

## 2. Which of the following options for judicial selection and retention do you believe is best?

### Different process: Please describe.

Appointed by the Governor and confirmed by the Legislature. Six year terms. Must be reappointed and confirmed every six years.

Federal system process BUT not for a lifetime appointment - subject to periodic performance evaluations - NOTE: I do not believe judges should be elected, because the majority isn't necessarily right in terms of constitution, etc.

I do think that performance plays a critical role in the retention process but I'm also quite hesitant to support a Commission to serve this purpose without knowing much more - who might serve on the Commission, the appointment process, member terms, how evaluation criteria would be determined and by whom, what kind of information would the public receive and how might it be presented, fiscal impact and who pays, what does "merit" selection really mean and who determines what is meritorious; and maybe most importantly, how did we get to this point anyway. If the public is going to continue to be factored in, then the public certainly needs to know the whys and hows. If the public will be removed from this process, the profession still needs to be clear about how a new option might avoid or at least mitigate past problems. Why does the current process no longer work and can we really take the time, and think long and hard about how changing the process will significantly improve the quality of the judicial system, those who serve, and those who are involved in the system.

I would favor retaining much more of the current system, and instead focus on improving the process for electing/selecting judges through what I would hope would be minor reforms in campaign finance, special interest spending, and discussion of issues etc. I think the current manipulation of the system (where judges time their departures to facilitate appointment by their favorite Governor) should be prohibited. I am also concerned that what is now being characterized as a "merit system" of appointment by Governors is not that at all, and is subject to political/personal whims of the executive and should be reformed.

Judges elected or appointed as in current process. Performance Evaluation Commission (PEC) periodically evaluates. If PEC determines judge to be not qualified, members of the bar (state or county, as appropriate) vote to retain or not retain. Appeal process through the legislature.

Judges should run for office as elected officials

Minor change in process: Judges are initially either elected by the public or, in most cases, appointed by the governor through a merit selection process. Subsequent terms are filled by election. The incumbent is NOT indicated on the ballot.

No change in current process, without "incumbent" listed on the ballot.

Only elections. No gubernatorial appointment. We need a hell of a lot more democracy, not less of it.

Elections should be held immediately when there is a vacancy. Friends of the Governor who have represented him, practiced with him or have gone to law school with him do not necessarily make good Judges.

Quiet Commission Minority report with a twist: The appointed commission has to be bi-partisan.

Retain current system, but have Bar Associations actively oppose any candidate for judge who seeks endorsement by a political party or unit of political party.

Richard, this is Pat O'Neill. I think you should strongly consider a hybrid system for the supreme court, court of appeals and district court. The district court elections will not garner the big money that a supreme court election may garner. If you look at all the other states and example elections where big money was spent, it was not in a lower trial court position. A different set of rules should apply for the higher office. Otherwise, I would vote for number one. There is no way our bar association can vote to take the decision away from the voters. Pat.

Use system in majority report, but don't put the result on the ballot.

**3. Is there anything else you would like to tell the RCBA Board of Directors as we consider whether to take a position on this issue?**

Accountability!! A judge's performance and number and severity of complaints should weight in. They should have performance requirements (or let us know in the public what they currently have).

All "qualified" candidates should be on the ballot and no incumbancy shown

All the alternatives have advantages and disadvantages. But we know how the current one works, so better to stay with what we have than deal with hidden problems in the other alternatives. If it looks like one of the other alternatives may pass, then we should work to make sure the kinks are ironed out.

All the approaches advanced by the Quie commission greatly enhances the power of the executive (Governor)in naming and retaining judges, diminishes the will of the electorate, and makes judges more insulated and less accountable. These are poor alternatives. The RCBA should not be supporting them. I am concerned that this whole process of appointing the Quie Commission, the subsequent narrowing of alternatives, even the action of taking this survey are keeping this very much an insiders game.

As a second alternative to what I checked I would support the federal system.

Both of the Quie recommendations have great merit. One question is the makeup , qualifications, and representativeness of the evaluation commission and another relates to criteria for evaluation. If it predominately a white and wealthy group of lawyers, there is concern about what would happen to judges of color or judges who take unpopular positions. On the other hand , it would likely save time and public expense if there were no elections and a person could argue that just "yes" or " no " information on a ballot will not lead to an informed electorate. Also, it could be argued that without an opponent it will be the exception when voters vote someone out. Because Minnesota is unfortunately still in the grips of unconscious , institutional racism in my experience, on balance, I would lean toward keeping the electorate involved so the rights of judges of color and perhaps even women are protected as the Quie majority implicitly suggests. It is a very hard issue though and I can see how reasonable persons would disagree and perhaps a majority and minority view of the RCBA will have to be reported also.

Continued value of diversity in judicial selection

Current politics is poison

Diversity, diversity, diversity!

Elections with party affiliation will severely damage our judicial process in Minnesota.

Given the White decision and the wave of financial contributions and negative media campaigns for judicial positions in other states, I don't think maintaining our current system of selecting judges will be possible without incurring great harm to the historically high quality and independence of our judges. The voters won't support an entirely appointive system, so, while retention elections may not be perfect, the combination of merit selection, gubernatorial appointment, judicial evaluation and retention elections is the best way to go.

I am becoming very concerned about the political nature of judicial elections and the high financial costs that suggests. Sandra Day O'Connor's recent article on "Justice for Sale", or something like that, clearly demonstrates a critical need for a speedy change in the process.

I believe it is very important for attorneys/RCBA to have input into this decision. When I talk to lay people, they tell me they really have no idea who they are voting for in judicial elections, yet the idea that judges/candidates must campaign and therefore either be open to questions about, or commit to positions on legal issues seems to fly in the face of judicial impartiality. We all know that there are hot button issues that may very well never be an issue a district court judge can determine but can swing votes on that single issue (abortion rights being one example).

I chose the Majority report because I think Minnesota voters will resist abolishing elections altogether; absent that consideration, I'd go with the minority

I clerked for a district court judge for 2 years. Electing judges is ridiculous. The public cannot begin to evaluate the job that a judge does or does not do. The vast majority of the public will never step foot in a courtroom. It is an important job that should be decided on merit.

I don't trust any Performance Evaluation Commission regardless of how it is appointed.

I feel like this whole process is a solution looking for a problem. Some judges aren't as good as others, but really, do we have a problem with a politicalized bench in this state? Doesn't a charge to change the process cause more concerns about the bench?

I prefer minority report but think it is important that we rally around a single proposal.

I think it is important that we citizens get to vote for Judges, even if it is only for retention ( or rejection).

I think that party endorsement of judges is a mistake and leads to endorsement of those who are least natural, rather than most qualified.

I think that the merit selection process has been remarkably effective. Even Jesse Ventura didn't mess it up. Although I'm generally for the public having an opportunity to vote on official policy makers, it seems that this process is not particularly conducive to the selection of judges.

I think the RCBA should take a position only if there is consensus among its members. Otherwise you'll run into a Keller problem.

I would be concerned about the performance review process and its affect on decisions of the judges. I do not want the judges to cater to others.

I would suggest advocating for the Quie majority as the preferred method and the Quie minority as an acceptable option.

If the concern is that money will enter and unduly influence judicial elections, remove the money from the system through public financing rather than removing the people from the system by removing elections. To imagine that a judicial selection process without elections is not political is to ignore reality. Finally, if you do chose to endorse a system removing the input of the people, take care to emphasize that there the view is certainly not unanimous among members and that the members never voted on the position.

In general, I do not believe the public has enough information on judges to truly participate. At the same time, the public should have the ability to involve themselves if they believe that someone on the bench has no business being in that role.

It is clear that the Quie Commission is pushing to get this onto the November, 2008 ballot to amend our State constitution. In light of this, if RCBA does take a position, it will need to get on this issue quickly and publicly. The Second Judicial District is unanimous in opposing the change, in part because of a performance evaluation committee contemplated by the Quie Commission that will usurp the function of the voters in determining who is a "qualified" and "unqualified" judge, but also because we believe trial court judges and appellate court judges are in very different positions as a result of the White decision.

It is critical to keep money and partisan politics from corrupting our judicial system - that's why we need the Quie Commission solution.

It is essential that the independence of the judiciary be maintained, and that judges not be subject to the political process. The appointment by the governor is, itself, a political process. The commission evaluating the judges should not be selected by the governor, but by the judiciary and the bar.

It is ot broke and tinkering with several recommendations without a clear consensus can certainly provide for mischief at the legislature

It seems that we should support the Quie Commission Majority Report since the committee spent much time and the process seems eminently fair. It would avoid campaigning and fundraising, yet allows the public a say in the retention. Most judges are appointed now and in the past. I served as Chairman of the Judicial Selection Committee when Judge Hachey retired at the appointment of Governor Quie.

It serves the general public best to have independent judges, who are not beholden to interest groups making campaign contributions. The experience in other states like Texas support the idea that we should get away from judicial elections. Option 3 above would balance the interests in judicial oversight against the interests in an independent, non-partisan judiciary.

Judicial evaluation is a very important educational tool for the development of judges, however, these are in the nature of a performance evaluation and should not be made public. Judicial mentors are also an important asset that our system should be incorporating into the employment evaluation of judges allowing for job improvement and confidential communication on job performance.

Just my thanks for trying to head off a situation similar to what has happened in some other states.

Keep politics out of the judicial selection process. I am torn between 2 and 3. I definitely would not want 4. You can see from the grilling and nasty attacks of judicial nominees in Washington that we do not want to adopt that process.

Leading principle should be to protect judiciary from partisan election process as much as possible.

Let's quite kidding ourselves. The merit selection process is a joke and the Board should have the courage to criticize the governor whenever it is abused which is almost always. The only governor who truly respected an objective merit process was Ventura. The Board clearly breaches its duty to the bar and the public by not calling for a truly objective merit system to ensure the integrity and quality of the Minnesota judicial system. That is unless the Board thinks merit includes working on the Governor's campaign or being his/her racquetball partner.

Maybe the above belongs here. Thank you for the opportunity to be part of this step in the decisionmaking process.

Merit Selection Process should ALWAYS precede governor appointing.

My understanding is that the Quie commission was essentially split between proposals and that the so-called "majority" position had only a few votes more than the "minority" position. As I think that most readers would give the "majority" more weight than it probably deserves and may be more inclined to support that position simply because it is the "majority."

no politics in judicial races

Our constitution provided for the election of judges in response to Plessy v. Ferguson. The Board should consider history before it tries to fix a system that isn't broken.

Partisan elections should be avoided at all cost.

Quie Commission is undemocratic and reminds me of the people trying to get rid of Sheriff elections in Ramsey and Washington Counties. Government bureaucrats should almost never be trusted with anything, much less the appointment of Judges.

Retention elections guarantees every judge up for "retention" will have to campaign, raise money and perhaps seek endorsements. A judge can be targeted by a special interest group which does not have to do anything until the last week before the election and engage in a media blitz. The judge will have to anticipate who will come after her/him and campaign as if there is an opponent from the date of filing to election day. Retention elections will encourage, not eliminate the insertion of politics in judicial elections. There is no reason to change our current system.

Retention should not be based on a Judge's decision(s) on popular/unpopular issues but on his personal conduct and knowledge of the law and his interpretation thereof.

Some things are better left alone.

Someone should be honest about the fact that the present so-called merit selection process is subject to political influence, i.e., if the governor wants a person that name is sent up.

Thank you for seeking our input.

The current process worked very well prior to the White decision and so far, but that does not mean Minnesota's system is at risk. Election campaigns could easily spiral downward. The alternatives are not solutions, though, and I selected "no change" not because I don't foresee any problems (I do) but because the alternatives are just as troublesome.

The Judiciary must be above the political process.

The judicial selection process seems to work. What is not in place is any type of evaluation/review of judges after appointment. Public scrutiny/elections are the only real check we currently have.

The Performance Evaluation Commission should be separate from the Judicial Selection Commission, should be geographically and racially diverse, and should be willing to take input from the public (although not investigate---that's the job of the Judicial Board). It is important that the process be fair, be seen to be fair, and not disenfranchise anyone.

The present system for trial judges isn't broken. The Quie Commission recommendation may be OK for philosophical courts like Supreme Court.

the sky is not falling let's wait and see if problems occur before we look for a "solution" Judges need to be held accountable by the public in a meaningful way----that is what the present system does

The status quo is actually working, despite the many concerns.

The voters have the right to decide. Option #2 allows them to be informed by the Commission. Either that approach or no change from now.

The voting public is capable of electing Judges as long as the candidates for Judicial positions are permitted to discuss their qualifications with the voters. The MN Constitution should not be overlooked or amended to take this right away from the voters.

THERE IS NO EMPIRICAL EVIDENCE THAT "MERIT SELECTION" JUDGES ARE MORE "FAIR" JUDGES THAN JUDGES CHOSEN IN PARTISEN CONTESTED ELECTIONS. MOREOVER, THE VOTERS ARE BETTER SUITED TO CHOOSING JUDGES THAN ANY SELF-ANNOINTED LEGAL ELITE SOCIETY.

This is a waste of my bar fees.

This is an issue that will require a great deal of public education. As a bar association we need to take the lead in that process.

Trust the voters.

We have to do something to avoid the perils of unbridled contested elections. No system is perfect. The current system has to be changed - just leaving it as it is would be an invitation to disaster. Any of the alternatives are better than doing nothing.

We still need a way to take political and personal cronyism out of the initial selection process.

With respect to either Quie Commission report, the review commission appointment process is critical. If the composition of the commission is politicized I'd rather keep the present system. If the process is going to be highly politicized I'd rather have the electorate decide political issues. On the other hand, assuming the review commission selection process is sound, I currently tilt toward the minority report.

Yes. Don't stick your hand in the machine when it is running. Remember, the electorate is smarter than most of us give them credit for. Just because someone may get elected who either the organized bar does not support, or even someone who is demonstrably unqualified, does not mean the system is broke. We have a long history of great judges, of pretty good judges, of judges who are characters and not so good judges. Any change you make will not increase the first category and may well increase the last.

Yes. Whatever system is adopted, we should avoid a "political" system that is like a normal election where candidates raise money, run, take positions, etc. If the current system is allowed to stay in place too long, given the Supreme Court decision, that is what will eventually happen. Quie Commission - either position or the federal system is much superior.

You are assuming a problem exists and must be solved. I don't try cases, but from what I have read and heard, the problem is that the elected officials pass too many laws and assume that creates justice. As long as people can break the civil and criminal laws, it doesn't. A new system of selecting judges won't and can't change that.

You can't take the "political" (small "p") out of judges. Nor can you hide it away. The lawyers all know which Judge is good or bad for a particular POV. Only the public is denied this crucial information. That's a shameful way to trick them.