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

FROM: Paul Mannes, Chair
Advisory Committee on Bankruptcy Rules

DATE: June 1, 1995

RE: Report of the Advisory Committee on Bankruptcy Rules

Item 104

Introduction

The Advisory Committee on Bankruptcy Rules met on March 30-31, 1995, in Lafayette, Louisiana. The Committee considered public comments regarding the proposed amendments to the Bankruptcy Rules that were published in September, 1994. After making several changes to the proposed amendments, the Committee approved them for presentation to the Standing Committee for final approval. The Committee then approved another package of proposed amendments for presentation to the Standing Committee with a request for publication for comment by the bench and bar. Most of the proposed amendments presented with a request for publication are designed to implement provisions of the Bankruptcy Reform Act of 1994. Both packages of proposed amendments are discussed in the section of this report on "Action Items."

I. Action Items

A. Proposed Amendments to Bankruptcy Rules 1006, 1007, 1019, 2002, 2015, 3002, 3016, 4004, 5005, 7004, 8008, and 9006 Submitted for Approval by the Standing Committee and Transmittal to the Judicial Conference.

These proposed amendments were published for comment by the bench and bar in September 1994. Letters were received from eleven commentators (nine letters were received prior to the March meeting; two were received after the March meeting because they were mailed to the House Judiciary Committee). Eight letters commented on particular rules (Rules 2002, 3002, 5005, and 7004) and are discussed below following the text of the relevant proposed amendment. The following three letters contain only general statements regarding all published rules:

(1) Robert L. Jones III, President of the Arkansas Bar Association commented that "[w]e agree with the proposed amendments to the Federal Rules of Bankruptcy Procedure."

(2) Lee Ann Huntington, Chair of the Committee on Federal Courts of the State Bar of California, wrote that the Committee on Federal Courts "enthusiastically support the proposed amendments."

(3) Raymond A. Noble, Esq., Director of Legal Affairs, New Jersey State Bar Association, dated February 24, 1995, informed the Advisory Committee that the Bankruptcy Practice Section of the State Bar Association "concluded that the changes that affect bankruptcy practice are ministerial and do not require comment."

Bryan Garner, consultant on style, also suggested certain stylistic improvements. These suggestions were considered by the Advisory Committee at its March 1995 meeting and, as a result, a number of Mr. Garner's suggestions have been implemented.

1. Synopsis of Proposed Amendments

(a) Rule 1006(a) is amended to include within the scope of the rule any fees prescribed by the Judicial Conference of the United States pursuant to 28 U.S.C. § 1930(b) that is payable to the clerk upon commencement of a case. This fee will be payable in installments in the same manner that the filing fee prescribed by 28 U.S.C. § 1930(a) is payable in installments pursuant to Rule 1006(b).

(b) Rule 1007(c) is amended to provide that schedules and statements filed prior to conversion of a case to another chapter are treated as filed in the converted case, regardless of the chapter the case was in prior to conversion. The rule now provides that schedules and statements filed prior to conversion are treated as filed in the converted case only if the case was in chapter 7 prior to conversion. Since 1991, the same official forms for schedules and statements have been used in all cases and, therefore, limiting this provision to cases that were in chapter 7 prior to conversion is no longer necessary.

(c) Rule 1019(7) is abrogated. Subdivision (7) provides that, in a case converted to chapter 7, an extension of time to file claims against a surplus granted pursuant to Rule 3002(c)(6) shall be applicable to postpetition, pre-conversion claims. This subdivision is abrogated to conform to the abrogation of Rule 3002(c)(6).

(d) Rule 2002, which governs notices, is amended in several respects. Subdivision (a)(4) -- requiring notice of the time for filing claims against a surplus in a chapter 7 case -- is abrogated to conform to the abrogation of Rule 3002(c)(6) (see below). To reduce expenses in administering chapter 7 cases, subdivision (f)(8) is amended to eliminate the need to mail to all parties copies of the summary of the chapter 7 trustee's final account. Subdivision (h), which permits the court to eliminate the need to send notices to creditors who have failed to file claims, is revised in several ways: (1) to clarify that such an order may not be issued if creditors still have time to file claims because it is a "no asset" case and a "notice of no dividend" has been sent; (2) to clarify that an order under this subdivision does not affect notices that must be sent to parties who are not creditors; (3) to provide that a creditor who is an infant, an incompetent person, or a governmental unit is entitled to receive notices if the time for that creditor to file a claim has been extended under Rule 3002(c)(1) or (c)(2); and (4) to delete cross-references to Rule 2002(a)(4) and Rule 3002(c)(6), which are being abrogated.

(e) Rule 2015(b) and (c) are amended to clarify that a debtor in possession or trustee in a chapter 12 case, or a debtor engaged in business in a chapter 13 case, does not have to file an inventory of the debtor's property unless the court so directs.

(f) Rule 3002 is amended to conform to the new section 502(b)(9) that was added to the Code by the Bankruptcy Reform Act of 1994 and which governs objections to tardily filed claims. Rule 3002(c)(1) is amended to conform to the new section 502(b)(9) to the extent that it provides that a proof of claim filed by a governmental unit is timely if it is filed not later than 180 days after the order for relief. Rule 3002(c)(1) is also amended to delete any distinction between domestic and foreign governmental units. Rule 3002(c)(6) is abrogated to make the rule consistent with section 726 of the Bankruptcy Code which provides that, under certain circumstances, a creditor holding a claim that has been tardily filed may be entitled to receive a distribution in a chapter 7 case.

(g) Rule 3016(a) is abrogated because it could have the effect of extending the debtor's exclusive period for filing a chapter 11 plan without the court, after notice and a hearing, finding cause for an extension as is required by section 1121(d) of the

Bankruptcy Code.

(h) Rule 4004(c) is amended to delay the debtor's discharge in a chapter 7 case if there is a pending motion to extend the time for filing a complaint objecting to discharge or if the filing fee has not been paid in full.

(i) Rule 5005(a) is amended to authorize local rules that permit documents to be filed, signed. or verified by electronic means, provided that such means are consistent with technical standards, if any, established by the Judicial Conference. The rule also provides that a document filed by electronic means constitutes a "written paper" for the purpose of applying the rules and constitutes a public record open to examination. The purpose of these amendments is to facilitate the filing, signing, or verification of documents by computer-to-computer transmission without the need to reduce them to paper form in the clerk's office.

(k) Rule 7004 is amended to conform to the 1993 amendments to Rule 4 of the Federal Rules of Civil Procedure. First, cross-references to subdivisions of F.R.Civ.P. 4 are changed to conform to the new structure of the Civil Rule. Second, substantive changes to Rule 4 F.R.Civ.P. that became effective in 1993 are implemented in Rule 7004 to the extent that they are consistent with the continuing availability under Rule 7004 of service by first class mail as an alternative to the methods of personal service provided under Rule 4 F.R.Civ.P.

(l) Rule 8008 is amended to permit district courts and, where bankruptcy appellate panels have been authorized, circuit councils to adopt local rules to allow filing, signing, or verification of documents by electronic means in the same manner and with the same limitations that are applicable to bankruptcy courts under Rule 5005(a), as amended.

(m) Rule 9006 is amended to conform to the abrogation of Rule 2002(a)(4) and the renumbering of Rule 2002(a)(8).

2. Text of Proposed Amendments, GAP Report, and Summary of Comments Relating to Particular Rules:

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

Rule 1006. Filing Fee

(a) GENERAL REQUIREMENT. Every petition shall be accompanied by the ~~prescribed~~ filing fee except as provided in subdivision (b) of this rule. For the purpose of this rule, "filing fee" means the filing fee prescribed by 28 U.S.C. § 1930(a)(1)-(a)(5) and any other fee prescribed by the Judicial Conference of the United States under 28 U.S.C. § 1930(b) that is payable to the clerk upon the commencement of a case under the Code.

(b) PAYMENT OF FILING FEE IN INSTALLMENTS.

(1) *Application for Permission to Pay Filing Fee in Installments.* A voluntary petition by an individual shall be accepted for filing if accompanied by the debtor's signed application stating that the debtor is unable to pay the filing fee except in

installments. The application shall state the proposed terms of the installment payments and that the applicant has neither paid any money nor transferred any property to an attorney for services in connection with the case.

(2) *Action on Application.* Prior to the meeting of creditors, the court may order the filing fee paid to the clerk or grant leave to pay in installments and fix the number, amount and dates of payment. The number of installments shall not exceed four, and the final installment shall be payable not later than 120 days after filing the petition. For cause shown, the court may extend the time of any installment, provided the last installment is paid not later than 180 days after filing the petition.

(3) *Postponement of Attorney's Fees.* The filing fee must be paid in full before the debtor or chapter 13 trustee may pay an attorney or any other person who renders services to the

48 debtor in connection with the case.

COMMITTEE NOTE

The Judicial Conference prescribes miscellaneous fees pursuant to 28 U.S.C. § 1930(b). In 1992, a $30 miscellaneous administrative fee was prescribed for all chapter 7 and chapter 13 cases. The Judicial Conference fee schedule was amended in 1993 to provide that an individual debtor may pay this fee in installments.

Subdivision (a) of this rule is amended to clarify that every petition must be accompanied by any fee prescribed under 28 U.S.C. 1930(b) that is required to be paid when a petition is filed, as well as the filing fee prescribed by 28 U.S.C. § 1930(a). By defining "filing fee" to include Judicial Conference fees, the procedures set forth in subdivision (b) for paying the filing fee in installments will also apply with respect to any Judicial Conference fee required to be paid at the commencement of the case.

Public Comments on Rule 1006. None.

GAP Report on Rule 1006. No changes since publication, except for a stylistic change in subdivision (a).

Rule 1007. Lists, Schedules and Statements; Time Limits

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1 (c) TIME LIMITS. The schedules and
2 statements, other than the statement of
3 intention, shall be filed with the
4 petition in a voluntary case, or if the

petition is accompanied by a list of all the debtor's creditors and their addresses, within 15 days thereafter, except as otherwise provided in subdivisions (d), (e), and (h) of this rule. In an involuntary case the schedules and statements, other than the statement of intention, shall be filed by the debtor within 15 days after entry of the order for relief. Schedules and statements ~~previously~~ filed prior to the conversion of a case to another chapter ~~in a pending chapter 7 case~~ shall be deemed filed in ~~a superseding~~ the converted case unless the court directs otherwise. Any extension of time for the filing of the schedules and statements may be granted only on motion for cause shown and on notice to the United States trustee and to any committee elected ~~pursuant to~~ under § 705 or appointed ~~pursuant to~~ under § 1102 of the Code, trustee, examiner, or other party as the court may direct. Notice of an extension shall be given to the United States trustee and to any

committee, trustee, or other party as the court may direct.

COMMITTEE NOTE

Subdivision (c) is amended to provide that schedules and statements filed prior to the conversion of a case to another chapter shall be deemed filed in the converted case, whether or not the case was a chapter 7 case prior to conversion. This amendment is in recognition of the 1991 amendments to the Official Forms that abrogated the Chapter 13 Statement and made the same forms for schedules and statements applicable in all cases.

This subdivision also contains a technical correction. The phrase "superseded case" creates the erroneous impression that conversion of a case results in a new case that is distinct from the original case. The effect of conversion of a case is governed by § 348 of the Code.

Public Comments on Rule 1007(c). None.

GAP Report on Rule 1007(c). No changes since publication, except for stylistic changes.

Rule 1019. Conversion of Chapter 11 Reorganization Case, Chapter 12 Family Farmer's Debt Adjustment Case, or Chapter 13 Individual's Debt Adjustment Case to Chapter 7 Liquidation Case

When a chapter 11, chapter 12, or chapter 13 case has been converted or reconverted to a chapter 7 case:

* * * * *

~~(7) EXTENSION OF TIME TO FILE CLAIMS AGAINST SURPLUS. Any extension of time for the filing of claims against a surplus granted pursuant to Rule 3002(c)(6), shall apply to holders of claims who failed to file their claims within the time prescribed, or fixed by the court pursuant to paragraph (6) of this rule, and notice shall be given as provided in Rule 2002.~~

COMMITTEE NOTE

Subdivision (7) is abrogated to conform to the abrogation of Rule 3002(c)(6).

Public Comments on Rule 1019. None.

GAP Report on Rule 1019. No changes were made to the text of the rule. The Committee Note was changed to conform to the proposed changes to Rule 3002 (see GAP Report on Rule 3002 below).

Rule 2002. Notices to Creditors, Equity Security Holders, United States, and United States Trustee

(a) TWENTY-DAY NOTICES TO PARTIES IN INTEREST. Except as provided in subdivisions (h), (i), and (l) of this

rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees ~~not less than 20 days~~ at least 20 days' notice by mail of:

(1) the meeting of creditors ~~pursuant to~~ under § 341 of the Code;

(2) a proposed use, sale, or lease of property of the estate other than in the ordinary course of business, unless the court for cause shown shortens the time or directs another method of giving notice;

(3) the hearing on approval of a compromise or settlement of a controversy other than approval of an agreement pursuant to Rule 4001(d), unless the court for cause shown directs that notice not be sent;

~~(4) the date fixed for the filing of claims against a surplus in an estate as provided in Rule~~

~~3002(c)(6);~~

~~(5)~~ (4) in a chapter 7 liquidation, a chapter 11 reorganization case, and a chapter 12 family farmer debt adjustment case, the hearing on the dismissal of the case, unless the hearing is ~~pursuant to~~ under § 707(b) of the Code, or the conversion of the case to another chapter;

~~(6)~~ (5) the time fixed to accept or reject a proposed modification of a plan;

~~(7)~~ (6) hearings on all applications for compensation or reimbursement of expenses ~~totalling~~ totaling in excess of $500;

~~(8)~~ (7) the time fixed for filing proofs of claims pursuant to Rule 3003(c); and

~~(9)~~ (8) the time fixed for filing objections and the hearing to consider confirmation of a chapter 12 plan.

* * * * *

(c) CONTENT OF NOTICE.

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(2) *Notice of Hearing on Compensation.* The notice of a hearing on an application for compensation or reimbursement of expenses required by subdivision ~~(a)(7)~~ (a)(6) of this rule shall identify the applicant and the amounts requested.

* * * * *

(f) OTHER NOTICES. Except as provided in subdivision (l) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, all creditors, and indenture trustees notice by mail of: (1) the order for relief;

* * * * *

and (8) a summary of the trustee's final report ~~and account~~ in a chapter 7 case if the net proceeds realized exceed $1,500.

* * * * *

(h) NOTICES TO CREDITORS WHOSE CLAIMS ARE FILED. In a chapter 7 case,

~~the court may,~~ after 90 days following the first date set for the meeting of creditors ~~pursuant to~~ under § 341 of the Code, the court may direct that all notices required by subdivision (a) of this rule~~, except clause (4) thereof,~~ be mailed only to the debtor, the trustee, all indenture trustees, creditors ~~whose claims~~ that hold claims for which proofs of claim have been filed, and creditors, if any, ~~who~~ that are still permitted to file claims by reason of an extension granted ~~under Rule 3002(c)(6)~~ pursuant to Rule 3002(c)(1) or (c)(2). In a case where notice of insufficient assets to pay a dividend has been given to creditors pursuant to subdivision (e) of this rule, after 90 days following the mailing of a notice of the time for filing claims pursuant to Rule 3002(c)(5), the court may direct that notices be mailed only to the entities specified in the preceding sentence.

(i) NOTICES TO COMMITTEES. Copies of all notices required to be mailed ~~under~~ pursuant to this rule shall be

mailed to the committees elected ~~pursuant to~~ under § 705 or appointed ~~pursuant to~~ under § 1102 of the Code or to their authorized agents. Notwithstanding the foregoing subdivisions, the court may order that notices required by subdivision (a)(2), (3) and ~~(7)~~ (6) of this rule be transmitted to the United States trustee and be mailed only to the committees elected ~~pursuant to~~ under § 705 or appointed ~~pursuant to~~ under § 1102 of the Code or to their authorized agents and to the creditors and equity security holders who serve on the trustee or debtor in possession and file a request that all notices be mailed to them. A committee appointed ~~pursuant to~~ under § 1114 shall receive copies of all notices required by subdivisions (a)(1), ~~(a)(6)~~ (a)(5), (b), (f)(2), and (f)(7), and such other notices as the court may direct.

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(k) NOTICES TO UNITED STATES TRUSTEE. Unless the case is a chapter 9

municipality case or unless the United States trustee ~~otherwise~~ requests otherwise, the clerk, or some other person as the court may direct, shall transmit to the United States trustee notice of the matters described in subdivisions (a)(2), (a)(3), ~~(a)(5)~~ (a)(4), ~~(a)(9)~~ (a)(8), (b), (f)(1), (f)(2), (f)(4), (f)(6), (f)(7), and (f)(8) of this rule and notice of hearings on all applications for compensation or reimbursement of expenses. Notices to the United States trustee shall be transmitted within the time prescribed in subdivision (a) or (b) of this rule. The United States trustee shall also receive notice of any other matter if such notice is requested by the United States trustee or ordered by the court. Nothing in these rules ~~shall require~~ requires the clerk or any other person to transmit to the United States trustee any notice, schedule, report, application or other document in a case under the Securities Investor Protection Act, 15 U.S.C. § 78aaa et

160 seq.

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COMMITTEE NOTE

Paragraph (a)(4) is abrogated to conform to the abrogation of Rule 3002(c)(6). The remaining paragraphs of subdivision (a) are renumbered, and references to these paragraphs contained in other subdivisions of this rule are amended accordingly.

Paragraph (f)(8) is amended so that a summary of the trustee's final account, which is prepared after distribution of property, does not have to be mailed to the debtor, all creditors, and indenture trustees in a chapter 7 case. Parties are sufficiently protected by receiving a summary of the trustee's final report that informs parties of the proposed distribution of property.

Subdivision (h) is amended (1) to provide that an order under this subdivision may not be issued if a notice of no dividend is given pursuant to Rule 2002(e) and the time for filing claims has not expired as provided in Rule 3002(c)(5); (2) to clarify that notices required to be mailed by subdivision (a) to parties other than creditors must be mailed to those entities despite an order issued pursuant to subdivision (h); (3) to provide that if the court, pursuant to Rule 3002(c)(1) or 3003(c)(2), has granted an extension of time to file a proof of claim, the creditor for whom the extension has been granted must continue to receive notices despite an order issued pursuant to subdivision (h); and (4) to delete references to subdivision (a)(4) and Rule 3002(c)(6), which have been abrogated.

Other amendments to this rule are stylistic.

Public Comments on Rule 2002.

(1) Susan J. Lewis, Legal Editor at Matthew Bender & Company, Inc., in her letter of January 23, 1995, pointed out a typographical error in the committee note.

(2) Glenn Gregorcy, Chief Deputy Clerk, United States Bankruptcy Court for the District of Utah, in his letter of December 5, 1994, commented that the proposed amendment to Rule 2002(f)(8) (deleting the words "and account" from the requirement that the trustee send creditors "a summary of the trustee's final report and account in a chapter 7 case if the net proceeds realized exceed $1,500") "does nothing whatsoever" because "in a vast majority of the districts" only one notice (not two) are being sent under the present rule. That is, in most districts, the final report and the final account are the same document. He also recommends that Rule 2002(f)(8) be amended to provide that the summary of the trustee's final report be sent only to creditors who have previously filed claims in the case.

(3) James T. Watkins, Esq., of Becket & Watkins, Malvern, Pa., which represents "ten of the top twenty-five national issuers of credit cards in their bankruptcy cases nationwide," in his letter dated February 28, 1995, urged the Committee to abandon the proposed amendments to Rule 2002(f)(8). His firm regularly reviews the trustee's final reports and accounts to verify that distributions stated have been received. "In this process, we occasionally identify cases where Proofs of Claim were timely filed but not reflected in the trustee's account, or, far less often, the amounts of the claims, and thus the distributions, are incorrect." If the proposed amendment is not abandoned, he suggests that the summary of the trustee's final report should include the creditor's allowed

claim amount and address.

(4) Richard M. Kremen, on behalf of the Maryland Bar Association Committee on Creditors' Rights, Bankruptcy and Insolvency, in his letter dated February 23, 1995, offered stylistic improvements to the proposed amendments to Rule 2002(h).

(5) Mary S. Elcano, Senior Vice President, General Counsel, of the United States Postal Service, in her letter dated February 24, 1995, suggests that Rule 2002 be amended to require that the notice of dismissal of the case be served on the debtor's employer to make sure that the employer does not erroneously reject a subsequent garnishment request.

GAP Report on Rule 2002. No changes since publication, except for stylistic changes and the correction of a typographical error in the committee note.

Rule 2015. Duty to Keep Records, Make Reports, and Give Notice of Case

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(b) CHAPTER 12 TRUSTEE AND DEBTOR IN POSSESSION. In a chapter 12 family farmer's debt adjustment case, the debtor in possession shall perform the duties prescribed in clauses ~~(1) (4)~~ (2)-(4) of subdivision (a) of this rule and, if the court directs, shall file and transmit to the United States trustee a complete inventory of the property of the debtor within the time

fixed by the court. If the debtor is removed as debtor in possession, the trustee shall perform the duties of the debtor in possession prescribed in this paragraph.

(c) CHAPTER 13 TRUSTEE AND DEBTOR.

(1) *Business Cases.* In a chapter 13 individual's debt adjustment case, when the debtor is engaged in business, the debtor shall perform the duties prescribed by clauses ~~(1) (4)~~ (2) - (4) of subdivision (a) of this rule and, if the court directs, shall file and transmit to the United States trustee a complete inventory of the property of the debtor within the time fixed by the court.

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COMMITTEE NOTE

Subdivision (a)(1) provides that the trustee in a chapter 7 case and, if the court directs, the trustee or debtor in possession in a chapter 11 case, is required to file and transmit to the United States trustee a complete inventory of the debtor's property within 30 days after qualifying as trustee or debtor in possession, unless such an inventory has already been filed. Subdivisions (b) and (c) are amended to clarify that a debtor in possession and trustee in a chapter 12 case, and a debtor in a chapter 13 case where the debtor is engaged in business, are not required to file and transmit to

the United States trustee a complete inventory of the property of the debtor unless the court so directs. If the court so directs, the court also fixes the time limit for filing and transmitting the inventory.

Public Comments on Rule 2015. None.

GAP Report on Rule 2015. No changes since publication, except for a stylistic change in the first sentence of the committee note.

Rule 3002. Filing Proof of Claim or Interest

(a) NECESSITY FOR FILING. An unsecured creditor or an equity security holder must file a proof of claim or interest ~~in accordance with this rule~~ for the claim or interest to be allowed, except as provided in Rules 1019(3), 3003, 3004, and 3005.

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(c) TIME FOR FILING. In a chapter 7 liquidation, chapter 12 family farmer's debt adjustment, or chapter 13 individual's debt adjustment case, a proof of claim ~~shall be filed within~~ is timely filed if it is filed not later than 90 days after the first date set for the meeting of creditors called

under ~~pursuant to~~ § 341(a) of the Code, except as follows:

(1) A proof of claim filed by a governmental unit is timely filed if it is filed not later than 180 days after the date of the order for relief. On motion of ~~the United States, a state, or subdivision thereof~~ a governmental unit before the expiration of such period and for cause shown, the court may extend the time for filing of a claim by the ~~United States, state or subdivision thereof~~ governmental unit.

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~~(6) In a chapter 7 liquidation case, if a surplus remains after all claims allowed have been paid in full, the court may grant an extension of time for the filing of claims against the surplus not filed within the time herein above prescribed.~~

COMMITTEE NOTE

The amendments are designed to conform to §§ 502(b)(9) and 726(a) of

the Code as amended by the Bankruptcy Reform Act of 1994.

The Reform Act amended § 726(a)(1) and added § 502(b)(9) to the Code to govern the effects of a tardily filed claim. Under § 502(b)(9), a tardily filed claim must be disallowed if an objection to the proof of claim is filed, except to the extent that holder of a tardily filed claim is entitled to distribution under § 726(a)(1), (2), or (3).

The phrase "in accordance with this rule" is deleted from Rule 3002(a) to clarify that the effect of filing a proof of claim after the expiration of the time prescribed in Rule 3002(c) is governed by § 502(b)(9) of the Code, rather than by this rule.

Section 502(b)(9) of the Code provides that a claim of a governmental unit shall be timely filed if it is filed "before 180 days after the date of the order for relief" or such later time as the Bankruptcy Rules provide. To avoid any confusion as to whether a governmental unit's proof of claim is timely filed under § 502(b)(9) if it is filed on the 180th day after the order for relief, paragraph (1) of subdivision (c) provides that a governmental unit's claim is timely if it is filed not later than 180 days after the order for relief.

References to "the United States, a state, or subdivision thereof" in paragraph (1) of subdivision (c) are changed to "governmental unit" to avoid different treatment among foreign and domestic governments.

Public Comments on Rule 3002.

(1) Richard M. Kremen, on behalf of the Maryland Bar Association Committee on Creditors' Rights, Bankruptcy and Insolvency, in his letter dated February

23, 1995, suggested changes to the published draft designed to implement amendments to § 502(b)(9) of the Bankruptcy Code resulting from the Bankruptcy Reform Act of 1994.

(2) Jon M. Waage, Esq., of Denton, Texas, in his letter dated February 21, 1995 (sent to the House Judiciary Committee and received by the Advisory Committee after its March meeting), recommended another amendment to require a creditor who files a proof of claim to serve a copy thereof on the debtor and the debtor's attorney.

(3) Donald Ross Patterson, Esq., of Tyler, Texas, in his letter dated March 6, 1995 (sent to the House Judiciary Committee and received by the Advisory Committee after its March meeting), makes the same recommendation as that made by Mr. Waage.

[At the March 1995 meeting, the Advisory Committee decided to postpone until the September 1995 meeting a Committee member's recommendation that notice of a tardily filed claim be served on the debtor and the trustee together with a copy of the proof of claim. The Advisory Committee will also consider at the September 1995 meeting the similar recommendations of Mr. Waage and Mr. Patterson]

GAP Report on Rule 3002. After publication of the proposed amendments, the Bankruptcy Reform Act of 1994 amended sections 726 and 502(b) of the Code to clarify the rights of creditors who tardily file a proof of claim. In view of the Reform Act, proposed new subdivision (d) of Rule 3002 has been deleted from the proposed amendments because it is no longer necessary. In addition, subdivisions (a) and (c) have been changed after publication to clarify that the effect of tardily filing a proof of claim is governed by § 502(b)(9) of the Code, rather than by this rule.

The amendments to § 502(b) also provide that a governmental unit's proof of claim is timely filed if it is filed before 180 days after the order for relief. Proposed amendments to Rule 3002(c)(1) were added to the published amendments to conform to this statutory change and to avoid any confusion as to whether a claim by a governmental unit is timely if it is filed on the 180th day.

The committee note has been re-written to explain the rule changes designed to conform to the Reform Act.

Rule 3016. Filing of Plan and Disclosure Statement in Chapter 9 Municipality and Chapter 11 Reorganization Cases

~~(a) TIME FOR FILING PLAN. A party in interest, other than the debtor, who is authorized to file a plan under § 1121(c) of the Code may not file a plan after entry of an order approving a disclosure statement unless confirmation of the plan relating to the disclosure statement has been denied or the court otherwise directs.~~

~~(b)~~ (a) IDENTIFICATION OF PLAN. Every proposed plan and any modification thereof shall be dated and, in a chapter 11 case, identified with the name of the entity or entities

submitting or filing it.

~~(c)~~ (b) DISCLOSURE STATEMENT. In a chapter 9 or 11 case, a disclosure statement ~~pursuant to~~ under § 1125 or evidence showing compliance with § 1126(b) of the Code shall be filed with the plan or within a time fixed by the court.

COMMITTEE NOTE

Section 1121(c) gives a party in interest the right to file a chapter 11 plan after expiration of the period when only the debtor may file a plan. Under § 1121(d), the exclusive period in which only the debtor may file a plan may be extended, but only if a party in interest so requests and the court, after notice and a hearing, finds cause for an extension. Subdivision (a) is abrogated because it could have the effect of extending the debtor's exclusive period for filing a plan without satisfying the requirements of § 1121(d). The abrogation of subdivision (a) does not affect the court's discretion with respect to the scheduling of hearings on the approval of disclosure statements when more than one plan has been filed.

The amendment to subdivision (c) is stylistic.

Public Comments on Rule 3016. None.

GAP Report on Rule 3016. No changes since publication, except for a stylistic change.

Rule 4004. Grant or Denial of Discharge

* * * * *

(c) GRANT OF DISCHARGE.

(1) In a chapter 7 case, on expiration of the time fixed for filing a complaint objecting to discharge and the time fixed for filing a motion to dismiss the case pursuant to Rule 1017(e), the court shall forthwith grant the discharge unless:

~~(1)~~ (a) the debtor is not an individual,

~~(2)~~ (b) a complaint objecting to the discharge has been filed,

~~(3)~~ (c) the debtor has filed a waiver under § 727(a)(10), ~~or~~

~~(4)~~ (d) a motion to dismiss the case ~~under~~ pursuant to Rule 1017(e) is pending,

(e) a motion to extend the time for filing a

complaint objecting to discharge is pending, or

(f) the debtor has not paid in full the filing fee prescribed by 28 U.S.C. § 1930(a) and any other fee prescribed by the Judicial Conference of the United States under 28 U.S.C. § 1930(b) that is payable to the clerk upon the commencement of a case under the Code.

(2) Notwithstanding ~~the foregoing~~ Rule 4004(c)(1), on motion of the debtor, the court may defer the entry of an order granting a discharge for 30 days and, on motion within ~~such~~ that period, the court may defer entry of the order to a date certain.

* * * * *

COMMITTEE NOTE

Subsection (c) is amended to delay entry of the order of discharge if a motion pursuant to Rule 4004(b) to extend the time for filing a complaint

objecting to discharge is pending. Also, this subdivision is amended to delay entry of the discharge order if the debtor has not paid in full the filing fee and the administrative fee required to be paid upon the commencement of the case. If the debtor is authorized to pay the fees in installments in accordance with Rule 1006, the discharge order will not be entered until the final installment has been paid.

The other amendments to this Rule are stylistic.

Public Comments on Rule 4004. None.

GAP Report on Rule 4004. No changes have been made since publication, except for stylistic changes.

Rule 5005. Filing and Transmittal of Papers

(a) FILING.

(1) *Place of Filing.* The lists, schedules, statements, proofs of claim or interest, complaints, motions, applications, objections and other papers required to be filed by these rules, except as provided in 28 U.S.C. § 1409, shall be filed with the clerk in the district where the case under the Code is pending. The judge of that court may permit the papers to be filed with the judge, in which event the filing date shall be noted thereon, and

they shall be forthwith transmitted to the clerk. The clerk shall not refuse to accept for filing any petition or other paper presented for the purpose of filing solely because it is not presented in proper form as required by these rules or any local rules or practices.

(2) *Filing by Electronic Means.* A court by local rule may permit documents to be filed, signed, or verified by electronic means, provided such means are consistent with technical standards, if any, established by the Judicial Conference of the United States. A document filed by electronic means in accordance with this rule constitutes a written paper for the purpose of applying these rules, the Federal Rules of Civil Procedure made applicable by these rules, and § 107 of the Code.

* * * * *

COMMITTEE NOTE

The rule is amended to permit, but not require, courts to adopt local rules that allow filing, signing, or verifying of documents by electronic

means. However, such local rules must be consistent with technical standards, if any, promulgated by the Judicial Conference of the United States.

An important benefit to be derived by permitting filing by electronic means is that the extensive volume of paper received and maintained as records in the clerk's office will be reduced substantially. With the receipt of electronic data transmissions by computer, the clerk may maintain records electronically without the need to reproduce them in tangible paper form.

Judicial Conference standards governing the technological aspects of electronic filing will result in uniformity among judicial districts to accommodate an increasingly national bar. By delegating to the Judicial Conference the establishment and future amendment of national standards for electronic filing, the Supreme Court and Congress will be relieved of the burden of reviewing and promulgating detailed rules dealing with complex technological standards. Another reason for leaving to the Judicial Conference the formulation of technological standards for electronic filing is that advances in computer technology occur often, and changes in the technological standards may have to be implemented more frequently than would be feasible by rule amendment under the Rules Enabling Act process.

It is anticipated that standards established by the Judicial Conference will govern technical specifications for electronic data transmission, such as requirements relating to the formatting of data, speed of transmission, means to transmit copies of supporting documentation, and security of communication procedures. In addition, before procedures for electronic filing are implemented, standards must be established to assure

the proper maintenance and integrity of the record and to provide appropriate access and retrieval mechanisms. These matters will be governed by local rules until system-wide standards are adopted by the Judicial Conference.

Rule 9009 requires that the Official Forms shall be observed and used "with alterations as may be appropriate." Compliance with local rules and any Judicial Conference standards with respect to the formatting or presentation of electronically transmitted data, to the extent that they do not conform to the Official Forms, would be an appropriate alteration within the meaning of Rule 9009.

These rules require that certain documents be in writing. For example, Rule 3001 states that a proof of claim is a "written statement." Similarly, Rule 3007 provides that an objection to a claim "shall be in writing." Pursuant to the new subdivision (a)(2), any requirement under these rules that a paper be written may be satisfied by filing the document by electronic means, notwithstanding the fact that the clerk neither receives nor prints a paper reproduction of the electronic data.

Section 107(a) of the Code provides that a "paper" filed in a case is a public record open to examination by an entity at reasonable times without charge, except as provided in § 107(b). The amendment to subdivision (a)(2) provides that an electronically filed document is to be treated as such a public record.

Although under subdivision (a)(2) electronically filed documents may be treated as written papers or as signed or verified writings, it is important to emphasize that such treatment is only for the purpose of applying these rules. In addition, local rules and

Judicial Conference standards regarding verification must satisfy the requirements of 28 U.S.C. § 1746.

Public Comments on Rule 5005.

(1) Patricia M. Hynes, Esq., Chair of the Committee on Federal Courts of the Association of the Bar of the City of New York, together with her letter dated February 27, 1995, submitted comments of the Committee on Federal Courts that are specifically addressed to proposed amendments to Civil Rule 5(e) regarding electronic filing. She suggested that these comments also be considered in connection with the proposed amendments to Bankruptcy Rule 5005(a) that are similar, but not the same, as Civil Rule 5(e). The Federal Courts Committee is concerned that the proposed rule on electronic filing would leave to each district an uncontrolled discretion to adopt local rules that may not adequately take into consideration the following "potentially serious problems:" Access to electronically filed documents; system compatibility; authenticity and accuracy; and security of court files.

Although these issues are mentioned in the Advisory Committee note, the concern is that the note is too general to provide sufficient guidance to local courts without any oversight over local experimentation. To address these concerns, they suggest one of two alternatives: (1) include in the rule itself a specific reference to the need for adequate consideration of these problems in any local rule, or (2) address these concerns more explicitly in the Committee Note. The final recommendation is to put in place some effort for ongoing monitoring, possibly by the Judicial Conference, of local rules governing electronic filing.

GAP Report on Rule 5005. No changes since publication.

Rule 7004. Process; Service of Summons, Complaint

(a) SUMMONS; SERVICE; PROOF OF SERVICE. Rule ~~4(a), (b), (c)(2)(C)(i), (d), (e) and (g)-(j)~~ 4(a), (b), (c)(1), (d)(1), (e)-(j), (l), and (m) F.R.Civ.P. applies in adversary proceedings. Personal service pursuant to Rule ~~4(d)~~ 4(e)-(j) F.R.Civ.P. may be made by any person ~~not less than~~ at least 18 years of age who is not a party, and the summons may be delivered by the clerk to any such person.

(b) SERVICE BY FIRST CLASS MAIL. Except as provided in subdivision (h), in addition to the methods of service authorized by Rule ~~4(e)(2)(C)(i) and (d)~~ 4(e)-(j) F.R.Civ.P., service may be made within the United States by first class mail postage prepaid as follows:

(1) Upon an individual other than an infant or incompetent, by mailing a copy of the summons and complaint to the individual's dwelling house or usual

place of abode or to the place where the individual regularly conducts a business or profession.

(2) Upon an infant or an incompetent person, by mailing a copy of the summons and complaint to the person upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such a defendant in the courts of general jurisdiction of that state. The summons and complaint in that ~~such~~ case shall be addressed to the person required to be served at that person's dwelling house or usual place of abode or at the place where the person regularly conducts a business or profession.

(3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association, by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service

of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

(4) Upon the United States, by mailing a copy of the summons and complaint addressed to the civil process clerk at the office of the United States attorney for the district in which the action is brought and by mailing a copy of the summons and complaint to ~~also~~ the Attorney General of the United States at Washington, District of Columbia, and in any action attacking the validity of an order of an officer or an agency of the United States not made a party, by also mailing a copy of the summons and complaint to that ~~such~~ officer or agency. The court shall allow a reasonable time for service pursuant to this subdivision for the purpose of curing the failure to mail a copy of the summons and complaint to multiple officers, agencies, or corporations of the United States if the plaintiff has mailed a copy of the summons and

complaint either to the civil process clerk at the office of the United States attorney or to the Attorney General of the United States.

(5) Upon any officer or agency of the United States, by mailing a copy of the summons and complaint to the United States as prescribed in paragraph (4) of this subdivision and also to the officer or agency. If the agency is a corporation, the mailing shall be as prescribed in paragraph (3) of this subdivision of this rule. The court shall allow a reasonable time for service pursuant to this subdivision for the purpose of curing the failure to mail a copy of the summons and complaint to multiple officers, agencies, or corporations of the United States if the plaintiff has mailed a copy of the summons and complaint either to the civil process clerk at the office of the United States attorney or to the Attorney General of the United States. If the United States trustee is the trustee in the case and service is made

upon the United States trustee solely as trustee, service may be made as prescribed in paragraph (10) of this subdivision of this rule.

(6) Upon a state or municipal corporation or other governmental organization thereof subject to suit, by mailing a copy of the summons and complaint to the person or office upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such a defendant in the courts of general jurisdiction of that state, or in the absence of the designation of any such person or office by state law, then to the chief executive officer thereof.

(7) Upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of this rule, it is also sufficient if a copy of the summons and complaint is mailed to the entity upon whom service is prescribed to be served by any statute of the United States or by the law of the state in

which service is made when an action is brought against such a defendant in the court of general jurisdiction of that state.

(8) Upon any defendant, it is also sufficient if a copy of the summons and complaint is mailed to an agent of such defendant authorized by appointment or by law to receive service of process, at the agent's dwelling house or usual place of abode or at the place where the agent regularly carries on a business or profession and, if the authorization so requires, by mailing also a copy of the summons and complaint to the defendant as provided in this subdivision.

(9) Upon the debtor, after a petition has been filed by or served upon the debtor and until the case is dismissed or closed, by mailing ~~copies~~ a copy of the summons and complaint to the debtor at the address shown in the petition or statement of affairs or to such other address as the debtor may designate in a filed writing and, if the debtor is represented by an attorney, to

the attorney at the attorney's post-office address.

(10) Upon the United States trustee, when the United States trustee is the trustee in the case and service is made upon the United States trustee solely as trustee, by mailing a copy of the summons and complaint to an office of the United States trustee or another place designated by the United States trustee in the district where the case under the Code is pending.

(c) SERVICE BY PUBLICATION. If a party to an adversary proceeding to determine or protect rights in property in the custody of the court cannot be served as provided in Rule ~~4(d) or (i)~~ 4(e)-(j) F.R.Civ.P. or subdivision (b) of this rule, the court may order the summons and complaint to be served by mailing copies thereof by first class mail, postage prepaid, to the party's last known address, and by at least one publication in such manner and form as the court may direct.

(d) NATIONWIDE SERVICE OF PROCESS.

The summons and complaint and all other process except a subpoena may be served anywhere in the United States.

~~(e) SERVICE ON DEBTOR AND OTHERS IN FOREIGN COUNTRY. The summons and complaint and all other process except a subpoena may be served as provided in Rule 4(d)(1) and (d)(3) F.R.Civ.P. in a foreign country (A) on the debtor, any person required to perform the duties of a debtor, any general partner of a partnership debtor, or any attorney who is a party to a transaction subject to examination under Rule 2017; or (B) on any party to an adversary proceeding to determine or protect rights in property in the custody of the court; or (C) on any person whenever such service is authorized by a federal or state law referred to in Rule 4(e)(2)(C)(i) or (e) F.R.Civ.P.~~

~~(f)~~ (e) SUMMONS: TIME LIMIT FOR SERVICE. If service is made pursuant to Rule ~~4(d)(1)-(6)~~ 4(e)-(j) F.R.Civ.P. it shall be made by delivery of the summons and complaint within 10 days following

issuance of the summons. If service is made by any authorized form of mail, the summons and complaint shall be deposited in the mail within 10 days following issuance of the summons. If a summons is not timely delivered or mailed, another summons shall be issued and served.

(f) PERSONAL JURISDICTION. If the exercise of jurisdiction is consistent with the Constitution and laws of the United States, serving a summons or filing a waiver of service in accordance with this rule or the subdivisions of Rule 4 F.R.Civ.P. made applicable by these rules is effective to establish personal jurisdiction over the person of any defendant with respect to a case under the Code or a civil proceeding arising under the Code, or arising in or related to a case under the Code.

(g) ~~EFFECT OF AMENDMENT TO RULE 4 F.R.CIV.P. The subdivisions of Rule 4 F.R.Civ.P. made applicable by these rules shall be the subdivisions of Rule 4 F.R.Civ.P. in effect on January 1,~~

~~1990, notwithstanding any amendment to Rule 4 F.R.Civ.P. subsequent thereto.~~ [abrogated].

(h) SERVICE OF PROCESS ON AN INSURED DEPOSITORY INSTITUTION. -- Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding shall be made by certified mail addressed to an officer of the institution unless --

(1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail;

(2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or

(3) the institution has waived in writing its entitlement to

service by certified mail by designating an officer to receive service.

COMMITTEE NOTE

The purpose of these amendments is to conform the rule to the 1993 revisions of Rule 4 F.R.Civ.P. and to make stylistic improvements. Rule 7004, as amended, continues to provide for service by first class mail as an alternative to the methods of personal service provided in Rule 4 F.R.Civ.P., except as provided in the new subdivision (h).

Rule 4(d)(2) F.R.Civ.P. provides a procedure by which the plaintiff may request by first class mail that the defendant waive service of the summons. This procedure is not applicable in adversary proceedings because it is not necessary in view of the availability of service by mail pursuant to Rule 7004(b). However, if a written waiver of service of a summons is made in an adversary proceeding, Rule 4(d)(1) F.R.Civ.P. applies so that the defendant does not thereby waive any objection to the venue or the jurisdiction of the court over the person of the defendant.

Subdivisions (b)(4) and (b)(5) are amended to conform to the 1993 amendments to Rule 4(i)(3) F.R.Civ.P., which protect the plaintiff from the hazard of losing a substantive right because of failure to comply with the requirements of multiple service when the United States or an officer, agency, or corporation of the United States is a defendant. These subdivisions also are amended to require that the summons and complaint be addressed to the civil process clerk at the office of the United States attorney.

Subdivision (e), which has governed service in a foreign country, is abrogated and Rule 4(f) and (h)(2) F.R.Civ.P., as substantially revised in 1993, are made applicable in adversary proceedings.

The new subdivision (f) is consistent with the 1993 amendments to F.R.Civ.P. 4(k)(2). It clarifies that service or filing a waiver of service in accordance with this rule or the applicable subdivisions of F.R.Civ.P. 4 is sufficient to establish personal jurisdiction over the defendant. See the committee note to the 1993 amendments to Rule 4 F.R.Civ.P.

Subdivision (g) is abrogated. This subdivision was promulgated in 1991 so that anticipated revisions to Rule 4 F.R.Civ.P. would not affect service of process in adversary proceedings until further amendment to Rule 7004.

Subdivision (h) and the first phrase of subdivision (b) were added by § 114 of the Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, 108 Stat. 4106.

Public Comments on Rule 7004.

(1) Mary S. Elcano, Senior Vice President, General Counsel, of the United States Postal Service, in her letter dated February 24, 1995, suggested that Rule 7004 be amended to require service on "the particular department, office, or unit of an agency out of which the debt in question arose." The reason for this suggestion is explained by relating the experience of the Postal Service. "It is not always clear why the Postal Service is listed as a creditor in a particular action. The debtor, for example, may have written a bad check to cover a mailing, postage put on a meter machine, a stamps-on-consignment debt, or a

delinquent Express Mail account at any one of a number of post offices. Without service on the office out of which the debt arose, counsel is hard-pressed to locate the source of the debt in order to file a proof of claim."

GAP Report on Rule 7004. After publication of the proposed amendments, Rule 7004(b) was amended and Rule 7004(h) was added by the Bankruptcy Reform Act of 1994 to provide for service by certified mail on an insured depository institution. The above draft includes those statutory amendments (without underlining new language or striking former language). No other changes have been made since publication, except for stylistic changes.

Rule 8008. Filing and Service

(a) FILING. Papers required or permitted to be filed with the clerk of the district court or the clerk of the bankruptcy appellate panel may be filed by mail addressed to the clerk, but filing ~~shall not be~~ is not timely unless the papers are received by the clerk within the time fixed for filing, except that briefs ~~shall be~~ are deemed filed on the day of mailing. An original and one copy of all papers shall be filed when an appeal is to the district court; an original and three copies shall be filed

when an appeal is to a bankruptcy appellate panel. The district court or bankruptcy appellate panel may require that additional copies be furnished. Rule 5005(a)(2) applies to papers filed with the clerk of the district court or the clerk of the bankruptcy appellate panel if filing by electronic means is authorized by local rule promulgated pursuant to Rule 8018.

* * * * *

COMMITTEE NOTE

This rule is amended to permit, but not require, district courts and, where bankruptcy appellate panels have been authorized, circuit councils to adopt local rules that allow filing of documents by electronic means, subject to the limitations contained in Rule 5005(a)(2). See the committee note to the amendments to Rule 5005. Other amendments to this rule are stylistic.

Public Comments on Rule 8008. None.

GAP Report on Rule 8008. No changes since publication, except for stylistic changes.

Rule 9006. Time

* * * * *

(c) REDUCTION.

* * * * *

(2) *Reduction Not Permitted.* The court may not reduce the time for taking action ~~under~~ pursuant to Rules ~~2002(a)(4) and (a)(8)~~ 2002(a)(7), 2003(a), 3002(c), 3014, 3015, 4001(b)(2), (c)(2), 4003(a), 4004(a), 4007(c), 8002, and 9033(b).

* * * * *

COMMITTEE NOTE

Subdivision (c)(2) is amended to conform to the abrogation of Rule 2002(a)(4) and the renumbering of Rule 2002(a)(8) to Rule 2002(a)(7).

The substitution of "pursuant to" for "under" is stylistic.

Public Comments on Rule 9006. None.

GAP Report on Rule 9006. No changes since publication, except for a stylistic change.

amendments to Civil Rule 11, except that the safe harbor provision which prohibits the filing of a motion for sanctions unless the challenged paper is not withdrawn or corrected within a prescribed time after service of the motion, does not apply if the challenged paper is a bankruptcy petition.

(p) Rule 9015 is added to provide procedures relating to jury trials in bankruptcy cases and proceedings, including procedures for consenting to have a jury trial conducted by a bankruptcy judge under 28 U.S.C. § 157(e) that was added by the Bankruptcy Reform Act of 1994;

(q) Rule 9035 is amended to clarify that the Bankruptcy Rules do not apply to the extent that they are inconsistent with federal statutory provisions relating to bankruptcy administrators in the judicial districts in North Carolina and Alabama, even if such statutory provisions are not included in title 11 or title 28.

(2) Text of Proposed Amendments:

PROPOSED AMENDMENTS TO THE BANKRUPTCY RULES SUBMITTED FOR APPROVAL TO PUBLISH

Rule 1019. Conversion of Chapter 11 Reorganization Case, Chapter 12 Family Farmer's Debt Adjustment Case, or Chapter 13 Individual's Debt Adjustment Case to Chapter 7 Liquidation Case

When a chapter 11, chapter 12, or chapter 13 case has been converted or reconverted to a chapter 7 case:

****

(3) CLAIMS FILED <u>BEFORE CONVERSION</u> ~~IN SUPERSEDED CASE~~. All claims actually filed by a creditor ~~in the superseded case~~ <u>before conversion of the case are</u> ~~shall be~~ deemed filed in the chapter 7 case.

****

(5) FILING FINAL REPORT AND SCHEDULE OF POSTPETITION

DEBTS.

(A) *Conversion of Chapter 11 or Chapter 12 Case.* Unless the court directs otherwise, if a chapter 11 or chapter 12 case is converted to chapter 7, the debtor in possession or, if the debtor is not a debtor in possession, the trustee serving at the time of conversion, shall:

(i) not later than 15 days after conversion of the case, file a schedule of unpaid debts incurred after the filing of the petition and before conversion of the case, including the name and address of each holder of a claim; and

(ii) not later than 30 days after conversion of the case, file and transmit to the United States trustee a final report and account;

(B) *Conversion of Chapter 13 Case.* Unless the court directs otherwise , if a chapter 13 case is converted to chapter 7,

(i) the debtor, not later than 15 days after conversion of the case, shall file a schedule of unpaid debts incurred after the filing of the petition and before conversion of the case, including the name and address of each holder of a claim; and

(ii) the trustee, not later than 30 days after conversion of the case, shall file and transmit to the United States trustee a final report and account;

(C) *Conversion After Confirmation of a Plan.* Unless the court orders otherwise, if a chapter 11, chapter 12, or chapter 13 case is converted to chapter 7 after confirmation of a plan, the debtor shall file:

(i) a schedule of property not listed in the final report and account acquired after the filing of the petition but before conversion, except if the case is converted from chapter 13 to chapter 7 and § 348(f)(2) does not apply;

(ii) a schedule of unpaid debts not listed in the final report and account incurred after confirmation but before the conversion; and

(iii) a schedule of executory contracts and unexpired leases entered into or assumed after the filing of the petition but before conversion.

(D) *Transmission to United States Trustee.* The clerk shall forthwith transmit to the United States trustee a copy of every schedule filed pursuant to Rule 1019(5).

~~Unless the court directs otherwise, each debtor in possession or trustee in the superseded case shall: (A) within 15 days following the entry of the order of conversion of a chapter 11 case, file a schedule of unpaid debts incurred after commencement of the superseded case including the name and address of each creditor; and (B) within 30 days following the entry of the order of conversion of a chapter 11, chapter 12, or~~

~~chapter 13 case, file and transmit to the United States trustee a final report and account. Within 15 days following the entry of the order of conversion, unless the court directs otherwise, a chapter 13 debtor shall file a schedule of unpaid debts incurred after the commencement of a chapter 13 case, and a chapter 12 debtor in possession or, if the chapter 12 debtor is not in possession, the trustee shall file a schedule of unpaid debts incurred after the commencement of a chapter 12 case. If the conversion order is entered after confirmation of a plan, the debtor shall file (A) a schedule of property not listed in the final report and account acquired after the filing of the original petition but before entry of the conversion order; (B) a schedule of unpaid debts not listed in the final report and account incurred after confirmation but before entry of the conversion order; and (C) a schedule of executory contracts and unexpired leases entered into or assumed after the filing of the original petition but before entry of the conversion order. The clerk shall forthwith transmit to the United States trustee a copy of every schedule filed pursuant to this paragraph.~~

COMMITTEE NOTE

The amendments to subdivisions (3) and (5) are technical corrections and stylistic changes. The phrase "superseded case" is deleted because it creates the erroneous impression that conversion of a case results in a new case that is distinct from the

original case. Similarly, the phrase "original petition" is deleted because it erroneously implies that there is a second petition with respect to a converted case. See § 348 of the Code.

Rule 1020. Election to be Considered a Small Business in a Chapter 11 Reorganization Case

In a chapter 11 reorganization case, a debtor that is a small business may elect to be considered a small business by filing a written statement of election not later than 60 days after the date of the order for relief or by a later date as the court, for cause, may fix.

COMMITTEE NOTE

This rule is designed to implement §§ 1121(e) and 1125(f) that were added to the Code by the Bankruptcy Reform Act of 1994.

Rule 2002. Notices to Creditors, Equity Security Holders, United States, and United States Trustee

(a) TWENTY-DAY NOTICES TO PARTIES IN INTEREST. Except as provided in subdivisions (h), (i), and (l) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at least ~~not less than~~ 20 days' ~~days~~ notice by mail of:

(1) the meeting of creditors under ~~pursuant to~~ § 341 or § 1104(b) of the Code;

* * * *

(n) CAPTION. The caption of every notice given under

this rule shall comply with Rule 1005. The caption of every notice required to be given by the debtor to a creditor shall include the information required to be in the notice by § 342(c) of the Code.

COMMITTEE NOTE

Paragraph (a)(1) is amended to include notice of a meeting of creditors convened under § 1104(b) of the Code for the purpose of electing a trustee in a chapter 11 case. The court for cause shown may order the 20-day period reduced pursuant to Rule 9006(c)(1).

Subdivision (n) is amended to conform to the 1994 amendment to § 342 of the Code. As provided in § 342(c), the failure of a notice given by the debtor to a creditor to contain the information required by § 342(c) does not invalidate the legal effect of the notice.

Rule 2007.1. Appointment of Trustee or Examiner in a Chapter 11 Reorganization Case

(a) ORDER TO APPOINT TRUSTEE OR EXAMINER. In a chapter 11 reorganization case, a motion for an order to appoint a trustee or an examiner ~~pursuant to~~ under § 1104(a) or § ~~1104(b)~~ 1104(c) of the Code shall be made in accordance with Rule 9014.

(b) ELECTION OF TRUSTEE.

(1) *Request for an Election.* A request to convene a meeting of creditors for the purpose of electing a trustee in a chapter 11 reorganization case shall be filed and transmitted to the United States trustee in accordance with Rule 5005 within the time prescribed by § 1104(b) of the Code. Pending court approval of the

person elected, any person appointed by the United States trustee under § 1104(d) and approved in accordance with subdivision (c) of this rule shall serve as trustee.

(2) *Manner of Election and Notice.* An election of a trustee under § 1104(b) of the Code shall be conducted in the manner provided in Rules 2003(b)(3) and 2006. Notice of the meeting of creditors convened under § 1104(b) shall be given as provided in Rule 2002. The United States trustee shall preside at the meeting. A proxy for the purpose of voting in the election may be solicited only by a committee of creditors appointed under § 1102 of the Code or by any other party entitled to solicit a proxy pursuant to Rule 2006.

(3) *Appointment and Resolution of Disputes.* If it is not necessary to resolve a dispute regarding the election or if the court has resolved all such disputes, the United States trustee shall promptly appoint the person elected to be trustee and file an application for approval of the appointment in accordance with subdivision (c) of this rule. If it is necessary to resolve a dispute regarding the election, the United States trustee shall promptly file a report informing the court of the dispute. Not later than the date on which the report is filed, the United States trustee shall mail a copy of the report to any party in

interest that has made a request to convene a meeting under § 1104(b) or to receive a copy of the report, and to any committee appointed under § 1102 of the Code. Unless a motion for the resolution of the dispute is filed not later than 10 days after the United States trustee files the report, any person appointed by the United States trustee under § 1104(d) and approved in accordance with subdivision (c) of this rule shall serve as trustee.

~~(b)~~ (c) APPROVAL OF APPOINTMENT. An order approving the appointment of a trustee elected under § 1104(b) or appointed under § 1104(d), or the appointment of an examiner ~~pursuant to § 1104(c)~~ under § 1104(d) of the Code, shall be made ~~only~~ on application of the United States trustee~~,~~. The application shall state ~~stating~~ the name of the person appointed~~, the names of the parties in interest with whom the United States trustee consulted regarding the appointment,~~ and, to the best of the applicant's knowledge, all the person's connections with the debtor, creditors, any other parties in interest, their respective attorneys and accountants, the United States trustee, and persons employed in the office of the United States trustee. Unless the person has been elected under § 1104(b), the application shall state the names of the parties in interest with whom the United States trustee consulted regarding the appointment. The application shall be accompanied by a

verified statement of the person appointed setting forth the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, and any person employed in the office of the United States trustee.

COMMITTEE NOTE

This rule is added to implement the 1994 amendments to § 1104 of the Code regarding the election of a trustee in a chapter 11 case.

This rule requires the United States trustee to file an application for court approval of the appointment of the elected person in accordance with Rule 2007.1(c). Court approval is necessary primarily because of the requirement under § 1104(b) that the person be disinterested.

The procedures for reporting disputes to the court derive from similar provisions in Rule 2003(d) applicable to chapter 7 cases. An election may be disputed by a party in interest or by the United States trustee. For example, if the United States trustee believes that the person elected is ineligible to serve as trustee because the person is not "disinterested," the United States trustee may file a report disputing the election.

The word "only" is deleted from subdivision (b), redesignated as subdivision (c), to avoid any negative inference with respect to the availability of procedures for obtaining review of the United States trustee's acts or failure to act pursuant to Rule 2020.

Rule 3014. Election ~~Pursuant to~~ Under § 1111(b) by Secured Creditor in Chapter 9 Municipality or ~~and~~ Chapter 11 Reorganization Case ~~Cases~~

An election of application of § 1111(b)(2) of the Code by a class of secured creditors in a chapter 9 or 11 case may be made at any time prior

to the conclusion of the hearing on the disclosure statement or within such later time as the court may fix. If the disclosure statement is conditionally approved pursuant to Rule 3017.1, and a final hearing on the disclosure statement is not held, the election of application of § 1111(b)(2) may be made not later than the date fixed pursuant to Rule 3017.1(a)(2) or another date the court may fix. The election shall be in writing and signed unless made at the hearing on the disclosure statement. The election, if made by the majorities required by § 1111(b)(1)(A)(i), shall be binding on all members of the class with respect to the plan.

COMMITTEE NOTE

This amendment provides a deadline for electing application of § 1111(b)(2) in a small business case in which a conditionally approved disclosure statement is finally approved without a hearing.

Rule 3017. Court Consideration of Disclosure Statement in Chapter 9 Municipality and Chapter 11 Reorganization Cases

(a) HEARING ON DISCLOSURE STATEMENT AND OBJECTIONS ~~THERETO~~. Except as provided in Rule 3017.1, after a disclosure statement is filed in accordance with Rule 3016(b) ~~Following the filing of a disclosure statement as provided in Rule~~

~~3016(c)~~, the court shall hold a hearing on ~~not less than~~ at least 25 ~~days~~ days' notice to the debtor, creditors, equity security holders and other parties in interest as provided in Rule 2002 to consider ~~such~~ the disclosure statement and any objections or modifications thereto. The plan and the disclosure statement shall be mailed with the notice of the hearing only to the debtor, any trustee or committee appointed under the Code, the Securities and Exchange Commission, and any party in interest who requests in writing a copy of the statement or plan. Objections to the disclosure statement shall be filed and served on the debtor, the trustee, any committee appointed under the Code, and any ~~such~~ other entity ~~as may be~~ designated by the court, at any time before the disclosure statement is approved ~~prior to approval of the disclosure statement~~ or by ~~such~~ an earlier date as the court may fix. In a chapter 11 reorganization case, every notice, plan, disclosure statement, and objection required to be served or mailed pursuant to this subdivision shall be transmitted to the United States trustee within the time provided in this subdivision.

(b) DETERMINATION ON DISCLOSURE STATEMENT. Following the hearing the court shall determine

whether the disclosure statement should be approved.

(c) DATES FIXED FOR VOTING ON PLAN AND CONFIRMATION. On or before approval of the disclosure statement, the court shall fix a time within which the holders of claims and interests may accept or reject the plan and may fix a date for the hearing on confirmation.

(d) TRANSMISSION AND NOTICE TO UNITED STATES TRUSTEE, CREDITORS, AND EQUITY SECURITY HOLDERS. Upon ~~On~~ approval of a disclosure statement, ~~unless~~ -- except to the extent that the court orders otherwise with respect to one or more unimpaired classes of creditors or equity security holders~~,~~ -- the debtor in possession, trustee, proponent of the plan, or clerk as ~~ordered by~~ the court orders shall mail to all creditors and equity security holders, and in a chapter 11 reorganization case shall transmit to the United States trustee,

(1) the plan~~,~~ or a ~~court approved~~ court-approved summary of the plan;

(2) the disclosure statement approved by the court;

(3) notice of the time within which acceptances and rejections of ~~such~~ the plan may be filed; and

(4) any ~~such~~ other information as the court may direct, including any court opinion ~~of the court~~ approving the disclosure statement or a ~~court approved~~ court-approved summary of the opinion. In addition, notice of the time fixed for filing objections and the hearing on confirmation shall be mailed to all creditors and equity security holders in accordance with ~~pursuant to~~ Rule 2002(b), and a form of ballot conforming to the appropriate Official Form shall be mailed to creditors and equity security holders entitled to vote on the plan. ~~In the event~~ If the ~~opinion of the~~ court opinion is not transmitted or only a summary of the plan is transmitted, the ~~opinion of the~~ court opinion or the plan shall be provided on request of a party in interest at the plan proponent's expense ~~of the proponent of the plan~~. If the court orders that the disclosure statement and the plan or a summary of the plan shall not be mailed to any unimpaired class, notice that the class is designated in the plan as unimpaired and notice of the name and address of the person from whom the plan or summary of the plan and disclosure statement may be obtained upon request and at the plan proponent's expense ~~of the proponent of the plan~~, shall be mailed to members

of the unimpaired class together with the notice of the time fixed for filing objections to and the hearing on confirmation. For the purposes of this subdivision, creditors and equity security holders shall include holders of stock, bonds, debentures, notes, and other securities of record on ~~at~~ the date the order approving the disclosure statement is ~~was~~ entered or another date as the court may, after notice and a hearing, for cause fix.

(e) TRANSMISSION TO BENEFICIAL HOLDERS OF SECURITIES. At the hearing held pursuant to subdivision (a) of this rule, the court shall consider the procedures for transmitting the documents and information required by subdivision (d) of this rule to beneficial holders of stock, bonds, debentures, notes, and other securities, ~~and~~ determine the adequacy of the ~~such~~ procedures, and enter any ~~such~~ orders ~~as~~ the court deems appropriate.

COMMITTEE NOTE

Subdivision (a) is amended to provide that it does not apply to the extent provided in new Rule 3017.1, which applies in small business cases.

Subdivision (d) is amended to provide flexibility in fixing the record date for the purpose of determining the holders of securities who are entitled to receive documents pursuant to this subdivision. For example, if there may

be a delay between the oral announcement of the judge's order approving the disclosure statement and entry of the order on the court docket, the court may fix the date on which the judge orally approves the disclosure statement as the record date so that the parties may expedite preparation of the lists necessary to facilitate the distribution of the plan, disclosure statement, ballots, and other related documents.

The court may set a record date pursuant to subdivision (d) only after notice and a hearing as provided in § 102(1) of the Code. Notice of a request for an order fixing the record date may be included in the notice of the hearing to consider approval of the disclosure statement mailed pursuant to Rule 2002(b).

If the court fixes a record date pursuant to subdivision (d) with respect to the holders of securities, and the holders are impaired by the plan, the judge also should order that the same record date applies for the purpose of determining eligibility for voting pursuant to Rule 3018(a).

Other amendments to this rule are stylistic.

Rule 3017.1 Court Consideration of Disclosure Statement in a Small Business Case

(a) CONDITIONAL APPROVAL OF DISCLOSURE STATEMENT. If the debtor is a small business and has made a timely election to be considered a small business in a chapter 11 case, the court may, on application of the plan proponent, conditionally approve a disclosure statement filed in accordance with Rule 3016(b). On or before conditional approval of the disclosure statement, the court shall:

(1) fix a time within which the holders of claims and interests may accept or reject the plan;

(2) fix a time for filing objections to the disclosure statement;

(3) fix a date for the hearing on final approval of the disclosure statement to be held if a timely objection is filed; and

(4) fix a date for the hearing on confirmation.

(b) APPLICATION OF RULE 3017. Rule 3017(a), (b), (c), and (e) do not apply to a conditionally approved disclosure statement. Rule 3017(d) applies to a conditionally approved disclosure statement, except that conditional approval is considered approval of the disclosure statement for the purpose of applying Rule 3017(d).

(c) FINAL APPROVAL.

(1) *Notice.* Notice of the time fixed for filing objections and the hearing to consider final approval of the disclosure statement shall be given in accordance with Rule 2002 and may be combined with notice of the hearing on confirmation of the plan.

(2) *Objections.* Objections to the disclosure statement shall be filed, transmitted

to the United States trustee, and served on the debtor, the trustee, any committee appointed under the Code and any other entity designated by the court at any time before final approval of the disclosure statement or by an earlier date as the court may fix.

(3) *Hearing*. If a timely objection to the disclosure statement is filed, the court shall hold a hearing to consider final approval before or combined with the hearing on confirmation of the plan.

COMMITTEE NOTE

This rule is added to implement § 1125(f) that was added to the Code by the Bankruptcy Reform Act of 1994.

The procedures for electing to be considered a small business are set forth in Rule 1020. If the debtor is a small business and has elected to be considered a small business, § 1125(f) permits the court to conditionally approve a disclosure statement subject to final approval after notice and a hearing. If a disclosure statement is conditionally approved, and no timely objection to the disclosure statement is filed, it is not necessary for the court to hold a hearing on final approval.

Rule 3018. Acceptance or Rejection of Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case

(a) ENTITIES ENTITLED TO ACCEPT OR REJECT PLAN; TIME FOR ACCEPTANCE OR REJECTION. A plan may be accepted or rejected in accordance with § 1126 of the Code within the

time fixed by the court pursuant to Rule 3017. Subject to subdivision (b) of this rule, an equity security holder or creditor whose claim is based on a security of record shall not be entitled to accept or reject a plan unless the equity security holder or creditor is the holder of record of the security on the date the order approving the disclosure statement is entered or on another date fixed by the court, for cause, after notice and a hearing. For cause shown, the court after notice and hearing may permit a creditor or equity security holder to change or withdraw an acceptance or rejection. Notwithstanding objection to a claim or interest, the court after notice and hearing may temporarily allow the claim or interest in an amount which the court deems proper for the purpose of accepting or rejecting a plan.

* * * * *

COMMITTEE NOTE

Subdivision (a) is amended to provide flexibility in fixing the record date for the purpose of determining the holders of securities who are entitled to vote on the plan. For example, if there may be a delay between the oral announcement of the judge's decision approving the disclosure statement and entry of the order on the court docket, the court may fix the date on which the judge orally approves the disclosure statement as the record date for voting purposes so that the parties may expedite preparation of the lists necessary to facilitate the distribution of the plan, disclosure statement, ballots, and other related documents in connection with the solicitation of votes.

The court may set a record date pursuant to subdivision (a) only after notice and a hearing as provided in § 102(1) of the Code. Notice of a request for an order fixing the record date may be included in

the notice of the hearing to consider approval of the disclosure statement mailed pursuant to Rule 2002(b).

If the court fixes the record date for voting purposes, the judge also should order that the same record date shall apply for the purpose of distributing the documents required to be distributed pursuant to Rule 3017(d).

Rule 3021. Distribution Under Plan

After confirmation of a plan, distribution shall be made to creditors whose claims have been allowed, to interest holders ~~of stock, bonds, debentures, notes, and other securities of record at the time of commencement of distribution whose claims or equity security~~ whose interests have not been disallowed, and to indenture trustees who have filed claims pursuant to Rule 3003(c)(5) ~~and which~~ that have been allowed. For the purpose of this rule, creditors include holders of bonds, debentures, notes, and other debt securities, and interest holders include the holders of stock and other equity securities, of record at the time of commencement of distribution unless a different time is fixed by the plan or the order confirming the plan.

COMMITTEE NOTE

This rule is amended to provide flexibility in fixing the record date for the purpose of making distributions to holders of securities of record. In a large case, it may be impractical for the debtor to determine the holders of record with respect to publicly held securities and also to make distributions to those holders at the same time. Under this amendment, the plan or the order confirming the plan may fix a record date for distributions that is earlier

than the date on which distributions commence.

This rule also is amended to treat holders of bonds, debentures, notes, and other debt securities the same as any other creditors by providing that they shall receive a distribution only if their claims have been allowed. Finally, the amendments clarify that distributions are to be made to all interest holders -- not only those that are within the definition of "equity security holders" under § 101 of the Code -- whose interests have not been disallowed.

Rule 8001. Manner of Taking Appeal; Voluntary Dismissal

(a) APPEAL AS OF RIGHT; HOW TAKEN. An appeal from a ~~final~~ judgment, order, or decree of a bankruptcy judge to a district court or bankruptcy appellate panel as permitted by 28 U.S.C. § 158(a)(1) or (a)(2) shall be taken by filing a notice of appeal with the clerk within the time allowed by Rule 8002. An appellant's failure ~~Failure of an appellant~~ to take any step other than ~~the~~ timely filing ~~of~~ a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the district court or bankruptcy appellate panel deems appropriate, which may include dismissal of the appeal. The notice of appeal shall (1) conform substantially to the appropriate Official Form, (2) ~~shall~~ contain the names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their respective attorneys, and (3) be accompanied by the prescribed fee. Each appellant shall file a sufficient number of copies of the notice of appeal to enable the clerk to comply promptly with Rule 8004.

(b) APPEAL BY LEAVE; HOW TAKEN. An appeal from an interlocutory judgment, order, or decree of a bankruptcy judge as permitted by 28 U.S.C. § 158(a)(3) shall be taken by filing a notice of appeal, as prescribed in subdivision (a) of this rule, accompanied by a motion for leave to appeal prepared in accordance with Rule 8003 and with proof of service in accordance with Rule 8008.

* * * * *

(e) ELECTION TO HAVE APPEAL HEARD BY THE DISTRICT COURT ~~CONSENT TO APPEAL TO BANKRUPTCY APPELLATE PANEL. Unless otherwise provided by a rule promulgated pursuant to Rule 8018, consent to have an appeal heard by a bankruptcy appellate panel may be given in a separate statement of consent executed by a party or contained in the notice of appeal or cross appeal. The statement of consent shall be filed before the transmittal of the record pursuant to Rule 8007(b), or within 30 days of the filing of the notice of appeal, whichever is later.~~ An election to have an appeal heard by the district court under 28 U.S.C. § 158(c)(1) may be made only by a statement of election contained in a separate writing filed within the time prescribed by 28 U.S.C. § 158(c)(1).

COMMITTEE NOTE

This rule is amended to conform to the Bankruptcy Reform Act of 1994 which amended 28 U.S.C. § 158. As amended, a party may -- without obtaining leave of the court -- appeal from an interlocutory order or decree

of the bankruptcy court issued under § 1121(d) of the Code increasing or reducing the time periods referred to in § 1121.

Subdivision (e) is amended to provide the procedure for electing under 28 U.S.C. § 158(c)(1) to have an appeal heard by the district court.

Rule 8002. Time for Filing Notice of Appeal

* * * * *

(c) EXTENSION OF TIME FOR APPEAL.

(1) The bankruptcy judge may extend the time for filing the notice of appeal by any party ~~for a period not to exceed 20 days from the expiration of the time otherwise prescribed by this rule~~ , unless the judgment, order, or decree appealed from:

(A) grants relief from an automatic stay under § 362, § 922, § 1201, or § 1301;

(B) authorizes the sale or lease of property or the use of cash collateral under § 363;

(C) authorizes the obtaining of credit under § 364;

(D) authorizes the assumption or assignment of an executory contract or unexpired lease under § 365;

(E) approves a disclosure statement under § 1125, or;

(F) confirms a plan under § 943, § 1129, § 1225, or § 1325 of the Code.

(2) A request to extend the time for filing a notice of appeal must be made by written motion filed before the time for filing a notice of appeal has expired, except that such a motion filed not later ~~request made no more~~ than 20 days after the expiration of the time for filing a notice of appeal may be granted upon a showing of excusable neglect ~~if the judgment or order appealed from does not authorize the sale of any property or the obtaining of credit or the incurring of debt under § 364 of the Code, or is not a judgment or order approving a disclosure statement, confirming a plan, dismissing a case, or converting the case to a case under another chapter of the Code.~~ An extension of time for filing a notice of appeal may not exceed 20 days from the expiration of the time for filing a notice of appeal otherwise prescribed by this rule or 10 days from the date of entry of the order granting the motion, whichever is later.

COMMITTEE NOTE

Subdivision (c) is amended to provide that a request for an extension of time to file a notice of appeal must be filed within the applicable time period. This amendment will avoid

uncertainty as to whether the mailing of a motion or an oral request in court is sufficient to request an extension of time, and will enable the court and the parties in interest to determine solely from the court records whether a timely request for an extension has been made.

The amendments also give the court discretion to permit a party to file a notice of appeal more than 20 days after expiration of the time to appeal otherwise prescribed, but only if the motion was timely filed and the notice of appeal is filed within a period not exceeding 10 days after entry of the order extending the time. This amendment is designed to protect parties that file timely motions to extend the time to appeal from the harshness of the present rule as demonstrated in In re Mouradick, 13 F.3d 326 (9th Cir. 1994), where the court held that a notice of appeal filed within the 3-day period expressly prescribed by an order granting a timely motion for an extension of time did not confer jurisdiction on the appellate court because the notice of appeal was not filed within the 20-day period specified in subdivision (c).

The subdivision is amended further to prohibit any extension of time to file a notice of appeal -- even if the motion for an extension is filed before the expiration of the original time to appeal -- if the order appealed from grants relief from the automatic stay, authorizes the sale or lease of property, use of cash collateral, obtaining of credit, or assumption or assignment of an executory contract or unexpired lease under § 365, or approves a disclosure statement or confirms a plan. These types of orders are often relied upon immediately after they are entered and should not be reviewable on appeal after the expiration of the original appeal period under Rule 8002(a) and (b).

Rule 8020. Damages and Costs for Frivolous Appeal

If a district court or bankruptcy appellate panel determines that an appeal from an order, judgment, or decree of a bankruptcy judge is frivolous, it may,

after a separately filed motion or notice from the district court or bankruptcy appellate panel and reasonable opportunity to respond, award just damages and single or double costs to the appellee.

COMMITTEE NOTE

This rule is added to clarify that a district court hearing an appeal, or a bankruptcy appellate panel, has the authority to award damages and costs to an appellee if it finds that the appeal is frivolous. By conforming to the language of Rule 38 F.R.App.P., this rule recognizes that the authority to award damages and costs in connection with frivolous appeals is the same for district courts sitting as appellate courts, bankruptcy appellate panels, and courts of appeals.

Rule 9011. Signing ~~and~~ of Papers; Representations to the Court; Sanctions; Verification and Copies of Papers

(a) SIGNATURE. Every petition, pleading, written motion and other paper ~~served or filed in a case under the Code on behalf of a party represented by an attorney~~, except a list, schedule, or statement, or amendments thereto, shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. ~~whose office address and telephone number shall be stated. A party who is not represented by an attorney shall sign all papers and state the party's address and telephone number.~~ Each paper shall state the signer's address and telephone number, if any. ~~The signature of an attorney or a party~~

~~constitutes a certificate that the attorney or party has read the document; that to the best of the attorney's or party's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation or administration of the case. If a document is not signed, it~~ An unsigned paper shall be stricken unless ~~it is signed promptly after the~~ omission of the signature is corrected promptly after being called to the attention of the ~~person whose signature is required~~ attorney or party. ~~If a document is signed in violation of this rule, the court on motion or on its own initiative, shall impose on the person who signed it, the represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including a reasonable attorney's fee.~~

(b) REPRESENTATIONS TO THE COURT. By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the

circumstances, --

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) SANCTIONS. If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) *How Initiated.*

(A) *By Motion.* A motion for sanctions

under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 7004. The motion for sanctions may not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected, except that this limitation shall not apply if the conduct alleged is the filing of a petition in violation of subdivision (b). If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) *On Court's Initiative.* On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

(2) *Nature of Sanction; Limitations.* A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or , if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(3) *Order.* When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

(d) INAPPLICABILITY TO DISCOVERY. Subdivisions (a)

through (c) of this rule do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 7026 through 7037.

~~(b)~~ (e) VERIFICATION. Except as otherwise specifically provided by these rules, papers filed in a case under the Code need not be verified. Whenever verification is required by these rules, an unsworn declaration as provided in 28 U.S.C. § 1746 satisfies the requirement of verification.

~~(c)~~ (f) COPIES OF SIGNED OR VERIFIED PAPERS. When these rules require copies of a signed or verified paper, it shall suffice if the original is signed or verified and the copies are conformed to the original.

COMMITTEE NOTE

This rule is amended to conform to the 1993 changes to F.R.Civ.P. 11. For an explanation of these amendments, see the advisory committee note to the 1993 amendments to F.R.Civ.P. 11.

The "safe harbor" provision contained in subdivision (c)(1)(A), which prohibits the filing of a motion for sanctions unless the challenged paper is not withdrawn or corrected within a prescribed time after service of the motion, does not apply if the challenged paper is a petition. The filing of a petition has immediate serious consequences, including the imposition of the automatic stay under § 362 of the Code, which may not be avoided by the subsequent withdrawal of the petition. In addition, a petition for relief under chapter 7 or chapter 11 may not be withdrawn unless the court orders dismissal of the case for cause after notice and a hearing.

Rule 9015. Jury Trials

(a) APPLICABILITY OF CERTAIN FEDERAL RULES OF CIVIL PROCEDURE. Rules 38, 39, and 47-51 F.R.Civ.P., and Rule 81(c) F.R.Civ.P. insofar as it applies to jury trials, apply in cases and proceedings, except that a demand made pursuant to Rule 38(b) F.R.Civ.P. shall be filed in accordance with Rule 5005.

(b) CONSENT TO HAVE TRIAL CONDUCTED BY BANKRUPTCY JUDGE. If the right to a jury trial applies, a timely demand has been filed pursuant to Rule 38(b) F.R.Civ.P., and the bankruptcy judge has been specially designated to conduct the jury trial, the parties may consent to have a jury trial conducted by a bankruptcy judge under 28 U.S.C. § 157(e) by jointly or separately filing a statement of consent within any applicable time limits specified by local rule.

COMMITTEE NOTE

This rule provides procedures relating to jury trials. This rule is not intended to expand or create any right to trial by jury where such right does not otherwise exist.

Rule 9035. Applicability of Rules in Judicial Districts in Alabama and North Carolina

In any case under the Code that is filed in or transferred to a district in the State of Alabama or the State of North Carolina and in which a United States trustee

is not authorized to act, these rules apply to the extent that they are not inconsistent with any federal statute ~~the provisions of title 11 and title 28 of the United States Code~~ effective in the case.

COMMITTEE NOTE

Certain statutes that are not codified in title 11 or title 28 of the United States Code, such as § 105 of the Bankruptcy Reform Act of 1994, Pub. L. 103-394, relate to bankruptcy administrators in the judicial districts of North Carolina and Alabama. This amendment makes it clear that the Bankruptcy Rules do not apply to the extent that they are inconsistent with these federal statutes.

II. Information Items

A. Status of Matters Under Consideration

1. Proposed Uniform Numbering System for Local Bankruptcy Rules

Proposed amendments to Bankruptcy Rules 9029 and 8018 that require local rules to conform to any uniform numbering system prescribed by the Judicial Conference of the United States have been promulgated by the Supreme Court and, in the absence of Congressional action, will become effective on December 1, 1995.

At the Standing Committee's request, the Advisory Committee -- through the efforts of its Subcommittee on Local Rules and with support from the Bankruptcy Judges Division of the Administrative Office -- has developed a preliminary draft of a uniform numbering system for local bankruptcy rules that coordinates with the numbering system of the Federal Rules of Bankruptcy Procedure.

The preliminary draft of the proposed local

rule numbering system uses the four-digit national Bankruptcy Rule numbers followed by a dash and a numeral to identify the topic that relates to the national rule. Local rules that do not relate to specific national rules have been assigned numbers that relate to the part of the Bankruptcy Rules (Parts I - IX) to which the local rule seems most closely related, but the four-digit prefix is not related to any specific national rule.

The preliminary draft of the proposed uniform numbering system was published in November 1994 with a request for comments by March 15, 1995. The published draft was accompanied by a memorandum containing a detailed explanation of the proposed system and a description of the methodology used to develop the system.

The Committee received 12 letters commenting on the proposed numbering system and one oral comment from a former Advisory Committee member and reporter. The comments were generally favorable (except for two letters that disapproved of both the proposed system and the entire concept of uniform numbering), but most letters contained suggestions for some modification.

As a result of the comments received and further consideration by the Subcommittee on Local Rules, the Advisory Committee decided to amend the preliminary draft of the proposed numbering system by deleting all references to subdivisions of national rules. The Committee also voted to include cross-references to make the system easier to use. The Committee approved the proposed numbering system subject to these changes. Another draft, excluding subdivisions and including cross-references, is being prepared for consideration by the Advisory Committee at its September 1995 meeting.

2. Alternative Dispute Resolution.

The Subcommittee on Alternative Dispute

Resolution met in Chicago on May 24, 1995, to discuss possible amendments to the rules relating to the use of mediation and other alternative dispute resolution techniques. In particular, suggested amendments to Bankruptcy Rule 9019 (Compromise and Arbitration) were considered.

3. Official Bankruptcy Forms

The Subcommittee on Forms met in Chicago on May 25, 1995, to continue its work reviewing the Official Bankruptcy Forms with a view toward simplifying language and making them more understandable to the general public.

B. Other Matters.

1. Long-Range Planning.

The Subcommittee on Long-Range Planning, together with the Federal Judicial Center, has conducted a survey designed to determine whether members of the bench and bar believe that the Bankruptcy Rules need fundamental and thorough reorganization or only focussed attention in discrete problem areas. Preliminary results of the survey indicate no strong demand for complete restructuring, but a desire to improve the rules in the area of motion practice and the interplay between Part VII (adversary proceedings) and Part IX (general provisions).

Attachments:

Draft of minutes of Advisory Committee meeting of March 30-31, 1995.

DRAFT

ADVISORY COMMITTEE ON BANKRUPTCY RULES

Meeting of March 30-31, 1995

Lafayette, Louisiana

Minutes

The Advisory Committee on Bankruptcy Rules met in the Lafayette Hilton Hotel in Lafayette, Louisiana, March 30-31, 1995. The following members were present:

Bankruptcy Judge Paul Mannes, Chairman
Circuit Judge Alice M. Batchelder
District Judge Adrian G. Duplantier
District Judge Eduardo C. Robreno
Honorable Jane A. Restani, United States Court of International Trade
Bankruptcy Judge Donald E. Cordova
Bankruptcy Judge Robert J. Kressel
Bankruptcy Judge James W. Meyers
Kenneth N. Klee, Esquire
J. Christopher Kohn, Esquire, United States Department of Justice
Leonard M. Rosen, Esquire
Gerald K. Smith, Esquire
Henry J. Sommer, Esquire
Professor Charles J. Tabb
Professor Alan N. Resnick, Reporter

Joseph Patchan, Director, Executive Office for United States Trustees, and R. Neal Batson, Esquire, were unable to attend.

The following representatives of the Committee on Rules of Practice and Procedure also attended:

District Judge Alicemarie H. Stotler, Chair
District Judge Thomas S. Ellis, III, liaison to the Advisory Committee

The following additional persons attended the meeting: Judge Edward Leavy, United States Court of Appeals for the Ninth Circuit and former chairman of the Advisory Committee; Richard G. Heltzel, Clerk, United States Bankruptcy Court for the Eastern District of California; Patricia S. Channon and James H. Wannamaker, Bankruptcy Judges Division, Administrative Office of the United States Courts; Mark D. Shapiro, Rules Committee Support Office, Administrative Office of the United States Courts; and Elizabeth C. Wiggins, Federal Judicial Center.

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

the office of the Secretary to the Committee on Rules of Practice and Procedure. Unless otherwise indicated, all memoranda referred to were included in the agenda book for the meeting.

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

INTRODUCTORY MATTERS

The Chairman introduced Judge Leavy, the former chairman of the Advisory Committee. The Chairman also welcomed Judge Stotler and Judge Ellis to the meeting. **The Committee approved a resolution of thanks to the host committee chaired by Bankruptcy Judge Gerald H. Schiff.**

Minutes of Previous Meetings. Mr. Klee moved to approve the minutes of the September 1994 and December 1994 meetings with the substitution of the word "March" for "February" in the second line of page 9 of the September minutes. **The Committee approved the minutes, as amended, without dissent.**

Standing Committee Meeting. The Reporter stated that the Standing Committee had ratified the three suggested interim rules approved by the Advisory Committee at its December meeting. The suggested interim rules were distributed to the courts with a letter dated January 17, 1995, from Judges Stotler and Mannes. The amendments to the Official Forms to conform to the Bankruptcy Reform Act of 1994 were approved by the Standing Committee in January and by the Judicial Conference on March 14.

The Reporter said the Standing Committee thought the Advisory Committee's request for authority to approve future increases in dollar amounts on the Official Bankruptcy Forms was premature because the next three-year adjustment required by 11 U.S.C. § 104(b), as amended, is not due until 1998. Since the statute requires that the Judicial Conference adjust the dollar

amounts in several sections of the Bankruptcy Code after public notice, revision of the Official Forms can be included in the same resolution presented to the Conference. Judge Stotler asked that the Advisory Committee monitor the matter of the dollar adjustments.

The Reporter said the Standing Committee agreed to the Advisory Committee's request to communicate directly with the Bankruptcy Review Commission. In addition, members of the Advisory Committee were invited to communicate directly with Professor Thomas E. Baker concerning their response to the Self-Study of Federal Judicial Rulemaking undertaken by the Long Range Planning Subcommittee of the Standing Committee. Copies of the self-study were distributed at the meeting.

RULES

Comments on Proposed Amendments. The Reporter reviewed the comments on the proposed amendments to Rules 1006, 1007, 1019, 2002, 2015, 3002, 3016, 4004, 5005, 7004, 8008, and 9006, which were published in 1994. The first six letters commenting on the proposed amendments are discussed in the Reporter's memorandum of February 28, 1995. The three comments received later are covered by the Reporter's memorandum of March 15, 1995, which was distributed at the meeting. In addition, Bryan A. Garner, consultant to the Style Subcommittee of the Standing Committee, submitted a number of suggestions for stylistic changes in the proposed amendments.

The Reporter recommended no action on the general comments of Raymond A. Noble, Director of Legal Affairs for the New Jersey State Bar Association; Robert L. Jones, III, President, Arkansas Bar Association; and Lee Ann Huntington, Chair, Committee on Federal Courts, State Bar of California.

Susan J. Lewis, Legal Editor, Matthew Bender & Company, Inc., pointed out a typographical error in the reference to Rule 3003(c)(2) in the Committee Note to the proposed amendment to Rule 2002(h). The reference should be to Rule 3002(c)(2). **The Advisory Committee agreed to make the correction.**

Glenn Gregorcy, Chief Deputy Clerk, United States Bankruptcy Court for the District of Utah, commented that the proposed deletion of the words "and account" from Rule 2002(f)(8) "does nothing whatsoever" because, he wrote, only one notice is sent under the current rule in most courts. In other words, he stated, in most districts, the trustee's final report and the final account are the same document. James T. Watkins, who stated that his law firm represents 10 of the top 25 national issuers of credit cards in their bankruptcy cases nationwide, urged the Advisory Committee to abandon the proposed amendment. He stated that his firm regularly reviews the trustee's final report and account in order to verify that the stated distributions have been received.

The Reporter said that, while Mr. Gregorcy assumes that the trustee's final report and account are one document in most courts, Mr. Watkins' comments indicate that there are two separate documents -- both of which may be helpful to creditors. **After a brief discussion, the committee took no action on the two comments.**

Richard M. Kremen offered a redraft of the proposed amendment to Rule 2002(h) on behalf of the Maryland Bar Association Committee on Creditors' Rights, Bankruptcy, and Insolvency. Judge Batchelder stated that Mr. Kremen's redraft appeared preferable for clarity. The Reporter suggested revising Mr. Kremen's redraft by substituting "under" for "pursuant to" in line 11; moving the phrase "the court may," from line 12 to line 14 before the word "direct"; and substituting the phrase "mailed

only to the entities listed in the preceding sentence" for the phrase "limited as set forth above" in the final line. Judge Meyers moved the acceptance of Mr. Kremen's redraft, as revised. Mr. Rosen suggested changing the word "listed" in the revision to "specified." Judge Meyers agreed to the change. **The motion was approved without dissent.**

Mr. Kremen also suggested a change in the proposed amendment to Rule 3002 in order to implement the amendment to 11 U.S.C. § 502(b)(9) in the Bankruptcy Reform Act of 1994. The Reporter presented an alternative amendment to Rule 3002. The Reporter asked whether the revised amendments to Rules 3002 and 7004, which was amended directly by the Congress, should be published for comment. He said he believes publication is not required because the revisions just conform the rules to statutory changes in the Bankruptcy Reform Act of 1994. **The Committee agreed.**

Mary S. Elcano, Senior Vice President, General Counsel, United States Postal Service, suggested that Rule 2002 be amended to require service of a notice of dismissal on the debtor's employer and that Rule 7004 be revised to require service on the particular department, office, or unit of an agency out of which the debt in question arose. She stated this is needed so the agency can locate the source of the debt and file a proof of claim. The Reporter stated that the suggested change to Rule 2002 was unrelated to the proposed amendment published and would require separate publication. The Reporter stated that Ms. Elcano's concern about locating the source of a debt appeared to relate to notice of the bankruptcy filing and of the meeting of creditors pursuant to Rule 2002(a), not service of process under Rule 7004. He recommended no action on these comments.

Commenting on the proposed amendment to Civil Rule 5(e), and indirectly on a similar amendment to Rule 5005(a), as well as on electronic filing in general, Patricia M. Hynes, Chair, Committee

on Federal Courts, Association of the Bar of the City of New York, expressed concern about access to electronic filing and electronic records, system compatibility, the authenticity and accuracy of electronic records. The Reporter stated that the Advisory Committee's Technology Subcommittee had focused on these same concerns in drafting the proposed amendment to Rule 5005 and the accompanying Committee Note. The proposed amendment mandates public access by reference to 11 U.S.C. § 107. The Reporter recommended no further action on Ms. Hynes' comments.

The Reporter stated that he had reviewed Mr. Garner's proposed stylistic changes and had included a number of the suggestions in a revised draft of the proposed amendments. Judge Duplantier stated that "under" does not mean the same thing as "pursuant to." The Reporter said that a number of years ago the Advisory Committee rejected the universal substitution of "under" for "pursuant to." Judge Restani moved to approve the Reporter's substitution of "under" for "pursuant to" in his revised draft. **After further discussion of the proposed stylistic changes, the Committee rejected the motion with two dissenting votes.** Judge Batchelder suggested that the Advisory Committee's Style Subcommittee consider the drafting conventions used in the proposed amendments to the Supreme Court Rules. **The Chairman requested that she review the proposed amendments to the Supreme Court Rules.**

The Advisory Committee then considered the Reporter's revised draft of each of the proposed amendments, including his post-publication changes.

Rule 1006. Judge Duplantier suggested deleting "that is to be" from lines 10-11 on page 1 of the Reporter's revised draft. After a discussion, he withdrew the motion. **A motion to approve the proposed amendment as published carried unanimously.**

Rule 1007. **The Advisory Committee approved the proposed amendment as published. The Committee subsequently agreed to change "pursuant to" to "under" in lines 25 and 26 on page 5.**

Rule 1019. **The Advisory Committee approved the proposed amendment as published. The Advisory Committee deleted the part of the Committee Note after "3002(c)(6)" in line 3 on page 8 and approved the remaining portion of the Committee Note.**

Rule 2002. Judge Meyers moved to retain "as the court may direct" on lines 4-5 of page 8 rather than substituting "whom the court directs." **The Advisory Committee agreed.** Mr. Smith moved to accept the substitution of "at least 20 days'" for "not less than 20 days" on lines 8-9. **The motion carried with one dissenting vote.** Judge Batchelder moved to accept each of the changes suggested by the Reporter and incorporated in the revised proposed amendments unless the Advisory Committee votes to make a specific modification in the revised proposed amendments. **The Advisory Committee agreed. The Advisory Committee agreed to substitute "that" for "who" on line 93 of page 13.** Mr. Sommer moved to substitute "under" for "pursuant to" on lines 102 and 103 of page 13 in order to track the language used in the Bankruptcy Code for the appointment or election of a committee. **The motion carried by a vote of 5-3. The Advisory Committee agreed to substitute "under" for "pursuant to" on lines 111, 112, and 119 on page 14. The Advisory Committee agreed to retain "pursuant to" rather than substituting "under" on lines 10 and 21 of page 9.** It was moved to delegate to the Reporter to review all of the revised proposed amendments and to use either "pursuant to" or "under" as is consistent with the Bankruptcy Code and to use "pursuant to" when the Code is not specific. **The motion passed by acclamation.**

Rule 2015. There were no changes in the proposed amendment.

Rule 3002(d). In response to the Advisory Committee's request, the Reporter prepared and distributed a draft of a new subsection (d). The new subsection would require a creditor that tardily files a claim in a chapter 12 or chapter 13 case to mail copies of the tardy claim to the trustee and debtor. The Reporter stated that he prepared the draft to focus the discussion but opposed the proposal because of uncertainty about the sanction for failing to give the notice. He said the new subsection would require publication for comment.

The Reporter said that the debtor could provide for tardily-filed claims in its plan and the trustee could periodically check the claims register for tardy claims. Mr. Sommer stated that the notice requirement might create a new area of litigation. He said that, if a party learns about the bankruptcy, it should find out about the deadlines, especially a party with an important priority or administrative claim.

The Committee discussed whether the clerk or the creditor should be responsible for noticing a late-filed claim. The Reporter stated that the creditor may not know that its claim was received after the deadline and that requiring the clerk to give the notice would ensure that it is done. Judge Meyers and Mr. Heltzel said it is easier for the clerk to send every claim than to sort them and just send the tardy ones. **At the Chairman's suggestion, the Committee agreed to set the matter over to the September meeting.**

Rule 3002. The Reporter stated that he had deleted subsection (d) of the published amendment to Rule 3002 and revised subsection (c) and the Committee Note in order to conform the rule to the statute, as amended by the Bankruptcy Reform Act of 1994. He said he believed the revisions did not require publication. Mr. Klee moved to substitute "not later" for "no later" on line 14 of page 20. **The Advisory Committee agreed.** It

was moved to substitute "not later than" for "before" in line 21 on page 21 and explain in the Committee Note that the change was made to clarify a possible ambiguity in the statute. **After discussing whether this extended the deadline, the Advisory Committee voted, with one dissent, to approve the motion. With one dissent, the Advisory Committee approved a motion to submit the revised draft of Rule 3002 to the Standing Committee without further publication.**

The Reporter offered an additional paragraph to be included in the Committee Note on page 22 to explain that "not later than" is used to avoid any confusion over whether a governmental unit's claim is timely filed if the claim is filed on the 180th day. **The Advisory Committee agreed to the inclusion.**

Rule 3016. **The Advisory Committee agreed to delete the Reporter's stylistic changes of "pursuant to" to "under" where not consistent with the usage in the Bankruptcy Code.**

Rule 4004. Mr. Klee suggested inserting "other" after "any" in line 29 on page 26 in order to be consistent with the statute and to move the word "also" to the beginning of the second sentence of the Committee Note. **The Advisory Committee agreed to the stylistic changes.**

The Committee on the Administration of the Bankruptcy System had requested Rule 4004 be further amended to provide that the court may delay issuing a discharge to a chapter 7 debtor who has not paid in full the proposed $15 trustee surcharge fee which is due when a case is converted to chapter 7. The Chairman asked whether the debtor's discharge should be denied over $15. The Reporter stated that the proposed revision should be published for comment if there is any controversy. Mr. Sommer moved to table the matter. **The motion carried without dissent.**

Rule 5005. There were no changes in the proposed amendment.

Rule 7004. The Reporter stated that the changes in this rule subsequent to its publication were stylistic except for specifying that subsection (g) was abrogated, incorporating the new subsection (h), and including the new introductory phrase in subsection (b) added by the Bankruptcy Reform Act of 1994.

Rule 8008. The post-publication changes are stylistic.

Rule 9006. The Reporter said changing "may not" to "shall" in line 4 on page 49 made the meaning clearer. Mr. Klee said the rule of construction in section 102 of the Bankruptcy Code dictates the use of "may not." The Reporter agreed to restore "may not."

Amendments to be submitted for publication. The Reporter presented proposed amendments to Rules 1020, 2002(a), 2002(n), 2007.1, 3018, 3021, 8001(a), 8001(e), 8020, 9015, and 9035 for submission to the Standing Committee with a request for publication. Judge Meyers asked the purpose of the amendment to Rule 3021. The Reporter said it is to provide flexibility in fixing the record date for the purpose of making distributions to holders of securities of record. Judge Restani commented on the frequency of amendments to Rule 2002. The Reporter stated that the Advisory Committee deals with Rule 2002 by subsection to avoid confusion. He said many of the amendments conform Rule 2002 to changes in other rules.

The Reporter stated that he received a number of suggestions for stylistic changes in the proposed amendments from Mr. Garner the night before the meeting. Judge Batchelder said the Advisory Committee should deal with substantive matters and refer the suggested stylistic changes to the Style Subcommittee. It was moved to submit the proposed amendments to Rules 1020, 2002(a),

2002(n), 3018, 3021, 8001(a), 8001(e), 8020, 9015, and 9035 for publication along with the proposed amendment to Rule 3017 included in Agenda Item 7. The Style Subcommittee is to review the proposed amendments and circulate its changes to the committee members, who will have one week to object to the stylistic changes. As restyled, the proposed amendments then will be submitted to the Standing Committee for publication. **The Advisory Committee approved the proposed arrangements.**

Rule 2007.1. At its December meeting, the Advisory Committee approved Interim Bankruptcy Rule 1, which provides that the United States trustee will appoint the person elected as a chapter 11 trustee, subject to court approval. This comports with the other references in chapter 11 to the appointment of a trustee.

Marvin E. Jacob and Una M. O'Boyle had suggested in a letter a number of changes in the interim rule. In drafting proposed Rule 2007.1, the Reporter incorporated their suggestions that copies of the United States trustee's report of a disputed election go to the party who requested the election and to the creditors' committee (line 34) and that the ten-day period for moving to resolve a disputed election run from the filing of the report (line 40).

Mr. Sommer expressed concern that other parties may need notice of the report of disputed election. The Reporter suggested substituting "has made a request to convene a meeting under § 1104(b) or to receive a copy of the report," for "made a request under § 1104(b)". Judge Restani moved to approve the Reporter's suggested change. Judge Robreno suggested adding "all persons for whom ballots were cast". The Reporter said the suggested phrase would include creditors for whom a proxy vote is cast. He said trustee candidates probably would request a copy. **Judge Restani's motion carried with one dissent.**

The Reporter recommended substituting "United States trustee files the report" for "date of the creditors' meeting called under § 1104(b) of the Code". Mr. Rosen so moved. After a colloquy with Mr. Klee, the Reporter agreed to substitute "Unless a" for "If no" in line 38 on page 4, "not later than" for "within" on line 39, and "any" for "a" on line 42. Judge Restani moved for the approval of the revision. **The motion carried without dissent.**

Mr. Klee suggested substituting the language in lines 42 - 45, as revised, for the phrase "a person appointed trustee under § 1104(d) shall serve as trustee" on lines 12 - 13 on page 3. **Mr. Rosen's motion to make the change was approved without dissent.** The Reporter stated that the rule should specify that equity security holders can not convene a meeting to elect a trustee or solicit proxies. **Accordingly, the Advisory Committee agreed without dissent to add the word "only" after "solicited" on line 21 on page 3 and "of creditors" after "committee" on the same line.**

Mr. Rosen asked if someone other than the United States trustee could file a report of a disputed election. The Reporter said they could object to the United States trustee's report. In order to allow a party to object without waiting for the report, Mr. Klee suggested substituting "not later than" for "within" on line 39 of page 4. **The Advisory Committee agreed.** Professor Tabb suggested substituting "Unless a" for "If no" on line 38 of page 4. **Judge Restani moved to make the change and the Advisory Committee approved her motion without dissent.** Mr. Smith suggested deleting "approval of" from line 24 on page 3. **The Advisory Committee agreed.**

The General Counsel for the Executive Office for United States Trustees has expressed concern about the authority of the United States trustee to preside at the election of a chapter 11

trustee. **In response, the Advisory Committee voted unanimously to insert the sentence "The United states trustee shall preside at the meeting." after "2002" on line 20 on page 3.**

After the December meeting and lengthy discussions with Mr. Patchan concerning the application of proposed Rule 2007.1, the Reporter revised the Committee Note to explain the need for court approval of the appointment of the elected trustee. The revised Committee Note, which was distributed at the meeting, includes an example of a situation in which the United States trustee might dispute the election, i.e., the United States trustee believes the person elected is not "disinterested." Mr. Klee suggested changing "not eligible" to "ineligible" in the sixth line of the fourth paragraph and "should" to "may" in the penultimate line of that paragraph. **The Advisory Committee agreed.**

After the Advisory Committee discussed various changes in the paragraph which begins "The rule", Professor Tabb moved to approve the Committee Note with the insertion of "appointment of the" after "the" in the first sentence of the paragraph; Mr. Klee's two stylistic changes in the next paragraph; and the deletion of "(2)" in "§1104(b)(2)". At Mr. Klee's request, Professor Tabb agreed to the insertion of "primarily" after "necessary" in the penultimate line of the paragraph. At Mr. Rosen's suggestion, Professor Tabb agreed to the deletion of "of the appointment of the elected person after the disclosures required under Rule 2007.1(c)". **The amended motion carried without dissent.**

Rules 3017, 3017.1, 3018. At its September meeting, the Advisory Committee approved amendments to Rules 3017 and 3018 to provide flexibility in fixing the record date for the purpose of determining the parties entitled to receive solicitation materials and to vote on a chapter 11 plan. At its December meeting, the Advisory Committee approved the substance of a new

Rule 3017.1 for court consideration of a disclosure statement in a small business case. Judge Kressel moved to approve the Reporter's draft of Rule 3017.1 **The motion carried unanimously.**

Mr. Rosen suggested adding "Other Than Small Business Cases" to the caption of Rule 3017. **The Advisory Committee agreed.** Judge Kressel stated that Rule 3017 does apply in small business cases if the debtor does not make a timely election to be treated as a small business. **The Advisory Committee reconsidered and withdrew the amendment to the caption.** Judge Robreno moved to delete "new. It is" from line 1 of the Committee Note on page 7. **The Advisory Committee agreed.**

Mr. Klee stated, that as the result of the deletion of subsection 1124(a)(3) in the Bankruptcy Reform Act of 1994, classes will be impaired even if they receive cash equal to the full, allowed amount of their claims. He said the rules should give the court discretion to dispense with sending out the disclosure statement if the plan proponent plans to go straight to cramdown on such a class. The Reporter asked if he would limit the amendment to former subsection 1124(a)(3) or make it applicable to any impaired class. Mr. Klee said the procedure should be available for any class not solicited.

Mr. Smith said that, as a matter of due process, members of an unsolicited class should get a one-page summary of what is being done to them and why their votes are not being sought. **The Reporter agreed to prepare a memorandum on the matter for the next meeting.**

Rule 3014. The Reporter prepared an amendment to Rule 3014 to provide a deadline for a section 1111(b) election in small business cases. He said he was unsure whether the deadline should be determined by reference to the date fixed pursuant to subsection (a)(2), (a)(3), or (a)(4) of Rule 3017.1. **After**

discussing the importance of fixing a date, the Advisory Committee agreed that the election "may be made no later than the date fixed under Rule 3017.1(a)(2) or another date the court may fix." The Advisory Committee approved the proposed amendment, as revised.

Rule 9011. At its September 1994 meeting, the Advisory Committee discussed and approved a recommendation to amend Rule 9011 so that it conforms substantially to the 1993 amendments to Civil Rule 11. The Reporter was directed to draft appropriate language for the rule and Committee Note to provide that the 21-day "safe harbor" provision would not apply to motions for sanctions for the improper filing of a petition.

The Advisory Committee discussed revising lines 69 - 70 on page 4 to provide "A motion for sanctions for the filing of a petition in violation of subdivision (b) may be filed at any time. Any other". Several committee members expressed concern about the statement that Rule 9011 motions "may be filed at any time." It was proposed to delete lines 69 - 70, insert "The" at the beginning of line 71, and insert ", except that this limitation shall not apply if the conduct alleged is the filing of a petition in violation of subsection (b)" after "corrected" on line 76. **The proposal was approved with one dissenting vote.** The Reporter agreed to correct typographical errors by inserting the word "to" at the beginning of line 37 and substituting "withdrawn" for "withdraw" on line 16 of the Committee Note on page 7.

Rule 1019. In February 1994, the Advisory Committee voted to delete the phrase "superseded case" in Rules 1007(c) and Rule 1019(3) and (4) because the use of the phrase gives the erroneous impression that conversion of a case results in a new case. The changes in Rule 1007(c) were part of the package of proposed rule amendments published for comment in September 1994. In addition

to deleting "superseded" from Rule 1019, the Advisory Committee asked the Reporter to restyle the rule and divide it according to applicable Code chapter.

Mr. Klee said "within" on line 31 of page 4 should be "not later than". The Reporter agreed that "not later than" should be substituted for "within" throughout the proposed amendment. **The Advisory Committee accepted the change.** Mr. Klee said lines 19 and 31 should refer to a "holder of a claim" rather than a "creditor." **The Advisory Committee agreed.**

Judge Kressel said "a debtor" should be inserted after "not" in line 14 on page 3. **The Advisory Committee agreed.** Mr. Sommer expressed concern that lines 39 - 41 of the draft appear to take a substantive position on the interpretation of 11 U.S.C. § 348 as amended by the Bankruptcy Reform Act of 1994. **The Advisory Committee agreed that subsection (C)(i) on page 4 should be revised to implement the 1994 amendment to section 348. The Advisory Committee approved the proposed amendment, as revised.**

Rules 8002(c), 7062. In September 1993, the Advisory Committee voted to amend Rule 8002(c) to clarify that a motion for an extension of the time to file a notice of appeal must be "filed" -- rather than "made" -- within the ten-day period. In view of the Ninth Circuit's decision in In re Mouradick, 13 F.3d 326 (9th Cir. 1994), the Advisory Committee approved additional amendments at its September 1994 meeting designed to give a party that files a timely extension motion the benefit of an order granting the motion, regardless of when the extension motion is granted.

After the approval of the September 1994 amendments, the Committee asked the Reporter to compile an appropriate list of orders with respect to which the time to appeal may not be extended at all. In compiling the list the Reporter considered

the orders listed in Rule 7062 as exceptions to Civil Rule 62's ten-day automatic stay of enforcement or execution with respect to a judgment. As a result, he proposed amending both Rule 8002(c) and Rule 7062.

Judge Kressel suggested transposing the numbers "1325" and "1225" in lines 19 and 20 on page 8 and in lines 15 and 16 on page 10. **The Advisory Committee agreed to make the correction. The Advisory Committee agreed to substitute "change the effect of" or similar language for "overrule" in the second sentence of the Committee Note to Rule 8002(c) on page 9.** Judge Restani suggested inserting "the automatic stay under" after "to" in line 2 on page 10. **The Advisory Committee agreed.** Mr. Sommer suggested substituting "may" for "must" in line 36 on page 8. **The Advisory Committee agreed.**

Mr. Smith asked if the court has the ability to make an order effective immediately even if the order otherwise would be stayed for ten days. The Reporter said he believes the phrase "unless the court otherwise directs" in Rule 9014 authorizes the court to waive the application of Rule 7062 in a contested matter. Mr. Smith said Rule 7062 should give the court explicit discretion to except other orders from the ten-day stay, as Civil Rule 62 does. Mr. Klee said the parties should have an opportunity to get a stay pending appeal, even if an order is effective immediately, in order to preserve the constitutional right to consideration by an Article III judge.

Judge Kressel said Civil Rule 62 does not make sense in the bankruptcy context, which causes many of the problems with the bankruptcy rule. Professor Tabb said there should be a separate stay rule for contested matters. Mr. Klee said Rule 7062 should be published for comment as drafted while the Long Range Planning Subcommittee considers rationalizing Rules 9014 and 7062.

Mr. Klee moved to approve the proposed amendment to Rule 8002(c) with the changes made during the discussion. **The motion was approved unanimously.** Mr. Klee moved to approve the proposed amendment to Rule 7062 with the addition of a subsection (f) which states "any other order as the court may direct." **The Advisory Committee approved the motion by a 7-4 vote.**

Rule 2002. Attorney General Janet Reno proposed an amendment to Rule 2002(j)(4) in order to provide more effective notice to the United States. (Copies of her letter were distributed separately.) The proposed amendment, which is fashioned after local rules in several districts, was modified after a series of conversations between Mr. Kohn and the Reporter. The revised proposal would require that the notice to the United States attorney identify the agency through which the debtor became indebted and that the notice to the federal agency be addressed as the United States attorney directs in a filed request. Mr. Kohn said bankruptcy notices sent to the United States attorney often are ignored because there is no practical way to identify the agency and that notices sent to a federal agency often go to the address where the debtor makes payments.

Mr. Klee said he is sympathetic to the government's problem but that the proposed amendment goes to the heart of the bankruptcy process and puts the burden on the debtor to apprise the creditor of the nature of its claim. He said the debtor ought to be required to make a good faith effort to identify the agency, if it knows the name, but that the debtor should not risk losing its discharge. Mr. Smith said the emphasis should be on effective notice, not perceived due process questions. He stated that the government is a major creditor and millions of dollars are at stake. Mr. Smith said the proposed amendment is good for the debtor because compliance with the proposal is fairly easy and compliance should avoid challenges to the discharge.

Mr. Klee said the Congress wrestled with the issue of effective notice to creditors in considering the Bankruptcy Reform Act of 1994. The lawmakers compromised by requiring the debtor's Social Security number or taxpayer ID (instead of the debtor's account number) but excluding challenges to the discharge. The Reporter stated that the 1994 amendments gave the government 180 days to file a claim, which should be enough time to get the notice to the right place. Mr. Kohn said it is better to get the notice on the first day.

Mr. Klee suggested inserting "to the mailing address" after "addressed" on line 5 on page 5 to avoid any implication that the United States attorney could require the use of an account number. **The Advisory Committee agreed. A motion to approve the proposed amendment failed. The Chairman asked Mr. Kohn to revisit the matter and consider preparing another draft for the next meeting.**

The Chairman suggested that the Department of Justice consider preparing a national register of addresses to be used for bankruptcy notices to government agencies. Mr. Kohn said that would be very difficult because federal agencies' procedures for handling bankruptcy notices vary from district to district and agency to agency. Several committee members expressed sentiment for the development of local federal agency address registers similar to the ones which have been published as addendums to some local rules. Mr. Klee suggested requiring the sender to designate the agency only if known to the sender. The Advisory Committee discussed whether the sender or the debtor should be responsible for making sure the right address is used. Mr. Heltzel said the deputy clerk putting the creditor addresses into the court's computer system should not be required to recognize that a government agency's address needs to be changed.

Rule 6007(a). The Attorney General also requested in her

letter that Rule 6007(a) be amended to require notice to the Environmental Protection Agency (EPA) of any proposed abandonment or disposition of estate property with respect to which there may be claims or obligations under statutes or regulations administered by the EPA. After a series of discussions between Mr. Kohn and the Reporter, the proposal was limited to the abandonment of nonresidential real property and the abandonment of hazardous substances and hazardous waste and broadened to include notice to state environmental agencies.

The Reporter stated that it may be difficult for trustees to comply with the proposed notice requirement because the referenced statutory definition of hazardous substances contains cross-references to a number of other environmental statutes. Several committee members questioned the meaning of the phrase "to which there is or may be a claim or cleanup obligation under any law administered by the United States Environmental Protection Agency or a state environmental unit" on lines 14 - 16 on pages 9 - 10.

The Reporter said it might be better to require notice to the EPA of any abandonment of nonresidential real property. Judge Restani stated that requiring notice of every abandonment effectively would be no notice at all. Mr. Klee stated that he favors the current requirement, which is limited to known claims or cleanup obligations. **The Chairman asked Mr. Kohn to revise the proposed amendment so that the notice requirement in subsection (a)(2) is limited to known claims.**

Rule 9006(b)(1). In In re Village Green Associates, No. AZ-94-1232-ZRH, slip op. (Bankr. 9th Cir. August 8, 1994), the Bankruptcy Appellate Panel of the Ninth Circuit found several ambiguities in Rule 9006(b)(1). The Reporter stated that the issues raised by the decision can be analyzed by considering two questions: 1) Should a court have the discretion to act, in the

absence of a request, to extend a chapter 11 claims bar date or another deadline before the time period expires? and 2) Should a court have the discretion to act sua sponte -- for cause but without finding excusable neglect -- to extend a chapter 11 claims bar date or another deadline for all parties after the time period has expired? The Reporter stated that the rule could be revised to specify that the court has no discretion to extend the deadline after the time has expired absent a motion and a showing of excusable neglect, or to specify that the court can extend the deadline for everyone for cause.

Professor Tabb moved to adopt the second, more liberal alternative. The motion was amended to require an initial vote on whether to amend the rule at all. Judge Meyers stated that Village Green Associates was an unpublished decision. **With one dissent, the Advisory Committee voted against making any changes in the rule.**

Rule 2014. Harvey R. Miller, of the law firm of Weil, Gotshal & Manges in New York, requested that the Advisory Committee study Rule 2014(a) and consider appropriate amendments to clarify the duty to disclose. The Reporter stated that, in response to a resolution adopted by the House of Delegates of the American Bar Association (ABA), the Advisory Committee considered Rule 2014 at its meeting in March 1992 and decided not to amend the rule. The Chairman said he put the matter on the agenda for the purpose of deciding whether to revisit it. The Reporter said he believes there are two issues: 1) Whether the rule can be clarified by being more specific and detailed in setting forth the facts that must be disclosed and 2) The application of the rule to large cases in which strict compliance is difficult or impossible.

Mr. Smith stated that he was responsible for the ABA resolution and that it was not intended to reduce disclosure. He

said the rule should give bankruptcy attorneys who practice around the country guidance as to what types of connections they should disclose. Mr. Rosen stated that the rule does not address supplementation, which causes problems in large cases in which the parties change as the result of claims trading.

Judge Meyers agreed with the comments but expressed concern that it would appear that the Advisory Committee is intervening to give an attorney solace. Mr. Rosen said that the decision in In re Leslie Fay, No. 93-B-41724(TLB), slip op. (Bankr. SDNY December 15, 1994), which prompted Mr. Miller's letter, has been settled and there are no pending appeals. Judge Batchelder expressed concern that claims trading could be used as a means of disqualifying competent counsel and said the letter heightened existing concerns about the rule. **The Advisory Committee unanimously approved a motion to revisit the matter. The Chairman appointed Mr. Smith to head a Rule 2014 subcommittee. Mr. Smith may select the other members of the subcommittee.**

SUBCOMMITTEES

Local Rules. Ms. Channon distributed her memorandum on the 12 letters commenting on the proposed uniform numbering system for local rules. She said the Advisory Committee also received one oral comment from a former committee member. Ms. Channon said the comments were generally either favorable or favorable with qualifications or suggestions for modification. Two persons were opposed to both the proposed system and the entire idea of uniform numbering.

Ms. Channon said the Local Rules Subcommittee had decided that the subdivisions of the national rules should not be carried over into the uniform numbers, that the use of the prescribed titles should be mandated for the uniform numbers, and that the

uniform numbers should not have the exact same titles as the national rules.

Professor Tabb suggesting putting all miscellaneous matters in the 9000 series numbers unless there is an exact match with a national rule. Mr. Sommer said it is more logical to assign these rules to related national rules. Mr. Klee said there appears to be little impetus for completely restructuring the national rules and, therefore, the Advisory Committee should go forward with uniform numbers based on the current national rules.

Judge Leavy suggested that a list be published of the uniform numbers for all local rules, rather than requiring the districts to reorganize their rules according to the national numbers. Mr. Rosen said the problem in implementing the uniform numbers is that one local rule may relate to several national rules. Mr. Heltzel said that it would require a tremendous amount of work for each district to revise its local rules. He suggested compiling a database of local rules and making it available in a scannable format.

Judge Batchelder said the issue is no longer whether to require uniform local rule numbers but what is the best uniform number system. She said the question is what is the most expeditious, most efficient, and least objectionable system. Judge Meyers suggested that the districts be authorized either to use the uniform numbers or to add references to the uniform numbers to their existing rules. Professor Tabb moved to adopt the proposed uniform numbers set out in the attachment to Director Mecham's memorandum of November 22, 1994, except that references to subdivisions of the national rules are to be deleted and cross-references are to be included. **The motion carried with one dissenting vote.**

Long Range Planning. Judge Stotler led a discussion of the

report prepared by the Long Range Planning Subcommittee of the Standing Committee. The committee members agreed that a five-year term for the chair of an Advisory Committee is desirable in order to oversee the lengthy rule-making process and preserve an institutional memory. There was no agreement on whether committee members should be eligible for appointment to a third term or whether the terms should be for two, three or four years.

At the request of the Advisory Committee, the Federal Judicial Center conducted a survey concerning the scope, format, and organization of the bankruptcy rules. A memorandum setting out the survey questions and a tabulation of the initial responses was distributed at the meeting.

Mr. Klee said the survey has not been completed but that some trends are apparent. He said that, although there is no ground swell of sentiment for a complete overhaul of the rules, there is support for improving the rules related to motion practice and the interaction between the 7000 series rules and the 9000 series. Ms. Wiggins stated that the survey indicated there is room for improving a number of rules. Mr. Klee said interest was expressed for developing ethical standards for practicing before the bankruptcy courts. The Reporter stated that the Standing Committee's reporter is tackling the issue as it relates to all federal courts.

Technology. **The Chairman assigned Mr. Heltzel, Mr. Klee, and Mr. Sommer to the Technology Subcommittee and designated Mr. Heltzel as chairman.** The Chairman stated that he will ask Judge James Barta, a former member of the Advisory Committee and the former chairman of the subcommittee, to serve as a consultant. Professor Tabb stated that the American Bankruptcy Journal will publish a symposium issue on the bankruptcy rules, including a section on automation.

Civil Rules Liaison. Judge Restani stated that the Advisory Committee on Civil Rules met in Philadelphia with a number of experts to consider the need for revising Fed. R. Civ. P. 23, Class Actions. She stated that, although the rule does not work well in mass tort cases, there was little sentiment among the experts for a major overhaul of the rule. She said the Civil Committee will continue its exploration of the rule at a seminar at New York University in April.

Alternative Dispute Resolution. With the help of Ralph Mabey, a former member of the Advisory Committee, the subcommittee has conducted a national survey on local Alternative Dispute Resolution (ADR) programs in the bankruptcy courts. Professor Tabb promised to distribute copies of an article on the survey to committee members.

He stated that the ADR Subcommittee will meet at 3 p.m. on May 24, 1995, to consider drafting an ADR proposal for the September meeting. The meeting will be held at a hotel in the vicinity of O'Hare International Airport. Professor Tabb asked that any committee member interested in ADR contact him or another subcommittee member before the May meeting. Several committee members expressed their opposition to mandatory arbitration or mandatory mediation.

Forms. Mr. Sommer said the Forms Subcommittee has almost completed its revision of a number of forms and hopes to present the new, revamped forms at the September meeting. He said the Forms Subcommittee will meet at 10 a.m. on May 25, 1995, at a hotel in the vicinity of O'Hare International Airport.

UPCOMING MEETINGS

The Chairman announced that the next meeting will be in Portland, Oregon, on September 7 - 8, 1995. He suggested that

the winter - spring meeting for 1996 be held in the eastern part of the country. The Reporter suggested March 21 - 22 or March 28 - 29, 1996, as possible meeting dates. The committee members agreed to inform Ms. Channon of their schedule conflicts for those dates within one week.

Respectfully submitted,

James H. Wannamaker, III