ADVISORY COMMITTEE
ON
BANKRUPTCY RULES

SANTA FE, NM
SEPTEMBER 30-OCTOBER 1, 2010

ADVISORY COMMITTEE ON BANKRUPTCY RULES
Meeting of September 30 - October 1, 2010
Santa Fe, New Mexico

Introductory Items

1. Greetings; Introduction of new chair (Judge Wedoff), new committee member (Professor Morrison), and new liaison (Judge Lefkow); and acknowledgment of the service of Judge Coar and Dean Ponoroff. (Judge Swain)

2. Approval of minutes of New Orleans meeting of April 29 - 30, 2010. (Judge Swain)

   - Draft minutes.

3. Oral reports on meetings of other committees:

   (A) June 2010 meeting of the Committee on Rules of Practice and Procedure. (Judge Swain and Professor Gibson)

   - Draft minutes of the Standing Committee meeting of June 14 - 15, 2010.

   (B) June 2010 meeting of the Committee on the Administration of the Bankruptcy System. (Judge Lefkow and Judge Swain)

   (C) Upcoming November 2010 meeting of the Advisory Committee on Civil Rules (anticipated agenda items). (Judge Wedoff)

   (D) Upcoming October 2010 meeting of the Advisory Committee on Evidence (anticipated agenda items). (Judge Caldwell)

   (E) Upcoming October 2010 meeting of the Advisory Committee on Appellate Rules (anticipated agenda items). (Professor Gibson)

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

   (G) Progress report from the Sealing Committee. (Judge Coar and Professor Gibson)

   (H) Progress report from the Privacy Committee. (Judge Coar and Professor Gibson)

Subcommittee Reports and Other Action Items

4. Report by the Subcommittee on Consumer Issues. (Judge Wedoff and Professor Gibson)

(A) Recommendations concerning Suggestion (09-BK-H) by Judge Margaret Dee McGarity and Suggestion (09-BK-N) by Judge Michael E. Romero (both on behalf of the Bankruptcy Judges Advisory Group) to amend Rule 3007(a) to provide for disposition of objections to claims by negative notice and to clarify the proper method of serving objections to claims. (Judge Wedoff and Professor Gibson)

- Memo of September 2, 2010, by Professor Gibson.

(B) Recommendation concerning Suggestion (09-BK-J) by Judge William F. Stone, Jr., to amend Rules 9013 and 9014 to require that the caption of a motion that initiates a contested matter set forth the name of every person whose interests would be directly affected by the relief sought. (Judge Wedoff and Professor Gibson)

- Memo of September 2, 2010, by Professor Gibson.

(C) Recommendation concerning Suggestion (09-BK-I) by Dana C. McWay (on behalf of the Next Generation Bankruptcy CM/ECF Clerk's Office Functional Requirements Group) to amend Rule 1007(b)(7) to allow providers of personal financial management courses to file statements of individual chapter 7 and chapter 13 debtors' completion of the course. (Judge Wedoff and Professor Gibson)

- Memo of September 2, 2010, by Professor Gibson.

(D) Recommendation concerning Comment (09-BK-032) by attorney William J. Neild on the published amendments to Forms 22A and 22C that a debtor who is not self-employed should be permitted to deduct expenses for telecommunication services to the extent they are necessary for the production of income. (Judge Wedoff and Professor Gibson)

- Memo of September 2, by Professor Gibson.

5. Joint Reports by the Subcommittee on Consumer Issues and the Subcommittee on Forms. (Judge Wedoff, Judge Perris, and Professor Gibson)

(A) Report on what changes, if any, should be made in Official Form 22C as a result of the Supreme Court's decision in Hamilton v. Lanning, 130 S. Ct. 2464 (2010), in which the Court rejected a purely "mechanical" approach to the calculation of a

chapter 13 debtor's projected disposable income under 11 U.S.C. § 1325(b)(1). (Judge Wedoff, Judge Perris, and Professor Gibson)

- Memo of September 2, 2010, by Professor Gibson.

(B) Report on what changes, if any, should be made in Schedule C (Official Form 6C) as a result of the Supreme Court's decision in Schwab v. Reilly, 130 S. Ct. 2652 (2010), in which the Court dealt with the extent of a claimed exemption. (Judge Wedoff, Judge Perris, and Professor Gibson)

- Memo of September 7, 2010, by Professor Gibson.

6. Report of the Subcommittee on Forms. (Judge Perris, Professor Gibson, Mr. Myers)

(A) Recommendation concerning amending Official Form 1 to implement proposed new Rule 1004.2 (Petition in Chapter 15 Cases) (December 1, 2011, effective date). (Judge Perris and Professor Gibson)

- Memo of September 2, 2010, by Professor Gibson.
- Draft revision of Official Form 1.
- Draft Committee Note.

(B) Recommendation concerning amending Official Forms 9A - I to reflect the proposed amendment of Rule 2003(e) (effective December 2011) and stylistic changes. (Judge Perris and Professor Gibson)

- Memo of September 2, 2010, by Professor Gibson.
- Draft revision of Official Forms 9A - 9I.
- Draft Committee Note.

7. Report of the Subcommittee on Business Issues. (Judge Wizmur and Professor Gibson)

(A) Recommendation concerning Suggestion 09-BK-J by Judge William F. Stone, Jr., for rules and an Official Form to govern applications for the payment of administrative expenses. (Judge Wizmur and Professor Gibson)

- Memo of September 2, 2010, by Professor Gibson.

(B) Recommendation concerning Suggestion 10-BK-D by Judge Raymond T. Lyons to delete Bankruptcy Rule 9006(d). (Judge Wizmur and Professor Gibson)

- Memo of September 2, 2010, by Professor Gibson.

(C) Recommendation concerning a Suggestion by Deputy Clerk Debbie Lewis, a legal management advisor in the Southern District of Florida, to provide an Official Form or rule for corporate and partnership debtors filing schedules of current income and expenditures. (Judge Wizmur and Professor Gibson)

- Memo of September 2, 2010, by Professor Gibson.

8. Report of the Subcommittee on Privacy, Public Access, and Appeals. (Judge Pauley and Professor Gibson)

   Oral report on the status of revision of the Part VIII rules. (Judge Pauley and Professor Gibson)

   - A working draft of the proposed revision will be distributed separately.

9. Oral Report of the Subcommittee on Technology and Cross Border Insolvency. (Judge Coar and Professor Gibson)

10. Oral Report of the Subcommittee on Attorney Conduct and Health Care. (Mr. Rao and Professor Gibson)

11. Oral report on status of the Bankruptcy Forms Modernization Project. (Judge Perris)

    - Materials will be distributed separately.

Discussion Items

12. Oral report on the new Strategic Plan for the Federal Judiciary if approved by the Judicial Conference at its meeting in September. (Judge Swain)

    - Judge Breyer's memo on the new Strategic Plan and a draft copy of the plan will be distributed separately.

Information Items

13. Report on the status of bankruptcy-related legislation. (Mr. Wannamaker, Judge Swain, Professor Gibson)

    List of pending legislation.

14. Oral update on opinions interpreting section 521(i). (Prof Gibson)

15. *Bull Pen*: Proposed new Rule 8007.1 and the proposed amendment to Rule 9024 (indicative rulings), approved at September 2008 meeting.

16. Rules Docket.

17. Future meetings:

    Spring 2011 meeting, April 7 - 8, 2011, at the Fairmont Hotel in San Francisco, California. Possible locations for the fall 2011 meeting.

18. New business.

19. Adjourn.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
CHAIRS and REPORTERS

Honorable Lee H. Rosenthal United States District Judge United States District Court 11535 Bob Casey U.S. Courthouse 515 Rusk Avenue Houston, TX 77002-2600	Professor Daniel R. Coquillette Boston College Law School 885 Centre Street Newton Centre, MA 02459
Honorable Jeffrey S. Sutton United States Circuit Judge United States Court of Appeals 260 Joseph P. Kinneary United States Courthouse 85 Marconi Boulevard Columbus, OH 43215	Professor Catherine T. Struve University of Pennsylvania Law School 3400 Chestnut Street Philadelphia, PA 19104
Honorable Eugene R. Wedoff United States Bankruptcy Court Everett McKinley Dirksen United States Courthouse 219 South Dearborn Street Chicago, IL 60604	Professor S. Elizabeth Gibson Burton Craige Professor of Law 5073 Van Hecke-Wettach Hall University of North Carolina at Chapel Hill C.B. #3380 Chapel Hill, NC 27599-3380
Honorable Mark R. Kravitz United States District Judge United States District Court Richard C. Lee United States Courthouse 141 Church Street	Professor Edward H. Cooper University of Michigan Law School 312 Hutchins Hall Ann Arbor, MI 48109-1215
Honorable Richard C. Tallman United States Circuit Judge 902 William Kenzo Nakamura U.S. Courthouse – 1010 Fifth Avenue Seattle, WA 98104-1195	Professor Sara Sun Beale Duke University School of Law Science Drive & Towerview Road Box 90360 Durham, NC 27708-0360
Honorable Sidney A. Fitzwater Chief Judge United States District Court Earle Cabell Federal Building and United States Courthouse 1100 Commerce Street, Room 1528 Dallas, TX 75242-1310	Professor Daniel J. Capra Fordham University School of Law 140 West 62nd Street New York, NY 10023

Effective October 1, 2010

ADVISORY COMMITTEE ON BANKRUPTCY RULES

Chair:	**Reporters:**
Honorable Eugene R. Wedoff United States Bankruptcy Court Everett McKinley Dirksen United States Courthouse 219 South Dearborn Street Chicago, IL 60604	Professor S. Elizabeth Gibson Burton Craige Professor of Law 5073 Van Hecke-Wettach Hall University of North Carolina at Chapel Hill C.B. #3380 Chapel Hill, NC 27599-3380
Members:	
Michael St. Patrick Baxter Covington & Burling LLP 1201 Pennsylvania Avenue, NW Washington, DC 20004-2401	Honorable Karen K. Caldwell United States District Court United States Courthouse and Post Office 101 Barr Street Lexington, KY 40507
Honorable Arthur I. Harris United States Bankruptcy Court Howard M. Metzenbaum United States Courthouse 201 Superior Avenue, Room 148 Cleveland, OH 44114-1238	Honorable Sandra Segal Ikuta United States Court of Appeals Richard H. Chambers Court of Appeals Building 125 South Grand Avenue, Room 305 Pasadena, CA 91105-1621
J. Christopher Kohn, Esquire Director, Commercial Litigation Branch Civil, U.S. Dept. of Justice (ex officio) P.O. Box 875, Ben Franklin Station Washington, DC 20044-0875 (1100 L Street, N.W., 10th Flr, Rm 10036) Washington, DC 20005)	J. Michael Lamberth, Esquire Lamberth, Cifelli, Stokes & Stout, P.A. 3343 Peachtree Road, N.E., Suite 550 Atlanta, GA 30326
David A. Lander Thompson Coburn LLP One US Bank Plaza St. Louis, MO 63101	Professor Edward R. Morrison Columbia Law School Greene Hall, Room 819 435 West 116th Street New York, NY 10027
Honorable William H. Pauley III United States District Court 2210 Daniel Patrick Moynihan United States Courthouse 500 Pearl Street New York, NY 10007-1581	Honorable Elizabeth L. Perris Chief Judge United States Bankruptcy Court 700 Congress Center 1001 Southwest Fifth Avenue Portland, OR 97204-1145

Effective October 1, 2010

ADVISORY COMMITTEE ON BANKRUPTCY RULES (CONT'D)

John Rao, Esquire National Consumer Law Center 7 Winthrop Square, 4th Floor Boston, MA 02110-1245	Honorable Judith H. Wizmur Chief Judge United States Bankruptcy Court Mitchell H. Cohen U. S. Courthouse 2nd Floor – 400 Cooper Street Camden, NJ 08102-1570
Advisors and Consultants: Patricia S. Ketchum, Esquire 113 Richdale Avenue #35 Cambridge, MA 02140	 Mark A. Redmiles, Deputy Director Executive Office for U.S. Trustees 20 Massachusetts Ave., N.W., Suite 8000 Washington, DC 20530

  James J. Waldron Clerk, United States Bankruptcy Court Martin Luther King, Jr. Federal Building and United States Courthouse Third Floor, 50 Walnut Street Newark, NJ 07102-3550	**Liaison Member:** Honorable James A. Teilborg United States District Judge United States District Court 523 Sandra Day O'Connor United States Courthouse 401 West Washington Street Phoenix, AZ 85003-2146
Liaison from Committee on the Administration of the Bankruptcy System: Honorable Joan Humphrey Lefkow United States District Court Everett McKinley Dirksen United States Courthouse 219 South Dearborn Street, Room 1956 Chicago, IL 60604	**Secretary:** Peter G. McCabe Secretary, Committee on Rules of Practice and Procedure Washington, DC 20544 <Peter_McCabe@ao.uscourts.gov>

Advisory Committee on Bankruptcy Rules

Subcommittee/Liaison Assignments, Effective May 1, 2010

Subcommittee on Consumer Issues Judge Eugene R. Wedoff, Chair Judge Sandra Segal Ikuta Judge William H. Pauley III Judge Karen K. Caldwell Judge Judith H. Wizmur Judge Arthur I. Harris John Rao, Esq. David A. Lander, Esq. James J. Waldron, *ex officio* Mark A. Redmiles, Esq., *EOUST liaison*	**Subcommittee on Business Issues** Judge Judith H. Wizmur, Chair Judge David H. Coar Judge Eugene R. Wedoff J. Christopher Kohn, Esq. J. Michael Lamberth, Esq. Michael St. Patrick Baxter, Esq. David A. Lander, Esq. James J. Waldron, *ex officio* Mark A. Redmiles, Esq., *EOUST liaison*
Subcommittee on Forms Judge Elizabeth L. Perris, Chair Judge Judith H. Wizmur Judge Arthur I. Harris J. Christopher Kohn, Esq. John Rao, Esq. J. Michael Lamberth, Esq. David A. Lander, Esq. James J. Waldron, *ex officio* Mark A. Redmiles, Esq., *EOUST liaison* Patricia S. Ketchum, Esq., *Consultant*	**Forms Modernization Project** Judge Elizabeth L. Perris, Chair Judge Judith H. Wizmur Judge Arthur I. Harris J. Christopher Kohn, Esq. John Rao, Esq. J. Michael Lamberth, Esq. James J. Waldron, *ex officio* Mark A. Redmiles, Esq., *EOUST liaison* Patricia S. Ketchum, Esq., *Consultant*
Subcommittee on Privacy, Public Access and Appeals Judge William H. Pauley, III, Chair Judge Sandra Segal Ikuta Judge Karen K. Caldwell Judge Elizabeth L. Perris Judge Eugene R. Wedoff J. Christopher Kohn, Esq. Michael St. Patrick Baxter, Esq. David A. Lander, Esq. Dean Lawrence Ponoroff Mark A. Redmiles, Esq., *EOUST liaison*	**Subcommittee on Style** Dean Lawrence Ponoroff, Chair Judge Sandra Segal Ikuta Judge David H. Coar Judge Karen K. Caldwell Judge Judith H. Wizmur Judge Eugene R. Wedoff J. Michael Lamberth, Esq. David A. Lander, Esq. Michael St. Patrick Baxter, Esq.

Subcommittee on Attorney Conduct and Healthcare John Rao, Esq., Chair, Chair Judge William H. Pauley, III Judge Karen K. Caldwell Judge David H. Coar Judge Arthur I. Harris J. Michael Lamberth, Esq. Mark A. Redmiles, Esq., *EOUST liaison*	**Subcommittee on Technology and Cross Border Insolvency** Judge David H. Coar, Chair Judge Sandra Segal Ikuta Judge William H. Pauley III Judge Arthur I. Harris Dean Lawrence Ponoroff Michael St. Patrick Baxter, Esq. Mark A. Redmiles, Esq., *EOUST liaison*
Civil Rules Liaison: Judge Eugene R. Wedoff ---------- **Evidence Rules Liaison:** Judge Judith H. Wizmur ---------- **Sealing Committee Liaison:** Judge David H. Coar	**CM/ECF Working Group and CM/ECF Next Gen Liaison:** Judge Elizabeth L. Perris ---------- **Privacy Committee Liaison:** Judge David H. Coar

Members	Position	District/Circuit	Start Date	End Date
Eugene R. Wedoff **Chair**	B	Illinois (Northern)	2010	2013
Michael St. Patrick Baxter	ESQ	Washington, DC	2008	2011
Karen K. Caldwell	D	Kentucky (Eastern)	2009	2012
Arthur I. Harris	B	Ohio (Northern)	2010	2012
Sandra Segal Ikuta	C	Ninth Circuit	2010	2012
J. Christopher Kohn*	DOJ	Washington, DC		Open
J. Michael Lamberth	ESQ	Georgia	2005	2011
David A. Lander	ESQ	Missouri	2008	2011
Edward R. Morrison	ACAD	New York	2010	2013
William H. Pauley III	D	New York (Southern)	2005	2011
Elizabeth L. Perris	B	Oregon	2007	2013
John Rao	ESQ	Massachusetts	2006	2012
Judith H. Wizmur	B	New Jersey	2008	2011
S. Elizabeth Gibson **Reporter**	ACAD	North Carolina	2008	Open
* Ex-Officio				
Principal Staff:				
Peter G. McCabe		202-502-1800		
John K. Rabiej		202-502-1820		
James H. Wannamaker		202-502-1900		

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

John K. Rabiej Chief Rules Committee Support Office Administrative Office of the U.S. Courts Washington, DC 20544
James N. Ishida Senior Attorney-Advisor Rules Committee Support Office Administrative Office of the U.S. Courts Washington, DC 20544
Jeffrey N. Barr Attorney-Advisor Rules Committee Support Office Administrative Office of the U.S. Courts Washington, DC 20544
Henry Wigglesworth Attorney-Advisor Rules Committee Support Office Administrative Office of the U.S. Courts Washington, DC 20544
James H. Wannamaker III Senior Attorney Bankruptcy Judges Division Administrative Office of the U.S. Courts Washington, DC 20544
Scott Myers Attorney Advisor Bankruptcy Judges Division Administrative Office of the U.S. Courts Washington, DC 20544
Ms. Gale B. Mitchell Administrative Specialist Rules Committee Support Office Administrative Office of the U.S. Courts Washington, DC 20544
Ms. Denise London Administrative Officer Rules Committee Support Office Administrative Office of the U.S. Courts Washington, DC 20544
Ms. Jamila White-Bandah Staff Assistant **(Temporary)** Rules Committee Support Office

Administrative Office of the U.S. Courts Washington, DC 20544
Program Assistant **(Temporary)** Rules Committee Support Office Administrative Office of the U.S. Courts Washington, DC 20544

FEDERAL JUDICIAL CENTER

Joe Cecil (Rules of Practice & Procedure) Senior Research Associate Research Division One Columbus Circle, N.E. Washington, DC 20002-8003 Phone 202-502-4084 Fax 202-502-4199 <jcecil@fjc.gov>	Marie Leary (Appellate Rules Committee) Research Associate Research Division One Columbus Circle, N.E. Washington, DC 20002-8003 Phone 202-502-4069 Fax 202-502-4199 <mleary@fjc.gov>
Molly T. Johnson (Bankruptcy Rules Committee) Senior Research Associate Research Division One Columbus Circle, N.E. Washington, DC 20002-8003 Phone 202-502-4074 Fax 202-502-4199 <mjohnson@fjc.gov >	Emery G. Lee (Civil Rules Committee) Senior Research Associate Research Division One Columbus Circle, N.E. Washington, DC 20002-8003 Phone 202-502-4078 Fax 202-502-4199 <elee@fjc.gov>
Laural L. Hooper (Criminal Rules Committee) Senior Research Associate Research Division One Columbus Circle, N.E. Washington, DC 20002-8003 Phone 202-502-4093 Fax 202-502-4199 <lhooper@fjc.gov>	Tim Reagan (Evidence Rules Committee) Senior Research Associate Research Division One Columbus Circle, N.E. Washington, DC 20002-8003 Phone 202-502-4097 Fax 202-502-4199 <treagan@fjc.gov>

TAB

1

Item 1 will be an oral report.

TAB

2

ADVISORY COMMITTEE ON BANKRUPTCY RULES
Meeting of April 29 - 30, 2010
New Orleans, Louisiana
(DRAFT MINUTES)

The following members attended the meeting:

District Judge Laura Taylor Swain, Chair
Circuit Judge Sandra Segal Ikuta
District Judge Karen Caldwell
District Judge David Coar
Bankruptcy Judge Arthur I. Harris
Bankruptcy Judge Elizabeth L. Perris
Bankruptcy Judge Eugene R. Wedoff
Bankruptcy Judge Judith H. Wizmur
Dean Lawrence Ponoroff
Michael St. Patrick Baxter, Esquire
J. Christopher Kohn, Esquire
J. Michael Lamberth, Esquire
David A. Lander, Esquire
John Rao, Esquire

The following persons also attended the meeting:

Professor S. Elizabeth Gibson, reporter
G. Eric Brunstad, Jr., Esquire, former member
District Judge James A. Teilborg, liaison from the Committee on Rules of Practice and Procedure (Standing Committee)
District Judge Joy Flowers Conti, liaison from the Committee on the Administration of the Bankruptcy System (Bankruptcy Committee) (telephonically)
Professor Daniel Coquillette, reporter of the Standing Committee
Peter G. McCabe, secretary of the Standing Committee
Patricia S. Ketchum, advisor to the Committee
Mark Redmiles, Deputy Director, Executive Office for U.S. Trustees (EOUST)
Lisa Tracy, Counsel to the Director, EOUST
James J. Waldron, Clerk, U.S. Bankruptcy Court for the District of New Jersey
John Rabiej, Administrative Office of the U.S. Courts (Administrative Office)
James Ishida, Administrative Office
James H. Wannamaker, Administrative Office
Stephen "Scott" Myers, Administrative Office
Robert J. Niemic, Federal Judicial Center
Philip S. Corwin, Butera & Andrews

District Judge William H. Pauley, III was unable to attend the meeting.

The following summary of matters discussed at the meeting is written in the order of the meeting agenda unless otherwise specified, not necessarily in the order actually discussed. It should be read in conjunction with the agenda materials and other written materials referred to, all of which are on file in the office of the Secretary of the Standing Committee.

An electronic copy of the agenda materials, other than materials distributed at the meeting after the agenda was published, is available at http://www.uscourts.gov/RulesAndPolicies/FederalRulemaking/ResearchingRules/Reports.aspx Votes and other action taken by the Committee and assignments by the Chair appear in **bold**.

Introductory Items

1. Greetings and Introduction of new members and subcommittee chairs.

The Chair welcomed the members and guests to the meeting and recognized new members, Judge Sandra Segal Ikuta (Ninth Circuit Court of Appeals), and Judge Arthur I. Harris, (Bankruptcy, Southern District of Ohio). The Chair also recognized Judge Wizmur as the new chair of the Subcommittee on Business Issues, and Mr. Rao as the new chair of the Subcommittee on Attorney Conduct and Healthcare.

2. Approval of minutes of Boston meeting of October 1 - 2, 2010.

The Boston minutes were approved with the correction of typographical errors pointed out by the Chair, Judge Harris, and Mr. Kohn.

3. Oral reports on meetings of other committees:

(A) January 2010 meeting of the Committee on Rules of Practice and Procedure (the "Standing Committee").

The Reporter said that Committee's report to the Standing Committee consisted only of information items. She said the Standing Committee accepted the Committee's report on the rules and forms published for comment and the need for a public hearing to consider testimony on the proposed amendments, which was held in New York City; the Committee's consideration of a comprehensive revision to Part VIII of the Bankruptcy Rules (including holding a one-day conference at Harvard Law School with judges, clerks of court, practitioners, and academics); the Committee's forms modernization project; and the creation of a revised set of Director's reaffirmation forms to be used when a debtor seeks to reaffirm a pre-bankruptcy debt.

(B) January 2010 meeting of the Committee on the Administration of the Bankruptcy System.

Judge Conti gave the report. She said that at its last meeting, the Bankruptcy Committee focused on the bankruptcy judgeship bill, which, if passed, would add 13 new judgeships. She said that the bill was pending in Congress. She added that the Bankruptcy Committee will consider new case weighting standards at its next meeting this June. She said that, because of the BAPCPA changes to the Bankruptcy Code, it is likely that the new case weights will reveal that judges are spending more time adjudicating cases and that the need for new judges is even greater than the judgeship request currently pending in Congress.

Judge Conti said that the Bankruptcy Committee is also looking at ways to encourage the use of recall judges. She said that it put forth a proposal at the last Judicial Conference meeting that would encourage circuits to take an early look at whether a particular judge would be recalled prior to that judge's retirement. She said, however, that because of concerns raised at the Judicial Conference meeting about the wording the Bankruptcy Committee withdrew the proposal to consider alternative language to be submitted at a later date.

(C) March 2010 and October 2009 meetings of the Advisory Committee on Civil Rules.

Judge Wedoff said that that the Civil Rules Committee met twice since this Committee's last meeting and, although it had proposed no rule changes at either meeting, there was still a lot of activity. He said a primary topic of discussion was the upcoming civil litigation conference at Duke Law School in May, 2010, which would focus primarily on the costs of civil litigation, including the costs of discovery. Mr. McCabe added that the Duke conference was shaping up to be a big event, and recommended that members review the presenters' materials posted on the Courts' public website.

Judge Wedoff said that the Civil Rules Committee also continues to monitor case law development and congressional action concerning the heightened pleading standards announced by the Supreme Court in Iqbal and Twombly. He said another recent focus was a possible change to Rule 45, to simplify and streamline it, and to consider establishing standards for setting up and continuing protective orders.

(D) April 2010 meeting of the Advisory Committee on Evidence.

Judge Wizmur said that the Evidence Committee's restyling project is now complete. She added that in response to a comment there had been a slight change to the restyling of Evidence Rule 1101 from the version that was published, to clarify that the rule applied throughout bankruptcy (not just to proceedings, but to cases as well).

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

[See discussion at Agenda Item 8].

(F) Progress report from the Sealing Subcommittee.

The Reporter said that at its last meeting, the Standing Committee's Sealing Subcommittee discussed the FJC's study of sealed cases. She that there were no instances of sealed bankruptcy cases, and she anticipated that the Sealing Committee would not be recommending any rule changes with respect to sealing cases. She said it may make recommendations, however, with respect to the eventual unsealing of cases.

(G) Progress report from the Privacy Subcommittee.

Judge Coar said he and the Reporter attended the Standing Committee's Privacy Subcommittee meeting at Fordham Law School, and that he was struck by the complexity of issues and tension of goals between providing public access to court documents and demonstrating transparency of process, on the one hand, and protecting litigants' privacy interests, on the other hand.

The Reporter said that in preparation for its meeting the Privacy Committee did a study to determine the availability of full social-security numbers in online court filings. She said that in over 10 million electronic documents filed online in 2009, 2,899 contained full social-security numbers, about 2,200 of which were filed in bankruptcy cases. She said that in discussing the findings, participants acknowledged that the large number of court filings made in bankruptcy cases probably meant that the rate of noncompliance with redaction rules was probably not that much higher in than in ordinary civil cases. Nevertheless, there was concern that a greater effort should be made to educate creditors as to the need to redact personal information from attachments to filings – particularly attachments to the proof of claim.

Subcommittee Reports and Other Action Items

4. Report by the Subcommittee on Consumer Issues.

(A) Recommendation concerning comments submitted on the proposed amendment to Rule 3001 and proposed new Rule 3002.1.

(A)(1) Comments on the mortgage provisions.

The Reporter explained that she would first review the comments and testimony responding to the proposed amendments to Rule 3001(c) and proposed new Rule 3002.1 as they relate to claims secured by a security interest in the debtor's principal residence. She said she would address the comments and testimony as they relate to unsecured claims at agenda item 4(A)(2). The Chair added that Mr. Rao would then review the related new mortgage forms -- Draft Mortgage Proof of Claim Attachment, Official Form 10 (Attachment A); Draft Notice of Payment Change, Official Form 10 (Supplement 1); and Draft Notice of Postpetition Fees, Charges and Expenses, Official Form 10 (Supplement 2) – and that the Committee would then

consider the chapter 13 mortgage-related provisions as a whole.

Rule 3001(c)(2).

As published in August 2009, Rule 3001(c) would be amended to add a new paragraph (2) that would apply to individual debtor cases. The new paragraph consists of four subparagraphs, which the Reporter discussed in turn.

Subdivision (c)(2)(A) would require the filing of an itemized statement with the proof of claim ("POC") that specifies prepetition interest, fees, expenses, and charges included in the claim.

The Reporter said that there was little negative comment with respect to this subparagraph insofar as it applies to home mortgages and that the Subcommittee recommended that it be approved as published.

Subdivision (c)(2)(B) would require inclusion in the POC of the amount necessary to cure any default as of the petition date with respect to a claim secured by a security interest in the debtor's property.

The Reporter said that some comments incorrectly assumed that this provision would apply to judicial liens. She noted that the rule itself was phrased in terms of a "security interest," which is defined at 11 U.S.C. § 101(51) as a lien created by agreement. She said that the Subcommittee recommended adding the phrase "secured by a security interest" to the committee note discussion as well to emphasize that only security interests are addressed by the rule. She said the revised note was at page 53 of the agenda materials.

Subdivision (c)(2)(C) would require that if a claim secured by a security interest in the debtor's principal residence is one for which an escrow account has been established, the POC include an escrow account statement prepared as of the petition date.

The Reporter said that a comment from the National Association of Chapter 13 Trustees suggested that it might be difficult for smaller servicers to run an analysis as of a particular date. The Subcommittee recommended no change, however, because it concluded that such an analysis was a necessary step in calculating the claim and that all servicers would need to find a way to accomplish the task.

The Reporter said that Judge Marvin Isgur said in his comment and testimony that the preparation of an escrow statement as of the petition date might conflict with the Fifth Circuit's decision in Campbell v. Countrywide Homes, Inc., 545 F.3d 348 (2008), concerning whether a particular default occurred pre- or post-petition. The Subcommittee, however, did not think the rule dictated how defaults should be allocated and therefore did not think it was inconsistent with any existing case law. The Subcommittee recommended approving subparagraph (C) as

published.

Judge Ikuta noted that the rule requires preparation of the escrow statement in accordance with "applicable nonbankruptcy law" and asked if any law other than RESPA could apply. If not, she suggested changing the reference to RESPA. Mr. Rao responded that the Subcommittee chose the broader phrase because RESPA establishes a floor for escrow statements, but that state law might also apply and might have additional requirements.

Subdivision (c)(2)(D) would authorize sanctions against a creditor in an individual debtor case who fails to provide any of the information required by subdivision (c). Unless the court found that the creditor's failure to provide the required information was substantially justified or harmless, the creditor would be prohibited from presenting the omitted information in a contested matter or adversary proceeding. In addition to, or in place of, prohibiting the use of the omitted information, subparagraph (D) also authorized "other appropriate relief," including the award of reasonable expenses and attorney's fees.

The Reporter said that there were several comments critical of the sanctions provision. Among other things, critical comments maintained that that the provision sweeps too broadly and that by requiring the attachment of additional supporting documentation in every case, even when there is no demonstrated need for the information, the proposed amendments to Rule 3001(c), including its sanction provision, would abridge creditors' substantive rights in violation of the Rules Enabling Act.

Some comments viewed the sanctions provision in subparagraph (D) as being tantamount to claim disallowance, making it inconsistent with § 502 of the Code, as well as disproportionate to the violation in most cases. In support of the latter argument, Professor Bernadette Bollas Genetin of the University of Akron School of Law (comment 09-BK-130) quoted from Judge Posner's opinion in In re Stoecker, 5 F.3d 1022, 1028 (7th Cir. 1993): "Forfeitures of valuable claims, and other heavy sanctions, should be reserved for consequential or easily concealed wrongs. A creditor should therefore be allowed to amend his incomplete proof of claim. . . . to comply with the requirements of Rule 3001, provided that other creditors are not harmed by the belated completion of the filing."

The Reporter said that the Subcommittee carefully considered the comments, and that a majority recommended that the provision be approved as published. Two Subcommittee members, however, Judge Perris and Mr. Kohn, favored an alternative version set out at pages 37-40 of the agenda materials.

Judge Perris and Mr. Kohn spoke in favor of their alternative escalating sanctions proposal, which would start by requiring the debtor to file and serve a Request to Amend Claim that specifies the deficiency in the claim. They said the request would include an accounting of attorney's fees and costs reasonably incurred in seeking a cure of the deficiency and would give the creditor an opportunity to amend the claim or cure the deficiency. They said the proposal

includes additional procedural steps that would result in escalating sanctions if the claimant failed to respond.

Judge Perris said she preferred some variation of the alternative version because she thought the published sanctions version was too one-sided. Historically, debtors and creditors alike have been given liberal leave to amend their filings. She said this made sense particularly in the claims-resolution process where the purpose was to resolve disputes as efficiently as possible. The published sanctions provision, however, would change the liberal amendment policy in a one-sided way, sanctioning only creditors for the failure to file all required documents in the first instance.

Mr. Rao said that he didn't think the alternative sanctions provision would work with proposed Rule 3002.1. That rule, he said, is designed as a response to the current failure by some creditors to notify chapter 13 debtors of payment and fee changes during the case by establishing time frames by which such notices must be made. The harm the rule is designed to address is the accumulation of unpaid fees and charges over the course of the case, resulting in a large deficiency when the debtor emerges from bankruptcy with the expectation of a fresh start.

The alternative sanction, he said, is triggered only when the creditor files something for the debtor to dispute. Mr. Rao said he was concerned about what would happen if the type of creditor the rule is trying to address simply does as it has always done and waits until the end of the case to notify the debtor of accrued fees and charges. He reasoned that under the alternative sanction procedure, the debtor might be able to object at that time and possibly get an award of attorney's fees, but at the end of the day, the accumulated unpaid fees and charges due under the note will still be due, and the opportunity to pay those fees and charges over the course of the chapter 13 plan will have been missed.

Judge Harris agreed with Judge Perris that the published sanction provision does not seem evenhanded. He acknowledge the proponents' point that the language was simply derived from the discovery sanctions in Rule 37, but pointed out that sanctions in that context apply to disclosures that apply to both parties. In this case, the "disclosures" are required only of the creditor and only the creditor can be sanctioned. He said the new procedural requirements would probably be enough to encourage claimants to file the required attachments and questioned whether sanctions were needed at all.

Judge Wedoff said the starting point for sanctions is a grave problem. Creditors, including mortgage holders, simply do not comply with the existing disclosure requirements, and a stronger enforcement mechanism is needed. The rationale for the published mechanism is that it is parallel to what the civil rules do with initial disclosures required under Rule 26. Like the initial disclosures in Rule 26, the filings a creditor must make under proposed amended Rule 3001 and new Rule 3002.1 are required so that debtor or other parties can understand the creditor's claim.

Judge Wedoff added that the published sanctions scheme is a graduated one. Although the creditor would not be able to use material it should have provided before an objection was filed, it could make that failure harmless by simply providing the material at a later date. The Debtor will still have to object and show a legitimate objection to the claim, and the committee note makes clear that simple failure to attach documents is not a ground for disallowance of the claim.

Judge Coar said he disagreed with those who thought the sanction was not evenhanded. The creditor starts out with a statutory presumption that its claim is valid. Unless there is an objection, the claim will be paid according to its priority. It is not unbalanced in this context to require the creditor to document the claim or face a sanction. Absent documentation, the trustee and debtor often will not know what to object to.

Judge Ikuta asked two questions. First, if the creditor doesn't file the required information at the outset, would that constitute unfair surprise to the debtor? Second, if the creditor is not allowed to use the omitted information later in the case, is it really tantamount to disallowance?

In response to the first question, Judge Wedoff thought it well could be unfair surprise to a debtor and certainly would be to a trustee. In response to Judge Ikuta's second question, Judge Wedoff said it would not amount to disallowance because the debtor must still allege a valid objection to the claim, and the debtor's assertions would be subject to cross examination. Mr. Rao added that the debtor has an incentive to schedule claims because they won't be discharged otherwise. Since scheduling a claim amounts to an admission, the debtor won't likely be in a position to falsely deny that it owes the debt simply because the creditor failed to attach documentation.

Mr. Baxter pointed out that the committee note discussion of the sanction provision speaks in terms of what the court "may" do, while the rule itself says that the sanction "shall" be applied. Members of the Subcommittee explained that "may" was used in the committee note because the rule allowed for the possibility of different sanctions. Members then discussed amending the rule at lines 29 and 30 at page 52 of the materials by changing the default sanction from "the holder *shall* be precluded from presenting the omitted information" to "the holder *may* be precluded from presenting the omitted information." After initially voting 7 to 6 in favor of the published version, the Committee voted a second time and **approved revising Rule 3001(c)(2)(D) by substituting "may" for "shall" subject to a number of style revisions, and changing the lead-in to read as follows: "If the holder of a claim fails to provide any of the information required by this subdivision (c), the court may, after notice and a hearing, take either of both of the following actions: (i) preclude the holder from presenting the omitted information …; or (ii) award other appropriate relief …".**

Rule 3002.1:

The Reporter said that proposed new Rule 3002.1, also published for comment in August 2009, would require the filing in chapter 13 cases of several notices regarding claims secured by a security interest in the debtor's principal residence. The rule would provide for three types of notice: (1) notice of payment changes with respect to home mortgages that are being cured and maintained pursuant to § 1322(b)(5); (2) notice of fees, expenses, and charges incurred after the petition was filed; and (3) notice of final cure payment. The proposed rule also includes a sanction provision modeled on the proposed sanction provision of Rule 3001(c)(2)(D). The Reporter discussed the comments to each provision of new Rule 3002.1 in turn.

Notice of payment changes. Subdivisions (a) and (b) of the rule deal with the timing, filing, and content of payment change notices. As published, the notice would have to be filed by the holder of the claim and served on the debtor, debtor's counsel, and the trustee at least 30 days before the new mortgage payment amount was due.

The Reporter said that some of the comments suggested different time periods and that particular concern was expressed with respect to Home Equity Line of Credit (HELOC) loans (which often adjust every month), or any loan with an interest rate that adjusts frequently. After considering the comments and noting that notice of a change to the monthly payment of a HELOC outside of bankruptcy must be given between 25 and 120 days before the payment is due, the Subcommittee recommended the notice period be shortened to "no later than 21 days before the next payment."

Mr. Rao added that the Subcommittee concluded that the 21-day period would be sufficient in bankruptcy, that it was consistent with the recent change in the federal rules to express time periods less than 30 days in multiples of seven days, and that it allowed for lengthier notice if required by non-bankruptcy law.

Choice of docket. The Reporter explained that as published, the rule requires that the creditor notices required under subdivisions (a) - (c) and (e) be filed as supplements to the claim on the claims docket, rather than on the court's main docket. She said that prior to publishing, both the Bankruptcy Clerks' Advisory Group (BCAD) and the Bankruptcy Judge Advisory Group (BJAG) recommended that creditors file the required notices on the claims docket to avoid overburdening the main court docket and to reduce the likelihood that a large group of non-attorney filers would request electronic filing privileges on the main docket.

The Reporter said two comments addressed the choice of docket issue. The BJAG filed a comment emphasizing its support of filing such notices on the claims docket. The second comment consisted of a survey compiled by Glen Palman of the Bankruptcy Court Administration Division of the Administrative Office. Mr. Palman's survey indicated that 74% of 58 responding bankruptcy clerks favored filing the notices on the main court docket.

The Subcommittee concluded that the filing destination wasn't critical to the rule's success, but it favored a uniform approach as opposed an *ad hoc* system governed by local rule. It therefore recommended that subdivisions (a) - (c) be approved as published with respect to the requirement that the notices under those subdivisions be filed on the claims docket.

Applicability of Rule 3001(f). The Reporter said that, as published, the notices required under proposed Rule 3002.1 are not subject to Rule 3001(f)'s provision of prima facie validity. She said that during his testimony in New York, Mr. Philip S. Corwin asserted that Rule 3001(f) *should* apply to the notices filed under Rule 3001.2, but he did not elaborate on his assertion either in his testimony or his written comments. The Reporter said that the Committee decided to exclude the operation of Rule 3001(f) from Rule 3002.1 in order to place the burden of proving the validity of postpetition payment changes and assessments on the mortgagee if there is an objection. She said that the Subcommittee continues to support that decision, and therefore recommends that the provisions of proposed Rule 3002.1 that state that Rule 3001(f) does not apply be approved as published.

The Reporter said that three comments addressed the requirements of subdivision (c) that the mortgagee serve a notice of fees, expenses, and charges "no later than 180 days after the date when the fees, expenses, or charges are incurred" or that the debtor or trustee file a motion "no later than one year after service of the notice" to obtain a court determination of the validity of the fees, expenses, and charges. She said that some comments suggested different time periods and others cautioned that the published time periods would be too costly in small cases.

The Reporter explained that, in proposing the timing provisions, the Committee attempted to avoid imposing an unreasonable burden on either the debtor or the mortgagee, while at the same time allowing a judicial determination that would permit the debtor to make necessary adjustments in ongoing payments. She said that the Subcommittee continues to support the time periods in proposed Rule 3002.1(c) and therefore recommended that they be approved as published.

Procedure for determining the status of the debtor's payments at the end of the case. The Reporter said that several comments raised issues about the procedure provided in subdivisions (d) - (f) regarding the debtor's successful cure of any default and completion of all payments due after the petition. The most serious concern relates to the timing of the notice provision. As drafted, subdivision (d) requires the trustee to file a notice of final cure payment no later than 30 days after the amount required to cure a mortgage default has been paid in full. This notice triggers the mortgagee's obligation to state whether it agrees that the default has been cured and also to indicate whether the debtor is "otherwise current on all payments." The procedure was proposed in order to permit a determination at the end of the case of whether the debtor is current on all mortgage payments.

The Reporter said that three comments pointed out that a mortgage default is sometimes cured early in the case, especially if the amount in default is relatively small, and that in such an

instance the published procedure would announce only that the debtor was current at the time of the cure, and not, as intended, current on all payments at the end of case. A suggested fix was to tie the procedure for verifying that the mortgage was current to the debtor's completion of payments under the plan, rather than to the final cure payment.

The Reporter said that the Subcommittee agreed with the comments that subdivision (d) should be revised to meet the goal of providing a procedure to determine the status of the mortgage at the end of the case. It therefore recommended that Rule 3002.1(d) be approved with the first sentence revised to read as follows: "No later than 30 days after completion by the debtor of all payments under the plan, the trustee in a chapter 13 case shall file and serve upon the holder of the claim, the debtor, and the debtor's counsel a notice stating that the amount required to cure the default has been paid in full." Judge Perris suggested a friendly amendment, changing the beginning of the sentence from "No later than" to "Within."

The Reporter said that because the mortgagee would face sanctions for failing to comply with the rule, the Subcommittee also recommended that a statement be added to subdivision (d) that requires the trustee's notice to inform the mortgagee of the need to provide a response under subdivision (e). With the exception the changes discussed above, the Subcommittee recommended that subdivisions (d) through (f) of proposed Rule 3002.1 be approved as published.

Sanctions. The Reporter said that proposed Rule 3002.1(g) was intended to parallel the sanctions provisions the Committee just reviewed and modified in Rule 3001(c)(2)(D), and said the changes to both provisions should be the same.

Appropriateness of the rule in non-conduit districts. The Reporter said that several comments suggested that proposed Rule 3002.1 will work only in districts in which the chapter 13 trustees make all mortgage payments ("conduit" districts). See 09-BK-035, -037, -140. These comments are based on the fact that subdivisions (a) and (c) require notices to be filed on the claims docket and service to be made on the trustee and that subdivision (d) provides for notice of the final cure payment to be given by the trustee.

The Reporter explained that the rule was drafted, however, with both conduit and non-conduit districts in mind. If the debtor makes postpetition mortgage payments directly, the debtor and the debtor's counsel will receive the required notices, as will the trustee. Moreover, it is because the debtor may be making payments directly that subdivision (d) provides that the trustee will only file a notice regarding the completion of cure payments (which are made by the trustee), rather than a notice regarding the postpetition mortgage payments.

In light of the misunderstanding apparent in some of the comments, however, the Subcommittee recommended adding a statement to the committee note clarifying that the rule applies in all districts, regardless of whether the debtor makes ongoing mortgage payments directly to the mortgagee, or through the chapter 13 trustee. She said the recommended language

was in the last sentence of the first paragraph of the committee note.

Draft Mortgage Forms for Publication.

Mr. Rao walked the Committee through the contents of the three proposed mortgage forms at Agenda Item 5(A), starting at page 114 of the materials – the Draft Mortgage Proof of Claim Attachment, Official Form 10 (Attachment A); the Draft Notice of Mortgage Payment Change, Official Form 10 (Supplement 1); and the Draft Notice of Postpetition Mortgage Fees, Charges, and Expenses, Official Form 10 (Supplement 2). He said the Subcommittee's recommendation was to publish the attachment and two supplements for comment this August so that they would be on the same approval track for final approval as Rule 3001(c)(2) and 3002.1(b) and (c).

Mr. Rao explained that Attachment A was designed to be attached to the proof of claim form (POC) and filed at the same time as the POC to implement the requirements of Rule 3001(c)(2). Because it would be filed as an attachment, no signature line was required. Mr. Rao added that Mr. Myers had drafted an alternative version of Attachment A (starting at page 116 of the materials and labeled "alternative 2") that presented the same information in a slightly different format. Mr. Myers explained that the main difference was a greater use of tables in "alternative 2" so that that some of the information could be presented in columns and more easily tabulated.

Judge Harris recommended that the header for whichever version of Attachment A is approved include the debtor's name and case number.

Mr. Rao explained that the two supplement forms were designed to implement Rule 3002.1(a) - (c). In response to a comment from Judge Ikuta about the language in the signature block, Mr. Rao explained that the signature blocks would be conformed to whatever the Committee decided to do with the signature block on Form 10, which would be discussed at Agenda Item 5(B).

Judge Harris asked whether there had been any discussion of applying the supplements to non-residential mortgages. Judge Wedoff said that that issue was not before the Subcommittee, but that it might be something the Committee should consider in the future.

After additional discussion about the proposed mortgage forms, the proposed change to Rule 3001(c)(2) and proposed new Rule 3002.1, the following motions were made:

A motion to recommend final approval of Rule 3001(c)(2) in its entirety as set forth at pages 51-53 of the materials, with the subparagraph (D) drafting revisions and other changes discussed above and subject to review by the Style Subcommittee, passed without objection.

A motion to recommend final approval of Rule 3002.1, as set forth at pages 54-59 with the changes discussed above including conforming the sanctions provision with Rule 3001(c)(2)(D), and subject to review by the Style Subcommittee, passed without objection.

A motion to approve Attachment A, alternative 2 (as opposed to alternative 1), for publication, as shown as page 116 of the materials passed 12 to 1, subject to restyling before publication.

A motion to approve Supplements 1 and 2 for publication, subject to conforming the signature blocks to the Committee's recommendation for the signature block on Official Form 10 (at Agenda Item 5(B)), passed without objection, subject to restyling before publication.

After the meeting all three forms were reviewed by an outside consultant who works with the Forms Subcommittee in connection with the Forms Modernization Project ("FMP" – discussed below at Agenda Item 8). The FMP consultant recommended a number of stylistic and formatting changes which were distributed to committee members by email. The styled versions were revised in response to committee member comments **and, by email vote, the Committee recommended for publication final styled versions of the mortgage forms.**

4(A)(2) Comments on the bulk claim and revolving credit provisions.

The Reporter explained that, as published in August 2009, a proposed amendment to Rule 3001(c) – redesignated as (c)(1) – would have required the holder of a claim based on an open-end or revolving consumer credit agreement to attach to its proof of claim the last account statement sent to the debtor prior to the commencement of the bankruptcy case. She said that there was a dramatic split in the commentary between representatives of the bulk claims industry and credit card issuers (arguing against the proposal) and the consumer debtor bar and trustees (arguing in favor of the proposal).

Representatives of bulk purchasers of credit card debt objected on several grounds arguing, among other things, that the last account statement will often not be available when the proof of claim is filed (under federal record retention policies for financial institutions, credit card account records generally need only be retained for two years). Another reason cited in opposition was that account statements often reveal private information about the debtor (e.g., where purchases were made or the type of medical treatment obtained).

Asserting that there is a low objection rate to claims filed by bulk claims purchasers, some opposing comments questioned whether there was a problem at all. Others pointed out that Rule 9011 and criminal sanctions are already available to police fraudulent claims, and asserted that adding the threat of sanctions coupled with a requirement for information that is impractical or impossible to obtain will have a devastating impact on the debt purchasing market, which they say provides important benefits to the U.S. economy.

On the other side of the issue, numerous comments filed by consumer bankruptcy lawyers and trustees strongly supported the proposed amendments. They recounted their frustrating experiences in dealing with bare POCs filed by bulk claims purchasers. They said that claims failed to comply with existing documentation requirements and that it was impossible to determine how the claim amounts were calculated. Furthermore, they argued, when additional information was sought, claimants frequently failed to respond until an objection was filed, at which point they either withdrew their claims or belatedly provided information that should have been attached to the POC.

Debtors' lawyers explained the disincentives to challenging inadequately documented claims. The lawyer often would receive no additional compensation for the effort, and any money freed up from payment of a challenged claim would just go to other unsecured creditors. In some cases, they said, the cost of objecting would exceed the payment that would be made to the creditor. Nevertheless, some lawyers or trustees said that they did pursue challenges to claims filed by bulk purchasers and discovered claims that were time-barred, filed against the wrong debtor, or excessive in amount.

Supporters of the amendments applauded the proposal to provide sanctions for the failure of claimants to comply with the rules. They noted the burdens placed on debtors seeking bankruptcy relief and expressed the view that bulk purchasers should not be free to ignore rule requirements based on assertions that compliance would be unduly burdensome.

Some members of the consumer bar advocated strengthening the proposed requirements and sanctions. Some desired a requirement that a credit card claimant provide not only the last account statement, but also the dates of the last payment and of the last actual charge on the account. Others wanted the original credit agreement with the debtor's signature to be attached to the POC. Several argued that POCs that fail to comply with the documentation requirements should be disallowed.

The Reporter explained that the proposal to attach the last account statement for credit card claims arose because, despite the existing requirement in Rule 3001 to the attach the writing on which a claim is based, holders of credit card debt rarely attach the underlying agreements or any of the amendments or statements that support their claim. When little supporting information is provided with a proof of claim, the burden is placed on a debtor or trustee to seek, through informal means or by discovery, information that Rule 3001(c) or Form 10 requires the claimant to provide in support of its claim.

In reviewing the comments, however, the Subcommittee concluded that the rule should not require the attachment of information that is frequently unavailable or impracticable to obtain. Likewise, it concluded that, if there is a less burdensome way for a creditor to provide the information needed to assess the validity of its claim, the rule should not insist on the provision of that information in a more costly or difficult manner.

The Subcommittee therefore recommended withdrawing the proposal for the attachment of the last account statement in Rule 3001(c)(1) and in its place recommended for publication a new subdivision (c)(3). That provision requires a statement of the following information, to the extent applicable: (1) the name of the entity from whom the creditor purchased the account; (2) the name of the entity to whom the debt was owed at the time of the last transaction on the account by an account holder; (3) the date of the last transaction on the account by an account holder; (4) the date of the last payment on the account; and (5) the date on which the account was charged to profit and loss.

The Reporter said that there was a split in the Subcommittee about whether bulk claims filers should be required to comply with new (c)(3) – described above – in *addition to* the requirement of (c)(1) to provide writings on which the claim is based, but that the majority recommended that the new (c)(3) reporting requirements *in place of* the (c)(1) attachment requirements.

The Committee discussed the Subcommittee's recommendation. Mr. Rao said that he supported proposed (c)(3) as an alternative to requirement of providing the last account statement, but that he was worried that using (c)(3) as a replacement for (c)(1) would result in the debtor having to incur costs through discovery or court filings in order to obtain original writings. He said the original credit card agreement might not matter in most instances, but could have a bearing on statute of limitation defenses because the agreement would include the parties' choice of law provision. He said he wouldn't have a problem with the Subcommittee's proposed draft if it included a provision that the original writing the claim is based on must be turned over on request by a party in interest.

Judge Wedoff proposed an amendment that would allow a party in interest to obtain the writing on which an open-end or revolving consumer credit claim is based by making a request in writing for that documentation from the holder of the claim. After discussing possible language, a suggestion was made to designate (c)(3), as proposed in the agenda materials at pages 71 and 72, as (c)(3)(**A**), and add a new (c)(3)(**B**), as follows: "On written request of a party in interest, the holder of such a claim shall provide the documents required in paragraph (1) of this subdivision."

After further discussion, **the Committee voted to recommend for publication new 3001(c)(3) as revised above, subject to review by the Style Subcommittee.**

(B) Recommendations concerning comments submitted on:

(1) Proposed amendment to Rule 2003.

The Reporter reviewed the comments pertaining to the proposed amendment to Rule 2003(e), providing that, if the section 341 meeting is adjourned, "[t]he presiding official shall

promptly file a statement specifying the date and time to which the meeting is adjourned." She explained that the purpose of the amendment was two-fold: (1) to provide notice of the date and time to which the meeting has been continued; and (2) to discourage premature motions to dismiss or convert the case under § 1307(e) when a meeting is adjourned or "held open" as permitted by § 1308(b)(1) of the Code in order to allow the debtor additional time in which to file a tax return with taxing authorities.

The Reporter said that the comments generally supported the amendment as published, with the exception of comment 09-BK-139, submitted by Deborah A. Butler, Associate Chief Counsel of the IRS on behalf of the Office of Chief Counsel. Ms. Butler suggested several changes based on the view that § 1308(b)(1) requires the trustee to declare specifically that the meeting is being "held open for the purpose of allowing the debtor additional time in which to file his or her tax returns." She distinguished that authority from the broader and more general authority of the officer presiding at a meeting of creditors to "adjourn" the meeting as necessary. Ms. Butler argued that the rule as proposed "could lead debtors to believe that any adjournment of the section 341 meeting would qualify as holding the meeting open for purposes of section 1308."

The Reporter explained that in drafting the proposal, the Subcommittee determined that there was no substantive difference between the terms "held open" and "adjourned," and consequently agreed with Ms. Butler's point that "any adjournment" would qualify as holding open the meeting for purposes of § 1308(b)(1), at least so long as the date to which the meeting is adjourned does not exceed the time limits of § 1308(b)(1)(A) and (B). Accordingly, the Subcommittee recommended no change to the rule as published.

Mr. Kohn reiterated and emphasized some of the points raised by in Ms. Butler's comment in opposing the rule as published. He pointed out that Congress wasn't writing on a clean slate when it gave the trustee the ability to "hold open" a meeting to allow a limited amount time to file required tax returns, and that a notice to "hold open" a meeting would send a clear signal to parties in interest that there was a tax problem in the case. "Adjournment" on the other hand, has historically been associated with trustee discretion for time periods well beyond those in § 1308. He was concerned that an adjournment for a discretionary reason could result in allowing the debtor an indefinite period of time to file taxes.

Judge Wedoff responded that indefinite adjournment for tax-filing purposes is not possible because § 1308 contains hard deadlines for filing taxes, so that, while any adjournment would result in allowing the debtor additional time to file taxes, it could only do so up to the statutory deadlines. He said he was more concerned that requiring a trustee to use different notices to "hold open" or "adjourn" would be confusing and could cause problems simply because the trustee filed the wrong form.

After additional discussion, **the Committee voted 9-4 to recommend that Rule 2003 be adopted as published.**

(2) Proposed amendment to Rule 4004.

The Reporter recapped the purpose of the proposed amendment to Rule 4004(b). She explained that the amendment is intended to address the situation in which there is a gap between the deadline under Rule 4004(a) for objecting to a debtor's discharge and the court's entry of the discharge order. If during that period the trustee or a creditor discovers that the debtor had engaged in conduct that would provide a basis for denial of the discharge, it would be too late to object. Moreover, even if the conduct would otherwise provide a basis for revocation of the discharge once the order was entered, revocation would not be available if § 727(d) required that the party seeking revocation not have knowledge of the conduct until after the granting of the discharge.

The Reporter said three comments were received. Two comments, by Bankruptcy Judges Wesley Steen and Marvin Isgur, supported the change but recommended going further and allowing objections to discharge for any of the reasons listed in 11 U.S.C. § 727(a), not just grounds for revocation listed in § 727(d). A third comment, from the Insolvency Law Committee of the Business Law Section of the State Bar of California (ILC), suggested that the committee note make clearer that the revision was meant to apply to any of the grounds listed in § 727(d), and not just subsection (d)(1).

The Reporter said that Subcommittee carefully considered the comments. She said it considered a draft revision that would allow for the bringing of any § 727(a) ground for discharge until the discharge was actually entered, but rejected such a solution as unnecessarily prolonging the possibility of discharge litigation in cases in which the discharge is not promptly entered after the objection period closes. Instead, the Subcommittee continued to favor allowance of objections based on grounds for revocation under § 727(d). She said the Subcommittee did recommend including the following language the committee note after considering the ILC comments:

> Furthermore, during that period the debtor may commit an act that provides a basis for both denial and revocation of the discharge. In ~~that~~ those situations, subdivision (b)(2) allows a party to file a motion for an extension of time to object to discharge based on those facts so long as they were not known to the party before expiration of the deadline for objecting. The motion must be filed promptly after discovery of those facts.

After discussing the Subcommittee's recommendation, the Committee recommended approval of the amendment with the change to the committee note discussed above.

(3) Proposed amendment to Official Forms 22A, 22B, and 22C.

The Reporter said that there were no comments opposing the proposed substitution at

several places on Forms 22A-C of the phrases "household" and "household size" for "number of persons" and "family size," and that the Subcommittee recommended that the forms be approved as published.

Judge Wedoff added that there was one comment, 09-BK-032, by attorney William J. Neild, unrelated to the proposed changes. Attorney Neild suggested that B22A be amended to allow employee debtors to deduct from income any telecommunications expenses incurred in the course of their work. Judge Wedoff suggested that the issue be referred to the Subcommittee.

A motion to recommend approval of the proposed changes to Forms 22A, 22B and 22C effective December 2010, and to refer Comment 09-BK-032 to the Consumer Subcommittee carried without opposition,

(C) Recommendation concerning Suggestion 09-BK-H by Judge Margaret Dee McGarity (on behalf of the Bankruptcy Judges Advisory Group) to amend Rule 3007(a) to provide for disposition of objections to claims by negative notice, rather than requiring a hearing.

Judge Wedoff explained that the Subcommittee drafted a proposal to allow for negative notice under Rule 3007(a), which was contained in the agenda materials. After its consideration of the matter, however, it became aware of a related suggestion from the BJAG, 09-BK-N. That suggestion asks the Committee to address a split of authority on the interplay between the current language in Rule 3007(a), Rule 9014, and Rule 7004 with respect to the service and notice requirements for an objection to claim. Judge Wedoff said the Subcommittee therefore was withdrawing its recommendation so that both suggestions could be considered together. **The Chair referred Suggestion 09-BK-H back to the Consumer Subcommittee to be considered along with Suggestion 09-BK-N**

(D) Recommendation concerning Suggestion 09-BK-K by the National Association of Chapter 13 Trustees and Wells Fargo Corporation to add a claims identifier to Official Form 10, the proof of claim.

The Reporter said that the Consumer Subcommittee carefully considered the suggestion for the addition of a uniform claim identifier (UCI) on Form 10. The Subcommittee concluded that the proposed UCI could assist chapter 13 trustees in getting payments more easily to the correct creditor and credited to the correct account. Moreover, the Subcommittee identified no privacy problems under current laws, rules, and policies that would be presented by the use of the proposed 24-character identifier. It therefore recommended the designation of space for this item in Form 10. [See Agenda Item 5(B) for the discussion about the placement of the UCI on Form 10.]

(E) Oral report concerning possible revision of Schedule C to deal with the extent of a claimed exemption; issues that the Supreme Court will be considering in Schwab

v. Reilly (08-538) [See also, Agenda Item 4(B) for the October 2009 meeting.]

Judge Wedoff said that the Subcommittee would continue to hold any suggested revision of Schedule C until after Supreme Court decides Schwab v. Reilly.

(F) Recommendation concerning proposed amendment to Rule 7056 to provide an exception to the time for filing a motion for summary judgment set out in Civil Rule 56, as amended effective December 1, 2009. [March 2009 agenda item 13 and October 2009 agenda item 10].

Judge Wedoff explained that, when the new version of FRCP 56 (which is incorporated into the Bankruptcy Rules by BR 7056) went into effect on December 1, 2009, it included a new default deadline that requires a summary judgment motion be filed within 30 days from the close of discovery. He said such a deadline often would not make sense in bankruptcy cases, and that many courts have established different default deadlines by standing order or local rule.

Judge Wedoff recommended a change to Rule 7056 that would establish a more meaningful default deadline in bankruptcy of "30 days before the initial date set for a scheduled evidentiary hearing on an issue for which summary judgment is sought." After a short discussion, **a motion recommending publishing an amendment to Rule 7056 as set forth at page 107 of the agenda materials carried without opposition.**

5. Report of the Subcommittee on Forms.

(A) Recommendations on proposed forms to address problems related to claims secured by a debtor's home: Draft Mortgage Proof of Claim Attachment, Official Form 10 (Attachment A); Draft Notice of Payment Change, Official Form 10 (Supplement 1); Draft Notice of Postpetition Fees, Charges and Expenses, Official Form 10 (Supplement 2).

[See Committee action at Agenda Item 4(A)(1).]

(B) Recommendations on proposed amendments to Form 10, the Proof of Claim, including the wording of a creditor certification; the statement about attachment of a summary; inconsistent use of the pronoun "you" and whether some parts of the form should be worded in the first person; and Suggestion (10-BK-B) by Rena M. Myers to provide additional space for the "filed" stamp.

Judge Perris reviewed the proposed changes to the proof of claim form, (Official Form 10).

At the fall 2009 meeting in Boston, the Advisory Committee approved the Subcommittee's recommendation concerning the interest rate information in Item 4 of the form.

The amendment consists of adding "(at time case filed)" under "Annual Interest Rate _____%" and adding check boxes to indicate whether that rate is fixed or variable. Additional suggestions for amendments to Form 10 were discussed in Boston and referred to the Subcommittee for further consideration.

The matters that were referred to the Subcommittee relate to the following: (1) the wording of the declaration in the date and signature block; (2) the statement in Item 7 about the attachment of a summary of any documents that support the claim; and (3) ambiguity in the references to "your claim" throughout the form. After the fall 2009 meeting, three suggestions relating to Form 10 were also referred to the Subcommittee. They relate to the addition of spaces on the form for a date-stamp and for a uniform claim identifier and the placement of greater emphasis on the need to redact attached documents. All of these issues are discussed below.

Creditor Declaration. Judge Perris said that the Consumer Subcommittee initially recommended that the following declaration be added to the date and signature block of Form 10: "By signing, the person filing the claim declares under penalty of perjury the information provided above is true and correct." In discussing this proposal at the fall meeting, some members questioned whether the declaration imposed too high a standard on the person signing, and some members suggested allowing the statement to be made "upon information and belief" or "after reasonable inquiry." Another issue raised was whether the declaration should be in the name of someone other than the person filing the claim, such as "the person on whose behalf this claim is filed."

The Forms Subcommittee carefully considered the matter, and concluded that a declaration similar to ones used in other forms (such as Official Forms 2 and 6) is appropriate for a proof of claim. Because some members were concerned that the person filing a proof of claim might later assert total reliance on someone else regarding the validity of the information, the Subcommittee concluded that the declarant should be held to a standard of reasonableness. Judge Perris said that the Subcommittee therefore recommended that the following declaration be added to the signature block of Form 10: "I declare under penalty of perjury that the information provided above is true and correct to the best of my knowledge, information, and reasonable belief."

The Subcommittee also considered *who* should make the declaration. At the fall meeting, some committee members said that the person filing the claim on behalf of a creditor is often a lawyer or a company employee with relatively little direct knowledge of the creditor's accounts. That prompted the suggestion of requiring the certification to be made by "the person on whose behalf this claim is filed," although another member responded that the person actually filing the proof of claim should be required to engage in a reasonable inquiry before doing so. Another concern was whether the declaration should be made by a "person" (including a corporation) or an "individual."

Currently the signature provision of Form 10 applies to the "person filing this claim." That is who must sign it, yet it also requires the filer to "sign and print the name and title, if any, of the creditor or other person authorized to file this claim." According to Rule 3001(b), a proof of claim "shall be executed by the creditor or the creditor's authorized agent." If the creditor fails to timely file a claim, the trustee or debtor may file under Rule 3004, and a guarantor, surety, indorser, or other codebtor may file under Rule 3005.

Judge Perris said that the Subcommittee concluded that a real, live person should have to take responsibility for assuring the accuracy of a proof of claim. Thus it recommended requiring the signature of an individual – either the creditor or other individual entitled to file a proof of claim or the creditor's authorized agent. To simplify the wording of the date and signature box, the Subcommittee recommended that four checkboxes be added to designate the role of the individual signing the form: (1) creditor; (2) authorized agent; (3) trustee or debtor; or (4) guarantor, surety, indorser, or other codebtor. The Subcommittee further recommended that the instruction for Item 8 state that the form must be signed by an individual and that it emphasize the significance of the signature as a declaration. Finally, the Subcommittee recommended that the instructions state that when a proof of claim is filed by a servicing agent for a creditor, both the name of the individual filing the claim and the name of the servicing agent be provided. The name of the individual filing the claim would be indicated in the signature block beside "Print name," and the name of the servicing agent would be listed in the signature block beside "Company." (The name of the creditor is already listed at the top of page 1 of the form.)

In discussing the Subcommittee's recommendations, Judge Harris suggested that there should be something added to the instruction for Item 8 that clarifies that the declaration is derived from Rule 9011(b). After considering language variations, the Committee approved adding to the instruction "Your signature is also a certification that the claim meets the requirements of FRBP 9011(b)," and also approved a suggestion by Judge Wizmur to ask for the email address as part of the contact information in the notice and address boxes at the top of the form and in Item 8.

The Use of a Summary of the Writings Supporting a Claim. Rule 3001(c) requires that when a claim is based on a writing, "the original or a duplicate shall be filed with the proof of claim." If it has been lost or destroyed, an explanation must be filed with the claim. The current version of Form 10 instructs the filer in Item 7 to attach "redacted copies of any documents that support the claim." It goes on to state: "You may also attach a summary." The meaning of the second sentence is not clear. It could either mean "you also have permission to attach a summary, rather than the documents themselves" or "you may also attach a summary in addition to the supporting documents." The first meaning is not consistent with the Rule 3001(c); the second one is.

During discussion of this issue at the fall meeting, the sense of the Committee was that the supporting documents should be attached to the proof of claim, as Rule 3001(c) requires, and that a summary may be added if the creditor believes it would be useful. In referring this matter

to the Subcommittee, the Chair asked it to consider whether an exception allowing the filing of only a summary should be created for the situation in which the supporting documents are voluminous and, if so, how that exceptional circumstance should be defined.

Judge Perris said that the Subcommittee recommended amending Form 10 to conform to Rule 3001(c) and that the submission of a summary not be permitted in lieu of attaching the supporting documents themselves. She said that there does not appear to be any technological barrier to filing lengthy documents under the current CM/ECF system, and the Subcommittee concluded that because a proof of claim executed and filed in accordance with the rules constitutes prima facie evidence of the validity of the claim, it is appropriate to require the submission of supporting documentation.

Accordingly, the Subcommittee recommended amending Item 7 to require the attachment of redacted copies of documents that support the claim or that provide evidence of the perfection of any security interests and to eliminate any reference to summaries. It also recommended that the instructions for Item 7 be amended to provide that a summary may be attached *in addition* to redacted copies of the document.[1]

Proposed Wording Changes in the Form. The Consumer Subcommittee previously pointed out that an inconsistency exists in the current form with respect to the meaning of "your." In most places "your" refers to the creditor, but a proof of claim may also be filed by a debtor or trustee, and there is a checkbox to indicate such a filing. When someone other than the creditor files the proof of claim, the references to "your claim" are inaccurate.

The Subcommittee concluded that this issue can be resolved by eliminating the word "your" before "claim" and substituting "the" or "this." The Subcommittee incorporated the proposed changes, as indicated on the mock-up of the form included in the materials.

Amendments in Response to Suggestions. The Reporter said that suggestions were submitted regarding Form 10, and that the Subcommittee recommended amendments in response to each of the suggestions.

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[1] The Chair noted that the Committee's earlier decision at Agenda Item 4(A)(2) to recommend publishing this fall proposed new Rule 3001(c)(3) – which would allow a summary instead of underlying documents for an open-end credit claim – does not bear on the proposal in this agenda item to remove any reference to summaries at Item 7. She explained that, because of added procedural requirements, a change to a federal bankruptcy rule takes a year longer than a change to an official form. Thus, if ultimately approved, the proposed open-end credit claim procedure in Rule 3001(c)(3) will not go into effect until December 1, 2012. The currently proposed revisions for Form 10, however, are on track to go into effect a year earlier, on December 1, 2011.

The Chair said that if, after the comment period next spring, the Committee recommends going forward with the Rule 3001(c)(3) change, that a corresponding carve-out in Instruction 7 of Form 10 could be published for comment next year, with a target effective date of December 1, 2012, to coincide with the effective date of the proposed rule change.

The first suggestion (09-BK-K) was submitted by George Stevenson, which proposes that Form 10 be amended to provide space for a uniform claim identifier. Background and discussion of the suggestion is included as Agenda Item 4(D). In response to the Consumer Subcommittee's endorsement of the suggestion and the referral of the matter to this Subcommittee, the Forms Subcommittee recommended amending Form 10 to add space for this optional information as Item 3b, and adding instructions regarding the UCI as indicated in the mockup of Form 10 in the materials.

The second suggestion (10-BK-B) was submitted by Rena Myers, case administrator in the Bankruptcy Court for the Eastern District of Tennessee. She suggested that there is a need for more space on the form to allow for a legible date-stamp. The Subcommittee agreed and recommended that Form 10 be modified as indicated on the mockup in the materials.

The final suggestion (10-BK-C) was submitted by Therese Buthod, clerk of court for the Bankruptcy Court for the Eastern District of Oklahoma. She said that filers often fail to redact personal identifier information from documents attached to proofs of claim, and suggested emphasizing the need to redact documents in Item 7 of Form 10. The Subcommittee agreed with the suggestion and recommended that the word "redacted" be written in bold type at the beginning of Item 7 as shown in the mockup.

In discussing the definition of "redacted," committee members recommended the following changes: changing the beginning of the second sentence **"A creditor must show only the last four digits of …"; adding to the end of the definition the following – "If the claim is based on the delivery of health care goods or services, limit disclosure of confidential health care information."**

Judge Perris explained that, as a result of the proposed changes, Official Form 10 would expand to three pages. Accordingly, references to instructions or definitions on the "reverse side" should be eliminated, since the form itself is now on two pages and the instructions and definitions are on pages two and three.

After additional discussion, the Committee recommended publishing Form 10 as set forth in the materials for comment, with the changes discussed above. After the meeting, a number of style changes were made to the form in response to suggestions from the Forms Subcommittee's Forms Modernization Consultant. **The Committee approved the styled version by email vote.**

(C) Oral report on recommendation (by email vote) that the Director of the Administrative Office amend Director's Form B240A, the Reaffirmation Agreement; issue Instructions for Form B240A; and continue to make available the former reaffirmation form (now designated as Form 240A/B ALT).

Judge Perris reminded the Committee that at its fall 2009 meeting it considered a revised reaffirmation agreement form (Director's Form 240A) and recommended that the Director promulgate it and post it on the internet, while continuing to post the older version for a six-month transition period. She said that, after posting of the new form in December, the Administrative Office ("AO") learned from clerks that some creditor attorneys thought that it was inconsistent with the Bankruptcy Code, and that two creditor attorneys contacted the AO directly with their concerns. See Suggestion 09-BK-L (suggestion of Bradley Halberstadt) and Suggestion 10-BK-A (suggestion of Richardo I. Kilpatrick).

Judge Perris said that the Subcommittee discussed the suggestions by conference call on January 13, and reaffirmed its prior conclusion that § 524(k)(2) allows form drafters flexibility in wording and organization of the mandated disclosures because it authorizes the disclosures to be made "in a different order and . . . [to] use terminology different from that set forth in paragraphs (2) through (8)," with the exception of two terms – "Amount Reaffirmed" and "Annual Percentage Rate" – whose use is required. Because paragraphs (2) through (8) comprise all of the statutory disclosure requirements – including language that is contained in quotation marks – the Subcommittee again concluded that no particular language, other than the two specified terms, is statutorily mandated.

The Subcommittee did, however, conclude that in order to ensure compliance with the substance of § 524(k) and (m), additional revisions to Form 240A should be made with respect to the: (1) specification of fees and costs included in the amount reaffirmed; (2) description of the repayment terms; and (3) information about the effective date of agreements for which there is a presumption of undue hardship. Judge Perris said the Committee approved the revisions by email vote, and that on the Committee's recommendation, the Director promulgated the newly revised version on April 1, 2010. Judge Perris said that details about the differences between the April 2010 version and the December 2009 version it replaced were discussed in detail in the Reporter's memorandum in the materials.

Judge Perris said that, although B240A is a Director's form and its use is not required by the Bankruptcy Code or Rules, many courts require its use by local rule. She said that the Committee's original intent in revising the form was to create a version that was easier to read and understand for debtors. The form was not, however, appropriate for all circumstances. In particular, she explained, because some of the statutory disclosures were in the reaffirmation agreement portion of the form, it could not be used to provide necessary disclosures if the parties decided to use their own reaffirmation agreement – a practice the statute allows.

Accordingly, form instructions were also posted on the court's website with the April version of the form. Among other things, the new instructions set out the purpose of the form, the legal authority governing reaffirmation agreements, and the reasons for the revision, as well as basic directions for completing the form. These instructions also explain that § 524(k)(2) authorizes a different order and language from that set out in the statute, that the form is not appropriate for attachment to a stand-alone reaffirmation agreement, and that the Code

authorizes parties to use their own agreement.

Finally, Judge Perris explained that in order to provide a uniform set of disclosures for separate reaffirmation agreements, the original Form 240A, re-labeled as Form 240A/B ALT, will remain on the website indefinitely. If attached to a separate reaffirmation agreement, Form 240A/B ALT will provide the disclosures required by § 524(k).

(D) Recommendations and reports on other amendments to the bankruptcy forms:

(1) Recommendation on Suggestion (09-BK-G) by Kathleen Crosser to create a separate petition for use in chapter 15 cases.

The Reporter reviewed the suggestion as set out in her memo in the materials, and explained that the Committee considered and declined at its October 2008 meeting to adopt a separate chapter 15 petition when it considered a similar suggestion submitted by Judge Laurel Myerson Isicoff (Bankr. S.D. Fla.). Among the reasons that the Advisory Committee declined to accept this suggestion was the relatively small number of chapter 15 petitions that are filed annually.

The Reporter said that the Subcommittee concluded that the problems with the petition cited by Ms. Crosser are not sufficiently serious to require immediate action. The space for indicating the chapter in which the petition is filed and, for chapter 15 cases, whether recognition is being sought of a main or non-main foreign proceeding, has a clear format. Members of the Subcommittee also did not think that the foreign representative signature box is especially confusing.

The Subcommittee therefore recommends that any adjustments to the petition form await developments of the Forms Modernization Project. **After a short discussion, the Chair referred the suggestion to the Forms Subcommittee's Forms Modernization Project.**

(2) Recommendation on revision of the captions of Official Forms 20A and 20B.

Mr. Myers explained that B20A and B20B should be amended to change their captions in two respects. First, the forms should instruct the filer to list all names used by the debtor in the last eight, rather than six, years. This change would conform the forms to a 2005 amendment of § 727(a)(8) of the Bankruptcy Code that extended the period between chapter 7 discharges from six to eight years. Second, the filer should be instructed to redact the debtor's individual taxpayer identification number (ITIN), in addition to the current requirement to redact the debtor's social security number. The need to redact an ITIN is required by Rule 9037.

The Committee voted unanimously to approve the amendments without publication.

(3) Oral report on amendments to Official Forms 1, 6C, 6E, 7, 10, 22A, and 22C, and Directors Forms 200 and 283, to conform to the dollar adjustments to the Bankruptcy Code on April 1, 2010, as provided in section 104(a) of the Code.

The Reporter said the above forms were amended on April 1, 2010 to incorporate the dollar adjustments to the Bankruptcy Code that occur every three years under 11 U.S.C. § 104(a).

6. Report of the Subcommittee on Business Issues.

(A) Recommendation concerning comments submitted on the proposed amendments to Rule 2019.

Judge Wizmur and the Reporter reviewed the comments and the Subcommittee's recommendation regarding Rule 2019.

Repeal of Rule 2019 or adoption of an alternative to its verified statement requirement. Judge Wizmur explained that the Committee's consideration of Rule 2019 was prompted by a suggestion of two trade associations that the rule be repealed. After publication of the proposed amendments, however, those organizations no longer advocated repeal. The only commentator who supported repeal of Rule 2019 was attorney Thomas Lauria. In both his testimony and his written comments, he argued that the rule chills participation by *ad hoc* committees in chapter 11 cases, that it is used improperly for tactical purposes by parties, and that its valid purpose can be fulfilled by the use of discovery. Another attorney, Martin Bienenstock, suggested that parties be allowed to satisfy Rule 2019 by filing three certifications rather than the verified statement required by the rule. The certifications would require a party to state the amount of its pre- and postpetition claims against the debtor and whether it held economic interests in the debtor or in an affiliate of the debtor that would increase in value if the debtor's estate decreased in value.

The overwhelming majority of commentators supported a clarified and reinvigorated Rule 2019, even if they opposed specific aspects of the proposed amendments. They favored providing greater transparency in the chapter 11 reorganization process and permitting creditors and equity security holders to have access to information about possible conflicts of interest of those purporting to represent them.

Price and date of acquisition information. Most of the opposition to the published amendments focused on the proposed rule provisions that would have required the disclosure of the date when each disclosable economic interest was acquired (if not more than one year before the filing of the petition) and, if directed by the court, the amount paid for each disclosable economic interest. These disclosure obligations would have applied to each covered entity, indenture trustee, member of a group or committee, and to each creditor or equity security holder represented by a covered entity, indenture trustee, or committee or group (other than an official

committee).

The objectors to these provisions raised the following concerns:

- The price paid for a claim or interest is generally irrelevant to any issue in a chapter 11 case.
- If this information should ever be relevant, it could be obtained through discovery or pursuant to the court's inherent authority to order its disclosure.
- Pricing information is highly guarded by distressed debt purchasers. Requiring its disclosure will allow competing firms to determine the disclosing party's trading strategy.
- Parties in interest engage in the strategic use of the authority to compel the disclosure of this confidential information.
- The existence of this requirement, proposed to be made explicitly applicable to *ad hoc* committees, will discourage the formation of such groups and will decrease the purchasing of distressed debt.
- The disclosure of the date of purchase enables other parties to determine the purchase price by using market reports. Thus the required disclosure in all cases of the date of purchase will result in the acquisition price being revealed, whether or not the court directs its disclosure.

Bankruptcy Judge Robert Gerber of the Southern District of New York testified in favor of the published amendments, including the provisions for disclosure of date and price of acquisition. He indicated, however, that a more general disclosure of the time of acquisition and a required showing of relevance of price might be sufficient to serve the rule's purposes.

Disclosure regarding clients who do not actively participate in the case. The National Bankruptcy Conference ("NBC") commented that an entity, such as a law firm, should not be made subject to the rule when it represents more than one client with respect to a chapter 11 case but it does not appear in court to seek or oppose the granting of relief on behalf of more than one of those clients. NBC argued that if a client remains passive in the case, there is no reason to require the public disclosure of its holdings merely because it retained a firm that happens to represent one or more other creditors or equity security holders.

Exclusions from the rule. Several comments asserted that administrative agents under credit agreements should not be required to disclose information regarding each of the lenders in its syndicated credit facility; others argued further that such agents should be exempted altogether from the rule's coverage. It was argued that these entities are not agents in the traditional sense of that term since the lenders are free to take positions adverse to the agent. Furthermore, it was contended, the lenders themselves often are not acting in concert with each other and so should not be covered by the rule just because there happens to be an administrative agent under the credit agreement.

Somewhat similarly, the argument was made that indenture trustees should not be required to make disclosures regarding every bondholder under the applicable indenture merely because the bonds were issued under an indenture. Another comment stated that the rule should be revised to make clear that it does not cover class action representatives.

Supplemental statements. Several comments addressed the proposed requirement in subdivision (d) that supplemental verified statements be filed monthly, setting forth any material changes in the facts disclosed in a previously filed statement. The comments expressed concern that the requirement would be overly burdensome on the parties and the court. Some commentators sought clarification that a supplemental statement would not have to be filed if no changes had occurred. One comment suggested that verified statements be supplemented only when the group, committee, or entity that filed the original statement was seeking to participate in matters before the court. That change, it was argued, would relieve parties no longer active in the case from the continuing obligation to file supplemental statements.

The enforcement provision of subdivision (e). The published draft of amended Rule 2019 proposed mostly organizational and stylistic changes to the existing provisions of Rule 2019(b), which authorize sanctions for the failure to comply with the rule's requirements. The published revision of the rule moved the sanctions provisions to subdivision (e). Judge Wizmur said that two sets of written comments criticized the breadth of proposed subdivision (e). Like the existing rule, the proposed subdivision would have authorized the court to determine and impose sanctions for violations of applicable law other than Rule 2019. It would also continue to specify certain materials that the court could examine in making its determination.

Both the comment submitted by the Loan Syndications and Trading Association ("LSTA") and the Securities Industry and Financial Markets Association ("SIFMA") and the comment submitted by the Insolvency Law Committee of the Business Law Section of the California State Bar questioned the authority of bankruptcy courts to determine "whether there has been any failure to comply with any other applicable law regulating the activities and personnel of any entity, group, committee, or indenture trustee" and "whether there has been any impropriety in connection with any solicitation." LSTA and SIFMA also argued that the materials that the court can examine in making a determination under this subdivision should be left to the Federal Rules of Evidence.

Disclosure by entities that are seeking or opposing relief. As published, Rule 2019(b) would have authorized the court, on motion of a party in interest or on its own motion, to require disclosure of some or all of the information specified in subdivision (c)(2) by an entity that seeks or opposes the granting of relief. This part of the rule would apply to individual entities that do not represent others. While disclosure by such entities would not be routinely required, the provision would authorize the court to order disclosure when knowledge of a party's economic stake in the debtor would assist the court in evaluating the party's arguments.

Two commentators expressed concerns about this part of the proposed rule. The Clearing House Association argued that the addition of the provision was inconsistent with the original purpose of the rule – protection of represented parties; that it could be obtained by means of discovery or Rule 2004 if relevant; and that it would lead to abusive litigation by parties seeking merely to harass opponents. Bankruptcy Judge Michael Lynn of the Northern District of Texas also expressed concern about the likely tactical use of this provision. He suggested that an order for such disclosure by an entity that is not representing others should issue only on the court's own motion, or on motion by the U.S. trustee, the case trustee, or an examiner.

The Subcommittee carefully considered all of the views expressed in the testimony and comments and recommended making several changes to the published rule as set forth at pages 165 through 171 of the materials. The Reporter said that although there were many recommended changes, the Subcommittee concluded that the revised version should go forward for final approval because the changes described below were responsive to suggestions made in the comments and testimony and narrow in some respects the provisions of the published rule. In addition to stylistic changes, the version set out in the materials includes the following changes after publication:

- The addition of a definition of "represent" or "represents" in subdivision (a)(2) that limits the meaning of the terms to taking a position before the court or soliciting votes on a plan, thereby removing entities that are only passively involved in a case from coverage under the rule.
- The addition of a provision in subdivision (b)(1) providing that the covered groups, committees, and entities are those that represent or consist of multiple creditors or equity security holders that act in concert to advance their common interests and are not composed entirely of affiliates or insiders of one another.
- The elimination of the provision in subdivision (b) of the published amendments that authorized the court to require disclosure by an entity that does not represent anyone else.
- The addition of subdivision (b)(2), which excludes certain entities from the rule's disclosure requirements unless the court orders otherwise.
- The elimination from subdivision (c) of the authorization for the court to order the disclosure of the amount paid for a disclosable economic interest.
- With respect to disclosure of the date of acquisition of a disclosable economic interest, the limitation of the requirement in subdivision (c) to the quarter and year of acquisition and the restriction of its application to an unofficial group or committee that claims to represent any entity other than its members.
- Revision of subdivision (d) to require the filing of supplemental statements only when a covered entity, group, or committee is taking a position before the court or solicits votes on a plan, and any fact disclosed in its most recently filed statement has changed materially.

- Revision of subdivision (e) to limit the scope of its sanctions provision to failures to comply with the provisions of Rule 2019 and to eliminate the enumeration of materials the court may examine in making a determination of noncompliance.
- The addition of a sentence to the committee note stating that the rule does not affect the right to obtain information by means of discovery or as ordered by the court under authority outside the rule.

The Committee thoroughly discussed the Subcommittee's recommended changes.

Some members questioned the wording of subdivision (b)(2)(E), which would exclude "an investment advisor that represents individual funds." The Committee agreed that the provision should be reworded because "represents" is a defined term in the rule, and that word as used in subdivision (b)(2)(E) was not intended to be restricted to that limited meaning. Additionally, members suggested that the exclusion should be phrased in terms of the represented funds rather than the investment advisor.

Subject to a post-meeting resolution of the proper wording of the subdivision (b)(2)(E) and review by the Style Subcommittee, **the Committee unanimously recommended that revised Rule 2019 be approved as set forth in the materials with the following changes: delete "on behalf of another entity," from subdivision (a)(2), and at subdivision (c)(1)(B), change the second instance of "entity" to "creditor or equity security holder."** [However, as a result of changes made by the Styling Subcommittee, the phrase "on behalf of another entity" was added back in to subdivision (a)(2).]

After the meeting, upon the recommendation of Judge Wizmur and the Reporter, the Committee concluded that, even without an express exclusion, an investment advisor would not be an entity that has to file a verified statement merely by virtue of its status as an investment advisor. Thus no exclusion is needed. To the extent, however, that an investment advisor participates as a member of a covered group or committee, it would be subject to the rule's requirements to the same extent as the other members.

By email vote, the Committee approved deleting subdivision (b)(2)(E) from the rule.

(B) Recommendation concerning whether the time limits in Rule 7054(b) should be amended to conform to Civil Rule 54 and the new time computation provisions.

The Reporter said that the Committee voted at its fall 2009 meeting to recommend changing the five-day in Rule 7054(b) to seven days, in conformity with the new time computation rules. The question of whether to change to a multiple of seven days the existing the one-day period for the taxing of costs by the clerk was referred to the Subcommittee.

The Subcommittee considered the issue during its February 18, 2010, conference call.

Rule 7054(b) is the counterpart to Civil Rule 54(d). As part of the time computation amendments, the one-day notice period in Rule 54(d) was extended to 14 days because the one-day period was thought to provide an "unrealistically short" amount of time in which to prepare and present a response to the prevailing party's bill of costs. At the fall meeting the Committee discussed whether there is a similar need to extend the period in bankruptcy cases, and it requested Jim Waldron to survey clerks about their views. Mr. Waldron sent out a query to the clerks in January.

In response to Mr. Waldron's survey question "Should Rule 7054(b) be amended to allow the clerk to tax costs on 14 days notice instead of the currently authorized one day period?", 75.4% of the 65 respondents answered yes. Of the respondents who commented, several stated that one day was too short, and a number of them indicated that their local practice was to provide more time. Several of the clerks also noted that confusion would be reduced by having the notice period in Rule 7054(b) be the same as in Rule 54(d). The Subcommittee therefore recommended publishing for comment the Committee's previous recommendation to change the five-day period in Rule 7054(b) to seven days, as well as the proposal to change to 14 days the one-day period the clerk has to tax costs. **After a short discussion, the Committee adopted the Subcommittee's recommendation.**

(C) Recommendation concerning whether the effective date provision of Article VIII of Official Form 25A, the model chapter 11 plan for a small business debtor, should be changed in light of the time computation amendments

The Reporter explained that B25A, the model chapter 11 plan, contains a default effective date provision, Section 8.02, and that the effective date of the plan is "eleventh *business* day following entry of the order of confirmation." She said the wording presents two problems. First it is incompatible with the new 14-day appeal period in Rule 8002(a), and second, the counting of business days is inconsistent with the newly adopted days-are-days approach to time computation in the federal rules. After discussing various revisions to the Reporter's draft at page 181 of the materials, **the Committee voted to retain the concept of "first <u>business</u> day following the date that is fourteen dates after the entry of the order of confirmation," and to rewrite the last sentence.**

> 8.02 <u>Effective Date of Plan</u>. The effective date of this Plan is the ~~eleventh~~ <u>first</u> business day following the date <u>that is fourteen days after</u>~~of~~ the entry of the order of confirmation. ~~But i~~<u>If, however,</u> a stay of the confirmation order is in effect on that date, the effective date will be the first business day after the ~~at~~ date on which ~~no~~<u>the</u> stay of the confirmation order <u>expires or is otherwise terminated</u> ~~is in effect, provided that the confirmation order has not been vacated~~.

The Committee voted to recommend publishing for comment the above revision of Section 8.02, with a proposed effective date of December 1, 2011.

(D) Recommendation concerning Suggestion 09-BK-H by Judge Margaret Dee McGarity (on behalf of the Bankruptcy Judges Advisory Group) to adopt a rule which provides for closing individual chapter 11 cases after confirmation of a plan and reopening the cases as necessary.

The Reporter said that Judge McGarity's suggestion addresses the timing of the closing of individual chapter 11 bankruptcy cases. The suggestion notes that, as a result of the 2005 BAPCPA amendments, a discharge in an individual chapter 11 case is usually not entered until the completion of payments under the plan. If the case remains open until the discharge is entered, the debtor is obligated to make quarterly payments to the U.S. trustee for several years. In order to avoid paying those fees, some debtors have sought to have their case closed shortly after confirmation, to be reopened upon completion of the plan payments in order to receive a discharge. The suggestion notes that courts have disagreed over whether to allow the case to be closed at that point.

Judge McGarity noted some of the problems presented by the pre-discharge closing of an individual chapter 11 case: no stay is in effect while the plan is being carried out; enforcement of the plan may be sought by creditors in separate state court actions; and the payment of a fee for reopening will be required in order to seek a plan modification, conversion or dismissal, or discharge. While BJAG did not propose any specific rule amendments, Judge McGarity suggested that the group felt that some guidance would be helpful, "such as a streamlined procedure for reopening for enforcement of an individual chapter 11 plan, reopening for discharge, or automatic reopening linked to the terms of the plan, with noticing provisions."

For reasons discussed in the Reporter's memorandum in the agenda materials, the Subcommittee concluded that the Rule 3022 allows the case to be closed "[a]fter the estate is fully administered" and that full administration and entry of a final decree does not require completion of payments under the plan. The Subcommittee therefore recommended that no rule change be proposed.

The Subcommittee did recommend, however, that the Bankruptcy Administration Committee be advised of possible problems presented by an instruction in the current fee schedule regarding the fee for reopening a chapter 11 case. The Subcommittee was concerned that, as currently drafted, the Bankruptcy Court Miscellaneous Fee Schedule, issued by the Judicial Conference under 28 U.S.C. § 1930(b) and as effective on January 1, 2010, may *require* the full $1,000 chapter 11 filing fee to reopen a chapter 11 case and complete the ministerial task of entering a discharge after the plan payments are completed. Although the schedule provides that the "court may waive [the] fee under appropriate circumstances," it also states that the "reopening fee must be charged when a case has been closed without a discharge being entered."

As waiver of the reopening fee is a matter outside the scope of the rules, the Subcommittee recommended bringing the matter to the attention of the Bankruptcy Administration Committee, and asking it to consider whether fee waivers should be authorized

for reopening individual chapter 11 cases in order for the debtor to obtain a discharge or at the request of a creditor. **After a short discussion, the Committee agreed with the Subcommittee's analysis and recommended no change in the rules.**

Mr. McCabe and Mr. Wannamaker said that AO staff would raise the fee waiver issue with the Bankruptcy Administration Committee, which has an advisory role on bankruptcy fee issues, and the Court Administration and Case Management Committee, which has the primary responsibility for bringing fee issues to the attention of the Judicial Conference.

(E) Recommendation concerning Suggestion 09-BK-M by Judge Colleen A. Brown and Judge Robert E. Littlefield, Jr. to amend Rule 7004(h) to clarify the service requirements set forth in the rule.

The Reporter reviewed Judge Brown and Judge Littlefield's suggestion concerning the service requirement of Rule 7004(h) which governs service on insured depository institutions in contested matters and adversary proceedings.

Among other alternatives, the rule requires service by certified mail "addressed to an officer of the institution." The Reporter explained that this subdivision of Rule 7004 was added by § 114 of the Bankruptcy Reform Act of 1994, 108 Stat. 4106. The statute declares that "Rule 7004 of the Federal Rules of Bankruptcy Procedure is amended . . . by adding" the language now set out in subdivision (h).

Judge Brown requests the Advisory Committee to consider clarifying the meaning of service by certified mail "addressed to an officer of the institution." She says that the language is unclear and is subject to several interpretations. For example, she questions whether the envelope must be addressed to an officer by name and title; to an officer by name; to "Officer"; or to a designated official position, such as "President." She seeks clarification of the rule because there is no definitive case law on the question and bankruptcy courts face the dilemma of "determining whether service is sufficient to warrant the granting of a motion when there have been no objections filed and any one of these variations could reasonably be construed to comply with Rule 7004(h)."

After considering the suggestion, the Subcommittee concluded that the Committee lacks authority to recommend an amendment to this subdivision of the rule. Congress enacted Rule 7004(h) by statute, and the legislation prescribed the language of the subdivision. Because 28 U.S.C. § 2075, the bankruptcy rules enabling act, does not allow bankruptcy rules to supersede statutory provisions, the Subcommittee believes that in this instance there is no authority to "clarify" the rule through the bankruptcy rule-making process.

The Reporter noted that the requirement in Rule 7004(h) that the service be "addressed to an officer of the institution" is not unique in the rules. Rule 7004(b)(3) similarly requires the mailing of a summons and complaint "to the attention of an officer" or others, and Civil Rule

4(d)(1)(A)(ii) provides that a mailed request for the waiver of formal service by a corporation be "addressed . . . to an officer" or others. Despite the lack of clarity about how these requirements must be carried out, Congress mandated the wording of Rule 7004(h), so the Subcommittee concluded that resolution of its meaning will have to continue to be worked out through the case law. **After a short discussion, the Committee agreed to take no affirmative action on the suggestion.**

7. Report of the Subcommittee on Privacy, Public Access, and Appeals.

(A) Oral report on the status of revision of the Part VIII rules, including incorporation of comments following the special open subcommittee meeting held on September 30, 2009.

Mr. Brunstad said he made about 300 changes to the draft since the fall meeting in Boston, or roughly half the number of changes made after the previous special open meeting in San Diego. He said that, again, many of the changes were mechanical, such as moving statutory cross references, but that there were also changes that had required significant thought. He said that Rule 8009 has become very long because of his attempt to accommodate both written and electronic filings, and he suggested that one possible solution might be to pull out the indicative ruling provisions. He added that he thought the draft was now at a mature stage, and incorporated much of the thinking of some of the best minds through the comments received in San Diego and Boston.

The Chair and membership thanked Mr. Brunstad for all the time and effort he has expended in getting this project off the ground, even after his term on the Committee expired. For his part, Mr. Brunstad said he has enjoyed the project immensely, but that he was happy now to pass it on to the Reporter and the Subcommittee.

(B) Discussion of the underlying goals of the revision of the Part VIII bankruptcy appellate rules.

The Reporter said that Subcommittee is proceeding with its consideration of a comprehensive revision of the bankruptcy appellate rules (Part VIII of the Bankruptcy Rules) and that it endorsed the following goals for the revision:

- Make the bankruptcy appellate rules easier to read and understand by adopting the clearer and more accessible style of the Federal Rules of Appellate Procedure (FRAP).
- Incorporate into the Part VIII rules useful FRAP provisions that currently are unavailable for bankruptcy appeals.
- Retain distinctive features of the Part VIII rules that address unique aspects of bankruptcy appeals or that have proven to be useful in that context.

- Clarify existing Part VIII rules that have caused uncertainty for courts or practitioners or that have produced differing judicial interpretations.
- Modernize the Part VIII rules to reflect technological changes – such as the electronic filing and storage of documents – while also allowing for future technological advancements.

With the benefit of valuable input from users of the existing Part VIII rules obtained at special meetings held in March and September 2009, the Subcommittee anticipates submitting a draft of a revised version of Part VIII rules to the Advisory Committee for consideration at its fall 2011 meeting.

After a discussion, the Committee endorsed the Subcommittee's recommendation and also endorsed a suggestion that staff attempt to coordinate the Committee's spring 2011 meeting with the meeting of the Advisory Committee on Appellate Rules so that the committees can coordinate their efforts to modernize the two sets of appellate rules.

8. Oral report on status of the Bankruptcy Forms Modernization Project.

Judge Perris said that her report would cover CM/ECF and NextGen CM/ECF as well as the Forms Modernization Project (FMP).

CM/ECF. Judge Perris said that CM/ECF's next release version 4.0. Three courts will test it in the next month or two. The main features are that it brings into the national program an order processing module and better navigation. She said version 5.0 is scheduled for 2011.

NextGen. Judge Perris said that NextGen CM/ECF is going like gangbusters. District Court NextGen is now moving forward. The Project Steering Groups for Bankruptcy and District Next Generation of CM/ECF have been merged. Bankruptcy and District continue to have separate groups developing requirements for clerks and chambers; there is a joint group developing the requirements for outside stakeholders. All groups are busy creating their "requirements" (which Judge Perris described as the "wish list" phase of the project). She said that the bankruptcy clerks group, which started first, has released its fourth set of requirements for comments. She said that bankruptcy chambers group is also moving forward, and that a systems architecture study has begun. She said that the requirements phase is projected to be finished on February 2012.

The Forms Modernization Project. Judge Perris said that the FMP is designed to go hand-and-hand with NextGen in that NextGen will allow the information collected by the forms to be electronically uploaded and accessible in formats consistent with policy of the Judicial Conference with appropriate privacy safeguards.

She referred the group to Tab 8 of the Supplemental Materials, and said that the FMP's forms revision expert has been very helpful in focusing the group. She said that the group has

finished its rewrite of the Petition and Schedules A and B, and that it was now working on the Social Security Form, a form for renters facing an eviction judgment who want to keep their rental unit, the fee waiver and fee installment forms, and the rest of the schedules.

Judge Perris explained that in general, the revision process for a particular form starts with forms expert's review and draft of the form, followed by a working group's review and revision over several conference calls and redrafts, and finally by the full group review and comments. In order to gauge reaction to the new forms, the FMP leadership has been doing presentations at FJC workshops, the clerks' operational practices forum, and using on-line questionnaires. In the future, she anticipates seeking reaction from trustee groups and other outside user groups.

Judge Perris said that the next meeting of the full group would be on June 25.

9. Oral Report by the Subcommittee on Technology and Cross Border Insolvency concerning comments submitted on proposed new Rule 1004.2.

The Reporter said that this was the second time that Rule 1004.2 has been published for comment. She said that as originally published, subdivision (b) of the rule provided that the U.S. trustee or a party in interest may challenge the center of main interests ("COMI") designation made by the debtor in its chapter 15 petition, by motion "filed no later than 60 days after the notice of the petition has been given to the movant under Rule 2002(q)(1)." She said that the Committee had been persuaded by comments that the proposed 60-day time period was too long, and that a challenge should be filed before the hearing on the petition for recognition is held.

The Rule was republished to provide that "[u]nless the court orders otherwise, the motion shall be filed no later than seven days before the date set for the hearing on the petition for recognition." No comments were submitted in response to republication. **A motion to recommend final approval with an effective date December 1, 2011 was approved without objection.**

10. Oral Report of the Subcommittee on Attorney Conduct and Health Care concerning comments submitted on the proposed amendment to Rule 6003.

The Reporter said that there were no comments concerning the proposed amendment, which clarifies that although the rule limits the time for entry of certain orders, it does not prevent the court from providing that the effective date of the order may relate back in time to the motion for relief or some other time. **A motion to recommend final approval with approval with an effective date of December 1, 2011, carried without objection.**

Discussion Items

11. Discussion of Suggestion (09-BK-J) by Judge William F. Stone, Jr., (1) to amend Rules

9013 and 9014 to require that the caption of a motion initiating a contested matter set forth the name of any party whose interest would be affected, and (2) to consider adopting a rule to provide for applications for the allowance of administrative expenses.

Judge Stone's suggestion to style a motion for a contested matter as an adversary proceeding was referred to the Consumer Subcommittee, and his suggestion for a rule to provide for applications for the allowance of administrative expenses was referred to the Business Subcommittee.

12. Oral report on Hamilton v. Lanning (08-998), in which the Supreme Court is considering projected disposable income calculations in chapter 13 cases, and its implications for Form 22C.

The Reporter said the Supreme Court has not yet ruled in the case. Depending on how the court comes out, it may be necessary to revise Form 22C and possibly 22A.

13. Discussion of Suggestion (09-BK-I) by Dana C. McWay (on behalf of the Next Generation Bankruptcy CM/ECF Clerk's Office Functional Requirements Group) to amend Rule 1007(b)(7) to allow the course provider to file Official Form 23 (the statement that an individual chapter 7 or chapter 13 debtor has completed the required personal financial management course).

Motion to refer the suggestion to the Consumer Subcommittee carried without objection.

14. Oral report on the results of the email poll of the Committee on possible responses to a proposal to amend the three-day rule in Civil Rule 6(d).

The Reporter said that after an email poll, the Committee did not support a change in the three-day rule at this time, and that that result has been conveyed to the Standing Rules Committee.

Information Items

15. Oral report on the status of pending legislation, including S. 3217, Senator Dodd's Financial Reform proposal; H.R. 4506, to authorize additional bankruptcy judgeships; H.R. 4677 and S. 3033, which provide additional protections for workers whose employers are in bankruptcy; and H.R. 4950, which increases compensation for chapter 7 trustees, and other legislation.

Mr. Wannamaker said there is a great deal of interest in S. 3217, which would create a new non-Bankruptcy Code liquidation process for financial firms that pose a systemic risk to the nation's financial system – including the creation of the Orderly Liquidation Authority Panel. The panel would consist of three bankruptcy judges from the District of Delaware. They would

consider applications by the Secretary of the Treasury to appoint the Federal Deposit Insurance Corporation as receiver of large financial companies which are in default or are in danger of default. Mr. Wannamaker said that the current version of the legislation did not appear to require preparation work for the Committee because the contemplated panel would be required to develop its own procedural rules.

Mr. Wannamaker said that the judgeship bill appears to have a fair chance of passage, but that none of the other pending bankruptcy-related legislation appeared likely to be voted on in this Congress.

16. Memo of January 19, 2010, by the Director of the Administrative Office on the Standing Order Guidelines approved by the Judicial Conference.

The Chair said that the Standing Committee had approved this Committee's recommendation that the explanatory memorandum for the guidelines be augmented to explain that a local court rule is an order for the purpose of statutes and rules that contain a provision that is applicable "unless the court orders otherwise." She said that the approved language did not, however, get posted and distributed as planned, but that she has discussed the problem with AO staff and has been assured that the link would be updated and that information would be conveyed to the courts.

17. Letter of September 30, 2009, by Judge Bernice B. Donald on behalf of the American Bar Association concerning the restrictions on attorneys in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Pub. L. 109-8); response by Judge Carl E. Stewart; and syllabus, Milavetz v. United States, No. 08-1119.

The Chair reviewed the ABA's resolution that BAPCPA violates the First Amendment insofar as it imposes restrictions upon the bankruptcy-related legal advice certain lawyers can provide to their clients and requires them to identify themselves as debt relief agencies. She noted that in Milavetz the Supreme Court rejected the proposition that the statutory definition of debt relief agency is overly broad, and it concluded that Section 526(a)(4) of the Code prohibits a debt relief agency only from advising a debtor to incur more debt because the debtor is filing for bankruptcy, rather than for a valid purpose. No action required.

18. Oral update on opinions interpreting section 521(i).

The Reporter said that not much has changed since her last update. The courts are still divided on whether "automatic" means automatic, and the only the circuit opinions find that the bankruptcy court has discretion to retain the case after the 45th day. She said that so long as the courts seemed to breaking in favor of finding the that statute allows discretion, it would be hard to develop a rule to implement automatic dismissal.

19. *Bull Pen*: Proposed amendments to Official Form 10, approved at

March 2009 and October 2009 meetings.

Proposed new Rule 8007.1 and the proposed amendment to Rule 9024 (indicative rulings), approved at September 2008 meeting.

Proposed amendment to Rule 7054(b) approved at October 2009 meeting.

Mr. Wannamaker said that as a result of action at this meeting, only indicative rulings remained in the Bull Pen.

20. Rules Docket.

Mr. Wannamaker asked members to review the rules tracking docket and to let him know if they spot any errors. He said he hoped members found it to be a useful tool in keeping abreast of the Committee's work.

21. Oral report on posting a definitive set of Bankruptcy Rules.

Mr. Ishida said definitive rules have gone through another round of review and are now posted on the courts' public website. He said that according to a statistical review of "page hits" it is one of the most popular pages on the rules website. He said that initially it appeared that the House Judiciary Committee's Office of the Law Revision Counsel would not have the resources necessary to publish the bankruptcy rules in pamphlet form as they do the other federal rules. In a recent email exchange, however, he became encouraged that they may have found necessary resources, and he was hopeful that a pamphlet form would be available within a year.

22. Future meetings:

Fall 2010 meeting, September 30 - October 1, 2010, at the at the Bishop's Lodge in Santa Fe, New Mexico. The Chair sought suggestions of possible locations for the spring 2011 meeting.

23. New business.

None.

24 Adjourn.

Respectf ully submitted,

Stephen "Scott" Myers

TAB

3

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
Meeting of June 14-15, 2010
Washington, DC
Draft Minutes

TABLE OF CONTENTS

ATTENDANCE

The mid-year meeting of the Judicial Conference Committee on Rules of Practice and Procedure was held in Washington, D.C., on Monday and Tuesday, June 14 and 15, 2010. All the members were present:

Judge Lee H. Rosenthal, Chair
Dean C. Colson, Esquire
Douglas R. Cox, Esquire
Judge Harris L Hartz
Judge Marilyn L. Huff
Chief Justice Wallace Jefferson
John G. Kester, Esquire
Dean David F. Levi
William J. Maledon, Esquire
Judge Reena Raggi
Judge James A. Teilborg
Judge Diane P. Wood

The Department of Justice was represented on the committee by Lisa O. Monaco, Principal Associate Deputy Attorney General. Other attendees from the Department included Karyn Temple Claggett, Elizabeth Shapiro, Kathleen Felton, J. Christopher Kohn, and Ted Hirt.

Professor R. Joseph Kimble, the committee's style consultant, participated throughout the meeting, and Judge Barbara Jacobs Rothstein, director of the Federal Judicial Center, participated in part of the meeting.

Providing support to the committee were:

Professor Daniel R. Coquillette	The committee's reporter
Peter G. McCabe	The committee's secretary
John K. Rabiej	Chief, Rules Committee Support Office
James N. Ishida	Senior attorney, Administrative Office
Jeffrey N. Barr	Senior attorney, Administrative Office
Henry Wigglesworth	Senior attorney, Administrative Office
Joe Cecil	Research Division, Federal Judicial Center
Emery G. Lee III	Research Division, Federal Judicial Center
Tim Reagan	Research Division, Federal Judicial Center
Andrea Kuperman	Judge Rosenthal's rules law clerk

Representing the advisory committees were:

Advisory Committee on Appellate Rules —
Judge Jeffrey S. Sutton, Chair
Professor Catherine T. Struve, Reporter
Advisory Committee on Bankruptcy Rules —
Judge Laura Taylor Swain, Chair
Professor S. Elizabeth Gibson, Reporter
Advisory Committee on Civil Rules —
Judge Mark R. Kravitz, Chair
Professor Edward H. Cooper, Reporter
Professor Richard L. Marcus, Associate Reporter
Advisory Committee on Criminal Rules —
Judge Richard C. Tallman, Chair
Professor Sara Sun Beale, Reporter
Professor Nancy J. King, Associate Reporter
Advisory Committee on Evidence Rules —
Judge Robert L. Hinkle, Chair
Professor Daniel J. Capra, Reporter

INTRODUCTORY REMARKS

Judge Rosenthal reported that the Supreme Court had transmitted to Congress all the rule amendments approved by the Judicial Conference in September 2009, except the proposed amendment to FED. R. CRIM. P. 15 (depositions). That proposal would have authorized taking the deposition of a witness in a foreign country outside the presence of the defendant if the presiding judge were to make several special findings of fact. The Court remitted the amendment to the committee without comment, but some further explanation of the action is anticipated. She noted that the advisory committee had crafted the rule carefully to deal with delicate Confrontation Clause issues, and it appears that it may have further work to do.

Judge Rosenthal reflected that the rules committees had accomplished an enormous amount of work since the last Standing Committee meeting in January 2010. First, she said, the Advisory Committee on Evidence Rules had completed the restyling of the entire Federal Rules of Evidence and was now presenting them for final approval. The evidence rules, she noted, are the fourth set of federal rules to be restyled, and the final product is truly impressive.

Second, she said, final approval was being sought for important changes in the appellate and bankruptcy rules and for a package of amendments to the criminal rules that would allow courts and law enforcement authorities to take greater advantage of technological developments. Third, she pointed to the recent work of the sealing and privacy subcommittees and the Federal Judicial Center's major report on sealed cases in the federal courts.

Finally, she emphasized that the civil rules conference held at Duke Law School in May 2010 had been an unqualified success. She noted that the conference proceedings and the many studies and articles produced for the event should be viewed as just the beginning of a major rules project that will continue for years. All in all, she said, it had been a truly productive year for the rules committees, and the year was still not half over.

Judge Rosenthal introduced the committee's newest member, Chief Justice Wallace Jefferson of Texas. She noted that he is extremely well regarded across the entire legal community and recently received more votes that any other candidate for state office in Texas. She described some of his many accomplishments and honors, and she noted that he will be the next presiding officer of the Conference of Chief Justices.

With regret, she reported that several rules committee chairs and members were attending their last Standing Committee meeting because their terms would expire on October 1, 2010. She thanked Judge Swain and Judge Hinkle for their leadership and enormous contributions as advisory committee chairs for the past three years.

She pointed out that Judge Swain, as chair of the Advisory Committee on Bankruptcy Rules, had embarked on new projects to modernize the official bankruptcy forms and update the bankruptcy appellate rules, and had guided the committee through controversial rules amendments that were necessary to respond to economic developments. She emphasized that the work had been extremely complicated, timely, and meticulous.

Judge Hinkle's many accomplishments as chair of the Advisory Committee on Evidence Rules, she said, included the major, and very difficult, project of restyling the Federal Rules of Evidence. The new rules, she said, are outstanding and are an appropriate monument to his leadership as chair.

Judge Rosenthal said that the terms of two members of the Standing Committee were also about to end – Judge Hartz and Mr. Kester. She noted that Judge Hartz had come perfectly prepared to serve on the committee, having been a private practitioner, a prosecutor, a law professor, and a state judge. She thanked him for his incisive work as chair of the sealing subcommittee, for his amazing attention to detail, and for his willingness to do more than his share of hard preparatory work.

She said that Mr. Kester had been a wonderful member, bringing to the committee invaluable insights and wisdom as a distinguished lawyer. She detailed some of his background as a partner at a major Washington law firm, a law clerk to Justice Hugo Black, a former president of Harvard Law Review, a former high-level official at the Department of Defense, and a member of many public and civic bodies. She noted that he always shows great respect and appreciation for the work of judges and has written articles on law clerks and how they affect the work of judges.

Judge Rosenthal pointed out that two of the committee's consultants – Professor Geoffrey C. Hazard, Jr. and Joseph F. Spaniol, Jr. – had been unable to attend the meeting and would be greatly missed. She noted that Mr. Spaniol had been part of the federal rules process for more than 50 years.

Judge Rosenthal reported that Tom Willging was about to retire from his senior position with the Research Division of the Federal Judicial Center. She noted that Dr. Willging had worked closely with the Advisory Committee on Civil Rules for more than 20 years and had directed many of the most important research projects for that committee. She thanked him for his many valuable contributions to the rules committees and emphasized his hard work, innovative approach, and completely honest assessments.

Judge Rosenthal also thanked the staff of the Administrative Office for their uniformly excellent work in supporting the rules committees, noting in particular that they coped successfully with the recent upsurge in rules committee activities and contributed mightily to the success of the May 2010 civil rules conference at Duke Law School.

APPROVAL OF THE MINUTES OF THE LAST MEETING

The committee without objection by voice vote approved the minutes of the last meeting, held on January 7-8, 2010.

LEGISLATIVE REPORT

Civil Pleading

Judge Rosenthal reported that legislation had been introduced in 2009 in each house of Congress attempting to restore pleading standards in civil cases to those in effect before the Supreme Court's decisions in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. ___, 129 S. Ct. 1937 (2009). Three hearings had been held on the bills, but none since January 2010.

In May 2010, she said, a discussion draft had been circulated of new legislation that would take a somewhat different approach from the two earlier bills. She added that Congressional markup of some sort of pleading legislation had been anticipated by May, but had been postponed indefinitely. Another markup session, she said, may be scheduled before the summer Congressional recess, but there is still a good deal of uncertainty over what action the legislature will take.

Judge Rosenthal pointed out that the judiciary's primary emphasis has been to promote the integrity of the rulemaking process and to urge Congress to use that process, rather than legislation, to address pleading issues. She noted that the rules committees have been: (1) monitoring pleading developments since *Twombly* and *Iqbal;* (2) memorializing the extensive case law developed since those decisions; and (3) drawing on the Administrative Office and the Federal Judicial Center to gather statistics and other empirical information on civil cases before and after *Twombly* and *Iqbal*. That information, she said, had been given to Congress and posted on the judiciary's website. In addition, she, Judge Kravitz, and Administrative Office Director Duff had written letters to Congress emphasizing the importance of respecting and deferring to the Rules Enabling Act process, especially in such a delicate and technical legal area as pleading standards.

Sunshine in Litigation

Judge Rosenthal reported that the committee was continuing to monitor proposed "sunshine in litigation" legislation that would impose restrictions on judges issuing protective orders during discovery in cases where the information to be protected by the order might affect public health or safety. She noted that a new bill had recently been introduced by Representative Nadler that is narrower than earlier legislation. But, she said, it too would require a judge to make specific findings of fact regarding any potential

danger to public health and safety before issuing a protective order. As a practical matter, she explained, the legislation would be disruptive to the civil discovery process and require a judge to make important findings of fact without the assistance of counsel and before any discovery has taken place in a case.

REPORT OF THE ADVISORY COMMITTEE ON APPELLATE RULES

Judge Sutton and Professor Struve presented the report of the advisory committee, as set forth in Judge Sutton's memorandum and attachments of May 28, 2010 (Agenda Item 11).

Amendments for Final Approval

FED. R. APP. P. 4(a)(1) and 40(a)
and
PROPOSED STATUTORY AMENDMENT TO 28 U.S.C. § 2107

Judge Sutton reported that the proposed changes to Rule 4 (time to appeal) and Rule 40 (petition for panel rehearing) had been published for comment in 2007. The current rules, he explained, provide additional time to all parties to file a notice of appeal under Rule 4 (60 days, rather than 30) or to seek a panel rehearing under Rule 40 (45 days, rather than 14) in civil cases in which one of the parties in the case is a federal government officer or employee sued in an *official* capacity. The proposed amendments, he said, would clarify the law by specifying that additional time is also provided in cases where one of the parties is a federal government officer or employee sued in an *individual* capacity for an act or omission occurring in connection with duties performed on the government's behalf.

He noted, by way of analogy, that both FED. R. CIV. P. 4(i)(3) (serving a summons) and FED. R. CIV. P. 12(a)(3) (serving a responsive pleading) refer to a government officer or employee sued "in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf." The same concept was being imported from the civil rules to the appellate rules.

Judge Sutton pointed out that the advisory committee had encountered a complication when the Supreme Court held in *Bowles v. Russell*, 551 U.S. 205 (2007), that an appeal time period reflected in a statute is jurisdictional in nature. In light of that opinion, the advisory committee questioned the advisability of making the change in Rule 4 without also securing a similar statutory amendment to 28 U.S.C. § 2107.

The advisory committee, he said, had considered dropping the proposed amendment to Rule 4 and proceeding with just the amendment to Rule 40 – which has no statutory counterpart. But the committee was uncomfortable with making the change in

one rule but not the other because the two deal with similar issues and use identical language. Accordingly, after further discussion, the committee decided to pursue both the Rule 4 and Rule 40 amendments, together with a proposed statutory change to 28 U.S.C. § 2107. Amending all three will bring uniformity and clarity in all civil cases in which a federal officer or employee is a party.

Judge Sutton reported that the advisory committee had made a change in the proposed amendments following publication to specify that the rules apply to both current and former government employees.

He also explained that the advisory committee had debated whether to set forth specific safe harbors in the text of the rule to ensure that the longer time periods apply in certain situations. All committee members, he said, agreed to include two safe harbors in the rule. They would cover cases where the United States: (1) represents the officer or employee at the time the relevant judgment is entered; or (2) files the appeal or rehearing petition for the officer or employee.

Judge Sutton explained that two committee members had wanted to add a third safe harbor, to cover cases where the United States pays for private representation for the government officer or employee. There was no opposition to the third safe harbor on the merits, but a seven-member majority of the committee pointed to practical problems that cautioned against its inclusion. For example, neither the clerk's office nor other parties in a case will know whether additional time is provided because they will not be able to tell from the pleadings and the record whether the United States is in fact financing private counsel. The rule, moreover, had proven quite complicated to draft, and adding another safe harbor would make it more difficult to read.

In short, he said, the advisory committee concluded that the third safe harbor was simply not appropriate for inclusion in the text of the rule. He suggested, though, that some language addressing it could be included in the committee note, even though it would be unusual to specify a safe harbor in the note that is not set forth in the rule itself.

A participant inquired as to how often the situation arises where the government funds an appeal but does not provide the representation directly. Judge Sutton responded that the advisory committee had been informed that it arises rather infrequently, in about 30 to 50 cases a year.

A member suggested that the committee either add the third safe harbor to the text of the rules or not include any safe harbors in the rules at all. For example, the text of the two rules could be made simpler and a non-exclusive list added to the committee notes.

Judge Sutton explained that the advisory committee had originally drafted the rule using the words, "including, but not limited to . . . ." The style subcommittee, however, did not accept that formulation because it was not consistent with general usage elsewhere

in the rules. He suggested, therefore, that two options appeared appropriate: (1) returning to the original language proposed by the advisory committee, *i.e.,* "including but not limited to . . ."; or (2) retaining the current language of the rule with two safe harbors, but adding language to the note referring to the third safe harbor as part of a non-exclusive list. Professor Struve offered to draft note language to accomplish the latter result.

A member moved to adopt the second option, using the language drafted by Professor Struve, with a minor modification.

The committee without objection by voice vote approved the proposed amendments to Rules 4 and 40, including the additional language for the committee notes. Without objection by voice vote, it also approved the proposed corresponding statutory amendment to 28 U.S.C. § 2107.

Informational Items

Judge Sutton reported that the advisory committee was considering proposals to amend FED. R. APP. P. 13 (review of Tax Court decisions) and FED. R. APP. P 14 (applicability of other rules to review of Tax Court decisions) to address interlocutory appeals from the Tax Court. He noted that the committee would probably ask the Standing Committee to authorize publication of the proposed amendments at its January 2011 meeting.

He reported that the advisory committee was continuing to study whether federally recognized Indian tribes should be given the same status as states under FED. R. APP. P. 29 (amicus briefs), thereby allowing them to file amicus briefs without party consent or court permission. He said that he would consult on the matter with the chief judges of the Eighth, Ninth, and Tenth Circuits, where most tribal amicus filings occur. One possibility, he suggested, would be for those circuits to amend their local rules to take care of any practical problems. This course might avoid the need to amend the national rules. Otherwise, he said, the advisory committee would consider amending Rule 29. In addition, he noted that the Supreme Court does not give tribes the right to file amicus briefs without permission, but it does allow municipalities to do so.

He also reported that the advisory committee was considering some long-term projects, including possible rule amendments in light of the recent Supreme Court decision in *Mohawk Industries, Inc. v. Carpenter,* 130 S. Ct. 599 (2009), which held that a ruling by a district court on attorney-client privilege did not qualify for an immediate appeal under the "collateral order" doctrine. Another long-term project, he said, involved studying the case law on premature notices of appeal. He noted that there are splits among the circuits regarding the status of appeals filed prior to the entry of an appealable final judgment.

Finally, Judge Sutton noted that the advisory committee was considering whether to modify the requirements in FED. R. APP. P. 28(a)(6) and (7) (briefs) that briefs contain separate statements of the case and of the facts. He suggested that the requirements prevent lawyers from telling their side of the case in chronological order. Several members agreed with that assessment and encouraged the advisory committee to proceed.

REPORT OF THE ADVISORY COMMITTEE ON BANKRUPTCY RULES

Judge Swain and Professor Gibson presented the report of the advisory committee, as set out in Judge Swain's memorandum and attachment of May 27, 2010 (Agenda Item 10).

Amendments for Final Approval

FED. R. BANKR. P. 1004.2

Judge Swain reported that proposed new Rule 1004.2 (chapter 15 petition) would require a chapter 15 petition – which seeks recognition of a foreign proceeding – to designate the country in which the debtor has "its center of main interests." The proposal, originally published in 2008, had been criticized in the public comments for allowing too much time for a party to file a motion challenging the designation. As a result, the advisory committee republished the rule in 2009 to reduce the time for filing an objection from 60 days after notice of the petition is given to 7 days before the date set for the hearing on the petition.

She noted that no comments had been submitted on the revised proposal, and only stylistic changes had been made after publication.

The committee without objection by voice vote approved the proposed new rule for approval by the Judicial Conference.

FED. R. BANKR. P. 2003

Professor Gibson explained that under current law the officer presiding at the first meeting of creditors or equity security holders, normally the trustee, may defer completion of the meeting to a later date without further notice. The proposed amendment to Rule 2003 (meeting of creditors or equity security holders) would require the officer to file a statement specifying the date and time to which the meeting is adjourned. This procedure will make it clear on the record for those parties not attending whether the meeting was actually concluded or adjourned to another day.

She noted that § 1308 of the Bankruptcy Code requires chapter 13 debtors to file their tax returns for the last four taxable periods before the scheduled date of the meeting.

If, however, a debtor has not filed the returns by that date, § 1308(b)(1) permits the trustee to "hold open" the meeting for up to 120 days to allow the debtor additional time to file.

Under FED. R. BANKR. P. 3002(c) (filing a proof of claim or interest), taxing authorities have 60 days to file their proofs of claim after the debtor files the returns. If the debtor fails to file them within the time period provided by § 1308, the failure is a basis under § 1307 of the Code for mandatory dismissal of the case or conversion to chapter 7.

Professor Gibson pointed out that the purpose of the proposed amendment to Rule 2003 was to give clear notice to all parties as to whether a meeting of creditors has been concluded or adjourned and, if adjourned, for how long. It will let them know whether the trustee has extended the debtor's time to file tax returns as required for continuation of a chapter 13 case, since adjourning the meeting functions as "holding open" the meeting for purposes of the tax return filing provision.

She noted that eight of the nine public comments on the rule had been favorable. The Internal Revenue Service, however, recommended that the rule be revised to require the presiding officer to specify whether the meeting of creditors is being: (1) "held open" explicitly under § 1308 of the Code to give a taxpayer additional time to file returns; or (2) adjourned for some other purpose.

She reported that the advisory committee had debated the matter, and the majority voted to approve the rule as published for three reasons. First, no court has required a presiding officer to state specifically that the meeting is being "held open" or to cite § 1308. Rather, courts distinguish only between whether the meeting is concluded or continued. Second, the advisory committee believed that "holding open" and "adjourning" are truly equivalent terms, even though Congress used the inartful term "hold open" in § 1308. Third, the advisory committee was persuaded that the consequences of a presiding officer not specifically using the term "hold open" would be sufficiently severe for the debtor – conversion or dismissal of the case – that use of the exact words should not be required. Moreover, the taxing authorities are not prejudiced because they still have 60 days to file their proofs of claim.

Professor Gibson reported that the only change made since publication was the addition of a sentence to the committee note stating that adjourning is the same as holding open. The modification was made to address the concerns expressed by the Internal Revenue Service.

Ms. Claggett and Mr. Kohn stated that the Department of Justice appreciated the advisory committee's concerns for the Internal Revenue Service's position, but wanted to reiterate the position for the record. Mr. Kohn explained that making a distinction in the rule between adjourning a meeting for any possible reason and holding it open for the

narrow purpose of § 1308 is fully consistent with § 1308. The meeting, he said, can be "held open" for only one purpose. Congress, he said, had used the term deliberately, and it should be carried over to the rule.

The Department, he said, agreed that § 1308 had been designed to help taxing authorities prod debtors into filing returns and promptly providing information early in a case. The Department, he said, was concerned that there will be confusion if the distinction between holding open and adjourning a meeting is blurred. Moreover, the sanctions that may be imposed for failing to file in a timely fashion may be compromised.

The committee by voice vote with one objection (the Department of Justice) approved the proposed amendment for approval by the Judicial Conference.

FED. R. BANKR. P. 2019

Judge Swain reported that the advisory committee was recommending a substantial revision of Rule 2019 (disclosure of interests) to expand both the coverage of the rule and the content of its disclosure requirements. The rule, she said, provides the courts and parties with needed insight into the interests and potentially competing motivations of groups participating in a case. It attracted little attention over the years until buyers of distressed debt began to participate actively in chapter 11 cases.

The revised rule would require official and unofficial committees, groups, or entities that consist of, or represent, more than one creditor or equity security holder to disclose their "disclosable economic interests." That term is defined broadly in the revised rule to include not only a claim, but any other economic right or interest that could be affected by the treatment of a claim or interest in the case.

Among other things, she said, there has been strategic use of the current rule, especially to force hedge funds and other distressed-debt investors to reveal their holdings when they act as ad hoc committees of creditors or equity security holders. As a result, a hedge fund association suggested that the rule be repealed in its entirety. Other groups, however, including the National Bankruptcy Conference and the American Bar Association, recommended that the rule be retained and broadened.

Judge Swain pointed out that the proposal had drawn considerable attention, including 14 written comments and testimony from seven witnesses at the advisory committee's public hearing. In the end, she said, all but one commentator acknowledged the need for disclosure and supported expansion of the current rule.

Three sets of objections were voiced to the proposal as published. First, distressed-debt buyers objected to the proposed requirement to divulge the date that each disclosable economic interest was acquired and the amount paid for it. That information, the industry said, would compromise critical business secrets, such as trading strategies,

seriously damage their operations, and undercut the bankruptcy process. Second, objections were raised to applying the disclosure requirements to entities acting in certain institutional roles, such as entities acting in a purely fiduciary capacity. Third, there were objections to applying the rule to "groups" that are really composed of a single affiliated set of actors, or to law firms or other entities that are only passively involved in a case.

On the other hand, she said, there had been many public comments in support of the rule. The supporters, however, agreed that the rule would still be effective even if narrowed to address some of the objections. Accordingly, after publication, the committee made a number of changes to narrow the disclosure requirements and the sanctions provision.

She said that republication would not be necessary because all the subject matter included in the revised rule had been included in the broader published rule, and the advisory committee had added no new restrictions or requirements. Republication, moreover, would delay the rule by a year, and it is important to have it take effect as soon as possible to avoid further litigation over the scope and meaning of the current rule and strategic invocation of the current rule to gain leverage in disputes.

The committee without objection by voice vote approved the proposed amendments for approval by the Judicial Conference.

FED. R. BANKR. P. 3001

Professor Gibson reported that the proposed amendments to Rule 3001 (proof of claim) and new Rule 3002.1 (notice of fees, charges and payment amount changes imposed during the life of a chapter 13 case in connection with claims secured by a security interest in the debtor's principal residence) were designed to address problems encountered in the bankruptcy courts with inadequate claims documentation in consumer cases. First, she said, proofs of claims are frequently filed without the documentation currently required by the rules and Official Form 10, especially by bulk purchasers of consumer claims. Second, problems arise in chapter 13 cases as a result of inadequate notice of various fees and penalties assessed on home mortgages. Debtors who successfully complete their plan payments may be faced with deficiency or foreclosure notices soon after they emerge from bankruptcy with a discharge.

Professor Gibson explained that current Rule 3001(c) lays down the basic requirement that whenever a claim is based on a writing, the original or a duplicate of the writing must be filed with the proof of claim. The published amendments to Rule 3001(c)(1) would have added a requirement that a copy of the debtor's last account statement be attached to open-end or revolving credit-card account claims. The statement would let the debtor and trustee know who the most recent holder of the claim was, how old the claim is and whether it may be barred by the statute of limitations.

Because accounting mistakes occur and creditors change periodically, it would also help debtors to match up the claim with the specific debt.

She reported that the two rules had attracted a good deal of attention, including more than a hundred written comments and several witnesses at the advisory committee's public hearing. Comments from buyers of consumer debt objected because the last account statements, they said, are often no longer available. Federal law, for example, requires that they be kept for only two years. In addition, industry representatives stated that some of the loan information required by the amendments is not readily available to current creditors and cannot be broken out as specified in the proposed rules. Some commentators also argued that a copy of the last statement would unnecessarily reveal private information as to the nature and specifics of the credit card purchases of the debtor.

Professor Gibson reported that as a result of the public comments and testimony, the advisory committee had decided to withdraw the proposed revolving and open-end credit related amendments, redraft them, and republish them for further comment as a proposed new paragraph (c)(3). See *infra*, page 18.

The advisory committee, therefore, was seeking final approval at this point of only the proposed changes in Rule 3001(c)(2). They would require that additional information be filed with a proof of claim in cases in which the debtor is an individual, including:
(1) itemized interest charges and fees; and (2) a statement of the amount necessary to cure any pre-petition default and bring the debt current. In addition, a home mortgage creditor with an escrow account would have to file an escrow statement in the form normally required outside bankruptcy.

To standardize the new requirements of paragraph (c)(2) and supersede the many local forms already imposing similar requirements, the advisory committee was also seeking approval to publish for comment a proposed new standard national form – Official Form 10, Attachment A. See *infra,* page 20. The form would take effect on December 1, 2011, the same date as the proposed amendments to Rule 3001(c)(2).

Professor Gibson added that some public comments had recommended requiring a creditor to provide additional information on fees and calculations, while others argued for less information. The advisory committee, she said, had tried to strike the correct balance between obtaining additional disclosures needed for the debtor and trustee to understand the claim amounts and avoiding imposing undue burdens on creditors.

Professor Gibson pointed out that proposed new subparagraph (c)(2)(D) sets forth sanctions that a court may impose if a creditor fails to provide any of the information specified in Rule 3001(c). Modeled after FED. R. CIV. P. 37(c)(1), it specifies that if the

holder of a claim fails to provide the required information, the court may preclude its use as evidence or award other appropriate relief.

She reported that the provision had attracted several comments. After publication, the advisory committee revised the rule and committee note to emphasize that: (1) a court has flexibility to decide what sanction to apply and whether to apply a sanction at all; (2) the rule does not create a new ground to disallow a claim, beyond the grounds specified in § 502 of the Code; and (3) a court has discretion to allow a holder of the claim to file amendments to the claim. The proposed rule, she said, is a clear rejection of the concept that creditors may routinely ignore the documentation requirements of the rule and force debtors to go to the court to obtain necessary information.

The committee without objection by voice vote approved the proposed amendments for approval by the Judicial Conference.

FED. R. BANKR. P. 3002.1

Professor Gibson explained that proposed new rule 3002.1 (notice related to post-petition changes in payment amounts, and fees and charges, during a chapter 13 case in connection with claims secured by a security interest in the debtor's principal residence) implements § 1322(b)(5) of the Bankruptcy Code. It would provide a procedure for debtors to cure any pre-petition default, maintain payments, and emerge current on their home mortgage at the conclusion of their chapter 13 plan. For the option to work, she explained, the chapter 13 trustee needs to know the required payment amounts, and the debtor should face no surprises at the end of the case.

She noted that subdivision (b) of the new rule would require the secured creditor to provide notice to the debtor, debtor's counsel, and the trustee of any post-petition changes in the monthly mortgage payment amount, including changes in the interest rate or escrow account adjustments. As published, the rule would have required a creditor to provide the notice 30 days in advance of a change. Public comments pointed out, though, that only 25 days is sometimes required by non-bankruptcy law. Accordingly, the advisory committee modified the rule after publication to require 21 days' advance notice of changes.

She added that the advisory committee had drafted a new form to implement subdivision (b) (Official Form 10, Supplement 1, Notice of Mortgage Payment Change). It would be published for comment in August 2010 and take effect on December 1, 2011, the same time as the proposed new rule. See *infra,* page 20.

Professor Gibson reported that subdivision (c) would require the creditor to provide notice to the debtor, debtor's counsel, and the trustee of any post-petition fees, expenses, and charges within 180 days after they are imposed. She explained that

debtors are often unaware of the different kinds of charges that creditors assess, some of which may not be warranted or appropriate under the mortgage agreement or applicable non-bankruptcy law. The proposed amendments would give the debtor or trustee the chance to object to any claimed fee, expense, or charge within one year of service of the notice. She added that the advisory committee had worked hard to strike the right balance between providing fair notice to debtors and avoiding imposing unnecessary burdens on creditors.

She noted that the advisory committee had drafted a new form to implement subdivision (c) (Official Form 10, Supplement 2, Notice of Postpetition Mortgage Fees, Expenses, and Charges). It would be published for comment in August 2010 and take effect on December 1, 2011, the same time as the proposed new rule. See *infra*, page 20.

Professor Gibson explained that subdivisions (f) through (h) deal with final-cure payments and end-of-case proceedings. They will permit debtors to obtain a determination as to whether they are emerging from bankruptcy current on their mortgage. The amendments recognize that in some districts, debtors make mortgage payments directly, and in others they are paid by the chapter 13 trustee. In all districts, the trustee makes the default payments.

Within 30 days of the debtor's completion of all payments under the plan, the trustee would be required by the rule to provide notice to the debtor, debtor's counsel, and the holder of the mortgage claim that the debtor has cured any default. The holder of the claim would be required to file a response indicating whether it agrees that the debtor has cured any default and also indicating whether the debtor is current on all payments.

She pointed out that subdivision (i) contains a sanction provision for failure to provide the information required under the rule, similar to the sanction provision proposed in Rule 3001, *supra* page 14.

The committee without objection by voice vote approved the proposed new rule for approval by the Judicial Conference.

FED. R. BANKR. P. 4004

Professor Gibson explained that the proposed amendments to Rule 4004 (grant or denial of discharge) would resolve a problem identified by the 7th Circuit in *Zedan v. Habash,* 529 F.3d 398 (2008). They would permit a party in specific, limited circumstances to seek an extension of the time to object to the debtor's discharge after the time for objecting has expired. The proposal would address the unusual situation in which there is a significant gap in time between the deadline in Rule 4004(a) for a party to object to the discharge (60 days after the first date set for the meeting of creditors) and the date that the court actually enters the discharge order.

During such a gap, a party – normally a creditor or the trustee – may learn of facts that may provide grounds to revoke the debtor's discharge under § 727(a) of the Code, such as fraud committed by the debtor. But it is too late at that point to file an objection. The party, moreover, cannot seek revocation because § 727(d) of the Code specifies that revocation is not permitted if a party learns of fraud *before* the discharge is granted. The party, therefore, may be left without appropriate recourse.

The proposed amendments would allow a party to file a motion to extend the time to object to discharge after the objection deadline has expired and before the discharge is granted. The motion must show that: (1) the objection is based on facts that, if learned after the discharge was entered, would provide a basis for revocation under § 727(d); and (2) the party did not know of those facts in time to file an objection to discharge. The motion, moreover, must be filed promptly upon discovery of the facts.

The committee without objection by voice vote approved the proposed amendments for approval by the Judicial Conference.

FED. R. BANKR. P. 6003

Judge Swain reported that Rule 6003 (relief immediately after commencement of a chapter 11 case) generally prohibits a court from issuing certain orders during the first 21 days of a chapter 11 case, such as approving the employment of counsel, the sale of property, or the assumption of an executory contract or unexpired lease. The proposed rule amendment would make it clear that the waiting period does not prevent a court from later issuing an order with retroactive effect, relating back, for example, to the date that the application or motion was filed. Thus, professionals can be paid for work undertaken while their application is pending.

The amendment would also clarify that the court is only prevented from granting the relief specifically identified in the rule. A court, for example, could approve the procedures for a sale during the 21-day waiting period, but not the actual sale of estate property itself.

The committee without objection by voice vote approved the proposed amendment for approval by the Judicial Conference.

OFFICIAL FORMS 22A, 22B, and 22C

Judge Swain reported that the proposed amendments to the "means-test" forms, Official Forms 22A (chapter 7), 22B (chapter 11), and 22C (chapter 13), would replace in several instances the terms "household" and "household size" with "number of persons" or "family size." The revised terminology more closely reflects § 707(b) of the Code and IRS standards. Section 707(b)(2)(A)(ii)(I) of the Code specifies that the debtor's means-test deductions for various monthly expenses may be taken in the amounts specified in the IRS National and Local Standards. The national standards, she said, are based on numbers of persons, rather than household size. The local standards are based on family size, rather than household size.

In addition, she said, an instruction would be added to each form explaining that only one joint filer should report household expenses regularly paid by a third person. Instructions would also be added directing debtors to file separate forms if only one joint debtor is entitled to an exemption under Part I (report of income) and they believe that filing separate forms is required by § 707(b)(2)(C) of the Code. The statutory provisions, she said, are ambiguous on means-testing exclusions. Therefore, the form does not impose a particular interpretation, and the instructions allow debtors to take positions consistent with their interpretations of the ambiguous exemption provisions.

The revisions, she said, would become effective on December 1, 2010.

The committee without objection by voice vote approved the proposed amendments to the forms for approval by the Judicial Conference.

Amendments for Final Approval, Without Publication

OFFICIAL FORMS 20A AND 20B

Judge Swain reported that the proposed changes to Official Forms 20A (notice of motion or objection) and 20B (notice of objection to claim) were technical in nature and did not require publication. They would conform the forms to: (1) the 2005 amendment to § 727(a)(8) of the Code, which extends the time during which a debtor is barred from receiving successive discharges from 6 years to 8 years; and (2) the 2007 addition of FED. R. BANKR. R. 9037, which directs filers to provide only the last four digits of any social security number or individual taxpayer-identification number.

The revisions, she said, would become effective on December 1, 2010.

The committee without objection by voice vote approved the proposed amendments to the forms for approval by the Judicial Conference without publication.

Amendments for Publication

FED. R. BANKR. P. 3001

As noted above on pages 12-14, the proposed amendments to Rule 3001(c)(1) (proof of claim) published in August 2009 would have required a creditor with a proof of claim based on an open-end or revolving consumer credit agreement to file the debtor's last account statement with the proof of claim. The main problem that the rule was designed to address is that credit-card debt purchased in bulk claims may be stale.

Professor Gibson explained that the advisory committee had withdrawn the published proposal in light of many comments from creditors that they could not effectively produce the account statements, especially since claims for credit-card debt may be sold one or more times before the debtor's bankruptcy. Some recommended that pertinent information be required instead.

Professor Gibson explained that the advisory committee would replace the proposal with a substitute new paragraph 3001(c)(3). In lieu of requiring that a copy of the debtor's last account statement be attached, the revised proposal would require the holder of a claim to file with the proof of claim a statement that sets forth several specific names and dates relevant to a consumer-credit account. Those details, she said, are important for a debtor or trustee to be able to associate the claim with a known account and to determine whether the claim is timely or stale.

Although the creditor would not have to attach the underlying writing on which the claim is based, a party, on written request, could require the creditor to provide the writing. In certain cases, the debtor needs the information to assert an objection.

The committee without objection by voice vote approved the proposed amendments for publication.

FED. R. BANKR. P. 7054

Judge Swain reported that the proposed amendment to Rule 7054 (judgment and costs) would conform the rule to FED. R. CIV. P. 54 and increase the time for a party to respond to the prevailing party's bill of costs from one day to 14 days. The current period, she said, is an unrealistically short amount of time for a party to prepare a response. In addition, the time for serving a motion for court review of the clerk's action in taxing costs would be extended from 5 to 7 days, consistent with the 2009 time-computation rules that changed most 5-day deadlines to 7 days.

The committee without objection by voice vote approved the proposed amendments for publication.

FED. R. BANKR. P. 7056

Judge Swain explained that Rule 7056 (summary judgment) incorporates FED. R. CIV. P. 56 in adversary proceedings. Rule 56 is also incorporated in contested matters through FED. R. BANKR. P. 9014(c).

She reported that the proposed amendment to Rule 7056 would alter the rule's default deadline for filing a summary judgment motion in bankruptcy cases. She explained that the deadline in civil cases – 30 days after the close of discovery – may not work well in fast-moving bankruptcy contested matters, where hearings often occur shortly after the close of discovery. Therefore, the advisory committee decided to set the deadline for filing a summary judgment motion in bankruptcy at 30 days before the initial date set for an evidentiary hearing on the issue for which summary judgment is sought. As with FED. R. CIV. P. 56(c)(1), she noted, the deadline may be altered by local rule or court order.

A member suggested that the proposed language of the amendment was a bit awkward and recommended moving the authorization for local rule variation to the end of the sentence. Judge Swain agreed to make the change.

The committee without objection by voice vote approved the proposed amendment for publication.

OFFICIAL FORM 10
and
ATTACHMENT A, SUPPLEMENT 1, AND SUPPLEMENT 2

Judge Swain reported that the advisory committee was recommending several changes in Official Form 10 (proof of claim). The holder of a secured claim would be required to specify the annual interest rate on the debt at the time of filing and whether the rate is fixed or variable. In addition, an ambiguity on the current form would be eliminated to make it clear that the holder of a claim must attach the documents that support a claim, and not just a summary of the documents.

To emphasize the duty of accuracy imposed on a party filing a proof of claim, the signature box would be amended to include a certification that the information submitted on the form meets the requirements of FED. R. BANKR. P. 9011(b) (representations to the court), *i.e.,* that the claim is "true and correct to the best of the signer's knowledge, information, and reasonable belief." This is particularly important, she said, because a proof of claim is prima facie evidence of the validity of a claim. In addition, a new space would be provided on the form for optional use of a "uniform claim identifier," a system

implemented by some creditors and chapter 13 trustees to facilitate making and crediting plan payments by electronic funds transfer

Professor Gibson reported that three new claim-attachment forms had been drafted to implement the mortgage claims provisions of proposed Rules 3001(c)(2) and 3002.1. They would prescribe a uniform format for providing additional information on claims involving a security interest in a debtor's principal residence.

Attachment A to Official Form 10 would implement proposed Rule 3001(c)(2) and provide a uniform format for the required itemization of pre-petition interest, fees, expenses, and charges included in the home-mortgage claim amount. It would also require a statement of the amount needed to cure any default as of the petition date. If the mortgage installment payments include an escrow deposit, an escrow account statement would have to be attached, as required by proposed Rule 3001(c)(2)(C).

Supplement 1 to Official Form 10 would implement proposed Rule 3002.1(b) and require the home-mortgage creditor in a chapter 13 case to provide notice of changes in the mortgage installment payment amounts.

Supplement 2 to Official Form 10 would implement proposed Rule 3002.1(c) and provide a uniform format for the home-mortgage creditor to list post-petition fees, expenses, and charges incurred during the course of a chapter 13 case.

Judge Swain noted that, following publication, the proposed form changes would become effective on December 1, 2011.

The committee without objection by voice vote approved the proposed amendments to Form 10 and the new Attachment A and Supplements 1 and 2 to the form for publication.

OFFICIAL FORM 25A

Judge Swain reported that Official Form 25A is a model plan of reorganization for a small business. It would be amended to reflect the recent increase of the appeal period in bankruptcy from 10 to 14 days in the 2009 time-computation rule amendments. The effective date of the plan would become the first business day following 14 days after entry of the court's order of confirmation.

The committee without objection by voice vote approved the proposed amendments to the form for publication.

Informational Items

Professor Gibson reported that the advisory committee was continuing to make progress on its two major ongoing projects – revising the bankruptcy appellate rules and modernizing the bankruptcy forms. She noted that the committee would begin considering a draft of a completely revised Part VIII of the Bankruptcy Rules at its fall 2010 meeting. In addition, it would try to hold its spring 2011 meeting in conjunction with the meeting of the Advisory Committee on Appellate Rules in order to have the two committees consider the proposed revisions together.

Judge Swain reported that the forms modernization project, under the leadership of Judge Elizabeth L. Perris, had made significant progress in reformatting and rephrasing the many forms filed at the outset of a individual bankruptcy case. She noted that the project had obtained invaluable support from Carolyn Bagin, a nationally renowned forms-design expert, and it was continuing to reach out to users of the forms to solicit their feedback through surveys and questionnaires. In addition, the project was working closely with the groups designing the next generation replacement for CM/ECF to make sure that the new system includes the ability to extract and store data from the forms and to retrieve the data for user-specified reports.

REPORT OF THE ADVISORY COMMITTEE ON CIVIL RULES

Judge Kravitz and Professor Cooper presented the report of the advisory committee, as set out in Judge Kravitz's memorandum and attachment of May 17, 2010 (Agenda Item 5). The advisory committee had no action items to present.

Informational Items

FED. R. CIV. P. 45

Judge Kravitz reported that the advisory committee, aided by a subcommittee chaired by Judge David G. Campbell, was exploring potential improvements to Rule 45 (subpoenas). Professor Marcus, he noted, was serving as the subcommittee's reporter.

Judge Kravitz said that substantial progress had been made in addressing some of the problems most often cited with the current rule. The subcommittee's efforts have included: (1) reworking the division of responsibility between the court where the main action is pending and the ancillary discovery court; (2) enhancing notice to all parties before serving document subpoenas; and (3) simplifying the overly complex rule. The subcommittee, he noted, had drafted three models to illustrate different approaches to simplification, including one that would separate discovery subpoenas from trial subpoenas.

Judge Kravitz reported that the committee would convene a Rule 45 mini-conference with members of the bench and bar in Dallas in October 2010. The

conference, he said, should be helpful in informing the advisory committee on what approach to take at its fall 2010 and spring 2011 meetings. Rule amendments might be presented to the Standing Committee in June 2011.

PLEADING

Judge Kravitz reported that the advisory committee was continuing to monitor dismissal-motion statistics and case-law developments in light of the Supreme Court's decisions in *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544 (2007) and *Ashcroft v. Iqbal,* 129 S. Ct. 1937 (2009). The committee, he said, was focusing in particular on whether the decisions have had an impact on motions to dismiss and rates of dismissal.

Dr. Cecil explained that the Federal Judicial Center was collecting and coding court orders disposing of Rule 12(b)(6) motions in about 20 district courts and comparing outcomes in 2006 with those in 2010 to see whether there are any differences. In addition, the Center was examining court records to determine whether judges in granting dismissal motions allow leave to amend and whether the plaintiffs in fact file amended complaints.

Judge Kravitz noted that a division of opinion had been voiced at the May 2010 Duke conference on the practical impact of *Twombly* and *Iqbal*. One prominent judge, for example, urged the participants to focus on the actual holdings in the two cases, and not on the language of the opinions. Other judges concurred and argued that the two cases had not changed the law materially and were being implemented very sensibly by the lower courts. On the other hand, two prominent professors argued that the two Supreme Court decisions would cause great harm, were cause for alarm, and would effectively diminish access to justice.

Judge Kravitz emphasized that stability matters. He suggested that the advisory committee's intense research efforts demonstrated that the law of pleading in the federal courts was clearly settling down, and the evolutionary process of common-law development was working well. For that reason, he said, it would make no sense to enact legislation or change pleading standards at this point. He noted that the advisory committee's reporters were considering different ways to respond to the cases by rule, but they were awaiting the outcome of further research efforts by the Federal Judicial Center.

He pointed out that the advisory committee was looking carefully at the frequently cited problem of "information asymmetry." To that end, it was considering permitting some pre-dismissal, focused discovery to elicit information needed specifically for pleading. Another approach, he said, might be to amend FED. R. CIV. P. 9 (pleading special matters) to enlarge the types of claims that require more specific pleading. In addition, there may be a need for more detailed pleading requirements regarding affirmative defenses.

In short, he said, the advisory committee was looking at several different approaches and focusing on special, limited discovery for pleading purposes. He added that true "notice pleading" is actually quite rare in the federal courts. To the contrary, he said, when plaintiffs know the facts, they usually set them forth in the pleadings. The problem seems to be that some plaintiffs at the time of filing simply lack access to certain information that they need in order to plead adequately.

Judge Kravitz added that pleading issues should occupy a good deal of the advisory committee's time at its November 2010 meeting. The committee, he said, should have a report available in January 2011, but it may not have concrete proposals ready until later.

MAY 2010 CIVIL LITIGATION REVIEW CONFERENCE

Judge Kravitz thanked Dean Levi for making the facilities at Duke Law School available for the May 2010 conference. He said that the event had been a resounding success, thanks largely to the efforts of the conference organizer, Judge John G. Koeltl. He pointed out that Judge Koeltl had done an extraordinary job in creating an excellent substantive agenda, assembling an impressive array of speakers, and soliciting a wealth of valuable articles and empirical data.

Several members who had attended the conference agreed that the program had been outstanding. They described the panel discussions as extremely substantive and valuable.

Specific Suggestions Made at the Conference

Judge Kravitz noted that a few recommendations had been made at the conference for major rule changes, such as: (1) moving away from "trans-substantivity" towards different rules for different kinds of cases; (2) abandoning notice pleading; (3) limiting discovery; and (4) recasting the basic goals enunciated in Rule 1. Nevertheless, he emphasized, most of the speakers and participants at the conference did not advocate radical changes in the structure of the rules. Essentially, the consensus at the conference was that the civil process should continue to operate within the broad 1938 outline.

Judge Kravitz noted that the topics discussed at the conference were largely matters that the advisory committee has been considering in one form or another for years. He added that much of the discussion and many of the papers presented dealt with discovery issues, and he proceeded to describe some of the suggestions.

The initial disclosures required by Rule 26(a), he said, came under attack from two sides. Some speakers recommended eliminating them entirely, while others urged that they be expanded and revitalized.

Some support was voiced for imposing presumptive limits on discovery. In particular, it was suggested that the current presumptive ceiling on the number of depositions and the length of depositions might be reduced.

Judge Kravitz reported that strong support was voiced by many participants for increased judicial involvement at the pretrial stage of civil cases. Lawyers at the conference all cited a need for more actual face-to-face time with judges in the discovery process. Judges, they said, need to be personally available to provide direction to the litigants and resolve disputes quickly. Nevertheless, he suggested, it would be difficult to mandate appropriate judicial attention through a national rule change. Other approaches, such as judicial education, may be more effective in achieving this objective.

Support was offered for developing form interrogatories and form document requests specifically tailored to different categories of cases, such as employment discrimination or securities cases. The models could be drafted collectively by lawyers for all sides and established as the discovery norm for various kinds of cases.

A concept voiced repeatedly was the need for greater cooperation among lawyers. Judge Kravitz pointed out that data from the recent Federal Judicial Center's discovery study had demonstrated a direct correlation between lawyer cooperation and reduced discovery requests and costs. He noted that a panelist at the conference emphasized that the discovery process is considerably more coordinated and disciplined in criminal cases (where the defendant's freedom is at stake) than in civil cases (where money is normally the issue). He observed that lawyers in criminal cases focus on the eventual trial and outcome, while civil lawyers focus mostly on the discovery phase itself. There are, moreover, more guidelines and limits in criminal discovery, due to the specific language of FED. R. CRIM. P. 16 and the Jencks Act. In addition, there are no economic incentives for the attorneys to prolong the discovery phase in criminal cases.

Judge Kravitz reported that many participants who represent defendants in civil cases complained about discovery costs. Among other things, they stated that the costs of reviewing discovery documents before turning them over to the other side continue to be huge, despite the recent enactment of FED. R. EVID. 502 (limitations on waiver of attorney-client privilege and work product). He observed that lawyers are naturally reluctant to let their opponents see their clients' documents, even if the rule now gives them adequate legal protection.

Professor Cooper noted that plaintiffs' lawyers, on the other hand, argued that the emphasis that defendants place on their discovery burdens and costs is misplaced. They suggested, to the contrary, that the greatest problem with discovery is stonewalling on the part of defendants.

Judge Kravitz noted that support was also voiced at the conference for adopting simplified procedures, improving the Rule 16 and Rule 26 conferences, fashioning sensible discovery plans, and providing for greater cost shifting.

He reported that electronic discovery was a major topic at the conference. The lawyers, he said, were in agreement on two points. First, they recommended amending the civil rules to specify with greater precision what materials must be preserved at the outset of a case, and even before a federal case is filed. Second, they urged revision of the current sanctions regime in Rule 37(e) and argued that the rule's safe harbor is too shallow and ineffective.

Judge Kravitz said that current law provides clear triggers for the obligation to preserve potential litigation materials, but they are not specified in the federal rules. Preservation obligations, moreover, vary among the states and among the federal circuits. He said that the advisory committee was examining potential rule amendments to address both the preservation and sanctions problems. But, he cautioned, it will be very difficult to accomplish the changes that the bar clearly wants through the national rules.

He pointed out that the Rules Enabling Act limits the rules committees to matters of procedure, not substance. That statutory limitation is a serious impediment to regulating pre-lawsuit preservation obligations. Yet, once a case is actually filed in a federal court, the rules may address preservation and sanctions issues. Thus, despite the difficulty of drafting a rule to accomplish what the participants recommend, the advisory committee will move forward on the matter.

Professor Cooper agreed that the bar was promoting the laudatory goal of having clear and precise rules on what they must preserve and how they must preserve it. But the task of crafting a national preservation rule will involve complex drafting problems, as well as jurisdictional problems, and it just may not be possible.

Professor Coquillette added that state attorney-conduct rules addressing spoliation have been incorporated in a number of federal district-court rules. He explained that the Standing Committee had considered adopting national rules on attorney conduct a few years ago, but it eventually backed away from doing so because it involved many competing interests and difficult state-law issues.

Judge Kravitz reported that an excellent presentation was made at the conference on a promising pilot project in the Northern District of Illinois that focuses on electronic discovery. It emphasizes educating the bar about electronic discovery, promoting cooperation among the lawyers, and having the parties name information liaisons for discovery.

Judge Kravitz observed that, overall, the bar sees the 2006 electronic-discovery rule amendments as a success. They have worked well despite continuing concerns about

preservation and sanctions. He suggested that the rules may well need further refining, but they were, in retrospect, both timely and effective.

Judge Kravitz referred to a panel discussion at the conference that focused on trials and settlement. He noted that substantial angst was expressed by some participants over diminution in the number of trials generally. Nevertheless, no changes to that phenomenon appear in sight. One professor, he noted, argued that since all civil cases are eventually bound for settlement, the rules should focus on settlement, rather than trial. On the other hand, an attorney panelist countered that maintaining the current focus of the rules on the trial facilitates good results before trial.

Perceptions of the Current System

Judge Kravitz reported that several written proposals had been submitted to the conference by bar groups, and a good deal of survey data had been gathered. One clear conclusion to be drawn from the conference, he said, is that a large gap exists between the perceptions of plaintiffs' lawyers and those of defendants' lawyers. Those differences, he said, will be difficult to reconcile. Nevertheless, the advisory committee may be able to take some meaningful steps toward achieving workable consensus.

The general consensus, he said, is that the civil rules are generally working well. At the same time, though, frustration experienced by certain litigants leads them to believe that the system is not in fact working. The two competing perceptions, he said, are reconcilable. The reality appears to be that the process works well in most cases, but not in certain kinds of cases, particularly complex cases with high stakes. The various empirical studies, he said, show that the stakes in cases clearly matter, and complex cases with more money at stake tend to have more discovery problems and greater discovery costs. The goal in each federal civil case, he suggested, should be to agree on a sensible and proportionate discovery plan that relates to the stakes of the litigation.

Dr. Lee described and compared the various studies presented at the conference. He said that two different kinds of surveys had been conducted – those that asked lawyers for their general perceptions and those that were empirically based on actual experiences in specific cases.

The two approaches, he said, produce different results. For example, the responses from lawyers in a perception study showed that they believe that about 70% of litigation costs are associated with discovery. The empirical studies, on the other hand, demonstrate that discovery costs were actually much lower, ranging between 20% and 40%. By way of further example, a recent perception-study showed that 80% or 90% of lawyers agree that litigation is too expensive. Yet the Federal Judicial Center studies demonstrate empirically that costs in the average federal case were only about $15,000 to $20,000.

The difference between the two results, he suggested, is due to cognitive biases. Respondents focus naturally on extreme cases and cases that stand out in their memory, and not on all their other cases. Perceptions, understandably, are not always accurate.

Judge Kravitz added that the empirical studies show that the vast majority of civil cases in the federal courts actually have little discovery. Nevertheless, discovery in complex civil cases can be enormous and extremely costly. Lawyers at the conference, he said, emphasized that it is the complex cases that judges should spend their time on.

Dr. Lee added that the empirical studies show that discovery costs clearly increase in complex cases. The stakes in litigation, he said, are the best predictor of costs, and they alone explain about 40-50% of the variations in costs shown in the studies. The economics of law practice, he said, also affects costs. Large firms, for example, have higher costs, and hourly billing increases costs for plaintiffs. He concluded that most of the factors shown in the studies to affect costs – such as complexity, litigation stakes, and law practice economics – are not driven by the rules themselves, but by other causes. Therefore, changing the rules alone may only have a marginal impact on the problems.

Future Committee Action

Judge Kravitz suggested that a handful of common themes had emerged at the conference. (1) There was universal agreement that cooperation among the attorneys in a case has a beneficial impact on limiting cost and delay. (2) There was universal agreement that active judicial involvement in a case, especially a case that has potential discovery problems, is essential. (3) There was little enthusiasm for retaining the Rule 26(a) mandatory disclosures in their current format. (4) Discovery costs in some cases are very high, and they may drive parties to settlement in some cases. (5) Certain types of cases are more prone to high discovery costs than others.

He noted that the advisory committee would address each of these issues, and it may also form a subcommittee to explore how judicial education and pilot projects might contribute to improvements, especially if the pilots are carefully crafted and channeled through the Federal Judicial Center to assure that they generate useful data to inform future policy choices. The bottom line, he said, is that the advisory committee will be digesting and working on these issues for a long time.

A member suggested that the conference discussions on electronic discovery were particularly meaningful and asked the advisory committee to place its greatest priority on addressing the electronic discovery issues – preservation and sanctions. He said that most of the other problems referred to at the conference can be resolved by lawyers working cooperatively, but rules changes will be needed to address the electronic discovery problems.

Other members agreed, but they questioned whether changes in the electronic discovery rules to address preservation obligations can be promulgated under the Rules Enabling Act. Judge Kravitz pointed out that the advisory committee was very sensitive to the limits on its authority. He said that the committee might be able to rework the sanction provisions, make them clearer, and specify the applicable conduct standards more precisely. On the other hand, preservation obligations are normally addressed in state laws and ethics rules. There are also federal laws on the subject, such as Sarbanes-Oxley. He said that the advisory committee would explore preservation issues closely, and it might be able to make the preservation triggers clearer. Ultimately, though, legislation may be required, as with the 2008 enactment of FED. R. EVID. 502 (attorney-client privilege and work product; limitations on waiver).

A member pointed out that general counsels from several corporations participated actively in the conference. He noted that they did not generally criticize the way that the rules are working and recommended only minor tweaks in the rules. On the other hand, they argued unanimously and strongly for greater judicial involvement in the discovery process, especially early in cases. They tended to be critical of their own lawyers for contributing to increased costs and saw the courts as the best way to drive down costs. He acknowledged that mandating effective early judicial involvement is hard to accomplish formally by a rule, but it should be underscored as an essential ingredient of the civil process.

A judge added that many suggestions raised at the conference are not easily addressed in rules, but might be promoted through best-practices initiatives, handbooks, websites, workshops, and other educational efforts. She added that controlled pilot projects could also be helpful to ascertain what practices work well and produce positive results.

A member noted that he had heard a good deal of criticism of judges at the conference, especially about their lack of sufficient focus on resolving discovery matters. He noted that magistrate judges handle discovery extremely well and can provide the intense focus on discovery that is needed, especially with regard to electronic discovery. The system, though, may not be working effectively in some districts because the magistrate judges have been assigned by the courts to other types of duties and do not focus on discovery.

A participant cautioned, though, that for every theme raised at the conference, there was a counter theme. Several lawyers suggested, for example, that there should be a single judge in a case. Yet every court has its own culture and different available resources. Essentially, each believes that its own way of doing things is the best approach.

Judge Rosenthal pointed out that a report of the conference and an executive summary would be prepared. She added that the advisory committee and the Standing

Committee were resolved to take full advantage of what had transpired at the conference, and the proceedings will be the subject of considerable committee work in the future.

RULE 26(C) PROTECTIVE ORDERS

Judge Kravitz reported that the advisory committee had brought Rule 26(c) (protective orders) back to its agenda for further study in light of continuing legislative efforts to impose restrictions on the use of protective orders. He noted that the chair and reporter had worked on a possible revision of Rule 26(c), working from Ms. Kuperman's thorough analysis of the case law on protective orders in every circuit.

He noted that draft amendments to Rule 26(c) had been circulated at the advisory committee's spring 2010 meeting. They would incorporate into the rule a number of well-established court practices not currently explicit in the rule itself and add a provision on protecting personal privacy.

The committee, he said, was of the view that the federal courts are doing well in applying the protective-order rule in its current form. Nevertheless, it decided to keep the proposed revisions on its agenda for additional consideration. He noted, too, that none of the participants at the May 2010 conference had cited protective orders as a matter of concern to them. That fact, he suggested, was an implicit indication that the current rule is working well.

OTHER MATTERS

Judge Kravitz referred briefly to a number of other matters pending on the advisory committee's agenda, including the future of the illustrative forms issued under Rule 84 and the committee's interplay with the appellate rules committee on a number of issues that intersect both sets of rules.

REPORT OF THE ADVISORY COMMITTEE ON CRIMINAL RULES

Judge Tallman and Professor Beale presented the report of the advisory committee, as set forth in Judge Tallman's memorandum and attachments of May 19, 2010 (Agenda Item 6).

Amendments for Final Approval

TECHNOLOGY AMENDMENTS

Judge Tallman reported that the package of proposed technology changes would make it easier and more efficient for law enforcement officers to obtain process, typically early in a criminal case. It includes the following rules:

FED. R. CRIM. P. 1	Scope and definitions
FED. R. CRIM. P. 3 Com	plaint
FED. R. CRIM. P. 4	Arrest warrant or summons
FED. R. CRIM. P. 4.1 (new)	Issuing process by telephone or other reliable electronic means
FED. R. CRIM. P. 6 Grand	jury
FED. R. CRIM. P. 9	Arrest warrant or summons on an indictment or information
FED. R. CRIM. P. 40	Arrest for failing to appear or violating release conditions in another district
FED. R. CRIM. P. 41	Search and seizure
FED. R. CRIM. P. 43 Defendant's	presence
FED. R. CRIM. P. 49	Serving and filing papers

Judge Tallman commended the leadership of Judge Anthony Battaglia of the Southern District of California, who chaired the subcommittee that produced the technology package. The project, he said, was a major effort that had required substantial consultation, analysis, and drafting. He also thanked Professors Beale and King, the committee's hard-working reporters, for their contributions to the project.

He noted that the proposed amendments are intended to authorize all forms of reliable technology for communicating information for a judge to consider in reviewing a complaint and affidavits or deciding whether to issue a warrant or summons. Among other things, the term "telephone" would be redefined to include any form of technology for transmitting live electronic voice communications, including cell phones and new technologies that cannot yet be foreseen.

The amendments retain and emphasize the central constitutional safeguard that issuance of process must be made at the direction of a neutral and detached magistrate.

They are designed to reduce the number of occasions when law enforcement officers must act without obtaining prior judicial authorization. Since a magistrate judge will normally be available to handle emergencies electronically, the amendments should eliminate most situations where an officer cannot appear before a federal judge for prompt process.

The heart of the technology package, he said, is new Rule 4.1. It prescribes in one place how information is presented electronically to a judge. It requires a live conversation between the applicant and the judge for the purpose of swearing the officer, who serves as the affiant. A record must be made of that affirmation process.

Rule 4.1 also reinforces and expands the concept of a "duplicate original warrant" now found in Rule 41 and extends it to other kinds of documents. In the normal course, he said, the signed warrant will be transmitted back to the applicant, but there will also be occasions in which the judge will authorize the applicant to make changes on the spot to a duplicate original.

He noted that new Rule 4.1 preserves the procedures of current Rule 41 and adds improvements. Like Rule 41, Rule 4.1 permits only a federal judge, not a state judge, to handle electronic proceedings.

Judge Tallman pointed out that the proposed amendments carry the strong endorsement of the Federal Magistrate Judges Association. Helpful comments were also received from individual magistrate judges, federal defenders, and the California state bar. The advisory committee, he said, had amended the published rules in light of those comments.

The advisory committee, he explained, had withdrawn a proposed amendment to FED. R. CRIM. P. 32.1 (revoking or modifying probation or supervised release) that would have allowed video teleconferencing to be used in revocation proceedings. He noted that there is strong societal value in having defendants appear face-to-face before a judge, and many observers fear that embracing technology may diminish the use of courtrooms and undercut the dignity of the court. Revocation proceedings, he said, are in the nature of a sentencing, and they clearly may affect the determination of innocence or guilt. For that reason, the advisory committee concluded that while video teleconferencing is appropriate for certain criminal proceedings, it should not be used for revocation proceedings.

FED. R. CRIM. P. 1

Judge Tallman reported that the proposed amendment to Rule 1 (scope and definition) would expand the term "telephone," now found in Rule 41 to allow new kinds of technology.

A member asked whether the term "electronic" is appropriate since other kinds of non-electronic communications may become common in the future. Judge Rosenthal

explained that the same issue had arisen with the 2006 "electronic discovery" amendments to the Federal Rules of Civil Procedure. She said that after considerable consultation with many experts, the civil advisory committee chose to adopt the term "electronically stored information." She added that if new, non-electronic means of communication are developed, it may well be necessary to amend the rules in the future to include those alternatives, but at this point "electronic" appears to be the best term to use in the rule.

The committee without objection by voice vote approved the proposed amendment for approval by the Judicial Conference.

FED. R. CRIM. P. 3

Judge Tallman explained that the proposed amendment to Rule 3 (complaint) refers to new Rule 4.1 and authorizes using the protocol of that rule in submitting complaints and supporting materials to a judge by telephone or other reliable electronic means.

The committee without objection by voice vote approved the proposed amendment for approval by the Judicial Conference.

FED. R. CRIM. P. 4

Judge Tallman reported that the proposed amendments to Rule 4 (arrest warrant or summons on a complaint) also refers to new Rule 4.1 and authorizes using that rule to issue an arrest warrant or summons.

The committee without objection by voice vote approved the proposed amendments for approval by the Judicial Conference.

FED. R. CRIM. P. 4.1

Judge Tallman pointed out that proposed new rule 4.1 (complaint, warrant, or summons by telephone or other reliable electronic means) is the heart of the technology amendments. He emphasized that a judge's use of the rule is purely discretionary. A judge does not have to permit the use of technology and may insist that paper process be issued in the traditional manner through written documents and personal appearances.

He noted that if the protocol of Rule 4.1 is used, the supporting documents will normally be submitted electronically to the judge in advance. A phone call will then be made, the applicant law enforcement officer will be placed under oath, and a record will be made of the conversation. If the applicant does no more than attest to the contents of the written affidavit submitted electronically, the record will be limited to the officer's swearing to the accuracy of the documents before the judge. The judge will normally

acknowledge the jurat on the face of the warrant. If, however, the judge takes additional testimony or exhibits, the testimony must be recorded verbatim, transcribed, and filed.

The judge may authorize the applicant to prepare a duplicate original of the complaint, warrant, or summons. The duplicate will not be needed, though, if the judge transmits the process back to the applicant.

The judge may modify the complaint, warrant, or summons. If modifications are required, the judge must either transmit the modified version of the document back to the applicant or file the modified original document and direct the applicant to modify the duplicate original document. In addition, Rule 4.1(a) adopts the language in existing Rule 41(d) specifying that, absent a finding of bad faith, evidence obtained from a warrant issued under the rule is not subject to suppression on the grounds that issuing the warrant under the protocol of the rule was unreasonable under the circumstances.

A member noted that the proposed rule expands the requirement in current Rule 41(d) that testimony be recorded and filed. Yet, he said, there is no requirement in either the current or revised rule that the warrant and affidavits themselves be filed. He pointed out that record-keeping processes among the courts are inconsistent, and the advisory committee should explore how documents are being filed and preserved in the courts, especially in the current electronic environment.

Judge Tallman agreed and noted that the advisory committee was aware of the inconsistencies. Some districts, for example, assign a magistrate-judge docket number to warrant applications and file the written documents in a sealed file without converting them to electronic form. Other courts digitize the documents and transfer them to the district court's criminal case file when an indictment is returned and a criminal case number assigned. He said that preserving a record of warrant proceedings is very important to defense lawyers, and the advisory committee will look further into the matter.

Mr. Rabiej reported that one of the working groups designing the next generation CM/ECF system is addressing how best to handle criminal process and other court documents that generally do not appear in the official public case file. Dr. Reagan explained that as part of the Federal Judicial Center's recent study of sealed cases, he had looked at all cases filed in the federal courts in 2006. Typically, he said, a warrant application is assigned a magistrate-judge electronic docket number. Although the records may still be retained in paper form in the magistrate judge's chambers in one or more districts, most courts incorporate them into the files of the clerk's office.

A member suggested that Rule 4.1 may be mandating more requirements than necessary. Judge Tallman pointed out, though, that the requirements had largely been carried over from the current Rule 41. He said that the rule needs to be broadly drafted because there are so many different situations that may arise in the federal courts. An officer, he said, may be on the telephone speaking with the magistrate judge, writing out

the application, and taking down what the judge is saying. More typically, though, an officer will call the U.S. attorney's office and have a prosecutor draft the application.

A member said that the rule assumes that the applicant will wind up with an official piece of paper in hand. Yet in the current age of rapid technological development, perhaps an electronic version of the document should suffice. By way of example, electronic boarding passes are now accepted at airports, and police officers use laptop computers and hand-held devices in their patrol cars.

Judge Tallman explained, though, that Rule 41(f) requires the officer to leave a copy of a search warrant and a receipt for the property taken with the person whose property is being searched. Professor Beale added that Rule 4.1 may need to be changed in the future to take account of electronic substitutes for paper documents. Nevertheless, the rule as currently proposed will help a great deal now because it will make electronic process more widely available and reduce the number of situations where officers act without prior judicial authorization. Ms. Monaco added that the Department of Justice believes that the new rule will be of great help to its personnel, and it plans to provide the U.S. attorneys with guidance on how to implement it.

The committee without objection by voice vote approved the proposed amendments for approval by the Judicial Conference.

FED. R. CRIM. P. 6

Judge Tallman reported that the proposed amendment to Rule 6 (grand jury) would allow a judge to take a grand jury return by video teleconference. He noted that there are places in the federal system where the nearest judge is located a substantial distance from the courthouse in which the grand jury sits. The rule states explicitly that it is designed to avoid unnecessary cost and delay. The rule would also preserve the judge's time and safety.

The committee without objection by voice vote approved the proposed amendment for approval by the Judicial Conference.

FED. R. CRIM. P. 9

Judge Tallman reported that the proposed amendment would authorize the protocol of Rule 4.1 in considering an arrest warrant or summons on an indictment or information.

The committee without objection by voice vote approved the proposed amendment for approval by the Judicial Conference.

FED. R. CRIM. P. 40

Judge Tallman reported that the proposed amendment to Rule 40 (arrest for failing to appear or violating conditions of release in another district) would allow using video teleconferencing for an initial appearance, with the defendant's consent. It will be helpful to some defendants, as, for example, when a defendant faces a long transfer to another district and hopes that the judge might quash the warrant or order release if he or she is able to present a good reason for not having appeared in the other district.

Professor Beale added that Rule 40 currently states that a magistrate judge should proceed with an initial appearance under Rule 5(c)(3), as applicable. The advisory committee, she said, had some concern whether current Rule 5(f), allowing video teleconferencing of initial appearances on consent, would clearly be applicable to Rule 40 situations. So, as a matter of caution, it recommended adding a specific provision in Rule 40 to make the matter clear.

A member cautioned that the committee should not encourage a reduction in the use of courtrooms, and he asked where the participants will be located physically for the Rule 40 video teleconferencing. Judge Tallman suggested that the judge and the defendant normally will both be in a courtroom for the proceedings.

He added that the potential benefits accruing to a defendant who consents to video conferencing under Rule 40 outweigh the general policy concerns about diminishing the use of courtrooms. Professor Beale pointed out that Rule 5 already authorizes video teleconferencing in all initial appearances if the defendant consents. Moreover, the role of lawyers and the use of court interpreters will not change. The proposed amendment merely extends the current provision to the Rule 40 subset of initial appearances.

The committee without objection by voice vote approved the proposed amendment for approval by the Judicial Conference.

FED. R. CRIM. P. 41

Judge Tallman said that the proposed amendments to Rule 41 (search and seizure) are largely conforming in nature. Most of the current text in Rule 41 governing the protocol for using reliable electronic means for process would be moved to the new Rule 4.1. In addition, revised Rule 41(f) would explicitly authorize the return of search warrants and warrants for tracking devices to be made by reliable electronic means.

The committee without objection by voice vote approved the proposed amendments for approval by the Judicial Conference.

FED. R. CRIM. P. 43

Judge Tallman reported that, after considering the public comments, the advisory committee withdrew a proposed amendment to Rule 32.1 (revoking or modifying

probation or supervised release) and a proposed conforming cross-reference to Rule 32.1 in Rule 43(a) (defendant's presence). The withdrawn provisions would have authorized a defendant, on consent, to participate in a revocation proceeding by video teleconference.

The remaining Rule 43 amendment would authorize video teleconferencing in misdemeanor or petty offense proceedings with the defendant's written consent. He noted that Rule 43 currently permits arraignment, plea, trial, and sentencing in misdemeanor or petty offense cases in the absence of the defendant. The procedure, he noted, is used mainly in minor offenses occurring on government reservations such as national parks because requiring a defendant to return to the park for court proceedings may impose personal hardship. He emphasized, though, that the presiding judge may always require the defendant's presence and does not have to permit either video teleconferencing or trial in absentia.

A member agreed that there are practical problems with misdemeanors in national parks, but lamented the trend away from courtroom proceedings. The dignity of the courtroom and the courthouse, he said, are very important and have positive societal value. The physical courtroom, moreover, affects personal conduct. In essence, steps that reduce the need for courtroom proceedings should only be taken with the utmost caution and concern.

Judge Tallman agreed and explained that the advisory committee had withdrawn the proposed amendment to Rule 32.1 for just that reason. Several members concurred that substitutes to a physical courtroom should be the exception and never become routine. One member noted, though, that courts are being driven to using video teleconferencing by the convenience demands of others, including law enforcement personnel, lawyers, and parties. A member added that the only practical alternative to video teleconferencing for a defendant in a misdemeanor case now is for the defendant not to show up and to pay a fine.

Members suggested that language be added to the committee note to emphasize that the use of video teleconferencing for misdemeanor or petty offense proceedings should be the exception, not the rule, and that judges should think carefully before allowing video trials or sentencing. They suggested that the advisory committee draft appropriate language to that effect for the committee note. Judge Tallman pointed out that the committee note to the current Rule 5 contains appropriate language that could be adapted for the Rule 43 note. After a break, the additional language was presented to the committee and approved.

The committee without objection by voice vote approved the proposed amendment, including the additional note language, for approval by the Judicial Conference.

FED. R. CRIM. P. 49

Judge Tallman reported that the proposed amendment to Rule 49 (serving and filing papers) would bring the criminal rules into conformity with the civil rules on electronic filing. Based on FED. R. CIV. P. 5(d)(3), it would authorize the courts by local rule to allow papers to be filed, signed, or verified by reliable electronic means, consistent with any technical standards of the Judicial Conference.

The committee without objection by voice vote approved the proposed amendment for approval by the Judicial Conference.

Technical Amendments for Final Approval without Publication

FED. R. CRIM. P. 32

Judge Tallman reported that the proposed amendments to Rule 32(d)(2)(F) and (G) (sentencing and judgment) had been recommended by the committee's style consultant. They would remedy two technical drafting problems created by the recent package of criminal forfeiture rules.

The committee without objection by voice vote approved the proposed amendments for approval by the Judicial Conference without publication.

FED. R. CRIM. P. 41

Judge Tallman reported that the proposed amendments to Rule 41 (search and seizure) were also technical and conforming in nature. The rule currently gives a law enforcement officer 10 "calendar" days after use of a tracking device has ended to return the warrant to the judge and serve a copy on the person tracked. The proposed amendments would delete the unnecessary word "calendar" from the rule because all days are now counted the same under the 2009 time computation amendments' "days are days" approach.

Judge Rosenthal suggested that when the rule is sent to the Judicial Conference for approval, the committee's communication should explain why as a matter of policy it chose the shorter period of 10 days, rather than 14 days, since the 10-day periods in most other rules had been changed to 14 days as part of the time computation project.

The committee without objection by voice vote approved the proposed amendments for approval by the Judicial Conference without publication.

Amendments for Publication

FED. R. CRIM. P. 37

Judge Tallman reported that the proposed new Rule 37 (indicative rulings) would authorize indicative rulings in criminal cases, in conformance with the new civil and appellate rules that formalize a procedure for such rulings – FED. R. CIV. P. 62.1 and FED. R. APP. P. 12.1. Professor Beale pointed out that the criminal advisory committee had benefitted greatly from the work of the civil and appellate committees in this matter. She added that the advisory committee would also delete the first sentence of the second paragraph of the proposed committee note.

The committee without objection by voice vote approved the proposed new rule for publication.

FED. R. CRIM. P. 5 and 58

Judge Tallman reported that the proposed amendments to Rule 5 (initial appearance) and Rule 58 (petty offenses and other misdemeanors) had been suggested by the Department of Justice and would implement the government's notice obligations under applicable statutes and treaties.

He noted that the proposed amendment to Rule 5(c)(4) would require that the initial appearance of an extradited foreign defendant take place in the district where the defendant is charged, rather than in the district where the defendant first arrives in the United States. The intent of the amendment is to eliminate logistical delays. A member voiced concern, though, over potential delay of the initial appearance if the defendant no longer receives an initial appearance as soon as he or she arrives in the United States.

A member suggested adding language to the rule requiring that the initial appearance be held promptly. Professor Beale and Judge Tallman pointed out that Rule 5(a)(1)(B) already states explicitly that the initial appearance must be held "without unnecessary delay." The member suggested that it would be helpful to include a reference in the committee note to the language of Rule 5(a)(1)(B). After a break, Judge Tallman presented note language to accomplish that result.

Judge Tallman explained that the other proposed amendments to Rule 5 and 58 would carry out treaty obligations of the United States to notify a consular officer from the defendant's country of nationality that the defendant has been arrested, if the defendant requests. A member recommended removing the first sentence of the committee note for each rule, which refers to the government's concerns. Professor Beale agreed that the sentences could be removed, but she noted that the rule and note had been carefully negotiated with the Department of Justice. Judge Tallman suggested rephrasing the first sentence of each note to state simply that the proposed rule facilitates compliance with treaty obligations, without specifically mentioning the government's motivation.

The committee without objection by voice vote approved the proposed amendments, including the additional note language, for publication.

Informational Items

FED. R. CRIM. P. 16

Judge Tallman noted that at the January 2010 Standing Committee meeting, he had presented a report on the advisory committee's study of proposals to broaden FED. R. CRIM. P. 16 (discovery and inspection) and incorporate the government's obligation to provide exculpatory evidence to the defendant under *Brady v. Maryland,* 373 U.S. 83 (1963) and later cases. He noted that the advisory committee had convened a productive meeting on the subject in February with judges, prosecutors, law enforcement authorities, defense attorneys, and law professors. The participants, he said, had been very candid and non-confrontational, and the meeting provided the committee with important input on the advisability of broadening discovery in criminal cases.

He reported that the Federal Judicial Center had just sent a survey to judges, prosecutors, and defense lawyers on the matter, and the responses have been prompt and massive, with comments received already from 260 judges and nearly 2,000 lawyers. He added that the records of the Department of Justice's Office of Professional Responsibility showed that over the last nine years an average of only two complaints a year had been sustained against prosecutors for misconduct. But, he added, lawyers may be reluctant to file formal complaints with the Department. The current survey, he noted, was intended in part to identify any types of situations that have not been reported.

FED. R. CRIM. P. 12

Judge Tallman noted that in June 2009 the Standing Committee recommitted to the advisory committee a proposed amendment to Rule 12 (pleadings and pretrial motions) that would have required a defendant to raise before trial any claims that an indictment fails to state an offense. The advisory committee was also asked to explore the advisability of using the term "forfeiture," rather than "waiver," in the proposed rule.

He reported that the pertinent Rule 12 issues are complex. Therefore, the committee was considering a more fundamental, broader revision of the rule that might clarify which motions and claims must be raised before trial, distinguish forfeited claims from waived claims, and clarify the relationship between these claims and FED. R. CRIM. P.52 (harmless and plain error).

FED. R. CRIM. P. 11

Judge Tallman reported that the recent Supreme Court decision in *Padilla v. Kentucky,* 130 S. Ct. 1473 (March 31, 2010) had demonstrated the importance of informing an alien defendant of the immigration consequences of a guilty plea. As a result, he said, the advisory committee had appointed a subcommittee to examine whether

immigration and citizenship consequences should be added to the list of matters that a judge must include in the courtroom colloquy with a defendant in taking a guilty plea under FED. R. CRIM. P. 11 (pleas).

CRIME VICTIMS' RIGHTS

Judge Tallman reported that the advisory committee was continuing to monitor implementation of the Crime Victims' Rights Act. Among other things, he said, the committee had discovered an instance of an unintended barrier to court access by crime victims. An attorney representing victims had been unable to file a motion asserting the victim's rights because the district court's electronic filing system only authorized motions to be filed by parties in the case. On behalf of the advisory committee, he said, he had brought the matter to the attention of the chair of the Judicial Conference committee having jurisdiction over development of the CM/ECF electronic system.

REPORT OF THE ADVISORY COMMITTEE ON EVIDENCE RULES

Judge Hinkle and Professor Capra presented the report of the advisory committee, as set forth in Judge Hinkle's memorandum and attachments of May 10, 2010 (Agenda Item 7).

Amendments for Final Approval

RESTYLED EVIDENCE RULES 101-1103

Judge Hinkle reported that the restyling of the Federal Rules of Evidence was the only action matter on the agenda. He noted that the project had been a joint undertaking on the part of the advisory committee and the Standing Committee's Style Subcommittee, comprised of Judge Teilborg (chair), Judge Huff, and Mr. Maledon.

He noted that the project to restyle the federal rules had originated in the early 1990s under the sponsorship of the Standing Committee chair at the time, Judge Robert Keeton, who set out to bring greater consistency and readability to the rules. Judge Keeton had appointed Professor Charles Alan Wright as the first chair of the Standing Committee's new Style Subcommittee and Bryan Garner as the committee's first style consultant. Judge Hinkle pointed out that Mr. Garner had authored the pamphlet setting out the style conventions followed by the subcommittee – *Guidelines for Drafting and Editing Court Rules.*

Judge Hinkle explained that the restyled appellate rules took effect in 1998, the restyled criminal rules in 2002, and the restyled civil rules in 2007. With each restyling effort, he said, there had been doubters who said that restyling was not worth the effort and that the potential disruption would outweigh the benefits. Each time, he said, the

doubters had been proven wrong. He pointed out, for example, that a professor who had opposed restyling changes later wrote an article proclaiming that they were indeed an improvement.

He added that whatever disruption there may be initially will evaporate rather quickly because the committee worked intensively to avoid any changes in substance. He pointed out, though, that there are indeed differences between the evidence rules and the other sets of federal rules because the evidence rules are used in courtrooms every day, and lawyers need to know them intimately and instinctively.

Judge Hinkle reported that Professor Kimble had assumed the duties of style consultant near the end of the criminal rules restyling project and had been an indispensable part of both the civil and evidence restyling efforts. He pointed out that the restyled civil rules had proven so successful that they had been awarded the Burton Award for Reform in Law, probably the nation's most prestigious prize for excellence in legal writing.

Judge Hinkle explained that the process used by the advisory committee to restyle the rules had involved several steps. It started with Professor Kimble drafting a first cut of the restyled rules. That product was reviewed by Professor Capra, the committee's reporter, who examined the revisions carefully to make sure that they were technically correct and did not affect substance. Then the rules were reviewed again by the two professors and by members of the advisory committee. They were next sent to the Style Subcommittee for comment. After the subcommittee's input, they were reviewed by the full advisory committee.

The advisory committee members reviewed the revised rules in advance of the committee meeting and again at the meeting. He added that the committee had also been assisted throughout the project by Professor Kenneth S. Broun, consultant and former member of the committee, by Professor Stephen A. Saltzburg, representing the American Bar Association (and former reporter to the criminal advisory committee), and by several other prominent advisors. He explained that the rules were all published for comment at the same time, even though they had been reviewed and approved for publication by the Standing Committee in three batches at three different meetings.

Judge Hinkle reported that if the advisory committee decided that any change in the language of a rule impacted substance, it made the final call on the revised language. If, however, a change was seen as purely stylistic, the advisory committee noted that it was not a matter of substance, and the Style Subcommittee made the final decision on language.

Judge Hinkle reported that the public comments had been very positive. The American College of Trial Lawyers, for example, assigned the rules to a special committee, which commented favorably many times on the product. The Litigation Section of the American Bar Association also praised the revised rules and stated that they

are clearly better written than the current rules. The only doubt raised in the comments was whether the restyling was worth the potential disruption. Nevertheless, only one negative written public comment to that effect had been received.

At its last meeting, the advisory committee considered the comments and took a fresh look at the rules. In addition, Professors Capra and Kimble completed another top-to-bottom review of the rules. The Style Subcommittee also reviewed them carefully and conducted many meetings by conference call.

Finally, the advisory committee received helpful comments from members of the Standing Committee in advance of the current meeting. The comments of Judges Raggi and Hartz were reviewed carefully and described in a recent memorandum from Professor Capra. Dean Levi also suggested changes just before the meeting that Judge Hinkle presented orally to the committee.

A motion was made to approve the package of restyled evidence rules, including the recent changes incorporated in Professor Capra's memo and those described by Judge Hinkle.

A member stated that she would vote for the restyled rules, but expressed ambivalence about the project. She applauded the extraordinary efforts of the committee in producing the restyled rules, but questioned whether they represent a sufficient improvement over the existing rules to justify the transactional costs of the changes.

She also expressed concern over the need to revise the language of all the rules since the evidence rules are so familiar to lawyers as to make them practically iconic. They are cited and relied on everyday in courtroom proceedings. Any changes in language, she said, will inevitably be used by lawyers in future arguments that changes in substance were in fact made.

She noted that some of the changes clearly improve the rules, such as adding headings, breakouts, numbers, and letters that judges and lawyers will find very helpful. Nevertheless, every single federal rule of evidence was changed in the effort, and some of the changes were not improvements. She asked whether it was really necessary to change each rule of evidence, especially because the rules were drafted carefully over the years, and many of them have been interpreted extensively in the case law.

She recited examples of specific restyled rules that may not have been improved and suggested that some of them were actually made worse solely for the sake of stylistic consistency. In short, she concluded, the new rules represent a solution in search of a problem. Nevertheless, despite those reservations, she stated that she would not cast the only negative vote against the revised rules and would vote to approve the package, but with serious doubts.

A member suggested that those comments were the most thoughtful and intelligent criticisms he had ever heard about the restyling project. Yet, he had simply not been persuaded.

Another member also expressed great appreciation for those well-reasoned views, but pointed out that the great bulk of lawyers and organizations having reviewed the revised rules support them enthusiastically. She explained that the new rules eliminate wordiness and outdated terms in the existing rules. They also improve consistency within the body of evidence rules and with the other federal rules. Moreover, the restyling retains the familiar structure and numbering of the existing evidence rules, even though the style conventions might have called for renumbering or other reformatting. In the final analysis, she suggested, the restyled evidence rules are significantly better and lawyers will easily adapt to the changes.

A member agreed and said that, as a practicing lawyer, he had been skeptical when the project had first started. He pointed out, though, that the committee had made extraordinary efforts to avoid any changes in substance or numbering that could potentially disrupt lawyers. This attempt to preserve continuity, he said, had been a cardinal principle of the effort and had been followed meticulously.

On behalf of the Style Subcommittee, Judge Teilborg offered a special tribute to Judge Hinkle for his outstanding leadership of the project, as well as his great scholarship and technical knowledge. The end product, he said, was superlative and could only have been achieved through an enormous amount of work and cooperation. He also thanked Judge Huff and Mr. Maledon for their time and devotion to the Style Subcommittee's efforts, especially for giving up so many of their lunch hours for conference calls.

Judge Teilborg added that it had been a joy to observe the intense interplay between Professors Capra and Kimble, truly experts in their respective fields. He pointed out that Professor Kimble had left his hospital bed after surgery to return quickly to the project. He also thanked Jeffrey Barr of the Administrative Office for his great work as scribe in keeping the minutes and preparing the drafts. Finally, he thanked Dean Levi and Judges Raggi and Hartz for offering helpful changes in the final days of the project.

A member suggested that one of the great benefits of the restyling process is that the reviewers uncover unintended ambiguities in the rules. He pointed out that Professor Capra was keeping track of all the ambiguities in the evidence rules, so they may be addressed in due course as matters of substance on a separate track. He also remarked that the committee's style conventions are not well known to the public and suggested that they be made available to bench and bar to help them understand the process.

The committee without objection by voice vote approved the proposed amendments for approval by the Judicial Conference.

REPORT OF THE SEALING SUBCOMMITTEE

Judge Hartz, chair of the Sealing Subcommittee, reported that the subcommittee had been charged with examining the sealing of entire cases in the federal courts. The assignment had been generated by a request to the Judicial Conference from the chief judge of the Seventh Circuit.

Judge Hartz noted that the bulk of the subcommittee's work in examining current court practices had been assigned to the Federal Judicial Center. Dr. Reagan of the Center, he said, had reviewed every sealed case filed in the federal courts in 2006.

He pointed out that there are very good reasons for courts to seal cases – such as matters involving juveniles, grand juries, fugitives, and unexecuted warrants. The study, he added, revealed that many of the sealed "cases" docketed by the courts were not entire cases, but miscellaneous proceedings that carry miscellaneous docket numbers.

He noted that the Center's report had been exhaustive, and the subcommittee felt comfortable that virtually all the sealing decisions made by the courts had been supported by appropriate justification. On the other hand, it was also apparent from the study that court sealing processes could be improved. In some cases, for example, lesser measures than sealing an entire case might have sufficed, such as sealing particular documents. Moreover, the study found that in practice many sealed matters are not timely unsealed after the reason for sealing has expired.

In the end, the subcommittee decided that there is no need for new federal rules on sealing. The standards for sealing, he said, are quite clear in the case law of every circuit, and the courts appear to be acting properly in sealing matters. Nevertheless, there does appear to be a need for Judicial Conference guidelines and some practical education on sealing.

Professor Marcus said that it is worth emphasizing that when the matter was first assigned to the rules committee, the focus was on whether new national rules are needed. He added that there is a general misperception that many cases are sealed in the courts. The Federal Judicial Center study, though, showed that there are in fact very few sealed cases, and many of those are sealed in light of a specific statute or rule, such as in qui tam cases and grand jury proceedings. As for dealing with public perceptions, he said, the committee should emphasize that the standards for sealing are clear and that judges are acting appropriately. Nevertheless, some practical steps should be taken to improve sealing practices in the courts.

He noted that the subcommittee's report does not recommend any changes in the national rules. Its recommendations, rather, are addressed to the Judicial Conference's

Court Administration and Case Management Committee. The report recommends consideration of a national policy statement on sealing that includes three criteria.

> First, an entire case should be sealed only when authorized by statute or rule or justified by a showing of exceptional circumstances and when there is no lesser alternative to sealing the whole case, such as sealing only certain documents.
>
> Second, the decision to seal should be made only by a judge. Instances arise when another person, such as the clerk of court, may seal initially, but that decision should be reviewed promptly by a judge.
>
> Third, once the reason for sealing has passed, the sealing should be lifted. He noted that the most common problem identified during the study was that courts often neglect to unseal documents promptly.

Professor Marcus explained that the subcommittee was also recommending that the Court Administration and Case Management Committee consider exploring the following steps to promote compliance with the proposed national policy statement:

(1) judicial education to make sure that judges are aware of the proper criteria for sealing, including the lesser alternatives;
(2) education for judges and clerks to ensure that sealing is ordered only by a judge or reviewed promptly by a judge;
(3) a study to identify when a clerk may seal a matter temporarily and to establish procedures to ensure prompt review by a judge;
(4) judicial education to ensure that judges know of the need to unseal matters promptly and to set expiration dates for sealing;
(5) programming CM/ECF to generate notices to courts and parties that a sealing order must be reviewed after a certain time period;
(6) programming CM/ECF to generate periodic reports of sealed cases to facilitate more effective and efficient review of them; and
(7) administrative measures that the courts might take to improve handling requests for sealing.

The committee endorsed the subcommittee report and recommendations and voted to refer them to the Court Administration and Case Management Committee for appropriate action.

REPORT OF THE PRIVACY SUBCOMMITTEE

Judge Raggi, chair of the Privacy Subcommittee, reported that the subcommittee's assignment was to consider whether the current privacy rules are adequate to protect

privacy interests. At the same time, she noted, it is also important to emphasize the need to protect the core value of providing maximum public access to court proceedings.

She noted that the subcommittee included three representatives from the Court Administration and Case Management Committee, whose contributions have been invaluable. In addition, she said, Judge John R. Tunheim, former chair of the Court Administration and Case Management Committee, and Judge Hinkle were serving as advisors to the subcommittee.

In short, the subcommittee was reviewing: (1) whether the new rules are being followed; and (2) whether they are adequate. To address those questions, she explained, the subcommittee had started its efforts with extensive surveys by the Administrative Office and the Federal Judicial Center. It then conducted a major program at Fordham Law School, organized by Professor Capra, to which more than 30 knowledgeable individuals with particular interests in privacy matters were invited. The invitees included judges, members of the press, representatives from non-government organizations, an historian, government lawyers, criminal defense lawyers, and lawyers active in civil, commercial, and immigration cases. With the benefit of all the information and views accumulated at the conference, the subcommittee will spend the summer drafting its report for the January 2011 Standing Committee meeting.

Judge Raggi noted that, like the sealing subcommittee, her subcommittee's report will likely not include any recommendations for changes in the federal rules. Rather, it will provide relevant information on current practices in the courts and on the effectiveness of the new privacy rules. Professor Capra added that the Federal Judicial Center had prepared an excellent report on the use of social security numbers in case filings that will be a part of the subcommittee report.

LONG RANGE PLANNING

It was noted that the April 2010 version of the proposed *Draft Strategic Plan for the Federal Judiciary* had been included in the committee's agenda materials, and several of the plan's strategies and goals relate to the work of the rules committees. It was also pointed out that a separate chart had been included in the materials setting out the specific matters in the proposed plan that have potential rules implications.

NEXT MEETING

The members agreed to hold the next committee meeting on January 6-7, 2011, in San Francisco.

Respectfully submitted,

Peter G. McCabe,
Secretary

TAB

4-A

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON CONSUMER ISSUES

RE: OBJECTIONS TO CLAIMS – NEGATIVE NOTICE AND SERVICE

DATE: SEPTEMBER 2, 2010

Two suggestions have been submitted on behalf of the Bankruptcy Judges Advisory Group ("BJAG") that relate to Rule 3007(a) (Objections to Claims). The first suggestion (09-BK-H), submitted by Judge Margaret D. McGarity, proposed that Rule 3007(a) be amended to clarify that a negative notice procedure is allowed for objections to proofs of claim. That change would dispense with the requirement that every objection be noticed for a hearing, a procedure currently not followed in a number of courts, and would place the burden on the claimant to request a hearing after receiving notice of the objection.

The second suggestion (09-BK-N), submitted by Judge Michael E. Romero, concerns the proper method of serving objections to claims. He noted that there is confusion and a disagreement among the courts about whether service of an objection must be made by one of the methods specified in Rule 7004, which is made applicable to contested matters by Rule 9014(b), or whether it is sufficient to serve the objection by the method specified in Rule 3007(a).

The Subcommittee considered Judge McGarity's suggestion in January and prepared a recommendation to the Advisory Committee for the spring 2010 meeting. That recommendation, however, was withdrawn by the Subcommittee so that it could consider Judge Romero's suggestion along with Judge McGarity's. During its August 2 conference call, the

Subcommittee carefully considered both suggestions, and **it recommends that Rule 3007(a) be amended to clarify that negative notice is permitted and that, with the exception of service on the United States, service of an objection be by mail or delivery to the name and address listed on the proof of claim for receipt of notice.**

Judge McGarity's Suggestion

Rule 3007(a) provides that an objection shall be made in writing and filed and that a copy of the objection "with notice of the hearing thereon" shall be provided the claimant, the debtor or debtor in possession, and the trustee "at least 30 days prior to the hearing." Judge McGarity questioned the need for a hearing on all objections to claims. Because the requirement can result in clogged court calendars, she said that some courts ignore the requirement altogether, and others schedule the hearing but cancel it if the claimant does not respond by a specified date before the hearing.[1] BJAG asked the Advisory Committee to consider an amendment to Rule 3007(a) that would place the burden on an interested party to request a hearing after receiving notice of the objection (i.e. allow negative notice).

Judge Romero's Suggestion

Judge Romero stated that BJAG seeks the Advisory Committee's guidance about what constitutes proper service of an objection to a proof of claim. He explained that some courts

[1] *See, e.g.*, Local Bankr. Rule 3007(b) (Bankr. E.D. Tex.) ("A party filing an objection to claim, other than an objection for which the filing of an adversary proceeding is required, may utilize the 21-day negative notice language described in LBR 9007(a)."); Local Bankr. Rule B-3007-1(e) (Bankr. N.D. Ind.) ("Unless a response to the objection is filed within thirty (30) days following service of the notice of objection, the court may disallow or modify the claim in accordance with the objection, without further hearing."); Local Bankr. R. 3007-1(b)(3) (Bankr. C.D. Cal.) (requiring objection to claim to indicate date, time, and place of hearing, but allowing court to grant the requested relief without a hearing unless the claimant files and serves a response no later than 14 days before the hearing date).

have required service pursuant to Rule 7004, because the filing of an objection creates a contested matter and Rule 9014(b) provides that the "motion [initiating a contested matter] shall be served in the manner provided for service of a summons and complaint by Rule 7004." These courts require Rule 7004 service in addition to the provision of notice required by Rule 3007(a).

Other courts have concluded that Rule 9014(b) is not applicable because Rule 9014(a) says that it applies to contested matters "not otherwise governed by these rules." Reasoning that the same limitation applies to subdivision (b) of the rule, these courts have concluded that Rule 3007(a) does "otherwise govern" the method of service of a claim objection by specifying to whom notice must be mailed or otherwise delivered at least 30 days prior to the hearing.

Judge Romero stated that further confusion is created by the fact that Rule 3007(b) allows an objection to be included in an adversary proceeding, in which case service of the summons and complaint (and claim objection) must be made pursuant to Rule 7004. He said that "even though the relief sought in a claims challenge may be identical, depending on the pleading filed, the service requirements may be vastly different." He concluded by stating that BJAG seeks to have the Rules clarified so that "one uniform method of service can be used for all objection[s] to claims purposes."

Negative Notice Procedure for Claim Objections

Section 502(b) of the Code provides that if an objection to a claim is made, "the court, after notice and a hearing, shall determine the amount of such claim . . . and shall allow such claim" except to the extent that one of the specified grounds for disallowance applies. As used in the Code and Rules, the phrase "after notice and a hearing," or similar wording, allows action to be taken without a hearing if notice is properly given and a hearing is not timely requested by

a party in interest. *See* § 102(1); Rule 9001. The Code, therefore, does not mandate that a hearing actually be conducted on every objection to a claim. Rule 3007(a), however, by not using the phrase "after notice and a hearing" and by affirmatively requiring a hearing date to be noticed along with the objection, may be read to require that a hearing be calendared for all objections to claims.

Because an objection to a claim that does not seek other relief gives rise to a contested matter, it might be argued the Rule 9014(a) governs in all respects the procedure for resolving the objection. Indeed, the Committee Note accompanying Rule 3007 states that the "contested matter initiated by an objection to a claim is governed by rule 9014." The latter rule provides for "reasonable notice and opportunity for hearing." It thus allows negative notice. Rule 9014(a), however, applies only to contested matters "not otherwise governed by these rules." Rule 3007(a)'s more specific requirement for giving notice of the hearing date on an objection to a claim appears to override the more general notice requirement of Rule 9014.

The Subcommittee concluded that the BJAG suggestion is well taken. As Judge McGarity noted, some objections to claims – such as ones based on untimely filing or the incorrect designation of a priority category – may be sufficiently straight-forward that a hearing is not needed. If a negative notice procedure were permitted, the scheduling of hearings on objections could be limited to situations in which the claimant or another party in interest requests one. Moreover, because courts now are not uniformly adhering to the procedure required by Rule 3007(a), the Subcommittee concluded that an amendment to the rule allowing negative notice would facilitate uniformity. The Subcommittee further concluded that a 21-day notice period, rather than the current 30 days, is sufficient as a default rule.

Service of Objections to the Allowance of Claims

The Subcommittee agreed with Judge Romero that the service issue is in a state of "confusion." Rules 3007 and 9014 and their accompanying Committee Notes send some conflicting signals. Rule 3007(a), as noted above, requires that a "copy of the objection with notice of the hearing thereon . . . be mailed or otherwise delivered to the claimant, the debtor or debtor in possession, and the trustee at least 30 days prior to the hearing." While the rule does not use the word "serve," it does specify how the only documents that need to be served are to be delivered to the claimant and others.

But service in that manner presents several issues, including the following:

- to which address the objection and notice should be mailed;
- when the claimant is a corporation, whether the mailing must be addressed to the attention of an officer, a managing or general agent, or to another agent authorized by appointment or by law to receive service of process; and
- when the claimant is the United States or an agency or officer of the federal government, whether the objection and notice should also be mailed to the appropriate U.S. Attorney's office and to the Attorney General.

Courts that have concluded that Rule 3007(a) provides the proper service method have held that the claimant generally should be served by mailing the person specified, at the address provided, in the Form 10 box that states where notices should be sent. *See, e.g.*, *In re* State Line Hotel, 323 B.R. 703 (9th Cir. BAP 2005), *vacated as moot*, 242 Fed. App'x 460 (9th Cir. 2007); *In re* Stauffer, 378 B.R. 333 (Bankr. D. Utah 2006); *In re* Hawthorne, 326 B.R. 1 (Bankr. D.D.C. 2005); *In re* Morton, 2003 WL 23744636 (Bankr. N.D. Tex. 2003). A number of courts taking

this view, however, have carved out a special rule for federal government claimants. *See, e.g.*, *In re* F.C.M. Corp., 1987 WL 364456 (S.D. Fla. 1987); *In re* Morrell, 69 B.R. 147 (N.D. Cal. 1986). They require the claim objection to be served on these government claimants in accordance with Rule 7004(b)(4) or (5).

Despite these decisions, the original Committee Note to Rule 3007 creates some uncertainty about whether that rule is intended to provide the method for service of objections to claims. It says that the rule "prescribes the manner in which an objection to a claim shall be made and *notice of the hearing thereon* given to the claimant" (emphasis added). It goes on the state that the "contested matter initiated by an objection to a claim is governed by Rule 9014, unless a counterclaim by the trustee is joined with the objection to the claim."

Rule 9014(a) provides that in "a contested matter not otherwise governed by these rules, relief shall be requested by motion, and reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought." Subdivision (b), which was at one time combined with (a), says that the "motion shall be served in the manner provided for service of a summons and complaint by Rule 7004." The original Committee Note to this rule gives as an example of a contested matter "the filing of an objection to a proof of claim."

Some courts have read Rule 9014(b), supported by the Committee Notes, as requiring an objection to a claim to be served on the claimant by one of the methods set forth in Rule 7004. *See, e.g.*, *In re* Levoy, 182 B.R. 827 (9th Cir. BAP 1995); *In re* Boykin, 246 B.R. 825 (Bankr. E.D. Va. 2000); *see also* Local Bankr. Rule 3007-1(b)(2) (C.D. Cal.) ("The claim objection must be served on the claimant at the address disclosed by the claimant in its proof of claim and at such other addresses and upon such parties as may be required by FRBP 7004 and other applicable rules.").

The Subcommittee concluded that, except in the case of federal government claims, service of objections to claims should be made by mail or delivery to the person, at the address, the claimant itself listed on the proof of claim for receipt of notice. Because of the large number of claims filed by the federal government and the dispersed responsibility for litigating them, the Subcommittee decided that notice to the appropriate U.S. Attorney's office and the Attorney General should also be required for objections to federal claims.

Recommendation

In response to the two suggestion submitted on behalf of BJAG, the Subcommittee recommends that the Committee approve for publication the proposed amendment of Rule 3007(a) as indicated below:

Rule 3007. Objections to Claims

(a) OBJECTIONS TO CLAIMS. An objection to the allowance of a claim shall be ~~in writing and~~ filed and served on the claimant by mail or delivery to the name and address specified on the proof of claim or in a subsequently filed alternative address for the claimant. An objection to the allowance of a claim of the United States or any of its officers or agencies shall also be mailed to the civil process clerk at the office of the United States attorney for the district where the case is pending and to the Attorney General of the United States at Washington, D.C. Reasonable notice and opportunity for hearing shall be afforded. ~~A copy of the objection with notice of the hearing thereon shall be mailed or otherwise delivered to~~ the claimant, the debtor or debtor in

possession, and the trustee ~~at least 30 days prior to the hearing~~.

Unless the court orders otherwise, notice shall be provided no later than 21 days before any scheduled hearing on the objection and any deadline for the claimant to request a hearing.

* * * * *

COMMITTEE NOTE

Subdivision (a) is amended to specify the manner in which an objection to a claim must be served on the claimant. Rather than using the service methods of Rule 7004, which Rule 9014(b) generally makes applicable to contested matters, subdivision (a) of this rule specifies that a claimant must be served by mail or delivery to the name and address listed on the proof of claim form for receipt of notice. If the claimant is the United States or an officer or agency of the United States, a copy of the objection must also be mailed to the civil process clerk at the appropriate United States Attorney's office and to the Attorney General.

Subdivision (a) is also amended to require at least 21 days' notice of the objection prior to any scheduled hearing date and any deadline for the claimant to request a hearing. The prior requirement of 30 days' notice was determined to be longer than necessary. This 21-day time period, however, may be altered by court order, including by means of a local rule. By using the phrase "[r]easonable notice and opportunity for hearing," the amendment authorizes the practice in some districts of using a negative notice procedure for objections to claims. Under that procedure, the court may disallow a claim if reasonable notice is given the claimant and the claimant does not request a hearing on the objection. *See* § 102(1) of the Code; Rule 9001.

TAB

4-B

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON CONSUMER ISSUES

RE: SUGGESTION REGARDING CAPTION FOR MOTION INITIATING A CONTESTED MATTER

DATE: SEPTEMBER 2, 2010

Bankruptcy Judge William F. Stone, Jr. (W.D. Va.) submitted suggestion 09-BK-J, which addressed two separate issues. One of those issues – suggesting an amendment of either Rule 9013 or 9014 – was referred to this Subcommittee for further consideration.[1] He proposed that the caption of a motion that initiates a contested matter include the name of every person whose interests would be directly affected by the relief sought, rather than just the caption prescribed by Official Form 16B. The Subcommittee carefully considered this suggestion during its August 2 conference call, and for the reasons discussed below, **it recommends that the Advisory Committee take no further action on the suggestion.**

Judge Stone's Suggestion

Judge Stone stated that it has always struck him as inconsistent that the caption of a lien avoidance motion pursuant to Rule 4003(d) need not identify the party whose lien would be avoided, while any other challenge to a lien must be brought as an adversary proceeding, the caption of which includes the affected party's name. He stated that motions to value collateral, motions to sell estate property free and clear of existing liens, and motions to assume or reject

[1] The other suggestion, which concerned the procedure for the allowance of administrative expenses, was referred to the Subcommittee on Business Issues and is discussed at tab 7A.

leases or other executory contracts are other common examples of motions specially affecting the rights of particular creditors.

Judge Stone explained that the underlying rationale for his proposal is that "naming a person or entity as a respondent on the initial page(s) of the caption of a motion is the best simple and inexpensive way to make such party aware that the motion seeks some manner of relief which affects the particular rights or interests of such party and therefore is a pleading which ought to be reviewed carefully and dealt with promptly." He stated that imposing this requirement is likely to reduce the number of instances in which parties fail to respond because they are not aware that a motion affects their property rights or other interests. A collateral benefit would be to compel practitioners, before filing the motion, to determine which parties have rights that would be affected.

Judge Stone attached to his suggestion a local rule that his court, the Western District of Virginia, has adopted that sets out requirements for the caption of a motion initiating a contested matter. Local Rule 9013-1(I) provides:

> Caption: Names of Parties: Every motion initiating a contested matter pursuant to Bankruptcy Rule 9014 shall contain a caption which conforms with Official Form 16B and an additional caption setting forth the debtor's name as shown on the petition, the assigned motion number, and a designation showing the parties as "Movant", "Respondent" and "Trustee" (when applicable).

The local rule sets out an example of such a caption. The example includes a motion number and the names of the affected parties as respondents.

The Subcommittee's Consideration of the Suggestion

In its discussion of Judge Stone's suggestion, the Subcommittee reviewed the memorandum on this matter that Jim Wannamaker prepared for the spring 2010 meeting (in the

agenda book for that meeting behind tab 11). Mr. Wannamaker pointed out that in the early 1980s many bankruptcy courts required that motions be captioned with respondents' names and a motion number. The motions, responses, and subsequent papers were maintained in separate motions folders, rather in the case file. The practice largely disappeared after the courts' electronic docketing systems, such as BANCAP and NIBS, linked motions and related papers on the docket and many clerks' offices found it unduly burdensome to maintain separate motion numbers and files.

Mr. Wannamaker also noted that Judge Stone's concerns might be partially addressed by Official Form 20A, Notice of Motion or Objection. Use of the Official Form is mandatory pursuant to Rule 9009. Although the caption of Official Form 20A does not include the names of the affected party (or parties), the form states:

> _____ has filed papers with the court to [relief sought in motion or objection].
>
> **Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)**
>
> If you do not want the court to [relief sought in motion or objection], or if you want the court to consider your views on the [motion] [objection], then on or before (date), you or your attorney must:
>
> [File with the court a written request for a hearing {*or, if the court requires a written response*, an answer, explaining your position} . . . .]

The Subcommittee agreed with Mr. Wannamaker's analysis. It concluded that, given the mixed reaction this proposal received from the Bankruptcy Judges Advisory Group and the abandonment of this type of caption by many courts, the decision whether to require the caption

of a motion to include any information beyond what is required by Form 16B is one that should continue to be left up to local court rules and practices.

TAB

4-C

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON CONSUMER ISSUES

RE: FILING OF CERTIFICATE OF COMPLETION OF PERSONAL FINANCIAL MANAGEMENT COURSE

DATE: SEPTEMBER 2, 2010

Dana McWay, the clerk of the Bankruptcy Court for the Eastern District of Missouri, submitted suggestion 09-BK-I on behalf of the NextGen Clerk's Office Functional Requirements Group ("FRG"). The FRG proposes that approved providers of personal financial management courses be allowed to file statements of the debtor's completion of the course, rather than requiring – as Rule 1007(b)(7) now does – the debtor to file Official Form 23. At the spring 2010 meeting, the Advisory Committee referred this matter to this Subcommittee for further consideration, and the Subcommittee considered it during its August 2 conference call. **The Subcommittee recommends that Rule 1007(b)(7) and the preface and instructions to Form 23 be amended to relieve individual debtors of the obligation to file the form if the provider has already notified the court of the debtor's completion of the financial management course.**

Ms. McWay's Suggestion

As part of their effort to plan for the Next Generation of Bankruptcy CM/ECF, the FRG is recommending authorizing financial management course providers, who must be approved by the United States trustee or the bankruptcy administrator, to file course completion statements directly with the court. Ms. McWay indicated that this change should reduce the number of cases closed without entry of a discharge, which currently occurs when debtors are unable to get

the necessary certificate from the course provider or they just fail to file Form 23.[1] Many of these cases are reopened later, necessitating the payment of an additional fee, for the debtor to file the statement and the court to issue the discharge.

Under the FRG's proposal, approved personal financial management course providers would be given "limited user" logins/passwords for the CM/ECF filing system, as is done for the auditors who review debtors' statements of income, expenditures, and assets, and for creditors who are allowed to file their proofs of claim directly in CM/ECF. The FRG envisions that, as a condition for being approved by the U.S. trustee or bankruptcy administrator, a provider would have to use computer software that allows for automatic filing with the court of a statement indicating that the debtor had completed the personal financial management course. A debtor would be required to provide certain information to the course provider (such as case name, case number, district in which case is pending). Then upon the debtor's completion of the course, the statement would be automatically e-filed as either a text entry or a PDF; no human intervention would be required.

Although this proposal arose in the course of planning for the NextGen system, Ms. McWay indicated that the technology already exists to implement it, perhaps with some minor tweaking. The FRG would need to reach an agreement with the Executive Office for U.S. Trustees (and Bankruptcy Administrators), but there is no reason that direct filing by course providers would need to await the roll-out of NextGen.

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[1] In follow-up correspondence with the reporter, Ms. McWay indicated that some courts require the filing of a certificate from the course provider in addition to Form 23, while others require that either the form or the certificate be filed.

Rule and Form Amendments Required for Implementation

In considering the FRG's suggestion, the Subcommittee noted that the Code does not address what document must be filed to attest to course completion or who must file it. Section 111(d) sets out the minimum requirements for a personal financial management course, and §§ 727(a)(11), 1141(d)(3), and 1328(g)(1) provide that a discharge must be denied an individual debtor who does not complete the course after filing the bankruptcy petition. In implementing these provisions, Rule 1007(b)(7) requires the debtor to file a "statement of completion of a course concerning personal financial management, prepared as prescribed by the appropriate Official Form." The form referred to is Official Form 23, and it requires the debtor to certify that he or she has completed an instructional course in personal financial management.

The Subcommittee agreed that it supports the goal of reducing the number of individual cases that are dismissed without the granting of a discharge (even though the debtor had completed the financial management course) and later reopened at a cost to the debtor and the court system. It concluded that, while it might not be appropriate for a Bankruptcy Rule to impose a requirement directly on providers of personal financial management courses, a rule could facilitate the filing of statements by those providers by eliminating the requirement that Form 23 always be filed by individual debtors. The Subcommittee recommends that Rule 1007(b)(7) be amended as follows:

Rule 1007. Lists, Schedules, Statements, and Other Documents; Time Limits

* * * * *

(b) SCHEDULES, STATEMENTS, AND OTHER DOCUMENTS REQUIRED.

* * * * *

(7) Unless an approved provider of an instructional course concerning personal financial management has notified the court that a debtor has completed the course after filing the petition:

(A) An individual debtor in a chapter 7 or chapter 13 case shall file a statement of completion of the ~~a~~ course ~~concerning personal financial management~~, prepared as prescribed by the appropriate Official Form~~.~~; and

(B) An individual debtor in a chapter 11 case shall file the statement ~~in a chapter 11 case in which~~ if § 1141(d)(3) applies.

COMMITTEE NOTE

Subdivision (b)(7) is amended to relieve an individual debtor of the obligation to file a statement of completion of a personal financial management course if the course provider has already notified the court that the debtor has completed the course. Course providers approved under § 111 of the Code [may] have the capability of filing this notification electronically with the court immediately upon the debtor's completion of the course. If the provider does not notify the court, the debtor must file the statement, prepared as prescribed by the appropriate Official Form, within the time period specified by subdivision (c).

If the Advisory Committee recommends the proposed rule amendment for publication, changes to Form 23 would also be required. The preface and instructions to that form currently implement Rule 1007(b)(7) by placing the responsibility for filing on the debtor. To reflect the proposed amendment of the rule, the Subcommittee recommends amending the form as follows:

UNITED STATES BANKRUPTCY COURT

_____District Of _____

In re _____ Case No._____

Chapter_____

Debtor's Certification of Completion of Postpetition Instructional Course Concerning Personal Financial Management

This form should not be filed if an approved provider of a postpetition instructional course concerning personal financial management has already notified the court of the debtor's completion of the course. Otherwise, ~~E~~every individual debtor in a chapter 7 or chapter 13 case or in a chapter 11 case in which § 1141(d)(3) applies~~, or chapter 13 case~~ must file this certification. If a joint petition is filed and this certification is required, each spouse must complete and file a separate certification. Complete one of the following statements and file by the deadline stated below:

* * * * *

Instructions: Use this form only to certify whether you completed a course in personal financial management and only if your course provider has not already notified the court of your completion of the course. (Fed. R. Bankr. P. 1007(b)(7).) Do NOT use this form to file the certificate given to you by your prepetition credit counseling provider and do NOT include with the petition when filing your case.

* * * * *

COMMITTEE NOTE

The form is amended to reflect the amendment of Rule 1007(b)(7). As amended, that rule allows an approved provider of a personal financial management course to notify the court directly of the debtor's completion of the course. That notification relieves the debtor of the obligation to file this form.

TAB

4-D

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON CONSUMER ISSUES

RE: MEANS TEST FORM DEDUCTION OF TELECOMMUNICATION EXPENSES NECESSARY FOR THE PRODUCTION OF INCOME

DATE: SEPTEMBER 2, 2010

The Subcommittee brings back to the Advisory Committee a narrow issue regarding permissible deductions on the means test forms (Official Forms 22A and 22C). This issue was raised by attorney William J. Neild in his comment (09-BK-032) on the amendments to Forms 22A - C that were published in August 2009. Although Mr. Neild framed the issue more broadly, the Subcommittee, in its memorandum to the Advisory Committee for the spring 2010 meeting, found potential merit in only the following issue: whether a debtor who is not self-employed should be permitted to deduct expenses for telecommunication services to the extent that they are necessary for the production of income. The example Mr. Neild gave of when he believes this deduction should be permitted is that of a truck driver, employed by someone else, who pays for cell phone services used on his job. This issue was referred to the Subcommittee for further consideration.

The Subcommittee's Consideration of Mr. Neild's Comment

Mr. Neild proposed that Form 22A be revised to allow chapter 7 debtors to deduct from income any expenses incurred in the production of income. He contended that deductions of this type are allowed by the IRS and thus are required to be deducted by § 707(b)(2)(A)(ii) of the Code.

The Subcommittee noted that to a large extent this issue was considered and rejected by

the Committee in its initial adoption of the means test forms. The basis for the argument was also considered and rejected by the Committee in 2008 when it was proposed that Form 22C should require the calculation of current monthly income based on gross, not net, income.

Section 707(b)(2)(A)(ii) provides for the monthly expenses that are permitted to be deducted from current monthly income under the means test. Among other deductions are "the debtor's actual monthly expenses for the categories specified as Other Necessary Expenses" by the IRS. Those categories of expenses are set out in § 5.15.1.10 of the IRS Financial Analysis Handbook. See http://www.irs.gov/irm/part5/irm_05-015-001.html#d0e1381. The general instructions of that section state that to be considered as permissible, expenses must meet a necessity test: "they must provide for the health and welfare of the taxpayer and/or his or her family or they must be for the production of income." That section of the handbook then goes on to list fifteen specific expense items, such as taxes, child care, and involuntary deductions. Those listed expenses that do not constitute the repayment of debt are included in lines 25-32 of Form 22A.

The Subcommittee focused on the fact that, although the IRS Handbook's explanation of the necessary expense test refers to expenses for the production of income, there is not a listed category of other necessary expenses that covers all expenses incurred in the production of income. Because § 707(b)(2)(A)(ii) only allows the deduction of "the debtor's actual monthly expenses for the *categories specified* as Other Necessary Expenses" (emphasis added), the Subcommittee concluded that Form 22A properly limits deductions for other necessary expenses to the expense items specifically listed in the Handbook. This part of the means test does not permit the deduction of all expenses incurred in the production of income.

The Subcommittee's comparison of Form 22A to the IRS list of other necessary expenses did reveal one respect in which the allowed deductions on the form are narrower than the IRS categories. The deduction on line 32 for telecommunication services allows for the monthly cost of pagers, call waiting, internet service, etc. "to the extent necessary for your health and welfare or that of your dependents." The IRS, on the other hand, includes as other necessary expenses the cost of optional telephones, telephone services, and internet provider/email "if it meets the necessary expense test." For internet and email services, the explanation goes on to say, "generally for the production of income." It therefore appears that the IRS necessary expense test does not limit these types of expenses to ones necessary for the debtor's health and welfare but considers as well their necessity for the production of income.

The Subcommittee noted that the reason Form 22A limits this deduction as it does is that the calculation of monthly income in Part II of the form already permits the deduction of ordinary and necessary business expenses from the gross receipts from the operation of a business, profession, or farm. For a self-employed debtor, therefore, expenses necessary for the production of income will have already been taken into account. Mr. Neild, however, addressed possible unreimbursed business expenses of an employee. To the extent that an expense of this type would qualify as an "other necessary expense" according to the IRS but, because the debtor is not self-employed, it would not be deductible anywhere on Form 22A, the Subcommittee concluded that there is an unintended gap on the form (and on Form 22C as well).

Recommendation

To correct this omission, **the Subcommittee recommends that line 32 of Form 22A and line 37 of Form 22C be amended to read as follows:**

Other Necessary Expenses: telecommunication services. Enter the total average monthly amount that you actually pay for telecommunication services other than your basic home telephone and cell phone service—such as pagers, call waiting, caller id, special long distance, ~~or~~ internet service, or business cell phone service —to the extent necessary for your health and welfare or that of your dependents or for the production of income if not reimbursed by your employer. **Do not include any amount previously deducted.**

COMMITTEE NOTE

Line 32 of Form 22A and line 37 of Form 22C are amended to permit the deduction of telecommunications expenses that are necessary for the production of income if those expenses have not been reimbursed by the debtor's employer. If a debtor is self-employed, those expenses may be deductible as ordinary and necessary operating expenses at line 5 of Form 22A and line 4 of Form 22C.

If the Committee approves this amendment for publication, the Subcommittee recommends that it be held in the bullpen until there are other amendments to Form 22 to forward to the Standing Committee.

TAB

5-A

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEES ON CONSUMER ISSUES AND ON FORMS

RE: AMENDMENT OF FORM 22C IN RESPONSE TO *HAMILTON* v. *LANNING*

DATE: SEPTEMBER 7, 2010

On June 7, 2010, the Supreme Court issued an 8-1 decision in Hamilton v. Lanning, 130 S. Ct. 2464, in which it rejected a purely "mechanical" approach to the calculation of a chapter 13 debtor's projected disposable income under 11 U.S.C. § 1325(b)(1). The Court instead adopted a "forward-looking" approach that allows consideration in "unusual cases" of changes in the debtor's income and expenses prior to confirmation. Because Form 22C calculates "disposable income" based on the so-called mechanical approach, the decision presents the question whether any changes should be made to the form. This issue was considered during a joint conference call of these two Subcommittees on August 3, and **the Subcommittees recommend that Form 22C be amended to require above-median-income debtors to report any changes to the income and expenses reported elsewhere on the form that have occurred or are virtually certain to occur during the debtor's applicable commitment period.**

The *Lanning* Decision

The basic facts of the case were as follows. The debtor, Stephanie Kay Lanning, received a significant one-time buyout from her former employer within the six months prior to filing her chapter 13 petition. As a result of this buyout, the debtor's disposable income as determined by Official Form 22C was $1,114.98 per month. The debtor reported her actual income at the time of filing on Schedule I, and, based on the expenditures reported on Schedule

J, she concluded that her monthly disposable income was $149.03. The debtor filed a plan calling for payments of $144 per month for three years. Petitioner Hamilton, the chapter 13 trustee, objected to confirmation of the debtor's plan based on her failure to devote to it all of her projected disposable income as determined by the information reported on Official Form 22C. The trustee argued that the debtor should be required to pay $756 a month for five years, which payments would enable her creditors to be paid in full.

The bankruptcy court rejected the trustee's argument and confirmed the debtor's proposed monthly payments of $144 (while requiring a five-year plan). The Tenth Circuit Bankruptcy Appellate Panel affirmed. The Tenth Circuit also affirmed, holding that the mechanical approach established a presumption of projected disposable income that could be rebutted by evidence of a substantial change in the debtor's income during and after the six-month period prior to filing.

Section 1325(b) of the Bankruptcy Code forbids bankruptcy courts from confirming chapter 13 plans over the objection of a trustee or an unsecured creditor if the plan does not either pay unsecured claims in full or commit all of the debtor's projected disposable income to the plan payments. The Bankruptcy Code does not define "projected disposable income"; however, "disposable income" is defined in § 1325(b)(2). The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") changed the statutory definition of "disposable income" from "income which is received by the debtor and which is not reasonably necessary to be expended" for certain purposes, to the debtor's "current monthly income" that is not reasonably necessary to be expended for those purposes. "Current monthly income," as defined by § 101(10A), is generally based on the debtor's income during the six-month period

prior to the filing of the bankruptcy petition. Prior to BAPCPA bankruptcy courts typically determined projected disposable income by multiplying monthly net income (determined by Schedules I and J) by the plan period, but they exercised discretion to take into account clearly foreseeable changes in the debtor's financial circumstances.

Justice Alito's opinion for the Court began its analysis by examining the ordinary meaning of the word "projected." Pointing to non-bankruptcy cases and statutes, as well as uses of the term in non-legal contexts, Justice Alito observed that projections generally are not "based on the assumption that the past will necessarily repeat itself." Instead, he wrote, "[w]hile a projection takes past events into account, adjustments are often made based on other factors that may affect the final outcome." 130 S. Ct. at 2472. He further noted that, had Congress intended a purely mechanical approach to calculating projected disposable income, it could have used the word "multiplied" instead of "projected." He cited provisions of the Bankruptcy Code and other federal statutes that are expressed in that manner.

The majority opinion also relied on the pre-BAPCPA use of the forward-looking approach to determine projected disposable income. That practice was "telling," said the Court, because Congress had not clearly indicated that it intended a departure from past bankruptcy practice when it amended § 1325(b).[1] 130 S. Ct. at 2473-74. Relying on prior Supreme Court bankruptcy decisions, Justice Alito wrote that "had Congress intended for 'projected' to carry a specialized – and indeed, unusual – meaning in Chapter 13, Congress would have said so

[1] Justice Scalia argued in dissent that, given the "significant changes" BAPCPA made to § 1325(b), the majority's reliance on pre-amendment practice was "suspect." 130 S. Ct. at 2482.

expressly." *Id.* at 2474. He also identified other clauses in § 1325(b) that were said to be inconsistent with the mechanical approach.

Justice Alito said that the majority's interpretation does not make the statutory definition of disposable income superfluous because, as the Tenth Circuit observed, the calculation of disposable income, as defined by § 1325(b)(2), is the starting point in all cases. It establishes a rebuttable presumption that applies in all but those "unusual" cases in which "other known or virtually certain information about the debtor's future income or expenses" can be taken into account. 130 S. Ct. at 2475. In "most cases," however, "nothing more is required" than calculating "disposable income" as defined by § 1325(b)(2). *Id.*

The Court concluded by stating its holding: "[W]hen a bankruptcy court calculates a debtor's projected disposable income, the court may account for changes in the debtor's income or expenses that are known or virtually certain at the time of confirmation." 130 S. Ct. at 2478.

Impact of *Lanning* on Form 22C

The Subcommittees concluded that *Lanning* does not invalidate Form 22C, because the form carefully tracks the language of § 1325(b) and does not purport to determine more than the statute, as now interpreted by the Supreme Court, allows. It provides for the calculation of current monthly income, and based on the annualization of that figure, the determination of the applicable commitment period of the plan. Section 1325(b)(3) requires that determination to be based on "current monthly income, . . . multiplied by 12." Form 22C then provides for the calculation of "disposable income," as defined by § 1325(b)(2). The form does not purport to determine "projected disposable income." Instead, it leaves it up to the courts to determine how to use the information provided by the form in that calculation.

Because the Supreme Court has now held that the calculation of projected disposable income can in unusual cases include changes to income or expenses that at the time of confirmation are known or are virtually certain to occur, the Subcommittees concluded that Form 22C should be expanded to solicit information about any such changes. With respect to income, this information would include either an upward or downward adjustment of the income figure that Form 22C calculates based on the six-month prepetition average. Although the facts of *Lanning* concerned only a change in the debtor's income, the Court's holding referred as well to known or virtually certain changes in the debtor's expenses. The Subcommittees therefore decided that Form 22C should also be amended to require the reporting of upward or downward adjustments of expenses.

The proposed changes would apply only to debtors whose annualized current monthly income exceeds the applicable median family income. They are the debtors whose projected disposable income is determined by the information provided on Form 22C. While other chapter 13 debtors also must report their current monthly income on Form 22C to determine their applicable commitment period and to provide the starting point for the calculation of projected disposable income, the expenses that they may deduct from that income are reported on Schedule J (Current Expenditures of Individual Debtors). That schedule and Schedule I (Current Income of Individual Debtor(s)) require a debtor to report any increase or decrease in income and expenditures "reasonably anticipated to occur within the year following the filing of this document."

The Subcommittees recommend that Schedule 22C be amended to include a new line 61 in Part VI (which only debtors who fall above the applicable median family income must

complete). The verification in Part VII would accordingly be renumbered as line 62. The Subcommittees propose that line 61 read as follows:

61. Change in income or expenses. If any change from the income or expenses you reported in the lines above has occurred or is virtually certain to occur during your applicable commitment period, state in the space below: each line affected, the reason for the change, the date of the change, and the amount by which the income or expense reported on the affected line would be increased or decreased. For example, if the wages reported in Line 2 have increased or decreased, or are definitely scheduled to increase or decrease in the future, you would make an entry listing Line 2, the reason for the increase or decrease, the date it has occurred or will occur, and the amount of the change. You would make a similar entry for increases or decreases in expenses that are allowed to be deducted. Add a separate page with additional lines, if necessary.

Line to change	Reason for change	Date of change	Increase (+) or decrease (-)	Amount of change
				$
				$
				$

COMMITTEE NOTE

Form 22C is amended in response to the Supreme Court's decision in Hamilton v. Lanning, 130 S. Ct. 2464 (2010). Adopting a forward-looking approach, the Court there held that the calculation of a chapter 13 debtor's projected disposable income under § 1325(b) of the Code may take into account changes to income or expenses reported elsewhere on this form that, at the time of plan confirmation, have occurred or are virtually certain to occur. Those changes could result in either an increased or decreased projected disposable income.

A new line 61 is added for the reporting of those changes. Only debtors whose annualized current monthly income exceeds the applicable median family income have their projected disposable income determined exclusively by the information provided on Form 22C. Therefore they are the only debtors required to provide the information about changes to income and expenses on this form. Debtors whose annualized current monthly income falls at or below the applicable median must report on Schedules I and J any changes to income and expenses that are reasonably expected to occur within the next year.

In reporting changes to income on line 61, a debtor must indicate whether the amounts reported in Part I of the form – which are monthly averages of various types of income received during the six months prior to the filing of the bankruptcy case – have already changed or are virtually certain to change during the debtor's applicable commitment period (generally five years for above-median-family-income debtors). For each change, the debtor must indicate the line of this form on which the changed amount was reported, the reason for the change, the date of its occurrence, whether the change was an increase or decrease of income, and the amount of the change.

In reporting changes to expenses on line 61, a debtor must list changes to the debtor's actual expenditures reported in Part IV that are virtually certain to occur during the applicable commitment period. With respect to the deductible amounts reported in Part IV that are determined by the IRS national and local standards, only changed amounts that result from changed circumstances in the debtor's life – such as the addition of a family member or the surrender of a vehicle – should be reported. For each change in expenses, the same information required to be provided for income changes must be reported.

Because of the addition of new line 61, the line for the debtor's verification is renumbered as 62.

Issues for the Committee's Consideration

The recommended amendment of Form 22C is based on the resolution of several issues regarding the implementation of the *Lanning* decision for which the decision itself does not provide clear answers. Some of these issues were raised by Subcommittee members after the joint conference call with the suggestion that they be considered by the Advisory Committee at the fall meeting. The issues relate to both the income and expense components of projected disposable income, the time period during which a virtually certain change must occur, and the impact, if any, of the proposed amendment of Form 22C on Schedules I and J.

In particular, the Committee may want to consider whether all debtors, regardless of income level, should be required/allowed to report on Form 22C known or virtually certain

changes to income, since the determination of projected disposable income begins with the backward-looking current monthly income for all chapter 13 debtors. Second, because above-median-income debtors must base their expense deductions largely on IRS standards regardless of their actual expenses, the Committee might consider what types of expense changes are properly considered under *Lanning*.

Third, the Court in *Lanning* refers to "known or virtually certain" changes to income and expenses at the time of confirmation, but it does not explain how far into the future virtually certain changes can occur that are to be taken into consideration. For example, if a debtor knows that in the third year of a five-year plan a child will leave home or no longer need child care, is that change one that should be considered in computing projected disposable income at the time of confirmation, or is it a change that, when it occurs, provides a basis for formal or informal modification of the plan? Schedules I and J currently inquire about changes to income and expenses that are reasonably anticipated to occur within the next year. The Committee therefore may want to consider whether the inquiry about virtually-certain-to-occur changes should be limited to one year, the applicable commitment period, or a less definite period, such as the near or immediate future.

Finally, depending on the resolution of the first and last issues, the Committee might want to consider whether Schedules I and J should be amended to provide for the reporting by at-or-below-median-income debtors of changes to income and expenses to the same extent as Schedule 22C provides for above-median-income debtors.

TAB

5-B

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEES ON CONSUMER ISSUES AND ON FORMS

RE: POSSIBLE RESPONSES TO *SCHWAB v. REILLY*

DATE: SEPTEMBER 7, 2010

In Schwab v. Reilly, 130 S. Ct. 2652 (June 17, 2010), the Supreme Court held that an objection under § 522(*l*) of the Bankruptcy Code and Fed. R. Bankr. P. 4003 is not required in order for a trustee to challenge the debtor's valuation of exempt property and thereby permit the estate to recover any value exceeding the claimed exemption amount. During a joint conference call on August 3, the Subcommittees carefully considered the impact of the *Schwab* on Schedule C (Property Claimed as Exempt). Thereafter, discussions continued by email about what, if any, changes the Subcommittees should recommend to the Advisory Committee. Because no clear consensus emerged from those discussions, the Subcommittees are not bringing a recommendation to the Advisory Committee at this time. Instead, this memorandum discusses the *Schwab* opinion, summarizes the various positions that have been expressed by members of the Subcommittees regarding the amendment of Schedule C, and provides a framework for a discussion of the issue by the full Committee at the fall meeting.

The *Schwab* Decision

The debtor in the case, Nadejda Reilly, operated a catering business. When she commenced her chapter 7 bankruptcy case, she listed as an asset on Schedule B business equipment valued at $10,718. On her Schedule C, she claimed an exemption for the equipment in the same dollar amount, using her entire "tools of the trade" exemption from § 522(d)(6) and

the majority of the "wildcard" exemption permitted by § 522(d)(5). Schwab, the bankruptcy trustee, did not object to the exemption of the equipment within the 30-day period allowed by Rule 4003(b) for filing objections to a debtor's claimed exemptions,[1] despite having obtained an appraisal prior to the close of the objection period that indicated the equipment might have a value as high as $17,200. Instead, the trustee later moved to sell the equipment, pay the debtor the monetary value of her claimed exemptions, and distribute the rest of the proceeds to her creditors. The debtor opposed this motion by arguing that her Schedule C indicated an intent to exempt the full value of the equipment and the trustee had failed to object to the exemption. Thus, she claimed, the property in its entirety was now exempt.

The bankruptcy court agreed with the debtor and denied the trustee's motion. The trustee then appealed to the district court and to the Third Circuit, with both courts affirming the bankruptcy court's decision. The Supreme Court granted *certiorari* to resolve a split among the circuits over whether a party must file a timely objection to an exemption in order to challenge the debtor's valuation of the property claimed as exempt.

Section 522(*l*) requires a debtor to "file a list of property that the debtor claims as exempt" and states that "[u]nless a party in interest objects, the property claimed as exempt on such list is exempt." Reilly argued that, by listing the current market value of the business equipment and the value of the claimed exemptions in the same amount on her Schedule C, she notified the trustee that she intended to fully exempt the property, regardless of its value. Thus she contended that the trustee was required to object to her claimed exemption in order to

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[1] Rule 4003(b) generally requires a party in interest to object to a claimed exemption within 30 days after the meeting of creditors is concluded.

challenge her valuation of the property. The trustee argued that he had no duty to object to the debtor's exemptions, since the type and amount of the exemptions she claimed were within the statutory limits of the Bankruptcy Code. The Supreme Court agreed with the trustee's position in a 6-3 decision.

Justice Thomas, writing for the Court, concluded that the language of § 522(d) limits the "property claimed as exempt" – the target of an objection under § 522(*l*) – to "the debtor's interest" in the property. Subsection (*l*) does not require a trustee or other party to object to the debtor's statement of the value of the property itself. Instead, the Court held, a trustee or other party must object to a claimed exemption only if the description of the property claimed as exempt, the statutory exemption provision cited, or the "value of the claimed exemption" is inconsistent with § 522. In this case, the trustee had no obligation to object in order to preserve the estate's right to retain any excess value in the cooking equipment, because Reilly "accurately describe[d] an asset subject to an exempt interest and . . . declare[d] the 'value of [the] claimed exemption' as a dollar amount within the range the Code allows."[2] 130 S. Ct. at 2662.

Justice Thomas stated that the Court's conclusion does not make the valuation information on Schedule C unnecessary, as it allows the trustee to compare the stated market value of the property with the claimed exemption amount. By doing so, the trustee can determine whether there may be some value in the asset available to the estate or whether there is property whose full value may not be available for an exemption due to the existence of an

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[2] The Court distinguished Taylor v. Freeland & Kronz, 503 U. S. 638 (1992), as being a case in which the trustee had a duty to object in order to challenge an exemption listed as "unknown," because that value could exceed the statutory limits. Here, however, the Court said that Reilly's claimed exemptions were within the statutory limits.

unavoidable lien. The Court further noted that historically debtors have claimed exemptions only by listing the value of the claimed exempt interest and only since 1991 have they been required by Schedule C to state the estimated market value of the property itself. That form change, he stated, was not occasioned by any amendment of the relevant provisions of § 522.

At the end of the majority opinion, the Court explained how a debtor can indicate the intent to exempt "the full market value of the asset or the asset itself" in a manner that puts the trustee on notice and "will encourage the trustee to object promptly to the exemption if he wishes to challenge it and preserve for the estate any value in the asset beyond relevant statutory limits." Justice Thomas wrote that the debtor can list as the exempt value of the asset on Schedule C "'full fair market value (FMV)' or '100% of FMV.'"[3] Then, the Court explained, "[i]f the trustee fails to object, or if the trustee objects and the objection is overruled, the debtor will be entitled to exclude the full value of the asset." 130 S. Ct. at 2668.

Justice Ginsburg dissented in an opinion joined by Chief Justice Roberts and Justice Breyer. In addition to accepting the debtor's argument that, by exempting an amount equal to the stated value of property, the debtor had put the trustee and other parties on notice that she was claiming the entire property as exempt, Justice Ginsburg also noted a practical problem created by the majority opinion: If trustees are not required to object under Rule 4003 in order to challenge the valuation of property claimed as exempt, they will be able to sell the property at any point before the end of the bankruptcy case. The dissent reasoned that a bankruptcy case

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[3] The Court referred to exempting the full fair market value of the asset. It seems, however, that the reference should be to the full fair market value of the debtor's interest in the property, in order to account for the interests of co-owners and the existence of unavoidable liens.

could last several years and during that time the debtor would be unable to make future plans regarding the property with any confidence that she would remain the owner at the conclusion of the case.

Justice Ginsburg also questioned the majority's suggested method for claiming the full value of an asset as exempt. She pointed out that the instructions to Schedule C direct a debtor "to 'state the *dollar value* of the claimed exemption in the space provided.'" She asked, "How are [unrepresented chapter 7 debtors] to know they must ignore Schedule C's instructions and employ the 'warning flag' described today by the Court . . . ?" 130 S. Ct. at 2677.

The Subcommittees' Consideration of the Impact of *Schwab* on Schedule C

The current version of Schedule C requires a debtor, for each item of property being claimed as exempt, to provide the following information: a description of the property, the law providing each exemption, the value of the claimed exemption, and the current value of the property without deducting any exemptions. According to *Schwab*, the first three items of information are necessary for determining whether an exemption is properly claimed, and thus they provide the basis for an objection under § 522(*l*), which is governed by the time limits of Rule 4003. The final item of information – the value of the property – is not necessary for exemption purposes, but it provides useful information by relieving a reader of Schedule C from having to refer back to Schedule A or B in order to compare the claimed exemption amount to the overall value of the property. The Subcommittees concluded that existing Schedule C is not rendered invalid in any respect by the Court's decision in *Schwab* and that no amendment of Schedule C is mandated by the decision.

The Subcommittees proceeded to consider whether, given the result in *Schwab*, it would

be useful for Schedule C to require more specific information about the claimed exemptions or to clarify that a debtor may claim 100% of her interest in an asset as exempt. Members of the Subcommittees considered three possible responses to *Schwab*, and each position was supported by some of the members. None of the options, however, garnered the support of a majority of the two Subcommittees.

Alternative A

This option would recommend that no change be made to Schedule C. Thus it would continue to ask the debtor to provide the following information about each asset claimed as exempt: **Description of Property**, **Specify Law Providing Each Exemption**, **Value of Claimed Exemption**, and **Current Value of Property Without Deducting Exemption**. After *Schwab,* so long as the debtor listed in Schedule C a type of property and a value of the exemption consistent with § 522 – and cited an appropriate exemption provision – a trustee or other interested person would not have to object within the Rule 4003(b) period in order to later challenge valuation and seek to obtain for the estate any value exceeding the exemption amount listed on Schedule C.

Some Subcommittee members expressed a preference for this option, at least for now. Others expressed some concerns about making any changes now to Schedule C, although they also expressed a preference for Alternative C over Alternative B if changes are made. Supporters of Alternative A noted the value of continuing to use a form that the Supreme Court has now authoritatively interpreted, as opposed to creating a new form that may raise its own issues of interpretation. They also expressed concern that the other two options are likely to increase exemption litigation unnecessarily. To the extent that there are concerns about a lack of

finality regarding ownership of property claimed as exempt, some of these members suggested a rule change to place a time limit on the trustee's right to challenge valuation or to determine whether to administer or abandon property.

Members of the Subcommittees who expressed opposition to Alternative A focused primarily on the part of the *Schwab* opinion that explains that a debtor who desires to exempt the full market value of an asset or the asset itself may do so "by listing the exempt value as 'full fair market value (FMV)' or '100% of FMV.'" Because the current Schedule C does not indicate that such a response is an appropriate reply to the question about "value of claimed exemption," some Subcommittee members expressed concern that only knowledgeable debtors, or more likely those represented by knowledgeable attorneys, will take advantage of this option that would require the trustee to object within the Rule 4003(b) time period in order to retain any value for the estate. Other debtors, however, may continue to believe that they must specify a dollar amount, which if it falls within the statutory exemption limit, will not provide a "warning flag" that requires a timely objection. To avoid these uneven results, as well as to facilitate the claiming of uncapped exemptions, Subcommittee members opposing Alternative A prefer that Schedule C explicitly solicit information about the extent of the claimed exemption in relation to the fair market value of the debtor's interest in the property.

One Subcommittee member who supports Alternative A noted that the instructions could be amended to state that a debtor can put "100% of FMV" in column 3 when the claimed exemption is unlimited or can be claimed consistently with Rule 9011.

Alternative B

Under this option, Schedule C would be amended to replace the column for **Value of Claimed Exemption** with **Extent of Claimed Exemption**. The other three columns would remain as in the current Schedule C. Under Extent of Claimed Exemption, the debtor would be instructed to check only one of the following boxes: ❑ **Debtor's interest in the property, limited to $_____**, or ❑ **Debtor's entire interest in the property, not limited in amount**.[4] If a debtor checked the second box, the trustee would have to object within the Rule 4003(b) period in order to seek to recover any value in the property for the estate. If the period expired without an objection, under § 522(*l*) the entire property would be exempt, even if its value exceeded the allowed exemption amount.

Some members of the Subcommittees expressed a preference for this alternative, and others expressed support for some change to Schedule C that would allow the debtor to indicate an intent to exempt her entire interest in certain property. Supporters of Alternative B stated that this option accords with the "roadmap" provided by the *Schwab* majority for claiming an exemption for the entire value of property, rather than just a stated dollar amount. Any ambiguity about the debtor's intent would be therefore be eliminated, and the trustee would be put on notice of the need to file a timely objection if the trustee believed the value of the property exceeded the allowed exemption amount. If no objection were made, the debtor would know that she could retain her entire interest in the property. In response to concerns about possible debtor abuse of this option, one Subcommittee member suggested that the Committee Note (or perhaps the form's instructions) could indicate that a debtor should check the second

[4] Alternatively, the language "not limited in amount" could be deleted.

box only if claiming an unlimited exemption or doing so is consistent with Rule 9011.

Subcommittee members opposing this alternative expressed three concerns. First is the concern that debtors will frequently choose the second option, even for capped exemptions, because they believe their interest in the property is worth no more than the exemption amount (or they hope that no one will object). Trustees will then have to object within the Rule 4003(b) time period to preserve their ability to later challenge valuation. As a result, exemption litigation will increase. Second, finality regarding the property claimed as exempt will not necessarily be achieved. Finality comes only if no objection is made; if the trustee objects to the claimed exemption of the debtor's entire interest, that issue will have to be subsequently resolved either by a court decision or a settlement between the parties. Finally, some members expressed concern that eliminating the designation of the value of the claimed exemption will complicate calculation of exemption amounts available for other assets (in the case of exemptions that can spill over to other property or apply to multiple items of property).

Alternative C

The final option that was discussed would retain the four columns in the current Schedule C and add a fifth column labeled **"Specify Whether Debtor's Entire Interest in Property is Claimed as Exempt."** The debtor would be instructed to mark "yes" or "no" for each entry. This version of the schedule would require a timely objection whenever a debtor marked "yes" for a capped exemption with respect to property that the trustee believed might exceed the value of the exemption. If no objection were made within the Rule 4003(b) period, the debtor's entire interest would be exempt.

Subcommittee members who advocated this option stated that, like Alternative B, it is

consistent with *Schwab*'s instructions for how to claim the debtor's entire interest in an asset as exempt, thus triggering the trustee's need to object to retain any value for the estate. Unlike Alternative B, it also requires the debtor to specify an exemption amount, thereby facilitating calculation of the remaining amount of a wildcard exemption or not-fully-used homestead exemption.

Members who oppose any change to Schedule C had the same objections to this alternative as they had to Alternative B. In addition, one supporter of Alternative B expressed concern that the Alternative C version of the form creates ambiguity by permitting a debtor to state that her entire interest is exempt while also requiring her to specify an exemption amount. That combination, in the case of a capped exemption, might present uncertainty about which statement controls. That uncertainty, it was argued, could be especially problematic in the case of homestead or wildcard exemptions, because the trustee would not know whether to calculate the remaining exemption available based on the stated exemption amount or the value of the debtor's interest in the property.

Proposal for Committee Discussion

Because the Subcommittees were unable to reach agreement on a recommendation to the Committee, they seek to have a full discussion at the fall meeting of whether any form or rule amendment should be proposed in response to *Schwab*. The discussion might proceed by considering the following issues in the order indicated:

- Is there a need to amend Schedule C to allow a debtor to clearly indicate an intent to exempt the debtor's entire interest in an asset?
- If not, should the instructions to Schedule C be amended to explain the method that the Supreme Court identified in *Schwab* for exempting the full value of a debtor's interest in an asset?

- If no change is made to Schedule C, should a time limit be imposed on the trustee's decision to administer or abandon property that may be only partially exempt or to challenge a debtor's valuation of property claimed as exempt?

- If Schedule C should be amended to allow a debtor to indicate that 100% of the debtor's interest in an asset is being claimed as exempt, how should the form be worded to solicit that information?

- If Schedule C is amended, is there a way to discourage excessive exemption claims and unnecessary objections?

The decision about the best way to respond to *Schwab* depends in part on one's assessment of the importance of early finality regarding the status of property claimed as exempt, and how that finality is best achieved, as well as one's view of the likely behavior of debtors and trustees. In assessing the options, however, it is important to keep in mind the relatively limited number of cases in which this issue is likely to be important. In most individual chapter 7 cases, all unencumbered assets are exempt, and the trustee is not going to challenge the debtor's claimed exemptions. Perhaps whichever option is ultimately adopted, after an initial flurry of some excessive exemption claims and unnecessary objections, exemption practice may settle back down because no one will want to incur the costs of unnecessary litigation. (Indeed, this settling may occur before any change to Schedule C works it way through the rulemaking process.)

Engaging in a discussion at the fall meeting, rather than voting on a recommendation, will not cause a delay in implementing any changes. Action, if deemed appropriate, can be recommended at the spring meeting and submitted to the June Standing Committee meeting for approval of its publication for comment in August 2011. Delaying a decision until the spring meeting will also provide the Advisory Committee with the opportunity to determine how parties

have been responding to *Schwab* and, if the Committee desires, to seek input from groups of trustees and consumer bankruptcy attorneys.

TAB

6-A

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON FORMS

RE: PROPOSED AMENDMENT OF FORM 1

DATE: SEPTEMBER 2, 2010

At its June 2010 meeting, the Standing Committee approved and transmitted to the Judicial Conference proposed new Rule 1004.2 (Petition in Chapter 15 Cases). Among other provisions, subdivision (a) requires a chapter 15 petition to "state the country where the debtor has the center of its main interests . . . [and] also identify each country in which a foreign proceeding by, regarding, or against the debtor is pending." This rule, if finally approved, will go into effect on December 1, 2011.

A footnote to the proposed rule, as submitted to the Standing Committee, states as follows: "In addition to the adoption of Rule 1004.2, Official Form 1 would be amended to include a line on the form where the foreign representative indicates the country of the debtor's center of main interests. The Official Form would also be amended to include a line or lines on which the filer would set out the countries in which cases are pending."

The Subcommittee discussed the wording and placement of an amendment of the petition to implement Rule 1004.2 during its July 22 conference call. **It recommends that the Advisory Committee approve the amendments to Form 1 that are highlighted in the attached mock-up of the form.** The proposed amendments consist of the following changes:

- A new box is added on the first page for chapter 15 debtors. It requires the listing of the country of the debtor's center of main interests and each country in which a foreign proceeding by, regarding, or against the debtor is pending.
- The new box is placed in the space previously occupied by the box for "Nature of Debts." The latter box is moved to a previously blank space immediately under "Type of Debtor."
- A couple of minor stylistic changes are made to the first page of the form.

Because the amendment of Form 1 would be a conforming change, it would not have to be published for comment. It would, however, need to be approved by the Judicial Conference at its September 2011 meeting in order for the form change to take effect at the same time as the rule amendment. If the Advisory Committee approves the amendment at the fall (or the spring) meeting, it will be on track for a timely promulgation.[1]

[1] It should be noted that any change to Form 1 the Advisory Committee recommends to implement Rule 1004.2(a) will likely be a temporary design. Eventually, the Forms Modernization Project will recommend a newly designed chapter 15 petition (whether as a separate form or combined with a petition under one or more other chapters).

B1 (Official Form 1) (12/11) (9.10 committee draft)

United States Bankruptcy Court **_____DISTRICT OF _____**	**Voluntary Petition**
Name of Debtor (if individual, enter Last, First, Middle):	Name of Joint Debtor (Spouse) (Last, First, Middle):
All Other Names used by the Debtor in the last 8 years (include married, maiden, and trade names):	All Other Names used by the Joint Debtor in the last 8 years (include married, maiden, and trade names):
Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN)/Complete EIN (if more than one, state all):	Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN)/Complete EIN (if more than one, state all):
Street Address of Debtor (No. and Street, City, and State): ZIP CODE	Street Address of Joint Debtor (No. and Street, City, and State): ZIP CODE
County of Residence or of the Principal Place of Business:	County of Residence or of the Principal Place of Business:
Mailing Address of Debtor (if different from street address): ZIP CODE	Mailing Address of Joint Debtor (if different from street address): ZIP CODE
Location of Principal Assets of Business Debtor (if different from street address above): ZIP CODE	

Type of Debtor (Form of Organization) (Check **one** box.)	**Nature of Business** (Check **one** box.)	**Chapter of Bankruptcy Code Under Which the Petition is Filed** (Check **one** box.)
☐ Individual (includes Joint Debtors) *See Exhibit D on page 2 of this form.* ☐ Corporation (includes LLC and LLP) ☐ Par tnership ☐ Other (If debtor is not one of the above entities, check this box and state type of entity below.)	☐ Health Care Business ☐ Single Asset Real Estate as defined in 11 U.S.C. § 101(51B) ☐ Railr oad ☐ Stockbr oker ☐ Commodity Broker ☐ Clear ing Bank ☐ Other	☐ Chapter 7 ☐ Chapter 9 ☐ Chapter 11 ☐ Chapter 12 ☐ Chapter 13 ☐ Chapter 15 Petition for Recognition of a Foreign Main Proceeding ☐ Chapter 15 Petition for Recognition of a Foreign Nonmain Proceeding

Nature of Debts (Check **one** box.)	**Tax-Exempt Entity** (Check box, if applicable.)	**Chapter 15 Debtors**
☐ Debts are primarily consumer debts, defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose." ☐ Debts are primarily business debts.	☐ Debtor is a tax-exempt organization under title 26 of the United States Code (the Internal Revenue Code).	Country of debtor's center of main interests: _____ Each country in which a foreign proceeding by, regarding, or against debtor is pending: _____

Filing Fee (Check one box.)	**Chapter 11 Debtors**
☐ Full Filing Fee attached. ☐ Filing Fee to be paid in installments (applicable to individuals only). Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form 3A. ☐ Filing Fee waiver requested (applicable to chapter 7 individuals only). Must attach signed application for the court's consideration. See Official Form 3B.	**Check one box:** ☐ Debtor is a small business debtor as defined in 11 U.S.C. § 101(51D). ☐ Debtor is not a small business debtor as defined in 11 U.S.C. § 101(51D). **Check if:** ☐ Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than $2,190,000. - **Check all applicable boxes:** ☐ A plan is being filed with this petition. ☐ Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).

Statistical/Administrative Information — **THIS SPACE IS FOR COURT USE ONLY**

☐ Debtor estimates that funds will be available for distribution to unsecured creditors.
☐ Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.

Estimated Number of Creditors									
☐ 1-49	☐ 50-99	☐ 100-199	☐ 200-999	☐ 1,000-5,000	☐ 5,001-10,000	☐ 10,001-25,000	☐ 25,001-50,000	☐ 50,001-100,000	☐ Over 100,000

Estimated Assets									
☐ $0 to $50,000	☐ $50,001 to $100,000	☐ $100,001 to $500,000	☐ $500,001 to $1 million	☐ $1,000,001 to $10 million	☐ $10,000,001 to $50 million	☐ $50,000,001 to $100 million	☐ $100,000,001 to $500 million	☐ $500,000,001 to $1 billion	☐ More than $1 billion

Estimated Liabilities									
☐ $0 to $50,000	☐ $50,001 to $100,000	☐ $100,001 to $500,000	☐ $500,001 to $1 million	☐ $1,000,001 to $10 million	☐ $10,000,001 to $50 million	☐ $50,000,001 to $100 million	☐ $100,000,001 to $500 million	☐ $500,000,001 to $1 billion	☐ More than $1 billion

Voluntary Petition *(This page must be completed and filed in every case.)*	Name of Debtor(s):	
All Prior Bankruptcy Cases Filed Within Last 8 Years (If more than two, attach additional sheet.)		
Location Where Filed:	Case Number:	Date Filed:
Location Where Filed:	Case Number:	Date Filed:
Pending Bankruptcy Case Filed by any Spouse, Partner, or Affiliate of this Debtor (If more than one, attach additional sheet.)		
Name of Debtor:	Case Number:	Date Filed:
District:	Relationship:	Judge:

Exhibit A

(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11.)

☐ Exhibit A is attached and made a part of this petition.

Exhibit B

(To be completed if debtor is an individual whose debts are primarily consumer debts.)

I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter. I further certify that I have delivered to the debtor the notice required by 11 U.S.C. § 342(b).

X _____

Signature of Attorney for Debtor(s) (Date)

Exhibit C

Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety?

☐ Yes, and Exhibit C is attached and made a part of this petition.

☐ No.

Exhibit D

(To be completed by every individual debtor. If a joint petition is filed, each spouse must complete and attach a separate Exhibit D.)

☐ Exhibit D completed and signed by the debtor is attached and made a part of this petition.

If this is a joint petition:

☐ Exhibit D also completed and signed by the joint debtor is attached and made a part of this petition.

Information Regarding the Debtor - Venue

(Check any applicable box.)

☐ Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.

☐ There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.

☐ Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the United States in this District, or has no principal place of business or assets in the United States but is a defendant in an action or proceeding [in a federal or state court] in this District, or the interests of the parties will be served in regard to the relief sought in this District.

Certification by a Debtor Who Resides as a Tenant of Residential Property

(Check all applicable boxes.)

☐ Landlord has a judgment against the debtor for possession of debtor's residence. (If box checked, complete the following.)

(_____

Name of landlord that obtained judgment)

(_____

Address of landlord)

☐ Debtor claims that under applicable nonbankruptcy law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after the judgment for possession was entered, and

☐ Debtor has included with this petition the deposit with the court of any rent that would become due during the 30-day period after the filing of the petition.

☐ Debtor certifies that he/she has served the Landlord with this certification. (11 U.S.C. § 362(l)).

Voluntary Petition
(This page must be completed and filed in every case.)

Name of Debtor(s):

Signatures

Signature(s) of Debtor(s) (Individual/Joint)

I declare under penalty of perjury that the information provided in this petition is true and correct.
[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.
[If no attorney represents me and no bankruptcy petition preparer signs the petition] I have obtained and read the notice required by 11 U.S.C. § 342(b).

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X _____
Signature of Debtor

X _____
Signature of Joint Debtor

_____
Telephone Number (if not represented by attorney)

_____
Date

Signature of a Foreign Representative

I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition.

(Check only **one** box.)

☐ I request relief in accordance with chapter 15 of title 11, United States Code. Certified copies of the documents required by 11 U.S.C. § 1515 are attached.

☐ Pursuant to 11 U.S.C. § 1511, I request relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached.

X _____
(Signature of Foreign Representative)

_____
(Printed Name of Foreign Representative)

_____
Date

Signature of Attorney*

X _____
Signature of Attorney for Debtor(s)

_____
Printed Name of Attorney for Debtor(s)

_____
Firm Name

_____
Address

_____

_____

_____
Telephone Number

_____
Date

*In a case in which § 707(b)(4)(D) applies, this signature also constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules is incorrect.

Signature of Debtor (Corporation/Partnership)

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.

The debtor requests the relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X _____
Signature of Authorized Individual

_____
Printed Name of Authorized Individual

_____
Title of Authorized Individual

_____
Date

Signature of Non-Attorney Bankruptcy Petition Preparer

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section. Official Form 19 is attached.

_____
Printed Name and title, if any, of Bankruptcy Petition Preparer

_____
Social-Security number (If the bankruptcy petition preparer is not an individual, state the Social-Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer.) (Required by 11 U.S.C. § 110.)

_____
Address

_____

X _____

_____
Date

Signature of bankruptcy petition preparer or officer, principal, responsible person, or partner whose Social-Security number is provided above.

Names and Social-Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual.

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.

COMMITTEE NOTE

The form is amended to implement Rule 1004.2. Subdivision (a) of that rule requires a chapter 15 petition to state the country of the debtor's center of main interests and to identify each country in which a foreign proceeding by, regarding, or against the debtor is pending. A box is added to the first page of the form for this purpose. Minor stylistic changes are also made.

TAB

6-B

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON FORMS

RE: PROPOSED CHANGES TO FORM 9

DATE: SEPTEMBER 2, 2010

Upon recommendation of the Advisory Committee, the Standing Committee in July approved and sent to the Judicial Conference amendments to Forms 9A, 9C, and 9I (Notice of Meeting of Creditors & Deadlines) to conform the "Deadlines" section on the front of the forms and the "Discharge of Debts" section on the back to upcoming amendments to Rules 4004 and 7001. Those rule amendments, which are scheduled to take effect on December 1, 2010, allow certain objections to discharge – those under §§ 727(a)(8), (a)(9), and 1328(f) – to be raised by motion rather than by the commencement of an adversary proceeding, and therefore the statements in the existing forms about the need to file a complaint to make any objection to discharge are inconsistent with the soon-to-be-amended rules. The Standing Committee approved the amendments to the forms on an expedited basis, and they are likely to be approved by the Judicial Conference in September, thus allowing them to take effect simultaneously with the amendments to Rules 4004 and 7001.

This memorandum addresses additional changes to the various versions of Form 9 that the Subcommittee considered but did not think were sufficiently urgent to be included in the expedited amendment package discussed above. These suggestions include an amendment to reflect the proposed amendment of Rule 2003(e) (effective December 2011) and some minor stylistic suggestions. **The Subcommittee recommends that the changes indicated on the**

attached Form 9C be approved for all versions of the form (Form 9A - 9I). Because they are conforming and stylistic amendments, the Subcommittee recommends that the Standing Committee be asked to approve them without publication.

Amendments to Conform to Amended Rule 2003(e)

Rule 2003(e) currently states that a meeting of creditors "may be adjourned . . . by announcement at the meeting of the adjourned date and time without further written notice." The Advisory Committee recommended, and the Standing Committee approved at its June 2010 meeting, an amendment to Rule 2003(e) that would require the presiding official at a meeting of creditors to file a statement specifying the date and time to which such a meeting is adjourned. If approved by the Judicial Conference and the Supreme Court (and not rejected by Congress), the amended rule will go into effect on December 1, 2011.

During the Subcommittee's earlier consideration of the amendments to Form 9, it noted that all of the versions of the form reflect the current wording of Rule 2003(e). On the back of each form, the explanation of "Meeting of Creditors" states that the "meeting may be continued and concluded at a later date without further notice." Assuming that the proposed amendment to Rule 2003(e) goes into effect in 2011, the forms must be amended to reflect that change. The Subcommittee recommends that the explanation be revised to state that the "meeting may be continued and concluded at a later date specified in a notice filed with the court." Approval of this amendment by the Standing Committee and Judicial Conference without publication will allow it to take effect on December 1, 2011, along with the rule amendment.

Proposed Stylistic Changes

The Subcommittee also considered some stylistic changes to Forms 9A - 9I. It recommends that the most straightforward of them be approved along with the amendment to conform to Rule 2003(e) and that the rest be considered as part of the Forms Modernization Project. The amendments that the Subcommittee recommends for approval now – which are highlighted on the attached Form 9C – are as follows:

- The heading just before the box for the debtor's name and address – "See Reverse Side for Important Explanations" – is placed in bold to call greater attention to it.
- The word "rights" is spelled with a lower-case "r" throughout the forms.
- A comma is inserted in the explanation of "Claims."

B9A (Official Form 9A) (Chapter 7 Individual or Joint Debtor No Asset Case) (12/11) (9.10 committee draft)

UNITED STATES BANKRUPTCY COURT_____**District of**_____

Notice of
Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines

[A chapter 7 bankruptcy case concerning the debtor(s) listed below was filed on _____(date).]
or [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter_____on _____(date) and was converted to a case under chapter 7 on_____(date).]

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your Rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

See Reverse Side for Important Explanations

Debtor(s) (name(s) and address):	Case Number: Last four digits of Social-Security or Individual Taxpayer-ID (ITIN) No(s)./Complete EIN:
All other names used by the Debtor(s) in the last 8 years (include married, maiden, and trade names):	Bankruptcy Trustee (name and address):
Attorney for Debtor(s) (name and address): Telephone number:	Telephone number:

Meeting of Creditors

Date: / / Time: ( ) A. M. ( ) P. M. Location:

Presumption of Abuse under 11 U.S.C. § 707(b)

See "Presumption of Abuse" on the reverse side.

Depending on the documents filed with the petition, one of the following statements will appear.

The presumption of abuse does not arise.

Or

The presumption of abuse arises.

Or

Insufficient information has been filed to date to permit the clerk to make any determination concerning the presumption of abuse. If more complete information, when filed, shows that the presumption has arisen, creditors will be notified.

Deadlines:

Papers must be *received* by the bankruptcy clerk's office by the following deadlines:

Deadline to Object to Debtor's Discharge or to Challenge Dischargeability of Certain Debts:

Deadline to Object to Exemptions:

Thirty (30) days after the *conclusion* of the meeting of creditors.

Creditors May Not Take Certain Actions:

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

Please Do Not File A Proof of Claim Unless You Receive a Notice To Do So.

Creditor with a Foreign Address:

A creditor to whom this notice is sent at a foreign address should read the information under "Do Not File a Proof of Claim at This Time" on the reverse side.

Address of the Bankruptcy Clerk's Office: Telephone number:	**For the Court:** Clerk of the Bankruptcy Court:
Hours Open:	Date:

Filing of Chapter 7 Bankruptcy Case	A bankruptcy case under Chapter 7 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.
Presumption of Abuse	If the presumption of abuse arises, creditors may have the right to file a motion to dismiss the case under § 707(b) of the Bankruptcy Code. The debtor may rebut the presumption by showing special circumstances.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. *The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date ~~without further notice~~ specified in a notice filed with the court.
Do Not File a Proof of Claim at This Time	There does not appear to be any property available to the trustee to pay creditors. *You therefore should not file a proof of claim at this time.* If it later appears that assets are available to pay creditors, you will be sent another notice telling you that you may file a proof of claim, and telling you the deadline for filing your proof of claim. If this notice is mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.
Discharge of Debts	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that the debtor is not entitled to receive a discharge under Bankruptcy Code § 727(a) *or* that a debt owed to you is not dischargeable under Bankruptcy Code § 523(a)(2), (4), or (6), you must file a complaint -- or a motion if you assert the discharge should be denied under § 727(a)(8) or (a)(9) -- in the bankruptcy clerk's office by the "Deadline to Object to Debtor's Discharge or to Challenge the Dischargeability of Certain Debts" listed on the front of this form. The bankruptcy clerk's office must receive the complaint or motion and any required filing fee by that deadline.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objections by the "Deadline to Object to Exemptions" listed on the front side.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.

Refer To Other Side For Important Deadlines and Notices

UNITED STATES BANKRUPTCY COURT_____**District of**_____

Notice of
Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines

[A chapter 7 bankruptcy case concerning the debtor(s) listed below was filed on _____(date).]
or [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter_____on _____(date) and was converted to a case under chapter 7 on_____(date).]

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your Rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

See Reverse Side for Important Explanations

Debtor(s) (name(s) and address):	Case Number: Last four digits of Social-Security or Individual Taxpayer-ID (ITIN) No(s)./Complete EIN:
All other names used by the debtor(s) in the last 8 years (include trade names): Attorney for Debtor(s) (name and address): Telephone number:	Bankruptcy Trustee (name and address): Telephone number:

Meeting of Creditors

Date: / / Time: ( ) A. M. ( ) P. M. Location:

Creditors May Not Take Certain Actions:

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

Please Do Not File A Proof of Claim Unless You Receive a Notice To Do So.

Creditor with a Foreign Address:

A creditor to whom this notice is sent at a foreign address should read the information under "Do Not File a Proof of Claim at This Time" on the reverse side.

Address of the Bankruptcy Clerk's Office: Telephone number:	**For the Court:** Clerk of the Bankruptcy Court:
Hours Open:	Date:

Filing of Chapter 7 Bankruptcy Case	A bankruptcy case under Chapter 7 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; and starting or continuing lawsuits or foreclosures. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. *The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date ~~without further notice~~ specified in a notice filed with the court.
Do Not File a Proof of Claim at This Time	There does not appear to be any property available to the trustee to pay creditors. *You therefore should not file a proof of claim at this time.* If it later appears that assets are available to pay creditors, you will be sent another notice telling you that you may file a proof of claim, and telling you the deadline for filing your proof of claim. If this notice is mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.

Refer To Other Side For Important Deadlines and Notices

B9C (Official Form 9C) (Chapter 7 Individual or Joint Debtor Asset Case) (12/11) (9.10 committee draft)

UNITED STATES BANKRUPTCY COURT_____**District of**_____

Notice of
Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines

[A chapter 7 bankruptcy case concerning the debtor(s) listed below was filed on _____(date).]
or [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter_____on _____(date) and was converted to a case under chapter 7 on_____(date).]

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

See Reverse Side for Important Explanations

Debtor(s) (name(s) and address):	Case Number: Last four digits of Social-Security or Individual Taxpayer-ID (ITIN) No(s)./Complete EIN:
All other names used by the Debtor(s) in the last 8 years (include married, maiden, and trade names): Attorney for Debtor(s) (name and address): Telephone number:	Bankruptcy Trustee (name and address): Telephone number:

Meeting of Creditors

Date: / / Time: ( ) A. M. ( ) P. M. Location:

Presumption of Abuse under 11 U.S.C. § 707(b)

See "Presumption of Abuse" on the reverse side.

Depending on the documents filed with the petition, one of the following statements will appear.

The presumption of abuse does not arise.

Or

The presumption of abuse arises.

Or

Insufficient information has been filed to date to permit the clerk to make any determination concerning the presumption of abuse. If more complete information, when filed, shows that the presumption has arisen, creditors will be notified.

Deadlines:

Papers must be *received* by the bankruptcy clerk's office by the following deadlines:

Deadline to File a Proof of Claim:

For all creditors (except a governmental unit): For a governmental unit:

Creditor with a Foreign Address:

A creditor to whom this notice is sent at a foreign address should read the information under "Claims" on the reverse side.

Deadline to Object to Debtor's Discharge or to Challenge Dischargeability of Certain Debts:

Deadline to Object to Exemptions:

Thirty (30) days after the *conclusion* of the meeting of creditors.

Creditors May Not Take Certain Actions:

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

Address of the Bankruptcy Clerk's Office: Telephone number:	**For the Court:** Clerk of the Bankruptcy Court:
Hours Open:	Date:

Filing of Chapter 7 Bankruptcy Case	A bankruptcy case under Chapter 7 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. *The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date ~~without further notice~~ specified in a notice filed with the court.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim from other assets in the bankruptcy case. To be paid, you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. **Filing Deadline for a Creditor with a Foreign Address:** The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.
Discharge of Debts	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that the debtor is not entitled to receive a discharge under Bankruptcy Code § 727(a) *or* that a debt owed to you is not dischargeable under Bankruptcy Code § 523(a)(2), (4), or (6), you must file a complaint -- or a motion if you assert the discharge should be denied under § 727(a)(8) or (a)(9) -- in the bankruptcy clerk's office by the "Deadline to Object to Debtor's Discharge or to Challenge the Dischargeability of Certain Debts" listed on the front of this form. The bankruptcy clerk's office must receive the complaint or motion and any required filing fee by that deadline.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objections by the "Deadline to Object to Exemptions" listed on the front side.
Presumption of Abuse	If the presumption of abuse arises, creditors may have the right to file a motion to dismiss the case under § 707(b) of the Bankruptcy Code. The debtor may rebut the presumption by showing special circumstances.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Liquidation of the Debtor's Property and Payment of Creditors' Claims	The bankruptcy trustee listed on the front of this notice will collect and sell the debtor's property that is not exempt. If the trustee can collect enough money, creditors may be paid some or all of the debts owed to them, in the order specified by the Bankruptcy Code. To make sure you receive any share of that money, you must file a Proof of Claim, as described above.
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.
Refer To Other Side For Important Deadlines and Notices	

B9D (Official Form 9D) (Chapter 7 Corporation/Partnership Asset Case) (12/11) (9.10 committee draft)

UNITED STATES BANKRUPTCY COURT_____**District of**_____

Notice of
Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines

[A chapter 7 bankruptcy case concerning the debtor(s) listed below was filed on _____(date).]
or [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter_____on _____(date) and was converted to a case under chapter 7 on_____(date).]

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your Rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

See Reverse Side for Important Explanations

Debtor(s) (name(s) and address):	Case Number: Last four digits of Social-Security or Individual Taxpayer-ID (ITIN) No(s)./Complete EIN:
All other names used by the Debtor(s) in the last 8 years (include trade names):	Bankruptcy Trustee (name and address):
Attorney for Debtor(s) (name and address): Telephone number:	Telephone number:

Meeting of Creditors

Date: / / Time: ( ) A. M. ( ) P. M. Location:

Deadline to File a Proof of Claim

Papers must be *received* by the bankruptcy clerk's office by the following deadlines:

For all creditors (except a governmental unit): For a governmental unit:

Creditor with a Foreign Address:
A creditor to whom this notice is sent at a foreign address should read the information under "Claims" on the reverse side.

Creditors May Not Take Certain Actions:

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

Address of the Bankruptcy Clerk's Office: Telephone number:	**For the Court:** Clerk of the Bankruptcy Court:
Hours Open:	Date:

Filing of Chapter 7 Bankruptcy Case	A bankruptcy case under Chapter 7 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; and starting or continuing lawsuits or foreclosures. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. *The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date ~~without further notice~~ specified in a notice filed with the court.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim from other assets in the bankruptcy case. To be paid, you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. **Filing Deadline for a Creditor with a Foreign Address:** The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.
Liquidation of the Debtor's Property and Payment of Creditors' Claims	The bankruptcy trustee listed on the front of this notice will collect and sell the debtor's property that is not exempt. If the trustee can collect enough money, creditors may be paid some or all of the debts owed to them, in the order specified by the Bankruptcy Code. To make sure you receive any share of that money, you must file a Proof of Claim, as described above.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.

Refer To Other Side For Important Deadlines and Notices

UNITED STATES BANKRUPTCY COURT_____**District of**_____

Notice of
Chapter 11 Bankruptcy Case, Meeting of Creditors, & Deadlines

[A chapter 11 bankruptcy case concerning the debtor(s) listed below was filed on _____ (date).]
or [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter_____on _____ (date) and was converted to a case under chapter 11 on_____(date).]

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

See Reverse Side for Important Explanations

Debtor(s) (name(s) and address):	Case Number: Last four digits of Social-Security or Individual Taxpayer-ID (ITIN) No(s)./Complete EIN:
All other names used by the Debtor(s) in the last 8 years (include married, maiden, and trade names):	Attorney for Debtor(s) (name and address): Telephone number:

Meeting of Creditors

Date: / / Time: ( ) A. M. ( ) P. M. Location:

Deadlines:

Papers must be *received* by the bankruptcy clerk's office by the following deadlines:

Deadline to File a Proof of Claim:
Notice of deadline will be sent at a later time.

Creditor with a Foreign Address:
A creditor to whom this notice is sent at a foreign address should read the information under "Claims" on the reverse side.

Deadline to File a Complaint to Determine Dischargeability of Certain Debts:

Deadline to File a Complaint Objecting to Discharge of the Debtor:

First date set for hearing on confirmation of plan
Notice of that date will be sent at a later time.

Deadline to Object to Exemptions:

Thirty (30) days after the *conclusion* of the meeting of creditors.

Creditors May Not Take Certain Actions:

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

Address of the Bankruptcy Clerk's Office: **Telephone number:**	**For the Court:** Clerk of the Bankruptcy Court:
Hours Open:	Date:

Filing of Chapter 11 Bankruptcy Case	A bankruptcy case under Chapter 11 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 11 allows a debtor to reorganize or liquidate pursuant to a plan. A plan is not effective unless confirmed by the court. You may be sent a copy of the plan and a disclosure statement telling you about the plan, and you might have the opportunity to vote on the plan. You will be sent notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the debtor's property and may continue to operate any business.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. *The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date ~~without further notice~~ specified in a notice filed with the court. The court, after notice and a hearing, may order that the United States trustee not convene the meeting if the debtor has filed a plan for which the debtor solicited acceptances before filing the case.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. You may look at the schedules that have been or will be filed at the bankruptcy clerk's office. If your claim is scheduled and is *not* listed as disputed, contingent, or unliquidated, it will be allowed in the amount scheduled unless you filed a Proof of Claim or you are sent further notice about the claim. Whether or not your claim is scheduled, you are permitted to file a Proof of Claim. If your claim is not listed at all *or* if your claim is listed as disputed, contingent, or unliquidated, then you must file a Proof of Claim or you might not be paid any money on your claim and may be unable to vote on a plan. The court has not yet set a deadline to file a Proof of Claim. If a deadline is set, you will be sent another notice. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. **Filing Deadline for a Creditor with a Foreign Address:** The deadline for filing claims will be set in a later court order and will apply to all creditors unless the order provides otherwise. If notice of the order setting the deadline is sent to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.
Discharge of Debts	Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. *See* Bankruptcy Code § 1141 (d). Unless the court orders otherwise, however, the discharge will not be effective until completion of all payments under the plan. A discharge means that you may never try to collect the debt from the debtor except as provided in the plan. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523 (a) (2), (4), or (6), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and any required filing fee by that Deadline. If you believe that the debtor is not entitled to receive a discharge under Bankruptcy Code § 1141 (d) (3), you must file a complaint with the required filing fee in the bankruptcy clerk's office not later than the first date set for the hearing on confirmation of the plan. You will be sent another notice informing you of that date.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors, even if the debtor's case is converted to chapter 7. The debtor must file a list of property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.
Refer To Other Side For Important Deadlines and Notices	

UNITED STATES BANKRUPTCY COURT_____**District of**_____

Notice of
Chapter 11 Bankruptcy Case, Meeting of Creditors, & Deadlines

[A chapter 11 bankruptcy case concerning the debtor(s) listed below was filed on _____(date).]
or [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter_____on _____(date) and was converted to a case under chapter 11 on_____(date).]

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

See Reverse Side for Important Explanations

Debtor(s) (name(s) and address):	Case Number:
	Last four digits of Social-Security or Individual Taxpayer-ID (ITIN) No(s)./Complete EIN:
All other names used by the Debtor(s) in the last 8 years (include married, maiden, and trade names):	Attorney for Debtor(s) (name and address): Telephone number:

Meeting of Creditors

Date: / / Time: ( ) A. M. ( ) P. M. Location:

Deadlines:

Papers must be *received* by the bankruptcy clerk's office by the following deadlines:

Deadline to File a Proof of Claim:

For all creditors (except a governmental unit): For a governmental unit:

Creditor with a Foreign Address:
A creditor to whom this notice is sent at a foreign address should read the information under "Claims" on the reverse side.

Deadline to File a Complaint to Determine Dischargeability of Certain Debts:

Deadline to File a Complaint Objecting to Discharge of the Debtor:

First date set for hearing on confirmation of plan
Notice of that date will be sent at a later time.

Deadline to Object to Exemptions:

Thirty (30) days after the *conclusion* of the meeting of creditors.

Creditors May Not Take Certain Actions:

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

Address of the Bankruptcy Clerk's Office: **Telephone number:**	**For the Court:** Clerk of the Bankruptcy Court:
Hours Open:	Date:

Filing of Chapter 11 Bankruptcy Case	A bankruptcy case under Chapter 11 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 11 allows a debtor to reorganize or liquidate pursuant to a plan. A plan is not effective unless confirmed by the court. You may be sent a copy of the plan and a disclosure statement telling you about the plan, and you might have the opportunity to vote on the plan. You will be sent notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the debtor's property and may continue to operate any business.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. *The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date ~~without further notice~~ specified in a notice filed with the court. The court, after notice and a hearing, may order that the United States trustee not convene the meeting if the debtor has filed a plan for which the debtor solicited acceptances before filing the case.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. You may look at the schedules that have been or will be filed at the bankruptcy clerk's office. If your claim is scheduled and is *not* listed as disputed, contingent, or unliquidated, it will be allowed in the amount scheduled unless you filed a Proof of Claim or you are sent further notice about the claim. Whether or not your claim is scheduled, you are permitted to file a Proof of Claim. If your claim is not listed at all *or* if your claim is listed as disputed, contingent, or unliquidated, then you must file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side or you might not be paid any money on your claim and may be unable to vote on a plan. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. **Filing Deadline for a Creditor with a Foreign Address:** The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.
Discharge of Debts	Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. *See* Bankruptcy Code § 1141 (d). Unless the court orders otherwise, however, the discharge will not be effective until completion of all payments under the plan. A discharge means that you may never try to collect the debt from the debtor except as provided in the plan. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523 (a) (2), (4), or (6), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and any required filing fee by that Deadline. If you believe that the debtor is not entitled to receive a discharge under Bankruptcy Code § 1141 (d) (3), you must file a complaint with the required filing fee in the bankruptcy clerk's office not later than the first date set for the hearing on confirmation of the plan. You will be sent another notice informing you of that date.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors, even if the debtor's case is converted to chapter 7. The debtor must file a list of property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.
Refer To Other Side For Important Deadlines and Notices	

UNITED STATES BANKRUPTCY COURT_____**District of**_____

Notice of
Chapter 11 Bankruptcy Case, Meeting of Creditors, & Deadlines

[A chapter 11 bankruptcy case concerning the debtor(s) listed below was filed on _____(date).]
or [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter_____on _____(date) and was converted to a case under chapter 11 on_____(date).]

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

See Reverse Side for Important Explanations

Debtor(s) (name(s) and address):	Case Number: Last four digits of Social-Security or Individual Taxpayer-ID (ITIN) No(s)./Complete EIN:
All other names used by the Debtor(s) in the last 8 years (include trade names):	Attorney for Debtor(s) (name and address): Telephone number:

Meeting of Creditors

Date: / / Time: ( ) A. M. ( ) P. M. Location:

Deadline to File a Proof of Claim

Proof of Claim must be *received* by the bankruptcy clerk's office by the following deadline:

Notice of deadline will be sent at a later time.

Creditor with a Foreign Address:
A creditor to whom this notice is sent at a foreign address should read the information under "Claims" on the reverse side.

Deadline to File a Complaint to Determine Dischargeability of Certain Debts:

Creditors May Not Take Certain Actions:
In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

Address of the Bankruptcy Clerk's Office: **Telephone number:**	**For the Court:** Clerk of the Bankruptcy Court:
Hours Open:	Date:

EXPLANATIONS **B9F (Official Form 9F) (12/11)**

Filing of Chapter 11 Bankruptcy Case	A bankruptcy case under Chapter 11 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 11 allows a debtor to reorganize or liquidate pursuant to a plan. A plan is not effective unless confirmed by the court. You may be sent a copy of the plan and a disclosure statement telling you about the plan, and you might have the opportunity to vote on the plan. You will be sent notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the debtor's property and may continue to operate any business.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; and starting or continuing lawsuits or foreclosures. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. *The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date ~~without further notice~~ specified in a notice filed with the court. The court, after notice and a hearing, may order that the United States trustee not convene the meeting if the debtor has filed a plan for which the debtor solicited acceptances before filing the case.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. You may look at the schedules that have been or will be filed at the bankruptcy clerk's office. If your claim is scheduled and is *not* listed as disputed, contingent, or unliquidated, it will be allowed in the amount scheduled unless you filed a Proof of Claim or you are sent further notice about the claim. Whether or not your claim is scheduled, you are permitted to file a Proof of Claim. If your claim is not listed at all *or* if your claim is listed as disputed, contingent, or unliquidated, then you must file a Proof of Claim or you might not be paid any money on your claim and may be unable to vote on a plan. The court has not yet set a deadline to file a Proof of Claim. If a deadline is set, you will be sent another notice. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. **Filing Deadline for a Creditor with a Foreign Address:** The deadline for filing claims will be set in a later court order and will apply to all creditors unless the order provides otherwise. If notice of the order setting the deadline is sent to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.
Discharge of Debts	Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. *See* Bankruptcy Code § 1141 (d). A discharge means that you may never try to collect the debt from the debtor, except as provided in the plan. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 1141 (d) (6) (A), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and any required filing fee by that deadline.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.

Refer To Other Side For Important Deadlines and Notices

B9F ALT (Official Form 9F ALT) (Chapter 11 Corporation/Partnership Case) (12/11) (9.10 committee draft)

UNITED STATES BANKRUPTCY COURT_____**District of**_____

Notice of
Chapter 11 Bankruptcy Case, Meeting of Creditors, & Deadlines

[A chapter 11 bankruptcy case concerning the debtor(s) listed below was filed on _____(date).]
or [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter_____on _____(date) and was converted to a case under chapter 11 on_____(date).]

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below.
NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

See Reverse Side for Important Explanations

Debtor(s) (name(s) and address):	Case Number: Last four digits of Social-Security or Individual Taxpayer-ID (ITIN) No(s)./Complete EIN:
All other names used by the Debtor(s) in the last 8 years (include trade names):	Attorney for Debtor(s) (name and address): Telephone number:

Meeting of Creditors

Date: / / Time: ( ) A. M. ( ) P. M. Location:

Deadline to File a Proof of Claim

Proof of Claim must be *received* by the bankruptcy clerk's office by the following deadline:

For all creditors (except a governmental unit): For a governmental unit:

Creditor with a Foreign Address:
A creditor to whom this notice is sent at a foreign address should read the information under "Claims" on the reverse side.

Deadline to File a Complaint to Determine Dischargeability of Certain Debts:

Creditors May Not Take Certain Actions:
In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

Address of the Bankruptcy Clerk's Office: **Telephone number:**	**For the Court:** Clerk of the Bankruptcy Court:
Hours Open:	Date:

Filing of Chapter 11 Bankruptcy Case	A bankruptcy case under Chapter 11 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 11 allows a debtor to reorganize or liquidate pursuant to a plan. A plan is not effective unless confirmed by the court. You may be sent a copy of the plan and a disclosure statement telling you about the plan, and you might have the opportunity to vote on the plan. You will be sent notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the debtor's property and may continue to operate any business.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; and starting or continuing lawsuits or foreclosures. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. *The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date ~~without further notice~~ specified in a notice filed with the court. The court, after notice and a hearing, may order that the United States trustee not convene the meeting if the debtor has filed a plan for which the debtor solicited acceptances before filing the case.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. You may look at the schedules that have been or will be filed at the bankruptcy clerk's office. If your claim is scheduled and is *not* listed as disputed, contingent, or unliquidated, it will be allowed in the amount scheduled unless you filed a Proof of Claim or you are sent further notice about the claim. Whether or not your claim is scheduled, you are permitted to file a Proof of Claim. If your claim is not listed at all *or* if your claim is listed as disputed, contingent, or unliquidated, then you must file a Proof of Claim by the "Deadline to File Proof of Claim" listed on the front side, or you might not be paid any money on your claim and may be unable to vote on a plan. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. **Filing Deadline for a Creditor with a Foreign Address:** The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.
Discharge of Debts	Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. *See* Bankruptcy Code § 1141 (d). A discharge means that you may never try to collect the debt from the debtor, except as provided in the plan. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 1141 (d) (6) (A), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and any required filing fee by that deadline.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.

Refer To Other Side For Important Deadlines and Notices

UNITED STATES BANKRUPTCY COURT_____**District of**_____

Notice of
Chapter 12 Bankruptcy Case, Meeting of Creditors, & Deadlines

[The debtor(s) listed below filed a chapter 12 bankruptcy case on _____(date).]
or [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter_____on _____ (date) and was converted to a case under chapter 12 on_____(date).]

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below.
NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

See Reverse Side for Important Explanations

Debtor(s) (name(s) and address):	Case Number: Last four digits of Social-Security or Individual Taxpayer-ID (ITIN) No(s)./Complete EIN:
All other names used by the Debtor(s) in the last 8 years (include married, maiden, and trade names): Attorney for Debtor(s) (name and address): Telephone number:	Bankruptcy Trustee (name and address): Telephone number:

Meeting of Creditors

Date: / / Time: ( ) A. M. ( ) P. M. Location:

Deadlines:

Papers must be *received* by the bankruptcy clerk's office by the following deadlines:

Deadline to File a Proof of Claim:

For all creditors(except a governmental unit): For a governmental unit:

Creditor with a Foreign Address:

A creditor to whom this notice is sent at a foreign address should read the information under "Claims" on the reverse side.

Deadline to File a Complaint to Determine Dischargeability of Certain Debts:

Deadline to Object to Exemptions:

Thirty (30) days after the *conclusion* of the meeting of creditors.

Filing of Plan, Hearing on Confirmation of Plan

[The debtor has filed a plan. The plan or a summary of the plan is enclosed. The hearing on confirmation will be held:
Date:_____Time:_____Location:_____]
or [The debtor has filed a plan. The plan or a summary of the plan and notice of confirmation hearing will be sent separately.]
or [The debtor has not filed a plan as of this date. You will be sent separate notice of the hearing on confirmation of the plan.]

Creditors May Not Take Certain Actions:

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor, the debtor's property, and certain codebtors. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

Address of the Bankruptcy Clerk's Office: **Telephone number:**	**For the Court:** Clerk of the Bankruptcy Court:
Hours Open:	Date:

Filing of Chapter 12 Bankruptcy Case	A bankruptcy case under Chapter 12 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 12 allows family farmers and family fishermen to adjust their debts pursuant to a plan. A plan is not effective unless confirmed by the court. You may object to confirmation of the plan and appear at the confirmation hearing. A copy or summary of the plan [is included with this notice] *or* [will be sent to you later], and [the confirmation hearing will be held on the date indicated on the front of this notice] *or* [you will be sent notice of the confirmation hearing]. The debtor will remain in possession of the debtor's property and may continue to operate the debtor's business unless the court orders otherwise.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions against the debtor and certain codebtors are listed in Bankruptcy Code § 362 and § 1201. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages. Under certain circumstances, the stay may be limited in duration or not exist at all, although the debtor may have the right to request the court to extend or impose a stay.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. *The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date ~~without further notice~~ specified in a notice filed with the court.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim from other assets in the bankruptcy case. To be paid you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. **Filing Deadline for a Creditor with a Foreign Address:** The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.
Discharge of Debts	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523 (a) (2), (4), or (6), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and any required filing fee by that Deadline.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors, even if the debtor's case is converted to chapter 7. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.
Refer To Other Side For Important Deadlines and Notices	

UNITED STATES BANKRUPTCY COURT_____**District of**_____

Notice of
Chapter 12 Bankruptcy Case, Meeting of Creditors, & Deadlines

[The debtor [corporation] *or* [partnership] listed below filed a chapter 12 bankruptcy case on _____ (date).]
or [A bankruptcy case concerning the debtor [corporation] *or* [partnership] listed below was originally filed under chapter_____ on _____ (date) and was converted to a case under chapter 12 on_____(date).]

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below.
NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

See Reverse Side for Important Explanations

Debtor(s) (name(s) and address):	Case Number: Last four digits of Social-Security or Individual Taxpayer-ID (ITIN) No(s)./Complete EIN:
All other names used by the Debtor(s) in the last 8 years (include trade names):	Bankruptcy Trustee (name and address):
Attorney for Debtor(s) (name and address): Telephone number:	Telephone number:

Meeting of Creditors

Date: / / Time: ( ) A. M. ( ) P. M. Location:

Deadlines:

Papers must be *received* by the bankruptcy clerk's office by the following deadlines:

Deadline to File a Proof of Claim:

For all creditors(except a governmental unit): For a governmental unit:

Creditor with a Foreign Address:

A creditor to whom this notice is sent at a foreign address should read the information under "Claims" on the reverse side.

Deadline to File a Complaint to Determine Dischargeability of Certain Debts:

Filing of Plan, Hearing on Confirmation of Plan

[The debtor has filed a plan. The plan or a summary of the plan is enclosed. The hearing on confirmation will be held:
Date:_____Time:_____Location:_____]
or [The debtor has filed a plan. The plan or a summary of the plan and notice of confirmation hearing will be sent separately.]
or [The debtor has not filed a plan as of this date. You will be sent separate notice of the hearing on confirmation of the plan.]

Creditors May Not Take Certain Actions:

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

Address of the Bankruptcy Clerk's Office: **Telephone number:**	**For the Court:** Clerk of the Bankruptcy Court:
Hours Open:	Date:

Filing of Chapter 12 Bankruptcy Case	A bankruptcy case under Chapter 12 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by the debtor listed on the front side, and an order for relief has been entered. Chapter 12 allows family farmers and family fishermen to adjust their debts pursuant to a plan. A plan is not effective unless confirmed by the court. You may object to confirmation of the plan and appear at the confirmation hearing. A copy or summary of the plan [is included with this notice] *or* [will be sent to you later], and [the confirmation hearing will be held on the date indicated on the front of this notice] *or* [you will be sent notice of the confirmation hearing]. The debtor will remain in possession of the debtor's property and may continue to operate the debtor's business unless the court orders otherwise.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions against the debtor and certain codebtors are listed in Bankruptcy Code § 362 and § 1201. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; and starting or continuing lawsuits or foreclosures. Under certain circumstances, the stay may be limited in duration or not exist at all, although the debtor may have the right to request the court to extend or impose a stay.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. *The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date ~~without further notice~~ specified in a notice filed with the court.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim from other assets in the bankruptcy case. To be paid you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. **Filing Deadline for a Creditor with a Foreign Address:** The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.
Discharge of Debts	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523 (a) (2), (4), or (6), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and any required filing fee by that Deadline.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.

Refer To Other Side For Important Deadlines and Notices

UNITED STATES BANKRUPTCY COURT_____**District of**_____

Notice of
Chapter 13 Bankruptcy Case, Meeting of Creditors, & Deadlines

[The debtor(s) listed below filed a chapter 13 bankruptcy case on _____ (date).]
or [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter_____
on _____ (date) and was converted to a case under chapter 13 on_____(date).]

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below.
NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

See Reverse Side for Important Explanations

Debtor(s) (name(s) and address):	Case Number: Last four digits of Social-Security or Individual Taxpayer-ID (ITIN) No(s)./Complete EIN:
All other names used by the Debtor(s) in the last 8 years (include married, maiden, and trade names):	Bankruptcy Trustee (name and address):
Attorney for Debtor(s) (name and address): Telephone number:	Telephone number:

Meeting of Creditors

Date: / / Time: ( ) A. M. ( ) P. M. Location:

Deadlines:

Papers must be *received* by the bankruptcy clerk's office by the following deadlines:

Deadline to File a Proof of Claim:

For all creditors (except a governmental unit):

For a governmental unit (except as otherwise provided in Fed . R. Bankr. P. 3002(c)(1)):

Creditor with a Foreign Address:

A creditor to whom this notice is sent at a foreign address should read the information under "Claims" on the reverse side.

Deadline to Object to Debtor's Discharge or to Challenge Dischargeability of Certain Debts:

Deadline to Object to Exemptions:

Thirty (30) days after the *conclusion* of the meeting of creditors.

Filing of Plan, Hearing on Confirmation of Plan

[The debtor has filed a plan. The plan or a summary of the plan is enclosed. The hearing on confirmation will be held:
Date:_____Time:_____Location:_____]
or [The debtor has filed a plan. The plan or a summary of the plan and notice of confirmation hearing will be sent separately.]
or [The debtor has not filed a plan as of this date. You will be sent separate notice of the hearing on confirmation of the plan.]

Creditors May Not Take Certain Actions:

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor, the debtor's property, and certain codebtors. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

Address of the Bankruptcy Clerk's Office: **Telephone number:**	**For the Court:** Clerk of the Bankruptcy Court:
Hours Open:	Date:

Filing of Chapter 13 Bankruptcy Case	A bankruptcy case under Chapter 13 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 13 allows an individual with regular income and debts below a specified amount to adjust debts pursuant to a plan. A plan is not effective unless confirmed by the bankruptcy court. You may object to confirmation of the plan and appear at the confirmation hearing. A copy or summary of the plan [is included with this notice] *or* [will be sent to you later], and [the confirmation hearing will be held on the date indicated on the front of this notice] *or* [you will be sent notice of the confirmation hearing]. The debtor will remain in possession of the debtor's property and may continue to operate the debtor's business, if any, unless the court orders otherwise.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions against the debtor and certain codebtors are listed in Bankruptcy Code § 362 and § 1301. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to exceed or impose a stay.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. *The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date ~~without further notice~~ specified in a notice filed with the court.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim from other assets in the bankruptcy case. To be paid, you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. **Filing Deadline for a Creditor with a Foreign Address:** The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.
Discharge of Debts	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that the debtor is not entitled to a discharge under Bankruptcy Code § 1328(f), you must file a motion objecting to discharge in the bankruptcy clerk's office by the "Deadline to Object to Debtor's Discharge or to Challenge the Dischargeability of Certain Debts" listed on the front of this form. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523(a)(2) or (4), you must file a complaint in the bankruptcy clerk's office by the same deadline. The bankruptcy clerk's office must receive the motion or the complaint and any required filing fee by that deadline.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors, even if the debtor's case is converted to chapter 7. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.
Refer To Other Side For Important Deadlines and Notices	

COMMITTEE NOTE

The form's explanation of the "Meeting of Creditors" is amended to take account of the amendment of Rule 2003(e). When a meeting of creditors is adjourned to another date, the rule requires the official presiding at the meeting to file a statement specifying the date and time to which the meeting is adjourned. The explanation on all versions of the form is amended to reflect that requirement. Stylistic changes to the form are also made.

TAB

7-A

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON BUSINESS ISSUES

RE: SUGGESTION REGARDING APPLICATIONS FOR PAYMENT OF ADMINISTRATIVE EXPENSES

DATE: SEPTEMBER 2, 2010

Bankruptcy Judge William F. Stone, Jr. (W.D. Va.) submitted a suggestion (09-BK-J) that addresses two different issues. One of the issues is the need for rules and an Official Form to govern applications for the payment of administrative expenses. That matter was referred at the spring 2010 Advisory Committee meeting to this Subcommittee for further consideration.[1] The Subcommittee discussed the suggestion during its August 2 conference call and **recommends the gathering of additional information to determine whether there is a need for a national rule or Official Form for the allowance of administrative expenses**.

Judge Stone's Suggestion

Judge Stone noted that the Bankruptcy Code and Rules provide extensive details about the procedures for seeking payment for one type of administrative expense – compensation of professionals retained in the case – but virtually no guidance about applications for the allowance of other types of administrative expenses. He stated, for example, that there is no rule provision about who is to receive notice of an application, and, unlike Form 10, no Official Form for an administrative expense application. He suggested that, rather than leaving the procedures

[1] The other issue was referred to the Subcommittee on Consumer Issues and is discussed at tab 4B.

up to local rules and practices, it would be useful to have a uniform national procedure for the allowance of administrative expenses.

Background: Statutory and Rule Provisions Regarding Administrative Expenses

Judge Stone is correct that the Code and Rules provide little detail about the method of seeking payment of administrative expenses. Section 503(a) provides that an entity may "file a request for payment of an administrative expense." This filing may either be timely or, with the court's permission and for cause, tardy. The legislative history of this provision states that the Bankruptcy Rules "will specify the time, the form, and the method of such a filing." S. REP. NO. 95-989, at 66 (1978). Section 503(b) provides that administrative expenses shall be allowed after notice and a hearing.

The Rules, however, do not provide much detail about requests for payment of administrative expenses. Rule 2016 prescribes procedures for obtaining compensation from the estate for services rendered and reimbursement of expenses, and Rule 1019(6) governs the payment of postpetition claims incurred before conversion of a case. Under that rule, payment of administrative expenses must be sought by a request for payment. Rule 1019(6) sets forth a procedure for providing notice of the time for filing such requests after the case has been converted. There is no official form for requests for payment of administrative expenses, nor a rule that generally prescribes the time, form, and method of filing such requests.

The Committee's Prior Consideration of Procedures for Payment of Administrative Expenses

At its spring 2009 meeting, the Advisory Committee considered and decided to take no further action on a narrower suggestion regarding administrative expenses. Former panel trustee Philip Martino had suggested that Rule 1017 be amended to provide a streamlined procedure for

a chapter 7 trustee to seek compensation in a case that gets converted to chapter 13. His proposal was to allow the trustee to file a proof of claim in the chapter 13 case, rather than a request for payment that would have to be approved by the court after notice and hearing. Judge Wedoff then noted that there were at least two other types of administrative expenses that were sufficiently similar to prepetition claims that a proof of claim procedure might be appropriate: the claim of a supplier of goods or services furnished in the ordinary course of business during a chapter 11 case that later gets converted to chapter 7, and the claim of a supplier under § 503(b)(9) for the value of goods received by the debtor during the 20 days before bankruptcy. The Committee therefore considered whether payment of all three of the administrative expenses noted above should be addressed by a Part III rule that would allow for the filing of a proof of claim by a specified deadline.

The Committee agreed with this Subcommittee's conclusion that such an amendment of the Rules would be inconsistent with the Code. Section 501 permits the filing of a proof of claim only with respect to prepetition claims and a limited and specified group of postpetition claims. Administrative expenses are not included in that group. Instead, the payment of such expenses is governed by § 503, which requires a request for payment and court authorization after notice and a hearing. Moreover, with respect to the payment for goods and services furnished in the ordinary course of business in a chapter 11 case prior to conversion to chapter 7, § 348(d) preserves the administrative expense status of such claims and thereby excludes them from the proof of claim procedure of § 501.

In the course of its deliberations about Mr. Martino's suggestion, the Subcommittee in 2009 also discussed whether a uniform set of rules prescribing the procedure for requests for

payment of administrative expenses was needed. It concluded at that time that local rules and practices seemed to be working satisfactorily. Based on the Subcommittee's recommendation and the absence of any indication that there was a problem for which national rules on requests for payment of administrative expenses were needed, the Advisory Committee decided in March 2009 that no further action should be taken.

Recommendation Regarding Judge Stone's Suggestion

Judge Stone's suggestion squarely presents to the Committee the issue whether there should be national rules and an Official Form governing requests for payment of administrative expenses. He has legislative history and logic on his side in making this suggestion. The Code is appropriately limited in the procedural details about allowance of administrative expenses because Congress anticipated that Bankruptcy Rules would be promulgated that would provide the applicable procedures. And because the payment of administrative expenses is a basic task in most cases, it would seem to be a logical subject of the Bankruptcy Rules and perhaps Official Forms.

On the other hand, the settled practice of over 30 years supports the Committee's prior decision not to undertake this rule-making project. Every district, or individual judge, must have by now adopted procedures either formally or informally for the application and allowance of administrative expenses. Disruption of existing practices without a clear need to do so is not likely to be well received.

The Subcommittee concluded that, before it makes a final recommendation regarding Judge Stone's suggestion, it would be helpful to gather information about existing local rules, practices, and forms. If the Committee agrees, Jim Waldron could survey fellow clerks about the

existence of local administrative-expense procedures and whether the clerks see a need for uniform, national ones. A further examination of local rules and forms (guided by the information Mr. Waldron elicits) could then be undertaken to obtain information about the range of procedures used by courts for requesting payment and allowing administrative expenses, as well as to provide some rule and form models for the Subcommittee's consideration. Should the Committee decide that this further investigation is worth pursuing, the Subcommittee would report its recommendation to the Committee at the spring 2011 meeting.

TAB

7-B

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON BUSINESS ISSUES

RE: SUGGESTION THAT RULE 9006(d) BE DELETED

DATE: SEPTEMBER 2, 2010

Bankruptcy Judge Raymond Lyons (D.N.J.) submitted a suggestion (10-BK-D) that Rule 9006(d) be deleted because it is superfluous, is not properly located within the Bankruptcy Rules, and may create confusion. Rule 9006(d) prescribes time periods for serving motions, notices of hearing, and affidavits. It is part of the rule that governs "Computing and Extending Time." The Subcommittee considered the suggestion during its August 2 conference call. **Instead of recommending the repeal of Rule 9006(d), the Subcommittee recommends that Rules 9006, 9013, and 9014 be amended to address some of the concerns that Judge Lyons raised.**

Rule 9006(d)

Rule 9006(d) states that a written motion, other than one that can be heard ex parte, and notice of any hearing must be served no later than seven days before the date of the hearing. This provision applies, however, only if another time period is not specified by the Bankruptcy Rules or a court order, and the rule permits the court order to be entered for cause on an ex parte application. Any supporting affidavits must be served with the motion. Any opposing affidavits may be served no later than one day before the hearing (other than affidavits in opposition to a motion for a new trial, which are governed by Rule 9023). The time period for serving opposing affidavits applies "unless the court permits them to be served at some other time."

Judge Lyons's Suggestion

Judge Lyons made several arguments in support of his suggestion that Rule 9006(d) be deleted. First, he argued that the provision is superfluous because most districts have their own local rules governing motion practice that specify time periods for service of motions and responses. Second, he said that the provision is "misplaced." Rules 9013 and 9014 address motions and contested matters, and he suggested that it would be more logical for time requirements for the service of motions and related papers be located in one of those rules. Moreover, he noted, there are no cross-references to Rule 9006(d) in the Rules 9013 and 9014 or in their Committee Notes. Finally, he suggested that Rule 9006(d) may lead to confusion to the extent that its time periods are inconsistent with ones specified by local rules. As an example, he noted that a lawyer in his court who does not frequently handle bankruptcy matters read Rule 9006(d) to allow him to file his response to a motion one day before the hearing – even though the local rule requires it to be filed seven days in advance, and Rule 9006(d) itself addresses only opposing affidavits, not responses or memoranda in opposition. Judge Lyons suggested that the scheduling of motions and responses should be left to local practice and deleted from the national rule.

Consideration of the Issues Raised by the Suggestion

The Subcommittee was not persuaded by the argument that a national rule provision is superfluous because the issue is addressed by local rules that may be inconsistent with the national provision. If that conflict in fact exists, the appropriate solution, and the one required by Rule 9029, is that the local rules be repealed or amended to make them consistent with and not duplicative of the national rule – not the other way around.

However, in most respects Rule 9006(d) allows local variation. It authorizes the specified time limit for service of a motion to be altered by court order – which may include a local rule – and the specified time for serving opposing affidavits to be altered if "the court permits them to be served at some other time." The only provision of subdivision (d) that does not allow alteration by the court is the requirement that supporting affidavits be served with the motion. In reality, then, the time limits specified in Rule 9006(d) are default rules, applicable only if another national or a local rule or court order does not prescribe a different deadline.

The Subcommittee discussed whether there is any need to retain Rule 9006(d), given the existence of local rules and procedures governing motion practice. The Subcommittee concluded that the provision continues to serve a useful purpose. Some districts do not have their own rules specifying the time for filing motions and supporting and opposing affidavits. For those districts, Rule 9006(d) provides timing rules for any motions not addressed elsewhere in the Bankruptcy Rules or changed in an individual case. Although reported decisions under Rule 9006(d) address some instances of noncompliance, they do not indicate that there is a widespread problem of confusion caused by the existence of the rule. Anyone who reads the rule should be aware of the need to determine whether there are different time limits imposed locally.

The Subcommittee did conclude that Judge Lyons's observations about the location of the provision and the absence of cross-references in Rule 9013 and 9014 are well taken. Members of the Subcommittee agreed that it seems odd to include specific deadlines for motion practice within a rule providing generally for the method of computing time periods throughout the rules and the Bankruptcy Code. If the Committee were starting from scratch, the timing rules

for motion practice would appear to be better situated in Rule 9013 or Rule 9014. Indeed, that is where many of the local rules place their time provisions for service of motion papers.

The placement of this provision in Rule 9006 resulted from the fact that the bankruptcy rule was modeled on Civil Rule 6. What used to be Civil Rule 6(d), and is now Rule 6(c), specifies the deadlines for filing motions, notices of hearing, and supporting and opposing affidavits.[1] Like Rule 9006, Civil Rule 6 addresses "Computing and Extending Time." Its title, however, unlike the one for Rule 9006, also refers to its coverage of "Time for Motion Papers." The inclusion of that language in the title makes it easier for a reader looking for the time limits for serving motion documents to find the applicable rule. Furthermore, Civil Rule 6 is followed immediately by a rule that addresses, among other things, the form of motions.

The Subcommittee proposes several rule amendments that will serve to highlight the existence of Rule 9006(d). The first set of changes is to Rule 9006 itself. The Subcommittee recommends that the title of the rule be amended to add a reference to the time limits for serving motion papers. This change, which is consistent with Civil Rule 6, should make it easier for someone to find the provision if they are not otherwise aware of it.

The Subcommittee also recommends that the coverage of subdivision (d) be expanded to address the timing of the service of any written response to a motion, not just opposing affidavits. Local motion practices vary widely, so the Subcommittee concluded that the

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[1] As of December 1, 2009, Civil Rule 6(c) was amended not only to conform to the new multiple-of-seven time computation rules, but also to lengthen the time periods. The time for serving a motion, notice of hearing, and supporting affidavits was changed from five to 14 days before the hearing, and the time for serving opposing affidavits was changed from one to seven days before the hearing. As of the same date, Rule 9006(d) was amended to extend the initial time period from five to seven days, while the one-day period for opposing affidavits was retained.

provision should be as inclusive as possible. The caption of subdivision (d) and its wording would be changed to reflect this expansion. As amended, the relevant part of Rule 9006 would read as follows:

Rule 9006. Computing and Extending Time; Time for Motion Papers

* * * * *

(d) ~~FOR~~ MOTION~~S~~ PAPERS~~= AFFIDAVITS~~. A written motion, other than one which may be heard ex parte, and notice of any hearing shall be served not later than seven days before the time specified for such hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Rule 9023, ~~opposing affidavits~~ any written response may be served not later than one day before the hearing, unless the court permits ~~them~~ it to be served at some other time.

* * * * *

COMMITTEE NOTE

The title of this rule is amended to draw attention to the fact that it prescribes time limits for the service of motion papers. These time periods apply unless another Bankruptcy Rule or a court order, including a local rule, prescribes different time periods. Rules 9013 and 9014 should also be consulted regarding motion practice. Rule 9013 governs the form of motions and the parties who must be served. Rule 9014 prescribes the

procedures applicable to contested matters, including the method of serving motions commencing contested matters and subsequent papers.

Subdivision (d) is amended to apply to any written response to a motion, rather than just to opposing affidavits. The caption of the subdivision is amended to reflect this change.

The Subcommittee also agreed with Judge Lyons that cross-references to Rule 9006(d) should be included in Rules 9013 and 9014. It recommends that the rules be amended as indicated below:

Rule 9013. Motions: Form and Service

A request for an order, except when an application is authorized by the rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Every written motion, other than one which may be considered ex parte, shall be served by the moving party within the time determined by Rule 9006(d) on the trustee or debtor in possession and on those entities specified by these rules or, if service is not required or the entities to be served are not specified by these rules, the moving party shall serve the entities the court directs.

COMMITTEE NOTE

A cross-reference to Rule 9006(d) is added to this rule to call attention to the time limits for the service of motions, supporting affidavits, and written oppositions to motions. Rule 9006(d) prescribes time limits that apply unless other limits are fixed by these rules, a court order, or a local rule.

Rule 9014. Contested Matters

* * * * *

(b) SERVICE. The motion shall be served in the manner provided for service of a summons and complaint by Rule 7004 and within the time determined by Rule 9006(d). Any paper served after the motion shall be served in the manner provided by Rule 5(b) F.R. Civ. P., and any written opposition to the motion shall be served within the time period prescribed by Rule 9006(d).

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COMMITTEE NOTE

A cross-reference to Rule 9006(d) is added to subdivision (b) to call attention to the time limits for the service of motions, supporting affidavits, and written oppositions to motions. Rule 9006(d) prescribes time limits that apply unless other limits are fixed by these rules, a court order, or a local rule.

The Subcommittee recommends that the Committee approve these proposed amendments but that they be held in the bullpen for the time being. It concluded that the amendments are not of sufficient urgency that they need to be forwarded to the Standing Committee immediately. Rather, if the Committee approves them for publication, they can be included in an appropriate package of amendments that is forwarded at a later date.

TAB

7-C

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON BUSINESS ISSUES

RE: SCHEDULE OF CURRENT INCOME AND EXPENDITURES OF NON-INDIVIDUAL DEBTORS

DATE: SEPTEMBER 2, 2010

Debbie Lewis, the legal management advisor for the Bankruptcy Court for the Southern District of Florida, contacted Jim Wannamaker concerning the need for corporations and partnerships to file schedules of current income and expenditures and the consequences of their failure to do so. Their email exchange prompted the question whether an official form or a rule amendment would be helpful to address this issue. The Subcommittee considered this matter during its conference call on August 2 and **recommends that the Advisory Committee take no further action in response to Ms. Lewis's inquiry**.

Does a Corporation or Partnership Have to File a Schedule of Current Income and Expenditures?

Unless a court relieves a corporation or partnership of the duty to file a schedule of current income and expenditures, § 521(a) and Rule 1007(b) require the filing of that information. Section 521(a)(1)(B)(ii) of the Code requires "[t]he debtor" to file a schedule of current income and current expenditures "unless the court orders otherwise." Unlike subsection (b) of § 521, which applies to an "individual debtor," there is no limitation on the type of debtor to which subsection (a) applies. Rule 1007(b)(1) implements this statutory provision by requiring – except in a chapter 9 case – "the debtor" to file a schedule of current income and expenditures, unless the court orders otherwise. This provision requires use of the appropriate

Official Form, if any. For individual debtors, schedules I and J are the appropriate Official Forms, but there is no similar form for non-individual debtors. The 1987 Committee Note to Rule 1007 states that "[a]lthough a partnership or corporation is also required by § 521(1) to file a schedule of current income and current expenditures, no Official Form is prescribed therefor."

What Is the Consequence of a Non-Individual Debtor's Failure to File the Schedule?

Ms. Lewis's inquiry was provoked by her uncertainty about whether the clerk's office is required to take action if a partnership or corporation fails to file a schedule of current income and expenditures. Although her court sends out a notice of petition-filing deficiencies to debtors, it has been their practice not to include the failure to file this particular schedule if the debtor is not an individual. Ms. Lewis questioned the authority of the clerk's office to overlook this failure if the court has not by local rule eliminated the requirement.

The consequences of failing to file a schedule of current income and expenditures vary depending on whether the debtor is an individual or not. Under § 521(i), a chapter 7 or 13 case filed by an individual debtor "shall be automatically dismissed" if the information required by § 521(a)(1) is not filed within 45 days after the petition is filed. For non-individuals, however, different procedures apply to the dismissal or conversion of a case due to the failure to provide required information.

In a chapter 11 case, § 1112(b)(4)(F) provides that the debtor's "unexcused failure to satisfy timely any filing or reporting requirement" constitutes "cause" for dismissal or conversion of the case. But § 1112(b)(1) permits dismissal or conversion of the case for cause only "on request of a party in interest, and after notice and a hearing." Likewise, in a chapter 7 case of a non-individual, § 707(a)(3) authorizes dismissal due to the debtor's failure to file the

information required by § 521(i) within 15 days after the filing of the petition (or such additional time as the court allows), "but only on the motion by the United States trustee" and "only after notice and a hearing."

Thus, although a partnership or corporation is required to file a schedule of current income and expenditures, if it fails to do so, the court is not permitted to dismiss the case due to that failure unless a party in interest (in a chapter 11 case) or the U.S. trustee (in a chapter 7 case) seeks that relief. The court is not permitted to take action on its own and without the opportunity for a hearing.

Is There a Need for a Rule Change or an Official Form to Address this Issue?

The Subcommittee considered whether a rule or form amendment is needed to encourage compliance with this filing requirement by non-individual debtors. Mr. Redmiles informed the Subcommittee that U.S. trustees do not perceive this matter to present a problem. They are already getting the information they need regarding the income and expenses of corporate and partnership debtors from their monthly operating reports.

The Subcommittee concluded that there is no need to take any further action on this issue. Ms. Lewis's inquiry and possible suggestion were apparently based on a misperception about the court's role in enforcing the filing requirement for non-individual debtors. Because compliance with § 521(a) and Rule 1007(b) by non-individual debtors has not been identified as a problem needing a rule or form solution by U.S. trustees or creditors, the Subcommittee

concluded that implementation of the filing requirement can continue to be left to local rules and practices.[1]

[1] Ms. Lewis noted at least one district – the Bankruptcy Court for the Southern District of Indiana – has adopted a local form for the reporting of Current Business Income and Expenses.

TAB

8-14

Items 8-12 and 14 will be oral reports.

Pending and Recently Enacted Bankruptcy-Related Legislation

- Pub. L. 111-203, Senator Christopher Dodd and Representative Barney Frank's Wall Street Reform and Consumer Protection Act, (H.R.4173), signed by the President on July 31, 2010.
- H.R. 5827, Representative John Boccieri's gun exemption bill, passed by the House on July 28, pending in the Senate along with Senator Patrick Leahy's companion bill, S. 3654.
- S. 3675, Senator Sheldon Whitehouse's bill to create a new subchapter in chapter 11 for reorganization of small businesses, pending before the Judiciary Committee.
- H.R. 4506, Representative Steve Cohen's bankruptcy judgeship bill, passed the House on March 12, reported out of the Senate Judiciary Committee on May 27, pending in the Senate, along with S. 193, Senator Dianne Feinstein's related bill, which was reported out of the Judiciary Committee on July 21.
- H.R. 4950, Representative Steve Cohen's bill to provide additional compensation for chapter 7 trustees, pending in the Subcommittee on Commercial and Administrative Law.
- H.R. 4677 and S. 3033, Representative John Conyers, Jr., and Senator Richard Durbins' bills to increase the maximum amount for wage priority claims and contributions to employee benefit plans, etc., hearing on the Conyers bill before the Subcommittee on Commercial and Administrative Law on May 25, pending before the House and Senate Judiciary Committees.
- H.R.901, Representative Carol Shea-Porter's bill to liberalize exemptions for "medically distressed debtors" and exempt them from the means test, hearing before the Subcommittee on Commercial and Administrative Law on July 15, pending before the Judiciary Committee.
- S.1624, Senator Sheldon Whitehouse's companion bill to H.R. 901, hearing on October 20, 2009, pending before the Judiciary Committee.
- S.1490, Senator Patrick Leahy's bill to exempt victims of identity theft from the means test, reported out of the Judiciary Committee on November 5, 2009.

TAB

15-16

Proposed new Rule 8007.1 and the proposed amendment to Rule 9024 (indicative rulings), which were approved at September 2008 meeting, are in the *Bull Pen*

Bankruptcy Rules Tracking Docket (By Rule or Form Number) 9/7/10

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rule 1004.2 (new), Chapter 15 rule	Suggestion 05-BK-B Judge Samuel Bufford 1/20/06 Committee proposal	3/06 - Referred to Subcommittee on Technology and Cross Border Insolvency 5/06 - Subcommittee discussed 6/06 - Subcommittee approved revised rule 9/06 - Committee approved for publication 3/07 - Publication deferred for further study 6/07 - Subcommittee discussed 9/07 - Committee approved for publication, held in bull pen 2/08 - Subcommittee discussed 3/08 - Committee approved for publication 6/08 - Standing Committee approved publication 8/08 - Published for public comment 1/09 - Subcommittee drafted revised rule 3/09 - Committee approved revised rule for republication 6/09 - Standing Committee approved republication 8/09 - Republished for public comment 4/10 - Committee approved 6/10 - Standing Committee approved 9/10 - Judicial Conference agenda	12/1/11

Rule 1007(a)(2) Creditors list in involuntary case	Comment 06-BK-057 Chief Deputy Clerk Margaret Grammar Gay	3/07 - Referred to Subcommittee on Business Issues 6/07 - Subcommittee discussed 9/07 - Committee approved for publication 1/08 - Standing Committee approved for publication 6/08 - Published for public comment 3/09 - Committee approved 6/09 - Standing Committee approved 9/09 - Judicial Conference approved 4/10 - Supreme Court approved	12/1/10
Rule 1007(b)(7) Allow financial management course provider to file Form 23	Suggestion 09-BK-I Dana C. McWay on behalf of the Next Generation Bankruptcy CM/ECF Clerk's Office Functional Requirements Group	4/10 - Committee considered, referred to Subcommittee on Consumer Issues 8/10 - Subcommittee considered 9/10 - Committee agenda	
Rules 1007(c), 4004, 5009 Notice that case may be closed without discharge, additional time for debtor to file certification of completion of financial management course	Committee proposal	3/07 - Committee discussed, referred to Subcommittee on Consumer Issues 6/07 - Subcommittee discussed 9/07 - Committee approved for publication, held in bull pen 6/08 - Standing Committee approved for publication 8/08 - Published for public comment 3/09 - Committee approved 6/09 - Standing Committee approved 9/09 - Judicial Conference approved 4/10 - Supreme Court approved	12/1/10

Rules 1014, 1015 Chapter 15 amendments	Richard Broude	2/08 - Subcommittee on Technology and Cross Border Insolvency considered 3/08 - Committee approved for publication 6/08 - Standing Committee approved for publication 8/08 - Published for public comment 3/09 - Committee approved 6/09 - Standing Committee approved 9/09 - Judicial Conference approved 4/10 - Supreme Court approved	12/1/10
Rule 1018 Chapter 15 amendments; is injunctive relief under §§ 1519(e), 1521(e) governed by Rule 7065?	05-BR-037 Insolvency Law Committee of the Business Law Section of State Bar of California	3/07 - Referred to Subcommittee on Technology and Cross Border Insolvency 6/07 - Subcommittee considered 9/07 - Committee considered 2/08 - Subcommittee considered 3/08 - Committee approved for publication 6/08 - Standing Committee approved for publication 8/08 - Published for public comment 3/09 - Committee approved 6/09 - Standing Committee approved 9/09 - Judicial Conference approved 4/10 - Supreme Court approved	12/1/10

Rule 1019(2) New filing period for objection to exemptions in converted case	Comment 06-BK-054 Judge Dennis Montali Suggestion 07-BK-C Judge Paul Mannes	6/07 - Subcommittee on Consumer Issues discussed 9/07 - Committee approved for publication 1/08 - Standing Committee approved for publication 8/08 - Published for public comment 3/09 - Committee approved 6/09 - Standing Committee approved 9/09 - Judicial Conference approved 4/10 - Supreme Court approved	12/1/10
Rule 2003 Procedure for holding open § 341 meetings to give chapter 13 debtors more time to file tax returns	Suggestion 08-BK-L Judge Keith Lundin	1/09 - Subcommittee on Consumer Issues discussed 3/09 - Committee approved for publication 6/09 - Standing Committee approved for publication 8/09 - Published for public comment 2/10 - Consumer Subcommittee considered comments 4/10 - Committee approved 6/10 - Standing Committee approved 9/10 - Judicial Conference agenda	12/1/11

Rule 2019 Repeal the rule as unnecessary	Suggestion 07-BK-G Loan Syndication and Trading Association, Securities Industry and Financial Markets Association	3/08 - Committee discussed, Chair directed the Assistant Reporter to prepare a review of the case law on Rule 2019 10/08 - Committee discussed, referred to Subcommittee on Business Issues 12/08, 2/09 - Subcommittee prepared revised rule 3/09 - Committee approved revised rule for publication 6/09 - Standing Committee approved for publication 8/09 - Published for public comment 2/10 - Public hearing 2/10 - Business Subcommittee considered comments 4/10 - Committee approved revised amendments 6/10 - Standing Committee approved 9/10 - Judicial Conference agenda	12/1/11

Rules 3001(c), 3002.1 (new) Disclosure of postpetition mortgage fees, changes in payment amount, procedure after debtor has completed chapter 13 plan payments	Committee proposal	5/08 - Subcommittee on Consumer Issues discussed 10/08 - Committee considered 12/08 - Consumer Subcommittee prepared revised rules 3/09 - Committee approved revised rules for publication 6/09 - Standing Committee approved for publication 8/09 - Published for public comment 2/10 - Public hearing 2/10 - Consumer Subcommittee considered comments 4/10 - Committee approved revised amendments 6/10 - Standing Committee approved 9/10 - Judicial Conference agenda	12/1/11

Rule 3001, **Official Form 10** Facilitate identification of stale claims and inadequately documented claims filed after bulk transfer of consumer debts	Suggestion 08-BK-J Judge A. Thomas Small	1/09 - Subcommittee on Consumer Issues discussed 3/09 - Committee approved amendment to Rule 3001(c)(1) for publication with mortgage amendments to Rules 3001, 3002.1 (see above); certification approved, added to pending amendments to Form 10 6/09 - Standing Committee approved for publication 8/09 - Published for public comment 2/10 - Public hearing 2/10 - Consumer Subcommittee considered comments 4/10 - Committee approved republication of revised Rule 3001 and publication of Form 10 with certification 6/10 - Standing Committee approved publication 8/10 - Publication for public comment	12/1/12 Rule 3001 12/1/11 Form 10
Rule 3007(a) Disposition of objections to claims by negative notice	Suggestion 09-BK-H Judge Margaret Dee McGarrity on behalf of the Bankruptcy Judges Advisory Group	1/10 - Subcommittee on Consumer Issues considered 4/10 - Committee discussed, referred to Subcommittee on Consumer issues 8/10 - Subcommittee considered 9/10 - Committee agenda	
Rule 3007(a) Clarify service requirements for objections to claims	Suggestion (09-BK-N) Judge Michael E. Romero on behalf of the Bankruptcy Judges Advisory Group	4/10 - Committee discussed, referred to Subcommittee on Consumer issues 8/10 - Subcommittee considered 9/10 - Committee agenda	

Rule 4001(d)(2), (3) Additional time computation changes	Chair	3/09 - Committee approved as technical amendment 6/09 - Standing Committee approved as technical amendment 9/09 - Judicial Conference approved 4/10 - Supreme Court approved	12/1/10
Rules 4004, **7001** Application of sections 1328(f), 727(a)(8),(9); objection to discharge by motion	Judge Neil Olack Committee proposal	9/06 - Referred to Subcommittee on Consumer Issues 12/06 - Subcommittee considered 2/07 - Subcommittee considered 3/07 - Committee considered, referred to Subcommittee 6/07 - Subcommittee considered 9/07 - Committee approved for publication 1/08 - Standing Committee approved for publication 8/08 - Published for public comment 3/09 - Committee approved as revised 6/09 - Standing Committee approved 9/09 - Judicial Conference approved 4/10 - Supreme Court approved	12/1/10

Rules 4004(d), 7001(4) Classification of proceedings to object to or revoke discharge as adversary proceedings; objections to revoke discharge in gap period	Suggestion 08-BK-E Judge Frank Easterbrook Zedan v. Habas, 529 F.3d 398 (7th Cir. 2008)	10/08 - Committee considered, Rule 4004 gap period issues referred to Subcommittee on Consumer Issues, no further action on classification 12/08, 1/09 - Subcommittee prepared revised gap period rule 3/09 - Committee approved revised rule for publication 6/09 - Standing Committee approved for publication 8/09 - Published for public comment 2/10 - Comments considered by Consumer Subcommittee 4/10 - Committee approved Rule 4004 gap period amendment 6/10 - Standing Committee approved 9/10 - Judicial Conference agenda	12/1/11
Rule 5009(b) (new) Closing case without entry of discharge	Committee proposal	6/07 - Committee approved for publication, held for new Rule 5009(c) for chapter 15 cases 3/08 - Committee approved for publication 6/08 - Standing Committee approved for publication 8/08 - Published for public comment 3/09 - Committee approved 6/09 - Standing Committee approved 9/09 - Judicial Conference approved 4/10 - Supreme Court approved	12/1/10

Rules 5009(c), 9001, etc. Chapter 15 rules	Suggestion 05-BK-B Judge Samuel Bufford Committee proposal	3/06 - Referred to Subcommittee on Technology and Cross Border Insolvency 5/06 - Subcommittee discussed 6/06 - Subcommittee approved revised amendments 9/06 - Committee approved Rules 5009, 9001 for publication 9/06 - Committee approved Rule 5012 for publication as revision of amendment published 08/06 3/07 - Publication deferred for further study 6/07 - Subcommittee discussed 9/07 - Committee approved for publication, held in bull pen 2/08 - Subcommittee discussed 3/08 - Committee approved for publication 6/08 - Standing Committee approved publication 8/08 - Published for public comment 3/09 - Committee approved 6/09 - Standing Committee approved 9/09 - Judicial Conference approved 4/10 - Supreme Court approved	12/1/10

Rule 5012 (new) Communications with foreign courts	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee deferred for further study 6/07 - Subcommittee discussed 9/07 - Included in package of chapter 15 amendments approved for publication 3/08 - Committee approved for publication 6/08 - Standing Committee approved for publication 8/08 - Published for public comment 3/09 - Committee approved 6/09 - Standing Committee approved 9/09 - Judicial Conference approved 4/10 - Supreme Court approved	12/1/10
Rule 6003 Issuance of orders during 20-day cooling off period	Suggestion 08-BK-D Bankruptcy Judges Advisory Group	3/08 - Committee discussed 8/08 - Subcommittee on Attorney Conduct and Health Care discussed 10/08 - Committee approved for publication 1/09 - Standing Committee approved for publication 8/09 - Published for public comment 4/10 - Committee approved 6/10 - Standing Committee approved 9/10 - Judicial Conference agenda	

Rule 7004(h) Amend rule to clarify service requirements	Suggestion 09-BK-M Judge Colleen A. Brown and Judge Robert E. Littlefield, Jr.	2/10 - Subcommittee on Business Issues considered 4/10 - Committee considered, no further action	
Rule 7054(b) Time provisions	Committee proposal	10/09 - Committee approved changing 5 days to 7 days, deferred 1-day provision 11/09 - BJAG recommended changing 1 day to 7 days 2/10 - Subcommittee on Business Issues considered 4/10 - Committee approved for publication 6/10 - Standing Committee approved for publication 8/10 - Published for public comment	
Rules 8001 - 8020 Revise Part VIII of the rules to more closely follow the Appellate Rules	Eric Brunstad	3/08 - Referred to Privacy, Public Access and Appeals Subcommittee 5/08 - Subcommittee discussed 8/08 - Subcommittee discussed 10/08 - Committee discussed 3/09 - Open meeting of Subcommittee on Privacy, Public Access, and Appeals 3/09 - Committee discussed 6/09 - Subcommittee discussed comments at open meeting 9/09 - Subcommittee discussed comments at 2nd open meeting 10/09 - Report to committee 12/09 - Revised draft incorporated comments at 2nd open meeting 2/10 - Subcommittee considered 4/10 - Committee received progress report 8/10, 9/10 - Subcommittee calls 9/10 - Report on Committee agenda	

Rule 8006 Premature filing of appellant's designation of items in the record on appeal	John Shaffer	12/07 - Subcommittee on Privacy, Public Access, and Appeals discussed 2/08 - Considered by subcommittee 3/08 - Committee took no action with the understanding that the issue could be addressed as part of a comprehensive review of the Part VIII rules	
Rules 8007.1 (new), 9023, 9024 Indicative rulings	Committee proposal	8/08 - Subcommittee on Privacy, Public Access, and Appeals discussed 10/08 - Committee tentatively approved new Rule 8007.1 and Rule 9024 amendment for publication 3/09 - Rules 8007.1 and 9024 assigned to the Bull Pen	
Rule 9006(d) Delete as superfluous, not properly located in the Rules, and may create confusion	Suggestion 10-BK-D Judge Raymond T. Lyons	8/10 - Considered by the Subcommittee on Business Issues 9/10 - Committee agenda	
Rules 9013, 9014 Include the respondent's name in caption of certain types of motions	Suggestion 09-BK-J Judge William Stone, Jr.	4/10 – Committee considered, referred to Subcommittee on Consumer issues 8/10 - Subcommittee considered 9/10 - Committee agenda	

New Rule Automatic dismissal under § 521(i)	Suggestion 06-BK-011 Judge Marvin Isgur Suggestion 06-BK-020 National Association of Consumer Bankruptcy Attorneys	6/07 - Subcommittee on Consumer Issues discussed 9/07 - Committee discussed 2/08 - Considered by Consumer Subcommittee 3/08 - Committee discussed 10/08, 3/09, 10/09 - Committee discussed, Reporter to continue monitoring 4/10 - Committee report 9/10 - Committee report	
New Rule and Form Applications for allowance of administrative expenses	Suggestion 09-BK-J Judge William Stone, Jr.	4/10 - Committee considered, referred to Subcommittee on Business Issues 8/10 - Subcommittee considered 9/10 - Committee agenda	
New Rule Closing chapter 11 individual cases after confirmation and reopening as necessary	Suggestion 09-BK-H Judge Margaret Dee McGarrity on behalf of Bankruptcy Judges Advisory Group	3/10 - Subcommittee on Business Issues considered 4/10 - Committee considered, no further action	
Civil Rule 8(c) Deletion of bankruptcy discharge as affirmative defense	Judge Eugene Wedoff	4/08 - Civil Rules Committee discussed 10/08 - Committee discussed 3/09 - Committee approved deletion of affirmative defense 4/09 - Civil Rules Committee approved deletion 6/09 - Standing Committee approved 9/09 - Judicial Conference approved 4/10 - Supreme Court approved	12/1/10

Rule 7056, Civil Rule 56 Timing of summary judgment motions in contested matters and adversary proceedings after civil rule amended	Judge Wedoff	3/09 - Committee discussed 10/09 - Committee considered, referred to Subcommittee on Consumer Issues 2/10 - Note in newsletters for bankruptcy judges and clerks 3/10 - Subcommittee considered 4/10 - Committee approved for publication 6/10 Standing Committee approved publication 8/10 - Published for public comment	
Official Form 1 Conform to Rule 1004.2 (technical amendment)	Committee Proposal	7/10 - Subcommittee on Forms considered 8/10 - Committee agenda	12/1/11
Official Form 1 Separate chapter 15 petition	Suggestion 09-BK-G Kathleen Crosser Operations Manager, WAW Bankruptcy Court	1/10 - Subcommittee on Forms considered 4/10 - Committee considered, no further action now, referred to Forms Modernization Project	
Official Form 6C Extent of claimed exemption, Schwab v. Reilly	Judge Eugene Wedoff	7/09 - Subcommittee on Consumer Issues considered 10/09 - Committee discussed 4/10 - Committee discussed 6/10 - Supreme Court decision 8/10 - Consumer and Forms Subcommittees considered 9/10 - Committee agenda	
Official Form 9A, 9C, 9I Conform to Rule 7001 amendment (technical amendment)	Committee proposal	7/10 - Committee approved as technical amendment by email 6/10 - Standing Committee approved by email vote 9/10 - Judicial Conference agenda	12/1/10

Official Form 9(A - I) Conform to Rule 2003(e) amendment	Committee Proposal	7/10 - Subcommittee on Forms considered 8/10 - Committee agenda	12/1/11
Official Form 10, Rule 3001 Inconsistency on attachment of original papers, highlight the word "redacted"	Committee proposal Suggestion 10-BK-C Terese Buthold, Clerk, Eastern District of Oklahoma	7/09 - Subcommittee on Forms considered 10/09 - Committee considered 3/10 - Forms Subcommittee considered 4/10 - Committee approved for publication 6/10 - Standing Committee approved for publication 8/10 - Published for public comment	12/1/11
Official Form 10, Rule 3001 Revise Form 10 certification to deter stale claims	Suggestion 08-BK-J Judge A. Thomas Small Committee proposal	1/09 - Subcommittee on Consumer Issues discussed 3/09 - Committee approved revised certification, added to pending amendments to Form 10 (see above)	12/1/11
Official Form 10 Use of pronouns	Committee proposal	10/09 - Referred to Subcommittee on Forms and included in pending amendments to Form 10 (see above)	12/1/11
Official Form 10 Interest rate for secured tax claims	Christopher Kohn	7/09 - Subcommittee on Forms considered 10/09 - Committee approved variable interest rate language to be included in revised Form 10 (see above)	12/1/11
Official Form 10 Space for claim identifier	Suggestion 09-BK-K George Stevenson, chapter 13 trustee	7/09 - Subcommittee on Forms considered 3/10 - Subcommittee on Consumer Issues considered revised suggestion 4/10 - Committee approved for publication as part of Form 10 amendments (see above)	12/1/11

Official Form 10 Space for date stamp	Suggestion 10-BK-B Rena Myers, case administrator, Eastern District of Tennessee	3/10 - Subcommittee on Consumer Issues considered revised suggestion 4/10 - Committee approved for publication as part of Form 10 amendments (see above)	12/1/11
Official Forms 10 (Attach. A), 10 (Suppl. l) 10 (Suppl. 2) new forms to address problems related to home mortgage claims	Suggestion 08-BK-K Judges Isgur, Magner, and Bohm	3/09 - Committee discussed, referred to Subcommittee on Forms 8/09 - Court posts revised forms after public comment 7/09 - Subcommittee considered 10/09 - Committee discussed, referred to Forms subcommittee 12/09 - Judge Isgur testified 3/10 - Subcommittee considered draft forms 4/10 - Committee approved for publication 6/10 - Standing Committee approved for publication 8/10 - Published for public comment	12/1/11
Official Forms 20A, 20B Conform caption to Rule 1005 (technical amendment)	Committee proposal	1/10 - Subcommittee on Forms considered 4/10 - Committee approved as technical amendment 6/10 - Standing Committee approved 9/10 - Judicial Conference agenda	12/1/10

Official Forms 22A, 22C Use "family" size instead of "household" size for National Standard deduction on line 19A etc. on Form 22A, line 24A etc on Form 22C	Judge Eugene Wedoff 3/6/08	3/08 - Referred to Subcommittee on Forms 5/08 - Subcommittee discussed 8/08 - Subcommittee discussed 10/08 - Committee approved 1/09 - Standing Committee questioned wording 1/09 - Subcommittee considered 3/09 - Committee approved for publication 6/09 - Standing Committee approved for publication 8/09 - Published for public comment 2/10 – Subcommittee on Consumer Issues considered comments 4/10 - Committee approved 6/10 - Standing Committee approved 9/10 - Judicial Conference agenda	12/1/10
Official Form 22A If one joint debtor is exempt from the means test, does the other debtor have to file the means test information?	Judge Eugene Wedoff	1/09 - Subcommittee on Consumer Issues discussed 3/09 - Committee approved for publication 6/09 - Standing Committee approved for publication 8/09 - Published for public comment 2/109 - Subcommittee on Consumer Issues discussed 4/10 - Committee approved 6/10 - Standing Committee approved 9/10 - Judicial Conference agenda	12/1/10

Official Forms 22A, 22B, 22C revise instructions on reporting regular payments of household expenses by another person or entity	Judge Eugene Wedoff	1/09 - Subcommittee on Consumer Issues discussed 3/09 - Committee approved for publication 6/09 - Standing Committee approved for publication 8/09 - Published for public comment 4/10 - Committee approved 6/10 - Standing Committee approved 9/10 - Judicial Conference agenda	12/1/10
Official Forms 22A, 22C Deducting telecommunications expenses by debtor who is not self-employed	William J. Neild Comment (09-BK-032)	4/10 - Committee discussed, referred to Subcommittee on Consumer Issues 8/10 - Subcommittee considered 9/10 - Committee agenda	
Official Form 22A Exclusion from means test for Reservists and members of National Guard - Pub. L. 110-438 - expires 3 years from 12.19.08	Carl Barnes, Best Case		
Official Form 22C Calculation of projected disposable income under § 1325(b)(1), Hamilton v. Lanning	Judge Eugene Wedoff	4/10 - Committee discussed 6/10 - Supreme Court decision 8/10 - Consumer and Forms Subcommittees considered 9/10 - Committee agenda	

Official Form 23 Revise instructions to conform to proposed amendment to Rule 1007(c)	Mark Diamond, NYS Bankruptcy Court	3/09 - Committee approved as technical amendment 6/09 - Standing Committee approved 9/09 - Judicial Conference approved	12/1/10
Official Form 25A Change effective date from 11 business days after entry of confirmation	Committee proposal	10/09 - Referred to Subcommittee on Business Issues 2/10 - Subcommittee considered 4/10 - Committee approved for publication 6/10 - Standing Committee approved for publication 8/10 - Published for public comment	
New Form Create an Official Form or rule for corporate and partnership debtors filing schedules of current income and expenditures	Deputy Clerk Debbie Lewis, Southern District of Florida	7/10 - Subcommittee on Business issues considered 9/10 - Committee agenda	

Official Forms Alternatives to paper-based format for forms; renumber Official Forms	Judge James D. Walker, Jr. Comment 06-BK-011 Judge Marvin Isgur Patricia Ketchum	9/06 - Committee will coordinate a study with the Administrative Office 8/07 - Discussion of how to organize the study 9/07 - Committee discussed and authorized chair to create group 1/08 - Organizational meeting for Forms Modernization Project 2008 /2009/2010 - Forms Modernization Project continues work, meetings in January, June 9/10 - Statement of Financial Affairs drafting session 9/10 - Report on agenda 10/10 - Form 22 drafting session	

TAB

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Items 17 - 19 will be oral reports.

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