

## JUDICIAL EVOLUTION: THE C. EDWIN MOORE YEARS

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The recent death of C. Edwin Moore, former Chief Justice of the Iowa Supreme Court, ended a long and distinguished judicial career spanning his assumption of office as municipal judge in 1936; his elevation to district court judge in 1943; his appointment to serve as a justice of the Iowa Supreme Court in 1962;<sup>1</sup> and his election by his brethren to be Chief Justice of the Iowa Supreme Court<sup>2</sup> in 1969. Justice Moore's mandatory retirement on August 2, 1978, saw his judicial role only slightly curtailed, as he continued to serve as a senior judge for another eight years (the last six of which were authorized by special Supreme Court appointment).

At the commencement of C. Edwin Moore's appellate experience, the Iowa Supreme Court was primarily concerned with dispute resolution and opinion writing. The remarkable change in the court as an institution, with its present assumed administrative duties and as supervisor of the Iowa court system, started during the Ed Moore years and continued under his successors Chief Justices W. Ward Reynoldson and Arthur A. McGivern.<sup>3</sup> To one who remembers the early years of judicial simplicity this change is among the forefront of Chief Moore's contributions to the Iowa judicial system.

The evolution during "the Ed Moore years" prompts an examination of what those changes have been, how they affect our judicial system, and Justice Moore's contributions to them. From the standpoint of choosing the proper time frame for such examination and to limit comments on Justice Moore's contributions to the period where his efforts were capable of being most effective, we concentrate on the Iowa judicial system as a functioning body from the time of Justice Moore's appointment to the Iowa Supreme

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1. 17:2 IOWA'S THIRD BRANCH 1-2 (Mar.-June 1987).

2. IOWA CODE § 684.9 (1966).

3. This limitation ignores very major changes in the Iowa court system which have occurred since 1978. The history of the institutional changes in Iowa's judicial system is well covered in J. BEATTY, AN INSTITUTIONAL AND BEHAVIORAL ANALYSIS OF THE IOWA SUPREME COURT—1965-1969 (unpublished Ph.D. dissertation), University of Iowa, Iowa City, January 1970, and J. BEATTY, J. GREEN, R. ROSS & J. SCHMIDHAUSER, THE IOWA UNIFIED COURT SYSTEM, University of Iowa, Iowa City, 1974.

Court in 1962 to his mandatory retirement in 1978.<sup>4</sup>

### I. JUDICIAL ADMINISTRATION—1962

When Justice Moore was appointed by Governor Norman Erbe to fill the vacancy on the Iowa Supreme Court created by the retirement of Judge Bliss, the justices were nominated by partisan convention and election in the same manner as the governor. Terms were staggered and required re-election every four years.<sup>5</sup> Police judges were the only appointive Iowa judicial officers. In 1955 the legislature created the position of judicial statistician in the office of the clerk of the Supreme Court.<sup>6</sup> Jerry Beatty, Iowa Supreme Court Executive Director of Judicial Education and Planning, has correctly observed that this legislation was the first step in the institutionalization of the Iowa judicial system.<sup>7</sup> The statistical data reports and recommendations of that office helped give birth to the reforms and institutionalization of the system which continue to this writing.

The Supreme Court Clerk was appointed by the court.<sup>8</sup> There was a code editor and an assistant who aided in duplicating the court's opinions for distribution. Each of the nine justices had a secretary of his choosing, but there were only five offices for nine justices, a conference room, and one office for secretaries.<sup>9</sup> Since all justices except Justice Moore were from different Iowa communities where they were traditionally furnished an office in the local courthouse, the shortage of space was primarily apparent when the court met *en banc* as it did one week out of four, ten times a year.

Even before 1962, the constantly increased workload, illustrated by information generated by the court statistician, moved the legislature to change and improve the judicial system. The 58th and 59th sessions of the General Assembly authorized submission of Iowa constitutional amendments<sup>10</sup> to article 5 dealing with the Judicial Department. Significantly, the first section of the amendment mandated the Supreme Court to "exercise a supervisory and administrative" control over all inferior judicial tribunals throughout the state.<sup>11</sup> The words "and administrative" were added by the new amendment. The amendment then substituted an entirely new system for the selection of all judges and justices in the state of Iowa; provided for nominating commissions and appointment by the Governor; fixed the terms of office; and mandated election to approve or reject the judge on his or her record for another term. The main outline for the present structure for se-

4. *IOWA'S THIRD BRANCH*, *supra* note 1.

5. *IOWA CODE* § 46.6 (1962).

6. 1955 *Iowa Acts* ch. 270.

7. *Supra* note 3 at 13 and 21.

8. *IOWA CODE* § 685.1 (1962).

9. Personal memories of the Supreme Court facilities in the early 1960s.

10. 1959 *Iowa Acts* ch. 420; 1961 *Iowa Acts* ch. 343.

11. *IOWA CONST.*, art. V, § 1.

lection of judges in Iowa was then adopted.<sup>12</sup> Justice Moore worked hard for the adoption of this amendment. Iowa was the second state in the union (after Alaska) to adopt this broad legislation for the selection of judges, mandatory retirement, and a judicial retirement system.<sup>13</sup>

These changes coincided with Justice Moore's elevation to the Supreme Court and were the harbinger of restructuring efforts which would see Iowa in the forefront of a voluntary process that would fundamentally change judicial administration in this state.

## II. PERMANENT CHIEF JUSTICES

Originally the Iowa Court rotated chief justices on a two-year basis.<sup>14</sup> Subsequently, the court rotated chiefs on a six-month basis until 1959;<sup>15</sup> thereafter each chief was elected to serve throughout the remainder of his term of office.<sup>16</sup> The first elected "permanent" chief, serving from 1959 to 1961, was Robert L. Larson.<sup>17</sup> Chief Justice Garfield was elected chief to succeed Justice Larson effective January 1, 1961.<sup>18</sup> He served until his retirement on November 11, 1969.<sup>19</sup> Justice Moore was elected Chief Justice on November 13, 1969.<sup>20</sup> The change from "rotating" to "permanent" chiefs was significant. No one justice had real primary responsibility for leading the court administratively until the change was made.

## III. THE PHILOSOPHIC BASIS

The court's actions during the Moore years implemented a philosophy which is embodied in the Preamble to Rule 121, Client Security and Attorney Discipline System:

### PREAMBLE

WHEREAS, this court is not only constitutionally vested with judicial power but charged by the constitution with exercising a supervisory control over all inferior judicial tribunals throughout the state . . .

    . . .  
The supreme court in the exercise of this power has the duty to protect insofar as reasonably possible those persons who may be injured by attorney defalcations.<sup>21</sup>

The court recognized its constitutional power and its concomitant

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- 12. IOWA CODE § 46.1-25 (1987).
- 13. IOWA'S THIRD BRANCH, *supra* note 1, at 1.
- 14. IOWA CONST., art. 5, § 3.
- 15. IOWA CODE § 684.4 (1958).
- 16. 1959 IOWA ACTS, ch. 365.
- 17. JUSTICES OF THE SUPREME COURT OF IOWA (1938 TO PRESENT) 74.
- 18. 105 N.W.2d IV.
- 19. 172 N.W.2d V.
- 20. *Id.*
- 21. Iowa Court Rule 121 (Preamble).

responsibility.

The following actions were wholly due to court orders (as distinguished from legislative action) and were taken under the leadership of Chief Justice Moore. The court moved to administrative action independent of the legislature. It fulfilled the court's constitutional mandate recognized in the above Preamble.

#### IV. THE IOWA CODE OF PROFESSIONAL ETHICS

Although a new code of professional responsibility patterned on the code suggested by the American Bar Association<sup>22</sup> and supported by the leadership of the Iowa Bar Association had been under consideration by the court for some time, it was not actually adopted by the court until December 29, 1969. Thus, this first major change in the court's supervisory activities did not come until Chief Justice Moore was in office for some six weeks.

The significance of the adoption of the new modernized Code of Professional Responsibility can only be fully appreciated by those who began practice and continued to work under the prior code, which was adopted piecemeal through the years by the American Bar Association<sup>23</sup> and which the Iowa court simply adopted by reference.<sup>24</sup>

Again, by comparison the attorney discipline actions were far fewer and less specific, not to say less onerous, before the new code was adopted *as a rule of court*.

#### V. CLIENT SECURITY AND ATTORNEY DISCIPLINE

After many months of study, debate, and educational efforts by the court and the Iowa Bar Association, the Client Security Fund was adopted in 1973.<sup>25</sup>

The philosophy inherent in the Rule 121 Preamble had been long held by the court and was to guide it thereafter to the present day as its need to regulate its own branch of government increased. There is little doubt the philosophy was shared by the whole court, but it acted under the leadership of C. Edwin Moore. The court was not enthusiastic about the adoption of a rule which would result in lawyers suddenly finding "they did not have a lifetime vested interest in their license to practice law in Iowa." The cooper-

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22. The contribution of the Iowa Bar Association to the administrative and substantive changes in the Iowa court system cannot be overemphasized. It has been Iowa's good fortune to have a Supreme Court Chief Justice and a State Bar Association that have worked so well together.

23. Model Code of Professional Responsibility (1957).

24. Iowa Court Rule 119.

25. It is interesting to note that a Client Security Fund, discussed *infra*, had been recommended by the Iowa Bar Association in 1960 "but the idea never got off the ground." Neiman, *Lawyer Audits: A Matter of Trust*, 17:4 THE JUDGES' JOURNAL 10 (1978) [hereinafter Neiman]. The evolutionary process had not reached the proper point for either the court or the Iowa bar.

ation by Chief Justice Moore in appointing a three-judge subcommittee—Justices Clay LeGrand, Harvey Ulenhopp, and W. Ward Reynoldson (later Chief Justice)—to study the problem resulted in a fine example of cooperation of bench and bar to institute a needed reform.<sup>26</sup>

The new rules called for payments into the Client Security Fund by each practicing lawyer in order to raise a fund sufficient to reimburse clients who suffered by the lawyers' dishonesty (as distinguished from malpractice or ineptitude). The annual payments have now been waived for all lawyers who have paid in the \$200 assessment. The present reserve is sufficient to carry the fund for purposes of reimbursement of clients who have been cheated, with a reimbursement cap of \$50,000 to any one victim and \$150,000 by reason of the acts of any one attorney.<sup>27</sup>

The Client Security Fund Commission has the power to and does conduct random audits of the practicing lawyers' accounts.<sup>28</sup>

The assessment of a contribution to the fund was the least of the changes felt by Iowa lawyers. The impact of the Client Security and Attorney Discipline Orders and the Commission created thereby can hardly be exaggerated. Prior to December 5, 1973, a person who was once admitted to the practice of law in the state of Iowa needed to do nothing to preserve that right (or privilege). He or she needed only to act in such a way as to avoid disciplinary proceedings which resulted in suspension or disbarment.

Since December 5, 1973, a person admitted to the bar must file an annual form composed of seventeen questions and one broad authorization in order to continue to legally practice law in this state. Thus, lawyers who had theretofore been tenured for life in the absence of active wrongdoing became licensees from year to year. The task of persuading the lawyers of this state to accept the new type of regulation was formidable. It was performed by the bench and the bar of the state under the leadership of the Iowa Supreme Court, C. Edwin Moore at the helm, and the Iowa Bar Association, which was then headed by Richard G. Zellhoefer.<sup>29</sup> Iowa's Client Security Fund rules are widely heralded as among the best and most satisfactory in the United States.

The court's reaction to what it perceived to be the "felt necessities of the times" (to paraphrase Justice Holmes) not only laid the groundwork for satisfactory handling of the problem of clients who suffered by reason of the dishonesty of lawyers, but served as a basis for additional far-reaching changes in the court system of Iowa which continued during the Moore

26. Reynoldson, *The Court's View of Lawyer Auditing*, 17:4 THE JUDGES' JOURNAL 15 (1978).

27. Iowa Court Rule 121.3.

28. First in the nation to adopt auditing procedures. Neiman, *supra* note 25, at 12.

29. List of past presidents furnished by Iowa Bar Association. The Iowa Bar committee appointed to implement this change was composed of John H. Neiman (chairman), Lee Gaudineer, and S. David Peshkin, all of Des Moines.

years.

## VI. CLE—CONTINUING LEGAL EDUCATION

It was a matter of months until the Moore court tackled another major innovation—"continuing legal education"—again, with the urging and input of the Iowa Bar Association under the leadership of F. W. Tomasek and D. J. Goode, presidents from 1973 to 1975. The need for specific requirements for continuing education in the legal profession was addressed. Another round of debate, study, education, persuasion, and cajolement was carried on until the court adopted the present Rule 123 on April 9, 1975.<sup>30</sup> The action was taken without benefit of legislative promulgation and the administration of the program has remained a part of the judicial function. While grumbling is heard from time to time, the court and the Bar Association's long campaigns of persuasion have resulted in a surprisingly high level of acceptance and cooperation on the part of the individual members of the Iowa Bar.<sup>31</sup>

## VII. IOWA CODE OF JUDICIAL CONDUCT

Another court rule update achieved during the Moore years was the adoption of the Iowa Code of Judicial Conduct in 1973. This detailed and pervasive code became an order of the court.<sup>32</sup> Like the Code of Professional Responsibility, it was no longer a mere reference to a code for which the American Bar Association was solely responsible; it was not a promulgated court order.

## VIII. LEGISLATIVE ACTION—THE MOORE YEARS

The foregoing recitation focuses on the evolutionary process accomplished by the Supreme Court through the medium of court rule. During the same years far-reaching changes occurred through legislative action. All of these changes required the attention, input, and, at times, prodding of the court usually represented by the chief justice.

Perhaps the biggest single step was taken when the legislature created the Iowa Court of Appeals in 1976. Among the other far-reaching changes in the Iowa judicial system that required legislative action were the following:

Consolidation of eighteen judicial districts into eight judicial districts for purposes of administration and supervision of judicial personnel (1971);

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30. Iowa Court Rule 123. Iowa was the second state in the nation to adopt a rule requiring continuing legal education for judges and attorneys. *IOWA'S THIRD BRANCH*, *supra* note 1, at 2.

31. This writer, having chaired the Iowa Bar Association temporary committee to study and recommend the adoption of continuing legal education, is aware of such comment, perhaps to an unusual degree.

32. Iowa Court Rule 119.

Establishment of the position of state court administrator and the creation of a central research staff to assist the court in handling the burgeoning appellate caseload (1971);

Adoption of the unified trial court system which abolished the justice of the peace courts, mayors' courts, police courts, and municipal courts; eliminated the fee system; and created a uniform and simplified method of handling minor criminal (scheduled violations) and civil (small claims) cases (1972, effective July 1, 1973);

Creation of the Client Security Fund and the Client Security and Attorney Disciplinary Commission (1973); and

Creation of the Iowa Court of Appeals (1976).<sup>33</sup>

All of the above legislative changes required the input, leadership, and, at times, lobbying of Supreme Court members, particularly the chief justices.

The chief's posture with the legislature had to take a negative tone at times. When the legislature had Senate File 277 (a bill relating to occupational licensing) before it in 1974, Chief Justice Moore had a memorandum prepared which said flatly that regulation of lawyers, with respect to both admission and discipline, was the domain of the Supreme Court and only the Supreme Court. This memo was forwarded to the House and Senate leadership and the Judiciary Committee Chairman on January 24, 1972, with copies to lawyer legislators a few weeks later.<sup>34</sup> Attempts to license and regulate lawyers by legislative statute were abandoned.

Chief Justice Moore's relationship with the other branches of state government was always cordial but he represented the judicial branch well.

#### IX. CONCLUSION

This tract is focused on C. Edwin Moore's administrative and supervisory accomplishments. His contributions to the substantive law of the state may be left to others.<sup>35</sup> The truth is that Chief Justice Moore's contributions spanned all facets of the judiciary and will be influencing Iowa state law for generations to come.

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33. IOWA'S THIRD BRANCH, *supra* note 1, at 2.

34. Copy of letter dated February 14, 1974, with attached memorandum, Office of the Iowa Supreme Court Clerk.

35. Lest it be overlooked, the Moore dissent in the first *Boyer v. Iowa High Sch. Athl. Ass'n*, 256 Iowa 349, 127 N.W.2d 606, 613 (1964), was the catalyst that occasioned the passage of the Iowa Tort Claims Acts. Private conversation with Lee Gaudineer, then a member of the Iowa House of Representatives.

