

original jurisdiction on the Court of Appeals, but gave that power to the legislature with respect to the intermediate court.

It suggests to me when an occasion arises where the legislature did want to create original jurisdiction in an appellate court, that you have really restricted them to fixing that in the intermediate appellate court because obviously that is much easier to do than amend the constitution and fix it in the court of appeals.

THE CHAIRMAN: Delegate Mudd?

DELEGATE MUDD: We recognize we have, Delegate Bamberger, and after hearing from several judges of the Court of Appeals and intermediate court of appeals and debating the matter within Committee, our objective was to maintain and perpetuate our Court of Appeals as the court of last resort and to establish that that appellate jurisdiction responsibility would not be interfered with by delegation of original jurisdiction to the legislature. It was our further intention to have the intermediate court of appeals absorb the workload if it should develop. That was the considered view of the majority.

THE CHAIRMAN: Delegate Bamberger.

DELEGATE BAMBERGER: Would it be possible for the legislature to create original jurisdiction in the intermediate appellate court and at the same time preclude review of that by the Court of Appeals.

DELEGATE MUDD: Yes.

DELEGATE BAMBERGER: Section 5.06 provides that the General Assembly may increase the number of members of the intermediate appellate court over the minimum of five. But the legislature when it does that may not at the same time by law provide that they would sit in divisions. That is an exclusive rule-making function. Why would you not allow the General Assembly to provide by law that the court could sit in divisions?

DELEGATE MUDD: As I recall, the consideration in Committee was that the use of the intermediate court of appeals in division work could be better accommodated by rule-making power than by the legislature. It is conceived and our Committee assumed that this court is going to be expanded jurisdictionally and with manpower. But once it is, and the rules provide that this court sit in divisions, that is more appropriately a rule-making power than one prescribed by law.

THE CHAIRMAN: Delegate Bamberger.

DELEGATE MUDD: It is use of manpower actually.

DELEGATE BAMBERGER: In other words, if the legislature decided that the work of that court required that its membership be increased they could increase it to nine, let's say, as a number, but they would have to rely upon some assurance from the Court of Appeals that it would divide them into panels of three.

DELEGATE MUDD: Exactly, but all the testimony before our Committee, Delegate Bamberger, has been to the effect that there has been complete harmony between the court in its exercise of its rule-making power and the legislative leaders in the exercise of the legislative functions regulating courts and we thought that compatibility could continue within this field.

THE CHAIRMAN: Delegate Bamberger.

DELEGATE BAMBERGER: Except that power is now really a concurrent power which is a great lever toward compatibility. Did you consider giving both the Court of Appeals and the General Assembly the power to have the intermediate court sit in divisions.

DELEGATE MUDD: I do not think that concurrent power to the General Assembly and by rule-making as applied to the intermediate court sitting in divisions was discussed.

THE CHAIRMAN: Delegate Bamberger.

DELEGATE BAMBERGER: I have some questions with regard to sections 5.08 and 5.10. I take it that 5.08 concerning superior court provides for a superior court judge resident in each county, and in the district court where the district encompasses more than one county, there must be a district court judge not just resident, not even necessarily resident, but who sits in that district. Does 5.08 require that there be a superior court sitting, functioning as a court in each county?

DELEGATE MUDD: Yes, that is our interpretation of it.

THE CHAIRMAN: Delegate Bamberger, any further questions?

DELEGATE BAMBERGER: Yes. Is there then not some problem of construction presented by comparison of section 5.08 and 5.10? Section 5.10, on line 35 speaks about residence of the judge, but is much more specific in lines 38 and 39, when it says "shall sit regularly."