ADVISORY COMMITTEE ON BANKRUPTCY RULES
Meeting of September 20 - 21, 2012
Portland, Oregon

Minutes

The following members attended the meeting:

Bankruptcy Judge Eugene R. Wedoff, Chair
Circuit Judge Sandra Segal Ikuta
Circuit Judge Adalberto Jordan (by telephone)
District Judge Karen Caldwell
District Judge Jean Hamilton
District Judge Robert James Jonker
Bankruptcy Judge Arthur I. Harris
Bankruptcy Judge Elizabeth L. Perris
Bankruptcy Judge Judith H. Wizmur
Professor Edward R. Morrison (by telephone)
Michael St. Patrick Baxter, Esquire
Richardo I. Kilpatrick, Esquire
J. Christopher Kohn, Esquire
David A. Lander, Esquire
John Rao, Esquire

The following persons also attended the meeting:

Professor S. Elizabeth Gibson, reporter
Professor Troy A. McKenzie, assistant reporter
Circuit Judge Edward Leavy, former chair
District Judge James A. Teilborg, liaison from the Committee on Rules of Practice and Procedure (Standing Committee)
Chief Bankruptcy Judge Pamela Pepper, Eastern District of Wisconsin
Peter G. McCabe, secretary of the Standing Committee
Patricia S. Ketchum, advisor to the Committee
Ramona D. Elliott, Deputy Director /General Counsel, Executive Office for U.S. Trustees (EOUST)
Lisa Tracy, Associate General Counsel, EOUST
James J. Waldron, Clerk, U.S. Bankruptcy Court for the District of New Jersey
Jonathan Rose, Rules Committee Support Officer, Administrative Office of the U.S. Courts (Administrative Office)
Benjamin Robinson, Administrative Office
James H. Wannamaker, Administrative Office
Scott Myers, Administrative Office
Molly Johnson, Federal Judicial Center
Debra L. Miller, Chapter 13 Trustee, South Bend, IN

Raymond J. Obuchowski, Esquire, on behalf of the National Association of Bankruptcy Trustees

Habbo G. Fokkens, Senior Counsel, Law Division, Wells Fargo

Introductory Items

The Chair asked participants to introduce themselves, and then he announced that this would be Mr. Rao's last meeting. He thanked Mr. Rao for his six years of service to the Committee and in particular for his stewardship of the model chapter 13 plan that was being presented to the Committee at this meeting.

2. Approval of minutes of Phoenix meeting of March 29 - 30, 2012.

The Committee approved the Phoenix minutes with several minor changes.

3. Oral reports on meetings of other committees.

(A) June 2012 meeting of the Committee on Rules of Practice and Procedure, including approval of the amendments to Civil Rules 37 and 45, which are scheduled to take effect on December 1, 2013.

The Chair said the Standing Committee adopted all the proposals put forth by the Advisory Committee. With respect to the pending amendments to Civil Rules 37 and 45, the Reporter said that no changes in the bankruptcy versions would be necessary. In response to a question about e-filing, the Reporter added that the Advisory Committee had been encouraged to move forward in its consideration of rules governing the use of electronic signatures for bankruptcy filings.

(B) June 2012 meeting of the Committee on the Administration of the Bankruptcy System.

The Chair said that the primary focus of the June meeting of the Bankruptcy Administration Committee was cost containment and the reduction of funding for bankruptcy courts. He said bankruptcy courts were being encouraged to pursue shared services with district courts in order to deal with reduced funding.

(C) Upcoming November 2012 meeting of the Advisory Committee on Civil Rules.

Judge Harris said that he would report on the November 2012 Civil Rules meeting when the Advisory Committee meets in the spring.

(D) April 2012 meeting and upcoming October 2012 meeting of the Advisory Committee on Evidence Rules.

Judge Wizmur said that at its spring 2012 meeting the Evidence Advisory Committee approved for public comment several rules dealing with the hearsay exception. She added that the Standing Committee has adopted the recommendation and that the rules have been published for comment. She said that electronic discovery rules will be discussed at a symposium in conjunction with the fall 2012 Evidence Committee meeting.

(E) April 2012 meeting and upcoming September 2012 meeting of the Advisory Committee on Appellate Rules.

The Reporter said that Appellate Rule 6 was currently published for public comment with changes designed to coordinate with the bankruptcy appellate rules that are also published for comment.

(F) Bankruptcy CM/ECF Working Group and the CM/ECF NextGen Project.

Judge Perris said the last big release for CM/ECF will be delivered to the courts in the next few weeks, and that the first release of NextGen is scheduled for early 2014.

Subcommittee Reports and Other Action Items

4. Report by the Subcommittee on Consumer Issues.

(A) Recommendation concerning Suggestion 12-BK-I by Judge John E. Waites (on behalf of the Bankruptcy Judges Advisory Group) to amend Rule 1006(b) to provide that courts may require a minimum initial payment with requests to pay filing fees in installments.

Judge Harris said the Subcommittee considered a suggestion by the Bankruptcy Judges Advisory Group (BJAG) to amend Rule 1006(b) to make clear that a court may require a minimum initial payment when approving requests to pay filing fees in installments. Some courts require an initial payment when a filing is made, Judge Harris said, because of concerns about collecting the filing fee if the case is dismissed before the full fee is paid. Courts do not construe Rule 1006(b) uniformly, however. The BJAG suggestion pointed out that some courts read the rule to prohibit requiring payment of a first installment at filing, and courts that require payment of a first installment at filing vary as to its amount.

BJAG suggested that uncertainty about the practice could be eliminated by amending Rule 1006(b) to clearly state that courts may require a minimum payment to accompany an application to pay in installments. BJAG also recommended that the rule set a maximum amount

for the first installment of 25% of the filing fee as a fair balance between maintaining debtor access to bankruptcy relief and reducing the court burden of collecting unpaid fees.

The Subcommittee concluded that the current language of Rule 1006(b)(1) is inconsistent with a local rule that requires an initial payment with an application to pay in installments. The Subcommittee considered whether to recommend that efforts be made to bring courts requiring an initial installment into conformity with Rule 1006(b), but ultimately concluded that that the national rule should be changed to permit a local practice of requiring an upfront payment of a reasonable amount with an application to pay in installments. Subcommittee members favored a flexible approach so long as the initial payment would not be so great as to discourage applications to pay in installments or to prompt more requests for fee waivers. Accordingly, the Subcommittee accepted BJAG's recommendation of 25% of the total filing fee as the maximum amount that could be required by local rule.

The Subcommittee also discussed but could not come to a consensus on whether the clerk's office should be affirmatively authorized to reject a filing if an initial installment payment required by local rule is not tendered at the time of filing.

Judge Harris said that he had reconsidered his own position since the Subcommittee discussed the BJAG's suggestion, and he thought it would be more equitable to debtors to set a national initial installment amount. Other members also supported a national minimum first installment. Mr. Rao, however, pointed out that an initial installment requirement might actually drive up requests for fee waivers in chapter 7. He said that approximately 30% of chapter 7 filers are eligible to request a fee waiver, but only 2-3% actually request a waiver. After additional discussion, most members favored revising Rule 1006 either to allow or to require a minimum first installment of some amount, but several members thought that additional research should be done to determine the scope of the problem and the likelihood that requiring an initial installment will drive up chapter 7 fee waiver requests. **The Subcommittee agreed to investigate and to report back in the spring.** The Subcommittee was also asked to consider procedures for dealing with any failure to pay an installment when due. No member supported a procedure that allowed the clerk to reject a filing for failure to provide a required initial payment, but there was support for immediately setting a hearing on dismissal.

(B) Recommendation concerning Suggestion 11-BK-N for a rule and form for applications to waive fees other than filing fees, under 28 U.S.C. § 1930(f)(2) and (f)(3).

David Yen, an attorney at the Legal Assistance Foundation of Chicago, submitted a suggestion (11-BK-N) regarding the waiver of bankruptcy fees other than the ones that Rule 1006(c) and Official Form 3B currently address. That rule and form govern the waiver of filing fees by individual chapter 7 debtors, as authorized by 28 U.S.C. § 1930(f)(1). Subsection (f)(2) of that statute authorizes waiver of other bankruptcy fees for debtors who qualify for a filing-fee

waiver under (f)(1). And subsection (f)(3) provides that subsection (f) "does not restrict the district court or the bankruptcy court from waiving . . . fees prescribed under this section for other debtors and creditors."

Mr. Yen proposes that procedures and Official Forms be adopted for (1) debtors who have qualified for a filing-fee waiver and who seek the waiver of additional fees, and (2) debtors as well as creditors who seek fee waivers but who are not entitled to a filing-fee waiver under section 1930(f)(1). Mr. Yen gives some suggestions for the content of these forms.

The Subcommittee concluded that there was no need for a national form to process "other fee" waiver requests from debtors who had already been granted a filing fee waiver under subsection (f)(1) because the information reported in Official Form 3B would either be sufficient for the court to process the request or could be easily updated at the time the new request was made. The Subcommittee also did not think that an official form for waivers under 28 U.S.C. § 1930(f)(3) was necessary, but recommended that the Forms Subcommittee consider the creation of a director's form for such waivers that could be used by courts if they thought it would be useful to parties seeking fee waivers. **After discussing the Subcommittee's analysis, the Advisory Committee referred to the Forms Subcommittee the issue of creating a director's form for fee waivers other than for the chapter 7 filing fee.**

(C) Recommendation concerning Suggestion 12-BK-B by Matthew T. Loughney (on behalf of the Bankruptcy Noticing Working Group) to amend Rule 2002(f)(7) to require notice of the confirmation of the debtor's chapter 13 plan.

Judge Harris gave the report. He said it is not clear why chapter 13 was omitted from the requirement in Rule 2002(f)(7) to notice confirmation orders, and that members of the Subcommittee saw potential benefits in providing notice of confirmation orders in chapter 13 cases. The Subcommittee also identified two concerns with the suggestion. First, the omission of chapter 13 cases from Rule 2002(f)(7) has not created any confusion in the case law, and nothing prevents courts from invoking their authority in appropriate cases to order service of notice of confirmation on creditors. Second, there is a concern that the costs of requiring notice will outweigh the benefits, particularly if the burden of noticing the confirmation order is placed on the debtor. **After a short discussion, the Advisory Committee deferred consideration and asked the Subcommittee to contact clerks' offices about whether notice is already being made already under local practice and, if so, whether the court, the trustee, or the debtor bears the cost of the noticing.**

(D) Oral report concerning Suggestion 12-BK-D by Judge S. Martin Teel, Jr., to amend Rule 7001(1) as it concerns compelling the debtor to deliver the value of property to the trustee.

The Reporter said that the Judge Teel's suggestion would allow a trustee to seek turnover of the value of property, in addition to property itself, by a turnover motion against a debtor. Judge Teel's concern arose because sometimes the property subject to a turnover motion has already been disposed of by the time the trustee learns about it, and adding the recovery of the value of property to this procedure would eliminate the requirement for the trustee to file a separate adversary proceeding against the debtor. **The Reporter said that there were concerns about whether this was a sufficiently significant problem to require rule changes and that the Subcommittee would consider the issue further and report back at the spring meeting.**

5. Joint Report by the Subcommittees on Consumer Issues and Forms.

> Oral report on the mini-conference to gather input on new Rules 3001(c) and 3002.1 and the new mortgage forms –Form 10 (Attachment A), Form 10 (Supplement 1), and Form 10 (Supplement 2).

The Reporter explained that the day before the meeting the Advisory Committee's Consumer and Forms Subcommittees held a mini-conference on users' experiences with the new mortgage rules (Bankruptcy Rules 3001(c) and 3002.1) and forms (B10 Attachment, B10 Supplement 1, and B10 Supplement 2). Attorneys for consumer debtors and mortgage servicers, chapter 13 trustees, bankruptcy judges, and a bankruptcy clerk participated in the mini-conference and provided constructive feedback about their experiences with the rules and forms.

The participants were divided into panels, and each panel met by phone before the mini-conference to discuss pre-assigned topics. The panels then presented their topics to the rest of the participants at the meeting. The presentations revealed general acceptance of the disclosure requirements in the rules and forms, but also a desire to eliminate ambiguities and to make adjustments to facilitate compliance and provide additional information.

There was general agreement among the participants on the following topics:

- A detailed payment history should be attached to the proof of claim. The payment history should be in a form that can be automated.
- Disclosure requirements should be uniform nationwide with no local variations permitted.
- The proof of claim attachment should include the amount of the mortgage payment as of the petition date.
- Home equity lines of credit (HELOCs) should be treated differently from other types of claims secured by the debtor's principal residence.
- There should be a procedure for objecting to payment changes.
- An official form should be adopted for the Trustee's Notice of Final Cure Payment.

- Rule 3002.1 should specify when the creditor's notice obligation terminates if the residence is surrendered or the stay is lifted.
- Rule 3002.1 should state clearly that it applies whenever a plan provides for maintenance of current mortgage payments, even if there is no arrearage to be cured.
- The attachment to the proof of claim should be revised so that it calculates the claim amount.

Some of the participants agreed to gather additional information for the Advisory Committee's benefit, and others indicated that they would continue to engage in discussions in an effort to arrive at agreement on additional suggestions.

The Consumer and Forms Subcommittees will carefully consider the feedback received at the mini-conference and report at the spring 2013 meeting of the Advisory Committee on any proposals they recommend for amending the mortgage rules or forms.

6. Report by the Chapter 13 Form Plan Working Group.

> Recommendation concerning adopting an official form for chapter 13 plans; amending Rules 3002, 3007, 3012, 3015, 4003, 5009, 7001, and 9009 in connection with adopting an official form; and contacting interest groups to obtain reactions to the proposed official form and rules amendments.

Mr. Rao said that a working group has been working on a proposal for an official form for chapter 13 plans. He said the working group started by surveying the many form plans used in districts across the country. It has attempted to incorporate common provisions from those plans into an official form and to provide a structure that allows for easy discovery of uncommon provisions.

In its deliberations, the working group also concluded that amendments to the bankruptcy rules would be helpful – if not essential – to an effective national form. Mr. Rao said that the working group has now created an initial draft of a proposed official form as well as proposed amendments to eight rules (Rules 3002, 3007, 3012, 3015, 4003, 5009, 7001, and 9009), all of which were included in the agenda materials.

Mr. Rao said that the working group is now seeking feedback from the Advisory Committee on the draft proposals. He said he anticipated that the working group and the Consumer and Forms Subcommittees would use the feedback in revising the proposed plan and rules and would present a recommendation to the Advisory Committee at its spring meeting about publication for public comment. Mr. Rao said the working group members also recommend seeking feedback over the winter from outside groups, such as the National

Association of Chapter 13 Trustees and consumer and creditor attorney groups that practice in chapter 13.

Mr. Rao reviewed the draft plan and rules in the agenda materials and received a number of comments from members identifying issues with the proposals or suggesting improvements to the drafts. One proposal that generated significant discussion among members was the treatment of secured claims under the proposed rules and official form. Mr. Rao explained that a proposed change to the rules that would require secured creditors to file a proof of claim before the plan confirmation hearing date was designed to facilitate resolution of any differences between the plan and the proof of claim and thereby enhance the plan confirmation process.

Mr. Rao said that the Advisory Committee previously agreed in concept to a proposed rule amendment that would require secured creditors to file proofs of claim by a specified deadline. Some Advisory Committee members questioned whether the requirement should apply across all chapters, however, or only in chapter 13, and the question of whether it should apply in chapter 11 cases was referred to the Business Subcommittee. Mr. Rao said the Working Group favored applying the requirement to all chapters, and that the proposed amendment to Rule 3002(a) in the agenda materials would do that. The working group also proposed that the deadline for filing proofs of claim under Rule 3002(c) – which deals with claims in chapters 7, 12, and 13 – be reduced from 90 days after the first date set for the § 341 meeting of creditors to 60 days after the filing of the petition to ensure that claims are filed before the confirmation hearing in chapter 12 or chapter 13. He noted that a different time period is set out for involuntary chapter 7 cases, and that, consistent with the limitation in section 502(b)(9) of the Code, the proposed deadline would not apply to governmental creditors.

Judge Wizmur reviewed concerns considered by the Business Subcommittee about requiring secured creditors to file claims in chapter 11 cases. She said a memo discussing the issues was in the agenda materials at Tab 8A. The main concern, she said, is that there is nothing in chapter 11 practice that would be "fixed" by requiring secured creditors to file a proof of claim and that such a requirement might have unintended consequences. Under 11 U.S.C. § 1111(a), she said, all claims are "deemed filed" if scheduled by the debtor in a chapter 11 case unless they are scheduled as "disputed, contingent or unliquidated." Accordingly, if the creditor is satisfied with how its claim is scheduled, it does not need to file a proof of claim.

Judge Wizmur said that one perceived advantage of not filing a claim is that the creditor can avoid subjecting itself to the jurisdiction of the bankruptcy court. But, she pointed out, that strategy only works if the creditor is willing to accept how the debtor scheduled the claim. If the creditor wishes to dispute how the claim is scheduled, it must file a proof of claim in order to get the bankruptcy court to resolve the dispute, and, in so doing, will subject itself to bankruptcy court jurisdiction. Judge Wedoff added that changing Rule 3002(a) to require a deadline for filing such a claim just establishes a timeframe for bringing the dispute to the attention of the court. Section 1111(a) along with Rule 3003(c) would still allow the creditor to take advantage

of the "deemed filing" status, and thereby avoid the jurisdiction of the bankruptcy court, if there is no dispute. After further discussion, members who had initially expressed concern about applying a requirement for secured proofs of claim in chapter 11 said their concerns had been addressed.

Members also discussed proposed changes to Rule 9009. Judge Perris explained that the need for the proposed changes stemmed from past experience with the current language which says that, except as provided in Rule 3016(d), the Official Forms "shall be observed and used with alterations as may be appropriate." She said that some courts have interpreted "with alternations as may be appropriate" as allowing them to require a local variation of a form instead of the official version, and that filers sometimes modified Official Forms without clearly showing the modification. As an example, she said that some creditors simply refused to incorporate the new signature block that was added to the proof of claim form in 2011, and instead used an older version of the signature block. Judge Perris said that the version of Rule 9009 in the agenda materials was amended with the following principles in mind: (1) require courts to accept the official forms, (2) allow users to alter some forms to eliminate questions that are not relevant, (3) prohibit alteration of some forms, such as the proposed official form chapter 13 plan and the proposed detailed loan payment history being considered as a replacement for the official form attachment to the proof of claim form, and (4) allow a court to create local versions of official forms, as long as the court does not require use of a local version instead of the national version.

Members generally agreed with the objectives of the proposed changes to Rule 9009. There was concern, however, about whether the draft in the agenda materials clearly met the objectives. One member said that the phrase "shall be observed and used" seemed imprecise and suggested instead stating simply "shall be used." Some members pointed out that it may be necessary to go through the forms one by one to decide which should be alterable and which should not. Then Rule 9009 could state a general principle that the Official Forms should (or should not) be alterable, with a carve-out listing the forms to which the general principle does not apply. Another member suggested stating in the rule a general principle of non-alterability that would apply unless the Official Form itself allows for different treatment.

The Reporter pointed out that in deciding whether some official forms should be alterable, and others not alterable, the Subcommittee should be mindful that several rules have different phrasing regarding the use of official forms, such as "prepared as prescribed by the appropriate Official Form," or "shall conform to the appropriate Official Form" or "conform substantially to the appropriate Official Form." Finally, Ms. Ketchum pointed out that many of the forms that are designed to be altered, such as the forms used in chapter 11 cases, might be reclassified as director's forms so it is clear that alterations are not restricted by Rule 9009.

Members also discussed several options for obtaining feedback from outside groups about the proposed rules and form chapter 13 plan. **The Advisory Committee decided that the**

best approach to develop dialog among different chapter 13 constituencies would be to hold a one day mini-conference in Chicago on January 17, 2013, the day before the planned public hearing in Chicago on the bankruptcy rules currently published for comment. [After the meeting concluded, the proposed date was changed to **January 18, 2013,** the same date as the scheduled public hearing in Chicago].

7. Report by the Subcommittee on Forms and the Forms Modernization Project.

(A) Report on the status of the Forms Modernization Project.

Judge Perris gave an overview of the progress of the Forms Modernization Project (FMP) since its inception in 2008. She noted that the fee forms, income and expense forms, and means test forms were all approved for publication by the Standing Committee at its June meeting and were out for public comment now. She said that there was one comment so far (positive) but that she expected more feedback by the end of the comment period, February 15, 2013.

Judge Perris said the FMP was largely done with the individual filing package, and the agenda materials included the most recent versions of the following forms: proposed new Official Forms B101, B101AB, B102, B104, B106-Summary, B106A, B106B, B106C, B106D, B106E, B106F, B106-Declaration, B107, B112, B119, B318, B423, and B427 and the committee notes and instructions. She said the new numbering system was a result of creating different forms for filing individual and non-individual bankruptcy cases. She said that the 1XX series was used for forms filed early in individual bankruptcy cases, the 2XX series was for forms filed early in non-individual cases, the 3XX series was for orders and court notices, and the 4XX series was for forms filed later in the case. She added that because all the new official forms would be three digits, the director's forms (which currently use three digits) would use four digits, generally by adding a zero to the end of the current three-digit number.

Judge Perris explained that general instructions were now in the form of a booklet, rather than associated with each particular form, to avoid repetition of common instructions and to more clearly separate the instructions from the forms that would be filed. She said her purpose in bringing the forms to the Advisory Committee for this meeting was to solicit feedback to consider along with any comments received on the FMP forms that are currently out for public comment. She added that she anticipated resubmission of revised versions at the spring meeting with a request for publication.

Judge Perris explained that the development of the non-individual forms is well underway, and those forms would likely look much different than the individual forms. The non-individual forms are being designed with the following guiding principles:

- Eliminate requests for information that pertains only to individuals.

- To the extent possible, parallel how businesses commonly keep their financial records.
- Include information identifying where and how the requested information departs from information maintained according to standard accounting practices.
- Provide better instructions about how to value assets on the schedules, and provide a valuation methodology that will allow people who commonly sign schedules to respond without needing expert valuations of assets.
- Revise the secured debt schedule to clarify the status of debts that are cross-collateralized and the relative priority of secured creditors.
- Require responsive information to be set out in the forms themselves and not simply included as attachments.
- Use a more open-ended response format, as compared to the draft individual debtor forms.
- Keep inter-district variations to a minimum, particularly with respect to the mailing matrix.

Judge Perris said that it was not yet clear when the non-individual forms would be ready to publish for comment, and that further consideration would be appropriate at the spring meeting. A likely possibility is that the individual and non-individual forms will have to be published in successive years. That means, Judge Perris said, that the Advisory Committee will have to decide whether to recommend that each group of forms go into effect in the normal course (i.e., in successive years), or if instead it would be less disruptive to the bankruptcy community to hold the effective date for the individual forms for a year to allow both individual and non-individual forms to go into effect at the same time.

The Advisory Committee reviewed the individual forms in the agenda materials and had the following comments:

B101: A member noted that there are missing checkboxes on questions 2 and 3. Another member asked whether including the leading "9" in the space for the debtor's Individual Taxpayer Identification Number (to be filled out if the debtor has an ITIN instead of a social security number) might be confusing to some debtors because there were only eight digits left to fill out. Another member suggested that it might be clearer if the "9" were underlined, and members agreed to defer to the judgment of the FMP's forms consultant.

B104 CN: A member suggested adding an "s" to "eliminate" in first line of last paragraph of the Committee Note for the list of 20 Largest Unsecured Creditors.

B106-Summary: The Advisory Committee discussed replacing "married people" with "spouses" because "married" is not in the Bankruptcy Code, but most members favored using "married people."

B106A: A member pointed out that there are missing checkboxes on question 1a. Another member suggested that the form ask for the purchase price of listed vehicles as a check on the accuracy of the figure reported for current value, but most members thought auto valuation books already provided a sufficient check on reported current value.

B106C: Judge Perris explained that the form combines both priority and non-priority unsecured claims, which are currently on separate forms, into a single form. One member suggested that, although it is clear from the layout and instructions on B106B that the unsecured portion of a secured claim should be reported on that form, a cross reference in the instructions for this form might also be helpful.

B106D: Judge Perris said that form incorporates a proposed change addressing *Schwab v. Reilly*, 130 S. Ct. 2652 (2010), that is further discussed at Tab 7B of the Agenda Book.

After the Advisory Committee reviewed all of the individual schedules, one member asked for reconsideration of the proposed numbering scheme as it pertains to the schedules. The suggestion would change Schedule B106A to B106AB, to signal that it is derived from current schedules A and B, and change B106C to B106EF to signal that it is derived from current schedules E and F. The proposed changes would allow the remaining schedules to retain the same letter designation as current versions which could be less disruptive. No other member seconded the proposal for reconsideration of the new numbering scheme.

B112: A member noted that checkboxes are missing from the first column in the middle of the first page of the form.

Instruction Book: A member said the table of contents should be updated, and noted that page numbers in the table of contents for the glossary seem to show only the leading digit (i.e., "4" instead of "40").

After further discussion, the Advisory Committee decided to include the individual forms, related committee notes, and instruction book in its report to the Standing Committee with a request for preliminary comments.

(B) Recommendation concerning revision of the exemption schedule as a result of the Supreme Court's holding in *Schwab v. Reilly*, 130 S. Ct. 2652 (2010).

The Reporter explained that last spring, based on concerns raised during the public comment period, the Committee withdrew a proposed amendment to the exemption schedule that was designed to implement the holding in *Schwab*. The proposal would have added a checkbox to the form to allow debtors to state the value of a claimed exemption as the "full fair market value of the exempted property"—as an alternative to stating "Exemption limited to $_____."

The Reporter said that the FMP, and the Consumer and Forms Subcommittees, subsequently developed an alternative approach that was incorporated into the version of the exemption schedule included with the new FMP form at Tab 7A. **Because the Advisory Committee is not being asked to take action on any of the FMP forms at this meeting, however, the Chair tabled the recommendation regarding the *Schwab* holding until the spring meeting.**

8. Report by the Subcommittee on Business Issues.

(A) Report concerning amending the Bankruptcy Rules to require the filing of proofs of secured claims in chapter 11 cases.

See discussion at Tab 6.

(B) Recommendation concerning Suggestion 11-BK-M by attorney Jim F. Spencer, Jr., on behalf of the Advisory Committee to the Uniform Local Rules for the Northern and Southern Districts of Mississippi, to amend Rule 9027 to require that a notice of removal be filed with the bankruptcy clerk for the district and division where the civil action to be removed is pending.

Judge Wizmur said that the Subcommittee recommends no action on this item because the majority of the case law now holds that a notice of removal should be filed with the bankruptcy court, and because Bankruptcy Rule 9013 defines "clerk" as the bankruptcy clerk. **The Committee declined to take any action.**

9. Report by the Subcommittee on Privacy, Public Access, and Appeals.

Recommendation concerning Suggestion 12-BK-H by Professor Alan N. Resnick to amend the Bankruptcy Rules in response to *Stern v. Marshall*, 131 S. Ct. 2594 (2011).

Judge Jordon said that the Subcommittee recommends reconsidering the suggestion at a future meeting because the Advisory Committee's *Stern*-related rules amendments are still out for public comment, because case law is still developing on *Stern*, and because a number of courts have created local rules that address the suggestion. **The Advisory Committee agreed to reconsider suggestion 12-BK-H at a future meeting**.

10. Report by the Subcommittee on Technology and Cross Border Insolvency.

Report concerning adopting a bankruptcy rule establishing standards for electronic signatures by parties other than attorneys.

Mr. Baxter said that, as described in the agenda materials, the Subcommittee has considered two options for the use of electronic signatures by debtors or others who are not part of the CM/ECF system: a declaration procedure similar to the one used in the Northern District of Illinois, or an amendment to Bankruptcy Rule 5005(b) that would allow electronic filing for documents filed and signed in accordance with Judicial Conference procedures. He said that, since there are not currently any Judicial Conference filing procedures for electronic signatures, the Subcommittee favored the declaration procedure as being easier to implement. The Subcommittee would like to do further research to determine how many other bankruptcy courts are already using declaration procedures like the one in Illinois, and to evaluate the experiences the three courts that are testing the pro se electronic filing pilot in NextGen. Dr. Johnson has agreed to undertake this research and will report her findings to the Subcommittee. **The Subcommittee will report back at the spring 2013 meeting.**

11. Oral report by the Subcommittee on Attorney Conduct and Health Care.

Mr. Rao said that the Subcommittee had no assignments.

Discussion Items

12. Oral report on the revision of Interim Rule 1007-I to conform the Interim Rule to the proposed amendment to Rule 1007, which is scheduled to take effect on December 1, 2012.

The Committee agreed that the Director should advise the courts to amend their local rule version of Interim Rule 1007-I so that it conforms to the pending Rule 1007 changes that are scheduled to go into effect on December 1, 2012.

13. Oral report on Suggestion 12-BK-E by Judge Richard Schmidt to amend Rules 7008, 7012, 9014, 9027, and 9033 in response to the Supreme Court's decision in *Stern v. Marshall*, 131 S. Ct. 2594 (2011).

The Chair said that part of the suggestion has already been incorporated into the *Stern*-amendments that are currently out for public comment, and that the Advisory Committee previously considered and rejected the possibility of requiring a litigant to affirmatively demand an Article III judge or face waiver of that right. **No further action required by the Committee.**

14. Oral report on Suggestion 12-BK-L by Judge Neil P. Olack to amend Rule 7008(b) to clarify the pleading requirements to recover statutory attorney's fees.

The Chair said this matter has already been considered and the current amendments published for public comment would eliminate 7008(b) in its entirety and replace it with 7054. **No further action required.**

Information Items

15. Oral report on the status of bankruptcy-related legislation, including the revision of Forms B200 and B201 as a result of the enactment of the Temporary Bankruptcy Judgeships Extension Act of 2012 (Pub. L. No. 112-121).

Mr. Wannamaker reviewed pending legislation. He explained that in light of the upcoming election it was unlikely that anything would pass this year, but that much of the legislation would probably be reintroduced in the next legislative session. He said that the Temporary Bankruptcy Judgeships Extension Act of 2012 did pass and has been enacted as Pub. L. No. 112-121. He said the new law would have a minor impact on two Director's Forms, B200 and B201, both of which would need to be updated to reflect an increase in the Chapter 11 filing fee that occurred to pay for the extended judgeships.

16. Oral update on opinions interpreting section 109(h) of the Bankruptcy Code.

The Reporter said that 11 U.S.C. § 109(h) requires individual debtors to complete an approved course on credit counseling in order to be a debtor under title 11. She said that courts were split on the meaning of the original language of that subsection and whether it allowed the debtor to file a petition on the same day as taking the course (so long as the course was completed prior to filing) or if it instead required the debtor to wait a calendar day before filing. The Reporter said that a technical amendment made to section 109(h) in 2011 was apparently designed to settle the court split by making clear that the debtor may file a case the same day as completing the required course. Unfortunately, however, the technical amendment introduced a new ambiguity, and might now be read to allow the debtor to file the petition and then complete the counseling course later in the day.

The Reporter said that if courts interpreting section 109(h) allow completion of the credit counseling course on the same day but after the petition is filed, the Advisory Committee may need to consider amendments to Rule 1007 and Official Form 23. She said no changes were needed yet, however, because the two bankruptcy courts that have reviewed the new language so far have both concluded that the credit counseling course must be completed before the bankruptcy petition is filed. She said she would report on further case law developments at the spring 2013 meeting.

17. *Bull Pen.*

Amendment to Official Form 23 to implement the proposed amendment to Rule 1007(b)(7) which would authorize providers of financial management course providers to file notification of the debtor's completion of the course, approved at September 2010 meeting.

The proposed amendment is scheduled to go forward at the spring 2013 meeting.

18. Rules Docket.

Mr. Wannamaker asked members to review the Rules Docket and to let him know if any changes are needed.

19. Future meetings: Spring 2013 meeting, April 2 – 3, in New York City. Possible locations for the fall 2013 meeting.

The Chair suggested Minneapolis for the fall 2013 meeting.

20. New business.

The Chair expressed his profound thanks to District Judge James A. Teilborg, who was attending his last meeting as liaison from the Standing Committee.

21. Adjourn.

Respectfully submitted,

Scott Myers