

CHAPTER 490

JUDGES, RETIREMENT

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490.01, 490.02 [Repealed, 1949 c 640 s 5 sbd 2]

490.025 RETIREMENT OF SUPREME COURT JUSTICES. Subdivision 1. **Requisites.** When a justice of the supreme court arrives at the age of 70 years and has served at least one term or becomes incapacitated for the performance of his official duties to the extent that the public service suffers therefrom, and makes written application to the governor for his retirement, the governor, if he determines that such justice has arrived at such age and has served at least one term or that such disability exists, shall direct his retirement by written order which shall effect a vacancy in the office to be filled as provided by law.

Subd. 2. **Retirement compensation; amount.** Such justice shall receive the compensation allotted to his office for the remainder of the term for which elected. If such justice be retired for age or disability and, at the time of his retirement, has served as such justice for two full terms or the equivalent thereof or as such justice and as a judge of the district court for 15 years he shall, after the expiration of the term for which elected or appointed, receive for the remainder of his life one half of the compensation allotted to his office plus two and one half percent of the compensation allotted to his office for each year, not exceeding 10, which he served in his office in excess of two full terms, or the equivalent thereof, on the supreme court or in excess of 15 years as a justice of such court and as a judge of the district court. All such retirement pay shall be paid in the manner judicial salaries are paid.

4 5564 W Subd. 3. **Special case.** Where a justice of the supreme court has served for two full terms and during this period reaches the age of 70, upon the completion of this period, he may apply for and receive for the remainder of his life the equivalent of the retirement compensation granted justices of the supreme court under subdivision 2.

Subd. 4. **Age limit.** Unless at the time of this enactment a justice has already reached the age of 73, he shall not acquire an increase of two and one half percent of the compensation allotted to his office in his retirement pay, as provided in subdivision 2, after he has reached the age of 73 years.

Subd. 5. **Commissioner.** Upon retirement of a justice of the supreme court, the court may appoint him a commissioner of that court to aid and assist in the performance of such of its duties as may be assigned to him with his consent.

Subd. 6. **Prior retirement.** Each justice and commissioner of the supreme court who has heretofore retired under the statutes in force at the time of his retirement shall, from the date of retirement, receive retirement compensation at the rate and for the time provided in the statutes in force at the time of retirement.

Subd. 7. **Attorney general.** When and after an attorney general has arrived at the age of 70 years and has served in state elective office or offices, including service as a member of the state legislature, for more than 25 years, of which at least 15 years shall have been served continuously as attorney general, he may at any time thereafter notify the governor of his resignation before or his retirement at the expiration of the term for which he has been last elected, and, if the governor shall determine that such attorney general has arrived at such age and has served in state elective office or offices as herein required for more than 25 years and at least 15 years continuously in the office of attorney general, the governor shall designate by written order the effective date of such resignation or retirement. From

such date such attorney general shall receive as retirement compensation annually for the remainder of his life one half of the annual compensation allotted to his office by Laws 1949, Chapter 738, Section 5. Such retirement compensation shall be paid semi-monthly and in the manner in which state salaries are paid. The amount required therefor is hereby annually appropriated from the general revenue fund in the state treasury.

Subd. 8. Clerk of supreme court. When and after a clerk of the Supreme Court has arrived at the age of 65 years and has served in state elective office or offices for more than 25 years, and when the clerk of the Supreme Court has served in that office for 25 years or more, he or she may at any time thereafter notify the governor of his or her resignation before his or her retirement at the expiration of the term for which he or she has been last elected, and if the governor shall determine that such clerk of the Supreme Court has arrived at such age and has served in state elective office or offices as herein required for more than 25 years and at least 15 years continuously in the office of clerk of the Supreme Court, the governor shall designate by written order the effective date of such resignation or retirement. From such date such clerk of the Supreme Court shall receive as retirement compensation annually for the remainder of his or her life, one half of the annual compensation allotted to his or her office by Laws 1949, Chapter 740, Section 3, Item 1. Such retirement compensation shall be paid semi-monthly and in the manner in which state salaries are paid. The amount required therefor is hereby annually appropriated from the general revenue fund in the state treasury.

Subd. 9. State auditor. When and after a state auditor has arrived at the age of 65 years, has served in state elective office for 25 years or more and has been elected seven consecutive times to the office of state auditor, he may, at any time thereafter, notify the governor of his resignation before or his retirement at the expiration of the term for which he has last been elected. If the governor finds that such state auditor has attained age 65, has served in such elective office and has been elected seven consecutive times to the office of state auditor, as required, the governor shall by written order designate the effective date of such resignation or retirement. From the date of such resignation or retirement, such state auditor shall receive as retirement compensation annually for the remainder of his life one-half of the annual compensation received by him at the time of the passage of this subdivision. Such retirement compensation shall be paid semi-monthly and in the same manner in which state salaries are paid. The amount required therefor is hereby annually appropriated from any funds in the state treasury not otherwise appropriated.

[1943 c 595 s 1-4; 1953 c 360 s 1; 1953 c 455 s 1, 2; 1955 c 648 s 1]

490.026 INTERPRETATION. Section 490.03 shall not be construed to amend or repeal Minnesota Statutes 1945, Section 490.025.

[1949 c 645 s 4]

490.027 [Repealed, 1949 c 640 s 5; 1949 c 645 s 3]

490.03 ALLOWANCES TO CERTAIN JUDGES. Justices and commissioners of the Supreme Court and judges of the district court who have heretofore retired, or who hereafter retire 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, or at the time each of them hereafter retire as the case may be.

[Ex 1937 c 83; 1949 c 640 s 6; 1949 c 645 s 2] (211-7a)

490.031 RETIREMENT COMPENSATION, CERTAIN JUDGES. Notwithstanding the provisions of Minnesota Statutes, Section 490.03, any judge of the district court who has heretofore retired whose retirement compensation is less than \$354.16 per month shall receive as retirement compensation for the time provided in the statutes in force at the time such judge retired but commencing as of January 1, 1951, the sum of \$354.16 per month during such time.

[1951 c 621 s 1]

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

490.101, 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; 1957 c 507 s 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)

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,

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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 [Repealed, 1949 c 640 s 5 sbd 1]

C688.22 **490.101 RETIREMENT OF DISTRICT JUDGE.** Subdivision 1. When a judge of the district court who has served for not less than 15 years as such judge, or as such judge and as judge of a court of record, arrives at the age of 70 years and makes written application to the governor for retirement, the governor shall direct his retirement by a written order.

Subd. 2. When a judge of the district court becomes incapable of performing his official duties and makes written application to the governor for retirement, the governor, if he determines that the applicant is so incapacitated, shall direct his retirement by a written order.

Subd. 3. Upon the filing of such order in the office of the secretary of state, the office of such judge shall become vacant.

[1949 c 640 s 1]

Rel. 2.3 **490.102 COMPENSATION ALLOWANCE.** Subdivision 1. A judge retired under the provisions of section 490.101, subdivisions 1 or 2 shall continue to receive the compensation allotted to his office from the date of his retirement until the expiration of the term for which he was elected.

Subd. 2. If, at the time of retirement, he has served for 15 years as such judge, or as such judge and as judge of a court of record, he shall receive for the remainder of his life, after the expiration of the term for which he was elected, one-half the compensation allotted to his office at the time of his retirement.

Subd. 3. Any judge of the district court who is serving in such capacity on the effective date of sections 490.03, 490.101 to 490.104 and who has attained, or hereafter attains, the age of 73 or more years, and has completed 15 years of service, shall receive retirement pay hereunder if he applies for retirement within one year after becoming eligible, but not otherwise.

Any judge of the district court whose initial service as a judge of the district court begins after the effective date of sections 490.03, 490.101 to 490.104, who hereafter attains the age of 70 years, and who has completed 15 years of service, shall receive retirement pay hereunder, if he applies for retirement within one year after becoming eligible, but not otherwise.

Subd. 4. Retirement allowances shall be paid in the same manner as the salaries of judges of the district court are paid.

Subd. 5. No retired judge shall receive retirement pay while practicing law.

[1949 c 640 s 2]

C688.25 **490.103 PRIOR RETIREMENT.** A judge of the district court who has heretofore retired as provided by law shall hereafter receive the same compensation now received by him.

[1949 c 640 s 3]

C688.25 **490.104 RETIREMENT UNDER SECTIONS 490.04 TO 490.09.** A judge of the district court hereafter retired under the provisions of Minnesota Statutes 1945, Sections 490.04 to 490.09 shall receive compensation as provided in sections 490.03, 490.101 to 490.104.

[1949 c 640 s 4]

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 HALF PAY. Subdivision 1. **Retirement under section 490.11.** When a probate 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 judge, or as such judge and as judge of a court of record, or as such judge and a referee in probate, continually for 25 years, or more, or, if then past 69 years of age, having served as such judge continuously for 26 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.

Subd. 2. **Voluntary retirement.** After a probate judge has attained the age of 70 years or more and has served as such judge, or as such judge and as judge of a court of record, or as such judge and as referee in probate, continuously for 25 years or more, he may voluntarily retire at the end of his term of office, even though he is not physically or mentally incapacitated from performing the duties of his office, and after he has so retired 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 for the payment of salaries of probate judges.

Subd. 3. **Service not continuous.** In computing the period of service of any probate judge for retirement purposes he shall receive credit for all periods of time served in the armed forces of the United States during any period when the United States was at war. Such period of service as a probate judge need not be continuous.

[1931 c 253 s 2; 1947 c 183 s 1; 1947 c 472 s 1; 1949 c 473 s 1; 1953 c 126 s 1, 2; 1955 c 556 s 1; 1955 c 794 s 1, 2] (211-9)