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Reform of Civil Procedure – a Symposium

The Work of Kentucky’s Civil Code Committee

By Porter Sims*

The Kentucky Civil Code Committee was created by the General Assembly at its 1950 regular session. The purpose was to improve civil practice and procedure in the courts of the Commonwealth, and to that end the Committee was directed to make a comprehensive study of the Kentucky Civil Code, and to formulate and execute plans and policies for the simplification, clarification and revision of the Code as might appear necessary and proper. It was authorized to recommend transposition of general procedural rules from the Kentucky Revised Statutes to the Code, and matters of substantive law from the Code to the Statutes. The study was limited by the provision that the substantive rights of litigants should not be abridged, enlarged or modified.

The Act provided that membership of the Committee should be composed of the Chief Justice of the Court of Appeals, or a member of that Court designated by him, two Circuit Judges, and four members of the Kentucky State Bar Association. All members, with the exception of the representative of the Court of Appeals, were to be appointed by the Governor. In accordance with these provisions, the membership presently consists of the writer as Chairman; Hon. Morton J. Holbrook, Jr., of Owensboro, Secretary; Hon. Lawrence S. Grauman, Judge of the Jefferson Circuit Court, Common Pleas Branch; Hon. A. J. Bratcher, Judge of the Thirty-eighth Judicial District, Hon. Allen Prewitt, of Frankfort; Hon. T C. Carroll of Shepherdsville; and Hon. Marion

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W Moore, of Covington. The Committee's staff is composed of Hon. Watson Clay and Hon. Robert K. Cullen, Commissioners of the Court of Appeals, and Hon. Ben B. Fowler and Hon. George M. Catlett of the Frankfort Bar.

Moved by the desire to improve those features of civil procedure which most demanded attention, the Committee directed a letter to each member of the Kentucky State Bar Association requesting suggestions and cooperation in the undertaking. Such a request was also made to the Judicial Conference and in the State Bar Journal. It was felt that those, who either as judges or active practitioners, daily administered the provisions of the Civil Code, were best qualified with the knowledge and experience to point the proper course of endeavor. Concurrently with this action, the Staff, under the direction of Judge Cullen, former Reviser of the Statutes of Kentucky, made a systematic study and breakdown of the Civil Code, related statutory provisions and Criminal Code sections and construing cases. The purpose of these activities was to determine basically where Kentucky stood procedurally, and where it should go procedurally.

The response of the Bar was gratifying and indicated that a revision along the lines of the Federal Rules of Civil Procedure was desired. Following such a policy would introduce many procedural reforms long overdue, and would give the added practical advantage of supplying the profession with a standard civil procedure which could be applied not only in the local courts, be they term courts or courts of continuous session, but in the Federal courts and in the growing number of jurisdictions which are adopting the Federal Rules in the main. Consequently, upon a careful consideration of the involved factors, and weighing the relative advantages and disadvantages of such a course, the Committee adopted the policy of following the Federal Rules of Civil Procedure, insofar as practicable, in formulating a new Code.

With the necessary conditions precedent as to policy established, a practical operating basis was agreed upon and has been followed. The Staff takes each Federal Rule in order, unless some interrelating factor precludes it, and studies this rule. Research is performed in order to determine its meaning and effect. The Kentucky law, whether it be code section, statute
or case law, upon the same matter is then determined and compared with the federal provision. Tentative drafts with explanatory and discussion notes are prepared and reproduced for presentation to the Committee at periodic meetings wherein they are gone over word for word and changes and recommendations made. The directives of the Committee resulting from these meetings are acted upon by the Staff, which redrafts, incorporates desired changes, and does further research before proceeding in preparation of new material.

In this manner the matter embraced in Federal Rules 1 through 75 has been covered at this date. Portions of the Civil Code dealing with substantive rights have been earmarked for transfer into the Kentucky Revised Statutes, and certain statutes have been selected for treatment in order to achieve conformity with the new procedural provisions. There remain for the Committee’s consideration the problem of the inferior courts, provisional remedies, and the administrative provisions necessary for the new procedural system. In addition to its activities in the revision processes, the Committee has published two narrative interim reports of its work, and has presented oral reports and panel discussions at the annual convention of the Kentucky State Bar Association and at each of the district conventions of the Association. Articles have also been contributed to the Kentucky State Bar Journal relative to the progress of the project.

The time remaining before the forthcoming session of the General Assembly, when the final efforts of the Committee are to be presented and considered, is fast growing short and must be used to full advantage if a successful termination is to be achieved. What has been accomplished could not have been done without the sincere and wholehearted cooperation of the Bench, the Bar and the Law Schools, whose suggestions, interest and support are reflected in this effort to create the greatest wholesale procedural reform since 1851, in which year the present Code of civil practice was adopted.

This issue of the Kentucky Law Journal, coming on the hundredth anniversary of the adoption of the Code, presents a timely independent study of the College of Law which should prove invaluable to the profession. Especially is this true if the efforts of the Committee are put into effect. The research, which has
been pursued in a manner similar to that employed by the Com-
mittee, gives an insight into the problem of procedural reform, 
and offers a scholarly comparison between our present and an-
ticipated procedural systems, charting an effective line of de-
parture between the two for future reference.

We all stand united that the maxim "in our law one comma 
overturns the whole pleading" shall be eliminated from Kentucky 
procedure.