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# Managing the Business of the Courts

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## MANAGING THE BUSINESS OF THE COURTS\*

There is no provision in the statute law of West Virginia for any external administrative control of the various courts. Each court acts by virtue of its own inherent authority of self administration, and is subject to no other court or agency in the matter of handling the details of its own business. While there is no statute which would directly subject the several courts to administrative control it must be noted that by virtue of Chapter 51, Article 1, Section 4 of the *West Virginia Code* of 1931, as amended by Chapter 37 of the Acts of the Legislature of 1935,<sup>1</sup> covered in Part I of this survey, the Supreme Court of Appeals "may from time to time make and promulgate general rules and regulations governing pleading, practice and procedure in such courts and in all other courts of record in this state. All statutes relating to pleading, practice and procedure shall have force only as rules of court . . ." It would seem that this power might be exercised to effect a measure of control of the administrative activities of the several courts of record, but *quaere* as to whether a court rule would be effective to prescribe duties of any administrative official when such duties are defined in sections of the code not relating to "pleading, practice and procedure". Justice of the peace courts are not included, their activities being circumscribed by statute.

In this connection, also,<sup>2</sup> there has been established a Judicial Council which is to act as an advisory board "to make observation and report to the Supreme Court of Appeals, from time to time such recommendations as may, in its judgment, be proper."<sup>3</sup> The Judicial Council, however, has no power expressly conferred other than that given to organize a bureau of statistics.<sup>4</sup>

The Supreme Court of Appeals is the only court sitting in bank. The president of the Supreme Court of Appeals, selected in rotation from the membership, is normally the presiding officer but actually exercises little power. All cases are taken in strict rotation by the several judges unless a valid reason for not doing so appears. There are no divisions of a single court except in the

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\* Part II of "A Survey of the Administration of Justice", based upon the recommendations of the Section of Judicial Administration made in 1938 to the American Bar Association and adopted as a special program of the Association, being made by the Junior Bar Conference as a cooperating organization. Part I appeared in (1941) 47 W. VA. L. Q. 136.

<sup>1</sup> W. VA. CODE (Michie, 1937) c. 51, art. 1, § 4.

<sup>2</sup> *Id.* at c. 56, art. 11.

<sup>3</sup> *Id.* at c. 51, art. 1, § 4; see also *id.* at c. 56, art. 11, § 4.

<sup>4</sup> *Id.* at c. 56, art. 11, § 4.

first judicial circuit where a unique situation exists. Two judges sit in this circuit in the same manner as the single judge of the other circuits. These two judges divide the business of the court to their mutual satisfaction, and only in the event of a disagreement does the "presiding magistrate" prevail. The "presiding magistrate" is chosen by lot in the first instance and thereafter the title is alternated yearly.<sup>5</sup> Otherwise the conduct of the business of the first judicial circuit does not differ from that of the other circuits.

As hereinabove mentioned, there has been provision made for the gathering of judicial statistics under the direction of the Judicial Council,<sup>6</sup> which statistics shall be reported by certain courts and agencies as the Judicial Council may require, semi-annually, upon forms prepared by the Council. The statistics are to be reported, together with the Council's recommendation, to the Supreme Court of Appeals and to the Governor, making such proposals for legislation as it may deem necessary. As a practical matter little has been done, although the statute setting up the Judicial Council was passed in 1933. Unfortunately no legislative appropriation has ever been made for the carrying on of any of the Council's work, especially the gathering of statistics, which, as a consequence, has been limited to a few meetings per year and a few recommendations. The bureau of statistics has never functioned to any extent.

While the Judicial Council is evidence of a step in the right direction toward a unification of the courts of this state it has, as a practical matter, effected no visible changes. The bureau of statistics in particular should be set up on a permanent basis in order that there could be a definite determination of the business transacted in the various courts and the dispatch with which it is completed. Thereafter the logical step would be to have some sort of rearrangement or statutory provision whereby a central agency or court could assign judges from the less crowded courts to those where the docket is in eternal confusion. At present no such authority exists. In some cases the confusion of the court is the fault of the judge although in most cases it is merely the press of business; yet on the whole, in West Virginia, the several courts transact their business with reasonable efficiency and dispatch to the satisfaction of the bar.

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<sup>5</sup> W. Va. Acts 1933, c. 63.

<sup>6</sup> W. VA. CODE (Michie, 1937) c. 56, art 11, § 4.

The principal objection at the present time to the West Virginia judicial system is the justice of the peace court, the elimination of which by constitutional amendment was defeated by the voters at the last general election. It is unnecessary to enumerate the many objectionable features of these courts, particularly in the areas of larger population, since the problem is common to a great part of the United States and much already has been written concerning it.

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