

**Meeting of the Advisory Committee on Bankruptcy Rules
November 14, 2016, Washington D.C.**

The following members attended the meeting:

Circuit Judge Sandra Segal Ikuta, Chair
Circuit Judge Thomas L. Ambro
District Judge Pamela Pepper
District Judge Amul R. Thapar
Bankruptcy Judge Stuart M. Bernstein
Bankruptcy Judge Dennis Dow
Bankruptcy Judge A. Benjamin Goldgar
Bankruptcy Judge Melvin S. Hoffman
Diana Erbsen, Esquire
Jeffrey Hartley, Esquire
Richardo I. Kilpatrick, Esquire
Thomas Moers Mayer, Esquire
Jill Michaux, Esquire
Professor David Skeel

The following persons also attended the meeting:

Professor S. Elizabeth Gibson, reporter
Professor Michelle Harner, associate reporter
District Judge David G. Campbell, Chair of the Committee on Rules of Practice and Procedure (the Standing Committee)
Circuit Judge Susan P. Graber, liaison from the Standing Committee
Rebecca Womeldorf, Secretary, Standing Committee and Rules Committee Officer
Bankruptcy Judge Erithe Smith
Bankruptcy Judge Eugene R. Wedoff
Bankruptcy Judge David Sims Crawford
Ramona D. Elliot, Esq., Deputy Director/General Counsel, Executive Office for U.S. Trustee
Kenneth Gardner, Clerk, U.S. Bankruptcy Court for the District of Colorado
Molly Johnson, Senior Research Associate, Federal Judicial Center
Bridget Healy, Esq., Administrative Office
Scott Myers, Esq., Administrative Office
Jon M. Waage, Chapter 13 Trustee, Middle District of Florida
Nancy Whaley, National Association of Chapter 13 Trustees

I. Introductions

Judge Sandra Ikuta welcomed the new members to the Advisory Committee on Bankruptcy Rules (the Committee). She also introduced Judge David Campbell, the new chair of the Standing Committee, and Judge Susan Graber, the new liaison from the Standing Committee.

II. Minutes from April 2016 Meeting

The minutes from the minutes of the April 2016 meeting of the Bankruptcy Rules Committee were approved.

III. Report from the June 2016 meeting of the Standing Committee

Professor Michelle Harner reported that all of the Committee's action items were approved. In addition, there were two information items reported, including several technical changes to the bankruptcy forms.

IV. Report on the November 2016 Meeting of the Advisory Committee on Civil Rules

Judge Benjamin Goldgar reported on the items discussed at the Civil Rules Committee meeting that were of interest to the Committee. First, the Civil Rules Committee is studying the method of serving subpoenas (service by mail versus in person). Second, the Civil Rules Committee is considering possible changes to Rule 30(b)(6) for depositions of corporate representatives. Third, the Civil Rules Committee decided not to go forward at this time with possible amendments to Rule 5.2, although the amendments may be reconsidered. The Civil Rules Committee did not find the same issues with personal identifiers in civil cases as may occur in bankruptcy cases. The other rules committees have also considered similar amendments, and each committee decided not to proceed. Judge Goldgar will monitor developments on proposed amendments to Civil Rules 45(b)(1) and 30(b)(5).

V. Report on the October 2016 Meeting of the Advisory Committee on Appellate Rules

Judge Pamela Pepper advised that the majority of the discussion at the Appellate Rules Committee meeting was unrelated to bankruptcy. Many of the potential amendments under consideration relate to electronic filing and service. The Appellate Rules Committee is continuing to discuss the proper language for bonds and security instruments in several rules. Also, they discussed potential changes to the civil class action rules and whether any Appellate Rule amendments were needed as a result. The Appellate Rules Committee discussed a suggestion to require additional disclosures in bankruptcy appeals, and asked that the Committee work with the Appellate Rules Committee on the issue. The Committee agreed to work with the Appellate Rules Committee, and the matter was assigned to the Privacy, Public Access, and Appeals Subcommittee.

VI. Report on the June 2016 Meeting of the Committee on the Administration of the Bankruptcy System

Judge Erithe Smith reported that the Bankruptcy Administration Committee considered several issues related to fees at the meeting, concurring with fee proposals submitted by the Committee on Court Administration and Case Management (CACM). Also, the judgeship vacancy pilot project is moving forward. Under the project, one judge has been sworn in to the District of South Dakota and will sit in the Middle District of Florida for five years, and another judge has been sworn in to the Northern District of Iowa and will sit in the Eastern District of Michigan. In addition, the horizontal coordination pilot project was approved by the Judicial Conference earlier this year, and the Bankruptcy Administration Committee is working on finding districts to participate in the project. Judge Stuart Bernstein added that there is concern regarding temporary judgeships, as most temporary judgeship positions will expire in May 2017 without action from Congress.

Judge Ikuta advised of the letter from the Committee to the Bankruptcy Administration Committee regarding the suggestion for a Notice of Change of Address form, and Judge

Smith advised that it will be considered at the Bankruptcy Administration Committee's December 2016 meeting.

VII. Business Subcommittee Report

Professor Harner provided the report of the subcommittee's review of noticing issues. She explained that the review focuses on formal noticing suggestions submitted to the Committee over the years, with several concerning the mode of noticing and ways to better utilize technology, electronic filing, and service. Although research is ongoing, Professor Harner noted that the many of the materials reviewed by the subcommittee suggest inefficiencies in the system and the high burden and cost associated with noticing under the Bankruptcy Rules. With the proposed amendments to Rule 5005 there is a movement toward default electronic filing, but this does not include noticing. The subcommittee generally agreed that permitting broader use of electronic noticing and service may be warranted, but that it needed to analyze further certain issues relating to non-individual parties who are not represented in bankruptcy cases.

The Committee discussed various issues relating to the suggestions regarding electronic noticing and service. One member advised that some creditors would prefer to receive notices by mail because they lack the ability to process everything electronically, or they have systems set up to accept bankruptcy notices that are not electronic. The Committee discussed the potential value to phasing in any changes to the mode of noticing and service through an opt-in mechanism. The Committee also noted the need to consider the potential impact of Civil Rule 5(b).

Professor Harner then explained two other issues identified in the noticing project. First, a few suggestions raise issues with the special service of process requirements for certain entities under Rules 7004(b)(3) and (h). The Committee discussed the need for, and challenges to, any amendments to the service of process rules. It also recognized the need to coordinate with other rules committees and other groups within the bankruptcy community before proposing any changes. Second, the noticing project considered certain issues involving claims objections. The proposed amendment to Rule 3007(a) clarifies that service of an objection may be made upon the creditor by first-class mail at the address set forth in the proof of claim. There is a question as to whether this procedure should be extended to claims for which no proof of claim is required.

Although the noticing project is ongoing, the Committee decided to focus on one issue at this time. Specifically, the Committee is exploring an amendment to the bankruptcy rules that would allow businesses, financial institutions, and other non-individual parties that hold claims against the debtor, but that are not registered users of CM/ECF, to opt into electronic noticing and service in bankruptcy cases. The Committee would ensure that any such amendment is consistent with 11 U.S.C. § 342(e) and (f), which gives certain creditors the right to designate a particular service address.

VIII. Subcommittee on Privacy, Public Access, and Appeals

A. Conforming technical amendments to Rule 8011

Professor Elizabeth Gibson reported that the amendments to Rule 8011 conform to the proposed amendments to Federal Rule of Appellate Procedure 25 (currently out for publication). The proposed amendments would also be consistent with the proposed

amendments to Rule 5005, Civil Rule 5, and Criminal Rule 49 (currently out for publication). Rule 8011 currently does not specifically address electronic filing, but the recent amendments to the Part VIII rules generally favored electronic transmission by and to represented parties. Professor Gibson noted that minor changes to the proposed amendments (to Rule 8011) may be required depending on the comments received on the published proposed amendments to Appellate Rule 25. Any changes will be presented at the spring 2017 meeting. The Committee discussed service requirements. Local rules often require additional service, although this practice could continue, even with a rule amendment. In addition, the Committee agreed that, because the proposed amendments mirror the pending amendments to the appellate rules on electronic service and proof of service, publication of the proposed amendments to Rule 8011 would serve no additional purpose. It also noted the value to having the amendments to Rule 8011 approved on the same timetable as those being made to Appellate Rule 25, Rule 5005, Civil Rule 5, and Criminal Rule 49. A motion was made and approved to move forward with the proposed amendments, subject to any minor amendments or corrections based on comments received during the publication period, and to request that the Standing Committee approve the proposed amendments without prior publication.

B. Suggestion 16-BK-E (Mandate Procedure in Bankruptcy Appeals)

Professor Gibson provided the report, explaining that the suggestion is to require a mandate in bankruptcy appeals to clarify when authority reverts with the bankruptcy court. The subcommittee previously chose not to pursue the issue, but now recommended that it be considered for further study. Current Rule 8024(b) does not require a mandate, unlike Federal Rule of Appellate Procedure 41(c). The subcommittee intends to survey bankruptcy judges and practitioners to determine if the lack of a mandate causes problems.

Professor Gibson advised the group that a number of bankruptcy appellate panels have local rules regarding mandates from bankruptcy appeals. Also, the mandate under Appellate Rule 41(c) can be withdrawn under certain circumstances and district courts can take actions without the mandate. Some members questioned whether a rule is necessary, suggesting that a better solution may be to encourage communication between the courts to prevent potential issues. The subcommittee will consider whether to propose a rule that when the Court of Appeals remands an action to the district court, the court would have a certain amount of time (30 or 60 days) to hold a status conference to determine whether the district court or bankruptcy court should move forward with the case. The Committee discussed that such a rule would likely not be necessary when a district court enters a judgment.

IX. Information Items

Professor Harner explained that there are four items under consideration. The Business Subcommittee initially considered all of the items. The first suggestion relates to noticing of plans under Rule 2002(f)(7), and whether chapter 13 plans should be added to that rule. The suggestion was considered and rejected in the past, but the grounds for rejection are unclear. The Consumer Subcommittee will look at this issue. The second suggestion relates to the parties entitled to receive notices in chapter 13 cases under Rule 2002. The Business Subcommittee referred this suggestion to the Consumer Subcommittee. The third issue is a suggestion regarding disclosures under Rule 4001(c). The Business Subcommittee also referred this suggestion to the Consumer Subcommittee. The final issue concerns service of a motion to compel abandonment under Rule 6007(b) and whether such requirements should mirror the service required for a trustee's notice of abandonment under Rule 6007(a). The

Business Subcommittee will present additional information on this suggestion at the spring meeting.

X. Coordination Issues

Scott Myers provided some background regarding the need for coordination between the rules committees. There are often conforming amendments needed to retain uniformity within the federal rules. He noted that most of the issues included in his memo (in the agenda materials) were already discussed, but highlighted that certain amendments will be needed if the Appellate Rules Committee decides to amend its rules regarding supersedes bonds. Also, the Criminal Rules Committee proposed an amendment to its disclosure rule (Rule 12.4) and the Appellate Rules Committee is considering similar amendments. The Privacy, Public Access, and Appeals Subcommittee will consider whether any changes are needed to the bankruptcy disclosure rules and report at the spring 2017 meeting.

XI. Forms Subcommittee

Judge Dennis Dow provided an overview of the subcommittee's work on amended Rule 3015 and new Rule 3015.1. The rules were published for comment in August 2015. Several comments were submitted and a hearing was held in September 2016. There was general support for the approach in the proposed rules, although there was some opposition. There were specific suggestions for edits to the proposed amendments. The subcommittee considered all of the comments.

He advised that the subcommittee determined that proposed Rules 3015 and 3015.1 permit the Committee to achieve the goals of uniformity while still permitting local variations where necessary. Districts will have only one plan form; even if it is not the national form, it will be a local form with more national uniformity. The proposed form plan and related rules are procedural rather than substantive.

Judge Dow detailed the comments and testimony. Some of the opposition focused on specific disputes regarding substantive chapter 13 issues rather than those that could be resolved by a form or procedural rule. Noticing was an issue raised in some of the comments, and these issues are being considered as part of the noticing project. Several commenters voiced concerns about the automatic stay provisions, but the subcommittee determined not to make any changes to the rule, although some explanatory language will be added to the Committee Note in response to one of these comments. Several other changes to the Committee Notes were made in response to comments, and there was one minor edit to proposed Rule 3015.1(d)(4) to add relevant statutory references.

The subcommittee also made stylistic edits to Form 113, including conforming the header and signature lines to the remainder of the modernized forms and standardizing references throughout the form. In addition, a few minor edits were made to the Committee Note for the form. The Committee approved a motion to approve Rule 3015, Rule 3015.1, the revised version of Form 113, and the Committee Note for Form 113. Professor Gibson reminded the group that the Director's Form for adequate protection needs to be issued by December 2017.

XII. Referral to Other Committees

Professor Gibson reported on an item referred to CACM regarding redaction of personally identifiable information. For redaction, the issue is with third party services that provide

court dockets to paid users and the potential for protected information to appear on those dockets. CACM thanked the Bankruptcy Rules Committee for the information. Professor Gibson also reported that the suggestion regarding a Notice of Change of Address form was forwarded to the Bankruptcy Administration Committee. Letters regarding both issues were included in the agenda materials.

XIII. Five-Year Review Questionnaire

Judge Ikuta explained that the Committee is asked to respond to the questionnaire, and that the responses from 2007 and 2012 are included in the agenda materials. She advised that she would like to include a few sentences regarding the Committee's coordination efforts, and made the suggestion that current liaison positions be entitled to vote. Finally, she added her support for the idea that Committee members have some bankruptcy experience prior to being part of the Committee. Committee members voiced support for these suggestions. Judge Campbell will coordinate responses from all Advisory Committees.

XIV. Consent Agenda

The consent agenda, reproduced below, was approved by motion by the Committee. The consent agenda materials, as well as other supporting agenda materials, are also available at <http://www.uscourts.gov/rules-policies/archives/agenda-books/advisory-committee-rules-bankruptcy-procedure-november-2016>.

1. Not assigned to a subcommittee

(A) Recommendation of no action regarding Suggestion 13-BK-J to require that the Rule 2016(b) statement (Disclosure of Compensation Paid or Promised to Attorney for Debtor) be filed with the petition instead of within 14 days after the petition is filed.

(B) Recommendation to approve Suggestion 14-BK-F for technical amendment to Rule 7004(a)(1).

2. Subcommittee on Consumer Issues

(A) Recommendation of no action regarding Suggestion 15-BK-I concerning various suggestions in dealing with pro se filers and redaction of social security numbers.

(B) Recommendation to approve Suggestion 16-BK-B to amend question number 11 on Official Form 101 (Individual Debtor Petition) with proposed December 1, 2017 effective date.

3. Subcommittee on Business Issues.

(A) Recommendation of no action regarding Suggestion 16-BK-G that Rule 7004(e) to provide at least 14 days for service of summons and complaint.

4. Subcommittee on Privacy, Public Access, and Appeals

(A) Recommendation of no action regarding Suggestion 16-BK-F to eliminate the requirement of a request for permission to take a direct appeal when the court certifies the appeal.

XVII. Conclusion

The spring 2017 meeting will be held in Nashville, Tennessee on April 7, 2017. The meeting was adjourned at 1:40 PM.

Respectfully submitted,

Michelle Harner, associate reporter