ADVISORY COMMITTEE ON BANKRUPTCY RULES
Meeting of April 8-9, 2021
Held Remotely by Conference Call and Microsoft Teams

The following members attended the meeting:

Bankruptcy Judge Dennis R. Dow, Chair
Circuit Judge Thomas L. Ambro
Bankruptcy Judge Rebecca Buehler Connelly
Circuit Judge Bernice Bouie Donald
Bankruptcy Judge Melvin S. Hoffman
David A. Hubbert, Department of Justice
Bankruptcy Judge Catherine Peek McEwen
Debra L. Miller, Esq.
District Judge J. Paul Oetken
Jeremy L. Retherford, Esq.
Damian S. Schaible, Esq.
Professor David A. Skeel
Tara Twomey, Esq.
District Judge George H. Wu

The following persons also attended the meeting:

Professor S. Elizabeth Gibson, reporter
Professor Laura B. Bartell, associate reporter
District Judge John D. Bates, Chair of the Committee on Rules of Practice and Procedure (the Standing Committee)
Professor Daniel R. Coquillette, consultant to the Standing Committee
Professor Catherine T. Struve, reporter to the Standing Committee
Professor Daniel J. Capra, liaison to the Emergency Rules Subcommittee
Bankruptcy Judge A. Benjamin Goldgar as liaison to the Restyling Subcommittee
Circuit Judge William J. Kayatta, Jr., liaison from the Standing Committee
Ramona D. Elliott, Esq., Deputy Director/General Counsel, Executive Office for U.S. Trustees
Kenneth S. Gardner, Clerk, U.S. Bankruptcy Court for the District of Colorado
Brittany Bunting, Administrative Office
Bridget M. Healy, Esq., Administrative Office
S. Scott Myers, Esq., Administrative Office
Julie Wilson, Esq., Administrative Office
Shelly Cox, Administrative Office
David A. Levine, Administrative Office

Dana Yankowitz Elliott, Administrative Office
Daniel J. Isaacs-Smith, Administrative Office
Kevin Crenny, Rules Law Clerk
Molly T. Johnson, Federal Judicial Center
Nancy Whaley, National Association of Chapter 13 Trustees
John Hawkinson, freelance journalist
Sai, pro se litigant
Teri E. Johnson, attorney
Connor D. McMullan, attorney
S. Kenneth Lee, Federal Judicial Center
District Judge Laurel M. Isicoff

Discussion Agenda

1. **Greetings and introductions**

Judge Dennis Dow welcomed the group and thanked them for joining this meeting remotely. He first discussed logistical matters for the remote meeting. He thanked outgoing member of the Advisory Committee, Judge Melvin Hoffman, and introduced the new members, Judge Rebecca Buehler Connelly, Judge Catherine Peek McEwen, Damian S. Schaible, Esq. and Tara Twomey, Esq.

2. **Approval of minutes of remote meeting held on Sept. 22, 2020.**

The minutes were approved by motion and vote after a correction in the name and title of Dana Elliott.

3. **Oral reports on meetings of other committees**

(A) ***Jan. 5, 2021 Standing Committee meeting***

Judge Dow gave the report.

(1) **Joint Committee Business**.

(a) ***Emergency Rules.*** Section 15002(b)(6) of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") , Pub. L. 116-136, which required that "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.)." Each of the Advisory Committees for the Civil, Criminal, Appellate and Bankruptcy Rules participated in a discussion before the Standing Committee about the efforts to develop a relatively uniform version of an emergency rule. Professor Dan Capra provided a side-by-side comparison of the rules and discussed the outstanding differences between them. The Standing Committee provided its reactions to those outstanding issues.

(2) **Bankruptcy Committee Business**.

The Advisory Committee presented for retroactive approval amendments to Official Forms 309A-I to make a technical amendment with respect to the new web address of PACER. The Standing Committee gave retroactive approval to those amendments and undertook to inform the Judicial Conference.

The Advisory Committee also presented for publication proposed amendments to (1) Rule 3011 (Unclaimed Funds in Chapter 7 Liquidation, Chapter 12 Family Farmer's Debt Adjustment, and Chapter 13 Individual's Debt Adjustment Cases); (2) Rule 8003 (Appeal as of Right – How Taken; Docketing the Appeal); and (3) Official Form 417A (Notice of Appeal and Statement of Election). The Standing Committee voted to publish those rules and form.

Judge Dow also reported to the Standing Committee on the approval of a change in the instructions for Official Form 410A (Proof of Claim, Attachment A) and on the status of the restyling project.

(B) ***April 7, 2021 Meeting of the Advisory Committee on Appellate Rules***

Judge Donald made the report. The Appellate Committee met April 7, 2021. It approved amendments to Appellate Rule 42 (Voluntary Dismissal) and 25 (Filing and Service) which were published for public comment in August 2020. Bankruptcy Rule 8023 is being amended to conform to amended Appellate Rule 42(b). Appellate Rule 25(a)(5) is being amended to make applicable provisions on remote access in Civil Rule 5.2(c)(1) and (2), and the Appellate Committee examined the rule to ensure that it was consistent with other rules. There was discussion of amicus briefs and what should be disclosed, and the Appellate Committee will return to that issue in the future. The Appellate Committee approved for publication amendments to Appellate Rules 35 and 40 dealing with hearings and rehearing en banc and panel rehearing, which will fold them into a single Rule 40.

The next meeting of the Appellate Committee is Oct. 7, 2021.

Professor Struve mentioned that the Appellate Committee is amending Rule 4(a)(4)(A)(vi) to contemplate the applicability of the new emergency rule to extensions of Civil Rule 51/52/59/60 motions. She asked if Bankruptcy Rule 8002(b)(1) should be amended in a parallel way.

(C) ***October 16, 2020 Meeting of the Advisory Committee on Civil Rules***

Judge Goldgar provided a report on the Oct. 16, 2020 meeting. The meeting was conducted virtually because of the COVID-19 health emergency.

1. CARES Act – Rules Emergency. The subcommittee addressing Rule 87, the rules emergency proposal, reported on its work. Prof. Capra made a cameo appearance and described the proposals from the different advisory committees. Some uncertainty was expressed about (1) whether Rule 87 was needed, given its limited scope and the flexibility of the civil rules (which have worked well during the pandemic, members said); and (2) when Rule 87 should be published if indeed it is needed. Despite these uncertainties, it appears the Committee at least intends to send the proposed rule to the Standing Committee.

2. Appeal Finality after Consolidation. The joint subcommittee that has been addressing whether rules amendments are necessary to address the effects of *Hall v. Hall*, 138 S. Ct. 1118 (2018), reported on its work. The subcommittee had asked the FJC to study whether *Hall* was causing problems that might warrant amendments. The FJC completed its work and found no problems, but its investigation only covered actions filed between 2015 and 2017. The subcommittee is considering whether data might be gathered in other ways, either informally from the courts of appeals or from bar groups. Since there appears to be no immediate need for rule-making, no decision has been made on a possible amendment.

3. Rule 17(d) – Official Capacity. The Civil Committee has been studying a proposed amendment that would require a public officer who sues or is sued in the officer's official capacity to be designated by official title rather than by name. (The current rule is permissive rather than mandatory.) The Department of Justice expressed its opposition to the amendment, and the sense was that the current rule works satisfactorily. The item was removed from the agenda.

4. Rule 5(d)(3) – E-filing by Unrepresented Litigants. Rule 5(d)(3) currently allows pro se litigants to file electronically only if a court order or local rule permits. The proposal is to allow all pro se litigants to file electronically. The Committee is continuing to gather information and study the question.

Judge Dow commented that the Bankruptcy Advisory Committee is very interested in the issue of electronic filing.

5. IFP Disclosures. The Committee considered a suggestion to change the IFP forms to require only the party seeking IFP status to disclose financial information. The forms currently require information not only about the party's own finances but also finances of the party's spouse, and

the suggestion said that raised privacy concerns. The Committee concluded that since these are Administrative Office forms, the decision on changing them is up to the AO. There was no action for the Committee to take.

6. E-Filing Deadline. A joint subcommittee continues to consider whether the e-filing deadline should be moved from midnight to the time when the clerk's office closes. The Federal Judicial Center is still examining the issue.

7. Rule 9(b). The Committee considered as an information item a suggestion from Dean Spencer (William & Mary) to amend Rule 9(b). The amendment would change the sentence that allows state of mind to be pled "generally" by deleting that word and saying instead that state of mind may be pled "without setting forth the facts or circumstances from which the condition may be inferred." The goal is to undo the portion of the Supreme Court's *Iqbal* decision holding that although mental state need not be alleged "with particularity," the allegation must still satisfy Rule 8(a)) – meaning some facts must be pled. Spencer's view is set out at length in a Cardozo Law Review article.

This is a question of serious interest to the Bankruptcy Advisory Committee. Rule 9(b) comes up often in bankruptcy because section 523(a)(2)(A) is one of the most commonly invoked exceptions to discharge. Judge Goldgar also said that he was a fan of *Iqbal*. Many creditors having contract claims bring adversary proceedings under section 523(a)(2)(A), contorting their claims into fraud claims and alleging intent only as a conclusion. *Iqbal* allows a judge to dispose of those quickly. The Bankruptcy Advisory Committee will want to watch this proposed amendment closely and consider weighing in when the time comes.

8. Privilege Logs – Rules 26(b)(5)(A) and 45(e)(2). The Committee considered as an information item a proposal to amend Rules 26(b)(5)(A) and 45(e)(2). The amendments would require parties to add specific details about materials withheld from production on privilege grounds. Prof. Cooper expressed skepticism about the proposal, saying it was unclear an amendment would solve the problem. But the lawyer members of the Committee countered that the problem was a serious one. The Committee concluded that the proposal warranted further study. Since these rules apply in bankruptcy, and since privilege problems also arise in bankruptcy cases, we will want to keep an eye on this one as well.

9. Sealing Court Records. The Committee considered as an information item a proposal from Prof. Volokh on behalf of the Reporters Committee for Freedom of the Press for a national rule on sealing court records**.** The rule would override local practices and rules. The matter was continued for further discussion. Another one we will want to watch.

10. Rule 15(a). The Committee took up a proposal to change the word "within" in Rule 15(a)(1) to "no later than." The change, Prof. Cooper said, would avoid an apparent gap that results from a literal, "if not common-sense," reading of the rule. The Committee found the amendment both sensible and innocuous and will move ahead with it.

Judge Catherine Peeks McEwen provided the report on the agenda for the next Civil Rules Committee to be held virtually on April 23, 2021. The Civil Committee will be looking at

suggestions regarding Rule 4(f)(2) on Hague Convention service, Rule 65(e)(2) on preliminary injunctions in interpleader actions, Rules 6 and 60 on times for filing, and will be revisiting in forma pauperis standards.

(D) ***Dec. 8-9, 2020 meeting of the Committee on the Administration of the Bankruptcy System (the "Bankruptcy Committee")***

Judge Isicoff provided the report.

The Bankruptcy Committee met by videoconference on Dec. 8-9, 2020. The next meeting is June 22-23, 2021. Before the last meeting, the Committee took action to address the impact of the COVID-19 pandemic on the bankruptcy system. Following the enactment in March 2020 of the CARES Act, and based on the possibility at the time that Congress might quickly move forward with further legislation in response to COVID-19, the Bankruptcy Committee recommended a legislative proposal that was included in the judiciary's package of legislative proposals transmitted to Congress in April 2020.

That proposal would authorize bankruptcy courts to extend statutory deadlines and toll statutory time periods under title 11 and chapter 6 of title 28 of the United States Code during the COVID-19 national emergency, upon a finding that the emergency conditions materially affect the functioning of a particular bankruptcy court of the United States. The authorization would expire 30 days after the date that the COVID-19 national emergency declaration terminates, or upon a finding that emergency conditions no longer materially affect the functioning of the particular bankruptcy court, whichever is earlier. Unfortunately, since the legislative proposal was transmitted to Congress in April, Congress has taken no action on it and it has not been included in any of the COVID-19 stimulus legislation introduced to date.

The Bankruptcy Committee recommended that the legislative proposal be withdrawn because of the existence of the local emergency rules that have been enacted in the meantime, and the fact that the legislation might call these into question. The Judicial Conference withdrew the legislation.

The Bankruptcy Committee is considering whether to recommend a permanent grant of authority during an ongoing emergency, which could enable bankruptcy courts to respond more quickly to future emergency or major disaster declarations. The Committee deferred making any recommendation until the COVID-19 emergency has subsided or ended and courts have resumed normal operations, and to evaluate the potential impact of any Bankruptcy Rule changes under consideration by the Bankruptcy Rules Committee that would impact or overlap with the proposal. As drafted, the permanent grant of authority under consideration would not extend to the Bankruptcy Rules.

The Bankruptcy Committee was grateful for the work of the Advisory Committee on Rule 3011 dealing with unclaimed funds.

The Bankruptcy Committee, jointly with CACM, decided not to pursue a proposal to allow parties to access the BNC electronic data base of addresses for service of process and notice.

Subcommittee Reports and Other Action Items

4. **Report of the Emergency Rule Subcommittee**

Judge Hoffman and Professor Gibson provided the report. The Subcommittee has been working in response to the directive of Section 15002(b)(6) of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") , Pub. L. 116-136, which required that "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.)." At the direction of the Standing Committee, the Advisory Committees on Civil Rules, Criminal Rules, Appellate Rules and Bankruptcy Rules, working through Dan Capra who was appointed by the Standing Committee to be the liaison to the Advisory Committees on this issue, worked to prepare their own emergency rules with the goal of achieving uniformity to the extent possible.

Initial drafts of a proposed Rule 9038 and the other proposed emergency rules were presented to the Standing Committee at its January meeting, and they were the subject to extensive discussions there. Although no formal votes were taken, the Standing Committee provided views on some of the key elements of the rules and Rule 9038 was revised accordingly. The Subcommittee worked to achieve as much uniformity as possible with the other Advisory Committees, and approved the revised rule and presented it to the Advisory Committee for approval and publication. Professor Gibson discussed some of the key elements of the rule.

(a) The biggest difference from the prior version reviewed by the Advisory Committee is with respect to who may declare a rules emergency. The Standing Committee indicated that they thought only the Judicial Conference of the United States should have the authority to declare an emergency, and the draft rule was therefore revised to follow the Civil and Criminal Rules model.

(b) A second issue was the standard for an emergency. The Subcommittee did not include the additional requirement – included in the Criminal emergency rule -- that there be no other feasible means of complying with the existing rules, and the Standing Committee indicated that the Criminal Rules could differ in that respect.

(c) The third change was the use of the word "court." The word "bankruptcy" was added before the word "court" throughout, to avoid using the Rule 9001-defined word "court."

(d) The Criminal Rules committee is proposing to remove the words "to modify the rules" in (b)(1)(B), and we may conform to that proposal because the rules are not really modified.

(e) In part (b)(4), all Committees now make termination permissive, not mandatory.

(f) Bankruptcy Rule, Part (c) is different from other sets of emergency rules, because unlike the other emergency rules the bankruptcy emergency rule only provides for an extension of time limits, and therefore it seems appropriate that it can be ordered on a district-wide level or by an individual judge. Circumstances can differ between districts, and the Judicial Conference likely does not want to be in the business of deciding what extensions should be adopted.

The style consultants have suggested modifications to (c)(1)(A) that removed one illustration of the types of actions that might be affected.

Professor Struve raised an issue regarding further extensions in (c)(4). She believes that as written the "good cause" requirement might be read to apply only to motions made by a party in interest and not to decisions by the judge sua sponte, and it should apply to both. She suggested revised text to make that clear.

(g) Professor Struve also suggested that the committee Note should address Subdivision (c)(5), and Professor Gibson agreed to draft a new paragraph for that purpose.

Judge Dow then opened the floor for discussion. Professor Capra said that the Bankruptcy Rules Committee has been very cooperative in this process.

Judge Bates congratulated the Subcommittee. He raised a question as to why bankruptcy was different with respect to (c) as to who decides what extensions should be granted. He also asked if an individual bankruptcy judge should be able to extend time limits even if the chief bankruptcy judge for the district has not made that decision for the entire district. Judge Dow said that this is indeed allowed and appropriate. That authority exists in most circumstances anyway. Prof. Capra said that this is not a declaration of the emergency, but just responding to it

– not a "rear-guard action" trying to move the authority to declare an emergency away from the Judicial Conference – and this should be made clear. Judge Hoffman stated that there are some bankruptcy cases involving large numbers of participants nationally (mega-cases) that are different from other cases in the district that therefore require unique treatment. That justifies giving the authority to particular bankruptcy judges. Judge Bates said that this is an area that just may require differences between the various emergency rules.

Judge Bates also suggested that line 45 should be "presiding judge" rather than "bankruptcy judge" like in line 59. Tara Twomey supported use of the term "presiding judge" because of the possibility of withdrawal of the reference.

Judge Isicoff supported using extra verbiage rather than the style consultants' suggestion of "take any other action" in subdivision (c)(1)(A). Judge Bates noted that the only eliminated language is "commence an action." Professor Gibson thought perhaps that language should be returned.

Judge McEwen pointed out that "court" is used in some places without "bankruptcy" before it. For district-wide determinations, what about divisions of the district? Could (c)(1) be amended to say in any district or division?

Judge Isicoff pointed out that when the entire S.D. Florida was shut down by a hurricane she was reversed when she tried to extend deadlines. She would support using all the language of (c)(1)(A).

Judge Kayatta asked why (c)(2) is different from (c)(4) in terms of good cause and notice and hearing. Professor Gibson says that changing the status quo may require more formality in (c)(4).

Judge Goldgar said that the rule only provides for the extension of deadlines. He fears that local districts might be held not to have the power to do anything else, like suspend local rules, by negative implication given that the rule does not address those actions. Judge Dow said that this rule is addressed only to matters for which the courts do not already have authority; it does not preclude other emergency actions. Professor Gibson pointed out the first paragraph of the Committee Note that should eliminate that worry. Professor Capra said that it was intended not to include in the emergency rules anything that was already flexible under the existing rules.

Professor Gibson said the elimination of "bankruptcy" before "court" came from the style consultants. As for "presiding judge" she assumed it was whoever was on the bench at the time.

Judge Dow identified the issues to be discussed:

1. (b)(1)(B) – delete the words "to modify the rules." The Advisory Committee agreed to deletion.

2. (c)(1)(A) -- add back "commence a proceeding" to all the various actions. The Advisory Committee agreed.

3. good cause requirement in (c)(4) – revise the language to read "the judge may do so only for good cause after notice and a hearing and only on the judge's own motion or motion of a party in interest or the United States trustee." The Advisory Committee agreed.

Professor Struve said that the judge does not need to have notice and a hearing for a sua sponte decision. She was concerned only about ambiguity. Judge Hoffman pointed out that "notice and a hearing" does not actually require a hearing. Judge Dow thought no alteration was required.

4. revision to committee note to reference (c)(5) – Advisory Committee approved.

Professor Struve asked how that note deals with the time for taking an appeal? Professor Gibson says that Rule 8002 deals with the time for appeal, so it is not a time limit set by statute. Judge Dow agreed. Professor Struve suggested mentioning it in the Committee Note. Judge McEwen thought that mentioning one and not others would be troubling. Professor Struve feared that a statute that mentions a rule might be deemed to make the rule unalterable. Judge Donald said that the fact we are discussing this issue suggests it should be addressed in the Committee Note. Judge Dow wants to avoid mentioning any specific examples. Professor Struve suggested defining what "imposed by statute" means in (c)(5). Professor Gibson will revise the Committee Note with these comments in mind.

5. (c)(1) caption and text – reference "district or division" instead of just district. Advisory Committee approved.

6. use of the term "a presiding judge" in (c)(2) instead of "any bankruptcy judge in the district" – Advisory Committee approved.

7. standards in (c)(2) v. (c)(4) – Judge Connelly suggested that good cause is appropriate in (c)(4) but not needed in (c)(2) because the circumstances are different. Judge Dow proposed that we leave the draft as is. Advisory Committee approved.

Judge Bates asked whether (c)(3) and (c)(4) should be reversed in order. Judge Connelly suggested leaving it as is, because the extension could come after the termination. Judge Dow agreed. The Advisory Committee decided to make no change.

Judge Dow inquired whether the Advisory Committee was concerned to the extent the Bankruptcy Rule is not uniform. No one expressed concern.

Professor Capra suggested that the Advisory Committee approve the rule for publication. It was agreed to send the revised draft and Committee Note around after the meeting and provide for an electronic vote next week to send the rule to the Standing Committee for publication in August.

The Advisory Committee subsequently voted by email to approve the draft for publication.

5. **Report by Appeals, Privacy, and Public Access Subcommittee**

(A) ***Comments on amendments to Bankruptcy Rule 8023 to conform to proposed amendments to FRAP 42(b)***

Judge Ambro introduced the issue and Professor Bartell provided the report. Proposed amendments to Bankruptcy Rule 8023 (Voluntary Dismissal) were published in August 2020 that would conform the rule to proposed amendments to Fed. R. App. P. 42(b) dealing with voluntary dismissals. The amendments are intended to clarify that a court order is required for any action other than a simple dismissal.

No comments were submitted in response to publication of the proposed amendments. The Advisory Committee approved the amended rule and recommended the amended rule to the Standing Committee for final approval.

6. **Report by the Business Subcommittee**

(A) ***Consider comments on SBRA Rules – Rules 1007, 1020, 2009, 2012, 2015, 3010, 3011, 3014, 3016, 3017.1, new Rule 3017.2, 3018, and 3019***

Professor Gibson provided the report. The interim rules that the Advisory Committee issued in response to the enactment of the Small Business Reorganization Act ("SBRA") took effect as local rules or standing orders on Feb. 19, 2020, the effective date of the SBRA. The amended and new rules were published for comment last summer, along with the SBRA form amendments. No comments were submitted in response to publication of the amendments to

Rules 1007, 1020, 2009, 2012, 2015, 3010, 3011, 3014, 3016, 3017.1, 3018, or 3019, or new Rule 3017.2. There was only one stylistic change from the existing interim rules.

Rule 1020 has subsequently been amended on an interim basis in response to the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") which took effect on March 27, 2020. The CARES Act modified provisions allowing more debtors to elect treatment under subchapter V of chapter 11, and necessitated amending Interim Rule 1020 to add references to the debtors allowed to elect such treatment under the CARES Act. Even after the extension of the CARES Act provisions to March 27, 2022 by the Bankruptcy Relief Extension Act of 2021, Pub. L. 117-5, 135 Stat. 249, the CARES Act amendments are anticipated to sunset before the amended Rule 1020 becomes effective Dec. 1, 2022. Therefore, the published version of Rule 1020 is the appropriate one for final approval.

Ramona Elliot suggested deleting the last line in the Committee Note to Rule 3019 which seems to be a mistake. Professor Gibson agreed.

With that change, the Advisory Committee approved the rules as published and directed they be submitted to the Standing Committee for final approval.

(B) ***Review comments on Rule 7004(i) addressing Suggestion 19-BK-D***

Professor Bartell provided the report. Amendments to Rule 7004 (Process; Service of Summons, Complaint) to add a new paragraph (i) were published in August 2020. The amendments would make clear that service under Rule 7004(b)(3) or Rule 7004(h) may be made on an officer, managing or general agent, or other agent by use of their titles rather than their names.

No comments were submitted in response to publication of the proposed amendments.

Judge McEwen suggested deleting the comma after "7004(b)(3)." The Advisory Committee agreed to do so.

Judge Wu asked whether the term "Agent" was sufficient as an addressee, as the Committee Note suggested. The Advisory Committee approved modifying the Committee Note to change "Agent" to "Agent for Receiving Service of Process." The Advisory Committee approved the amended rule and Committee Note and recommended it to the Standing Committee for final approval.

(C) ***Review comments on Rule 5005***

Professor Bartell provided the report. Amendments to Rule 5005 (Filing and Transmittal of Papers) were published in August 2020. The amendments allow transmission of papers required to be transmitted to the United States trustee to be done electronically, and eliminate the requirement for filing a verified statement for papers transmitted other than electronically.

The only comment submitted in response to publication was one that noted an error in the redlining of the published version, but recognized that the comment clarified the intended language.

The Advisory Committee approved the amended rule and recommended it to the Standing Committee for final approval.

7. **Report by the Consumer Subcommittee**

(A) ***Recommendation Concerning Suggestions 18-BK-G and 18-BK-H for amendments to Rule 3002.1***

Judge Connelly provided an introduction to the three items from the Subcommittee.

Professor Gibson provided the report. As was discussed at the last four Advisory Committee meetings, the Advisory Committee has received suggestions 18-BK-G and 18-BK-H from the National Association of Chapter Thirteen Trustees (NACTT) 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). These suggestions are intended to increase compliance with the rule and make sure the debtor and trustee get the appropriate information.

The Advisory Committee provided feedback on a preliminary draft at its meeting in September 2020, and after several further meetings, the Subcommittee prepared draft amendments for approval for publication. (The Forms Subcommittee prepared related forms for publication – discussed at 8(B)).

Professor Gibson described the proposed changes to Rule 3002.1, which are intended to accomplish two goals. First, they would provide a more straight-forward and familiar procedure for determining the status of a mortgage claim at the end of a chapter 13 case. Second, they would provide for a new midcase assessment of the mortgage claim's status in order to give the debtor an opportunity to cure any postpetition defaults that may have occurred.

Professor Gibson described the changes in the Rule. Subdivision (a) would be modified only to make it applicable to reverse mortgages that do not have regular payments made in installments.

Subdivision (b) is intended to provide the debtor and the trustee notice of any changes in the home mortgage payment amount during the course of a chapter 13 case so that the debtor can remain current on the mortgage. The two main changes to this subdivision are the addition of provisions about the effect of late payment change notices and detailed provisions about notice of payment changes for home equity lines of credit (HELOCs). Proposed subdivision (b)(2) would provide that late notices of a payment increase would not go into effect until the required notice period (at least 21 days) expires. There would be no delay, however, in the effective date of an untimely notice of a payment decrease.

Professor Struve questioned why the payment increase begins on the first due date that is at least 21 days after the date when the notice is filed as opposed to when it is served. Professor Gibson suggested adding the words "and served" after "is filed" on line 38 and line 61.

Professor Gibson described the new subdivision (b)(3) which would replace language added to the rule in 2018 and would provide that a HELOC claimant would only file annual payment change notices—which would include a reconciliation figure (net over- or underpayment for the past year)—unless the payment change in a single month was for more than $10. This provision, too, would ensure at least 21 days' notice before a payment change took effect.

There were mostly stylistic changes to Subdivision (c) and (d), many to conform to the changes made in the ongoing restyling project. Subdivision (e) now allows a party in interest to shorten the time for seeking a determination of the fees, expense, or charges owed.

Subdivisions (f) and (g) are new and implement a new midcase assessment of the status of the mortgage. The procedure would begin with the trustee providing notice of the status of the mortgage. An Official Form has been proposed for this purpose. The mortgage lender would then have to respond (subdivision (g)), again by using an Official Form to provide the required information. If the claim holder failed to respond, a party in interest could seek an order compelling a response. A party in interest could also object to the response. If an objection was made, the court would determine the status of the mortgage claim.

Subdivisions (h)–(j) provide for an assessment of the status of the mortgage at the end of a chapter 13 case—when the debtor has completed all payments under the plan. The procedure would be changed, however, from a notice to a motion procedure that would result in a binding order, and time periods for the trustee and claim holder to act would be lengthened. Under

subdivision (h), the trustee would begin the process by filing – within 45 days after the last plan payments was made – a motion to determine the status of the mortgage. Two Official Forms have been created for this purpose, one for cases in which the trustee made ongoing postpetition payments to the claim holder and one for cases in which the debtor made those payments directly to the claim holder. The claim holder would have to respond within 28 days after service of the motion, again using an Official Form to provide the required information (subdivision (i)). If the claim holder failed to respond, a party in interest could seek an order compelling a response, A party in interest could also object to the response. This process would end with a court order detailing the status of the mortgage (subdivision (j)). If the claim holder failed to respond to an order compelling a response, the court could enter an order stating that the debtor was current on the mortgage. If there was a response and no objection to it was made, the order could accept as accurate the amounts stated in the response. If there was both a response and an objection, the court would determine the status of the mortgage. Subdivision (j)(4) specifies the contents of the order.

Subdivision (k) was previously subdivision (i) and is the sanctions provision. The provision would be amended to clarify that the listed sanctions are authorized in addition to any other actions that the rule authorizes the court to take if the claim holder fails to provide notice or respond as required by the rule. Stylistic changes were also made.

Judge Dow opened the floor to comments from the Advisory Committee.

Deb Miller said that the mortgage holders were part of the group making these recommendations through NACTT and will not be surprised by the changes.

Judge Hoffman asked about the impact of the proposed rule on districts that have tremendous chapter 13 dockets, and whether those judges have had input. Deb Miller said that the motion described in the rule will probably not trigger an actual hearing on most cases, so it will not take a lot of court time. Although there may be an opportunity for a motion to compel, most parties will be satisfied with an order that the debtor is current.

Judge McEwen asked about the midterm report. What happens if the servicer does not respond? Does failure to respond to the midcase notice merely preclude them from bringing up evidence on something they should have revealed later in the case? Professor Gibson said that is correct, and perhaps the court could sanction the servicer for not responding if it wished to do so.

Judge McEwen also expressed concern about fees, and how to make sure the fees are reasonable. Deb Miller says that her office objects to fees under Section 330 of the Code. The amended rule did not change much with respect to fees and charges for that reason. Tara Twomey also said that the rule was not trying to change the underlying contractual provisions

relating to fees and charges. Judge Dow said that the court has authorization to consider reasonableness if the underlying contract required the fees and charges to be reasonable. Judge McEwen said she thought the court had inherent power to judge the reasonableness of the fees. Professor Gibson said that the fee language has not been changed from the existing rule.

Professor Gibson said that the style consultants have extensive comments on the rule, and the subcommittee will have to deal with those before this rule goes to the Standing Committee.

The Advisory Committee approved inserting the words "and served" in lines 38 and 61.

Judge Dow asked whether the midcase review should indeed be mandatory. Judge Connelly said the advantage of not being mandatory would provide for the new provisions to be tested. If it is mandatory, how is it enforced? Deb Miller said that the US trustee will enforce it.

Judge Dow concluded that it is time to see what others think of the proposal by publishing it and then deal with the comments.

The Advisory Committee approved amended Rule 3002.1, subject to further stylistic changes approved by the Subcommittee, and recommended it to the Standing Committee for publication.

(B) ***Review Comments on Rule 3002 regarding Suggestion 19-BK-F***

Professor Bartell provided the report. Proposed amendments to Rule 3002 (Filing Proof of Claim or Interest) were published in August 2020. The amendments would make uniform the standard for seeking bar date extensions between domestic and foreign creditors. There were no comments on the proposed amendments.

The Advisory Committee approved the amended rule and recommended it to the Standing Committee for final approval.

(C) ***Consideration of City of Chicago v. Fulton, 141 S. Ct. 585, and Suggestions 21-BK-B and 21-BK-C for rule amendments that would allow turnover proceedings to be brought by motion rather than by adversary proceedings***

Professor Gibson provided the report. On Jan. 14, 2021, the Supreme Court decided in City of Chicago v. Fulton, 141 S. Ct. 585, that a creditor's continued retention of estate property that it acquired prior to bankruptcy does not violate the automatic stay under § 362(a)(3). The Court concluded that a contrary reading would render largely superfluous the provisions of § 542(a) providing for turnover of property of the estate. In a concurring opinion Justice

Sotomayor noted that turnover proceedings "can be quite slow" because they must be pursued by adversary proceedings, *id*. at 594, and stated that "[i]t is up to the Advisory Committee on Rules of Bankruptcy Procedure to consider amendments to the Rules that ensure prompt resolution of debtors' requests for turnover under § 542(a), especially where debtors' vehicles are concerned." *Id*. at 595.

Since the decision in *Fulton*, we received suggestion 21-BK-B from 45 law professors for rules amendments that would allow turnover proceedings to be brought by motion rather than by adversary proceeding for all chapters and all types of property. Another suggestion, 21-BK-C, submitted by three of those law professors proposed amended language from that offered in the original suggestion.

The Subcommittee began considering these suggestions during its Feb. 19, 2021 meeting and seeks input from the Advisory Committee on three issues. First, is any change needed to the existing turnover procedure under Rule 7001(1) requiring an adversary proceeding? The Subcommittee was inclined to believe an amendment would be appropriate. Second, if so, should an amendment to Rule 7001(1) apply to all types of property and all types of debtors, or should it be more limited? The Subcommittee tended to think the amendment should be more limited, but had no recommendation on whether it should be limited to certain types of property (e.g., cars, property necessary for an effective reorganization, tangible personal property, or some other characterization) or certain bankruptcy chapters (e.g., chapters 11, 12, and 13), or certain types of debtors (e.g., consumers), or property having a certain value (small v. large).

Because a number of bankruptcy courts already allow turnover by motion in certain situations, the Subcommittee asked Ken Gardner to solicit information about local practices from court clerks, and Deb Miller sought information from chapter 13 trustees. A number of respondents favor a national rule on this issue.

David Skeel said that coming up with a narrowing principle is very difficult. Therefore, there should probably be a broad change or no change. Judge Dow noted that the ABI Consumer Bankruptcy Commission proposed a different time period for chapter 13 as opposed to other bankruptcy cases and therefore endorsed a narrowing principle. Judge Dow said he was not persuaded of the need to extend the procedure to non-chapter 13 cases.

Ramona Elliott said that the government was concerned about extending turnover by motion to all types of property, like cash held by the government. There does not seem to be a need to go beyond tangible property, or consumer cases. There are also due process issues. The government really cannot deal with the turnover motion on seven days' notice.

David Hubbert agreed with Ramona Elliott. If a new rule is limited to § 542(a), that eliminates a lot of concerns the government may have. There are a myriad of statutes under which the government may be holding payments. He thinks this should apply only to tangible assets in chapter 13 cases.

Judge Dow said that it seems the Advisory Committee supports a rule, limited to chapter 13 and tangible property. Judge McEwen suggested limiting it to personal property that is used for personal, family or household purposes. Judge Dow said perhaps it should be personal property necessary for an effective reorganization. Judge Ambro suggested sending it back to let the Subcommittee craft a proposal. Judge McEwen wants to eliminate § 542(b) from the equation. Ramona Elliott asks how far we should go beyond the situation in *Fulton*.

The Subcommittee will be reviewing any local rules, but a lot of courts have not yet acted but are contemplating local rules in the wake of *Fulton*.

Judge McEwen would include chapter 7 cases because of the exemption issue. She would also not limit it to cars.

Judge Dow said that the Subcommittee is not bound by the suggested rule proposed by the law professors, but it can be used as a starting point.

8. **Report by the Forms Subcommittee**

(A) ***Review comments on SBRA Official Forms 101, 122B, 201, 309E-1, 309E-2, 309F-1, 309F-2, 314, 315, and 425A***

Professor Gibson provided the report. The new and amended forms promulgated in response to the enactment of the Small Business Reorganization Act ("SBRA") took effect on Feb. 19, 2020. Although publication was not required, the Advisory Committee chose to publish the forms for comment last August, along with the SBRA rule amendments. One additional amended form was published, Official Form 122B (Chapter 11 Statement of Your Current Monthly Income) in order to correct an instruction at the beginning of the form.

No comments were submitted on the SBRA forms in response to publication. The Advisory Committee gave final approval to Official Form 122B and made no changes to the other Official Forms that are already in effect.

Ramona Elliott noted that we do not have a form for an individual subchapter V debtor like Official Form 122B. This may be something the Subcommittee should consider. Judge McEwen pointed out that Form 122C-2 is not required for a chapter 13 debtor who is under

median and whose expenses are measured with reference to the same statutory limits (in 1325(b)) as those stated in 1191(d).

(B) ***Consider forms to implement proposed amendments to Rule 3002.1***

Professor Gibson provided the report. The Consumer Subcommittee recommended for publication amendments to Rule 3002.1 (Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence). The amended rule provides for new Official Forms. The five new forms do the following:

(1) Form 410C13-1N (Trustee's Midcase Notice of the Status of the Mortgage Claim) – used by the trustee to provide the notice required by amended Rule 3002.1(f)

(2) Form 410C13-1R (Response to Trustee's Midcase Notice of the Status of the Mortgage Claim) – used by the claim holder to indicate whether it agrees with the trustee's statements about the status of the mortgage claim under amended Rule 3002.1(g)(1)

(3) Form 410C13-10C (Motion to Determine the Status of the Mortgage Claim) – used by the trustee who made ongoing postpetition mortgage payments in a conduit district at the end of a chapter 13 case under amended Rule 3002.1(h)

(4) Form 410C13-10NC (Motion to Determine the Status of the Mortgage Claim) – used by the trustee if ongoing postpetition mortgage payments were made by the debtor in a nonconduit district at the end of a chapter 13 case under amended Rule 3002.1(h)

(5) Form 410C13-10R (Response to Trustee's Motion to Determine the Status of the Mortgage Claim) – used by the claim holder to indicate whether it agreed with the trustee's statements about the status of the mortgage claim under amended Rule 3002.1(i)(1) and (2)

Judge Dow suggested that in Form 410C13-1R, Part III, it should say "as of the date of the Trustee's Notice" instead of "as of the Trustee's Notice." And in the signature block, the word "Trustee" should be eliminated. He also suggested that, on Form 410C13-10R, paragraphs 2, 3 and 4 need headings.

The Advisory Committee approved the proposed forms with the proposed amendments and directed they be submitted to the Standing Committee for publication.

(C) ***Consider Suggestions 20-BK-I from Judge Callaway and 21-BK-A from Judge Surratt-States concerning Official Form 101, line 4***

Professor Bartell provided the report. The Advisory Committee received suggestions from two different bankruptcy judges suggesting that consumer debtors are confused by Form 101 (Voluntary Petition for Individuals Filing for Bankruptcy), Part 1, line 4, which asks the debtor to list "any business names and Employer Identification Numbers you have used in the last 8 years." Both judges have reported that consumer debtors are listing the names of limited liability companies or corporations through which the debtors have conducted business in the past 8 years, not realizing that the question seeks only names that the debtor individually has used during that period. Because the debtors list those LLC and corporate names, those names appear as names of additional debtors on the notice of bankruptcy on the applicable version of Form 309 even though those LLCs and corporations have not filed for bankruptcy protection.

The proposed amendment to Form 101 eliminates the portion of line 4 that asks for any business names the debtor has used in the last 8 years, and instead asks for additional similar information in Question 2, which is consistent with the treatment of that information in Form 105, 201, and 205. There is also new language in the margin of Form 101, Part 1, Question 2, directing the debtor NOT to insert the names of LLCs, corporations or partnerships that are not filing for bankruptcy.

The Advisory Committee approved the amended form and recommended it be submitted to the Standing Committee for publication.

(D) ***Consider Suggestion 20-BK-E from Judge Dore***

Professor Bartell provided the report. Bankruptcy Judge Timothy W. Dore of the W.D. Wash. suggested that the language in line 7 of Official Form 309E1 (Notice of Chapter 11 Bankruptcy Case for Individuals or Joint Debtors) (line 8 in Official Form 309E2 (Notice of Chapter 11 Bankruptcy Case for Individuals or Joint Debtors under Subchapter V)) is not clear about when the deadline is for objecting to discharge, as opposed to seeking to have a debt excepted from discharge. The Subcommittee agreed, and recommends amended forms for approval and publication.

The Advisory Committee decided to change the line that says "the court will send you notice of that date later" to add the words "or its designee" after "the court."

The Advisory Committee approved the amended forms with the additional amendments and recommended them to be submitted to the Standing Committee for publication.

9. **Report by Technology and Cross Border Insolvency Subcommittee**

Professor Gibson presented the report. Judge Audrey Fleissig, chair of the Committee on Court Administration and Case Management ("CACM"), submitted a suggestion based on a question her committee received from Bankruptcy Judge Vincent Zurzolo (C.D. Cal.). Judge Zurzolo inquired whether debtors and others without CM/ECF filing privileges are permitted to electronically sign documents filed in bankruptcy cases. Judge Fleissig noted that in 2013 CACM "requested that the Rules Committee explore creating a national federal rule regarding electronic signatures and the retention of paper documents containing original signatures to replace the model local rules." That effort was eventually abandoned, however, largely because of opposition from the Department of Justice. Among the reasons for the DOJ's opposition were that current procedures work fine and scanning of signatures would be more complicated, scanned documents will require greater electronic storage capacity, there is or soon will be superior technology that will assure the validity of electronic signatures, and elimination of the retention requirement will make prosecutions and civil enforcement actions for bankruptcy fraud and abuse more difficult.

Judge Fleissig's letter was addressed to Judge David Campbell, chair of the Standing Committee, and he referred it to the Advisory Committee. In doing so, he noted that, although the suggestion relates specifically to bankruptcy, it is an issue that is relevant to the work of the other rules advisory committees. He requested that the Advisory Committee take the lead in pursuing the issues. The matter was assigned to this Subcommittee.

The use of electronic signatures by debtors and others without a CM/ECF account is a matter that the Advisory Committee spent several years considering (2012-2014), only to abandon the proposed rule after reviewing the comments received following publication, in large part because of opposition from the Department of Justice. The Subcommittee identified several questions that should be addressed in considering whether to pursue a new e-signature rule:

(1) is there a problem that needs fixing?
(2) what is the Department of Justice's current view regarding the use of e-signatures by debtors without retention of documents with wet signatures?
(3) what e-signature products are available, and what safeguards to assure authenticity do they possess?
(4) should a new e-signature rule specify needed safeguards for e-signatures or just refer to standards to be developed by the Administrative Office of the Courts?
(5) rather than creating a new rule for e-signatures, can debtors and pro se litigants be given CM/ECF accounts so that they come within Rule 5005(a)(2)(C)'s provision for e-signatures?

The Subcommittee is being assisted in gathering information by Drs. Molly Johnson and Ken Lee of the Federal Judicial Center, and Nicole Eallonardo, a staff member in the District Court for the Northern District of New York who is a member of the subgroup of the COVID-19 Judiciary Task Force that is focusing on using virtual technology for court proceedings and other meetings with detainees.

The Subcommittee intends to seek input from such groups as court clerks, the National Association of Consumer Bankruptcy Attorneys, the National Association of Chapter Thirteen Trustees, and the National Association of Bankruptcy Trustees. The Department of Justice will be seeking input from U.S. trustees, U.S. attorneys, and the FBI. The Subcommittee also plans to gather information about e-signature products currently on the market, as well as procedures used by bankruptcy courts that allow electronic filing by pro se debtors.

Molly Johnson said that the FJC has begun a survey of courts about what procedures they have put in place, especially during the pandemic, an update of the FJC's prior investigation. They will be trying to get a group sense of whether the rules should be changed.

Dave Hubbert is surveying the prosecutors on how the issue has been addressed, to see if the Department's position has changed since the last inquiry. Law enforcement agencies are distinguishing between digital signatures that have authenticated identity v. electronic signatures.

Professor Gibson asked whether there are any issues that should be explored or resources the Subcommittee should pursue that have not been described. Tara Twomey suggested that pro se litigants are not going to be able to use digital signatures with authenticated identity. That means there has to be a balance. Ken Gardner said that it would be a burden to teach all pro se litigants to use CM/ECF. If electronic signatures are too complicated, they will not be useful.

Judge Connelly suggested that signatures are always verified at the 341 meeting, whether the debtors are pro se or not. Therefore, why should we require something more onerous for a pro se litigant than one prepared with a petition preparer? Ken Gardner said that petition preparers do not use electronic filing, so there is a wet signature. Judge Dow said that the problem is a bigger one than merely the signatures on the petition. Scott Myers said the consumer bar thinks it is easier to work with clients if they can apply the electronic signature after the petition is finalized with last minute changes, and when the client cannot meet in person with the lawyers. Judge Dow pointed out that electronic signatures are used in tax filings and other contexts, and there is no reason they should not be used in bankruptcy filings. Although the 341 meeting can take care of the signature on the petition, subsequent documents will never be examined for the signature.

Judge Bates says it is a very complicated issue in bankruptcy. But it can impact other advisory committees as well. Has there been any outreach to other committees? Professor Gibson said that it has not happened yet because there is nothing concrete to show them. Judge Bates suggested that the FJC might want to look beyond bankruptcy.

Judge McEwen said that we should make use of current technology, even if some cannot use it. Eventually people will catch up. Bankruptcy should not be the "dinosaur." Judge Donald agreed.

Dave Hubbert noted that there is a statute that governs the filing of tax returns. They will look at other statutes governing filings with governmental agencies.

Tara Twomey suggested looking at eSign, and the commercial world for guidance going forward.

10. **Report by the Restyling Subcommittee**

(A) ***Consider comments on, and recommendation for final approval of, the 1000 and 2000 series of Restyled Rules***

Judge Melvin Hoffman, member of the Subcommittee, and Professor Bartell provided the report.

The first two parts of the Restyled Bankruptcy Rules, Parts I and II, were published for comments in August 2020. The Advisory Committee received extensive comments from the National Bankruptcy Conference, each of which was considered, shared with the style consultants, and either incorporated or rejected, as discussed in the memo included in the agenda book.

Judge McEwen asked about the capitalization issue, and Professor Bartell and Judge Goldgar explained how the style consultants have the final word on matters of style.

The Advisory Committee gave final approval to Parts I and II of the Restyled Bankruptcy Rules and recommended them to the Standing Committee for final approval, with the suggestion that they not be submitted to the Judicial Conference until all other parts of the Bankruptcy Rules have been restyled, published, and given final approval.

(B) ***Consider recommendation to publish the 3000 through 6000 series of Restyled Rules***

Professor Bartell provided the report. The Restyling Subcommittee has completed its work on the restyled versions of the next four parts of the Bankruptcy Rules, Parts III, IV, V and VI and presents them to the Advisory Committee for approval for publication.

The Advisory Committee approved the Restyled Rules in Parts III, IV, V and VI and recommended them to the Standing Committee for publication.

Judge Bates expressed his congratulations to the Restyling Subcommittee and the style consultants for their work on this project.

11. **Information Items**

(A) ***By an email vote closing February 3, 2021, with all members voting in favor, the Advisory Committee recommended Director's Form 4100S to address provisions of the Consolidated Appropriations Act of 2021***.

Professor Gibson provided the report. The Consolidated Appropriations Act of 2021 ("CAA") contains provisions that address the treatment of amounts that are deferred on Federally backed mortgage claims under the CARES Act. The CAA allows an eligible creditor to file a supplemental proof a claim for a CARES Act forbearance claim in a chapter 13 case. Director's Form 4100S is a new proof of claim form for these CARES Act forbearance claims. The applicable provisions of the CAA are scheduled to sunset one year from the date of enactment, on Dec. 27, 2021. Therefore the Forms Subcommittee concluded that a Director's Form was the best means of providing a form that could be easily adjusted and withdrawn while the CAA provisions are in effect. The Advisory Committee approved the new form by email vote closing Feb. 3, 2021.

(B) ***By an email vote closing January 28, 2021, with all members voting in favor, the Advisory committee recommended Interim Rule 4001(c) for distribution to the courts to be adopted as a local rule if and after the Administrator of the Small Business Association takes certain actions authorized under the Consolidated Appropriations Act of 2021***

Professor Bartell provided the report. The Consolidated Appropriations Act of 2021 included a provision amending Section 364 of the Code to provide for certain loans under the Small Business Act, and to specify that the court hold a hearing on such a loan within 7 days after the filing and service of a motion to obtain such a loan. The CAA also states that the court may grant final relief at such a hearing "notwithstanding the Federal Rules of Bankruptcy

Procedure." This provision of the CAA is to take effect on the date on which the Administrator of the Small Business Administration submits to the Director of the Executive Office of the United States Trustees a written determination that certain debtors in possession or trustees would be eligible for the specified loans. If that determination were submitted, amendments to Rule 4001(c)(2) (dealing with hearings on motions to obtain credit) would be necessary to reflect the new CAA directions. As it was not clear when the Administrator might submit that determination, the Advisory Committee approved by email vote an interim rule to be adopted as a local rule if and after that declaration is submitted.

Ramona Elliott said that the Administrator of the SBA has the matter under consideration. The SBA posted updated information FAQs about what it means to be involved in a bankruptcy case for purposes of PPP loans, and allows reorganized debtors to apply for PPP loans.

12. **Future meetings**

The fall 2021 meeting has been scheduled for September 14, 2021.

11. **New Business**

There was no new business.

12. **Adjournment**

The meeting was adjourned at 3:25 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. Business Subcommittee.

A. Recommendation of no action regarding Suggestion 21-BK-D from former member Thomas Mayer concerning Rule 3007(c)-(e) (Professor Bartell).

2. Consumer Subcommittee.

A. Recommendation of no action regarding Suggestion 20-BK-I from Judge Calloway for an amendment to Rule 3001(c) to require last transaction information for claims that may have a statute of limitations defense (Professor Bartell).

3. Forms Subcommittee.

A. Recommendation of no action regarding Suggestion 20-BK-H from Trustee Aguilar to include a question on official Form 410 requiring the filing creditor to assert whether it believes its claim is protected by the anti-modification provisions of 11 U.S.C. § 1325(a), and to include instructions on how to compute the secured amount of such a claim (Professor Bartell).