1948

Preliminary Report on Revision of the Judiciary Article of the Minnesota State Constitution

Minn. L. Rev. Editorial Board

PRELIMINARY REPORT ON REVISION OF THE JUDICIARY ARTICLE OF THE MINNESOTA STATE CONSTITUTION

By the Judiciary Committee of the Minnesota Constitutional Commission.

Introduction

During the 1947 session, the legislature of this state created the Minnesota Constitutional Commission and charged it with the following duties:[1]

"The commission shall study and consider the constitution in relation to political, economic, and social changes and developments which have occurred and which may occur, and shall recommend in a report to the next general session of the legislature amendments, if any, determined to be in the public interest necessary or proper to meet present and probable future governmental requirements. The report shall be filed with the Secretary of State and a copy mailed to each member of the legislature, to the Governor, and to the Clerk of the Supreme Court not later than October 1, 1948. If amendment of the constitution is recommended the report in addition to any other matter shall contain the proposed amendment or amendments in a form suitable for submission to the people."

One of the committees created by the Commission was the undersigned Judiciary Committee which was given the responsibility of preparing a draft of Article VI of our constitution. This is the article which provides for the judicial system of the state. In the following pages is set forth a tentative draft of this article as prepared by the Committee. Although this draft does not represent the final judgment of the Committee, it is now submitted in order to provide a basis for obtaining suggestions from members of the Minnesota bench and bar and from other persons who are interested.

Not since 1857, when our Constitution was adopted, have Minnesota citizens been given a more favorable opportunity for improving the administration of justice.

The proposed revision presents no arbitrary or revolutionary changes. Your Committee has endeavored to provide an evolutionary plan of sufficient elasticity to allow, in the light of practical experience, for gradual changes through legislative action. Care, however, has been taken to preserve the independence of the judiciary as one of the three coordinate branches of our government.

1. Laws of Minn., 1947, Chap. 614, sec. 2.

The Committee members express to Judge Maynard E. Pirsig their sincere thanks for his assistance as Committee Consultant. We are also grateful to Mr. William B. Henderson, Revisor of Statutes, and Mr. Duncan L. Kennedy, his assistant, for their cooperation and suggestions.

In June, the Judiciary Committee must submit its final recommendations to the Constitutional Commission as a whole. Although the time is short, it is the desire of Committee members to obtain suggestions from all persons interested. Your suggestions for the improvement of the tentative draft, both as to substance and wording, should be sent at the earliest possible moment—and not later than May 20, 1948—to the Judiciary Committee chairman, Leroy E. Matson, State Supreme Court, 219 State Capitol, St. Paul 1, Minnesota. Any member of the Committee will be glad to receive your suggestions.

Judiciary Committee
SENATOR A. R. JOHANSON
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REP. ROBERT SHERAN
REP. JOSEPH PRIFREL, JR.
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LUDWIG I. ROE
WILLIAM D. GUNN, *Secretary*
LEROY E. MATSON, *Chairman*

MAYNARD E. PIRSIG,
Committee Consultant

TENTATIVE DRAFT OF PROPOSED AMENDMENT OF ARTICLE VI OF MINNESOTA STATE CONSTITUTION

This draft is strictly tentative and does not represent the final recommendations of the Judiciary Committee of the State Constitutional Commission. Although it is not in final form, it represents substantially the conclusions of the Committee at this time. The present draft is now submitted as a basis for obtaining suggestions from members of the Minnesota bench and bar and other interested persons. The annotations or comments accompanying this draft have been prepared by Judge Maynard E. Pirsig.

Introductory Comment:

Several general characteristics of the Committee's draft may be noted:

(1) It provides a more coordinated and interrelated judicial branch of government, with means provided by which the responsi-

bility of the courts for effective and efficient administration of justice can be better met.

(2) Most of the major changes incorporated depend upon legislative action which can be adapted and changed as experience indicates.

(3) The present judicial system is retained in practically all its aspects.

(4) Obsolete material has been eliminated and what remains has been more carefully stated.

(5) Practically all of the changes incorporated or authorized are in actual operation in one or more of the other states or in the federal judicial system.

Sec. 1. The judicial power of the state is hereby vested in the supreme court, a district court, a court of probate, magistrates subject to section 8, and such other courts inferior to the supreme court as the legislature may establish.

Comment: In providing for "a court of probate" instead of "courts of probate," this section follows the example of the district court of the state and the spirit of the decision in In re Estate of Martin, 1933, 188 Minn. 408, 247 N. W. 515.

This section does not, as do the present provisions, require a two-thirds vote of the legislature to create new courts. Such a restriction seems unnecessary today.

Sec. 2. The supreme court shall consist of a chief justice and not less than six nor more than ten associate justices as provided by law. It shall have appellate jurisdiction in all cases and such original jurisdiction as is provided by law. Except as limited by law, the court may sit in divisions of three or more members in any civil case where the amount in controversy does not exceed $1,000, exclusive of interest and costs.

After public notice and opportunity for hearing thereon, it may prescribe rules of practice, procedure, and evidence for all courts, which rules may not change any substantive right. It may delegate to other courts appropriate rule-making power as to the practice and procedure therein.

(The Committee is in doubt whether the rule-making power conferred upon the court should apply to *evidence,* and desires the reaction of the bench and bar and others interested.)

If the chief justice is unable to serve or there is a vacancy in the office, the duties of the office shall be discharged by the associate

justice senior in service, or if senior associate justices are equal in length of service then by the elder.

The supreme court shall appoint, to serve at its pleasure, a clerk, a reporter, the librarian of the state law library which shall be under the jurisdiction of the court, and such other employees as it may deem necessary.

Comment: The variable number of justices permits adjustment to the long term trends of business of the court. Temporary needs could be met under § 15 by assignment from the district court.

Original jurisdiction of the court is not limited to the extraordinary writs but would depend upon legislative action. The technical problem of distinguishing between appellate and original jurisdiction would be eliminated. Little original jurisdiction is to be contemplated since the court would continue to be essentially a reviewing court of last resort.

The right to sit in divisions exists in several states. The legislature could provide under what conditions a full bench should be required to sit in cases under $1,000 in amount.

The law library would be removed from the anomalous position it is in under the present provisions.

Sec. 3. The district court shall be divided into districts with one or more judges in each district. Except as otherwise provided by law, the number and boundaries thereof may be changed by the supreme court as convenience and the efficient administration of justice require, but the office of a judge of the district court may not be vacated during his term. Each judge shall exercise all the powers of the district court. Any person selected as a judge of the district court in any district shall be a resident of such district at the time of selection and shall remain a resident thereof during his continuance as such judge. The district court in each district shall appoint a clerk of the district court for each county of the district to serve at its pleasure. His duties shall be prescribed by law, or, subject thereto, by the supreme court under rules of general application. His compensation shall be fixed by law.

Comment: The number and boundaries of judicial districts involves primarily a problem of the efficient distribution of the judicial business of the state. What changes, if any, should be made in any particular district seems more a question for the courts than for a legislative body. In practical operation no change would be made in the present districts until the wishes of the local bar and the judges affected and others interested had been submitted.

The function of clerks of court are essentially clerical and recording in nature. Few, if any, questions of public policy are involved. At the same time, what they do may aid or impede the functioning of the courts to a very substantial degree. Appointment by the court rather than election is thus indicated.

Sec. 4. The district court shall have original jurisdiction in all civil and criminal cases, and shall have appellate jurisdiction as may be prescribed by law. The legislature may limit the exercise of this jurisdiction to the extent that like jurisdiction is conferred upon any other court by this constitution or by law.

Comment: The last sentence allows greater flexibility in avoiding overlapping functions of the courts, as, for example, between a district and a municipal court. Otherwise this section introduces little change.

Sec. 5. A majority of the judges in any district having three or more judges may provide that the court shall sit in divisions consisting of one or more judges for the performance of designated classes of judicial business.

Comment: If the judges in the larger counties think they can carry out their judicial duties better by functioning in divisions, this section would permit them to do so. They might create divisions for juvenile cases, for criminal cases, for domestic relations cases, for mechanic's liens cases, etc.

Sec. 6. The legislature may provide for the appointment and compensation of a court commissioner in any county, the appointment to be made by the district court of the district in which the county is located. The court commissioner shall serve at the pleasure of the district court and shall have the jurisdiction and powers prescribed by the court, which shall never exceed the jurisdiction and powers of a judge of the district court at chambers. A judge of a court of probate, with his consent, may be appointed court commissioner.

Comment: The court commissioner, exercising some of the functions of the district court but being no part of it, is an anomaly for which little explanation has been found. The proposed section makes him an officer of the court in which capacity he will serve a very useful function.

Sec. 7. (a) The probate court shall have one or more judges in each county. It shall have jurisdiction of the administration of the estates of deceased persons, and all guardianship and incompetency proceedings. For the complete determination of all matters and controversies relating thereto, it shall have such additional

jurisdiction, including trial by jury, as may be prescribed by law. Jurisdiction over the administration of trust estates and for the determination of taxes contingent upon death may be conferred by law.

(b) Each judge of the court of probate in any county shall be a resident of such county at the time of his selection and during his continuance in office.

(c) The judge or judges of the court of probate of any county shall select the clerk of the court of probate for such county to serve at the court's pleasure and under its direction. His powers and duties shall be prescribed by law, or, subject thereto, by the supreme court under rules of general application. His compensation shall be fixed by law.

(d) The legislature may provide, without vacating the office of any judge, that in any county containing a city of more than 100,000 population as determined by the United States census the district court for such county shall have the jurisdiction, exercise the powers, and perform the duties conferred upon the court of probate for such county by this section.

(The Committee is in doubt whether subdivision (d) of § 7 should be included or whether it should be extended to all counties. Again the reaction of the bench and bar to this provision is desired.)

Comment: The probate court is the one court in this state that exists in every county and is continuously functioning. The proposed revision of the Committee undertakes to develop this court into one of greater importance, prestige, and usefulness, and to enable it to be used for types of cases best dealt with on a local level and by a judge who devotes his time and talents to their proper disposition.

The jurisdiction conferred by the constitution itself is not changed but the legislature is authorized to add to this other powers which the court does not now have. Under subdivision (a) of § 7, collateral civil jurisdiction may be conferred to enable the court to make a complete disposition of all the issues that arise in litigation before it. This would include such matters as settlement of claims against estates and administration of trust estates.

Section 8 permits the legislature to give probate courts jurisdiction in minor civil and criminal cases either in place of or along with magistrates. Such jurisdiction is conferred on probate courts in numerous other states.

Under § 16, the probate court may be used, as it now is through the juvenile court act, for cases involving the care

and welfare of minors and possibly (see note to the section) for domestic relations cases.

In keeping with the increased importance of these courts, all probate judges are required by § 10 to be lawyers except those now in office who would be retained under § 18(c). Section 7(a) also permits the legislature to provide for more than one judge in any county where more are needed. These changes also make possible the elimination of the wasteful practice of trials de novo. See § 9.

The extent to which these changes should be made may differ with the different counties. This would be particularly true as between the large urban centers and the rural counties. The proposed revision does not require that the changes made apply alike to all counties.

Under § 7, subdivision (d) the question raised is whether, with both the district court and probate court in continuous operation in the large counties, the legislature should not be permitted to consider whether it might not be more economical and efficient to permit the two to function as one court. If this were done, no doubt a division of the district court dealing with probate matters would be created under § 5.

Sec. 8. (a) One magistrate or more shall be selected for each county as provided by law. Magistrates shall have such jurisdiction as is provided by law, but such jurisdiction shall not extend to civil cases where the amount in controversy exceeds $500, cases of unlawful detainer, and criminal cases where the punishment for the offense may exceed 90 days in jail or a fine of $100. Magistrates shall not be deemed judges as that term is used in this article.

(b) In lieu of magistrates or in addition thereto, the legislature may provide that such jurisdiction shall be exercised:

(1) By the probate court of the county or,

(2) If the powers, duties and jurisdiction of the probate court of the county are exercised by the district court under the provision of section 7(d) of this article, by a county court created by law with jurisdiction corresponding to that of a magistrate, or,

(3) By a municipal court of a municipality within the county in which a majority of the inhabitants of the county are residents as determined by the United States census.

In the exercise of jurisdiction so conferred, such probate, county, or municipal court may sit in any convenient place in the county.

Comment: At the present time, with a few exceptions, the justice of the peace and the fee paid municipal court

judges, neither of whom need be legally trained, have provided the principal tribunals for the disposition of small civil and criminal cases. They alone have been the poor man's courts. The abuses of this system have been notorious and spring from the fact that the justice of the peace and the municipal court judge need not have any knowledge of law and that their compensation is dependent upon fees paid only when cases are brought before them. The unscrupulous constable or claimant brings his cases only before those who will decide in his favor. The remedy is to require the justice or judge to be legally trained and to remove the fee as a basis of compensation. (See § 10.)

Changes in other states have followed two lines. The substitution of magistrates on a salary basis has been one remedy. The other has been to set up local courts on a county level. The proposed section 8 requires the use of magistrates but authorizes the legislature to substitute or add a county court, using for this purpose the probate court, a municipal court of a municipality containing most of the population of the county or a new court set up for the purpose. Precedents for what the Committee proposes or variants thereof may be found in a number of states including Missouri, New Jersey, Wisconsin, Indiana, New York, Massachusetts, and others.

An objection sometimes voiced against county courts of this character is that they are too far distant from the local community in which the litigation arises. Section 8 avoids this difficulty by permitting the court to sit in any convenient place in the county and by authorizing magistrates to be created in addition to the court itself.

Sec. 9. The legislature may provide for an appeal from any probate court, or other court of limited jurisdiction, to the district court or to an appellate division thereof, or to the supreme court. There shall be no trial de novo upon such appeal except as provided by law in special cases.

Comment: Trials de novo are productive of delay and wasteful of the public's and litigant's money. It exists because of distrust of the inferior court judge. With the provision that the judges of these courts shall be lawyers and paid by salary, (See § 10) the elimination of the double trial becomes feasible.

A simple method of review of legal questions passed on by the lower courts should be provided. The use of the district court for this purpose is authorized by the section.

Sec. 10. Judges and magistrates shall be learned in the law. The legislature shall prescribe their compensation, which shall not

be diminished during their term of office. They shall receive no other fee or reward for their services.

Sec. 11. (a) The term of office of all judges shall be six years and until their successors are qualified and they shall be elected by the electors of the state, district, county, municipality or other territory wherein they are to serve. Where more than one position on the same court is to be filled at an election, each candidate shall specify, and the official ballot shall show, the position for which he is a candidate.

Comment: The method of selection provided in the second sentence has been in successful operation in Ohio. Where several incumbents are running for re-election, each should stand or fall on the basis of his own record. The present system does not permit this since opposing candidates run against the field.

(b) In lieu of the foregoing provisions for the election of judges, the legislature may provide that the chief justice and the associate justices of the supreme court, and any judge of the district court or of any other court shall be appointed by the governor. Any such appointment shall be made from a list of three persons qualified for the position nominated by a nonpartisan judicial commission as provided by law, and shall be for a term of six years and until his successor is qualified. If a judge is a candidate for re-election hereunder, his name shall be placed on the official ballot without any opposing candidates, the question being only "Shall he be retained in office?"

Comment: While judges in this state are now elected, the usual practice has been that judges first ascend the bench by appointment by the governor on a vacancy occurring. The voters, with some exceptions, have on succeeding elections returned the judge to the bench.

This subdivision authorizes the legislature to put this practice on a formal legal basis with the provision added that the governor shall make his appointment from recommendations received from a nonpartisan commission. This method of selection has been in operation in Missouri since 1941. The electorate there has twice approved it, once by adopting it as a constitutional amendment and again by refusing to repeal it. It is also in operation in California in modified form. It is the method of selection recommended by the American Bar Association. For a description of the plan and its successful operation in Missouri, see article by Justice Douglas of the Missouri Supreme Court entitled, "'Missouri Plan' Works Well in Actual Results" in 33 Am. Bar Assn. Jr. 1169 (1947).

(c) When a judge attains the age of 67 years during his term of office for which selected, such term is hereby extended until the date of his compulsory retirement under section 13.

Sec. 12. Judges of the supreme court and the district court shall hold no office under the United States nor any other office under this state. The term of office of any judge of either of said courts who files as a candidate for an elective office of the Federal government, or for a nonjudicial office under this constitution, shall thereupon immediately terminate.

Sec. 13. A justice, judge or magistrate shall be retired upon attaining the age of 70 years. When the supreme court certifies to the governor that it appears that any judge is so incapacitated as substantially to prevent him from performing his judicial duties, the governor shall appoint a commission of three persons to inquire into the circumstances; and, on their recommendation, the governor may retire the judge from office. Retirement allowances for a judge or justice retired hereunder who has held judicial office continuously for ten or more years immediately preceding his retirement shall be provided by law.

Comment: The source of this section is the recent constitution adopted in New Jersey. See its judiciary article, § VI, subds. 3 and 5. New York also has a compulsory retirement age of 70 years. This age is also the most commonly accepted one in voluntary retirement plans.

Sec. 14. If the office of a judge becomes vacant, the governor shall appoint some qualified person to fill such vacancy, who shall hold office until his successor is elected and qualified. Such successor shall be elected at the first election occurring more than one year after the vacancy occurred for a term of six years and until his successor is qualified. If the legislature provides for the appointment of such judge in the manner prescribed in section 11, subdivision (b), this section shall be inoperative.

Comment: This section increases the spread between appointment and the appointee's subsequent candidacy for election from 30 days to one year. The 30-day period has proved too short. Complications arise when a vacancy occurs after the primary election but more than 30 days prior to the final election. In addition, the short period does not give sufficient time to enable observation of the competence developed by the appointee prior to the election.

The provision that the election shall be for the full term of office incorporates the judicial interpretation given to the

present provisions. See, Enger v. Holm, 1942, 213 Minn. 154, 6 N. W. 2d 101.

Sec. 15. The chief justice shall be the administrative head of all the courts. He shall appoint an administrative director to serve at his pleasure. He may temporarily assign a judge of the district court to a district other than his own or a judge of the court of probate to a county other than his own as need and the public interest require. He may temporarily assign a judge of the district court to act as a justice of the supreme court when necessary. When a majority or all of the justices of the supreme court are disqualified from sitting in any case the governor shall assign judges of the district court to sit in such case instead of the disqualified justices, unless the governor be interested in the result of such case, and in that event the lieutenant governor shall assign such judges. Any judge assigned as provided in this section shall have all the powers and perform all the duties of a judge of the district, county or court to which he is assigned. No action shall be taken hereunder which interferes with the exercise of the judicial functions of a judge in any case or proceeding.

Comment: Recent developments have been in the direction of providing better coordination of the various parts of the judicial system. Rule-making power in the field of procedure, now in force in most states including Minnesota and in the Federal system, is one example. (See § 2.) Administrative responsibility in the highest court and its head is another and is illustrated by the administrative director of the United States courts acting under the supervision of the Conference of Senior Circuit Court Judges with the Chief Justice of the U. S. Supreme Court as its chairman. See U. S. Code, Tit. 28, Chap. 13A. A number of states provide for temporary assignment of judges who are idle for the moment to serve in another county, district or court where the judges for the time being are overloaded with work. Leading examples are California, Michigan, New York and New Jersey. The first two sentences of the proposed section appear in § VII of the judiciary article of the New Jersey constitution recently adopted. For text of the New Jersey article see 31 Jr. of Am. Judicature Soc. 142 (1948). See, also English, New Jersey Reorganizes Its Judicial System, 34 Am. Bar Assn. Jr. 11 (1948).

Sec. 16. The legislature may confer jurisdiction over cases and proceedings relating to domestic relations and the care or welfare of minors upon the court of probate or the district court of any county or upon a court created for such purposes.

(The Committee is in doubt whether this section should include cases pertaining to domestic relations. Again the reaction of all interested parties is desired.)

Sec. 17. No judicial action taken by any court shall fail for want of jurisdiction over the subject matter. Any case or proceeding which is not within the jurisdiction of the court in which it is pending shall on application be transferred to the proper court, or may be so transferred on the court's own motion.

Comment: Jurisdiction over the subject matter involves the distribution of judicial business among the several courts. Whether a particular case comes within the class of business of the court in which it is commenced is not a question that goes to the merits of the case. Yet the present rules punish a party who mistakenly brings his action in the wrong court by denying all validity to the steps he and the court have taken and nullifying any judgment he may have obtained. The necessities of the problem would seem to require only that the case be transferred to the proper court and that, if no one raises the objection, the resulting judgment should stand.

Some plans of court reorganization have sought to avoid the effect of the present rules by providing for a single court for the state as a whole with divisions thereof to exercise the various judicial functions. The proposed section seems equally effective and does not involve a major change in the organization of the courts we now have.

Schedule

Sec. 18. (a) All justices of the peace shall constitute magistrates each for the period of his term which remains unexpired at the time this Article goes into effect.

(b) All clerks of court shall constitute clerks of their respective courts each for the period of his term which remains unexpired at the time this Article takes effect.

(c) All probate judges shall constitute probate judges of their respective counties each for the period of his term which remains unexpired at the time this Article takes effect. Thereafter they shall be eligible for re-election or reappointment as the case may be without regard to the provisions of this Article.

(d) All statutes relating to practice, procedure and evidence and in force at the time this Article takes effect shall remain in force as rules of the supreme court subject to the provisions of this Article.

(e) The provisions of section 13 shall not apply to any judge

in office at the time this Article takes effect and during his continuance in such office.

(The Committee is in doubt whether the application of subdivision (e) of section 18 should be limited to those incumbents who have reached the age of 60 [or 65] years at the time when this Article is adopted. The reaction of the bench and bar is again desired.)

(f) All municipal courts in existence at the time this Article takes effect shall continue in existence until otherwise provided by law. All municipal court judges shall continue in office each for the period of his term which remains unexpired at the time this Article takes effect. They shall be eligible for re-election or reappointment as the case may be without regard to the provisions of this Article.

(g) Salary schedules, in effect when this Article is adopted, for the compensation of judges, court commissioners, clerks of court, and other court employees, shall remain in effect until otherwise provided by law. Any judge, court commissioner, or clerk of court, whose compensation at the time of the adoption of this Article is derived in part from fees, shall continue to receive such fees until July 1 of the year in which the second regular session of the legislature is held subsequent to the adoption of this Article.

(h) Statutory provisions fixing the retirement compensation of judges, in effect when this Article is adopted, shall remain in effect until otherwise provided by law.

(i) All court commissioners in office when this Article is adopted shall continue in office for the remainder of any term for which they have been selected, and if heretofore appointed to serve at the pleasure of any court, they shall continue so to serve until they, or their successors, receive a new appointment hereunder.