**ADVISORY COMMITTEE ON BANKRUPTCY RULES**

**Meeting of March, 29-30, 2007**
**Marco Island, Florida**

The following members attended the meeting:

District Judge Thomas S. Zilly, Chairman
Circuit Judge R. Guy Cole, Jr.
District Judge Irene M. Keeley
District Judge William H. Pauley, III
District Judge Richard A. Schell
District Judge Laura Taylor Swain
Bankruptcy Judge Christopher M. Klein
Bankruptcy Judge Mark B. McFeeley
Bankruptcy Judge Kenneth J. Meyers
Bankruptcy Judge Eugene R. Wedoff
Dean Lawrence Ponoroff
J. Michael Lamberth, Esquire
G. Eric Brunstad, Jr., Esquire
J. Christopher Kohn, Esquire
John Rao, Esquire

The following persons also attended the meeting:

Professor Jeffrey W. Morris, Reporter
Bankruptcy Judge A. Thomas Small, former chairman
District Judge James A. Teilborg, liaison from the Committee on Rules of Practice and Procedure (Standing Committee)
Bankruptcy Judge Jacqueline P. Cox, liaison from the Committee on the Administration of the Bankruptcy System (Bankruptcy Administration Committee)
Bankruptcy Judge Eric L. Frank, former member
Bankruptcy Judge James D. Walker, Jr., former member
Professor Alan N. Resnick, former reporter, former member
K. John Shaffer, Esquire, former member
Professor Daniel R. Coquillette, Reporter to the Standing Committee
Peter G. McCabe, Secretary of the Standing Committee
Clifford J. White, III, Director, Executive Office for U.S. Trustees (EOUST)
Donald F. Walton, Acting Deputy Director, EOUST
Mark A. Redmiles, National Civil Enforcement Coordinator, EOUST
Monique Bourque, Chief Information Officer, EOUST
James J. Waldron, Clerk, U.S. Bankruptcy Court for the District of New Jersey
John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the U.S. Courts (Administrative Office)

James Ishida, Rules Committee Support Office, Administrative Office
James H. Wannamaker, Bankruptcy Judges Division, Administrative Office
Stephen "Scott" Myers, Bankruptcy Judges Division, Administrative Office
Robert J. Niemic, Federal Judicial Center (FJC)
Karl F. Kaufman, Sidley Austin, Washington, D.C.

The following persons were unable to attend the meeting:

Patricia S. Ketchum, advisor to the Committee

The following summary of matters discussed at the meeting should be read in conjunction with the memoranda and other written materials referred to, all of which are on file in the office of the Secretary of the Standing Committee. Votes and other action taken by the Committee and assignments by the Chairman appear in **bold**.

## INTRODUCTORY MATTERS

The Chairman welcomed the members, advisers, staff, and guests to the meeting. He introduced Judge Cox, who replaced Bankruptcy Judge Dennis Montali as permanent liaison from the Bankruptcy Committee and Judge Teilborg, who replaced Circuit Judge Harris L. Hartz as liaison from the Standing Committee. He welcomed both liaisons. And he expressed the regrets of Ms. Ketchum who was unable to attend the meeting.

***Agenda Item 1 (Approval of Minutes of Seattle meeting of September 14-15, 2006)***

The Chairman requested a motion to approve the minutes from the Committee September 2006 meeting in Seattle. Motion was made and the **minutes were approved.**

***Agenda Item 2 (Oral reports on Meetings of other Rules Committees)***

*2(A) January 2007 meeting of the Committee on Rules of Practice and Procedure, (Judge Zilly and Professor Morris).*

The Chairman said that the Standing Committee had approved in principle the Committee's September 2006 recommendation to publish changes to the rules that would eliminate the separate document requirement in contested matters. Before publishing, however, the Standing Committee asked the Committee to consider stylistic changes to the proposed rules (existing Bankruptcy Rules 7052 and 9021 and new Bankruptcy Rule 7058). The Chairman said that Style Subcommittee considered the changes, and recommended the stylistic changes set out in Agenda Item 2(A). **Motion to approve all stylistic changes and to recommend publishing Rules 7052 and 9021, and new Rule 7058 carried without opposition.**

Draft minutes of the Standing Committee meeting were distributed at the meeting.

*2(B) November 2006 meeting of the Advisory Committee on Appellate Rules Committee.*

The Chairman said that the Appellate Rules Committee was working on changes to Appellate Rule 29. No current action items.

*2(C) January 2007 meeting of the Committee on the Administration of the Bankruptcy System*

Judge Klein said that the primary discussion was the Executive Office of the United States Trustee's request that the courts require the use of data-enabled "smart forms." He said that there was a robust discussion about policy concerns, but that no recommendation was made. He said the other major discussion related to diminished filings and the consequent effect on the judiciary budget.

*2(D) September 2006 meeting of Advisory Committee on Civil Rules*

Judge Walker reported that the primary focus concerned the new time computation template and applying the template to the Civil Rules. And the Chairman noted this Committee would be discussing the template and its application to the bankruptcy rules at Agenda Item 10.

*2(E) November 2006 meeting of Advisory Committee on Evidence*

Judge Klein said the primary focus of the Evidence Committee related to protecting attorney client privilege with respect to e-discovery. And he referred the Committee to Evidence Rule 502, which was published for comment last August

*2(F) Bankruptcy CM/ECF Working Group*

Judge McFeeley reported no noteworthy activity over the last period.

## ACTION ITEMS

***Agenda Item 3 (Comments concerning the Interim Rules, the published rules and Official Forms, and suggestions concerning rules and forms not published for comment)***

The Chairman said that the high volume of material before the Committee limited the time available for discussion. Accordingly, he said, the Committee would only discuss changes recommended by the subcommittees to specific published forms and rules, unless a member requested otherwise. He said that the Committee would first vote on approving the rules and forms which received no comment or which the assigned subcommittee recommended that no change be made. He said each subcommittee would then discuss recommended changes to the rules and forms. He referred the Committee to several memos included at agenda item 3 which discussed the comments received on the published rules and forms as well as several suggestions concerning rules and forms now in effect.

*3(A) "No comment" rules*

The Chairman said that no comments had been received concerning the proposed changes to **Bankruptcy Rules 1005, 1009, 1015, 2007.1, 2015, 3003, 3019, 5001, and 9009, and proposed new Bankruptcy Rule 2015.2**, and he asked for a motion to approve the rules as published. **With the exception of Rule 3019, the Committee approved each of the "no comment" rules as published.**

Judge Frank questioned whether the last sentence of Rule 3019 was necessary. After various suggested changes, the Committee voted to eliminate the last sentence and added a change to line 16 of the rule as follows: after "Code" and before "shall" insert the words "is governed by Rule 9014. The request …". **The Committee approved Rule 3019 as modified.**

*3(B) "No comment" forms*

The Chairman said that there had been no comments concerning the proposed changes to Official Forms 3A, 3B, 10, 16A, 19A, 19B. **Motion to approve the "no comment" forms as published carried without opposition.**

**The Committee later voted to replace Forms 19A and 19B with Form 19 (as set forth at Agenda Item 13), and as discussed at the post-meeting email vote described below.**

*3(C) "Comment rules" which the assigned subcommittee recommends be approved without change*

The Chairman said that the assigned subcommittee had considered the comments made on the following rules and recommended that no change be made: Bankruptcy Rules 1006, 1017, 1020, 2003, 3016, 3017.1, 4006, 4007, 4008, and 8001, and 9006; and new Bankruptcy Rules 1021, 2007.2, 2015.1, and 5008. **Motion made to approve all rules (as modified below) made and carried.**

Judge Frank suggested a possible change to Rule 4008 depending on whether the Committee approved proposed Official Form 27 (Reaffirmation Agreement Coversheet). The Chairman suggested the Committee table the suggestion until the coversheet was discussed at Agenda Item 9. **A motion was made and carried to defer and consider Judge Frank's proposed change to Rule 4008 with Official Form 27. The Committee later voted to publish for comment proposed Official Form 27 (as discussed at Agenda Item 9(A)) and the proposed change to 4008(a) as discussed at the post-meeting email vote described below.**

Committee members suggested the following changes to Rule 2015.1: move "unless the court orders otherwise" from the beginning of the first sentence to the beginning to the second sentence (to line 4), and change "health" to "patient" at line 19. **Rule 2015.1 was approved with the suggested changes.**

**The Committee later made two conforming changes to Rule 9006 as discussed at Agenda Item 5(b) below.**

*3(D) Comments or suggested changes to existing rules (not published for comment in August 2006)*

The Chairman said that there had been several suggestions to existing rules that require further study. And he made the following referrals:

The Reporter said that comment **06-BK-057** suggested that **Rule 2003** be amended to establish different deadlines for 341 meetings in voluntary and involuntary cases. **Referred to the Subcommittee on Business Issues**.

The Reporter said that comment **06-BK-015** suggested that **Rule 3015** be amended to allow the IRS to object to a confirmed plan after the debtor files required tax returns. **Referred to the Subcommittee on Business Issues.**

In response to NBC comment **06-BK-017**, the Reporter suggested that a new subdivision could be added to **Rule 5009** directing court to notify debtor that case will be closed without entry of a discharge if Form 23 is not filed. **Referred to the Subcommittee on Consumer Issues**.

The Reporter recommended further study concerning a suggestion to amend **Rule 7065** made by the Business Law Section of the State Bar of California at comment **05-BK-037**. Referred to the **Subcommittee on Technology and Cross Border Insolvency.**

The Reporter said that Judge Colleen A. Brown's comment at **06-BK-016** suggested revisions to **Rule 8003(b) and Rule 8005**. **Referred to the Subcommittee on Privacy, Public Access, and Appeals**

**There were no objections to the referrals.**

*3(E) Letter from Representatives John Conyers, Jr., and Linda T. Sanchez concerning Official Form 22, Rule 1017(e)(1), Rule 4002(b)(2), and Rule 9011.*

The Chairman directed the members' attention to a March 22, 2007 letter received from Representatives Conyers and Sanchez, which was included in the materials at Agenda Item 3. He noted that the Representatives indicated that they were writing in part to respond to previous letters from Senators Grassley and Sessions. And he said that the various aspects of the letter would be discussed later in the meeting in the context of suggested changes to the rules and forms, and that a formal response would be made after the meeting.

***Agenda Item 4 (Report by the Subcommittee on Attorney Conduct and Health Care)***

*4(A) Proposed changes to Rule 9011 and Official Form 1 regarding attorney conduct.*

Judge Schell described proposed changes to Rule 9011 and Form 1 recommended by the Subcommittee on Attorney Conduct and Health Care. He said the proposed changes were

described in the Form 1 mockup and in two memos at Agenda Item 4, one dated January 10, 2007, as revised February 27, 2007 (the January 10 Memo) and the other dated March 22, 2007 (the March 22 Memo).

Judge Schell said that at the last Committee meeting, the subcommittee was asked to add language to the attorney signature box on Form 1 to warn consumer debtor attorneys of their obligations under § 704(b)(4)(D). He said the subcommittee recommended that the language set out at page 4 of January 10 Memo be added to Form 1 as shown in the Form 1 mockup in the materials. After discussion, **the Committee approved the proposed amendment to Form 1 with two changes: (1) add the word "also" after "signature" in the warning, and (2) move the entire warning to the bottom of the attorney signature box.**

Judge Schell described the Rule 9011changes recommended by the subcommittee, as set out in the March 22 Memo. He said the subcommittee initially considered the problem of differential burdens that § 707(b)(4)(D) appears to place on consumer debtor attorneys based on when and in what chapter the schedules are filed. He said that literally read, §707(b)(4)(D) may only apply in situations where the schedules are filed *with* the petition. Thus, if the schedules are filed with the petition, §707(b)(4)(D) and Rule 9011 are applicable, but if the schedules are filed after the petition, only Rule 9011 is applicable. Judge Schell said that the subcommittee also thought it was unclear whether the § 707(b)(4)(D) standard applies to chapter 7 cases that have been converted from chapter 11 or chapter 13.

To address the problem of differential burdens inherent in § 707(b)(4)(D), the subcommittee recommended amending Rule 9011 to apply the statutory standard to consumer debtor attorneys across all bankruptcy chapters. He said Rule 9011(b)(2)(A) as proposed at page 8 of the March 22 Memo was meant to achieve this goal.

Judge Schell said the subcommittee also considered whether it made sense to limit the § 707(b)(4)(D) standard to debtor attorneys in consumer cases. He said that it could be inferred that in enacting BAPCPA, Congress had found a need for better accuracy in all consumer filings. And he said that the letter from Representatives Conyers and Sanchez (at Agenda Item 3(E)) expressed concern about placing differential burdens on debtor and creditor attorneys. Finally, he referred the Committee to the recent case of In re Rivera, 342 B.R. 435 (Bankr. D.N.J. 2006), and a pending class action case in the Bankruptcy Court for the Southern District of Alabama as evidence that there may a problem with documentation of claims and lift stay motions that is not sufficiently deterred by the current system. Accordingly, to avoid singling out consumer debtor attorneys, and as an incentive to consumer creditor attorneys to more thoroughly investigate the documentation supporting claims and lift-stay motions, the subcommittee recommended proposed Rule 9011(b)(2)(B) as set out at page 8 of the March 22 Memo.

There was a lengthy discussion regarding the proposed changes to Rule 9011 and the Committee was unable to come to a resolution the first day when the matter was initially taken up. Several members strongly objected to any change to Rule 9011. Professor Resnick articulated some common reasons against the proposed changes. He said that prior FJC studies indicate that bankruptcy judges have not found a particular problem with respect to the consumer bar, and he argued that there was no reason to single them out now (either creditor or debtor

side). He also said the proposed changes introduce traps in federal practice by making Rule 9011 more inconsistent than necessary with Civil Rule 11. And finally, he noted that while the Committee historically might put a warning in the forms, the rules have never attempted to parrot the statute, but instead allow the statute to speak for itself.

Several members agreed that there was no evidentiary basis to single out the consumer bar for a special disciplinary standard and suggested that before this Committee approved such a change to Rule 9011, that the FJC should study the matter and determine whether there really is a problem.

But Mr. White said he thought a study was unnecessary. He said this issue has been on the Committee's agenda since at least April 2005, and he believes that there is no question that there have historically been inaccuracies in the schedules. He supported the changes and said the time to act was now.

And Judge McFeeley reiterated the subcommittee's main reasons for making the suggested changes. He said the statute was poorly worded and argued that it doesn't make sense to apply a different attorney review standard only if the schedules are filed with the petition. He suggested that at the least, the rule should be changed so that the §707(b)(4)(D) standard applies to all schedules whenever filed. And he thought it should address chapter 13 filings to eliminate traps that exist if no change is made.

Mr. Rao said his first position was that no change should be made. But, he said that if a change *is* made to Rule 9011, it should be uniform and the new standard should apply to creditor attorneys as well as debtor attorneys in consumer cases.

Judge Frank also opposed changing Rule 9011, in part because he thought the change was pointless. He said that there is no conduct addressed by § 707(b)(4)(D) that would not also already be a violation of existing Rule 9011. And he was very concerned about singling out the consumer debtor attorneys in any manner not required by the statute. He suggested slowing the process down.

Judge Wedoff initially supported the proposed changes for the reasons stated by the subcommittee. On the second day of the discussion, however, he changed his position. He said that in the course of the debate, he had become convinced that Rule 9011 currently imposes a higher standard on debtor attorneys than § 707(b)(4)(D). And if the § 707(b)(4)(D) standard was not as stringent as the standard already in Rule 9011, there was no reason to incorporate it into the rule.

Some members were skeptical that Congress would have intentionally made the §707(b)(4)(D) standard less stringent than existing Rule 9011, and Mr. Lamberth said that although he didn't know whether §707(b)(4)(D) was a lesser standard, he knew it was different, and that was basis for putting it in the rule. But Judge Swain said it was inappropriate to "fix" the problems with §707(b)(4)(D) by putting it into the rule and applying it more broadly than the statute already does. Rather, she said, no change should be made and that if Congress believed that the reach of § 707(b)(4)(D) should be expanded it should amend that statute.

After discussing the matter over two days, the Chairman asked for vote; **and the subcommittee's proposed changes to Rule 9011 were rejected with only one vote in favor of the changes.**

*4(B) Comments on the proposed health care rules*

The Reporter directed the Committee to the February 23 memo at Agenda Item 4 for a review of comments on the rules applicable to health care cases. He said the only recommended change was to amend Rule 6011(b) to add the state attorney general to the list of persons who get notice under the rule. **A motion to add the state attorney general to the list of persons who get notice under Rule 6011(b) was made and carried.**

***Agenda Item 5 (Report by the Subcommittee on Consumer Issues)***

*5(A) Comments on the means test (Forms 22A, 22B, and 22C)*

Judge Wedoff said that Subcommittee on Consumer Issues was recommending or asking the Committee to consider 24 potential changes to Forms 22A, 22B, and 22C. He directed the Committee's attention to his March 23 memo in the materials that summarized the proposed changes by issue and he noted that the proposed changes were highlighted in the annotated forms at Agenda Item 5. Finally, he told the Committee that a more detailed review of the comments was contained in the March 5, 2007 analysis contained in the materials, but explained that he would only be talking about comments to the extent that the subcommittee recommended changes.

A review of the Committee's actions by item number, as set out in the Judge Wedoff's March 23 Memo, and by line number in each version of Form 22 is set forth below.

**1. Form 22C, Lines 7 and 9 (Form 22A, Lines 8 and 10; Form 22B, Lines 7 and 9)**

The issue concerns the proper treatment of alimony and support payments. The current versions of the forms treat alimony as current monthly income only when it is "regularly paid." However, § 101(10A)(A) of the Code counts as "current monthly income" all "income" received by the debtor, whether or not it is regularly paid. Section 101(10A)(B) defines an additional element of current monthly income: payments of household expenses of the debtor or the debtor's dependents made on a regular basis. **Because alimony and marital support are "income" to the recipient regardless of the regularity of the payments, the subcommittee recommended (1) that the instruction dealing with amounts paid on a regular basis be amended to delete the words "or spousal" and to instruct debtors not to include spousal support and (2) that the instruction for income from other sources be amended specifically to include spousal support payments.**

**The Committee approved the proposed changes, with the addition of the words "paid for that purpose" after the word "support" in the first sentence of line 7 of Forms 22B and 22C and line 8 of 22A.**

**2. Headings for Form 22C, Part IV (Form 22A, Part V)**

The issue is that the existing headings are inaccurate in limiting to "§ 707(b)(2)" the deductions from current monthly income included in the sections that they introduce. One of the included deductions—the one for charitable contributions—is not set out in § 707(b)(2) but rather is found in §1325(b)(3) (for Form 22C) and § 707(b)(1) (for Form 22A). To avoid this inaccuracy, **the subcommittee recommended that the headings be changed as follows: the heading for Part V of Form 22A and Part IV of Form 22C should be "CALCULATION OF DEDUCTIONS FROM INCOME," the heading for Subpart B should be "Additional Living Expense Deductions," and the heading for Subpart D should be "Total Deductions from Income."**

**The Committee approved the proposed changes.**

**3. Form 22C, Lines 24 and 44 (Form 22A, Lines 19 and 39)**

The issue concerns references to the content of the IRS National Standards for living expenses. In order to conform more closely to the language used in the Internal Revenue Manual, **the subcommittee recommended changing the "clothing" reference in the instruction for applying the National Standards to "apparel and services," changing the "household supplies" reference to "housekeeping supplies," and the "food and apparel" reference to "food and clothing (apparel and services)."**

**The Committee approved the proposed changes.**

**4. Form 22C, Lines 24, 25A, and 25B (Form 22A, Lines 19, 20A, and 20B)**

The issue concerns use of the debtor's "household size" instead of "family size" in instructions for determining applicable deductions. In order to determine the proper National and Local Standard deductions for living expenses, a debtor must specify the number of persons for whom the deductions are applicable. The current forms refer to this number as the debtor's "family size," apparently because there are references to "family" in the Internal Revenue Manual and because § 707(b)(6) and (7) compare the debtor's income to the "median family income" reported by the Census Bureau. However, in making this comparison, § 707(b)(6) and (7) themselves use the number of persons in the debtor's "household," and the Bureau of Labor Statistics, which provides the basis for the IRS's National and Local Standard living expense deductions, measures expenses by household size. Accordingly, **the subcommittee recommended that "family size" be changed to "household size" in the lines for National and Local Standard deductions.**

**The Committee approved the proposed changes.**

**5. Form 22C, Line 24 (Form 22A, Line 19)**

The comments suggested that the means test form should instruct debtors how to determine the "gross monthly income" used to determine the proper National Standard deduction or require then to disclose the gross monthly income that they actually used. Because there is no clear indication in the Code as to how gross monthly income should be determined,

the subcommittee recommended against a definition and also recommended against a required disclosure of the amount of current monthly income, because of concerns that this would confuse debtors. However, **the subcommittee concluded that the source used by the debtor to determine gross monthly income should be disclosed, and therefore recommended adding a check-list setting out the most likely sources.**

**The Committee approved the proposed changes.**

**6. Form 22C, Line 31 (Form 22A, Line 26)**

The comments suggested changing the language of the form to correspond more closely to the language contained in the Internal Revenue Manual with respect to "other necessary expense" for employment expenses. **The subcommittee agreed and recommended changing the phrase "payroll deductions" to "deductions for employment", and changing "mandatory" to "involuntary."**

**The Committee approved the proposed changes as modified by changing the word "non-mandatory" before "401(k) contributions" to "voluntary."**

**7. Form 22C, Lines 32, 34-37, 40-44 (Form 222A, Line 27, 29-32, 35-39)**

The comments pointed out that the forms inconsistently use of the words "total average" to describe the debtors' expenses. Wherever there may be multiple expenditures within a given expense category, the subcommittee determined that the instruction should direct debtors to total these expenditures. Wherever the amount of the expenditure may vary from month to month, the subcommittee determined that the instruction should direct debtors to average the monthly expenditures. Accordingly, t**he subcommittee recommended that the words "total" or "average" be added to several of the instructions for expense deductions.**

**The Committee approved the proposed changes.**

**8. Form 22C, Line 33 (Form 22A, Line 28)**

The comments noted that the category of court-ordered payments, as defined in the Internal Revenue Manual, encompasses payments ordered by an administrative agency as well as a court. **The subcommittee agreed, and recommended that the instructions be expanded to include agency-ordered payments**.

**The Committee approved the proposed changes.**

**9. Form 22C, Line 36 (Form 22A, Line 31)**

The comments noted that the Internal Revenue Manual limits health care expenses to those "required for the health and welfare of the family," but that the current instruction for Line 36 fails to include this limitation. **The subcommittee recommended that the instructions be amended to include the limitation to "required" expenses.**

**The Committee approved the proposed changes.**

**10. Form 22C, Line 39 (Form 22A, Line 34)**

The comments noted that the forms' instructions currently limit the debtor's deduction for health insurance, disability insurance, and health savings account expenses to amounts actually expended, but that § 707(b)(2)(A)(ii)(I), which provides for the deduction, does not contain this limitation. **The subcommittee recommended that the instructions be amended to allow the debtor, consistent with § 707(b)(2)(A)(ii)(I), to deduct "reasonably necessary" expenditures, without limitation to amounts actually expended. However, the subcommittee also recommended that the debtor be required to state actual expenditures when these differ from the amounts claimed as reasonably necessary.**

**The Committee approved the proposed changes with one dissent.**

**11. Form 22C, Line 41 (Form 22A, Line 36)**

The present instruction for the expense deduction for protection against family violence, provided for in §707(b)(2)(A)(ii)(I)), does not include the statutory limitation to "reasonably necessary expenses." **The subcommittee recommended that the instruction be amended to refer to "reasonably necessary expenses" that the debtor incurs for protection against family violence.**

**The Committee approved the proposed changes.**

**12. Form 22C, Line 42 (Form 22A, Line 37)**

Consistent with the comments and the language of § 707(b)(2)(A)(ii)(V), the subcommittee **recommended that the instructions be changed to require debtors to provide documentation only of the amount of their actual expenses and to permit debtors to "demonstrate" rather than "document" the reasonable and necessary character of those expenses.**

**The Committee approved the proposed changes with the following modifications: add ", and you must" after the phrase "actual expenses."**

**13. Form 22C, Line 43 (Form 22A, Line 38)**

The comments made two suggestions for this item, both of which the subcommittee recommends as being more consistent with the language of § 707(b)(2)(A)(ii)(IV). **First, the subcommittee recommended that the instruction be changed to refer to expenses "for attendance at . . . school" rather than the costs of "providing education." Second, the subcommittee recommended that the instructions require the debtor only to "explain" that additional expenses are reasonable and necessary rather than provide "documentation" of reasonableness and necessity.**

**The Committee approved the proposed changes with the following modification: add "or secondary" after "elementary" and add ",and you must" after the phrase "actual expenses."**

**14. Form 22C, Line 44 (Form 22A, Line 39)**

Consistent with the language of § 707(b)(2)(A)(ii)(I), **the subcommittee recommended that the instruction require the debtor only to "demonstrate" that additional expenses are reasonable and necessary rather than provide "documentation" of reasonableness and necessity.**

**The Committee approved the proposed changes.**

**15. Form 22C, Line 45 (no change in Form 22A)**

The Religious Liberty and Charitable Donation Clarification Act of 2006 amended §1325(b) to allow above-median income debtors the same charitable donation deduction that had previously been accorded only to below-median income debtors (capped at 15% of gross income). **To accommodate this change in the law, the subcommittee recommended that the instruction for deducting charitable contributions in Chapter 13 read as follows:**

> Enter the amount reasonably necessary for you to expend on charitable contributions in the form of cash or financial instruments to a charitable organization as defined in 26 U.S.C. § 170(c)(1)-(2). **Do not include any amount in excess of 15% of your gross monthly income.**

**The Committee approved the proposed changes with the following modification: add the words "each month" after the word "expend."**

**16. Form 22C, Line 47 (Form 22A, Line 42)**

The comments suggested two distinct issues that are addressed by the subcommittee's recommendation. **First, in order to be consistent with the language of § 707(b)(2)(A)(iii)(I), the subcommittee recommended that instruction refer to amounts "scheduled as" contractually due. Second, to avoid duplication of deductions already allowed under the Local Standard for housing, the subcommittee recommended that escrow payments for taxes and insurance be excluded from the deduction for payments on secured claims, by limiting the deduction to payments of principal and interest.** The second recommendation was not unanimous.

Some members argued against eliminating the "taxes and insurance" component because, even though it would go against the Committee's general principal of avoiding double counting, it would not matter in most cases. Also, some members thought that many debtors would not have ready access to the documents that itemize the tax and insurance portion of their payments. And other members said that under the terms of most mortgage agreements, taxes and insurance *are* contractually due to the mortgagee, even if the mortgagee then must pay those amounts to the taxing authorities and the insurance company.

After additional discussion, **the Committee approved the subcommittee's "scheduled as" recommendation, but modified the rest of the line so that the debtor reports the Average Monthly Payment to the mortgagee (and uses the entire payment in the form's**

**calculations), but then checks a box to report whether that payment includes "taxes and insurance."**

**17. Form 22C, Line 49 (Form 22A, Line 44)**

The subcommittee rejected comments suggesting that anticipated attorney fees for Chapter 13 representation could be deducted as priority claims. To avoid confusion on this issue, **the subcommittee recommended an addition to the instructions for priority claim deductions, stating expressly that these should include only past due obligations.**

**The Committee approved the proposed changes in principle. As approved, the 22C version of instruction should read:**

> **Payments on prepetition priority claims.** Enter the total amount, divided by 60, of all priority claims, such as priority tax, child support and alimony claims, for which you were liable at the time of your bankruptcy filing. **Do not include current obligations, such as those set out in Line 33.**

**18. Form 22C, Line 54 (no corresponding change in Form 22A)**

Pursuant to § 1325(b)(3), certain child support payments, foster care payments, and disability payments for a dependent child are not to be included in calculating the disposable income required to be paid to unsecured creditors. Such payments would properly be included in Line 7 of Form 22C, and the instruction for excluding these items in Line 54 now makes reference to payments "included in Line 7." However, it is possible that a debtor might include such payments in another line of Part I of the form. To deal with that possibility, **the subcommittee recommended that the instruction be amended to state that the debtor should exclude support income "reported in Part I" rather than "included in Line 7."**

**The Committee approved the proposed changes.**

**19. Form 22C, Line 55 (no corresponding change in Form 22A)**

Section 541(b)(7) provides a deduction from disposable income in Chapter 13 for certain retirement plan deductions. To track the statutory language more closely, **the subcommittee recommended that the instruction for this deduction be amended to read as follows:** "Enter the monthly total of (a) all amounts withheld by your employer as wages or received by your employer as contributions for qualified retirement plans, as specified in § 541(b)(7) and (b) all required repayments of loans from retirement plans, as specified in § 362(b)(19)."

**The Committee modified the subcommittee's recommendation so that the instruction now reads:**

> **Qualified retirement deductions.** Enter the monthly total of (a) all amounts withheld by your employer from wages as contributions for qualified retirement plans, as specified in § 541(b)(7) and (b) all required repayments of loans from retirement plans, as specified in § 362(b)(19).

**20. Form 22C, New Line 57 (no corresponding change in Form 22A)**

In providing for use of the means test in calculating disposable income for above-median income debtors, § 1325(b)(3) provides for the use not only of § 707(b)(2)(A), the means test deductions, but also § 707(b)(2)(B), the provision allowing a debtor to rebut a presumption of abuse by showing, among other things, expenses arising from special circumstances. Form 22C currently has no provision allowing a debtor to deduct such expenses from disposable income. To address this issue, **the subcommittee recommended that Form 22C be amended to add a new Line 57 allowing the debtor to include any expenses arising from special circumstances as described in § 707(b)(2)(B).** The later line numbers would be adjusted accordingly. The subcommittee reasoned that the amendment would make the "Additional Expense Claims" line in Part VI of the current form unnecessary, and so t**he subcommittee also recommended that current Part VI be eliminated.**

**The Committee agreed with the addition of the new line 57, but amended the last sentence of the instruction "you must" after the word "and."** The Committee disagreed that the adding the new line eliminated the need for Part VI because a different statutory section was involved (§ 707(b)(2)(A)(ii)(I)), **and accordingly recommended that existing Part VI remain in the form.**

**21. Form 22A, Line 1 (and Rule 1007(b)(4))**

The subcommittee concluded that two changes should be made to address the issue of debtors who claim that their debts are not primarily consumer debts, and so are not subject to any of the "abuse" provisions of § 707(b). **First, the subcommittee recommended that Rule 1007(b)(4) be amended by deleting the words "with primarily consumer debts."** This change would require all individual debtors to complete at least the first part of a means test form in chapter 7. **Second, the subcommittee recommended that Part I of Form 22A be amended with an expanded title—"Exclusions for Disabled Veterans and Non-Consumer Debtors," that the existing exclusion for veterans be renumbered as Line 1A, and that a new Line 1B be added with a check box allowing debtors to declare that their debts are not primarily consumer debts.** As with covered veterans, this declaration would result in the debtor not being required to complete the remainder of the form.

The subcommittee recommended these changes in response to concerns that a failure to file Form 22A could lead to automatic dismissal of a case filed by debtors who incorrectly asserted that they did not have primarily consumer debts. Section 707(b)(2)(C) provides that debtors subject to § 707(b) (individuals with primarily consumer debts) must file a statement of current monthly income and calculations that determine whether a presumption of abuse has arisen, "[a]s part of the schedule of current income and expenditures required under section 521." The statement of current income and expenditures is required by § 521(a)(1)(B)(2), and failure to file a document required under any provision of § 521(a)(1) results in automatic dismissal 45 days after the bankruptcy filing, pursuant to § 521(i)(1), unless on motion filed within that period the court extends the deadline for no more than an additional 45 days. Requiring Form 22A in all individual Chapter 7 cases is intended to eliminate this potential for dismissal, with the understanding that the debtor will have filed the required statement, even though it would have to be amended substantially in the event that the debtor was later determined to have primarily consumer debts.

**The Committee approved the proposed changes.**

**22. Form 22A, Line 4; Form 22B, Line 3; Form 22C, Line 3.**

In response to informal comments from forms vendors, the Administrative Office of the United States Courts suggested a modification to the instructions for reporting income from the operation of a business, profession, or farm, to deal with situations in which debtors operate more than one such entity. The modification states: "If you operate more than one business, profession or farm, enter aggregate numbers and provide details on an attachment." The Forms subcommittee recommends the modification.

**The Committee approved the proposed change.**

**23. Form 22A, Line 17; Form 22C, Lines 13 and 19**.

The Executive Office for United States Trustees suggested additions to the instructions dealing with the situation of married debtors filing separately from their spouses. In these situations, the Code (and hence the forms) require that for some purposes, all of the income of the non-filing spouse be counted, but that for other purposes, only part of the income of the non-filing spouse—the income regularly used to pay household expenses of the debtor or the debtor's dependents ("debtor expenses")—be counted. The forms deal with this situation by requiring a disclosure of all of the non-filing spouse's income (allowing use of that information where required), but then providing for an adjustment—deducting the income not used to pay debtor expenses (resulting in the lower income otherwise required). The UST amendment would direct the debtor to specify the uses to which the non-filing spouse put any income not used to pay debtor expenses. To accomplish this, the UST proposes the following content for Form 22A, Line 17:

| | |
|---|---|
| 17 | **Marital adjustment.** If you checked the box at Line 2.c, enter on Line 17 the total of any income listed in Line 11, Column B that was NOT paid on a regular basis for the household expenses of the debtor or the debtor's dependents. Specify in the lines below each use to which your spouse put the excluded Column B income (such as payment of the spouse's tax liability or the spouse's support of persons other than the debtor or the debtor's dependents) and the amount of income devoted to each use. If necessary, list additional uses on a separate page. If you did not check box at Line 2.c, enter zero. |

| | | |
|---|---|---|
| a. | | $ |
| b. | | $ |
| c. | | $ |

Total and enter on Line 17.

Similar changes would be made in Form 22C, Lines 13 and 19, but since Line 13 presents an optional adjustment (used only if the debtor contends that the full income of a non-filing spouse should not be used for calculating the applicable commitment period), the instruction would be somewhat more complex:

> If you are married, but are not filing jointly with your spouse, AND if you contend that calculation of the commitment period under § 1325(b)(4) does not require inclusion of the income of your spouse, enter the amount of the income listed in Line 10, Column B that was NOT paid on a regular basis for the household expenses of you or your dependents and specify, in the lines below, each use to which your spouse put the excluded Column B income (such as

payment of the spouse's tax liability or the spouse's support of persons other than the debtor or the debtor's dependents) and the amount of income devoted to each use. If necessary, list additional uses on a separate page. If the conditions for entering a marital adjustment do not apply, enter zero.

**The Committee approved the proposed changes with stylistic revisions as set forth in the handout provided by Judge Wedoff on Friday morning.**

**24. Form 22C, New Line (no corresponding change in Form 22A)**

The subcommittee had a lengthy discussion of the best way to deal with the provision of § 1325(b)(2) which states that "the term 'disposable income' means current monthly income received by the debtor." Judge Lundin, in comment 06-BK-009, suggested that this language is a limitation on a debtor's disposable income, requiring a deduction of current monthly income that the debtor does not personally "receive." Two examples were offered to test the analysis. The first was the payment of tuition directly by a grandparent to a school for the education of the debtor's children. The second example was of the payment of the mortgage on the debtor's home by the debtor's non-filing spouse directly to the mortgage holder. Regarding the first payment, a number of subcommittee members believed that this payment perhaps should be excluded, but there was also general agreement that the payment to the mortgage company should not be excluded from disposable income. The subcommittee was split in the end, with a majority concluding that all payments should be included in the debtor's disposable income and thus no change should be made to the form.

**After discussing the issue, the Committee voted to make no change to the forms regarding income not actually received by the debtor.**

*5(B) Additional comments on the consumer rules and proposed amendments.*

The Reporter referred the Committee to the March 23 memo at Agenda Item 5B of the materials.

The Reporter first discussed the proposed change to Rule 1007(b)(4) as set out at page 5 of the March 23 memo, at line 60. He said the change, which Judge Wedoff had previously discussed at Item 21 of his means-test analysis, would require all individual debtors to complete the first part of the means-test form in chapter 7, and would prevent a trap that sometimes caught individuals who incorrectly asserted that their debts were not primarily consumer debts. **The Committee approved the change as set out in the memo.**

The Reporter next described proposed changes to Rule 1007(b)(7) and (c) at pages 5-7 of the March 23 memo and to the committee note at page 10 of the March 23 memo. By line number, the changes were at lines 76-77 and lines100-101. **The Committee approved the proposed changes to Rule 1007(b)(7) and (c) as set forth in the March 23 memo with the following change: at line 106, after "§ 1328(b)," add ", but the court may, at any time and in its discretion, enlarge the time to file the statement required by subdivision (b)(7).**"

The Committee also made two changes to Rule 9006 to account for the enlargement and reduction limitations that it approved in Rule 1007. Using the line numbers in the published rules, the Committee added at line 20, after the phrase "business case," the phrase "and the time to file the statement required under Rule 1007(b)(7)," and at line 27, after "Rules," added "1007(c) with respect to the time to file schedules and statements in a small business case and the time to file the statement required under Rule 1007(b)(7)." The Reporter prepared the changes distributed the revised version to the Committee the next day, **and the Committee approved the changes to Rule 9006(b)(3) and (c)(2) as set forth in the handout distributed at the meeting.**

The Reporter next discussed two versions of a proposed new Rule 1017.1 set out at pages 10-11 of the March 23 memo. He said the purpose of the new rule was to provide a deadline for court action pertaining to the debtor's certification that the failure to get prepetition credit counseling was due to § 109(h)(3) "exigent circumstances." Several members questioned whether the rule was needed, and there was disagreement about whether the proposed alternatives inappropriately "wrote out" a requirement under the statute that the court make an affirmative finding that debtor's certification is "satisfactory" in order for it to be effective. **Ultimately, the Committee voted to approve the second version of Rule 1017.1 in the March 23 memo with the modification that service of any motion challenging the debtor's certification also be made on the United States trustee.**

The Reporter said the subcommittee proposal to change to the Committee Note to Rule 1019 (described at the top of page 12 of the March 23 memo) was meant to explain that although Rule 1019 sets a deadline for § 707(b) and (c) motions after a case is converted to chapter 7 from another chapter, the deadline was not meant to imply that such motions were proper. **The Committee approved the change to the Rule 1019 note with the following change: substitute "permitted" for the phrase "appropriate or not appropriate."**

The Reporter reviewed proposed changes in the Committee Note for Rule 4002 at pages 16 and 17 of the March 23 memo. **The Committee approved the proposed changes including the bracketed language at the bottom of page 16 with the following substitution: replace the phrase "that there is no reason to" with "need not."**

The Reporter discussed several comments with respect to Rule 4003. Two comments opposed the expansion of the deadline to object to exemptions from 30 to 60 days. The subcommittee did not recommend reverting to 30 days, but did recommend amending the rule to provide notice of the objection to the debtor and anyone who may have filed the exemption in the case. The subcommittee also recommended a change to the note to make clear that the deadlines set forth in Rule 4003(b)(2) also apply to exemption objection made under (b)(3). After discussion, **the Committee approved the subcommittee recommendation to amend the rule at lines 13-15 and line 18 as set forth on page 18 of the March 23 memo. A majority of the Committee rejected the subcommittee's recommendation regarding the 60 days period, and therefore approved changing "60" on line 2 to "30", and the Committee amended the note by deleting the second paragraph and deleting the new underlined sentence in the fourth paragraph (at the top of page 20 of the March 23 memo).**

The Reporter said that the proposed changes to Rules 4004 and 7001 set out at pages 20-26 of the March 23 memo were meant to clarify that an objection to discharge based on insufficient lapse of time between cases need not be brought by complaint. The Committee generally agreed in concept, but referred the matter back to the subcommittee to determine whether to require such motions should be made within 60 days after the case is filed (the current limit for other types of discharge objections), or whether they should be allowed until the case is closed; and to suggest a procedure for the court to use when it raises the matter on its own. **Prior to referral, the Committee approved the following changes to the material printed in the March 23 memo:** with respect to **Rule 7001**: delete "(a)" at line 1; delete underlined material at line 10 in subdivision (4) and replace with "except when an objection to discharge is under §§ 727(a)(8), (a)(9), or 1328(f)"; and delete subparagraph (b) (all underlined material on lines 22-23; and with respect to **Rule 4004**: delete "the debtor is not eligible to receive" at line 44 and replace with "a motion is pending to deny the debtor"; and delete "if the debtor is not eligible for" at line 53 and replace with "a motion is pending to deny the debtor." **After the meeting, the Committee approved Rule 4004(c) as published, as described in the email vote below.**

The Reporter said that based on the comments, the subcommittee proposed changing Exhibit D of Form 1 so that a debtor must describe on the form any exigent circumstances that warrant a waiver of the requirement to participate in an approved credit counseling course before filing. He explained that the proposed change would eliminate the need for a separate motion. **The Committee approved the change to Exhibit D as distributed in a handout at the meeting on Friday with the following changes to the handout:** In the first sentence of the warning below the explanation lines, substitute "petition" for "case" and "counseling" for "briefing."

The Reporter said that the subcommittee recommended a suggestion from Judge Lundin to add language at the top of schedules I and J to explain that the income and expenses calculated on those forms might be different than the income and expenses calculated in Form 22A-C. **The Committee approved the warnings at the top of I and J as set out at page 28 of the March 23 memo except that the warning for J would read as follows:** "The average monthly income calculated on this form may differ from the deductions from income allowed on Form 22A or 22C."

The Reporter said that one of the comments pointed out that debtors still mistakenly file Official Form 23 (which certifies completion of a debtor education course) to evidence completion of prepetition credit counseling. Accordingly, the subcommittee recommended adding the word "postpetition" to the title of the form. **The Committee approved the change to Form 23 as shown in the materials except that first italicized sentence should read:** *"Every individual in a chapter 7, chapter 11 in which § 1141(d)(3) applies, or chapter 13 case must file this certification."*

Finally, the Reporter discussed a comment made by the National Association of Consumer Bankruptcy Attorneys that advocated a rules-based solution to the problem of automatic dismissals under § 521 of the Code. **The Committee agreed with the subcommittee that any action would be premature at this time.**

***Agenda Item 6 (Report by the Subcommittee on Business Issues)***

*6(A)(1) Comments on the business rules and proposed amendments.*

The Reporter referred the Committee to the February 26 memo at Agenda Item 6. He said that at issue 2 of the memo, the subcommittee recommended adding a line to the committee note for Rule 2002 to include a cross-reference to Rule 6004(g). **The Committee approved the proposed change to the committee note for Rule 2002.**

The Reporter said that issue 3 of the February 26 memo set out alternative recommendations by the subcommittee designed to make clear that the sale of personally identifiable information under Rule 6004 could be continued to allow for full participation by a privacy ombudsman. After discussion, the **Committee rejected a motion to change the rule, but approved a motion to change the note to Rule 6004 as proposed at page 6.**

The Reporter said that the subcommittee discussed a number of issues raised by the IRS. At issue 4 of the February 26 memo, the subcommittee considered whether to amend Rule 2002(g)(2) to ensure that a designated address filed by a governmental unit under Rule 5003(e) will be effective. The subcommittee recommended inserting § 342(f) and 5003(e) in rule as shown at page 7, and making change in committee note as shown on page 7. Mr. Kohn suggested an additional change at line 7 adding "or Rule 5003(e)" after 2002(g)(1). **The Committee approved the change to Rule 2002(g)(2) with Mr. Kohn's modification, and also approved the proposed changes to the note set out at page 7 of the February 26 memo except that the underlined sentence in the first paragraph will be deleted, and the first two words of the last sentence in the first paragraph will be changed from "it also" to "The subdivision."**

The Reporter said that at issue 5 of the memo, the subcommittee recommended revising Rule 3002(c)(1) to allow the IRS to request additional time to file claims based on § 1308 for cause shown. **After discussion, the Committee voted to approve the proposed changes to Rule 3002 and to the committee note as set out on page 9 of the February 26 memo.**

The Reporter said that at issue 6 of the memo, the subcommittee recommended revising the note to Rule 4002 to state that tax returns and transcripts are treated differently from the debtor's other financial documents. **The Committee approved the proposed change to the note for Rule 4002 as set out at page 10 of the February 26 memo.**

The Reporter said that at issue 7, the subcommittee recommend changing Rule 5003(e) to direct the clerk to keep a separate government address register for the notice required by § 505(b) of the Code. Mr. Brunstad suggested adding the word "separate" after "a" on line 16. Some members thought keeping a separate register was not required by the Code, and that simply posting a separate address in the same general register (as is done now) would be less confusing. But other members thought that a separate register, properly designated by the clerk, would reduce confusion. **The Committee voted to approve the subcommittee's amendment to 5003 as set forth on pages 11 and 12 of the February 26 memo, with the addition of the word**

**"separate" at line 16.** Members suggested a number of changes to the note, and **the Committee approved the note to Rule 5003 as set out at page 12 of the February 26 memo with the following changes**: Change the third line by deleting "a request" and substituting "requests;" substitute "each request" for "a request" at the end of the second to last line; and delete the last line.

The Reporter said that at issue 8 of the memo, the subcommittee considered whether to amend Rule 3007(a) as shown at page 14 to prevent the filing of an objection to a § 1308 tax claim until a tax return is filed. A thorough discussion of the proposal, which reflected the Sense of Congress expressed in § 716(e)(2) of BAPCPA, ensued. Committee members expressed concern as to tension with the Bankruptcy Code's provision for automatic allowance of claims in the absence of an objection, as well as concern as to how the rule would operate in the event that no tax return was required for a year within the § 1308 period. The Committee discussed the fact that the absence of § 1308 compliance would become clear upon the filing of a premature objection, and concluded after careful consideration that a rule precluding objections should not be adopted. **Accordingly, the Committee voted *against* making any change.**

The Reporter referred the Committee to a proposed change to Rule 2015.3(e) at page 3 of the March 23, 2007 Addendum. He said the proposed change was designed to eliminate a conflict with Rule 2003(a). **The Committee approved the change as set forth in the March 23 Addendum, except that 20 days at line 43 was changed to 14 days.**

*6(A)(2) Comments on business forms.*

The Reporter discussed several comments regarding Official Forms 25A, 25B and 25C described in the March 15, 2007 memo at Agenda Item 6. He said that the subcommittee rejected a number of the comments for reasons set forth in the memo, but that it agreed with a recommendation from the Commercial Law League to insert a new Article VII in the Plan (Form 25A) entitled "Means for Implementation of the Plan" as set out on page 3 of the March 15 memo. **The Committee approved insertion of the new Article VII in Form 25A, with the following substitution:** replace "§ 1125(a)(5)" with "§ 1123(a)(5)." **And the Committee voted to renumber the remaining articles in the Form 25A.**

The Reporter said that the EOUST had made two suggestions about Form 25C (Small Business Monthly Operating Report) that were not discussed in any of the memos: (1) adding a new "yes/no" question (#18) on the questionnaire part of Form 25C "Has anyone made an investment in your business this month?"; and (2) adding a new section in front of the "Income" section called "Summary of Cash on hand." **The Committee approved both changes.**

***Agenda Item 7 (Report by the Subcommittee on Technology and Cross Border Insolvency)***

Judge McFeeley said that there were a number of comments pertaining to cross border insolvencies and directed the Committee to the memos and handouts at Agenda Item 7 for the details. He said that the preliminary question was whether the Committee should wait for a year before making any of the changes suggested in the memos until the bench and bar develops more

experience with the new law. **After discussing the matter, the Committee voted to wait a year to consider the suggested chapter 15 related rule and forms changes (including Rule 5012 in the bullpen) with the following exception: The Committee approved changing the references to "foreign creditor" in all versions of Form 9 and the instructions to Form 9 to "creditor with a foreign" address, as illustrated in the materials.**

**After the meeting, as described in the email vote below, the Committee approved the cross border amendments to Rules 1007(a)(4), 1010, 1011, 2002(p) and (q) as published, and Rule 2002(p)(3) as approved at the Seattle meeting.**

***Agenda Item 8 (Report of Subcommittee on Privacy, Public Access, and Appeals)***

Judge Pauley said that the subcommittee was not proposing any changes to the rules based on the comments, but did suggest a possible change to the committee note for Rule 8001(f)(3) as set forth at page 3 of the February 23 memo at Agenda Item 8. **After discussion, the Committee voted to revise the committee note to Rule 8001(f)(3) as set forth on page 3 of the March February 23 memo. And after the meeting, as described in the email vote below, the Committee approved Rule 8003(d) as published.**

***Agenda Item 9 (Report of Subcommittee on Forms)***

*9(A) (Comments on the Official Forms)*

Judge Klein said that the subcommittee was recommending a number of changes to the Official Forms as described in the January 26 memo and as illustrated by the annotations to the forms found at Agenda Item 9. But, he said, only few changes required discussion. The first proposed discussion item was whether the Committee should recommend publishing the proposed reaffirmation agreement coversheet (Official Form 27) at page 205 of the materials. He explained that the subcommittee proposed the form as a compromise between members on the Committee that had previously suggested that director's form 240 be made an official form, and others that preferred that it remain a director's form for the time being. He said the subcommittee thought that the new form coversheet captured in one place all the required financial information the court must review when deciding whether to approve a reaffirmation agreement.

Judge Wedoff and Judge Frank suggested several changes to the proposed coversheet. After discussing the form and certain changes, the **Committee approved the coversheet in concept; agreed it should be an official form, and approved publication after it has been restyled by the Forms and Style Subcommittees and the following changes have been incorporated:** Number all questions. Insert a new question 2: "Describe collateral, if any, securing debt. _____." Question 8 would become "income for Schedule I, line 16: _____." Question 9 would be, "Explain any difference in the amounts set out in lines 7 and 8. _____." Line 10 would become "Debtor's monthly expenses at reaffirmation (without reaffirmed debt): _____." Line 11 would become "Current expenditures from Schedule J, line 18 (without reaffirmed debt): _____." Line 12 would be: "Explain any difference in the amounts set out on line 10 and 11. _____."

Judge Klein discussed Official Form 8 (Statement of Intention). He said that the proposed changes were in response to a comment from Judge Elizabeth Perris that most debtors were incorrectly filling out the current version of the form. Judge Klein noted that Bankruptcy Judges Advisory Group (BJAG) had provided their initial reactions to the proposed changes at its most recent meeting a few weeks ago. He said that despite negative comments from some members of the BJAG that the proposed changes make the form too complex, the subcommittee still thought they were an improvement over the current version. Accordingly, the subcommittee recommended publishing the revised Form 8 for comment.

Mr. Rao echoed some of the BJAG comments, and said he thought the existing version was probably better. Judge Frank also expressed reservations, but did not object to publishing the new version for comment. And he suggested several changes. **After discussing the matter, the Committee voted to publish proposed Form 8 at set forth at page 189 of the materials, with the following changes:** change "which" to "that" in the second "checkmark" line at the top of the form; change "applicable actions" to "applicable items" in the fourth column; delete "Property is not subject to § 521(a)(6)" in the fourth column; and replace with "Other. Explain _____," and delete the last bulleted paragraph at the bottom of page 1.

Judge Klein explained that proposed change to the "residential property box" on Official Form 1 (as set forth at page 179 of the materials) was made to facilitate the certification required of the debtor under § 362(l) of the Code. **The Committee approved changes as recommended.**

Judge Klein said that the subcommittee recommended the annotated changes to Official Forms 4, 6, and 7 set out at pages 180-82 of the materials in response to a suggestion that filers would be more likely to make correct references to minor children if the instructions contained an example. **The Committee approved the recommended changes.**

**The Committee also approved all of the technical/non-controversial recommendations to Official Forms 1, 6E and 6F, 6I, 6-Declaration, 22A, 22B, 22C, 24 and 25A, as set out at section 2 of the January 26 memo (pages 6-9).**

*9(B) (Automatic, statutory adjustments to certain dollar amounts) (Information item)*

Mr. Wannamaker reported that the AO had updated Official Forms 1, 6C, 6E, 7, 10, 22A, and 22C with the new dollar amounts as required by law, and said that the new forms would be posted and effective on April 1, 2007.

*9(C) (Proposed amendments to Director's Procedural Forms) (Information Item).*

Mr. Wannamaker reported on a number of changes described in the January 26 memo at Agenda Item 9(C). The changes included: privacy amendments to the captions of Forms 13S, 15S, 132, 204, 205, 206, 207, 231A, 231B, 253, and 270; a revision of the bankruptcy subpoena

forms 254, 255, and 256 to conform with the amendment to Civil Rule 45; the abrogation of Forms 130A and 130B; and additional amendments to Forms 13S, 104, 202, 204, and 240.

***Agenda Item 10 (Report of the ad hoc group on time computation and the discussion of time computation at the Standing Committee meeting)***

The Chairman referred the Committee to the recommendations set out in the December 8 memo regarding time computation change to be made to the Bankruptcy Rules. The Chairman reminded the Committee that it had already approved the general template, and said that the Civil Rule version of the template (Civil Rule 6) was included in the materials. He said that the two issues for discussion were whether the Committee should proceed this year or wait, and, whenever it goes forward, what exceptions to the template should be implemented.

**After discussion, the Committee recommended making the time-computation changes now.**

*10(A) Proposed amendments to template rule.*

The Chairman said that Ad Hoc Group recommends adopting the template as presented in the materials. **After discussion, a motion to approve the template as set out in the materials carried without opposition.**

*10(B) Timing and procedure for bankruptcy rule time-computation changes.*

The Chairman said that the Ad Hoc Group recommends the global changes listed in the December 8, 2006 memo. Generally, two-day time periods and periods of 30 days or more would be unchanged, and all other time periods less than 30 days would be changed to multiples of 7. **The Committee approved the Ad Hoc Group's recommendations.**

The Reporter said the Ad Hoc Group recommended excluding one category of rules from the general approach of changing 10-day periods to 14 days. He said that to facilitate the rapid disposition of bankruptcy appeals, the Ad Hoc Group recommended that 10-day periods that deal with noticing appeals (or serve a similar purpose) remain 10 days. Several members objected to any exclusions as being likely to turn into traps, and said that even at 14 days bankruptcy appeals would move much faster than civil appeals.

Professor Resnick said that the Committee had once before tried to change the appeal time period, but that there that there was so much negative response that it was changed back a year later. He said the response before was that most big deals don't close until after the appeal period runs so that the parties can be sure the deal won't be undone. And, for a lot of parties, an extra three days would be a big difference. Other members said that nowadays many deals close immediately and rely on the doctrine of mootness to prevent an appeal from undoing the deal. After additional discussion, **the Committee agreed (with 2 votes against) that all 10-day periods (even if related to appeals) will change to 14 days.**

***Agenda Item 11 (Proposed amendments to the Bankruptcy Rules as a result of the restyling of the Civil Rules)***

**The Committee approved the changes to Rules 7012, 7022, 7023.1 and 9024 as set forth in the February 16 memo at Agenda Item 11 to reflect amendments to the civil rules made as part of the restyling of those rules.**

***Post meeting email vote***

After the meeting, the Chairman requested an email vote on several published rules set forth below. He said, that although the relevant subcommittee had been asked to consider further changes to each of the rules, it was unclear from the minutes and his notes whether the Committee recommended approving the published versions of the rules (with further changes from the subcommittees to be considered at the next meeting) or if, instead, the Committee recommended continued use of the interim rule versions after December 2008. He also requested confirmation of the Committee's decision to replace Forms 19A and 19B with Form 19 (as set forth in Agenda Item 13).

Rule 1007(a)(4) as published with the following changes:

> Replace "administrators in foreign proceedings of the debtor" with "all persons or bodies authorized to administer foreign proceedings of the debtor" each place it appears.

Rule 1010 as published.
Rule 1011 as published.
Rule 2002(p)(1)-(2) as published plus Rule 2002(p)(3) from the bull pen (Agenda Item 13).
Rule 2002(q) as published with the following changes:

> Replace "administrators in foreign proceedings of the debtor" with "all persons or bodies authorized to administer foreign proceedings of the debtor" each place it appears.

Rule 4004(c) as published.
Rule 4008 as published.
Rule 4008(a) as follows for publication:

> (a) FILING OF REAFFIRMATION AGREEMENT. A reaffirmation agreement shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a) of the Code. <u>The reaffirmation agreement shall be accompanied by a coversheet, prepared as prescribed by the appropriate Official Form.</u> The court may . . ..

Rule 8003(d) as published.
Rule 9006(b)(3) and (c)(2), as set forth by the Reporter in his handout on Friday morning of the meeting.
Replacement of Officials Forms 19A and 19B with Form 19 as set forth in the bullpen (Agenda Item 13).

**The Committee approved all suggested changes, with the following stylistic change to Rule 9006(b)(3): The caption would be changed to "Enlargement Otherwise Regulated" and the text would state "Enlargement of the time for taking action under Rules 1006(b)(2) . . . and 9033, shall be governed by the provisions of those rules."**

## Administrative Matters

The Chairman reminded the members that the next meeting will be held September 6-7, 2007, at the Teton Mountain Lodge, Jackson Hole, WY. A motion to adjourn carried without dissent, and the meeting was adjourned.

Respectfully submitted,

Stephen "Scott" Myers