

January 1939

Proposed New Rules of Colorado Civil Procedure

Philip S. Van Cise

Follow this and additional works at: <https://digitalcommons.du.edu/dlr>

Recommended Citation

Philip S. Van Cise, Proposed New Rules of Colorado Civil Procedure, 16 Dicta 169 (1939).

This Article is brought to you for free and open access by the Denver Law Review at Digital Commons @ DU. It has been accepted for inclusion in Denver Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

PROPOSED NEW RULES OF COLORADO CIVIL PROCEDURE

By PHILIP S. VAN CISE*

AT the annual meeting of the Colorado Bar Association last fall it was unanimously voted that the Colorado Code of Civil Procedure should be amended, as far as practicable, to conform to the new Federal Rules. Pursuant thereto the association secured new legislation empowering the Supreme Court to act by rule. This was done by Senate Bill 119, which was approved by the governor February 25, 1939.

Under this act the Supreme Court may make rules for all courts of record, governing the practice and procedure in civil actions and all forms in connection therewith. Such rules, when adopted, shall take effect three months after their promulgation by the court.

The court has now notified the association that it will welcome a draft of suggested rules prepared by its authorized committee. George Dexter Blount, the President, has appointed the writer as Chairman of the Advisory Committee. The committee has been split into four sections, (1) Rules as based upon the Code and existing Colorado Supreme Court Rules; (2) Forms; (3) General Statutes which properly belong in the Code; (4) Revision, to criticize and harmonize the work into the final form for the court. The Supreme Court will, in turn, amend this work as it sees fit.

The purpose of the committee is to prepare a complete new Code of Procedure, following, so far as practicable, the order and phraseology of the Federal Rules, but not being hide-bound by the latter. Where the Colorado practice is preferable we will retain it; where the Federal Rules can be improved we will suggest such change; where they are inapplicable they will be disregarded. The task of the committee will be to make one practice for both jurisdictions, and to simplify the work of the lawyer and the courts. The cardinal principle involved will be to expedite and simplify litigation, so that rights will be determined at a minimum of time and expense.

Denver lawyers are being given the brunt of this work for the reason that they can meet on short notice and without

*Chairman of the Advisory Rules Committee, Colorado Bar Association. Member of Denver Bar.

expense. But Mr. Blount is asking the president of each Bar Association in the state, outside of Denver, to select a representative to be a member of Group No. 4. These association members will be sent the revision draft, and will be asked to submit the same to a meeting of their local Bar Associations. When all Bar Associations have acted, another draft will be prepared, public hearings will be held in the Supreme Court room, and then the final draft will be assembled and submitted to the court.

The lawyer out in the state has problems of which city attorneys know nothing. And we particularly want the country lawyers to work on this code so that it will apply to all sections of the state and to all kinds of practice in courts of record. We welcome and ask for suggestions from every member of the bar.

We wish to express our thanks to West Publishing Company for a large number of copies of its Annotated Rules on Civil Procedure, The Lawyers' Co-Operative Publishing Company for additional copies of the rules, and Bradford-Robinson Printing Company for four copies of the Code.

The first meeting of the committee will be held in the Supreme Court room in the Capitol Building on Monday, May 8th, at 7:30 P. M. It is expected that at least forty lawyers will be in attendance.

Between fifty and seventy-five lawyers will be on the committee, but more are needed and volunteers are called for.

As a sample of the problems before the committee, the Rules provide for appeals from District to Circuit Court of Appeals, the Code for writ of error to the Supreme Court. If we are to use one practice for appellate work, the writ of error should be abolished—yet it is provided for in the Constitution, Art. VI, Sec. 23, from County Court to Supreme Court. The Code was adopted in 1887, in a horse and buggy age. Many of its provisions do not appear in the Rules. Yet all such should be amended and brought down to date, and in other cases the Rules and Code be synchronized. As a sample of duplication in times gone by, Sec. 451 provides that,

“The seal may be fixed by impressing it upon the paper, or on a substance attached to the paper and capable of receiving the impression,” while Sec. 397 provides that,

“it may be impressed with wax, wafer or any other substance, and then attached to the writ,* or it may be impressed on the paper alone.”

Both are in the 1887 Code, adopted at the same time!

No special amendments will be attempted at this time on County Court special proceedings. That work, if needed, will be left to another committee.

We ask that all judges and lawyers write at once to the chairman, giving their criticisms of and suggestions about the present code or rules so that these can be referred to the proper sections for study.

We were preparing to study Rule 27 with Code sections 400 to 405, when Percy Morris informed us that he, Golding Fairfield and Fred Sanborn had just amended these sections in the present legislature! So send in your amendments now.

Members of the committee to date are as follows:

GROUP NO. 1—DRAFTS

Judge J. T. Adams
 Judge Wilbur Alter
 Walter M. Appel
 Hamlet J. Barry
 Guy Brewster
 Tom M. Burgess
 W. Clayton Carpenter
 John A. Carruthers
 Harold George Chapman
 Edward V. Dunklee
 William R. Eaton
 Golding Fairfield
 Frank Fetzer
 Ernest L. Fowler
 Omar E. Garwood
 Benjamin L. Griffith
 Charles H. Haines
 Mark Harrington
 Horace Hawkins, Jr.
 Judge H. Lawrence Hinkley
 Herschel Horn
 D. I. Hutchinson
 Gail L. Ireland
 Thomas Kelley
 Arthur Laws
 Bruce M. McCay
 J. Warner Mills
 Percy S. Morris
 Harry Petersen
 W. W. Platt

Ira Quiat
 Harold D. Roberts
 Fred Sanborn, Jr.
 Fred Sanborn, Sr.
 Jacob Schey
 Harry Silverstein
 Charles J. Simon
 M. E. H. Smith
 Mortimer Stone
 Ben Sweet
 Hubert D. Waldo
 Ben S. Wendelkin
 Judge S. Harrison White
 Roger H. Wolcott
 John Zanoni

GROUP NO. 2—FORMS

Carle Whitehead, Chairman
 Louis A. Hellerstein
 Glenn G. Saunders

GROUP NO. 3—STATUTES

Robert L. Stearns, Chairman
 Cecil M. Draper
 John L. Griffith
 Frank Swancara

GROUP NO. 4—REVISION

Charles C. Sackman, Chairman
 William E. Hutton
 Kenneth W. Robinson
 R. Hickman Walker
 Edward L. Wood