MINNESOTA CONSTITUTIONAL STUDY COMMISSION

JUDICIAL BRANCH
COMMITTEE REPORT

This report constitutes committee recommendations to the Constitutional Study Commission. See the Final Report for the Commission's action which in some cases differed from the committee recommendations.

November, 1972

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The full Commission took action which differed from the recommendations of the Judicial Branch Committee in the following areas:

A unified court system, (Section 1 of the recommended constitutional amendment). The Commission decided that the present division of trial courts into a district court and lower courts should be retained at least until completion of national studies now being conducted on court unification.

An intermediate court of appeals (Sections 1 and 3 of the recommended amendment). The Commission preferred to give the Legislature the power to create an intermediate appellate court rather than to establish the court by constitutional mandate.

Judicial nominating commission (Section 7 of the recommended amendment). The Commission preferred to leave the power of judicial appointment exclusively in the hands of the governor, as at present.

The Commission added to the Committee's recommendation a provision that the governor may fill judicial vacancies created by incumbents not filing for reelection.

I. INTRODUCTION

A. BACKGROUND

The Judicial Branch Committee was given the task of examining Article VI of the Constitution which relates to the structure of the court system and the selection of judges.

The committee conducted public hearings in Moorhead on May 4, 1972, in conjunction with the monthly meeting of the full Commission; in St. Paul on June 1; and in conjunction with meetings of the Minnesota Bar Association and the Minnesota District, Municipal, and Probate Judges Associations in Rochester on June 26. The committee appreciates the cooperation of all those who have appeared before it or have offered suggestions in the form of letters or written statements. A listing of persons who appeared before the committee or communicated to it in writing is included in an appendix to this report.

The Committee has drafted a complete judicial article for the State Constitution. It is based on language in the present Constitution, but contains improvements which we believe desirable. Thus, our report is somewhat different in format from others which have been presented. It centers on the proposed article, with notes and comments on each section.

An earlier version of this proposed article was circulated to interested parties for comment. That version represented a synthesis of various sources. On the basis of comments received, changes have been made. This draft represents our recommendations to the Commission. Except where specifically noted, all members of the committee concur in this report.

B. SUMMARY OF RECOMMENDATIONS

A summary of the major impact of our proposed article should assist in its examination. Four major changes are proposed in Minnesota's judicial system as follows:

1. Merit selection. Section 7 of the committee's proposal provided for a system of "merit selection" of judges. Under this proposal, whenever a judicial vacancy occurred, a commission would nominate candidates for the office and the governor would appoint a new judge from among the list of nominees. The judge would be subject to a "yes/no" election on the question of his retention once every six years. (For details and further explanation, see Section 7 of the proposal.)

2. Unified court system. Several sections of the proposal permit the creation of a "unified court system." (See particularly Sections 1, 2, and 4.)

The committee believes centralization and unification of administrative responsibility will permit more efficient and speedy administration of justice.

3. Intermediate court of appeals. We are also recommending the establishment of an intermediate court of appeals in Sections 1 and 3. This court would relieve the Supreme Court from the burden of hearing some appeals from the district court and permit it to focus upon issues of broad interest and importance.

4. Judicial discipline and removal. The committee recommends the establishment of the "California Plan" of judicial discipline

and removal. (See Section 5, paragraph 2.) Our proposal gives the legislature authority to adopt a system of judicial discipline. Such a plan is already in effect for lower courts of the state and is being submitted to the voters of Minnesota as one of the amendments on the 1972 ballot.

The above mentioned amendment also contains provisions which would eliminate the probate court, provide for the appointment (rather than election) of the clerks of the district court, and allow the assignment to the supreme court of several district judges at the same time. In making its recommendations, the committee will refer both to the existing Article VI of the State Constitution and to the proposal which is being submitted on the November election ballot.

II. COMMITTEE RECOMMENDATIONS

The Judicial Branch Committee recommends the adoption of all material printed in *script language*. These script sections comprise the entire text of suggested new Article VI.

SECTION 1

Section 1. The Judicial Power. The judicial power of the state is vested in a supreme court, a court of appeals, and a district court. All courts except the supreme court may be divided into geographic districts as provided by law.

Present text; changes. Section 1 of the present constitution vests the judicial power of the state in a supreme court, a district court, a probate court, and such other courts, minor judicial officers and commissioners with jurisdiction inferior to the district court as the legislature may establish. The effect of the proposed Section 1 would be to:

1. Establish a court of appeals. This point is discussed in Section 3 of this report.
2. Abolish the probate court.
3. Establish a single, unified trial court.

There is no language in the present constitution equivalent to the second sentence of the provision but this does not appear to create any new power.

Comment

Court of appeals. The arguments for establishing a new court of appeals are set forth following Section 3 of this report.

Abolition of the probate court. Until the last session of the legislature, there was a probate court in each county of the state except one where a probate court served two counties.

The 1971 Legislature created a county court system, which now operates in all counties except Hennepin, Ramsey, and St. Louis. Under the county court system, the probate and municipal courts have been merged in order that full-time judges may be available throughout the state. Separate probate courts have been maintained in the three above-named counties.

Under the proposed constitutional amendment to be voted on this November, total abolition of the probate courts as separate courts could take place and their present jurisdiction could be reassigned in accordance with law. This would permit the merging of probate business with civil and criminal business of other courts and hopefully expedite probate business.

In recommending the structure established here, the Judicial Branch Committee is going one step further. The committee is recommending that there be only one trial court in Minnesota for all classes of cases. Under the proposal, that court would be the district court, which could then make such provisions for the dispatch of probate business as seemed appropriate for a given local area. For example, the district court could assign one of its judges to hear probate matters on a full-time basis. Under the proposal, the precise organization could be established in each judicial district to meet the needs of that district.

Unified judicial system. Section 1, together with several other sections, is intended to create a unified judicial system for Minnesota. At the trial court level, such a system would mean that there would be only one trial court for a given locality, the district court.

In Hennepin, Ramsey, and St. Louis counties, a unified court system would mean that the district, probate, and municipal courts would be consolidated into a new district court. In other counties, the proposal would mean that the district and county court would be consolidated into a new district court.

After this consolidation, the district courts themselves would provide for the enumeration of divisions and the creation of local courts of limited jurisdiction. The district court would assign judges to its various functions. This is intended to provide flexibility to meet the differing needs of various parts of the state. For example, in areas with large population, a unified court would allow jurisdictions to be broken down on a functional basis. One judge might specialize in probate matters, another in juvenile cases, etc. In less populous areas, the district courts might choose to distribute the workload on a geographic basis, with each judge handling all of the business at a particular court house for a certain period of time. The two patterns of assignment given here are simply illustrations; the individual district courts would reach their own assignment patterns and create their own divisions, as individual circumstances would require. They would then be able to change such assignments, as circumstances changed.

Placing all trial jurisdiction in one local court would permit increased efficiency in utilizing judicial resources. It would permit the district court to assign judges to meet the changing workload, rather than the present system in which jurisdictional barriers sometimes prohibit some judges from assisting others.

Vesting this power in the hands of the district judges, rather than in the legislature, has two advantages. In the first place, it would allow more rapid response to changing patterns of case loads. The judges are in session throughout the year, while the legislature meets only periodically. In the second place, such an arrangement would allow different patterns of judicial administration to be established to meet the different needs of the various regions of our state. The proper system of inferior courts for the metropolitan area might be significantly different from the system which would meet the needs of rural counties.

Section 1 of the proposed judicial article is derived from **Advisory** Commission on Intergovernmental Relations, Court Reform, page 5, Suggested Constitutional Judicial Article, Sec. 1..

SECTION 2, FIRST PARAGRAPH

> *Section 2. The Supreme Court. The supreme court shall consist of one chief justice who shall be executive head of the judicial system and not less than six nor more than eight associate justices as the legislature may establish. It shall have original jurisdiction in such remedial cases as may be prescribed by law and such appellate jurisdiction as may be prescribed by law or by rule, but there shall be no trial by jury in said court.*

Present text; changes. There are three changes from the present text of Article VI, Section 2, first paragraph.

1. The amendment assigns the duty of "executive head of the judicial system" to the chief justice of the supreme court.

2. The amendment changes the denomination of the office from "judge" to "justice", formally recognizing a title which has long been used in fact.

3. Present language confers all appellate jurisdiction on the supreme court. The amendment provides for appellate jurisdiction to be established by statute and rule of court and is designed to permit allocation between the intermediate court and the supreme court.

Comment

The constitutional recognition of the chief justice as the "executive head of the judicial system" underscores the importance of the administrative functions of the office. It thus reinforces the unified court system which Section 1 creates.

The chief justice has long exercised the powers formally granted to him here, both by statutory authorization and by the simple prestige of his office. With the Judicial Administrator, who acts as his assistant in these matters, he proposes the budget for the state court system and makes recommendations to the governor and legislature regarding the support and constitution of the state's courts.

The authorization for an intermediate court of appeals in Section 1 of the proposed article requires limitation on the appellate jurisdiction of the supreme court. Were it otherwise, every decision of the intermediate court could constitutionally be appealed to the supreme court, thus destroying the ameliorating effect which the court of appeals might otherwise have on the workload of the supreme court.

Currently the unlimited appellate jurisdiction of the court is regulated by the Civil Appeal Code (Minn. Stat. Ch.605), the Criminal Appeal Statute (Minn. Stat. Ch. 632), Supreme Court Rules of Appellate Procedure (Rules 103-111), in addition to various and sundry scattered statutes. The amendment authorizes the Supreme Court to regulate appellate jurisdiction by rule, thus providing a flexible mechanism for the adjustment of appellate jurisdiction, depending upon circumstances.

SECTION 2, SECOND PARAGRAPH

The supreme court shall appoint, to serve at its pleasure, a clerk, a reporter, a state law librarian and such other employees as it may deem necessary.

Present text; comment. This provision is the same as the present third paragraph of Section 2.

SECTION 2, THIRD PARAGRAPH

The supreme court shall adopt rules governing the administration, admissibility of evidence, practice and procedure in all courts. These rules may be changed by the Legislature by a two thirds vote of the members elected to each house.

Comment

This provision is entirely new. In the past, the legislature has provided for these matters by law. At one time, the legislature passed detailed codes of procedure for criminal and civil cases and rules for the administration of courts, setting term dates, etc. The legislature has gradually recognized that this is really a function which is better served by the courts themselves. Accord-

ingly, it has delegated substantial control over court administration to the Judicial Council (see MS 483.01-483.04) and the power to adopt rules for civil and criminal cases to the supreme court (see MS 480.05-480.059).

The provision proposed here would have double impact. The ability of the supreme court to adopt rules for judicial administration would assist the court in the implementation of a unified judicial system. The unified court should promote the efficient utilization of judicial manpower.

By ad hoc decisions the Supreme Court has, in effect, adopted rules of evidence. The authority granted in the proposed section would permit the adoption of an integrated, comprehensive code of evidence. In either case, the legislature could, by extraordinary majority, override the rules made by the supreme court. The ultimate responsibility of the legislature is thus recognized, but the section also acknowledges that the familiarity and competence of the judiciary in these areas should be given great weight.

SECTION 2, FOURTH PARAGRAPH

The supreme court shall appoint a chief judge from among the members of the court of appeals, a chief judge from among the members of the district court of each judicial district, a state administrative director of the courts and such assistants as the administrative director deems necessary to supervise the administration of the courts of the state.

Present text; changes--This entire provision is new, although current statutes do recognize the title of chief judge.

Comment

The chief judge of each judicial district is currently elected by the judges in the district, pursuant to Minn. Stat. Sec.484.34. In the 3rd and 6th Judicial Districts, the position is rotated; in several other districts the judge who is senior in service is re-elected each year; in still others the selection is made on the basis of ability and interest in administration. The recommendation, which places the selection in the hands of the supreme court, seeks to promote uniformity in the criteria for selection of chief judges of the district court and the new court of appeals.

The duties of the chief judge may well be increased under the proposed unified system. The assignment to divisions and allocation of responsibility among divisions of the district court will be carried out under that judge's leadership. The management of the court's business and affairs requires administrative and diplomatic skills as well as some continuity in office. These prerequisites can best and most efficiently be imposed by a single appointing agency.

SECTION 2, FIFTH PARAGRAPH

The chief justice may assign judges of the district court from one district to another to aid in the prompt disposition of judicial business. The supreme court may assign judges of the district court to act temporarily as judges of the court of appeals; judges of the court of appeals and of the district court may be assigned as provided by law temporarily to act as justices of the supreme court upon its request.

Present Text; changes--This section replaces and substantially expands upon the language of the second paragraph of the present Section 2, which authorizes the supreme court to assign one judge at a time to serve as a temporary judge of the supreme court. On the ballot this fall is an amendment to permit the court to assign several judges at one time, if authorized by law.

Comment

Present statutes permit the chief justice to assign district judges from one district to another. Minn. Stat. Sec. 2.724. Under Minn. Stat. Sec. 484.05 a district judge may request another district judge to serve in the requesting judge's district, under certain circumstances. There is no power to require such transfer and the conditions operate to limit the effectiveness of the statute. The effect of the proposal is to give constitutional status to the statutory authority, without restricting limitations.

The first half of the second sentence grants the authority to assign district judges temporarily to the court of appeals. Such assignments may only be made "upwards" in the judicial system. Judges of the court of appeals may not be assigned to serve in the district court.

The second half of the second sentence authorizes the assignment of district judges or appeals judges to the supreme court, on request of the court. This goes beyond the present text in that it would permit temporary assignment of more than one judge at a time. Obviously, this is intended to cover the situation where all or a substantial number of the supreme court justices are disqualified. Currently, it is impossible to assign more than one temporary judge at a time.

A power of assignment is necessary for the efficient operation of the judicial system. If the unified court system is to work

efficiently to reduce court backlogs and to keep expenditures for judicial services to a minimum consistent with the fair administration of justice, there should be a power to assign judicial manpower between courts, as well as within courts.

Section 2 of the proposed judicial article is derived from several sources including the Minnesota Constitution, Article VI Sections 2 and 3 (prior to the 1956 amendment); Minnesota Statutes Section 2.724; and Advisory Commission on Intergovernmental Relations, Court Reform, p.5, Suggested Constitutional Judicial Article, Sections 2 and 3.

SECTION 3

Section 3. Court of Appeals. The court of appeals shall consist of not less than seven nor more than nine judges and shall have such original and appellate jurisdiction as provided by law.

Present text; changes--This provision is new and is the operative provision for the court of appeals. Prior to 1956, Section 1 of Article VI would have permitted the legislature to establish an intermediate appellate court since judicial power of the state was vested in "such other courts, inferior to the supreme court, as the legislature may from time to time establish." By omitting that language, the 1956 amendment, which substituted the present language, eliminated the power of the legislature to create an intermediate court between the district and supreme court. Under the committee's proposal the intermediate appellate court would be a constitutional court which could not be abolished by the legislature, but whose jurisdiction would be established by that body.

Comment

Statistics on the supreme court indicate the need for an intermediate appellate court. Its business has more than doubled in the past ten years. In 1960-61, the supreme court heard an average of 235 cases a year and wrote 176 Opinions. For the two year period 1970-71, the average annual number of opinions was 325. Even using the services of district judges assigned to assist the court, each supreme court justice had to write an average of 48 opinions a year, almost twice the number recommended for careful appellate opinion writing. (See Supreme Court of Minnesota, Office of the State Court Administrator, Eighth Annual Report, 1971, Minnesota Courts, pp. 4,6.) The supreme court will not be able to maintain its record of quality and efficiency if the present load is unrelieved.

Twenty-three states have intermediate appellate courts, including the Midwestern states of Illinois, Indiana, Michigan and Missouri. Fifteen of those states establish the court by constitutional provision; eight by statute, including three states where there is a specific reference to an intermediate court in the constitution.

In order to provide for panels of three judges, the proposed Section 3 authorizes not less than seven nor more than nine judges. In most states the minimum panel is three judges, except New York (four to five); Pennsylvania Superior Court (four, five or seven) and Tennessee Court of Criminal Appeals (three or five). Intermediate courts of appeals judges number from three (the two Alabama courts) to forty-eight (California).

Overall there are 381 intermediate appellate court judgeships in the 26 courts of the twenty-three states,for an average of about fifteen and a mean of nine.

The proposed court of appeals might sit in divisions. If nine judges are appointed, three judges could be assigned to each of three divisions. Section 1 permits geographic divisions of the court of appeals. The division could also be along functional lines, so that one division could hear civil appeals, another criminal appeals, etc. Other alternatives are obviously available. Eleven state intermediate courts of appeals regularly sit in divisions. New Jersey allows for divisions by rule; Oregon judges may sit in divisions at the discretion of the chief judge; the Tennessee Court of Appeals can sit in divisions when business requires it.

The jurisdiction of the intermediate appellate court will be provided by statute so that flexibility can be maintained to meet ever changing conditions.

SECTION 4

Section 4. District Court. The district court shall have original jurisdiction in all civil and criminal cases, and shall have such appellate jurisdiction as may be prescribed by law.

The number and boundaries of judicial districts shall be established or changed in the manner provided by law but the office of a district judge may not be abolished during his term. There shall be two or more district judges in each judicial district. Each judge of the district court in any

judicial district shall be a resident of such district at the time of selection and during continuance in office.

There shall be appointed in each county one clerk of the district court, whose qualifications, compensation, and duties shall be prescribed by law, and who shall serve at the pleasure of a majority of the judges of the district court in each judicial district.

Present Language

The first paragraph of the proposal is the present Section 5. The second paragraph is the present Section 3, except that the term "judicial district" has been used in place of "district" in the second sentence. No substantive change is intended.

The third paragraph is Section 4 of the proposal which is on the 1972 ballot. Clerks of the district court are currently elected in each county. If the 1972 amendment carries, clerks will be appointive officers. The committee's proposal changes the proposed amendment by adding the word "appointed" as the fourth word of the paragraph. That clearly is intended by the 1972 proposal.

Comment

The only substantive change recommended here is the appointment of clerks of the district court, a proposal already submitted on the 1972 election ballot. Clerks of the district court should be chosen for their administrative abilities. Such abilities are difficult to demonstrate in an election campaign. There are few, if any, policy decisions to be made by the clerk. The clerk should have the confidence of the district court judges under whom he serves. All of these reasons make appointment, rather than election, the most suitable method for choosing a clerk of district court.

Since Section 1 operates to eliminate all courts inferior to the district court, its appellate jurisdiction, if any, is left to the legislature. It may be that some provision will be made to allow review by one division of the district court of a decision rendered by another division. On the other hand, the legislature may determine that all review of district court decisions should be by the intermediate appellate court. These details are better left for legislation, rather than established by constitutional mandate.

SECTION 5, FIRST PARAGRAPH

> *Section 5. Judicial Rules of Conduct. The supreme court shall adopt rules of conduct for all judges. All judges shall devote full time to judicial duties. They shall not, while in office, engage in the practice of law or other gainful employment. They shall not hold any other public office under the United States except a commission in a reserve component of the military forces of the United States and shall not hold any other office under this state. The term of office of any judge shall terminate at the time he files for an elective office of the United States or for a non-judicial office of this state.*

Present provisions. The first three sentences are new. The remainder of the section is substantially the same as the present Section 9, which applies only to judges of the supreme court and district courts.

Comment

The first sentence of this section gives the supreme court the authority to adopt rules of judicial ethics. The integrity of the judiciary must be maintained beyond question. In many circumstances, however, the ethical obligations of a judge are far from clear. The establishment of such rules would permit judges and the public to make better determinations about the course of ethical conduct.

In order to prevent possible conflicts of interest, the second and third sentences require all judges to serve full time in their judicial duties. Supreme court justices and district court judges have long been full-time officers, although this was not spelled out in the constitution. The 1971 Legislature required all county judges and judicial officers (replacing the old probate judges and municipal judges) to be full-time judges. Thus, this requirement will represent little change from present practice. Placing the requirement of full-time service in the constitution would strengthen its force.

The third and fourth sentences spell out in greater detail the obligation of judges to spend full time in judicial service. The final sentence, copied from the present constitution but made applicable to all judges, vacates the office of any judge who files for non-judicial office. The Canons of Judicial Ethics prescribe that such political candidacy is a violation of the ethical duties of a judge.

SECTION 5. SECOND PARAGRAPH

The legislature may provide by law for retirement of all judges, and for the retirement, removal or other discipline of any judge who is disabled, incompetent or guilty of conduct prejudicial to the administration of justice.

Present language. Section 10 of the present Article VI grants the legislature the power to provide by law "for the retirement of all judges, . . . and for the removal of any judge who is incapacitated while in office."

The proposed amendment which is on the ballot this fall would give the legislature the power to provide by law "for the retirement of all judges, . . . and for the retirement, removal or other discipline of any judge who is disabled, incompetent or guilty of conduct prejudicial to the administration of justice."

Comment

The first phrase of the proposed paragraph provides the legislature with the power to establish a mandatory retirement age for judges. Section 8 of this proposal (Section 10 of the present Article VI) permits the assignment of retired judges to hear cases, as provided by law.

The remainder of this paragraph provides the legislature with the power to create a system of judicial discipline. Thus, it would be unnecessary to use the cumbersome impeachment process to remove a judge who had become unable to perform his duties or who had seriously violated the rules of judicial conduct provided in the first paragraph of this proposed section.

Under its existing power, granted by Article XIII, Section 2, the legislature has already established a system for the discipline and removal of the judges of inferior courts (Minnesota Statutes 351.03). This proposed section would permit the extension of that system, or a similar system, to include the judges of the supreme and district courts, as well as the proposed court of appeals.

All three forms of judicial discipline are important. Retirement is proper in cases where the physical or mental disability of a judge makes it impossible for him to continue his service, but no question of "fault" is involved. Removal or other disciplinary measures may be appropriate when there have been violations of standards of judicial conduct. Removal is an extreme sanction. Suspension, censure, or reprimand may be more appropriate sanctions in less serious cases.

Experience in California has indicated that the establishment of a body with the power to review judicial conduct has a salutary effect both upon public confidence in the judiciary and upon the judges themselves. See Frankel, "Judicial Ethics and Discipline for the 1970's," 54 Judicature 18 (1970).

Under the recommended text, the legislature is given the power to create the method of judicial removal. The California system calls for removal by the supreme court on recommendation of a commission on judicial qualifications "for action occurring not more than 6 years prior to the commencement of his current term that constitutes willful misconduct in office, willful and persistent failure to perform his duties, habitual intemperance, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute."

Section 5 of the proposed article is derived from the present language in Article VI, Section 9, the language contained in the amendment being submitted to the voters of Minnesota this November and the Advisory Commission on Intergovernmental Relations, Court Reform, page six, Section 4.

SECTION 6

Section 6. Qualifications and Compensation. All justices and judges shall be admitted and licensed to practice law in this state. The compensation of all justices and judges shall not be diminished during their term of office.

Present language. The first sentence is a modification of the present language in Article VI, Section 7. That Section provides that supreme court and district court judges be "learned in the law". The final sentence is the same as the final sentence in the present Section 7, with descriptive modifications.

Comment

The present constitutional requirement that judges be "learned in the law" has been extended by statute to county court judges. The proposal would cover, constitutionally, judges at every level and would make explicit what is implicit in the prior language, i.e., that a judge must not only be admitted to practice, but must be currently licensed.

The concluding sentence, which is similar to a provision in the United States Constitution, is included to prevent the legislature from reducing the salaries of judges to punish them for decisions made with which the legislature did not agree. Although this is only a remote possibility such protection has traditionally been included in the constitution.

Note--Mr. Justice Otis abstained from consideration of amendments to the present Section 7 and the change in language from "learned in the law" to "admitted and licensed to practice law."

SECTION 7

Section 7. Judicial Nominating Commissions. The legislature shall, by law, establish one or more judicial nominating commissions for the nomination of justices of the supreme court, judges of the court of appeals, and judges of the district court. All judges shall be appointed initially by the governor from a list of nominees submitted by the appropriate judicial nominating commission. If the governor fails to make the appointment from such list within sixty days of the day it is submitted to him, the appointment shall be made by the supreme court from the same list of nominees. Each judge shall stand for retention in office at the next general election occurring more than four years after such appointment and every six years thereafter on a ballot which shall submit the question of whether he should be retained in office.

Present language. This proposed section replaces present Section 8, which provides that judges shall be elected, and Section 11, which provides that the governor may temporarily fill vacancies by appointment.

Comment

Since its adoption, Minnesota's constitution has provided for the popular election of all judges. In the 115 years since statehood, Minnesota has been indeed fortunate in the high quality of

its judiciary. The recommendations of this committee on the matter of judicial selection do not in any way reflect negatively on the quality and competence of past or present judges in Minnesota. Our proposal merely attempts to improve the quality of an already fine judicial system.

The method of judicial selection which the committee is recommending is commonly referred to as the "Missouri Plan" or "merit selection". Under the proposed Section 7, the legislature would create judicial nominating commissions consisting of both lawyers and non-lawyers. Upon a judicial vacancy, the commission would carefully screen candidates for the vacancy within the geographical jurisdiction of the court and then select a list of two or more candidates for the office. The governor would then make his appointment from among the nominees presented by the commission. As a safeguard to insure the prompt filling of each vacancy, the governor would be required to make his appointment within sixty days of the submission of the list of nominees by the commission. Failure to make the appointment within that sixty-day period would require the state supreme court to make the appointment from among the same list of nominees.

The section further provides that after the judge has served four years, the question would be put on the ballot, "Should Judge John Doe be retained in office as a judge of the district court?" On the question of retention, the voters would vote "yes" or "no". The judge would then come up for a similar vote on retention every six years.

In making this recommendation, the committee has carefully examined our present method of judicial selection in Minnesota. Under the present system, approximately 85 per cent of the district judges and six of the seven supreme court judges came to the bench by appointment by a governor without any systematic screening except through an occasional recommendation of the bar. It is unrealistic to assume that such selections have been made after an impartial, non-partisan, broadly-gauged scrutiny of the qualifications of the entire bar. The truth of the matter is that judges in the overwhelming majority of cases in Minnesota are not elected initially but are appointed by the governor. The committee's proposal would continue this present practice of appointment but would also increase the quality and visibility of the process which leads to the actual appointment of the judge.

The committee also believes that additional qualified and competent lawyers will seek appointment to judicial office under such a method of selection. Under the present system, too many qualified and competent lawyers who are successful practitioners decline to be considered for fear they will give up their practice only to be defeated by a politician with a popular name at some future election.

No one debates the desirability of having judges responsive to the people. Nevertheless, the public finds it distasteful for judges to become embroiled in politics. They have no platform, they can make no promises, and they must remain completely uncommitted to other persons in politics or any other area of civic activity. It is unbecoming for judges to become so deeply immersed in civic matters that they may be disqualified to consider the merits

of controversial issues. The method of retention at election as proposed in Section 7 would allow the public to reflect favorably or unfavorably on a judge's competence in office and, thus, retain ultimate control of the judiciary in the hands of the voting public.

In every contested election for supreme court justice in Minnesota, about a quarter of a million people refrain from voting. Experience has demonstrated that many of those who do vote for appellate judges who run statewide have little or no knowledge of the candidates or their qualifications for office. For example, in 1964, the St. Louis Park League of Women Voters examined the returns reflected by voting machines in the election of a supreme court judge. In every St. Louis Park precinct where the incumbent's name appeared first, he won the precinct, and in every precinct in which the incumbent's name appeared second, he lost. While the proposed Section 7 would do nothing to improve voter interest or awareness, it would not allow a lack of voter interest or awareness to elect an unqualified judge.

Under the present method of judicial selection in Minnesota there continues to be a remote but ever present danger that a wholly unqualified candidate for the court might succeed to that office by default through the death or disability of the incumbent. The Minnesota Supreme Court has called attention to this problem in the Amdahl-Barbeau case reported at 264 Minn. 350. Although that case involved two highly qualified candidates, it stressed the problems which surfaced as a result of the death of an incumbent trial judge after the primary but before the general election. The

method of judicial selection proposed by this committee would insure that each successor to a judicial office had been carefully screened by the appropriate nominating commission and the above-mentioned situation could not occur.

Some twenty-one jurisdictions have now adopted the "merit plan" for the selection of all or part of their judiciary. Appellate court judges are presently selected under such a plan in Alaska, California, Colorado, Idaho, Iowa, Kansas, Missouri, Nebraska, New Mexico, Oklahoma, Utah, and Vermont. Significantly, several of the above are neighboring states to Minnesota with an electorate and culture similar to our own.

The trend toward the adoption of the "merit plan", especially at the appellate level, stems in large measure from the activities of citizens groups, bar groups, and intergovernmental organizations. Such a method of judicial selection has been strongly recommended by at least two citizen conferences on court reform held in Minnesota, has the support of the American Bar Association and the American Judicature Society. The "merit plan" was strongly recommended a year ago at the National Conference on the Judiciary held at Williamsburg, Pennsylvania. Model acts embodying such a plan have been drafted or endorsed by the Committee for Economic Development, the President's Commission on Law Enforcement and Administration of Justice, the Advisory Commission on Intergovernmental Relations, the National Municipal League and the American Bar Association.

Despite the committee's favorable position on adoption of the merit selection system, it should be underscored that the recommendation is based on the premise that the nominating commission will fairly and adequately represent all segments of the population. The committee shares the concern of some groups that a judicial nominating commission could be captured, controlled and dominated by an unrepresentative segment of the bar and thereby produce nominees from that same narrow constituency. We are aware that the merit plan is being proposed at a time when groups traditionally excluded from the political process are beginning to exercise their political muscle, either independently or in coalition. It is the committee's view that a nominating commission can, and indeed must, include these groups, be sensitive to their concerns, and consider and recommend nominees who are broadly representative.

Under the proposed amendment, the composition of the nominating commission is left to be determined by statute. The pattern among the states using merit selection varies slightly. All of them provide for representation of lawyers, as they are able to evaluate professional qualifications and competence of candidates, as well as members of the general public. Some states require that a member of the judiciary serve on nominating commissions.

An eleven member commission might well be structured thus: the chief justice; four members of the bar; and six lay persons appointed by the governor to serve for periods coterminous with the appointing governor. Other patterns are possible, including a

majority of lawyers, with some being named by the organized bar and the others being named by the governor.

The "merit method" of judicial selection need not be a vehicle for restricting judicial office to a "chosen few" but can, in fact, insure that judges are not only qualified, but descriptively representative of all segments and interests. Because the committee is confident that the legislature will structure a commission to achieve these ends, we propose the "merit system."

Note--Governor Rolvaag abstains from the Committee's recommendations in this section. Professor Hughes' concurrence is contingent upon the establishment of a nominating commission which is representative of all cultural, ethnic, social and economic levels.

SECTION 8

Section 8. Retired Justices and Judges. As provided by law, a retired justice or judge may be assigned to hear and decide any cause over which the court to which he is assigned has jurisdiction.

Present language. The present provision is Article VI, Section 12. The only change is to substitute the term "justice or judge" for the term "judge".

Comment

There is no substantive change.

OTHER LANGUAGE OMITTED

The rearrangement of language made in the committee's proposal reduces the number of sections in Article VI from twelve to eight.

The substantive changes indicated above required the omission or change of some language in the present constitution. Other changes are as follows:

1. Section 6, relating to the jurisdiction of probate courts, is entirely deleted. This section becomes unnecessary, since all original jurisdiction is given to the reorganized district court.

2. The provision in Section 10 for the continuation in office of a judge who is near retirement age is deleted. This provision becomes unnecessary with the merit selection plan.

3. The Schedule appended to the end of the article is deleted. The Schedule served its purpose when the present Article VI took effect in 1958. It no longer has any practical effect.

If the proposed amendments on the ballot at this November's election are approved, a new Section 13, relating to the service of certain probate judges, would also be repealed. The proposed Section 13 is only transitional in effect.

III. SUMMARY OF RECOMMENDATIONS

The Judicial Branch Committee recommends repeal of the present language in Article VI of the Minnesota constitution and the substitution of an entirely new Article VI with Sections 1-8 as outlined in this report.

Briefly summarized the proposed Article contains the following substantive changes:

Section 1. Judicial Power. The section establishes a court of appeals; abolishes the probate court; and limits the state court structure to the supreme, appellate, and district courts.

Section 2. The Supreme Court. The section assigns the duty of "executive head of the judicial system" to the chief justice of the supreme court; provides for the establishment of the supreme court's appellate jurisdiction by law or by rule; allows the supreme court to adopt rules governing administration, admissibility of evidence, practice and procedure in all courts (subject to a veto of two-thirds of the legislature); allows the supreme court to appoint the chief judges of the district court in each district, the chief judge of the court of appeals, and an administrative director of courts; makes constitutional the present statutory authority of the chief justice to assign judges of the district court from one district to another; and allows the temporary assignment of judges of the district court to the court of appeals and judges of the district and appellate court to the supreme court.

Section 3. Court of Appeals. The section provides that the court of appeals created by Section 1 consist of 7-9 judges and has original and appellate jurisdiction as provided by law.

Section 4. District Court. The section endorses the provision in the 1972 constitutional amendment which would require the appointment, rather than election, of clerks of district court.

Section 5. Judicial Rules of Conduct. The section authorizes the supreme court to adopt rules of conduct for all judges; requires all judges to devote full time to judicial duties; and endorses the provision in the 1972 constitutional amendment which would authorize the legislature to provide for the discipline and removal of all judges.

Section 6. Qualifications and Compensation. The section endorses the judicial interpretation of "learned in the law" as "admitted and licensed to practice law in this state" and applies that requirement to all judges.

Section 7. Judicial Nominating Commissions. The section establishes a "merit plan" for judicial selection for all judges.

Section 8. Retired Justices and Judges. The section contains no substantive change.

NOTE: A proposed constitutional amendment which would implement the recommendations of the Judicial Branch Committee is attached as an appendix to this report.

IV. APPENDIX I--WITNESSES, CORRESPONDENCE, STAFF RESEARCH

Persons Testifying at the May 4 Hearing in Moorhead

Hon. Oscar R. Knutson, Chief Justice of Minnesota
Richard Klein, Court Administrator of Minnesota

Persons Testifying at the June 1 Hearing in St. Paul

William J. Cooper, Minnesota Citizens for Court Reform
W.E. English, Minneapolis
David Roe, President, Minnesota AFL-CIO
Hon. Oscar R. Knutson, Chief Justice of Minnesota
Gordon Peterson, Minneapolis
Jerome Daly, Burnsville
William Drexler, Justice of the Peace, St. Paul
Dorothy Jackson, Minneapolis
Hon. William Ojala, State Representative, Aurora

Persons Testifying at the June 21 Hearing in Rochester

Hon. Harvey Holden, District Judge, Windom
Hon. John Friedrich, District Judge, Red Wing
Hon. Thomas Bujold, Municipal Judge, Duluth
Robert J. King, President, Minnesota State Bar Association
Hon. Noah S. Rosenbloom, District Judge, New Ulm
Hon. David E. Marsden, District Judge, St. Paul

Persons Submitting Letters and Written Statements

Joseph B. Johnson, Chairman, Judicial Selection Committee, Minnesota State Bar Association
Kenneth P. Griswold, Chairman, Civil Rights Committee, Minnesota State Bar Association
Hon. Dana Nicholson, President, Minnesota District Judges Association
Hon. Donald Barbeau, District Judge, Minneapolis
Henry Halladay, Minneapolis
Hon. Howard Albertson, Chairman, House Judiciary Committee
Thorwald A. Anderson, Jr., U.S. Attorney's Office
Lawrence A. Wallin, Political Science Department, Hibbing State Junior College
Hon. Warren Spannaus, Attorney General of Minnesota
Rev. Alton M. Motter, Executive Director, Minnesota Council of Churches
Hon. C.A. Rolloff, District Judge, Montevideo
Hon. Lindsay G. Arthur, District Judge, Minneapolis
Hon. L.J. Irvine, District Judge, Fairmont
Hon. Leonard Keyes, District Judge, Anoka

Internal Research

Staff Memorandum on "Intermediate Courts of Appeals", Stan G. Ulrich, February 28, 1972
Staff Memorandum on "Comments and Questions Concerning Proposed Judicial Article", Stan G. Ulrich, February 29, 1972
Staff Memorandum on "Judicial Article Amendments", Fred Morrison, July 13, 1972

Persons and Groups Invited to Testify Before the Committee

Hon. Dana Nicholson, President, Minnesota District Judges Association
Hon. Edwin P. Chapman, President, Municipal Judges Association
Hon. Clifford E. Olson, President, Probate Judges Association
Mr. John MacGibbon, County Attorneys Association
Mr. Joseph B. Johnson, Chairman, Committee on Judicial Selection Minnesota State Bar Association
Hon. Warren Spannaus, Attorney General of Minnesota
Mr. Melvin Orenstein, Chairman, Hennepin County Bar Association
Mr. Timothy P. Quinn,Committee on Judicial Selection, Ramsey County Bar Association
Mr. Marvin Anderson, Chairman, Minnesota Afro-American Lawyers
Hon. Howard Albertson, Chairman,House Judiciary Committee
Hon. William Dosland, Chairman, Senate Judiciary Committee
Mrs. Rita Kaplan, Judiciary Chairman, League of Women Voters of Minnesota
Mr. Dave Roe, President, Minnesota AFL-CIO
Mr. William Cooper, Citizens for Court Reform
Mr. William E. English, Region G, Governor's Commission on Crime Prevention and Control
Donald Glass, Twin City Chippewa Council
Mr. Erv Sargeant, American Indian Federation
Dr. John Warfield, Expanded Educational Opportunities, Macalester College
Chicanos Unidos, St. Paul
Guadaloupe Area Project, St. Paul

V. APPENDIX II--DRAFT CONSTITUTIONAL AMENDMENT

A bill for an act

proposing an amendment to the Minnesota Constitution substituting a new Article VI for the present Article VI, and altering Article XIII, Section 1; organizing the judicial branch.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. The following amendment to the Minnesota Constitution, substituting a new Article VI for the present Article VI, and altering Article XIII, Section 1, is proposed to the people. If the amendment is adopted, the new Article VI will read as follows:

ARTICLE VI

Section 1. The Judicial Power. The judicial power of the state is vested in a supreme court, a court of appeals, and a district court. All courts except the supreme court may be divided into geographic districts as provided by law.

Section 2. The Supreme Court. The supreme court shall consist of one chief justice who shall be executive head of the judicial system and not less than six nor more than eight associate justices as the legislature may establish. It shall have original jurisdiction in such remedial cases as may be prescribed by law and such appellate jurisdiction as may be prescribed by law or by rule, but there shall be no trial by jury in said court.

The supreme court shall appoint, to serve at its pleasure, a clerk, a reporter, a state law librarian and such other employees as it may deem necessary.

The supreme court shall adopt rules governing the administration, admissibility of evidence, practice and procedure in all courts. These rules may be changed by the legislature by a two thirds vote of the members elected to each house.

The supreme court shall appoint a chief judge from among the members of the court of appeals, a chief judge from among the members of the district court of each judicial district, a state administrative director of the courts and such assistants as the administrative director deems necessary to supervise the administration of the courts of the state.

The chief justice may assign judges of the district court from one district to another to aid in the prompt disposition of judicial business. The supreme court may assign judges of the district court to act temporarily as judges of the court of appeals; judges of the court of appeals and of the district court may be assigned as provided by law temporarily to act as justices of the supreme court upon its request.

Section 3. Court of Appeals. The court of appeals shall consist of not less than seven nor more than nine judges and shall have such original and appellate jurisdiction as provided by law.

Section 4. District Court. The district court shall have original jurisdiction in all civil and criminal cases, and shall have such appellate jurisdiction as may be prescribed by law.

The number and boundaries of judicial districts shall be established or changed in the manner provided by law but the office of a district judge may not be abolished during his term. There shall be two or more district judges in each judicial district. Each judge of the district court in any judicial district shall be a resident of such district at the time of selection and during continuance in office.

There shall be appointed in each county one clerk of the district court, whose qualifications, compensation, and duties shall be prescribed by law, and who shall serve at the pleasure of a majority of the judges of the district court in each judicial district.

Section 5. Judicial Rules of Conduct. The supreme court shall adopt rules of conduct for all judges. All judges shall devote full time to judicial duties. They shall not, while in office, engage in the practice of law or other gainful employment. They shall not hold any other public office under the United States except a commission in a reserve component of the military forces of the United States and shall not hold any other office under this state. The term of office of any judge shall terminate at the time he files for an elective office of the United States or for a non-judicial office of this state.

The legislature may provide by law for retirement of all judges, and for the retirement, removal or other discipline of any judge who is disabled, incompetent or guilty of conduct prejudicial to the administration of justice.

Section 6. Qualifications and Compensation. All justices and judges shall be admitted and licensed to practice law in this state. The compensation of all justices and judges shall not be diminished during their term of office..

Section 7. Judicial Nominating Commissions. The legislature shall, by law, establish one or more judicial nominating commissions for the nomination of justices of the supreme court, judges of the court of appeals, and judges of the district court. All judges shall be appointed initially by the governor from a list of nominees submitted by the appropriate judicial nominating commission. If the governor fails to make the appointment from such list within sixty days of the day it is submitted to him, the appointment shall be made by the supreme court from the same list of nominees. Each judge shall stand for retention in office at the next general election occurring more than four years after such appointment and every six years therafter on a ballot which shall submit the question of whether he should be retained in office.

Section 8. Retired Justices and Judges. As provided by law, a retired justice or judge may be assigned to hear and decide any cause over which the court to which he is assigned has jurisdiction.

Article XIII, Section 1 will read as follows:

Section 1. The governor, secretary of state, treasurer, auditor, attorney general, and the judges of the supreme , appeals and district courts, may be impeached for corrupt conduct in office, or for crimes and misdemeanors; but judgement in such case shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust or profit in this State. The party

convicted thereof shall nevertheless be liable and subject to indictment, trial, judgement and puhishment, according to law.

Sec. 2 The proposed amendment shall be submitted to the people at the ____ general election. The question proposed shall be:

"Shall the Minnesota Constitution be amended to establish, organize, conduct, and operate the judicial power of the state?

Yes _____

No _____"