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AN ANALYSIS of the PROPOSED CONSTITUTION

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THE JUDICIAL BRANCH

The proposed constitution makes the following major changes with respect to the judicial article:

1. Provisions to effectuate a unified judicial system.
2. Increased judicial and administrative authority for supreme court as head of the state court system.
3. A new court is established—an intermediate court of appeals-subordinate only to the supreme court.
4. Provisions on circuit and probate courts make these courts more adaptable to changes in judicial activity.
5. Courts of limited jurisdiction to replace justices of the peace and circuit court commissioners within five years.
6. Provisions relating to judges:
 - a) Assignment of retired judges by the supreme court until judicial vacancies are filled by election replaces appointment by the governor.
 - b) Incumbent judges may seek re-election by filing affidavits of candidacy.
 - c) Uniform salaries are required by type of court; fee system is prohibited.

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A Unified Judicial System

Under the proposed constitution, the state judicial power is “vested exclusively in one court of justice”—divided into the supreme court, the court of appeals, the circuit court (designated as a trial court of general jurisdiction), the probate court, and “courts of limited jurisdiction” which may be established by law for which a two-thirds vote of the legislature is required. The first four courts specified are designated as “courts of record.” The courts of limited jurisdiction (which will supplant justices of the peace and circuit court commissioners within five years) may be designated “courts of record” by statute.

The intermediate court of appeals provided for in the proposed constitution is intended to relieve the supreme court of some of its appellate load and permit the supreme court greater discretion to sift judicial cases and concentrate on those involving more important questions. This and other features intended to increase the supreme court’s judicial and administrative supervision of the other courts would emphasize the supreme court’s role as head of a unified state judicial system.

Appeal and Review. Two new provisions in the proposed constitution are likely to increase judicial activity:

1. The accused in every criminal prosecution shall have “an appeal as a matter of right.” (Art. I, Sec. 20)
2. All final decisions and orders—which are judicial or quasi-judicial and affect private rights or licenses—issued by any administrative agency are required to be “subject to direct review by the courts as provided by law,” with specified exceptions relating to workmen’s compensation and property tax appeals. The court review must include determination whether such decision is authorized by law and whether it is supported by substantial evidence in the record if a hearing is required.

The Supreme Court

Several changes from present provisions have been made in the proposed constitution with respect to the personnel of the supreme court, as well as its judicial powers including judicial administration.

Supreme Court Justices

1. The number of justices is fixed at seven. The present constitution does not specify the number of supreme court justices—eight are required by law. This number would be reduced to seven by not filling the first vacancy occurring after the proposed constitution’s effective date.
2. The term of office is specifically required to be for eight years which is presently prescribed by law. Not more than two terms of office shall expire at the same time—a similar but clarified version of the present provision which prohibits more than two justices from going “out of office” at the same time.

3. No change is made in the provision for nomination of supreme court justices—as prescribed by law (presently by party conventions)-except that an incumbent justice may renominate himself by filing an “affidavit of candidacy” not less than 180 days before his term expires. Final election of justices remains “non-partisan.” but at the November election—the April election having been discarded in the proposed constitution.
4. Selection of a chief justice by the supreme court from its membership is required by the proposed constitution. The chief justice shall perform “duties required by the court.” The method of selecting a chief justice is carried over from present practice for which constitutional authority is not clear.

Supreme Court Powers

The supreme court retains unchanged its “general superintending control” over all courts and under its original jurisdiction the power to issue, hear and determine prerogative and remedial writs. Various changes have been made affecting the powers of the supreme court:

1. The court’s appellate jurisdiction would be specifically under its own control—”as provided by rules of the supreme court.”
2. The court’s responsibility to “establish, modify, amend and simplify” judicial practice and procedure by general rule has been extended to all state courts rather than all courts of record as at present.
3. The supreme court is prohibited from removing a judge.
4. The court is required to appoint an “administrator of the courts” (presently a statutory office) to perform administrative duties assigned by it, and other supreme court assistants to aid in administering the state court system.
5. The court is authorized to appoint and remove its “staff,” rather than the presently specified clerk, reporter and crier. The court is given “general supervision” of its staff; this is a change from the present requirement that court officers perform duties prescribed by law.
6. New power is provided the court to control the “preparation of its budget recommendations” and the expenditure of funds appropriated for court operations or its staff’s activities.

Advisory Opinions. A new provision (Art. III, Sec. 8) permits the supreme court to issue advisory opinions on questions relating to the constitutionality of any law after its enactment but before its effective date. Such opinions may be issued only on the request of the governor or either house of the legislature.

Supreme Court Decisions

The requirement that decisions of the supreme court be in writing and contain a concise statement of facts and reasons is continued and made more comprehensive. A statement of reasons for each “denial of leave to appeal” is a new requirement.

Court of Appeals

The new intermediate court of appeals, inferior only to the supreme court, would have nine judges, but this number could be increased by law.

1. Court of appeals judges would be nominated and elected at nonpartisan elections from districts prescribed by law.
2. Court of appeals election districts would have equal population to the extent that this is possible under the requirement that districts follow county lines.
3. The terms of office for judges of the court of appeals would be six years, arranged so that not all terms for judges in each district would expire at the same time.
4. The court of appeals’ jurisdiction would be prescribed by law.
5. The sessions of the court of appeals and its practice and procedure would be prescribed by the supreme court. The supreme court may also require the court of appeals to sit in divisions of not less than three judges.

Other State Courts

Three other classes of courts—the circuit and probate courts and courts of limited jurisdiction—are required by the proposed constitution.

Circuit Courts

The nomination and election of circuit judges would remain non-partisan under the proposed constitution. They would continue to have a six-year term of office. A new provision requires staggering of terms in circuits having more than one circuit judge. other changes in provisions relating to circuit courts are:

1. Judicial circuits are required to be drawn along county lines.
2. Specific direct authority is given to the supreme court to assign circuit judges to court duty in other circuits.
3. The legislature’s power to alter circuits and the number of circuit judges is continued, but such changes are made mandatory when recommended by the supreme court “to reflect changes in judicial activity.”

4. The original jurisdiction of the circuit courts would be in all matters “not prohibited by law.” Their appellate jurisdiction from all inferior courts and tribunals would be “except as otherwise provided by law.” Their supervisory and general control over inferior courts and tribunals within their “respective jurisdictions” is required to be in accordance with supreme court rules.

Probate Courts

The nomination and election of probate judges would remain non-partisan. The following changes have been made with respect to probate courts:

1. The term of office for probate judge is extended from four to six years. In counties or districts with more than one probate judge the terms are to be staggered.
2. The requirement of a probate court in each county is unchanged, but the legislature is granted discretion to create or alter probate court districts of more than one county if approved by a majority voting on the question in each affected county. Another new feature would allow the office of probate judge to be combined by law with a “judicial office of limited jurisdiction within a county.”
3. More than one judge of probate in each county or probate district may be provided by law. The present requirement that a county have over 100,1000 population in order to have more than one probate judge was not continued.
4. The probate court’s original jurisdiction in all cases of juvenile delinquents and dependents is qualified by the added phrase, “except as otherwise provided by law.”

Courts of Limited Jurisdiction

Within five years of the proposed constitution’s effective date, the legislature is required to establish a court or courts of limited jurisdiction which will be subordinate to the circuit courts. Their powers and jurisdiction will be prescribed by law. The location of these courts and details relating to their judges are also to be prescribed by law.

Abolishment of Justice Courts and Circuit Court Commissioners. The courts of limited jurisdiction will replace the offices of justice of the peace and circuit court commissioner which will be abolished five years after the effective date of the proposed constitution if not previously abolished by law within that period.

General Provisions Affecting Judges

Justices and judges of all courts of record are required to be “licensed to practice law in this state.” This is presently required only of supreme court and circuit court judges. The age limit of 70 years for election or appointment to judicial office is applied to all judges rather than only to supreme court and circuit judges as at present.

Judicial Vacancies

Any vacancy in a judicial office in any court of record is required to be filled “at a general or special election as provided by law.” The supreme court may authorize retired judges “to perform judicial duties” from the time of a vacancy until a successor is elected and qualified. Any retired judge temporarily filling a vacancy is made ineligible for election to that office.

This provision for temporary assignment of retired judges to vacant judicial offices by the supreme court replaces the present requirement that the governor fill judicial vacancies by appointment. Any judge so appointed by the governor is eligible for election to that office under the present constitution.

Affidavit of Candidacy

Any elected incumbent judge of the court of appeals, circuit court or probate court may be a candidate in the primary election for the office he holds by filing an “affidavit of candidacy in the form and manner prescribed by law.” An incumbent supreme court justice may renominate himself by filing an affidavit of candidacy not less than 180 days before his term expires.

Salaries Uniform by Type of Court

Uniformity of salary is required for supreme court justices, for appeals judges, for circuit judges “within a circuit,” and for probate judges “within a county or district.” During a term of office salaries may be increased but not decreased except to the extent of a general salary reduction in all other branches. Under the present constitution, salaries of public officers except circuit judges can be neither increased nor decreased “after election or appointment.” The present provision which permits each circuit judge to receive additional salary from any county in which he holds court is continued in the proposed constitution.

Remuneration from Fees Prohibited. A new provision prohibits payment of any judge from the fees of his office or the measurement of his salary by fees or funds received or by the amount of judicial activity.