

REPORT OF ADVISORY COMMITTEE ON BANKRUPTCY RULES

During the past year the Advisory Committee on Bankruptcy Rules has been concerned primarily with three kinds of problems: (1) the general organization of the rules and forms to be promulgated pursuant to the new grant of rule-making authority made in 28 U.S.C. §2075 (enacted Oct. 3, 1964); (2) the resolution of difficult questions of categorization of particular matters as substantive or procedural; and (3) the formulation of approaches and drafts of language for key provisions of the new Bankruptcy Rules.

The Rules have tentatively been organized into nine parts as follows:

Part I	Petition and Proceedings Relating Thereto and to Adjudication
Part II	Meetings of Creditors; Elections; Examinations
Part III	Claims and Distribution to Creditors
Part IV	Exemptions and Discharge
Part V	Administration; Officers; Expenses
Part VI	Collection and Liquidation of the Estate
Part VII	Adversary Proceedings
Part VIII	Appellate Review
Part IX	General Provisions

A complete list of the rules for these nine parts is projected in the enclosure.

It is contemplated that the rules in these nine parts will regulate the procedure during the course of administration of cases in ordinary bankruptcy. Additional rules required for reorganization proceedings and other proceedings under the debtor relief chapters of the Act will be set

out in parts assigned higher numbers. Since the rules prescribed for ordinary bankruptcy, like the first 72 sections of the Bankruptcy Act (and the first 47 General Orders), are basic to all proceedings under the Bankruptcy Act, the Committee has agreed to postpone consideration of the rules applicable only to rehabilitation proceedings pending the development of a fairly complete set of rules for ordinary bankruptcy.

Analysis of the proceedings that arise under the Bankruptcy Act discloses that there are at least six kinds that require separate recognition and treatment:

(1) the proceedings initiated by a "petition" and leading to an adjudication or dismissal;

(2) plenary proceedings initiated by a complaint filed in a federal district court or by an appropriate pleading in a state court;

(3) adversary proceedings within the summary jurisdiction of the bankruptcy court which can be assimilated to plenary proceedings in the federal district court;

(4) contested matters arising in the course of bankruptcy administration which ordinarily need not conform to plenary proceedings;

(5) administrative proceedings which involve no contest or adversary aspect; and

(6) review of referees' orders by the district and appellate courts.

The "petition," a statutory term under the Bankruptcy Act, ordinarily may not be contested but sometimes may be. Many requests for relief made in the course of a bankruptcy proceeding, including proofs of claims against bankrupt estates, do not contemplate responsive pleadings even when contested. Under the General Orders in Bankruptcy the

Federal Rules of Civil Procedure are followed "as nearly as may be" in handling the adversary aspects of the bankruptcy practice and procedure to the extent "not inconsistent with the Act or with these general orders." The degree to which the Civil Rules may be thought to be consistent with the Act and the General Orders and compatible with the needs of bankruptcy administration not only varies widely from court to court, but, since much of bankruptcy practice is not regulated by rules reduced to writing, it undoubtedly differs substantially from case to case. The Advisory Committee is sensitive to the need for retaining the advantages of expedition, economy, and simplicity that have characterized summary proceedings in bankruptcy, as it endeavors to develop uniform rules prescribing conformity to the Civil Rules, or adaptations thereof, in the conduct of adversary proceedings that seem assimilable to ordinary civil litigation in federal courts. The Committee is making progress in this effort, but it has been painfully slow.

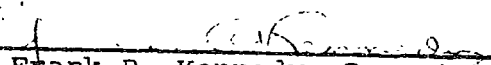
The Committee held two meetings of 3 1/2 days each during the year. All twelve members of the Committee were in attendance. Judge Maris and Professor Moore also sat in at these meetings and made helpful contributions to the deliberations. In addition five members of the Committee met with the Reporter on two occasions for three days each to explore alternative approaches in merging the procedural

provisions of the Bankruptcy Act, the General Orders in Bankruptcy, and the Federal Rules of Civil Procedure.

In an effort to accelerate the work of the Committee the members agreed at its last meeting (in June of 1966) to hold three meetings of 3 1/2 days each during the coming year.

The Reporter has been assisted during the past year by Professor Morris G. Shanker of the Western Reserve University School of Law, and he will continue to work with the Reporter during the coming year.

During the year the Reporter made a progress report of the work of the Advisory Committee on Bankruptcy Rules to the National Association of Referees in Bankruptcy and the Sixth Circuit Judicial Conference.


Frank R. Kennedy, Reporter

Enclosure

ORGANIZATION OF BANKRUPTCY RULES

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

PART I PETITION AND PROCEEDINGS RELATING
THERE TO AND TO ADJUDICATION

BANKRUPTCY RULE:

- 1.1 Commencement of Bankruptcy Case
- 1.2 Voluntary Petition
- 1.3 Involuntary Petition
- 1.4 Partnership Bankruptcy
- 1.5 Filing Fees
 - 1.5.1 Reference
- 1.6 Consolidation of Cases Commenced in Same Court
- 1.7 Schedules and Statement of Affairs
 - 1.7.1 Verification of Petitions and Accompanying Papers
 - 1.7.2 Service of Petition and Process
- 1.8 Responsive Pleading or Motion -- Affirmative Defense of Solvency
 - 1.8.1 Amendments of Papers
- 1.9 Hearing and Disposition of Petition
 - 1.9.1 Applicability of Rules in Part VII
- 1.10 Venue and Transfer
- 1.20 Accounting by Prior Custodian of Bankrupt's Property
- 1.40 Allowances to Attorneys for Petitioning Creditors

PART II MEETINGS OF CREDITORS;
ELECTIONS; EXAMINATIONS

BANKRUPTCY RULE:

- 2.1 Meetings of Creditors
- 2.10 Notices to Creditors
- 2.21 Examination
- 2.22 Voters at Meetings
- 2.25 Solicitation and Voting of Proxies

PART III CLAIMS AND DISTRIBUTION TO CREDITORS

BANKRUPTCY RULE:

- 3.1 Proofs of Claim
- 3.2 Filing Proof of Claim
- 3.3 Claim of Bankrupt Estate
 - 3.3.1 Claims by and Against Partners in Partnership Bankruptcy
- 3.4 Filing of Claims by Bankrupt
 - 3.4.1 Withdrawal of Claim
- 3.5 Allowance of Claims
- 3.10 Reconsideration of Claims
- 3.20 Declaration and Distribution of Dividends

PART IV EXEMPTIONS AND DISCHARGE

BANKRUPTCY RULE:

- 4.1 Exemptions
- 4.10 Application for Discharge
- 4.11 Waiver of Discharge
- 4.12 Complaint Objecting to Discharge
- 4.13 Hearing on Complaint Objecting to Discharge
- 4.14 Notice of Failure to Obtain Discharge

PART V ADMINISTRATION; OFFICERS; EXPENSES

BANKRUPTCY RULE:

- 5.1 Filing of Papers
- 5.2 Books and Records Kept by Clerks
- 5.3 Books and Records Kept by Referees
 - 5.3.1 Reports of Referees
- 5.8 Payment of Filing Fees in Installments
- 5.11 Receivers and Marshals
- 5.12 Ancillary Proceedings
- 5.17 Limitation of Appointment of Receivers and Trustees
- 5.18 Trustee Not Appointed in Certain Cases
- 5.19 Accounts and Papers of Receivers and Trustees
- 5.20 Oaths and Affirmations
- 5.21 Transfer or Revocation of Reference
- 5.23 Nepotism and Influence
- 5.53 Special Masters

PART VI COLLECTION AND LIQUIDATION OF THE ESTATE

BANKRUPTCY RULE:

- 6.1 Duties of Trustee
- 6.2 Deposits of Money
- 6.8 Redemption of Property
- 6.18 Sale of Property
- 6.45 Auctioneers and Appraisers

PART VII ADVERSARY PROCEEDINGS

BANKRUPTCY RULE:

- 7.1 Scope of Rules in Part VII
- 7.3 Commencement of Adversary Proceeding
- 7.4 Service of Summons, Complaint, and Notice of Trial
- 7.5 Service and Filing of Pleadings and Other Papers
- 7.7 Pleadings and Motions
- 7.8 General Rules of Pleading
- 7.9 Pleading Special Matters
- 7.10 Form of Pleadings
- 7.12 Defenses and Objections
- 7.13 Counterclaims and Cross-claims
- 7.14 Third Party Practice
- 7.15 Amended and Supplemental Pleadings
- 7.16 Pre-Trial Procedures
- 7.17 Parties and Capacity
- 7.18 Joinder of Claims and Remedies

PART VII ADVERSARY PROCEEDINGS (Continued)

BANKRUPTCY RULE:

- 7.19 Joinder of Persons Needed for Just Adjudication
- 7.20 Permissive Joinder of Parties
- 7.21 Misjoinder and Nonjoinder of Parties
- 7.22 Interpleader
- 7.23 Class Actions
- 7.24 Intervention
- 7.25 Substitution of Parties
- 7.26 Depositions Pending Action
- 7.27 Depositions Before Action or Pending Appeal
- 7.28 Persons Before Whom Depositions May be Taken
- 7.29 Stipulations Regarding the Taking of Depositions
- 7.30 Depositions upon Oral Examination
- 7.31 Depositions of Witnesses upon Written Interrogatories
- 7.32 Effect of Errors and Irregularities in Depositions
- 7.33 Interrogatories to Parties
- 7.34 Discovery and Production of Documents and Things for Inspection, Copying, or Photographing
- 7.35 Physical and Mental Examination of Persons
- 7.36 Admission of Facts and Genuineness of Documents
- 7.37 Refusal to Make Discovery, Consequences
- 7.40 Setting of Date for Trial
- 7.41 Dismissal of Actions

PART VII ADVERSARY PROCEEDINGS (Continued)

BANKRUPTCY RULE:

- 7.42 Consolidation, Separate Trials
- 7.43 Evidence
- 7.44 Proof of Official Record
- 7.44.1 Determination of Foreign Law
- 7.45 Subpoenas
- 7.46 Exceptions Unnecessary
- 7.47 Jurors
- 7.48 - Juries of Less Than Twelve - Majority Verdict
- 7.49 Special Verdicts and Interrogatories
- 7.50 Motions for Directed Verdict and for Judgment Notwithstanding the Verdict
- 7.51 Instructions to Jury: Objection
- 7.52 Findings by the Court
- 7.54 Judgments; Costs
- 7.55 Default
- 7.56 Summary Judgment
- 7.57 Declaratory Judgments
- 7.58 Entry of Judgments
- 7.59 New Trials; Amendment of Judgment
- 7.60 Relief from Judgment or Order
- 7.61 Harmless Error
- 7.62 Stay of Proceedings to Enforce Judgments
- 7.63 Disability of Bankruptcy Judge

PART VII ADVERSARY PROCEEDINGS (Continued)

BANKRUPTCY RULE:

- 7.64 Seizure of Person or Property
- 7.65 Injunctions
- 7.65.1 Security: Proceedings Against Sureties
- 7.67 Deposit in Court
- 7.68 Offer of Judgment
- 7.69 Execution
- 7.70 Judgment for Specific Acts; Vesting Title
- 7.71 Process in Behalf of and Against Persons Not Parties
- 7.80 Stenographer; Stenographic Report or Transcript as Evidence

PART VIII APPELLATE REVIEW

BANKRUPTCY RULE:

- 8.1 Review of Referees' Judgments by District Court
- 8.2 Appeal from District Court to Supreme Court
- 8.3 Appeal to Court of Appeals
- 8.4 Joint Appeals to the Supreme Court or to a Court of Appeals
- 8.5 Record on Appeals to a Court of Appeals
- 8.6 Record on Appeal to a Court of Appeals; Agreed Statement

PART IX GENERAL PROVISIONS

BANKRUPTCY RULE:

- 9.1 General Requirements of Form
- 9.2 Rule of Construction
- 9.3 Forms
- 9.6 Time
- 9.7 Procedure in Contested Matters Not Otherwise Provided for
- 9.10 Representation
- 9.11 Signing and Verification of Pleadings and Other Papers
- 9.12 Objection to Summary Jurisdiction
- 9.19 General Definitions
- 9.20 Definitions of Words Used in the Federal Rules of Civil Procedure
- 9.56 Local Bankruptcy Rules
- 9.85 Title
- 9.86 Effective Date