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After Much Deliberation...

Approximately three weeks ago, the governing body of the HCBA took up the issue of judicial selection and elections in Minnesota. The question of how our current system of judicial selection and elections might be improved to preserve our fair and impartial judiciary was debated and resolved by the Board of Directors after lengthy and significant analysis. Prior to voting on this issue, the Board of Directors studied this issue for nine months by analyzing the Quie Commission Report, hosting speakers at Board meetings who represented various viewpoints, studying *The Hennepin Lawyer's* November 2007 issue (dedicated to this topic), conferring with colleagues of the Bar and the public at large, hosting a forum debate, and taking a survey of our membership (results available on the HCBA Web site: www.hcba.org).

Relying on the multitude of information and resources described above, the HCBA's Board of Directors concluded that the Bar Association's mission strongly supports HCBA's involvement in the pressing judicial selection/election issue:

...The Association shall strive to ensure the fairness and accessibility of the legal system, promote public understanding and confidence in our system of justice, and work with the courts to improve the administration of justice.

Indeed, more than 87 percent of the members who took time to complete the survey felt it was either very important (63.7%) or somewhat important (23.6%) that the HCBA take a stand on this issue.

The Board of Directors weighed many factors, including (i) the unique role that judges serve in our society, (ii) concerns regarding the impact of the U.S. Supreme Court decision in *Republican Party of Minnesota v. White*, (iii) national trends


demonstrating how judicial elections are becoming more politicized in other states and are the subject of large expenditures of special interest groups, (iv) the need for judges to be accountable to the constitution and the rule of law, (v) the additional need for judges to be perceived as being accountable to the constitution and the rule of law only, (vi) Minnesota's history of judicial elections to date, and (vii) the difficulties of proposing a system that would require amendment to the Minnesota Constitution that would eliminate all voting rights related to judicial elections.

The Board concluded that a system that allows for selection of judges based on merit, but includes public participation in the evaluation of judges through a retention election system would be the most reasonable and practical solution to improve the current system. The Board therefore passed a resolution stating that the HCBA would support and prefer a method of judicial selection and retention that allows for:

- (a) merit-based nominations and appointments of judges from a list of candidates provided to the governor by a merit selection commission;
- (b) judges being appointed for an initial four-year term;
- (c) performance evaluation by a separate commission (composed of a diverse group of lawyers and non-lawyers) that includes performance reviews and publication of those performance reviews;
- (d) renewal of a judge's term being determined through retention elections whereby the electorate has a "yes" or "no" voting option to the question of whether a particular judge should be retained;

- (e) judges elected in a retention election serving for an additional eight years;
- (f) judges not being elected in a retention election being replaced as indicated in (a) above.

The resolution further clarified that, in the event that the Minnesota legislature does not favor the retention model proposed by the HCBA, the HCBA supports change to the current judicial election/selection process "to the extent the proposed change is designed to remove to the greatest extent possible the influence of money, special interests, and politics from the judicial selection and retention process."

It is unclear if and when the Minnesota legislature will address the issue of judicial selection and elections. If and when that time comes, however, the HCBA is ready to share its proposal and to be part of the movement supporting preservation of fair and impartial courts in Minnesota. 



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