The Status of Judicial Reform in the State of Florida

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Article I, section 4 of the Declaration of Rights of the Florida Constitution states, "All courts in this state shall be open, so that every person for any injury done him in his lands, goods, person or reputation shall have remedy, by due course of law, and right and justice shall be administered without sale, denial or delay." (italics provided) The movement for judicial reform in this state has been primarily concerned with the problems of delay and the circumstances related to and contributing to the delay in the administration of justice.

The judiciary of Florida is provided for in article V of the Florida Constitution. Generally speaking, the Legislature is responsible for the creation of new courts, the addition of judges and circuits, and the creation and elimination of justice districts within which justices of the peace operate. In instances, the responsibilities of the Legislature are shared by the citizens of the county concerned. Matters of great import, such as the expansion of the Florida Supreme Court and addition of courts require constitutional amendments; procedures for which are set forth in article XVII of the Florida Constitution.

The existence or non-existence of a need for judicial reform in Florida is not a subject for determination in this article. The citizens of Florida and the Legislature of the state have evidenced their concern over the status of the state court system several times. They have placed the responsibility for determining whether or not a need for reform exists in the hands of the Florida Judicial Council. Further, this group is charged with making recommendations where appropriate after completion of their studies. The Council was established by the Legislature in 1953, and it was charged with "a continuous study of the organization, procedure, practice and work of the courts of Florida, including all matters concerning the more efficient administration of justice." The courts were directed to cooperate with the Council in its collection of statistics and other data. The members of the Council were appointed by the Governor. The Council set its course when by resolution it determined to study five main areas: (1) the establishment of appellate courts; (2) a non-partisan method of selection of judges; (3) organization and procedure in the trial

1. Article V, section 16 B of the Florida Constitution provides that the Legislature can add county judges in counties where the population is over 125,000 subject to referendum in the county concerned. Section 21 provides that the legislature can change the boundaries of justice districts, or increase or decrease the number of districts subject to referendum in the county concerned.

2. LAWS OF FLA. c. 28062 (1953). The Council was also to make recommendations to the legislature, to the courts and to make an annual report to the Governor of Florida of its proceedings, recommendations and the results thereof. The law was approved by the Governor on May 29, 1953.
courts; (4) methods of improving the utilization of jurors and other lay-men; (5) administrative improvements in the judicial system.8

This distinguished group of professional and non-professional Floridians wasted no time in undertaking their important task. The bill establishing the Council was approved by the Governor on May 29, 1953, and the Council held its first meeting in October of that year. The Council broke down its membership into seven task forces to study specified areas of judicial concern: (1) appellate courts; (2) trial courts; (3) selection, tenure, compensation and retirement of judges; (4) jurors; (5) drafting; (6) statistics; (7) public relations, policy and information. The Council decided that its meetings should be open to the public, and to facilitate public attendance meetings were held in various cities throughout the state.

The second meeting provided the members with an opportunity to hear one of the leaders in the field of judicial reform and administration, Dr. Sheldon Elliott, Director of the Institute of Judicial Administration of New York City. Dr. Elliott was able to give the Council the benefit of his experience and vast knowledge in the field and undoubtedly the Council gained greatly from his presence so opportune at the outset of their undertaking.

Close cooperation with the Florida Bar Association was obviously essential to the success of the Council's undertakings, and as early as May of 1954 the Florida Bar and the Council embarked on a mutual program of coordination. Exchanges of opinion on the work and progress of the Council became the order of the day.

The Council methodically and carefully gathered its data and wrestled with its problems. On April 28, 1955, it presented to the Florida Legislature the final draft of its recommendations for a constitutional amendment to revise the Florida judicial system. This set of recommendations was the fifteenth draft of the Council's initial recommendations to the Legislature. This final draft had received the approval of the Board of Governors of the Florida Bar Association before its presentation to the Legislature.4 The proposed amendment had been published in the Florida Bar Journal to familiarize the members of the legal profession with the plan being presented by the Council.5

When the recommendations got to the Legislature they contained five main areas of concern: (1) creation of district courts of appeal; (2) centralization of administrative authority in the supreme court; (3) control by the supreme court of practice and procedure in all state courts; (4) regulation by the supreme court of admissions to the bar and dis-

3. Minutes of the meeting of the Florida Judicial Council held November 27-8, 1953.
cipline of attorneys; (5) non-partisan selection of supreme court justices and judges of the district courts of appeal, with provision for similar selection of circuit court judges in those circuits where the electors, at the instance of the Legislature, chose to follow such a plan for non-partisan selection.6

The joint resolution that eventually left the Legislature to be submitted to the people did not contain all of the suggestions of the Council.7 It is obvious that compromise was necessary, but it cannot be denied that the Council, the Legislature and other concerned parties certainly acted with diligence and sincerity in following the course of their convictions in determining what finally was submitted to the voters of Florida.

The essential differences between the 1955 judiciary, the recommendations of the Council and the final legislative resolution are as follows.

The revised section 1 of article V added the district courts of appeal and the Legislature accepted the institution of these courts. The Council’s suggested wording of section 2 gave the chief justice “general administrative authority over all courts in this state,” but the Legislature chose to leave this out. Connecticut, Idaho, Missouri, North Carolina, Virginia, Wisconsin and the federal courts have some central authority to handle administrative matters for their courts. Generally this authority is vested in, or under the control of the chief justice concerned.8 Further, Alabama, Arkansas, Colorado, Indiana, Iowa, Michigan, Mississippi, New York, Oklahoma and Texas have at one time or another considered the possibility of a central administrative unit for all of the courts of the particular state.9 While the Legislature saw fit to turn down the centralization of administrative control, a major step forward was taken in placing the regulation of practice and procedure in all courts under the Florida Supreme Court in section 3 as was recommended by the Council. Section 4, as suggested and as accepted by the Legislature, did away with the divisions of the Florida Supreme Court and made five justices necessary for a quorum, requiring concurrence of four for a decision. The original arrangement called for four as a quorum, required three for a decision.

The revised section 5 limited appeals as a matter of right from the district courts of appeal to: (1) decisions initially passing upon the validity of a state statute or a federal statute or treaty; (2) initial construction of a controlling provision of the Florida or Federal Constitutions. This section also limited review by certiorari to (1) any decision

6. op. cit., 8.
7. Id. 10.
9. Personal correspondence with the clerks of the courts of last resort and with the Administrative Office of the United States Courts, Washington, D.C., on file University of Miami Law Library.
of a district court affecting a class of constitutional or state officers; (2) passing upon a question certified by the district court to be of great public interest; (3) where decisions of another district court or the supreme court are in conflict on the same point of law and (4) issuance of writs of certiorari to commissions established by law. Under the revision as proposed by the Council, the supreme court could issue; (1) writs of mandamus and quo warranto when a state officer, board, commission, or other agency authorized to represent the public generally, or a member of any such agency is named as respondent; (2) writs of prohibition to commissions established by law, to the district courts of appeal, and to the trial courts when questions are involved upon which a direct appeal to the supreme court is allowed as a matter of right. Further, the supreme court could provide for the transfer to the court having jurisdiction of any such matter subject to review when the jurisdiction of another appellate court has been improvidently invoked. The Legislature chose to adopt this section as recommended by the Council.

Section 6 was revised by the Council to call for the election of the chief justice for a six year term, but the Legislature chose to leave the term at two years as it existed in section 4.11

The Council added a marshal in section 7 who was to have the power to execute the process of the court throughout the state and gave him the power to deputize the sheriff or deputy sheriff in any county for such purpose. This revision suggestion was also accepted by the Legislature as part of section 4.

Revised sections 8 and 9, as proposed, dealing with the appellate courts originally called for three or more (italics supplied) appellate districts but the Legislature limited it to three. The Council recommended three or more judges in each district, but the Legislature limited it to three. All three must consider each case and the concurrence of two is necessary for a decision. The Legislature accepted this section as part of section 5, with modification as indicated. The original judges were appointed by the Governor and will be replaced by election.

Proposed section 10, dealing with the jurisdiction of the newly established courts, provided for appeals from trial courts in each appellate district as a matter of right from all final judgments or decrees except those from which appeals may be taken directly to the supreme court or to a circuit court. The Legislature changed this in section 5, as adopted, so that appeals from trial courts in each appellate district, and from final orders or decrees of county judges courts pertaining to probate matters of testators and interests of minors and incompetents may be taken to

10. Ibid.
11. Fla. Const. art. V § 44.
the court of appeal of such district, as a matter of right, from all final judgments or decrees except those from which appeals may be taken directly to the supreme court or to a circuit court. The Council recommended review by the appellate courts of interlocutory orders or decrees in chancery matters not directly reviewable by the supreme court while the Legislature changed this to review of interlocutory orders or decrees in matters reviewable by the district courts of appeal.

The Council recommended, and the Legislature agreed, that the new courts should have power of direct review of administrative action as may be provided by law, and further that a district court of appeal or any judge thereof may issue writs of habeas corpus returnable before that district court or any judge thereof, or before any circuit judge in that district. The Council and the Legislature agreed that the new courts may issue writs of mandamus, certiorari, prohibition, quo warranto and also all other writs necessary or proper to the complete exercise of its jurisdiction.

The Council's section 11 created clerks and marshals for the courts, and the Legislature adopted the recommendations of the Council in this respect as part of section 6.

The Council's section 12 (number 6 in the final amendment) incorporated existing sections 8, 45 and 51, which dealt with the circuit courts.

In proposed section 13, the Council recommended provision for additional circuit judges as recommended by the Judicial Council, but the Legislature did not agree to this provision. This position on the part of the Legislature typifies their reluctance to centralize responsibility for the courts and to accept outside assistance in their work. Several states, as pointed out above, utilize lay groups in the operation of their court systems and have central control of the administration of their courts in the courts themselves. It would seem that the Legislature and the courts would benefit from assistance from the Judicial Council in such matters. The Council has established the machinery to gather statistics and to study the needs of various localities and has proved its capacity for analysis in the presentation of its findings to the Legislature in the form of the recommended article. It is evident that this reluctance on the part of the Legislature to accept concrete assistance is not confined to this area alone.

The proposed section 14 (section 6c in the final resolution) moved appeals in probate to the new district courts of appeal and recognized the equity jurisdiction of juvenile courts and the Legislature concurred.

Proposed sections 16 through 21 (16 through 21 became part of sections 6, 7 and 8) did no more than renumber existing sections, except
that the Council recommended that county courts should have final appellate jurisdiction in civil cases arising in the courts of justices of the peace and that the trial of such appeals may be de novo at the option of the appellant. In this matter the Legislature did not agree.

Section 22, as proposed, called for the Legislature, acting upon application of a majority of the registered voters in any county, to establish criminal courts of record, but the Legislature reserved for itself the right to establish such courts in section 9 of the amendment. It would seem that the recommendation of the Council was well founded. Perhaps this matter will be brought before the Legislature again by the Judicial Council after further study.

Sections 23 and 24 were carried over in their original form as parts of section 9. Sections 25 through 30 were substantially unchanged and were included in the new section 9. Section 31, also, was substantially unchanged except that the Legislature reserved the right to fix the compensation of the judges of the court of record of Escambia County as part of section 9. Sections 32 through 35 were adopted from the corresponding sections of Article V in the new sections 11 and 12.

Section 36, as proposed by the Council and adopted by the Legislature as section 13, set the requirements for selection as judge of the district courts of appeal and they include citizenship of Florida and membership in good standing of the Florida Bar for at least ten years. Section 36 (now 13) also opened the door for members of the Florida Legislature to be elected or appointed to any official position which may have been created, or the emoluments whereof may have been increased, during the time for which he was elected.

Proposed section 37 dealt with selection of circuit court judges. The proposal would have permitted voters in the circuits, at the instance of the Legislature, to choose between electing judges or having them appointed by the Governor from a list of three persons nominated by the Circuit Court Judicial Nominating Commission. Section 38 provided that vacancies would be filled by appointment in circuits which had decided to follow the appointment method. The appointments would have been made either by the supreme court or the Governor in such cases. Section 39 would have created the Supreme Court Judicial Nominating Commission which would have been composed of three active members of the bar elected by members of the bar, and three non-members of the bar appointed by the Governor. Proposed section 40 covered the District Court of Appeal Judicial Nominating Commissions. The members of the Commission, according to proposed section 42, except the chief justice, would not be able to hold any public office or official position in any political party and would have received no compensation for their efforts. Proposed section 43, dealing with election of justices of the
Florida Supreme Court and judges of both courts of appeal and circuit courts, provided that any judge deciding to succeed himself would have to file notice of his intention not less than forty-five days prior to the election and would then appear on the ballot with no party designation. The electors then would have decided by majority vote either to retain him or not. Sections 37 through 43 were not adopted by the Legislature. The failure of the Legislature to forward these proposed sections to the people for acceptance or rejection was a blow to judicial reform in Florida. The ingredients of this plan have been tried and proved in several of the states. However, the Judicial Council has certainly not acceded to the action of the Legislature as final disposition of the matter but will probably continue to study the problem and make recommendations again for such a plan if they deem them appropriate.

Proposed section 44 provides for six year terms for the judges of the new courts of appeal (in section 16 of the amendment). The original appointments were made for two, four and six years, with replacement as appropriate, by election.

Section 45 as recommended by the Council contained a clause providing for the retirement of justices or judges with compensation without regard to expiration of term if they were otherwise eligible. This clause was not adopted by the Legislature. The section (section 17 in the amendment) as adopted did provide for automatic retirement of all justices and judges at age seventy and for retirement for disability by a commission made up of justices and judges. Further, the new section provides for justices and judges liability to impeachment for misdemeanors in office. Proposed section 46 prohibited activities for justices and judges of an outside nature and required them to devote full time to their duties. Further, it restricted them from holding office in any political party. These parts of the proposed section were passed as part of new section 18. The proposed section also included a provision that justices and judges could not be candidates for non-judicial office until one year after they had relinquished their judicial office and this provision was not adopted by the Legislature.

Proposed section 47, dealing with judicial salaries and expenses, called for possible supplementation of retirement salaries for judges of the circuit courts and district courts of appeal. The Legislature limited these provisions to circuit court judges in the renumbered section 19. Further, the Council had recommended that the salaries of justices and judges not be diminishable during their respective terms of office, but the Legislature chose to delete this.

12. Personal correspondence with the clerks of the courts of last resort and with the Administrative Office of the United States Courts, Washington, D.C., on file University of Miami Law Library.
13. 3 ANNUAL REPORT, Fla. JUDICIAL COUNCIL 3 (1956).
Sections 48 through 50, dealing with process, referees and juries, were retained as they were originally written and renumbered 20, 21 and 22 respectively.

Section 51 placed exclusive control over admission to the practice of law and discipline of persons admitted to the bar in the hands of the Florida Supreme Court. The Legislature went further than the Council and added that the supreme court could designate members of commissions to act in matters of discipline with the actions of such commissions subject to the review and supervision of the supreme court in renumbered section 23.

Proposed section 52 dealt with the Judicial Council and was left out by the Legislature. Of course, the Council remains in existence in accordance with the original enactment that instituted it.

Recommended section 53 provided that any laws reducing the number of judges shall not shorten the term of any judge then in office. The section was adopted as suggested and numbered 24.

Proposed section 54 was adopted to read the way original section 36 had read in new section 25. This section deals with judicial officers as conservators of the peace.

Proposed section 55 (new section 26) dealt with the scheduling of the effective dates of the new article in its first five parts and later provided for the transfer of causes, matters and proceedings to the district courts of appeal from the supreme court as were within the jurisdiction of those courts, providing that no case which had been orally argued before the supreme court would be transferred. In addition, this section provided for an additional judge for Duval County in the fourth circuit. The Legislature chose to add a judge for the circuit in which the state capital is located. Additional parts of the section provided that orders of the Florida Industrial Commission shall be subject to review only by petition to the district courts of appeal for writs of certiorari and further that the new article would not disturb the terms of incumbent judges. Further, it provided that the section dealing with automatic retirement (proposed section 45, final section 17) shall not apply to persons now in office.

In its third annual report the Council pointed out that, "The inclusion of the unrevised sections did not signify that the Council had re-endorsed them, on the contrary, at the meeting following the adjournment of the Legislature, the Council immediately reverted to a consideration of the subjects with which those sections dealt."14

The Council embarked upon an extensive educational campaign in hopes of assisting the electorate in their decision concerning the amend-

14. Ibid.
ment as adopted by the Legislature. The all-out campaign included cooperation of the Florida Bar, general public education and the creation of a task force to concentrate efforts to secure passage.

Fortunately, the Council had been given financial assistance by the 1955 Legislature in the amount of $20,000. To this point, the Council had been operating without support from the state government. Such a decision was consistent with the best interests of success on the part of the Council in their continued studies and efforts.

The Council broadened its activities by determining to fully cooperate with the newly created Florida Constitution Advisory Commission. This effort on the part of the Council offers great opportunity for close cooperation in future revisions to the constitution and should extend greatly the impact of the Council’s research and recommendations.

The Council has received full cooperation from all sources. The group was able to report in its fourth annual report, “The Council was never refused the cooperation or assistance of anyone from whom it was requested.” In cooperation with the united effort to secure passage, the Florida Bar published a pamphlet entitled “Give Justice a Green Light” concerning revision. Public appearances were made by the Governor, members of the Bar, members of the Council, and by justices of the supreme court—all of whom aimed at assisting the united effort to engender understanding of the proposal and what it meant to Floridians.

The efforts of the Council and other parties in interest bore fruit. In the election held November 6, 1955, the public passed the amendment by the greatest percentage ever given a constitutional amendment in Florida’s history.

By December of 1956 the Council had prepared a draft of the proposed revision of the trial court system in Florida. It was determined by the Council not to submit it to the 1957 Legislature, however, but to wait and complete further studies and to schedule submission of the proposal for the 1959 Legislature.

The Council studied the problem of proper location of the new district courts of appeal and submitted their recommendations to the Legislature. In addition, the Council studied the problems of salaries for judges, clerks and marshals and, as a result, submitted a resolution to the Legislature reflecting the results of their labors. These recommendations were not followed, but the Council is determined to continue its studies in this field and to submit new recommendations to the Legislature in 1959.

15. 4 ANNUAL REPORT, FLA. JUDICIAL COUNCIL 3 (1957).
16. Ibid.
The Council's activities have extended to assisting the Legislature in the implementation of the retirement field and also to working with the supreme court in revision of Florida's Appellate Rules.

With its broadened base of activities, the Council realized the need for additional funds and the 1957 Legislature cooperated by appropriating thirty thousand dollars to the Council. In addition, the Council has met the need for a full time director with the appointment of Mr. Arthur Lundeen (as of July 15, 1957).

In four years, primarily due to the efforts of a group of professional and non-professional personnel, who are evidently possessed of fine executive ability and a sincere desire to improve the judiciary of their state, Florida has brought itself to the forefront of progress in judicial reform in the United States. The enthusiasm and good work of the Council have obviously caught hold. The cooperation of the Bar was to be expected, but the degree of cooperation has been unquestionably greater than the fondest hopes of the original proponents of judicial reform in Florida. Lay cooperation can be traced from the intention of the framers of the Council to include the members of the general public in their activities and from their acceptance of non-professionals as members of the Council.

Florida has established the machinery to continue studying and improving its judiciary. The continued success of this machinery will depend upon the concentrated efforts of the membership of the Council, the cooperation of the Bar, the open-mindedness of the Legislature and the interest of the general public. Certainly, we cannot expect that all of the Council's recommendations will be accepted with open arms—what is important is that the problems will be studied and sincere consideration will be given to the proposals brought forth.

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