

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

MINUTES OF MEETING OF AUGUST 20, 1973

The standing Committee on Rules of Practice and Procedure met in the Conference Room of the Administrative Office in Washington, D.C., on August 20, 1973.

Present: Judge Albert B. Maris, chairman, Judge Charles W. Joiner, Richard E. Kyle, Esq., Professor James Wm. Moore, J. Lee Rankin, Esq., Judge Frank W. Wilson and Professor Charles Alan Wright. Judge Carl McGowan and Bernard G. Segal, Esq., were unavoidably absent. Also present during certain periods of the meeting were Judge Phillip Forman, chairman of the Advisory Committee on Rules of Bankruptcy, and Professor Lawrence P. King, associate reporter to the advisory committee. William E. Foley, Esq., secretary to the standing committee, Ada E. Beckman, law clerk to the chairman, and Barbara A. Gray, of the rules study staff, were also present.

AGENDA ITEM 2. BANKRUPTCY RULES

The chairman reported that the Bankruptcy Rules and Official Forms covering Chapters I-VII and Chapter XIII which were approved by the Conference in October 1972 and transmitted to the Supreme Court, pursuant to the request of this committee, were prescribed by the Supreme Court by order entered April 24, 1973, to be effective October 1, 1973 and were transmitted to the Congress by the Chief Justice. These rules and official forms are now contained in House Document No. 93-87, 93d Cong., 1st sess. The

chairman stated that it is not anticipated that either House of Congress will have any problem with these rules and official forms.

Judge Forman, in a preliminary statement, reported that Professors Kennedy and Countrymen attend and give advice at all of the advisory committee meetings and their expertise gives uniformity to the new rules under consideration. Judge Forman further stated that the advisory committee at its July meeting gave consideration to the comments and suggestions received from the public and the Securities and Exchange Commission on the preliminary draft of Chapter X Rules (Corporate Reorganization) which was printed and circulated under date of December 1972, but that the advisory committee did not complete its consideration of those rules. Professor King reported on the status of the chapters now being prepared for consideration of the advisory committee, that a draft of rules covering railroad reorganization proceedings under Chapter VIII, section 77, of the act, is now in the course of preparation by Professor Walter J. Taggart, an associate reporter to the advisory committee, and that a preliminary draft of rules under Chapter IX (Composition of Indebtedness of Local Taxing Agencies) has been prepared by Professor King. A preliminary draft of Chapter XII Rules (Real Property Arrangements) is now in the hands of the Government Printing Office and will be distributed to the bench and bar for comments as soon as the printed pamphlets are available.

The committee considered the definitive draft of rules

and forms under Chapter XI (Arrangements) of the Bankruptcy Act which were recommended by the Advisory Committee on Bankruptcy Rules for approval.

Prof. Moore inquired whether, because of the relationship between Chaps. X and XI, should Chapter XI wait for Chapter X? Prof. King answered No. these chapters are independent of each other.

Judge Joiner asked whether there are any special rules or comments of which the committee should be alerted. Prof. King said No, these are regarded as non-controversial, that there are not many changes from the present statute.

A discussion followed respecting the comments and views of the Security and Exchange Commission on the proposed rules. Prof. King stated that the SEC comments were adopted totally in some rules and in part in others.

The committee questioned the reporter on the time limit in Rule 11-15, Conversion to Chapter X, in the light of the objections by the SEC. A discussion followed. Mr. Rankin expressed the view that the rule should not limit the court from extending the 120 day period. Following discussion, Judge Joiner moved that the words "On application filed within such 120-day period" be deleted from subsection (b) and that the term "the court may" in (b) be amended to read "The court may". It was suggested that such an amendment would meet the objections of the SEC. Mr. Kyle seconded the motion. Judge Joiner's motion was adopted by a vote of 4 to 2. As thus amended, Rule 11-15 was approved by the committee.

Prof. King stated he would make conforming changes in any of the Notes, should any changes be required by the amendment of Rule 11-15, subsection (b). He stated that no changes were needed in the Note to Rule 11-15.

Judge Joiner moved that the proposed Rules of Bankruptcy Procedure, Title V, Chapter XI Rules and Official Forms be approved and transmitted to the Judicial Conference with the recommendation that the Conference approve the draft rules and forms and transmit them to the Supreme Court with the recommendation that they be prescribed for use in proceedings under Chapter XI of the Act effective, if possible, July 1, 1974. Professor Moore seconded the motion and it was unanimously adopted by the committee.

AGENDA ITEM 5. PROPOSED CORRECTIVE AMENDMENTS

- (a) Proposed amendment to Official Bankruptcy Form No.7(14), (15)
- (b) Criminal Rule 41(a)
- (c) Criminal Rule 50

Due to typographical errors, portions of Official Form No.7 and the words "court of record " in Criminal Rule 41(a) were inadvertently omitted from the drafts submitted to and prescribed by the Supreme Court. In the amendment of Rule 50 which added subdivision (b) thereto, the previously existing single paragraph of the rule was not given the new subdivision designation and title "(a) Calendars" to distinguish it from the new subdivision (b). The committee approved proposed amendments to Official Bankruptcy Form No.7, Criminal Rule 41(a) and Criminal Rule 50 to correct these matters, and recommended that the corrective amendments be approved by the Conference and transmitted to the Supreme Court.

AGENDA ITEM 1. RULES OF EVIDENCE

The committee considered the Comments of the standing committee and the Advisory Committee on Rules of Evidence on the amendments proposed by the House Subcommittee on Criminal Justice (Committee Print, June 28, 1973, H.R. 5463, 93d Cong., 1st sess.)

The chairman recounted the events which led to the convening of the standing committee and the Advisory Committee on Rules of Evidence in Washington on July 18 and 19, 1973 to jointly consider the changes in the Federal Rules of Evidence tentatively proposed by the House Judiciary Subcommittee in its Committee Print of H.R. 5463. The two committees agreed on a joint formulation of their comments on each of the proposed amendments. In addition, the two committees considered the proposal of the Subcommittee to add to H.R. 5463 a new section 2 which would add to title 28, U.S.C., a new section 1657 giving to the Supreme Court express authority to prescribe amendments to the Federal Rules of Evidence, which the two committees approved since it would eliminate any question as to the power of the Court in this regard. However, the two committees disapproved the proposal, contained in a proviso, that either House may by its own resolution reject such a rules-proposal prescribed by the Court in which case it shall not take effect.

Judge Wilson stated that the Comments are meaningful to those who participated in the discussion of the joint committees, but he suggested that a summary of the proposed Subcommittee changes appear preceding the comment to each specific rule. The committee was in accord with Judge Wilson's suggestion that the Committee sub-

mitted to the Conference should contain a concise statement of the proposed change to each rule preceding the comment thereto. The chairman was authorized to add such summary statements to each comment. Otherwise, the Comments of the Standing Committee and the Advisory Committee were approved, together with the Comments on Proposed Section 2 of H.R. 5463, and the standing committee recommended that the Conference approve the Comments and authorize the immediate release of its action to the House Subcommittee on Criminal Justice.

AGENDA ITEM 3. CRIMINAL RULES

The chairman reported that the Advisory Committee on Criminal Rules met on August 2d and 3d, 1973 in Washington when extensive consideration was given to the operation and use of the grand jury and to a number of other proposals for amendment of the Criminal Rules. These will be given further study by the committee. The advisory committee was also considering the views and comments from the bench and bar with respect to the January 1973 preliminary drafts of amendments to Criminal Rules 6, 11, 23, 24, 35, 41 and 43, new Criminal Rule 40.1, Rules Governing Habeas Corpus Proceedings, Rules Governing § 2255 Proceedings and amendment to Appellate Rule 4.

AGENDA ITEM 4. CIVIL RULES

The chairman reported that the advisory committee is studying the possible amendment of Rule 48 to provide for a six member jury and a lesser number of peremptory challenges.

Professor Ward, reporter to the advisory committee, is continuing his study of Rule 23 relating to class action. A discussion by the committee followed respecting the difficult problems facing the courts in this field.

Judge Joiner expressed the view that parties should be encouraged to settle their cases at an earlier stage and not to wait to the time the case is ready for trial. Judge Wilson stated that there should be a civil rule comparable to Criminal Rule 50(b) for the more expeditious handling of the civil docket. Judge Maris agreed that this is an area which the Advisory Committee on Civil Rules should explore. Judge Maris also suggested that the archaic rules governing copyright cases should be studied by the advisory committee to bring the procedure in line with present civil rules.

AGENDA ITEM 6. OTHER BUSINESS

The chairman asked whether the committee had any further matters in mind. There was no further business.

The chairman informed the committee that in accordance with the terms of service prescribed by the Chief Justice the terms of Professor Moore, Mr. Rankin and himself would expire on October 1, 1973. The chairman also informed the committee that he had requested the Chief Justice to relieve him from further service as a member and chairman of the committee after October 1st and that the Chief Justice has agreed to his retirement from further service after that date. The members of the committee expressed to Judge Maris their deep appreciation of his wise, judicious and outstanding leadership.

The meeting then adjourned.

Respectfully submitted,
[Signature]
Law Clerk to Judge Davis