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Harry O. Lawson

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## Colorado's New Court System

# COLORADO'S NEW COURT SYSTEM

BY HARRY O. LAWSON\*

## I. INTRODUCTION

Amendment No. 1, adopted at the 1962 general election, repealed and replaced Article VI of the Colorado Constitution, providing for the state's judicial system. In addition, Amendment No. 1 repealed Article XIV, Section 11 of the constitution, which provided for justices of the peace and constables as constitutional officers. Most provisions of the new judicial article take effect on the second Tuesday in January, 1965. Consequently, it was necessary for the general assembly to pass implementing and corrective legislation during the 1964 session, no action having been taken during the 1963 session.

The legislation adopted during the 1964 session was drafted as the culmination of several months of study made by the Legislative Council Committee on Amendment No. 1, comprised of the members of the standing judiciary committees of both houses. Senator Carl Fulghum, chairman of the Senate Judiciary Committee, served as chairman,<sup>1</sup> and Representative William Myrick, chairman of the House Judiciary Committee, served as vice chairman. This committee was assisted by an advisory committee composed primarily of members of the bench and bar. During its deliberations, it held some 19 meetings, including 10 regional hearings.

The new judicial article and the implementing legislation provides Colorado with a significantly altered judicial system, as will be explained in the following sections.

## II. NEW JUDICIAL ARTICLE PROVISIONS

### A. Court Structure

The new judicial article provides that the judicial power of the state shall be vested in a supreme court, district courts, a probate court in the City and County of Denver, a juvenile court in the City and County of Denver, county courts, and such other courts or judicial officers with jurisdiction inferior to the supreme court as the general assembly may establish.

The supreme court, district courts, and county courts are retained from the previous article. Justice of the peace courts are eliminated as constitutional courts; the Denver juvenile court is given constitutional status; and the Denver probate court is created as a constitutional court. (The authority of the general assembly to establish other courts inferior to the supreme court was also contained in the previous judicial article.)

### B. Original Jurisdiction

1. *District Court.*—The district court continues to be the trial court of general jurisdiction, with probate matters expressly in-

\* Staff Director, Governor's Local Affairs Study Commission.

<sup>1</sup> Senator Fulghum also chaired the Legislative Council Administration of Justice Committee, which drew up Amendment No. 1.

cluded within the court's jurisdiction, except in the City and County of Denver where the Denver probate court is given this jurisdiction. The Denver juvenile court is given exclusive jurisdiction over juvenile matters within the city and county, and the probate court is given exclusive jurisdiction over mental cases within the city and county. In the rest of the state, juvenile and mental health jurisdiction would be in the district court under its general jurisdictional authority, unless the general assembly were to place this jurisdiction in the county court or in a new statutory court. Such jurisdiction could not be given exclusively to another court by the general assembly, however, but would have to be concurrent with the district court.

2. *County Court.*—The general assembly is given the authority to prescribe the jurisdiction of the county court within certain limits established by the new judicial article. County courts are barred from jurisdiction over felonies and civil cases in which the boundaries or title to real property are in question. The general assembly is also given the authority to provide simplified procedures in county court for claims not exceeding \$500 and for the trial of misdemeanors.

### C. *Appellate Jurisdiction*

The new judicial article provides that the supreme court shall continue to be the highest state court of review. The right of appellate review by the supreme court of final judgments of the district courts and the Denver probate and juvenile courts is also provided in the new judicial article. The general assembly is given the authority to establish the appellate jurisdiction of the district and county courts.

### D. *Other Provisions*

1. *Supreme Court.*—The qualifications for supreme court justices have been changed to provide that a person shall have been licensed to practice law in this state for five years at the time of his election or selection. The previous requirement was that such person be learned in the law. The administrative authority of the supreme court over other state courts and the supreme court's rule making power are clarified in the new judicial article. The supreme court is also authorized to select a chief justice by court rule. Under the old judicial article, the position was a rotating one; the justice with the fewest years to serve in a regular term became chief justice for a 12-month period. The number of members of the supreme court may be increased from seven to nine upon request of the supreme court and approval by two-thirds of the members of each house of the general assembly. Generally, in other respects the provisions of the new and old judicial articles concerning the supreme court are similar.

2. *District Court.*—The eligibility requirements for district judges were also changed in the same way as for supreme court justices. Generally, the provisions of the old judicial article pertaining to judicial district boundaries and increases and decreases in the number of district judges were retained in the new judicial

article. These changes require a two-thirds vote of each house of the general assembly.<sup>2</sup> There were a few significant amendments and additions, however. Under the new judicial article, a district judge still may not have his office abolished during the term for which he was elected or appointed, but he may be required to serve in a judicial district other than his own, as long as such district encompasses his county of residence. Further, district court terms are to be established by court rule rather than statute, and separate divisions of the district court may also be established by court rule in the absence of statutory provision for court divisions.

3. *County Court*.—The general assembly is authorized to establish the qualifications for the office of county judge and the number of county judges in each county. Under the old judicial article, each county was allowed only one county judge, but an exception is made in the new judicial article for the City and County of Denver. It provides that the number, manner of selection, and term of office of the judges of the Denver county court shall be provided in Denver's charter and ordinances.

4. *Judicial Selection*.—Supreme court justices, district judges and county judges (Denver excepted) will continue to be elected under the new judicial article in the same way and for the same terms as they have in the past.<sup>3</sup> Judges of the Denver juvenile and probate courts must meet the same qualifications and shall be elected for the same terms as district judges.

The previous judicial article required that all district judges be elected at the same general election, with a similar provision applying to county judges. When a vacancy occurred under the old judicial article, the person appointed to fill the vacancy (or his successor) ran for election at the next general election for the remainder of the unexpired term. Under the new judicial article, the requirement that all judges of the same court be elected for full terms at the same time has been eliminated. The removal of this restriction makes it possible to elect for full terms in 1964 those additional district judges required to implement the new judicial article. The vacancy provisions have also been altered. Judges elected to fill future vacancies shall serve a full term rather than the remainder of the unexpired term. The net effect of these changes will be staggered terms of office, assuring continuity on the court and a reduction of the number of judicial positions appearing on the ballot at any one general election in multi-judge districts and counties.

### III. LEGISLATIVE IMPLEMENTATION

During the 1964 legislative session, the general assembly adopted twelve measures which implemented the new judicial article.

<sup>2</sup> Under the old judicial article, however, district boundaries could be altered by a majority vote of the general assembly as long as no new judgeships or districts were created. See *In re Senate Resolution No. 9*, 54 Colo. 429, 131 Pac. 257 (1913).

<sup>3</sup> The term for a supreme court justice is ten years, a district court judge six years, and a county court judge four years.

1. Senate Bill 1 dealt with the appointment and salary of probation officers and detention facilities for children.<sup>4</sup>

2. Senate Bill 2 established a juvenile court in the City and County of Denver.<sup>5</sup>

3. Senate Bill 3 established a probate court in the City and County of Denver.<sup>6</sup>

4. Senate Bill 4 provided for appeals from municipal and police courts.<sup>7</sup>

5. Senate Bill 5 provided for the jurisdiction of superior courts.<sup>8</sup>

6. Senate Bill 6 dealt with jurisdiction for forcible entry and detainer cases.<sup>9</sup>

7. Senate Bill 15, one of the two major reorganization bills, established the new county court, including number of judges, jurisdiction, and related matters.<sup>10</sup>

8. Senate Bill 19, the second of the two reorganization reform bills, established judicial district boundaries and the number of district judges.<sup>11</sup>

9. Senate Bills 27 and 28 eliminated references to justice of the peace courts and corrected references to district and county courts throughout Colorado statutes consistent with the implementing legislation.<sup>12</sup>

10. Senate Bill 20 increased certain docket fees.<sup>13</sup>

11. House Bill 1101 transferred Elbert county from the 4th judicial district to the 18th district. Under Senate Bill 19, Elbert County was retained in the 4th district.<sup>14</sup>

Following is a brief summary of the statutory provisions implementing the new judicial article.

<sup>4</sup> Colo. Sess. Laws 1964, ch. 37.

<sup>5</sup> Colo. Sess. Laws 1964, ch. 46.

<sup>6</sup> Colo. Sess. Laws 1964, ch. 47.

<sup>7</sup> Colo. Sess. Laws 1964, ch. 100.

<sup>8</sup> Colo. Sess. Laws 1964, ch. 41.

<sup>9</sup> Colo. Sess. Laws 1964, ch. 53.

<sup>10</sup> Colo. Sess. Laws 1964, ch. 45.

<sup>11</sup> Colo. Sess. Laws 1964, ch. 42.

<sup>12</sup> Colo. Sess. Laws 1964, chs. 39 and 40.

<sup>13</sup> Colo. Sess. Laws 1964, ch. 52.

<sup>14</sup> Colo. Sess. Laws 1964, ch. 43.

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### A. COUNTY COURT

1. *Jurisdiction.*—The new county court will have concurrent original jurisdiction with the district court in civil actions (including torts) in which the debt, damage, or the value of the personal property claimed does not exceed \$500, except when such cases involve the boundary or title to real property. The county court will also have concurrent original jurisdiction with the district court in petitions for change of name, the issuance of corrected or delayed birth certificates, and in cases of forcible entry, forcible detainer, or unlawful detainer, if the value of the monthly rental or the total damages claimed is less than \$500.

The county courts will have concurrent jurisdiction with the district court in all misdemeanors and in the issuance of restraining orders affecting breaches of the peace and will also have jurisdiction in preliminary hearings and bindovers in felony cases, including the issuance of warrants.

2. *Referees.*—All other jurisdiction (including domestic relations, mental health, and juvenile cases) will be placed in the district court, except that district judges, in their discretion, may appoint county judges as referees in juvenile and mental health matters. County judges who serve as referees in juvenile and mental health cases will not receive additional compensation for this service, but any expenses incurred will be reimbursed by the district court. County judges who are designated as referees in other matters, however, will be entitled to the same compensation as the district judge might award any nonjudicial referee so appointed.

3. *Simplified Procedure.*—All civil cases brought in the county court will be tried under simplified civil procedure, as provided in Senate Bill 15. Parties to actions under simplified procedure may appear and act personally or may be represented by an attorney; provided that in claims involving accounts receivable or negotiable interests, parties to actions may be represented by an agent, except as limited by Colo. Rev. Stat. § 28-1-17 (1953).<sup>15</sup> Simplified criminal procedure (also provided by Senate Bill 15) will apply as to the means by which alleged offenders are brought before the county court. The trial and the disposition of criminal matters in the county court will follow the Colorado Rules of Criminal Procedure.

4. *Number of Judges.*—Except for the following exceptions there will be one county judge in each county. The number of county judges for Denver will be determined by charter and ordinances. Adams and Jefferson counties will each have three county judges; and Arapahoe, Boulder, El Paso, and Weld counties will have two judges each.

Also under Senate Bill 15, the offices of associate county judge and assistant county judge were created. Both offices will be elective, the judges being elected in the same manner, at the same time,

<sup>15</sup> COLO. REV. STAT. § 28-1-27 (1953) provides that "it shall be a violation of this article for anyone engaged in the collection business to appear before any court in towns or cities of 100,000 population or more unless represented by a licensed attorney. Further, no (collection agency) licensee shall render or advertise that it will render legal service, but any licensee may solicit claims for collection, take assignments thereof, and pursue the collection thereof."

and for the same term of office as the county judge. Associate county judges and assistant county judges will have the same qualifications as county judges.

Five associate county judges were authorized: one in Larimer County, to have his legal residence in Loveland; one in Montrose County, to have his legal residence in the western portion of that county; one in Garfield County, to have his legal residence in Rifle; one in Rio Blanco County, to have his legal residence in Ranglely; and one in Morgan County, to have his legal residence in Brush. Associate county judges will receive one-half the annual salary of the county judge.

Three counties were authorized one assistant judge each: Larimer County, to have his legal residence in Estes Park; Moffat County, to have his legal residence in the southwest portion of that county; Eagle County, to have his legal residence in Minturn. Assistant county judges will receive one-fourth the annual salary of the county judge.

5. *Qualifications.*—The qualifications of lawyer county judges will be as presently provided by statute.

The following counties have full-time, lawyer judges: Class A county, Denver; Class B counties, Adams, Arapahoe, Boulder, El Paso, Larimer, Jefferson, Mesa, Pueblo, and Weld.

The following have part-time, lawyer judges and are designated as Class C counties: Alamosa, Delta, Fremont, Garfield, La Plata, Las Animas, Logan, Montezuma, Montrose, Morgan, Otero, Prowers, Rio Grande.

County judges in all other counties, designated as Class D, are not required to be attorneys, but are required to be at least high school graduates and to attend, unless excused, a training institute to be established by the supreme court. This institute will be held between election and the time the judge takes office. Expenses for attending the institute will be paid by the counties. Lawyer county judges elected to that office for the first time may attend the training institute at county expense.

In the ten largest counties, associate and assistant county judges (if such are provided) will have the same qualifications as the county judge. In the other twelve counties where lawyer judges are required, associate and assistant judges will be attorneys, if possible. If no attorney runs for the position, the associate or assistant judge must have the same qualifications as a nonlawyer county judge. In all other counties, an associate or assistant judge must have the same qualifications as a nonlawyer county judge.

6. *Salaries.*—With the exception of Denver county, county judges will receive the same salaries as are presently provided by statute.<sup>16</sup> County judges in the City and County of Denver will receive an annual salary of \$12,000.

7. *Record Provisions.*—The county court will be a court of record, and a full record will be made of any county court case at the option of either litigant or upon the court's own motion. There will be no charge except for the preparation of a transcript, and

<sup>16</sup> Colo. Sess. Laws 1962, ch. 59, § 8.



indigent criminal defendants will receive records without charge. The court may determine the method by which the record is to be made, including the use of mechanical or electronic recording equipment.

8. *Appellate Procedure.*—Appeals from the county court will lie to the district court. The district court will review the case on the record and affirm, reverse, remand, or modify the judgment; provided that the district court may remand the case for a new trial with such instructions as it may deem necessary, or it may try the case de novo. Appeals from municipal court will be tried de novo in the county court. A record must be made if further appeal is to be taken to the district court. In Denver, municipal and county court appeals will lie to the superior court.

9. *Court Administration and Procedures.*—The county court will sit at the county seat and may provide by rule for hearings and trials to be held within the county at locations other than the county seat. In counties where associate or assistant judges have been provided, their place of holding court, if outside the county seat, has been specified by statute. In each county with more than one county judge, the court is required to designate a presiding judge by rule. If the presiding judge is not so designated, the supreme court departmental justice will name the presiding judge.

In counties requiring full-time, lawyer county judges, there will be a clerk of the county court and such additional employees as deemed necessary by the court. In Denver, the appointment of the clerk and his salary will be prescribed by city charter and ordinances. In Class B counties, the clerk will be appointed by the judge, who will also set the clerk's salary, subject to the approval of the board of county commissioners. In Class C counties, the clerk's salary is also subject to the approval of the commissioners, with a maximum salary of \$4,800 per year. In the remaining counties (Class D), both the establishment of the position of clerk and salary are subject to the approval of the commissioners; however, the district court clerk may serve as the clerk of the county court with the concurrence of the judges of both courts. A consolidated clerical office may also be established in counties which do not require full-time, lawyer judges, if the judges of the district and county courts agree.

In counties where the county judge serves as his own clerk, he will be required to be bonded. In counties where the judge has a clerk, only the clerk will be required to be bonded. Terms of court will be established by court rule, with at least one term to be held annually.

10. *Special Provisions Concerning the Place of Trial in Misdemeanors.*—Normally, a defendant will be required to appear in a county court in the county in which the alleged offense took place; however, for convenience certain exceptions have been provided: (1) If the alleged offense is a traffic violation for which a penalty assessment ticket could be issued, the defendant may elect to appear in the county court of an adjoining county if such is more convenient. (2) For all other alleged misdemeanors, the offender may elect to be tried in an adjoining county, if the arresting officer and all other parties to the case agree. In counties of more

than 100,000 population, if the alleged offense takes place in the defendant's county or residence, the case must be tried in that county, the exceptions listed above notwithstanding. The county in which such cases are tried will bear the costs of such trials, but will receive any fees and fines (to the extent provided by law) resulting therefrom. More liberal bonding procedures in traffic violations have also been provided.

#### B. DISTRICT COURT

1. *Judicial District Boundaries.*—Several changes were made in judicial district boundaries. These changes include:

1. transfer of Douglas and Elbert counties from the 4th to the 18th judicial district;

2. division of the 6th district into two districts, the first to consist of Archuleta, La Plata, and San Juan counties (to continue as the 6th district), and the second to consist of Dolores and Montezuma counties (22nd district);

3. division of the 7th district into two districts, one to consist of Mesa county (21st district), and the other consisting of the remaining six counties in the district (to continue as the 7th district); and

4. division of the 8th district into three districts; Larimer and Jackson counties (to continue as the 8th district), Weld county (19th district), and Boulder county (20th district).

Figure 1 shows the judicial district boundaries as established by Senate Bill 19.

2.—*Number of District Judges.*—The number of district judges was increased from 41 to 69, with the 28 additional district judges

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to be elected to full terms at the 1964 general election. Four districts (1st, 8th, 17th, and 18th) will receive an additional judge in 1969—to be elected at the 1968 general election. Table I shows the number of district judges.

3. *Other Matters.*—1. Geographic divisions of the district court were provided for three districts (3rd, 4th, and 11th) to assure that the population centers in each of these districts will have a resident district judge.

2. State aid to juvenile probation is continued at the present level, and juvenile probation services may be provided on an inter-district basis (as is presently provided for adult probation).

3. Contractual arrangements are permitted among counties or among judicial districts for juvenile detention facilities and services.

4. Legislation was passed (Senate Bill 24) to clarify the selection of directors of the Northern Colorado Water Conservancy District, because four judicial districts are now involved.<sup>17</sup>

#### C. CITY AND COUNTY OF DENVER

1. *Probate and Juvenile Court.*—The Denver probate court will have one judge, and the Denver juvenile court will have two judges; all three to be elected in 1964. The jurisdiction of the Denver juvenile court and the juvenile jurisdiction of district courts in other counties are similar.

2. *Superior Court.*—The superior court will have one judge whose qualifications, term of office, and salary will be the same as for district judges. Vacancies will be filled in the same way as vacancies in the office of district judge. The superior court will have appellate jurisdiction of county court and municipal court decisions and original civil jurisdiction concurrent with the district court from \$500 to \$5,000, and will be a court of record in all proceedings.

#### D. DOCKET FEES

Major changes in docket fee amounts and fee distribution are as follows.

1. The fee in traffic cases will be \$5 rather than \$4.

2. The plaintiff's docket fee in district court civil cases will be \$20 instead of \$15; and the defendant's fee will be \$10 instead of \$7.50.

3. Fees from all cases docketed in district courts will be divided, with 90 percent retained by the county in which the case is filed and 10 percent to the state. At present, the state receives 30 percent of the fees from cases docketed in district court, and the counties retain the other 70 percent.

4. The answer fee in civil cases in the new county court will be \$5; the present justice court answer fee is \$2.

5. Probate fees will be increased for estates in excess of \$50,000.

<sup>17</sup> Colo. Sess. Laws 1964, ch. 101.

TABLE I

## NUMBER OF DISTRICT JUDGES BY JUDICIAL DISTRICT

District <sup>a</sup>	Present No. of Judges <sup>b</sup>	Additional Judges to Take Office in 1965	Total	Additional Judges to Take Office in 1969
1st	3	2	5	1
2nd	10	4	14	---
3rd	1	1	2	---
4th	4	2	6	---
5th	1	---	1	---
6th	1	1	2	---
7th	1	1	2	---
8th	1	1	2	1
9th	1	1	2	---
10th	2	2	4	---
11th	1	1	2	---
12th	2	---	2	---
13th	2	2	4	---
14th	1	---	1	---
15th	1	1	2	---
16th	1	1	2	---
17th	2	2	4	1
18th	2	2	4	1
19th	1	1	2	---
20th	1	2	3	---
21st	1	1	2	---
22nd	1	---	1	---
TOTAL	41	28	69	4

a. As established by Senate Bill No. 19.

b. Prorated in those districts where boundaries were changed or where new districts were created from the old.

FIGURE 1

JUDICIAL DISTRICTS OF COLORADO (Effective January, 1965)

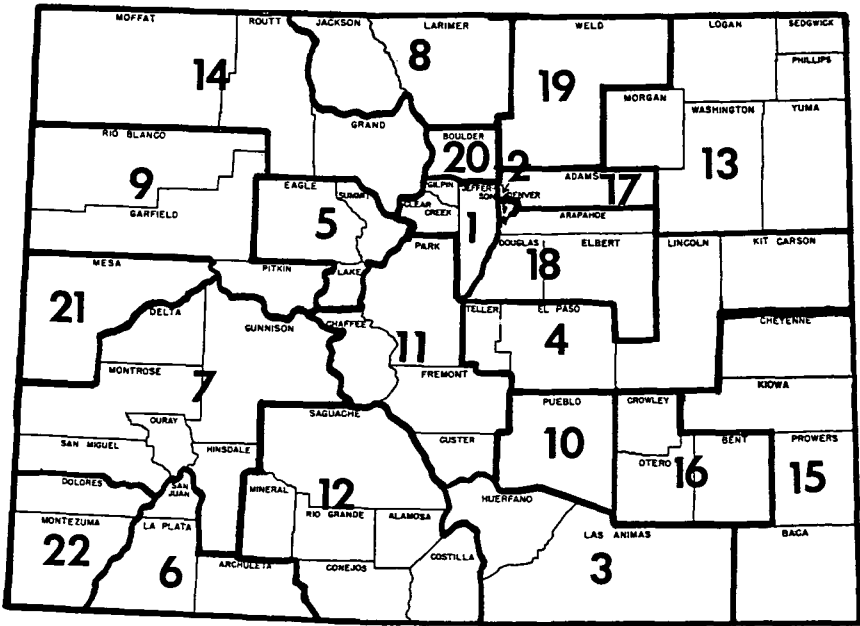
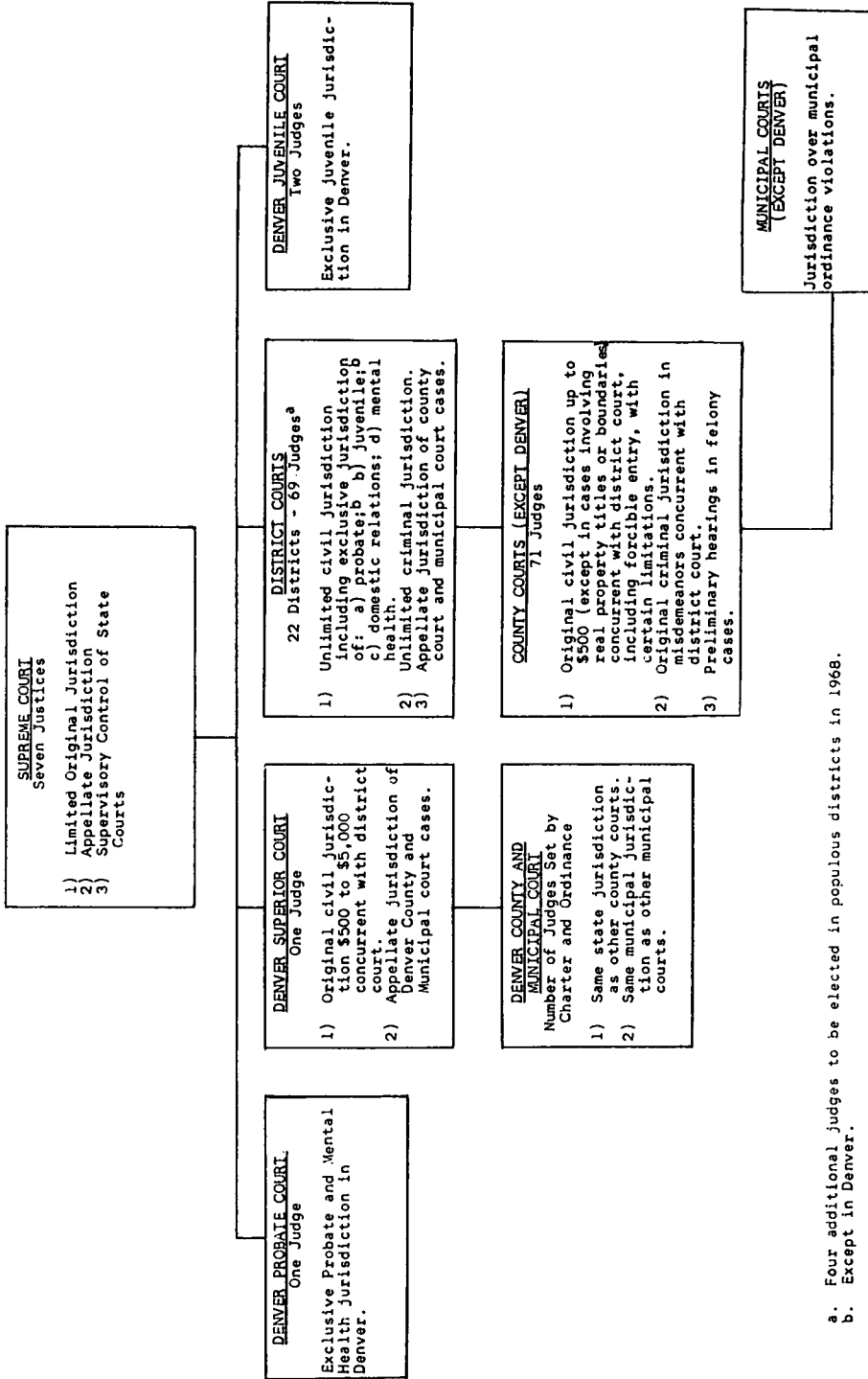


FIGURE 2  
Colorado Court Structure Under New Judicial Article And Statutory Implementation



a. Four additional judges to be elected in populous districts in 1968.  
 b. Except in Denver.