The Wisconsin Board of Circuit Judges

C. A. Fowler

Follow this and additional works at: http://scholarship.law.marquette.edu/mulr

Part of the Law Commons

Repository Citation
Available at: http://scholarship.law.marquette.edu/mulr/vol5/iss4/3

This Article is brought to you for free and open access by the Journals at Marquette Law Scholarly Commons. It has been accepted for inclusion in Marquette Law Review by an authorized administrator of Marquette Law Scholarly Commons. For more information, please contact megan.obrien@marquette.edu.
THE WISCONSIN BOARD OF CIRCUIT JUDGES

HON. C. A. FOWLER

Judge of 18th Judicial Circuit, Chairman of Board of Circuit Judges

The following is submitted pursuant to request of the Editor of the REVIEW for an article respecting the Board of Circuit Judges.

During recent years the growth of certain cities and the settlement of sparsely inhabited counties in the State so increased the work of certain circuits that it could not be handled by a single judge. Effort was made to provide a remedy by creating new circuits. By this means a particular situation could be relieved, but the constitutional requirement that circuits be bounded by county lines and consist of contiguous counties made it impossible to equalize the work of the different circuits. Some judges were greatly overburdened, while others had not enough to do fully to occupy their time. There were enough judges easily to do the work in all the circuits if the time of all could be utilized.

To avoid the necessity of creating new circuits and to provide a method of utilizing the spare time of the circuit judges to relieve congested conditions, the legislature of 1913 created the Board of Circuit Judges. The original act did little more than provide for annual meeting of all circuit judges, at public expense, and impose upon them the duty of adopting such rules and regulations as they "should deem advisable to promote the administration of the judicial business of the circuit courts of the state." Subsequent legislatures have considerably amplified the act by incorporating specific provisions calculated to provide means of effectuating the primary purpose. The statute now specifically provides that the board "shall elect a chairman whose duty it shall be to expedite and equalize so far as practicable the work of the circuit judges. The chairman shall request judges whose calendars are not congested to assist those judges whose calendars are congested. Every circuit judge shall report monthly, and every clerk and reporter of a circuit court shall report when requested, to the chairman such information as the latter shall request respecting the condition of judicial business in the circuit of such circuit judge." It is made the duty of every circuit judge to comply with the request of the chairman to perform work outside his own circuit, unless the chairman shall thereafter relieve him from its performance. In case of a vacancy in a circuit, or in case a judge is unable on account of accident or
absence, sickness or disability to call another judge into his circuit, the chairman is required to designate a judge to hold the terms of court in the circuit during the period of the vacancy or disability. It is made the duty of the chairman to secure assistance in a circuit whenever for any reason he is requested by the local judge to do so.

Pursuant to the statute creating the board, the judges of the state have met annually. The chairman has been able to provide assistance whenever called upon. Upon his request judges have held court outside their circuits for consecutive periods as long as six weeks at a time. In no circuit except that of Milwaukee County is the work of the court at all behind. At least two terms a year are held in each county and, generally speaking, cases are determined within six months from their commencement. In Milwaukee County the work of the Court as a whole is from ten months to a year behind, although near the close of a term cases are on trial that have been pending not longer than six months. The Judges are steadily and lately very rapidly catching up with their calendar. There are cases more than a year old on the calendar, but it is not the fault of the court that they have not been more promptly disposed of. Every case on the calendar at the last term was called for trial before the close of the term, although many were continued for cause or by stipulation. The advancement of the work is doubtless as far as in any county in the United States with a population as numerous as that of Milwaukee County. This is by no means entirely due to the Board of Judges, although an outside judge is kept presiding a considerable portion of the time and not infrequently two at a time are presiding. It is more due to the employment, at the recommendation of the local judges, of a calendar clerk, whose sole duty it is, through notifying and pressing attorneys, to have cases always ready for immediate trial, and to the vigor with which this clerk has performed his duty.

The system has been helpful in other ways than relieving congested calendars. During the complete disability of one judge for four years the chairman provided for the holding of all terms of court and the transaction of all business within his circuit, comprising five counties. Help has been provided during short periods of disability of other judges. The chairman is often called upon to procure a judge to try a particular case which the local judge does not want to try because local questions or situations are involved, or which he is disqualified from trying because
of the filing of an affidavit alleging prejudice. The filing of such an affidavit requires the sending of the case to a county of an adjoining circuit or the calling in of an outside judge to try it. In most instances it is preferable to call in a judge rather than send away the case. While the local judge may act without the intervention of the chairman, he is often embarrassed in so acting for the reason that, the invited judge being under no obligation to comply with his request, assistance is not always readily procurable unless the invited judge receives service in return, which the judge requesting assistance may not be able to give; or because he may be subjected to criticism for procuring a judge other than one desired by the parties or one of them. Thus many cases that formerly would have been sent away for trial are now retained to be handled by an outside judge sent in by the chairman. While much of the assistance procured by the chairman might have been procured without his aid, the fact is that there is now much more assistance rendered than was rendered before the creation of the board. Now the procuring of assistance whenever desired and for whatever reason is a matter of right to the judge asking it, and the matter of rendering assistance at the request of the chairman is a matter of obligation and duty, while formerly it was merely a matter of favor and convenience. Judges are more disposed to demand rights of the chairman than to ask favors of their brother judges. Formerly certain judges frequently found it impossible to get outside judges to come into their circuits and were thus compelled to send away for trial cases that should have been tried where brought. Moreover, the procuring of assistance may as a rule more properly be done by some single authority than by the local judge. Some judges are more acceptable than others. Those most acceptable are most likely to be called upon by the local judge. If free with their service such will give more than their share of outside assistance. The single authority can call on those not likely to be called by the local judge, who in making a request is prone to comply with the wishes of the attorneys in the case to be tried, and thus equalize the outside work. He is also for a similar reason better able and more likely to select the judge best suited to the particular work to be done.

The mere association of the judges at their annual meetings has proved of great advantage in promoting the administration of judicial business. Matters of procedure and methods of conducting business are discussed and views and experiences are
exchanged. Because of the acquaintances and feelings of mutual regard that have been established between judges who would otherwise have remained practical or complete strangers, aversions to asking for help have been overcome and more free and generous dispositions toward granting it have developed, with the result that exchange of work and rendition of service directly between judges have greatly increased. Practice and procedure have become practically uniform throughout the state. Lawyers going to distant circuits to conduct court business are as much at home as when practicing in their own circuits. At the meetings many proposals for statutory changes in matters of practice have been discussed and such as have been considered worthy have been recommended to the legislature, with the result that several highly important ones have been enacted.

The program of the last meeting of the board is referred to as illustrating the nature of these meetings. At the previous meeting Judge Halsey had called attention to a statement by Reginald Heber Smith in a widely published article severely criticizing the practice in Wisconsin as leading to a denial of justice to poor persons plaintiffs in litigation. The statement was: "If proof of the failure of our courts to understand the position of the poor is needed it can be found on page 490 in the 23d volume of the Wisconsin Reports. One Campbell, a poor man, brought suit against a railroad. The defendant promptly moved that the plaintiff be required to furnish a bond for costs. The plaintiff could not get a bond and his case was thereupon thrown out of court. He appealed. The Supreme Court lamented the absence of an in forma pauperis statute, but forgot its own power to waive costs; it also forgot the constitutional guarantees of freedom and equality of justice." Consideration of the subject was referred to the executive committee of the Board of Judges, and they were instructed to report measures to remove the cause of injustice if any injustice should be found to exist. The committee reported that in their opinion the only denial of justice to such persons resulting from matters of practice or procedure is in connection with litigation in justice courts, and that the principal ones are the provision making compulsory the furnishing of security for costs when it is demanded and the delays possible in bringing cases to trial, and recommended certain remedial statutory changes. The board adopted their report with one modification and directed the drafting of a bill and procuring its introduction to carry out the recommendations.
A special committee reported on the subject of expert testimony. This committee had acted with a committee of the State Bar Association on the same subject and recommended a measure agreed upon by the two committees giving the court power to appoint experts in criminal cases and prescribing the procedure in case of appointment. The board adopted their recommendation and directed the executive committee to procure introduction in the legislature of a bill to effectuate it.

A third committee had been appointed to investigate the English Practice Act with a view to ascertaining whether any provisions of it might advantageously be adopted into our practice. This committee made a comprehensive and interesting report, too long for incorporation in this article. The committee did not make any recommendations. The subject was referred back to them with instructions to report "for consideration at our next meeting their specific recommendations relating to adoption of provisions of the English Act; and to report whether such provisions as they recommend for adoption may be adopted by court rules or must be adopted, if at all, by legislative act; and report proposed rules or bills for carrying out their specific recommendations."

The second report of this committee will be the main subject for consideration of the board at their next meeting.

By what has been said above, it is not intended to give the impression that the fact that the circuit courts of the state are everywhere practically up to date with their work is due entirely to the creation of the Board of Judges. There was no little cooperation of judges before the board was created, mostly between judges of contiguous or closely connected circuits. But the creation of the board has greatly increased this cooperation and so extended it that it is now state wide. The law has explicitly declared that the duty and obligation of the judges are to the state, and are as much to serve outside as within their circuits. Perhaps this was impliedly true before the creation of the board, from the consideration that the judges were all state officers drawing their salaries directly from the state. But if so, some of the judges failed to appreciate it, or if they did were less prone to act upon it than they now are. The operation of the law has demonstrated that it provides a practical and sufficient means to effect its purpose to equalize the work of the circuit courts and advance it wherever it fell behind. Administration of the law practically has made, and is capable of fully making, the
circuit courts of the state in effect a unified court—that is a single
court instead of a large number of distinct courts each only con-
cerned with its own business, whether much or little, hard or
easy, delayed or apace. Ex-President Taft, in the course of an
address in which he mentioned some of the shortcomings of
courts, expressed approval of it and commended its general appli-
cation as a means of overcoming the most common one, that of
delay. He was most enthusiastic in its favor, and saw in it great
promise of relief from the delays and burdens of congested
calendars.