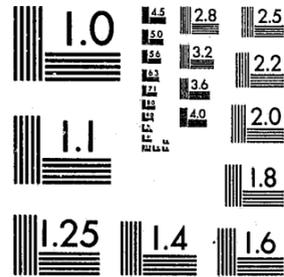


National Criminal Justice Reference Service



This microfiche was produced from documents received for inclusion in the NCJRS data base. Since NCJRS cannot exercise control over the physical condition of the documents submitted, the individual frame quality will vary. The resolution chart on this frame may be used to evaluate the document quality.



MICROCOPY RESOLUTION TEST CHART
NATIONAL BUREAU OF STANDARDS-1963-A

Microfilming procedures used to create this fiche comply with the standards set forth in 41CFR 101-11.504.

Points of view or opinions stated in this document are those of the author(s) and do not represent the official position or policies of the U. S. Department of Justice.

National Institute of Justice
United States Department of Justice
Washington, D. C. 20531

6-17-82

MFI



THE JUDICIAL COUNCIL OF NEW MEXICO

Twelfth Annual Report

December 31, 1980

76242

**NEW MEXICO
JUDICIAL
COUNCIL**

138 HARVARD S.E.
P.O. BOX 4007
ALBUQUERQUE, N.M. 87196



RUSSELL D. MANN
Chairman
MANNY M. ARAGON
Vice Chairman
DAVID R. GARDNER
Executive Secretary
(505) 842-3102

January 26, 1981

The Honorable Bruce King, Governor
State of New Mexico

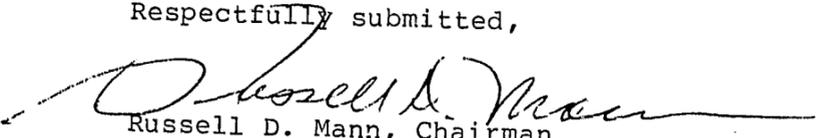
The Honorable Members of the
New Mexico State Legislature

The Honorable Justices of the
New Mexico Supreme Court

Dear Governor, Members of the Legislature and Justices of the
Supreme Court:

I am submitting herewith the 1980 annual report of the New Mexico
Judicial Council, pursuant to §34-12-5, NMSA, 1978 which directs
the Judicial Council to "submit a report of its proceedings and
recommendations to the legislature, the governor and the supreme
court each year."

Respectfully submitted,


Russell D. Mann, Chairman
New Mexico Judicial Council

U.S. Department of Justice 76242
National Institute of Justice

This document has been reproduced exactly as received from the
person or organization originating it. Points of view or opinions stated
in this document are those of the authors and do not necessarily
represent the official position or policies of the National Institute of
Justice.

Permission to reproduce this copyrighted material has been
granted by

David R. Gardener

to the National Criminal Justice Reference Service (NCJRS).

Further reproduction outside of the NCJRS system requires permis-
sion of the copyright owner.

NCJRS

MAR 16 1981

ACQUISITIONS

MEMBERSHIP

Manny M. Aragon, State Senator, Albuquerque - Reginald A. Begaye, State Representative, Tohatchi - Dr. James A. Beall, Ruidoso - James L. Brown, District
Judge, Aztec - Gene Franchini, District Judge, Albuquerque - B.C. Hernandez, Court of Appeals Judge, Albuquerque - Russell D. Mann, Lawyer, Roswell -
Marshall Martin, Lawyer, Albuquerque - H. Vern Payne, Supreme Court Justice, Santa Fe - Lidio Rainaldi, Magistrate, Gallup - Ira Robinson, District Attorney,
Albuquerque - N. Randolph Reese, District Judge, Hobbs - Jo-Carol Ropp, Las Cruces - Tom Rutherford, State Senator, Albuquerque - Hal Stratton, State
Representative, Albuquerque - Mary Margaret Wilson, Albuquerque - Edward J. Baca, Director, Administrative Office of the Courts, ex-officio, Santa Fe -
Jeff Bingaman, Attorney General, ex-officio, Santa Fe - Robert Desiderio, Dean of UNM Law School, ex-officio, Albuquerque.

Table of Contents	Page
Judicial Council	1
Membership	1
Duties	2
Meetings	2
Cooperation and Assistance	
Programs and Studies	3
Jury Administration	4
Redistricting	5
Court Monitoring Project	6
Continuances	6
Trailing Dockets	7
Judicial Qualifications and Selection	
New Studies Initiated	10
Study of Appellate Courts	10
Witness Fees	11
Penalty Assessments	11
Grand Jury Reforms	
Miscellany	13
Plea Bargaining	13
Citizen Perceptions of the Courts	13
Christian Conciliation Service	13
Foster Placement	14
Metropolitan Court Problems	14
Quality of Judges	14
Sites of Oral Arguments	15
Magistrate Election Districts	15
Probate Judge Training	
Recommendations	16
Jury Management	17
Continuances	17
Trailing Dockets	17
Selection of Appellate Judges and Justices	18
Qualifications for Judicial Office	19
Waiver of Extradition Proceedings	19
Appeals from Magistrate Court	20
Administrative Procedures Act	

JUDICIAL COUNCIL MEMBERSHIP

December 31, 1980

Chairman: Russell D. Mann, Attorney, Roswell
 Vice-chairman: Manny M. Aragon, Senator, Albuquerque
 Members: Edward J. Baca, Director, Administrative Office of the Courts, Santa Fe
 James A. Beall, Lay Member, Ruidoso
 Reginald A. Begaye, Representative, Tohatchi
 Jeff Bingaman, Attorney General, Santa Fe
 James L. Brown, District Judge, Farmington
 Robert Desiderio, Dean, University of New Mexico School of Law, Albuquerque
 Gene Franchini, District Judge, Albuquerque
 B. C. Hernandez, Court of Appeals Judge, Albuquerque
 Marshall G. Martin, Attorney, Albuquerque
 H. Vern Payne, Supreme Court Justice, Santa Fe
 Lidio Rainaldi, Magistrate, Gallup
 N. Randolph Reese, District Judge, Hobbs
 Ira Robinson, District Attorney, Albuquerque
 Jo-Carol Ropp, Lay Member, Las Cruces
 Tom Rutherford, Senator, Albuquerque
 Hal Stratton, Representative, Albuquerque
 Mary M. Wilson, Lay Member, Albuquerque

Created by the Legislature in 1969, the Judicial Council is a statutory body of nineteen members. The membership consists of a justice of the Supreme Court and a magistrate, both appointed by the Supreme Court; a judge of the Court of Appeals appointed by that court; three district judges elected by the district judges; two senators and two representatives chosen as are other committee members of the state legislature; two attorneys appointed by the Board of Bar Commissioners; three non-lawyers and one district attorney appointed by the Governor; the Attorney General; the dean of the University of New Mexico School of Law; and the director of the Administrative Office of the Courts.

DUTIES

The duties of the Judicial Council are established by law, and are found in Section 34-12-3 of the New Mexico Statutes Annotated, 1978 Compilation. The Council is to:

- a. continuously study the administration and operation of all courts in the state;
- b. investigate criticisms and suggestions pertaining to the administration of justice;
- c. keep advised concerning the decisions of the courts and Legislature affecting the organization and operation of the courts; and
- d. recommend desirable changes to the Legislature and the Supreme Court.

MEETINGS

Section 34-12-3.E, New Mexico Statutes Annotated, 1978 Compilation, requires the Judicial Council to hold at least four meetings a year, including at least one session to which the public is invited to submit complaints, observations and recommendations concerning the administration of justice in the courts of the state. During 1980 the Council held ten meetings including a public meeting in Hobbs. All meetings are open to the public, but once a year the Council schedules a meeting in a different part of the state and publicizes its intention to hear complaints and recommendations from citizens at that meeting. Meetings are generally scheduled for the first Friday of each month. During 1980, six meetings were held in Albuquerque and three were held in Santa Fe.

COOPERATION AND ASSISTANCE

The Judicial Council acknowledges the cooperation and information supplied by court officials, state agencies and others during the year. The Council appreciates that assistance.

PROGRAMS AND STUDIES

JURY ADMINISTRATION

The Judicial Council's interest in the jury system has been continuous. In the past the Council has studied the use of six member juries and has regularly sought more adequate reimbursement for jurors. In 1976 the Council proposed legislation to make jury terms more flexible and to make it illegal for employers to discriminate against employees called for jury duty. These proposals were enacted in 1979 along with one that tied juror reimbursement to statutes setting minimum wages and compensating state employees for travel.

The Legislature has demonstrated its concern for the burden imposed upon citizens called for jury duty by passing the legislation proposed by the Council, adding a further provision to excuse a person from jury duty who has within the past three years served on any state or federal jury, seeking to shorten the term of jury service, and requesting a study by the Judicial Council and Administrative Office of the Courts into means for lessening the burden on jurors.

The request for the study was made in House Memorial 33 in 1979. It asked for the development of a plan specifying methods for "utilizing eligible jurors to further the goals of:

1. Lessening the inconvenience to citizens of serving as jurors;
2. broadening citizen participation in the jury system and distributing the responsibility for participating in the jury system among the people in as fair a manner as possible;
3. increasing the efficiency and effectiveness of judicial activity;
4. reducing the length of the term of service of a juror; and
5. reducing the number of trials which an individual juror serves during a term."

The Administrative Office of the Courts assured the Council it had applied for a federal grant to do such a study, and the Council decided to await the outcome of that study rather than duplicate efforts. The Council had already acquired much information on jury management and stood ready to assist in the study. The federal grant resulted in a contract between the Administrative Office of the Courts and the National Center for State Courts. The National Center began the study late in 1979 or early 1980. The Judicial Council provided materials on its studies in New Mexico to the National Center in December 1979.

During 1980 the Case Management committee of the Judicial Council, chaired by Judge Randolph Reese, was assigned the responsibility of looking into the jury management study. Judge Reese met with personnel from the National Center for State Courts and had some input on the procedures followed in the study. The study did produce some valuable information, but in reviewing the recommendations of the study, the Case Management committee found some of them to be impractical. Judge Reese met with the Administrative Office of the Courts and some modified recommendations were produced. These recommendations were presented to the Judicial Council where further modifications were made. The recommendations as approved by the Judicial Council are reproduced on page 16.

REDISTRICTING

Article 6, Section 16 of the New Mexico Constitution says that "at the first session after each United States census . . . the legislature may rearrange the districts of the state, increase the number thereof, and make provision for a district judge for any additional district." After the 1960 census the number of judicial districts was increased from ten to eleven. Following the 1970 census the number was increased to thirteen. In anticipation that a further increase would be proposed following the 1980 census, the Judicial Council created a redistricting committee to study the need for additional districts. The Council was concerned about the question because any reorganization has a great effect of the efficiency, workload, and availability to the public of the courts.

The redistricting committee started with no pre-conceived notions as to whether a new district should be created, boundaries shifted, districts consolidated, or districts left unchanged. The committee had the benefit of work done by the Judicial Council prior to the 1971 redistricting, and the advantage of assistance from the University of New Mexico School of Law. Dean Desiderio of the law school chaired the committee, and he obtained help from the faculty and student body in the study.

The materials collected by the Council in 1970 were reviewed, as were articles on the procedures used for redistricting in other states. A list of factors to be taken into consideration was compiled. The list included caseloads, travel, population centers, commercial centers, census projections, administrative workload, out-of-district designations, need for flexibility, political homogeneity of districts, urban-rural mix and geography. Court statistics for the ten years up to and including 1979 were sought from the Administrative Office of the Courts, and questionnaires to obtain input from district judges, district attorneys and county chairmen were designed. Attempts to get 1980 census data were delayed because the data were not ready for distribution. A public meeting was held in the Fifth Judicial District to which mayors, city councilmen, county commissioners, legislators, judges, court clerks and bar association officers were invited.

The information gathered by the Council's redistricting committee is voluminous and will not be reproduced here. The consensus of responses, to the questionnaires and at the public meeting, was that no one strongly favored redistricting and some strongly opposed it. The Council resolved to take no position on the subject other than to provide information if called upon.

The question was raised as to whether districts were needed at all. They provide smaller groups for administrative purposes, but the boundaries, like county lines, are arbitrary. It was felt that an alternative to redistricting would be to change venue statutes such as those mandating where cases against state agencies shall be tried. As a result, the Council has begun looking into venue statutes.

COURT MONITORING PROJECT

In January, Pauline LaDu, president of Court Update, a citizen's organization for improvement of the courts, requested sponsorship by the Council of a project to monitor the 72 magistrate courts of the state. After receiving sufficient information to be assured that the project was viable, the Council, in February, agreed to sponsor the project.

Purpose

The project proposes to assess the adequacy of facilities, procedures, the practices in each magistrate court and to make that information available to the Administrative Office of the Courts and to the Judicial Council for possible improvements. The project also proposes to involve lay members of the public as monitors in order to increase public familiarity with the courts.

Implementation

The project calls for recruiting monitors in each judicial district and train them. The monitors will attend court in pairs for a two month period, filling out prepared forms in accordance with their observations. At the conclusion of the monitoring period, the forms will be collected and the information compiled.

Funding

Court Update, with the Council acting as grantee agency, applied for and received a grant of Law Enforcement Assistance Administration funds in the amount of \$18,000.00. Matching funds in the amount of \$2,000.00 were provided by the Supreme Court. The funds are for printing, office supplies, travel, postage, telephone, training and personnel costs for the project.

Progress

The funding was approved in May, and the project began in June.

By the end of the year the training materials and forms had been printed and distributed and monitors and coordinators had been recruited and trained in five of the state's thirteen judicial districts. Actual monitoring was completed in ten of the 72 magistrate courts, and in progress in seven others.

CONTINUANCES

The Council's case management committee considered a rule on district court trial continuances that would require an attorney requesting a continuance to certify to the court that the client had been notified of the attorney's motion for a continuance. The main purpose for the rule was to reduce the number of continuances and therefore shorten the time to get a case to trial. This would happen if clients objected to delays that were not in their interests. At one point it was suggested that the client should join in the motion for the continuance.

The rule was proposed to the Supreme Court by the Judicial Council. The court considered the rule and decided that, owing to the differing local circumstances, a local rule would be preferable to a state-wide rule.

A questionnaire was sent to all district judges, district attorneys, local bar associations and the chief public defender. Responses were received from 84% of the judges, 69% of the district attorneys and 41% of the local bar associations. Only one of the judicial districts had a local rule requiring attorneys seeking continuances to notify their clients. Such a rule was favored by 64% of the responding judges, 89% of the responding district attorneys and 71% of the responding bar associations. However, the question was phrased only in terms of a state-wide rule, and it is known that some would favor a local rule over a state-wide rule.

If a local district court feels there is a need which could be met by having such a rule, the Supreme Court indicated it would give its approval.

TRAILING DOCKETS

One problem plaguing trial attorneys and their clients has been the use of trailing dockets. A trailing docket is a schedule for hearing cases on which several cases are set for hearing before the same judge on the same date. That is done because quite often a case will be settled just before the trial is to begin. Statistically, about 70% of the cases filed are settled before trial. Without the trailing docket, when a case set for trial settled, the judge, and often the citizens called to serve on the jury, would find there was nothing to do until the day on which the next trial was scheduled. If the first case were to be a three day trial, three days might be lost that could be used to try other cases. By setting three or more cases for the same time, even if two or more cases went off, there would be parties there prepared to try a case, and the court's time would not be wasted.

Often, however, cases do not settle and several parties are put to the expense of having witnesses and lawyers set aside time to try a case that must be reset for some later date. On the other hand, attorneys whose cases are rather far down on the list on a trailing docket may be unprepared when called by the judge's secretary to be told that all the cases ahead of them have gone off and they should be at the courthouse that afternoon to begin the trial.

One of the major complaints has been with regard to expert or medical witnesses. These witnesses typically charge the parties substantial sums to set aside a day from their professional practice to appear in court. Doctors who have scheduled a particular day for a trial appearance may become hostile toward the attorney who has them subpoenaed for another day, especially doctors who had several operations scheduled for that other day. Some attorneys are finding that medical witnesses are hard to get and that their fees are very high. Some of this is a result of uncertain trailing dockets.

The Judicial Council in the same questionnaire sent on the question of continuances, asked if trailing dockets were used, whether they caused problems, and asked for comments. The questionnaire proposed a state-wide rule that parties be given at least 24 hours notice that a case on the trailing docket would actually be called.

Only in the Ninth Judicial District was it stated that a trailing docket was not used. In four other districts responses indicated they were already giving the proposed notice without having the rule.

As with the proposed rule on continuances, the Supreme Court advised the Judicial Council that this rule should be provided by the local district courts if they so desired. Since conditions do vary from one district to another, as evidenced by the responses to the questionnaire, the Judicial Council feels the Court's decision is an appropriate one for the district judges to consider.

JUDICIAL QUALIFICATIONS AND SELECTION

One of the areas of ongoing study by the Judicial Council has been that of judges and judgeships. A committee of the Council has evolved that has looked at ways to determine when an additional judgeship is justified, how judges should be chosen, what should be the qualifications of judicial candidates, whether a mandatory retirement age is advisable, and what training should be provided to judges. Most of these topics were again reviewed by the Council's committee on judicial qualifications and selection this year, and two topics were given special attention.

The two studied more carefully were judicial selection and judicial qualifications. The 1980 session of the Legislature gave

more favorable attention to resolutions on those subjects than they had in the past. The committee felt the Council's past support for the topics should be continued.

Judicial Selection

The Judicial Council has long supported the idea of removing selection of judges from partisan politics. There has also always been a minority opposition within the Council to that proposal. The arguments in support of non-partisan selection have been that voters have almost no knowledge of the qualifications of candidates, especially at the appellate level, and therefore do not vote on the basis of qualifications, while a nominating committee would be in a better position to screen out unqualified candidates. Campaigning for judicial office is expensive and time consuming, especially in state-wide races, and therefore is a barrier to some well qualified individuals who would otherwise be willing to serve. By removing partisan motivations in office seeking, decisions of judges would be based on higher considerations of what is just and fair.

Opposition to selection commission plans is voiced in arguments that candidates not chosen by the voters are not accountable to the voters, that the experience of states having such plans is that politics at the polls is merely replaced by politics in the composition of the selection commission, that candidates need to get out and campaign periodically to maintain touch with the people, and that no non-elective selection procedure provides any better assurance that a candidate will prove to be a good judge.

The committee found that most judges in New Mexico initially become judges through appointment, that incumbents usually are not challenged in elections and generally retain office until they retire, that campaigning is generally a matter of establishing name identification since a candidate cannot promise in advance how he will lean in cases to come before him, and that campaign costs give some candidates pause (during the 1980 campaign a candidate running for state-wide office was told by a county party chairman he would have to contribute \$1,500.00 to the county campaign chest if he wanted party support in that county.) The committee did feel that partisan election was probably more meaningful in district and lower court races where there was likely to be voter acquaintance with candidates. For Supreme Court and Court of Appeals judgeships it recommended a nominating committee and appointment procedure.

Judicial Qualifications

Article 6, Section 8 of the state constitution says that to be qualified to hold the office of justice of the Supreme Court a person shall have been in the actual practice of law for at least three years. The qualifications for judges of the Court of Appeals and district courts are the same. The committee found that "actual

practice of law" has come to mean merely licensed to practice law and that three years was a rather minimal requirement.

The committee recognized that there were some sitting judges who assumed the bench with little more than three years experience who were good judges. But it also realized that with a little more experience, they would have been better judges. In order not to discourage younger candidates, but to encourage higher qualifications, the committee recommended that the constitution be amended to require six years practice of law for candidates for district judgeships and ten years practice for appellate judgeships. The definition of "practice of law" presented some difficulties, but there are some court decisions bearing on the definition. It was agreed that "practice of law" includes being licensed to practice law and may also include serving as a judge or as a law clerk while so licensed. The committee preferred a requirement of an actual amount of courtroom practice, but recognized the problems of defining that in the constitution.

The Judicial Council adopted the recommendation of the committee.

NEW STUDIES INITIATED

During the year the Council discussed some items that it wished to have studied more in depth by committees. There was not time left in the year to achieve reportable progress, but study has been initiated and reports will be forthcoming.

STUDY OF APPELLATE COURTS

During the year there was occasional reference to dissatisfaction with the quality of opinions issuing from the appellate courts. It was decided to place the matter on the agenda for Council consideration. During the subsequent discussion of the matter it was emphasized that the Council was not interested in an investigation of individual judges or justices such as might be done by the Judicial Standards Commission. The intent would be to review and consider recommendations for improvement of the appellate system. Among aspects to be considered were the relative caseloads of the Supreme Court and Court of Appeals, the number of judges or justices required to reach a decision, and laws and procedures governing appeals. Letters were written to the justices of the Supreme Court and judges of the Court of Appeals advising them of the Council's intentions and inviting their input. The matter will be one of continued study by the Council through the committee to which it was assigned.

WITNESS FEES

One item currently under study in an effort to see if costs of litigation can be held down is the question of expert witness fees, particularly medical experts' fees. Workmen's compensation and personal injury cases usually require the testimony of medical experts to prove the extent of injuries, the need of future medical attention, and the cost of medical treatments. Medical witnesses are required to absent themselves from their practices in order to testify, and they seek to be reimbursed in proportion to what they might have earned had they used a like amount of time pursuing their profession.

The legislature tried to set some limitations on expert witness fees by providing that the total expert witness fees to be allowed a prevailing party should not exceed \$750.00 (Section 38-6-7, NMSA, 1978) and fees for no more than four witnesses per side may be taxed against the losing party (Section 39-2-9, NMSA, 1978.) Courts retain the discretion, however, to allow additional needed witnesses. And, a party needing a particular witness in order to prevail may pay a high fee to obtain that witness even though the entire cost may not be recouped.

The law does provide for a witness to be subpoenaed against his will with the compensation to be set by the court, but this does not help when the expert is from out-of-state or, because of

being hauled to court unwillingly, becomes hostile and uncooperative toward the side responsible for the subpoena.

The Council feels there are some things that can be done to lessen the harsh impacts of the problem, and the matter has been taken up by a committee for study.

PENALTY ASSESSMENTS

Magistrate Lidio Rainaldi has continued to represent the Judicial Council in efforts to find workable means to collect penalty assessments for motor vehicle violations. The penalty assessment program allows motorists to pay fines by mail. Those who fail to pay require the attention of the Administrative Office of the Courts, which has to account for the fines; the local court, which must issue a warrant for the offender; the state police, which issued the citation and must act on the warrant; and the Motor Vehicle Division, which must flag the motorist's license for non-renewals if the assessment is not paid. Treatment of out-of-state motorists has been discussed, and may involve adoption of an interstate compact. Simplification, however, is a major goal. Duplication of effort and computer time could be eliminated by placing the entire program under a single agency. Proposals will be made to the 1981 session of the legislature.

GRAND JURY REFORMS

Judicial Council focus on grand jury procedures in 1978 resulted in some meaningful changes in those procedures with respect to the status of targets of investigations and the duties of prosecuting attorneys. Judge Joseph Baca of the Second Judicial District brought to the attention of the Council some other matters respecting grand juries. He noted the following problems:

1. There are difficulties in maintaining a grand jury of the same twelve individuals over the full six month term of a grand jury. Always there are illnesses, trips, and other occurrences in the lives of individual jurors which must disrupt the schedule of the jury.

2. There is a need for uniform charges to grand juries. There may be a great difference between the role of a "garden variety" grand jury and one called upon to enter into a lengthy investigation involving complex or technical evidence.

3. There is some question as to the procedure to be followed in selecting twelve persons out of the total number of prospective jurors summoned. If the method used were found to produce a grand jury that might be biased, any indictments issued could be quashed.

4. Present law strictly limits the personnel who may be present to assist a grand jury. Tape recorder monitors and bailiffs are not among those permitted, yet the cost of obtaining a court

stenographer in place of a monitor to run a tape recorder, and the need to provide some security for a grand jury questioning dangerous inmates about the penitentiary riots, suggest that the law should be revised.

These matters are under consideration by a committee of the Council.

MISCELLANY

During the year the Council heard presentations from a number of people regarding the courts. Some presentations were made by advocates of particular programs. Some were made by members of the Judicial Council in explanation of their perceptions of various matters coming to their attention. Others were made by citizens at meetings of the Council. These matters did not result in formal action by the Council and are briefly mentioned here only for information purposes.

PLEA BARGAINING

A discussion on plea bargaining policies of district attorneys, particularly in the Second Judicial District, concerned the practicability of forcing cases to trial that could be disposed of through negotiation. Statistics available to the Administrative Office of the Courts indicated that a policy to limit plea bargaining had not created greater caseloads.

CITIZEN PERCEPTIONS OF THE COURTS

Some areas of concern to citizens were brought to the Council's attention. These included a distaste for plea bargaining, a feeling that criminal offenders are released too early from prison, a desire for a victim restitution fund to which offenders contribute, and a questioning of the propriety of public defenders using public money to import expert witnesses.

While it was felt some of those perception might be wrong, it was conceded that they did exist, and that where they were correct the system should be changed.

CHRISTIAN CONCILIATION SERVICE

The organization and development of a Christian Conciliation Service in New Mexico was explained to the Council. The Service, involving the voluntary efforts of clergymen and lawyers, would provide for mediation and arbitration of civil disputes. If successful in New Mexico as in other states, the service would relieve the courts of some disputes and promote reconciliation between the parties, an element generally not attainable once a case has gone through the adversary process of the courts. Training for clergymen and lawyers interested in the program took place during the year, according to information given to the Council.

FOSTER PLACEMENT

It was reported that citizens serving as foster parents feel the courts do not give adequate attention to input foster parents could provide when questions of disposition in foster care cases come before the courts.

Judges responding to that explained their roles in handling such cases and suggested that relations with foster parents could be improved if the legal status of such cases and the controlling rules of court procedures were explained to foster parents.

METROPOLITAN COURT PROBLEMS

Prior to the July 1 consolidation of the magistrate, municipal and small claims courts in Bernalillo County into one metropolitan court, several problems were foreseen which could be very severe. These stemmed from the fact that rules of the new court required all prosecutions of municipal ordinance violations to be handled as they would in magistrate court. This presented the prospect of thousands of additional cases to be handled by the district attorney's office with the defendants being able to demand jury trials and court appointed attorneys. The office of the public defender as well as the district attorney, saw the need for sizable increases in staff, but no appropriations had been made to provide the increases. The judges of the new court foresaw a load of as many as 200 jury trials per month. Other factors contributing to problems were the increased jurisdiction in civil cases to \$5,000.00 which would tend to increase caseload, the availability of trial de novo on appeal from the metropolitan court jury trials, and the loss of the clinical law program at the law school. The clinical law program was funded to a large extent from the budgets of the offices of the district attorney and the public defender. With the sudden strains on those budgets the program, under which law students had handled the bulk of misdemeanor representations in magistrate courts, might be lost.

After hearing the different points of view, the Council decided to look at the matter at a later date to see what the actual experience showed.

QUALITY OF JUDGES

At a public meeting the Council was urged to determine whether judges were coming from the best qualified level of lawyers, and to let the public know why not. The speaker felt the best lawyers usually make the best judges, but that the best lawyers usually did not want to be judges because judges' salaries are too low. It was pointed out that New Mexico has a good reputation for the quality of its judges in comparison with the rest of the country.

SITES OF ORAL ARGUMENTS

A proposal was made that oral arguments before the Supreme Court and Court of Appeals be scheduled occasionally at the law school in Albuquerque so that law students could observe. A counter-proposal was that the oral arguments be taped on video recorders and played back to law classes so the students and professor could critique the performances of lawyers and judges. It was noted that the constitution requires the Supreme Court to sit in Santa Fe.

MAGISTRATE ELECTION DISTRICTS

An interesting matter raised before the Council was the election of magistrates in county-wide races. It was pointed out that in some divisions the local residents may overwhelmingly prefer one candidate but that another candidate could be elected by a more populous area of the county where neither candidate was well known. The suggestion was made that the voting should be restricted to electors residing within the magistrate division.

The Council recognized the problem but felt a simple solution was not possible since in other parts of the state there are two or more divisions of the magistrate court located in the same courthouse in the same town. In addition, magistrate court jurisdiction is county-wide rather than being restricted to geographical boundaries within the county. In fact, no division boundaries exist.

PROBATE JUDGE TRAINING

In the past the Judicial Council has advocated the abolishment of the probate courts. This was based on the perception that probate courts in New Mexico had relatively small case loads, the judges were generally untrained in the law, the probate laws and practices in the state combined to force many matters into district court, and the passage in 1975 of the Probate Code virtually reduced the probate courts to ministerial offices where most matters could be handled by a clerk.

This year the New Mexico Probate Judges Association was invited to present the viewpoint of probate judges to the Council. Judges Carmen Malone and Marthanne Cole ably represented the Association in explaining the difficulties facing probate judges and in advocating the upgrading of the probate courts. It became apparent that probate judges have not obtained budget support in their counties, have been afforded almost no training opportunities to make them more effective, and have been ordered about by some attorneys who, though knowledgeable in probate matters under the former law, were less conversant with the current probate code than the judges. Judges Malone and Cole felt that if probate judges got better training they could help relieve district judges of more of their caseloads.

It was felt by the Council that so long as probate judges continued to represent the judiciary to the public, they should be offered training. The Council recommended that training be handled locally under the direction of the presiding district judge. Accordingly, the Council has requested presiding district judges in each district to establish seminars for probate judges in the district. It was also recommended by the Council that a curriculum be developed by the Administrative Office of the Courts and the University of New Mexico School of Law.

RECOMMENDATIONS

As seen in the foregoing report, the Judicial Council recommends some changes in practices and procedures affecting the New Mexico courts. These are repeated, and in some cases explained, here for the sake of convenience.

JURY MANAGEMENT

The steps leading to the Council's recommendations are reviewed on pages 3 and 4 above. The plans approved by the Council, in relation to the goals established by House Memorial 33 are:

Goal 1: Lessening the inconvenience to citizens of serving as jurors

Plan: It is recommended that the six month service (three month in Bernalillo County) be retained, with discretion in the district courts to implement local rules to shorten the amount of actual service required. In addition, the Council feels that the present compensation for jurors is too low.

Goal 2: Broadening citizen participation in the jury system and distributing the responsibility for participating in the jury system among the people in as fair a manner as possible

Plan: We recommend legislation approving the merging of Motor Vehicle Department drivers license registrations with the voters registrations after lists are compared for duplications and duplications eliminated. We would recommend that a pilot program be authorized and initiated in District Three or Nine for a period of one year to determine cost and effectiveness of this procedure. We have investigated water meters, telephone books, and gas hookups and we feel that all of these types of lists would address the groups now appearing in voter registration lists and would not accomplish broadening of citizen participation in the jury system among people in as fair a manner as possible.

Goal 3: Increasing the efficiency and effectiveness of judicial activity

Plan: The recommendation in Plan 1 concerning length of service would increase the efficiency and effectiveness of jury trials. In addition, it is felt that fees for jury trials should be brought more in line with the actual cost.

Goal 4: Reducing the length of the term of service of a juror; and

Goal 5: Reducing the number of trials which an individual juror serves during a term

Plan: These items are dealt with in the first recommendation.

CONTINUANCES

It appearing that a state-wide rule would be inappropriate due to differing conditions in each judicial district, and since the majority of respondents to the Council questionnaire indicated they favored a rule, it is suggested that each district court give consideration to establishing a local rule. The rule would be to the effect that requests for continuances must be submitted by motion and that the motion be accompanied by, or incorporate, a certificate by the attorney that his client had been notified of the request for a continuance. See page 6 above for a discussion of the recommendation.

TRAILING DOCKETS

The recommendation is the same as with the one on continuances above. Each district court should examine its practices to see if a rule would be helpful in ensuring as much advance notice as possible when a case on a trailing docket will come up for hearing. Notice twenty-four hours in advance of the hearing is suggested, but it is recognized that local conditions may dictate twenty-two hours notice or forty-eight hours notice.

SELECTION OF APPELLATE JUDGES AND JUSTICES

In reviewing a particular draft for a joint resolution amending the constitution to provide for judicial selection by appointment, the Council approved the following features:

1. The creation of a state judicial nominating commission consisting of ten members. The members would be the chief justice of the Supreme Court, the speaker of the House of Representatives, the president pro tempore of the Senate, three lawyers appointed by majority vote of the Board of Bar Commissioners, and four non-lawyers appointed by the Governor. The Council was concerned that politics and special interests be limited as much as possible in commission membership, but recognized it could not be eliminated entirely. It did suggest that another method of selecting the lawyer members might be more appropriate, if it provided better balance to the lawyer membership.

2. Provision to hold commission hearings in confidential sessions in order to encourage applicants, and to allow thorough probing of backgrounds and qualifications.

3. Placing an appointee's continuance in office before the electorate for retention or rejection. This should happen at the second general election following the initial appointment, and every six years thereafter to give the judge sufficient tenure to make the office attractive, and to give sufficient experience on which to base a decision to retain or reject a judge.

4. Incorporating a recommendation for retention or rejection of a judge seeking to retain his office, on the ballot. The Commission would be in a better position than most voters to assess the competency of a judge and make that evaluation available to the voters.

QUALIFICATIONS FOR JUDICIAL OFFICE

The following draft legislation is suggested as a model for implementing the recommendations discussed on page 7 above:

A JOINT RESOLUTION

PROPOSING AN AMENDMENT TO ARTICLE 6 OF THE CONSTITUTION OF NEW MEXICO TO PROVIDE FOR THE QUALIFICATIONS OF SUPREME COURT JUSTICES AND DISTRICT COURT JUDGES: AMENDING SECTIONS 8 AND 14 OF ARTICLE 6.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO

Section 1. It is proposed to amend Article 6, Section 8 of the constitution of New Mexico to read:

"No person shall be qualified to hold the office of justice of the supreme court unless he be at least thirty years old, learned in the law, [and] shall have been in the actual practice of law for at least ten years, and resided in this state [~~or the territory of New Mexico~~] for at least three years. Any person whose time of service upon the bench of any district court or court of appeals of this state, or as a law ckerk while licensed to practice law in this state [~~for the territory of New Mexico~~], added to the time he may have practiced law, as aforesaid, shall be equal the [three] ten years, shall be qualified without having practiced for the full [three] ten years.

Section 2. It is proposed to amend Article 6, Section 14 of the constitution of New Mexico to read:

The qualifications of the district judges shall be the same as those of justices of the supreme court, except that they shall have been in the actual practice of law for at least six years. Each district judge shall reside in the district for which he was elected.

WAIVER OF EXTRADITION PROCEEDINGS

The Judicial Council voted to repeat its recommendation made last year that the law be amended to allow waiver of extradition proceedings to be heard in magistrate court. The law now requires that they be heard in a court of record. The proceedings are mainly ministerial and the documents required for the proceeding constitute the record. There are more magistrates than district judges available to expedite the hearings, and they apply only where a defendant voluntarily agrees to waive extradition.

APPEALS FROM MAGISTRATE COURT

If a party is dissatisfied with a judgement in magistrate or municipal court, he can appeal the case to district court and the case will be tried again. This second, full trial is called trial de novo. The Judicial Council concluded, in 1974, that the process was being abused by defendants in criminal cases who found they had nothing to lose by appealing the lower court conviction. The law at that time restricted the district judge to imposing the same or a lesser penalty than that imposed by the magistrate or municipal judge. In addition the defendant gained a delay in the imposition of the penalty and the chance that the prosecution witnesses would be unavailable for the second trial.

The proposal of the Judicial Council was that the law be amended to permit the district judge to also impose a greater penalty, if after the trial de novo he felt a greater penalty were merited. It was felt that this would tend to discourage the merely frivolous appeals and would remove an unnecessary restriction on the discretion of the district judge.

A bill was introduced in the 1975 session of the legislature to effect the Council's proposal. The bill passed and was signed, but another bill, signed subsequent to the Council bill, amended the section of the law dealing with appeals from the magistrate court. Since that act superseded the Council bill with regard to magistrate appeals, only in municipal court appeals was there specific provision for assessing a greater penalty upon trial de novo. The act superseding the Council bill on magistrate appeals deleted all mention of sentencing authority in trials de novo. Since this removed the previous restriction that a district judge could only assess the same or a lesser penalty after trial de novo, it was felt there would be no obstacle to a district judge's imposing a greater penalty. In 1980, however, a court of appeals case (New Mexico v. Haar) decided that since the Governor signed a bill on the subject subsequent to his signing of the Council's bill, it was the intent of the legislature that a greater penalty should not be imposed.

In order to re-establish the provision allowing a greater penalty to be imposed in magistrate appeals and bring them on a par

with municipal court appeals, the Judicial Council recommends the amendment of Section 35-13-2, NMSA, 1978, to specifically authorize the imposition of a greater, the same or a lesser penalty by the district court in deciding an appeal from magistrate court.

ADMINISTRATIVE PROCEDURES ACT

The Judicial Council has renewed its proposal for an administrative procedures act that will accomplish the purpose of its creation. There is an act in existence which applies only to the administrative agencies specifically adopting it. The great majority of state agencies have adopted other procedures which are not uniform and which cause confusion for the citizens, and for the courts called upon to review the judgements of the agencies. An attempt in 1979 to pass an act which would include all agencies except those which, for legitimate reasons, should follow different procedures, passed but was vetoed by the Governor at the insistence of some agencies that were not exempted. The Council favors renewed efforts to enact that law.

END