The Court Reorganization Plan

By R. H. deLamber, St. Paul,
Chairman of the Special Committee of the Minnesota State Bar Assn.

In 1941 the Judicial Council appointed a committee to prepare a plan for the reorganization of the courts. Such committee spent a great deal of time over a period of a year or so preparing a plan, which plan has been published, with some discussion thereof, and submitted to all of the lawyers in the state. The Judicial Council asked the State Bar Association to submit the plan for approval or disapproval to the state association, district associations, and the lawyers of the state. Since that time the plan has been discussed in most of the district associations, at bar clinics or meetings.

The time has now come when some action should be taken thereon determining whether or not the state association and district associations are for or against the plan, so that the state association can report back to the Judicial Council the determination of the lawyers.

The state association, through its committee on education on the court reorganization plan, is requesting each district bar association to discuss and act on such plan in meetings to be held in January, February or March of 1945. It has been suggested that prior to such meetings, an article summarizing the plan be published so that the district associations may have the benefit of such article in discussing and acting on the plan. This article has been prepared by the chairman of the Committee on Education with reference to the court reorganization plan, in compliance with a direction of such committee.

The text of the plan itself is appended to this article. Summarizing, however, there are four parts to the plan:

1. UNIFICATION OF THE COURTS. The plan provides for one general court having all inclusive jurisdiction, with three divisions, viz., the supreme court, district court, and county court. To the county court is attached a minor judicial officer called magistrate.

   Purpose: To form the courts into an integrated system; to eliminate all questions of jurisdiction; and to secure a court organization suitable to judicial self-government and to which administrative supervision can be readily applied; and to thereby expedite and simplify the administration of justice.

2. ADMINISTRATIVE COUNCIL. The administrative council would have general supervision over all administrative matters pertaining to the judicial system, with power to departmentalize the district and county courts. The council would consist of nine judges, three from each division of the general court. Serving under it would be an administrative director.

   Purpose: To promote efficiency, eliminate waste and delays, and obtain increased elasticity.

3. RULE-MAKING POWER. The provision as to this would give
the supreme court full power to prescribe rules of practice, procedure, and evidence for all divisions of the general court. This corresponds roughly with the rule-making power of the Supreme Court of the United States.

Purpose: To place the rule-making power where it can be exercised promptly and intelligently, to the end that practice and procedure may be simplified, so far as desirable unified, and where it will be readily responsive to the desires of the bench and bar.

4. SELECTION AND TENURE OF JUDGES. Under this portion of the plan, judges of all courts would be nominated by a commission and appointed to the Supreme Court by the governor, and to the District Courts by the Chief Justice. The plan further provides for periodical submission to the voters whether or not a judge shall be retained in office.

Purpose: (1) To make the judicial office seek the man, not the man the office. (2) To retain in judicial office those who have been good judges.

QUESTIONS AND ANSWERS

1—Q. Why is the amendment sought?
   A. For the purpose of improving our judicial system and strengthening our judiciary by attracting, so far as possible, the best lawyers to the bench. The plan includes the best features of the federal and state court systems.

2—Q. Why do we need a constitutional amendment?
   A. Because the court system, the method of selecting judges and clerks, the terms of judicial officers, and other features vary from what is prescribed by the present Article VI of our State Constitution.

3—Q. Why could not the same result be accomplished by an enabling act and legislation?
   A. It possibly could be. The suggestion should receive careful consideration. However, the basic framework of all state judicial systems is prescribed by the state constitutions, not subject to legislative changes. There is a feeling on the part of some lawyers that if difficulties appeared in the operation of the proposed plan such difficulties would have to be corrected by another constitutional amendment. It is believed that any such difficulty can be more promptly and intelligently corrected under the terms of the plan itself by the courts than to await the slower action of the legislature which would be required in the event an enabling act with legislation was passed rather than the present proposed constitutional amendment.

4—Q. What would happen to the present judges in the event the plan is favorably acted upon?
   A. They would be retained. The supreme court and district court judges would continue as such. Municipal court and probate judges would become judges of the county court. The new selection provision would become operative only in the case of vacancies.
Q. Why do the district courts have probate jurisdiction in cities of the first class, and county courts in other cities?
A. For convenience. In cities of the first class there is only one county involved. In other judicial districts there are sometimes many counties. The citizens should have access to a court handling probate matters in their counties.

Q. Are county courts in other states handling probate matters?
A. Yes, it works well in Wisconsin, Iowa, Montana and other states.

Q. Would appeals in probate matters be appealed directly to the supreme court?
A. Yes. This would eliminate a trial de novo in the district courts.

Q. In addition to the federal judiciary, do any courts have the rule-making power?
A. Yes, about one-half of the states of the union confer this power on their courts.

Q. What are "magistrates" and where and by whom would they be appointed?
A. They are judicial officers of limited civil and criminal jurisdiction attached to the county court. They would be appointed in those municipalities desiring them. The appointment would be by judges of the district court.

Q. Are there any states using a similar plan for selection and tenure of judges?
A. Yes, California and Missouri. The California act was passed in 1934, and the Missouri change in 1940. In 1940 in Missouri the majority for the plan was 95,000. It was again submitted in 1942, and the majority was 173,000. Thus it has had approval of the people in Missouri twice. Other states are working on similar plans.

Q. Are there any published articles criticizing the plan?
A. Yes, in the March, 1943, "MINNESOTA LAW REVIEW" is an article commencing at page 383. This article approves the unification of the courts and the administrative council provisions, and disapproves the provisions with reference to selection and tenure of judges. It also suggests in the case of the rule-making power, that the provisions of the plan be amended so as to submit such rules to the legislature, and if the legislature doesn't disapprove such rules within a certain period they shall become effective. With reference to the rule-making power that is substantially the provision of the federal act. The federal congress is in session a great deal oftener and longer than the state legislature, however, and it is thought that the suggested amendment with reference to the rule-making power would be somewhat cumbersome. With reference to the matter of selection of judges, it probably should be observed that approximately three-quarters of the judges now in office were originally
appointed by the governor, without any restraint except that they should be attorneys at law. This means that we now have a system which is three-quarters appointive, and without the restraints as to selection which are provided in the proposed plan.

12—Q. Have any articles been published favoring the plan?
A. Yes, several articles have been published in the "Journal of the American Judicature Society," one in the February, 1943, issue, and shorter articles in other issues. The Judicature Society praises the plan highly. The "syllabus" heading the February, 1943, article reads:

"Not only a judicial selection system as good as Missouri's, but a minor court system as good as Virginia's, business administration equal to that of the United States courts, along with a court organization matched by no other state, full and adequately-implemented rule-making power, and other advantages."

13—Q. Is the magistrate system used in other states?
A. Yes, in Virginia, where it works very well under the supervision of the district courts.

14—Q. What becomes of the jurisdiction now exercised by justices of the peace?
A. This jurisdiction will be in the county court, to be exercised either by the judges of that court or by the magistrates.

15—Q. Is there any "Ethiopian" in the woodpile?
A. No. The judicial council was authorized by Chapter 467 Session Laws of 1937. It has no "axe" to grind. It is assumed that the judicial council is likely to favorably consider the recommendation of the bar as to the report.

16—Q. May changes be suggested by the district or county associations?
A.—Yes. The plan may be approved "with reservations." The state association wants to know what the bench and bar of the state think of this proposal. If the meeting approves it in principle but has any suggestions or reservations they should be noted in the resolution approving. In other words, the members of the bar should consider any suggested amendment to the plan which may occur to them for its improvement, rather than to reject the whole plan because some particular feature does not appeal to them.

The above questions were raised by the members of the Committee on Education with reference to the court reorganization plan. If there are any other questions which district or county organizations or individual lawyers have, if they will send them to R. H. deLambert, E-1115 First National Bank Building, St. Paul 1, Minnesota, the chairman of the Committee on Education, he will attempt to answer such questions by publishing both the questions and the answers.

The plan follows: