

REPORT OF THE COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

TO THE CHIEF JUSTICE OF THE UNITED STATES, CHAIRMAN, AND
MEMBERS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES:

The Committee on Rules of Practice and Procedure met in Washington, D. C. on July 25, 1975. All members of the Committee were present except Judge Frank W. Wilson, Professor Charles Alan Wright and Mr. Bernard G. Segal who were unable to be present. Mr. Charles Horsky also attended on behalf of the Advisory Committee on Bankruptcy Rules as did the Reporters for that Committee, Professors Kennedy, King, Countryman and Taggart. The Committee's discussion was largely confined to the consideration of the proposed rules implementing Chapter VIII and IX of the Bankruptcy Act and certain amendments to the rules and forms heretofore promulgated.

BANKRUPTCY RULES

On August 1, 1975 the rules approved by the Supreme Court under Chapter X of the Bankruptcy Act (Corporate Reorganization) and Chapter XII (Real Property Arrangements) became effective. That left only the proposed rules under Chapter VIII (Railroad Reorganization) and Chapter IX (Composition of Indebtedness of Certain Taxing Agencies) which had not become effective. Those matters were considered by

the Advisory Committee on Bankruptcy Rules in the middle of July and the Standing Committee considered those proposed rules at its July 25 meeting. These are attached hereto as Exhibit A. This Committee recommends that the Conference approve these proposed rules and forms in implementation of Chapter VIII and IX of the Bankruptcy Act and direct that the Director of the Administrative Office transmit them to the Supreme Court with a recommendation for favorable action by the Court.

Also during July the Bankruptcy Committee considered and recommended certain proposed amendments to the Bankruptcy Rules heretofore approved and promulgated by the Supreme Court. These proposals had also been circulated to the bench and bar for comment. They are largely technical and correctional in nature and your Committee recommends that the Conference approve them (as attached hereto as Exhibit B) and instruct the Director of the Administrative Office to transmit them to the Supreme Court with a recommendation for favorable action by the Court.

Annexed to Exhibit B is a memorandum by the Reporters for the Advisory Committee on Bankruptcy Rules which explains the changes in the proposed rules and forms contained in Exhibits A and B made after circulation of the preliminary drafts to the bench and bar.

RULES OF EVIDENCE

As the Conference was advised at the last meeting the Federal Rules of Evidence were enacted by the Congress as PL 93-595 and were approved on January 2, 1975. These rules became effective on July 1, 1975. Since the enactment of PL 93-595 there has been introduced in the Congress and passed by the House of Representatives a bill (S. 1549) which amends Rule 801(d)(1) of the Federal Rules of Evidence to add a new subparagraph (C) as follows: "(C) one of identification of a person made after perceiving him; or."

CIVIL RULES

The Advisory Committee on Civil Rules met on April 21 and 22, 1975. Its discussions were devoted in large measure to Rule 23 and the present operation of that rule. As a result a questionnaire has been prepared for district court judges designed to solicit their comments on the working of the class action rule in their districts. When the comments are received they will be tabulated by the Federal Judicial Center and reported to the Advisory Committee.

APPELLATE RULES

The Advisory Committee on Appellate Rules met on May 9 and 10, 1975. The Committee had before it tentative drafts of proposed amendments to several of the Federal Rules of Appellate Procedure. The discussion was largely preliminary in nature and the Committee will meet again in October to continue its deliberations.

CRIMINAL RULES

On August 1, 1975, the President signed PL 94-64 which reinstated the amendments proposed by the Supreme Court in its order of April 22, 1974 except for the amendments made by this legislation. Except as to Rule 11(e)(6) which became effective on August 1, 1975, the remaining amendments proposed by the Supreme Court and those enacted by the Congress will become effective on December 1, 1975. The changes made in the rules as originally promulgated by the Supreme Court are largely confined to Rule 4 relating to summons, Rule 11(c) and Rule 11(e) relating to pleas, Rule 12(e), Rule 12(h), Rule 12.1, 12.2(c), Rule 15, Rule 16, Rule 17(f) and Rule 32. Copies of the public law have been sent to all members of the Federal Judiciary.

Respectfully submitted,



Roszel C. Thomsen,
Chairman

Charles W. Joiner
Richard E. Kyle
Bernard G. Segal
Frank W. Wilson
Charles Alan Wright
Carl McGowan
Francis N. Marshall
Frank J. Remington

M E M O R A N D U M

September 3, 1975

TO: The Honorable Roszel C. Thomsen, Chairman of the Standing Committee on Rules of Practice and Procedure of the Judicial Conference of the United States

FROM: Frank R. Kennedy, Reporter, and Vern Countryman, Lawrence P. King and Walter J. Taggart, Associate Reporters for the Advisory Committee on Bankruptcy Rules

RE: Changes after Circulation to the Bench and Bar in the Preliminary Draft of the Proposed Amendments to the Bankruptcy, Chapter XI, and Chapter XIII Rules and Forms, and the Preliminary Drafts of the Chapter VIII and Chapter IX Rules and Forms

Comments from the bench and bar concerning the above-mentioned Preliminary Drafts were due on July 15, 1975. The Advisory Committee on Bankruptcy Rules met on July 18 and 19, 1975 to consider these comments. All comments received prior to the beginning of the meeting on July 18, 1975 were furnished the Advisory Committee and considered. The Standing Committee met on July 25, 1975 to consider the Preliminary Drafts as modified by the Advisory Committee's action at its meeting the previous week.

The purpose of this memorandum is to summarize the actions taken at the meetings of the Advisory and Standing Committees. The Preliminary Drafts as approved by the Standing Committee will be referred to as the Final Preliminary Drafts. Page references are to the Final Preliminary Drafts as submitted to Judicial Conference. To facilitate use of this memorandum in conjunction with any subsequent printed versions of the Bankruptcy and Chapter Rules and Forms, we have attached copies of the pages on which changes have been made.

It should be noted that this memorandum is based on our notes and recollections of the meetings of the Advisory and Standing Committees. On a number of occasions we have stated

the consensus which developed prior to formal action of either of the committees. Our statements are subject to the limitation that it is possible members of the committees voted with the majority for reasons different than the indicated consensus position.

Three types of changes are reflected in the Final Preliminary Drafts. Technical changes include correction of printer's errors, case citations, and cross-references, citations to subsequent history of cases, and additional punctuation. Style changes include instances in which changes or additions were made to improve the readability of the material or to better reflect the intent of the Advisory Committee. Since the technical and style changes are readily understood from a reading of the Final Preliminary Drafts and no decisions of importance to the intent or policy of the rules were involved, we have listed only the pages on which changes appear. When a change in the Advisory Committee's Note was made as the result of a style change in a rule, the change in the note is listed as a style change. Finally, the heading "Other Changes" includes new material and changes which involve matters of significance to the intent or policy of the rules.

I

Amendments to the Bankruptcy Rules and Forms(a) Technical Changes:

None

(b) Style Changes:

Style changes were made on pages 12, 13, and 22

(c) Other Changes:Rule 112 (p. 1)

This rule was amended to extend the time for filing an answer or motion in recognition of the fact that Rule 704(e) was being amended to extend the time allowed for service of a petition and summons. As the accompanying Advisory Committee's Note explains, the proposed change in Rule 112 is correlated with a like change in Rule 712(a). Both rules prescribe a period for the serving of an answer which commences on the day following issuance of the summons, and enlargement of the time for serving the summons dictates the same enlargement of time for serving the answer in Rule 112 as is provided in Rule 712(a).

Rule 205(d) (p. 4)

The last sentence of the rule was added to clarify the impact of the enactment of the Federal Rules of Evidence by Public Law 93-595 on the availability of the spousal privilege in examinations conducted under Rule 205. As the accompanying Advisory Committee's Note explains, the amendment of §205(d) makes explicit reference to provisos in §21a of the Bankruptcy Act in order to make clear that the limitation of the spousal privilege in examinations as provided in the Act has been preserved. The result is consistent with the Congressional policy embodied in Federal Rule of Evidence 501 and 28 U.S.C. §2076 to leave the law of privileges pretty much as it existed prior to the enactment of the Federal Rules of Evidence and subject to modification by the regular legislative process.

Rule 306(c) (p. 5)

This rule has been further amended to allow 30 days' notice of any objection to a tax claim. This amendment accedes to a request by the Department of Justice for more time in which to prepare to meet an objection to a tax claim than is allowed with respect to other kinds of claims. The new change is not limited, however, to tax claims of the United States.

Rule 712 (p. 14)

When additional time was allowed for the service of a summons by an amendment of Rule 704(e), 5 more days was allowed by a correlated amendment of Rule 712(a) for the service of an answer by most defendants. No additional time was given the United States within which to file responsive pleadings, however, it having been assumed that the 5 days' extra time previously given the United States for filing responsive pleadings under the rule would be adequate for the Government's needs. An extension of 5 days has been given the Government for filing responsive pleadings under the revised amendment of Rule 712 in response to a request of the Department of Justice for the additional time.

Rule 755(a) (p. 16)

This rule has been amended, as indicated in the accompanying Advisory Committee's Note, as a safeguard against the possibility that service of the summons, complaint, notice of trial or pre-trial conference had failed to come to the attention of the defendant against whom a default judgment has been entered. The provision in the amended rule for mailing a

copy of a default judgment to the defendant against whom it is entered is an adaptation of a suggestion by a correspondent, who had proposed that service of a summons, complaint, and notice by mail pursuant to Rule 704(c) as amended be supplemented by notice of the entry of any default.

Official Form No. 6 (p. 23)

This form was amended to require the zip code as part of the complete mailing address of each creditor listed in the schedules of creditors in this form. Two correspondents, commenting on the Advisory Committee's original proposal to insert "zip code recommended" on this form, insisted that merely recommending use of zip codes would be a futile change and that only a requirement that the zip code be used would be effective. The Advisory Committee and Standing Committee agreed.

II

Amendments to the Chapter XI Rules and Forms

One technical change was made on page 27.

III

Amendments to the Chapter XIII Rules and Forms

(a) Technical Changes:

A technical change was made on page 33

(b) Style Changes:

None

(c) Other Changes:

Rule 13-204(a)(1) (p. 30)

This rule was changed to conform to amended Rule 13-302(e)(1), as circulated, changing the time for filing secured claims from "on or before the first date set for" the first meeting of creditors to "before the conclusion of" that meeting.

Rule 13-206(d) (p. 31)

This rule was changed to conform to the change in Rule 205(d).

Rule 13-307(c) (p. 37)

This rule and the note thereto were changed to conform to the change in Rule 306(c) and its note.

Official Form 13-5 (p. 41)

Paragraphs 11(a) and (b) of this form and the note thereto were changed to conform to the changes in Bankruptcy Form No. 6 and the note thereto.

Official Form No. 13-7 (p. 42)

The fourth unnumbered paragraph of this form was changed to conform to the change in Rule 13-204(a)(1) and to the amendment of Rule 13-302(e)(1) as circulated.

IV

Chapter VIII Rules and Forms

(a) Technical Changes:

Technical changes were made on pages 6, 8, 18, 20, 30, 31, 41, 52, 66, 73, 80, 82, 85, 90, 93, 95, 96, 110, 117, 119, 120, 121, 124, 125-127, 130, 131, 136, 137, 140, 141, 145 and 149.

(b) Style Changes:

Style changes were made on pages 13, 14, 22, 51, 66, 69, 84, 112, 150 and 151.

(c) Other Changes:

Rule 8-207 (p. 38)

The language at the end of this rule was added at the suggestion of the Department of Justice. This language is consistent with case law and the original intent of the Advisory Committee. A conforming addition was made to the note on page 39.

Rule 8-209(b) (p. 41)

The Justice Department's suggestion that notices also be served on the Attorney General in Washington, as well as the local United States Attorney, was adopted by the Advisory Committee.

Rule 8-210 - Advisory Committee's Note (p. 46)

In order to clarify Rule 8-210, a new sentence was placed in the note which emphasizes the point that the rule does not in any way govern who serves as counsel for the governmental parties entitled to intervene under subdivision (b).

Rule 8-212 - Advisory Committee's Note (p. 54)

The note was rewritten to make it clear that the authority of the Interstate Commerce Commission to prescribe the contents of applications filed with the Commission is in no way affected by this rule.

Rule 8-301 - Advisory Committee's Note (p. 63)

The note was expanded in response to comments by the Department of Justice. First, the note was supplemented to make it absolutely clear that the rule did not contemplate court review of the merits of a plan at this juncture in the case. Second, a new paragraph was added which points out the fact that through intervention of the Department of Transportation the United States may always be a party to a Chapter VIII case.

Rule 8-303 (p. 64)

The last sentence of the rule and a comparable sentence from the note on page 65 were deleted in response to comments by the Interstate Commerce Commission.

Rule 8-401(g) (p. 82)

At the request of the Tax Division of the Department of Justice, tax claimants, including but not limited to the United States, were accorded 30 days instead of 10 days to respond to an objection to their claims.

Rule 8-702 - Advisory Committee's Note (p. 127)

A new paragraph was added at the end of the note to draw attention to the fact that by operation of law once a receiver or trustee qualifies, the debtor's authority under these rules to act on behalf of the estate terminates.

Rule 8-703(a)(6) (p. 128)

To conform the Chapter VIII Rules to the Bankruptcy Rules amendments, a new paragraph (6) was added to subdivision (a).

Rule 8-706(b) (p. 132); Official Form No. 8-1 (p. 136); and Official Form No. 8-2 (p. 140)

To implement a decision of the Standing Committee the rule and the two official forms were amended to require counsel to include their telephone numbers on their appearances and official forms.

V

Chapter IX Rules and Forms

(a) Technical Changes:

Technical changes were made on pages 15 and 65.

(b) Style Changes:

Style changes were made on pages 14, 42, 54, 55 and 62.

(c) Other Changes:

Rule 9-15 (p. 19)

The word "may" was changed to "shall" pursuant to a recommendation that the rule conform more closely to the statutory provision from which it is derived. Thus, the change reflects the statutory policy to accord record owners of real property, if they are included on the filed lists of creditors, the right to be heard on any matter arising in a Chapter IX case.

Rule 9-22(f) (p. 34)

This rule was changed to include a requirement of at least 10 days' notice of a hearing on objection to a claim. This change was made to conform the Chapter IX Rule with comparable rules in other chapters.

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Official Form No. 9-1 (p. 57) and Official
Form No. 9-4 (p. 64)

To implement a decision by the Standing Committee both forms were changed to require that a telephone number be included with the required address information.