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Appellate Reorganization In Louisiana

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The amendment of the judiciary article of the Louisiana Constitution adopted at the last congressional election[1] reduced the appellate jurisdiction of the Supreme Court, correspondingly increased the appellate jurisdiction of the courts of appeal, and reorganized the latter courts to enable them to cope with their correspondingly increased workload.

The purpose of the change was to give the Supreme Court an opportunity, long desired by bench and bar, to guide the development of the jurisprudence without the necessity of haste imposed by its demonstrably excessive caseload. The movement for the change was led by a committee of the Judicial Council, which worked in close liaison with committees of the State Bar Association and of local bar associations throughout the state for a year and a half seeking to arrive together at a solution of the problem which would meet with general approval.

In the early stages of the movement, the Judicial Council described the Supreme Court's plight as follows:

> "During the 1955-56 term, the Court wrote 349 opinions, disposing of 299 cases. It considered 157 applications for rehearing, and 257 applications for writs. Viewed in the light of the day-by-day operation of the Court, these facts acquire added significance.
>
> "The annual term of the Supreme Court is a period of approximately 40 weeks. This period is divided functionally

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1. LA. CONST. art. VII, §§ 10, 19, 20-24, 26, 28-30, 36, 81, and 91, as amended on November 4, 1958, pursuant to La. Acts 1958, No. 561.

into roughly 8 cycles of 5 weeks each. The first and second of these 5 weeks are devoted to the hearing of argument; the third and fourth, to the writing of opinions; and the fifth, to consideration of the opinions written by other members of the Court. A final conference is held on Friday of the fifth week and decisions are rendered on the following Monday, when the next 5-week cycle commences.

"In terms of averages, each member of the Court wrote 45 opinions during the term — not including concurring and dissenting opinions. In each of the 8 cycles of 5 weeks, therefore, each member wrote approximately 6 opinions — or 3 during each of the two weeks devoted primarily to writing opinions. During the fifth week, each member considered 6 opinions by each of his colleagues, or a total of 36 — 9 per day, since Friday is conference day. Moreover, each member of the Court wrote an average of 7 concurring or dissenting opinions during the term, or roughly 1 during each 5-week cycle.

"In addition, each member considered an average of 22 applications for rehearing during their term — or approximately 3 per 5-week cycle. Each considered an average of 37 applications for writs — or 5 per 5-week cycle.

"Thus during each 5-week cycle, each member of the Court wrote 7 opinions, examined critically 36 others, and considered 3 applications for rehearing and 5 applications for writs — a total of 51 matters handled by each member during every 5-week period. Since the first two weeks of these periods are largely taken up by the hearing of argument, (4 cases are set per day), these 51 matters were handled largely during the last three weeks of the period.

"This analysis, based upon representative figures, does not account for the participation of more than one member of the Court in consideration of applications for rehearing and writs, nor for any duties not of a purely judicial nature."

Even allowing for the impossibility of treating all "matters handled" by the Supreme Court as equal units, the case for reform was clear and complete.

Reform primarily took the shape of reducing the Supreme Court's appellate jurisdiction. An analysis of the nature of cases

appealed to the court during a five-year period showed the following frequencies of appeals in the various categories of the court's jurisdiction:

Amount-in-dispute cases:	54%
Criminal cases:	18%
Dismissals and transfers:	12%
Divorce, separation, juvenile, and other personal status cases:	10%
Cases on validity of statutes and ordinances:	4%
Civil Service Commission cases:	2%
Public Service Commission cases (less than 1%):	—
Homestead Exemption cases (less than 1%):	—
	100%

The amendment as proposed and adopted reduces the volume of appeals in the court by approximately eighty percent by confining the Supreme Court's appellate jurisdiction to the following matters:

"(1) Cases in which the constitutionality or legality of any tax, local improvement assessment, toll or impost levied by the state or by any parish, municipality, board or subdivision of the state is contested;

"(2) Cases in which an ordinance of a parish, municipal corporation, board or subdivision of the state, or a law of this state has been declared unconstitutional;

"(3) Cases in which orders of the Public Service Commission are in contest, as is provided in Article VI, Section 5 of this Constitution;

"(4) Appealable cases involving election contests, but only if the election district from which the suit or contest arises does not lie wholly within a court of appeal circuit; and

"(5) Criminal cases in which the penalty of death or imprisonment at hard labor may be imposed, or in which a fine exceeding three hundred dollars or imprisonment exceeding six months has been actually imposed."[2]

The supervisory or "writ" jurisdiction of the Supreme Court is not changed by the amendment, and it is of course anticipated that many cases which would have been taken to the court directly by appeal prior to the amendment will still come before the court on application for supervisory writs, making the net reduction of the court's overall caseload much less than the eighty percent by which its appellate caseload, properly speaking, is reduced.

In order to have a basis to speculate on the probable volume of judicial business to be expected in the courts of appeal after reduction of the Supreme Court's appellate jurisdiction, the Judicial Council compiled the following statistics. The table shows the caseload of each court of appeal during a representative period, to which is added eighty percent of the appeals to the Supreme Court originating in the territorial jurisdiction of each:

Territorial Jurisdiction of Court of Appeal	Appeals to Supreme Court 1956-57	80% Appeals to Supreme Court 1956-57	Appeals to Court of Appeal 1957	"Probable" Caseload Courts of Appeal
FIRST CIRCUIT	68	54.4	247	301.4
SECOND CIRCUIT	57	45.6	141	186.6
ORLEANS	88	70.4	208	278.4
TOTAL	213	170.4	596	766.4

These figures left no doubt that a major overhaul of the intermediate level of appellate courts would be needed to enable these courts to dispose of their augmented caseloads with reasonable care and dispatch.

Many proposals were considered to increase their working capacity. The one adopted as amended in the Legislature makes the following major changes in the structure of the intermediate appellate courts:

(1) A new Court of Appeal (Third Circuit) is created from

2. *Id.* art. VII, § 10. "If a case is appealed properly to the Supreme Court on any issue, the Supreme Court has appellate jurisdiction over all other issues involved in the case." *Ibid.*

the parishes lying in the western part of the First Circuit and the southern part of the Second Circuit, as constituted prior to the amendment, making a total of four Courts of Appeal.[3]

(2) Ten additional judgeships are created for the Courts of Appeal, making a total of nineteen Court of Appeal judges, which are so allocated that the reconstituted First Circuit has 5 judges, the reconstituted Second has 4, the new Third Circuit has 5, and the Fourth Circuit (formerly the "Orleans") Court of Appeal has 5.[4]

The amendment provides that a court of appeal having more than three judges shall sit in rotating panels composed of three judges, with the proviso that, in exceptional cases or when deemed necessary or expedient by the courts, they may sit *en banc*.[5] The special elections for the ten new judgeships will be held in April of 1959, and the new judges will take office on July 1, 1960. A detailed description of the arrangement of parishes and districts within circuits and the allocation of judgeships to those districts is outside the scope of this brief analysis. Suffice it to say that:

(1) In the First Circuit, its new first district is its former second district, composed of the "Sugar Bowl" parishes; and its former third district has been divided, with East Baton Rouge Parish composing its new second district, and the Felicianas and Florida Parishes composing its new third district;

(2) The Second Circuit, in North Louisiana, now has the same districts which it had before, but the southern parishes of each district have been transferred to the new Third Circuit;

(3) The Third Circuit has been created out of the former western district of the First Circuit, now divided into two districts, and a third district composed of the southern tier of parishes of the old Second Circuit; and

(4) The Fourth Circuit (formerly Orleans) remains unchanged territorially.[6]

3. *Id.* art. VII, § 20.
4. *Id.* art. VII, § 21(A-D).
5. *Id.* art. VII, § 23.
6. *Id.* art. VII, § 20.

Some subsidiary changes in the operation of courts of appeal should be noted. The anachronistic requirement that the First and Second Circuit Courts of Appeal travel to various points within their respective circuits for the hearing of cases has been abolished, and each court is assigned a fixed and permanent domicile.[7] The equally anachronistic and time-consuming provision for appeals *de novo* in the Orleans Court of Appeal has been repealed, and the appeals now so heard have been directed to the Civil District Court for the Parish of Orleans.[8] Each court of appeal is given supervisory jurisdiction, subject to that of the Supreme Court, over all inferior courts in all cases in which an appeal would lie to the court of appeal.[9]

Important for the future is the provision in the amendment for the unlimited increase of the number of judges on the courts of appeal without the necessity of a constitutional amendment and without the necessity of a redivision of the state, either district- or circuit-wise. This has been accomplished by authorizing the Legislature to create such new judgeships by two-thirds vote, upon the recommendation of the Judicial Council. The judgeships thus created are to be filled by an election in the circuit as a whole.[10] A flexibility is thereby imparted to the new appellate system which should render unnecessary for many years the type of major reorganization accomplished by the amendment.

Until the new judges of the courts of appeal take office on July 1, 1960, appeals will continue to be taken under the Constitution as written prior to this amendment, and the amendment provides that these appeals shall be disposed of by the court in which they are properly lodged.[11] For this reason, the reduction of the Supreme Court's appellate jurisdiction will not be immediately felt. Even after July 1, 1960, the court will have on hand a backlog of at least one year's work, which will be in the way of an immediate revision of the court's internal procedure in keeping with its new role under the amendment as a court of principally supervisory jurisdiction. The Supreme Court's improved opportunity for proper guidance of the development of the jurisprudence will thus become manifest certainly but only gradually.

7. *Id.* art. VII, §§ 21(A-D), 24. The domiciles of these courts of appeal will be: First Circuit, Baton Rouge; Second Circuit, Shreveport; Third Circuit, Lake Charles; and Fourth Circuit, New Orleans. *Id.* art. VII, § 21(A-D).

8. *Id.* art. VII, §§ 81, 91.

9. *Id.* art. VII, § 29.

10. *Id.* art. VII, § 21(F).

11. *Id.* art. VII, § 30.

Viewed in the perspective of the long-range hopes of bench and bar for further improvement of a judicial system which is basically sound, the adoption of the appellate revision amendment signifies a number of things. It demonstrates the potentialities of the Judicial Council as the coordinating force spearheading a broad program of judicial reform. It demonstrates the efficacy of enlightened and disinterested bar association leadership at both the state and local levels. It signifies the tremendous influence of the office of Chief Justice of the Supreme Court, when exerted by an incumbent who is keenly interested in the improvement of the administration of justice. Lastly, it demonstrates the fact that an appeal for improvements in the administration of justice can be made successfully, both to the legal profession and to an enlightened public opinion, when convincing proof of the need is supported by accurate factual data, and the solution of the problem has been developed by thorough discussion and the objective cooperation of all segments of the legal profession in Louisiana.