

Long form⁴

REPORT OF THE ADVISORY COMMITTEE ON BANKRUPTCY RULES
to the
COMMITTEE ON RULES OF PRACTICE AND PROCEDURE OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
June 30, 1965

During the first four and one-half years of its existence, the Advisory Committee on Bankruptcy Rules was engaged in formulating proposals for amendments of the General Orders and Official Forms in Bankruptcy. The General Orders and Official Forms were promulgated by the Supreme Court pursuant to former section 30 of the Bankruptcy Act. This section, originally enacted in 1898 and unchanged until repealed, had been construed by the Court to authorize the prescription only of those rules, forms, and orders as to procedure necessary for carrying the Bankruptcy Act into effect, and not to authorize additions to its substantive provisions. See *Meek v. Centre County Banking Co.*, 268 U.S. 426, 434 (1925), invalidating a general order and an official form because "without statutory warrant."

In November 1960, during its first year, the Advisory Committee recommended revision of 12 General Orders and 23 Official Forms, the abrogation of nine Official Forms, and the promulgation of four new Official Forms. These proposals were limited to those required to bring the General

Orders and Official Forms into harmony with recent amendments of the Bankruptcy Act and with current and approved practice. With minor modifications these proposed amendments became effective on July 19, 1961, by order of the Supreme Court.]

Until the enactment of Public Law 88-623 on October 3, 1964, the scope of the proposals considered by the Advisory Committee on Bankruptcy Rules was restricted by section 30 of the Bankruptcy Act.] The desirability of an enabling act which would authorize the Supreme Court to exercise the same rule-making power in respect of bankruptcy practice and procedure as that granted by 28 U.S.C. §§ 2072 and 2073 in respect of civil and admiralty procedure was recognized and discussed by the Advisory Committee at its first meeting. See Minutes of the December 1960 Meeting at pp. 17-18.] A bill to insert a new section on Bankruptcy Rules in Title 28 of the United States Code and to repeal section 30 of the Bankruptcy Act] was introduced in the 87th Congress on June 1, 1961, but died after passage by the House of Representatives. The bill was promptly reintroduced in the 88th Congress and] finally became law near the end of the second session on October 3, 1964.]

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In the meantime the Advisory Committee continued to work on proposals for changes in the "rules, forms, and orders as to procedure and for carrying the provisions of this [Bankruptcy] Act into force and effect" within the limitations imposed by section 30 of the Act. Accompanying this report are proposed amendments of fifteen General Orders and thirty Official Forms and proposals for seven new General Orders and nine new Official Forms which have been approved by the Advisory Committee and laid on the shelf pending the completion of the Committee's assignment under its original charge. In addition the Advisory Committee approved proposals to abrogate two General Orders and nine Official Forms.

As has been intimated, all of the drafts of proposals laid on the shelf, except for a few items recently approved, have been prepared and considered on an assumption that no longer holds, viz., that they must consist with the Bankruptcy Act. While a number of the drafts that have been approved will presumably remain substantially unaffected by the change in the rule-making authority, the ultimate impact of the recent legislation cannot readily be determined in advance of a consideration of proposals which, if adopted, will supersede the procedural and practice provisions of the

Bankruptcy Act. In due course all of the items on the shelf will require reconsideration in the light of the new dispensation.

At its last meeting, held on June 17 and 18, the Committee carefully considered whether any of the proposals previously approved were of such urgency that early publication to the bench and bar should be recommended to the Committee on Rules of Practice and Procedure. It was concluded that the advantages of an interim submission of proposals for consideration by the bench and bar and ultimately by the Supreme Court and Congress would be more than offset by the disadvantages, particularly in light of the risk that some if not all of the proposals now apparently ready for submission may require modification in the light of future decisions that involve supersession of provisions of the Act itself.

The Advisory Committee is proceeding to carry out its new duties under 28 U.S.C. § 2075 in accordance with the assignment given it by the Committee on Rules of Practice and Procedure. At its last meeting (on June 17 and 18) it considered proposed amendments of the Federal Rules of Civil Procedure which would accommodate unification of civil and

bankruptcy procedure insofar as the latter involves adversary proceedings. The Committee has now directed the Reporter to prepare a comprehensive draft of Bankruptcy Rules covering administrative as well as adversary matters and designed to supersede the provisions of the Bankruptcy Act dealing with procedure and practice.