Whitney, LLP, Minneapolis.
- John J. Ursu, Minneapolis. Senior Vice President Legal Affairs and General Counsel, 3M, St. Paul.

Each of the commission members has made a significant commitment to public service. At-large members may devote 12 or more days per year to commission business. They receive no per diem payments for their work, and their expenses are not reimbursed. In the commission's first few meetings, the members have been prepared, have worked diligently, and have actively deliberated the commission's recommendations.

Commission members express a variety of reasons for their interest in the work of selecting judges. John Kostouros, a nonlawyer member in Hennepin County and former reporter for the Star Tribune, has witnessed first-hand the positive effect a good judge can have in a case. "I bring experience to the commission as an observer of the court system and someone with experience in evaluating credibility and character," says Kostouros. Helen M. Meyer, an at-large lawyer member, was motivated to be on the commission by her past involvement in the area of judicial evaluations. Meyer says, "Recruiting and selecting highly qualified candidates will prevent some of the problems that judicial evaluation programs try to address."

John Hultquist is the governor's staff person for judicial appointments. As judicial appointments coordinator, he sends application forms to potential candidates, receives applications and letters of recommendation, does background checks, schedules interviews, arranges for commission meetings, offers advice to the commission and governor, and much more. He is the principal contact for judicial applicants. He may be reached at (651) 296-0019 or john.hultquist@state.mn.us.

SELECTION CRITERIA

The Legislature created the commission to foster a merit-selection process, reducing the role of politics in judicial appointments. The statute creating the commission, Minn. Stat. Sec. 480B.01, does not establish specific selection criteria, rather leaving it to the commission to "evaluate the extent to which candidates have the following qualifications for judicial office: integrity, maturity, health if job related, judicial temperament, diligence, legal knowledge, ability and experience, and community service."

Each member probably has his or her own set of factors deemed important in considering judicial applicants. Some factors may be more important to some members than other factors. Solid legal experience and good judicial temperament are the two most important qualifications. Based on experience, the commission generally focuses on the following criteria.

1. *Legal experience.* The commission is looking for excellent lawyers, preferably with broad experience in district court matters and significant trial experience. The commission favors lawyers with diverse experience and specialists who are recognized in their fields. Some commission members prefer lawyers who have tried at least several jury trials.

2. *Temperament.* Equally important, the commission is looking for candidates who will be patient and respectful to all litigants and lawyers. It wants judges who will listen to all sides, assuring all parties that they have had a fair hearing. Symptoms of impatience and arrogance or the onset of the dreaded "black robe disease" will derail a judicial candidacy.

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3. *Integrity and fairness.* The commission also wants judges who will be fair to all parties, who set aside any biases, and who can make a successful transition from advocate to arbiter.

4. *Work ethic.* The commission favors hard workers, who will continue their work ethic when they assume the bench. Applicants will not be successful if they want to "retire in the job."

5. *Community service and pro bono.* The commission wants judges who are rooted in the community. Significant community activity, not just résumé-building, is favored. Also, several commission members prefer candidates who have worked *pro bono* for the disadvantaged or for organizations that serve the disadvantaged.

6. *Diversity.* The commission's statute requires to the commission "give consideration to women and minorities," and to solicit recommendations "from organizations that represent minority or women attorneys." In its recruitment and screening activities, the commission seeks women and people of color. It also seeks candidates who are sensitive to their districts' diversity issues.

7. *Leadership and reform.* In this time of rising caseloads and declining judicial resources, some members give credit to applicants who are open to reforms intended to make the courts more efficient and responsive.

Equally important are the items that are not factors in the commission's deliberations or recommendations. This commission is passionately nonpartisan, so a candidate's affiliation or involvement with a political party is not considered, except that the candidate may get credit for a community activity. Just as in judicial elections, a candidate is not asked for a position on a legal or political issue. Nor is a candidate asked how particular factual or legal issues should be decided.

THE GOVERNOR'S ROLE

The statutory process was employed during the last few months of the Perpich administration. The process and commission won wide acceptance during the Carlson administration. Gov.

Arne Carlson appointed 96 district court judges during his eight-year tenure; 95 of those appointed were among the finalists recommended by the commission.

Governor Ventura appointed most of the current commission's members, but he has treated the commission as an independent body. His only instructions to the commission are to keep politics out of the process and to send him the three best candidates for each vacancy.

The governor reviews the finalists' applications and recommendations before he conducts his interviews. His interviews are wide-ranging, interesting, engaging, and fun. The governor gives candidates a good chance to present their credentials and express their personalities.

The governor's first judicial appointment was Fourth District Judge Bruce Peterson, a widely respected civil and criminal trial lawyer. Judge Peterson was impressed by the governor's abil-

ity to put him at ease during the interview and thereby draw out his personality. Judge Peterson's advice for future candidates is "to allow the commission (and the governor if you are a finalist) to measure your personality as well as your legal credentials. Much of the work of a judge requires a strong character and an empathetic heart in addition to a solid knowledge of the law."

Since Judge Peterson's appointment, the governor has appointed three other district court judges and one judge on the Workers' Compensation Court of Appeals. Each time, he has chosen from the commission's three finalists, showing his commitment to the process. According to Governor Ventura, "The merit-selection process has demonstrated its effectiveness. I will make my decisions after careful thought, knowing that the people I select will be judges long after I leave the governor's office."

THE FUTURE

Through 2002, Governor Ventura will probably make at least four more appointments to the bench in the Fourth Judicial District. Of the 13 new judgeships created by the 1999 Legislature, two will be in the Fourth District. These vacancies will be certified in January 2001. In addition to the two new Fourth District judgeships, at least two Fourth District judges are expected to retire during the governor's term. The commission and the governor look forward to drawing from talented applicants to fill those future vacancies. Hennepin County lawyers should encourage their best-qualified colleagues to seek appointment during the Ventura administration. 

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