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It is proposed to take a hypothetical client with a hypothetical estate and to discuss, first, the plan of an estate for such client together with the form of will, trust, or other instrument that might be used to carry out the plan; and second, the administration of the estate after the client's death.

The fact situation to be discussed will be an approximation of the typical estate and typical family relationship of any average business or professional man. Principal consideration will be given to the problem of best providing for the future needs of the family should the client die before accumulating any additional assets.

The morning session will be devoted to a panel discussion of the problems involved in planning the estate so as to obtain the maximum benefit to the widow and children. The panel will be comprised of Edward King, dean of the University of Colorado Law School, Wilson Hurt, professor at the University of Denver Law School and a third member who will be an attorney engaged in general law practice. Morrison Shafroth will be the moderator.

Judge C. Edgar Kettering of the County Court of Denver will be the principal speaker at the noon luncheon. He will point out some of the major pitfalls to be avoided in probate proceedings.

The afternoon session will consist of a series of brief talks on the problems of administering this same client's estate by lawyers with wide experience and experts in this field. These discussions will be limited to the practical side of estate administration—how to do what, when, and why.

Following the afternoon session will be the informal dinner for members, wives, husbands, ladies and escorts, at which we shall have an opportunity to meet and hear our American Bar Association president. Judge Orie L. Phillips will be toastmaster.

Be sure to save the entire day of June 7 and plan to attend this meeting. Watch for further announcements in DICTA, and make reservations early.

# Plan for Reorganization of the Judicial System of Minnesota†

By M. J. DOHERTY*

From a study of the trend of judicial reform in this country and England over the last century, it will be found that practically every comprehensive plan for bettering the administration of justice has centered around one or more of four major principles: (1) unification or integration of the courts; (2) administrative organization and control; (3) enlargement of the rule-

†An address before the State Bar Association of Minnesota. This address is reprinted, with permission, because of its timeliness in connection with the work of the Colorado Bar Association Judiciary Committee in its study of the Colorado judicial organization.

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making power of the courts; (4) improvement in selection and tenure of judges.

Our federal system has shown the greatest progress in this country and in the past two decades has moved far ahead of the states. However, the English reforms have been much more radical and complete than anything seen in this country. Prior to 1873 the English judicial system consisted of some fifteen different and distinct courts, exclusive of the courts of petty jurisdiction,—complicated, cumbersome, and confusing. Then came the English Judicature Acts of 1873 and 1875, by which the whole motley assortment of English courts was in effect abolished and was replaced with one single court called the Supreme Court of Judicature of England. This court was divided into two branches, the Court of Appeals and the High Court of Justice. The latter, in turn, had five divisions. The fundamental change was the erasure of all jurisdictional lines between courts and the substitution for a multiplicity of courts of one court with appropriate subdivisions or branches. The same acts effected various procedural reforms, established administrative controls, and conferred plenary rule-making power upon the courts. There seems never to have been any question but that these acts accomplished a sound and lasting reform. They have stood the test of experience, and no suggestion apparently has ever come from the English bench or bar for their repeal or radical modification.

In this country the pioneer advocate of reform along the lines of the English acts was Roscoe Pound. Probably his earliest public utterance on the subject was his address at the meeting of the American Bar Associtaion here in St. Paul in 1906. Three years later a special committee of the American Bar Association at its meeting in 1909 made a notable report, in which it submitted certain fundamental principles of judicial reform, of which the first was that:

> "The whole judicial power of every state should be vested in one great court, of which all tribunals should be branches, departments or divisions."

There was also recommendation of a thorough organization of the courts on their administrative side and of more complete rule-making power. This committee had quite a distinguished personnel, including such men as Edward T. Sanford, later justice of the United States Supreme Court, Roscoe Pound, Professor Beale, Judge Amidon, Charles B. Elliott, and about a dozen others. The report has generally been recognized as an important contribution to its subject. For many years now proposals along the lines mentioned have been persistently advocated by such organizations as the American Judicature Society, the National Municipal League, and the bar associations and judicial councils of many states. The latest important declaration on the subject is a report, just submitted, of a special committee of the American Bar Association headed by Judge John B. Sanborn as chairman. This was a sub-

committee for Minnesota of a general committee on improving the administration of justice. This report naturally carries special weight with us because of the well-known clearness of vision and soundness of judgment of Judge Sanborn. Among the recommendations of this report were (1) that provision be made for a unified judicial system for Minnesota and (2) that the supreme court be vested with full rule-making power for all of the courts of the state.

This subject has been under consideration of the Judicial Council of Minnesota for some time, and in August, 1941, at the instance of the council, a committee was appointed by Justice Stone, its chairman, to make a survey and recommend measures for the improvement of our judicial system. He appointed a number of subcommittees, the one for which I am particularly speaking being the committee on unification of the courts. The general committee consists of twenty-two members and includes lawyers and judges from every section of the state, constituting in the aggregate a very representative cross-section of the bench and bar of Minnesota. The general chairman is Justice Loring of the Supreme Court, who has been the principal moving and guiding spirit in the whole undertaking. The committee applied itself to its job with commendable interest and diligence. Its meetings have been well attended and the discussions have clearly evidenced serious study and thought on the part of its members. As the result of its labors the committee has brought forth a plan which I shall try to explain at least in outline.

The first conclusion of the committee was that no adequate reorganization of our court system could be accomplished except by constitutional amendment. Consequently the plan takes the form of a new judiciary article to be substituted for present Article VI of the state constitution.

The foundation of the whole plan is to be found in the first section, which reads:

> "There is hereby created The General Court of Minnesota, which shall have all of the jurisdiction at any time vested in the courts of this state. It shall have divisions to be known as the supreme court, district court, and county court."

The effect of this provision, if adopted, will be to place the whole judicial power of the state in one court with three divisions. These divisions will be separated by no jurisdictional lines, their separate functions being defined merely by way of allocating the judicial business of the general court. Each judge would be in a sense a judge of the whole court and would be eligible to serve in any division, but of course could sit outside of his own division only by special assignment. Any case within the jurisdiction of any division would automatically be within the jurisdiction of the general court and therefore of every division. This would mean that no litigant who had found his way into any division of the court would afterwards find himself out on his ear on jurisdictional grounds until he had exhausted all of the remedies

afforded by the whole judicial system or had had an opportunity of so doing.

The Supreme Court would undergo but little change except that it is given full rule-making power for all divisions of the general court. Its rules would have the force and effect of law and would supersede any conflicting statutes. The court could sit in divisions of not less than three members. It probably has that power now. It is not contemplated, of course, that it would divide in cases of difficulty or importance, but for seven supreme court judges to sit in deliberation upon a question of whether a plaintiff in a $501 personal injury suit is guilty of contributory negligence as a matter of law would seem a pretty obvious waste of judicial man-power. This is the sort of thing that prompted the provision.

The district court would have substantially its present jurisdiction except that in counties embracing a city of the first class it would also have probate jurisdiction. It might under a provision, later to be mentioned, be given power to review certain orders and decisions.

One of the new and important features of the plan is the creation of a county court. This court would, in general, take over all of the present jurisdiction of municipal courts and justices of the peace and, in all counties not having a city of the first class, also probate jurisdiction. It would have the number of judges provided by law, except that at the outset all municipal and probate judges would automatically become judges of the county court.

Municipal courts and justices of the peace are eliminated, and the probate court is assimilated, as explained, by the district and county courts. One result of this will be to end the senseless practice of appeal from the probate to the district court.

A problem that gave the committee a great deal of trouble was that of petty civil and criminal litigation. The question was whether the newly created county court would be a suitable tribunal for disposal of the large volume of small civil matters, and the even more troublesome volume of petty criminal matters now disposed of by justices of the peace and municipal courts. The problem was especially serious in relation to rural communities. The solution proposed is the creation of a special officer of the county court, to be known as magistrate, clothed with minor civil and criminal jurisdiction. The maintenance of such an officer, however, is left optional with each municipality, and no provision for such officer was thought necessary in respect to cities of the first class.

Provision is made that the clerks of all the courts shall be appointed by the courts, the popular election of clerks being entirely dispensed with.

We come next to one of the most important innovations of the plan. A common criticism of our judicial system has long been alleged waste and inefficiency, due to lack of any administrative supervision or control. To remedy this defect there is created a body to be known as the administrative council, which is given very important powers. This council is to consist

of three representatives of each division of the general court, that is, three judges of the supreme court, three of the district court, and three of the county court. The representatives of each division are to be elected by the members of that division. The council is given general supervision of the administrative organization and operation of the general court and its divisions and authority to prescribe the duties of the administrative and clerical personnel of all divisions. It is given authority to appoint an administrative head of the general court to be known as administrative director. It is given power to create subdivisions or departments of the district and county courts and to allocate matters to these departments. This provision has in mind the possibility of separate departments for such special branches of court work as probate matters, domestic relations, criminal cases, offenders, conciliation, and the like. Such departmentalization of court work has often been advocated as a means of furthering specialization on the part of judges.

The council is given power to modify the jurisdiction properly exercisable by the district and county courts and to provide for review by a panel of district court judges in certain cases decided by the county and district courts, and in such cases to condition the right of appeal to the supreme court upon leave of that court. The committee felt that the time might come, if it is not yet here, when good purpose would be served by conferring this limited power of review upon judges of the district court. The expectation would be that a reviewing panel of three or more members would be set up and be given cognizance of certain defined cases of lesser importance. In order that its decisions might count for something, they should, at least if unanimous, be made final unless the supreme court should order further review in that court.

The purpose generally of the council's power over the district and county courts is to introduce a measure of elasticity into those courts. It was realized that the county court particularly, being something entirely new, may need adjustment from time to time to make it fit properly into the field for which it is intended. The judges of the courts are manifestly in the best position to observe the working of the judicial system, and through their representatives on the council to promptly apply to it the lessons of every day experience. No similar opportunity for observation is open to legislators and no such promptness of action could be expected of them. Here we have a completely integrated and thoroughly coordinated judicial system. It is closely adapted to what we might call judicial self-government. In the operation of that system and its improvement and adaptation, within the constitutional framework, to future needs there could be no safer guide than the composite judgment of those who are charged with its administration.

A few incidental provisions might be mentioned.

All judges are subject to an age limit of seventy years except those in office when the new article takes effect. There has long been need of some

provision for involuntary retirement of judges—something better than the cumbersome and unused method of impeachment. The cases most in need of remedy are those of judges who become incompetent by reason of mental or physical disability but who refuse to recognize their incapacity. For such cases the plan gives the administrative council authority to investigate and determine the question of competence and to retire judges who refuse voluntarily to retire after incompetence is found by the council to exist.

There is provision for retirement compensation applicable to judges reaching the age limit and to those retired for disability. Any such judge who has served ten years or more in judicial office in this State is given retirement compensation of one-half his salary, with power left in the legislature to increase the amount if it should see fit.

What I have said has not been intended as an argument for the plan. There will be time for full discussion after the bar has had an opportunity to examine and consider the committee's final report. All I have tried to do is to give you a very brief sketch of the background of the committee and an outline of the salient features of its proposal and a few of the considerations upon which its adoption is recommended.

## Our Returning Lawyer-Veterans

WILLIAM L. GOBIN, major, Judge Advocate General's Dept., army, served from Aug. 1942 to Nov. 1946. Basic training and service with Coast Artillery (Anti-Aircraft Command), vicinity Washington, D. C. He was commissioned in the Judge Advocate General's Office, Washington; attended Judge Advocate General's School, Ann Arbor; went overseas Jan. 1944; and served as asst. judge advocate of L. Island Command, New Caledonia, and as staff judge advocate of Guadalcanal Island Command, and of the Army Air Forces, New Caledonia. He was admitted to the Colorado bar in 1932, and practised in Rocky Ford until his entrance into the army. He has an A.B. from Denver Univ., and LL.B. from Harvard.

## Law Books For Sale

Harold F. Mudge, 1180 Magnolia St., Denver, has for sale a set of 1935 Colorado Statutes Annotated, including the new volume 1 containing the Rules of Civil Procedure, which he will sell for $65, and a Colorado Digest by the West Publishing Company, for sale for $75.

## New Member of Denver Bar Association

JOHN G. BLANCH was admitted to membership in the Denver Bar Association at the February 3, 1947 meeting.