

SUMMARY

REPORT OF THE JUDICIAL CONFERENCE COMMITTEE ON
RULES OF PRACTICE AND PROCEDURE

This report contains the following recommendations for the consideration of the Conference:

1. Bankruptcy Rules

That the Conference approve the amendments to the Bankruptcy Rules to conform them to the substantive and procedural changes in the Bankruptcy Code enacted by the Bankruptcy Amendments and Federal Judgeship Act of 1984, and to eliminate gender-specific language, as set out in Appendix A, and transmit them to the Supreme Court with the recommendation that they be approved by the Court and transmitted to the Congress pursuant to law.

2. Bankruptcy Forms

That the Conference approve the amendments to the Bankruptcy Official Forms to conform them to the substantive and procedural changes in the Bankruptcy Code enacted by the Bankruptcy Amendments and Federal Judgeship Act of 1984, and to eliminate gender-specific language, also set out in Appendix A. (In accordance with Bankruptcy Rule 9009, the Judicial Conference prescribes the Official Forms. They do not have to be transmitted to the Supreme Court.)

3. Civil Rule 51

That the Conference approve the amendment to Rule 51, set out in Appendix B, and transmit it to the Supreme Court with the recommendation that the rule be approved by the Court and transmitted to the Congress pursuant to law.

4. Criminal Rule 6(a) and 30

That the Conference approve the amendments to Rules 6(a) and 30, as set out in Appendix C, and transmit them to the Supreme Court with the recommendation that they be approved by the Court and transmitted to the Congress pursuant to law.

5. Gender-Neutralizing Civil Rules

That the Conference approve the proposed amendments to the Rules of Civil Procedure eliminating all gender-specific language, set out in Appendix D, and transmit them to the Supreme Court with the recommendation that they be approved by the Court and transmitted to the Congress pursuant to law.

6. Gender-Neutralizing Criminal Rules

That the Conference approve the proposed amendments to the Rules of Criminal Procedure eliminating all gender-specific language, set out in Appendix E, and transmit them to the Supreme Court with the recommendation that they be approved by the Court and transmitted to the Congress pursuant to law.

7. Gender-Neutralizing Evidence Rules

That the Conference approve the proposed amendments to the Federal Rules of Evidence eliminating all gender-specific language, set out in Appendix F, and transmit them to the Supreme Court with the recommendation that they be approved by the Court and transmitted to the Congress pursuant to law.

**REPORT TO THE JUDICIAL CONFERENCE
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:

Your Committee on Rules of Practice and Procedure met in Washington, D. C., on July 9, 1986. All members of the Committee attended the meeting except Judge Walter R. Mansfield and Professor Wade H. McCree, Jr., who were unavoidably absent. The Secretary of the Committee and Deputy Director of the Administrative Office, James E. Macklin, Jr., and the Reporter to the Committee, Dean Daniel R. Coquillette of Boston College Law School, also attended the meeting. Accompanying Dean Coquillette was Professor Stephen N. Subrin of Northeastern University Law School, who is assisting Dean Coquillette in the local rules project. Judge Morey L. Sear, Chairman; Professor Lawrence P. King, former Reporter, and Norman H. Nachman, both members of the Advisory Committee on Bankruptcy Rules, were present to report on the recommendations of that Committee. Dean Paul D. Carrington, Reporter to the Advisory Committee on the Federal Rules of Civil Procedure, and Professor Stephen A. Saltzburg, Reporter to the Advisory Committee on the Federal Rules of Criminal Procedure, attended to report on the recommendations of the respective committees. Joseph F. Spaniol, Jr., Clerk of the United States Supreme Court and formerly Secretary to the Committee, was present. Also attending the meeting were Thomas W. Hutchison, Counsel to the House Judiciary Subcommittee on

Criminal Justice; Gary Goldberger and Judith Bailey, Assistant Counsel to the House Judiciary Subcommittee on Monopolies and Commercial Law; and Terry Wooten, Counsel to the Senate Judiciary Committee.

I. Bankruptcy Rules

The Advisory Committee on Bankruptcy Rules has submitted to your Committee proposed amendments to the Bankruptcy Rules and Official Forms to conform them to the substantive and procedural changes in the Bankruptcy Code enacted by the Bankruptcy Amendments and Federal Judgeship Act of 1984. The proposed amendments also eliminate all gender-specific language from the Bankruptcy Rules and Official Forms. These proposed amendments are set out in Appendix A and are accompanied by Committee Notes explaining their purpose and intent. Separate reports from the Chairman of the Advisory Committee summarize the Advisory Committee's work.

Your Committee recommends that the proposed amendments to the Bankruptcy Rules be approved by the Conference and transmitted to the Supreme Court for its consideration with a recommendation that they be approved by the Court and transmitted to the Congress pursuant to law.

Your Committee also recommends that the Conference approve the proposed amendments to the Bankruptcy Official Forms.

II. Federal Rules of Civil Procedure

The Advisory Committee on the Federal Rules of Civil Procedure has submitted to your Committee a proposed amendment to Civil Rule 51. The proposed amendment is set out in Appendix B and is accompanied by a Committee Note explaining its purpose and intent. A separate report from the Chairman of the Advisory Committee summarizes the Advisory Committee's work.

Your Committee recommends that the proposed amendment to Civil Rule 51 be approved by the Conference and transmitted to the Supreme Court for

its consideration, with a recommendation that it be approved by the Court and transmitted to the Congress pursuant to law.

III. Federal Rules of Criminal Procedure

The Advisory Committee on the Federal Rules of Criminal Procedure has submitted to your Committee proposed amendments to Criminal Rules 6(a) and 30. The proposed amendments are set out in Appendix C and are accompanied by Committee Notes explaining their purpose and intent. A separate report from the Chairman of the Advisory Committee summarizes the Advisory Committee's work.

Your Committee recommends that the proposed amendments to Criminal Rules 6(a) and 30 be approved by the Conference and transmitted to the Supreme Court for its consideration, with a recommendation that they be approved by the Court and transmitted to the Congress pursuant to law.

IV. Gender-Neutralizing Rules

The Advisory Committee on Civil Rules has submitted to your Committee proposed amendments to the Civil Rules eliminating all gender-specific language from the Civil Rules. These proposed amendments are set out in Appendix D and are accompanied by Committee Notes explaining their purpose and intent.

The Advisory Committee on Criminal Rules has submitted to your Committee proposed amendments to the Criminal Rules eliminating all gender-specific language from the Criminal Rules. These proposed amendments are set out in Appendix E and are accompanied by Committee Notes explaining their purpose and intent.

The Advisory Committees on Civil and Criminal Rules have submitted to your Committee proposed amendments to the Evidence Rules eliminating all

gender-specific language from the Evidence Rules. These proposed amendments are set out in Appendix F and are accompanied by Committee Notes explaining their purpose and intent.

It is the opinion of this Committee that these proposed gender-neutralizing amendments do not effect substantial changes and that it is not necessary that they be circulated to the bench and bar and the public generally for comment. Your Committee has reviewed and approved these proposed amendments.

Your Committee recommends that the proposed gender-neutralizing amendments to the Civil, Criminal and Evidence Rules be approved by the Conference and transmitted to the Supreme Court for its consideration with a recommendation that they be approved by the Court and transmitted to the Congress pursuant to law.

V. Federal Rules of Appellate Procedure

Your Committee is pleased to report that the Congress took no action to defer the effective date of the amendments to the Federal Rules of Appellate Procedure that were approved by the Conference in September 1985 and were promulgated by the Supreme Court on March 10, 1986 pursuant to 28 U.S.C. § 2072. Accordingly, these amendments became effective on July 1, 1986 as provided in the Supreme Court Order promulgating them.

Respectfully submitted,

Hon. Edward T. Gignoux, Chairman
Hon. Amalya L. Kearse
Hon. Walter R. Mansfield
Hon. Walter E. Hoffman
Prof. Wade H. McCree, Jr.
Prof. Wayne R. LaFave
Edward H. Hickey, Esquire
Gael Mahony, Esquire

August 19, 1986

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

EDWARD T. GIGNOUX
CHAIRMAN

June 23, 1986

JAMES E. MACKLIN, JR.
SECRETARY

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MOREY L. SEAR
BANKRUPTCY RULES

TO: Hon. Edward T. Gignoux, Chairman
Standing Committee on Rules of Practice and Procedure

FROM: Hon. Morey L. Sear, Chairman
Advisory Committee on Bankruptcy Rules

SUBJECT: Explanation of Changes Made Subsequent to
the Original Publication of the November 1985
Preliminary Draft of Proposed Bankruptcy Rules

The Advisory Committee on Bankruptcy Rules considered the testimony of each witness at the public hearings held in San Francisco, California on February 20, 1986; in Chicago, Illinois on March 3, 1986; and in Washington, D.C. on August 17, 1986, as well as all communications received from interested individuals and groups who responded to the Committee's request for comment. Correction of typographical errors, changes in punctuation, and changes in language for clarification and to make similar rules consistent have been made. In addition, the rules have been made gender-neutral.

The significant changes made by the Advisory Committee subsequent to the original publication of the rules in November, 1985 are:

**PART I. COMMENCEMENT OF CASE;
PROCEEDINGS RELATING TO PETITION
AND ORDER FOR RELIEF**

Rule 1002. Commencement of Case.

Rule 1002 has been changed by deleting a cross reference to Rule 5005, the general rule governing the filing of papers. The revised rule requires simply that the petition be filed with the clerk. Rule 9001 defines clerk to mean the bankruptcy clerk if one has been appointed.

A sentence has been added to the Committee Note to make clear that the Official Forms of petition must be used.

Rule 1007. Lists, Schedules and Statements; Time Limits.

Subdivision (b). Schedules and Statements Required. Paragraph (2) has been changed to include a specific reference to the power of the court to exempt Chapter 13 debtors from filing certain statements.

Paragraph (3) has been changed to provide that a copy of the statement of intention shall be served on the trustee and the creditors named in it.

Subdivision (c). Time Limits. The time for filing a statement of intention is specified in § 521 of the Code. This subdivision has been changed to make clear that this rule does not govern that time. A technical change has been made in the third sentence to limit its applicability to conversion of Chapter 7 cases.

Subdivision (h). Interests Acquired or Arising After Petition. The last sentence of the subdivision has been changed to specify that the duty of a Chapter 13 debtor to file a supplemental schedule of receipt of property subject to § 541(a)(5) of the Code continues until the entry of the order discharging the debtor.

The Committee Note reflects the changes in the rule.

Rule 1011. Responsive Pleading or Motion in Involuntary and Ancillary Cases.

A technical change has been made in subdivision (a) to conform the rule to the language of § 304(b) of the Code.

Rule 1017. Dismissal of Case; Suspension.

Subdivision (d). Procedure For Dismissal or Conversion. Because §§ 706(a) and 1112(a) of the Code give the debtor the right to convert a case to another chapter, a proceeding to convert a case under either of these sections has been excluded from the requirements of Rule 9014 governing contested matters. A new sentence has been added to provide the procedure for conversion of a Chapter 13 case to a Chapter 7 case by the filing of a notice of conversion pursuant to § 1307(a). No court order is required.

The Committee Note for subdivision (d) reflects the changes in the rule.

Rule 1018. Contested Involuntary Petitions; Contested Petitions Commencing Ancillary Cases; Proceedings to Vacate Order for Relief; Applicability of Rules in Part VII Governing Adversary Proceedings.

A second paragraph has been added to the Committee Note to explain that entry of an order for relief against an uncooperative debtor in an involuntary case is one of the sanctions available under Rule 37 F. R. Civ. P. which has been incorporated into these rules in Rule 7037.

Rule 1019. Conversion of Chapter 11 Reorganization Case or Chapter 13 Individual's Debt Adjustment Case to Chapter 7 Liquidation Case.

Paragraph (1) has been divided into two separate paragraphs designated (A) and (B) to set apart the provisions governing the statement of intention.

Paragraph (2) has been changed to require that notice of conversion of a Chapter 11 case or a Chapter 13 case to a Chapter 7 case be provided to the trustee in the superseded case.

Paragraph (3) has been given the new caption **New Filing Periods**. The text of the rule has been changed to clarify the effect upon the time period for filing claims and for filing complaints relating to the discharge or the dischargeability of a debt, resulting from the conversion of a Chapter 11 case or a Chapter 13 case to a Chapter 7 case.

Paragraph (4) has been changed to provide that if a claim was deemed allowed in a superseded Chapter 11 case pursuant to § 1111(a) of the Code, the holder of the claim must file a proof of claim in the superseding Chapter 7 case.

Paragraph (6) has been changed to impose on the Chapter 13 debtor the obligation to file a schedule of unpaid debts incurred after the commencement of the superseded Chapter 13 case.

**PART II. OFFICERS AND ADMINISTRATION;
NOTICES; MEETINGS; EXAMINATIONS;
ELECTIONS; ATTORNEYS AND ACCOUNTANTS**

Rule 2002. Notices to Creditors, Equity Security Holders, and United States.

Subdivisions (a), (b), (d) and (f). Each of these subdivisions refers to notice given by the clerk or some other "person" as the court may direct. The term "entity", which includes

the United States, state and local governments, and foreign countries, had been substituted in the Preliminary Draft for the term "person." The rule has been changed by restoring the original term "person" so as not to impose the cost of notice upon governmental units.

Subdivision (a). Twenty-Day Notices to Parties in Interest. Clause (7) has been changed to require notice of a hearing on a fee application only when the amount sought is in excess of \$500. The existing rule and the Preliminary Draft set the amount at \$100.

Subdivision (d). Notice to Equity Security Holders. A new clause (3) has been added which requires that equity security holders be given notice of a hearing on the proposed sale of all or substantially all of the debtor's assets.

Subdivision (f). Other Notices. Clause (7), which authorized the clerk or "some other person as the court may direct" to give notice of discharge, has been deleted. The effect of the deletion, when read with Rule 4004(g), is to require the clerk to provide notice of the final order of discharge.

Subdivision (i). Notices to Committees. A change has been made to require that a request for notice under this subdivision also be served on the trustee or debtor in possession.

Subdivision (j). Notices to the United States. The proposed amendment to subdivision (j) sought to eliminate specific reference to copies of notices required to be sent to various federal agencies and officers. The Preliminary Draft provided that agencies would be provided with notices on request. As a result of comments from the agencies affected, the Advisory Committee has restored the original text of the rule.

The Committee Note reflects the changes in the rule.

Rule 2008. Notice to Trustee of Selection.

This rule has been changed by providing that a trustee who has furnished a blanket bond is deemed to have accepted an appointment unless a rejection of the appointment is filed within five days following receipt of notice of selection. The change eliminates the necessity of the trustee submitting a separate acceptance in each case.

Rule 2010. Qualification by Trustee; Proceeding on Bond.

Subdivision (b) has been deleted to conform to the change made in Rule 2008.

Rule 2012. Substitution of Trustee or Successor Trustee; Accounting.

A new subdivision (a) has been added to the rule which provides that a trustee appointed in a Chapter 11 case is automatically substituted for the debtor in possession in pending litigation.

Rule 2014. Employment of Professional Persons.

Subdivision (a), Application For an Order of Employment, has been changed by adding the requirement that an application for approval of the employment of a professional person be accompanied by a verified statement of the professional which describes the professional's connections, if any, with the debtor and parties in interest or their attorneys or accountants.

Rule 2015. Duty of Trustee or Debtor in Possession to Keep Records, Make Reports, and Give Notice of Case.

A new clause (5) has been added to subdivision (a). It requires that the trustee or debtor in possession record a copy of the petition or a notice of the filing of the petition in the land office in each county in which real property of the debtor is located. The filing of the notice or a copy of the petition is essential to the protection of the estate from unauthorized post-petition conveyances of real estate.

A Committee Note has been added to explain the addition of clause (5) to subdivision (a).

Rule 2016. Compensation for Services Rendered and Reimbursement of Expenses.

A new paragraph has been added to the Committee Note to make clear that the judge has the authority to ensure that the application for compensation or reimbursement is both comprehensive and detailed and reflects the nature of the services rendered and the complexity of the case.

**PART III. CLAIMS AND DISTRIBUTION TO
CREDITORS AND EQUITY INTEREST HOLDERS; PLANS**

Rule 3002. Filing Proof of Claim or Interest.

Subdivision (a), Filing Proof of Claim or Interest, has been changed to include Rule 1019(4) to the exceptions to the

requirement for filing a proof of claim or interest. Rule 1019(4) provides that all claims actually filed by creditors in a converted Chapter 11 case or Chapter 13 case shall be deemed filed in the superseding Chapter 7 case.

A Committee Note explaining the change has been added.

Rule 3004. Filing of Claims by Debtor or Trustee.

The Committee Note has been rewritten to give a more complete explanation of the amendments to the rule.

Rule 3020. Deposit; Confirmation of Plan.

Subdivision (b). Objections to and Hearing on Confirmation. The last sentence of the subdivision has been changed by returning to the original concept that on confirmation of the plan, no evidence of good faith is required in the absence of timely objection.

Subdivision (c), Order of Confirmation, has been changed by directing that notice of entry of the order of confirmation be given in accordance with Rule 2002(f) which permits the notice to be given by the "clerk, or some other person as the court may direct." The present rule requires notice to be mailed by the clerk, which is inconsistent with Rule 2002(f).

PART IV. THE DEBTOR: DUTIES AND BENEFITS

Rule 4001. Relief From Automatic Stay; Use of Cash Collateral; Obtaining Credit; Agreements.

Subdivisions (b), Use of Collateral; (c), Obtaining Credit; and (d), Agreement Relating to Relief From the Automatic Stay, Providing Adequate Protection, Use of Cash Collateral, and Obtaining Credit. The five day time period provided in subdivisions (b) and (c) and the 20 day time period provided in subdivision (d) have been changed to 15 days. Subdivision (d) has been changed to permit the court to fix a different time period.

Subdivision (c)(2), which had set forth the requirements for the content of a motion to obtain credit, has been eliminated.

The Committee Note has been expanded to set forth the appropriate content of a motion seeking authority to use cash collateral and of a motion to obtain credit.

The note has been further expanded to explain subdivision (d) in greater detail.

PART V. COURTS AND CLERKS

Rule 5003. Records Kept By the Clerk.

Subdivision (c), **Judgments and Orders**, has been changed by eliminating the requirement that all judgments affecting the title to or a lien upon real or personal property and for money judgments be kept and indexed with the civil judgments of the district court. These judgments will now be maintained by the clerk of the district court only on the request of the prevailing party.

The Committee Note reflects the change in the rule.

Rule 5004. Disqualification.

A Committee Note has been added to make clear that the bankruptcy judge before whom a matter is pending determines whether disqualification is required.

Rule 5005. Filing of Papers.

Subdivision (a), **Filing**, has been changed by deleting reference to filing of the petition. This change complements the change in Rule 1002 which now specifies that the petition is filed with the clerk.

Subdivision (c) of the Preliminary Draft has been deleted. It would have made Rule 5(b) F. R. Civ. P. authorizing service on attorneys applicable in all cases under the Code.

Subdivision (d) has been moved to become new Rule 5011.

Rule 5010. Reopening Cases.

A new sentence is added to this rule to permit the reopening of a Chapter 7 case or a Chapter 13 case without the appointment of a trustee.

Rule 5011. Withdrawal and Abstention from Hearing a Proceeding.

Subdivision (a), **Withdrawal**; and Subdivision (b), **Abstention From Hearing A Proceeding**, are new.

Subdivision (a), Withdrawal, provides that a motion for withdrawal of a case or proceeding from a bankruptcy judge is heard by the district judge.

Subdivision (b), Abstention From Hearing A Proceeding, provides that a motion for abstention from hearing a proceeding pursuant to 28 U.S.C. § 1334(c) is heard by a bankruptcy judge in the first instance. The bankruptcy judge files a report and recommendation for disposition of the motion by the district judge pursuant to Rule 9033. The rule does not apply to motions under § 305 of the Code for abstention from hearing a case.

Subdivision (c). Effect of Filing of Motion for Withdrawal, Abstention, or Transfer. This subdivision was Rule 5005(d) in the Preliminary Draft and has not been changed.

A new Committee Note explains the operation of the rule in detail.

PART VI. COLLECTION AND LIQUIDATION OF THE ESTATE

Rule 6004. Use, Sale, or Lease of Property.

Subdivision (a). Notice of Proposed Use, Sale, or Lease of Property. A technical change has been made in subdivision (a) to provide specifically that the rule on notice of a proposed use, sale, or lease of property does not govern a motion to use cash collateral.

PART VII. ADVERSARY PROCEEDINGS

Rule 7001. Scope of Rules of Part VII.

A proceeding to compel the debtor to deliver property to the trustee is excepted from the rules covering adversary proceedings.

A Committee Note has been added to explain the change.

Rule 7004. Process; Service of Summons, Complaint.

Subdivisions (a) and (f) are changed to conform these subdivisions to recent changes in Rule 4 F. R. Civ. P.

**PART VIII. APPEALS TO DISTRICT COURT
OR BANKRUPTCY APPELLATE PANEL**

The word "Review" has been deleted from the caption to Part VIII of the rules.

Rule 8001. Manner of Taking Appeal; Voluntary Dismissal; Effect of Appeal to Court of Appeals.

Section 158 of title 28 authorizes circuit councils to establish bankruptcy appellate panels to hear appeals from bankruptcy judges upon consent of all the parties. Rule 8001(e) requires that the consent of the parties be express.

Subdivision (e), Consent to Appeal to Bankruptcy Appellate Panel, has been changed to authorize circuit councils to promulgate a rule for a Bankruptcy Appellate Panel which provides for a method of giving consent to the hearing of an appeal by the panel that is different from the consent procedure specified in subdivision (e).

The Committee Note has been changed to reflect this change in subdivision (e).

Rule 8008. Filing and Service.

A change has been made in subdivision (d) to distinguish between clerk of the district court and clerk of the bankruptcy appellate panel.

Rule 8015. Motion for Rehearing.

The rule is changed to provide that the filing of a timely motion for rehearing after the disposition of an appeal by the appellate panel or district judge postpones the beginning of the period for appeal to the circuit court until the motion for rehearing is denied or a new judgment is entered.

Rule 8019. Review of Proposed Findings of Fact and Conclusions of Law in Non-Core Proceedings.

Rule 8019 of the Preliminary Draft dealt with review of findings of fact and conclusions of law in non-core matters, rather than with appeal. It is more appropriately a general provision for inclusion in Part IX and has been moved to become new Rule 9033.

Existing Rule 8019, which was renumbered Rule 8020 in the Preliminary Draft, is restored to its original position and number.

PART IX. GENERAL PROVISIONS

Rule 9003. Prohibition of Ex Parte Contacts.

This rule has been changed to make the prohibition of ex parte contact applicable to district judges as well as bankruptcy judges.

A Committee Note has been added to reflect the change in the rule.

Rule 9006. Time.

Changes have been made to reflect the changes in Rule 4001 and Rule 9033 (formerly Rule 8019).

Subdivision (b)(2), Enlargement Not Permitted, has been changed to remove the prohibition against enlarging the 15 day time period provided for hearing on motions for authorization to use cash collateral.

Subdivision (b)(3), Enlargement Limited, has been changed to include Rule 9033 which, by its own terms, authorizes an extension of up to 20 days to file objections to proposed findings of fact and conclusions of law.

Subdivision (c)(2), Reduction Not Permitted, has been changed to prohibit reduction of the 15 day period between the filing of a motion for authority to use cash collateral or obtain credit and the final hearing on the motion. The change, however, permits reduction of the 15 day period for filing objections to agreements under Rule 4001(d).

Rule 9003 is included in the prohibition against reduction of its time period. Accordingly, the 10 day time period for filing objections to a bankruptcy judge's proposed finding of fact and conclusions of law in a non-core proceeding may not be reduced.

The Committee Note has been recast to reflect the changes in the rule.

Rule 9015. Jury Trial.

This rule is abrogated.

Former § 1480 of title 28 preserved a right to trial by jury in any case or proceeding under title 11 in which jury trial was provided by statute. Rule 9015 provided the procedure for jury trials in bankruptcy courts. Section 1480 was repealed. Section 1411, added by the 1984 amendments, affords a jury trial only for personal injury or wrongful death claims, which 28 U.S.C. § 157(b)(5) requires be tried in the district court. Nevertheless, Rule 9015 has been cited as conferring a right to jury trial in other matters before bankruptcy judges. In light of the clear mandate of 28 U.S.C. § 2075 that the "rules shall not abridge, enlarge, or modify any substantive right," the Advisory Committee abrogated Rule 9015.

A Committee Note explaining the abrogation of the rule has been added.

Rule 9020. Contempt Proceedings.

Rule 9020 of the Preliminary Draft provided that a motion for contempt be filed in the district court and it authorized a bankruptcy judge only to certify facts of a contempt to the district court for hearing and determination.

The rule has been changed to establish a procedure which enables the bankruptcy judge to enter the contempt order. That order is effective and has the same force as though it had been entered by the district court unless objections to the order are filed within ten days. The review by the district court is much the same as the review of a district court contempt order by the court of appeals under similar circumstances.

The Committee Note has been changed to explain the procedure in light of the changes made by the 1984 amendments.

Rule 9022. Notice of Judgment or Order.

The reference to Rule 5005(c) in this rule has been deleted for the reason that Rule 5055(c) has been deleted from the rules. The original reference to Rule 7005 has been restored.

Rule 9027. Removal.

Subdivision (a), Application, has been changed to provide that an application for removal is filed with the bankruptcy clerk rather than with the district court clerk.

Subdivision (d), Filing in Non-Bankruptcy Court, has been changed by adding a specific requirement that the removal application be filed promptly with the court from which the claim or cause of action was removed.

Subdivision (e), Remand, has been changed to provide that the motion for remand is filed with the clerk of the bankruptcy court rather than the district court clerk. Unless the district judge orders otherwise, the bankruptcy judge hears the remand motion and files a report and recommendation which is reviewed by the district judge pursuant to Rule 9033.

Subdivision (f), Procedure After Removal, has been changed to make clear that in those instances in which the district court has referred a case to a bankruptcy judge, a removed claim or cause of action is included in the referral and is heard by the bankruptcy judge.

The Committee Note reflects the changes in the rule.

Rule 9029. Local Bankruptcy Rules.

Rule 9029 has been changed by an addition to the last sentence of the rule which conforms the rule to the 1985 amendment to Rule 83 F. R. Civ. P.

The Committee Note reflects the change in the rule.

Rule 9033. Review of Proposed Findings of Fact and Conclusions of Law in Non-Core Proceedings.

This rule was Rule 8019 in the Preliminary Draft.

Subdivision (a), Service, has been changed to include the requirement that the clerk note on the docket the date of mailing of copies of the bankruptcy judge's proposed findings of fact and conclusions of law.

PART X. UNITED STATES TRUSTEES

Rule X-1004. Notification to Trustee of Selection; Blanket Bond.

Subdivision (a), Notification, of this rule has been changed to conform to the change made in Rule 2008 which provides that a trustee who has furnished a blanket bond is deemed to have accepted an appointment unless a rejection of the appointment is timely filed.

The Committee Note reflects the change in the rule.

Rule X-1010. Prohibition of Ex Parte Contacts.

Rule X-1010 has been changed to conform to the change made in Rule 9003 which extends the prohibition on ex parte contacts to district judges as well as bankruptcy judges.

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

EDWARD T. GIGNOUX
CHAIRMAN

June 13, 1986

JAMES E. MACKLIN, JR.
SECRETARY

CHAIRMEN OF ADVISORY COMMITTEES
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BANKRUPTCY RULES

Hon. Edward T. Gignoux
Senior United States District Judge
Chairman, Committee on Rules of
Practice and Procedure
P. O. Box 8
Portland, Maine 04112

My dear Judge Gignoux:

On behalf of the Advisory Committee on Bankruptcy Rules, I have the honor to transmit for consideration by the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, proposed amendments to the Bankruptcy Rules and official forms. These amendments are made necessary by the Bankruptcy Amendments and Federal Judgeship Act of 1984 (the 1984 Act), Pub. L. No. 98-353, 98 Stat. 333, signed by the President on July 10, 1984.

In 1978 Congress enacted a Bankruptcy Reform Act (the Reform Act). It created an independent bankruptcy court and conferred upon it "jurisdiction of all civil proceedings arising under title 11 [the Bankruptcy title] or arising in or related to cases under title 11." Former 28 U.S.C. § 1471(b), (c). Bankruptcy courts were given "the powers of a court of equity, law, and admiralty." Former 28 U.S.C. § 1481. The Reform Act became effective in October 1979, but it provided a transition period until it took full effect in April 1984. Rules of practice and procedure necessitated by the Reform Act and applicable only to bankruptcy courts became effective August 1, 1983.

In June 1982 the Supreme Court found that the broad grant of jurisdiction to bankruptcy judges in the Reform Act violated Article III of the Constitution. Northern Pipeline Construction Co. v. Marathon Pipe Line Co., 458 U.S. 50, 102 S. Ct. 2858 (1982). The 1984 Act, in response to Marathon, established a new statutory scheme which vests exclusive jurisdiction of all cases under title 11 in the district courts, 28

U.S.C. § 1334(a), and establishes bankruptcy judges as a unit of the district court. 28 U.S.C. § 151. The district court is authorized, but not required, to refer "any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11" to the bankruptcy judges for the district. 28 U.S.C. § 157(a). The 1984 Act also permits, and under certain circumstances requires, the district court to withdraw any case or proceeding referred to the bankruptcy judges. 28 U.S.C. § 157(d).

As a consequence of the 1984 amendments to the Bankruptcy and Judicial Codes, it is necessary to amend the 1983 Bankruptcy Rules to provide rules of practice and procedure applicable to district judges when sitting in bankruptcy and to bankruptcy courts when exercising the district court's jurisdiction.

The preliminary draft of proposed changes to the rules was circulated to members of the bench and bar. Comments were received from 75 respondents. Public hearings to afford interested persons the opportunity to express their views were held in San Francisco, California on February 20, 1986, Chicago, Illinois on March 13, 1986, and Washington, D.C. on April 17, 1986. The Advisory Committee considered the testimony of each witness and the written comment of each respondent.

As a result of the testimony and written comments, the Advisory Committee has made several changes in the preliminary draft. These changes are reflected in detail in the attached report of the comments received and the explanation of changes made subsequent to the original publication. Of particular interest are the provisions relating to the authority of bankruptcy judges in certain proceedings.

The power of a "district judge or other officer or employee of a district court to exercise any of the authority or responsibilities conferred upon the court under . . . [the Code is] determined by reference to the provisions relating to such judge, officer, or employee set forth in title 28." 11 U.S.C. § 105(c). A bankruptcy judge's authority is determined by § 157 of title 28, but it is limited by § 105(c) to "authority . . . conferred upon the court under . . . [the Code]." Thus, the bankruptcy judge may apply the substantive law of the Code in any case or proceeding that is referred. However, under § 157(b) the bankruptcy judge may enter "appropriate orders and judgments" only in "core" proceedings. In a proceeding that is not a core proceeding, the bankruptcy judge is required by § 157(c) to "submit proposed findings of fact and conclusions of law to the district court."

A question exists as to the power of a bankruptcy judge to decide issues which arise under title 28, rather than the Code, because of the limitations imposed by § 105(c) of title 11 and the various sections of title 28 which refer only to the district court. Issues which arise outside of the Code included withdrawal of cases or proceedings referred to bankruptcy judges, 28 U.S.C. § 157(d); abstention from hearing a particular proceeding arising under, in or related to a case under title 11, 28 U.S.C. § 1334(c); change of venue, 28 U.S.C. § 1412; remand of removed cases (28 U.S.C. § 1452); contempt; and jury trial.

Because cases and proceedings are referred to bankruptcy judges by the district court, the Advisory Committee concluded that a motion to withdraw a referred case or proceeding should be heard by the district judge. Rule 5011(a) therefore provides that a motion to withdraw "shall be heard by a district judge."

In the interest of justice or comity with State courts, district courts may abstain "from hearing a particular proceeding arising under title 11." Upon timely motion in a proceeding based upon a state law claim related to but not arising under or in a case under title 11, the district courts must abstain if it is commenced and can be timely adjudicated in an appropriate state forum. The decision to abstain in either instance "is not reviewable by appeal or otherwise." The Advisory Committee concluded therefore that the order to abstain should be entered by the district judge. However, the district judge should, if the judge so desires, have the benefit of the recommendation of the bankruptcy judge. Rule 5011(b) authorizes the bankruptcy judge to hear the motion to abstain and provide the district judge with a report and recommendation for disposition of the motion.

Section 1452(a) of title 28 authorizes removal of cases to the district court. The decision to remand, like that to abstain, is not reviewable. 28 U.S.C. § 1452(b). Rule 9027 adopts a procedure similar to abstention and authorizes the bankruptcy judge to hear the motion and file a report and recommendation for its disposition.

Bankruptcy courts as constituted under the Reform Act were courts of the United States with inherent power to punish for contempt. However, former 28 U.S.C. § 1481 restricted the criminal contempt power of bankruptcy judges to that committed in the presence of the judge. The 1984 Amendments omit any reference to contempt. The Advisory Committee recognized that bankruptcy judges may not, therefore, have the power to punish for contempt. Nevertheless, the Committee believes that sound judicial administration requires that the initial determination of contempt be made by the bankruptcy judge.

Rule 9020 establishes a procedure which enables the bankruptcy judge to enter the contempt order. That order is effective and has the same force as though it had been entered by the district court unless objections to the order are filed within ten days. The review by the district court is much the same as the review of a district court contempt order by the court of appeals under similar circumstances.

Former section 1480 of title 28 preserved a right to trial by jury in any case or proceeding under title 11 in which jury trial was provided by statute. Rule 9015 provided the procedure for jury trials in bankruptcy courts. Section 1480 was repealed. Section 1411 added by the 1984 Act affords a jury trial only in personal injury or wrongful death claims, which 28 U.S.C. § 157(b)(5) requires be tried in the district court. Nevertheless, Rule 9015 has been cited as conferring a right to jury trial in other matters before bankruptcy judges. In light of the clear mandate of 28 U.S.C. § 2075 that the "rules shall not abridge, enlarge, or modify any substantive right," the Advisory Committee recommends that Rule 9015 be abrogated. In the event the courts of appeals or the Supreme Court define a right to jury trial in the bankruptcy courts, a local rule of court in substantially the form of Rule 9015 can be adopted pending amendment of the rules.

Section 157(c) authorizes bankruptcy judges to hear non-core proceedings that are related to a case under title 11. A bankruptcy judge, however, may not enter final orders or judgments in non-core proceedings absent the consent of all parties. Instead, § 157(c)(1) requires the bankruptcy judge to prepare findings of fact and conclusions of law for consideration by the district judge, who then enters the final order or judgment. Rule 9033 provides a procedure similar to Rule 72 of the Federal Rules of Civil Procedure for filing objections and review of proposed findings and conclusions of the bankruptcy judge.

Section 157(c)(2) permits the parties to consent to entry of final orders or judgment by a bankruptcy judge. To avoid what became known in the bankruptcy practice prior to the Reform Act as "jurisdiction by ambush" and to satisfy the statutory requirement for consent, the Advisory Committee included in Rules 7008 and 7012 a requirement that the consent of the parties to entry of final orders and judgment by the bankruptcy judge in non-core proceedings be expressly given.

Finally, the Advisory Committee gave serious consideration to comments with regard to limiting the practice of cross-collateralization of assets. These suggestions have considerable

merit, but the Advisory Committee concluded that any significant change in Rule 4001 as proposed would require further comment from the bench and bar. Certainly, it is a subject for consideration in the future.

The Advisory Committee's work is the result of many long hours of study and debate of judges, practitioners and academicians whose dedication to improving bankruptcy practice is unquestioned. Each has my deepest respect and abiding esteem. Our work was a continuation of that begun in 1979 under the inspiring leadership of Chief Judge Ruggero J. Aldisert of the Court of Appeals for the Third Circuit.

The members of the Advisory Committee are outstanding. Norman H. Nachman, senior partner of Nachman, Munitz & Sweig of Chicago, is recognized as the "Dean" of the bankruptcy bar. Mr. Nachman has been a member of the Advisory Committee on Bankruptcy Rules since 1960. He and Joseph Patchan of Baker & Hosteler of Cleveland, a former bankruptcy judge, ably represent the bankruptcy bar.

Professor Lawrence P. King, Charles Seligson Professor of Law of New York University School of Law, was chief reporter to the Committee during the original draft of the 1983 Rules. Professor King also serves the New York law firm of Wachtell, Lipton, Rosen & Katz as counsel. His expertise as a draftsman and experience as a practitioner combined with his scholarly insight into the law make him an invaluable resource to the Committee.

Academia is also represented by Professor Robert W. Foster, former Dean of the University of South Carolina Law School. Professor Foster brings experience as teacher, practitioner, and arbitrator.

The bench is represented on the Committee by Circuit Judge Joel M. Flaum of the Seventh Circuit Court of Appeals, District Judges Franklin T. Dupree, Jr., Senior Judge and formerly Chief Judge of the Eastern District of North Carolina, Norman W. Black of the Southern District of Texas, Lloyd D. George of the District of Nevada, Chief Judge Thomas A. Wiseman of the Middle District of Tennessee, and Chief Bankruptcy Judge Beryl E. McGuire of the Western District of New York.

Each judge is uniquely qualified to serve on our Committee. Judge Flaum is a former member of the Committee on the Administration of the Bankruptcy System. Judge Dupree is expert in court administration. Judge Black is a former United States

Hon. Edward T. Gignoux
June 13, 1986
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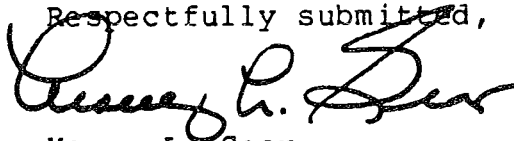
Magistrate and serves as Chairman of the Bankruptcy Committee in his district. Chief Judge Wiseman has attended special workshops in bankruptcy and has brought to the Committee many years of experience as a practitioner of business law. Judge George was for many years an outstanding bankruptcy judge. His knowledge of the law and practice in bankruptcy courts is of invaluable aid to the Committee. Judge McGuire is immediate past president of the National Conference of Bankruptcy Judges and has many years of experience on the bench.

The members of the Advisory Committee owe a special debt of gratitude to "Dean" Nachman, Professor King and Judge George who spent untold additional hours with me refining the rules following each Committee meeting. Finally, we are grateful to the non-voting member of the Committee, our Reporter, Professor Walter J. Taggart of Villanova Law School. He brought special expertise as the special law clerk to the reorganization judge in the Penn Central bankruptcy proceeding and as co-reporter to the Advisory Committee under Chief Judge Aldisert.

It has been a particular honor to serve under your leadership. You were generous with your time, wise in your counsel and loyal in your support.

Finally, my special thanks to Director L. Ralph Mecham, James E. Macklin, Jr., Deputy Director and Secretary to our Committee, and Peter G. McCabe, Assistant Director of the Administrative Office. Their support of our project was essential to its success.

Respectfully submitted,



Morey L. Sear

MLS/sb

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS
WASHINGTON, D.C. 20554

TO THE COMMITTEE ON RULES OF PRACTICE AND PROCEDURE:


I have the honor of submitting herewith our Committee's final draft of a proposed amendment of Rule 51.

This proposed amendment is the product of two years of study in which the Committee has had the benefit of the views of many judges, lawyers, and citizens, both by letter and at public hearings in Washington, D.C. and San Francisco, in response to a wide distribution of earlier drafts for criticism and comment.

The Committee proposes to revise Rule 51 to permit the court to instruct a jury either before or after argument by counsel, or both. Instruction before argument is the practice of some states and is favored by some courts as a means of providing a better framework for the arguments of counsel. The Committee believes that this amendment, if adopted, will serve to improve the administration of justice in our federal courts.

The Committee also recommends adoption of the gender-neutralizing amendments to the Civil Rules. These amendments have been reviewed to assure that no change in the meaning of the Civil Rules will result. Their purpose is merely to alter the style of the Rules to eliminate any implication that judges or lawyers are, or should be, male.

Respectfully submitted,


Frank M. Johnson, Jr.
Chairman, Civil Rules Committee

PROPOSED AMENDMENT
TO THE
FEDERAL RULES OF CIVIL PROCEDURE*

Rule 51. Instructions to Jury: Objection

1 At the close of the evidence or at such earlier time during
2 the trial as the court reasonably directs, any party may file written
3 requests that the court instruct the jury on the law as set forth in
4 the requests. The court shall inform counsel of its proposed action
5 upon the requests prior to their arguments to the jury, ~~but the~~
6 ~~court shall instruct the jury after the arguments are completed.~~ The
7 court, at its election, may instruct the jury before or after
8 argument, or both. No party may assign as error the giving or the
9 failure to give an instruction unless ~~he objects thereto~~ that party
10 objects thereto before the jury retires to consider its verdict,
11 stating distinctly the matter objected to ~~which he objects~~ and the
12 grounds of ~~his~~ the objections. Opportunity shall be given to make
13 the objection out of the hearing of the jury.

COMMITTEE NOTE

Although Rule 51 in its present form specifies that the court shall instruct the jury only after the arguments of the parties are completed, in some districts (typically those in states where the practice is otherwise) it is common for the parties to stipulate to instruction before the arguments. The purpose of the amendment is to give the court discretion

*New matter is underscored; matter to be omitted is lined through.

to instruct the jury either before or after argument. Thus, the rule as revised will permit resort to the long-standing federal practice or to an alternative procedure, which has been praised because it gives counsel the opportunity to explain the instructions, argue their application to the facts and thereby give the jury the maximum assistance in determining the issues and arriving at a good verdict on the law and the evidence. As an ancillary benefit, this approach aids counsel by supplying a natural outline so that arguments may be directed to the essential fact issues which the jury must decide. See generally Raymond, Merits and Demerits of the Missouri System of Instructing Juries, 5 St. Louis U. L. J. 317 (1959). Moreover, if the court instructs before an argument, counsel then know the precise words the court has chosen and need not speculate as to the words the court will later use in its instructions. Finally, by instructing ahead of argument the court has the attention of the jurors when they are fresh and can give their full attention to the court's instructions. It is more difficult to hold the attention of jurors after lengthy arguments.

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

TO THE COMMITTEE ON RULES OF PRACTICE AND PROCEDURE:

On behalf of the Advisory Committee on Criminal Rules, I transmit herewith proposals to amend Rules 6(a) and 30 of the Federal Rules of Criminal Procedure. These proposed amendments were circulated to the bench and bar in August, 1983. Public hearings were held in Washington, D. C. and San Francisco, California on February 14, 1984.

I. PROPOSALS RECOMMENDED FOR APPROVAL

Rule 6(a)

The amendment to Rule 6(a) would add a paragraph covering impanelling of alternate grand jurors. Several comments from the bar were received, and all were supportive of the proposed amendment. These included comments by the American College of Trial Lawyers, the California Bar Federal Courts Committee, the Wisconsin Judicial Council and the Los Angeles County Bar Association. Although other organizations—the ABA Criminal Justice Section, the Federal Bar Association Litigation Section, and Division 18 (Litigation) of the District of Columbia Bar—also approved the change, they expressed some concern over bringing new jurors into an ongoing investigation. In light of the case law holding that it is not absolutely necessary for all jurors joining in an indictment to have been present and to have heard all of the evidence—e.g., United States v. Leverage Funding Systems, Inc., 637 F.2d 645 (9th Cir. 1980)—the Advisory Committee saw no need to add complicated procedures to the rule. It is well established that the judge who impanels an alternate may direct that the juror be informed of relevant material previously presented to the grand jury.

The Advisory Committee originally decided that the proposed amendment to Rule 6 was not necessary, but upon reconsideration determined that it might be useful in some districts. In light of the strong public support for the proposed amendment, the Advisory Committee forwarded it to the Standing Committee in June, 1985. Recirculation was deemed unnecessary, since no change in the amendment was made following the 1983 public circulation.

Rule 30

As circulated to the bar, the amendment to Rule 30 provided that the judge may instruct the jury before or after argument. The proposed change received strong public support from the ABA Criminal Justice Section, the California Bar Federal Courts Committee, the Wisconsin

Judicial Council, the Federal Bar Association, the Federal Litigation Section, the Conference of Chief Justices, the Los Angeles Bar Association, and the Illinois State Bar Association.

There was some opposition expressed by the New York Legal Aid Society, the Association of the Bar of the City of New York Committees on Federal Courts and Criminal Law, and the American College of Trial Lawyers. The Legal Aid Society expressed concern about lack of uniformity in federal courts, and all three groups indicated that they worried about the prosecutor abusing the opportunity to have the last word if the trial judge instructs before argument.

As approved by the Advisory Committee and sent to the Standing Committee, the amendment to Rule 30 permits the judge to instruct before argument, after argument, or at both times. The Advisory Committee believes that the discretion given to the judge to instruct at both times resolves the major problem identified by the few groups who opposed the rule. The Advisory Committee did not believe that giving the trial judge flexibility unduly interfered with the desired uniform handling of federal criminal cases. Rather, the flexibility increases the trial judge's ability to adequately inform a jury of the law it must use in deciding a case.

Although the amendment approved by the Advisory Committee makes a small change (permitting instruction both before and after argument) in the language circulated for public comment, the Committee does not believe that recirculation is needed. The small change actually responds to other public comments that were received in opposition to the amendment. Moreover, Federal Rule of Civil Procedure 51 as subsequently circulated for comment, and the Civil and Criminal Rules Committees have had the benefit of two sets of reactions to amendments that address the timing of instructions. The Advisory Committee is confident that the bench and bar have had substantial opportunity for comment, and the comments received indicate broad support for the amendment.

II. STYLISTIC CHANGES

The Advisory Committee was requested to remove gender-specific language from the Criminal Rules. These proposed amendments do not effect substantive changes and are accompanied by Committee Notes explaining their purpose and intent.

Respectfully submitted,

Leland C. Nielsen
Chairman, Advisory Committee
on Criminal Rules

July 31, 1986