

## CHAPTER 209

### ELECTION CONTESTS

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**209.01** MS 1957 [Repealed, 1959 c 675 art 13 s 1]

#### **209.01 DEFINITIONS.**

Subdivision 1. **In general.** The definitions in chapter 200 apply to this chapter.

Subd. 2. **Statewide office.** For purposes of this chapter "statewide office" means the office of governor, lieutenant governor, attorney general, state auditor, secretary of state, chief justice or associate justice of the Supreme Court, judge of the Court of Appeals, United States senator, or presidential elector.

**History:** 1959 c 675 art 10 s 1; 1986 c 408 s 1; 2003 c 112 art 2 s 50

**209.02** MS 1957 [Repealed, 1959 c 675 art 13 s 1]

#### **209.02 CONTESTANT; GROUNDS.**

Subdivision 1. **General.** Any eligible voter, including a candidate, may contest in the manner provided in this chapter: (1) the nomination or election of any person for whom the voter had the right to vote if that person is declared nominated or elected to the senate or the house of representatives of the United States, or to a statewide, county, legislative, municipal, school, or district court office; or (2) the declared result of a constitutional amendment or other question voted upon at an election. The contest may be brought over an irregularity in the conduct of an election or canvass of votes, over the question of who received the largest number of votes legally cast, over the number of votes legally cast in favor of or against a question, or on the grounds of deliberate, serious, and material violations of the Minnesota Election Law.

Subd. 2. [Repealed, 1986 c 408 s 13]

Subd. 3. [Repealed, 1986 c 408 s 13]

Subd. 4. [Repealed, 1986 c 408 s 13]

Subd. 4a. [Repealed, 1986 c 408 s 13]

Subd. 5. [Repealed, 1986 c 408 s 13]

Subd. 6. [Repealed, 1986 c 408 s 13]

Subd. 7. [Repealed, 1986 c 408 s 13]

Subd. 8. [Repealed, 1986 c 408 s 13]

**History:** 1959 c 675 art 10 s 2; 1961 c 607 s 1; 1963 c 682 s 1; 1965 c 81 s 4-6; 1971 c 733 s 3,4; 1974 c 312 s 1; 1978 c 674 s 60; 1981 c 29 art 7 s 38; 1983 c 303 s 23; 1986 c 408 s 2; 1987 c 266 art 1 s 64; 1990 c 453 s 18

**209.021 NOTICE OF CONTEST.**

Subdivision 1. **Manner; time; contents.** Service of a notice of contest must be made in the same manner as the service of summons in civil actions. The notice of contest must specify the grounds on which the contest will be made. The contestant shall serve notice of the contest on the parties enumerated in this section. Notice must be served and filed within five days after the canvass is completed in the case of a primary or special primary or within seven days after the canvass is completed in the case of a special or general election; except that if a contest is based on a deliberate, serious, and material violation of the election laws which was discovered from the statements of receipts and disbursements required to be filed by candidates and committees, the action may be commenced and the notice served and filed within ten days after the filing of the statements in the case of a general or special election or within five days after the filing of the statements in the case of a primary or special primary. If a notice of contest questions only which party received the highest number of votes legally cast at the election, a contestee who loses may serve and file a notice of contest on any other ground during the three days following expiration of the time for appealing the decision on the vote count.

Subd. 2. **Notice filed with court.** If the contest relates to a nomination or election for statewide office, the contestant shall file the notice of contest with the court administrator of District Court in Ramsey County. For contests relating to any other office, the contestant shall file the notice of contest with the court administrator of district court in the county where the contestee resides.

If the contest relates to a constitutional amendment or other question voted on statewide, the contestant shall file the notice of contest with the court administrator of District Court in Ramsey County. If the contest relates to any other question, the contestant shall file the notice of contest with the court administrator of district court for the county or any one of the counties where the question appeared on the ballot.

Subd. 3. **Notice served on parties.** In all contests relating to the nomination or election of a candidate, the notice of contest must be served on the candidate who is the contestee, a copy of the notice must be sent to the contestee's last known address by certified mail, and a copy must be furnished to the official authorized to issue the certificate of election. If personal or substituted service on the contestee cannot be made, an affidavit of the attempt by the person attempting to make service and the affidavit of the person who sent a copy of the notice to the contestee by certified mail is sufficient to confer jurisdiction upon the court to decide the contest.

If the contest relates to a constitutional amendment or other question voted on statewide or voted on in more than one county, notice of contest must be served on the secretary of state, who is the contestee. If a contest relates to a question voted on within only one county, school district, or municipality, a copy of the notice of contest must be served on the county auditor, clerk of the school district, or municipal clerk, respectively, who is the contestee. If the contest is upon the question of consolidation or reorganization of a school district, a copy of the notice of contest must be served on the county auditor authorized by law to issue the order.

**History:** 1986 c 408 s 3; 1Sp1986 c 3 art 1 s 82; 1987 c 175 s 16; 1987 c 266 art 1 s 65; 1989 c 291 art 1 s 29; 1990 c 453 s 19

**209.03** MS 1957 [Repealed, 1959 c 675 art 13 s 1]

**209.03 CONTESTEE'S ANSWER.**

Subdivision 1. **Contest of vote count.** If a notice of contest questions only which of the parties to the contest received the highest number of votes legally cast at the election or the number of votes legally cast in favor of or against a question, the contestee need not file an answer, unless the contestee desires to raise issues not specified in the notice of contest.

Subd. 2. **Other contests.** For all other election contests the contestee's answer to the notice of contest must be filed and served on the contestant. The answer must so far as practicable conform to the rules for pleading in civil actions. If the contest relates to a primary or special primary, service of the answer must be made within the time fixed by the court, but no more than five days after service of the notice of contest. If the contest relates to a general or special election, service of the answer must be made within seven days after service of the notice of contest. The contestee's answer must be served in the same manner as the answer in a civil action or in the manner the court may order. Any other notices must be served in the manner and within the times the court may order.

**History:** 1961 c 607 s 2; 1965 c 81 s 7; 1971 c 733 s 5; 1981 c 29 art 7 s 38; 1986 c 408 s 4; 1990 c 453 s 20

**209.04** MS 1957 [Repealed, 1959 c 675 art 13 s 1]

**209.04** MS 1984 [Repealed, 1986 c 408 s 13]

**209.045 VENUE FOR STATEWIDE CONTESTS.**

If a notice of contest is filed in the District Court of Ramsey County regarding a statewide office or constitutional amendment or other question voted on statewide, the court administrator of district court, within three days of receipt of the notice of contest, shall submit one copy of it and of the answer, if any, to the chief justice of the Supreme Court by certified mail. The case must be heard and determined in Ramsey County by three judges assigned by the chief justice of the Supreme Court. If there is a division of opinion, the majority opinion prevails.

**History:** 1986 c 408 s 5; 1Sp1986 c 3 art 1 s 82

**209.05** MS 1957 [Repealed, 1959 c 675 art 13 s 1]

**209.05 GUARDING THE BALLOTS.**

In any election, upon demand made of the custodian of the ballots and upon notice to the candidate's opponent, a candidate may keep a continuous visual guard over the ballots until the expiration of the time for instituting contests. In case of a contest, the contestant or contestee may keep a visual guard over the ballots. The guard may be maintained either by the candidate, contestant, or contestee, or by their duly authorized agents, not exceeding two at a time for each party to the contest. If a candidate, contestant, or contestee seeks to guard the ballots, the custodian of the ballots shall appoint some suitable person to guard the ballots so they are not in the sole custody of the candidate, contestant, contestee, or their agents.

**History:** 1959 c 675 art 10 s 3; 1961 c 607 s 4; 1986 c 408 s 6

**209.06** MS 1957 [Repealed, 1959 c 675 art 13 s 1]

**209.06 INSPECTION OF BALLOTS.**

Subdivision 1. **Appointment of inspectors.** After a contest has been instituted, either party may have the ballots inspected before preparing for trial. The party requesting an inspection shall

file with the district court where the contest is brought a verified petition, stating that the case cannot properly be prepared for trial without an inspection of the ballots and designating the precincts in which an inspection is desired. A judge of the court in which the contest is pending shall then appoint as many sets of three inspectors for a contest of any office or question as are needed to count and inspect the ballots expeditiously. One inspector must be selected by each of the parties to the contest and a third must be chosen by those two inspectors. If either party neglects or refuses to name an inspector, the judge shall appoint the inspector. The compensation of inspectors is the same as for referees, unless otherwise stipulated.

Subd. 2. **Bond, taxing of costs.** The party applying for the inspection shall file with the court administrator of district court a bond in the sum of \$250 if the contest is in a single county. In other cases the bond shall be in a sum set by the court with sureties approved by the court, and conditioned that the party seeking inspection will pay the administrative costs and expenses of the inspection if that party loses the contest.

Subd. 3. **Report of inspectors.** An inspection must be made in the office and in the presence of the legal custodian of the ballots. The inspectors shall recanvass the votes cast for the parties to the contest or the question in issue in accordance with the rules for counting ballots in the Minnesota Election Law. They shall make a written report of the inspection indicating the number of votes cast for each candidate or each side of the question in each precinct where the ballots were inspected and indicating any disputed ballots upon which the inspectors cannot agree.

**History:** 1959 c 675 art 10 s 9; 1961 c 607 s 5; 1986 c 408 s 7; 1Sp1986 c 3 art 1 s 82

#### **209.065 PLEADINGS; PROCEDURE.**

The notice of contest and any answer are the pleadings in the case and may be amended in the discretion of the court. The contest proceedings must be brought on for trial by either the contestant or contestee as soon as practicable within 20 days after the filing of the notice of contest. The court shall proceed in the manner provided for the trial of civil actions so far as practicable.

**History:** 1986 c 408 s 8

**209.07 MS 1957 [Repealed, 1959 c 675 art 13 s 1]**

#### **209.07 RESULTS OF CONTEST.**

Subdivision 1. **Generally.** If a nomination is contested, the court shall decide which candidate, if any, was nominated and is entitled to be named in print on the official ballots. When the court decides an election contest for any office other than state senator or state representative, and the time for appeal has expired or, in case of an appeal, if the contestant succeeds in the contest, the court may invalidate and revoke any election certificate which has been issued to the contestee. If the contest involved an error in the counting of ballots, the official authorized to issue the certificate of election shall issue the certificate to the person entitled to it, but if a contestant succeeds in a contest where there is no question as to which of the candidates received the highest number of votes cast at the election, the contestant is not, by reason of the disqualification of the contestee, entitled to the certificate of election.

Subd. 2. **Defective ballots.** In a contested election, if the court decides that a serious and material defect in the ballots used changed the outcome of the election for the contested office, the election must be declared invalid for that office.

Subd. 3. **Costs of contest.** If the contestee succeeds, costs of the contest must be paid by the contestant. If the contestant succeeds, costs of the contest must be paid by the contestee;

except that if the contestee loses because of an error in the counting of ballots or canvass of the returns or because of any other irregularity in the election procedure, costs must be paid, in the discretion of the judge, by the election jurisdictions responsible for errors which resulted in the reversal of the prior results of the election.

Subd. 4. **School district board election; surety bond requirements.** If an election approving the issuance of bonds by a school district is contested, the contestant shall file in the district court a surety bond of at least \$5,000 or a greater amount determined necessary by the court to provide security for costs of the contest to the school district, including any additional costs that may be incurred by the school district if the bond issue is delayed. The court may waive the requirements of this subdivision to the extent it finds that there is a reasonable likelihood that the contestant will prevail and that filing the bond would impose an undue hardship. If the surety bond is not filed within the time allowed by the court, the contest shall be dismissed with prejudice.

**History:** 1961 c 607 s 6; 1971 c 733 s 6; 1986 c 408 s 9; 1986 c 444; 1999 c 241 art 9 s 45

**209.08** [Repealed, 1959 c 675 art 13 s 1]

**209.085** [Repealed, 1959 c 675 art 13 s 1]

**209.09** MS 1957 [Repealed, 1959 c 675 art 13 s 1]

#### **209.09 APPEALS.**

Subdivision 1. **Most contests.** If the decision of the district court in any contest under this chapter is appealed, the appellant shall file in the district court a bond of \$500 for the payment of all costs incurred by the respondent if appellant fails on the appeal. Except for a statewide contest or a state legislative contest, the notice of appeal must be served and filed in the court of appeals in the case of a general or special election no later than ten days and, in the case of a primary or special primary, no later than five days after the entry of the district court's decision in the contest. The record on appeal must be made, certified, and filed in the Court of Appeals within 15 days after service of notice of appeal. The appeal may be brought on for hearing in the court at any time, upon notice from either party, as the court determines; and may be heard and determined summarily by the court.

Subd. 2. **Statewide offices and questions.** Section 209.10, subdivision 4, applies to a contest regarding a statewide office, a constitutional amendment, or other question voted on statewide. A copy of the Supreme Court's decision must be forwarded to the contestant and the contestee.

**History:** 1959 c 675 art 10 s 10; 1961 c 607 s 7; 1971 c 733 s 7; 1981 c 29 art 7 s 38; 1983 c 247 s 91; 1986 c 408 s 10; 1986 c 444; 1987 c 200 s 1; 1990 c 453 s 21

**209.10** MS 1957 [Repealed, 1959 c 675 art 13 s 1]

#### **209.10 STATE LEGISLATIVE OFFICE.**

Subdivision 1. **Notice in legislative contest.** In a legislative contest, the court administrator of district court, within three days of receipt of the notice of contest, shall submit one copy of it to the chief justice of the Supreme Court by certified mail. The court administrator shall also submit one copy of the answer, if any, to the chief justice by certified mail within three days of receipt.

Subd. 2. **Judge selection.** In cases where an unfair campaign practice is alleged, within five days of receipt of a notice of contest, the chief justice shall submit to the parties a list of all the district judges in the state, except those involved in a trial that would interfere with serving as a

judge in the election contest and those whose health precludes serving as judge in the election contest. Within two days after receiving the list of judges the parties shall meet together and, by alternating strikes they shall remove the names of all judges until only one remains. If no unfair campaign practice is alleged, the parties shall follow the same procedure using only the names of judges of the judicial district or districts covering the area served by the contested office. If the contestant does not proceed within the time provided for in this section, the action must be dismissed and the judge shall transmit a copy of the order for dismissal to the chief clerk of the house of representatives or the secretary of the senate, as appropriate.

Subd. 3. **Duties of court.** Within 15 days after notice of contest has been filed, the judge shall convene the proceeding at an appropriate place within the county, or, if the district includes all or portions of more than one county, a county within the legislative district, and hear testimony of the parties under the ordinary rules of evidence for civil actions. The judge shall decide the contest, issue appropriate orders, and make written findings of fact and conclusions of law. Unless the matter is appealed to the Supreme Court, the judge, by the first day of the legislative session, shall transmit the findings, conclusions, orders, and records of the proceeding to the chief clerk of the house of representatives or the secretary of the senate, as appropriate.

Subd. 4. **Appeal.** The judge's decision may be appealed to the Supreme Court no later than ten days after its entry in the case of a general election contest or five days after its entry in the case of a primary contest. The record on appeal must be made, certified, and filed in the Supreme Court within 15 days after service of notice of appeal. The appellant shall file in the district court a bond of \$500 for the payment of respondent's costs if appellant fails on appeal. The appeal from an election contest relating to the office of state senator or representative takes precedence over all other matters before the Supreme Court. A copy of the decision must be forwarded to the chief clerk of the house of representatives or the secretary of the senate, as appropriate.

Subd. 5. **Legislative hearing, procedure.** In hearing a contest, the house of representatives or senate shall proceed as follows:

(a) At the time appointed, the parties shall be called and, if they appear, their appearance shall be recorded.

(b) If the presiding officer is a party, a speaker pro tem must be elected to preside.

(c) The contestant shall submit evidence first, followed by the contestee, and the contestant shall open the argument and close the argument after the contestee has been heard.

(d) The vote upon the contest must be viva voce, any member may offer reasons for an intended vote, and a majority of the votes given decides the issue. No party to the contest may vote upon any question relating thereto.

(e) The clerk or secretary shall enter the proceedings in the journal.

Subd. 6. **Not a limitation.** This chapter does not limit the constitutional power of the house of representatives and the senate to judge the election returns and eligibility of their own members.

**History:** 1959 c 675 art 10 s 7; 1961 c 564 s 6; 1961 c 607 s 8; 1971 c 733 s 8; 1986 c 408 s 11; 1986 c 444; 1Sp1986 c 3 art 1 s 82

**209.11** MS 1957 [Repealed, 1959 c 675 art 13 s 1]

**209.11** MS 1984 [Repealed, 1986 c 408 s 13]

**209.12** MS 1957 [Repealed, 1959 c 675 art 13 s 1]

**209.12 CONGRESSIONAL OFFICE.**

When a contest relates to the office of senator or a member of the house of representatives of the United States, the only question to be decided by the court is which party to the contest received the highest number of votes legally cast at the election and is therefore entitled to receive the certificate of election. The judge trying the proceedings shall make findings of fact and conclusions of law upon that question. Evidence on any other points specified in the notice of contest, including but not limited to the question of the right of any person to nomination or office on the ground of deliberate, serious, and material violation of the provisions of the Minnesota Election Law, must be taken and preserved by the judge trying the contest, or by some person appointed by the judge for that purpose; but the judge shall make no findings or conclusion on those points.

After the time for appeal has expired, or in case of an appeal, after the final judicial determination of the contest, upon application of either party to the contest, the court administrator of the district court shall promptly certify and forward the files and records of the proceedings, with all the evidence taken, to the presiding officer of the Senate or the House of Representatives of the United States. The court administrator shall endorse on the transmittal envelope or container the name of the case and the name of the party in whose behalf the proceedings were held, and shall sign the endorsement.

**History:** *1963 c 682 s 2; 1986 c 408 s 12; 1986 c 444; 1Sp1986 c 3 art 1 s 82*

**209.13-209.22** [Repealed, 1959 c 675 art 13 s 1]