

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
SUPREME COURT BUILDING
WASHINGTON, D. C. 20544

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August 21, 1970

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Honorable Albert B. Maris
Senior United States Circuit Judge
5050 United States Courthouse
Philadelphia, Pennsylvania 19107

Dear Judge Maris:

This letter is in response to your request for a brief written report as to the present status of the work of the Advisory Committee on Bankruptcy Rules and its program for the immediate future.

I am presently engaged as the reporter for the committee in preparing a final draft of the proposed rules and forms for proceedings in straight bankruptcy, including notes to accompany the draft. Enclosed is an Organizational Outline of the Rules and Official Forms. It is my expectation to have the draft reviewed by a subcommittee on style in late September and finally approved at the meeting of the Committee scheduled for November 18 - 21. The draft would then be submitted to the Standing Committee on Rules of Practice Procedure with a recommendation that they be published to the bench and bar for study and suggestions.

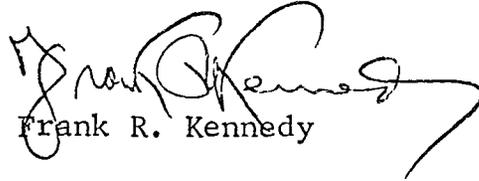
A contingency which may delay the schedule somewhat is the possibility that Congress may enact H.R. 18,871 (or its counterpart S.4247), which has been approved by Subcommittee No. 4 of the House Committee on the Judiciary and which would effect substantial changes in the procedure in bankruptcy cases in regard to discharge.

Professors Lawrence King of the New York University School of Law and Vern Countryman of Harvard University Law School who have been engaged as associate reporters during the last

The Honorable Albert B. Maris
August 21, 1970
Page 2

two years in preparing drafts of rules for debtor relief proceedings under Chapters X, XI, XII, and XIII of the Bankruptcy Act, are expected to begin presentations of their drafts to the Committee at the meeting scheduled for November 18-21. It is anticipated that most of this meeting will be devoted to consideration of these rules.

Sincerely yours,



Frank R. Kennedy

FRK/sem
Enclosure

6/13/70

ORGANIZATION OF BANKRUPTCY RULES AND OFFICIAL FORMS

PART I PETITION AND PROCEEDINGS RELATING THERETO AND
TO ADJUDICATION

Rule:

- 1-1 Commencement of Bankruptcy Case
- 1-2 Reference of Cases; Withdrawal of Reference and Assignment
- 1-3 Voluntary Petition
- 1-4 Involuntary Petition
- 1-5 Partnership Bankruptcy
- 1-6 Caption on Petition
- 1-7 Filing Fees
- 1-8 Schedules and Statement of Affairs
- 1-9 Verification of Petitions and Accompanying Papers
- 1-10 Amendments of Voluntary Petitions, Schedules, and Statements of Affairs
- 1-11 Service of Petition and Process
- 1-12 Responsive Pleading or Motion
- 1-13 Affirmative Defense of Solvency
- 1-14 Examination of Bankrupt on Issue of Insolvency or Inability to Pay Debts as They Mature
- 1-15 Hearing and Disposition of Petition
- 1-16 Venue and Transfer
- 1-17 Consolidation of Joint Administration of Cases Pending in Same Court

Part I cont'd

Rule:

- 1-18 Death or Insanity of Bankrupt
- 1-19 Dismissal or Suspension of Case of Bankrupt Adjudged in a Foreign Jurisdiction
- 1-20 Dismissal of Case Without Determination of Merits
- 1-21 Applicability of Rules in Part VII

PART II OFFICERS FOR ADMINISTERING THE ESTATE;
NOTICES TO CREDITORS; CREDITORS' MEETINGS;
EXAMINATIONS; ELECTIONS; ATTORNEYS AND
ACCOUNTANTS

Rule:

- 2-1 Appointment and Duties of Receiver
- 2-2 Appointment of Marshal in Lieu of Receiver; His Duties
- 2-3 Notices to Creditors
- 2-4 Meetings of Creditors
- 2-5 Examination
- 2-6 Compelling Attendance for Examination
- 2-7 Voting at Creditors' Meetings
- 2-8 Solicitation and Voting of Proxies
- 2-9 Selection and Qualification of Trustee
- 2-10 Trustees for Estates When Joint Administration Ordered
- 2-11 Trustee Not Appointed in Certain Cases
- 2-12 Qualification by Trustee and Receiver

Part II cont'd

Rule:

- 2-13 Limitation on Appointment of Receivers and Trustees
- 2-14 Creditors' Committee
- 2-15 Employment of Attorneys and Accountants
- 2-16 Authorization of Trustee to Conduct Business of Bankrupt
- 2-17 Ancillary Proceedings
- 2-18 Duty of Trustee to Keep Records, Make Reports, and
 Furnish Information
- 2-19 Compensation of Trustees, Receivers, Marshals,
 Attorneys, and Accountants
- 2-20 Examination of Bankrupt's Transactions with His Attorney
- 2-21 Removal of Trustee or Receiver; Substitution of Successor

PART III CLAIMS AND DISTRIBUTION TO CREDITORS

Rule:

- 3-1 Proof of Claim
- 3-2 Filing Proof of Claim
- 3-3 Filing of Tax and Wage Claims by Bankrupt
- 3-4 Claim by Surety for Bankrupt
- 3-5 Withdrawal of Claim
- 3-6 Objections to and Allowance of Claims for Purpose
 of Distribution; Valuation of Security
- 3-7 Reconsideration of Claims
- 3-8 Declaration and Payment of Dividends
- 3-9 Small Dividends
- 3-10 Unclaimed Money

PART IV THE BANKRUPT: DUTIES AND BENEFITS

Rule:

- 4-1 Adjudication as Automatic Stay of . . . Personam
Actions Against Bankrupt
- 4-2 Duties of Bankrupt
- 4-3 Exemptions
- 4-4 Grant or Denial of Discharge
- 4-5 Waiver of Discharge
- 4-6 Implied Waiver of Discharge
- 4-7 Burden of Proof in Objecting to Discharge
- 4-8 Notice of Nondischarge

PART V COURTS OF BANKRUPTCY: OFFICERS AND PERSONNEL; THEIR DUTIES

Rule:

- 5-1 Courts of Bankruptcy and Referees' Offices
- 5-2 Abolition of Referees' Bonds
- 5-3 Restrictions on Referees
- 5-4 Books, Records, and Reports of Referees
- 5-5 Nepotism, Influence, and Interest
- 5-6 Delegation of Ministerial Functions
- 5-7 Books and Records Kept by Clerks
- 5-8 Public Access to Records and Papers in Bankruptcy Cases
- 5-9 Filing of Papers
- 5-10 Issuance and Certification of Copies of Papers
- 5-11 Recording and Reporting of Proceedings

Part V cont'd

Rule:

- 5-12 Designated Depositories
- 5-13 Special Masters
- 5-14 Closing Cases
- 5-15 Reopening Cases

PART VI COLLECTION AND LIQUIDATION OF THE ESTATE

Rule:

- 6-1 Filing of Petition as Automatic Stay Against Lien Enforcement
- 6-2 Duty of Trustee or Receiver to Give Notice of Bankruptcy
- 6-3 Burden of Proof as to Validity of Post-Bankruptcy Transfer
- 6-4 Accounting by Prior Custodian of Property of the Estate
- 6-5 Money of the Estate: Collection, Deposit, and Disbursement
- 6-6 Appraisal and Sale of Property; Compensation and Eligibility of Appraisers and Auctioneers
- 6-7 Assumption, Rejection, and Assignment of Executory Contracts
- 6-8 Abandonment of Property
- 6-9 Redemption of Property from Lien or Sale
- 6-10 Prosecution and Defense of Litigation and Proceedings on Behalf of Estate
- 6-11 Preservation of Voidable Transfer
- 6-12 Proceeding to Avoid Indemnifying Lien or Transfer to Surety

PART VII ADVERSARY PROCEEDINGS

Rule:

- 7-1 Scope of Rules of Part VII
- 7-3 Commencement of Adversary Proceeding
- 7-4 Process; Service of Summons, Complaint, and Notice of Trial
- 7-5 Service and Filing of Pleadings and Other Papers
- 7-7 Pleadings Allowed
- 7-8 General Rules of Pleading
- 7-9 Pleading Special Matters
- 7-10 Form of Pleadings
- 7-12 Defenses and Objections
- 7-13 Counterclaim and Cross-Claim
- 7-14 Third-Party Practice
- 7-15 Amended and Supplemental Pleadings
- 7-16 Pre-Trial Procedure; Formulating Issues
- 7-17 Parties Plaintiff and Defendant; Capacity
- 7-18 Joinder of Claims and Remedies
- 7-19 Joinder of Persons Needed for Just Determination
- 7-20 Permissive Joinder of Parties
- 7-21 Misjoinder and Non-Joinder of Parties
- 7-22 Interpleader
- 7-23 Class Proceedings
- 7-23.1 Derivative Proceedings by Shareholders

Part VII, cont'd

Rule:

- 7-23.2 Adversary Proceedings Relating to Unincorporated Associations
- 7-24 Intervention
- 7-25 Substitution of Parties
- 7-26 General Provisions Governing Discovery
- 7-27 Depositions Before Adversary Proceeding or Pending Appeal
- 7-28 Persons Before Whom Depositions May Be Taken
- 7-29 Stipulations Regarding Discovery Procedure
- 7-30 Depositions upon Oral Examination
- 7-31 Depositions upon Written Questions
- 7-32 Use of Depositions in Court Proceedings
- 7-33 Interrogatories to Parties
- 7-34 Production of Documents and Things and Entry upon Land for Inspection and Other Purposes
- 7-35 Physical and Mental Examination of Persons
- 7-36 Requests for Admission
- 7-37 Failure to Make Discovery: Sanctions
- 7-41 Dismissal of Adversary Proceedings
- 7-42 Consolidation of Adversary Proceedings; Separate Trials
- 7-44.1 Determination of Foreign Law
- 7-52 Findings by the Court
- 7-54 Judgments; Costs
- 7-55 Default

Part VII cont'd

Rule:

- 7-56 Summary Judgment
- 7-62 Stay of Proceedings to Enforce a Judgment
- 7-64 Seizure of Person or Property
- 7-65 Injunctions
- 7-67 Deposit in Court
- 7-68 Offer of Judgment
- 7-69 Execution
- 7-70 Judgments for Specific Acts; Vesting Title
- 7-71 Process in Behalf of and Against Persons Not Parties
- 7-82 Transfer of Adversary Proceeding

PART VIII APPEAL TO DISTRICT COURT

Rule:

- 8-1 Manner of Taking Appeal
- 8-2 Time for Filing Notice of Appeal
- 8-3 Finality of Referee's Judgment or Order
- 8-4 Service of the Notice of Appeal
- 8-5 Stay Pending Appeal
- 8-6 Record and Issues on Appeal
- 8-7 Transmission of the Record; Docketing of the Appeal
- 8-8 Filing and Service of Briefs

Part VIII cont'd

Rule:

- 8-9 Oral Argument
- 8-10 Disposition of Appeal; Weight Accorded Referee's Findings
- 8-11 Costs
- 8-12 Motion for Rehearing
- 8-13 Duties of Clerks *or Disposition of Appeal*
- 8-14 Suspension of Rules in Part VIII

PART IX GENERAL PROVISIONS

Rule:

- 9-1 General Definitions
- 9-2 Meanings of Words in the Federal Rules of Civil Procedure When Applicable in a Bankruptcy Case
- 9-3 Rule of Construction
- 9-4 General Requirements of Form
- 9-5 Harmless Error
- 9-6 Time
- 9-7 General Authority to Regulate Notices
- 9-8 Publication
- 9-9 Forms
- 9-10 Representation and Appearances; Powers of Attorney

Part IX cont'd

Rule:

- 9-11 Signing and Verification of Pleadings and Other Papers
- 9-12 Oaths and Affirmations
- 9-13 Habeas Corpus for Performance of Duties Under Act
- 9-14 Procedure in Contested Matters Not Otherwise Provided for
- 9-15 Objection to Jurisdiction of Court of Bankruptcy
- 9-16 Subpoena
- 9-17 Evidence
- 9-18 Secret, Confidential, Scandalous, or Defamatory Matter
- 9-19 Compromise and Arbitration
- 9-20 Contempt Proceedings
- 9-21 Judgments of Referees
- 9-22 Notice of Referee's Judgment or Order
- 9-23 New Trials; Amendment of Judgments
- 9-24 Relief from Judgment or Order
- 9-25 Security: Proceedings Against Sureties
- 9-26 Exceptions Unnecessary
- 9-27 Local Bankruptcy Rules
- 9-28 Jurisdiction Unaffected
- 9-29 Title
- 9-30 Effective Date

OFFICIAL FORMS

Form:

- No. 1 Petition for Voluntary Bankruptcy
- No. 2 Application to Pay Filing Fees in Installments
- No. 3 Order Permitting Payment of Filing Fees in Installments
- No. 4 Verification on Behalf of a Corporation
- No. 5 Verification on Behalf of a Partnership
- No. 6 Schedules
- No. 7 Statement of Affairs for Bankrupt Not Engaged in Business
- No. 8 Statement of Affairs for Bankrupt Engaged in Business
- No. 9 Creditors' Petition for Bankruptcy
- No. 10 Summons to Bankrupt
- No. 11 Adjudication of Bankruptcy
- No. 12 Order for First Meeting of Creditors and Fixing Time For Filing Objections to Discharge Combined with Notice Thereof and of Automatic Stay
- No. 13 General Power of Attorney
- No. 14 Special Power of Attorney
- No. 15 Proof of Claim
- No. 16 Proof of Claim for Wages, Salary, or Commissions
- No. 17 Order Approving Election of Trustee or Appointing Trustee and Fixing the Amount of his Bond
- No. 18 Notice to Trustee of his Election or Appointment and of Time for Filing a Complaint Objecting to his Discharge

Form:

- No. 19 Bond of Trustee or Receiver
- No. 20 Order Approving Trustee's Bond
- No. 21 Order that No Trustee Be Appointed
- No. 22 Report of Exempt Property
- No. 23 Order Approving Report of Exemptions
- No. 24 Discharge of Bankrupt
- No. 25 Trustee's Application for Leave to Abandon Property and Order Granting Application
- No. 26 Caption for Complaint in Adversary Proceeding
- No. 27 Summons and Notice of Trial of Adversary Proceeding
- No. 28 Subpoena to Witness
- No. 29 Notice of Appeal to a District Court from a Judgment of a Referee Entered in Adversary Proceeding
- No. 30 Order for and Notice of Final Meeting of Creditors
- No. 31 Report of Trustee in No-Asset Case