COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

MEMORANDUM

TO: Honorable John D. Bates, Chair
Standing Committee on Rules of Practice and Procedure

FROM: Honorable Dennis R. Dow, Chair
Advisory Committee on Bankruptcy Rules

RE: Report of the Advisory Committee on Bankruptcy Rules

DATE: May 24, 2021

I. Introduction

The Advisory Committee on Bankruptcy Rules met by videoconference on April 8, 2021. The draft minutes of that meeting are attached.

At the meeting, the Advisory Committee gave its final approval to rule and form amendments that were published for comment last August. They consist of amendments to (1) Parts I and II of the Bankruptcy Rules that are proposed as part of the rules restyling project; (2) thirteen rules and one Official Form that would implement the Small Business Reorganization Act of 2019 ("SBRA"); and (3) four additional rules. The Advisory Committee also voted to seek publication for comment of (1) amendments to Parts III, IV, V, and VI of the Bankruptcy Rules—the next installment of the restyling project; (2) new Rule 9038 (Bankruptcy Rules Emergency); (3) amendments to Rule 3002.1 (Notice Relating to Claims Secured by Security

Interest in the Debtor's Principal Residence); (4) five new Official Forms proposed to implement the Rule 3002.1 amendments; and (5) amendments to three existing Official Forms.

Part II of this report presents those action items. They are organized as follows:

A. Items for Final Approval

Rules and form published for comment in August 2020—

- Restyled Parts I and II;
- Rules 1007, 1020, 2009, 2012, 2015, 3010, 3011, 3014, 3016, 3017.1, new Rule 3017.2, 3018, and 3019 (in response to SBRA);
- Rule 3002(c)(6);
- Rule 5005;
- Rule 7004;
- Rule 8023; and
- Official Form 122B (in response to SBRA).

B. Items for Publication

- Restyled Parts III, IV, V, and VI;
- Rule 3002.1;
- Official Form 101;
- Official Forms 309E1 and 309E2; and
- New Official Forms 410C13-1N, 410C13-1R, 410C13-10C, 410C13-10NC, 410C13-10R.

A discussion of Rule 9038, which is proposed for publication, is included elsewhere in the agenda book, along with a memorandum from Professors Capra and Struve.

Part III of this report presents four information items. The first concerns Interim Rule 4001(c), which the Standing Committee has already approved subject to action being taken by the Small Business Administration. The second information item discusses the Advisory Committee's approval of a Director's Form to implement a provision of the Consolidated Appropriations Act of 2021. The third and fourth items concern the Advisory Committee's ongoing consideration of (1) turnover procedures in response to the Supreme Court's recent decision in *City of Chicago v. Fulton* and (2) the use of electronic signatures by debtors and others who are not registered users of CM/ECF.

II. Action Items

A. Items for Final Approval

The Advisory Committee recommends that the Standing Committee approve the proposed rule and form amendments that were published for public comment in August 2020 and are discussed below. Bankruptcy Appendix A includes the rules and form that are in this group.

Action Item 1. Restyled Parts I and II. Extensive comments were submitted on the restyled rules from the National Bankruptcy Conference. After discussion with the style consultants and consideration by the Restyling Subcommittee, the Advisory Committee incorporated some of those suggested changes into the revised rules and rejected others. Comments and changes since publication are noted on the restyled rules in Appendix A.

An additional comment was submitted that noted the failure to restyle Rule 2002(n). That provision cannot be restyled because it was enacted by Congress.

The Advisory Committee seeks final approval of the restyled rules, but suggests that the Standing Committee not submit the rules to the Judicial Conference until all remaining parts of the Bankruptcy Rules have been restyled, published, and given final approval, so that all restyled rules can go into effect at the same time.

Action Item 2. SBRA Rules. The interim rules that the Advisory Committee issued in response to the enactment of the Small Business Reorganization Act took effect as local rules or standing orders on February 19, 2020, the effective date of the Act. As part of the process of promulgating national rules governing cases under subchapter V of chapter 11, the amended and new rules were published for comment last summer, along with the SBRA form amendments.

The following rules were published:

- **Rule 1007** (Lists, Schedules, Statements, and Other Documents; Time Limits),
- **Rule 1020** (Small Business Chapter 11 Reorganization Case),
- **Rule 2009** (Trustees for Estates When Joint Administration Ordered),
- **Rule 2012** (Substitution of Trustee or Successor Trustee; Accounting),
- **Rule 2015** (Duty to Keep Records, Make Reports, and Give Notice of Case or Change of Status),
- **Rule 3010** (Small Dividends and Payments in Cases Under Chapter 7, Subchapter V of Chapter 11, Chapter 12, and Chapter 13),
- **Rule 3011** (Unclaimed Funds in Cases Under Chapter 7, Subchapter V of Chapter 11, Chapter 12, and Chapter 13),
- **Rule 3014** (Election Under § 1111(b) by Secured Creditor in Chapter 9 Municipality or Chapter 11 Reorganization Case),

- **Rule 3016** (Filing of Plan and Disclosure Statement in a Chapter 9 Municipality or Chapter 11 Reorganization Case),
- **Rule 3017.1** (Court Consideration of Disclosure Statement in a Small Business Case),
- **new Rule 3017.2** (Fixing of Dates by the Court in Subchapter V Cases in Which There Is No Disclosure Statement),
- **Rule 3018** (Acceptance or Rejection of Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case), and
- **Rule 3019** (Modification of Accepted Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case).

No comments were submitted on the SBRA rules in response to publication, and the Advisory Committee gave final approval to the rules as published.

It should be noted that one of the interim SBRA rules, Rule 1020, was amended—also on an interim basis—in response to the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), which took effect on March 27, 2020. The CARES Act modified the definition of "debtor" in § 1182(1) of the Bankruptcy Code for determining eligibility to proceed under subchapter V of chapter 11. The CARES Act also amended § 103(*i*) to provide that subchapter V of chapter 11 applies to a "debtor (as defined in section 1182(1))" who elects such treatment, rather than a "small business debtor" who so elects. These changes necessitated amending Interim Rule 1020 to add references to "a debtor as defined in § 1182(1) of the Code."

Under the CARES Act, the definition of "debtor" in § 1182(1) was to revert to its prior version one year after the effective date of the CARES Act, that is, on March 27, 2021. For that reason, the pre-CARES Act version of Interim Rule 1020 was published for comment. Congress acted in March of this year to extend the sunset date in the CARES Act to March 27, 2022. Nevertheless, the published version of Rule 1020 is still the appropriate one to be finally approved because by the time it goes into effect—December 1, 2022—the CARES Act definition will likely have expired.

Action Item 3. Rule 3002(c)(6) (Filing Proof of Claim or Interest). The amendments would make uniform the standard for seeking bar date extensions by both domestic and foreign creditors. In both situations, the court could grant an extension if it found that the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim. There were no comments on the proposed amendments, and the Advisory Committee approved them as published.

Action Item 4. Rule 5005 (Filing and Transmittal of Papers). The amendments would allow papers required to be transmitted to the United States trustee to be sent electronically and would eliminate the requirement for filing a verified statement for papers transmitted other than electronically. The only comment submitted in response to publication was one that noted an error in the redlining of the published version, but it recognized that the Committee Note clarified the intended language. With that error corrected, the Advisory Committee approved the amendments.

Action Item 5. Rule 7004 (Process; Service of Summons, Complaint). The amendments add a new subdivision (*i*) to make clear that service under Rule 7004(b)(3) or Rule 7004(h) may be made on an officer, managing or general agent, or other agent by use of their titles rather than their names. No comments were submitted in response to publication of the proposed amendments. The Advisory Committee deleted one comma from the text of proposed Rule 7004(*i*) and made one modification to the Committee Note, changing the word "Agent" to "Agent for Receiving Service of Process," before approving the amendments.

Action Item 6. Rule 8023 (Voluntary Dismissal). Rule 8023 was proposed for amendment to conform to pending amendments to Fed. R. App. P. 42(b). The amendments are intended to clarify that a court order is required for any action other than a simple voluntary dismissal. No comments were submitted in response to publication of the proposed amendments, and the Advisory Committee approved them as published.

Action Item 7. Official Form 122B (Chapter 11 Statement of Your Current Monthly Income). The Advisory Committee promulgated new and amended Official Forms in response to the enactment of the Small Business Reorganization Act, which took effect on February 19, 2020, the effective date of the Act. Unlike the interim SBRA rules, the forms were officially issued under the Advisory Committee's delegated authority to make conforming and technical amendments to Official Forms, subject to subsequent approval by the Standing Committee and notice to the Judicial Conference. Nevertheless, the Advisory Committee asked the Standing Committee to publish them for comment last August, along with the SBRA rule amendments, in order to ensure that the public had a thorough opportunity to review them.

In addition to the nine previously amended forms, Official Form 122B was published in order to correct an instruction at the beginning of the form. It currently begins, "You must file this form if you are an individual and are filing for bankruptcy under Chapter 11." That statement is incorrect for individuals filing under subchapter V of chapter 11. Therefore, the proposed amendment states, "You must file this form if you are an individual and are filing for bankruptcy under Chapter 11 (other than under subchapter V)."

No comments were submitted on the SBRA forms in response to publication, and the Advisory Committee voted to give final approval to Official Form 122B as published and to make no changes to the existing SBRA forms.[1]

[1] As discussed in Action Item 2, the 2020 CARES Act temporarily amended the definition of "debtor" for purposes of eligibility to seek relief under subchapter V of chapter 11. To reflect this statutory change, the Advisory Committee used its delegated authority to amend Official Forms 101 and 201. When the temporary definition expires—now scheduled for March 27, 2022—the Advisory Committee will amend Forms 101 and 201 to revert to the pre-CARES Act versions, which were the versions that were published for comment.

B. Items for Publication

The Advisory Committee recommends that the following rule and form amendments be published for public comment in August 2021. The rules and forms in this group appear in Bankruptcy Appendix B.

Action Item 8. Restyled Parts III, IV, V, and VI. The Advisory Committee seeks publication of the restyled versions of the rules in Parts III, IV, V and VI of the Federal Rules of Bankruptcy Procedure, which reflect many hours of work by the style consultants, the reporters, and the Restyling Subcommittee. The Advisory Committee expects to present the final three parts of the restyled Bankruptcy Rules for publication next year.

Action Item 9. Rule 3002.1 (Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence). In response to suggestions submitted by the National Association of Chapter Thirteen Trustees (18-BK-G) and the American Bankruptcy Institute's Commission on Consumer Bankruptcy (18-BK-H), the Advisory Committee is proposing significant amendments to Rule 3002.1. The amendments are intended to encourage a greater degree of compliance with the rule's provisions and to provide a more straight-forward and familiar procedure for determining the status of a mortgage claim at the end of a chapter 13 case. The amended rule would also provide for a new midcase assessment of the mortgage claim's status in order to give the debtor an opportunity to cure any postpetition defaults that may have occurred. Stylistic changes are made throughout the rule.

Subdivision (b) would be amended to add provisions about the effective date of late payment-change notices and to provide more detailed provisions about notice of payment changes for home equity lines of credit ("HELOCs"). Subdivision (b)(2) would provide that late notices of a payment increase do not go into effect until the required notice period (at least 21 days) expires. There would be no delay, however, in the effective date of an untimely notice of a payment decrease. Under proposed subdivision (b)(3), a HELOC claimant would only need to file annual payment-change notices—including a reconciliation figure (net overpayment or underpayment for the past year)—unless the payment change in a single month was for more than $10. This provision would also ensure at least 21 days' notice before a payment change took effect.

Proposed subdivision (f) is new. It would provide the procedure for a midcase assessment of the status of the mortgage, which would allow the debtor to be informed of any deficiencies in payment while there was still time in the chapter 13 case to become current before the case was closed.

As under the existing rule, there is an assessment of the status of the mortgage at the end of a chapter 13 case—when the debtor has completed all payments under the plan. The procedure would be changed, however, from a notice to a motion procedure that would result in a binding order, and time periods for the trustee and claim holder to act would be lengthened.

Subdivision (*i*) would be amended to clarify that the listed sanctions are authorized in addition to any other actions that the rule authorizes the court to take if the claim holder fails to provide notice or respond as required by the rule.

Action Item 10. Official Form 101 (Voluntary Petition for Individuals Filing for Bankruptcy). The Advisory Committee received suggestions from two different bankruptcy judges suggesting that consumer debtors are confused by Form 101, Part 1, line 4, which asks the debtor to list "any business names and Employer Identification Numbers you have used in the last 8 years." Both judges reported that consumer debtors are listing the names of limited liability companies or corporations through which the debtors have conducted business in the past 8 years, not realizing that the question seeks only names that the debtor individually has used during that period. Because the debtors list those LLC and corporate names, those names appear as names of additional debtors on the notice of bankruptcy on the applicable version of Form 309, even though those LLCs and corporations have not filed for bankruptcy protection.

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

Action Item 11. Official Forms 309E1 (Notice of Chapter 11 Bankruptcy Case (For Individuals or Joint Debtors)) and 309E2 (Notice of Chapter 11 Bankruptcy Case (For Individuals or Joint Debtors under Subchapter V)). Bankruptcy Judge Timothy W. Dore of the W.D. Wash. suggested that the language in line 7 of Official Form 309E1 (line 8 in Official Form 309E2) is not clear about when the deadline is for objecting to discharge, as opposed to seeking to have a debt excepted from discharge. The Advisory Committee recommends revisions to those lines to clarify the information provided. The Advisory Committee also decided to change the line that says "the court will send you notice of that date later" to add the words "or its designee" after the words "the court" because often the court itself does not send this notice.

Action Item 12. New Official Forms 410C13-1N (Trustee's Midcase Notice of the Status of the Mortgage Claim), 410C13-1R (Response to Trustee's Midcase Notice of the Status of the Mortgage Claim), 410C13-10C (Motion to Determine the Status of the Mortgage Claim (conduit)), 410C13-10NC (Motion to Determine the Status of the Mortgage Claim (nonconduit)), 410C13-10R (Response to Trustee's Motion to Determine the Status of the Mortgage Claim). The proposed amendments to Rule 3002.1, which are discussed at Agenda Item 9, call for the use of new Official Forms. Subdivisions (f) and (g) of the amended rule require the notice, motion, and responses that a chapter 13 trustee and a holder of a mortgage claim must file to conform to the appropriate Official Forms. The Advisory Committee therefore proposes new forms for this purpose.

The first form—Official Form 410C13-1N—is to be used by a trustee to provide the notice required by Rule 3002.1(f)(1). This notice is filed midway through a chapter 13 case (18-24 months after the petition was filed), and it requires the trustee to report on the status of payments

to cure any prepetition arrearages and, if the trustee makes the ongoing postpetition mortgage payments, the amount and date of the next payment.

Within 21 days after service of the trustee's notice, the holder of the mortgage claim must file a response using the second form—Official Form 410C13-1R. *See* Rule 3002.1(f)(2). The claim holder must indicate whether it agrees with the trustee's statements about the cure of any prepetition arrearage, and it must also provide information about the status of ongoing postpetition mortgage payments.

The third and fourth forms—Official Forms 410C13-10C and 410C13-10NC—implement Rule 3002.1(g)(1). One is used if the trustee made the ongoing postpetition mortgage payments (as a conduit), and the other is used if those payments were made by the debtor directly to the holder of the mortgage claim (nonconduit). This motion is filed at the end of a chapter 13 case when the debtor has completed all plan payments, and it seeks a court order determining the status of the mortgage claim.

As required by Rule 3002.1(g)(2), the holder of the mortgage claim must respond to the trustee's motion within 28 days after service, using the final form—Official Form 410C13-10R. The claim holder must indicate whether it agrees with the trustee's statements about the cure of any arrearages and the payment of any postpetition fees, expenses, and charges. It must also provide information about the status of ongoing postpetition mortgage payments.

III. Information Items

Information Item 1. Interim Rule 4001(c) (Obtaining Credit). The Consolidated Appropriations Act of 2021 ("CAA") includes a provision temporarily amending § 364 of the Bankruptcy Code to provide for certain loans under the Small Business Act and to require that the bankruptcy court hold a hearing on such a loan within seven days after the filing and service of a motion to obtain such a loan. The CAA also states that the court may grant final relief at such a hearing "notwithstanding the Federal Rules of Bankruptcy Procedure." This provision of the CAA, which will sunset on December 27, 2022, is to take effect on the date when the Administrator of the Small Business Administration submits to the Director of the Executive Office for United States Trustees a written determination that certain debtors in possession or trustees would be eligible for the specified loans. If that determination were submitted, amendments to Rule 4001(c)(2) (dealing with hearings on motions to obtain credit) would be necessary to reflect the new CAA directions.

Because of the uncertain timing of the effective date and the limited duration of the CAA amendments if they go into effect, and because there would be insufficient time to approve a rule amendment under the normal Rules Enabling Act process prior to the amendments becoming effective, the Advisory Committee recommended that the Standing Committee approve Interim Bankruptcy Rule 4001(c) for possible distribution to the courts if and when the amendments become effective, with a sunset date of December 27, 2022. However, because the CAA amendments may never go into effect, the Advisory Committee also recommended that the Standing Committee wait to forward its recommendation to the Judicial Conference only after (and

if) the SBA takes the steps that would make the rule necessary. The Standing Committee unanimously approved both recommendations by an email vote that closed on February 10, 2021.

Given the tight timeline involved, if the SBA Administrator does act, the Standing Committee can ask the Executive Committee to act on an expedited basis on behalf of the Judicial Conference to authorize the distribution of the Interim Rule to the courts for local adoption. This would be similar to the process the Executive and Rules Committees followed between September and December 2019 to authorize the distribution of interim bankruptcy rules needed to implement the Small Business Reorganization Act of 2019.

Information Item 2. Director's Form 4100S (Supplemental Proof of Claim for CARES Forbearance Claim). The CARES Act, which was enacted on March 27, 2020, authorizes "a borrower with a Federally backed mortgage loan experiencing a financial hardship due, directly or indirectly, to the COVID–19 emergency [to] request forbearance [which must be granted] on the Federally backed mortgage loan, regardless of delinquency status." A similar provision applies to borrowers with a federally backed multifamily mortgage. At the end of the forbearance period, the borrower must repay the deferred amounts. How that obligation should be dealt with in an ongoing chapter 13 case has presented difficulties.

The Consolidated Appropriations Act of 2021 contains provisions that address the treatment of CARES forbearance claims in chapter 13 cases. It amends § 501 of the Bankruptcy Code to add a new subsection (f), which allows an eligible creditor to file a supplemental proof of claim for a CARES forbearance claim in a chapter 13 case. "CARES forbearance claim" means "a supplemental claim for the amount of a Federally backed mortgage loan or a Federally backed multifamily mortgage loan that was not received by an eligible creditor during the forbearance period of a loan granted forbearance under section 4022 or 4023 of the CARES Act."

The proof of claim for such a supplemental claim must be filed within 120 days from the end of the forbearance period. And the new § 501(d)(2)(B) specifies information that must be included in a CARES forbearance proof of claim if the debtor and creditor have agreed to a modification or deferral of the underlying mortgage loan obligation in connection with a forbearance.

By an email vote that concluded on February 4, 2021, the Advisory Committee approved a new Director's form to implement the CARES forbearance claim provisions. Director's forms are issued under Bankruptcy Rule 9009(b) and do not go through the Rules Enabling Act process. Instead, the AO seeks the Advisory Committee's review and recommendation of such forms before posting them on uscourts.gov. Director's forms are available for use by the courts and the public, but are not required. As such, they can be revised, if necessary, by the user. The Forms Subcommittee recommended that Form 4100S be adopted as a Director's form, rather than an Official Form, because of this flexibility and also because this Code change is only in effect until December 27, 2021, one year after the enactment of the CAA.

Information Item 3. Turnover procedures. On January 14, 2021, the Supreme Court decided in *City of Chicago v. Fulton,* 141 S. Ct. 585, that a creditor's continued retention of estate

property that it acquired prior to bankruptcy does not violate the automatic stay under § 362(a)(3). In so ruling, the Court found that a contrary reading of § 362(a)(3) would render largely superfluous § 542(a)'s provisions for the turnover of estate property. In a concurring opinion, Justice Sotomayor noted that under current procedures turnover proceedings "can be quite slow" because they must be pursued by an adversary proceeding. She stated, however, that "[i]t is up to the Advisory Committee on Rules of Bankruptcy Procedure to consider amendments to the Rules that ensure prompt resolution of debtors' requests for turnover under § 542(a), especially where debtors' vehicles are concerned."

Acting on Justice Sotomayor's comment, 45 law professors have submitted a suggestion (21-BK-B) for rule amendments that would allow turnover proceedings to be brought by motion rather than by adversary proceeding. They offered specific language for the amendment of several rules. The National Bankruptcy Conference has submitted a suggestion (21-BK-J) that is generally supportive of the law professors' suggestion.

In her concurring opinion, Justice Sotomayor addressed the importance to a chapter 13 debtor of promptly regaining possession of a seized car so that the debtor can travel to work and continue to earn money to fund his or her plan. "Bankruptcy courts," she commented, "are not powerless to facilitate the return of debtors' vehicles to their owners. Most obviously, the Court leaves open the possibility of relief under § 542(a)." But because such relief currently requires bringing an adversary proceeding, which on average lasts over 100 days, Justice Sotomayor raised the possibility of a statutory or rule change to facilitate prompter action. Although some courts had tried to resolve turnover actions promptly, she concluded with the following suggestion:

> Ultimately, however, any gap left by the Court's ruling today is best addressed by rule drafters and policymakers, not bankruptcy judges. It is up to the Advisory Committee on Rules of Bankruptcy Procedure to consider amendments to the Rules that ensure prompt resolution of debtors' requests for turnover under § 542(a), especially where debtors' vehicles are concerned. Congress, too, could offer a statutory fix, either by ensuring that expedited review is available for § 542(a) proceedings seeking turnover of a vehicle or by enacting entirely new statutory mechanisms that require creditors to return cars to debtors in a timely manner.

141 S. Ct. at 594.

The law professors' suggestion follows up and expands on Justice Sotomayor's invitation for rulemaking to expedite the turnover of property essential for a chapter 13 debtor. As the suggestion explains, "Although the pressing policy issues in consumer chapter 13s highlighted by *Fulton* are the impetus for the proposal, we suggest an expansion beyond chapter 13 to allow turnover actions by motion in all circumstances. Where there is no dispute, there is no reason a party holding estate property should be able to hide behind an adversary proceeding to delay doing the party's statutory duty that sections 521(a)(4), 542, or 543 require." Under their proposal, then, turnover relief under the three listed sections would be sought by motion in all chapters and for all types of property.

The Consumer Subcommittee has begun consideration of the law professors' suggestion. The initial issue it is exploring is whether any change in turnover procedure should be limited to the type of situation that gave rise to Justice Sotomayor's concern—the return of essential property to a chapter 13 debtor—or whether it should apply across the board, as suggested by the law professors. Because some bankruptcy courts have already made decisions to allow turnover by motion in certain situations, the Subcommittee has begun gathering information about the limits imposed in those local rules and procedures.

Information Item 4. Electronic signatures. Judge Audrey Fleissig, chair of the Committee on Court Administration and Case Management ("CACM"), submitted a suggestion (20-BK-E) based on a question her committee received from a bankruptcy judge regarding whether debtors and others without CM/ECF filing privileges are permitted to electronically sign documents filed in bankruptcy cases. Judge Fleissig pointed out that recent amendments to Rule 5005(a)(2) provide that a "filing made through a person's electronic-filing account and authorized by that person, together with that person's name on a signature block, constitutes the person's signature," but that the rule is silent about electronic signatures of persons without a CM/ECF account. She said that her committee believes that bankruptcy courts are hesitant to allow such signatures "without clarification in the rules that use of electronic signature products is sufficient for evidentiary purposes, particularly for petitions, lists, schedules and statements, amendments, pleadings, affidavits, or other documents that must contain original signatures, require verification under Fed. R. Bankr. P. 1008, or require an unsworn declaration under penalty of perjury, pursuant to 28 U.S.C. § 1746." Judge Fleissig asked the Advisory Committee to consider the issue raised by the judge, as well as whether security standards should be required for electronic signatures that would eliminate the need for the retention of wet signatures.

The questions raised by the CACM suggestion are ones that the Advisory Committee has previously considered. In 2013 the Advisory Committee published an amendment to Rule 5005(a) to govern electronic signatures. As proposed, this national rule would have permitted the filing of a scanned signature page of a document bearing the signature of an individual who was not a registered user of the CM/ECF system. That scanned signature would have been given the same force and effect as an original signature, and retention of the original document with the wet signature would not have been required. Following publication, the Advisory Committee decided not to proceed further with the amendment, largely because of opposition from the Department of Justice. The DOJ raised concerns that eliminating the requirement to retain the original document would make prosecutions and civil enforcement actions for bankruptcy fraud and abuse more difficult.

At the fall 2020 meeting, the Advisory Committee voted to pursue the CACM suggestion, and the matter was referred to the Technology Subcommittee. Committee members noted that there have been advances in electronic-signature technology since 2013 and that the position of the Department of Justice may have changed in the interim.

Molly Johnson and Ken Lee of the Federal Judicial Center are assisting the Subcommittee in doing research about existing e-signature judicial practices and in obtaining input from other organizations. Also participating in the work of the Subcommittee is a member of the subgroup

of the COVID-19 Judiciary Task Force that is focusing on using virtual technology for court proceedings and other meetings with detainees. The question of electronic signatures has come up in that context as well, and she has offered to share her knowledge with the Subcommittee. The Advisory Committee's DOJ representative, David Hubbert, has alerted the Department of the Advisory Committee's renewed consideration of the issue of electronic signatures, and he hopes to be able provide some initial input from the Department and the FBI this summer.

Although the CACM suggestion was directed at practices under the Bankruptcy Rules, the issues being considered are relevant as well to the other sets of rules. At Judge Bates's suggestion, the reporter will be conferring with the reporters for the other advisory committees as the consideration of this suggestion proceeds.