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supernumerary judges; and two Referees, who have one secretary each. The qualifications for the Referees is the same as for the legal assistants.²¹

Oklahoma decisions no longer show non-participation of justices; they show only justices concurring or dissenting. Although the Court has a record of non-participation, it is not reflected in the opinion.

In some jurisdictions, dissenting opinions may be discouraged. This is not true in Oklahoma. While some members of the Oklahoma Supreme Court prefer not to dissent without writing an opinion, if a justice is sufficiently aroused, he will write a dissenting opinion. There are some critics in this country who feel that dissents destroy the image of a supreme court as knowledgeable leaders in defining the law, and that the public may become confused and disillusioned when split decisions, with dissenting opinions are promulgated. But the Oklahoma Supreme Court does not stifle individual reasoning of its members, and recognizes the value of dissenting opinions toward future development of the law.

How are decisions arrived at by the Oklahoma Supreme Court? Is there a pre-set formula, such as examining past cases and precedents and meticulously working out a conclusion, like solving algebraic equation? Or do the members arrive at the decision first, and then work backwards? The answer is that there is no set formula. Each case is examined on its own merits. The guiding principle is the dispensing of justice.

James Dudley Williams

REMOVAL OF JUDGES IN OKLAHOMA: PRESENT METHODS AND THE PROPOSED COURT ON THE JUDICIARY

Under removal procedure in Oklahoma, justices of the Supreme Court are subject to removal *only* through the impeachment process and then *only* for "wilful neglect of duty, corruption in office, habitual drunkenness, incompetency, or any offense involving moral turpitude committed while in office".¹ The impeachment process begins in the House of Representatives when articles of impeachment are drafted by that body.² If articles of impeachment pass the House of Representatives, they go to the Senate, the body vested with authority to try the impeachment and return a conviction if two-thirds of the senators present concur.³

Judges of the Court of Criminal Appeals⁴ and trial court judges⁵ are

²¹ OKLA. CONST. ART. 7, § 9; 74 OKLA. STAT. § 278 (1961).

¹ OKLA. CONST. ART. VIII, § 1; 51 OKLA. STAT. § 51 (1961).

² OKLA. CONST. ART. VIII, § 3; 51 OKLA. STAT. § 56 (1961).

³ OKLA. CONST. ART. VIII, § 4; 51 OKLA. STAT. § 53 (1961).

⁴ *State v. Rowe*, 149 Okla. 240, 300 Pac. 727 (1931).

⁵ *Maben v. Rosser*, 24 Okla. 588, 103 Pac. 674 (1909).

not subject to impeachment. The methods of disciplining these judges are contained in Titles 22 and 51 of the Oklahoma Statutes. Under Title 22 a judge is subject to removal for "habitual or wilful neglect of duty, gross partiality in office, oppression in office, corruption in office, extortion or wilful overcharge of fees in office, wilful maladministration, habitual drunkenness, or failure to produce and account for all public funds or property in his hands at any settlement or inspection authorized by law".⁶ In an action brought under this statute to remove a county judge, a petition alleging "mental disease or derangement" was held to be "too general and indefinite" to constitute grounds for removal.⁷

These elective judges are also subject to removal for any acts of commission, omission, or neglect, even though committed during a term of office ending prior to that during which proceedings are brought.⁸ However, the Supreme Court of Oklahoma held this section to be inapplicable when the prior term expired before the effective date of this section.⁹ A grand jury indictment or an accusation by a board of county commissioners is the basis for removal action.¹⁰ The district judge to whom the accusation is delivered transmits it to the district attorney who causes a copy to be served upon the defendant.¹¹ The action is tried by a jury in the same manner as the trial of an indictment for a misdemeanor.¹²

Title 51 provides for ouster by action when initiated by the Attorney General, the Governor, or five or more reputable citizens. The Attorney General conducts an investigation when directed to do so by the Governor or when he receives verified, written notice from five or more reputable citizens.¹³ The Attorney General must bring an action for removal if this investigation reveals cause for such an action.¹⁴ Grounds for ouster by action are willful failure or neglect to diligently and faithfully perform any duty enjoined upon the judge, intoxication in any public place within the state, or commission of any act which is in violation of a penal statute involving moral turpitude.¹⁵ The Attorney General also has the power to bring an action on his own initiative when he has reason to believe that the penal statutes of Oklahoma are being openly and notoriously violated.¹⁶ The Supreme Court and the district courts have concurrent jurisdiction to hear ouster actions,¹⁷ and either party to the action is entitled to a jury trial.¹⁸

⁶ 22 OKLA. STAT. § 1181 (1961).

⁷ *Robberson v. Board of Commissioners of Noble County*, 109 Okla. 249, 235 Pac. 525 (1925).

⁸ 22 OKLA. STAT. § 1181.1 (1961).

⁹ *State v. Bailey*, 305 P.2d 548 (Okla. 1956).

¹⁰ 22 OKLA. STAT. § 1182 (1961); 22 OKLA. STAT. § 1194 (1961).

¹¹ 22 OKLA. STAT. 1184 (1961).

¹² 22 OKLA. STAT. § 1191 (1961).

¹³ 51 OKLA. STAT. § 94 (1961).

¹⁴ *Ibid.*

¹⁵ 51 OKLA. STAT. § 93 (1961).

¹⁶ 51 OKLA. STAT. § 102 (1961).

¹⁷ 51 OKLA. STAT. § 92 (1961). Probably the superior courts in counties where they exist have jurisdiction also, since they have concurrent jurisdiction with district courts.

¹⁸ 51 OKLA. STAT. § 103 (1961).

Does Oklahoma have effective methods for the removal of unfit judicial officers? Experience indicates that the effectiveness of the present methods is questionable. Impeachment of justices of the Supreme Court is cumbersome, expensive, and often political; ouster and removal of other judges has not proved satisfactory. For the most part, removal of these judges has been by defeat in an election at the end of a term. There is no express provision for the removal of justices and judges from office for mental or physical disabilities which prevent the proper performance of official duties. Nor is there a provision broad enough to cover conduct, not now enumerated, which brings discredit to the bench and bar.

The Twenty-ninth Legislature accepted the recommendations of the Legislative Council and the House of Delegates of the Oklahoma Bar Association and submitted to the people State Referendum Question 415, a proposal establishing additional methods for removing, disciplining, and retiring justices and judges. Unfortunately, this proposal was defeated in the general election by the silent vote.¹⁹ The Act establishing the proposed Court on the Judiciary would not rescind existing statutory or constitutional provisions for removal; it would merely supplement existing removal procedures. But what does this Act provide? Following is a discussion of the Act which would create the Court on the Judiciary.²⁰

Under the Act, the cause for *removal* from office is gross neglect of duty, corruption in office, habitual drunkenness, commission while in office of any offense involving moral turpitude, gross partiality in office, oppression in office, or *conduct tending to bring the judiciary into disrepute*. The cause for *compulsory retirement* from office, with or without compensation, is mental or physical disability preventing the proper performance of official duty or incompetence to perform the duties of the office.²¹

The Court of the Judiciary is divided into a trial division and appellate division. The trial division is composed of nine members. Eight members are the district judges in the state who are senior in service but under sixty years of age. The other member is chosen from active members of the Oklahoma Bar Association by the Executive Council of the Association or other body exercising similar power. The appellate division is composed of two members of the Supreme Court chosen by that court, one member of the Court of Criminal Appeals chosen by that court, one active member of the Oklahoma Bar Association chosen by its Executive Council or other body exercising similar powers, and the five district judges in the state who are senior in service but under sixty-five years of age. The Secretary of State determines the district judges who hold membership on each division. If any district judge is qualified for both

¹⁹ The Oklahoma Constitution provides that in a general election a majority of all votes cast must be received in favor of a proposal before passage is possible. Those persons not casting a vote either way (the silent vote), in effect, cast a vote against the proposal.

²⁰ The complete text of the Act establishing the Court on the Judiciary may be found in 33 OKLA. B.A.J. 1302 (1962).

²¹ 33 OKLA. B.A.J. 1302 (1962).

divisions, he serves on the appellate division and the next in qualification serves on the trial division. Members of the court so designated serve until March first of the odd-numbered year next after the year in which they are named. The attainment of the age limit specified does not terminate service during the term.²² In all proceedings the established rules for disqualification of judges for interest, prejudice, or partiality are applied, and no district judge sits in a matter in which the respondent is a judge of a court within his district court judicial district. Members of the Court on the Judiciary serve without compensation, but they do receive the allowance for expenses permitted district judges serving outside their districts.²³

Each division meets on call of its presiding judge or three of its members. A majority of the authorized membership of each division constitutes a quorum, regardless of existing vacancies. In the exercise of its jurisdiction, the Court on the Judiciary is vested with full judicial power and authority, including the power to summon witnesses to appear and testify under oath and to compel the production of books, papers, documents, records, and other evidential objects; to issue all manner of judicial and remedial process and writs both legal and equitable; to provide for discovery procedures in advance of trial; to make rules governing procedure; and to grant full immunity from prosecution or punishment when deemed necessary and proper in order to compel the giving of testimony under oath or the production of books, papers, documents, records, or other evidential objects.²⁴

The jurisdiction of the trial division is invoked by a petition filed by the Supreme Court or the Chief Justice thereof, by the Governor, by the Attorney General, by the Executive Secretary of the Oklahoma Bar Association when directed to do so by a vote of a majority of all members of the Executive Council, or by resolution of the House of Representatives. The prosecutor is designated by the presiding judge from a panel of five active members of the Oklahoma Bar Association submitted by the Executive Council. Pending the determination of the proceedings, the trial division in its discretion may suspend the respondent from the exercise of his office. After full hearing, the trial division renders such judgment as the facts justify. However, no judgment extends further than (1) removal of the respondent from office with or without disqualification to hold any public office of honor, trust, or profit under this state, or (2) compulsory retirement from office. Such a proceeding, regardless of result, is not a bar or prejudice to any other proceeding authorized by law.²⁵ From any judgment of the trial division, the respondent or the prosecutor may appeal to the appellate division. The review in the appellate division is an equity appeal as to both law and fact. The appellate division may affirm, modify, reverse, or enter a new judgment.²⁶ No other court has jurisdiction to restrict, control, or review the orders of the

²² *Ibid.*

²³ 33 OKLA. B.A.J. 1304 (1962).

²⁴ *Id.* at 1303.

²⁵ *Ibid.*

²⁶ 33 OKLA. B.A.J. 1304 (1962).