

AMENDMENTS TO THE BANKRUPTCY RULES
AND OFFICIAL BANKRUPTCY FORMS
UNDER CHAPTERS I-VII OF
THE BANKRUPTCY ACT

Rule 112. Responsive pleading or motion.

The alleged bankrupt in an involuntary petition, or, in the case of a petition against a partnership under subdivision (b) or (c) of Rule 105, any general partner (or alleged general partner) who is not a petitioner, may contest the petition. Rule 12 of the Federal Rules of Civil Procedure applies to the making of a defense or objection to the petition, except that an answer or a motion permitted under Rule 12 (b), (e), or (f) of the Federal Rules of Civil Procedure shall be served and filed within 20 days after the issuance of the summons, but if service is made by publication upon an alleged bankrupt or partner not an inhabitant of nor found within the state in which the district court is held, the court shall prescribe the time for such service and filing of the response. The service of a motion permitted under Rule 12 of the Federal Rules of Civil Procedure shall have the effect prescribed by Rule 712 (a) on the time allowed for serving an answer to the petition, but any motion or answer served on the petitioner must be filed with the court no later than the last day allowed for service of the motion or the answer, as the case may be. The answer to a petition may include the statement of a claim against a petitioning creditor only for the purpose of defeating the petition. No other responsive pleadings shall be allowed, except that the court may order a reply to an answer and prescribe the time for it to be served and filed.

Rule 121. Applicability of rules in Part VII.

Except as otherwise provided in Part I of these rules and unless the court otherwise directs, the following rules

in Part VII apply in all proceedings relating to a contested petition and in all proceedings to vacate an adjudication: Rules 705, 708-710, 715, 716, 724-726, 728-737, 752, 756, and 762. The court may direct that one or more of the other rules in Part VII shall also apply in such a proceeding. For the purposes of this rule a reference in the rules in Part VII to adversary proceedings shall be read as a reference to proceedings relating to a contested petition or proceedings to vacate an adjudication, and a reference in the Federal Rules of Civil Procedure to the complaint shall be read as a reference to the petition.

Rule 205. Examination.

(d) *Scope of examination.*—The examination under subdivisions (a) and (b) of this rule may relate only to the acts, conduct, or property of the bankrupt, or to any matter which may affect the administration of the bankrupt's estate, or to his right to discharge. The examination of a spouse under subdivisions (a) and (b) of this rule shall be subject to the provisos of § 21a of the Act.

Rule 306. Objections to and allowance of claims for purpose of distribution; valuation of security.

(c) *Objection to allowance.*—An objection to the allowance of a claim for the purpose of distribution shall be in writing. A copy of the objection and at least 10 days' notice or, if the claim is for taxes, at least 30 days' notice of a hearing thereon shall be mailed or delivered to the claimant. If an objection to a claim is joined with a demand for relief of the kind specified in Rule 701, the proceeding thereby becomes an adversary proceeding.

Rule 404. Grant or denial of discharge.

(h) *Notice of discharge.*—Within 45 days after an order of discharge of an individual bankrupt becomes final, the court shall mail a copy of such order to the persons specified in subdivision (b) of this rule.

Rule 704. Process; service of summons, complaint, and notice of trial or pre-trial conference.

(a) *Summons and notice of trial or pre-trial conference: Issuance and form; service with complaint.*—Upon the commencement of an adversary proceeding the bankruptcy judge shall set a date either for trial or for a pre-trial conference and shall forthwith issue a summons and notice of trial or pre-trial conference. The summons and notice shall conform substantially to Official Form No. 26 and shall be served together with the complaint on the defendant in one of the modes authorized by this rule.

(b) *Personal service.*—Service of the summons, complaint, and notice of trial or pre-trial conference may be made as provided in Rule 4 (d) of the Federal Rules of Civil Procedure for the service of process. Personal service may be made by any person not less than 18 years of age who is not a party.

(c) *Service by mail.*—Service of summons, complaint, and notice of trial or pre-trial conference may also be made within the United States by first-class mail postage prepaid as follows:

(1) Upon an individual other than an infant or incompetent, by mailing a copy of the summons, complaint, and notice to his dwelling house or usual place of abode or to the place where he regularly conducts his business or profession.

(2) Upon an infant or an incompetent person, by mailing a copy of the summons, complaint, and notice to the person upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such defendant in the courts of general jurisdiction of that state. The summons, complaint, and notice in such case shall be addressed to the person required to be served at his dwelling house or usual place of abode or at the place where he regularly conducts his business or profession.

(3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association, by mailing a copy of the summons, complaint, and notice directed to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

(4) Upon the United States, by mailing a copy of the summons, complaint, and notice to the United States attorney for the district in which the action is brought and also to the Attorney General of the United States at Washington, District of Columbia, and in any action attacking the validity of an order of an officer or an agency of the United States not made a party, by also mailing a copy of the summons, complaint, and notice to such officer or agency.

(5) Upon any officer or agency of the United States, by mailing a copy of the summons, complaint, and notice to the United States as prescribed in paragraph (4) of this subdivision and also to the officer or agency. If the agency is a corporation, the mailing shall be as prescribed in paragraph (3) of this subdivision of this rule.

(6) Upon a state or municipal corporation or other governmental organization thereof subject to suit, by mailing a copy of the summons, complaint, and notice to the person or office upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such a defendant in the courts of general jurisdiction of that state, or in the absence of the designation of any such person or office by state law, then to the chief executive officer thereof.

(7) Upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of this rule, it is also sufficient if a copy of the summons, complaint, and

notice is mailed to the person upon whom service is prescribed to be served by any statute of the United States or by the law of the state in which service is made when an action is brought against such defendant in the courts of general jurisdiction of that state.

(8) Upon any defendant, it is also sufficient if a copy of the summons, complaint, and notice is mailed to an agent of such defendant authorized by appointment or by law to receive service of process, at his dwelling house or usual place of abode or at the place where he regularly carries on his business or profession and, if the authorization so requires, by mailing also a copy of the summons, complaint, and notice to the defendant as provided in this subdivision.

(9) Upon the bankrupt, after a petition has been filed by him or served upon him and until the case is dismissed or closed, by mailing copies of the summons, complaint, and notice to the bankrupt at the address shown in the petition or statement of affairs filed by him or to such other address as he may designate in a writing filed with the court and, if he is represented by an attorney, to the attorney at his post-office address.

(d) Service pursuant to court order.

(1) *Service in accordance with Federal Rule of Civil Procedure 4 (e).*—If a party cannot be served as provided in subdivision (b), (c), or (i) of this rule, the court may order the summons, complaint, and notice of trial or pre-trial conference to be served as provided in Rule 4 (e) of the Federal Rules of Civil Procedure for service of summons, notice, or order in lieu of summons.

(2) *Service by publication.*—If a party to an adversary proceeding to determine or protect rights in property in the custody of the court cannot be served as provided in subdivision (b), (c), or (i) of this rule, the court may order the summons, complaint, and notice of trial or pre-trial conference to be served by mailing copies thereof to the party's last known address, if any,

and by at least one publication in such manner and form as the court may direct.

(e) *Time of service.*—Service under subdivision (b) shall be made within 10 days after the issuance of the summons. If service is made under subdivision (c), the summons, complaint, and notice of trial or pre-trial conference shall be deposited in the mail within 10 days after the issuance of the summons. Service under subdivision (d) or (i) shall be made within the time fixed by the court. If a summons is not timely served in accordance with the foregoing provisions, another summons shall be issued and served and a new date set for trial.

(f) *Territorial limits of effective service.*

(1) The summons, together with the complaint and notice of trial or pre-trial conference, and all other process except a subpoena may be served anywhere within the United States. "United States," as used in this subdivision, includes the Commonwealth of Puerto Rico and the territories and possessions to which the Act is or may hereafter be applicable.

(2) The summons, together with the complaint and notice of trial or pre-trial conference, and all other process except a subpoena may be served as provided in subdivision (b) or (d) in a foreign country (A) on the bankrupt, any person required to perform the duties of a bankrupt, any general partner of an adjudicated partnership, or any attorney who is a party to a transaction subject to examination under Rule 220, or (B) on any party to an adversary proceeding to determine or protect rights in property in the custody of the court, or (C) on any person whenever such service is authorized by a federal or state law referred to in Rule 4 (d)(7) or Rule 4 (e) of the Federal Rules of Civil Procedure.

(3) A subpoena may be served within the territorial limits provided in Rule 45 of the Federal Rules of Civil Procedure.

(g) *Proof of service.*—Service of process under the foregoing provisions of this rule shall be proved as provided in Rule 4 (g) of the Federal Rules of Civil Procedure. When service is made by mail, the proof shall include a certification of the mailing by the person who made the service. Failure to make proof of service does not affect the validity of the service.

(h) *Effect of errors; amendment.*—Service of process under this rule shall be effective notwithstanding an error in the papers served or the manner or proof of service if no material prejudice resulted therefrom to the substantial rights of the party against whom the process issued. Amendment of process or proof of service thereof may be allowed as provided in Rule 4 (h) of the Federal Rules of Civil Procedure.

(i) *Alternative provisions for service in a foreign country.*—If service of the summons, complaint, and notice of trial or pre-trial conference or of any process is authorized to be effected upon a party in a foreign country, it may also be made and proved as provided in subdivision (i) of Rule 4 of the Federal Rules of Civil Procedure.

Rule 712. Defenses and objections.

(a) *When presented.*—If a complaint is duly served upon him, a defendant shall serve his answer within 30 days after the issuance of the summons, except when a different time is prescribed by the court. The court shall prescribe the time for service of the answer when service of a complaint is made by publication or upon a party in a foreign country. A party served with a pleading stating a cross-claim against him shall serve an answer thereto within 10 days after the service upon him. The plaintiff shall serve his reply to a counterclaim in the answer within 10 days after service of the answer or, if a reply is ordered by the court, within 10 days after service of the order, unless the order otherwise directs. The

United States or an officer or agency thereof shall serve an answer to a complaint within 35 days after the issuance of the summons, and shall serve an answer to a cross-claim, or a reply to a counterclaim, within 35 days after service upon the United States attorney of the pleading in which the claim is asserted. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court: (1) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 5 days after notice of the court's action; (2) if the court grants a motion for a more definite statement, the responsive pleading shall be served within 5 days after the service of a more definite statement.

Rule 744.1. Determination of foreign law.

[Abrogated]

Rule 755. Default.

(a) *Entry and service of copy of judgment.*—When a judgment is sought against a party in adversary proceedings and such party has, without sufficient excuse, (1) failed to plead or otherwise defend or, (2) having filed a pleading or motion, is not ready to proceed with trial on the day set therefor in accordance with these rules, the court upon request therefor shall enter a judgment by default, except as provided hereinafter. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings as it deems necessary and proper. No judgment by default shall be entered against an infant or incompetent person unless represented in the proceeding by a general guardian, committee, conservator, or other such representative who has appeared therein. Immediately on

the entry of judgment by default the court shall serve a copy of the judgment by mail in the manner provided by Rule 705 on the party against whom the judgment is entered. The service of such copy shall be noted in the court's docket. Lack of service of the copy does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted by Rule 802.

Rule 801. Manner of taking appeal; voluntary dismissal.

(a) *Manner of taking appeal.*—An appeal from a judgment or order of a referee to a district court shall be taken by filing a notice of appeal with the referee within the time allowed by Rule 802. Failure of an appellant to take any step other than that specified in the first sentence does not affect the validity of the appeal, but is ground only for such action as the district court deems appropriate, which may include dismissal of appeal. The notice of appeal shall conform substantially to Official Form No. 28, shall contain the names of all parties to the judgment or order appealed from and the names and addresses of their respective attorneys, and shall be accompanied by the fee fixed by the Judicial Conference of the United States pursuant to § 40c of the Act. Each appellant shall file a sufficient number of copies of the notice of appeal to enable the referee to comply promptly with Rule 804.

(b) *Voluntary dismissal.*—If an appeal has not been docketed, the appeal may be dismissed by the referee upon the filing with him of a stipulation for dismissal signed by all the parties, or upon motion and notice by the appellant. If the parties to an appeal shall sign and file with the clerk of the district court an agreement that the appeal be dismissed, specifying the terms as to payment of costs, and shall pay whatever fees are due, the clerk shall enter the case dismissed, but no mandate or other process shall issue without an order of the court.

An appeal may also be dismissed upon motion of the appellant upon terms agreed upon by the parties or fixed by the court.

Rule 805. Stay pending appeal.

A motion for a stay of the judgment or order of a referee, for approval of a supersedeas bond, or for other relief pending appeal must ordinarily be made in the first instance to the referee. Notwithstanding Rule 762 but subject to the power of the district court reserved hereinafter, the referee may suspend or order the continuation of proceedings or make any other appropriate order during the pendency of an appeal upon such terms as will protect the rights of all parties in interest. A motion for such relief, or for modification or termination of relief granted by the referee, may be made to the district court, but the motion shall show why the relief, modification, or termination was not obtained from the referee. The district court may condition the relief it grants under this rule upon the filing of a bond or other appropriate security with the referee. A trustee or receiver may be required to give a supersedeas bond or other appropriate security in order to obtain a stay when taking an appeal. 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 914. Procedure in contested matters not otherwise provided for.

In a contested matter in a bankruptcy case not otherwise governed by these rules, relief shall be requested by motion, and reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought. No responsive pleading is required under this

rule unless the court orders an answer to a motion. The motion shall be served in the manner provided for service of a summons, complaint, and notice by Rule 704. In all contested matters, unless the court otherwise directs, the following rules shall also apply: 721, 725, 726, 728-737, 741, 742, 752, 754-756, 762, 764, 769, and 771. The court may at any stage in a particular matter direct that one or more of the other rules in Part VII shall apply. A person who desires to perpetuate his own testimony or that of another person regarding any matter that may be cognizable and relevant in a contested matter in a pending bankruptcy case may proceed in the same manner as provided in Rule 727 for the taking of a deposition before an adversary proceeding. For the purposes of this rule a reference in the rules in Part VII to adversary proceedings shall be read as a reference to contested matters. Notice of an order or direction under this rule shall be given when necessary or appropriate to assure to the parties affected a reasonable opportunity to comply with the procedures made applicable by the order.

Rule 917. Evidence.

The Federal Rules of Evidence and Rules 43, 44, and 44.1 of the Federal Rules of Civil Procedure apply in bankruptcy cases subject to specific provisions in these rules governing matters of evidence.

The following table shows the results of the experiments conducted in the laboratory of the U. S. Bureau of Entomology and Plant Quarantine, Washington, D. C., during the summer of 1934. The table is arranged in the order in which the experiments were conducted, and the results are given in the order in which they were obtained. The first column gives the name of the insect, the second column gives the name of the host plant, the third column gives the name of the insecticide, the fourth column gives the concentration of the insecticide, the fifth column gives the date of the experiment, and the sixth column gives the results of the experiment.

TABLE I.—Results of the experiments conducted in the laboratory of the U. S. Bureau of Entomology and Plant Quarantine, Washington, D. C., during the summer of 1934.

The following table shows the results of the experiments conducted in the laboratory of the U. S. Bureau of Entomology and Plant Quarantine, Washington, D. C., during the summer of 1934. The table is arranged in the order in which the experiments were conducted, and the results are given in the order in which they were obtained. The first column gives the name of the insect, the second column gives the name of the host plant, the third column gives the name of the insecticide, the fourth column gives the concentration of the insecticide, the fifth column gives the date of the experiment, and the sixth column gives the results of the experiment.