ADVISORY COMMITTEE ON BANKRUPTCY RULES

Meeting of April 3-4, 2003
Longboat Key, Florida

Minutes

The following members attended the meeting:

Bankruptcy Judge A. Thomas Small, Chairman
District Judge Robert W. Gettleman
District Judge Ernest C. Torres
District Judge Thomas S. Zilly
District Judge Laura Taylor Swain
District Judge Irene M. Keeley
Bankruptcy Judge James D. Walker, Jr.
Bankruptcy Judge Christopher M. Klein
Bankruptcy Judge Mark McFeeley
Professor Mary Jo Wiggins
Professor Alan N. Resnick
Eric L. Frank, Esquire
Howard L. Adelman, Esquire
K. John Shaffer, Esquire
J. Christopher Kohn, Esquire

Professor Jeffrey W. Morris, Reporter, attended the meeting. District Judge Norman C. Roettger, Jr., a member of the Committee, was unable to attend.

Circuit Judge Anthony J. Scirica, chair of the Committee on Rules of Practice and Procedure (Standing Committee); District Judge Thomas W. Thrash, Jr., liaison to the Standing Committee; and Peter G. McCabe, secretary to the Standing Committee, attended. District Judge Bernice Bouie Donald, a former member of the Committee, attended. Bankruptcy Judge Jack B. Schmetterer, a member of the Committee on Federal-State Jurisdiction (Federal-State Committee); District Judge Lee H. Rosenthal, a member of the Advisory Committee on Civil Rules (Civil Rules Committee); David M. Bernick, a member of the Standing Committee; and Professor S. Elizabeth Gibson, University of North Carolina Law School, attended. Bankruptcy Judge Dennis Montali, liaison to the Committee on the Administration of the Bankruptcy System (Bankruptcy Committee), and Lawrence A. Friedman, Director, Executive Office for United States Trustees (EOUST), were unable to attend.

The following additional persons attended all or part of the meeting: Martha L. Davis, Principal Deputy Director, EOUST; James J. Waldron, Clerk, United States Bankruptcy Court for the District of New Jersey; John K. Rabiej, Chief, Rules Committee Support Office,

Administrative Office of the United States Courts (Administrative Office); Patricia S. Ketchum and James H. Wannamaker, Bankruptcy Judges Division, Administrative Office; and Robert Niemic, Research Division, Federal Judicial Center (FJC).

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 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 all the members, liaisons, advisers, and guests to the meeting. The Chairman recognized the contributions of Bankruptcy Judge Donald E. Cordova, a former member of the Committee, who died on February 16, 2003. The Chairman presented a certificate of appreciation to Judge Donald in recognition of her service as a member of the Committee. The Chairman presented a certificate of recognition to Ms. Ketchum in recognition of her outstanding work as principal support staff for the Committee under five different chairmen.

The Committee approved the minutes of the October 2002 meeting.

The Chairman reported on the January 2003 meeting of the Bankruptcy Administration Committee. The Bankruptcy Administration Committee adopted a revised mass torts report, which examines the mass torts recommendations of the National Bankruptcy Review Commission. The report, which was revised to incorporate comments from the Civil Rules Committee and the Federal-State Committee, includes an observation that bankruptcy is only one aspect of any solution to the problem of mass torts in the federal and state courts. The report also notes that the Review Commission recommendations raise constitutional issues that may not be resolved without guidance by the United States Supreme Court.

The Chairman stated that it was the view of the Bankruptcy Administration Committee that the continuing development and support of the Case Management/Electronic Case Files System (CM/ECF) is necessary to ensure future compatibility with court enhancements and advances in technology. To accomplish this, the Bankruptcy Administration Committee established a Subcommittee on Automation to assist the Committee in working with the Committee on Information Technology to define requirements for additional functionality.

The Chairman briefed the Committee on the January 2003 meeting of the Standing Committee. The Chairman reported that Mr. Bernick had expressed reservations about the impact of the proposed amendments to Rules 3004 and 3005 in mass torts cases. In order that the Committee could reconsider the proposed amendments after discussing mass torts, the Chairman withdrew the proposal from the Standing Committee. The Standing Committee approved the Committee's recommendation to publish a proposed amendment to Rule 4008 for

public comment.

The Chairman reported that the Supreme Court approved amendments Bankruptcy Rules 1005, 1007, 2002, 2003, 2009, 2016, 7007.1 on March 27, 2003. The amendments were transmitted to Congress and will take effect on December 1, 2003, unless Congress enacts legislation to reject, modify, or defer the amendments.

Discussion of Mass Torts

The Chairman said that the Standing Committee had devoted the final day of its January meeting to a general discussion of mass torts, and he thought that the Committee should start thinking about mass tort issues. As part of the discussion, he invited Mr. Bernick, a member of the Standing Committee, who has been a litigator in many mass tort cases, Professor Gibson of the University of North Carolina Law School, who has written extensively on the subject, and Judge Rosenthal, the chair of the Civil Rules Subcommittee on Class Actions, to discuss mass tort issues. In addition, Judge Schmetterer, a member of the Federal/State Committee; and Professor Resnick, a member of the Committee and the author of a recent law review article on resolving enterprise-threatening mass torts liability in bankruptcy, spoke briefly and participated in the discussion.

Professor Gibson said bankruptcy is an attractive alternative for companies facing thousands or millions of tort claims because: a bankruptcy case permits the consolidation of the litigation in a single forum with nationwide jurisdiction; the Bankruptcy Code's definition of claims is broad enough to include future claims; and the debtor can obtain a broad, comprehensive discharge of its liabilities. In addition, bankruptcy offers the protection of the automatic stay, which may be expanded to third parties in some circumstance; the bankruptcy court has exclusive jurisdiction over the debtor's property; and, unlike a civil class action, in a bankruptcy case, claimants do not have the opportunity to opt out of the proceeding. Professor Gibson outlined issues that may arise during the course of a mass torts bankruptcy. She said the inclusion of future claimants raises due process issues such as what kind of notice to give, the sufficiency of the appointment of a future claims representative, and whether a separate future claims representative is needed for each category of claimants.

Mr. Bernick said there is no clear litigation path for mass tort cases, inside or outside of bankruptcy. Outside of bankruptcy, no one court is in charge, and there is no single legal standard on which to determine liability and factual issues. Defendant conduct may be a common element, but its impact is plaintiff-specific. Mr. Bernick said it is very difficult for the courts to value a large number of individual claims, many of which are mediocre and a few of which are very valuable. Bankruptcy is appealing because it offers centralization before a single judge, tools to define liability and damages, the flexibility of section 105 of the Code, and the bankruptcy discharge. He said making the reorganization process work is arduous, however, because there is no clear litigation path and myriad issues must be wrestled to the ground. He

analyzed centralization, litigation, and closure issues in several major mass torts cases and concluded that, although asbestos cases are instructive, non-asbestos cases offer a better model for reforming the process.

Judge Rosenthal said her subcommittee was charged with ameliorating problems in class action cases and muting the corrosive effects of the process, which include overlapping, competing and duplicative class action suits in state and federal courts, lengthy delays, high litigation costs, and conflicts in rules and procedure, including the timing of class certification, the selection of class counsel, and determining which case will be tried first. After extensive study and discussion, the subcommittee concluded that rulemaking under the Rules Enabling Act could not solve the problem. Along with the Federal/State Committee, however, the Civil Rules Committee recommended the concept of minimal diversity for certain large, multi-state class actions in the federal courts with appropriate safeguards. In addition, the Supreme Court has forwarded to Congress proposed amendments to Civil Rule 23 concerning the conduct of class actions. If the amendments become effective December 1, 2003, as expected, they would apply in adversary proceedings in bankruptcy cases.

Professor Resnick said the 18-month limit on a chapter 11 debtor's exclusivity period in the pending Bankruptcy Reform Act, which has passed the House of Representatives, would change the dynamics of cases. He stated that what the Committee can do is limited by the nature of procedural rules and the absence of a supersession clause in section 2075 of title 28. Judge Schmetterer discussed the importance of the minimal diversity recommendation and of further analysis of the reform proposals made by the National Bankruptcy Review Commission and others.

After further discussion, the Advisory Committee concluded that additional mass tort-related amendments to the Bankruptcy Rules probably will have to be preceded by legislative action. The Chairman thanked Mr. Bernick, Judge Rosenthal, and Professor Gibson for their clear presentations of the difficult issues.

Action Items

Proposed Amendments to Rules 3004 and 3005. At its meeting in Hyannis, the Committee approved proposed amendments to Rules 3004 and 3005 to bring those rules in compliance with section 501(c) of the Bankruptcy Code. At the Standing Committee's January meeting, the Chairman withdrew the proposed amendments for further consideration after Mr. Bernick expressed reservations about the proposal's impact in mass tort cases. Mr. Bernick described a case in which he was involved where the chapter 11 debtor filed a proof of claim on behalf of mass tort claimants so that their claims could be brought before the court and adjudicated. Setting a bar date for filing claims in such a case may be very costly because of the difficulty in providing notice to thousands or millions of potential creditors of their need to file.

Mr. Bernick's comments and the proposed amendments were considered by an ad hoc Rule 3004/3005 Subcommittee of the Advisory Committee, which recommended going forward with the original proposal because of the apparent conflict with section 501(c). At the Committee meeting, a member of the committee asked whether a chapter 11 debtor could avoid the need to file a claim on behalf of the creditor by amending its schedules. Mr. Bernick responded that the claims are unliquidated. He said the debtor wants to file a claim on behalf of the creditors in order get a trial on the merits on scientific issues and to determine the value of the claim.

The ad hoc subcommittee also considered whether timeliness under section 501, could be construed to mean within a time for the court to efficiently resolve matters essential to the case. The subcommittee concluded that it is likely the term would be interpreted to mean within the time permitted by the rules. Professor Resnick said the phrase "timely filed" is used several places in the Bankruptcy Code and Rules and that there is danger in saying that "timely filed" refers to something other than the bar date. The Committee discussed whether the bankruptcy judge could set a bar date for a small number of creditors as a means of moving the case forward, such as a bar date for claims based on currently filed lawsuits, or utilize sections 105 and 502(c) of the Code to estimate claims, even if unfiled, so long as due process is satisfied.

The Reporter said the Committee Note attempted to leave to the discretion of the court the extent of a creditor's ability to amend a claim filed on its behalf by the debtor or the trustee. The Chairman said that the Committee had addressed the question raised at the Standing Committee and that if other questions remain, the Committee could address them along with any comments after publication of the proposed rules. **A motion to forward the proposed amendments to the Standing Committee and request their publication for comment passed without dissent.**

Proposed Amendment to Rule 9014. The Reporter stated that the Committee has received four comments as a result of the publication of the proposed amendment to Rule 9014. The proposed amendment would make the mandatory disclosure and meeting requirements of Civil Rule 26 inapplicable to contested matters unless the court directs otherwise. One of the comments suggested that the Committee Note be revised to make explicit the court's discretion to reinstate the excepted subdivisions of Civil Rule 26 in whole or in part. The Reporter recommended inserting the phrase "some or all" in the final sentence of the Committee Note.

The Committee discussed whether such an insertion is needed in either the proposed amendment or the Committee Note and whether the insertion would create a negative inference in other rules. Mr. Frank suggested not making the insertion in order to avoid any negative inference. **A motion to approve the proposed amendment and the Committee Note without revision and recommend their adoption passed without dissent.**

Proposed Amendment to Rule 2002(g). The Bankruptcy Noticing Working Group had previously requested that the Committee consider an amendment to Rule 2002(g) to create a

process to permit creditors to receive notices electronically on a national or regional basis. The Noticing Working Group also has requested that the Committee consider amending Rule 2002(g) to permit creditors to register in a single place the address or addresses they wish to be used in all cases and in all districts throughout the bankruptcy system. The Working Group noted that technological advances permit the Bankruptcy Noticing Center (BNC) to correct misaddressed notices, batch multiple notices to a single creditor, and enhance the desirability of creditor participation in the Electronic Bankruptcy Noticing program by sending a creditor's notices to a single address designated by the creditor, all at a substantial savings to the judiciary. The Technology Subcommittee discussed the propriety of such an amendment to Rule 2002(g) and concluded that the issue should be considered by the Committee.

The Committee discussed concerns that the debtor might submit a creditor name which the name-matching software would match with the wrong creditor and, as a result, the BNC would send a notice intended for creditor A to creditor B. The problem could be avoided by sending two copies of the notice, one to the address supplied by the debtor and one to the national or regional address supplied by the creditor. Committee members noted that the double notice solution could be accomplished by contract without amending the rule and that sending double notices would not increase efficiency in the noticing process. Professor Resnick and Mr. Shaffer suggested that creditors could be charged extra for the added value of receiving duplicate notices at a single address.

Mr. Waldron suggested that a creditor file its request for a single, national address with the court, rather than with the BNC, which is operated by a government contractor. Judge Swain said the proposed amendment would force the debtor to review each certificate of service to determine if the notice went to the right party. The Chairman characterized the task as a heavy burden. The Committee discussed the differences between the proposed amendment and the register of mailing addresses for governmental units maintained by the clerk pursuant to Rule 5003(c). Although the Technology Subcommittee proposed a safe harbor similar to that in Rule 5003(c), the two rules would function differently and the discussion indicated that it might be difficult to provide a "safe harbor" for debtors whose notices are misdirected.

Judge Zilly stated that the origin of the proposed amendment was the creditor's desire to have a single, national address which would alleviate the problem with notices going to the wrong person at a creditor's local address. The Committee discussed whether the creditor should bear the risk for mistakes, since it requested the convenience of a single address, or whether the BNC should bear the cost. The Committee also discussed whether the proposed amendment would govern lease rejections and other notices given directly by the debtor, overriding the notice address stated in the lease or contract.

Several Committee members expressed interest in questioning representatives of the BNC and the Noticing Group about the operation of the BNC and the proposed national address system. **Mr. Frank's motion to table consideration of the proposed amendment until the next meeting passed without dissent.** On May 19, the Technology Subcommittee will meet

with representatives of the BNC, the Noticing Group, and the Bankruptcy Court Administration Division at the Administrative Office to discuss the proposal.

Proposed Official Form 21 on Which an Individual Debtor is to Submit the Debtor's Full Social Security number to the Court. The proposed privacy-related amendments to Rules 1007 and 2002, which are scheduled to take effect on December 1, 2003, will require that an individual debtor submit to the court the debtor's complete Social Security number for use on the § 341 Notice to Creditors and by any case trustee, the United States trustee or bankruptcy administrator, or the court. The proposed new subdivision (f) of Rule 1007 also provides for a debtor who does not have a Social Security number to so state.

Judge Walker presented the proposed form and Committee Note as revised by the Subcommittee on Forms. The subcommittee recommended deleting the phrase *("If more than one, state all.")* both times it was used in the draft form, deleting the last sentence of the first paragraph of the Committee Note, and deleting the entire second paragraph of the draft Note as it appeared in the agenda book for the meeting. Judge Walker stated that the Subcommittee had anguished over whether to include the Individual Taxpayer Identification Number (ITIN), a nine-digit number which is used by certain aliens and others who cannot obtain a Social Security number. The subcommittee concluded that consideration of including the ITIN should be deferred to a future meeting.

Judge McFeeley asked why the subcommittee didn't want to know if the debtor has more than one Social Security number. Judge Walker said the courts' software systems don't permit capturing more than one Social Security number or including more than one number on the meeting of creditors notice. Ms. Davis said the United States trustees want to know if the debtor has multiple Social Security numbers. Judge Torres said the form should err on the side of including multiple numbers, even if multiple numbers can't be put into the system with current technology. Mr. Frank said the form is to implement the privacy policy and give notice to creditors, not to require the debtor to disclose crimes such as using multiple Social Security numbers.

Judge Klein stated the current petition form asks for the debtor's Social Security number or tax ID number and adds "(if more than 1, state all)." Because the purpose of the new form is to transfer this answer block from the petition to a form that's not part of the public file, he said that, at a minimum, the new form should include the same information. The Reporter stated that collecting multiple numbers may not be all that useful if the court's computer system sends out only one number, and creditors may get a different number from the one under which they extended credit.

Judge Swain stated that the petition form facially gives the debtor an opportunity to submit multiple Social Security numbers and that the new form should not lose that. Including only one number might prevent the debtor from discharging debt obtained under other numbers. She stated that even if only one Social Security number is included on the notice, creditors and

the trustee now can review petitions with more than one Social Security number. She said the new form should not cut off the debtor's opportunity to submit information.

Judge Walker suggested retaining the phrase "(if more than one, state all)" from the current petition form and asking the programers to revise the software which generates the section 341 notice. **A motion to approve the form as drafted, including the phrase, carried without dissent.** Although further changes are anticipated in the form in the future (possibly including the ITIN), the consensus of the Committee was that the proposed form is important enough that it should be an Official Bankruptcy Form, rather than the less formal Director's Procedural Form.

A committee member asked how an unscheduled creditor could get the debtor's Social Security number. The Reporter answered that, if the creditor extended credit under the debtor's Social Security number, the creditor can input that number in the court computer system to confirm the debtor's identity. Mr. Shaffer questioned the deletion of a statement in an earlier draft of the Committee Note that the court would make the debtor's Social Security number available to law enforcement. The Reporter stated that law enforcement agencies do not get the section 341 notice but that the United States trustee's use of the full number is not limited. **The Committee approved the Committee Note as revised by the Forms Subcommittee after deleting the word "Only" at the start of the next to last sentence.** The proposed form and Committee Note will be transmitted to the Standing Committee with a recommendation for their adoption.

Proposed Amendment to Rule 7004. The Committee briefly considered the electronic issuance of a summons under Rule 7004 at its meeting in Hyannis and referred the matter to the Technology Subcommittee. Judge Zilly discussed the three reasons for the electronic issuance identified by the subcommittee. First, the plaintiff can file the complaint electronically. Second, in many bankruptcy cases, the debtor or the trustee may file dozens or even hundreds of adversary proceedings at the same time. Finally, many attorneys are located a great distance from the court, and the issuance of a summons electronically is both more convenient and more efficient for that attorney. The Committee has informed the Civil Rules Committee that it is considering amending Rule 7004 to specifically authorize the electronic issuance of a summons. The Civil Rules Committee may have helpful suggestions on the matter and the bankruptcy amendment possibly may form the basis of a future amendment to the Civil Rules.

Professor Resnick suggested changing the reference to "subdivision (a)(2)" in the first line of the proposed amendment to a reference to "Rule 7004(a)(2)" and that the Committee Note refer to "Rule 7004(a)(2)" rather than to "subpart (a)(2) of the rule." The Committee discussed whether it is appropriate for the first sentence Committee Note to state there is some doubt that the clerk can issue a summons electronically under Civil Rule 4(a) and (b). At Judge Klein's suggestion, the Committee agreed to revise the sentence to state "This amendment specifically authorizes the clerk to issue a summons electronically."

Judge Klein stated that the civil rule refers to signing, sealing, and issuing a summons while the proposed amendment only refers to signing and sealing it but the Committee Note refers to issuing the summons electronically. The Reporter stated that the proposed amendment only referred to signing and sealing the summons electronically because these actions can be demonstrated physically. He said signing and sealing the summons is issuance. It was suggested that line 8 of the proposed amendment be revised to state "The clerk may sign, seal, and issue a summons electronically . . ."

A motion to approve the proposed amendment and Committee Note with Professor Resnick's suggested changes in Line 2 of the proposed amendment and in the Committee Note, the suggested change in line 8 of the proposed amendment, and Judge Klein's suggested change in the first sentence of the Committee Note carried without dissent. The proposed amendment and Committee Note will be transmitted to the Standing Committee with a request for their publication for comment.

Proposed Amendment to Rule 8001. At its meeting in Hyannis, the Committee considered whether to pursue an amendment to Rule 8001 to expedite the dismissal of appeals when an appellant has failed to complete the designation of the record in the matter in a timely fashion. The Committee referred the matter to the Subcommittee on Privacy and Public Access. During a teleconference, the subcommittee discussed the bankruptcy appeals process in those courts in which the members have had any experience, and no one indicated any problems with delays in these matters. Mr. Waldron stated that he had discussed the matter with several bankruptcy clerks and that, although the courts use a number of different procedures to bring unperfected appeals to the attention of the district court or the bankruptcy appellate panel, this does not appear to be a problem.

The Reporter discussed Appellate Rule 3, which requires that the clerk of the district court promptly send a copy of the notice of appeal to the clerk of the court of appeals. This would be more difficult in bankruptcy appeals because the appeal could go either to the district court or to the Bankruptcy Appellate Panel (BAP). Judge Klein stated that the bankruptcy courts in the 9th Circuit handle the matter by immediately sending a copy of the notice to the BAP unless the appellant has opted to take the appeal to the district court. If the appellee subsequently opts out of the BAP, the BAP sends the notice of appeal to the district court. This enables the BAP or the district court to monitor the status of the appeal. Judge McFeeley indicated the 10th Circuit BAP follows the same procedure, sending the notice of appeal to the district court if the appellee opts out of the BAP.

Judge Klein stated that there are a number of provisions in the rules governing bankruptcy appeals which deserve study and that the Committee should not go forward with a proposal to amend just a single rule. Judge Small suggested that the Committee accept the Subcommittee's recommendation that it not pursue the matter. **The Committee agreed by consensus.**

Proposed Amendment to Rule 1007 and Schedule G. At its meeting in Hyannis, the

Committee discussed the proper treatment of the parties listed on Schedule G — Executory Contracts and Unexpired Leases. The current schedule contains a note reminding the person completing the schedule that "[a] party listed on this schedule will not receive notice of the filing of this case unless the party is also scheduled in the appropriate schedule of creditors." The cautionary note may be misleading because it could be read to suggest that parties to executory contracts and unexpired leases may not be creditors. Therefore, the note may mislead debtors into concluding that they do not need to notify these parties of the case.

Judge Walker stated that all parties to the case should be notified but that there is no consistency in the treatment of parties to executory contracts and unexpired leases. He said that the proposed amendment requires a list containing the names and addresses of the persons included or to be included on Schedules D, E, F, and G, instead of a list of creditors. For the first time in the national rules, the Committee Note refers to a "mailing matrix," a phrase frequently used in local rules and in bankruptcy practice.

Professor Resnick suggested deleting the phrase "unless the court orders otherwise" in line 7 because it would limit the requirement to prepare and file the list rather than limiting notice to the parties listed. The Reporter and Mr. Adelman stated that the provision was intended for cases such as those in which the debtor is a manufacturer, software company, or franchiser with thousands of executory contracts. Judge Klein suggested providing that, unless the court orders otherwise, the parties listed on Schedule G shall be included on the list filed with the petition. Professor Resnick said the provision would encourage "boilerplate" motions for such relief and suggested that the matter be left to the court's power under 11 U.S.C. § 105.

The Committee agreed to delete the phrase "unless the court orders otherwise" in line 7, correct the spelling of "name" in line 12, correct the reference to "subdivision (a)(2)" in line 22, and the reference to "subsection (a)" in line 37. At Professor Wiggins' suggestion, the Committee agreed to revise the last sentence of the Committee Note to read: " This list may be amended when necessary. See Rule 1009(a)." At Professor Resnick's suggestion, the Committee agreed to delete the last sentence of the third paragraph of the Committee Note and the second sentence of the fifth paragraph. **Judge Walker's motion to approve the proposed amendments to Rule 1007 and Schedule G, as revised at the meeting, carried without dissent.** The proposed amendment and Committee Note will be transmitted to the Standing Committee with a request for their publication for comment.

Proposed Amendments to the Uniform Numbering System for Local Bankruptcy Court Rules. Acting on the recommendation of the Standing Committee, the Judicial Conference directed the courts to "adopt a numbering system for local rules of court that corresponds with the relevant Federal Rules of Practice and Procedure." In furtherance of that policy, the Committee developed and distributed to the courts a numbering system for local bankruptcy rules that corresponds to the numbering system in the Bankruptcy Rules. Ms. Ketchum stated that the use of the uniform numbers and the posting of local rules on court websites has made practicing bankruptcy law in multiple districts easier.

The uniform numbers have not been updated since the system was issued seven years ago. Ms. Ketchum stated that, as a result of changes in the national rules and the adoption of local rules for electronic filing, there is interest in revising the uniform numbering system. **Professor Resnick's motion to approve the changes proposed by Ms. Ketchum carried without dissent.** The Chairman suggested that the revision is a great opportunity to remind the courts about the uniform numbering system. **Ms. Ketchum said she would prepare a memorandum for distribution to the courts.**

Proposed Technical Amendments to Rules 1011 and 2002(j). The proposed technical amendment to Rule 1011 corrects a cross reference to Rule 1004. The Reporter stated that the proposed amendment does not require publication because it is purely technical and makes no substantive or procedural change in the rules or the bankruptcy process. **The amendment was approved by consensus.** The proposed technical amendment to Rule 2002(j) deletes the reference to District Director of Internal Revenue and provides for service on the agency at the address set out in the Rule 5003(g) register. The Committee approved the amendment and recommended its adoption without publication at the Tucson meeting. Rather than transmit proposed amendments piecemeal, the Committee delayed sending the technical amendment to Rule 2002(j) to the Standing Committee. **The technical amendments to Rule 1011 and Rule 2002(j) will be transmitted to the Standing Committee along with a recommendation that they be approved without publication.**

Proposed Development of National Chapter 13 Plan. The Forms Subcommittee considered a model chapter 13 plan form developed at a workshop during the 2002 meeting of the National Association of Chapter 13 Trustees and submitted by Judge Keith M. Lundin. One Committee member stated that everybody favors a standard form for chapter 13 plans but "they want to use their standard form, not yours." Several committee members expressed concern that a number of standard forms for chapter 13 plans are used across the country and that the Committee could spend a lot of time considering whether to adopt a standard form and, if so, which one. Professor Resnick described the work done several years ago by the Committee's former Chapter 13 Subcommittee. He said the subcommittee found that chapter 13 is working fine even though there are different practices in every district. **The Committee agreed not to pursue the matter.**

Information Items

CM/ECF Working Group Subcommittee on Claims. Judge McFeeley and Mr. Wannamaker reported on the work of the Claims Subcommittee of the Bankruptcy CM/ECF Working Group. Judge McFeeley said the subcommittee is considering recommending establishment of a national filing center for proofs of claim and streamlining the transfer of claims by large, institutional creditors. Mr. Wannamaker said the claims group also is considering how to make it easier for small creditors to file claims, possibly using a electronic form in the "fillable PDF" format. Judge McFeeley said the CM/ECF claims group has

scheduled a meeting in Washington in May and that the group currently has no recommendation for rules changes.

Implementation of the CM/ECF system. Ms. Ketchum reported that the implementation of the CM/ECF system has been a mixed blessing for the courts. The system has changed how filings get to the court and has given the attorneys, court staff, and judges better access to documents in the case, but it has made it more difficult for bankruptcy judges to sign orders. She said that creative ways to solve the problem are being developed as the courts become more familiar with the CM/ECF system.

Mr. Waldron said his court has been live on the CM/ECF system for a year. He said the biggest complaints are the volume of email to attorneys on Notices of Electronic Filing and the fact that the court continues to scan a large volume of paper. Mr. Waldron stated that he would like a rules amendment permitting electronic service of the motion initiating a contested matter. Ms. Ketchum said many attorneys err on the side of caution when they file and serve motions because they are unsure whether it will be a contested matter under Rule 9014, which requires service in the manner required for a summons and complaint under Rule 7004. **The Chairman asked Mr. Waldron to prepare a proposal for the next meeting.**

The E-Government Act of 2002. The Reporter stated that the Committee's approval of the proposed privacy amendments to the Bankruptcy Rules and Forms limiting the disclosure of a debtor's Social Security number to the last four digits had proved serendipitous with the enactment of the E-Government Act in December. The act provides that, if the rules require the redaction of certain categories of information to protect privacy and security concerns, a party who wishes to file an otherwise proper document containing such information, may file an unredacted document under seal as well as the redacted electronic version. Ms. Ketchum said there is concern that the provision will be burdensome for the courts.

Memorandum on Proposed Amendment to Rule 9036. The Administrative Office's Bankruptcy Noticing Working Group has previously requested that Rule 9036 be amended to eliminate the requirement that the sender of an electronic notice receive an electronic confirmation that the transmission has been received. A memorandum in support of amending Rule 9036 was distributed to the Committee.

Ms. Ketchum stated that the Bankruptcy Noticing Center is trying to expand the use of Electronic Bankruptcy Noticing over the Internet, which would reduce the Judiciary's printing and postage costs, speed the delivery of notices to the parties, and facilitate the use of automated processing by recipients. Many Internet service providers (ISPs), however, only offer negative receipts, not the affirmative receipts required by Rule 9036. In addition, doubts have been expressed about the reliability of transmitting the text of bankruptcy notices as large e-mail attachments. Ms. Ketchum said the BNC has experimented with sending e-mails with hyperlinks to the text of bankruptcy notices, which has worked in almost every instance. She said the Committee may wish to consider whether it is satisfied with a system which gives creditors a

message that they have a notice rather than the notice itself.

Mr. Waldron stated that the system only retains the links to the notice text for a limited time, possibly as short as two weeks. He said the BNC also is exploring the possibility of establishing its own ISP which would provide the electronic confirmations currently required by Rule 9036. **The chairman requested that the Technology Subcommittee meet in Washington, D.C., with the representatives of the Working Group and the BNC and that the Committee consider the matter at its September meeting.**

Study of Mandatory Disclosure under Civil Rule 26. Mr. Niemic reported that the FJC has encountered problems in its attempt to get information electronically for a study of whether mandatory disclosure is needed in some types of adversary proceedings under Rule 7026 and Civil Rule 26. He said the FJC will continue to investigate the matter but that a more costly review of the dockets in a sample of adversary proceedings may be necessary.

Administrative Matters

The Committee's next scheduled meeting will be at Skamania Lodge in Stevenson, WA, on September 18-19, 2003. The Committee discussed several East Coast locations as possible sites of the spring 2004 meeting. The Committee discussed several dates in March or early April as possibilities.

Respectfully submitted,

James H. Wannamaker, III