

CHAPTER 490

RETIREMENT OF JUDGES

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490.01 RETIREMENT OF SUPREME COURT JUDGES AND DISTRICT COURT JUDGES. When a judge of the supreme court or a judge of the district court in this state shall become incapacitated physically or mentally from performing his judicial duties during the remainder of his term of office and shall make a written application to the governor for his retirement, setting forth the nature and extent of such disability, the governor shall make such investigation as he shall deem advisable, and if he shall thereby determine that such disability exists, and the public service is suffering and will continue to suffer by reason of such disability, he shall thereupon, by written order to be filed in the office of the secretary of state, direct the retirement of such judge for the unexpired portion of the term for which such judge was elected, which retirement shall create a vacancy in said office, which shall be filled by appointment, as provided by law.

When the disability is mental and to an extent that renders such judge incompetent to make such application, the same may be made by the legally appointed guardian of such judge.

[1913 c. 269 s. 1; 1927 c. 337 s. 2] (210)

490.02 RETIREMENT OF SUPREME COURT JUSTICES AND DISTRICT COURT JUDGES. When a justice of the supreme court or a judge of the district court shall be retired under the provision of section 490.01, he shall receive the compensation allotted to his office for the remainder of his said term; or, if a justice of the supreme court is then past 70 years of age, and has served as a justice of the supreme court, or as such justice and as a commissioner of the supreme court or a judge of the district court of this state, or either continuously for 25 years or more, or if a judge of the district court is then past 70 years of age, and has served as a judge of the district court, or as such judge and as a judge of a municipal court or a probate court of this state, or either, continuously for 25 years or more, he shall receive one-half of the compensation allotted to his office at the time of such retirement for the remainder of his life, to be paid at the time and in the manner provided by law.

When a justice of the supreme court has served continuously for 25 years or more, either as a justice of the supreme court, or as a justice of the supreme court and a judge of the district court or a commissioner of the supreme court, and is then past the age of 70 years, or when a judge of the district court has served continuously for 25 years or more, either as a judge of the district court, or as a judge of the district court and a judge of a municipal court or a probate court of this state, and is then past 70 years of age, and has not been retired under the provisions of existing law, he may retire from further service as such judge, and shall receive one-half of the compensation allotted to his office at the time of such retirement for the remainder of his life, to be paid in the manner provided by law for the payment of the salary of such justice or judge.

[1913 c. 269 s. 2; 1923 c. 79; 1927 c. 337 s. 1; 1929 c. 201; 1929 c. 408; 1937 c. 475 s. 1] (211)

490.03 RETIREMENT PRIOR TO JANUARY 1, 1937. Justices and commissioners of the supreme court and judges of the district court who retired prior to January 1, 1937, under the statutes in force at the time of their retirement, shall

from the date of their retirement receive retirement compensation at the rate and for the time provided in the statutes in force at the time each of them retired.

[*Ex. 1937 c. 83*] (*211-7a*)

490.04 COMPULSORY RETIREMENT OF DISTRICT JUDGES. When any judge of the district court of the state becomes mentally or physically incapacitated from performing his official duties and such incapacity shall have continued for at least six months, and the public service is suffering and will continue to suffer by reason thereof, and no application has been made by such judge or his legally appointed guardian to the governor for his retirement under and pursuant to section 490.01, any 25 or more freeholders and electors of the judicial district of such judge may petition the governor to have the question of the incapacity of such judge judicially determined, as hereinafter provided.

[*1925 c. 281 s. 1*] (*211-1*)

490.05 PETITION. The petition shall be in writing, duly verified, and shall allege said incapacity and set forth the nature and extent thereof, that such incapacity has existed for at least six months before the presentation thereof, and that the public service is suffering and will continue to suffer on account thereof unless such judge be suspended and retired from his said office.

[*1925 c. 281 s. 2*] (*211-2*)

490.06 SUSPENSION PENDING DETERMINATION OF INCAPACITY. Upon receiving such petition, the governor shall forthwith deliver a certified copy thereof to the attorney general, and shall file another certified copy thereof in the office of the clerk of the district court of the county in which such judge resides, together with an order suspending the judge from office until the final determination of the question of his incapacity, and shall also forthwith make and file in the clerk's office an order appointing a special term of the district court of said county, to be held at a time and place specified therein, for a hearing upon said petition, which order shall designate and assign three judges of the district court of the state to sit en banc to try and determine the question of the incapacity of such judge to perform his judicial duties, at which hearing the district judge longest in judicial service shall preside. Such hearing shall be commenced not less than 30, nor more than 60, days after the filing of the order, and certified copies of the petition and of the order shall be personally served upon the judge, upon his legally appointed guardian, if there be one, and upon the attorney general, not less than 20 days before the day set for the commencement of the hearing. After the filing of the petition, the same shall not be withdrawn nor abandoned without full hearing, and the judges may, if necessary, appoint counsel at the expense of the state to conduct the hearing and to prepare and present evidence, and may, for cause, continue the hearing a reasonable length of time on application of said judge, his legally appointed guardian, if there be one, the petitioners, or any attorney duly appearing in said proceedings.

[*1925 c. 281 s. 3*] (*211-3*)

490.07 PROCEDURE ON HEARING. At such hearing, the petitioners, the said judge, and his guardian, if there be one, may appear and be heard, personally or by counsel, and may offer any competent evidence upon the issues involved. The attorney general, if in his judgment the public interest so requires, may, in person or by any reputable attorney or attorneys of the state appointed by him as special assistant attorney or attorneys general for such hearing, appear and be heard, participate in the hearing, and produce evidence thereat.

The proceedings, including all evidence offered or received, all rulings, and all orders made, shall be taken down in shorthand by some competent shorthand reporter appointed by the presiding judge, as upon other trials in the district court, but such judge shall not appoint the court reporter of such district. The said judges sitting en banc shall determine all issues of law and fact, and particularly whether such judge is, or is not, incapacitated from performing his judicial duties, and shall make and file with the clerk of the district court of such county their findings of fact upon the issues involved in said proceedings. The reporter shall forthwith, upon the completion of the hearing, transcribe his shorthand notes of the proceedings and file a certified copy thereof with the clerk.

Upon the filing of the findings of fact, the clerk shall forthwith transmit to the governor a certified copy thereof.

[*1925 c. 281 s. 4*] (*211-4*)

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490.08 ORDER FOR RETIREMENT; FILLING VACANCY. If the judges shall find that such judge is incapacitated from the performance of his judicial duties, the governor shall, upon the expiration of the time for appeal, if no appeal is taken, and upon the final determination of such appeal, if taken, sustaining such findings, by written order, direct his retirement for the unexpired portion of his term, a certified copy of which order shall be forthwith served upon such judge and upon his legally appointed guardian, if there be one, and a copy thereof shall be filed in the office of the clerk of the county in which the hearing was had. The filing of the order, with proof of service upon such judge and his legally appointed guardian, if there be one, shall create a vacancy in the office, which shall be filled by appointment, as provided by law; and such appointee shall, upon qualifying, become the judge of the district and hold such office until a successor is elected and qualifies.

[1925 c. 281 s. 5] (211-5)

490.09 APPEALS TO SUPREME COURT. Within 20 days after the filing of such findings of fact, such judge, or his legally appointed guardian, the petitioners, or any one or more of them, or the attorney general may appeal from the findings to the supreme court of the state by filing a notice of such appeal with the clerk in whose office the findings are filed. The clerk shall forthwith transmit a certified copy of the notice to the clerk of the supreme court, and the supreme court shall place the matter upon the calendar for hearing at the earliest time conveniently possible, giving preference to such matter over general matters pending. The court shall also make such order in regard to printing, filing, and serving of briefs and record as shall seem proper in the premises. The clerk of the district court shall transmit to the clerk of the supreme court all records and files in the proceedings, including the reporter's transcript.

[1925 c. 281 s. 6] (211-6)

490.10 COMPENSATION OF RETIRED JUDGES. When any judge shall be retired under the provisions of sections 490.04 to 490.10, he shall receive the compensation to which he would have been entitled had he served out the remainder of his term, which compensation shall be paid at the time and in the manner provided by law.

[1925 c. 281 s. 7] (211-7)

490.11 RETIREMENT OF JUDGES OF PROBATE COURT. When a probate judge shall become incapacitated physically or mentally from performing his judicial duties during the remainder of his term of office and shall make a written application to the governor for his retirement, setting forth the nature and extent of such disability, the governor shall make such investigation as he shall deem advisable and if he shall thereby determine that such disability exists, and that the public service is suffering and will continue to suffer by reason of such disability, he shall thereupon, by written order to be filed in the office of the secretary of state, direct the retirement of such judge for the unexpired portion of the term for which such judge was elected, which retirement shall create a vacancy in the office, which shall be filled by appointment, as provided by law.

[1931 c. 253 s. 1] (211-8)

490.12 TO RECEIVE HALF-PAY. When a judge shall be retired under the provisions of section 490.11, he shall receive the compensation allotted to his office for the remainder of his term, or, if then past 70 years of age, having served as such probate judge continually for more than 40 years, he shall receive one-half of the compensation allotted to his office at the time of such retirement for the remainder of his life, to be paid at the time and in the manner provided by law.

[1931 c. 253 s. 2] (211-9)