



RULES OF PRACTICE

In the

DISTRICT COURTS OF THE UNITED STATES

For the

EASTERN, MIDDLE and WESTERN DISTRICTS
OF NORTH CAROLINA.

In force on and after the

1 day of January, 1935

Prepared by the Committee appointed
at the meeting of the Federal Judicial
Conference of the Fourth Circuit,
held at Asheville, June, 1933.

AT LAW

ATTORNEYS:

1. For admission to practice as an attorney in the District Court of the United States in the State of North Carolina, it is requisite that the attorney be a resident of, and maintain an office in the State; that he be a citizen of the United States; said application for admission must be in writing and accompanied by the certificate of two attorneys entitled to practice in said Court that the private and professional character of the applicant is good.

The fee for admission to practice shall be such as is prescribed by order of the Courts, or by Act of Congress.

2. Any member of the Bar of said Court may be disbarred or suspended from practice for a definite time, or reprimanded for good cause shown, after being given an opportunity to be heard. Any member of said Bar who has been suspended from practice in any of the Courts mentioned in Rule 1 shall not be permitted to practice in the District Court while such suspension is in force and effect, and any member disbarred from practice in any of the Courts aforesaid, or in any Court of any State of the United States, shall not be permitted to practice at all in said Courts.

3. Unless he is a member of the Bar of said Court, no attorney, solicitor or proctor shall be permitted to file papers as such in any cause in said Court; but any member of the Bar of another State, District or country, may be heard as counsel in any cause pending in said Courts by permission of the Judge of said Courts.

4. No attorney, solicitor or proctor of record shall withdraw from any cause pending in said Courts, except by and with the consent of his client in writing, or by order of the Court for good cause shown.

5. No attorney, solicitor or proctor shall become bail or surety in any cause or proceeding, civil or criminal, in any of said Courts.

6. Copies of all pleadings and papers in any cause pending in the Courts, may be made by any attorney, solicitor or proctor, but no pleadings, papers or documents in any cause pending in the Courts, can be taken from the files in the offices of the Clerk except by order of the Court. All copies of such papers must be made in the office of the Clerk, and papers must be kept under his control and in his custody.

7. No more than two attorneys to the side shall present and argue any cases to the Jury, except by permission of the Court, and arguments of each side are limited to the time fixed by the Court.

PRACTICE AND PROCEDURE:

1. The practice, pleadings and form and mode of proceedings in actions at law shall conform, as near as may be, to the practice, pleadings and form and mode of proceedings existing in like actions in the Superior Court of the State of North Carolina, and as authorized by the United States Judicial Code.
2. All writs, summons, executions, and other process issuing from the courts, shall be sealed, attested and dated as required by the United States Code; shall be served by an officer authorized to make service by the delivery of a copy or copies to the defendant or defendants personally, or by leaving a copy or copies at the dwelling house or usual place of abode of the defendant or defendants, with some adult person, a member of or resident in the family; and in the case of non-resident defendant or defendants service shall be made in the manner prescribed by law.
3. Subpoenas and notices of motions may be served by any person sui juris, not a party to the cause, nor attorney of record, and when, and if service is so made, an affidavit of such service by the person making same shall be filed at the return of said subpoenas or notices.
4. Alias or pluries summons, and other process, shall be issued in the same manner, and in accordance with the same mode of procedure as the same are issued under the laws of the State of North Carolina.
5. Publication of all process, notices, and advertisements required by law or order of the court, shall be made in some newspaper having a general circulation, published in the district.
6. All suitors in said courts shall be entitled to all the rights and remedies as respects attachments, arrest and bail, claim and delivery, and proceedings supplementary to execution and other process, as are given and provided by the laws of the State of North Carolina to the Superior Courts of said State; provided that such proof, affidavits, undertakings, security, notice and other requirements of the laws of North Carolina, or the rules of these courts, as authorized by the United States Code, are complied with and observed.
7. The time and method of filing pleadings, and other papers and documents, for service or otherwise, in the office of the Clerk of these courts, shall conform to the practice and procedure existing in like actions in the Superior Courts of North Carolina, except as otherwise provided by Federal Statute.
8. Upon instituting any action or suit in said courts, it is required that a deposit in the sum of \$25.00 shall be made, whether in law or equity, to be held and applied to the payment of costs, which deposit shall be increased from time to time as may be required; provided, however, that this does not apply to actions or suits in forma pauperis. Defendants upon entering appearance or filing pleadings, shall be required to make a deposit of \$15.00 for the same purposes.

9. Where notice of a hearing is required, such notice must be served not less than five days before the time set for the hearing, but the Judge may, by order, in any case prescribe a longer or shorter notice.

10. The Judge shall examine all jurors on their voir dire, and if attorneys desire additional examination as to any matters, the Judge, if he, in his discretion, deems such matters proper or material, shall further examine the jurors in respect thereof.

11. All requests for special instructions to the jury shall be signed by the attorneys and submitted to the court before the beginning of argument to the jury.

12. Parties may, by stipulation in writing, or in open court to be entered of record, waive a jury trial, and consent to the appointment of a Referee to take and report the evidence, or to hear and determine the cause, and the findings and conclusions of said Referee must be in writing and filed in the office of the Clerk of the Court, and notice thereof at once given to the parties or their attorneys; exceptions in writing to the findings and conclusions of the Referee as set forth in his report, shall be filed with the Clerk within twenty (20) days from the receipt of the notice of the filing of the report, and such exceptions shall not be filed at a later date except by special permission of the Judge for cause shown, or by consent and agreement of the attorneys of record, and in no event shall said time be extended more than twenty (20) days. If such exceptions are not filed, then the said report will be deemed as correct and confirmed.

In other respects, the practice and procedure in reference cases in the Superior Courts of North Carolina, shall be followed.

13. In any bankruptcy proceeding, where the issue of insolvency is to be tried, and in causes at common law where accounts are complex and intricate, or the documents and other evidence are voluminous, or where extensive computations are to be made, the court may appoint an auditor or referee to define and simplify the issues, to take and report testimony, to audit and state accounts, to make computation, to make findings on conflicting evidence, and to make and file a report of his findings and conclusions in the office of the clerk, which report shall not finally determine the issue, but shall, unless excepted to within ten days after the service of notice of filing, be either confirmed, or disallowed, in whole, or in part, by the court; if a trial before a jury is demanded as provided by the laws of North Carolina, the report of the auditor or referee shall be prima facie evidence as to the facts found by him, and the evidence taken before him shall be admitted as if taken by deposition. If a jury trial is to be had, demand therefor must be made at the time of the filing of the exceptions to the report of the auditor or referee.

14. All judgments rendered shall bear date of the rendition thereof, and interest from said date until paid, at the rate similar judgments bear interest in the Superior Courts of North Carolina.

15. Exceptions taken during the progress of the trial must be taken at the time made, and exceptions to the Charge of the Court must be taken before the jury retires to consider the verdict.

16. The first Monday in each month, unless the same be a legal holiday, in which event the Tuesday immediately following, shall be the rules and motions day on which matters requiring notice and hearing may be set and disposed of, but the Judge may direct hearings on any other day and grant necessary continuances.

BILLS OF EXCEPTIONS:

1. Bills of Exceptions for matters arising at the trial of a case must be prepared, settled and allowed within forty days from the date of the judgment, unless for good cause shown said time is extended before the expiration of said forty days by the Judge. One or more extensions may be allowed by the Judge, provided that no extension shall be valid unless allowed within a period fixed by this rule or the Judge, and no extension shall be allowed unless in the opinion of the Judge the extension is necessary to enable the appellant to prepare the Bill of Exceptions.
2. No Bill of Exceptions shall be allowed on a general exception to the Charge of the Court to the jury in trials at common law. The party excepting shall be required before the jury retires to state distinctly the several matters of law in such Charge to which he excepts; and no other exceptions to the Charge shall be allowed by the Court or inserted in a Bill of Exceptions, but the entire Charge shall be included in the Bill of Exceptions.
3. Only so much of the evidence shall be embraced in a Bill of Exceptions as may be necessary to present clearly the questions of law involved in the rulings to which exceptions are reserved; and the testimony of the witnesses to be embraced in the Bill of Exceptions shall not be set forth in full, but shall be stated only in narrative form, save that if either party desires it, and the Judge so directs, any part of the testimony shall be reproduced in the exact words of the witnesses. But the Judge shall not so direct, unless, in his opinion, such action is essential to a proper understanding of the questions presented.
4. The duty of so condensing and stating the evidence to be incorporated in the Bill of Exceptions shall rest primarily on the appellant, who shall prepare his statement thereof and incorporate it in the Bill of Exceptions and then lodge the Bill of Exceptions in the Clerk's office for the examination of the other parties. The appellant shall promptly notify the other parties or their attorneys of such lodgment, and shall name a time and place when he will ask the trial judge to settle, allow and sign the Bill of Exceptions, the time so named to be at least ten days after such notice. After the expiration of the time named or such further time as the court or the judge may allow, the Bill of Exceptions, together with any objections made or amendments proposed by any party, shall be presented to the trial judge, and if the Bill of Exceptions be true and complete and properly prepared, it shall be allowed and signed by the trial judge; and if it be not true, complete or properly prepared, it shall be made so under the direction of the trial judge and will then be allowed and signed by him. If all the parties in interest, by their attorneys of record, agree upon the form of the Bill of Exceptions and so note thereon, it may be forthwith presented to the trial judge for his signature, without previous lodgment in the Clerk's office. It shall not be necessary to have a separate Bill of Exceptions for each exception, but all exceptions shall be numbered and included in one Bill of Exceptions as far as practicable, and one signature of the trial judge at the end of the Bill of Exceptions shall be sufficient.

When the Bill of Exceptions is allowed and signed by the judge, it shall be filed in the Clerk's office and become a part of the record for the purposes of the appeal.

5. For the purpose of retaining jurisdiction of the court in such cases, the term of the court at which the judgment is entered shall be deemed extended for the period of time allowed in Sections 1 and 4 of this rule, or any extension thereof, for the preparation, settlement and allowance of the Bill of Exceptions.

6. No Bill of Exceptions will be allowed which does not comply with the requirements of the Rules of Practice at the time being of the United States Circuit Court of Appeals for the Fourth Circuit, or of the Supreme Court of the United States, as the case may be, to which the appeal has been taken.

BILLS OF EXCEPTIONS IN ORIGINAL CASES

1. Bills of exceptions, setting forth the proceedings in a case upon which the appellant wishes to rely, in addition to the clerk's record of proceedings, that is, upon the indictment, information or presentment and other pleadings and the orders, opinions, and judgment of the court, shall be prepared by the appellant, to be settled and allowed by the trial judge, and filed in the clerk's office within thirty (30) days after the taking of the appeal, or within such further time as within said period of thirty days may be fixed by the trial judge, and he shall give no extension of time that is not required in the interest of justice.

2. No bill of exceptions shall be allowed on a general exception to the charge of the court to the jury in original trials. The party excepting shall be required before the jury retires to state distinctly the several matters of law in such charge to which he excepts; and no other exceptions to the charge shall be allowed by the court or inserted in a bill of exceptions, but the entire charge shall be included in the bill of exceptions.

3. Only so much of the evidence shall be embraced in a bill of exceptions as may be necessary to present clearly the questions of law involved in the rulings to which exceptions are reserved, and such evidence as is embraced therein shall be set forth in condensed and narrative form, save as a proper understanding of the questions presented may require that parts of it be set forth otherwise. See Equity Rule 75b, 226 U. S. Appendix, p. 23, as amended, 286 U.C. 570.

4. The duty of so condensing and stating the evidence to be incorporated in the bill of exceptions shall rest primarily on the appellant, who shall prepare his statement thereof and incorporate it in the bill of exceptions and then lodge the bill of exceptions in the clerk's office for the examination of the United States Attorney. The appellant shall promptly notify the United States Attorney of such lodgment, and shall name a time and place when he will ask the trial judge to settle, allow and sign the bill of exceptions, the time so named to be at least ten days after such notice, but within the thirty day period allowed by the rules of the Supreme Court in original cases, unless the time for filing the bill of exceptions as settled be extended in accordance with said rules. After the expiration of the time named or such further time as the court or judge may allow, the bill of exceptions, together with any objections made or amendments proposed by any party, shall be presented to the trial judge, and if the bill of exceptions be true and complete and properly prepared, it shall be allowed and signed by the trial judge; and if it be not true, complete or properly prepared, it shall be made so under the direction of the trial judge and will then be allowed and signed by him. If all the parties in interest, by their attorneys of record, agree upon the form of the bill of exceptions and so note thereon, it may be forthwith presented to the trial judge for his signature, without previous lodgment in the clerk's office. It shall not be necessary to have a separate bill of exception for each exception, but all exceptions noted shall be numbered and included in one bill of exceptions as far as practicable, and one signature of the trial judge at the end of the bill of exceptions shall be

sufficient. When the bill of exceptions is allowed and signed by the judge, it shall be filed in the Clerk's office and become a part of the record for the purposes of the appeal.

5. For the purpose of retaining jurisdiction of the court in such cases, the term of the court at which the judgment is entered shall be deemed extended for the period of time allowed in sections 1 and 4 of this rule, or any extension thereof, for the preparation, settlement and allowance of the bill of exceptions.

6. No bill of exceptions will be allowed which does not comply with the requirements of the Rules of practice and Procedure in Criminal Cases prescribed by the Supreme Court of the United States and the Rules of Practice at the time being of the United States Circuit Court of Appeals for the Circuit.

IN EQUITY

1. The procedure, practice and pleading in cases in equity shall conform to the rules of practice promulgated by the Supreme Court of the United States, and any amendments which may be made from time to time.
2. Motion and Rules Day shall be the same as provided in the equity rules and such matters may be heard at such other times as the Judge may direct.
3. When any order or decree for payment of money is made, any party entitled may (unless otherwise ordered by the Judge) have the same entered on the judgment book as provided, and upon such entry the same shall have the same lien and rank, and be entitled to interest at the same rate from the date of such entry, as judgments of law, and shall be entitled to the same process for enforcement by execution or otherwise.
4. In every cause referred to a Master, the Master before settling his report, unless otherwise directed by the Judge, shall mail a copy of a draft thereof to the Solicitor for each party to the cause, and set a date not less than ten days from the date of mailing of such draft within which the parties may file objections to the report or make suggestions of amendment. Upon consideration of such suggestions or objections, the Master shall settle and sign his report and file the same forthwith in the office of the Clerk, together with a statement of any objections thereto by any of the parties.
5. In any suit in which a Receiver is appointed, the Judge who appoints the Receiver shall retain supervision over the cause, including appointment of Solicitors and applications for allowances.
6. Every Receiver shall forthwith upon his qualification, take charge of the assets of the estate committed to his care and shall within twenty days after his qualification, or within such other time as he may be directed by the Judge, make and file with the Clerk a report containing an inventory of all assets coming into his hands, in such detail as may be practicable, in view of the size and character of the business, together with his estimate of the value of said assets, the liabilities of the defendant, and such additional information as he may deem advisable for the consideration of the Judge.
7. Within twenty days from the time of his appointment, or such time as the Judge may direct, the Receiver shall prepare a list of all known creditors of, and claims against the defendant, with the amounts of the debts owing to them by, or claims by them against, the defendant, with their last known address, and a list of the stockholders, if a corporation, with their last known addresses.

8. A Receiver may be authorized to continue the business of a defendant, but in all cases other than a public utility corporation, unless the court shall otherwise direct, for a period of not more than ninety days, during which time the Judge shall inquire into the propriety of a further continuance, and, if deemed necessary, a meeting of creditors shall be called upon ten days notice, to make recommendations in regard to a further continuance of the Receivership.

9. Every Receiver of a continuing business shall make a report thereof at least every three months to the court, and furnish full information to the Judge, to the end that he may determine the advisability of terminating the Receivership, or continuing the same.

10. Every creditor or stockholder of the defendant may inspect at such reasonable time, and under such reasonable regulations, as the Receiver may impose, all books of account of moneys received and expended, and relating to the management of the business.

11. Exceptions to findings of fact and conclusions of law found by the Court with reference to Receivership, must be taken within twenty days after notice of the filing of same in the office of the Clerk.

IN ADMIRALTY

1. The procedure, practice and pleadings in all cases of admiralty, shall conform to the rules of practice for the courts of the United States in admiralty and maritime jurisdiction as promulgated by the Supreme Court of the United States and now in effect, and all amendments which may be hereafter made.
2. It shall be requisite to the admission to practice as an attorney or proctor, that there must be a compliance with the provisions of the Rules for the admission of attorneys as set forth in the Rules "In Law".
3. The Court of Admiralty shall be always open for the purpose of filing any pleadings, issuing and returning meane and final process, and of making and directing all interlocutory motions, orders, rules and other proceedings preparatory to the hearing of causes upon their merits. The Judge will upon due notice to parties, make, direct and award in court and otherwise, all such process, commissions, orders, rules and other proceedings according to the rules and practice of the court, and will also upon proper notice as required, hear and finally determine and award final decree in causes ready for same.
4. Service of all process and execution of all writs and warrants, meane and final, shall be by the Marshal of the District, or a Deputy, except where the same is in the nature only of a monition, citation or summons addressed to a party, it may be served by some other person specially appointed by the Judge for such purpose, and in such case the party making the service shall file an affidavit in regard thereto.
5. Libels shall be sworn to, either by libellant, his agent or proctor. When so sworn to, no proof of their allegations is necessary in case of default, provided there are sufficient allegations as to damage to enable the Court to render a proper decree, but the Court in its discretion, may require further proof.
6. A libel, information or petition, must state plainly the facts upon which the relief is sought, without any repetition or amplification of the charge, and amendments or supplementary matters must be connected with the libel or other pleadings by appropriate references without any recapitulation or restatement of the pleading amended.
7. In all suits for salvage the libel shall state the amount of compensation for the salvaged services for which a decree is prayed, and shall also state to the best knowledge and belief of the libellant, the value of the property salvaged, and in all such cases and all other causes, civil and maritime, persons entitled to participate in the recovery, but not made parties in the original libel, may upon petition be admitted to prosecute as co-libellants on such terms as the court may prescribe.
8. Process on libels, both in rem and in personam, shall be made returnable not less than fourteen days, nor more than twenty days from the issuance of such process, unless the Judge shall shorten or extend the time, and all such process may be issued by the clerk without the mandate of the Judge, except in causes for the arrest of the person, or in cases of suit for seaman's wages. In the absence of the Judge from the District, process will issue as provided by statute.

9. In suits in personam, no mesne process for the arrest of the person of defendant, shall issue under the provisions of Admiralty Rule No. 2, without the mandate of a Judge, and the amount of the bail to be taken by bond or stipulation for the party arrested, shall be stated in the mandate and endorsed upon the warrant of arrest; and in suits in personam, no warrant of arrest shall issue for the arrest of property of defendant for an amount in excess of \$500.00, except by special order of the Judge upon affidavit or other proper proof showing the necessity therefor.

10. No process in rem except on behalf of the United States, shall be issued unless a stipulation in the sum of \$250.00 shall be first entered by the party with a resident surety of the District, conditioned that the principal shall pay all costs awarded against him by the Court, or in case of appeal by the Appellate Court, provided where the property is worth less than \$250.00, the stipulation need be only for the value of the property, but in no event less than \$100.00.

11. In suits for seamen's wages, any mariner in the same voyage not made a party, may by short petition to the Court at any time previous to the final distribution of the fund, or discharge of defendant and his surety, be joined as a libel in the cause, but no costs shall be allowed for the proceedings to make him a party. Seamen suing in rem for wages for their own benefit for services on American Vessels and Salvors coming into port in possession of the property libelled shall not be required to give security in the first instance, but the Judge on motion, with notice, to the libellant, may after the arrest of the property order that stipulation be given in such cases or the property discharged.

12. Suit can be prosecuted and defended in forma pauperis if authorized by order of the Court, and in such cases no stipulation for costs unless otherwise ordered, shall be required, but process in rem or for attachment of persons or property in such cases shall not issue unless allowed by the Judge.

13. Before a monition shall issue in personam cases in which neither a warrant of attachment, nor of arrest of person or property is sought a stipulation must be entered into on behalf of libellant with a surety, unless in the discretion of the Court security is not required, in the sum of \$100.00 for the payment of costs which may be awarded against the libellant in this or any Appellate Court and in all suits in rem any party by or on behalf of whom a claim is put in under the provisions of Admiralty Rule No. 25, shall unless otherwise ordered, at the time of putting in such claim, file a stipulation with surety in the sum of \$250.00, conditioned as prescribed by the rule, provided that if the property claimed is worth less than \$250.00, the amount of the stipulation need not exceed the value of the property; if any third person intervenes, pursuant to the provisions of Admiralty Rule No. 34, he shall unless otherwise ordered by the Court, upon filing his intervention, file a stipulation with sureties, in the sum of \$250.00, conditioned as prescribed by the rule, provided that if the amount claimed is less than \$250.00, the stipulation need not exceed the amount claimed; where a stipulation is filed pursuant to Admiralty Rule No. 6, the same unless otherwise ordered by the Court, shall be for the same sum as required for the issuance of process in rem, and the stipulation to be given by the claimant or new party, shall unless otherwise ordered by the Court, be for the same sum required of claimants under the provisions relating to Admiralty Rule No. 25.

14. All process shall be returned on the return day thereof, and if not so returned, an order may be entered on application of any party or his proctor by the Clerk, that the Marshal shall show cause within ten days why an attachment shall not issue against him. In case of process in rem, the return on the process shall show the day of the seizure of the property and the day of sale if the process be for such purpose; when the citation or monition in suits in personam is returned not served personally, and it is made to appear that defendant is within the jurisdiction and evading service, the libellant may on verifying by oath the matters demanded in the libel, have an attachment in personam issued instanter, in which case all subsequent proceedings may be as if attachment had been issued in the first instance.

On the return of a citation or monition with proof of personal service, the party shall be deemed in court and may be proceeded against accordingly, and in cases of foreign attachment, if defendant appear, the same proceeding shall be had as in cases in personam, and if he make default, the Court may proceed ex parte and pronounce decree unless the attachment is discharged at the instance of the garnishee.

On failure of defendant to appear after due return of service, libellant will be entitled to a decree of default or contumacy according to the nature of the case, and in case of such default the court may award such decree as the justice of the case requires.

15. In case of an arrest or attachment of property, or arrest of the person in causes of civil and maritime jurisdiction (except the attachment is issued upon certificate pursuant to Sec. 603 and 604 Title 46 U. S. Code) the party arrested or any person having the right to intervene in respect to the property attached, may upon showing any improper practice or want of equity on part of libellant, have a mandate from the Judge for the libellant to show cause instanter why the arrest or attachment should not be vacated; and any person arrested under a warrant issued in personam, may upon affidavit that he cannot give bond or stipulation in the amount required, by the endorsement on the warrant, apply to the Court for a rule to libellant to show cause instanter, or at such time as may be ordered, why the bond or stipulation should not be reduced or rescinded; the bond or stipulation to be given for the dissolution of attachment in suits in personam, as permitted by Admiralty Rule No. 5, unless otherwise ordered by the Court, shall be for double the amount of libellant's claim, or for an amount equal to the value of the goods, chattels, credits or effects attached, as the same may be ascertained by appraisement had in the manner prescribed by these Rules; on libels in rem, the bond to release the property from arrest or attachment shall conform to the provisions of the United States Code, but the bond may be reduced by consent, or be given under the provisions of Admiralty Rules Nos. 11 and 12 where applicable.

16. Where no specific process is provided by law, or by the Rules in Admiralty or by these Rules, parties may have process similar to that as is in use in like cases in the Superior Court of the State of North Carolina. Wherever Admiralty Rules are spoken of in these Rules, the Admiralty Rules prescribed by the Supreme Court of the United States

are meant.

17. Notice of two days shall be given the proctor of libellant of application under U. S. Code, Sec. 754, Title 28, or Rules 5, 11 and 12 of the Admiralty Rules for delivering up on bond or stipulation property under arrest or attachment, specifying the sureties intended to be given, their occupations and residences and the Officer before whom, and place where the stipulations will be offered, except in suits by seamen for wages when such notice may be instanter.

Notice of the arrest or attachment of property by arrest or attachment on a process in rem, in behalf of individual suitor, shall pursuant to Admiralty Rule 10 be given by publishing the same in some newspaper published near the place of seizure, and by posting in the most public manner at or near the place of trial for at least fourteen days unless a shorter notice be ordered by the Judge, which notice shall contain briefly a short statement of parties to and the character and purpose of the libel and of property seized and time assigned for the return of process and hearing of the cause.

The Court, however, may in its discretion in cases of emergency requiring it, order the return of process instanter, immediate pleading and prompt hearing of the cause.

Orders for appraisement of property under arrest or attachment, at the suit of individuals, may be entered by the Clerk at the instance of any party interested, and upon such order the Judge may with or without further notice, appoint three or more persons to appraise the property, who shall be duly sworn to faithfully perform and discharge their duties as appraisers before an officer authorized to administer oath, and the expense of such appraisement in the first instance shall be paid by the party making the application, but eventually shall be paid by such party as the Court may finally decree should pay the same. The appraisement, when made, shall be certified to and signed by the appraisers and filed with the Clerk.

In case of seizure of property by or for the United States, in which a release under appraisement and bond may be allowed, an appraisement for the purpose of so bonding the same may be had by any party in interest upon one day's notice of motion before the Judge for the appointment of appraisers, and if parties and their proctors and the District Attorney are present in court, such motion may be made instanter after seizure.

Appraisers acting under an order and appointment of the court, will be allowed severally \$5. 0 each for each day necessarily employed in making the appraisal.

18. Defense may be made by answer or claim of matters of law or fact without the employment of exceptions or special plea usual in causes of civil and maritime jurisdiction, other than exceptions to the competency of the party or the process of other matters of abatement. The defense herein referred to must, unless the time is enlarged by order of the Court, be filed in the Clerk's office on

or before the return day of the process, but where the return day is less than seven days after the service, in proceedings in rem, of the warrant of arrest and in personam after the service of the motion, the defense need not be filed until seven days after such service unless otherwise required by the Judge.

A sworn answer shall not be deemed higher evidence than the libel or information to which it responds, except under the circumstances the Court may find it entitled to.

Where a claimant or respondent is absent from the United States or resides out of the District, a claim or answer to a libel may be sworn to by a proctor or attorney in fact in behalf of such party, and if by written notice a personal answer verified by oath of the party is demanded, proceedings shall be stayed to enable such answer to be taken.

19. Exceptions to the libel or to interrogatories propounded therewith, shall be filed as a separate pleading at or before the time required for answering, whereupon the time for answering shall be automatically extended until the expiration of ten days after the disposition of the exceptions, unless otherwise ordered by the Court.

Exceptions to the answer or to interrogatories propounded therewith, shall be filed within fifteen days after service of copy of the answer, unless otherwise ordered.

If interrogatories be propounded by leave of Court otherwise than with the libel or answer, exceptions thereto shall be filed within fifteen days after service of a copy of the interrogatories, unless otherwise ordered.

All exceptions shall specify the matter excepted to and the grounds of exception, and the Court, upon motion of either party, will expedite the hearing thereof and may set such hearing at short notice.

All such exceptions shall be disposed of before hearing on the merits, and the Court, for proper cause shown, may extend the time allowed for the filing of exceptions or amended pleadings.

20. If any party to a cause, whether at issue or not, shall be desirous of obtaining a commission to examine a witness or witnesses residing beyond the reach of subpoena, he shall first file in the Clerk's office the original and a copy of the interrogatories which are to be propounded to the witness or witnesses, together with the name or names of a Commissioner or Commissioners; and serve said papers on the opposite party, or his attorney, at least ten days before he applies to have it issued; and if within ten days from the time of such service the opposite party shall not file with the Clerk cross-interrogatories, and a copy thereof, together with the name or names of a Commissioner or Commissioners, the commission shall issue ex parte, to the Commissioner or Commissioners named, but if within said ten days the opposite party shall file the name or names of a Commissioner or Commissioners, then the commission shall be issued by the Clerk to one of the Commissioners named on each side unless the parties agree as to the person to whom the commission shall issue. When a commission shall have been returned

it shall be forthwith opened by the Clerk and notice of the receipt given by the Clerk in writing to counsel for the respective parties. Exceptions to the execution and return of said commission shall be filed within fifteen days thereafter, or before any evidence is offered in a trial before the Court, or shall be considered as waived.

21. Whenever, for any cause, there shall be a default in the pleadings or proceedings or new parties are necessary, proper order shall be made to remedy such defects or to make necessary parties, and it shall be sufficient to allege in a petition therefor, briefly, the prayer of the original libel, the several proceedings in the cause and the reason for making such changes and such parties, and the order shall further provide for service on such new parties and time for them to file proper pleadings and give the necessary stipulations and security.

22. The Court of Admiralty shall be always open for the transaction of business, and the Admiralty Booket shall be called at each term of the Court, but on special cause shown, or by agreement of counsel and with the Court's approval, cases may be specially assigned for trial; and the Court may of its own motion, require cases to be set for trial at a time designated by the Court.

23. In Admiralty and Maritime causes where the matter in demand does not exceed fifty dollars, the proceedings may be summary, and instead of filing a libel, the applicants in suits, by individuals, may by short petition, take the matter of the demand, the amount or value thereof, or present an account stated or a bill of charges by items, on the filing of which the proof that demand has been made for payment, process may issue as in ordinary cases, and the security to be given shall be for the sum of fifty dollars. The monition, or citation or attachment, or warrant of arrest in such cases may be made returnable in not less than two days, and on the return of process the cause may stand for trial.

24. Writs for sale of property and all final process may, unless otherwise ordered by the Court, be made returnable in not less than thirty nor more than ninety days from the issuance thereof; and unless otherwise directed by order or decree or where otherwise provided by statute, all sales of property condemned and decreed to be sold in suits in rem, shall be made to the highest bidder at public auction at such place as the Court may appoint, after at least fifteen days notice, unless a shorter notice be prescribed by the Court, published in one or more of the newspapers of the place where such sale is to be made, or if none be published therein, then of the nearest convenient place thereto, and a copy of such notice shall also be fixed for the same period upon the door, or at some conspicuous place, near the entrance of the Court house.

25. When any moneys shall come into the hands of the Marshal under or by virtue of any order or process of the court, he shall forthwith pay the gross amount thereof to the Clerk, with a bill of his charges thereon, and a statement of the time of the receipt of the moneys by him, and upon the filing of such statement and the taxation of such charges, the same shall be paid to the Marshal out of such moneys; and the general account of all property sold

under the order of decree of court, shall be returned by the Marshall and filed in the Clerk's office, with the execution or other process under which the sale was made.

All bills of cost and the charges to be paid under any order or decree shall be taxed and fixed with the Clerk before the payment thereof; and such bills of cost shall be subject to re-taxation on application by any party to the cause provided such application is made within ten days after receiving notice of the said bill of cost. The Clerk is authorized to tax and certify bills of cost, to take acknowledgments of the satisfaction of judgments and all affidavits and oaths out of court in all cases where same are not required by law to be taken in open court; and is authorized to enter satisfaction on the record of any judgment rendered in behalf of the United States on receiving and filing an acknowledgment of satisfaction made by the District Attorney.

26. In all cases wherein a final order or decree has been rendered for the payment of money in any proceeding in Admiralty, any party thereto entitled, unless otherwise ordered by the court, may have the same entered in the judgment docket of the court, and upon such entry the same shall have the same lien and rank and be entitled to the same interest as judgments at law and be entitled to the same process for enforcement as any judgment at law.

IN BANKRUPTCY

1. The procedure, practice and pleading in all matters in bankruptcy shall conform to general orders in bankruptcy adopted by the Supreme Court of the United States, with such additions to, or amendments of the same as have been or shall be hereafter made. Regular printed forms as approved by the Supreme Court should be used as far as practicable, and others which do not conform to the prescribed form shall not be received.

Voluntary petition shall state the full name, occupation, residence and post office address of the debtor, and such petitions by corporations shall recite the authority of the officer signing the papers. All amendments, schedules filed at any time shall be in triplicate, executed and sworn to as required of originals.

2. Except where a party conducts his own proceeding, no petition for adjudication or other petition or pleading in bankruptcy and no proof of claim, and no notice required to be signed by counsel shall be accepted by the Clerk or Referee unless it is signed by an attorney who has been admitted to practice in this court, is a resident of and maintains an office in the State of North Carolina, and who has entered his appearance of record with the address of where notice can be served, and this appearance cannot be withdrawn without leave of court. Service of notices, rules and pleadings on such resident attorney shall be equivalent to service on parties for whom he has appeared, and where a party is conducting his own proceedings he shall furnish an address where notices and papers can be served.

3. In involuntary and voluntary cases in which Receivers are to be appointed, applications therefor shall be made to the Judge, if in the district, and when absent from the district, such application shall be addressed to the Judge, filed with the Clerk, and by him referred to the Referee with a certificate of the Judge's absence; but an appointment by a Referee of a Receiver shall not ordinarily be made except after a hearing has been had upon the application and upon reasonable notice to the bankrupt. In such cases, the Referee is authorized to fix the amount and approve the bond of the petitioning creditors and of the Receiver.

4. No Referee shall undertake by any order to permit the issue of Receiver's certificates as constituting a lien upon the assets of the bankrupt estate, nor shall he undertake by any order to permit any Receiver to carry on the business of the bankrupt, except for a limited time and until the Judge returned to the district, at which time the matter shall be brought to the attention of the Judge and he shall determine such question. All applications to enjoin proceedings in a State Court and to permit the sale of assets free from liens claimed by third parties, must be made by the judge.

5. Immediately upon the appointment and qualification of a trustee, the Receiver shall turn over to the Trustee all moneys and assets in his possession, taking the Trustee's receipt therefor and file his report and account within ten days thereafter, unless the time is extended by the Referee or Judge. If said account is found correct by the Referee, and allowed, he shall discharge the Receiver.

6. All moneys received by Receiver or Trustee must be deposited in some depository designated as required by the Bankruptcy Act, in the name of the Receiver or Trustee in the particular cause in which such money is received, and in making such deposits, they are required to show on the deposit slip the number of the case as the same appears on the bankruptcy docket in the office of the Clerk. All official checks drawn by Receivers, Trustees or other persons shall be retained by the depository until withdrawn by the Referee or Judge on his order, and all paid checks shall be withdrawn from the depository upon the closing of the case, filed in the office of the Clerk of the Court in the order of the respective case number, in a file kept specially for that purpose. All depositories shall allow the duly accredited examiners of the Department of Justice full access at all times to the accounts of moneys of bankrupt estates and the use of paid checks drawn on such accounts.

7. All accounts of funds of bankrupt estates shall be segregated by the depository under a general index, headed "Bankruptcy United States District Court" and all such accounts shall be indexed thereunder and the number of each case, as docketed in the office of the Clerk of the Court shall likewise be shown thereon; each depository shall at the close of business on June 30th and December 31st of each year, and at such other times as may be directed prepare and transmit to the Clerk statement of all balance in estates in bankruptcy on deposit.

8. A bankrupt desiring to offer a composition shall file a petition containing all the terms thereof, the proposed offer, and, if he contemplates the giving of any promissory note, the names and addresses of endorsers, if any; and full particulars of any other consideration if contemplated. The proposed offer shall also make full and itemized disclosure as to any proposed disposition or settlement of reclamations or priority or preferential rights or claims, and as to any proposed payment, compensation or reimbursement for expense to any creditors committee, accountants, attorneys, receivers, trustees or other persons. Thereupon, the court or the referee in charge of the same shall promptly fix a time and place for a meeting of creditors to receive and consider the proposed offer, which, if made before adjudication, shall be filed with the Clerk, but after adjudication with the Referee.

Notice to creditors of the hearing and advertisement, if ordered, to consider the proposed offer, shall state the time and place of hearing, and of the confirmation of the composition, and shall contain the terms and full particulars of the offer, the proposed

settlement or disposition of all reclamation, priorities or preferential claims, the proposed compensation of and disbursements paid or to be paid to creditors committees, accountants, attorneys, receivers, trustees or other persons, and that such offer and all other matters thereto pertaining will be acted upon by the court after hearing the parties in interest.

The Referee shall file with the Clerk two days before the hearing on confirmation of the composition, the following papers: certified copy of order under which the Referee acts; petition for confirmation or composition; copy of notice of hearing; proof of publication and service; minutes of the hearing at which the offer was considered, and also of the bankrupt's examination; offer of composition; acceptances; evidence in writing that consideration has been deposited for creditors; certificate of referee that schedules have been filed and bankrupt has been examined in open court, or at a meeting of creditors, and that composition offer was made after this examination; that creditors whose claims have been allowed have filed acceptances in writing; that the cash consideration deposited is sufficient to cover all expenses of administration, priority claims and the amount offered creditors; affidavit required by general order 41.

On the return day of the petition for confirmation of composition, no appearance and opposition shall be received, but the court shall hear the parties summarily and decide the procedure necessary to secure justice to all parties, and may vacate the receivership, order the filing and immediate trial of specifications before the court, or refer the same to a special master or take any other proceeding which justice requires. No withdrawal of such opposition will be permitted and no order of confirmation entered, except on affidavit of the bankrupt and his attorney that no consideration has been promised or given for such withdrawal.

Pending the confirmation or disapproval of composition, no sale shall be postponed nor business continued unless there be furnished such satisfactory indemnity against loss or expense as the court or referee in charge of the case may order. In event of confirmation, objections to claims approved or schedules, unless brought on for hearing within ten days of the date of the order of confirmation, shall be deemed abandoned, and the claims allowed.

9. Where a jury trial of issues raised by the answer is demanded the person demanding such trial shall within two days thereafter serve on all attorneys of record and file with the Clerk a written notice which shall be accompanied by admission of proof of such service and shall contain a statement of the docket number of the case, and the names and addresses of the attorneys of record. If an answer is filed, and no demand for jury trial made, the person filing the answer shall at the time of such filing, make a motion for immediate trial or reference to one of the referees as a special master. If this requirement is not complied with, the answer shall be stricken out and the Clerk shall enter an adjudication.

10. No attorney for a Receiver or Trustee shall be appointed except upon order of the court, which shall be granted only upon the verified petition of the Receiver or Trustee, stating the name of the counsel he wishes to employ, the reasons for his selection, the professional services he is to render, the necessity for employing counsel at all, and to the best of petitioner's knowledge, all of the attorney's connections with the bankrupt or debtor, the creditors or any other parties to the proceeding, and their respective attorneys. If satisfied that the attorney represents no interest adverse to the Receiver, Trustee or any creditor, in the matters upon which he is to be engaged, that his employment would be to the best interest of the estate, the Court may authorize his employment; such employment shall be for a specific purpose, unless the Court is satisfied that the case is one justifying a general retention. If, without disclosure, any attorney acting for a Receiver or Trustee, shall have represented any interest adverse to the Receiver, Trustee or any creditor, in any matter upon which he is employed for such Receiver, or Trustee, the Court may deny the allowance of any fee to such attorney or the reimbursement of his expenses, or both, and may also deny any allowance to the Receiver or Trustee, if it shall appear that he failed to make diligent inquiry into the connections of said attorney.

11. All applications for compensation for services as attorney for the Receiver or Trustee, shall comply with general order XLII, and shall state in addition: (1) the date when the attorney was retained, together with a true copy of the order authorizing employment; (2) that all the services for which compensation is requested were performed for, and on behalf of the Receiver or Trustee, as the case may be, and not on behalf of any committee, creditor or any other person; (3) in concise form the facts regarding such services, showing their nature and difficulty, the amount and importance of the matters involved, results obtained, size of the estate, and any other matters which will enable the Court to determine the reasonable value of such services.

12. Application for compensation for services as attorney for petitioning creditors shall comply with general order XLII, and shall state in addition: That all services for which compensation is requested were rendered for and on behalf of the petitioning creditors while performing the duties prescribed by the Bankruptcy Act, the amount requested for services, and reimbursement for expenses, if any, said expenses to be itemized.

13. Application for compensation for services as attorney for the bankrupt shall comply with general order XLII, and shall state in addition: That all services for which compensation is requested performed before the petition in bankruptcy was filed, were in connection with said bankruptcy proceeding, and were not services in any other matter; and that all services performed since were in connection with the performance by the bankrupt of the duties prescribed by the Bankruptcy Act, or were rendered pursuant to order of the Court, or Referee; the amount of compensation requested for services and the amount received therefor from the bankrupt or any other person, and the amount requested for expenses, if any, said expenses to be itemized.

14. All applications for allowances to receivers, trustees, appraisers, accountants or attorneys, shall be filed with the referee prior to the sending of notice to creditors of the receiver's or trustee's accounting. The referee is authorized to pass upon accounts of receivers and trustees and to order their discharge; to fix and order payment of compensation in accordance with these rules and the Bankruptcy Act to receivers, trustees, accountants, appraisers, attorneys for petitioning creditors, bankrupts, receivers, and trustees, and such allowances shall be subject to review by the Judge when, and if objections are filed by creditors within twenty (20) days after the order of the Referee is made.

15. No compensation or fees shall be paid to attorneys or Receivers or Trustees until the final account of such Receiver or Trustee shall be filed with the Referee.

16. The Referee's certificate of the appointment or election of Trustee, or trustees, shall be promptly forwarded to the Clerk, together with the Trustee's Bond duly approved, and all other papers left with the Trustee to be filed, except claims and powers of attorney, shall be sent to the Clerk for filing, and if taken from the Clerk for any purpose, they shall be returned as soon as practicable.

17. Referees shall appoint appraisers and fix their compensation, and appoint auctioneers when necessary. They shall make report to the Court quarterly on the first day of January, April, July and October of all unsettled cases which have been pending before them for more than twelve months, and of all cases in which no progress appears of record within the past three months.

18. It shall be the duty of Referees to give all notices required by the Bankruptcy Act to be given to creditors. They shall notify all parties in interest of orders passed by them in matters referred to them by the Court to hear and determine; shall on all applications for discharge certify to the Court before the date set for the hearing, that requisite notice has been given to creditors of said hearing and that no reason is known, if such be the case, why discharge should not be granted, but if reasons are known, they must be certified to the Court.

19. The Receiver or Trustee may upon order by the court, or the Referee, abandon any property of the bankrupt if burdensome, or of no net realizable value, and the order of the Referee authorize the abandonment of any property as of no net realizable value shall be conclusive of the fact whether a trustee or receiver has been appointed or not, and if appointed, whether any formal action is taken by him or not. And the order of the referee closing any case as a no asset case shall have the same effect as to all the property of the bankrupt. In all such cases, creditors holding liens shall have the right to proceed to foreclose the same without intervening in the bankruptcy proceedings or re-opening the same.

20. All orders for sale of real and personal property shall be signed by the Referee unless otherwise ordered.

21. All private sales of personal property, unless otherwise directed by the court, shall be confirmed and ratified by the Referee.

22. The Referee shall transmit to the Clerk within thirty days after the case is finally disposed of, his memoranda of data for the statistical report required by the Attorney General of the United States, and all papers filed with him in the proceeding.

23. In certifying to the Court questions covered by petition to review, the Referee shall include in his findings of fact a summary of the testimony on which such findings are based, and shall then give his conclusions of law, and all petitions for review must be filed within fifteen days from the date of any order made by the Referee, unless the time of filing is extended by the Judge or Referee.

GENERAL PROVISIONS

The following Rules shall be deemed of general nature, and applicable to actions, suits and proceedings at law, in equity, bankruptcy and admiralty, as far as possible, and unless there is some rule of the Supreme Court, or some rule of this Court specifically governing such actions, suits and proceedings:

1. Rules 1 to 7, both inclusive, relating to the admission, practice, etc., of attorneys, solicitors and proctors, as set forth under that Section entitled "At Law", shall apply to all actions, suits and proceedings in the District Court, in equity, bankruptcy and admiralty, as well as at law.
2. If it should appear that an action at law should have been brought as a suit in equity, or a suit in equity should have been brought as an action at law, then the same shall be transferred to the proper docket and such alteration and pleading as may be necessary and essential because of such transfer, shall be filed.
3. The making of calendars shall at all times be under the control of the Judge, and when a case upon notice of the setting of the calendar has been placed on the trial calendar at any term of the court, it shall not be continued except for cause shown to have arisen after the calendar was promulgated and published.
4. All naturalization proceedings for the Eastern District shall be heard at _____, for the Middle District, at Greensboro; for the Western District at Charlotte and Asheville, and at such times as the Judge may direct by notice duly promulgated and published in some newspaper as may be specified in the order fixing the time of hearing.
5. The courts shall always be open, Sunday and legal holidays excepted, for the purpose of filing pleadings, issuing and returning writs and final process, notices, and the making and directing interlocutory motions, orders, rules and other proceedings peremptory to the hearing upon the merit of pending actions.
6. The Clerk of the court may sign all orders in the following classes without submission to the Judge:
 - (a) Adjudication and discharges in bankruptcy;
 - (b) Orders and decrees pro confesso in equity;
 - (c) Orders for the substitution of attorneys upon consent;
 - (d) Orders extending the time by consent within which to plead or make any motion, except in bankruptcy or judgment creditors bills;
 - (e) Orders of discontinuance by consent;
 - (f) Orders of voluntary nonsuit;
 - (g) Consent orders satisfying decrees and cancelling stipulations and bonds;
 - (h) Judgment by default and inquiry and default final at the next Rule Day after the time for answering or pleading has expired and no answer or pleading has been

- (1) Orders in attachment, arrest and bail, claim and delivery and supplementary proceedings as the same are made by the Clerk of the Superior Courts of North Carolina.

7. Motions to remand to the State Court of any case removed therefrom, shall be made within thirty days from the filing of the transcript in the office of the Clerk, and notice of the filing of such transcript shall be mailed by the Clerk to the attorneys of record, or shall be deemed waived, and can thereafter be made only by leave of court for good cause shown, and upon notice of ten days given to opposing attorney.

8. Commissions to take testimony of witnesses in any cause at law, in equity, admiralty or bankruptcy, may be sued out by any party thereto, and shall be issued in the form heretofore practiced in this Court. Depositions taken under a commission, shall be returned to the Clerk and opened by consent in writing of the parties or their attorneys, upon one day's notice and the opening of such commissions or depositions shall not preclude either party from objecting to the competency or relevancy of the evidence when offered on trial.

9. The Clerk shall in all cases require before filing, to cover costs of Clerk and Marshal, deposit as follows:

In all actions at law and suits in equity, not less than the sum of \$25.00 by the plaintiff at the time of the issuing of the summons or subpoena;

In admiralty cases not less than the sum of \$_____ by the libellant;

In cases removed from State Courts, not less than the sum of \$5.00 by the removing party.

10. The costs and disbursements in actions or proceedings at law in equity, admiralty and bankruptcy, shall be such as are allowed by law and shall be taxed by the Clerk, and any party affected thereby may except to such taxation within five days after notice thereof, and thereafter the matter shall be heard by the Judge at such time and place as he may fix.

11. Whenever by any rule of the practice of the Court, a bond, recognizance, stipulation, or undertaking is authorized or required to be given, there may be deposited with the Clerk a sum in lawful money of the United States equal in amount to the bond, recognizance, stipulation or undertaking so authorized or required, and the Clerk shall give a receipt therefor in which shall be stated the case or proceeding in which the deposit is made, and that the same is held in lieu of a bond, recognizance, stipulation or undertaking, and subject to like conditions.

12. In all cases in which a final decree or judgment shall be rendered in any suit in equity, admiralty or bankruptcy, for the payment of money, interest shall accrue from the date of the rendition of the judgment.

13. Where the same party in any cause has more than one attorney or record, any paper may be served upon any of such attorneys, and the absence of one of said counsel or more, if there are others in the cause, shall not be ground for continuance of the cause, unless for other reasons, but all such matters are within the discretion of the Judge.

14. In cases removed from any State Court, if any party desires to traverse any of the allegations of fact contained in a petition for removal, such traverse shall be filed with the Clerk of this court, and a copy thereof served upon the attorney for the adverse party within ten days after filing of the transcript of the record from the State Court. If such traverse be not filed and served, the facts stated in the petition will be deemed as admitted. The traverse required shall not be in the form of a general denial, but shall specifically deny each controverted fact in plain and concise language. A hearing upon such traverse, and the issues raised, will be heard at such time and place as the court may direct.

15. In suits brought in forma pauperis, the attorney of record for the plaintiff shall file a stipulation to the effect that his compensation shall be such reasonable fee for services rendered as may be fixed by the court, and shall have no other agreement or understanding with respect thereto, and shall not have any other share or interest in the claim or any judgment rendered thereon, and no final judgment shall be entered in said cause unless this stipulation is observed.

16. All applications for allowances to attorneys as compensation for services in any action, suit or proceeding pending in the court must be made in writing and state the services performed, when, and at whose instance, and such matters as will furnish the court with full information concerning the merits of the application.

17. In any action or suit or proceeding affecting the title to real property in this State, any party may file with the Clerk of the District Court a notice of the pendency of the action as provided by the laws of North Carolina, and the Clerk shall thereupon send a certified copy of the said notice to the Clerk of the Superior Court of any county in the State in which the real property described, or any part thereof, is situate, to be filed and indexed by said Clerk of the State Court in accordance with the law of North Carolina; and no notice or proceeding shall be given effect in this court as a notice of lis pendens unless this rule is complied with. The party filing the notice must pay the fees and expenses incurred.

18. The court will be open each morning of the session at 9:30 A.M. o'clock, and motions shall be made and heard at the time for hearing fixed by the Judge as the first business of the court, but this rule shall not affect matters required to be heard on rule day.

These rules shall become effective ^{Jan. 1} ~~Dec. 31~~, 1935, and shall be printed. All rules heretofore promulgated, and all amendments thereof are rescinded, but this shall not affect any proper action taken under them before these rules become effective.