

NEW
BANKRUPTCY RULES
AND
OFFICIAL FORMS

COMMITTEE ON RULES OF PRACTICE
AND PROCEDURE

OF THE

JUDICIAL CONFERENCE OF THE
UNITED STATES

AUGUST 1982

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

August 9, 1982

Honorable Edward T. Gignoux
Chairman, Committee on Rules of Practice
and Procedure of the Judicial Conference
of the United States
Washington, D.C. 20544

My Dear Judge Gignoux:

On behalf of the Advisory Committee on Bankruptcy Rules, I am pleased to transmit the rules and forms for practice under the Bankruptcy Reform Act of 1978. I am proud of the Committee's work. The challenge that it faced can be measured by the breadth of changes in the substantive law introduced by the new Bankruptcy Code.

The first task assumed and completed by the Advisory Committee was to fill certain gaps between the Code and the existing rules which are to be applied until superseded by the new rules. We drafted a small set of interim rules and forms for use between October 1, 1979, the effective date of the Code, and the promulgation of permanent rules. These interim rules were transmitted to the United States District Courts and Bankruptcy Courts and, for the most part, were adopted as local rules. After completing this project in August, 1979, the Advisory Committee began work on a comprehensive set of new rules.

Similar to the former rules, the rules are divided into parts that correspond to different aspects of bankruptcy procedure. The new rules, however, are not divided into chapters. The old rules are divided into chapters, each governing a different type of debtor relief case. The new rules are drafted to apply to all cases under the Code with variations specifically set forth when necessary.

Part I contains rules relating to the commencement of cases under the Code, to voluntary and involuntary petitions, and to the order for relief following an involuntary petition.

Part II concerns various administrative matters, including appointment and qualification of trustees, employment of professionals by trustees, creditors' meetings, voting, and examination of debtors.

Part III details the form and time for filing claims. It also includes procedures for adopting plans of reorganization under chapter 11 and plans of arrangement under chapter 13 of the Code.

Part IV deals with the debtor's duties and benefits, such as claiming exemptions permitted under the Code and obtaining a discharge from debts.

Part V is general and governs matters unique to the bankruptcy court and its personnel. It contains provisions for filing papers, record keeping, and disqualification of judges.

Part VI contains rules governing various aspects of the collection and disbursement of moneys into and from the estate.

Part VII, entitled "Adversary Proceedings," explicitly adopts most of the Federal Rules of Civil Procedure for litigated matters of a truly adversarial nature, i.e., actions between estates and third parties.

Part VIII covers appeals from bankruptcy courts.

Part IX contains general provisions, including definitions, and specifies the Federal Rules of Civil Procedure applicable to disputed matters commenced other than by complaint under Part VII.

Part X concerns the procedure in the eighteen pilot districts in which a United States trustee has been appointed. (This experimental program will end on April 1, 1984, unless Congress enacts further legislation.)

Official Forms will again go out with the rules, but the Advisory Committee proposes to relieve the Supreme Court of the responsibility for promulgating forms. Instead, we recommend promulgation by the Judicial Conference of the United States. The Advisory Committee has drafted these forms as the representative of the conference.

To draft a complete set of rules to implement the Bankruptcy Reform Act of 1978 has been a monumental task, yet we have managed to complete this assignment in the remarkably short period

of three and a half years. The Committee has held eighteen meetings, each lasting two days. Additionally, several members have met in nine subcommittee meetings of two to three days. Attendance at these meetings has been commendable: with rare exceptions, each member has attended every meeting. In its deliberations, the Committee considered each rule line by line, word for word, as the rule proceeded through several drafts.

The preliminary draft was made available for public comment from March 1, 1982 to August 1, 1982. For those individuals and organizations desiring to make oral comments, public hearings were conducted by our Committee in San Francisco, California on May 13-14, 1982, New York City on June 7-8, 1982, and Chicago, Illinois on June 24-25, 1982.

During the public comment period, we received 99 written comments, and the oral observation of 31 witnesses. In addition to comments from lawyers and individuals we received the suggestions of 11 bar associations, including the American Bar Association, eight governmental agencies, 19 bankruptcy judges, four professional conferences, and five law school professors.

The rules were drafted to accommodate any future amendments by Congress to the jurisdiction of the bankruptcy courts necessitated by Northern Pipeline Construction Co. v. Marathon Pipeline Co., ___ U.S. ___ (50 U.S.L.W. 4892, June 28, 1982).

Members of the Committee were outstanding. Our bankruptcy judges gave insight and suggestions based on their many years of diverse experience in various parts of the country. I publicly note the perceptive contributions of retired New York City bankruptcy judge, author, and lecturer Asa S. Herzog, known affectionately and deservedly as "Mr. Bankruptcy"; Clive W. Bare of Knoxville, Tennessee, a figure of national esteem who has served the federal government for 43 years, 24 years as a judge; Beryl E. McGuire of Buffalo, New York, who provided insightful views gained from an older metropolitan area; and Alexander L. Paskay of Tampa, Florida, who made vigorous contributions informed by his valuable experience in the rapidly expanding economy of the South. Herbert Katz made us the beneficiaries of his rich experience both as a trial judge in San Diego, California, and as a member of the Ninth Circuit's Appellate Panel of Bankruptcy Judges.

In addition to Professor Lawrence P. King of New York University School of Law, chief reporter to the Committee, academe was well represented by Professor Robert W. Foster,

former dean of the University of South Carolina Law School, and by Professor Walter J. Taggart of Villanova Law School, our co-reporter, who had served many years as a special law clerk to the reorganization judge in the prodigious Penn Central bankruptcy proceedings and who was a faithful and exemplary research resource to the committee.

The practicing bar was ably represented by outstanding lawyers: Norman Nachman, one of America's most highly regarded bankruptcy specialists, of Nachman, Munitz & Sweig, Chicago; Joseph Patchan of Baker & Hostetler, Cleveland, who combined a practitioner's valuable perspective with past bankruptcy judge experience; and Charles Horsky of Covington & Burling, Washington, D.C., one of this nation's most distinguished trial and appellate lawyers and current president of the National Bankruptcy Conference. Through much of his service with our committee, Richard L. Levine, of Hill & Barlow, Boston, was the first executive director of the Department of Justice's United States Trustee program. He constantly briefed us on the particulars of the experimental program.

Morey L. Sear of New Orleans not only shared his impressive experience as a district judge and a former United States magistrate, but also coordinated the Committee's work with the Federal Rules of Civil Procedure. In addition, I am grateful for his profound talent and generosity in assuming numerous administrative responsibilities on my behalf. John T. Copenhaver of Charleston, West Virginia, gave us the benefit of his present role as a district judge and his previous service as a bankruptcy judge.

Although the work is the cumulative product of the entire committee, I publicly acknowledge the monumental contribution of our chief reporter, Professor Lawrence P. King. I publicly pay tribute to his scholarship; to his unlimited capacity for meticulous research; to his unfailing energy; to his rare capacity of viewing a problem from the perspective of academic, author, editor and practitioner; and his unfailing good humor.

I thank you Judge Gignoux, for wise counsel and generous assistance.

Finally, the work of the committee could not have been performed effectively and our self-imposed deadlines could not have been met without the indispensable cooperation and services provided by Joseph F. Spaniol, Jr., Deputy Director of the Administrative Office of the United States Courts, who serves as

the Secretary of the standing committee. His faithful attendance at our meetings is much appreciated, as is his thoughtfulness in providing a capable and conscientious staff, headed by Ms. Barbara Nordberg, to attend to our needs.

Respectfully submitted,

Ruggero J. Aldisert,
*United States Circuit Judge
Pittsburgh, Pennsylvania
Chairman, Advisory Committee
on Bankruptcy Rules*

PREFACE

The Advisory Committee on Bankruptcy Rules was newly constituted as of January 1, 1979 in response to the enactment of Public Law 95-598, generally effective October 1, 1979, unofficially called the Bankruptcy Reform Act of 1978. It repealed the former Bankruptcy Act of 1898 and replaced that Act with a codified bankruptcy law in title 11 U.S.C. (the "Code").

Section 405(d) of Public Law 95-598 provides that the existing bankruptcy rules not inconsistent with the Bankruptcy Code remain in effect until repealed or superseded by new rules promulgated pursuant to 28 U.S.C. § 2075, as amended. Section 247 of Public Law 95-598 amends 28 U.S.C. § 2075 to require that rules promulgated thereunder be consistent with the Code. The rules are consistent with the Code and do not change any procedural provisions contained therein. The rules are also designed to adapt to amendments to the Code by Congress necessitated by Northern Pipeline Construction Co. v. Marathon Pipeline Co., ___ U.S. ___ (50 U.S.L.W. 4892, June 28, 1982).

The scope of the rules and forms is set forth in Rule 1001. The format is similar to that of the prior rules promulgated by the Supreme Court on varying dates between 1973 and 1976. They are divided into ten parts with titles indicating the subject matter of the rules grouped in each part. The proposed rules, however, are not divided into chapters related to the different types of debtor relief chapters in the Code. These rules apply in all chapter cases except as a particular rule otherwise provides.

Part X of these rules pertains only to the pilot districts in which a United States trustee is serving. Pursuant to § 408(c) of Public Law 95-598, the pilot program established by chapter 39 of 28 U.S.C. terminates as of April 1, 1984 unless further legislation is enacted by Congress. If this legislation is not enacted, Part X can be repealed without affecting the other rules.

SIGNIFICANT PROVISIONS OF THE PROPOSED RULES

In many respects the rules contain provisions similar to those in the former rules. Necessarily there are differences occasioned by changes made by the Code and there are provisions for the new matters. Some rules contain provisions different from those in the former rules because of changes occurring in the practice in the bankruptcy courts. Some of the significant provisions follow:

(1) Rule 1007(d) requires a debtor in a chapter 9 or 11 case to file a list of its 20 largest unsecured creditors with the petition. This will assist the court in expediting appointment of a creditors' committee as required by § 1102 of the Code.

(2) Rule 2003(b)(1) provides that the clerk of the bankruptcy court is to preside at the meeting of creditors unless the court designates another person or one is elected by creditors. Section 341(c) of the Code changes former practice and does not permit the judge to preside at the meeting.

(3) Rule 2003(b)(3) requires that a creditor desiring to vote at the meeting of creditors have either a proof of claim or some writing evidencing a right to vote. The rule provides the procedure for the holder of an allowable claim to vote and is designed to eliminate disputes at meetings by requiring some evidence of creditor status.

(4) Rule 2006, which regulates solicitation of proxies, applies only in chapter 7 cases because creditors may vote for a trustee or committee only in those cases.

(5) Rule 2007 provides a procedure for the appointment of a pre-petition committee as the statutory committee in a chapter 11 case.

(6) Rule 2013 which regulates the appointment of trustees and examiners was first included in the Suggested Interim Rules.

(7) Rule 2018(b) provides a new procedure and permits a state's Attorney General to appear subject to court approval on behalf of consumer creditors.

(8) Rule 3001 pertains to the form of the proof of claim; Rule 3002 pertains to all matters regarding its filing.

The time for filing claims in chapter 7 and 13 cases is reduced to 90 days after the first date set for the meeting of creditors. The Advisory Committee believes that six months is unnecessarily long.

(9) Rule 3003 provides the procedure and time for filing claims under § 1111(a) of the Code.

(10) Rule 3014 fixes the time within which a secured creditor may elect to hold a nonrecourse claim pursuant to § 1111(b). The

election may be made prior to the conclusion of the hearing on the disclosure statement or within a later time as the court may fix.

(11) Rule 3017 fixes the procedure for the hearing on the disclosure statement. Prior to the hearing the statement will be transmitted to the debtor, trustee, appointed committee, SEC and any party in interest requesting a copy. After its approval, the statement is transmitted to all parties whose votes are being solicited. Rule 3017(d).

(12) Rule 3020 requires that the consideration to be distributed upon confirmation of a chapter 11 plan be deposited with the trustee or debtor in possession. The Code is silent with respect to any pre-confirmation deposit.

(13) Rule 4001(a) provides that relief from the automatic stay pursuant to § 362 shall be initiated by motion.

Rule 4001(b) continues the well accepted proposal in the Suggested Interim Rules that there be a deadline imposed on the court to conclude the final hearing on a motion for relief from the automatic stay.

(14) Rule 4003(d) prescribes that the procedure avoiding a lien under § 522(f) of the Code is by motion, thus eliminating resort to the existing more formal adversary proceeding practice.

(15) Rules 4004(a) and 4007(c) provide a uniform deadline for filing complaints objecting to discharge and to determine the nondischargeability of certain debts. Former practice permitted each judge to fix a date but the Advisory Committee believes that a uniform standard is preferable.

(16) Rule 5002 governs prohibited appointments and now includes examiners within its scope. The rule is adapted from former Rule 505(a).

(17) Rule 6004(c) permits a more expeditious procedure for the sale of estate property having little value. A general notice of intention to sell will suffice and absent timely objection, the sale may take place.

(18) Pursuant to § 554 of the Code, property of the estate may be abandoned. Rule 6007 provides the procedure for abandonment.

SPECIAL CONSIDERATIONS

A. Special Masters

While Parts VII and IX together incorporate many of the Federal Rules of Civil Procedure, the proposed rules do not make Rule 53 applicable in cases under the Code. Former Bankruptcy Rule 513 provided:

If a reference is made in a bankruptcy case by a judge to a special master, the Federal Rules of Civil Procedure applicable to masters apply.

The word "judge" meant the United States district judge, not the bankruptcy judge. See § 1(20) of the Act; former Bankruptcy Rule 901. Accordingly, former Rule 513 generally applied only when a Chapter X case was retained by the district judge although it probably would apply when a district judge removed any case from the bankruptcy court to the district court. See former Rule 102(b).

There does not appear to be any need for the appointment of special masters in bankruptcy cases by bankruptcy judges. The Advisory Committee, therefore, has decided that former Rule 513 not be continued in the rules and that Rule 53 F.R.Civ.P. not be made applicable. See Rule 9031.

B. Adversary Proceedings - Part VII

The concept of adversary proceedings is continued in Part VII of the proposed rules with some changes.

Initially, former Rule 704 permitted that service by registered mail could displace personal service. In 1976, the rule was amended to permit service by first class mail because process could be avoided by nonacceptance of registered mail. The Advisory Committee decided to retain this manner of service in Rule 7004 and in addition permit service as provided in Rule 4 F.R.Civ.P.

C. Appeals - Part VIII

Because of the statutory changes made in the appellate process, the Part VIII Rules contain provisions not found in the former rules. For example, the procedure for appeals as of right and motions for leave to appeal is specified in Rule 8001(a) and 8003. The effect of taking a direct appeal by agreement to the United States Court of Appeals on a previously filed notice of appeal is set forth in Rule 8001(d).

D. General Provisions - Part IX

The rules in Part IX cover matters which are general in nature and apply in contested matters, adversary proceedings and other aspects of cases under the Code.

Rule 9003 prohibits ex parte contact with the judge unless otherwise permitted by law. This proscription was included in the Suggested Interim Rules.

Rule 9015 contains jury trial provisions and is adapted from Rules 38 and 39 F.R.Civ.P. There is a greater possibility for jury trials under the Code than under the Act. See 28 U.S.C. § 1480(a).

Rule 9027 implements 28 U.S.C. § 1478(a) which is new and permits removal of a claim or cause of action to the bankruptcy court. The rule conforms substantially to 28 U.S.C. §§ 1446-1450 and Rule 81(a) F.R.Civ.P. in providing the procedure for removal.

As under the former rules, local rules may be adopted which are not inconsistent with the Code or the rules promulgated by the Supreme Court. Rule 9029 delegates this authority to the bankruptcy courts.

OFFICIAL FORMS

Rule 9009 provides that official forms will be prescribed by the Judicial Conference of the United States. In essence, it is contemplated that the official forms, such as those prepared by the Advisory Committee and appended to these rules, will be prescribed by the Judicial Conference. The Advisory Committee on Bankruptcy Rules will be the representative of the Judicial Conference in the drafting of the forms.

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