

KANSAS JUDICIAL COUNCIL BULLETIN

JULY, 1952

PART 2—TWENTY-SIXTH ANNUAL REPORT



SCHUYLER W. JACKSON

Please Help Us Keep Our Mailing List Up to Date

The JUDICIAL COUNCIL BULLETIN is published quarterly and mailed without charge to lawyers, courts, public officials, newspapers and libraries, who are or may be interested in our work. We are glad to add to our mailing list the name of any person who is interested in receiving the BULLETIN regularly. We will also send current numbers to persons making requests for them, and will furnish back numbers so far as available.

In order to save unnecessary printing expenses, we are constantly revising our mailing list, and are attempting to eliminate the names of persons who have died or moved out of the state or who have changed their addresses and are receiving the BULLETIN at the new address.

Please advise promptly if you have changed your address, giving the old address as well as the new. If you do not receive any current BULLETIN and wish to remain on the mailing list, please notify us to that effect. If you are receiving a BULLETIN addressed to some person who has died or moved away, please let us know and we will remove the name from the list.

Address all inquiries to: THE JUDICIAL COUNCIL, STATE HOUSE, TOPEKA, KAN.

TABLE OF CONTENTS

| | PAGE |
|---|----------------------|
| FOREWORD | 22 |
| NOTES ON LEGAL EDUCATION IN KANSAS | 23 |
| By SCHUYLER W. JACKSON, Dean of Washburn University Law School | |
| THE JUDGE PRO TEM IN KANSAS | 28 |
| By A. K. STAVELY, Judge of the 35th Judicial District | |
| AMENDMENTS TO TITLE STANDARDS | 39 |
| MEMBERS OF THE JUDICIAL COUNCIL | (Inside back cover) |
| FORMER MEMBERS OF THE JUDICIAL COUNCIL | (Inside back cover) |
| PLEASE HELP US KEEP OUR MAILING LIST UP TO DATE | (Inside front cover) |

FOREWORD

This month marks the twenty-fifth anniversary of the organization of the Judicial Council. The Council was created by chapter 187 of the Laws of 1927, which took effect on its publication in the statute book of that year. Its original members, appointed by Chief Justice William A. Johnston, were Justice W. W. Harvey of the Supreme Court, Judge Edward L. Fischer of Kansas City, Kan., Judge J. C. Ruppenthal of Russell, Charles L. Hunt of Concordia, Robert C. Foulston of Wichita, C. W. Burch of Salina, and Chester Stevens of Independence, together with Senator John W. Davis of Greensburg, chairman of the Senate judiciary committee, and Arthur C. Scates of Dodge City, chairman of the House judiciary committee, who became members ex officio. The Council commenced its duties immediately and made a comprehensive annual report for 1927, showing that a great deal of work was done during the first half year. The annual report was divided into a quarterly bulletin in 1932, which has been published regularly since that time.

In this issue we are glad to present an article by Schuyler W. Jackson, Dean of the Law School of Washburn University of Topeka. Mr. Jackson is a native Kansan, having been born in Eureka, Kan., on November 24, 1904. He received his college education at Washburn, where he received an A. B. degree in 1927, and at Harvard Law School, where he received his LL. B. degree in 1930. Mr. Jackson was admitted to the bar in 1930, and commenced practice with his father, the late Fred S. Jackson, former attorney general of Kansas, in the same year, with the firm of Smith & Jackson, which later became Smith, Hatcher & McFarland. He continued with this firm until 1939, when he entered the research department of the Supreme Court, and became Supreme Court reporter in 1942. He resigned from this position in 1947 to join the faculty of Washburn University, and became dean of the Law School in 1948. A portrait of Dean Jackson appears on the cover of this BULLETIN.

We also print in this BULLETIN an article by one of our new members, Judge A. K. Stavely of Lyndon, Kan., on the Kansas statutes relating to judges pro tem. At the request of the Council, Judge Stavely made a study of the laws on this subject, with a view to suggested improvements in the statutory procedure for selection of judges pro tem.

We also print in this BULLETIN the amendments to the title standards adopted by the Bar Association of the State of Kansas in 1951 and 1952, so as to bring up to date the complete set of title standards printed in the July, 1949, issue of the BULLETIN.

Notes on Legal Education in Kansas

By SCHUYLER W. JACKSON,
Dean of Washburn University Law School

In accepting the kind invitation to write a short article for the JUDICIAL COUNCIL BULLETIN on the Kansas requirements in legal education, it has seemed best first, to show the standards of today; secondly, to explain the proposal recently adopted by the Kansas State Bar Association; and lastly, to recount briefly how we "got this way."

At the present time, applicants for admission to the Bar must have a college degree and a degree from an accredited law school.¹ It is possible to attain both degrees in the equivalent of six years work through what is commonly called the combined degree plan. This plan is one in which all of the colleges and universities of the state, and some in other states, co-operate with the law school in accepting up to thirty semester hours of law credit toward the college degree. This first thirty hours of law is thus allowed to be used both toward the college degree and toward the law degree. Of course, a goodly percent of the applicants have for many years secured a college degree before entering law school. It might also be noted that although at the present time several other states and territories require as much as three years of college before entering law school, only Kansas, Connecticut, and Delaware seem to provide that the applicant must hold a college degree.

At the Kansas City meeting of the Kansas State Bar Association in May of this year, the report of the Committee on Legal Education and Admission to the Bar was approved by the general meeting of the Association. This report recommended to the Supreme Court the amendment of the rules of the Supreme Court and of the Board of Law Examiners to require the attainment of a college degree before entering law school. The report would give the student an option of entering law school without his college degree and transferring back to college a maximum of fifteen semester hours of law to complete the requirements for the college degree, but in that event, the student would be required to spend three years residence in law school after attaining his college degree. This alternate plan would allow the student to use half of the increased study time in law school instead of on purely college courses, if he so desired. There has been for many years much discussion as to the merits of plans which entail four years in college and three years in law school or three years in college and four years in law school. The proposal now adopted by the Bar Association would offer an option which would be half way between. It is my opinion that the success of either plan will often depend upon the individual student. I believe it wise and right to leave some discretion with the college senior and his advisors. It seems at present writing, that most of the better known law schools are inclined to stay with the four-year college and three-year law course. Neither Kansas University Law School nor Washburn Law School will have difficulty in offering sufficient curriculum for even a four-year law course.

1. Applicants under the archaic provisions as to reading law are not subject to the educational requirements. See *infra* as these provisions.

Since Dean F. J. Moreau and I have both been members of the Committee on Legal Education for a number of years, during which time this proposal has been considered, it would seem appropriate to attempt to explain my impression of the opinion of the committee thereon although Dean Moreau was our able chairman this year. I am certain all of the members of the committee in approving the proposed increase in educational requirements were interested only in attempting to improve the quality of the Bar, and in keeping Kansas in the forefront in legal education. I do not think that any of the members—certainly not Dean Moreau and I—were interested in limiting the number of law students.

A committee of investigation has reported to the Association of American Law Schools that there were 96,000 fewer students in the law schools of the country in the decade of 1940 to 1950 than between 1930 and 1940. Moreover, there were 26,000 fewer persons admitted to the Bar in the United States during the forties than during the thirties, this despite the fact that the population of the United States increased by 30,000,000 between 1930 and 1950. In view of the fact that the influx of the veterans into law school did not make up for the absence of law students during the years of the war, and that enrollment in the schools has practically again reached the pre-war level, or below, it would not seem that good lawyers were apt soon to become "a dime a dozen." At Washburn, while our enrollment is holding up well, we graduated 304 students between 1940 and 1950, compared to 385 between 1930 and 1940. Thus, we are in accord with the national trend. It will be noted that the above figures do not attempt to take into consideration the need for new lawyers to replace those lawyers which time has removed from the Bar. Nor would any one dispute the fact that the increased complexity of government since 1930 has increased the need for lawyers to a greater degree than would be true simply from the mere increase in the population of the country.

In a recent issue of the *American Bar Journal* appeared an article by Mr. Arch M. Cantrall, of the Bar of West Virginia, in which the average incomes of the legal profession and of the medical profession are compared. (*Economic Inventory of the Legal Profession*, 38 A. B. J. 196, Mch. 1952.) Mr. Cantrall finds that in 1929, the average incomes of lawyers and doctors were roughly about the same. However, in the twenty-one years between 1929 and 1949, the average physician's income increased 125 percent while the lawyer's income increased only forty-six percent. Mr. Cantrall seems to show that the increase in physicians' incomes was neither out of line with the general increase of other incomes, nor due to a decrease in the number of members of the profession. He comes to the conclusion that it is the lawyer that is out of line. In Mr. Cantrall's opinion, the reason for the failure of the lawyer to keep in line has been a lack of proper preparation to handle his job. Blame is put, in part, upon the education received in the average law school, and also on a failure of the members of the profession to keep abreast of the times after admission to the Bar.

We all know the lawyer is not noted for his good public relations. I should like to suggest as an additional reason for the poor showing of the lawyer in financial rewards, that the average layman in these twenty-one years has come to regard the physician as a highly-educated man, certainly a graduate of a rigorous course of study after first finishing college. He is a man to whom our citizens will go when ill, and if possible before becoming ill. As to the lawyer,

we still have people who call our law school inquiring about correspondence courses in law, and in legal aid bureaus and reference plans about eighty-five percent of the people who seek such service have never been to a lawyer before.

At any rate, there can be no question but that there is still room for an increase in the educational requirements for the Bar. Both the American Bar Association and the Association of American Law Schools have recently raised the minimum prelegal requirement to three years of college before law school. This will raise the requirements of all those states requiring graduation from an approved law school to an approximate equal basis with Kansas.

The only objection to the increase of the educational requirements at this time has been in connection with men who have had to enter service during the present emergency. It was the suggestion of the Legal Education committee that any new rule promulgated by the Supreme Court might well exempt from the new requirements all men who had been in college prior to the taking effect of the rule. Thus, the rule would actually go into effect immediately, and the number exempted therefrom would be fixed. This might avoid the situation which arose before when a similar rule was attempted to be put in operation.

The history of educational requirements for the Kansas Bar is quite interesting. A comprehensive discussion of the subject is to be found in an article by Mr. William M. Mills, Jr., of the Topeka Bar in the December, 1948, issue of the JUDICIAL COUNCIL BULLETIN.

Under chapter 14, Laws of 1859, there was no specified educational requirement. The statute read in part as follows:

"SEC. 2. Any white *male* citizen of the United States, who is actually an inhabitant of this Territory, and who satisfies any district court of this Territory, that he possesses the *requisite learning*, and that he is of good moral character, may, by such court, be permitted to practice in all district and inferior courts of this Territory, upon taking the usual oath of office." (Section 3 provided for admission before the Supreme Court upon motion. *Italics ours.*)

There were no women lawyers in those days.

Under the provisions of G. S. 1868, chapter 11, section 2, it became necessary that the applicant must have "read law for two years, the last of which must be in the office of a regularly practicing attorney, who shall certify that the said applicant is a person of good moral character, etc."

By the Laws of 1897, chapter 111, section 1, graduates of the School of Law of the University of Kansas were admitted to practice without examination. This diploma privilege in favor of graduates of the only law school then existing in the state lasted until the passage of Laws of 1903, chapter 64. This last statute as amended by Laws of 1905, chapter 67, contains the statutory provision for admission to the Bar at the present time. The statute as amended now appears as G. S. 1949, 7-102, and reads:

"Any citizen of the United States who has read law for three years in the office of a regularly practicing attorney, or who shall be a regular graduate of the law department of the University of Kansas or some other law school of equal requirements and reputation, and who satisfies the supreme court of this state that he possesses the requisite ability and learning and that he is of good moral character, may be admitted to practice in all the courts of this state upon taking the oath prescribed."

The 1905 statute had changed the time for reading law from two to three years. Perhaps, the most important part of the statute is that it gives to the Supreme Court, which probably had competence without the statute, the duty

of determining the requisite ability and learning which must be possessed by the applicant. From this time on, the changes in requirements appear in the rules of the Supreme Court and the Board of Law Examiners.

In 1903, it was provided in Supreme Court Rule 26:

"Where the applicant has not been admitted to practice in the highest court of any other state or territory, and is not a graduate of a law school, his petition shall state his general educational advantages exclusive of legal study, and where and for what time, with whom, or in what law school or under what supervision his legal studies have been pursued, and the works read in the course of such legal study." (66 Kan. xi.)

At the same time, Rule 4 of the Board of Examiners read:

"Educational Requirements. As a guide to the requirements of the preliminary examination, applicants are expected to have covered satisfactorily the following ground: Three years English, grammar, rhetoric, and literature; arithmetic, algebra, geometry; general history, Roman, English and American history; civil government; the elements of physical geography, botany, biology, political economy, and sociology." (66 Kan. xiv.)

It might be remarked that the Court and Board of Law Examiners of 1903 had not set their sights so very low. If the applicant actually could show himself proficient in the subjects above named he would not have a bad pre-legal education. Rule 5 of the Board of Law Examiners dealt with the legal education of the applicant and was first in accord with the above statute of 1903, and was amended in 1905 to conform to the amended statute requiring three years of reading law in an office if not a graduate of a law school.

The rules remained the same until July, 1917, when they were amended to require "an education substantially equivalent to that acquired in a standard four-year course of an accredited high school." (Supreme Court Rule 23, Board Rule iv, 100 Kan. xx, xxiii.) In 1921, the rules were changed to require in addition to the high-school education, that in June, 1924, and January, 1925, applicants should show one year of college and thereafter two years of college. Certain equivalents were recognized. (110 Kan. xvii, xix.) There was no change until June, 1932, when the rules were amended to require the applicant from and after June 1, 1936, to show the "equivalent of three years college." (134 Kan. xii, xv.) Though the rules were amended as to wording on certain occasions, the next material alteration came as of July, 1936, when the rules announced the first requirement for both a college and a law degree. The rule read:

"On and after July 1, 1940, the applicant shall show that he holds a degree issued by an accredited college indicating his satisfactory completion of a *full collegiate course* in the arts and sciences; and he shall also show that he holds a degree of bachelor of laws issued by an accredited law school. Whether the two requisite degrees shall have been earned by four years' study in the arts and sciences and three years' study in law or by three years in the arts and sciences and four years in law shall continue, as at present, to be the concern of the educational institutions which issue those degrees to the applicant, so long as their standards of educational excellence are satisfactory to the board of law examiners." (143 Kan. xxix.)

This rule would seem to have given the applicant the option of taking three years in college and four years in law school or vice versa as long as he had both degrees. Some members of the Bar would go back to this old rule, which never became operative. On July 8, 1938, in Supreme Court Rule 39, the Supreme Court seems to have redefined or retreated from the rule last above

quoted. The new rule appears in 147 Kan. xix, and provides for the combined degree as we know it today, and not for the equivalent of seven years of study divided four—three or three—four. The rule continues:

“(5) on and after July 1, 1943, the applicant must show that prior to the beginning of his study of law and the granting to him of the degree of bachelor of laws or a higher degree, he completed the required course of study for and received the degree of bachelor of arts or bachelor of science from an accredited college.”

The last part of the rule quoted would seem to adopt as a fixed policy the acquisition of the college degree before starting to law school. This provision never became operative because of World War II. As of September 15, 1942, Rule 39 of the Court was amended to read:

“Each applicant shall satisfy the board that he has completed a full standard high-school course in an accredited school, and that he has completed a full course of study in an accredited college of arts and sciences, and a full course of study in an accredited law school and that he has been granted and holds the degree of A. B. or B. S., or higher degree, and the degree of LL. B. or a higher degree.” (157 Kan. xxv.)

This is the rule which is in force at this time, and in view of the practice of all of the institutions of higher learning in Kansas, the rule allows the acquisition of both a college and law degree in six years of school work. If the proposal adopted by the Bar Association is approved and put into force by the Supreme Court, the applicant in the future will not be able to count thirty semester hours of law study toward his college degree, and also apply the same thirty hours towards his law degree. Thus, he will be required to complete the equivalent of seven years of work for his two degrees instead of a minimum of six years. It would approximately reach the goal for which the Supreme Court started out in 1936, but was deflected therefrom by the great war. Even under the present rule, Kansas is still pretty well in the forefront of educational requirements for admission to the Bar. As noted above, the action of the American Bar Association and the Association of American Law Schools in requiring three years college before admission to an accredited law school will have the effect of raising the standards in several states. It would seem that the advancement of the educational requirements at this time would be to the best interest of the future lawyers and of the public. I hold this opinion, knowing that my seventeen-year-old son, who is showing interest in the law, will probably have to serve his time in the armed services. I still want him to be educated for his profession as well as possible.

In conclusion something should be said concerning the provision still in the statute and Supreme Court Rules concerning the reading of law for three years in an office. As now regulated by the rules, it would appear almost impossible to pass the Bar in this manner. See the requirements set out in Rule 34 of the Supreme Court and Rule V of the Board of Law Examiners (169 Kan. xvi, xx). The Clerk of the Supreme Court advises that only one applicant has successfully passed the Bar under these rules since 1940, and this successful applicant was a long-time probate judge. There have been only nine applications filed under these rules since 1940, and none since July 5, 1949. It may be suggested that these provisions have no present utility. Judge J. C. Ruppenthal, of Russell, has urged the repeal of the statutory and rule authority for reading law. Should the requirements be raised by the Supreme Court as advocated by the Bar Association in its recommendation, the elimination of all mention of “reading law” is only logical and in keeping with modern times.

The Judge Pro Tem in Kansas

By A. K. STAVELY,
Judge of the 35th Judicial District

While it cannot be claimed that questions relating to the work of the judge pro tem constitute a major problem in the administration of the law, such questions have formed the principal issues in some thirty cases found in our reports. In addition, the reports contain many cases actually tried by a judge pro tem but in which no question was raised as to his authority; and of course many cases so tried have not been appealed. No statistics are available as to the total volume of business transacted by judges pro tem, but it is safe to say that at all times somewhere in the state a large amount of court work is being handled by someone other than the regular judge.

The subject of the judge pro tem applies to only a limited part of our judicial system. As to the Supreme Court, there is no constitutional nor statutory provision relating either to the disqualification of a member of that Court or authorizing the selection of a substitute for one of the justices. (*Aetna v. Travis*, 124 Kan. 350, 354; *Barber Co. v. Bank*, 123 Kan. 10, 14.) At the other end of the judicial scale, there are no judges pro tem for justices of the peace, the remedy in those courts being by a change of venue. Thus the law of judges pro tem in Kansas affects only the District, Probate, County, Magistrates' and City Courts. Passing the District Courts for the present, our statutes * relating to these other courts are fairly simple and adequate when examined with respect to a particular tribunal; but viewed as a whole there is such lack of uniformity that the over-all picture is confusing. For example, under the various statutes the selection of a substitute judge is to be made by the agreement of the parties, by appointment by the regular judge, by the Clerk of the District Court, by the County Commissioners, or by the Judge of the District Court.

Again, there is a wide variation in the required qualifications of the person appointed. Various statutes require the selection of "some qualified person," "some competent and disinterested person," or a person having the same qualifications as the superseded judge, or "a disinterested attorney regularly practicing in the county," or "some reputable practicing attorney of the county," or an attorney residing in a particular city, or "a member of the bar." It would seem that at least so far as the Probate and County Courts are concerned, the statutes ought to be made uniform.

Turning to the general subject of the judge pro tem, and particularly as it relates to the District Courts, it must be borne in mind that the over-all problem is the securing of some competent and impartial substitute for the regular judge when the latter cannot or ought not to serve. The occasions when this is necessary are plainly indicated by the statutes, and are generally well known. The proper methods of accomplishing this substitution, and the consequences attendant upon its accomplishment, are not so thoroughly understood. These

* Probate Courts, G. S. 1949, 59-203; County Courts, 20-818; Magistrates' Courts, 20-2512; City Courts: 1st and 2d Class, over 13,900, 20-1414; 2d Class, 9,000-13,900, 20-1437; 2d Class, over 10,000, 20-2429; Atchison, 20-1513; Coffeyville, 20-1628; Leavenworth, 20-1815; Topeka, 20-1921; Wichita, 20-2011; Kansas City, 20-2115.

matters do not often engage the attention of the lawyer, and a too hasty thumbing of the statutes is quite likely to result in increased confusion.

We have twelve sections of the statutes which relate to judges pro tem in the District Courts. Ten of these sections are to be found in chapter 20, and two of them in the Code of Civil Procedure (60-511; 60-3816). Especially do the sections in chapter 20 bear evidence of additions by frequent amendment made without careful consideration of the other sections. The result is too much repetition, too much unnecessary verbiage, and at the same time a failure to cover other matters which should have been included. In the interest of clarification and certainty, these sections ought to be redrafted to cover the subject adequately.

The Criminal Code makes no mention of a judge pro tem. It does provide for a change of venue if the judge is disqualified; but it does not indicate what is to be done if the judge is sick or absent. Evidently the judges pro tem who have tried many criminal cases in this state have been selected under the provisions of chapter 20, the language of which is permissive. On the other hand, the language of section 62-1317 providing for a change of venue when the regular judge is disqualified, is mandatory. Suppose the defendant in a criminal case insists upon a change of venue; can he be put off with a mere change of judges? Any doubt on that question should be put at rest by statute. It would seem that the danger to be guarded against—trial before a prejudiced judge—is sufficiently averted by provision of an unprejudiced judge, so that no change of venue ought to be necessary under such circumstances.

THE GROUNDS FOR SELECTING A JUDGE PRO TEM

The occasions which make proper the selection of a judge pro tem as provided by the statutes fall into two general classes: (1) Disability in fact, and (2) disability in law.

Disability in fact results from the absence or illness of the regular judge at the beginning of the term or during the term and before all cases pending at the commencement of the term have been reached for disposition. (20-305.) While it was once held that the death of the regular judge was not the equivalent of his absence (*State v. Roberts*, 130 Kan. 754, 756), that situation is now covered by section 20-309 which makes such death a ground for the selection of a judge pro tem.

One situation which has arisen in two or three cases refers to the interval between the acceptance of the resignation of the former judge and the qualification of his successor. This contingency is not expressly mentioned in the statutes and probably does not need to be. Usually appointments are not long delayed, and since a term of court is bound to open at the time fixed by law, irrespective of the absence of the judge (*State v. Hargis*, 84 Kan. 150, 155), a judge pro tem can be selected under section 20-305. Furthermore, a term having once opened, it continues until it expires by law or is adjourned sine die. (*Rld. v. Hand*, 7 Kan. 380, 387; *State v. Hargis*, 84 Kan. 150, 154-5.) Hence if the lapse occurs during the term, selection can be made under section 20-307 if it be thought that section 20-305 does not apply.

The other general situation which authorizes the selection of a judge pro tem is the disability in law of the regular judge, that is to say, his disqualifica-

tion. The statutes (20-305, 20-311, 60-511, 62-1317) mention as grounds of such disqualification the interest of the regular judge as a party or former counsel in the case or the subject matter thereof. Whenever one is called upon to act judicially, the common-law rule that no man shall be judge in his own case should be broadly and not narrowly applied in all cases; and the extension of this rule disqualifies a judge who has been of counsel for one of the parties. (*Tootle v. Berkley*, 60 Kan. 446, 448, 449.) Unfortunately not all trial judges have kept this salutary principle in mind.

In the matter of relationship, section 20-311 enumerates certain relationships to a party or an attorney in the case which will disqualify; but with all of its particularity it says nothing about cousins in any degree (*Thompson v. Barquette*, 170 Kan. 384, 391) nor about uncle and nephew. This section might well be rewritten to cover the whole subject of disqualifying relationships in broader terms.

In addition to interest in the case or the subject matter thereof, and relationship to a party or attorney, sections 20-305 and 60-511 add "disqualification for any other reason." One problem sometimes met is that of the trial judge as a witness in the case in question. It is a rule to be inflexibly adhered to, that the same person cannot be both witness and judge (*Ins. Co. v. McLeod*, 40 Kan. 54, 56), hence under the head of "any other reason" a judge is disqualified if he is a necessary witness to prove some material fact in the case. (*Gray v. Crockett*, 35 Kan. 66, 71.) But if the allegations as to which the judge is a witness be stricken from the pleadings, no issue remains on that subject and the disqualification vanishes. (*Bank v. Crow*, 126 Kan. 395, 399.)

The Criminal Code (62-1317) specifically mentions prejudice as a ground for disqualification, meaning thereby the prejudice of the judge toward a party and not that of a party toward the judge. (*State v. Grinstead*, 62 Kan. 593, 599.) At common law, prejudice did not disqualify a judge (*In re Peyton*, 12 Kan. 398, 407); and while our other statutes do not mention bias and prejudice, it clearly constitutes a disqualification for "other reason." However, belief in the guilt of a defendant does not amount to prejudice (*State v. Morrison*, 67 Kan. 144, 149; *State v. Cagi*, 105 Kan. 536, 537); nor do adverse rulings in the same or other trials. (*State v. Tawney*, 83 Kan. 603, 604; *State v. Bohan*, 19 Kan. 28, 52; *State v. Parmenter*, 70 Kan. 513, 516; *Sheldon v. Board of Education*, 134 Kan. 135, syl. 3.) The question of prejudice is one of fact to be determined by the judge in view of his own knowledge of the matter. (*Miller v. Kerr*, 94 Kan. 545, 547.) It is addressed largely to his conscience (*Oswego v. Condon*, 124 Kan. 823, 825; *Bank v. Grisham*, 105 Kan. 460, 473); and he is disqualified only when his mental attitude is such that he cannot try the case fairly and rule and instruct properly. (*State v. Cole*, 136 Kan. 381, 382.)

"Other reason" also includes a multitude of matters which are left to that sense of delicacy which ought to be characteristic of any judge. If for any reason the judge feels himself disqualified, he should step aside. (*Hedrick Appeals*, 155 Kan. 165, 184.) "Next in importance to the duty of rendering a righteous judgment is that of doing it in such a manner as to beget no suspicion of the fairness and integrity of the judge." (See *Tootle v. Berkley*, 60 Kan. 446, 448.) Thus conscientious judges often disqualify themselves for reasons much less substantial than the grounds expressly named in the statutes.

THE METHODS OF SELECTING THE JUDGE PRO TEM

Our statutes provide no less than five different methods of selecting a judge pro tem.

(1) *Election by the Bar.* This is the method mentioned in the Constitution (Article III, section 20) and doubtless must be retained. However, it has been held that this constitutional provision is only directory and neither denies, withholds nor limits power. (*Ry. v. Reynolds*, 8 Kan. 623, 630.) Other methods of selection are not precluded by it. (*Chandler v. Chandler*, 92 Kan. 355, 357-8.)

When the judge is absent at the beginning of the term or during the term, and before all cases at issue at the commencement of the term have been reached, or when the judge is disqualified, a judge pro tem may be selected by ballot of the members of the bar of the state present at an election held under the direction of the judge, or if he is absent, of the clerk. (20-306.) The time within which such election can be held is limited, and if the judge does not appear and no judge pro tem be elected within two days after the first day of the term, then court stands adjourned for the term. Until this time, the sheriff has power to keep the term alive by adjournment from day to day. (60-3816.) If the absence of the judge occurs during the term, the selection of a substitute is to be initiated by the written application of at least five members of the bar made before adjournment for the term. (20-307.)

Two matters may be noticed in connection with this method of selection. First, if the selection is for the purpose of holding a term of court or part of a term, it is proper that the bar generally should participate in the election; but if the selection is for the trial of a particular case because of the disqualification of the judge, it does not seem quite right that other lawyers, not concerned with the case, should participate in the election. Second, the statute makes no provision for adequate notice of the election. The bar as a whole has no right to vote, but only such part of it as happens to be present at the time of the election. The result is that those most vitally interested may never know of the election until after it is over. As the statute now stands, the election may be made an instrument of chicanery or even of horseplay. Some provision should be made by which reasonable notice of the holding of an election should be given to all the members of the bar of the county.

(2) *Agreement of the Parties.* A strange face upon the bench is usually somewhat disturbing to the litigants, if not to their counsel, for confidence in the integrity and ability of the trial judge enters somewhat into the trial of most cases. The right to a voice in the selection of arbitrators may contribute largely to the popularity of that vigorous competitor of the judicial process. Litigants and lawyers feel strongly that they should be accorded as much control over their cases as is consistent with the accomplishment of justice. Hence to this very day, in actual experience, we often find the parties agreeing upon a judge pro tem. In truth, however, there has been no statutory warrant for so doing for the past nineteen years, except in respect to the single situation indicated by section 20-311 as hereinafter mentioned.

The last sentence of our former statute (G. S. 1923, 20-306) provided that in any case the parties or their attorneys might agree upon a judge pro tem. This, it was held, was a proper method of selecting a substitute for the regular judge. (*Chandler v. Chandler*, 92 Kan. 355, 360; *McCleery v. Lum-*

ber Co., 140 Kan. 117, 121.) Laws 1933, chapter 168, section 1 amended that section by deleting the provision authorizing selection by agreement, and adding the present language to the effect that any member of the bar of this state or the judge of any other district might be selected as judge pro tem. Ever since this amendment, the parties have had no right to agree upon a judge pro tem, except as is provided in section 20-311. That section now provides that the judge is disqualified by relationship in certain degrees to a party or an attorney in the case. In such a situation, the parties are authorized to agree upon a substitute judge, or if they cannot agree, then the Chief Justice appoints some other district judge as is provided in section 20-311a.

Speaking of the amendment of 1933, Justice Harvey's dissenting opinion in the McCleery case comments that "perhaps wisely" the new statute took away the right to select the judge pro tem by agreement. There is merit in this observation, for it has happened that counsel have been inveigled into agreement when unknown to them some hidden tie existed between opposing counsel and the person agreed upon, sufficient to raise the suspicion that the latter was, in the language of the Tootle case, "not wholly free, disinterested, impartial and independent." If selection by agreement of the parties is wise, then it ought to be extended to all situations; but if not, then the single remaining instance of it should be eliminated.

(3) *Appointment by the Regular Judge.* This method, authorized by section 60-511, is another single instance. When the regular judge is disqualified, the court may change the place of trial to some other county on the application of either party. As an alternative to granting such change of venue, the judge may request some other district judge to attend and sit as judge. By granting such change of venue, the appointment of a judge pro tem might be avoided, but usually all concerned desire that the trial take place where the case is filed. But may the applicant for such change of venue stand upon his motion and refuse to accept a judge pro tem?

That part of section 60-511 relating to a change of venue when the judge is disqualified came into our law as Laws 1870, chapter 87, section 2, and its wording has remained intact to the present time. In *Ry. v. Reynolds*, 8 Kan. 623, it was held that the words "may . . . change the place of trial" mean that the court must do so (p. 627); that the statute grants a right to the parties and does not merely vest a discretion in the judge; and that if either party desires a change of venue he is entitled to it. (p. 630.) The later cases confirm this view. In 1888 it was held that the discretion is not left to the court or to the adverse party, but to the applicant, whether he will take a change of venue or proceed under a judge pro tem. (*Sumner Co. v. Twp.*, 39 Kan. 137, 143.) Again, in 1910, it was held that the granting of a change of venue was not a matter of discretion with the court, but of right to the parties applying for it. (*Jones v. Ins. Co.*, 83 Kan. 44, 49.)

In actual experience, the judge pro tem is often appointed by the disqualified judge, and the results seem satisfactory since such appointment usually gives effect to what the court and counsel have agreed upon, notwithstanding this procedure is without sanction in the statutes. It certainly does not conform to section 60-511 unless it is preceded by an application for a change of venue. That statute operates only when such application has been first made, while section 20-305 is vitalized by the mere fact of disqualification of the judge.

(*Ry. v. Reynolds*, 8 Kan. 623, 630.) Hence unless a change of venue is asked, section 60-511 cannot be invoked, and the judge must either call an election or certify his disqualification to the Supreme Court.

(4) *Appointment by the Chief Justice.* Section 20-311a applies to any situation where selection of a judge pro tem is necessary, provided there has been no election by the bar. Under the statute it is the duty of the Clerk of the District Court to certify the facts showing the necessity for a substitute to the Supreme Court. If the substitution is for the trial of a particular case because of the disqualification of the regular judge, then such certification may be made by an attorney of record in the case, but he must first serve notice on opposing counsel that a certificate has been made. When the certificate of the Clerk or of counsel is filed in the Supreme Court, the Chief Justice appoints some other district judge to serve.

Some criticism arises because of the uncertainty as to who will be appointed, and because the parties are deprived of any voice in the selection. This complaint is likely prompted by the supposed, but practically nonexistent, right to select by agreement. If the parties desire a voice in the matter it can always be had through an election by the bar, since section 20-311a has no application when the bar has elected a judge pro tem. Again, complaint is made of the time lost between the making of the certificate and the receipt of the order of appointment. However, such appointments are made with the greatest dispatch possible, even when much effort is required to find a district judge who can serve. The slight delay involved is not of great consequence. Whatever criticism may be directed against this method, it must be admitted that it does provide an adequate safeguard against both guile and folly.

(5) *Appointment by the Supreme Court.* Section 20-311c is a special remedy designed to provide for unusual circumstances. As such, it goes somewhat beyond the other statutes referred to herein. It provides that when proceedings in any case are retarded or unduly delayed by the illness or absence of the regular judge, or if the docket is extraordinarily heavy, the Supreme Court may direct any district judge of the state to attend and sit as judge of said court, with powers equal to those of the regular judge; which powers are to be exercised as an alternate for, or concurrently with, the regular judge.

Ordinarily, a judge pro tem is only a substitute for the regular incumbent and is never a duplicate judge selected to increase the judicial staff. (*In re Millington*, 24 Kan. 214, 224; *Keys v. Keys*, 83 Kan. 92, 95.) This distinction has lost some of its importance in view of the enactment of Laws 1923, chapter 121, section 1, which authorizes the judge pro tem to hold court at the same time the regular judge is holding court elsewhere in the same or another county of the district. (20-310.) It is clear that a judge assigned under section 20-311c is not a mere substitute but is an actual increase of the judicial staff.

The situation which this section is designed to meet is of so grave a nature and its consequences are so serious that responsibility for the determination of the necessity should be shared by the full court; but once that determination is made, the designation of the assigned judge should not need the consideration of the entire bench. In the interest of simplification, the appointing power in cases of this kind might well be lodged in the Chief Justice alone. It would also be helpful if the statute prescribed the details as to who can make the

application, when the hearing is to be held, and what notice thereof should be given.

Section 20-105 specifies the qualifications required of a district judge: He must be at least thirty years of age, have been regularly admitted, and for at least four years must have been engaged in active and continuous practice of law or in service as judge of a court of record. These qualifications must continue to the date of his election (*Hanson v. Cornell*, 136 Kan. 172, syl. 2); but a lawyer who could not run for the office of district judge may be selected as judge pro tem. Section 20-306 provides that any member of the bar of this state, or the judge of any other district court, may be selected, hence a lawyer under the age of thirty, or an older lawyer who has long since retired from practice, would be eligible as a judge pro tem.

Section 20-306 authorizing the selection of a member of the bar as judge pro tem applies only where the substitute judge is elected by the members of the bar, or in those cases where the parties may select by agreement. In all other cases, the person selected must be a district judge. Thus, if it is desired that a member of the bar serve as a judge pro tem, that result can be reached through an election or by such agreement. Doubtless there are many members of the bar who can serve quite acceptably in this capacity, but every lawyer who first undertakes the duties of a judge finds that he has much to learn. After all, there is substantial benefit to be gained by the selection of an experienced judge.

THE QUALIFICATION OF THE JUDGE PRO TEM

The person selected as judge pro tem, whether he is a member of the bar or the judge of another district, need not accept the office tendered to him, and his refusal to act amounts to his resignation. (*Berry v. Dewey*, 102 Kan. 392, 396.) The right to select is not exhausted by one choice, and a further selection can be made if necessary, as where a member of the bar chosen to hold a term of court has cases of his own for disposition at such term. (*Davis v. Wilson*, 11 Kan. 74.)

In every case, if the person selected accepts the position he must qualify by taking the oath required of the regular judge, which oath must be in writing and signed by him. The language of the oath should follow the provisions of section 54-106, and should indicate clearly the matters to which it is applicable. If the selection is for the trial of a particular case, the oath should cover the performance of duties in that case only, but if the selection is for the term, the terms of the oath should be of sufficient scope to include the general work of the court for that period.

In addition to the judicial oath, section 21-305 requires every officer of this state to take the loyalty oath. If the judge pro tem is judge of another district, he has already taken and filed such oath; but must he retake it? A member of the bar selected to act as judge pro tem may never have taken the loyalty oath, and he should do so in order to comply with the statute.

Failure of the judge pro tem to qualify as required by law is a defect which is not too serious. Public policy requires that the regularity of official acts be sustained so far as possible. For this reason, the rules relating to *de facto* officers have been applied to sustain the validity of the official acts of

judges pro tem. A judge pro tem who assumes to act as such is a *de facto* judge (*Parvin v. Johnson*, 110 Kan. 356, 357), and his failure to take the oath does not render his acts invalid. (*In re Hewes*, 62 Kan. 288, 290; *Chandler v. Chandler*, 92 Kan. 355, 360.) The *de facto* doctrine has been almost uniformly applied to sustain the selection of the judge pro tem and the validity of his acts in cases where his selection is irregular or his authority is challenged. From the practical standpoint, it is proper that the official acts of the judge pro tem be sustained by virtue of this rule, but a more satisfactory basis therefor would be strict conformity to the rules of law.

THE RECORD OF THE SELECTION

Another preliminary to actual service by the judge pro tem is the record of his selection which serves as the foundation of his authority. His oath and the proceedings leading up to his selection must be entered on the journal. (20-308.) In those cases where selection by agreement is permitted, such agreement should also be entered of record. (20-311.)

The Judicial Council is in receipt of some comment on the insufficiency of the record of selection made in certain litigation and suggesting the need of some uniform procedure. But it would seem that our statutes relating to the record are plain and adequate. The trouble is in securing compliance with them. The first task of every judge pro tem ought to be the careful examination of the record of his selection and the determination that such record meets the statutory requirements.

The record should show fully all the steps preliminary to the commencement of actual work by the judge. It should begin with a recital of the absence of the regular judge, or his announcement or decision of disqualification. If the selection is by election, the election proceedings should be stated; if by agreement, such agreement should appear in the record; if by appointment by the Chief Justice, the certification to the Supreme Court and the order made thereon should be spread of record; and finally, the judge's oath should be copied on the journal. The record so made imparts verity and cannot be overthrown by parol testimony. (*In re Watson*, 30 Kan. 753, 755.) In the absence of anything in the record to the contrary, all presumptions are in favor of the authority of the judge pro tem and the validity of his acts. (*Higby v. Ayres and Martin*, 14 Kan. 331, 337.) Thus it has been held that where the record is silent it will be presumed that the oath was taken. (*Ry. v. Preston*, 63 Kan. 819, 825.)

The record of the selection and qualification of the judge pro tem is to be interpreted liberally and without regard to technical defects such as failure to mention the trial judge as judge pro tem where the record shows that he was a member of the bar and he was recognized as judge by the parties and court officials. (*Wellington v. Twp.*, 46 Kan. 213, 216.) The principle that formal defects are cured by such recognition is also applied in *Hunter's Admr. v. Ferguson's Admr.*, 13 Kan. 462, where the record failed to show that the person selected was a member of the bar and was present at the time as was required by the law of Alabama where the original judgment was rendered.

THE COMPENSATION OF THE JUDGE PRO TEM

When a member of the bar is chosen to hold a term or part thereof, he is entitled to be paid by the county where the term is held the sum of \$10 per day for each day he actually holds court. (20-309.) Contrary to the common understanding, this section has no application to a judge pro tem who is selected only for the trial of a particular case on account of the disqualification of the regular judge. In such case it is held that his claim for payment is not a proper charge against the county treasury. (*McCleery v. Lumber Co.*, 140 Kan. 117, 123.) His only recourse is to look to the litigants for his compensation, and they may properly agree upon the amount thereof and that the same shall be taxed as costs. (*Ibid.*)

The judge of another district who serves as judge pro tem cannot charge the county either for compensation or expenses, except that where, under section 60-511, he is appointed by the regular judge in lieu of granting a change of venue, he is entitled to his necessary expenses from the county. The liability of the county in such cases may subject the disqualified judge to some undeserved criticism, and this sole instance where the county must pay the expenses of some judge from another district should be eliminated.

THE POWERS OF THE JUDGE PRO TEM

As heretofore stated, the judge pro tem is ordinarily only a substitute, yet as such he is as much judge of the court for the time being as is the regular judge. (*Higby v. Ayres and Martin*, 14 Kan. 331, 337.) The old notion that the court, being a single entity, cannot function in two different places at the same time, has been wisely disposed of by section 20-310. This section provides that it shall be lawful for the two judges, regular and pro tem, to hold court at the same time in the same or different counties of the district.

The extent of the authority of the judge pro tem depends largely upon the purpose for which he is chosen. Our statutes recognize a difference between the powers of a substitute elected to hold a term of court and one chosen to try a particular case. (*Chandler v. Chandler*, 92 Kan. 355, 360.) If selected to try a particular case because of the disqualification of the regular judge, his authority is not only limited to such case, but apparently also to only such phases thereof as are affected by such disqualification. (See *Hess v. Hess*, 114 Kan. 623, 625; *Price v. Gibson*, 165 Kan. 10.) These cases indicate that the power of the judge pro tem ends with the rendition of the judgment, and that the enforcement of the judgment, as well as all intermediate matters, are left to the regular judge unless his disqualification affects them. This partitioning of disqualification and responsibility may result in some obscurity as to the exact limits of the authority of the respective judges. Within these limits, however, the authority of a judge pro tem for the trial of a particular case extends to all matters involved as a part of the judgment to be rendered by him. (*Hentig v. Thomas*, 7 K. A. 115, 116.) Over the other business of the court he has no control, except that if the regular judge is not present or has not otherwise ordered, the judge pro tem may adjourn court to a later date for trial of other cases by the regular judge, and it is doubtful if the judge pro tem can end the term by an adjournment sine die. (*State v. Palmer*, 40 Kan. 474, 478.)

The powers of a judge pro tem elected to hold a term of court are considerably broader, and his authority cannot be limited by the terms of the motion calling for the election at which he is chosen. (*State v. Hargis*, 84 Kan. 150, 152.) His power extends to all matters properly before the court in any manner, although common courtesy will suggest reluctance to meddle with partly finished business such as questions under advisement, except in cases of extreme urgency. At the same time, the authority of the substitute chosen to hold a term of court is limited in ways not applicable to the judge pro tem selected for the trial of a particular case. Since he is only a substitute, he loses his power when the absent judge reappears and resumes his official duties. (*Keys v. Keys*, 83 Kan. 92, 95.) Again, being selected to hold a particular term, his right to act expires with such term (*State v. Hargis*, 84 Kan. 150, 153), and it does so end when the term expires by the beginning of a new term in another county of the district (*Cox v. State*, 30 Kan. 202, 204), unless the term is preserved by proper adjournment.

It is questionable whether the return of the absent judge or the end of the term should deprive the judge pro tem of the authority to complete the matters before him. That rule may result in leaving the determination of a motion for a new trial, or similar post-trial motions, to the regular judge or a new judge pro tem chosen for the next term, neither of whom would be familiar with the case. Certainly the judge pro tem who has conducted the trial is in a better position to deal with such matters than anyone else, and they ought to remain under his jurisdiction, at least if the parties so desire.

Whether selected to hold a term or to try a particular case, some attention should be given to the territorial limitations upon the authority of the judge pro tem. Judicial officers are required to exercise their authority within the territorial limits of their respective jurisdictions. (*Phillips v. Thralls*, 26 Kan. 780.) With this in mind, it was once argued that a district judge could not act as a judge pro tem of another district because of the constitutional provision (Article III, section 11) requiring judicial officers to reside in their respective districts. (*In re Hewes*, 62 Kan. 288, 289.) The decision does not answer this question, but the judge pro tem was sustained on the theory that he was a *de facto* judge.

More frequent is the related question as to the authority of the judge pro tem at chambers. All judicial business must be transacted in court except where otherwise expressly authorized. (*In re Barnhouse*, 60 Kan. 849, 851.) Only the court, and not the judge at chambers, can render any judgment or make any final order. (*State, ex rel. v. Stevens*, 40 Kan. 113, 117.) The question of dismissals, for example, is one which the judge pro tem often meets. A dismissal is a judicial act, a judgment which only the court can render (*Oberlander v. Confrey*, 38 Kan. 462, 464; *Allen v. Dodson*, 39 Kan. 220, 225), and the parties cannot by their consent confer authority upon a judge to render any judgment at chambers. (*Packard v. Packard*, 34 Kan. 53, 56.)

Section 20-302 provides that judges of district courts *in their respective districts* shall have and exercise such power in vacation or at chambers as may be provided by law. None of the various statutes defining the powers of district judges at chambers make any mention of authority granted to judges pro tem at chambers. Furthermore, section 20-309 in defining the powers of

judges pro tem uses the words "*while holding court.*" This language, it has been held, restricts the authority of the judge pro tem to such time as the court is actually in session. (*State v. Hargis*, 84 Kan. 150, 153.)

There being no statutory grant of power to a judge pro tem at chambers, his authority is limited to such time as he is actually holding court in the district where he is substituting; nevertheless, the judge pro tem is constantly solicited to perform at his chambers in his own district, judicial acts which relate to matters in the court where he has been the substitute. Clearly, if a judge pro tem has no "at chambers" powers in the district where he substitutes, he can have none at his chambers in his own district. A judge pro tem after his return to his home district "cannot transact any judicial business connected with the other district except as may be authorized by law; and he cannot at chambers, located within the territorial limits of his own district, transact any judicial business pertaining to causes pending in another district to which he may have been called." (33 C. J. 981, section 114.) The result is that the judge pro tem finds it necessary to make extra trips to the place where he is substituting, when, if permitted by statute, the business in hand could be as well done in his own chambers. Authority should be given to judges pro tem to hear and determine any matter and to transact any judicial business at any place which he and the parties may agree upon.

Although it may not be strictly within the scope of the present subject, the correlative problem of the relation of the regular judge to the case being tried by the judge pro tem may well receive some consideration. It has been said that the disqualification of a judge is not equivalent to a total want of jurisdiction. (*Hess v. Hess*, 114 Kan. 623, 625.) Although he may be disqualified in a particular case, it is the duty of the regular judge to see that the business of the court proceeds, and he may thus arrange for a new judge pro tem upon the resignation of the one first selected. (*Berry v. Dewey*, 102 Kan. 392, 395.)

Should it be necessary for the judge pro tem to attend for the purpose of making orders relative to routine matters preliminary to the trial, such as continuances when agreed upon, or setting a date for trial, or ordering additional jurors, and the like? In actual experience, with the consent of the parties these matters are often attended to by the regular judge, to the great convenience of all and with harmful results to none. Yet the regular judge may feel some reluctance to do so in view of the rule that having disqualified himself his judicial authority is in suspension. (*List v. Jockheck*, 59 Kan. 143, 150.) In one case, error was claimed because the disqualified judge, in an effort to be helpful, had ordered additional jurors to be drawn in the regular manner. (*State v. Hilbish*, 126 Kan. 282.) It was held that for want of timely objection the complaint was too late, but the propriety of the order by such disqualified judge was not decided.

Regardless of the grounds upon which the judge pro tem is selected, there is much that the regular judge can do in co-operation with his substitute to expedite the trial. The statutes ought to clothe him with this authority in such manner as to remove any doubt upon the subject, at least where the parties consent thereto.

Amendments to Title Standards

In the July, 1949, issue of the JUDICIAL COUNCIL BULLETIN, we published the standards for title opinions adopted by the Bar Association of the State of Kansas to and including May, 1949. No change was made in these title standards during the year 1950. In the year 1951 two of these title standards were amended at the annual meeting of the state bar association, and these amendments were published in the July, 1951, BULLETIN. In 1952, four additional title standards were adopted at the annual meeting of the association.

We are here reprinting the two amendments adopted in 1951 and printing the four new standards adopted in 1952, so that this issue of the JUDICIAL COUNCIL BULLETIN brings the title standards up to date. The July, 1949, BULLETIN and this issue contain all of the title standards adopted by the state bar association up to the present time.

(Amendments adopted in 1951)

I

That the recommendation under Title Standard No. 44 be amended to read as follows:

RECOMMENDATION: If the deed has been recorded for a sufficient length of time that the statute might have run against the mortgage or mortgages and if it can be shown that no claim has been made under such mortgage or mortgages and no payments of interest or principal made by the titleholders since the recording of the deed; *or if the mortgage is referred to or described in any instrument of record prior to the date provided in G. S. (1949) 67-332 and any amendments thereto*; then the title can be taken on such showing; otherwise, quiet title. (1944 Standards, XII.)

II

That Standard No. 38 be amended by the addition of a new recommendation, No. 38 (b):

QUESTION (new): House bill No. 492 (Chapter 346, Session Laws of 1951, effective July 1, 1951), specifies procedure in probate court to decree termination of life estates and joint tenancies. Shall Standard No. 38 be amended to specify procedure to be followed?

RECOMMENDATION: (b) Yes. Accept procedure under H. B. No. 492 as an alternative procedure to that provided in original Standard No. 38 (July, 1949).

(New Title Standards adopted in 1952.)

1. Conveyances:

Question: Do separate acknowledgements on a deed by husband and wife, raise a presumption of invalidity?

Answer: No.

2. Guardian ad litem:

Question: What requirement should be made in cases where a guardian *ad litem* is not appointed in the case of the sale of real estate by the guardian?

Answer: None, unless the guardian has an adverse interest in the real estate or the real estate is a homestead. (See 164 Kan. 179.)

3. *Abstracts:*

Question: Should abstracts which are in whole or in part handwritten be rejected merely because they are not typewritten?

Answer: Not unless the abstract is illegible or in such physical condition that careful examination is precluded.

4. *Minor's Interest in Real Estate:*

Question: An abstract shows a defective proceeding relating to the sale of a minor's interest in real estate. Subsequently, and before reaching majority, the minor joins with the other owners in the execution of a general warranty deed. Showing is made by affidavit that the minor was living and was mentally competent during and subsequent to the statutory time after reaching his majority, in which to disaffirm the deed. Should the title be passed?

Answer: Yes.



24-4073

MEMBERS OF THE JUDICIAL COUNCIL

| | |
|---|----------------|
| WALTER G. THIELE, <i>Chairman.</i> (1941-) | Lawrence |
| Justice of the Supreme Court. | |
| RANDAL C. HARVEY, <i>Secretary.</i> (1941-) | Topeka |
| JAMES E. TAYLOR. (1941-) | Sharon Springs |
| JOHN A. ETTLING. (1945-) | Kinsley |
| Chairman Senate Judiciary Committee. | |
| ROBERT H. COBEAN. (1947-) | Wellington |
| DALE M. BRYANT. (1947-1949, 1951-) | Wichita |
| Chairman House Judiciary Committee. | |
| A. K. STAVELY. (1951-) | Lyndon |
| Judge Thirty-fifth Judicial District. | |
| J. WILLARD HAYNES. (1951-) | Kansas City |
| FRANKLIN B. HETTINGER. (1952-) | Hutchinson |
| Judge Fortieth Judicial District. | |

FORMER MEMBERS OF THE JUDICIAL COUNCIL

| | |
|---|---------------|
| W. W. HARVEY. (<i>Chairman</i> , 1927-1941) | Ashland |
| J. C. RUPPENTHAL. (<i>Secretary</i> , 1927-1941) | Russell |
| EDWARD L. FISCHER. (1927-1943) | Kansas City |
| ROBERT C. FOULSTON. (1927-1943) | Wichita |
| CHARLES L. HUNT. (1927-1941) | Concordia |
| CHESTER STEVENS. (1927-1941) | Independence |
| JOHN W. DAVIS. (1927-1933) | Greensburg |
| C. W. BURCH. (1927-1931) | Salina |
| ARTHUR C. SCATES. (1927-1929) | Dodge City |
| WALTER PLEASANT. (1929-1931) | Ottawa |
| ROSCOE H. WILSON. (1931-1933) | Jetmore |
| GEORGE AUSTIN BROWN. (1931-1933) | Wichita |
| RAY H. BEALS. (1933-1938) | St. John |
| HAL E. HARLAN. (1933-1935) | Manhattan |
| SCHUYLER C. BLOSS. (1933-1935) | Winfield |
| E. H. REES. (1935-1937) | Emporia |
| O. P. MAY. (1935-1937) | Atchison |
| KIRKE W. DALE. (1937-1941) | Arkansas City |
| HARRY W. FISHER. (1937-1939) | Fort Scott |
| EDGAR C. BENNETT. (1938-1951) | Marysville |
| GEORGE TEMPLAR. (1939-1941, 1943-1947) | Arkansas City |
| SAMUEL E. BARTLETT. (1941-1951) | Wichita |
| PAUL R. WUNSCH. (1941-1943) | Kingman |
| WALTER F. JONES. (1941-1945) | Hutchinson |
| GROVER PIERPONT. (1943-1944) | Wichita |
| I. M. PLATT. (1943-1945) | Junction City |
| C. A. SPENCER. (1944-1951) | Oakley |
| CHARLES VANCE. ⁹ (1945-1947) | Liberal |
| RICHARD L. BECKER. (1949-1951) | Coffeyville |
| W. D. VANCE. (1951-1952) | Belleville |

KANSAS JUDICIAL COUNCIL
STATE HOUSE
TOPEKA, KANSAS
RETURN POSTAGE GUARANTEED

Sec. 34.66, P. L. & R.
U. S. POSTAGE

PAID

Topeka, Kansas
Permit No. 421

PRINTED BY
FERD VOILAND, JR., STATE PRINTER
TOPEKA, KANSAS
1952



24-4073