ADVISORY COMMITTEE ON BANKRUPTCY RULES

Minutes of the Meeting of March 15 - 16, 1990

Orlando, Florida

The Advisory Committee on Bankruptcy Rules met at 9 a.m. in the Delta Court of Flags Hotel in Orlando, Florida. The following members were present:

District Judge Lloyd D. George, Chairman
Circuit Judge Edith Hollan Jones
Circuit Judge Edward Leavy
District Judge Joseph L. McGlynn, Jr.
Bankruptcy Judge James J. Barta
Bankruptcy Judge Paul Mannes
Bankruptcy Judge James W. Meyers
Ralph R. Mabey, Esquire
Bernard Shapiro, Esquire
Professor Lawrence P. King
Professor Alan N. Resnick, Reporter

The following additional persons also attended the meeting:

W. Reece Bader, Esquire, Member of the Committee on Rules of Practice and Procedure and liaison with this Committee
Patricia S. Channon, Attorney, Bankruptcy Division, Administrative Office of the U.S. Courts
Richard G. Heltzel, Clerk, U.S. Bankruptcy Court for the Eastern District of California
James H. Wannamaker, Attorney, Bankruptcy Division, Administrative Office of the U.S. Courts

Carl R. Stewart, Clerk, U.S. Bankruptcy Court for the Middle District of Florida, attended a portion of the meeting. John E. Logan, Acting Director and Counsel, Executive Office for United States Trustees, U.S. Department of Justice, attended the second day of the meeting.

The following summary of matters discussed at the meeting should be read in conjunction with the various memoranda and other written materials referred to, all of which are on file in the office of the Secretary to the Committee on Rules of Practice and Procedure. References to pages and lines are to the Preliminary Draft of Proposed Amendments to the Bankruptcy Rules. The Preliminary Draft was circulated for public comment by the Committee on Rules of Practice and Procedure in August, 1989.

Votes and other action taken by the Advisory Committee and assignments by the Chairman appear in bold.

Introductory Matters

The Chairman indicated that Committee members Judge Malcolm J. Howard, Joseph G. Patchan, Harry D. Dixon, and Herbert P. Minkel, Jr., were unable to attend the meeting due to schedule conflicts.

Proposed Amendments to the Bankruptcy Rules

The first order of business was the consideration of additional comments on and suggested changes in the proposed amendments to the Bankruptcy Rules. The Committee considered comments and suggested changes submitted by the following:

American Bankruptcy Institute;
American Bar Association, Business Bankruptcy Committee, Rules Subcommittee, Michael L. Temin, Chairman;
Commercial Law League of America;
National Bankruptcy Conference;
National Conference of Bankruptcy Clerks;
United States Department of Justice;
Internal Revenue Service;
Clerks of the United States Bankruptcy Courts in the Seventh Circuit;
Local Rules Advisory Committee of the District of South Carolina;
Chief Bankruptcy Judge Henry L. Hess;
Chief Bankruptcy Judge Robert J. Kressel;
Chief Bankruptcy Judge Michael J. Melloy;
Chief Bankruptcy Judge R.F. Wheless, Jr.;
Bankruptcy Judge Jeremiah E. Berk;
Bankruptcy Judge Judith Klaswick Fitzgerald;
Hon. Clarine Nardi Riddle, Attorney General, State of Connecticut;
Professor Frank R. Kennedy;
Mr. Robert A. Greenfield, Esquire;
Ms. Margaret Sheneman, Esquire; and
Mr. J. Maxwell Tucker, Esquire.

Abstention

The National Bankruptcy Conference suggested that new procedures for abstention from cases pursuant to 11 U.S.C. § 305 be added to the Rules. The Reporter stated that the proposal would require publication for public comment because it does not relate to any of the changes proposed by the Committee in the published Preliminary Draft. After noting the value of consistency in matters, such as abstention, where there is no right of appeal, Mr. Shapiro moved that the suggested procedures be rejected and revisited at a future meeting. The motion to reject and revisit passed on a unanimous vote.

Rule 1001

The Commercial Law League suggested retaining the existing short title, the "Bankruptcy Rules," for simplicity. The short title was changed to the "Federal Rules of Bankruptcy Procedure" in the proposed amendments to conform to the citation form for the Federal Rules of Civil Procedure, Federal Rules of Appellate Procedure, and Federal Rules of Criminal Procedure. It was moved and seconded to reject the suggestion to retain the existing short title. **The motion to reject passed on a unanimous vote.**

Rule 1002

The National Bankruptcy Conference stated that subdivision (a) should require separate petitions for each debtor, except for joint petitions. Many attorneys try to file for individuals and corporations or partnerships in the same petition. The Reporter indicated that the change is unnecessary. Judge Mannes moved to leave the rule as it is. **The motion passed unanimously.**

The National Bankruptcy Conference suggested adding "Unless the United States trustee otherwise requests," at the beginning of the sentence that begins on page 1, line 3 of the Preliminary Draft. The Reporter stated that the United States trustee should get a copy of every petition. Judge Meyers and Mr. Heltzel indicated that the United States trustees in their districts had requested that they not be sent copies of chapter 13 petitions. The Chairman stated that, if the United States trustee does not want copies of chapter 13 petitions, sending the copies is a waste of paper and extra work for the United States trustee's office in sorting and discarding the copies. Professor King moved to reject the suggested change. **The motion failed on a vote of 6-3.** Judge Leavy moved to adopt the suggestion. **The motion passed on a vote of 6-3.**

The National Bankruptcy Conference also suggested that "the clerk shall forthwith transmit" be changed to "the clerk or some other person as designated by the court shall forthwith transmit". The Reporter stated that the clerk, rather than the parties, should transmit petitions and other important documents to the United States trustee for the purpose of reliability. He indicated that the Acting Director of the Executive Office had agreed that the clerk should transmit important documents to the United States trustee. It was moved and seconded to leave the rule as it is. **The motion carried unanimously.**

Rule 1005

The Seventh Circuit bankruptcy clerks suggested that the words "the docket number" on page 3, line 3, be changed to a "place for the docket number to be assigned by the clerk".

Mr. Heltzel noted that the debtor can not include the docket number in the caption until the clerk has assigned the number, which occurs after the debtor has filed the petition. He indicated that this has not caused a problem in the past. Professor King moved to reject the suggested change. **The motion to reject carried unanimously.**

Rule 1007

The National Conference of Bankruptcy Clerks suggested adding "Unless the United States trustee otherwise requests," at the beginning of the sentence which begins on page 10, line 133 of the Preliminary Draft. The Reporter recommended rejection but indicated that might not be consistent with the Committee's addition of the same language to Rule 1002(b). Judge Mannes inquired how the clerk's office separates papers which are to be transmitted to the United States trustee from those which are not to be transmitted. Mr. Heltzel indicated that the papers are separated by chapter of the Bankruptcy Code and that this does not present a problem. Judge Mannes moved to adopt the change suggested by the NCBC. **The motion passed unanimously.**

The National Bankruptcy Conference also suggested that "the clerk shall forthwith transmit" be changed to "the clerk or some other person as designated by the court shall forthwith transmit". Professor King moved to leave the rule as it is. **The motion carried unanimously.**

Rules 1009, 5005

Judge Melloy suggested that the rule require service of a copy of an amendment to a schedule, list, or statement, rather than service of "notice" of the amendment. The Reporter indicated that he assumed that service of a "notice" or a "copy" would mean the same thing in this context. Professor King indicated that it is not necessary to send a copy of the amendment, just the substance of the amendment. Mr. Shapiro indicated that in some cases an amendment of the schedules may be 20 to 30 pages long. Judge Barta stated that it often is just as easy to send a copy of the amendment. Judge Leavy moved to reject the suggested change. **The motion to reject carried unanimously.**

Judge Melloy suggested that the debtor, rather than the clerk, be required to transmit copies of amendments to the United States trustee. The Reporter stated that the clerk should transmit the amendment for purposes of consistency and reliability. Mr. Mabey moved to add "Unless the United States trustee otherwise requests," at the beginning of this subdivision. Judge Barta stated that this would be extra work for the clerk's office and could lead to the application of a different standard in each district. The Chairman indicated

that the change should not pose a problem as long as there is consistency in a particular district. Mr. Heltzel stated that complying with a request by the United States trustee not to receive copies of certain papers would not require a tremendous amount of work in the clerk's office as long as the United States trustee only declines general categories of papers. Professor King stated that a Committee Note should be added to Rule 1002 explaining that the rule is intended to permit the United States trustee to request not to receive only general groups of papers, such as chapter 13 papers.

The Reporter suggested that a new subdivision (b)(3) be added to Rule 5005, rather than adding "Unless the United States trustee otherwise requests," to numerous rules. The subdivision would provide that the clerk shall not be required to transmit any paper to the United States trustee if the United States trustee requests in writing that the paper not be transmitted. The Reporter stated that, although the new subdivision would not require that the clerk transmit these papers, it would not bar their transmittal. Judge Mannes stated that the Reporter's suggestion should be subject to Professor King's proposed Committee Note. The Committee Note to Rule 1002 would refer to Rule 5005. Judge Leavy moved to tentatively adopt the Reporter's suggestion. **The motion carried unanimously.**

The National Bankruptcy Conference suggested deleting proposed Rule 1009(c) and including the United States trustee in Rule 1009(a) as an entity to receive notice of the amendment. This would place the burden of sending notice to the United States trustee on the party filing the amendment. The Reporter recommended rejection for the purpose of reliability and because a party serving the United States trustee would have to file a proof of transmission, which the clerk's office would have to process. Judge Mannes moved to leave the proposed rule as it is. **The motion carried unanimously.**

Rule 1014

The National Bankruptcy Conference suggested modifying Rule 1014(a)(2) to provide on page 16, line 13 that an improperly venued case may be dismissed or transferred to "any district in which it could have been brought." This would conform with 28 U.S.C. § 1406, which provides that a civil action may be transferred to a district "in which it could have been brought." The Reporter recommended rejection, indicating that it is not clear whether § 1406 applies to the transfer of bankruptcy cases because 28 U.S.C. § 1412 permits the transfer of a bankruptcy case to another district "in the interest of justice or for the convenience of the parties." The Reporter stated that he would prefer to leave this difficult issue to the courts and that such a major change would require publication for public comment. Professor King outlined the statutory history of the issue and

indicated that the case law is unsettled. Mr. Shapiro moved to reject the change suggested by the Conference. The motion carried unanimously.

Rule 1015

The Seventh Circuit bankruptcy clerks suggested that the following sentence be added to Rule 1015: "A joint petition may be deconsolidated upon motion by one or more of the joint debtors and after payment of the prescribed fee." The Judicial Conference Schedule of Fees for Bankruptcy Courts was amended recently to provide a for deconsolidation of a joint petition, but the rules do not provide for it. The Reporter recommended rejection because the change would require publication for public comment and because a joint petition does not create a consolidated petition. Ms. Channon stated that the Judicial Conference Schedule of Fees for Bankruptcy Courts had been revised and the word "deconsolidated" removed.

Judge Leavy moved that no actual vote be taken on routine motions unless a Committee member requested a vote or objected. The motion carried without objection. It was moved and seconded to leave Rule 1015 as it is. The motion carried without objection.

Rule 1017

The National Conference of Bankruptcy Clerks suggested that Rule 1017(d) be revised to require that the party filing a "notice of conversion" transmit a copy to the United States trustee (rather than the clerk doing it) unless the United States trustee otherwise requests. As an alternative, the subdivision could be revised to require that the clerk or some other person designated by the court make the transmittal. The Reporter recommended rejection, stating that if a copy is to be transmitted to the United States trustee, the clerk should do it because the "notice of conversion" effectively converts the case. It was moved and seconded to leave the rule as it is. The motion carried without objection.

The National Conference of Bankruptcy Clerks suggested that the period in Rule 1017(e)(1) for a § 707(b) motion by the United States trustee be 60 days after the first date set for the § 341 meeting. The Reporter stated that the suggestion was moot because the Committee voted to make the change at a previous meeting.

The Seventh Circuit bankruptcy clerks suggested that the 60-day time limit for § 707(b) motions be deleted because it penalizes the United States trustee and the court and rewards dishonest debtors. As an alternative, the 60-day time limit should run from the first date set for the § 341 meeting. The

Reporter recommended rejection. A § 707(b) motion is analogous to denial of discharge and revocation of discharge is available if the debtor conceals substantial abuse by giving false testimony, filing false schedules, etc. Judge Mannes moved to reject the suggested deletion. The motion to reject carried without objection.

Rule 1019

The American Bankruptcy Institute suggested that there is an inconsistency between the first and last sentences of proposed Rule 1019(5). The ABI suggested that the last sentence be revised to clarify that it applies only in cases under chapters 12 and 13. The Reporter agreed that clarification is needed but stated that the ABI's suggested change would leave confusion over who should transmit the final reports to the United States trustee. The Reporter recommended that the rule provide that the clerk transmit all schedules to the United States trustee but that the trustee or debtor in possession transmit the final report and account. The Reporter recommended revising the sentence beginning on line 48 of page 25 to read as follows:

> Each debtor in possession or trustee in the superseded case shall: (A) within 15 days following the entry of the order of conversion of a chapter 11 case, file a schedule of unpaid debts incurred after commencement of the superseded case including the name and address of each creditor; and (B) within 30 days following the entry of the order of conversion of a chapter 11, chapter 12, or chapter 13 case, file and transmit to the United States trustee a final report and account.

It was moved and seconded to adopt the Reporter's clarification. The motion carried without objection.

The Seventh Circuit bankruptcy clerks made a suggestion similar to that of the ABI. Mr. Shapiro moved to reject the clerks' suggestion. The motion to reject carried without opposition.

The National Conference of Bankruptcy Clerks suggested changes in Rule 1019(5) similar to those proposed by the ABI. The clerks also suggested changing Rule 1019(6) to require the court to set a deadline for filing postpetition claims only in asset cases. The clerks recommended deleting the requirement that the court order notice of the bar date for filing postpetition claims because the deadline will be included in the notice of the meeting of creditors.

The Reporter recommended rejecting the clerks' suggested change in Rule 1019(5). The Reporter recommended adding "Unless a notice of insufficient assets to pay a dividend is mailed

pursuant to Rule 2002(e)," to the beginning of the sentence beginning on line 84, page 26. The Reporter also recommended adding the following sentences to the end of the sixth paragraph of the Committee Note:

> The subdivision is amended further to avoid the need to fix a time for filing claims arising under § 365(d) if it is an no asset case upon conversion. If a surplus becomes available for distribution, the court may fix a time for filing such claims pursuant to Rule 3002(c)(4).

The Reporter also recommended that the Committee consider changing "the court shall order that written notice be given" on lines 80-81 to read "the clerk, or some other person as the court may direct, shall give notice . . ." The following sentence would be added to the sixth paragraph of the Committee Note:

> This paragraph is also amended to eliminate the need for a court order to provide notice of the time for filing claims. It is anticipated that this notice will be given together with the notice of the meeting of creditors.

Mr. Mabey moved to adopt the Reporter's suggestions. The motion carried on a vote of 8-0.

The Commercial Law League suggested adding the words "including professional fees, and quarterly administrative fees" after the word "debts". The Commercial Law League also suggested setting a single 30-day deadline for Rule 1019(5) and requiring the debtor in possession or trustee, not the clerk, to transmit a copy of the report and schedule to the United States trustee. The Reporter recommended rejecting the three suggestions as unnecessary. **Professor King moved to reject the Commercial Law League's suggestions. The motion to reject carried without objection.**

Rule 2002

The National Conference of Bankruptcy Clerks suggested giving the same 25 days' notice of the time for filing objections and of the confirmation hearing in chapter 12 cases as in chapter 9, 11, and 13 cases. **It was moved and seconded to leave the rule as it is. The motion carried without objection.**

The Seventh Circuit bankruptcy clerks suggested providing notice to the SEC "at Washington, D.C. or at any other place the Commission designates . . ." The Reporter opposed changing Rule 2002(j)(1), which now requires notice at both places, because of opposition to a change in Federal Rule of Civil Procedure 4 to eliminate duplicative service on the United States. **Mr. Mabey moved to reject and revisit the suggestion. The motion to reject and revisit carried without objection.**

The Seventh Circuit bankruptcy clerks suggested providing at Rule 2002(n) that the caption of a notice shall comply with Rule 9004(b) instead of Rule 1005. The clerks indicated that the social security number, employer's tax ID number, and other names used by the debtor, which are included in the Rule 1005 caption, are not needed in routine notices. Creditors have been apprised of this information in the § 341 meeting of creditors notice. The Reporter opposed changing the Rule because some creditors rely on the social security number to identify the debtors. Professor King stressed the importance of the information in the full caption and opposed the proposed change. It was moved to leave the rule as it is. **The motion carried without objection.**

The Seventh Circuit clerks also suggested deleting subdivision (o) of Rule 2002, which requires notice of the order for relief in consumer cases, because the notice of the § 341 meeting of creditors serves this purpose. The Reporter opposed the change in Rule 2002(o) because the section was added by § 321 of the Bankruptcy Amendments and Federal Judgeship Act of 1984. It was moved to reject the suggested deletion. **The motion to reject carried without objection.**

The Commercial Law League suggested that the exclusion of Rule 4001(d) agreements from the 20-day notice requirements of Rule 2002(a)(3) should not apply to any agreement which encompasses either waiver or termination of substantive rights of the estate, such as potential defense or counterclaims against secured parties. The Reporter opposed the suggestion because the parties still must comply with Rule 4001(d). Mr. Shapiro moved to leave the rule as it is. **The motion carried without objection.**

Rule 2003

The National Conference of Bankruptcy Clerks suggested changing Rule 2003(a) so that § 341 meetings of creditors in chapter 12 cases could be held within 40 days after the order for relief, not 35 days. The clerks stated that processing the case and sending out the notice within 15 days of filing is difficult because of the need to interact with the United States trustee's office and the United States trustee's need to obtain a hearing location in a rural area where facilities may not be readily available. The Reporter opposed the suggestion. He noted that the Committee had voted at an earlier meeting to permit § 341 meetings in chapter 12 cases to be held up to 60 days after the order for relief if the meeting is to be held at a place not regularly staffed by the United States trustee or an assistant who may preside at the meeting. It was moved to reject the change suggested by the clerks. **The motion to reject carried without objection.**

The NCBC also opposed the proposed first sentence of Rule 2003(c). The Reporter stated that the issue is moot because the Committee deleted the proposed sentence at an earlier meeting. The National Conference of Bankruptcy Clerks and the Seventh Circuit bankruptcy clerks suggested changing "$250" on line 95 of Rule 2003(g) on page 42 of the Preliminary Draft to "$1,500". The Reporter stated that the suggestions are moot because the Committee has already voted to make the change.

The Seventh Circuit bankruptcy clerks suggested amending the first sentence of Rule 2003(c) to require that the United States trustee inform the clerk of the names and addresses of creditors who appear at the § 341 meeting. The Reporter recommended rejection. The first sentence has been deleted. The Reporter stated that he did not know why the clerk would want to know the names and addresses of the creditors who appear at the meeting. The Seventh Circuit clerks also recommended increasing the $250 amount in subdivision (g) to $1,500. The Reporter stated that the suggestion is moot in light of the Committee's previous decision to change the amount to $1,500. It was moved to leave the rule as it is. The motion carried without objection.

The Commercial Law League suggested that subdivision (b)(1) be amended to authorize the interim trustee to preside at chapter 7 meetings of creditors unless a majority of creditors objects in writing. The Reporter stated that he believed the suggestion violated the statute. He recommended rejection and Professor King so moved. The motion to reject the proposed change carried without objection.

Rule 2004

The Commercial Law League suggested amending Rule 2004(a) to provide that a motion for examination shall be heard only if the moving party certifies that, notwithstanding good faith efforts, it was not possible to schedule and conduct the examination by agreement. The Reporter stated that the change would require publication. Judge Mannes moved to leave the rule as it is. The motion carried without objection.

Rule 2007

The American Bankruptcy Institute suggested a 60-day limit on raising objections to the appointment of a committee organized prepetition. The ABI stated that this would free the committee from the burden of defending such an attack after it has been organized and is active. The Reporter recommended rejection. The Committee rejected a similar suggestion by the National Association of Credit Management at the February 1, 1990, meeting. Professor King moved to reject the ABI's proposed bar date. The motion to reject carried without objection.

Rule 2007.1

The National Bankruptcy Conference suggested that Rule 2007.1 permit any party, not just the United States trustee, to apply for an order approving the appointment of a chapter 11 trustee. The Conference stated that restricting the applications to the United States trustee may lead to delays and is overly restrictive. The Reporter recommended rejection because only the United States trustee can appoint a trustee. Logically, he indicated, the United States trustee should apply for the approval. Professor King moved to leave the rule as it is. The motion carried without objection.

Rule 2011

The National Bankruptcy Conference suggested that the United States trustee, not the clerk, should have the duty of notifying the court that a person appointed or elected as a trustee had failed to qualify in a timely manner. The Conference stated that the United States trustee would be the first to know that the trustee had not qualified and should make the notification. The Reporter recommended rejection because § 322 requires that the trustee file a bond with the court, not with the United States trustee. Therefore, he stated, the clerk will be the first to know. Professor King suggested requiring that the clerk monitor the matter and inform the court. The Reporter indicated that the clerk should have an explicit duty to report the trustee's failure to qualify. If the clerk catches the failure early, he stated, this can avoid challenges after the trustee has acted. Mr. Heltzel stated that a report on the trustee's qualification could be prepared automatically on the BANCAP computer system in the future or the matter could be tracked manually by the clerk's office. Professor King moved to reject the change suggested by the Conference. The motion to reject carried without objection.

Rule 2012

The American Bankruptcy Institute suggested that the deleted language in Rule 2012(b)(1) be retained because § 325 does not provide that the successor trustee is automatically substituted as a party in any pending action. The Reporter stated that the Committee had assumed that no order of substitution was needed but that he could see how others could disagree. The Reporter recommended restoring only the deleted language on lines 8 and 9 on page 60 of the Preliminary Draft and altering the Committee Note accordingly. Judge Barta stated that the restoration could avoid wasteful disputes over the status of the trustee as a proper party. Mr. Mabey moved to restore the deleted language on lines 8 and 9 and to revise the Committee Note. The motion carried on a vote of 7-0.

Rule 2013

The American Bankruptcy Institute suggested that Rule 2013(a) not be deleted because the subdivision provides guidance to the United States trustee and practitioners. The Reporter recommended rejection because the matter is within the United States trustee's discretion and because the second sentence of the Committee Note provides guidance. It was moved to reject the ABI's suggestion. **The motion to reject carried.**

The National Conference of Bankruptcy Clerks recommended eliminating the annual public record summary required by Rule 2013. The clerks stated that the record is burdensome to prepare and rarely if ever consulted. If it must be prepared, they stated, the United States trustee should bear the burden. The Reporter recommended rejection. The court awards fees, he stated, and the clerk should compile the summary of those fees. Deleting the record-keeping requirement would send the wrong message, even if the summaries are never reviewed, the Reporter stated.

Mr. Heltzel stated that he had opposed the requirement in the past but now has a simple computer program to prepare the summary. He indicated that the summary should be retained as a matter of public policy. Ms. Channon stated that the summaries have been used by disgruntled spouses and others such as the Internal Revenue Service. Judge Meyers moved to reject the suggestion but to revisit it in the future. The motion died for lack of a second. Professor King moved to retain the annual summary. **The motion carried without objection.**

Rule 2014

The Commercial Law League stated that the necessity for the employment of counsel on general retainer is usually obvious and need not be spelled out in the application for an order approving the employment. In the rare cases when the court, the United States trustee, or other parties require specific information, appropriate inquiries can be made, the Commercial Law League stated. The Reporter recommended rejection, and Mr. Shapiro so moved. **The motion to reject carried without objection.**

Rule 2015

The National Conference of Bankruptcy Clerks suggested revising proposed Rule 2015(a)(5) to delete the requirement that a statement of the amount of the quarterly fee paid to the United States trustee be filed with the clerk. If the statement was transmitted to the United States trustee, the clerk would not need to handle the additional paper, the clerks stated. The Reporter stated that the filing requirement should not be a significant burden because the statement could be included in

other reports. If the statement is not filed with the clerk, he stated, a separate proof of transmission must be filed pursuant to Rule 5005(b). Mr. Heltzel agreed that there is no requirement that the statement of the quarterly fee be a separate report on a separate piece of paper. The Reporter suggested that the Committee Note indicate that the statement should be included in other reports whenever possible. It was moved to leave the proposed rule as it is and make the change suggested by the Reporter in the Committee Note. **The motion carried without objection.**

The National Conference of Bankruptcy Clerks also suggested that the requirement for post-confirmation reports not be deleted from current Rule 2015(a)(6). The Clerks noted that § 1106(a)(7) only requires post-confirmation reports as are necessary or as the court orders. The NCBC stated that the automatic filing requirement in the current rule is useful because it avoids the need for a court order in each case. The Reporter recommended rejection because the current rule is ignored and § 1106(a)(7) is sufficient.

The clerks also suggested that the requirement for applications for final decrees not be deleted from current Rule 2015(a)(7). The clerks asked how the court would know that the case had been fully administered if nobody is required to apply for a final decree. The Reporter recommended rejection because debtors will move to close the case under Rule 3022. Ms. Channon stated that the Official Form for confirmation orders could include the two requirements deleted from Rule 2015(a)(6) and (a)(7). Judge Barta moved to reject the clerks' suggestions on current Rules 2015(a)(6) and (a)(7). **The motion to reject carried without objection.**

The Commercial Law League suggested that the inventory of the property of the debtor be filed with the United States trustee (but not with the court) unless it is offered as an exhibit during the course of a hearing. Professor King moved to leave the rule as it is. **The motion carried without objection.**

The Commercial Law League suggested that subparagraph (a)(5) not be deleted from Rule 2015. The League stated that it is inconsistent with the policy of § 549 to grant a debtor-in-possession or trustee discretion to dissipate the protection which the Code gives creditors against unauthorized post-petition transfers by not recording notice of the petition in the land records. Professor King moved to reject the suggestion. **The motion to reject carried without objection.**

Rule 2017

The National Conference of Bankruptcy Clerks stated that the provisions of Rule 2017 should be extended to document preparation services which prepare petitions. The Reporter recommended rejection because the purpose of the rule is to implement § 329, which only deals with attorneys' fees. Furthermore, he stated, the proposed amendment would require publication. Judge Mannes indicated that abuses by document preparation services are a real problem and that merely referring the offenders to a bar association committee on unauthorized practice is not sufficient. Mr. Shapiro stated that some debtors need help but that the document preparation services are charging too much for their assistance. Judge Mannes stated that pushing the "near lawyers" too much would just lead to the dismissal of their "clients'" cases and embroil the judge in chasing the document preparers. Judge Mannes moved to leave the rule as it is. **The motion carried without objection.**

Rule 3001

The National Bankruptcy Conference suggested that Rule 3001(e)(2) should more clearly specify what is intended by the words "publicly traded." The Reporter stated that he was not sure how he would define "publicly traded" or whether a definition is needed. If a definition is needed, he offered the following language for inclusion in the Committee Note:

> Publicly traded notes, bonds, and debentures are excluded from the requirements of subdivision (e)(2), (3), and (4). A debt instrument is "publicly traded" if it is of the kind that is commonly traded for investment or speculation. Temporary suspension of trading of such instruments does not affect the characterization as "publicly traded" for the purposes of this rule.

Professor King stated that it is dangerous to try to define such a phrase such as "publicly traded" for the first time. He moved not to include a definition. **The motion carried without objection.**

The National Bankruptcy Conference suggested amending subdivision (e) to require notice to the creditors' committee of a post-petition transfer of an unsecured claim. The Conference indicated that giving the affected committee notice that a sub rosa plan is being effectuated will cure the potential abuse. The Reporter recommended rejection of the suggestion because the amendments proposed by the Committee were intended to get the Rules out of substantive determinations regarding trading claims. Mr. Shapiro stated that he couldn't imagine a case in which the committee wouldn't know that such trading was going on. He moved

to leave the proposed rule as it is. **The motion passed without objection.**

The Conference also suggested amending subdivision (e) to specify the effect of a claim transfer on a vote previously cast on a plan. The Reporter recommended leaving the determination to the courts under Rule 3018(a), and Mr. Shapiro so moved. **The motion passed without objection.**

The Conference also suggested amending Rule 3001(f) to clarify that in a chapter 11 case a claim scheduled other than as disputed, contingent, or unliquidated is prima facie evidence of the validity and amount of that claim. The Reporter recommended rejection because the change would require publication and because the change appears unnecessary in light of § 1111(a). Mr. Shapiro moved to leave the rule as it is. **The motion passed without objection.**

The National Conference of Bankruptcy Clerks suggested that the transferee, rather than the clerk, be required to give notice to the transferor. The clerks also suggested that no notice be required if the transferee files a copy of the assignment signed by the transferor. The Reporter recommended rejection of both suggested changes in Rule 3001(e). Because the purpose of the notice requirement is to prevent fraud by an alleged transferee, the Reporter stated, the clerk should send the notice even if a "signed" assignment is submitted. It was moved and seconded to reject the suggested change. **The motion to reject carried without objection.**

The Commercial Law League suggested that the Committee Note on the deletion of the requirement for furnishing the details of consideration for the transfer of a claim should state that the Committee does not propose a change in the substantive law regarding trafficking in claims. The Reporter recommended rejection because the amendments are intended to get the Rules out of the issue. It was moved to leave the Committee Note as it is. **There was no objection.**

Rule 3004

The National Bankruptcy Conference stated that the Committee's proposed change in the time the debtor or trustee may file a claim on behalf of a creditor limits the debtor or trustee to filing such a claim after the bar date, instead of after the § 341 meeting of creditors. The Conference stated that debtors often file claims at the § 341 meeting or prior to confirmation. The Reporter indicated that he believes that the current rule and § 501(c) do not permit a debtor or trustee to file a proof of claim prior to the bar date. The Reporter stated that the Conference's suggestion violates § 501(c).

Mr. Shapiro stated that if a debtor or trustee files a proof of claim for a creditor after the § 341 meeting and before the bar date, the proof of claim is probably void. If the creditor fails to file, however, the proof of claim filed by the debtor or trustee is deemed to be valid. The Reporter stated that the Conference wants the proof of claim filed during the interim to be valid, not springing to life later. Judge Barta stated that many chapter 13 debtors file proofs of claim early, even before the § 341 meeting, and that the trustee utilizes these proofs of claim in making his calculations for confirmation. Mr. Shapiro suggested that the matter should be considered in light of actual practices and as part of the Committee's in-depth review of chapter 13. Mr. Shapiro moved to delete the proposed revisions in lines 1-7 of Rule 3004, to delete the first paragraph of the Committee Note, and to revisit the question as part of the Committee's review of chapter 13 matters. **The motion carried on a vote of 8-0.**

Rule 3006

The American Bankruptcy Institute suggested deleting one of the section signs before "705(a)" on line 9 of page 88 of the Preliminary Draft and including § 1114 committees of retired persons in the list of persons to receive notice of the withdrawal of a claim or acceptance or rejection of a plan. The Reporter stated that the suggestions are moot because the first section mark has already been deleted and the Committee has decided that § 1114 committees should not receive notice of these matters. The Reporter recommended rejection and it was so moved. **The motion to reject carried without objection.**

Rule 3009

Judge Berk asked why a final order of distribution is needed. He stated that the requirement is particularly troublesome because the court is essentially removed from the administration of the case but nevertheless must pass on the propriety of the distribution. The court no longer has a staff to review the proposed distributions and the United States trustee's office often is unwilling or unable to make a thorough review of the proposed distributions, the judge indicated. The judge proposed having the United States trustee approve the distribution. The Reporter stated that he favored abrogating the entire rule but that course of action would require publication.

The Reporter stated that the matter could be dealt with as part of Rule 9034. Judge Barta asked if the new case closing procedures be~~ing~~ developed by the Administrative Office and the Executive Office for United States trustees been put into effect. Professor King stated that the procedures have not been finalized. Mr. Heltzel stated that many courts had refused to close cases without the United States trustee's certification of

the case trustee's work. He stated that the courts get the certification now but have little confidence in it. The Reporter stated that there is nothing in the statute which requires court approval of the distribution. Mr. Heltzel said it is a function of getting court approval of the trustee's final account.

The Chair requested a joint report by the Administrative Office and the Executive Office on the new case closing procedures forthwith. It was agreed to defer consideration of Judge Berk's comments and Rule 9034 to the next meeting.

Rule 3012

The Rules Advisory Committee of the District of South Carolina suggested that the phrase "after a hearing on notice" in Rule 3012 be changed to "after notice and a hearing." The South Carolina committee stated the change would permit the adoption of a local rule that a hearing is not required unless requested by a party in interest. The Reporter recommended rejection because he believed the two phrases have the same effect under § 102 and because the change would require publication. Mr. Mabey stated that he believed most bankruptcy judges and attorneys believe the two phrases have different meanings. Mr. Shapiro stated that he believed the phrase used in Rule 3012 requires a hearing. It was moved and seconded to reject the suggested change but to revisit the use of the phrase "after a hearing on notice" throughout the Rules. **The motion to reject and revisit was approved without objection.**

Rule 3015

The National Conference of Bankruptcy Clerks suggested that the filing party, rather than the clerk, be required to send copies of a chapter 12 or chapter 13 plan or plan modification to the United States trustee unless the plan is filed with the petition. The clerks also suggested that the United States trustee get plans and plan modifications only on request. The Reporter recommended rejection because the statute requires the United States trustee to monitor plans and the most reliable way to receive a copy of every plan is for the clerk to transmit it. The Reporter indicated that he did not believe the transmittal to be a significant burden for the clerk because copies of plans could be placed in a "drop box" for the United States trustee. He stated that the United States trustee could follow the new procedure approved by the Committee for requesting that notices not be sent. Professor King moved to leave the proposed rule as it is. **The motion was approved without objection.**

Rule 3016

Professor Kennedy questioned whether the Committee's proposed change in the Rule 3016(a) bar date for filing creditor plans conflicts with § 1129(c), which does not include a bar date. The Reporter recommended taking no action. The Reporter stated that the proposed change actually extends the time for a creditor to file a plan from the conclusion of the hearing on the disclosure statement until the entry of an order approving the statement. The Reporter stated that he believes it is appropriate for the Rules to set deadlines for actions permitted by the Bankruptcy Code.

The American Bar Association and Ms. Sheneman had made the same comment as Professor Kennedy. The ABA stated that § 1129(c) contemplates that more than one plan may be submitted for a vote and suggested that the Rules should permit each court deal with multiple plans on an ad hoc basis. The Reporter recommended no action. He stated that the Rule merely prevents another plan from being submitted without leave of court after entry of an order approving the disclosure statement on a plan already submitted.

Ms. Sheneman suggested that if the language in question is to be retained, it should be expanded to limit the filing of debtor plans. Professor King stated that setting a bar date for debtor plans would violate § 1121(a), which provides that the debtor may file a plan "at any time".

The United States did not object to the substance of the rule but indicated that there is a serious ambiguity which could be interpreted to permit the court to limit the right of a creditor to file a competing plan at any time prior to the approval of the disclosure statement. The Reporter stated that he does not believe that the ambiguity exists but offered an addition to the Committee Note or alternative language for the rule to clarify the matter. Judge Mannes moved to revise the Committee Note. There was no second. Judge Leavy moved to reject the changes suggested by Professor Kennedy, the ABA, and Ms. Sheneman. **The motion to reject was approved unanimously.**

The American Bankruptcy Institute suggested adding the following language to the end of Rule 3016(a): "for cause shown and on notice as the court may direct." The ABI stated that the additional language would provide guidance for the courts and put the burden on the party which waits until a disclosure statement has been approved to file a plan. Judge Jones stated that this is implicit in the rule. Mr. Mabey moved to reject the suggested addition. **The motion to reject was approved without objection.**

Mr. Tucker suggested that Rule 3016(a) be deleted so as to allow for competition between competing plans. If the rule is not abrogated, he stated, the rule should be amended to require that the court consider the size and complexity of the case, and the views of the parties and the United States trustee in fixing the time within which a party may file a plan. The Reporter recommended rejection. He disagreed with the need to abrogate the rule, stated that the proposed substitute language would give increased discretion to the court, and stated that either change would require publication. **The Committee agreed to reject Mr. Tucker's suggestions in light of its approval of Judge Leavy's motion to reject the other suggestions.**

The National Bankruptcy Conference suggested that the rule require that exclusivity be terminated for all parties, if it is terminated. The Reporter recommended rejection because the Rule does not deal with terminating exclusivity. **The Committee agreed to reject the Conference's suggestion.**

The Conference also suggested that the rule should make it clear that when competing plans are disseminated and creditors have indicated that they prefer one plan, the court can still confirm a plan other than the one preferred by the creditors, so long as the other requirements of confirmation are met. The Reporter recommended rejection. He stated that this is a substantive question concerning the interpretation of § 1129(c). **The Committee agreed to reject the suggested change.**

The Commercial Law League stated that the objective of the proposed amendment is laudable but that the change appears to expand the debtor's exclusive filing period without the showing of cause required by the Code. The Reporter stated that he did not understand the comment, which was submitted late. **The Committee agreed no action was required on the comment.**

Rule 3017

Ms. Sheneman suggested that the Committee delete the proposed language in Rule 3017(d) which permits the court to order that the disclosure statement not be sent to unimpaired classes. Ms. Sheneman stated that this could be dangerous in the extreme and violate due process if the often complex issue of impairment were not fully briefed and argued at the time the court restricts distribution of the disclosure statement. The Reporter recommended that the Committee reconsider the issues in light of the possibility that classification as unimpaired might be disputed. The Committee previously had rejected Ms. Sheneman's suggestion but had directed the Reporter to prepare a revision of Rule 3017(d) to make it clear that all creditors get notice of the confirmation hearing.

The Reporter indicated that with the current language the court could order that an "unimpaired" class not get notice of its designation as unimpaired. He proposed deleting subsection (d)(4); redesignating subsection (d)(5) as (d)(4); and inserting the following language after "In addition," on line 42 on page 96 of the Preliminary Draft: "notice of the time fixed for filing objections and the hearing on confirmation shall be mailed to all creditors and equity security holders pursuant to Rule 2002(b), and".

The Securities and Exchange Commission stated that it is troubled by the proposed language in Rule 3017(d), which it believes is in conflict with the requirement in § 1125(c) that a disclosure statement be distributed to every holder of a claim or interest. Even if they get notice of the confirmation hearing, the SEC stated, their unfamiliarity with the disclosure statement would limit their effectiveness. The SEC suggested that members of unimpaired classes be given notice of that designation and an opportunity to receive a copy of the statement.

The Reporter recommended rejection of the suggestion that members of unimpaired classes be given notice of a motion to excuse mailing the disclosure statement to them. He stated that mailing notice of first the motion and subsequently the confirmation hearing to members of the unimpaired classes would defeat the purpose of restricting notice. Instead, in addition to his proposed changes in lines 38, 39, and 42, the Reporter recommended consideration of inserting the following language in line 48 on page 96 of the Preliminary Draft:

> "If the court orders that the disclosure statement and the plan or a summary of the plan shall not be mailed with respect to any unimpaired class, notice that the class is designated in the plan as unimpaired and notice of the name and address of the person from whom the plan or summary of the plan and the disclosure statement may be obtained upon request and at the expense of the proponent of the plan, shall be mailed to members of the unimpaired class together with the notice of the time fixed for filing objections and the hearing on confirmation."

Professor King stated that § 1125(c) requires that a copy of the plan and the disclosure statement be mailed to everybody. Mr. Mabey stated that he had always read § 1125(b) to mean that copies of the disclosure statement only have to mailed to the parties who can vote. Judge Jones stated that the member of an unimpaired class can still object to confirmation.

Professor King suggested interlining the word "to" between the words "objections" and "and" in the final sentence of the Reporter's suggested addition to line 48 on page 96 of the Preliminary Draft. Judge Leavy moved to adopt the Reporter's

suggested addition to line 48 with Professor King's interlineation. The Committee approved the addition unanimously. Mr. Shapiro moved to adopt the Reporter's suggested changes on lines 38, 39, and 42 on page 96. The Committee approved the changes unanimously.

Ms. Riddle objected to allowing the court to order that unimpaired classes not receive the disclosure statement. The attorney general of Connecticut stated that her state's tax claims are frequently classified as "unimpaired" even though § 1123(a)(1) excludes tax priority claims from classification. She stated that it would be difficult or impossible to appear at a hearing on a motion to excuse notice and that requesting a copy of the disclosure statement would often take too long.

The Reporter recommended discussion of Ms. Riddle's comments. He suggested either excluding the holders of claims entitled to priority under § 507(a)(7) or adding the following language to the second paragraph of the Committee Note on page 97 of the Preliminary Draft:

> "This amendment is not intended to give the court discretion to dispense with the mailing of the plan and disclosure statement to governmental units holding claims entitled to priority under § 507(a)(7)."

The Reporter stated that adding the exclusion to the rule itself would be silly and that he preferred adding the one-sentence clarification to the Committee Note. Mr. Shapiro moved to make the addition to the Committee Note. The Reporter suggested adding the following language to the clarification: ", who are not members of a class pursuant to § 1123". Mr. Shapiro stated that some people argue that § 1123 merely says that § 507(a)(7) claims do not have to be classified, not that they can not be classified. Judge Leavy suggested the following language as a substitute amendment: "because they may not be classified. See § 1123(a)(1)". Mr. Shapiro accepted the amendment. The Committee approved the Reporter's addition to the Committee Note, as amended, by a 6-0 vote.

The American Bankruptcy Institute suggested inserting the words "for cause shown" on line 30 of page 95 of the Preliminary Draft. The Reporter agreed with the ABI. Mr. Mabey stated that the phrase "unless the court orders otherwise" appears frequently in the Rules and asked whether the Committee wanted to imply that cause is not required in the other instances. Judge Jones moved to reject the ABI's suggestion. The Committee approved the motion to reject without objection.

The ABI also suggested adding a requirement that the debtor furnish a copy of the papers to unimpaired creditors on request. The Reporter stated that the ABI's suggestion was similar to his.

It was moved to leave the proposed rule as it is. The motion was approved without objection.

The National Bankruptcy Conference suggested that Rule 3017(c) be revised to allow small chapter 11 cases to be heard on a "fast track." The change would permit consolidating the hearings on the disclosure statement and confirmation. The Reporter recommended rejection. He stated that the change would require publication and questioned how the two hearings could be consolidated without violating creditors' right to vote on the plan. It was moved to reject. Judge Mannes asked that the suggestion be rejected and revisited. The Committee agreed to reject and revisit the suggested change.

Rule 3018

The American Bankruptcy Institute opposed deleting the language "and within the time fixed for acceptance or rejection of a plan" in subdivision (a) on lines 17-18 on page 98 of the Preliminary Draft. The ABI indicated that, as the rule is revised, one could conclude that a vote could be changed or withdrawn after confirmation. It was moved to leave the proposed rule as it is. The motion passed without objection.

The National Bankruptcy Conference stated that subdivision (a) is too restrictive in requiring that the date of the order approving the disclosure statement be the "record date" for identifying equity security holders and creditors of record who are entitled to accept or reject a plan. The Conference stated that the court should be given the flexibility to set another record date. The Reporter recommended rejection. He stated that he is not aware of any problems with the current rule and that the change may require publication. It was moved to leave the rule as it is. The motion passed without objection.

Rule 4001

The American Bar Association made the same suggestion as Mr. Justice regarding subdivision (a)(2). No further action was required in light of the Committee's action on Mr. Justice's comment.

The ABA stated that the title of subdivision (d) refers to obtaining credit but the subdivision does not deal with that matter. The ABA also suggested that the entire section be deleted and motions with respect to cash collateral and obtaining credit be dealt with the same fashion whether consensual or adversarial. The Reporter stated that the section does deal with obtaining credit when a lien is given, as is often the case.

The ABA recommended that the final hearings on the use of cash collateral or obtaining credit be held no sooner than 45

days after the motion. The ABA made substantially the same suggestions earlier and the Committee rejected them at its meeting in September, 1988. The Reporter recommended rejection because the ABA gave no new reasons in support of the suggestion and because the changes would require publication. Mr. Shapiro moved to reject the ABA suggestions in regard to Rule 4001. The motion to reject carried without objection.

Ms. Sheneman suggested that the Rules require that any motion under subdivisions (a) or (d) be served on any entity claiming an interest in the property. She stated that the change would parallel the notice requirements in subdivision (b) and satisfy due process concerns. The Reporter stated that the change would require publication. He asked whether the Committee wanted to put the burden of doing a title search on the moving party. Mr. Shapiro stated that attorneys generally try to give notice to any entity with an interest in the property but wondered whether due diligence is required. Professor King stated that if notice is required by due process, saying so in the rule does not change anything. Judge Mannes moved to reject and revisit the suggested change. The motion carried without objection.

The American Bankruptcy Institute stated that Rule 4001(a)(1) is inconsistent with § 363(e) because it provides that Rule 9014 (which contemplates a hearing) governs motions to prohibit the use, sale, or lease of collateral. Section 363(e) states that the court may provide relief "with or without a hearing." The Reporter stated that he initially had the same concern about the phrase in § 363(e) but became convinced that including such motions in Rule 4001(a) is not inconsistent because of the availability of ex parte relief under Rule 4001(a)(2). Professor King moved to leave the proposed rule as it is. The motion carried without objection.

The ABI suggested that the word "for" should be added after the word "move" on line 38, page 106 of the Preliminary Draft. The Reporter stated that the present language has existed since the rule was originally drafted. It was moved to reject the suggested change. The motion to reject carried without objection.

The ABI suggested that a provision be added to sections (a)(1), (b)(1), (c)(1), and (d)(1) to require notice to § 1114 committees of retired persons. The Reporter recommended rejection. He stated that the Committee considered the matter before and decided that § 1114 committees do not require notice of Rule 4001 motions because it is not necessary for the performance of their functions. It was moved to leave the proposed rule as it is. The motion carried without objection.

The ABI suggested that the phrase "the relief proposed by the movant in" be inserted following "the court determines that" on line 129 on page 110 in the Preliminary Draft. The Reporter recommended rejection. He stated that the change is not necessary in light of the Committee Note. Also, the Reporter stated, if the court orders a response to the motion and the response is served on the parties, the response should be considered by the court in applying Rule 4001(d)(4). It was moved and seconded to reject the suggested insertion. **The motion to reject carried without objection.**

Judge Fitzgerald stated that the order of the items in the caption of Rule 4001(d)(1) does not comport with the order in the body of the subsection. The Reporter recommended rejection and stated that the order of the items was not intended to be the same. It was moved to reject the suggested change. **The motion to reject carried without objection.**

The National Bankruptcy Conference stated that subdivision (a)(1) creates an implication that the trustee, debtor, and debtor's counsel do not receive notice of a motion for relief from the stay. The Conference stated that the implication may mislead an inexperienced practitioner into not serving those persons. The Conference suggested specifying that they be served. The Reporter stated that the suggested change is unnecessary because Rule 9013 applies, which requires service on the trustee and debtor. Judge Barta moved to reject the suggested addition. **The motion to reject carried without objection.**

Rule 4004

The Commercial Law League suggested that Rule 4004 be amended to provide that an extension of time for filing an objection to discharge applies to all parties, not just to the movant. The League stated that the contrary construction of the rule, which is supported by the existing Committee Note, is inconsistent with the policy of the Code and the proposed amendment to Rule 7041. Mr. Shapiro stated that he thought an extension applied only to the movant. It was moved to leave the rule as it is. **The motion carried without objection.**

Rule 4007

The Commercial Law League suggested that the time for filing dischargeability complaints in an individual chapter 11 case should be the earliest of the confirmation of a plan, the entry of an order converting the case to chapter 7, or a date ordered by the court for cause after notice and a hearing. The Reporter stated that the suggestion would require publication and indicated that the matter may have been considered by the

Committee a year ago. Professor King moved to reject the suggested change. The motion carried without objection.

Rule 5003

The Seventh Circuit bankruptcy clerks suggested that Rule 5003(d) be amended to provide that the clerk shall make a search on request and payment of the prescribed fee. The Reporter recommended rejection. He questioned whether the change is needed and stated that it would require publication. It was moved to reject the amendment. The motion to reject carried without objection.

Rule 5005

The National Conference of Bankruptcy Clerks suggested deletion of the two sentences at lines 21-31 of Rule 5005 on pages 123-124 of the Preliminary Draft regarding errors in filing papers. This would avoid any obligation on anyone to transmit an erroneously delivered document to the correct office. Because the clerk's office and the United States trustee's office may not be in the same location, the clerks stated that it is difficult to ascertain whether a copy of a document was erroneously delivered. The clerks also expressed fear that attorneys might use the clerk's office as the filing place for all documents which have to go to the United States trustee. Mr. Mabey stated that he had more faith in the bar than this. Professor King moved to leave the rule as it is. The motion carried without objection.

The Seventh Circuit bankruptcy clerks suggested that Rule 5005(a) be amended to provide that a filing with the judge is effective as of the date of the filing only if the clerk promptly receives any prescribed fee for the filing. Otherwise, the filing would be effective when the clerk receives payment. The Reporter recommended rejection. He stated that there are adequate remedies for failing to pay the filing fee, such as dismissal, and that the change would require publication. It was moved to reject the amendment. The motion to reject was approved without objection.

The Seventh Circuit clerks suggested that language be added to clarify whether filing by facsimile machines is allowed or prohibited. If allowed, the clerks stated, the authority to accept facsimile filings should be permissive and subject to restrictions by local rule or court order. The Reporter recommended rejection because the various bodies of federal rules should be uniform on filing by facsimile. He stated that the Standing Committee on Rules is considering the matter and will provide guidance to the advisory committees. It was moved to leave the rule as it is. The motion was approved without objection.

Rule 5008

Rule 5008 was abrogated by the Committee at an earlier meeting. The Reporter recommended consideration of the following language as a replacement for the Committee Note published in the Preliminary Draft: "This rule is abrogated in view of the amendments to § 345(b) of the Code and the role of the United States trustee in approving bonds and supervising trustees." It was moved to approve the Reporter's substitute text. The motion carried without objection.

The American Bankruptcy Institute suggested that subdivision (i) not be abrogated. The ABI suggested that subdivision (i) be revised so as to make the combining of funds from different estates subject to approval by the United States trustee. The Reporter recommended rejection because the matter is one within the supervisory role of the United States trustee. It was moved to reject the ABI's suggestion. The motion to reject carried without objection.

Rule 5010

The Seventh Circuit Clerks suggested that the phrase "the United States trustee shall appoint a trustee unless the court determines that a trustee is not necessary" on lines 3-5 of Rule 5010 on page 131 of the Preliminary Draft should be changed to:

> "a trustee shall not be appointed by the United States trustee unless the court determines that a trustee is necessary".

The clerks stated that most cases are reopened to accord relief to the debtor which does not require a trustee. Rather than making a negative finding in the majority of the cases, the clerks indicated, it makes more sense for the court to make a positive finding in the minority of cases when a trustee is needed. The Reporter stated that the suggested language appears to be consistent with the Code and to make good sense. The Reporter proposed the following language for addition to the Committee Note if the suggestion is adopted:

> "In most reopened cases, a trustee is not needed because there are no assets to be administered. Therefore, in the interest of judicial economy, this rule is amended so that a motion will not be necessary unless the United States trustee or a party in interest seeks the appointment of a trustee in the reopened case."

Professor King moved the adoption of the suggested amendment and addition to the Committee Note. The motion carried unanimously.

Rule 5011

Judge Fitzgerald stated that the proposed changes in the abstention procedures under Rule 5011(b) are not consistent with the existing procedures regarding contempt matters under Rules 9020(c) and 9033. Judge Fitzgerald stated that the two procedures should be the same and that the ruling by the bankruptcy judge should become final in the absence of an appeal or objection. The Reporter recommended rejection. He stated that the change would require publication and that the two procedures are not inconsistent (because Rule 5011 incorporates the procedures of Rule 9033). It was moved to reject Judge Fitzgerald's suggestion. The motion carried without objection.

Judge Kressel previously wrote to the Committee suggesting significant revisions to Rules 5011(b) (abstention) and 9027(e) (remand) so that the bankruptcy judge may enter final orders on these matters. The Committee had discussed these suggestions at length and rejected them. Judge Kressel proposed three alternatives including abrogating the two rules; abrogating the two rules and providing that the bankruptcy judge's ruling can be appealed to the district court; and adopting a review process similar to that in Rule 9020(c).

The Reporter recommended rejection. He stated that the changes would require publication and a statutory change, and that the Committee had already considered and rejected Judge Kressel's views. The Reporter indicated that he agreed with the Federal Courts Study Committee that Congress should amend 28 U.S.C. §§ 1334 and 1452 and 11 U.S.C. § 305 to make it clear that they bar appeals only to the court of appeals, not to the district court. It was moved to reject Judge Kressel's suggestion. The motion carried without objection.

Rule 6003

The American Bankruptcy Institute suggested not abrogating the first sentence of Rule 6003 as it provides guidance that is otherwise lacking in the Rules. The Reporter recommended rejection because the method of disbursement should be left to the United States trustee for regulation. It was moved to reject the ABI's suggestion. The motion carried without objection.

Rule 6004

The National Conference of Bankruptcy Clerks suggested that Rule 6004(f)(1) be further amended to state that the party conducting the sale is the one to transmit a copy of the statement to the United States trustee. The Reporter agreed that a clarification is needed. He recommended that ", transmit a copy thereof to the United States trustee," be inserted following "file the statement" on page 137, line 45 of the Preliminary

Draft and that "and transmit a copy thereof to the United States trustee" be inserted at the end of the sentence on line 48. If these changes are made, the underlined language on lines 42-43 may be deleted. Mr. Shapiro moved to adopt the changes proposed by the Reporter. The motion was approved without objection.

Rule 6007

The American Bankruptcy Institute suggested that a provision be added to Rule 6007(a) providing for notice to § 1114 committees of retired persons. The Reporter recommended rejection. He stated that the Committee had decided earlier that § 1114 committees do not receive notice of the proposed abandonment or disposition of property. It was moved to leave the rule as it is. The motion carried without objection.

Rule 7012

Judge Wheless suggested that bankruptcy judges have the authority to enter default judgments in non-core proceedings. Because Rule 7012(b) requires the consent of the parties before a bankruptcy judge may enter a judgment in a non-core matter, a bankruptcy judge cannot enter a default judgment in a non-core matter. In contrast, the clerk can enter a default under Civil Rule 55(b)(1). The Reporter recommended rejection. He stated that are limitations in Civil Rule 55(b)(2) on what defaults the clerk can enter and that there are serious Constitutional questions about consent by silence to a bankruptcy judge's entry of a judgment. Judge McGlynn stressed the difference between the entry of a default and the entry of a default judgment. Judge Leavy moved to reject Judge Wheless' suggestion. The motion carried without objection.

Rule 7019

The National Bankruptcy Conference suggested that Rule 7019 be amended to conform with 28 U.S.C. § 1406 and limit transfers to districts of proper venue. It was the Conference's position that § 1412 was intended to apply only to properly venued proceedings and cases. The Reporter recommended rejection and stated that the change would require publication. The Reporter stated that he would rather leave the issue to judicial development. The Committee previously rejected a similar suggestion by the Conference to amend Rule 1014. Professor King moved to leave the rule as it is. The motion carried without objection.

Rule 7062

The National Bankruptcy Conference suggested that the words "in contested matters" be deleted from line 9 of Rule 7062 on page 158 in the Preliminary Draft. Alternatively, the Conference

stated, the rule could be clarified to state that an uncontested motion is a "contested matter." The Conference stated that it appears unwise to allow parties who have not filed an objection to a particular motion to nevertheless retain a right to appeal from the resulting order or judgment.

The Reporter recommended rejection. He stated that the language in question was added because all of the exceptions listed are obtained in contested matters. The Reporter stated that a "contested matter" under Rule 9014 is still a "contested matter" even if it is not contested. Professor King stated that if the phrase is redundant and it causes a problem, it should be deleted. It was moved to delete the words "in contested matters" from line 9 on page 158. The motion passed unanimously.

Mr. Greenfield suggested modification of Rule 7062 as follows: (1) the 10-day stay should remain applicable with respect to enforcement of money judgments and should not apply with respect to the matters currently excepted under Rule 7062 and Civil Rule 62(a); (2) if any order, judgment, or decree is not contested in the bankruptcy court or, if contested, the objection is withdrawn prior to the entry of the order, the stay should not be in effect; (3) unless otherwise ordered by the court, with respect to any other order, judgment, or decree, the stay would remain in effect only two business days after entry. The Reporter recommended rejection or rejection and revisiting because the changes go well beyond the proposed amendments. The Reporter stated that the second suggestion is inconsistent with the civil rule. Mr. Shapiro stated that the changes would gut Civil Rule 62 in bankruptcy cases. Professor King moved to leave the rule as it is. The motion carried without objection.

Rule 7087

The National Bankruptcy Conference suggested that Rule 7087 be modified to conform to 28 U.S.C. § 1406 in that it should provide that a proceeding may be transferred only to a district which would have proper venue. Also there is no reference to dismissal of an improperly venued proceeding. The Reporter disagreed with the suggestion, which was unrelated to any proposed rule changes, and recommended rejection. The Reporter stated that the rule complies with 28 U.S.C. § 1412 dealing with transfers of proceedings in the interest of justice or for the convenience of the parties. Professor King stated that rejection would be consistent with the Committee's earlier vote on Rules 1014 and 7019. Professor King moved to reject the suggested change. The motion to reject carried without objection.

Rule 8002

The Commercial Law League suggested that Rule 8002(a) should be clarified to specifically include the gap period between the time an order is signed and the time it is entered on the docket. It was moved to leave the rule as it is. **The motion carried without objection.**

The League suggested that Rule 8002(b) should be modified to provide that the notice of an appeal filed during the pendency of a motion which tolls the time for appeal would be treated as if filed immediately after disposition of the motion. The League stated that the existing provisions of Rule 8002(b) are inconsistent with the proposed change in Rule 8002(a). The Reporter stated that he did not see any inconsistency.

Judge Leavy stated that the rule contains the same "trap" for the unwary as Federal Rule of Appellate Procedure 4, i.e., a notice of appeal filed before disposition of certain motions is ineffective, even if the notice is filed before the motion. He indicated that the provision avoids confusion over just what is before the appellate court, especially if the judgment is changed. The Reporter stated that the "trap" is a good "trap" -- even though it sometimes works an injustice -- because it discourages blanket appeals. Professor King moved to leave the proposed rule as it is. **The motion carried without objection.**

Judge McGlynn and the Chairman expressed concern about the use of the word "announcement" in Rule 8002(a). Professor King stated that Rule 8002(a) should track the language of Federal Rule of Appellate Procedure 4(a). **The Chairman directed the Reporter to review the matter.**

Rule 8004

The National Conference of Bankruptcy Clerks suggested that the appellant (instead of the clerk) be required to transmit a copy of the notice of appeal to the United States trustee and that the language "Unless the United States trustee otherwise requests," be added at the beginning of the new sentence on line 8 of Rule 8004 on page 162 of the Preliminary Draft. The Reporter recommended rejection of the first suggestion because of the reliability of transmission by the clerk's office. He recommended rejection of the second suggestion on the basis of the Committee's decision to add a new subdivision (b)(3) to Rule 5005, which would relieve the clerk of any obligation to transmit a document to the United States trustee if the United States trustee does not wish to receive it. It was moved to leave the rule as it is. **The motion carried without objection.**

Rule 8006

The National Conference of Bankruptcy Clerks suggested four changes in Rule 8006.

The first change was to follow the "excerpts of the record" concept set out in Rule 8009(b) regarding bankruptcy appellate panels. The rule provides for copies of pertinent documents to be attached to the briefs. The Reporter stated that Rule 8009(b) does not excuse the preparation and transmittal of the entire record of appeal under Rule 8007(b), but allows the appendix approach to avoid the necessity of multiple copies of the entire record for all three BAP judges. Judge Meyers indicated that the BAP only requests specific papers.

The second change suggested by the NCBC was that, if the Committee retains the present approach, someone other than the clerk's office prepare the documents for the record on appeal. The clerks suggested that the appellate courts could decide to what extent, if any, documents not designated by a party would be considered. The Reporter stated that the rule lists items to be included in the record, and that appellate courts should not have to designate the items to be included.

The present rule requires the attorney to designate the record within 10 days, while briefs are not due for 15 days. The NCBC stated that attorneys routinely designate the entire case file rather than risk neglecting to designate a critical document. The Reporter stated that the two time periods deal with different, unrelated matters. The 10 days runs from the filing of the notice of appeal and the 15 days runs from the entry of the appeal on the docket of the appellate court.

The clerks' fourth suggestion dealt with the added language on lines 20-21 of page 166 of the Preliminary Draft. The amendment proposed by the Committee is an invitation for attorneys to use the clerk's office to make copies, rather than using their own staffs. The proposed amendment provides that if a party fails to provide copies of the items designated as the record on appeal, the clerk will make the copies at the expense of the party. The NCBC stated that it is unlikely that the clerk will be paid because the most likely reason that the copies were not provided is that the appellant has no further interest in pursuing the appeal.

The Reporter stated that the proposed procedure is appropriate so long as the party pays for the copies. Mr. Heltzel stated that the clerk often can not collect for the copies of the record on appeal. Judge Jones stated that in no other appellate system does a party prepare the official record on appeal, one of the core functions of the clerk. Judge Meyers stated that the BAP often receives unsigned copies of documents

from the attorney's file as the record on appeal. Mr. Heltzel stated that the quality of the record on appeal must take precedence over labor saving in the clerk's office.

Judge Leavy moved to reject all four of the clerks' suggestions. The motion to reject carried. The Reporter stated that the rules now require that the complete record go up to the appellate court in all cases and that the three members of the BAP panel get three copies of the appendices, which consist of important documents.

Rule 8007

The National Bankruptcy Conference stated that Rules 8007 and 8006 appear to provide for the transmission of the entire record on appeal while some bankruptcy judges order the transmission of only a partial record. The Conference said this causes problems regarding the interpretation of Rule 8009(a), which provides for filing the appellant's brief 15 days after entry of the appeal on the docket of the appellate court. The Conference stated that, if a partial record has been ordered, the appellant's brief may be due before some of the documents which the appellant deems relevant to its appeal are before the appellate court, necessitating motions for extensions of time. The Conference also indicated that there is no procedure in the rules to deal with disputes over the content of the record or to toll the time for filing briefs until such disputes are resolved.

The Reporter recommended rejection. The suggestions are not related to any of the amendments proposed by the Committee and would require publication. Rule 8007(a) provides that the clerk shall transmit the record "when the record is complete for purposes of appeal." The Reporter questioned whether disputes over the content of the record are really a problem. He indicated that he assumed that a party could raise such a dispute by a motion to supplement or to strike, and could move to extend the time to file briefs if necessary. Judge Jones stated that the district court gets these motions all of the time. It was moved and seconded to leave the rule as it is. The motion carried without objection.

The Commercial Law League questioned the advisability of amending Rules 8006 and 8007 to change the present procedure of transmitting the original record on appeal. The League stated that preparing copies of the documents to be transmitted is an unnecessary expense. If there are courts in which transmitting the original papers has created a difficulty, the League stated that appropriate action can be taken under Rule 8019. The Reporter recommended rejection because the bankruptcy case has to continue below while the appeal is taken. It was moved to leave the proposed rule as it is. The motion carried without objection.

Rule 8016

The National Conference of Bankruptcy Clerks suggested amending Rule 8016(b) to add "unless the United States trustee otherwise requests" on line 11 of page 178 of the Preliminary Draft. The NCBC also suggested eliminating the last line of subdivision (b) in light of the Committee's proposed amendment to Rule 8007(b).

The Reporter recommended rejection of both suggestions. The first suggestion is unnecessary in light of the Committee's decision to amend Rule 5005 so as to relieve the clerk of any obligation to transmit a document to the United States trustee if the United States trustee does not wish to receive it. The last line of section (b) is necessary because any original documents sent to the appellate court as part of the record on appeal should be returned to the trial court. It was moved to reject the clerks' suggestions. **The motion carried without objection.**

Rule 9001

The Commercial Law League indicated that the term "designee" is somewhat ambiguous in Rule 9001(11). The League also asked if there are any limits to the United States trustee's authority to designate, the formal requirements of the designation, and whether the designation must be for specific purposes or may be for all situations where the rules refer to the United States trustee. The Reporter recommended rejection on the basis of the Committee's earlier discussion. It was moved to leave the rule as it is. **The motion carried without objection.**

Rule 9003

The Committee had changed Rule 9003 earlier to add examiners. The Reporter recommended adoption of the following Committee Note:

> "Subdivision (a) is amended to extend to examiners the prohibition on ex parte meetings and communications with the court."

Judge Jones moved to adopt the Committee Note. **The motion carried without objection.**

The American Bankruptcy Institute suggested deleting "and assistants" following "United States trustee" on line 7 of Rule 9003(b) on page 183 of the Preliminary Draft. The ABI stated that the language is redundant in view of Rule 9001(11) which includes assistants within the definition of "United States trustee." The Reporter agreed and recommended deleting "and assistants". Judge Mannes disagreed and moved to reject the suggestion. **The motion to reject carried without objection.**

Rule 9006

At the February 1, 1990, meeting, the Committee had voted to add "1017(e)" to Rule 9006(b)(3). The Reporter recommended adoption of the following Committee Note:

> "Subdivision (b)(3) is amended to limit the enlargement of time regarding dismissal of a chapter 7 case for substantial abuse in accordance with Rule 1017(e)."

Professor King moved to adopt the Committee Note. The motion carried without objection.

The Commercial Law League suggested deleting the reference to "any applicable statute" from line 4 of page 184 of the Preliminary Draft in light of decisions such as In re Butcher, 829 F.2d. 596 (6th Cir. 1987). It was moved to reject the suggestion in light of the effect on other federal rules. The motion to reject carried without objection.

The League also suggested amending the rule to permit later filing under Rules 1007(a), 1017(b)(3), and 2003(a)(1) and (d) in cases of excusable neglect. The Reporter stated that the amendment would require publication. Professor King moved to reject the suggestion. Mr. Mabey stated that the issue should be revisited. The motion was amended to reject and revisit the suggestion. The amended motion carried without objection.

Rule 9011

Judge Wheless suggested that the word "proceeding" be added after the word "case" on line 2 of page 190 in the Preliminary Draft to make it clear that sanctions can be imposed in adversary proceedings. The Reporter recommended either rejection of the suggestion or the deletion of the words "in a case under the Code" in line 2 of page 190 of the Preliminary Draft. In many rules, the Reporter stated, the word "case" is used to include proceedings within the case.

Judge Wheless also suggested bringing oral representations within the rule. The Reporter recommended rejection. He stated that Rule 9011 is intended to incorporate Federal Rule of Civil Procedure Rule 11, which does not include oral representations. In any event, the change would require publication. It was moved to leave the rule as it is. The motion carried without objection.

The Commercial Law League suggested changing the word "shall" on line 21 of page 191 of the Preliminary Draft to "may." The Commercial Law League stated that experience has demonstrated the desirability of affording greater flexibility to the courts in cases of relatively harmless non-compliance. The Reporter

recommended rejection. It was moved to leave the rule as it is. The motion carried without objection.

Rule 9014

The National Bankruptcy Conference suggested that Rule 9014 be changed to clarify that the automatic 10-day stay under Rule 7062 "is not waivable as to a confirmation order." The Reporter recommended rejection. The Reporter stated that he assumed that, by "not waivable", the Conference meant that the court may not "otherwise direct", see page 193, lines 7-9 of the Preliminary Draft. The Reporter indicated that he thought the court should have the power to alter the application of Rule 7062 regarding a confirmation order in a particular case. The Reporter also indicated that the change might require publication. Mr. Shapiro stated that the parties have to have 10 days to object to a confirmation order to avoid a rush to object before the objection is moot. Judge Leavy moved to reject the suggestion. The motion to reject carried without objection.

The Commercial Law League suggested that Rule 9014 be amended to provide specifically that a contested motion may be served on counsel who has already appeared generally in a bankruptcy case for a party from whom relief is sought. The League stated that many bankruptcy judges require service on the party rather than counsel, which is embarrassing to client and counsel and tends to increase the likelihood of default through untimely response. The Reporter recommended rejection and stated that the motion should be served on the party. It was moved to leave the rule as it is. The motion carried without objection.

Rule 9015

In view of the Granfinanciera decision, the Commercial Law League stated that it is essential that former Rule 9015 or a similar rule be reinstated. The League stated that the rule or the committee note should indicate that the Committee does not intend to express an opinion on the right of bankruptcy judges to conduct jury trials but merely seeks to prescribe the procedures to be followed in those cases where the right to a jury trial exists. The League indicated that it doubts that the gap can be filled by local rules. The Reporter recommended that the suggestion be rejected and revisited, and it was so moved. The motion to reject and revisit carried without objection.

Rule 9021

The Commercial Law League suggested that the separate document requirement for judgments be eliminated because it is unworkable and is seldom observed. As a result of the rule, the League stated, two courts of appeals have suggested that there is an interminable period during which appeals or motions under

rules 9023 and 9024 may be initiated. Judge Jones stated that the Court of Appeals for the Fifth Circuit had ruled that the separate document can not be eliminated. The Chairman indicated that the Ninth Circuit had made a similar ruling. It was moved to leave the rule as it is. The motion carried without objection.

Rule 9022

Because the United States trustee is not involved in every matter which results in a judgment or order, the National Conference of Bankruptcy Clerks suggested adding the words "or unless the United States trustee otherwise requests" before the comma on line 5 on page 197 and at the end of line 14 on page 198 of the Preliminary Draft. The Reporter stated that the Committee had dealt with the issue in its discussion and vote on Rule 5005.

The NCBC suggested that the phrase "the clerk shall forthwith transmit" on line 6 of page 197 and on line 15 on page 198 of the Preliminary Draft should be changed to "the clerk or some other person as designated by the court." The Reporter recommended rejection. For reliability purposes, he stated, a judgment or order entered by a district judge should be transmitted by the clerk, who has to transmit it to the parties, anyway. It was moved to reject the suggestion. The motion to reject carried without objection.

Rule 9027

Judge Kressel suggested amending both Rule 5011 (abstention) and Rule 9027 (removal and remand) to permit bankruptcy judges to enter final orders on these matters. The Reporter stated that the Committee had voted to reject the suggested change in Rule 5011 and he recommended rejection of the change in Rule 9027. The Committee agreed to reject the suggestion.

The Commercial Law League suggested that the rule be amended to require that a notice of removal contain only copies of the initial pleading and responses in the first instance. Further documents could be submitted later as they are needed. The League stated that the current requirement that a notice of removal include copies of all pleadings and process can be extremely burdensome. The Reporter recommended rejection. He stated that the bankruptcy court should have copies of all process and pleadings. It was so moved, and the motion passed without objection.

Rule 9033

The National Bankruptcy Conference suggested that subdivision (a) be amended to require that a proposed order be submitted to the district court along with the proposed findings

of fact and conclusions of law. The Reporter recommended rejection. He stated that the statute does not require a proposed order and that any change in Rule 9033 would require publication. It was moved to leave the rule as it is. The motion carried without objection.

The National Bankruptcy Conference suggested that subdivision (b) be amended to provide that the 10-day period for objections run from the entry on the docket of a notice of submission or transmission to the district court, instead of the current provision that the 10-day period begins when the party is served with the proposed findings of fact and conclusions of law. The Reporter recommended rejection. He stated that the suggested change would have the effect of shortening the time for objections, which is already short enough. It was moved to leave the rule as it is. The motion carried without objection.

The meeting was adjourned until 8:30 a.m., Friday, March 16, at which time the meeting was reconvened.

Rule 3016

Judge Jones had stated that a judge could consider the Committee Note to Rule 3016 and the use of the word "prohibit," and conclude that the rule conflicts with § 1129(c). Judge Jones moved to revise the Committee Note to say just what was changed, i.e., moving the bar date from the conclusion of the hearing to the entry of an order. The Committee directed the Reporter to draft a revision. The Reporter proposed the following draft:

> Subdivision (a) is amended to enlarge the time for filing competing plans. A party in interest may not file a plan without leave of court only if an order approving a disclosure statement relating to another plan has been entered and a decision on the confirmation of the plan has not been entered. This subdivision does not prohibit a debtor from filing a plan.

The revised Committee Note was approved without objection.

Rule 5005

The Reporter read the following draft of a proposed new subsection (b)(3) and recommended its approval:

> (3) Nothing in these rules shall require the clerk to transmit any paper to the United States trustee if the United States trustee requests in writing that the paper not be transmitted.

The Reporter read the following draft addition to the Committee Note to accompany the proposed new subdivision (b)(3):

Subdivision (b)(3) is designed to relieve the clerk of any obligation under these rules to transmit a document to the United States trustee if the United States trustee does not wish to receive it.

The Chairman stated that the clerk can separate out only large groups of papers and that the United States trustee may get some papers which the trustee requested not to receive. Mr. Logan stated that this would pose no problem because the United States trustee will throw out the unwanted papers. Mr. Logan indicated that the United States trustees understand the practical problems faced by the clerks in sorting large volumes of papers. Judge Barta moved to approve the proposed new subdivision (b)(3) and the proposed addition to the Committee Note. The motion carried without objection.

Rule 1002

The Reporter read the following proposed addition to the Committee Note:

> Notwithstanding subdivision (b), the clerk is not required to transmit a copy of the petition to the United States trustee if the United States trustee requests that it not be transmitted. See Rule 5005.

The Committee discussed adding a cross-reference to every Committee Note which referred to the clerk sending copies to the United States trustee. The Reporter stated that the provisions affect only the clerk and the United States trustee, both of whom should know about the rule. Mr. Mabey stated that there should not be a Committee Note to Rule 1002 unless there is a cross-reference in the other rules. It was moved to delete the proposed addition to the Committee Note to Rule 1002. The motion to delete failed for lack of a second and the movant withdrew it.

As a substitute motion, Mr. Mabey moved that the following sentence be added to the Committee Note in place of the bare cross reference to Rule 5005:

> Many rules require the clerk to transmit a certain document to the United States trustee, but Rule 5005(b)(3) relieves the clerk of that duty under this or any other rule if the United States trustee requests that such document not be transmitted.

The substitute motion carried without objection.

Rule 3002

The United States suggested changing the bar date for filing proofs of claim in chapter 12 cases. The United States stated that it is virtually impossible for government creditors to file proofs of claims within the time set by Rule 3002(c) for chapter 12 cases. In the Preliminary Draft, the deadline was set at five days after the first date set for the § 341 meeting of creditors. The Committee voted at its February 1, 1990, meeting to change the deadline date from five days to eight. Because 20 days' notice is required for the § 341 meeting, the proposed revision of Rule 3002(c) gives creditors only 28 days to prepare and file proofs of claim in chapter 12 cases. Because an extension can be requested, the government stated the exception could be far more common than the rule. The Internal Revenue Service and the American Bankruptcy Institute expressed similar concerns about the proposed change.

The government proposed that the rule permit filing of claims up to 60 days after the petition, unless the debtor or the trustee affirmatively requests shortening the time on 10 days' notice to creditors. In no event should the time be shortened to less than five days after the § 341 meeting.

The Reporter opposed the specific changes proposed by the government but indicated that the problem is worthy of discussion. He stated that he sympathized with the problems faced by government creditors but that the early filing date was proposed to have the bar date prior to confirmation so that the confirmation standards under § 1225 may be considered at the hearing.

The Reporter indicated that the Committee had a number of alternatives, including leaving the rule as it is, allowing a later bar date if the plan is not filed with the petition, and permitting claims to be filed after the confirmation hearing. The Reporter noted that claims can be filed after confirmation in chapter 13. He indicated that many bankruptcy courts deal with the situation by requiring an amended plan if post-confirmation claims make the confirmed plan unworkable.

Professor King noted that the interim chapter 12 rules permitted claims to be filed up to 90 days after the first date set for the § 341 meeting, as is the case in chapter 13. He stated that no change in the existing 90-day deadline in chapter 12 may be best in light of Committee's planned full review of chapter 13, which could include consideration of the claims bar date for both chapters; and the short time between the August 1, 1991, effective date for the proposed amendments and the termination of chapter 12 on October 1, 1993. Judges Barta, Mannes, and Meyers indicated that they opposed the early bar date.

The Reporter stated that if a 90-day bar date for chapter 12 claims is included in Rule 3002(c), Rules 3004 and 3005 should be amended to treat chapter 12 the same as other chapters. The change also would require the deletion of the first paragraph of the Committee Note on Rule 3002 and the addition of a sentence to refer to the inclusion of chapter 12. Professor King moved to adopt the 90-day bar date for chapter 12 cases and the remainder of the package proposed by the Reporter. The motion carried without objection.

The American Bankruptcy Institute suggested adding the words "Except as provided in Rule 3005," to the beginning of Rules 3002(c) and 3003(c)(3) for clarity. The Reporter stated that the phrase was stylistically inconsistent and unnecessary. Judge Jones moved to leave the rule as it is. The motion carried without objection.

The Seventh Circuit clerks suggested adding a new subparagraph (c)(7) to provide:

> "If a creditor is added by amendment to the schedules in a chapter 13 case, the added creditor may file a claim within 30 days after notice of the amendment or within 90 days after the first date set for the meeting of creditors called pursuant to § 341 of the Code, whichever is later."

The clerks stated that the change is needed because Rule 9006(b)(3) does not allow the bar date to be extended once it has expired and because § 523(a)(3) (the nondischargeability of unscheduled debts) does not apply in chapter 13 cases. The Reporter recommended rejection and revisiting as part of the Committee's review of chapter 13 matters. He stated that the change would require publication, anyway. Professor King moved that the suggestion be rejected and revisited. The motion to reject and revisit carried without objection.

Judge Hess also opposed the proposed time limit for filing proofs of claims in chapter 12 cases. The Reporter stated that the judge's suggestions were moot in light of the Committee's vote to change Rules 3002, 3004, and 3005.

Rule 3015

The United States stated that the rule should be changed to eliminate the provision for mailing plan summaries in lieu of the actual plans, at least in chapter 12 cases. The government indicated that although a summary may be sufficient in consumer chapter 13 cases, such a summary will rarely suffice in the complex world of agricultural financing. Mr. Logan stated that the government immediately asks the clerk for a copy of the plan in each of these chapter 12 cases.

Judge Mannes stated that summaries are permitted in order to accommodate central mailing operations. Mr. Heltzel stated that the use of a plan summary permits the court to notice the § 341 meeting and the summary of the plan on a single piece of paper. Mr. Logan stated chapter 12 plans are short but that the summary does not include the treatment of government claims generally.

Judge Leavy moved to leave the rule as it is. The motion carried on a vote of 4-2.

Rule 3022

The United States stated that the phrase "fully administered" should be clarified in the rule. The government suggested that the six factors set out in the first paragraph of the Committee Note be moved to the end of the rule itself and that the word "whether" be eliminated from each factor. The government suggested that the rule should provide that the estate shall be deemed to have been "fully administered" if the all six factors are present. The government also suggested that the following be added to the Committee Note:

> "Normally, the United States trustee's role ends upon confirmation of the plan; however, the United States trustee could have post confirmation involvement if matters pertaining to the duties of the United States trustee under 28 U.S.C. § 586 remain unresolved at confirmation."

The Reporter recommended rejection. The Committee voted earlier to move the six factors to the Committee Note. The Committee also decided that the six factors should be exemplary but not binding. The Reporter also stated that neither the Committee Note nor the rule should get into the role of the United States trustee, which is a matter of statutory construction. Mr. Mabey stated that placing the six factors in the rule itself would give the erroneous impression that all six factors must be met before a case is "fully administered."

Mr. Logan stated that the proposed Committee Note reflected the general practice of the United States trustee program unless the court instructs the debtor to send post-confirmation reports to the United States trustee and requests that the United States trustee review the reports. The Chairman stated that it was hard for the Committee to make a precise statement when on balance there is some question. Mr. Logan stated that the matter was being discussed by the Administrative Office and the United States trustees and that there may be more to the matter than the United States trustees' initial conclusion that, as a matter of resource allocation, they have no further role after confirmation.

Professor King moved to leave the rule as it is. The motion carried without objection.

The American Bankruptcy Institute opposed the deletion of the language on lines 3 to 5 of page 103 of the Preliminary Draft, which stated that the final decree closing the case shall discharge any trustee and may include provisions by way of an injunction. The Reporter recommended rejection. He stated that the language is unnecessary because the rule is being changed to make it clear that the rule applies only in chapter 11 cases. It was moved to leave the proposed rule as it is. The motion carried without objection.

Judge Fitzgerald stated that the term "fully administered" in § 350 of the Code indicates an intent to have the plan payments completed before entry of a final decree. She indicated that this is inconsistent with the statement in the Committee Note that entry of a final decree should not be delayed solely because the plan payments have not been completed. The Reporter recommended rejection. He stated that he disagreed with Judge Fitzgerald's reading of the statute. Professor King moved to reject the suggestion. The motion to reject carried without objection.

Judge Fitzgerald also suggested that the substance of current Rules 2015(a)(6) and (7) should be included in some form in Rule 3022 because it is helpful for plan proponents to file requests for final decrees and status reports. The Reporter stated that the Committee was of the view that these parts of Rule 2015 are virtually ignored today. The court may order any reports it desires pursuant to § 1106(a)(7). It was moved to reject the suggested addition to Rule 3022. The motion carried without objection.

The National Conference of Bankruptcy Clerks stated it is unclear whether a written motion is required prior to the entry of a final decree by the court "on its own motion". The clerks suggested that a written motion not be required because of the additional work and delay.

The Reporter suggested use of the phrase "on its own initiative", which Mr. Heltzel endorsed. Professor King stated that the language in the rule should be consistent with other usages in the Bankruptcy Code and Rules, such as § 707(b) and Rule 1017(e). Judge Mannes asked how trustees get discharged. The Reporter stated that they are discharged pursuant to Rule 5009, except in chapter 11 cases. Judges Mannes asked how the bond company knows that a chapter 11 trustee has been discharged. Professor King stated that the information is in the final decree.

Judge Barta endorsed closing chapter 11 cases on the court's own motion but expressed concern about the lack of notice to creditors. Judge Jones suggested incorporating the language from the last sentence of Rule 5009(a) into Rule 3022 to provide notice of the court's motion to close the case. The Reporter indicated that the language would have to be modified for chapter 11. Judge Leavy moved to leave Rule 3022 as it was set out in the Preliminary Draft. He stated that the case law handles the matter of when a chapter 11 trustee is discharged now and can continue to do so. Judge Leavy's motion carried unanimously.

Rule 5002

The United States suggested changing the definition of "United States trustee" in the Committee Note on page 121 of the Preliminary Draft to limit it to the United States trustee or an assistant United States trustee. Mr. Logan withdrew the suggestion.

The United States also disagreed with the rule to the extent that when a relative of the judge or the United States trustee is not approved for employment, the person's partner or a member of the person's firm is disqualified as well. Mr. Logan stated that the proposed rule does not consider the effect of a "Chinese wall" around the ineligible person. He said the focus should be on the firm as well as the ineligible person, who can take himself or herself out of the case. According to Mr. Logan, the focus of the court's consideration should be on hiring the firm, not on automatically disqualifying it.

The Reporter stated that the Committee Note already refers to the court's consideration of "the relationship and the particular circumstances of the case," including whether the United States trustee disqualifies himself or herself, whether the related person handles the case, and whether a Chinese wall is built around the related person. Professor King stated that the question is not a conflicts situation, but a matter of compensation or benefit. He indicated that any associate or partner, including the related person, benefits when a law firm is appointed. The Chairman stated that the current draft is much more realistic than the present rule.

Mr. Shapiro asked whether it is more likely for a law firm to be disqualified from representing the debtor or a committee, or for the United States trustee to withdraw from the case. Mr. Logan stated that Department of Justice's Standards for Ethical Conduct require that the United States trustee recuse himself or herself, even if the trustee's relative at the law firm is not a bankruptcy attorney and would have no role in the case. Judge Leavy moved to leave the rule as it is. The motion carried without objection.

The United States suggested that the Committee Note refer to the American Bar Association's Model Code of Ethics and the Department of Justice's Standards for Ethical Conduct. **Mr. Logan withdrew the suggestion.**

The Seventh Circuit clerks suggested extending subdivision (a) to prohibit the employment of a relative of the United States trustee. The clerks stated that a lay person who does not understand the distinction between bankruptcy judges and United States trustees, it would appear that the rule perpetuates the potential for abuse sought to be eliminated by the United States trustee program. The Reporter recommended rejecting the suggestion, which was discussed at length after the hearing in Washington. Judge Leavy moved to reject the suggestion. **The motion to reject carried without objection.**

Rule 5009

The United States suggested that the certification by the United States trustee apply only to asset cases. The United States suggested inserting "in an asset case" after "United States trustee" on line 14 of page 129 of the Preliminary Draft, and "or in a no asset case indicating that the United States trustee has reviewed and approves the trustee's report of no distribution" after "account" on line 16. The Reporter recommended rejection because the Bankruptcy Code requires a final report and final account in every chapter 7 case.

Mr. Logan stated that the term "certification" means different things in asset and no asset cases. He stated that the United States was asking that the rule acknowledge the difference. The Reporter stated that the proposed rule does not deal with the content of the certification, but merely requires certification that the United States trustee has reviewed the final report and final account, and that the estate has been fully administered.

Professor King inquired about the status of the joint memorandum agreement on case closings which was being prepared by representatives of the Executive Office and the Administrative Office. Mr. Logan indicated that a clear, final draft should be prepared for circulation within the next month. Professor King stated that it makes sense to consider the rule in light of the agreement.

Judge Leavy moved that further consideration of Rule 5009 be deferred and designated as the number one item on the agenda for the Committee's next meeting. He stated that the Committee would consider the matter whether or not it receives the memorandum. The Chairman stated that it would be to Mr. Logan's advantage to get a final draft of the memorandum to the Committee by the next meeting. Mr. Logan stated that he would try to get a draft of

the memorandum to the Reporter and Ms. Channon by the next Thursday. The motion to defer passed without objection.

Rule 7004

The Reporter inquired whether he should read the proposed revision of Rule 7004, which deals with the incorporation of certain provisions of Federal Rule of Civil Procedure 4, or mail the proposed revision to committee members before the next meeting. It was agreed that the Reporter should mail the revision so that committee members could review it with the civil rule. Judge Mannes stated that the Committee Note should include the provisions of the civil rule which are incorporated. The Committee agreed. The Reporter suggested that a similar provision be added to the end of the Committee Note for Rule 1010. The Committee agreed.

Effective Date

In a memorandum dated August 10, 1989, the general counsel of the Administrative Office expressed his opinion that the Supreme Court can delay the effective date of amendments to the Bankruptcy Rules under the provisions of 28 U.S.C. § 2075. Under the current statutory scheme, the effective dates for the Bankruptcy Rules are different from the effective dates for the other procedural rules. Because of the difference, the Reporter stated, a civil rule incorporated into the Bankruptcy Rules can be changed between the effective dates for changes in the two sets of rules. He stated that he did not want such a change in a civil rule to result in the proposed changes in the Bankruptcy Rules being returned to the Committee for further consideration.

Ms. Channon stated that the date in section 2075 is the earliest date the changes can be effective, not a date certain. The Chairman stated that the Standing Committee could suggest that the Supreme Court delay the effective date. The Reporter stated that he was not sure that he agreed with the general counsel's interpretation of section 2075 and that needed changes in the Bankruptcy Rules should not be delayed just to have the same effective date. Professor King agreed with the Reporter. Judge Jones noted that changes in the Bankruptcy Rules have always been effective on August 1.

Mr. Mabey stated that the lead time for the changes in the Bankruptcy Rules is already very long and moved that the Committee abide by the statutory date. The motion carried without objection.

Amended Minutes

Professor King moved that the amended minutes of the February 1, 1990, meeting be approved. The motion carried on a unanimous vote.

Adjournment and Future Meetings

The next meeting of the committee will be held April 19 - 20, 1990, in Nashville, Tennessee. The comments on the preliminary draft of proposed Official Bankruptcy Forms are due by April 2, 1990. The Reporter recommended devoting the Nashville meeting to considering the comments on the proposed forms. The following meeting will be held in St. Louis. The Reporter suggested using the St. Louis meeting to tidy up the proposed amendments to the rules and forms and for a style committee meeting.

The Chairman inquired about moving the St. Louis meeting to an earlier date or combining the two meetings. The Reporter stated that the Committee had received 24 comments on the draft proposed forms and that most comments usually come in the last week before the deadline. The Reporter suggested waiting until the Nashville meeting to decide whether a second meeting is needed. The Committee agreed.

The Chairman adjourned the meeting at 9:40 a.m., March 16, 199[illegible].

Respectfully submitted,

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Division of Bankruptcy