

# CITIZENS COMMISSION FOR THE PRESERVATION OF AN IMPARTIAL JUDICIARY

## MEETING SUMMARY MARCH 27, 2006

**Present:** Gov. Al Quie – Chair, Justice G. Barry Anderson, Steve Besser, Professor John Brandl, Wil Fluegel, Michael Ford, Mark Gehan, Susan Holden, Judge James Hoolihan, Judge Thomas Kalitowski, Patrick Kelly, Dr. Reatha Clark King, Eric Lipman, Sue Mauren, Brian Melendez, Dean Thomas Mengler, Dan Mikel, Rick Morgan, Jann Olsten, Vance Opperman, Justice Alan Page, Helen Palmer, Dr. Jon Quistgaard, George Soule, John Stanoch, Mary Vasaly  
**Absent:** Greg Bulinski, Doug Johnson, Annette Meeks, Rev. Gloria Roach Thomas, Dave Titus, Judge Lucy Wieland

**Staff:** Sue Dosal, John Kostorous, Kelly Mitchell, Chris Ruhl – Minnesota Supreme Court; Tim Groshens and Nancy Mischel – MSBA

### **Summary and Impact of the *White* Decisions:**

Tom Vasaly from the Minnesota Attorney General's Office provided an overview of the impact of the *White* decisions on judicial elections in Minnesota.

As a result of the decisions, several provisions of the Judicial Code concerning campaign conduct have been struck down:

- a) Judges are no longer prohibited from announcing their views on disputed legal or political issues;
- b) The partisan activities clauses have been invalidated. This means:
  1. Judges may now identify themselves as members of a political organization;
  2. Judges may attend political gatherings and speak at them;
  3. Judges may seek, accept or use endorsements from a political organization.
- c) There are now two exceptions to the solicitation clause:
  1. Judges may make a blanket statement to a large group
  2. Judges may sign letters soliciting donations, but judges are to be restricted from information regarding the recipients of the letters and their response.

Discussion and questions followed Mr. Vasaly's presentation. Members were interested in the appropriate forum for reform efforts; the speaker suggested non-governmental organizations. Members questioned whether any federal reforms to address corruption and the appearance of impropriety are underway.

### **Current Threats to Judicial Impartiality – National and Local Trends:**

George Soule presented a powerpoint which included a chart ranking states on the amount of money spent on judicial campaigns. Minnesota ranks quite low in that regard, particularly as compared to high-spending states such as Illinois, Alabama and Ohio. The highest spending on judicial campaigns occurs in states that allow for partisan judicial elections.

Mr. Soule presented examples of partisan advertising in states such as Alabama. The League of Christian Voters in Alabama became heavily involved in judicial elections when all of the Supreme Court justices except one voted to remove the Ten Commandments from the courthouse. For example, they ran ads promoting their candidate as a “pro-life leader, fighter for tax payers and strong opponent of gay marriage.” In West Virginia, 80% of television ads were negative ads, with one individual contributing \$2.4 million. In a recent contested judicial election in Illinois, nearly \$10 million was spent on advertising, mostly negative. In New York, judicial candidates are hand-picked by political operatives at nominating conventions and primaries. There are allegations of corruption with bribed judges and grand jury investigations.

In Minnesota in 2000, there were ten contested judicial elections (four Supreme Court, one Court of Appeals and five district court). All of the incumbents won. In 2002, there were 18 contested races out of 124 judges up for reelection. In all races involving an incumbent, the incumbent won. Most incumbents win with about a 2/3 majority. In 2006, a total of 75 judges are up for reelection.

Following the presentation, members discussed the difference between “partisan political” and “special interest” groups. There was general agreement that the concern regarding judicial campaign speech goes beyond party politics.

Four main judicial selection options exist: appointments without elections, partisan elections, non-partisan elections and retention elections. In practice, Minnesota has had a de facto retention system.

**Viewpoint of *White Plaintiffs*:** On behalf of the Republican Party of Minnesota, Eric Kaardal provided information regarding problems they see with the current judicial selection and retention system in Minnesota. The Republican Party became involved in this issue as a response to perceived judicial activism, e.g. the Ramsey County judge who ordered certain programs continued during the state shutdown in 2005. There needs to be a balance of interests between impartiality/independence and accountability/responsiveness. Mr. Kaardal stated that the Republicans are a populist party opposed to elite groups imposing their will on the majority.

The Republican Party also feels the current judicial elections system violates equal protection because of the incumbent designation. Judges often leave before the end of their terms, resulting in appointment of a successor rather than an election. Another problem is that even though Minnesota’s current Court of Appeals has eight judges appointed by Congressional district, they do not need to continue to reside in their district after appointment. The geographic restriction will apply to their challengers, however, and that also violates equal protection.

Following Mr. Kaardal’s presentation, member discussion included the possibility of removing or modifying the incumbent designation on judicial ballots. The incumbent designation is required by statute.

Concern was expressed that expansion of partisan elections might erode the judiciary’s role to protect the minority. Members reiterated the importance of public confidence in the judiciary and felt it might be eroded if judicial candidates appear beholden to special interests.

**Decisions, Action Steps, Other Business:**

Following the next Commission meeting on Monday, April 24, all subsequent meetings will be held on the third Tuesday of the month. The location of subsequent meetings is to be determined.

Members agreed the public hearings in July and August should be scheduled for the evening rather than during the day to make it easier for the public to attend. All Commission members who are able to attend the public hearings will do so.

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