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Hudson Moore

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Assignment of Trial Cases

ASSIGNMENT OF TRIAL CASES*

By Hudson Moore, of the Denver Bar

GENERALLY speaking, there are two methods in vogue in the American courts governing the assignment of cases for trial, which may be designated as the Single Calendar System and the Multiple Calendar System. The Denver District Court employs the Multiple System, and nothing need be said in explanation of it. It is of interest, however, to note that a very general inquiry discloses the fact that only one other city in the United States of the size of Denver retains the Multiple System.

To those lawyers who are not familiar with the Single Calendar System, some explanation of its plan and workings may be of interest. The underlying principle of that system is that when a case is at issue, it is placed upon a single trial calendar and the several judges employed in trial work receive cases therefrom in their order, as and when needed, instead of each trial judge having a separate calendar controlled by him, as is the case in the Multiple System. The rules under which the system operates differ widely in the various cities, and are usually framed to meet local needs and customs.

Generally, there is a semi-official court paper, in which court calendars are published; are required to be kept up-to-date, and the state of the calendar show from day to day with reasonable accuracy. There are two calendars or lists; a trial list, carrying the number of the case, the names of the parties and their attorneys, which should contain enough cases estimated to keep all of the judges trying cases from that calendar, engaged for that week; an active list, which is made up and published a week in advance of the time cases therefrom are likely to be placed upon the trial list. On Friday, the Assignment Clerk takes all the cases remaining undisposed of from the trial list and places them in their order upon the trial list for the following week, assigning cases for each day of the week, up to and including Friday. When all cases have been taken from the week's unfinished trial list, cases are then

*This article is a reprint from the January, 1925, edition of the Bar Record, and of interest at this time since a committee of the Association has been appointed to recommend changes in our present system.

taken from the active list, and in their order, sufficient to complete the trial list. The trial list is then published in the edition of the court paper appearing on Saturday morning.

There is an extra court room over which the Assignment Clerk nominally presides, but is at all times under the control and direction of the Presiding Judge. Jurors are summoned to appear, say, at 9:30 on a Monday, in the Assignment Clerk's room. At that hour the Presiding Judge attends, and a sufficient number of jurors to meet the requirements of the several divisions engaged in jury work are selected. The room of the Assignment Clerk is equipped with large blackboards, upon which appears the trial list. At the opening of Court, the first case on the list is called and sent to Division One, the next case to Division Two, and so on until all divisions are engaged. When a case in a division is nearing completion, the Clerk of that division telephones the Assignment Clerk and the next case on the trial list is sent to that division for trial. This procedure is followed throughout the week, or until all cases on the trial list are disposed of. Only attorneys with their clients and witnesses appearing in the first half of the cases assigned for Monday are required to attend court at 10 o'clock on that day. When all divisions are engaged, one or two additional cases may be held, and other parties and counsel excused, subject to call. It is the duty of the Assignment Clerk or his Assistant to telephone each attorney whose name and telephone number has been filed with the Assignment Clerk, and who appears of record as such attorney, from thirty minutes to an hour before his case will probably be reached. Such attorney should then report to the Assignment Clerk's room with his witnesses. In like manner, the Assignment Clerk will, on the adjournment of court each day, telephone attorneys, whose cases are likely to be reached at the opening of court the following morning. It is the duty of counsel who have cases on the trial list, to keep in touch, in person or by phone, with the Assignment Clerk. The same procedure would be followed where cases are tried to the court without a jury. Where thought best, the telephone feature of the system may, and sometimes is, dispensed with, thereby diminishing, but not destroying, the efficacy of the system.

Under the Single Calendar System, where there are five

or more judges engaged in the trial of civil cases, there should be a Presiding Judge who would hear all motions, demurrers, undefended divorce cases, applications for injunctions and receivers, defaults, etc. The above rules would have no application to his calendar, and he would have a separate calendar of his own, containing the matters to be heard by him. The rest of the judges would primarily try cases from the trial list. However, the Presiding Judge should be vested with large discretionary powers in the control of both his calendar and the trial list. He could at any time send cases from his calendar to any other judge not actually engaged in the trial of a case, and could require the full time of a judge from some other division when and as the needs of his calendar might demand. A Presiding Judge should serve as such from three to six months. In some jurisdictions two months is the rule.

On Saturday mornings, or at such other times as might be fixed, the several judges would hear motions for new trial in cases decided by them. Where some issue in an important or complicated equity case has been tried by a judge, he could retain jurisdiction over all questions arising therein until the case is finally disposed of.

The Single Calendar plan has great time saving possibilities for the busy lawyer. He has only one calendar to watch instead of five. He is not required to waste a large part of his time in attendance, along with his clients and witnesses, upon court, waiting for his case to be reached. If he has several cases on the trial list, he knows with reasonable certainty which case will be tried first, whereas, if he has several cases in as many divisions, he has no means of knowing which case will be first tried, and must be ready at all times in all of the cases. Under the Multiple System if he has the second case upon the docket of one of the divisions, with out of town witnesses in attendance, he may lose several days of his and their time waiting for the case to be reached, if, as sometimes happens, the case on trial runs on as Tennyson's brook. Under the Single Calendar System, his case in all probability would be tried the day set. As illustration, during the last week of court before the summer vacation, the writer was engaged in the trial of a case which consumed the entire week. In the next case on the calendar, out of town parties were present and

anxious for a trial and in attendance from day to day. No trial was had, though some of the other judges were not engaged the greater part of the time. This would not have happened under the Single Calendar System.

The plan has its advantages from the standpoint of the Judge. He is not bothered with arranging his calendar each morning in an effort to accommodate disagreeing attorneys, and can give his entire attention to the matter in hand—that of trying the case before him. There is more uniformity of work. All judges are engaged until the business before the Court is disposed of and all are then at leisure. When business requires, an outside judge is called, not for some separate division, but for the benefit of the entire list. If it is thought that some judge might under such a plan “loaf on the job,” the plan adopted by the judges in Cleveland, of publishing each year a report showing the work and its character, performed by each of the judges, might be efficacious.

Those interested in this question will find a very illuminating article by Chief Justice Powell of the Cleveland courts, appearing in the March, 1924, number of the American Bar Journal, in which the subject is discussed at length.

The stock objection to the Single Calendar System is that a judge who hears a motion or demurrer is best qualified to try all issues in the case. Probably in the greater number of cases such motions and demurrers serve only to gain time for the movant, and sometimes to teach his adversary the weakness of his own case, against the which he immediately prepares. In rare instances the point will have application, but it is thought that the advantages of the Single Calendar System far outweigh and outnumber this disadvantage.

While the promulgation of rules rests primarily with the judges, still most judges were lawyers before they became judges and are usually willing to try out any plan that a majority of the Bar may recommend.

The Clerk of the Court at Boston concludes a ten-page letter to the writer, in which he discusses the Single Calendar System, with the following paragraph:

“This system seems, after a considerable number of years’ experience, to have given pretty thorough satisfaction to the

Bar and to the Court, and visiting counsel from other states who have been here to try cases in our county, have unanimously praised it as being far better than the system used in the States from which they came.”

Having had more than ten years' experience under each of these systems, I am thoroughly convinced that the Single Calendar System, moulded upon rules to conform to local needs and customs, is the most economical and satisfactory plan alike for Bench, Bar, Litigant, and Public.

REPORT OF PROFESSIONAL ETHICS COMMITTEE

STATEMENT

A detective agency, incorporated, licensed and bonded under the state statutes, advertises and holds itself out to the public as expert investigator of all manner of claims such as damages, domestic matters, judgments, collections, lost heirs, criminal matters, etc., and offers to render its investigating service and assemble all the evidence on a percentage basis computed on the amount realized on the claim. It makes direct contract with the claimant, and one of the terms is that if the claim is found to be meritorious and the services of an attorney are needed, the claimant agrees to employ a competent attorney at his own expense. The agency recommends different attorneys but the claimant is not bound by the recommendation. He makes his own selection, whether outside or inside the recommended list.

The selected attorney is then asked to render his services on a percentage basis, but at a lower rate than usual, because all the investigating, assembling of evidence, etc., is done by the agency. The attorney makes separate contract with the claimant and has nothing to do with the agency or its contract, and there is no mingling of the attorney's fees and the agency's compensation.

Is it unethical for the attorney to accept employment under such circumstances?

OPINION

In the opinion of the Committee the amount of a contingent fee is a matter for agreement between the attorney and his client.

The attorney is not professionally interested in knowing by whom or how evidence is gathered but he should and must be professionally interested in the character of the proof upon which he is expected to rely, whether collected by a detective agency or any other person, and should satisfy himself as to its truth. If convinced of that his acceptance of employment under the circumstances proposed would not, in the opinion of the Committee, be unethical.

Respectfully submitted,

EDWARD D. UPHAM, Chairman.
For the Committee.