

**PROPOSED
RULES OF BANKRUPTCY PROCEDURE**

**Title III
Chapter IX Rules**

**COMMITTEE ON RULES OF PRACTICE
AND PROCEDURE
of the
JUDICIAL CONFERENCE OF THE
UNITED STATES**

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CHAPTER IX RULES

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**TITLE III
CHAPTER IX RULES**

**Rule 9-1. Scope of Chapter IX Rules and
Forms; Short Title**

1 The rules and forms in this Title III
2 govern the procedure in courts of bank-
3 ruptcy in cases under Chapter IX of the
4 Bankruptcy Act. These rules may be
5 known and cited as the Chapter IX
6 Rules. These forms may be known and
7 cited as the Official Chapter IX Forms.

ADVISORY COMMITTEE'S NOTE

A "Chapter IX case," as defined in Rule 9-2, is one wherein a petition has been filed seeking relief under Chapter IX of the Bankruptcy Act. The case includes all of the proceedings and matters which arise in connection with the case and of which the court of bankruptcy is given jurisdiction under Chapter IX of the Act. These rules and forms thus do not apply to a case initiated under Chapters I-VII of the Act nor to a case initiated under other debtor-relief chapters (VIII, X-XIII). Nor do these rules prescribe except incidentally the practice for actions or "plenary proceedings" brought in state courts or federal district courts to determine controversies that arise in connection with a Chapter IX case.

"Courts of bankruptcy" are defined in § 1(10) of the Bankruptcy Act, 11 U.S.C. § 1(10), to "include the United States district courts and the district courts of the Territories and possessions to which this Act is or may hereinafter be applicable." (References to the Bankruptcy Act hereinafter will be to the Act and will omit citations to Title 11 of the United States Code.)

The courts of bankruptcy clearly include the district courts of Guam and the Virgin Islands. 1 Collier, *Bankruptcy* ¶ 1.10 at 71-72 n.22 (14th ed. rev. 1968), citing relevant statutory provisions. (Hereinafter citations to the Collier treatise will omit the title and references to the edition but will include the date of the revision of the cited material.) It is problematical whether the District Court for the District of the Canal Zone is a bankruptcy court, but it appears that the court has not undertaken to act as a court of bankruptcy. 1 Collier, *supra* at 72.

Rule 9-2. Commencement of Chapter IX Case

- 1 A Chapter IX case is commenced by
- 2 the filing with the court of a petition
- 3 seeking relief under Chapter IX of the
- 4 Act.

ADVISORY COMMITTEE'S NOTE

This rule prescribes the mode for beginning a case under Chapter IX. The petition can only be a voluntary, original petition. The rule assumes the continuing applicability of the definition of "petition" in § 1(24) of the Act but, as used in these rules, the word refers to the document commencing a Chapter IX case. The place of filing a petition is more fully particularized in Rule 9-12.

Rule 9-3. Petition

- 1 A petition under Chapter IX of the
- 2 Act shall conform substantially to Offi-
- 3 cial Form No. 9-F1. An original and ~~2~~ ⁴
- 4 copies of the petition shall be filed,
- 5 unless additional copies are required by
- 6 local rule. ↑

The clerk of the district court shall transmit one copy to the Securities and Exchange Commission and one copy to the Secretary of State of the state in which the petitioner is located.

ADVISORY COMMITTEE'S NOTE

Pursuant to §§ ~~82 and 83(a)~~, a petition under Chapter IX may be only voluntary. Additionally, it is not possible for a petition to be filed in a pending bankruptcy case because a Chapter IX petitioner is not entitled to relief under Chapters I-VII as provided in § 4 of the Act.

84 and 85(a)

This rule requires that the petition be filed in one original and ~~2~~ copies. Note should be taken of local rules to determine whether or not any additional copies must be filed.

4

As provided in Rule 9-4, the filing of the petition acts as a stay of other proceedings against the petitioner or its property.

Only the original of the petition need be signed and verified, but the copies must be conformed to the original. See Bankruptcy Rule 911(c) made applicable by Rule 9-32.

The requirement that copies be transmitted to the Securities and Exchange Commission and Secretary of State of the state in which petitioner is located is derived from § 85(d) of the Act.

Rule 9-4. Stay of Actions Against Petitioner and Lien Enforcement

1 (a) *Automatic Stay of Actions and*
2 *Lien Enforcement.* A petition filed un-
3 der Rule 9-3 shall operate as a stay of
4 the commencement or the continuation
5 of any court or other proceeding
6 against the petitioner or any officer or
7 inhabitant thereof, ~~on account of the~~
8 ~~claims proposed in the petition or plan~~
9 ~~to be affected by the plan, or of any act~~
10 or the commencement or continuation
11 of any court proceeding to enforce any
12 lien on ~~taxes or assessments for the~~
13 ~~payment of obligations pursuant to~~
14 ~~such claims or against any property~~
15 ~~acquired by petitioner through foreclo-~~

which seeks to enforce any claim against the petitioner,

or other

the property of the petitioner, and shall operate as a stay of the enforcement of any set-off or counter-claim relating to a contract, debt, or obligation of the petitioner.

or a lien on or arising out of taxes or assessments due the petitioner,

16 ~~sure of any such tax lien or special~~
17 ~~assessment lien.~~

18 (b) *Duration of Automatic Stay.* Ex-
19 cept as it may be terminated, annulled,
20 modified, or conditioned by the court
21 under subdivision (c) of this rule, the
22 stay provided by subdivision (a) of this
23 rule shall continue until the case is
24 closed or dismissed or the property sub-
25 ject to the lien is, with the approval of
26 the court, abandoned or transferred.

27 (c) *Relief from Automatic Stay.* On
28 the filing of a ~~motion~~, seeking relief
29 from a stay provided by subdivision (a)
30 of this rule, the court shall set the trial
31 for the earliest possible date. The court
32 may, for cause shown, terminate, an-
33 nul, modify or condition such stay. A
34 party seeking continuation of the stay
35 shall show that he is entitled thereto.

36 (d) *Other Stays.* The commencement
37 or continuation of any other act or pro-
38 ceeding may be stayed, restrained, or
39 enjoined pursuant to Rule 65 of the
40 Federal Rules of Civil Procedure, ex-
41 cept that a temporary restraining or-
42 der or preliminary injunction may be
43 issued without compliance with subdi-
44 vision (c) of that rule.

complaint

ADVISORY COMMITTEE'S NOTE

85(e)

This rule supplements and reinforces the policy of § 83(e), of the Act, which ~~authorizes the stay of certain types of suits or acts as specified therein. While under § 83(e) the stay is discretionary, requires notice, and may be granted only after the judge fixes a time for~~

provides for a stay, on the filing of the petition, of proceedings against the petitioner, of acts or proceedings to enforce liens against the petitioner's property, and of the enforcement of any setoff or counterclaim against the petitioner.

~~the hearing on the petition, this rule renders the stay automatic on the filing of such petition when the action or proceeding involves a debt which may be affected by a plan. The automatic stay is effective on the filing of a petition commencing a Chapter IX case notwithstanding that approval of the petition may occur at a later date. See Rule 9-11.~~

~~Conditions which may be attached to the stay include those specified in § 83(c) of the Act such as making the plan temporarily operative on securities affected by it. Security as defined in § 82 of the Act includes "bonds, notes, judgments, claims, and demands, liquidated or unliquidated, and other evidences of indebtedness, either secured or unsecured, and certificates of beneficial interest in property." The word "claims" as used in this rule is defined in Rule 9-88.~~

Subdivision (d) provides the procedure to obtain the stay of any action which is not automatically stayed by subdivision (a).

Rule 9-5. Caption of Petition

- 1 The caption of every petition shall
- 2 comply with Bankruptcy Rule 904(b).
- 3 In addition the title of the case as set
- 4 forth in the caption shall include the
- 5 name of the petitioner and such other
- 6 names used by it as are necessary to
- 7 assure adequate identification.

ADVISORY COMMITTEE'S NOTE

Other names used by the petitioner, if any, should be included in the caption to provide creditors with adequate notice of the Chapter IX case.

Rule 9-6. Filing Fees

- 1 Every petition shall be accompanied
- 2 by the prescribed filing fees.

ADVISORY COMMITTEE'S NOTE

Filing fees for Chapter IX cases are prescribed by § 82(a) of the Act and are in lieu of fees required under any other chapters of the Act.

85(c)

Lists of Creditors

Rule 9-7. List of Claims and Owners of Real Property

(a) List of Creditors

1 (a) Lists Required.

2 (1) The petitioner shall file with the

3 court, a list of claims proposed to be

4 affected by the plan showing their

5 amounts and character, whether they

6 are secured or unsecured, whether they

7 are disputed, contingent, or unliqui-

8 dated as to amount, the name and ad-

9 dress of any indenture trustee and, so

10 far as known, the name and address of

11 each creditor.

12 (2) If the proposed plan requires a

13 revision of assessments so that the pro-

14 portion of special assessments or spe-

15 cial taxes to be assessed against some

16 real property will be different from the

17 proportion in effect at the date the

18 petition pursuant to Rule 9-3 is filed,

19 the petitioner shall also file with the

20 court a list showing the names and

21 addresses, so far as known, of the hold-

22 ers of record of title, legal or equitable,

23 to such real property adversely af-

24 fected.

25 (3) The court, on application, may for

26 cause shown modify the requirements

27 of paragraphs (1) and (2) of this subdivi-

28 sion.

The petitioner shall supplement the list as creditors who were unknown or unidentified at the time the list was filed become known or identified to the petitioner.

, whether secured or unsecured, the nature of any security,

, within such time as the court may fix, a list of the petitioner's creditors of each class, showing the amounts and character of their claims and, so far as known, the name and address or place of business of each creditor and whether the claim is

proposed pursuant to Rule 9-24(a)

(b) List of Owners of Real Property.

(c) Modification of Requirements.

subdivisions (a) and (b) of this Rule.

29 ~~(b) Time for Filing Lists. The lists~~
 30 ~~required to be filed by subdivision (a) of~~
 31 ~~this rule shall be filed with the petition~~
 32 ~~unless the petitioner is unable to file~~
 33 ~~such lists at that time, in which event~~
 34 ~~the lists shall be filed within 15 days~~
 35 ~~thereafter. On application the court~~
 36 ~~may grant up to 30 additional days for~~
 37 ~~the filing of the lists; any further ex-~~
 38 ~~tension may be granted only for cause~~
 39 ~~shown and on such notice as the court~~
 40 ~~may direct.~~

ADVISORY COMMITTEE'S NOTE

~~This rule is derived from the first two paragraphs of § 83(a) of the Act. That section requires the lists to be filed with the petition but subdivision (b) of this rule permits a later filing because under the rules it is not necessary to file a plan with the petition. The provisions of the second paragraph of § 83(a) of the Act are included in subdivision (a)(1) of this rule and therefore are not separately stated.~~

While ~~paragraph (3)~~ of subdivision (a) permits the court to modify the list requirements, due regard must be given to the constitutional limits placed on the court. Bearer bonds would be included on the list required to be filed under subdivision (a) although the names of the holders are unknown. By so listing, the claim would be deemed filed and allowed under Rule 9-22. The holder thereof would thus be entitled to participate in any distribution without filing a claim. One could, however, file a claim if he desired. See also Rule 9-23 for definition of "claims."

Subdivision (a) is derived from § 85(b) of the Act.
 Subdivision (b) is derived from §§ 81(10), (11) and 90(b) of the Act. Section 90(b) requires transmission of a plan to special taxpayers if they will be affected by the plan.

c

38

Rule 9-8. Verification of Petitions and Lists

1 All petitions, lists, and amendments
 2 thereto shall be verified.

ADVISORY COMMITTEE'S NOTE

Only the original of the paper filed need be executed and verified; copies thereof, however, should be conformed to the original. See Bankruptcy Rule 911(c) made applicable by Rule 9-~~92~~.

40

Rule 9-9. Amendments of Petitions and Lists

1 (a) *Petitions.* A petition may be
 2 amended as a matter of course at any
 3 time before a responsive pleading is
 4 served ~~or the petition is approved pur-~~
 5 ~~suant to Rule 9-11.~~ An amendment at
 6 any other time may be made only by
 7 leave of court. Subdivisions (b), (c), and
 8 (d) of Rule 15 of the Federal Rules of
 9 Civil Procedure apply to amendments
 10 of petitions.

11 (b) *Lists.* A list of creditors or holders
 12 of record of title to real property filed
 13 pursuant to Rule 9-7~~(a)~~ may be
 14 amended as a matter of course at any
 15 time before expiration of the time fixed
 16 for filing claims pursuant to Rule 9-22.
 17 Thereafter such a list may be amended
 18 only with leave of court on such notice
 19 as the court may direct. The court may,
 20 on application of any party in interest,
 21 or on its own initiative, order any list to
 22 be amended.

23 (c) *Number of Copies; Notice.* Every
 24 amendment under this rule shall be
 25 filed in the same number as required of
 26 the original paper, and the court shall
 27 give notice of the amendment to such
 28 persons as it may designate.

or the petition is
 approved pursuant
 to Rule 9-11.

ADVISORY COMMITTEE'S NOTE

Subdivision (a): General Order 11, from which this rule is principally derived, has required an application for leave to amend a petition or schedule. Once a petition is filed, other parties have a recognizable interest to appear and contest the petition. Additionally, there may have been the judicial act of approving a petition before the time for filing answers has expired. Where either there has been such approval or an answer has been filed, leave of court is necessary, under this rule, to amend the petition. Prior to either occurrence, amendment may be made as a matter of right. F.R. Civ.P. Rule 15(b), (c), and (d) apply to any amendments of petitions.

Subdivision (b) adopts a permissive approach to amendments of lists required to be filed by Rule 9-7.

Subdivision (c) contemplates that every amendment shall be brought to the attention of the court so that it may determine who, if anyone, should be notified of the amendment.

Since the allegations of a petition are minimal, any amendment would usually be inconsequential. Under these rules the plan need not be filed with the petition nor is it required that acceptances of a plan be filed therewith. If an amendment is made, one original and 4 two copies should be filed. Only an original of an amendment to a list of creditors is necessary. Those are the same numbers as required of the original papers.

If a plan is filed with the petition an amendment thereto does not ~~require~~ amending the petition. See Rule 9-26 dealing with modification of plans. ~~If no plan is filed with the petition but when subsequently filed the plan lists classes of creditors differently from the manner in which they are set out in the petition, it is not necessary to amend the petition. The classes are set out in the petition for the purposes of the automatic stay contained in Rule 9-4, and for transmission of notice under Rule 9-14.~~

Rule 9-10. Responsive Pleading

1 (c) *Time for Filing Answer.* Any
 2 party in interest may serve and file an
 3 answer to a petition not later than ~~10~~
 4 ~~days before the first date set for the~~
 5 ~~meeting of creditors provided for in~~
 6 ~~Rule 9-17.~~ A timely answer filed under
 7 this subdivision shall be deemed also to
 8 constitute a motion to vacate any prior
 9 order of approval of a petition.

15 days after the
 publication of notice
 required by Rule
 9-14(h)(1) is completed.

10 (b) *Contents of Answer.* The answer
 11 to a petition shall contain all defenses
 12 and objections, including those which
 13 may be raised by separate motion un-
 14 der Rule 12(b), (e), or (f) of the Federal
 15 Rules of Civil Procedure.

16 (c) *Other Responsive Pleading.* No
 17 other responsive pleading shall be al-
 18 lowed, except that the court may order
 19 a reply to an answer and prescribe the
 20 time for it to be served and filed.

ADVISORY COMMITTEE'S NOTE

85(a) This rule is derived from ~~the second paragraph of~~
~~§ 83(b) of the Act, permitting creditors affected by a~~
~~plan to contest a petition.~~

~~a petitioner may well have many creditors but only~~
~~certain classes of them will be affected by a plan, such~~
~~as bondholders. Only those who are or will be affected~~
~~by a plan are included within § 83(b) as those who may~~
~~contest a petition. Pursuant to the rule a party in~~
~~interest may contest the petition. When relevant, the~~
~~term party in interest could include a holder of record~~
~~of title to real property.~~

parties in interest
 to contest a
 petition on good
 faith or eligibility
 grounds.

**Rule 9-11. Preliminary Approval; Hearing;
Disposition of Petition**

1 (a) *Preliminary Approval or Other*
2 *Disposition of Petition.* On the filing of
3 a petition, the court, with or without a
4 hearing, shall enter an order approving
5 the petition if satisfied that it complies
6 with the requirements of Chapter IX of
7 the Act and has been filed in good faith.
8 If not so satisfied, the court shall enter
9 an order permitting the petition to be
10 amended or dismissing the case.

11 (b) *Hearing and Disposition of Peti-*
12 *tion After Answer.* If a timely answer is
13 filed, the court shall hold a hearing at
14 the meeting of creditors provided for in
15 Rule 9-17 or at such earlier time as the
16 court may fix on such notice as it may
17 direct, and shall determine the issues
18 and approve the petition, dismiss the
19 case, or enter such other order as may
20 be appropriate.

ADVISORY COMMITTEE'S NOTE

~~Subdivision (a) is derived from the last sentence of the first paragraph of § 83(a) of the Act. In effect, the Act and this subdivision provide, for what may be a preliminary approval of a Chapter IX petition. Such approval may be only preliminary because subsequent to the entry of such an order, creditors still have time, under Rule 9-10, to contest the petition by filing an answer. The early approval is necessary, however, to begin some administration of the case. The date fixed for the meeting of creditors, under Rule 9-17, is not more than 90 days after approval of the petition. The time fixed for creditors to file an answer to a Chapter~~

Subdivision (a)
provides

IX petition is, under Rule 9-10, keyed to the date set for the meeting. If a hearing is directed under this subdivision the court should also direct the notice thereof that should be given.

Subdivision (b) requires a hearing if a timely answer is filed. Such hearing may be held at the meeting of creditors or earlier if the court so directs. The preliminary approval means simply that the case is properly commenced under Chapter IX of the Act and can thereafter proceed.

Rule 9-12. Venue and Transfer

- 1 *(a) Proper Venue.* A petition filed
- 2 pursuant to Rule 9-3 may be filed in
- 3 the district in which the petitioner ~~or~~
- 4 ~~the major part thereof~~ is located.
- 5 *(b) Transfer or Retention When Venue*
- 6 *Improper.* If a petition is filed in a
- 7 wrong district, the court may, after
- 8 hearing on notice to the petitioner and
- 9 such other persons as it may direct,
- 10 transfer the case to the proper district
- 11 or in the interest of justice retain the
- 12 case.

ADVISORY COMMITTEE'S NOTE

85(c) This rule is derived from ~~the first paragraph of~~
~~§. 83(a)~~ of the Act. Pursuant to this rule the court may, when a case is commenced in an improper venue, transfer it or retain it if to do so would be in the interest of justice. No option is given to dismiss the case. There may be instances where a petitioner is located in more than one district and the one where a petition was filed is nevertheless an improper venue. Usually it should be transferred to the other district but, if the interest of justice requires, the court may retain the case.

Rule 9-13. Reference of Issues

to a Referee

- 1 The judge may, at any time, refer
 2 any issues of fact or law to a referee in
 3 bankruptcy for consideration and re-
 4 port. Subdivisions (c), (d), and (e) of
 5 Rule 53 of the Federal Rules of Civil
 6 Procedure apply to any such reference.

see attachment

ADVISORY COMMITTEE'S NOTE

This rule is derived from the third paragraph of § 83(b) of the Act. Under this rule a reference may be made only to a referee in bankruptcy; the Act would, in exceptional circumstances, permit a reference also to a special master. With the expertise of the bankruptcy referee in the overall area of rehabilitation and relief of financially distressed debtors available, there appears no need to utilize the services of some other person as special master. It would also permit reference at any time of issues of law or fact. Section 83(b) limits such reference to special issues of fact and only when the judge finds that the taking of such testimony by him would unduly delay the court's other business because of the nature of his docket. The Act also permits compensation to be allowed the referee which would be remitted for deposit in the Referee's Salary and Expense Fund.

Rule 9-14. Notices

- 1 (a) *Notice of Meeting of Creditors.*
 2 The petitioner shall give all creditors
 3 ~~proposed to be affected by the plan~~ and
 4 such other persons as the court may
 5 designate at least 30 days' notice by
 6 mail of the meeting held pursuant to
 7 Rule 9-17. Such notice shall be pub-
 8 lished as provided in subdivision (h) of

included on the
 list of creditors
 and any supplemental
 list filed pursuant
 to Rule 9-7(a)

Attachment for Rule 9-13J

1 The court may refer any special issue of fact to a
2 referee in bankruptcy for consideration, the taking of
3 testimony, and a report on such special issue of fact, if
4 the court finds that the condition of its docket is such
5 that it cannot take such testimony without unduly delaying
6 the dispatch of other business pending in the court, and if
7 it appears that such special issue is necessary to the
8 determination of the case. A reference to a referee in
9 bankruptcy shall be the exception and not the rule. The court
10 shall not make a general reference of the case, but may only
11 request findings of specific facts.

ADVISORY COMMITTEE'S NOTE

This rule is derived from § 87(a) of the Act.

9 this rule and shall conform substan-
10 tially to Official Form No. 9-F2.

11 (b) *Twenty-Day Notice.* Except as
12 provided hereinafter, the petitioner
13 shall give all creditors ~~proposed to be~~
14 ~~affected by the plan~~ and such other
15 persons as the court may designate at
16 least 20 days' notice by mail of (1) the
17 hearing on the dismissal of a case when
18 notice is required by Rule 9-28; and (2)
19 the time fixed for filing objections to
20 confirmation of a plan.

included on the list of
creditors and any supple-
mental list filed pursuant
to Rule 9-7(a)

21 (c) *Other Notices.* Except as provided
22 hereinafter, the petitioner shall give
23 notice by mail to all creditors ~~proposed~~
24 ~~to be affected by the plan~~ and such
25 other persons as the court may desig-
26 nate of (1) dismissal of the case pur-
27 suant to Rule 9-28; (2) the time fixed
28 for filing proofs of claim pursuant to
29 Rule 9-22(b)(1); (3) the time fixed for
30 accepting a plan pursuant to Rule 9-25;
31 (4) the time fixed to reject a modifica-
32 tion of a plan pursuant to Rule 9-26; (5)
33 the hearing on confirmation of a plan
34 pursuant to Rule 9-27; (6) confirmation
35 of a plan pursuant to Rule 9-27; and (7)
36 the order approving the deposit pur-
37 suant to Rule 9-31.

included on the list of
creditors and any supple-
mental list filed pursuant
to Rule 9-7(a)

or rejecting

38 (d) *Notice to Record Owners of Real*
39 *Property.* Except as provided hereinaf-
40 ter, when a list of record owners of title
41 to real property has been filed pur-
42 suant to Rule 9-7(a)(2) all notices re-

(b)

43 quired by this rule shall be mailed to
44 such owners.

45 (e) *Limitation on Notices to Credi-*
46 *tors.* The court may direct that all no-
47 tices required by subdivisions (b) and
48 (c) of this rule other than clause (2) of
49 subdivision (c) be mailed only to credi-
50 tors and listed record owners of real
51 property who file with the court a re-
52 quest that all notices under ~~these rules~~
53 be mailed to them, or who may be oth-
54 erwise designated by the court. The
55 notice of the meeting mailed and pub-
56 lished pursuant to subdivisions (a) and
57 (h) of this rule shall state that creditors
58 and listed record owners of real prop-
59 erty who do not file such request may
60 not receive subsequent notices of pro-
61 ceedings in the case.

62 (f) *Addresses of Notices.* All notices to
63 which a creditor or owner of real prop-
64 erty is entitled under these rules shall
65 be addressed to such person as he or
66 his authorized agent may direct in a
67 request filed with the court; otherwise,
68 to his address shown in the lists or, if a
69 different address is stated in a proof of
70 claim duly filed, then to the address so
71 stated.

72 (g) *Notices to the United States and*
73 *State.* Notwithstanding subdivision (e)
74 of this rule, copies of all notices re-
75 quired to be mailed to creditors under
76 these rules shall be mailed to the Sec-
77 retary of the Treasury of the United

this

a

STANDING TO BE HEARD; INTERVENTION

1 (a) Standing to Be Heard.

2 (1) The petitioner, any creditor, and any record owner of
3 title to real property who is included on the lists filed pursuant
4 to Rule 9-7(b) shall have the right to be heard on all matters
5 arising in a Chapter IX case.

6 (2) The court may permit, for cause shown, a labor union or
7 employees' association, representative of employees of the
8 petitioner, to be heard on the economic soundness of a plan
9 affecting the interests of the employees.

10 (b) Right of Governmental Bodies to Intervene. The

11 Secretary of the Treasury and the Securities and Exchange Commission
12 may or, if requested by the court, shall intervene in a Chapter IX
13 case. Representatives of the state in which the petitioner is
14 located may intervene in a Chapter IX case. Any person intervening
15 under this subdivision shall be deemed a party in interest with the
16 right to be heard on all matters in the case except that the
17 Securities and Exchange Commission may not appeal from any order
18 of the court.

ADVISORY COMMITTEE'S NOTE

Subdivision (a)(1) is derived from § 90(b) of the Act, which requires transmission of the plan to record owners of real property if the plan affects their interests. See also Rules 9-7(b) and 9-14(d).

Subdivision (a)(2) is derived from § 94(a) of the Act. It is analogous to Rule 10-210(a)(2) and Rule 8-210(a)(2).

Subdivision (b) is derived from § 85(d) of the Act, which requires notice of the filing of the petition to be sent to the Securities and Exchange Commission and the Secretary of State of the state in which petitioner is located. Rule 9-14 adds the Secretary of the Treasury of the United States as a recipient of notices. This subdivision is also derived from § 93 of the Act.

78 States, and to the Secretary of State of
79 the State in which the petitioner is
80 located.

, to the Securities
and Exchange
Commission

81 (h) Notice by Publication.

82 (1) Meeting of Creditors. The notice of
83 the meeting mailed pursuant to subdivi-
84 sion (a) of this rule, shall also be pub-
85 lished at least once a week for 3 succes-
86 sive weeks in at least one newspaper of
87 general circulation published within
88 the district in which the case is pend-
89 ing, and in such other paper or papers
90 having a general circulation among
91 bond dealers and bondholders as may
92 be designated by the court, and in such
93 other publication as the court may di-
94 rect. ~~The first publication of such no-~~
95 ~~tice shall be completed at least 30 days~~
96 before the date fixed for the meeting.

the
or Dismissal of Case,
or the notice of the
dismissal of the case
pursuant to Rule 9-28,

The notice of the
meeting shall be first
published as soon as
practicable after the
filing of the petition
and

97 (2) Other Notices. The court may or-
98 der publication of any notice, other
99 than notice of the meeting of creditors,
100 in such form and manner as it may
101 direct.

or dismissal of
the case,

102 (i) Caption. The caption of every no-
103 tice given under this rule shall comply
104 with Rule 9-5.

(j) Cost of Notice.

The expense of
giving a notice
required by this
rule shall be paid by
the petitioner,
unless the court,
for cause shown,
finds that such
expense should be
borne by another
party.

ADVISORY COMMITTEE'S NOTE

This rule collects the provisions for notices specifi-
cally applicable to creditors in Chapter IX cases.

Subdivision (a) requires that creditors receive 30
days' notice of the meeting of creditors. See Rule 9-17.
Official Form 9-F2 also requires that the notice of the
meeting indicate the time for filing claims. In addition
to mailing the notice this subdivision and subdivision

s
notice of
required
by

(h) require that the notice be published. These notice requirements are derived from ~~the first paragraph of § 82(b)~~ of the Act.

85(d)

If a meeting of creditors is adjourned before its conclusion, no notice of the adjourned date is required under this rule. Treatment of the adjournment as a continuance conforms to established practice under the Act. 3 Collier 11-12 (1964).

Subdivision (b) requires that creditors receive 20-day notices by mail of the significant events in a Chapter IX case.

The requirements of subdivisions (a) and (b) are satisfied if the notices they prescribe are deposited in the mail at least 30 or 20 days respectively before the event of which notice is to be given, even though the notice is received within the prescribed period. Notice is complete upon mailing. Bankruptcy Rule 906(e). ~~With respect to the notice of the meeting this continues the provision in the Act which, in § 82(b), provides that such mailing be completed at least 60 days before the date of the meeting.~~

not

which is made applicable by rule 9-40(b)

The time limits prescribed by subdivisions (a) and (b) cannot be reduced except to the extent and under the conditions stated in this rule. See ~~Bankruptcy Rule 906(e)~~. The exceptions referred to by the introductory phrase of this subdivision (b) include the modifications in the notice procedure permitted by subdivision (e) as to nonrequesting creditors, and by subdivision (h)(2) when the court so directs.

9-40(a)(2).

Subdivision (d) is derived from ~~§ 82(a)~~ which entitles record owners of title to real property to receive ~~the same notices as creditors when they are listed~~ because the proposed plan affects the proportion of special assessments or taxes against the real property. See Rule 9-7

90(b)

a copy of the plan

Subdivision (e) recognizes that not all parties will be interested in the proceedings of the case, in many cases the great expenditure of money and time in mailing out numerous notices can be lessened. For those notices required under subdivisions (a) and (b) only those creditors who have requested receipt of all

notices will receive them. The court may also designate any other parties it sees fit to receive such notices.

Subdivision (f) recognizes that an agent authorized to receive notices for a creditor may, without a court order, designate how notices to the creditor he represents should be addressed. Such an agent includes an officer of a corporation, an attorney at law, or an attorney in fact if the requisite authority has been given him.

Subdivision (g) limits the required notice to the United States to notice to the Secretary of the Treasury of the United States. Notice is also required to be given the Secretary of State of the State where in the petitioner is located. If located in more than one State, notices should be given to each such Secretary of State.

and the Securities and Exchange Commission

which

Subdivision (h)(1) is derived from the first paragraph of § 83(b) of the Act. It and the rule require publication of the notice of the meeting of creditors.

filing or dismissal of a petition while the rule refers to notice of the meeting of creditors or dismissal of the case. Notice of the meeting will serve the same purpose as notice of the filing of the petition.

Subdivision (h)(2), dealing with notices other than notice of the meeting, specifies that the court may direct publication. Supplementation of the mailed notice by publication is indicated when the petitioner's records are incomplete or inaccurate and it is reasonable to believe that publication may reach some of the creditors who would otherwise be missed. But this does not substitute for notice by mail to those creditors filing a request pursuant to subdivision (b). Bankruptcy Rule 908 applies when the court directs notice by publication under this rule.

Subdivision (i) follows the disclosure requirement of Rule 9-5. Inclusion in notices to creditors of information as to other names used by the petitioner will assist them in the preparation of their proofs of claim.

Bankruptcy Rule 907 authorizes the court to prescribe the manner in which any other notice is to be given under the rules. These rules pose no obstacle to the giving of notice by mail deposited at the location of a national or regional computer center on the basis of information supplied the center.

subdivision (j) is derived from § 85(d) of the Act, which recognizes that there may be instances when the cost of a particular notice should be borne by a party other than the petitioner.

S

S

85(d)

S

Rule 9-15. Standing to Be Heard

1 ~~The court may permit any record~~
2 ~~owner of title to real property who is~~
3 ~~included on the lists filed pursuant to~~
4 ~~Rule 9-7 and any other party in inter-~~
5 ~~est to be heard on any matter arising in~~
6 ~~the Chapter IX case.~~

see attachment

ADVISORY COMMITTEE'S NOTE

~~This rule is derived from the second paragraph of § 83(a). Such owners of real estate become parties in interest when the proposed plan would affect the proportion of special assessments or taxes against real property. See Rules 9-7 and 9-14.~~

Rule 9-16. Representation of Creditors

1 *(a) Data Required.* Every person, or-
2 ganization, group, or committee repre-
3 senting more than one party in interest
4 shall file a signed statement with the
5 court setting forth (1) the names and
6 addresses of such parties in interest; (2)
7 the amount, class and character of
8 their securities, if any; and (3) a recital
9 of the pertinent facts and circumstan-
10 ces in connection with the employment
11 of such person or organization, and, in
12 the case of a group or committee, the
13 name or names of the person or persons
14 at whose instance, directly or indi-
15 rectly, such employment was arranged
16 or the group or the committee was or-
17 ganized or agreed to act. The state-
18 ment shall include a copy of the instru-

19 ment or instruments signed by the
20 holders of the securities showing the
21 authority of such holders to enter into
22 the agreement between such person,
23 organization, group, committee, and
24 creditors represented by it or them and
25 a copy of such agreement. The agree-
26 ment shall disclose all compensation to
27 be received, directly or indirectly, by
28 such person, organization, group, or
29 committee, and such compensation
30 shall be subject to modification and
31 approval by the court. A supplemental
32 statement shall be filed promptly, set-
33 ting forth any material changes in the
34 facts contained in the statement filed
35 pursuant to this subdivision.

36 (b) *Failure to Comply; Effect.* The
37 court on its own initiative or on appli-
38 cation or motion of any party in inter-
39 est (1) may determine whether there
40 has been a failure to comply with the
41 provisions of this rule or with any other
42 applicable law regulating the activities
43 and personnel of any person, group,
44 organization, or committee or any
45 other impropriety in connection with
46 any solicitation and, if it so determines,
47 the court may refuse to permit any
48 such person, group, organization, or
49 committee to be heard further or to
50 intervene in the case or make such
51 other orders as may be appropriate; (2)
52 may examine any representation provi-
53 sion of a deposit agreement, proxy,

54 committee, or other authorization, and
 55 any claim acquired by such person,
 56 group, organization, or committee in
 57 contemplation or in the course of a case
 58 under the Act and make such other
 59 orders as may be appropriate; and (3)
 60 may hold invalid any authority or ac-
 61 ceptance given, procured, or received
 62 by a person, group, organization, or
 63 committee who has not complied with
 64 subdivision (a) of this rule.

ADVISORY COMMITTEE'S NOTE

86(a)
 of the
 Act.

Subdivision (a) is derived from ~~the last paragraph of~~
~~§ 82(a) and clarifies some ambiguity in the statute~~
~~with respect to the type of instrument that is to be~~
~~filed.~~

Subdivision (b) is new but is similar to §§ 212 and
 213 in Chapter X of the Act. See Chapter X Rule 10-
 211.

Pursuant to clauses (2) and (3) an order may provide
 for denial of compensation in appropriate circumstan-
 ces.

Rule 9-17. Meeting of Creditors

- 1 *(a) Date and Place.* A meeting of
 2 creditors shall be held not less than 30
 3 nor more than 90 days after the ap-
 4 proval of a petition commencing a
 5 Chapter IX case. The meeting may be
 6 held at a regular place for holding
 7 court or at any other place within the
 8 district more convenient for the parties
 9 in interest.
 10 *(b) Agenda.* At the meeting of credi-

11 tors, (1) the petitioner shall report on
 12 the status of the case, and (2) the judge
 13 may classify claims, may determine
 14 which claims are entitled to vote and
 15 which have voted for acceptance of a
 16 plan and shall preside over the transac-
 17 tion of such other business as is proper
 18 under Chapter IX of the Act.

ADVISORY COMMITTEE'S NOTE

~~Subdivision (a) is derived from § 83(b) of the Act.~~
 The date of the meeting should be so fixed that the mailing and publication of notices thereof can be accomplished as provided in Rule 9-14.

~~Subdivision (b) is derived from § 83(b) of the Act.~~

At this meeting it may also be necessary for the court to hold a hearing on the petition itself, if a timely answer was filed after the preliminary approval. If a hearing on the petition had not previously been held this may be an opportune time to consider the issues and make the necessary determination with respect to the final approval of the petition. This item would come within the scope of such business as is proper under Chapter IX. If appropriate the court could also fix a date for the hearing on confirmation of a plan.

In Chapter IX cases there is no provision in the Act or rules for the appointment or election of a receiver, trustee, or any other officer.

Rule 9-18. Qualification by Disbursing Agent; Bonds

1 (a) *Qualifying Bond or Security.* Ev-
 2 ery person specially appointed as dis-
 3 bursing agent shall, before entering on
 4 the performance of his official duties,
 5 qualify by filing a bond in favor of the

This rule is new. Chapter IX of the Act as amended does not provide for a meeting of creditors or similar hearing as did § 83(b) prior to the amendment. The meeting serves the purposes of enabling the court to receive a report of the status of the case, determining acceptances of a plan (Rule 9-25), and fixing the time for filing answers to the petition (Rule 9-10).

6 United States conditioned on the faith-
 7 ful performance of his official duties or
 8 by giving such other security as may be
 9 approved by the court.

10 (b) *Amount of Bond and Sufficiency*
 11 *of Surety.* The court shall determine
 12 the amount of the bond and the suffi-
 13 ciency of the surety for each bond filed
 14 under this rule.

15 (c) *Filing of Bond; Proceeding on*
 16 *Bond.* Unless otherwise provided by lo-
 17 cal rule, a bond given under this rule
 18 shall be filed with the court. A proceed-
 19 ing on the bond may be brought by any
 20 party in interest in the name of the
 21 United States for the use of the person
 22 injured by the breach of the condition.
 23 No proceeding shall be brought on a
 24 bond of a disbursing agent more than 2
 25 years after his discharge.

ADVISORY COMMITTEE'S NOTE

This rule is not drawn from any provision in Chapter IX of the Act. That chapter does permit the court to appoint a disbursing agent; see Rule 9-27.

(ss 95(b)(1)(B),
 96(a))

Rule 9-19. Compensation for Services and Reimbursement of Expenses

1 (a) *Application for Compensation and*
 2 *Reimbursement.* A person seeking com-
 3 pensation for services or reimburse-
 4 ment of necessary expenses shall file
 5 with the court an application setting
 6 forth a detailed statement of (1) the

This rule does not apply to require the petitioner to file a bond if it acts as disbursing agent. The court may permit petitioner to act as disbursing agent rather than appointing a person specially to be the disbursing agent.

7 services rendered and expenses in-
8 curred; (2) the amounts requested; and
9 (3) the claims against the petitioner, if
10 any, in which a beneficial interest, di-
11 rect or indirect, has been acquired or
12 transferred by him or for his account,
13 after the filing of a petition commenc-
14 ing a case under Chapter IX of the Act.
15 The application shall include a state-
16 ment by the applicant as to what pay-
17 ments have theretofore been made or
18 promised to him for services rendered
19 or to be rendered in any capacity what-
20 soever in connection with the case, the
21 source of the compensation so paid or
22 promised, whether any compensation
23 he has previously received has been
24 shared and whether an agreement or
25 understanding exists between the ap-
26 plicant and any other person for the
27 sharing of compensation received or to
28 be received for services rendered or in
29 connection with the case, and the par-
30 ticulars of any such sharing of compen-
31 sation or agreement or understanding
32 therefor, except that the details of any
33 agreement by the applicant for the
34 sharing of his compensation as a mem-
35 ber or regular associate of a firm of
36 lawyers or accountants shall not be
37 required. The requirements of this sub-
38 division shall apply to an application
39 for compensation for services rendered
40 by an attorney or accountant even
41 though the application is filed by a
42 creditor or other person.

43 **(b) Disclosure of Compensation Paid**
44 **or Promised to Attorney for Petitioner.**
45 Every attorney retained by the peti-
46 tioner in connection with the Chapter
47 IX case, whether or not he applies for
48 compensation, shall file with the court
49 on or before the first date set for the
50 meeting held pursuant to Rule 9-17, or
51 at such other time as the court may
52 direct, a statement setting forth the
53 compensation paid or promised him for
54 the services rendered or to be rendered
55 in connection with the case, the source
56 of the compensation so paid or prom-
57 ised, and whether the attorney has
58 shared or agreed to share such compen-
59 sation with any other person. The
60 statement shall include the particulars
61 of any such sharing or agreement to
62 share by the attorney, but the details
63 of any agreement for the sharing of his
64 compensation with a member or regu-
65 lar associate of his law firm shall not be
66 required.

67 **(c) Factors in Allowing Compensation**
68 **and Reimbursement of Expenses.**

69 **(1) General.** Reasonable compensa-
70 tion and reimbursement of expenses
71 may be allowed by the court to commit-
72 tees or other representatives of credi-
73 tors, the attorneys or agents for any of
74 them, and to the attorney for the peti-
75 tioner, for services rendered and ex-
76 penses incurred in connection with the
77 case, including services and expenses

78 in obtaining the deposit, or preparation
79 of the plan. No compensation for ser-
80 vices or reimbursement of expenses
81 shall be assessed against the petitioner
82 or its revenues, property, or funds ex-
83 cept as provided in the plan.

84 (2) *Denial of Allowances.* No compen-
85 sation or reimbursement shall be al-
86 lowed to any committee or attorney, or
87 other person acting in the case in a
88 representative or fiduciary capacity,
89 who at any time after assuming to act
90 in such capacity has, without the ap-
91 proval of the court, purchased or sold
92 claims against the petitioner, or benefi-
93 cial interests direct or indirect in such
94 claims, or by whom or for whose ac-
95 count such claims or beneficial inter-
96 ests therein have been otherwise ac-
97 quired or transferred.

98 (d) *Restriction on Sharing of Com-*
99 *pen-sation.* Except as herein provided, a
100 person rendering services in a Chapter
101 IX case or in connection with such a
102 case shall not in any form or guise
103 share or agree to share the compensa-
104 tion paid or to be paid for such services
105 with any other person, nor shall he
106 share or agree to share in the compen-
107 sation of any other person rendering
108 services in connection with such a case.
109 This rule does not prohibit an attorney
110 or accountant from sharing his com-
111 pensation with a member or regular
112 associate of his firm, or from sharing in

of securities

113 the compensation received by his firm
114 or by any other member or regular
115 associate thereof, and does not prohibit
116 an attorney from sharing his compen-
117 sation for services rendered with any
118 other attorney contributing thereto. If
119 a person violates this subdivision, the
120 court may deny him compensation, may
121 hold invalid any transaction subject to
122 examination under Rule 9-21 to which
123 he is a party, or may enter such other
124 order as may be appropriate.

ADVISORY COMMITTEE'S NOTE

Authority for the allowance and payment of compensation and reimbursement for expenses to the various parties in interest involved in a Chapter IX case is found in § 87(b) of the Act. It prescribes the procedure for making application for compensation and provides guides for the court in making allowances.

The premise for including in these rules provisions governing the allowance of compensation to committees, attorneys, and accountants is that it is peculiarly a judicial responsibility to supervise the administration of estates and in particular to assure that allowances for compensation to those rendering services in connection therewith are fair but not excessive. 3A Collier ¶ 62.05[3] (1961). The costs of bankruptcy administration have been a matter of continuing concern in the history of American bankruptcy law. *Id.* ¶ 62.02. This concern has led to an increasing recognition of the necessity for close judicial control of these costs. The General Orders in Bankruptcy have contained numerous provisions regulating compensation of officers, attorneys, and accountants in bankruptcy cases. The validity of these exercises of the rule-making power was assumed by the courts. See, *e.g.*, *Realty Associates Securities Corp. v. O'Connor*, 295 U.S. 295,

87(b)

300-01 (1935); *In re H.L. Stratton, Inc.* 51 F.2d 984 (2d Cir. 1931); see also *Weil v. Neary*, 278 U.S. 160, 168-69 (1929).

This rule assimilates the practice in respect to applications for an allowance of compensation to accountants to that which has developed under § 62 of the Act in respect to applications for and allowances of compensation to attorneys. All allowances of compensation under this rule are exercises of the court's discretion, but inasmuch as allowances to attorneys and accountants are not subject to the limitations imposed by § 48 of the Act on the compensation of receivers, marshals, and trustees, there is special need for detail in applications for compensation of attorneys and accountants. Such applications should set out all relevant information having a bearing on the compensation to be allowed. See Report of the Proceedings of the Judicial Conference of the United States, March 30-31, 1967, p. 34. In respect to an attorney's compensation, it has been said that

"The principal factors which enter into a determination of what is reasonable are the time spent, the intricacy of the questions involved, the size of the estate, the opposition encountered, the results obtained and the 'economic spirit' of the Bankruptcy Act to curtail unnecessary expenses." *In re Paramount Merrick, Inc.*, 252 F.2d 482, 485 (2d Cir. 1958).

The disclosure requirements of § 62d of the Act have been extended by subdivision (a) to cover all payments for services in connection with the case, whether or not made pursuant to previous allowances, and the source of such payments. Requiring such disclosures will strengthen the court's hand in dealing with the evils of fee-splitting and in discovering arrangements and relationships which may exert an adverse influence on administration of the estate. Consistently with the recognition in subdivision (d) of the propriety of the sharing of professional compensation by the members of a firm, an applicant for an allowance of compensation is excused from disclosing

the details of the partnership agreement or other arrangement for the distribution of compensation among members of a firm of lawyers or accountants. The provisions of the rule regarding the sharing of professional compensation continue the policy of the Act as expressed in the proviso to § 62c but extend it not merely to law partners but to associate members of a law partnership, to associate members and partners of an accounting partnership, and to the professional members of an incorporated firm of attorneys or accountants. The last sentence of subdivision (a) makes it clear that the disclosures required to be made by an attorney or an accountant when he applies for an allowance of compensation are equally necessary when local practice permits a creditor or any other person to apply on behalf of the attorney or accountant for compensation for professional services. See 3A Collier ¶ 62.29[1] (1961).

Subdivision (b) of this rule is new and facilitates examination pursuant to Rule 9-21 of payments and arrangements for payment of his attorney by the debtor. Rule 9-21 authorizes the court to examine transactions whereby the petitioner directly or indirectly pays money to its attorney for services, and the disclosure required by subdivision (b) covers divisions of compensation and agreements therefor, however received and whatever its source, so long as the compensation is for services rendered in contemplation of or in connection with the case.

The sharing of compensation allowed to an attorney with a forwarding attorney, heretofore permitted under § 62c of the Act, is no longer authorized unless the attorney sharing in the compensation has contributed to the services for which the compensation is allowed. This change in the law harmonizes the practice in respect to the sharing of fees with Canon 34 of the Canons of Professional Ethics and Disciplinary Rule 2-107 of the Code of Professional Responsibility adopted by the American Bar Association. See Drinker, *Legal Ethics* 186-88 (1953); Smith, Canon 2: "A Lawyer Should Assist the Legal Profession in

Fulfilling its Duty to Make Legal Counsel Available," 48 Tex.L.Rev. 285, 297 (1970). The rule prohibits division of compensation paid or agreed to be paid before initiation of the case as well as afterward. As Chief Justice Taft pointed out in *Weil v. Neary*, 278 U.S. 160, 173 (1929), arrangements for division of compensation are contrary to public policy not only because of "actual evil results but their tendency to evil in other cases."

"Any division of fees or other compensation represents, above all, an incentive for the applicant to claim a compensation high enough to make his own share in it a worthwhile remuneration. It thereby tends toward extravagance of expenditure. Another evil is that it subjects the officer or attorney entitled to compensation to outside influences, over which the court has no control and which may affect the administration by depriving the court's functionaries of their requisite independence of judgment. Finally, it results in a clear transfer of judicial power over expenditure and allowances from the court to persons who, at best, have a distinctly lesser degree of public responsibilities." 3 Collier 1637 (1961).

The second sentence of *subdivision (d)* resolves a doubt existing under § 62c of the Act as to whether an attorney or accountant may share compensation allowed him as a trustee or receiver with a member of a professional firm to which he belongs. See *In re Ira Haupt & Co.*, 361 F.2d 164, 167-68 (2d Cir. 1966), and *In re Street Railways Advertising Co.*, 54 F. Supp. 577, 578 (S.D.N.Y. 1940); compare 3 Collier 1639 (1961).

Neither denial of compensation nor invalidation of an arrangement for compensation pursuant to *subdivision (d)* of this rule is an exclusive sanction for violation of the *subdivision*. A person may be removed from office or dismissed from his employment for such a violation. 3 Collier 1639 n. 8 (1961).

**Rule 9-20. Hearing on Applications for
Compensation and Reimbursement**

1 The court shall fix a time of hearing
2 applications for allowances for services
3 rendered or reimbursement of ex-
4 penses. Notice of such hearing shall be
5 given to the applicants, the petitioner
6 and such other persons and in such
7 manner as the court may direct.

ADVISORY COMMITTEE'S NOTE

87(b)

While § ~~82(b)~~ of the Act does not provide for a hearing on applications for allowances, this rule requires one. Notice of the hearing, however, is to be sent to such persons as the court directs.

**Rule 9-21. Examination of Petitioner's
Transactions with Its Attorney**

1 *(a) Payment ~~or Transfer~~ to Attorney*
2 *in Contemplation of Chapter IX Case.*
3 On motion by any party in interest or
4 on the court's own initiative, the court
5 may examine any payment by the peti-
6 tioner, made directly or indirectly and
7 in contemplation of the filing of a peti-
8 tion under Chapter IX of the Act, to an
9 attorney for services rendered or to be
10 rendered.

11 *(b) Invalidation of Unreasonable*
12 *Payment.* Any payment examined un-
13 der this rule shall be valid only to the
14 extent of a reasonable amount as de-
15 termined by the court. The court may
16 enter an order in favor of the petitioner

17 in the amount of any excess found to
18 have been paid.

ADVISORY COMMITTEE'S NOTE

This rule is derived from § 60d of the Act. Information required to be disclosed by the attorney for the petitioner under Rule 9-19 will assist the court in determining whether to proceed under this rule. The attorney falling within the provisions of this rule and Rule 9-19 is an attorney retained specially by the petitioner for purposes of the Chapter IX case. An attorney regularly employed by petitioner on a salary basis does not fall within the purview of these rules.

Since recoveries of payments will constitute a part of the estate in a Chapter IX case, this rule provides for initiation of a proceeding to examine on motion of any party in interest, as well as on the court's own initiative.

Rule 9-22. Proof of Claim

1 (a) *List of Claims.* The list of claims
2 prepared and filed with the court pur-
3 suant to Rule 9-7 shall constitute
4 prima facie evidence of the validity and
5 amount of claims which are not listed
6 as disputed, contingent, or unliqui-
7 dated as to amount and, except as pro-
8 vided in subdivision (b)(3) of this rule, it
9 shall not be necessary to file a proof of
10 such claim.

11 (b) *Filing Proof of Claim.*

12 (1) *Time for Filing.* A proof of claim
13 may be filed at any time prior to the
14 ~~first date fixed for the meeting of credi-~~
15 ~~tors pursuant to Rule 9-17, except that~~
16 the court may fix a different bar date

confirmation of a
plan

17 for the filing of claims on notice as
18 provided in Rule 9-14.

19 (2) *Who May File.* Any creditor or
20 indenture trustee may file a proof of
21 claim within the time prescribed by
22 subdivision (b)(1) of this rule.

23 (3) *Who Must File.*

24 (A) Any creditor, including the
25 United States, a state, or any subdivi-
26 sion thereof, whose claim is listed as
27 disputed, contingent, or unliquidated
28 as to amount, shall file a proof of claim
29 within the time prescribed by subdivi-
30 sion (b)(1) of this rule; any such creditor
31 who fails to do so shall not, with respect
32 to such claim, be treated as a creditor
33 for the purposes of voting and distribu-
34 tion. ←

35 (B) Notwithstanding the foregoing,
36 the court may, at any time, require the
37 filing of a proof of claim within such
38 time as it may fix. Any person required
39 under this paragraph to file a proof of
40 claim who fails to do so shall not, with
41 respect to such claim, be treated as a
42 creditor for the purposes of voting and
43 distribution.

44 (4) *Evidentiary Effect.* A proof of
45 claim executed and filed in accordance
46 with these rules shall constitute prima
47 facie evidence of the validity and
48 amount of such claim. Such a proof of
49 claim shall supersede any listing of
50 that claim made pursuant to Rule 9-7.

51 (5) *Form and Place of Filing.* A proof

Within 30 days
after the filing of
the list pursuant
to Rule 9-7, the
court shall give
notice by mail to
all creditors
required under this
paragraph to file a
proof of claim.
The notice shall
conform substantial-
ly to Official Form
No. 9-F2A.

52 of claim shall consist of a statement in
53 writing setting forth a creditor's claim
54 and shall be executed by the creditor or
55 by his authorized agent. Unless other-
56 wise directed, a proof of claim shall be
57 filed with the court.

58 *(b) Filing by Indenture Trustee.* An
59 indenture trustee may file claims of all
60 holders, known or unknown, of securi-
61 ties issued pursuant to the instrument
62 under which he is trustee.

63 *(c) Transfer of Claim.* If a claim other
64 than one founded on a bond or deben-
65 ture has been assigned, a statement
66 setting forth the terms of the assign-
67 ment shall be filed with the court and a
68 copy thereof delivered to the petitioner.

69 *(d) Duty to Examine and Object to*
70 *Claims.* The petitioner shall examine
71 listed claims and proofs of claims and,
72 unless no purpose would be served
73 thereby, object to the allowance of im-
74 proper claims.

75 *(e) Allowance When No Objection*
76 *Made.* Subject to the provisions of sub-
77 division (b)(3) of this rule, a claim filed
78 or listed in accordance with this rule or
79 Rule 9-7, shall be deemed allowed un-
80 less objection is made by a party in
81 interest.

82 *(f) Objection to Allowance.* An objec-
83 tion to the allowance of a claim shall be
84 in writing. A copy of the objection and
85 notice of a hearing thereon shall be

at least
10 days'

86 mailed or delivered to the claimant and
87 the petitioner.

88 (g) *Classification of Claims.* For the
89 purposes of the plan and its acceptance,
90 the court ~~may fix~~, after hearing on
91 such notice as it may direct, ~~the divi-~~
92 ~~sion of creditors into classes according~~
93 ~~to the nature of their respective claims.~~

94 (h) *Reconsideration of Claims.* A
95 party in interest may move for reconsi-
96 deration of an order allowing or disal-
97 lowing a claim. If the motion is
98 granted, the court, ~~may~~ after hearing

may 99 on notice, make such further order as
100 may be appropriate.

101 (i) *Proof of Right to Record Status.*
102 For the purposes of Rules 9-25 and 9-29
103 and for the purpose of receiving no-
104 tices, a person who is not the record
105 holder of a security may show that he
106 is nevertheless entitled to be treated as
107 such holder of record by filing with the
108 court proof thereof. An objection to
109 such proof may be filed by any party in
110 interest.

may designate
classes of creditors
whose claims are of
substantially similar
character and the
members of which
enjoy substantially
similar rights, except
that, for reasons of
administrative con-
venience, the court
may create a
separate class of
creditors having
unsecured claims of
less than \$250.

ADVISORY COMMITTEE'S NOTE

Subdivision (a): This ~~rule~~ permits the use of the lists filed under Rule 9-7 to determine the claims of creditors in place of a formal proof of claim. The inconvenience and expense to numerous and widespread creditors will be obviated as will the burdens of collecting and registering such claims on the part of the court or petitioner. Bearer bonds would be included on the lists filed pursuant to Rule 9-7(a) and the holders thereof would not have to file claims to

subdivision
is derived from
§ 88(a) of the Act
and

participate since under this rule their claims would be deemed filed and allowed. See also definition of "claims" in Rule 9-32.

33

Subdivision (b): Pursuant to subdivision (b), only creditors whose claims are disputed, contingent, or unliquidated, or creditors as to whom it is determined advisable, need file proofs of claim. In any event, any creditor may file a claim. When a proof is filed, there should be compliance with the provisions of this rule as to form, manner, and time. The court may but need not fix a bar date for the filing of proofs with respect to any or all creditors. If a claim is required to be filed, failure to do so within the time fixed precludes that creditor from voting on a plan or participating in distribution. If the court has fixed a bar date, it may still extend the time pursuant to ~~Bankruptcy Rule 906(b)~~ made applicable to Chapter IX by Rule 9-32.

40

This differs from a bankruptcy case where the 6-month period for filing claims may not be extended. It is similar to the practice in a Chapter X case. See Chapter X Rule 10-401 and Advisory Committee's Note.

6(b) of the Federal Rules of Civil Procedure

Notice of the provisions of this rule is provided for in Official Form No. 9-F2, the order for the meeting of creditors.

Subdivision (b)(3)(A) is derived from § 88(a) of the Act and requires a special notice to creditors whose claims are listed as disputed, contingent, or unliquidated. The notice may be on Official Form No. 9-F2A or combined with Official Form No. 9-F2.

Paragraph (6) is derived from § 198 in Chapter X of the Act. Although an indenture trustee may file claims on behalf of debenture holders, these rules do not constitute the indenture trustee a creditor for voting purposes.

Subdivision (g) is derived from § ~~82(b)~~ of the Act. The provisions in that section respecting certain classes of creditors will remain a statutory guide.

88(b)

Rule 9-23. Withdrawal of Claim

- 1 A creditor may withdraw a claim as
- 2 of right by filing a notice of withdrawal,
- 3 except as provided in this rule. If, after
- 4 a creditor has filed a proof of claim, an

5 objection is filed thereto, or the credi-
6 tor has accepted the plan or otherwise
7 has participated significantly in the
8 case, he may not withdraw the claim
9 save on application or motion with no-
10 tice to the petitioner, and on order of
11 the court containing such terms and
12 conditions as the court deems proper.

ADVISORY COMMITTEE'S NOTE

Since 1938 it has generally been held that Rule 41 of the Federal Rules of Civil Procedure governs the withdrawal of a proof of claim. *In re Empire Coal Sales Corp.*, 45 F. Supp. 974, 976 (S.D.N.Y. 1942) aff'd sub nom. *Kleid v. Ruthbell Coal Co.*, 131 F.2d 372, 373 (2d Cir. 1942); *Kelso v. Maclaren*, 122 F.2d 867, 870 (8th Cir. 1941); *In re Hills*, 35 F. Supp. 532, 533 (W.D.Wash. 1940). Accordingly, it was ruled in the cited cases that a proof of claim may be withdrawn only subject to approval by the court after an objection has been filed. This constitutes a restriction of the right of withdrawal as recognized by some though by no means all of the cases antedating the promulgation of the Federal Rules of Civil Procedure. See 3 Collier ¶ 57.12 (1961); Note, 20 Bost.U.L.Rev. 121 (1940).

The filing of a claim does not commence an adversary proceeding under these rules, but the filing of an objection against the claimant recognizes the applicability of the considerations underlying Rule 41(a) of the Federal Rules of Civil Procedure to the withdrawal of a claim after it has been put in issue by an objection. Rule 41 (a) (2) of the Federal Rules of Civil Procedure provides for a bar to dismissal over the objection of a defendant who has pleaded a counterclaim prior to the service of the plaintiff's motion to dismiss. Although the applicability of this provision to the withdrawal of a claim was assumed in *Conway v. Union Bank of Switzerland*, 204 F.2d 603, 608 (2d Cir. 1953), *Kleid v. Ruthbell Coal Co.*, supra, *Kelso v. Macl-*

aren, supra, and *In re Hills, supra*, this rule vests discretion in the court to grant, deny, or condition the request of a creditor to withdraw, without regard to whether the trustee, receiver, or debtor in possession has filed a merely defensive objection or a complaint seeking an affirmative recovery of money or property from the creditor.

A number of pre-1938 cases sustained denial of a creditor's request to withdraw his proof of claim on the ground that he had estopped himself or made an election of remedies, 2 Remington, *Bankruptcy* 186 (Henderson ed. 1956); cf. 3 Collier 201 (1961). Voting his claim in an election of a trustee in a bankruptcy case was an important factor in the denial of a request to withdraw in *Standard Varnish Works v. Haydock*, 143 Fed. 318, 319-20 (6th Cir. 1906), and *In re Cann*, 47 F.2d 661, 662 (W.D.Pa. 1931), and voting on the plan in a Chapter IX case would appear to be of similar significance. It has frequently been recognized also that a creditor should not be allowed to withdraw his claim once he has accepted a dividend. *In re Friedman*, 1 Am. B.R. 510, 512 (Ref., S. D.N.Y. 1899); 3 Collier 205 (1964); cf. *In re O'Gara Coal Co.*, 12 F.2d 426, 429 (7th Cir. 1926), cert. denied, 271 U.S. 683 (1926). It was held in *Industrial Credit Co. v. Hazen*, 222 F.2d 225 (8th Cir. 1955), however, that although a claimant has participated in the first meeting of creditors and in the examination of witnesses, he was entitled under Rule 41(a)(1) of the Federal Rules of Civil Procedure to withdraw his claim as of right when he filed a notice of withdrawal before the trustee filed an objection under § 57g of the Act. While this rule incorporates the post-1938 case law referred to in the first paragraph of this note, it rejects the implication drawn in the *Hazen* case that Rule 41(a) of the Federal Rules of Civil Procedure supersedes the pre-1938 case law that vests discretion in the court to deny or restrict withdrawal of a claim by a creditor on the ground of estoppel or election of remedies. While purely formal or technical participation in a case by a creditor who has filed a claim should not deprive him of a right to withdraw

his claim, a creditor who has accepted a dividend or who voted on the plan or otherwise participated actively in a case should be permitted to withdraw only with the approval of the court on terms deemed appropriate by it after notice to the debtor and the trustee, or receiver. 3 Collier 205-06 (1964).

Rule 9-24. Filing of Plan; Transmission to Creditors

1 (a) *Filing of Plan.* The petitioner
 2 shall file a plan with its petition or
 3 thereafter, but not later than a time
 4 fixed by the court.
 5 (b) *Transmittal of Plan to Creditors;*
 6 *Adjourned Meetings.* If a plan is filed
 7 prior to mailing notice of the meeting of
 8 creditors, a copy of the plan shall ac-
 9 company the notice. If the petitioner
 10 has not filed a plan prior to the first
 11 date set for the meeting of creditors,
 12 the court, at the meeting or thereafter,
 13 shall fix a time for filing a plan. If a
 14 plan is not filed prior to the mailing of
 15 notice of the meeting of creditors, the
 16 court, at the meeting, shall adjourn the
 17 meeting to a date certain. When a plan
 18 is filed, a copy thereof and notice of a
 19 subsequent adjourned meeting date
 20 shall be mailed to the persons specified
 21 in Rule 9-14(a) at least 10 days prior to
 22 such date. The court may adjourn a
 23 meeting of creditors from time to time
 24 to dates certain.

approved by
the court
and any
analysis of
such plan

or summary

or a summary
thereof approved
by the court and
any analysis of
such plan

mailed to each
creditor whose
claim is affected
by the plan, to
each of the special
taxpayers affected
by the plan, and
to such other
parties in interest
as the court may
designate

this subdivision

In the event only
a summary of the
plan is transmit-
ted, notice of the
right to receive a
copy of the plan on
request without
charge shall also
be transmitted.

For the purposes of this subdivision, creditors shall include holders of bonds, debentures, notes, and other securities of record as of the date of the transmittal of information pursuant to this subdivision.

ADVISORY COMMITTEE'S NOTE

~~Section 83(a)~~ of the Act required that a plan and 51% acceptances of it accompany the Chapter IX petition. These rules do not require the plan or acceptances to be filed with the petition. This is in accord with the recommendation of the Commission on the Bankruptcy Laws of the United States.

"The Commission is of the opinion that [the requirement of the Act] is unwise. It allows the petitioner to submit a *fait accompli* to the judge, thereby creating substantial pressure on the judge to confirm the plan. It also gives those who would seek to depress the market price of the securities of an eligible petitioner for improper purposes an excuse for doing so." Report of the Commission on the Bankruptcy Laws of the U.S., Part I, p. 274 (1973).

The rule also places less of a burden on a petitioner which requires speedy relief under Chapter IX by eliminating the time consuming practice of preparing a plan and obtaining the requisite acceptances before it can file a petition.

Under the rule the plan can be filed with the petition or thereafter; however, if the court has fixed a time, it must be filed within that time. The court may fix such time at the meeting of creditors, at any adjourned meeting, or at any time.

Copies of the plan are to be transmitted to creditors either with the notice of the meeting of creditors, or with notice of any adjourned date if the plan is not filed in sufficient time for it to be sent with the first notice. Since notice of the meeting is sent by petitioner pursuant to Rule 9-14, it is not necessary that it file copies of the plan for creditors with the court. The petitioner will transmit the plan with such notices.

When a plan is not filed in time for it to accompany the notice of the meeting, that meeting must at some point be adjourned to enable creditors to receive copies of the plan. That original set meeting, however, may be held on the first date set to conduct such other business as may be appropriate.

The last sentence of subdivision (b) conforms with § 92(a) and Rule 9-25(a), which permit security holders of record at the date of transmittal of information to vote on the plan.

Prior to the amendment of Chapter IX, §

Chapter IX was amended in 1976. As amended, § 90 does not require that a plan be filed with the petition. The petition must, however, contain one of the allegations specified in § 84 of the Act.

Section 90 and this

affected by the plan (see § 90(b) of the Act),

[New 9]

The rule permits a summary of the plan to be transmitted in place of the plan itself. This provision is derived from § 90(b) of the Act. If a summary is sent, which should be approved by the court, a copy of the plan may be obtained on request without charge.

Rule 9-25. Acceptance or Rejection of Plans

1 (a) *Persons Entitled to Accept or Re-*
 2 *ject Plan; Time for Acceptance or Rejec-*
 3 *tion.* At any time prior to the conclu-
 4 sion of the meeting of creditors, any
 5 creditor whose claim is deemed allowed
 6 pursuant to Rule 9-22(e) or has been
 7 allowed by the court, may accept or
 8 reject a plan. Acceptances may be ob-
 9 tained before or after the filing of the
 10 petition and may be filed with the court
 11 on behalf of the accepting or rejecting
 12 creditor. For cause shown and within
 13 the time fixed by this subdivision, the
 14 court may permit a creditor to change
 15 or withdraw his acceptance or rejec-
 16 tion. Notwithstanding objection to a
 17 claim, the court may temporarily allow
 18 it to such extent as to the court seems
 19 proper for the purpose of accepting or
 20 rejecting a plan.

21 (b) *Form of Acceptance or Rejection.*
 22 An acceptance or rejection of a plan
 23 shall be in writing, shall identify the
 24 plan accepted or rejected and shall be
 25 signed by the creditor or his authorized
 26 agent.

27 (c) *Computing Requisite Majorities.*
 28 The requisite majorities necessary for
 29 the acceptance of a plan shall be com-
 30 puted on the basis of the claims of
 31 creditors affected by the plan who file
 32 an acceptance or rejection of the plan
 33 within the time prescribed, which in no

and any creditor
 who is a security
 holder of record as
 of the date of the
 transmittal of
 information under
 Rule 9-24(b) whose
 claim has not been
 disallowed ,

↑ _____ [] .

34 ~~event shall be less than the requisite~~
 35 ~~majorities of the filed and allowed. An~~
 36 ~~acceptance or rejection of a plan shall~~
 37 ~~be deemed to constitute the filing of a~~
 38 ~~proof of claim for the purpose of comput-~~
 39 ~~ing the majorities required by the Act.~~

ADVISORY COMMITTEE'S NOTE

~~Subdivision (a) carries over the requirement of § 83(e) of the Act that the plan be accepted before the conclusion of the meeting of creditors (called a hearing under the Act), and that acceptances may be obtained before the filing of the petition. Since filing of claims is not required by Rule 9-22, the list evidencing creditors' claims, this rule permits those creditors whose claims are allowed or deemed allowed to vote on a plan.~~

is derived from § 92(a) of the Act.

(

Subdivision (b): The acceptance or rejection should be in writing and properly signed and identify the plan in some appropriate manner.

~~Subdivision (c) is adapted from § 83(d) of the Act. Under that section the requisite majorities for determining whether or not a plan is accepted are based on the total number of claims filed and allowed; thus, failure to accept a plan is tantamount to a rejection. The rule does not displace this statutory provision. The failure by one who has filed a claim to vote may still count as a rejection since there must be acceptance by the majorities required by § 83(d) of the Act. Subdivision (c) provides an increased democratization of this procedure by providing that those votes cast are counted in computing such majorities. Accordingly, a creditor who wishes to participate in the determinative process must file either an acceptance or rejection of the plan. It should also be noted that creditors are not required to file proofs of claims in order to vote on the plan or participate in distribution thereon unless the~~

is derived from § 92(c) of the Act.

),

~~claim is within the provisions of Rule 9-22(b)(3). The final sentence of subdivision (c) deems the filing of an acceptance or rejection to constitute the filing of a claim. If proof of claim is filed prior to voting, the acceptance or rejection would not constitute or supersede such filing.~~

Rule 9-26. Modification of Plan Before Confirmation

1 At any time prior to the acceptance
2 of a plan by the requisite majority of
3 creditors, the petitioner may file a mod-
4 ification thereof. After a plan has been
5 so accepted and before its confirmation
6 the petitioner may file a modification of
7 the plan only with leave of court. The
8 petitioner may also submit with the
9 proposed modification written accept-
10 ances thereof by creditors. Subject to
11 the provisions of this rule and with the
12 written consent of the petitioner, any
13 creditor may file a modification of a
14 plan. If the court finds that a proposed
15 modification does not materially and
16 adversely affect the interest of any
17 creditor who has not in writing ac-
18 cepted it, the modification shall be
19 deemed accepted by all creditors who
20 have previously accepted the plan. Oth-
21 erwise, the court shall enter an order
22 that the plan as modified shall be
23 deemed to have been accepted by any
24 creditor who accepted the plan and who
25 fails to file with the court within such
26 reasonable time as shall be fixed in the

27 order a written rejection of the modifi-
 28 cation. Notice of such order, accom-
 29 panied by a copy of the proposed modi-
 30 fication, shall be given to creditors and
 31 other parties in interest at least 10
 32 days before the time fixed in such order
 33 for filing rejections of the modification.

ADVISORY COMMITTEE'S NOTE

This rule is derived from the procedure now covered
 by ~~§ 83(c)~~ of the Act. The standard for determining
 whether a proposed modification affects the interest of
 a creditor who has not in writing accepted it is pre-
 scribed in ~~§ 83(a)~~ of the Act. Official Form No. 9-F3
 provides a form of order fixing a time for rejecting the
 proposed modification, combined with a notice thereof.

§ 90(a) and 92(e)

81(4)

Rule 9-25 authorizes the petitioner to obtain accept-
 ances of a proposed plan from the creditors before or
 after the filing of the petition. Before a plan has been
 accepted by the requisite number of creditors, the
 petitioner or a creditor if the petitioner accepts it, may
 file a proposed modification as a matter of right. After
 it has been accepted but before confirmation leave of
 court is necessary to file a modification.

,
 a plan

Rule 9-27. Confirmation of Plan; Deposit

1 (a) *Objection to and Hearing on Con-*
 2 *firmation.*
 3 (1) *Objections.* Objections to confir-
 4 mation shall be filed at least 10 days
 5 before the hearing held under this sub-
 6 division, unless the court fixes a differ-
 7 ent time. A copy of any objection shall
 8 be mailed or delivered promptly to the
 9 petitioner, and to such other persons as
 10 may be designated by the court.

11 (2) *Hearing.* The court shall hold a
12 hearing to rule on confirmation of a
13 plan on at least 20 days' notice to the
14 petitioner, creditors, and other parties
15 in interest as provided in Rule 9-14,
16 whether or not any objections are filed.

17 (b) *Order of Confirmation.* The order
18 of confirmation shall conform substan-
19 tially to Official Form No. 9-F4 and
20 notice of entry of the order of confirma-
21 tion shall be mailed promptly to all
22 parties in interest as provided in Rule
23 9-14.

24 (c) *Deposit.* At the hearing on confir-
25 mation, the court shall (1) designate as
26 disbursing agent the petitioner or a
27 person specially appointed to distribute,
28 subject to the control of the court, the
29 consideration, if any, to be deposited by
30 the petitioner; and (2) fix a time before
31 final decree within which the petitioner
32 shall deposit with the court or the dis-
33 bursing agent, or in such place as shall
34 be designated by and subject to the
35 order of the court, the money or other
36 consideration which under the plan is
37 to be distributed to creditors after en-
38 try of the final decree.

,
,

ADVISORY COMMITTEE'S NOTE

This rule is derived from ~~§ 83(d), (e), and (f)~~ of the Act. Official Form No. 9-F4 provides an appropriate form of confirmation order. Included among the issues at the hearing on confirmation under this rule would be any controversy over whether a creditor or any

§ 93, 94, and 95(b)
(1)(B)

§ 81(4),
90(b),
and
92(d)

class thereof who has rejected a plan or modification of a plan, was affected thereby, as is now contemplated by ~~§ 83(a)~~ of the Act, and whether any class of affected creditors not accepting the plan is adequately protected as provided in ~~§ 83(d)~~ of the Act.

92(d)

To confirm the plan the court must be satisfied that there is compliance with ~~§ 83(d) and (e)~~ of the Act.

94(b)

and equitable and, ~~for the best interests of creditors~~; that it

feasible

does not discriminate unfairly in favor of any creditor or class; that it complies with the provisions of Chapter IX; that the offer of the plan and its acceptance are in good faith; that all amounts to be paid by petitioner have been disclosed and are reasonable; and that petitioner is ~~legally authorized to take all action~~ necessary to carry out the plan. Another required finding pertains to the examination of agreements regarding compensation as specified in ~~the first paragraph of § 83(e)~~. If the court finds a violation thereof it may dismiss the case or adjourn the confirmation hearing to permit a modification of the plan so that it complies with the Act. The procedure of confirmation would then apply to the modified plan. See Official Form No. 9-F4, Order Confirming Plan.

not prohibited by law from taking any

86(b)

~~The scheme of this rule would effect a change in § 83(e) and (f) requiring an interlocutory decree confirming a plan. This rule and Rule 9-31 provide for an order confirming a plan, an order approving the deposit and a final decree.~~

Subdivision (b) requires notice to parties in interest of entry of the order of confirmation. Although this notice is required to be mailed promptly, the time to appeal from such order commences from the time of entry of the order regardless of when notice is actually received.

Subdivision (c) is derived from ~~§ 83(f)~~ of the Act.

95(b)(1)(B)

Rule 9-28. Dismissal of Case After Approval of Petition

Permissive

1 (a) ~~Dismissal of Case~~. The court shall

may

2 enter an order, after hearing on notice
 3 as provided in Rule 9-14, dismissing the
 4 case—

- 5 (1) for want of prosecution; or
- 6 (2) if no plan is proposed within the
- 7 time fixed or extended by the court; or
- 8 (3) if no proposed plan is accepted
- 9 within the time fixed or extended by
- 10 the court; or

- 11 ~~(4) if confirmation is refused and no~~
- 12 ~~further time is granted for the proposal~~
- 13 ~~of other plans; or~~
- 14 ~~(5) if a confirmed plan is not consum-~~
- 15 ~~mated.~~

c

16 *(b) Notice to Creditors.* Promptly
 17 after entry of an order of dismissal
 18 under this rule notice thereof shall be
 19 given to creditors in the manner pro-
 20 vided in Rule 9-14(c).

(4) when the court has retained jurisdiction after confirmation of a plan---
 (A) if the petitioner defaults in any of the terms of the plan; or
 (B) if a plan terminates by reason of the happening of a condition specified therein.
(b) Mandatory Dismissal. The court shall dismiss the case if confirmation is refused.

ADVISORY COMMITTEE'S NOTE

This rule is derived from ~~§ 82(b)~~ of the Act. Under *subdivision (a)*, any party in interest has standing to file an application.

Among the causes listed is "want of prosecution" which includes failure to file lists, withdrawal or abandonment of a plan, or failure to make any deposit required by the plan.

A Chapter IX case may also be dismissed pursuant to Rule 9-11. That dismissal, however, results from dismissal of the petition because of its inadequacy or because it may not have been filed in good faith.

The case may also be dismissed pursuant to the first paragraph of ~~§ 82(c)~~ of the Act because of improper payment of compensation to persons promoting the plan. This result may obtain under this rule by refusing confirmation. See the form for the order of confir-

98

86(b)

mation, Official Form No. 9-F4, which refers to these findings.

C *Subdivision (4)* requires notice of dismissal of a case under this rule to be mailed as provided in Rule 9-14(c). It should be mailed promptly. The time of receipt of this notice, however, has no bearing on the time to file notice of appeal from the order itself. This appeal time is governed by the date of entry of the order itself.

Rule 9-29. Participation and Distribution Under Plan

1 (a) *Distribution*. Subject to the provi-
2 sions of subdivision (b) of this rule, and
3 after entry of the order approving the
4 deposit pursuant to Rule 9-31, distribu-
5 tion shall be made ~~to creditors whose~~
6 ~~claims have been allowed, and to inden-~~
7 ~~ture trustees who have filed claims~~
8 ~~pursuant to Rule 9-22(b)(6) which have~~
9 ~~been allowed.~~

10 (b) *Bar Date for Participation in Dis-*
11 *tribution*. When a plan requires pres-
12 entment or surrender of securities or
13 the performance of any other act as a
14 condition to participation in distribu-
15 tion under the plan, ~~the court shall, on~~
16 ~~the confirmation of the plan, or in the~~
17 ~~order approving the deposit enter an~~
18 ~~order on such notice to all affected per-~~
19 ~~sons as it may direct, fixing a time not~~
20 ~~less than five years after the final de-~~
21 ~~creed closing the case within which such~~
22 action shall be taken. Persons who
23 have not within such time presented or

, in accordance with the provisions of the plan, to holders of bonds, debentures, notes, and other securities of record at the date the order confirming the plan becomes final whose claims have not been disallowed, to other

not later than 5 years after the entry of the order of confirmation

24 surrendered their securities or who
 25 have not taken such other action re-
 26 quired by the plan shall not participate
 27 in distribution thereunder.

ADVISORY COMMITTEE'S NOTE

~~This rule is derived from § 204 of Chapter X of the Act. Some bar date is necessary in order for the case to be finally closed. The order under subdivision (b) may be placed in the order confirming the plan or order approving the deposit entered pursuant to Rule 9-31.~~

← The court may permit distribution to the indenture trustee on the claims he has filed if the underlying trust indenture so provides.

**Rule 9-30. Distributions: Unclaimed Money
and Securities**

1 (a) *Distributions.* Except as other-
 2 wise provided in the plan, Bankruptcy
 3 Rule 308 applies in Chapter IX cases to
 4 cash distributions made under a plan.
 5 Except as otherwise provided in the
 6 plan or ordered by the court, considera-
 7 tion other than cash distributed under
 8 the plan shall be issued in the name of
 9 the creditor entitled thereto and if a
 10 power of attorney authorizing another
 11 person to receive dividends has been
 12 executed and filed in accordance with
 13 Bankruptcy Rule 910, such considera-
 14 tion shall be transmitted to such other
 15 person.

Subdivision (a)
of this Rule is
derived from § 96
(c) of the Act and
Rule 10-405(a).

Subdivision (b)
is derived from §
96(d) of the Act,
which provides a
bar date of 5 years
after entry of the
confirmation order.
If the act required
by the plan is not
taken within such
time, the creditor
will be barred from
participating in
distribution, and
that portion of the
deposit will revert
to the petitioner
under Rule 9-30(b).

16 (b) *Unclaimed Money and Securities.*
 17 Unless otherwise provided in the plan,
 18 the securities or cash remaining un-
 19 claimed at the expiration of the bar
 20 date fixed pursuant to Rule 9-29(b), or
 21 any extension thereof, shall be deliv-
 22 ered to the petitioner.

ADVISORY COMMITTEE'S NOTE

Subdivision (b) adopts the practice under Chapter X of returning to the reorganized debtor (here the petitioner) any money or securities that remain unclaimed after the bar date fixed by the court.

See also the last sentence of § 96 (d) of the Act.

**Rule 9-31. Order Approving Deposit;
 Final Decree; Title**

1 (a) *Order Approving Deposit.* After
 2 confirmation of the plan, the deposit of
 3 the money, securities, or other consid-
 4 eration pursuant to Rule 9-27 to be
 5 distributed to creditors, and after the
 6 court finds that deposited securities, if
 7 any, are lawfully authorized, constitute
 8 valid obligations of petitioner and the
 9 provisions therein to pay and secure
 10 payment are valid, the court shall en-
 11 ter an order substantially conforming
 12 to Official Form No. 9-F9 approving the
 13 deposit, which shall be mailed promptly
 14 to all parties in interest as provided in
 15 Rule 9-14.

and after the making of

,

order

execution

16 (b) *Final Decree.* On consummation

17 of the plan, the court shall enter a final
18 decree which shall contain provisions
19 by way of injunction or otherwise as
20 may be equitable and closing the case.
21 (c) Evidence of Title. A certified copy
22 of an order providing for the transfer of
23 title to any property dealt with by the
24 plan shall constitute conclusive evi-
25 dence of such transfer of title.

ADVISORY COMMITTEE'S NOTE

~~Subdivisions (a) and (b) are derived from § 83(f) of the Act. Under the Act, the various orders of the court are referred to as an interlocutory decree of confirmation and a final decree. That final decree, however, is entered after the court makes the findings included in subdivision (a) of this rule but before distribution under the plan is commenced. Subdivisions (a) and (b) of this rule conform the labeling of these orders more closely to the actual steps taken in a Chapter IX case and to such orders as used in other chapters of the Bankruptcy Act. The order of confirmation entered pursuant to Rule 9-27 indicates that the plan meets the requirements of Chapter IX and has been accepted by creditors. See also Official Form No. 9-F4. After such order is entered, the petitioner makes the deposit as required by the plan and the order of confirmation. Subdivision (a) of this rule provides for the court to enter an order approving the deposit if it makes the findings specified in the subdivision. These would, under § 83(f) of the Act, have been made in order to enter the final decree. Official Form No. 9-F9, the Order Approving Deposit, contains such findings and also the effect of such order with respect to the binding nature of the plan on creditors and discharge of the debts affected by the plan. After entry of this order, distribution would commence and the court would enter any orders necessary for the consummation of the plan.~~

subdivision (a) is derived from § 95 of the Act.

Cf. § 96(a) of the Act.

See § 95(a) and (b) the Act.

execution

96(f)

execution

On ~~consummation~~ of the plan, subdivision (b) provides for entry of a final decree, similar to one entered in a Chapter X case, closing the case. See Chapter X Rule 10-309(b).

Subdivision (c) is derived from § 83(g) of the Act.

See Attachment

RULE 9-32. ISSUANCE OF CERTIFICATES OF INDEBTEDNESS

1 When a motion is made for the issuance of a certificate
2 of indebtedness, the court shall set a hearing on notice
3 to such parties in interest as the court may direct.

ADVISORY COMMITTEE'S NOTE

Under § 82(b)(2) of the Act, the court may, for cause shown, permit the issuance of certificates of indebtedness with such priority as the court may approve. This rule provides for a hearing on such notice as the court may direct when a motion is made for the issuance of such certificates.

Pursuant to § 82(b)(2) of the Act, certificates may be authorized to be issued during the pendency of the case or, the court has retained jurisdiction, after confirmation of a plan. The certificates may be given over existing secured or unsecured obligations, including the costs and expenses of administration, but excluding operating expenses of the petitioner.

RULE 9-33. REJECTION OF EXECUTORY CONTRACTS

1 When a motion is made for the rejection of an executory
2 contract, including an unexpired lease, other than as part
3 of the plan, the court shall set a hearing on notice to the
4 parties to the contract and to such other parties in interest
5 as the court may direct.

ADVISORY COMMITTEE'S NOTE

Under § 82(b)(1) of the Act, the court has jurisdiction to permit the rejection of executory contracts. This rule provides for a hearing when such motion is made and it is derived from Rule 10-606 of the Chapter X Rules.

RULE 9-34. PRESERVATION OF VOIDABLE TRANSFER

1 Whenever any transfer is voidable by the petitioner, the
2 court may determine, in an adversary proceeding in which are
3 joined persons claiming interests or rights in the property
4 subject to the transfer, whether the transfer shall be avoided
5 only or shall be preserved for the benefit of the estate.

ADVISORY COMMITTEE'S NOTE

This rule conforms to Bankruptcy Rule 611. Sections 60a, 60c, 67a, 67d, 70c, 70e(1), and 70e(2), and the first 3 sentences of § 60b are specifically made applicable to Chapter IX cases by § 85(h). Except for § 70c, all of the other sections contain provisions for preserving voidable transfers for the benefit of the estate. The power to preserve a voidable lien for the benefit of the estate probably inheres in the court of bankruptcy as a court of equity. Cf. Jordan v. Hamlett, 312 F. 2d 121, 124 (5th Cir. 1913); In re Edward Bibinger, Inc., 12 App. Div. 2d 237, 239, 210 N.Y.S. 2d 319, 321 (1961); Kennedy, The Trustee in Bankruptcy as a Secured Creditor Under the Uniform Commercial Code, 65 Mich. L. Rev. 1419, 1438 n. 68 (1967). See Advisory Committee's Note to Bankruptcy Rule 611.

RULE 9-35. PROCEEDING TO AVOID INDEMNIFYING LIEN
OR TRANSFER TO SURETY

1 If a lien voidable under § 67a of the Act has been
2 dissolved by the furnishing of a bond or other obligation
3 and the surety thereon has been indemnified by the transfer
4 of, or the creation of a lien upon, property of the petitioner,
5 the surety shall be joined as a defendant in any proceeding
6 to avoid the indemnifying transfer or lien. Such proceeding
7 is governed by Rule 9-37. If an order is entered for the
8 recovery of indemnifying property in kind or for the
9 avoidance of an indemnifying lien, the court, on motion by any
10 party in interest, shall ascertain the value of such property
11 or lien; if such value is less than the amount for which such
12 property or lien is indemnity, the surety may elect to retain
13 the property or lien on payment of the value so ascertained
14 to the petitioner within such time as the court may fix.

ADVISORY COMMITTEE'S NOTE

This rule is derived from § 67a(2) and (4) of the Act.
Section 85(h) of the Act makes § 67a applicable in Chapter IX
cases.

RULE 9-36. ADVERSARY PROCEEDINGS

1 Rule 9-37 governs any proceeding instituted by a party
2 in a Chapter IX case to (1) recover money or property other
3 than a proceeding under Rule 9-21; (2) determine the validity,
4 priority, or extent of a lien or other interest in property;
5 (3) obtain an injunction; or (4) obtain relief from a stay
6 as provided in Rule 9-4. Such a proceeding shall be known
7 as an adversary proceeding.

ADVISORY COMMITTEE'S NOTE

This rule is derived from Bankruptcy Rule 701. Modifications have been made to adapt the rule to the Chapter IX context. By incorporation of many of the Federal Rules of Civil Procedure and 4 rules from Part VII of the Bankruptcy Rules, Rule 9-37 establishes a litigation process for adversary proceedings which is almost exactly the same as the civil practice in the federal courts.

~~Rule 9-32. Applicability of Federal Rules of
Civil Procedure and Bankruptcy Rules~~

Delete and
substitute Rule
9-37

1 ~~(a) Federal Rules of Civil Procedure~~
2 Except as otherwise provided in these
3 rules and unless the court otherwise
4 directs, the following rules of the Fed-
5 eral Rules of Civil Procedure apply in
6 all proceedings relating to a contested
7 petition and other litigated matters:
8 Rules 3-5, 7(a), 8-21, 22(1), 23-37, 41, 42,
9 44.1-46, 52, 54-56, 58, 59, 61-65.1, and
10 67-71. For the purposes of this rule
11 relating to a contested petition, a refer-
12 ence in the Federal Rules of Civil Pro-
13 cedure to the complaint shall be read as
14 a reference to the petition.

15 (b) *Bankruptcy Rules.* (1) Except as
16 provided hereinafter, the following
17 rules in Part IX of the Bankruptcy
18 Rules apply in Chapter IX cases: Rules
19 903, 904, 906-912, 915(a), 917, 918, 922,
20 924, 927, and 928.

21 (2)(A) The references to various rules
22 in Rule 906(b) shall also include a refer-
23 ence to Chapter IX Rule 9-17(a).

24 (B) The references to various rules in
25 Rule 906(c) shall also include references
26 to Chapter IX Rules 9-14(a) and 9-
27 17(a).

RULE 9-37. APPLICABILITY OF FEDERAL RULES OF CIVIL
PROCEDURE AND BANKRUPTCY RULES TO ADVERSARY PROCEEDINGS

1 (a) Federal Rules of Civil Procedure.

2 Rules 3,5, 7(a), 8-10, 12-21, 22(1), 23-26,
3 28-37, 41, 42, 52, 54-56, 64-65, and 67-71
4 of the Federal Rules of Civil Procedure apply
5 to adversary proceedings in Chapter IX cases,
6 except that:

7 (1) The reference in Rule 5 to Rule 4
8 shall be read as a reference to Bankruptcy
9 Rule 704.

10 (2) The reference in Rule 8 to Rule 11
11 shall be read as a reference to Bankruptcy
12 Rule 911.

13 (3) The reference in Rule 10 to "caption"
14 shall be read as "caption conforming substantially
15 to the caption of Official Form 9-F1."

16 (4) The following words shall be added at
17 the beginning of Rule 12(h)(3): "Subject to
18 Bankruptcy Rule 915."

19 (5) The following clause shall be added at
20 the end of the last sentence of Rule 13(a):
21 "(3) a party sued by the petitioner need not
22 state as a counterclaim any claim which he has
23 against the petitioner"; and the following words
24 shall be added at the end of the last sentence
.5 of Rule 13(f): "or by commencing a new adversary

26 proceeding or separate action."

27 (6) The reference in Rule 30(a) to Rule 4(e)
28 shall be read as a reference to Bankruptcy
29 Rule 704(d)(1).

30 (7) The following is added at the end of
31 paragraph one of Rule 65(c): "The court may
32 excuse compliance with this subdivision when
33 the applicant is the petitioner."

34 (b) Bankruptcy Rules. Bankruptcy Rules
35 704, 719(b), 727, and 782 apply to adversary
36 proceedings in a Chapter IX case, except that:

37 (1) The reference in Bankruptcy Rule 704(a)
38 to "and shall forthwith issue a summons" shall
39 be read as "and the district judge or clerk shall
40 forthwith issue a summons." The reference in
41 Bankruptcy Rule 704(f)(2) to Rule 220 shall be
42 read as a reference to Rule 9-21.

43 (2) The reference in Bankruptcy Rule 719(b)
44 to "subdivision (a)" shall be read as a reference
45 to "Rule 19(a) of the Federal Rules of Civil
46 Procedure."

47 (3) The references in Bankruptcy Rule 727 to
48 Bankruptcy Rules 734 and 735 shall be read as
49 references to Rules 34 and 35 of the Federal Rules
50 of Civil Procedure.

51 (4) The second sentence of Bankruptcy Rule 782 is
52 deleted.

ADVISORY COMMITTEE'S NOTE

Subdivision (a). By incorporation of many of the rules of the Federal Rules of Civil Procedure, this rule establishes a procedure for adversary proceedings in Chapter IX cases that is essentially equivalent to the procedure applicable in other civil litigation in the federal courts. It should be noted that some of the Federal Rules of Civil Procedure not incorporated by this rule are nevertheless applicable to adversary proceedings under Rule 9-40.

Subdivision (b) incorporates 4 rules or portions thereof from Part VII of the Bankruptcy Rules. Bankruptcy Rule 704 is the most significant in that it permits, in addition to the modes of service provided by Rule 4 of the Federal Rules of Civil Procedure, service by mail anywhere in the United States, and it requires that the district judge set a date for trial or a pre-trial conference prior to issuance of a summons. The Advisory Committee's Note to Bankruptcy Rule 704 should be consulted for detailed elaboration of the operation of the rule.

Bankruptcy Rules 719(b) and 782, which are incorporated by subdivision (b), and Bankruptcy Rule 915, which is incorporated by Rule 9-40, provide the procedure for the resolution of several important issues. Unless the defendant in an adversary proceeding raises an objection to the exercise of the court's summary jurisdiction, the objection is waived. Bankruptcy Rule 915. However, when a defendant consents to or waives the objection to summary jurisdiction, Bankruptcy Rule 719(b) preserves for a party joined under Rule 19(a) of the Federal Rules of Civil Procedure the right to object to the jurisdiction of the court. If a timely objection is made and sustained, the joined party will be dismissed from the proceeding or, if jurisdiction in the district court is otherwise proper, the matter may be transferred to the civil docket. Under Bankruptcy Rule 782 an adversary proceeding in a Chapter IX case may be transferred to another district when such transfer is "in the interest of justice and the convenience of the parties."

28 ~~(C) The exception in Rule 9-10(c) for~~
 29 ~~“the execution and filing of a proof of~~
 30 ~~claim” shall be read to include also “the~~
 31 ~~execution and filing of an acceptance or~~
 32 ~~rejection of a plan.”~~

33 ~~(c) Applicability of Other Rules. On~~
 34 ~~notice the court may at any stage in a~~
 35 ~~particular matter direct that one or~~
 36 ~~more of the other rules of the Federal~~
 37 ~~Rules of Civil Procedure or the Bank-~~
 38 ~~ruptcy Rules as may be appropriate~~
 39 ~~shall apply.~~

~~ADVISORY COMMITTEE'S NOTE~~

~~This rule enumerates those Federal Rules of Civil~~
~~Procedure which are applicable in proceedings relat-~~
~~ing to a contested petition and other litigated matters,~~
~~unless the court otherwise directs. Subdivision (b) also~~
~~incorporates various rules of the Bankruptcy Rules~~
~~relating to general procedure which are applicable in~~
~~Chapter IX cases. Rule 9-34 translates certain terms~~
~~used in the Federal and Bankruptcy Rules into compa-~~
~~table Chapter IX terms.~~

Rule 9-33. General Definitions

38

81 1 The definitions of words and phrases
 2 in § 82 of the Act govern their use in
 3 the Chapter IX Rules to the extent
 4 they are not inconsistent therewith. In
 5 addition, the following words used in
 6 these rules have the meanings herein
 7 indicated unless they are inconsistent
 8 with the context:

- 9 ~~(1) "Act" means the Bankruptcy Act.~~
 10 (2) "Claims" shall include bonds,
 11 notes, judgments, and demands, liqui-
 12 dated or unliquidated, and other evi-
 13 dences of indebtedness, either secured
 14 or unsecured, and certificates of benefi-
 15 cial interest in property.
 16 (3) "Court" means the district judge
 17 of the court of bankruptcy or the dis-
 18 trict court in which a Chapter IX case
 19 is pending.
 20 (4) "Creditor" means the holder of a
 21 claim.
 22 (5) "Judge" means the district judge
 23 of the court of bankruptcy in which a
 24 Chapter IX case is pending.

see attachment

ADVISORY COMMITTEE'S NOTE

Pursuant to the Act and these rules, a Chapter IX case is not automatically referred to a referee in bankruptcy but proceeds in the United States District Court sitting as a bankruptcy court. This rule indicates the meaning of words used in the Chapter IX Rules in this regard. The definition of "court" conforms with Chapter IX of the Act. Normally, under the Act, it includes the referee in bankruptcy; in Chapter IX, however, it means only the district court.

Rule 9-34. Meanings of Words in the Federal Rules of Civil Procedure and Bankruptcy Rules When Applicable in Chapter IX Cases

39

- 1 The following words and phrases
 2 used in the Federal Rules of Civil Pro-

9 (1) "Accountant" includes an accounting partnership
10 or corporation.

11 (2) "Act" means the Bankruptcy Act.

12 (3) "Application" includes any request to the court for
13 relief that is not a pleading or proof of claim. An application
14 not made in open court shall be in writing unless a writing is
15 excused by the court. An application for an order against
16 another party may be required to be made by motion.

17 (4) "Attorney" includes a law partnership or corporation.

18 (5) "Claims" includes all claims of whatever character
19 against the petitioner or the property of the petitioner,
20 whether or not such claims are provable under § 63 of the Act
21 and whether secured or unsecured, liquidated or unliquidated,
22 fixed or contingent.

23 (6) "Court" means the United States district court or a
24 judge thereof.

25 (7) "Creditor" means the holder of any claim.

26 (8) "Judge" means the United States district court or a
27 judge thereof.

28 (9) "Motion" means an application to the court for an
29 order in an adversary proceeding or in a proceeding on a
30 contested petition or to determine any other contested matter.
31 Unless made during a hearing or trial, a motion shall be made
32 in writing, shall conform substantially to a pleading in form,
33 shall state with particularity the grounds therefor, and shall
34 set forth the relief or order sought.

35 (10) "Person" includes an individual, corporation,
36 partnership, association, joint-stock company, unincorporated

37 organization, or a government or unit thereof.

38 (11) "Special tax payer" means record owner or holder
39 of title, legal or equitable, to real estate against which
40 has been levied a special assessment or special tax the proceeds
41 of which are the sole source of payment for obligations
42 issued by the petitioner to defray the costs of local improve-
43 ments.

3 cedure or Bankruptcy Rules made ap-
 4 plicable in Chapter IX cases by these
 5 rules have the meanings herein indi-
 6 cated unless they are inconsistent with
 7 the context:

8 (1) *Federal Rules of Civil Procedure.*

9 "Action" or "civil action" means a
 10 proceeding on a contested petition or a
 11 ~~proceeding~~ to determine any other liti-
 12 gated matter.

13 (2) *Bankruptcy Rules.*

14 (A) "Bankrupt" means "petitioner."

15 (B) "Bankruptcy" or "bankruptcy
 16 case" means "Chapter IX case."

17 (C) "Court," "referee," or "bank-
 18 ruptcy judge" means the ~~district judge~~
 19 ~~of the court of bankruptcy or district~~
 20 ~~court.~~

21 (D) "Receiver," "trustee," "receiver
 22 in bankruptcy," or "trustee in bank-
 23 ruptcy" means "petitioner."

an adversary proc-
 eeding or, when
 appropriate, a
 Chapter IX case, or

United States
 district court or a
 judge thereof.

ADVISORY COMMITTEE'S NOTE

These rules make many of the Federal Rules of Civil Procedure and Bankruptcy Rules applicable in Chapter IX cases or in proceedings therein and this rule indicates the substitution or translation of certain terms that is necessary for that purpose.

The definition in paragraph (2)(C) conforms with that of "court" in Rule 9-32(3). In other proceedings under the Act "court" includes the referee in bankruptcy; in Chapter IX cases, however, it means only the United States District Court or district judge.

38(6)

See Attachment

RULE 9-40. APPLICABILITY OF FEDERAL RULES OF CIVIL
PROCEDURE AND BANKRUPTCY RULES

1 (a) Federal Rules of Civil Procedure. Rules 6, 43-46,
2 58-63, 65.1, 77, 79, and 80 of the Federal Rules of Civil
3 Procedure apply in Chapter IX cases, except that:

4 (1) The references in Rule 6(b) to various rules shall
5 also include a reference to Rule 9-17(a).

6 (2) The following shall be added to Rule 6: "(f)
7 Reduction. When by these rules or by a notice given thereunder
8 or by order of court an act is required or allowed to be done
9 at or within a specified time, the court for cause shown may
10 in its discretion with or without application or notice order
11 the period shortened; but it may not reduce the time for
12 taking any action under Rules 9-14(a) and 9-17(a)."

13 (3) The reference in Rule 43(e) to "Evidence on Motions"
14 shall be read as "Evidence on Motions or Applications," and
15 the reference to "When a motion is based on facts not appearing
16 in the record" shall be read as "When a motion or application
17 is based on facts not appearing in the record."

18 (4) The following clause shall be added at the end of
19 the second sentence of Rule 60(b): "except that a motion to
20 reopen a case or for reconsideration of an order allowing or
21 disallowing a claim against the petitioner entered without a
22 contest is not subject to the one-year limitation."

23 (5) The following shall be added to Rule 62: "(i)
24 Effect of Appeal on Unstayed Order. Unless an order approving
25 the issuance of a certificate of indebtedness is stayed
26 pending appeal, the issuance of a certificate to a good faith

27 holder shall not be affected by the reversal or modification
28 of such order on appeal, whether or not the holder knows of
29 the pendency of the appeal."

30 (6) The sentence in Rule 65.1 "His liability may be
31 enforced on motion without the necessity of independent
32 action" shall be read as "His liability may be enforced in
33 an adversary proceeding governed by Rule 9-37."

34 (7) The reference in Rule 79 to "civil docket" shall
35 be read as "bankruptcy docket."

36 (b) Bankruptcy Rules. Bankruptcy Rules 508, 903, 904, 906(e),
37 907-909, 911, 912, 915, 918, 927, and 928 apply in Chapter
38 IX cases, except that the reference in Rule 915 to Rule 112
39 shall be read as a reference to Rule 9-10.

ADVISORY COMMITTEE'S NOTE

This rule specifies those Federal Rules of Civil
Procedure and Bankruptcy Rules which have general application
in a Chapter IX case.

RULE 9-41. SERVICE AND FILING OF APPLICATIONS, MOTIONS,
AND OTHER PAPERS

1 (a) Service on Petitioner: when Required. Except as
2 otherwise provided in these rules or by order of the court,
3 every order required by its terms to be served, every
4 appearance, objection, application, motion, or paper relating
5 *to discovery, other than an application or motion which may*
6 be heard ex parte, shall be served on the petitioner.

7 (b) Service: How Made. whenever under these rules
8 service is required or permitted to be made on a person
9 represented by an attorney the service shall be made upon the
10 attorney unless service on the person himself is ordered by
11 the court. Service on the attorney or on the person shall be
12 made by delivering a copy to him or by mailing it to him at
13 his last known address or, if no address is known, by leaving
14 it with the clerk of the court. Delivery of a copy within this
15 rule means: handing it to the attorney or to the person to be
16 served; or leaving it at his office with his clerk or other
17 person in charge thereof; or, if there is no one in charge,
18 leaving it in a conspicuous place therein; or, if the office
19 is closed or the person to be served has no office, leaving it
20 at his dwelling house or usual place of abode with some person
21 of suitable age and discretion then residing therein. Service
22 by mail is complete on mailing.

23 (c) Filing. All papers after the petition required to
24 be served shall be filed with the court either before service
25 or within a reasonable time thereafter. The court may prescribe
26 the number of copies to be filed.

27 (d) Filing with the Court. The filing of papers with
28 the court as required by these rules shall be made by filing
29 them with the clerk of the court, except that the judge may
30 permit the papers to be filed with him, in which event he
31 shall note thereon the filing date and forthwith transmit
32 them to the office of the clerk.

ADVISORY COMMITTEE'S NOTE

This rule is adapted from Rule 5 of the Federal Rules of Civil Procedure and is similar to Rule 8-704 of the Chapter VIII Rules.

RULE 9-42. PROCEDURE IN CONTESTED MATTERS NOT OTHERWISE PROVIDED FOR

1 In a contested matter in a Chapter IX case not otherwise
2 governed by these rules, relief shall be requested by motion,
3 and reasonable notice and opportunity for hearing shall be
4 afforded the party against whom relief is sought. No
5 responsive pleading is required under this rule, but the
6 court may order an answer to a motion. In all such matters,
7 unless the court otherwise directs, the following Federal
8 Rules of Civil Procedure shall apply: 21, 25, 26, 28, 29,
9 30 as modified by Rule 9-37, 31-37, 41, 42, 52, 54-56, 62,
10 64, 69, and 71. The court may at any stage in a particular
11 matter direct that one or more of the Federal Rules of Civil
12 Procedure, as incorporated and modified by Rule 9-37, shall
13 apply. A person who desires to perpetuate his own testimony
14 or that of another person regarding any matter that may be
15 cognizable and relevant in a contested matter in a pending
16 Chapter IX case may proceed in the same manner as provided in
17 Bankruptcy Rule 727 for the taking of a deposition before an
18 adversary proceeding. Notice of an order or direction under
19 this rule shall be given when necessary or appropriate to
20 assure to the parties affected a reasonable opportunity to
21 comply with the procedures made applicable by the order.

ADVISORY COMMITTEE'S NOTE

This rule substantially conforms to Bankruptcy Rule 914 and Rule 8-705 of the Chapter VIII Rules.

RULE 9-43. REPRESENTATION AND APPEARANCES; POWER
OF ATTORNEY

1 (a) Authority to Act Personally or by Attorney. Subject
2 to the provisions of Rule 9-16, the petitioner, a creditor,
3 indenture trustee, committee or group, or other person may
4 in a Chapter IX case (1) appear and act in his own behalf or
5 by an attorney authorized to practice in the court, and
6 (2) perform any act not constituting the practice of law,
7 by an authorized agent, attorney in fact, or proxy.

8 (b) Notice of Appearance. An attorney appearing in a
9 Chapter IX case shall file a notice of appearance with his
10 name, business address, and telephone number unless his
11 appearance is otherwise noted in the record.

12 (c) Power of Attorney. The authority of any agent,
13 attorney in fact, or proxy for any purpose other than the
14 execution and filing of a proof of claim or any acceptance or
15 rejection of a plan shall be evidenced by a written power of
16 attorney acknowledged before an officer authorized to
17 administer oaths in proceedings before courts of the United
18 States or under laws of the state where the oath is to be
19 taken, or a diplomatic or consular officer of the United
20 States in any foreign country.

ADVISORY COMMITTEE'S NOTE

This rule conforms substantially to Bankruptcy Rule 910
and Rule 8-706 of the Chapter VIII Rules.

Subdivision (c) imposes the general requirement that a
power of attorney be evidenced by a writing acknowledged by
persons authorized to administer oaths under federal or state
law. These formalities are not imposed on an agent or attorney
who files a proof of claim or votes on behalf of his principal.
However, the person's authority to act for the principal must be
validly conferred under applicable law.

OFFICIAL CHAPTER IX FORMS

[Note: These official forms should be observed and used with such alterations as may be appropriate to suit the circumstances. See Bankruptcy Rule 909, made applicable by Rule 9-22.]

40

FORM NO. 9-F1

CHAPTER IX PETITION

1 United States District Court
2 for the ----- District of -----
3 In re
4 ----- } Chapter IX
5 Petitioner. } Case No. ----
6
7

CHAPTER IX PETITION

- 9 1. Petitioner's post-office address is
10 -----
11 2. Petitioner [or The major part of
12 petitioner] is located within this dis-
13 trict.
14 3. Petitioner is qualified to file this
15 petition and is entitled to the benefits
16 of Chapter IX of the Bankruptcy Act.
17 4. Petitioner is insolvent [or unable to
18 pay its debts as they mature].
19 5. A copy of petitioner's proposed
20 plan, dated -----, is attached [or
21 Petitioner intends to file a plan pur-
22 suant to Chapter IX of the Act affect

see attachment

7

J.

5. Petitioner is authorized by State law to file this petition under Chapter IX of the Act.

6. [Petitioner has successfully negotiated a plan of adjustment of its debts with creditors holding at least a majority in amount of the claims of each class which are affected by that plan] or

[Petitioner has negotiated in good faith with its creditors and has failed to obtain, with respect to a plan of adjustment of its debts, the agreement of creditors holding at least a majority in amount of the claims of each class which are affected by that plan] or

[Negotiation of a plan of adjustment of petitioner's debts with creditors holding at least a majority in amount of the claims of each class affected by the plan is impracticable for the following reasons:
.
.] or

[Petitioner has a reasonable fear that a creditor may attempt to obtain a preference, as follows
.
.].

23 ~~ing the following creditors or classes of~~
24 ~~creditors:~~

25 -----
26 -----
27 -----

28 Wherefore petitioner prays for relief
29 in accordance with Chapter IX of the
30 Act.

31 Signed: -----,
32 Attorney for Petitioner.

33 Address: -----,

34 -----

35 State of ----- } ss:
36 County of ----- }

Telephone number:
-----.

37 I, -----, the -----
38 ----- [state official title or an au-
39 thorized agent] of the instrumentality
40 ~~[or other designation]~~ named as peti-
41 tioner in the foregoing petition, do
42 hereby swear that the statements con-
43 tained therein are true according to the
44 best of my knowledge, information, and
45 belief, and that the filing of this peti-
46 tion on behalf of the ----- has
47 been authorized.

political
subdivision [or
public agency or
instrumentality]

48 -----
49 Subscribed and sworn to before me
50 on -----

51 -----
52 -----

53 [Official character]

54 ~~[The list of claims and, when applicable,~~
55 ~~the list of holders of record of title to~~
56 ~~real property must be filed with the peti-~~

57 ~~tion or within 15 days thereafter as~~
58 ~~provided in Rule 9-7.]~~

ADVISORY COMMITTEE'S NOTE

This form is new. ~~Attachment of a proposed plan was required by the Act but pursuant to Rule 9-24 a plan may be filed after commencement of the case.~~

~~A note at the foot of the form calls attention to the necessity to file a list of creditors with the petition or within 15 days thereafter pursuant to Rule 9-7.~~

Section 84 of the Act specifies the requirements for eligibility for relief, and they are set forth in this form.

FORM NO. 9-F2

ORDER FOR MEETING OF CREDITORS
AND RELATED ORDERS, COMBINED
WITH NOTICE THEREOF AND OF
AUTOMATIC STAY

1 [Caption, other than designation, as in
2 Form No. 9-F1.]

3 ORDER FOR MEETING OF CREDITORS
4 AND HEARING ON APPROVAL OF THE
5 PETITION, COMBINED WITH NOTICE
6 THEREOF AND OF AUTOMATIC STAY

7 To the petitioner, its creditors, and
8 other parties in interest:

9 A petition having been filed on _____
10 by _____, the
11 above-named petitioner of * _____

12 _____, seeking relief under Chapter IX of
13 the Bankruptcy Act, it is ordered, and
14 notice is hereby given, that:

15 1. The meeting of creditors shall be
16 held at _____

17 _____,
18 on _____ at _____ o'clock ___M.

*State post-office address.

19 2. The last date for filing an answer
 20 to the petition by any party in interest
 21 is -----.
 22 If any such answer is timely filed, a
 23 hearing on the approval of the petition
 24 will be held at ----- on ----
 25 -----, at ---- o'clock ---M. [*or* at
 26 the meeting of creditors].

27 3. The petitioner has filed or will file
 28 a list of claims pursuant to Rule 9-7.
 29 Any creditor holding a listed claim
 30 which is not listed as disputed, contin-
 31 gent, or unliquidated as to amount,
 32 may, but need not, file a proof of claim
 33 in this case. Creditors whose claims are
 34 not listed or whose claims are listed as
 35 disputed, contingent, or unliquidated
 36 as to amount and who desire to partici-
 37 pate in the case or share in any distri-
 38 bution must file their proofs of claims
 39 on or before the date above fixed for
 40 the meeting [*or* on or before -----
 41 --, which date is hereby fixed as the
 42 last day for filing a proof of claim, *or, if*
 43 *appropriate*, on or before a date to be
 44 later fixed of which you will be
 45 notified]. Any creditor who desires to
 46 rely on the list has the responsibility
 47 for determining that his claim is accu-
 48 rately listed.

49 4. [*If appropriate*] The hearing on
 50 confirmation of the plan, a copy of
 51 which is attached hereto, shall be held
 52 at a date to be later fixed [*or* at a date
 53 to be fixed at the meeting *or* at -----

54 ----- on ----- at -----
55 ----- or immediately following the
56 conclusion of the meeting].

57 5. Creditors may file written objec-
58 tions to confirmation on or before ----
59 ----- [or by a date to be later
60 fixed].

61 You are further notified that:

62 The meeting [if appropriate and the
63 hearing on confirmation] may be con-
64 tinued or adjourned from time to time
65 by order made in open court, without
66 further written notice to creditors.

67 At the meeting creditors may trans-
68 act such business as may properly come
69 before the meeting [if appropriate and
70 file their acceptances or rejections of
71 the plan].

72 The filing of the petition by the peti-
73 tioner above-named operates as a stay
74 of the commencement or the continua-
75 tion of any action against the peti-
76 tioner, ~~or any officer or inhabitant~~
77 ~~thereof, on account of the claims pro-~~
78 ~~posed in the petition or plan to be af-~~
79 ~~ected by the plan, or of any act or the~~
80 ~~commencement or continuation of any~~
81 ~~court proceeding to enforce any lien on~~
82 ~~taxes or assessments for the payment~~
83 ~~of obligations pursuant to such claims~~
84 ~~or against any property acquired by~~
85 ~~petitioner through foreclosure of any~~
86 ~~such tax lien or special assessment lien.~~

87 As provided in Rule 9-14 the court
88 may direct that certain notices will not

or
her

, its property,

of the petitioner,
which seeks to
enforce any claim
against the
petitioner,

the property of the
petitioner, and of
the enforcement of
any set-off or
counterclaim relating
to a contract, debt,
or obligation of the
petitioner.

or a lien on or arising out
of taxes or assessments due
the petitioner,

89 be mailed to creditors who do not file a
90 written request with the court for re-
91 ceipt of all notices.

92 Dated: -----

93 -----,

94 *District Judge.*

ADVISORY COMMITTEE'S NOTE

This form is new. As provided in Rule 9-11 the court is to approve the petition prior to the meeting if practicable. The hearing on approval may be conducted at the meeting of creditors if a timely answer to the petition is filed and the hearing is not held prior thereto. This form provides for notice that the hearing on approval may be held at such meeting. Even if the petition has received preliminary approval prior to the meeting, the court will specify the last date for the filing of an answer to the petition.

Rule 9-14 provides that many notices are not to be sent to creditors unless they have filed a written request with the court for the receipt of all notices. This form notifies such parties of their option to receive all notices.

Creditors holding claims which are not listed as disputed, contingent or unliquidated as to amount need not file proofs of claims to participate in the Chapter IX case. The list filed with the court will be sufficient to evidence such claims. But it is the creditor's responsibility to determine if his claim is accurately listed. Creditors may, however, file such proof as they desire and the court may, in its discretion, fix a bar date for such filing.

NOTICE TO CREDITORS WHOSE CLAIMS ARE LISTED AS DISPUTED, CONTINGENT, OR UNLIQUIDATED

1 [Caption, other than designation, as in Form No. 9-F1.]

2 Notice to Creditors Whose Claims Are
3 Listed as Disputed, Contingent, or
4 Unliquidated

5 To creditors whose claims are listed as disputed,
6 contingent, or unliquidated as to amount:

7 You are hereby notified that:

8 The, petitioner, filed
9 a petition on seeking relief under
10 Chapter IX of the Bankruptcy Act.

11 As required by Chapter IX Rule 9-7 of the Rules of
12 Bankruptcy Procedure, a list of creditors has been filed which
13 includes the amount and character of the petitioner's obligation
14 to each creditor. You appear on this list as a creditor whose
15 claim is listed as disputed, contingent, or unliquidated as to
16 amount.

17 A creditor whose claim is shown on the list as disputed,
18 contingent, or unliquidated as to amount must file a proof of
19 claim within the time prescribed in this notice. If a proof
20 of claim is not filed, you will not be entitled to share in
21 any distribution under a plan or to vote on a plan.

22 Pursuant to an order entered in this case on,
23 proofs of claim must be filed on or before,
24 with at
25 [or, if appropriate, proofs of claim must be filed prior to
26 the confirmation of a plan]. A proof of claim must comply with
27 the formalities specified in Rule 9-22(b)(5).

28 Dated:

29)

30 District Judge.

ADVISORY COMMITTEE'S NOTE

This form is new. Under Rule 9-22(b)(3)(A) this notice is required to be sent to creditors whose claims are listed as disputed, contingent, or unliquidated as to amount. See also § 88(a) of the Act.

FORM NO. 9-F3

ORDER PERMITTING FILING
MODIFICATION OF PLAN PRIOR TO
CONFIRMATION, FIXING HEARING AND
TIME FOR REJECTION OF
MODIFICATION, COMBINED WITH
NOTICE THEREOF

1 [Caption, other than designation, as in
2 Form No. 9-F1.]

3 ORDER PERMITTING FILING
4 MODIFICATION OF PLAN PRIOR TO
5 CONFIRMATION, FIXING HEARING AND
6 TIME FOR REJECTION OF MODIFICATION,
7 COMBINED WITH NOTICE THEREOF

8 To the petitioner, its creditors, and
9 other parties in interest:

10 A modification of the plan dated ----
11 ----- having been filed by -----
12 -----, on -----, it
13 is ordered and notice is hereby given
14 that:

15 1. The modification, a copy [or a
16 summary] of which is attached hereto,
17 may be filed.

18 2. The hearing for the consideration
19 of the proposed modification shall be
20 held at ----- on -----
21 ---- at ---- o'clock --M., which hearing
22 may be continued or adjourned from
23 time to time by order made in open
24 court, without further notice to credi-
25 tors.

26 3. ----- is fixed as the

F

proposed

27 last day for filing a written rejection of
28 the modification. Any creditor who has
29 accepted the plan and who fails to file a
30 written rejection of the modification
31 within the time above specified shall be
32 deemed to have accepted the plan as
33 modified.

34 Dated: -----
35 -----
36 *District Judge.*

ADVISORY COMMITTEE'S NOTE

This form, which is new, combines the order and notice provided by Rule 9-26 when a modification is proposed.

FORM NO. 9-F4

ORDER CONFIRMING PLAN

1 [*Caption, other than designation, as in*
2 *Form No. 9-F1.*]

3 ORDER CONFIRMING PLAN

4 The petitioner's plan having been
5 filed on -----, [*if appropri-*
6 *ate, as modified by a modification filed*
7 *on -----,]; and*

8 It having been determined after
9 hearing on notice:

10 1. That the plan has been accepted in
11 writing by the creditors whose accept-
12 ance is required by law; and

13 2. That the provisions of Chapter IX
14 have been complied with; that the pro-
15 posal of the plan and its acceptance are
16 in good faith; that there has been no

17 illegal agreement or practice pro-
 18 scribed by ~~the first paragraph of § 83(e)~~
 19 of the Act; that the plan is fair and
 20 equitable, ~~and for the best interests of~~
 21 ~~creditors~~, and does not discriminate un-
 22 fairly in favor of any creditor or class of
 23 creditors; and that the petitioner is ~~au-~~
 24 ~~thorized by law to take all~~ action neces-
 25 sary to be taken by it to carry out the
 26 plan; and

86(b)

and feasible,

not prohibited
by law from
taking any

27 3. That all amounts to be paid by
 28 petitioner for services and expenses, in-
 29 cident to the plan have been fully dis-
 30 closed and are reasonable:

or by any person,
not including
governmental
entities,

31 It is ordered that:

32 A. The petitioner's plan filed on ---
 33 -----, [if appropriate, as modified by
 34 a modification filed on -----,] a
 35 copy of which is attached hereto, is
 36 confirmed.

in the case or

37 b. On or before ----- peti-
 38 tioner shall deposit with the court [or
 39 ----- of *-----
 40 -----, the disbursing agent, or in ---
 41 -----] the money or other con-
 42 sideration which is to be distributed to
 43 creditors under the plan.

44 Dated: -----.

45 -----,

46 *District Judge.*

* State post-office address

and telephone
number.

ADVISORY COMMITTEE'S NOTE

This form is new. The order of confirmation specifies those matters heard and determined by the court at

the hearing on confirmation which are required by the Act in order for a plan to be confirmed.

FORM NO. 9-F5

ORDER APPOINTING DISBURSING
AGENT AND FIXING AMOUNT OF HIS
BOND

1 [Caption, other than designation, as in
2 Form No. 9-F1.]
3 ORDER APPOINTING DISBURSING AGENT
4 AND FIXING AMOUNT OF HIS BOND
5 1. _____, of * _____
6 _____, is hereby appointed dis-
7 burasing agent in this case.
8 2. The amount of the bond of the
9 disbursing agent is fixed at \$ _____.
10 Dated: _____.
11 _____,
12 *District Judge.*

*State post-office address.

ADVISORY COMMITTEE'S NOTE

This form is new.

FORM NO. 9-F6

NOTICE TO DISBURSING AGENT OF HIS
APPOINTMENT

1 [Caption, other than designation, as in Form
2 No. 9-F1.]
3 NOTICE TO DISBURSING AGENT OF HIS
4 APPOINTMENT
5 To _____, of * _____
6 _____.

7 You are hereby notified of your appoint-
8 ment as disbursing agent in this case. The
9 amount of your bond has been fixed at \$____
10 _____.
11 Dated: _____,
12 _____,
13 *District Judge.*

*State post-office address.

ADVISORY COMMITTEE'S NOTE

This form is new. This notice may be combined with
Official Form No. 9-F5 which is the form for the order
appointing a disbursing agent.

FORM NO. 9-F7

BOND OF DISBURSING AGENT

1 [*Caption, other than designation, as in*
2 *Form No. 9-F1.*]
3 BOND OF DISBURSING AGENT
4 We, _____, of *__
5 _____, as principal, and
6 _____ of *_____
7 _____, as surety, bind our-
8 selves to the United States in the sum
9 of \$_____ for the faithful perform-
10 ance by the undersigned principal of
11 his official duties as disbursing agent
12 in this case.
13 Dated: _____
14 _____,
15 _____

*State post-office address.

ADVISORY COMMITTEE'S NOTE

This form is new.

FORM NO. 9-F8

ORDER APPROVING DISBURSING AGENT'S BOND

1 [Caption, other than designation, as in
 2 Form No. 9-F1.]
 3 ~~ORDER~~ APPROVING DISBURSING
 4 AGENT'S BOND
 5 The bond filed by -----
 6 of *----- as disburs-
 7 ing agent in this case is hereby ap-
 8 proved.
 9 Dated: -----
 10 -----,
 11 District Judge.

*State post-office address.

ADVISORY COMMITTEE'S NOTE

This form is new.

FORM NO. 9-F9

ORDER APPROVING DEPOSIT AND DISCHARGING PETITIONER

1 [Caption, other than designation, as in
 2 Form No. 9-F1.]
 3 ORDER APPROVING DEPOSIT AND
 4 DISCHARGING PETITIONER
 5 The petitioner having made the de-
 6 posit required by the order of this court
 7 dated ----- confirming peti-
 8 tioner's plan [*and it having been de-
 9 termined after hearing on notice:

10 1. That the deposited securities are
11 lawfully authorized and constitute
12 valid obligations of petitioner; and

13 2. That the provisions in such securi-
14 ties to pay and secure payment are
15 valid];

16 It is ordered that:

17 A. The deposit is approved.

18 B. The plan is binding on all creditors
19 affected by it, whether secured or unse-
20 cured, whether or not their claims have
21 been filed or allowed, and whether or
22 not such creditors have accepted the
23 plan.

24 C. The petitioner is discharged from
25 all debts and liabilities dealt with in
26 the plan except as provided therein,
27 whether secured or unsecured, whether
28 the claims have been filed or allowed,
29 and whether or not the creditors hold-
30 ing such claims have accepted the plan.

31 Dated: -----

32 -----,

33 *District Judge.*

*The bracketed material should be included in the order if
the deposit consists in whole or in part of securities.

or in § 95(b)(2)(B)
of the Act

ADVISORY COMMITTEE'S NOTE

This form is new. It is the order to be entered under
Rule 9-31(a) and contains the provisions specified
therein as well as the effect of such order as pre-
scribed by § ~~83(f)~~ of the Act, ~~except that the name of~~
~~the order has been changed from final decree to order~~
~~approving deposit.~~

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