

OFFICE OF  
APPELLATE COURTS  
FILED

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STATE OF MINNESOTA

IN SUPREME COURT

C9-85-1506

WAYNE TSCHAMPENE  
CLERK

O R D E R

In re Sixth Judicial District  
District Court Vacancy

Continuing Judicial Position  
in the Sixth District  
Adopting Plan Providing for  
Termination of Judicial  
Officer Positions

WHEREAS, pursuant to the provisions of Minn. Stat. § 2.722, subd. 4 (1985), the Supreme Court is authorized to continue, abolish, or transfer judicial positions which are vacated upon the death, resignation, retirement, or removal from office of incumbent judges after consultation with judges and attorneys in the affected judicial district, and

WHEREAS, the Honorable Donald C. Odden notified the Governor of his retirement, effective January 2, 1986, and

WHEREAS, the judges of the Sixth Judicial District have adopted a plan, a copy of which is attached to this Order and incorporated herein by reference, which provides for the gradual phasing out of judicial officers in the Sixth Judicial District, and

WHEREAS, after giving notice and inviting written and oral testimony, a public hearing was held on January 24, 1986, in the St. Louis County Courthouse, the purpose of which was to consult with judges and attorneys in the affected district to determine whether the continuation of the judicial position being vacated by the retirement of

Judge Odden and the continuation of judicial officers currently chambered in the Sixth Judicial District are necessary for effective judicial administration, and


WHEREAS, this court has considered the arguments made regarding the continuation of the district judgeship in Duluth and the necessity of retaining judicial officers, and has attached to this order a memorandum which addresses these issues,

NOW, THEREFORE, IT IS HEREBY ORDERED that the vacancy in a judicial position in St. Louis County occasioned by the retirement of the Honorable Donald C. Odden is hereby continued in the Sixth Judicial District.

IT IS HEREBY FURTHER ORDERED that the terms of the plan adopted by the judges of the Sixth Judicial District be, and hereby are, adopted by this court.

Dated: February 28, 1986

BY THE COURT

  
Douglas K. Amdahl  
Chief Justice

JAN 24 1986

WAYNE TSCHAPPELLE  
CLERK

R E S O L U T I O N

**WHEREAS**, pursuant to the provisions of Minnesota Statutes § 2.722, subdivision 4 (1985), the Supreme Court is empowered to continue, abolish, or transfer judicial positions which are vacated upon the death, resignation, retirement or removal from office of incumbent judges after consultation with judges and attorneys in the affected judicial district;

**WHEREAS**, a vacancy in the Sixth Judicial District will occur as a consequence of the retirement of Judge Donald C. Odden;

**WHEREAS**, the Supreme Court has indicated that it will rely heavily upon the weighted caseload analysis in determining whether judicial positions should be continued, abolished or transferred;

**WHEREAS**, the Sixth Judicial District currently has a complement of 14 judges and 5 judicial officers; and the weighted caseload analysis indicates a need for 14.3 judicial positions;

**WHEREAS**, the legislature has indicated a public policy preference for judges rather than judicial officers or referees;

**THEREFORE, BE IT RESOLVED**, that the judges of the Sixth Judicial District do hereby agree that the Chief Judge of the district shall terminate judicial officers in the following manner and subject to the following conditions;

One judicial officer in St. Louis County on or before July 1, 1986,

One judicial officer in Carlton County on or before July 1, 1986,

One judicial officer in St. Louis County on or before  
January 1, 1987,

One judicial officer in St. Louis County on or before  
January 1, 1988,

Provided that in the event a vacancy occurs in a judicial  
officer position for whatever reason, that position shall not  
be filled by the Chief Judge; and

Provided that should a future update to the weighted caseload  
analysis indicate a need for 16 judicial positions in the Sixth  
Judicial District, termination of the last of the above enumerated  
judicial officer positions shall not take effect; and that should  
a future update to the weighted caseload analysis indicate a  
need for 14 judicial positions or fewer in the Sixth Judicial  
District, one additional judicial officer position beyond that  
enumerated above shall be terminated on or before January 1, 1988.

Provided, further, that if the judges of the Sixth Judicial  
District believe that there are circumstances that would mitigate  
in favor of retaining a judicial officer position to be terminated  
hereunder, they shall request an opportunity to make a presentation  
to the Supreme Court, not earlier than June 30, 1987.

Dated this 17th day of January, 1986.

Donald C. Odden  
Donald C. Odden, District Judge

Mitchell A. Dubow  
Mitchell A. Dubow, District Judge

Jack J. Litman  
Jack J. Litman, District Judge

David S. Bouschor  
David S. Bouschor, District Judge

Charles T. Barnes  
Charles T. Barnes, District Judge

Joseph R. Scherkenbach  
Joseph R. Scherkenbach, District Judge

Robert V. Campbell  
Robert V. Campbell, County Judge

Galen C. Wilson  
Galen C. Wilson, County Judge

Gerald C. Martin  
Gerald C. Martin, County Judge

David E. Ackerson  
David E. Ackerson, County Judge

Dale A. Wolf  
Dale A. Wolf, County Judge

Kenneth A. Sandvik  
Kenneth A. Sandvik, County Judge

Donovan W. Frank  
Donovan W. Frank, County Judge

John T. Oswald  
John T. Oswald, County Judge

## MEMORANDUM

The 1985 Minnesota Legislature amended Minn. Stat. § 2.722 (1985) by adding the following subdivision:

Subd. 4. Determination of a Judicial Vacancy. When a judge of the district, county, or county municipal court dies, resigns, retires, or is removed from office, the supreme court, in consultation with judges and attorneys in the affected district, shall determine within 90 days of receiving notice of a vacancy from the governor whether the vacant office is necessary for effective judicial administration. The supreme court may continue the position, may order the position abolished, or may transfer the position to a judicial district where need for additional judges exists, designating the position as either a county, county/municipal or district court judgeship. The supreme court shall certify any vacancy to the governor, who shall fill it in the manner provided by law.

The Supreme Court recognizes and accepts the responsibility conferred upon the court, and by promulgating the accompanying order and this memorandum, intends to discharge its obligation under the law. The only issues before us are whether (1) to continue in place a district judgeship, to abolish it, or to transfer it to another location and (2) to ratify a plan adopted by the judges in the district, which would have the effect of phasing out four judicial officers over a specific time period.

On December 9, 1985, the Governor notified the Supreme Court of the impending retirement of Judge Donald C. Odden, effective January 2, 1986. This notification triggered the provisions of the above statute.

On January 24, 1986, after public notice, a hearing was held in the county board room on the second floor of the St. Louis County Courthouse, after public notice. Senior Associate Justice Lawrence R. Yetka, liaison justice to the Sixth Judicial District, presided at the hearing.

The Order for hearing specified that "the Supreme Court intends to consider weighted caseload information, which indicates that there currently exists a surplus of judicial positions in the Sixth Judicial District \* \* \*." At the hearing, the application of the weighted caseload analysis to the Sixth Judicial District was presented by a representative of the State Court Administrator's office and that topic and other concerns regarding the vacated judgeship and the continuation of judicial officers in the district were discussed.

**WEIGHTED CASELOAD ANALYSIS AND ITS APPLICABILITY TO THE DETERMINATION OF ADEQUATE JUDICIAL RESOURCES**

Since 1976, the legislature has appropriated funds for the development and implementation of the State Judicial Information System (SJIS) and its companion project, the weighted caseload analysis. SJIS, among other features, captures data by case type regarding the number of case filings and charts the progress of litigation through the court system until final disposition. The automated system allows for a very specific analysis of judicial workload at both the county and district court levels. The SJIS database, when coupled with the weighted caseload information, enables judicial administrators and the legislature to arrive at the number of judges required throughout the state to dispose of litigation filed in our courts.

Briefly stated, three factors comprise the weighted caseload analysis: case weights, case filings, and judicial equivalent. Case weights are the average time required for a judge to dispose of each type of case. Case filings are the actual number of cases for each case type filed each year and are derived from SJIS. The judicial equivalent is the amount of time a judge typically has available to dispose of cases. This figure is calculated by: 1) subtracting from the calendar year, weekends, holidays, and sick, vacation, and educational/administrative leave; and 2) subtracting from the standard 7.5 hour work day, non-case related time spent on intradistrict travel;

administration and file management; "dead" time, i.e., time spent awaiting trial; and general legal research and professional reading.

The case weights and judicial equivalent were derived from data collected during a survey conducted in 1980. During the period of August 11 to November 21, 1980, time actually spent by judges and court personnel was logged each day regarding specific activities. Ninety-eight percent of the judges participated and some eleven thousand daily time reports were received and reviewed; any apparent anomalies were investigated, and the reports were corrected when necessary. The survey produced the amount of courtroom and chambers time that a judge typically requires to dispose of specific types of cases, thereby allowing for the derivation of case weights.

Additionally, the survey determined the judicial equivalent calculation by recording the amount of time per year that a judge should have available for case-related work. This calculation is particularly necessary, because demands on judges' time for such off-the-bench activities as travel and court administration vary among judicial districts. The judicial equivalent, therefore, takes into account the salient fact that judges in non-metropolitan districts typically have less time available for courtroom work than do urban judges, primarily because of "windshield" time spent traveling between courthouses. The judicial equivalent varies even among outstate districts, so it is calculated differentially in arriving at the weighted caseload figures across the state. For example, in the Sixth District, the weighted caseload analysis allocates between 1.22 hours and 1.37 hours per day for travel and case management, depending upon each judge's assignment. This compares to 1.13 hours of non-case related time credited to metropolitan judges.

The third element of the weighted caseload analysis, actual case filings, is provided by SJIS, which has collected detailed caseload information on a county and a district basis since 1978.



We find that the results of the weighted caseload analysis should be accorded great weight. The sample of time data collected during the survey period is remarkable: some states have relied upon a mere 20% sample of judge time collected during a few weeks. We have available one of the most comprehensive and accurate samples ever taken. The rigorous and thorough collection of actual time spent by judges in conducting their judicial business during the sampling period affords a high degree of confidence in the case weights and judicial equivalent values, both of which have been coupled with case-filing data every year since 1980 to arrive at a judge-need estimate that is specific for counties and judicial districts. While some have criticized the weighted caseload analysis as being out of date because it does not take into account changes in court jurisdiction and changes in law and procedure regarding several case types that have occurred since 1980, the magnitude of the surplus of judicial resources that exists in the Sixth District supports the action we take in this order.

Minnesota is not alone in utilizing the weighted caseload analysis in determining judicial staffing requirements. The states of Wisconsin, Washington, California, New Jersey, and Georgia utilize weighted caseload, as do the federal courts. A committee staffed by the Stanford University School of Business has concluded that weighted caseload is the best method for determining judgeship needs.\* Finally, the National Center for State Courts, the largest national courts research organization in the country, concludes in a recent study that "the best direct measure of demand is the number of weighted filings," i.e., the weighted caseload analysis.\*\*

The weighted caseload analysis has been relied upon by both the legislature and the Supreme Court. In 1982, the legislature created ten new judgeships in three

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\*"Report of the (California) Advisory Committee to Review the Weighted Caseload System," April, 1982.

\*\*"Assessing the Need for Judicial Resources: Guidelines for a New Process," (Williamsburg, Virginia, the National Center for State Courts, 1983, p. 51)

suburban districts and added three more last year. In 1978 and 1982, the Supreme Court utilized this SJIS data and weighted caseload information to terminate two judgeships as a consequence of judicial district redistricting, pursuant to Minn. Stat. § 587.01, subd. 6, upon the retirement of a county court judge in Kandiyohi County and the appointment of a county court judge to the district court in Lac qui Parle County. We cannot ignore the legislature's implicit validation of the worth of the weighted caseload analysis by its creation of thirteen judicial positions during the last five years, its passage in 1977 of Minn. Stat. § 487.01, subd. 6, which is still intact today, and its enactment of Minn. Stat. § 2.722, subd. 4, last session.

We now focus our attention upon the matter of judicial officers and the weighted caseload analysis as applied to the Sixth District.

#### **JUDICIAL OFFICERS IN THE SIXTH JUDICIAL DISTRICT**

The position of judicial officers was created by action of the 1971 legislature. The enabling legislation provided as follows:

##### **487.08 JUDICIAL OFFICERS.**

When the judicial business of a county court requires, the county court may appoint one or more part time judicial officers who shall be learned in the law and whose salary shall be fixed by the county court, with the approval of the county board or boards of the counties of the district, and paid by the county. They shall serve at the pleasure of the county court. They shall hear and try such matters as shall be assigned to them by the county court judge. (1971 Minn. Laws ch. 951, § 8).

In 1977, when judgeships became funded by the state, the judicial officers were abolished. (1971 Minn. Laws ch. 432, § 25). However, the following year, the legislature allowed some judicial officers to continue in office on either a part-time or full-time basis and provided for the creation of one such position. (1978 Minn. Laws ch. 750, § 3). Pursuant to this legislation, two full-time, and three part-time, judicial officers were actually retained in St. Louis County; one full-time position was created in Carlton County. In 1982, the legislature continued these positions but subjected

them to the supervisory and assignment authority of the chief judge of the district, who, with the concurrence of the county boards in the subject counties, set their salaries. (1982 Minn. Laws ch. 608, § 2). By 1983, there were five full-time judicial officers serving in the Sixth District, four in St. Louis County and one in Carlton County. To summarize, the legislature initially permitted the creation of judicial officer positions throughout the state; six years later, these positions were abolished entirely; in the following year the legislature strictly limited the number of judicial officers who were permitted to remain in office.

It is clear from the legislative history outlined above that the legislature prefers the creation of judicial positions in the form of county and district court judgeships as the alternative to granting authority to judges to appoint these quasi-judicial personnel. This is further illustrated by the fact that the legislature has, since 1982, created some thirteen new judgeships based upon a rational demonstration of need, which has been provided by the weighted caseload analysis. It is also the position of this court that the use of judges, who are elected by their constituents on either a district-wide or county-wide basis and whose fitness for office is appropriately determined by the voters, is vastly superior to the use of quasi-judicial personnel who are accountable only to other judges.

#### **JUDICIAL STAFFING REQUIREMENTS IN THE SIXTH JUDICIAL DISTRICT**

There are currently five judicial officers, eight county court judges, and six district court judges chambered in the Sixth Judicial District, for a total of nineteen judicial and quasi-judicial positions. The weighted caseload analysis indicates a need for 14.2 judicial positions, nearly five fewer than the present complement. The greatest disparity between the number of judges needed and the number of judges chambered there is in Duluth, where there are three judicial officers assigned to county court work, four county judges, and four district judges. In Duluth, the weighted

caseload analysis indicates that there is a need for 4.9 county court judges, nearly one full-time position more than the current complement of four. If we were to count the judicial officers in Duluth, there would be an excess of nearly four county court judicial positions. There also is a need in Duluth for 2.6 district judgeships compared with the four district court judgeships that are presently chambered there.

On January 17, 1986, the judges of the district unanimously adopted a resolution, a copy of which is attached to the order accompanying this memorandum, which establishes a plan for the gradual phasing out of four of the five judicial officers between July 1, 1986, and January 1, 1988. This plan would continue one of the positions in St. Louis County, thus meeting the weighted caseload indication of need for 4.9 county judgeships. Minnesota Statutes § 487.08, subd. 2, provides in relevant part as follows: "Persons holding the office of judicial officer in St. Louis County \* \* \* and Carlton County may continue to serve at the pleasure of the chief judge." Since Judge Jack J. Litman, chief judge of the Sixth Judicial District, signed the resolution, and since the weighted caseload analysis as applied to Duluth indicates a need for the current county court judgeships and the single judicial officer position which will be retained, this court ratifies and accepts the proposed plan.

The most pressing need for additional judicial resources in the Sixth Judicial District exists in Carlton County, where one county judge and one judicial officer, whose position will be eliminated pursuant to the plan on or before July 1 of this year, are chambered. The weighted caseload analysis indicates a need for 1.3 county court judges and .6 district court judge, or approximately .9 of a judicial position more than will exist after July 1, 1986.

The situation in Carlton County is further complicated by several facts. The Moose Lake State Hospital is located in that county, and the sole county judge handles mental commitment matters for that facility not only for Carlton County but for other

counties across the state. This assignment requires the judge to make detailed findings of fact, conclusions of law, and entry of judgments and to review all cases every six months. In addition, the judge serves as a member of the statewide judicial appeal panel to review mental commitments, which takes him away from his local responsibilities several days per month.

In the Sixth District taken as a whole, there has been a 21% decrease in workload between 1980 and 1984. A decrease has occurred in each of the four counties during this period: 13.5% in Carlton County, 22.4% in Cook County, 37.4% in Lake County, and 20% in St. Louis County. Thus, in the four counties that constitute the Sixth Judicial District, the smallest workload decrease has been in Carlton County.

The State Planning Agency estimates that two of the four counties in the Sixth District will experience significant growth between 1985 and 2010: Carlton and Cook. Carlton County will grow from 30,911 to 34,176, or an increase of more than 10%, and Cook County will grow from 4,255 to 4,625, or an increase of approximately 8.5%. By contrast, St. Louis County will drop from its present 215,955 to 207,730, or a decrease of approximately 4 1/2%. Lake County's population will decrease from its current 12,564 to 10,553, or a drop of approximately 20%.

The aforesaid statistics and information regarding the heavy workload of the county judge in Carlton County were not fully appreciated until after the January 24, 1986 hearing. However, based on the foregoing analysis, it appears that Carlton County, where the workload decrease has been the smallest and population projections for the future are the highest, will have the least judicial resources to handle its caseload. It is, therefore, an appropriate location for chambers of a district court judgeship.

However, Minn. Stat. § 480.22 provides in relevant part as follows: "The supreme court shall designate the location of chambers for judges of all courts in the state after consultation with the judges of the affected judicial district." (Emphasis added.) While

there was mention at the January 24 hearing of the authority of the supreme court to move chambers, there was no in-depth discussion on the merits of such a proposal. We deem it desirable that lawyers and judges have a full opportunity to be heard on the issue. Accordingly, the supreme court shall, by separate order, set a date for a hearing on the question of whether chambers of one district judge should be moved to Carlton County from St. Louis County.

According to the terms of Minn. Stat. § 2.722, subd. 4, the supreme court is required to notify the governor within 90 days of the notice of vacancy whether the vacant position should be continued, abolished or transferred. Because the governor notified the supreme court of the vacancy occasioned by the retirement of Judge Odden on December 9, 1985, there is insufficient time to hold the rechambering hearing as contemplated in this memorandum and to notify the governor of any change in the chambers location of the successor judge within the allotted time. Consequently, we conclude at this time that the vacancy occasioned by the retirement of The Honorable Donald C. Odden shall be continued in the Sixth Judicial District as a district court judgeship.