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Survey of Recent Developments in Indiana Law

The staff of the *Indiana Law Review* is pleased to publish its third annual Survey of Recent Developments in Indiana Law. This survey covers the period from June 1, 1974, through May 31, 1975. It combines a scholarly and practical approach in emphasizing recent developments in Indiana case and statutory law. Selected federal statutory developments are also included. No attempt has been made to include all developments arising during the survey period or to analyze exhaustively those developments that are included.

I. Foreword: Justice of the Peace Reform: The Legislative Response

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In the foreword to last year's *Survey of Recent Developments in Indiana Law,* Mr. David Campbell discussed the need for reform in Indiana's system of courts of limited jurisdiction.[1] The members of the 99th General Assembly recently addressed that problem and offered as their solution what has come to be known as the County Court Law.[2] The law provides for county courts to serve sixty-two counties,[3] for small claims dockets to be created

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[1]Campbell, *Foreword: Indiana Justice of the Peace Courts—Problems and Alternatives for Reform, 1974 Survey of Indiana Law,* 8 IND. L. REV. 1 (1974) [hereinafter cited as *1974 Survey of Indiana Law*].

[2]IND. CODE §§ 33-10.5-1-1 to -8-6 (Burns Supp. 1975).

[3]*Id.* §§ 33-10.5-2-1(a), -2. Lake County receives three county courts, and two courts each are created in Delaware, Elkhart, LaPorte, Madison, and Vigo counties. The following counties have one county court: Bartholomew, Boone, Cass, Clark, Clinton, Dearborn, Decatur, DeKalb, Fayette, Floyd, Grant, Hamilton, Hancock, Hendricks, Henry, Howard, Huntington, Jackson, Jefferson, Johnson, Knox, Kosciusko, Lawrence, Marshall, Miami, Monroe, Montgomery, Morgan, Porter, Rush, Shelby, Tippecanoe, Wabash, and Wayne. Joint circuits were created in the counties of Clay-Putnam, Dubois-Martin,

in the circuit courts of twenty-five counties,[4] and for each of two counties to be served by a small claims and misdemeanor division of their unified superior court.[5] The remaining three Indiana counties were the subject of separate legislative action.[6]

For several years the question of reforming minor courts has generated considerable debate in Indiana. The various factions were widely divided in their philosophical views of how the "best system" should be organized.[7] The final result of the General Assembly's action is probably totally pleasing to no one who expended time and energy in the struggle for change, but the consensus of opinion seems to be that the final compromise solution is workable.

A. Legislative History

The session began with several alternative court reform pro-

Greene-Sullivan, Harrison-Crawford, Lagrange-Steuben, Ohio-Switzerland, Posey-Gibson, Randolph-Jay, Wells-Adams, White-Jasper, and Whitley-Noble.

[4]*Id.* §§ 33-4-1-4.1 *et seq.* The following counties are affected: Benton, Blackford, Brown, Carroll, Daviess, Fountain, Franklin, Fulton, Jennings, Newton, Orange, Owen, Parke, Perry, Pike, Pulaski, Ripley, Scott, Spencer, Starke, Tipton, Union, Vermillion, Warren, and Washington.

[5]*Id.* § 33-10.5-2-1(b). Small claims dockets are created in the unified superior court of Allen and St. Joseph Counties. Two additional judges are provided for each of these courts. *Id.* § 33-10.5-2-2.

[6]Marion County will be served by a modification of the current justice of the peace system. IND. CODE §§ 33-11.6-1-1 to -7 (Burns Supp. 1975). The present nonattorney justices are retained in office by means of a "grandfather clause;" however, the law provides that anyone who replaces them must be admitted to the practice of law in Indiana. *Id.* §§ 33-11.6-3-2, -3. The courts are given civil jurisdiction in cases where the claim is $1,500 or less, but they will have no criminal jurisdiction. *Id.* §§ 33-11.6-4-2, -3. All appeals will be by trial de novo to the circuit or superior courts. *Id.* § 33-11.6-4-14. A superior court is created in Warrick County and a small claims and misdemeanor division is established therein. *Id.* §§ 33-5-45.5-1, -14. The first judge for the court will be elected in November, 1976. *Id.* § 33-5-45.5-11. The terms of the justices of the peace in Warrick County are therefore extended until December 31, 1976. *Id.* § 33-5-45.5-24(a). Prior law had extended justice of the peace courts only until January 1, 1976. *Id.* § 33-11-21-2 (Burns 1975). A small claims division with a misdemeanor docket will be established in the Vanderburgh Superior Court. *Id.* §§ 33-5-43.1-1, -3 (Burns Supp. 1975). One or more judges will be appointed for that court. *Id.* § 33-5-43.1-2.

[7]During the legislative hearings on minor court reform, many members of the General Assembly expressed the viewpoint that the best alternative would be an upgrading of the present justice of the peace system. They reasoned that the present system of over four hundred courts provided geographical convenience and that nonattorney judges were capable of dispensing "common sense" justice regardless of the fact that most of the justices had undergone little or no legal training. For a discussion of the lack of legal training among justices see STAFF OF INDIANA JUDICIAL STUDY COMM'N, REPORT NO. 2—JUSTICE OF THE PEACE SYSTEM (1974). See *1974 Sur-*

posals being introduced for consideration. At opposite extremes were a bill simply to extend the present justice of the peace system[8] and another to create a statewide system of county courts.[9] The latter proposal was almost identical to one that had succeeded in winning Senate approval during both sessions of the 98th General Assembly,[10] but on each occasion it was subsequently defeated in the House.[11] In the middle ground were House and Senate proposals for creating a docket-commissioner system in the existing circuit courts.[12] The House proposal had been drafted by a joint interim study group. After certain amendments it was approved by the House Courts and Criminal Code Committee and passed on for action on the floor.[13] However, the bill was never handed down for second reading. Thereafter, the House initiated no other proposals for small claims court reform.

Meanwhile, the Senate's docket-commissioner proposal was stripped in committee, and the first draft of the legislation which would eventually become the County Court Law was inserted in its place. The bill was primarily a combination of the county court and docket-commissioner systems. The compromise bill passed the Senate.[14] The House amended it to provide that a non-attorney could serve as judge so long as that person could qualify for the office by passing a special examination to be administered

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vey of Indiana Law 7-11 (the merits of suggested alternatives to the justice of the peace system).

[8]Ind. H.R. 1046, 99th Gen. Assembly, 1st Sess. (1975). H.R. 1046 would have extended the offices of justice of the peace and all laws relating thereto until December 31, 1975. See *1974 Survey of Indiana Law* 3-7 for criticism of justice of the peace courts.

[9]Ind. S. 389, 99th Gen. Assembly, 1st Sess. (1975).

[10]Ind. S. 40, 98th Gen. Assembly, 1st Sess. (1973), 1973 IND. S. JOUR. 1183; Ind. H.R. 1065, 98th Gen. Assembly, 2d Sess. (1974), 1974 IND. S. JOUR. 694. Had either of these proposals passed, they would have created a system of independent county courts to hear small claims, traffic, and misdemeanor cases. Every county at least would have shared a county court.

[11]Ind. S. 40, 98th Gen. Assembly, 1st Sess. (1973), was referred to the House Courts and Criminal Code Committee and was never reported out for second reading. 1974 IND. H.R. JOUR. 985. Ind. H.R. 1065 (1974) was defeated when the House failed to concur in amendments added by the Senate. 1974 IND. H.R. JOUR. 570.

[12]Ind. S. 441, 99th Gen. Assembly, 1st Sess. (1975); Ind. H.R. 1264, 99th Gen. Assembly, 1st Sess. (1975). These proposals would not have created new independent courts, but would have established a small claims and misdemeanor docket for each existing circuit court. The circuit judge would have been empowered to hire a full or part-time employee to hear the cases filed on the docket.

[13]1975 IND. H.R. JOUR. 286. The committee report was adopted by the House, and this was the last action taken on H.R. 1246.

[14]1975 IND. S. JOUR. 445.

by the Indiana Supreme Court.[15] The Senate then dissented to the House amendments, and it was therefore necessary to appoint a conference committee.[16] Following a series of meetings, the Senate again passed the bill;[17] however, the bill failed in the House,[18] primarily because of objections to a provision which would have abolished all city courts as of December 31, 1975.[19] The bill was again sent to a conference committee,[20] which amended it to provide for the extension of all city courts until December 31, 1979.[21] The one exception to this provision was that city courts in second-class cities in Lake County would continue to exist until the General Assembly provided otherwise.[22] Both chambers passed the final draft of the bill in the closing days of the session,[23] and Governor Bowen subsequently signed it into law.

B. Jurisdiction and Procedure

As previously noted, the bulk of Indiana's counties will be served by independent county courts. The County Court Law provides for the creation of these courts and the method and form of their operation. The county courts are granted original and concurrent jurisdiction in civil cases founded on contract or tort where the amount in controversy does not exceed $3,000 and in possessory actions between landlord and tenant where the monthly rental payment does not exceed $500.[24] The county courts also have criminal jurisdiction where the minimum statutory penalty does not exceed one year of imprisonment, a $1,000 fine, or both.[25]

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[15]The nonattorney testing provision was ultimately retained in the final draft of the bill. IND. CODE § 33-10.5-4-1 (Burns Supp. 1975). After this amendment the bill was passed by the House. 1975 IND. H.R. JOUR. 863.

[16]1975 IND. S. JOUR. 866. The Senate conferees were Senator Benjamin of District 4 (Lake County) and Senator Edwards of District 28 (Hancock, Henry, and Madison Counties). 1975 IND. H.R. JOUR. 932. The House conferees were Representative Arnold of District 7 (LaPorte and St. Joseph Counties) and Representative Jones of District 43 (Marion County).

[17]1975 IND. S. JOUR. 919, 939.

[18]1975 IND. H.R. JOUR. 975.

[19]The floor debate of the Indiana House and Senate is not recorded, but the author was present during debate on the conference committee report and almost all arguments against adoption concerned the fact that city courts should be retained for one more term as a transition measure in case the county court system could not immediately handle all of the cases within its jurisdiction.

[20]1975 IND. H.R. JOUR. 1004. The conferees were the same as those listed in note 16 *supra*.

[21]Ind. Pub. L. No. 305, § 55(a) (May 5, 1975).

[22]*Id.* at § 55(b).

[23]1975 IND. S. JOUR. 996; 1975 IND. H.R. JOUR. 1017.

[24]IND. CODE § 33-10.5-3-1 (Burns Supp. 1975).

[25]*Id.*

The county court is specifically denied jurisdiction in matters involving divorce, paternity, probate, juveniles, partition of real estate, and appointment of receivers; but it may conduct preliminary hearings in felony cases.[26]

All causes filed in the county court will be assigned to one of three dockets: (1) A small claims docket for civil cases in which the amount claimed does not exceed $1,500, (2) a plenary docket for civil cases above $1,500 but not more than $3,000, and (3) a criminal docket for all traffic and misdemeanor cases.[27] Cases assigned to the small claims dockets will be subject to relaxed rules of procedure and evidence, which will hopefully allow a litigant to present his or her case without the assistance of legal counsel.[28] The filing fee on the small claims docket will be $10, and this amount will include the cost of service of process by registered mail. The plenary docket costs will be the same as the amount provided by statute for filing a civil claim in circuit court.[29]

In order to simplify and expedite the processing of cases involving violations of motor vehicle laws, the new act establishes a traffic violations bureau to operate in conjunction with each county court.[30] For the convenience of the arresting officer and the defendant, the law provides that such bureaus may be located in various places throughout the counties.[31] The majority of offenses will be administered by allowing an alleged offender to enter a guilty plea with the violations clerk and pay a predetermined amount of fine and costs.[32] Anyone who has been convicted of or pled guilty to another violation within the previous 12-month period will still be obligated to appear in court.[33] Likewise, a person charged with certain enumerated offenses, such as driving without a license, exceeding the speed limit by more

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[26] *Id.* § 33-10.5-3-2.

[27] *Id.* § 33-10.5-7-1.

[28] *Id.* § 33-10.5-7-2. *Id.* § 34-1-60-1 (Burns 1973) provides that corporations must appear by attorney in all cases. Public Law 305 section 51 mandates the Indiana Judicial Study Commission to prepare and publish model rules of small claims procedure by January 1, 1977. Section 51 further provides that these may be submitted to the Indiana Supreme Court for consideration and possible adoption as rules of court. The Judicial Study Commission had anticipated the need for these rules and has been at work on them since 1974. The first draft of the rules has now been completed, and copies were forwarded to the Supreme Court Rules Advisory Committee on October 27, 1975.

[29] IND. CODE § 33-10.5-8-5 (Burns Supp. 1975).

[30] *Id.* §§ 33-10.5-2-6 to -12.

[31] *Id.* § 33-10.5-2-4.

[32] *Id.* § 33-10.5-2-10.

[33] *Id.* § 33-10.5-2-8.

than fifteen miles per hour, or driving under the influence, will not be entitled to utilize the violations bureau procedures.[34]

One provision of the County Court law, which is foreign to present Indiana law, allows the use of six member juries in both civil and criminal cases in the county court.[35] The filing of a cause on the small claims docket will act as an automatic waiver of the plaintiff's right to trial by jury. The defendant may, however, still exercise his right to jury trial by making demand for such within 10 days following the service of process. The demand must be made by affidavit and accompanied by a $10 transfer fee. If the defendant properly demands a jury trial, the case will lose its status as a small claim and be reassigned to the plenary docket, where formal rules of procedure and evidence thereafter will apply.[36]

Prior to the County Court Law, all actions appealed from justice of the peace courts were tried de novo in the local circuit or superior court.[37] The County Court Law drastically changes that policy by providing that all appeals from the county courts will be handled in the same manner as an appeal from a circuit court.[38] This provision was the subject of considerable controversy throughout the legislative process, with the primary argument in favor of trials de novo being the fear that the appellate courts would be overwhelmed with additional cases. The proponents of direct appeal presented several compelling reasons for its adoption. First, many circuit and superior courts are already operating at near maximum capacity, and the additional appellate burden could prove overwhelming. Secondly, trials de novo are often pursued solely for the purpose of delay or to force a litigant to settle a suit rather than face the expensive prospect of a retrial in a court of general jurisdiction. Finally, at least in a county court where the judge is an attorney, it can be presumed that such person's legal expertise is equivalent to that of the local circuit or superior court judge; in such event a second trial would be a meaningless waste of the party's time and the taxpayers' money.

C. Nonattorneys as Judges

The County Court Law provides that a nonattorney is eligible to serve as judge of the county court provided that such person is able to pass a qualifying examination designed and administered

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[34] *Id.*

[35] *Id.* § 33-10.5-7-6.

[36] *Id.* § 33-10.5-7-5.

[37] *Id.* § 33-11-1-55 (Burns 1975). This entire article is repealed effective January 1, 1976, by Ind. Pub. L. No. 305, § 54(a) (May 5, 1975).

[38] IND. CODE § 33-10.5-7-10 (Burns Supp. 1975).

under the direction of the Indiana Supreme Court.[39] On August 1, 1975, the supreme court, sua sponte, issued a brief opinion in which the justices unanimously held the testing provision unconstitutional as a violation of separation of powers.[40] The court reasoned that article 4, section 7 of the Indiana Constitution gave it specific power to ensure the competence of those persons admitted to the practice of law in Indiana and that it "cannot in good conscience concede, as this Act in question does, that less legal ability and knowledge is required of a judge than of the lawyer practicing before the judge."[41] The court took notice of the fact that appeals from the county court would be taken directly to the Indiana Court of Appeals and that if a nonattorney were allowed to serve as judge, it would be reasonable to anticipate that numerous criminal convictions would be appealed on the grounds of unfair trial and denial of due process.[42] Since the unconstitutional provision was held to be severable, the remainder of the County Court Law was allowed to stand.[43]

D. Small Claims Dockets in Circuit and Superior Courts

The original county court bill, as drafted by the Indiana Judicial Study Commission in 1972, had provided for each county in the state at least to share a county court. However, many legislators felt that certain counties would not generate a sufficient number of cases to justify the expense of establishing such a court. It was determined that an acceptable alternative in those counties would be the creation of a small claims docket in the existing circuit court.[44] One judge would then hear the cases previously handled by the county's justice of the peace courts as well as those cases ordinarily filed in the circuit court. Allen and St. Joseph Counties had previously unified their trial court systems[45] and did not wish to fragment them again by creating an independent system of county courts. Therefore, a small claims division was created in the unified superior court of these two counties and two additional judges were authorized for each court.[46]

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[39]*Id.* § 33-10.5-4-1.

[40]*In re* Judicial Interpretation of 1975 Senate Enrolled Act. No. 441, 332 N.E.2d 97 (Ind. 1975). This opinion is similar in its reasoning to a recent California Supreme Court decision. Gordon v. Justice Court, 12 Cal. 3d 323, 525 P.2d 72, 115 Cal. Rptr. 632 (1974).

[41]332 N.E.2d at 98.

[42]*Id.*

[43]*Id.* at 98, 99.

[44]The affected counties are listed at note 4 *supra.*

[45]IND. CODE § 33-5-5.1-1 (Burns 1975) (Allen County Superior Court); *id.* § 33-5-40-1 (St. Joseph Superior Court).

[46]*See* note 5 *supra.*

The majority of problems which have arisen in interpreting the terms of the County Court Law stem from the fact that the law is a compromise of the county court and docket-commissioner systems. When these proposals were merged into a single bill, the language used was inadequate to specify which provisions relating to the county courts were also intended to apply to the circuit and superior court dockets. On September 19, 1975, the Indiana Supreme Court issued a second advisory opinion construing these ambiguous provisions of the new law.[47] In conjunction with the portion of the law that is clear on its face, the opinion will help effectuate the orderly and uniform implementation of the County Court Law.

The County Court Law specifically provides that a small claim in a circuit court will encompass any civil action for $3,000 or less.[48] The advisory opinion declared this same limit applicable to small claims filed in superior court dockets. However, the opinion did not resolve the inequality between plaintiffs in counties with different court systems. One should recall that to qualify as a small claim in the county court, the amount in controversy may be no more than $1,500 and that in counties which have a county court, no other court may have a small claims docket. A resident of a county without a county court, that is, a county in which a circuit or superior court small claims docket is created, will be able to litigate a $2,000 controversy as a small claim, while a resident of a county in which a county court is created may possess an identical claim and yet his only means of redress is to file the action on the regular docket of the county or circuit court. In order to remedy this unequal treatment of plaintiffs, there appears to be some sentiment among legislators to make the $1,500 limit on small claims uniform throughout the state.[49]

An important question answered by the advisory opinion involves the proper amount of court costs to be charged for cases filed on the small claims and misdemeanor dockets of the circuit and superior courts. The supreme court found that it was the obvious legislative intent that the costs made specifically applicable

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[47] *In re* Public Law No. 305 & Public Law No. 309 of the Indiana Acts of 1975, 334 N.E.2d 659 (Ind. 1975).

[48] IND. CODE §§ 33-4-1-4.1 to -88.2 (Burns Supp. 1975).

[49] On September 9, 1975, Chief Justice Givan called a meeting of various members of the General Assembly to discuss the content of the supreme court's forthcoming advisory opinion. Following that meeting the legislators asked the staff of the Indiana Judicial Study Commission to draft an amendment to the County Court Law to make the $1,500 small claims jurisdiction uniform throughout the state.

to the county courts "be applied in all courts exercising small claims and misdemeanor jurisdiction under Public Law No. 305."[50]

The court also addressed the question of the constitutionality of the use of six member juries. It first noted that a prior Indiana case had refused to uphold such a system,[51] but the court continued on to state that the United States Supreme Court has recently held that the use of six member juries does not violate the fourteenth amendment to the United States Constitution.[52] The court concluded that "[i]n view of the ruling of the Supreme Court of the United States and in view of the obvious legislative intent in this statute, we hold that the provision for a six member jury in the county courts is a constitutional provision."[53] While the section of the law concerning six member juries is specifically applicable only to the county courts,[54] the advisory opinion provides that circuit and superior courts which are exercising "county court functions" may adopt by local rule any provision which the law makes applicable to the county courts.[55] In addition to the use of six member juries, this option would include such matters as evening court sessions, change of venue from the county only upon the showing of good cause, and the establishment of a traffic violations bureau.[56]

E. Financing

The County Court Law was created to fill the gap which will result when the justice of the peace system ceases to exist on January 1, 1976.[57] More importantly, it was designed to cure many of the defects which had been noted in those courts.[58] The fee system, by which the majority of justices of the peace were compensated, has been replaced by a salary of $23,500 per year.[59] In addition,

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[50]334 N.E.2d at 663.

[51]Miller's Nat'l Ins. Co. v. American State Bank, 206 Ind. 511, 190 N.E. 433 (1934).

[52]Williams v. Florida, 399 U.S. 78 (1970).

[53]334 N.E.2d at 663.

[54]IND. CODE § 33-10.5-7-6 (Burns Supp. 1975).

[55]334 N.E.2d at 665, 667.

[56]IND. CODE § 33-10.5-2-4 (Burns Supp. 1975) (traffic violations bureau); *id.* § 33-10.5-7-3 (change of venue); *id.* § 33-10.5-8-1(c) (night sessions).

[57]IND. CODE § 33-11-21-2 (Burns 1975). The Indiana Constitution makes no provision for justice of the peace courts since the amendment of article 7, approved on November 3, 1970. IND. CONST. art. 7, § 20, provides, however, that justice of the peace courts are to remain in existence "unless and until such courts are abolished or altered or such laws repealed or amended by an act of the General Assembly . . . ." IND. CODE § 33-11-21-1 (Burns 1975) provides for the continued existence of the justice of the peace system until January 1, 1976. *See 1974 Survey of Indiana Law* 3 n.8.

[58]See *1974 Survey of Indiana Law* 3-7 for specific defects which have been noted in the justice of the peace system.

[59]IND. CODE § 33-10.5-5-2 (Burns Supp. 1975).

all county court judges will be eligible to participate in the Judges' Retirement System.[60] Some legislators believed that this level of compensation was excessive, at least in light of the original provision that a nonattorney could serve as judge. Others believed that the county court judges should receive a salary equal to that of circuit and superior court judges.[61] Those legislators holding the latter viewpoint argued that equal pay would attract more qualified applicants, keep them interested in the office for a longer period of time, and decrease the likelihood that the county court judge would be thought of as a second class judicial officer.

A further advantage of the new system will be the availability of adequate facilities and resources for the county courts. The law provides that the county shall furnish a suitable place for holding court and shall also provide adequate supplies and staff.[62] Justice of the peace courts often received minimal funding. This fact accounts for many courts being operated in the justice's own home.[63] There have been recent newspaper reports that at least one county is refusing to fund its new court;[64] however, the provisions of the bill providing for operating appropriations from the county council are clearly mandatory,[65] and in all probability this matter will soon be resolved.

It was often argued that since justice of the peace courts were self-supporting, any formalization of the system would result in an additional burden on local taxpayers. Research by the staff of the Indiana Judicial Study Commission resulted in a finding that during 1974 only one-sixth of the 352 justice of the peace courts for which figures were available actually produced revenues in excess of expenditures.[66] It would be impossible accurately to predict revenues from the county court system, but it is worthy of note that there is currently in operation a full-time county court in Hendricks County and a part-time court in Hancock County

[60] *Id.* § 33-10.5-8-3. *Id.* § 33-13-8-1 (Burns 1975) provides for the formation and operation of the Judges' Retirement System.

[61] There are three salaries for circuit and superior court judges and the total amount of a particular judge's salary is dependent upon the population and assessed valuation of the judge's home county. *Id.* §§ 33-13-12-6, -8 (Burns 1975). The three salaries are $31,500, $28,500 and $26,500. *Id.* § 33-13-12-8 (Burns Supp. 1975).

[62] *Id.* §§ 33-10.5-8-1, -3.

[63] STAFF OF INDIANA JUDICIAL STUDY COMM'N, REPORT NO. 2—JUSTICE OF THE PEACE SYSTEM 6 (1974).

[64] Lafayette Journal and Courier, Sept. 11, 1975, § B at 1.

[65] IND. CODE §§ 33-10.5-8-1 to -3 (Burns Supp. 1975).

[66] Unpublished research by the staff of the Indiana Judicial Study Commission shows that in 1974 the revenues of only fifty-six justice of the peace courts exceeded the amount of funds appropriated for their operation. Two hundred forty courts operated at a loss and thirty-six courts broke even.

and that both of these courts operate at a profit to their communities.[67] It should suffice to say that a court is capable of generating a certain amount of funds to offset its operating costs and that any further revenue generating requirement indicates a mistaken concept of the proper role of the judiciary.

F. Caseloads

Subsequent to the passage of the County Court Law, the major concern of the circuit court judges was that their courts would be inundated by the cases currently handled by the local justices of the peace and that serious caseload backlogs would therefore result.[68] The 99th General Assembly foresaw this eventuality. The House and Senate both passed Senate Bill 171, which would have allowed these judges to appoint a master commissioner to serve as a hearing officer in the circuit court.[69] Unfortunately, the bill was vetoed by Governor Bowen after the 1975 session had ended. Circuit court judges thus were left without any statutory authority to appoint an assistant. The supreme court remedied this situation in ruling that it would adopt an amendment to Indiana Trial Rule 53 which would authorize the appointment of a referee to assist the judge in performing "county court functions."[70] The court further held that since the State was paying a portion of the county court judge's salary, it should also pay the same percentage of the referee's compensation. The total amount to be paid to the referee will be determined by the appointing judge.[71]

The county court system will be capable of processing a high volume of cases in a relatively short amount of time. During the first five months of this year, the Hendricks County Court handled approximately 2,500 traffic and misdemeanor cases and 200

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[67]This conclusion is based on interviews conducted by the staff of the Indiana Judicial Study Commission with Judge Mowrer of the Hendricks County Court and Judge Gottschalk of the Hancock County Court.

[68]The circuit judges who were to administer the new dockets were so concerned about the number of cases that they invited Chief Justice Givan to discuss the problem with them. The meeting was held on June 6, 1975, at which time the judges requested that the supreme court take some action which would allow them to appoint a hearing officer to asist in handling small claims, misdemeanors, and traffic cases.

[69]1975 IND. S. JOUR. 879; 1975 IND. H.R. JOUR. 836.

[70]334 N.E.2d at 666.

[71]*Id.* The Indiana Code of Judicial Conduct provides that a referee is to be considered as a judge for the purpose of compliance with the Code and that part-time judges may not practice law in the court on which they serve. This provision may seriously limit the number of attorneys who are willing to serve as a referee, and because of it a circuit judge may find it necessary to look outside the county for qualified applicants.

civil claims.[72] In addition, that court also issued search and arrest warrants and set bond in felony cases pending transfer to the local circuit or superior court.[73] It can be anticipated that the number of small claims cases will increase as individuals realize the potential of the new court.[74] The fact that the county courts have civil jurisdiction of up to $3,000 may also relieve the pressure on many overburdened circuit and superior courts. At least in many of the small counties, the number of contract and tort cases in which the amount claimed is under $3,000 may approach 50 percent of the total filings.[75] Prior to the enactment of the County Court Law, the justice of the peace system was the only available forum for the adjudication of small claims, and the majority of these courts did not exercise civil jurisdiction.[76] Therefore, a litigant often was forced either to forego his claim or to choose the uneconomical and time-consuming option of filing in the circuit or superior court. The county court's capability for providing a convenient and inexpensive small claims forum thus will accomplish a great service for the citizens of Indiana.

G. Public Reception

The revised minor courts system has met with both praise and criticism since its adoption. The president of the Indiana State Bar Association, Gerald H. Ewbank, termed the legislation a "landmark for justice" and further stated that the county courts will be "people's courts" and "they can mean a higher quality of justice in matters which touch most of the public—the smaller civil actions, misdemeanors and traffic offenses."[77] Many county officials have voiced concern that the entire cost of the courts, with the exception of $18,000 of the judge's salary,[78] was placed di-

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[72]This statement is based on an interview conducted by the staff of the Indiana Judicial Study Commission with Judge Mowrer of the Hendricks County Court.

[73]IND. CODE §§ 33-5.5-2-4, -5(d) (Burns 1975).

[74]In an interview with the staff of the Indiana Judicial Study Commission, Judge Andrews of the Bloomington City Court stated that since the creation of a small claims docket in that court in 1972, the number of filings had increased from 206 the first year to approximately 800 in 1974.

[75]STAFF OF INDIANA JUDICIAL STUDY COMM'N, STUDY OF THE PROPOSED WARRICK COUNTY SUPERIOR COURT 1-2 (1975).

[76]STAFF OF INDIANA JUDICIAL STUDY COMM'N, REPORT NO. 2—JUSTICE OF THE PEACE SYSTEM 6 (1974); STAFF OF INDIANA JUDICIAL STUDY COMM'N, EXPLANATION AND FULL TEXT OF THE COUNTY COURT BILL 8 (1973).

[77]Press Release of the Indiana State Bar Association, May 12, 1975.

[78]IND. CODE § 33-10.5-5-2 (Burns Supp. 1975). The State also pays only a portion of other trial court judges' salaries. The amount of state payment is $22,000 per year regardless of the judge's annual salary. *See* note 61 *supra*.

rectly on the shoulders, or more appropriately the pocketbooks, of the counties.[79] The situation would appear to be most critical in the smaller counties. Many of the costs of operating a court are fixed expenses, and therefore the less populous counties will experience a relatively higher per capita burden. The inequality of the system is even more evident when one considers the fact that, even though located in the counties, these are in fact state courts with statewide jurisdiction.[80] Further, a recent study has shown that the amount of money expended by the state on judicial functions is equal to only three-tenths of 1 percent of the total state budget and that when court-generated revenues are subtracted from this amount, the figure is decreased to one-tenth of 1 percent.[81]

Regardless of the problems which the new system will face in implementation and operation, it is obviously a move in the right direction. Everyone involved in the area of court operation and legislation must remain mindful of the fact that upgrading the judiciary is a dynamic process and that changes for the betterment of the system must continue to keep pace with the needs of society. In this respect the County Court Law should be considered as the first step, rather than the final solution, in minor court reform. With this fact in mind, the legislation will be capable of accomplishing its major goal of creating a system for the efficient, expeditious, and inexpensive handling of small claims, traffic, and misdemeanor cases.

The individual counties must then pay the remainder of the salary. IND. CODE § 33-13-12-7 (Burns Supp. 1975).

[79]The author recently had the privilege of speaking to the annual meeting of the clerks of Indiana circuit courts, which was conducted in Nashville, Indiana, on September 10, 1975. The majority of the complaints voiced by the clerks concerned the problems of financing the new court system at the local level.

[80]IND. CONST. art. 7, § 1 provides that "[t]he judicial system of the State shall be vested in one Supreme Court, one Court of Appeals, Circuit Courts, and such other courts as the General Asembly may establish."

[81]These figures were compiled by the staff of the Indiana Judicial Study Commission as a portion of the financial statistics which will appear in the report of a study currently being conducted for the commission by the American Judicature Society. In addition to fiscal information, the report will include sections concerning the physical and administrative structure of the Indiana trial court system. The study is expected to be published before the end of 1975.