

STATE OF MINNESOTA
IN COURT OF APPEALS

OFFICE OF
APPELLATE COURTS

JAN 04 2013

FILED

In re Designations of Court of Appeals
Judges for Congressional Districts
Pursuant to Minnesota Statutes
Section 480A.02, Subdivision 5.

ORDER

#ADM10-8010

This administrative order fulfills the statutory requirement that eight judges of the court of appeals be redesignated for Minnesota's eight congressional districts after each reapportionment. *See* Minn. Stat. § 480A.02, subd. 5 (2012).

On January 13, 2012, the undersigned judge issued an order under this same administrative file number. That order provides the relevant background information concerning the eight authorized judgeships of the Minnesota Court of Appeals that are designated for geographic districts, which are derivative of Minnesota's congressional districts. *See id.*, subd. 3. The earlier order noted that the chief judge of this court is obligated by statute to redesignate judges for congressional districts every ten years: "After each reapportionment, the chief judge shall designate a judge for each of the new congressional districts." *Id.*, subd. 5. When redesignating judges for congressional districts, the relevant location of a judge's residence is the place where he or she resided "at the time of original election or appointment." *Id.*, subd. 5. A judge who is designated for a particular congressional district "shall continue to be eligible for that seat without regard to any subsequent change of residence." *Id.*, subd. 3.

The January 13, 2012 order clarified that the proper time for the chief judge to redesignate judges for congressional districts is when the newly drawn congressional districts have become effective, which occurs when the persons elected to Congress according to the newly drawn congressional districts take their seats. *See Clayton v. Kiffmeyer*, 688 N.W.2d 117, 124 (Minn. 2004). The persons elected to Congress by Minnesotans in November 2012 now have been sworn in as members of the United States House of Representatives. Accordingly, now is the proper time for the chief judge to make the required redesignations of court of appeals judges for congressional districts.

The statute that governs the redesignations of court of appeals judges for congressional districts provides as follows:

[1] After each reapportionment, the chief judge shall designate a judge for each of the new congressional districts. [2] The chief judge shall first redesignate the incumbent judges serving for the old congressional districts. [3] If only one of them was, at the time of original election or appointment, resident at a place within a new congressional district, that judge shall be designated as serving for that district. [4] If two or more of them were residents at the time of initial election or appointment in places which are within the same new congressional district, the judge whose district was in the opinion of the chief judge most substantially related to the new district shall be designated as serving for the new district and the other shall be designated as serving at large. [5] If there is then any new congressional district for which there is no designated judge, but there is an incumbent at-large judge who was resident within that territory at the time of initial election or appointment, that judge, or the senior of them, if there is more than one, shall be assigned to the district seat. [6] If there then remains any new congressional district for which there is no designated judge, there shall be no judge designated to serve from that district until the next at-large vacancy arising by death, retirement,

resignation, or removal, which shall be filled by appointment of a person from that congressional district.

Minn. Stat. § 480A.02, subd. 5 (alterations added).

The redesignation process begins with the second sentence of section 480A.02, subdivision 5, which requires the chief judge to identify the incumbent judges who were designated for the old congressional districts. Those judges are as follows: Judge Thomas J. Kalitowski, Judge Jill Flaskamp Halbrooks, Judge Renee L. Worke, Judge Kevin G. Ross, Judge Lawrence B. Stauber, Jr., Judge Edward J. Cleary, Judge Carol A. Hooten, and Judge Michael L. Kirk. These designations were established by a May 24, 2002 order of the chief judge and by subsequent designations by governors who appointed judges to fill mid-term vacancies. *See* Minn. Const. art. VI, § 8.

The next step in the redesignation process is contained in the third sentence of section 480A.02, subdivision 5, which requires the chief judge to redesignate each incumbent judge who is the only such judge whose original residence (*i.e.*, the residence “at the time of original election or appointment”) is within a new congressional district. Six incumbent judges are described by the first clause of the fourth sentence of the statute: Judge Jill Flaskamp Halbrooks, Judge Renee L. Worke, Judge Kevin G. Ross, Judge Lawrence B. Stauber, Jr., Judge Edward J. Cleary, and Judge Michael L. Kirk. Thus, those six judges must be redesignated pursuant to the third sentence of the statute.

The next step in the redesignation process is contained in the fourth sentence of section 480A.02, subdivision 5, which provides a method for determining which previously designated incumbent judge should be redesignated “[i]f two or more of them

were residents at the time of initial election or appointment in places which are within the same new congressional district.” Minn. Stat. § 480A.02, subd. 5. In that event, “the judge whose district was in the opinion of the chief judge most substantially related to the new district shall be designated as serving for the new district and the other shall be designated as serving at large.” *Id.* Two incumbent judges are described by the first clause of the fourth sentence of the statute: Judge Thomas J. Kalitowski and Judge Carol A. Hooten. Judge Kalitowski previously was designated for the old Sixth Congressional District, and Judge Hooten previously was designated for the old Second Congressional District. At present, the original residences of both Judge Kalitowski and Judge Hooten are within the new Second Congressional District. In the opinion of the undersigned chief judge, the old Second Congressional District is more substantially related to the new Second Congressional District. Thus, Judge Hooten must be redesignated pursuant to the fourth sentence of the statute. Judge Kalitowski will become an at-large judge.

The final step in the redesignation process is contained in the fifth sentence of section 480A.02, subdivision 5, which provides a method for determining which incumbent judge should be designated “[i]f there is then any new congressional district for which there is no designated judge, but there is an incumbent at-large judge who was resident within that territory at the time of initial election or appointment.” *Id.* In that event, the “incumbent at-large judge who was resident within that territory at the time of initial election or appointment, . . . or the senior of them, if there is more than one, shall be assigned to the district seat.” *Id.* There remains one new congressional district for which there is no designated judge: the new Sixth Congressional District. Two

incumbent at-large judges were residents within the territory of the new Sixth Congressional District at the time of initial election or appointment: Judge Randolph W. Peterson and Judge Michelle A. Larkin. Judge Peterson is the more senior of them. Thus, Judge Peterson must be designated for the Sixth Congressional District pursuant to the fifth sentence of the statute.

The sixth sentence of the statute is inapplicable at present because there is no new congressional district for which there is no designated judge.

In light of the foregoing, the following incumbent judges must be redesignated, and hereby are redesignated, for the following new congressional districts:

- Judge Renee L. Worke, First Congressional District;
- Judge Carol A. Hooten, Second Congressional District;
- Judge Kevin G. Ross, Third Congressional District;
- Judge Edward J. Cleary, Fourth Congressional District;
- Judge Jill Flaskamp Halbrooks, Fifth Congressional District;
- Judge Randolph W. Peterson, Sixth Congressional District;
- Judge Michael L. Kirk, Seventh Congressional District; and
- Judge Lawrence B. Stauber, Jr., Eighth Congressional District.

IT IS SO ORDERED.

Dated: January 4, 2013

BY THE COURT



Matthew E. Johnson
Chief Judge