MEMORANDUM

TO: Hon. David G. Campbell, Chair
Committee on Rules of Practice and Procedure

FROM: Hon. Sandra Segal Ikuta, Chair
Advisory Committee on Bankruptcy Rules

RE: Report of the Advisory Committee on Bankruptcy Rules

DATE: December 6, 2017

I. Introduction

The Advisory Committee on Bankruptcy Rules met in Washington, D.C., on September 26, 2017. The draft minutes of that meeting are attached.

At the meeting the Advisory Committee approved for publication amendments to two rules: Rule 2002(h) (Notices to Creditors Whose Claims are Filed) and Rule 8012 (Corporate Disclosure Statement). Because both amendments relate to other amendments that were published in August 2017 and remain subject to comment, the Advisory Committee does not seek action on them at this meeting. Instead we will present them at the June 2018 meeting.

Part II of this report presents four information items. The first concerns the Advisory Committee's decision to withdraw the proposed amendment to Rule 8023, which was published for comment in August 2016. The second item discusses the Advisory Committee's approval of national instructions to several Official Forms that authorize courts to make alterations to those forms. The third item discusses the Advisory Committee's plans for considering a suggestion that Rule 2013 be amended to eliminate a recordkeeping requirement regarding court awards of

compensation. The final item concerns the Advisory Committee's exploration of the advisability of restyling the Bankruptcy Rules.

II. Information Items

A. Withdrawal of the proposed amendment to Rule 8023 (Voluntary Dismissal).

In August 2016 the Standing Committee published an amendment to Rule 8023. As published, the rule and committee note provided as follows:

> **Rule 8023. Voluntary Dismissal**
>
> Subject to Rule 9019, ~~T~~the clerk of the district court or BAP must dismiss an appeal if the parties file a signed dismissal agreement specifying how costs are to be paid and pay any fees that are due. An appeal may be dismissed on the appellant's motion on terms agreed to by the parties or fixed by the district court or BAP.
>
> **Committee Note**
>
> The rule is amended to provide a reminder that, when dismissal of an appeal is sought as the result of a settlement by the parties, Rule 9019 may require approval of the settlement by the bankruptcy court.

No comments were submitted on the amendment during the notice-and-comment period.

At the spring 2017 meeting, when the Appeals Subcommittee recommended that the Advisory Committee give its final approval to the amendment, the representative of the Department of Justice on the Committee raised some concerns. Specifically, he noted that making the clerk's authority "subject to Rule 9019" might mean that every attempt to seek a voluntary dismissal of an appeal based on a signed agreement of the parties would require the clerk to determine whether Rule 9019 applied or to seek a judicial determination of its applicability. (Rule 9019 allows a court to approve a settlement on motion of the trustee.) As a result, the Department feared that clerks would end up making determinations more appropriate for the judiciary, or voluntary dismissals would be delayed awaiting the court's ruling. After committee discussion in which varying views were expressed, the matter was referred back to the subcommittee for further consideration. At the fall 2017 meeting, the Advisory Committee accepted the subcommittee's recommendation that the amendment be withdrawn and that no further action be taken on it.

The amendment to Rule 8023 was proposed in response to a comment from the National Conference of Bankruptcy Judges ("NCBJ") that the current rule fails to take account of the fact

that one of the parties to an appeal being voluntarily dismissed might be the bankruptcy trustee, who, according to the NCBJ, "is obliged under Fed. R. Bankr. P. 9019 to obtain court approval of any compromise." The NCBJ raised the concern that, by its silence, Rule 8023 could be read as overriding Rule 9019. The Advisory Committee approved for publication an amendment that cross-referenced Rule 9019—to signify that Rule 8023 does not supersede it—without attempting to resolve the division in the case law concerning a bankruptcy court's jurisdiction to approve a settlement of a matter on appeal.

Since 1983, Rule 8023 and its predecessor, Rule 8001(c), have required the clerk to dismiss an appeal based on the parties' agreement, and Rule 9019 has provided for court approval of settlements. The NCBJ, in suggesting a possible amendment to Rule 9023, admitted that the issue it raised regarding the possible applicability of Rule 9019, did "not appear to be disrupting bankruptcy administration." Furthermore, research revealed no reported decision that raises any issue about the relationship between the voluntary dismissal of a bankruptcy appeal pursuant to the parties' agreement and Rule 9019. Because the proposed amendment was not intended to change the current rule, but only to call attention to the possibility that Rule 9019 might also apply, the Advisory Committee concluded that there is insufficient reason to amend Rule 9023 if doing so might cause problems of the sort suggested by the Department of Justice. It therefore voted unanimously to withdraw the amendment.

B. Approval of national form instructions authorizing alterations.

Amendments to Rule 9009 that went into effect on December 1, 2017, restrict authority to make alterations to Official Bankruptcy Forms. The amended rule provides as a general matter that "[t]he Official Forms prescribed by the Judicial Conference of the United States shall be used without alteration." This amendment was made in order to ensure that forms such as the Chapter 13 Plan Form (Official Form 113) and the Mortgage Proof of Claim Attachment (Official Form 410A), which are intended to provide information in a particular order and format, are not altered.

Rule 9009, as amended, does provide certain exceptions to the general rule. First, minor alterations that do not affect wording or the order of presenting information are permitted, and the rule provides specific examples of that type of change. Second, alterations to a particular form may be authorized by "these rules, . . . a particular Official Form, or . . . the national instructions for a particular Official Form." These exceptions were included in the rule in response to comments from clerks, judges, and lawyers that Official Forms are sometimes tailored to implement local rules and practices and to reduce the burden of providing multiple notices.

As the effective date of amended Rule 9009 approached, several court officials contacted the Administrative Office of the Courts ("AO") to inquire about whether they would be able to add information to or otherwise alter certain Official Forms. In response, Scott Myers drafted,

and the Advisory Committee approved, instructions for the following forms that specify the types of alterations that may be made and by whom:

- Official Form 103A (Application for Individuals to Pay the Filing Fee in Installments),
- Official Form 103B (Application to Have the Chapter 7 Filing Fee Waived),
- Official Forms 309(A-I) (Case Noticing Forms),
- Official Form 312 (Order and Notice for Hearing on Disclosure Statement),
- Official Form 313 (Order Approving Disclosure Statement and Fixing Time for Filing Acceptances or Rejections of Plan, Combined with Notice Thereof),
- Official Form 314 (Ballot for Accepting or Rejecting Plan),
- Official Form 315 (Order Confirming Plan),
- Official Form 318 (Discharge of Debtor – Chapter 7), and
- Official Form 420A (Notice of Motion or Objection).

Mr. Myers also drafted a Table of Authorities Permitting Alterations to Official Bankruptcy Forms. After providing information about Rule 9009 and the circumstances in which it permits alterations of Official Forms, the document includes a table that describes alterations that are permitted by national instructions, a table that describes alterations that are permitted by a Bankruptcy Rule, and two tables that list the Official Bankruptcy Forms and the Director's Forms. This information has been posted on the AO website along with all of the forms.

C. Consideration of a suggestion that Rule 2013 (Public Record of Compensation Awarded to Trustees, Examiners, and Professionals) be amended.

The Advisory Committee received a suggestion from a bankruptcy clerk, Kevin P. Dempsey, that questions whether there is a need any longer for Rule 2013. The suggestion (BK-17-A) proposes that the Advisory Committee consider substantially modifying the rule to eliminate its requirements that (1) the clerk maintain a public record of awarded fees and (2) make an annual summary available to the public and the United States trustee.

Rule 2013(a) requires the clerk to maintain a public record of all fees awarded by the court to trustees, attorneys and other professionals employed by trustees, and examiners.[1] The record must identify each case in which fees were awarded and indicate for each case who received the fees and in what amount. Subdivision (b) requires the clerk annually to prepare a summary of the record by individual or firm name, indicating the total fees each was awarded

[1] Rule 2013(a) says that the requirements do not apply to debtors in possession, and the Committee Note says that the rule is inapplicable to standing trustees in chapter 13 cases.

during the year. The summary must be made available without charge to the public, and a copy of it must be transmitted to the U.S. trustee.

Mr. Dempsey says, based on his experience and discussions with other clerks, that compliance with Rule 2013 "is spotty." He states that during his 17 years in the U.S. trustee's office, such a report was never submitted to the office, nor was it ever requested. And during his 10 years as clerk, he says, no one has ever requested to see the Rule 2013 record.

Mr. Dempsey suggests that CM/ECF has replaced the need for the type of record that the rule calls for. Information about fee awards is available electronically, and reports can be generated on demand. He says that his office would provide such a report without charge to anyone who asked. To ensure that all courts would follow a similar practice, he proposes that, rather than being abrogated, Rule 2013 be amended to require the clerk to make information about fees awarded to professionals available upon request, perhaps with a limit on the time period covered by the report. He suggests that the information might be expanded to include fees awarded all professionals, including those employed by chapter 11 debtors in possession.

The original Committee Note to Rule 2013 states that its purpose "is to prevent what Congress has defined as 'cronyism.'" The Committee Note goes on to explain as follows:

> Appointment or employment, whether in a chapter 7 or 11 case, should not center among a small select group of individuals unless the circumstances are such that it would be warranted. . . . This rule is in keeping with the findings of the Congressional subcommittees as set forth in the House Report of the Committee on the Judiciary, No. 95-595, 95th Cong., 1st Sess. 89-99 (1977). These findings included the observations that there were frequent appointments of the same person, contacts developed between the bankruptcy bar and the courts, and an unusually close relationship between the bar and the judges developed over the years. A major purpose of the new statute [the Bankruptcy Code] is to dilute these practices and instill greater public confidence in the system. Rule 2013 implements that laudatory purpose.

FED. R. BANKR. P. 2013 advisory committee's note (1983); *see also In re* Smith, 524 B.R. 689, 699 (Bankr. S.D. Tex. 2015) (noting Rule 2013's purpose of preventing cronyism). A leading bankruptcy treatise adds that the reports under the rule "are intended for use by the United States trustee in ensuring against disproportionate employment or compensation of some professionals." 9 ALAN N. RESNICK & HENRY J. SOMMER, COLLIER ON BANKRUPTCY ¶ 2013.03 (16th ed. 2017).

Members of the subcommittee to which the suggestion was referred noted Rule 2013's goal of providing transparency regarding compensation in the bankruptcy courts and expressed reluctance to amend or abrogate the rule without having a record to support such a decision.

Before deciding whether the suggestion should be pursued, the subcommittee intends to gather more information about current compliance with Rule 2013. Mr. Dempsey asserts that it is spotty, but a more systematic survey of districts might reveal otherwise. The subcommittee has therefore asked Dr. Molly Johnson of the Federal Judicial Center to survey bankruptcy clerks regarding their compliance and experience with Rule 2013. She will also seek information from a group of bankruptcy scholars to determine the extent to which information reported under Rule 2013 is useful for research purposes. The subcommittee will look further to information provided by the Executive Office for U.S. Trustees regarding their need for and use of the summary report mandated by Rule 2013(b).

The Advisory Committee agreed with this approach, and the subcommittee anticipates obtaining this information and being in a position to make a recommendation to the Advisory Committee at the spring 2018 meeting.

D. Exploration of whether the Bankruptcy Rules should be restyled.

The Bankruptcy Rules are the only set of federal rules that have not been comprehensively restyled, although in the process of revising Part VIII of the rules (Appeals) and certain individual rules, the new style conventions have been incorporated. In the past, when the issue of restyling has been raised, the Standing Committee has agreed with the Advisory Committee that such a project should not be undertaken because of the close association of the Bankruptcy Rules with statutory text. For example, the Bankruptcy Rules continue to use the now disfavored word "shall" in order to be consistent with the Bankruptcy Code's use of that term.

In response to suggestions from the style consultants that the time for a Bankruptcy Rules restyling has come, the Advisory Committee agreed at the fall meeting to explore the advisability of embarking on such a project. A subcommittee has been established to investigate whether a restyling is needed and whether it would be appropriate.

Among other steps, the subcommittee plans to look more closely at the Bankruptcy Rules to determine the extent to which the bankruptcy rules are dependent on statutory language that cannot be restyled and whether the bankruptcy rules differ from the other federal rules in any other way that would make restyling unnecessary or undesirable.

The subcommittee anticipates that it will make at least a preliminary report to the Advisory Committee at the spring 2018 meeting.

TAB 6B

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ADVISORY COMMITTEE ON BANKRUPTCY RULES
Meeting of September 26, 2017
Washington, DC

Discussion Agenda

The following members attended the meeting:

Circuit Judge Sandra Segal Ikuta, Chair
Circuit Judge Thomas L. Ambro
Circuit Judge Amul R. Thapar
Bankruptcy Judge Stuart M. Bernstein
Bankruptcy Judge Dennis Dow
Bankruptcy Judge A. Benjamin Goldgar
Bankruptcy Judge Melvin S. Hoffman
Jeffrey Hartley, Esquire
David Hubbert, 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 Laura Bartell, associate reporter
District Judge David G. Campbell, Chair of the Committee on Rules of Practice and Procedure (the Standing Committee)
District Judge Susan Graber
Bankruptcy Judge Mary Gorman
Professor Daniel R. Coquillette, reporter to the Standing Committee
Professor Cathie Struve, associate reporter to the Standing Committee (by telephone)
Rebecca Womeldorf, Secretary, Standing Committee and Rules Committee Officer
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
Patrick Tighe, Administrative Office
Debra Miller, Chapter 13 Trustee
Dermott Gorman, U.S. Trustee Program

1. Greetings and Introductions

Judge Sandra Ikuta welcomed everyone to the meeting, and introduced Professor Laura Bartell, the Committee's new associate reporter. She is a professor at Wayne State University

Law School in Detroit, Michigan. In addition, Judge Ikuta introduced Judge Mary Gorman, the new liaison from the Committee on Bankruptcy Administration, and Professor Cathie Struve, the new associate reporter to the Standing Committee. Professor Struve previously served as the reporter to the Advisory Committee on Rules of Appellate Procedure.

Judge Ikuta advised the group that this is the final meeting for Judge Jean Hamilton and Richardo Kilpatrick. She thanked them for their service to the Committee, noting their assistance with the new chapter 13 plan form and related rules. Debra Miller, the Standing Chapter 13 Trustee for the District of Northern Indiana, and Judge Marcia Krieger of the District of Colorado, will join the Committee as of October 1, 2017.

2. Approval of minutes of the spring meeting held April 6, 2017

With two minor amendments, the minutes were approved upon motion and vote.

3. Oral reports on meetings of other committees:

(A) June 13, 2017 meeting of the Committee on Rules of Practice and Procedure

Professor Elizabeth Gibson provided the report. The Standing Committee gave final approval to the amended rules and forms, and one new rule. It also approved conforming amendments to amended rules that were not published, but were amended to conform to amendments to the civil and appellate rules. The rules were approved by the Judicial Conference in September, and will have an effective date of December 2018, if approved by the Supreme Court and Congress. Professor Gibson advised that Appellate Rule 26.1 was approved for publication by the Standing Committee, and if the amendment goes forward, it may require a conforming amendment to Rule 8012.

(B) April 25-26, 2017 Meeting of the Advisory Committee on Civil Rules

Judge Benjamin Goldgar provided the report, noting that there were several issues discussed that may require monitoring by this Committee. First is a piece of legislation being considered by Congress that may impact the federal rules, specifically Civil Rule 11, entitled the Lawsuit Abuse Reduction Act. Second, a subcommittee of the Civil Rules Committee is considering potential changes to Civil Rule 30(b)(6). Third, the Civil Rules Committee is considering possible changes to Civil Rule 45, and any changes may impact Bankruptcy Rule 2004. Finally, a possible change to Civil Rule 68 is under consideration. Judge David Campbell explained the proposed legislation in greater detail, advising that the rules committees have communicated with Congress regarding the potential rules involvement and its concerns regarding a possible change to the rules.

(C) May 2, 2017 Meeting of the Advisory Committee on Appellate Rules

Professor Gibson provided the report because Judge Pamela Pepper was unable to attend the meeting. The Appellate Rules Committee will not meet until November, and there are no issues on the meeting agenda that would impact bankruptcy, but the Committee will continue to monitor any comments on the published amendment to Rule 26.1 regarding corporate disclosure.

(D) June 8-9, 2017 meeting of the Committee on the Administration of the Bankruptcy System

Judge Mary Gorman provided the report. She advised that the Bankruptcy Committee agreed that no action should be taken regarding the creation of a specific form for creditor address changes. The Bankruptcy Committee remains concerned about unclaimed funds remaining with courts, and will continue to investigate the issue to attempt to develop solutions. Also, the Bankruptcy Committee determined that no action should be taken regarding a suggestion to permit bankruptcy judges to consider venue *sua sponte*, and that the Judicial Conference agreed with this decision.

Judge Gorman stated that the Federal Judicial Center (FJC) developed a manual for chapter 9 cases for courts and practitioners. She advised that judges and practitioners have voiced concerns about gaps in the law regarding Chapter 9. In addition, the FJC created a manual for guidance in the use of telephonic and video conferences. The manual contains tips and practical advice for judges.

Subcommittee Reports and Other Action Items

4. Report by the Subcommittee on Consumer Issues

(A) Further consideration of a proposed amendment to Rule 2002(h) (Suggestion 12-BK-M from Chief Judge Scott Dales, BK WD-MI). See Memo of September 1, 2017, by Professor Gibson, included in the agenda materials located at the following link: Advisory Committee on Rules of Bankruptcy Procedure - September 2017 .

Judge Goldgar explained that following discussion at the spring 2017 meeting, the subcommittee was asked to consider the inclusion of chapter 12 in proposed amended Rule 2002(h). Following discussion, the subcommittee determined to add chapter 12 to the proposed amendment, and the Committee Note was updated as well.

The subcommittee considered a suggestion regarding the creditor matrix namely, that it be truncated after the claims bar date has passed, to comport with the proposed amendment to Rule 2002(h), but the subcommittee concluded that the issue could not be resolved by rulemaking. Ken Gardner added that he will look into a technological solution to the creditor matrix issue.

A motion was made to approve the proposed amendment to Rule 2002(h) for publication, and the motion was approved. Professor Gibson stated that because there are several proposed amendments to Rule 2002 pending, this amendment will not be presented to the Standing Committee for approval until its June 2018 meeting.

5. Report by the Subcommittee on Forms

(A) Consider National Instructions for Official Forms 103A, 103B, 309A-I, 312, 313, 314, 315, 318, and 420A. See Memo of September 1, 2017, by Professor Gibson.

Judge Dennis Dow explained that several forms may need to be modified, but that the amended language of Rule 9009 that will be effective in December generally prohibits modification of Official Forms. Professor Gibson added that amended Rule 9009 permits a form to be modified if the national instructions permit such modification, therefore, the national instructions should be modified given that courts and practitioners have raised concerns about the need to modify specific forms. She advised that the amendments to the national instructions are approved by the Committee alone; no approval is needed from the Standing Committee.

Scott Myers provided a list of the specific forms that need to be included in the list of modifiable forms, and the language that will be added to the national instructions. He detailed the reasons for the need for modification for each form or group of forms. A proposed table was included in the agenda materials. It lists the forms that may be modified, and separates Official Forms from Director's Forms. Director's Forms are not Official Forms, and may be modified despite amended Rule 9009.

Mr. Myers noted that it is possible that additional forms will need to be added to the national instructions to permit modifications. Generally, the practice will be to present any needed changes at Committee meetings.

A motion to approve the changes to the national instructions and the table was approved.

6. Report by the Subcommittee on Business Issues

(A) Recommendation concerning suggestion 17-BK-A from Kevin Dempsey, Clerk (IL-S) to revise and modernize the recordkeeping requirements of Rule 2013. See Memo of September 1, 2017, by Professor Gibson.

Professor Gibson stated that the suggestion is to amend Rule 2013. In the suggestion, Kevin Dempsey opines that the rule is rarely used or enforced. The subcommittee asked Molly Johnson of the FJC to research the use of the rule and whether it is being enforced, and she will report about her findings at the Committee's spring 2018 meeting.

(B) Recommendation concerning suggestion 17-BK-B from the ABA Business Law Section to incorporate "proportionality" language in Bankruptcy Rule 2004. See Memo of September 5, 2017, by Professor Gibson.

Professor Gibson stated that the subcommittee discussed the suggestion. It agreed that discovery should not be excessive and that the production and preservation of electronically stored information can be expensive and time consuming. The subcommittee discussed potential language for Rule 2004, and thought it needed to be more specific than the language included in the suggestion. It determined that it would be helpful to include proportionality factors rather than merely a cross-reference to Civil Rule 26. The proposed amended language included in the agenda materials introduces the term "electronically stored information," and language regarding proportionality. The proposed Committee Note explains that the amendments conform to the Civil Rule amendments, and the reasoning behind the clause in the second paragraph of the proposed rule that permits the court to consider the purpose for which the request is being made under Rule 2004. Professor Gibson detailed the proposed language, referring to the proposed amended rule included in the agenda materials, stating that the subcommittee recommended adoption of the proposed amended rule.

Several members voiced concerns about substantive changes to the purpose of Rule 2004, noting that the purpose of the rule is a "fishing expedition," which is different than Civil Rule 26. This makes it difficult to fit proportionality within the rule, and it may be inconsistent. Rule 2004 serves a purpose within a bankruptcy case, and if the rule is amended as suggested, it may lead to increased litigation regarding Rule 2004 motions. Others responded that disputes do arise regarding the scope of Rule 2004, and courts need a frame of reference for resolving these disputes; the proposed amendments reflect the reality of what occurs in bankruptcy courts. A suggestion was made to change the amended language to include a reference to electronically stored information only, and to remove the language regarding proportionality.

Professor Bartell summarized that it appeared that the first amended paragraph was not objectionable to the Committee, i.e., the inclusion of the term "electronically stored information" to modernize the rule. She suggested that there may be different language that could be added to the second paragraph to achieve the goal of preventing improper use of the rule in bankruptcy cases. The Committee agreed to ask the subcommittee to reconsider the proposed amendment.

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

(A) Recommendation regarding proposed amendments to Rule 8023, published for comment in 2016, withheld from final approval at spring 2017 meeting to consider concerns raised by Department of Justice. See Memo of September 5, 2017, by Professor Gibson.

Judge Thomas Ambro advised that the proposed rule amendment was reconsidered by the subcommittee following a concern raised by the Department of Justice (DOJ) at the spring meeting. Professor Gibson explained that the DOJ was concerned that the proposed amendments

would require a judicial decision for every voluntary dismissal or would unnecessarily burden clerks. The subcommittee discussed several options including revising the amendments or abandoning the amendment. The DOJ provided substitute language (the suggested language was included in the memo referenced above), and while the subcommittee preferred the substitute language, it recommended abandoning the proposed amendment. It did not appear that the current rule is causing difficulties, and any proposed amendment may lead to potential problems. The subcommittee also discussed the issue of costs in the rule, and determined not to pursue any amendments to this language. The Committee approved a motion to withdraw the proposed amendment. The action will be reported to the Standing Committee.

(B) Consider possible conforming amendments to Rule 8012 in light of proposed amendment to FRAP 26.1 (Corporate Disclosure Statement). See Memo of September 5, 2017, by Professor Gibson.

Professor Gibson stated that the Appellate Rules Committee published several amendments to Appellate Rule 26.1. These changes may require amendments to Rule 8012, and Professor Gibson detailed some of the potential changes, noting that the version of the rule approved by the Appellate Rules Committee had a narrow focus regarding disclosures in bankruptcy. The subcommittee agreed that Rule 8012 should conform to the proposed amendments to Appellate Rule 26.1. She has communicated with the Appellate Rules Committee regarding a potential gap in Rule 8012(c) if the rule is conformed to amended Appellate Rule 26.1.

Professor Gibson and will monitor the final version of the proposed amended Appellate Rule, particularly after the Appellate Rules Committee considers any comments at its spring 2018 meeting. Judge Campbell made a suggestion to change the title of subsection (d) to better reflect the purpose of Rule 8012, noting that it differs in application from Appellate Rule 26.1. The group discussed limiting the wording to "Disclosures as to Debtor" or similar language.

The group discussed several minor language revisions to the proposed amendments to Rule 8012, including the language regarding corporate ownership for clarity, the percentage ownership requirement, and changing the word "intervenors" to the singular, "intervenor." A motion to approve the revised language for publication was approved.

Judge Ikuta advised that the revised amendments should be communicated to the Appellate Rules Committee. Professor Gibson stated that the proposed amendment will not be presented to the Standing Committee until June 2018 to provide an opportunity to coordinate with the Appellate Rules Committee regarding the proposed amendments.

Information Items

8. Item Awaiting Transmission to the Standing Rules Committee

(A) Recommendation in consideration of suggestion 12-BK-B to amend Rule 2002(f)(7) to require notice of a chapter 13 plan confirmation order.

Professor Gibson explained that at the spring 2017 meeting, the Committee recommended publishing the proposed amendment to Rule 2002(f)(7) after the pending change to Rule 3002 goes into effect on December 1, 2017. The intended publication date would be August 2018. She noted that there may be a new amendment to Rule 2002(k), pending the outcome of the discussion regarding the suggestion at the spring 2018 meeting.

9. Items Retained for Further Consideration.

The matters listed below are part of the noticing project and will be considered at a later date in light of final approval of electronic noticing rules already under consideration

(A) Suggestion 15-BK-H, proposing an amendment to Bankruptcy Rule 9036 that would mandate electronic noticing in certain circumstances.

(B) Suggestion 14-BK-E, proposing an amendment to Bankruptcy Rule 3001 to require a corporate creditor to specify address and authorized recipient information and the promulgation of a new rule to create a database for preferred creditor addresses under section 347. In addition, the Suggestion discusses the value to requiring electronic noticing and service on large creditors in bankruptcy cases for all purposes (other than process under Bankruptcy Rule 7004).

(C) Comment 12-BK-040, submitted as a comment in response to proposed revisions to Rule 9027. It suggested that the reference to "mail" in Rule 9027(e)(3) be changed to "transmit." Because the comment did not implicate the part of Rule 9027 being amended, the comment was retained as suggestion for further consideration at a later time.

(D) Comments 12-BK-005, 12-BK-008, 12-BK-026, 12-BK-040, submitted separately. The comments were made response to pending amendments to Rule 8003(c)(1), and have been retained as suggestions for further consideration. They recommend that the obligation to serve a notice of appeal rest with the appellant or be permitted by electronic means.

(E) Suggestion/Comment BK-2014-0001-0062, proposing amendments regarding service of entities under Bankruptcy Rule 7004(b) and, in turn, Bankruptcy Rules 4003(d) and 9014(b).

(F) Informal Suggestion from David Lander, former committee member, proposing rule in context of electronic noticing that would require particular notice to, or service on, a party when a motion or pleading is adverse to that party, as opposed to that party just receiving the general e-notice of a filing in the case.

8. Coordination Items. See Memo of September 6, 2017, by Mr. Myers.

Mr. Myers advised that there are no new issues to consider for coordination items.

9. Future meetings:

The spring 2018 meeting will be in San Diego, CA, on April 3, 2018.

The fall 2018 meeting will be in Washington, DC, on September 17, 2018.

10. New business

Judge Ikuta proposed that the Committee consider restyling the Bankruptcy Rules, noting that it will be a big undertaking for the Committee. Professor Gibson advised that she consulted with the reporters of the other rules committees regarding the process, and cited an article published by Dan Capra, reporter to the Evidence Rules Committee, regarding the process. Generally, the first step would be to provide the rules to the style consultants for their suggestions and proposed changes. Following this, the Committee would review the suggested changes to evaluate whether they would result in any substantive changes. The Committee could object to a suggested change if merely style-based, although the style consultants have the final say on mere style (not substantive) language changes.

The goals of restyling are to make the rules clearer, better presented, and to eliminate unnecessary and ambiguous words. Good examples are the elimination of the word "shall" and the use of the active versus passive voice in the restyling of the Evidence Rules. Professor Gibson spoke with Professor Ed Cooper, reporter to the Civil Rules Committee, regarding his experience with the restyling process. The Civil Rules Committee created multiple subcommittees to review the proposed style changes, and then met as a full committee over multiple days to complete a full review and approve or reject the style suggestions.

Professor Gibson stated that it will be a multi-year process that will require a lot of time and effort, and the challenge is the line between style and substance. In the past the bankruptcy rules have been exempt from restyling because of their close relationship to the language in the Bankruptcy Code. Professor Coquillette advised that when restyling was initially started with the rules committees, Chief Justice Rehnquist voiced concern regarding restyling the Bankruptcy Rules because of their relationship with the Code. Also, substantive problems with rules restyling inevitably arise, although some are not apparent until the amendments are effective and the rules are in general use.

Judge Ikuta suggested an incremental approach. First, a restyling subcommittee should be created. That subcommittee will seek input from the other rules committees on restyling, determine whether the Committee has Standing Committee support, and whether restyling would be welcomed by the bankruptcy community. The subcommittee will then make a

recommendation whether to go forward with the project. The Committee discussed the idea of restyling, and agreed that an incremental approach makes sense.

In addition, Professor Gibson advised that a suggestion regarding mediation was filed. It will be assigned to the Business Subcommittee.

Also, there is an inconsistency between the Rule 9010 and two power of attorney forms that are currently Director's Forms. The rules may require that they be converted into Official Forms. This issue will be assigned to the Forms Subcommittee.

Finally, a suggestion from the reporter to amend Rule 2002(k) regarding chapter 13 noticing of objections to plans should be assigned to the Consumer Subcommittee.

Consent Agenda

The Chair and Reporter proposed the following item for study and consideration prior to the Committee's meeting**.** There being no objection to placing the item on the consent agenda, the recommendation was approved.

1. Subcommittee on Forms Issues.

   (A) Recommendation of no action regarding suggestion 17-BK-C from Judge Pamela S. Hollis for a revision to Official Form 423 to require most individual chapter 11 debtors to take the personal financial management course described by 11 USC § 111(d) as a condition of obtaining a discharge. See Memo of September 1, 2017, by Professor Gibson, included in the agenda materials.