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TRANSFER OF RULE-MAKING POWER FROM LEGISLATIVE TO JUDICIAL DEPARTMENT
A RESPONSIBILITY OF THE BAR

FRANCIS E. WINSLOW*

Until actually called into government service, a lawyer can best serve his country in this dire crisis by giving the best service of which he is capable to his clients and community, and cooperating with other lawyers in making the tools with which he works sharper, more efficient, and more productive. So long as the work of the organized bar is not permitted to interfere with the actual promotion of the war effort, such activity, usefully directed, cannot but be an aid to the war effort. When the whole democratic system is threatened with extinction because of its alleged inefficiency, the lawyer can engage in no more useful work in defense of democracy than to cooperate with his fellows in an earnest effort to eliminate waste, lost motion, and monkey wrenches, from the judicial machinery established by the people and for the people.

THE PUBLIC HOLDS THE BAR RESPONSIBLE FOR DELAYS AND EXPENSES OF LITIGATION AND MISCARRIAGES OF JUSTICE

The man in the street believes that the judicial machinery of this State is more cumbersome, more awkward, more inefficient, more wasteful of time and money, than it need be. This view is so widely held and evokes such a feeling of aversion to any contact with the law or lawyers, that businessmen, disgusted because nothing is being done to remedy the situation by the present rule-making authority, the General Assembly, have learned to avoid contact with the courts as if they were infected with a plague. More compromises and adjustments of differences are due to fear of "getting into court," and "being soaked by lawyers," than by bona fide evaluation of the relative strength of claims and defenses. "An Englishman standing upon a right" will not give an inch to tyrannical government, or a foreign oppressor, but his American descendant has enough Scotch or Latin blood in him to shrewdly find ways to sidestep conflicts with his fellow man which involve what he considers unnecessary inconvenience and expense, which are conducted like a sporting match or game, and which are too frequently decided on sympathy or prejudice rather than the weight of the evidence. Where the possibility of controversy can be foreseen, as in business contracts, the practice of substituting arbitration for the

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courts has grown rapidly in recent years. Cotton contracts were fertile fields of litigation some years ago in textile centers like Charlotte. Arbitration has for a long time now taken all this business away from the lawyers and the courts. The new motion picture industry has armed itself against the lawyers by the same device. Property insurance contracts long ago pointed the way. The General Assembly of North Carolina, while unwilling to take any important step about improving court procedure, has encouraged arbitration by law.\footnote{Pub. Laws of N. C., 1927, Chap. 94, N. C. Code Ann. (Michie, 1939) §898.} In wide areas of non-contractual relationships, administrative boards or commissions are substituted for both arbitration and courts, as in the Workmens Compensation Law, and the proposed Automobile Liability Law. In practically all that broad field of law comprised in modern social legislation regulating industrial employment and such matters, and in legislation regulating transportation, the courts get only such controversies as survive the winnowing-out process of administrative procedure, which has been made a necessary prerequisite to court action, e.g., Railway Labor Act,\footnote{54 Stat. 756, 758, 45 U. S. C. A. §151 et seq.} and the North Carolina laws regulating buses. The trend for years has been and still is to starve the courts and their officers, that is to say, the lawyers. Some part of the growth of administrative law must fairly be ascribed to the better adaptation of administrative procedure for the enforcement of new statutes dealing with the complexities of modern life. But dissatisfaction with the procedure of the courts is responsible for a substantial part of such growth.

If the starving of the lawyers were all there is to it, the public might be well satisfied with the process and the progress made. The lawyers are a small group, and getting smaller. No matter how much the public has admired lawyers for their individual worth, it has never loved them as a class. However, other factors are involved. The irreducible minimum of litigation which remains in spite of the starving out process is still enough to irritate the public. Men and women who are required to leave their regular pursuits and attend courts as jurors, litigants, or witnesses find their time wasted by unexpected continuances, or mistrials for surprise, which could have been avoided by a few simple but adequate procedural rules, such as for pretrial hearings or discovery. If the case is tried, they find much lost motion due to arguments on amendments to pleadings and the form of issues, and still more time and money actually wasted in proof of facts which should have been admitted, all of which should have been saved by a pretrial hearing. If the case is decided, there may be a new trial for a procedural reason not affecting the real merits of the case or the fairness of the trial, such
as that the judge has no power to reserve his decision on a motion for
nonsuit until after verdict,9 or that the judge has no power to complete
a verdict as to an issue which neither party had thought sufficiently
important to tender,4 and so on. These are but examples of a horde
of procedural technicalities. Not infrequently there are four or five
such new trials in one case.6 After one such experience, the litigants
involved on both sides usually take a solemn oath "never again," the
lawyers on both sides lose clients, and both litigants and lawyers lose
money, and witnesses and the public generally are disgusted with the
law.

THE GENERAL ASSEMBLY IS NOT AN EFFICIENT RULE-MAKING BODY

The instances just mentioned merely illustrate some of the defects
which have been disclosed in the operation of our legislative Code of
Civil Procedure in the course of its seventy-five years' reign as the
ruler of our trial courts. They do not constitute an indictment of the
Code as such; but, rather, reflect on those factors which have caused
the Code to become too inflexible to meet the demands of modern
litigation. Its formulation by David Dudley Field about one hundred
years ago, as adopted by us in 1868, was a definite forward step away
from the refinements of common-law pleading, and toward the sim-
plicity of equity pleading. If the General Assembly had had a David
Dudley Field as its technical advisor during all the intervening years,
and had allowed him to keep the machinery cleaned up and lubricated
and repaired as the need appeared, we would have long since had rules
for pretrial practice to eliminate continuances and mistrials for surprise
and to shorten trials by closing the pleadings against further amendment
and by simplifying the issues by stipulations as to uncontroverted facts,
etc.;6 we would have had modernized discovery to take the edge off
lawyers who try a lawsuit as they play a game and love the trick
plays;7 we would have had a rule that motion for nonsuit or directed
verdict could be renewed after verdict, to save a new trial in case the
ruling should be reversed on appeal;8 we would have had a rule that
when neither party tenders a minor issue, and the jury returns a verdict
which is incomplete because of such oversight, the judge can complete

9 Batson v. City Laundry Co., 202 N. C. 560, 163 S. E. 600 (1932); Batson v.
City Laundry Co., 205 N. C. 93, 170 S. E. 136 (1933); Batson v. City Laundry
Co., 206 N. C. 371, 174 S. E. 90 (1934); Batson v. City Laundry Co., 209 N. C.
223, 183 S. E. 413 (1936).
6 See note 3 supra.
7 Rules Civil Procedure, U. S. D. C., Rules 26-37, incl. New Maryland
8 Rules Civil Procedure, U. S. D. C., Rule 50(b); New Maryland Rules,
Trial Rule 4.
the verdict, to save a new trial. The few amendments just mentioned would take care of all the fiascos described above. Every one of them has been adopted in other jurisdictions, by court rule, with excellent results, but none of them has been even considered in North Carolina by the present rule-making authority, the General Assembly. The North Carolina General Assembly has had only one expert advisor on rules, David Dudley Field, and he has been dead for several generations. His dynamic Code has become a dead engine for want of an engineer. It is not the Code which is to blame. It is the lack of power to change and adapt itself to changing times that is at the root of our troubles today.

Without an expert in whom it had confidence, the General Assembly has been paralyzed in its work upon the Code. It has made a few amendments in the past seventy-five years; some good, but most of them bad—conceived in the wrath of some lawmaker who has lost a case—unskillfully drawn, and ill-fitted into the general scheme. These changes, instead of mending, too often marred the symmetry of the whole, and produced worse ills than those they were intended to cure. The General Assembly has its attention fixed on matters other than court procedure. Its members meet once in two years; there is a large turnover in its make-up; and no one is ever elected to that body because of his competency and learning in adjective law. Not knowing for sure whether proposed amendments will work for good or evil, and having no authority to turn to for sound advice, it "plays safe" by voting them all down, leaving the courts as rigidly bound as before.

The Supreme Court with an Advisory Committee Would Be the Most Competent Rule-Making Authority to Study and Adopt All Procedural Changes

Realizing that such paralysis of legislative bodies is inherent in their nature and function, other jurisdictions have turned the whole matter over to the most competent rule-makers in their respective realms, to-wit, the courts of last resort. Nine states had taken this step prior to 1934—Michigan, New Jersey, Delaware, Washington, Florida, Rules Civil Procedure, U. S. D. C., Rule 49(a); New Maryland Rules, Trial Rule 7.

Mr. Justice Cardozo once stated the case against legislative tinkering when he said: "The Legislature, informed only casually and intermittently of the needs and problems of the courts, without expert or responsible or disinterested or systematic advice as to the workings of one rule or another, patches the fabric here and there, and mars often when it would mend." Mitchell, Reform in Judicial Procedure (1938) 24 Am. Bar Ass'n J. 197.


Petition of Florida State Bar Ass'n for Promulgation of New Florida Rules of Civil Procedure, 199 So. 57 (1940).
Wisconsin,16 Rhode Island,17 Tennessee,18 and New Mexico.19 In Florida the method adopted was later held unconstitutional, and the work has to be done over again in that state. Of the other eight, five have done effective work because they have had either a judicial council or a rules committee to assist the court. In those states where there is no judicial council and no advisory committee little has been accomplished. In 1934 the Congress authorized the Supreme Court of the United States to make all the rules for civil actions in the United States District Courts.20 The Supreme Court developed the technique of modern rule-making through appointment of an advisory committee, including persons who had studied the procedural systems of all the jurisdictions of the English-speaking world. The result, adopted by the court, and made effective in 1938, closely followed the plan of the Field code, but contained a great many important improvements such as Field, himself, probably would have made had he lived. In 1941 the Supreme Court reappointed its advisory committee to function as a continuing body to consider any and all changes proposed by any responsible source, including the court itself. Thus the technique has been established by the highest court in the land. The new Federal rules have been deemed by qualified experts to be the best set of rules yet devised in any English-speaking jurisdiction.21 The Federal rules provide for pretrial hearings, for discovery, for renewal of motion for directed verdicts, for findings by the court in the absence of issues tendered, and numerous devices for preventing new trials on technicalities where one fair trial has been had.22 If defects are disclosed in the present rules, the continuing advisory committee will call them to the attention of the Supreme Court, and they may be remedied without asking the Senate and the House of Representatives to lay aside other business more important to the nation, to pass a bill relating to such details.

Since 1934 the opinion that the court can be trusted to do a better job of rule-making than the legislature has jelled rapidly. Since that date nine states have followed the Federal precedent—West Virginia,23 South Dakota,24 Pennsylvania,25 Indiana,26 Arizona,27 Colorado,28

18 TENN. CODE ANN. (Williams, 1934), §10331.
20 48 STAT. 1064, 28 U. S. C. A §§723(b), 723(c) (1927).
21 Senior Circuit Judge J. J. Parker, Fourth Circuit, United States Circuit Court of Appeals. Parker, Improving the Administration of Justice (1941) 27 Am. Bar Ass'n. J. 71.
22 See notes 6, 7, 8, and 9 supra.
23 W. VA. CODE ANN. (Michie, 1937), §5183.
24 LAWS OF S. DAK. 1937, Ch. 60, §2.
25 PURDON'S PENN. STATUTES (1930), Title 17, par. 61.
26 BURNS INDIANA STATUTES (1937), §§2-4718.
Maryland, Nebraska, and Texas. All of these states followed the new technique and have either a judicial council or an advisory committee to do the spade work for the court. One of these states, Arizona, on January 1, 1940, adopted the new Federal rules as its own rules, with changes in numbering and some other slight revisions to fit local conditions. The bar of Virginia is working on a bill to give the rule-making power to the Virginia Supreme Court of Appeals, and on February 16, 1942, the bill passed the House of Delegates, but failed in the Senate, after the judges of the court issued a statement of disapproval.

In North Carolina, Judge L. R. Varser sponsored a similar bill in 1921, but it passed only with emasculating amendments, which failed to improve the situation. In 1927 the North Carolina Judicial Council recommended a bill to the General Assembly, but it was ignored, and the Council was abolished in 1931. In 1938 the North Carolina Bar Association sponsored the movement and submitted a bill to the General Assembly of 1939, and, again, to the General Assembly of 1941. The latter two bills followed the technique developed by the Supreme Court of the United States, providing for an advisory commission to function continuously, but these bills also failed of passage.

OPPOSITION IN THE LEGISLATURE

In the General Assembly the lay-members were willing to follow the lawyer members, but the lawyer members were so divided that the lay-members were without leadership. The lawyer members of the legislature who opposed the bill in 1939 and 1941 gave various reasons for their opposition. One said that since the next legislature could repeal the law, if passed, why pass it? Another said that if the bill were passed the next legislature could not repeal it, and therefore he opposed it. Several said that the change would repeal all they knew of procedure, and they would have to learn it all over again. Of course a lawyer must always keep a weather eye open for changes, whether made by legislature or court. Under the proposed bill changes could not be made oftener than once in two years. Hearings must be had on proposed changes, and publication of all changes must be made in the Advance Sheets of the Supreme Court Reports both before and after they are made. Only after adoption by the Supreme Court and

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29 ANN. CODE OF MD. (Flack, 1939), Art. 26, §35.
30 COMP. STAT. OF NEB. (1939 Supp.), §27-231.
31 REVISED CIVIL STATUTES OF TEXAS, Art. 1731a.
32 PUB. LAWS OF N. C., EXTRA SESS. 1921, C. 92, §20, N. C. CODE ANN. (Michie, 1939), §1421(a).
33 (1928) 30 N. C. BAR ASS'N. REPORTS 142.
34 1939 Bill, 41 N. C. BAR ASS'N. REPORTS 172; 1941 Bill, 43 N. C. BAR ASS'N. REPORTS 114.
due publication do they become effective. Thus under the proposed bill it would be much easier to keep up with changes than under the present system. Still others said that the new bill was a project of a small group of lawyers who sought advantage for city lawyers, as against country lawyers, or for defendants against plaintiffs. For twenty-five years an influential member of the Senate of the United States frustrated the efforts of the American Bar Association to provide uniform simple rules for the United States District Court, and he gave similar reasons for his opposition. Every one should know that every amendment of rules which simplifies procedure deprives a defendant of a technical weapon, and strengthens the armament of the plaintiff, who has the burden of getting the case into court and to trial and through the process of trial. Since 1934 the Federal Government and nine states have followed the course here advocated in a period of our history when the so-called “vested interests” have had the smallest voice in government since the Civil War. These arguments are appeals to prejudice, rather than to reason.

IMMEDIATE OBJECTIVES

If the Supreme Court of North Carolina were given the power to amend the Code of Civil Procedure, its well-known conservatism would be sufficient guarantee against any radical or drastic amendments to the Code. One could expect, without great delay, perhaps in two years, rules for pretrial procedure, and such like, for which there has grown up a very large demand, and which have proven their efficacy elsewhere. One could expect, perhaps, the abolition of the demurrer, a prolific source of preliminary appeals, and the substitution of the motion to dismiss, which could be reviewed on appeal only after a trial on the merits. One could expect a code of rules for administering estates in receivership, of which there are now practically none. Every judge who handles a receivership during his six months’ term in the district has to pioneer his way and neither court nor counsel have any chart or guide. There are many other gaps in our procedural fences, the closing of which by simple and easily understood rules of court would be a general benefit. At the 1941 meeting of the North Carolina State Bar a committee was appointed to confer with the Supreme Court on the modernization of the rules of evidence to eliminate some of the absurdities of that obsolete structure. One could expect that the Court would give consideration to a simplification in that field, and that some short cuts to suit modern conditions of bookkeeping, etc., would be studied. The American Law Institute’s Code of Evidence

39 Dean Pound says “his like is to be found in every law-making body in the land.” Pound, Judicial Councils and Judicial Statistics (1942) 28 Amer. Bar Ass’n J. 98.
could be a useful guide in such endeavor to bring court procedure into line with modern conditions.

The bill, as heretofore submitted to the General Assembly, would achieve a more useful purpose if it should be amended to authorize the Supreme Court, with its advisory commission, to act as a judicial council. There would remain outside the general rule-making power certain matters affecting the operation of the courts which would require legislation. An example is the selection of jurors. This matter is now regulated by statute and it may be that it could not be dealt with under the general rule-making power. There is no one now charged with the duty of making any study of the question of selection of qualified jurors. This goes to the heart of the jury system. In recent years there has grown up the idea that every man is qualified to be a juror. This is a far cry from the traditions of the common-law jury trial, which is guaranteed in the Constitutions of both the United States and the State of North Carolina. This problem is not alone a North Carolina problem, but a national one. The ancient mode of jury selection, as opposed to the modern "every man system," has found an able and bold champion in the Hon. Merrill E. Otis, U. S. District Judge, Missouri, who recently said:

"The idea that jurors should be men above the average entered into those phrases which are a part of the jury tradition. The jury is not merely 'twelve men.' It is 'twelve good men and true.' 'Good men!' That is, 'stout hearted, courageous men.' 'True men!' That is, 'honest, just, upright' men. When Blackstone said that the jury trial is 'the glory of the English law,' in the next paragraph he said the juries should be made up 'of sensible and upright jurymen, chosen by lot from among those of middle rank.' When Lord Brougham paid the most famous of all tributes to the jury he did not say: 'All we see about us, kings, lords and commons, the whole machinery of the state, all the apparatus of the system and its varied workings, end in simply bringing twelve average individuals from the mass into a box.' He said —'twelve good men into a box!' The twelve 'good men and true,' who demonstrated even in despotic days that the jury can be a bulwark against tyrants, in what Lord Macaulay has described as the most notable trial in English history, The Trial of the Seven Bishops, consisted of a baronet, a knight and ten landed proprietors. That jury stood out against the machinations of King James. Any study of the cases, whether in England or America, in which the verdicts of juries have been such as to justify Blackstone's eulogy, will reveal juries of strong men, intelligent men, men with reputations for justice and courage. Any study of those cases in which shameful verdicts have resulted, in which tyrants have had their way against the innocent, in which the notoriously guilty have escaped just punishment, in which bigotry and cupidity and prejudice have baffled justice, the study of those cases will disclose juries of weak, ignorant, inferior men.
“Every jury in every court should be made up of twelve good men and true, that is of stout hearted, courageous, honest, just and upright men. Does the man against whom an unjust criminal charge has been brought, does the man who has a just claim against another, does the man against whom an unjust claim is asserted, do these men desire inferior jurors? Not they. The criminal, conscious of his guilt; the defendant against a meritorious suit for damages, willing to escape by any chicanery; the fakir, who was not hurt, but sues for damages for personal injuries; these and the shysters who go into the lists in their behalf; they and they alone want juries of inferior men. The only voice which ever will be heard calling out for low-grade jurors is the voice of the demagogue who somehow has been admitted to the bar. And his voice is never a frankly speaking voice. He camouflages his true intent under such fine words as ‘Democracy!’ ‘Representative of the community,’ ‘Cross-section of society,’ ‘All men are equal!’ He declaims against ‘Packing juries,’ against ‘Vesting officials with too much authority,’ against ‘Judicial tyranny,’ against bugaboos which once were real but which went out with Jeffrys and his ilk long, long ago.

“The judges of the courts, reputable lawyers, thinking citizens, all of these wish for juries of reputable and competent individuals. The common-law jury was intended to be so constituted. The jury trial guaranteed by the Constitution was a trial by such a jury as was contemplated by the common law, Blackstone’s jury of ‘sensible and upright men.’ Nowhere in the common law or old English statutes, nowhere in the statutes and practices of the thirteen colonies, nowhere in the constitution and usages of the states before and at the time of the adoption of the Constitution, was there any recognition of the demagogic theory that every individual is qualified to be a juror. Everywhere there was recognition that jurors for the master panel must be selected by competent and responsible officials. The only direct reference the Constitution makes to the qualifications of jurors is that in criminal cases they must be ‘impartial’ and residents of the same state and district with the accused. The only other reference in the Constitution is indirect. The ‘equal protection’ clause of the Fourteenth Amendment prohibits an arbitrary and systematic exclusion of great racial groups. Nothing in the Constitution opposes the wish of the ‘good and the just,’ if we may be so bold as to employ the phrase made use of by the Father of His Country, that jurors shall be competent.”

The advisory commission should also be authorized to make recommendations to the Supreme Court as to amendment of its own rules. The Supreme Court already has exclusive power to make its own rules, but without some such body as an advisory commission to bring to the court’s attention the views of the bar concerning the rules of the Supreme Court, the court is likely to remain static through the years. The court’s attention could well be called to Rule 10, first adopted by

“Otis, Selecting Federal Court Jurors (Section on Judicial Administration of the American Bar Association, August, 1942) 12.”
the Fourth Circuit Court of Appeals, and since by the United States Court of Appeals for the District of Columbia, the Circuit Court of Appeals for the Third Circuit, the Circuit Court of Appeals for the First Circuit, and, as to cases coming from the Labor Board, by the Circuit Courts of Appeals for the Seventh and Ninth Circuits. The Supreme Court of the State of Wisconsin recently adopted Rule 10, and other State Supreme Courts are now considering its adoption. This rule eliminates the narration of the evidence and the printing of the record on appeal, and provides that counsel print as supplements to their briefs such parts of the record as they desire the court to read. The clerk of the Fourth Circuit Court of Appeals, the Hon. Claude M. Dean, spoke to the North Carolina Bar Association at Blowing Rock in June, 1940, on the results of the rule, and practice under it. Enormous printing costs have been saved to litigants and the labors of court and counsel have been greatly reduced, and all concerned are better satisfied with the result. This is but an example of the kind of thing that the advisory commission might do for the benefit of the bar, the court, and the public.

LONG-RANGE OBJECTIVE

The long-range objective is even more important and greater in scope. Although comprised of forty-eight states, we are but one nation, indivisible. Our national integration has progressed rapidly in matters economic, and in other branches of government, but we are still forty-eight separate and independent kingdoms with respect to the work of the courts and the legal profession, except as to business in the United States District Courts. It would be a very great advantage to any American lawyer to be able to practice both in the Federal courts and in all state courts by rules substantially the same in both jurisdictions. In formulating the new Federal rules the objective was to perfect such a workable system of procedure that it would be adopted eventually by all the states. Arizona has already taken advantage of the opportunity, by adopting the Federal rules wholesale, exactly as North Carolina adopted the Field Code in toto in 1868. If there were a uniform system of procedure, lawyers would be able to devote less time to procedural questions, and more to the preparation and trial of cases on their merits.

LOGIC OF THE CASE

The question has so far been considered from the standpoint of expediency, that is, the public welfare, and the self-interest of the lawyers. The case is equally strong from the standpoint of principle. The courts and the bar are held responsible for the quality of their product, but they have to work with tools provided by the legislative
department. The power should be placed where the responsibility is supposed to lie. The judicial department is a coordinate branch of government. It would be as illogical for the legislature to operate under rules made by the court, as for the judicial system to operate under rules made by the legislature. Historically all common-law and equity courts had inherent power to determine how they would proceed. But there was no rule-making authority in the court system having the power to supplant an existing rule in the trial courts. This situation led to the adoption of legislative codes. It soon became apparent that a statute is even more of a strait-jacket than the old court-made rules. Naturally enough, therefore, the present movement is a swinging back to the courts, but with two significant differences. Under the plan now making such progress in the country, which has already proven its worth in other English-speaking nations (in England since 1873), the rule-making authority vested in the court is an express authority to enact general rules not by-products of case law, and provision is made for continuous study by an assisting body charged with the duty of overseeing how rules work out, and comparing results elsewhere. If the courts cannot do the job better than the General Assembly, the future would be dark indeed. We have had seventy-five years of legislative control, becoming less fit every decade. Under the term "judicial rule-making" we now include all the talent of the legal profession, brought into play through the advisory committee, which must give consideration to the views of all who care to express themselves. That talent found in legislative halls can best serve by opening the way to revision by the bar through aid afforded the bench.**

**GENERAL RULE-MAKING POWER BY STATES**


Alabama, Power limited to make general equity rules (1935) Dormant
Arizona, General rule-making statute (1939) Active
Arkansas, Power limited to rules for Probate Court Dormant
California, No general power
Colorado, General statute (1913) Active
Connecticut, Power limited to certain actions (1905) Active
Delaware, General statute (1925) Dormant
Florida, Power limited to actions pending in Supreme Court
Georgia, Statute giving general power over appellate procedure vetoed (1941)
Idaho, General power Active
Illinois, General power
Indiana, General statute (1937) Active
Iowa, General statute, rules filed with legislature (1941) Active
Kansas, No general power
Kentucky, No general power. General statute introduced 1942 (Result unknown)

**For general rule-making power by states see Appended Table.
Louisiana, No general power
Maine, No general power
Maryland, General statute, rules filed with legislature
  (1927 and 1939) Active
Massachusetts, No general power
Michigan, General power by Constitution (1850) Active
Minnesota, No general power
Mississippi, No general power
Missouri, No general power—Supreme Court advising legislature
Montana, No general power—statute now sponsored by bar
Nebraska, General statute, rules filed with legislature (1939) Active
Nebraska, No general power
New Hampshire, No general power
New Jersey, General statute (1912) Active
New Mexico, General statute (1933) Active
New York, No general power
North Carolina, No general power—General statute defeated
  in legislature (1939 and 1941)
North Dakota, General statute (1941)
Ohio, No general power—Judicial Council recommending statute
Oklahoma, No general power
Oregon, No general power
Pennsylvania, General statute (1937) Active
Puerto Rico, General statute (1941) Active
Rhode Island, General statute (1930) Active
South Carolina, No general power
South Dakota, General statute (1937-1939) Active
Tennessee, No general power
Texas, General statute, rules filed with legislature (1939)
Utah, No general power—Proposed “rule days” (1928) General
  statute defeated 1942
Vermont, No general power
Virginia, Limited power to regulate “rule days” (1928) Active
Washington, General statute (1925) Dormant
West Virginia, General statute (1935) Active
Wisconsin, General statute (1929) Active
Wyoming, No general power