

6-1934

A Simplified Code of Appellate Procedure

L. L. Bomberger
Member, Hammond Bar

Follow this and additional works at: <http://www.repository.law.indiana.edu/ilj>

 Part of the [Courts Commons](#), and the [Legislation Commons](#)

Recommended Citation

Bomberger, L. L. (1934) "A Simplified Code of Appellate Procedure," *Indiana Law Journal*: Vol. 9: Iss. 9, Article 1.
Available at: <http://www.repository.law.indiana.edu/ilj/vol9/iss9/1>

This Article is brought to you for free and open access by the Law School Journals at Digital Repository @ Maurer Law. It has been accepted for inclusion in *Indiana Law Journal* by an authorized administrator of Digital Repository @ Maurer Law. For more information, please contact wattn@indiana.edu.



JEROME HALL LAW LIBRARY

INDIANA UNIVERSITY
Maurer School of Law
Bloomington

INDIANA LAW JOURNAL

Volume IX

JUNE, 1934

No. 9

A SIMPLIFIED CODE OF APPELLATE PROCEDURE

L. L. BOMBERGER*

There are two primary rights involved in Appellate practice. First, the right of appellant to be heard on the merits of his appeal without undue procedural pitfalls; second, the right of appellee to have a decision without unreasonable delay. While the objective of ultimate justice between the parties is never lost sight of, yet the approach in the reviewing court differs from that of the trial court. It is the duty of a trial court to do justice; it becomes the duty of a reviewing court to determine whether justice has been done.

The vehicle by which an appellant carries his case to a reviewing court should never be as important as its cargo. The energy of appellant's counsel should be devoted in the main to presenting the merits of his cause. He should not be so vexed by the mechanical processes of appeal as to disconcert or exhaust him before reaching the merits. The deliberation of counsel should be given to the rights of his client, rather than to the preparation of a transcript.

There is no reason why the appealing of a case should not be simplified to the point where formality becomes unimportant, or at least fully subordinated.

A radical departure from the established code of Appellate practice is in no sense a blow at approved procedure, including the formation of appropriate and proper issues and an orderly trial, in the court below.

The purpose of this discussion and of the plan which is offered is such that changes in the practice generally, which are

* Of the Hammond bar.

frequently suggested and discussed, are entirely beside the point. The subject matter is Appellate Procedure, and the object is only to bring about such changes as will emphasize the end to be accomplished, rather than the means.

The case is well stated by Attorney General Cummings in this language:*

“Courts exist to vindicate and enforce substantive rights. Procedure is merely the machinery designed to secure an orderly presentation of legal controversies. If that machinery is so complicated that it serves to delay justice or to entrap the unwary, it is not functioning properly and should be overhauled.”

In order to get under way, it is probably necessary that the legislative branch of the Government withdraw from its invasion of the prerogatives of the judiciary by conceding that the subject matter is an appropriate one for rules of court, rather than statutes.

To that end, a legislative enactment is suggested:

Section 1. Appeals from judgments in civil actions, which are now or may hereafter be allowed by law, shall be taken under such rules as to the time and manner thereof, including the procedure in both the trial courts and the courts of review, as shall be prescribed and adopted by the Supreme Court.

Section 2. Such rules, when adopted, shall have the force of law, and shall, to the extent and scope thereof, supercede statutes now applicable to the subject matter, and such superseded statutes are hereby repealed as of the date when such rules take effect.

That the foregoing or a similar statute is appropriate needs no other proof than a review of the manner in which the Supreme Court has handled admissions to the Bar. When the Act of 1931 was enacted, the court immediately made an intensive study of the question, adopted a comprehensive set of rules for examination of candidates, and appointed and put to work a Board of Examiners of the highest type. Upon this subject, Indiana has been definitely raised to a position of high respect and credit among the states. An opportunity now awaits her to

* Am. Bar Assoc. Jour., April, 1934.

acquire some distinction in the modification of Appellate practice.

It is highly discreditable to this or any other state that it is possible, and on the average, probably more than lived up to, for an appellant to have at least eight (8) months' time elapse between the return of a verdict and the filing of his brief in the court of review. The statute allows thirty (30) days for the filing of a motion for new trial. It may be assumed that such motion is not ruled on within thirty (30) days, then follows thirty (30) days for filing an appeal bond, sixty (60) days thereafter for filing a transcript in the reviewing court, thirty (30) days for submission, and finally sixty (60) days for appellant's brief. In the rules that are herein proposed, this unreasonable delay will be reduced to ninety (90) days. Even this may be reduced somewhat when the Bench and Bar are able to make further breaks with tradition.

In general, the proposed rules will establish procedure as follows:

Within twenty days after verdict or decision, the losing party must file in the trial court his assignment of errors, which will be much in the form of the present motion for new trial. It will not be necessary to include a formal prayer for relief. The assignment of errors will set proceedings in motion automatically. Within ten days after an assignment of errors has been filed, the trial court may, for any reason, grant a new trial. If no new trial is granted, judgment shall be entered and the appeal allowed. Twenty days will be the limit for filing an appeal bond. The appellant will have thirty days after the appeal is granted to prepare and file his record. Under extraordinary circumstances, he may get an extension for presenting his bill of exceptions to the trial court, but this will not prevent his filing in the court of review such parts of the record as are then available. Twenty days after filing the record in the reviewing court, the appellant's brief is to be filed. Extensions of time will be rarely granted, and only for exceptional reasons.

This proposal is made upon the assumption that when a case once reaches judgment in the trial court, further proceedings therein should have preference on the program of the interested attorneys. Unless this principle is permitted to permeate Appellate practice, unreasonable delays will still prevail.

It will be observed that generally there has been all the delay in the trial court which either party may reasonably ask. This

applies particularly to the one who is ascertained to be in the wrong. Once it has been determined in the court below that a party to litigation has certain rights, then, whoever thereafter desires to resist the enforcement of such rights or obtain a review of the judgment, should be required to use all reasonable promptness in having the adverse ruling reviewed.

Moreover, it should not be made possible for the appellant to obtain the delays that are necessarily characteristic of appeals without adequate protection to the appellee. Therefore, there should be no vacation appeal. Certainly the statute now permitting vacation appeals within one hundred eighty days is archaic and unreasonable, resulting only in opportunity to embarrass an opponent, particularly when titles to real estate are involved, with probable loss to the successful party, for which there is no redress.

For many years the statute has provided that appeals from the Industrial Board are submitted at once, and that no extensions of time for filing briefs may be granted. While this statute is probably an invasion of the judicial branch, and therefore of at least doubtful validity, it has been accepted and acted upon by the Bench and Bar—a most significant indication of the ability to perform, when there is present the necessity to perform. There is no apparent reason why all litigants should not receive, by rule of court, the same prompt attention to their cause as is now mandatory in behalf of injured employees.

The proposed rules relate only to civil cases.

Rules

RULE 1.

As used herein "Reviewing Court" means the Supreme and Appellate Courts; "Trial Court" means any inferior court from which appeals may be taken to a reviewing court; "Judgment" means any order, decision or judgment from which an appeal may be taken.

RULE 2

Within twenty days after the return of a verdict or the entry of a finding or decision, in the trial court, any party aggrieved thereby and desiring to appeal therefrom, shall file in the clerk's office of such court an assignment of errors, including therein,

separately numbered, every alleged error which it is desired to present to the reviewing court, setting forth those occurring before and after trial, as well as upon the trial. A ruling of the trial court subsequent to the entry of judgment may be presented by a supplemental assignment of errors filed within five days after the entry of such ruling. No question not embraced in the assignment of errors will be considered by the reviewing court. Motion in arrest of judgment or for judgment *non obstante verdicto* shall be filed within five days after the verdict or decision, in which case the time herein fixed for filing assignment of errors shall be enlarged as of course to include the time elapsing between the return of the verdict and the ruling of the trial court on such motion, but such motion shall be ruled upon within ten days of the filing thereof.

The present code of practice on appeal is built upon the theory that procedure and practice in the trial court should be repeated above. The assignment of errors is frequently called the pleading of the appellant. There is no substantial reason for a pleading on appeal. This rule proposes to avoid the difficulties that so often beset the appellant in the preparation of an assignment of errors. All questions of what is a so-called independent error, and whether a certain assignment should be included in a motion for new trial, will be eliminated. Therefore, that much of counsel's energy can be devoted to the merits of the case.

The proposed plan is substantially that of the Federal courts. Each assignment of error is an independent one and should be so definite and specific as to inform not only the reviewing court, but the trial court as well, of the alleged errors complained of. It will be noted that rulings on pleadings must be in the assignment of errors. The trial court may examine the assignment of errors, if he so choose, may hear argument thereon, and if convinced of the necessity of so doing, may grant a new trial. If he does not, the case is automatically ready for judgment and preparation for appeal at the end of ten days. It is respectfully submitted that a case that has been tried should have the right of way in the trial court as well as in the attorney's office, and that it should not be tied up indefinitely, as so frequently happens by failure to rule on a motion for new trial. Both trial courts and the interested attorneys should act upon the principle that a case that has proceeded to a verdict or decision is unfinished and

should have preference over other business that has not progressed to that stage.

It will be noted that by a subsequent rule (Rule 5), the clerk below certifies the assignment of errors in the record, and the matter is then before the reviewing court without the necessity of any further pleading therein and without the risk and anxiety that parties now encounter by failure to name all parties correctly. All parties to the judgment are to be bound by the appeal. (Rule 9.)

RULE 3

The trial court shall have ten days after the filing of the assignment of errors to grant a new trial for any cause; failure so to rule shall be equivalent to a denial thereof, and thereupon judgment shall be entered on the motion of the prevailing party. The aggrieved party may, within five days thereafter, file a prayer for appeal and a praecipe for such parts of the record as he shall desire therefor. The court shall grant the appeal and fix the penalty of the appeal bond and name the approved sureties thereon. The court shall also at such time allow time for presenting bills of exceptions.

This proposed rule will probably be criticized for the comparatively short time allowed the trial court to determine whether or not he has committed a reversible error, but again the cardinal principle must be borne in mind that it is the duty of both court and counsel, once a man's rights have been determined, to proceed with diligence to finish the job. Moreover, it may be observed that a trial judge is probably better able to dispose of alleged errors on the trial within ten days, than he is likely to be after any greater lapse of time.

RULE 4

Appeal bonds must be filed within twenty days and bills of exceptions presented within thirty days after the allowance of the appeal. The trial court may, upon a verified showing, enlarge or extend the time for presenting bills of exceptions as now provided by Chapter 114 of the Acts of Assembly, approved March 3rd, 1911.

This shortens the time for filing appeal bonds, but no good reason has ever been discovered why a party should not get the

preliminaries under way for a surety on his appeal bond concurrently with the preparation of his assignment of errors, or at least within the ten day period allowed the trial judge to grant a new trial. It is no hardship to require the filing of an appeal bond within twenty days after the appeal has been allowed, if interested parties will diligently attend to the matter. Thirty days is, in a vast majority of cases, quite sufficient time for the preparation of a bill of exceptions. If an extraordinary situation arise, the proposed rule takes care of it by the preservation of the Act of 1911 permitting extensions. If the bill of exceptions be not ready for filing with the transcript of the record, it may be brought up by certiorari later on, and an extension of time for filing appellant's brief be obtained for that reason. (See Rule 15.)

RULE 5

Within ten days after the filing of the appeal bond, the clerk of the trial court shall certify to and file in the reviewing court a transcript of the assignment of errors, the judgment, the prayer for and order granting the appeal and fixing the bond, the appeal bond, the praecipe, and such other parts of the record as are called for by the praecipe. The cause shall be docketed in the reviewing court in the name of the party taking the appeal as the appellant, and the opposite party as appellee. It shall not be necessary to name more than the first appellant and the first appellee, but shall be sufficient to refer to the others as "and others" or "*et al.*"

The present statute providing for appeals from interlocutory orders appointing receivers requires that the record be filed within ten days, and there is no reason why all other appeals should not be prepared and filed within a like time. In actual practice, it is well known that a transcript of the record is ordered immediately when the appeal is granted, sometimes before, so that the party really has thirty days from the date of the granting of his appeal to obtain and file a transcript of the record.

The assignment of errors in the court below is entitled as the cause is entitled in that court. On appeal, the clerk will name as appellant the party assigning the error, and the opposite party as appellee. It is sufficient to name the first appellant and first appellee, and refer to the others "*et al.*" No difficulty about

the jurisdiction of the reviewing court is involved here, because Rule 9 provides that all parties below shall be deemed to have notice of the appeal and shall be bound thereby.

RULE 6

All proceedings provided for by *Rules 2 and 3* may be in term or vacation; the absence or disability of the trial judge shall not excuse failure to take each step therein set out within the time allowed, and to that end, any judge of the Circuit, Superior, Criminal or Probate courts of the same or any adjoining county may act in his place. Provided, that if the time for presenting the bill of exceptions will expire during the absence of the trial judge, it shall be deemed a sufficient presentation of such bill of exceptions to file the same in the clerk's office of the trial court, and the clerk shall certify to such presentation as the trial judge would certify if present. Such bill of exceptions shall remain in the clerk's office until the return of the trial judge, who shall thereafter act upon the same, as though it had been actually submitted to him within the time fixed.

It is necessary to provide for vacation entries in taking the various steps for appeal, and therefore, this rule is proposed. It is also important that the rights of parties be not prejudiced by the absence of the trial judge. Therefore, as the matter is more or less of a formality, at least after the ten days have elapsed for the consideration by the trial judge of the assignment of errors, there is no reason why some other judge should not fix the appeal bond and approve the sureties. Indeed, he might go further and approve the bill of exceptions, at least if all parties agree that it is correct.

RULE 7

A copy of the praecipe provided for by Rule 3 shall be served on the attorney of the opposite party on or before the filing thereof, and such party shall have five days after service thereof to file an additional praecipe for any other parts of the record deemed essential to a proper consideration of the appeal. Either party bringing unnecessary parts of the record before the reviewing court may be taxed the costs thereof.

All records for appeals should be based on a written praecipe, and this proposed rule will permit the opposite party to bring

in any parts which he feels are necessary to present the questions involved. Undoubtedly, much unnecessary matter is frequently embraced in records for appeal, because of a verbal or general praecipe.

RULE 8

The party prevailing in the trial court shall not have judgment during the time allowed for filing an assignment of errors, and after such assignment is filed there shall be a further stay as of course until the time of granting the appeal. The allowance of an appeal shall stay proceedings on the judgment, but, if the appeal bond be not filed within the time allowed, the judgment or decree may be enforced; provided, at any time after the verdict or decision, upon the filing of a petition, verified by the party or his counsel, and certified by counsel to be in good faith after careful investigation made by him, and setting forth one or more of the grounds of attachment under the statutes of this state, and reciting in detail the facts relied upon, the trial court shall enter judgment and shall allow the prevailing party to proceed to satisfy the same, unless stay is taken by the giving of surety approved by the court, to remain obligated until the appeal bond is filed and conditioned for the payment or satisfaction of the judgment in the event that no appeal bond is filed.

This rule is designed, first, to protect appellant from the entry of a judgment and possible proceedings thereon during the time he may appeal, and second, to provide the judgment creditor a method of enforcing the judgment if extraordinary circumstances arise, such as the removal of the defendant or his property from the state. This situation has occurred in actions in tort against non-residents. The increase of motor vehicle traffic is a potential source of opportunity for a defendant to escape. This rule will furnish the judgment plaintiff some protection, and certainly cannot harm any defendant, who is in good faith.

Grounds of attachment, as now embraced in the statutes, are believed to be a fair basis for permitting acceleration of judgment and execution.

RULE 9

Vacation appeals are abolished, and all parties to the proceedings below shall be deemed to have notice of the appeal, and shall be bound thereby. It shall be sufficient to entitle the as-

signment of errors by the full names of the first party plaintiff and defendant respectively, referring to the others "and others," or by appropriate abbreviation.

By the time a case reaches judgment, either party ought to have fairly definite intentions as to an appeal from an adverse decision. The idea that one should be allowed six full months to make up his mind on this subject, will seldom be found to operate in the interests of justice, but on the other hand, is a prolific source of irritation, uncertainty and consequent injustice. Balancing the occasional situations where a vacation appeal might be proper against the vast majority of situations where it would be unjust to the prevailing party, and remembering that rules must be made, as laws, in accordance with the needs of the greater number, there is no defense for vacation appeals, and they should be abolished.

RULE 10

No pleadings other than the assignment of errors filed in the trial court shall be required in the court of review. The ruling of the trial court on a motion for new trial will not be reviewed.

This proposed rule is substantially that of the Federal courts. It is entirely workable and satisfactory as there applied, and is a desirable short cut across formalities to get the alleged errors before the reviewing court.

The rule will not prevent the filing of a motion for new trial, but there is no need of such motion, because, unlike the Federal practice, this rule would permit the trial court to consider the assignment of errors, and if convinced of the commission of error, to grant a new trial. This is nothing more than acting under the inherent and time-honored right and duty of the trial court.

RULE 11

Where a case is decided in a trial court after change of venue from any other court, the assignment of errors shall sufficiently present all alleged errors in the proceedings had in any court in which the cause was at any time pending, without naming the court in which the error occurred; and the trial court shall have power to set aside any ruling made in the cause by any other court, within the ten days prescribed by Rule 3.

Under this rule, it will be unnecessary for an appealing attorney to concern himself about naming the court which actually committed the error he desires to present. This oversight has been fatal to appeals in the past. No substantial right is invaded by ignoring this requirement. An error should be sufficiently presented by showing that it has occurred somewhere between the inception of the case and the judgment.

Inasmuch as the court finally trying the case has before it the assignment of errors, for a period of ten days, it should not hesitate to correct error occurring before the case reached it.

RULE 12

Cross-errors may be assigned by any party to the judgment by filing the same in the office of the Clerk of the reviewing court not later than the time fixed for filing appellant's brief. Assignments of cross-errors shall conform in all respects to the rules for the preparation of assignments of errors.

This rule not only gives the appellee an opportunity to ascertain what the appellant's record contains, but if he desires to file cross-error, he may bring up, by his own praecipe (Rule 7) sufficient additional record to present his cross-errors. Of course, no opportunity is given the trial court to review cross-errors, and no necessity therefor has been observed under the present practice.

RULE 13

No document nor exhibit shall be twice copied into the record for appeal, but it shall be sufficient for the trial court, in settling a bill of exceptions, or the clerk, in certifying the record, to include such document or exhibit but once, and thereafter to identify by reference thereto. No bill of exceptions will be treated as incomplete which complies with this rule. If a document or exhibit is attached to any pleading presented to the reviewing court, and also introduced in evidence, it shall be sufficient to copy such exhibit or document only in the bill of exceptions containing the evidence, and the clerk may make appropriate reference thereto in copying the pleadings.

This rule is designed to permit the preparation of a record in a sensibly brief way, without taking the risk of having it rejected because some document has not been actually copied

therein more than once. The idea is that if the document appears once in the bill of exceptions containing the evidence, that should be sufficient, and it may be identified by reference, at all other places where it appears.

RULE 14

The appellant's brief shall be filed within twenty days after the record is filed; the appellee's brief within twenty days after the filing of appellant's brief; the reply brief within fifteen days after the filing of appellee's brief. Appellee's brief on cross-errors shall be filed with his answer brief, and appellant may file an answer brief thereto within twenty days thereafter, to which appellee may file reply brief within fifteen days.

Copies of all briefs shall be served on opposing counsel and no brief will be filed by the clerk of the reviewing court unless accompanied by an acknowledgment of such brief on the part of the opposite counsel, or a certificate by counsel offering the brief for filing that such copy has been served personally, or by due course of mail.

Although this rule reduces materially the time for filing briefs, it is no more limited than the prevailing rules in such states as New York, Wisconsin, Illinois, the Seventh Circuit Court of Appeals, and the Supreme Court of the United States. After all, it simply exacts of counsel the will to work and not postpone.

The provision for service of briefs on opposing counsel will save time in the preparation of answer and reply briefs, especially for attorneys not residing in Indianapolis, and in view of the proposed reduction of time for filing briefs, it is logical that opposing counsel should be served therewith on or before the filing. Service of briefs is now required in the Supreme Court of the United States.

RULE 15

Petitions for extensions of time to file briefs will not hereafter be granted, unless facts are stated therein showing that the court in which the cause is pending has jurisdiction thereof and that the brief will be on the merits of the cause. When filed by the appellee such petition shall also show that all motions to dismiss and all dilatory motions in the cause on behalf of the

petitioner have been filed. Extensions will only be granted (1) by reason of illness or other incapacity of the attorney in charge of the preparation of the brief, (2) his actual engagement in the trial of a cause, which trial commenced before the beginning of the time within which such party is required to file the brief involved in the petition for extension, (3) upon a showing that the bill of exceptions, containing the evidence, was not filed with the transcript of the record and showing when the bill was filed, in which event twenty days' extension from the time the bill of exceptions is brought into the reviewing court will be granted for filing appellant's brief, (4) that such attorney is already engaged in the preparation of a brief in a reviewing court of this state or of the United States, the time for filing which will expire not later than twenty days after the expiration of the time fixed, which he desires to have extended, (5) upon a showing that the record is so voluminous as to render it impossible to abstract the same and brief the points in the assignment of errors within the time prescribed by this rule. Actual engagement in the preparation of a brief in a reviewing court of this state or of the United States shall be sufficient grounds for postponement of the trial of any case, or hearing before any Board or Commission, which is in immediate charge of the attorney engaged in preparing such brief. At least three days' notice to the adverse party must be given of all applications for extensions of time.

This rule strikes at one of the most notorious abuses chargeable to the Bar of this state. Everyone can recall in his own practice multiplied illustrations of injurious delays, from the litigant's standpoint, because of dilatory briefing. One case, of very great and general public interest, which would have been advanced, probably, on motion, and speedily disposed of, may be cited. Notwithstanding the importance of this case, the appellant took four months from the date of filing within which to write his brief, and the appellee obtained several extensions and consumed about five months.

Extensions will no longer be granted, as of course, nor by consent of the parties. The latter custom, going under the name of professional courtesy, has developed largely for the convenience of lawyers with little regard to the rights of clients. Indeed, the present rule, permitting one extension without notice to the opposite party, is tantamount to an invitation to apply for it.

A study made in 1931* of a group of cases in which extensions of time had been allowed, disclosed the fact that these cases averaged twelve months in their journey through the trial courts, but the average time consumed in filing the briefs was thirteen months. This is a highly disproportionate ratio.

While there may be a question as to the power of the Supreme Court to compel trial courts to grant continuances where attorneys are engaged in writing a brief in a reviewing court, nevertheless, it might well enough be considered an abuse of discretion to deny such an application. At least, a spirit of co-operation in advancing appeals could readily be established by both the Bench and Bar.

RULE 16

Application for a rehearing of any cause shall be made by petition, separate from the briefs, signed by counsel, filed with the clerk within twenty days from the rendition of the judgment, stating concisely the cause for which the judgment is supposed to be erroneous, which application shall be supported by briefs only, with arguments set out therein, if desired. Ten copies of the brief must be filed at the same time the petition is filed, and one copy of the brief shall be delivered at once by the clerk to each judge. If no petition for rehearing is filed within the time herein fixed, the opinion and judgment shall at once be certified to the trial court. The opposite party may file a brief in opposition to the petition for rehearing within ten days after the filing of such petition.

The time for petitioning for a rehearing is shortened to twenty days. The questions in any case will be, to some extent, limited by the opinion handed down by the reviewing court, so that it is improbable that any considerable number of points may be worth bringing up on a petition for rehearing. Indeed, it would seem to be unwise to attempt a restatement of merely doubtful questions, but if there is an outstanding question worthy of presentation for rehearing, attention can be concentrated upon it and the work done, well within the twenty days allowed. Ten days should be sufficient to answer a petition for rehearing.

* VII Ind. Law Journal 341.

RULE 17

An application to transfer a cause from the Appellate Court to the Supreme Court shall be filed within fifteen (15) days after a petition for rehearing has been overruled, and shall set forth (1) that the Appellate Court has decided the case, or some material part thereof, against the party who asks that it be transferred, (2) that a written opinion setting forth the reasons on which such judgment was based was filed by the Appellate Court, giving the date when it was filed, (3) that the Appellate Court overruled a petition for rehearing duly presented by such party within the time allowed, stating on what date it was overruled; and having thus shown the jurisdiction, the petition (4) shall particularly and specifically and without argument point out what there is in the opinion of the Appellate Court which contravenes a ruling precedent of the Supreme Court, or which erroneously decides a new question of law, indicating the ruling precedent, or concisely stating the new question of law, referred to. Such petition (5) shall be signed by the petitioner or by his attorney. (6) If briefs are filed, they shall be separate from and filed with the petition; but they shall not be necessary to invoke the action of the court on the petition. Parties opposing a transfer may file briefs within twenty-five (25) days after the ruling on the petition for rehearing.

If a rehearing is denied in the Appellate Court, fifteen days is allowed for filing a petition for transfer. In the average case, the unsuccessful party is about at the end of his rope, if the Appellate Court denies a rehearing. If there is anything left, it certainly is a very narrow issue, only two questions being permitted as a basis for a petition to transfer and prompt action may reasonably be demanded.

RULE 18

This rule would be the present Rule 21 concerning preparation of appellant's brief, with these additions: (1) The brief should include an index of cases, referring to each page of the brief where a case is cited. (2) An index should be a part of every brief. (3) Some improvement may be made in the method of citing cases: (a) where a practice question is presented and regarded as settled in Indiana, but one authority, the latest known to the party, may be cited; (b) in citing Indiana cases,

the official citation must be given if available, and the last cases known to the party shall be cited first; (c) where authorities outside of Indiana are cited, all citations known to the party, including selected case systems, will be required. Counsel will arrange their authorities in the order of their reliance upon them (this suggestion is patterned somewhat after Rule 22 of the U. S. Cir. Ct. of App. 7th Cir). (4) It is suggested that the first page of a brief should be a statement of legal propositions involved, without mention of parties, dates or amounts, but wholly in the abstract. This rule had its origin in Pennsylvania, where it is known as Rule 50 of the Supreme Court. It is rigidly enforced in that state, to the benefit of both counsel and the court.*

An examination of many briefs filed in the Supreme and Appellate Courts of this state leads one to the conclusion that had counsel been required to state at the outset the questions involved, as they are stated in Pennsylvania and other states that have adopted the rule, such briefs, instead of being merely a receptacle for all sorts of long range suggestions, which are evidently thrown in with the hope of making something stick, would present a comparatively limited number of substantial questions. That such a change would materially aid the court and consequently speed up its work is self-evident. A reviewing judge, taking up a brief prepared as proposed, would instantly have a comprehensive view of the issues involved, and in a vast majority of cases an impression as to the correctness of the disposition of them by the trial court.

Many times the Bar has been admonished by judges of reviewing courts that the statement of the case is of the utmost importance. Indeed, it is hardly an exaggeration to say that a case well stated is half won. Moreover, the discipline in concentration and expression which will be a concomitant of this rule will be of value to attorneys engaged in briefing cases, and tend to a gradual raising of the quality of briefs.

RULE 19

This would be the present Rule 22 concerning appellee's brief. If the substance of Pennsylvania Rule 50 is adopted concerning

* 34 Yale L. J. 287. This Rule has been adopted in California, Florida, Kentucky, Michigan, North Carolina and South Carolina. Jud. C. of Mich. 3rd Rep. June, 1933, p. 240.

appellant's briefs, then the rule for appellee's brief should permit a counter-statement of the propositions involved. With that amendment, present Rule 22 could be used.

RULE 20

This would restate the present Rule 23 concerning arguments in briefs.

RULE 21

This concerns the mechanical make-up of a brief and should be a re-statement of present Rule 24.

RULE 22

This could re-state present Rule 25 concerning amendments.

The present rules as to oral arguments (Rules 26, 27 and 28), as to possession and removal of records (Rules 30 and 31), docketing and distribution of cases (Rule 32), certiorari (Rule 34), the Supreme Court Reporter (Rule 38, except as to the sixty-day provision), withdrawal papers (Rule 39), would not be disturbed by this proposal.

RULE 23

Unless otherwise provided in these rules, notice shall mean written notice to the opposite party by service upon his counsel prior to the filing of any petition, pleading or brief.

This provision is substantially that of the Federal law concerning notice of petition for removal of causes. In view of the purpose of the entire proposal to expedite procedure, there is no appreciable reason for the conventional ten days or other extended period of notice.

RULE 24

These Rules shall take effect on the — day of —, 1935, and shall thereafter apply to all cases in which a verdict or decision is rendered subsequent to said date. So much of these Rules as concerns the preparation of briefs and the time for filing the same shall apply to all briefs which become due after the taking effect of these Rules, but all appeals filed after the said — day of —, 1935, shall be immediately submitted and Rule 14 applied thereto.

Inasmuch as these rules contemplate changes in the trial courts as well as in the reviewing courts, they should not take effect at once in both courts. Ample time will doubtless be given before the rules are made effective as to proceedings in the trial courts, but with respect to the reviewing courts, it is appropriate to apply the rules to briefs that become due after a date to be fixed by the court.

Delays in court procedure are discussed at every important meeting of the Bar, in every influential law journal, and in nearly every issue, criticized by laymen, and placidly tolerated and enhanced by the Bar. Warnings without number by presidents of associations and prominent speakers, that our very livelihood is imperiled, that our work as advocates in courts is being constantly and consistently shifted to bureaus and commissions, do not bestir us.

The case from the layman standpoint is succinctly put in an editorial recently appearing in a national magazine that claims millions of readers:*

“Bench and bar should be given a fair chance and a free hand to reconstruct our court procedure along lines that will lead to speedy trials and fair and reasonable court costs. If they fail, they cannot complain if the job is taken out of their hands and put into more competent ones.”

We fiddle in the face of approaching conflagration, with this distinction from the ancient prototype, that not only will the fires of disgust and impatience, fed by hostile and irrational legislation, consume the rights committed to our care, but likewise threaten the perpetuation of our profession itself in its honorable station in society.

This is not a “reform” measure; the word is offensive to most of us. It is simply a suggestion that there may be, from the standpoint of our clients, a better way of conducting appeals. The writer has not gone as far from beaten paths as he feels inclined to go, and certainly not as far as ultimately the Bench and Bar will determine to go, but it is certain that we must get under way.

The purpose motivating the submission of this proposition can be no better stated than by adopting the language of Pro-

* Saturday Evening Post, April 14, 1934.

fessor Cain in his admirable article on "Congested Dockets and Measures for Relief."* He says:

"It is the sole purpose of the author of this article to contribute something to the making of a Judicial Establishment that will invite instead of repel, that will be a beneficent, not a calamitous means for the settlement of human differences. It is in that spirit that this is submitted, with the hope that it will bear fruit."

* Notre Dame Lawyer, January, 1934.