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Judicial Conference for Ohio

Robert Amsdell

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Recent Legislation

JUDICIAL CONFERENCE FOR OHIO

The Ohio Legislature has established a Judicial Conference composed of the judges of the supreme court, courts of appeals, common pleas, probate, juvenile, municipal, and county courts.¹ Its purpose is to coordinate the work of the courts, encourage uniformity in the application of the law, consider problems pertaining to the administration of justice, and to make recommendations to the legislature for the improvement of the law.²

The Judicial Conference should not be confused with the Ohio Judicial Council.³ The Judicial Council is a fifteen member supreme court advisory group with only six of its members representing the judiciary. In the Judicial Conference, all judges are eligible for membership and those who want to participate in its activities have a direct opportunity to do so by serving on its committees and attending its meetings.

The most significant reason for an independent Judicial Conference is the collective influence represented in its organization. Judges, the men responsible for the administration of court procedure, will be making the decisions of the Conference. These same judges can simply and efficiently carry out the Conference decisions through rules of court. Therefore, while the legislature has delegated no express rule making authority to the Conference, its very composition gives it great potential as a rule making body.⁴

The power of the Ohio courts to regulate their own procedure is both inherent and statutory. It is inherent because at common law this power existed in the court of last resort and extended over other courts

1. OHIO REV. CODE §§ 105.91-95 (Supp. 1963). The first Ohio Judicial Conference met in 1959 and in 1960 adopted a constitution. Its organization and subsequent legislative recognition are largely the work of the Ohio State Bar Association.

2. Three other state legislatures have provided for a Judicial Conference. MO. ANN. STAT. §§ 476.320-390 (1949); TENN. CODE ANN. §§ 17-401 to -407 (1955); VA. CODE ANN. §§ 17-228 to -231 (1950). These statutes are similar in these respects: (1) The chief justice of the supreme court is the presiding officer; (2) attendance is compulsory; (3) meetings are held annually; (4) compensation is given to members for expenses incurred while attending meetings. The Missouri statute provides for its conference membership to be composed of both active and retired judges. The Virginia and Missouri statutes provide for an "executive council" to be the governing body of the Conference. In Virginia the members of the council are elected at large, while in Missouri the "executive council" is composed of a set number of judges coming from and elected by each judiciary branch. It is also of note that the Missouri executive council operates between sessions of the Judicial Conference.

The Executive Secretary of the Virginia Supreme Court described the Virginia Judicial Conference to this writer in the following terms: "Unquestionably, the Judicial Conference has been of great assistance to the movement for procedural reform, to the expedition of the trial cases, and to the creation of a new, vigorous *esprit de corps* in Virginia."

3. OHIO REV. CODE § 105.51 (Supp. 1963); OHIO REV. CODE §§ 105.52-56.

4. Taft, *Should We Have An Ohio Judicial Conference*, 36 OHIO BAR 675 (1963).

in all cases which that court had the power to review. The Ohio constitution neither defines nor limits the rule making power of the supreme court other than to prohibit any rule which prevents a person from exercising the original jurisdiction of that court.⁵

The power of the Ohio courts to regulate their own procedure is statutory because the General Assembly expressly gave the supreme court supervision over rules "in any court."⁶ Supervision over other courts is also a duty incident to the assignment of judges and the functions of administrative assistants.⁷

There are many reasons why the judges have not sought procedural reform collectively. The Ohio system of selecting judges has retarded reform because campaigns for re-election are not conducive to mutual efforts. The discretion of local judges, the frequent turnover of members, the isolation within jurisdictional levels, the uneven distribution of litigation, and the restriction within local limits have all combined to discourage judicial cooperation and reform.⁸

The progress of judicial reform in Ohio has been blocked on the one hand by abandonment by the General Assembly and on the other hand by an unwillingness on the part of the courts to reform their own procedure. The lack of supervision within the judiciary has created a vacuum which fosters individual court practices.

Ohio's courts, like most state courts, are handicapped by different rules of practice in each county. Some local rules are necessary because the unequal distribution of population requires flexibility. However, statutes on pleading, procedure, and evidence, fundamental institutions which require uniform application, should not be applied differently in each county. The legislature cannot remedy this situation because: (1) it lacks expertise; (2) legislatures are loath to usurp what traditionally has been the court's prerogative; and (3) there is a fear among judges that administrative control would impinge upon their judicial autonomy and impair the traditional freedom in which courts conduct their business.⁹

The solution rests with the supreme court in a co-operative effort with

5. OHIO CONST. art. IV, § 2.

6. OHIO REV. CODE §§ 2101.04, 2505.45, 2937.46 (Supp. 1963).

7. OHIO REV. CODE §§ 1901.14 (Supp. 1963), 2503.04 (Supp. 1963), 2503.281 (Supp. 1963). The foregoing powers apparently are authorized by the Ohio Constitution which gives to the judges of the supreme court such "power . . . as may be directed by law." OHIO CONST. art. VI, § 18. See *State v. Powell*, 109 Ohio St. 383, 389, 142 N.E. 401, 402-03 (1924). The appellate courts also have sustained the constitutionality of such a law governing control of their courts. *Fry v. Pennsylvania R.R.*, 35 N.E.2d 756 (Ohio Ct. App. 1941). OHIO REV. CODE § 2937.46 (Supp. 1963) gives the supreme court the further duty of supervision over inferior courts not identified in the constitution.

8. Gertner, *The Inherent Power of Courts To Make Rules*, 13 U. CINC. L. REV. 32 (1936).

9. Harris, *The Rule-Making Power*, 14 OHIO BAR 430, 434 (1941).

all Ohio judges. The regular duties of the supreme court are too demanding for it to devote the necessary time to the problems of other courts. Other judges can furnish the necessary leadership and experience essential to find acceptable methods to administer justice evenly throughout Ohio. The Judicial Conference composed of judges can do informally what could not be done by other methods. Action by these representatives from all parts of Ohio's judicial system can aid and encourage the supreme court in defining and exercising its rule making power. The fact that the rules will be promulgated through the cooperative efforts of the judges themselves will be a further inducement for the courts to follow them.

Instances of courts pulling themselves up by their own bootstraps are not new in Ohio. The appellate courts have achieved much uniformity through voluntary cooperation stimulated by legislative sanction.¹⁰ Ohio Revised Code section 2501.08, which has been declared constitutional,¹¹ allows the judges of the court of appeals to formulate uniform rules of practice for all districts. Probate courts also have achieved some uniformity under rules approved by the supreme court,¹² but no similar program has been attempted by the other courts.

The Judicial Conference is required to submit biennially a report to the General Assembly of recommendations for legislation. These recommendations, it is hoped, will facilitate cooperation between these two bodies. If the Conference feels a substantial change in policy is required, it can refer the matter to the legislature. Cooperation of this type is both practical and desirable because few courts would oppose a legislative mandate initiated in this manner.¹³

A serious limitation on the Conference will be its lack of funds. It is financed at present entirely through voluntary contributions. This aspect of the legislation is unfortunate because it will probably limit research and experimentation. The lack of basic legal research in the past has deprived Ohio of guidance in reform and has left improvement to patchwork legislation and occasional precedents.

The attitude of the Ohio Supreme Court will be the *sine qua non* as to whether the Conference will succeed. The Conference would not have had its birth without the shepherding of the justices. Their attendance will cause the other judges to recognize the importance of the idea and will lend the Conference dignity.

ROBERT AMSDELL

10. OHIO REV. CODE § 2501.08.

11. *Fry v. Pennsylvania R.R.*, 35 N.E.2d 756 (Ohio Ct. App. 1941).

12. OHIO REV. CODE § 2101.04.

13. Harris, *The Rule-Making Power*, 10 OHIO BAR 430, 435 (1941).

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