REPORT OF THE JUDICIAL CONFERENCE.

Washington, D. C., October 1, 1927.

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The Conference of Senior Circuit Judges provided for by Section 2 of the Act of Congress of September 14th, 1922 (42 Stat. 837, 838), met in the Conference Room of the Supreme Court of the United States, at Washington, D. C., September 27th, 1927, and held a session of three days. At the conclusion of the Conference, Chief Justice Taft, who presided, issued the following statement of the proceedings of the Conference and its resolutions, to be made public and to be circulated to the Supreme Justices, the Circuit Judges and the District Judges.

The judges of the Circuit Courts of Appeals in attendance were as follows:

First Circuit, George H. Bingham; 2nd Circuit, Martin T. Manton; 3rd Circuit, J. Warren Davis; 4th Circuit, Edmund Waddill, jr.; 5th Circuit, Richard W. Walker; 6th Circuit, Arthur C. Denison; 7th Circuit, Samuel Alschuler; 8th Circuit, Walter H. Sanborn; 9th Circuit, William B. Gilbert.

The time of the Conference was first occupied in going over reports from each circuit and the districts of each circuit to determine what the condition of the business was at the close of the fiscal year.

In that discussion the names of district judges who could be transferred from one circuit to another at different times during the year were furnished by the judges of circuits from which such judges could be taken without interference with the business of their own districts.

Much discussion was had with reference to the forms to be sent to the district judges for additional information to be received by the senior circuit judges for presentation to the conference next year, and new forms and instructions will be issued.

ATTORNEY GENERAL HEARD AT LENGTH.

The conference heard the Attorney General at length on the condition of business in the district courts and heard also suggestions from the Committee on Jurisprudence and Law Reform of the American Bar Association.

REMOVAL OF DEAD CASES FROM THE DISTRICT COURT DOCKETS.

At the Judicial Conference of Senior Circuit Judges held in October, 1924, the following suggestion was made to the United States district judges as a rule which they should adopt for the dispatch of business:

"In any case which might have been brought to trial, in which no action has been taken by the parties for one year, it shall be the duty of the clerk to mail notice to counsel of record and to the parties thereto, if their post office addresses are known, 30 days before the opening of the term of court following the first of January in each year. If such notice has been given and no action has been taken in the case in the meantime, an order of dismissal shall be entered as of course at the opening of such term of court."

This suggestion has been adopted in a great many districts and has resulted in the removal from the docket of many dead cases, which until their dismissal or removal gave the appearance of a congestion of business which the conditions did not justify and were misleading as to the necessity for additional judges or courts.

At the present Judicial Conference of 1927, the Attorney General has presented statistics which are of great interest in showing that efficient work may still be done in this matter.

From the reports of the clerks and district attorneys, there are tabulated for each District and for the District of Columbia, the criminal cases, the civil cases in which the United States is a party, and the private suits pending at the close of June 30, 1926, and the same classes of cases pending at the close of June 30, 1927, and the number of these classes of cases in which no action has been taken by the court or counsel for one year or more at the close of business June 30, 1927.

NUMBER OF INACTIVE CASES CALCULATED.

From this the Attorney General has had calculated the percentage of inactive United States cases as compared with the total of them, and the same percentage of inactive cases of all classes, including private civil cases, except bankruptcy.

He has had recapitulated these statistics by Circuits, and from his statement it appears that in the 1st Circuit the number of inactive United States cases is 36.37 per cent; in the 2nd Circuit, 56.88 per cent; in the 3rd Circuit, 51.32 per cent; in the 4th Circuit, 34.90 per cent; in the 5th Circuit, 39.12 per cent; in the 6th

Circuit, 27.07 per cent; in the 7th Circuit, 23.40 per cent; in the 8th Circuit, 33.88 per cent; in the 9th Circuit, 30.9 per cent, and in the District of Columbia, 23.80 per cent.

Or, averaging the total, 40.73 per cent of the United States cases now on the dockets have been inactive.

Eliminating bankruptcy, and including private civil suits, the percentage of inactive cases of all classes is, for the 1st Circuit, 43.51 per cent; for the 2nd Circuit, 44.46 per cent; for the 3rd Circuit 48.35 per cent; for the 4th Circuit 42.98 per cent; for the 5th Circuit, 30.10 per cent; for the 6th Circuit, 19.37 per cent; for the 7th Circuit, 22.17 per cent; for the 8th Circuit, 26.65 per cent; for the 9th Circuit, 23.55 per cent; and for the District of Columbia, 11.23 per cent, or an average total of 33.76 per cent.

It is quite possible that in this percentage of inactive cases shown are a number that due to the failure of the deficiency appropriation bill, or for other reasons, should not be dismissed and are really not dead cases, but it is not probable that such reasons apply in many of the cases in which no action has been taken whatever for a full year.

DISMISSAL OF YEAR-OLD INACTIVE CASES SUGGESTED.

It is thought wise, therefore, to renew and emphasize the suggestion of 1924 to the district judges that in every district and division in cases in which no action has been taken by the parties for one year, the clerk shall issue the notice to counsel of record 30 days before the opening of the term of court following the first of January in each year, and if such notice has been given and no action has been taken in any case in the meantime and no legitimate explanation made, an order of dismissal shall be entered as of course at the opening of such term of court.

In the form of requests for information made to district judges by the senior circuit judges, there should be included an inquiry to each district judge whether such general call of the docket of all pending cases coming within the Conference's suggestion of 1924 has been had in his district and its divisions, and what was the result in dismissals.

It is thought that while the suggestion of 1924 in this matter was followed by many district courts, it has not been followed by all, and that those which have neglected it should see that it is enforced.

RECOMMEND PREFERENCE BE GIVEN CRIMINAL CASES.

The Conference resolved that it would be helpful for each circuit court of appeals to adopt the plan now followed in the Supreme Court, of advancing, for the earliest hearing possible, all writs of error and habeas corpus cases involving the prosecution of crime, and, so far as the statutes permit, giving them preference over every other class of hearings.

STAY OF ISSUING MANDATE IN CIRCUIT COURTS OF APPEALS, PENDING PETITION FOR CERTIORARI.

The Conference suggests to the circuit courts of appeals that each shall adopt a rule providing that where a stay of the issuing of mandate is applied for to it, pending an application to the Supreme Court of the United States for a writ of certiorari seeking review of a decision of such court, the stay shall be for not more than 30 days and shall contain a provision that if within the 30 days there is filed with the clerk of the court the certificate of the clerk of the Supreme Court that the certiorari petition, record and brief have been filed and proof by affidavit of notice thereof under paragraph 3 of Rule 35, of the Supreme Court be given, the stay shall continue until the final disposition of the case by the Supreme Court. Immediately upon the filing of a copy of an order denying the writ applied for, the clerk of the circuit court of appeals shall issue the mandate.

CONSIDERATION SUGGESTED OF SUBJECT OF CLERKS' FEES.

The Conference recommends that there be provided for each circuit judge a law clerk, to be appointed by him, who shall receive a salary of not more than $3,000, and it recommends that the Attorney General seek to secure provision for the payment of the salaries of such law clerks through an appropriate item of the budget for the year.

FEES FOR CLERKS OF CIRCUIT COURTS OF APPEALS.

Since the present table of fees of the clerks of the circuit courts of appeals was fixed more than 30 years ago, some revisions may be desirable. The Conference respectfully suggests that the Supreme Court consider the subject, and indicate its willingness to receive recommendations on this subject from the members of the Conference.

The Conference further authorizes the Chief Justice, if at any time it seems necessary, to appoint a committee from this Conference to recommend legislation on this head.

DISTRIBUTION OF LAW BOOKS TO JUDGES.

The Conference, by resolution, desires to express to the Attorney General and his assistants its appreciation of the satisfactory manner in which the needs of the judges for law books have been met during the last year under the administration of the department, and its belief that the continuance of the present system and appropriations will fairly meet the reasonable wants of the judges for the current year.

INCREASE OF JUDGES.

At the Conference of last year, this body made recommendations of increases of district judgeships and one circuit judgeship as follows:

A special provision for the appointment of an additional judge in southern Iowa, to assist the judge now in office, who is disabled by bad health from doing his full work, with no succession to the office of the present judge.

Three new district judges to be provided for in the Southern District of New York, and one circuit judge in the Second Circuit.

A new district judge in the Eastern District of New York.

A new district judge in the Western District of New York, and one in the District of Connecticut.

A new district judge in the District of Maryland.

A new district judge in the Eastern District of Michigan.

A new district judge in the Western District of North Carolina, or the establishment of a third new district.

In addition to this the last Conference recommended that where two judges had died, one in the Eastern District of Pennsylvania, and the other one in the Northern District of California, provision be made for successors to those deceased judges, because under the legislation by which the offices were created there was no power given the President to appoint successors.

Congress at its last session provided for a judge in the Northern District of New York which the Conference did not recommend, but which it is glad to have had provided.

Congress followed during its last session all the foregoing recommendations, except that it failed to provide for a judge in the

Southern District of Iowa, to assist Judge Wade, the regular judge of that circuit, who is disabled, and failed to provide for another circuit judge in the Second Circuit, and for three district judges in the Southern District of New York, and one district judge in the Eastern District of New York.

The Conference renews its recommendation that provision be made for an additional district judge in the Southern District of Iowa. The business of the district is important and the necessity for supplying judges from other parts of the Circuit should not continue.

The Conference further earnestly urges that the additional circuit judge for the Second Circuit, the four district judges in New York—three in the Southern District, and one in the Eastern District, be provided.

In the last Conference report it set forth the need of these four district judges and the circuit judge. We earnestly urge the same reasons for this legislation as still existing and pressing.

We make one new recommendation, and that is that there be an additional circuit judge in the Sixth Circuit. The Circuit Courts of Appeals of all the circuits have kept up with their dockets, so that there has been no retardation of business in those courts, but the strain of the work of the judges to do the business is such that the Second and the Sixth Circuits additional force is very necessary.

CONDITION OF COURT BUSINESS REPORTED MORE SATISFACTORY.

The condition of business in the district courts of all the country is much more satisfactory than it was a year ago. In 1926, of the civil cases in which the United States was a party, there were commenced 17,504 cases, and there were terminated 17,236 cases. In 1927, there were 17,887 cases commenced, and there were terminated 19,952 cases, so that there were pending in 1926, 18,455 cases, and in 1927 they had been reduced to 16,443 cases.

Of the criminal cases, there were commenced 68,582 cases in 1926, and 64,614 in 1927. In 1926, there were terminated 76,536 cases. In 1927, there were terminated 67,279 cases. There were pending in 1926, 38,858 cases. That has been now reduced for 1927 to 35,386.

With the further and more rigid enforcement of the rule recommended for the annual call of the docket and the dismissal of all

cases in which without proper excuse no action has been taken for a year, we feel confident that the cases now pending can be reduced so as more clearly to show the real business on the docket.

The courts as now organized in the United States are able, we think, to take care of the business as it comes in, if they are given the additional judges in the Southern and Eastern Districts of New York and the Southern District of Iowa. There has been no opportunity fully to show the advantage which follows from the work of the judges created by the last Congress.

The language of the report made to this Conference by the veteran and distinguished senior circuit judge of the whole United States as to his, the Eighth Circuit, the largest circuit in the United States, with 13 States in its jurisdiction, fairly states the situation not only for that circuit but for the whole United States, with the qualifications already made as to New York City and Brooklyn.

Judge Sanborn says:

"The trials of criminal cases, especially of the prohibition and anti-narcotic cases, are occupying much less of the time of the judges than they were two or three years ago. In the Minnesota district 1,619 criminal cases were disposed of in the year ending June 30, 1924; in the year ending June 30, 1927, 690 criminal cases were disposed of and all but 33 without trials. During 1924 almost all the time of the district judges was occupied in trying criminal cases.

"The condition of the business throughout the circuit is far more satisfactory than it has been at any time within the last five years. The time of the judges is principally occupied in trying important civil cases. The criminal cases are rapidly disposed of, nearly as fast as they come in. Few criminal cases comparatively remain on the calendar from term to term.

"There remains yet a congestion of private civil cases, such as important equity cases, including especially patent cases; but if there is no serious change in the laws by Acts of Congress, the work in this circuit will in my opinion be promptly and speedily disposed of as it comes in."

WM. H. TAFT, *Chief Justice.*