ADVISORY COMMITTEE ON BANKRUPTCY RULES
Meeting of April 2, 2020
Held Remotely by Conference Call and Webex

The following members attended the meeting:

Bankruptcy Judge Dennis Dow, Chair
Circuit Judge Thomas Ambro
Bankruptcy Judge Stuart M. Bernstein
Circuit Judge Bernice Bouie Donald
Bankruptcy Judge A. Benjamin Goldgar
Jeffery J. Hartley, Esq.
Bankruptcy Judge Melvin S. Hoffman
David A. Hubbert, Esq.
District Judge Marcia S. Krieger
Thomas Moers Mayer, Esq.
Debra L. Miller, Esq.
District Judge J. Paul Oetken
Jeremy L. Retherford, Esq.
Professor David A. Skeel
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
Professor Catherine Struve, reporter to the Standing Committee
Professor Brian Garner, style consultant to the Standing Committee
Professor Joseph Kimble, style consultant to the Standing Committee
Bankruptcy Judge Laurel L. Isacoff, Liaison to the Committee on the Administration of the Bankruptcy System
Circuit Judge William J. Kayatta, Jr., liaison from 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. Trustees
Kenneth Gardner, Clerk, U.S. Bankruptcy Court for the District of Colorado
Brittany Bunting, Administrative Office
Bridget Healy, Esq., Administrative Office
Scott Myers, Esq., Administrative Office
Allison Bruff, Administrative Office
Molly T. Johnson, Federal Judicial Center
Beth Wiggins, Federal Judicial Center
Nancy Whaley, National Association of Chapter 13 Trustees

Discussion Agenda

1. Greetings and introductions

Judge Dennis Dow welcomed the group and thanked them for their flexibility in holding this meeting remotely. He also thanked the staff of the Administrative Office for finding a platform for the meeting. He introduced Brittany Bunting, who is new to the staff of the Administrative Office, and thanked her for her work on this meeting. He also introduced new members Judge Donald and Judge Oetken. He introduced a new liaison, Judge Isacoff, from the Bankruptcy Committee. He noted that there is a supplement to the agenda book. Judge Dow also described technical issues relating to the software program used for the meeting.

2. Approval of minutes of Washington, D.C. Sept. 26, 2019 meeting

The minutes were approved by motion and vote.

3. Oral reports on meetings of other committees

(A) Jan. 28, 2020 Standing Committee meeting

Judge Dow gave the report. The Standing Committee commended the Advisory Committee for its fast work in preparing interim rules and forms to implement the Small Business Reorganization Act of 2019 (SBRA).

The Advisory Committee presented proposed amendments to three official forms—Official Forms 122A-1 (Chapter 7 Statement of Your Current Monthly Income), 122B (Chapter 11 Statement of Your Current Monthly Income), and 122C-1 (Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period)—to implement the Honoring American Veterans in Extreme Need Act (HAVEN Act) of 2019 which became effective on August 23, 2019. The Standing Committee retroactively approved (and undertook to provide notice to the Judicial Conference concerning) the amendments to the three official forms.

Professor Gibson also provided the Standing Committee information on the process by which the interim SBRA rules and forms were implemented, including the brief publication of the proposed interim SBRA rules and forms, their amendment in response to comments, their approval by the Advisory Committee and the Standing Committee and authorization by the Executive Committee of the Judicial Conference for distribution to the districts for adoption as

local rules. At this meeting, the Advisory Committee will begin the process of adopting permanent SBRA rules and forms for publication.

Professor Bartell described to the Standing Committee the progress of the restyling project and reported that the Advisory Committee expected to present Parts I and II of the restyled Bankruptcy Rules for publication at the next meeting of the Standing Committee.

(B) April 4, 2020 Meeting of the Advisory Committee on Appellate Rules

Judge Donald presented the report.

The Advisory Committee on Appellate Rules will be meeting remotely on April 4, 2020. Because the meeting had not yet taken place, there was no report.

(C) October 30, 2019 Meeting of the Advisory Committee on Civil Rules

Judge Benjamin Goldgar provided the report.

After extensive work, the MDL subcommittee concluded there was no reason to adopt rules governing third-party litigation funding ("TPLF") in the MDL context. The subcommittee reached that conclusion because (a) multi-district litigation doesn't appear to involve much TPLF, and (b) the TPLF phenomenon is evolving rapidly. The subcommittee referred the TPLF question back to the full Committee. Given the rapid evolution of TPLF, the Committee decided not to pursue possible rules for now and to reexamine the question in a year or two.

A joint subcommittee from the Appellate, Civil, and Bankruptcy Rules Committees is considering whether some amendment, probably to Fed. R. Civ. P. 42(a) or 54(b), would be appropriate in the wake of the Supreme Court's *Hall v. Hall* decision. At the subcommittee's request, the FJC is studying whether as a practical matter *Hall* poses enough of a problem to justify an amendment. That study is ongoing. No results should be expected for some time.

Another joint subcommittee is considering a proposal to move the deadline for papers filed electronically from midnight on the due date to the time when the clerk's office closes. The subcommittee is still in the information-gathering stage.

The Committee considered the same suggestion from "Sai" that the Bankruptcy Rules Committee considered at its fall meeting that would have required the clerk or the judge (or someone with the court) to calculate for each pro se litigant every potential deadline in the litigant's case. The Committee was sympathetic to the concerns Sai raised but agreed with the Bankruptcy Rules Committee and decided to take no action.

The Committee rejected amendments to Rule 68, Rule 26(b)(4)(B) and Rule 26.

The Mandatory Initial Discovery Pilot continues in N.D. Ill. and D. Ariz. and is reportedly "going pretty well," according to Judge Robert Dow. Five rounds of surveys have been sent to lawyers to gauge their reaction to the program. Results from the two participating districts have been positive and mostly similar, except that Illinois defense lawyers are more negative than their western counterparts.

(D) Dec. 10-11, 2019 meeting of the Committee on the Administration of the Bankruptcy System

Judge Laurel Isacoff provided the report.

There was an emergency meeting this week precipitated by the CARES Act at which the Committee passed a motion directing staff to draft a proposal to present to the Committee regarding legislation allowing extension of deadlines that are not ordinarily subject to extension during a time of emergency.

Judge Dow commented that the Bankruptcy Committee had been approached with respect to the Bankruptcy Rules that impose deadlines on action. He intends to appoint a subcommittee to consider whether a new rule should be adopted to permit these extensions.

Subcommittee Reports and Other Action Items

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

(A) Consideration of whether to propose amendments to Bankruptcy Rule 8003 to conform to proposed amendments to FRAP 3(c)

Judge Ambro introduced the issue; the Advisory Committee of Appellate Rules has published a proposed amendment to FRAP 3(c) (Contents of the Notice of Appeal), which is intended to resolve the different practices in different courts of appeals. Professor Gibson provided the report. The Subcommittee was asked to recommend to the Advisory Committee whether to propose amendments to Rule 8003 (Appeal as of Right—How Taken; Docketing the Appeal) that conform to amendments to FRAP 3(c). A change would make a notice of appeal encompass all issues that merge into the judgment, not merely those mentioned in the notice of appeal. At the fall 2019 meeting of the Advisory Committee, the Subcommittee reported that it had some doubts about whether conforming amendments were necessary and that it wanted to

consider any comments received on the FRAP 3(c) before making a recommendation regarding Rule 8003.

The Subcommittee has decided to make no recommendation at this meeting regarding conforming amendments to Rule 8003 and to continue to consider whether the proposed amendments can be properly adapted to the bankruptcy context. While some members stressed the possible negative consequences of failing to conform Rule 8003 and Official Form 417A to FRAP 3(c) and Appellate Form 1, others raised concerns about how the amendments would be applied in appeals from contested matters, as opposed to adversary proceedings that mirror civil litigation.

The Subcommittee also noted that the Appellate Committee meets after the Advisory Committee meets. That means that the Advisory Committee will not know what action the Appellate Committee is going to take in response to the comments until after the conclusion of our meeting. Rather than try to take action by email in between the spring meeting and the preparation of the Standing Committee report, the Subcommittee concluded that the better course would be to see what proposal for FRAP 3(c) and Form 1 goes forward and then to carefully consider the extent to which that approach can be adapted for bankruptcy practice.

5. Report by the Business Subcommittee

(A) Recommended amendments to Rule 5005 concerning notices sent to the United States trustee

Professor Bartell provided the report. The changes to Fed. R. Bankr. P. 9036 (entitled "Notice or Service Generally"), which became effective December 1, 2019, provide that whenever the bankruptcy rules "require or permit sending a notice or serving a paper by mail, the clerk or other party may send the notice to – or serve the paper on – a registered user by filing it with the court's electronic-filing system." The rule "does not apply to any complaint or motion required to be served in accordance with Rule 7004."

Transmittal of papers to the U.S. Trustee is governed by Rule 5005, which requires that such papers be "mailed or delivered to an office of the United States trustee, or to another place designated by the United States trustee" and that the entity transmitting the paper file as proof of transmittal a verified statement.

For the last year, the EOUST has been considering whether any changes should be made to Rule 5005 in light of the changes to Rule 9036. The EOUST has proposed amendments to Rule 5005 to conform this USTP-specific rule to both amended Rule 9036 and current

bankruptcy practice under Rule 5005(b). The proposed changes would allow papers to be transmitted to the U.S. Trustee by electronic means, and would eliminate the requirement that the filed statement evidencing transmittal be verified.

The Advisory Committee approved the proposed amendments to Rule 5005 and committee note and directed that they be submitted to the Standing Committee for publication.

(B) Recommended amendments to Rule 7004

Professor Bartell provided the report. George Weiss, an attorney in Potomac, MD, proposed in Suggestion 19-BK-D that Bankruptcy Rule 7004(h) should be amended by "importing the language of" Civil Rule 4(h) (permitting service of process on an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process) to replace the requirement that service be made on "an officer," but retaining the requirement that such service be made by certified mail.

Several suggestions have been made in recent years requesting amendments to Rule 7004(h), most recently in 2017, 17-BK-E, which requested inclusion of credit unions in the Rule. Bankruptcy Rule 7004(h) was enacted verbatim by Congress in Section 114 of the Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, 108 Stat. 4106. Because, under the Bankruptcy Rules Enabling Act, 28 U.S.C. § 2075, bankruptcy rules cannot override statutory provisions, the Advisory Committee lacks the authority to modify Rule 7004(h) in a manner that is inconsistent with federal statutes. Because the text of Rule 7004(h) is in fact statutory, an amendment that modifies that language in the manner suggested by Mr. Weiss is beyond the power of the Advisory Committee, whatever its substantive merits.

Mr. Weiss followed up his initial suggestion with two others in 19-BK-J. Rather than modifying the statutory language of the rule, he suggested first that the Advisory Committee supplement the rule with a new definition of "officer" to include a resident agent appointed to accept service of process. The Subcommittee concluded that it could not label someone an officer who was not in fact an officer, and declined to act on this suggestion.

Mr. Weiss's second additional suggestion is that Rule 7004 be amended to specify that any service made on an officer need not name the officer but rather can be addressed to "officer of [name of institution]."

This issue is not confined to Rule 7004(h); the same issue arises under the general service of process rule, Rule 7004(b)(3), with respect to service on corporations. Courts are divided on

whether service is adequate if the officer is not named, both under Rule 7004(h) and under Rule 7004(b)(3).

The Subcommittee concluded that this suggestion had merit. In looking at the history of Rule 7004, the Associate Reporter found that there was an Advisory Committee Note to its predecessor, Rule 704, that explicitly stated that under the predecessor to Rule 7004(b)(3),

> "In serving a corporation or partnership or other unincorporated association by mail pursuant to paragraph (3) of subdivision (c), **it is not necessary for the officer or agent of the defendant to be named in the address so long as the mail is addressed to the defendant's proper address and directed to the attention of the officer or agent by reference to his position or title**." (Emphasis supplied).

When the Bankruptcy Rules were revised following the enactment of the Bankruptcy Reform Act of 1978, and Rule 704 became 7004, the original Advisory Committee Note to Rule 704 was no longer included in the published version. Instead, the Advisory Committee Note to Subdivision (b) of the Rule simply stated: "Subdivision (b), which is the same as former Rule 704(c), authorizes service of process by first class mail postage prepaid. This rule retains the modes of service contained in former Bankruptcy Rule 704. The former practice, in effect since 1976, has proven satisfactory."

The Advisory Committee also rejected a suggestion to require a specific name in service under Rule 7004(b)(3) at its Sept. 1999 meeting.

In light of this history, the Subcommittee concluded that Rule 7004 should be amended to include the substance of the former Advisory Committee Note to Rule 704. (The Advisory Committee Notes cannot be amended without a modification to the Rule itself.) Therefore, the Subcommittee recommended approval of a new Section 7004(i) clarifying that service can be made under Rule 7004(b)(3) or Rule 7004(h) by position or title rather than specific name and, if the recipient is named, that the name need not be correct if service is made to the proper address and position or title.

Judge Goldgar expressed the view that it is not difficult to find out the actual name of the officer or director, and he is therefore ambivalent about the proposed amendment. He also suggested that Rule 7004(i) seems to be a rule interpreting another rule, acting like a Committee Note. Professor Gibson stated that she sees this as comparable to FRAP 3(c). Dan Coquillette said that he understands the concern, but agrees with Professor Gibson. Judge Donald also said

that it is not always so easy to find the name of the officer or director, especially for pro bono filers, and supports the proposed rule.

The Advisory Committee approved the amendments to Rule 7004 and committee note and directed that they be submitted to the Standing Committee for publication.

(C) Recommended Rule amendments to implement the Small Business Reorganization Act of 2019

Professor Gibson provided the report. The interim rules that the Advisory Committee issued in response to the enactment of the Small Business Reorganization Act of 2019 ("SBRA") took effect as local rules or standing orders on February 19, 2020, the effective date of SBRA. Now the Advisory Committee will begin the process of promulgating national rules governing cases under subchapter V of chapter 11. The first step in that process is to seek publication of the amended and new rules for comment this summer, along with the SBRA form amendments. The Subcommittee was asked to make a recommendation to the Advisory Committee regarding any changes or additions that are needed to the interim rules for which publication will be sought.

Because the interim rules just recently went into effect, there is little experience with them so far. As a result, the only suggested changes the Subcommittee is aware of are a few stylistic changes to Rules 3017.2 and 3019 suggested by the style consultants. The Subcommittee accepted the stylistic changes to Rule 3017.2, but concluded that stylistic changes to Rule 3019 should await the restyling process.

The Advisory Committee recommended that the Standing Committee order publication of the SBRA rules.

Ramona Elliot provided data on small business filings since SBRA; filings are at twice the rate before SBRA, and 75% of those filing are electing subchapter V treatment. Things are operating as they should to this point.

(D) Proposed amendments to Rules 3007 and 7007.1

Professor Gibson provided the report. Amendments to Rules 3007(a)(2) (manner of service for objection to claims of an insured depository institution) and 7007.1 (disclosure requirements for recusal purposes) were published for public comment in August. Other than a general statement of support for the amendment to Rule 3007 by the National Conference of Bankruptcy Judges ("NCBJ"), no comments were submitted regarding that rule. The NCBJ also expressed general support for the amendments to Rule 7007.1, but in addition it suggested one

change, as did another commenter. The comment of the other commentator will be addressed in the restyling process. The change suggested by the NCBJ was to retain the terminology "corporate ownership statement" because "disclosure statement" is a bankruptcy term of art with a different meaning and for consistency with references in other rules. The Subcommittee agreed with that change.

The Advisory Committee gave final approval to Rule 3007 as published, and to Rule 7007.1 with the change suggested by the NCBJ.

(E) Proposed amendments to Rule 9036

Professor Gibson provided the report. For several years, this Subcommittee has been considering possible amendments to the Bankruptcy Rules to increase the use of electronic noticing and service in the bankruptcy courts. One set of amendments to Rule 9036 (Notice and Service Generally) went into effect on December 1, 2019. Proposed amendments to Rule 2002(g) and Official Form 410 that were published along with the 2019 amendments to Rule 9036—authorizing creditors to designate an email address on their proofs of claim for receipt of notices and service—were held in abeyance by the Advisory Committee for further consideration by the Subcommittee. Most recently, additional amendments to Rule 9036 were published for public comment last August.

The published amendments to Rule 9036 would encourage the use of electronic noticing and service in several ways. The rule would recognize a court's authority to provide notice or make service through the Bankruptcy Noticing Center ("BNC") to entities that currently receive a high volume of paper notices from the bankruptcy courts. In anticipation of the simultaneous amendments of Rule 2002(g) and Official Form 410, it would also allow courts and parties to serve or provide notice to a creditor at an email address designated on its proof of claim. And it would provide a set of priorities for electronic noticing and service in situations in which a recipient had provided more than one electronic address to the courts.

Seven sets of comments were submitted regarding the proposed amendments to Rule 9036. Most of them were from clerks of court or their staff, and they expressed several concerns about the proposed amendments to Rule 9036, as well as to the earlier published amendments to Rule 2002(g) and Official Form 410.

The Subcommittee noted that there was enthusiastic support for the program to encourage high-volume paper-notice recipients to register for electronic bankruptcy noticing. No comments expressed opposition to it or concerns about it. The Subcommittee also recognized, however, that many clerks expressed opposition to several other aspects of the proposed Rule 9036

amendments. The concerns fell into 3 categories: clerk monitoring of email bounce-backs; administrative burden of a proof-of-claim opt-in for email noticing and service; and the interplay of the proposed amendments to Rules 2002(g) and 9036.

In response to the concerns about clerk monitoring of email bounce-backs, the Subcommittee added a sentence to Rule 9036(d): "It is the recipient's responsibility to keep its electronic address current with the clerk."

Because of the comments expressed about the administrative burden of a proof-of-claim opt-in, the Subcommittee decided that the proof-of-claim check-box option should not be pursued. Deciding not to go forward with the proposed amendments to Rule 2002(g) and Official Form 410, and deleting references to that option in Rule 9036, would allow the courts to receive the benefits of the high-volume paper-notice program, which is anticipated to result in significant savings to the judiciary, without imposing what many clerks perceive as an undue burden on them of having to review proofs of claim for email addresses. It is anticipated that future improvements to CM/ECF will allow the entry of email addresses in a way that will be accessible to parties as well as to those within the court system. Language proposed by the Subcommittee in Rule 9036(b)(2) would allow for that future possibility.

The concern about the interplay of the proposed amendments to Rules 2002(g) and 9036 will disappear if the Subcommittee's recommendation not to go forward with the proposed amendments to Rule 2002(g) and Official Form 410 is accepted, because amended Rule 9036 by itself will make the use of electronic noticing and service optional.

Ken Gardner endorsed the Subcommittee's recommendation.

The Advisory Committee gave final approval to the proposed amendments to Rule 9036 as presented and decided to take no further action on the previously published amendments to Rule 2002(g) and Official Form 410.

(F) Consideration of Rule and Form Revisions under CARES Act

Professor Gibson and Professor Bartell presented the report. On March 27, 2020, President Trump signed the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"), which made several changes to the Bankruptcy Code, most of them temporary, to provide financial assistance during the coronavirus crisis.

The CARES Act modifies the definition of "debtor" for determining eligibility to proceed under subchapter V of chapter 11. Previously, § 1182(1) defined "debtor" under subchapter V as

"a small business debtor." Under the CARES Act, § 1182(1) was amended to include a separate definition for "debtor" for subchapter V purposes. The definition of "debtor" in § 1182(1) will revert to its prior version one year after the effective date of the CARES Act.

For the next year there are three categories of debtors – (1) debtors that do not satisfy the requirements for "small business debtor" or "debtor" under subchapter V; (2) debtors that satisfy the requirements for "small business debtor" who do not elect to proceed under subchapter V; and (3) "debtors" who meet the requirements for subchapter V and elect to employ those procedures.

In existing Form 101, line 13 asks the debtor whether he or she intends to file under chapter 11, whether he or she is a small business debtor, and if so whether he or she intends to elect treatment under subchapter V of chapter 11. This line must be amended to ask not only whether the individual debtor is a small business debtor, but also whether he or she is a debtor as defined in § 1182(1) and whether he or she wishes to proceed under subchapter V.

In existing Form 201, line 8, if the debtor files under chapter 11 the debtor is asked to check a box (if applicable) to confirm its aggregate debts are less than the $ 2,725,625 figure in the definition of "small business debtor." The debtor is also asked to check a box if the debtor is a small business debtor, and a separate box if the debtor is a small business debtor and wishes to elect subchapter V treatment. Because of the amended definition of "debtor" in § 1182(1), line 8 must be modified to permit the debtor to confirm that its aggregate debts are less than $7,500,000 (the figure in the definition of "debtor" in § 1182(1)) and elects subchapter V treatment. The proposed amendments provide more language explaining the elections (which was modified during the meeting) and modify the elections to permit disclosure of whether the debtor is a "debtor" within the meaning of § 1182(1) and elects subchapter V treatment.

Ramona Elliot asked whether the form itself should disclose the time limit on the provisions. Scott Myers stated that the revised form would be withdrawn after the one-year period so it will not be misleading. In addition, there is a notation in the committee note that the legislation sunsets in one year.

Rule 1020 provides procedural rules for "small business chapter 11 reorganization cases." Because of the revised definition of "debtor" for purposes of subchapter V elections, it is proposed that the rule be amended to include separate references to a "debtor as defined in § 1182(1)" whenever the rule previously mentioned a "small business debtor."

The CARES Act also amends the definition of "current monthly income" in § 101(10A)(B)(ii) to add a new exclusion from the computation of "current monthly income" for

‘‘(V) Payments made under Federal law relating to the national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 et seq.) with respect to the coronavirus disease 2019 (COVID–19).’’ An identical exclusion was inserted in § 1325(b)(2) for computing disposable income. As a result, Forms 122A-1 (chapter 7 statement of current monthly income), 122B (chapter 11 statement of current monthly income), and 122C-1 (chapter 13 statement of current monthly income) must be amended to insert the same exclusion in line 10 of each of the proposed amended forms. These amendments have a duration of one year after the effective date of the CARES Act, at which time the Forms will revert to their former versions.

Because the CARES Act is immediately effective, the Advisory Committee exercised its delegated authority to make confirming changes to the Official Forms and approved the proposed amendments to Official Forms 101, 201, 122A-1, 122B, and 122C-1, subject to subsequent approval by the Standing Committee and notice to the Judicial Conference.

The Advisory Committee approved the amendments to Rule 1020 and will seek the approval of the Standing Committee and the Judicial Conference by electronic vote to issue the amended rule as an interim rule to be implemented by each district as a local rule or standing order. Because of the immediate effective date of the CARES Act, the limited duration of its bankruptcy provisions, and relatively minor nature of the amendments, the Advisory Committee concluded that the interim rule should be issued without publication.

Judge Campbell described the background of the language in the CARES Act asking the Judicial Conference to consider whether there should be rules that are applicable in a national emergency. The CARES Act includes the following provision:

(6) NATIONAL EMERGENCIES GENERALLY.—The Judicial Conference of the United States and the Supreme Court of the United States shall consider rule amendments under chapter 131 of title 28, United States Code (commonly known as the ‘‘Rules Enabling Act’’), that address emergency measures that may be taken by the Federal courts when the President declares a national emergency under the National Emergencies Act (50 U.S.C. 1601 et seq.).

The Rules Committee chairs are being asked to establish subcommittees to identify rules that might be affected in national emergencies and consider what should be done to those rules in such a situation. They are to report to the full Advisory Committee in the fall, and approve any emergency rules for publication the next year. Such rules would become effective at the end of 2023. Judge Campbell does not know whether any emergency procedures need to be built into the bankruptcy rules.

Judge Dow said he intended to appoint a special subcommittee to address these issues and invited members of the Advisory Committee who would be interested in serving on that subcommittee to let him know.

6. Report by the Consumer Subcommittee

(A) Proposed amendments to Rule 2005

Professor Bartell presented the report. Judge Brian Fenimore of the Western District of Missouri brought to the attention of Judge Dennis R. Dow that Federal Rules of Bankruptcy Procedure 2005(c) (dealing with conditions for release) contains references to repealed provisions of the Criminal Code, 18 U.S.C. §§ 3146(a) and (b). The topic of conditions is in 18 U.S.C. § 3142. Although much of Section 3142 is completely inapplicable to the subject of Federal Rule of Bankruptcy Procedure 2005(c) (conditions designed to assure attendance for examination or appearance before the court), the easiest technical fix is that suggested by Judge Fenimore, which is simply replacing the reference to "§ 3146(a) and (b)" in Rule 2005(c) with a reference to "§ 3142."

The Subcommittee recommended that change to the Advisory Committee at its spring meeting to be approved without publication. Although the Advisory Committee agreed with that recommendation, the Standing Committee decided to insert the word "relevant" before the word "provisions" and to publish the proposed modifications to the rule.

The only mention of the proposed change in the comments was a supportive statement from the National Conference of Bankruptcy Judges.

The Advisory Committee gave final approval to the amended Rule 2005(c) and accompanying committee note as published.

(B) Proposed amendments to Rule 3002.1

Professor Gibson provided the report. As was discussed at the spring and fall 2019 meetings, the Advisory Committee has received suggestions 18-BK-G and 18-BK-H from the National Association of Chapter Thirteen Trustees and the American Bankruptcy Institute's Commission on Consumer Bankruptcy regarding amendments to Rule 3002.1 (Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence).

Judge Goldgar appointed a working group to review the suggestions and make a recommendation to the Subcommittee. The Subcommittee began its consideration of the

proposed amendments last summer by reviewing a draft presented by a working group of the Subcommittee. During its most recent conference call, the Subcommittee began reviewing an alternative draft presented by Subcommittee member Deb Miller, along with drafts of implementing forms. The alternative draft would simplify the mid-case review of the status of the mortgage, an approach that has been endorsed by several of members of the groups that made the original suggestions. The Subcommittee plans to continue its review of the proposed amendments and forms, and it hopes to have drafts to present to the Advisory Committee for discussion at the fall meeting.

(C) Proposed amendments to Rule 3002(c)(6)(A)

Professor Bartell provided the report. The Advisory Committee received a suggestion from George Weiss of Potomac, MD, 19-BK-F, with respect to Fed. R. Bankr. P. 3002(c)(6)(A). Rule 3002 requires creditors to file proofs of claim for their claims to be allowed, and specifies, in Rule 3002(c), the deadline for filing those proofs of claim in cases filed under chapter 7, 12 and 13. Rule 3002(c) then provides certain exceptions, including for domestic creditors, in clause (6)(A), when "the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim because the debtor failed to timely file the list of creditors' names and addresses required by Rule 1007(a)." Mr. Weiss noted that this would not permit an extension of the deadline for creditors who actually did not get notice either because they were omitted from the matrix or were listed with an improper address.

The most recent amendments to Rule 3002(c) were made in connection with the adoption of the national chapter 13 plan, and were published twice, in 2013 and 2014. There were extensive comments on the amendments, many of which made the same point that Mr. Weiss is making now. There is no indication that these comments were considered by the Advisory Committee at the time, probably because of the volume of comments on the national chapter 13 plan.

At its meeting in September 2019, the Advisory Committee referred the suggestion to the Subcommittee to make a recommendation on the appropriate amendment to the Rule to address the problem. The Subcommittee recommended that the Rule be amended to allow an extension of time to file proofs of claim for both domestic creditors and foreign creditors if "the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim." That is the standard now applicable to foreign creditors under Rule 3002(c)(6)(B)). The Subcommittee endorsed this amendment because it provides a uniform standard for all creditors and gives bankruptcy judges maximum discretion.

David Hubbert noted that there may be concern about the interplay between Rule 3002(c)(1) and the amended Rule 3002(c)(6). The Advisory Committee decided that this is a separate issue and can await future developments.

The Advisory Committee approved the proposed amendments to Rule 3002(c)(6) and committee note for submission to the Standing Committee for publication.

7. Report by the Forms Subcommittee

(A) SBRA forms for publication

Professor Gibson provided the report. The new and amended forms that the Advisory Committee promulgated in response to the enactment of the Small Business Reorganization Act ("SBRA") took effect on February 19, the effective date of the Act. Unlike the interim SBRA rules, the forms were officially issued under the Advisory Committee's delegated authority to make conforming and technical amendments to Official Forms, subject to subsequent approval by the Standing Committee and notice to the Judicial Conference. Nevertheless, the Advisory Committee has committed to publishing them for comment this summer, along with the SBRA rule amendments, in order to ensure that the public has a thorough opportunity to review them.

The Subcommittee considered whether any changes or additions are needed to the forms that will be published, and it recommends that they be published as they now appear, along with a minor amendment to an additional form.

A staff member at the Administrative Office of the Courts has pointed out the need to add an exception to the instructions set out at the beginning of Official Form 122B (Chapter 11 Statement of Your Current Monthly Income). It currently begins, "You must file this form if you are an individual and are filing for bankruptcy under Chapter 11." That statement is incorrect for individuals filing under subchapter V of chapter 11. The Subcommittee proposes that the first sentence of those instructions be amended as follows: "You must file this form if you are an individual and are filing for bankruptcy under Chapter 11 (other than under subchapter V)."

The Advisory Committee agreed to seek the publication of the amended Official Form 122B and Official Forms 101, 201, 309E1, 309E2, 309F1, 309F2, 314, 315, and 425.

(B) Proposed conforming amendments to Official Form 417A (Notice of Appeal and Statement of Election)

Professor Gibson provided the report. The Subcommittee was asked to recommend to the Advisory Committee whether to propose amendments to Official Form 417A that conform to amendments to Appellate Form 1 (Notice of Appeal) that have been proposed by the Advisory Committee on Appellate Rules and published for public comment. At the fall 2019 meeting of the Advisory Committee on Bankruptcy Rules, this Subcommittee and the Subcommittee on Privacy, Public Access, and Appeals ("Appeals Subcommittee") jointly reported that they had some doubts about whether conforming amendments to Form 417A and Rule 8003 were necessary and that they wanted to consider any comments received on the amendments to FRAP 3(c) and Appellate Form 1 before making a recommendation regarding the bankruptcy rule and form.

As is explained in the Appeals Subcommittee's report, that Subcommittee voted to await further actions on the FRAP amendments before making a recommendation about possible conforming amendments to Rule 8003. This Subcommittee decided that it should follow the lead of the Appeals Subcommittee and hold off on making a recommendation about amendments to Official Form 417A. That approach will allow both subcommittees to know exactly what the Appellate and Standing Committees approve regarding FRAP 3(c) and Appellate Form 1 and to carefully consider the amendments' fitness for bankruptcy appeals. Joint conference calls of the two subcommittees before the fall meeting will be arranged for this purpose.

(C) Discharge orders for Subchapter V cases

Professor Gibson provided the report. The Bankruptcy Clerks' Advisory Group has suggested that it would be helpful to have one or more form orders of discharge for subchapter V cases. Currently the only chapter 11 discharge form is for individual debtors (Director's Form 3180RI). While it can be adapted for subchapter V cases, it is not appropriate in its entirety for those cases because the scope of discharge differs. As with the other discharge-order forms, forms that are adopted for subchapter V cases should be Director's Forms in order to allow individual courts flexibility in using them. Issuing Director's Forms will also expedite implementation since they will only have to be reviewed by the Advisory Committee, rather than going through the approval process for Official Forms issued by the Judicial Conference.

The Subcommittee recommended the approval of three forms. One is for an individual case in which confirmation is consensual under § 1191(a). In those cases, discharge is governed by § 1141(d)(1)-(4). If, however, the plan is confirmed nonconsensually under § 1191(b), § 1192 governs the discharge. Two different forms are proposed for that situation, one for individuals and another for corporations and partnerships.

The Advisory Committee gave final approval to the proposed three Director's Forms.

8. Report by the Restyling Subcommittee

Judge Marcia Krieger, chair of the Subcommittee, and Professor Bartell provided the report. Judge Krieger began with an expression of gratitude to Judge Campbell for his leadership in this area, and to those staff members at the Administrative Office who assisted with the programs to facilitate the process. She also thanked the style consultants for their contributions. She provided a general overview of the restyling process.

Judge Krieger then described the basic principles followed by the Subcommittee in the restyling process: make no substantive changes, respect defined terms, preserve terms of art, remain open to new ideas, and defer on matters of pure style.

Professor Bartell highlighted the area in which the Subcommittee had disagreements with the style consultants – the desire of the style consultants to restyle terms that are defined in the Bankruptcy Code, the differing views on terms of art, and the language of Rule 2002(n) (currently designated as Rule 2002(o)) that was enacted directly by Congress in the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. 98-353, 98 Stat. 357, rather than issued by the Supreme Court through the bankruptcy version of the Rules Enabling Act, 28 U.S.C. § 2075. The style consultants were invited to explain their position with respect to those issues and Bryan Garner and Joe Kimble both spoke, supporting their view that restyling defined terms and terms of art and Congressional language was desirable.

Judge Campbell expressed concern about Congressional sensitivity about modifications to something Congress has done. If a change were made in legislative language, it would have to be highlighted in every communication with respect to the restyled rules.

David Skeel said that he agrees with the reporters on the position the Subcommittee took with respect to defined terms. Tom Mayer agreed. Judge Goldgar said that the rules have to function with the Code, and he is not prepared to differ from the statute. Catherine Struve said that search functionality on electronic legal research programs will change with compound words. The Advisory Committee voted to support the position of the Subcommittee and not restyle defined terms.

The Advisory Committee discussed the use of terms of art, such as "property of the estate" and "meeting of creditors." The Advisory Committee agreed with the Subcommittee that these terms "should not be changed to "estate property" and "creditors' committee" and that other potential terms of art will be considered one by one, in context.

The Advisory Committee then turned to the language of Rule 2002(n). Judge Dow expressed the view that we should restyle the provision, as long as we do not change the substance. Judge Goldgar expressed the contrary view. Upon a vote, the Advisory Committee concluded that it would not change Rule 2002(n) from the language enacted by Congress.

The Subcommittee presented to the Advisory Committee for approval and publication Parts I and II of the restyled Federal Rules of Bankruptcy Procedure and the proposed committee note. Professor Bartell then asked the Advisory Committee for comments as to specific changes made during the process and an identification of any mistakes or substantive changes that the Subcommittee may have missed. The Advisory Committee made comments on various sections of the restyled rules and the committee note.

The Advisory Committee approved the restyled rules in Parts I and II and the committee note as amended at the meeting and recommended they be forwarded to the Standing Committee for publication for comment.

9. Future meetings

The fall 2020 meeting will be in Washington, D.C. on September 22, 2020.

10. New Business

There was no new business.

11. Adjournment

The meeting was adjourned at 5:10 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 suggestions 19-BK-I and 19-BK-K with respect to DSO Certification for Deceased Debtor