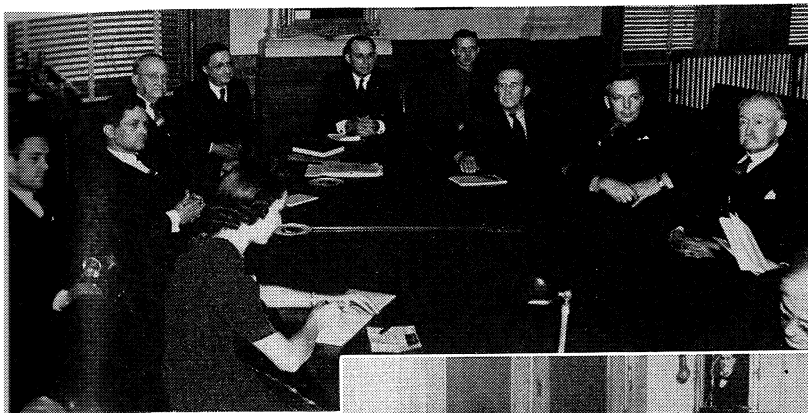


# Committee Begins Work on Rules



The Supreme Court's advisors on rules of civil procedure get into action in the State Capitol. At the left are Robert W. Calvert, Allan Clark, James W. McClendon, Robert W. Stayton, James P. Alexander, Allen Montgomery, Winbourn Pearce, Roy W. McDonald, and R. B. Leavy.

At the right are Committeemen Marion N. Chrestman, Randolph L. Carter, W. E. Orgain, Dallas Scarborough, Ben H. Powell, and Angus G. Wynne, and Miss Louise Worley, secretary. Unable to be present because of illness were F. A. Williams, Olan R. Van Zandt, and William A. Vinson.



Two sub-committees to consider a plan of action for revision of rules of civil procedure were appointed at the first meeting of the Supreme Court's advisory committee on the Rule-making Power Act January 20. One sub-committee, headed by Judge Robert W. Stayton of The University of Texas, will list the statutes subject to revision under the Act and propose the organization and distribution of work. Dallas Scarborough of Abilene is chairman of the other, which will recommend a declaration of policy for the committee at its next meeting in Austin February 16 and 17.

Appointed by order of the Supreme Court January 10, the advisory committee is composed of twenty-one members, with Angus G. Wynne of Longview as chairman. Ten members were selected from the state at large, and one from each of the eleven supreme judicial districts. Those of the first group are as follows:

*Mr. Wynne*, president of the Texas Bar Association and chairman of the advisory committee on the State Bar Act; *Judge F. A. Williams* of Galveston, former asso-

ciate justice of the Supreme Court; *Judge Ben H. Powell* of Austin, retiring president of the Texas Bar Association and former member of the Commission of Appeals; *M. N. Chrestman* of Dallas, president of the Texas Civil Judicial Council; *Judge James W. McClendon*, chief justice of the Austin Court of Civil

"Let's not forget we have a big job," W. R. Chapman of Abilene tells members of the advisory committee. With him in the picture below are Dallas Scarborough, Richard Burgess, and J. B. Dooley.



Appeals and member of the Texas Civil Judicial Council.

Also *Judge James P. Alexander*, associate justice of the Waco Court of Civil Appeals, professor of practice and procedure at Baylor University Law School, and member of the Texas Civil Judicial Council; *Judge Stayton* of Austin, former member of the Commission of Appeals, professor of practice and procedure at The University of Texas, and member of the Texas Civil Judicial Council; *Roy McDonald* of Dallas, professor of practice and procedure at Southern Methodist University; *Judge W. R. Chapman* of Abilene, former member of the Commission of Appeals, member of the Texas Civil Judicial Council, and 104th District judge; and *Senator Olan R. Van Zandt* of Tioga, chairman of the civil jurisprudence committee of the Senate and member of the Texas Civil Judicial Council.

Judge Powell was appointed to the committee to succeed Judge Thomas B. Greenwood of Austin, former associate justice of the Supreme Court, who resigned because of illness. The following committeemen were named to represent their respective supreme judicial districts:

*William A. Vinson* of Houston, *District Judge Allen Montgomery* of Wichita Falls, *Winbourn Pearce* of Temple, *Randolph L. Carter* of San Antonio, *Allan Clark* of Greenville, *Judge R. B. Leavy* of Longview, former associate justice of the Texarkana Court of Civil Appeals, *J. B. Dooley* of Amarillo, *Richard F. Burgess* of El Paso, *W. E. Orgain* of Beaumont, *Robert W. Calvert* of Hillsboro, former speaker of the House of Representatives, and *Mr. Scarborough*.

The Supreme Court appointed the advisory committee to assist it in carrying out the provisions of House Bill 108, passed at the last Regular Session of the Legislature and giving the Court full rule-making power in civil practice and procedure. Copies of the proposed rules must be filed with the Secretary of State and mailed to each member of the Legislature on or before December 1. Unless disapproved by the Legislature, they will become effective September 1, 1941.

Only laws governing practice and procedure in civil actions are repealed by the Act, substantive laws being unaffected.

Five thousand dollars was provided in the Judiciary Appropriations Bill for expenses of the Court, including stenographic services, postage, printing, and research. Committee members are allowed traveling expenses, but no salary for their services.

Need for granting rule-making power to the Supreme Court was cited in the emergency clause of the Act:

"Rules of practice and procedure in the civil courts, as prescribed by legislative enactment, often result in much unnecessary delay and expense to the litigants and the State, and in unnecessary reversals and new trials on purely technical and procedural grounds; and as a result the courts are subjected to criticism which weakens and undermines in the public estimate their prestige so essential to the stability of our democratic form of government, and it is essential to place the rule-making power in civil actions in the Supreme Court, whose knowledge, experience, and intimate contact with the problems of judicial administration render that Court particularly qualified to mitigate and cure these evils."

Out of more than eight thousand articles of the Revised Civil Code, Judge Stayton's committee, which met in Waco January 27-29, will list those that are partly or entirely procedural, so that substantive laws will not be considered for revision. The number of sub-committees and the principle to govern distribution of the work among them also will be suggested. Other members of the committee are Judge Alexander, Mr. McDonald, Judge McClendon, and Judge Chrestman.

Controversial matters, such as pre-trial procedure, to be put on the agenda of proposed rules will be determined by Mr. Scarborough's committee, composed of Mr. Orgain, Mr. Carter, Mr. Burgess, Mr. Clark, and Judge Chapman.

Associate Justices Richard Critz and John H. Sharp were present at the meeting of the advisory committee, Chief Justice C. M. Cureton being in attendance at the meeting of the Supreme Court Memorial Building committee. Judge Critz explained that the advisory committee had been appointed to do the detailed work because of the great amount

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The Court would not have appointed the committee to perform the functions of the Rule-making Power Act if it had not been of the opinion that the essential features of the Act were valid, he declared.

"The Court stands ready to cooperate with you," Judge Sharp asserted. "We don't want to dictate to you. We know that you are going to be helpful. That a change is needed along certain lines we all will admit. There is a tendency to hasten up trials. Everybody will agree to that. There is a tendency in a trial of a case to make the lawyer on both sides deal openly and fairly with the Court, and if he doesn't, he waives it and can't bring the question forward in some appellate court and have the case reversed and remanded on that."

Of the task of the committee, he added: "It is a practical matter, and you gentlemen are practical men who are in touch with the people of Texas. It is for you to decide whether it would be wise to submit to the Legislature a code so radical that it would change rules of procedure and put in an entirely new set."

An informal discussion of the ways and means of revising the rules was entered into by the committee. Mr. Scarborough stated that the question of keeping up with the docket is probably the hardest of all. The Court would be in a better position than anyone else to suggest how it could be done, he pointed out. Judge Chapman suggested the work of the committee be divided by courts.

"The lawyers of Texas have been clamoring for this law for a long time," Judge Chapman told the committee, "and we have led the people of the state to believe that it was absolutely necessary that we have it. They are going to expect something more than just that we are in favor of matters as they now stand. I think this committee has the opportunity to perform the greatest service to the lawyers and people of Texas that any committee of lawyers has ever had in the history of the state, and it is up to us to realize that we have a Herculean undertaking."

"I am not going to belong to that class that believes in just making a few changes. The lawyers and people of Texas want to get a case in court and get it disposed of some way. We must do that."

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#### COMMITTEE BEGINS—

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of work which the Court already has to do.

"This Court realizes," he said, "that while we are conservative, the law must grow to keep pace with the growth of civilization and the changing conditions and problems that confront the government. We hope that the rules we now have and the rules we make will be brought into one codification so that the lawyers of Texas will be able to take the rules as finally announced and know what the law and the rules are. We are confident that we have appointed a committee whose work will reflect credit on the committee and the Court and embody an untold good for the jurisprudence of this State and this nation."

I get along with my lawyers, but we must get away from lawyers' making exceptions. We must fix it some way so that the lawyer who has something in the case must divulge that at the trial. Let's not forget that we have a big job."

