ADVISORY COMMITTEE ON BANKRUPTCY RULES

Meeting of March 27-28, 2008
St. Michaels, MD

The following members attended the meeting:

District Judge Laura Taylor Swain, Chair
Circuit Judge R. Guy Cole, Jr.
District Judge William H. Pauley, III
District Judge Richard A. Schell
Bankruptcy Judge Jeffery P. Hopkins
Bankruptcy Judge Kenneth J. Meyers
Bankruptcy Judge Elizabeth L. Perris
Bankruptcy Judge Eugene R. Wedoff
Dean Lawrence Ponoroff
G. Eric Brunstad, Jr., Esquire
J. Christopher Kohn, Esquire
J. Michael Lamberth, Esquire
John Rao, Esquire

The following persons also attended the meeting:

Professor Jeffrey W. Morris, reporter
Professor S. Elizabeth Gibson, assistant reporter
District Judge Thomas S. Zilly, former chair
Bankruptcy Judge Thomas A. Small, former chair
Bankruptcy Judge Paul Mannes, former chair
Bankruptcy Judge Eric Frank, former member
Bankruptcy Judge Christopher M. Klein, former member
Bankruptcy Judge Mark B. McFeeley, former member
Professor Alan Resnick, former member
District Judge James A. Teilborg, liaison from the Committee on Rules of Practice and Procedure (Standing Committee)
District Judge Joy Flowers Conti, liaison from the Committee on the Administration of the Bankruptcy System (Bankruptcy Administration Committee)
District Judge Lee H. Rosenthal, chair of the Standing Committee
Peter G. McCabe, secretary of the Standing Committee
Patricia S. Ketchum, advisor to the Committee
Mark Redmiles, Deputy Director, Executive Office for U.S. Trustees (EOUST)
Lisa Tracy, Counsel to the Director, EOUST
James J. Waldron, Clerk, U.S. Bankruptcy Court for the District of New Jersey
James Ishida, Rules Committee Support Office, Administrative Office of the U.S. Courts (Administrative Office)

James H. Wannamaker, Bankruptcy Judges Division, Administrative Office
Stephen "Scott" Myers, Bankruptcy Judges Division, Administrative Office
Robert J. Niemic, Federal Judicial Center
Phillip S. Corwin, Butera & Andrews

The following members were unable to attend:

District Judge David H. Coar
District Judge Irene M. Keeley

The following summary of matters discussed at the meeting is written in the order of meeting agenda unless otherwise specified, not necessarily in the order actually discussed. It should be read in conjunction with the agenda materials and other written materials referred to, all of which are on file in the office of the Secretary of the Standing Committee.

An electronic copy of the agenda materials, *other than materials distributed at the meeting after the agenda was published*, is available at http://www.uscourts.gov/rules/Agenda_Books.htm. Votes and other action taken by the Committee and assignments by the Chair appear in **bold**.

Introductory Matters

The Chair welcomed the members, advisers, staff, and guests, including several former members and former chairs, to the meeting. She introduced Professor Elizabeth Gibson as the Committee's new Assistant Reporter, and the members and guests each introduced themselves.

1. Approval of Minutes of Jackson Hole meeting of September 6-7, 2007.

The Chair asked for a motion to approve the minutes of the Jackson Hole meeting held September 6-7, 2007. **A motion to approve the minutes passed without opposition.**

2. Oral reports on meetings of other Rules Committees.

(A) January 2008 meeting of the Committee on Rules of Practice and Procedure (Standing Committee).

The Chair said the Standing Committee accepted this Committee's recommendations from the Jackson Hole meeting.

(B) November 2007 meeting of the Advisory Committee on Appellate Rules Committee.

The Chair said that the Appellate Rules Committee continues to consider adopting a rule to deal with indicative rulings. She said that proposed Federal Rule of Appellate Procedure 12.1 would provide a mechanism for discretionary remand by the appellate court upon receiving

notice that the district court would be inclined to grant a motion to vacate, but for the filing of the appeal.

(C) January 2008 meeting of the Committee on the Administration of the Bankruptcy System.

Judge Conti said that the Bankruptcy Committee reviewed the current fee structure in consideration of possible increases to enhance revenue. She said that although no increase was currently contemplated, a possible source for additional fees in the future was a fee to process claims transfers in bankruptcies of publicly traded companies or companies with assets over $50,000,000.

Judge Conti said one of the major endeavors of the Bankruptcy Committee over the next five years will be long range planning. She said the Bankruptcy Committee continued to recommend the FEGLI fix as one of its highest priorities, and that the case weight study and biennial judgeship survey are coming this year.

With respect to the EOUST's request for mandatory data-enabling of the existing Official Forms, Judge Conti said that the Bankruptcy Committee had recommended going forward as soon as possible with enhancements to the DXTR system as a method of providing many of the data elements requested by the Executive Office for United States Trustees.

The Chair elaborated on how the DXTR system works, and said this Committee maintains great interest in the Bankruptcy Committee's data-enabled forms decision because it implicates this Committee's Forms Modernization project. She noted that in considering the data-enabled forms request, the Bankruptcy Committee expressed support for the Forms Modernization Project as a forum for looking at future technology.

(D) November 2007 meeting of Advisory Committee on Civil Rules.

Judge Wedoff reviewed two major issues considered by the Civil Rules Committee: the report of the Discovery Subcommittee on expert witnesses, and further consideration of Rule 56.

He said that with respect to expert witnesses, four separate issues were discussed. The first issue was what should be done with experts, such as treating physicians, who are not required to provide reports. The Subcommittee recommended that the only disclosure required be by the attorney for the party tendering the expert. The second and third issues were whether disclosure of draft reports, and attorney communications about such reports, should be required. On these issues, the Subcommittee recommended disclosure only upon a showing that would require disclosure of attorney work product. Finally, Judge Wedoff said that the Subcommittee identified a problem with work papers. The Subcommittee did not have a good way to distinguish between draft reports that don't need to be disclosed, and work papers that might need to be disclosed. Judge Wedoff said the there was considerable discussion by the full Civil Rules Committee and that the expert witness issues were given back to the Discovery Subcommittee for further consideration.

Judge Wedoff recapped that at its April 2007, meeting, the Civil Rules Committee recommended publishing substantial changes to Rule 56, but because of the volume of interest in the matter, the Standing Committee deferred consideration of the proposal for a year. This gave the Civil Rules Committee the opportunity to reconsider its proposed changes at its November meeting at which time it recommended a number of small changes to its original proposal. Judge Wedoff said the proposal would be discussed again at the Civil Rules Committee's upcoming meeting and he expected a recommendation would be made that rule be published for comment in the fall.

Judge Swain elaborated that the Rule 56 proposal sets a presumptive briefing structure for summary judgment motions, which Judge Wedoff had previously noted could be unworkable in bankruptcy cases. However, changes in the proposal since the last meeting would allow the court to alter the presumptive structure by order.

(E) November 2007 meeting of Advisory Committee on Evidence.

Judge Meyers reported that the Evidence Committee is considering restyling the rules.

(F) Bankruptcy CM/ECF Working Group.

Judge Perris said that the item of greatest interest to this Committee was that the CM/ECF Working Group was looking at how the record for an appeal gets assembled. She said that an approach under consideration would be to simply extract the record directly from the originating court's docket. She said that depending on how the proposal developed, changes in rules (for example, the number of copies of papers required) may be needed.

(G) Sealing Subcommittee.

The Assistant Reporter said that the Sealing Committee was formed to consider when it is appropriate to seal all or part of the court record. She said that at its January meeting, the Sealing Committee addressed the scope of its work, and considered whether (1) it should just look at issues related to sealing an entire case file; or (2), in addition, look at sealing particular filings in the case; or (3), also look as sealing things that are not filed (such as discovery). Ultimately, the Sealing Committee decided to limit its review to the entire case issue. The Assistant Reporter said that the Federal Judicial Center will do an empirical study and report back at the next meeting about how often the issue occurs.

(H) Time Computation Project.

Judge Wedoff said that the Standing Committee's Time Computation Subcommittee considered the comments to all the time computation amendments and that it continued to recommend the amendments as proposed. He said that the Time Computation Subcommittee would also recommend statutory amendments to Congress to conform statutory time periods to the proposed rules amendments. He said that two proposals had generated significant discussion: (1), a proposal to amend the committee notes to specifically address conflicts with local rules; and (2), a proposal to exempt state holidays from the usual counting rule that applies to holidays

and weekends in backward-looking time periods. Judge Wedoff said the Subcommittee considered but ultimately rejected both proposals.

3. Request that Subcommittees Classify Recommendations.

The Chair asked that each subcommittee classify any recommended changes in the rules and forms as either for immediate action or to hold until a package of amendments is ready.

Subcommittee Reports and Other Action Items

4. Report by the Subcommittee on Consumer Issues

(A) Comments on published rules and forms amendments, including Rules 4008 and 1017.1 and Exhibit D to Official Form 1, and recommended actions.

Judge Wedoff reminded the Committee of the substance of proposed Rule 1017.1, and explained the proposed amendment to Exhibit D of Form 1. Rule 1017.1, he said, would "deem satisfactory" the debtor's certification of exigent circumstances warranting a postponement of the obligation to obtain a credit counseling briefing so long as no action was taken by the court or a party in interest within 14 days after commencement. The debtor's certification would be made in Exhibit D of Form 1.

Judge Wedoff said that after considering the comments, the Consumer Subcommittee recommended that proposed Bankruptcy Rule 1017.1 be withdrawn. He said that there were a number of comments that illustrated problems with the rule as published, but that the primary reason for withdrawal is that the subcommittee members no longer thought the rule was necessary. According to the comments, and the experience of the bankruptcy judges on the Subcommittee, the harm the statute was designed to prevent rarely, if ever, comes up. Judge Wedoff explained that to take advantage of the exigent circumstances exception under 11 U.S.C. § 109(h)(3), the debtor must truthfully certify that he or she sought credit counseling during the 5 days before filing, but was unable to obtain it. Because of the existence of Internet and phone providers nationally, however, the Consumer Subcommittee concluded that this situation was mostly theoretical and almost never occurs.

Mr. Rao suggested that the issue might come up if the debtor wanted an "in person" counseling session, and he pointed out it was possible for Internet and phone service to be unavailable for extended periods of time, such as in a natural disaster. He nevertheless supported withdrawing the rule because he thought the situation was sufficiently rare that a rule was unnecessary. Several members thought that incarcerated debtors, especially in joint cases, might present facts for exigent circumstances, but other members said such cases more often present statutory access problems that no deadline extension can solve. After additional discussion, Judge Wedoff moved to withdraw Rule 1017.1, **and the motion carried without opposition.**

Judge Wedoff said that in light of its recommendation to withdraw Rule 1017.1, the Subcommittee also recommended removing the reference to the rule in option 3 of Exhibit D.

He then moved that Exhibit D as set forth in the agenda materials be approved with a re-ordering of the clauses in the last sentence as follows: "Your case may also be dismissed if the court is not satisfied with your reasons for filing your bankruptcy case without first receiving a credit counseling briefing." Another member suggested adding the word "to" after "warns" in the penultimate sentence of the committee note. **The motion to recommend Exhibit D and its committee note with the suggested changes for final adoption, with an anticipated December 1, 2008, effective date, carried without opposition.**

Judge Wedoff said that no negative comments were received concerning the proposed amendment to Rule 4008(a) that would require the use of an official form reaffirmation agreement coversheet. He moved that the amendment be recommended for final approval, with a December 1, 2009 effective date. **The motion carried without opposition.**

(B) Rule 2016 issues relating to the delivery and filing of petition preparer declarations pursuant to 11 U.S.C. §110(h)(2).

Judge Wedoff referred to the Reporter's memo at pages 29-32 of the agenda materials and the proposed changes to Rule 2016 at page 31. He said that last September, the Subcommittee recommended a simple change correcting a reference in the rule from 11 U.S.C. §110(h)(1) to § 110(h)(2). The change was needed because § 110(h)(1) was re-designated as §110(h)(2) by the 2005 amendments to the Bankruptcy Code. Upon further review, however, it became apparent that the fix would be more complicated because the 2005 amendments also required that the petition preparer's declaration be filed with the petition (rather than within 10 days of filing, as had been the case before the 2005 amendments). The Subcommittee's solution was to require the petition preparer to deliver the declaration to the debtor before the petition was filed, so that the debtor could file the declaration along with the petition. After a short discussion, **a motion to recommend approval of the proposed change to 2016 as final without publication as a technical change carried without objection.** A December 1, 2009 effective date is anticipated.

(C) Proposed new Rule 5009(b).

Judge Wedoff said that at its last meeting, the Advisory Committee approved an amendment to Rule 5009, adding a new subdivision (b) that requires the clerk to give notice to the debtor that the case will be closed without entry of a discharge unless the debtor timely files the statement required by Rule 1007(b)(7). He said the Subcommittee was simply seeking confirmation of that decision and that it recommended forwarding the amendment to the Standing Committee at this time. The Chair added that the recommendation was held back from the Standing Committee pending the resolution of issues concerning the package of cross border changes to several rules, including Rule 5009. **Judge Wedoff's motion to forward proposed new subdivision (b) of Rule 5009 to the Standing Committee for publication was seconded and approved without opposition. Further, a motion to remove the last words of the committee note -- "under § 350" -- carried without opposition.** A December 1, 2010, effective date is anticipated.

(D) Status of consideration of possible amendment of the rules to establish a procedure to govern "automatic dismissals" under § 521(i) of the Code.

Judge Wedoff referred the Advisory Committee to the Reporter's memo at page 36-39, and he said that since there had been little case law development in this area that the Subcommittee recommended no rule amendment at this time. He said the Subcommittee would continue to monitor developments, and would report back at the next committee meeting.

5. Report by the Subcommittee on Technology and Cross Border Insolvency.

(A) (1) Amendment of Rule 1018 to clarify the scope of provisions and applicability of Rule 7065 to actions for injunctive relief under §§ 1519(e) and 1521(e).

The Reporter referred the Committee to his memo at pages 58-63 of the agenda materials. He said as an initial matter, the Subcommittee considered but rejected a suggestion that Rule 1018 be amended and limited to involuntary cases and that a new Rule 1018.1 be proposed that would apply only in chapter 15 cases. The Subcommittee next considered the need to amend Rule 1018 to clarify that the rule applies to matters relating directly to contests over involuntary petitions and petitions filed under chapter 15 and not to other matters relating to the contested petitions. He said the rule had been interpreted to reach other matters, and the Subcommittee concluded that the rule should be more limited in its scope, and that it recommended publishing the rule as set out pages 59-60 of the agenda materials. **After discussing the matter, the Committee agreed with the Subcommittee and recommended publishing the proposed changes to Rule 1018. A December 1, 2010, effective date is anticipated.**

(2) Possible amendments of Rules 1014 and 1015 to resolve a potential problem that can arise when two or more cases are pending simultaneously.

The Reporter explained that the proposed amendments to Rules 1014 and 1015 would include petitions for recognition of a foreign proceeding in the procedures for consolidation and joint administration, or for determining which case should go forward, when multiple petitions concerning the same debtor are filed. **A motion to approve a recommendation to publish the proposed amendments as set out at pages 61-63 of the agenda materials carried without opposition. A December 1, 2010, effective date is anticipated.**

(B) Approval of transmission of the chapter 15-related amendments package (amendments to Rules 5009 and 9001 and new Rules 1004.2 and 5012) to the Standing Committee with a request that they be published for comment.

The Reporter said that the Committee previously approved several chapter 15-related rule changes and that the Subcommittee on Technology and Cross Border Insolvency recommends publishing the changes (amendments to Rules 5009 and 9001 and new Rules 1004.2 and 5012) for comment in August 2008. He briefly described the changes, which were set out in the agenda materials at pages 64-69. He said Rule 1004.2 is a new rule that requires an

identification of the debtor's center of main interests on the petition and establishes a procedure for challenging that identification. Rule 5009(c) requires the foreign representative to file a final report in a chapter 15 case and sets out the scope of that report. New Rule 5012 governs agreements for the coordination of the chapter 15 case and the foreign proceeding. Finally, Rule 9001 is amended to reflect the addition to the Bankruptcy Code of § 1502.

Members suggested several stylistic changes that the Reporter incorporated into a handout distributed on Friday. With respect to the change to Rule 5009(c), members discussed who should receive the final report, and who should merely receive notice of the report, and how the clerk would know when all requirements had been met so that the case could be closed. Members agreed that the closing report should be transmitted to the U.S. trustee, that notice of the report should be transmitted to parties in interest, and that the filing of a certificate of service that notice had been sent would trigger case closing. Because there were several wording issues with Rule 5009(c), however, a member suggested that drafting changes be left to the Style Subcommittee and that the rule be redistributed to the Committee for final approval. **A motion to recommend publishing Rules 1004.2, 5009(c), 5012, and 9001 carried without opposition, with the understanding that changes to Rule 5009(c) would be made by the Style Subcommittee and sent back to the Committee for final approval. The Committee approved the final version of 5009(c) by email vote, after the meeting.** A December 1, 2010, effective date is anticipated.

6. Report of Subcommittee on Privacy, Public Access, and Appeals.

(A) (1) Comments on the published separate document amendments to Rules 7052, 7058, and 9021 and recommended actions.

The Reporter said that only one comment was received concerning the separate document amendments to Rules 7052, 7058, and 9021: Judge Brandt's suggestion that "shall be read as a reference to" could be replaced by "means." The Reporter said that the Subcommittee recommended the lengthier published version because it was established historically from Rule 9021. One member suggested adding a discussion in the committee notes explaining that the separate document requirement still applied in adversary proceedings, but no change was made. After additional discussion, **a motion approving all three rules as published for transmission to the Standing Committee with a recommendation for final approval carried without objection**. A December 1, 2009, effective date is anticipated.

(2) Comments on the published time computation amendments to Rules 8002, et al., and recommended actions.

The Reporter said that there had been considerable comment from the bench and bar concerning the proposed change of the appeal time period in Rule 8002 from 10 to 14, or possibly 30 days. Comments were received not only from individual bankruptcy judges, clerks and attorneys, but several prominent organizations, including the National Bankruptcy Conference, the American Bar Association, the American Bankruptcy Institute, the Commercial Law League of America, and many state bar associations and sections of state bar associations.

A summary of the comments received on the proposed change to Rule 8002 can be found in the agenda materials at pages 72-89.

The Reporter said although there was some support for going to 30 days, most of the comments advocated for either 10 or 14 days. In general, those favoring 10 days were attorneys, and those favoring 14 days (or more) were clerks and judges, although there was substantial overlap.

The Reporter said the primary argument for keeping the appeal period at 10 days was the policy that appeals in bankruptcy should move quickly to facilitate the debtor's reorganization. Another argument for 10 days was that bankruptcy practitioners are used to the existing deadline, and don't see the need for a change.

The Reporter said the primary argument in favor of 14 days was to make the time period consistent the time amendment changes to all other rules (i.e. periods less than 30 days should be multiples of seven days). After considering the arguments for each side, the Subcommittee continued to recommend changing the period to 14 days on the ground that the time increase was not very long, because it would help to mitigate the difficulty government agencies and other complex institutions often face in ensuring attention at the appropriate levels to the appealable ruling within the time limit, and because having an exception to the "multiples of seven" rule would be a trap to the occasional bankruptcy practitioner.

Professor Resnick and several members reiterated the arguments in favor of keeping the appeal period at 10 days, emphasizing the number of attorney organizations that came out against a longer period and noting in particular that increasing the appeal deadline extends uncertainty in situations where no appeal will be taken. Other members, including attorney members, argued that the existing 10-day deadline actually increases uncertainty, because it is so short that it encourages unnecessary protective notices of appeal. **After extended discussion the Committee approved a motion to forward Rule 8002 to the Standing Committee for final approval as published, with an appeal period of 14 days, by a vote of 10-3.** A December 1, 2009, effective date is anticipated.

(3) Comments on the published time computation amendments to Rule 9006 and recommended actions. *[The Committee's post-meeting approval by email of the published time amendment changes to bankruptcy rules other then Rules 8002 and 9006(a), is reported at the end of this subsection.]*

The Reporter said that there were a substantial number of comments regarding the amendments to Rule 9006(a), most of which have been considered by the Standing Committee's Time Computation Subcommittee. He said that many of the comments overlapped with the related proposed amendment to Rule 8002(a) (discussed above). A summary of the comments directly generally at Rule 9006(a) was included in the March 3, 2008 memorandum at pages 90-123 of the agenda materials.

The Reporter said that said that one non-controversial amendment to Rule 9006(a) was to fix an incorrect cross-reference in subdivision (a)(3) from a reference to Rule 6(a)(1) to 9006(a)(1), and that he recommended that such a change be made.

As to other changes, the Reporter said that Time Computation Subcommittee considered adding changes to the Committee Note to further address potential conflicts with local rules because of the adoption of a "days are days" computation method. He noted that the national rules supersede local rules, but that several comments expressed concern that some local rules may not be changed, and the result would be the significant shortening of periods under those rules by the inclusion of intermediate weekends and holidays under the new computation system. He said that Time Computation Subcommittee considered the matter and concluded that no special protections should be provided for local rules provisions. If certain time limits in the local rules become too short, those rules will need to be amended in a manner consistent with the national rule. He said that the Time Computation Subcommittee did consider adding a more explicit statement regarding the impact of the new system on local rules to the Committee Note, but that it ultimately made no change.

The Reporter said a number of comments, including one from former reporter Professor Alan Resnick, recommended exempting short time periods from the "days are days" computation method. He said that the concern was that -- both with the local rule issue, but especially with respect to short statutory time periods, (i.e., seven days or less) -- changing to a system that counts weekends and holidays would effectively make such periods shorter than they were when originally implemented.

The Reporter said that rather than exempting statutory time periods from the "days are days" approach, the Standing Committee and the Time Computation Subcommittee were working with congressional staff to change short time periods to seven-day multiples. He said that the Committee would later consider, at Agenda Item 6(B), a proposed recommendation that Congress change several existing bankruptcy related five-day statutory deadlines to seven days so that adoption of proposed 9006(a) does not result in a *de facto* shortening of those deadlines.

The Chair asked Judge Rosenthal, chair of the Standing Committee, to report on the current status of the Time Computation Subcommittee's request to amend short deadlines. Judge Rosenthal said that congressional staff has been very cooperative so far, and that they were working to ensure that recommended statutory time period changes and the rule changes occur seamlessly. She said that they were no guarantees, but her sense was that this request was not controversial and that Congress would enact the requested conforming statutory time amendments effective December 1, 2009, the date Rule 9006(a) is scheduled to go into effect.

Professor Resnick spoke in favor of exempting deadlines of less than seven days from the "days are days" computation method. He said that even if the Standing Committee successfully coordinated with Congress to get the statutory deadlines listed in Agenda Item 6(B) changed, he worried that there would be conflict between the effective dates of the statutory changes and 9006(a), that some periods may have been missed in the recommendation at Agenda Item 6(B), that there might be possible UCC time periods that have been overlooked, and that there would be lots of short time periods proposed by future congresses.

Several members supported Professor Resnick's suggestion to exempt periods of seven days or less from the "days are days" calculation method. Other members opposed such a two-

tiered approach because they thought it would undermine the intent of the rule, which was to eliminate the confusion inherent in having exceptions to the general counting rule and to encourage future drafters to use more uniform time periods.

Finally the Reporter elaborated on an issue mentioned earlier by Judge Wedoff. The Reporter said the Time Computation Subcommittee considered, but ultimately rejected, amending the general counting system for backward looking periods when the last day backwards fell on a state holiday. He explained that as published, when calculating backward looking time periods, (e.g., a filing is due at least 5 days prior to a scheduled hearing), the rule requires counting in the same direction to determine the applicable deadline. So, if the fifth day prior to a scheduled hearing is a Saturday, then Friday becomes the deadline for the filing of the document.

The Reporter said that when little known state holidays come into play, the backward looking time calculation could be a trap. For example, Illinois recognizes Casmir Pulaski Day as a state holiday. If the fifth day prior to a scheduled hearing fell on a Thursday that also happened to be Casimir Pulaski Day, then in a federal court in Illinois, the document would be due on Wednesday, irrespective of the fact that the court would most likely be open on the holiday. The Reporter added that little known state holidays do not create problems when the time computation is forward looking, because in those circumstances, the person subject to the deadline would wind up with an extra day.

The Reporter said that although some were in favor of a change to the rule that would address the "Casimir Pulaski Day" problem, that ultimately, the Time Computation Subcommittee did not think the problem was significant enough to create an exception to the general backward counting rule.

Judge Wedoff said that he was in favor of creating an exception, and suggested that if the Committee voted in favor of making the change to the bankruptcy version of the rule, that at least the Standing Committee would then have the benefit of knowing that one advisory committee thought the change was needed. Judge Rosenthal counseled against such a recommendation, however, unless it was based on the premise that bankruptcy was somehow different from other federal practice in this context.

After additional discussion, **a motion to approve the version of 9006(a), as set forth in the agenda materials beginning at page 94, correcting the typo at line 53 on page 96 (i.e., substituting Rule 9006(a) for 6(a)), for forwarding to the Standing Committee for approval as final, carried on a 7 to 5 vote. The Committee will, however, provide, and Judge Rosenthal indicated that the Standing Committee will consider in connection with its final determination on the backward-counted holidays issue, a list of the backward-counted deadlines in the Bankruptcy Code and Rules and other relevant statutes.** A December 1, 2009 effective date is anticipated.

Time Amendments to Rules other than Rules 8002 and 9006(a).

After the meeting, by email vote, the Committee approved the published time amendment changes to Rules 1007, 1011, 1019, 1020, 2002, 2003, 2006, 2007, 2007.2, 2008, 2015, 2015.1, 2015.2, 2015.3, 2016, 3001, 3015, 3017, 3019, 3020, 4001, 4002, 4004, 6003, 6004, 6006, 6007, 7004, 7012, 8001, 8003, 8006, 8009, 8015, 8017, 9027, and 9033. A December 1, 2009 effective date is anticipated.

(4) Possible amendments to Rules 7052, 9015, and 9023 to "decouple" the time provisions set by the three Bankruptcy Rules from Civil Rules 50, 52, and 59 in connection with proposed amendments to the Civil Rules extending 10-day periods after entry of judgment to 30 days.

The Reporter said that as part of the Time Computation Project, the Civil Rules Committee proposed changing the 10-day deadlines in Civil Rules 50, 52, and 59 to 30 days, rather than 14 days. Each of the rules applies to post judgment motions. The Reporter said that the proposed changes present a problem for this Committee, because those civil rules are incorporated into the Bankruptcy Rules 9015, 7052, and 9023. Given this Committee's decision to limit the appeal deadline to 14 days (see Agenda Item 6(A)(2)), the Reporter said there was a need to "decouple" Bankruptcy Rules 9015, 7052, and 9023 from Civil Rules 50, 52, and 59.

The Reporter said the memo at pages 124-131 contained two stylistic versions to decouple the civil rules: a "Full Text" incorporation, which uses the language from the relevant civil rule but uses 14 days instead of 30 days; and a "Streamlined Option," which generally takes the approach that the relevant civil rule applies in bankruptcy cases, but includes language that requires filing the relevant motion within 14 days rather than 30 days. After considering the two approaches, **the Committee recommended approval, as a technical amendment without need for publishing, the streamlined versions of Rules 7052, 9015, and 9023 set out at pages 129-131 of the agenda materials, with the following changes: all instances of "must" were changed to "shall"; subparagraph (b) in Rule 9015 was changed to (c), with a conforming change to the committee note; Rule 9023 was revised to add "or to alter or amend a judgment" after "A motion for a new trial"; and the title of Rule 9023 was changed to conform to restyled Civil Rule 59, "New Trial; Altering or Amending a Judgment."** A December 1, 2009 effective date is anticipated.

(B) Recommendation in response to request from the Standing Committee's Time Computation Subcommittee for the Advisory Committee's view on which, if any, bankruptcy-related short statutory deadlines should be amended to offset the change in time computation under Rule 9006(a), i.e., the inclusion of weekends and holidays in the computation of periods of less than 8 days.

The Reporter said that an ad hoc group of committee members convened to review statutory deadlines that could be affected by adoption of proposed Rule 9006(a). He said that although the there were a lot of statutory deadlines, (he noted 235 deadlines in Title 11 alone), that only deadlines less than eight days would be affected by the proposed change to Rule 9006(a), as existing Rule 9006 only excludes weekends and holidays from computation of

periods of less than 8 days. The Ad Hoc Group ultimately identified 16 deadlines that could be effectively shortened by the adoption of the new counting rule.

After reviewing the deadlines, the Ad Hoc Group decided not to recommend changing any of the four seven-day periods it identified, because increasing those periods would require going to the next multiple of seven, to 14 days. Although staying at seven days would effectively shorten the deadline under the "days are days" approach by two days (instead of counting intervening weekends for a total of nine days, seven days would *really* be seven days) the Ad Hoc Group did not think it was appropriate to increase those deadlines to 14 days.

The Reporter said that Ad Hoc Group did recommend changing the five-day periods to seven days, because under proposed Rule 9006(a), the change would bring the statutes into conformity with the seven-day approach, and would also effectively keep the time period the same as it is now. The Reporter said that all proposed changes were all set out at pages 135-136 of the agenda materials. **Motion to approve the Ad Hoc Committee's recommendation that Congress change, effective December 1, 2009, the five-day deadlines in the following statues to seven days carried without opposition: 11 U.S.C. §§ 109(h)(3)(A)(ii); 322(a); 332(a); 342(e)(2); 521(e)(3)(B); 521(i)(2); 704(b)(1)(B); 764(b), and 749(b).**

(C) Recommendation in response to suggestion by the bankruptcy clerk of court in the Southern District of New York that Rule 9006(a)(1) be amended to exclude weekends and holidays in computing the five-day period set by section 704(b)(1)(B) of the Code for the clerk's duty to provide creditors with a copy of the United States trustee's statement concerning presumption of abuse.

The Reporter said 11 U.S.C. § 704(b)(1)(B) is one of the five-day deadlines included in the list of such deadlines at Agenda Item 6(B) that the Committee recommends Congress change to seven days. He said that changing the statutory period to seven days addresses the concern raised by the bankruptcy clerk for the Southern District of New York that proposed Rule 9006(a) would make it impractical to timely provide creditors a copy of the United States trustee's statement concerning abuse under § 704(b)(1)(B). The Committee took no action.

(D) Recommended response to John Shaffer's suggestion to amend Rule 8006 to address the consequence of premature filing of an appellant's designation of items to be included in the record and its statement of issues.

The Assistant Reporter said that the Subcommittee considered a comment from former member John Shaffer regarding a possible ambiguity in Rule 8006. In the case of an interlocutory appeal, Rule 8006 requires the appellant to file its designation of items to be included in the record and its statement of issues within 10 days from the entry of an order by the district court or the BAP granting leave to appeal. The rule then permits the appellee "10 days after the service of the appellant's statement" to file and serve a designation of additional items to be included in the record.

Mr. Shaffer was concerned that if an appellant prematurely serves its designation and statement before leave to appeal has been granted, the literal wording of the rule starts the clock

for the appellee's designation, and could cause the appellee to expend time and money before learning whether an appeal will be allowed. Mr. Shaffer also thought that the appellant's premature designation and statement might cause the bankruptcy clerk's office to transmit the record to the appellate court, leading to the docketing of the appeal and the commencement of the briefing period – work which would be unnecessary if leave to appeal is not granted.

In discussing the matter, Subcommittee members questioned whether the issue should be first be considered by the Advisory Committee on Appellate Rules because of similar wording in Appellate Rule 10(b)(3)(B). The Assistant Reporter said that she talked with the reporter for the Advisory Committee on Appellate Rules who indicated that the issue does not seem to come up often in appellate practice, and that the Appellate Rules Committee was not likely to take any action.

The Assistant Reporter said that in an effort to determine whether the issue happens often bankruptcy practice, Jim Waldron polled his fellow bankruptcy clerks. There were 55 responses to the poll. Most bankruptcy clerks had never encountered the problem. Those who had encountered the problem said it was infrequent, and that they generally dealt with it by waiting for a ruling on the motion for leave to appeal before forwarding any papers to the appellate court. Several clerks said they also inform the appellee that the time for filing its designation would not begin to run until leave was granted.

The Assistant Reporter said that the Subcommittee fully discussed the issue by teleconference and, because the problem seems to occur infrequently and seems to be handled well when it does occur, unanimously decided not to recommend an amendment of Rule 8006 at this time. A member of the Subcommittee suggested, however, that the issue could be revisited in any future comprehensive review of the Part VIII rules that the Committee might authorize.

A motion to approve the Subcommittee's recommendation that no change to Rule 8006 be made at this time carried without opposition, with the understanding that the issue could be addressed in the context of any comprehensive review of the appellate rules authorized by the Committee.

(E) Recommendations in response to (1) erroneous cross-reference in proposed amendment to Rule 9006(a) and (2) suggestion by the bankruptcy clerk of court in the Middle District of North Carolina that the cross-reference to Civil Rule 5(b)(2)(C) and (D) in Rule 9006(f) be updated in light of the restyling and renumbering of the Civil Rule, in order to preserve 3-day grace period for both service by mail and by electronic means.

The Reporter directed the Committee's attention to his memo at pages 162-163 of the agenda materials and said the memo described two technical changes needed for Rule 9006. The Chair noted that the Committee already approved the first technical change (correcting an erroneous cross-reference in the proposed amendment to Rule 9006(a)) at Agenda Item 6(A)(3). The Reporter said the second change, expanding the two cross-references in Rule 9006(f) to the subparagraphs of Civil Rule 5(b)(2) was needed because the civil rule had been restyled. **A**

motion approving the proposed change to 9006(f) without publishing as a technical change with a recommended effective date of December 1, 2009 carried without opposition.

7. Report of Subcommittee on Forms.

(A) Comments on published forms amendments, including Official Forms 8 and 27, and recommended action.

The Reporter said that the Forms Subcommittee considered several comments received after publishing Official Forms 8 and 27 in August 2007. Form 8 is the debtor's statement of intention in which debtors must set out their intentions as to personal property that is either subject to a lien or security interest, or that the debtor holds under a lease. Proposed new Official Form 27 is the cover sheet for reaffirmation agreements.

The Reporter said that the Subcommittee made a number of formatting and language changes to the published version of Form 8 in response to the comments, to streamline the form and make it easier to understand. Among other things, the Reporter said, the Subcommittee considered but rejected a suggestion that the form include a certificate of service, deleted the petition-preparer declaration on page 2 as unnecessarily duplicative of Form 19, (which must be filed with any paper prepared by a petition-preparer), and added a continuation page. **After discussing the changes, the Committee voted to recommend Form 8 for final approval as set out in the agenda materials at pages 173-175, with a recommended effective date of December 1, 2008. After the meeting, the Committee approved the committee note describing the changes to Form 8 by email vote.**

The Reporter and Judge Perris described a number of formatting and wording changes made to Form 27 as a result of the comments. Members made several additional suggestions, which were incorporated into a handout distributed on Friday, the second day of the meeting. **After additional discussion on Friday, the Committee voted to recommend Form 27 for final approval as set forth in the Friday handout, with minor additional changes. After the meeting, the Committee approved additional formatting changes and a committee note to Form 27 by email vote.**

(B) Recommendation in response to suggestion by Bankruptcy Judge Joyce Bihary of the Northern District of Georgia for the issuance of forms for § 522(q) and/or Domestic Support Obligation certification before chapter 13 discharge.

The Assistant Reporter said that as a result of Judge Joyce Bihary's inquiry of whether the Committee was considering a national form to implement the domestic support obligation (DSO) certificate required by 11 U.S.C. § 1328(a), she surveyed the various local forms and rules that have been developed to address some aspect of the requirements for a chapter 13 debtor's eligibility for discharge. She said that approximately 40 districts have adopted such local forms, and, although wording varied, they fell into three basic categories: (1), a DSO-only type of form; (2), a comprehensive form that requires the debtor to certify all of the eligibility requirements of § 1328 have been satisfied; and (3), something in between, generally a DSO certification as well as a certification or statement regarding the inapplicability of § 522(q)(1).

After considering the various local forms that have been developed, the Subcommittee recommended that the Administrative Office adopt proposed Director's Form 283 as set out at pages 185-186 of the agenda materials. The Assistant Reporter said this was a "middle ground" version in that it addressed the DSO certification and the statement regarding the applicability of 522(q), but that it also required the debtor to supply current address information for the debtor and the debtor's employer.

Members discussed several aspects of the proposal, including: (i), whether to include the bracketed language as "Part II"; (ii) whether the statutory definition of a domestic support obligation should be incorporated into language on the first page of the form, or if including the statutory definition and reference in the "Information" section of the form was sufficient; and (iii), whether the form should be an official form rather than a director's form. **After discussing the various suggestions, a majority of the Committee (eight members) voted in favor of recommending that the Administrative Office promulgate Form 283 as a Director's form, as set forth in the agenda materials, including Part II (but without the brackets).** The four dissenting members favored adopting the form as a director's form, but would have included the statutory definition for a DSO on page one, instead of, or in addition to the DSO definition and statutory reference on page two. No member supported making the form an official form.

The Chair also asked the Administrative Office staff to review all the forms for consistent certifications.

(C) Recommendation regarding possible amendment to Official Form 10 or Rule 3001 to restrict disclosure of sensitive information contained in the debtor's medical records by advising creditors holding health care claims to submit only the minimally necessary information. The proposal was part of Comment 06-BK-016 submitted by Bankruptcy Judge Colleen Brown of the District of Vermont.

The Reporter reviewed Comment 06-BK-016, submitted by Bankruptcy Judge Colleen Brown (D. Vt.) which included a suggestion that the Committee consider amendments to the rules and forms to prevent the disclosure of personal information on proofs of claim and attached documentation provided to support claims. Judge Brown noted in particular that claims filed by health care providers frequently include information about services and medical tests that essentially disclose the nature of the illness or condition of the patient.

The Reporter said that Judge Brown's suggestion was initially given to the Subcommittee on Privacy, Public Access and Appeals to consider possible rule changes. That Subcommittee, however, suggested instead that the Forms Subcommittee consider whether Official Form 10 or the instructions to that form could be amended to advise creditors to submit only minimally necessary information. The Advisory Committee concurred, and the matter was given to the Forms Subcommittee.

The Forms Subcommittee met by teleconference to consider the matter, and after considerable deliberation, recommended amending instructions 2 and 7 on the back of Form 10, and box 7 on the front of the form, as set forth in the materials at pages 188-189. **A motion**

made to recommend adopting the health care-related changes to Form 10, as proposed by the Forms Subcommittee, passed without opposition, except that the word "unnecessary" in the new material added to instruction 2 was deleted. The Committee also recommended that the change take effect as a technical change on December 1, 2008, without publication.

(D) Recommended changes to definitions on back of Official Form 10: proposed new definition of "creditor" (approved at September 2007 Jackson Hole meeting); proposed revision of definition of "claim" to conform to the change in the definition of "creditor."

Mr. Myers referred the Committee to the memo at pages 194-195 of the materials and explained that, at the Jackson Hole meeting, the Committee approved revising the definition of "creditor" on the back of Form 10 to more closely follow the statutory definition as follows:

> **Creditor**
> A creditor is a person, corporation, or other entity owed a debt by the debtor that arose on or before the date of the bankruptcy filing. See 11 U.S.C. § 101(10).

Mr. Myers said that, although Committee approved the proposed revision at the Jackson Hole meeting, it decided not to forward the recommendation to the Standing Committee until other changes to the form were needed. The Committee had also asked the Forms Subcommittee to propose a similar change for the related definition of "Claim" on the back of Form 10. Mr. Myers said that the Subcommittee discussed the matter and that it recommends that the definition of "Claim" set forth below. He said the Subcommittee also proposes that both the "creditor" and "claim" definitions go forward to the Standing Committee along with the health care-related changes discussed at Agenda Item 7(C):

> **Claim**
> A claim is a creditor's right to receive payment on a debt owed by the debtor that arose on or before the date of the bankruptcy filing. See 11 U.S.C.§101(5). A claim may be secured or unsecured.

The Committee approved a motion to recommend revising the definitions of "creditor" and "claim" on the back of Form 10, and to recommend that the revisions be made effective December 1, 2008 as a technical change without publication along with the health care-related changes to the form discussed at Agenda Item 7(C).

(E) Recommended response to suggestion by the chief deputy clerk of the bankruptcy court for the District of New Mexico that the debtor's phone number be deleted from Official Form 9F, the meeting of creditors notice for chapter 11 corporate/partnership debtors.

The Reporter said that among several amendments to most versions of Official Form 9 that became effective on December 1, 2007, was the deletion of the language that required debtors to state their telephone numbers. He said that the deletion was consistent with the

Judicial Conference privacy policy, and was approved by the Advisory Committee. In the case of Official Form 9F ("Notice of Commencement of Case Under the Bankruptcy Code, Meeting of Creditors, and Deadlines in cases filed under chapter 11 by a corporation or a partnership"), however, the deletion was inadvertently overlooked. The Reporter said that the Subcommittee recommends that Official Form 9F be revised to delete the request for the debtor's telephone number. **The Committee approved a motion to recommend deletion of the request for the debtor's telephone number on Official Form 9F as a technical change not requiring publication, with a recommended December 1, 2008, effective date.**

(F) Recommendation regarding possible revision of the statement on filing deadlines at the bottom of Official Form 23 in light of comment from the bankruptcy court for the Southern District of New York on the application of the debtor education requirement to certain individual debtors in chapter 11 cases.

Mr. Myers said that Mark Diamond, an attorney and the operations manager of the bankruptcy court in the Southern District of New York, reported an inconsistency with the "Filing Deadlines" note at the bottom of Official Form 23. The form, entitled Debtor's Certification of Completion of Postpetition Instructional Course Concerning Personal Financial Management, was amended on December 1, 2007.

Mr. Myers explained that the pending amendment to Rule 1007(c) that will go into effect on December 1, 2008, includes a deadline for filing the certificate in a chapter 11 case in which the debtor requests a hardship discharge under § 1141(d)(5)(B) of the Code. The note at the bottom of Form 23, however, does not include the same deadline.

Although an individual receiving a hardship discharge in chapter 11 would be rare, to avoid confusion, the Forms Subcommittee recommended changing the footnote to track the language in the pending rule. The suggested fix conforms to the language of pending Rule 1007(c) by adding a reference to § 1141(d)(5)(B) and removing the words "entry of." As revised, the note would read:

> *Filing Deadlines*: In a chapter 7 case, file within 45 days of the first date set for the meeting of creditors under § 341 of the Bankruptcy Code. In a chapter 11 or 13 case, file no later than the last payment made by the debtor as required by the plan or the filing of a motion for ~~entry of~~ a discharge under <u>§ 1141(d)(5)(B) or</u> § 1328(b) of the Code. (See Fed. R. Bankr. P. 1007(c).)

After discussion, the Committee approved the change to Form 23 as set forth above, and recommended that it go into effect without publication on December 1, 2008 as a conforming change, the same time as the proposed amendment to Rule 1007(c).

(G) Judicial Conference approval of amendments to Official Forms 1, 22A, 22B, and 22C. (Information item.)

Mr. Myers referred the Committee to the agenda materials at pages 203 and 204 for a description of changes to Form 1 and Forms 22A and 22C, which went into effect on January 1,

2008, after approval by the Committee, the Standing Committee and the Judicial Conference by email vote. Form 22B went into effect at the same time.

(H) Amendments to Director's Procedural Forms 200, 254, 255, and 256. (Information item.)

Mr. Wannamaker recapped changes (described at pages 205 and 206 of the agenda materials) to the Director's Procedural Forms 200, 254, 255, and 256 that became effective since the Committee's September 2007 meeting.

Discussion Items

8. Status of the Bankruptcy Forms Modernization Project and its organizational meeting on January 31, 2007.

Judge Perris reported that at its organizational meeting, the group divided its work among two subgroups. She said that one subgroup, the "Analytical" Subgroup, has begun to inventory the informational elements requested on the petition and schedules. The Analytical Subgroup has had several conference calls, and has already done its initial analysis of the petition and schedules. She said the next step will be to put the information into spreadsheets, categorizing it, filtering it and thinking about how to restate it. She said a primary focus of the Analytical Subgroup at this point is to identify overlapping information requests and eliminate redundancies.

Judge Perris reported that the other subgroup, the Technology Subgroup, has also had several conference calls since the January meeting, and that it is currently surveying available technologies for inputting, outputting and manipulating information currently collected on the forms. She said the Forms Modernization Project Group is also planning to make presentations at several upcoming FJC events and at the clerk operations forum as part of the effort to solicit input from the bankruptcy community.

9. Planning for the future of the CM/ECF system.

As an informational item, Judge Perris told the Committee that the Administrative Office is in the initial stages of forming a group to assess plans for the future of CM/ECF. She said that she would be acting as liaison from the Committee, and that she would report on the group's activity at the next Committee meeting.

10. Suggestion by Bankruptcy Judge Laurel M. Isicoff of the Southern District of Florida to create a new Official Form to be used as a petition in chapter 15 cases.

The Reporter said that the Hon. Laurel Myerson Isicoff (Bankr. S.D. Fla.) has suggested that a new form be developed, in place of Official Form 1, to commence a case under chapter 15 of the Bankruptcy Code. Judge Isicoff reported that recently, a trustee in an individual debtor bankruptcy case pending in the United Kingdom initiated a chapter 15 case in her court. The

debtor in UK case had relocated to the United States, and the trustee intended to liquidate some of the debtor's jewelry he asserted was an asset of the estate in the UK case.

Judge Isicoff believes that the UK trustee's use of Official Form 1 to commence the chapter 15 case creates several problems. First, it creates the appearance of a "case." Judge Isicoff argues that this is inconsistent with § 1511 of the Code, which authorizes the foreign representative to initiate a bankruptcy case "upon recognition" of the foreign proceeding.

Judge Isicoff reported that the UK trustee initially filed a pleading called a "Petition for Recognition," as required § 1515, but that the filing was rejected in the absence of a Form 1 Voluntary Petition to accompany the pleading. She suggests that since Official Form 1 merely contains a check box for chapter 15, it creates confusion about whether a "Petition for Recognition" pleading is needed.

Judge Isicoff believes that using Official Form 1 to file a chapter 15 case against an individual also creates new difficulties for the individual. In the case before Judge Isicoff, the debtor was unable to use a credit card because the credit reporting agencies reported the filing of a petition under the debtor's name. This might not be justified if, for example, the credit card was issued after the UK filing. Judge Isicoff maintains that future problems could be avoided if a form other than Official Form 1 was used to initiate a chapter 15 case.

After a brief discussion, **the Chair referred the matter to the Subcommittee on Technology and Cross Border Insolvency to consider whether a new form should be created to commence chapter 15 proceeding, or whether existing Official Form 1 is (or could be if amended) sufficient, to address the matter.**

11. Suggestion by Mr. Brunstad that Part VIII of the bankruptcy rules be rewritten to more closely follow the Federal Rules of Appellate Procedure.

Mr. Brunstad said that, although Part VIII of the bankruptcy rules is based on the Federal Rules of Appellate Procedure ("FRAP"), it has become somewhat dated because it does not reflect the many amendments that have been made to FRAP over time. He suggested that many of the FRAP amendments would be beneficial in bankruptcy appeals and he proposed that a subcommittee review and rewrite the bankruptcy appellate rules. **The Chair referred the matter to the Subcommittee on Privacy, Public Access, and Appeals.**

12. Memorandum by the Director of the Administrative Office pursuant to Rule 5003(c) authorizing clerks to keep their files and indices of judgments and orders in electronic form, using any automated means that the court determines will meet the needs of the users of those records and that the clerk's office can support.

As an information item, Mr. Wannamaker reviewed Director Duff's January 16, 2008 memorandum authorizing clerks to keep their indices of civil judgments and orders in electronic form.

13. Regulations proposed by the Executive Office for United States Trustees for final reports in chapter 7, chapter 12, and chapter 13 cases and approval of credit counseling agencies.

The Assistant Reporter referred the Committee to the agenda materials at pages 213-233 for a description of the EOUST's proposed regulations for final reports in chapter 7, 12, and 13 cases, and for approval of credit counseling agencies.

With respect to closing reports, the Assistant Reporter said that case trustees currently use hundreds of different closing forms throughout the United States, and EOUST's proposed closing reports (mandated by BAPCPA) would make the process uniform and facilitate closing. She also advised members that the comment period on the proposed forms ends April 4, 2008.

The Assistant Reporter also described the proposed regulations concerning approval of credit counseling agencies, which she said were out for public comment until April 1, 2008.

On behalf of the EOUST, Mark Redmiles reiterated that the deadline for comments concerning the closing reports was April 4. He noted that the reports would be filed as "data-enabled" forms to facilitate the EOUST's ability to pull the information from the forms.

14. Suggestion by the Loan Syndication and Trading Association and the Securities Industry and Financial Markets Association to repeal Rule 2019.

The Assistant Reporter said that the Loan Syndications and Trading Association and the Securities Industry and Financial Markets Association (collectively the "LSTA") have proposed that Rule 2019 be repealed. She said that Rule 2019, titled "Representation of Creditors and Equity Security Holders in Chapter 9 Municipality and Chapter 11 Reorganization Cases," comes into play in chapter 9 and 11 cases with respect to entities and committees (other than committees appointed under § 1102 or § 1114) that represent more than one creditor or equity holder. She said the LSTA generally objects to detailed reporting requirements concerning the members of an ad hoc committee including details about how and when holder claims or equities were acquired and at what price, as well as information about the organizational structure of the ad hoc committee itself.

The Assistant Reporter said that in contrast to the LSTA, it was her understanding that other organizations, including the National Bankruptcy Conference, were considering whether to recommend that Rule 2019 be expanded to cover official committees or whether the rule should be otherwise amended. Several members indicated that other organizations that they are involved in might want to take a position on Rule 2019 elimination or expansion as well.

After additional discussion, LSTA's suggestion was tabled until the next meeting in anticipation of suggestions from other interested organizations. Members were encouraged to discuss the matter with other organizations they participate in. **The Chair asked the Assistant Reporter to provide a review of the case law on Rule 2019 for the next meeting.**

Information Items

15. Comment circulated to Congress in February 2008 regarding the deadline set out in H.R. 3609 – mortgage foreclosure legislation – for filing a notice of fees charged pursuant to a chapter 13 debtor's home mortgage.

The Chair gave a report about the status of legislation before Congress that would amend § 1322(c)(3) of the Bankruptcy Code to disallow certain fees on the debtor's home mortgage while case is pending unless certain notice is given. She said there was a problem in the way the proposed legislation calculated the notice period, and that Administrative Office's legislative affairs office has forwarded a proposed fix to congressional staff.

16. Rules Docket.

Mr. Wannamaker asked the members to review the Rules Docket and let him know if any changes were needed.

17. New posting of list of suggested rules amendments on the Internet

Mr. Ishida said that the Rules Support Office recently begun posting suggestions for changes to the bankruptcy rules and forms on the court's public website at:

http://www.uscourts.gov/rules/Bankruptcy_Rules_Suggestions_Chart.htm.

He asked members to review the webpage and provide any suggestions. He said that he anticipated that the status of suggestions and official responses would be posted on the chart so that the public could easily learn what action had been taken. He said that he also anticipated that keeping historical suggestions and responses posted publicly would help refine future suggestions, as interested parties would have the benefit of easily learning Committee reaction to prior similar suggestions.

18. Bull Pen:

All of the proposed rules amendments in the *Bull Pen* were addressed in prior agenda items.

19. Future Meetings.

The Chair reminded the Committee that the next meeting was scheduled for October 2-3, 2008, at the Hotel Teatro in Denver, Colorado. **The Chair asked members to make suggestions for the spring 2009 meeting by email.**

20. New business:

(A) Use of the term "family size" rather than "household size" in determining the National Standard deduction for food, clothing and other items on Line 19A of Official Form 22A.

Judge Wedoff reviewed his March 6 memo from the materials. He explained that in the last revisions to the means test forms, the Committee approved using "household" rather than "family" size in determining applicable median income to conform with the term used in 11 U.S.C. § 707(b)(7). He noted, however, unlike the Internal Revenue Manual, the means-test forms do not have an IRS dependency limitation built into the calculation of household size. Because there was no dependency limitation, he thought the forms could produce anomalous results in some instances (for example, a college age debtor living at home with his two parents and asserting a household of "three"), and he suggested the Consumer Subcommittee review the matter. **The Chair agreed with the suggestion and referred the matter to the Consumer Subcommittee.**

(B) Suggested changes to Rule 6003.

The Reporter reviewed his memo, which sets out two issues that have been raised concerning Rule 6003: (1) Judge Robert Kressel's query as to whether the time period should start from the "order for relief" instead of the "filing of the petition;" and (2) informal comments from BJAG members that Rule 6003 as written might prevent the debtor-in-possession from hiring counsel prior to the first 20 days of the case. As to Judge Kressel's comment, because the purpose of the rule was simply to relieve some of the time pressures at the beginning of the case, no member thought it was necessary to tie the beginning of the period to the order for relief in involuntary cases.

With respect to the second issue, the Reporter said that when Rule 6003 was initially recommended, the expectation was that an application to employ counsel in chapter 11 would be filed on the first day of a chapter 11 case, that counsel would serve until employment was approved, and that approval would be effective from the date of the application or from commencement of the case, as the court determined.

The Committee discussed the matter and the general consensus was that the rule allows for employment of debtor-in-possession counsel from the beginning of a chapter 11 case. Members agreed with the Reporter that the rule only limits when the order approving employment can be entered, not when it is effective. Some members also pointed out that the rule has an exception "to avoid immediate an irreparable harm," which seems to allow for immediate entry of the order if the court agrees with the argument that a debtor cannot file at all unless counsel first has an order approving employment in hand.

There was some agreement with the Reporter's observation that a more explicit statement in the committee note that the rule is not intended to prevent counsel from acting on behalf of the debtor-in-possession before an employment order is entered might have been helpful. However, it is not possible to amend or add to a committee note without amending the rule. In the absence

of a formal request or suggestion for a rule change or clarification from BJAG or another party in this respect, the Committee did not undertake to develop a statement on the issue.

The Committee voted to table the issue pending the BJAG's determination as to whether it will request any Committee action. The Committee noted in this connection that, if the BJAG requested action or comment, the Committee's response could be posted on the new area of the judiciary's rulemaking website that provides links to written suggestions and responses to those suggestions.

21. Adjourn

The Chair again (see addendum below) thanked Judges Zilly, Klein, and McFeeley for their service to Committee over their terms, and she thanked the current members and the guests for their participation in a great meeting, and adjourned the meeting.

Addendum: Judges Zilly, Klein, and McFeeley Honored at the "Zillybration"

The Chair asked that the minutes reflect some of the comments made at the committee dinner honoring the Committee's three outgoing members, former chair of the Committee, Judge Thomas S. Zilly, former chair of the Subcommittee on Forms, Judge Christopher M. Klein, and former chair of the Subcommittee on Technology and Cross Border Insolvency, Judge Mark B. McFeeley. In addition to the committee membership, assigned staff and committee liaisons, two former chairs (Judge Thomas Small, and Judge Paul Mannes), former reporter and committee member Professor Alan Resnick, and former member Judge Eric L. Frank attended the celebration.

Speakers at the Zillybration included Standing Committee Chair Judge Lee Rosenthal, Judge Thomas Small, reporter Professor Jeffrey Morris, former reporter and committee member Professor Alan Resnick, Judge Eugene Wedoff, Peter McCabe, James Wannamaker, Scott Myers, Patricia Ketchum and Committee Chair Judge Laura Taylor Swain.

The speakers shared many anecdotes about the three retiring members, and all praised the extraordinary accomplishments undertaken by the Committee over the past several years. Of particular note, Judge Zilly led, and Judges Klein and McFeeley played vital roles in, an intensive team effort by the Committee to draft and approve an extensive set of Interim Rules and Forms in the 180 days between the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) and the act's effective date on October 17, 2005. Because the usual rules process takes at least three years, the Interim Rules were adopted by the courts as local rules.

Despite the expedited process and the ambiguity of many BAPCPA provisions, the Interim Rules have served the bankruptcy community well and required only limited fine tuning for adoption as permanent rules. The permanent rules were approved by the Supreme Court and sent to Congress a few days before the Committee meeting, and will take effect on December 1, 2008 unless Congress acts to the contrary.

The following rules amendments (and new rules) were proposed during Judge Zilly's term as chair:

Thirty-nine Interim Rules (for BAPCPA) proposed in 2005 were approved by the Committee on Rules of Practice and Procedure (the Standing Committee) in August 2005 and adopted by the courts as local rules, effective October 17, 2005.

One Interim Rule was amended in 2006 in response to practice under BAPCPA.

Nine rules amendments were proposed in 2005 and were published for comment in August 2005. Eight of the nine amendments became effective on December 1, 2007.

Forty amendments proposed in 2006 were published for comment in August 2006. All 40 will be effective on December 1, 2008 if approved by the Supreme Court and unless Congress acts to the contrary.

Thirty-nine amendments proposed in 2007 were published for comment in August 2007. Comments for these amendments were considered by the Advisory Committee in March 2008.

Four technical amendments were proposed in 2007 and approved by the Judicial Conference in September 2007. The technical amendments will be effective on December 1, 2008 if approved by the Supreme Court and unless Congress acts to the contrary.

In addition, Judge Zilly shepherded 12 other rules amendments (proposed during Judge Small's tenure as chair) through the remainder of the rules process. Eight of the nine amendments published in August 2003 became effective on December 1, 2005, and four amendments published in August 2004 (including two separate amendments to Rule 5005) became effective on December 1, 2006.

The following form amendments were proposed during Judge Zilly's term as chair:

Nineteen amendments to the Official Forms (and new forms) were proposed on an expedited basis in 2005 in response to the enactment of BAPCPA. The amended forms were approved by the Judicial Conference and took effect on October 17, 2005.

Three of the new Official Forms were amended by the Judicial Conference in October 2005.

Eight amendments to the Official Forms were proposed on an expedited basis in 2006 in response to practice under BAPCPA and comments on the 2005 amendments. The amended forms were approved by the Judicial Conference in September 2006 and took effect on October 1, 2006.

Twenty-five forms amendments (including new forms) were published for comment in August 2006 (including the BAPCPA forms amendments). Fifteen of the forms became

effective on December 1, 2007 (including 2 forms which were combined), three became effective on January 1, 2008, and six are scheduled to take effect on December 1, 2008.

In addition, two technical forms amendments proposed during Judge Small's tenure became effective on December 1, 2004.

Throughout the years of drafting and revising the forms and rules to implement the 2005 bankruptcy legislation, Judges Zilly, Klein and McFeeley remained cheerful (and sane) despite the long hours of meetings and conference calls, the often tedious process of proofreading hundreds of pages of documents, and countless discussions of how the committee should proceed. They were considerate of both the other committee members and the staff, and they steadfastly kept the "train" running on schedule. Their efforts are greatly appreciated and will be much missed.

The Committee presented each departing member with a certificate of appreciation. Judge Zilly was also presented with a unique leather bound volume of the Rules, Rule amendments, and Forms developed under his leadership.

Respectfully submitted,

Stephen "Scott" Myers