

1945

Work of the Missouri Supreme Court, The

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Recommended Citation

Laurance M. Hyde, *Work of the Missouri Supreme Court, The*, 10 Mo. L. REV. (1945)

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Missouri Law Review

Volume X

NOVEMBER, 1945

Number 4

THE WORK OF THE MISSOURI SUPREME COURT

THE LAST THIRTY-FIVE YEARS UNDER THE
1875 CONSTITUTION

COMMENCEMENT UNDER THE CONSTITUTION OF 1945.

LAURANCE M. HYDE*

The Missouri Supreme Court has now caught up with its docket, and is keeping it on a current basis. An appeal in any kind of case is put on the first hearing docket, prepared after it is filed in the clerk's office. The court has been and will be ready to hear all cases on the day they are first set. Thereafter, any delay in submission (under the old Code) has been due to failure to prepare abstracts of the record in time. Moreover, during the past year the court has commenced each term with all previously submitted cases handed down, that is with no undecided cases remaining under submission. Of course, under the new Code, the case is not transferred to the Appellate Court until the transcript on appeal is filed and, therefore, could not go on a hearing docket until the transcript reaches the Appellate Court. (Code Section 137.) This will result in fewer continuances after the case is set for hearing. It has not been unusual, even before the new code went into effect, for cases to be argued and submitted within four months after the judgment in the circuit court. In one recent important case, filed in 1944, the supreme court's opinion *en banc* was handed down in less than five months after the case was commenced in the circuit court. This can occur more frequently under the new Code, if the parties promptly prepare their transcripts on appeal.

It is indeed fortunate that the court has thus cleared its docket at this time. The new Constitution of 1945 greatly increases the duties of the judges of the supreme court (Art. 5, Sec. 5 making procedure, Sec. 6 transferring judges, Sec. 27 retirement of Judges and Magistrates; Art. 7, Sec. 2

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impeachments, Sec. 5, election contests), expands the review of cases decided in the courts of appeals, (Art. 5, Sec. 10) and adds new sources of cases for all appellate courts. (Art. 5, Sec. 22) Moreover, if we can judge the future by the past, there will also be a great increase in ordinary appeals from the upsurge of business activity which is sure to follow the close of World War II. (There are also many cases now being held up in the Circuit Courts, under the Soldiers and Sailors Relief Act, awaiting the end of the war.) The members of the court feel that it is a matter of the highest importance for the court to keep up with its docket now that it is on a current basis. The deplorable conditions of justice denied because of long delay, which was caused by congested dockets after World War I, must not be permitted again. It will be worth much to the people of this state to prevent such injustice; and it can only be prevented by allowing the courts adequate judicial man power and by making the best possible use of all judicial personnel.

Much has recently been said about falling off of court dockets, and it is true that all courts have had fewer cases during the war period, and even during the preceding depression years. However, the work of the Missouri Supreme Court has not fallen off as much as might be supposed. Complete judicial statistics are not available for the past, as they will be in the future under the Judicial Conference Act of 1943. (Mo. Laws 1943, p. 514) Nevertheless, there is considerable information on the volume of work of the Missouri Supreme Court available for the period of 1910 to 1925, and fairly complete data for the twenty-year period, 1925-1944 inclusive.

Twenty years ago, we were reaching the peak load of the increased business which followed World War I, and the supreme court was two full years behind with its docket. That meant that an appeal was not put on a hearing docket until two years after it had been filed in the clerk's office. Under the old term system large hearing dockets were set, often resulting in more submissions than could be promptly disposed of by opinion, so that it too frequently required from six months to a year more, after submission, before some cases were decided. Even this showed improvement over conditions in 1911, when Commissioners were first authorized. "Litigants in cases (appealed from the circuit courts as well as those certified up from the various courts of appeals) were required at that time to wait three years and two months on the average after the term to which their cases were returnable in the supreme court, before they could be heard." (Re-

port of Special Committee appointed to Investigate the Status of the Supreme Court Docket. Fiftieth General Assembly Journals. Vol. III Appendix, 1919.) This report shows that the Commissioners wrote 1100 opinions during the first eight years of the life of the Commission, bringing the court "practically one year nearer up with its docket." Thereafter, the increase of business following the close of World War I prevented the court, even with the aid of two more Commissioners, from making much progress in catching up with its docket until the Nineteen-thirties.

The report of this Special Committee of the Fiftieth General Assembly contains the following table, showing the total number of cases of all kinds filed annually in the Supreme Court:

	Cases
From April term, 1910, to April term, 1911	517
From April term, 1911, to April term, 1912	568
From April term, 1912, to April term, 1913	560
From April term, 1913, to April term, 1914	627
From April term, 1914, to April term, 1915	625
From April term, 1915, to April term, 1916	649
From April term, 1916, to April term, 1917	705
From April term, 1917, to April term, 1918	648

The Official Manual (Blue Book) 1927-1928 contains the following information about appeals and writs filed in the Supreme Court, on a calendar year basis, prior to 1925:

	Total Appeals	Total Writs	Total Writs and Appeals Filed
1900	434	36	470
1910	438	74	512
1915	530	119	649
1920	522	159	681
1922	616	183	799
1923	885	207	1092
1924	653	233	886

Since 1925 more complete statistics have been kept and published in the Blue Book, on a calendar year basis. Criminal Appeals and Civil Appeals have been separated. Furthermore, records have been kept on the disposition of cases, showing classes of cases (civil and criminal) disposed of by written opinion and also dismissals and disposition of appeals and refusals of applications for writs without opinion. These twenty year tables (1925 to 1944 inclusive) are as follows:

TABLE I
 TWENTY YEAR PERIOD—1925 to 1944 INCLUSIVE
 From Official Manual of State of Missouri
 (Blue Book)

Year	Appeals in Criminal Cases	Appeals in Civil Cases	Total Appeals	Applications For Writs	Total Appeals and Writs Filed	Totals 20 Years 1925 to 1944
1925	190	444	634	244	878	
1926	275	499	774	238	1012	Total Appeals
1927	287	564	851	225	1076	Criminal
1928	187	494	681	222	903	Civil
1929	124	481	605	190	795	Applications for writs
1930	150	498	648	205	853	
1931	118	461	579	186	765	Total appeals and writs filed
1932	123	703	826	231	1057	Undisposed of cases—Dec. 31, 1924
1933	120	492	612	190	802	921
1934	95	387	482	211	693	
1935	98	473	571	216	787	Total
1936	86	342	438	185	623	15627
1937	91	340	431	195	626	
1938	68	429	497	200	697	
1939	89	320	409	181	590	The total number of cases disposed of
1940	93	310	403	178	581	in this 20 year period as shown by Table
1941	34	303	337	168	505	II is larger than this (15805), because
1942	51	283	334	131	465	two complete opinions are often written
1943	73	303	376	176	552	in cases transferred to Banc after a
1944	54	225	279	167	446	Division opinion has been adopted.
20 year totals	2416	8351	10767	3939	14706	
Criminal appeals filed					Annual Av.	
Civil appeals filed					120	
Civil and criminal appeals filed					417	
Applications for writs filed					538	
Total cases of all kinds filed					197	
					735	
					Twenty-year total	
					2416	
					8351	
					10767	
					3939	
					14706	

Several interesting facts appear from these tables.

First: Total filings of cases during the eight year period (1910-1918), when Commissioners were first authorized and used was 4899, an annual average of 612. However, this total is 500 less than the total filings of 5399 during the eight years (1933-1940) preceding 1941 (an annual average of 675); but this later period was, nevertheless, the time during which the supreme court finally caught up with its docket and attained a current basis.

Second: Filings increased greatly after the last war, but the full increase did not really come until about three years after the end of the war; and this increased period covered about twelve years. In this period from 1922 (when filings reached 799) to 1933 (the last year filings have been above 800), the total was 10918, an annual average of 910, as compared with 14706 total and 735 annual average for the last 20 years, 1925-1944 inclusive. During four of those years (1923, 1926, 1927 and 1933) the total filings exceeded 1000 cases.

Third: The annual average of the filings of the first three years of World War II (1942-1944 inclusive) was 487. Although this is the lowest for any three year period during the last twenty, it nevertheless exceeds the number filed in 1900 (470), when the court was not keeping up with its docket, and was only 27 less than the number filed in 1910 (512), the year before Commissioners were first authorized, during a period when the court got more than three years behind with its docket.

Fourth: The number of opinions required to be written to dispose of civil cases (which usually involve more complicated facts, require ruling on more points, and take the most time to prepare) has not decreased as much (either from the peak years or from the annual average) as is true of criminal cases. Moreover, in recent years opinions are being written in a greater proportion of the appealed cases. (Fewer appeals are dismissed than formerly.) This means that a greater proportion of appeals are perfected (argued and submitted for decision by opinion) when the court's docket is on a current basis.

It, therefore, seems reasonable to expect (now that this war has ended) a considerable increase of business from the usual source of appeals and applications for writs. Undoubtedly, this will be accelerated by the new Code with its less expensive method of appeal. How much additional increased business will come from the additional sources created by the

broadened review provisions of the new Constitution can hardly be estimated. However, there can be no doubt that it will be considerable and also that renewed peacetime activity of all business will likewise increase the normal business to be expected from these new sources. Nor must it be overlooked that we have an entire new Constitution to construe, and that there also soon will be several thousand new statutes (to put into effect new Constitutional provisions) to construe. All of these things, as well as past experience, indicate an immediate and continuous increase in the work of the Supreme Court, which is likely to go on for many years.

Even this is not the complete picture of the work of the court. Of course, many days of the time of Judges and Commissioners are taken in hearing oral arguments of cases submitted in the Divisions and in the Court *en banc*, and this increases in proportion to the number of appeals. Moreover, motions of various kinds (for continuances, dismissal or affirmance, revival, etc.) require individual consideration and conference discussion. These motions in the aggregate require considerable time of the Chief Justice and presiding Judges of Divisions and are often assigned to other Judges or Commissioners for report. The number of such motions does not appear in the statistical tables included in this article. In addition to these preliminary motions, there are motions for rehearing or to transfer to the court *en Banc* (which likewise are not shown in the statistical tables) filed in most of the cases decided by opinion. A full report in conference by a Judge or Commissioner is always required on every motion for rehearing or for transfer and a very thorough study is made of them. The new code has added some new motions which also require study, report and conference discussion. (For example: Special appeals, Sec. 130; suspension of rules, Sec. 139.) Furthermore, in the last fifteen years, and prior to the adoption of the new Constitution, the Judges have been called upon to do a constantly increasing amount of administrative work in connection with the regulation of the practice of law. This includes supervision of admissions to the Bar, legal ethics and discipline, prevention of unlawful practice, and the integration and government of the Bar. To these are now added by the new Constitution (and to some extent by the new Code and the Judicial Conference Act prior thereto) complete responsibility for both civil and criminal procedure and for the coordination and efficient operation of the entire judicial system of the state, as well as such former functions of the Legislature as impeachments and election contests involving the highest executive officers.

The time required of the Judges in formulating procedure alone during the last two years has almost equaled that required in writing opinions, and this work could not have been accomplished without the assistance of the Commissioners in writing so many of the Divisional opinions.

No other state has imposed so many duties upon their highest court as our new Constitution requires of the Supreme Court of Missouri. Apparently, the people of this state desire our supreme court to assume increased duties and greater responsibilities in continuously improving the administration of justice in this state. There can be no higher duty in a democracy, and the members of the court keenly feel their obligation to perform it well. To do so also requires prompt handling of the regular work of the court. Surely when the people indicate such confidence in the court, by giving it so many new functions, they would wish it to have adequate facilities and sufficient assistance to perform all of the duties they have required of it. The court must have the assistance of advisory committees in its work of formulating and keeping up to date both civil and criminal procedure. These committees will need some clerical and stenographic help which should be paid for by the state. For the administrative work of supervising the entire judicial system, there should be an administrative office with a full time director and staff, such as has been found necessary in federal courts and in several states smaller than Missouri. Certainly, the minimum present requirement must be the continuance of Commissioners for an indefinite period.