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## Judicial Councils

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# WEST VIRGINIA LAW QUARTERLY

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## JUDICIAL COUNCILS

THURMAN ARNOLD\*

A discussion of the Judicial Council movement may well start with a quotation from Judge Cardozo:

“The courts are not helped as they could and ought to be in the adaptation of law to justice. The reason they are not helped is because there is no one whose business it is to give warning that help is needed. \* \* \* Legislature and courts move on in proud and silent isolation. Some agency must be found to mediate between them.

“This task for mediation is that of a ministry of justice. The duty must be cast on some man or group of men to watch the law in action, observe the manner of its functioning, and report the changes needed when function is deranged. \* \* \*<sup>1</sup>

“A single committee should be organized as a ministry of justice. Certain at least it is that we must come to some official agency unless the agencies that are voluntary give proof of their capacity and will to watch and warn and purge—unless the bar awakes to its opportunity and power.

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<sup>1</sup> 35 HARV. L. REV. 113.

"How the committee should be constituted, is, of course, not of the essence of the project. My own notion is that ministers should be not less than five in number. There should be representatives, not less than two, perhaps even as many as three, of the faculties of law or political science in institutes of learning. Hardly elsewhere shall we find the scholarship on which the ministry must be able to draw if its work is to stand the test. There should be, if possible, a representative of the bench; and there should be a representative or representatives of the bar."<sup>2</sup>

The above quotation was written by Judge Cardozo in 1921. The idea was not new even then. Dean Pound had expressed it as early as 1917.<sup>3</sup> Since Judge Cardozo's article there has been a movement of increasing force to put into actual operation this idea of a ministry of justice in the form of judicial councils with widely varying powers. It is the purpose of this article to discuss the organization and work of these judicial councils and to collect for the benefit of the West Virginia bar the statutes in the fourteen states which have adopted the idea in some form.

I. *Voluntary effort on the part of state bar associations is not an efficient substitute for a judicial council.* There is a theory of American jurisprudence which is recurrently dressed up in appropriate and beautiful language and led out for the examination of the bar at their annual meetings and banquets. During the interim between these meetings and banquets it is stowed away in some mysterious place unknown to the writer and never referred to or used. That theory is to the effect that the bench and bar are working together for a common end,—the administration of justice, efficiently, speedily and economically; that the members of the bar are officers of the court to assist them in this common project and that the various branches of the court are co-operating with each other to this same end.

The reason that this theory only marches on dress parade and only appears on festive occasions when oratory is on

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<sup>2</sup> *Idem*, p. 124.

<sup>3</sup> "Juristic Problems of National Progress", 21 *AM. JOUR. OF SOCIOLOGY* 721.

tap, is not due to unwillingness on the part of either the bench or the bar, to follow its implications. Nor is it lack of belief in the theory that accounts for its infrequent appearances but rather lack of organization. Is there a multiplicity of courts with overlapping jurisdictions? If so, what can the bar as officers of those courts do about it? Are the courts of one county over-crowded, those of another comparatively idle? If so what can either the bar or the courts do to change this situation? Does a cumbersome rule of procedure delay litigation? Are the burdens of litigation unequally distributed over the state? If so there is no machinery for correcting the situation. Finally, if there happens to be a lack of statistical information on just how court organization or rules of procedure actually work and whether the organization of bench and bar really is functioning evenly and efficiently there is no way to get this information. Discussion of administrative or procedural changes and the effect they will have are frequent in bar association meetings. They are not, however, based on any state-wide survey of facts but only on a priori reasoning or on the limited experience of those taking a part in the discussion. The slowness of bar associations to act is due not to lack of interest but rather to a lack of definite information on which to act and a lack of legally recognized organization through which to act.

If one desired to select quotations from prominent lawyers giving their opinions on the results obtained by bar associations in promoting the efficient administration of justice, one could draw up an indictment of our present system which would be amazing. We quote only two because they are typical of the rest and come from recognized lawyers of conservative standing.

Elihu Root: "Every lawyer knows that the continual reversal of judgments, the sending of parties to a litigation to and fro between the trial courts and the appellate courts, has become a disgrace to the administration of justice in the United States. Everybody knows that the vast network of highly technical rules of evidence and procedure which prevails in this country serves to tangle justice in the name of form.

It is a disgrace to our profession. It is a disgrace to our law and a discredit to our institutions."<sup>4</sup>

William H. Taft: "One great crying need in the United States is cheapening the cost of litigation by simplifying procedure and expediting final judgment. Under present conditions the poor man is at a woeful disadvantage in a legal contest with the corporation or a rich opponent. The necessity for reform exists both in the United States courts and in all the state courts."<sup>5</sup>

Do these indictments apply to West Virginia? With the available data it is doubtful if this question can be answered. Certainly justice seems to operate more speedily in this state than in many others. The interminable delays in civil or criminal trials—the long waits for appellate decisions, the weeks consumed in selecting juries, are conspicuous by their absence. Yet on the other hand no one knows very accurately from an actual study of the cases in the state courts just how the rules of procedure are working, how much the administration of justice is costing, or whether it is efficiently or inefficiently managed. We can guess, we can argue, but we cannot bring facts and figures to bear on the question. Assuming that the problems of administration of justice in West Virginia are less acute than in other states, there is no particular object in waiting until our system does become completely unsatisfactory before putting in more efficient machinery. And further, regardless of whether the administration of justice in West Virginia is better or worse than in other states it is nevertheless certain that legal machinery is lacking at least in the following particulars:

(1) There is no machinery with which to study the cost of judicial administration with a view to determining whether there is waste of either money or time.

(2) There is no organization to determine the actual operation of rules of procedure by a statistical study of the cases actually tried.

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<sup>4</sup> 1 AM. JUD. SOCIETY 177; 21 AM. JOUR. OF SOCIOLOGY 721, 6 ORE. L. REV. 36.

<sup>5</sup> 2 IDEM. 27, 6 ORE. L. REV. 36.

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(3) There is no machinery to collect complete statistics on the judicial business of the state so that they can be studied.

(4) There is no body which can study or report on the organization and distribution of our courts in the state, or the distribution of litigation among them.

(5) There is no way of determining the efficiency of the system of administrative officers of our courts such as clerks and sheriffs. Is there duplication, or are these departments under-manned? No one knows accurately.

(6) There is no organization to study the improvements in judicial administration carried out in other states and to determine whether a need for them exists here.

(7) Rules of procedure are enacted by a legislature composed in the main of persons not qualified by experience or training to know what they are doing, instead of by a body of experts.

(8) The courts and bar have no official representation before the Legislature which governs their entire organization and procedure. The two bodies intimately connected so far as the administration of law is concerned are completely isolated and working at cross-purposes because of the lack of official representation. Voluntary efforts by bar associations have been in the past regarded with suspicion. Where commissions have been formed they have generally achieved noteworthy results but they have gone out of existence and fundamental isolation of the two bodies has continued.<sup>6</sup>

It has been said that if a business corporation were conducted with as little study of efficient methods as our judicial system, it would become bankrupt in a year. In view of this often repeated remark it is interesting to note that one of the principal things stressed in President Hoover's first official utterance is the reorganization of the

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<sup>6</sup> As an example of this we point out that the recent code commission in West Virginia after several years of careful work was dissolved. Now a new committee has to be formed to continue that work, and must necessarily lose considerable time in getting oriented. In the meantime numerous voluntary committees of the bar association have added their efforts. It is submitted that there is a tremendous waste in this method of handling the problem. The writer is informed that the code commission itself was convinced of the necessity of a permanent body.

federal courts along more efficient lines. This is the reaction of an engineer to our judicial system. Yet it is submitted that a commission which studies the problem and goes out of existence has no continuing effectiveness. From the very nature of things, judicial administration like any other reform of administration, needs continuous study and supervision.

II. *History of the Judicial Council Movement.*<sup>7</sup> The movement for more scientific judicial administration may be said to have received a definite start or impetus from Dean Pound's paper before the American Bar Association in 1906.<sup>8</sup> In that paper he called attention to the comparative superiority of the English system of administration. That system, however, could not be taken as a model in this country. In England the Lord Chancellor is the administrative head of all the courts, and also is responsible for the representation of the courts in the Cabinet and in Parliament. Not only judicial administration but pertinent legislation come within his function.<sup>9</sup> Such an official is impossible under our various constitutions. However, another instrumentality in the organization of justice in England appeared to be more adapted to our system, and

<sup>7</sup> The following references from law journals which are by no means exhaustive, but only representative, illustrate how widespread the interest in the judicial council movement has been in the last few years. See notes on "Judicial Organization and Procedure", 22 AM. POL. SCI. REV. 936; Edson R. Sunderland, "Machinery of Procedural Reform", 22 MICH. L. REV. 203, "The Exercise of the Rule Making Power", 12 AM. BAR ASSN. JOUR. 548; Paul, "Growth of Judicial Council Movement", 10 MINN. L. REV. 86, "Judicial Council and Reform of Judicial Procedure", 5 ORE. L. REV. 1; "Report of Sub-Committee on Judicial Council", 5 ORE. L. REV. 48; "Meeting of Judicial Council", 7 ORE. L. REV. 146; "The American Judicial Council", 4 ORE. L. REV. 292; "The Judicial Council Meeting", 4 ORE. L. REV. 257; "Judicial Council and Rule Making Power," 4 ORE. L. REV.; "One Year of the Judicial Council in North Dakota", 2 DAK. L. REV. 295; "Virginia Judicial Council Holds First Meeting", 15 AM. BAR ASSN. JOUR. 119; "Rhode Island Judicial Council Makes Recommendations", 15 AM. BAR ASSN. JOUR. 120; "Does Indiana Need a Judicial Council", 4 IND. L. J. 254; "Suggestions for Improving Court Procedure in Texas", 6 TEX. L. REV. 58; See also citations from JOUR. OF AM. JUD. SOCIETY, n. 15.

<sup>8</sup> "The Causes of Popular Dissatisfaction with the Administration of Justice", 29 AM. BAR ASSN. REFS. 395.

<sup>9</sup> Sunderland, "The English Struggle for Procedural Reform", 39 HARV. L. REV. 723.

that was the Rules Committee.<sup>10</sup> In 1875 the rule-making power in England had been placed in the hands of a general council of the bench.<sup>11</sup> Because a committee composed entirely of judges was not representative of the bar and not particularly active in making rules, three practitioners of law were made members of the Committee in 1894.<sup>12</sup> In 1909 the present rules committee was adopted in England, including in its membership two barristers and two solicitors.<sup>13</sup>

The addition of the members of the bar to this committee relieved it of one of its weaknesses. As Mr. Sunderland points out, under our system it is necessary that courts be removed from criticism.<sup>14</sup> Decisions of courts are not the legitimate subject of popular attack and this immunity has been jealously guarded under the constructive contempt power of courts. However the method by which courts handle their business, the organization and the rules by which they proceed are political questions of great popular interest. It is not only a privilege but it is a duty of citizens to attack those publicly responsible for an inefficient administration of justice. For this very reason the courts should not be called upon to make the rules of practice and information of the organization of judicial systems because of the public criticism which the exercise of these functions does and should elicit. In England the rule-making committee is a body independent of the courts, subject to free discussion and criticism. With the model of this rules committee before the American bar something very similar has been evolved in an increasing number of states, which is called the Judicial Council.

The American Judicature Society, an actively militant body, composed of many of the leaders of the American bar has, for many years, repeatedly urged the merits of this

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<sup>10</sup> For brief history of Rules Committee in England see Sunderland, "The Exercise of the Rule Making Power", 12 AM. BAR ASSN. JOUR. 548, at 551.

<sup>11</sup> JUD. ACT 1875, §17; JUD. ACT 1881, §19, increasing number of judges from six to eight.

<sup>12</sup> JUD. ACT 1894, §4.

<sup>13</sup> RULE COMMITTEE ACT 1909.

<sup>14</sup> *Supra*, n. 9.



type of organization.<sup>15</sup> Largely through its efforts and influence the movement for the organization of judicial councils has spread until at present there are eleven states which have adopted this type of organization.<sup>16</sup> It is the purpose of this article to briefly summarize the acts creating a judicial council in these states and to comment on the operation of these acts. This has been done by others from time to time but the material is scattered and not available to most of the members of the West Virginia Bar.

In Wisconsin, in 1913,<sup>17</sup> a body of circuit judges was established with power to make rules not inconsistent with the statutes and promote the administration of judicial business. This body has met annually and has instituted various reforms in practice and procedure, and also done something toward equalizing the work of the courts. This council however, has not attracted very much attention.

In 1921 a judicial council act was drafted by the Massachusetts Judicature Commission. It was approved by the Massachusetts Bar Association but was not enacted until 1924. In 1922 Congress passed an act for a conference of senior circuit court judges.<sup>18</sup> This had been proposed as early as 1914 by ex-President Taft. The essentials of this proposal were the possibility of transfer of judges and administrative control to make these transfers effective. Justice Taft was largely influential in obtaining the passage of

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<sup>15</sup> "Ohio Adopts Judicial Council", 9 AM. JUD. SOC. 5; "Judicial Superintendence for Oregon", 9 AM. JUD. SOC. 85; "Missouri Judicial System Unified in Revised Constitution", 7 AM. JUD. SOC. 116; "What a Judicial Council Can Do", 7 AM. JUD. SOC. 159; "Massachusetts Judicial Council", 8 AM. JUD. SOC. 245; "North Carolina Judicial Council", 8 AM. JUD. SOC. 84; "Pennsylvania Bar Approves Judicial Council", 9 AM. JUD. SOC. 47; "Washington Creates Judicial Council", 9 AM. JUD. SOC. 102, 103; "Judicial Council Movement", 9 AM. JUD. SOC. 189; "California Judicial Council", 9 AM. JUD. SOC. 103, 10 AM. JUD. SOC. 171; 11 AM. JUD. SOC. 9, 155, 12 AM. JUD. SOC. 18; "Rhode Island Establishes Judicial Council", 11 AM. JUD. SOC. 117; "Massachusetts Judicial Council", 11 AM. JUD. SOC. 120; "North Dakota Judicial Council", 10 AM. JUD. SOC. 171; "Argument for Judicial Council", 12 AM. JUD. SOC. 45; "Kansas Council Organizes", 11 AM. JUD. SOC. 52; "Kansas and Connecticut Judicial Councils", 11 AM. JUD. SOC. 8; "Virginia Acquires Judicial Council", 12 AM. JUD. SOC. 82; "Experience with Judicial Councils", 12 AM. JUD. SOC. 83.

<sup>16</sup> 22 AM. POL. SCI. REV. 937.

<sup>17</sup> See appendix for copy of act.

<sup>18</sup> 42 STAT. L. 837; For history of Federal Act see FRANKFURTER AND LANDIS, BUSINESS OF THE SUPREME COURT, 235 *et seq.* See appendix for copy of Act.

<sup>19</sup> See appendix for copy of act.

the Federal Act of 1922 which, according to Mr. Frankfurter, marks a revolutionary step toward the unification and efficiency of the federal courts. In the federal judicial council neither the judges of the *nisi prius* courts nor the bar are represented.

In 1923 Oregon established a judicial council of five, consisting of two appellate judges and three *nisi prius* judges.<sup>19</sup> In 1924 Massachusetts created a council of nine, including four attorneys.<sup>20</sup> In 1925 Washington established a council consisting of five judges, two legislators and three lawyers.<sup>21</sup> In 1925 North Carolina passed an act similar to the Ohio law.<sup>22</sup>

The Missouri Constitutional Convention in 1923 adopted a very advanced judicature act as a result of the efforts of the American Judicature Society in which a complete unification of courts was attempted.<sup>23</sup> The judicial council was made the heart of the judicial system. This article, however, was defeated by a narrow margin, due to the conservative rural vote.

In 1925 a resolution to amend the Constitution providing for a judicial council was passed in California and was adopted in 1926.<sup>24</sup> The proponents of the measure had hoped to give the judicial council rule-making power but that section was stricken from the resolution. In 1927 North Dakota,<sup>25</sup> Kansas,<sup>26</sup> Connecticut and Rhode Island,<sup>27</sup> passed acts. The last judicial council was authorized in 1928 in Virginia,<sup>28</sup> which follows the organization model of the Federal system. During these years the American Judicature Society was extremely active in giving publicity to acts providing for judicial councils which had been passed and urging other states to adopt similar acts.<sup>29</sup> The movement began to gather momentum.

In addition to the actual legislation passed the move-

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<sup>20</sup> *Idem.*

<sup>21</sup> *Idem.*

<sup>22</sup> *Idem.*

<sup>23</sup> 7 AM. JUD. SOC. 119, and 183.

<sup>24</sup> N. 19, *supra*.

<sup>25</sup> *Idem.*

<sup>26</sup> *Idem.*

<sup>27</sup> *Idem.*

<sup>28</sup> *Idem.*

<sup>29</sup> See n. 15, *supra*.

ment is attracting much interest and discussion among the state bar associations. For example, at a meeting of the Association of Judges of the Civil Appeals in Dallas, Texas, September, 1927, Judge McClendon, Chief Justice of the Austin Court of Civil Appeals, presented the draft of an act for a judicial council in Texas, composed of judges, lawyers, legislators or practicing attorneys, and one member of the faculty of the state university law school.<sup>30</sup>

The Chicago Bar Association, without any statutory authority has appropriated ten thousand dollars for the necessary expense of a judicial advisory council to draft the legislative program for the revision of the criminal and civil procedure.<sup>31</sup> With that example before it the Illinois Bar Association already has plans for the establishment of a judicial council in Illinois without resort to the Legislature, under the power of the Supreme Court given by the Constitution to report to the governor defects and omissions in laws, and appropriate sums and bills to cure those defects.<sup>32</sup>

IV. *Powers of Judicial Council.* Most of the judicial councils in the United States are for the purpose of a continuous study of the administration of justice, on which study recommendations are to be made. All of them submit reports. A majority of them have the power of calling witnesses and holding public hearings. California has the power of assigning judges. None of them as yet have a complete rule-making power, although in Washington that power exists in the Supreme Court, and as a matter of fact it is understood that the judicial council is doing the actual work of drawing up the rules.

The effectiveness of the councils however does not depend particularly upon the powers with which they are endowed but rather upon the membership and the qualities of the chairman.

V. *Different forms of organization of judicial councils.* It will be noted from the table of the various acts shown in the appendix to this article, that there are various types of

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<sup>30</sup> 6 TEX. L. REV. 59.

<sup>31</sup> 25 AM. BAR ASSN. JOUR. 121 (March, 1929).

<sup>32</sup> *Supra*, n. 31.

organization. First, judicial councils composed entirely of judges. Second, those composed partly of lawyers and partly of judges. Of these two types it seems that the most successful is the one in which the bar is represented. In fact in some states the judicial council has become inactive because of the fact that there is no representative of the bar. England discovered that her rule committee would not work when it was composed solely of judges and by two successive acts increased the number of the bar in that committee. The reason for this is obvious.

A judicial council is concerned with a critical analysis of the administration of justice. No court sitting as a court can undertake to criticize the system under which it operates. If judges perform this function as a judicial council there is danger that the public will confuse their two functions. Courts should be immune from the criticism which follows the expressions of opinion and recommendations on controversial questions. If there are sufficient members of the bar sitting on the council the council as such will be easily distinguishable from the courts and the courts in their judicial capacity will not be held responsible for what the council does.

The councils also fall into two further types: large councils such as those of North Carolina and Dakota, and small councils. While the North Carolina and North Dakota councils have not been in operation long enough to determine their efficiency, it is submitted that no body containing fifty members can effectively work except through an executive committee. Of course this prediction may be wrong, but it is interesting to note that the two most effective councils in the country are those of Massachusetts and California, which are composed of smaller bodies.

In the appendix to this article we have printed a table showing a comparison of the judicial councils now functioning.

IV. *Results accomplished by judicial councils.* A brief examination of the accomplishments of judicial councils formed in the last ten years shows that the mere formation of a judicial council does not solve the problem. Some of them have been outstandingly active, others have simply constituted another ornamental organization. Most of them

have been too recently formed to permit an appraisal of their possibilities. Massachusetts and California have attracted the most attention. We have before us four volumes of reports of the Massachusetts Judicial Council<sup>53</sup> which show astonishing progress. Its statistical information seems to be complete, its recommendations are elaborately supported by research and from an examination of the reports the legislature seems to have been willing to enact laws following its advice. The last report takes up in detail with elaborate statistics the motor vehicle cases in Massachusetts and recommends legislation to take care of the problem. Its other reports indicate that the legislature has been willing to adopt a large proportion of the recommendations of the Judicial Council.

The California Council in its report of 1927 makes the following statement regarding the previous administration of California courts:

“No commercial organization could have survived which had delayed for so long a period of time to investigate its methods of transacting business.”

As a result of the survey of the administration of justice, the council among other things, has recommended a complete revision of the section of the constitution relating to the jurisdiction of the various courts, a plan of arbitration, a master calendar, and assignment of judges. The California Council has refused to have anything to do with the matters of substantive law, but has made the specific recommendation that it be given the rule-making power over matters of procedure.

It is very difficult to make an accurate estimate of the actual accomplishment of the judicial councils in most of the states here enumerated. It may be said however that Massachusetts and California have attracted the most attention and seem to be accomplishing the most substantial results, if one may judge from the publicity given to these two councils. Some other councils are completely inactive. We hesitate to point out which ones for the reason that opinions in the states where inactive councils exist differ as

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<sup>53</sup> MASS. PUB. DOC. 144.

to their utility and it is difficult to be fair without an actual survey of the situation from the ground. It may be said however with great confidence that there is no instance of any of the judicial councils ever doing any harm.

VI. *Finance of Judicial Councils.* None of the judicial councils are expensive, or have received any large appropriations with the single exception of California, for which fifty thousand dollars has been set aside.<sup>34</sup> Most of them are working under appropriations of from two hundred fifty dollars to one thousand dollars a year. Some are not financed at all. Massachusetts, which is one of the most successful, may expend such money as may be approved by the government. This is a common provision and has the advantage of being elastic and subject to the control of someone outside the council. It does not appear to be handicapped by lack of funds.

VII. *Purposes of a Judicial Council.* In discussing the best organization of a judicial council it will first be useful to examine just what a judicial council can do.

*First, there is the rule-making power.* It must be evident to anyone who follows legal reform that this power has gathered great headway in the last few years after a somewhat unfortunate start which is due to the fact that in the states where it was granted, in whole or in part, nothing whatever was done with it.<sup>35</sup> Washington, Delaware and Michigan have complete rule-making power, and in all these three states a set of rules is being drawn up. In Michigan and Delaware there is no judicial council, but a committee of the Michigan bar association, under the very able leadership of Professor Sunderland, has formed some very extensive rules of pleading which they are urging the court to adopt. In Washington the Bar Association is working on the same line. Whether the Supreme Court or a judicial council has the rule-making power, it should obviously be the work of the council to do the work involved in gathering the data and submitting rules.

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<sup>34</sup> See table in appendix.

<sup>35</sup> "Recent Statutes on Rule Making Power of Court", 34 W. VA. L. QUAR. §4. See also article by Edson R. Sunderland which will appear in the next number of the WEST VIRGINIA LAW QUARTERLY.

The responsibilities for rules of procedure should rest on the judicial council for the reason that this is not a proper burden to impose on any court, and whether it is proper or not, it is doubtful if any court will undertake, unaided, to assume it. At least this has been the experience in the past.

*Second, collection of statistics.* One of the greatest lacks in the study of any procedural problem in America is the fact that there are no adequate judicial statistics. For example, in West Virginia, you will frequently hear it argued that there is less delay under the equity system than under the common law rule of pleading. You will just as frequently hear opinions expressed the other way. There is no way of actually ascertaining where the truth lies. It could only be done by a tabulation of the cases in West Virginia collected and arranged with some carefully studied statistical method, so as to show just what happened in each case before the *nisi prius* court. Such statistics, if properly collected, have this advantage; that in no way can the personal bias of the person collecting them have any effect upon the results. This is true of very few forms of statistical information. Such statistics are collected and kept in England.

Only one attempt has been made to do this in America and that is found in the work of Professor Clark of Yale, assisted by the Rockefeller Foundation. He has already printed a short report in the Connecticut Bar Journal.<sup>30</sup> The statistics give a complete picture of litigation in Connecticut. They show not only how the rules of pleading are working but how the rules of substantive law work. They show the time taken to recover judgment in the various classes of cases comparing jury and court cases in the time taken before final judgment; the use of attachments; the use of demurrers, pleas and motions. Without that information it is difficult to formulate any rules of procedure excepting some a priori reasoning from the limited experience of the party drawing them up. Such statistics can show the cost of litigation, the cost of the judicial system, the cost of jury trials, what judges are over-burdened,

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<sup>30</sup> 2 CONN. BAR JOUR. (July, 1928). See also "Need of Statistical Information on Civil Litigation" with tables, 1 AM. JUD. SOC. 182.

how the distribution of litigation would be more and more effective by mobilizing the entire judicial force. They are not difficult to collect and keep once a proper statistical method of arrangement has been found. They are invaluable data regarding drawing any sort of conclusion regarding the efficiency of the judicial system.

A commission was appointed in 1919 by the legislature of Massachusetts and made a study extending over two years. Some of the statements of that report are pertinent here. The report said in part:

“It is not a good business arrangement for a commonwealth to leave the study of the judicial system or the formulation of suggestions for its development almost entirely to the casual interest and initiative of individuals. \* \* \* There is at present no body charged with the duty of collecting the facts regarding the work and expense of the various courts whereby a judgment may be formed as to the relation between cost and results.”

The commission then went on to point out that there was some statistical information collected, but in regard to it the report said that the figures were “in many instances made up by different systems of classification in vogue in the different counties and courts, and much of the time of the commission was consumed in the collection and correction of said materials. \* \* \*” The commission further said:

“The main point is that there should be an officially recognized body of judges and members of the bar who are expected to meet for the mutual exchange of views and the discussion of practical questions, to whom suggestions will be made and who will report annually. The Commission believes that such discussions will gradually result in many valuable improvements in the courts of the commonwealth, and the methods of administration and practice.”

The work of supervising the collection and the study of these statistics is peculiarly one of the functions of the judicial council.

*Third, administrative control of courts.* A third func-



tion of such a council should probably be the administration of courts through the transfer of judges in order to allow the state to utilize fully its entire judicial force. It has not been the experience that such conditions have been successfully met by reciprocity. The present method of relieving a crowded judge is to create another judge in the same county. But the fact that there is more work than one judge can handle does not necessarily indicate that there is enough work for two. It is certainly true that England gets along with a much less number of judges per capita than the United States. This can probably be best explained by the administrative control of judges in England.

A fourth function of the judicial council should be making recommendations of executive action by the governor or by the courts, or the passage of laws by the legislature. This function is fulfilled to a large extent by the bar association, but again, as we pointed out before, the bar association is handicapped by the fact that they have no official standing; cannot compel the attendance of witnesses, and have great difficulty in obtaining time for research and study of the problems on which recommendations are made.

VII. *Suggested organization for West Virginia.* A review of the organization of judicial councils in the United States would indicate that if West Virginia were to provide for such a body it should avoid the following mistakes:

- (1) The judicial council should not be unduly large.
- (2) The bar of the state should be adequately represented as well as the court.
- (3) The services of some body of scholars should be available to do the necessary research to present to the council for its consideration.

The writer suggests that a body of four judges and five lawyers would be a workable organization. The reason that a majority of lawyers are suggested is not through distrust of the ability of the courts but because it is thought that the court should not bear the responsibility of the possible public criticism of actions on the part of the judicial coun-

cil, particularly in the event that rule-making power should be given to the Judicial Council. The writer believes that it is important that the courts should be able to shift the responsibility to the judicial council for these rules of organization and procedure, just as they now are enabled to shift it to the legislature. Courts which have been given the rule-making power in the United States, as in Michigan and Colorado, have never used that power for the very adequate reason that they have felt that they should not be called upon to undergo the criticism which falls to the lot of every quasi-legislative body. Such an organization is not dissimilar to the more successful judicial councils of the United States.

A second suggestion regarding the organization of a judicial council in West Virginia has not been tried out in any other state so far as the writer knows. It consists in using the state law college as a research department of the judicial council to present such data to them as the judicial council may direct, in so far as time and funds permit the law school to do this. As a matter of fact Yale Law School is doing this very thing for the Connecticut Judicial Council though not in an official capacity. The advantages of such a scheme are obvious.

(1) It works into the general idea of President John Roscoe Turner that the University should be a research department for the state of West Virginia and should be built into the social and economic development of the state.

(2) It is in accord with the plan of co-operation between the bar association and the law school regarding research work on state legal problems which has already been adopted by the Bar Association.<sup>37</sup>

(3) It is a function which is peculiarly adapted to a state law school because it brings its faculty and students in closer touch with the actual problems which exist in West Virginia.

(4) If the plans for the development of the University along graduate lines meet with favor in the Legislature, it will be entirely possible to finance such research work on

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<sup>37</sup> Article by T. W. Arnold in 15 *AM. BAR ASSN. JOUR.* 67; see last report of Committee on Legal Education, *W. VA. BAR ASSN. REPTS.* 1928.

the part of the law school, whereas it is very difficult to finance a judicial council adequately by direct appropriations. This is evidenced by the fact that few of the judicial councils in the United States are adequately financed at present. Hopes are already being entertained by the law school that through the aid of some foundation it will be able to collect statistics on the judicial administration in West Virginia as they are doing at Yale. If this can be financed it can be done in collaboration with Yale Law School and an adequate statistical method worked out. The development of such a statistical method of handling investigations of judicial systems is not easy and requires time and study. There is no other body of trained lawyers in the state of West Virginia which is in a position to give that time and study except the Law School. The expense would not be great because it would simply mean the increasing of the teaching force in the law school to such an extent that a certain amount of the time of the faculty would be available for such work. The collection of statistics at the beginning would, of course, require the employment of recent graduates to examine the records of the various county courts in the state, but this would not be expensive and the supervision and analysis of these statistics would be done without any extra compensation whatever by the law faculty.

If the specialized ability of the law faculty can be linked with the practical experience of the bar through the medium of a judicial council there is no reason to believe that substantial results would not be forthcoming.

*Conclusion.* At least four things may be said with absolute certainty enjoining the movement for a judicial council:

(1) It is a logical and orderly method of procedure, consistent with common sense and with those business principles which apply in any efficient organization.

(2) The movement is gaining great headway in the United States, is being continuously discussed in all bar associations and is backed by most of the leaders of American legal opinion.

(3) In spite of the fact that many judicial councils

have failed to function as their founders hoped, nevertheless very substantial progress has been made and many changes along the lines of speed and accomplishment in judicial procedure, particularly in Massachusetts and California, have been accomplished.

(4) That there is no case on record in the fifteen types of judicial councils which are herein discussed where any of them did any harm. They are not the kind of a body which need arouse any feelings of alarm in the hearts of the most conservative. It is as difficult to imagine a body of prominent lawyers and judges urging radical and trouble-making legal devices as it is to imagine the House of Bishops of some American church adopting a subversive moral code. On the negative side of the movement it appears to be almost conclusively shown that it is at least absolutely safe.

The demand for legal reform has always existed. The reason for that is not necessarily the fault of the law but is really due to the fact that laws must always be in a state of gradual change. This is particularly true of procedure and law administration. The reforms of the past are never permanent because of the necessarily changing character of any system of law. Continuous study and effort are necessary. Such study can only be given direction and continuity by the recognition of some official body.

In West Virginia we believe that the need for a permanent body such as the judicial council is illustrated in every legislature by the various kinds of organization which are appointed to study the problems of administration of law. In the last legislature there were no less than two commissions, one to study and report on the further revision of the code, and another to study the constitution of the state.<sup>38</sup> Both are to submit reports. Both of these commissions have important functions to perform and are needed. However, it seems almost certain that if there were a continuing body with the research and statistics of years available, it could act with much greater effectiveness in the present emergency. If the particular problems were beyond its province it would have valuable data for any of the com-

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<sup>38</sup> ACTS OF W. VA. LEGISLATURE, 1929, House Joint Resolutions Nos. 5 and 10.

missions which might be appointed to supplement its work. The study of the administration of justice by new commissions appointed from time to time without opportunity for organized collection of statistics and research can never be as effective as the scheme here outlined. There will always be an immense waste of time before the commission can get under way and a great loss of collected work and experience when the commission dissolves after making its report. A continuing body gains experience and facility with years. It learns how to collect and keep records. It acquires a technique of research. And finally it acquires those intangible assets which are the chief assets of any political body. Those are traditions, good will and authority. Legislatures and the public begin to have confidence in it and to follow where it leads. Do they follow the reports of temporary commissions? We need only point out the difficulties in passing the new code in West Virginia.

We close with a quotation from Mr. Justice Riddell of the Supreme Court of Ontario because it is the quotation with which the Judicial Council of Massachusetts saw fit to preface their third report:

“We regard the courts as a business institution to give the people seeking their aid the rights which facts entitle them to, and that with a minimum of time and money. We cannot afford to waste either time or money.”

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NOTE:—Since this article has been set up in type the last volume of the Acts of the Kentucky Legislature has appeared which contains provision for a Judicial Council after the model of North Carolina. This council comprises all the judges of the Court of Appeals and all Circuit judges. There is also an Act for a Judicial Council which has been introduced in the Michigan Legislature and will probably be a law by the time this appears in print.

N. Dakota 1927	About 35	All judges of the supreme and District Courts; one County judge	Five lawyers appointed by state bar association	Dean of the state law school and the attorney general	Duty to make a continuous study of judicial systems. Council has power to organize bureau of statistics and require report from all public bodies connected with administration of justice	Advisory only	Public hearings, subpoenas of witnesses provided for. All district courts must furnish reports on litigation	Advisory	Annually to the governor with recommendations for maintenance of court and expenses of attorneys paid from state bar funds	Expenses of judges come out of funds for maintenance of court and expenses of attorneys paid from state bar funds
Kansas 1927	Nine	Three chief justices of Supreme Court and two judges appointed by him	Four appointed by chief justice of supreme court	Chairmen of the Judiciary Committees of House and Senate	Continuous study of the judicial system and recommendations thereon	Advisory only	May request reports and statistics from clerks of court, sheriffs, police officers and judges	Advisory	Annually to the governor, report to be printed by state and distributed to legislature and to all judges, justices of the peace, etc.	Bills and accounts prepared by chairman for expenses shall be paid as other claims against the state. No express limit.
Connecticut 1927	Nine	Four appointed by chief justice of Supreme Court	Four appointed by the governor.	One state's attorney appointed by the governor	Makes suggestions and recommendations as to procedure	Advisory only	None, but may compel reports from various courts	Emphasis on rules of practice	Biennially to the governor	Expenses each as board of control may approve
Rhode Island 1927	Six	Three	Three appointed by the governor	None	Makes suggestions as to rules and procedure	None except advisory	None	Examines rules of procedure only	From time to time to justices and annually to governor	By special appropriation. \$500 appropriated in 1927

POWERS OF COUNCIL

STATE AND DATE OF PASSAGE	TOTAL NO. ON COUNCIL	NO. OF JUDGES ON COUNCIL	NO. OF LAWYERS ON COUNCIL	OTHER BODIES REFERENCED ON COUNCIL	ADVISORY POWER WITH DUTY TO RECOMMEND TO LEGISLATURE	RULE MAKING POWER	POWER TO COMPULSORY ATTENDANCE OF WITNESSES	POWER OF ASSIGNING JUDGES	DUTY TO REPORT	METHOD OF FINANCE
Virginia 1928	Council summoned each year by Pres. of Sup. Ct. Council may change each year. Max. 15, Min. 10	Max. 8; Min. 5 for each year	Ten	None	Makes a comprehensive survey each year with recommendations	Advisory only. Supreme Court may make rules of practice by special statute	None excepting reports which each judge of a court must make concerning litigation in his court.	Advisory only	Annually to the governor and to the supreme court	Necessary expenses of members in attending council paid by state treasurer
Texas Draft of Act approved by Texas judges but not passed	Over 40	Judges representing Supreme Court, civil appeals and all judicial districts	Four	Chairmen of House and Senate judiciary committees, member of faculty of state university law school	Continuous study and the gathering of statistics	Advisory only	Hold public meetings	Advisory only	Annually to governor and supreme court	Clerical and travelling expenses paid by state treasurer
Missouri Court amendment approved by Constitution at Convention but defeated at popular election in 1924	Six	Some ex-officio, others appointed by courts	None	None	See next heading	Complete rule making power which may override inconsistent legislation	None provided	Complete power over assignment of judges	Not specifically required	Travel expenses and per day
Federal Act 1922 42 Stat. L. 837	Conference of all Senior Judges called yearly by Chief Justice of United States Supreme Court		None	None	Comprehensive survey	Makes suggestions	Requires reports from district judges	Makes plans for assignment of judges	Not required	Expenses of travel plus \$10 per day

(The analysis of the acts under the head "Powers of Council" is necessarily inaccurate. In the first place the acts are vague in their language and in the second place the councils have not paid any particular attention to the exact limits of their power. The analysis here given simply points out the powers which are emphasized by the act.)

STATE AND DATE OF PASSAGE	TOTAL NO. ON COUNCIL	No. of Judges on Council	No. of Lawyers on Council	OTHER BODIES REFERENCED ON COUNCIL	POWERS OF COUNCIL					METHOD OF FINANCE	
					ADVISORY POWER WITH DUTY TO RECOMMEND TO LEGISLATURE	RULE MAKING POWER	POWER TO COMPEL ATTENDANCE OF WITNESSES	POWER OF ASSIGNING JUDGES	DUTY TO REPORT		
Wisconsin 1913	All circuit judges in the state		None	None	None	Duty to make rules not inconsistent with statute	None	None	Limited power	None stated	Salary of Secretary and expenses.
New Jersey 1915	Eight	Four appointed by Supreme Court.	Three appointed by Governor	Attorney General	Duty to examine judicial procedure and report to governor and legislature	Only advisory	None	None	Considers rules of practice only	At least every two years	No provision for finance
Oregon 1923	Four	Four appointed by chief justice of Supreme Court	State bar association and state's attorneys invited to attend meetings of council		Council advises and recommends rules of procedure to Sup. Ct. and suggestions for conduct of business of courts	Advisory only	Advisory only	Complete power exists	Advisory	Annually	None provided in act
Ohio 1923	Nine	Six representing various courts some ex officio, others appointed by courts	Three appointed by governor	None	Duty to suggest changes in procedure to legislature and to courts	Only advisory	Power to hold public hearing, administer oaths, etc.	Advisory	Advisory	Biennially to general assembly with recommendations and from time to time to the courts	Clerical expenses, etc. not to exceed \$1000 per year



POWERS OF COUNCIL

STATE AND DATE OF PASSAGE	TOTAL NO. ON COUNCIL	NO. OF JUDGES ON COUNCIL	NO. OF LAWYERS ON COUNCIL	OTHER BODIES REFERRED ON COUNCIL	ADVISORY POWER WITH DUTY TO RECOMMEND TO LEGISLATURE	RULE MAKING POWER	POWER TO COMPEL ATTENDANCE OF WITNESSES	POWER OF ASSIGNING JUDGES	DUTY TO REPORT	METHOD OF FINANCE
Mass. 1924	Nine	Five representing various courts, some ex officio, others appointed by courts	Four appointed by governor	None	Suggestions to governor and legislature	Only advisory	None stated	Advisory	Annually to governor and time to courts	Allowed from state treasury for any expenses or clerical help governor and council may approve*
Washington 1925	Nine and state law librarian as secretary	Four, some ex officio, others appointed by courts	Three, one of whom is prosecuting attorney appointed by Supreme Court	Chairman of judiciary committee of House and Senate	Duty of continuous study of procedure to report suggestions to courts and to legislature with recommendations	Advisory to Supreme Court which has complete rule making power	Public hearings may be held, witnesses called, etc. Judges and clerks make reports to council	Advisory	Biennially to governor and legislature and from time to time to courts	Travel expenses only
N. Carolina 1925	About 50. Quorum 6 judges and 6 other members	All judges of Supreme and Super. courts	1 from each judicial district to be appointed by governor	Atty general, Clerk of supreme court as secretary	Examine judicial procedure and report to governor, legislature and courts	Advisory only	May hold public meetings, require attendance of witnesses, etc.	Advisory	Annually to governor who transmits reports to legislature	Expenses for clerical help limited to \$250 a year
California 1927 By constitutional amendment 1926	Eleven	Eleven appointed by chief justice of Sup. Court	None	Clerk of Supreme Ct. is secretary	Submits suggestions to courts, governor and legislature	Advisory only but council has asked for rule making power	Not specifically provided for but all judicial clerks, etc., required to furnish reports and information	Judicial council makes specific regulations for mobilization and assignment of judges	To the governor and legislature at each session	No compensation to members, but \$80,000 appropriated for collection of statistics and investigation

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## LIST OF ACTS OF VARIOUS JURISDICTIONS

We have set out in full all of the Acts relating to Judicial Councils for the reason that these are not available in the ordinary library and this collection offers a basis for comparison to anyone who is interested in pursuing the subject.

## WISCONSIN

LAWS OF WISCONSIN, Ch. 592, Section 9, p. 691.

Section 9. A new section is added to the statutes to read:

113.08 The several circuit judges of the state shall constitute a board to be known as the "Board of Circuit Judges". They shall hold their first meeting at the senate chamber, in the city of Madison, on the 29th day of December, 1913. Their subsequent meetings shall be held at least once in each year thereafter, at such time and place as they shall determine. They shall make such rules and regulations as they shall deem advisable, not inconsistent with the statutes or the rules of practice adopted by the justice of the supreme court, to promote the administration of the judicial business of the circuit courts of the state. If said board shall determine that it is necessary to secure the services of a secretary, they shall have power to employ such secretary and fix his compensation, which shall be payable monthly and shall not exceed one thousand dollars per year. The salary of said secretary, his expenses for postage, telegraphing and telephoning, and for traveling and hotel bills in attending the meetings of the board shall be paid, on the certificate of the chairman of the board, out of the treasury, and charged to the appropriation for circuit courts.

## NEW JERSEY

CUM. SUP. TO COMP. STAT. OF NEW JERSEY, 1911-1924. Sec. 103, p. 1644.

## \*103 JUDICIAL PROCEDURE—COUNCIL FOR.

An Act to provide for the appointment of a Council for Judicial Procedure. (L. 1915, c. 93, p. 147.)

\*103-1. How composed—styled—duties—report. 1. The Chancellor and one Vice-Chancellor, to be named by him, the Chief Justice of the Supreme Court and one associate justice, to be

named by the Supreme Court, the Attorney-General and three counselors-at-law (not members of any court), to be designated by the Governor, shall constitute a "Council for Judicial Procedure", whose duty it shall be to consider the operation of statutes and rules of court relating to judicial procedure in all the courts, to inquire into and examine defects in the said statutes or rules or in their operation, and to report to the Governor of the State and to the Legislature from time to time, and at least once in every two years what, if any, amendments, additions or alterations are in their judgment expedient. (L. 1915, c. 93, p. 147.)

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### OREGON

GEN. LAWS OF ORE., 1923, ch. 149, p. 211.

Providing for the administration of the courts through council of judges.

Be it Enacted by the People of the State of Oregon:

Section 1. Judicial Council Established—There is hereby established a judicial council, of which the chief justice of the supreme court shall be chairman. Within sixty days from the taking effect of this act the chief justice shall appoint an associate justice of the supreme court and three judges of courts of record to serve as members of the judicial council for terms of one year and until the chief justice shall appoint their successors. The chief justice shall have power to invite the president of the State Bar Association, the president of the State Attorney's Association, or other members of the bar, to attend the meetings of the council and advise it in the performance of its duties.

Section 2. Annual Report; Recommendations—It shall be the duty of the judicial council to report annually to the governor upon the work of the several courts and branch courts of the state. The council may also, from time to time, report to the supreme court concerning the operation of the rules of pleading and practice, and may recommend to that court the adoption of rules and amendments to simplify procedure and expedite the business of the courts. The council may also, from time to time, submit such suggestions as it may deem advisable for the consideration of the judges of the several courts concerning the administration of the rules and the conduct of the business of the courts.

Section 3. Reports by Judges—The judges of all courts, in-

cluding courts not of record, shall report to the chairman of the council at such times and in such manner as he shall prescribe respecting the condition of the judicial business, whether civil or criminal, in their respective courts.

Section 4. Meetings of Judges—The council shall fix a time and place each year for a meeting of all the judges of courts of record in this state. At such meetings the judges shall receive and consider all recommendations and complaints submitted to them concerning the business of the courts and their officers, and the operation of the rules, and shall take such steps provided by law as they may deem necessary and proper with respect thereto. The council shall, in its discretion, publish all or part of the proceedings of such meetings.

Section 5. Production of Evidence—The council may hold public meetings and have power to administer oaths and to require the attendance of witnesses and the production of books and documents. A witness who testifies falsely, or fails to appear when summoned, shall be subject to the same orders and penalties to which a witness before a court is subject.

Section 6. Compelling Attendance—Any circuit court judge of this state, either in term time or vacation, upon application of the judicial council, may, in his discretion, compel the attendance of witnesses, the production of books and documents, and the giving of testimony before the council, by an attachment for contempt or otherwise, in the same manner as production of evidence may be compelled before such circuit court.

Section 7. Secretary to the Council—There shall be an executive secretary of the council, to be appointed by the council, who shall serve during its pleasure.

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## OHIO

PAGE'S ANNOTATED OHIO GENERAL CODE 1, Ch. 9-1, p. 906.

Sec. 1697-1. Membership; term of office; composition; method of selection. 1. There shall be a judicial council of nine members for the continuous study of the organization, rules and method of procedure and practice of the judicial system of the state of Ohio, the work accomplished and the results produced by that system and its various parts. The term of office of members of the council shall be three years. This council shall be composed of

the chief justice of the supreme court and two associate judges of the supreme court selected by the judges of the supreme court; the chief justice of the court of appeals of the state; one common pleas judge to be selected by the common pleas judges of the state at a meeting to be held the first January following the passage of this act (G, C, sec. 1697-1 to 1697-5) and every three years thereafter; one municipal judge to be selected by the municipal judges of the state at a meeting to be held the first January following the passage of this act and every three years thereafter; and three practicing attorneys-at-law to be appointed by the governor. The chief justice of the supreme court shall be president of the council.

History.—110 v. 364, sec. 1.

Sec. 1697-2. Vacancies filled by majority vote of council. 2. A vacancy in the judicial council caused by death, resignation, removal from office, failure of a person appointed to qualify within ten days after the organization of the council, or of his appointment, shall be filled by the council, or vote of all the remaining members of the council, at the next meeting following such vacancy.

History.—110 v. 364, sec. 2.

Sec. 1697-3. Report biennially to general assembly. 3. The council shall report biennially to the General Assembly of the work of the various branches of the judicial system with its recommendations for modification of existing conditions. It may also from time to time, submit such suggestions as it may deem advisable for the consideration of the judges of the various courts with relation to rules and practice and procedure. The clerks of the various courts and other officials shall make to the council such reports on such matters and in such form periodically, or from time to time, as the council may prescribe.

History.—110 v. 364 (365), sec. 3.

Sec. 1697-4. Public hearing; oaths and attendance of witnesses. 4. The council may hold public hearings and shall have power to administer oaths and require the attendance of witnesses and the production of books and documents. A witness who gives false testimony or fails to appear when duly summoned, shall be subject to the same penalties to which a witness before a court is subject, and the same shall be imposed by the supreme court or any judge of the court of common pleas.

History.—110 v. 364 (365), sec. 4.

Sec. 1697-5. Gratuitous service. 5. No member of said council shall receive any compensation for his services. The council

and the several members thereof shall be allowed from the state treasury such expenses for clerical and other services, travel and incidentals as the council and the governor shall approve.

All disbursements by vouchers; limitation. All disbursements shall be by vouchers signed by the president of the council and shall not exceed one thousand dollars per year.

History.—110 v. 364 (365), sec. 5.

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### MASSACHUSETTS

MASSACHUSETTS CUMULATIVE STATUTES, 1927, Ch. 221, Sec. 34A, 34B, 34C, p. 795.

34A. Judicial council, establishment, purposes, etc.—There shall be a judicial council for the continuous study of the organization, rules and methods of procedure and practice of the judicial system of the commonwealth, the work accomplished, and the results produced by that system and its various parts. Said council shall be composed of the chief justice of the supreme judicial court or some other justice or former justice of that court appointed from time to time by him; the chief justice of the superior court or some other justice or former justice of that court appointed from time to time by him; the judge of the land court or some other judge or former judge of that court appointed from time to time by him; one judge of a probate court in the commonwealth and one justice of a district court in the commonwealth and not more than four members of the bar all to be appointed by the governor, with the advice and consent of the executive council. The appointments by the governor shall be for such periods, not exceeding four years, as he shall determine. Acts 1924, ch. 244.

34B. Annual report; suggestions, etc.—The judicial council shall report annually on or before December first to the governor upon the work of the various branches of the judicial system. Said council may also from time to time submit for the consideration of the justices of the various courts such suggestions in regard to rules of practice and procedure as it may deem advisable. Acts 1924, ch. 244.

34C. No compensation; expense.—No member of said council shall receive any compensation for his services, but said council and the several members thereof shall be allowed from the state treasury out of any appropriation made for the purpose such expenses for clerical and other services, travel and incidentals as the governor and council shall approve. Acts 1924, ch. 244.

WASHINGTON

LAWS OF WASH., 1925, ch. 45, p. 38.

An Act establishing a judicial council and prescribing its powers and duties and the duties of other officers in respect thereof.

Be it enacted by the Legislature of the State of Washington:

Section 1. There is hereby established a judicial council, which shall consist of the chief justice and one other judge of the supreme court, two superior judges, two members of the legislature, and three members of the bar who are practicing law and one of whom is a prosecuting attorney. The judge of the supreme court other than the chief justice shall be chosen by the court. The two superior judges shall be chosen by the superior judges through their association, if they have one, but if not, then in such manner as the judges of the supreme court shall prescribe by rule. The members of the legislature shall be the persons last appointed chairman of the judiciary committees of the senate and the house. The members of the bar shall be appointed by the chief justice of the supreme court with the advice and consent of the other judges of the court.

Sec. 2. The term of a member of the council who is a judge, a chairman of a judiciary committee of the legislature or a prosecuting attorney shall be for the rest of his term in office that qualified him to become a member. The term of a member chosen from the bar, except the one who is prosecuting attorney, shall be two years. A vacancy shall be filled for the rest of the term by appointment as in the first instance.

Sec. 3. The chief justice shall be chairman of the council, and one of the other members may be appointed by the council to be executive secretary. The state law librarian shall be the recording secretary, and he shall keep in his office records of the proceedings and acts of the council. The council may make rules for its procedure and the conduct of its business, and may employ such clerical assistants and procure such office supplies as shall be necessary in the performance of its duties.

Sec. 4. A meeting of the council shall be held at the seat of government on the second Monday of September of each year. Other regular meetings may be provided for by rule. A special meeting may be held anywhere in the state at any time upon call by the chairman or five other members of the council and upon notice given to each member in time to enable him to attend.

Sec. 5. It shall be the duty of the council:

(1) Continuously to survey and study the operation of the judicial department of the state, the volume and condition of business in the courts, whether of record or not, the methods of procedure therein, the work accomplished, and the character of the results;

(2) To receive and consider suggestions from judges, public officers, members of the bar, and citizens as to remedies for faults in the administration of justice;

(3) To devise ways of simplifying judicial procedure, expediting the transaction of judicial business, and correcting faults in the administration of justice;

(4) To submit from time to time to the courts or the judges such suggestions as it may deem advisable for changes in rules, procedure, or methods of administration;

(5) To report biennially to the governor and the legislature on the condition of business in the courts, with the council's recommendations as to needed changes in the organization of the judicial department or the courts or in judicial procedure; and

(6) To assist the judges in giving effect to section twenty-five of article four of the constitution.

Sec. 6. Judges and other officers of the courts, whether of record or not, and all other state, county and municipal officers shall render to the council such reports as it may request on matters within the scope of its duty to inquire.

Sec. 7. The council may hold public meetings and hearings, and shall have power to require the attendance of witnesses and the production of books and documents. Every member of the council shall have power to administer oaths and to issue subpoenas requiring the attendance of witnesses and the production of books and documents before the council, and the superior court shall have power to enforce obedience to such subpoenas and to compel the giving of testimony.

Sec. 8. A member of the council shall not receive compensation for his services but shall be allowed his actual necessary expenses when traveling on business of the council.

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#### NORTH CAROLINA

PUBLIC LAWS OF N. C., 1925, ch. 244, p. 489.

An Act to Create a Judicial Conference.

The General Assembly of North Carolina do enact:

Section 1. There shall be created a judicial conference for the continuous study of the organization, rules, and methods of prac-



tice and procedure of the judicial system of the state of North Carolina and the practical working and results produced by the system.

Sec. 2. The conference shall be composed of the judges of the Supreme and Superior Courts, the attorney-general, and one practicing attorney-at-law from each judicial district to be appointed by the governor, for a term of two years. Any vacancy in the judicial conference among the practicing attorneys caused by death, resignation or otherwise, shall be filled by the governor. The chief justice of the Supreme Court shall be the president of the conference, and the clerk of the Supreme Court shall be secretary of the conference.

Sec. 3. The conference shall report annually to the governor the work of the various parts and branches of the judicial system, with its recommendations as to any changes or reforms in the system and in the practice and procedure of the courts, and the governor shall transmit the report of the conference biennially to the general assembly with such recommendations as he may deem advisable. The conference may also from time to time, submit such suggestions and recommendations as it may deem advisable for the consideration of the judges of the various courts with relation to rules of practice and procedure. The clerks of the various courts and other officials shall make to the conference such reports on such matters and in such form, periodically or from time to time, as the conference may prescribe.

Sec. 4. The conference shall meet twice each year, at a time and place to be fixed by the president of the conference. The conference may hold public meetings and shall have power to administer oaths and require the attendance of witnesses and the production of books and papers. A quorum for the transaction of business shall consist of not less than two of the justices of the Supreme Court, six judges of the Superior Court, and six members of the conference.

Sec. 5. No member of the conference shall receive any compensation for his services. The sum of not exceeding two hundred and fifty (\$250.) dollars annually is appropriated for actual expenses incurred for clerical help, and incidentals to be paid out of the treasury upon the order of the president of the conference, approved by the state auditor.

Sec. 6. This act shall be in force from and after its ratification.

## JUDICIAL COUNCILS

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## CALIFORNIA

CAL. STATS. 1927, p. XX, Art. VI.

Sec. 1-a. There shall be a judicial council. It shall consist of the chief justice or acting chief justice, and of one associate justice of the supreme court, three justices of district courts of appeal, four judges of superior courts, one judge of a police or municipal court, and one judge of an inferior court, assigned by the chief justice to sit thereon for terms of two years; provided, that if any judge so assigned shall cease to be a judge of the court from which he is assigned, his term shall forthwith terminate. The chief justice or acting chief justice shall be chairman. No act of the council shall be valid unless concurred in by six members.

The judicial council shall from time to time:

(1) Meet at the call of the chairman or as otherwise provided by it.

(2) Survey the condition of business in the several courts with a view to simplifying and improving the administration of justice.

(3) Submit such suggestions to the several courts as may seem in the interest of uniformity and the expedition of business.

(4) Report to the Governor and legislature at the commencement of each regular session with such recommendations as it may deem proper.

(5) Adopt or amend rules of practice and procedure for the several courts not inconsistent with laws that are now or that may hereafter be in force; and the council shall submit to the legislature, at each regular session thereof, its recommendations with reference to amendments of, or changes in, existing laws relating to practice and procedure.

(6) Exercise such other functions as may be provided by law.

The chairman shall seek to expedite judicial business and to equalize the work of the judges, and shall provide for the assignment of any judge to another court of a like or higher jurisdiction to assist a court or judge whose calendar is congested to act for a judge who is disqualified or unable to act, or to sit and hold court where a vacancy in the office of judge has occurred.

The clerk of the supreme court shall act as secretary of the council.

The several judges shall co-operate with the council, shall sit and hold court as assigned, and shall report to the chairman at such times and in such manner as he shall request respecting the condition and manner of disposal, of judicial business in their respective courts.

No member of the council shall receive any compensation for his services as such, but shall be allowed his necessary expenses for travel, board and lodging incurred in the performance of his duties as such. Any judge assigned to a court wherein a judge's compensation is greater than his own shall receive while sitting therein the compensation of a judge thereof. The extra compensation shall be paid in such manner as may be provided by law. Any judge assigned to a court in a county other than that in which he regularly sits shall be allowed his necessary expenses for travel, board and lodging incurred in the discharge of the assignment. (New section adopted Nov. 2, 1926.)

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#### NORTH DAKOTA

LAWS OF NORTH DAK., 1927, ch. 124, p. 155.

An Act Creating a Judicial Council for the State of North Dakota, and Providing for the Continuous Study of the Administration of Justice.

Section 1. Judicial Council Established. There is hereby established a judicial council which shall consist of all judges of the supreme and district courts of the state, one judge of the county court to be chosen by the supreme court, the attorney-general, the dean of the school of law of the state university, and five members of the bar who are engaged in the practice of law, who shall be chosen by the executive committee of the state bar association.

Section 2. Term of Office. The judges of the supreme and district courts, the attorney-general and the dean of the school of law of the state university, shall hold office as members of the council during the time they occupy their respective official positions. The terms of office of the county judges chosen by the supreme court, and of the members of the bar, shall be two years, commencing on the first Monday of January of odd-numbered years. A vacancy shall be filled by the authority originally selecting the member.

Section 3. Organization of Council. The chief justice during

his term as chief justice shall be chairman of the council. An executive secretary shall be chosen by the council either from within or without the council. The council shall make rules for its procedure and the conduct of its business.

Section 4. Meetings. The council shall meet at least twice in each year at such times and places as shall be fixed by the council, provided that the first meeting shall be held at such time and place as the chief justice shall designate, and within six months after the taking effect of this act.

Section 5. Duties. The judicial council is to make a continuous study of the operation of the judicial system of the state, to the end that procedure may be simplified, business expedited and justice better administered.

Section 6. Hearings. The council may hold public meetings and hearings and shall have power to require the attendance of witnesses and the production of books and documents. The district court shall have power to enforce obedience to subpoenas issued by the council and to compel the giving of testimony. Each member of the council shall have power to administer oaths in any hearing or investigation instituted by the council.

Section 7. Bureau of Statistics. The council shall have the power to organize a bureau of statistics for the purpose of gathering information relating to crime and criminal and civil litigation. Judges, state's attorneys, sheriffs, and attorney-general, clerks of the district courts, the state board of administration, the superintending officers of penal and reformatory institutions and of asylums and others places of detention, and all other state, county and municipal officers, boards and commissions, shall render to the council such reports as it may request on matters within the scope of its powers. The clerks of the district courts of the state shall prepare a statement semi-annually under the seal of the court showing the number of cases filed, the number of cases ready for trial and the number of cases tried during the preceding period of six months, together with such additional information as may be required by the council; and such statement shall be forwarded to the judicial council not later than January first and July first of each year.

Section 8. Report. The judicial council shall submit to the governor not later than the first day of December of each even-numbered year a report upon the work of the various branches of the judicial system of the state. The council may recommend to

the governor or to the legislative assembly such measures as it shall deem advisable and may from time to time submit for the consideration of the supreme court suggestions regarding rules of practice and procedure.

Section 9. Meeting of Judges. Immediately following each meeting of the judicial council the judges of the supreme and district courts shall assemble for the purpose of considering matters relating to the administration of justice, including recommendations and complaints submitted to them concerning the business of the courts and their officers.

Section 10. Compensation. No member of the council shall receive compensation for any services rendered by him in such capacity; but any necessary expense incurred by any judge of the district and supreme courts in the discharge of his duties as a member shall be deemed expense incurred in the performance of the duties of his office and paid as such; the expenses of all other members of the council shall be audited, and paid from the State Bar Fund in the same manner as other claims against such fund.

Section 11. Repeal. All acts or parts of acts in conflict herewith are hereby repealed.

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## KANSAS

ACTS, KANSAS, 1927, ch. 187, p. 243.

Sec. 1. A judicial council is hereby established and created which shall be composed of one Justice of the Supreme Court, two judges of different districts each of whom shall have served in such capacity four years previous to his appointment, four resident lawyers, each of whom shall have been admitted to practice for not less than ten years previous to his appointment, the chairman of the judiciary committee of the House of Representatives, and the chairman of the Judiciary Committee of the Senate. All members except the chairman of the House and Senate Judiciary Committees shall be appointed by the Chief Justice of the Supreme Court. Of the members first appointed one judge and two lawyers shall be appointed for a term of two years and one justice, one judge and two lawyers for a term of four years. Upon the expiration of the terms of those appointed each succeeding member shall be appointed and hold office for a term of four years and until his successor shall have been appointed and qualified. The terms of the chairman of the Senate and House Ju-

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diciary Committees, and all other members, shall terminate upon such member ceasing to belong to the class from which he was appointed. All vacancies except those of chairman of the Senate and House Judiciary Committees shall be filled by appointment by the chief justice for the unexpired term. Upon vacancy, the places of the chairman of the Senate and House Judiciary shall be filled by their successors as such chairmen.

Sec. 2. The Judiciary Council shall select one of its members as chairman for such period as it may choose, and shall meet semi-annually and more frequently, if necessary, upon call of the chairman.

Sec. 3. It shall be the continuous duty of the Judicial Council to survey and study the judicial department of the state, the volume and condition of business in the courts, whether of record or not, the methods and rules of procedure therein, the time elapsing between the initiation of litigation and the conclusion thereof, and the condition of dockets as to unfinished business at the closing of terms; to receive and consider suggestions from judges, members of the bar, public officials and citizens concerning faults in the administration of justice, and remedial rules and practice; to recommend methods of civil and criminal procedure, expediting the transaction of judicial business and eliminating unnecessary delays therein and correcting faults in the administration of justice; to submit from time to time to the courts of justice thereof suggestions as to changes in rules and methods of civil and criminal procedure as may be deemed by the council to be beneficial.

Sec. 4. The Council shall submit to the Governor on or before December first of each year a written report of the work of the Council, the facts ascertained, the conditions of the business in the courts, conditions found to be defeating or deferring the administration of justice, with recommendations concerning needed changes in the organization of the judicial department, in rules and methods in civil and criminal procedure and pertinent legislation. Such report shall be printed by the state printer and copies thereof distributed to all members of the legislature and judges of the supreme, district, county, probate, and city police courts, and justices of the peace in this state.

Sec. 5. The clerks of the various courts of record in this state, judges and justices of courts not of record, and sheriffs and police officers, shall on request of the judicial council, without charge, furnish such information relating to rules, methods and procedure in vogue in their respective courts, and the condition

of legal business therein as may be deemed necessary by the council of performing its duties.

Sec. 6. All members of the council shall serve without compensation but shall be paid their actual and necessary expenses incurred, within the state of Kansas in the performance of their duties. All bills and accounts of the council shall be approved by the chairman and shall be audited and paid as other claims against the state, authorized by law.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.

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### CONNECTICUT

LAWS OF CONN., 1927, ch. 190, p. 4268.

Text of Connecticut Act:

Section 1. There shall be a judicial council for the continuous study of the organization, rules and methods of procedure and practice of the judicial system of the state, the work accomplished and the results produced by that system and its various parts. Said council shall be composed of the chief justice of the supreme court of errors or some other justice or former justice of that court, appointed from time to time by him; one judge or former judge of the superior court, one judge of a common pleas court and one judge of a city court, all to be appointed from time to time by the chief justice of the supreme court and not more than four practicing attorneys-at-law, and one state's attorney, to be appointed by the governor. The appointment by the governor shall be for such periods, not exceeding four years, as he shall determine.

Sec. 2. The judicial council shall report biennially on or before December first, to the governor upon the work of the various branches of the judicial system, together with any recommendations it may have with respect thereto. It may also from time to time submit for the consideration of the judges of the various courts such suggestions in regard to rules of practice and procedure as it may deem advisable. The clerks of the various courts and other officials thereof shall make to the council such reports, from time to time, as the council may prescribe.

Sec. 3. No member of said council shall receive any compensation for his services, but said council and the several members thereof may be allowed such sum for clerical, travel and incidental expenses as the board of control shall approve.

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## RHODE ISLAND

PUB. LAWS OF R. I., 1927, ch. 1038, p. 224.

Text of Rhode Island Act:

Section 1. A judicial council is hereby created for the study of the organization, rules, and methods of procedure and practice, of the judicial system of the state and all matters relating to the administration of said system and its several departments of service. The judicial council shall consist of the chief justice of the supreme court or some other justice or former justice of that court designated by him from time to time to serve on said council; the presiding justice of the superior court or some other justice or former justice of that court designated by him from time to time to serve on said council; a justice or associate justice of a district court and three attorneys admitted to practice in the courts of this state and actively engaged in such practice, who shall be appointed by the governor. The four members of said council first appointed by the governor shall serve until the first day of February, 1931, and in the month of January, 1931, and in said month every fourth year thereafter the governor shall appoint members of said council to succeed those whose terms are about to expire, and to serve until the first day of February in the fourth year after their appointment. Any vacancy that shall occur in the membership of said council appointed by the governor shall be filled by another appointment by him for the remainder of the term. The chief justice of the supreme court or the justice or former justice of said court who may be designated by him to be a member of said council shall be chairman thereof, and shall call said council together for organization within thirty days after the appointment of all its members.

Sec. 2. The judicial council may from time to time submit for the consideration of the justices of the various courts such suggestions in regard to rules of practice and procedure as it may deem advisable and it shall report annually to the governor on or before December the fifteenth upon such matters as it desires to bring to his attention or to the attention of the general assembly. In such report to the governor for the year 1927 the council shall present its opinion as to the need of additional justices of the superior court.

Sec. 3. The members of said council shall serve without compensation and the general assembly shall annually appropriate such sum as it may deem necessary for clerical assistance and other necessary expenses incurred in carrying out the provisions of this act, and the state auditor is hereby directed to draw his



order upon the general treasurer for the payment of such sum or so much thereof as may from time to time be necessary, upon receipt by him of proper vouchers approved by the chairman of said council.

Sec. 4. For the purpose of carrying this act into effect during the fiscal year ending November 30, 1927, the sum of five hundred dollars is hereby appropriated out of any money in the treasury not otherwise appropriated and the state auditor is hereby authorized and directed to draw his orders upon the general treasurer for the payment of said sum or so much thereof as may be from time to time necessary upon receipt by him of proper vouchers approved by the chairman of said council.

Sec. 5. This act shall take effect upon its passage. Approved April 21, 1927.

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VIRGINIA

VA. ACTS OF ASSEMBLY, 1928, ch. 7, p. 6.

The text of the Virginia act follows:

1. Be it enacted by the general assembly of Virginia, That it shall be the duty of the president of the supreme court of appeals of Virginia, or in case of his disability, of one of the judges of the supreme court, in order of their seniority, to summon annually to a judicial council, on the first Wednesday in December, at Richmond, or at such other time and place in the state as may be designated in the said summons, not less than three or more than five circuit judges, and not less than two or more than three of the judges of other courts of record, and ten members of the bar of the supreme court of appeals, one from each congressional district of the state.

If for any cause the judges so summoned are unable to attend, the president of the supreme court or the judges calling the council, may fill their places by summoning any other judges of courts of record who are able to attend. It shall be the duty of every judge thus summoned to attend said conference and to remain throughout its proceedings, unless excused by the presiding judge, and to advise as to any matters in respect of which in their opinion the administration of justice in the courts of this Commonwealth may be improved. If any member of the bar thus summoned cannot attend he shall forthwith notify the presiding judge, and his other member of said bar. Each judge of a court

of record of this Commonwealth shall, on or before the first day of October in each year, prepare and submit to the president of the supreme court of appeals for the consideration of the council, a report showing the condition of business in his court for the preceding twelve months, including the number and character of cases on the docket, the business in arrears, and cases disposed of, and such other facts pertinent to the business dispatched and pending in his court, together with recommendations as to the need of additional judicial assistance for the disposal of business for the ensuing year, as said judge may deem proper.

2. The president of the supreme court or the judge summoning the council as aforesaid, shall be the presiding officer of the council. Said council shall make a comprehensive survey of the condition of business in the courts of the Commonwealth, and make recommendations for the improvement of the administration of justice, and shall particularly report as to needed changes in the rules of practice and procedure in the several courts of the Commonwealth.

3. Each member of the council shall serve without compensation, but the presiding judge may engage a stenographer to be paid for his services, and he and each member of the council summoned and attending said council shall be allowed his actual expenses of travel, and also his necessary expenses for subsistence while attending the council, which shall be paid out of any money in the treasury not otherwise appropriated, on the order of the judge presiding at the council.

4. On the request of the presiding judge the attorney general shall attend said council and confer with the members thereof, more particularly on the Commonwealth's business in the courts, and for the purpose of devising methods for the prevention of undue delay in the trial of such cases.

5. A report of the proceedings of said council shall be made to the governor and to the supreme court of appeals, with such recommendations as may be agreed upon.

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#### TEXAS

TEXAS LAW REVIEW, Vol. 6, No. 1, p. 59.

Suggestions for Improving Court Procedure in Texas—An Advisory Civil Judicial Council for Texas.

Section 1. There is hereby created an advisory judicial council for the continuous study of and report upon the organization,

rules, procedure and practice of the civil judicial system of this state, the work accomplished and the results produced by that system and its various parts.

Section 2. The Council shall be composed of the following members:

The Chief Justice of the Supreme Court, who shall be president and chief executive officer of the Council.

An Associate Justice of the Supreme Court to be selected by that court.

The Chief Justice of each of the Courts of Civil Appeals.

The presiding judge in each of the administrative judicial districts.

Two members of the legislature who shall be chairmen, respectively, of the Senate and House Committees on Civil Jurisprudence.

Four practicing attorneys of the state to be selected, two by the State Bar Association and two by the Supreme Court.

One member of the faculty of the State University Law School to be selected by the president of the State University.

Section 3. The term of a member of the Council who is a judge or chairman of a legislative committee shall be for the rest of his term in the office that qualified him to become a member. The term of all other members shall be for two years from the date of their selection and until their successors are selected. A vacancy shall be filled for the rest of the term by selection as in the first instance.

Section 4. The Chief Justice of the Supreme Court and the several Chief Justices of the Courts of Civil Appeals shall have the power to designate some justice of their respective courts to serve in their stead as president or member of said Council during the pleasure of such designating Chief Justice. The district judges members of said Council shall have like power to designate some other district judge in their respective administrative judicial districts to serve in their stead and during the pleasure of such designating district judge.

Section 5. It shall be the duty of the Council:

1. To make a continuous study of the organization of the civil courts; the rules and methods of procedure and the practice of the civil judicial system of the state; of the work accomplished, the results attained and the uniformity of the discretionary power of the civil courts, to the end that procedure may be simplified, business expedited, and justice better administered.

2. To receive and consider suggestions from judges, public officers, members of the bar, and citizens, touching remedies for faults in the administration of civil justice.

3. To formulate methods for simplifying civil judicial procedure, expediting the transaction of civil judicial business, and correcting faults in the administration of civil justice.

4. To gather civil judicial statistics from the several judges and other court officials of the state.

5. To study and make suggestions regarding admission to the bar, the conduct of attorneys admitted to practice and disbarment, and to file such suggestions and the recommendations thereon with the Supreme Court and the Governor.

6. To make a complete detailed report, on or before December 1st of each year, to the Governor and to the Supreme Court, of all its proceedings, suggestions and recommendations, and such supplemental reports from time to time as the Council may deem advisable. All such reports shall be considered public reports and may be given to the press of this state as soon as filed.

7. To make investigations and reports upon such matters touching the administration of civil justice as may be referred to the Council by the Supreme Court or the legislature.

8. To hold one meeting in each calendar year, and such other meetings as may be ordered by the Council and at such time and place as it may designate; provided, that the first meeting of said Council shall be held prior to ----- upon call of its president.

Section 6. The Council shall have power:

1. To hold public meetings, require the attendance of witnesses and the production of books and documents, require reports from the several civil courts of this state, including courts not of record, as may be deemed necessary, to administer oaths and take testimony.

2. To appoint committees from its membership, and charge such committees with such of its duties and delegate to such committees such of its powers as it may deem proper.

Section 7. The Clerk of the Supreme Court shall act as secretary of the Council without additional compensation, but shall be allowed his actual expenses, including clerical assistance, incurred in the discharge of his duties as secretary upon verified itemized account approved by the president of the Council.

Section 8. No member of the Council shall receive any compensation for his services as such member, but shall be paid his actual traveling and other necessary expenses incurred in the discharge of his duties as such member to be paid upon verified, itemized account approved by the president of the Council. The necessary clerical expenses of the Council and its committees shall be paid in like manner.

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#### MISSOURI

Missouri Judicial Council Amendment, 7 Am. Jud. Soc. 117.

Sec. 25. The Chief Justice of the Supreme Court, the presiding judge of each division thereof, the presiding judges of the Kansas City and Springfield Courts of Appeals, with a judge of the St. Louis Court of Appeals selected by the judges thereof and three judges of circuit courts who, unless otherwise provided by law, shall be selected by the above named persons shall constitute a Judicial Council, which shall meet at the seat of government at least once each year. It shall have power to provide by rule or order for the transfer of causes from one Court of Appeals to another, to assign a judge of any trial court to assist the trial court of any like jurisdiction in the trial of cases and the transaction of the business of such court or to hold a term or part of a term of such court, either upon the request of the judge of such court, or in case of the disability or disqualification of, or change of venue from, such judge, or when the efficient transaction of the business of such court so requires. The Council may from time to time establish and simplify rules of practice and procedure for all courts which shall not deny or abridge any remedy or substantive right given by law. All laws in force at the time of the adoption of this constitution which pertain to practice and procedure, shall be considered as, and have the force of, general rules until rescinded, changed or modified by the Council: *Provided*, that any rule of practice or procedure adopted by the Council may be annulled or amended or a new rule created in lieu thereof, by the General Assembly by a special law limited to that purpose. The Council shall have such additional powers and shall perform such additional duties as may be provided by law. The members of the Council shall receive no compensation for their services, except they shall be paid for their actual expenses in attending the meeting of said Council, not exceeding the sum of five cents per mile each way actually traveled

in going to and returning from said Council, and five dollars per day while attending meetings of the Council.

Sec. 26. The Judicial Council shall make provision for holding court in all cases, when for any reason, a regular judge cannot hold such court.

Sec. 27. The Judicial Council, when the business of the court requires, may call to the aid of the Supreme Court or any of the Courts of Appeals one or more judges of the circuit courts for such time as may be necessary. Such judges, while so acting, shall possess all of the powers of judges of the court in which they are called to sit. The Council, when a sufficient number of such judges are called, may, for a period not exceeding ninety days, create an additional division of the Supreme Court of Appeals, but at least one regular judge of the Supreme Court or of the Courts of Appeals, shall sit in such division. While so acting such judges shall receive the sum of ten dollars per day from the State in addition to the compensation provided for judges of the circuit court.

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FEDERAL ACT. 42 Stat. L. 838.

Annual conference of senior court judges. It shall be the duty of the Chief Justice of the United States, or in case of his disability, of one of the other justices of the Supreme Court, in order of their seniority, as soon as may be after the passage of this Act, and annually thereafter, to summon to a conference on the last Monday in September, at Washington, District of Columbia, or at such other time and place in the United States as the Chief Justice, or, in case of his disability, any of said justices in order of their seniority, may designate, the senior circuit judge of each judicial circuit. If any senior circuit judge is unable to attend, the Chief Justice, or in case of his disability, the justice of the Supreme Court calling said conference, may summon any other circuit or district judge in the judicial circuit whose senior circuit court judge is unable to attend, that each circuit may be adequately represented at said conference. It shall be the duty of every judge thus summoned to attend said conference, and to remain throughout its proceedings, unless excused by the Chief Justice, and to advise as to the needs of his circuit and as to any matters in respect of which the administration of justice in the courts of the United States may be improved,

The senior district judge of each United States district court, on or before the first day of August in each year, shall prepare and submit to the senior circuit judge of the judicial circuit in which said district is situated, a report setting forth the condition of business in said district court, including the number and character of cases on the docket, the business in arrears, and cases disposed of, and such other facts pertinent to the business dispatched and pending as said district judge may deem proper, together with recommendations as to the need of additional judicial assistance for the disposal of business for the year ensuing. Said reports shall be laid before the conference herein provided, by said senior circuit judge, or, in his absence, by the judge representing the circuit at the conference, together with such recommendations as he may deem proper.

The Chief Justice, or, in his absence, the senior associate justice, shall be the presiding officer of the conference. Said conference shall make a comprehensive survey of the condition of business in the courts of the United States and prepare plans for assignment and transfer of judges to or from circuits or districts where the state of the docket or condition of business indicates the need therefor, and shall submit such suggestions to the various courts as may seem in the interest of uniformity and expedition of business.

The Attorney General shall, upon request of the Chief Justice, report to said conference on matters relating to the business of the several courts of the United States, with particular reference to causes or proceedings in which the United States may be a party.

The Chief Justice and each justice or judge summoned and attending said conference shall be allowed his actual expenses of travel and his necessary expenses for subsistence, not to exceed \$10 per day, which payments shall be made by the marshal of the Supreme Court of the United States upon the written certificate of the judge incurring such expenses, approved by the Chief Justice. F. S. A. Supp. 1922, 232.