ADVISORY COMMITTEE ON BANKRUPTCY RULES
Meeting of April 4, 2019
San Antonio, Texas.

The following members attended the meeting:

Bankruptcy Judge Dennis Dow, Chair
Circuit Judge Thomas Ambro (called in)
Bankruptcy Judge Stuart M. Bernstein
Bankruptcy Judge A. Benjamin Goldgar
Bankruptcy Judge Melvin S. Hoffman (called in)
David A. Hubbert, Esq.
District Judge Marcia S. Krieger
Thomas Moers Mayer, Esq.
Debra Miller, Chapter 13 trustee
District Judge Pamela Pepper
Jeremy L. Retherford, Esq.
Circuit Judge Amul R. Thapar (called in)
District Judge George Wu

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 Coquillette, consultant to the Standing Committee (called in)
Professor Catherine Struve, reporter to the Standing Committee (called in)
Circuit Judge Susan Graber, liaison to the Standing Committee
Bankruptcy Judge Mary Gorman
Bankruptcy Judge Marvin Isgur
Circuit Judge William J. Kayatta, Jr.
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
Ahmad Al Dajani, Administrative Office
Bridget Healy, Esq., Administrative Office
Scott Myers, Esq., Administrative Office
Nancy Whaley, National Association of Chapter 13 Trustees
Elizabeth Jones, Supreme Court fellow
Abigail Willie, Supreme Court fellow

Discussion Agenda

1. Greetings and introductions

Judge Dennis Dow welcomed the group. He introduced new members Jeremy Retherford and Judge George Wu, and Judge William Kayatta who will be the new liaison to Standing Committee, replacing Susan Graber. He also introduced Judge David Campbell, the chair of the Standing Committee, and Professor Daniel Coquillette, and Professor Catherine Struve, the consultant and reporter for the Standing Committee, who were participating by phone. He also introduced others attending the meeting.

2. Approval of minutes of Washington, D.C., September 17, 2018 meeting

The minutes were approved by motion and vote.

3. Oral reports on meetings of other committees

(A) January 3, 2019 Standing Committee meeting

Professor Elizabeth Gibson provided the report. The only bankruptcy action item on the agenda for the January 3 meeting was the Advisory Committee's request 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. The Standing Committee approved that procedure. During the discussion it was noted that it is important to keep Congress apprised about the project. The Standing Committee expressed an interest in getting a primer on bankruptcy and perhaps sharing that with the style consultants.

The Standing Committee was also informed that the Advisory Committee was considering amendments to Rule 9036 to deal with high-volume notice recipients and might have a proposal for publication next summer. The Standing Committee was also informed that the Advisory Committee had approved an amendment to Form 113, (*Chapter 13 Plan*), but decided to defer proceeding with the proposed amendment in order to see whether experience under the new form and related rules suggests the need for additional adjustments.

(B) Oct. 26, 2018 Meeting of the Advisory Committee on Appellate Rules

Judge Pepper delivered the report. At the June 2019 Standing Committee meeting, the Appellate Rules Committee plans to seek the Standing Committee's final approval to amend

Rules 35 and 40. These amendments, which concern length limits applicable to responses to a petition for rehearing, are currently published for public comment. The Appellate Rules Committee is also considering additional changes to Rules 35 and 40 aimed at reconciling discrepancies between the two rules. These discrepancies trace back to a time when parties could petition for panel rehearing but only "suggest" rehearing en banc.

At the next Standing Committee meeting, the Appellate Rules Committee will also seek approval to publish amendments to Rule 3 for public comment. These amendments would address the relationship between the contents of the notice of appeal and the scope of the appeal. The Appellate Rules Committee's research revealed that when a notice of appeal from a final judgment also designates a specific interlocutory order, some courts (invoking the "expressio unius" canon) take the view that the additional specification limits the scope of appellate review to the designated interlocutory order. The proposed rule would not limit the scope of appeal on this basis.

The Appellate Rules Committee is considering whether granting voluntary dismissals should be mandatory under Rule 42(b). Rule 42(b) provides that the clerk "may" dismiss an appeal if the parties file a signed dismissal agreement. The proposal before the Appellate Committee would make dismissal mandatory, but where an action by the court is needed, such as a remand for the district court to review a proposed settlement, courts would have the discretion to decline to take the action proposed in the parties' agreement.

The Appellate Rules Committee had been considering an amendment to Rule 36 that would provide a uniform practice for handling votes cast by judges who depart the bench before an opinion is filed with the clerk's office, but the Supreme Court's decision in *Yovino v. Rizo*, 139 S.Ct. 706 (Feb. 25, 2019), rendered that consideration unnecessary.

Finally, the Appellate Rules Committee had been considering whether the Supreme Court's decision in *Hamer v. Neighborhood Housing Services of Chicago*, 138 S. Ct. 13 (2017), which characterized time limits set only by court-made rules as non-jurisdictional procedural limits, raised practical issues for the rules, but the Supreme Court held in *Nutraceutical Corp. v. Lambert*, 139 S.Ct. 710 (Feb. 26, 2019), that the 14-day deadline for filing a petition for permission to appeal in Civil Rule 23(f) is not subject to equitable exceptions. As a result, no further consideration is necessary.

(C) Nov. 1, 2018 Meeting of the Advisory Committee on Civil Rules

Judge Benjamin Goldgar provided the report. A subcommittee of the Civil Rules Committee continues to study possible rules for multi-district litigation, including third-party

funding of litigation. The Civil Rules Committee approved for transmission to the Standing Committee its published amendment to Rule 30(b)(6) after eliminating the requirement that parties confer about the identity of the witness to be deposed, and drafting a new Committee Note. The Civil Rules Committee approved for publication and comment an amendment to Rule 7.1(a) that parallels amendments to Bankruptcy Rule 8012 and Appellate Rule 26. The Civil Rules Committee and the Appellate Rules Committee have agreed to form a joint committee to consider the recent Supreme Court decision in *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. Judge Goldgar pointed out that Rule 42 applies in bankruptcy cases, and Judge Bates, chair of the Civil Rules Committee, suggested that the Bankruptcy Rules Committee may be able to participate in the joint committee if it wishes to do so. Judge Goldgar volunteered to serve in that role, and the Advisory Committee accepted his offer.

(D) Dec.13-14, 2018 meeting of the Committee on the Administration of the Bankruptcy System

Judge Mary Gorman provided the report. She reported on the major Unclaimed Funds Task Force work. One focus is to get the unclaimed funds to the persons to whom they belong. The court for the Eastern District of Virginia has developed an unclaimed funds locator, but there are some problems with that locator. There is no smart search feature, and no ability to search across all courts. The Administrative Office is devoting resources to updating the locator, and those improvements are near.

Another suggestion is to waive filing fees to reopen a case to dispose of unclaimed funds (if reopening the case is necessary). Another suggestion is not to charge a transfer fee if the claimant is a successor in interest seeking unclaimed funds, but the Task Force does not want to encourage claimants to wait until funds are unclaimed to avoid the transfer fee.
The Task Force is also pursuing a legislative proposal to create a statute of limitations for unclaimed funds requests, which was approved by the Executive Committee of the Judicial Conference and may proceed to Congress.

Professor Struve asked whether the committee considered federalism concerns raised by the Unclaimed Funds Act. Judge Isgur said the problem is exacerbated by payment of secured creditors being paid through the trustees and asked the Bankruptcy Committee to look at the issue. Judge Gorman promised to relay these issues.

Subcommittee Reports and Other Action Items

4. Report by Appeals, Privacy, and Public Access Subcommittee

(A) Recommendation and review of public comments concerning proposed amendments to Rule 8012 relating to corporate disclosure statement

Judge Ambro and Professor Gibson provided the report. Amendments to Rule 8012 were approved for publication at the spring 2018 meeting of the Advisory Committee to track the relevant amendments to FRAP 26.1. Among other changes, the amendments would modify subsection (a) to make the disclosure requirements applicable to corporations seeking to intervene. The proposed amendments were published in August 2018. Three comments were submitted concerning the amendments, and all were supportive. The Subcommittee therefore recommended that the Advisory Committee give final approval to the amendments.

Tom Mayer expressed the need for additional amendments to Rule 8012 to extend the disclosure requirements to a broader range of entities. The Subcommittee did not disagree but believes that any such expansion should be undertaken in coordination with the other advisory committees with comparable rules, and should not delay the pending amendments.

The Advisory Committee, by motion and vote, gave final approval to the amendments to Rule 8012.

(B) Recommendation concerning suggestion 19-BK-A to amend Rules 3011 and 9006(b) regarding unclaimed funds

Judge Ambro and Professor Bartell provided the report. The Committee on the Administration of the Bankruptcy System made a suggestion requesting the Advisory Committee to recommend amendments to Federal Rule of Bankruptcy 3011 (and a conforming change to Rule 9006(b)) for the purpose of limiting the time for requesting withdrawal of unclaimed funds from the bankruptcy court to five years after publication of the list pursuant to Rule 3011 of all known names and addresses of the entities and the amounts that they are entitled to be paid. The Bankruptcy Committee also intends to seek an amendment to 11 U.S.C. § 347(a) to provide that unclaimed funds remain with the bankruptcy court for five years, and at the end of that period all parties (including any claimant entitled to those funds) would be barred from asserting any claim against them. The clerks of court would have no further obligations with respect to the funds after that time.

Section 347 of the Bankruptcy Code provides that ninety days after the final distribution in a chapter 7, 12, or 13 case, the trustee shall stop payment on any check remaining unpaid, pay any remaining property of the estate into the court for disposition under chapter 129 of the Judicial Code. Under 28 U.S.C. § 2041, moneys paid into the court are deposited with the Treasury, in the name and to the credit of such court. Withdrawal of such funds is governed by 28 U.S.C. § 2042, which requires a court order to withdraw those funds, and if the money remains on deposit for at least five years unclaimed by the person entitled to it, the money gets deposited with the Treasury in the name and to the credit of the United States. Section 2042 goes on to say:

> "Any claimant entitled to any such money may, on petition to the court and upon notice to the United States attorney and full proof of the right thereto, obtain an order directing payment to him."

Section 2042 clearly contemplates that such petitions may be filed more than five years after the money is deposited.

Under 28 U.S.C. § 2075, bankruptcy rules of procedure "shall not abridge, enlarge, or modify any substantive right." The Subcommittee concluded that the proposed amendments are beyond the scope of the rule-making power of the Supreme Court, and therefore recommended no modification to the rules in response to this suggestion.

Since the memorandum of the Subcommittee was submitted to the Advisory Committee, the Unclaimed Funds Task Force of the Committee on the Administration of the Bankruptcy System sent a letter suggesting that the matter should be recommitted to the Subcommittee because the Subcommittee erred in its analysis. Professor Bartell discussed the points made in the supplemental letter.

Judge Gorman said that the Task Force had understood the Subcommittee to believe erroneously that substantive rights were created by Section 2042. Professor Bartell agreed that the phrase "created by Section 2042" in the memorandum to the Advisory Committee was inaccurate. It should have said "contemplated by Section 2042." The substantive claim to funds is created by the bankruptcy distribution statutory scheme. The Subcommittee was polled, and all members continued to adhere to the recommendation previously made. The Advisory Committee, by motion and vote, approved the recommendation of the Subcommittee to take no action on the suggestion.

5. Report by the Business Subcommittee

(A) Recommendation concerning suggestion 18-BK-D from CACM (Court Administration and Case Management) to expand electronic noticing with proposed amendment to Rule 9036; recommendation concerning proposed "opt-in"

Professor Gibson provided the report. Currently pending before the Supreme Court are amendments to Rule 9036 that would allow 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. The rule would also allow service or noticing on any entity by any electronic means consented to in writing by that person. We anticipate that these amendments will go into effect in December.

Since the spring meeting, the Subcommittee has continued to consider whether to facilitate electronic notice and service by creating an opt-in procedure under which creditors could specify on proofs of claim that they wish to receive notices and service at an electronic address that they would provide on the form. In addition, the Committee on Court Administration and Case Management (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 bankruptcy courts in a calendar month

Working with AO staff and others involved with noticing issues, the Subcommittee is recommending for publication additional amendments to Rule 9036 that would provide for a high-volume-paper-notice recipient program. The following points were taken into account in drafting the proposed amendments:

1) Notice and service by the courts should be addressed separately from notice and service by parties. Courts have access to BNC; parties do not. The high-volume program would apply only to notice and service by courts.
2) The high volume program allows the recipient to sign up with BNC for electronic noticing and service. If they do not, the AO Director will designate an electronic address for them (through methods to be determined by the Director), but the recipient can designate a mailing address pursuant to § 342(e) and (f) of the Code that would prevail over the Director's designation.

3) Registered users of CM/ECF (lawyers) can be required to receive notice and service through that system.
4) The working details of the high-volume program do not need to be spelled out in the rule, but the committee note gives a fuller explanation.
5) Consistent with amendments to Rule 8011 that went into effect last December, notice and service by electronic means (whether by parties or by the court) is complete upon filing or sending unless the filer or sender receives notice that the intended recipient did not receive it (e.g., receives a bounce-back).

The Subcommittee recommended that the draft and accompanying committee note contained in the agenda book be published for comment this summer.

Judge Isgur on behalf of CACM praised the draft and said it would save millions of dollars. There is a suggestion in CACM to have private parties contract with BNC using bankruptcy court data with BNC sharing the revenue. It is not clear whether that can happen, but CACM invites feedback.

Judge Pepper suggested that "send the paper" in line 20 be modified to "send the notice or serve the paper." It was also suggested that the use of the word "it" in various lines (lines 9, 11, 27, 31, 33, 41) might be examined to see if references to "the notice or paper" would be better. Judge Campbell suggested moving lines 21-23 to the end of the paragraph and insert them after a new phrase reading "unless the entity has designated …." These changes will be considered in connection with the restyling of the section prior to publication.

The Advisory Committee, by motion and vote, approved publication for comment of the draft amendments to Rule 9036 and accompanying committee note with the noted changes.

(B) Recommendation and review of public comments concerning proposed amendments to Rule 2004 on examination of debtors and other entities

Professor Gibson provided the report. Amendments to Rule 2004(c) published for comment in August 2018 add references to "electronically stored information" and revise the subpoena requirements to conform to the current versions of Rule 9016 and Civil Rule 45. On two occasions the Advisory Committee considered acting on a suggestion of the Business Law Section of the American Bar Association, on behalf of its Committee on Bankruptcy Court Structure and Insolvency Process, that Rule 2004(c) be amended to include a proportionality requirement. At its fall meeting in 2017 the Advisory Committee voted, by a narrow margin, to include such a requirement, but could not agree on its wording. The matter was sent back to

subcommittee. At the Advisory Committee's meeting in spring 2018, it rejected, again by a narrow margin, a draft that incorporated such a requirement.

Three sets of comments were submitted in response to publication:

> The Debtor/Creditor Rights Committee of the Business Law Section of the State Bar of Michigan (BK-2018-0002-0008) suggested that proportionality should be a factor that a bankruptcy judge has the discretion to consider in ruling on a request for production of documents and ESI in connection with a Bankruptcy Rule 2004 examination.
>
> The National Association of Bankruptcy Trustees (BK-2018-0002-0010) supported the amendment.
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> Federal Bar Association's Bankruptcy Section (BK-2018-0002-0011) supported the published changes to Rule 2004(c), and urged caution before imposing a proportionality requirement.

Because a proposal close to the suggestion of the Michigan Bar committee has already been considered and rejected by the Advisory Committee, the Subcommittee recommended that the Advisory Committee grant final approval of the amendments to Rule 2004 as published.

The Advisory Committee, by motion and vote, gave final approval to the amendments to Rule 2004(c) and accompanying committee note as published.

(C) Consider publication of amendment to Rule 7007.1 to parallel proposed amendment to Civil Rule 7.1 regarding requirements for intervenors

Professor Gibson noted that the Civil Rules Committee will be proposing for publication an amendment to Rule 7.1 to conform to pending amendments that have been proposed for Appellate Rule 26.1 and Bankruptcy Rule 8012, which also govern disclosure statements for purposes of recusal. The amendment would add a requirement for nongovernmental corporations that are seeking to intervene to file a disclosure statement. The proposed amendment to Rule 7007.1 which is included in the agenda book is consistent with the amendments to those other rules, with minor stylistic and substantive differences.

Although the amendment to Rule 7007.1 is just for the purpose of conforming to the parallel rules, the Subcommittee recommended that it be published for comment in August 2019 to keep it on the same track as the proposed amendment to Civil Rule 7.1.

As was true for the proposed amendments to Rule 8012, Tom Mayer expressed the view that additional changes are needed to Rule 7007.1 to extend the requirements to a broader range of entities. The Subcommittee continues to believe that any expansion should be undertaken in coordination with the other advisory committees and should not hold up the pending amendments.

Judge Goldgar said that at the Civil Rules Committee's meeting questions were raised about the requirement for duplicate copies in Civil Rule 7.1. It was agreed that the bankruptcy rule should conform to Civil Rule 7.1 so Rule 7007.1 should follow whatever the Civil Rules Committee does on that issue.

The Advisory Committee, by motion and vote, approved publication for comment of the draft amendments to Rule 7007.1 and accompanying committee note, as potentially amended to conform to Civil Rule 7.1.

6. Report by the Consumer Subcommittee

(A) Consider suggestion 14-BK-E (from National Bankruptcy Conference)

Professor Bartell provided the report. Suggestion 14-BK-E from Richard Levin on behalf of the National Bankruptcy Conference (NBC) has been pending for some time. The problems it addresses are (1) the difficulties imposed by Rule 7004(h)'s requirement that service on an insured depository institution in a contested matter or adversary proceeding be made by certified mail addressed to an officer of the institution (a provision implementing § 114 of the Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, 108 Stat. 4106), and (2) that service on corporations or partnerships that are not insured depository institutions must be made pursuant to Rule 7004(b)(3) by first-class mail addressed to an "officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service."

The NBC proposed an amendment to Rule 3001 to require that a creditor identify on the proof of claim form the name and address of the person responsible for receiving notices under the Code. If the creditor were a corporation, the claimant would be required to list the name and address of an officer or agent for purposes of Rule 7004(b)(3). Additional modifications were proposed for insured depository institutions. The Subcommittee declined to approve any change to Rule 3001 for three reasons. First, proof of claim forms are not required in most chapter 7 bankruptcies because there are no assets to distribute; so the rule change would not provide the information it seeks to provide in many cases. Second, conflicting addresses might be on file for

a single creditor and that creates priority issues. Third, the proposal would not solve the problem it seeks to address because of likely changes in representatives of creditors over time.

The second proposal contained in 14-BK-E was a request that debtors' counsel have access to the BNC database, a suggestion that cannot be implemented, or alternatively an amendment to Rule 5003(e) that would allow creditors to file their addresses for providing notice under § 342(f) and the name and address of an officer to receive service of process. The register of addresses designated under § 342(f) would be kept by the clerk and be accessible by registered users of the court's electronic-filing system. The Subcommittee rejected this proposal because it would impose significant burdens on the clerks of court, and would create yet another potentially conflicting address for a creditor without resolving the priority dispute.

The third proposal made in 14-BK-E was to amend Rule 9036 to require large creditors (those who have filed or anticipate filing in the aggregate 100 or more proofs of claim in bankruptcy courts within any 12-month period) to register for the electronic-filing system in all bankruptcy courts in which they file proofs of claim and use that system for filing all documents and receiving all notices and service of process rather than by mail (other than pursuant to Rule 7004). The Business Subcommittee had this issue before it in the form of another proposal, 18-BK-D. Therefore, this Subcommittee did not address it.

The Subcommittee recommended no rule changes in response to Suggestion 14-BK-E. The Advisory Committee, on motion and vote, approved that recommendation.

(B) Recommendation and review of public comments concerning proposed amendments to Rule 2002

Professor Gibson provided the report. In August 2018 a package of amendments to Rule 2002 were published. These amendments would (i) require giving notice of the entry of an order confirming a chapter 13 plan, (ii) limit the need to provide notice to creditors that do not file timely proofs of claim in chapter 12 and chapter 13 cases and update time periods, and (iii) add a cross-reference in response to the relocation of the provision specifying the deadline for objecting to confirmation of a chapter 13 plan.

Six sets of comments were submitted on one or more of these proposed amendments. Four of the comments included brief statements of support for the amendments. Two other comments were generally supportive, but made additional suggestions. The Subcommittee declined to make any changes in response to those suggestions, and recommended that the Advisory Committee give final approval to the amendments to Rule 2002 as published.

Judge Hoffman expressed concerned that a surrogate might file a claim on behalf of a creditor after thirty days, and the creditor would not get notices in the case. Because Rule 3004

requires notice to the creditor, it appears that the clerks' offices are adding the creditor back to the matrix after a claim is filed on its behalf, and so it will get notice. No change is needed to deal with that issue.

The Advisory Committee, by motion and vote, gave final approval to the amendments to Rule 2002 and accompanying committee note as published.

7. Report by the Forms Subcommittee

(A) Recommendation concerning suggestion 18-BK-F to amend Official Form 122A-1

Professor Gibson provided the report. Christian Cooper, a senior staff attorney who assists pro se debtors in the Bankruptcy Court for the Central District of California, submitted a suggestion (18-BK-F) regarding one of the means test forms—Official Form 122A-1 (*Chapter 7 Statement of Your Current Monthly Income*). Mr. Cooper stated that many pro se debtors whose income does not trigger a presumption of abuse fail to see the instruction under the signature line on Form 122A-1 that they should not file Form 122A-2 (the means test calculation). He suggests that the instruction should also be added to the end of line 14a.

Amending line 14a as Mr. Cooper suggests would make that instruction parallel to the instruction on line 14b. Line 14b says to fill out Form 122A-2. The form also includes a similar statement after the signature and date. Likewise, the equivalent form for chapter 13—Official Form 122C-1 (*Chapter 13 Statement of Your Current Monthly and Calculation of Commitment Period*)—includes an instruction not to fill out Form 122C-2 both at line 17a and after the signature and date.

The Subcommittee agreed with the suggestion and recommended that the Advisory Committee propose such an amendment for final approval by the Standing Committee and Judicial Conference without publication. The Subcommittee concluded that the change is sufficiently minor that publication is not needed.

The Advisory Committee, upon motion and vote, agreed to propose the amendment and committee note for final approval by the Standing Committee and the Judicial Conference without publication.

(B) Recommendation concerning suggestion 19-BK-B to create a director's form Application for Unclaimed Funds

Professor Bartell provided the report. The Committee on the Administration of the Bankruptcy System (the "Bankruptcy Committee") submitted a suggestion, 19-BK-B, that the Advisory Committee adopt a Director's Form containing a standard application for withdrawal of unclaimed funds, together with instructions and a proposed order either granting or denying the application. The proposed form was developed by an Unclaimed Funds Task Force established by the Bankruptcy Committee, comprised of district and bankruptcy judges, clerks of court, and liaisons from the Bankruptcy Administrators program and the EOUST. Each district currently uses its own form for this purpose. The Subcommittee recommended that a uniform director's form be adopted, and (working with the AO) made some modifications to the form, application and proposed orders included in the original suggestion.

The Subcommittee recommended to the Advisory Committee that the AO be asked to post a new Director's Form for the application for the payment of unclaimed funds in the form, and with the instructions and forms of orders, included in the agenda book.

Professor Bartell noted that the Guide to Judiciary Policy is being revised with respect to guidance on unclaimed funds, but the revisions do not affect the recommendation.

There was discussion about whether the instructions should require use of the standard form of powers of attorney. The general consensus was not to require that explicitly. It would be up to the court to conclude that the power of attorney was sufficient.

The Advisory Committee, by motion and vote, asked the AO to post a new Director's Form in the form, and with the instructions and forms of orders, included in the agenda book.

8. Report by the Restyling Subcommittee

(A) Report on status of effort

Judge Marcia Krieger, chair of the Subcommittee, reported on the informal meeting of the Restyling Subcommittee over lunch. This is a large project, which will take a number of years to complete. The three style consultants are working on Parts 1 and 2 of the rules. After the style consultants have all reviewed the proposals, they will send them to the reporters. When the reporters have a version that should be shared with the Restyling Subcommittee, it will be uploaded to a ShareFile program that allows everyone to see all drafts. Skype for Business will be used to allow the Subcommittee to see a working draft collaboratively while it discusses and makes changes. Judge Krieger thanked the AO and FJC for facilitating these technological mechanics.

Many Article III judges and others do not understand bankruptcy practice and language, so Judge Krieger has developed a video program to help provide non-experts a primer on bankruptcy law. This will be shared with the Standing Committee and the style consultants.

The reporters await the first group of rules from the style consultants.

Nothing has happened yet on keeping Congress apprised of the progress on restyling, but that will be pursued after the first group of restyled rules is produced.

Scott Myers reported that the current schedule contemplates the first group of rules would be ready for publication in August 2020. The Subcommittee will also keep a list of issues that are substantive in nature that require change, which can be made at the same time as the restyling or thereafter.

(B) Discussion of considerations with respect to restyling the Bankruptcy Rules

Abigail Willie, Supreme Court fellow, reported on her research on issues relating to restyling. The issue she researched was whether the restyling of any rule was interpreted to make a substantive change to the rules when the other committees undertook this process. She found no published case in which anyone argued that restyling effected a substantive change in the law.

She then looked at what other issues the Advisory Committee might want to consider in the restyling process. The issues she identified were flagging ambiguous words or phrases; use of auxiliary words like "shall" and "should;" use of intensifiers; elimination of redundant phrases; sacred phrases and terms of art; transactions costs; continuity; and protecting the substance of the rules when using plain language.

(C) Discussion of Civil Rules Restyling effort

Judge Lee H. Rosenthal, participating by telephone, discussed restyling of the civil rules. She said that it is possible to change style without changing substance. The good news is that restyling project was the best thing she did during her time on the rules committee – the benefits of the restyling are significant. There is no alternative to restyling.

The major challenge she foresees is that we are starting with the Code, which is not a model of good writing. She encourages lots of review at every stage – each review uncovers new issues. She recommends using footnotes to identify drafting decisions. Civil Rules used subcommittees for different sections. They did not publish until everything was completed.

She encouraged the Advisory Committee to enlist major bar organizations to help identify the concerns even before publication.

She emphasized that the Advisory Committee needs to make clear that jurisprudence of rules predating the restyling continues to be viable. Every restyled Civil Rule had a note that said that the amendments were intended to be stylistic only and make no substantive change.

She recommended resisting changes of numbers or subsections. The restyling subcommittee will have to consider to what extent we conform to other restyled rules or to the Code.

It is critical to keep Congress apprised of the work. The entire restyling project for the Civil Rules almost collapsed because the key Congressional players did not understand what was happening.

She closed by noting that the project will take longer than anticipated, and there will be mistakes, but it will be interesting and important. This is a major service to the constituents.

Information Items

9. Review of notice provisions in Rule 3002.1 and effect on Chapter 13 discharge where trustee payments through a plan are successfully completed, but direct payments by the debtor to a mortgagee are not current.

Elizabeth Jones, Supreme Court fellow, presented this issue. In a conduit district, where all payments are made through the trustee, everyone knows when there is a problem and the court is able to respond immediately, perhaps by dismissal if payments are not made. If all payments are made at the end of the plan period, the debtor gets a discharge. In a direct pay district, if payments that are to be made outside of the plan are not made, no one knows about it until the Rule 3002.1 statement goes out and the recipient checks its records. At this point it is unclear that any action can be taken, and those debtors are treated differently from the debtor in a conduit district.

The Code does contemplate the direct payments are permitted pursuant to court order or a chapter 13 plan, but Ms. Jones suggested some changes that might be made to the rules to address the problem. She also suggested that changes could be made to require periodic reporting by the debtor on the status of direct payments, or a midterm audit could be required.

10. Consumer Subcommittee status report on consideration of suggestions 18-BK-G and 18-BK-H for amendments to Rule 3002.1 concerning home mortgage information

Elizabeth Gibson provided a report on the status. The idea is that chapter 13 debtors who are making current payments and cure payments should know whether they are current at the end of the case and the rule change would give them that information. A task force will be looking at these issues over the summer and may make a recommendation at the fall meeting.

11. Update on possible amendments to Rule 5005 in connection with pending amendments to Rule 9036

Ramona Elliot explained that the EOUST is looking at the pending amendments to Rule 9036 and their interplay with Rule 5005.

12. Future meetings

The fall 2019 meeting will be in Washington D.C. on September 26, 2019. The time and place of the spring 2020 meeting have not been set.

13. New Business

The Committee assigned to the Forms Subcommittee for its consideration suggestion 19-BK-C to amend Official Form 309A (and other versions of Form 309) to list addresses for the debtor for the previous three years.

14. Adjournment

The meeting was adjourned at 2:28 p.m.

Proposed 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. Consumer Subcommittee

   (A) Recommendation of no action regarding suggestion 18-BK-I (to require the debtor's attorney to mail the statement of intent to creditors) because the rules already impose a duty on the debtor to send the statement of intent to creditors

   (B) Recommendation for approval without publication of technical amendment to Rule 2005(c) to reflect statutory change