

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
SUPREME COURT BUILDING
WASHINGTON, D. C. 20544

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July 8, 1969

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The Honorable Albert Maris
Chairman, Committee on Rules
of Practice and Procedure
5050 U.S. Courthouse
Philadelphia, Pennsylvania 19107

Dear Judge Maris:

The Advisory Committee on Bankruptcy Rules is scheduled to hold its eighteenth meeting on July 9-12. The Committee has now approved a substantial body of rules and forms for straight bankruptcy--108 rules and 5 forms. Fifty - five rules (many of which involve the adaptation of Federal Rules of Civil Procedure to bankruptcy cases) and 22 forms are at varying stages short of finality pending further consideration by the Committee and Reporter. A number of policy questions, such as whether the filing of claims in no-asset and nominal asset cases should be eliminated, remain to be resolved.

During this past year two associate reporters, Professors Larry King and Vern Countryman, commenced their work on the drafting of rules and forms for debtor relief proceedings. Professor King is responsible for the rules and forms for proceedings under Chapter X (corporate reorganizations), Chapter XI (arrangements), Chapter XII (real property arrangements), and § 77 (railroad reorganizations). Professor Countryman is responsible for the rules and forms for proceedings under Chapter XIII (wage earner plans). Both reporters will present questions of a policy nature affecting their work for resolution by the Committee at the forthcoming meeting.

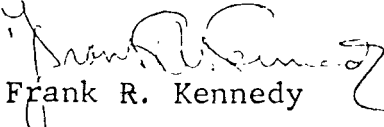
As previously reported, the Committee has been of the opinion that the preferable course is not to submit a draft of Bankruptcy Rules for publication until the rules and forms

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for debtor relief proceedings as well as those for straight bankruptcy are complete. The primary consideration is that there is such a close interrelation among all these rules that it would be unwise to submit only one part of the body of rules for study and comment by the bench and bar. A request for early publication of the rules for straight bankruptcy has recently been received from the President of the National Association of Referees in Bankruptcy, however, and the Advisory Committee will re-examine its position on this matter in light of this request.

A new member of the Committee, Professor Morris Shanker of Case-Western Reserve University Law School, Cleveland, Ohio, was added by Chief Justice Warren in June. Professor Shanker is familiar with the work of the committee by reason of his having previously served for a time as an assistant to the Reporter on the Bankruptcy Rules project.

Sincerely yours,


Frank R. Kennedy

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7/3/69

ORGANIZATION OF BANKRUPTCY RULES AND FORMS

[The scope and content of the Bankruptcy Rules listed below are still subject to further consideration by the Advisory Committee on Bankruptcy Rules, and the titles are therefore tentative.]

PART I PETITION AND PROCEEDINGS RELATING THERETO
AND TO ADJUDICATIONRULE:

- 1.1 Commencement of Bankruptcy Case
- 1.2 Voluntary Petition
- 1.3 Involuntary Petition
- 1.4 Partnership Bankruptcy
 - 1.4.1 Caption on Petition
- 1.5 Filing Fees
 - 1.5.1 Reference of Cases
 - 1.5.8 Payment of Filing Fees in Installments
- 1.6 Consolidation of Cases Commenced in Same Court
- 1.7 Schedules and Statement of Affairs
 - 1.7.1 Verification of Petitions and Accompanying Papers
 - 1.7.2 Service of Petition and Process
- 1.8 Responsive Pleading or Motion
 - 1.8.1 Amendment of Papers
 - 1.8.2 Affirmative Defense of Solvency
- 1.9 Hearing and Disposition of Petition
 - 1.9.1 Applicability of Rules in Part VII
- 1.10 Venue and Transfer
- 1.50 Dismissal of Case Without Determination of Merits

PART II MEETINGS OF CREDITORS; NOTICES; ELECTIONS;
EXAMINATIONS

RULE:

- 2.1 Meetings of Creditors
- 2.9 General Authority of Court to Regulate Notice
- 2.10 Notices to Creditors
- 2.21 Examination
- 2.21.1 Compelling Attendance for Examination
- 2.22 Voting at Creditors' Meetings
- 2.25 Solicitation and Voting of Proxies
- 2.30 Habeas Corpus for Performance of Duties Under the Act

PART III CLAIMS AND DISTRIBUTION TO CREDITORS

RULE:

- 3.1 Proof of Claim
- 3.2 Filing Proof of Claim
- 3.3 Claim by Surety for Bankrupt
- 3.4 Filing of Tax and Wage Claims by Bankrupt
- 3.4.1 Withdrawal of Claim
- 3.5 Objections to and Allowance of Claims for Purpose of Distribution; Valuation of Security
- 3.10 Reconsideration of Claims
- 3.14 Trustee's Duty to Assert Set-Off or Right of Action Against Claimant
- 3.20 Declaration and Payment of Dividends
- 3.25 Piddling Dividends
- 3.66 Unclaimed Money

PART IV BENEFITS FOR BANKRUPT

RULE:

- 4.1 Exemptions
- 4.5 Adjudication as Automatic Stay of In Personam Actions Against Bankrupt
- 4.11 Waiver of Discharge
- 4.12 Grant or Denial of Discharge
- 4.12.1 Implied Waiver of Discharge
- 4.13 Burden of Proof in Objecting to Discharge
- 4.14 Notice of Nondischarge

PART V ADMINISTRATION; OFFICERS; EXPENSES

RULE:

- 5.1 Filing of Papers
- 5.2 Books and Records Kept by Clerks
- 5.3 Books, Records, and Reports of Referees
- 5.3.1 Public Access to Records and Papers in Bankruptcy Cases
- 5.3.2 Duties of Referees
- 5.7 Courts of Bankruptcy and Referees' Offices
- 5.11 Appointment and Duties of Receiver
- 5.11.1 Appointment of Marshal in Lieu of Receiver; His Duties
- 5.12 Ancillary Proceedings
- 5.13 Selection and Qualification of Trustee
- 5.13.1 Duty of Trustee to Keep Records, Make Reports, and Furnish Information
- 5.17 Limitation on Appointment of Receivers and Trustees

PART V, cont'd

- 5.18 Trustee Not Appointed in Certain Cases
- 5.18.5 Removal of Trustee or Receiver; Substitution of Successor
- 5.19 Creditors' Committee
- 5.20 Oaths and Affirmations
- 5.21 Transfer or Revocation of Reference
- 5.23 Nepotism and Influence
- 5.24 Restrictions on Referees
- 5.30 Issuance and Certification of Copies of Papers
- 5.33 Delegation of Ministerial Functions
- 5.38 Recording and Reporting of Proceedings
- 5.44 Employment of Attorneys and Accountants
- 5.48 Qualification by Trustee and Receiver
- 5.49 Abolition of Referees' Bonds
- 5.50 Compensation of Trustees, Receivers, Marshals, Attorneys, and Accounts
- 5.53 Special Masters
- 5.61 Designated Depositories
- 5.69 Accounting by Prior Custodian of Property of the Estate
- 5.75 Closing Cases
- 5.80 Reopening Cases

PART VI COLLECTION AND LIQUIDATION OF THE ESTATE

RULE:

- 6.1 Money of the Estate: Collection, Deposit, and Disbursement
- 6.2 Duty of Trustee or Receiver to Give Notice of Bankruptcy to Third Persons
- 6.5 Filing of Petition as Automatic Stay Against Lien Enforcement
- 6.6 Collection of Partnership Estate
- 6.8 Redemption of Property
- 6.18 Appraisal and Sale of Property; Compensation and Eligibility of Appraisers and Auctioneers
- 6.20 Abandonment of Property

PART VII ADVERSARY PROCEEDINGS

RULE:

- 7.1 Scope of Rules of Part VII
- 7.3 Commencement of Adversary Proceeding
- 7.4 Service of Summons, Complaint, and Notice of Trial
- 7.5 Service and Filing of Pleadings and Other Papers
- 7.7 Pleadings Allowed; Form of Motions
- 7.8 General Rules of Pleading
- 7.9 Pleading Special Matters
- 7.10 Form of Pleadings
- 7.12 Defenses and Objections
- 7.13 Counterclaims and Cross-claims
- 7.14 Third-Party Practice

PART VII, cont'd

RULE:

- 7.15 Amended and Supplemental Pleadings
- 7.16 Pre-Trial Procedures
- 7.17 Parties and Capacity
- 7.18 Joinder of Claims and Remedies
- 7.19 Joinder of Persons Needed for Just Adjudication
- 7.20 Permissive Joinder of Parties
- 7.21 Misjoinder and Nonjoinder of Parties
- 7.22 Interpleader
- 7.23 Class Actions
- 7.24 Intervention
- 7.25 Substitution of Parties
- 7.26 General Provisions Governing Discovery
- 7.27 Depositions Before Action or Pending Appeal
- 7.28 Persons Before Whom Depositions May Be Taken
- 7.29 Stipulations Regarding Discovery Procedure
- 7.30 Depositions upon Oral Examination
- 7.31 Depositions of Witnesses upon Written Questions
- 7.32 Use of Depositions in Court Proceedings
- 7.33 Interrogatories to Parties
- 7.34 Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes
- 7.35 Physical and Mental Examination of Persons
- 7.36 Requests for Admission

PART VII, cont'd

RULE:

- 7.37 Failure to Make Discovery: Sanctions
- 7.40 Setting of Date for Trial
- 7.41 Dismissal of Adversary Proceedings
- 7.42 Consolidation; Separate Trials
- 7.43 Evidence
- 7.44 Proof of Official Record
- 7.44.1 Determination of Foreign Law
- 7.52 Findings by the Court
- 7.54 Judgments: Costs
- 7.55 Default
- 7.56 Summary Judgment
- 7.62 Stay of Proceedings to Enforce a Judgment

- 7.64 Seizure of Person or Property
- 7.65 Injunctions

- 7.67 Deposit in Court
- 7.68 Offer of Judgment
- 7.69 Execution
- 7.70 Judgment for Specific Acts: Vesting Title
- 7.71 Process in Behalf of and Against Persons Not Parties
- 7.82 Transfer of Adversary Proceeding

PART VIII APPELLATE REVIEW

RULE:

8.1 Appeal to District Court

PART IX GENERAL PROVISIONS

RULE:

9.1 General Definitions

9.1.1 Definitions of Words Used in Parts I - IX

9.1.2 Definitions of Words Used in the Federal
Rules of Civil Procedure

9.2 General Requirements of Form

9.2.1 Rule of Construction

9.3 Forms

9.6 Time

9.7 Procedure in Contested Matters Not Otherwise
Provided for

9.8 Compromise and Arbitration

9.10 Representation and Appearances; Powers of Attorney

9.11 Signing and Verification of Pleadings and Other Papers

9.12 Objection to Jurisdiction of Bankruptcy Court

9.20 Harmless Error

9.28 Publication

9.30 Secret, Confidential, Scandalous, or Defamatory Matter

9.41 Subpoena

9.46 Exceptions Unnecessary

PART IX, cont'd

RULE:

- 9.56 Local Bankruptcy Rules
- 9.58 Judgments and Orders
- 9.59 (Motion for) Rehearing
- 9.60 Relief from Judgment or Order
- 9.65.1 Security: Proceedings Against Sureties
- 9.82 Jurisdiction Unaffected
- 9.85 Title
- 9.86 Effective Date

OFFICIAL FORMS

FORM:

- No. 1 Petition for Voluntary Bankruptcy
- No. 1A Application to Pay Filing Fees in Installments
- No. 1B Order Permitting Payment of Filing Fees in
 Installments
- No. 1C Verification on Behalf of a Corporation
- No. 1D Verification on Behalf of a Partnership
- No. 2 Schedules
- No. 3 Statement of Affairs for Bankrupt or Debtor Not
 Engaged in Business
- No. 4 Statement of Affairs for Bankrupt or Debtor
 Engaged in Business
- No. 5 Creditors' Petition for Bankruptcy
- No. 6 Summons to Bankrupt
- No. 6A Caption for Complaint in Adversary Proceedings
- No. 6B Summons and Notice of Trial of Adversary Proceeding
- No. 17A Order for First Meeting of Creditors and Fixing
 Time for Filing Objections to Discharge
- No. 17B Notice of First Meeting of Creditors and Time for
 Filing Objections to Discharge
- No. 17G Order for Final Meeting of Creditors
- No. 17H Notice of Final Meeting of Creditors
- No. 17Y Multiple Case Order for First Meetings of Creditors
 and Fixing Time for Filing Objections to Discharge

FORM:

- No. 17Z Order for First Meeting of Creditors and Fixing Time for Filing Objections to Discharge Combined with Notice Thereof and of Automatic Stay
- No. 18 General Power of Attorney
- No. 19 Special Power of Attorney
- No. 28 Proof of Claim for Wages, Salary, or Commissions
- No. 29 Proof of Claim
- No. 38A Trustee's Application for Leave to Abandon Property and Order Granting Application
- No. 39 Report of Exempt Property and Order Approving Report
- No. 45 Discharge of Bankrupt
- No. 46A Notice of Appeal to a District Court (from a Judgment or Order of a Referee Entered in an Adversary Proceeding)

6/8/69

TABLE OF DRAFTS ON THE SHELF

√The parenthesized number following the title of each rule or form indicates the number of the packet of Drafts for the Shelf in which the draft was included. If two or more parenthesized numbers follow the title, the original draft has been subsequently revised at the time later numbered packets were issued.7

PART I PETITION AND PROCEEDINGS RELATING
THERE TO AND TO ADJUDICATION

RULE:

- 1.1 Commencement of Bankruptcy Case (1)
- 1.2 Voluntary Petition (1)
- 1.3 Involuntary Petition (1 & 3)
- 1.4 Partnership Bankruptcy (3)
- 1.5 Filing Fees (3)
 - 1.5.1 Reference of Cases (1, 4, & 8)
 - 1.5.8 Payment of Filing Fees in Installments (3)
- 1.6 Consolidation of Cases Commenced in Same Court (2 & 8)
- 1.7 Schedules and Statement of Affairs (3)
 - 1.7.1 Verification of Petitions and Accompanying Papers (1)
 - 1.7.2 Service of Petition and Process (2 & 3)
- 1.8 Responsive Pleading or Motion (2 & 3)
 - 1.8.1 Amendments of Papers (3 & 8)
 - 1.8.2 Affirmative Defense of Solvency (1)
- 1.9 Hearing and Disposition of Petition (1)
 - 1.9.1 Applicability of Rules in Part VII (1)

PART I cont'd

RULE:

- 1.10 Venue and Transfer (2, 3, & 8)
- 1.50 Dismissal of Case Without Determination of Merits (5)

PART II MEETINGS OF CREDITORS; NOTICES;
ELECTIONS; EXAMINATIONS

RULE:

- 2.1 Meetings of Creditors (5 & 6)
- 2.9 General Authority of Court to Regulate Not~~h~~^h (6)
- 2.10 Notices to Creditors (6, 7, & 8)
- 2.21 Examination (3)
- 2.21.1 Compelling Attendance for Examination (3)
- 2.22 Voting at Creditors' Meetings (5 & 6)
- 2.25 Solicitation and Voting of Proxies (4)
- 2.30 Habeas Corpus for Performance of Duties Under the Act (3)

PART III CLAIMS AND DISTRIBUTION TO CREDITORS

RULE:

- 3.1 Proof of Claim (5)
- 3.2 Filing Proof of Claim (5)
- 3.3 Claim by Surety for Bankrupt (5)
- 3.4 Filing of Tax and Wage Claims by Bankrupt (4)
- 3.4.1 Withdrawal of Claim (5)

PART III cont'd

RULE:

- 3.5 Objections to and Allowance of Claims for
 Purposes of Distribution; Valuation of
 Security (5)
- 3.10 Reconsideration of Claims (5)
- 3.20 Declaration and Payment of Dividends (5 & 6)
- 3.66 Unclaimed Money (5)

PART IV BENEFITS FOR BANKRUPT

RULE:

- 4.1 Exemptions (5)
- 4.5 Adjudication as Automatic Stay of In Personam
 Actions Against Bankrupt (4)
- 4.11 Waiver of Discharge (3)
- 4.12 Grant or Denial of Discharge (4 & 6)
- 4.12.1 Implied Waiver of Discharge (4)
- 4.13 Burden of Proof in Objecting to Discharge (4)
- 4.14 Notice of Nondischarge (4 & 6)

PART V ADMINISTRATION; OFFICERS; EXPENSES

RULE:

- 5.1 Filing of Papers (4)
- 5.2 Books and Records Kept by Clerks (5)
- 5.3 Books, Records, and Reports of Referees (6)
- 5.3.1 Public Access to Records and Papers in
 Bankruptcy Cases (6)

PART V cont'd

RULE:

- 5.11 Appointment and Duties of Receiver (5, 6, & 7)
- 5.11.1 Appointment of Marshal in Lieu of Receiver;
His Duties (5 & 6)
- 5.12 Ancillary Proceedings (6)
- 5.13 Selection and Qualification of Trustee (6)
- 5.13.1 Duty of Trustee to Keep Records, Make
Reports, and Furnish Information (6)
- 5.17 Limitation on Appointment of Receivers and
Trustees (4)
- 5.18 Trustee Not Appointed in Certain Cases (4)
- 5.18.5 Removal of Trustee or Receiver; Substitution
of Successor (6)
- 5.19 Creditors' Committee (5)
- 5.20 Oaths and Affirmations (1)
- 5.21 Transfer or Revocation of Reference (1)
- 5.23 Nepotism and Influence (4 & 8)
- 5.24 Restrictions on Referees (8)
- 5.30 Issuance and Certification of Copies of
Papers (6)
- 5.33 Delegation of Ministerial Functions (5 & 7)
- 5.38 Recording and Reporting of Proceedings (8)
- 5.44 Employment of Attorneys and Accountants (4)
- 5.48 Qualification by Trustee and Receiver (7)
- 5.49 Abolition of Referees' Bonds (6)
- 5.50 Compensation of Trustees, Receivers, Marshals,
Attorneys, and Accountants (8)

PART V cont'd

RULE:

- 5.53 Special Masters (5)
- 5.69 Accounting by Prior Custodian of Property of the Estate (6)
- 5.75 Closing Cases (4)
- 5.80 Reopening Cases (4)

PART VI COLLECTION AND LIQUIDATION OF THE ESTATE

RULE:

- 6.1 Money of the Estate; Collection, Deposit, and Disbursement (6)
- 6.2 Duty of Trustee or Receiver to Give Notice of Bankruptcy to Third Persons (8)
- 6.5 Filing of Petition as Automatic Stay Against Lien Enforcement (4)
- 6.18 Appraisal and Sale of Property; Compensation and Eligibility of Appraisers and Auctioneers (6)

PART VII ADVERSARY PROCEEDINGS

RULE:

- 7.1 Scope of Rules in Part VII (1, 4, & 6)
- 7.3 Commencement of Adversary Proceeding (1)
- 7.4 Service of Summons, Complaint, and Notice of Trial (3)
- 7.5 Service and Filing of Pleadings and Other Papers (1)
- 7.7 Pleadings Allowed (8)

PART VII cont'd

RULE:

- 7.8 General Rules of Pleading (8)
- 7.9 Pleading Special Matters (8)
- 7.12 Defenses and Objections (2 & 3)
- 7.14 Third-Party Practice (8)
- 7.15 Amended and Supplemental Pleadings (2)
- 7.16 Pre-Trial Procedure; Formulating Issues (8)
- 7.25 Substitution of Parties (6)
- 7.40 Setting of Date for Trial (1)
- 7.41 Dismissal of Adversary Proceedings (5)
- 7.43 Evidence (2)
- 7.62 Stay of Proceedings to Enforce a Judgment (7 & 8)
- 7.65 Injunctions (3)
- 7.82 Transfer of Adversary Proceeding (2 & 3)

PART VIII APPELLATE REVIEW

RULE:

- 8.1 Appeal to District Court (8)

PART IX GENERAL PROVISIONS

RULE:

- 9.1 General Definitions
- 9.1.2 Meanings of Words in the Federal Rules of Civil Procedure When Applicable in a Bankruptcy Case (8)

PART IX cont'd

RULE:

- 9.2 General Requirements of Form (4)
- 9.2.1 Rule of Construction (6)
- 9.3 Forms (4)
- 9.6 Time (1)
- 9.10 Representation and Appearances; Powers of Attorney (4)
- 9.11 Signing and Verification of Pleadings and Other Papers (1, 2, 3, & 8)
- 9.12 Objection to Jurisdiction of Bankruptcy Court (2 & 3)
- 9.28 Publication (6)
- 9.30 Secret, Confidential, Scandalous, or Defamatory Matter (6)
- 9.45 Subpoena (3 & 6)
- 9.56 Local Bankruptcy Rules (1)
- 9.60 Relief from Judgment or Order (8)
- 9.65.1 Security: Proceedings Against Sureties (8)

OFFICIAL FORMS

NUMBER:

- 6 Summons to Bankrupt (2)
- 6B Summons and Notice of Trial of Adversary Proceeding (2)
- 17B Notice of First Meeting of Creditors and Time for Filing Complaint Objecting to Discharge (5)
- 17H Notice of Final Meeting of Creditors (5)
- 46A Notice of Appeal to a District Court (8)