

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

AGENDA ITEM - 8
Tucson, Arizona
January 12-15, 1994

ALICEMARIE H. STOTLER
CHAIR

PETER G. McCABE
SECRETARY

CHAIRS OF ADVISORY COMMITTEES

JAMES K. LOGAN
APPELLATE RULES

PAUL MANNES
BANKRUPTCY RULES

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CIVIL RULES

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CRIMINAL RULES

RALPH K. WINTER, JR.
EVIDENCE RULES

December 10, 1993

TO: Honorable Alicemarie H. Stotler, Chair
Standing Committee on Rules of Practice
and Procedure

FROM: Honorable Paul Mannes, Chair
Advisory Committee on Bankruptcy Rules

SUBJECT: Report of the Advisory Committee on
Bankruptcy Rules

The Advisory Committee on Bankruptcy Rules does not submit any matters for action by the Standing Committee at its meeting to be held on January 13-14, 1994.

At its meetings held in February and September of 1993, the Advisory Committee considered and approved for recommendation to the Standing Committee proposed amendments to Bankruptcy Rules 2015, 3016, 4004, and 8002(c), but has decided to delay presentation of these amendments to the Standing Committee. The reasons for delaying presentation of these amendments are (1) these proposed amendments are not urgent and could await the Advisory Committees' consideration of other amendments that are on the agenda for the next Advisory Committee meeting, (2) a package of amendments to 18 Bankruptcy Rules became effective on August 1, 1993, (3) other amendments regarding Rules 8002 and 8006 were approved by the Judicial Conference in September and have been forwarded to the Supreme Court for promulgation in 1994, and (4) we are in the middle of a public comment period regarding the proposed uniform amendments to Bankruptcy Rules 8018, 9029, and 9037 (local rules, standing orders, and technical amendments) that have been published for comment last month. The Advisory Committee wants to avoid confusion that could be caused by amending rules too frequently and by having different packages of amendments in different stages of the rules-making process at the same time.

The Advisory Committee met once since the Standing Committee's last meeting. A preliminary draft of the minutes of the Advisory Committee meeting held on September 13-14, 1993, is enclosed. These minutes will be presented to the Advisory Committee for approval at its next meeting.

The Advisory Committee's subcommittee on technology will be meeting on January 20-21, 1994, to discuss, among other items, issues relating to electronic filing. The next meeting of the Advisory Committee will be held on February 24-25, 1994.

ADVISORY COMMITTEE ON BANKRUPTCY RULES

PRELIMINARY DRAFT

Minutes of the Meeting of September 13 - 14, 1993

Jackson Hole, Wyoming

The Advisory Committee on Bankruptcy Rules met at 9:00 a.m. on September 13, 1993, in a conference room of the Jackson Lake Lodge in Jackson Hole, Wyoming. The following members were present:

Circuit Judge Edward Leavy, Chairman
Circuit Judge Alice M. Batchelder
District Judge Adrian G. Duplantier
District Judge Joseph L. McGlynn, Jr.
Bankruptcy Judge James J. Barta
Bankruptcy Judge Paul Mannes
Bankruptcy Judge James W. Meyers
Kenneth N. Klee, Esquire
Ralph R. Mabey, Esquire
Herbert P. Minkel, Jr., Esquire
Gerald K. Smith, Esquire
Henry J. Sommer, Esquire
Professor Charles J. Tabb
Professor Alan N. Resnick, Reporter

One committee member was unable to attend: District Judge Harold L. Murphy.

The following persons also attended all or a part of the meeting:

District Judge Thomas S. Ellis, III, member, Committee on Rules of Practice and Procedure, and liaison with this Committee
John E. Logan, Director, Executive Office for United States Trustees, U.S. Department of Justice
Peter G. McCabe, Assistant Director for Judges Programs, Administrative Office of the U.S. Courts
Richard G. Heltzel, Clerk, U.S. Bankruptcy Court for the Eastern District of California
John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the U.S. Courts
Patricia S. Channon, Attorney, Bankruptcy Division, Administrative Office of the U.S. Courts
James H. Wannamaker, Attorney, Bankruptcy Division, Administrative Office of the U.S. Courts
Elizabeth C. Wiggins, Research Division, Federal Judicial Center

The following summary of matters discussed at the meeting should be read in conjunction with the various memoranda and other written materials referred to, all of which are on file in

the office of the Secretary to the Committee on Rules of Practice and Procedure.

References to the Standing Committee are to the Committee on Rules of Practice and Procedure. References to the Bankruptcy Rules or the Rules are to the Federal Rules of Bankruptcy Procedure. References to the Official Forms are to the Official Forms prescribed by the Judicial Conference pursuant to Bankruptcy Rule 9009. References to the Civil Rules are to the Federal Rules of Civil Procedure. References to the Appellate Rules are to the Federal Rules of Appellate Procedure. References to the Criminal Rules are to the Federal Rules of Criminal Procedure. References to the Evidence Rules are to the Federal Rules of Evidence.

Votes and other action taken by the Advisory Committee and assignments by the Chairman and the Chairman-designate appear in bold.

Preliminary Matters

The Chairman opened the meeting by welcoming two new members, Judge Batchelder and Professor Tabb, and requesting that all attendees introduce themselves. The Chairman recognized Judge Mannes, who has been appointed by the Chief Justice to serve as the next chairman of this Committee. The Chairman announced that Judge Alicemarie H. Stotler has been appointed as chair of the Standing Committee.

Mr. Sommer moved that the draft minutes of the February, 1993, meeting be approved. The Committee approved the minutes by voice vote.

Standing Committee

The Reporter stated that the Standing Committee approved the proposed amendments to Bankruptcy Rules 8002 and 8006 at its meeting in June, 1993. The amendments were to be submitted to the Judicial Conference the next week.

The Standing Committee has directed the publication for public comment of a proposed uniform rule on local rules and standing orders. As revised by the reporters for the advisory committees on the Civil, Criminal, Appellate, and Bankruptcy Rules, the uniform rule would be incorporated in Bankruptcy Rules 9029 and 8018. The Chairman expressed concern that this Committee had not considered the revised amendments, although the Chairman and the Reporter helped draft the revision.

The Standing Committee also directed the publication of a uniform rule on technical amendments to the Civil, Criminal, Appellate, and Bankruptcy Rules. The proposed uniform rule, which would be Bankruptcy Rule 9037, would authorize the Judicial Conference to make certain technical, nonsubstantive changes in the rules without approval from the Supreme Court and the Congress. The Reporter stated that this Committee was the only advisory committee to oppose the proposed uniform rule. Several members of the Committee expressed concern about how strictly technical amendments would be defined. The Reporter stated that he has been assured that each of the advisory committees will have input in future rule changes. Judge Ellis stated that he does not anticipate that future amendments would be adopted over the adamant opposition of this Committee.

The Reporter stated that the Style Committee of the Standing Committee expects to complete redrafting the entire body of the Civil Rules by the end of the year and then will turn to the Appellate Rules. Afterwards, this Committee will have to review those bankruptcy rules which incorporate the revised rules by reference.

As a result of this Committee's work on the revision of Rule 8002, discrepancies were discovered in the references to the deadlines for post-judgment motions. Civil Rules 50, 52, and 59 require that the motions be "made" or "served" within a certain time, whereas the Bankruptcy Rules require that the motions be "filed" by the deadline. The Reporter stated that the Civil Rules will be revised to conform to the use of "filed" in the Bankruptcy Rules.

The Reporter stated that both this Committee and the Standing Committee had opposed the proposed liberalization of the guidelines for filing by facsimile. Although the Committee on Court Administration and Case Management has insisted on going forward with consideration of the changes, it has accepted a revised draft prepared by the reporters for the rules committees. If adopted by the Judicial Conference, the revised guidelines would apply in bankruptcy matters when adopted by the local court and where authorized by the Rules, *i.e.*, in adversary proceedings pursuant to Rule 7005. Mr. Mabey expressed concern that the proposed new guidelines exclude petitions and proofs of claim, creating a negative inference that other papers in bankruptcy cases may be filed by facsimile.

The Committee discussed filing by facsimile and by electronic transmission, and how original signatures could be accommodated by the two processes. Mr. Klee stated that an original signature is important for both Rule 9011 sanctions and perjury prosecutions. Mr. Minkel expressed concern that an electronic claim might be misplaced more easily than a piece of paper. Mr. Heltzel stated that there is the same potential for

misplacing either one. He said electronic dockets are backed up on the computer's hard disk, on tapes stored in the clerk's office, and on tapes stored off the premises. Mr. Minkel stated that the Committee should consider electronic filing in the context of the paper flow and the integrity of the record, especially in large cases in which the court may use a contractor to maintain some of the case papers.

The Chairman stated that it is important for the Committee to move forward and exercise leadership on the issue of electronic filing. He suggested that a subcommittee prepare an overview of where the Committee wants to go with electronic filing. Judge Mannes stated that he saw no reason to displace the existing Technology Subcommittee and indicated that he would charge it with preparing such an overview. He asked Mr. Minkel and Mr. Sommer to help prepare the overview. Several members suggested that a demonstration of the new technology similar to the one given by Gordon Bermant of the Federal Judicial Center (FJC) would be useful in this process.

Bankruptcy Forms

Ms. Channon stated that many of the forms in the Bankruptcy Forms Manual, which was published in 1988, have been updated but the new versions have not been included in the manual. She stated she expects a draft revision of the manual to be prepared within a year. The new version will be in a single volume including limited instructional material and will be available through the Government Printing Office.

Service of Process

The Reporter reviewed this Committee's action in freezing the version of Civil Rule 4 incorporated by reference in Rule 7004 as that in effect on January 1, 1990. A number of amendments to the civil rule are scheduled to take effect on December 1, 1993, but may be blocked or changed by the Congress. The Committee agreed to review the amendments in their final form after they have taken effect.

The Reporter discussed S. 201, which was introduced by Senator Helms, and S. 540, a comprehensive bankruptcy bill introduced by Senators Heflin and Grassley. Each bill would modify the requirements for service of process on certain defendants in bankruptcy cases. The Chairman of the Standing Committee has written Senator Helms to oppose enactment of S. 201 and Francis F. Szczebak, the chief of the Bankruptcy Division, has testified against the service of process provisions in S. 540. The Committee discussed the prospects for the passage of

the two bills and whether additional comments should be directed to the Judiciary Committee.

Amendments to Civil Rule 26

A number of amendments to the Civil Rules will become effective on December 1, 1993, unless the Congress provides otherwise. The Reporter described the mandatory disclosure provision in Rule 26(a), as amended, and the mandatory meeting of the parties required by the amendment to Rule 26(f). Bankruptcy Rule 7026 applies Rule 26 in adversary proceedings and Bankruptcy Rule 9014, in turn, incorporates Rule 7026 in contested matters.

Mr. Rabiej stated that 20 districts have mandatory early disclosure as part of their civil justice expense and delay reduction plan. The Reporter stated that he believes the mandatory discovery provisions may be inappropriate in bankruptcy motions practice. Although both Rule 26(a) and Rule 26(f) authorize the court to opt out of the mandatory provisions by local rule or court order, he said the bankruptcy courts may not know about the changes in time to do so.

The Committee discussed the need to advise the bankruptcy courts of the situation. Congressman Hughes has introduced a bill to revise the amendment to Rule 26(a). Mr. McCabe stated that he is reluctant to distribute a memorandum on the changes until the Congress has acted or the amendments have taken effect without Congressional action. Judge Meyers moved to direct the Reporter to prepare a memorandum to the bankruptcy courts on the problem. Judge Mannes seconded the motion. The Reporter stated that it may be inappropriate for him to do so without taking the matter to the Standing Committee. The Administrative Office, however, could communicate with the district and bankruptcy judges on the changes and include a model local rule. Judge Mannes moved to amend the motion. Judge Meyers accepted the change. The Committee agreed that no vote was necessary because such a directive is outside the Committee's functions. The Reporter agreed to help prepare such a memorandum, if asked.

Pioneer Investment Services

The Reporter discussed the Supreme Court's application of the excusable neglect standard in Pioneer Investment Services v. Brunswick Associates, 113 S.Ct. 1489, to permit the late filing of proofs of claim based on perceived shortcomings in the form used to inform creditors of the deadline for filing claims. The Reporter outlined recent changes in Official Form 9. He stated that he believes the new official form is sufficient to meet the Supreme Court's requirements but could be improved further. The

Committee discussed further changes to make the form easier to understand.

Mr. Klee moved that the Committee make technical changes in Official Form 9 to be implemented forthwith in response to the Pioneer Investment decision. The Reporter stated that the changes could be presented to the Standing Committee in December and the Judicial Conference in March. He cautioned that the form had been amended several times in recent years and should not be changed again unless necessary. The Reporter stated that some judges might interpret an amendment as an indication that the Committee believes that the current form does not comply with Pioneer Investment.

Judge Barta stated that the form should be improved, even at the risk that some judges would view the change as a concession that the existing form is not good enough. Professor Tabb suggested that the Committee defer revising the form if it intends to review all of the forms in an effort to incorporate plain language. Judge Mannes called the question. The Chairman stated that the motion called for changes in the form to be presented to the next meeting of the Standing Committee. The motion failed by a vote of 4-7. Judge Mannes stated that he would refer the matter to the Forms Subcommittee.

Rule 3002

The Reporter outlined the Committee's consideration of Rule 3002 over the last few years, the apparent conflict between the rule and section 726(a)(3) of the Bankruptcy Code, the court's decision in In re Hausladen, and Judge Mannes' exchange of letters with Professor Lawrence P. King on behalf of the ad hoc subcommittee of bankruptcy judges. Judge Mannes expressed concern about the discharge of claims held by unnoticed and unknowing creditors and about the problems faced by a chapter 13 trustee when a late claim is filed after the trustee has made payments under a confirmed plan. For purposes of discussion, Judge Mannes moved the adoption of the Reporter's draft amendment included in the meeting materials. Judge McGlynn seconded the motion.

Speaking against the adoption of his own draft, (which was presented for discussion purposes only), the Reporter stated that deleting the reference to the "allowance" of claims would be essentially adopting the rationale of Hausladen, with which he disagrees. The Reporter stated that there is no urgency to fixing the section 726 "glitch". Mr. Sommer stated that Hausladen and its prodigy would create chaos in chapter 13, even without priority for late-filed claims. Professor Tabb said it is imperative that the rule continue to speak to "allowance".

Mr. Smith stated that he believes the Bankruptcy Code can be interpreted along the lines of Hausladen. He said that the rules could create a regime to allow tardy creditors to share in the distribution, although he was not sure how all of the potential problems would be resolved. The Reporter stated that a number of courts have expressed due process concerns about the treatment of tardy claims in chapter 13 and, as a result, allow those claims to share in the distribution or find them nondischargeable. Judge Mannes stated that it is not obvious that the claims are nondischargeable. The Reporter stated that, if the motion passes, he would like an opportunity to revise the draft to include some of the comments during the discussion. Judges Mannes and McGlynn agreed to the change in their motion. Mr. Klee stated that it could be catastrophic if the Hausladen concept carried over to chapter 11. The motion failed by a vote of 3-6.

Judge Ellis stated that Rule 3002 is not right as it currently exists. Mr. Sommer moved to amend Rule 3002 along the lines of subsection (a)(2) of the Reporter's draft which is set forth on page 58 of item VI of the agenda materials. The motion passed by a vote of 8-0. The Reporter stated that he would prepare a draft for discussion at the next meeting.

Professor Tabb moved to adopt the new subsection (c)(6) as set out on page 16 of the agenda materials for item VI. Judge Barta seconded the motion. The Reporter proposed that the Committee take a tentative vote, the Reporter prepare a memorandum on what the draft does, and the Committee take a final vote. The Committee agreed to follow that procedure.

Mr. Klee opposed the motion as an improper effort to codify due process in the form of a rule. The Reporter stated that many courts would find that they have no authority to extend the time for filing claims and that, as a result, due process requires that the claim not be discharged. Mr. Smith stated that the concept of paying a late creditor makes sense and that the plan could provide for doing so. Mr. Sommer stated that a late claim could be paid now under three different scenarios: 1) the debtor files a claim for the tardy creditor; 2) the creditor files a late claim, no one objects, and the trustee pays it; or 3) the debtor provides in the plan for late claims. The Reporter stated that the negative inference of the draft would stop the widespread practice of treating late claims as timely. The motion failed by a vote of 3-8. The Reporter agreed to do another draft and Judge Mannes agreed to place it on the agenda for the next meeting. The sole purpose of the draft will be to make Rule 3002 consistent with section 726 of the Bankruptcy Code regarding tardily-filed claims.

Rule 4008

The Reporter stated that there is no way for the court to know that a reaffirmation agreement will be filed -- and that a hearing should be scheduled -- if there is no deadline for filing the agreement. The matter was discussed at the last meeting and the Reporter offered a draft amendment to require that the agreement be filed within 10 days after the discharge is entered and that the reaffirmation hearing be held within the Rule 4008(a) period. Mr. Sommer moved to adopt the draft and Mr. Smith seconded the motion. Mr. Heltzel said the debtor generally does not get the discharge until seven days after its entry -- if everything goes right.

The Reporter suggested extending the time for the hearing and Mr. Heltzel suggested making the deadline for filing the agreement earlier, perhaps tied to the date for the meeting of creditors, because no-asset cases are closed shortly after the entry of the discharge. The Chairman stated that closing the case does not deprive the court of jurisdiction. Judge Mannes stated that he favored making the deadline 60 days after the meeting of creditors. He said there is no need to protect people who make a reaffirmation agreement and then shelve it. Mr. Sommer amended his motion to adopt the concept of the draft and to discuss the timing later. Mr. Smith accepted the amendment. The motion failed by a vote of 4-7.

Rule 8002(c)

The Reporter discussed Judge Kressel's suggestion that Rule 8002(c) be amended to require that any motion to extend the appeal period be filed within ten days after the entry of the judgment. Judge Mannes moved to adopt the draft amendment prepared by the Reporter. The motion passed on a unanimous vote.

Rule 1007(c)

The Reporter presented a draft amendment to delete the reference to chapter 7 in the third sentence of Rule 1007(c), which was promulgated when different schedules were used in chapter 13 cases. Mr. Klee questioned the use of the phrases "the pending case" and the "superseding case" as being inconsistent with the concept of a converted case being the same case before and after conversion. The Reporter said the phrases are used in a number of rules and that the matter could be referred to the Style Committee. He stated that he would prefer to change a number of rules at once, rather than acting piecemeal.

Judge Mannes moved to table the draft amendment. The motion carried. Judge Leavy suggested that the Reporter prepare substitute language, which could be considered at the next meeting. The Committee agreed.

Rule 5007

Mr. Klee stated that an attorney may need to obtain a transcript of a hearing in the bankruptcy court on an expedited basis in order to prepare a pleading or an appeal. Despite this, he stated that a supervisor in the Central District of California refused to honor his request for one. Mr. Klee moved to amend Rule 5007 to state that a party has a right to obtain a copy of the transcript on an expedited basis. Judge Duplantier stated that the rules can not make people behave. The motion failed for lack of a second.

Rule 7001

The Reporter discussed Mr. Klee's proposal to amend Rule 7001(3) to permit the sale of jointly-owned property and Rule 7001(7) to permit the issuance of an injunction or other equitable relief through a plan of reorganization without filing an adversary proceeding. The Reporter opposed amending Rule 7001(3) because selling a non-party's home should require more than inclusion in a plan. He stated that the Rule 7001(7) amendment was a closer call and that many chapter 11 plans do include injunctive relief. Mr. Klee stated that, because Rule 7001(8) includes a "carve out" for subordination, it ought to include other "carve outs" as appropriate.

The Committee discussed the use of injunctions to channel litigation to an insurance fund, to enjoin non-contributing partners in partnership cases, and to enjoin creditors from pursuing non-debtor guarantors. Judge Duplantier stated that he was surprised that plan proponents could take away those sorts of rights without filing a complaint and summons, and giving the affected parties a chance to answer. Mr. Mabey stated that the court decisions had generally supported the first two types of injunctions as long as they did not violate due process. He said the rule is possibly misleading or in conflict with these decisions. The Reporter stated that the injunction should be in both the plan and the confirmation order in order to give notice to the affected creditor.

Mr. Klee moved to adopt his draft revision of Rule 7001(7) with a further amendment to require that the injunction be included in both the plan and the confirmation order. Mr. Mabey questioned the repetition in the draft. Mr. Klee agreed to revise the draft to parallel the construction of Rule 7001(8).

Mr. Mabey seconded the motion, as amended. The Chairman stated that the amendment "superloads" the definition of adversary proceedings with what is permissible in a plan, which should be decided separately. Mr. Minkel stated that the amendment limits the mischief that a court might do in a major case. Judge Meyers stated that the proposal was prompted by In re Commercial W. Fin. Corp., which was decided in 1985 and has not caused a problem so far. Mr. Heltzel stated that the definition of adversary proceedings is a revenue issue because of the filing fees. The motion failed by a vote of 4-7.

Rule 9024

Mr. Klee stated that he had prepared an amendment to Rule 9024 out of concern that some courts were using the rule to do more than was intended. Since then, in In re Cisneros, the Ninth Circuit had upheld the use of Rule 9024 and Civil Rule 60 to vacate a chapter 13 discharge based on mistake, despite the provisions of section 1328(e). Mr. Klee asked that his proposal be held in abeyance until the next meeting, in order that he could consider the opinion and whether to go forward. The Committee agreed.

Rule 3010

Mr. Klee stated that the absence of a provision in Rule 3010 specifying the minimum distribution in a chapter 11 or chapter 9 case implies that the court cannot set a minimum. He said he would be happy if the rule just left it to the plan. The Reporter stated that he believes the proponent of a plan who does not want to make small payments can so provide in the plan.

The Reporter stated that it is dangerous for the Rules to specify what can or cannot be included in a plan. Furthermore, he said, by limiting small payments, the proposed amendment could impair classes of claims. Mr. Klee said he intended only to prohibit a series of small payments, not a one-time distribution. At the request of the chairman, Mr. Klee moved that a draft amendment be prepared for the next meeting. Mr. Minkel seconded the motion. Mr. Ellis stated that, if the Bankruptcy Code permits such a plan provision, there's no need for a rule to say that it can be done.

The Committee discussed how it views possible changes in the Rules. Mr. Minkel stated that, if the rules are not broken, the Committee should not try to fix them and that the Standing Committee does not want a number of piecemeal changes if there's no concern by the bench and bar. Mr. Mabey disagreed. He stated that the Code has gone through a revolution while the Rules went through an evolution. He said there are plenty of situations in

which the Committee ought to take a look at the Rules in a serious and fundamental way. Mr. Smith stated that he believes the Rules are "stop gap" ones which should be subject to a thorough review as a long range project.

Judge Ellis stated that it is not prudent to send a number of insignificant changes to the Standing Committee at every meeting, but that the type of changes proposed by Mr. Klee are within the ambit of what the Standing Committee intends for this Committee to do. The Reporter said it's a difference between protocol and substance. He said Mr. Klee was absolutely right to bring the proposals to the Committee, but that he, the Reporter, disagreed with them as a matter of substance. Mr. Klee withdrew the motion and Mr. Minkel withdrew his second.

Rule 1001

Mr. Klee stated that he suggested that the Reporter draft an amendment adding the word "proceedings" to Rule 1001 in order to clarify that the Bankruptcy Rules apply whenever a bankruptcy matter is before a trial court, regardless of whether a bankruptcy judge or a district judge is presiding. The Reporter presented two drafts. One draft added references to the district courts, bankruptcy courts, and bankruptcy appellate panels, and the other added references both to the courts and to civil proceedings arising under title 11 or arising in or related to cases under title 11.

The Committee discussed whether the proposed amendments would apply the Bankruptcy Rules to a civil action related to a bankruptcy case but filed in another district before the bankruptcy petition was filed. Mr. Klee stated that he would withdraw the proposal because no courts are misinterpreting the existing rule. At the request of Mr. Sommer, the Reporter agreed to review the wording of Rule 1001 in light of the Tenth Circuit's decision in In re Graham.

Rule 2002(h)

Glenn M. Gregorcy, the chief deputy clerk of the United States Bankruptcy Court for the District of Utah, has suggested that Rule 2002(h) be amended to include notices to file claims against a surplus in chapter 7 cases. Mr. Logan requested that the matter be set over to the next meeting. Judge Mannes suggested that a Rule 3015(g) notice of a plan modification only be given to creditors who have filed claims if the modification is filed after the time to file claims has expired. He requested that the two proposals be considered at the same time. The Committee agreed.

Rule 3009

One of the amendments which were effective on August 1, 1993, deleted the requirement that the court approve the trustee's proposed distributions in a chapter 7 case. Some disputes have arisen over what notices have to be sent and exactly what is the trustee's final report and account as that phrase is used in the Bankruptcy Code and Rules. Mr. Logan stated that he would report to the Committee at its next meeting on the protocol which is being developed in an effort to avoid double noticing.

Plain English Forms

Mr. Sommer stated that many notices sent out in bankruptcy cases are unintelligible to people who are not attorneys despite the fact that the bankruptcy courts probably have more pro se parties than any other part of the court system. He discussed efforts by the state courts to put parties on notice that their rights and property may be affected by a motion or other pleading and to give them some guidance on what they must do to oppose the motion or pleading. Mr. Sommer, who stated that the bankruptcy courts have dealt with this matter to varying degrees in their local rules, offered a generic notice for use in contested matters.

It was suggested that it is time for a new Forms Subcommittee to be organized and that the proposal could be referred to that group. Mr. Sommer accepted the suggestion and the Committee agreed.

Official Form 14

The Reporter stated that he was asked at the last meeting to prepare alternative draft revisions of Official Form 14, Ballot for Accepting or Rejecting Plan, to include comments by several members of the Committee. He presented one draft which could be used whether or not the ballot covers multiple plans and a pair of alternative forms, one of which would be used to vote on single plans and one to vote on multiple plans.

The Reporter cautioned against changing the form if all of the Official Forms are to be revised a year from now. Mr. Klee said the language of the drafts is a good improvement over the current form. He suggested that the last sentence of the first paragraph be in bold type and the addition of a statement that the ballot must be returned in a timely manner. Professor Tabb suggested that the matter be referred to the new Forms Subcommittee. There was no objection to doing so.

Official Form 5

Judge Jellen has suggested amending Official Form 5, Involuntary Petition, to require that the petitioner or petitioners allege the facts which are the basis of their eligibility to file the petition pursuant to section 303 of the Code. Mr. Minkel stated that the proposal might conflict with Rule 1003(b) and moved to reject the suggestion. The motion carried without any dissenting votes.

Technology Subcommittee

Judge Barta presented the report from the Technology Subcommittee.

Judge Barta stated that Robert Fagan of the FJC is heading a team which is preparing an interactive video training program on the Civil Rules. The program, which is aimed at deputy clerks, will be completed early in 1994. A similar interactive program is planned on the Bankruptcy Rules. Judge Barta asked if the Technology Subcommittee could serve as a liaison with the Bankruptcy Rules project. Judge Mannes stated that he would respond.

Mr. Heltzel stated that the contract had been awarded for the Bankruptcy Noticing Center and that the first courts would go on line late this fall. He stated that the Bankruptcy Automated Noticing System (BANS) courts would be the first to use the new system in which notice information will be transmitted to the contractor, which will print, sort, and mail the notices.

Judge Barta stated that Rule 9036 became effective on August 1, 1993, and has been well received. Mr. Heltzel has developed a model agreement between the court and creditors to implement electronic noticing. Mr. Heltzel said a three phase acknowledgment process will be used in which creditors or their agents acknowledge 1) receipt of some data, 2) specifically what data they received, and 3) whether the debtor is someone to whom they issued credit or who owes them money. If the creditor does not acknowledge the debt, the clerk's office informs the debtor. Mr. Heltzel stated that the system has been set up so that it requires virtually no human intervention on the court side.

Mr. Minkel stated that electronic noticing benefits both the court and the creditor, but that the creditor receives greater benefits. He asked when the courts will start charging for the service. Mr. Heltzel stated that the courts do not anticipate charging for the service. Mr. Sommer asked if electronic noticing was covered by the fee for electronic access to court information. Mr. Heltzel said electronic noticing is not covered by the access fee because the electronic notice only includes the

information in the paper notice. It does not include information on other creditors.

Mr. Smith asked whether the electronic notice includes the scheduled amount of the debt. Mr. Heltzel said neither the paper notice nor the electronic one has the amount. Mr. Klee asked whether, if the court directs a party to give notice, the party would have to do so electronically. Mr. Heltzel said that was not intended. Ms. Channon said the party may be able to contract with the noticing center to do so in the future.

Conclusion & Adjournment

Judge Mannes stated that the next meeting is scheduled for Memphis on February 24 - 25, 1994, and that the following meeting is tentatively set for September, 1994. He asked that Committee members consider where that meeting should be held.

The Chairman thanked Judge Ellis for his interest and for representing the Standing Committee. The Chairman thanked Mr. Rabiej for making the arrangements for the meeting and Mr. Mabey for entertaining the Committee members at his ranch. He thanked the Administrative Office for its support of this Committee and Mr. Logan and Mr. Heltzel for serving as liaisons with the Committee. Judge Mannes, in turn, thanked the Chairman for his three years of "world class" service in that position and for the caliber of the meetings during his tenure as chairman.

There being no further business, the meeting was adjourned at 11:20 a.m. on September 14, 1993.

Respectfully submitted,

James H. Wannamaker, III
Attorney
Division of Bankruptcy