

REPORT OF THE JUDICIAL CONFERENCE.

Memorandum of first two meetings convened on
December 28, 1922 and September 26, 1923.

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THE FEDERAL JUDICIAL COUNCIL*

The first conference of the Federal Judicial Council authorized by the Act of September 14, 1922, convened in the conference room of the Supreme Court at Washington on December 28, 1922, at the call of Chief Justice Taft. In addition to the chief justice, who acted as chairman ex officio, the conference was attended by the senior circuit judges from each of the nine judicial circuits, except the Eighth which was represented by Circuit Judge Kenyon who had been designated by the chief justice to appear in place of Senior Circuit Judge Sanborn whose attendance was prevented by a temporary indisposition.

Following a roll call and the election of a secretary, the conference listened to a report by the attorney general of the business of the United States District Courts for the fiscal year ending June, 1922, from which it appeared that there had been a marked increase over the preceding fiscal year in the number of cases pending in those courts, owing largely to the vast number of prohibition cases which had been filed. The report indicated the districts in which the congestion was greatest and recommended the assignment to those districts of judges from other circuits as a means of helping to catch up with the arrears. It having been observed by some of the members of the council whose circuits embraced congested districts that it would be useless to send in outside judges as those districts were without adequate court facilities to accommodate additional judges, the conference agreed to bring the matter to the attention of Congress with a view to obtaining an appropriation for additional assistant district attorneys, deputy clerks and deputy marshals, to enable the additional district judges to do effective work. Such action was subsequently taken by the conference and funds were appropriated by Congress for that purpose.

The conference then received, in turn, the report of each senior circuit judge regarding the condition of business within his circuit and as to what district judges, if any, could be spared for service in other districts of the same or other circuits.

*This official memorandum of the first two meetings of the Federal Judicial Council contains so much information of interest to lawyers and serves so well to illustrate how an important piece of judicial machinery may be set up and put to work and the sort of problems it has to deal with, that it is, with the kind permission of Chief Justice Taft, reproduced in its entirety. It is not believed to have been printed heretofore.

The chief justice then outlined to the conference the scope and purpose of a bill pending in Congress (H. R. 14709) which had been drafted by the Supreme Court, to limit the jurisdiction of that court so as to enable it to catch up and keep up with its docket by providing that certain cases which under existing law are heard in the Supreme Court on appeal or writ of error should be subject to review there only on *certiorari*. The chief justice also referred to another bill pending in Congress (H. R. 13094) authorizing the appointment by the president of a commission consisting of the chief justice, two justices of the Supreme Court, two circuit judges, and three qualified attorneys at law, for the purpose of formulating recommendations for statutory changes in the practice and procedure in the federal courts to enable a more expeditious dispatch of their business. While no formal action was taken by the conference with regard to these bills, the consensus of opinion was that the changes therein provided for were advisable and should be put into effect.

The conference then discussed the question of what committees should be appointed to aid the council in carrying out the purposes for which it had been created by law. In addition to committees on "Rules and Procedure of the Conference," on "Forms and Procedure for the Transfer of Judges," on the "Character of Reports to Be Submitted by the District Judges," etc., the following committees were authorized:

Committee on Need and Possibility of Transfer of Judges: Judge Gilbert, Ninth Circuit; Judge Rogers, Second Circuit.

Committee on Recommendations to District Judges of Changes in Local Procedure to Expedite Disposition of Pending Cases and to Rid Dockets of Dead Litigation: Judge Baker, Seventh Circuit; Judge Bingham, First Circuit.

Committee on Recommendations as to Bankruptcy Rules: Judge Buffington, Third Circuit.

Committee on Recommendations as to Equity Rules: Judge Knapp, Sixth Circuit.

Committee on Amendments to Appellate Procedure: Judge Baker, Seventh Circuit.

The committees were authorized to associate with them, as members thereof, circuit or district judges of convenient residence to act with them.

The second conference of the Federal Judicial Council met at the conference room of the Supreme Court at Washington on September 26, 1923, and was attended by the chief justice and the senior circuit judge from each of the nine circuits. Following the appointment of a secretary and the adoption of the minutes of the preceding meeting, the conference received the reports of the senior circuit judges as to the condition of business within their respective circuits. From these reports,

as well as from a report submitted by the attorney general, it appeared that, notwithstanding that the additional district judges authorized by recent legislation had been appointed and were doing good work and outside judges had been assigned to congested districts wherever practicable, there had been an increase of 11,890 pending cases during the fiscal year ending June 30, 1923. Pointing out that there were fourteen districts which had more than 600 prohibition cases lying undisposed of on their dockets, the attorney general recommended that, if possible, district judges be dispatched to these congested districts to hear prohibition cases alone, and suggested that a decrease in the number of prohibition cases would result in a saving to the government in the cost of storing liquors and automobiles seized for violations of the National Prohibition Act the disposition of which must, under that act, await a termination of the criminal case. The attorney general also referred to the small average sentences imposed in prohibition cases in some districts as compared with the heavier average sentences imposed in other districts and recommended that, if possible, action be taken by the council to bring about a reasonable uniformity in sentences. The attorney general further recommended that the district judges be asked to exercise more care in the appointment of United States commissioners, as those officers are vested with important duties under the prohibition act and in some instances have not been performing them satisfactorily. It was decided that the conference should formulate and submit to the attorney general a series of questions on the subjects of sentences imposed in prohibition cases and as to the performance by United States commissioners of their duties under the prohibition act, so that copies of the attorney general's reply might be sent to the various district judges.

The conference then received the reports of the various committees appointed at the preceding conference. Judge Gilbert, speaking for the committee on "Need and Possibility of Transfer of Judges," reported that the committee had determined that information on that subject could be best obtained from the reports submitted by the various senior circuit judges at the conference meetings as to the condition of business within their respective circuits, and that the committee, therefore, had no other report to make.

The report of the committee on "Recommendations to District Judges of Changes in Local Procedure to Expedite Disposition of Pending Cases and to Rid Dockets of Dead Litigation" was submitted by Judge Baker. Following a reading of that report, the following resolutions were adopted by the conference:

It is the sense of this conference that the district judges be urged to adopt, each in his district, a procedure for the prompt elimination

of dead and moribund cases, and that the committee be authorized to draft and address a recommendation to the district judges with such suggestions as to details in the form of action to be taken by them as may be approved by this conference upon special vote now taken, or as may approve themselves to the committee and then to the conference by submission of the recommendation, before it be circulated, to each member of the conference.

That in its recommendation to the district judges the committee fix the time at the expiration of which a case should be dismissed for lack of prosecution at one year, with notice to counsel, and to the parties if their postoffice addresses are known, thirty days in advance of the beginning of the term succeeding the first of the year, and that if no action has been taken within said thirty days, the case should be automatically dismissed.

That in its recommendation to the district judges the committee also include the following suggestions recommended by the committee:

(b) Continuances by agreement of counsel should not be allowed. Other engagements of counsel should be accepted as a ground for continuances. No continuances should be allowed except for good cause shown by affidavits, such as sickness of a party or unavoidable absence of an important witness.

(c) There should be fixed times at frequent intervals for the hearing of motions and settlement of issues. Postponement of matters on such calls should not be permitted except for causes justifying the continuance of a case set for trial.

(d) Examination of prospective jurors by the judge alone. If counsel on either side desire that additional matter be inquired into, he shall state the matter to the judge, and the judge, if the matter is proper, shall conduct the examination.

That recommendations in the committee's report dealing with delays in equity and bankruptcy cases could be referred to the committees on equity rules and bankruptcy rules, respectively.

That the chairman of the committee be authorized to prepare a bill, for the approval of the council, upon the subject matter of the following recommendations made by the committee:

In prohibition and other misdemeanor cases, authorize the United States commissioners, in all cases in which the defendants do not file written demands for jury trial, to take and file written pleas of guilty and to hear the evidence on pleas of not guilty and to file in court their reports of the cases and their recommendations of what judgment should be entered.

That the conference now express its opinion that such a bill as is referred to in the preceding paragraph would be expedient, provided the machinery proposed is within constitutional limits.

That it is the opinion of the conference that it is both advisable and desirable that legislation looking to a simplified procedure and the unification of forms of action be passed by Congress.

Judge Buffington then read the report of the "Committee on Recommendations as to Bankruptcy Rules." After stating therein that it had held consultations with a number of district judges from different circuits, with referees and members of the bar and especially with commercial bodies, relative to

whether changes should be made in the bankruptcy rules, the committee recommended that it be allowed to seek further information before committing itself to any present change in the rules. Reference was made in the report to a report submitted to the committee by the National Association of Credit Men recommending seven changes in the general orders in bankruptcy by the Supreme Court to meet that number of abuses which the association, in the course of an extended investigation, had found to exist. The committee recommended that it be authorized to send copies of the association's report to the district judges of the country in order that it might be ascertained: (1) Whether they did or did not favor the changes in the general orders thus recommended; (2) whether, in their judgment, such changes would better bankruptcy administrations in their districts; and (3) whether they advised any other changes in the general orders. Following a discussion, the conference adopted resolutions as follows:

It is moved and seconded that the committee already appointed have three additional members of the conference put on it to act with the chairman to take up the recommendations of the present report and exercise their discretion in following them, and to summon to their aid such district judges as may seem to them wise to assist them in the consideration of this question and to report at the next meeting of the conference.

It is moved and seconded that referees in bankruptcy and members of the bar be added to district judges as persons upon whom the committee may call to aid it in its investigations.

The chief justice thereupon appointed Judges Rogers, Baker and Bingham to act on the committee with Judge Buffington.

The report of the "Committee on Recommendations as to Equity Rules" was then read by Judge Knappen. The committee reported that in its opinion the present rules, with a few minor exceptions, were satisfactory. It recommended the appointment by the Supreme Court of a standing commission to be composed of one circuit judge, three district judges and three members of the bar, with terms of seven years each, except that the terms of the members first appointed be such that one designation should expire each year, thus giving desirable continuity, such commission to report its recommendations to the Supreme Court, from time to time as its judgment might indicate, but not less than once in every five years.

By resolution duly adopted, the conference decided to submit the committee's report, with its recommendations, to the Supreme Court for such action thereon as the court might see fit to take, accompanied by the statement that, while the conference did not say that the rules might not be improved, it

was of the view that they had worked with remarkable success.

The conference then took up the matter of recommendations for increase of the judiciary. By motions duly seconded and carried, it went on record as recommending the appointment of the following additional judges: Two district judges for the Southern District of New York; one district judge for the Northern District of Georgia; and two circuit judges for the Eighth Circuit.