

## 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

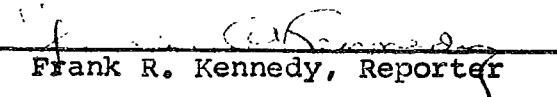
Federal Rules of Civil Procedure are followed "as nearly as may be" in handling the adversary aspects of the bankruptcy practice and procedure to the extent "not inconsistent with the Act or with these general orders." The degree to which the Civil Rules may be thought to be consistent with the Act and 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