COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544



# MEMORANDUM

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

**FROM:** Hon. Dennis R. Dow, Chair
Advisory Committee on Bankruptcy Rules

**RE:** Report of the Advisory Committee on Bankruptcy Rules

**DATE:** December 3, 2018

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## I. Introduction

The Advisory Committee on Bankruptcy Rules met in Washington, D.C., on September 17, 2018. The draft minutes of that meeting are attached as Tab B.

At the meeting the Advisory Committee voted to seek publication of an amendment to Rule 3007(a)(2)(ii) (manner of service of claim objections on insured depository institutions). It also voted to seek final approval without publication of conforming technical amendments to Rules 8012, 8013, and 8015 to remove or qualify references to "proof of service." These amendments will be presented at the Standing Committee's June 2019 meeting.

A major topic of discussion at the September meeting was whether the Advisory Committee should engage in a restyling of the Federal Rules of Bankruptcy Procedure. Based in part on positive feedback from relevant constituencies, the Advisory Committee gave its conditional approval to undertaking such a project. Part II of the report discusses the considerations that the Advisory Committee took into account and the conditions under which it

supports a restyling. It seeks approval of a restyling under those conditions and presents a tentative work schedule for the project.

Part III of this report presents two information items. The first concerns the Advisory Committee's continuing consideration of amendments to expand the use of electronic service and noticing in the bankruptcy courts, including a proposal by the Committee on Court Administration and Case Management (CACM) to provide for mandatory electronic service on "high volume notice recipients." The second information item discusses the Advisory Committee's approval of an amendment to Official Form 113 (Chapter 13 Plan) and its decision to hold the proposed amendment in abeyance to see whether other changes are suggested as the recently adopted form gets greater use.

## II. Action Item

### Restyling of the Federal Rules of Bankruptcy Procedure

The Advisory Committee's Restyling Subcommittee was tasked with recommending to the Committee whether to embark upon a project to restyle the Federal Rules of Bankruptcy Procedure, similar to the restyling projects that produced comprehensive amendments to the Federal Rules of Appellate Procedure in 1998, the Federal Rules of Criminal Procedure in 2002, the Federal Rules of Civil Procedure in 2005, and the Federal Rules of Evidence in 2011.

In order to make that recommendation, the Subcommittee decided that it would be necessary to obtain input from those who would be affected by such a restyling. In preparation for doing so, the Subcommittee undertook two tasks.

First, the Subcommittee asked the style consultants to prepare a restyled version of Part IV of the Federal Rules of Bankruptcy Procedure, so that those asked for their views on the restyling process would have a concrete example of restyled rules to look at. The style consultants produced a draft of a restyled Rule 4001 in January. The reporters and the Subcommittee chair provided comments on the draft, and the style consultants sent a revised version in which they accepted some, but not all, of the comments. Second, the Associate Reporter and Dr. Molly Johnson of the Federal Judicial Center prepared a cover memo and survey to obtain comments on the possibility of restyling the Bankruptcy Rules.

At the spring meeting, the Advisory Committee decided to use as an exemplar only one subdivision of the restyled rule, Rule 4001(a), without any footnotes or comments from the style consultants. It also decided to eliminate from the draft any changes that the Committee found unacceptable or questionable. The Advisory Committee explained in the cover memo to the survey that the exemplar was not being proposed by the Committee for adoption, nor was the Committee seeking substantive comments on the rule. Additional language was added to emphasize that substance and "sacred words" will prevail over style rules.

The cover memo and survey were posted on the AO's rules website as an Invitation for Comments, and were also sent directly to bankruptcy judges and clerks of court, as well as interested organizations, such as the NCBJ, NACBA, CLLA, NABT, NACTT, ABI, ABA Business Law Section Bankruptcy Committee, American College of Bankruptcy, National Bankruptcy Conference, and AALS Debtor-Creditor Committee. The deadline for making comments was June 15. The FJC received and analyzed completed surveys from 307 respondents, including 142 bankruptcy judges, 40 bankruptcy clerks of court, 19 respondents to the organization survey, and 109 respondents to the website survey. More than two-thirds of all respondents in every category supported the idea of restyling the bankruptcy rules. Given the strong support voiced by survey respondents for the restyling project, the Advisory Committee recommended to the Standing Committee that the restyling project be authorized, but with one important qualification.

The Federal Rules of Bankruptcy Procedure have not been restyled before because all parties recognized that bankruptcy is unique, particularly rule and statute driven and subject to generally-understood terms, concepts, and procedures. It is a highly technical area, and the rules often track statutory language that itself is not restyled. The greatest concern expressed by those who responded to the survey was that any stylistic changes not create unintended consequences. To ensure consistency and clarity in the revised rules, the Advisory Committee believes that it is important to retain this linkage between the Code and the Rules, even if it may sometime be at the expense of restyling principles. Therefore, the Advisory Committee recommends that the Standing Committee authorize the Advisory Committee to begin restyling the Federal Rules of Bankruptcy Procedure with the understanding that the final decision on whether to recommend to the Standing Committee that any change be made to a Federal Rule of Bankruptcy Procedure rests with the Advisory Committee. A proposed set of procedures for the restyling process, and anticipated schedule, is attached as Tab C.

## III. Information Items

### A. Expansion of the Use of Electronic Noticing and Service

On the Advisory Committee's recommendation, the Standing Committee in August 2017 published for public comment proposed amendments to two rules and to one Official Form that were intended to expand the use of electronic noticing and service in the bankruptcy courts. The proposed amendments to Rule 2002(g) (Addressing Notices) allowed notices to be sent to email addresses designated on filed proofs of claims and proofs of interest. As published, the amendments to Rule 9036 (Notice or Service Generally) allowed clerks and parties to provide notices or serve documents (other than those governed by Rule 7004) by means of the court's electronic-filing system on registered users of that system. It also allowed service or noticing on any person by any electronic means consented to in writing by that person. Finally, the proposed amendment to Official Form 410 (Proof of Claim) added a check box for opting into email service and noticing. It instructed the creditor to check the box "if you would like to receive all notices and papers by email rather than regular mail."

In response to publication, four sets of comments were submitted that addressed the proposed amendments. Although the commenters were supportive of the effort to authorize greater use of electronic service and noticing, they raised several substantial issues about the published amendments. Those issues fell into three groups: (1) technological feasibility; (2) priorities if there are different email addresses for the same creditor; and (3) miscellaneous wording suggestions.

Based on its careful consideration of the comments and the logistics of implementing the proposed email opt-in procedure, the Advisory Committee voted at the spring 2018 meeting to hold back the amendments to Rule 2002(g) and Official Form 410, but it gave final approval to the amendments to Rule 9036, with some minor revisions. In June the Standing Committee gave final approval to the Rule 9036 amendments, and they were approved by the Judicial Conference in September.

After the spring 2018 Advisory Committee meeting, CACM submitted a suggestion (18-BK-D) that Rule 9036 be amended to provide for mandatory electronic service on "high volume notice recipients," a category that would initially be composed of entities that each receive more than 100 court-generated paper notices from one or more courts in a calendar month. Judge Wm. Terrell Hodges, CACM chair, explained that the suggestion built upon a 2015 suggestion submitted by the Bankruptcy Judges Advisory Group, the Bankruptcy Clerks Advisory Group, and the Bankruptcy Noticing Working Group. The Advisory Committee had voted not to act on that suggestion for mandatory electronic service on high volume notice recipients because it concluded that § 342(e) and (f) of the Bankruptcy Code allow a chapter 7 or 13 creditor to insist upon receipt of notices at a particular physical address. Judge Hodges explained that the current suggestion takes account of that concern by making the mandatory electronic noticing program "subject to the right to file a notice of address pursuant to § 342(e) or (f) of the Code."

In support of the CACM suggestion, Judge Hodges explained that for the 2019 fiscal year, the judiciary has budgeted $14 million for bankruptcy noticing, and his committee has developed several proposals for reducing that expense. CACM strongly urged the adoption of the high-volume-notice-recipient program in order to achieve substantial savings. Administrative Office of the Courts (AO) staff members who work with noticing issues have estimated that the savings could equal $3 million or more a year.

The Advisory Committee's Subcommittee on Business Issues has considered several possible approaches for rule amendments to authorize greater use of electronic noticing and service in the bankruptcy courts, including the recognition of a high-volume-notice-recipient program. It presented for feedback a working draft of amendments to Rule 9036 at the fall Advisory Committee meeting and received support for continuing to develop a draft in coordination with CACM and AO staff. The Subcommittee hopes to be able to present a draft for Advisory Committee review at the spring 2019 meeting.

### B. Proposed Amendment to Official Form 113 (Chapter 13 Plan)

As adopted in 2017, Part 1 of the national chapter 13 plan form contains a notice to creditors in which the debtor indicates whether the following provisions are or are not included in the plan:

- A limit on the amount of a secured claim, set out in Section 3.2, which may result in a partial payment or no payment at all to the secured creditor;
- Avoidance of a judicial lien or nonpossessory, nonpurchase-money security interest, set out in Section 3.4; and
- Nonstandard provisions, set out in Part 8.

In anticipation of the possibility that a debtor might fail to properly complete this section of the form, the instructions in Part 1 state in bold, **"Debtors must check one box on each line to state whether or not the plan includes each of the following items. If an item is checked as 'Not Included' or if both boxes are checked, the provision will be ineffective if set out later in the plan."** The Advisory Committee included this provision in Official Form 113 in order to provide clear notice to creditors of plan provisions that significantly affect their interest or that deviate from the form provisions.

The Advisory Committee received a suggestion (18-BK-A) from attorney Alane A. Becket that pointed out that one possible scenario is missing from the bolded instructions—the failure of a debtor to check any box. In order to be complete and to leave no room for argument, she suggested that the second bolded sentence be amended as follows: **"If an item is checked as 'Not Included,' <u>if no box is checked,</u> or if both boxes are checked, the provision will be ineffective if set out later in the plan."**

The Advisory Committee agreed that Ms. Becket's point regarding Official Form 113 was valid. Even though Part 1 of that form requires the debtor to check a box on each of the three lines, it fails to state what the effect of not doing so is. While one might infer that a debtor cannot benefit from failing to comply, the absence of a no-boxes-checked possibility in the second bolded sentence raises some doubt. The Advisory Committee concluded that adding the language suggested by Ms. Becket would eliminate any possible uncertainty.

The Advisory Committee therefore voted to propose an amendment to Official Form 113 for publication that would make the suggested addition. It also voted to hold the amendment in abeyance until it can be determined whether other amendments need to be made to the form or related rules. Official Form113, amended Rule 3015, and new Rule 3015.1 just went into effect in December 2017. It is possible that experience with the new form and rules will bring to light the need for additional modifications. Moreover, because of the considerable controversy that resulted from the proposal of a national chapter 13 plan form, the Advisory Committee thought it advisable to allow for a respite before introducing any changes.

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ADVISORY COMMITTEE ON BANKRUPTCY RULES
Meeting of September 17, 2018
Washington, D.C.

The following members attended the meeting:

Circuit Judge Sandra Segal Ikuta, Chair
Circuit Judge Amul R. Thapar
District Judge Marica S. Krieger
Bankruptcy Judge Stuart M. Bernstein
Bankruptcy Judge Dennis Dow
Bankruptcy Judge A. Benjamin Goldgar (by phone)
Bankruptcy Judge Melvin S. Hoffman
Jeffrey J. Hartley, Esq. (by phone)
David A. Hubbert, Esq.
Thomas Moers Mayer, Esq.
Jill Michaux, Esq.
Debra Miller, Chapter 13 trustee
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)
Professor Daniel Coquilette, reporter to the Standing Committee (by phone)
Professor Catherine Struve, associate reporter to the Standing Committee (by phone)
Circuit Judge Susan Graber, liaison to the Standing Committee (by phone)
Bankruptcy Judge Mary Gorman
Professor Cathie Struve, associate reporter to the Standing Committee
Rebecca Womeldorf, Secretary, Standing Committee and Rules Committee Officer
Ramona D. Elliot, Esq., Deputy Director/General Counsel, Executive Office for U.S. Trustee
Vivian Jones, 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
Ahmad Al Dajani, Administrative Office
Bridget Healy, Esq., Administrative Office
Scott Myers, Esq., Administrative Office
Nancy Walle, National Association of Chapter 13 Trustees
Gary Seitz, representative of the National Association of Bankruptcy Trustees
Elizabeth Jones, Supreme Court fellow
Abigail Willie, Supreme Court fellow

Discussion Agenda

1. Greetings and introductions

Judge Sandra Ikuta welcomed the group and advised that this is her last meeting at chair of the Committee. Judge Dennis Dow will take over on October 1, 2018. She introduced Judge David Campbell, Professor Daniel Coquillette, and Professor Catherine Struve, the chair and reporters for the Standing Committee.

2. Approval of minutes of San Diego April 3, 2018 meeting

The minutes were approved by motion and vote.

3. Oral reports on meetings of other committees

(A) June 12, 2018 Standing Committee meeting

Professor Elizabeth Gibson provided the report. All proposed bankruptcy items were approved, including several items for final approval and publication. She reviewed the rule and form amendments that were approved by the Standing Committee, noting that those given final approval were just approved by the Judicial Conference. She advised that minor stylistic changes were made to the draft proposed Rule 8012 to conform with changes made to proposed Appellate Rule 26.1.

(B) April 10, 2018 Meeting of the Advisory Committee on Civil Rules

Judge Benjamin Goldgar provided the report. The Civil Rules Committee discussed many issues related to multi-district litigation, including interlocutory appeals, settlement, and third-party funding of litigation. There was a discussion of a recent Supreme Court decision *Hall v. Hall*, 138 S.Ct. 1118 (2018), in which the Court ruled that when originally independent cases are consolidated under Rule 42(a)(2), they remain separate actions for purposes of final-judgment appeal under 28 U.S.C. § 1291. The Court noted that changes in the meaning of final judgment should come from rulemaking rather than judicial decisions. The Civil Rules Committee determined to go forward with a study of the issue.

(C) April 6, 2018 Meeting of the Advisory Committee on Appellate Rules

No report.

(D) June 14-15, 2018 meeting of the Committee on the Administration of the Bankruptcy System

Judge Mary Gorman provided the report. She said the issue most relevant to this Committee was the discussion regarding unclaimed funds held by courts. The Bankruptcy Committee is considering submitting a suggestion for amendments to Rules 3011 and 9006 to

add a statute of limitations for unclaimed funds. Another possible solution is to reach out to larger claimants regarding the collection of unclaimed funds; however, there are practical issues with claiming the funds.

The Committee discussed the potential proposed rule changes, and whether a statute of limitations amendment is the proper solution to the issue of unclaimed funds.

Subcommittee Reports and Other Action Items

4. Report by the Subcommittee on Business Issues

(A) Status report concerning proposed amendments to Rules 2002(g) and Official Form 410A (held back at spring 2018 meeting) and related suggestion 18-BK-D from the Committee on Court Administration and Case Management to require certain high-volume notice recipients to transition from paper to electronic notices

Professor Gibson provided the report, advising that that no rule changes are being proposed at this time and that the subcommittee seeks guidance from the Committee as to how to proceed. She reminded the Committee that proposed amendments to Rules 2002(g) and 9036, along with Official Form 410, were published in August 2017. The amendments were intended to expand the use of electronic noticing and service. Following several comments raising concerns regarding the technological implementation of the proposed changes, including the potential for conflicting priorities of email addresses for notice, the Committee determined to hold back the amendments to Rule 2002(g) and Official Form 410. The Committee went forward with the proposed amendments to Rule 9036, which would permit clerks and parties to provide notices or serve using a court's electronic filing system (CM/ECF) on registered users of CM/ECF. The proposed amendments to Rule 9036 were approved by the Standing Committee and Judicial Conference.

After the spring meeting, the Committee on Court Administration and Case Management (CACM) filed suggestion 18-BK-D to further amend Rule 9036 to impose a requirement for mandatory electronic notice for certain high-volume notice recipients. The suggestion related to a previous suggestion from the Bankruptcy Judges Advisory Group (BJAG) which was discussed by the Committee but not adopted because of potential conflicts with Bankruptcy Code § 342.

The subcommittee discussed CACM's suggestion, which was modified from BJAG's suggestion to account for any potential conflicts with Bankruptcy Code § 342. The subcommittee contacted Administrative Office (AO) technology staff to determine any possible technological issues. The current proposal is to amend Rule 9036 to add a carve-out for section 342(e) and (f) and to distinguish between types of filers, i.e., registered users, non-registered users, and high-volume notice recipients (as defined by the Director of the Administrative Office). A further issue that arose in the discussions with the AO technology staff is the monitoring of bounce back emails if the email address provided is not valid or no longer valid. Ken Gardner completed an informal survey of clerks' office and found that most courts responding (about fifty percent) do some type of monitoring of bounce back emails.

Professor Gibson advised that the subcommittee is seeking feedback about whether the Committee should propose rule amendments adopting a program that impacts high-volume notice recipients. The Committee agreed that the subcommittee should continue to work on a proposed draft amendment for Rule 9036, in consultation with AO technology staff.

Judge Campbell asked about the current proposed amendments to Rule 9036 that were given final approval by the Standing Committee and Judicial Conference this year and will be forwarded to the Supreme Court for approval. If the current proposed amendments to Rule 9036 go forward, they will be effective December 1, 2019. He raised whether the current proposed amendments should be removed from consideration by the Supreme Court, and the entire set of proposed changes to Rule 9036 presented together in the future. Professor Gibson and Judge Ikuta responded that it could be several years until other amendments are proposed, and that technology could change prior to any further amendment. For these reasons, the current proposed amendments to Rule 9036 should go forward. Judge Campbell agreed with this conclusion.

(B) Recommendation to amend Rule 3007(a)(2)(ii) to eliminate the inclusion of credit unions from the heightened service requirements of Rule 7004(h).

Professor Gibson provided the report. The current version of Rule 3007 includes special requirements for serving insured depository institutions based on the congressionally enacted language in Rule 7004(h). At the spring meeting, the Committee determined not to expand Rule 7004(h) to include credit unions because of the limited definition of "insured depository institution" in that rule. However, Bankruptcy Code § 101 contains a definition of insured depository institution that is broader than the definition provided in Rule 7004, and that definition applies to Rule 3007. The Committee voted to propose for publication an amendment to Rule 3007(a)(2)(ii) to eliminate credit unions from the special service requirements of that rule.

5. Report by the Forms Subcommittee

(A) Recommendation for amendment to Official Form 113 based on Suggestion 18-BK-A

Professor Gibson provided the report, explaining that the suggestion was to change to Official Form 113 to avoid a possible ambiguity. On the current version of the form, the debtor is required to check a box identifying whether certain provisions are included in the proposed plan, and the form states the consequences of checking that a provision is not included or checking both boxes for a particular provision. The form is silent, however, about the consequence of failing to check either box, resulting in ambiguity. A second part of the suggestion was based, in part, on an issue with a local form in one jurisdiction, and the subcommittee's research shows that the local form at issue was amended to correct the mistake. The subcommittee agreed that the second part of the suggestion no longer required action, but it recommended accepting the first suggestion to amend the Official Form to include language to

address situations in which no box is checked. The Committee, by motion and vote, approved the amended language, and the approved amendment will be held pending other potential amendments to Form 113.

(B) Recommendation in support of Suggestion 18-BK-B to amend Director's Form 3180W

Professor Bartell explained the suggestion regarding Director's Form 3180W is to change the language about non-dischargeable fines and penalties. A revised version of the form was included in the materials, and no additional approval is required to implement the amendment. The revised form was approved by motion and vote.

(C) Recommendation of no action in response to Suggestion 18-BK-E to amend Official Forms 101A and 101B

Professor Bartell explained that the suggestion related to Official Forms 101A and 101B, which were both adopted as part of the Forms Modernization Project in December 2015. She explained that Bankruptcy Code § 362(b)(22) is the basis for the forms, but that Bankruptcy Code § 525(a) is the section at issue in the suggestion as it may preclude a debtor from being evicted from governmental housing. Professor Bartell noted that the law is not settled on the issue, so the subcommittee recommended that no action be taken on the suggestion at this time.

6. Report by the Restyling Subcommittee

(A) Recommendation regarding restyling the Federal Rules of Bankruptcy Procedure

Judge Dow introduced the topic of restyling the Bankruptcy Rules. He advised the subcommittee recommends that the Committee proceed with the restyling project and that it would be similar to the restyling of the other federal rules.

He provided detail of the work completed by the subcommittee. Following the spring meeting, the subcommittee completed a survey of the bankruptcy community regarding interest in restyling of the Bankruptcy Rules. The survey was drafted by Dr. Molly Johnson of the Federal Judicial Center and Professor Bartell, and included a sample restyled version of Rule 4001(a). The subcommittee sent the survey to bankruptcy judges, clerks, and bankruptcy organizations, and posted it on uscourts.gov. More than 300 people responded to the survey, including forty percent of bankruptcy judges and about fifty percent of bankruptcy clerks. The survey respondents overwhelmingly supported the restyling effort, but there were significant concerns raised regarding the protection of certain terms of art used in bankruptcy and the danger of unintended consequences of restyling. In addition, the survey showed that respondents supported restyling all the rules rather than a subset.

Judge Dow stated that following the survey results, the subcommittee determined that the project to restyle the Bankruptcy Rules should go forward. A caveat to the subcommittee's

recommendation is that any final decisions on whether to recommend any change to the Bankruptcy Rules rest with the Committee. Judge Dow noted that if the Committee approves the recommendation, there are still open questions with regard to how to proceed with the restyling project, and that the subcommittee will continue to work on these issues.

Judge Campbell stated that it is a big task, and it will take several years, advising that it is likely unavoidable that problems will be introduced through restyling, as seen with the restyling of other federal rules. He expressed his view that the recommendation regarding the restyled rules comes from the Committee, and the Committee has the final say regarding whether something is of substance rather than stylistic, including terms of art and terms used in the Bankruptcy Code. The Standing Committee will defer to the Committee regarding whether something is substantive and not stylistic, as well as language approved by the Committee because bankruptcy is a specialty area. Several Committee members and Professor Dan Coquilette noted their approval of Judge Campbell's comments.

Professor David Skeel added that the Committee should be wary of unintended consequences of rules restyling, stating that mistakes can be introduced easily even with careful attention to detail. Professor Catherine Struve echoed his comments, although both offered their support for the project. The recommendation to approve the restyling project subject to the caveat was approved by motion and vote.

Information Items

7. Business Subcommittee Consideration of possible changes to Rule 5005.

Professor Bartell explained that she is working with Ramona Elliott to determine if changes are needed to Rule 5005 as a result of the proposed amendment to Rule 9036. A further update will be provided at the spring meeting.

8. Coordination Items.

Scott Myers provided a brief report on the coordination of pending rule amendments.

9. Future meetings:

The spring 2019 meeting will be in San Antonio, Texas, on April 4, 2019, and the fall 2019 meeting will be in Washington D.C.

10. Adjournment

The meeting was adjourned at 12:00 p.m.

Consent Agenda

The Chair and Reporters proposed the following items for study and consideration prior to the Advisory Committee's meeting. No objections were presented, and all recommendations were approved by acclamation at the meeting.

1. Subcommittee on Appellate Issues.

   (A) Recommendation for conforming technical changes to Rules 8012, 8013, and 8015.

   (B) Recommendation of no action in response to Suggestion 18-BK-C to amend Rule 9033.

2. Subcommittee on Business Issues.

   (A) Recommendations to refer Suggestion 14-BK-E (from the National Bankruptcy Conference) to the Consumer Subcommittee, and to take no action with respect to informal suggestions from committee member Jill Michaux, and former committee member David Lander.
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# TAB 3C

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# PROPOSED PROCEDURES FOR RESTYLING FEDERAL RULES OF BANKRUPTCY PROCEDURE

## I. Pacing of Restyling

The style consultants have suggested that we divide the project into "three big batches" of rules to pace our restyling efforts. We would contemplate that those batches would consist of:

a. Parts I and II of the Rules

b. Parts III, IV, V and VI of the Rules

c. Parts VII, VIII[1] and IX of the Rules

Although we would restyle the rules in batches and would obtain public comment on each group as it is restyled, we contemplate that none of the restyled rules would become effective until all groups were finally approved. Although we are not adopting a rigid schedule, we would expect to receive an initial draft of the first batch of rules from the style consultants within four months of commissioning the project, and hope to have the first group ready for the August 2020 public comment period, and each subsequent group ready for publication one year after the prior group is finalized, with a target effective date for the full rule set of restyled rules of December 1, 2024. These dates are intended to be aspirational and may change as we get into the project.

## II. Working with Style Consultants

We believe that the relationship with the style consultants should be a close and collaborative one. The style consultants would be tasked with producing an initial restyled version of the group of rules on which we are working, without changing the substance of the rules and without eliminating "terms of art" that are used in bankruptcy practice. Where the rules use words or phrases that are used in the Bankruptcy Code, there should be a presumption that those words or phrases will not be modified through restyling, although the Restyling Subcommittee will consider any proposals by the style consultants to the contrary. However, in all other respects the goal is to put the Bankruptcy Rules into the best possible form as reflected in the literature on rule-drafting and legal drafting generally, simplifying the style as much as possible without sacrificing meaning. Established style conventions should prevail on matters of pure style. Although the style consultants will have flexibility to change some subpart designations and even to reorganize subparts, such structural changes should be minimized, if possible.

[1] We think it unlikely that Part VIII will need many, if any, restyling revisions because it has been restyled recently and parallels the provisions of the Federal Rules of Appellate Procedure.

The initial draft (in Word format) would be shared with the reporters and placed on FileShare or a similar platform. This platform will allow the reporters, the style consultants and members of the Restyling Subcommittee and the Advisory Committee to review proposed changes, revisions and comments throughout the process. The reporters will respond to proposed edits and comments. The style consultants will have an opportunity to respond with additional suggestions and comments. All of this will result in a "first draft" to be reviewed by the Restyling Subcommittee. To the extent necessary and appropriate, the style consultants will be invited to participate in the Restyling Subcommittee's evaluation which will culminate in a "second draft." The style consultants will have an opportunity to further comment on the second draft. If the chair of the Restyling Subcommittee thinks it desirable, she may call a meeting of the Restyling Subcommittee at which the style consultants would be present to discuss any disagreements and the Restyling Subcommittee can give directions to the style consultants.[2] All comments will be considered by the Restyling Subcommittee and may result in submission of either a "third draft" that incorporates some or all of the recommendations of the style consultants, or the "second draft" with the comments of the style consultants, to the Advisory Committee to approve a request for publication. The Advisory Committee will have access to all drafts and comments on drafts. The request and approved draft will then be submitted to the Standing Committee.

After comments in response to publication are received for each group of rules, the style consultants will work with the Restyling Subcommittee to modify the draft restyled rules as appropriate to respond to those comments and prepare a final draft for approval by the Advisory Committee and the Standing Committee.

Throughout this process, it is understood that the decision whether any change is to be made to the Federal Rules of Bankruptcy Procedure through the restyling project rests initially with the Restyling Subcommittee, and then with the Advisory Committee, and ultimately with the Standing Committee. The Restyling Subcommittee expects to show great deference to the restyling experts on matters that are purely stylistic but expects that the restyling experts will accept the judgment of the Restyling Subcommittee with respect to matters of substance and terms of art unique to bankruptcy law and practice.

[2] If the Restyling Subcommittee deems it advisable, the Subcommittee may share the drafts with outside bankruptcy experts at any stage of the review proceedings to obtain additional views.