

FRIDAY, APRIL 14, 1972

Attorneys Ask Rehearing in O'Hara Case

Attorneys for Criminal District Judge Malcolm V. O'Hara have asked the other nine judges of the court to reconsider their April 10 decision denying Judge O'Hara disability retirement benefits on the grounds of mental incapacity.

Guy P. Johnson and George W. Reese, in a motion for a rehearing, said the denial deprived O'Hara of his "vested property right" in the retirement plan without due process of law and endangered the public by allowing him to return to the bench.

They argued the judges' decision following an en banc open hearing was made with no evidence to support it and that they were not allowed to argue "the effect of the overwhelming evidence nor the clear provisions of the law."

They also contended that the secrecy of the individual decisions of the judges constituted "a procedure unknown in Anglo-Saxon jurisprudence" and that the court gave no written or oral reasons for the denial which the attorneys could cite in asking for a review.

The attorneys said the testimony of three court-appointed psychiatrists who examined O'Hara supported the original application for retirement.

One "legal effect of the decision, in the light of the uncontradicted evidence," they contended, "is that mental incapacity does not disqualify a judge from sitting in judgment."

The motion also asks the judges to set aside their denial order and sign the certificate of disability or give written reasons for refusing to do so.

Motion for Rehearing Filed by Judge O'Hara

Criminal District Court Judge Malcolm V. O'Hara, turned down by his fellow judges recently on his request for disability retirement, filed a motion for a rehearing.

His attorneys suggested that one reason O'Hara was turned down could be because it is an election year.

O'Hara's attorneys had affidavits from three psychiatrists stating that the judge is no longer capable of serving on the bench because of emotional problems aggravated by drinking too much alcohol.

The nine criminal district court judges made their decision behind closed doors and that's the basis of the request for a rehearing.

O'Hara's attorneys, Guy Johnson and George Reese, said there is no precedent for

such action being taken behind closed doors.

"I know of none in the history of the world, or at least in England and the United States," said Johnson.

At issue is a disability retirement salary, which if granted, would have given O'Hara \$22,000 a year for life.

Asked by a newsman if the judges went behind closed doors and refused to grant the pension because it is an election year, Reese said: "We think a lot of things we are not allowed to say, obviously, but it is fair to say it is an election year and it's fair to say five of the judges are up for reelection."

And, Johnson said, the refusal to grant O'Hara's request means he is eligible to return to the bench.

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Judge O'Hara Is Granted New Hearing

Criminal District Judge Malcolm V. O'Hara has been granted a new hearing Friday on his request for a disability retirement.

Eight of the nine judges of the Criminal District Court voted to grant the new hearing and Senior Judge Bernard Bagert set the case for noon Friday.

The nine judges ruled April 10 that there was no evidence to support O'Hara's request for retirement on the grounds of mental incapacity.

Attorneys Guy P. Johnson and George W. Reese filed the motion Friday asking for a rehearing of the case on the grounds that the decision deprived O'Hara of his "vested property right" in the retirement plan without due process of law and endangered the public by allowing him to return to the bench.

O'Hara is seeking a \$22,000 a year pension for life as a disabled jurist.