

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490.01, 490.02 [Repealed, 1949 c 640 s 5 sbd 2]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

Subd. 3. **Retirement age.** 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, or where a justice has served a minimum period of 15 years on the supreme court and has reached the age of 65, he may retire and apply for and receive for the remainder of his life the equivalent of the retirement compensation payable under subdivision 2 to a retired justice whose final elective term has expired.

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; 1959 c 564 s 1]

490.026 [Repealed, 1959 c 688 s 6]

490.027 [Repealed, 1949 c 640 s 5; 1949 c 645 s 3]

490.030, 490.031 [Repealed, 1959 c 688 s 6]

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] (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)

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 [Repealed, 1949 c 640 s 5 sbd 1]

490.101 RETIREMENT OF DISTRICT JUDGE. Subdivision 1. (a) 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.

(b) When a judge of the district court who has served for at least 25 years as such judge, and as judge of a court of record, arrives at the age of 65 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 mentally or physically incapacitated from performing his official duties and the governor has determined that such judge shall be retired either on his own application or that of his legally appointed guardian or pursuant to Minnesota Statutes 1961, Section 490.04, such judge shall receive as retirement benefits the following:

When such judge of the district court has served for not less than 15 years as such judge, or as such judge and as a judge of a court of record, he shall receive the maximum retirement allowances provided by law for a judge of the district court pursuant to section 490.102. If such judge has served less than the number of years required for maximum retirement benefits but for a period of not less than six years, he shall receive retirement pay as that portion of the maximum retirement allowances allotted to the office for the years of service as a district court judge, or as such judge and as a judge of a court of record, prior to his retirement for disability, bears to the number of years required for the maximum retirement allowance of a district court judge. Years of service shall be determined by the whole year and not by any fraction thereof.

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

Subd. 4. When the term of any judge of the district court would expire three years or less from the time when he would become eligible to retire under the provisions of this section and section 490.102, upon written application by such judge to the governor stating his intention to retire upon eligibility, the governor shall forthwith make a written order accepting such retirement application, and extending his term of office for three years or such proportion thereof as may be necessary to make him eligible for such retirement.

[1949 c 640 s 1; 1959 c 688 s 2; 1965 c 762 s 1, 2]

490.102 COMPENSATION ALLOWANCE. Subdivision 1. A judge who elects to retire under the provisions of section 490.101 and who has an unexpired balance of the term for which he was elected yet to run after such retirement, shall, in order to receive the retirement compensation hereinafter outlined, waive in writing the compensation allotted to his office, from the date of such retirement to the date of the expiration of the term for which such judge was elected, and receive only during such period and thereafter retirement pay as hereinafter outlined. This subdivision shall not apply to any judge who has retired prior to the effective date of this act.

Subd. 2. (a) If, at the time of retirement, he has attained the age of at least 70 years and 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, one-half the compensation allotted to the office.

(b) If, at the time of retirement, he has attained the age of at least 65 years and he has served for 25 years as such judge, or as such judge and as a judge of a court of record, he shall receive for the remainder of his life, one-half the compensation allotted for the office.

Subd. 3. Any judge of the district court who is serving in such capacity on April 24, 1949 and who has attained or hereafter attains, the age of 73 or more years and has completed 15 years of service, as such judge, or as such judge and as judge of a court of record, 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 such judge began after

April 24, 1949, after reaching his 70th birthday, shall apply for retirement within one year after such birthday or forfeit all retirement benefits hereunder. However, if a judge of the district court has not completed 15 years of service on attaining the age of 70 years, he shall receive retirement pay hereunder if he applies for retirement within six months of the date he completes 15 years of service. Provided that any district judge past the age of 74 years still serving on the bench and for whom retirement has been allowed by a previous act passed by the 1959 legislature shall be permitted retirement allowance if he retires during his current term of office or during an extended term of three years thereafter which extension may be granted in the same manner as provided in section 490.101, subdivision 4.

Subd. 3a. If a judge of the district court has attained the age of at least 70 years and has completed ten or more years of service as a district court judge or fifteen or more years as a judge of a court of record including at least six years as a district court judge but less than the number of years required for maximum retirement benefits, he may apply for retirement and receive retirement pay of that portion of the maximum retirement allowance allotted to the office which the years of his service as a district court judge, prior to his retirement, bears to the number of years required for the maximum retirement allowance of a district court judge. Years of service shall be determined by the whole year rather than a fraction thereof. Any district court judge presently serving who is over 70 years of age shall forfeit any benefits under this subdivision if he shall serve beyond the expiration of his present term.

Subd. 4. Retirement allowances, including county payments, if any, 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.

Subd. 6. The widow of every judge of the district or supreme court who dies, in active service, shall be paid one-half of the retirement compensation to which such judge would have been entitled on the date of his death, if he would have been otherwise eligible for retirement under the provisions of section 490.101 or under section 490.025, and had retired on that date, irrespective of whether he shall have attained the age of retirement at the date of his death or not and irrespective of whether he had served 15 years as such judge or as a judge of a court of record, and irrespective of whether he had previously been eligible to retire, but had not retired under the provisions of Minnesota Statutes, Section 490.101, prior to his death, provided she had been married to such judge for five years prior to his death. The widow of every judge of the district court or supreme court who dies after retiring shall be paid one-half of the retirement compensation which such judge was receiving at the date of his death.

Any judge who has heretofore retired and exercised the option previously set forth in Minnesota Statutes, Section 490.102, shall, after July 1, 1961, be paid the full retirement compensation herein provided for, and his widow shall upon his death be entitled to compensation as herein set forth.

The term "widow" as used in this subdivision means the surviving wife of a district or supreme court judge, but only if she was married to him for a period of not less than five years immediately prior to the date of his retirement or of his death, whichever occurs first.

If such widow, either of a retired judge or a judge who dies in active service, who is otherwise qualified under this section, has not attained the age of 40 years at the time of such judge's death, such widow will not become eligible for retirement compensation payments hereunder until her 40th birthday but shall receive such payments thereafter.

A widow who is entitled to a retirement compensation under the provisions of this subdivision and subdivision 7 shall be paid such retirement compensation for the period of her life, unless she remarries, in which event such retirement compensation is to cease and terminate. Every judge of the district court and every judge of the supreme court shall contribute four percent of his state salary, which amount shall be deducted from his salary at least once each month and paid to the state treasurer to be deposited in a special survivor retirement account. This contribution shall be for the purpose of providing the survivor benefits established by this subdivision and subdivision 7 and such amount as may be necessary to carry out this purpose is hereby appropriated from such special retirement account. It is declared to be the policy of the legislature that the survivor

benefits provided for herein shall be wholly paid from contributions by the judges to said special retirement account. To implement this policy the rate of contribution by the judges shall be reviewed periodically and contributions adjusted to make this account sufficient to cover all benefits.

Subd. 7. In addition to the provisions of Minnesota Statutes 1961, Section 490.102, Subdivision 1 to 6, inclusive, and notwithstanding the limitations thereof, the widow of every judge of the District or Supreme Court who died in active service prior to May 19, 1961, who had been married to such judge for five years prior to his death and who has now attained the age of 49 years, shall be paid during her life one-half of the retirement compensation to which such judge would have been entitled, if he had been retired as of date of death. For the purposes of this subdivision, the said judge shall be deemed to have been entitled to full retirement and to have retired as of the day of his death. If retirement of a district judge from active service was by executive order prior to enactment of Laws 1949, Chapter 640, his unmarried widow who would otherwise qualify under this section will receive one-half of the compensation such judge would have received if his retirement occurred in 1949 after enactment of that law and he was eligible for compensation thereunder.

Subd. 8. On June 30 of each year, the state auditor shall review the fiscal condition of the special survivor retirement account in the light of the prospective demands for payment therefrom in the next fiscal year. If the state auditor determines that the balance in such account on June 30 plus the prospective receipts in the next fiscal year appear to be insufficient to meet the demands on such account during the next fiscal year, the state auditor on July 1 of each year shall make and file in his office an order increasing the rate of contribution to such account by the several judges of the district court from four percent of his salary to such rate of contribution as will, in the judgment of the state auditor, provide sufficient funds in said special survivor benefit account to pay all demand thereon during the next fiscal year. If on any following June 30, the state auditor should determine that a lower rate of contribution will provide sufficient moneys to pay all demands on such special survivor benefit account, he may on the next July 1, make and file an order reducing the rate of contribution to such rate as will in his judgment provide sufficient moneys to meet all demands on such special account in the current fiscal year but in no event lower than four percent. The state auditor shall make deductions of contributions in accordance with rates prescribed by law or by his order, as the case may be.

[1949 c 640 s 2; 1959 c 688 s 3; Ex1961 c 15 s 1-3; 1963 c 739 s 1; 1963 c 844 s 1-3; 1965 c 762 s 3-5]

490.103 PRIOR RETIREMENT. A judge of the district court who has heretofore retired as provided by law shall hereafter receive one-half of the compensation allotted to the office from which he retired.

[1949 c 640 s 3; 1959 c 688 s 4; Ex1961 c 15 s 4]

490.104 RETIREMENT UNDER SECTIONS 490.04 TO 490.09. A judge of the district court retired under the provisions of Minnesota Statutes 1957, Sections 490.04 to 490.09, shall receive compensation as provided in sections 490.101 to 490.104.

[1949 c 640 s 4; 1959 c 688 s 5]

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. Thereafter, if then past 65 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, for 24 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.** When 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, for 20 years or more, or when a probate judge has attained the age of 65 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 for 24 years or more, he may voluntarily retire from 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.

Subd. 4. **Limitations.** In no event shall the total retirement pension to a probate judge exceed the retirement pension provided by law for district judges of the county in which the probate judge held office.

Subd. 5. **Membership in other retirement pension funds.** The probate judges retirement pension as provided herein shall be reduced by the full amount of any retirement pension other than is herein provided received by a probate judge from the state, any political subdivision, or public employees retirement association. In the event the probate judge withdraws from any retirement pension fund other than as herein provided prior to his retirement as a probate judge, the amount contributed by the state or any political subdivision shall be computed and deducted from the probate judge's retirement over a five-year period commencing upon the date of such judge's retirement.

[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; Ex1961 c 25 s 1] (211-9)

NOTE: As to retirement of Freeborn county probate judge, see Laws 1965, Chapter 625.