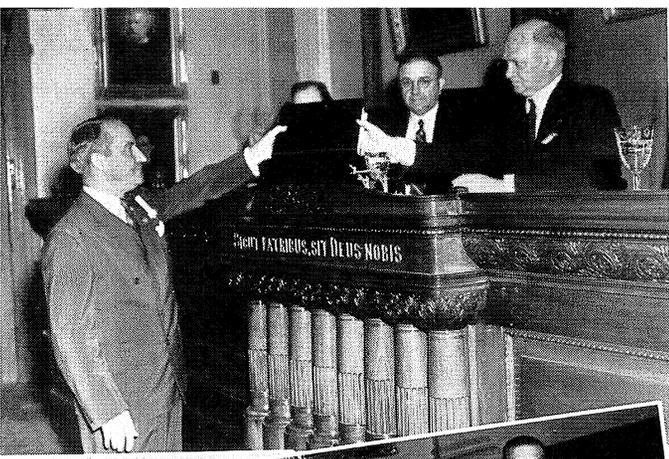


Court Gets New Rules



Chief Justice Moore, above, receives the new rules of civil procedure from Chairman Wynne. In the center are Advisory Committeemen McClendon, Alexander, Burges, Calvert, and Clark. S. A. Philquist, standing left below, confers with Committeemen Van Zandt, Montgomery, and Scarborough.

Eight months of intensive study and work was climaxed Sept. 28 when Angus Wynne, chairman of the Supreme Court advisory committee, handed the revised rules of civil procedure to Chief Justice W. F. Moore. The report, containing 822 recommended rules and called by the Chief Justice the greatest work of jurisprudence in the State, was presented in a simple, business-like ceremony with a majority of the twenty-one committee members in attendance.

Praising his co-workers for devoting themselves wholeheartedly to the task en-

trusted in them in January, 1940, by the Supreme Court after authorization by the Legislature, Mr. Wynne also thanked the Court for its assistance.

"The Bar should be grateful for your cooperation enabling us to work with one ideal in view, to make the rules better for the citizens of Texas," Mr. Wynne declared.

Chief Justice Moore accepted the report and requested that the committee remain intact, and available for consultation.

Called to special session by the Supreme Court, the committee met Oct. 24 in Austin and accepted eleven changes in the rules suggested by the Court. With this action, the work of the advisory committee ended.

In a letter accompanying the report the committee urged liberal interpretation.

"With the utmost conviction, we assure this court that unless these rules are liberally construed to avoid technicality and delay, the tremendous contribution of time and energy made to them by the lawyers of Texas will have been wasted," it read.

Recognizing the fact that no set of new rules alone can work material change, the committee held that "The attitude of the judges who must interpret and apply the rules must in the final analysis determine the success of the entire program. Undoubtedly the vast majority of the trial and intermediate appellate judges of Texas anticipate the opportunity to interpret a new set of rules liberally to expedite the disposition of business and to decrease the number of technical reversals.

"But we should not be blind to the obvious if we did not recognize that there may be a small majority of judges who do not immediately evidence the broad outlook typical of their brothers on the bench."

The letter went on to say that the committee was assured that the Court would give the liberal construction essential to improvement in Texas procedure.

Tracing circumstances which led to the development of the new rules, the committee's letter stated that "With the five

levels of courts ranging from the justice of the peace to the smallest village cross road, through the county courts, the district courts, and the Courts of Civil Appeals, to your own body and the two Commissions which assist you, Texas presents procedural problems which are in many respects different from those of less complex court systems.

"These problems are increased by the fact that neither the Justices of the Peace nor the Judges of the County Courts are necessarily trained attorneys. They are complicated further by the fact that through the past years there have been created numerous special county courts at law and by the enactment of statutes having application only to a limited class of district courts."

After the sub-committees on the plan and scope of the work had prepared a program, Chairman Wynne divided the committee proper into sub-committees on

trial procedure, appellate procedure, ancillary procedure, and special proceedings. The sub-committees met at various times and nine general sessions were held. The State Bar of Texas paid the expenses of a member of the committee to put the report in final form.

The report contains the source and suggested change for each rule. Sources were stated only when the rule was based on or superseded a previous statute or Texas court rule or was drawn from the Federal Rules. Such sources as recommendations of the Civil Judicial Council and statutes of other states were not mentioned.

"In the short time we have had, it has been impossible to study every general subject of procedure in detail," the committee's letter read. "We have read, in general, every rule which we have recommended, every statute on which these rules

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Members of the Supreme Court and its advisory committee are shown below. Back row, left to right, are Commissioners S. H. German and J. E. Hickman, Associate Justice John H. Sharp, Chief Justice W. F. Moore, Associate Justice Richard Critz, and Commissioners W. M. Taylor, G. B. Smedley, and C. S. Slatton.

Second row, Alonzo Wasson of the Dallas News, Committee members Allen Clark, James W. McClendon, Richard F. Burges, Robert W. Calvert, Dallas Scarborough, Olan R. Van Zandt, Allan Montgomery, Randolph Carter, and S. A. Philquist, clerk.

Seated, William A. Vinson, James P. Alexander, Ben H. Powell, Angus G. Wynne, chairman, R. B. Levy, W. R. Chapman, and M. N. Chrestman.



court every procedural statute or part of a statute which is not expressly listed as repealed."

The committee expressed the opinion that a continuous study of the work will be helpful, and that with additional time, further improvement can be made in bringing about uniformity and simplicity. Since such a study falls within the outlined duties of the Texas Civil Judicial Council, it was suggested that thought be given to obtaining for the Council sufficient appropriations to permit it to employ research assistance such as that maintained by the Councils of New York and Michigan.

The committee thanked the lawyers of Texas for aiding through the institutes on civil procedure.

"The Texas Bar Association and the State Bar of Texas took an active part in promoting these institutes, and the research and suggestions of the committees of the Texas Bar Association on Remedial Procedure and Pre-Trial Procedure were of great assistance," the letter stated. "Individual attorneys were generous in submitting helpful suggestions. The rules which we recommend thus represent the thought of the lawyers of Texas, and not the work of one small group.

"We realize that the proposed rules will not satisfy everyone. They will not satisfy anyone with extreme views. But we have been, throughout our work, in complete accord with the observations made at the outset of our undertaking by Associate Justices John H. Sharp and Richard Critz that the committee should take a fairly conservative attitude and should work to eliminate the present evils."

Besides Mr. Wynne, the committee is composed of Judge James P. Alexander of Waco, Robert W. Calvert of Hillsboro, Judge W. R. Chapman of Abilene, Allen Clark of Greenville, R. B. Levy of Longview, Roy W. McDonald of Dallas, W. E. Orgain of Beaumont, Judge Ben H. Powell of Austin, Judge Robert W. Stayton of Austin, William A. Vinson of Houston, Richard F. Burges of El Paso, Randolph L. Carter of San Antonio, M. N. Chrestman of Dallas, J. B. Dooley of Amarillo, Judge James W. McClendon of Austin, Judge Allan Montgomery of Wichita Falls, Winbourn Pearce of Temple, Dallas Scarborough of Abilene, Senator Olan R. Van Zandt of Tioga, and F. A. Williams of Galveston.

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are based, all Texas and all Federal rules. Yet we have not had sufficient time to study completely such complex subjects as citation by publication, nor to select from the statutes all which are in part procedural. Hence we have included Rule 819, which is intended to preserve as rules of