

THE GOVERNOR'S COMMITTEE ON PREPARATORY RESEARCH
for the
NEW JERSEY CONSTITUTIONAL CONVENTION

THE JUDICIAL COUNCIL

by
Evelyn M. Seufert
Member of the New Jersey Bar

State of New Jersey
Alfred E. Driscoll, Governor
May 1947

THE JUDICIAL COUNCIL

I - Functions

The primary function of the judicial council is to study the court system in the states and to recommend desirable changes. For this purpose it conducts "a continuous survey of the volume and condition of business in the various state courts and also observes the result of experiments in other jurisdictions."¹ It devises

"ways of simplifying judicial procedure and handling cases more expeditiously. Proposals for improved organization and method are submitted to the legislature and occasionally to the judges of the courts. Special investigations are made from time to time at the legislature's request. In most instances, therefore, a judicial council merely investigates and recommends. It is without power to compel adoption of any of its suggestions. It has no final authority. But in a few states, of which California is the most notable example, it has a certain measure of control over the court system. The California Judicial Council assigns judges to care for crowded calendars, and also to make rules of procedure that supplement rules established by state law."²

More than a third of the states have created judicial councils for the purpose of scrutinizing the operations of the courts, expediting their business, and bringing order into their transactions.³

Apparently many states evidenced a critical need for a more efficient administration of justice. It became obvious that some agency was essential to conduct a systematized

study for the improvement of unsatisfactory conditions in the courts, especially in connection with congestion of the court calendars, delays, and miscarriages of justice.⁴

Consequently

"the Judicial Council became one of the most important devices employed * * * for the improved efficiency of the court system."⁵

Chief Justice Lucien D. Gardener, Chief Justice of the Alabama Supreme Court, writing recently on the subject, said:⁶

"Judicial Councils are organizations set up to study and report on the states' judicial system, with recommendations for improvement as investigations of the Council show to be necessary. * * * The work of the Council involves the collection of statistical and other information concerning the courts and litigation conducted in them; the efficiency with which the business of the courts is being administered, the soundness of the rules of practice, procedure and evidence, and other matters of similar nature. Experience has demonstrated that the legislatures of the several states can give only limited and intermittent time and effort to the problems involved in the administration of justice. The Judicial Council is, therefore, a state agency to gather information and to make suggestions which concern the welfare of the courts and the disposition of the business of the courts."

The nature of the functions of the average judicial council might well be determined by a listing of the powers of such a council in a pertinent section of the Georgia statute of 1945, which empowered the judicial council

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

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

"4. To gather 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 1 of each year, to the Governor and to the Supreme Court of all of 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 the State, as soon as filed.

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

"8. To make a careful and thorough study of the cost of the courts and of the administering of justice in the state, and to gather statistics and data thereon, and report the same from time to time to the General Assembly, with their recommendations for effecting economies and reducing the cost of the state and counties and to litigants in the several courts of the state."⁷

II - The Judicial Council in Operation in the Various States

The first state to establish a judicial council was Ohio, in 1923. Massachusetts soon followed with a similar statute in 1924. By 1947, 32 states in the Union had created judicial councils.⁸ The majority of these states created the councils by statute, but we find that in several of the jurisdictions

the councils were authorized by state bar association resolutions or by supreme court rules.⁹ In Arkansas a voluntary judicial council has been operating since 1941, composed of 49 members of the supreme court, the circuit court and the chancery court.¹⁰ Illinois has a unique statute, passed in 1931, which provides that "any county over 500,000 in population may establish a Judicial Council by resolution of the County Board." This council receives no compensation for its services, but its expenses are paid by the county board. So far, only Cook County has established such a council.¹¹ California is the only state which authorizes a judicial council by constitutional provision.¹²

The size of the judicial councils range from a membership of 6 in Rhode Island to 52 in Kentucky, with the average membership ranging from 9 to 12.¹³ In composition they include judges, lawyers, legislators and laymen, exclusively, or in combinations. While a few states have only judges serving on the council, and in a few other states only practicing lawyers are allowed to serve, the majority of the states provide for a combination of judges and practicing lawyers, or judges, practicing lawyers and legislators. It is interesting to note that in states where there are state universities they require that the judicial council membership must include a member of the state law school faculty.¹⁴

Comparatively few states include laymen in the judicial council although they are becoming more and more recognized as

valuable members. A few years ago the president of the American Bar Association declared:

"I asked an informed individual which kind of group gets the best results. His answer was, 'Those councils which have laymen on them. Where either lawyers or judges serve alone they seem to lack energy for sustained attack. Where judges and lawyers serve together each group seems to have a diffidence about imposing its views upon the other, which stultifies action. Where, however, laymen are included, their presence seems to act as an ice-breaker and to stir activity among the professional members of the council. Laymen's criticism are sharper.'"¹⁵

Similarly, Chief Justice Lucien D. Gardener of the Alabama Supreme Court, in reference to the work of his committee on the creation of a judicial council for Alabama stated:

"Your committee discovered that the most successful Judicial Councils of the various states are those which embrace among the membership some outstanding laymen, and, as a consequence, our report provides the laymen on the Council."¹⁶

III - The Judicial Council in New Jersey.

In 1930 the New Jersey Legislature established by statute a Judicial Council to consist of ten members, one appointed by the Chancellor from the Court of Chancery, four appointed by the Chief Justice from the law courts, and five lawyers appointed by the president of the New Jersey State Bar Association; there are also three ex officio members, the

-6-

Attorney General, the Chairman of the Judiciary Committee of the Senate and the Chairman of the Judiciary Committee of the Assembly.¹⁷

The function of the Council was established as follows:

"It shall be the duty of the Judicial Council to make continuous study of the organization in relation of the various courts of the state, counties and municipalities; the rules and method of procedure and practice of the judicial system of the State; the work accomplished; and the results produced. It shall from time to time submit for the consideration of the justices and judges of the various courts such suggestions in regard to the rules of practice and procedure as it may deem advisable, and shall report annually to the Governor on or before December 15 such matters as it may wish to bring to his attention or to the attention of the Legislature. The Council shall cooperate with the Legislature and its committees and shall from time to time, upon request, aid and advise the Legislature and its committees upon any subject of law or procedure which may be before the Legislature for action."¹⁸

That same year the Judicial Council made its first annual report to the Governor, and continued to do so for the next eight years. The reports indicate exhaustive research in the collection of data concerning the work of the courts, a thorough analysis of the court systems and well considered recommendations to bring about improvements in the systems. Some of these recommendations took the form of bills to be introduced in the Legislature and some were in the nature of rules to be adopted by the courts. Of the 11 bills recommended

by the Council in its supplement to its first annual report, five became enacted into law.¹⁹

In 1931 the Legislature, by Joint Resolution, directed the Judicial Council to "make a complete study of the status of the judicial system of the State and report and submit to the next Legislature its findings and recommendations as to the State Constitution."²⁰ The Judicial Council thereupon did submit such proposed judiciary amendments the following year, but the Legislature failed to act favorably upon them.²¹

An examination of the printed reports of the Judicial Council of New Jersey reveals that the function of the Council is not only of a research and statistical nature but also advisory. The fact that New Jersey's Judicial Council makes recommendations to the appropriate authorities places it on the level of agencies capable of practical achievements. One need only to look at the Council's eighth annual report to the Governor to appreciate the fact that here is a body whose field of activity is broad in nature and whose ability to grasp, study and resolve a problem is particularly evident.

Such a Judicial Council could prove to be of inestimable value to the courts and to the public. The fact that little benefit has been derived from the Council in the past few years may be explained by the failure of the Legislature to appropriate funds for its operation. Although the members of the Council serve without compensation, funds are necessary to maintain a sufficient

clerical and secretarial staff to carry out the work of the Council. As a matter of fact, lack of, or sub-standard appropriations for the operation of judicial councils has been the greatest handicap of judicial councils throughout the country. Appropriations in other states vary from \$100 in Indiana to over \$64,000 in California. New York's annual appropriation averages \$27,500, Massachusetts \$5,300, and the remainder of the states \$3,000 or less. In the majority of the states no compensation is paid to the members of the judicial council, but their expenses are paid. Five councils have paid staffs and three councils are able to pay for expert aid.²² In some jurisdictions, therefore, such as New Jersey, research and study is done by law school students, law faculty and the members of the council themselves. Consequently the extent and comprehensiveness of the research depends to a great degree upon the gratuitous contributions of individuals and state bar organizations, supplementing or substituting for state financial aid.

IV - Evaluation of the Judicial Council.

That judicial councils serve a vital and necessary function seems to be beyond controversy. The reports of these councils are used regularly as a basis for informed legislation.²³ Their research is utilitarian as well as informative.²⁴ The California Judicial Council is credited with securing the passage of 60 statutes leading to judicial reforms within an 11-year

period, and Massachusetts 50 such statutes. The states of Arizona and Iowa were able, after many long years, to get the rule-making back into the courts.²⁵

"The legislation these groups sponsor appears, in variety, to touch every aspect of court procedure, processes, pleadings, pre-trial, trial, evidence, judgment, appeal, court fees, court administration, admission to the bar, selecting juries, instructing juries, parole, pardons, code revision, etc...."²⁶

The presiding judge of the first division of the Missouri Supreme Court believes that:

"The public expects lawyers not merely to practice law but to improve law.* * * There is no better way to carry out this obligation and duty to the public than through a Judicial Council. * * * With the end of the war we are entering a new era, in which the institutions of democracy will be tested as never before * * *. The improvement of the administration of justice is a continuous process. The operations and needs of the judicial system must be constantly surveyed, tested and improved. That is the purpose of the Judicial Council. It can compile statistics on the operation of your judicial system and determine its needs. It can do the research work for improvement. It provides a means for cooperation of Bench and Bar by which the judicial system can remedy its defect, increase its efficiency and better serve the public. But to obtain results it must have cooperation. There must be enough lawyers willing to take some time from the practice of law to try to improve law."²⁷

The public nature of the service performed by the judicial council is well expressed in the Third Report of the Judicial Council of California, as follows:

"Combining the task of examining the conditions existing in our courts with the study of the causes which have given

rise to those conditions which have led to widespread criticism of these tribunals * * * particularly to congestion and the delays therein * * * and involving, as it does, the responsibility of considering, devising and recommending the remedies for improving the administration of justice, the Judicial Council movement offers to the legal fraternity, to the Bench and Bar alike, the greatest opportunity for genuinely constructive public service."²⁸

Footnotes

1. Macdonald, A.F., American State Government and Administration, 3rd ed., 1945, p. 239
2. Ibid, p. 240
3. Grant, J.A.C., "The Judicial Council Movement," Amer. Pol. Science Review, Nov. 1928
4. Louisiana State University, Constitution Revision Project, Constitutional Problems, No. 6, "Judicial Council," p. 1, 1947
5. Ibid, Introduction by Kimbrough Owen
6. "Judicial Councils," 5 Alabama Lawyer 297 (1944)
7. Georgia Code Annotated, Ch. B I - 1606; Acts 1945, p.p. 155, 156
8. For list of states with Judicial Councils see annexed chart from The Book of States, 1945-46, p. 452 (see p. 13)
9. See footnote 4, supra
10. Ibid
11. Ibid
12. California Constitution, Judicial Department, Judicial Council, sec. 1 a, adopted Nov. 2, 1926
13. See footnote 4, supra.
14. Ibid
15. Morris, George, "The Judicial Councils of the States," 29 Amer. Bar Assn. Journal 366, 367
16. Gardener, Lucien D., "Judicial Councils," 5 Alabama Lawyer 297, 1944

17. R.S. 2:17-1 to 10
18. Ibid
19. For an explanation of these measures see Second Report of the Judicial Council of New Jersey to the Governor, Dec. 15, 1931, pp.1-5
20. 155th Legislature, Joint Resolution No. 16, adopted April 27, 1931
21. Report of the Judicial Council of New Jersey to the Senate and General Assembly of the State of New Jersey, May 31, 1932
22. See footnote 4, supra
23. Ibid, p. 6
24. For example, in New Jersey, see Ralph R. Temple, Report on the Constitutional Courts of the State of New Jersey, 1942, for references to the work of the New Jersey Judicial Council.
25. See footnote 4, supra
26. Morris, George, op. cit., p. 366
27. Hyde, Laurence M., "The Place of the Judicial Council in Improving the Administration of Justice," 16 Oklahoma Bar Assn. Journal 1595 - 1600 (Nov. 24, 1945)
28. Holzer, Harry A., in the Third Report of the Judicial Council of California. See also the Twelfth Annual Report of the Judicial Council of the State of New York, 1946, Leg. Doc. No. 17, for an excellent picture of the scope of activities of New York's Judicial Council.

Schedule A

The Book of the States

JUDICIAL COUNCILS*

State	Date Estab- lished	Authorization			Number of Members	Term	Appro- priation, 1943	Functions	
		Consti- tution	Statute	State Bar Reso- lution				Supreme Court Rule	Judicial Statistics Compiled	General Judicial Research
Alabama.....	1936	.....	.....	★	9	4 yrs.	None	.....	★
Arizona.....	1941	.....	.....	(*)	45	.....	None	.....	.....
Arkansas.....	1926	★	.....	.....	11	2 yrs.	\$64,780 ^b	★	★
California.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Colorado.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Connecticut.....	1928	.....	★	.....	9	4 yrs.	\$500	★	★
Delaware.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Florida.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Georgia.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Idaho ^c	1929	.....	.....	★	.....	.....	.....	.....	.....
Illinois.....	1929 ^d	.....	.....	(d)	5	4 yrs.	\$2,500	.....	.....
Indiana.....	1935	.....	★	.....	9	4 yrs.	\$100 ^b	★	★
Iowa.....	1936	.....	.....	.....	13	4 yrs.	None	★	★
Kansas.....	1927	.....	★	.....	9	4 yrs.	\$2,750	★	★
Kentucky.....	1929	.....	★	.....	52	.....	\$800	★	★
Louisiana.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Maine ^e	1935	.....	★	.....	.....	.....	.....	.....	.....
Maryland ^e.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Massachusetts.....	1924	.....	★	.....	10	4 yrs.	\$5,300	★	★
Michigan.....	1929	.....	★	.....	10	6 yrs.	\$1,500	★	★
Minnesota.....	1937	.....	★	.....	12	3 yrs.	\$750	★	★
Mississippi.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Missouri.....	1943	.....	★	.....	9	3 yrs.	expense allowed	.....	.....
Montana.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Nebraska.....	1939	.....	.....	.....	11	.....	None	.....	★
Nevada.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
New Hampshire.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
New Jersey.....	1930	.....	★	.....	14	5 yrs.	\$1,850	★	★
New Mexico.....	1933	.....	★	.....	10	(*)	None	.....	★
New York.....	1934	.....	★	.....	20 ^k	2 yrs.	\$27,500	★	★
North Carolina.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
North Dakota.....	1927	.....	★	.....	28	2 yrs.	None	★	★
Ohio.....	1924	.....	★	.....	13	3 yrs.	\$1,500	★	★
Oklahoma.....	1934 ^f	.....	.....	.....	.....	.....	.....	.....	.....
Oregon.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Pennsylvania.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Rhode Island.....	1939	.....	★	.....	6	3 yrs.	\$500	★	★
South Carolina.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
South Dakota.....	1933	.....	.....	★	12	.....	(*)	★	★
Tennessee.....	1943	.....	★	.....	14	4 yrs. ^l	\$3,000	★	★
Texas.....	1929	.....	★	.....	16	6 yrs.	\$1,350	★	★
Utah.....	1931	.....	.....	★	11	3 yrs.	None	.....	★
Vermont.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Virginia ^b.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Washington.....	1926	.....	★	.....	10	4 yrs.	\$2,500	★	★
West Virginia.....	1934	.....	★	.....	9	6 yrs.	\$1,455	.....	★
Wisconsin.....	1929	.....	★	.....	10	1 yr.	(^l)	.....	★
Wyoming.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

^a Voluntary.

^b For two years.

^c Inactive.

^d In Cook County only, by resolution of Board of County Commissioners.

^e Indefinite.

^f State Bar act under which Council was established now repealed.

^g State Bar funds.

^h In process of reorganization.

ⁱ Expenses only.

^j Two chairmen of Judiciary Committees of Legislature, for the term of office as chairmen; Attorney General, ex-officio.

^k Eleven by virtue of their office; six appointed by Governor, three advisory members.

* Prepared from *Handbook, National Conference of Judicial Councils*, 1942, 744 Broad Street, Newark, New Jersey. Revised for publication in March, 1945, by William E. Hannan, Legislative Reference Librarian, New York State Library.

APPENDIX

MODEL STATE CONSTITUTION*

Section 606. Establishment of Judicial Council. There shall be a judicial council, to consist of the chief justice, and one justice of the supreme court department and two judges of the inferior court departments to be designated for four years by the chief justice; three practicing lawyers, to be appointed by the governor for overlapping terms of three years, from an eligible list containing three times as many names as there are appointments to be made and presented to him by the governing board of the state bar association; three laymen citizens of the state, to be appointed by the governor for overlapping terms of three years; and the chairman of the judiciary committee of the legislature. The judicial council shall meet at least once in each quarter, at a time and place to be designated by the chief justice.

Section 607. Powers of the Judicial Council. The judicial council, in addition to other powers herein conferred upon it or hereafter conferred by law, shall have power to make or alter the rules relating to pleading, practice, or procedure in the General Court of Justice, and to prescribe generally by rules the duties and jurisdiction of masters and magistrates; and also to make rules and regulations respecting the duties and the business of the clerk of the General Court of Justice and his subordinates and all ministerial officers of the General Court of Justice, its departments, divisions, or branches. The legislature may repeal, alter, or supplement any rule of pleading, practice, or procedure, by a law limited to that specific purpose. No such rule made by the judicial council shall be effective until published as provided by law.

* National Municipal League, Model State Constitution, Partial Revision, 1946, p. 14

BIBLIOGRAPHY

1. California Constitution
2. California, Reports of the Judicial Council
3. Council of State Governments, The Book of the States, 1945-1946
4. Gardener, Lucien D., "Judicial Councils," 5 Alabama Lawyer, 297, 1944
5. Georgia Code Annotated
6. Grant, J. A. C., "The Judicial Council Movement," 22 Amer. Pol. Science Review, Nov. 1928
7. Hollzer, Harry A, Third Report of the Judicial Council of California
8. Hyde, Laurence M., "The Place of the Judicial Council in Improving the Administration of Justice," 16 Oklahoma Bar Assn. Journal, Nov. 24, 1945
9. Louisiana State Univ., Constitutional Revision Project, Constitutional Problems, Monograph 6, "Judicial Council," 1947
10. MacDonald, A. F., American State Government and Administration, 3rd. ed., 1945, Chap. 11, "State Courts"
11. Morris, George M., "The Judicial Councils of the States," Amer. Bar Assn. Journal, July, 1943
12. New Jersey Legislature, 155th Session, Joint Resolution No. 16, adopted April 27, 1931
13. New Jersey, Reports of the Judicial Council
14. New Jersey Revised Statutes
15. New York, Reports of the Judicial Council
16. Pirsig, Maynard E., Judicial Councils (American Bar Association, monograph of Committee on Improving the Administration of Justice, 1942)
17. Pound, Roscoe, "Judicial Councils and Judicial Statistics," Amer. Bar Assn. Journal, Feb. 1942
18. Temple, Ralph R., Report on the Constitutional Courts of the State of New Jersey, 1942