

Choosing a Judge

Objectives:

- To explain and evaluate the procedures used to select judges.
- To understand the governor's constitutional power to appoint judges.
- To identify factors that are considered in judicial appointments.

Grade Level: 7 - 12

Activity Format: Small group work, classroom discussion.

Materials needed: Copies of Student Handout: JUDICIAL SELECTION PROCESS and YOU DECIDE.



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So why are we here today?

- The judiciary is one-third of our government and is responsible for assuring justice in our society by resolving disputes peacefully. The judicial branch balances the other two branches of government and protect people's rights and liberties under the Constitution and the law.
- That's why it is so important that we all participate in appointing and electing judges who are qualified, ethical and will do a good job.
- Today we're going to talk about how our judges are appointed and elected.

A quick review of judicial 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 289 district court judges, 19 Court of Appeals judges, and 7 Supreme Court justices.
- 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](#)). 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.
- Given the process in Minnesota, some questions need to be addressed:
 - 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?
 - How do I as a voter make a good decision about a judge; how should I choose?
 - If a judge has to run a campaign, could someone influence that judge by giving money to the campaign?
 - During a campaign, can a judge seek votes by promising to make certain rulings?

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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.
- According to the American Judicature Society (AJS):
 - 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:
 - 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.
 - Institutional, or branch, independence. - Institutional independence describes the separation of the judicial branch from the executive and legislative branches of government.
- So why is independence so important? Because without it, you can’t get a fair trial. Judges have to look at the law and the facts of an individual case. They have to stay neutral so they can hear both sides, apply the law fairly and guarantee equal justice for all people.
- So how do you think judges are 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 majority of the 49 commissioners are appointed by the governor and the rest by the Supreme Court.

The election process

- The citizens of Minnesota hold ultimate authority over whether a judge will remain on the bench through the election process. But judicial 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 on the ballot.
- The Supreme Court has also instituted rules concerning the activities of judicial candidates.
- For example, candidates cannot state their views on disputed legal issues, or imply how they might rule on certain types of cases.

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- Candidates can campaign, however, 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.

Complete “Judicial Selection Process” handout

- *[Distribute student handout, “Judicial Selection Process.” Ask students to read the handout and complete the exercise on judicial characteristics.]*
- Should the new judge be a friend? In many cases, governors will appoint persons they know. Is this a good idea? Why or why not?
- 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?)
- If an independent group is to decide, who should belong to the group? Lawyers? People who are not lawyers?

Work in small groups

- *[Divide students into small groups. Distribute the “You Decide” handout.]*
- You are the governor. A vacancy has recently occurred on the Supreme Court. The Supreme Court is currently comprised of six judges (seven when all positions are filled); three are women and three are men. There are no minority judges on the Supreme Court. Most of the members of the Court will be retiring in the next 10-15 years. (In Minnesota, judges must retire when they reach the age of 70.)
- Working in your small groups, appoint one of the five candidates to fill the vacancy. In a few moments, we’ll discuss each group’s choice and reasons.

Discussion

- *[Ask each group to share the candidate they chose and the reasons they chose that individual.]*

Options

- Talk about the importance of citizen participation in voting for judges when they face re-election every six years. Discuss the ways in which voters can learn about judicial candidates
 - There is a lot of information available about Minnesota judges.
 - First of all, all of the decisions of District Court judges, Court of Appeals judges and Minnesota Supreme Court justices are public information.
 - There is biographical information about every single judge in every single public library in the state. For Court of Appeals judges and Supreme Court justices, photographs and biographies are posted on the front page of the state court system’s web page (www.mncourts.gov).

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- The League of Women voters has a list of questions that can be asked of any candidate for judicial elections, including what he/she believes to be “the most critical issue currently facing the criminal justice system,” the “mission and role” of the judge,
- Most importantly, the League of Women voters sponsors local judicial candidate forums and has a voter guide for judicial candidates that is available for the asking.
- Discuss the importance of judicial independence and how the judicial selection/election process in Minnesota ensures judicial independence.

Q&A

- Invite students and teachers to visit the court system web site at www.mncourts.gov.

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 being 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. After you have completed this activity, develop a definition of a good judge. Write it in the space provided.

CHARACTERISTICS

- | | | | |
|---------------------|-------------------------|----------------------------|--------------------------------|
| 1. Female | 17. Concise writer | 32. Handicapped | 47. Supports foreign aid |
| 2. Old and wise | 18. Child of immigrant | 33. Trustworthy | 48. Opposes school prayer |
| 3. Republican | 19. Male | 34. Risk-taker | 49. Member of a minority group |
| 4. Fair | 20. Single parent | 35. Helpful | 50. Opposes higher taxes |
| 6. Radical | 21. Good health | 36. Religious | 51. Civil rights activist |
| 7. Youthful | 22. Conservative | 37. Loyal | 52. Holder of public office |
| 9. Pro environment | 23. Humane | 38. Brilliant mind | 53. Business background |
| 10. Collegial | 24. Traditional | 39. Eminent legal scholar | 54. Community-minded |
| 11. Good campaigner | 25. Well-educated | 40. Good fundraiser | 55. Distinguished lawyer |
| 12. Aggressive | 26. Democrat | 41. Trial attorney | 56. Follows party lines |
| 13. Self-reliant | 27. Liberal | 42. U.S. Citizen | 57. Middle-of-the-road |
| 14. Honest | 28. Controversial | 43. Independent thinker | 58. Tough on crime |
| 15. Good looking | 29. Judicial experience | 44. Strict constructionist | 59. DWI conviction |
| 16. Clear thinker | 30. Family oriented | 45. Eloquent speaker | |
| | 31. Supports welfare | 46. Supports abortion | |

ESSENTIAL REQUIREMENTS

DESIRABLE QUALITIES

UNDESIRABLE QUALITIES

UNNECESSARY QUALITIES

Develop a definition of a good justice or judge.

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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 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 upon. Stephen is 58 years old.

Candidate 4: Tibetha Cunningham

Tibetha is an African American lawyer in St. Paul. Although she has only been practicing for 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 36 years old.

Candidate 5: Bouy Hey

Bouy is a lawyer who has been practicing for 9 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 children, and live happy lives. Bouy is very well respected in his community and has become the spokesperson for Southeast Asians. Bouy is 39 years old.

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