

January 23, 1961

To the Honorable Albert B. Maris, Chairman, and the
Members of the Committee on Rules of Practice and
Procedure of the Judicial Conference of the United States:

The following is a progress report of the Advisory Committee
on Bankruptcy Rules.

1. The Committee held its first meeting on December 12 and 13, 1960, in Washington, D. C. Notwithstanding adverse weather conditions, all members were in attendance with the exception of Judge Edward T. Gignoux, who was ill. The Advisory Committee was materially assisted in its deliberations by the presence and participation of Judge Maris and Professor J. W. Moore of the standing Committee on Rules, and of Edwin L. Covey, Chief of the Division of Bankruptcy of the Administrative Office, who acts as an adviser to the Advisory Committee. The Chief Justice also appeared during the meeting to express his interest and that of the Court in the work of the Advisory Committee. In his remarks to the Committee he emphasized the particular importance of time and costs of administration in bankruptcy. Other persons in attendance included the Director and the Deputy Director of the Administrative Office, Aubrey Gasque, the Secretary of the Advisory Committee, and Frank R. Kennedy, the Reporter.

Lots were drawn so as to divide the twelve members into two equal groups, the members of one having four-year terms and the others having two-year terms.

2. This Committee submitted to your Committee for consideration at its meeting on August 31, 1960, a preliminary draft of a proposed revision of certain general orders and official forms in bankruptcy.

These changes were limited to those required (1) to bring the general orders and official forms into harmony with recent amendments of the Bankruptcy Act, (2) to bring them into harmony with current and sound practice, and (3) to correct obvious departures from approved form. Generally speaking, changes of the second and third kinds were proposed only for those orders and forms for which changes of the first category are necessary.

Pursuant to action taken by your Committee at that meeting, the preliminary draft was published to the bench and bar under date of November 1, 1960, for consideration and suggestions. This preliminary draft has now been revised in minor particulars in the light of discussion had at the meeting of the Advisory Committee in December and of the responses to the published invitation for suggestions that have been received.

It is believed that no substantial controversy is involved in respect to any of the proposed changes. Differences of opinion have been encountered as to how some essentially noncontroversial changes can best be effected and, even more frequently, whether additional changes ought not to be included in the Advisory Committee's recommendation. When the Committee decided to propose some changes of form in addition to those required by recent bankruptcy legislation, the bench and bar were stimulated to submit other changes thought to be of a like nature. The Committee has resisted the temptation to adopt most of these suggestions at this time notwithstanding their apparent

merit. This decision was necessary if realization of the objective of bringing the general orders and official forms into harmony with the recent amendments of the Bankruptcy Act was not to be further delayed. At the same time the Advisory Committee's decision to restrict most of its proposals for formal changes to those provisions which have had to be conformed to recent legislation results in some inconsistency of form between the orders and forms proposed to be amended and those not touched by the proposals. The Advisory Committee on Bankruptcy Rules is making a study of all the general orders and official forms with a view to recommending a revision which will achieve consistency in usage and form while accomplishing more substantial improvements. In the meantime the discrepancies in form between the amended and unamended orders and forms may be viewed, it is hoped, as incidental and temporary.

A special problem involves Official Form No. 1 (Debtor's Petition), Official Form No. 4 (Partnership Petition), and Official Form No. 5 (Creditor's Petition). Several minor and noncontroversial changes might appropriately be proposed at this time in order to bring these forms into harmony with recent legislation. The Advisory Committee is nevertheless not recommending adoption of any of these changes at this time because it believes that its study will disclose other changes which should be made in these forms. While the same observation applies to other official forms as well as general orders that would be changed by the proposals being made at this time, no other changes, it is

believed, would render obsolete any large inventory of forms or entail comparable printing costs. During the transitional period pending the Advisory Committee's report on the results of its closer study of the orders and forms, it seems wise to suspend recommendations affecting Forms No. 1, 4, and 5.

The Advisory Committee's Proposed Revision of Certain of the General Orders and Official Forms in Bankruptcy is attached to this report and is submitted to your Committee for approval.

3. By letter of August 5, 1960, Judge Maris for the Rules Committee referred to our Advisory Committee several matters which had previously been referred to the Rules Committee by the Judicial Conference. The first such reference was the matter of improving procedures in installment fee cases under General Order 35(4). At its December meeting, the Committee considered and approved in substance a proposed revision of General Order 35(4). The changes tentatively agreed to would require (1) the limitation of installment payments to three, or possibly four, in number, payable over a period of no more than four months, extendable for cause shown to six months; (2) payment of all installments to the clerk of the court; and (3) payment in full of filing fees before any compensation can be paid to the attorney for a bankrupt or debtor. It was also agreed that an appropriate official form should be drafted. The Reporter is preparing a suitable form and a redraft of General Order 35(4).

The Committee suggested that it might be appropriate for the Judicial Conference's Committee on Bankruptcy Administration to consider (1) whether section 48c of the Bankruptcy Act ought not to be amended to cure an ~~inadvertence~~^{inadvertence} which seems to continue to permit pauper petitions to be filed in bankruptcy; and (2) whether section 1915 of Title 28 of the United States Code, generally authorizing pauper petitions to be filed, should be amended to negative its applicability in bankruptcy proceedings.

4. The elimination of the oath on proofs of claim, referred to the Advisory Committee by Judge Maris' letter of August 5, would be accomplished by the proposed amendments of Forms No. 28-31 set forth in the attached Proposed Revision.

5. Judge Maris' letter passed on to the Advisory Committee a request from the Judicial Conference that a change in Schedule B-4 be drafted to conform the schedule to a proposed amendment to section 60d of the Bankruptcy Act which the Conference had approved. The Reporter has drafted a change in the schedule to accommodate the proposed amendment of the Bankruptcy Act. If the amendment is enacted in the form approved by the Judicial Conference, an appropriate revision of Schedule B-4 will be submitted to your Committee, together with other proposed changes of Form No. 1, when the Advisory Committee has completed its study of this form.

6. Pursuant to the reference to this Committee, the proposal of the Bankruptcy Division of the Administrative Office to establish

a panel of standing trustees to handle small cases was considered at length at the December meeting of the Committee. The related matter of exempting trustees appointed in no-asset cases from the provisions of General Order 14 was also discussed. The consensus developed was that the problems attendant on the appointment of trustees for no-asset and nominal asset cases require further study. In particular the Reporter was directed to pursue the possibility of obtaining through the facilities of the Administrative Office statistical data which might throw light on the relative effectiveness of different modes of handling no-asset and nominal asset cases in the bankruptcy courts of the country. It is hoped that this study can be made and completed before the next meeting of the Advisory Committee, which was tentatively set for October 1961.

7. The last item referred to the Advisory Committee by your Committee is the matter of whether jury trials should be conducted by referees. After extended discussion at the December meeting, the Advisory Committee approved the following as an appropriate statement of the rule to deal with the problem referred to the Committee: "If a jury trial is permitted [i.e., by the Bankruptcy Act], it shall be before the judge if request therefor be made in the pleading."

While presumably this statement might be incorporated into General Order 12(1), the Advisory Committee has received other recommendations for changes in this general order, which are believed to be deserving of study. Accordingly no change in General Order 12 is recommended at this time.

8. Section 30 of the Bankruptcy Act provides:

"All necessary rules, forms, and orders as to procedure and for carrying the provisions of this title into force and effect shall be prescribed, and may be amended from time to time, by the Supreme Court of the United States."

There is no requirement that the Court refer to Congress the bankruptcy rules and forms which it promulgates pursuant to this authority. In other areas of its rule-making responsibility, of course, the Supreme Court is required by pertinent legislation to report proposed rules to Congress. Once the rules reported to Congress by the Court have gone into effect at the close of a statutory waiting period, all conflicting laws, including Congressional enactments, are superseded. No such effect attaches to the General Orders and Official Forms in Bankruptcy promulgated pursuant to section 30 of the Bankruptcy Act.

The Advisory Committee concluded at its December meeting, after consideration of the matter, that rule making in bankruptcy should conform to the pattern prescribed for rule making in the areas of civil procedure and admiralty. The Committee recommends the enactment of appropriate Congressional legislation to accomplish this objective, and the following language is submitted as suitable for the purpose:

"Bankruptcy Rules

"The Supreme Court shall have the power to prescribe, by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure under the Bankruptcy Act.

"Such rules shall not abridge, enlarge, or modify any substantive right.

"Such rules shall not take effect until they have been reported to Congress by the Chief Justice at or after the beginning of a regular session thereof but not later than the first day of May and until the expiration of ninety days after they have been thus reported.

"All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect."

This language follows closely sections 2072 and 2073 of the United States Judicial Code. The question of whether the proposal should be enacted as a substitute for section 30 of the Bankruptcy Act or as a new section of Title 28 of the United States Code was left open for later determination, however, in the light of what may appear to be the best procedure for securing its enactment.

9. As indicated above, the Advisory Committee is continuing its study of the General Orders and Official Forms in Bankruptcy with a view to making a comprehensive recommendation for such revision as it deems desirable and necessary to promote "simplicity of procedure, fairness in administration, the just determination of litigation, and the elimination of unjustifiable expense and delay." Its next meeting is scheduled for October of 1961. Your Committee will be kept informed of its activities and progress.

Respectfully submitted,

Phillip Forman
Chairman