

TITLE VI
CHAPTER XII RULES

Rule 12-1. Scope of Chapter XII rules and forms; short title.

The rules and forms in this Title VI govern the procedure in courts of bankruptcy in cases under Chapter XII of the Bankruptcy Act. These rules may be known and cited as the Chapter XII Rules. These forms may be known and cited as the Official Chapter XII Forms.

Rule 12-2. Meanings of words in the Bankruptcy Rules when applicable in a Chapter XII case.

The following words and phrases used in the Bankruptcy Rules made applicable in Chapter XII cases by these rules have the meanings herein indicated, unless they are inconsistent with the context:

(1) "Bankrupt" means "debtor."

(2) "Bankruptcy" or "bankruptcy case" means "Chapter XII case."

(3) "Receiver," "trustee," "receiver in bankruptcy," or "trustee in bankruptcy" means the "trustee" or "debtor continued in possession" in the Chapter XII case.

Rule 12-3. Commencement of Chapter XII case.

(a) *Method of commencement.*—A Chapter XII case is commenced by the filing of a petition with the court by a person seeking relief under Chapter XII of the Act.

(b) *When case may be commenced.*—The petition under Chapter XII may be an original petition or it may be filed in a case pending under another chapter of the Act.

Rule 12-4. Chapter XII cases originally commenced under another chapter of the Act.

When a case commenced under another chapter of the

Act proceeds under Chapter XII, the Chapter XII case shall be deemed to have been originally commenced as of the date of the filing of the first petition initiating a case under the Act.

Rule 12-5. Reference of cases; withdrawal of reference and assignment.

Bankruptcy Rule 102 applies in Chapter XII cases.

Rule 12-6. Original petition.

An original petition under Chapter XII of the Act shall conform substantially to Official Form No. 12-F1. An original and 4 copies of the petition shall be filed, unless a different number of copies is required by local rule. The clerk shall transmit one copy to the District Director of Internal Revenue for the district in which the case is filed, and one copy to the Secretary of the Treasury.

Rule 12-7. Petition in pending case.

If a case under another chapter of the Act is pending by or against the debtor, any petition under Chapter XII shall be filed therein and may be filed before or after adjudication. Such petition shall conform substantially to Official Form No. 12-F2. The number and distribution of copies shall be as specified in Rule 12-6. The filing of the petition shall act as a stay of adjudication and of administration of an estate in bankruptcy. The court may, for cause shown, terminate, annul, modify, or condition the stay.

Rule 12-8. Partnership petition.

A petition may be filed pursuant to Rule 12-6 or 12-7 by all the general partners on behalf of the partnership.

Rule 12-9. Caption of petition.

Bankruptcy Rule 106 applies in Chapter XII cases.

Rule 12-10. Filing fees.

Every petition filed pursuant to Rule 12-6 shall be accompanied by the prescribed filing fees.

Rule 12-11. Schedules, statement of affairs, and statement of executory contracts.

(a) *Schedules and statements required.*—The debtor shall file with the court schedules of all his debts and all his property, a statement of his affairs, and a statement of his executory contracts, prepared by him in the manner prescribed by Official Forms No. 12-F4 and either No. 12-F5 or No. 12-F6, whichever is appropriate. The number of copies of the schedules and statements shall correspond to the number of copies of the petition required by these rules.

(b) *Time limits.*—Except as otherwise provided herein, the schedules and statements, if not previously filed in a pending bankruptcy or Chapter XI case, shall be filed with the petition. A petition shall nevertheless be accepted by the clerk if accompanied by a list of all the debtor's creditors and their addresses, and the schedules and statements may be filed within 15 days thereafter in such case. On application, the court may grant up to 30 additional days for the filing of schedules and the statements; any further extension may be granted only for cause shown and on such notice as the court may direct.

(c) *Partnership.*—If the debtor is a partnership, the general partners shall prepare and file the schedules of the debts and property, statement of affairs, and statement of executory contracts of the partnership.

(d) *Interests acquired or arising after petition.*—Bankruptcy Rule 108 (e) applies in Chapter XII cases except that the supplemental schedule need not be filed with respect to property or interests acquired after confirmation of a plan.

Rule 12-12. Verification and amendment of petition and accompanying papers.

Bankruptcy Rules 109 and 110 apply in Chapter XII cases to petitions, schedules, statements of affairs, statements of executory contracts, and amendments thereto.

Rule 12-13. Venue and transfer.

(a) *Proper venue.*

(1) *General venue requirement.*—A petition filed pursuant to Rule 12-6 may be filed in the district (A) where the debtor has had his principal place of business or his principal assets for the preceding 6 months or for a longer portion thereof than in any other district; or (B) if there is no such district, in any district where the debtor has property. A petition filed pursuant to Rule 12-7 shall be filed with the court in which the other petition under the Act is pending.

(2) *Partner with partnership or copartner.*—Notwithstanding the foregoing: (A) a petition commencing a Chapter XII case may be filed by a general partner in a district where a petition under the Act by or against a partnership is pending; (B) a petition commencing a Chapter XII case may be filed by a partnership or by any other general partner or any combination of the partnership and the general partners in a district where a petition under the Act by or against a general partner is pending.

(3) *Affiliate.*—Notwithstanding the foregoing, a petition commencing a Chapter XII case may be filed by an affiliate of a debtor or bankrupt in a district where a petition under the Act by or against the debtor or bankrupt is pending.

(b) *Transfer of cases; dismissal or retention when venue improper; reference of transferred cases.*—Bankruptcy Rule 116 (b) and (d) apply in Chapter XII cases.

(c) *Procedure when petitions involving the same debtor or related debtors are filed in different courts.*—Bankruptcy Rule 116 (c) applies in Chapter XII cases.

Rule 12-14. Joint administration of cases pending in same court.

Bankruptcy Rule 117 (b) and (c) apply in Chapter XII cases.

Rule 12-15. Death or insanity of debtor.

In the event of death or insanity of the debtor, a Chapter XII case may be dismissed, or if further administration is feasible and in the best interest of the parties, the estate may be administered and the case concluded in the same manner, so far as possible, as though the death or insanity had not occurred.

Rule 12-16. Debtor involved in foreign proceeding.

Bankruptcy Rule 119 applies in Chapter XII cases.

Rule 12-17. Appointment of trustee; continuance of debtor in possession; removal.

(a) *Reappointment of bankruptcy trustee.*—When a petition is filed under Rule 12-7 after the qualification of a trustee in bankruptcy in a pending bankruptcy case, the court shall appoint such trustee as trustee in the Chapter XII case.

(b) *Retention of debtor in possession; appointment of trustee.*—On the filing of a petition under Rule 12-6 or 12-7, if no trustee in bankruptcy has previously qualified, the debtor shall continue in possession. On application of any party in interest, the court may, for cause shown, appoint a trustee.

(c) *Notice to trustee of his appointment; qualification.*—The court shall immediately notify the trustee of his appointment, inform him as to how he may qualify, and require him forthwith to notify the court of his acceptance or rejection of the office. A trustee shall qualify as provided in Rule 12-19.

(d) *Eligibility.*—Only a person who is eligible to be a trustee under Bankruptcy Rule 209 (d) may be appointed a trustee in a Chapter XII case.

(e) *Removal of trustee for cause.*—On application of any party in interest or on the court's own initiative and after hearing on notice, the court may remove a trustee for cause and either appoint a successor or designate the debtor as debtor in possession.

(f) *Substitution of successor.*—When a trustee dies, resigns, is removed, or otherwise ceases to hold office during the pendency of a Chapter XII case, his successor is automatically substituted as a party in any pending action, proceeding, or matter without abatement.

Rule 12-18. Trustees for estates when joint administration ordered.

(a) *Appointment of trustees for estates being jointly administered.*—If the court orders a joint administration of 2 or more estates pursuant to Rule 12-14, it may appoint one or more common trustees or separate trustees for the estates being jointly administered. Common trustees shall not be appointed unless the court is satisfied that parties in interest in the different estates will not be prejudiced by conflicts of interest of such trustees.

(b) *Separate accounts.*—The trustee or trustees of estates being jointly administered shall nevertheless keep separate accounts of the property of each estate.

Rule 12-19. Qualification by trustee and disbursing agent; indemnity; bonds; evidence.

(a) *Qualifying bond or security.*—Except as provided hereinafter, every trustee within 5 days after his appointment, and every person specially appointed as disbursing agent within the time fixed by the court shall, before entering on the performance of his official duties, qualify by filing a bond in favor of the United States conditioned on the faithful performance of his official duties or by giving such other security as may be approved by the court.

(b) *Blanket bond.*—The court may authorize a blanket bond in favor of the United States conditioned on the faithful performance of official duties by a trustee in more than one case or by more than one trustee.

(c) *Qualification by filing acceptance.*—A trustee for whom a blanket bond has been filed pursuant to subdivision (b) of this rule shall qualify by filing his acceptance of his appointment in lieu of the bond.

(d) *Indemnification.*—The court may after hearing on notice to the debtor and such other persons as the court may direct, order the debtor to indemnify or otherwise protect the estate against subsequent loss thereto or diminution thereof until the entry, if any, of an order of adjudication.

(e) *Amount of bond and sufficiency of surety; filing of bond; proceeding on bond.*—Bankruptcy Rule 212 (e) and (f) apply to the bonds of trustees and persons specially appointed as disbursing agents in Chapter XII cases.

(f) *Evidence of qualification; debtor continued in possession.*—A certified copy of the order approving the bond or other security given by a trustee under subdivision (a) or of his acceptance filed under subdivision (c) of this rule shall constitute conclusive evidence of his appointment and qualification. Whenever evidence is required that a debtor is a debtor in possession, the court may so certify and the certificate shall constitute conclusive evidence of that fact.

Rule 12-20. Limitation on appointment of trustees.

Bankruptcy Rule 213 applies in Chapter XII cases.

Rule 12-21. Employment of attorneys and accountants.

Bankruptcy Rule 215 applies in Chapter XII cases.

Rule 12-22. Authorization of trustee or debtor in possession to conduct business of debtor.

The court may authorize the trustee or debtor in possession to conduct the business and manage the property of the debtor for such time and on such conditions as may be in the best interest of the estate.

Rule 12-23. Notice to parties in interest and the United States.

(a) *Ten-day notices to parties in interest.*—Except as provided hereinafter, the court shall give the trustee, the debtor, all creditors, and indenture trustees at least 10 days' notice by mail of (1) a meeting of creditors;

(2) any proposed sale of property, other than in the ordinary course of business, including the time and place of any public sale, unless the court on cause shown shortens the time or orders a sale without notice; (3) the hearing on the approval of a compromise or settlement of a controversy, unless the court on cause shown directs that notice not be sent; (4) the time for filing objections to confirmation; (5) the hearing to consider confirmation of a plan; (6) the time fixed to reject a proposed modification of a plan when notice is required by Rule 12-39; and (7) the hearing on an application for allowances for compensation or reimbursement of expenses. The notice of a proposed sale of property, including real estate, is sufficient if it generally describes the property to be sold. The notice of a hearing on an application for compensation or reimbursement of expenses shall specify the applicant and the amount requested.

(b) *Other notices to parties in interest.*—The court shall give notice by mail to the trustee, the debtor, all creditors, and indenture trustees of (1) dismissal of the case pursuant to Rule 12-41; (2) the time allowed for filing a complaint to determine the dischargeability of a debt pursuant to § 17c (2) of the Act as provided in Rule 12-47; and (3) entry of an order confirming a plan pursuant to Rule 12-38.

(c) *Addresses of notices.*—Bankruptcy Rule 203 (e) applies in Chapter XII cases.

(d) *Notices to the United States.*—Copies of all notices required to be mailed to creditors under these rules shall be mailed to the United States in the manner provided in Bankruptcy Rule 203 (g).

(e) *Notice by publication.*—Bankruptcy Rule 203 (h) applies in Chapter XII cases.

(f) *Caption.*—The caption of every notice given under this rule shall comply with Rule 12-9.

Rule 12-24. Meeting of creditors.

(a) *First meeting.*

(1) *Date and place.*—The first meeting of creditors shall be held not less than 20 nor more than 40 days after the filing of a petition commencing a Chapter XII case but if there is an application or motion to dismiss or to convert to bankruptcy pursuant to Rule 12-41 or an appeal from or a motion to vacate an order entered under that rule, the court may delay fixing a date for such a meeting. The meeting may be held at a regular place for holding court or at any other place within the district more convenient for the parties in interest.

(2) *Agenda.*—The bankruptcy judge shall preside over the transaction of all business at the first meeting of creditors, including the examination of the debtor. He shall, when necessary, determine which claims are unsecured and which are secured and to what extent, which claims have voted for acceptance of a plan, and may fix a time for filing a plan if one has not been filed.

(b) *Special meetings.*—The court may call a special meeting of creditors on application or on its own initiative.

Rule 12-25. Representation of creditors.

(a) *Representation.*—A creditor may appear in a Chapter XII case and act in his own behalf or by an attorney authorized to practice in the court, and may also perform any act not constituting the practice of law by an authorized agent, attorney in fact, proxy, or committee.

(b) *Data required.*—Every person or committee representing more than one creditor, and every indenture trustee shall file a signed statement with the court setting forth (1) the names and addresses of such creditors; (2) the nature and amounts of their claims and the time of acquisition thereof unless they are alleged to have been acquired more than one year prior to the filing of the petition; (3) a recital of the pertinent facts and circumstances in connection with the employment of such person or indenture trustee, and, in the case of a com-

mittee, the name or names of the person or persons at whose instance, directly or indirectly, such employment was arranged or the committee was organized or agreed to act; and (4) with reference to the time of the employment of such person, or the organization or formation of such committee, or the appearance in the case of any indenture trustee, a showing of the amounts of claims owned by such person, the members of such committee or such indenture trustee, the times when acquired, the amounts paid therefor and any sales or other disposition thereof. The statement shall include a copy of the instrument, if any, whereby such person, committee, or indenture trustee is empowered to act on behalf of creditors. A supplemental statement shall be filed promptly, setting forth any material changes in the facts contained in the statement filed pursuant to this subdivision.

(c) *Failure to comply; effect.*—The court on its own initiative or on application or motion of any party in interest (1) may determine whether there has been a failure to comply with the provisions of this rule or with any other applicable law regulating the activities and personnel of any person, committee, or indenture trustee or any other impropriety in connection with any solicitation and, if it so determines, the court may refuse to permit any such person, committee, or indenture trustee to be heard further or to intervene in the case; (2) may examine any representation provision of a deposit agreement, proxy, trust mortgage, trust indenture, or deed of trust, or committee or other authorization, and any claim acquired by any person or committee in contemplation or in the course of a case under the Act and grant appropriate relief pursuant to the Act; and (3) may hold invalid any authority or acceptance given, procured, or received by a person or committee who has not complied with subdivision (b) of this rule.

Rule 12-26. Examination.

Bankruptcy Rule 205 applies in Chapter XII cases,

except that the scope of examination referred to in subdivision (d) thereof may also relate to the liabilities and financial condition of the debtor, the operation of his business and the desirability of the continuance thereof, the source of any money or property acquired or to be acquired by the debtor for the purposes of consummating a plan and the consideration given or offered therefor, and any other matter relevant to the case or to the formulation of a plan.

Rule 12-27. Duty of trustee or debtor in possession to keep records, make reports, and furnish information.

Bankruptcy Rule 218 applies in Chapter XII cases, except that (1) the written report of the financial condition of the estate shall be made by the trustee or debtor in possession within a month after the filing of a petition commencing a Chapter XII case and every month thereafter, and shall include a statement of the operation of the business for the preceding month and, if payments are made to employees, the amounts of deductions for withholding and social security taxes and the place where such amounts are deposited; and (2) the court may excuse the filing of a final report and account by a trustee, and a debtor in possession need not file a final report and account unless ordered to do so by the court.

Rule 12-28. Compensation for services and reimbursement of expenses.

(a) *Factors in allowing compensation.*—Reasonable compensation and reimbursement of necessary expenses may be allowed by the court to the trustee and his attorney, the attorney for the debtor in possession, the attorney for the debtor, and such other persons as may be authorized to assist the trustee or debtor in possession, and to creditors, committees or representatives of creditors, indenture trustees, depositaries, reorganization managers, and any other parties in interest and the attorneys or agents for any of them, for services which contribute to a plan which is confirmed or to the confirmation of a

plan, and for services rendered in opposing a plan confirmation of which has been refused, and for services in connection with the administration of the estate under Chapter XII.

(b) *Superseded case.*—If the Chapter XII petition was filed in a pending case, the court may allow, if not already allowed, reasonable compensation for services rendered and reimbursement of expenses to a marshal, receiver, or trustee as allowed by the Act, to the attorney for petitioning creditors, to the attorney for the bankrupt or debtor, and to any other persons and their attorneys entitled to compensation under the Act or rules in such case.

(c) *Application for compensation and reimbursement; disclosure of arrangements regarding compensation by attorney for debtor; attorney or accountant; restriction on sharing of compensation.*—Bankruptcy Rule 219 applies in Chapter XII cases and in addition to the matters specified in subdivision (a) thereof the application for compensation for services or reimbursement for necessary expenses shall also set forth the claims against the debtor, if any, in which a beneficial interest, direct or indirect, has been acquired or transferred by the applicant or for his account after the filing of a petition commencing a case under the Act.

(d) *Denial of allowances.*—No compensation or reimbursement shall be allowed to any committee or attorney, or other person acting in the case in a representative or fiduciary capacity, who at any time after assuming to act in such capacity has, without the approval of the court, purchased or sold claims against the debtor, or a beneficial interest direct or indirect in such claims, or by whom or for whose account such claims, or beneficial interest therein have been otherwise acquired or transferred.

(e) *Dismissal or conversion to bankruptcy.*—On the dismissal or conversion of a case to another chapter under the Act, the court may allow reasonable compensation for

services rendered and reimbursement of expenses incurred in the Chapter XII case by any persons entitled thereto under this rule.

Rule 12-29. Examination of debtor's transactions with his attorney.

Bankruptcy Rule 220 applies in Chapter XII cases.

Rule 12-30. Proof of claim.

(a) *Schedule of debts.*—The schedule of debts filed with the court pursuant to Rule 12-11 shall constitute prima facie evidence of the validity and amount of claims of creditors which are not scheduled as disputed, contingent, or unliquidated as to amount and, except as provided in subdivision (b)(3) of this rule, it shall not be necessary for the holder of such claim to file a proof of claim.

(b) *Filing proof of claim.*

(1) *Time for filing.*—The court shall fix a time within which proofs of claim may be filed. For cause shown, the court may extend such time. Notice of the time so fixed shall be transmitted to all creditors.

(2) *Who may file.*—Any creditor or indenture trustee may file a proof of claim within the time fixed pursuant to subdivision (b)(1) of this rule.

(3) *Who must file.*—(A) Any creditor, including the United States, a state, or any subdivision thereof, whose claim is scheduled as disputed, contingent, or unliquidated as to amount, shall file a proof of claim within the time fixed pursuant to subdivision (b)(1) of this rule; any such creditor who fails to do so shall not, with respect to such claim, be treated as a creditor for the purposes of voting and distribution.

(B) The court may, at any time, require the filing of a proof of claim within such time as it may fix. Any person required under this paragraph to file a proof of claim who fails to do so shall not, with respect to such claim, be treated as a creditor for the purposes of voting and distribution.

(4) *Evidentiary effect.*—A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of such claim. Such a proof of claim shall supersede any scheduling of that claim made pursuant to Rule 12-11.

(5) *Form and place of filing.*—A proof of claim shall consist of a statement in writing setting forth a creditor's claim and, except as provided in Rule 12-32, shall be executed by the creditor or by his authorized agent. Subdivisions (b) and (c) of Bankruptcy Rule 302 apply in Chapter XII cases except that subdivision (c) shall not apply to claims founded on bonds or debentures.

(6) *Filing by indenture trustee.*—An indenture trustee may file claims for all holders, known or unknown, of securities issued pursuant to the instrument under which he is trustee.

(c) *Transfer of claim.*—If a claim other than one founded on a bond or debenture has been assigned, a statement setting forth the terms of the assignment shall be filed with the court and a copy thereof delivered to the trustee or debtor in possession.

(d) *Duty to examine and object to claims.*—The trustee or debtor in possession shall examine scheduled debts and proofs of claim and, unless no purpose would be served thereby, object to the allowance of improper claims.

(e) *Allowance when no objection made.*—Subject to the provisions of subdivision (b)(3) of this rule and Rule 12-31, a claim filed in accordance with this rule, or Rule 12-32, or scheduled in accordance with Rule 12-11, shall be deemed allowed unless objection is made by a party in interest.

(f) *Objection to allowance.*—An objection to the allowance of a claim shall be in writing. A copy of the objection and notice of a hearing thereon shall be mailed or delivered to the claimant, the debtor and the trustee, or debtor in possession. If an objection is joined with

a demand for relief of the kind specified in Bankruptcy Rule 701, the proceeding thereby becomes an adversary proceeding.

(g) *Reconsideration of claims.*—Bankruptcy Rule 307 applies in Chapter XII cases.

Rule 12-31. Classification of claims; valuation of security.

(a) *Classification of claims.*—For the purpose of the plan and its acceptance, the court may fix, after hearing on such notice as it may direct, the division of creditors into classes according to the nature of their respective claims.

(b) *Valuation of security.*—For the purposes of classification under subdivision (a) of this rule, of claims which may be secured in whole or in part, the court shall, if necessary, on application of any party in interest, hold a hearing on such notice as the court may direct, to determine the value of the security interest and allow the claim as unsecured to the extent it is enforceable for any excess of the claim over such value.

Rule 12-32. Claim by codebtor.

(a) *Filing of claim.*—If a creditor has not filed a proof of claim pursuant to Rule 12-30 (b) a person who is or may be liable with the debtor to that creditor, or who has secured that creditor, may, during the time for filing claims prescribed by Rule 12-30 (b), execute and file a proof of claim pursuant to this rule in the name of the creditor, if known or if unknown, in his own name. No distribution shall be made on the claim except on satisfactory proof that the original debt will be diminished by the amount of distribution. The creditor may nonetheless file a proof of claim pursuant to Rule 12-30 (b) and it shall supersede the proof of claim filed pursuant to the first sentence of this subdivision.

(b) *Filing of acceptance; substitution of creditor.*—A person who has filed a claim pursuant to the first sentence of subdivision (a) of this rule may file an accept-

ance or rejection of a plan in the name of the creditor, if known or if unknown, in his own name but if the creditor files a proof of claim within the time permitted by Rule 12-30 (b) or files a notice with the court of his intention to act in his own behalf prior to confirmation, he shall be substituted for such other person, with respect to that claim, for all purposes of the Chapter XII case.

Rule 12-33. Post-petition tax claims.

Notwithstanding Rule 12-30 (b), the court may, at any time while a case is pending, permit the filing of a proof of claim for the following:

(1) Claims for taxes owing to the United States, a state, or any subdivision thereof, at the time of the filing of the petition under Rule 12-6 or 12-7 which had not been assessed prior to the date of confirmation of the plan, but which are assessed within one year after the date of the filing of the petition.

(2) Claims for taxes owing to the United States, a state, or any subdivision thereof, after the filing of the petition under Rule 12-6 or 12-7 and which are assessed while the case is pending.

Rule 12-34. Withdrawal of claim.

A creditor may withdraw a claim as of right by filing a notice of withdrawal, except as provided in this rule. If, after a creditor has filed a proof of claim, an objection is filed thereto or a complaint is filed against him in an adversary proceeding, or the creditor has accepted or rejected the plan or otherwise has participated significantly in the case, he may not withdraw the claim save on application or motion with notice to the trustee or debtor in possession, and on order of the court containing such terms and conditions as the court deems proper.

Rule 12-35. Distribution; undistributed consideration; unclaimed funds.

(a) *Distributions.*—Except as otherwise provided in the plan and except with respect to an indenture trustee

authorized by the indenture under which he is trustee to receive distributions, Bankruptcy Rule 308 applies in Chapter XII cases to cash distributions made under a plan. Except as otherwise provided in the plan or ordered by the court, consideration other than cash distributed under the plan shall be issued in the name of the creditor entitled thereto and, if a power of attorney authorizing another person to receive dividends has been executed and filed in accordance with Bankruptcy Rule 910, such consideration shall be transmitted to such other person.

(b) *Undistributed consideration.*—Except as provided in subdivision (c) of this rule, or as otherwise ordered by the court, the disbursing agent shall return to the debtor or to such other person as may be designated by the court any money or other deposited consideration in his possession not distributed under the plan.

(c) *Unclaimed funds.*—Sixty days after any distribution, the disbursing agent shall stop payment on all checks then unpaid. Bankruptcy Rule 310 shall otherwise apply in Chapter XII cases.

Rule 12-36. Filing of plan; transmission to creditors; adjourned meeting.

(a) *Filing of plan by debtor.*—The debtor may file a plan with his petition or thereafter, but not later than a time fixed by the court.

(b) *Filing of plan by creditors.*—Within such time as may be fixed by the court, a plan may be filed by a creditor holding a security interest in real property or a chattel real dealt with by such plan.

(c) *Number of copies.*—If required by the court, the person filing a plan shall promptly furnish a sufficient number of copies to enable the court to transmit them as provided in subdivision (d) of this rule.

(d) *Transmittal of plan; adjourned meetings.*—If a plan is filed prior to mailing of notice of the first meeting of creditors, a copy of the plan shall accompany the

notice. If the debtor has not filed a plan prior to the first date set for the first meeting of creditors, the court, at the first meeting or thereafter, shall fix a time for filing a plan. If the debtor has not filed a plan prior to the mailing of notice of the first meeting of creditors, the court at the first meeting, shall adjourn the meeting to a date certain. When a plan is timely filed by the debtor or a creditor, a copy thereof and notice of a subsequent adjourned meeting date shall be mailed to the persons specified in Rule 12-13 (a) at least 10 days prior to such date. The court may adjourn a first meeting of creditors from time to time to dates certain.

Rule 12-37. Acceptance or rejection of plans.

(a) *Persons entitled to accept or reject plan; time for acceptance or rejection.*—The court shall fix a time for the acceptance or rejection of a plan or plans and notice thereof shall accompany any plan transmitted to creditors pursuant to Rule 12-36. If his claim is deemed allowed pursuant to Rule 12-30 (e) or has been allowed by the court, a creditor may accept or reject a plan or plans within the time fixed. Acceptances may be obtained before or after the filing of the petition and may be filed with the court on behalf of the accepting creditor. For cause shown and within such time, the court may permit a creditor to change or withdraw his acceptance or rejection.

(b) *Form of acceptance or rejection.*—An acceptance or rejection shall be in writing, shall identify the plan or plans accepted or rejected, and shall be signed by the creditor or his authorized agent. If more than one plan is transmitted pursuant to Rule 12-36, an acceptance or rejection may be filed by each creditor for any number of such plans and if acceptances are filed for more than one plan, the creditor may indicate his preferences among the plans so accepted.

(c) *Acceptance or rejection by partially secured creditor.*—A creditor whose claim has been allowed in part

as a secured claim and in part as an unsecured claim shall be entitled to accept or reject a plan or plans in both capacities.

(d) *Computing requisite majorities.*—The requisite majorities necessary for the acceptance of a plan shall be computed on the basis of the claims of creditors affected by the plan who file an acceptance or rejection of the plan within the time prescribed which in no event shall be less than the requisite majorities of the filed and allowed claims. The filing of an acceptance or rejection of a plan by a creditor shall be deemed to constitute the filing of a proof of claim for the purpose of computing the majorities required by the Act.

(e) *Temporary allowance.*—Notwithstanding objection to a claim, the court may temporarily allow it to such extent as to the court seems proper for the purpose of accepting a plan.

Rule 12-38. Deposit; confirmation of plan; evidence of title.

(a) *Deposit.*—At the first meeting of creditors, after a plan has been accepted and before confirmation, the court shall (1) designate as disbursing agent the trustee, if any, otherwise the debtor in possession or a person specially appointed, to distribute, subject to the control of the court, the consideration, if any, to be deposited; and (2) fix a time before confirmation within which there shall be deposited with the disbursing agent, or in such place and on such terms as the court may approve, the money, other consideration, or security required by the Act for confirmation.

(b) *Waiver.*—Any person who has waived his right to share in the distribution of the deposit or in payments under the plan shall file with the court, prior to confirmation of the plan, a statement setting forth the waiver and any agreement with respect thereto made with the debtor, his attorney, or any other person.

(c) *Objections to confirmation.*—Objections to confirmation of a plan shall be filed and served on the debtor, any other person filing a plan, and creditors' committees, if any, at any time prior to confirmation or by such earlier date as the court may fix. An objection to confirmation on the ground the debtor committed any act or failed to perform any duty which would be a bar to the discharge of a bankrupt is governed by Part VII of the Bankruptcy Rules. Any other objection is governed by Bankruptcy Rule 914.

(d) *Hearing on confirmation.*—The court shall rule on confirmation of a plan after hearing on notice as provided in Rule 12-23. The hearing may be held at any time after the conclusion of the first meeting of creditors. If no objection is timely filed under subdivision (c) of this rule, the court may find, without taking proof, that the debtor has not committed any act or failed to perform any duty which would be a bar to the discharge of a bankrupt and that the plan has been proposed and its acceptance procured in good faith, and not by any means, promises, or acts forbidden by law. If more than one plan has received the requisite number of acceptances, the court shall consider the preferences indicated by the creditors pursuant to Rule 12-37 (b) in determining which plan to confirm.

(e) *Order of confirmation.*—The order of confirmation shall conform substantially to Official Form No. 12-F18. Notice of entry of the order of confirmation and a copy of the provisions of the order dealing with the discharge of the debtor shall be mailed to the debtor and to all creditors within 30 days after entry of the order.

(f) *Evidence of title.*—A certified copy of the plan and of the order confirming the plan shall constitute conclusive evidence of the revesting of title to all property in the debtor or the vesting of title in such other person as may be provided in the plan or in the order confirming the plan.

Rule 12-39. Modification of plan before or after confirmation.

At any time prior to the acceptance of a plan by the requisite majority of creditors, a person filing a plan pursuant to Rule 12-36 may file a modification thereof. After a plan has been so accepted the person filing the plan may file a modification of the plan only with leave of the court. The debtor or such creditor may also submit with the proposed modification written acceptances thereof by creditors. If the court finds that the proposed modification does not materially and adversely affect the interest of any creditor who has not in writing accepted it, the modification shall be deemed accepted by all creditors who have previously accepted the plan. Otherwise, the court shall enter an order that the plan as modified shall be deemed to have been accepted by any creditor who accepted the plan and who fails to file with the court within such reasonable time as shall be fixed in the order a written rejection of the modification. Notice of such order, accompanied by a copy of the proposed modification, shall be given to the debtor, the trustee, creditors, indenture trustees, and such other persons as the court may designate, at least 10 days before the time fixed in such order for filing rejections of the modification. The debtor or creditor shall, if required by the court, furnish a sufficient number of copies of the proposed modification to enable the court to transmit a copy with each such notice.

Rule 12-40. Revocation of confirmation.

Any party in interest may, at any time within six months after a plan has been confirmed, make a motion pursuant to the Act to revoke the confirmation as procured by fraud. The circumstances constituting the alleged fraud shall be stated with particularity. When such motion is made, the court shall reopen the case if necessary and conduct a hearing on at least 10 days'

notice to all parties in interest. If the confirmation is revoked—

(1) The court may dispose of the case pursuant to Rule 12-41 (b); or

(2) The court may receive proposals to modify the plan. Thereafter, the procedure for modification and for confirmation of a plan as modified shall follow Rules 12-38 and 12-39, except that acceptance of the plan shall not be required by any creditor who has participated in the fraud and such creditor shall not be counted in determining the amount of the claims of creditors whose acceptance is required. If a modified plan is not confirmed, the court shall dispose of the case pursuant to Rule 12-41 (b).

Rule 12-41. Dismissal or conversion to bankruptcy prior to or after confirmation of plan.

(a) *Voluntary dismissal or conversion to bankruptcy.*—The debtor may file an application or motion to dismiss the case or to convert it to bankruptcy at any time prior to confirmation or, where the court has retained jurisdiction, after confirmation. On the filing of such application or motion, the court shall—

(1) if the petition was filed pursuant to Rule 12-7, enter an order directing that the bankruptcy case proceed; or

(2) if the petition was filed pursuant to Rule 12-6, enter an order adjudicating the debtor a bankrupt if he so requests, or, if he requests dismissal, enter an order after hearing on notice dismissing the case or adjudicating him a bankrupt whichever may be in the best interest of the estate.

Notwithstanding the foregoing, when a plan has been filed by a creditor pursuant to Rule 12-36, the court shall not dismiss the case or adjudicate the debtor a bankrupt unless the court, after hearing on notice to the debtor, the trustee, all creditors and indenture trustees,

determines that the creditor's plan should not be confirmed under the Act or cannot be consummated.

(b) *Dismissal or conversion to bankruptcy for want of prosecution, denial of confirmation, default, or termination of plan.*—The court shall enter an order, after hearing on such notice as it may direct dismissing the case, or adjudicating the debtor a bankrupt if he has not been previously so adjudged, or directing that the bankruptcy case proceed, whichever may be in the best interest of the estate—

(1) for want of prosecution; or

(2) for failure to comply with an order made under Rule 12-19 (d) for indemnification; or

(3) if no plan is confirmed; or

(4) if confirmation is revoked for fraud and a modified plan is not confirmed pursuant to Rule 12-38; or

(5) where the court has retained jurisdiction after confirmation of a plan:

(A) if a confirmed plan is not consummated; or

(B) if a plan terminates by reason of the happening of a condition specified therein.

The court may reopen the case, if necessary, for the purpose of entering an order under this subdivision. Notwithstanding the foregoing, if a confirmed creditor's plan is not consummated for reasons other than the debtor's default, the court shall not order the case converted to bankruptcy without the written consent of the debtor.

(c) *Notice of dismissal.*—Promptly after entry of an order of dismissal under this rule, notice thereof shall be given as provided in Rule 12-23.

(d) *Effect of dismissal.*—Unless the order specifies to the contrary, dismissal of a case on the ground of fraud is with prejudice, and a dismissal on any other ground is without prejudice. A certified copy of the order of dismissal under this rule shall constitute conclusive evidence of the revesting of the debtor's title to his property.

(e) *Consent to adjudication.*—Notwithstanding the foregoing, no adjudication shall be entered under this rule against a wage earner or farmer without his written consent.

Rule 12-42. Confirmation as discharge.

(a) *Statement of discharge.*—The order confirming a plan shall contain provisions substantially similar to Official Form No. 12-F18 stating the effect of confirmation on the further enforcement of claims against the debtor.

(b) *Registration in other districts.*—An order confirming a plan that has become final may be registered in any other district by filing in the office of the clerk of the district court of that district a certified copy of the order and when so registered shall have the same effect as an order of the court of the district where registered and may be enforced in like manner.

Rule 12-43. Petition as automatic stay of actions against debtor and lien enforcement.

(a) *Stay of actions and lien enforcement.*—A petition filed under Rule 12-6 or 12-7 shall operate as a stay of the commencement or the continuation of any court or other proceeding against the debtor, or the enforcement of any judgment against him, or of any act or the commencement or continuation of any court proceeding to enforce any lien against his property, or of any court proceeding for the purpose of the rehabilitation of the debtor or the liquidation of his estate.

(b) *Duration of stay.*—Except as it may be deemed annulled under subdivision (c) or may be terminated, annulled, modified, or conditioned by the bankruptcy court under subdivision (d), (e), or (f) of this rule, the stay shall continue until the case is closed, dismissed, or converted to bankruptcy or the property subject to the lien is, with the approval of the court, abandoned or transferred.

(c) *Annulment of stay.*—At the expiration of 30 days after the first meeting of creditors, a stay provided by this rule other than a stay against lien enforcement shall be deemed annulled as against any creditor whose claim has not been listed in the schedules and who has not filed his claim by that time.

(d) *Relief from stay.*—On the filing of a complaint seeking relief from a stay provided by this rule, the bankruptcy court shall, subject to the provisions of subdivision (e) of this rule, set the trial for the earliest possible date, and it shall take precedence over all matters except older matters of the same character. The court may, for cause shown, terminate, annul, modify or condition such stay. A party seeking continuation of a stay against lien enforcement shall show that he is entitled thereto.

(e) *Ex parte relief from stay.*—On the filing of a complaint seeking relief from a stay against any act or proceeding to enforce a lien or any proceeding commenced for the purpose of rehabilitation of the debtor or the liquidation of his estate, relief may be granted without written or oral notice to the adverse party if (1) it clearly appears from specific facts shown by affidavit or by a verified complaint that immediate and irreparable injury, loss, or damage will result to the plaintiff before the adverse party or his attorney can be heard in opposition, and (2) the plaintiff's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting his claim that notice should not be required. The party obtaining relief under this subdivision shall give written or oral notice thereof as soon as possible to the trustee, receiver, or debtor in possession and to the debtor and, in any event, shall forthwith mail to such person or persons a copy of the order granting relief. On 2 days' notice to the party who obtained relief from a stay provided by this rule without notice or on such shorter notice to that party as the court may prescribe, the adverse party may ap-

pear and move its reinstatement, and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(f) *Availability of other relief.*—Nothing in this rule precludes the issuance of, or relief from, any stay, restraining order, or injunction when otherwise authorized.

Rule 12-44. Duties of debtor.

Bankruptcy Rule 402 applies in Chapter XII cases and, in addition to the duties specified therein, the debtor shall attend at the hearing on confirmation of a plan and, if called as a witness, testify with respect to issues raised.

Rule 12-45. Apprehension and removal of debtor to compel attendance for examination.

Bankruptcy Rule 206 applies in Chapter XII cases to a debtor and, if the debtor is a partnership, to the general partners and any other person in control of the partnership.

Rule 12-46. Exemptions.

Bankruptcy Rule 403 (a) applies in Chapter XII cases.

Rule 12-47. Determination of dischargeability of a debt; judgment on nondischargeable debt; jury trial.

Bankruptcy Rule 409 applies in Chapter XII cases except that the court may but need not make an order fixing a time for filing a complaint under § 17c (2) of the Act. If such an order is made, at least 30 days' notice of the time so fixed shall be given to all creditors in the manner provided in Rule 12-23. The court may for cause, on its own initiative or on application of any party in interest, extend the time so fixed under this rule. If such an order is not made, a complaint to determine the dischargeability of a debt under clause (2), (4), or (8) of § 17a of the Act may be filed at any time.

Rule 12-48. Duty of trustee or debtor in possession to give notice of Chapter XII case.

Bankruptcy Rule 602 applies in Chapter XII cases.

Rule 12-49. Burden of proof as to validity of post-petition transfer.

Bankruptcy Rule 603 applies in Chapter XII cases.

Rule 12-50. Accounting by prior custodian of property of the estate.

(a) *Accounting required.*—Any person required by the Act to deliver property in his possession or control to the trustee or debtor in possession, shall promptly file a written report and account with the court in which the Chapter XII case is pending with respect to the property of the estate and his administration thereof.

(b) *Examination of administration.*—On the filing of the report and account required by subdivision (a) of this rule and after an examination has been made into the superseded administration, the court shall determine the propriety of such administration, including the reasonableness of all disbursements.

Rule 12-51. Money of the estate: Deposit and disbursement.

Bankruptcy Rule 605 (b) and (c) apply in Chapter XII cases.

Rule 12-52. Rejection of executory contracts.

When a motion is made for the rejection of an executory contract, including an unexpired lease, other than as part of the plan, the court shall set a hearing on notice to the parties to the contract and to such other persons as the court may direct.

Rule 12-53. Appraisal and sale of property; compensation and eligibility of appraisers and auctioneers.

(a) *Appraiser: Appointment and duties.*—The court may appoint one or more competent and disinterested appraisers who shall prepare and file with the court an appraisal of the property of the debtor. The court may prescribe how such appraisal shall be made.

(b) *Sale of property.*—The court may, on such notice as it may direct and for cause shown, authorize the

trustee or debtor in possession to lease or sell any real or personal property of the debtor, on such terms and conditions as the court may approve.

(c) *Compensation and eligibility of auctioneers and appraisers.*—Bankruptcy Rule 606 (c) applies in Chapter XII cases to any appraiser or auctioneer appointed by the court.

Rule 12-54. Abandonment of property.

After hearing on such notice as the court may direct and on approval by the court, the trustee or debtor in possession may abandon any property.

Rule 12-55. Redemption of property from lien or sale.

Bankruptcy Rule 609 applies in Chapter XII cases.

Rule 12-56. Prosecution and defense of proceedings by trustee or debtor in possession.

Bankruptcy Rule 610 applies in Chapter XII cases.

Rule 12-57. Preservation of voidable transfer.

Bankruptcy Rule 611 applies in Chapter XII cases.

Rule 12-58. Proceeding to avoid indemnifying lien or transfer to surety.

Bankruptcy Rule 612 applies in Chapter XII cases.

Rule 12-59. Courts of bankruptcy; officers and personnel; their duties.

Part V of the Bankruptcy Rules applies in Chapter XII cases.

Rule 12-60. Adversary proceedings.

(a) *Adversary proceedings.*—Part VII of the Bankruptcy Rules shall govern any proceeding instituted by a party before a bankruptcy judge in a Chapter XII case to (1) recover money or property other than a proceeding under Rule 12-29 or Rule 12-50, (2) determine the validity, priority, or extent of a lien or other interest in property, (3) sell property free of a lien or other interest for which the holder can be compelled to take a

money satisfaction, (4) obtain an injunction, (5) obtain relief from a stay as provided in Rule 12-43, (6) object to confirmation of a plan on the ground that the debtor has committed any act or failed to perform any duty which would be a bar to the discharge of a bankrupt, or (7) determine the dischargeability of a debt. Such a proceeding shall be known as an adversary proceeding.

(b) *Reference in Bankruptcy Rules.*—As applied in Chapter XII cases, the reference in Rule 741 to “a complaint objecting to the bankrupt’s discharge” shall be read to include also a reference to “a complaint objecting to the confirmation of a plan on the ground that the debtor has committed any act or failed to perform any duty which would be a bar to the discharge of a bankrupt.”

Rule 12-61. Appeal to district court.

Part VIII of the Bankruptcy Rules applies in Chapter XII cases, except that:

(1) Rule 802 (c) thereof shall read as follows:

“(c) *Extension of time for appeal.*—The referee may extend the time for filing the notice of appeal by any party for a period not to exceed 20 days from the expiration of the time otherwise prescribed by this rule. A request to extend the time for filing a notice of appeal must be made before such time has expired, except that a request made after the expiration of such time may be granted upon a showing of excusable neglect if the judgment or order does not authorize the sale of any property or the issuance of any certificate of indebtedness, or is not a judgment or order under Rule 12-38 confirming a plan, or is not a judgment or order under Rule 12-41 dismissing a Chapter XII case, or converting a Chapter XII case to bankruptcy.”

(2) The following shall be added to Rule 805 thereof:

“Unless an order approving a sale of property or issuance of a certificate of indebtedness is stayed pending appeal, the sale to a good faith purchaser or the issuance

of a certificate to a good faith holder shall not be affected by the reversal or modification of such order on appeal whether or not the purchaser or holder knows of the pendency of the appeal."

Rule 12-62. General provisions.

Part IX of the Bankruptcy Rules applies in Chapter XII cases, except that:

(1) The definitions of words and phrases in § 406 of the Act govern their use in Chapter XII Rules to the extent they are not inconsistent therewith.

(2) The references to various rules in Rule 906 (c) shall also include references to Chapter XII Rules 12-23 (a) and 12-24 (a)(1).

(3) The exception in Rule 910 (c) for "the execution and filing of a proof of claim" shall be read to include also "the execution and filing of an acceptance or rejection of a plan" and the reference to Official Forms in that rule shall include a reference to Official Form No. 12-F15.

(4) The reference in Rule 913 (b) to "a dischargeable debt" shall be read as "a debt which is or will be provided for by the plan."

(5) The reference in Rule 919 (a) to Rule 203 (a) shall be read as a reference to Chapter XII Rule 12-23 (a).

(6) The reference in Rule 922 (b) to Rule 102 shall be read as a reference to Chapter XII Rule 12-5.