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The Obama presidency: What will it mean for Minnesota lawyers?

by [Barbara L. Jones](#) Associate Editor

Lawyers barely have time to celebrate or mourn presidential election results before they start to evaluate their impact on the legal community. What will a change in administration mean to the Department of Justice and thereby to Minnesota? Will President Barack Obama appoint a new U.S. attorney to replace Republican appointee Frank Magill, who has been the acting head of the office since the beginning of the year? What is likely to happen on the federal bench? What will it mean to have a lawyer in the White House again?

Other lawyers wonder if a new national agenda will affect their clients. Will tort reform efforts continue? Will there be new energy regulations? Will life get harder or easier for immigrants?

The United States attorney holds the highest profile federal political appointment in the state. Magill took over the office on an interim basis last year after Rachel Paulose resigned after a rocky tenure. Paulose's predecessor, Thomas Heffelfinger, had left the office to return to private practice. It was later revealed that he was on a list of U.S. attorneys slated for removal. When the firings of U.S. attorneys without good cause came to light, it resulted in a national scandal that eventually engulfed the top tier of the DOJ and led to the resignation of U.S. Attorney General Alberto Gonzales.

Because the Magill appointment was not put forth for confirmation by the U.S. Senate, it expires by law next month. After that, the District Court can appoint a U.S. attorney. Because Magill has brought stability to the office and is generally viewed as having done a good job, it is likely he will be left in place at least through the start of the next administration, and maybe longer.

"Frank Magill is doing a fine job as acting U.S. attorney," said Minneapolis attorney B. Todd Jones, who served as Minnesota's U.S. attorney under President Bill Clinton from 1998-2001. "Because we went through a difficult period, it might not be a high priority to put a political appointment in right away."

Heffelfinger, who served as Minnesota's U.S. attorney under both the current president and his father, also predicts a relatively subdued changing of the guard in the top spots at U.S. Attorneys Offices rather than a dividing-the-spoils approach. Both Republican presidential candidate John McCain and Obama expressed ire during the campaign about the politics at the DOJ under Gonzales, he pointed out.

While Heffelfinger expects Obama to replace AG Michael Mukasey, he doesn't expect the incoming president to replace U.S. attorneys in the districts immediately. The appointment in Minnesota will depend in large part on who becomes Attorney General, Heffelfinger added.

Jones does expect a lot of new faces at the DOJ. "They will clean house, big time." He also expects Obama, as an attorney, to bring in colleagues. "There will be a lot more lawyers running the show," he predicted.

Minneapolis attorney David Lillehaug, who, like Jones, served a stint as U.S. Attorney in Minnesota during the Clinton administration, has advised Obama to use "special care" in nominating a new AG. Obama "gets it" when it comes to past problems with the DOJ, Lillehaug said.

A Minneapolis lawyer with connections to the Democratic Party, who did not wish to be identified, pointed out that, under the usual tradition, the choice of a U.S. attorney is primarily

in the hands of Sen. Amy Klobuchar, the senior senator of the new president's party. "Amy Klobuchar knows a lot of lawyers," the attorney noted. Other lawyers speculated that Norm Coleman, if he retains his seat as the state's senior senator, also will be influential.

Two names of possible U.S. Attorneys have been frequently mentioned — Andrew Luger of Greene Espel and Lucinda Jesson, a professor at Hamline University School of Law. Luger was an assistant U.S. attorney in the Eastern District of New York from 1989-92 and in Minnesota from 1992-95. He ran for Hennepin County Attorney in 2006, but was defeated by Mike Freeman. Jesson served as chief deputy Hennepin County attorney under Klobuchar from 1999-2000, and now is a professor at Hamline University School of Law.

Jesson told Minnesota Lawyer she was flattered by rumors that she was a possible candidate for the U.S. attorney post but had no comment. "I've enjoyed my public service in the past, and I'm enjoying my job here at Hamline," she said. Luger had no comment.

Federal judgeships

Another issue of interest when a new president takes over is the federal judiciary. Under the "Rule of 80," a federal judge is eligible to retire or take senior status when his/her age plus years of service adds up to 80. This formula raises the possibility of one Minnesota federal court vacancy in the next four years or two in the next eight.

In addition, pending legislation, the Federal Judgeship Act of 2008, if passed, would add two judges to the 8th U.S. Circuit Court of Appeals and one or two U.S. District Court judges in Minnesota. The text of the bill calls for one District Court judge, but the recommendation of the Judicial Conference is for an additional temporary judge, Chief U.S. District Court Judge Michael Davis told Minnesota Lawyer.

There is no shortage of local lawyers who would be interested in a federal judgeship, but no one is naming names at this point. The Infinity Project — a locally created group dedicated to getting another woman on the 8th Circuit bench — will undoubtedly be making its opinion known with the new administration.

Policy changes

Some lawyers are watching the administration for changes in federal law-enforcement policies that will impact their clients or their practices.

John Keller, executive director of the Immigrant Law Center of Minnesota, said that both Obama and McCain made few statements about immigration in the general press, but "waged a kind of war" in the Spanish-language media.

Keller said that it's hard to predict what will happen with immigration in these tough economic times. "There will have to be a concerted effort to make it an out-of-the-block priority," he said. And if there is, the ILCM is ready, he said. "We have solidified the business community and the advocacy community to take the message to Congress," he said.

The trial lawyers were not anticipating a big change under either candidate, according to Minneapolis attorney Chris Messerly, who is also the acting executive director of the Minnesota Association for Justice. "I don't see the new president doing anything with tort 'deform,'" he said. With a Democratic president and Congress, Messerly also predicts diminished influence by insurance and pharmaceutical companies, or what he calls "stealth tort deform."

There is a lot of work to be done in the field of energy law and regulation, and the Obama administration will likely be willing to do it, said B. Andrew Brown, chair of the energy department at Dorsey & Whitney. However, he pointed out that a McCain administration likely would have seen a significant change in policy on energy issues as well.

Brown expects issues of greenhouse gas emission and cap and trade programs to get more attention from the new administration. At the same time, many energy-related changes have been in the pipeline for some time, particularly after the 2006 U.S. Supreme Court decision in Massachusetts v. EPA that said that the agency could regulate greenhouse gases, he added.

“Both parties have an interest in working with regulated business,” Brown said. “The challenge will be to maintain economic growth while we work with serious environmental issues.”

Several Minnesota attorneys are among the more than 80 lawyers for detainees at Guantanamo Bay who backed Obama for president.

Both candidates said they want to close the facility, but “I don’t expect either [McCain or Obama] would move very quickly,” said Minneapolis attorney James Dorsey, who represents one of the detainees. However, he believes that a new administration may break through some of the road blocks that have impeded negotiations with other countries over accepting the return of some of the detainees.

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