

Rules of the  
United States District Court  
Southern District of West Virginia.

Fourth Circuit.

Promulgated January 2, 1912

revision: 1912

RULES OF THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA.

FOURTH CIRCUIT.

1.

ADMISSION OF ATTORNEYS.

1. No person shall be admitted to practice as an attorney or counselor of this Court unless he shall have been previously admitted in the Supreme Court of the United States or the Supreme Court of Appeals or a Circuit Court for this State, or the highest Court of a sister State, or of an organized territory of the United States.

Admission shall be made only on motion of a member of the Bar of this Court and in open Court. The applicant upon his admission shall sign the Roll of Attorneys and take and subscribe the following oath, to-wit:

"I do solemnly swear (or affirm) that I will demean myself as an attorney and counselor of this Court uprightly and according to law, and that I will support the Constitution of the United States."

2. The fee for admission shall be such sum as may be provided by Act of Congress.

2.

SECURITY FOR COSTS.

All parties instituting suits in this Court shall be required to give security for costs before or at the commencement of any suit by them; and the party by whom

## 2.

## SECURITY FOR COSTS.

All parties instituting suits in this Court shall be required to deposit with the Clerk the sum of Thirty-five Dollars in each case, whether in law or in equity, to be held and applied to the payment of costs, chargeable to the party instituting the suit, or removing the same to this Court, which deposit shall be increased from time to time, as costs accrue and the necessities of the case may require. All defendants to such suits at law or in equity appearing therein shall at the time of such appearance deposit with the Clerk such reasonable sum of money as the Clerk may decide is proper under the circumstances of the particular case, for the payment of any costs that may be incurred by such defendant, which deposit shall be increased from time to time as his costs accrue and the necessities of the case may require.

PROVIDED, That if any party at the time of beginning the suit or filing papers for removal, or at any time during the pendency of the suit, when required to give security, shall make and file with the Clerk the statement under oath, in writing provided for by the Act of Congress approved July 20, 1892, (27 U.S. Stat. 252), as amended by the Act of June 25, 1910, and by Rule 3 of these Rules, he shall not be required to prepay fees or costs, or give security therefor, and,

PROVIDED, Further, that the foregoing shall not be so construed as to prevent the Court from making such special rule or order as to giving security for costs as right and justice may require.

Unless this rule is complied with, the Clerk shall do nothing relative to such suit except to return to the party bringing a praecipe or other papers to him, such praecipe or papers.

amount so due upon motion filed, and ten days notice thereof in writing to the said stipulators.

## 3.

## IN FORMA PAUPERIS.

That hereafter the plaintiff or other person filing an affidavit under the Act of Congress entitled "An Act providing when a plaintiff may sue as a poor person, and when counsel shall be assigned by the Court" passed July 20th, 1892, (27 U. S. Stat. 252) as amended by the Act of June 25, 1910, his counsel of record shall sign and file a stipulation to the effect that no agreement or understanding has been entered into between them for a division or share of, or interest in the claim or judgment, and that no assignment of such claim or judgment shall be made prior to the final disposition of the suit, either here or in any higher court to which it may be taken. The stipulation shall further provide that any money obtained on judgment or compromise shall be paid into the Registry of the Court, there to remain until disposed of by the Court as follows, to-wit: First, the costs shall be paid, and then the attorney shall receive for his services a fee to be fixed by the Court. The remainder of the fund shall be paid to the party suing.

## 4.

## COMMENCEMENT OF ACTION.

Actions at law shall be commenced and prosecuted and process shall be issued, endorsed and made returnable and served in the manner provided from time to time in the Code of West Virginia, or the Acts of the Legislature of said State, except as otherwise provided in these Rules or in the Laws of the United States applicable to special cases.

## 5.

## LOCAL REPRESENTATIVES.

Whenever any proceeding in a cause is filed in this Court by an attorney not a resident within the District in behalf of a non-resident party, such attorney at the time of filing such proceeding shall designate in writing, to be filed in the cause, some member of the bar, resident within the District, upon whom can be served all papers in such cause which properly could be served on such non-resident attorney were he resident within the District.

## 6.

## SUBSTITUTED PROCESS.

A party desiring substituted process under sec. 57 of the Judicial Code shall file a motion for the same specifying the defendants so to be served and also an affidavit showing that said defendants can not be served with process in this District, and if known, their places of residence and post office addresses, and the places where it is believed process can be served upon each of them personally; and also the location of the real or personal property involved in the proceeding, and the name and place of residence of every person in charge of the same. Where the affidavit or affidavits so filed shall not disclose some part of the matters aforesaid there shall be filed also the affidavit of the attorney or solicitor of the party desiring such substituted process, showing the information obtained as to matters not so disclosed, and that after diligent inquiry it has been found impossible to obtain any further information thereupon. And thereafter the Court will make such order for service without the District personally, or by publication as shall be authorized by law and proper under the circumstances.

## 7.

## RULE AND MOTION DAYS.

1. The first Monday of every month shall be Rule day for law causes. The Rules may continue for three days; but when in any case such continuance would interfere with the terms of the Court for which the Rules are held they shall not continue in such case beyond the day preceeding the commencement of the term of such Court.

2. The first Wednesday of each month shall be Motion Day as provided in Rule 6 of the Rules of Practice for the Courts of Equity of the United States. Motions shall be made before the Judge at his Chambers in the City of Charleston, except when a motion day falls in term time, in which case the motions shall be made in open court at such place as the court is then sitting.

## 8.

## CLERK'S OFFICE.

1. The Clerk's Office will be open for the transaction of business between the hours of nine o'clock a. m. and four o'clock p. m. on each week day, legal holidays excepted. The records of the Court will be open for the inspection and examination of the public and those in interest between the said hours.

2. Papers presented to the Clerk for filing shall be endorsed with the style of the suit and nature of contents, and written in legible manuscript or printed; otherwise the Clerk may refuse to receive or file them. The Clerk shall endorse the papers "Filed" with the date, and no notice will be taken of papers not so endorsed.

3. No original papers on file in this Court and in the custody of the Clerk of the Court, shall be taken from the office except under the special order of the Judge.

## 9.

## COPIES OF PLEADINGS.

1. Pleadings in any cause at law or in equity shall not be permitted to be withdrawn from the files. Any party to any cause or his counsel shall be permitted to make, in the Clerk's Office, copies of any pleadings on file in this Court.

2. The Clerk shall not make copy of any pleadings on file in his office except upon the præcipe therefor of a party to said cause or his counsel or other person who may be entitled to receive such copy. The cost of making such copies shall, when so requested, and not otherwise, be included in the taxation of costs in the cause. And such præcipe for such copy of any pleadings by any party or his attorney, or the delivery by the Clerk of any such copy of a pleading to a party or his attorney, shall not be considered or held to be an appearance or entry of appearance by such party or his attorney in such cause.

## 10.

## AMENDMENTS OF PLEADINGS.

Where any declaration or bill is amended as of right or upon leave, the amendment will be made by filing a second declaration or bill, and not by striking from or interlining the original.

## 11.

## REMOVAL FROM STATE COURTS.

1. When a cause is removed from a State Court into the District Court under section 29 of the Judicial Code a strict compliance with said section is imperative.

2. (a) Upon removal of a cause from a State Court into the District Court under said section a transcript of

the record, certified under the hand of the Clerk and the seal of the Court, shall be delivered in person to the Clerk of this Court or be transmitted by mail or express to the Clerk at his official residence, Charleston, West Virginia, with direction to the Clerk to place said cause upon the docket at such place of holding Court in the District as is most convenient for the parties in interest, or as counsel for the respective parties may by agreement elect.

(b) Upon receipt of said transcript from the State court the Clerk shall inspect same and all essentials to show jurisdiction in this Court must appear upon the face of the transcript, before same can be filed in this Court, i. e.

1. Complete transcript of the proceedings in the State Court. (No original papers from said Court can be filed.)
2. Petition and Bond for removal.
3. Written notice given the adverse party of intention to file petition and bond in State Court and return of proper service thereof.

A record presented to the Clerk which does not show affirmatively upon its face that notice has been given the adverse party in the State Court, previous to the time of the presentation of the petition and bond, will not be filed in this Court.

(c) The presentation to the Clerk of a proper transcript of record from the State Court, within thirty days from the date of filing the petition and bond in said court, and its endorsement and filing by the Clerk of this court, will be deemed a sufficient compliance with section 29 of the Judicial Code as to "Copy being entered" in this Court, and no formal order of the Judge will be necessary.

3. The party removing said cause shall within thirty days from the date of entering said cause in this Court,

plead, answer or demur to the declaration or complaint therein, if same has been filed before removal, and in default thereof the cause shall stand upon the docket of this Court as matured at Rules as if originally brought herein. And the plaintiff or complainant shall have the same rights and control as to office judgments in cases at law as provided by the statutes of West Virginia; and in causes in equity as to Bills *pro confesso* etc., as provided in the Rules of Practice in Equity prescribed by the Supreme Court of the United States. In the event a case at law is removed from a State Court into this Court *before* the declaration is filed in that Court, the plaintiff shall have the same rights as to filing same herein as if the suit had been originally brought here as of the date of entering said cause in this Court.

4. A motion to remand to the State Court, which is founded solely upon want of jurisdiction over the person of the plaintiff, must be made in writing and filed in the cause within thirty days of the date of entering said cause herein; and unless so filed shall be deemed to have been waived, and can only be filed thereafter by leave of the Court and for good cause shown.

5. Any proceedings which could have been had in the State Court before or at the time of giving notice of intention to file petition and bond for removal, shall be deemed to have been presented in time if filed in this Court within thirty days after the entry of said cause herein, regardless of the intervention of Rule days within said period.

## 12.

## CALENDAR—NOTICES FOR TRIAL.

1. Jury cases will not be placed upon the calendar for trial unless at issue. Cases not at issue will be placed upon the calendar for the purposes of general call of the docket, which will be made on the fourth day of the term,

and cases falling within Rule 13 will be dismissed. Rule 13 will be enforced at other times upon motion and notice to counsel.

2. Notices for trial under the provisions of sec. 950 R. S. U. S. shall be in writing and served upon counsel and filed with the Clerk not less than twenty days before the beginning of the term, and cases so noticed shall be placed upon the calendar by the Clerk.

3. Twenty days before the sitting of the Court the Clerk shall prepare the calendar for the term placing thereon all cases that have matured at Rules, as they will appear at the last Rule day before the beginning of the term, in their numerical order, giving therewith the last order in the cause and the date thereof. And shall also place upon the calendar all cases removed from the State Courts in which the transcript has been entered in this Court thirty days before the beginning of the term. At the same time he shall set down for trial all jury cases at issue upon such dates in the term as shall appear best for the proper dispatch of business. A case removed from a State Court and in which a plea had been filed will not be deemed at issue for the purpose of setting for trial, unless the plaintiff shall within thirty days before the beginning of the term have filed in the Clerk's Office his replication to said plea concluding to the country. Upon the filing of said replication the issue shall be deemed made for the purpose of setting for trial, and the first order entered on the date of trial shall contain a formal joinder of said issue.

Cases when so set for trial will be tried or continued when reached unless otherwise ordered for special reasons. The Clerk shall have such number of the calendar printed as may be necessary, and forwarded by mail one copy to the counsel for the respective parties as they appear thereon.

4. The Clerk shall prepare before the beginning of each term a separate "Motion Calendar" and shall set

down for argument all motions, pleadings and other matters of like nature at such times as will suit the convenience of the Court.

## 13.

## DISCONTINUANCES.

Cases which have been on the docket for four consecutive terms, without any proceedings taken therein, other than orders of continuance, shall be dismissed from the docket as of course, without prejudice, for want of prosecution, with leave to reinstate within two terms thereafter for good cause shown. Such dismissal shall not be entered if counsel show by statement to the Court that compromise is pending, or other good cause to the contrary.

## 14.

## CONTINUANCES.

1. Application for continuance must be made on the fourth day of the term upon the calling of the calendar, except as to causes set for trial under sec. 3, of Rule 12, which shall be made on or before the date set for trial, and no grounds then existing will be recognized on subsequent application if the same be resisted.

2. Where a continuance is resisted the application therefor shall be put in writing, showing the facts on which it is founded, and shall be verified by affidavit or professional statement. If granted such terms will be imposed as to the Court seem just.

3. If a continuance be asked because of the absence of a witness, an affidavit must be filed, if required by any party opposing, setting forth in addition to other matters required in order to obtain a continuance, the name of the witness, the substance of what the party expects to prove by such witness and what efforts he has made to procure his attendance, or take his testimony by deposi-

tion; and the affiant must if required by any opposing party, submit to cross-examination in open court, upon the matters set forth in such affidavit.

## 15.

## GENERAL CONTINUANCES.

All causes and matters pending in Court at the close of a term thereof, not otherwise disposed of, shall stand continued as of course to the next term.

## 15-A.

## EXAMINATION OF JURORS.

Examination of prospective jurors in every case, criminal and civil, shall be by the judge alone. If counsel on either side desire that additional matters be inquired into, such counsel shall state the matter to the judge, and the judge, if he considers the matter proper, shall conduct the examination thereupon.

## WITNESSES.

1. The statutes of West Virginia requiring that service of all process shall be made by delivering a copy thereof to the party to be served, and it appearing that some confusion has occurred from the practice of the Marshal of this District serving subpoenas on witnesses by reading the same to them and failing to give copies thereof to said witnesses; it is here ordered that the Clerk of this Court do in future furnish the Marshal of this District with a certified copy of each and every subpoena issued by him in civil and criminal cases, to be left with witnesses as is required by the laws of the State of West Virginia, and that his fees therefor in cases to which the United State is a party be allowed by the Court and certified to the proper accounting officer of the Treasury for settlement.

2. All witnesses in attendance at this Court shall claim their certificates for mileage and per diem at the time of their discharge from such attendance, or within ten days thereafter, and in default thereof they shall forfeit such claim, unless in special cases to be adjudged by the Court.

3. The Clerk of this Court shall issue the necessary certificates to all witnesses subpoenaed on behalf of the United States in all causes, civil as well as criminal.

## 18.

## DEPOSITIONS.

1. Notaries Public, Commissioners and Examiners, taking and certifying depositions to be used in this Court shall tax their fees for the same and note the attendance and mileage of witnesses; otherwise the Clerk will not be held responsible for a failure to tax the same in the costs of the litigation.

2. When a deposition has been filed in any cause, it shall, except in cases in which the Acts of Congress prescribe a different rule, be opened by the Clerk upon the request of either party to the cause in which the deposition was taken, or their counsel, and such request, its date and for whom opened, shall thereupon be endorsed by the Clerk upon the wrapper or envelope containing the deposition, and such wrapper or envelope shall be attached to and preserved with the deposition.

3. Exceptions to the form and manner of taking and returning depositions, including the proof of the official character of the person taking them, shall be reduced to writing and filed in the Clerk's office at least one day before the case is called for trial, and unless so filed, shall be deemed waived; and before the trial of the cause at the request of either party such exceptions shall be heard and decided.

4. Depositions on file shall not be withdrawn without leave of the Court.

## 19.

## EXCEPTIONS TO RULINGS.

1. All exceptions to the rulings of the Court must be taken at the time the ruling is made; and all exceptions to a charge given by the court to a jury, must be taken at the end of the charge, and before the jury retires.

2. Where a bill of exceptions is necessary to show the ruling complained of, time may be taken to reduce the same to form; but the bill shall be signed and filed at the same term at which the ruling excepted to was made, and within forty days after the final judgment of the court in the particular case is entered; unless at that term, by order of court made therein, the time is extended.

## BRIEFS.

If parties to a cause in equity desire or expect to file or submit to the Court briefs upon final hearing or consideration of the cause, a copy of such briefs for complainant or the party having the affirmative on the issue joined, must be furnished to opposing counsel within thirty days from and after the close of the testimony, and the other side shall have thirty days thereafter within which to prepare and serve upon opposing counsel brief in answer, provided that either period may be extended by the Court on notice and good cause shown. And no brief, printed, written or otherwise, will be received or considered by the Court on any final hearing in equity unless copies of the same shall have been furnished to opposing counsel as above provided; except that the Court may, in its discretion, receive briefs in reply, if served

upon opposing counsel a reasonable time before the hearing.

## 21.

## SUMMONS AND SEVERANCE.

Whenever a judgment or decree of the District Court is joint, or jointly affects all the plaintiffs or all the defendants, and it is desired by less than all the plaintiffs or defendants to prosecute a writ of error or appeal to such judgment or decree; it shall be sufficient for the purpose of severing the interest of parties neglecting or refusing to join in such writ of error or appeal, and to entitle the party or parties so desiring to have an appeal granted to him or them as to his or their own interest, that ten days written notice, by letter or otherwise, be duly served upon the other party or parties jointly affected by such judgment or decree, or upon his or their counsel of record, of the time and place of application to the Court for such severance; and neglect or refusal to join in such writ of error or appeal after such notice shall entitle the party or parties applying for the same to a severance and an order granting a writ of error or appeal as to his or their own interests.

## 22.

## MODELS, EXHIBITS, ETC.

Models, diagrams, material or other form of exhibit, constituting part of the evidence in any cause pending in this Court, or used or intended to be used upon trial, hearing or argument of any such cause shall be placed in the custody of the Clerk of this Court, who shall be responsible for the same; and the Clerk of this Court may require the Marshal of this District to take charge of, store and preserve any of said models, diagrams, material or other exhibit, subject to the order of the Clerk,

taking a receipt from said Marshal for the same; and thereafter said models, diagrams, material or other form of exhibit shall be produced by the Clerk for use in the Clerk's Office or court room, upon trial, hearing, or argument of such cause, at the request of the Court or any Judge thereof, or at the request of counsel for either party to the cause to which the same relate.

## 23.

## BAIL AND SECURITY.

1. No attorney or counselor at law, or any clerk or deputy clerk of this Court, or marshal or his deputies shall be received as bail or security for any purpose in any cause or matter in this Court; except that this Rule shall not operate or prevent counsel from becoming surety in the first instance, on the stipulation for costs.

2. All bail bonds or recognizances taken in open court shall be in writing signed and acknowledged before the Clerk, and filed. An order shall be entered of record showing the amount of recognizance, names of sureties and the filing and approval of said recognizance.

## 24.

## OATHS.

Special commissioners, examiners and masters in chancery shall respectively, before entering upon their official duties, taken an oath to support the Constitution of the United States, and to faithfully and impartially discharge the duties pertaining to their offices; which may be administered by any person who is authorized by the laws of the United States or of the State of West Virginia to administer oaths. Such oaths shall be returned and filed in the office of the Clerk.

## 25.

## RECEIVERS' AND MASTERS' COPIES.

In all causes in equity in which receivers are appointed, or references had to Masters in Chancery, it shall be the duty of the Clerk to furnish for the use of the Receiver or Master a duly attested copy of the order of appointment or reference, and of all subsequent orders relating to his duties; and the fees for such copies shall be taxed as costs in the cause.

## 26.

## INJUNCTIONS AND RECEIVERSHIPS.

Due and proper notice to the adverse party must be given of the time and place of making application to the Court, or a Judge thereof, for an injunction or the appointment of a receiver. This Rule shall not operate to deprive the Court or a Judge thereof, of the authority to grant a temporary restraining order or to appoint a temporary receiver, for good cause shown, and where notice to the opposing party would work an irreparable injury to the applicant.

## 27.

## RECORDS, JOURNAL ENTRIES ETC.

1. There shall be kept at each place designated by law for the holding of terms of Court in this District a complete set of records to consist of the following:

(a) Law Order Book in which shall be recorded at length all orders and judgments of the Court in common law, admiralty and criminal cases.

(b) Equity Order Book in which shall be recorded at length all orders and decrees in equity causes.

(c) Civil Appearance Docket in which shall be entered and numbered consecutively all cases at law and in equity, in the order in which they are filed, and a notation of each step in the proceeding.

(d) Criminal Appearance Docket in which shall be entered all cases of a criminal nature in the order in which they are filed and a notation of each step in the proceeding.

(e) Judgment Docket in which shall be docketed all judgments, civil and criminal, giving a brief summary and abstract of the judgment.

(f) Such other records and books as may be necessary for the proper dispatch of the business of the Court and as from time to time are found to be proper by the Court.

(g) An Admiralty Register shall be kept at the official headquarters of the Clerk in which shall be entered all cases in Admiralty in the order in which they are filed and notation of each step in the proceeding. This Register shall be kept for all places of holding Court in the District.

2. For making the several entries in the Civil Appearance Docket the Clerk shall be allowed to charge the sum of fifteen cents as for making any other permanent record of the Court.

3. Counsel for the party in whose favor an order decree or judgment is rendered, shall within three (3) days thereafter, unless further time is given by the Court, prepare the proper journal entry and submit it to counsel for the adverse party who shall approve or reject the same within two (2) days after the receipt thereof. When approved or rejected by counsel, it shall be so endorsed and handed to the Court. If counsel are unable to agree on the entry, it shall be submitted to the Judge, who will direct what entry shall be made.

4. Upon failure to comply with this rule the Court may order the Clerk to make the entry.

5. No entry in any case shall be made by the Clerk until approved by the Court.

6. In jury cases entry shall be drawn by the Clerk without submission to counsel, and judgment shall be en-

tered upon the verdict at once upon approval of the entry by the Court. The Clerk shall, however, reserve exceptions for the defeated party.

## 28.

## STENOGRAPHERS.

Stenographers may be employed in civil cases upon approval by the Judge presiding at the trial, who will summarily determine all questions of compensation as to which the stenographer and parties may disagree, and whose decision thereon shall be accepted as conclusive. Stenographers shall be duly and properly sworn in open court to faithfully record and transcribe such evidence and proceedings as are required.

## 29.

## EJECTMENT.

1. In commencing an action in Ejectment plaintiff may if he so desires, sue out of the Clerk's office a Summons in the following form:

## SUMMONS IN EJECTMENT.

United States of America,  
 Southern District of West Virginia, ss:  
 The President of the United States of America,  
 To the Marshal of the Southern District of West Virginia, GREETING:

You are hereby commanded to summon \_\_\_\_\_  
 \_\_\_\_\_ if found in your District to be and  
 appear before the Judge of the District Court of the  
 United States, in and for the Southern District of West  
 Virginia, at the City of \_\_\_\_\_ at Rules to  
 be held in the Clerk's Office of said Court on the first  
 Monday in \_\_\_\_\_ next (or to the first day of

the term as the plaintiff elects) to answer unto \_\_\_\_\_  
 \_\_\_\_\_ of a plea in Ejectment to-wit:

(Here insert the Declaration and Notice at length.)

Hereof fail not, and of this writ make legal service  
 and return.

Witness the Honorable Benjamin F. Keller,  
 Judge of the District Court of the United  
 States for the Southern District of West Vir-  
 (Seal) ginia, this \_\_\_\_\_ day of \_\_\_\_\_  
 19 \_\_\_\_\_ and in the \_\_\_\_\_ year of the In-  
 pendence of the United States of America.

\_\_\_\_\_  
*Clerk.*

D. C. U. S. S. D. W. VA.

Summons may be served by the Marshal of this Court,  
 or by any responsible person selected by the plaintiff.  
 In the event service is made by any person other than  
 the Marshal, return shall be under oath showing the  
 time, place and manner of service. And the declaration  
 so set out in the original summons shall be filed as the  
 declaration in the cause.

2. In all cases in ejectment wherein any defendant  
 claims less than the whole of the premises described in  
 the declaration, such defendant shall, except as herein-  
 after stated, cause that part of said premises to which  
 his claim relates to be surveyed and laid down in a map  
 or plat to be made and filed in the cause, showing the  
 metes and bounds of the part so claimed, and of any  
 improvements made by him thereon and unless he shall  
 so do he shall not be permitted on the trial to give evi-  
 dence of any such claim; provided always that if such  
 defendant shall have filed a disclaimer in the cause, set-  
 ting forth specifically the part of the premises claimed  
 by him, he shall not, unless otherwise ordered, be re-  
 quired to have such surveying done and shown on a map.

3. In all actions of ejectment, when the question of  
 identity of the land in controversy arises, no trial shall  
 be had until survey has been duly made and plats and re-

ports duly returned and filed, unless the court shall otherwise order.

4. Any party may apply to the court for such orders as may be proper to determine the real controversy in the cause, to enable a verdict to be rendered with certainty, or to prevent undue surprise at the trial.

## 30.

## JUDGMENTS.

Judgments in law cases, shall, unless otherwise ordered, become absolute from and after the expiration of thirty days from the date of entry thereof; and the prevailing party may have execution, *feri facias*, or other final writ, as of course, by filing in the office of the clerk proper *praccipe* for the same at any time after the expiration of said thirty days and within the statutory period. And all laws of the State of West Virginia now in force in relation to remedies upon Judgments, by execution, or otherwise, to reach the property of the judgment debtor, are hereby adopted for the enforcement of judgments in this court.

## 31.

## UNITED STATES COMMISSIONERS.

1. United States Commissioners shall return to the Clerk within three days after the completion of a hearing in any criminal case, all the original papers, including a brief statement of the evidence of each witness, which statement shall contain all the material points. Failure to comply with this Rule will be sufficient cause for a suspension of account rendered for such case.

2. United States Commissioners shall keep in a well bound Docket a record of each case heard before them, which Docket shall at all times be kept up to date and properly indexed.

3. Accounts of United States Commissioners against the United States for their fees for per diem, and on subpoenas and other writs in criminal cases will not be certified to by the Judge of this Court, unless the District Attorney of the United States for this District shall have previously certified that the several cases included in said accounts were proper ones for inquiry by the Commissioner, and that process was issued and witnesses were subpoenaed by his assent.

## 32.

## WITNESSES FOR INDIGENT DEFENDANTS.

1. Whenever any person indicted in this Court makes an affidavit in writing under the provisions of section 878 Revised Statutes of the United States, such affidavit shall set forth the names of the witnesses whose evidence is material to his defense, that he can not safely go to trial without them, the substance of what he expects to prove by each witness, that they are within this District, or if without this District, within one hundred miles of the place of trial; and that he is not possessed of sufficient means and is actually unable to pay the fees of such witnesses; the Court in term, or the Judge thereof in vacation, may order that such witnesses be subpoenaed if found within the limits aforesaid.

2. The application provided for in the preceding section must be made at the first opportunity, and such application shall not operate as a sole means of delay and grounds for a continuance unless other good cause be shown.

3. The costs incurred by the process and the fees of witnesses in such case shall be paid in the same manner that similar costs and fees are paid in case of witnesses subpoenaed in behalf of the United States.

## 33.

## ARRAIGNMENT AND PLEA.

If upon the return of an Indictment by a Grand Jury or the filing of an Information by the United States Attorney, the defendant named therein is on bond or in custody, he shall be arraigned for plea forthwith, and the cause set down for trial or other proceeding.

## 34.

## CRIMINAL PROCESS AND RETURNS.

1. All process in criminal cases shall issue out of the Clerk's Office and be delivered direct to the Marshal for docketing. In no case shall the Clerk deliver process to Field Deputy Marshals without first presenting the same in the Marshal's office to be docketed.

2. All process shall be returned by the Marshal and his Deputies to the Clerk's Office at the point returnable and on the return day. The failure of the Deputy Marshals to comply strictly with this rule will result in suspension of charges for services in cases where process is not returned into the Clerk's Office.

3. The Clerk shall keep in a well bound book a record of all criminal process issued, and shall also enter therein the Marshal's return. It shall be sufficient to enter the substance of the return together with the names of the Marshal and the Deputy executing the process.

## BANKRUPTCY.

## 35.

## REFEREE'S DIVISIONS.

Division No. 1. Counties of Boone, Clay, Fayette and Kanawha.

Division No. 2. Counties of Monroe, Raleigh and Summers.

Division No. 3. Counties of Cabell, Lincoln, Mingo and Wayne.

Division No. 4. Counties of Greenbrier and Pocahontas.

Division No. 5. Counties of Mercer, McDowell, Wyoming and Logan.

Division No. 6. Counties of Braxton, Nicholas and Webster.

Division No. 7. Counties of Jackson, Mason, Putnam and Roane.

## 36.

## PETITIONS.

1. Petitions must state where the debtor has resided, including the street and number if any, and also where his principal place of business if any, has been during the six months or the greater part thereof preceding the filing, and also the date of any assignment or insolvent proceedings under any State law. The petitioner shall also aggregate the liabilities and assets set forth in his schedules.

2. All petitions for adjudication of bankruptcy shall be filed with the Clerk at the point of holding Court most convenient to said bankrupt, or the petitioning creditors. The petitions and schedules filed therewith must be typewritten or printed in accordance with the forms prescribed by the Supreme Court, and must be filled out and filed in triplicate and said petitions and schedules A and B must be properly verified. Each division of assets and liabilities on the schedules prescribed must be filled in by the petitioner, and where there are no assets or liabilities under any of such heads that fact must be stated thereon.

## 37.

## NEWSPAPERS.

The Referees in the several Districts are authorized and directed to designate a newspaper in each County of their Referee Districts as the designated newspaper for the publication of notices in Bankruptcy. The Referees respectively will certify to the Clerk of this Court the newspapers so designated and said Clerk is directed to note the names thereof in the Bankruptcy Order Book. When deemed proper by the Referee notices may be published in additional papers besides those designated.

## 38.

## REFERENCES.

1. Upon an adjudication of Bankruptcy the cause shall be immediately referred to the Referee whose District includes the county wherein the bankrupt resides or has done business. *Provided*, That for a good cause shown a reference may be made to any Referee. The certificate of counsel for the petitioner in voluntary cases and for the petitioning creditors in involuntary cases, that the convenience of parties to be affected thereby will be advanced by reference to a particular Referee shall *prima facie* constitute good cause for the reference to be made to the Referee specified.

2. When the Judge is absent from the District, the Clerk, under section 18 f and g will refer Petitions to the proper Referee for an adjudication or dismissal under the authority vested in him by section 38 a of the Bankruptcy Act. When a case has been adjudicated or dismissed by the Referee he shall at once transmit to the Clerk a copy of his order of adjudication or dismissal, who shall file the same and enter of record in the Bankruptcy order Book the proper order of adjudication in conformity with Form 12 promulgated by

the Supreme Court, with the proper changes so as to make it appear that the adjudication was made by the Referee.

## 39.

## PAYMENT OF FEES.

1. The services of the Referee, Trustee and Clerk shall be deemed to have been rendered, and their statutory fees to be payable upon the completion and filing of the Referee's Report.
2. Petitioners who have made no deposit with the Clerk for services of officers should be examined by or under the direction of the Referee as to their means, and if the Referee is not satisfied of the bankrupt's inability to make the deposit, a report thereof should be made to the Judge, who may thereupon dismiss the petition.
3. No discharge will be granted until all costs and expenses are paid.
4. The Referee shall notify the Clerk of this Court by mail, at the place where the case is pending, of intention to make final distribution of funds or to close any case in bankruptcy, at least ten days before the date of such final disbursements or closing of the case. And the failure of the Referee to so notify the Clerk, as aforesaid, shall relieve the Clerk of liability for the payment of any fees due the Referee or Trustee in such cases, other than the amount remaining to the credit of a cause after all disbursements by the Clerk have been deducted. And the Clerk, or Deputy Clerk, shall, on or before the date set for final distribution or closing of a case, certify to the Referee the condition of the ledger account in such case. And the Clerk may pay over to said Referee any balance remaining on the books after all costs have been disbursed.

## 40.

## DEPOSITS AND CHECKS.

All funds belonging to the bankrupt's estate shall be deposited in such banks as the Judge may direct. All funds so deposited shall be disbursed only by checks or warrants drawn on the depository in accordance with the orders of the Court or Referee, or with a dividend sheet prepared by the Referee. Said checks or warrants are to be drawn by the Trustee and countersigned by the Judge or Referee. The Referee before whom a case is pending is hereby directed and authorized to countersign all checks or warrants for the withdrawal of money from the depository under General Order XXXIX, unless otherwise specially ordered by the Judge.

## 41.

## HEARING ON CERTIFICATES.

When a question has been decided and certified by the Referee to the Judge, the papers necessary to an understanding of such certificate shall be attached to the certificate of the Referee, and forwarded by him to the Clerk, and a hearing may be had thereon before the Judge by either party on reasonable notice to the counsel of record for the adverse party.

## 42.

## PARTNERSHIP.

1. A partnership which has discontinued partnership business or been dissolved and a final settlement had is not a partnership within the meaning and intent of section 5. The individual members of such partnership who may desire the benefits of the Bankruptcy Act may file separate individual petitions, each scheduling partnership debts, but they may not file a joint petition.

2. In voluntary proceedings by a partnership when an adjudication is asked by the firm and the individual members thereof (which may be done) the estate of the firm and of the individual members respectively shall be treated and considered as separate and distinct estates, and a filing fee shall be paid for each estate to be administered.

43.

TRUSTEES IN BANKRUPTCY.

The attorney for the bankrupt in voluntary cases the attorney for the petitioning creditors in involuntary cases, or any attorney or other person holding claims against an estate of a bankrupt, or the partner of such attorney or person, shall not be elected or appointed Trustee.

44.

PETITION FOR DISCHARGE.

1. Petition for discharge shall be filed with the Clerk in the form prescribed. Upon the filing of such petition the same is tendered within the statutory period and proper certificate of creditors has been received from the Referee, the Clerk shall fix a date for a hearing thereon, and cause notice thereof to be published twice in a designated newspaper in the County wherein the bankrupt has resided or done business, or if there be no newspaper within said county, then in such newspaper as he may deem best; and shall also give thirty days notice thereof to all creditors by mail. All hearings upon said petition shall be ordered for the place of holding Court, at which the original petition for adjudication was filed. If upon or before the day set for hearing upon a petition for discharge, appearance is entered, and within ten days thereafter specifications of objection to the granting of a dis-

charge are filed, the Clerk shall forthwith refer the questions arising thereon to one of the Referees as a Special Master; said Referee as a Special Master shall notify all parties in interest, fixing a day for hearing and preside thereat at his office unless some other place be specified. At the close of said hearing or within three days thereafter, the said Referee shall forward to the Judge of this District, a certificate of the proceedings, the evidence taken if any, and any exceptions taken and filed to the granting of the discharge, together with a recommendation that a discharge be or be not granted. *Provided*, however, that when the Judge shall deem it advisable a further hearing may be ordered and held before the Judge in person.

Before proceeding to a hearing upon any such reference as above provided, the Referee may in case the objection is not filed by the Trustee, require the objecting creditors to make deposit of a sufficient amount to cover all costs of such hearing, including any amount necessary to pay costs of the Clerk's Office incident to such proceeding.

2. For holding the hearing provided for in the foregoing section the Referee as a Special Master shall be allowed the sum of Ten dollars, to be taxed together with any other necessary costs against the party objecting to discharge, should the said objection be overruled, and to be paid from the bankrupt's estate in the event the objection is sustained.

Except that in all cases where the objection to discharge is made by a Trustee, the costs shall be paid from the estate of the Bankrupt.

3. For certifying and mailing copies of the Order of Notice on a petition for discharge or any other notice, the Clerk shall be allowed a sum not to exceed twenty-five cents for each creditor notified, to cover cost of stationery, printing, time of preparation, etc.

## 45.

## COSTS BEFORE REFEREE.

1. All evidence taken down before a Referee upon any hearing shall be typewritten and made a part of the record, and shall be charged for at the rate of fifty cents per folio page, to be paid by the party at whose instance the same is taken; and if proper and material evidence, be taxed as part of the costs and repaid to said party out of the estate.

2. For all notices mailed to creditors or attorneys the Referees are allowed ten cents each to cover the cost of stationery, envelopes and mailing same, payable out of the estate or the indemnity against costs provided for in General Order X, or if upon a hearing for final discharge as provided in section 2, of Rule 16.

## 46.

## PETITION FOR REVIEW.

1. Any party desiring to file Petition for a Review of a decision of a Referee, must file the same with the Referee within ten days from the date of the rendition of the decision sought to be reviewed; and no Petition for Review tendered after said ten days shall be considered unless by special order of the Court and for good cause shown as to why same was not filed within the said ten days.

2. Where a petition is filed for review of a decision made by a Referee and it is desired that the same act as a supersedeas to the order made by the Referee, a bond shall be given to indemnify the opposing party in such sum as may be prescribed by the Referee or the Judge of this Court, and also as security for any and all costs that may be incurred upon such review. In the entry of the order on review the Court will adjudge costs against the parties as right and justice require.

47.

## EXEMPTIONS.

Property claimed to be exempt by a bankrupt shall be listed and proved by the bankrupt, and set apart by the Trustee in the manner prescribed by the statutes of the State of West Virginia.

## NATURALIZATION.

48.

## HEARINGS ON PETITIONS.

Hearings upon Petitions for Naturalization will be had upon the following days:

**AT CHARLESTON:**

Tuesday after third Monday in May.

Wednesday after second Monday in December.

**AT HUNTINGTON:**

Thursday after fourth Monday in September.

Thursday after second Monday in March.

**AT BLUEFIELD:**

Thursday after third Tuesday in January.

Friday after third Tuesday in June.

The Clerk will govern himself accordingly and set cases for hearing upon the date given above first occurring after the filing of the petition, provided the same does not fall within ninety days of the date of said filing.

49.  
Unless specially authorized by the court, receivers and trustees in bankruptcy shall not retain as their attorney the attorney of the bankrupt, of the petitioning creditors, of the person applying for the appointment of a receiver, or of any creditor; and trustees shall not retain as their attorney, any attorney who has obtained proxies or voted upon the election of such trustees, or who is an attorney for persons holding such proxies, or who has any agreement or understanding express or implied, for any division of fees, or is in the service of employment of, or has his office in connection with such attorney.

## TIMES AND PLACES FOR HOLDING COURTS.

At Charleston on the first Tuesday in June and the third Tuesday in November of each year.

At Huntington on the first Tuesday in April and the first Tuesday after the third Monday in September of each year.

At Bluefield on the first Tuesday in May and the third Tuesday in October of each year.

At Addison (Webster Springs) on the first Tuesday in September of each year.

At Lewisburg on the second Tuesday in July of each year.

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COUNTIES IN THE DISTRICT.

Braxton, Boone, Clay, Cabell, Fayette, Greenbrier, Jackson, Kanawha, Lincoln, Logan, Mason, Mercer, McDowell, Mingo, Monroe, Nicholas, Pocahontas, Putnam, Raleigh, Roane, Summers, Wayne, Webster and Wyoming, with the waters thereof.

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MAP OF THE FOURTH JUDICIAL CIRCUIT.

