

Rules
of
United States District Courts
FOR THE SOUTHERN AND EASTERN DISTRICTS
OF NEW YORK

**General, Calendar, Civil, Criminal, Admiralty
and Bankruptcy**



March 1, 1952

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and Bankruptcy

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THE COURT PRESS, INC.

UNDER THE SUPERVISION AND DIRECTION
OF THE COMMITTEE ON LOCAL RULES OF
THE UNITED STATES DISTRICT COURTS
FOR THE SOUTHERN AND EASTERN
DISTRICTS OF NEW YORK



Order of the United States District Court for the
Southern District of New York Adopting Local Rules.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter

- of -

RULES OF PRACTICE IN THIS COURT

PRESENT:

HONORABLE JOHN C. KNOX	HONORABLE JOHN F. X. MCGOHEY
HONORABLE HENRY W. GODDARD	HONORABLE IRVING R. KAUFMAN
HONORABLE WILLIAM BONDY	HONORABLE GREGORY F. NOONAN
HONORABLE VINCENT L. LEIBELL	HONORABLE SIDNEY SUGARMAN
HONORABLE JOHN W. CLANCY	HONORABLE EDWARD WEINFELD
HONORABLE EDWARD A. CONGER	HONORABLE THOMAS F. MURPHY
HONORABLE SYLVESTER J. RYAN	HONORABLE EDWARD J. DIMOCK
HONORABLE SAMUEL H. KAUFMAN	HONORABLE DAVID N. EDELSTEIN.

The Circuit Conference for the Second Circuit having heretofore recommended that appropriate steps be taken to formulate uniform rules of practice in the District Courts of this Circuit as nearly as may be; and to that end committees of practicing attorneys having been appointed in the Southern and Eastern Districts, respectively, to make appropriate recommendations; and the said committees having filed joint interim reports which have been examined and considered by the members of our respective Courts sitting in conference; and final action thereon now being deemed appropriate, this Court upon its own motion does hereby

ORDER (a) The General Rules, the Civil Rules, the Admiralty Rules and the Bankruptcy Rules, attached hereto, are hereby approved and adopted to govern applicable practice in this Court except such rules as are designated as applicable solely to the U. S. District Court for the Eastern District of New York. The Calendar Rules were approved and adopted by this Court by an order dated June 4, 1951. The Criminal Rules were approved and adopted by this Court by an order dated December 17, 1951.

(b) The Court hereby acknowledges a deep sense of appreciation to Harold Harper, Michael Feiring, Werner Ilsen and George L. Varian, the attorneys heretofore so appointed in this District and to Louis J. Castellano, Samuel C. Duberstein, Frank C. Mason and Charles J. Zinn, the attorneys heretofore so appointed in the Eastern District, for the extended and helpful labors which they have rendered in the performance of this onerous task, in which they have enlisted the constant and helpful cooperation of William V. Connell, the Clerk of this Court and Percy G. B. Gilkes, the Clerk of the Court in the Eastern District.

(c) These gentlemen are designated as a Standing Committee on the Rules of this Court.

(d) The effective date of the General Rules, the Civil Rules, the Admiralty Rules and the Bankruptcy Rules is to be at the beginning of business on March 1, 1952.

The Calendar Rules by an order of this Court went into effect on July 1, 1951.

The Criminal Rules by an order of this Court went into effect on January 1, 1952.

JNO. C. KNOX
HENRY W. GODDARD
WM. BONDY
VINCENT L. LEIBELL
JOHN W. CLANCY
EDWARD A. CONGER
SYLVESTER J. RYAN
SAMUEL H. KAUFMAN

JOHN F. X. McGOHEY
IRVING R. KAUFMAN
GREGORY F. NOONAN
SIDNEY SUGARMAN
EDWARD WEINFELD
THOS. F. MURPHY
E. J. DIMOCK
DAVID N. EDELSTEIN

United States District Judges.

New York, N. Y.
February 6, 1952

Order of the United States District Court for the
Eastern District of New York Adopting Local Rules.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

In the Matter

- of -

RULES OF PRACTICE IN THIS COURT

PRESENT:

HONORABLE ROBERT A. INCH,
HONORABLE CLARENCE G. GALSTON,
HONORABLE MORTIMER W. BYERS,
HONORABLE MATTHEW T. ABRUZZO,
HONORABLE HAROLD M. KENNEDY,
HONORABLE LEO F. RAYFIEL.

The Circuit Conference for the Second Circuit having heretofore recommended that appropriate steps be taken to formulate uniform Rules of Practice in the District Courts of this Circuit as nearly as may be; and to that end committees of practicing attorneys having been appointed in the Southern and Eastern Districts, respectively, to make appropriate recommendations; and the said committees having filed joint interim reports which have been examined and considered by the members of our respective Courts sitting in conference; and final action thereon now being deemed appropriate, this Court upon its own motion does hereby

ORDER: (a) The General Rules, the Civil Rules, the Criminal Rules, the Admiralty Rules, the Bankruptcy Rules, and the Calendar Rules, attached hereto, are hereby approved and adopted to govern applicable practice in this Court.

(b) The Court hereby acknowledges a deep sense of appreciation to Louis J. Castellano, Samuel C. Duberstein, Frank C. Mason and Charles J. Zinn, the attorneys heretofore so appointed in this District, and to Harold Harper, Michael Feiring, Werner Ilsen and George L. Varian, the attorneys heretofore so appointed in the Southern District,

for the extended and helpful labors which they have rendered in the performance of this onerous task, in which they have enlisted the constant and helpful cooperation of Percy G. B. Gilkes, the Clerk of the Court, and William V. Connell, the Clerk of the Court in the Southern District.

(c) These gentlemen are designated as a Standing Committee on the Rules of this Court.

(d) The effective date of the said Rules is to be at the beginning of business on March 1st, 1952.

Brooklyn, New York, February 6, 1952.

ROBERT A. INCH
CLARENCE G. GALSTON
MORTIMER W. BYERS
MATTHEW T. ABRUZZO
HAROLD M. KENNEDY
LEO F. RAYFIEL

United States District Judges.

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General Rules
of
United States District Courts
for the Southern and Eastern Districts
of New York

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OATH TO ATTORNEYS FOR ADMISSION
TO PRACTICE BEFORE THIS
COURT

YOU AND EACH OF YOU DO SOLEMNLY SWEAR *****

That you shall demean yourselves, as attorneys,
proctors, solicitors, advocates and counselors of
the United States District Court for the Southern
District of New York, uprightly, and according to
law, and shall support the Constitution of the
UNITED STATES OF AMERICA.

SO HELP YOU GOD.

GENERAL RULES

RULE 1—Judge and Clerk

(a) The word “judge,” wherever occurring in any rule of this court, shall mean any judge or justice authorized by law to serve in this court;

(b) The words “chief judge,” wherever so occurring, shall apply also to a judge temporarily performing the duties of chief judge under 28 U. S. C. Sec. 136 (e);

(c) The word “clerk,” wherever so occurring, shall include a deputy clerk designated by the clerk to perform services of the general class provided for in the rule.

Note:—(a) Revised from first paragraph of former Southern District Rule I.

(b) and (c) are new.

RULE 2—Terms of Court

A regular term of court shall commence on the first Monday of each month.

The chief judge, after consultation with his associate judges, shall divide the business of the court and assign judges to the several parts, and shall periodically file with the clerk a schedule of assignments.

The chief judge may assign a long and complicated case to a judge for all purposes including the following: (1) to hear all motions and preliminary applications; (2) to conduct the pre-trial conference and (3) to preside at the trial of the action.

Note:—28 U. S. C. Sec. 138 provides that the times for holding regular terms of court shall be determined by rule of the district court. By Sec. 137 the business of the court is to be divided among the judges as provided by rules and orders of the court. The chief judge is to divide the business and assign the cases so far as the rules do not otherwise prescribe. These statutory provisions render most of former Rule I. of the Southern District unnecessary.

RULE 3—Admission to the Bar

(a) A member in good standing of the bar of the State of New York, who has been such for at least one year, or a member in good standing of the bar of a United States district court in New Jersey, Connecticut or Vermont and of the bar of the State in which such district court is located,

provided such district court by its rules extends a corresponding privilege to members of the bar of this court, may be admitted to practice in this court on compliance with the following provisions:

Each applicant for admission shall file with the clerk of this court, at least ten days prior to hearing thereon (unless, for good cause shown, the judge shall shorten the time), a verified written petition for admission stating: (1) his residence and office address; (2) the time when, and court where, admitted; (3) his legal training and experience; (4) whether he has ever been held in contempt of court, and if so the nature of the contempt and the final disposition thereof; and (5) that he has read and is familiar with: (a) the provisions of the Judicial Code (Title 28, U. S. C.) which pertain to the jurisdiction of, and practice in, the United States district courts; (b) the Rules of Civil Procedure for the district courts; (c) the Rules of Criminal Procedure for the district courts; and (d) that he has read the Canons of Ethics of the American Bar Association, and will faithfully adhere thereto.

The petition shall be accompanied by an affidavit of an attorney of this court who has known the applicant for at least one year, stating when the affiant was admitted to practice in this court, how long and under what circumstances he has known the applicant, and what he knows of the applicant's character and experience at the bar. Such petition shall be placed at the head of the calendar and, on the call thereof, the attorney whose affidavit accompanied the petition shall personally move the admission of the applicant. If the petition is granted, the applicant shall take the oath of office and sign the roll of attorneys.

(b) A member in good standing of the bar of the United States District Court for the Southern [Eastern] District of New York may be admitted to the bar of this court without formal application (1) upon filing in this court a certificate of the clerk of the United States District Court for the Southern [Eastern] District of New York that he is a member in good standing of the bar of that court and (2) upon taking the oath of office and signing the roll of attorneys of this court.

(c) A member in good standing of the bar of any state, or of any United States district court, may upon motion be permitted to argue or try a particular cause in whole or in part as counsel or advocate. Only an attorney or proctor of this court may enter appearances for parties, sign stipu-

lations or receive payments upon judgments, decrees or orders.

Note:—(a) Formerly, the Southern District admitted members of the New Jersey bar. The Eastern District admitted members of the New Jersey, Connecticut and Vermont bars. On the other hand, the New Jersey and Connecticut district courts limit admission to members of the New Jersey and Connecticut bars, respectively. There are no written rules of the Vermont district court. This privilege should be granted only reciprocally.

The second paragraph is taken substantially from the Eastern District rule. The requirements of familiarity with the Admiralty Rules and the General Orders in Bankruptcy have been dropped in view of the fact that these are special branches. There have been substituted therefor a requirement of familiarity with part of the Judicial Code and with the Rules of Criminal Procedure. As the Canons are usually referred to as those of the American Bar Association, "American Bar Association" has been substituted for "New York State Bar Association".

(b) This is designed to save the time of the court and counsel by avoiding a second admission ceremony deemed unnecessary as between courts in the same city having identical admission requirements.

(c) Taken without substantial change from the last paragraphs of Rule II. of the Eastern and Rule III. of the Southern District, respectively, which are identical.

RULE 4—Attorneys of Record

No member of the bar of this court not having an office within the Southern or Eastern District of New York shall appear as attorney or proctor of record in any cause without designating with his initial notice or pleading a member of the bar of either district having an office within the Southern or Eastern District of New York upon whom service of papers may be made.

Note:—Adapted from Rule IV. of the Eastern and first paragraph of Rule V. of the Southern District. The requirement that the person designated be a member of the bar of this court is new. The Committee believes that the present provision for the designation of a "person" is usually construed as requiring the designation of a lawyer. At all events, such person should be subject to the discipline of the court.

The second paragraph of former Rule V. of the Southern District is covered by Rule 1 of the Criminal Rules.

RULE 5—Discipline of Attorneys

(a) The chief judge shall have charge of all matters relating to the discipline of members of the bar.

(b) The court shall make an order disbarring a member of the bar of this court (1) who has been convicted in any federal, state, or territorial court of an offense which is a felony in the jurisdiction of such conviction; or (2) who has been disbarred by any court of record, federal, state or territorial. The court may make an order disbarring a member of the bar who has resigned from the bar of any state, or of any such court. The court may make an order suspending a member of the bar of this court from practice until the expiration of the period for which he has been suspended by such other court.

The order of disbarment or suspension may be made without notice upon the filing in the office of the clerk of this court of a certified copy of the judgment of conviction or the order of disbarment or suspension.

The court, upon such notice and hearing as it directs, may make an order disbarring a member of the bar of this court who has been convicted of a misdemeanor.

If the judgment of conviction or order of disbarment or suspension upon which the disciplinary action of this court was based is reversed upon appeal or otherwise vacated, the court, upon motion duly made upon notice to the United States Attorney, may reinstate as a member of the bar of this court the person so disbarred or suspended.

(c) Professional misconduct shall include fraud, deceit, malpractice or conduct prejudicial to the administration of justice, or a failure to abide by the provisions of the canons of ethics of the American Bar Association or of the New York State Bar Association.

Complaints of professional misconduct shall be presented to the chief judge, and if he deems the charges of sufficient weight, he may refer them either to the United States Attorney for this district or to the grievance committee of a bar association in the county where the member resides or has his office. The United States Attorney or grievance committee shall thereupon conduct such preliminary investigation of the charges as may seem warranted and shall take appropriate action.

(d) A disciplinary proceeding shall be commenced by filing a petition setting forth the charges against the respondent. A copy of the petition shall be served upon the respondent personally or by mail. The respondent shall serve his answer within 20 days thereafter. The chief judge may thereupon order the matter set for prompt hearing before a court of one or more judges, or may

appoint a master to hear and report his findings and recommendations. If the court finds the respondent guilty of professional misconduct, it may disbar, suspend or reprimand him. The court, with the consent of the respondent, may order the hearing to be private, and direct the papers to be sealed.

(e) Whenever it appears that an attorney at law admitted to practice in the court of any state is convicted of any crime, or is disbarred, in this court, the clerk shall transmit to the state court where such person was admitted to practice a certified copy of the judgment of conviction or order of disbarment and a statement of the last office and residence addresses of such person.

(f) A visiting lawyer permitted to argue or try a particular cause in accordance with Rule 3(c) who is found guilty of professional misconduct shall not again be permitted to appear at the bar of this court. The order of preclusion may be made upon the same procedure prescribed herein for the discipline of members of the bar of this court. Upon the entry of such an order the clerk shall transmit to the federal or state court in which such person was admitted to practice, a certified copy thereof, and of the opinion, if any, together with so much of the transcript of the record of this court, in the original cause and in the disciplinary proceeding as this court shall direct.

Note:—Under former Rule III. of the Eastern and Rule IV. of the Southern District disbarment from another court results in automatic disbarment from the district court only if such disbarment is from the bar of the State of New York or New Jersey, or of any United States court in either of said states or in the Second or Third Circuits. There appears to be no good reason why disbarment from outside of these circuits should not also result in automatic disbarment from the district court.

Former Rule III. of the Eastern District is in general the basis of this rule.

The practice is to have disbarment cases prosecuted by the United States attorney and this should receive recognition in the rule. Authority should be given, however, to refer disbarment cases to grievance committees.

The rule prescribes the disciplinary procedure somewhat more fully than heretofore.

Subdivision (e) was suggested by Chapter 296, New York Laws of 1950, which makes a similar requirement of state courts.

Subdivision (f) is new.

RULE 6—Filing Papers

Unless a judge of this court shall otherwise direct, no paper shall be received for filing unless (a) it is plainly written, typed or printed, without erasures or interlineations which materially deface it, and (b) it bears the index number, if any, assigned to the action or proceeding.

Note:—Adapted from former Rule VII. Southern and former Rule XXI. Eastern Districts.

RULE 7—Transfer of Cases to Another District

In a case ordered transferred from this district, the clerk, unless otherwise ordered, shall promptly mail to the court to which the case is transferred (1) certified copies of the court's opinion ordering the transfer, of its order thereon, and of the docket entries in the case, and (2) the originals of all other papers on file in the case.

Note:—This rule is new and is necessitated by 28 U. S. C. 1404, 1406, which are new. The rule provides for the practice now followed by the clerk under these sections, and now and heretofore under Sec. 118 (Chapter X) of the Bankruptcy Act.

RULE 8—Naturalization Days

The petitions of aliens to become citizens of the United States shall be heard on (Eastern) Tuesdays and Thursdays, [(Southern) Mondays] and on any other day fixed by the court.

Note:—Condensed from former Rule XVIII. Eastern District and former Rule XV. Southern District.

RULE 9—Motions

(a) Except as otherwise provided by statute, rule or order of the court, notice of motion in all actions or proceedings shall be in the time and manner as provided in the Rules of Civil Procedure for the United States District Courts.

(b) The notice of motion and supporting affidavits with proof of due service shall be filed at least two days before the return day. No note of issue is required.

(c) Upon any motion directed to a pleading where no affidavit in support thereof is submitted, the moving party shall serve, together with the motion papers, a memorandum setting forth the points upon which the moving party relies.

If the memorandum be not so served, the motion shall not be heard, unless the judge before whom it is returnable otherwise directs.

(d) The judge may permit the parties to submit, and may determine motions without oral hearing upon brief written statements of reasons in support and opposition.

(e) All motions other than in criminal or bankruptcy proceedings, or for preferences, all exceptions, all writs of habeas corpus (other than in criminal proceedings, or as 28 U. S. C. Sec. 2243 may otherwise require), including deportation and exclusion, shall be heard on (Eastern) Wednesdays in the motion part [(Southern) Tuesdays and Thursdays in the motion part; except that during July, August and September, such motions shall be heard on Tuesdays only, unless the judge assigned to the motion part otherwise directs].

(f) There shall be a preliminary call of the general motion calendar by the clerk at 10 A.M. at which defaults and unopposed withdrawals may be noted. Unopposed adjournments may also be noted, when there have been no more than two previous adjournments.

(g) Bankruptcy motions and proceedings which are required to be conducted before a judge (other than jury trials) shall be heard on (Eastern) Fridays in the motion part [(Southern) Wednesdays, in the motion part; except that during July, August and September, such motions and proceedings shall be heard on the general motion day, or on such other day as the judge assigned to the motion part directs].

(h) A motion for reargument shall be made within 14 days after the filing of the court's determination of the original motion and upon the same notice required for the original motion. There shall be served with the notice a memorandum, setting forth concisely the matters or controlling decisions which counsel believes the court has overlooked. No oral argument shall be heard unless the court grants the motion and specifically directs that the matter shall be reargued orally.

Note:—This rule was covered by former Rules XI. and XIV. in the Eastern and XI. and XII. in the Southern District. References to demurrers, and to the National Prohibition and Chinese Exclusion Acts, which have been repealed, have been deleted. (b) and (f) are suggested by the Committee on Courts of Superior Jurisdiction of the Association of the Bar; (b) is now required by Rule XIV. of the Eastern Dis-

trict. (c) is new. (d) is new and is made pursuant to Rule of Civil Procedure 78.

(h) is revised from former Rule XXXV. Eastern District. While the rule does not prohibit the use of an affidavit, it seems incorrect to require it, since all relevant facts were presumably presented by affidavit upon the original hearing of the motion.

Former Rule XIV. Southern District and former Rule XIX. Eastern District are now covered by Criminal Rule 3(a).

RULE 10—Orders

(a) A memorandum of the determination of a motion, signed by the judge, shall constitute the order; but nothing herein contained shall prevent the court from making an order, either originally or on an application for resettlement, in more extended form.

(b) No *ex parte* order shall be granted, unless based upon an affidavit showing cause therefor, and stating whether or not a previous application for similar relief has been made.

Note:—(a) Revised from a portion of former Rule XI. Southern District.

(b) Civil Rule V. Eastern and Southern Districts, transferred.

Civil Rules VI. and VII., which also relate to orders generally, have been discarded.

RULE 11—Clerk to Sign Certain Orders

The clerk shall sign orders of the following classes without submission to a judge:

(a) Orders specially appointing persons 18 years old or over to serve a summons and complaint, or to serve an involuntary petition and subpoena in bankruptcy.

(b) Orders on consent for the substitution of attorneys.

(c) Except in bankruptcy, orders on consent extending for not more than 20 days in any instance the time within which to plead, move or except.

(d) Except in criminal cases, orders on consent extending for not more than 20 days in any instance the time to file the record on appeal and to docket the appeal in the appellate court.

(e) Orders of discontinuance or dismissal on consent, except in bankruptcy proceedings and in causes to which Rule 23c or Rule 66 of the Rules of Civil Procedure applies.

(f) Orders on consent satisfying decrees, and orders on consent cancelling stipulations and bonds.

Note:—The subject was dealt with in former Eastern Rule XXVIII. and former Southern XVII.

(a) This was 4 in the Eastern and (g) in the Southern District rule.

(b) This was 1 in the Eastern and (b) in the Southern District rule.

(c) This provision has been much debated in the committee. It appeared as (c) in the Southern District rule. Whether, under the Rules of Civil Procedure, the time to plead, etc., may be extended by stipulation has not yet been decided in this circuit. *Orange Theatre Corporation v. Rayherstz Amusement Corporation*, 130 F. 2d 185 (3 C. A. 1942), held that an order was necessary in civil causes. The ground of the decision was that there is no authority for the extension except under Rule of Civil Procedure 6 b and that this requires an exercise of discretion by the Court. The decision is contrary to *O'Brien v. Lashar* (2 C. A. 1921) 273 F. 520, certiorari denied 257 U. S. 640, which was decided under Equity Rule 16, which contained the same words "cause shown" that appear in Rule 6 b (198 F. xxiii). As a result of the *Rayherstz* decision, however, lawyers have been insisting upon an order. After a time, and at the suggestion of Judge Bright, the clerk discontinued signing these orders and submitted them all to the judge for signature. These orders, however, now by far outnumber all the other orders that the *ex parte* judge is required to sign, and they have become a considerable burden to the court. The judge has not the time to, and never does, make any inquiry beyond the signature of the attorney for the adverse party consenting to the extension. No actual discretion is or can be exercised. Mr. Edgar B. Tolman at the Washington Symposium (p. 115) expressed the view that the district court under Rule 83 might provide that in certain cases stipulations should be recognized without an order. Since orders are certain to be presented, however, signature by the clerk seems to be the practical solution. There appears to be no legal objection to the clerk signing extension orders in admiralty, except possibly in the case of answers to interrogatories (Supreme Court Admiralty Rule 31) as to which the same question arises.

(d) Revised from (d) of the Southern District rule. The same argument may be had as to empowering the clerk to sign orders on consent extending the time to file the record and docket the appeal, except that these orders are not so numerous. Inasmuch as the district court cannot extend the time in any event beyond ninety (90) days, the committees believe that a delegation of this power to the clerk is desirable.

(e) This is revised from 2 of the Eastern and (e) of the Southern District rule. In civil causes no order is necessary

(Rule 41a(1)) except in class actions (23c) or where a receiver has been appointed (66). Accordingly, the former Eastern rule applies only "in all cases to which the Federal Rules of Civil Procedure do not apply". However, since many such orders will be submitted in civil causes, the clerk might as well sign them. Since the Rules of Civil Procedure speak only of "dismissal," this has been added to "discontinuance," which is still employed in Admiralty.

(f) This was 3 of the Eastern and (f) of the Southern District rule.

(a) of the former Southern rule, relating to bankruptcy, has been omitted. It seems improper to provide that the clerk shall sign the order of reference in Chapter XI, XII and XIII proceedings, since Secs. 331, 431 and 631 each provides: "The *judge* may refer the proceeding to a referee." Likewise, there is no saving of time in having the clerk sign adjudications, even if this is permissible (see Official Form No. 11), since these ordinarily are accompanied by orders of general reference and again (Sec. 22a) the "judge" is empowered to refer. Discharges are ordinarily signed by the referee.

RULE 12—Form of Orders, Judgments and Decrees

The form of an order, judgment or decree shall be entitled and dated substantially as follows:

UNITED STATES DISTRICT COURT
EASTERN [SOUTHERN] DISTRICT OF NEW YORK

— — — — —
CAPTION : Docket No.
— — — — —

At Brooklyn, New York [New York, New York],
in said district, on March 1, 1952.

Note:—As to orders, this was formerly covered by Civil Rule IV., Eastern and Southern Districts.

RULE 13—Submission of Orders, Judgments and Decrees

Proposed orders, judgments and decrees shall be presented to the clerk, and not sent to the judge direct. Unless the form of order, judgment or decree is consented to in writing, or unless the court otherwise directs, two-days' notice of settlement is required. One-day's notice is required of all counter-proposals.

Note:—Revised from former Rule XXVI. Eastern District, former Rule XVI. Southern District.

RULE 14—Entering Satisfaction of Judgments or Decrees

Satisfaction of a money judgment recovered or registered in this district shall be entered by the clerk, as follows:

(a) Upon the payment into court of the amount thereof, plus interest, and the payment of the marshal's fees, if any;

(b) Upon the filing of a satisfaction-piece executed and acknowledged by (1) the judgment-creditor; or (2) his legal representatives or assigns, with evidence of their authority; or (3) his attorney or proctor, if within two years of the entry of the judgment or decree.

(c) If the judgment-creditor is the United States, upon the filing of a satisfaction-piece executed by the United States attorney.

(d) In admiralty, pursuant to an order of satisfaction; but such an order will not be made on the consent of the proctors only, unless such consent is given within two years from the entry of the decree to be satisfied.

(e) Upon the registration of a certified copy of a satisfaction entered in another district.

Note:—Revised from former Rule XXVII. Eastern and former Rule XXXI. Southern District.

The reference to "the clerk's statutory charges" in the former rules is to the 1% for receiving, keeping and paying out money, formerly covered by 28 U. S. C., Sec. 555, sub. 8. This provision was repealed by the Act of March 3, 1942, Chap. 124, 56 Stat. 122, and reference to "statutory charges" is, accordingly, deleted.

Subdivision (e) is occasioned by the provision for registration of judgment from other districts in 28 U. S. C., Sec. 1963.

RULE 15—Receivers

Applications for the appointment of receivers shall be made only to the *ex parte* judge. If he is unavailable, the application shall be made to such other judge as the chief judge designates.

Note:—Condensed from former Rule X. Southern District.

RULE 16—Oath of Master, Commissioner, Etc.

Every person appointed master, special master, commissioner, special commissioner, assessor or appraiser shall before entering upon his duties take and subscribe an oath, which, except as otherwise prescribed by statute or

rule, shall be to the effect that he will faithfully and impartially discharge his duties conformably to the order of appointment to the best of his ability and understanding. Such oath may be taken before any federal or state officer authorized by federal law to administer oaths, and shall be filed in the office of the clerk.

Note:—Neither the Rules of Civil Procedure, the Bankruptcy Act, the General Orders or the Admiralty Rules require an oath. In *Thompson v. Smith* (C. C. S. D. Ohio 1869) F. C. 13,976, it was held that a master in chancery need not be sworn, unless the court orders it. In *Magen v. United States* (2 C. A. 1928) 24 F. 2d 325, cert. den. 277 U. S. 595, a conviction for perjury before a special commissioner in bankruptcy was upheld although the officer had not been sworn. It appears to be the invariable practice for commissioners in admiralty to take oaths; for masters in civil or bankruptcy cases usually not to do so. Official Bankruptcy Form No. 12 prescribes the form of oath for an appraiser which varies only slightly in phraseology from this rule.

RULE 17—Commission to Take Testimony

(a) Except as otherwise provided by law, in all actions or proceedings where the taking of depositions of witnesses or of parties is authorized, the procedure for obtaining and using the same shall be that provided in the Rules of Civil Procedure for the United States District Courts. The party seeking the deposition shall furnish the officer to whom the commission is issued with a copy of Rules of Civil Procedure 26(b), (c), 28(c), 30(c), (d), (e) and (f) and 43(b).

(b) Upon receipt of a deposition the clerk, unless otherwise ordered, shall open and file it forthwith and give notice thereof by mail to the attorneys for the parties.

Note:—The first sentence of (a) is revised from former Rule VIII. Southern District. The second sentence of (a) and (b) are revised from Civil Rule XIII. Eastern and Southern Districts.

RULE 18—Deposition for Use Abroad

A person desiring to take the deposition of a witness who resides or may be found within the district for use in a judicial proceeding pending in a foreign country may apply *ex parte* to the court for an order designating a commissioner before whom such deposition may be taken. If a person has been appointed to take such deposition by the court in which the action is pending, the court shall des-

ignate that person commissioner unless there be good cause for withholding such designation. If no such appointment has been made, the court, if requested, shall designate as commissioner a person authorized to administer oaths by the laws of the United States or of the State of New York.

The entry of such an order constitutes a sufficient authorization for the issuance by the clerk of subpoenas for the persons named or described therein. The Rules of Civil Procedure for the United States District Courts, so far as applicable, including the provision for punishment for contempt for disobedience of a subpoena, shall govern the taking of such deposition.

Note:—This rule is in substitution for former Rule XXV. Eastern District, former Rule IX. Southern District, which provided for the execution of letters rogatory from abroad. The provisions for the taking of testimony (former 28 U. S. C., Secs. 701-704) under a commission or letters rogatory issued by a foreign court, limited to “a suit for the recovery of money or property,” were repealed by the new Judicial Code. There never had been provision for the taking of such testimony in a criminal case, or in any other type of civil case. The new Judicial Code provides as follows:

“Sec. 1782. *Testimony for use in foreign country.*

The deposition of any witness residing within the United States to be used in any judicial proceeding pending in any court in a foreign country with which the United States is at peace may be taken before a person authorized to administer oaths designated by the district court of any district where the witness resides or may be found.

The practice and procedure in taking such depositions shall conform generally to the practice and procedure for taking depositions to be used in courts of the United States.”

Accordingly, there appears to be no basis now for a local rule prescribing the method of executing letters rogatory from abroad.

It is necessary, however, under Sec. 1782, for the district court to designate “a person authorized to administer oaths” as the person before whom the deposition is to be taken. The procedure in the foreign court will, no doubt, contemplate taking the deposition before a person selected by it, such as the consul. Since Sec. 1782 directs that the procedure shall conform generally to that for taking depositions to be used in courts of the United States, reference may be had to Rule 28(a) of the Civil Rules of Procedure. This provides that a deposition may be taken “before a person appointed by the court in which the action is pending. A person so appointed has power to administer oaths and take testimony.” If this rule may be read into Sec. 1782, a person appointed by the foreign court would be a person “authorized to administer oaths.” Since such person must

also be designated by the district court in order to come under Sec. 1782, it seems proper to require that the court upon application designate the person named by the foreign court, unless there is good cause for not doing so.

The only provision for the issuance of subpoenas is found in Rule of Civil Procedure 45d(1), which requires as a condition precedent "proof of service of a notice to take a deposition." Since, however, there are instances in which the clerk should require an order, as well as proof of service of a notice, before issuing subpoenas, it seems proper to provide that the order of designation shall be sufficient authorization to issue the subpoenas.

The follow-through provisions of the former General Rules are, no doubt, due to the fact that the district court felt a responsibility to the foreign court issuing letters rogatory to see that they were executed. In view of the change in method of taking depositions these seem unnecessary.

RULE 19—Exhibits

Except in proceedings before a master or commissioner, and unless the court otherwise directs, exhibits shall not be filed with the clerk, but shall be retained in the custody of the respective attorneys who produced them in court. In the case of an appeal or other review by an appellate court a party, upon the request of any other party, shall make the original exhibits available to him, or furnish copies, as may be necessary to enable him to designate or prepare the record on appeal.

Note:—Former Rule XXIII. of the Southern District revised and enlarged.

The former rule excepted only proceedings before a master, but commissioners in admiralty also file their exhibits.

Neither the Rules of Civil Procedure nor the Admiralty Rules indicate how retained exhibits are to be made available for the record on appeal.

RULE 20—Actions by or on Behalf of Infants or Incompetents

No action by or on behalf of an infant or incompetent shall be settled or compromised without leave of the court embodied in an order, judgment or decree. The proceeding upon an application to settle or compromise such an action shall conform, as nearly as may be, to the practice in the New York state courts (see New York Rule of Civil Practice 294).

The court may authorize payment of a reasonable attorney's fee and proper disbursements from the amount recovered in such an action, whether realized by settlement, execution or otherwise.

The court shall order the balance of the proceeds of the recovery or settlement to be distributed as it deems may best protect the interest of the infant or incompetent.

Note:—This subject was originally covered by former Rule XXXIII. of the Civil Rules in both the Eastern and the Southern Districts. By an order of May 15, 1942, the Civil Rule in the Southern District was omitted and General Rule XXXIV. was substituted. The present rule follows generally former General Rule XXXIV. of the Southern District. Rule 294 of the New York Rules of Civil Practice (adapted from former General Rule XXXIV. of the Southern District) is much more complete than former Civil Rule XXXIII.

The New York provisions relating to settlement were revised in 1947, pursuant to recommendations of the Judicial Council, and among other things Article 80 of the Civil Practice Act was added, which for the first time authorized the settlement of the claim of an infant (not of an incompetent) where no action was pending. In view of the reference to the New York law and rules it is well to emphasize that the federal court can authorize the settlement only of a pending action. True, the New York State courts approved settlements prior to the enactment of Article 80, but this was based on inherited chancery jurisdiction over infants which the federal courts do not have. The Rules of Civil Procedure and the Admiralty Rules are wholly silent on this subject.

The New York statutes and rules do not specify a procedure for the application to settle or compromise the claim of an incompetent, but it is assumed that the procedure laid down in the case of infants by Rule 294 of the Rules of Civil Practice would be followed.

RULE 21—Dismissal of Causes for Want of Prosecution

Causes which have been pending for more than one year without any proceedings having been taken may be dismissed for want of prosecution by the court on its own motion at a general call of such causes upon not less than thirty (30) days' notice given by the clerk of this court by mail addressed to the attorneys or proctors of record. Notice of the call of such causes shall be published in the New York Law Journal, or otherwise as the court directs. Such calendar shall be called on the first Fridays of June and December.

Note:—This subject was covered by former Eastern District Rule XXIV. Southern XXX. The new rule is revised from the Eastern District rule. It seems preferable to give the attorneys notice in advance rather than after the order of dismissal has been entered.

Rule of Civil Procedure 60b seems adequately to take care of cases in which the dismissal is suffered through mistake, inadvertence or excusable neglect.

The requirement for publication in the New York Law Journal is taken from the Southern District rule. Other provisions of the Southern District rules seem unnecessary. Rule of Civil Procedure 41b provides in part "For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against him."

RULE 22—Notice of Claim of Unconstitutionality

If, at any time prior to the trial of any action, suit or proceeding, to which neither the United States nor any agency, officer or employee thereof is a party, a party draws in question the constitutionality of an act of Congress affecting the public interest, such party (to enable the court to comply with 28 U. S. C. Sec. 2403) shall notify the chief judge in writing of the existence of such question, giving the title of the cause, a reference to the questioned statute sufficient for its identification, and the respects in which it is claimed that the statute is unconstitutional.

Note:—Revised from former Civil Rule XI. Eastern and Southern Districts.

RULE 23—Habeas Corpus

(a) The petition in all habeas corpus proceedings shall set forth whether or not applications previously have been made for writs or for similar relief, stating to what court or judge they were made, the determination in each case, and any new facts upon the present application that were not previously shown.

(b) The original verified petition shall be filed with the clerk. In addition to the service on the respondent of the writ of habeas corpus or order to show cause why such a writ should not issue, in all cases of deportation and exclusion, and in all cases where an official or employee of the United States is respondent, a copy of the petition and writ or order to show cause shall be served on the United States attorney on the day of the issuance of the writ or granting of the order; if the office of the United States attorney is closed, these papers shall be served before 10 A.M. on the following business day.

Note:—Subdivision (a) is new. Subdivision (b) is revised from former Rule XXXI. Eastern, former Rule XX. Southern District.

28 U. S. C., Sec. 2243 indicates that the proceeding may now be initiated by order to show cause.

RULE 24—Petitions for Habeas Corpus in Exclusion and Deportation Cases

(a) A petition for habeas corpus in an exclusion or deportation case must be verified and, if the petitioner applies as next friend, must show either that the petitioner has been authorized by the alien to make the application, or that he is the parent, child, spouse, brother, or sister of the alien.

(b) Where an appeal from an order of a Board of Special Inquiry is permitted by law, a writ will not be allowed in an exclusion case unless the petition shows that the alien has taken such an appeal and that the Attorney General has affirmed the exclusion and ordered the alien to be deported; or, in a deportation case, that a warrant of deportation has been issued and affirmed by the Board of Immigration Appeals.

(c) Petitioner must state in detail what conduct of the exclusion or deportation authorities has deprived the alien of a fair hearing, and why he is entitled to land or to remain notwithstanding the order of exclusion or deportation. The petition shall include a statement (1) that the petitioner or his attorney has learned the facts so stated from the records of the Immigration and Naturalization Service; or (2) that access to such records has been refused, in which event the petition shall state when and by whom application was made, and who refused the inspection; or (3) that the interval between the notice to the alien of deportation and the time of the proposed deportation is too short to allow an examination of the records, in which event the petition shall state the time when the alien was informed of the order of exclusion and the affirmance thereof, or of the warrant of deportation and the affirmance thereof, the time of the proposed deportation, and why the interval was not long enough to apply for examination of the records.

(d) Pending the determination of a writ of habeas corpus in deportation and exclusion cases, the custody of the relator shall not be disturbed nor shall he be enlarged on bail.

Note:—Revised from former Rule XII. Eastern and former Rule XVIII. Southern District.

The Attorney General has been substituted for the Secretary of Labor in accordance with Reorganization Plan 5, effective June 14, 1940, 54 Stat. 230, 1238, 5 U. S. C. following 133 t, 5 U. S. C. 133 v. By the same plan the

office of the Commissioner of Immigration was abolished. The function is now discharged by the District Director of the Immigration and Naturalization Service.

The Chinese Exclusion Act has been repealed.

Subdivision (d) is declaratory of the decisions in *United States ex rel. Carapa v. Curran* (2 C. A. 1924) 297 F. 946, 953, 958; *United States ex rel. N. G. Hen v. Sisson* (S. D. N. Y. 1914) 220 F. 538, 540-541.

RULE 25—Service of the Writ in Exclusion and Deportation Cases

After delivery of an alien for deportation to the master of a ship or the commanding officer of an airplane, the writ shall be addressed to, and served upon, such master or commanding officer only. Notice to the respondent of the allowance or issuance of the writ will not be recognized as binding upon him without service. Service must be made by delivery of the original writ to the respondent while the alien is in his custody. Service may not be made upon a master after a ship has cast off her moorings.

In case the writ is served upon the master of a ship or upon the commanding officer of an airplane, he may deliver the alien at once to the officer from whom he received him, for custody until the return day. In such case the writ will be deemed returnable forthwith, and the custody of the officer so receiving the alien will be deemed that of the respondent, pending disposition of the writ.

Note:—Revised from former Rule XIII. Eastern and former Rule XIX. Southern District. Only substantial change is to include deportation by airplane.

RULE 26—Payment of Fees in Advance

The clerk shall not be required to render any service for which a fee is prescribed by statute or by the Judicial Conference of the United States unless the fee for the particular service is paid to him in advance.

Note:—28 U. S. C., Sec. 1914(c) provides: "Each district court by rule or standing order may require advance payment of fees."

RULE 27—Publication of Advertisements

EASTERN DISTRICT

All advertisements in admiralty or in civil causes, except notices of sale of real estate or of any interest in land, shall be published in the "Brooklyn Eagle". The court may direct the publication of such additional advertisement in the "New York Law Journal" or in any other newspaper as it may deem advisable.

Unless otherwise ordered, the following newspapers are designated in each county for publication of notices of sale of real estate or of any interest in land located therein:

In Kings County	Brooklyn Eagle Brooklyn Daily
In Queens County	Queens Evening News Long Island Daily Press
In Nassau County	Nassau Daily and Review Star News Day
In Richmond County	Staten Island Advance
In Suffolk County	Riverhead News Bay Shore Centennial County Review Hampton Chronicle

SOUTHERN DISTRICT

All advertisements except notices of sale of real estate or of any interest in land shall in civil and admiralty causes, be published in a newspaper of general circulation and published in the Borough of Manhattan. The court may direct the publication of such additional advertisement as it may deem advisable. Unless otherwise ordered, notices for the sale of real estate or of any interest in land shall be published in a newspaper of general circulation in the County in which the real estate or the land in question is located.

Note:—Revised from former Rule XXIII. Eastern, former Rule XXI Southern District.

RULE 28—Sureties

(a) Whenever a bond, undertaking or stipulation is required, it shall be sufficient, except in bankruptcy or criminal cases, or as otherwise prescribed by law, if the instrument is executed by the surety or sureties only.

(b) Except as otherwise provided by law, every bond, undertaking or stipulation must (1) be secured by the deposit of cash or government bonds in the amount of the bond, undertaking or stipulation, or be, or be secured by (2) the undertaking or guaranty of a corporate surety holding a certificate of authority from the Secretary of the Treasury, or (3) the undertaking or guaranty of two individual residents of the Southern or Eastern Districts of New York, each of whom owns real or personal property within such districts worth double the amount of the bond, undertaking or stipulation, over all his debts and liabilities, and over all obligations assumed by him on other bonds, undertakings, or stipulations, and exclusive of all legal exemptions.

(c) In the case of a bond, or undertaking, or stipulation executed by individual sureties, each surety shall attach his affidavit of justification, giving his full name, occupation, residence and business addresses, and showing that he is qualified as an individual surety under subdivision (b) of this rule.

(d) Members of the bar, administrative officers or employees of this court, the marshal, his deputies or assistants, shall not act as surety in any suit, action or proceeding pending in this court.

Note:—(a), (b) and (c) are new. Execution by the principal is apparently not required in admiralty stipulations. 28 U. S. C. Sec. 2464. Rule of Civil Procedure 73 does not require execution by the party. Rule of Criminal Procedure 46 (d), however, provides “A person required or permitted to give bail shall execute a bond for his appearance”.

(d) is revised from former Rule XVII. Eastern, former Rule XXIV. Southern District.

RULE 29—Approval of Bonds of Corporate Sureties

Except as otherwise provided by law, all bonds, undertakings and stipulations of corporate sureties holding certificates of authority from the Secretary of the Treasury, where the amount of such bonds or undertakings has been fixed by a judge or by court rule or statute, may be approved by the clerk.

Note:—Revised from last paragraph former Rule XXIX. Eastern, former Rule XXV. Southern District.

RULE 30—Supersedeas

A supersedeas bond, where the judgment is for a sum of money only, shall be in the amount of the judgment

plus 11% to cover interest and such damages for delay as may be awarded, plus \$250 to cover costs and, if eligible under Rule 29, may be approved by the clerk.

When the stay may be effected solely by the giving of the supersedeas bond, but the judgment or order is not solely for a sum of money, the court, on notice, shall fix the amount of the bond. In all other cases, it may, on notice, grant a stay on such terms as to security and otherwise as it may deem proper.

Upon approval a supersedeas bond shall be filed with the clerk, and a copy thereof, with notice of filing, promptly served on all parties affected thereby. If the appellee raises objections to the form of the bond or to the sufficiency of the surety, short notice of a hearing before the court on such objections shall be given.

Note:—Revised from former Civil Rule XXVIII. Eastern and Southern Districts.

RULE 31—Notice of Changes in Rules

No amendment shall be made by the court to any local rule which is identical with a rule of the United States District Court for the Southern [Eastern] District of New York and no additional rules, other than Calendar Rules, shall be adopted without prior notice of the proposed amendment or additions by the chief judge of this court to the chief judge of the United States District Court for the Southern [Eastern] District.

Note:—New. The purpose is to give the other court opportunity to acquiesce in proposed changes and thus keep the rules uniform as far as possible. The present rule will permit such changes as the designation of a new or different newspaper to be made without such consultation.

TABLE OF DISPOSITION OF FORMER GENERAL RULES

Southern District

Rule I.—JUDGE.

1st Par.—Covered by new Rule 1 (a).

2nd Par.—Dropped. See note to new Rule 2.

3rd Par.—Covered by new Rule 2.

Rule II.—ATTORNEYS.

Dropped as unnecessary.

Rule III.—ADMISSION TO THE BAR.

Covered by new Rule 3.

Rule IV.—DISBARMENT.

Covered by new Rule 5.

Rule V.—ATTORNEYS OF RECORD.

1st Par.—Covered by new Rule 4.

2nd Par.—Covered by Criminal Rule 1.

Rule VI.—EXTENSION OF TERMS.

1st Par.—Dropped by reason of Rule 6 (c) Rules of Civil Procedure and 28 U. S. C. Sec. 452.

2nd Par.—Dropped as covered by Rule of Criminal Procedure 39 and Rule of Civil Procedure 75.

Rule VII.—FILING PAPERS.

Covered by new Rule 6.

Rule VIII.—COMMISSIONS.

Covered by new Rule 17.

Rule IX.—LETTERS ROGATORY.

Covered by new Rule 18.

Rule X.—RECEIVERS.

Covered by new Rule 15.

Table of Disposition

Rule XI.—MOTIONS.

- 1st Par.—Covered by new Rule 9 (a).
- 2nd Par.—Covered by new Rule 10 (a).
- 3rd Par.—Covered by new Rule 9 (e).
- 4th Par.—Covered by Criminal Rules 3 (a) and 5.
- 5th Par.—Covered by new Rule 9 (g).
- 6th Par.—Dropped.

Rule XII.—NOTES OF ISSUE FOR MOTIONS.

Not required. See new Rule 9 (b).

Rule XIII.—APPLICATIONS FOR REMISSIONS OF FORFEITURE OF BAIL BONDS.

Covered by Criminal Rule 3 (a).

Rule XIV.—MOTIONS IN VACATION.

Covered by Criminal Rule 3 (a).

Rule XV.—NATURALIZATION DAYS.

Covered by new Rule 8.

Rule XVI.—SUBMISSION OF ORDERS AND DECREES.

Covered by new Rule 13.

Rule XVII.—CLERK TO SIGN CERTAIN ORDERS.

Covered by new Rule 11.

Rule XVIII.—PETITIONS FOR HABEAS CORPUS IN EXCLUSION AND DEPORTATION CASES.

Covered by new Rule 24.

Rule XIX.—SERVICE OF THE WRIT.

Covered by new Rule 25.

Rule XX.—FILING PETITION AND SERVING UNITED STATES ATTORNEY IN HABEAS CORPUS CASES.

Covered by new Rule 23 (b).

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Rule XXI.—PUBLICATION OF ADVERTISEMENTS.

Covered by new Rule 27.

Rule XXII.—EXAMINATION ON VOIR DIRE.

Dropped; covered by Rule of Criminal Procedure 24 (a).

Rule XXIII.—EXHIBITS.

Covered by new Rule 19.

Rule XXIV.—SURETIES.

Covered by new Rule 28 (d).

Rule XXV.—BONDS AND SURETIES THEREON.

1st Par.—Dropped. The rule adds nothing to the statute, 6 U. S. C. Sec. 6, and might be interpreted as barring the court's discretion to disapprove a particular bond. See *Concord Casualty & Surety Co. v. U. S.*, 69 F. 2d 78 (2 C. A. 1934).

2nd Par.—Covered by Criminal Rule 6.

3rd Par.—Covered by Criminal Rule 6.

4th Par.—Covered by new Rule 29.

Rule XXVI.—ATTENDANCE OF DEFENDANTS IN CRIMINAL CAUSES.

Covered by Criminal Rule 2.

Rule XXVII.—FINES IN CIVIL CAUSES.

1st Par.—The first paragraph of the former rule, which deals with the issuance of execution against the property where the party fined is not committed, is ambiguous and this ambiguity also affects the second paragraph. The rule may relate (1) to fines for the use of the United States other than those imposed by sentence in a criminal cause or (2) to such fines other than those embodied in a judgment in favor of the United States or imposed by sentence in a criminal cause. If

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the rule has the former and wider scope, it is unnecessary as to all the instances in which execution will issue as of course where the fine is embodied in the judgment. See 28 U. S. C. Sec. 2461. If it has the latter meaning, the rule seems to be limited to fines for civil contempt imposed for use of the United States. This would seem too narrow a field for any general rule. The ground is covered by the Rule on Civil Contempts which is Civil Rule 12.

2nd Par.—Likewise, the only civil fines which the court could have power to remit would be a fine imposed for contempt. For example, Post Office fines may be remitted by the General Accounting Office with the consent of the Postmaster General. 5 U. S. C. Sec. 383. The function of remitting fines in connection with shipping is divided between the Commandant of the Coast Guard, the Commissioner of Customs and the Secretary of Commerce. 1946 Reorganization Plan No. 3 (60 Stat. 1097), Sec. 101; 5 U. S. C. Sec. 133y-16; 19 U. S. C. Sec. 1618. Customs fines are remitted by the Secretary of the Treasury, 19 U. S. C. Sec. 1618. The same official has the power to remit or mitigate forfeitures under the Internal Revenue Laws. 26 U. S. C. Sec. 3726. In *United States v. One 1941 Plymouth Tudor Sedan*, 153 F. 2d 19 (10 C. A. 1946), it was held that the power of the district court to remit forfeitures for violation of the Revenue Laws is limited to the forfeiture for vehicles for violation of the laws pertaining to liquor.

3rd Par.—Dropped as now covered by Regulations of the Administrative Office of the United States Courts.

Rule XXVIII.—MONEYS DUE THE COLLECTOR OF CUSTOMS.

Dropped, as now covered by Regulations of the Administrative Office, United States Courts.

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Rule XXIX.—MARSHAL'S COMMISSIONS.

Dropped; the admiralty commissions upon which this rule is based were themselves abolished by Act of August 3, 1935, Ch. 431, 49 Stat. 513, which repealed Revised Statutes Sec. 829 (old 28 U. S. C. Sec. 574). Marshal's fees are now governed by 28 U. S. C. Sec. 1921.

Rule XXX.—DISMISSALS FOR WANT OF PROSECUTION.

1st Par.—Covered by new Rule 21.

2nd Par.—Dropped as unnecessary in view of Rule of Civil Procedure 41 b.

Rule XXXI.—ENTERING SATISFACTION OF JUDGMENT OR DECREE.

Covered by new Rule 14 (a) (b) (c).

Rule XXXII.—BAIL BONDS BY UNITED STATES COMMISSIONERS IN REMOVAL PROCEEDINGS.

Dropped; covered by Rule of Criminal Procedure 40 (b) (3).

Rule XXXIII.—COURT REPORTERS.

Dropped; now covered by 28 U. S. C. Sec. 753.

Rule XXXIV.—SETTLEMENT OF CLAIMS OF INFANTS AND INCOMPETENTS AND DISPOSITION OF FUNDS.

Covered by new Rule 20.

Rule XXXV.—DEPOSITS FOR CLERK'S FEES.

Dropped; Clerk's fees are now as prescribed by statute, 28 U. S. C. Sec. 1914 (a), or as prescribed by the Judicial Conference by authority of Sec. 1914 (b). But see new Rule 26.

TABLE OF DISPOSITION OF FORMER GENERAL RULES

Eastern District

Rule I.—ATTORNEYS.

1st Par.—Dropped as unnecessary.

2nd Par.—Dropped, except as covered by new Rule 3 (a) and new Rule 5 (c).

Rule II.—ADMISSION TO THE BAR.

Covered by new Rule 3.

Rule III.—DISBARMENT.

Covered by new Rule 5.

Rule IV.—ATTORNEYS OF RECORD.

Covered by new Rule 4.

Rule V.—EXTENSION OF TERMS.

1st Par.—Dropped by reason of Rule of Civil Procedure 6 (c) and 28 U. S. C. Sec. 452.

2nd Par.—Dropped as covered by Rule of Criminal Procedure 39 and Rule of Civil Procedure 75.

Rule VI.—CALENDARS.

Transferred to Calendar Rules.

Rule VII.—NOTICES OF TRIAL.

Transferred to Calendar Rules.

Rule VIII.—NEW CALENDARS.

Transferred to Calendar Rules.

Rule IX.—CALENDAR CALL.

Transferred to Calendar Rules.

Rule X.—PREFERENCES.

Transferred to Calendar Rules.

Rule XI.—MOTIONS.

Covered by new Rule 9 (a) (e) (g).

Fourth paragraph covered by Criminal Rule 3 (a).

Rule XII.—HABEAS CORPUS IN EXCLUSION AND DEPORTATION CASES.

Covered by new Rule 24.

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Rule XIII.—SERVICE OF THE WRIT.

Covered by new Rule 25.

Rule XIV.—MOTION CALENDAR.

Covered by new Rule 9 (b).

Rule XV.—FINES IN CIVIL CAUSES.

Dropped; see note to former Rule XXVII. Southern District.

Rule XVI.—MONEYS DUE THE COLLECTOR OF CUSTOMS.

Dropped, as now covered by Regulations of the Administrative Office, United States Courts.

Rule XVII.—SURETIES.

Covered by new Rule 28 (d).

Rule XVIII.—NATURALIZATION DAYS.

Covered by new Rule 8.

Rule XIX.—MOTIONS IN VACATION.

Transferred to Criminal Rule 3 (a).

Rule XX.—EXHIBITS.

Covered by new Rule 19.

Rule XXI.—FILING PAPERS.

Covered by new Rule 6.

Rule XXII.—JUDGE.—JUDGE'S ORDER.

Covered by new Rule 1 (a).

Rule XXIII.—PUBLICATION OF ADVERTISEMENTS.

Covered by new Rule 27.

Rule XXIV.—DISMISSAL FOR WANT OF PROSECUTION.

Covered by new Rule 21.

Rule XXV.—LETTERS ROGATORY.

Covered by new Rule 18.

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Rule XXVI.—SUBMISSION OF ORDERS AND DECREES.

Covered by new Rule 13.

Rule XXVII.—ENTERING SATISFACTION OF JUDGMENTS AND DECREES.

Covered by new Rule 14.

Rule XXVIII.—CLERK TO SIGN CERTAIN ORDERS.

Covered by new Rule 11.

Rule XXIX.—BONDS AND SURETIES THEREON.

1st Par.—Dropped. See note to former Rule XXV.
Southern District.

2nd Par.—Covered by Criminal Rule 6.

3rd Par.—Covered by Criminal Rule 6.

4th Par.—Covered by new Rule 29.

Rule XXX.—ADJOURNMENTS.

(a) and (b) Transferred to Calendar Rules.

(c) Dropped.

Rule XXXI.—HABEAS CORPUS.

Covered by new Rule 23 (b).

Rule XXXII.—SUSPENSION OF SENTENCE.

Covered by Criminal Rule 3 (c).

Rule XXXIII.—REQUESTS TO CHARGE.

Dropped; covered by Rule of Criminal Procedure 30.

Rule XXXIV.—EXAMINATION ON VOIR DIRE.

Dropped; covered by Rule of Criminal Procedure 24 (a).

Rule XXXV.—MOTION FOR REARGUMENT.

Covered by new Rule 9 (h).

Rule XXXVI.—NOTICE OF APPEARANCE IN FELONY CASES.

Covered by Criminal Rule 1.

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of

United States District Court

**for the Southern District
of New York**

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CALENDAR RULES—SOUTHERN DISTRICT

RULE 1—Causes Under Calendar Rules

These rules shall apply to civil and admiralty causes, but not (except where specific reference is made) to criminal causes.

RULE 2—Calendar Judge

The chief judge shall act as calendar judge. All applications with relation to the calendar shall be heard by the calendar judge. The time and place of the application shall be arranged with the calendar commissioner.

RULE 3—Calendar Commissioner

The clerk, with the approval of the court, shall appoint a calendar commissioner, whose office shall be a subdivision of the clerk's office.

The calendar commissioner shall have charge of the assignment for trial, and for pre-trial, of all causes to which the Calendar Rules apply, shall provide the court with causes ready for trial and shall act under the direction of the calendar judge.

RULE 4—Permanent Calendars

The calendar commissioner shall keep three permanent calendars of causes awaiting trial—Jury, Admiralty and Non-Jury. Upon one calendar shall be placed all jury causes raising issues of fact of a civil nature, including issues in bankruptcy proceedings triable by jury; upon the second calendar shall be placed all admiralty causes, and upon the third calendar all other non-jury causes of a civil nature, including causes wherein trial by jury has been waived. Each cause shall be designated by its title and by a serial number. The calendar status of each cause shall be kept up to date. Causes shall be renumbered from time to time. These records shall be open to the public during business hours on all days except Sundays and legal holidays.

RULE 5—Placing Causes on Calendar—Note of Issue

At any time subsequent to ten days after the service of the first answer, any party may file with the clerk, with

proof of service thereof upon the attorneys of all parties who have appeared, a note of issue stating the title of the cause, the docket number, names, addresses and telephone numbers of the attorneys, the time when the first answer was served, the specific nature and object of the action, whether and by whom a jury has been demanded and the date of the service of such demand.

The clerk shall immediately transmit the notes of issue to the calendar commissioner who shall place the causes on the appropriate calendar in the order in which the notes of issue are filed.

A party who brings in a new or additional party shall within five days thereafter serve such new or additional party or his attorney with a copy of the note of issue, and shall also within the same five-day period file a statement with the clerk, advising him of the addition of such new or additional party and of any change in the title of the action, and the name, address and telephone number of the attorney for such additional party, together with proof of service of the note of issue upon the new or additional party or his attorney, and of service of such statement upon the attorneys for all parties who have appeared. The clerk shall transmit such statement to the calendar commissioner. The cause shall retain its place upon the calendar unless the court shall otherwise direct.

No other notice of trial need be served in any cause.

RULE 6—Day and Reserve Calendars

At least three days before the opening of the October term of court, and on each court day thereafter, except as otherwise directed by the calendar judge, the calendar commissioner shall publish (a) by name and number, three day calendars, Jury Day Calendar, Admiralty Day Calendar and Non-Jury Day Calendar, and (b) by name or number, at the foot of the respective day calendars, three reserve calendars. Unless the calendar judge shall otherwise direct, the causes shall be taken in their numerical order from the permanent calendars.

RULE 7—Adjournment of Causes

(a) Adjournment of Causes on Reserve Calendars.

Causes appearing on the reserve calendars may be adjourned on written consent of all attorneys of record by use of an "adjournment slip" in such form as the calendar com-

missioner shall specify. Adjournment slips shall not be effective unless approved in writing by the calendar commissioner. All adjournment slips shall be filed with the calendar commissioner not later than 3:00 P. M. on the last court day before the day on which the cause is on the day calendar. Only three adjournments by consent shall be allowed. Under no circumstances shall the name of an opposing attorney be signed to an adjournment slip without authority, and the name of the person authorizing such signature shall appear thereon. In the event an opposing attorney does not consent that a cause on the reserve calendar be passed, an application for an adjournment may be made in writing to the calendar judge, with notice to the other side of the time and place the application is to be made.

(b) *Adjournment of Causes on Day Calendars.*

A cause appearing on the day calendar may not be adjourned except for good cause arising after it has been published on the day calendar. If there be such good cause, written application must be made forthwith to the calendar judge, with notice to the other side of the time and place the application will be made. All orders granting or denying applications for adjournments shall be immediately presented for filing to the calendar commissioner. Unless the court shall otherwise direct, causes on the day calendar which have been adjourned to a definite date shall be added to the foot of the day calendar for the adjourned date.

(c) *Holding Causes on Day Calendars.*

Causes may be held in place on the day calendars by the calendar commissioner when counsel are actually engaged.

(d) *Adjournment of Causes after Assignment to Trial Part.*

Each cause assigned to a trial part shall be tried or dismissed. Where good cause for adjournment has arisen after assignment to a trial part, application for adjournment shall be made to the trial judge. If the application be granted the cause shall be returned to the calendar commissioner.

**RULE 8—Calendar Commissioner's Communication
with Attorneys by Telephone**

During each day that the court is in session, the calendar commissioner shall telephone to the attorneys of record in the causes which are to appear on the day calendar for the

following court day and shall inquire whether they are to be tried, settled or discontinued. If any disposition of a cause results from such telephone calls other than to mark it ready for trial, an appropriate entry shall be made of such disposition, together with the name of the attorney of record authorizing such disposition.

RULE 9—Information Concerning Causes on Trial and Notification of Attorneys in Next Ready Causes

(a) The calendar commissioner shall post on bulletin boards in his office information which shall indicate the status of each cause on trial in each trial part, and the deputy clerks in the parts shall report the progress of trials to the calendar commissioner as directed by him. The calendar commissioner shall answer all inquiries by telephone or otherwise as to the disposition or status of the causes on the calendars and on trial.

(b) When a trial part is, or is about to be, disengaged, the calendar commissioner shall notify the attorneys of record in the next ready cause on the day calendar by telephone to report in a designated trial part, in such manner that they will have reasonable opportunity to reach there in time. The time of notification shall be indicated on the case record. However, responsibility for the appearance of attorneys, parties and witnesses in court in readiness for trial is on the attorneys of record and is not on the calendar commissioner.

RULE 10—Dismissal or Discontinuance of Causes by Stipulation

Where parties to any cause have stipulated its dismissal or discontinuance, the attorneys of record shall at once enter the proper order. Where the cause is on the day calendar, notice of such dismissal or discontinuance shall be given forthwith to the calendar commissioner.

RULE 11—Preferences

The following causes only shall be entitled to preferences:

(a) Issues in bankruptcy framed by an answer to a bankruptcy petition which are triable by a jury.

(b) Causes entitled to a preference under any statute of the United States.

(c) Causes restored to the calendar for a new trial by the setting aside of a former verdict, by reversal of a former judgment or after a mistrial. No new note of issue need be served or filed.

(d) Causes in which a receiver appointed by any court, or a trustee or debtor-in-possession in a bankruptcy proceeding is a plaintiff.

(e) Causes which in the judgment of the calendar judge are entitled to a preference for exceptional and meritorious reasons.

Such preferences shall be obtained only by order of the calendar judge upon two days' notice of the application. Unless otherwise ordered, a cause so preferred shall be placed at the foot of a day calendar designated by the calendar judge, except that causes entitled to a preference under (a) shall be placed at the head of the day calendar.

RULE 12—Juries

Under direction of the calendar judge, jurors for all trial parts (including the criminal parts) shall be assembled in one room and shall be under the supervision of the calendar commissioner. Sufficient numbers drawn from the jury wheel in the calendar commissioner's office shall be sent by the calendar commissioner to each trial part to be empanelled when and as required.

RULE 13—Subpoenas

All subpoenas shall be made returnable at the court, with a direction to the witness to appear in the calendar commissioner's office for information as to the trial part in which the cause is to be tried.

RULE 14—Pre-Trial Calendars and Conferences

The chief judge shall supervise the preparation of a pre-trial calendar, and shall preside at the pre-trial calendar call and at the pre-trial conferences to be held pursuant to Rule of Civil Procedure 16, or designate one or more other judges to do so.

RULE 15—Pre-Trial Calendars and Notice of the Pre-Trial Conference

(a) There shall be three pre-trial call calendars to which actions from the respective permanent calendars shall be assigned.

(b) The pre-trial call calendars shall be published in the New York Law Journal and written notice of the call shall be mailed by the calendar commissioner to the attorneys of record. The notice shall inform the attorneys that upon the call the action will be set for a pre-trial conference. It shall further inform the attorneys that at such pre-trial conference each shall be prepared to submit a typewritten memorandum covering such of the following items as are appropriate:

1. A brief statement of what the plaintiff expects to prove in support of his claim.
2. A brief statement of what the defendant expects to prove as a defense thereto.
3. Similar statements as to any counterclaim or cross-claim of a defendant.
4. Any amendments required of the pleadings.
5. Any tender of issue in the pleadings that is to be abandoned.
6. Any stipulation of facts, as to liability or damages, that the attorney is willing to make, or on which he requests an admission.
7. The details of the damages claimed, or of any other relief sought, as of the date of the pre-trial conference.
8. The documents and records to be offered in evidence at the trial which will be conceded to be genuine or as to which a concession is requested.
9. The names and specialities of experts to be called as witnesses.
10. Any other pre-trial relief which the attorney will request.

The notice shall request the attorneys in preparation for the pre-trial conference, to discuss with each other the matters listed therein.

(c) On the call of a pre-trial call calendar, actions which are not marked settled or otherwise disposed of shall be placed on a pre-trial conference calendar for a day certain. The pre-trial conference calendar shall be published in the New York Law Journal.

RULE 16—Pre-Trial Conference on Application

After the note of issue is filed and before the action appears on a pre-trial call calendar, the pre-trial judge, on written notice and for good cause shown, may set the action for a pre-trial conference for a day certain, and the clerk shall thereupon mail a notice of the conference to the attorneys of record, which shall include the information required to be given the attorneys by Rule 15 (b).

RULE 17—Pre-Trial Conferences

(a) All pre-trial conferences shall be held before a pre-trial judge in open court or in chambers, with the clerk and an official court reporter present. The attorneys appearing at the pre-trial conference shall be prepared to discuss the action and shall be authorized to act for their clients. If an attorney for a party fails to appear at a pre-trial conference, the pre-trial judge may act as in the case of a non-appearance for trial.

(b) The matter of a settlement may be discussed at the pre-trial conference, but the discussion shall not be made part of the court record and shall not be mentioned in the order entered on the pre-trial conference.

RULE 18—The Pre-Trial Order

(a) The judge shall make an order which shall recite the action taken at the conference, to which order the attorneys shall affix their signatures with respect to the stipulations and agreements set forth in said order. The order when entered shall control the subsequent course of the action unless modified by the pre-trial judge, or by the trial judge, to prevent manifest injustice.

(b) The pre-trial order shall cover such of the items in the following form as may be appropriate, subject to such additions and modifications as the pre-trial judge may deem advisable:

(Caption)

The parties to this action or their attorneys having appeared before the Court at a pre-trial conference pursuant to Rule of Civil Procedure 16, the following action was taken:

1. It is ordered that the following amendments to the pleadings are allowed:
2. The parties agreed that the trial of this action shall be based upon the pleadings as amended, except that the following issues raised by the pleadings are abandoned:
3. The parties stipulated the following facts:
4. The parties agreed that the following documents, which were marked for identification, may be received in evidence:
5. The parties agreed to limit the number of expert witnesses as follows:
6. The parties agreed that the following are all of the claims for damages or for other relief, in this action, as of the date of this conference:
7. The parties also agreed on the following matters:
8. The issues to be tried are formulated by the court as follows:
9. Briefs on the questions of law are to be filed with the clerk and copies furnished to opposing counsel, a week in advance of the trial.

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United States District Court

**for the Eastern District
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CALENDAR RULES—EASTERN DISTRICT

RULE 1—Calendars

The Clerk shall keep three permanent calendars of causes awaiting trial, namely, CIVIL JURY, CIVIL NON-JURY and ADMIRALTY.

Causes shall be placed upon the calendars to which they belong by the filing of a note of issue. The note of issue shall contain the docket number and full title of the cause, the names and addresses of the attorneys of record, the date of issue joined, the nature of the action, and a request to add it to one of the calendars above named.

Such note of issue shall be served not less than ten days and filed with proof of service at least six days before the commencement of the term for which the cause is noticed.

Note:—This rule is taken from the first and second paragraphs of former Eastern District General Rule 6; General Rule 7 provided for 10 day period for service of notice of trial.

RULE 2—Calendar Call

Day calendars shall be made up by the clerk from the permanent calendars, and called in such manner as the trial judge may direct.

If upon the call of a day calendar a cause shall be stricken therefrom, it can be replaced on the permanent calendar by stipulation approved by a judge, or order entered on motion.

Note:—This rule is substantially Eastern District General Rule 9.

RULE 3—Preferences

The following causes shall be entitled to preference:

(a) Issues in bankruptcy framed by an answer to any bankruptcy petition.

(b) Causes entitled to a preference under any statute of the United States.

(c) Causes restored to the calendar for a new trial by the setting aside of a former verdict, the reversal of a former judgment, or after a mistrial. No new note of issue need be served or filed.

(d) Causes to which a receiver appointed by any court, or a trustee in bankruptcy or debtor in possession, or a

trustee under other Chapters of the Bankruptcy Act, is a party. Causes in this class shall be allowed a preference only on the application of the receiver, trustee or debtor in possession.

(e) Causes which in the judgment of the judge before whom the particular calendar is called are entitled to a preference for exceptional and meritorious reasons.

All applications for preference shall be made on two days' notice (unless notice is waived by both parties) before the judge calling the calendar in trial term Part I Civil Jury, Admiralty, or Civil Non-Jury, as the case may be. A cause so preferred shall be placed at the foot of any day calendar designated by the judge.

Note:—Former General Rule 10 Eastern District and Calendar Rule 20 Southern District furnish the basis for this rule.

RULE 4—Reserve Calendars

The Clerk shall prepare and publish reserve calendars as the court may direct.

Note:—Rule is new.

RULE 5—Pre-Trial

An application for a pre-trial conference shall be made orally to the trial judge on the call of the calendar.

Note:—Rule is new, substantially the same as notice published in Law Journal each term.

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of

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CIVIL RULES

RULE 1—Address of Party or Original Owner of Claim to Be Furnished

A party shall furnish to any other party, within five days after demand, a verified statement setting forth his post office address and residence, and, if a corporation, the names, post office addresses and residences of its principal officers. In the case of an assigned claim, the statement shall include the post office address and residence of the original owner of the claim and of any assignee thereof. Upon non-compliance with the demand, the court, on *ex parte* application, shall order the furnishing of the statement, and in a proper case, on motion, may direct that the proceedings on the part of the non-complying party be stayed, or make such other order as justice requires.

Note:—This rule is in part former Civil Rule VIII, Eastern and Southern Districts. The balance is based on New York Rule of Civil Practice 9-a.

RULE 2—Security for Costs

(a) *By non-resident.* A plaintiff, who is not a resident of the State of New York, shall file within twenty days after service upon him of a demand therefor, a bond for costs in the sum of \$250.00, unless the court, on motion and for cause shown, dispenses with the bond or fixes a different amount. The bond shall comply with the provisions of the General Rules and shall be conditioned to secure the payment of all fees that must by law be paid by the non-resident party to the clerk, marshal or other officer of the court, and all costs and disbursements of the action which he may ultimately be required to pay to any other party. If a bond in the sum of \$250.00 is filed no approval thereof is necessary. The party filing the bond shall promptly serve on his adversary a copy thereof with notice of filing. If the bond is not filed within the time specified, or if the bond filed is found insufficient, the court, on motion of the defendant, may order that a sufficient bond be filed within a specified time, and, on motion of the defendant supported by a sufficient affidavit that the order has not been complied with, the action may be dismissed for want of prosecution.

(b) *By other parties.* The court, on motion or on its own initiative, may order any party to file an original bond

for costs or additional security for costs in such an amount and so conditioned as it may designate.

Note:—This rule is new and is based on Rule VII of the Local Rules for the United States District Courts proposed by the Judicial Conference Committee (1940).

RULE 3—Removal of Cases from State Courts

(a) A defendant or defendants desiring to remove a civil action or proceeding from a state court in this district shall file in this court a verified petition as required by 28 U. S. C. Sec. 1446, and, except where a bond is not required by law, shall file a bond in the penal sum of \$500.00, complying with the provisions of the General Rules, conditioned that the defendant or defendants will pay all costs and disbursements incurred by reason of the removal proceedings should it be determined that the case was not removable or was improperly removed.

(b) Within twenty days after filing the petition and bond, the petitioner shall file with the clerk a copy of all records and proceedings had in the state court.

(c) Upon the entry of an order remanding a case to the state court, the plaintiff shall deposit with the clerk a copy thereof to be certified and mailed by the clerk to the clerk of the state court.

Note:—This rule is new and was occasioned by reason of Sections 1446-7 of the United States Code, Title 28, which do not provide for matters embodied therein.

RULE 4—Counsel Fees on Taking Depositions in Certain Cases

(a) When a proposed deposition upon oral examination, including a deposition before action, or pending appeal, is sought to be taken at a place more than 150 miles from the courthouse, the court may provide in the order therefor, or in any order entered under Rule of Civil Procedure 30(b), that prior to the examination the applicant pay the expense of the attendance at the place where the deposition is to be taken of one attorney for the adversary party or parties, or expected party or parties, including a reasonable counsel fee. The amounts so paid shall be a taxable cost in the event that the applicant recovers costs of the action or proceeding.

(b) An order, pursuant to Rule of Civil Procedure 27(a)(2), appointing an attorney to represent the absent

expected adversary party and to cross-examine the proposed witness, shall fix his compensation to include his expenses; the compensation so fixed shall be paid by the petitioner prior to the appearance of such attorney upon the examination.

Note:—This rule is a revision of former Civil Rule XII, Eastern and Southern Districts, without changes in substance.

RULE 5—Masters

(a) *Agreement on a master.* The parties to a civil action may stipulate in writing for the appointment of a master to report upon particular issues, or upon all the issues. The stipulation may suggest the master, in which case the court may appoint the person named. The procedure covering such a reference shall be the same as that governing any other reference to a master.

(b) *May sit outside district.* A master may sit within or outside the district. Where he is requested to sit outside the district for the convenience of a party and there is opposition thereto by another party, he may make an order for the holding of the hearing, or a part thereof, outside the district, upon such terms and conditions as shall be just.

(c) *Report.* The court in passing upon the report of a master in non-jury actions shall be deemed to have adopted the findings of fact enumerated in the report, except where its order rejects the report in its entirety, or except to the extent that it specifically rejects enumerated findings.

(d) *Fees taxable.* After a master's compensation and disbursements have been allowed by the court, the prevailing party may pay such compensation and disbursements, and on payment the amount thereof shall be a taxable cost against the unsuccessful party or parties. Where, however, the court directs by order the parties against whom, or the proportion in which such compensation and disbursements shall be charged, or the fund or subject matter out of which they shall be paid, the party making the payment to the master shall be entitled to tax such compensation and disbursements only against such parties and in such proportions as the court has directed, and to payment of such taxable cost only out of such fund or subject matter as the court has directed.

(e) *Order of reference.* Whenever an order of reference to a master is made, the attorney procuring the order shall,

at the time of filing thereof, deposit with the clerk a copy to be furnished to the master.

(f) *Filing of report.* Upon the filing of his report the master shall furnish the clerk with sufficient copies of a notice of filing thereof addressed severally to the parties or their attorneys, to enable the clerk to mail copies to them.

(g) *Confirmation etc., of master's report.* A motion to confirm or to reject, in whole or in part, a report of a master shall be heard by the judge appointing such master.

Note:—Former Eastern and Southern Districts Civil Rules XVII, XIX, XX and XXI and part of XXV all dealing with Masters have been revised and combined into one rule. Civil Rule XVIII, Eastern and Southern Districts, has been eliminated as unnecessary.

(a) above is former Civil Rule XVII, Eastern and Southern Districts. (b) above is in effect former Southern District Civil Rule XIX, which is broader than former Eastern District Civil Rule XIX. See *Consolidated Fastener Co. v. Columbian Button & Fastener Co.*, 85 F. 54 (N. D. N. Y., 1898) which holds that a master in his discretion and for the convenience of the parties may sit outside the district of his appointment even where there is opposition. (c) above is in effect the second sentence in former Eastern District Civil Rule XX. (d) above is former Civil Rule XXI, Eastern and Southern Districts. (e) above is in effect the first paragraph of former Civil Rule XXV, Eastern and Southern Districts. (f) above is the second paragraph of former Civil Rule XXV, Eastern and Southern Districts. (g) above is new.

RULE 6—Proposed Findings of Fact and Conclusions of Law

In any civil action, where findings of fact and conclusions of law are required, the court may require from either or both parties, before or after the announcement of its decision, proposed findings of fact and conclusions of law, for the assistance of the court, but, unless adopted by the court, such proposed findings of fact and conclusions of law shall not form any part of the record of the action.

Note:—This rule is substantially former Civil Rule XXXVI of the Eastern District. See *Matton Oil Transfer Corp. v. "The Dynamic,"* 123 F. 2d 999 (1941); *Societe Suisse Pour Valeurs de Metaux v. Cummings*, 99 F. 2d 387, 390 (App. D. C., 1938) and *Schilling v. Schwitzer-Cummins Co.*, 142 F. 2d 82 (App. D. C., 1944).

RULE 7—Default Judgment

(a) *By the clerk.* When a party is entitled to have the clerk enter a default judgment pursuant to Rule of Civil Procedure 55(b)(1), he shall submit with his form of judgment a statement showing the principal amount due which shall not exceed the amount demanded in the complaint giving credit for any payments and showing the amounts and dates thereof, a computation of the interest to the day of judgment, and the costs and taxable disbursements claimed. An affidavit of the party or his attorney shall be appended to the statement showing: (1) that the party against whom judgment is sought is not an infant or an incompetent person; (2) that he has made default in appearance in the action; (3) that the amount shown by the statement is justly due and owing and that no part thereof has been paid except as therein set forth; and (4) that the disbursements sought to be taxed have been made in the action or will necessarily be made or incurred therein. The clerk shall thereupon enter judgment for principal, interest and costs.

(b) *By the court.* An application to the court for the entry of a default judgment, pursuant to Rule of Civil Procedure 55(b)(2), shall be accompanied by a certificate of the clerk of the entry of the default, and by a copy of the pleading to which no response has been made.

Note:—(a) above is in effect former Civil Rule XXIII, Eastern and Southern Districts. (b) above is in effect the first paragraph of former Civil Rule XXIV, Eastern and Southern Districts. The last two paragraphs of former Civil Rule XXIV have been omitted for the reason that the subject matter is sufficiently covered by Rule of Civil Procedure 55(b)(2).

RULE 8—Stenographic Transcript

Subject to the provisions of Rule of Civil Procedure 54 (d), the expense of any party in necessarily obtaining all or any part of a transcript, for purposes of a new trial, or for amended findings or for appeal shall be a taxable cost against the unsuccessful party at the rates prescribed by the Judicial Conference.

Note:—This rule is based on the fifth paragraph of former General Rule 33, Southern District adopted January 22, 1941 and in effect until July 1, 1945.

As to the transcript ordered by the court, see 28 U. S. C. Sec. 753(b), (f), which implies that no charge can be made by the stenographer if the transcript is ordered by the court; so held in *Texas City Tort Claims Suits v. United States*, 188 F. 2d 900 (5th Cir. 1951).

described and therein directed to be sold, to which
..... reference is made
(Order or Judgment)

for the terms of sale and for a description of the
property which may be briefly described as follows:

Dated:

Signature and Official Title

The notice need not describe the property by metes and bounds or otherwise in detail and will be sufficient if in general terms it identifies the property by specifying its nature and location. However, it shall state the approximate acreage of any real estate outside the limits of any town or city, the street, lot and block number of any real estate within any town or city, the termini of any railroad and a general statement of the character of any improvements upon the property.

Note:—This is in effect former Civil Rule XXVII, Eastern and Southern Districts. As to executions and judicial sales see 28 U. S. C. Secs. 2001-2004.

RULE 10—Entry of Order or Judgment

The attorney causing the entry of an order or judgment shall append to or endorse upon it a list of the names of the parties entitled to be notified of the entry thereof and the names and addresses of their respective attorneys.

Note:—This rule is in effect the last paragraph of former Civil Rule XXV, Southern District. The additional provision in former Civil Rule XXV, Eastern District, requiring the furnishing of a number of copies of such order or judgment has been omitted as unnecessary. The last paragraph of former Civil Rule XXV, Eastern District, has also been omitted as unnecessary.

RULE 11—Appeals

(a) A notice of appeal shall exhibit the names of the several parties to the judgment, and the names and addresses of their respective attorneys of record. Upon the filing of the notice of appeal the appellant shall furnish the clerk with a sufficient number of copies thereof to enable him to comply with the provisions of Rule of Civil Procedure 73(b).

(b) The designation of contents of record on appeal by Rule of Civil Procedure 75(a) required to be served and

filed by the appellant, shall be served and filed within fifteen days after an appeal is taken.

(c) Whenever a notice of motion to enforce the liability of a surety upon an appeal or a supersedeas bond is served upon the clerk pursuant to Rule of Civil Procedure 73(f), the party making such motion shall deposit with the clerk one additional copy for each surety to be served.

Note:—(a) above is in effect the third paragraph of former Civil Rule XXV, Eastern and Southern Districts. (b) above is new. It is deemed advisable to prescribe a definite time within which the designation should be served, since Rule of Civil Procedure 75(a) only provides that the designation should be served and filed “promptly.” Without a prescribed time it has occurred that the appellant delayed unreasonably in serving and filing the designation, thereby placing an undue burden upon the appellee. See, *In re Prudence Co.*, 29 F. Supp. 630 (E. D. N. Y., 1939), appeal dismissed by C. C. A. 2, Dept. Jus. Bull. on Federal Rules, Dec. No. 56, p. 51; first sentence of Rule 25 of Northern District of Illinois, 11 F. R. S. 996.

Former Civil Rules XXIX, XXX and XXXI, Eastern and Southern Districts, have been eliminated for the reason that the Rules of Civil Procedure and the Rules of the United States Court of Appeals for the Second Circuit cover the matter adequately. See also comment by Hon. William D. Mitchell in Federal Rules of Civil Procedure and Proceedings of the Institutes, Washington and New York, published by the American Bar Association, p. 326.

(c) above is paragraph 4 of former Civil Rule XXV, Eastern and Southern Districts.

RULE 12—Contempts

(a) A proceeding to adjudicate a person in civil contempt of court, including a case provided for in Rule of Civil Procedure 37(b)(2)(IV), shall be commenced by the service of a notice of motion or order to show cause. The affidavit upon which such notice of motion or order to show cause is based shall set out with particularity the misconduct complained of, the claim, if any, for damages occasioned thereby, and such evidence as to the amount of damages as may be available to the moving party. A reasonable counsel fee, necessitated by the contempt proceeding, may be included as an item of damage. Where the alleged contemnor has appeared in the action by an attorney, the notice of motion or order to show cause and the papers upon which it is based may be served upon his attorney; otherwise service shall be made personally, in the manner provided for by the Rules of Civil Procedure

for the service of a summons. If an order to show cause is sought, such order may upon necessity shown therefor, embody a direction to the United States marshal to arrest the alleged contemnor and hold him in bail in an amount fixed by the order, conditioned for his appearance at the hearing, and further conditioned that the alleged contemnor will hold himself thereafter amenable to all orders of the court for his surrender.

(b) If the alleged contemnor puts in issue his alleged misconduct or the damages thereby occasioned, he shall upon demand therefor, be entitled to have oral evidence taken thereon, either before the court or before a master appointed by the court. When by law such alleged contemnor is entitled to a trial by jury, he shall make written demand therefor on or before the return day or adjourned day of the application; otherwise he will be deemed to have waived a trial by jury.

(c) In the event the alleged contemnor is found to be in contempt of court, an order shall be made and entered (1) reciting or referring to the verdict or findings of fact upon which the adjudication is based; (2) setting forth the amount of the damages to which the complainant is entitled; (3) fixing the fine, if any, imposed by the court, which fine shall include the damages found, and naming the person to whom such fine shall be payable; (4) stating any other conditions, the performance whereof will operate to purge the contempt; and (5) directing the arrest of the contemnor by the United States marshal, and his confinement until the performance of the condition fixed in the order and the payment of the fine, or until the contemnor be otherwise discharged pursuant to law. Unless the order otherwise specifies, the place of confinement shall be the Federal House of Detention. No party shall be required to pay or to advance to the marshal any expenses for the upkeep of the prisoner. Upon such an order, no person shall be detained in prison by reason of the non-payment of the fine for a period exceeding six months. A certified copy of the order committing the contemnor shall be sufficient warrant to the marshal for the arrest and confinement. The aggrieved party shall also have the same remedies against the property of the contemnor as if the order awarding the fine were a final judgment.

(d) In the event the alleged contemnor shall be found not guilty of the charges made against him, he shall be discharged from the proceeding and, in the discretion of

the court, may have judgment against the complainant for his costs and disbursements and a reasonable counsel fee.

Note:—This rule is substantially former Civil Rule XVI, Eastern and Southern Districts. Because of the comment by Judge Clark in his concurring opinion in *In re Tracy*, 106 F. (2d) 96, 98 (2d Cir., 1939), it is provided that the proceeding may also be instituted by notice of motion. The provision requiring the setting forth of evidence as to damages in the moving affidavit has been changed in view of the comment by the Second Circuit in *Stetson v. Stetson*, 133 F. (2d) 129, 130 (1943).

(d) above is based on Rule 5 of the District of Minnesota (5 F. R. S. 938). See also Rule 7, District of North Dakota (11 F. R. S. 1003).

The last paragraph of former Civil Rule XVI, Eastern and Southern Districts, has been omitted in view of Rule of Criminal Procedure 42.

RULE 13—Procedure in Absence of Rule

Whenever a procedural question arises which is not covered by the provisions of any statute of the United States, or of the Rules of Civil Procedure, or of these Rules, it shall be determined, if possible, by the parallels or analogies furnished by such statutes and rules. If, however, no such parallels or analogies exist, then the procedure heretofore prevailing in courts of equity of the United States shall be applied, or in default thereof, in the discretion of the court, the procedure which shall then prevail in the Supreme Court of the State of New York may be applied.

Note:—This rule is former Civil Rule XXXIV, Southern District, which is very similar to former Civil Rule XLV, Eastern District.

TABLE OF DISPOSITION OF FORMER CIVIL RULES

Southern and Eastern Districts

Rule 1—ACTION TO ABATE IF DEFENDANT NOT SERVED

Discarded as unnecessary. If the Advisory Committee had thought that a time limit was advisable it would have so provided in the Rules of Civil Procedure. As a matter of fact the Advisory Committee discussed this matter at some length and decided it was unwise to put any definite limitation in the Rules of Civil Procedure. See Preliminary Draft of the Rules of Civil Procedure (May, 1936), Rule 3 “* * * An action begun by such filing and delivery [to the marshal] shall abate as to any defendant upon whom summons and complaint are not served within 60 days thereafter, unless within that period the court for good cause shown extends the time for service.” A time limitation was found in former Equity Rules XII-XIV. This Rule, thus in effect, sets aside a conclusion of the Advisory Committee which was charged with promoting uniformity so far as possible. See *Hackner v. Guaranty Trust Co.*, 117 F. 2d 95 (2d Cir. 1941, footnote p. 99); *Dabney v. Levy*, S. D. N. Y., Civil 46-461, Op. #18,004; but see, *Adams v. Jarka Corp.*, 8 F. R. D. 571 (S. D. N. Y. 1948). Furthermore, the Rules of Civil Procedure require both filing and prompt delivery of the summons to the marshal for service. Also General Rule 21, Eastern and Southern Districts, deals with dismissal of causes for want of prosecution and Rule of Civil Procedure 41(b) provides: “For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against him.”

In diversity cases the Supreme Court has held that the filing of the complaint will not toll the statute of limitations of a state where it is provided, as an integral part of the statute, that it is not tolled until actual service of the summons. *Ragan v. Merchants Transfer & Warehouse Co.*, 337 U. S. 530 (1949). This decision probably controls actions based on diversity brought in the federal courts in New York and thus the mere filing of the complaint would not help the plaintiff in tolling the statute. See also, *Nola Electric Co. v. Reilly*, 93 F. Supp. 164 (S. D. N. Y. 1949).

Rule 2—APPEARANCE

Discarded as unnecessary and not in harmony with the Rules of Civil Procedure.

Rule 3—PLEADINGS TO BE FILED

Discarded as unnecessary. See Rule of Civil Procedure 5(d).

Rule 4—FORM OF ORDER

Discarded. Covered by General Rule 12.

Table of Disposition

Rule 5—REQUISITES OF EX-PARTE ORDER

Discarded. Covered by General Rule 10(b).

Rule 6—SERVICE OF EX-PARTE ORDER

Discarded as unnecessary.

Rule 7—ORDERS TO BE FILED

Discarded. See generally Rules of Civil Procedure 5(d), (e) and 45(d)(1) and Advisory Committee note thereto.

Rule 8—ADDRESS OF PARTY TO BE FURNISHED

Covered by Civil Rule 1.

Rule 9—ENFORCEMENT OF STIPULATIONS

Discarded as unnecessary.

Rule 10—FURTHER STATEMENT OR BILL OF PARTICULARS

Discarded as unnecessary.

Rule 11—NOTIFICATION OF CLAIM OF UNCONSTITUTIONALITY

Discarded. Covered by General Rule 22.

Rule 12—COUNSEL FEES ON TAKING DEPOSITIONS IN CERTAIN
CASES

Covered by Civil Rule 4.

Rule 13—MANNER OF TAKING DEPOSITION

Discarded as sufficiently covered by Rules of Civil Procedure 26 *et seq.*

Rule 14—FURTHER ANSWER TO INTERROGATORY

Discarded as unnecessary.

Rule 15—ORDER FOR SUBPOENA DUCES TECUM FOR DEPOSITION

Discarded as obsolete. See Rule of Civil Procedure 45(d)(1) and Advisory Committee note thereto.

Rule 16—CONTEMPT PROCEDURE

Covered by Civil Rule 12.

Table of Disposition

Rule 17—AGREEMENT ON A MASTER

Covered by Civil Rule 5(a).

Rule 18—CERTAIN DIRECTIONS OF MASTER TO BE IN WRITING

Discarded as unnecessary.

Rule 19—MASTER MAY SIT OUTSIDE DISTRICT

Covered by Civil Rule 5(b).

Rule 20—FINDINGS OF FACT

First sentence discarded as unnecessary. See Rule of Civil Procedure 52(a). Second sentence of former Eastern District Rule adopted in substance and covered by Civil Rule 5(c).

Rule 21—MASTER'S FEES TAXABLE

Covered by Civil Rule 5(d).

Rule 22—ENTERING JUDGMENT

Previously abrogated in both Districts.

Rule 23—DEFAULT JUDGMENT BY CLERK

Covered by Civil Rule 7(a).

Rule 24—DEFAULT JUDGMENT BY COURT

Covered by Civil Rule 7(b).

Rule 25—ADDITIONAL COPIES FOR THE CLERK

First paragraph covered by Civil Rule 5(e).
Second paragraph covered by Civil Rule 5(f).
Third paragraph covered by Civil Rule 11(a).
Fourth paragraph covered by Civil Rule 11(c).
Fifth paragraph covered by Civil Rule 10.

Rule 25-A—CERTIFICATE OF COURT IN ACTIONS INVOLVING
EMERGENCY PRICE CONTROL ACT OF 1942

This rule was found only in the Southern District and is discarded as obsolete.

Rule 25-B—SERVICE OF PAPERS UPON THE PRICE ADMINIS-
TRATOR

This rule was found only in the Southern District and is discarded as obsolete.

Table of Disposition

Rule 25-C—REMOVED ACTIONS

Discarded. See Civil Rule 3.

Rule 26—NEW TRIAL

Discarded as unnecessary. See Rule of Civil Procedure 59(b) as amended.

Rule 27—NOTICE OF SALE

Covered by Civil Rule 9.

Rule 28—SUPERSEDEAS

Discarded. Covered by General Rule 30.

Rule 29—DESIGNATION OF PART OF REPORTER'S TRANSCRIPT
FOR APPEAL

Discarded. Sufficiently covered by the Rules of Civil Procedure and the Rules of the Court of Appeals for the Second Circuit.

Rule 30—ABRIDGEMENT OF EXHIBITS

Discarded. Sufficiently covered by the Rules of Civil Procedure and the Rules of the Court of Appeals for the Second Circuit.

Rule 31—RECORD ON APPEAL

Discarded. Sufficiently covered by the Rules of Civil Procedure and the Rules of the Court of Appeals for the Second Circuit.

Rule 32—OFFICIAL STENOGRAPHER

Discarded. Now covered by 28 U. S. C. §753.

Rule 33—SETTLEMENT OF CLAIMS OF INFANTS AND INCOMPETENTS
AND DISPOSITION OF FUNDS

Southern District Rule discarded May 15, 1942. Former Eastern District Rule discarded. Subject now covered by General Rule 20.

Rule 34—SOUTHERN DISTRICT. PROCEDURE IN ABSENCE OF
RULE

This is the last Southern District Rule and is now covered by Civil Rule 13.

Table of Disposition

THE FOLLOWING RULES APPLIED ONLY TO THE EASTERN DISTRICT.

Rule 34—PLACING CAUSES ON CALENDAR

Discarded. See the new Calendar Rules for the Eastern District.

Rule 35—EXAMINATION ON VOIR DIRE

Discarded. See Rule of Civil Procedure 47(a).

Rule 36—PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF
LAW

Covered by Civil Rule 6.

Rule 37—ALLOWANCES TO RECEIVERS AND ATTORNEYS

Discarded as unnecessary.

Rule 38—RECEIVERS—EMPLOYMENT OF SOLICITOR, ATTORNEY,
SPECIAL COUNSEL, ACCOUNTANT OR INVESTIGATOR

Discarded as unnecessary.

Rule 39—RECEIVERS—POWER TO CONDUCT OR CONTINUE BUSI-
NESS

Discarded as unnecessary.

Rule 40—DEPOSITORIES

Discarded as unnecessary.

Rule 41—RECEIVERS TO DEPOSIT IN DESIGNATED DEPOSITORIES

Discarded as unnecessary.

Rule 42—RECEIVERS—FORM OF NOTICE AND MAILING

Discarded as unnecessary.

Rule 43—DISCHARGE OF RECEIVER

Discarded as unnecessary.

Rule 44—FORM OF BAIL

Discarded as unnecessary. See generally Rule of Civil Procedure 64.

Rule 45—PROCEDURE IN ABSENCE OF RULE

Covered by Civil Rule 13.

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Criminal Rules

of

United States District Courts

**for the Southern and Eastern Districts
of New York**

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CRIMINAL RULES

RULE 1—Notice of Appearance

Attorneys representing defendants named in an information or indictment shall file a notice of appearance in the clerk's office and serve a copy on the United States attorney; or, in cases wherein a complaint has been filed with the United States commissioner, a notice of appearance shall be filed with him and a copy served on the United States attorney.

Note:—Former General Rule 36 Eastern District required notice to be filed in felony cases only.

Former General Rule 5 Southern District required a notice of appearance in all cases including cases where a complaint only has been filed.

RULE 2—Attendance of Defendants

A defendant in a criminal prosecution admitted to bail shall attend before the court at all times required by the Rules of Criminal Procedure for the United States District Courts, and at any time upon notice from the United States attorney.

Note:—Former General Rule 26 Southern District provided that a defendant in a criminal prosecution admitted to bail shall not be required to attend any term of court except upon notice from the United States attorney.

Rule of Criminal Procedure 43 states the times when defendant's presence is required; on arraignment, trial, including impaneling of jury, verdict and sentence; and provides for trial continuance in event of voluntary absence after trial begins. Provision is also made for trial in misdemeanor cases without personal attendance, upon written consent.

RULE 3—Motions

(a) Except as otherwise provided by statute, rule or order of the court, motions in criminal proceedings and motions for remission of forfeiture of bail shall be made upon five days' notice to the United States attorney, returnable on Monday in the criminal calendar part. When no session is being held for the trial of criminal causes, the motions shall be made returnable in the general motion part.

(b) Notice of motion and any supporting affidavits must

be filed with the clerk at least two days before the return day. No note of issue is required.

(c) Motions for correction or reduction of sentence under Rule of Criminal Procedure 35, or to suspend execution of sentence under 18 U. S. C. Sec. 3651, or in arrest of judgment under Rule of Criminal Procedure 34, shall be referred to the trial judge. If he has ceased to be a judge of the court, is absent from the district, or is for any reason incapacitated from performing his duties, the judge presiding in the criminal calendar part may hear the same. If the trial judge served by designation and assignment under 28 U. S. C. Secs. 291-296, and is absent from the district, such motions may be referred to him for consideration and disposition.

Note:—Motions covered by former General Rules 12 and 14 Southern District, and General Rule 19, Eastern District.

Former General Rule 32 Eastern District required that motions to suspend execution of sentence be referred to the judge who imposed sentence.

Rules of Criminal Procedure 34 and 35 provide for motions in arrest of judgment, and for correction or reduction of sentence.

RULE 4—Bail Pending Appeal

Application for bail pending appeal shall be made orally upon the clerk's or stenographer's minutes to the trial judge, upon notice. The action taken thereon and the reasons therefor shall be recorded. The judge may direct that the application be made upon notice and written petition setting forth briefly the questions to be reviewed by the appellate court.

Note:—Rule of Criminal Procedure 46 (a) (2) provides that bail may be allowed by trial judge, appellate court, by any judge thereof, or circuit justice pending appeal or certiorari, only if it appears that the case involves a substantial question which should be determined by the appellate court.

Rule of Criminal Procedure 38 (c) provides that an application for bail pending appeal may be made to the appellate court, or a judge thereof, or justice of the Supreme Court; that the application shall be upon notice, and show the disposition thereof by the court below with the reasons given for the denial, if the motion was denied. Court of Appeals Rule 23, provides that all such applications be made to the judge who imposed sentence, and that upon refusal, application may be made to the Court of Appeals on notice, and in compliance with Rule of Criminal Procedure 38 (c).

RULE 5—Writs of Habeas Corpus

Writs of habeas corpus in criminal, removal, and extradition proceedings shall be heard in the criminal calendar part.

Note:—Former General Rule 11 Eastern District and former General Rule 11 Southern District. 28 U. S. C. 2243 prescribes the time for filing the return and time for hearing.

RULE 6—Approval of Bail Bonds

In causes wherein the amount of bail has been fixed by the judge, the clerk may approve the bond of a corporate surety holding a certificate of authority from the Secretary of the Treasury, and may approve the bond of an individual furnishing such bail in cash or Government bonds.

Bail bonds of individual sureties shall be approved by one of the officers specified in 18 U. S. C. Sec. 3041.

Note:—Title 6 U. S. C. Sec. 6 covers surety companies. Rule is same as former General Rule 25 Southern District and former General Rule 29 Eastern District, excepting for omission of last paragraph of these two identical rules. Last paragraph of former rule now included in new General Rule 29.

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Admiralty Rules

of

United States District Courts

**for the Southern and Eastern Districts
of New York**

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ADMIRALTY RULES

RULE 1—Process. Return of Same

All process shall be issued by the clerk. Process *in personam* shall be returnable on the return day thereof at the clerk's office not less than eight days from its issuance, and shall be served not less than four days before the return day, unless otherwise ordered. Process *in rem* shall be returnable and called by the clerk at the next general motion day, not less than eight days from its issuance unless otherwise ordered. The return upon such process shall state the date of seizure or of sale, as the case may be. Appearance or claim shall be filed on or before the return day, and when none is filed, a proper decree, interlocutory or final, may be entered.

Note:—Former rules 1 and 2 in the two Districts are combined in this rule.

RULE 2—Publication: Sale

(a) Unless otherwise ordered or provided by law, notice of arrest of property in suits *in rem*, shall be published once at least one week before the date on which the process is returnable and shall contain the title of the cause, the nature of the cause of action, the amount demanded, the time and place of the return of process and names of the marshal and proctor, and shall state that all interested persons should appear, otherwise default will be noted and condemnation ordered.

(b) When the *res* remains in custody of the marshal, the cause will not be heard until after publication of process shall have been made in that cause, or in some other pending cause in which the property is held in custody. No final decree shall be entered ordering the condemnation and sale of property, not perishable, arrested under process *in rem*, unless publication of process in that cause shall have been duly made.

(c) Unless otherwise ordered or provided by law, notice of sale of property after condemnation in suits *in rem* shall be published daily for at least six days before sale.

(d) No sale of the *res* shall be ordered by interlocutory decree before the sum chargeable thereon is fixed by the

court, except by consent of the parties or by order of the court.

Note:—This rule combines former rules 4, 5 and 6 in both districts, with exceptions. No reference is here made to newspapers where publication shall be made, since general rule 27 so provides. The only reference in Supreme Court Admiralty Rules to publication is in rule 10,—that the marshal shall give public notice of the arrest of a vessel, the time assigned for the return of the cause “in such newspaper within the district as the district court shall order; and if there is no newspaper published therein, then in such other public places in the district as the court shall direct”.

Section 736 of Title 28 U. S. C. entitled “Seizure for Forfeiture”, and which provided for 14 days publication of notice of seizure and libel when any vessel or merchandise is seized by the customs authorities and prosecuted for forfeiture was repealed by the Act of June 25, 1948 c. 646, Section 39, 62 Stat. 992. This section was the only one fixing the number of days for publication in matters brought on behalf of the United States or under the revenue laws. It is understood that since such repeal, the United States attorney has followed the former local admiralty rule for publication in matters involving property arrested or sold by or on behalf of the United States. Accordingly, this rule would also have application to causes on behalf of the United States or under the revenue laws.

RULE 3—Property in Possession of Collector

(a) In suits in *rem* when the *res* is in the custody of the collector of customs the marshal shall, in addition to the publication of the process provided for by Rule 2, deliver a copy of the process to the collector together with notice of the attachment of the property therein described and require the collector to detain such property in custody until the further order of the court.

(b) In case the collector is not found within the district, then a copy of such process and notice shall be delivered to the custodian of the property within the district.

(c) Notice of the attachment shall also be given to the owner or his agent if found within the district and, if the owner or his agent cannot be found within the district or if such owner or agent be unknown, then the publication of such notice shall be deemed sufficient, unless the court shall otherwise direct.

Note:—(1) The language of former rule 3 in both districts apparently did not require publication of notice of arrest where property was in the possession of the collector.

(2) Publication of such notice is not necessary to confer jurisdiction where the libel is by the United States, provided the *res* is in possession of the collector when the libel is filed. (Benedict, Vol. II. § 300; *The Underwriter* (2 C. A.), 13 F. (2d) 433).

(3) Upon the filing of an independent libel, however, publication of the notice of attachment is required, where the *res* is in the possession of the collector, before the attachment can be binding upon the owner or parties, other than the collector, who may be interested in such *res*. (*The Algie* (E. D. N. Y., Campbell, J.), 50 F. (2d) 624, 625). Supreme Court admiralty rules 9 and 10 require publication in *all* suits *in rem*.

(4) The rule as it formerly existed did not provide for the contingency of notice to an owner or agent who could not be found within the district. In suits *in rem* notice to the owner in some form must be given if the decree is to be conclusive upon them. Publication is accepted as a sufficient notice or invitation to appear when the owner cannot be found within the district. (*The Lottawanna*, 87 U. S. (20 Wall.) 201; *The Rio Grande*, 90 U. S. (23 Wall.) 458).

(5) The marshals in both districts appear to properly require publication of all independent process *in rem*, even where the *res* may be in the possession of the collector of customs.

RULE 4—Possessory, Petitory and Licitation Suits

In all possessory, petitory and licitation suits, the process shall be returnable at the first general motion day not less than three days after date of the issuance of the process, unless otherwise ordered by a judge. Unless otherwise ordered, the answer shall be filed upon return of the process duly served, and a day of hearing then fixed.

Note:—This is a modification of former rule 37 in both districts. Supreme Court admiralty rule 19 defines the process employed in possessory and petitory suits “by an arrest of the ship, and by a monition to the adverse party or parties to appear and make answer to the suit”. Former rule 37 provided “Notice by publication will not be required unless specially ordered”. This sentence has been deleted from the present rule because Supreme Court admiralty rule 10 requires publication in all suits and proceedings *in rem*.

RULE 5—Suits in Forma Pauperis

Unless allowed by the court, no process *in rem* shall issue in forma pauperis suits except upon proof of twenty-four

hours notice to the owner of the *res* or his agent, of the filing of the libel.

Note:—Former rule 38 in both districts provided that suits could be prosecuted or defended in *forma pauperis*, by allowance of the court, and without the requirement of a stipulation for costs. It also provided for notice to the owner of the *res*, of the filing of the libel. Only that portion relating to notice is now preserved in the present rule because by the Judicial Code, Title 28, Sections 1915 (a) and 1916 citizens and seamen may institute or defend in *forma pauperis* without prepayment of fees and costs or security therefor.

RULE 6—Security for Costs

(a) No libel, petition, appearance, claim or answer shall be filed, except on the part of the United States, or on the special order of the court, or when otherwise provided by law, or by these rules, unless the party offering the same shall file a stipulation for costs, conditioned that the principal shall pay all costs awarded by the court, and, in case of appeal, by any appellate court, against him, it or them. In suits *in personam*, such stipulation shall be in the sum of \$100; in suits *in rem*, or where process of attachment is to be issued, the stipulation shall be in the sum of \$250. In lieu of a stipulation the party may deposit the necessary amount in the registry of the court. A separate stipulation for costs shall not be required where a stipulation for value is given and the amount of such stipulation, as fixed by the court or by agreement, is increased by the amount of the appropriate stipulation for costs.

(b) Seamen suing for wages in their own right and for their own benefit for services on board American vessels, salvors coming into port in possession of the property libelled, petitioners for money in the registry of the court, and the City of New York, shall not be required to give such security in the first instance. The court, however, may on motion order the usual stipulation to be given.

Note:—The language is substantially the same as that of rule 7 in both districts with some rearrangement of the wording.

RULE 7—Stipulations

(a) All stipulations shall contain the consent of the stipulators, that if the libellant or petitioner recover, the decree may be entered against them for an amount not exceeding the amount named in such stipulation and that

thereupon execution may issue against their goods, chattels, lands, and tenements or other real estate.

(b) Where the party offering a stipulation for costs resides or has a place of business within the Southern or Eastern District of New York, one surety shall be sufficient, if a resident of either district.

Note:—Rule 8 of both districts was revised. The form of stipulation is covered by general rule 28 (b), except so much thereof as is peculiarly applicable to admiralty.

RULE 8—General or Standing Stipulations

Whenever the owner or owners of any vessel shall execute and deliver to the marshal a general bond or stipulation as provided by Title 28, U. S. Code, Section 2464 and Supreme Court admiralty rules, conditioned to answer the decree of the court in all or any cases that shall thereafter be brought against the said vessel, notice of the process shall be given to the principal and surety or sureties in said bond by service of a copy thereof by the marshal upon each of the persons named in said bond. Failure to receive such notice shall in no wise affect the liability under such bond; all other notices shall be given and the cause proceed as if such vessel had been taken into actual custody.

Note:—This is former rule 45 of the Southern District with slight modification of language and correction of statute reference; the former rule spoke of “Section 941 of the Revised Statutes, as amended (28 U. S. Code Section 754)”, which was repealed by the schedule attached to Public Law 773. The posting of special bond is now governed by Section 2464 of Title 28. The Eastern District heretofore did not have a rule on this subject.

RULE 9—Stipulators, Justification by

(a) Stipulators may justify on short notice before the clerk, a commissioner, or a notary public, who, if required by the opposite party shall examine the sureties under oath as to their sufficiency, and annex their depositions to the bond or stipulation.

(b) In all cases where the surety on bonds or stipulations is not a corporate surety holding a certificate of authority of the Secretary of the Treasury and the bond or stipulation is not approved by proctors, reasonable notice of application for approval by a judge shall be given. In the absence of

the judges, the approval of the clerk, on like notice, shall be sufficient.

Note:—The first paragraph is the language of former rule 9 of both districts, the term “deputy clerk” having been omitted in view of the definition rule in local general rules and which includes the “deputy” within the designation “clerk”. The second paragraph is an amendment of the former rule by the addition of the words “In all cases * * * Treasury” to confirm the practice of requiring notice of application for approval of individual sureties.

RULE 10—Verification of Pleadings and Interrogatories

Verification of claims to property, pleadings and answers to interrogatories shall be by the parties or one of them, and if a corporate party, by an officer thereof. If the individual party or all officers of the corporate party are not within the City of New York, the verification may be made by an agent, attorney-in-fact or proctor, who shall state briefly the sources of his knowledge or information, declare that the document affirmed to is true to the best of his knowledge, information and belief, and state the reason why the verification is not made by the party. If the personal oath of a party or all the parties be demanded, a motion may be made for a stay pending the procurement of such verification by commission or otherwise.

Note:—This is in substantially the same language as former rule 12 in both districts, except that it provides for claims to property and also for corporate verification. It is not in conflict with or repetitious of Supreme Court admiralty rules, of which rules 25, 26 and 31 deal with verification of pleadings and other papers, each merely providing that the papers be “on oath or solemn affirmation” or “under oath”. Rule 33 of Supreme Court admiralty rules provides for issuance of a commission, in the court’s discretion, where a party is out of the country or unable from sickness or other casualty to make answer on oath or solemn affirmation at the proper time.

RULE 11—Time to Plead or Except; Interrogatories

Unless the court directs otherwise:

(a) When process is issued the answer, exceptions or exceptive allegations to the libel or petition, (except in possessory, petitory and licitation suits), shall be filed within three weeks after the return day.

(b) When process has not been issued, but a claim or notice of appearance has been filed, the answer, exceptions or exceptive allegations shall be filed within three weeks thereafter.

(c) Exceptions or exceptive allegations to the answer must be filed within three weeks after service of a copy of the answer.

(d) If a party submit to exceptions he shall amend his pleading with respect to the matters excepted to within three weeks after service of a copy of the exceptions.

(e) If exceptions to a pleading or to an interrogatory be overruled, the party excepting may answer within two weeks after the service of a copy of the order on his proctor.

(f) In all suits in which the United States shall be respondent in admiralty, the notice of appearance shall be filed within two weeks after the completion of the prescribed service of the libel, and the answer within four weeks after the completion of said service.

Note:—This rule combines former rules 13 and 14 in both districts.

The time to plead or except under former rule 13 in the Eastern District was two weeks and in the Southern District three weeks. By this rule the period of three weeks has been fixed for both districts. Time to plead in possessory suits is taken care of by local rule 4 and Supreme Court admiralty rule 19.

The last paragraph of former rule 13 in both districts relating to the entry of a decree pro confesso is here omitted, but included in rule 22 dealing with decrees on default in *in rem* suits.

The last paragraph of former rule 14, relating to interrogatories, and the answer or exceptions thereto, is omitted. Supreme Court rule 31 (in effect September 1, 1939) is that interrogatories shall be excepted to or answered within fifteen days. It also provides the method of bringing exceptions on for hearing "with notice as in case of motion". Therefore, no provision is here required for interrogatories, the answers or exceptions thereto.

Sub-division (e) of this rule provides a time period within which to answer, when the time is not otherwise specified in the order.

This rule is not in conflict with or repetitious of Supreme Court admiralty rules 26, 27, 28, 29 and 39. Rule 26 defines requisites of the answer. Rule 27 provides that parties may except to pleadings or interrogatories. Rule 28 permits the default upon failure to answer and also the setting aside of the default upon application to the court. Rule 29 provides that the court may compel a further answer. Rule 39 permits the court to grant a rehearing within sixty days after the decree has been entered, the term of the court being deemed extended for this purpose until the expiration of sixty days. This rule is superseded by statute, Title 28, U. S. C. § 139.

RULE 12—Joinder

(a) Except as governed by Supreme Court admiralty rules, parties may sue and parties (including a vessel or other *res*) may be sued either jointly, severally or alternatively in one suit, and persons having separate causes of action may join in one suit if the causes of action involve substantially the same questions and arise out of the same transactions.

(b) Persons who, under the preceding paragraph of this rule, might have joined as co-libellants, and, in suits for wages, any other seamen claiming wages for the same voyage, not made parties in the original libel, may, upon petition, be admitted to prosecute as co-libellants upon such terms as the court may deem reasonable.

Note:—This rule is in the same language as former rule 15 of both districts, with the addition, in the first paragraph, of the words “Except as governed by Supreme Court admiralty rules”. This modification is recommended because by Supreme Court admiralty rule 15 suits for assault on the high seas “shall be *in personam* only”, except in the event of the owner’s or master’s misconduct in certain specified respects; special provision is made for petitory and possessory suits by Supreme Court admiralty rule 19 “by arrest of the ship and by a monition to the adverse party or parties to appear and make answer to the suit”. The right of joinder in suits not specified in Supreme Court admiralty rules was left an open question by the Supreme Court and sustained by the lower courts, although it is expected that the practice would be upheld if the question were ever presented to the Supreme Court. Other Supreme Court admiralty rules on the subject of joinder are 16, which provides for joinder of suits *in rem* and *in personam* upon a “mere maritime hypothecation of ship or freight”, rule 18 which permits suits for salvage service *in rem* and *in personam* and rule 34 which permits a third party to intervene upon filing a pleading and stipulation. Rule 56 permits the claimant or respondent to bring in any other vessel or person who may be partly or wholly liable to libellant or to such claimant or respondent by way of remedy over, contribution or otherwise. It also provides the method of procedure.

RULE 13—Consolidation

When various suits are pending, all resting upon the same matter of right or defense, although there be no common interest between the parties, the court may consolidate or compel said suits to be tried together, and enter a single decree or decrees in each cause.

Note:—This is substantially the language of former rule 16 of both districts. There is no Supreme Court admiralty rule on the subject,

RULE 14—Severance

At any stage of the proceeding, if it appears to the court's satisfaction that the libellant is entitled to recover a part of the claim or claims set forth in the libel and respondent does not claim any recoupment, offset, or counter-claim in respect of said part, the court may, upon motion, make an order of severance and enter an appropriate decree all without prejudice to the further prosecution of the cause with respect to the remaining issues.

Note:—This rule is a revision of former Eastern District rules 17a and 29 and Southern District rule 29. The structure of the former rule was criticized by the Court of Appeals, Second Circuit in *Galveston Drydock & Construction Co. v. Standard Dredging Company*, 1938 A. M. C. 862, 40 F. (2d) 442. The former rule provided "In case the respondent or claimant in his answer does not deny that the libellant is entitled * * *". The Court of Appeals pointed out that in admiralty failure to deny any allegation may not be treated as identical with its admission, that Supreme Court admiralty rule 29 requires libellant to except, if respondent does not answer fully, and therefore there must be some declaration of the court that the allegations not denied are to be taken *pro confesso*.

RULE 15—Substitution of Parties

When by reason of the death or incompetency of any of the parties, changes of interest in the suit, defects in the pleadings or proceeding, or otherwise, new or substituted parties to the suit are necessary or proper, persons, upon their own petition or upon petition of any party to the cause, may be made parties by appropriate order ex parte if no appearance or claim has been filed, otherwise the said application shall be made on notice to all parties who have filed appearance or claim. The order may provide for the issuance of process.

Note:—Former rule 18 in both districts was amended by this rule. It contained the phrase "the death" of any of the parties, while the present rule adds the words "or incompetency". The former rule made no reference to ex parte applications, those on notice or the issuance of process in an appropriate case.

RULE 16—Recoupment and Cross-Libel

If a respondent or claimant shall desire to recoup or set off any damages sustained by him growing out of the transactions referred to in the libel, he must in his answer state the facts and his own damages in like manner as upon

filing a cross-libel, and such statement shall be without prejudice to any other defense which he may interpose. He shall not, however, be entitled to any affirmative recovery upon such answer. In any case where a cross-libel *in personam* will lie, service of such cross-libel may be made on the proctors for the libellant.

Note:—This is in the same language as former rule 17 in both districts. There is no provision in Supreme Court admiralty rules with respect to recoupment, but Supreme Court rule 50 dealing with "Security on cross-libel" provides that where the respondent or claimant in the original suit shall have given security, the respondent in the cross-libel shall give security, unless the court shall otherwise direct, and also that all proceedings on the original libel shall be stayed until such security be given unless the court otherwise directs.

RULE 17—Cross-Claim Against Co-Respondent or Claimant

A respondent or claimant may, by petition or pleading, state a claim, arising out of the transaction, occurrence or property that is the subject matter of the original cause, against a co-party who has appeared or claimed in the suit. The petition or pleading may be served upon the proctor for the party against whom the claim is asserted, and in such case the party so pleaded against shall except to or answer the petition or other pleading within three weeks after such service upon its proctor.

Note:—This rule is new and serves to clarify the procedure suggested by Judge Learned Hand in *Vane v. Wood* (S. D. N. Y. 1916), 231 Fed. 353, 356; *The Sif* (C. A. 2), 266 Fed. 166, 169.

RULE 18—Attachments

(a) In proceeding *in personam* where the debts, credits or effects named in any process of foreign attachment are not delivered up to the marshal by the garnishee or are denied by him to be the property of the respondent it shall be a sufficient service of such foreign attachment to leave a copy thereof with such garnishee, or at his usual residence or place of business, with notice of the property attached. On due return thereof by the marshal the libellant, on proof satisfactory to the court that the property belongs to respondent, may proceed to a hearing and final decree in the cause.

(b) In proceedings *in rem*, process against freight or proceeds of property in possession of any person, and all

orders granted by the court under the Supreme Court admiralty rules in similar cases may be served in like manner.

Note:—This rule is the substance of former rule 19 in both districts with rearrangement of language. It does not conflict with Supreme Court rule 36. In foreign attachment proceedings ownership of attached property by respondent is a jurisdictional requisite.

RULE 19—Appraisements and Appraisers

(a) In case of seizure of property in behalf of the United States, an appraisement for the purpose of bonding the same may be had by any party in interest, on giving one day's previous notice of motion for the appointment of appraisers. If the parties or their proctors and the United States attorney are present in court, such motion may be made *instante*, after seizure and without previous notice.

(b) Orders for the appraisement of property under arrest or attachment at the suit of a private party may be entered as of course, at the instance of any party interested, or upon the consent of the proctors for the respective parties.

(c) Only one appraiser is to be appointed, unless otherwise ordered, and, if the respective parties do not agree in writing upon the appraiser to be appointed, the judge shall name him.

(d) The appraiser shall give one day's notice of the time and place of making the appraisement to the proctors in the cause. The appraisement when made shall be filed with the clerk.

Note:—This rule is substantially in the language of former rule 20 in both districts, with these exceptions: The former rule required the appraiser to take an oath, which is not necessary in the present rule since the general rules require it; the former rule provided for the posting of a notice by the appraiser of the time and place of making the appraisement. It is deemed unnecessary for the appraiser to give notice except to proctors in the cause. There is no Supreme Court admiralty rule on the subject of appraisement.

RULE 20—Release of Seizures

Property seized by the marshal may be released as follows:

(a) By giving bond as provided by Title 28 U. S. Code, Section 2464 and Supreme Court Admiralty Rules.

(b) In suits for sums certain, by paying into court the amount alleged in the libel as due, with interest as claimed therein up to the term next succeeding the return day, or by filing an approved stipulation for such alleged amount, with interest, and by payment into court of the costs of officers of the court already accrued, and by depositing also the sum of \$250, to cover further costs; or in lieu of such deposit for costs giving a stipulation for costs in the usual form.

(c) In suits, other than possessory, petitory or licitation, by filing an approved stipulation for the amount of the appraised or agreed value of the property seized with interest (unless the same is modified by an order of the court), conditioned to abide by all orders of the court, interlocutory or final, and to pay the amount awarded by the final decree rendered by the court, or by any appellate court, if an appeal intervene, with interest.

(d) In possessory, petitory and licitation suits upon the order of the court only, and on such security and terms as ordered.

(e) By an order duly entered by the clerk upon the written consent of the proctor for the party on whose behalf the property is detained.

Note:—This rule is in the same language as former rule 21 of both districts. The rule is not in conflict with but supplements and brings into one local rule all methods of release covered by 28 U. S. C. § 2464 (formerly R. S. 941), Supreme Court admiralty rule 5 (foreign attachment), rule 24 (stipulation for costs), rule 12 (release of vessels) and rule 57 (release of property generally in custody of marshal).

RULE 21—Summary Release From Arrest or Attachment

Where there is an arrest of the person, or where property is attached, the party arrested or any person having a right to intervene in respect of the thing attached, may, upon evidence showing any improper practice or a manifest want of equity on the part of the libellant be entitled to an order requiring the libellant to show cause *instanter* why the arrest or attachment should not be vacated. This rule shall have no application to suits for seaman's wages when process is issued upon a certificate of sufficient cause filed pursuant to Sections 4546 and 4547 of the Revised Statutes (Title 46 U. S. Code, Sections 603 and 604).

Note:—This is a substantial restatement of former rule 22 of both districts.

RULE 22—Decree of Default

(a) On the expiration of the time to answer, if no pleading, exceptions or exceptive allegations have been filed, the libellant or petitioner may enter, by default, an interlocutory or final decree as may be appropriate, without notice, unless the claimant or respondent has appeared by proctor, in which case at least five days notice of the submission of such decree shall be given.

(b) In any suit *in rem*, or *in personam*, where debts, credits or effects have been attached and there has been no appearance, a final decree will not enter unless notice of the suit has been given by personal service or by mail, to the owner or agent of the property arrested or attached at his last known address or to the master or person in charge of a vessel in custody. Such notice shall be in addition to the proof of publication of the notice of arrest and shall specify the date the libel was filed and by whom and the date the property was arrested or attached. If it be made to appear to the court that such notice cannot be given or is unnecessary, then proof of the publication of the process and attachment of the *res* thereunder shall be sufficient.

(c) Unless the court otherwise directs, in all cases where an interlocutory decree may be entered under sub-division (a), a final decree on default may be entered where the libel is for breach of contract and the damages are liquidated, upon affidavit or other proof satisfactory to the court, without the requirement of a reference to a commissioner.

Note:—Paragraph (a) of this rule is a revision of former rule 13 in both districts. Former rule 13 of the Eastern District permitted the entry of a decree, without notice in all cases. Supreme Court admiralty rule 28 permits a default upon failure to answer and also the setting aside of the default upon application to the court. Rule 39 permits the court to grant a rehearing, after default, within 60 days after the decree has been entered, the term of the court being deemed extended for that purpose until the expiration of 60 days. The former rule in both districts provided “Such decree shall not be set aside except on application to the Court, and on such terms as the Court may impose”. These words are deemed unnecessary in view of Supreme Court admiralty rules 28 and 39, both of which permit the setting aside of the default upon application of the respondent or claimant. The 60 day provision referred to in

Supreme Court admiralty rule 39 has been superseded by statute, Title 28, U. S. C. § 139.

Paragraph (b) is a revision of former rule 28 in both districts. There is no Supreme Court admiralty rule touching the service of notice of suit before the entry of final decree, although Supreme Court admiralty rule 10 provides for public notice in all cases of seizure. The former rule which was the same in both districts (rule 28) provided for the entry of final decree on default "after actual notice to the owner or agent, etc." had been given. In the Eastern District *pro forma* notice by the marshal at the time the arrest was made was deemed sufficient compliance with the Rule. In the Southern District the word "actual" was more strictly construed and led to practical difficulties where the owner or agent was located beyond the Eastern or Southern District of New York or was unknown. The provision for additional notice was a precautionary measure, apparently designed to give the owner of the property a last clear chance to pay the claim or make application to the court to vacate the default.

Paragraph (c) is new and had not been the subject of rule in either district. It is proposed to enable the entry of a final decree without the necessity of a reference where the proof otherwise would be largely *pro forma*.

RULE 23—Tender, and Notices Before Trial in Limitation of Damage

(a) A tender *inter partes* before suit shall be of no avail in defense, or in discharge of costs, unless, before the answer is filed, the amount so tendered shall be deposited in court to abide the final order or decree. In case of such deposit, the respondent or claimant shall recover costs, unless the libellant shall recover a sum in excess of the amount of the tender, without interest after the date of the tender.

(b) The libellant may at any time on notice take an order for the withdrawal of so much of the tender or amount deposited as the court may allow, without prejudice to continuing the litigation for a larger amount, leaving in the registry a sum sufficient to cover the respondent's or claimant's costs, in case the amount deposited should be held in the court, or in any appellate court, to be a sufficient tender.

(c) If the respondent or claimant serves on the proctor for the libellant written notice of consent that the whole, or any specific part, of the tender deposited be paid to the libellant, the respondent or claimant shall not be liable thereafter for interest on so much of the libellant's claim.

(d) At any time before trial a respondent or claimant may serve and file a written offer to allow a decree to be entered for a sum therein specified, with costs to the date of the offer. The respondent or claimant shall recover costs from the date of filing of the offer unless the libellant shall recover damages in excess of the amount of the offer, without interest after the date of filing of the offer.

(e) Nothing, however, in this rule shall be held to control the discretion of the Court in respect of costs and disbursements.

Note:—This rule is in the same language as former rule 23 in both districts, with slight modification. There is no Supreme Court admiralty rule on this subject.

RULE 24—Offer of Damages After Interlocutory Decree

At any time after an interlocutory decree in favor of the libellant, the respondent or claimant, without prejudice to his right to appeal, may serve and file a written offer to allow libellant's damages to be assessed at a sum of money therein specified with interest, if allowable, and with costs, to be taxed to the date of the offer. Said respondent or claimant shall recover costs from the date of the offer, unless the libellant shall obtain a final decree wherein the damages awarded (without interest or costs after offer) exceed the amount of the offer.

Note:—This rule is in the same language as former rule 24 of both districts, except that the words "with interest if allowable, and" are added in order to avoid the question, after reference, as to the sufficiency of the offer of damages.

RULE 25—Commissioners' Reports and Fees

(a) When a reference is made, the clerk shall forthwith notify the commissioner of his appointment. Any of the parties may fix the time and place for the hearing by giving at least ten days' notice in writing to the other parties or their proctors and to the commissioner.

(b) The report of the commissioner, together with the transcript of the proceedings and the exhibits, shall be filed by him with the clerk. Upon the filing of his report, the commissioner shall furnish the clerk with sufficient copies of a notice of filing thereof addressed severally to the parties or their proctors to enable the clerk to mail a copy to each of them. In no event shall the commissioner retain his report as security or withhold prompt filing of the same because of failure to pay his fee.

(c) If the fee of the commissioner shall not have been paid upon the filing of the report, he shall certify, by endorsement on the report, the amount of the fee and the fact that it has not been paid. Exceptions to the amount of such fee may be filed in like manner as to the report. After the filing of such report, if it appears that the fee of the commissioner has not been paid, the court by appropriate proceedings may enforce payment thereof in favor of such officer against any party or the *res* liable therefor. At the instance of any party the fee of such commissioner shall be taxed as costs by the clerk.

(d) Exceptions to the reports of commissioners shall be filed within ten days after service of notice of filing of the report, in default of which the report may be confirmed at the instance of any party by order entered without notice, upon proof of service of notice of filing the report and default in filing exceptions.

Note:—Paragraph (a) of this rule is new.

Paragraphs (b) and (c) are patterned after former rule 26 of the Southern District, with some amendments. There is omitted language of the former rule which provided that the fee of the commissioner should be paid by the libellant or moving party upon notice of the commissioner that the report was ready for filing, and in cases where the fee was agreed upon.

Paragraph (d) is in the same language as former rule 27 of both districts, except that the time within which to file exceptions is 10 days instead of 5 days.

Former rule 26 of the Eastern District did not protect the commissioner in the payment of his fee.

This rule is not in conflict with Supreme Court admiralty rules of which rule 43 provides that the court may refer any matter in cases where it deems it expedient or necessary for the purpose of justice, and rule 43½ provides that the report is treated as presumptively correct, though subject to review by the court. There is no Supreme Court admiralty rule fixing the time within which exceptions to the commissioner's report shall be filed.

RULE 26—Judicial Sale, Return of, by Marshal

(EASTERN DISTRICT) (a) When money shall come to the hands of the marshal under or by virtue of any order or process of the court, he shall forthwith pay over the gross amount thereof to the clerk, with a bill of his charges thereon and a statement of the time of the receipt of the moneys by him; and, upon the filing of such statement and the taxation of such charges, the same shall be paid to the

marshal out of such moneys; and an account of all property sold under the order or decree of this court, shall be returned by the marshal and filed in the clerk's office, with the execution or other process under which the sale was made.

(SOUTHERN DISTRICT) (a) When any money shall come to the hands of the marshal under or by virtue of any order or process of the court, he shall forthwith present to the clerk a bill of his charges thereon and a statement of the time of receipt of the money and upon the filing of the statement and the taxation of the charges he shall forthwith pay to the clerk the amount of said money less his charges as taxed. An account of all property sold under the order or decree of this court shall be returned by the marshal and filed in the clerk's office, with the execution or other process under which the sale was made.

(EASTERN and SOUTHERN DISTRICTS) (b) Wharfage, storage and like charges which accrue while the vessel or other property is in the marshal's custody shall not be included in the marshal's bill of charges, except by consent of all interested parties, lienors who have appeared, or their proctors. If such charges are not consented to in the marshal's bill, they may be claimed by petition filed, unless otherwise ordered, not later than ten days after sale of the vessel or other property, against the proceeds or against any party claimed to be responsible therefor. The wharfinger or other person entitled to such charges shall be given notice of settlement of the final decree and order of distribution of proceeds.

Note:—The first two paragraphs differ in the two districts by reason of established procedure which apparently cannot be conveniently changed. Supreme Court admiralty rule 40 on this subject provides as follows: "All sales of property under any decree of admiralty shall be made by the Marshal or his deputy, or other proper officer assigned by the Court, where the Marshal is a party in interest, in pursuance of the orders of the Court; and the proceeds thereof, when sold, shall be forthwith paid into the registry of the Court by the officer making the sale, to be disposed of by the Court according to law."

The third paragraph is new. The courts have disapproved of the early practice of including in the marshal's bill, as a disbursement, wharfage and like charges and have stated that such claims should be asserted by way of libel for preferential payment. See *Larsen v. New York Dock Co.* 166 Fed. (2nd) 687 (C. A. 2); *The Poznan*, 274 U. S. 117; *Isbrandtsen Company v. S/S Pan Orleans*, 1948 A. M. C. 1296 (not otherwise reported).

RULE 27—Claims After Sale, How Limited

In proceedings *in rem*, claims upon the proceeds of sale of property under a final decree, except for seamen's wages, will not be admitted in behalf of lienors who file libels or petitions after the sale, to the prejudice of lienors who filed libels or petitions before the sale, but shall be limited to the remnants and surplus, unless for cause shown it shall be otherwise ordered.

Note:—This rule is in the same language as former rule 40 of both districts, with slight correction in language.

RULE 28—Informations, Admiralty Procedure to Apply

In all informations, whether *in rem* or *in personam*, the practice and procedure of admiralty shall apply in respect of process (mesne or final), pleadings and exceptions thereto, delivery of property on stipulation, sale of the same and intervention and appearance of claimants.

Note:—This rule is in the same language as former rule 36 in both districts.

RULE 29—Stenographic Transcript

Subject to the provisions of Rule of Civil Procedure 54 (d), the expense of any party in necessarily obtaining all or any part of a transcript, for purposes of a new trial, or for amended findings or for appeal shall be a taxable cost against the unsuccessful party at the rates prescribed by the Judicial Conference.

Note:—The foregoing is a repetition of civil rule 8 and note in connection therewith is applicable.

RULE 30—Stay of Execution

Execution shall not issue for 10 days after service of a copy of the decree with notice of entry upon the adverse party, or his proctor, unless the decree shall have been entered on default or the court shall otherwise order.

Note:—This rule is in the same language as former rule 30 in both districts.

RULE 31—Summons and Severance Abolished

Parties interested jointly, severally, or otherwise in a judgment or decree may join in an appeal therefrom; or, without summons and severance, any one or more of them

may appeal separately or any two or more of them may join in an appeal.

Note:—The language of this rule is borrowed from Rule of Civil Procedure 74 with the words “or decree” added after the word “judgment”.

RULE 32—Depositions: Taking and Use of

(EASTERN DISTRICT) (a) The taking and use of depositions of witnesses within the United States shall be governed as provided in Sections 863 to 865, inclusive, Revised Statutes (former Sections 639 to 641, inclusive, Title 28, United States Code).

(b) The taking and use of depositions of adverse parties is authorized, and shall conform to the Federal Rules of Civil Procedure to the extent not specially provided for in the Supreme Court Admiralty Rules. A deposition of an adverse party so taken shall not be admissible in evidence at a trial in admiralty when sought to be offered as a deposition of a witness unless the taking and offering thereof also meet the requirements of Sections 863 to 865 inclusive, Revised Statutes (former Sections 639 to 641 inclusive, Title 28, United States Code), but this proviso shall not prevent the use of such a deposition, or parts thereof, for the purpose of impeaching or contradicting the testimony of the deponent as a witness, or otherwise as may be permitted by the rules of evidence.

Note:—Supreme Court admiralty rule 46 reads:

“In all trials in admiralty the testimony of witnesses shall be taken orally in open court, except as otherwise provided by statute, or agreement of parties. When deemed necessary by the court or the officer taking the testimony or by the parties, a stenographer may be employed who shall take down the testimony in shorthand or otherwise, and, if requested by the court or either party, transcribe the same. The fees may be fixed by the court and taxed as costs.”

Rule 44 of the Supreme Court makes provision for the regulation by the District Courts of their practice in all cases “not provided for by these rules or by statute”, the rule *in toto* being:

“In suits in admiralty in all cases not provided for by these rules or by statute, the District Courts are to regulate their practice in such a manner as they deem most expedient for the due administration of justice, provided the same are not inconsistent with these rules.”

The only existing statutory authority for the taking of depositions are the so-called *de bene esse* statutes enumerated in the proposed rule as Revised Statutes, Sections 863, 864 and 865. In the pre-revision Code they were numbered Sections 639-641 and, though not repealed, they have not been carried forward into the new Code. Nevertheless, they are still in effect (See Title 28 U. S. C. Chapter 117, note).

It should be noted that there formerly existed in both districts rule 25 as follows:

“Discovery, inspection and taking of a photograph of any article, property or place under the control of a party may be had by any other party, upon order of the Court.

In suits for personal injuries, the Court may require the libellant to appear before a commissioner and submit to a physical examination by a physician or surgeon appointed in the order, and to answer such questions of the physician or surgeon as the commissioner may determine are necessary to ascertain the extent of the injuries, subject to the right of appeal *instantly* to the Court from any ruling of the commissioner.”

Rule 25 was superseded by Supreme Court admiralty rules 32 to 32C, which were added May 22nd, 1939 and became effective September 1st, 1939. Supreme Court rule 32 relates to discovery and production of documents and other objects, rule 32A relates to physical and mental examination of persons, while rule 32B has to do with the admission of facts and of genuineness of documents. Rule 32C covers the subject of penalties in the event of refusal to answer upon oral examination, failure to comply with an order and similar subjects. These rules were adopted from the civil rules, rules 32 having been taken from civil rule 34, 32A from civil rule 35, 32B from civil rule 36 and 32C from civil rule 37.

(SOUTHERN DISTRICT) The taking and use of depositions of parties and witnesses shall be governed by the Federal Rules of Civil Procedure except that their use shall be limited as follows:

Use of Depositions. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any of the following provisions:

- (1) Any deposition may be used by any party for the

purpose of contradicting or impeaching the testimony of deponent as a witness.

(2) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: 1, that the witness is dead; or 2, that the witness is at a greater distance than 100 miles from the place of trial or hearing, or is bound on a voyage to sea, or is out of the United States, unless it appears that the absence of the witness was procured by the party offering the depositions; or 3, that the witness is unable to attend or testify because of age, sickness, infirmity or imprisonment.

(3) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts.

Substitution of parties does not affect the right to use depositions previously taken; and, when an action in any court of the United States or of any state has been dismissed and another action involving the same subject matter is afterwards brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor.

This rule shall be superseded by any subsequent statutes, Supreme Court admiralty rules or agreement of parties.

Note:—The text of this rule was promulgated by order of the court (Southern District) dated May 10, 1950.

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of

United States District Courts

**for the Southern and Eastern Districts
of New York**

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BANKRUPTCY RULES

RULE 1—Petitions and Schedules

(a) In addition to complying with the General Orders and prescribed Forms, all petitions and schedules and all lists of creditors, shall, in describing the residence or place of business of a bankrupt, debtor or creditor, state the usual post office address, including the street and number thereof.

(b) In voluntary proceedings, all assumed, trade and any other names or designations by or under which the bankrupt has been known or has conducted any business within six years next preceding the filing of the petition in bankruptcy shall be set forth in the petition and in all notices sent to creditors. In involuntary proceedings, such facts shall be set forth by the petitioning creditors to the best of their knowledge, information and belief.

Note:—Subdivision (a) is substantially the same as former Southern rule 2(a) and Eastern rule 1(a) except that it applies also to “all lists of creditors.”

Subdivision (b) is substantially the same as former Southern rule 2(b) and the third paragraph of former Eastern rule 1(a).

Several provisions of the former Eastern rule have been dropped since they are covered by the Act or the General Orders. The last sentence of the first paragraph of rule 1(a) is eliminated. (See General Order No. 38, form No. 1.) The second paragraph of 1(a) is unnecessary in view of General Order 38, form No. 4. The fourth paragraph of 1(a) is unnecessary in view of the requirement that all pleadings must be verified under oath. (See section 18c of the Act.) Rule 1(b) is dropped as unnecessary under Section 7a (8) of the Act. Rule 1(c) is covered by rule 2.

RULE 2—Lists of Creditors and Statement of Assets

Whenever, pursuant to law, further time is sought for the filing of schedules, the required list of creditors and their addresses shall be filed in triplicate and shall, unless otherwise ordered by the court for cause shown, be accompanied by a statement in triplicate setting forth a brief description and the location of the assets of the bankrupt. The clerk shall forthwith deliver one copy of such list and statement to the referee and another to the receiver, if one is appointed.

Note:—This rule is substantially the same as former Southern rule 3 and Eastern rule 1(c). It gives the court discretion, for cause shown, to dispense with the statement setting forth a brief description and the location of the assets.

RULE 3—Service of Subpoena and Adjudication

(a) In involuntary proceedings, unless a notice of appearance on behalf of the alleged bankrupt is filed with the petition, the clerk shall forthwith issue a subpoena and cause the subpoena and copy of the petition to be delivered to the marshal or to a person specially appointed for that purpose for service upon the alleged bankrupt.

In voluntary proceedings in behalf of a partnership filed by less than all of the general partners, unless a notice of appearance on behalf of the partner or partners who did not join in such petition be filed with such petition, the clerk shall forthwith issue a subpoena and cause the subpoena and a copy of the petition to be delivered to the marshal or to a person specially appointed for that purpose for service on such partner or partners.

(b) The marshal or person specially appointed for that purpose shall forthwith serve the subpoena and petition in conformity with Rule of Civil Procedure 4.

(c) If service is not made within the time allowed by law and an order for service by publication has not been obtained, the clerk shall forthwith give notice in writing to the attorney for petitioner to show cause before the court on the next bankruptcy motion day why service of the subpoena has not been made or an order of publication obtained.

(d) No application for the appointment of a receiver in an involuntary proceeding or in a proceeding instituted by or in behalf of a partnership by less than all of the general partners shall be submitted to the court until after the subpoena shall have been delivered to the marshal, or other person specially appointed by the court, for service, or a notice of appearance on behalf of the bankrupt or the respondent partners, as the case may be, shall have been filed with the clerk; and the clerk shall in every case advise the court when submitting such application whether this provision has been complied with.

(e) Upon adjudication, the clerk shall forthwith mail a certified copy thereof to the attorney for the petitioning creditors or petitioning partners, as the case may be, who shall immediately serve it with notice of entry upon the

bankrupt or respondent partners or their attorneys of record.

Note:—This rule is adapted from former Rule 2 of the Eastern District and Rule 4 of the Southern District. The procedure for the service of subpoena and petition contained in Eastern District Rule is incorporated in condensed form. The provision in Southern Rule 4 with respect to application for the appointment of receiver is incorporated in this rule. The last part of former Southern and Eastern rules concerning compensation for services and compliance with the rule by attorney for petitioning creditors is eliminated as being unnecessary.

RULE 4—Extension of Time to Answer

The time to answer or move with respect to a petition shall be extended only upon order of the court made on stipulation or on petition showing adequate cause.

Note:—This rule is adapted from former Eastern Rule 4 and Southern Rule 5 in condensed form.

RULE 5—Trial of Issues

Upon the filing of an answer to an involuntary petition, with proof of service thereof upon the attorney for the petitioning creditors, the clerk shall place the matter upon the next bankruptcy motion calendar. If the issues are triable by jury, the calendar commissioner (Southern District) clerk (Eastern District) shall forthwith place the proceeding at the head of the Ready Jury Day Calendar. If the issues are not triable by jury, then the judge may set the trial of the issues before him, or refer the proceeding generally to a referee in bankruptcy. Hearings before the referee on the issues shall proceed so far as practicable from day to day. If any of the parties fail to so proceed the referee shall make such disposition of the matter as is proper.

Note:—Adapted substantially from former Southern Rule 13 and Eastern Rule 3 in condensed form.

RULE 6—Stay of Adjudication

No order staying adjudication shall be entered except on notice to the receiver.

Note:—This rule is the same as former rule 6 of the Southern District. There was no such rule in the Eastern District.

RULE 7—Receivers**(a) *Appointment.***

Application for the appointment of a receiver shall be made to the ex parte judge on a verified petition setting forth the necessity therefor and the value of the assets.

(b) *Possession—Inventory—Lists of Creditors.*

Upon qualification the receiver shall take personal and immediate possession of the property, books and records of the bankrupt. Within ten days after qualification he shall make and file in the office of the clerk or, if the proceeding has been referred, with the referee, an inventory of the property, books, and records; and unless the bankrupt shall have already done so, the receiver shall file in triplicate with the clerk a list of creditors with their addresses.

As soon as possible after qualification, the receiver shall determine whether the assets shall be sold or the business continued and shall, at the earliest possible date, make and bring on for prompt determination an appropriate application in respect to such matters.

Note:—Adapted from former Eastern Rule 8a and Southern Rule 27 and condensed as to form.

(c) *Continuance of Business.*

The order appointing the receiver may authorize him to continue the business for a period of not more than fifteen days, during which time he shall inquire into the propriety of its further continuance, and if he comes to the conclusion that the business should be further continued he shall so petition the court setting forth his recommendations and the recommendations, if any, made by substantial creditor interests. Upon such petition the court may authorize a further continuance of the business for a specified period. The continuance of the business for the provisional period of fifteen days shall not entitle the receiver to more than a single commission except upon special direction of the court.

Note:—Adapted from former Southern Rule 26 and Eastern Rule 8b. The Eastern District rule provided for the calling of a meeting of creditors which has been dispensed with as unnecessary.

(d) *Deposit and Disbursement of Funds.*

All funds received shall be deposited in designated depositories. Payments and withdrawals shall be made only by

checks consecutively numbered. Such checks shall be signed by the receiver and counter-signed by the referee, and shall be substantially in the following form:

“No.	Date
NAME OF BANK	
Pay to the Order of	\$.....
.....	Dollars
In payment of	
	Estate of
	
	Alleged Bankrupt
	
	Receiver
Countersigned:	
.....	
Referee in Bankruptcy”	

In cases where a receiver is or has been appointed and there has been no general reference to a referee, the judge shall forthwith appoint a referee in the case; and such referee is authorized to countersign such receiver's checks upon being satisfied with the propriety thereof.

Note:—Adapted from former Southern Rule 29 which provides for reference to the referee if a receiver is appointed and requires countersignature by the referee of the receiver's checks. However, in view of Section 22a of the Bankruptcy Act which provides that the judge may at any stage of the proceeding refer the same to a referee, instead of having the clerk designate a referee in the case, the above rule provides that the judge shall forthwith appoint a referee in order that the checks may be countersigned by him. The provision in former Rule 29 of the Southern District permitting the deposit of funds in a banking institution which is itself the receiver is eliminated as being unnecessary. In the rare instance where a banking institution is appointed a receiver such permission to deposit the funds with itself may be granted by special order of the court in the particular case.

Former Eastern Rule 11 provides for countersignature of receiver's checks by the clerk or his deputy. In the interest of uniformity the Southern rule providing for countersignature by a referee to be appointed is adopted. It is desirable that the referee who in the normal course will be in charge of the case should be familiar with the entire proceeding including the administration of the estate and the disbursement of funds by the receiver.

(e) *Consultation with Creditors.*

Where practicable, the receiver shall consult with creditors and their committees regarding the administration and disposition of bankrupt estates.

Note:—Adapted from former Southern Rule 8, which is the same as the provisions now in the Bankruptcy Act with respect to trustees. See Section 44 of the Act. There is no similar provision in the former Eastern rules.

(f) *Reports and Accounts.*

Within ten days after qualification of the trustee, the receiver shall, unless otherwise ordered, turn over to the trustee all property, funds and books of the estate, and within twenty days after the qualification of the trustee, the receiver shall file with the referee in duplicate his report and accounting and petition for allowance. Such report shall contain the following information in the following order:

(1) Date of the receiver's qualification and the amount of his bond.

(2) Statement of the services performed by the receiver.

(3) Total receipts and total disbursements of the receiver and the balance turned over by him to the trustee.

(4) Total disbursements made by him in continuing the business of the bankrupt.

(5) The compensation requested by the receiver for his services and the amount of any previous allowance.

(6) A statement of the amounts of compensation asked for by his attorneys and accountants together with such comments or recommendations as he may deem appropriate.

(7) A statement that all disbursements made by the receiver were reasonable in amount and properly made.

Attached to the report shall be the following: Affidavit required by Section 62 of the Act, vouchers for all disbursements, together with bank statement showing account closed, and the following schedules:

Schedule A. Cash items received by the receiver in detail, giving the dates of receipt and on account of what received and the total of such receipts.

Schedule B. The disbursements of the receiver in detail, giving the date of each disbursement, the amount

thereof, the purpose thereof and the total of such disbursements.

Schedule C. An adequate statement as to the assets which came into the receiver's possession and the disposition thereof.

Schedule D. A list of the receiver's unpaid obligations.

Note:—Adapted from former Southern Rule 30 and Eastern Rule 8c with slight change.

RULE 8—Trustees

(a) *Inventory.*

Within ten days after qualification, the trustee, if he be a person other than the receiver, shall file with the referee an inventory of all property, books and records coming into his possession.

Note:—Adapted from former Southern Rules 31 and 32 and Eastern Rules 9a and 9b and condensed as to form. The requirement that the trustee take possession of the property is eliminated since this is covered by General Order 17.

(b) *Deposit and Disbursement of Funds.*

All funds received shall be deposited in designated depositories. Payments and withdrawals shall be made only by checks consecutively numbered. Such checks shall be signed by the trustee and countersigned by the referee and shall be substantially in the following form:

“No.	Date	
	NAME OF BANK	
Pay to the Order of	\$.....	
.....	Dollars	
In payment of		
	Estate of	
		
	Bankrupt	
		
	Trustee	
Countersigned:		
.....		
	Referee in Bankruptcy”	

Note:—Adapted from former Rule 34 of the Southern District and Rule 11 of the Eastern District.

(c) *Reports and Accounts.*

Within one month after qualification the trustee shall file a report with the referee, and shall thereafter from time to time file such reports as may be necessary to keep the court and creditors advised of the progress of the administration of the estate. Every such report shall state what, if any, dividends can be paid and the reasons why a final report cannot then be filed.

The trustee's final report shall be filed in duplicate and shall contain the following information in the following order:

(1) Date of the trustee's qualification and the amount of his bond.

(2) Statement of the services performed by the trustee.

(3) Total receipts and total disbursements of the trustee.

(4) Total disbursements made by him in continuing the business of the bankrupt.

(5) A statement that all the assets have been reduced to cash and that the estate is ready to be closed.

(6) A statement referring in reasonable detail to the items of property mentioned in the bankrupt's schedules, including accounts receivable and choses in action, and accounting for the same.

(7) A statement that the trustee has examined into the amount paid, prior to the filing of the petition, to any attorney for the bankrupt for services rendered or to be rendered in connection with the bankruptcy, setting forth the amount of such payment, and whether he deems the fee reasonable; and if he deems the fee unreasonable, what proceedings have been taken thereon.

(8) A statement of the amounts of compensation asked for by his attorneys and accountants, together with such comments or recommendations as he may deem appropriate.

(9) A statement that all disbursements made by the trustee were reasonable in amount and properly made.

(10) A statement that the claims on file with the referee have been examined and should be allowed for the amounts therein claimed or for such amounts as have been fixed by order.

(11) The compensation requested by the trustee for his services and the amount of any previous allowance.

Attached to the report shall be the following: Affidavit required by Section 62 of the Act, vouchers for all disbursements, together with bank statement and the following schedules:

Schedule A. Cash items received by the trustee in detail, giving the dates of receipt and on account of what received and the total of such receipts.

Schedule B. The disbursements of the trustee in detail, giving the date of each disbursement, the amount thereof, the purpose thereof and the total of such disbursements.

Schedule C. An adequate statement as to the assets which came into the trustee's possession and the disposition thereof.

Note:—Adapted from former Southern Rule 35 and Eastern Rule 9c with slight change.

(d) *Unclaimed Dividends and Unadministered Assets.*

Sixty days after declaration of the final dividend the trustee shall stop payment of all checks then unpaid and deposit by certified check the amount of such unpaid checks with the clerk, and shall file with the clerk a list of the persons entitled to the unpaid checks and the amounts thereof.

If after the declaration of a final dividend or other termination of the proceeding, a trustee shall have paid to him any moneys belonging to the estate, he shall notify at least two of the creditors of the estate and forthwith pay the same to the clerk of the court, who shall thereupon deposit the amount received by him in the registry of the court, subject to its further order.

Note:—Adapted from former Southern Rules 36 and 37 and Eastern Rule 33.

RULE 9—Appointment of Attorneys

All petitions to retain an attorney for a receiver, trustee or debtor in possession shall comply with General Order 44. The showing of necessity shall be factual.

The attorney for petitioning creditors shall not be retained as attorney for the receiver, trustee or debtor in possession unless his affidavit shall show that he did not file the peti-

tion or became the attorney for the petitioning creditors at the instance of or pursuant to any arrangement with the bankrupt or anyone acting in his behalf.

The receiver, trustee or debtor in possession may retain as special counsel for litigation or other matters then pending an attorney who at the time of the filing of the petition in bankruptcy was acting for the bankrupt. The receiver, trustee or debtor in possession may also retain as special counsel an attorney in another jurisdiction. No special counsel shall be so retained except on order of the court.

Note:—Adapted from former Eastern Rule 12 and Southern Rule 9. However, both rules have been condensed and unnecessary matter eliminated in view of the provisions of General Order 44 and Section 62 of the Bankruptcy Act. The provision of former Eastern Rule 12 requiring that special circumstances be shown before a receiver or trustee is permitted to retain his law partner or office associate is omitted in view of Section 62c of the Bankruptcy Act. The provision of Eastern rule requiring that the business, professional or other connection of the attorney during one year prior to the application be set forth is omitted since that subject is now covered by General Order 44. The provision of Eastern District rule to the effect that the judge shall not be bound by the wishes of the receiver or trustee as to the attorney to be employed is a subject matter which should not be covered by rule. Furthermore, this subject was dealt with by the Court of Appeals (2nd Circuit) in *re Mandell*, 69 F. (2d) 830. Throughout the rule the word "judge" has been changed to "court" in view of General Order 12 which provides that upon reference of a case to a referee "thereafter all the proceedings, except such as are required by the Act or by these general orders to be had before the judge, shall be had before the referee * * *".

RULE 10—Employees of Receiver and Trustee

No receiver or trustee shall employ, at the expense of the estate, a caretaker or watchman for more than five days or, unless authorized to carry on the business, a person for any other purpose for any period, except on order of the court expressly authorizing such employment and fixing the amount of compensation or the rate or measure thereof. The application for such order must be made upon the petition of the receiver or trustee setting forth the name of the person whom he wishes to employ, the reason for his selection and the necessity for the employment. The receiver or trustee shall not employ, at the expense of the estate, persons merely for the purpose

of guarding the property when there are other adequate methods of protecting it at less expense.

Each such person employed by the receiver or trustee shall submit before payment an affidavit setting forth the dates on which he acted as such employee, and also the hours between which he was actually present and performing his duties as such; such affidavit shall accompany the check when presented for countersignature.

A petition to employ an accountant shall comply with General Order 45 and rule 11.

Note:—Adapted from former Southern Rules 28 and 33 and Eastern Rule 10 and condensed as to form.

RULE 11—Accountants

No receiver, trustee or debtor in possession shall employ an accountant except upon order of the court. Such order shall be granted only upon petition of the receiver, trustee or debtor in possession setting forth facts indicating the necessity for the employment of an accountant and the reason for his selection. The affidavit of the person proposed as accountant shall accompany the petition and shall set forth:

(a) His name, business address, whether or not he is a certified public accountant, and to the best of his knowledge his relationship to or business association with any attorney, creditor, bankrupt, or debtor or other party to the proceedings;

(b) Whether he has already rendered any service as an accountant to the bankrupt, receiver, trustee, debtor or debtor in possession, the extent thereof, and the status of his compensation therefor;

(c) The nature and extent of the services that he proposes to render, the estimated cost thereof, the basis of such estimate and the extent to which he is familiar with the books or accounts of the bankrupt or debtor.

Any order authorizing the employment of an accountant shall fix the amount of the compensation or the rate or measure thereof in accordance with General Order 45.

Note:—Adapted from former Eastern Rule 13 with changes to comply with General Order 12 and General Order 45. There is no similar rule in the Southern District and it is deemed desirable to propose a uniform procedure.

RULE 12—Newspapers and Official Advertising

The following newspapers are designated, in pursuance of Section 28 of the Act, for publication of notices and orders:

SOUTHERN DISTRICT

In New York and Bronx Counties	Daily News Record
In Westchester County	The Herald Statesman
In Putnam County	Putnam County Republican
In Dutchess County	The Poughkeepsie New Yorker
In Columbia County	Hudson Daily Star
In Greene County	Catskill Daily Mail
In Ulster County	The Kingston Daily Freeman
In Sullivan County	The Liberty Register
In Orange County	The Newburgh News
In Rockland County	The Journal News

EASTERN DISTRICT

In Kings County	Brooklyn Eagle Brooklyn Daily
In Queens County	Queens Evening News Long Island Daily Press
In Nassau County	Nassau Daily Review Star Newsday
In Richmond County	Staten Island Advance
In Suffolk County	Riverhead News Bay Shore Centennial County Review Hampton Chronicle

On order of the court, additional publication of orders and notices may be inserted in the New York Law Journal or any other newspaper having a daily or weekly circulation in the District.

Note:—The rule is the same as former Southern District Rule 7 and Eastern District Rule 31, except that the last paragraph has been added.

RULE 13—Appraisals—Auctioneer—Sales**(a) Appraisals**

Appraisals shall be filed before the sale with the referee, or if the matter has not been referred, with the clerk of the court.

At all sales a copy of the appraisal shall be physically present so that access thereto may be had by the judge, the referee, the receiver, the trustee or their attorneys, but neither its contents nor the substance shall be divulged until after the conclusion of the sale.

Note:—Adapted from former Eastern Rule 7 and Southern Rule 11. The requirement as to the appointment of an appraiser as contained in the Eastern Rule is now unnecessary since it is covered by section 70f of the Act.

(b) *Auctioneer*

APPLICABLE TO SOUTHERN DISTRICT

The Underwriters' Salvage Company of New York is designated as the official auctioneer for sales within the counties of New York, Bronx and Westchester, and shall be subject to removal by the court at any time. Such auctioneer shall give a surety bond, to be approved by the court, in the sum of twenty-five thousand dollars, conditioned upon its faithful and prompt accounting for all moneys and property which may come into its possession as such auctioneer, upon compliance with all the rules, orders and decrees of the court and with the orders of the respective referees in charge of the cases and upon the faithful performance of its duties. Such auctioneer shall provide an adequate warehouse and shall receive and store in such warehouse and, if requested by the receiver or trustee, shall insure movable property of bankrupt estates, without charge for storage of property, other than for books and papers, if sold at auction by it within thirty days after the time of receipt; and, if not so sold, such auctioneer shall be allowed a reasonable charge for the storage of property for any period in excess of thirty days.

In places other than those where the official auctioneer is designated to act, an auctioneer shall be specially designated in each case by the court; and, unless limited in the order of his designation, shall be allowed the commissions hereinafter specified. The auctioneer, whether official or otherwise, shall be reimbursed for expenditures in trucking goods when so directed by the receiver or trustee and shall be allowed reasonable disbursements for necessary labor, cataloguing, printing, insurance and all other actual and necessary disbursements. He shall be allowed the following commissions upon the proceeds of each sale conducted by him:

"7½% on the first \$10,000.00 or any part thereof;

5% on the next \$15,000.00 or any part thereof;
3% on any amount over \$25,000.00.

These commissions shall be in effect for a period of six months commencing January 1, 1952 or until the further order of the court".

In sales of real property the compensation of the auctioneer shall be fixed by the court at rates not in excess of the rates fixed for the sale of personalty.

The books and records of a bankrupt estate to be stored with the official auctioneer shall be packed in cases weighing not more than one hundred (100) pounds each. It shall be entitled to charge sixty-five cents (65¢) per month for the first six months and thereafter at the rate of forty cents (40¢) per month for the storage of each such case. It shall, in cases where there are any assets, receive payment in advance for the storage of books and records for six months' periods.

Every auctioneer acting hereunder shall at all times keep proper records of all transactions conducted by him and shall set forth in his reports of sales

- (1) The time and place of sale;
- (2) The gross amount of the sale, and when property is sold in lots, he shall report the items and the amount received for each lot, as well as the bulk bid;
- (3) An itemized statement of the expenditures, disbursements and commissions allowable under this rule, together with appropriate vouchers;
- (4) Whenever articles are sold free and clear of liens, the lien to attach to the proceeds, he shall either itemize or state separately the articles so sold.

Payment of proceeds of sales shall be made by the auctioneer with all possible promptness and not later than one week after the completion of the delivery of property sold. In event of unavoidable delay in completing deliveries, payments on account shall be made by the auctioneer to the receiver or trustee within one week after receipt of said payments by the auctioneer.

APPLICABLE TO EASTERN DISTRICT

There shall be no official auctioneer, but the auctioneer shall be designated in every case in the order authorizing the sale.

Every auctioneer acting hereunder shall at all times keep proper records of all transactions conducted by him and shall set forth in his reports of sales

- (1) The time and place of sale;
- (2) The gross amount of the sale, and when property is sold in lots, he shall report the items and the amount received for each lot, as well as the bulk bid;
- (3) An itemized statement of the expenditures, disbursements and commissions allowable under this rule, together with appropriate vouchers;
- (4) Whenever articles are sold free and clear of liens, the lien to attach to the proceeds, he shall either itemize or state separately the articles so sold.

Payment of proceeds of sales shall be made by the auctioneer with all possible promptness and not later than one week after the completion of the delivery of property sold. In event of unavoidable delay in completing deliveries, payments on account shall be made by the auctioneer to the receiver or trustee within one week after receipt of said payments by the auctioneer.

The auctioneer shall be allowed a reasonable charge for the storage of goods if not sold by him, and his reasonable disbursements for necessary labor, cataloguing, printing, insurance and all other actual disbursements which must be itemized. He shall also be allowed the following commissions upon the proceeds of sales made by him:

6% on the first \$5,000;
3% on all over \$5,000;

In sales of real property the compensation of the auctioneer shall be fixed by the court at rates not in excess of the rates fixed for the sale of personalty.

Note:—Adapted from former Southern rule 12 and Eastern rules 15 and 16 with minor changes. The provision relating to real property sales is new.

SOUTHERN AND EASTERN DISTRICTS

(c) Sales

No receiver or trustee shall sell property of a bankrupt estate on a percentage basis, i.e., on terms providing for the payment of a fixed percentage to creditors and expenses of administration.

Unless otherwise ordered by reason of special circumstances, sales shall be by public auction. Unless the court for cause shown, dispenses with or modifies these requirements or directs a shorter period of advertising, sales shall be advertised at least ten days before the sale and on the day of sale, except that in those counties in which no morning daily newspaper is designated, sales shall be advertised at least ten days before the sale and again on such additional day before the sale as will be closest to the day of sale. Such advertising shall be in newspapers designated by these rules.

Unless the court shall, for cause shown, direct that shorter or no notice be given, at least ten days' notice of the sale shall be given in the manner and to the persons prescribed in the Bankruptcy Act. The receiver or trustee may cause further advertising or notice to be given. Except as in this rule provided or unless otherwise specially ordered, all advertising shall be in the newspapers designated by these rules.

The property to be sold shall be on public exhibition for such reasonable period prior to the sale as the receiver or trustee may determine. The auctioneer shall, before receiving bids, announce the terms of sale. The property shall be offered for sale first in bulk and then in lots; or in such other manner as the court may direct. The auctioneer shall announce that no sales will be final without special order of the court unless the sale realizes seventy-five per cent or more of the appraised value. Any property which, because of reclamation proceedings or for other reasons, is not included in the sale, shall be set apart and conspicuously marked "not included in sale", and such fact shall be announced by the auctioneer before the sale.

(d) Disposition of books, records and property

The receiver or trustee may, upon approval by the court, abandon any property of the bankrupt if burdensome or of no net realizable value.

At the final meeting of creditors, the referee may order the destruction, sale or other disposition of the books and

records of the bankrupt estate or provide for the payment of an appropriate amount for storage charges should the retention of the books be ordered.

Note:—Substantially the same as former Eastern rule 14 and Southern rule 15. In subdivision (b) of the Southern rule, Westchester has been added to the counties where the official auctioneer is designated in view of its close proximity to New York and Bronx.

RULE 14—Solicitation of Proxies and Voting

(a) *Disapproval of Election of Trustee or Creditors' Committee.* The appointment of any trustee in bankruptcy or of the official creditors' committee selected at any meeting of creditors as provided in the Bankruptcy Act whose election or appointment shall have been procured by votes cast under powers of attorney or proxies in the interest of the bankrupt, or in any interest other than that of general creditors, shall be forthwith disapproved, or the trustee shall be removed and the appointment of such committee shall be set aside, and such powers of attorney or proxies shall not thereafter be voted for any purpose by the holders thereof.

(b) *Voting More Than One Claim by Proxy.* No person, firm or corporation, other than a creditor, committee of creditors, or an attorney at law, shall be permitted to vote more than one claim under power of attorney or proxy at any meeting of creditors, unless the referee at the time of voting, and not prior thereto, grants an order authorizing such voting. Such order may be granted on an affidavit or verified petition annexed to said order which shall set forth the following:

Applicant's name, business and address, whether the claims applicant desires to vote have been solicited, and if so, by whom and at whose suggestion, the purpose of such solicitation, the compensation or consideration, if any, which affiant expects to receive, directly or indirectly, therefrom, and that such solicitation is not in the interest of the bankrupt, or in an interest other than that of general creditors.

If it shall thereafter appear to the satisfaction of the referee that powers of attorney or proxies have been solicited by the applicant in the interest of the bankrupt or in an interest other than that of general creditors, the referee may vacate such order, in which event, he shall give notice in such manner as he may direct of the said vacatur to all persons who have theretofore granted powers of attorney or proxies to the applicant.

(c) *Qualification for Voting By*

1. *A Creditor.* A creditor desiring to vote claims, other than his own, under power of attorney or proxy at any meeting of creditors shall, prior to such voting, file an affidavit with the referee stating (1) his name, address, nature of business and amount of his own claim, (2) the names and amounts of the claims he desires to vote, (3) the name of the person from who he received the claims and the nature of his connection with said person, (4) whether the claims have been solicited, and if so, by whom and at whose instance or suggestion, and the purpose of such solicitation, (5) whether he expects to receive any compensation or consideration, directly or indirectly, and if so, from whom, and the amount or nature thereof, and (6) that said claims were not solicited nor will they be voted in the interest of the bankrupt or in an interest other than that of general creditors.

2. *A Committee of Creditors.* Any member or members of a committee of creditors desiring to vote claims held by such committee shall, prior to such voting, file an affidavit with the referee stating (1) names of officers and members of such committee and the amounts of their respective claims, (2) whether they or their firms are general creditors, (3) when, where and at whose instance the committee was organized, (4) whether any members or officers thereof expect compensation, directly or indirectly, and if so, from whom, and (5) that said claims were not solicited nor will they be voted in the interest of the bankrupt or in an interest other than that of general creditors.

3. *An Attorney at Law.* An attorney desiring to vote more than one claim under power of attorney or proxy at any meeting of creditors shall, prior to such voting, file an affidavit with the referee stating (1) his name and office address, (2) the names and amounts of the claims he desires to vote, (3) whether any of the creditors whose claims he desires to vote are his regular clients, and if so, their names and the approximate length of time each has been such regular client, (4) the name of the person from whom he received the claims of creditors who are not his regular clients, and the nature of his connection with such person, (5) whether the claims of creditors other than his regular clients have been solicited, and if so, by whom, and (6) that said claims were not solicited nor will they be voted in the interest of the bankrupt or in an interest other than that of general creditors.

(d) *Inquiry by Referee as to Solicitation of Proxies.* The referee, at his own instance, or at the request of any party in interest in the proceeding, may make, or permit inquiry to be made, as to the solicitation of claims voted, or to be voted. If, upon such inquiry, it appears that any claim, power of attorney or proxy has been solicited with the intent or purpose of voting such claim at any meeting or hearing in the interest of the bankrupt, or in an interest other than that of general creditors, or, if it appears that any claim, power of attorney or proxy has been solicited, and such claim is being voted at any meeting of creditors by an attorney at law, the referee shall not allow the voting of such claim under such power of attorney or proxy. If, in the opinion of the referee, the election of the trustee, or the determination of the matter to be submitted, is affected by such disallowance, the referee may adjourn the meeting and notify the creditor who executed such power of attorney or proxy of the adjourned date of meeting, to afford him an opportunity to attend and vote or to execute a new power of attorney or proxy designating some other person.

Note:—Adapted from former Southern Rule 10 and Eastern Rule 27. Subdivision (a) of the Eastern Rule does not include creditors' committees; the above uniform rule covers both trustees and creditors' committees.

It is generally felt that the adoption of the Eastern and Southern rules regulating solicitation of proxies following the enactment of the Chandler Act has produced salutary results in the elimination of a number of abuses which were prevalent in the bankruptcy practice. However, attention has been directed to a practice which has grown up in recent years of proxies being solicited by laymen with the names of attorneys inserted in the powers. Although solicitation of itself is not deemed unlawful (*In re Mayflower Hat Co. Inc.* 65 F. (2) 330) when engaged in by a layman, it is, of course, unlawful when done by, for, or on behalf of a lawyer. It is therefore deemed advisable to amend subdivision (c) of the former rule by requiring an attorney at law as well as a creditor to file an affidavit making a full disclosure as to the solicitation of claims.

Subdivision (d) in the above rule provides in addition to the existing matters that "if it appears that any claim, power of attorney or proxy has been solicited, and such claim is being voted at any meeting of creditors by an attorney at law, the referee shall not allow the voting of such claim under such power of attorney or proxy."

Subdivision (e) of the former rule is eliminated as being unnecessary since it is in effect covered by Section 38(6) of the Bankruptcy Act and Section 3057 of Title 18 of the United States Code which is based on former Section 29e of the Bankruptcy Act.

RULE 15—Allowances

(a) *Compensation Applications.* All applications for allowances, including the reports and accounts of custodians, receivers, ancillary receivers, trustees, accountants, attorneys, assignees and appraisers shall be filed with the referee in the case.

Applications must state the sums requested. No sums shall be allowed greater than those requested. No disbursements shall be allowed for any except extraordinary typewriting charges. All applicants for allowances shall annex to their applications an affidavit which shall state in addition to the matters required by Sec. 62 of the Bankruptcy Act: (1) that no division of compensation shall be made by the applicant except as set forth in said affidavit; (2) whether or not any agreement prohibited by the U.S.C. Title 18 Sec. 155 has been made.

Except as to appraisers as hereinafter mentioned, applications for allowances shall be heard on notice sent by mail to the creditors, the applicants, the trustee and his attorney. The notice of hearing shall state the amount requested, and the amount of compensation, if any, and to whom, theretofore allowed in the case. Where an appraiser requests \$50.00 or less as compensation, the referee may pass on such application without notice to creditors.

In cases of which he is in charge, the referee shall examine all accounts of receivers and trustees and shall make recommendations to the court as to discharge of receivers. The referee shall also make recommendations to the court as to compensation and the amount thereof, in accordance with these rules and the Bankruptcy Act, to receivers, trustees, accountants, appraisers, assignees, attorneys for assignees, attorneys for debtors, attorneys for the petitioning creditors, attorneys for bankrupts, attorneys for receivers and attorneys for trustees. Where an appraiser requests \$50.00 or less as compensation, the referee shall fix the value of such services and order the same as fixed to be paid.

In the report as to compensation the referee shall state:

1. What the gross assets of the estate were.
2. What the net assets on hand are.
3. What amount will remain after payment of the recommended allowances and any other deductions.
4. What previous dividends had been declared and paid, and if so, of what percent and of what amount.

5. The sum necessary to pay a dividend of 1%.

6. An itemized statement of all prior allowances both as to amounts and the persons to whom such allowances were made.

7. Whether the services referred to in the report have been the subject of compensation in whole or in part to any other person.

8. And in the case of a Receiver whether the services rendered were more than those of a mere custodian.

(b) *Attorney for Receiver or Trustee.* Applications for compensation for services as attorney for the receiver or trustee shall comply with Section 62 of the Act, and shall state in addition the following:

1. The date when the attorney was retained, together with a copy of the order authorizing such retention, except when made by the referee.

2. That all the services for which compensation is requested were performed for and on behalf of the receiver or trustee, as the case may be, and not on behalf of any committee, creditor or other person.

3. In concise form the facts regarding such services, showing their nature and extent, the results obtained, the size of the estate and any other matters which will enable the court to determine the reasonable value of such services.

4. The amount of compensation applied for, the amount of any compensation theretofore received in the case, and the amount requested as reimbursement for expenses, which shall be itemized.

(c) *Attorney for Petitioning Creditors or Partners.* Applications for compensation for services as attorney for the petitioning creditors in an involuntary proceeding or as attorney for petitioning partners in a voluntary proceeding (where less than all join) shall comply with Section 62 of the Act and shall state in addition the following:

1. That all the services for which compensation is requested were rendered for and on behalf of the petitioning creditors, or petitioning partners, as the case may be.

2. The amount of compensation requested for said services, and the amount requested as reimbursement for expenses, which shall be itemized.

3. That a certified copy of the adjudication has been served upon the bankrupt, or the respondent partners, or their attorneys of record, within five days after adjudication, or the reasons why such service was not made.

(d) *Attorney for Bankrupt.* Applications for compensation for services as attorney for the bankrupt shall comply with Section 62 of the Act, and, in addition, shall state the following:

1. That all services for which compensation is requested, performed before the petition in bankruptcy was filed, were in connection with the said bankruptcy proceeding and were not services in any other matter; that all services performed after the filing of the petition were in connection with the performance by the bankrupt of the duties prescribed for him by the Act or were rendered pursuant to an order of the court.

2. The amount of compensation requested for such services and the amount of compensation received therefor from the bankrupt or any other person and the amount requested as reimbursement for expenses which shall be itemized.

Note:—Subdivisions (b), (c) and (d) are taken from former **Eastern Rule 22** and **Southern Rule 17**. Adapted for both Districts so as to make uniform as far as possible the form and contents of applications for disallowances by attorneys.

RULE 16—Discharges

(a) *Individual and Copartnership Bankrupts.* In cases where the bankrupt is an individual or a copartnership and has not waived the right to a discharge, the referee in charge of the proceeding shall in the absence of special circumstances, within fifteen days after the completion of the bankrupt's examination at the first meeting of creditors or at a meeting specially fixed for that purpose, fix by order the last day for the filing of objections to the bankrupt's discharge, and give notice thereof to all parties in interest as provided in section 58b of the Act.

The objections to the bankrupt's discharge shall be verified and in writing, shall specify the grounds of opposition, shall be filed with the referee and a copy thereof served upon the bankrupt or his attorney on or before the date of such filing.

Within five days after the last day fixed for the filing of the objections the bankrupt may make any motion with respect thereto on at least five days' notice to the objecting

party of a hearing thereon before the referee on the earliest date on which such referee shall hold hearings. The referee may permit the filing of amended objections in the event that the motion is sustained.

A party who files objections may be required by the referee to deposit with the stenographer such sum as the referee may determine is necessary to pay the expense of the stenographer in reporting the minutes. In that event the referee shall give notice to the attorney for the objecting party of the amount of the deposit required and that unless such deposit is made within ten days thereafter the objections may be dismissed. If such deposit is not made within said period of ten days or such further time as the referee may permit, the referee may dismiss the objections and grant the discharge.

Notice of hearing on the objections filed to the bankrupt's discharge shall be given by the referee within fifteen days after the last day fixed for the filing of such objections, but where a motion by the bankrupt is pending as to such objections, such notice shall be given within such time as the referee may fix in the order disposing of such motion.

If after the commencement of the hearing on the objections there is unreasonable delay in carrying on and completing such hearing, the court may dismiss the application for discharge or the objections, as the case may be.

In the event of any withdrawal of objections to a discharge or the failure to prosecute the objections, no discharge shall be granted unless the bankrupt and his attorney shall each make and file with the court an affidavit that no consideration has been promised or given, directly or indirectly, for any such withdrawal or failure to prosecute.

(b) *Corporate Bankrupts.* Corporations seeking discharge shall file their applications with the clerk and a duplicate original thereof with the referee in charge of the proceeding. Thereupon the procedure set out in subdivision (a) of this Rule shall be followed, except that in cases where the corporate bankrupt's examination at the first meeting of creditors or at a meeting specially fixed for that purpose was concluded prior to the filing of its application for discharge, the referee shall within fifteen days after the filing of the application for discharge, make an order fixing the last day for the filing of objections to the bankrupt's discharge.

Note:—The above rule is substantially the same as former Southern District Rule 19 and Eastern District Rules 23 and 24, with slight changes. The provision in both rules

requiring the referee to inquire and report to the judge whether any illegal or improper acts appear on the withdrawal of objections is eliminated as unnecessary in view of section 3057 of title 18 United States Code, which is based on former section 29e of the Act.

Subdivision (c) of Southern District rule 19 is eliminated as unnecessary by reason of Rule of Civil Procedure 6(b).

RULE 17—Compensation of Referees' Court Stenographers

SOUTHERN AND EASTERN DISTRICTS

Compensation to stenographers employed to report proceedings before Referees in Bankruptcy is fixed at twenty-five cents per folio for an original transcript and fifteen cents per folio for a copy.

FOR SOUTHERN DISTRICT ONLY ADD THE FOLLOWING

For attending and making shorthand notes in each proceeding the stenographer may charge a minimum of one dollar and fifty cents (\$1.50) for the first ten minutes of such service or any portion thereof and one dollar (\$1.00) for each succeeding ten minutes or portion thereof. In no event, however, shall the charge in any one proceeding for one half day's attendance exceed seven dollars and fifty cents (\$7.50), or for a full day's attendance fifteen dollars (\$15.00), except that there shall be an additional charge of two dollars and fifty cents (\$2.50) per hour in excess of five in any day. In the event that a transcript is furnished the attendance charge shall be absorbed in the charge for the transcript if the transcript charges are greater than the attendance fees set forth above.

Note:—See Section 38(7) of the Act. The first part of this Rule is common to both Districts. It is substantially the same as former Rule 29 Eastern District except for the proposed increase in the rate for an original transcript in conformity with present-day increased costs of operation.

The addendum for benefit of Southern District stenographers is substantially the same as former Rule 18 Southern District. Different conditions in both districts require separate rules.

Reference to taxation and payment of costs are eliminated since provision is made therefor in section 2a(18) of the Act and General Orders 10 and 34.

RULE 18—Proceedings Before Referees

After a general reference, all applications whether ex parte or on notice, shall be made to the referee unless otherwise provided by law or by these rules. If an appli-

cation is made to the judge after a general reference, the judge shall refuse to hear the application, unless the referee is absent and no other referee is available.

Upon delivery to the referee of a certified copy of the adjudication or the order of reference, the clerk shall at the same time deliver a statement of the name and address of any receiver appointed and the amount of the bond.

In the event of the absence of a referee from his office and court any other referee who may be available shall temporarily act in his place.

Note:—Adapted from former Southern District Rule 20 with changes in language. Southern Rule 20 has worked well in practice and in the interest of uniformity the above rule for both districts is highly desirable.

The last paragraph is now the rule in both districts by separate orders of the judges.

RULE 19—First Meeting of Creditors

The referee shall promptly call the first meeting of creditors to be held at the earliest practicable date. Where a list of creditors with their addresses is filed with the referee, the latter shall, without waiting for the filing of schedules, call such first meeting of creditors.

With the notice of the first meeting of creditors, the referee shall include a notice reading substantially as follows:

Filing of Claim

Your attention is directed to the provisions of the Bankruptcy Act that claims may not be allowed against the bankrupt estate if not filed within six months after the first date set for the first meeting of creditors.

Proof of claim must be filed whether or not the debt due the creditor is included in the schedules of the bankrupt.

It is essential to proper administration of bankrupt estates that creditors avoid giving their proxies to unknown persons who may solicit them. Proxies will not be recognized by the referee if it appears that they were solicited in the interests of the bankrupt or of any one other than general creditors.

Note:—Substantially the same as former Southern District Rule 22 and Eastern District Rule 21.

Attention is called to the fact that in Chapter XI in the event of the entry of an order of adjudication, claims may not be allowed against the estate if not filed within three (3) months after the first date set for the first meeting of creditors. See Bankruptcy Act section 355.

RULE 20—Referees' Decisions—Orders Thereon—Petitions for Review

(a) *Decisions.* Referees shall make and file decisions within two months after final submission and shall forthwith give notice of such filing to the parties or their attorneys.

(b) *Orders Thereon.* Unless the referee otherwise directs, an order in a contested matter shall be settled on notice.

(c) *Petitions for Review.* To enable referees to comply with section 39a(8) of the Act, the party who files with the referee a petition to review a referee's order, shall, within ten days thereafter, or within such further time as the referee may for cause shown allow, furnish the referee with (1) a transcript of the evidence or a summary thereof agreed on by the parties; (2) all exhibits, and (3) the expense, if any, of transporting the same to the clerk.

(d) *Extension of Time.* An order granting an extension of the time within which to file a petition for review shall be served promptly on all adverse parties.

Note:—Adapted from former Southern District Rules 14 and 23 and Eastern District Rule 17.

The provision in the second paragraph of S. D. rule 14 requiring reply by a referee to a post card inquiry is eliminated as not being the proper subject of a court rule. See Bankruptcy Act 39a(4).

Subdivision (b) of E. D. Rule 17 is eliminated as unnecessary in view of Bankruptcy Act section 39c and as being in possible conflict with the latter section.

RULE 21—Distribution of Dividends

Except as otherwise directed by the court, upon the declaration of any dividend or confirmation of an arrangement, checks shall be forwarded to the several creditors, or to their duly authorized attorneys-at-law, with a notice reading substantially as follows:

“Enclosed please find check for dividend of %.
This check should be deposited promptly, as it will be necessary, after the declaration of final dividends, to stop payment of all checks in accordance with the rules and practice of this court.”

Note:—Substantially the same as former Southern District rule 24 and Eastern District rule 32 with change in language to make the rule uniform for both districts.

TABLE OF DISPOSITION OF FORMER GENERAL BANKRUPTCY RULES

Southern District

- Rule 1—Unnecessary as being merely a restatement of the adjective law.
- Rule 25—Unnecessary. See sections 39, 40 and 42 of the Act.
- Rule 38—Unnecessary. See General Order 37 and Rule 6, Federal Rules of Civil Procedure.

Eastern District

- Rule 5—Unnecessary. See General Order 12 and section 51 of the Act.
- Rule 18—Unnecessary. See General Order 26 and section 53 of the Act.
- Rule 19—Unnecessary. See section 40 of the Act.
- Rule 20—Unnecessary. See section 40 of the Act.
- Rule 25—Unnecessary. See section 40 of the Act.
- Rule 26—Unnecessary. See section 40 of the Act.
- Rule 28—Unnecessary. See section 2a(18) of the Act.
- Rule 30—Unnecessary. See section 61 of the Act.
- Rule 34—Unnecessary. See sections 39, 40 and 42 of the Act.
- Rule 35—Unnecessary. See General Order 37 and Rule 6, Federal Rules of Civil Procedure.

DERIVATION OF GENERAL BANKRUPTCY RULES

New Rule	Derived from	
	Former Southern Rule	Former Eastern Rule
1	2	1
2	3	1
3	4	2 and 6
4	5	4
5	13	3
6	6	none
7a	20	6
7b	27	8a
7c	26	8b
7d	29	11
7e	8	none
7f	30	8c
8a	31 and 32	9a and 9b
8b	34	11
8c	35	9c
8d	36 and 37	33
9	9	12
10	28 and 33	10
11	none	13
12	7	31
13a	11	7
13b	12	15 and 16
13c	15	14
14	10	27
15	16 and 17	22
16	19	23 and 24
17	18	29
18	20 and order	6 and order
19	22	21
20	14 and 23	17
21	24	32

RULES RELATING TO CORPORATE REORGANIZATION PROCEEDINGS UNDER CHAPTER X

RULE X-1—Applicability of General Bankruptcy Rules

The General Bankruptcy Rules, so far as applicable and not inconsistent with the provisions of these rules, shall apply to proceedings under Chapter X.

Note:—This is the same as former Rule X-1 of the Southern District. There is no similar rule in the Eastern District.

RULE X-2—Number of Copies of Papers to Be Filed

(a) *Petition.* The original and five copies of each petition pursuant to Article IV of Chapter X of the Act shall be filed with the clerk.

(b) *Orders and Other Papers.* 1. The original and four copies of each of the following papers shall be filed with the clerk: (a) orders approving or dismissing petitions; (b) orders appointing trustees or continuing debtors in possession; (c) orders determining the time within which the claims of creditors may be filed and allowed, and the division of creditors and stockholders into classes according to the nature of their respective claims and stock; (d) orders approving any plan or plans, together with copies of such plans; (e) orders approving alterations or modifications in plans, together with copies of such alterations or modifications; (f) orders confirming plans, together with copies of such plans; (g) applications for allowances for compensation and expenses; (h) orders making or refusing to make such allowances; (i) orders adjudging debtors to be solvent or insolvent; (j) orders adjudging debtors as bankrupts or dismissing proceedings.

2. Except as otherwise provided in these rules the clerk or referee shall determine the number of copies of papers to be filed.

(c) *Securities and Exchange Commission.* Whenever, by law, copies of papers are required to be transmitted to the Securities and Exchange Commission, two copies thereof shall be so transmitted.

Note:—Substantially the same as former Southern rules X-2, X-8 and X-9 and Eastern rules X-1 and X-6.

RULE X-3—Time Within Which Application for Approval of Debtor's Petition Must Be Made

If application for approval of debtor's petition for reorganization is not made within ten days after the filing of such petition, an order shall be entered dismissing such petition unless the time for making such application is extended.

Note:—Substantially the same as former Southern rule X-3 and Eastern rule X-2.

RULE X-4—Affidavit to Be Filed Prior to Approval of Petition for Reorganization

Before a petition praying for reorganization shall be approved, there shall be submitted an affidavit, together with five copies thereof, giving the following information:

(a) The nature and present status of each action or proceeding pending or threatened against the debtor or its property in which a judgment against the debtor or seizure of its property may be imminent.

(b) The amount of each issue of outstanding bonds, debentures or other evidences of indebtedness of the debtor whether or not secured by or issued under an indenture or other similar instrument, and the name and address of the trustee, if any, of each issue.

(c) The approximate total number of unsecured creditors of the debtor, other than holders of indebtedness mentioned in subdivision (b), and the name of each unsecured creditor who has a claim against the debtor in excess of 5% of the total of such claims.

(d) The name and address of each secured creditor of the debtor other than holders of securities specified in subdivision (b), the amount of the indebtedness to each, and a brief statement of the nature of the security held by each.

(e) A brief description of all property in the possession of the debtor, and of all property of the debtor in the custody of any public officer, receiver, trustee, assignee for the benefit of creditors, mortgagee, pledgee or assignee of rents; the name and address of each such person; the property held by each; and the courts in which such proceedings, if any, are pending.

(f) A brief statement of all pending proceedings or negotiations for the reorganization of the debtor and the names of the persons participating therein.

(g) If the fixed and liquidated indebtedness of the debtor is less than \$250,000.00, a statement giving the reasons or facts on the question whether a trustee should be appointed or whether the debtor should remain in possession.

(h) The names of all the officers and directors of the debtor, and their present salaries.

If it is impracticable or impossible to furnish any of the foregoing information, the affidavit shall state the reason. Upon good cause shown, the judge may dispense with any of the foregoing requirements.

Note:—The above is adapted from and is substantially the same as former Southern Rule X-4 and Eastern Rule X-3.

RULE X-5—Retention of Supervision by Judge

The judge who approves the petition shall, unless otherwise directed by him or by the chief judge, retain supervision over all subsequent steps in the proceeding.

Note:—Substantially the same as former Southern District Rule X-7 and Eastern District Rule X-27.

RULE X-6—Answers

The original answer, with proof of service of a copy thereof upon the attorney for the petitioning creditors, indenture trustee, or debtor, as the case may be, together with five copies thereof, shall be filed with the clerk.

Note:—Substantially the same as former Southern rule X-5 and Eastern rule X-4. The requirement for verification is omitted since it is provided for in Sections 18c and 102 of the Act.

RULE X-7—Trial of Issues; Reference

If an answer denies any material allegation of a petition, the clerk shall place the cause upon the next succeeding bankruptcy motion calendar as a contested issue. Upon the call of the calendar, the issue shall be referred to the judge who approved the petition or before whom application for approval of the petition or an issue raised by another answer is pending. Thereupon the judge shall either: (a) determine the issues summarily; or (b) refer the issues to a referee in bankruptcy or other person as Special Master in accordance with section 117 of the Act

and Rule 53 (b) of the Rules of Civil Procedure for consideration and report.

Note:—This is substantially the same as former Southern District Rule X-6 and Eastern District Rule X-5 with change in language. See sections 143 and 144 of the Act.

See Rule 53 (b) of Federal Rules of Civil Procedure and criticism of appointment of Special Masters in *Newman & Bisco v. Realty Associates*, 173 Fed. 2nd, 609, 610; *Prudence Bonds Corp. v. Prudence Realization Corp.*, 174 Fed. 2nd, 288, 289.

See also Section 117 of the Act amended effective as of July 1, 1947, requiring that special references under Chapter X should be made to Referees in Bankruptcy rather than to others, except in unusual circumstances.

RULE X-8—Appointment and Qualification of Trustees—Attorneys for Trustees

(a) Immediately upon the appointment of a trustee the clerk shall notify him by mail of his appointment. Within five days after his appointment, or within such further time, not to exceed five days, as the judge may permit, the trustee shall qualify by filing his bond with the clerk with an affidavit showing that he has the qualifications required by Sections 156 and 158 of the Act.

(b) No attorney shall be appointed to represent a trustee unless an affidavit showing that he has the qualifications required by Sections 157 and 158 of the Act has been submitted with the application for his appointment.

Note:—Same as former Southern District Rules X-10 and X-11 and Eastern District Rules X-28 and X-29.

RULE X-9—Interventions

(a) Every petition for leave to intervene pursuant to the provisions of Section 207 of the Act shall state whether the application is to intervene generally or as to specific matters, the interest which the petitioner seeks to protect, the facts showing the necessity for intervention to protect such interest, and the specific matters or issues as to which the petitioner desires to intervene. If the intervention is sought by any person or committee required to file a statement under Section 211 of the Act, a copy of such statement shall be annexed to the petition for leave to intervene. Notice of the application shall be given to the debtor in possession or trustee, to all persons who shall theretofore have been granted leave to intervene generally in the pro-

ceeding, to the Securities and Exchange Commission and to such other persons as the Judge may direct. Prior to the approval of the petition, such notice shall also be given to the debtor and to the petitioning creditors.

(b) If the interest which the petitioner seeks to protect is already represented in the proceeding, the petition shall state the name of the prior representative and the reasons why the interest which the petitioner seeks to protect is not adequately protected by such prior representative.

(c) If intervention is granted, the order shall state that the intervention is general or that the intervention is granted as to the specific matters or issues enumerated in such order. The granting of leave to intervene shall not of itself entitle the intervenor, or his attorney, to an allowance for services.

Note:—Same as former Southern Rule X-13 and Eastern Rule X-9.

RULE X-10—Confirmation of Reports of Special Masters

Hearings upon a special master's report on the approval or confirmation of a plan of reorganization, dismissal of the proceedings, adjudication of the debtor to be a bankrupt, or allowance of fees and expenses, shall be held at such time and place and upon such notice as the judge shall direct. Upon all other matters, the report of the special master shall be filed in the office of the clerk and upon the same day notice thereof shall be delivered or mailed by the special master to the attorneys who appeared before him at the hearing and to the parties who appeared at the hearing without attorneys. The report shall be brought on for confirmation on the day named in the notice, which shall be a day upon which the bankruptcy motion calendar is called and shall not be less than five days after the filing of the report and delivery or mailing of the notice. The clerk shall place the case on the calendar on the day specified in the notice.

Note:—Same as former Southern Rule X-12 and Eastern Rule X-8.

RULE X-11—Reports of Operations of Business

Unless otherwise ordered, the trustee or debtor in possession shall file with the clerk, not less than three days prior to the hearing provided for in Section 161 of the Act, a report and summary of the operations of the business of the debtor and the present condition thereof.

Unless otherwise ordered, every trustee or debtor in possession, if authorized to operate the business, shall file

with the clerk, not later than the 15th of each month, a report and summary of the operations of the business during the preceding months. Unless the judge otherwise directs, the report shall include a classified statement of receipts and disbursements, balance on hand at the beginning and at the end of the month, indebtedness incurred, credit extended, contractual and other obligations assumed, and such other matters as may be specified by the judge.

Note:—Substantially the same as former Southern rule X-14 and Eastern rule X-10.

RULE X-12—Operation of Vessels and Protection of Maritime Liens

(a) In all proceedings in which the debtor is the owner, or owner *pro hac vice*, or charterer, or is an agreed purchaser in possession, of one or more vessels upon which maritime liens are asserted, the judge shall, unless in his discretion he shall otherwise direct, upon application made at any time by the trustee, or by the debtor in possession, or by any one asserting such maritime lien, make such provision as he shall deem wise for the protection by insurance or otherwise of the holders of such maritime lien existing or claimed to exist at the time of the filing of the petition or arising thereafter, during such time as any such vessel or vessels may remain in the ownership of or be operated by the trustee, or by the debtor in possession.

(b) Any maritime lienor, notwithstanding any restraining order that may be issued in such proceeding, unless issued after hearing upon notice to him, shall be at liberty to file a libel in admiralty *in rem* against a vessel for the determination of his lien and the amount thereof, but without the right to issue process of attachment, or right of seizure, or of sale, or interference with the possession of the trustee or debtor in possession, except upon further order of the judge. Upon the filing of such libel the trustee or debtor in possession shall file claim to such a vessel without being required to file any stipulation for costs or value, and shall confess or defend the libel as may seem proper. In the latter event the issues raised by the pleadings shall be tried as a preferential cause on the admiralty side of court.

Note:—The purpose of the rule is to protect an existing maritime lienor against the possibility of loss of the vessel or incurrence of priority charges while it is in the operation of a debtor in reorganization. Limitation of such protection to

a situation where the debtor is the *actual* owner or owner *pro hac vice*, is inadequate. An owner *pro hac vice* is a bareboat or demise charterer, and but one of the class of persons who are presumptively clothed with power to pledge the credit of the vessel under Title 46 U. S. C. A. Sections 972, 973. Section 173 designates the persons having presumptive authority to pledge the credit of the vessel as “* * * such officers and agents when appointed by a charterer, by an owner *pro hac vice*, or by an agreed purchaser in possession of the vessel; * * *”. Hence, the rule should include all persons of such class and has been revised to include “* * * the owner, the owner *pro hac vice*, the time charterer or an agreed purchaser in possession of one or more vessels * * *”.

Otherwise the language of the former rule has been restated. (Former Rule X-15 of the Southern District and Rule X-11 of the Eastern District.)

As to the jurisdiction of the reorganization court see *Foust v. Munson S. S. Lines*, 299 U. S. 77, 57 S. Ct. 90.

RULE X-13—Agents of Receivers or Trustees for the Disbursement of Funds or the Execution of Instruments

The judge may authorize a receiver or trustee to designate one or more agents to sign, endorse and deliver checks and other negotiable instruments, orders for the payment of money or the delivery of property, documents of title, and other instruments and documents.

Note:—Same as former Southern rule X-16 and Eastern rule X-12 without change.

RULE X-14—Proofs of Claim and of Interest—Allowance—Objections

(a) *Forms.* Proofs of claim, except those founded upon securities, shall be in the form prescribed by subsections (a) and (b) of Section 57 of the Act, except that the proof need not be under oath if the claims or interests have been scheduled by the debtor in possession or listed by the trustee pursuant to Section 163 or Section 164 of the Act and if the claims or interests have not been disputed.

Every proof of claim or interest founded upon securities, other than a proof of claim by an indenture trustee, shall be signed by the holder of the claim or interest, and shall contain the following information: a description of the securities; the principal amounts of the securities, or the number of the shares; the coupons attached to the securities, if any; and the serial certificate, bond, and other identifying numbers of the securities. The proof of claim or interest

shall be verified unless (1) the claim or interest has been scheduled by the debtor or listed by the trustee, and has not been disputed; or (2) proof of claim has been filed by the indenture trustee.

(b) *Filing.* The judge may authorize the filing of proofs of claim or of interest with the debtor in possession or trustee, or a referee, special master or agent appointed by him. The security on which a proof of claim or interest is founded need not be forwarded or filed with the proof of claim or interest.

(c) *Proofs of claim by indenture trustees.* Every proof of claim filed by an indenture trustee pursuant to Section 198 of the Act shall be verified and have annexed thereto a copy of the instrument under which he is trustee. The proof of claim shall state the amount of securities then outstanding under the trust indenture, and the amount of cash and securities, if any, held for the account of the trust. The amount of the claim filed by the indenture trustee shall be deemed to be reduced: (1) by such part of the claim as is represented by securities owned by the debtor; and (2) by such part of the claim as is represented by securities on which proofs of claim or of interest have been filed by holders thereof and allowed.

(d) *Allowance of claims and interests.* Every claim or interest for which a proof of claim or of interest has been filed shall be deemed to be allowed until written objection is filed as provided herein.

(e) *Objections to claims and interests.* The debtor in possession, trustee, or any party in interest may, at any time prior to confirmation of the plan, file objections to any claim or interest scheduled by the debtor in possession or listed by the trustee or for which a proof of claim or interest has been filed. The judge may, however, fix an earlier date for the filing of objections, and may, for cause shown, permit an objection to be filed after confirmation of the plan. Objections shall be filed with the person designated by the judge as the person with whom proofs of claim or interest are to be filed. Such person shall mail notice of the objections to the claimant.

The claimant, or objectant, or debtor in possession or trustee, may at any time apply to the judge or referee for a summary hearing on a filed objection. The determination of the judge or referee shall be entered upon the registra-

tion records of the debtor's securities if the claim or interest is founded on a security.

Note:—Substantially the same as former Southern rules X-17, 18 and 19 and Eastern rules X-13, 14 and 15 with change in language to conform rule in both districts.

RULE X-15—Conflicting Claims Founded on the Same Securities

If two or more persons file conflicting proofs of claim or of interest founded on the same securities and bearing different dates and if there is no conflict with the security registration records of the debtor as referred to in the following paragraph, the person designated by the judge as the person with whom proofs of claim or interest are to be filed shall give notice by mail to the claimant whose proof of claim or interest bears the earlier date, advising him that such other proof of claim or interest on the same security has been filed, and that objections thereto must be made within ten days; and, if no objection be filed within such ten days or within any further time allowed, the person whose proof of claim bears the later date shall be presumed to be the owner of such claim or interest for the purpose of giving or withholding acceptance of a plan. If such conflicting proofs of claim or of interest bear the same date, each claimant shall be deemed to have objected to the claim of the other, and the provisions of Rule X-14 shall apply.

If a person file a proof of claim or of interest founded upon securities which is in conflict with the security registration records of the debtor, the person designated by the judge as the person with whom proofs of claim or interest are to be filed shall give notice by mail to such claimant, advising him of the conflict and that objections to the accuracy of the security registration records must be made within ten days; and, if no objection be filed within such ten days or within any further time allowed, the person whose name appears on the security registration records shall be presumed, for the purpose of giving or withholding acceptance of a plan, to be the owner of such claim or interest.

If objection be made pursuant to this rule, the matter shall be heard and determined as the court may direct.

Note:—Substantially the same as former Southern rule X-20 and Eastern rule X-16.

RULE X-16—Assignments of Claims Other Than Claims Founded on Securities

Upon the filing of satisfactory proof of an assignment of a claim, other than a claim founded on a security, proof of which has been filed, the person designated by the judge as the person with whom proofs of claim or interest are to be filed, shall give notice by mail to the original claimant advising him that such proof of assignment has been filed and that objections thereto must be made within ten days; and, if no objection be filed within such ten days or within any further time allowed, the assignee shall be deemed subrogated to the original claimant for all purposes. If objection be made, the matter shall be heard and determined as the court may direct.

Note:—Same as former Southern rule X-21 and Eastern rule X-17.

RULE X-17—Security Records and Transfer of Securities—Notices

(a) *Records and Transfers.* Whether a trustee is appointed or the debtor is continued in possession, the debtor shall continue, unless otherwise directed by the court, to transfer and exchange its stock certificates, bonds and other securities, and upon satisfactory proof of loss, theft, destruction or mutilation to issue new stock certificates, bonds and other securities, in the usual manner and in accordance with applicable law and the terms of the agreements, indentures, instruments, or other authority under which the securities were issued or listed, and it shall continue to record such transactions in its security records.

The schedules of the debtor in possession filed pursuant to section 163, or the trustee's list of stockholders and of creditors holding claims founded on securities filed pursuant to section 164 of the Act, shall conform to such records, and all subsequent transfers and changes noted on such records shall be deemed to be amendments of the schedules or lists so filed.

A sale, assignment or transfer of a security shall be deemed to effect a sale, assignment or transfer of the claim or interest covered by any filed proof of claim or interest founded on such security.

(b) *Notices.* Communications to holders of claims or interests founded upon registered securities shall be addressed to them at their addresses in the registration

records of the debtor's securities. Upon written request by a registered holder, his address on such records shall be changed.

Note:—Substantially the same as former Southern rules X-22 and 23 and Eastern rules X-18 and 19.

RULE X-18—Hearing of Plans

Notice of a hearing under Section 169 or Section 170 of the Act shall be given by mail and shall be accompanied by a copy of the plan filed by the debtor in possession or examiner, if any, or the trustee. If the hearing is on a report by the trustee that a plan cannot be effected, a copy of the report shall accompany the notice.

Note:—Same as former Southern rule X-25 and Eastern rule X-21.

RULE X-19—Applications for Compensation and Allowance

Every application for compensation or allowance shall be verified and shall include (a) a detailed statement of the services rendered and expenses incurred; (b) the amounts, separately stated, for which an allowance is sought as compensation and as reimbursement; (c) a copy of the statement, if any, filed pursuant to Section 211 of the Act; (d) a detailed statement bringing the facts in the statement filed pursuant to Section 211, if any, up to date; (e) a detailed statement of the facts required to be stated under Section 249 of the Act; (f) a statement by the applicant that he has not entered into any agreement, written or oral, express or implied, with the debtor, receiver, trustee, or any other party in interest, or any attorney of any of such persons, for the purpose of fixing the amount of any of the fees or other compensation to be allowed out of or paid from the assets of the debtor; and (g) such other facts as may be necessary to reveal fully the applicant's connection with the proceeding and with the debtor, receiver or trustee and the parties in interest.

Unless otherwise ordered, notice of hearing on such applications shall state the names of the applicants, the several capacities in which they have acted, and the amounts, separately stated, sought by each for compensation and for reimbursement.

Note:—Same as former Southern rule X-24 and Eastern rule X-20.

RULE X-20—Date for Determining Validity of Acceptances

The judge shall fix a date as of which the ownership of claims and interests shall be determined for the purpose of deciding who may accept or withhold acceptance of any specified plan, and on or before which acceptances must be filed. Proofs of claim or interest founded upon securities may be filed at any time on or before such date.

Note:—Same as former Southern rule X-26 and Eastern rule X-22.

RULE X-21—Consummation of Plan: Reports and Final Decree

(a) *Reports.* If the debtor has remained in possession, the debtor and such other corporation, if any, as may under the plan succeed to the business and assets of the debtor, shall, within thirty days after the date of the order confirming the plan or within such other period as the judge shall direct, report to him the action taken and the progress made in the consummation of the plan. If a trustee was appointed, such reports shall be made by the trustee and the debtor or such other corporation, if any, as may under the plan succeed to the business and assets of the debtor. Further reports shall be made from time to time as the judge may direct, until the plan has been consummated.

(b) *Final Decree.* After the consummation of the plan, the trustee or the debtor shall make application for a final decree. Such application shall set forth: (a) the extent to which the plan has been consummated; (b) the names and addresses, so far as may be known, of the holders of claims or interests which have not been surrendered or released in accordance with the provisions of the plan, and a statement of the nature and amounts of such claims or interests; (c) if the application is made by a trustee, a detailed statement of the services rendered by him and disbursements made or incurred for which no allowance has theretofore been made, including in such statement all the information required by Rule X-19 so far as applicable; and (d) such other facts as may be necessary to enable the judge to pass upon the provisions to be included in the final decree.

In addition to the provisions required by Section 228 of the Act, the judge may, in the final decree: (a) allow to the trustee, if any, compensation for services rendered and reimbursement for expenses incurred; (b) fix a time within which claims and interests must be released or surrendered,

as provided in Section 204 of the Act, in order to participate in the distribution under the plan; and (c) designate the debtor or other corporation which, under Section 205 of the Act, shall become entitled to the securities and cash remaining unclaimed at the expiration of the time fixed as provided in Section 204.

Note:—Substantially the same as former Southern rules X-28 and 29 and Eastern rules X-24 and 25.

RULE X-22—Procedures Subsequent to Adjudication of Debtor as Bankrupt

(a) *Order.* The order adjudicating the debtor a bankrupt and directing that bankruptcy be proceeded with shall: (1) direct the trustee in the reorganization proceeding to continue to administer the estate until the election of a trustee under section 44 of the Act, or appoint a receiver to replace the debtor in possession; and (2) refer the case to one of the referees. The clerk shall mail or deliver a certified copy of the order to the referee.

(b) *Accounting of trustee or debtor in possession.* Within twenty days after qualification of the trustee elected pursuant to section 44, the trustee in the reorganization proceeding or the debtor in possession, shall file with the referee, in duplicate, a report and accounting, which shall contain, so far as applicable, the information required from a receiver on an accounting in bankruptcy.

Note:—Substantially the same as former Southern rule X-27 and Eastern rule X-23, except that the report in subdivision (b) should be filed with the referee and not the clerk (as provided in the present rules) and the period of ten days allowed for the filing of the report is increased to twenty days.

TABLE OF DISPOSITION OF FORMER CHAPTER X RULES

Southern District

Rule X-30—No longer necessary.

Eastern District

Rule X-7 —Unnecessary. See section 117 of the Act.

Rule X-26—No longer necessary.

DERIVATION OF CHAPTER X RULES

New Rule	Derived from	
	Former Southern Rule	Former Eastern Rule
X-1	X-1	none
X-2	X-2, X-8 and X-9	X-1 and X-6
X-3	X-3	X-2
X-4	X-4	X-3
X-5	X-7	X-27
X-6	X-5	X-4
X-7	X-6	X-5
X-8	X-10 and X-11	X-28 and X-29
X-9	X-13	X-9
X-10	X-12	X-8
X-11	X-14	X-10
X-12	X-15	X-11
X-13	X-16	X-12
X-14	X-17, X-18 and X-19	X-13, X-14 and X-15
X-15	X-20	X-16
X-16	X-21	X-17
X-17	X-22 and X-23	X-18 and X-19
X-18	X-25	X-21
X-19	X-24	X-20
X-20	X-26	X-22
X-21	X-28 and X-29	X-24 and X-25
X-22	X-27	X-23

RULES RELATING TO ARRANGEMENT PROCEEDINGS UNDER CHAPTER XI

RULE XI-1—Applicability of General Bankruptcy Rules

The General Bankruptcy Rules, so far as applicable and not inconsistent with the provisions of these rules, shall apply to proceedings under Chapter XI.

RULE XI-2—Affidavits to Be Filed With Petition

(a) Every petition for arrangement filed pursuant to Section 321 shall be accompanied by an affidavit of the debtor setting forth:

(1) Whether a receiver or trustee was appointed in the prior bankruptcy proceeding, and if so, the name of such receiver or trustee; whether or not a creditors' committee was appointed under section 44(b) in the prior bankruptcy proceeding, and if so, the names and addresses of the members of such committee;

(2) the names and addresses of the ten largest creditors, excluding (a) those creditors who would not be entitled to vote at creditors' meetings under section 56(b); (b) such creditors as were employed by the debtor at the time of the filing of the petition; (c) creditors who are relatives of the debtor, or, if the debtor is a corporation, creditors who are stockholders or officers or members of the board of directors or trustees or other similar controlling bodies of such debtor corporation; and (d) creditors who have participated directly or indirectly in the act of bankruptcy as charged in the petition;

(3) the nature and present status of each action or proceeding pending or threatened against the debtor or his property, where a judgment against the debtor or the seizure of his property may be imminent; and

(4) a statement of all property of the debtor in the possession or custody of any public officer, receiver, trustee, assignee for the benefit of creditors, mortgagee, pledgee, or assignee of rents, giving the names and addresses of such persons and the court in which such proceedings, if any, are pending

(b) If the petition is filed under section 322 the affidavit shall set forth the matters required by subsection (a)(2)

(3) and (4) of this rule and shall also state whether the debtor is occupying any premises under a lease, and if he is, a statement as to the length of the term, the rent reserved, the amount owing for rent, and what negotiations for a modification of the lease have been had, if any, with whom and the present status thereof.

(c) If the debtor desires to continue the operation of the business, the affidavit shall also state:

(1) the estimated amount of the weekly payroll to employees (exclusive of the officers, stockholders and directors, if a corporation) for a period of thirty days following the filing of the Chapter XI petition;

(2) the amount now being paid and proposed to be paid for services for a period of thirty days following the filing of the Chapter XI petition

(a) if a corporation, to officers, stockholders or directors;

(b) if an individual or a partnership, to the individual or the members of the partnership;

(3) the estimated additional operating expenses for the period of thirty days following the filing of the Chapter XI petition;

(4) the estimated gain or loss in the operation of the debtor's business for a period of thirty days following the filing of the Chapter XI petition; and

(5) such additional information as may fully inform the court relative to the desirability of the debtor continuing business.

Upon a proper showing that it is impracticable or impossible to furnish any of the foregoing information, the court may dispense with any of the foregoing requirements, except that, in any event the affidavit shall contain the information required by subdivision (a) (2) of this rule.

Note:—Substantially the same as former rules X-1, XI-2 and XI-3 of Southern District and XI-1 and XI-2 of Eastern District. In all events, information as to ten largest creditors is required as a means of expediting the administration of cases.

RULE XI-3—Compensation to Debtor

No compensation shall be paid to the debtor, if an individual, or to the members of a copartnership, if a copartnership, or to an officer, stockholder or director of a

corporation, if a corporation, from the time of the filing of the petition until confirmation of the arrangement unless a prior order of the court shall have been obtained approving the employment and fixing the compensation.

Note:—Substantially the same as former rules XI-4 Southern District and XI-3 Eastern District.

RULE XI-4—Hearing on Indemnity; First Meeting

(a) Hearing on Indemnity

The court, after the filing of a petition under Section 322, shall cause a hearing to be held as soon as practicable, upon five days' notice by mail to the debtor, the debtor's attorney, those creditors whose names are listed in the affidavit filed by the debtor pursuant to the provisions of rule XI-2 and to such other parties in interest as the court may direct for the purpose of determining whether or not the debtor shall be required to file a bond or undertaking or deposit cash indemnity, or whether any other terms or conditions shall be imposed in accordance with sections 326, 342 and 343 of the Act.

Note:—Substantially the same as former rules XI-6 of the Eastern and Southern Districts except the addition of depositing cash indemnity which has been required in a number of cases in both districts.

(b) First Meeting of Creditors

In order to carry into effect the provisions of sections 334 to 338 of the Act, the court shall call the meeting of creditors within thirty days after the filing of the petition for arrangement and schedules or list of creditors.

Note:—This provision is new and was adopted after attention was directed to the failure of some courts to "promptly" call the meeting as required by section 334.

RULE XI-5—Operation of Debtor's Business

Unless otherwise ordered, every receiver, trustee or debtor-in-possession authorized to operate the business, shall file with the referee, and if the proceeding has not been referred, with the clerk, in duplicate (1) a verified weekly statement of cash receipts and disbursements setting forth the names of the persons to whom payments have been made, the amounts of the payments, the consideration, and where payments are to employees, the amounts of the deductions for withholding and social security taxes and whether or not such deductions have been deposited

in a special account; (2) a verified monthly report not later than the 15th of each month which shall set forth a summary of the operations of the business during the preceding month and a verified statement of (a) receipts from all sources, classified, and balance on hand at the beginning and at the end of the month, (b) disbursements for all purposes, classified, (c) the amount of indebtedness incurred and remaining unpaid and contractual and other obligations assumed, and, (d) detailed inventory on hand at the beginning of the month and detailed inventory on hand at the end of the month.

Note:—This rule is adapted from former Southern and Eastern District rule XI-8. Additional safeguards are provided by requiring *weekly* statement of receipts and disbursements and monthly detailed inventories in view of the fact that countersignature of the debtors' checks is dispensed with under General Order 48(2) which makes General Order 29 inapplicable in Chapter XI proceedings.

RULE XI-6—Operation of Vessels and Protection of Maritime Liens

(a) In all proceedings in which the debtor is the owner, or owner *pro hac vice*, or charterer, or is an agreed purchaser in possession, of one or more vessels upon which maritime liens are asserted, the court shall, unless in its discretion it shall otherwise direct, upon application made at any time by the trustee, or by the debtor in possession, or by any one asserting such maritime lien, make such provision as it shall deem wise for the protection by insurance or otherwise of the holders of such maritime lien existing or claimed to exist at the time of the filing of the petition or arising thereafter, during such time as any such vessel or vessels may remain in the ownership of or be operated by the trustee, or by the debtor in possession.

(b) Any maritime lienor, notwithstanding any restraining order that may be issued in such proceeding, unless issued after hearing upon notice to him, shall be at liberty to file a libel in admiralty *in rem* against a vessel for the determination of his lien and the amount thereof, but without the right to issue process of attachment, or right of seizure, or of sale, or interference with the possession of the trustee or debtor in possession, except upon further order of the court. Upon the filing of such libel the trustee or debtor in possession shall file claim to such vessel without being required to file any stipulation for costs or value, and shall confess or defend the libel as may seem

proper. In the latter event the issues raised by the pleadings shall be tried as a preferred cause on the admiralty side of the court.

Note:—See discussion in note under rule X-12.

RULE XI-7—Number of Copies of Papers to Be Filed

(a) *Petition.* The original and four copies of each petition under Chapter XI shall be filed with the Clerk.

(b) *Orders and Other Papers.* The original and two copies of orders appointing receivers shall be filed with the clerk and one copy thereof shall be transmitted to the referee when the proceeding is referred. The original and one copy of each of the following shall be filed with the clerk, or, if such proceeding has been referred, with the referee: (1) orders continuing debtors in possession; (2) orders confirming arrangements, together with copies of such arrangements; (3) orders approving alteration or modifications in arrangements, together with copies of such alterations or modification; (4) all applications for allowances for compensation and expenses, and the orders making or refusing to make such allowances; and (5) all orders dismissing proceedings, or directing that bankruptcy be proceeded with, discharging debtors, closing estates, and setting aside confirmations.

(c) The debtor shall furnish to the court sufficient copies of (1) the proposed arrangement; (2) summary of the liabilities, and (3) summary of the appraisal or summary of the assets to enable the court to comply with the provisions of Section 335 of the Act.

Note:—Substantially the same as former Eastern and Southern rule XI-10.

RULE XI-8—Objections to Confirmation of Arrangement

No opposition to the confirmation of an arrangement shall be heard unless at or prior to the time set for hearing, verified written objections, specifying the grounds of opposition, shall have been served on the debtor or his attorney and filed. The court shall hear the parties summarily, and shall then and there decide the procedure necessary to secure justice to the parties, order the prompt trial of the objections or take any other proceedings which the court deems appropriate under the circumstances.

A party who files objections may be required by the referee to deposit with the stenographer, within a fixed

time, such sum as the referee may determine is necessary to pay the expense of the stenographer in reporting the minutes. If such deposit is not made within the period as fixed or such further time as the referee may permit, the referee may in his discretion dismiss the objections and proceed accordingly.

If after the commencement of the hearing on the objections there is unreasonable delay in carrying on and completing such hearing, the court may dismiss the application for confirmation, or the objections, as the case may be.

In the event of the withdrawal of objections to an arrangement or the failure to prosecute the objections, no arrangement shall be confirmed unless the debtor and his attorney shall make and file with the court an affidavit that no consideration has been promised or given, directly or indirectly, for any such withdrawal or failure to prosecute.

Note:—Substantially the same as former Southern and Eastern rule XI-7. The provision in both rules requiring that the court inquire as to whether any illegal or improper acts have been committed on the withdrawal of objections is eliminated as unnecessary in view of section 3057 of Title 18, United States Code, which is based on former section 29e of the Act. The authority for the rule with respect to expense of the stenographer may be found in General Order 10 and sections 2a(8)(15) and 38(7) of the Act.

RULE XI-9—Unclaimed Distribution Checks

Sixty days after confirmation of an arrangement the disbursing agent shall stop payment of all checks then unpaid and deposit by certified check the amount of such unpaid checks with the clerk, and shall file with the clerk a list of the persons entitled to the unpaid checks and the amounts thereof.

Note:—This rule is new and its counterpart is contained in general bankruptcy rule (8(d)) applicable to trustees.

RULE XI-10—Certificate to Be Filed by Referee

Prior to the expiration of 90 days after the order of reference in a Chapter XI proceeding the referee shall file in the office of the clerk of the court a certificate setting forth the pertinent facts relating to the arrangement proceeding, if then pending before him, and his recommendations in the matter. Based upon such certificate, and upon notice to the debtor and the creditors committee, any party in interest may apply to the judge sitting in bankruptcy for such relief as may be proper.

TABLE OF DISPOSITION OF FORMER CHAPTER XI RULES

1. Rule XI-1 of Eastern District is dropped as unnecessary under General Order 5.
2. Rule XI-4 of the Eastern District has been eliminated as unnecessary in view of rule 7(a) of the general bankruptcy rules.
3. Rule XI-5 is eliminated in view of section 40 of the Act.
4. Rules XI-9 of the Eastern and Southern District are eliminated as unnecessary. The subject matter of the Eastern rule is adequately covered by sections 376 and 378 of the Act. The provisions of the Southern rule would not be generally applicable to arrangement proceedings and would be more appropriate in corporate reorganizations. However, in the rare case where the information should be furnished, the court may so direct.

DERIVATION OF CHAPTER XI RULES

New Rule	Derived from	
	Former Southern Rule	Former Eastern Rule
XI-1	XI-1	XI-1
XI-2	XI-2 and XI-3	XI-2
XI-3	XI-4	XI-3
XI-4	XI-6	XI-6
XI-5	XI-8	XI-8
XI-6	none	none
XI-7	XI-10	XI-10
XI-8	XI-7	XI-7
XI-9	none	none
XI-10	none	none

**RULES RELATING TO REAL PROPERTY
ARRANGEMENT PROCEEDINGS
UNDER CHAPTER XII**

RULE XII-1—Applicability of General Bankruptcy and Chapter XI Rules

The General Bankruptcy Rules and the Rules relating to Arrangement Proceedings Under Chapter XI shall apply to proceedings under Chapter XII. In addition to the copies of papers required by Rule XI-6, the original and one copy of the following shall be filed with the clerk, or, if such proceeding has been referred, with the referee:

- (a) Orders appointing trustees;
- (b) Orders determining the time within which claims of creditors may be filed or allowed and the division of creditors into classes.

Note:—Adapted from former Southern Rule XII-1, which by its terms makes applicable the General Bankruptcy and Chapter XI rules, thereby condensing the Chapter XII rules for both districts.

RULES RELATING TO WAGE EARNER PLAN PROCEEDINGS UNDER CHAPTER XIII

RULE XIII-1—Applicability of General Bankruptcy and Chapter XI Rules

The General Bankruptcy Rules and the Rules Relating to Arrangement Proceedings Under Chapter XI shall apply to proceedings under Chapter XIII. In addition to the copies of papers required by Rule XI-6, the original and one copy of the following shall be filed with the clerk, or, if such proceeding has been referred, with the referee:

(a) Orders confirming plans, together with copies of plans;

(b) Orders increasing or reducing the amount of the installment payments under plans and orders extending or adjourning the time of such payments.

Note:—Adapted from former Southern Rule XIII-1, which by its terms make applicable the General Bankruptcy and Chapter XI rules, thereby condensing the Chapter XIII rules for both districts.

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