West's Idaho Code Annotated
Title 1. Courts and Court Officials
Chapter 21. Judicial Council (Refs & Annos)

I.C. § 1-2101

§ 1-2101. Judicial council--Creation--Membership--Appointments--Vacancies

Currentness

(1) There is hereby created a judicial council which shall consist of seven (7) permanent members, and one (1) adjunct member. Three (3) permanent attorney members, one (1) of whom shall be a district judge, shall be appointed by the board of commissioners of the Idaho state bar with the consent of the senate. Three (3) permanent nonattorney members shall be appointed by the governor with the consent of the senate. If any of the above appointments be made during a recess of the senate, they shall be subject to consent of the senate at its next session. The term of office for a permanent appointed member of the judicial council shall be six (6) years. Vacancies shall be filled for the unexpired term in like manner. Appointments shall be made with due consideration for area representation and not more than three (3) of the permanent appointed members shall be from one (1) political party. The chief justice of the Supreme Court shall be the seventh member and chairman of the judicial council. No permanent member of the judicial council, except a judge or justice, may hold any other office or position of profit under the United States or the state. The judicial council shall act by concurrence of four (4) or more members and according to rules which it adopts.

(2) In addition to the permanent members of the judicial council, whenever there is an issue before the council which involves the removal, discipline or recommendation for retirement of a district court magistrate, the chief justice shall appoint an adjunct member of the judicial council, who shall be a district court magistrate. For all purposes for which the adjunct appointment is made, the adjunct member shall be a full voting member of the judicial council.

Credits
S.L. 1967, ch. 67, § 1; S.L. 1990, ch. 71, § 1.

Notes of Decisions (1)

I.C. § 1-2101, ID ST § 1-2101
The statutes and Constitution are current through the 2018 Second Regular Session of the 64th Idaho Legislature.

End of Document

West's Idaho Code Annotated
Title 1. Courts and Court Officials
Chapter 21. Judicial Council (Refs & Annos)

I.C. § 1-2102

§ 1-2102. Duties of council

Currentness

The judicial council shall:

(1) Conduct studies for the improvement of the administration of justice;

(2) Make reports to the supreme court and legislature at intervals of not more than two (2) years;

(3) Submit to the governor the names of not less than two (2) nor more than four (4) qualified persons for each vacancy in the office of justice of the supreme court, judge of the court of appeals, or district judge, one (1) of whom shall be appointed by the governor; provided, that the council shall submit only the names of those qualified persons who are eligible to stand for election pursuant to section 1-2404, 34-615 or 34-616, Idaho Code;

(4) Recommend the removal, discipline and retirement of judicial officers, including magistrates;

(5) Prepare an annual budget request in the form prescribed in section 67-3502, Idaho Code, and submit such request to the supreme court, which shall include such request as submitted by the judicial council in the annual budget request of the judicial department; and

(6) Such other duties as may be assigned by law.

Credits
S.L. 1967, ch. 67, § 2; S.L. 1985, ch. 29, § 3; S.L. 1990, ch. 71, § 2. Amended by S.L. 2011, ch. 13, § 1, eff. July 1, 2011.

I.C. § 1-2102, ID ST § 1-2102
The statutes and Constitution are current through the 2018 Second Regular Session of the 64th Idaho Legislature.

End of Document

West's Idaho Code Annotated
Title 1. Courts and Court Officials
Chapter 21. Judicial Council (Refs & Annos)

I.C. § 1-2103

§ 1-2103. Removal, disciplining, or retirement of judges or justices--Procedure

Currentness

A justice of the Supreme Court or judge of any district court, in accordance with the procedure prescribed in this section, may be disciplined or removed for wilful misconduct in office or wilful and persistent failure to perform his duties or habitual intemperance or conduct prejudicial to the administration of justice that brings judicial office into disrepute, or he may be retired for disability seriously interfering with the performance of his duties, which is, or is likely to become of a permanent character. The judicial council may, after such investigation as the council deems necessary, order a hearing to be held before it concerning the removal, discipline or retirement of a justice or a judge, or the council may in its discretion request the Supreme Court to appoint three (3) special masters, who shall be justices or judges, to hear and take evidence in any such matters, and to report their findings to the council. If, after hearing, or after considering the record and the findings and report of the masters, the council finds good cause therefor, it shall recommend to the Supreme Court the removal, discipline or retirement, as the case may be, of the justice or judge.

The Supreme Court shall review the record of the proceedings on the law and facts and in its discretion may permit the introduction of additional evidence and shall order removal, discipline or retirement, as it finds just and proper, or wholly reject the recommendation. Upon an order for retirement, the justice or judge shall thereby be retired with the same rights and privileges as if he retired pursuant to other provisions of law. Upon an order for removal, the justice or judge shall thereby be removed from office, and his salary shall cease from the date of such order.

All papers filed with and the proceedings before the judicial council or masters appointed by the Supreme Court, pursuant to this section, shall be subject to disclosure according to chapter 1, title 74, Idaho Code, provided, however, that if allegations against a judge are made public by the complainant, judge or third persons, the judicial council may, in its discretion, comment on the existence, nature, and status of any investigation. The filing of papers with and the giving of testimony before the council or the masters shall be privileged; but no other publication of such papers or proceedings shall be privileged in any action for defamation except that (a) the record filed by the council in the Supreme Court continues privileged and upon such filing loses its confidential character and (b) a writing which was privileged prior to its filing with the council or the masters does not lose such privilege by such filing. The judicial council shall by rule provide for procedures under this section, including the exercise of requisite process and subpoena powers. A justice or judge who is a member of the council or Supreme Court shall not participate in any proceedings involving his own removal, discipline or retirement.

This section is alternative to, and cumulative with, the removal of justices and judges by impeachment, and the original supervisory control of members of the judicial system by the Supreme Court.

Credits

S.L. 1967, ch. 67, § 3; S.L. 1969, ch. 225, § 1; S.L. 1986, ch. 89, § 1; S.L. 1990, ch. 213, § 3. Amended by S.L. 2015, ch. 141, § 1, eff. July 1, 2015.

Notes of Decisions (16)

I.C. § 1-2103, ID ST § 1-2103
The statutes and Constitution are current through the 2018 Second Regular Session of the 64th Idaho Legislature.

End of Document

West's Idaho Code Annotated
Title 1. Courts and Court Officials
Chapter 21. Judicial Council (Refs & Annos)

I.C. § 1-2103A

§ 1-2103A. Removal, disciplining, or retirement of magistrates

Currentness

A magistrate of the district court, in accordance with the procedure prescribed in this section, may be disciplined or removed for wilful misconduct in office or wilful and persistent failure to perform his duties or habitual intemperance or conduct prejudicial to the administration of justice that brings judicial office into disrepute, or he may be recommended for retirement for disability seriously interfering with the performance of his duties, which is, or is likely to become of a permanent character.

The judicial council may, after such investigation as the council deems necessary, order a hearing to be held before it concerning the removal, discipline or retirement of a magistrate, or the council may in its discretion request the Supreme Court to appoint three (3) special masters, who shall be district judges or district magistrates, to hear and take evidence in any such matters, and to report their findings to the council. If, after hearing, or after considering the record and the findings and report of the masters, the council finds good cause therefor, it shall recommend to the Supreme Court the removal, discipline or retirement, as the case may be, of the magistrate.

The Supreme Court shall review the record of the proceedings on the law and facts and in its discretion may permit the introduction of additional evidence and shall order removal or discipline, or recommend retirement for disability, or wholly reject the recommendation. Upon a recommendation for retirement for disability, the recommendation shall be presented to the public employee retirement system for action. Upon an order for removal, the magistrate shall thereby be removed from office, and his salary shall cease from the date of such order.

All papers filed with and the proceedings before the judicial council, or masters appointed by the Supreme Court, pursuant to this section, shall be confidential; provided, however, that if allegations against a magistrate are made public by the complainant, the magistrate, or third person, the judicial council may, in its discretion, comment on the existence, nature and status of any investigation. The filing of papers with and the giving of testimony before the council or the masters shall be privileged, but no other publication of such papers or proceedings shall be privileged in any action for defamation except that (a) the record filed by the council in the Supreme Court continues privileged and upon such filing loses its confidential character; and (b) a writing which was privileged prior to its filing with the council or the masters does not lose such privilege by such filing. The judicial council shall by rule provide for procedures under the provisions of this section including the exercise of requisite process and subpoena powers.

The provisions of this section are alternative to, and cumulative with, the removal of magistrates by impeachment, and the original supervisory control of members of the judicial system by the Supreme Court.

Credits
S.L. 1990, ch. 71, § 3.

I.C. § 1-2103A, ID ST § 1-2103A
The statutes and Constitution are current through the 2018 Second Regular Session of the 64th Idaho Legislature.

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SPECIAL COURT REFORM ISSUE

the Advocate

PUBLISHED BY THE IDAHO STATE BAR FOUNDATION

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HISTORY OF COURT REFORM

By R. Vern Kidwell, President of the Idaho State Bar

The proceedings of the Idaho State Bar has been reviewed as far back as 1942. The summary of prior years is adequately reported in the 1944 proceedings of the Idaho State Bar, commencing at page 36 and following. Prior years may be summarized by showing as follows:

1937, a resolution was adopted requiring the courts to confer on problems of improving and simplifying the practice.

1938, the bar sponsored a judicial improvement bill.

1941, a committee report favored abolition of Probate Courts and the transfer of its powers and duties to District Courts.

1942, a commitee was appointed to report on the improvement of methods of selection of judges.

1944, the Idaho Bar adopted a resolution recommending a judicial council.

1950, the convention provided for a permanent committee to study the selection of judges.

1953, a committee report entitled "Reorganization of Probate and Justice Courts" was presented by the now Honorable Fred M. Taylor, Senior Federal Judge. In this committee report, the committee pointed out that the improvement of lower court systems had been before the Bar Association for the past five years. Comment was made that in 1949 and 1951 the Bar had sponsored legislation to amend the Constitution to eliminate Probate Courts and Justice Courts as Constitutional Courts. Both proposals had been defeated. This aspect was again recommended by the Committee on Reorganization. At that time the committee report emphasized that the Idaho Bar Association can pass legislation if it will support it, but that unless and until the bar takes a stand the Idaho State Bar cannot expect lay members of the Legislature to do the work for the lawyers.

1954, recommendations were again made for a Constitutional revision.

1955, the Idaho State Bar unanimously adopted the following resolution:

"BE IT RESOLVED, that the Idaho State Bar Association sponsor through its local bar associations an educational program informing the public of the importance of the court reorganization and judicial reform, of ratifying the Constitutional Amendments relating to the elimination of the jurisdictional limits of Probate and Justice Courts at the next general election."

1957, a resolution was unanimously adopted to refer and attempt to secure passage of appropriate legislation to accomplish proper revision of the jurisdiction of the inferior courts and qualifications of the judges.

1958, a report of the Committee on Inferior Courts was referred to individual lawyers and bar associations to submit written comments and suggestions for final action at the 1959 annual meeting.

At the 1959 annual meeting a very comprehensive report of the Committee on Lower Courts was submitted. The committee recommended that justice be administred by qualified personnel; that

IDAHO ATTORNEYS URGED TO SUPPORT REFORM LEGISLATION

After years of effort and study, significant court reform legislation will be introduced into the Idaho Legislature in the next few days. The Idaho State Bar approved this legislation at its annual meeting. I ask each attorney and his friends to write his legislators supporting this much needed legislation.

Chas. F. McDevitt, Chairman
Legislative Committee
Idaho State Bar

The following attorneys have been appointed by the Board of Commissioners to the Legislative Committee of the Idaho State Bar. If you have any questions regarding the Bar sponsored legislative program, please feel free to contact the members of the Committee in your area, or the Chairman.

William W. Nixon, Bonners Ferry
William Dee, Grangeville
Michael E. McNichols, Orofino
Robert T. Felton, Moscow
Keith Jergensen, St. Anthony
E. W. Pike, Idaho Falls
Ralph H. Jones, Jr., Pocatello
Wallace M. Transtrum, Soda Springs
James B. Donart, Weiser
Edward L. Benoit, Twin Falls
Jess B. Hawley, Jr., Boise
Don J. McClenahan, Boise
Randall Wallis, Boise
J. Charles Blanton, Boise
Karl Jeppesen, Boise
Marion Callister, Boise
Richard Anderson, Boise
Byron Johnson, Boise
Thomas A. Miller, Boise
James B. Lynch, Boise

better Judicial system and that the only way that they might get this was to support the proposed plan. This certainly took a great deal of courage from these citizens who have served Idaho for a great number of years. Many of those present had served more than 20 years in office. I think that this is one of the best yard sticks we could judge the proposed Court plan on.

I think that the two level plan under the proposed seven-district re-organization would be a tremendous step in giving the citizens the most flexible and workable plan presented. This is based upon the theory that there will be at least one Magistrate in every County, and where the citizens can appear during regular work hours and find a Judge. With this type of two level Court, in considering the great fluctuations of our citizens at different times of the year, the two level court system could adopt itself to this trend.

One of the biggest advantages to this system is that the Banc of District Judges could determine from the experience, knowledge and behavior of the Magistrates many of the different cases that they could preside over. We do not agree that there should be any difference in the basic requirements between Lawyer and Non-Lawyer Magistrates. For many years, the Non-Lawyer Magistrates have handled some of the hardest type of cases and done a good job of it. We have all the confidence in the world in the District Judges making the assignments of the qualified Magistrates.

It has never ceased to be a wonder to me in traveling around the State of Idaho the past five years and observing the lower Courts in action, that the citizens of this State have received as good service from the Probate Courts, Justice of the Peace Courts and the Police Courts as they have. It has been well established that about 85 per-cent of the Judges were either elected or appointed and after being sworn into office told, "You are now a Judge". It has only been in the past four or five years that the Judges themselves, with the assistance of the Idaho State Bar, developed a training program for these lower courts. We have seen a tremendous improvement in these courts, but we have a long way to go to bring the courts up to the level that the citizens wish to see them. With this two level system and its requirements for continuous training programs, the Magistrates will be able to provide the citizens with the type of courts they wish and desire.

With the daily increase in our population and litigation, we must make our Judicial section of our Government modern to cope with these daily problems and affairs. It would be highly embarrassing to us, as citizens of Idaho, to continue with our old system and let our case-loads build up to the degree they have in some of our heavily populated states, when we are aware that we can and should modernize our system. I am sure that this is what our citizens had in mind when they voted the Constitutional Amendment to change our Judicial System in 1962. We are not too far behind yet to see what large case loads can do, but we should not let it happen to us, where even the most common traffic violation may take months or years to try, as they do in some of our states.

I believe it behooves all of us to modernize our courts, and the suggested two-level plan is one that is flexible enough to satisfy the many different types or areas that we have in Idaho. I believe that there are sufficient safeguards built into this proposal that the citizens will still have control over the courts but [illegible] at the same time, give the Ju[illegible] type of security in their position[illegible]g as they are doing their job. One o[illegible] biggest gains in this proposal is that it will remove our courts from the hands of the local politicians. No court should be tied to any political party or group. It was set up to be the one branch out of the three branches of our government that was not politically controlled. The two level system will provide this type of Judicial Branch.

EFFECTIVE COURT ADMINISTRATION

By Clay V. Spear
Justice of the Supreme Court of Idaho

The question is asked, "Why do we need an Administrator of the Courts in Idaho?" This I will try to answer as briefly as possible.

In 1962 the voting citizens in Idaho approved an amendment to Section 2 Article 5 of the Constitution of Idaho, which, among other things, provided as follows: "The courts shall constitute a unified and integrated system for administration and supervision by the supreme court." How can the court best comply with this directive?

At the present time the administration of the judicial system in the State of Idaho is left primarily to one of the supreme court justices who is designated the Coordinator of Courts. Idaho Code, Title 1, Chapter 6. This particular justice serves for a two-year period and is charged with the duties set forth in this chapter, in addition to carrying a full load of hearing cases and writing opinions and without additional compensation or without adequate staff of any kind. This system, in my opinion, falls only a little short of being ridiculous. In the first place the justices of the supreme court are educated, trained and experienced in the field of law, and it would be a rare instance indeed when any one of them would have the qualifications of a good administrator. Secondly, without an adequate staff, it is utterly impossible to perform these duties, in addition to his regular work, in the efficient and effective manner to which the citizens of this state are entitled.

After considerable study and after holding public hearings throughout the various sections of Idaho, the Legislative Council detected the obvious defects of the present system and suggested the creation of the office of Administrator of the Courts. The proposed legislation was taken almost verbatim from the model act suggested by the American Judicature Society. I personally can find nothing objectionable to this suggested act.

However, it is my understanding there are several district judges presently serving in Idaho, to whom the creation of such an office is objectionable. They feel an administrator could easily become a tyrant, a little Caesar who would soon turn his office into a bureaucracy that would ultimately usurp the judicial functions of the courts in Idaho. These same fears were expressed, but in each instance were proven groundless, in almost every state now having the office of an administrator.

However since these objections have been voiced, it has been suggested by Justice E. B. Smith that we amend Title 1, Chapter 6, Idaho Code, by providing an "Administrative Assistant of Courts" instead of a court coordinator and striking the portions requiring such administrative assistant to be a member of the supreme court or even a member of our profession. By doing this and by merely adding two additional duties to those already provided in said chapter, these being, (1) to examine the administrative and business methods in systems employed in the offices of the judges, clerks and other offices of the courts relating to and serving the courts and make recommendations to the supreme court for improvement thereof, and (2) to formulate and submit to the supreme court recommendations for the improvement of the judicial system, together with providing funds for adequately staffing the office of such administrative assistant, the same goals to be attained through the legislatioon suggested by the Legislative Council can be accomplished. Justice Smith is uniquely aware

signed to the magistrates. However, after the system goes into operation the administrative work should be nominal. In addition, the district court judges may delegate a broad group of cases to the magistrates and eliminate some of the case load now being assumed by our district courts. This saving in district court time by permitting the magistrates to hear more cases should more than off-set the time required by the district courts to administer the magistrate court division. With a flexible plan under the control of the district court judges, a gradual up-grading of our lower court system is not only possible but highly probable. Although the proposal does not eliminate the rather ludicrous spectacle of an untrained judge trying to conduct a trial with the parties represented by legally trained counsel, it does provide a basic machinery for the gradual elimination of such a travesty on justice.

CHANGES IN "SMALL CLAIMS" CASES

By Daniel A. Slavin, Senior Legal Analyst, Legislative Council

The Legislative Council proposal for the Small Claims Department of the Magistrate's Division of the District Court is very similar to the present small claims provisions found in Chapter 15 of Title 1, Idaho Code. But what appears to be minor changes will affect the conduct of small claims to a great degree.

The jurisdictional limits have been raised to $200.00 from the present $100.00 limitation found in Section 1-1501, Idaho Code. As will be pointed out later, the flexibility being proposed for small claims will offer better protection for unsatisfied claimants and defendants and allows a raising of the jurisdictional limitations.

Also, Section 1-1501, Idaho Code, is revised to allow for changes of venue when the residence of the defendant does not afford adequate opportunities to the parties to protect their claims.

Under the Legislative Council proposal, either party may appeal from a decision and judgment in small claims. The Small Claims Court has always been considered a plaintiff's court, and maybe rightfully so. Its advantage is fairly obvious, avoids the court's and counsel's expense and time where small liquidated damage claims are presented and may be forfeited as often as not.

By raising the jurisdictional limit, retaining counsel prohibition, and adding a dual appeal provision, the Legislative Council hopes to eliminate a greater percentage of jury trials in the courts of broader jurisdiction.

COST OF FINANCING COURTS

By Myran H. Schlechte, Staff Director Idaho Legislative Council

Financial data available on the operation of the present courts in Idaho is somewhat limited. There has been no sustained effort made on a state-wide basis to accumulate, analyze and disseminate the financial data of court operations on a continuing basis.

To overcome some parts of this lack of information about costs of courts, the Legislative Council has accumulated certain data. This data was assembled in conjunction with the study ordered by Senate Bill No. 142, Thirty-eighth Legislature. It is somewhat limited, and should be treated as such. The most apparent weakness of the total amount of the statistical date is that it is for a one-year period only, 1964. This enforced reliance on one year's material does not allow comparison with other years, and does not allow computation of trend data.

Source of Financial Data

Several sources were used for the financial data gathered for the Legislative Council. The data on the operation of the state's share of the district courts were obtained from the records maintained by the supreme court and the state auditor's office. These records are comprehensive and complete.

The source used for compiliation of the counties' share of the district court costs, the counties' costs of operating the probate courts, and the counties' costs of maintaining the justice of the peace courts was the county auditors' reports for calendar 1964. The detail in description of cost figures varied greatly from county to county. However, the auditors' reports were the most authoritative source available and have been relied upon. Auditors' reports were also used as a source for reported revenue collections.

The source used for compilation of the data on costs and revenues of the police courts was a questionnaire submitted to the cities. The response to the questionnaire was not complete, and certain projections were used to round out the data.

Costs of the Courts in 1964

From the accumulated sources noted above, a reasonable estimate of the amount spent in operating the district courts, the probate courts, the justice of the peace courts, and the police courts in Idaho in 1964 is $1,579,405.

District Courts. The district courts are financed at present from two distinct sources of funds. The state supports part of the district court expenses and the county supports the remaining costs. The state's share of district court expenditures is limited to the salaries of the district judges and court reporters and the travel expenses incurred by the district judges and reporters in attending to district court business outside their county of residence or chambers. The state's share of operating the district courts in 1964 was $438,316. The salaries paid the district judges and court reporters amounted to $422,400 or 96.36 per cent of the total state's share. The remaining 2.64 per cent of state expenditure was for the travel and subsistence of the judges and reporters.

The counties' share of district court expenses included all of the other operating costs, such as clerical salaries, jury and witness expenses, court appointed attorney fees, books, maintenance of the courtroom facilities, supplies, etc. In 1964, the counties' share of district court expenses was $246,771. Jury and witness fees accounted for the largest single item as an expense to the counties, as reported by the county auditors. In 1964, some $76,042 were spent for jury and witness fees. This single item was 30.81 per cent of the counties' share of operating the district courts. Court appointed attorney fees amounted to $24,932, or 10.10 per cent, of the counties' share of operating the district courts in 1964. Clerical salaries, as reported by the county auditors, amounted to only $23,600 in 1964, or less than 10.00 per cent of total county expenses for the district courts. All other expenses incurred by the counties for operating the district courts amounted to $122,197, or 49.52 per cent, of the counties' expenses. The "all other expenses" category included the books, supplies, maintenance, etc., necessary to keep the district courts operating.

The combined state and county costs to operate the district courts in 1964 were $685,087, or 43.37 per cent of the total costs of operating all of the courts. The state's share of operating the district courts was 63.98 per cent, and the counties' share was 36.02 per cent of district court expenditures.

Probate Courts. The probate courts are financed entirely from county funds. In 1964, the 44 probate courts in Idaho cost some $464,731 to operate, which was 29.42 per cent of the total costs of operating all of the courts. The largest single item of cost in the probate courts' expenditure was for the salaries of the probate judges. Judicial salaries in the probate courts totaled $259,683 or 55.88 per cent of the entire cost of operating the probate courts. Probation officers' salaries and expenses funded by the counties amounted to $59,704, or 12.84 per cent of the probate court expenses.

judges. These judges numbered over 200 in 1964. It is estimated that the same work load could have been handled by 60 district court magistrates with a salary expenditure of $376,400 instead of the $557,104 that was spent.

(7) This item reflects the other current expenditures of the justice of the peace courts and of the police courts, and would have remained unchanged.

(8) This item is the amount reported spent for probation services and would have remained unchanged.

Summary. It would appear that if the court modernization plan proposed by the Legislative Council Committee on Courts had been in effect in 1964, that a savings of $157,104 could have been effected that year. Since one of the ancillary concepts of a unified and integrated court system calls for central fundings of court functions, the state would have been called upon to finance the major portion of this spending. Rather than the $438,316 that the state did spend in supporting the district courts in 1964, the state would have spent $1,422,301, or 983,985 more than it did. This nearly one million dollars would have meant that much tax relief for the local units of government that now contribute the majority of the money to provide the courts' operating and salary expenses.

AN IDAHO JUDICIAL COUNCIL AND ITS ROLE IN THE SELECTION OF A JUDICIARY

By William D. DeCardy[1]

Pursuant to legislative direction,[2] the Legislative Council Committee on Courts has conducted a study of Idaho court systems over the past year which has repened into a set of proposals to be presented to the next regular session of the Idaho Legislature in January, 1967. Among these proposals is included "An Act Relating to a Judicial Council." The portions of this recommended statutory enactment which are pertinent hereto may be set forth as follows:[3]

"SECTION 1. Judicial council created —Members—terms of office. —There is hereby created a judicial council which shall consist of seven members. Three attorney members, one of whom shall be a district judge, shall be appointed by the board of commissioners of the Idaho state bar with the consent of the senate. Three non-attorney members shall be appointed by the governor with the consent of the senate. The term of office for an appointed member of the judicial council shall be six years except that of the members first oppointed, one attorney member and one non-attorney member shall each serve for two years, one attorney member and one non-attorney member shall each serve for four years, and one attorney member and one non-attorney member shall each serve for six years; thereafter, appointments shall be made for six year terms. Vacancies shall be filled for the unexpired term in like manner. Appointments shall be made with due consideration for area representation and not more than three of the appointed members shall be from one political party. The chief justice of the supreme court shall be the seventh member and chairman of the judicial council. No member of the judicial council, except a judge or justice, may hold any other office or position of profit under the United States or the state. The judicial council shall act by concurrence of four or more members and according to rules which it adopts.

"SECTION 2. Duties of judicial council. —The judicial council shall:

(1) Conduct studies for the improvement of the administration of justice;

(2) Make reports to the supreme court and legislature at intervals of not more than two years;

(3) Submit to the governor the names of not less than two nor more than four qualified persons for each vacancy in the office of justict of the supreme court or district judge, one of whom shall be appointed by the governor;

(5) Such other duties as may be assigned by law.

"SECTION 4. Compensation — Expenses. — Each member of the judicial council, except a judge or justice, shall receive an honorarium of twenty-five dollars per day for each day spent in actual attendance in meetings of the judicial council. Members of the council shall be reimbursed for actual expenses necessarily incurred in attending meetings and in the performance of official duties."

The committee, in submitting this proposed legislation, necessarily envisioned a constitutional change in the manner of selection of judges and justices. But under its final revised proposal, no change is indicated in the present method of non-partisan election of judges and justices in Idaho.[4]

However, the Idaho Commission on Constitutional Revision, also pursuant to direction of the 1965 legislature,[5] has approved a final draft for proposed revision of Article 5, the judicial article of the Idaho Constitution. A full report of these proposed constitutional amendments is being prepared by the Commission, under the chair of Hon. Raymond L. Givens, and will soon be submitted. While it will appear that some disparities will exist between the proposals of the Constitutional Revision Commission and the Legislative Council, they are reconcilable insofar as both bodies anticipate the creation of a "Judicial Council," consisting of lawyers and lay members, which would play some active part in the selection of the state's judiciary.

At this point, it is important to note that the functions and duties of the proposed judicial council extend beyond participation in the selection and tenure of the judiciary. Subsections (1) and (2) of Section 2 of the Act would make it incumbent upon such council to conduct continuing studies for the improvement of the administration of justice in this state. Subsection (5) retains authority to delegate additional duties as the need arises.

There is existing statutory authorization in Idaho for the Board of Commissioners of the Idaho State Bar to conduct studies for the advancement of jurisprudence and improvement of the administration of justice on its own motion, or upon request of the governer, Supreme Court, or the legislature.[6] The proposed plan would supplement and presumably improve this existing machinery in that the proposed statute is mandatory, i.e., the judicial council must conduct investigations and make reports at regular intervals, and also, provision has been made for the financing of such studies and reports by Section 4 of the proposed statute. In view of the history of the common law and of the history of the State of Idaho, it is difficult to realistically entertain an argument that such continuous study is not warranted and desirable.

Prior experience with what has been called a "judicial council" in this state has been neither lasting nor particularly fruitful. By appointment of the Board of Commissioners, a voluntary judicial council (under the auspices of the State Bar) was in operation from 1929 to 1932 and reported its recommendations to the 1932 bar convention.[7] Since that time the bar association has regularly recommended the establishment of a permanent judicial council to the legislature, with no apparent results.[8] Among the resolutions adopted by the voluntary council in 1932 there appears a recommendation for the establishment of a permanent judicial council by legislative enactment.[9]

The studies conducted by the 1932 council, before it died its natural death, are in large measure indicative of problems which continue to plague us today.

15. Survey of states taken from 10 Res Gestae, supra note 13 at p.12.

DISCIPLINE AND REMOVAL OF JUDGES IN IDAHO

By Thomas A. Miller, Chairman
Idaho State Bar Committe on Courts

The general competence and integrity of the district judges and supreme court justices in Idaho, to my knowledge has not been and is not now questioned. Our citizens may be justly proud of their judicial officers. Scandals that have rocked other states from time to time, causing wholesale loss of respect for the judicial system, have not and hopefully never will erupt in Idaho. The litigant rightfully feels that he has his "day in court" before a competent, impartial, unbiased tribunal immune from bribery or personal or partisan considerations.

However, should the need arise to discipline, remove or retire a district judge or supreme court justice we are woefully lacking in authority and procedure with which to act. This has been demonstrated in one or two instances in the past in which the judge, without any fault of his own, has become mentally or psychologically disabled from performing his duties, or from even recognizing his disability. None of the means for vacating the office—death, resignation, expiration of term of office, or defeat at the polls—were adequate to cope with the problem. Impeachment would not have reached the problem. In fact, it is questionable whether impeachment is available to remove a district judge for any cause since he is not elected on a state-wide basis.

Many states have reacted to the problem by providing procedures for discipline, removal and involuntary retirement of judges. The matter has been under study for some time in other jurisdictions, including at the federal level. The problem, of course, is to provide an effective procedure which, at the same time contains adequate safeguards to protect the judge against unmeritorious charges.

The Legislative Council Committee on Courts studied the systems in several states and proposed a plan based primarily upon adaptations of the California and Alaska systems which seemed ideally to suit condition and needs in Idaho.

The proposal calls for the appointment of a Judicial Council among whose duties shall be to "(4) Recommend the removal, discipline and retirement of judicial officers." (NOTE: See Mr. De Cardy's article in this issue "An Idaho Judicial Council and Its Role in the Selection of a Judiciary" for details as to the make up and appointment of the Council.)

Briefly stated the act would provide:

1. That a supreme court justice or district judge "may be disciplined or removed for willful misconduct in office or willful and persistent failure to perform his duties or habitual interperance, or he may be retired for disability seriously interfering with the performance of his duties, which is, or is likely to become of a permanent character."

2. The Council could investigate and hold a hearing, or request the supreme court to appoint as special masters three judges or justices to hear and take evidence and report their findings to the Council.

3. If the Council finds good cause it shall recommend to the supreme court the removal, discipline or retirement of the judge or justice.

4. The supreme court shall review the record and may allow introduction of additional evidence and then enter the order it deems warranted by the evidence.

5. A justice or judge who is a member of the Council or of the supreme court shall not participate in any proceeding involving his own removal, discipline or retirement. (NOTE: If the proceedings involved a supreme court justice, the supreme court might appoint five district judges to sit in their stead. See Article V, Section 6, Constitution and Section 1-301, Idaho Code.)

6. The record, prior to filing with the supreme court, would be confidential, to protect the judicial officer's reputation against the publication of charges which the Council finds to be unwarranted.

The Legislative Council also proposes an enabling amendment which would add a new Section 28 to Article V of the Constitution, to read:

"SECTION 28. REMOVAL OF JUDICIAL OFFICERS.—Provisions for the retirement, discipline and removal from office of justices and judges shall be as provided by law."

A similar system in California appears to be working quite satisfactorily. Many complaints have been investigated. Many of the problems were not serious and were quickly rectified by informal interviews. Occasionally, the judge resigned rather than face a formal hearing. Very few cases have been required to be heard by the California supreme court.

It is anticipated that in Idaho, a much smaller and less urbanized state, the number of complaints and in particular the number of meritorious complaints would be minuscule. However, the alternative—not providing the mechanics for discipline, removal and involuntary retirement of judges and justices—could be extremely serious. One "bad" judge remaining in office for several months or years in spite of incapacity or moral unfitness for the position can have the most adverse consequences, including: (1) The denial to our citizens of life, liberty and property; (2) the unjustified delay in, and thus the denial of justice; (3) the erosion of public respect for our judicial system, one of the pillars of our system of government.

The various proposals of the Legislative Council's Committee on Courts have received extensive, "in depth" consideration by lawyers, judges and other citizens during the past months. The proposal outlined herein has been received with the most heartening enthusiasm. To my knowledge only a handful of persons have contended that such a proposal is not needed, and there has been surprisingly little criticism of the details of this particular proposal. Early enactment of such a proposal, it is submitted, will rectify a most serious latent weakness in our judicial system, and will help to ensure that our courts will continue to merit the general respect and confidence of our citizens.

JUDICIAL ELECTION AND TENURE

By Watt E. Prather, Judge
Eighth Judicial District

The purpose herein shall be to discuss and highlight some of the difficulties inherent in our present system of election of judges and their tenure in office.

Our present law provides that district judges shall hold office for a period of four years and that supreme court justices hold office for a period of six years. At the end of his terms of office, the judge must submit his future and his livelihood to the electorate. On the face of it this would not appear so onerous, but deeper examination reveals many inequalities.

First of all, our Idaho law wisely prohibits the district and supreme court judges from all practice of law. Assuming, as is usually the case, that a judge has ascended the bench after a good many years in which he has established a successful practice, he must immediately divest himself of his practice and his clients. Upon completion of his four or six years in office, his practice and his clients are gone. He has been stripped of his source of livelihood at a time when he may need it most. If his bid for reelection fails he is suddenly reduced to the same position of the neophyte lawyer. He must start anew and rebuild his practice. This hazard alone is a substantial obstacle to obtaining qualified persons to seek a career in the judiciary.

lieve that our present court structure is archaic and cumbersome, that our present system functions as it does not because of the structure provided but because of the individuals on the bench and in the bar. It is possible that the two-level system is well accepted because it presents a solution or improvement to what exists (greatest criticism or concern is directed to our probate courts)—it could well be that another system would be as well received. The point is, laymen are not, in general, thoroughly versed in alternative solutions, and this is accepted because they feel a need exists and this appears to fill the need.

Real need has been expressed for establishment of the office of judicial administrator; however, there is at the same time a demand that such an office not become a bureaucratic octupus or that the officer not develop into a czar. Opposition that exists seems inspired by reservations contained within the legal profession itself. The concept of a line of administrative responsibility has occasionally been questioned by those who feel an inherent danger lies in the influencing of decisions of magistrates by district judges. This is perhaps because they fail to recognize the clear-cut distinction between "command" decisions and administrative decisions .

Proposed district consolidation and creation of seven judicial districts with the attendant equalization of workloads and more efficient utilization of judicial manpower has received almost unanimous endorsement. A few have questioned action of the legislature being required in establishment of resident chambers and additional judgeships.

The judicial council concept is extremely well received. Discussion concerning composition of the council ranges from a desire for make-up which will prohibit control by the bar association to questioning the need for laymen at all on the council. In all cases, the most pertinent suggestions are devoted to creation of a council as free as possible from politics.

Universal approval has been expressed for the provisions relating to removal, discipline and retirement of judges. It is in this area that probably the greatest demands for action lie, with frequent lamenting over the extreme lack of remedies at the present time for disciplining and removing judges. Inquiries about present salaries of judges leads to quite strong urging of substantial increases in compensation as additional incentive and partial solution of problems in finding well-qualified and able men for the judiciary.

It is in the proposal relating to adoption of the so-called "Missouri Plan" that the greatest concern lies. Even though initially many are reluctant about what they feel amounts to "giving up" their vote, in the main opposition here is overcome through thorough presentation of statistics concerning past appointments and elections, the review of difficulties in obtaining candidates for judgeships, emphasizing of the non-policy making position of the judiciary, and, in particular, the evaluating of an individual's vote presently in an election where a judge is unopposed on the ballot. The possibility of potential candidates for a judicial post being barred from running poses the aspect of further loss of individual rights.

Strongest concern, reservations and criticisms lie in the following specific areas:

Repeatedly the concern over loss of local autonomy arises. This appears particularly in the rural areas. There is a fear of cities and counties losing individuality by removing the appointing power over judicial officers from the city and county level to state or district selected judiciary. Hand in hand with this goes the concern over selection of judges being removed from the "common" people.

Citizen convenience through ready accessability to the courts is another factor critically evaluated, particularly in service to the violator-in-transit on minor traffic and game violations. Smaller communities fear there may be some slighting of their needs, that there will be too large a geographical gap in the provision of magistrates.

Because the Legislative Council's proposals are limited to court structure and the establishment of flexible practicability in a system which will be as adaptable to the future as the present, laymen frequently are concerned about the absence of provision for specialized courts, particularly in the area of domestic relations and the handling of juvenile matters. Very strong sentiment exists for provision of family courts, although there is frequently a failure to separate the need for actual substantive law from the proposals.

Absence of specific recommendations for the disposition of fees, fines, forfeitures and costs and failure to answer totally the details of finance have probably constituted the largest areas of complaint. Without specific, curative proposals, strong and valid opposition might be anticipated for these reasons alone.

Jurisdiction and qualifications of magistrates are other areas of critical inquiry. It is, after all, in the lower courts that the bulk of the population appearing in the courts receives exposure to our judicial system. Although many citizens consider that a law degree in itself does not mean judicial qualification, still, obviously, legal training is a highly-desirable requisite for magistrates. Strong demand exists for properly qualified, well-trained and competent personnel. Substantial opposition is found toward the minimum qualifications set for magistrates, particularly in the urban areas where citizens express fear of losing the degree of excellence achieved in the judiciary in the lower courts which has been brought about by purposeful local effort.

To summarize, at this time it appears, among informed laymen, that all recommendations of the Legislative Council for revision would receive endorsement, with some clarification, minor revisions and provisions being highly desirable if not necessary to satisfy the areas of concern above enumerated.

PROBLEMS OF COURT REFORM IN IDAHO

By Robert S. Fiedler
Dept. of Public Assistance

"Justice (is) that kind of state of Character which makes people disposed to do what is just and makes them act justly . . . ."[1]

At first this statement by Aristotle seems to be a circular definition: justice being defined in terms of justice. But the definition does accomplish something. It tells us that justice is a state of character. Character, is what determines the kind of actions that man eventually selects. Thus, Justice is the habit of acting justly.

In our order of things, we have established the courts as the final arena for the expression of justice. When things cannot be settled by the family, by the executive or legislative branch of government or the wider community, the courts are asked to intervene. This is our finest example of problem solving.

To handle this big and difficult job our courts should be the best possible in all respects. Efficient and effective constitutional structure, sound organization and talented personnel are all necessary to insure that our courts are strong and of good quality.

In the main, the record of our courts is a good one. It has had to be, otherwise our society would have broken apart long ago. The past record of our courts cannot be criticized; neither can we really criticize the courts as they exist today. I do believe, however, with our current rate of growth and change, we

to the matter of court reform. An illustration of this might be found in a proposal to have a liability-without-fault compensation system for court determination of automobile injury cases. This would make great sense to the corporation lawyer that rarely sees the inside of a courtroom, but would threaten the very bread and butter of over half of the members of the local bar association. It seems an extra burden to ask these good people to solve this difficult problem of court reform without help.

This means, then, that the wider public must become interested and involved in the matter of court reform. We must become involved for a very selfish reason in that we individually have a great deal at stake in this matter. If our court process seems callous, mechanical or unjust to the persons caught up in them, or if there is undue delay in administration of justice then respect for law and order can be undermined and the social order will be impared.

Another paragraph might well be added to Aristotle's conclusion that justice is the habit of acting wisely. I submit that justice must not only be done, but it must be seen to be done.

Let each of us work to make our courts more visable, more perceptive and responsive to change, and aware of our great interest in the administration of justice.

NOTES

1. Aristotle, Nicomachean Ethics, Book 5.
2. Maurice Rosenburg, "Court Congestion: Status, Causes, and Remedies" in The Courts, The Public and the Law Explosion, Prentice-Hall Inc. 1965.
3. George William Hegel, Ethical Life in The Philosophy of Right, Oxford University Press, Translated by T. M. Knox.
4. Maurice Rosenburg, Op Cit.