Completed Rules Urge Liberal Interpretation

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Supreme Court Advisory Committee

Among the seventeen men gathered around the long table there was an obvious sense of gratification and relief. Outside, the mid-August heat was broken by a Texas thundershower, but in the air-conditioned Texas Hotel at Fort Worth the discussion raged so constantly that the conferees did not hear the thunder. The advisory committee appointed by the Supreme Court to assist it in the task of preparing rules of procedure for civil actions in Texas, to become effective September 1, 1941, was holding its final policy-fixing session. Neither storm nor politics nor personal fatigue could interrupt its drive to finish the job to which it had been assigned almost exactly seven months before.

Let the records show the work that this group of lawyers has done. Excluding the time which has been spent in sub-committee meetings and in office study of proposed amendments to the rules, the members of the committee have spent one working day out of every nine since January in conference concerning these rules. The sessions of the committee as a whole have consumed twenty-one days. To the professors on the committee this has not been a serious sacrifice, and as one of the professors I waive for them any credit. But to the practicing lawyers who have thus given freely virtually one month of their time to this work I claim the privilege of expressing the appreciation of the Bar of Texas.

With the meeting at Fort Worth August 13, 14, and 15, the committee completed its study of appellate procedure and of the rules which it will recommend to the Supreme Court. As finally drafted, there will be some eight hundred rules. Many of these will be statutes which have been carried forward; others will be present rules of court which have been adopted without modification. But there will be many that are new and yet others which come from the Federal Rules. Every Federal Rule has been carefully studied and its possible application to our procedural system has been considered. Of the eighty-six Federal Rules, thirty-five will be found wholly or partly adopted in the recommendations of the committee.

Appellate procedure proved a difficult subject, and required most of the time of the group at three separate meetings, one early in July at Fort Worth, another late in the same month at Austin, and the final meeting in Fort Worth. The result of these deliberations will be the recommendation of a system which embraces much that is good from the Federal Rules while adapting it to the basic outlines of our present State system.

The objective pursued in the suggestions has been the simplification of the record on appeal and the prevention of reversals upon unsubstantial grounds. To this end perhaps the most important provisions have been those which provide for extremely liberal amendment privileges in the appellate courts. Not only the briefs, but the appeal bond, the transcript, the statement of facts, and even the trial pleadings may be amended while the case is upon appeal, provided that thereby the ends of justice will be furthered. Parties may be dropped or added in the appellate court where this may cure an error of misjoinder or non-joinder "without detriment to the substantial rights of any of the parties." It is recommended that there be no reversal or dismissal for want of form without allowing a reasonable time to correct or amend such irregularities.

Appeal, under the suggestions of the committee, will be perfected by notice of appeal, rather than by notice and cost bond as is now required. Cost bond will of course be necessary, but not as a step in the perfection of the appeal. Supersedeas

bonds will, if the recommendations are adopted, be for the amount of the judgment, interest, costs, and damages, rather than for double the amount, and specific provision will be made for superseding the judgment as to specified property without superseding the whole of the judgment where the suit is for the recovery of or foreclosure upon real or personal property.

The briefing rules will not seem strange to attorneys who have properly construed the present practice. Two principal changes have been recommended. One is that the assignments of error need not be repeated in the brief. The other is the elimination of formal propositions, and the substitution therefor of a "statement of the points upon which the appeal is predicted, separately numbered, in short form and without argument, and germane to one or more assignments of error. Such points will be sufficient if they direct the attention of the court to the error relied upon and *should ordinarily be so concisely stated that they may appear, separately numbered, on a single page of the brief.*"

As an illustration of a "point" under this rule, the committee suggests, in a note, the following:

"First point. The error of the court in refusing the charge upon the issue of appellant's liability under the family purpose doctrine."

Obviously, such points are not "propositions" as now understood, and the technical arguments about whether particular propositions are sufficient to require consideration should be eliminated.

A further simplification which will have far-reaching effect upon the forms of trial is the recommended adoption of Federal Rule 46, which eliminates the necessity of formally noting an exception to the rulings of the trial court which are made over the objection of a party.

The elaboration of the changes which have been suggested in appellate procedure could be continued beyond the permissible bounds of this brief report, but they would be fragmentary in any event, and those which have been mentioned have been suggested as examples of the type of work the committee has attempted, rather than as an effort to note all the differences.

The final report of the committee will be handed to the members of the Supreme Court in September. It will consist of a mimeographed book of some 250 pages, containing the body of the rules recommended, the source of each one, and a notation of the changes made in the source material. There will be a parallel refer-

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Seventeen of the twenty-one members of the Supreme Court's advisory committee on rules of civil procedure attended the final meeting in Fort Worth. Seated, left to right, are Judge Allen Montgomery, Randolph L. Carter, Alonzo Wasson of the Dallas News, Allen Clark, J. B. Dooley, Judge Robert W. Stayton, Roy W. McDonald, Chairman Angus G. Wynne, Richard F. Burgess, Senator Olan R. Van Zandt, Marion N. Chrestman, Judge W. R. Chapman, Judge R. B. Levy, Winbourn Pearce, and Judge James W. McClendon. Standing are Dallas Scarborough, Will R. Vinson, and Judge Ben H. Powell.