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DISCIPLINE OF JUDGES

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I. *Appellate Courts and Trial Courts of General Jurisdiction*

IN most of the states, judges of the appellate courts and of the trial courts of general jurisdiction are subject to discipline or removal from office by impeachment at the hands of the legislature, pursuant to constitutional provisions analogous to those applicable to the Federal Judiciary. Such proceedings are seldom instituted. The survey indicates that, during the 20 year period from 1928 to 1948, only three impeachment proceedings were prosecuted and in all three the defense prevailed.

Reaction to the adequacy of the foregoing constitutional provisions varies. In a substantial number of states it is indicated that the judges have been uniformly of such high character and integrity that there has been no occasion to invoke disciplinary proceedings so that there is no need for change. In some jurisdictions, it is indicated that the constitutional provisions are too cumbersome: the legislature is in session for a relatively short period bi-annually, an impeachment trial would unduly disrupt the session and, therefore, would be authorized only in the most flagrant case so that the constitutional provisions are inadequate. In other jurisdictions it is indicated that the cumbersome proceedings of impeachment provide a necessary deterrent to ill-advised and unwarranted attacks upon the judiciary for personal or political purposes.

A vital element in the usual constitutional provision for impeachment is the rule of law that, where the constitution of a state sets forth the grounds for discipline of a judge and the procedure to be invoked therefor, the legislature has no power to provide other grounds for discipline or other methods of trial.[1] Accordingly, in most of the states, judges of appellate courts and courts of general original jurisdiction are subject to discipline only through impeachment pursuant to con-

* This article is a report prepared for the Survey of the Legal Profession. The Survey is securing much of its material by asking competent persons to write reports in connection with various parts and aspects of the whole study. Reports are released for publication in legal periodicals, law reviews, magazines and other media as soon as they have been approved by the Survey Council's Committee on Publications. Thus the information contained in Survey reports is given promptly to the bar and to the public. Such publication also affords opportunities for criticisms, corrections, and suggestions. When this Survey has been completed, the Council plans to issue a final comprehensve report containing its findings, conclusions, and recommendations.

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[1] 30 Am. Jur. 736 (1940); 48 C.J.S. 975 (1947); Conroy v. Hallowell, 94 Neb. 794, 144 N.W. 895 (1913); State v. Dearth, 201 Ind. 1, 164 N.E. 489 (1929); Falloon v. Clark, 61 Kan. 121, 58 P. 990 (1899).

stitutional provisions, and any change in the power to discipline such judges would require constitutional amendments.

Notwithstanding the fact that in most states judges of the type now being considered may be disciplined or removed from office only by impeachment, there are constitutional provisions to the effect that, in addition to impeachment, such a judge is subject to discipline and removal by other methods. These include: *Arkansas,* a conviction in criminal proceedings of bribery or corruption automatically forfeits judicial office; *California,* a conviction of "a crime involving moral turpitude" requires the disbarment of a judge and his removal from office;[2] *Louisiana,* by a special court of seven judges; *Maryland,* by the governor upon conviction in a court of law of incompetency, a willful neglect of duty, misbehavior in office or any other crime; *Massachusetts,* by address of the governor to both houses of the legislature, and by the governor and the council for advanced age or physical or mental disability; *Michigan,* by the governor when the legislature is not in session on written charges after hearing, or by a special three judge court convened upon recommendation of the bar grievance committee after secret hearing with right of appeal to the supreme court; *New Hampshire,* by address of the governor to both houses of the legislature; *New York,* by a special court on the judiciary; *Rhode Island,* by the legislature abolishing the court and creating a new one; *California, Utah, Washington,* and *Wisconsin,* by joint resolution of both houses of the legislature. In *Oregon* a criminal trial and conviction for incompetency, corruption, malfeasance, delinquency in office may warrant a judgment of dismissal from office, or a judge may be recalled through a special election.

The survey indicates that, in those states having the special constitutional provisions noted above, no judge has been removed from office through such proceedings during the 20 year period from 1928 to 1948. The record of judges of the type now considered would appear to be one of outstanding character and integrity.

II. *Inferior Courts*

In practically every state there are inferior judicial tribunals to which the constitutional provisions for discipline and removal by impeachment do not apply. The legislatures have the power to provide for the discipline and removal of judges of such courts and the judges are subject to discipline and disbarment by the usual proceedings pro-

[2] See 22 So. Cal. L. Rev. 249 et seq. (1949).

vided therefor.[3] The survey indicates that, as to such judges, the legislatures have provided for the usual type of ouster proceedings applicable to other public officers not subject to impeachment, and the courts have invoked their inherent power to discipline and disbar such judges. In a number of cases such a judge has been first tried for a criminal offense and upon conviction has resigned and has been disbarred.

The record of removals of judges of these inferior courts is not as readily accessible as in the cases of impeachment so that an accurate enumeration of such removals has not been possible. The survey does indicate, however, that, where grounds exist for action against such a judge, adequate machinery is provided and a reasonably prompt hearing and adjudication is possible.

III. *General Supervision of Courts*

As heretofore noted, where the constitution of a state sets forth the grounds for discipline of a judge and the procedure to be invoked therefor, the legislature has no power to provide other grounds for discipline or other methods of trial. However, it should be observed that supervision of courts and judges is not regarded as synonymous with discipline thereof. Many state constitutions provide for general supervision of the work of trial courts and judges by the court of last resort and its chief justice. Undoubtedly much of the criticism of courts and judges could be met if the constitutional powers of supervision of their work were more effectively exercised than they are at present.

One of the most frequent criticisms of the courts is based upon the delays that postpone final disposition of controversies between litigants. It is often said, "Justice delayed is justice denied." The responsibility for such delays is often as much the fault of the lawyers as it is of the courts. A solution would appear to require a new approach by both the courts and the lawyers.

In the federal courts a reasonably satisfactory solution appears to have been accomplished through the promulgation of new rules of procedure in law actions as well as equity and, more recently, in criminal procedure, which rules have accelerated the work of the courts and the lawyers, and in the creation of the Administrative Office of the United States Courts.[4] The creation of this office has placed the federal courts on a much more efficient and effective basis. It has also provided

[3] In re Stolen, 193 Wis. 602, 214 N.W. 379, 55 A.L.R. 1255 (1927), and cases cited therein; In re Rempfer, 51 S.D. 393, 216 N.W. 355, 55 A.L.R. 1346 (1927); In re Burton, 67 Utah 118, 246 P. 188 (1926); In re Spriggs, 36 Ariz. 262, 284 P. 521 (1930).

[4] 28 U.S.C. (Supp. IV, 1951) §§601 to 610.

for elasticity in the assignment of judges so that, whenever a court or judge becomes overburdened with an excessive number of cases, relief can be afforded and the judicial work equalized. This has resulted, in many ways, in a more expeditious and effective functioning of the courts of the United States. The requirement for periodic reports as to the status of trial dockets is most helpful. It provides an incentive to judges to keep their dockets current and provides accurate information on which to base corrective or remedial measures when such are required. The reforms made by the federal courts have resulted from effective use of supervisory powers by the Supreme Court and the Chief Justice. These results were attained through strenuous, persistent, organized action of lawyers, assisted by judges.

In many of the states, the example set by the federal courts has been emulated through the adoption of improved rules of procedure. In some of the states, the example set by the Administrative Office of the United States Courts has also been followed. The most outstanding example of the state administrative office is to be found in New Jersey. There, under the leadership of Chief Justice Arthur T. Vanderbilt, of New Jersey, order has been established in the place of confusion, and delays have been eliminated to such an extent that the work of practically every court in the state is now on a current basis.

The National Conference of Commissioners on Uniform State Laws has promulgated a model act for an administrator for state courts which illustrates how the results accomplished by the Administrative Office of the United States Courts might be achieved through a similar office under the supervision of the court of last resort of a particular state.

There has been a growing tendency to provide for retirement of judges on a basis comparable to that afforded federal judges. This tends to lessen the embarrassment caused by a judge who has lost the necessary vigor to dispose effectively of the case load of his court.

It is our considered judgment that the remedy for the complaints now made against judges lies, not in a reform of methods of discipline of judges, but rather in reforms along the line of supervising the work of judges. In this field the complaints appear to be well grounded. Corrective measures are urgently needed. The examples afforded by the federal courts and by Chief Justice Vanderbilt demonstrate that a solution is available. The challenge to the lawyers is quite obvious. The judges may help a great deal but the real impetus for reforms in this field must come primarily from the lawyers. The lawyers must meet that challenge if they are to be worthy of their calling.