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## Bender's Federal Practice Forms. Edited by Louis R. Frumer.

David R. Kochery

*University at Buffalo School of Law*

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## BUFFALO LAW REVIEW

The two final chapters of the text deal with Bankruptcy arrangements, compositions and Corporate Reorganization. It is needless to state that the reader is merely afforded a fleeting glance of these rather complicated aspects of the Bankruptcy Act. Numerous volumes have been published on these specific phases of the Act but, as stated at the outset, the objective of the treatise is to afford a guide to the general practitioner rather than a reference to the specialist.

The author appears to have met with his greatest success in those portions of the text treating the application of the existing substantive state law as it affects the administration of the Bankruptcy Act. Although the author cites numerous leading cases on the topics under discussion, the reader fails to appreciate their value, because the facts submitted are overly brief and concise. The net result is that the synopses of the leading cases do not serve the intended purpose, the author having sacrificed his objective for the sake of brevity.

This text book has been written with an eye to the practical problems which arise daily in the practicing lawyer's office. It is a handy reference and useful guide on the various topics discussed, and should receive widespread acclaim from the general practitioner.

*David J. Goldstein*

Attorney at Law  
Lecturer  
University of Buffalo Law School

BENDER'S FEDERAL PRACTICE FORMS. Edited by Louis R. Frumer. Albany: Matthew Bender & Co. 1951-1953. 5 vols. (1-4 received). \$18.50 per vol.

This set of volumes combines a large number of legal forms with footnoted analyses of some of the procedural and substantive problems raised in each particular form or set of forms. This reviewer has received only four of what is anticipated to be a five-volume work, the last of which is intended to contain forms for use under the Federal Rules of Criminal Procedure. The first four volumes deal with forms appropriate under the 86 Federal Rules of Civil Procedure, certain sections of the Judicial Code, as well as forms applicable to special courts and proceedings. The volumes are bound in loose-leaf form, the same type of binding which the publisher has utilized for *Moore's Federal Practice* and *Bender's New York Practice*.

## BOOK REVIEWS

The footnote-comments accompanying the forms are cross-referenced to federal decisions, the Judicial Code provisions, and particularly to appropriate sections of *Moore's Federal Practice*, with which these volumes are apparently intended to form a companion set. Instead of an index, the practitioner is expected to seek out his form under the appropriate Federal Rule in its normal consecutive order.

This is the publisher's second effort in the field of federal forms,<sup>1</sup> an encore which is deemed justified by the advent of the Federal Rules wherein "One of the most significant objectives . . . was to simplify the 'paperwork' of federal practice."<sup>2</sup> In departing from the traditional form books (including this publisher's own former project in the federal field), the present edition contains forms most of which show a far greater simplicity and clarity of wording than their predecessors. Insofar as this latter accomplishment is concerned, the book is highly commendable as wholly in accord with the spirit of modern federal practice. Indeed, among his 4361 forms, the compiler has properly included the twenty-nine "official" forms which accompany the Federal Rules themselves.

The immediate impression one gets from these volumes is that the compiler has exhibited great assiduity in garnering forms covering an almost incredibly wide range of shades and varieties of legal problems. Forms are included which are applicable to litigation in the Tax Court<sup>3</sup> and the Court of Claims;<sup>4</sup> and, in addition to forms for use in more familiar types of litigation in the other federal courts, the compiler deals with proceedings involving administrative agencies as parties,<sup>5</sup> arbitration problems,<sup>6</sup> removal questions,<sup>7</sup> three-judge courts,<sup>8</sup> etc. One would not be far wrong if he conjectured that this is the most exhaustive form book which has been published for use in any jurisdiction. If looked upon as a convenient source for double-checking on himself, only the most credulous practitioner would seriously discount the advantages of these volumes. On the other hand, only the most sciolistic will be satisfied that they give him a deep appreciation of complicated procedural considerations. Many of these considerations are adroitly acknowledged by the compiler in his footnoted condensations, but they can only be absorbed

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1. See BENDER'S FEDERAL FORMS (Sylvester ed. 1929).

2. Vol. 1, p. iii.

3. Forms 4269 to 4310.

4. Forms 4311 to 4361.

5. Forms 4083 to 4126.

6. Forms 4158 to 4183.

7. Forms 4206 to 4240.

8. Forms 4241 to 4248.

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through exposure to the kind of methodical and scholarly approach found in a text such as *Moore's Federal Practice*. That some practitioners will look upon these forms as the embodiment of all the "law" they need to know is a phenomenon which is the fault neither of this form book nor of any other.

As stated previously, this publication obviously is the product of prodigious effort on the part of the compiler. Thus it seems almost an impertinence for a reviewer to suggest that even more could or should have been done. Nevertheless it is submitted that a compiler of a form book is in a peculiarly strategic position to raise the level of the profession. More than any other non-judicial producer of legal lore he is reasonably assured that practitioners will apply what he hath wrought. And it is that portion of the bar who will follow his forms blindly whose level of professional performance most needs raising. Therefore, although possibly not censurable, it is a little disappointing that a compiler has for the predominant part seen fit to quote forms verbatim from cases in which they have been used and supposedly litigated. Rather, it would appear that a compiler should sift through a variety of similar forms, critically appraise each of them, and then produce a form which is unprolix, logical, and, indeed, artistic. Concededly, whether 'tis nobler in the mind possibly to suffer the slings and arrows of outraged practitioners because of an untested form one has created rather than to re-print a used one poses a difficult problem. And it may be true that a compiler of a form book is the servant and not the teacher of the practitioner, although it does not appear to this reviewer that the two offices need be mutually inconsistent. Except on very rare occasions, the compiler of these forms has not seen fit to edit any of the forms at all, but has lifted them whole from those cases in which they appeared. The proficient practicing attorney is aware that a final decision in the Supreme Court in favor of the plaintiff is not necessarily a condonation of the form of his complaint, whose defects may have become mooted after trial on the merits. And it is highly probable that many of the forms are taken from cases in which the propriety of the form itself was never questioned or judicially determined. Because of their inordinate length, some of the forms herein set forth veritably cry out for the blue-pencil treatment.<sup>9</sup> Modification by the compiler would not have shaken the reader's confidence, and certainly would not have been an abandonment of what should be the policy of a modern form book.

With respect to padding of these volumes, it does seem that 78 pages of forms devoted to complaints under the anti-trust

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9. Forms 258, 261, 262, 280, 281, 284, 285, 291.

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laws<sup>10</sup> and 100 pages of forms on "Allegation of Jurisdiction"<sup>11</sup> are just too much of a good thing. And far too many of the forms are too similar to have warranted the extra printing burden. The inclusion of a form for making a "limited" appearance<sup>12</sup> seems highly questionable under modern federal practice and Rule 12(b).<sup>13</sup> And that portion of the book devoted to "Complaints" should be confined to illustrations of phrasing of the formal allegations and should not be cluttered up with long statements of the particular facts involved in the lawsuit from which the form is taken.

Unquestionably this set of volumes is extremely useful and will enjoy an extensive circulation, as indeed it should. There is no practitioner so literate that he does not need, from time to time, an external check-point when drafting his pleadings and other papers. This book suffices, far better than any of its fore-runners, to streamline the paperwork involved in twentieth-century litigation.

*David R. Kochery*

Assistant Professor of Law  
University of Buffalo

THE LEGAL AID SOCIETY, NEW YORK CITY 1876-1951. By Harrison Tweed.\* New York: Legal Aid Society. 1954. Pp. ix, 121.

It was purely coincidental that the Legal Aid Society in New York City was born in 1876 and Boss Tweed passed away in 1878. Although the author has referred to Boss Tweed, I assure you that they were not related. Attendant upon this birth, among others was Edward Salomon of German origin who became the Society's first president. Its creation became necessary to prevent the exploitation of a large group of German immigrants who had not had the opportunity to learn our language and the methods of some of our unscrupulous gentry. At this time the integrity

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10. Forms 190 to 196.

11. Forms 85 to 183.5.

12. Form 47.1.

13. ". . . No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. . . ." Special appearances are not necessary in federal courts. Indeed they are discouraged. See 2 MOORE, FEDERAL PRACTICE 2260-2265 (2d ed. 1948).

\* Mr. Tweed has been president of The Legal Aid Society in New York, three times president of The Association of the Bar of the City of New York, and chairman of the American Bar Association's Standing Committee on Legal Aid Work; he is now president of the American Law Institute and of the National Legal Aid Association, a director of the Legal Aid Society of New York, a trustee of Sarah Lawrence College and recipient of the American Bar Association Medal (1952).