

Rules

of the

United States District Court

for the

District of Colorado

1940

RULES

of the

UNITED STATES DISTRICT COURT

for the

DISTRICT OF COLORADO

CIVIL RULES AMENDED TO SEPTEMBER 6, 1940

BANKRUPTCY RULES AMENDED TO OCTOBER 16, 1940

TERMS OF COURT

At Denver	{ First Tuesday in May
At Pueblo	{ First Tuesday in November
At Sterling	First Tuesday in April
At Grand Junction	Second Monday in June
At Montrose	Second Tuesday in September
At Durango	Third Tuesday in September
	Fourth Tuesday in September

**RULES OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

1.

TITLE OF COURT

The Court adopts "United States District Court for the District of Colorado" as the title of the court.

2.

SEAL

The seal shall contain: around the outer edge, the words "UNITED STATES DISTRICT COURT," running from left to right from the word "SEAL," which shall be in the center of the lower part of said outer edge and set off with a star before the letter "S" and after the letter "L"; around the inner edge, the words "DISTRICT OF COLORADO"; and in the center, the figure or representation of an eagle. (See specification of seal below.)



3.

**PROOF OF SERVICE OF PLEADINGS,
MOTIONS, AND OTHER PAPERS**

Except as otherwise provided in the Federal Rules of Civil Procedure, or by order of court, proof of service of any pleading, motion, or other paper required to be served shall be by written

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acknowledgment of service or by affidavit. Such acknowledgment or affidavit shall be filed with the clerk with the paper or pleading so filed or may be endorsed upon the pleading, motion, or other paper required to be served.

4.

NOTICE OF FILING OF TRANSCRIPT IN REMOVAL CASES

The party filing the transcript in removed cases shall forthwith serve notice of such filing on the adverse party or his counsel, either in person or by mail, and shall file proof of such service with the clerk.

5.

DEPOSITIONS

"Reasonable notice" for the taking of depositions under Rule 30(a) of the Federal Rules of Civil Procedure shall be five (5) days, subject, however, to an order of the court entered for cause shown enlarging or shortening the time. Rule 6 of the Federal Rules of Civil Procedure shall govern the computation of time.

Depositions in pending cases which have been duly filed in the office of the clerk may be opened by the clerk for examination upon application of any attorney of record in the case.

Fees for taking of depositions shall be plainly endorsed on the notary's certificate or wrapper, or they may not be taxed as costs in the case unless good cause therefor is shown.

6.

SETTING OF CASES

All cases at issue shall be set for pretrial and for trial on the merits at times to be designated by the court. Reasonable notice of the time and place of the setting for pretrial and for trial on the merits shall be given by the clerk of the court by mail to counsel of record or to the parties.

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7.

CONTINUANCES

Cases shall not be continued upon stipulation of counsel alone, but such continuances may be allowed by order of court. No such continuances shall be allowed except for good cause shown.

8.

DISMISSAL FOR LACK OF PROSECUTION

In any case in which no action has been taken by the parties for one year, it shall be the duty of the clerk to mail notice thereof to counsel of record or to the parties thereto, if their post office addresses are known, thirty (30) days before the opening of the regular May Term of court in each year at Denver, and at the opening of the regular April Term of court in each year at Pueblo. If such notice has been given and no action has been taken in the case in the meantime, an order of dismissal may in the court's discretion be entered at the opening of such term of court.

9.

REMOVAL FROM FILES

No record or paper belonging to the files of the court shall be taken from the office or custody of the clerk, except upon the special order of the court or judge; a receipt specifying the record or paper shall be given by the party obtaining it; and no order will be made, except for cogent reasons.

10.

EXHIBITS

Exhibits introduced in evidence upon the trial of a case may and shall be withdrawn only upon order of the court. If the party entitled to withdraw such exhibits fails to comply with the order, such exhibits may be destroyed or otherwise disposed of as the court shall direct.

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11.

COURT ROOM DECORUM

The taking of photographs or the broadcasting of judicial proceedings in any court room of this court or so close to any such court room as to disturb the order and decorum thereof, either while the court is in session or at recesses between sessions when court officials, parties, counsellors, jurymen, witnesses, or other persons connected with the proceedings pending therein are present, is prohibited.*

12.

CASES, WHERE FILED

Suits commenced in this court, or removed from a state court of Colorado, shall be filed in the clerk's office at Denver, or at Pueblo.

Suits shall be tried or heard at the place where filed, unless removed by order of court to some other place where the court is authorized to sit. Cases may be removed for the hearing of motions or trial at the suggestion of counsel or by the court, for convenience of parties, witnesses, or the expense to the Government; and when so removed it shall be sufficient for the clerk, without certification, to transmit the files and records of the case to the place of trial or hearing and to return them to the office from which they came.

13.

COSTS

Whenever an action shall be filed in or removed to this court, the plaintiff shall deposit with the clerk \$15.00, to be applied to the payment of costs as they shall accrue. The defendant, or any other party brought in or appearing, upon entering his appearance or filing any paper in the cause shall deposit the like sum, to be applied in the same way. Whenever the costs accruing against any party shall equal or exceed the sum so deposited, and upon demand of the clerk, an additional sum of \$15.00 shall be de-

*Rules 1 to 11, inclusive, and Rule 26, are common to all the districts in the Tenth Circuit. Rules 12 to 25 are local to the District of Colorado.

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posited by such party to be applied in the same manner. In this way successive deposits of \$15.00 shall be made by each party whenever his previous deposit is exhausted.

14.

BONDS

An attorney, wife of a defendant, or party in a case shall not be accepted as surety for costs, or as surety on any appeal or other bond in the case.

Where the surety on a bond is an approved surety company, a power of attorney showing the authority of the agent signing the bond shall be on file with the clerk.

15.

MONEYS PAID INTO COURT, HOW DISPOSED OF, ETC.

All moneys brought into court shall be paid to the clerk of the court, unless the court shall otherwise direct, and when not immediately paid to the party entitled, be deposited by said clerk in his name of office with such depository as may be designated by law, or by the court, when no place is so designated. The amount so received, the purpose for which it was paid into court, together with the fact of the deposit, as herein provided, shall be noted by the clerk in the civil, criminal or bankruptcy docket of the court in the particular cause in which it is received.

Orders, checks, etc., on depositaries for the payment of money from the registry of the court shall be signed by the clerk and countersigned by a judge of the court.

The First National Bank of Denver and The Colorado National Bank of Denver are made depositaries for such funds.

16.

FORM OF PLEADINGS AND PAPER

The paper used for pleadings and other documents filed in court shall be approximately eight by fourteen inches in size, and in weight seven pounds for each five hundred sheets. The ink used shall be black. All such pleadings, depositions and other

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documents shall be fastened or bound at the side of the pages thereof except the original petition and schedules in bankruptcy, which are to be fastened at the top.

Papers which do not conform to this rule may not be received by the clerk. If any such shall be filed, they may be stricken from the files at the cost of the party filing them.

All pleadings and other papers shall when offered for filing be plainly and fairly written or printed without erasures or interlineations materially defacing them.

All papers subsequent to that beginning a litigation shall, when offered for filing, be endorsed with the proper docket number and all papers shall have endorsed thereon the proper description or designation thereof, as in Rule 7(b)(2) and Rule 10(a) of the Federal Rules of Civil Procedure. No paper shall be received for filing without such endorsement.

All papers shall be filed flat.

17.

ATTORNEYS

1. The bar of this court shall consist of those persons heretofore and hereafter admitted to practice, and who have signed or shall sign the roll of attorneys.

2. Any person possessing the qualifications prescribed by law for admittance to practice law in the courts of the State of Colorado may be admitted to practice in this court, upon taking the following oath of office, to wit:

I, A----- B-----, do solemnly swear before the ever-living God that I will support the Constitution of the United States and the laws made in pursuance thereof; and that I will faithfully observe and obey the rules of the District Court of the United States for the District of Colorado; and demean myself uprightly and according to law; so help me God.

and paying the clerk for his fees herein for each such admittance the sum of one dollar. (For clerk's Certificate of Admission, \$2.00 additional.)

3. All attorneys and counsellors who practice in this court, and reside outside of the district, shall associate with them in

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the action a resident attorney on whom notice may be served and who shall have the authority to act for and on behalf of the client in all matters, including pre-trial conferences and the trial of the case. Such resident attorney shall sign the first pleading filed and continue in the case unless other resident counsel be substituted. To facilitate service he shall also state his address beneath his signature on all papers filed by him.

4. Any member of the bar of this court, who has been disbarred from the bar of the State of Colorado, shall *ipso facto* be disbarred from the bar of this court, and his name stricken from the roll; and any member suspended for a period from practice by the Supreme Court of the State of Colorado shall *ipso facto* be suspended for a like period from practice in this court.

5. Any member of the bar of this court may be disbarred, suspended from practice for a definite time, or reprimanded for good cause shown, after opportunity has been afforded such member to be heard.

6. An attorney suspended or disbarred shall again be admitted to practice only upon motion.

18.

JURORS, SELECTION AND SERVICE

The clerk shall keep a box, as specified in the laws of the State of Colorado relating to jurors, and the marshal shall hold the keys of such box. The names of jurors selected as provided in the Act of Congress of March 3, 1911, shall be placed in one compartment of the said box. Upon the order of the court, or a judge of the court, the clerk or a deputy clerk shall publicly, and at such time as he may appoint, at his office, or at the court room if the court be in session, in the presence of the marshal or a deputy marshal, draw by chance a jury or juries, as the court or judge shall direct. The names of persons so drawn shall be placed in the other compartment of the said box, and from time to time, as the court shall direct, the names so used shall be destroyed.

Jurors shall be summoned by writ of *venire facias* in any of the following ways; that is to say:

(a) By reading the writ to the juror personally.

(b) By leaving a copy of the writ at the usual place of abode of the juror with some person, a member of his family, over the age of sixteen years.

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(c) By sending a copy of the writ to the juror through the mail in a registered envelope addressed to such juror at the post office from which he usually receives his letters.

Service by reading and by leaving a copy at the usual place of abode of the juror shall be made at least five days before the return day of the writ; service by mail shall be made by depositing in the post office, properly prepaid and addressed, a copy of the writ at least ten days before the return day thereof.

In his return to the writ, the marshal shall specify the manner of serving each juror; and in case of service by mail he shall state whether the juror has acknowledged that he has received the writ, according to the practice of the Post Office Department in respect to registered letters.

For making copies of the writ and for registering and sending the same by mail, the marshal shall be allowed the reasonable cost, to be charged as the actual expense of serving the writ.

In matters relating to the method of designating, summoning, and impaneling jurors, where no provision is made by the laws of Congress or by rule, the laws of the State of Colorado are adopted, so far as they may be applicable in the courts of the United States.

The commissioners appointed to select jurors, pursuant to the Act of Congress of March 3, 1911 (Title 28 USC Sec. 412) shall be paid the sum of five dollars per day during the time occupied in making such selection, but not to exceed fifteen dollars for such service at any term of court.

19.

UNITED STATES COMMISSIONERS

Whenever a warrant shall be issued by a commissioner for the arrest of any person, he shall attach thereto a certified copy of the complaint. The warrant shall be made returnable before him, provided he be the commissioner nearest or most convenient to the residence of the accused. If he is not, then he shall retain the affidavit on which the warrant is issued, and make the warrant, accompanied by a certified copy of the original affidavit, returnable before a commissioner having an office and acting nearest to the residence of the accused; and such commissioner shall make the examination of the party, and discharge, commit to prison, or admit to bail, as the case may be.

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Each commissioner shall enter upon the record book, to be kept by him as provided by law, on the day the transaction occurs, the issuing of each warrant, upon whose complaint and request the same was issued, the nature of the offense, and the officer to whom the warrant was delivered for service, together with the proceedings had under said warrant; the names of the witnesses present and examined, and their fees; the name of the guard, if any, and his fees, together with the marshal's or deputy marshal's fees and all of said fees, together with mileage and expenses allowed by law, and a statement of the commissioner's own fees, shall be properly entered upon the warrant when returned to the commissioner. After the close of each examination the commissioner shall forward to the clerk of the United States District Court for the proper district all the papers in the case, with a proper transcript of the proceedings, in which he shall schedule the papers forwarded.

All warrants and other writs except writs of mittimus issued by a commissioner shall, when so issued, be forwarded to the United States Marshal for the District of Colorado, at Denver, to serve; and a warrant or other writ shall be delivered by a commissioner to a deputy marshal for service only in exceptional cases that demand immediate service, and where delay incident to the transmission of the warrant to the marshal would defeat the ends of justice, in which case the writ shall be delivered by the commissioner to the deputy marshal designated by the United States Marshal, and shall make an immediate report of said writ sufficient to enable the marshal to docket the same in his office. When in the course of a hearing before a commissioner it becomes necessary to secure the attendance of a witness, which attendance can be procured without an adjournment of said hearing, a subpoena may be placed in the hands of a deputy marshal without first forwarding same to the marshal's office at Denver.

The clerk is charged with the duty of bringing to the attention of the court any failure on the part of commissioners to comply with this rule.

All United States Commissioners shall make and present their accounts against the United States in duplicate, the original to be forwarded to the Attorney General and the duplicate to be filed in the office of the clerk of this court.

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20.

HEARING OF MOTIONS

Except when otherwise permitted by the court, or prescribed by the Federal Rules of Civil Procedure, all motions at the time available, affecting any pleading in a civil action, an indictment, or an information must be filed at the same time, and will be disposed of at the same hearing; and in criminal cases must be filed and disposed of within such time as will not delay a trial to the first jury available.

21.

MOTION DAY

It being impracticable to establish a motion day in this court, the court will hear motions in each case at times and places fixed by the court.

All motions for argument will be set by the clerk for hearing, without the filing of praecipes by counsel or litigants, and the clerk will notify all parties thereof of the day so set; but this rule does not prevent attorneys from filing praecipes to expedite the setting of motions for argument.

22.

DEFAULT JUDGMENT BY CLERK

When a party is entitled to have the clerk enter judgment by default, pursuant to Federal 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 interest to the day of judgment, and the costs and taxable disbursements claimed, to which statement shall be appended an affidavit of the party or his attorney:

- (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; and
- (4) That the disbursements sought to be taxed have been made in the action, or will necessarily be made or incurred therein.

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The clerk shall thereupon enter judgment for principal, interest and costs.

If the cause of action in which a default judgment is sought is based on a promissory note, bill of exchange, draft, written contract, mortgage or the like, such instrument or instruments shall be filed with the clerk by plaintiff at the time of his application for entry of judgment, and shall not thereafter be withdrawn from the files without permission of the court and the substitution of a true copy.*

23.

ATTENDANCE OF DEFENDANTS IN CRIMINAL CAUSES

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 to the defendant and his bondsmen.

24.

SUBPOENA DUCES TECUM

In cases not governed by the Federal Rules of Civil Procedure, no subpoena duces tecum shall be issued by the clerk except upon an application to the court, and an order therefor made and filed.

25.

STENOGRAPHER

The court will appoint a stenographer to report trials where the litigants desire the trial to be stenographically reported.

Fees of the stenographer shall be as follows: per diem attendance fee, \$10.00; for transcript of the record, original, 20 cents per folio; all copies, 5 cents per folio.

The reporter shall not be required to undertake the making of a typed transcript without the deposit of an adequate indemnity, nor to furnish such transcript prior to the payment thereof.

*See also National Guard Act of August 23, 1940 and Soldiers' and Sailors' Civil Relief Act of October 17, 1940.

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MODIFICATION OF RULES

Any of the foregoing rules shall, in special cases, be subject to such modification as may be necessary to meet emergencies or avoid injustice and great hardship.

RULES of the UNITED STATES DISTRICT COURT for the DISTRICT of COLORADO in BANKRUPTCY

AUTHORITY

The following rules are hereby promulgated for carrying out the provisions of the bankruptcy laws of the United States.

RULE 1

BANKRUPTCY DISTRICTS

Sec. 1. For the purpose of compliance with Chapter 5, Section 34, of the Bankruptcy Act, the districts of Referees are not to be restricted to a defined territory within the District of Colorado, and the State of Colorado shall constitute one bankruptcy district. The referees having jurisdiction throughout the entire district may be assigned by the judge to administer cases in bankruptcy regardless of the location of the property of the bankrupt or the residence of the bankrupt or debtor, the cases to be assigned to the referees for administration in such manner as, in the discretion of the judge of said court, may best serve the public interest and the interest of the creditors.

RULE 2

PETITIONS AND SCHEDULES

Sec. 1. In addition to the requirements of Sections 7 and 8 of the Bankruptcy Act and General Orders relating to the filing of schedules, the petitions and schedules of the bankrupt shall conform to the following requirements: The petition and schedules shall be upon white paper of the weight of not less than ten pounds to the ream, and shall be typed in some form of printed lettering with printing press and/or typewriter, using black ink or ribbons. The size of the sheets shall be $8\frac{1}{2}$ x 14, and the schedules shall be in triplicate and shall contain complete and detailed information for the guidance of the officers of the court in the administration of the estate. The list of creditors shall be placed in the proper position in the schedules in alphabetical order, and the schedule of each creditor shall be accompanied by the full name together with any trade name used by such creditor, the address by street, city and town, if residing in towns over the size of 2500; shall list the amount of the debt admitted to be owing, or if the debt is disputed that fact should be stated; shall give the exact consideration passing when the debt was created; the date by

month and year when contracted, the date of any payments; what, if any, notes or other writings have been made by the bankrupt or debtor to evidence the debt; in case of secured debts a brief description of the property covered by security, the date of the security, the date and place where recorded, and if action has been taken to enforce the same a statement of where such proceedings are pending.

The schedule shall show the full and correct name of the bankrupt or debtor, with street address of residence and business, including city, county and state, nature of employment, name of employer, including a statement in connection with the schedule of creditors as to any trade name in which the debt was incurred. In case the bankrupt or debtor is a merchant, or possessed of merchandise or property kept by the bankrupt or debtor for sale, the schedule shall be accompanied by a detailed inventory in duplicate as required by Section 7-A-11 of the Bankruptcy Act.

Each schedule shall be duly signed and verified before a notary public or other officer authorized to administer oaths, who shall certify the same thereon. The duplicate and triplicate original schedules shall be sent by the clerk, one to the referee and the other to the trustee.

Sec. 2. As supplemental to the schedules, the bankrupt or debtor shall file the statement of affairs required by Section 7-A-9, in the form prescribed by the General Orders of the Supreme Court. Statement of affairs must be filed by bankrupts or debtors in such form and at such time as may be required by the court.

Sec. 3. The bankrupts or debtors shall furnish all such further information relating to the business and affairs, or relating to the bankruptcy, as may be required from time to time by the trustee or the court.

RULE 3

NOTICE TO CREDITORS AND OTHERS

Sec. 1. Notices that are required by the Act, the General Orders, or by any order of the court to be given to creditors or to any other persons, shall be given over the signature of the clerk, or in case of reference, over the signature of the referee in charge of the administration of the case. In case the referee shall deem it proper so to do, he shall provide in said notice of first meeting of creditors, in addition to other matters, that the sale

or other disposition of the assets and property of the bankrupt is to be considered, acted upon and authorized in such manner and upon such terms as the creditors may determine, subject to the approval of the referee. Notice to creditors and others of the first meeting of creditors shall be deposited in the Post Office at least ten days prior to the date fixed therein; and notices for filing of objection to discharges shall be deposited in the Post Office at least thirty days prior to the date fixed therein.

Sec. 2. Where the Bankruptcy Act and General Orders, Rules of Court, or the orders of court, shall require publication of any notice, it shall be published for the time and in the manner provided by such statute, supplemented by order of the court, in newspapers designated by order of the judge, or in case of reference by the referee in charge of the case; and the newspaper publishing the same shall, before receiving compensation for publication, file proper proof of its publication with the clerk or referee.

Sec. 3. Any newspaper published in Colorado and being at the time designated for the publication of any notice a legal newspaper as defined by the laws of the State of Colorado, is hereby designated as a proper newspaper for the publication of any notices required by the Bankruptcy Act; and courts of bankruptcy shall designate for publication of notices of first meetings and notices for filing objections on discharges, if and when published, and any other notices to be published, a newspaper published in the county of the residence of the bankrupt and/or in such other newspapers as the court may require.

Sec. 4. Newspapers shall be compensated for publications at the same rates as are fixed for publications of legal notices under the laws of the State of Colorado.

RULE 4

HEARINGS ON OBJECTIONS TO DISCHARGE

Sec. 1. In case objections to the discharge of a bankrupt other than a corporation are filed within the time or extended time fixed therefor, the court shall give notice of hearing as provided in Section 58b of the Act and shall hear and determine said objections within sixty days after the filing of the same, or within such further time as may be given for said hearing for cause shown.

Sec. 2. Petitions for discharge of corporations as provided by Section 14 of the Act, shall be filed with the clerk or with the referee in charge of the case, and shall be signed in the corporate

name by the persons authorized in the resolution of the corporation to file the original proceeding in bankruptcy, and under the corporate seal. Time within which such objections to the discharge of a corporation may be filed shall be fixed by the court not later than sixty days from the filing of the petition for discharge. Notice of the time fixed for filing objections shall be given as provided in Section 58b of the Act, and objections shall be promptly heard and determined.

In addition to notice by mail, the court may order a notice hearing of the objections to discharge.

Sec. 3. Where objections to the discharge of a bankrupt, including a corporate bankrupt, shall be made by a creditor or creditors, and, after hearing, discharge is denied, such denial shall relate only to the claims of such creditor or creditors so objecting unless the trustee shall join in making such objections, in which event the denial of discharge shall be absolute as to all parties.

RULE 5

ATTORNEYS' FEES

Sec. 1. The amount of attorneys' fees to be allowed to attorneys for bankrupts, debtors, petitioning creditors, or for creditors' committees, shall be fixed by the court after a hearing, upon notice to creditors, and other persons in interest as required by the Bankruptcy Act and General Orders.

Sec. 2. Claims for attorneys' fees shall be in writing, filed with the court in which the proceeding is pending, in the form of a petition under oath stating, in addition to the requirements specified in the Bankruptcy Act or in the General Orders or in any other order of court made in respect thereto, by whom the attorney was employed, the facts of employment, agreed compensation, if any, a detailed statement of the services rendered and the time involved, the amount claimed therefor, the rate at which the amount is computed and other pertinent details of the service rendered.

Sec. 3. The court shall fix fees commensurate with the real value of the services rendered and may take into consideration in making such allowances the size of the estate, the amount realized for the estate, especially through the discovery and recovery of hidden or disputed assets, whether the employment of the attorney is on a general retainer basis or for a particular purpose, the actual time involved, the skill requisite properly to

handle the particular transactions, the special ability, training and experience of the attorney with respect to the matter concerned in his charge, the results obtained, the contingencies certain of compensation, the compensation to be allowed to the trustee, creditors' committees, accountants, receivers, and other in respect to the said matters, and any other factors which may influence the value of the services rendered in a particular case.

Sec. 4. What constitutes "professional services" mentioned in General Order 42 shall be determined by the court on the fact in each case.

RULE 6

POOR PERSONS

Sec. 1. Whenever a proposed voluntary bankrupt has filed an affidavit under Sections 51-2 of the Act, and his papers have been filed thereunder, a voluntary bankrupt shall not thereby be excluded from the payment of the fees of the clerk and referee, but the order granting leave to file in forma pauperis shall operate to postpone for a definite period the payment of such fees. The postponement as to the fees of the clerk shall be for not exceeding 90 days after the date of the first meeting of creditors, and if such fees are not paid to the clerk in full at or before such time the case may be dismissed without notice to the bankrupt or the creditors as one dismissed for failure to pay the costs. The fee of the referee as fixed by these rules shall be paid as follows: One-half within 30 days after the date of adjudication, and the balance within 60 days thereafter, and if such fees are not paid on or before said time the referee may close the case and dismiss the same for failure to pay the costs of administration, said dismissal to be without notice to the bankrupt or creditors. Referee shall not be required to call first meetings or make expenditure until the necessary costs are advanced.

Sec. 2. Leave of court or the referee must be first had and obtained granting permission to file in forma pauperis under Sections 51-2, the form of such an affidavit being in the following words and figures, to wit:

Comes now -----, and being first duly sworn, upon his oath deposes and says:

That he is the petitioner in the above entitled proceeding in bankruptcy; that he is without and cannot obtain money with which to pay the fees of the clerk of the above

entitled court or the fees of the referee and the trustee required to be deposited with the clerk of the above entitled court, for the reason that he has no property in excess of his exemptions allowed him by the laws of Colorado in the possession of himself or any other person from which such fees may be obtained at the time this affidavit is made, and has not sold or assigned or disposed of any property within 30 days past or divested himself of funds to pay such costs.

That the petitioner has no wages due him from any employer for the period prior to the making of this affidavit in excess of his exemptions under the laws of Colorado sufficient to pay his costs to the clerk, or—

That wages due him and unpaid to the date of this affidavit amount to \$----- and any such wages not exempt to him by law shall be paid to the clerk to the extent of \$30.00 as soon as the same are collected, which money he is not able to obtain at the date of this affidavit.

That he has (not) employed an attorney to assist him herein and has not paid or agreed to pay any attorney any fees as such attorney in this proceeding which are chargeable to his estate; and he has not agreed to pay any attorney herein out of his earnings subsequent to bankruptcy an amount in excess of \$10.00 for his services herein, and has not agreed to pay any person other than an attorney at law for assistance in this proceeding, any sums of money out of his earnings subsequent to the filing of this petition, in excess of \$5.00.

That he attaches hereto a statement of his attorney at law as to the facts of his employment herein, and a statement of any other persons of clerical services charged for.

Wherefore, he prays the order of the court permitting him to file his petition with the clerk of the above entitled court without the prepayment of the fees of the clerk herein, with the understanding that such fees shall be paid according to Bankruptcy Rule 6 of this court.

PETITIONER

Subscribed and sworn to before me this ----- day of -----, A. D. 19-----

My commission expires -----

NOTARY PUBLIC

The above proceeding may be received by the clerk and filed without the prepayment of the clerk's fees.

By the Court:

JUDGE

A petitioner who has in his possession, or in the possession of another, at the time of tendering the petition, money or convertible property of the value of \$25.00, or more, in excess of exemptions, or who has wages of said amount or more above exemptions then due and collectible, is not qualified to make said affidavit. The fact, however, that petitioner has at said time wages due in a greater amount than \$25.00, but not then collectible, shall not disqualify him from making said affidavit.

RULE 7 COSTS

Sec. 1. The fees of the clerk of the court in voluntary and involuntary cases and in cases under Chapters XI and XII, are fixed at \$30.00 to be divided by the clerk as follows: \$10.00 to the clerk, \$15.00 to the referee, as provided by Section 40 of the Act, and \$5.00 to be disbursed to the trustee if and when appointed, otherwise to be returned to the bankrupt or debtor.

In cases where the order of the court permits the filing of a petition by a voluntary bankrupt without the payment of the costs, the fees payable to the clerk shall be \$25.00, to be distributed \$15.00 to the referee and \$10.00 to the clerk. If a trustee is appointed and the estate contains sufficient assets to pay the trustee's fee of \$5.00 such fee of \$5.00 as provided in Section 48-c shall be paid out of said assets; or in case the court shall so direct the bankrupt shall pay said \$5.00 as costs before receiving his discharge.

Sec. 2. Costs to the referee may be collected before the services are rendered, including actual costs in pauper cases. An initial deposit of \$30.00 may be collected from voluntary or involuntary bankrupts, whether asset or no-asset cases, and debtors under Chapters XI and XII, plus the actual and necessary expense in connection with publishing, printing, and mailing notices of hearing on bankrupt's discharge; which moneys shall be deposited by the referee in a special fund to be used only in the administration of cases in bankruptcy, and shall not become a subject of profit to the referee. Additional deposits for costs may be collected as required.

the closing of the case, the granting or refusing of the discharge payment of dividends, and the filing of the complete record of the closed case with the clerk of the court, within 30 days after the expiration of six months provided by the Act for the filing of claims, unless conditions exist that prevent such closing.

Sec. 3. Where cases are referred to referees in bankruptcy under Chapters XI, XII and XIII of the Act, the duty of the referee in the administration of the case shall be the same as in any other reference under Chapters I to VII of the Act, and referee shall take charge of the cases, unless the reference is limited fully administer the same and hear and determine all controversies arising therein, subject to the right of review as provided by the Act, and close the case when it is completely administered.

Sec. 4. When cases are referred generally to referees in bankruptcy or to special masters under Chapters IX and X of the Bankruptcy Act, such referee or special master shall take charge of the administration of the proceeding, shall hear and determine all matters not reserved in Chapters IX and X to be heard and determined by the judge, subject only to the right of any party for a petition for review from the decision of the referee or special master upon any matter not reserved for the judge to hear and determine.

Referees in bankruptcy or special masters shall also, if so directed by the judge, hear any and all controversies arising in any proceeding under Chapters IX and X reserved by the Act to the judge, and make therein findings of fact, conclusions of law, and recommendations of orders that in the judgment of the referee should be made on such controversies, and file the said report with the judge or clerk of the court within 15 days unless the time is further extended by order of the judge.

Sec. 5. Where questions arising under Chapters IX and X of the Act are referred to special masters, such special masters shall fully hear such controversies so referred to them, and shall within the time fixed, or if no time is fixed, as expeditiously as possible, make report to the judge, which report shall include findings of fact, conclusions of law, recommendations, and if requested by either party, a transcript of the evidence and the originals of all exhibits.

In cases under Chapter XIII where wage-earners file petitions under Section 622, Article 4 of Chapter XIII, "Wage-earners' Plans," the petition shall be accompanied by the fees provided in Section 624, i.e. \$15.00, to be paid when the petition is filed.

Sec. 3. There shall be paid from the estates of bankrupts and in proceedings under Chapters IX, X, XI, XII and XIII the necessary expenses of administration, which may include the actual and necessary traveling expenses and living expenses while traveling, of referees, special masters, trustees, receivers, and their attorneys, when away from the location of their offices on the business of administering bankrupts' or debtors' estates; which sums so paid shall only be paid upon the verified claim by the claimant, filed with the referee, and made the subject of an order of the court thereon.

Sec. 4. A part time referee may charge and pay out of the referee's special-costs fund under his charge such part of the costs of maintaining the bankruptcy department of his office as may be a fair proportion of expenses in connection with his joint office, which proportion shall be that as has been or is fixed by order of the referee and approved by the judge of the court.

Sec. 5. The necessary expenses and costs of part time referees under Section 62 of the Act shall be apportioned by statement itemized and verified by part time referees, and in the case of referees whose time is exclusively devoted to the business of the bankruptcy court such costs, including costs of establishing equipment and maintenance of the office of such full time referees, shall be charged to maintenance and paid out of the indemnity fund of such referees and the equipment purchased shall be carried on the accounts of the referees as belonging to the United States.

RULE 8

REFERENCE OF CASES

Sec. 1. When a case is referred to a referee under Chapters I to VII, inclusive, the referee shall assume complete jurisdiction of the said cases; shall perform all the duties within his jurisdiction as defined by the Act; shall hear and determine all controversies, and in deciding cases shall, so far as possible, make written findings and conclusions therein, either at the time of the decision, or embody such findings and conclusions in the record upon a petition for review, for the information of the judge.

Sec. 2. Cases shall be expeditiously handled, with a view to

RULE 9

RECLAMATION OF PROPERTY

Sec. 1. Petitions for reclamation of property, which shall include any and all claims to property as against the bankrupt estate or the trustee or receiver, shall be filed with the referee within 20 days after the first date fixed in the notice of first meeting, or such further time as the court may grant for cause shown. In case reclamations are not filed within the time herein provided, or prior to the sale of the property, whichever first occurs, a petition for reclamation may not be filed or granted, but a failure to so file shall not deprive the claimant of the right to file, within the time fixed by law, a claim having the status of a general unsecured claim.

RULE 10

SERVICE OF PAPERS, PROCESS AND ORDERS OF REFEREE

Sec. 1. By order of the bankruptcy court, so designating, any person over the age of 21 years may serve any orders, notice or proceeding or process issued by the court and make return of such service by affidavit, and such affidavit shall be prima facie evidence of such service.

RULE 11

PROXIES

Sec. 1. In case voting by proxies is authorized by the Act or permitted by the court, the proxies or powers of attorney shall be in writing, acknowledged or verified before a notary public or other proper officer, and filed with the referee in charge of the case at least 24 hours before the date of the meeting at which the proxies are to be used, and where not so filed the court may reject such proxies.

Sec. 2. In cases where creditors have assigned their claims, the assignees shall be permitted to vote such claims as separate and individual claims for the election of trustees, but all claims held by one individual or person shall be considered as one claim for voting purposes. This does not apply to the amount of the claims, which may be voted by an individual for the entire aggregate amount of all claims held by an assignee.

RULE 12

SALE OF ASSETS

Sec. 1. Courts of bankruptcy shall require assets to be sold in such a manner as is likely to produce the greatest return on such sales. As near as possible, sales shall be made by trustees or receivers or auctioneers at public auction upon due and sufficient notice to prospective buyers as directed by the court; and sales at public auction, where the price is reasonably adequate, shall be confirmed to the highest bidder. In event the court does not confirm the sale the property shall be ordered reoffered and notice shall be given of the time and place of reoffering said property as nearly as possible to the bidders at the original sale in order that all interested parties may have an opportunity of raising their bids. In cases where property has been struck off to the highest bidder at a public sale, public or private bids received subsequent to that date shall not be accepted or considered except upon petition, before confirmation, of a creditor, trustee or receiver, showing why the same should be accepted; and if such objections or petitions are sustained and the sale not confirmed, then a new date is to be fixed for a further sale at like public auction, and all bidders at the former sale shall have at least twenty-four hours' notice in writing thereof, when their address is on file.

In cases where property has been offered separately and then collectively by the trustee or receiver selling the same, the collective bid shall not be confirmed unless it substantially raises the total of the separate bids. A substantial raise shall be defined as a raise of twenty per cent or more. The mere fact that a substantial raise shall be made on a collective bid will not of itself entitle the person making the collective bid to purchase the property, but the question of whether the individual bidders or the collective bidder shall purchase the property shall be a question reserved for the court, and the trustee's report of sale shall, where such bidding has taken place, recite the individual bids and the collective bids for the consideration of the court.

Sec. 2. Trustees or receivers shall make reports of sale in writing as soon as possible after the sale, and said reports shall be acted upon within twenty-four hours of the date of filing the same if no objections are filed thereto within said period of twenty-four hours.

In case sales are to be made without notice to creditors as authorized by Section 58 of the Act, the court shall make such

orders of sale without notice only upon written petition of the receiver or trustee stating adequate reasons why the property should be sold without notice; and if to be sold without notice by mail or publication, notice shall be given by telephone, or personal notice or otherwise by the trustee or receiver or auctioneer to such persons as in his judgment may desire to bid.

Sec. 3. Sales of property shall be by detailed description of the property sold, and conveyances or bills of sale shall describe the property sold, either in the instrument or by proper reference to inventories or other documents, and no property shall be taken by buyers, or delivered by trustees or receivers or auctioneers, except the same is covered in said description. Applications to vacate sales, after orders of confirmation have been made and signed by the court, shall be granted only upon proof sufficient to vacate an order or judgment for fraud, mistake or other equitable grounds.

Sec. 4. The bid of the greatest amount of money shall not always be considered the highest and best bid, but the court may consider any other factor that may be involved in determining which bid shall be accepted and confirmed.

Sec. 5. If any bidder shall attempt to chill bids or discourage the interest of others in the property offered for sale, or shall act in any manner detrimental to the interests of the bankrupt estate in the sale of its property, or shall otherwise conduct himself as to interfere with either the bidders or the sale, any bid or bids made by such person may be rejected by the court and such person may be disciplined for interference with the orders of the court and may, if he offends the second time in such respect, be barred from making bids at any bankruptcy sale.

RULE 13

PETITIONS FOR REVIEW

Sec. 1. Petitions for review of all orders of the referee shall be accompanied by a praecipe setting out in detail the record to be sent up for review, including a statement of the evidence desired to be sent up, and all exhibits, books and other documents required to be sent; and petitioner shall at that time or such time as he may be notified by the referee of the amount of costs required, pay for making such record, transcript or documents.

If such sum is not paid within five days after the amount is fixed and reported to the party seeking the review, or such further

time as may be given by the court, the petition for review may be dismissed by the referee and such order of dismissal shall be final.

Upon preparation of certificates on petitions for review, statement of the questions presented and summary of the evidence, if any, as is provided by Sections 89 a(8) of the Bankruptcy Act, the referee shall notify in writing all parties represented at the hearing at least twenty-four hours before the record is sent to the clerk. Such parties shall, within five days from the mailing of such notices, file in writing their objections thereto, if any, and the same shall be thereafter promptly heard and determined by the referee. Objections not filed shall be deemed waived.

RULE 14

CLAIMS

Sec. 1. Claims filed and/or exhibits filed in support thereof may be withdrawn only upon verified written petition of the claimant stating the reasons therefor and showing that the administration of the estate will not be prejudiced, delayed or prevented by such withdrawal. Such withdrawal if granted may be upon such terms as the court may impose. Such applications for withdrawal shall be heard and disposed of promptly.

Sec. 2. Claims may be withdrawn by entry of an order of the referee to that effect. Documents attached to claims as exhibits may be withdrawn only after substitution of true and correct copies. The original claim signed by the claimant shall remain in the files of the referee as a part of the record in the case. When a claim is withdrawn the claimant shall be deemed to have withdrawn his appearance in the bankruptcy proceeding unless he has some interest therein other than his interest in the allowance or disallowance of his claim.

RULE 15

MONEYS DEPOSITED IN BANKS

Sec. 1. Moneys of bankrupt estates deposited in banks in this district by referees, receivers or trustees shall be deemed to be, if not actually, in custodia legis and shall be disbursed to creditors or others only in the manner provided by General Order 29, and without any charge, diminution or deduction by reason of any so-called "service charge" under any clearing house rule or for any other reason, unless such charge be previously authorized by written order of the court; and the clerk of this court shall furnish a copy of this rule to all depository banks. The receipt of deposits

by any bank with knowledge of this rule shall be deemed its assent thereto.

RULE 16

RENT CLAIMS

Sec. 1. Stocks of goods and other property of bankrupts coming into the possession of a receiver or trustee shall be deemed to be in custodia legis from the date of adjudication and the landlord of the premises wherein such property may be located at the date of adjudication shall be entitled to be paid a reasonable storage rental for the use of the premises until such property shall have been removed or sold, which amount shall be fixed by order of the court and when so fixed shall be paid as a cost of administration. The amount of rent paid by the bankrupt for such space or occupancy prior to adjudication shall not be deemed a measure of such allowance by the court.

RULE 17

CONFIRMATIONS

Sec. 1. Referees in considering arrangements under Section 38 of the Act, including arrangements under Chapters XI and XII and wage-earners' plans under Chapter XIII, shall make all final or other orders therein and thereon in writing and shall by written order make all such orders subject to review under Section 39c of the Act and shall otherwise fully administer such proceedings.

RULE 18

DEFINITIONS

Sec. 1. Where a proceeding is filed in a partnership case under Section 5 of the Bankruptcy Act, the partnership petition shall be considered the "case," and where individual partners join in such petition for the purpose of discharge from individual debts or liabilities, or are made parties thereto in any proceeding for said purpose, each partner so joining shall constitute a separate "estate" for the purpose of fixing fees of the clerk and other officers of the court, and the partnership petition shall be considered an estate likewise; and in Section 40 of the Bankruptcy Act the language "in each case" is defined to mean the partnership case alone and shall not include the individual partners joining therein or subsequently included; and in Section 48c the language "for each estate" shall mean for each separate estate, including the separate estate of each partner to such proceeding.

RULE 19

SUBPOENA DUCES TECUM

Sec. 1. In case any party to any proceeding in bankruptcy desires the introduction of books, records, papers or documents, he shall file with the clerk or referee his praecipe under oath stating what documents he desires to have the subpoenaed witness bring with him upon his attendance as a witness. It shall be the duty of the court or clerk to issue an order on said praecipe directing the issuing of a subpoena duces tecum therefor, which shall be served on the witness as any other subpoena would be served, and the same shall be effective to require the production of the documents described in the praecipe and in the subpoena.

RULE 20

CONSTRUCTION OF RULES

Sec. 1. These rules are to be construed in connection with and are to be deemed supplementary to the general provisions for the administration of the estates of bankrupts and debtors in the Bankruptcy Act and the General Orders in Bankruptcy, adopted by the Supreme Court of the United States, and are controlled in letter and spirit by the Bankruptcy Act and said General Orders in Bankruptcy.

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