ADVISORY COMMITTEE ON BANKRUPTCY RULES
Meeting of Sept. 12, 2024
Washington, D.C. and on Microsoft Teams

The following members attended the meeting in person:

Bankruptcy Judge Rebecca Buehler Connelly
Jenny Doling, Esq.
Bankruptcy Judge Michelle M. Harner
David A. Hubbert, Esq.
Bankruptcy Judge Benjamin A. Kahn
Bankruptcy Judge Catherine Peek McEwen
Professor Scott F. Norberg
District Judge J. Paul Oetken
Jeremy L. Retherford, Esq.
Damian S. Schaible, Esq.
Nancy Whaley, Esq.
District Judge George H. Wu

The following members attended the meeting remotely:

Circuit Judge Daniel A. Bress
District Judge Jeffery P. Hopkins
District Judge Joan H. Lefkow

The following persons also attended the meeting in person:

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 Catherine T. Struve, reporter to the Standing Committee
Kenneth S. Gardner, Clerk, U.S. Bankruptcy Court for the District of Colorado
Bankruptcy Judge Laurel Isicoff, liaison from the Committee on the Administration of the Bankruptcy System
H. Thomas Byron III, Administrative Office
Shelly Cox, Administrative Office
Allison A. Bruff, Administrative Office
Dana Elliott, Administrative Office
Scott Myers, Administrative Office
Kyle Brinker, Rules Law Clerk
Carly E. Giffin, Federal Judicial Center
Rebecca Garcia, Chapter 12 & 13 Trustee
Merril Hirsh, Academy of Court-Appointed Neutrals
Kaiya Lyons, American Association for Justice

The following persons also attended the meeting remotely:

Professor Daniel R. Coquillette, consultant to the Standing Committee
Ramona D. Elliott, Esq., Deputy Director/General Counsel, Executive Office for U.S. Trustees
Tim Reagan, Federal Judicial Center
Molly Johnson, Federal Judicial Center
Rakita Johnson, Administrative Office
Alane Becket, Esq., Becket & Lee (member of Committee effective Oct. 1)
District Judge James Browning (member of Committee effective Oct. 1)
Bridget M. Healy, Administrative Office
Hilary Bonial, Esq. Bonial PC
John Hawkinson, journalist
Daniel Kamensky, Esq., Creditor Rights Coalition
Alan Morrison, George Washington University
John Rabiej, Esq., Rabiej Litigation Law Center

Discussion Agenda

1. Greetings and Introductions

Judge Rebecca Connelly welcomed the group and thanked everyone for joining this meeting, including those Committee members attending virtually. She acknowledged the two members of the Committee for whom this is the last meeting – Jeremy Retherford and Judge George Wu – and thanked them for their service. She announced that the new members of the Committee will be District Judge James Browning and Alane Becket, who were attending the meeting remotely.

Judge Connelly thanked the members of the public attending in person or remotely for their interest and she noted that the meeting would be recorded.

2. Approval of Minutes of Meeting Held on Apr. 11, 2024

The minutes were approved.

3. Oral Reports on Meetings of Other Committees

(A) *June 4, 2024, Standing Committee Meeting*

Judge Connelly gave the report.

(1) Bankruptcy Rules Committee Business

Final Approval

The Standing Committee gave final approval to the proposed amendments to Rule 3002.1 (Notice Relating to Claims Secured by a Security Interest in the Debtor's Principal Residence in

a Chapter 13 Case) and Proposed New Official Forms 410C13-M1, 410C13-M1R, 410C13-N, 410C13-NR, 410C13-M2, and 410C13-M2R. The Standing Committee also gave final approval to the proposed amendment to Rule 8006(g) (Certifying a Direct Appeal to a Court of Appeals) and Official Form 410 (Proof of Claim relating to Uniform Claim Identifier) after making one technical change to Official Form 410 to conform it to the restyled Bankruptcy Rules scheduled to go into effect on Dec. 1, 2024.

Approval for Publication for Public Comment

The Standing Committee approved for publication a revised version of amendments to Rule 3018 (Chapter 9 or 11 – Accepting or Rejecting a Plan); and amendments to Rules 1007 (Lists, Schedules, Statements, and Other Documents; Time to File), 5009 (Closing a Chapter 7, 12, 13, or 15 Case; Declaring Liens Satisfied), and 9006 (Computing and Extending Time; Motions) dealing with the certificate of completion of financial management course.

Amendments to Rule 9014 (Contested Matters), 9017 (Evidence) and new Bankruptcy Rule 7043 (Taking Testimony) dealing with remote testimony in contested matters were approved for publication by electronic vote after the meeting after extensive changes were made to the committee note for Rule 9014 that addressed concerns raised during the Standing Committee meeting that it inadequately explained why remote testimony was needed in contested matters as compared with adversary proceedings.

(2) **Joint Committee Business**

Professor Catherine Struve and Tom Byron also reported to the Standing Committee on the Pro Se Electronic-Filing Project, the Redaction of Social Security Numbers Project, and the Joint Subcommittee on Attorney Admission. Judge Connelly noted that they would be reporting to this Committee on these projects later in the meeting.

(B) ***Meeting of the Advisory Committee on Appellate Rules***

The Advisory Committee on Appellate Rules will meet on Oct. 9, 2024. No report.

(C) ***Meeting of the Advisory Committee on Civil Rules***

The Advisory Committee on Civil Rules will meet on Oct. 10, 2024. No report.

(D) ***June 13-14, 2024, Meeting of the Committee on the Administration of the Bankruptcy System (the "Bankruptcy Committee")***

Judge Isicoff provided the report.

Legislative Proposal Regarding Chapter 7 Debtors' Attorney Fees

As previously reported, the Judicial Conference on recommendation of the Bankruptcy Committee has adopted a legislative proposal related to chapter 7 debtors' attorney fees. This proposal would amend the Bankruptcy Code to (1) except from discharge chapter 7 debtors' attorney fees due under any agreement for payment of such fees; (2) add an exception to the automatic stay to allow for post-petition payment of chapter 7 debtors' attorney fees; and (3) provide for judicial review of fee agreements at the beginning of a chapter 7 case to ensure reasonable chapter 7 debtors' attorney fees. This legislative proposal seeks to address concerns about access to justice and access to the bankruptcy system related to the compensation of chapter 7 debtors' attorneys.

The Administrative Office (AO) transmitted the legislative proposal to Congress most recently in July 2023. The proposal continues to be reviewed by Congressional staff, and several bankruptcy judges and AO staff have met with members of Congress to answer questions raised in connection with this proposal. If Congress enacts amendments to the Code based on this position, conforming changes to the Bankruptcy Rules would be required. The Bankruptcy Committee will continue to update the Advisory Committee on any progress in this area.

Remote Testimony in Bankruptcy Contested Matters

Last year the Bankruptcy Committee preliminarily reviewed suggested amendments to the Bankruptcy Rules concerning remote testimony in bankruptcy contested matters that were being considered by the Advisory Committee, with a focus on whether those amendments conflict with the Judicial Conference remote public access policy. The Bankruptcy Committee determined that the proposed amendments would not conflict with existing Conference policy. It then communicated this view, through staff, to the CACM Committee. The CACM Committee chair later sent a letter to Judge Connelly conveying the views of the two committees. The proposed amendments were submitted to the Standing Committee for publication and were published for public comment last month. The Bankruptcy Committee will continue to discuss these proposed amendments when it meets in December.

Masters in Bankruptcy Cases

The suggestion to allow appointment of masters in bankruptcy cases is an area in which the Bankruptcy Committee was historically very engaged, and Judge Isicoff is personally interested in it.

If the Advisory Committee or the Standing Committee is interested in working with Bankruptcy Committee to evaluate this issue at any stage, the Bankruptcy Committee would be honored and happy to assist.

4. Intercommittee Items

(A) *Report of Reporters' Privacy Rules Working Group*.

Tom Byron gave the report.

The Rules Committees have received several suggestions that address particular issues relating to the privacy rules, including suggestions regarding redaction of social-security numbers in federal-court filings and a suggestion relating to initials of known minors in court filings. The Advisory Committees will continue to consider those suggestions.

The Working Group has met a couple of times to consider whether additional privacy-related issues should be addressed by the Advisory Committees. After considering a number of issues that are highlighted in the memorandum included in the Agenda Book, the Working Group recommends that the Advisory Committees should not address these additional issues at this time. Each of the issues represents an area where some clarifying changes could be made to the privacy rules or where they could be expanded to cover additional information. But the consensus view is that there is no demonstrated need for the Rules Committees to take up any of these issues because there is no real-world problem that we need to solve right now.

Judge Isicoff noted that in the S.D. Fla. there is a large number of persons of Hispanic origin with the same name, and it would be difficult to distinguish between them without the last four digits of the social security number.

Jenny Doling suggested that we should consider potential changes to Rule 9037 to add "teeth" to the rule to address situations when attorneys willfully violate the privacy rule.

(B) *Report on Unified Bar Admissions*.

Judge Oetken and Professor Struve gave the report.

The Subcommittee chaired by Judge J. Paul Oetken has been considering the proposal by Alan Morrison and others for adoption of national rules concerning admission to the bars of the federal district courts.

The suggestion that there be a national rule that would create a national "Bar of the District Court for the United States" administered by the Administrative Office of the U.S. Courts was rejected by the Subcommittee. In addition to its practical challenges, the Subcommittee was concerned that the Rules Enabling Act may not authorize a rule to create a new bar. The Standing Committee supported the Subcommittee's decision.

Other approaches may be more promising, including a rule that would bar U.S. district courts from having a local rule requiring (as a condition to admission to the district court's bar)

that the applicant reside in, or be a member of the bar of, the state in which the district court is located.

The Subcommittee believes that there may also be other models to consider, including a extending the approach of Appellate Rule 46. The Standing Committee provided a lot of valuable feedback on the suggestion at its meeting in January. Tim Reagan of the Federal Judicial Center and former Rules Clerk Zachary Hawari have provided valuable research support. Many more comments were made at the Civil Rules Committee meeting on April 9.

During the summer the Subcommittee met virtually and reviewed Tim Reagan's research concerning local-counsel requirements and admission fees. The Subcommittee also discussed issues relating to the unauthorized practice of law and noted that it would be useful to ask state bar authorities whether they would have concerns about a national rule loosening district-court admission requirements for out-of-state lawyers. More information about practices under Appellate Rule 46 would also be useful. The Subcommittee is currently making inquiries with Circuit Clerks to ascertain how Appellate Rule 46 is functioning and whether the Rule's relatively open approach to attorney admission causes any problems with attorney conduct in the circuits. However, a number of participants in discussions of this project have questioned whether the experience of the federal courts of appeals with attorney admission can generalize to the context of admission to practice at the trial level.

An additional consideration is that some courts require local counsel be associated with an attorney admitted pro hac vice to the district court. Although Dean Morrison and his fellow proponents for rule change appear to assume that admission to a district court's bar would exempt an out-of-state lawyer from the requirement of associating local counsel in a case, that is not necessarily true. One might question whether the proposed rule change would have the effect desired by its proponents if the local district responded by expanding their local-counsel requirement to encompass out-of-state attorneys admitted in the district but not to the state bar.

There was spirited discussion about the suggestion. Judge Wu noted that, in his district, the requirement for associating local counsel had grown out of the need to have physical access to counsel without delay – contact rather than expertise – and in light of modern communication methods it need not be problematic to remove that requirement.

Judge McEwen invited Judge Isicoff to comment. Judge Isicoff said that the bench-bar funds come from attorney admission fees, so there are financial impacts to the proposals. Judge McEwen noted that civic outreach is paid for out of those funds and that changing the rules for admission to the district bar could alter the proportion of pro hac vice fees versus general admission fees.

Professor Struve noted that some proposals would have no financial impact, and others would have a greater impact. The Subcommittee is certainly aware of issues relating to financial impact.

Damian Schaible asked the judges in the room how they would feel about not having local counsel involved. Judge Oetken said that there is wide variation between districts as to whether they require local counsel, as the study showed. This proposal does not deal with the local counsel requirements. Mr. Schaible thinks that this has to be part of the proposal if the goal is to streamline the process.

Judge Harner said the Subcommittee may want to consider differences in the bankruptcy courts where the out-of-district lawyers may include a greater number of repeat players than in district-court litigation.

Professor Coquillette said that the fees for admission pro hac vice were not a big concern; hiring a local counsel was the major concern because of the cost involved. The two big issues are local-counsel requirements and requirements for in-state bar admission in states where admission requires taking the bar exam.

Judge Bates congratulated the Subcommittee for the work it has done so far and said that the work is obviously not over. There is an underlying issue under the Rules Enabling Act as to whether the rules can address this. The question of rulemaking authority would become even more acute if a proposal were to address local-counsel requirements. Professor Struve said the Subcommittee will continue to consider the issue of rulemaking authority.

Judge Lefkow reported on the local counsel rule in her district, which had been required for service only, and was abrogated because of electronic service rules.

The Subcommittee will continue to consider the suggestion, keeping in mind the importance of providing access to attorneys without undue time and expense, the interest of the district courts in controlling who may practice before them in order to maintain the quality and integrity of the district court bar, and the effect any approach may have on court revenue.

(C) ***Report on the Work of the Pro-Se Electronic Filing Working Group***

Professor Struve gave the report and thanked those who have participated in the project.

The Working Group has been studying two broad topics: (1) increases to electronic access to court by self-represented litigants (whether via CM/ECF or alternative means) and (2) service (of papers subsequent to the complaint) by self-represented litigants on litigants who will receive an electronic notice of filing (Notice of Filing) (which includes a notice of docket activity) through the court's electronic-filing system or through a court-based electronic-noticing program.

The Working Group has collaborated on a very tentative sketch of a possible amendment to Civil Rule 5. The sketch implements two policy choices. First, as to service, it eliminates the requirement of separate paper service (of documents after the complaint) on a litigant who receives a Notice of Filing through the court's electronic-filing system or court-based electronic-

noticing program. In a conceptually separate change, the proposal would also allow service by email to the address used by the court when sending notices by email. She invited comments on this aspect of the proposal.

Professor Gibson noted that electronic service also got moved up to the top of the methods of service in the proposed sketch.

Judge Harner said that the proposal makes great sense for most situations, but in bankruptcy there often are many people (creditors) who are not yet on CM/ECF. Professor Struve said that the proposal applies only to those being served who are registered to receive electronic service. For service on others this provision would not apply. Judge Harner thinks that point should be made more clearly so the pro se litigant will not be misled. Ken Gardner said that if the litigants do not effectively serve, they will get deficiency notices and there will be more work for the clerks. Judge Kahn suggested language *requiring* physical service on those who are not registered in subsection (b)(3) of the proposal. He also questioned the email service option.

Professor Scott Norberg agreed with Judge Harner that pro se litigants are not likely to understand the difference between registered and unregistered parties. Perhaps the electronic system could alert the filer that the service is effective only on those registered. Professor Struve responded that the difficulty is that these pro se filers will not get the bounceback notice because they do not have the electronic access themselves. The question is how much should be handled by national rule and how much by local provisions and guidance documents.

Judge McEwen agreed that some list should be given to the pro se litigants so they know who will receive electronic service and who needs to be served by another method. And if that list has to go out to the pro se litigant by mail, then they will be late in serving those who need to be served by another method. The only way to do it quickly is if it is sent by email originally.

Nancy Whaley shared her experience. She receives everything electronically. Looking at the current system through the eyes of a non-attorney, it is very complicated and difficult to explain and comply with. She thinks the pro se litigant should have the same rights as the attorneys who use electronic filing, but it is difficult. Professor Struve noted that pro se litigants may be on both sides, serving and receiving service.

Judge Harner thinks we are assuming everyone has an email address and access to the internet, which may not be true. Should we require email addresses on the proof of claim? Ken Gardner said it is a nightmare on the proof of claim form, which creates problems no matter what we do. There are already two addresses on the form, and even someone who knows bankruptcy has trouble understanding which to use. BNC reconciles the addresses for service in bankruptcy, and it may be different for district court.

Damian Schaible asked whether we can end paper service on those who are registered for electronic filing. Ken Gardner said that is a local requirement. Mr. Schaible asked whether this could be dealt with in a national rule. Mr. Gardner said in some places people are not as

comfortable with electronic filing. Ms. Whaley noted that BNC allows you to elect not to receive paper filings if you are receiving electronic filings.

Professor Struve said she is hearing that attempting to deal with electronic service for pro se litigants is a worthy project, but that the drafting should be further refined; she invited any interested participants to let her know if they would be willing to assist in the drafting effort.

Second, as to filing, the sketch presumptively permits self-represented litigants to file electronically on the court's electronic filing system, or alternatively allows a local rule or general court order that bars self-represented litigants from using the court's electronic-filing system so long as the court permits the use of another electronic method (like email) for filing documents and receiving electronic notice of activity in the case. This is likely to be controversial in many districts.

The Working Group supports the publication and adoption of the proposed rule changes concerning service, whether or not included with the provisions regarding filing. Professor Struve asks for the reactions of the Advisory Committee.

Judge McEwen wants some gatekeeping function to prevent litigants from putting inappropriate material on the electronic filing system, and that requires resources. Professor Struve said either that will be built into CM/ECF, or the courts will use the alternative process. Perhaps, Judge McEwen suggests, the litigants must take a course, or someone must look at it before it is posted. Judge Isicoff said her district eliminated email access for pro se litigants because it was being abused. The documents were not always in pdf format and could not be opened. The filings included grocery lists, family photos, etc., and the clerk's office would have to examine them manually on limited resources. The clerks have to be able to refuse access to their electronic filing system. Professor Struve said that the proposal allows the court to take a litigant who abuses the system off CM/ECF. Judge Isicoff suggested that the power to exclude litigants should be extended to alternative electronic-filing systems like email.

Ken Gardner opposes having separate systems for filing. His court has an email system and the filing of inappropriate materials exists today, even from lawyers. He noted that the litigants think they have filed a document when they use the email system, despite clear documentation noting that a document is not filed through these alternative systems until it has been accepted. He wants to have equal access to justice, and that means using the court's electronic filing system.

Judge Harner thinks perhaps we could start just by reversing the presumption to allow pro se litigants to file electronically unless the court adopts a local rule to preclude it rather than allowing it only if the court orders. Also, the rules should continue to be clear that the clerk cannot reject a litigant's filings. Ken Gardner likes not having to make the judgment and thinks current Rule 5005(a)(1) is appropriate. He agrees with Judge Harner that perhaps incremental changes would be appropriate.

Judge Kahn observed that an alternative to CM/ECF does not have a provision for original signatures and that can create problems.

Again, Professor Struve indicated that the Working Group will continue to analyze the proposal and thanked the Advisory Committee for its valuable contributions.

5. **Report by the Consumer Subcommittee**

(A) ***Proposed Amendment to Rule 2003***

Judge Harner and Professor Gibson provided the report.

Rebecca Garcia, a chapter 12 and chapter 13 trustee, has submitted a suggestion (Suggestion 24-BK-G) to amend Rule 2003(a) and (c) as pertains to the timing, location, and recording of meetings of creditors in chapter 7, 11, 12, and 13 cases. She makes this suggestion, which has been endorsed by the Association of Chapter 12 Trustees and the National Association of Chapter 13 Trustees, in response to the current practice of conducting the meetings remotely by means of Zoom. The proposed amendment would (1) authorize remote meetings of creditors, (2) create a preference for virtual meetings over ones held in person, (3) allow video recording of meetings, and (4) provide the same timeframe in all chapters for holding the meetings.

As to the first issue, the question is whether an amendment to Rule 2003 is needed. The Justice Department (through the USTP) and the AO (through the bankruptcy administrators) have already established a nationwide program of remote meeting of creditors under the existing rule. The Subcommittee is supportive of remote meetings but is seeking feedback from the Advisory Committee on several issues. The first is whether an amendment to the Rule is needed. Can Rule 2003(a)'s authorization of meetings "at any . . . place designated by the United States trustee within the district convenient for the parties in interest" be read to encompass remote meetings?

If an amendment to expressly authorize remote meetings is needed, the Subcommittee also asks whether there be concerns about the Advisory Committee proposing another "remoteness" amendment on the heels of the proposed amendments regarding remote hearings in contested matters. Subcommittee members discussed a number of reasons why allowing remote meetings of creditors should not raise concerns. These meetings are not judicial proceedings. Section 341(c) of the Code prohibits judges from attending the meetings, and it allows creditors to participate on their own without attorney representation. Moreover, the experience to date shows that the nationwide program of Zoom meetings is being conducted with few problems or concerns.

The Subcommittee invited the views of the Advisory Committee on whether to pursue an amendment to authorize expressly remote 341 meetings. (The Subcommittee does not recommend amending the rule to create a preference for remote meetings.)

Nancy Whaley said there was concern under the current rule as to where the trustee was located to conduct the meeting of creditors. Since moving to remote hearings, in their district and

in most places throughout the country trustees have to be in their offices, not in their home offices. However, U.S. trustees around the country have different views on where the trustee has to be sitting. Some trustees do not live within their district. Chapter 7 trustees have to be within the district to be appointed, but chapter 12 and 13 trustees do not.

Scott Norberg said that if the rule is not broken, we should not fix it. He does, however, see that there could be an issue interpreting the phrase "place within the district." Perhaps the words "within the district" should be struck from the rule.

Judge Harner expressed concerns about making a change that suggests previous practice (the current practice of remote 341 hearings) violated the rule.

Ramona Elliott said that she thinks the rule is working as it is, so no change is necessary.

Judge Bates, while not wanting to speak for the Standing Committee on its reaction to another remote proceeding, acknowledged that this is different from the existing proposal for remote contested matters, but says some members of the Standing Committee might not be happy to see another remote proceeding.

Ken Gardner said this suggestion really cannot be extended to chapter 13 cases.

Nancy Whaley suggested taking this back to the Subcommittee to discuss how to define "place in the district."

Judge Harner asked Ramona Elliott if the U.S. trustees will continue to regulate where the trustees must be located if the rule did not require the meeting to be at a place within the district. Ramona Elliott says that the statute is not limited to chapter 7 trustees. During the pandemic there were trustees who moved across the country and were conducting 341 meetings from there. She asked whether we want the perception that trustees are not near the court. This is generally the only contact the debtor has with the bankruptcy system. She has also heard that there may be a new proposal coming from the National Association of Bankruptcy Trustees (NABT) related to Rule 2003.

Assuming that the rule is not changed to allow remote hearings, Professor Gibson suggested that the Advisory Committee would not pursue the portion of the suggestion allowing video recording. Ramona Elliott told the Subcommittee that the USTP has declined to allow video recording of debtor examinations, allowing only audio recording, and she opposed amending the rule to allow video recording.

As to the final portion of the suggestion that recommends that time periods for setting the meeting of creditors be the same for all chapters (no fewer than 21 days and no more than 60 days after the order for relief), the justification was that it would "streamline the time frames." Professor Gibson reviewed the history of the changes to the time periods in Rule 2003, and noted that because other time periods in the Bankruptcy Code and Rules are expressed in relation to the meeting of creditors, a change to the times in Rule 2003(a) would have a ripple effect elsewhere.

She recommended to the Subcommittee that, in the absence of a good reason to make this change, the Subcommittee not make this amendment.

Nancy Whaley told the Subcommittee, and explained to the Advisory Committee, that the impact of such a change on other provisions would be less than might otherwise appear. In a chapter 12, having a 341 meeting 35 days after filing is too short. She explained that under the current rule meetings of creditors are often set for 60 days after the order for relief. That scheduling relies on the provision that allows an extended 60-day deadline "if the designated meeting place is not regularly staffed by the United States trustee or an assistant who may preside." The proposed amendment for a uniform 60-day deadline, Ms. Whaley said, would merely reflect the current practice. She supports the extension of time.In response to a question from Professor Gibson, Nancy Whaley said the problem of insufficient time for chapter 12 meetings of creditors is not eliminated by holding such meetings remotely. Judge Kahn said he is reluctant to go to 60 days because in subchapter V that is the date of the status conference. He does not oppose some extension, perhaps 50 days for chapter 12 and chapter 13.

Judge Harner thought it would be helpful to have more information from the chapter 12 and 13 trustees before making any recommendations. Ken Gardner said that he does not think the time frame for a chapter 7 should be extended at all because debtors move after filing, creating difficulties in finding them for a 341 meeting. Judge Harner suggested that the first issue on amending the rule to reflect remote hearings be tabled for now until the NABT suggestion is made. As to the issue regarding time frames for the meetings, the Subcommittee should ask for more information from the chapter 12 and chapter 13 trustees and continue to consider it with respect to those chapters.

6. **Report by the Forms Subcommittee**

(A) ***Proposed Technical Amendments to Official Forms 122A-2 and 122C-2 to conform to Connecticut Housing and Utilities Standards***

Judge Kahn and Scott Myers provided the report.

The U.S. Trustee Program recently updated the Means Testing page on its website to reflect that, effective May 15, 2024, "the Housing and Utilities Standards for Connecticut shall be broken down by planning regions rather than counties, to reflect the Census Bureau's use of the State of Connecticut's nine Regional Councils of government, or Planning Regions, as the county equivalent for purposes of the statistical data that informs the Housing and Utilities Standards."

In completing Official Form 122A-2, lines 8 and 9a, a debtor must consult the Housing and Utilities Standards for the debtor's "county" to determine the appropriate income deduction amount. To conform to the revised terminology now used for Connecticut, lines 8 and 9a should be revised to add "or planning region" after the word "county." The same changes should be made to lines 8 and 9a of Official Form 122C-2.

The Advisory Committee has the authority to make "non-substantive, technical, or conforming amendments" to official forms, subject to later approval by the Standing Committee. The Subcommittee recommended that the Advisory Committee approve the changes effective December 1, 2024, and ask the Standing Committee to approve the changes when it meets in January 2025.

Scott Norberg asked about the terminology in Louisiana where they have parishes rather than counties. Scott Myers said no one had raised that as a problem. Judge Wu said the language in the committee note should be "almost all" states rather than "most states" and moving the "However" to the beginning of the next sentence. The Advisory Committee agreed to that amendment to the committee note.

The Advisory Committee approved the changes, but after the meeting voted by email to recommit the matter to the Forms Subcommittee to reconsider the proposal in light of the fact that states other than Connecticut have geographic subdivisions that are not called "counties."

(B) ***Recommendation for Publication of Amendments to Official Form 101***

Judge Kahn and Professor Bartell provided the report.

Mark A. Neal, Clerk of the Bankruptcy Court for the D. Md., submitted a suggestion (24-BK-I) to modify the prompt for Question 4 in Part 1 on the Voluntary Petition for Individuals Filing for Bankruptcy (Official Form 101). Currently the question asks for "Your Employer Identification Number (EIN), if any." Mr. Neal notes that some pro se debtors are providing the employer identification number of their employers, not realizing that the question is attempting to elicit the EIN of the individual filing for bankruptcy if that individual is himself or herself an employer. Because multiple debtors may file who have the same employer and list that employer's EIN, the CM/ECF monitoring for repeat filings triggers a report erroneously suggesting that the debtor is not eligible because of prior filings.

The Subcommittee agrees that the prompt may be confusing, and recommends to the Advisory Committee for publication an amendment to the existing language of the prompt in Question 4 and the addition of a new paragraph so that the prompt would read as follows:

<u>"EIN (Employer Identification Number) issued to you, if any.</u>

Do NOT list the EIN of any separate legal entity such as your employer, a corporation, partnership, or LLC that is not filing this petition."

A suggested committee note follows:

Committee Note

Question 4 has been amended to make it clear that only debtors who themselves have an employer identification number (EIN) should list it; they should not include the EIN of their employer or any other entity not filing the petition.

Professor Harner said that this amendment will be very useful.

The Advisory Committee approved the proposed amendment and committee note and will recommend them to the Standing Committee for publication.

(C) ***Consider Instructions for Forms Implementing Rule 3002.1***

Judge Kahn and Professor Gibson provided the report.

At its June meeting, the Standing Committee gave final approval to the proposed amendments to Rule 3002.1 (Chapter 13—Claim Secured by a Security Interest in the Debtor's Principal Residence) and the six new forms proposed to implement its new provisions. The forms, if approved by the Judicial Conference, will go into effect on December 1, 2025, simultaneously with the amended rule. In the meantime, instructions for completing the forms need to be drafted.

The instructions for some official forms are relatively short and straightforward, but these are likely to be more detailed. In response to publication of the forms, several commenters asked for instructions, and one commenter raised a number of questions about the meaning of terms used in the forms, to which the Advisory Committee responded that the instructions would address those issues.

During the Subcommittee's meeting on July 29, a group was formed to draft the instructions. It will work on them this fall, and the Subcommittee will present recommended instructions to the Advisory Committee at the spring meeting.

(D) ***Recommendation Concerning Proposed Amendment to Official Form 318 and Director's Forms 3180W and 3180H***

Judge Kahn and Professor Bartell provided the report.

We have received a suggestion from Dana C. McWay, Chair of the Administrative Office of the U.S. Courts' Unclaimed Funds Expert Panel, that language be added to the form Order of Discharge used in Chapter 7 and Chapter 13 cases notifying recipients that unclaimed funds may be available and suggesting that they check the Unclaimed Funds Locator to ascertain whether they are entitled to any. Although there are comparable forms of Order of Discharge used in Chapter 12 and Subchapter V of Chapter 11, the Panel believes that there are fewer unclaimed funds in those cases and inclusion of the language is not necessary but could be done for consistency. The Panel notes that the Orders of Discharge "reach a wide audience, including

those for whom Bankruptcy courts hold unclaimed funds, making the forms an ideal vehicle to inform potential claimants of available funds." The Panel suggests that the following language be inserted in each form:

Money may be left over in this case.

Unclaimed funds are held by the court for an individual or entity who is entitled to the money but who has failed to claim ownership of it. To search unclaimed funds, use the Unclaimed Funds Locator at https://ucf.uscourts.gov/.

The Subcommittee recommends that no action be taken on this suggestion for several reasons.

First, although it is true that the Order of Discharge must be mailed by the clerk under Bankruptcy Rule 4004(g) to all creditors, the Subcommittee does not believe that order is the appropriate vehicle for admonitions about unclaimed funds. The existence of unclaimed funds has nothing to do with discharge. The Subcommittee believes that the discharge order should be kept clean of extraneous matter.

Second, often courts do not receive unclaimed funds until months after the discharge order is issued, so even if a creditor saw the notice and immediately communicated with the clerk's office – and this might increase the number of such calls -- the clerk would only be able to tell the creditor to check back later.

Third, if the reason that the funds are unclaimed is that the creditor has failed to update its address, the discharge order will be sent to the same erroneous address and therefore will not reach the creditor with a right to the funds.

Fourth, including this in the discharge order may encourage fraudulent claims by creditors who are not entitled to the funds. Such fraudulent claims seem to be increasing, and having the notice in the discharge order might encourage creditors to "try their luck" in securing unclaimed funds.

Finally, including that statement in the explanation of the nature of a bankruptcy discharge in the discharge order, which was drafted more for debtors than for creditors, could confuse debtors who might think there is left-over money that belongs to them.

Although the Subcommittee is sympathetic to the goals of the Unclaimed Funds Expert Panel, it does not believe this is the appropriate approach and recommends that no action be taken on the suggestion.

The Advisory Committee agreed with the recommendation to take no action.

(E) ***Suggestion to Amend Official Form 106C***

Judge Kahn and Professor Gibson provided the report.

Rebecca Garcia, a chapter 12 and chapter 13 trustee, has submitted a suggestion (Suggestion 24-BK-H) to amend Official Form 106C (Schedule C: The Property You Claim as Exempt). The suggestion, which has been endorsed by the Association of Chapter 12 Trustees and the National Association of Chapter 13 Trustees, proposes amending the form to include a total amount of assets being claimed exempt, similar to Schedule C in use prior to 2015. Ms. Garcia explains that "28 U.S.C. Sec. 589b(d)(3) requires the uniform final report submitted by trustees to total the 'assets exempted.' Without the amount totaled on the form, the Trustee is required to manually add up the amounts on each form in preparation of the required final report."

The current form resulted from several years of deliberation by the Advisory Committee and represents a compromise of competing interests. Professor Gibson reviewed the history of the changes made to the form in response to the S. Ct. opinion in *Schwab v. Reilly*, 560 U.S. 770 (2010).

Members of the Subcommittee understood the desire of trustees to have a total dollar amount of claimed exemptions listed on Form 106C in order to simplify their task of reporting "assets exempted" to the U.S. trustee under 28 U.S.C. § 589b. But because the form − in response to *Schwab* − allows an unspecified dollar amount to be claimed, simple addition to arrive at a total amount is not always possible. The value of an asset claimed as 100% exempt might be unliquidated or in dispute. Requiring a debtor to assign a definite value to such property in order to arrive at a total amount would be contrary to the option recognized in *Schwab*.

A suggestion was made that the form be revised to place in separate columns the two categories of exemption amounts: "☐ $_____" and "☐ 100% of fair market value, up to any applicable statutory limit." With that design the column for specific dollar amounts could be totaled. Consideration of that possibility led to a discussion of the trustees' statutory duty to report "assets exempted." Several questions were raised:

- Does reporting only exemptions claimed in a specific dollar amount satisfy the statutory requirement?
- Are unspecified amounts currently being reported and, if so, how?
- Are assets claimed as exempt on Form 106C the same as "assets exempted?

The Subcommittee intends to explore these issues further, assisted by Ramona Elliott, who will gather further information about the purpose and use of the reports to U.S. trustees on exemptions. The Subcommittee welcomes any thoughts and suggestions from the Advisory Committee about issues to pursue.

Judge Connelly said that it is important to recognize that the trustees are required to report this figure, and they are doing it manually now. The request is to have the form provide a total.

Judge Bates asked whether the trustee would have to double-check the total in any event if the debtor did the addition. Nancy Whaley said that the software would total the number. She said that there may be variations around the country about the computation and it is worthwhile to continue the conversation.

Judge McEwen noted that even if the software totaled the figures, pro se litigants often file schedules that are handwritten and would have to do it themselves.

Judge Kahn said that many exemptions do not have a limit in dollars, and the exempt value will not be reflected in the schedule.

The Subcommittee will continue to consider the suggestion.

(F) ***Conforming Changes to Director's Form 2000 concerning Pending Elimination of Official Form 423***

Judge Kahn and Scott Myers provided the report.

The pending amendments to Rule 1007(b)(7) on track to go into effect this December eliminate the requirement that the debtor file a statement on Official Form 423 *Certification About a Financial Management Course*. Instead, it requires that the debtor file the certificate of course completion provided by the approved course provider, unless the course provider notifies the court of course completion. The amendments also eliminate the requirement that a debtor who has been excused from taking such a course file Official Form 423 indicating the court's waiver of the requirement. As a result, Official Form 423 will be abrogated this December.

Abrogation of Official Form 423 requires conforming changes to Director's Form 2000, *Required Lists, Schedules, and Fees.* That form serves as a checklist for debtors of various requirements under chapter 7, 11, 12, or 13 of the Bankruptcy Code. Revisions are needed to the chapter 7, 11, and 13 checklists to remove references to Official Form 423, and to reflect that the debtor will no longer have to affirmatively assert the applicability of an exemption from taking the course.

Because Form 2000 is a Director's Form, the Advisory Committee's role is to review and, if appropriate, endorse any changes to the form. The Subcommittee recommends that the Advisory Committee endorse the proposed changes to Form 2000.

The Advisory Committee endorsed the proposed changes to Form 2000.

7. Report of the Technology, Privacy and Public Access Subcommittee

(A) *Continued Consideration of Suggestion 22-BK-I Concerning SSN Redaction in Bankruptcy Filings*

Judge Oetken and Professor Bartell provided the report.

Senator Ron Wyden of Oregon sent a letter to the Chief Justice of the United States in August 2022, in which he suggested that federal court filings should be "scrubbed of personal information before they are publicly available." Portions of this letter, suggesting that the Rules Committees reconsider a proposal to redact the entire social security number ("SSN") from court filings, have been filed as a suggestion with each of the Rules Committees. The Bankruptcy Rules suggestion has been given the label of 22-BK-I.

When the Advisory Committee last considered the suggestion, it concluded that it needed more information before formulating a response. Specifically, it decided to defer consideration until two different tasks were completed.

First, the Committee on Court Administration and Case Management of the Judicial Conference of the United States (CACM) requested the Federal Judicial Center (FJC) to design and conduct studies regarding the inclusion of sensitive personal information in court filings and in social security and immigration opinions that would update the 2015 FJC privacy study and gather information about compliance with privacy rules and the extent of unredacted SSNs in court filings. That study, completed in April 2024, is included in the agenda book.

Second, the Subcommittee decided that it was important to survey debtor attorneys, chapter 7, 12, and 13 trustees, creditor attorneys, various tax authorities, and representatives of the National Association of Attorneys General about whether bankruptcy forms that currently require inclusion of the debtor's redacted SSN must or should continue to do so. Concurrently, the Subcommittee decided to ask for reactions from bankruptcy clerks of court on the issue. Working with the FJC, the reporters and members of the Subcommittee developed two surveys and sent them electronically to the various bankruptcy parties. The responses to the surveys are included in the agenda book.

After reviewing the privacy study and the results on the surveys, the Subcommittee recommends that the Advisory Committee take no action on Sen. Wyden's suggestion for three reasons.

First, as far as the Subcommittee knows there is no demonstrated problem of SSN fraud stemming from the disclosure of either full or truncated SSN in bankruptcy filings. Sen. Wyden pointed to the last FJC report on protecting privacy and noted that full SSNs have been disclosed in court filings (including in bankruptcy court filings). But he provided no evidence that these disclosures have in fact led to "identity theft, stalking or other harms" about which he is concerned. Moreover, the FJC's 2024 Privacy Study indicates the disclosure of full SSNs in bankruptcy filings is very low – approximately 0.1% of the filings checked. Even if the

Advisory Committee recommended the extensive modifications to the rules and forms to eliminate redacted SSNs from most bankruptcy court filings, mistakes would be made (as they are today). The bankruptcy clerks and courts cannot guarantee that any rules would be followed especially in connection with proofs of claim where most of the errors are made. As the 2024 Privacy Study pointed out, although there are very few disclosures of full SSNs in filed bankruptcy documents, the vast majority of such disclosures appear to violate the existing privacy rules. The various rules committees have consistently tried to limit disclosure of personally identifiable information in filed documents to the redacted SSN in an effort to protect the privacy of debtors. The Standing Committee in the past has declined to go beyond the current requirements, and although the suggestion is well-meant, it may not be addressing a real-world problem.

Second, the surveys indicate a significant number of bankruptcy specialists oppose the idea removing the truncated SSN with respect to every form listed. Perhaps over time those parties could be made comfortable with the deletion of the truncated SSN in many of the forms, but it seems unwise to pursue changes that are both unnecessary and potentially unpopular.

Third, there are other ways to address the very valid concerns expressed in the Suggestion. It is clear from the 2024 Privacy Study that significant progress has been made in protecting SSNs from disclosure, and it is anticipated that such progress will continue. At this meeting the Subcommittee is recommending for publication an amendment to Bankruptcy Rule 2002(o) to eliminate the requirement that notices sent under Bankruptcy Rule 2002 use the full caption described in Bankruptcy Rule 1005 (which includes the truncated SSN) and instead use a shorter caption that does not include that information. This may decrease the number of filed documents with the truncated SSN.

As described in Part II of the 2024 Privacy Study, there are a number of ongoing approaches to protect privacy in court filings and opinions, including continued outreach and educational efforts. In May 2023 CACM sent a memorandum to the courts sharing suggested practices to protect personal information in court filings and opinions. The memorandum urged the courts to continue or to consider initiating outreach efforts to litigants and members of the bar to ensure that they are aware of redaction obligations and the need to minimize personal identifiers in certain court filings. In addition, CACM recently requested the AO and FJC to explore other ways to increase awareness about ways to protect privacy in court filings and opinions.

The current case management system notifies filers via a prominent banner titled "Redaction Agreement" that appears immediately after a filer logs in to remind them of the redaction requirements. The instructions to Official Form B410 (Proof of Claim) include a warning that "A Proof of Claim form and any attached documents must show only the last 4 digits of any social security number …." Continuing advances in court management software may alert filers and courts of possible violations of the privacy rules so that corrective action can be taken.

For these reasons, the Subcommittee recommended that the Advisory Committee take no action on Suggestion 22-BK-I.

Tom Byron noted that that the other Advisory Committees must also address Senator Wyden's suggestion and that it would be helpful to get feedback from the Advisory Committee on its reasoning. For example, while the Bankruptcy Rules Advisory Committee has identified benefits of having the last four digits of the SSN for bankruptcy purposes, should uniformity prevail across the other Advisory Committees? Which of the reasons for declining to take action are compelling to the Bankruptcy Advisory Committee? Judge Bates asked whether the Advisory Committee should make a final "no action" decision today or simply indicate the direction in which it is leaning.

Judge Isicoff repeated a statement she made earlier in the meeting about the need for truncated SSNs to assist in debtor identification in her district.

Judge Connelly said the most compelling reason for the recommendation is that there is no demonstrated problem that rule amendments would solve.

Judge Harner asked whether the discussion is likely to be different in the other committees because they don't use the SSN in the same way. She has no concern about deferring decision on this suggestion until the other Subcommittees consider it.

Judge Lefkow thought perhaps it would help the other Advisory Committees because they might want to know what the Bankruptcy Advisory Committee thinks. Tom Byron assured the Advisory Committee that its preliminary assessment would be shared.

Professor Gibson sees no reason why bankruptcy privacy rule cannot be different from the other privacy rules. There was extensive discussion about whether the Advisory Committee should take action today.

Judge Kahn said that today it seems that the cost of disclosing truncated SSN does not outweigh the need that the bankruptcy community has for the SSN. But we may get additional information in the future, and we can decide to make a different decision then.

Jenny Doling pointed out that there are full SSNs on the notice of 341 meeting sent to creditors but that version of the 341 notice is not publicly docketed. Judge Harner also expressed concern about shadow dockets which may disclose a full SSN number found in a filing even if that filing is later shielded on the court docket.

For the reasons set forth in the memorandum, the Advisory Committee decided to take no action on this Suggestion at this time but to continue to monitor discussions and developments in the other Advisory Committees.

(B) ***Suggestion to Amend Rule 2002(o) to allow short-form captions for Rule 2002 Notices***

A suggestion was made by the Clerk of Court for the Bankruptcy Court for the District of Minnesota, in which clerks of court for eight other bankruptcy courts in the Eighth Circuit joined, suggesting that Rule 2002(n) (restyled Rule 2002(o)) be amended to eliminate the requirement that the caption of every notice given under Rule 2002 comply with Rule 1005. The Bankruptcy Clerks Advisory Group submitted a second suggestion supporting the first one.

When it last considered the suggestions, the Subcommittee decided to survey bankruptcy clerks on their reaction to the suggestion. The results of that survey are included in the agenda book. The clerks overwhelmingly (19 out of the 21 respondents) stated that they endorsed the suggestion and, in fact, many ignore the requirements of Rule 2002(n) in their current practice.

The Subcommittee recommends an amendment to restyled Rule 2002(o) to the Advisory Committee for publication. The amended rule would read as follows:

> **(o) Caption.** The caption of a notice given under this Rule 2002 must include the information that Form 416B requires. The caption of a debtor's notice to a creditor must also include the information that § 342(c) requires.
>
> Committee Note
>
> The amendment eliminates the requirement that all notices given under Rule 2002 include the caption required for the bankruptcy petition under Rule 1005. That caption requires, among other things, the debtor's employer-identification number, last four digits of the debtor's social security number or individual debtor's taxpayer-identification number, any other federal taxpayer-identification number and all other names used within eight years before filing the petition. Instead, most Rule 2002 notices may use the caption described in Official Form 416B, which requires only the court's name, the name of the debtor, the case number, the chapter under which the case was filed, and a brief description of the document's character. Rule 2002 notices sent by the debtor must also include the information that § 342(c) of the Code requires. The notice of the meeting of creditors, Rule 2002(a)(1), will continue to include all information required by Official Forms 309(A-I).

Professor Gibson suggested that the words "to Rule 2002(o)" be inserted in the first line of the committee note after the word "amendment." The Advisory Committee approved the amended rule and committee note with that change and recommended it to the Standing Committee for publication.

8. Report of the Business Subcommittee

(A) *Report Regarding Suggestion to Propose a Rule Requiring Random Assignment of Mega Bankruptcy Cases within a District*

Judge McEwen and Professor Gibson provided the report.

A group of nine individuals and one organization, calling itself the Creditor Rights Coalition, has submitted Suggestion 24-BK-B, which requests the promulgation of a new Bankruptcy Rule "requiring random assignment of all mega bankruptcy cases to all bankruptcy judges within a particular district." Such a rule would prohibit the practice of some districts of assigning large bankruptcy cases to a member of a pre-selected panel of judges or limiting assignment to the judge or judges sitting within the division where the case was filed. The suggestion posits that "[l]ocal judicial assignment rules that concentrate mega bankruptcy cases within a district to small subsets of bankruptcy judges undermine public confidence in the Chapter 11 system."

The Subcommittee recommends that the Advisory Committee table consideration of this suggestion pending consideration of a similar issue by the Committee on the Administration of the Bankruptcy System ("the Bankruptcy Committee").

The Subcommittee also noted that it is not clear that the assignment of cases within a district comes within the bankruptcy rulemaking authority under 28 U.S.C. § 2075, which does not allow the Bankruptcy Rules to supersede statutes. Section 154(a) of Title 28 provides that "[e]ach bankruptcy court for a district having more than one bankruptcy judge shall by majority vote promulgate rules for the division of business among the bankruptcy judges to the extent that the division of business is not otherwise provided for by the rules of the district court." Whether that statute leaves room for a national rule prescribing how bankruptcy cases are to be assigned within a district is a question that will need to be explored if and when the Advisory Committee takes up consideration of the Creditor Rights Coalition's suggestion.

The Advisory Committee agreed with the recommendation and tabled consideration of the suggestion.

(B) ***Consideration of Suggestion 24-BK-A to Allow Masters in Bankruptcy Cases and Proceedings***

Judge McEwen and Professor Gibson provided the report.

Rule 9031 (as restyled) provides: "Fed. R. Civ. P. 53 does not apply in a bankruptcy case." As declared by its title, the effect of this rule is that "Using Masters [Is] Not Authorized" in bankruptcy cases. Since the rule's promulgation in 1983, the Advisory Committee has been asked on several occasions to propose an amendment to it to allow the appointment of masters in certain circumstances, but each time the Advisory Committee has decided not to do so. Now two new suggestions to amend Rule 9031 have been submitted to the Advisory Committee by Chief Bankruptcy Judge Michael B. Kaplan of the District of New Jersey (24-BK-A) and by the American Bar Association (ABA) (24-BK-C).

At its spring meeting, the Advisory Committee directed the Subcommittee to gather more information before making a recommendation. Specifically, it was agreed that a survey of bankruptcy judges should be undertaken to learn whether the judges

thought the rules should allow masters to be used in bankruptcy cases and in what circumstances, if any, they had ever needed such assistance.

Carly Giffin of the Federal Judicial Center offered the FJC's services in creating and conducting such a survey, and she suggested that it might be helpful to begin with interviews of some bankruptcy judges in order to determine the types of questions that might be asked in the survey. There was also a suggestion at the meeting that a separate survey might be conducted of district judges to learn how they had used masters.

At the Subcommittee's July 26 meeting, members agreed that it would be helpful for Dr. Giffin to begin by interviewing a group of bankruptcy judges regarding the need for masters in bankruptcy cases. The Subcommittee suggested the names of several bankruptcy judges from a variety of districts and with differing points of view. Dr. Giffin completed the interviews and provided information to the Advisory Committee about the results.

She interviewed nine judges, and they identified several tasks that would be facilitated by the ability to appoint a special master, such as discovery disputes and claims estimation or valuation. Unlike an examiner, a master would work for the court. Some judges thought use of special masters could speed up cases, ultimately saving the estate money and benefitting all parties. A special master might have expertise that the judge does not, and utilizing an expert's knowledge could help the judge make decisions and speed the case along.

The major concern expressed was the increased cost of having a master. Even judges who supported allowing appointment of special masters thought that it should be done only when the case was large enough to absorb the associated cost. Another concern expressed was that appointment of a special master would take the judicial decision-maker out of the picture. Litigants want to be heard by a judge directly rather than on review of a special master's decision. Another issue deals with appointment of special masters, and potential favoritism. Repeated appointments of the same people could give the appearance that the judge was benefitting certain cronies.

In addition, some judges expressed concern that bankruptcy judges do not have authority to appoint special masters because no such authority is granted by the Bankruptcy Code. Others thought a revised rule could confer the authority, while some thought they already had inherent authority to appoint a special master notwithstanding the rule.

Some judges thought the rule should set out special factors that should be required before appointments were made, or who could request appointment. Some thought only other bankruptcy judges should serve as special masters, which would solve the cost issue, but there were some objections to that idea.

In sum three judges supported amending the rule to permit appointment of special masters. Two judges said they would not need a special master, but were not opposed to permitting others to appoint them. Three judges opposed amending the rule. One judge said he

would have no objection to another judge serving as a special master, but was otherwise against amending the rule.

The Advisory Committee discussed the issue. Judge Wu said he is sensitive to cost, but noted that there are certainly cases where bankruptcy judges should have the resource of a special master. Judge Harner said she sees the potential value. Judge Isicoff said she used a special master for discovery disputes (not realizing it was prohibited) and suggested that perhaps special masters should be used only for matters that an examiner cannot do. She thinks using special masters for discovery dispute would be tremendously valuable. Using other bankruptcy judges as a special master may raise issues of judicial immunity, even if judges were willing to do that.

Judge Bates said that he thought that if a special master were supposed to be functionally the same as a magistrate judge, that creates complications; magistrates are statutory, cost-free, and judicial parties, unlike special masters. He also questions whether bankruptcy judges should look to outside masters to have expertise on the law. There are real complications here and the Subcommittee should think about what needs masters would serve.

Judge McEwen identified fee disputes as an area that would be appropriate for a master. Judge Kahn said that there are various other parties involved in a bankruptcy case, like the examiner and mediators, who can handle discrete issues. He thinks we cannot do this without knowing the extent of authority these special masters would have. He would prefer developing a more limited bankruptcy rule rather than extending Rule 53 to bankruptcy cases. Judge Wu said he assumes that any special master would only make proposed findings and conclusions and refer them to the bankruptcy judge.

Judge Kahn said he wants to ask bankruptcy judges who oppose the appointment why they do so. Dr. Giffin thinks the opposition comes from lack of statutory authority or the appearance of impropriety having an outsider performing what is an essential judicial function. Damian Schaible stated that using other bankruptcy judges seems a different question than appointing masters.

Dr. Giffin does think that gathering more information is valuable, and the Subcommittee will assist Dr. Giffin in devising a survey to go to the bankruptcy judges and potentially a broader group to share with the Advisory Committee. The Subcommittee will also consider the issue of whether bankruptcy courts have the authority to appoint special masters.

Judge Connelly invited any non-members of the Subcommittee to submit any questions or thoughts to the Subcommittee.

9. **New Business**

There was no new business.

10. Future Meetings

The spring 2025 meeting has been scheduled for April 3, 2025, at a location to be determined.

11. Adjournment

The meeting was adjourned at 2:10 p.m.