

July 3rd, 1963

MEMORANDUM

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

FROM: Frank R. Kennedy, Reporter for the Advisory Committee  
on Bankruptcy Rules

SUBJECT: Progress Report of the Advisory Committee on Bankruptcy  
Rules

The Advisory Committee on Bankruptcy Rules is continuing its study of the General Orders and Official Forms in Bankruptcy.

The Committee held two meetings during the fiscal year which ended on June 30, 1963, the first for 3 1/2 days in November and the second for 2 1/2 days in June. At no session of the Committee was more than one member absent, and for a good part of the first meeting all members were present. In addition, Judge Maris and Professor Moore attended most of the sessions of both meetings held during the year. Edwin Covey, who was Chief of the Bankruptcy Division of the Administrative Office of United States Courts until his retirement during the year, attended the first meeting as an advisor to the Committee and the second as a newly appointed member.

In addition, a subcommittee, constituted at the first of these two meetings and consisting of Judge Gignoux and Charles Seligson in addition to the Chairman of the Advisory Committee and the Reporter, met twice for two days each to review matters of form and style of drafts for general orders and official forms previously approved in substance by the Committee.

About ten general orders and thirty official forms appear to be close to final versions after extended consideration by the Advisory Committee. In nearly all cases the revisions are substantial. The process of reaching finality in the drafts of both the general orders and the official forms has proved quite time-consuming. Submission of issues to committee vote by mailed ballots has been utilized where feasible and will continue so to be used, but it has frequently been found necessary during meetings to reconsider matters once supposedly settled by mailed ballots.

The general orders and official forms are promulgated by the Supreme Court pursuant to section 30 of the Bankruptcy Act rather than under the Judicial Code. In carrying out the responsibility assigned it by this section, the Supreme Court has prescribed over sixty forms, many of them quite detailed. Undoubtedly one reason for their specificity is that they were prepared in

contemplation of use by laymen. Unlike the forms accompanying the Civil and Criminal Rules, the Official Forms in Bankruptcy are not merely illustrative; rather, as General Order 38 says, they "shall be observed and used, with such alterations as may be necessary to suit the circumstances of any particular case."

The Advisory Committee expects to reduce the number of the forms and the detail of those retained. It is considering the feasibility of recommending that some of the forms be issued by or with the approval of the Judicial Conference as illustrations rather than as official forms prescribed by the Supreme Court. Nevertheless, the Committee has necessarily been concerned with a great many particulars of bankruptcy practice in working toward its objective in revising the general orders and forms, many of which have come through without substantial change since 1867.

The Advisory Committee has tentatively set November 20-22, 1963, as the dates for its next meeting, with April of 1964 as the most likely time for a second meeting during the present fiscal year. It is hoped that finishing touches can be put on the ten general orders and thirty official forms earlier referred to and that substantial progress can be made on the considerable number of proposals affecting other orders and forms. The agenda will also include several proposals for new general orders and official

forms. Some of these proposals arise out of recent changes in the Bankruptcy Act, including the Omnibus Act of 1962 and two amendments already enacted in 1963. The Committee does not regard any changes sufficiently pressing, however, to warrant submission of its proposals for consideration by the bench and bar prior to the completion of its study of all the general orders and official forms and the proposals it has received.

Mention should perhaps again be made of the possible enactment by Congress of the proposed amendment of 28 U.S.C. to confer rule-making power on the Supreme Court for proceedings under the Bankruptcy Act comparable to that conferred by sections 2072 and 2073 respecting general civil and admiralty practice. Section 30 of the Bankruptcy Act would be repealed at the same time. The proposal, embodied in H. 2859, passed the House by voice vote on April 22, 1963. If enacted, this measure would substantially revise the frame of reference for the Advisory Committee by freeing it from the obligation to keep all bankruptcy rules and forms it proposes consistent with the Bankruptcy Act. While some of the general orders and official forms would not be significantly affected by enactment of the proposed legislation, some would surely be recast in their entirety. The

Committee is not waiting for Congress to act on this proposal, however. It has much yet to do within existing limitations to bring the general orders and official forms in bankruptcy up to date and to carry out its responsibility to recommend changes in the interest of promoting simplicity of procedure, fairness in administration, just determination of litigation, and elimination of unjustifiable expense and delay.