ADVISORY COMMITTEE ON BANKRUPTCY RULES
Meeting of March 31, 2022
Remotely by Conference Call and Microsoft Teams

The following members attended the meeting:

Circuit Judge Thomas L. Ambro
Bankruptcy Judge Rebecca Buehler Connelly
Circuit Judge Bernice Bouie Donald
Bankruptcy Judge Dennis R. Dow
David A. Hubbert, Esq.
Bankruptcy Judge Benjamin A. Kahn
District Judge Marcia S. Krieger
Bankruptcy Judge Catherine Peek McEwen
Debra L. Miller, Esq.
District Judge J. Paul Oetken
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
Senior District Judge John D. Bates, Chair of the Committee on Rules of Practice and Procedure (the Standing Committee)
Professor Catherine T. Struve, reporter to the Standing Committee
Professor Daniel R. Coquillette, consultant to 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
Circuit Judge William J. Kayatta, liaison from the Standing Committee
Bankruptcy Judge Nancy V. Alquist, Liaison to the Committee on the Administration of the Bankruptcy System
Brittany Bunting, Administrative Office
Bridget M. Healy, Esq., Administrative Office
S. Scott Myers, Esq., Administrative Office
Shelly Cox, Administrative Office
Dana Yankowitz Elliott, Administrative Office
Jason Broome, Administrative Office
Leanna Kipp, Administrative Office
Michael Croom, Administrative Office
Susan Jenson, Administrative Office
Cherry Simpson, Administrative Office
Carly E. Giffin, Federal Judicial Center
Burton DeWitt, Rules Law Clerk

Rebecca R. Garcia, Chapter 12 and 13 trustee
Nancy Whaley, National Association of Chapter 13 Trustees
John Hawkinson, freelance journalist
Lisa K. Mullen, Office of David Wm. Ruskin, Chapter 13 trustee
Marcy J. Ford, Trott Law, P.C.
Pam Bassel, Chapter 13 trustee
Teri E. Johnson, Law Office of Teri E. Johnson, PLLC

Discussion Agenda

1. **Greetings and Introductions**

Judge Dennis Dow, chair of the Advisory Committee, welcomed the group and thanked everyone for joining this meeting. He asked everyone to keep microphones muted unless that person is talking. Motions will be passed if there are no objections. Otherwise, members will use the raise hand function for voting and discussions. Lunch break will occur when and if appropriate.

Judge Dow began by asking Scott Myers to describe the current situation with the rules and forms as a result of the March 27, 2022, expiration of the amendments made by the CARES Act. Mr. Myers has posted the pre-CARES Act versions of Forms 101, 201, 122A-1, 122B, and 122C-1 on their respective current form landing pages. He is also updating the current rules page to note the lapse of the CARES Act and the related changes it made to Interim Rule 1020.

On March 14, 2022, Senator Grassley introduced a bill to make the higher debt limit permanent for Subchapter V, as well as modifying the eligibility requirements for chapter 13. The bill would not affect the means test forms. However, if the Grassley bill passes in the next few days or weeks, Interim Rule 1020 and Forms 101 and 201 will again be modified to incorporate the changes that expired on March 27. That would probably require an email vote of this Advisory Committee to recommend to the Standing Committee that those forms be reinstated and the Interim Rule go back into effect, and sending information to the courts.

Judge Dow asked whether the proposed changes in the eligibility requirements for chapter 13 have any form or rule implications. Mr. Myers said that he sees no implications. Ken Gardner asked whether the changes would be retroactive. Mr. Myers said he does not know but the bill will have to be rewritten because it contemplated that it would be passed before April 1, 2022. Judge Kahn and Judge McEwen pointed out that the current version is retroactive.

2. **Approval of Minutes of Remote Meeting Held on September 14, 2021**

The minutes were approved by motion and vote with one amendment to reflect that Judge Laurel Isicoff was in attendance.

3. Oral Reports on Meetings of Other Committees

(A) *Jan. 4, 2022 Standing Committee Meeting*

Judge Dow gave the report.

(1) Joint Committee Business

(a) ***Electronic Filing by Self-Represented Litigants*.** Judge Bates noted that he had asked Professor Cathie Struve to convene a joint meeting of the reporters to coordinate the responses of the various committees to these suggestions. Professor Struve reported that the reporters suggested ideas on research questions that might be helpful in resolving these issues and agreed to ask for assistance from the Federal Judicial Center.

(b) ***Juneteenth National Independence Day***. Three of the four Advisory Committees have approved proposed amendments to add the new holiday to the list of legal holidays in their respective time-computation rules, and the fourth Advisory Committee is expected to do so at its spring meeting. All proposals will be presented to the Standing Committee at its June 2022 meeting for approval as technical amendments that can be forwarded for final approval without publication and comment.

(2) Bankruptcy Rules Committee Business

The Standing Committee recommended for publication an amendment to Rule 7001, which responds to Justice Sotomayor's suggestion in her concurring opinion in City of Chicago v. Fulton, 141 S. Ct. 585 (2021). The amendment provides that an action seeking turnover of tangible personal property of an individual debtor may be brought by motion rather than adversary proceeding.

Judge Dow also provided the Standing Committee information on the status of:

(a) ***Rule 9006(a)(6) (Legal Holidays)***. The Bankruptcy Advisory Committee approved a technical amendment adding Juneteenth National Independence Day to the list of legal holidays.

(b) ***Electronic Signatures***. Judge Dow described the ongoing work on electronic signatures by debtors and others who do not have a CM/ECF account. The Advisory Committee is considering potential amendments to Rule 5005(a) and is conferring with the DOJ and the FJC in considering the issues.

(c) ***Restyling***. Judge Dow reported that Parts III through VI are out for public comment and would be presented to the Standing committee for final approval at its next meeting. Parts VII through IX are in process and should be ready for the Standing Committee to approve publication at the same meeting.

(B) ***March 30, 2022, Meeting of the Advisory Committee on Appellate Rules***

Because Judge Donald was unable to attend the meeting, Professor Struve provided the report.

(1) **Appellate Rules 2 and 4**. The proposed amendments to FRAP 2 and 4 adopted in response to the CARES Act were given final approval.

(2) **Appellate Rule 26**. The proposed amendment to FRAP 26 to include the Juneteenth National Independence Day as a legal holiday was approved.

(3) **Appellate Rule 29**. There was lengthy discussion on proposals to amend FRAP 29 to require additional disclosures by amici curiae. No decisions were made.

(4) **Bankruptcy Rule 8006(g)**. There was a brief discussion on the impact of proposed amendments to Bankruptcy Rule 8006(g) that were shared later in the meeting.

(C) ***March 29, 2022 Meeting of the Advisory Committee on Civil Rules***

Judge Catherine Peek McEwen provided a report. The meeting was conducted on a hybrid basis because of the COVID-19 health emergency.

(1) **Civil Rule 12**. In January, the Standing Committee approved for public comment an amendment to Civil Rule 12(a) that will clarify that the time to serve responsive pleadings does not override a deadline set by statute. Although Civil Rule 12 is not applicable in bankruptcy proceedings, we should look at Bankruptcy Rule 7012(a) to determine if a parallel amendment is warranted.

(2) **CARES Act – Rules Emergency.** The Civil Advisory Committee gave final approval to Rule 87, the rules emergency proposal.

(3) **Rule 15(a)(1)**. The Civil Advisory Committee gave final approval to an amendment to Civil Rule 15(a)(1) to replace the word "within" with "no later than." This rule applies in bankruptcy adversary proceedings.

(4) **Rule 9(b).** The Civil Advisory Committee had been considering an amendment to Rule 9(b) to change the second sentence that allows state of mind to be pleaded "generally" by deleting that word and saying instead that state of mind may be pleaded "without setting forth the facts or circumstances from which the condition may be inferred." The proposal was made by Dean A. Benjamin Spencer and was intended 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 pleaded. Dean Spencer's view is set out at length in a Cardozo Law Review article. Based on reported case law holding that the heightened scrutiny in the first sentence is not appliable to the second sentence, there appears to be no need for the proposed amendment. Therefore, the Civil Advisory

Committee accepted the recommendation of the Rule 9(b) Subcommittee to take no action on this proposal.

(5) **Juneteenth Amendment**. The Civil Advisory Committee at its meeting in October 2021 gave final approval to an amendment to Rule 6(a)(6)(A) to include Juneteenth National Independence Day in the list of statutory holidays. That proposed amendment will be forwarded to the Standing Committee for its June meeting, with the comparable amendments made by the other advisory committees for final approval without publication.

(6) **Privilege Logs– Rule 26(b)(5)(A).** The Discovery Subcommittee is considering proposals to amend Rule 26(b)(5)(A) and presented a preliminary draft to the Civil Advisory Committee for comments. The goal is for the subcommittee to study the draft over the next year with the hope that a proposal will be ready in March 2023. This rule applies in bankruptcy cases, so we will continue to monitor the Subcommittee's efforts.

(7) **Joint Civil-Appellate Subcommittee on Final Judgment Rule.** The Joint Civil-Appellate Subcommittee (aka "Hall v. Hall Subcommittee") appointed to study the effects of the final judgment rule for consolidated actions announced in Hall v. Hall, 138 S. Ct. 1118 (2018), received an extensive Federal Judicial Center study of appeals in consolidated actions filed in 2015, 2016, and 2017. It subsequently began informal efforts to ask judges in the Second, Third, Seventh, Ninth, and Eleventh Circuit Courts of Appeals about their experience with Hall v. Hall. Only the Second Circuit has dismissed appeals based on Hall v. Hall. The Subcommittee will meet again to consider further steps. The initial study was not useful. Consequently, the FJC's Emery Lee devised a different study methodology that he believed would yield better data. His initial findings were released recently and show few affected appeals. The Subcommittee has not met to discuss them.

(8) **Civil Rule 6(a)(4)(A)**. Civil Rule 6(a)(4)(A)'s "last day" clause is being studied by the FJC for whether the end of a day at midnight imposes undue burden on lawyers. Bankruptcy Rule 9006(a)(4) is our parallel rule.

(9) **Civil Rule 41**. A subcommittee will be formed to study Civil Rule 41 and the extent of dismissals under the rule, e.g., part of an action. Bankruptcy Rule 7041 makes Civil Rule 41 applicable in adversary proceedings, so we will monitor the developments.

(10) **Civil Rule 55**. Civil Rule 55(a)'s mandate for Clerks to enter defaults is being studied by Emery Lee and will be revisited in October. Bankruptcy Rule 7055 makes Civil Rule 55 applicable in adversary proceedings.

(11) **IFP Practices and Standards.** The Civil Advisory Committee has received various submissions over the past couple of years relating to the great variations in standards employed to qualify for in forma pauperis status as among different districts and as among judges in the same district. The Civil Advisory Committee discussed creating a joint subcommittee or other joint study of in forma pauperis standards, which could craft a civil rule or provide uniform and good practice guidance on IFP standards. There is no proposal for

present action, but the topic will remain on the agenda at least until next fall to see whether there is a sufficiently promising proposal to warrant further work.

(12) **Pro-Se and E filing**. Reporters for all the committee are deliberating on giving pro se filers authority to file electronically; recommendations may come next fall.

The next meeting of the Civil Advisory Committee will be on October 12, 2022, in D.C.

(D) ***Dec. 7-8, 2021, 2021 Meeting of the Committee on the Administration of the Bankruptcy System (the "Bankruptcy Committee")***

Judge Alquist provided the report.

The Bankruptcy Committee met in December in Miami in person. The next meeting is scheduled for June 23-24, 2022.

The Bankruptcy Committee reviewed the failure of Congress to act on its legislative proposal in response to the CARES Act, and was updated on the proposed rules amendments, including new Rule 9038.

As to proposed amendments to Rule 3011, which were based on the Bankruptcy Committee's proposal, the Bankruptcy Committee is grateful for the Advisory Committee's consideration of these amendments.

The Bankruptcy Committee continues to receive informational updates on the status of the proposed amendment to Rule 7001(1) in response to the decision of the Supreme Court in City of Chicago v. Fulton, 141 S.Ct. 585 (2021), and remains available should the Advisory Committee wish to refer any matters related to *Fulton* for the Bankruptcy Committee's feedback or input.

Subcommittee Reports and Other Action Items

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

(A) ***Consider comments on proposed new Bankruptcy Rule 9038***

Judge Wu and Professor Gibson provided the report.

At its June 2021 meeting, the Standing Committee approved for publication proposed emergency rules for the Civil, Criminal, Appellate, and Bankruptcy Rules, including proposed Bankruptcy Rule 9038. Only one comment was submitted concerning Rule 9038. The Federal Bar Association submitted a comment stating that it "supports each of the revised and new rules developed by the Appellate, Bankruptcy, Civil, and Criminal Rules Committees in response to the rulemaking directive in Section 15002(b)(6) of the CARES Act."

The Subcommittee recommended that the Advisory Committee give final approval to Rule 9038, as published, and ask the Standing Committee to do the same. The Advisory Committee voted to approve Rule 9038 and ask the Standing Committee to give final approval to the Rule.

5. **Report by the Consumer Subcommittee**

(A) ***Recommendation Concerning Suggestion 21-BK-G for Amendments to Rule 1007(b)(7)***

Professor Bartell provided the report.

Current Bankruptcy Rule 1007(b)(7) requires that, "[u]nless an approved provider has notified the court that the debtor has completed a course in personal financial management after filing the petition, an individual debtor in a Chapter 7 or Chapter 13 case—or in a Chapter 11 case in which § 1141(d)(3) applies—must file a statement that such a course has been completed (Form 423)."

Bankruptcy Judge Arthur I. Harris of the N.D. Ohio submitted Suggestion 21-BK-G, in which he proposed that use of Official Form 423 not be required. Instead, he suggested that the Rule be amended to also allow submission to the court of the Certificate of Debtor Education that is provided to the debtor by the provider of that course.

At the last meeting of the Advisory Committee, the Subcommittee presented a proposed amendment to Rule 1007(b)(7) that would make that certificate the *only* acceptable evidence of completion of the course on personal financial management, and would explicitly exclude from the requirements of the Rule a debtor who is not required to complete such a course. If the debtor has been excused from completing the course by court order, the court order will provide adequate evidence of that fact, and submission of an Official Form seems unnecessary.

Just prior to the fall meeting of the Advisory Committee, Professor Struve pointed out that there are a number of other bankruptcy rules (in particular, Rules 1007(b)(7), 1007(c)(4), 4004(c)(1)(H), 4004(c)(4), 5009(b), 9006(b)(3) and 9006(c)(2)) that refer to the "statement required by" Rule 1007(b)(7), all of which would have to be modified if the language of Rule 1007(b)(7) were changed to require a certificate rather than a statement. This could be avoided if the draft language replaced the words "certificate of course completion" with "statement of course completion" in both the text of the rule and the committee note.

The Advisory Committee expressed its support for the amendments proposed by the Subcommittee, but remanded the proposed amendments to the Subcommittee to consider whether the terminology in the proposed amendments should be changed to "statement" or whether the other rules that refer to the "statement" should be amended to refer to a "certificate." The Advisory Committee also asked the Forms Subcommittee to consider whether Form 423 should be eliminated if the amendments to Rule 1007(b)(7) go into effect.

The Subcommittee concluded that it was not appropriate to change the language in the proposed amendments to Rule 1007(b)(7) from "certificate" to "statement" because the document from the providers is clearly labeled a certificate. Therefore, the Subcommittee recommended that the amendment to Rule 1007(b)(7), and conforming amendments to Rules 1007(c)(4), 4004(c)(1)(H), 4004(c)(4), 5009(b), 9006(b)(3) and 9006(c)(2) and the related committee notes be approved for publication (with some minor changes in Rule 1007(b)(7) and committee note suggested by the style consultants).

The Advisory Committee approved those amendments and committee notes and recommended to the Advisory Committee that they be published for comment.

(B) ***Consider Comments on Proposed Amendments to Bankruptcy Rule 3002.1***

Professor Gibson provided the report. Proposed amendments to Rule 3002.1 were published for comment in August 2021. The amendments are designed to encourage a greater degree of compliance with the rule and to provide a new midcase assessment of the mortgage claim's status in order to give a chapter 13 debtor an opportunity to cure any postpetition defaults that may have occurred.

Twenty-seven comments were submitted on the proposed amendments, some of which were lengthy and detailed and others briefly stating support or opposition to the amendments.

The reactions to the published amendments were mixed. Broadly described, the comments fell into 3 categories:

(1) Comments opposing the amendments, or at least the midcase review, submitted by some chapter 13 trustees, including one signed by 68 trustees.

(2) Comments favoring the amendments, submitted by some consumer debtor attorneys.

(3) Comments favoring the amendments but giving suggestions for improvement, submitted by trustees, debtors' attorneys, judges, and an association of mortgage lenders.

The Subcommittee met three times to discuss the comments and to consider a course of action. Because the Subcommittee was unable to complete its consideration of the comments, it did not recommend any action on the proposed amendments to Rule 3002.1 at this meeting. Instead, it wished to provide the Advisory Committee an overview of the comments and the major points they raised, and report on the Subcommittee's discussions and tentative decisions in response to those comments.

The Subcommittee began its discussions with two threshold issues: are the amendments needed, and is there authority to promulgate them under the Rules Enabling Act, 28 U.S.C. § 2075? The Subcommittee concluded that, although there were some negative reactions to the

proposed amendments, there is a need for some improvements to the Rule. The Subcommittee also concluded that Rule 3002.1 is a procedural rule that implements a debtor's right under § 1322 to cure and maintain payments on a home mortgage or, in some cases to pay it off over the duration of a chapter 13 plan. The proposed amendments were intended to provide consequences for noncompliance with that rule, provide procedures for reconciling records, and to authorize an enforceable order that documents the debtor's successful completion of the mortgage payments under the plan. The Subcommittee has tentatively approved a change to the HELOC provision to ensure that it does not exceed rulemaking authority, but is confident that the amendments are authorized by the Rules Enabling Act.

The Subcommittee has tentatively agreed to several changes to the published version of subdivision (b). The provision in paragraph (3)(A) for annual notices of payment change for HELOCs would be made optional. The provision was proposed for the convenience of HELOC claim holders, so if they would prefer to continue to file notices whenever the payment amount changes, the Subcommittee saw no reason to prohibit them from doing so. Making the provision optional would also satisfy the concern expressed by one commenter about altering substantive rights.

The Subcommittee's consideration of the comments has led it to sketch out a revised midcase assessment procedure. It would be optional and could be initiated at any time in the case by whoever is making the postpetition mortgage payment—the trustee in a conduit case, the debtor in a non-conduit case—by filing a motion for determination of the status of the mortgage. The procedure would be default-based. The claim holder would not be required to respond, but if it did not do so, the court could enter an order favorable to the moving party based on the facts set forth in the motion. If the claim holder did respond and opposed the motion, it would be treated as a contested matter to be resolved by the court. No objection to the response or motion to compel would be required.

While the Subcommittee would like the end-of-case procedure to be as similar as possible as the midcase one, it has not yet resolved issues about how the procedure should be structured. Among the uncertain issues are whether the procedure should be mandatory in all cases, who should initiate it, whether it should be by notice or motion, whether the claim holder should be required to respond, what action should be taken if there is no response, and how it would apply in a non-conduit case.

Judge Connelly noted that working through the comments was a heroic task undertaken by Professor Gibson. This rule will have a far-reaching impact and it is important that the Advisory Committee get it right. The Subcommittee plans to continue its consideration of those issues and all of the comments so that it can have a recommendation of proposed changes to the Rule 3002.1 amendments to present at the fall meeting. The Subcommittee hopes that those changes will not be so substantial as to require republication. If they are not and if the Advisory Committee gives final approval to the amendments by spring 2023, they would be on track to take effect in 2024.

At this meeting, the Subcommittee was seeking the Committee members' thoughts on the comments submitted on the proposed Rule 3002.1 amendments and what changes, if any, should be made to the Rule. In particular, it asked for feedback on whether members agree with the Subcommittee's resolution of the threshold issues—need for amendments and authority to promulgate them—and on the tentative decisions discussed above. It also solicited ideas about how best to structure the end-of-case procedure for obtaining a determination of the status of the mortgage.

Judge Kahn expressed his gratitude to the Subcommittee for its work, and said that one cannot overstate the importance of this issue in chapter 13. Some of those who commented and objected to the proposed amendments were in districts that already had local procedures for a midcase review. He supports the approach of the Subcommittee.

Judge McEwen pointed out that Keith Lundin had very specific comments, and asked whether the Subcommittee had examined those. Professor Gibson said that those specific comments would be addressed at the next Subcommittee meeting. Judge Dow pointed out that many of his comments were addressed to existing language that was not being modified. Judge McEwen said that her district rarely sees this issue, and supports making the midcase review optional.

Debra Miller also supports making the midcase review optional and allowing it to occur at any time. The end-of-case procedures need to be worked on, and in addition to rule changes some education needs to be conducted among the trustees. She believes that we can develop a good system that will resolve a lot of the issues that the commenters raised.

Judge Donald asked whether the amendments would meaningfully affect discharge rates in chapter 13. Ms. Miller said that she thought it would help a great deal.

Judge Kahn supports making both midcase and end-of-case reviews voluntary because of the cost issues. He thinks no one is going to go to the court when the debtor has fallen behind in making the mortgage payments. It is not clear that a court may provide additional time for curing at the end of a case. Ms. Miller stated that a midcase motion may be styled as a request for information. Ms. Elliott stated that if the burden is on the debtor, there needs to be education for debtor's attorneys. Judge Connelly asked Judge Kahn to clarify his view that end-of-case procedures should be voluntary. Judge Kahn stated that he likes the model of current Rule 3002.1 – the trustee should be required to file a report of payments in conduit jurisdictions but without mandatory motions. Professor Gibson said that the difficult issue is what happens when the claim holder does not respond to the request for information about postpetition payments. Judge Kahn suggested that nonresponse could lead to the debtor voluntarily filing a motion, and the claim holder would be barred from presenting any evidence of the postpetition payments they failed to disclose. Judge Dow suggested that we go back to the rule as it was and modify from that starting point. Ms. Miller said that the biggest issue with the current rule is that nothing is filed at all. That causes the problems. But we can make some changes to the amended rule. Professor Gibson suggests that a different trigger than making the final cure payment is necessary because the trustee may not be making any cure payments.

The Advisory Committee agreed with the Subcommittee's conclusions on the threshold issues, and its approach to the midcase review. The Subcommittee should continue its work and try to submit a revised draft at the fall meeting.

6. **Report by the Forms Subcommittee**

(A) **Consider Comments and Recommendation for Final Approval of Proposed Amendments to Official Form 101 and Committee Note**

Professor Bartell provided the report. The Standing Committee approved publication of amendments to Form 101 at its last meeting. The amendments (1) eliminate the portion of Question 4 that asks for any business names the debtor has used in the last 8 years (leaving only the request for employer identification numbers, if any), and (2) expand the margin instruction at Question 2 (which now asks for "All other names you have used in the last 8 years" and directs the debtor to "Include your married or maiden names") to modify the language in small font after "All other names you have used in the last 8 years" to read "Include your married or maiden names and any assumed, trade names and doing business as names." The amendments also add the additional instruction: "Do NOT list the name of any separate legal entity, like a corporation, partnership, or LLC, that is not filing this petition" and revise the lines for including the information to add lines for "business name (if applicable)". The amendments make Form 101 consistent with Forms 105, 201, and 205, the other forms of petitions.

We received one comment on the proposed amendment from Sam Calvert, who suggested the part 1, Question 2, be divided into 2a (which would be the Question as published) and 2b, which would provide a space for information about an entity for whom the debtor was serving as guarantor or surety.

The Subcommittee decided to make no change in response to this comment. The proposed changes to Official Form 101 make it consistent with Official Forms 105, 201 and 205, none of which includes the information Mr. Calvert is requesting. Moreover, that information is available on Schedule E/F.

The Subcommittee recommended the amended Form 101 and Committee Note to the Advisory Committee for final approval in the form in which it was published. The Advisory Committee approved the amended Form 101 as published.

(B) ***Consider comments and Recommendation for Final Approval of Proposed Amendments to Official Forms 309E1, 309E2, and Committee Note***

Professor Bartell provided the report. The Advisory Committee approved publication of proposed amendments to Official Forms 309E1 (line 7) and 309E2 (line 8) to clarify the language about deadlines for objecting to the debtor's discharge and for objecting to the dischargeability of a specific debt. We received no comments on the proposed amendments. At the Subcommittee meeting it was agreed to insert a comma in line 7 of Form 309E1 and line 8 of

Form 309E2 in two places, one after "§ 1141(d)(3) in the first bullet and one after "or (6)" in the second bullet.

With those changes, the Subcommittee recommended the amended Official Forms 309E1 and 309E2 and the Committee Note to the Advisory Committee for final approval. The Advisory Committee approved the amended Forms and Committee Note with those changes.

(C) ***Consider Recommendation to Retire Official Form 423 if Proposed Amendments to Rule 1007(b)(7) Become Effective***

Professor Bartell provided the report. The Consumer Subcommittee has recommended amendments to Rule 1007(b)(7) (and several other rules) to make the certificate of completion issued by the provider of a course in personal financial management the exclusive acceptable evidence of the debtor's completion of the course and to exclude from the provisions of the Rule a debtor who is not required to complete such a course.

The Advisory Committee asked the Subcommittee to consider whether, if the amendments to Rule 1007(b)(7) become effective, Form 423 should be withdrawn as having no further purpose.

Official Form 423 has two different certifications. In the first, the debtor certifies that the debtor completed an approved course in personal financial management, and provides the date the course was taken, the name of the approved provider, and the certificate number. Alternatively, the debtor may certify that the debtor is not required to complete a course in personal financial management because the court has granted a motion waiving the requirement, and to identify the ground for such a waiver (incapacity, disability, active duty, or residence in a district in which the approved instructional course cannot adequately meet the debtor's needs).

As to the first certification, because the proposed amendment to Rule 1007(b)(7) makes submission of the certificate of course completion the exclusive means of satisfying the condition to discharge for an individual debtor in a chapter 7 or chapter 13 case, or in a chapter 11 case in which § 1141(d)(3)((C) applies, there is no need for the Official Form 423 submission because the certificate of course completion contains all the required information.

As to the second certification, if the court has already approved a motion excusing the debtor from the personal financial management course requirement, the court order so stating provides adequate evidence of that waiver and, again, there is no need for the Official Form 423 submission saying the same thing.

The Subcommittee recommended to the Advisory Committee that, if the proposed amendments to Rule 1007(b)(7) become effective, Official Form 423 be withdrawn. The Advisory Committee agreed with the recommendation.

(D) ***Consider Suggestion 22-BK-A to Amend Proof of Claim Attachment – Form 410A***

Professor Bartell provided the report. We received a suggestion, 22-BK-A, from Bankruptcy Judge Robert J. Faris of Hawaii, who suggests that Form 410A Proof of Claim Attachment A, be modified in Part 3 (Arrearage as of Date of the Petition) to replace the first line (which currently asks for "Principal & Interest") with two lines, one for "Principal" and one for "Interest."

Although the Subcommittee was not uniformly convinced by the reasons Judge Faris proposed for the change, it agreed that the information would be useful by placing the burden on the creditor of giving the debtor and the chapter 13 trustee the information necessary to determine whether the plan is treating the creditor's claim correctly.

The Subcommittee recommended that the Advisory Committee approve for publication the amended Form 410A with the accompanying committee note. The Advisory Committee approved the Form and committee note for publication.

(E) ***Comments on Proposed Amendments to Official Form 417A***

Professor Gibson provided the report. Last August the Standing Committee published for comment amendments to Official Form 417A that were proposed to conform to amendments proposed for Rule 8003. No comments were submitted on the proposed amendments to the form or to the rule.

The Subcommittee recommended that the Advisory Committee give its final approval to the proposed amendments to Official Form 417A, as published, and that it ask the Standing Committee to do the same, with a Dec. 1, 2023 effective date when the amended rule goes into effect. The Advisory Committee approved the proposed amendments and requested the Standing Committee to give final approval to them, with a Dec. 1, 2023 effective date.

(F) ***Comments on New Forms Related to Rule 3002.1***

Professor Gibson provided the report. Last August the Standing Committee published for comment proposed Official Forms 410C13-1N, 410C13-1R, 410C13-10C, 410C13-10NC, and 410C13-10R. They were proposed to implement proposed amendments to Rule 3002.1 that would create new procedures for a midcase and end-of-case determination of the status of a home mortgage claim in a chapter 13 case.

Nine comments were submitted on the proposed forms. The comments received on the underlying rule amendments, like those on the proposed forms, expressed a range of views and in some cases were quite detailed. As previously discussed, the Consumer Subcommittee is still in the process of considering the comments and deciding what revisions to the published rule amendments to recommend. Because the amendments to Rule 3002.1 that the forms in question implement remain in flux, the Subcommittee decided to defer its consideration of the comments

on the forms until decisions about the rule amendments have been made. It hopes to be able to make its recommendations about any needed revisions to the forms at the fall Advisory Committee meeting.

7. **Report by the Technology and Cross-Border Insolvency Subcommittee**

(A) ***Suggestion 20-BK-E from CACM for Rule Amendment Establishing Minimum Procedures for Electronic Signatures of Debtors and Others***

Judge Oetken and Professor Gibson presented the report. The Subcommittee has been considering its response to the suggestion (20-BK-E) by the Committee on Court Administration and Case Management ("CACM") regarding the use of electronic signatures in bankruptcy cases by individuals who do not have a CM/ECF account, along with suggestions by Sai (21-BK-H and 21-BK-I) regarding electronic filing and the use of electronic signatures by self-represented individuals.

At the fall meeting of the Advisory Committee the Subcommittee presented for discussion a preliminary draft of an amendment to Rule 505(a)(2)(C) regarding the use of electronic signatures in bankruptcy cases by individuals who do not have a CM/ECF account. Discussion of the proposal brought up several questions and concerns. Among the issues raised whether there is really a perception among attorneys that the retention of wet signatures presents a problem that needs solving.

The Reporter followed up on the question of whether there is a problem that requires an amendment to the rules by a discussion with Bankruptcy Judge Vincent Zurzolo whose inquiry to CACM led to CACM's suggestion to the Advisory Committee. Judge Zurzolo expressed the view that the courts were out of step with modern commerce by still requiring the retention of wet signatures rather than using some kind of electronic signature product, like DocuSign. He said that there was mild concern among the lawyers about having to retain wet signatures, but a stronger interest in facilitating the electronic filing of documents such as stipulations, where the filing attorney files a document with other attorneys' signatures.

The Subcommittee discussed what it considered to be a fundamental question that has yet to be resolved by the Advisory Committee: Does a problem exist under current practices that needs a national rule solution? Attorneys can file documents in the bankruptcy courts electronically, and the use of their CM/ECF account provides the basis for accepting their electronic signatures as valid. If they electronically file documents that their client or another individual has signed, they generally must retain the original document with the wet signature.

To date, the Advisory Committee has not received a suggestion from any bankruptcy attorney that the current procedures are causing problems. Judge Zurzolo's inquiry to CACM about the use of electronic signatures seems to have been based more on the desire to bring bankruptcy courts into the modern age of e-signing rather than on concerns he heard from attorneys about having to retain wet signatures. The suggestion from CACM does note that in 2013 it had suggested that "courts' local rules varied in their requirements to retain original

paper documents bearing 'wet' signatures, and that these varying practices posed problems for attorneys that file in multiple districts." Comments in response to the Advisory Committee's earlier electronic-signature proposal, however, did not produce comments bearing out that concern. CACM's current suggestion is based on concern that the absence of a provision in Rule 5005 regarding the electronic signatures of individuals without CM/ECF accounts may make courts "hesitant to make such a change without clarification in the rules that use of electronic signature products is sufficient for evidentiary purposes."

The Subcommittee concluded that current Rule 5005 does not address the issue of the use of electronic signatures by individuals who are not registered users of CM/ECF and that it therefore does not preclude local rulemaking on the subject. The Bankruptcy Court for the District of Nebraska already has such a rule (L.B.R. 9011-1), and other courts, such as Bankruptcy Court for the Central District of California, may adopt such rules in the future. The Subcommittee concluded that a period of experience under local rules allowing the use of e-signature products would help inform any later decision to promulgate a national rule. This discussion should put to rest any concerns about the authority of districts to adopt local rules. Electronic signature technology will also likely develop and improve in the interim.

For those reasons, the Subcommittee recommended that no further action be taken on the CACM suggestion.

The Subcommittee believes that the question of electronic signatures of pro se debtors presents different issues and should be considered separately. Professor Struve convened a working group of the reporters of the various Advisory Committees and AO staff to consider the issues presented by the pending suggestions regarding electronic filing by pro se litigants. The working group has met twice. The Federal Judicial Center has prepared a draft report with the information it has gathered about national practices on the issue. The FJC reported that districts that had provided pro se litigants access to CM/ECF had encountered very few problems. The researchers found that it is rare that bankruptcy filers are given CM/ECF access. Instead they generally use electronic self-representation software (ESR) that is available in NextGen, and petitions completed using this software are complete and legible. The difference between bankruptcy practice and non-bankruptcy practice is that the filing of the petition has an immediate effect on other parties. The working group asked whether uniformity is required between different practice areas.

One overriding question raised was whether this is an issue of rule-making or technology and administration. The one area in which the working group identified a rules-related issue is the requirement for physical service (the requirement for paper service if CM/ECF is not used).

The FJC study is not final and will be shared when it is.

Professor Struve added her thanks for the hard work of the FJC and the reporters on this issue.

Ken Gardner stated that CM/ECF is not the issue; the electronic signature is the issue. We need to deal with electronic signatures for pro se debtors. Judge McEwen has a litigant who has been filing with DocuSign because he is homeless and has no ability to print or scan. This is a serious issue.

8. **Report of the Privacy, Public Access, and Appeals Subcommittee**

(A) ***Consider Possible Amendments Addressing the Timing of Post-judgment Motions in Bankruptcy Proceedings Initially Heard in the District Court***

Professor Gibson provided the report. In response to a recent First Circuit decision, Professor Cathie Struve—reporter for the Standing Committee—raised with the reporters an issue that involves the overlap of the bankruptcy, civil, and appellate rules. The issue is whether, in a bankruptcy proceeding heard and decided by a district court, the time for filing postjudgment motions of the type that toll the period for filing a notice of appeal should be 14 days, as in the bankruptcy court, or should be 28 days because of the longer time for taking an appeal from the district court. Because the resolution of this issue likely requires either amending Bankruptcy Rules 7052 (Amended or Additional Findings), 9015(c) (Renewed Motion for Judgment as a Matter of Law), and 9023 (New Trials) or recommending that the Federal Rules of Appellate Procedure be amended, it was referred to this Subcommittee for consideration.

The district court in In re Lac-Mégantic Train Derailment Litigation exercised bankruptcy jurisdiction over all personal injury actions against the debtor and others. Twenty-eight days after a final judgment dismissing a defendant for lack of personal jurisdiction and denying the plaintiffs' motion to file an amended complaint, the plaintiffs moved for reconsideration of the order. The district court denied the motion for reconsideration and the plaintiffs filed an appeal, apparently within 30 days after the denial of reconsideration. The First Circuit dismissed the appeal for lack of appellate jurisdiction because the motion for reconsideration was not filed within 14 days after the entry of judgment as required by Bankruptcy Rule 9023, which is applicable to noncore proceedings heard by a district court. Because the motion was untimely, it did not toll the time for appealing under Fed. Rule of Appellate Procedure 4(a). The notice of appeal was filed more than 30 days after the original entry of judgment, so the court lacked appellate jurisdiction.

In calling the Lac-Mégantic case to the reporters' attention, Professor Struve pointed out a potential problem caused by the different time periods for filing postjudgment motions under Civil Rules 50, 52, and 59 (28 days) and their bankruptcy counterparts, Rules 7052, 9015(c), and 9023 (14 days). Under FRAP 4(a)(4)(A), the listed postjudgment motions toll the time for filing a notice of appeal if "a party files in the district court any of [those] motions under the Federal Rules of Civil Procedure—and does so within the time allowed by those rules." According to FRAP 6(a), that rule applies when an appeal is taken from a district court's exercise of jurisdiction under 28 U.S.C. § 1334.

But Professor Struve questioned which time period applies in such cases. If applied literally—using the time allowed by the Civil Rules—Rule 4(a)(4)(A) would allow motions that

are untimely under Bankruptcy Rules 7052, 9015(c), and 9023 to toll the time for filing a notice of appeal from a bankruptcy proceeding in the district court. On the other hand, if the bankruptcy time periods must be complied with, an inconsistency appears to be created with Rule 4(a)(4)(A)'s provision for tolling when motions are timely under the Civil Rules.

One possibility the Subcommittee considered to make clear that the current bankruptcy deadlines for postjudgment motions apply under FRAP 4(a)(4)(A) in bankruptcy proceedings heard by a district court was to suggest that the Appellate Rules Advisory Committee consider an amendment to Rule 4(a)(4)(A) to refer specifically to motions under the Federal Rules of Bankruptcy Procedure. An alternative approach considered was to suggest an amendment to FRAP 6(a) to add language that might state as follows: "The reference in Rule 4(a)(4)(A) to the time allowed by the Federal Rules of Civil Procedure must be read as a reference to the time allowed by the Federal Rules of Civil Procedure as shortened, for some types of motions, by the Federal Rules of Bankruptcy Procedure."

The Subcommittee considered whether, instead of suggesting a FRAP amendment, the Bankruptcy Rules should be amended to draw a distinction between proceedings heard by the district court and those heard by the bankruptcy court. The Subcommittee rejected that approach, and also concluded that it was not appropriate to recommend no action be taken on this matter.

The Subcommittee recommended that the Advisory Committee ask the Advisory Committee on Appellate Rules to consider amending FRAP 6(a) along the lines suggested above, with the actual wording of any such amendment remaining in the hands of the Advisory Committee on Appellate Rules.

Judge Kahn asked why the 30-day period in FRAP was not changed to 28 days. Professors Gibson and Struve noted that only periods less than 30 days were changed. Judge Kahn asked whether the Subcommittee considered whether there should be consistency in the district court between bankruptcy and non-bankruptcy matters. Professor Gibson said that there are alternative quests for consistency – either consistency in the district court or consistency with respect to all bankruptcy proceedings wherever they are heard. We have no other examples of different rules when a bankruptcy matter is heard by a district court, and therefore the Subcommittee opted for consistence for all bankruptcy proceedings.

Judge Ambro explained that he wants to be as simple as possible in dealing with the problem. That is the approach the Subcommittee adopted. Judge Krieger noted that in cases in district court the applicable process is different than when the matter is in bankruptcy court. Judges and litigants are uncertain what procedures to use. Perhaps there should be some way to alert judges and litigants which process applies.

Judge Dow asked whether there are other decisions on the applicability of bankruptcy rules in the district court. Professor Gibson said that district courts have consistently held that bankruptcy rules apply when the district court hears a bankruptcy matter. Judge Kayatta and Judge McEwen agreed. Professor Struve endorsed the Subcommittee solution. Judge Ambro wants to make sure attorneys do not have malpractice claims for violating timing rules. Judge

Wu asked whether the procedures are really that different between district court and bankruptcy court. Professor Gibson said that most procedures are the same, but that means that there is concern when they differ. Judge Krieger suggested that district judges should start with the bankruptcy rules rather than the civil rules when dealing with bankruptcy matters. Judge Connelly suggested adding an appendix that showed differences. Professor Coquillette said that the FJC is a good vehicle for educating district judges on this issue.

The Advisory Committee agreed to make the suggestion to the Appellate Rules Committee that they consider amending FRAP 6(a).

(B) ***Consider Comments on Proposed Amendments to Rule 8003***

Professor Gibson provided the report. Last August the Standing Committee published for comment amendments to Rule 8003 (Appeal as of Right—How Taken; Docketing the Appeal) that were proposed to conform to amendments recently made to FRAP 3. No comments were submitted on the proposed amendments.

The Subcommittee recommended that the Advisory Committee give its final approval to the proposed amendments to Rule 8003, as published, and the committee note, and that it ask the Standing Committee to do the same. The Advisory Committee gave final approval to the proposed amendments and committee note, and will request the Standing Committee to do so.

(C) ***Consider Comments on Proposed Amendments to Rule 3011***

Professor Bartell provided the report. The Standing Committee approved publication of amendments to Rule 3011 with respect to unclaimed funds in response to a proposal from the Committee on the Administration of the Bankruptcy System (Bankruptcy Committee), 20-BK-G.

There was one comment on the proposed amendments from Daniel J. Isaacs-Smith of the Administrative Office of the United States Courts. He suggested that language referring to "information in the data base" be changed to "data about such funds" because there is no reference elsewhere to a data base. The Subcommittee agreed to delete the words "data base" and instead of using the word "data" to use the word "information." Professor Bartell noted that Rule 3011 is among the restyled rules that are being presented to the Advisory Committee for final approval at this meeting, and the existing clause (a) will be restyled in connection with that project.

Ken Gardner supported the modifications. The Advisory Committee approved the amendments to Rule 3011 with the changes from publication presented to the Advisory Committee.

(D) ***Consider Recommendation to Publish an Amendment to Rule 8006(g)***

Professor Bartell provided the report. Under 28 U.S.C. § 158(d)(2)(A), a judgment, order or decree of a bankruptcy court may be appealed directly to the court of appeals if the

bankruptcy court, district court or bankruptcy appellate panel, acting on its own or on the request of a party to the judgment, order or decree, or all the appellants and appellees (if any) acting jointly, certify that the judgment, order or decree meets the requirements of that section and the court of appeals agrees to accept the direct appeal.

Fed. R. Bankr. P. 8006(g) currently states that "Within 30 days after the certification has become effective under (a), a request for leave to take a direct appeal to a court of appeals must be filed with the circuit clerk in accordance with Fed. R. App. P. 6(c)." Bankruptcy Judge A. Benjamin Goldgar has suggested a change in Rule 8006(g) to specify who must file the request for permission to take a direct appeal. The current rule is written in the passive voice and leaves the question open. He described one of his cases in which he certified his judgment for direct appeal but the appellants declined to file the request for permission to take the direct appeal. It was not clear that the appellees could file the request, and they did not do so. Without a request for permission to appeal, the court of appeals cannot entertain the appeal. He suggested that the Rule be amended to add a sentence stating that "any appellant or appellee" or "any party to the appeal" may file the request for permission to take a direct appeal to the court of appeals.

The Subcommittee recommends amended language that makes two substantive changes. First, it changes the word "must" to "may" to avoid suggesting that any party must file a request for leave to take a direct appeal. Second, the Subcommittee recommends adding a new sentence at the end of the Rule stating that "A request may be filed by any party to the prospective appeal."

Tara Twomey asked whether only the appellant should have the right to take a direct appeal. Judge Ambro said that the change expands the options to get a resolution of an issue the court believes is significant. Ms. Twomey also asked whether the trustee should be able to file the request. Judge Ambro said yes if it is a party to the appeal.

Judge Kahn does not think this is a substantive change. If the judge certifies, someone should be filing the request. The problem is that the current rule is written in passive voice. Judge Dow agreed.

Professor Struve said that this change may be good as a policy matter. But she believes the existing rule assumed that the request would be by the appellant because it dovetails with FRAP 5. The implementation may require some changes to FRAP 6. Under FRAP 5 the words "petitioner" and "appellant" are used interchangeably. Perhaps publication should be delayed until the Appellate Rules Committee considers its implications for FRAP 5 and 6.

Judge Ambro suggested remanding the suggestion to the Subcommittee to consider Professor Struve's concerns. Judge McEwen said that it is important to get certified matters to the court of appeals as soon as possible. Judge Bates agreed that this should not be published without considering the implications for the appellate rules. The Advisory Committee remanded the suggestion to the Subcommittee for further consideration.

(E) ***Consider Suggestion 21-BK-O for a New Rule (Rule 8023.1) to Address Substitution of Parties in Bankruptcy Appeals***

Professor Bartell provided the report. Bankruptcy Judge A. Benjamin Goldgar suggests the creation of a new bankruptcy rule to deal with substitution of parties in a bankruptcy appeal to the district court or bankruptcy appellate panel. He notes that neither Fed. R. Civ. P. 25 (which deals with substitution of parties) or Federal Rule of Appellate Procedure 43 (which also deals with substitution of parties) is applicable in this situation.

FRAP 43 applies only "in the United States courts of appeals." The Federal Rules of Civil Procedure "apply to bankruptcy proceedings to the extent provided by the Federal Rules of Bankruptcy Procedure." Fed. R. Civ. P. 81(a)(2). The only Federal Rule of Bankruptcy Procedure that makes Fed. R. Civ. P. applicable to bankruptcy proceedings is Fed. R. Bank. P. 7025, which states that "Subject to the provisions of Rule 2012 [dealing with substitution of a trustee], Rule 25 F.R.Civ.P. applies in adversary proceedings. Fed. R. Civ. P. 25 is not mentioned in Part IX of the Federal Rules of Bankruptcy Procedure as being applicable in cases under the Bankruptcy Code. Nor is Rule 25 mentioned in Part VIII of the Federal Rules of Bankruptcy Procedure as applicable to bankruptcy appeals.

The Subcommittee was convinced by the suggestion, and recommended that the Advisory Committee approve for publication a new Rule 8023.1 (modeled on FRAP 43) and the related committee note. The Advisory Committee approved the new Rule 8023.1 and committee note for publication (with some minor changes suggested by the style consultants).

9. **Report of the Restyling Subcommittee**

Judge Krieger began by noting that we are nearing the end of the process, and wanted to praise the efforts of the Subcommittee members, the reporters and the Administrative Office personnel who worked on this project.

(A) ***Consider Comments on Restyled Rules Parts III, IV, V, and VI***

Professor Bartell provided the report. Parts III-VI of the Restyled Federal Rules of Bankruptcy Procedure (the "Restyled Rules") were published for comments in August 2021. We received four sets of comments.

The first set of comments came from the National Bankruptcy Conference (NBC), reflecting a review of the restyled rules by its Court System and Bankruptcy Administration Committee. The second came from the National Conference of Bankruptcy Judges. The third came from a San Jose, California law firm, Gold and Hammes. The last set came from the National Association of Consumer Bankruptcy Attorneys (NACBA). In addition, one comment from James Davis that was included in the comments on the proposed substantive revision of Rule 3002.1 was deemed by the reporters to be stylistic in nature and related to the published current version of the rule. All these comments were carefully considered by the Associate Reporter and the style consultants, and recommendations on changes to the published rules were

presented to the Restyling Subcommittee. The reactions of the Subcommittee were then reviewed again with the style consultants, and the drafts being presented to the Advisory Committee reflect these discussions.

The Subcommittee recommended the restyled rules in Parts III – VI for final approval and submission to the Standing Committee, with the suggestion that none of the restyled rules be submitted to the Judicial Conference until all restyled rules have been given final approval.

The Advisory Committee gave final approval to the restyled rules in Parts III – VI for submission to the Standing Committee with that suggestion.

(B) ***Consider Recommendation for Publication of Restyled Rules in Parts VII – IX***

Professor Bartell provided the report. The Subcommittee presents to the Advisory Committee the last group of restyled rules for approval for publication. The work between the style consultants and the Subcommittee and the reporters has been very productive and collegial, and the Subcommittee again wants to thank the style consultants for their superb work

The Subcommittee recommends that the Advisory Committee approve the restyled rules in Parts VII-IX for publication. The Advisory Committee approved the restyled rules for publication.

10. **Future meetings**

The fall 2022 meeting has been scheduled for Sept. 15, 2022 in Washington, D.C.

11. **New Business**

There was no new business.

Judge Donald expressed her appreciation for the leadership of Judge Dow on the Advisory Committee.

12. **Adjournment**

The meeting was adjourned at 1:40 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. Privacy, Public Access, and Appeals Subcommittee

    (A) Recommendation of no action regarding Suggestions 21-BK-N and 21-BK-L for rule and form amendments concerning unclaimed funds