

*Not sent to Standing
Committee
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Committee
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July 13, 1962

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

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

The Advisory Committee on Bankruptcy Rules is engaged in a study of the General Orders and Official Forms in Bankruptcy. The Orders and Forms, promulgated by the Supreme Court pursuant to the authority granted by section 30 of the Bankruptcy Act, are valid only insofar as consistent with the Act.

The Committee has had two meetings of two days each, the first in December 1960 and the second in October 1961. A three-day meeting scheduled for May 2, 3, and 4 of this year was postponed because of the deficiency in the appropriation. The agenda for that meeting included proposed amendments of about forty of the General Orders and Official Forms and proposals for about ten new Orders or Forms. The meetings held have been well attended and have been fruitful. The Committee has been materially aided in its deliberations by the presence and active participation in the discussion of Judge Maris at its first meeting and, at both its meetings, of Professor J. W. Moore of the Standing Committee and Edwin Covey, Chief of the Bankruptcy Division of the Administrative Office.

The Advisory Committee has twelve members in addition to the Chairman. It has lost one member by death, and he has been replaced. The original terms of the appointments of six of the members expire on September 30, 1962.

Amendments of twelve General Orders and twenty-three Official Forms as recommended by the Advisory Committee and approved by the Standing Committee and the Judicial Conference became effective on July 19, 1961, by order of the Supreme Court. On the same date and by the same action three new Official Forms were established, and nine were abrogated. These amendments were restricted in scope to those required (1) to bring the General Orders and Official Forms into harmony with recent amendments of the Bankruptcy Act, (2) to bring them into harmony with current and sound practice, and (3) to correct obvious departures from approved form.

Six matters have been specifically referred to the Advisory Committee through the Standing Committee by the Judicial Conference: (1) the improvement of procedures in installment fee cases under General Order 35(4); (2) elimination of the oath on proofs of claim; (3) revision of Schedule B-4 in conformity to a proposed amendment of section 60d of the Bankruptcy Act; (4) the proposal of the Bankruptcy Division of the Administrative Office to establish panels of standing trustees to handle small cases; (5) the question whether referees should preside over jury trials in proceedings authorized by the Bankruptcy Act; and (6) a proposal to amend General Order 45 to make

employees of the Judicial Branch and the Department of Justice of the United States ineligible for appointment or employment as auctioneers, appraisers, or accountants in bankruptcy cases. The status of these matters will be indicated in brief statements about each as follows.

(1) The agenda for the postponed meeting of the Advisory Committee includes drafts of a proposed revision of General Order 35(4) and of new Official Forms for an Application for Permission to Pay Filing Fees in Installments and for an Order for Payment of Filing Fees in Installments. Discussions at two meetings and a considerable exchange of correspondence have explored the subject of installment fees rather fully, and the issues remaining to be resolved are fairly narrow.

(2) Elimination of the oath on proofs of claim was accomplished ^{to} by the amendments/the Official Forms promulgated last year. The agenda for the postponed meeting includes proposals for further simplification of the forms for proofs of claim.

(3) A draft of a revision of Schedule B-4 in conformity with the proposed amendment of section 60d in H.R. 5149 now pending in Congress has been drafted. When and if the proposal is enacted, an appropriate revision of the schedule will be submitted by the Advisory Committee for approval.

(4) The proposal to establish panels of trustees for small cases and other aspects of administering the enormous burden of no-asset and nominal-asset cases have received extended attention at both

meetings of the Advisory Committee. It is in this area that differences of opinion among members of the Committee are most pronounced. Like differences, it should be added, develop in most discussions of this subject, and generally acceptable solutions are elusive. The Administrative Office of United States Courts has made a survey of the administration of no-asset cases among a number of selected districts and has furnished tabulated results to the Committee, but the implications have not yet been fully considered. The Advisory Committee is not ready to submit a recommendation on this matter.

(5) The propriety of the conduct of jury trials by referees was extensively discussed at the first meeting of the Advisory Committee. The Committee was impressed by two facts: (1) that the demands for jury trial in bankruptcy proceedings are exceedingly few and far between; and (2) that there appears to be a general antipathy toward use of the rule-making power to dilute or modify traditional rights to jury trial, whether derived from constitutional or statutory sources. Nonetheless the Committee resolved tentatively to approve a revision of General Order 12 which would assure a jury trial before a judge in any bankruptcy proceeding only if request for a judge had been coupled with the demand for jury trial made pursuant to the Act. Pending completion of its study of other aspects of General Order 12 the Committee was disposed to postpone submitting a final recommendation on this matter.

(6) The proposed amendment of General Order 45 was attributable to a situation that developed in one federal district where the judges' bailiffs were uniformly appointed as appraisers in all bankruptcy proceedings. After disapproval of the practice by the Judicial Conference the judges of the court in question promulgated a district rule to prohibit it. Although the immediate cause of the reference to the Advisory Committee has been dissolved, the Committee has proceeded to consider the Conference's suggestion in company with a number of other proposals affecting General Order 45. It appears to be close to agreement on a draft of a revision of this Order.

The Committee on Bankruptcy Rules has received a large number of recommendations for changes affecting practically every one of the General Orders and Official Forms. Recommendations come not only from such organizations as the National Bankruptcy Conference and the National Association of Referees in Bankruptcy but from individual members of the bench and bar and from staff members in governmental agencies. Additionally an increasing number of proposals are being received which contemplate new Orders or Forms. The Reporter is undertaking preliminary evaluations of the proposals and preparation of drafts for those susceptible of formulation.

H.R. 7405, now pending in Congress, would amend title 28 of the United States Code by inserting a new section 2075 to confer rule-making power on the Supreme Court in respect to practice and procedure

under the Bankruptcy Act in terms comparable to the grants in other areas of federal procedure. Section 30 of the Bankruptcy Act would be repealed. H.R. 7405 passed the House without amendment on 7 August 1961, and it is understood that passage by the Senate during this Second Session of the 87th Congress is likely. The immediate result of enactment of H.R. 7405 would be to impress a new pattern on the procedure to be pursued in prescribing and amending bankruptcy rules and forms, which do not now need to be reported to Congress. Enactment would, moreover, make appropriate a consideration of the question whether new rules and forms of practice and procedure under the Bankruptcy Act should be formulated. Such rules would presumably merge the General Orders and procedural provisions of the Bankruptcy Act and would supersede the latter. Reforms not now within the jurisdiction of the Committee on Rules of Practice and Procedure and the Advisory Committee on Bankruptcy Rules could be studied and proposed. The dimensions of such a project would be substantially different from those of the present assignment of the Advisory Committee on Bankruptcy Rules.