Federal Rules for Texas

By WOODVILLE ROGERS *of San Antonio*

Three reasons all but compel adoption of the Federal Rules of Civil Procedure for Texas courts:

1. Practicing attorneys will be required to know and be reasonably familiar with but one system.

2. It is hardly to be supposed that the Texas Supreme Court and its advisory committee can improve upon the work of the United States Supreme Court and its advisory committee.

3. Texas courts and attorneys are sorely in need of the increased prestige to be added by the favorable reception these new Federal rules have met throughout the United States.

The present system in Texas must be changed. In addition to the Legislative mandate, resulting from the act investing our Supreme Court with rule-making power, the people of Texas are disgusted that the bar and the courts have failed to keep in step with progress. It is not enough that we merely patch up the old model. The progressive lawyers and the public demand a new streamlined system.

Lawyers of Texas want to represent their clients in both State and Federal courts. Litigants want the counsel of their choice, regardless of the forum. The lawyer who intends to confine himself to the State courts must familiarize himself with a new system in any event. That is inevitable. That also goes for the judges who in no event will be practicing in the Federal courts. They should welcome the lightened labor. The great majority of Texas lawyers either are practicing in both systems or have aspirations in that direction. No greater injustice could be done the progressive, ambitious lawyer and his client than to compel them to pilot the fastest pursuit ship in Federal court today and the slow, lazy bomber in State court tomorrow. This would tend to inefficiency, delay, and added expense. Regardless of controversial differences with reference to this rule or that, which means but little after all, let us have the same system in both courts. Let us have that uniformity so necessary to speedy, exact, and inexpensive justice.

The present Federal system was worked out by the United States Supreme Court and its advisory committee from 1934 to 1938. They spent four years going over the best in the Federal equity rules and the practice codes of the states. The committee and the Court were familiar with several systems. There was controversy, of course, and there was compromise. Two preliminary drafts were widely circulated among the lawyers of the United States before the third and final draft was presented to the Court. Thousands of suggestions were considered in minute detail. The rules have been in force eighteen months, and so successfully that the advisory committee has recently recommended that no necessity for change has been discovered, and that no change be made in any event until January 1, 1941.

Surely a system so carefully prepared with the assistance of outstanding scholars and practitioners, and promulgated by the greatest Court on earth, should not be rejected by Texas without compelling reasons. Pleading has been simplified and shortened; denials have been made specific; depositions and discovery have made preparation for trial easier and speedier; pre-trial saves time and expense on uncontroverted issues; failure to admit the obvious is penalized; hiding-in-wait is abolished; and the whole effort has been aimed at making a trial a quest for truth rather than a battle of wits. Useless exceptions to the Court's rulings are abolished, rules of evidence have been broadened, records on appeal have been shortened, and, in short, the whole system has been streamlined and modernized.

It is perhaps too much to hope that our Supreme Court and its advisory committee could much improve on this new system. An effort to improve it might not be a blunder, but it would be so regarded for many years to come.

The promulgation of these new rules have added to the growing prestige of the Federal courts. They have been proclaimed far and wide as an epochal landmark in the history of legal practice and procedure. Few lawyers there are who

have not been asked on the street, "Why is it your State courts do not function like the Federal courts?" Derision of our courts and lawyers is a popular pastime. There's no need to argue whether it is justly so. We've made little progress in fifty years. Other professions have kept pace with progress. We have strutted standing still. We now have the opportunity to capitalize on the popularity of this most advanced system in the administration of justice. In doing so we will render the overburdened public and the almost disgusted litigant a distinct service, and we will regain, at least in part, our lost prestige.

Certain changes will have to be made to make the rules applicable. Also it would not mar the system to require that the judges' charge be in writing, to require that it be delivered prior to argument, and to make the submission of a case on special issues mandatory if requested by counsel. Likewise the statute which prohibits a trial judge from commenting upon the weight of the evidence could be retained. Federal judges have always had this power, and there is no mention of it in the new Federal Rules. Other changes might be made to meet local conditions with which the Federal courts are not confronted, but on the whole the rules are as workable in the State courts of Texas as they are in the Federal courts.