

COMPLIMENTS OF
THE COURT PRESS, INC.

General Rules
of
United States District Court
FOR THE SOUTHERN DISTRICT OF NEW YORK

Including

Calendar, Civil and Admiralty Rules

\$2.00

PLUS 2% SALES TAX

Printed and Distributed By

THE COURT PRESS
INCORPORATED

LAW PRINTERS

130 Cedar Street

New York 6, N. Y.

TELEPHONE RECTOR 2-2544

1948

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GENERAL RULES

1. Judge

The word "Judge" wherever occurring in any rule of Court shall be held to mean any judge or justice authorized by law to serve in this Court.

1-a. Any judge designated to sit in the District Court for the Southern District of New York, in the absence of a specific assignment from a judge of superior authority shall do such work only as may be assigned to him by the senior district judge.

1-b. If any judge, by reason of illness, service in another part of the court upon an unfinished case, or other good cause, is unable to do the work allotted to him by any schedule entitled "Assignment of United States District Judges, Southern District of New York", and on file in the office of the clerk of this court, then the work so allotted to such judge, or such part thereof as the senior district judge may deem necessary shall be performed by any other judge who may be assigned or designated to perform such work by the senior district judge.

2. Attorneys

The Bar of this Court shall consist of those persons heretofore and hereafter admitted to practice, and who have signed or shall sign the roll of attorneys; provided, however, that all attorneys and solicitors of the Circuit Court of the United States for the Southern District of New York entitled to practice as such on December 31, 1911, shall be qualified attorneys of the Court without motion or other formal admission.

3. Admission to the Bar

Any person who is a member in good standing of the Bar of the State of New York, or of the Bar of the State of New Jersey, or who has been duly admitted to the Bar of either of those states when a member in good standing for five years of the Bar of some other state or territory or possession or the District of Columbia or of a foreign country, may be admitted to practice in this Court on compliance with the following provisions:

Each applicant for admission shall file at least five days prior to the hearing thereon, with the Clerk of this Court,

a written petition for admission, duly sworn to, setting forth the time when, and court where, admitted and his legal training and experience at the Bar. This petition shall be accompanied by affidavits of two attorneys of this Court stating where and when affiants were admitted to practice in this Court, how long and under what circumstances such attorneys have known petitioner, and stating what affiants know of petitioner's character and experience at the Bar. Such petition shall be placed at the head of the Motion Calendar, and, on the call thereof, one of the attorneys whose affidavits accompany the petition shall move the admission of the petitioner, and, if admitted, the petitioner's oath of office shall be taken in open court.

Any member in good standing of the Bar of any state, or of any United States District Court, may upon motion be admitted to argue or to try any cause in whole or in part as counsel or advocate. Only an attorney or proctor of this Court may enter appearances for parties, sign stipulations or receive payment upon judgments, decrees or orders.

4. Disbarment

Any member of the Bar of this Court who has been disbarred from the Bar of the State of New York, or of the State of New Jersey, or of any United States Court in the Second Circuit or in the State of New Jersey, shall *ipso facto* be disbarred from the Bar of this Court and his name stricken from the roll, and the name of any member of the Bar of this Court who has resigned from the Bar of any of said courts shall be stricken from the roll, without notice, unless otherwise directed by the Court, and any member suspended for a period from practice in any of said courts shall *ipso facto* be suspended for a like period from practice in this Court.

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

All applications for orders to show cause why a member of the Bar of this Court should not be disbarred or disciplined and all motions to such effect shall be made to or before the Senior Judge of this Court unless otherwise ordered by him, or he shall be ill, incapacitated or absent from the District, in which event they shall be made to or before the then acting Senior Judge.

5. Attorneys of Record

Any member of the Bar of this Court not having an office for the transaction of business in person within the Southern or the Eastern District of New York shall not appear as attorney or proctor of record in any cause without specifying upon the record a place where and a person upon whom service of all papers shall be made within either the Southern or the Eastern District of New York.

In all Criminal causes wherein a complaint or information has been filed, or where an indictment has been found, notices of appearance shall be filed by attorneys for defendants with the Clerk, after service of a copy thereof on the United States Attorney. Except as otherwise directed by the Court, orders for the substituting of attorneys in such causes shall be made only upon written consent of defendants. Such orders shall be signed by and filed with the Clerk.

6. Extension of Terms

For the purpose of allowing bills of exceptions or of taking any other action in any cause which must be taken within the term of the Court at which final judgment or decree is entered, each term of court is extended for ninety days from the date of entry of the final judgment or decree.

All applications for the extension of time to prepare bills of exception in criminal causes shall be presented to the Judge who tried the case, unless he be no longer in office or be absent from the District, in which event they shall be presented to the Judge assigned to the General Motion Part. Such an application shall be accompanied by an affidavit showing due reason for such extension, the date of judgment and whether the defendant is in custody or on bail. The Judge shall consider the motion and in his discretion grant or deny the same, notwithstanding the consent of the United States Attorney.

7. Filing Papers

All pleadings and other papers not specifically provided for by law shall when offered for filing be plainly and fairly written or printed without erasures or interlineations materially defacing them. If documents not conforming to this rule be offered, the Clerk before receiving them shall require the *allocatur* of a Judge.

All papers subsequent to that beginning a litigation shall, when offered for filing, be endorsed with the proper serial

number (in bankruptcy) and the proper docket and page number (in other cases) and no paper shall be received on file without such endorsement.

All papers in civil causes shall be filed flat.

8. Commissions

Except as otherwise provided by a statute of the United States, in all actions or proceedings where the taking of depositions of witnesses or of parties is authorized, the procedure for obtaining and using the same shall be that provided in the Federal Rules of Civil Procedure and the Civil Rules of this court.

9. Letters Rogatory

Upon the receipt from the Court of a foreign country of letters rogatory to take testimony within the District, the Judge in charge of *ex parte* business shall, by order, appoint the officer or commissioner named in such letters rogatory to execute the same. In case no officer or commissioner be named in said letters rogatory, the Judge shall, by order, appoint a commissioner to execute the same. In either case the officer or commissioner so appointed shall execute the letters and file them in the Clerk's office within twenty days after his appointment. The Clerk shall keep a record of all such orders and shall notify the officer or commissioner of his default if he fails to file the letters properly executed as above provided. If an officer or commissioner named in the letters rogatory and appointed as aforesaid shall fail to file them so executed within ten days after such notice, the Clerk shall in turn notify the Judge, who shall sign an order to show cause why the order made should not be vacated and the letters rogatory returned to the Court of the foreign country. If a commissioner not named in the letters rogatory but selected by the Judge as aforesaid shall fail to report within ten days after the notice above mentioned, the Clerk shall in turn notify the Judge, who shall sign an order to show cause why the commissioner should not be removed and another appointed to execute the letters. Such letters when executed shall be delivered by the Clerk to the office or person from whom they were received by the Court.

10. Receivers

All applications for the appointment of receivers in equity causes, in bankruptcy causes and any other causes (except

where a receiver in bankruptcy may be appointed by a referee as provided in the Bankruptcy Rules), shall be made to the judge assigned to hold the bankruptcy and motion part of the business of the court and to no other judge, provided, however, that in the event that such judge is unavailable by reason of illness, service in another part of the court upon an unfinished case, or other good cause, such application may be made to such other judge as may be assigned or designated by the senior district judge to entertain such application.

11. Motions

Except as otherwise provided by any statute of the United States, the procedure regulating the making of motions and of orders in actions or proceedings other than civil actions shall be that provided in the Federal Rules of Civil Procedure and the Civil Rules of this court.

A memorandum of the determination of a motion, together with a recital of the papers used thereon, and signed by the court or judge, shall constitute the order; but nothing herein contained shall prevent the court from making an order, either originally or on an application for a resettlement, in more extended form.

All motions other than in criminal or bankruptcy proceedings, all exceptions, all writs of habeas corpus other than in criminal proceedings, including deportation and exclusion, and all appeals from commissioners under the Chinese Exclusion Acts shall be heard on Tuesdays and Fridays in the motion part.

All demurrers, motions and writs of habeas corpus in criminal proceedings, removals under Revised Statutes, Sec. 1014 (18 U. S. C. Sec. 591) and extraditions shall be heard on Mondays in Criminal Part 1.

Bankruptcy motions and proceedings which are required to be conducted before a judge shall be heard on Wednesdays in the motion part.

Two adjournments by stipulation shall be allowed. Further adjournments shall be only for good cause shown.

12. Notes of Issue for Motions

Notes of Issue for all Motion Calendars except those heard in Criminal Part 1 must be filed at least two days before the calendar is called. Motions will not be placed upon the Motion Calendars unless notes of issue therefor

are filed as required by this rule. No motion will be added to Motion Calendars on the call thereof unless the Court on Special application otherwise order.

13. Applications for Remissions of Forfeitures of Bail Bonds

All applications for the remission of forfeitures of bail bonds must be made by motion on five days' notice to the United States Attorney, returnable on the Monday Criminal Motion Calendar.

Notes of issue thereon must be filed in the Clerk's office not later than the Friday preceding the return day.

14. Motions in Vacation

When no session is being held for the trial of Criminal causes, motions directed to be heard in Criminal Part 1 may be heard in the General Motion Part.

15. Naturalization Days

Mondays shall be stated days for hearing petitions of aliens to become citizens of the United States. If any Monday be not a day of jurisdiction, the hearings set for that day shall be held on a day fixed by the Court. Nothing in this rule, however, shall prevent the hearing of such petitions on any day by way of adjournment or upon special order, provided due notice be given to the applicants and the representatives of the Department of Labor.

16. Submission of Orders and Decrees

All orders, judgments and decrees submitted for settlement or signature must be presented to the Clerk at the Clerk's office and not sent to the Judge direct. Two days' notice of settlement is required in contested matters unless the form of order or decree be agreed upon and one day's notice is required of all counter proposals.

17. Clerk to Sign Certain Orders

The Clerk shall sign all orders of the classes prescribed below without submission to a Judge:

(a) Adjudications and discharges in bankruptcy not made by the referee and orders referring proceedings under Chapters XI, XII and XIII of the Bankruptcy Act to the Referee.

(b) Orders for the substituting of attorneys upon consent.

(c) In causes and proceedings other than Bankruptcy or judgment-creditor's bills, all orders extending the time on consent within which to plead or make any motion.

(d) In causes and proceedings other than Criminal, orders on consent extending the time to certify and file a transcript of record on appeal.

(e) Orders of discontinuance upon consent.

(f) Orders upon consent satisfying decrees and cancelling stipulations and bonds.

(g) Orders specially appointing persons 18 years old or over to serve the summons and complaint.

18. Petitions for Habeas Corpus in Exclusion and Deportation Cases

(a) Petitions for habeas corpus in exclusion and deportation cases, if the petitioner apply as next friend, must show either that the petitioner has been authorized by the alien to make the application, or that he is the father, son, husband or brother, or she is the mother, daughter, wife or sister of the alien.

(b) Writs will not be allowed unless the petition shows in exclusion cases that the alien has appealed from an order of exclusion of a board of special inquiry, and that the Secretary of Labor has affirmed the exclusion and ordered the alien deported; or in deportation cases that the Secretary of Labor has issued a warrant of deportation.

(c) Petitioner must state in detail what conduct of the exclusion or deportation authorities has deprived the alien of a fair hearing, and why he is entitled to land or to remain notwithstanding the order of exclusion or deportation. The petition must allege (1) that the petitioner or his attorney has learned the facts so stated from the record on file in the office of the Commissioner of Immigration or the Chinese Inspector, or (2) that access to such record has been refused, or (3) that the interval before notice to the alien of deportation and the time of the proposed deportation is too short to allow any examination of the record. In case it be alleged that access has been refused, the petition must state when application was made, and by whom and who refused inspec-

tion. In case it be alleged that the time is too short for examination, the petition must state the time when the alien was informed of the affirmance by or warrant of the Secretary of Labor and the time of the proposed deportation, and why the interval was not long enough to apply for examination of the record.

19. Service of the Writ

After delivery of an alien to the master of a ship for deportation, the writ shall be addressed to and served upon the master only. Notice to the respondent of the allowance or issuance of the writ will not be recognized as binding upon him without service. Service must be made by delivery of the original writ to the respondent, while the alien is in his custody, and may not be made upon a master after a ship has cast off from her wharf.

In case a writ be served upon a master, he may deliver the alien at once to the official from whom he received him, for custody until the return day. In such case the writ will be deemed returnable forthwith, and the custody of the official so receiving the alien will be deemed that of the Court, pending disposition of the writ.

20. Filing Petition and Serving U. S. Attorney in Habeas Corpus Cases

In all habeas corpus cases, the original petition must be filed with the Clerk, and in all such cases on deportation or exclusion or in Criminal proceedings or if an official of the United States be respondent a copy of the petition and of the writ must be served upon the United States Attorney, on the day upon which such writ is granted or, if granted after the closing of the Clerk's office, before 10:00 A. M. on the following day.

21. Publication of Advertisements

The publication of all advertisements in Civil actions and Admiralty, except notices of sale of real estate or of any interest in land, shall be made in the New York Post or the New York Law Journal, provided, however, that the Court in any given case may direct such additional advertisement as in its discretion may be deemed advisable.

Unless otherwise ordered, the following newspapers are designated for publication of notices of sale in such causes

of real estate or of any interest in land located as follows (28 U. S. Code, Section 849):

In New York County	New York Post and New York Law Journal
In Bronx County	The Home News and New York Law Journal
In Westchester County	The Herald Statesman
In Putnam County	Putnam County Republican
In Dutchess County	Poughkeepsie New Yorker (11/17, 42)
In Columbia County	Hudson Daily Star
In Greene County	Catskill Daily Mail
In Ulster County	The Kingston Daily Freeman
In Sullivan County	The Liberty Register
In Orange County	The Newburgh News
In Rockland County	The Journal News

22. Examination on *Voir Dire*

In criminal cases the Judge alone shall examine all jurors on their *voir dire*. If counsel desire examination as to any additional matter, he shall state the same, and the Judge, if the matter be proper in his opinion, shall further examine the jurors in respect thereof.

23. Exhibits

Except as otherwise provided for in F. R. C. P. 53(e) (1), exhibits shall not be filed with the Clerk, but shall be retained in the custody of the respective attorneys who produced them in Court, unless the Court otherwise order.

24. Sureties

In no case shall the Marshal or any of his deputies or any attorney of this Court be surety in any suit pending therein.

25. Bonds and Sureties Thereon

All surety companies holding certificates of authority from the Secretary of the Treasury as acceptable sureties on Federal bonds and which are either incorporated in the State of New York or have appointed process agents for the District, are hereby approved up to the amounts for which they are respectively authorized by the Treasury Department to act on any one bond, as sureties on stipulations for costs and value, undertakings, bail bonds and all other bonds required to be filed in the Court.

When the amount of bail pending an appeal in Criminal causes or habeas corpus proceedings, or after indictment or information in Criminal causes, has been fixed by a Judge, the Clerk or a Deputy Clerk may take such bail bond when the Surety thereon is one of the aforesaid approved surety companies, or when cash or United States Government bonds are deposited in the registry of the Court in lieu of sureties.

When individual sureties are offered on a bail bond, they shall be approved and the bail bond taken by one of the officers specified in Section 1014 of the United States Revised Statutes (18 U. S. Code, Section 591).

The approval of the Clerk or a Deputy Clerk of all other bonds and undertakings, except supersedeas and costs bonds on appeals, shall be sufficient where the sureties thereon are approved corporate surety companies and the amount of such security has been fixed by a Judge or by Court rule or statute.

26. Attendance of Defendants in Criminal Causes

A defendant in a Criminal prosecution admitted to bail shall not be required to attend any term of Court except upon notice from the United States Attorney.

27. Fines in Civil Causes

When a fine for the use of the United States is imposed by the Court other than by judgment or sentence in a Criminal cause, and the party fined is not thereupon committed, and such fine is not discharged, the Clerk shall at any time, upon the application of the United States Attorney, issue to the Marshal a warrant of execution requiring him to levy and make such fine of the goods and chattels, or in default thereof of the lands and tenements of the party.

Such fine may on application by the party, and sufficient cause shown and before the payment of the same out of Court, be mitigated or remitted.

The amount of all fines imposed, collected and paid into Court shall be accounted for by the Clerk with the United States Treasury.

28. Moneys Due the Collector of Customs

Where the Collector of Customs or any other officer of the United States is entitled to receive moneys in Court, the same after deduction of costs shall be paid him by the Clerk upon an order entered as of course.

29. Marshal's Commissions

In other than Admiralty causes the Marshal shall be entitled upon a settlement by the parties of the debt or claim without a sale of any property which may have come into his custody, pursuant to writ or process, to the like commissions as are provided for in Admiralty causes by Section 829 of the Revised Statutes (28 U. S. Code, Section 574).

30. Dismissals for Want of Prosecution

Causes which have been pending in this Court for more than one year without any proceedings having been taken therein during such year may be dismissed as of course, for want of prosecution, by the Court on its own motion, at a general call of such causes as the Court may, from time to time, direct to be included in a general call, notice of which call shall have been published in the New York Law Journal or otherwise given as the Court may direct. Such causes may also be dismissed for want of prosecution on motion by any party upon notice to the other parties. Notices of dismissal by the Court on its own motion shall be given by mail by the Clerk to the attorneys of record for all parties who have appeared in the cause. For the purpose of a motion to vacate such a dismissal by the Court of its own motion, the term of Court at which the cause was dismissed is extended until thirty days from the date of such mailing of notice by the Clerk.

Where the Court has reason to believe that a suit is brought for any purpose other than to obtain the earliest possible adjudication by the Court of the issues involved, either or both parties may be required to show cause why the case should not be put on immediate trial or be dismissed and stricken from the Calendar. Such order to show cause may issue on the motion of the Court or of any attorney of record.

31. Entering Satisfaction of Judgments or Decrees

Whenever the amount directed to be paid by any judgment or decree together with interest and the Clerk's statutory charges, shall be paid into Court, the Clerk shall enter satisfaction of said judgment or decree.

The Clerk shall enter satisfaction of any judgment or decree on behalf of the United States on filing acknowledgment of satisfaction thereof by the United States Attorney; in other cases, upon filing acknowledgment of satisfaction made by the judgment-creditor or his attorney, solicitor or

proctor, within two years from the entry of the judgment or decree, and thereafter upon acknowledgment by the judgment-creditor or by his legal representatives or assigns with evidence of their authority.

32. Bail Bonds Taken by United States Commissioners in Removal Proceedings

In the removal proceedings United States Commissioners, approving bail bonds for the appearance of the accused in the District Court of the District in which the offense charged is alleged to have been committed and in which the accused is to be tried, shall forthwith send the original bail bond, together with a certified transcript of the removal proceedings, to the Clerk of the said District Court, said Commissioner retaining in his files an exact copy of such bond. For transmitting such bond and transcript the Commissioner shall be entitled to fees as prescribed by Section 597, Title 28, United States Code.

33. Court Reporters

The court reporters appointed pursuant to the statute in such case made and provided, shall make such arrangements as may be necessary so that one of them shall attend at each session of the court and at every other proceeding that may be designated by rule of procedure or order of court or by one of the judges of the court, and shall record verbatim by shorthand or by mechanical means (1) all proceedings in criminal cases had in open court, whether in connection with plea, trial, or sentence; (2) all proceedings in all other cases had in open court unless the parties with the approval of the sitting judge shall specifically agree to the contrary; and (3) such other proceedings as a judge of the court may direct or as may be required by rule of procedure or order of the court or as may be requested by any party to the proceeding. The reporter shall attach his official certificate to the original shorthand notes or other original records so taken and promptly file them with the clerk of the court, who shall preserve them in the public records of the court for not less than ten years. Upon the request of any party to any proceeding which has been so recorded and who has agreed to pay the fee therefor or of a judge of the court, the reporter shall promptly transcribe the original records of the requested parts of the proceedings and attach thereto his official certificate, and shall then deliver the transcript to the party or judge making the re-

quest. He shall also transcribe and certify all pleas and proceedings in connection with the imposition of sentence in criminal cases and such other parts of the record of proceedings as may be required by rule of procedure or order of court. The reporter shall promptly deliver to the clerk for the records of the court a certified copy of any transcript that he may make of any part of the record of any proceeding. The transcript of the testimony and proceedings in any case when duly certified by such reporter shall be deemed prima facie a correct statement of such testimony and proceedings. No transcripts of the proceedings of the court shall be considered as official except those made from the records taken by the reporter so appointed. The said original notes or other original records and the said copy of transcript shall be open to inspection in the office of the clerk as provided by law with respect to books containing the docket or minute of judgments, or decrees thereof.

The reporter may charge and collect from parties, including the United States, who request transcripts, such fees therefor and no other, as may be prescribed from time to time by the court subject to the approval of the Judicial Conference. No fee shall be charged or taxed for any copy of a transcript delivered to the clerk for the records of court as required above. Fees for transcripts furnished in criminal or habeas corpus proceedings to persons allowed to sue, defend, or appeal in forma pauperis shall be paid by the United States out of money appropriated for that purpose; and the fees for transcripts furnished in other than criminal or habeas corpus proceedings to persons permitted to appeal in forma pauperis shall also be paid by the United States if the trial judge or circuit judge shall certify that the appeal is not frivolous but presents a substantial question. Except as to transcripts that are to be paid for by the United States, the reporter may require any party requesting a transcript to prepay the estimated fee therefor in advance of delivery of the transcript.

34. Settlement of Claims of Infants and Incompetents and Disposition of Funds

No claim or cause of action of an infant or incompetent shall be settled or compromised without leave of the court

embodied in an order. The papers upon any application to settle or compromise shall conform, as near as may be, to the practice then required by the laws and rules of the State of New York upon similar applications (See New York Civil Practice Act, section 980-a, Rule 294 of the Rules of Civil Practice, and section 271 of the New York Surrogates Court Act). A certificate of any depositary or receipt of payment, properly authenticated, showing compliance with any order made by the court upon such application, shall forthwith be filed with the clerk of this court.

CALENDAR RULES

1. Calendar Judge

The Senior District Judge, or in event of his illness, incapacity or absence from the District, the Acting Senior District Judge, shall act as Calendar Judge. All motions with relation to the calendar, and all questions regarding the same or the Calendar Commissioner's office, shall be referred to the Calendar Judge who will hear motions and matters in relation to the calendar at 10:30 A. M. and 2:00 P. M. on each week day other than Saturdays.

2. Attorneys, Solicitors and Proctors

The word "attorney" as used in these rules shall include a proctor of record. Any and all notices given under these rules to attorneys of record shall be binding on counsel and advocates.

3. Causes Under Calendar Rules

These rules shall apply to Civil and Admiralty causes, but not to Criminal causes.

4. Calendar Commissioner

The Senior District Judge shall appoint an official called the Calendar Commissioner, whose office shall be a subdivision of the Clerk's office.

The Calendar Commissioner shall have charge of the assignment for trial of all causes to which the Calendar Rules apply, shall provide the Court with causes ready for trial and shall act under the direction of the Calendar Judge.

5. Deputies in Each Court Room

The Clerk shall provide a deputy in each court room who shall be present during session hours, shall attend to the clerical details pertaining to the trial of causes and shall perform such other duties as shall be prescribed by the Calendar Commissioner.

6. Permanent Calendars

The Calendar Commissioner shall keep in dockets in his office three calendars of causes awaiting trial, one consisting

of admiralty causes, one of other non-jury causes and the third of jury causes. Each cause shall be designated in a record by its title and by a serial number, which shall be given to it by the Calendar Commissioner. In these calendars the calendar status of each cause shall be kept up to date. These records shall be open to the public during business hours on all days except Sundays and legal holidays. Upon one calendar shall be placed all jury causes raising issues of fact of a civil nature, including issues in Bankruptcy proceedings triable by jury; upon the second calendar shall be placed all admiralty causes, and upon the third calendar all other non-jury causes of a civil nature, causes wherein trial by jury has been waived and jury-of-one causes.

7. Filing Pleadings or Process

All pleadings or process shall be filed with the Clerk. Every cause shall be deemed at issue upon the filing of the answer or similar pleading.

8. Placing Causes on Calendars

Immediately after twenty days have elapsed since joinder of issue in all causes (except one pending before a master or commissioner and except a proceeding in Bankruptcy) the Clerk shall notify the Calendar Commissioner. In a Bankruptcy proceeding, wherein a jury trial of issues raised by the answer is demanded, the Clerk, immediately upon receipt of written notice from the person demanding such trial with proof of service of such notice on all opposing attorneys, shall notify the Commissioner. In each instance the Clerk shall, at the same time, inform the Commissioner of the docket number, full title, names of attorneys of record, nature of issue and date of issue joined. Thereupon the Calendar Commissioner shall place each such cause or proceeding upon the calendar in the order in which he has been so notified by the Clerk.

When any cause or proceeding already on the calendar is terminated or discontinued otherwise than by order made or other action taken in a trial part, the Clerk shall immediately notify the Calendar Commissioner, who shall thereupon drop it from the calendar.

No notice of trial need be served and no note of issue need be filed in any cause.

9. Case Records

When a cause is placed on the calendar, the Calendar Commissioner shall open a record in such form as he shall elect, entitled in the cause, upon which he shall enter, from time to time, its calendar history. This record shall be sent to the trial part by the Calendar Commissioner when the cause is assigned for trial.

10. Return of Case Records

When a cause is returned to the Calendar Commissioner for any reason, the Deputy Clerk in the trial part shall return the case record forthwith to the Calendar Commissioner, after having made proper notation thereon as to the reason for such return.

11. Publication of Permanent Calendars

Except as otherwise directed by the Calendar Judge, the Calendar Commissioner shall publish at such times as he deems proper, between July first and September fifteenth of each year, the calendar numbers or the titles, or both, of such a number of causes on the permanent calendars, in their order on such calendars, as, in the Commissioner's judgment, may be tried within the year beginning on the first day of the ensuing October Term.

The Commissioner in his discretion may publish from time to time additions to the published permanent calendars.

12. Day Calendars

At least three days before the opening of the October term of court, and on each court day thereafter, except as otherwise directed by the Calendar Judge, the Calendar Commissioner shall prepare and publish by name and number, three day calendars, one of jury causes (called jury day calendar), one of admiralty causes (called admiralty day calendar), and the third of other non-jury causes (called non-jury day calendar), each of which shall contain such number of causes taken from the head of the calendars as he sees fit.

13. Reserve Calendars

At least three days before the opening of the October term of court, and on each court day thereafter, except as otherwise directed by the Calendar Judge, the Calendar Commissioner shall publish by name and number three reserve

calendars, one of jury causes (called Jury reserve calendar), one of admiralty causes (called admiralty reserve calendar), and the third of other non-jury causes (called non-jury reserve calendar), which shall contain such number of causes as he sees fit, taken in their numerical order, from the permanent calendars, just behind those listed on the day calendars, in the order in which they appear on the calendar records.

Causes may be taken in their consecutive order on the permanent calendars, by the Calendar Commissioner from the permanent calendars, whether published or not, and added to the published reserve calendars at any time.

14. Adjournment of Causes

(a) Adjournment of Causes on Reserve Calendars.

Causes appearing on reserve calendars (but not those on permanent calendars) may be postponed on written consent of all attorneys of record by use of an "adjournment slip" in such form as the Calendar Commissioner shall specify. Adjournment slips shall not be effective unless approved in writing by the Calendar Commissioner. Adjournment slips, when so approved by and filed with the Calendar Commissioner, shall automatically postpone the trial to the adjourned date indicated on the slip. All adjournment slips shall be filed with the Calendar Commissioner not later than 3:00 P. M. on the last Court day before the day on which the cause is published on the day calendar. Only three adjournments by consent shall be allowed. Under no circumstances shall the name of an opposing attorney be signed to an adjournment slip without authority, and the name of the person authorizing such signature shall appear thereon. In the event an opposing attorney does not consent that a cause on the reserve calendar be passed, an application for a continuance may be made in writing to the Calendar Judge, with notice to the other side of the time and place the application is to be made. If the adjournment be asked upon the ground of the absence of a material witness, the attorney making the application shall file with it an affidavit setting forth what he expects to prove by such witness, and also what acts of diligence he has employed to procure the attendance of such witness. If the Court finds the testimony is material and that due diligence has been used, the cause may be passed to a later date unless the opposing attorney consents to the reading of such affidavit in evidence, in which event the trial shall proceed and the affidavit may be read

on the trial and treated as the deposition of an absent witness.

(b) *Adjournment of Causes on Day Calendars.*

A cause appearing on the day calendar may not be adjourned except for good cause arising after it has been published on the day calendar. If there be such good cause, written application must be made forthwith to the Calendar Judge, with notice to the other side of the time and place the application will be made. All orders granting or denying applications for adjournments shall be filed immediately in the Calendar Commissioner's office.

(c) *Holding Causes on Day Calendars.*

Causes may be held in place on the day calendars by the Calendar Commissioner when counsel are actually engaged as provided in these rules.

(d) *Adjournment of Causes After Assignment to Trial Room.*

Each case assigned to a trial room shall be tried or dismissed. In the exceptional instance where good cause for adjournment has arisen since the closing of Court on the preceding day, application for appropriate adjournment may be made to the Calendar Judge only, unless the trial actually shall have begun, when such application may be made to the Trial Judge. If the application be denied, the cause shall proceed forthwith to trial. If the application be granted, the cause shall be returned forthwith to the Calendar Commissioner's office and the adjourned date noted on his records. The reason for any continuance, if granted, must be entered on the case record, together with the name of the party seeking continuance or such other disposition as shall have been made, and the record returned forthwith to the Calendar Commissioner.

(e) *Position of Adjourned Causes.*

Causes which have been adjourned by consent or order to a definite date, pursuant to this rule, shall be added to the foot of the reserve calendar for the adjourned date, unless otherwise directed in the order.

**15. Calendar Commissioner's Communication
with Attorneys by Telephone**

During each day that the Court is in session, the Calendar Commissioner, personally or by his assistants, shall tele-

phone to the attorneys of record in the causes which are to appear on the day calendar for the following Court day and shall inquire whether they are to be tried, settled or discontinued, and shall provide an adequate calendar for the following day.

If any disposition of a cause results from such telephone calls other than to mark it ready for trial, an entry shall be made on the case record and in the docket in the Calendar Commissioner's office of such disposition, together with the name of the attorney of record authorizing such action.

16. Information Concerning Causes on Trial

The Calendar Commissioner shall post on bulletin boards in his office information which shall indicate approximately the status of each cause on trial in each trial room at all times, and the clerks in the court rooms shall report the progress of trials to the Calendar Commissioner as directed by him. The Calendar Commissioner's office shall answer all inquiries by telephone or otherwise as to the disposition or status of the causes on the calendars and on trial, and so far as possible as to the number of causes ready ahead of any particular cause awaiting trial, and shall co-operate in all reasonable ways with the Bar in facilitating the bringing of issues to trial so far as the calendars are concerned.

17. Notification of Attorneys in Next Ready Causes

The Calendar Commissioner shall keep informed as to the progress of each trial, and when a trial part is, or is about to be, disengaged, he shall notify the attorneys of record in the next ready cause on the day calendar by telephone to report in a designated trial room, in such manner that they will have reasonable opportunity to reach there in time; but the burden of responsibility for the appearance of attorneys, parties and witnesses, in Court in readiness for trial, is on the attorneys of record and is not on the Calendar Commissioner.

Attorneys of record shall keep the Commissioner informed of their telephone call numbers, and when they have causes on the day calendar they shall hold themselves within telephone call and report forthwith in the trial room on notice being given to their offices by the Calendar Commissioner's office. The time of notification shall be indicated on the case record.

Attorneys of record shall advise the Commissioner, upon his request, regarding their readiness for trial, probable

duration of trial and such other matters within their knowledge as may facilitate the performance of his duties and the prompt trial of causes.

18. Engagements of Counsel

Causes shall not be assigned to a trial room when counsel therein are actually engaged in such courts and in such proceedings as the Calendar Judge shall permit such engagements to be recognized. A cause may hold its place during any day to an hour fixed by all the attorneys of record with the approval of the Calendar Commissioner. The Calendar Commissioner shall post upon bulletin boards in his office the names of all counsel in causes published on the day calendar, who report themselves as actually engaged.

19. Settlement or Discontinuance of Causes on the Calendar

Where parties to any cause have settled the same, or have stipulated its dismissal, the attorneys of record shall at once enter the proper order. Where the cause is on the day calendar, notice of such settlement or dismissal shall be given forthwith to the Calendar Commissioner.

20. Preferences

The following causes only shall be entitled to preferences:

- (a) Causes entitled to a preference under any statute of the United States (F. R. C. P. 40).
- (b) Issues in bankruptcy framed by an answer (demanding a jury trial) to any bankruptcy petition.
- (c) Causes restored to the calendar for a new trial by the setting aside of a former verdict, by reversal of a former judgment or after a mistrial.
- (d) Causes to which any receiver appointed by any court or any trustee in bankruptcy is a party.
- (e) Causes which, in the judgment and discretion of the calendar judge, are entitled to a preference for exceptional and meritorious reasons.

Such preferences shall be obtained only by order of the Calendar Judge upon two days' notice of motion and a cause so preferred shall be placed at the foot of the reserve calendar for a day certain, unless the order otherwise direct.

21. Juries

Under direction of the Calendar Judge, jurors for all trial parts (including the Criminal parts) shall be assembled in one room and shall be under the supervision of the Calendar Commissioner. Sufficient numbers shall be sent by the Calendar Commissioner to each trial part to be empanelled when and as required. The jury wheel shall be kept in the Calendar Commissioner's office and, except as the Calendar Judge shall otherwise direct in special cases, all juries shall be drawn there by the Calendar Commissioner or by his deputy. On request by attorneys of record in any cause, the Calendar Commissioner shall notify them of the time of the drawing, in such manner as to provide a reasonable opportunity for them to be present. The drawing of jurors always shall be public, and may be attended by anyone who so desires.

22. Subpoenas

All subpoenas shall be made returnable at the Court, with a direction to the witness to appear in the Calendar Commissioner's office for information as to the trial room in which the cause in which he has been subpoenaed is to be tried. The Calendar Commissioner may arrange with any witness for telephone call to him upon the assignment of the cause to a trial room or make other arrangements to accommodate witnesses as seem to him proper.

CIVIL RULES

Pursuant to Rule 83 of the Rules of Civil Procedure for the District Courts of the United States, the following rules have been promulgated for the regulation of the practice of the United States District Court for the Southern District of New York in all suits of a civil nature whether cognizable as cases at law or in equity, with the exceptions stated in Rule 81 of said Rules of Civil Procedure. Said rules are hereinafter referred to by the initials F. R. C. P. (Federal Rules of Civil Procedure). The following rules may be cited as Civil Rules (C. R.).

RULE 1—Action to abate if defendant not served

The summons and complaint must be served on each defendant within three months after the issuance of the summons. Unless a defendant has been served within said time, or has appeared generally in the cause, the action against him shall abate; provided, however, that a plaintiff whose time to effect service has not expired may from time to time, for good cause shown, procure an order extending his time to serve the summons and complaint for such further period as the court may direct.

RULE 2—Appearance

A defendant against whom a summons has been issued may appear regardless of the plaintiff's failure to serve the summons upon him. An appearance is made by the service of a notice thereof, or by the service of any motion or pleading purporting to be responsive to, or affecting the complaint.

RULE 3—Pleadings to be filed

All pleadings after the complaint must be immediately filed after service. In the event of failure to file such a pleading within five days after notice from any party to do so, the court may strike such pleading on motion.

RULE 4—Form of Order

It shall not be necessary to state in the caption of any order of the court that it was made at any term. An order shall be dated as of the date of its signing, which date may appear at the foot thereof.

RULE 5—Requisites for *ex parte* Order

No *ex parte* order shall be granted, unless based upon an affidavit showing cause therefor, and stating whether or not a previous application for similar relief has been made.

RULE 6—Service of *ex parte* Order

Wherever the court has made an *ex parte* order, the party obtaining it shall serve a copy thereof, and of the papers upon which it was based, within two days thereafter upon each adverse party who has appeared in the cause and is affected thereby; except that an order to show cause shall be served within the time limited by the order.

RULE 7—Orders to be filed

All orders whether made on notice or *ex parte*, other than orders to show cause and orders for the issuance of a subpoena *duces tecum*, shall be filed forthwith in the office of the clerk.

RULE 8—Address of party to be furnished

Any party shall, upon demand of any other party, furnish such other party with his residence address, in default whereof the Court on an *ex parte* application shall order the furnishing of such information.

RULE 9—Enforcement of Stipulations

The court shall not be required to enforce stipulations affecting the proceedings in any civil action unless such stipulations are in writing, signed by the parties or their attorneys, or unless such stipulations are made in open court.

RULE 10—Further Statement or Bill of Particulars

Where an order is granted under F. R. C. P. 12 (e) for a more definite statement, or for a bill of particulars, and the pleading or bill which is served in purported compliance therewith fails to meet the terms of the order, a party before applying for other relief may make a motion for a further statement or bill.

RULE 11—Notification of Claim of Unconstitutionality

If at any time prior to the trial of a cause to which neither the United States nor any officer, agency or employee thereof

is a party, any party to the cause draws in question the constitutionality of an Act of Congress affecting the public interest, each party (to enable the court to comply with Section 1 of the Act of August 24, 1937, C. 754, 50 Stat. L. 751) shall notify the Senior District Judge, in writing, of the existence of said question, and in such notification shall give the title of the cause, a reference to the questioned statute sufficient for its identification, and the respects in which it is claimed that the statute is unconstitutional.

**RULE 12—Counsel fees on taking depositions
in certain cases**

In the case of a proposed deposition upon oral examination at a place more than 150 miles from the court-house, including the case of a deposition before action or pending appeal, the court may provide in the order therefor, or impose as a condition of denying a motion to vacate a notice thereof, that the applicant shall pay the expense of the attendance of one attorney for the adversary party or parties, or expected party or parties, at the place where the deposition is to be taken, including a reasonable counsel fee, which amounts shall be paid prior to such examination. The amount paid by such applicant to his adversary on account of attorney's fees and expenses shall be a taxable disbursement in the event that the applicant recovers costs of the action.

Where, pursuant to F. R. C. P. 27 (a) (2), the court appoints an attorney to represent an absent expected adverse party and cross-examine the proposed witness, the order appointing such attorney shall fix his compensation to include his expenses, and such compensation shall be paid by the petitioner prior to the appearance of such attorney upon the examination.

RULE 13—Manner of taking Deposition

The officer before whom a deposition is being taken pursuant to F. R. C. P. 26, 27 or 29, may continue the same from day to day until it is completed, except that an examination shall not be had on Sunday, or unless by consent of the parties and witness, on Saturday or a legal holiday. Where a witness is physically unable to attend the place of examination, the officer may continue the examination to the residence or other place of the witness, or he may adjourn the same from time to time, but, except by consent,

for not more than one week at a time. The officer before whom an oral examination is to be had shall be provided by the party procuring the same with a copy of the notice or order of examination, as well as of any other order made pursuant to F. R. C. P. 30 (b). The officer shall also be provided with a copy of this rule and of the following rules: F. R. C. P. 26 (c), 28 (c), 30 (c), (d), (e) and (f).

Upon receipt of a deposition the clerk, unless otherwise ordered, shall open and file it forthwith and give notice thereof by mail to the attorneys for the respective parties.

RULE 14—Further answer to interrogatory

Where an answer to any interrogatory made under F. R. C. P. 33 is incomplete or not responsive, or where the oath to such answer has been omitted, a party aggrieved may, before applying for other relief, apply for an order directing that a further answer be served.

RULE 15—Order for Subpoena Duces Tecum for Deposition

An order for the use of a subpoena commanding the production of documentary evidence on the taking of a deposition may be granted without notice or affidavit, and may be in the form of an endorsement on the subpoena of the words "So ordered" with the date and signature by the judge.

RULE 16—Contempt Procedure

A proceeding to adjudicate a person in civil contempt of court, including a case provided for in F. R. C. P. 37 (b) (2) (IV), must be initiated by the service of an order to show cause. The affidavit upon which such order is based shall set out with particularity the misconduct complained of, the claim, if any, for damages occasioned thereby, and the evidence upon which the amount of such damages may be determined. A reasonable counsel fee, necessitated by the contempt proceeding, may be included as an item of damage. Where the alleged contemnor has appeared in the action by an attorney, the order to show cause and the papers upon which it is based may be served on his attorney; otherwise, service must be made personally, in the manner provided for by the Federal Rules of Civil Procedure for the service of a summons. The order to show cause may, upon necessity shown therefor, embody a di-

rection to the United States Marshal to arrest the alleged contemnor and hold him in bail in an amount fixed by the order, conditioned for his appearance at the hearing, and further conditioned that the alleged contemnor will hold himself thereafter amenable to all orders of the court for his surrender.

If the alleged contemnor puts in issue his alleged misconduct or the damages thereby occasioned, he shall, upon demand therefor, be entitled to have oral evidence taken thereon, either before the court or before a master appointed by the court. Where under the statutes of the United States such alleged contemnor is entitled to a trial by jury, he must make written demand therefor on or before the return day or adjourned day of the order to show cause; else he will be deemed to have waived such jury.

An order adjudicating a person in contempt of court shall recite the papers and proceedings on the motion, and shall embody the findings of fact upon which the adjudication and quantum of damages are predicated; shall specify the grounds of the adjudication; shall fix the fine, if any, inflicted by the court, which fine shall include the damages found, and name the person to whom such fine is payable; shall state the other conditions, if any, the performance whereof will operate to purge the contempt, and shall direct the arrest of the contemnor by the United States Marshal, and his confinement until the performance of the condition fixed in the order and the payment of the fine, or until the contemnor be otherwise discharged pursuant to law. Unless the order otherwise specifies, the place of confinement shall be the Federal House of Detention. No party shall be required to pay or to advance to the marshal any expenses for the upkeep of the prisoner. Upon such an order, no person shall be detained in prison by reason of the non-payment of the fine for a period exceeding six months. A certified copy of the order committing the contemnor shall be sufficient warrant to the marshal for the arrest and confinement. The aggrieved party shall also have the same remedies against the property of the contemnor as if the order awarding the fine were a final judgment.

Where it is sought to adjudicate a person in criminal contempt for misconduct committed elsewhere than in the immediate presence or hearing of the court, such proceeding shall be brought by the United States Attorney in the name of the United States.

RULE 17—Agreement on a Master

The parties to any civil action may stipulate in writing for the appointment of a master to report upon particular issues, or upon all the issues. Such stipulation may suggest the master, in which case the court may appoint the person named. The procedure governing such a reference shall be the same as that governing any other reference to a master.

RULE 18—Certain directions of Master to be in writing

A direction by a master to a party to produce evidence as provided in F. R. C. P. 53 (c), or prescribing the form of account as provided in 53 (d) (3), shall, at the request of any party, be reduced to writing in the form of an order dated and signed by the master, who shall furnish a copy thereof to all parties to the hearing. The original of such order shall, at the request of any party, form a part of the record returned by the master with his report.

RULE 19—Master may sit outside District

A master may sit outside the district as well as within it. Where he is requested so to do for the convenience of one of the parties and there is opposition thereto by another party, he may make an order for the holding of the hearing, or a part thereof, outside of the district, upon such terms and conditions as shall be just.

RULE 20—Findings of Fact

All findings of fact by the court or a master shall be embodied in consecutively numbered paragraphs, the contents of which shall be limited as far as practicable to a single set of circumstances. The court in passing upon the report of a master shall be deemed to have adopted the findings of fact enumerated in the report, except where the order of the court rejects the report in its entirety, or except to the extent that it specifically rejects enumerated findings.

RULE 21—Master's fees taxable

After a master's compensation has been fixed by the court, and his disbursements allowed, the prevailing party may pay such compensation and disbursements, and such payment shall thereupon be a taxable disbursement against the defeated party or parties. Where, however, the court shall have directed by order the parties against whom, or the

proportion in which such compensation and disbursements shall be charged, or the fund or subject-matter out of which they shall be paid, the party making such payment to the master shall be entitled to tax such disbursement only against such parties and in such proportions as the court shall have directed, and to payment of such taxable disbursement only out of such fund or subject-matter as the court shall have directed.

RULE 22—Entering Judgment

An order was entered on October 1, 1945, annulling Civil Rule 22 of this court.

[NOTE.—The procedure for entry of judgment is governed by Rule 58 of the Federal Rules of Civil Procedure. Unless the court otherwise directs, judgment upon the verdict of a jury will be entered forthwith by the clerk. When the court directs the entry of a judgment that a party recover only money or costs, or that there be no recovery, the clerk will enter judgment forthwith upon receipt by him of the direction. The form of the judgment will be prepared by the clerk. In all other cases described in FRCP-58, the form of judgment will be prepared by the attorneys as at present. Costs must be promptly taxed in all cases.]

RULE 23—Default Judgment by Clerk

When a party is entitled to have the clerk enter judgment by default pursuant to F. R. C. P. 55 (b) (1), he shall submit with his form of judgment a statement showing the principal amount due, which shall not exceed the amount demanded in the complaint, giving credit for any payments and showing the amounts and dates thereof, a computation of interest to the day of judgment, and the costs and taxable disbursements claimed, to which statement shall be appended an affidavit of the party or his attorney (1) that the party against whom judgment is sought is not an infant or an incompetent person; (2) that he has made default in appearance in the action; (3) that the amount shown by the statement is justly due and owing and that no part thereof has been paid; and (4) that the disbursements sought to be taxed have been made in the action, or will necessarily be made or incurred therein. The clerk shall thereupon enter judgment for principal, interest and costs.

RULE 24—Default Judgment by Court

Where it is necessary to apply to the court for the entry of a default judgment, the application shall be accompanied by a certificate of the clerk of the entry of the default, and by a copy of the pleading to which no response has been made.

Where the amount of damages claimed is unliquidated, the applicant shall submit an affidavit, setting forth the evidentiary matter necessary to enable the court to fix the amount of the damage. If notice of the application for the default judgment is necessary, then the party against whom the motion is made may submit proof by affidavit in opposition to that of the applicant on the question of damages. The court may, thereupon, render judgment on the record before it, or order oral testimony on the question of damages to be produced before the court or before a master appointed by the court.

In all other cases, unless the court otherwise directs, judgment by default may be entered in accordance with the case made out by the pleading, and in accordance with the prayer thereof.

RULE 25—Additional copies for the Clerk

Whenever an order of reference to a master is made, the attorney procuring the signing of the order shall, at the time of the filing thereof, deposit with the clerk a copy to be furnished to the master.

Upon the filing of his report the master shall furnish the clerk with sufficient copies of a notice of filing thereof, addressed severally to the parties or their attorneys, to enable the clerk to mail copies to them.

All notices of appeal shall exhibit the names of the several parties to the judgment, and the names and addresses of their respective attorneys of record. Upon the filing of a notice of appeal, the appellant shall file a sufficient number of copies thereof to enable the clerk to comply with the provisions of F. R. C. P. 73 (b).

Whenever a notice of motion to enforce the liability of a surety upon an appeal or a supersedeas bond is served upon the clerk pursuant to the provisions of F. R. C. P. 73 (f), the party making such motion shall deposit with the clerk one additional copy for each surety to be served.

Whenever an order or judgment is entered, the attorney causing the entry thereof shall append to or endorse upon the order or judgment a list of the names of the parties

entitled to be notified of the entry of such judgment or order, and the names and addresses of their respective attorneys.

[NOTE.—The clerk will give notice of the entry of orders and judgments as required by Federal Rule of Civil Procedure 77(d) instead of mailing copies of such orders and judgments. Attorneys will no longer be required to furnish the clerk with such copies.]

**RULE 25-A—Certificate of the Court in actions involving
Emergency Price Control Act of 1942**

In any action wherein a party relies for ground of relief or defense upon the Emergency Price Control Act of 1942, Public Law 421, 77th Congress, or any regulation, order, price schedule, requirement, or agreement thereunder, the said party shall, at the time of filing a pleading alleging such reliance, file with the clerk in triplicate a "Certificate of Court to Price Administrator under Section 205 (d) of the Emergency Price Control Act of 1942," for use in notifying the Administrator of such action and to enable the Administrator to determine whether he will intervene. The certificate shall be prepared for the signature of the clerk and shall refer specifically to the provisions of said act and to the particular regulation, order, price schedule, requirement or agreement thereunder on which the said party relies for relief or defense. Said certificate shall be signed by the clerk and two copies mailed to the Regional Attorney of the Office of Price Administration, who shall have thirty days from the date of mailing thereof within which to file a petition to intervene.

**RULE 25-B—Service of papers upon the
Price Administrator**

In any action to which the Price Administrator, the office of Price Administration, or any officer thereof, is a party, all papers required to be served thereon shall be furnished in triplicate.

RULE 25-C—Removed Actions

Upon the filing in this Court of the transcript of the record of an action begun in a State Court, and removed therefrom to this Court, the removant shall at the same time, give written notice of the filing of such record to all other parties to the action.

of any real estate within any town or city, the termini of any railroad and a general statement of the character of any improvements upon the property shall be set out.

RULE 28—Supersedeas

An appellant desiring to stay the enforcement of a judgment for a sum of money only may, *ex parte*, present for approval a *supersedeas* bond as required by the provisions of F. R. C. P. 73 (d). The bond shall be in the amount of the judgment, plus 11 per cent to cover interest and such damages for delay as may be awarded, plus \$250 to cover costs. The bond must be in the form provided for by said rule, and properly executed and acknowledged. The bond may be executed by the surety only. If the bond is executed by individual sureties, said sureties shall severally attach their affidavits of justification, which shall state their full names, residences, occupations and business addresses, that their several net worths exceed twice the amount of the bond over and above any obligations as surety assumed by them on other bonds or undertakings, which also shall be stated. When the stay may be effected solely by the giving of the *supersedeas* bond, but the judgment or order is not solely for a sum of money, the court shall make its order on notice fixing the amount of the bond. In all other cases, it may grant a stay on notice on such terms as to security and otherwise as it may deem fit and proper.

Upon approval, a bond given to effect a stay pending appeal shall be filed with the clerk, and a copy thereof, with notice of filing, promptly served on all parties affected thereby. The appellee may raise objections to the form of the bond or to the sufficiency of the surety for determination by the court.

RULE 29—Designation of part of Reporter's Transcript for Appeal

If the appellant's designation of the portions of the record to be contained in the record on appeal includes only part of the reporter's transcript, and if the appellant fails to file two copies of additional parts thereof sufficient to enable the appellee to designate the parts he desires to have added, the appellee within five days of the appellant's designation may serve notice upon the appellant to furnish the additional parts needed, and the time within which the appellee may file his designation shall thereupon be extended ten days beyond the time of the filing of two copies of the additional parts of the transcript with service of a notice of the filing thereof.

RULE 30—Abridgment of Exhibits

Where an appellant desires to abridge an exhibit pursuant to F. R. C. P. 75 (e), he shall serve with his designation, a statement indicating the matter to be omitted therefrom, as well as any matter to be stated in lieu thereof.

RULE 31—Record on Appeal

For the purpose of enabling the clerk to transmit to the appellate court the record on appeal, as required by F. R. C. P. 75 (g), the appellant, within thirty days after the appeal has been taken, shall serve upon the appellee a typed or printed copy of the proposed record on appeal, to accord with the designations filed by the parties, and within the provisions of F. R. C. P. 75 (g). Unless a motion pursuant to F. R. C. P. 75 (h) to correct the proposed record in any respect is made returnable within ten days of such service, two typed or printed copies of the record as proposed shall be filed with the clerk, one of which may be certified by him and filed in the appellate court. If a motion to correct is granted, two copies, as ordered to be corrected, shall be filed with the clerk within five days of such order.

If the appellant attaches to a copy of the record filed by him with the clerk a stipulation of the parties to the appeal that the copy so filed is a true transcript of the record of the District Court as agreed upon by the parties, the clerk shall certify the same as the record on appeal, without charge therefor except such as may lawfully be made for the certificate itself. Such stipulation shall form part of the record on appeal.

RULE 32

[Vacated January 22, 1941. See General Rule 33.]

RULE 33

[Vacated May 18, 1942. See General Rule 34.]

RULE 34—Procedure in absence of rule

Whenever a procedural question arises which is not covered by the provisions of any statute of the United States, or of the Federal Rules of Civil Procedure, or of these rules, it shall be determined, if possible, by the parallels or analogies furnished by such statutes and rules. If, however, no such parallels or analogies exist, then the procedure heretofore prevailing in courts of equity of the United States shall be applied; or in default thereof in the discretion of the court, the procedure which shall then prevail in the Supreme Court of the State of New York may be applied.