

**ADVISORY COMMITTEE
ON
BANKRUPTCY RULES**

**Santa Fe, NM
September 29-30, 2005**

ADVISORY COMMITTEE ON BANKRUPTCY RULES
Meeting of September 29-30, 2005
El Dorado Hotel, Santa Fe, NM

Agenda

Introductory Items

1. Approval of minutes (Judge Zilly):
 - March 2005 meeting
 - August 2005 special meeting
2. Oral reports on meetings of other committees:
 - June 2005 meeting of the Committee on Rules of Practice and Procedure. (Judge Zilly and Professor Morris)
 - June 2005 meeting of the Committee on the Administration of the Bankruptcy System. (Judge Zilly and Judge Montali)
 - April 2005 meeting of Advisory Committee on Civil Rules. (Judge Walker)
 - April 2005 meeting of Advisory Committee on Evidence. (Judge Klein)

Action Items

3. Interim Bankruptcy Rules and Official Forms:
 - (a) Oral report on subsequent action by the Standing Committee and the Judicial Conference. (Judge Zilly and Professor Morris)
 - (b) Report on comments received on the Interim Rules and Official Forms; discussion of an on-going process to handle revision of the Interim Rules and Official Forms and posting on the Judiciary website; and proposed alternatives regarding revisions to Interim Rules. Mr. Rabiej's e-mails of August 31, September 2, and September 6, 2005. (Judge Zilly, Professor Morris, and Mr. Rabiej)
 - (c) Report on status of IRS issuance of separate housing allowance for ownership costs. (Mr. Frank and Mr. Redmiles)
 - (d) Report on possible revision of Form 22C, Statement of Current Monthly Income and Disposable Income Calculation, for use in calculating applicable commitment period for chapter 13 plan; draft amendments by Judge Wedoff and Mr. Frank. (Judge Wedoff and Mr. Frank)
 - (e) Report on the application of section 522(q) to discharges in chapter 11, chapter 12, and chapter 13 cases. (Professor Morris)
 - (f) Possible revision of Interim Rule 8001(f)(2) and the Committee Note to Rule 8001(f). (Professors Morris and Resnick)
4. Director's Procedural Forms to be amended to implement Bankruptcy Reform Act of

2005. (Ms. Ketchum)

5. Proposed standard small business plan and disclosure statement; discussion of Rule 3016(d) (tabled at August meeting). (Professors Resnick and Janger)
6. Report by Professor Morris on whether any changes to Rule 2002(g)(2) are appropriate in light of the Bankruptcy Reform Act. (Professor Morris)
7. Oral report by the Attorney Conduct and Health Care Subcommittee on ABA Task Force Request of June 21, 2005, concerning attorney compliance. (Judge Torres)
8. Report of Forms Subcommittee (Judge Walker):
 - (a) Rules 1005 and 1007 relating to other tax numbers.
 - (b) Official Form 10 (Proof of Claim) relating to page limitations and excerpts to implement proposed amendments to Rule 3001. (A copy of the proposed revision with the changes made at the Sarasota meeting is attached)
 - (c) Schedule I of Official Form 6.
9. Report of Consumer Subcommittee (Mr. Frank):
 - (a) Judge Wedoff's proposal (Sarasota agenda item 9) to amend Rule 4003(b) to allow the trustee to file objections after the 30-day time limit.
 - (b) Final approval of other proposed amendments to Rule 4003 (Sarasota agenda item 9) relating to lien avoidance and exemption objections to authorize a lien holder to defend a contested matter by raising an objection notwithstanding the 30-day limit in Rule 4003(b). (Mr. Frank and Judge Wedoff)
10. Report of the Privacy, Public Access, and Appeals Subcommittee (Mr. Adelman):
 - (a) Judge Adams' proposal (Sarasota agenda item 10) to amend the separate document provisions of Rule 9021.
 - (b) Judge Rasure's suggestion (Sarasota agenda item 17) on behalf of the Bankruptcy Judges Advisory Group about timing issues raised by Rule 3002(c)(5).
11. Oral report on status of Joint Subcommittee on Venue and Chapter 11 Matters and remaining possible amendments to new Rule 2021 (excerpt of Sarasota agenda item 12) relating to case management. (Judge Zilly and Mr. Shaffer)
12. Discussion of amendment of Rule 5001(b) (Skamania agenda item 7) to permit bankruptcy judges to hold court outside of the district in emergency conditions. Approved in principle at September 2003 meeting. Copy of Federal Judiciary Emergency Special Sessions Act of 2005, Public Law 109-63, signed by the President on September 9, 2005. (Professor Morris)

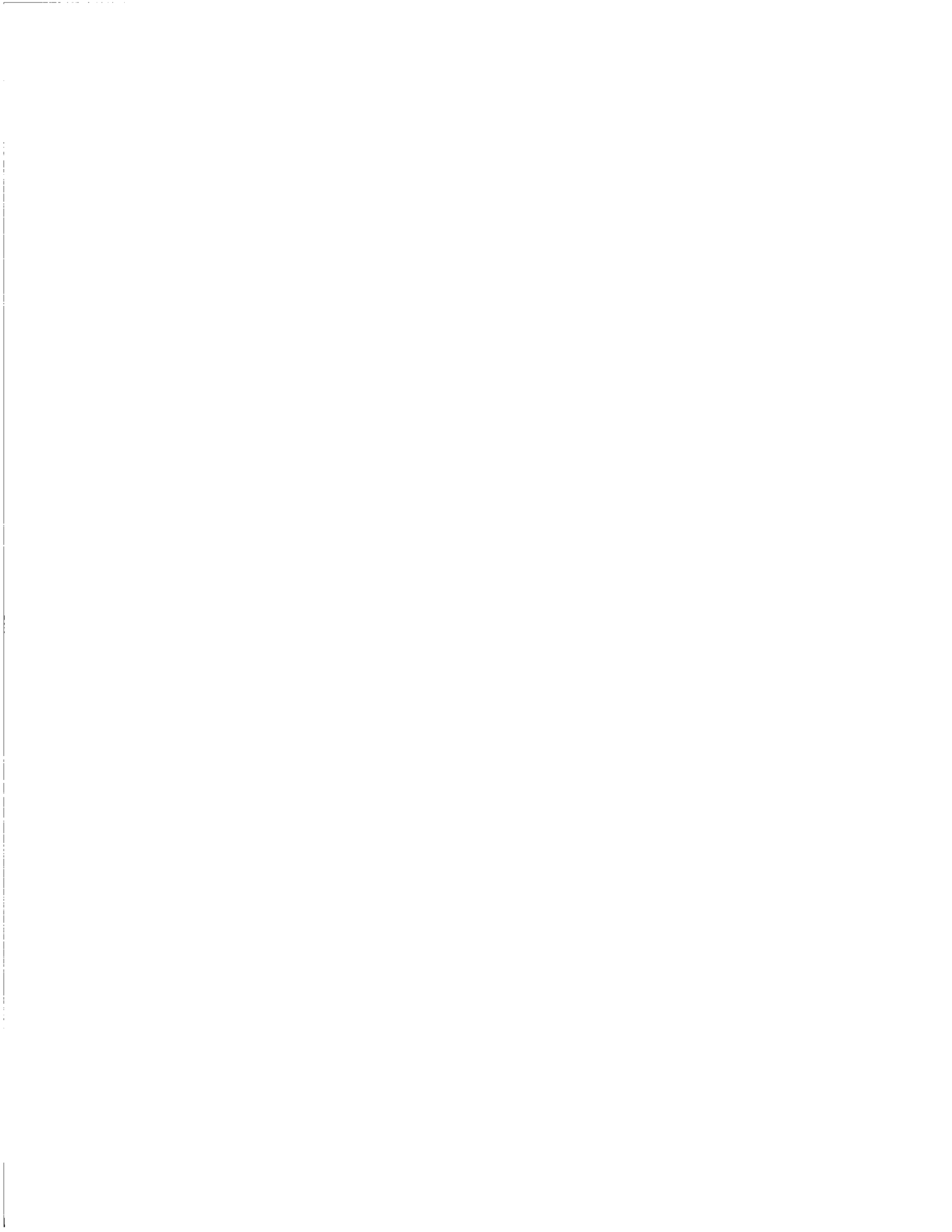
13. Possible amendments to Rules 1010 and 1011 concerning filing corporate ownership statements in involuntary cases and auxiliary cases. (Sarasota agenda item 19) (Professor Morris)

Discussion Items

14. Report on Judge Klein's suggestion concerning service of process initiating objections to claims and opinion in State Line Hotel 2005WL 857471. (Judge Klein and Professor Morris)
15. Judge Mannes' suggestion concerning a new rule regarding representation of corporations in small claims cases. Judge Mannes' e-mail of April 6, 2005. (Rules Tracking Docket 05-BK-A). (Professor Morris)
16. Report concerning the restyling of the Civil Rules; impact on the bankruptcy rules. (Judge Zilly and Professor Morris)
17. Discussion about follow-up and review of Interim Rules; tentative final approval of Interim Rules in March 2006 as proposed National Rules; discussion of the need for public hearings on Interim Rules and Official Forms. (Judge Zilly)

Information Items

18. Report of the Technology and Cross Border Insolvency Subcommittee (Sarasota agenda item 11) on whether Rule 8002 or Rule 9006 should be amended to provide additional time for the appeal of judgments, decrees, or orders in bankruptcy cases. (Judge McFeeley)
19. Rules Docket.
20. *Bull Pen*: There are no amendments pending in the "bull pen" awaiting transmission to the Standing Committee.
21. Oral report on electronic transmission of agenda materials. (Judge Zilly)
22. Next meeting reminder: *March 9-10, 2006, Carolina Inn, Chapel Hill, NC*
23. Discussion of date and location for fall 2006 meeting. (Judge Zilly)



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October 1, 2005

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ADVISORY COMMITTEE ON BANKRUPTCY RULES

**Meeting of March 10-11, 2005
Sarasota, Florida**

Draft Minutes

The following members attended the meeting:

District Judge Thomas S. Zilly, Chairman
Circuit Judge R. Guy Cole, Jr.
District Judge Ernest C. Torres
District Judge Laura Taylor Swain
District Judge Irene M. Keeley
District Judge Richard A. Schell
Bankruptcy Judge James D. Walker, Jr.
Bankruptcy Judge Christopher M. Klein
Bankruptcy Judge Mark B. McFeeley
Bankruptcy Judge Eugene R. Wedoff
Professor Alan N. Resnick
Eric L. Frank, Esquire
Howard L. Adelman, Esquire
K. John Shaffer, Esquire
J. Christopher Kohn, Esquire
Dean Lawrence Ponoroff

The following persons also attended the meeting:

Professor Jeffrey W. Morris, Reporter
Bankruptcy Judge A. Thomas Small, former chairman
Professor Mary Jo Wiggins, former member
Bankruptcy Judge Dennis Montali, liaison from the Committee on the
Administration of the Bankruptcy System (Bankruptcy Administration Committee)
Circuit Judge Harris L. Hartz, liaison from the Committee on Rules of Practice
and Procedure (Standing Committee)
Professor Daniel R. Coquillette, reporter of the Standing Committee
Peter G. McCabe, secretary of the Standing Committee
Professor Daniel J. Capra, reporter to the Advisory Committee on Evidence Rules
(Evidence Rules Committee) (participated by telephone)
Lawrence A. Friedman, Director, Executive Office for U.S. Trustees (EOUST)
Roberta A. DeAngelis, Assistant U.S. Trustee, Newark, New Jersey
James J. Waldron, Clerk, U.S. Bankruptcy Court for the District of New Jersey
Ms. Patricia S. Ketchum, advisor to the Committee

John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of
the U.S. Courts (Administrative Office)
James Ishida, Rules Committee Support Office
James H. Wannamaker, Bankruptcy Judges Division, Administrative Office
Robert Niemic, Research Division, Federal Judicial Center (FJC)

The following summary of matters discussed at the meeting should be read in conjunction with the memoranda and other written materials referred to, all of which are on file in the office of the Secretary of the Standing Committee. Votes and other action taken by the Committee and assignments by the Chairman appear in **bold**.

Introductory Matters

The Chairman welcomed the members, former members, liaisons, advisers, and guests to the meeting. The Chairman welcomed Dean Ponoroff to the Committee, and noted that this would be the last Committee meeting attended by Judge Small and Professor Wiggins.

The Committee approved the minutes of the September 2004 meeting with two clarifications. In the last sentence of the first full paragraph on page 10, "to Rule 3007" was inserted after "amendment." In the third full paragraph on page 13, "as to Rule 7007.1" was inserted after "dissenting vote" and the final sentence of the paragraph was deleted.

Judge Small briefed the Committee on the January 2005 meeting of the Standing Committee. The Standing Committee approved the proposed amendments to Rules 1014, 3007, and 7007.1 for publication. The Standing Committee discussed the proposed "fast track" amendments to Rules 2002(g), 9001, and 9036 in anticipation of approving them after the close of the comment period on February 15, 2005. No comments were submitted on the three proposed amendments and they were approved by the Committee and by the Standing Committee by email ballot. Judge Small stated that the Standing Committee gave final approval to the proposed new Civil Rule 5.1. He reported that the proposed restyling of the Civil Rules has been completed and the restyled rules have been published for comment. Judge Small stated that the Standing Committee will organize a group including representatives from all of the advisory committees to consider the rules for the computation of time.

Judge Montali and Judge Klein reported on the January 2005 meeting of the Bankruptcy Administration Committee. The Bankruptcy Administration Committee recommend that the Judicial Conference request that Congress create 47 additional judgeships, convert three existing temporary bankruptcy judgeship positions to permanent status, and extend one temporary judgeship for an additional five-year period. Judge Montali stated that 2005 Bankruptcy Court Case Weighting Study is underway. Bankruptcy judges have been divided into five groups. The judges in each group will record the time they devote to cases and other judicial activities for a ten-week period. The voluntary, confidential reports will be used to update the 1988-1989 case

weights. Judge Klein stated that the Bankruptcy Administration Committee is keenly interested in the work of the Joint Subcommittee on Venue and Chapter 11 Matters, which met in conjunction with the Bankruptcy Administration Committee.

Judge Walker reported on the October 2004 meeting of the Advisory Committee on Civil Rules (Civil Rules Committee). He discussed proposed new Civil Rule 5.1, the restyling project, and the Civil Rules Committee's work on class actions and electronic discovery. Judge Walker stated that there is intense interest in electronic discovery, which has been the subject of three public hearings.

Judge Klein reported on the January 2005 meeting of the Evidence Rules Committee. Judge Klein stated that the Evidence Committee's sentiment is not to change the Evidence Rules unless forced to do so by a new statute or a decision by the Supreme Court. Judge Klein stated that the Evidence Committee has an on-going project to inventory the federal common law of privilege even though a statute would be required to establish specific federal privileges.

The Chairman reported that the amendments to Rules 1011, 2002(j), and 9014 and Official Forms 16D and 17 were effective on December 1, 2004.

The Chairman stated that Judge Steven W. Rhodes was the only person to make a timely request to testify at the scheduled public hearings on the proposed amendments to Rule 4002. Judge Rhodes agreed to waive his testimony and the hearings were cancelled. Judge Rhodes discussed his concerns during a teleconference with the Chairman and the Reporter and his 43-page statement was circulated to the Committee.

Action Items

"Fast Track" Notice Amendments. The Committee received only one comment on the proposed "fast track" amendments to Rules 2002(g), 9001, and 9036. The comment by the State Bar of California's Committee on the Federal Courts favored the amendments. The three "fast track" amendments were approved by electronic ballot by the Committee and the Standing Committee before the meeting and were transmitted to the Judicial Conference.

The Committee discussed section 315 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the bankruptcy bill), which, like Rule 2002(g), provides for creditors to register a national or regional address to be used for notices. The Chairman stated that the clerk of the Supreme Court would be informed of the possible conflict between the two provisions. Judge Torres moved to give the Chairman discretion to request that the Supreme Court not transmit the proposed amendment to Congress if the legislation is enacted. **The motion carried without dissent.** The Chairman stated that he would confer with the Reporter and the Chairman of the Subcommittee on Technology and Cross Border Insolvency before acting. Mr. Shaffer asked that the Committee be informed by email. The Committee discussed

whether the proposed amendment to Rule 9036 should include a provision that service by electronic means is not effective if the party making service learns that the attempted service did not reach the person to be served. The Committee took no further action on the amendment.

Mandatory Use of Electronic Filing. Proposed amendments to Rule 5005(a)(2), Civil Rule 5(e), and Appellate Rule 25(a) were published for comment in November 2004 at the request of the Committee on Court Administration and Case Management. The three amendments were intended to save time and money for the courts by encouraging electronic filing. The Committee discussed the comments by the American Bar Association and others expressing concern that any court mandating electronic filing should provide appropriate exclusions or exceptions for indigent, disabled, or self-represented litigants. The Committee discussed whether the proposed amendment or the Committee Note should be revised. The Committee also discussed whether the matter should be left to the judicial councils of the circuits, which have the authority to abrogate local bankruptcy rules. Judge Klein moved to revise the proposed amendment by inserting the sentence "Courts requiring electronic filing shall reasonably accommodate parties who cannot feasibly comply with the mandatory electronic filing rule." **The revised rule was approved by a 9-5 vote. The Chairman directed the Reporter to revise the Committee Note to be consistent with the revision.**

Proposed Amendments to Rules 1009, 4002, 5005(c), and 7004, and Schedule I of Official Form 6. Proposed amendments to Rules 1009, 4002, 5005(c), and 7004, and Schedule I were published for comment in August 2004. The Committee received no negative comments on the proposed amendment to Rule 1009. **A motion to recommend final approval of the proposed amendment to Rule 1009 was approved without dissent.** The Committee received no negative comments on the proposed amendment to Rule 5005(c). **A motion to recommend final approval of the proposed amendment to Rule 5005(c) was approved without dissent.**

The Committee received no negative comments on the proposed amendment to Rule 7004. Bankruptcy Judge James E. Massey, however, called the Committee's attention to his decision in In re Khalif, 308 B.R. 614 (Bankr. N.D. Ga. 2004) in which the court found that service on the debtor at the address listed in response to question 18 in the statement of financial affairs is not the address anticipated by Rule 7004(b)(9). The Reporter stated that the Committee has already acted to correct this problem by deleting the reference to the statement of financial affairs in the proposed amendment to Rule 7004(b)(9) but that the deletion was not explained in the Committee Note. Judge Wedoff moved to amend the Committee Note by adding the explanatory paragraph set out on pages 4-5 of the Reporter's memorandum of February 24. **The motion was approved without dissent and the Committee recommended final approval of the proposed amendment to Rule 7004.** The Committee discussed whether to require dual service by mailing to the debtor's street address and the debtor's mailing address, if the mailing address is different from the street address. **Dean Ponoroff's motion to take no action was approved without dissent.**

One comment questioned the relevance of a non-filing spouse's income and complained

that the proposed amendment to Schedule I is unfair to married couples because the reporting requirement does not apply to unmarried couples. The Reporter stated that the Committee discussed the relevance of the information at previous meetings. Judge Wedoff stated that the debtor's current monthly income under the bankruptcy bill's means test includes any regular contributions to the debtor's household expenses and that Schedule I will have to be completely redone to comply with the bill. The Committee discussed whether to go forward with the published amendment to Schedule I, to table the amendment, or to go forward but refer the matter back to subcommittee if the bankruptcy bill is passed. Judge Torres moved to recommend final approval of the published amendment. **The motion was approved without dissent.** Judge Wedoff moved to table the proposed amendment if the bill passes. Professor Resnick and Judge Walker suggested giving the Chairman discretion to refer the proposed amendment to the Forms Subcommittee if the bill passes. Judge Wedoff agreed to the substitution. **The substitute motion was approved without dissent.**

The Reporter summarized the numerous comments received on the proposed amendment to Rule 4002. The Committee discussed whether the proposed amendment conflicts with the bankruptcy bill, which requires that the debtor submit prepetition tax returns to the trustee seven days before the meeting of creditors, provide identification documents to the trustee or United States trustee as requested, and file copies of payment advises or other evidence of payment with the court. The Committee discussed the provision for the trustee, the United States trustee, or the bankruptcy administrator to waive the production of the financial documents by instructing "otherwise." The Committee discussed whether to go forward with the published amendment to Rule 4002, to defer the matter to the next meeting, or to approve the proposed amendment but give the Chairman discretion to refer the proposal to subcommittee if the bankruptcy bill passes. Several Committee members stated that the published amendment represented a hard-fought, balanced compromise and would improve the bankruptcy process. They stated that the proposal should go forward with the inclusion of tax transcripts and clarification of the discretion to waive production. Other members stated that Congress chose to require production of certain items but not others and that the rule should not paraphrase the statute. These members urged deferring action until the Committee has a chance to study the bill. **A motion to defer the proposed amendment to the next meeting failed by a 5-9 vote. The Chairman stated that the Standing Committee would be informed of the nature of the dispute.** Judge Walker moved to insert "or, at the debtor's option, or a transcript thereof," in line 34 of the published amendment. **The motion was approved without dissent.** Judge Wedoff moved to substitute the phrase "Unless the trustee, the United States trustee, or the bankruptcy administrator instructs that the debtor need not do so," on lines 24-26 of the amendment. **The motion was approved without dissent. A motion to recommend final approval of the proposed amendment as amended carried with one dissenting vote.**

Privacy Template Rule. The E-Government Act of 2002 requires the promulgation of rules to protect the privacy of persons identified in court filings and to govern the availability of documents when they are filed electronically. The E-Government Committee developed a template privacy rule for consideration by the Bankruptcy, Civil, Criminal, and Appellate Rules

Committees with the expectation that, as adopted, the four rules would be as uniform as is possible but that deviations from the template may be needed for specific rules. The Committee discussed the need for bankruptcy-specific exceptions from redaction.

The Committee discussed the extent of the waiver under subdivision (g) of the proposed new rule and whether it would extend to information filed under seal. Professor Capra stated that the waiver only extended to the information listed in subdivision (a). Judge Klein moved to insert “to the extent that such information is filed not under seal and without redaction” at the beginning of line 50. **The motion was approved by a 9-3 vote.**

Judge Montali stated that the reference in line 22 to section 342(b) of the Code should be to section 342(c). Judge Swain stated that the Committee Note to abrogation of Official Form 16C states that the debtor should include the debtor’s full social security number on a notice sent to a creditor, as required by section 342(c), but redact the number on the copy of the notice filed with the court. As a result, she said, the reference to filings subject to section 342 is unnecessary. Judge Swain moved to delete the reference to section 342(b). **The motion was approved without dissent.** The Committee discussed the exemption from redaction in subdivision (b)(1) of the new rule and the possibility that the record of an administrative or agency proceeding including social security numbers would be attached to a proof of claim. Judge Wedoff moved to add “unless filed with a proof of claim” at the end of line 17. **The motion was approved unanimously.**

The Committee discussed the provision for protective orders in subdivision (d) and whether the reference to “in a case” could exclude adversary proceedings. Judge Swain suggested that the “If necessary to protect private or sensitive information that is not otherwise protected by subdivision (a), the court may in a case or proceeding (1) require redaction of additional information or limit or (2) prohibit remote access by a non-party to a document filed with the court.” Judge Swain moved to make the amendment. **The motion was approved by a 10-2 vote.** Judge McFeeley moved to approve the proposed new rule for publication as amended. **The motion was approved without dissent.**

Mr. Shaffer stated that the requirement in subdivision (b)(1) for the redaction of tax identification numbers conflicts with Rule 1005 which provides that the caption shall include the last four digits of the debtor’s social security number and the full version of any other federal tax identification number. The 2003 Committee Note to Rule 1005 states that publication of the debtor’s employer identification number does not present the same identity theft or privacy protection issues as disclosure of the social security number. Professor Capra stated that redaction of a tax identification number was based on the privacy policy adopted by the Judicial Conference in 2001. The Committee discussed whether the privacy policy covers individuals or all entities and whether there is a need to protect these numbers for non-individuals. Mr. Shaffer suggested that Rules 1005 and 1007(f) and the Official Forms should be amended to require the redaction of tax identification numbers and employer identification numbers. **The Chairman referred the matter to subcommittee.**

Amendments to Rule 3001 to Conform to the Revised Proof of Claim. The Reporter stated that the Subcommittee on Forms has been working to revise Official Form 10 to support the filing of proofs of claim in electronic form. In doing so, the Subcommittee determined that Rule 3001 should be revised to provide that claimants should file duplicates of documents that support their claims and perfection of security interests and that the rule should set limits on the length of documents attached to the proof of claim.

Judge Walker stated that limiting the size of the attachments would facilitate the transmission of claims to the court, the maintenance of the court's computer database, and accessing claims electronically. The Committee discussed whether large attachments actually burden the courts' computer systems or whether it would be sufficient for the attachments to be filed in segments. The Committee also discussed whether summaries are needed. Judge Walker stated that filing relevant excerpts of the documents is a conceptual change, but that filing the proof of claim and excerpts is sufficient to make the assertion that the debtor owes the money. Judge Klein stated that providing less than the full documentation puts the filer "in play" but limits the claim's evidentiary presumption under Rule 3001(f). Judge Torres stated that the page limits make the parties focus on the important issues.

The Reporter stated that "a" should be substituted for the phrase "the trustee or any other" on lines 11-12 and on line 24 because the trustee is a party in interest. **The Committee agreed.** Judge Walker moved to approve the proposed new rule for publication as revised. **The motion was approved on an 8-4 vote.**

Amendments to the Proof of Claim. The draft revision of Official Form 10, Proof of Claim, and its instructions were based on the experiences of creditors and trustees using the form and on the technological changes that have occurred in the courts' processing of claims.

The Reporter suggested that the references in item 7 to page limitations and to the definition of "redacted" on the reverse of the form be in bold. Mr. Adelman suggested that the definition of claim include a cross reference to section 101(5) of the Code. Mr. Shaffer suggested that item 1 refer to the date the case was filed, not the time, to be consistent with section 502 of the Code. Judge Zilly stated that the reference to "30 pages" in the first full paragraph of the second page of the Instructions should be to "25 pages." He suggested that "a redacted copy" be substituted for "relevant excerpts" in the last line of the first page of the Instructions and that ", including any summary" be inserted at the end of the next-to-last sentence of the first full paragraph on the second page of the Instructions. **The Committee approved the changes.**

The Committee discussed adding a reference to post-petition section 1305 claims in the note in italics at the top of the form. Judge Walker suggested that the Committee go forward with this form and then consider the situations in which the form does not work. **The Committee agreed to move the reference to instruction #4 up in item 4 and to add a**

checkbox in item 4 for “Other.” Judge Montali stated that the priorities in item 5 will change if the bankruptcy reform legislation is enacted. Judge Walker stated that the form could be revised after publication based on the comments and the legislation. Judge Walker moved to approve the revised form for publication at the same time as the proposed amendments to Rule 3001. **The motion was approved by a vote of 11-2.**

Extending the Time to Object to Improperly Claimed Exemptions. The Committee considered amending Rule 4003 to extend the time to object to improperly claimed exemptions at its September 2004 meeting. The matter was referred to the Subcommittee on Consumer Issues, which recommended permitting the trustee to object to an exemption after the bar date on the ground that the exemption claim is not based on existing law or a non-frivolous argument for the extension, modification, or reversal of existing law. As a safety valve, the debtor or one of the debtor’s dependants could move for the allowance of an exemption and bring the issues to resolution.

The Committee discussed whether debtors are gaming the system and receiving exemptions by declaration, whether trustees have enough time to review the exemptions, whether the proposed amendment is over inclusive, and the need for finality. As an alternative to the proposed amendment, the Committee discussed whether the bar date should be extended to 45 or 60 days after the claim of exemptions is filed or to 60 days after the first date set for the meeting of creditors in order to give busy trustees more time to respond. Judge Wedoff moved to approve the proposed amendment for publication. **The motion failed by a vote of 5-8.**

As an alternative, Judge Wedoff suggested striking “before the time to object expires” from line 8 and deleting new subdivisions (b)(2) and (b)(3). He stated that subdivision (b)(3) is unnecessary because the debtor could move to compel abandonment of the property. The Committee discussed whether it would be better to tie the deadline to the completion of the meeting of creditors, which could be continued by the trustee. Mr. Shaffer stated that the original concept for the amendment was closer to the excusable neglect standard in Rule 8002. Judge Wedoff moved to refer the matter to the Consumer Subcommittee. **The Committee agreed.**

Lien Avoidance and Exemptions. The second issue considered by the Consumer Subcommittee was whether Rule 4003 should be amended to authorize a lien holder whose lien is subject to avoidance to object to the debtor’s claim of exemption at the time of the avoidance motion. The Committee discussed whether a lienholder has an incentive to challenge the debtor’s claim of exemption before the debtor moves to avoid the lien and whether the creditor is required to do so under the existing caselaw. The Committee agreed to substitute “contest” for “object to” in subdivision (d) of the proposed amendment. Judge Wedoff moved to approve the proposed amendment in principle and to refer it to the Consumer Subcommittee. **Ten Committee members agreed and the motion carried.**

Constitutional Challenges. The proposed new Civil Rule 5.1 would replace a portion of existing Civil Rule 24(c) that requires notice to the United States or a state’s attorney general

when the constitutionality of a statute is challenged. Since Civil Rule 24 is applied in adversary proceedings by Rule 7024, the Reporter presented a new draft rule 7005.1 and an amendment to Rule 9014 to apply Rule 5.1 in adversary proceedings and contested matters. The Committee discussed whether the new civil rule should be applied in contested involuntary cases and ancillary cases. Judge Wedoff moved to approve the Reporter's draft amendments. Dean Ponoroff seconded the motion. The Committee discussed whether the amendments would require publication. Judge Klein moved to create a new 9000 series rule which would apply Civil Rule 5.1 in "cases under the Code." Judge Walker seconded the motion. **The motion was approved without dissent.**

Omnibus Objections to Claims. Mr. Shaffer described the work of the Joint Subcommittee on Venue and Chapter 11 Matters, including the proposed amendment to Rule 1014 which the Standing Committee has approved for publication in August. Mr. Shaffer stated that the Joint Subcommittee was concerned with fundamental fairness, issues that may have an impact on the selection of venue in large chapter 11 cases, and facilitating the management of these cases.

The proposed amendment to Rule 3007 authorizes (within limits) the filing of omnibus objections to claims. **The Committee agreed to use the phrase "Subject to the requirements of" on line 19 of the proposed amendment. After discussing the possibility that courts would opt out of the rule, the Committee agreed to use the phrase "An objection to claims of more than one creditor shall" on lines 39-41.** The Committee discussed whether there could be multiple objections to a single claim. Mr. Shaffer said the Joint Subcommittee neither condoned nor restricted the practice, which Judge Wedoff stated reflects the existing practice and is consistent with the reconsideration of claims under section 502(j) of the Code. Mr. Frank questioned the use of "pleading" in the proposed amendment. The Reporter stated that the Style Subcommittee could substitute "document." Mr. Adelman moved to approve the proposed amendment for publication with the changes on line 19, lines 39-41, and the substitution of "document" for "pleading." **The motion carried without dissent.**

Omnibus Motions to Assume, Reject, or Assign Executory Contracts or Unexpired Leases. The proposed amendment to Rule 6006 authorizes the use of omnibus motions to reject multiple executory contracts and unexpired leases. The amendment also authorizes the use of a single motion to assume or assign executory contracts and unexpired leases under certain circumstances. **At Judge Wedoff's suggestion, the Committee agreed to strike the phrase "Unless otherwise ordered by the court," on lines 11-12 of the proposed amendment.** It was suggested that Rule 6006 require the same cross reference as Rule 3002(e)(2). **The Committee agreed to insert "and identify the corresponding contract or lease" at the end of line 18.** Judge McFeeley suggested that the Committee Notes for Rules 3007 and 6006 include examples of the consecutively numbered motions, such as "Debtor in Possession's First Omnibus Motion for Authority to Assume Executory Contracts and Unexpired Leases." **The Committee agreed.** Mr. Shaffer moved to approve the proposed amendment for publication as amended. **The motion was approved without dissent.**

Motions for Authority to Use Cash Collateral, Obtain Credit, or Obtain Approval of Agreements. Mr. Shaffer stated that cash collateral motions and “first day” matters are among the most contentious issues in large chapter 11 cases. He stated that the Joint Subcommittee took no position on the merits of the specified provisions but that the proponent should be required to highlight them. The Committee discussed the references to Rule 9024 in the proposed amendment since Rule 9024 applies in all the rules. Mr. Shaffer suggested moving the references to the Committee Note. **The Committee agreed.** Mr. Shaffer moved to approve the proposed amendment for publication as amended. **The motion was approved without dissent.**

“First Day” Orders and Interim Relief. Mr. Shaffer stated that proposed new Rule 6003 is an effort to put the brakes on nonessential substantive “first day” matters while providing exceptions for emergencies and nonsubstantive matters. The Reporter stated that the rule is an effort to address concerns that an imbalance in “first day” practice in some districts has influenced venue choice. The Committee discussed including service and notice requirements in the new rule (Alternative One) or leaving that to other applicable rules, such as Rule 9014. Mr. Shaffer moved to approve Alternative Two for publication. **The motion was approved without dissent.** A suggestion to approve the service and notice provisions in Alternative One after striking the words “or notice” died for lack of a motion. **The Chairman referred the issue of service and notice requirements in Rule 2014 to the subcommittee.**

Case Management, Telephonic Participation, and Status Reports. Although it did not have an opportunity to consider the specific draft language, the Joint Subcommittee recommended that the rules require the use of status conferences in chapter 11 cases, authorize appearance at hearings by electronic means, and facilitate the use of other case management techniques which promote participation in chapter 11 cases. Judge Klein stated that bankruptcy bill would amend section 105 of the Code to require that the court hold status conferences. **The Committee took no action on the proposed new Rule 2021.**

Separate Document Rule. The Subcommittee on Privacy, Public Access, and Appeals considered whether to propose an amendment to Rule 9021 that would address the impact of the recent revisions of Civil Rule 58, which is incorporated by Rule 9021. As amended, Civil Rule 58 provides that when a separate document is required, the judgment is deemed entered when it is entered on the docket under Rule 79(a) and when it is either set forth in a separate document or when 150 days have run from the entry on the docket, whichever is earlier. Unable to reach a consensus, the subcommittee transmitted four alternative for consideration by the Committee.

The Committee discussed the four alternatives, the need for finality and speed in bankruptcy matters, the widespread practice of not setting forth judgments in separate documents, and whether contested matters should be exempted from the separate document requirement. The Committee discussed whether contested matters should be subject to the 150-day limit if they were exempted from the separate document requirement and whether Rule 5003 should be amended to clarify what is a final judgement or order in a contested matter. **The sense of the Committee, as expressed by a 5-3 vote, was that the separate document requirement**

should be eliminated in contested matters. The matter was re-referred to the subcommittee.

Extension of Time for Appeal. At its meeting in September 2004, the Committee discussed extending the time for filing a notice of appeal by either amending Rule 8002 to enlarge the period or by amending Rule 9006 to changing the method of counting 10-day periods. Concerns were expressed that the period is too short in light of the time needed to process and mail copies of court orders at the Bankruptcy Noticing Center and that it presents a trap for the unwary who are more familiar with the longer deadlines for appeals in civil cases in state and federal courts. The matter was referred to the Subcommittee on Technology and Cross Border Insolvency. After discussing the historical background of the 10-day rule, an informal survey of bankruptcy judges on the matter, and a memorandum on the 1987/1989 amendment and re-amendment of Rule 9006, the subcommittee recommended that no change be made in either rule. Mr. Rabiej stated that Judge David F. Levi, the chairman of the Standing Committee, has appointed an ad hoc group with representatives from each of the advisory committees to review all of the counting rules. Judge Walker moved to re-refer the matter to the subcommittee until the Standing Committee acts. **The motion carried without objection.**

Discussion Items

Civil Rules Restyling Project. The Civil Rules Committee has been engaged for some time in a project to restyle the Civil Rules from beginning to end. The restyled rules have been published for comment and the comment period runs through December 20, 2005. If approved by the Standing Committee and the Judicial Conference in 2006, and by the Supreme Court in 2007, the restyled rules could take effect on December 1, 2007, unless Congress acts to the contrary. Because the Bankruptcy rules adopt a substantial portion of the Civil Rules for adversary proceedings and contested matters, some of these style changes may require conforming amendments to the Bankruptcy Rules. Because the confirming amendments to the Bankruptcy Rules would not require publication, they could be considered by the Standing Committee in June 2006, along with the restyled Civil Rules. The Chairman recommended that the matter be deferred to the September meeting. **The committee agreed.**

Bankruptcy Reform Legislation. The Committee discussed the bankruptcy bill. The Chairman stated that the Business, Consumer, and Forms Subcommittees will take the lead in drafting amendments to implement the pending legislation. Professor Edward J. Janger of Brooklyn Law School will assist the Business Subcommittee and Professor Melissa B. Jacoby of the University of North Carolina School of Law will assist the Consumer Subcommittee. The Subcommittees on Technology and Cross Border Insolvency, Privacy, Public Access, and Appeals, and Attorney Conduct and Health Care also will be responsible for portions of the bill.

The Chairman stated that the consultants and the Reporter will review the legislation and the memoranda, draft rules, and draft forms memoranda prepared in 2001 and 2002 when

passage of a similar bill appeared likely. Copies of the 2001 and 2002 material will be mailed to Committee members. **The Chairman directed Reporter to report back to the Committee by the end of the month.** A steering committee including the Chairman, selected subcommittee chairs, the Reporter, and the consultants will meet in Washington in April. The Chairman stated that the three subcommittees are tentatively scheduled to meet in May in Washington and may meet in Boston on June 13-14, 2005. The Chairman stated that the full Committee will meet in Washington in July, possibly on July 6 - 8, with the goal of sending proposed interim rules and forms to the Standing Committee and the Judicial Conference by mid-August and then to the courts for adoption.

Rule 3002(c)(5) Notice of Possible Dividend. Writing on behalf of the Bankruptcy Judges Advisory Group, Judge Dana L. Rasure stated that Rule 3002(c)(5) is imprecise. The rule requires that the clerk notify creditors when it appears that a distribution may be possible in a case initially noticed as a "no-asset" one. Creditors are required to file their claims within 90 days of the mailing of the notice, rather than within 90 days of the date of the notice. Because the mailing date is not set out on the notice and because the BNC "mails" notices at different times depending on whether the notice is sent electronically or by regular mail, it is difficult for creditors to determine the exact deadline. Judge Rasure suggested that the court fix the deadline in the notice and give creditors at least 90 days notice of that deadline. Mr. Kohn suggested that governmental units be given 180 days to file their claims. Ms. Ketchum stated that the extra time is unnecessary because section 502(b)(9) of the Bankruptcy Code provides that governmental units may file claims up to 180 days after the date of the order for relief or such later time as provided by the rules. **The Chairman referred the matter to the Subcommittee on Privacy, Public Access, and Appeals.**

Internet Publication of Sale Notices. Bankruptcy Judge Vincent P. Zurzolo suggested that several rules be amended to require that notices of sales of property valued in excess of \$2,500 be posted on a website maintained by the Administrative office. The Committee was informed that the National Association of Bankruptcy Trustees already maintains such a website for sales of estate property. **A motion to take no action on the suggestion was approved without dissent.**

Applicability of Rule 7007.1 in Involuntary Cases and Ancillary Cases. Rule 7007.1 was added to the rules in 2003. It requires corporations that are parties to adversary proceedings to file a corporate ownership statement so that the court can be made aware of other parties related to the party by stock ownership. The Committee did not apply the new rule to contested matters because it concluded that the short time for contested matters made the operation of the rule ineffective. At the time the Committee did not consider involuntary cases and ancillary cases, which can be viewed as comparable to the adversary proceedings. Rule 1011 requires that an involuntary petition or the petition commencing an ancillary case be served with a summons in the manner provided in Rule 7004 for service of a complaint commencing an adversary proceeding. **The Committee agreed to insert "or a foreign representative" after the word "petitioner" in line 18 and "or with the petition commencing a case ancillary to a foreign proceeding" after the word "petition" in line 19 of the Reporter's draft amendment of Rule**

1010. Mr. Shaffer moved to table the matter until the September meeting. **The motion was approved without dissent.**

Requiring Creditors to File Superseding Claims in Converted Cases. Thomas J. Yerbich, Court Rules Attorney for the District of Alaska, suggested that Rule 1019(3) be amended to require creditors to file superseding claims in a chapter 11, 12, or 13 case converted to chapter 7. The Reporter stated that requiring creditors to file superseding claims would impose a greater burden on creditors and the clerk than the existing burden on the chapter 7 trustee of having to review previously filed claims for changes. Judge Klein moved to take no action on the suggestion. **The motion was approved without dissent.**

Information Items

Revision of Form B210, Notice of Transfer of Claim. At its meetings in March and September 2004, the Committee considered a proposed new form titled "Notice of Transfer of Claim Other Than for Security." As a result of discussions at the two meetings and consultations with the claims subgroup of the CM/ECF Working Group, the form was modified extensively and then issued as Procedural Form B210 by the Director of the Administrative Office. After the September meeting, the CM/ECF project staff determined that it would be difficult or impracticable for the clerk to insert the required information electronically in the same notice filed by a transferee. As a result, Form B210 will be divided into two parts. The first part will be completed and filed by the transferee. The second part will be completed by the clerk and mailed to the alleged transferor's record address.

History of the Bankruptcy Forms. Ms. Ketchum presented a short history of the bankruptcy forms, including the origin of the Official Forms and the Director's Procedural Forms. The Chairman suggested that the Committee request that West Publishing include frequently used Director's Procedural Forms its publications which include bankruptcy forms and that the courts include links from their websites to both the Official Forms and the Director's Procedural Forms. Ms. Ketchum stated that it would help the publishers if the Committee pointed out the most significant procedural forms, such as the subpoena, summons, notice to individual consumer debtor, reaffirmation agreement, and disclosure of compensation by debtor's attorney. **The Committee agreed to make the request.**

Other Information Items. Additional Information Items are set out in the agenda materials for the meeting.

Administrative Matters

The Chairman gave a brief report on long range planning. The Committee's next regularly scheduled meeting will be in the Eldorado Hotel in Santa Fe on September 29 - 30,

2005. The Chairman asked for suggestions for the spring 2006 meeting.

Respectfully submitted,

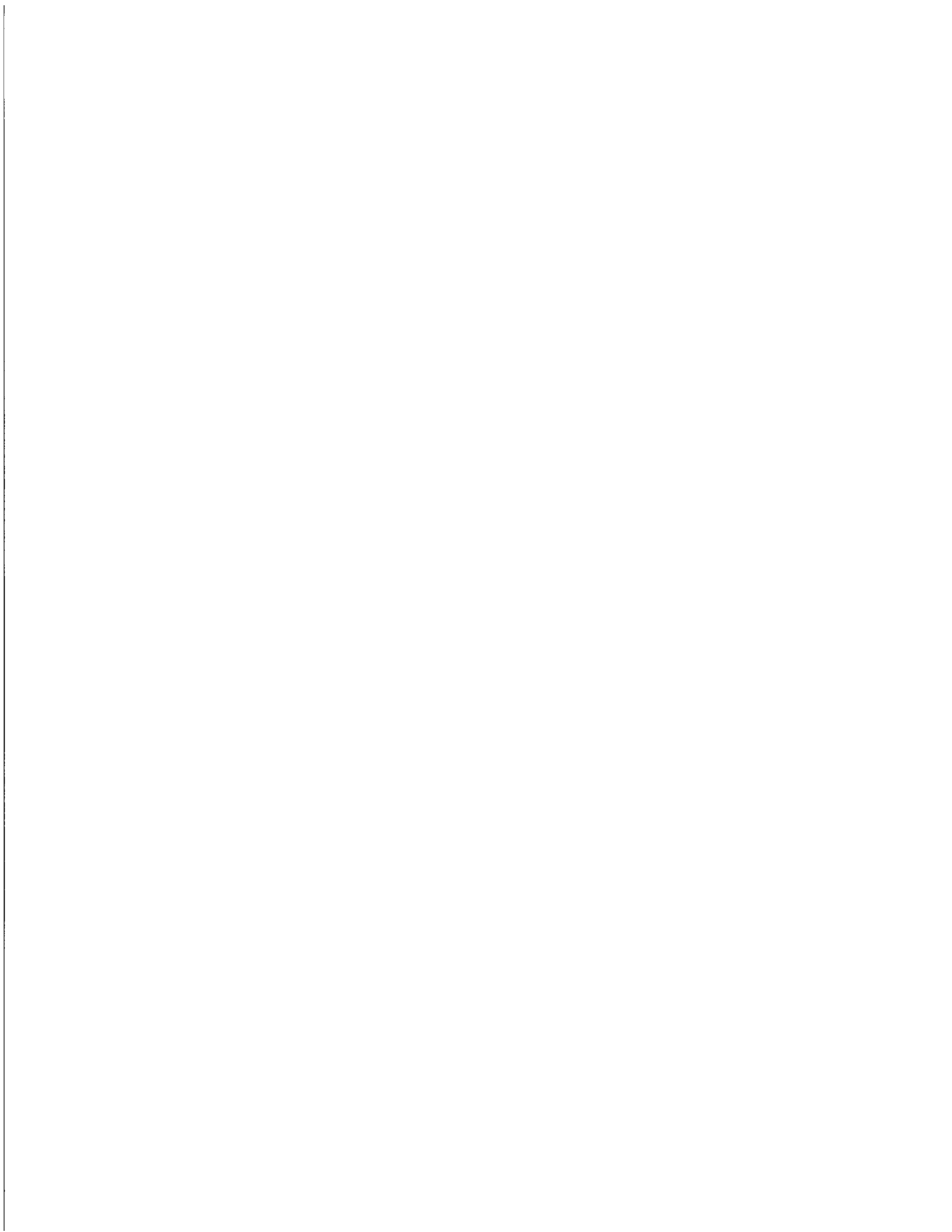
James H. Wannamaker, III



Copies of the draft minutes for the August 2005 special meeting
will be distributed separately.



Item 2 will be an oral report.



Item 3(a) will be an oral report.



John
Rabiej/DCA/AO/USCOURTS
08/31/2005 03:04 PM

To Thomas Zilly/WAWD/09/USCOURTS@USCOURTS
jeff.morris@notes.udayton.edu, Christopher
Klein/CAEB/09/USCOURTS@USCOURTS, David
Levi/CAED/09/USCOURTS@USCOURTS,
cc coquille@law.harvard.edu, Peter
McCabe/DCA/AO/USCOURTS@USCOURTS, James
Wannamaker/DCA/AO/USCOURTS@USCOURTS
bcc
Subject Revisions to the Interim Rules

Judge Zilly:

While researching a question about Rule 8001(f), I noticed that the citation to Rule 8003(a) or (b) in the last line of the first paragraph of the Committee Note is probably inaccurate. It should be to Rule 8001(a) or (b), consistent with the reference in Rule 8001(f) itself.

Coincidentally, in a later conference call today, Professor Resnick raised a question about the substance of Rule 8001(f) and recommended that it be changed to correct a probable error (changing interlocutory judgment to final judgment). He will raise the matter directly with Judge Montali and you for consideration at the September committee meeting. I bring this up now because we are sure to learn of other provisions that need change. Some of these changes are minor, involving typos, like the miscitation in the Committee Note. Other changes are more important. As we earlier discussed, we need to establish some type of process to address these edits, which might include alerting the courts to the changes.

Regarding minor typo changes, I thought we could strike through ~~Rule 8003~~ and insert a corrected cite, Rule 8001 in the Committee Note posted on the Internet, with a parenthetical next to it saying (revised August 31, 2005). On these matters, I believe you could authorize the change after advising Judge Levi. On more substantive changes, perhaps like the one Professor Resnick is suggesting, we may need the approval of the Standing Committee. Also, on these more substantive changes, we need to decide whether merely making a change in the posted rule on the internet with a parenthetical explaining that it has been revised, is sufficient notice.

We could insert a new paragraph upfront on the web page saying something like the following:

The Interim Rules approved by the Advisory Committee on Bankruptcy Rules and Committee on Rules of Practice and Procedure are temporary rules that are effective until the Federal Rules of Bankruptcy Procedure are amended in accordance with the Rules Enabling Act rulemaking process. Although the Interim Rules have been thoroughly reviewed, the Advisory Committee recognizes that the bench and bar may identify rules that need to be improved or corrected. The Committee will consider the suggestions during the formal rulemaking process. Meanwhile, the Committee expects to make changes to the rules to correct mistakes when necessary. In these cases, a parenthetical will be noted in the rule (or Committee Note) indicating which parts have been revised and the date of revision. If the change is substantial, a separate notice may be sent to the courts.

To date, the following revisions have been made: (e.g., Committee Note to Rule 8001(f) -- September 2, 2005; Rule

I do not believe that any of the proposed changes to the Interim rules require immediate attention, and we can wait until the September meeting for direction. So until then, I will not make any changes to the rules posted on the web site, unless you advise me otherwise.

John

John
Rabiej/DCA/AO/USCOURTS
09/02/2005 08:54 AM

To Thomas Zilly/WAWD/09/USCOURTS@USCOURTS
cc Peter McCabe/DCA/AO/USCOURTS@USCOURTS, James
Wannamaker/DCA/AO/USCOURTS@USCOURTS
bcc
Subject process to handle revisions to interim rules and forms

Judge Zilly:

I spoke with McCabe about recommending a process to handle revisions to the forms and Interim Rules. He agreed with my earlier proposal about making changes in the rules on the website after inserting a parenthetical noting the revision and its date (after obtaining approval from the Advisory Committee and Judge Levi), but also suggested that you advise all courts that the Committee will be considering revisions to the rules in light of comment and that revisions to the rules will be posted on the website as noted with a parenthetical. In this way, courts will be on notice to look at the website one final time before they issue their local rules or standing order. That makes much sense to me.

John



**Peter
McCabe/DCA/AO/USCOURT
S**
09/07/2005 08:59 AM

To James Wannamaker/DCA/AO/USCOURTS@USCOURTS,
Timothy Dole/DCA/AO/USCOURTS@USCOURTS, Emery
Lee/DCA/AO/USCOURTS@USCOURTS, Jeffrey
Barr/DCA/AO/USCOURTS@USCOURTS
cc
bcc
Subject Fw: Draft Correspondence Alerting Courts to Revisions to
Interim Rules

FYI

Peter

----- Forwarded by Peter McCabe/DCA/AO/USCOURTS on 09/07/2005 08:55 AM -----

**John
Rabiej/DCA/AO/USCOURTS**
09/06/2005 01:22 PM

To Thomas Zilly/WAWD/09/USCOURTS@USCOURTS
cc jeff.morris@notes.udayton.edu, Peter
McCabe/DCA/AO/USCOURTS@USCOURTS
Subject Draft Correspondence Alerting Courts to Revisions to Interim
Rules

Judge Zilly:

I have attached a draft memorandum to the committee containing draft correspondence alerting courts of revisions to the Interim Rules. Judge Levi suggested that the committee also consider an alternative option of "batching" revisions and sending notice to the courts on a periodic basis, e.g., every three or four months, if necessary. I included a second version in the attachment to account for this option. Judge Levi said that he did not have strong feelings about either option, but suggested that the committee might consider both.

John



bankruptcy web site interim rules.wpd



LEONIDAS RALPH MECHAM
Director

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

JOHN K. RABIEJ
Chief

CLARENCE A. LEE, JR.
Associate Director

WASHINGTON, D.C. 20544

Rules Committee Support Office

MEMORANDUM TO ADVISORY COMMITTEE ON BANKRUPTCY RULES

SUBJECT: *Draft Communication Alerting Courts to Revisions in the Interim Rules*

Courts have adopted or will soon adopt the Interim Rules recommended by the Committee. We have learned of a few minor errors in the Interim Rules, and we will likely continue to discover provisions that need to be revised in light of the courts' experiences. These changes will be reviewed by the Committee when it considers permanent amendments to the Federal Rules of Bankruptcy Procedure. Meanwhile, it may make sense to consider alerting the courts of these adjustments so that they can amend the Interim Rules that they adopted.

We are considering adopting one of two approaches to alert courts of errors in the Interim Rules. Under the first approach, the courts would be advised that revisions are being made to the Interim Rules and that those revisions have been posted on the judiciary's website to account for errors and improvements suggested by the bench and bar. We would recommend that courts check the website periodically to learn of new changes. Under the second approach, we would batch recommended revisions in the Interim Rules and send them to the courts on a periodic basis, perhaps every three or four months, depending on the volume. Under either approach, we would make an exception for any major change that required immediate notification.

The first approach has the advantage of alerting the courts immediately to a recommended revision, but it has the disadvantage of burdening court staff, requiring them to periodically review the website. The second approach has the advantage of easing the burden on courts, requiring them to revise their Interim Rules only periodically, e.g., every three or four months. But it has the disadvantage of retaining an error in the courts' local rules for up to three or four months.

Two alternative memoranda on the next page have been drafted for the Committee's consideration to notify courts of revisions to the Interim Rules, which implement either approach.

MEMORANDUM TO ALL: CHIEF JUDGES, UNITED STATES BANKRUPTCY COURTS
CLERKS, UNITED STATES BANKRUPTCY COURTS
BANKRUPTCY ADMINISTRATORS

SUBJECT: Revisions to Interim Rules Implementing New Bankruptcy Act

(First Approach)

Interim Rules and Official Forms implementing the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 were posted on the judiciary's website at www.uscourts.gov/rules on August 22, 2005. Courts have been urged to adopt the Interim Rules by general or other standing order without change to promote uniformity in practice. The Official Forms were approved by the Judicial Conference and must be observed in accordance with Bankruptcy Rule 9009.

The Interim Rules provide a transition until the National Rules are promulgated. Proposed amendments and new Federal Rules of Bankruptcy Procedure are expected to be published for public comment no later than August 2006. The National Rules will be substantially in the form of the Interim Rules modified after considering input from the bench and bar as a result of the use of the Interim Rules.

The Interim Rules were thoroughly reviewed by the Advisory Committee on Bankruptcy Rules. But the fast approaching effective date of the Act did not provide sufficient time to promulgate National Rules under the Rules Enabling Act, 28 U.S.C. §§ 2071-2077, which is normally a three-year process. Because the Bankruptcy Act is complicated and the Interim Rules had not undergone the exacting scrutiny of the Rules Enabling Act rulemaking process, the Committee expects that the bench and bar will uncover errors and propose improvements in the Interim Rules. This input will inform the Committee's consideration of the National Rules. The information will also be useful to courts that have adopted the Interim Rules. To assist courts in making adjustments to the Interim Rules, the Committee in consultation with the Committee on Rules Practice and Procedure will make corrections and other improvements in the rules posted on the website, highlighting revisions in bold print and indicating the date of revision. A listing of all revisions to the Interim Rules will be prominently located at the top of the website page.

To date, the Committee has become aware of only a few minor adjustments that should be made to the Interim Rules. If the Committee learns of a problem that requires a significant change to the Interim Rules, it will advise the courts in a separate notice. Otherwise, it expects that posting the adjustments on the judiciary's website will be satisfactory. The Committee recommends that courts check the website for recent revisions immediately before adopting the Interim Rules and continue to do so on a periodic basis as a means to update them.

Batching Revisions
(Second Approach)

(First two paragraphs identical to the first approach.)

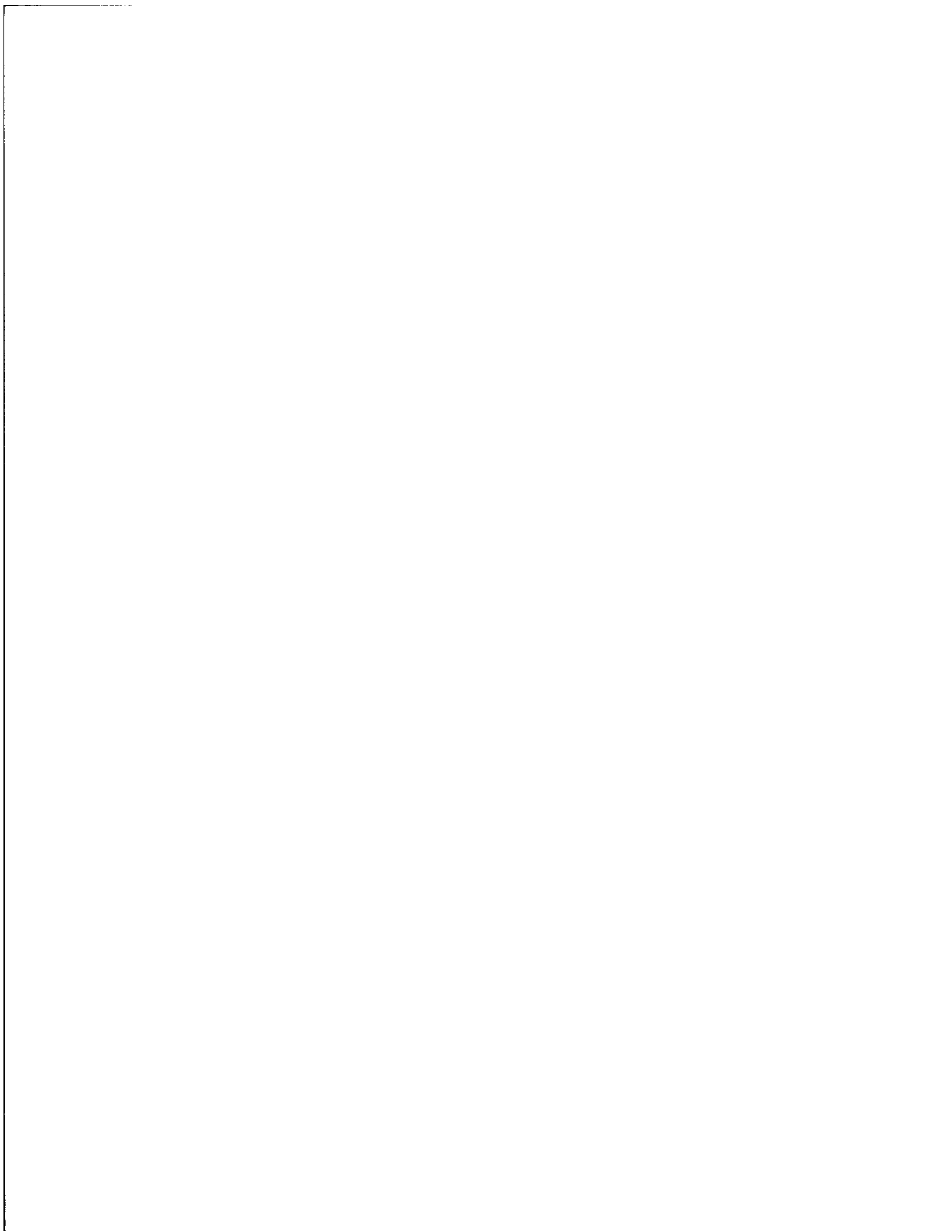
The Interim Rules were thoroughly reviewed by the Advisory Committee on Bankruptcy Rules. But the fast approaching effective date of the Act did not provide sufficient time to promulgate National Rules under the Rules Enabling Act, 28 U.S.C. §§ 2071-2077, which is normally a three-year process. Because the Bankruptcy Act is complicated and the Interim Rules had not undergone the exacting scrutiny of the Rules Enabling Act rulemaking process, the Committee expects that the bench and bar will uncover errors and propose improvements in the Interim Rules. This input will inform the Committee's consideration of the National Rules. The information will also be useful to courts that have adopted the Interim Rules. To assist courts in making adjustments to the Interim Rules, the Committee in consultation with the Committee on Rules Practice and Procedure will collect suggested revisions and advise the courts on a periodic basis, perhaps every three or four months, of recommended revisions to the Interim Rules. (Alternative wording.)

To date, the Committee has become aware of only a few minor adjustments that should be made to the Interim Rules. These recommended revisions are attached and represent the first "batch" of revisions. If the Committee learns of a problem that requires a significant change to the Interim Rules, it will advise the courts in a separate notice. Otherwise, it expects that a follow-up communication, if necessary, will be sent to the courts with a second "batch" of recommended revisions in a few months.



John K. Rabiej

Item 3(c) will be an oral report.



MEMORANDUM

To: Bankruptcy Rules Committee
From: Gene Wedoff
Re: Chapter 13 Current Monthly Income Form (B22C)
Date: September 12, 2005

After our forms were submitted to the standing committee, an issue arose regarding the form for reporting “current monthly income” in Chapter 13, Form B22C. This memo (1) describes the issue, (2) outlines the steps taken so far to address it, (3) suggests that we amend the form to address the issue, and (4) discusses several suggested amended forms.

1. The issue: current monthly income and the applicable commitment period.

In Chapter 13, the calculation of current monthly income (CMI) has two functions. It is used to determine both minimum plan payments and minimum plan term—and the statute uses CMI in different ways for the two purposes.

(1) *Minimum plan payments.* Under § 1325(b)(1), if the trustee or the holder of an allowed unsecured claim objects to the debtor’s plan, it may only be confirmed if it provides for full payment of the objecting creditor’s claim or if the plan commits all of the debtor’s “disposable income” to paying unsecured creditors. Under § 1325(b)(2), CMI is the base from which disposable income is calculated, and under § 1325(b)(3) if CMI exceeds the applicable state median, the Chapter 7 means test is used in determining expenses that are deducted from CMI in calculating “disposable income.” For this purpose, § 1325(b) specifies use of the CMI of “the debtor.”

(2) *Minimum plan term.* Under § 1325(b)(1), if there is an appropriate objection, the plan must, in the absence of full payment, extend for the “applicable commitment period.” “Applicable commitment period” is generally defined by § 1325(b)(4)(A)(i) as being three years, but § 1325(b)(4)(A)(ii) provides that the period is “not less than 5 years” if CMI equals or exceeds the applicable state median income. For this purpose, § 1325(b) specifies use of the CMI of “the debtor and the debtor’s spouse combined.”

Our current Chapter 13 form only deals with minimum plan payments (“disposable income”); it does not identify whether the calculated CMI results in an applicable commitment period of three years or five. And in calculating CMI, the current form does not “combine” the income of the debtor with the income of a non-debtor spouse, and it does not report any information about spousal income in a non-joint case.

2. Action taken to date

The question of whether our submitted Form B22C should be amended to deal with the applicable commitment period arose during the week after our meeting in Washington. In response to this question, the members of the CMI forms working group—Eric Frank, Mark Redmiles, and me—attempted to reach a consensus about what amendment to the form, if any, would be appropriate. We then informed Judge Zilly of the results of these discussions: no consensus in our working group about the need for an amendment to the form or about the nature of such an amendment. In turn, Judge Zilly informed the standing rules committee of this status, and as a result, Form B22C was released in a tentative format, introduced by a notice that the form was subject to revision. Since that time, the working group has continued to work toward consensus, and a telephone conference on the question of amending Form B22C was held with members of the consumer subcommittee. As a result, several alternative forms have been produced for discussion, even though the basic disagreement remains. Whether Form B22C, as submitted to the standing committee, should be amended—and if so, the wording of the amendment—needs to be determined at our Santa Fe meeting.

3. Reasons for an amendment

In general. The basic reason for amending Form B22C is straightforward: as submitted to the standing committee, this “current monthly income” form for Chapter 13 only reports the information concerning current monthly income that is needed to calculate disposable income. To be complete, and to avoid misleading practitioners, the form should also present the information concerning CMI needed to determine the applicable commitment period. At both the working group and committee level, we decided that our CMI forms should calculate CMI for all relevant purposes. The Chapter 7 form (B22A) accordingly reports the relevant information and calculates CMI for all three of the purposes dictated by § 707(b): standing to assert any motion under the section (§ 707(b)(6)); standing to assert the means test presumption (§ 707(b)(7)); and, where the presumption can be asserted, whether it arises (§ 707(b)(2)(A)).

Of course, if there were no difference in the calculation of CMI for disposable income and applicable commitment period, there would be no compelling reason to amend the form. This is the basic argument that Eric has advanced in support of leaving the form unchanged. However, the statute does make a distinction in the computation of CMI for the two purposes. As noted above, CMI for disposable income is stated in § 1325(b)(3) to be the CMI that “the debtor has.” But for purposes of determining the applicable commitment period, § 1325(b)(4) specifies use of the CMI “of the debtor and the debtor’s spouse combined.” A fair reading of this language requires the conclusion that the calculation of CMI for determining the applicable commitment period includes spousal income that is not included in the calculation of CMI for determining disposable income.

The impact of the definition of CMI. The argument about statutory construction stems from a conflict between the definition of CMI in § 101(10A) and the way in which

the term is used in the substantive provisions of the statute. The conflict is over the identity of the person whose income is relevant. The definition includes a designation of the relevant income recipient: “the debtor . . . or in a joint case the debtor and the debtor’s spouse.” However, the substantive provisions of the statute, in using the term “current monthly income” also designate the relevant income recipient, usually referring to “the debtor’s” CMI (as in § 707(b)(2)(C)), but sometimes referring to CMI of the debtor’s spouse (as in § 707(b)(6) and (7)). Literally, this produces a double designation of the income recipient, resulting in linguistic nonsense. If the definition of CMI is used in place of the term itself in the substantive provisions, the phrase “the debtor’s current monthly income” becomes “the debtor’s income received by the debtor and in a joint case the debtor and the debtor’s spouse.” Similarly the phrase “the current monthly income of the debtor’s spouse” would literally mean “the income of the debtor’s spouse received by the debtor and in a joint case the debtor and the debtor’s spouse.” This meaningless duplication could not have been intended; the drafters of the substantive provisions apparently designated the individual whose income was to be considered in determining CMI without regard to the fact that the definition already contained such a designation. The appropriate way of resolving the resulting conflict is to use the designations contained in the specific substantive provisions rather than the general definition. *See Fourco Glass Co. v. Transmirra Prod. Corp.*, 353 U.S. 222, 228 (1957) (quoting authority for the rule that “[h]owever inclusive may be the general language of a statute, it will not be held to apply to a matter specifically dealt with in another part of the same enactment”).

The impact of § 707(b)(7). The conflict between the definition of CMI and the substantive provisions using CMI is particularly evident in § 707(b)(7). Section 707(b)(7)(A) bases a safe harbor from the means test on “the current monthly income of the debtor . . . and the debtor’s spouse combined.” Section 707(b)(7)(B) contains an exception: the spousal CMI is not included if the debtor and the spouse are separated. This exception only applies “[i]n a case that is not a joint case.” This necessarily means that the phrase requiring a combining of the CMI of the debtor and the debtor’s spouse requires spousal CMI to be computed in non-joint cases unless the exception for separated spouses applies—despite the definition limiting spousal CMI to joint cases.

Eric argues that there is no contradiction here because § 707(b)(7) might only refer to situations in which the debtor’s spouse has filed a separate bankruptcy case, and so has CMI (under the definition) in that separate case. However, this explanation fails for two reasons: first, § 707(b)(7) is not limited to situations of dual filings by married debtors—it calls for combining the CMI of debtors and spouses in all cases (subject to the exception for separated spouses); second, the definition of CMI does not include income of the debtor’s spouse who has filed a separate case, but only income of “the debtor” and “the debtor’s spouse in a joint case”; under this definition, the fact that the debtor’s spouse has CMI in a separately filed case does not impact the CMI at issue in the debtor’s case. Moreover, Eric’s argument here concedes that the phrase requiring combining of the CMI of the debtor and the debtor’s spouse in § 707(b)(7) does require counting spousal CMI in at least some non-joint cases (those where the spouse has filed a separate bankruptcy). The current CMI form for Chapter 13 does not count CMI and any non-joint cases.

Finally, in the context of § 707(b)(7), the committee has already decided this issue. Our Chapter 7 form requires the calculation of spousal CMI in all non-joint cases where the exception for separated spouses does not apply. Section 1325(b)(4) uses exactly the same language in calculating applicable commitment periods as Section 707(b)(7) does in calculating its safe harbor from means testing. The general rule is that when the same language is used in different parts of the same statute, it should be given the same meaning, and there is no basis for an exception to that rule here.¹

The impact of § 707(b)(6). Section 707(b)(6), which limits standing to assert any motion to dismiss under § 707(b), is based on the “current monthly income of the debtor, or in a joint case, the debtor and the debtor’s spouse.” Thus, like Section 707(b)(7), the standing limitation in Section 707(b)(6) assumes that the spouse of the debtor has “current monthly income,” and provides for the use of a spouse’s CMI—for purposes of its standing limitation—only in joint cases. This paragraph is thus consistent with § 707(b)(7) in ignoring the designation of income recipient in the definition of CMI. Both § 707(b)(6) and § 707(b)(7) treat non-debtor spouses as always having CMI, and provide their own limitations on the use of that CMI: for the standing to bring a motion under § 707(b), the spouse’s CMI is only counted in joint cases; for the safe harbor from means testing, it is counted both in joint cases and in non-joint cases unless the separate household exception applies.

Policy arguments. Eric presents a policy argument for not counting the CMI of non-filing spouses in determining the applicable commitment period under § 1325(b)(4): if the spouses maintain separate households, the debtor may have no information about the spouse’s income, and, in any event, it would be unfair to count income used in a sepa-

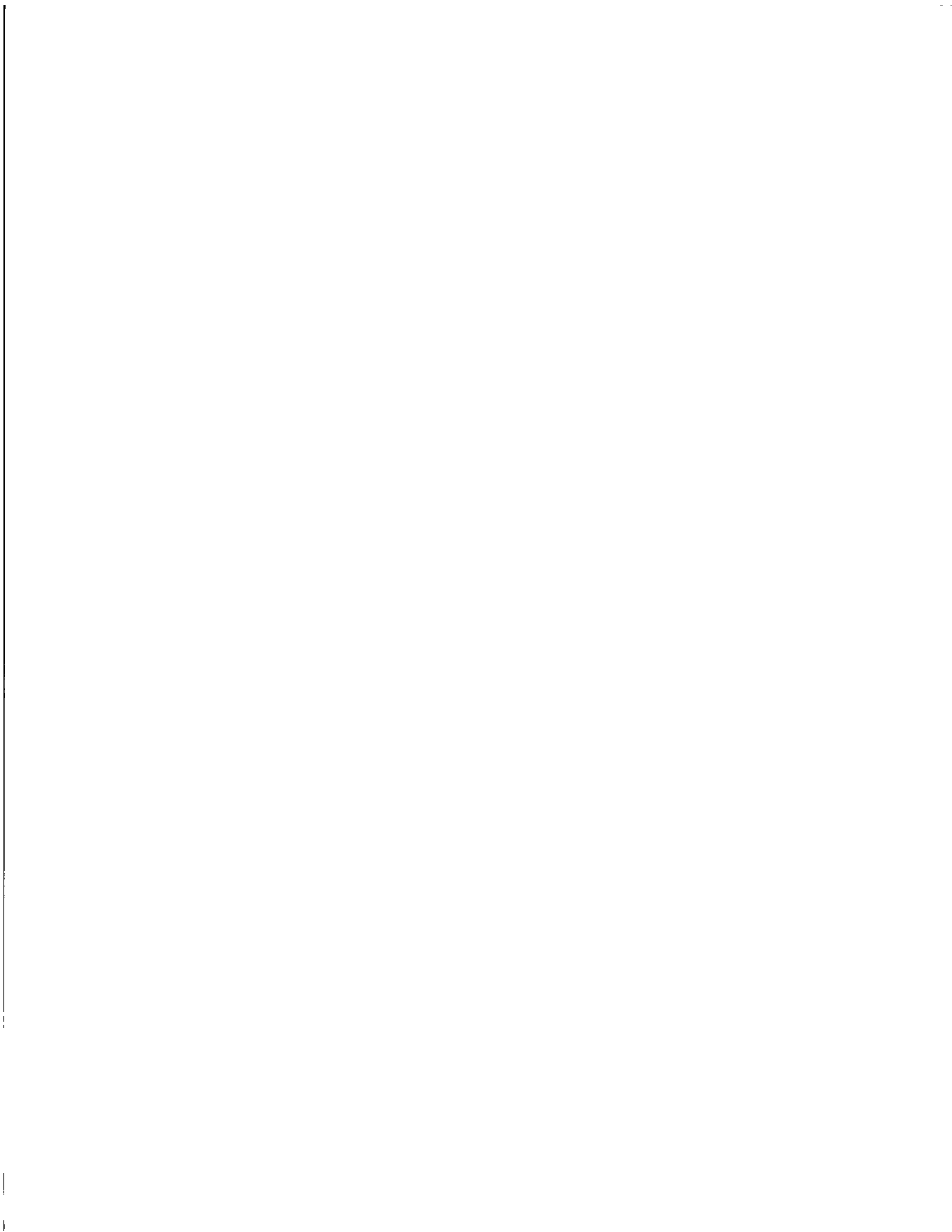
¹ See *Desert Palace, Inc. v. Costa*, 539 U.S. 90, 101 (2003) (quoting authority for the “normal rule of statutory construction that identical words used in different parts of the same act are intended to have the same meaning”). Eric has suggested that statutory language might be given different meanings in different parts of the Bankruptcy Code, citing *Dewsnup v. Timm*, 502 U.S. 410 (1992). *Dewsnup* interpreted the phrase “allowed secured claim” in § 506(d) of the Code to have a different meaning than in other Code sections. However, the Court reached this result only to uphold what it found to be a well-established pre-Code practice of treating secured claims as passing through bankruptcy liquidation unaffected. The Court explained that it “has been reluctant to accept arguments that would interpret the Code . . . to effect a major change in pre-Code practice that is not the subject of at least some discussion in the legislative history.” There is no pre-BAPCPA practice of failing to include the income of a non-debtor spouse for purposes of determining the household income available to a Chapter 13 debtor. To the contrary, the general practice was to include the income of a non-debtor spouse in calculating household income. See, e.g., *In re Williamson*, 296 B.R. 760, 764 (Bankr. N.D.Ill. 2003) (“Precedent supporting inclusion of the income of the non-debtor spouse recognize[s] that the husband and wife are a single economic unit and that the totality of the family’s income and expenses is appropriately considered in calculating disposable income.”) (citation omitted).

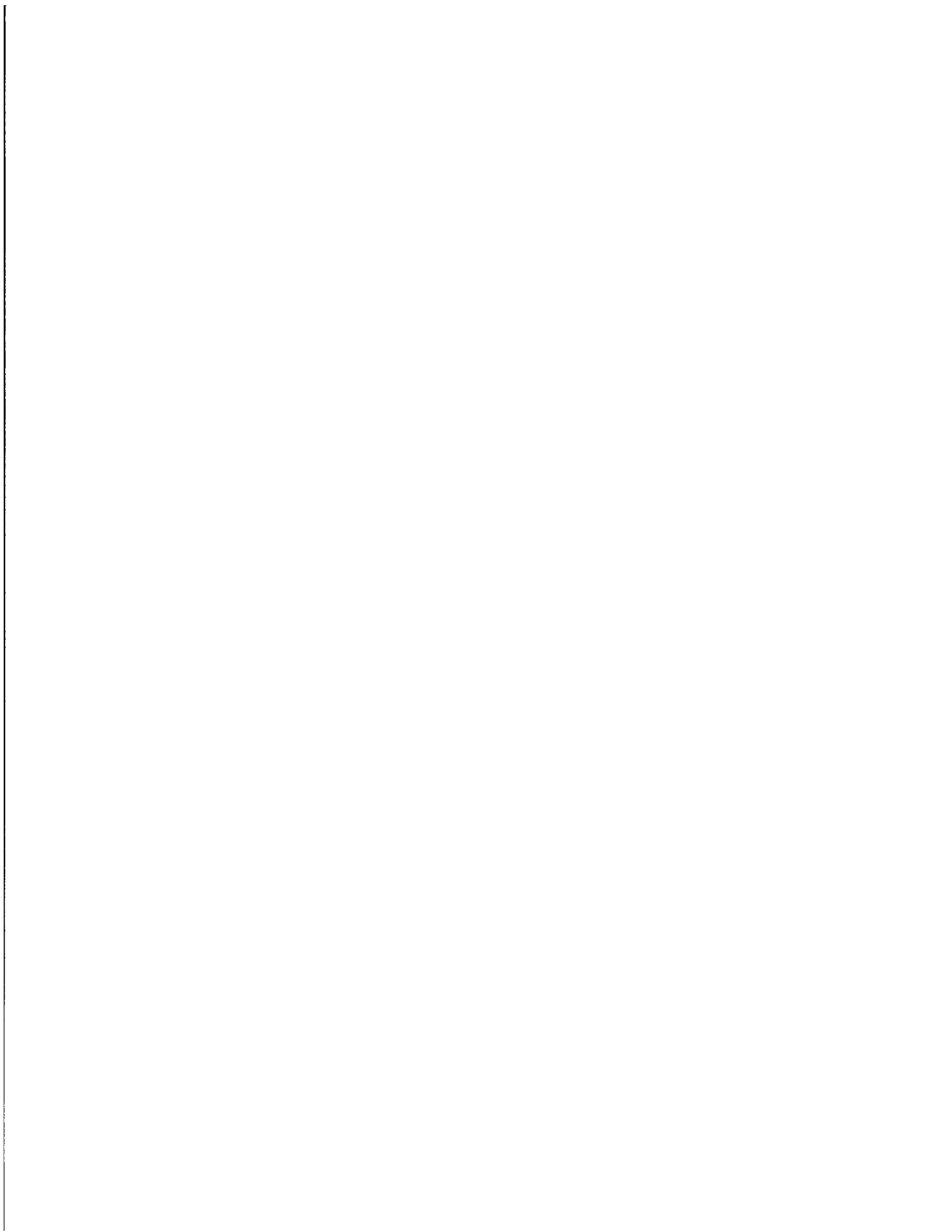
rated spouse's household as a basis for imposing an additional two years of Chapter 13 payments on the debtor (albeit at "disposable income" level that does not include spousal income). Indeed, it is hard to understand why there is not an exception for separated debtors in § 1325(b)(4) like the exception in § 707(b)(7), and it might be that, as applied to separated spouses in a particular case, § 1325(b)(4) is sufficiently unreasonable as to be a violation of due process. However, I do not believe that this is a decision that the form should incorporate. Rather, the form should be consistent with the statutory language, and allow the issue of enforceability to be determined by the court.

Moreover, § 1325(b)(4) cannot be said to lack a rational basis. In the common situation of spouses who live in the same household, a bankruptcy filing by only one of the spouses can reasonably be seen as an opportunity for manipulation. For example, married debtors in the same household could file separate Chapter 13 cases and each have a commitment period of three years, whereas, if they filed jointly, their combined current monthly income would require a five-year commitment term. Alternatively, in a household where one spouse had most of the income and the other spouse had incurred most of the debt, the spouse with the smaller income could file the bankruptcy case and assert that much of the non-debtor spouse's income was used for purposes other than household expenses, evading a five-year commitment period. Section 1325(b)(4) operates to prevent such manipulation. Indeed, supporters of the legislation could argue that they were generous in not requiring the debtor to make plan payments based on the non-filing spouse's income (as a majority of bankruptcy decisions had done under the pre-BAPCPA "disposable income" requirement).

The forms. To deal with the requirements of § 1325(b), I am suggesting two alternative forms. Both of these forms provide for a calculation of the applicable commitment period in a new Part II, with the results of the computation reflected in a box at the beginning of the form. Part I, the computation of income, is amended to provide for the income of the debtor's spouse to be reported in all cases. The calculation of current monthly income for purposes of determining the applicability of the means test deductions is set out in Part III. Here, the statute does not direct inclusion of the current monthly income of a non-debtor spouse, and so Part III provides for a deduction of such income to the extent that it is not contributed to the household expenses of the debtor or the debtor's dependents. This is parallel to the way in which the Chapter 7 form treats the similar issue of spousal CMI for purposes of the safe harbor of § 707(b)(7). The captions for the form itself and for Parts I through III are changed to reflect the new content.

The differences between the two forms is that the "B" version allows the debtor not to count spousal income in a non-joint case to the extent that it is not contributed to the debtor's household expenses. I have changed this "neutral form" from earlier versions to remove any suggestion that the spousal income is "current monthly income." I believe that this version of a neutral form addresses Eric's concerns, is consistent with the approach taken in our Chapter 7 form, and is simpler than either of Eric's neutral forms.





In re _____ Debtor(s)
 Case Number: _____ (If known)

Check the boxes as directed in Lines 14 and 20 of this statement.

Applicable commitment period of 3 years

Applicable commitment period of 5 years

Disposable income determined under § 1325(b)(3)

Disposable income not determined under §1325(b)(3)

STATEMENT OF CURRENT MONTHLY INCOME AND CALCULATION OF COMMITMENT PERIOD AND DISPOSABLE INCOME

FOR USE IN CHAPTER 13

In addition to Schedules I and J, this statement must be completed by every individual Chapter 13 debtor, whether or not filing jointly. Joint debtors may complete one statement only.

Part I. CALCULATION OF CURRENT MONTHLY INCOME TO DETERMINE COMMITMENT PERIOD						
1	Marital/filing status. Check the box that applies and complete the balance of this part of this statement as directed. a. <input type="checkbox"/> Unmarried. Complete only Column A ("Debtor's Income") for Lines 2-10. b. <input type="checkbox"/> Married. Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 2-10. All figures must reflect average monthly income for the six calendar months prior to filing the bankruptcy case, ending on the last day of the month before the filing. If you received different amounts of income during these six months, you must total the amounts received during the six months, divide this total by six, and enter the result on the appropriate line.			Column A Debtor's Income	Column B Spouse's Income	
2	Gross wages, salary, tips, bonuses, overtime, commissions.			\$	\$	
3	Income from the operation of a business, profession, or farm. Subtract Line b from Line a and enter the difference on Line 3. Do not enter a number less than zero. Do not include any part of the business expenses entered on Line b as a deduction in Part IV.					
	a.	Gross receipts	\$			
	b.	Ordinary and necessary business expenses	\$			
	c.	Business income	Subtract Line b from Line a	\$	\$	
4	Rent and other real property income. Subtract Line b from Line a and enter the difference on Line 4. Do not enter a number less than zero. Do not include any part of the operating expenses entered on Line b as a deduction in Part IV.					
	a.	Gross receipts	\$			
	b.	Ordinary and necessary operating expenses	\$			
	c.	Rental income	Subtract Line b from Line a	\$	\$	
5	Interest, dividends, and royalties.			\$	\$	
6	Pension and retirement income.			\$	\$	
7	Regular contributions to the household expenses of the debtor or the debtor's dependents, including child or spousal support. Do not include contributions from the debtor's spouse.			\$	\$	
8	Unemployment compensation. Enter the amount in the appropriate column(s) of Line 8. However, if you contend that unemployment compensation received by you or your spouse was a benefit under the Social Security Act, do not list the amount of such compensation in Column A or B, but instead state the amount in the space below:					
	Unemployment compensation claimed to be a benefit under the Social Security Act		Debtor \$ _____	Spouse \$ _____	\$	\$
9	Income from all other sources. Specify source and amount. If necessary, list additional sources on a separate page. Total and enter on Line 9. Do not include any benefits received under the Social Security Act or payments received as a victim of a war crime, crime against humanity, or as a victim of international or domestic terrorism.					
	a.		\$			
	b.		\$	\$	\$	
10	Subtotal of current monthly income. Add Lines 2 thru 9 in Column A, and, if Column B is completed, add Lines 2 through 9 in Column B. Enter the total(s).			\$	\$	

11	Total current monthly income for § 1325(b)(4). If Column B has been completed, add Line 10, Column A to Line 10, Column B, and enter the total. If Column B has not been completed, enter the amount from Line 10, Column A.	\$
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Part II. CALCULATION OF § 1325(b)(4) COMMITMENT PERIOD

12	Annualized current monthly income for § 1325(b)(4). Multiply the amount from Line 11 by the number 12 and enter the result.	\$
13	Applicable median family income. Enter the median family income for applicable state and household size. (This information is available by family size at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) a. Enter debtor's state of residence: _____ b. Enter debtor's household size: _____	\$
14	Application of § 1325(b)(4). Check the applicable box and proceed as directed. <input type="checkbox"/> The amount on Line 12 is less than the amount on Line 13. Check the box at the top of page 1 of this statement that states "Applicable commitment period is 3 years" and complete Part VII of this statement. Do not complete Parts III, IV, V or VI. <input type="checkbox"/> The amount on Line 12 is not less than the amount on Line 13. Check the box at the top of page 1 of this statement that states "Applicable commitment period is 5 years" and continue with Part III of this statement.	

Part III. APPLICATION OF § 1325(b)(3) FOR DETERMINING DISPOSABLE INCOME

15	Enter the amount from Line 11.	\$
16	Marital adjustment. If you are married, but are not filing jointly with your spouse, enter the amount of the income listed in Line 10, Column B that was NOT regularly contributed to the household expenses of you or your dependents. If you are unmarried or married and filing jointly with your spouse, enter zero.	\$
17	Current monthly income for § 1325(b)(3). Subtract Line 16 from Line 15 and enter the result.	
18	Annualized current monthly income for § 1325(b)(3). Multiply the amount from Line 17 by the number 12 and enter the result.	\$
19	Applicable median family income. Enter the amount from Line 13	\$
20	Application of § 1325(b)(3). Check the applicable box and proceed as directed. <input type="checkbox"/> The amount on Line 18 is more than the amount on Line 19. Check the box at the top of page 1 of this statement that states "Disposable income determined under § 1325(b)(3)" and complete the remaining parts of this statement. <input type="checkbox"/> The amount on Line 18 is not more than the amount on Line 19. Check the box at the top of page 1 of this statement that states "Disposable income not determined under § 1325(b)(3)" and complete Part VII of this statement. Do not complete Parts IV, V, or VI.	

Part IV. CALCULATION OF DEDUCTIONS ALLOWED UNDER § 707(b)(2)

Subpart A: Deductions under Standards of the Internal Revenue Service (IRS)

21	National Standards: food, clothing, household supplies, personal care, and miscellaneous. Enter the "Total" amount from IRS National Standards for Allowable Living Expenses for the applicable family size and income level. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)	\$	
22	Local Standards: housing and utilities; utilities/maintenance expense. Enter the amount of the IRS Housing and Utilities Standards; Utilities/Maintenance Expense for the applicable county and family size. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)	\$	
23	Local Standards: housing and utilities; mortgage/rental expense. Enter, in Line a below, the amount of the IRS Housing and Utilities Standards; Mortgage/Rental Expense for your county and family size available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter on Line b the total of the Average Monthly Payments for any debts secured by your home, as stated in Line 44; subtract Line b from Line a and enter the result in Line 23. Do not enter an amount less than zero.		
	a.	IRS Housing and Utilities Standards; Mortgage/Rental Expense	\$
	b.	Average Monthly Payment for any debts secured by your home, if any, as stated in Line 44	\$
	c.	Net mortgage/rental expense	Subtract Line b from Line a.

24	<p>Local Standards: transportation; vehicle operation/public transportation expense. You are entitled to an expense allowance in this category regardless of whether you pay the expenses of operating a vehicle and regardless of whether you use public transportation.</p> <p>Check the number of vehicles for which you pay the operating expenses or for which the operating expenses are included as a contribution to your household expenses in Line 7. <input type="checkbox"/> 0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 or more. Enter the amount from IRS Transportation Standards, Operating Costs & Public Transportation Costs for the applicable number of vehicles in the applicable Metropolitan Statistical Area or Census Region. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)</p>	\$									
25	<p>Local Standards: transportation ownership/lease expense; Vehicle 1. Check the number of vehicles for which you claim an ownership/lease expense. (You may not claim an ownership/lease expense for more than two vehicles.) <input type="checkbox"/> 1 <input type="checkbox"/> 2 or more.</p> <p>Enter, in Line a below, the amount of the IRS Transportation Standards, Ownership Costs, First Car (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 1, as stated in Line 44; subtract Line b from Line a and enter the result in Line 25. Do not enter an amount less than zero.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center;">a.</td> <td style="width: 70%;">IRS Transportation Standards, Ownership Costs, First Car</td> <td style="width: 25%; text-align: right;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 44</td> <td style="text-align: right;">\$</td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Net ownership/lease expense for Vehicle 1</td> <td style="text-align: right;">Subtract Line b from Line a.</td> </tr> </table>	a.	IRS Transportation Standards, Ownership Costs, First Car	\$	b.	Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 44	\$	c.	Net ownership/lease expense for Vehicle 1	Subtract Line b from Line a.	\$
a.	IRS Transportation Standards, Ownership Costs, First Car	\$									
b.	Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 44	\$									
c.	Net ownership/lease expense for Vehicle 1	Subtract Line b from Line a.									
26	<p>Local Standards: transportation ownership/lease expense; Vehicle 2. Complete this Line only if you checked the "2 or more" Box in Line 25.</p> <p>Enter, in Line a below, the amount of the IRS Transportation Standards, Ownership Costs, Second Car (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 2, as stated in Line 44; subtract Line b from Line a and enter the result in Line 26. Do not enter an amount less than zero.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center;">a.</td> <td style="width: 70%;">IRS Transportation Standards, Ownership Costs, Second Car</td> <td style="width: 25%; text-align: right;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 44</td> <td style="text-align: right;">\$</td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Net ownership/lease expense for Vehicle 2</td> <td style="text-align: right;">Subtract Line b from Line a.</td> </tr> </table>	a.	IRS Transportation Standards, Ownership Costs, Second Car	\$	b.	Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 44	\$	c.	Net ownership/lease expense for Vehicle 2	Subtract Line b from Line a.	\$
a.	IRS Transportation Standards, Ownership Costs, Second Car	\$									
b.	Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 44	\$									
c.	Net ownership/lease expense for Vehicle 2	Subtract Line b from Line a.									
27	<p>Other Necessary Expenses: taxes. Enter the total average monthly expense that you actually incur for all federal, state, and local taxes, other than real estate and sales taxes, such as income taxes, self employment taxes, social security taxes, and Medicare taxes. Do not include real estate or sales taxes.</p>	\$									
28	<p>Other Necessary Expenses: mandatory payroll deductions. Enter the total average monthly payroll deductions that are required for your employment, such as mandatory retirement contributions, union dues, and uniform costs. Do not include discretionary amounts, such as non-mandatory 401(k) contributions.</p>	\$									
29	<p>Other Necessary Expenses: life insurance. Enter average monthly premiums that you actually pay for term life insurance for yourself. Do not include premiums for insurance on your dependents, for whole life or for any other form of insurance.</p>	\$									
30	<p>Other Necessary Expenses: court-ordered payments. Enter the total monthly amount that you are required to pay pursuant to court order, such as spousal or child support payments. Do not include payments on past due support obligations included in Line 46.</p>	\$									
31	<p>Other Necessary Expenses: education for employment or for a physically or mentally challenged child. Enter the total monthly amount that you actually expend for education that is a condition of employment and for education that is required for a physically or mentally challenged dependent child for whom no public education providing similar services is available.</p>	\$									
32	<p>Other Necessary Expenses: childcare. Enter the average monthly amount that you actually expend on childcare. Do not include payments made for children's education.</p>	\$									
33	<p>Other Necessary Expenses: health care. Enter the average monthly amount that you actually expend on health care expenses that are not reimbursed by insurance or paid by a health savings account. Do not include payments for health insurance listed in Line 36.</p>	\$									
34	<p>Other Necessary Expenses: telecommunication services. Enter the average monthly expenses that you actually pay for cell phones, pagers, call waiting, caller identification, special long distance, or internet services necessary for the health and welfare of you or your dependents. Do not include any amount previously deducted.</p>	\$									
35	<p>Total Expenses Allowed under IRS Standards. Enter the total of Lines 21 through 34.</p>	\$									

Subpart B: Additional Expense Deductions under § 707(b)

Note: Do not include any expenses that you have listed in Lines 21-34

36	Health Insurance, Disability Insurance, and Health Savings Account Expenses. List the average monthly amounts that you actually expend in each of the following categories and enter the total.			\$
	a.	Health Insurance	\$	
	b.	Disability Insurance	\$	
	c.	Health Savings Account	\$	
			Total: Add Lines a, b, and c	\$
37	Continued contributions to the care of household or family members. Enter the actual monthly expenses that you will continue to pay for the reasonable and necessary care and support of an elderly, chronically ill, or disabled member of your household or member of your immediate family who is unable to pay for such expenses. Do not include payments listed in Line 31.			\$
38	Protection against family violence. Enter any average monthly expenses that you actually incurred to maintain the safety of your family under the Family Violence Prevention and Services Act or other applicable federal law.			\$
39	Home energy costs in excess of the allowance specified by the IRS Local Standards. Enter the average monthly amount by which your home energy costs exceed the allowance in the IRS Local Standards for Housing and Utilities. You must provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary.			\$
40	Education expenses for dependent children under 18. Enter the average monthly expenses that you actually incur, not to exceed \$125 per child, in providing elementary and secondary education for your dependent children less than 18 years of age. You must provide your case trustee with documentation demonstrating that the amount claimed is reasonable and necessary and not already accounted for in the IRS Standards.			\$
41	Additional food and clothing expense. Enter the average monthly amount by which your food and clothing expenses exceed the combined allowances for food and apparel in the IRS National Standards, not to exceed five percent of those combined allowances. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) You must provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary.			\$
42	Continued charitable contributions. Enter the amount that you will continue to contribute in the form of cash or financial instruments to a charitable organization as defined in 26 U.S.C. § 170(c)(1)-(2).			\$
43	Total Additional Expense Deductions under § 707(b). Enter the total of Lines 36 through 42.			\$

Subpart C: Deductions for Debt Payment

44	Future payments on secured claims. For each of your debts that is secured by an interest in property that you own, list the name of creditor, identify the property securing the debt, and state the Average Monthly Payment. The Average Monthly Payment is the total of all amounts contractually due to each Secured Creditor in the 60 months following the filing of the bankruptcy case, divided by 60. If necessary, list additional entries on a separate page. Do not include items you have previously deducted, such as insurance and real estate taxes.			\$	
		Name of Creditor	Property Securing the Debt		60-month Average Payment
	a.				\$
	b.				\$
	c.				\$
			Total: Add Lines a, b, and c	\$	
45	Past due payments on secured claims. If any of the debts listed in Line 44 are in default, and the property securing the debt is necessary for your support or the support of your dependents, you may include in your deductions 1/60th of the amount that you must pay the creditor as a result of the default (the "cure amount") in order to maintain possession of the property. List any such amounts in the following chart and enter the total. If necessary, list additional entries on a separate page.			\$	
		Name of Creditor	Property Securing the Debt in Default		1/60th of the Cure Amount
	a.				\$
	b.				\$
	c.				\$
			Total: Add Lines a, b, and c	\$	

46	Payments on priority claims. Enter the total amount of all priority claims (including priority child support and alimony claims), divided by 60.	\$									
47	Chapter 13 administrative expenses. Multiply the amount in Line a by the amount in Line b, and enter the resulting administrative expense.										
	<table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:5%; text-align:center;">a.</td> <td style="width:60%;">Projected average monthly Chapter 13 plan payment.</td> <td style="width:35%; text-align:right;">\$</td> </tr> <tr> <td style="text-align:center;">b.</td> <td>Current multiplier for your district as determined under schedules issued by the Executive Office for United States Trustees. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)</td> <td style="text-align:center;">x</td> </tr> <tr> <td style="text-align:center;">c.</td> <td>Average monthly administrative expense of Chapter 13 case</td> <td style="text-align:right;">Total: Multiply Lines a and b</td> </tr> </table>	a.	Projected average monthly Chapter 13 plan payment.	\$	b.	Current multiplier for your district as determined under schedules issued by the Executive Office for United States Trustees. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)	x	c.	Average monthly administrative expense of Chapter 13 case	Total: Multiply Lines a and b	\$
	a.	Projected average monthly Chapter 13 plan payment.	\$								
b.	Current multiplier for your district as determined under schedules issued by the Executive Office for United States Trustees. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)	x									
c.	Average monthly administrative expense of Chapter 13 case	Total: Multiply Lines a and b									
Total Deductions for Debt Payment. Enter the total of Lines 44 through 47.		\$									
Subpart D: Total Deductions Allowed under § 707(b)(2)											
49	Total of all deductions allowed under § 707(b)(2). Enter the total of Lines 35, 43, and 48.	\$									

Part V. DETERMINATION OF DISPOSABLE INCOME UNDER § 1325(b)(2)

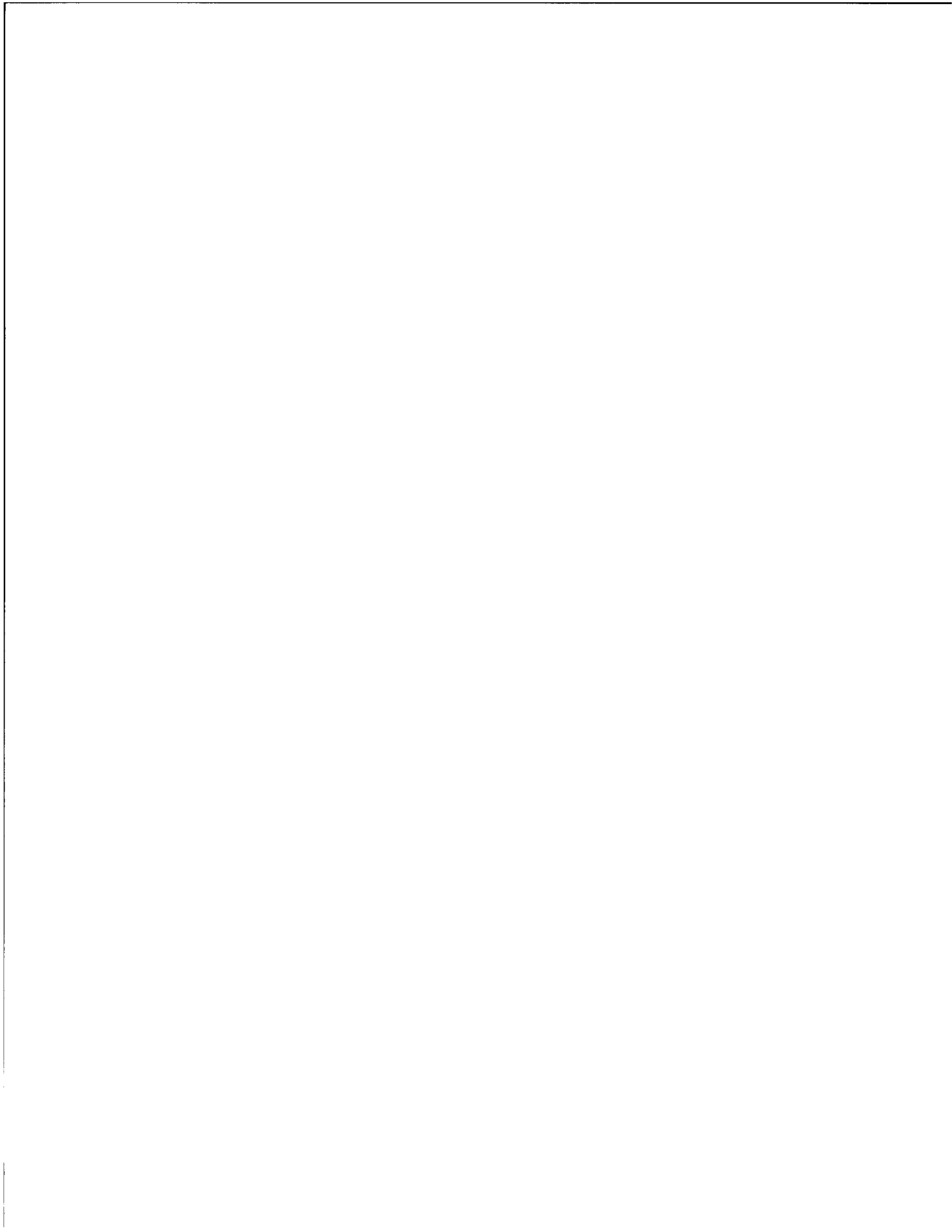
50	Total current monthly income. Enter the amount from Line 17.	\$
51	Support income. Enter the monthly average of any child support payments, foster care payments, or disability payments for a dependent child, included in Line 7, that you received in accordance with applicable nonbankruptcy law, to the extent reasonably necessary to be expended for such child.	\$
52	Qualified retirement deductions. Enter the monthly average of (a) all contributions or wage deductions made to qualified retirement plans, as specified in § 541(b)(7) and (b) all repayments of loans from retirement plans, as specified in § 362(b)(19).	\$
53	Total of all deductions allowed under § 707(b)(2). Enter the amount from Line 49.	\$
54	Total adjustments to determine disposable income. Add the amounts on Lines 51, 52, and 53 and enter the result.	\$
55	Monthly Disposable Income Under § 1325(b)(2). Subtract Line 54 from Line 50 and enter the result.	\$

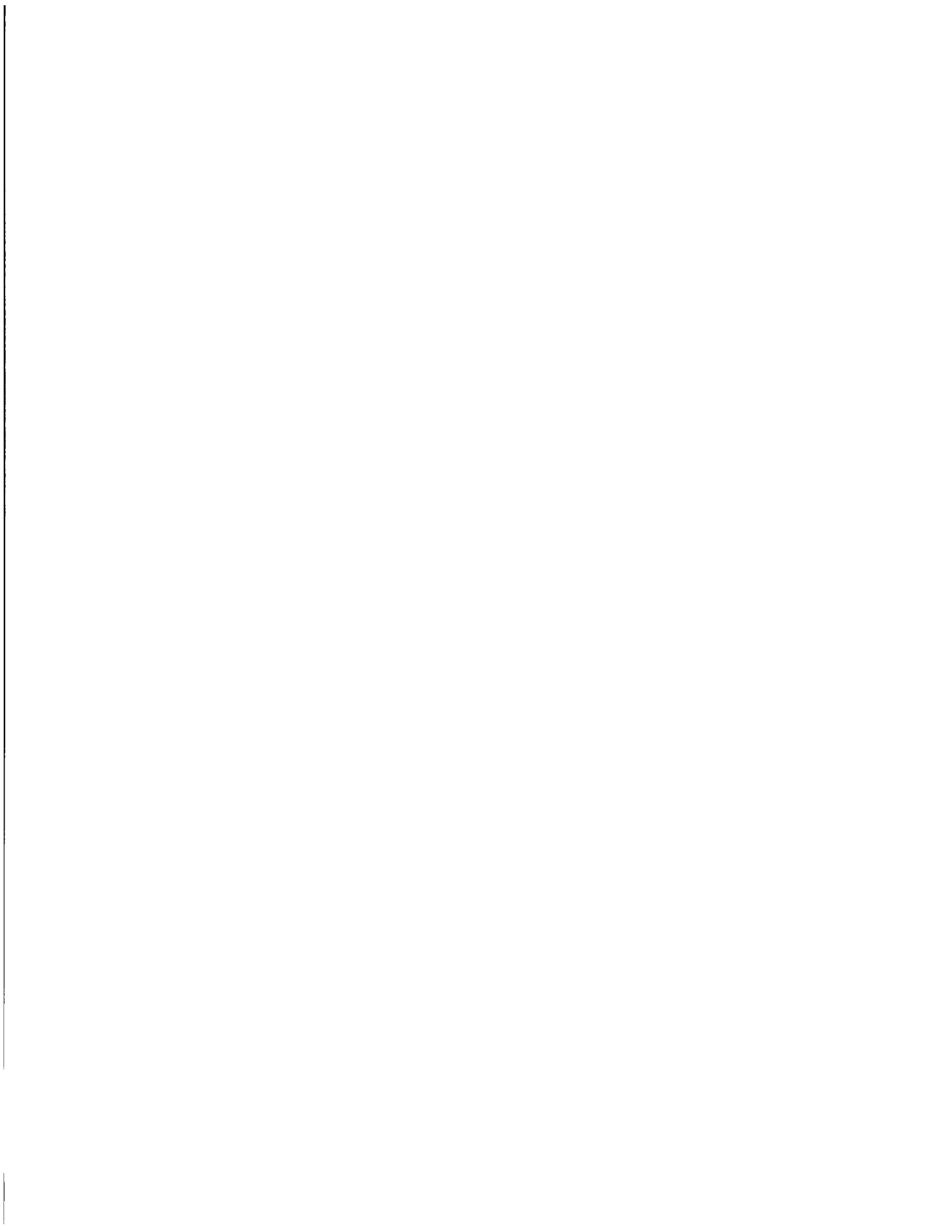
Part VI: ADDITIONAL EXPENSE CLAIMS

56	<p>Other Expenses. List and describe any monthly expenses, not otherwise stated in this form, that are required for the health and welfare of you and your family and that you contend should be an additional deduction from your current monthly income under § 707(b)(2)(A)(ii)(I). If necessary, list additional sources on a separate page. All figures should reflect your average monthly expense for each item. Total the expenses.</p> <table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width:5%;"></th> <th style="width:60%;">Expense Description</th> <th style="width:35%;">Monthly Amount</th> </tr> </thead> <tbody> <tr> <td style="text-align:center;">a.</td> <td></td> <td style="text-align:right;">\$</td> </tr> <tr> <td style="text-align:center;">b.</td> <td></td> <td style="text-align:right;">\$</td> </tr> <tr> <td style="text-align:center;">c.</td> <td></td> <td style="text-align:right;">\$</td> </tr> <tr> <td colspan="2" style="text-align:right;">Total: Add Lines a, b, and c</td> <td style="text-align:right;">\$</td> </tr> </tbody> </table>		Expense Description	Monthly Amount	a.		\$	b.		\$	c.		\$	Total: Add Lines a, b, and c		\$	
	Expense Description	Monthly Amount															
a.		\$															
b.		\$															
c.		\$															
Total: Add Lines a, b, and c		\$															

Part VII: VERIFICATION

57	<p>I declare under penalty of perjury that the information provided in this statement is true and correct. <i>(If this a joint case, both debtors must sign.)</i></p> <p style="text-align:center;">Date: _____ Signature: _____ (Debtor)</p> <p style="text-align:center;">Date: _____ Signature: _____ (Joint Debtor, if any)</p>	
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In re _____ Debtor(s)
 Case Number: _____ (If known)

Check the boxes as directed in Lines 14 and 20 of this statement.

Applicable commitment period of 3 years

Applicable commitment period of 5 years

Disposable income determined under § 1325(b)(3)

Disposable income not determined under §1325(b)(3)

STATEMENT OF CURRENT MONTHLY INCOME AND CALCULATION OF COMMITMENT PERIOD AND DISPOSABLE INCOME

FOR USE IN CHAPTER 13

In addition to Schedules I and J, this statement must be completed by every individual Chapter 13 debtor, whether or not filing jointly. Joint debtors may complete one statement only.

Part I. REPORT OF INCOME														
			Column A Debtor's Income	Column B Spouse's Income										
1	Marital/filing status. Check the box that applies and complete the balance of this part of this statement as directed. a. <input type="checkbox"/> Unmarried. Complete only Column A ("Debtor's Income") for Lines 2-10. b. <input type="checkbox"/> Married. Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 2-10. All figures must reflect average monthly income for the six calendar months prior to filing the bankruptcy case, ending on the last day of the month before the filing. If you received different amounts of income during these six months, you must total the amounts received during the six months, divide this total by six, and enter the result on the appropriate line.													
2	Gross wages, salary, tips, bonuses, overtime, commissions.			\$	\$									
3	Income from the operation of a business, profession, or farm. Subtract Line b from Line a and enter the difference on Line 3. Do not enter a number less than zero. Do not include any part of the business expenses entered on Line b as a deduction in Part IV. <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 5px;"> <tr> <td style="width: 5%; text-align: center;">a.</td> <td style="width: 45%;">Gross receipts</td> <td style="width: 50%; text-align: right;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Ordinary and necessary business expenses</td> <td style="text-align: right;">\$</td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Business income</td> <td style="text-align: right;">Subtract Line b from Line a</td> </tr> </table>			a.	Gross receipts	\$	b.	Ordinary and necessary business expenses	\$	c.	Business income	Subtract Line b from Line a	\$	\$
a.	Gross receipts	\$												
b.	Ordinary and necessary business expenses	\$												
c.	Business income	Subtract Line b from Line a												
4	Rent and other real property income. Subtract Line b from Line a and enter the difference on Line 4. Do not enter a number less than zero. Do not include any part of the operating expenses entered on Line b as a deduction in Part IV. <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 5px;"> <tr> <td style="width: 5%; text-align: center;">a.</td> <td style="width: 45%;">Gross receipts</td> <td style="width: 50%; text-align: right;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Ordinary and necessary operating expenses</td> <td style="text-align: right;">\$</td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Rental income</td> <td style="text-align: right;">Subtract Line b from Line a</td> </tr> </table>			a.	Gross receipts	\$	b.	Ordinary and necessary operating expenses	\$	c.	Rental income	Subtract Line b from Line a	\$	\$
a.	Gross receipts	\$												
b.	Ordinary and necessary operating expenses	\$												
c.	Rental income	Subtract Line b from Line a												
5	Interest, dividends, and royalties.			\$	\$									
6	Pension and retirement income.			\$	\$									
7	Regular contributions to the household expenses of the debtor or the debtor's dependents, including child or spousal support. Do not include contributions from the debtor's spouse.			\$	\$									
8	Unemployment compensation. Enter the amount in the appropriate column(s) of Line 8. However, if you contend that unemployment compensation received by you or your spouse was a benefit under the Social Security Act, do not list the amount of such compensation in Column A or B, but instead state the amount in the space below: <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 5px;"> <tr> <td style="width: 35%;">Unemployment compensation claimed to be a benefit under the Social Security Act</td> <td style="width: 30%;">Debtor \$ _____</td> <td style="width: 35%;">Spouse \$ _____</td> </tr> </table>			Unemployment compensation claimed to be a benefit under the Social Security Act	Debtor \$ _____	Spouse \$ _____	\$	\$						
Unemployment compensation claimed to be a benefit under the Social Security Act	Debtor \$ _____	Spouse \$ _____												
9	Income from all other sources. Specify source and amount. If necessary, list additional sources on a separate page. Total and enter on Line 9. Do not include any benefits received under the Social Security Act or payments received as a victim of a war crime, crime against humanity, or as a victim of international or domestic terrorism. <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 5px;"> <tr> <td style="width: 5%; text-align: center;">a.</td> <td style="width: 55%;"></td> <td style="width: 40%; text-align: right;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td></td> <td style="text-align: right;">\$</td> </tr> </table>			a.		\$	b.		\$	\$	\$			
a.		\$												
b.		\$												
10	Subtotal. Add Lines 2 thru 9 in Column A, and, if Column B is completed, add Lines 2 through 9 in Column B. Enter the total(s).			\$	\$									

11	Total. If Column B has been completed, add Line 10, Column A to Line 10, Column B, and enter the total. If Column B has not been completed, enter the amount from Line 10, Column A.	\$
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Part II. CALCULATION OF § 1325(b)(4) COMMITMENT PERIOD		
12	Enter the amount from Line 11.	
13	Marital adjustment. If you are married, but are not filing jointly with your spouse, AND if you contend that calculation of the commitment period under § 1325(b)(4) does not require inclusion of the income of your spouse, enter the amount of the income listed in Line 10, Column B that was NOT regularly contributed to the household expenses of you or your dependents. Otherwise, enter zero.	
14	Subtract Line 13 from Line 12 and enter the result.	
15	Annualized current monthly income for § 1325(b)(4). Multiply the amount from Line 14 by the number 12 and enter the result.	\$
16	Applicable median family income. Enter the median family income for applicable state and household size. (This information is available by family size at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) a. Enter debtor's state of residence: _____ b. Enter debtor's household size: _____	\$
17	Application of § 1325(b)(4). Check the applicable box and proceed as directed. <input type="checkbox"/> The amount on Line 15 is less than the amount on Line 16. Check the box at the top of page 1 of this statement that states "Applicable commitment period is 3 years" and complete Part VII of this statement. Do not complete Parts III, IV, V or VI. <input type="checkbox"/> The amount on Line 15 is not less than the amount on Line 16. Check the box at the top of page 1 of this statement that states "Applicable commitment period is 5 years" and continue with Part III of this statement.	

Part III. APPLICATION OF § 1325(b)(3) FOR DETERMINING DISPOSABLE INCOME		
18	Enter the amount from Line 11.	\$
19	Marital adjustment. If you are married, but are not filing jointly with your spouse, enter the amount of the income listed in Line 10, Column B that was NOT regularly contributed to the household expenses of you or your dependents. If you are unmarried or married and filing jointly with your spouse, enter zero.	\$
20	Current monthly income for § 1325(b)(3). Subtract Line 19 from Line 18 and enter the result.	
21	Annualized current monthly income for § 1325(b)(3). Multiply the amount from Line 20 by the number 12 and enter the result.	\$
22	Applicable median family income. Enter the amount from Line 16.	\$
23	Application of § 1325(b)(3). Check the applicable box and proceed as directed. <input type="checkbox"/> The amount on Line 21 is more than the amount on Line 22. Check the box at the top of page 1 of this statement that states "Disposable income determined under § 1325(b)(3)" and complete the remaining parts of this statement. <input type="checkbox"/> The amount on Line 21 is not more than the amount on Line 22. Check the box at the top of page 1 of this statement that states "Disposable income not determined under § 1325(b)(3)" and complete Part VII of this statement. Do not complete Parts IV, V, or VI.	

Part IV. CALCULATION OF DEDUCTIONS ALLOWED UNDER § 707(b)(2)		
Subpart A: Deductions under Standards of the Internal Revenue Service (IRS)		
24	National Standards: food, clothing, household supplies, personal care, and miscellaneous. Enter the "Total" amount from IRS National Standards for Allowable Living Expenses for the applicable family size and income level. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)	\$
25	Local Standards: housing and utilities; utilities/maintenance expense. Enter the amount of the IRS Housing and Utilities Standards; Utilities/Maintenance Expense for the applicable county and family size. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)	\$

26	<p>Local Standards: housing and utilities; mortgage/rental expense. Enter, in Line a below, the amount of the IRS Housing and Utilities Standards; Mortgage/Rental Expense for your county and family size available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter on Line b the total of the Average Monthly Payments for any debts secured by your home, as stated in Line 47; subtract Line b from Line a and enter the result in Line 26. Do not enter an amount less than zero.</p> <table border="1" data-bbox="196 278 1339 434"> <tr> <td>a.</td> <td>IRS Housing and Utilities Standards; Mortgage/Rental Expense</td> <td>\$</td> </tr> <tr> <td>b.</td> <td>Average Monthly Payment for any debts secured by your home, if any, as stated in Line 47</td> <td>\$</td> </tr> <tr> <td>c.</td> <td>Net mortgage/rental expense</td> <td>Subtract Line b from Line a.</td> </tr> </table>	a.	IRS Housing and Utilities Standards; Mortgage/Rental Expense	\$	b.	Average Monthly Payment for any debts secured by your home, if any, as stated in Line 47	\$	c.	Net mortgage/rental expense	Subtract Line b from Line a.	
a.	IRS Housing and Utilities Standards; Mortgage/Rental Expense	\$									
b.	Average Monthly Payment for any debts secured by your home, if any, as stated in Line 47	\$									
c.	Net mortgage/rental expense	Subtract Line b from Line a.									
27	<p>Local Standards: transportation; vehicle operation/public transportation expense. You are entitled to an expense allowance in this category regardless of whether you pay the expenses of operating a vehicle and regardless of whether you use public transportation.</p> <p>Check the number of vehicles for which you pay the operating expenses or for which the operating expenses are included as a contribution to your household expenses in Line 7. <input type="checkbox"/> 0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 or more. Enter the amount from IRS Transportation Standards, Operating Costs & Public Transportation Costs for the applicable number of vehicles in the applicable Metropolitan Statistical Area or Census Region. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)</p>	\$									
28	<p>Local Standards: transportation ownership/lease expense; Vehicle 1. Check the number of vehicles for which you claim an ownership/lease expense. (You may not claim an ownership/lease expense for more than two vehicles.) <input type="checkbox"/> 1 <input type="checkbox"/> 2 or more.</p> <p>Enter, in Line a below, the amount of the IRS Transportation Standards, Ownership Costs, First Car (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 1, as stated in Line 47; subtract Line b from Line a and enter the result in Line 25. Do not enter an amount less than zero.</p> <table border="1" data-bbox="196 904 1339 1059"> <tr> <td>a.</td> <td>IRS Transportation Standards, Ownership Costs, First Car</td> <td>\$</td> </tr> <tr> <td>b.</td> <td>Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 47</td> <td>\$</td> </tr> <tr> <td>c.</td> <td>Net ownership/lease expense for Vehicle 1</td> <td>Subtract Line b from Line a.</td> </tr> </table>	a.	IRS Transportation Standards, Ownership Costs, First Car	\$	b.	Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 47	\$	c.	Net ownership/lease expense for Vehicle 1	Subtract Line b from Line a.	\$
a.	IRS Transportation Standards, Ownership Costs, First Car	\$									
b.	Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 47	\$									
c.	Net ownership/lease expense for Vehicle 1	Subtract Line b from Line a.									
29	<p>Local Standards: transportation ownership/lease expense; Vehicle 2. Complete this Line only if you checked the "2 or more" Box in Line 28.</p> <p>Enter, in Line a below, the amount of the IRS Transportation Standards, Ownership Costs, Second Car (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 2, as stated in Line 47; subtract Line b from Line a and enter the result in Line 29. Do not enter an amount less than zero.</p> <table border="1" data-bbox="196 1255 1339 1410"> <tr> <td>a.</td> <td>IRS Transportation Standards, Ownership Costs, Second Car</td> <td>\$</td> </tr> <tr> <td>b.</td> <td>Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 47</td> <td>\$</td> </tr> <tr> <td>c.</td> <td>Net ownership/lease expense for Vehicle 2</td> <td>Subtract Line b from Line a.</td> </tr> </table>	a.	IRS Transportation Standards, Ownership Costs, Second Car	\$	b.	Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 47	\$	c.	Net ownership/lease expense for Vehicle 2	Subtract Line b from Line a.	\$
a.	IRS Transportation Standards, Ownership Costs, Second Car	\$									
b.	Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 47	\$									
c.	Net ownership/lease expense for Vehicle 2	Subtract Line b from Line a.									
30	<p>Other Necessary Expenses: taxes. Enter the total average monthly expense that you actually incur for all federal, state, and local taxes, other than real estate and sales taxes, such as income taxes, self employment taxes, social security taxes, and Medicare taxes. Do not include real estate or sales taxes.</p>	\$									
31	<p>Other Necessary Expenses: mandatory payroll deductions. Enter the total average monthly payroll deductions that are required for your employment, such as mandatory retirement contributions, union dues, and uniform costs. Do not include discretionary amounts, such as non-mandatory 401(k) contributions.</p>	\$									
32	<p>Other Necessary Expenses: life insurance. Enter average monthly premiums that you actually pay for term life insurance for yourself. Do not include premiums for insurance on your dependents, for whole life or for any other form of insurance.</p>	\$									
33	<p>Other Necessary Expenses: court-ordered payments. Enter the total monthly amount that you are required to pay pursuant to court order, such as spousal or child support payments. Do not include payments on past due support obligations included in Line 49.</p>	\$									
34	<p>Other Necessary Expenses: education for employment or for a physically or mentally challenged child. Enter the total monthly amount that you actually expend for education that is a condition of employment and for education that is required for a physically or mentally challenged dependent child for whom no public education providing similar services is available.</p>	\$									

35	Other Necessary Expenses: childcare. Enter the average monthly amount that you actually expend on childcare. Do not include payments made for children's education.	\$
36	Other Necessary Expenses: health care. Enter the average monthly amount that you actually expend on health care expenses that are not reimbursed by insurance or paid by a health savings account. Do not include payments for health insurance listed in Line 39.	\$
37	Other Necessary Expenses: telecommunication services. Enter the average monthly expenses that you actually pay for cell phones, pagers, call waiting, caller identification, special long distance, or internet services necessary for the health and welfare of you or your dependents. Do not include any amount previously deducted.	\$
38	Total Expenses Allowed under IRS Standards. Enter the total of Lines 24 through 37.	\$

Subpart B: Additional Expense Deductions under § 707(b)
Note: Do not include any expenses that you have listed in Lines 24-37

39	Health Insurance, Disability Insurance, and Health Savings Account Expenses. List the average monthly amounts that you actually expend in each of the following categories and enter the total.		\$	
	a.	Health Insurance		\$
	b.	Disability Insurance		\$
	c.	Health Savings Account		\$
	Total: Add Lines a, b, and c			
40	Continued contributions to the care of household or family members. Enter the actual monthly expenses that you will continue to pay for the reasonable and necessary care and support of an elderly, chronically ill, or disabled member of your household or member of your immediate family who is unable to pay for such expenses. Do not include payments listed in Line 34.		\$	
41	Protection against family violence. Enter any average monthly expenses that you actually incurred to maintain the safety of your family under the Family Violence Prevention and Services Act or other applicable federal law.		\$	
42	Home energy costs in excess of the allowance specified by the IRS Local Standards. Enter the average monthly amount by which your home energy costs exceed the allowance in the IRS Local Standards for Housing and Utilities. You must provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary.		\$	
43	Education expenses for dependent children under 18. Enter the average monthly expenses that you actually incur, not to exceed \$125 per child, in providing elementary and secondary education for your dependent children less than 18 years of age. You must provide your case trustee with documentation demonstrating that the amount claimed is reasonable and necessary and not already accounted for in the IRS Standards.		\$	
44	Additional food and clothing expense. Enter the average monthly amount by which your food and clothing expenses exceed the combined allowances for food and apparel in the IRS National Standards, not to exceed five percent of those combined allowances. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) You must provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary.		\$	
45	Continued charitable contributions. Enter the amount that you will continue to contribute in the form of cash or financial instruments to a charitable organization as defined in 26 U.S.C. § 170(c)(1)-(2).		\$	
46	Total Additional Expense Deductions under § 707(b). Enter the total of Lines 36 through 42.		\$	

Subpart C: Deductions for Debt Payment

47	Future payments on secured claims. For each of your debts that is secured by an interest in property that you own, list the name of creditor, identify the property securing the debt, and state the Average Monthly Payment. The Average Monthly Payment is the total of all amounts contractually due to each Secured Creditor in the 60 months following the filing of the bankruptcy case, divided by 60. If necessary, list additional entries on a separate page. Do not include items you have previously deducted, such as insurance and real estate taxes.			\$	
		Name of Creditor	Property Securing the Debt		60-month Average Payment
	a.				\$
	b.				\$
	c.				\$
Total: Add Lines a, b, and c					

48	Past due payments on secured claims. If any of the debts listed in Line 47 are in default, and the property securing the debt is necessary for your support or the support of your dependents, you may include in your deductions 1/60th of the amount that you must pay the creditor as a result of the default (the "cure amount") in order to maintain possession of the property. List any such amounts in the following chart and enter the total. If necessary, list additional entries on a separate page.			\$	
		Name of Creditor	Property Securing the Debt in Default		1/60th of the Cure Amount
	a.				\$
	b.				\$
	c.				\$
			Total: Add Lines a, b, and c	\$	

49	Payments on priority claims. Enter the total amount of all priority claims (including priority child support and alimony claims), divided by 60.	\$
----	---	----

50	Chapter 13 administrative expenses. Multiply the amount in Line a by the amount in Line b, and enter the resulting administrative expense.		\$	
	a.	Projected average monthly Chapter 13 plan payment.		\$
	b.	Current multiplier for your district as determined under schedules issued by the Executive Office for United States Trustees. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)		x
	c.	Average monthly administrative expense of Chapter 13 case		Total: Multiply Lines a and b

51	Total Deductions for Debt Payment. Enter the total of Lines 47 through 50.	\$
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Subpart D: Total Deductions Allowed under § 707(b)(2)

52	Total of all deductions allowed under § 707(b)(2). Enter the total of Lines 38, 46, and 51.	\$
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Part V. DETERMINATION OF DISPOSABLE INCOME UNDER § 1325(b)(2)

53	Total current monthly income. Enter the amount from Line 20.	\$
54	Support income. Enter the monthly average of any child support payments, foster care payments, or disability payments for a dependent child, included in Line 7, that you received in accordance with applicable nonbankruptcy law, to the extent reasonably necessary to be expended for such child.	\$
55	Qualified retirement deductions. Enter the monthly average of (a) all contributions or wage deductions made to qualified retirement plans, as specified in § 541(b)(7) and (b) all repayments of loans from retirement plans, as specified in § 362(b)(19).	\$
56	Total of all deductions allowed under § 707(b)(2). Enter the amount from Line 52.	\$
57	Total adjustments to determine disposable income. Add the amounts on Lines 54, 55, and 56 and enter the result.	\$
58	Monthly Disposable Income Under § 1325(b)(2). Subtract Line 54 from Line 50 and enter the result.	\$

Part VI: ADDITIONAL EXPENSE CLAIMS

59 **Other Expenses.** List and describe any monthly expenses, not otherwise stated in this form, that are required for the health and welfare of you and your family and that you contend should be an additional deduction from your current monthly income under § 707(b)(2)(A)(ii)(I). If necessary, list additional sources on a separate page. All figures should reflect your average monthly expense for each item. Total the expenses.

	Expense Description	Monthly Amount
a.		\$
b.		\$
c.		\$
Total: Add Lines a, b, and c		\$

Part VII: VERIFICATION

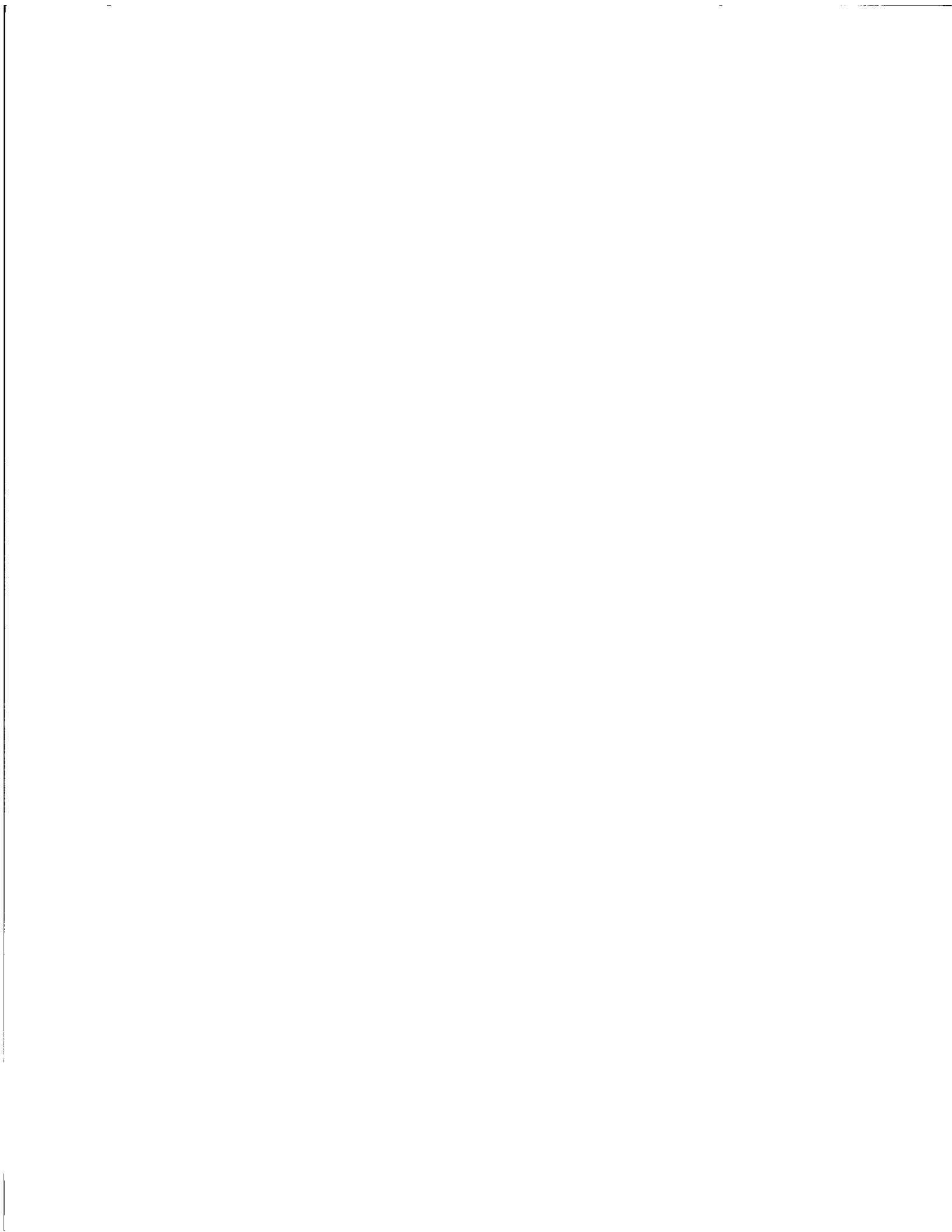
60 I declare under penalty of perjury that the information provided in this statement is true and correct. *(If this a joint case, both debtors must sign.)*

Date: _____

Signature: _____
(Debtor)

Date: _____

Signature: _____
(Joint Debtor, if any)



September 10, 2005

To: Members of the Advisory Committee
From: Eric L. Frank
Re: Proposed Modifications to Form 22C (Chapter 13 Means Test Form)

SUMMARY

At our meeting in Washington D.C. last month, the Advisory Committee adopted Form 22C as the official means test form for chapter 13 cases as part of our package of forms to be sent to the Judicial Conference (the "CURRENT CHAPTER 13 FORM"). The CURRENT CHAPTER 13 FORM provides for the computation of the "current monthly income" ("CMI") and the "disposable income" of a chapter 13 debtor for the purpose of determining how much money, if any, unsecured creditors may have to be paid in a chapter 13 plan.

Judge Wedoff has proposed that the CURRENT CHAPTER 13 FORM be substantially revised.

In making his proposal, Judge Wedoff does not contend that the methodologies for determining CMI and disposable income in the CURRENT CHAPTER 13 FORM are inaccurate or inconsistent with the statute. Rather, he advocates modifying the CURRENT CHAPTER 13 FORM to provide for an additional determination within the form: the determination of the minimum chapter 13 plan "commitment period" (i.e., the minimum length of the chapter 13 plan). See 11 U.S.C. §1325(b)(4). In doing so, his proposal would utilize a different methodology for computation of a debtor's CMI for purposes of determining the commitment period than that used for computing CMI for purposes of determining disposable income. Judge Wedoff has devised a form to accomplish that goal which is included in the materials (the "J.WEDOFF CHAPTER 13 FORM").

In my opinion, Judge Wedoff's methodology for computing CMI for the purpose of determining the commitment period is inconsistent with the plain language of the statute. In addition, in a significant number of cases, it causes a debtor's income to be artificially inflated by counting income that is not actually available to the debtor thereby compelling some debtors to remain in chapter 13 for 2 additional years based on "phantom income". Judge Wedoff is equally convinced that his methodology is correct and is required by the statute.

The issue of the proper methodology for computation of CMI for purposes of determining the proper length of a chapter 13 plan was the subject of an extensive debate among various members of the Consumer and Forms Subcommittees (via several e-mail exchanges and a lengthy conference call in which a number of the Subcommittee members and representatives of the EOUST participated). No consensus was reached in Subcommittee deliberations.

As a result of the lack of consensus, the Subcommittee requested that I attempt to devise an alternative, "neutral" form that would (a) provide for the determination of the minimum length of a plan; (b) collect the income information that would be relevant to the determination under either construction of the statute; and (c) remain neutral on the proper construction of the statute. I have done so and I have prepared 2 alternative versions of form that is "neutral" on the method of computing CMI for purposes of determining the minimum length of the plan.. Judge Wedoff has prepared a third alternative to the 2 neutral forms that I prepared.

The questions the Advisory Committee must resolve are:

1. Should the Advisory Committee modify the CURRENT CHAPTER 13 FORM to provide for a determination of the minimum length of a chapter 13 plan or take no

action?

2. If the Advisory Committee wishes to modify the CURRENT CHAPTER 13 FORM, should it:

A. adopt alternative chapter 13 means test form which has been devised by Judge Wedoff; OR

B. adopt an alternative chapter 13 means test form which is “neutral” and does not resolve the issue of statutory interpretation which was the subject of the debate among the Subcommittee members?

As to the Question No. 1, my recommendation to the Committee is that we take no action. If, however, the Advisory Committee believes that the chapter 13 means test form should be modified, my recommendation is that the Advisory Committee adopt a neutral form.

With respect to Question No. 2, if it is reached by the Advisory Committee, the Committee can choose from 3 different forms which have been prepared for its consideration:

1. NEUTRAL FORM #1: which I prepared and which provides for a determination of the minimum length of the plan, in a concise fashion, as an add-on, at the end of the existing CURRENT CHAPTER 13 FORM.

2. NEUTRAL FORM #2: which I prepared and which collects more detailed information and which makes the calculation of CMI and the determination of the minimum length of the plan a more integral part of the form.¹

¹ Neutral Form #2 has comparison markings because it was prepared as a revision to Judge Wedoff’s proposed revised chapter 13 means test form (J.WEDOFF CHAPTER 13 FORM), which itself displayed the changes he made from the CURRENT CHAPTER 13 FORM.

3. NEUTRAL FORM #3: a third alternative, which was prepared by Judge Wedoff.

If the Advisory Committee wishes to adopt a revised, “neutral” form, I recommend NEUTRAL FORM #1. However, depending upon how the Committee resolves certain “trade-offs”, it may conclude that NEUTRAL FORM #2 is the better alternative. If a neutral form is adopted, I recommend against the adoption of NEUTRAL FORM #3 because, in my opinion, it is not “neutral”; in its computation of CMI, it resolves the statutory issue in the same manner as the J.WEDOFF CHAPTER 13 FORM.

Below, I will amplify some of the points articulated in this Summary

Should the CURRENT CHAPTER 13 FORM Be Revised At All?

The Current Chapter 13 Form provides for a calculation of “current monthly income” (“CMI”) for purposes of determining how much money, if any, must be paid in a chapter 13 to plan to unsecured creditors. As Judge Wedoff explained in a memo he circulated to Subcommittee members on August 20, 2005:

Under § 1325(b)(1), if the trustee or the holder of an unsecured creditor objects to the debtor’s plan, it may only be confirmed . . . if the plan commits all of the debtor’s “disposable income” to paying unsecured creditors. Under §1325(b)(2), CMI is the base from which disposable income is calculated, and under § 1325(b)(3) if CMI exceeds the applicable state median income, the chapter 7 means test is used in determining expenses that are deducted from CMI in calculating “disposable income”.

In chapter 13 cases filed after October 17, 2005, CMI will used for a second purpose: to determine the minimum plan “commitment period” (i.e., the minimum length of the plan) in accordance with 11 U.S.C. §1325(b)(4). Under 11 U.S.C. §1325(b)(4), if the “current monthly

income” of “the debtor and the debtor’s spouse combined” is equal or greater than the median family income for the applicable state and household size, the plan must be 5 years; otherwise, the plan length may be 3 years.

The issue we need to consider first is the standard we should use for deciding whether the CURRENT CHAPTER 13 FORM should be modified at all. In light of the fact that we have already submitted the form to the Judicial Conference, a fair question is whether we should return to the Judicial Conference with a change in the interim form unless the form is incorrect or inconsistent with the statute. If we employ this standard, there is no reason to modify the form. As explained in the Summary above, there is a consensus that the form is accurate in its methodology for determining CMI for purposes of determining disposable income and in its methodology for determining disposable income.

We might employ a less stringent threshold for modifying the form, something in the nature of “a necessary improvement which would substantially enhance implementation of the Act”. Under this standard, again, there is no reason to modify the CURRENT CHAPTER 13 FORM.

Nothing in the statute requires the form to determine the commitment period. If my construction of the statute is correct, the CMI methodology in the CURRENT CHAPTER 13 FORM also happens to determine CMI for purposes of determining the commitment period, although the form is silent, and therefore, neutral on the question. If this form were to be used and, in a particular case, the UST or chapter 13 trustee believed that additional income should be considered in the determination, the procedural rules and the realities of chapter 13 practice would make it simple enough for the additional information to be obtained so that the legal

dispute could be presented to the court. Therefore, I do not believe that, for the chapter 13 system to function, it is “necessary” that the form even address the commitment period issue.

The Application of §1325(b)(4) to Married Debtors Not Filing Jointly

If the Committee believes that the CURRENT CHAPTER 13 FORM should be modified to provide for the determination of the commitment period, it must consider the issue of statutory construction which was debated by the Subcommittee.

The issue of statutory construction arises in cases in which a debtor is married but the debtor’s spouse is not a joint debtor. In such cases, there is no disagreement among the Committee members that any income earned by a non-debtor spouse which is not contributed to a debtor’s household is **not** counted in computing CMI for purposes of determining disposable income under §1325(b)(2) and (3). Thus, for example, if a debtor is separated from his/her spouse and does not received any money from the spouse, the spouse’s income is not counted. Or, whether or not a debtor is separated from his non-filing spouse, if the non-filing spouse does not contribute all of his/her income to the household,² only the amount contributed is counted.³

Judge Wedoff believes that § 1325(b)(4) requires a debtor to compute CMI for purposes of determining the commitment period by combining the CMI of the debtor and the non-debtor spouse regardless whether the income of the non-debtor spouse is actually contributed to the

² This is not infrequent, especially in households involving second marriages or marriages later in life.

³ Thus, in the CURRENT CHAPTER 13 FORM, the form requires disclosure of income in Column A of Lines 2-9 and does not require Column B to be completed. To the extent that the non-debtor spouse does contribute to the household, that income is captured on Line 7 of the form.

household of the debtor. Judge Wedoff has written a separate memo explaining in detail his reasoning, but his conclusion stems primarily from the fact that § 1325(b)(4) refers to “the current monthly income of the debtor and the debtor’s spouse combined”. By focusing on the words “and the debtor’s spouse combined”, Judge Wedoff concludes that all of the spouse’s income must be considered.

In my view, the primary flaw with this reading of the statute is that it is in direct conflict with the plain language of §101(10A), which defines CMI as “. . . the average monthly income from all sources that the debtor receives (or in a joint case the debtor and the debtor’s spouse receive)” (underscoring and italics added). Section 101(10A) does not refer to any income received by a non-debtor as CMI and I do not believe that it is possible to read this definition to mean that CMI can ever include the income of a non-debtor or, in fact, any income that is not actually received by the debtor.

Judge Wedoff’s primary response to the plain language of §101A(10A) is that, in his view, excluding the income of the non-debtor spouse from the computation of CMI for purposes of §1325(b)(4) renders the words “and the debtor’s spouse combined” surplusage in §1325(b)(4). However, there is a perfectly plausible reason why Congress would have used the wording that it did, consistent with §101(10A). The words “current income of the debtor and the debtor’s spouse combined” in §1325(b)(4) can easily be found to refer to situations where the debtor and his spouse file separate bankruptcy cases in order to avoid the mean test thresholds. In such a situation, the income of the spouse who is a non-debtor in one case, but is a debtor in another case would fall within the definition of CMI. Thus, by combining such incomes for mean test threshold purposes, Congress prevented debtors from manipulating the Code with multiple

bankruptcy filings to avoid the threshold determination of §1325(b)(4).⁴

To sum up, if I were to condense my argument on the issue to 4 points, they would be:

(1) §101(10A) refers to CMI as being the income “of the debtor” and requires that the income be “received”. There is no valid reason why the language in other sections have primacy over the plain language of the definitional section of the Code.

(2) A construction of the statute that creates the concept of CMI of a non-debtor is inconsistent with and reads additional words into §101(10A) that are not there, by making it mean “of the debtor and the debtor’s non-debtor spouse for certain purposes”.

(3) The words “current income of the debtor and the debtor’s spouse combined” in §1325(b)(4) can easily be found to refer to situations where the debtor and his spouse file separate bankruptcy cases in order to avoid the mean test thresholds. Thus, by combining such incomes for mean test threshold purposes, Congress prevented debtors from manipulating the Code to avoid the thresholds.

(4) The construction set forth in (3) above gives a rational meaning and purpose to the words in §1325(b)(4), avoids an inconsistency with the plain language of §101(10A) and avoids the obvious negative policy consequences which flow from imposing

⁴ Incidentally, the same legal analysis would apply under §707(b)(7), which compares CMI to median family income for purposes of determining whether the debtor is in the abuse “safe harbor” or has to provide a full means test analysis. In the chapter 7 form, this issue within the Subcommittee and a form was reported and adopted by the full Advisory Committee which does “count” the income of the non-debtor spouse for purposes of the §707(b)(7) threshold. However, the Committee should be aware that the decision to include a non-debtor spouse’s income in the §707(b)(7) analysis was controversial. I believe that the income should not be counted unless it is contributed to the debtor’s household. I ceded the issue in large part because consequences are relatively minor under §707(b) and in the interest of providing consensus on as many issues as possible. By comparison, the stakes under §1325(b)(4) are far more substantial. If you count the income of the separated spouse in chapter 7, generally it means only that the debtor will have to fill out the long version of the means test and almost all such debtors will pass the means test. The consequences under §1325(b)(4) are more substantial, involving real dollars as it can impact whether a person whose disposable income is then calculated under §1325(b)(3) (without counting the phantom income) has to pay an additional two years of payments under the plan. I see this as an irrational outcome which Congress could not have intended and which is inconsistent with the plain language of §101(10A).

adverse consequences on a debtor based on income of a non-debtor spouse that is not available to the debtor.

The Neutral Form Alternatives

In the event that the Committee concludes that the CURRENT CHAPTER 13 FORM should be revised to provide for the determination of the commitment period without taking a position on the legal issue under §1325(b)(4), I have prepared two alternative forms for the Committee's consideration: NEUTRAL FORM #1 and NEUTRAL FORM #2.

NEUTRAL FORM #1 is modeled on the method that the Advisory Committee used to resolve the disputed issue concerning the treatment of unemployment compensation income. Since there may be a question whether it is a Social Security benefit and therefore, whether it is excluded from CMI, Line 8 of the CURRENT CHAPTER 13 FORM requires the disclosure of the amount on the form but does not compel the debtor to include the amount in the computation of CMI.

In adding a determination of the commitment period to the CURRENT CHAPTER 13 FORM, NEUTRAL FORM makes only a minimal change in the form. It adds a new Part VI which requires the debtor to report the income of the non-debtor spouse using the same methodology as for the CMI of a debtor. It then permits the debtor to take the position that only the income of the non-debtor which was contributed to the debtor's household is counted for purposes of computing CMI and determining the commitment period. Therefore, in this form, all of the information is provided to a chapter 13 trustee or UST who may disagree with the debtor and believe that all of the non-debtor's income should be counted (presumably, because it brings the CMI above the applicable median income level) and that the debtor's plan must extend from

3 years to 5 years.

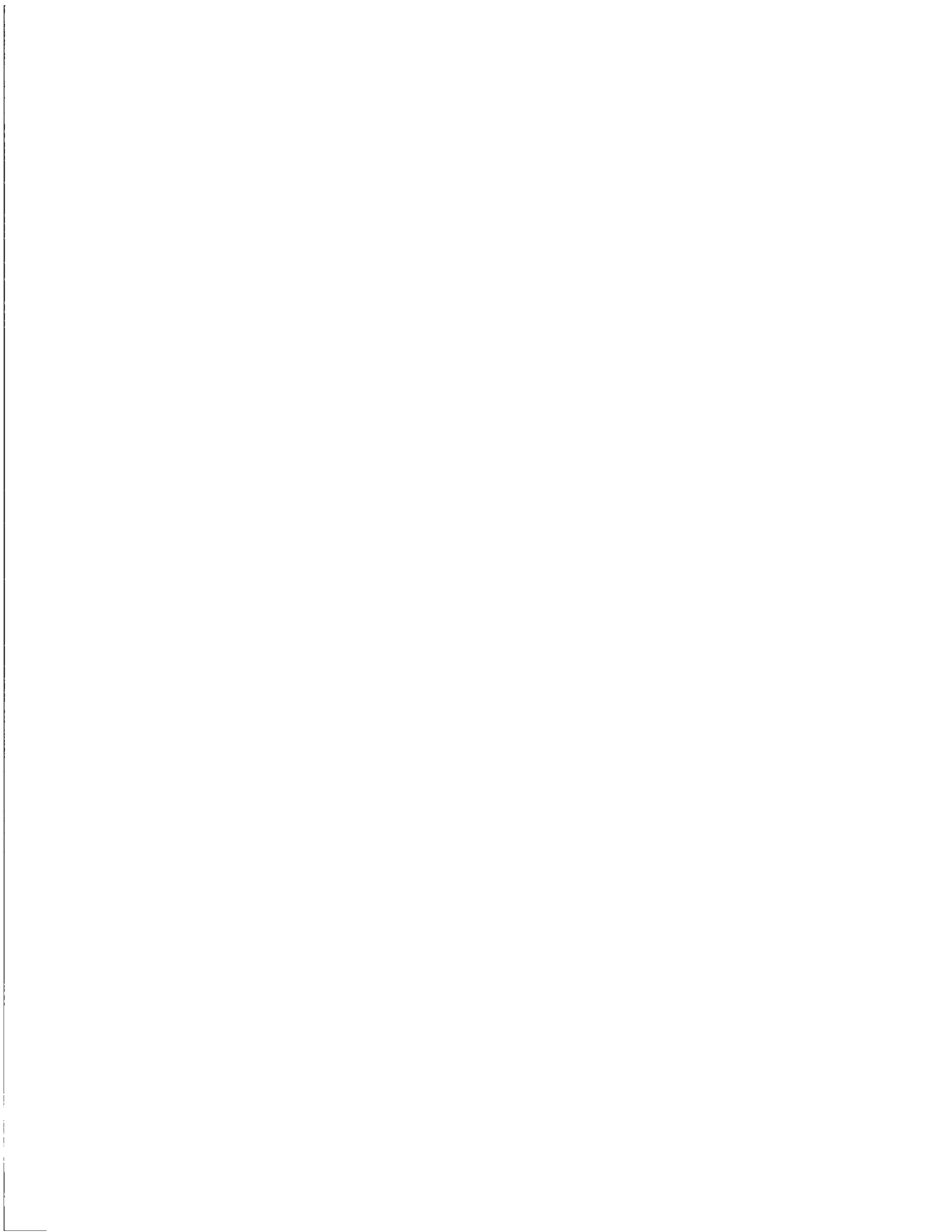
In NEUTRAL FORM #1, all of the income of the non-debtor is disclosed using the CMI methodology, but only the “bottom-line” income amount is disclosed. None of the component parts of CMI are disclosed. Compare CURRENT CHAPTER 13 FORM, Lines 2-9.

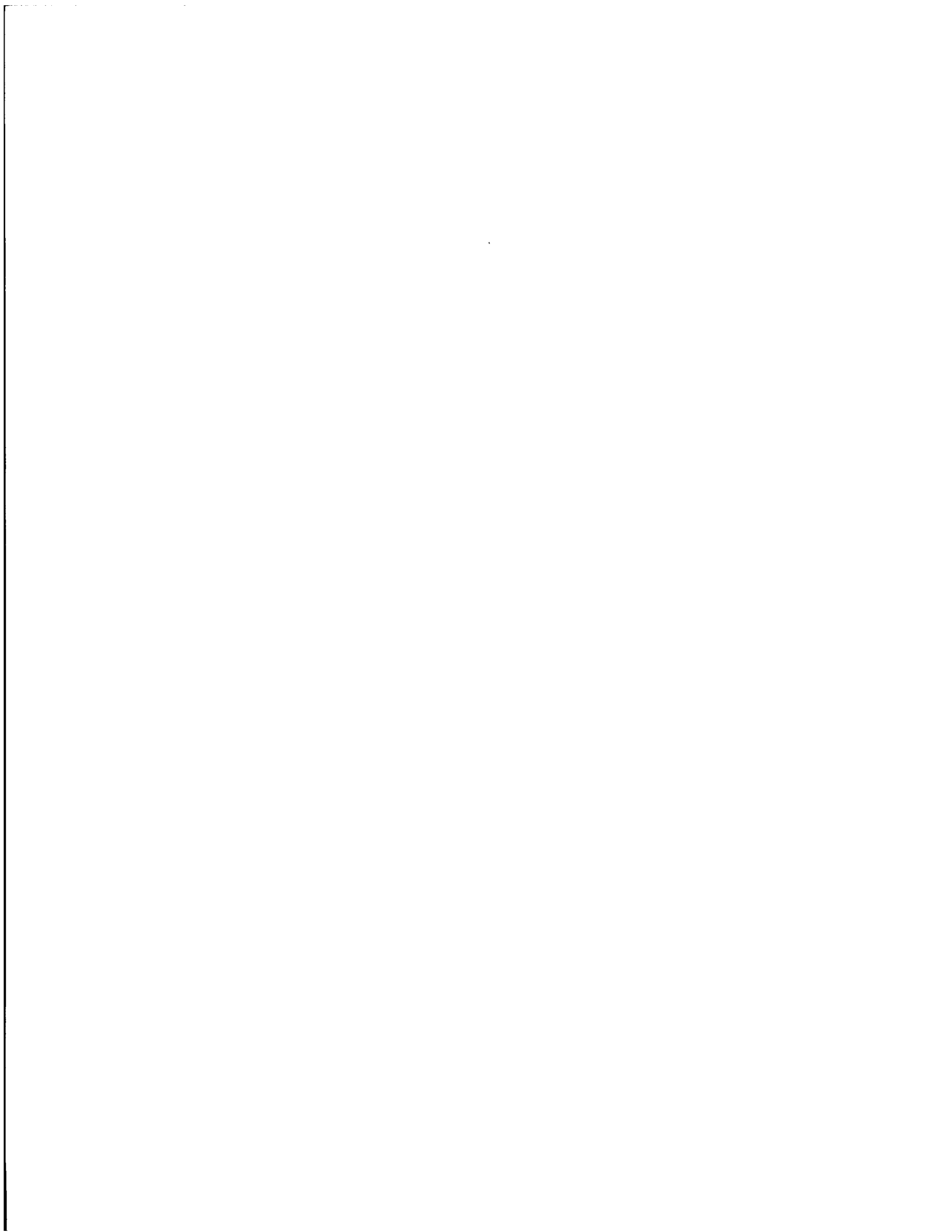
The Advisory Committee may conclude that it is preferable for a neutral form to require the disclosure of all of the non-debtor’s sources of income in the same manner and with the same level of detail as required by the debtor. Consequently, I have prepared NEUTRAL FORM #2, which requires the disclosure of that information. The trade-off, however, is that in order to require the disclosure of this information, it was necessary to more substantially revise the CURRENT CHAPTER 13 FORM. Also, the instructions required to make all of the adjustments necessary for the application of the proper methodology for computing CMI for the different purposes are necessarily more complicated. Nevertheless, the Committee may decide that the benefits of capturing the additional information outweigh the detriment.

Finally, Judge Wedoff has prepared an alternative neutral form, NEUTRAL FORM #3. If the Committee adopts a neutral form, I recommend that either NEUTRAL FORM #1 or NEUTRAL FORM #2 be adopted, rather than NEUTRAL FORM #3, primarily because NEUTRAL FORM #3 is not truly neutral.

NEUTRAL FORM #3, like NEUTRAL FORM #2, collects all of the non-debtor spouse’s income information using the CMI methodology. However, it then labels that income “current monthly income” without accounting for the possibility that the debtor may assert that the total amount of the non-debtor spouse’s income is not CMI if it includes income not contributed to the debtor’s household. See Lines 10 and 11 of NEUTRAL FORM #3. Labeling a computation that

includes income of a non-debtor spouse which may not contributed to the household as CMI is not a neutral formulation.





[NEUTRAL FORM #1]

In re _____
Debtor(s)

Case Number: _____
(If known)

<p>Check the boxes as directed in Lines 14 and 56 of this statement.</p> <p><input type="checkbox"/> Applicable commitment period of 3 years</p> <p><input type="checkbox"/> Applicable commitment period of 5 years</p> <p><input type="checkbox"/> Disposable income determined under § 1325(b)(3)</p> <p><input type="checkbox"/> Disposable income not determined under §1325(b)(3)</p>

**STATEMENT OF CURRENT MONTHLY INCOME AND
DISPOSABLE INCOME CALCULATION**
FOR USE IN CHAPTER 13 ONLY ALTERNATE VERSION

In addition to Schedules I and J, this statement must be completed by every individual Chapter 13 debtor, whether or not filing jointly. Joint debtors may complete one statement only.

Part I. CALCULATION OF CURRENT MONTHLY INCOME				Column A Debtor's Income	Column B Spouse's Income									
1	<p>Marital/filing status. Check the box that applies and complete the balance of this part of this statement as directed.</p> <p>a. <input type="checkbox"/> Unmarried. Complete only Column A ("Debtor's Income") for Lines 2-10.</p> <p>b. <input type="checkbox"/> Married, not filing jointly. Complete only Column A ("Debtor's Income") for Lines 2-10.</p> <p>c. <input type="checkbox"/> Married, filing jointly. Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 2-10.</p> <p>All figures must reflect average monthly income for the six calendar months prior to filing the bankruptcy case, ending on the last day of the month before the filing. If you received different amounts of income during these six months, you must total the amounts received during the six months, divide this total by six, and enter the result on the appropriate line.</p>													
2	Gross wages, salary, tips, bonuses, overtime, commissions.			\$	\$									
3	<p>Income from the operation of a business, profession or farm. Subtract Line b from Line a and enter the difference on Line 3. Do not enter a number less than zero. Do not include any part of the business expenses entered on Line b as a deduction in Part III.</p> <table border="1"> <tr> <td>a.</td> <td>Gross receipts</td> <td>\$</td> </tr> <tr> <td>b.</td> <td>Ordinary and necessary business expenses</td> <td>\$</td> </tr> <tr> <td>c.</td> <td>Business income</td> <td>Subtract Line b from Line a</td> </tr> </table>			a.	Gross receipts	\$	b.	Ordinary and necessary business expenses	\$	c.	Business income	Subtract Line b from Line a	\$	\$
a.	Gross receipts	\$												
b.	Ordinary and necessary business expenses	\$												
c.	Business income	Subtract Line b from Line a												
4	<p>Rent and other real property income. Subtract Line b from Line a and enter the difference on Line 4. Do not enter a number less than zero. Do not include any part of the operating expenses entered on Line b as a deduction in Part III.</p> <table border="1"> <tr> <td>a.</td> <td>Gross receipts</td> <td>\$</td> </tr> <tr> <td>b.</td> <td>Ordinary and necessary operating expenses</td> <td>\$</td> </tr> <tr> <td>c.</td> <td>Rental income</td> <td>Subtract Line b from Line a</td> </tr> </table>			a.	Gross receipts	\$	b.	Ordinary and necessary operating expenses	\$	c.	Rental income	Subtract Line b from Line a	\$	\$
a.	Gross receipts	\$												
b.	Ordinary and necessary operating expenses	\$												
c.	Rental income	Subtract Line b from Line a												
5	Interest, dividends and royalties.			\$	\$									
6	Pension and retirement income.			\$	\$									
7	Regular contributions to the household expenses of the debtor or the debtor's dependents, including child or spousal support. Do not include contributions from the debtor's spouse if Column B is completed.			\$	\$									
8	<p>Unemployment compensation. Enter the amount in Column A and, if applicable, Column B. However, if you contend that unemployment compensation received by you or your spouse was a benefit under the Social Security Act, do not list the amount of such compensation in Column A or B, but instead state the amount in the space below:</p> <table border="1"> <tr> <td>Unemployment compensation claimed to be a benefit under the Social Security Act</td> <td>Debtor \$ _____</td> <td>Spouse \$ _____</td> </tr> </table>			Unemployment compensation claimed to be a benefit under the Social Security Act	Debtor \$ _____	Spouse \$ _____	\$	\$						
Unemployment compensation claimed to be a benefit under the Social Security Act	Debtor \$ _____	Spouse \$ _____												
9	<p>Income from all other sources. Specify source and amount. If necessary, list additional sources on a separate page. Total and enter on Line 9. Do not include any benefits received under the Social Security Act or payments received as a victim of a war crime, crime against humanity, or as a victim of international or domestic terrorism.</p> <table border="1"> <tr> <td>a.</td> <td></td> <td>\$</td> </tr> <tr> <td>b.</td> <td></td> <td>\$</td> </tr> </table>			a.		\$	b.		\$	\$	\$			
a.		\$												
b.		\$												

10	Subtotal of current monthly income. Add Lines 2 thru 9 in Column A, and, if Column B is completed, add Lines 2 through 9 in Column B. Enter the total(s).	\$	\$
11	Total current monthly income. If Column B has been completed, add Line 10, Column A to Line 10, Column B, and enter the total. If Column B has not been completed, enter the amount from Line 10, Column A.	\$	

Part II. APPLICATION OF § 1325(b)(3)			
12	Annualized current monthly income. Multiply the amount from Line 11 by the number 12 and enter the result.	\$	
13	Applicable median family income. Enter the median family income for applicable state and household size. (This information is available by family size at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) a. Enter debtor's state of residence: _____ b. Enter debtor's household size: _____	\$	
14	Application of § 1325(b)(3). Check the applicable box and proceed as directed. <input type="checkbox"/> The amount on Line 12 is less than or equal to the amount on Line 13. Check the box at the top of page 1 of this statement that states "Disposable income not determined under § 1325(b)(3)" and complete Parts VI and VII of this statement; do not complete Parts III, IV, or V. <input type="checkbox"/> The amount on Line 12 is more than the amount on Line 13. Check the box at the top of page 1 of this statement that states "Disposable income determined under § 1325(b)(3)" and complete the remaining parts of this statement.		

Complete Parts III, IV and V of this statement only if required. (See Line 14.)

Part III. CALCULATION OF DEDUCTIONS ALLOWED UNDER § 707(b)(2)												
Subpart A: Deductions under Standards of the Internal Revenue Service (IRS)												
15	National Standards: food, clothing, household supplies, personal care, and miscellaneous. Enter the "Total" amount from IRS National Standards for Allowable Living Expenses for the applicable family size and income level. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)		\$									
16	Local Standards: housing and utilities; utilities/maintenance expense. Enter the amount of the IRS Housing and Utilities Standards; Utilities/Maintenance Expense for the applicable county and family size. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)		\$									
17	Local Standards: housing and utilities; mortgage/rental expense. Enter, in Line a below, the amount of the IRS Housing and Utilities Standards; Mortgage/Rental Expense for your county and family size (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter on Line b the total of the Average Monthly Payments for any debts secured by your home, as stated in Line 38; subtract Line b from Line a and enter the result in Line 17. Do not enter an amount less than zero. <table border="1" style="width: 100%; margin-top: 5px;"> <tr> <td style="width: 5%;">a.</td> <td style="width: 60%;">IRS Housing and Utilities Standards; Mortgage/Rental Expense</td> <td style="width: 35%;">\$</td> </tr> <tr> <td>b.</td> <td>Average Monthly Payment for any debts secured by your home, if any, as stated in Line 38</td> <td>\$</td> </tr> <tr> <td>c.</td> <td>Net mortgage/rental expense</td> <td>Subtract Line b from Line a.</td> </tr> </table>		a.	IRS Housing and Utilities Standards; Mortgage/Rental Expense	\$	b.	Average Monthly Payment for any debts secured by your home, if any, as stated in Line 38	\$	c.	Net mortgage/rental expense	Subtract Line b from Line a.	
a.	IRS Housing and Utilities Standards; Mortgage/Rental Expense	\$										
b.	Average Monthly Payment for any debts secured by your home, if any, as stated in Line 38	\$										
c.	Net mortgage/rental expense	Subtract Line b from Line a.										
18	Local Standards: transportation; vehicle operation/public transportation expense. You are entitled to an expense allowance in this category regardless of whether you pay the expenses of operating a vehicle and regardless of whether you use public transportation. Check the number of vehicles for which you pay the operating expenses or for which the operating expenses are included as a contribution to your household expenses in Line 7. <input type="checkbox"/> 0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 or more. Enter the amount from IRS Transportation Standards, Operating Costs & Public Transportation Costs for the applicable number of vehicles in the applicable Metropolitan Statistical Area or Census Region. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)		\$									
19	Local Standards: transportation ownership/lease expense; Vehicle 1. Check the number of vehicles for which you claim an ownership/lease expense. (You may not claim an ownership/lease expense for more than two vehicles.) <input type="checkbox"/> 1 <input type="checkbox"/> 2 or more. Enter, in Line a below, the amount of the IRS Transportation Standards, Ownership Costs, First Car (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 1, as stated in Line 38; subtract Line b from		\$									

Line a and enter the result in Line 19. Do not enter an amount less than zero.		
a.	IRS Transportation Standards, Ownership Costs, First Car	\$
b.	Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 38	\$
c.	Net ownership/lease expense for Vehicle 1	Subtract Line b from Line a.
20	Local Standards: transportation ownership/lease expense; Vehicle 2. Complete this Line only if you checked the "2 or more" Box in Line 20. Enter, in Line a below, the amount of the IRS Transportation Standards, Ownership Costs, Second Car (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 2, as stated in Line 38; subtract Line b from Line a and enter the result in Line 20. Do not enter an amount less than zero.	
a.	IRS Transportation Standards, Ownership Costs, Second Car	\$
b.	Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 38	\$
c.	Net ownership/lease expense for Vehicle 2	Subtract Line b from Line a.
		\$
21	Other Necessary Expenses: taxes. Enter the total average monthly expense that you actually incur for all federal, state and local taxes, other than real estate and sales taxes, such as income taxes, self-employment taxes, social security taxes, and Medicare taxes. Do not include real estate or sales taxes.	
		\$
22	Other Necessary Expenses: mandatory payroll deductions. Enter the total average monthly payroll deductions that are required for your employment, such as mandatory retirement contributions, union dues, and uniform costs. Do not include discretionary amounts, such as non-mandatory 401(k) contributions.	
		\$
23	Other Necessary Expenses: life insurance. Enter average monthly premiums that you actually pay for term life insurance for yourself. Do not include premiums for insurance on your dependents, for whole life or for any other form of insurance.	
		\$
24	Other Necessary Expenses: court-ordered payments. Enter the total monthly amount that you are required to pay pursuant to court order, such as spousal or child support payments. Do not include payments on past due support obligations included in Line 40.	
		\$
25	Other Necessary Expenses: education for employment or for a physically or mentally challenged child. Enter the total monthly amount that you actually expend for education that is a condition of employment and for education that is required for a physically or mentally challenged dependent child for whom no public education providing similar services is available.	
		\$
26	Other Necessary Expenses: childcare. Enter the average monthly amount that you actually expend on childcare. Do not include payments made for children's education.	
		\$
27	Other Necessary Expenses: health care. Enter the average monthly amount that you actually expend on health care expenses that are not reimbursed by insurance or paid by a health savings account. Do not include payments for health insurance listed in Line 30.	
		\$
28	Other Necessary Expenses: telecommunication services. Enter the average monthly expenses that you actually pay for cell phones, pagers, call waiting, caller identification, special long distance or internet services necessary for the health and welfare of you or your dependents. Do not include any amount previously deducted.	
		\$
29	Total Expenses Allowed under IRS Standards. Enter the total of Lines 15 through 28	
		\$
Subpart B: Additional Expense Deductions under § 707(b) Note: Do not include any expenses that you have listed in Lines 15-28		
30	Health Insurance, Disability Insurance and Health Savings Account Expenses. List the average monthly amounts that you actually expend in each of the following categories and enter the total.	
a.	Health Insurance	\$
b.	Disability Insurance	\$
c.	Health Savings Account	\$
	Total: Add Lines a, b and c	\$
31	Continued contributions to the care of household or family members. Enter the actual monthly expenses that you will continue to pay for the reasonable and necessary care and support of an elderly, chronically ill, or disabled member of your household or member of your immediate family who is unable to pay for such expenses. Do not include payments listed in Line 25.	
		\$

32	Protection against family violence. Enter any average monthly expenses that you actually incurred to maintain the safety of your family under the Family Violence Prevention and Services Act or other applicable federal law.	\$
33	Home energy costs in excess of the allowance specified by the IRS Local Standards. Enter the average monthly amount by which your home energy costs exceed the allowance in the IRS Local Standards for Housing and Utilities. You must provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary.	\$
34	Education expenses for dependent children under 18. Enter the average monthly expenses that you actually incur, not to exceed \$125 per child, in providing elementary and secondary education for your dependent children less than 18 years of age. You must provide your case trustee with documentation demonstrating that the amount claimed is reasonable and necessary and not already accounted for in the IRS Standards.	\$
35	Additional food and clothing expense. Enter the average monthly amount by which your food and clothing expenses exceed the combined allowances for food and apparel in the IRS National Standards, not to exceed five percent of those combined allowances. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) You must provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary.	\$
36	Continued charitable contributions. Enter the amount that you will continue to contribute in the form of cash or financial instruments to a charitable organization as defined in 26 U.S.C. § 170(c)(1)-(2).	\$
37	Total Additional Expense Deductions under § 707(b). Enter the total of Lines 30 through 36.	\$

Subpart C: Deductions for Debt Payment

38	<p>Future payments on secured claims. For each of your debts that is secured by an interest in property that you own, list the name of creditor, identify the property securing the debt, and state the Average Monthly Payment. The Average Monthly Payment is the total of all amounts contractually due to each Secured Creditor in the 60 months following the filing of the bankruptcy case, divided by 60. If necessary, list additional entries on a separate page. Do not include items you have previously deducted, such as insurance and real estate taxes.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 30%;">Name of Creditor</th> <th style="width: 35%;">Property Securing the Debt</th> <th style="width: 30%;">60-month Average Payment</th> </tr> </thead> <tbody> <tr> <td>a.</td> <td></td> <td></td> <td>\$</td> </tr> <tr> <td>b.</td> <td></td> <td></td> <td>\$</td> </tr> <tr> <td>c.</td> <td></td> <td></td> <td>\$</td> </tr> <tr> <td colspan="3"></td> <td>Total: Add Lines a, b and c</td> </tr> </tbody> </table>		Name of Creditor	Property Securing the Debt	60-month Average Payment	a.			\$	b.			\$	c.			\$				Total: Add Lines a, b and c	\$
	Name of Creditor	Property Securing the Debt	60-month Average Payment																			
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c.			\$																			
			Total: Add Lines a, b and c																			
39	<p>Past due payments on secured claims. If any of the debts listed in Line 38 are in default, and the property securing the debt is necessary for your support or the support of your dependents, you may include in your deductions 1/60th of the amount that you must pay the creditor as a result of the default (the "cure amount") in order to maintain possession of the property. List any such amounts in the following chart and enter the total. If necessary, list additional entries on a separate page.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 30%;">Name of Creditor</th> <th style="width: 35%;">Property Securing the Debt in Default</th> <th style="width: 30%;">1/60th of the Cure Amount</th> </tr> </thead> <tbody> <tr> <td>a.</td> <td></td> <td></td> <td>\$</td> </tr> <tr> <td>b.</td> <td></td> <td></td> <td>\$</td> </tr> <tr> <td>c.</td> <td></td> <td></td> <td>\$</td> </tr> <tr> <td colspan="3"></td> <td>Total: Add Lines a, b and c</td> </tr> </tbody> </table>		Name of Creditor	Property Securing the Debt in Default	1/60th of the Cure Amount	a.			\$	b.			\$	c.			\$				Total: Add Lines a, b and c	\$
	Name of Creditor	Property Securing the Debt in Default	1/60th of the Cure Amount																			
a.			\$																			
b.			\$																			
c.			\$																			
			Total: Add Lines a, b and c																			
40	Payments on priority claims. Enter the total amount of all priority claims (including priority child support and alimony claims), divided by 60.	\$																				
41	<p>Chapter 13 administrative expenses. Multiply the amount in Line a by the amount in Line b, and enter the resulting administrative expense.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tbody> <tr> <td style="width: 5%;">a.</td> <td style="width: 60%;">Projected average monthly Chapter 13 plan payment.</td> <td style="width: 35%;">\$</td> </tr> <tr> <td>b.</td> <td>Current multiplier for your district as determined under schedules issued by the Executive Office for United States Trustees. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)</td> <td>x</td> </tr> <tr> <td>c.</td> <td>Average monthly administrative expense of Chapter 13 case</td> <td>Total: Multiply Lines a and b</td> </tr> </tbody> </table>	a.	Projected average monthly Chapter 13 plan payment.	\$	b.	Current multiplier for your district as determined under schedules issued by the Executive Office for United States Trustees. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)	x	c.	Average monthly administrative expense of Chapter 13 case	Total: Multiply Lines a and b	\$											
a.	Projected average monthly Chapter 13 plan payment.	\$																				
b.	Current multiplier for your district as determined under schedules issued by the Executive Office for United States Trustees. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)	x																				
c.	Average monthly administrative expense of Chapter 13 case	Total: Multiply Lines a and b																				
42	Total Deductions for Debt Payment. Enter the total of Lines 38 through 41.	\$																				

Subpart D: Total Deductions Allowed under § 707(b)(2)

43	Total of all deductions allowed under § 707(b)(2). Enter the total of Lines 29, 37, and 42.	\$
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Part IV. DETERMINATION OF DISPOSABLE INCOME UNDER § 1325(b)(2)

44	Total current monthly income. Enter the amount from Line 11.	\$
45	Support income. Enter the monthly average of any child support payments, foster care payments, or disability payments for a dependent child, included in Line 7, that you received in accordance with applicable nonbankruptcy law, to the extent reasonably necessary to be expended for such child.	\$
46	Qualified retirement deductions. Enter the monthly average of (a) all contributions or wage deductions made to qualified retirement plans, as specified in § 541(b)(7) and (b) all repayments of loans from retirement plans, as specified in § 362(b)(19).	\$
47	Total of all deductions allowed under § 707(b)(2). Enter the amount from Line 43.	\$
48	Total adjustments to determine disposable income. Add the amounts on Lines 45, 46, and 47 and enter the result.	\$
49	Monthly Disposable Income Under § 1325(b)(2). Subtract Line 48 from Line 44 and enter the result.	\$

Part V: ADDITIONAL EXPENSE CLAIMS

50	Other Expenses. List and describe any monthly expenses, not otherwise stated in this form, that are required for the health and welfare of you and your family and that you contend should be an additional deduction from your current monthly income under § 707(b)(2)(A)(ii)(I). If necessary, list additional sources on a separate page. All figures should reflect your average monthly expense for each item. Total the expenses.	
	Expense Description	Monthly Amount
	a.	\$
	b.	\$
	c.	\$
	Total: Add Lines a, b and c	\$

Part VI. CALCULATION OF § 1325(b)(4) COMMITMENT PERIOD

51	Debtor's current monthly income. Enter the amount from Line 11.	\$												
52	Disclosure of Income of Spouse if Debtor checked box at Line 1.b. If you are married and not filing jointly, provide the information requested below.													
	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:5%; text-align:center;">a.</td> <td style="width:60%;">Enter the average monthly income of your spouse computed using the method in Lines 2-10</td> <td style="width:15%; text-align:right;">\$</td> </tr> <tr> <td style="text-align:center;">b.</td> <td>Enter the amount of any income listed in Line a that was already listed in Lines 2-10</td> <td style="text-align:right;">\$</td> </tr> <tr> <td style="text-align:center;">c.</td> <td>Subtract Line b from Line a and enter the result</td> <td style="text-align:right;">\$</td> </tr> <tr> <td style="text-align:center;">d.</td> <td>Add the amounts entered in Line c and Line 51 and enter</td> <td style="text-align:right;">\$</td> </tr> </table>	a.	Enter the average monthly income of your spouse computed using the method in Lines 2-10	\$	b.	Enter the amount of any income listed in Line a that was already listed in Lines 2-10	\$	c.	Subtract Line b from Line a and enter the result	\$	d.	Add the amounts entered in Line c and Line 51 and enter	\$	
a.	Enter the average monthly income of your spouse computed using the method in Lines 2-10	\$												
b.	Enter the amount of any income listed in Line a that was already listed in Lines 2-10	\$												
c.	Subtract Line b from Line a and enter the result	\$												
d.	Add the amounts entered in Line c and Line 51 and enter	\$												
53	Current monthly income for § 1325(b)(4). If you checked the boxes at Lines 1.a or 1.c, enter the amount from Line 51. If you checked the box at Line 1.b and contends that current monthly income for § 1325(b)(4) does not include the amounts set forth in Line, 52.c, enter the amount from Line 51; otherwise, enter the amount from Line 52.d.	\$												
54	Annualized current monthly income for § 1325(b)(3). Multiply the amount from Line 53 by the number 12 and enter the result.													
55	Applicable median family income. Enter the amount from Line 13													
56	Application of § 1325(b)(4). Check the applicable box and proceed as directed.													
	<input type="checkbox"/> The amount on Line 54 is less than the amount on Line 55. Check the box at the top of page 1 of this statement that states "Applicable commitment period is 3 years" and complete Part VII of this statement. Do not complete Parts III, IV, V or VI.													
	<input type="checkbox"/> The amount on Line 54 is not less than the amount on Line 55. Check the box at the top													

of page 1 of this statement that states "Applicable commitment period is 5 years" .

Part VII: VERIFICATION

I declare under penalty of perjury that the information provided in this statement is true and correct. *(If this a joint case, both debtors must sign.)*

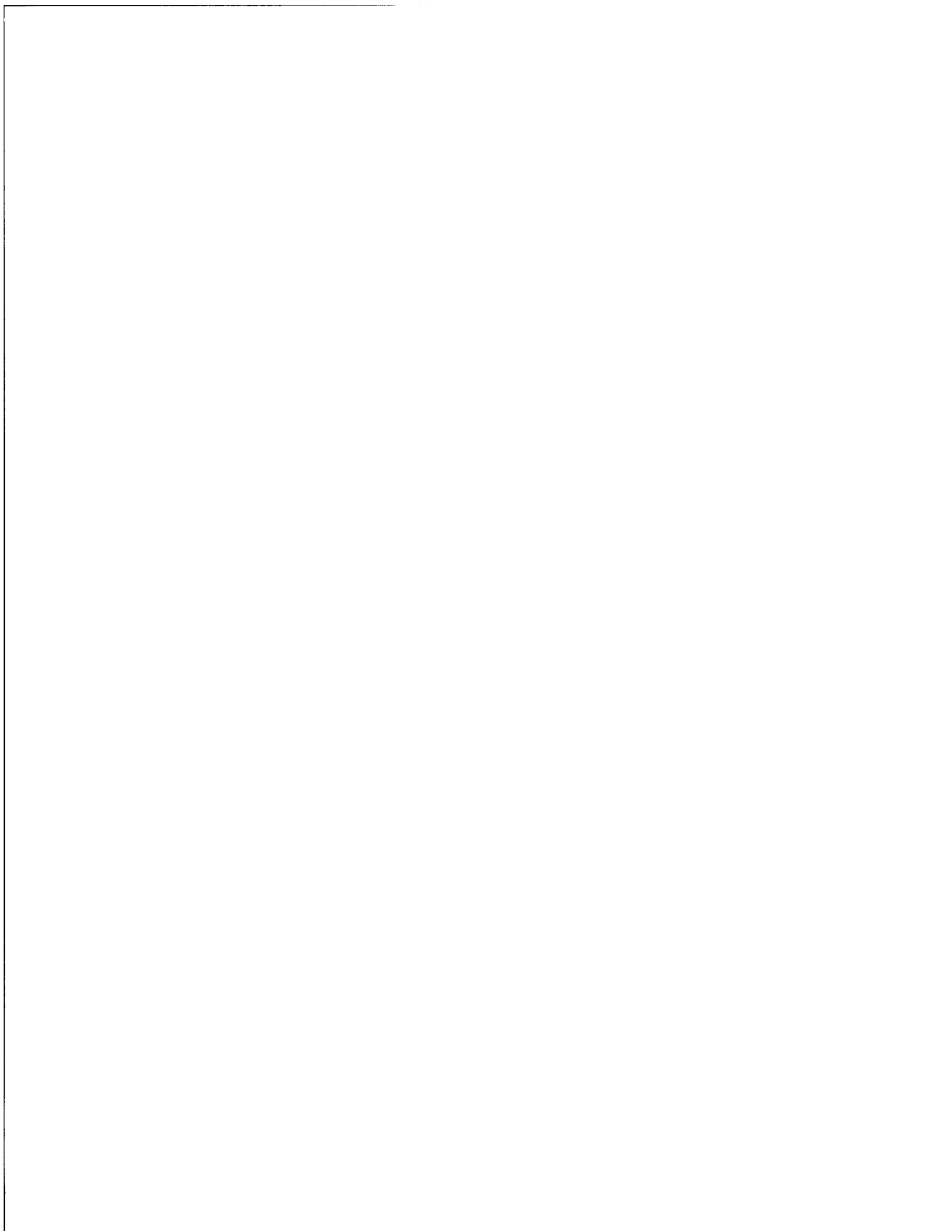
57

Date: _____

Signature: _____
(Debtor)

Date: _____

Signature: _____
(Joint Debtor, if any)



[NEUTRAL FORM #2]

In re _____
Debtor(s)

Case Number: _____
(If known)

Check the boxes as directed in Lines 15 and 21 of this statement.

Applicable commitment period of 3 years

Applicable commitment period of 5 years

Disposable income determined under § 1325(b)(3)

Disposable income not determined under §1325(b)(3)

**STATEMENT OF CURRENT MONTHLY INCOME
AND CALCULATION OF DISPOSABLE INCOME AND COMMITMENT PERIOD**
FOR USE IN CHAPTER 13

In addition to Schedules I and J, this statement must be completed by every individual Chapter 13 debtor, whether or not filing jointly. Joint debtors may complete one statement only.

Part I. CALCULATION OF CURRENT MONTHLY INCOME TO DETERMINE DISPOSABLE INCOME				Column A Debtor's Income	Column B Spouse's Income
1	<p>Marital/filing status. Check the box that applies and complete the balance of this part of this statement as directed.</p> <p>a. <input type="checkbox"/> Unmarried. Complete only Column A ("Debtor's Income") for Lines 2-10.</p> <p>b. <input type="checkbox"/> Married. Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 2-10.</p> <p>All figures must reflect average monthly income for the six calendar months prior to filing the bankruptcy case, ending on the last day of the month before the filing. If you received different amounts of income during these six months, you must total the amounts received during the six months, divide this total by six, and enter the result on the appropriate line.</p>				
2	Gross wages, salary, tips, bonuses, overtime, commissions.			\$	\$
3	<p>Income from the operation of a business, profession, or farm. Subtract Line b from Line a and enter the difference on Line 3. Do not enter a number less than zero. Do not include any part of the business expenses entered on Line b as a deduction in Part IV.</p>				
	a.	Gross receipts	\$		
	b.	Ordinary and necessary business expenses	\$		
	c.	Business income	Subtract Line b from Line a	\$	\$
4	<p>Rent and other real property income. Subtract Line b from Line a and enter the difference on Line 4. Do not enter a number less than zero. Do not include any part of the operating expenses entered on Line b as a deduction in Part IV.</p>				
	a.	Gross receipts	\$		
	b.	Ordinary and necessary operating expenses	\$		
	c.	Rental income	Subtract Line b from Line a	\$	\$
5	Interest, dividends, and royalties.			\$	\$
6	Pension and retirement income.			\$	\$
7	Regular contributions to the household expenses of the debtor or the debtor's dependents, including child or spousal support. Do not include contributions from the debtor's spouse.			\$	\$
8	<p>Unemployment compensation. Enter the amount in the appropriate column(s) of Line 8. However, if you contend that unemployment compensation received by you or your spouse was a benefit under the Social Security Act, do not list the amount of such compensation in Column A or B, but instead state the amount in the space below:</p>				
		Unemployment compensation claimed to be a benefit under the Social Security Act	Debtor \$ _____ Spouse \$ _____	\$	\$
9	<p>Income from all other sources. Specify source and amount. If necessary, list additional sources on a separate page. Total and enter on Line 9. Do not include any benefits received under the Social Security Act or payments received as a victim of a war crime, crime against humanity, or as a victim of international or domestic terrorism.</p>				
	a.		\$		
	b.		\$	\$	\$
10	<p>Income subtotals. Add Lines 2 thru 9 in Column A, and, if Column B is completed, add Lines 2 through 9 in Column B. Enter the total(s).</p>			\$	\$

11	Total income. If Column B has been completed, add Line 10, Column A to Line 10, Column B, and enter the total. If Column B has not been completed, enter the amount from Line 10, Column A.	\$
12	Marital adjustment for § 1325(b)(3). If you are married, but are not filing jointly with your spouse, enter the amount of the income listed in Line 10, Column B that was NOT regularly contributed to the household expenses of you or your dependents. If you are unmarried or married and filing jointly with your spouse, enter zero.	\$
13	Current monthly income for § 1325(b)(3). Subtract Line 12 from Line 11 and enter the result.	

Part II. APPLICATION OF § 1325(b)(3) FOR DETERMINING DISPOSABLE INCOME

14	Annualized current monthly income for § 1325(b)(3). Multiply the amount from Line 13 by the number 12 and enter the result.	\$
15	Applicable median family income. Enter the median family income for applicable state and household size. (This information is available by family size at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) a. Enter debtor's state of residence: _____ b. Enter debtor's household size: _____	\$
15	Application of § 1325(b)(3). Check the applicable box and proceed as directed. <input type="checkbox"/> The amount on Line 14 is more than the amount on Line 15. Check the box at the top of page 1 of this statement that states "Disposable income determined under § 1325(b)(3)" and complete the remaining parts of this statement. <input type="checkbox"/> The amount on Line 14 is not more than the amount on Line 15. Check the box at the top of page 1 of this statement that states "Disposable income not determined under § 1325(b)(3)" and complete Parts III and VII of this statement. Do not complete Parts IV, V, or VI.	

Part III. CALCULATION OF § 1325(b)(4) COMMITMENT PERIOD

16	Enter the amount from Line 11.	\$
17	Marital adjustment § 1325(b)(4). If you are married, but are not filing jointly with your spouse, AND if you contend that calculation of the commitment period under § 1325(b)(4) does not require inclusion of the monthly income of your spouse listed in Line 10, Column B that was NOT regularly contributed to the household expenses of you or your dependents, enter the amount of the income listed in Line 10, Column B that was NOT regularly contributed to the household expenses of you or your dependents. Otherwise, enter zero.	\$
18	Subtract Line 17 from Line 16 and enter the result.	
19	Annualized current monthly income for § 1325(b)(4). Multiply the amount from Line 18 by the number 12 and enter the result.	\$
20	Applicable median family income. Enter the amount from Line 15.	\$
21	Application of § 1325(b)(4). Check the applicable box and proceed as directed. <input type="checkbox"/> The amount on Line 19 is less than the amount on Line 20. Check the box at the top of page 1 of this statement that states "Applicable commitment period is 3 years" and complete Part VII of this statement. Do not complete Parts III, IV, V or VI. <input type="checkbox"/> The amount on Line 19 is not less than the amount on Line 20. Check the box at the top of page 1 of this statement that states "Applicable commitment period is 5 years" and continue with Part IV of this statement.	

Part IV. CALCULATION OF DEDUCTIONS ALLOWED UNDER § 707(b)(2)

Subpart A: Deductions under Standards of the Internal Revenue Service (IRS)

22	National Standards: food, clothing, household supplies, personal care, and miscellaneous. Enter the "Total" amount from IRS National Standards for Allowable Living Expenses for the applicable family size and income level. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)	\$
23	Local Standards: housing and utilities; utilities/maintenance expense. Enter the amount of the IRS Housing and Utilities Standards; Utilities/Maintenance Expense for the applicable county and family size. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)	\$

24	<p>Local Standards: housing and utilities; mortgage/rental expense. Enter, in Line a below, the amount of the IRS Housing and Utilities Standards; Mortgage/Rental Expense for your county and family size available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter on Line b the total of the Average Monthly Payments for any debts secured by your home, as stated in Line 45; subtract Line b from Line a and enter the result in Line 24. Do not enter an amount less than zero.</p> <table border="1" data-bbox="194 297 1339 446"> <tr> <td data-bbox="194 297 267 329">a.</td> <td data-bbox="267 297 974 329">IRS Housing and Utilities Standards; Mortgage/Rental Expense</td> <td data-bbox="974 297 1339 329">\$</td> </tr> <tr> <td data-bbox="194 329 267 404">b.</td> <td data-bbox="267 329 974 404">Average Monthly Payment for any debts secured by your home, if any, as stated in Line 45</td> <td data-bbox="974 329 1339 404">\$</td> </tr> <tr> <td data-bbox="194 404 267 446">c.</td> <td data-bbox="267 404 974 446">Net mortgage/rental expense</td> <td data-bbox="974 404 1339 446">Subtract Line b from Line a.</td> </tr> </table>	a.	IRS Housing and Utilities Standards; Mortgage/Rental Expense	\$	b.	Average Monthly Payment for any debts secured by your home, if any, as stated in Line 45	\$	c.	Net mortgage/rental expense	Subtract Line b from Line a.	
a.	IRS Housing and Utilities Standards; Mortgage/Rental Expense	\$									
b.	Average Monthly Payment for any debts secured by your home, if any, as stated in Line 45	\$									
c.	Net mortgage/rental expense	Subtract Line b from Line a.									
25	<p>Local Standards: transportation; vehicle operation/public transportation expense. You are entitled to an expense allowance in this category regardless of whether you pay the expenses of operating a vehicle and regardless of whether you use public transportation.</p> <p>Check the number of vehicles for which you pay the operating expenses or for which the operating expenses are included as a contribution to your household expenses in Line 7. <input type="checkbox"/> 0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 or more. Enter the amount from IRS Transportation Standards, Operating Costs & Public Transportation Costs for the applicable number of vehicles in the applicable Metropolitan Statistical Area or Census Region. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)</p>	\$									
26	<p>Local Standards: transportation ownership/lease expense; Vehicle 1. Check the number of vehicles for which you claim an ownership/lease expense. (You may not claim an ownership/lease expense for more than two vehicles.) <input type="checkbox"/> 1 <input type="checkbox"/> 2 or more.</p> <p>Enter, in Line a below, the amount of the IRS Transportation Standards, Ownership Costs, First Car (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 1, as stated in Line 45; subtract Line b from Line a and enter the result in Line 26. Do not enter an amount less than zero.</p> <table border="1" data-bbox="194 925 1339 1085"> <tr> <td data-bbox="194 925 267 968">a.</td> <td data-bbox="267 925 974 968">IRS Transportation Standards, Ownership Costs, First Car</td> <td data-bbox="974 925 1339 968">\$</td> </tr> <tr> <td data-bbox="194 968 267 1042">b.</td> <td data-bbox="267 968 974 1042">Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 45</td> <td data-bbox="974 968 1339 1042">\$</td> </tr> <tr> <td data-bbox="194 1042 267 1085">c.</td> <td data-bbox="267 1042 974 1085">Net ownership/lease expense for Vehicle 1</td> <td data-bbox="974 1042 1339 1085">Subtract Line b from Line a.</td> </tr> </table>	a.	IRS Transportation Standards, Ownership Costs, First Car	\$	b.	Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 45	\$	c.	Net ownership/lease expense for Vehicle 1	Subtract Line b from Line a.	\$
a.	IRS Transportation Standards, Ownership Costs, First Car	\$									
b.	Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 45	\$									
c.	Net ownership/lease expense for Vehicle 1	Subtract Line b from Line a.									
27	<p>Local Standards: transportation ownership/lease expense; Vehicle 2. Complete this Line only if you checked the "2 or more" Box in Line 25.</p> <p>Enter, in Line a below, the amount of the IRS Transportation Standards, Ownership Costs, Second Car (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 2, as stated in Line 45; subtract Line b from Line a and enter the result in Line 27. Do not enter an amount less than zero.</p> <table border="1" data-bbox="194 1276 1339 1436"> <tr> <td data-bbox="194 1276 267 1319">a.</td> <td data-bbox="267 1276 974 1319">IRS Transportation Standards, Ownership Costs, Second Car</td> <td data-bbox="974 1276 1339 1319">\$</td> </tr> <tr> <td data-bbox="194 1319 267 1393">b.</td> <td data-bbox="267 1319 974 1393">Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 45</td> <td data-bbox="974 1319 1339 1393">\$</td> </tr> <tr> <td data-bbox="194 1393 267 1436">c.</td> <td data-bbox="267 1393 974 1436">Net ownership/lease expense for Vehicle 2</td> <td data-bbox="974 1393 1339 1436">Subtract Line b from Line a.</td> </tr> </table>	a.	IRS Transportation Standards, Ownership Costs, Second Car	\$	b.	Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 45	\$	c.	Net ownership/lease expense for Vehicle 2	Subtract Line b from Line a.	\$
a.	IRS Transportation Standards, Ownership Costs, Second Car	\$									
b.	Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 45	\$									
c.	Net ownership/lease expense for Vehicle 2	Subtract Line b from Line a.									
28	<p>Other Necessary Expenses: taxes. Enter the total average monthly expense that you actually incur for all federal, state, and local taxes, other than real estate and sales taxes, such as income taxes, self employment taxes, social security taxes, and Medicare taxes. Do not include real estate or sales taxes.</p>	\$									
29	<p>Other Necessary Expenses: mandatory payroll deductions. Enter the total average monthly payroll deductions that are required for your employment, such as mandatory retirement contributions, union dues, and uniform costs. Do not include discretionary amounts, such as non-mandatory 401(k) contributions.</p>	\$									
30	<p>Other Necessary Expenses: life insurance. Enter average monthly premiums that you actually pay for term life insurance for yourself. Do not include premiums for insurance on your dependents, for whole life or for any other form of insurance.</p>	\$									

31	Other Necessary Expenses: court-ordered payments. Enter the total monthly amount that you are required to pay pursuant to court order, such as spousal or child support payments. Do not include payments on past due support obligations included in Line 47.	\$
32	Other Necessary Expenses: education for employment or for a physically or mentally challenged child. Enter the total monthly amount that you actually expend for education that is a condition of employment and for education that is required for a physically or mentally challenged dependent child for whom no public education providing similar services is available.	

33	Other Necessary Expenses: childcare. Enter the average monthly amount that you actually expend on childcare. Do not include payments made for children's education.	\$
34	Other Necessary Expenses: health care. Enter the average monthly amount that you actually expend on health care expenses that are not reimbursed by insurance or paid by a health savings account. Do not include payments for health insurance listed in Line 37.	\$
35	Other Necessary Expenses: telecommunication services. Enter the average monthly expenses that you actually pay for cell phones, pagers, call waiting, caller identification, special long distance, or internet services necessary for the health and welfare of you or your dependents. Do not include any amount previously deducted.	\$
36	Total Expenses Allowed under IRS Standards. Enter the total of Lines 22 through 35.	\$

Subpart B: Additional Expense Deductions under § 707(b)
Note: Do not include any expenses that you have listed in Lines 22-35

37	Health Insurance, Disability Insurance, and Health Savings Account Expenses. List the average monthly amounts that you actually expend in each of the following categories and enter the total.		\$	
	a.	Health Insurance		\$
	b.	Disability Insurance		\$
	c.	Health Savings Account		\$
	Total: Add Lines a, b, and c			
38	Continued contributions to the care of household or family members. Enter the actual monthly expenses that you will continue to pay for the reasonable and necessary care and support of an elderly, chronically ill, or disabled member of your household or member of your immediate family who is unable to pay for such expenses. Do not include payments listed in Line 32.	\$		
39	Protection against family violence. Enter any average monthly expenses that you actually incurred to maintain the safety of your family under the Family Violence Prevention and Services Act or other applicable federal law.	\$		
40	Home energy costs in excess of the allowance specified by the IRS Local Standards. Enter the average monthly amount by which your home energy costs exceed the allowance in the IRS Local Standards for Housing and Utilities. You must provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary.	\$		
41	Education expenses for dependent children under 18. Enter the average monthly expenses that you actually incur, not to exceed \$125 per child, in providing elementary and secondary education for your dependent children less than 18 years of age. You must provide your case trustee with documentation demonstrating that the amount claimed is reasonable and necessary and not already accounted for in the IRS Standards.	\$		
42	Additional food and clothing expense. Enter the average monthly amount by which your food and clothing expenses exceed the combined allowances for food and apparel in the IRS National Standards, not to exceed five percent of those combined allowances. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) You must provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary.	\$		
43	Continued charitable contributions. Enter the amount that you will continue to contribute in the form of cash or financial instruments to a charitable organization as defined in 26 U.S.C. § 170(c)(1)-(2).	\$		
44	Total Additional Expense Deductions under § 707(b). Enter the total of Lines 37 through 44.	\$		

Subpart C: Deductions for Debt Payment

45	Future payments on secured claims. For each of your debts that is secured by an interest in property that you own, list the name of creditor, identify the property securing the debt, and state the Average Monthly Payment. The Average Monthly Payment is the total of all amounts contractually due to each Secured Creditor in the 60 months following the filing of the bankruptcy case, divided by 60. If necessary, list additional entries on a separate page. Do not include items you have previously deducted, such as	
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insurance and real estate taxes.				\$
	Name of Creditor	Property Securing the Debt	60-month Average Payment	
a.			\$	
b.			\$	
c.			\$	
			Total: Add Lines a, b, and c	

46	Past due payments on secured claims. If any of the debts listed in Line 45 are in default, and the property securing the debt is necessary for your support or the support of your dependents, you may include in your deductions 1/60th of the amount that you must pay the creditor as a result of the default (the "cure amount") in order to maintain possession of the property. List any such amounts in the following chart and enter the total. If necessary, list additional entries on a separate page.			\$	
		Name of Creditor	Property Securing the Debt in Default		1/60th of the Cure Amount
	a.				\$
	b.				\$
	c.				\$
			Total: Add Lines a, b, and c		

47	Payments on priority claims. Enter the total amount of all priority claims (including priority child support and alimony claims), divided by 60.	\$
----	---	----

48	Chapter 13 administrative expenses. Multiply the amount in Line a by the amount in Line b, and enter the resulting administrative expense.		\$	
	a.	Projected average monthly Chapter 13 plan payment.		\$
	b.	Current multiplier for your district as determined under schedules issued by the Executive Office for United States Trustees. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)		x
	c.	Average monthly administrative expense of Chapter 13 case		Total: Multiply Lines a and b

49	Total Deductions for Debt Payment. Enter the total of Lines 45 through 48.	\$
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Subpart D: Total Deductions Allowed under § 707(b)(2)

50	Total of all deductions allowed under § 707(b)(2). Enter the total of Lines 36, 44, and 49.	\$
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Part V. DETERMINATION OF DISPOSABLE INCOME UNDER § 1325(b)(2)

51	Total current monthly income. Enter the amount from Line 13.	\$
52	Support income. Enter the monthly average of any child support payments, foster care payments, or disability payments for a dependent child, included in Line 7, that you received in accordance with applicable nonbankruptcy law, to the extent reasonably necessary to be expended for such child.	\$
53	Qualified retirement deductions. Enter the monthly average of (a) all contributions or wage deductions made to qualified retirement plans, as specified in § 541(b)(7) and (b) all repayments of loans from retirement plans, as specified in § 362(b)(19).	\$
54	Total of all deductions allowed under § 707(b)(2). Enter the amount from Line 50.	\$
55	Total adjustments to determine disposable income. Add the amounts on Lines 52, 53, and 54 and enter the result.	\$
56	Monthly Disposable Income Under § 1325(b)(2). Subtract Line 55 from Line 51 and enter the result.	\$

Part VI: ADDITIONAL EXPENSE CLAIMS

57 **Other Expenses.** List and describe any monthly expenses, not otherwise stated in this form, that are required for the health and welfare of you and your family and that you contend should be an additional deduction from your current monthly income under § 707(b)(2)(A)(ii)(I). If necessary, list additional sources on a separate page. All figures should reflect your average monthly expense for each item. Total the expenses.

	Expense Description	Monthly Amount
a.		\$
b.		\$
c.		\$
Total: Add Lines a, b, and c		\$

Part VII: VERIFICATION

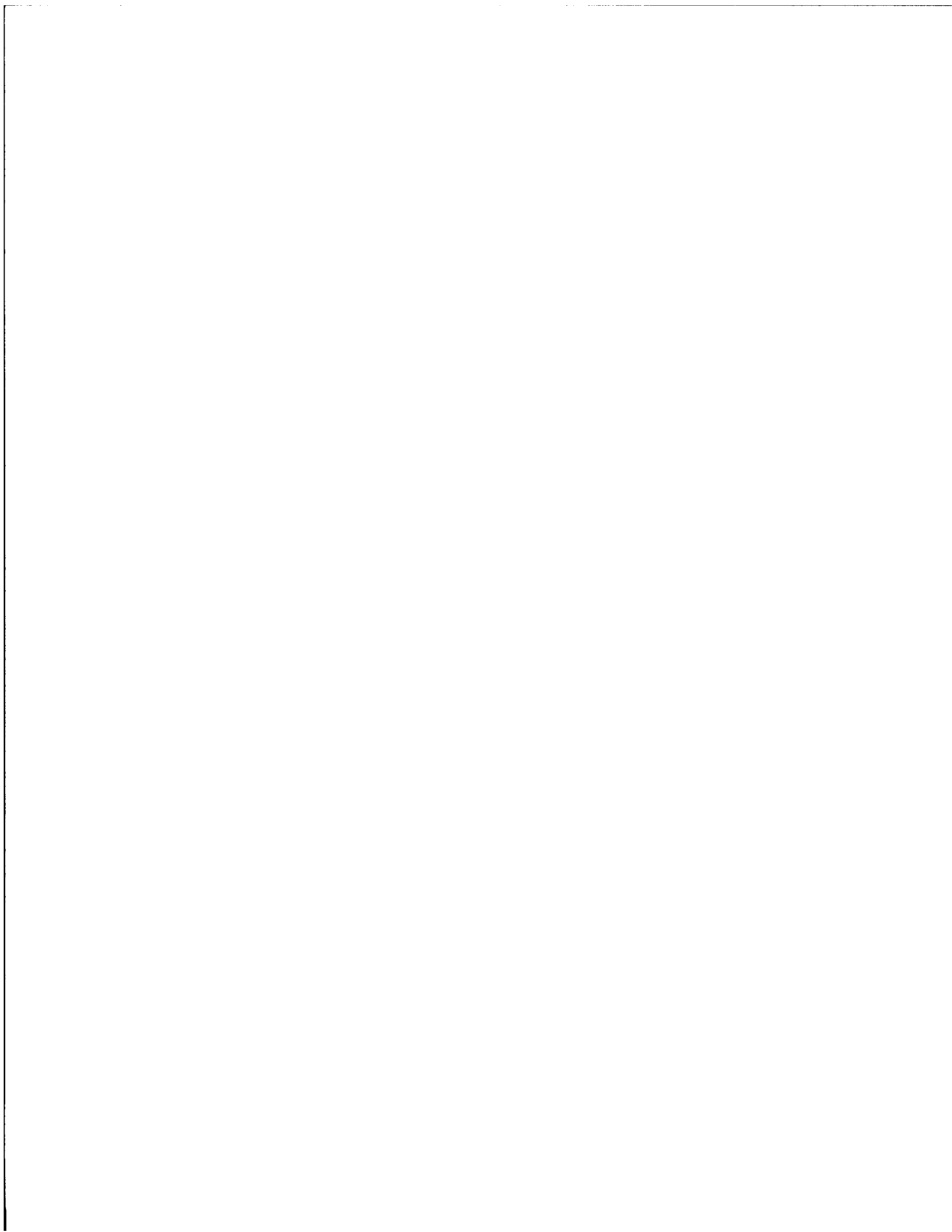
58 I declare under penalty of perjury that the information provided in this statement is true and correct. *(If this a joint case, both debtors must sign.)*

Date: _____

Signature: _____
(Debtor)

Date: _____

Signature: _____
(Joint Debtor, if any)



In re _____ Debtor(s)

Case Number: _____ (If known)

Check the boxes as directed in Lines 14 and 20 of this statement.

Applicable commitment period of 3 years

Applicable commitment period of 5 years

Disposable income determined under § 1325(b)(3)

Disposable income not determined under §1325(b)(3)

STATEMENT OF CURRENT MONTHLY INCOME AND CALCULATION OF COMMITMENT PERIOD AND DISPOSABLE INCOME

FOR USE IN CHAPTER 13

In addition to Schedules I and J, this statement must be completed by every individual Chapter 13 debtor, whether or not filing jointly. Joint debtors may complete one statement only.

Part I. CALCULATION OF CURRENT MONTHLY INCOME TO DETERMINE COMMITMENT PERIOD																	
1	<p>Marital/filing status. Check the box that applies and complete the balance of this part of this statement as directed.</p> <p>a. <input type="checkbox"/> Unmarried. Complete only Column A ("Debtor's Income") for Lines 2-10.</p> <p>b. <input type="checkbox"/> Married. Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 2-10.</p> <p>All figures must reflect average monthly income for the six calendar months prior to filing the bankruptcy case, ending on the last day of the month before the filing. If you received different amounts of income during these six months, you must total the amounts received during the six months, divide this total by six, and enter the result on the appropriate line.</p>			Column A Debtor's Income	Column B Spouse's Income												
2	Gross wages, salary, tips, bonuses, overtime, commissions.			\$	\$												
3	<p>Income from the operation of a business, profession, or farm. Subtract Line b from Line a and enter the difference on Line 3. Do not enter a number less than zero. Do not include any part of the business expenses entered on Line b as a deduction in Part IV.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center;">a.</td> <td style="width: 45%;">Gross receipts</td> <td style="width: 10%; text-align: center;">\$</td> <td style="width: 40%;"></td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Ordinary and necessary business expenses</td> <td style="text-align: center;">\$</td> <td></td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Business income</td> <td></td> <td style="text-align: center;">Subtract Line b from Line a</td> </tr> </table>			a.	Gross receipts	\$		b.	Ordinary and necessary business expenses	\$		c.	Business income		Subtract Line b from Line a	\$	\$
a.	Gross receipts	\$															
b.	Ordinary and necessary business expenses	\$															
c.	Business income		Subtract Line b from Line a														
4	<p>Rent and other real property income. Subtract Line b from Line a and enter the difference on Line 4. Do not enter a number less than zero. Do not include any part of the operating expenses entered on Line b as a deduction in Part IV.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center;">a.</td> <td style="width: 45%;">Gross receipts</td> <td style="width: 10%; text-align: center;">\$</td> <td style="width: 40%;"></td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Ordinary and necessary operating expenses</td> <td style="text-align: center;">\$</td> <td></td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Rental income</td> <td></td> <td style="text-align: center;">Subtract Line b from Line a</td> </tr> </table>			a.	Gross receipts	\$		b.	Ordinary and necessary operating expenses	\$		c.	Rental income		Subtract Line b from Line a	\$	\$
a.	Gross receipts	\$															
b.	Ordinary and necessary operating expenses	\$															
c.	Rental income		Subtract Line b from Line a														
5	Interest, dividends, and royalties.			\$	\$												
6	Pension and retirement income.			\$	\$												
7	Regular contributions to the household expenses of the debtor or the debtor's dependents, including child or spousal support. Do not include contributions from the debtor's spouse.			\$	\$												
8	<p>Unemployment compensation. Enter the amount in the appropriate column(s) of Line 8. However, if you contend that unemployment compensation received by you or your spouse was a benefit under the Social Security Act, do not list the amount of such compensation in Column A or B, but instead state the amount in the space below:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 40%;">Unemployment compensation claimed to be a benefit under the Social Security Act</td> <td style="width: 20%;">Debtor \$ _____</td> <td style="width: 40%;">Spouse \$ _____</td> </tr> </table>			Unemployment compensation claimed to be a benefit under the Social Security Act	Debtor \$ _____	Spouse \$ _____	\$	\$									
Unemployment compensation claimed to be a benefit under the Social Security Act	Debtor \$ _____	Spouse \$ _____															
9	<p>Income from all other sources. Specify source and amount. If necessary, list additional sources on a separate page. Total and enter on Line 9. Do not include any benefits received under the Social Security Act or payments received as a victim of a war crime, crime against humanity, or as a victim of international or domestic terrorism.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center;">a.</td> <td style="width: 45%;"></td> <td style="width: 10%; text-align: center;">\$</td> <td style="width: 40%;"></td> </tr> <tr> <td style="text-align: center;">b.</td> <td></td> <td style="text-align: center;">\$</td> <td></td> </tr> </table>			a.		\$		b.		\$		\$	\$				
a.		\$															
b.		\$															
10	Subtotal of current monthly income. Add Lines 2 thru 9 in Column A, and, if Column B is completed, add Lines 2 through 9 in Column B. Enter the total(s).			\$	\$												

11	Total current monthly income for § 1325(b)(4). If Column B has been completed, add Line 10, Column A to Line 10, Column B, and enter the total. If Column B has not been completed, enter the amount from Line 10, Column A.	\$
----	---	----

Part II. CALCULATION OF § 1325(b)(4) COMMITMENT PERIOD		
12	Enter the amount from Line 11.	
13	Marital adjustment. If you are married, but are not filing jointly with your spouse, AND if you contend that calculation of the commitment period under § 1325(b)(4) does not require inclusion of the current monthly income of your spouse, enter the amount of the income listed in Line 10, Column B that was NOT regularly contributed to the household expenses of you or your dependents. Otherwise, enter zero.	
14	Subtract Line 13 from Line 12 and enter the result.	
15	Annualized current monthly income for § 1325(b)(4). Multiply the amount from Line 14 by the number 12 and enter the result.	\$
16	Applicable median family income. Enter the median family income for applicable state and household size. (This information is available by family size at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) a. Enter debtor's state of residence: _____ b. Enter debtor's household size: _____	\$
17	Application of § 1325(b)(4). Check the applicable box and proceed as directed. <input type="checkbox"/> The amount on Line 15 is less than the amount on Line 16. Check the box at the top of page 1 of this statement that states "Applicable commitment period is 3 years" and complete Part VII of this statement. Do not complete Parts III, IV, V or VI. <input type="checkbox"/> The amount on Line 15 is not less than the amount on Line 16. Check the box at the top of page 1 of this statement that states "Applicable commitment period is 5 years" and continue with Part III of this statement.	

Part III. APPLICATION OF § 1325(b)(3) FOR DETERMINING DISPOSABLE INCOME		
18	Enter the amount from Line 11.	\$
19	Marital adjustment. If you are married, but are not filing jointly with your spouse, enter the amount of the income listed in Line 10, Column B that was NOT regularly contributed to the household expenses of you or your dependents. If you are unmarried or married and filing jointly with your spouse, enter zero.	\$
20	Current monthly income for § 1325(b)(3). Subtract Line 19 from Line 18 and enter the result.	
21	Annualized current monthly income for § 1325(b)(3). Multiply the amount from Line 20 by the number 12 and enter the result.	\$
22	Applicable median family income. Enter the amount from Line 16.	\$
23	Application of § 1325(b)(3). Check the applicable box and proceed as directed. <input type="checkbox"/> The amount on Line 21 is more than the amount on Line 22. Check the box at the top of page 1 of this statement that states "Disposable income determined under § 1325(b)(3)" and complete the remaining parts of this statement. <input type="checkbox"/> The amount on Line 21 is not more than the amount on Line 22. Check the box at the top of page 1 of this statement that states "Disposable income not determined under § 1325(b)(3)" and complete Part VII of this statement. Do not complete Parts IV, V, or VI.	

Part IV. CALCULATION OF DEDUCTIONS ALLOWED UNDER § 707(b)(2)		
Subpart A: Deductions under Standards of the Internal Revenue Service (IRS)		
24	National Standards: food, clothing, household supplies, personal care, and miscellaneous. Enter the "Total" amount from IRS National Standards for Allowable Living Expenses for the applicable family size and income level. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)	\$
25	Local Standards: housing and utilities; utilities/maintenance expense. Enter the amount of the IRS Housing and Utilities Standards; Utilities/Maintenance Expense for the applicable county and family size. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)	\$

26	<p>Local Standards: housing and utilities; mortgage/rental expense. Enter, in Line a below, the amount of the IRS Housing and Utilities Standards; Mortgage/Rental Expense for your county and family size available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter on Line b the total of the Average Monthly Payments for any debts secured by your home, as stated in Line 47; subtract Line b from Line a and enter the result in Line 26. Do not enter an amount less than zero.</p> <table border="1" data-bbox="193 293 1336 455"> <tr> <td data-bbox="201 304 266 336">a.</td> <td data-bbox="266 304 979 336">IRS Housing and Utilities Standards; Mortgage/Rental Expense</td> <td data-bbox="979 304 1328 336">\$</td> </tr> <tr> <td data-bbox="201 346 266 400">b.</td> <td data-bbox="266 346 979 400">Average Monthly Payment for any debts secured by your home, if any, as stated in Line 47</td> <td data-bbox="979 346 1328 400">\$</td> </tr> <tr> <td data-bbox="201 410 266 455">c.</td> <td data-bbox="266 410 979 455">Net mortgage/rental expense</td> <td data-bbox="979 410 1328 455">Subtract Line b from Line a.</td> </tr> </table>	a.	IRS Housing and Utilities Standards; Mortgage/Rental Expense	\$	b.	Average Monthly Payment for any debts secured by your home, if any, as stated in Line 47	\$	c.	Net mortgage/rental expense	Subtract Line b from Line a.	
a.	IRS Housing and Utilities Standards; Mortgage/Rental Expense	\$									
b.	Average Monthly Payment for any debts secured by your home, if any, as stated in Line 47	\$									
c.	Net mortgage/rental expense	Subtract Line b from Line a.									
27	<p>Local Standards: transportation; vehicle operation/public transportation expense. You are entitled to an expense allowance in this category regardless of whether you pay the expenses of operating a vehicle and regardless of whether you use public transportation.</p> <p>Check the number of vehicles for which you pay the operating expenses or for which the operating expenses are included as a contribution to your household expenses in Line 7. <input type="checkbox"/> 0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 or more. Enter the amount from IRS Transportation Standards, Operating Costs & Public Transportation Costs for the applicable number of vehicles in the applicable Metropolitan Statistical Area or Census Region. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)</p>	\$									
28	<p>Local Standards: transportation ownership/lease expense; Vehicle 1. Check the number of vehicles for which you claim an ownership/lease expense. (You may not claim an ownership/lease expense for more than two vehicles.) <input type="checkbox"/> 1 <input type="checkbox"/> 2 or more.</p> <p>Enter, in Line a below, the amount of the IRS Transportation Standards, Ownership Costs, First Car (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 1, as stated in Line 47; subtract Line b from Line a and enter the result in Line 25. Do not enter an amount less than zero.</p> <table border="1" data-bbox="193 927 1336 1093"> <tr> <td data-bbox="201 938 266 970">a.</td> <td data-bbox="266 938 979 970">IRS Transportation Standards, Ownership Costs, First Car</td> <td data-bbox="979 938 1328 970">\$</td> </tr> <tr> <td data-bbox="201 981 266 1034">b.</td> <td data-bbox="266 981 979 1034">Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 47</td> <td data-bbox="979 981 1328 1034">\$</td> </tr> <tr> <td data-bbox="201 1044 266 1093">c.</td> <td data-bbox="266 1044 979 1093">Net ownership/lease expense for Vehicle 1</td> <td data-bbox="979 1044 1328 1093">Subtract Line b from Line a.</td> </tr> </table>	a.	IRS Transportation Standards, Ownership Costs, First Car	\$	b.	Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 47	\$	c.	Net ownership/lease expense for Vehicle 1	Subtract Line b from Line a.	\$
a.	IRS Transportation Standards, Ownership Costs, First Car	\$									
b.	Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 47	\$									
c.	Net ownership/lease expense for Vehicle 1	Subtract Line b from Line a.									
29	<p>Local Standards: transportation ownership/lease expense; Vehicle 2. Complete this Line only if you checked the "2 or more" Box in Line 28.</p> <p>Enter, in Line a below, the amount of the IRS Transportation Standards, Ownership Costs, Second Car (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 2, as stated in Line 47; subtract Line b from Line a and enter the result in Line 29. Do not enter an amount less than zero.</p> <table border="1" data-bbox="193 1278 1336 1442"> <tr> <td data-bbox="201 1289 266 1321">a.</td> <td data-bbox="266 1289 979 1321">IRS Transportation Standards, Ownership Costs, Second Car</td> <td data-bbox="979 1289 1328 1321">\$</td> </tr> <tr> <td data-bbox="201 1332 266 1385">b.</td> <td data-bbox="266 1332 979 1385">Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 47</td> <td data-bbox="979 1332 1328 1385">\$</td> </tr> <tr> <td data-bbox="201 1395 266 1442">c.</td> <td data-bbox="266 1395 979 1442">Net ownership/lease expense for Vehicle 2</td> <td data-bbox="979 1395 1328 1442">Subtract Line b from Line a.</td> </tr> </table>	a.	IRS Transportation Standards, Ownership Costs, Second Car	\$	b.	Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 47	\$	c.	Net ownership/lease expense for Vehicle 2	Subtract Line b from Line a.	\$
a.	IRS Transportation Standards, Ownership Costs, Second Car	\$									
b.	Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 47	\$									
c.	Net ownership/lease expense for Vehicle 2	Subtract Line b from Line a.									
30	<p>Other Necessary Expenses: taxes. Enter the total average monthly expense that you actually incur for all federal, state, and local taxes, other than real estate and sales taxes, such as income taxes, self employment taxes, social security taxes, and Medicare taxes. Do not include real estate or sales taxes.</p>	\$									
31	<p>Other Necessary Expenses: mandatory payroll deductions. Enter the total average monthly payroll deductions that are required for your employment, such as mandatory retirement contributions, union dues, and uniform costs. Do not include discretionary amounts, such as non-mandatory 401(k) contributions.</p>	\$									
32	<p>Other Necessary Expenses: life insurance. Enter average monthly premiums that you actually pay for term life insurance for yourself. Do not include premiums for insurance on your dependents, for whole life or for any other form of insurance.</p>	\$									
33	<p>Other Necessary Expenses: court-ordered payments. Enter the total monthly amount that you are required to pay pursuant to court order, such as spousal or child support payments. Do not include payments on past due support obligations included in Line 49.</p>	\$									
34	<p>Other Necessary Expenses: education for employment or for a physically or mentally challenged child. Enter the total monthly amount that you actually expend for education that is a condition of employment and for education that is required for a physically or mentally challenged dependent child for whom no public education providing similar services is available.</p>	\$									

35	Other Necessary Expenses: childcare. Enter the average monthly amount that you actually expend on childcare. Do not include payments made for children's education.	\$
36	Other Necessary Expenses: health care. Enter the average monthly amount that you actually expend on health care expenses that are not reimbursed by insurance or paid by a health savings account. Do not include payments for health insurance listed in Line 39.	\$
37	Other Necessary Expenses: telecommunication services. Enter the average monthly expenses that you actually pay for cell phones, pagers, call waiting, caller identification, special long distance, or internet services necessary for the health and welfare of you or your dependents. Do not include any amount previously deducted.	\$
38	Total Expenses Allowed under IRS Standards. Enter the total of Lines 24 through 37.	\$

Subpart B: Additional Expense Deductions under § 707(b)
Note: Do not include any expenses that you have listed in Lines 24-37

39	Health Insurance, Disability Insurance, and Health Savings Account Expenses. List the average monthly amounts that you actually expend in each of the following categories and enter the total.		\$	
	a.	Health Insurance		\$
	b.	Disability Insurance		\$
	c.	Health Savings Account		\$
				Total: Add Lines a, b, and c
40	Continued contributions to the care of household or family members. Enter the actual monthly expenses that you will continue to pay for the reasonable and necessary care and support of an elderly, chronically ill, or disabled member of your household or member of your immediate family who is unable to pay for such expenses. Do not include payments listed in Line 34.	\$		
41	Protection against family violence. Enter any average monthly expenses that you actually incurred to maintain the safety of your family under the Family Violence Prevention and Services Act or other applicable federal law.	\$		
42	Home energy costs in excess of the allowance specified by the IRS Local Standards. Enter the average monthly amount by which your home energy costs exceed the allowance in the IRS Local Standards for Housing and Utilities. You must provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary.	\$		
43	Education expenses for dependent children under 18. Enter the average monthly expenses that you actually incur, not to exceed \$125 per child, in providing elementary and secondary education for your dependent children less than 18 years of age. You must provide your case trustee with documentation demonstrating that the amount claimed is reasonable and necessary and not already accounted for in the IRS Standards.	\$		
44	Additional food and clothing expense. Enter the average monthly amount by which your food and clothing expenses exceed the combined allowances for food and apparel in the IRS National Standards, not to exceed five percent of those combined allowances. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) You must provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary.	\$		
45	Continued charitable contributions. Enter the amount that you will continue to contribute in the form of cash or financial instruments to a charitable organization as defined in 26 U.S.C. § 170(c)(1)-(2).	\$		
46	Total Additional Expense Deductions under § 707(b). Enter the total of Lines 36 through 42.	\$		

Subpart C: Deductions for Debt Payment

47	Future payments on secured claims. For each of your debts that is secured by an interest in property that you own, list the name of creditor, identify the property securing the debt, and state the Average Monthly Payment. The Average Monthly Payment is the total of all amounts contractually due to each Secured Creditor in the 60 months following the filing of the bankruptcy case, divided by 60. If necessary, list additional entries on a separate page. Do not include items you have previously deducted, such as insurance and real estate taxes.			\$	
		Name of Creditor	Property Securing the Debt		60-month Average Payment
	a.				\$
	b.				\$
	c.				\$
			Total: Add Lines a, b, and c		

48	Past due payments on secured claims. If any of the debts listed in Line 47 are in default, and the property securing the debt is necessary for your support or the support of your dependents, you may include in your deductions 1/60th of the amount that you must pay the creditor as a result of the default (the "cure amount") in order to maintain possession of the property. List any such amounts in the following chart and enter the total. If necessary, list additional entries on a separate page.			\$	
		Name of Creditor	Property Securing the Debt in Default		1/60th of the Cure Amount
	a.				\$
	b.				\$
	c.				\$
			Total: Add Lines a, b, and c	\$	
49	Payments on priority claims. Enter the total amount of all priority claims (including priority child support and alimony claims), divided by 60.			\$	
50	Chapter 13 administrative expenses. Multiply the amount in Line a by the amount in Line b, and enter the resulting administrative expense.			\$	
	a.	Projected average monthly Chapter 13 plan payment.	\$		
	b.	Current multiplier for your district as determined under schedules issued by the Executive Office for United States Trustees. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)	x		
	c.	Average monthly administrative expense of Chapter 13 case	Total: Multiply Lines a and b		
51	Total Deductions for Debt Payment. Enter the total of Lines 47 through 50.			\$	
Subpart D: Total Deductions Allowed under § 707(b)(2)					
52	Total of all deductions allowed under § 707(b)(2). Enter the total of Lines 38, 46, and 51.			\$	

Part V. DETERMINATION OF DISPOSABLE INCOME UNDER § 1325(b)(2)				
53	Total current monthly income. Enter the amount from Line 11.			\$
54	Support income. Enter the monthly average of any child support payments, foster care payments, or disability payments for a dependent child, included in Line 7, that you received in accordance with applicable nonbankruptcy law, to the extent reasonably necessary to be expended for such child.			\$
55	Qualified retirement deductions. Enter the monthly average of (a) all contributions or wage deductions made to qualified retirement plans, as specified in § 541(b)(7) and (b) all repayments of loans from retirement plans, as specified in § 362(b)(19).			\$
56	Total of all deductions allowed under § 707(b)(2). Enter the amount from Line 52.			\$
57	Total adjustments to determine disposable income. Add the amounts on Lines 54, 55, and 56 and enter the result.			\$
58	Monthly Disposable Income Under § 1325(b)(2). Subtract Line 54 from Line 50 and enter the result.			\$

Part VI: ADDITIONAL EXPENSE CLAIMS

Other Expenses. List and describe any monthly expenses, not otherwise stated in this form, that are required for the health and welfare of you and your family and that you contend should be an additional deduction from your current monthly income under § 707(b)(2)(A)(ii)(I). If necessary, list additional sources on a separate page. All figures should reflect your average monthly expense for each item. Total the expenses.

59

	Expense Description	Monthly Amount
a.		\$
b.		\$
c.		\$
Total: Add Lines a, b, and c		\$

Part VII: VERIFICATION

I declare under penalty of perjury that the information provided in this statement is true and correct. *(If this a joint case, both debtors must sign.)*

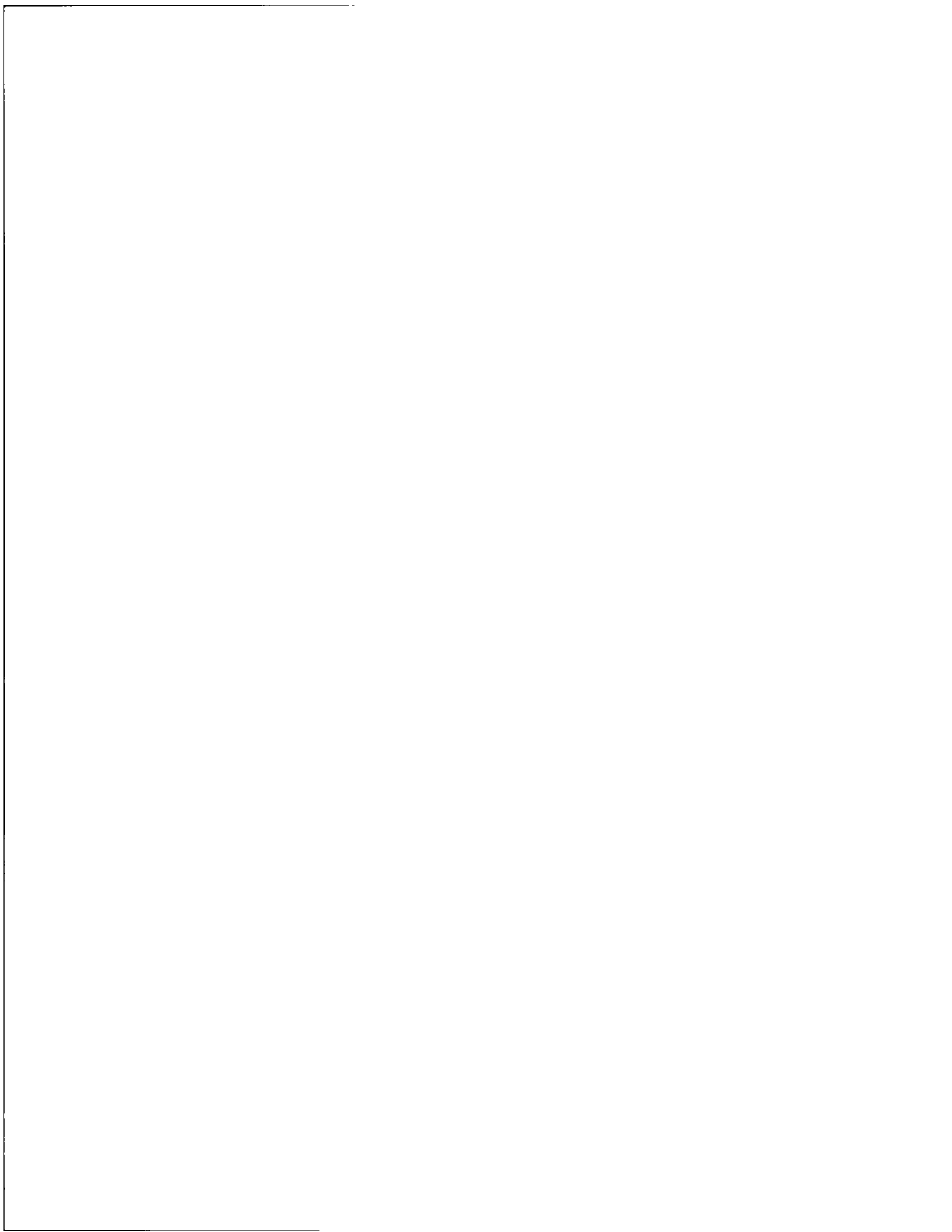
60

Date: _____

Signature: _____
(Debtor)

Date: _____

Signature: _____
(Joint Debtor, if any)



In re _____ Debtor(s)

Case Number: _____
(If known)

Check the box as directed in Part II, Line 14 of this statement.

Disposable income determined under § 1325(b)(3)

Disposable income not determined under § 1325(b)(3)

STATEMENT OF CURRENT MONTHLY INCOME AND DISPOSABLE INCOME CALCULATION

FOR USE IN CHAPTER 13 ONLY ALTERNATE VERSION

In addition to Schedules I and J, this statement must be completed by every individual Chapter 13 debtor, whether or not filing jointly. Joint debtors may complete one statement only.

Part I. CALCULATION OF CURRENT MONTHLY INCOME																	
			Column A Debtor's Income	Column B Spouse's Income													
1	<p>Marital/filing status. Check the box that applies and complete the balance of this part of this statement as directed.</p> <p>a. <input type="checkbox"/> Unmarried. Complete only Column A ("Debtor's Income") for Lines 2-10.</p> <p>b. <input type="checkbox"/> Married, not filing jointly. Complete only Column A ("Debtor's Income") for Lines 2-10.</p> <p>c. <input type="checkbox"/> Married, filing jointly. Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 2-10.</p> <p>All figures must reflect average monthly income for the six calendar months prior to filing the bankruptcy case, ending on the last day of the month before the filing. If you received different amounts of income during these six months, you must total the amounts received during the six months, divide this total by six, and enter the result on the appropriate line.</p>																
2	Gross wages, salary, tips, bonuses, overtime, commissions.			\$	\$												
3	<p>Income from the operation of a business, profession or farm. Subtract Line b from Line a and enter the difference on Line 3. Do not enter a number less than zero. Do not include any part of the business expenses entered on Line b as a deduction in Part III.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center;">a.</td> <td style="width: 40%;">Gross receipts</td> <td style="width: 15%; text-align: center;">\$</td> <td style="width: 40%;"></td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Ordinary and necessary business expenses</td> <td style="text-align: center;">\$</td> <td></td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Business income</td> <td></td> <td style="text-align: center;">Subtract Line b from Line a</td> </tr> </table>			a.	Gross receipts	\$		b.	Ordinary and necessary business expenses	\$		c.	Business income		Subtract Line b from Line a	\$	\$
a.	Gross receipts	\$															
b.	Ordinary and necessary business expenses	\$															
c.	Business income		Subtract Line b from Line a														
4	<p>Rent and other real property income. Subtract Line b from Line a and enter the difference on Line 4. Do not enter a number less than zero. Do not include any part of the operating expenses entered on Line b as a deduction in Part III.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center;">a.</td> <td style="width: 40%;">Gross receipts</td> <td style="width: 15%; text-align: center;">\$</td> <td style="width: 40%;"></td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Ordinary and necessary operating expenses</td> <td style="text-align: center;">\$</td> <td></td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Rental income</td> <td></td> <td style="text-align: center;">Subtract Line b from Line a</td> </tr> </table>			a.	Gross receipts	\$		b.	Ordinary and necessary operating expenses	\$		c.	Rental income		Subtract Line b from Line a	\$	\$
a.	Gross receipts	\$															
b.	Ordinary and necessary operating expenses	\$															
c.	Rental income		Subtract Line b from Line a														
5	Interest, dividends and royalties.			\$	\$												
6	Pension and retirement income.			\$	\$												
7	Regular contributions to the household expenses of the debtor or the debtor's dependents, including child or spousal support. Do not include contributions from the debtor's spouse if Column B is completed.			\$	\$												
8	<p>Unemployment compensation. Enter the amount in Column A and, if applicable, Column B. However, if you contend that unemployment compensation received by you or your spouse was a benefit under the Social Security Act, do not list the amount of such compensation in Column A or B, but instead state the amount in the space below:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 40%;">Unemployment compensation claimed to be a benefit under the Social Security Act</td> <td style="width: 20%;">Debtor \$ _____</td> <td style="width: 40%;">Spouse \$ _____</td> </tr> </table>			Unemployment compensation claimed to be a benefit under the Social Security Act	Debtor \$ _____	Spouse \$ _____	\$	\$									
Unemployment compensation claimed to be a benefit under the Social Security Act	Debtor \$ _____	Spouse \$ _____															
9	<p>Income from all other sources. Specify source and amount. If necessary, list additional sources on a separate page. Total and enter on Line 9. Do not include any benefits received under the Social Security Act or payments received as a victim of a war crime, crime against humanity, or as a victim of international or domestic terrorism.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center;">a.</td> <td style="width: 45%;"></td> <td style="width: 15%; text-align: center;">\$</td> <td style="width: 35%;"></td> </tr> <tr> <td style="text-align: center;">b.</td> <td></td> <td style="text-align: center;">\$</td> <td></td> </tr> </table>			a.		\$		b.		\$		\$	\$				
a.		\$															
b.		\$															
10	<p>Subtotal of current monthly income. Add Lines 2 thru 9 in Column A, and, if Column B is completed, add Lines 2 through 9 in Column B. Enter the total(s).</p>			\$	\$												

11	Total current monthly income. If Column B has been completed, add Line 10, Column A to Line 10, Column B, and enter the total. If Column B has not been completed, enter the amount from Line 10, Column A.	<div style="border: 2px solid black; padding: 5px; width: 100%; height: 30px;"> \$ </div>
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Part II. APPLICATION OF § 1325(b)(3)

12	Annualized current monthly income. Multiply the amount from Line 11 by the number 12 and enter the result.	\$
13	Applicable median family income. Enter the median family income for applicable state and household size. (This information is available by family size at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) a. Enter debtor's state of residence: _____ b. Enter debtor's household size: _____	\$
14	Application of § 1325(b)(3). Check the applicable box and proceed as directed. <input type="checkbox"/> The amount on Line 12 is less than or equal to the amount on Line 13. Check the box at the top of page 1 of this statement that states "Disposable income not determined under § 1325(b)(3)" and complete Part VI of this statement; do not complete Parts III, IV, or V. <input type="checkbox"/> The amount on Line 12 is more than the amount on Line 13. Check the box at the top of page 1 of this statement that states "Disposable income determined under § 1325(b)(3)" and complete the remaining parts of this statement.	

Complete Parts III, IV and V of this statement only if required. (See Line 14.)

Part III. CALCULATION OF DEDUCTIONS ALLOWED UNDER § 707(b)(2)

Subpart A: Deductions under Standards of the Internal Revenue Service (IRS)

15	National Standards: food, clothing, household supplies, personal care, and miscellaneous. Enter the "Total" amount from IRS National Standards for Allowable Living Expenses for the applicable family size and income level. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)	\$									
16	Local Standards: housing and utilities; utilities/maintenance expense. Enter the amount of the IRS Housing and Utilities Standards; Utilities/Maintenance Expense for the applicable county and family size. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court).	\$									
17	Local Standards: housing and utilities; mortgage/rental expense. Enter, in Line a below, the amount of the IRS Housing and Utilities Standards; Mortgage/Rental Expense for your county and family size (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter on Line b the total of the Average Monthly Payments for any debts secured by your home, as stated in Line 38; subtract Line b from Line a and enter the result in Line 17. Do not enter an amount less than zero.										
	<table border="1" style="width: 100%;"> <tr> <td style="width: 5%; text-align: center;">a.</td> <td style="width: 55%;">IRS Housing and Utilities Standards; Mortgage/Rental Expense</td> <td style="width: 40%; text-align: center;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Average Monthly Payment for any debts secured by your home, if any, as stated in Line 38</td> <td style="text-align: center;">\$</td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Net mortgage/rental expense</td> <td style="text-align: center;">Subtract Line b from Line a.</td> </tr> </table>	a.	IRS Housing and Utilities Standards; Mortgage/Rental Expense	\$	b.	Average Monthly Payment for any debts secured by your home, if any, as stated in Line 38	\$	c.	Net mortgage/rental expense	Subtract Line b from Line a.	
a.	IRS Housing and Utilities Standards; Mortgage/Rental Expense	\$									
b.	Average Monthly Payment for any debts secured by your home, if any, as stated in Line 38	\$									
c.	Net mortgage/rental expense	Subtract Line b from Line a.									
18	Local Standards: transportation; vehicle operation/public transportation expense. You are entitled to an expense allowance in this category regardless of whether you pay the expenses of operating a vehicle and regardless of whether you use public transportation. Check the number of vehicles for which you pay the operating expenses or for which the operating expenses are included as a contribution to your household expenses in Line 7. <input type="checkbox"/> 0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 or more. Enter the amount from IRS Transportation Standards, Operating Costs & Public Transportation Costs for the applicable number of vehicles in the applicable Metropolitan Statistical Area or Census Region. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)										

19	<p>Local Standards: transportation ownership/lease expense; Vehicle 1. Check the number of vehicles for which you claim an ownership/lease expense. (You may not claim an ownership/lease expense for more than two vehicles.) <input type="checkbox"/> 1 <input type="checkbox"/> 2 or more.</p> <p>Enter, in Line a below, the amount of the IRS Transportation Standards, Ownership Costs, First Car (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 1, as stated in Line 38; subtract Line b from Line a and enter the result in Line 19. Do not enter an amount less than zero.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center;">a.</td> <td style="width: 75%;">IRS Transportation Standards, Ownership Costs, First Car</td> <td style="width: 20%;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 38</td> <td>\$</td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Net ownership/lease expense for Vehicle 1</td> <td>Subtract Line b from Line a.</td> </tr> </table>	a.	IRS Transportation Standards, Ownership Costs, First Car	\$	b.	Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 38	\$	c.	Net ownership/lease expense for Vehicle 1	Subtract Line b from Line a.	\$
a.	IRS Transportation Standards, Ownership Costs, First Car	\$									
b.	Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 38	\$									
c.	Net ownership/lease expense for Vehicle 1	Subtract Line b from Line a.									
20	<p>Local Standards: transportation ownership/lease expense; Vehicle 2. Complete this Line only if you checked the "2 or more" Box in Line 20.</p> <p>Enter, in Line a below, the amount of the IRS Transportation Standards, Ownership Costs, Second Car (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 2, as stated in Line 38; subtract Line b from Line a and enter the result in Line 20. Do not enter an amount less than zero.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center;">a.</td> <td style="width: 75%;">IRS Transportation Standards, Ownership Costs, Second Car</td> <td style="width: 20%;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 38</td> <td>\$</td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Net ownership/lease expense for Vehicle 2</td> <td>Subtract Line b from Line a.</td> </tr> </table>	a.	IRS Transportation Standards, Ownership Costs, Second Car	\$	b.	Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 38	\$	c.	Net ownership/lease expense for Vehicle 2	Subtract Line b from Line a.	\$
a.	IRS Transportation Standards, Ownership Costs, Second Car	\$									
b.	Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 38	\$									
c.	Net ownership/lease expense for Vehicle 2	Subtract Line b from Line a.									
21	<p>Other Necessary Expenses: taxes. Enter the total average monthly expense that you actually incur for all federal, state and local taxes, other than real estate and sales taxes, such as income taxes, self employment taxes, social security taxes, and Medicare taxes. Do not include real estate or sales taxes.</p>	\$									
22	<p>Other Necessary Expenses: mandatory payroll deductions. Enter the total average monthly payroll deductions that are required for your employment, such as mandatory retirement contributions, union dues, and uniform costs. Do not include discretionary amounts, such as non-mandatory 401(k) contributions.</p>	\$									
23	<p>Other Necessary Expenses: life insurance. Enter average monthly premiums that you actually pay for term life insurance for yourself. Do not include premiums for insurance on your dependents, for whole life or for any other form of insurance.</p>	\$									
24	<p>Other Necessary Expenses: court-ordered payments. Enter the total monthly amount that you are required to pay pursuant to court order, such as spousal or child support payments. Do not include payments on past due support obligations included in Line 40.</p>	\$									
25	<p>Other Necessary Expenses: education for employment or for a physically or mentally challenged child. Enter the total monthly amount that you actually expend for education that is a condition of employment and for education that is required for a physically or mentally challenged dependent child for whom no public education providing similar services is available.</p>	\$									
26	<p>Other Necessary Expenses: childcare. Enter the average monthly amount that you actually expend on childcare. Do not include payments made for children's education.</p>	\$									
26	<p>Other Necessary Expenses: health care. Enter the average monthly amount that you actually expend on health care. Do not include payments for health insurance listed in Line 30.</p> <p>Other Necessary Expenses: telecommunication services. Enter the average monthly expenses that you actually pay for cell phones, pagers, call waiting, caller identification, special long distance or internet services necessary for the health and welfare of you or your dependents. Do not include any amount previously deducted.</p>	\$									
	<p>Total Expenses Allowed under IRS Standards. Enter the total of Lines 15 through 28</p>	\$									

In re _____ Debtor(s)

Case Number: _____
(If known)

Check the box as directed in Part II, Line 14 of this statement.

Disposable income determined under § 1325(b)(3)

Disposable income not determined under § 1325(b)(3)

STATEMENT OF CURRENT MONTHLY INCOME AND DISPOSABLE INCOME CALCULATION

FOR USE IN CHAPTER 13 ONLY ALTERNATE VERSION

In addition to Schedules I and J, this statement must be completed by every individual Chapter 13 debtor, whether or not filing jointly. Joint debtors may complete one statement only.

Part I. CALCULATION OF CURRENT MONTHLY INCOME					
			Column A Debtor's Income	Column B Spouse's Income	
1	<p>Marital/filing status. Check the box that applies and complete the balance of this part of this statement as directed.</p> <p>a. <input type="checkbox"/> Unmarried. Complete only Column A ("Debtor's Income") for Lines 2-10.</p> <p>b. <input type="checkbox"/> Married, not filing jointly. Complete only Column A ("Debtor's Income") for Lines 2-10.</p> <p>c. <input type="checkbox"/> Married, filing jointly. Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 2-10.</p> <p>All figures must reflect average monthly income for the six calendar months prior to filing the bankruptcy case, ending on the last day of the month before the filing. If you received different amounts of income during these six months, you must total the amounts received during the six months, divide this total by six, and enter the result on the appropriate line.</p>				
2		Gross wages, salary, tips, bonuses, overtime, commissions.	\$	\$	
3		Income from the operation of a business, profession or farm. Subtract Line b from Line a and enter the difference on Line 3. Do not enter a number less than zero. Do not include any part of the business expenses entered on Line b as a deduction in Part III.			
	a.	Gross receipts	\$		
	b.	Ordinary and necessary business expenses	\$		
	c.	Business income	Subtract Line b from Line a	\$	
4		Rent and other real property income. Subtract Line b from Line a and enter the difference on Line 4. Do not enter a number less than zero. Do not include any part of the operating expenses entered on Line b as a deduction in Part III.			
	a.	Gross receipts	\$		
	b.	Ordinary and necessary operating expenses	\$		
	c.	Rental income	Subtract Line b from Line a	\$	
5		Interest, dividends and royalties.	\$	\$	
6		Pension and retirement income.	\$	\$	
7		Regular contributions to the household expenses of the debtor or the debtor's dependents, including child or spousal support. Do not include contributions from the debtor's spouse if Column B is completed.	\$	\$	
8		Unemployment compensation. Enter the amount in Column A and, if applicable, Column B. However, if you contend that unemployment compensation received by you or your spouse was a benefit under the Social Security Act, do not list the amount of such compensation in Column A or B, but instead state the amount in the space below:			
		Unemployment compensation claimed to be a benefit under the Social Security Act Debtor \$ _____ Spouse \$ _____	\$	\$	
9		Income from all other sources. Specify source and amount. If necessary, list additional sources on a separate page. Total and enter on Line 9. Do not include any benefits received under the Social Security Act or payments received as a victim of a war crime, crime against humanity, or as a victim of international or domestic terrorism.			
	a.		\$		
	b.		\$		
10		Subtotal of current monthly income. Add Lines 2 thru 9 in Column A, and, if Column B is completed, add Lines 2 through 9 in Column B. Enter the total(s).	\$	\$	

11	Total current monthly income. If Column B has been completed, add Line 10, Column A to Line 10, Column B, and enter the total. If Column B has not been completed, enter the amount from Line 10, Column A.	<div style="border: 2px solid black; padding: 5px; display: inline-block;">\$</div>
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Part II. APPLICATION OF § 1325(b)(3)

12	Annualized current monthly income. Multiply the amount from Line 11 by the number 12 and enter the result.	\$
13	Applicable median family income. Enter the median family income for applicable state and household size. (This information is available by family size at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) a. Enter debtor's state of residence: _____ b. Enter debtor's household size: _____	\$
14	Application of § 1325(b)(3). Check the applicable box and proceed as directed. <input type="checkbox"/> The amount on Line 12 is less than or equal to the amount on Line 13. Check the box at the top of page 1 of this statement that states "Disposable income not determined under § 1325(b)(3)" and complete Part VI of this statement; do not complete Parts III, IV, or V. <input type="checkbox"/> The amount on Line 12 is more than the amount on Line 13. Check the box at the top of page 1 of this statement that states "Disposable income determined under § 1325(b)(3)" and complete the remaining parts of this statement.	

Complete Parts III, IV and V of this statement only if required. (See Line 14.)

Part III. CALCULATION OF DEDUCTIONS ALLOWED UNDER § 707(b)(2)

Subpart A: Deductions under Standards of the Internal Revenue Service (IRS)

15	National Standards: food, clothing, household supplies, personal care, and miscellaneous. Enter the "Total" amount from IRS National Standards for Allowable Living Expenses for the applicable family size and income level. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)	\$									
16	Local Standards: housing and utilities; utilities/maintenance expense. Enter the amount of the IRS Housing and Utilities Standards; Utilities/Maintenance Expense for the applicable county and family size. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court).	\$									
17	Local Standards: housing and utilities; mortgage/rental expense. Enter, in Line a below, the amount of the IRS Housing and Utilities Standards; Mortgage/Rental Expense for your county and family size (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter on Line b the total of the Average Monthly Payments for any debts secured by your home, as stated in Line 38; subtract Line b from Line a and enter the result in Line 17. Do not enter an amount less than zero. <table border="1" style="width: 100%; margin-top: 5px;"> <tr> <td style="width: 5%; text-align: center;">a.</td> <td style="width: 60%;">IRS Housing and Utilities Standards; Mortgage/Rental Expense</td> <td style="width: 35%; text-align: center;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Average Monthly Payment for any debts secured by your home, if any, as stated in Line 38</td> <td style="text-align: center;">\$</td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Net mortgage/rental expense</td> <td style="text-align: center;">Subtract Line b from Line a.</td> </tr> </table>		a.	IRS Housing and Utilities Standards; Mortgage/Rental Expense	\$	b.	Average Monthly Payment for any debts secured by your home, if any, as stated in Line 38	\$	c.	Net mortgage/rental expense	Subtract Line b from Line a.
a.	IRS Housing and Utilities Standards; Mortgage/Rental Expense	\$									
b.	Average Monthly Payment for any debts secured by your home, if any, as stated in Line 38	\$									
c.	Net mortgage/rental expense	Subtract Line b from Line a.									
18	Local Standards: transportation; vehicle operation/public transportation expense. You are entitled to an expense allowance in this category regardless of whether you pay the expenses of operating a vehicle and regardless of whether you use public transportation. Check the number of vehicles for which you pay the operating expenses or for which the operating expenses are included as a contribution to your household expenses in Line 7. <input type="checkbox"/> 0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 or more. Enter the amount from IRS Transportation Standards, Operating Costs & Public Transportation Costs for the applicable number of vehicles in the applicable Metropolitan Statistical Area or Census Region. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)										

19	<p>Local Standards: transportation ownership/lease expense; Vehicle 1. Check the number of vehicles for which you claim an ownership/lease expense. (You may not claim an ownership/lease expense for more than two vehicles.) <input type="checkbox"/> 1 <input type="checkbox"/> 2 or more.</p> <p>Enter, in Line a below, the amount of the IRS Transportation Standards, Ownership Costs, First Car (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 1, as stated in Line 38; subtract Line b from Line a and enter the result in Line 19. Do not enter an amount less than zero.</p> <table border="1" data-bbox="196 353 1338 506"> <tr> <td data-bbox="196 353 269 395">a.</td> <td data-bbox="269 353 979 395">IRS Transportation Standards, Ownership Costs, First Car</td> <td data-bbox="979 353 1338 395">\$</td> </tr> <tr> <td data-bbox="196 395 269 463">b.</td> <td data-bbox="269 395 979 463">Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 38</td> <td data-bbox="979 395 1338 463">\$</td> </tr> <tr> <td data-bbox="196 463 269 506">c.</td> <td data-bbox="269 463 979 506">Net ownership/lease expense for Vehicle 1</td> <td data-bbox="979 463 1338 506">Subtract Line b from Line a.</td> </tr> </table>	a.	IRS Transportation Standards, Ownership Costs, First Car	\$	b.	Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 38	\$	c.	Net ownership/lease expense for Vehicle 1	Subtract Line b from Line a.	\$
a.	IRS Transportation Standards, Ownership Costs, First Car	\$									
b.	Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 38	\$									
c.	Net ownership/lease expense for Vehicle 1	Subtract Line b from Line a.									
20	<p>Local Standards: transportation ownership/lease expense; Vehicle 2. Complete this Line only if you checked the "2 or more" Box in Line 20.</p> <p>Enter, in Line a below, the amount of the IRS Transportation Standards, Ownership Costs, Second Car (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 2, as stated in Line 38; subtract Line b from Line a and enter the result in Line 20. Do not enter an amount less than zero.</p> <table border="1" data-bbox="196 704 1338 857"> <tr> <td data-bbox="196 704 269 746">a.</td> <td data-bbox="269 704 979 746">IRS Transportation Standards, Ownership Costs, Second Car</td> <td data-bbox="979 704 1338 746">\$</td> </tr> <tr> <td data-bbox="196 746 269 815">b.</td> <td data-bbox="269 746 979 815">Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 38</td> <td data-bbox="979 746 1338 815">\$</td> </tr> <tr> <td data-bbox="196 815 269 857">c.</td> <td data-bbox="269 815 979 857">Net ownership/lease expense for Vehicle 2</td> <td data-bbox="979 815 1338 857">Subtract Line b from Line a.</td> </tr> </table>	a.	IRS Transportation Standards, Ownership Costs, Second Car	\$	b.	Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 38	\$	c.	Net ownership/lease expense for Vehicle 2	Subtract Line b from Line a.	\$
a.	IRS Transportation Standards, Ownership Costs, Second Car	\$									
b.	Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 38	\$									
c.	Net ownership/lease expense for Vehicle 2	Subtract Line b from Line a.									
21	<p>Other Necessary Expenses: taxes. Enter the total average monthly expense that you actually incur for all federal, state and local taxes, other than real estate and sales taxes, such as income taxes, self employment taxes, social security taxes, and Medicare taxes. Do not include real estate or sales taxes.</p>	\$									
22	<p>Other Necessary Expenses: mandatory payroll deductions. Enter the total average monthly payroll deductions that are required for your employment, such as mandatory retirement contributions, union dues, and uniform costs. Do not include discretionary amounts, such as non-mandatory 401(k) contributions.</p>	\$									
23	<p>Other Necessary Expenses: life insurance. Enter average monthly premiums that you actually pay for term life insurance for yourself. Do not include premiums for insurance on your dependents, for whole life or for any other form of insurance.</p>	\$									
24	<p>Other Necessary Expenses: court-ordered payments. Enter the total monthly amount that you are required to pay pursuant to court order, such as spousal or child support payments. Do not include payments on past due support obligations included in Line 40.</p>	\$									
25	<p>Other Necessary Expenses: education for employment or for a physically or mentally challenged child. Enter the total monthly amount that you actually expend for education that is a condition of employment and for education that is required for a physically or mentally challenged dependent child for whom no public education providing similar services is available.</p>										
26	<p>Other Necessary Expenses: childcare. Enter the average monthly amount that you actually expend on childcare. Do not include payments made for children's education.</p>	\$									
27	<p>Other Necessary Expenses: health care. Enter the average monthly amount that you actually expend on health care expenses that are not reimbursed by insurance or paid by a health savings account. Do not include payments for health insurance listed in Line 30.</p>	\$									
28	<p>Other Necessary Expenses: telecommunication services. Enter the average monthly expenses that you actually pay for cell phones, pagers, call waiting, caller identification, special long distance or internet services necessary for the health and welfare of you or your dependents. Do not include any amount previously deducted.</p>	\$									
29	<p>Total Expenses Allowed under IRS Standards. Enter the total of Lines 15 through 28</p>	\$									

Subpart B: Additional Expense Deductions under § 707(b)
Note: Do not include any expenses that you have listed in Lines 15-28

30	Health Insurance, Disability Insurance and Health Savings Account Expenses. List the average monthly amounts that you actually expend in each of the following categories and enter the total.			
	a.	Health Insurance	\$	
	b.	Disability Insurance	\$	
	c.	Health Savings Account	\$	
			Total: Add Lines a, b and c	\$
31	Continued contributions to the care of household or family members. Enter the actual monthly expenses that you will continue to pay for the reasonable and necessary care and support of an elderly, chronically ill, or disabled member of your household or member of your immediate family who is unable to pay for such expenses. Do not include payments listed in Line 25.			\$
32	Protection against family violence. Enter any average monthly expenses that you actually incurred to maintain the safety of your family under the Family Violence Prevention and Services Act or other applicable federal law.			\$
33	Home energy costs in excess of the allowance specified by the IRS Local Standards. Enter the average monthly amount by which your home energy costs exceed the allowance in the IRS Local Standards for Housing and Utilities. You must provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary.			\$
34	Education expenses for dependent children under 18. Enter the average monthly expenses that you actually incur, not to exceed \$125 per child, in providing elementary and secondary education for your dependent children less than 18 years of age. You must provide your case trustee with documentation demonstrating that the amount claimed is reasonable and necessary and not already accounted for in the IRS Standards.			\$
35	Additional food and clothing expense. Enter the average monthly amount by which your food and clothing expenses exceed the combined allowances for food and apparel in the IRS National Standards, not to exceed five percent of those combined allowances. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) You must provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary.			\$
36	Continued charitable contributions. Enter the amount that you will continue to contribute in the form of cash or financial instruments to a charitable organization as defined in 26 U.S.C. § 170(c)(1)-(2).			\$
37	Total Additional Expense Deductions under § 707(b). Enter the total of Lines 30 through 36.			\$

Subpart C: Deductions for Debt Payment

38	Future payments on secured claims. For each of your debts that is secured by an interest in property that you own, list the name of creditor, identify the property securing the debt, and state the Average Monthly Payment. The Average Monthly Payment is the total of all amounts contractually due to each Secured Creditor in the 60 months following the filing of the bankruptcy case, divided by 60. If necessary, list additional entries on a separate page. Do not include items you have previously deducted, such as insurance and real estate taxes.				
		Name of Creditor	Property Securing the Debt		60-month Average Payment
	a.				\$
	b.				\$
	c.				\$
			Total: Add Lines a, b and c	\$	
39	Past due payments on secured claims. If any of the debts listed in Line 38 are in default, and the property securing the debt is necessary for your support or the support of your dependents, you may include in your deductions 1/60th of the amount that you must pay the creditor as a result of the default (the "cure amount") in order to maintain possession of the property. List any such amounts in the following chart and enter the total. If necessary, list additional entries on a separate page.				
		Name of Creditor	Property Securing the Debt in Default		1/60th of the Cure Amount
	a.				\$
	b.				\$
	c.				\$
			Total: Add Lines a, b and c	\$	

40	Payments on priority claims. Enter the total amount of all priority claims (including priority child support and alimony claims), divided by 60.	\$
41	Chapter 13 administrative expenses. Multiply the amount in Line a by the amount in Line b, and enter the resulting administrative expense.	
	a. Projected average monthly Chapter 13 plan payment.	\$
	b. Current multiplier for your district as determined under schedules issued by the Executive Office for United States Trustees. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)	x
	c. Average monthly administrative expense of Chapter 13 case	Total: Multiply Lines a and b
42	Total Deductions for Debt Payment. Enter the total of Lines 38 through 41.	\$
Subpart D: Total Deductions Allowed under § 707(b)(2)		
43	Total of all deductions allowed under § 707(b)(2). Enter the total of Lines 29, 37, and 42.	\$

Part IV. DETERMINATION OF DISPOSABLE INCOME UNDER § 1325(b)(2)		
44	Total current monthly income. Enter the amount from Line 11.	\$
45	Support income. Enter the monthly average of any child support payments, foster care payments, or disability payments for a dependent child, included in Line 7, that you received in accordance with applicable nonbankruptcy law, to the extent reasonably necessary to be expended for such child.	\$
46	Qualified retirement deductions. Enter the monthly average of (a) all contributions or wage deductions made to qualified retirement plans, as specified in § 541(b)(7) and (b) all repayments of loans from retirement plans, as specified in § 362(b)(19).	\$
47	Total of all deductions allowed under § 707(b)(2). Enter the amount from Line 43.	\$
48	Total adjustments to determine disposable income. Add the amounts on Lines 45, 46, and 47 and enter the result.	\$
49	Monthly Disposable Income Under § 1325(b)(2). Subtract Line 48 from Line 44 and enter the result.	\$

Part V: ADDITIONAL EXPENSE CLAIMS		
50	Other Expenses. List and describe any monthly expenses, not otherwise stated in this form, that are required for the health and welfare of you and your family and that you contend should be an additional deduction from your current monthly income under § 707(b)(2)(A)(ii)(I). If necessary, list additional sources on a separate page. All figures should reflect your average monthly expense for each item. Total the expenses.	
		Expense Description
	a.	Monthly Amount
	b.	\$
	c.	\$
	Total: Add Lines a, b and c	\$

Part VI: VERIFICATION		
51	I declare under penalty of perjury that the information provided in this statement is true and correct. (If this a joint case, both debtors must sign.)	
	Date: _____	Signature: _____ (Debtor)
	Date: _____	Signature: _____ (Joint Debtor, if any)

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES
FROM: JEFF MORRIS, REPORTER
RE: IMPLEMENTATION OF AMENDMENTS TO § 522(q)
DATE: SEPTEMBER 6, 2005

The Interim Rules include an amendment to Rule 4004(c)(1)(I) to implement §§ 522(q) and 727(a)(12) of the Code. Section 522(q) provides that a debtor's homestead exemption is limited to \$125,000, notwithstanding any greater amount allowed under applicable nonbankruptcy law, if the debtor has committed a felony, violated certain securities laws, or engaged in other behavior that caused physical injury to or the death of another person in the past five years. Section 727(a)(12) provides that the court shall grant the discharge unless "the court after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharges finds that there is reasonable cause to believe" either that § 522(q) applies to the debtor or that there is pending a proceeding in which the debtor might be found guilty of a felony or liable for damages of the kinds set out in § 522(q).

The Committee also considered during the August meeting whether to extend the provision for the postponement of the discharge beyond chapter 7 cases. The Committee decided to limit the change to Rule 4004 to chapter 7 cases for two primary reasons. First, § 522(q) applies in only a handful of states where the homestead exemption could exceed \$125,000. Consequently, the need to address the issue would only apply in those few states which could address the matter by local rule. Secondly, since the discharge in cases of individuals in chapters 11, 12, and 13 are entered only after the completion of payments under the confirmed plan, there

was a sense that this issue could be left to the usual Rules Enabling Act process rather than requiring an immediate response through the proposal of an Interim Rule.

On further reflection, it seems more appropriate that the Committee propose an amendment to Interim Rule 4004 to implement the amendments to §§ 1141, 1228, and 1328 similar to that adopted to implement § 727(a)(12). While very few states have homestead exemptions available in an amount that would bring § 522(q) into play, the amendment to the choice of law provision in § 522(b)(3) may expand the geographical reach of those states' high dollar homestead exemptions. Under that section, the law of the jurisdiction in which the debtor resided for the greater part of the 180 days before two years prior to the commencement of the case governs the debtor's exemptions. Therefore, a bankruptcy court sitting anywhere in the country might be required to apply the law of a distant state with a large or unlimited homestead exemption. This expanded reach back period for the application of exemptions makes it more possible that the large homestead exemptions of a few states could be at issue in a bankruptcy court located in a state with a very small homestead exemption. Consequently, the argument that local rules in the courts of the states with large or unlimited homestead exemptions would be sufficient to implement this amendment to the Bankruptcy Code is based in part on an incorrect assumption. The issue could arise in any bankruptcy court, wherever it is located.

As to the second argument, payment plans in those cases generally do take three to five years to complete. However, that is not always the case. A debtor's plan can certainly pay all claims in full in a lesser period, and if the plan provides that debtors will be paid a stated percentage of their claims under the plan, those payments could conclude relatively quickly if a number of creditors fail to file a proof of their claim. Again, this is not the norm, but the

prospect for the completion of payments under plans confirmed in chapters 11, 12, and 13 prior to the time when a permanent national rule could be in effect is significant. For these reasons, the Committee should reconsider amending Interim Rule 4004 to expand its reach to cases under those chapters.

One possible fix would be to amend Interim Rule 4004(c)(1)(I) by adding a reference to the relevant sections from chapters 11, 12, and 13. This is the simplest solution, but it may not be sufficient to solve the problem. Sections 1141(d)(5)(C), 1228(f), and 1328(h) each provide that § 522(q) applies in these chapters, but they are written differently than the provision in chapter 7. Section 727(a)(12) provides that the court shall grant a discharge unless there is reasonable cause to believe that a violation of § 522(q) has occurred. The discharge sections in each of the other chapters provides that the court shall not grant a discharge unless the court finds that there is no reasonable cause to believe that the debtor is in violation of § 522(q). In chapters 11, 12, and 13, the court must make a finding that no violation of § 522(q) exists before entering the discharge order, while in chapter 7, the court can enter the discharge unless it finds that there is reasonable cause to believe that there is a violation of the section. This distinction supports the solution adopted in Interim Rule 4004(c)(1)(I) that places the burden on parties who may assert that the violation occurred by requiring that they move the court for a postponement of the discharge to allow the § 522(q) issue to be resolved. If they fail to act, the court would have no basis for finding reasonable cause to believe that a violation occurred and the discharge could be entered. The different wording in §§ 1141(d)(5)(C), 1228(f), and 1328(h) does not lend itself to the same solution. While in chapter 7 the Code appears to place the burden of raising the issue on creditors or the trustee, in the other chapters the language of the statute seems to place that

burden on the debtor to show that there is no reason to delay entry of the discharge or limit the homestead exemption. Certainly, each of the sections provide that the courts' action is to be taken "after notice and a hearing" which authorizes action without a hearing in the absence of a request, but the different phrasing of the sections as compared to § 727(a)(12) still appears to create a different burden of going forward on this issue.

If the Committee believes that this burden shift is sufficient enough that it would not be appropriate simply to add §§ 1141(d)(5)(C), 1228(f) and 1328(h) to Interim Rule 4004(c)(1)(I), then I would propose amendments to Interim Rules 1007(b) and (c) and 2002 to accomplish the goal. The amendments to Rule 1007 would require an individual debtor in a chapter 11, 12, or 13 case to file a statement that no reasonable cause exists to believe that § 522(q) is applicable in the case. The statement would have to be filed not later than the last payment due under the plan (similar to the deadline for filing the statement that the debtor has completed a personal financial management program). Under the amendment to Rule 2002, the court would notify creditors of the filing of the statement, and they would have at least 25 days to object to the statement or seek other relief under § 522(q). These proposed amendments follow. Please note that they are set out as amendments to the Interim Rules, and the strikeouts and underlining are to the "clean version" of the Interim Rules.

Interim Rule 1007. Lists, Schedules, Statements, and Other Documents; Time Limits

* * * * *

1
2
3

(b) SCHEDULES, STATEMENTS, AND OTHER DOCUMENTS REQUIRED.

* * * * *

4
5 (8) An individual debtor in a chapter 11, 12, or 13 case shall file a
6 statement that there are no grounds for the application of § 522(q).

7 (c) TIME LIMITS. In a voluntary case, the schedules, statements,
8 and other documents required by subdivision (b)(1), (4), (5), and
9 (6) shall be filed with the petition, or within 15 days thereafter,
10 except as otherwise provided in subdivisions (d), (e), (f), and (h) of
11 this rule. In an involuntary case, the list in subdivision (a)(2), and
12 the schedules statements, and other documents required by
13 subdivision (b)(1) shall be filed by the debtor within 15 days of the
14 entry of the order for relief. The documents required by
15 subdivision (b)(3) shall be filed with the petition in a voluntary
16 case. The statement required by subdivision (b)(7) shall be filed by
17 the debtor within 45 days after the first date set for the meeting of
18 creditors under § 341 of the Code in a chapter 7 case, and no later
19 than the last payment made by the debtor as required by the plan or
20 the filing of a motion for entry of a discharge under § 1328(b) in a
21 chapter 13 case. The statement required by subdivision (b)(8) shall
22 be filed by the debtor not later than the last payment made by the
23 debtor as required by the plan or the filing of a motion for entry of
24 a discharge under §§ 1141(d)(5)(B), 1228(b), or 1328(b). Lists,
25 schedules, statements, and other documents filed prior to the

26 conversion of a case to another chapter shall be deemed filed in the
27 converted case unless the court directs otherwise. Except as
28 provided in § 1116(3) of the Code, any extension of time for the
29 filing of the schedules, statements, and other documents may be
30 granted only on motion for cause shown and on notice to the
31 United States trustee and to any committee elected under § 705 or
32 appointed under § 1102 of the Code, trustee, examiner, or other
33 party as the court may direct. Notice of an extension shall be given
34 to the United States trustee and to any committee, trustee, or other
35 party as the court may direct.

* * * * *

COMMITTEE NOTE

The rule is amended to require an individual debtor in a case under chapter 11, 12, and 13 to file a statement that there are no reasonable grounds to believe that the restrictions on a homestead exemption as set out in § 522(q) of the Code are applicable. Sections 1141(d)(5)(C), 1228(f), and 1328(h) each provide that the court shall not enter a discharge order unless it finds that there is no reasonable cause to believe that § 522(q) applies. Requiring the debtor to submit a statement to that effect in cases under the other chapters provides the court with

Interim Rule 2002. Notices to Creditors, Equity Security Holders, Administrators in Foreign Proceedings, Persons Against Whom Provisional Relief is Sought in Ancillary and Other Cross-Border Cases, United States, and United States Trustee

* * * * *

1 (f) OTHER NOTICES. Except as provided in subdivision
2 (l) of this rule, the clerk, or some other person as the court may
3 direct, shall give the debtor, all creditors, and indenture trustees
4 notice by mail of: (1) the order for relief; (2) the dismissal or the
5 conversion of the case to another chapter, or the suspension of
6 proceedings under § 305; (3) the time allowed for filing claims
7 pursuant to Rule 3002; (4) the time fixed for filing a complaint
8 objecting to the debtor's discharge pursuant to § 727 of the Code as
9 provided in Rule 4004; (5) the time fixed for filing a complaint to
10 determine the dischargeability of a debt pursuant to § 523 of the
11 Code as provided in Rule 4007; (6) the waiver, denial, or
12 revocation of a discharge as provided in Rule 4006; (7) entry of an
13 order confirming a chapter 9, 11, or 12 plan; (8) a summary of the
14 trustee's final report in a chapter 7 case if the net proceeds realized
15 exceed \$1,500; (9) a notice under Rule 5008 regarding the
16 presumption of abuse; ~~and~~ (10) a statement under § 704(b)(1) as to
17 whether the debtor's case would be presumed to be an abuse under
18 § 707(b); and (11) of the time to object to a statement filed by the
19 debtor under Rule 1007(b)(8). Notice of the time fixed for
20 accepting or rejecting a plan pursuant to Rule 3017(c) shall be
21 given in accordance with Rule 3017(d).

COMMITTEE NOTE

The rule is amended to provide notice to creditors of the debtor's filing of a statement in a chapter 11, 12, or 13 case that there is no reasonable cause to believe that § 522(q) applies in the case. If a creditor disputes that assertion, the creditor can object to the statement and seek a ruling from the court as to the applicability of the provision. In the absence of any response to the statement, the court could enter a discharge order in the case.

The simple form of amendment to Rule 4004 to add the references to the other sections that implicate § 522(q) is set out below for your consideration.

Rule 4004. Grant or Denial of Discharge

1

* * * * *

2

(c) GRANT OF DISCHARGE.

3

(1)

4

* * * * *

5

(F) a motion to extend the time for filing a motion to

6

dismiss the case under Rule 1017(e) is pending,

7

(G) the debtor has not paid in full the filing fee

8

prescribed by 28 U.S.C. § 1930(a) and any other fee prescribed by

9

the Judicial Conference of the United States under 28 U.S.C. §

10

1930(b) that is payable to the clerk upon the commencement of a

11

case under the Code, unless the court has waived the fees under 28

12

U.S.C. § 1930(f);

13

(H) the debtor has not filed with the court a statement

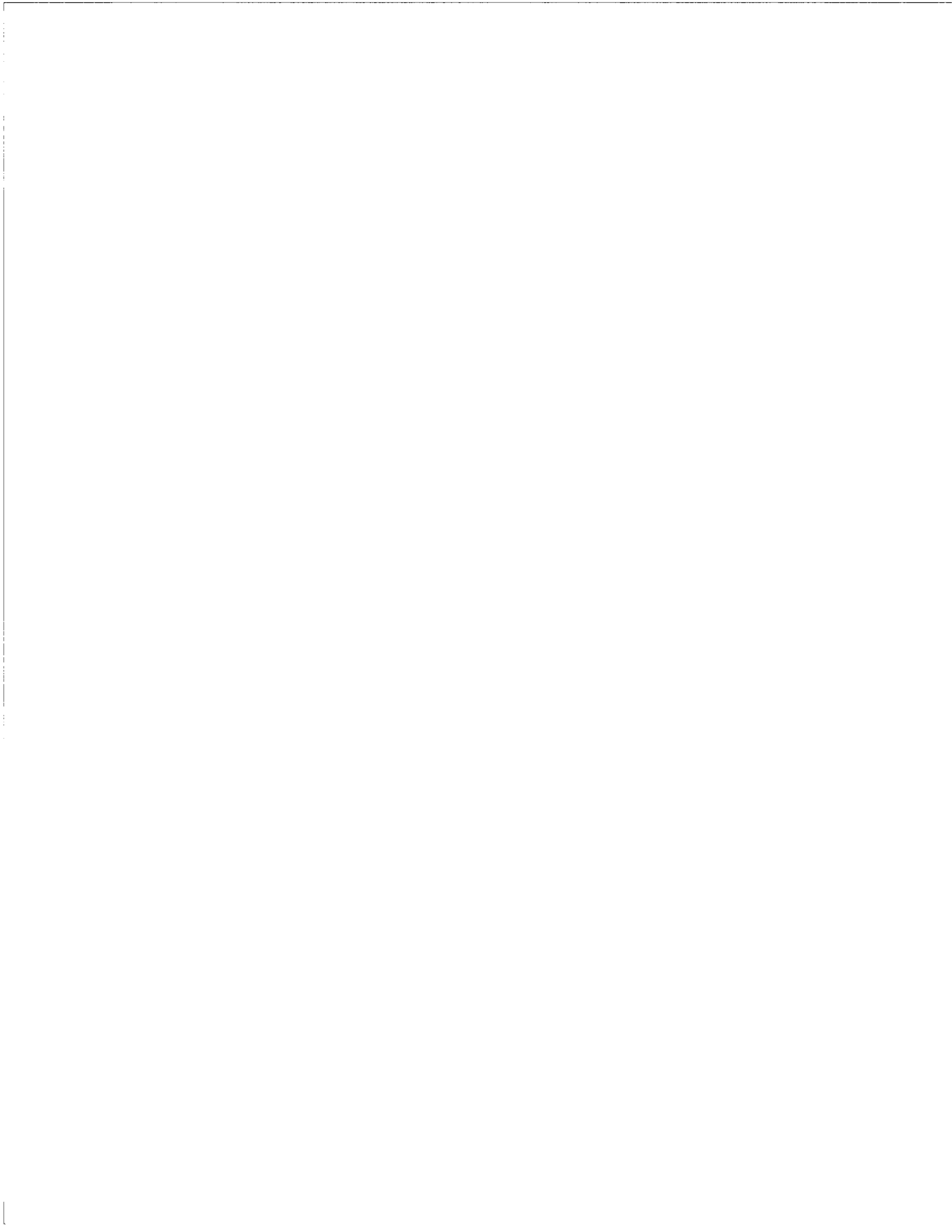
14

regarding completion of a course in personal financial management

15 as required by Rule 1007(b)(7);
16 (I) a motion to delay or postpone discharge under §
17 727(a)(12), 1141(d)(5)(C), 1228(f), or 1328(h) is pending; or
18 (J) a presumption that a reaffirmation agreement is an
19 undue hardship has arisen under § 524(m).

COMMITTEE NOTE

The rule is amended to include motions to delay or postpone the discharge under chapters 11, 12, and 13 if there is a question as to the applicability of § 522(q) of the Code.



MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES
FROM: JEFF MORRIS, REPORTER
RE: AMENDMENT TO INTERIM RULE 8001(f)(2)
DATE: SEPTEMBER 8, 2005

Interim Rule 8001(f) governs the process for certification for direct appeals to the courts of appeals. One of the principal decisions made by the Advisory Committee in adopting the rule was to establish a bright line for determining the court in which a matter is pending. The purpose was to avoid the potential for overlapping jurisdiction or confusion over which court could issue a certification of the matter to the court of appeals. As approved in August, Interim Rule 8001 (f)(2) provided

(2) *Court Where Made.* A certification that a circumstance specified in 28 U.S.C. § 158(d)(2)(A)(i)-(iii) exists shall be filed in the court in which a matter is pending for purposes of 28 U.S.C. § 158(d)(2) and this rule. A matter is pending in a bankruptcy court until the docketing of the appeal of a final judgment, order, or decree in accordance with Rule 8007(b) or the grant of leave to appeal an interlocutory judgment, order, or decree under 28 U.S.C. § 158(a). A matter is pending in a district court or bankruptcy appellate panel after an appeal of an interlocutory judgment, order, or decree has been docketed in accordance with Rule 8007(b) or leave to appeal has been granted under 28 U.S.C.

§ 158(a).

This version of the rule is ambiguous in that it suggests that a grant of leave to appeal is required for any appeal of an interlocutory judgment, order, or decree. Section 158(a)(2) of Title 28 provides, however, that parties may appeal interlocutory orders and decrees issued under § 1121(d) of the Code. That section governs the increase or decrease of the exclusivity period for the debtor to file a plan in a chapter 11 case. Therefore, the current language of Rule 8001(f)(2) inadvertently overlooks the possibility of the appeal of right of these interlocutory orders. To correct that oversight, the rule should be amended to reflect these different routes to the court of appeals. To that end, Interim Rule 8001 could be amended in the following manner. The rule is set out below in its “clean” version, and the ~~strikeout~~ and underlining identify the changes being proposed to the Interim Rule as described above. If the Advisory Committee concludes that this amendment is appropriate, we will forward the amendment to the Standing Committee for its approval and will recommend its adoption by standing order in the bankruptcy and district courts.

**Rule 8001. Manner of Taking Appeal; Voluntary Dismissal;
Certification to Court of Appeals**

* * * * *

1 (f) CERTIFICATION FOR DIRECT APPEAL TO COURT OF
2 APPEALS

3 (1) *Timely Appeal Required.* A certification of a judgment,
4 order, or decree of a bankruptcy court to a court of appeals under
5 28 U.S.C. § 158(d)(2) shall not be treated as a certification entered

6 on the docket within the meaning of § 1233(b)(4)(A) of Public
7 Law No. 109-8 until a timely appeal has been taken in the manner
8 required by subdivisions (a) or (b) of this rule and the notice of
9 appeal has become effective under Rule 8002.

10 (2) *Court Where Made.* A certification that a circumstance
11 specified in 28 U.S.C. § 158(d)(2)(A)(i)-(iii) exists shall be filed in
12 the court in which a matter is pending for purposes of 28 U.S.C. §
13 158(d)(2) and this rule. ~~A matter is pending in a bankruptcy court~~
14 ~~until the docketing of the appeal of a final judgment, order, or~~
15 ~~decree in accordance with Rule 8007(b) or the grant of leave to~~
16 ~~appeal an interlocutory judgment, order, or decree under 28 U.S.C.~~
17 ~~§ 158(a). A matter is pending in a district court or bankruptcy~~
18 ~~appellate panel after an appeal of an interlocutory judgment, order,~~
19 ~~or decree has been docketed in accordance with Rule 8007(b) or~~
20 ~~leave to appeal has been granted under 28 U.S.C. § 158(a). A~~
21 matter is pending in a bankruptcy court until the docketing, in
22 accordance with Rule 8007(b), of an appeal taken under 28 U.S.C.
23 § 158(a)(1) or (2), or the grant of leave to appeal under 28 U.S.C. §
24 158(a)(3). A matter is pending in a district court or bankruptcy
25 appellate panel after the docketing, in accordance with Rule
26 8007(b), of an appeal taken under 28 U.S.C. § 158(a)(1) or (2), or
27 the grant of leave to appeal under 28 U.S.C. § 158(a)(3).

28 (A) *Certification by Court on Request or Court's Own*
29 *Initiative.*

30 (i) *Before Docketing or Grant of Leave to Appeal.*

31 Only a bankruptcy court may make a certification on request or on
32 its own initiative while the matter is pending in the bankruptcy
33 court.

34 (ii) *After Docketing or Grant of Leave to Appeal.*

35 Only the district court or bankruptcy appellate panel involved may
36 make a certification on request of the parties or on its own
37 initiative while the matter is pending in the district court or
38 bankruptcy appellate panel.

39 (B) *Certification by All Appellants and Appellees*

40 *Acting Jointly.* A certification by all the appellants and appellees,
41 if any, acting jointly may be made by filing the appropriate Official
42 Form with the clerk of the court in which the matter is pending.

43 The certification may be accompanied by a short statement of the
44 basis for the certification, which may include the information listed
45 in subdivision (f)(3)(C) of this rule.

46 (3) *Request for Certification; Filing; Service; Contents.*

47 (A) A request for certification shall be filed, within the
48 time specified by 28 U.S.C. § 158(d)(2), with the clerk of the court
49 in which the matter is pending.

50 (B) Notice of the filing of a request for certification
51 shall be served in the manner required for service of a notice of
52 appeal under Rule 8004.

53 (C) A request for certification shall include the
54 following:

55 (i) the facts necessary to understand the question
56 presented;

57 (ii) the question itself;

58 (iii) the relief sought;

59 (iv) the reasons why the appeal should be allowed
60 and is authorized by statute or rule, including why a circumstance
61 specified in 28 U.S.C. § 158(d)(2)(A)(i)-(iii) exists; and

62 (v) an attached copy of the judgment, order, or
63 decree complained of and any related opinion or memorandum.

64 (D) A party may file a response to a request for
65 certification or a cross-request within 10 days after the notice of the
66 request is served, or another time fixed by the court.

67 (E) The request, cross request, and any response shall
68 not be governed by Rule 9014 and shall be submitted without oral
69 argument unless the court otherwise directs.

70 (F) A certification of an appeal under 28 U.S.C.
71 § 158(d)(2) shall be made in a separate document served on the

72 parties.

73 (4) *Certification on Court's Own Initiative.*

74 (A) A certification of an appeal on the court's own
75 initiative under 28 U.S.C. § 158(d)(2) shall be made in a separate
76 document served on the parties in the manner required for service
77 of a notice of appeal under Rule 8004. The certification shall be
78 accompanied by an opinion or memorandum that contains the
79 information required by subdivision (f)(3)(C)(i)-(iv) of this rule.

80 (B) A party may file a supplementary short statement
81 of the basis for certification within 10 days after the certification.

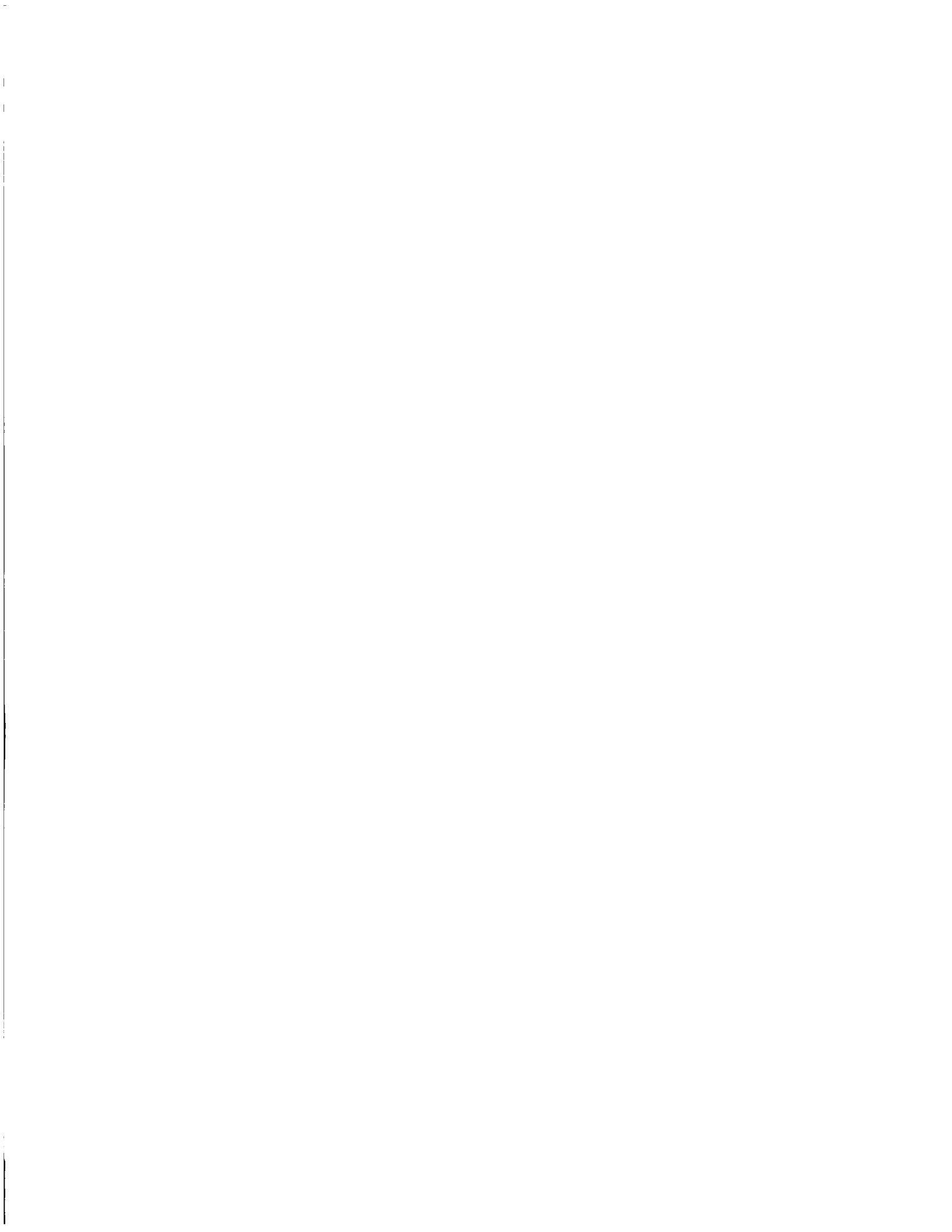
COMMITTEE NOTE

Subdivision (f) is added to the rule to implement the 2005 amendments to 28 U.S.C. § 158(d). That section authorizes appeals directly to the court of appeals, with that court's consent, upon certification that a ground for the appeal exists under § 158(d)(2)(A)(i)-(iii). Certification can be made by the court on its own initiative or in response to a request of a party. Certification also can be made by all of the appellants and appellees. An uncodified provision in Public Law No. 109-8, § 1233(b)(4), requires that, not later than 10 days after a certification is entered on the docket, there must be filed with the circuit clerk a petition requesting permission to appeal. Given the short time limit to file the petition with the circuit clerk, subdivision (f)(1) provides that entry of a certification on the docket does not occur until an effective appeal is taken under Rule 8003(a) or (b).

The rule adopts a bright-line test for identifying the court in which a matter is pending. Under subdivision (f)(2), the bright-line chosen is the "docketing" under Rule 8007(b) of an appeal of an interlocutory order or decree under 28 U.S.C. § 158(a)(2) or a final judgment, order or decree under 28 U.S.C. § 158(a)(1), or the granting of leave to appeal an any other interlocutory judgment,

order or decree under 28 U.S.C. § 158(a)(3), whichever is earlier.

To ensure that parties are aware of a certification, the rule requires either that it be made on the Official Form (if being made by all of the parties to the appeal) or on a separate document (whether the certification is made on the court's own initiative or in response to a request by a party). This is particularly important because the rule adopts the bankruptcy practice established by Rule 8001(a) and (b) of requiring a notice of appeal in every instance, including interlocutory orders, of appeals from bankruptcy court orders, judgments, and decrees. Because this requirement is satisfied by filing the notice of appeal that takes the appeal to the district court or bankruptcy appellate panel in the first instance, the rule does not require a separate notice of appeal if a certification occurs after a district court or bankruptcy appellate panel decision.



Copies of draft amendments to Director's Procedural Forms to implement the Bankruptcy Reform Act of 2005 will be distributed separately.



**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE _____ DISTRICT OF _____
DIVISION**

In Re	)	Bk. No.
)	
[Name of Debtor],	)	In a Small Business Case Under Chapter
	)	11 of the Bankruptcy Code
Debtor.	)	(11 U.S.C. § 1101 <i>et seq.</i>)
)	
	)	Chapter 11 Plan Proposed by [Name of Plan
	)	Proponent]
)	
	)	Dated [Insert Date]
)	
	)	[Name of Judge/Courtroom]
)	
	)	Plan Confirmation [and Disclosure Statement]
	)	Hearing Date
	)	See Disclosure Statement for Voting and
	)	Objecting Procedures

PLAN OF REORGANIZATION

ARTICLE I
SUMMARY

This Plan of Reorganization (the "Plan") under chapter 11 of the Bankruptcy Code (the "Code") proposes to pay creditors of the Debtor from [specify sources of payment, such as an infusion of capital, loan proceeds, sale of assets, cash flow from operations, or future income].

This Plan provides for _____ classes of secured claims; _____ classes of unsecured claims; and _____ classes of equity security holders. Unsecured creditors holding allowed claims will receive distributions, which the proponent of this Plan has valued at approximately _____ cents on the dollar, in the following manner: _____. This Plan also provides for the payment of administrative and priority claims [if payment is not in full on the effective date of this Plan with respect to any such claim (to the extent permitted by the Code or the claimant's agreement), identify such claim and briefly summarize the proposed treatment.]

All creditors and equity security holders should refer to Articles III through VI of this Plan for information regarding the precise treatment of their claim. A disclosure statement which provides more detailed information regarding this Plan and the rights of creditors and equity security holders has been circulated with this Plan. **Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)**

ARTICLE II
CLASSIFICATION OF CLAIMS AND INTERESTS

- 2.01 Class 1. All allowed claims entitled to priority under § 507 of the Code (except administrative expense claims under § 507(a)(2), [“gap” period claims in an involuntary case under § 507(a)(3),] and priority tax claims under § 507(a)(8).
- 2.02 Class 2. The claim of _____, to the extent allowed as a secured claim under § 506 of the Code.
- [Add other classes of secured creditors, if any.]
- 2.03 Class 3. All unsecured claims allowed under § 502 of the Code.
- [Add other classes of unsecured claims, if any.]
- 2.04 Class 4 . Equity interests in the Debtor. [If the Debtor is an individual -- “The interests of an individual Debtor in property of the estate.”]

ARTICLE III
**TREATMENT OF ADMINISTRATIVE EXPENSE CLAIMS,
U.S. TRUSTEES FEES, AND PRIORITY TAX CLAIMS**

3.01 Unclassified Claims. Under section §1123(a)(1), administrative expense claims, [“gap” period claims in an involuntary case allowed under § 502(f) of the Code,] and priority tax claims are not in classes.

3.02 Administrative Expense Claims. Each holder of an administrative expense claim allowed under § 503 of the Code [, and a “gap” claim in an involuntary case allowed under § 502(f) of the Code,] shall be paid in full on the later of the effective date of this Plan (as defined in Article VII) or the date such claim is allowed by a final non-appealable order, in cash, or upon such other terms as may be agreed upon by the holder of such claim and the Debtor.

3.03 Priority Tax Claims . Each holder of a priority tax claim shall be paid [specify terms of treatment consistent with § 1129(a)(9)(C) of the Code].

3.04 United States Trustee Fees. All fees required to be paid by 28 U.S.C. §1930(a)(6) (U.S Trustee Fees) shall accrue and be timely paid by the debtor until the case is closed, dismissed, or converted to another chapter of the Code. Any U.S. Trustee Fees owed on or before the effective date of this Plan shall be paid on the effective date.

ARTICLE IV
TREATMENT OF CLAIMS AND INTERESTS UNDER THE PLAN

4.01 Claims and interests shall be treated as follows under this Plan:

Class	Impairment	Treatment
Class 1 - Priority Claims	[State whether impaired or unimpaired.]	Class 1 is unimpaired by this Plan, and each holder of a Class 1 Priority Claim shall be paid in full, in cash, upon the later of the effective date of this Plan as defined in Article VII, or the date on which such claim is allowed by a final non-appealable order. [Except: _____]
Class 2 – Secured Claim of [Insert name of secured creditor.]	[State whether impaired or unimpaired.]	[Insert treatment of secured claims in this Class.]
Class 3 - General Unsecured Creditors	[State whether impaired or unimpaired.]	[Insert treatment of unsecured creditors in this Class.]
Class 4 - Equity Security Holders of the Debtor	[State whether impaired or unimpaired.]	[Insert treatment of equity security holders in this Class.]

ARTICLE V
ALLOWANCE AND DISALLOWANCE OF CLAIMS

5.01 Disputed Claim. A disputed claim shall mean a claim which has not been allowed or disallowed by a final non-appealable order, and as to which either (i) a proof of claim has been filed or deemed filed, and the Debtor or another party in interest has filed an objection; or (ii) no proof of claim has been filed, and the Debtor has scheduled such claim as disputed, contingent, or unliquidated.

5.02 Delay of Distribution on a Disputed Claim. No distribution shall be made on account of a disputed claim until such claim is allowed or disallowed by a final non-appealable order.

5.03 Settlement of Disputed Claims. The Debtor shall have the power and authority to settle and compromise a disputed claim with court approval and compliance with rule 9019 of the Federal Rules of Bankruptcy Procedure.

ARTICLE VI
PROVISIONS FOR EXECUTORY CONTRACTS AND UNEXPIRED LEASES

6.01 Assumed Executory Contracts and Unexpired Leases.

(a) The Debtor assumes the following executory contracts and/or unexpired leases effective upon the [Insert “effective date of this Plan as provided in Article VII,” “the date of the entry of the order confirming this Plan,” or other applicable date]:

[List assumed executory contracts and unexpired leases.]

(b) The Debtor shall be conclusively deemed to have rejected all executory contracts and unexpired leases not expressly assumed under section 6.01(a) above, or prior to the date of the order confirming this Plan, upon the [Insert “effective date of this Plan,” “the date of the entry of the order confirming this Plan,” or other applicable date] without further act or deed or order of Court. A proof of a claim arising from the rejection of an executory contract or unexpired lease under this section may be filed no later than _____ () days after the date of the order confirming this plan.

ARTICLE VII
GENERAL PROVISIONS

7.01 Definitions and Rules of Construction. The definitions and rules of construction set forth in §§ 101 and 102 of the Bankruptcy Code shall apply when the terms defined or construed therein are used in this Plan and are supplemented by the following definitions: [Insert additional definitions if necessary].

7.02 Effective Date of Plan. The effective date of this Plan shall mean the eleventh business day following the date of the entry of the order of confirmation, provided, however, if a stay of the confirmation order is in effect on such date, the effective date shall be the first business day thereafter on which no stay of the confirmation order is in effect, and provided further that the confirmation order has not been vacated.

7.03 Severability. If any provision in this Plan is determined to be unenforceable, the determination shall in no way limit or affect the enforceability and operative effect of any other provision of this Plan.

7.04 Binding Effect. The rights and obligations of any entity named or referred to in this Plan shall be binding upon, and shall inure to the benefit of the successors or assigns of such entity.

7.05 Captions. The headings contained in this Plan are for convenience of reference only and shall not affect the meaning or interpretation of this Plan.

[7.06 Controlling Effect . Unless a rule of law or procedure is supplied by federal law (including the Code, the Federal Rules of Bankruptcy Procedure), the laws of the State of _____ shall govern this Plan and any agreements, documents, and instruments executed in connection with this Plan, except as otherwise provided therein.]

[7.07 Corporate Governance. [If the Debtor is a corporation include provisions consistent with § 1123(a)(6) of the Code.]]

ARTICLE VIII DISCHARGE

[If the debtor is not entitled to discharge pursuant to 11 U.S.C. § 1143(d)(3) change this heading to “**NO DISCHARGE OF DEBTOR.**”]

8.01. [Option 1 -- If the Debtor is a corporation and § 1141(d)(3) of the Code is not applicable]

Discharge. On the effective date of this Plan, the debtor shall be discharged from any debt that arose before confirmation of this Plan, subject to the occurrence of the effective date, to the extent specified in § 1141(d)(1)(A) of the Code, except that the Debtor shall not be discharged of any debt (i) imposed by this Plan, (ii) of a kind specified in § 1141(d)(6)(A) if a timely complaint was filed in accordance with Rule 4007(c) of the Federal Rules of Bankruptcy Procedure, or (iii) of a kind specified in § 1141(d)(6)(B).

[Option 2 – If Debtor is an individual and § 1141(d)(3) of the Code is not applicable]

Discharge. Confirmation of this Plan does not discharge any debt provided for in this Plan until the court grants a discharge on completion of all payments under this Plan, or as otherwise provided in § 1141(d)(5) of the Code. Debtor will not be discharged from any debt excepted from discharge under § 523 of the Code, except as provided in Rule 4007(c) of the Federal Rules of Bankruptcy Procedure.

[Option 3 -- If the Debtor is a partnership and section 1141(d)(3) of the Code is not applicable]

Discharge. On the effective date of this Plan, the debtor shall be discharged from any debt that arose before confirmation of this Plan, subject to the occurrence of the effective date, to the extent specified in § 1141(d)(1)(A) of the Code. However, Debtor shall not be discharged from any debt imposed by this Plan.

[Option 4 – If § 1141(d)(3) of the Code is applicable]

No Discharge. In accordance with § 1141(d)(3) of the Code, the Debtor will not receive any discharge of debt in this bankruptcy case.

Respectfully submitted,

By: _____
The Plan Proponent

By: _____
Attorney for the Plan Proponent

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES
FROM: JEFF MORRIS, REPORTER
RE: RULE 2002(g)(2) AND THE 2005 LEGISLATION
DATE: SEPTEMBER 8, 2005

As you know, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 included a significant amendment that added § 342(e) and (f) to the Code. Under § 342(e), a creditor in a chapter 7 or 13 case of an individual may file with the court and serve on the debtor a notice of address that the debtor and the court must thereafter use in the case. Section 342(f) provides that entities may file with any bankruptcy court a notice of an address that all courts must use for the creditor in cases under chapter 7 or chapter 13. The address set out by a creditor under § 342(f) is subject to any address that is provided to the court and the debtor under § 342(e). The Advisory Committee has concluded that these provisions do not conflict with the amendment that added subdivision (g)(4) to Rule 2002 which provides a parallel mechanism for creditors to establish an address for notices, but the Committee has not considered whether the amendments to § 342 create a need to amend Rule 2002(g)(1) or (2).

Rule 2002(g)(1) provides that notices to creditors, and others, "shall be addressed as such entity or an authorized agent has directed in its last request filed in the particular case." This provision seems consistent with the amendments to § 342 which recognize that a notice under § 342(e) trumps a notice of address filed under § 342(f). Rule 2002(g)(2), however, provides that in the absence of a notice under Rule 2002(g)(1), notices shall be sent to the address shown on the list of creditors. This provision does not take new § 342(f) into account. Rule 2002(g)(1)

only relates to a direction filed in a particular case, while § 342(f) anticipates the filing of a notice of address other than in a particular case. Under that section, a creditor could file a notice of address with the bankruptcy court in Tampa and that notice would require the bankruptcy court in Detroit to send the notices in its cases to the creditor at the address listed in the notice filed in Tampa. Rule 2002(g) simply did not anticipate such a method for creditors to establish an address to which notices must be sent. The new amendment that adds subdivision (g)(4) to Rule 2002 anticipated some of these issues as a matter of the internal operation of the rule by providing that it applies “notwithstanding Rule 2002(g)(1)-(3).” A similar provision added to Rule 2002(g)(2) might permit it to coexist with the new amendment to the Code. That amendment is set out below.

Rule 2002. Notices to Creditors, Equity Security Holders, Administrators in Foreign Proceedings, Persons Against Whom Provisional Relief is Sought in Ancillary and Other Cross-Border Cases, United States, and United States Trustee

* * * * *

(g) ADDRESSING NOTICES

* * * * *

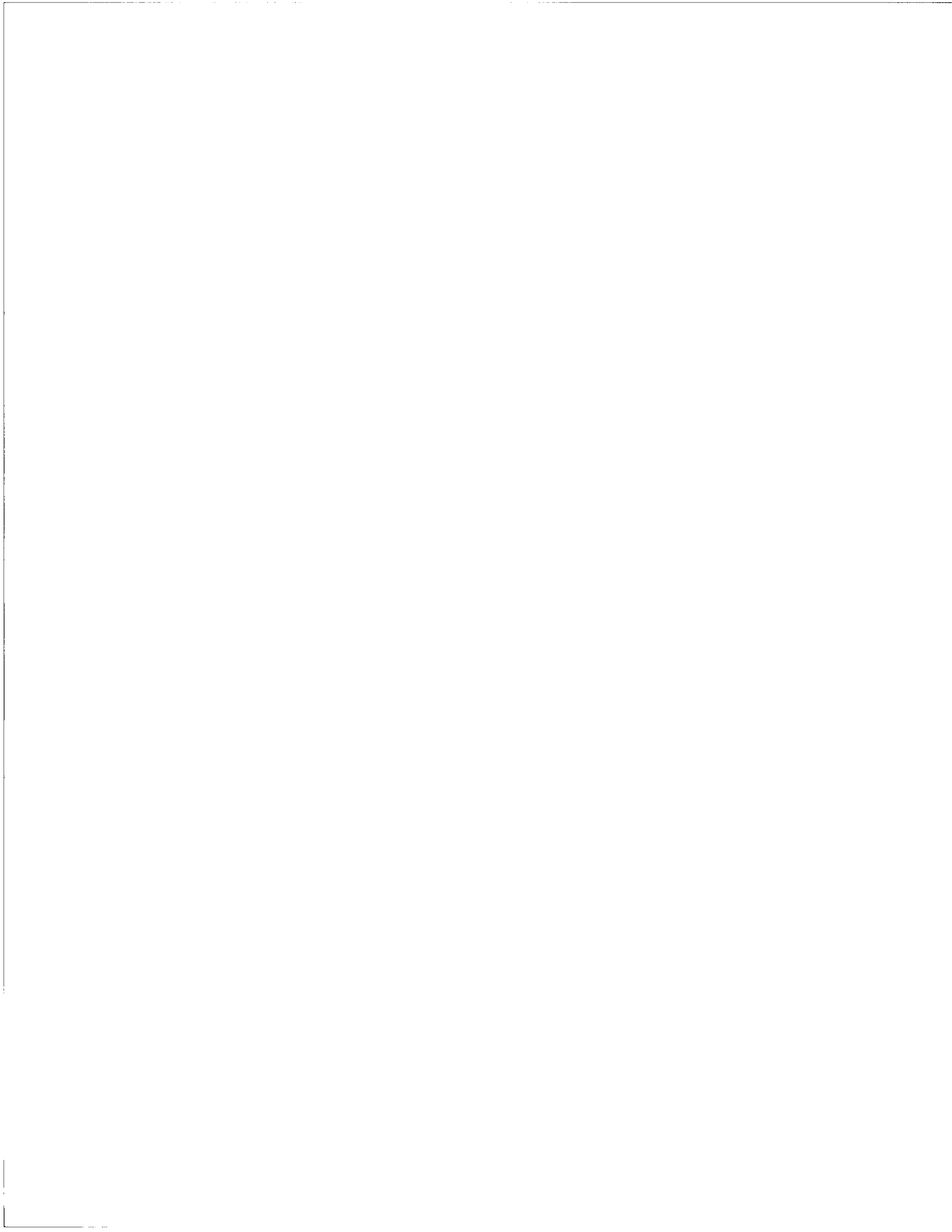
(2) Except as provided in § 342(f) of the Code, if ~~if~~ a creditor or indenture trustee has not filed a request designating a mailing address under Rule 2002(g)(1), the notices shall be mailed to the address shown on the list of creditors or schedule of liabilities, whichever is filed later. If an equity security holder has not filed a request designating a mailing address under Rule

10 2002(g)(1), the notices shall be mailed to the address shown on the
11 list of equity security holders.

12 * * * * *

COMMITTEE NOTE

The rule is amended because the 2005 amendments to § 342(f) of the Code permit creditors in chapter 7 and 13 individual debtor cases to file a notice with any bankruptcy court of the address to which the creditor wishes all notices to be sent. This provision does not apply in cases of nonindividuals in chapter 7 and in cases under chapters 11 and 12, so Rule 2002(g)(2) still operates in those circumstances. It also continues to apply in cases under chapters 7 and 13 if the creditor has not filed a notice under § 342(f). The amendment to Rule 2002(g)(2) therefore only limits that subdivision when a creditor files a notice under § 342(f).



June 21, 2005

Hon. Thomas S. Zilly
United States District Court
Western District of Washington
Room 410, U.S. Courthouse
1010 Fifth Avenue
Seattle, WA 98104

RE: Pending Emergency Local Rules Recommendations

Dear Judge Zilly and Members of the Advisory Committee on Bankruptcy Rules:

We understand that the Advisory Committee on Local Rules is in the process of developing interim rules proposals in the wake of the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"). We are writing to provide you with a recommendation for those interim rules.

Background information about the Task Force and its goals: The American Bar Association Task Force on Attorney Discipline was formed earlier this year by the Ad Hoc Committee on Bankruptcy Court Structure and Court Processes, which is a joint effort of several ABA sections, including the Business Law, Litigation, and General Practice Sections. The Task Force's assignment is to study and propose recommendations for model procedures for the discipline and disbarment of bankruptcy attorneys who are alleged to have engaged in serious misconduct. Our focus is not the individualized sanctions that a court may order in a particular case, but rather issues of discipline, suspension and disbarment affecting an attorney's general privilege to practice before the bankruptcy court. A list of the Task Force Members is attached. This letter is being written in our individual capacities. Neither the ABA nor any of the sections participating in the Ad Hoc Committee has adopted policy on the views expressed in the letter.

With the enactment of the BAPCPA, the Task Force will also be developing a report with guidelines and standards to assist practitioners and courts as they grapple with the implementation of new sections 707(b)(4)(C) and (5) and the conforming amendments to Bankruptcy Rule 9011. Both of these sections impose a new duty of "reasonable investigation" relating to consumer debtors' chapter 7 petitions and motions to dismiss them as "abusive." Section 707(b)(4)(D) additionally imposes a duty of "inquiry" with respect to the information on the consumer debtor's schedules, which by its own terms is not consistent with the inquiry standard under the new section 527(c); neither section 707(b)(4)(D) nor section 527(c) necessarily employs the same standard to which the courts are accustomed under Rule 9011.

The Task Force's Recommendation for the Interim Rules: Because of the volume nature of consumer bankruptcy practice for both debtors' and creditors' representatives, and because of interpretive issues that are inherent in the language of the new law, the Task Force is concerned that the courts' attention and resources will be burdened by collateral litigation about both substantive and technical compliance failures.

This could interfere not only an appropriate review of the merits of the underlying substantive dispute in any given case, but also with the courts' ability to police those errant attorneys whose behavior demonstrates a pattern of noncompliance with the law (under BAPCPA or prior law) and disregard of proper advocacy on behalf of clients.

Accordingly, we urge that the Subcommittee include in the Emergency Rule a suggestion along the following lines:

Because of the potential for increased litigation involving attorney compliance with the provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, each court should review its existing local rules or general orders to ensure that neither the due process rights of the targets of such litigation nor the substantive needs of the debtor and creditor clients are denied or subverted, and to ensure that the court may appropriately deal with errant attorneys whose pattern of misconduct may warrant consideration of the attorney's privilege to practice before the court. If no bankruptcy discipline rules or orders are in effect, each court should consider implementation of an appropriate review and discipline process.

By calling the courts' attention to the increased need for effective court-wide disciplinary procedures, such a recommendation from the Subcommittee will encourage a vitally important discussion about the appropriate way for the courts to respond to the challenges created by these new statutory requirements.

Please contact either Judy Miller (tel. 248-727-1429; email: jmiller@jaffelaw.com) or Lisa Hill Fenning (tel. 213-621-6233; email: lfenning@dbllp.com) if you have any questions or if we can be of any further assistance to the Advisory Committee in its work.

Respectfully submitted,

David W. Allard
James H. Cossitt
Lisa Hill Fenning
Jean K. FitzSimon
David A. Greer
Robert R. Keatinge
Judith Greenstone Miller

Jan Ostrovsky
Dean Nancy B. Rapoport
William H. Schorling
Jeffrey L. Solomon
Marc S. Stern
Paul G. Swanson
Catherine E. Vance

cc: Professor Jeffrey W. Morris
Hon. Eugene Wedoff

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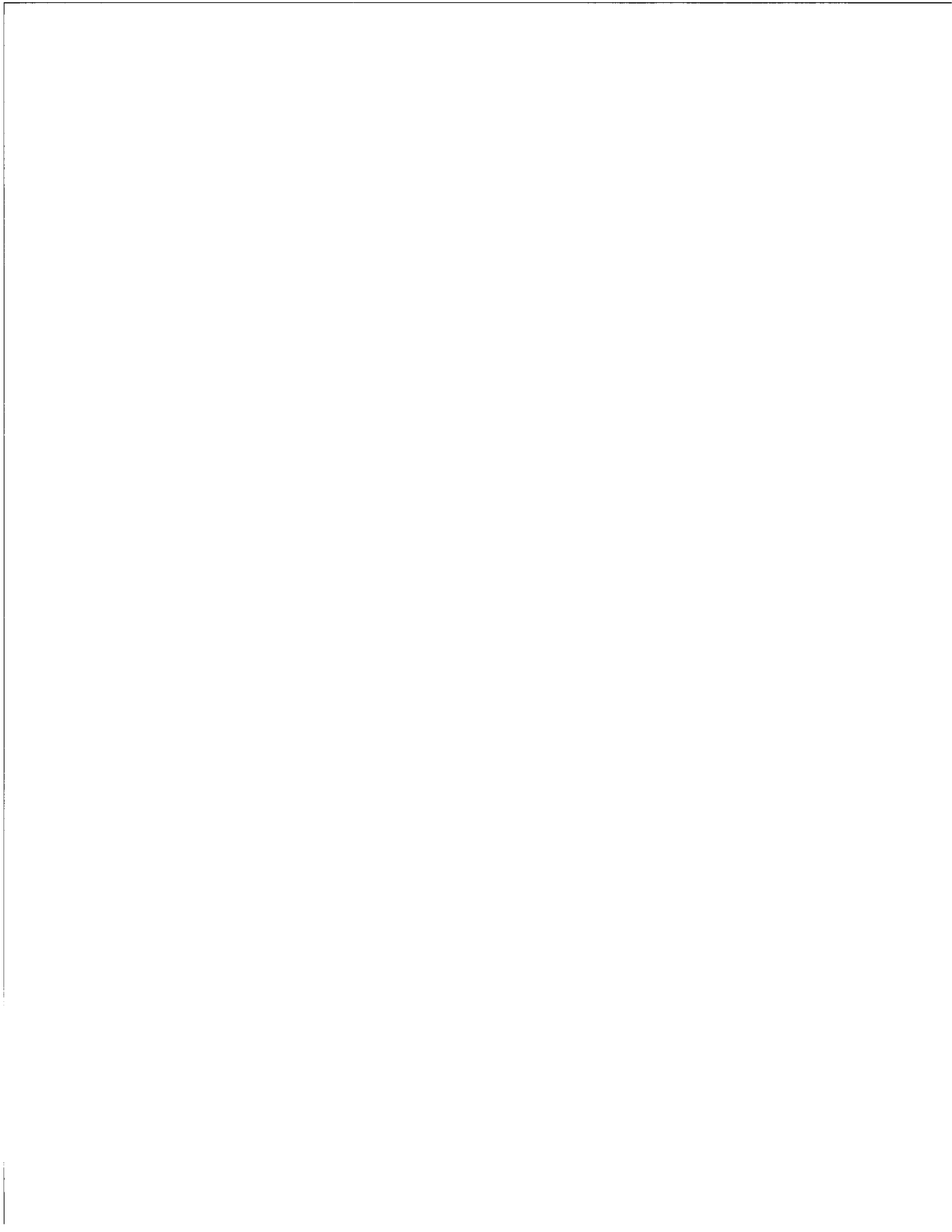
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Item 8 will be an oral report.

A copy of the proposed revision of Official Form 10 with the changes made at Sarasota meeting is attached.



UNITED STATES BANKRUPTCY COURT _____ DISTRICT OF _____		PROOF OF CLAIM
Name of Debtor: _____		Case Number: _____
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): _____		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.
Name and address where notices should be sent: _____		Court Claim Number: _____ <i>(If known)</i>
Telephone number: _____		Filed on: _____
Name and address where payment should be sent (if different from above): _____		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.
Telephone number: _____		<input type="checkbox"/> Check this box if you are the debtor or trustee in this case.
1. Amount of Claim as of Date Case Filed: \$ _____ If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of all interest or additional charges.		5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount. Specify the priority of the claim.
2. Basis for Claim: _____ (See instruction #2 on reverse side.)		<input type="checkbox"/> Wages, salaries, or commissions (up to \$4,650*) earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. §507(a)(3).
3. Last four digits of any number by which creditor identifies debtor: _____ 3a. Debtor may have scheduled account as: _____ (See instruction #3a on reverse side.)		<input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. §507(a)(4).
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information. Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: _____ Value of Property: \$ _____ Annual Interest Rate: _____ % Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ _____ Basis for perfection: _____ Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____		<input type="checkbox"/> Up to \$2,100* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. §507(a)(6).
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.		<input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. §507(a)(7).
7. Documents: Attach redacted copies (See definition of "redacted" on reverse side.) of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements or running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. If the documents supporting the claim and any summary together exceed 25 pages, see the page limitation set out in instruction #7 on reverse side. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. If the documents and any summary together exceed 5 pages, see instruction #7 on reverse.		<input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. §507(a)(8).
DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, please explain: _____		<input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. §507(a)(____). Amount entitled to priority: \$ _____
Date: _____		<i>*Amounts are subject to adjustment on 4/1/07 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment</i>
Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from notice address above. Attach copy of power of attorney, if any.		FOR COURT USE ONLY

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, there may be exceptions to these general rules.

Items to be completed in Proof of Claim form

Court, Name of Debtor, and Case Number:

Fill in the federal judicial district where the bankruptcy case was filed (for example, Central District of California), the bankruptcy debtor's name, and the bankruptcy case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is located at the top of the notice.

Creditor's Name and Address:

Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. Amount of Claim as of Date Case Filed:

State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:

State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor

3a. Debtor May Have Scheduled Account As:

Use this space to report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

4. Secured Claim:

Check the appropriate box and provide the requested information if the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See DEFINITIONS, below.) State the type and the value of property that secures the claim, attach copies of lien documentation, and state annual interest rate and the amount past due on the claim as of the date of the bankruptcy filing.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. §507(a).

If any portion of your claim falls in one or more of the listed categories, check the appropriate box(es) and state the amount entitled to priority (See DEFINITIONS, below.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Credits:

An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

7. Documents:

Attach to this proof of claim form redacted copies documenting the existence of the debt and of any lien securing the debt. You may also attach a summary of these documents, but together the documents and the summary may not exceed 25 pages. If the documentation supporting the claim exceeds 25 pages, attach instead a copy of relevant excerpts of the documentation along with a summary. The summary and excerpts together must not exceed 25 pages. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary of these documents, but together these documents may not exceed 5 pages in length. If the documents that evidence perfection of any security interest exceed 5 pages, you must attach relevant excerpts of the documents and a summary. This summary and excerpts together must not exceed 5 pages. **DO NOT SEND ORIGINAL DOCUMENTS.** If you do not file a copy of the complete documentation you must serve a copy of it on any party that requests it. FRBP 3001(d) and (d).

Date and Signature:

The person filing this proof of claim must sign and date it. Rule 9011, FRBP. If the claim is filed electronically, Rule 5005(a)(2), FRBP, authorizes courts to establish local rules specifying what constitutes a signature. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. Attach a complete copy of any power of attorney. Criminal penalties apply for making a false statement on a proof of claim.

DEFINITIONS

Debtor

A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

Creditor

A creditor is the person, corporation, or other entity owed a debt by the debtor on the date of the bankruptcy filing.

Claim

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

Proof of Claim

A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.

Secured Claim Under 11 U.S.C. § 506(a)

A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a

lien. A claim also may be secured if the creditor owes the debtor money (has a right of setoff).

Unsecured Claim

An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

Claim Entitled to Priority Under 11 U.S.C. § 507(a)

Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

Redacted

A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor should redact and use only the last four digits of any social security, tax identification, or financial account number, all but the initials of a minor's name and only the year of any person's date of birth.

Relevant Excerpts/Evidence of Perfection

Relevant excerpts are those parts of a larger document that bear directly on the matter to be considered by the trustee or the court. Excerpts with respect to a claim should provide information about the amount and validity of the claim: including names of parties, date signed, amount of the debt, and evidence of perfection of the creditor's interest, if any. Evidence of perfection

may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded. Attach no more than 25 pages of relevant excerpts that support the claim, including any summary. FRBP 3001(c). Attach no more than 5 pages of relevant excerpts of evidence of perfection, including any summary. FRBP 3001(d)

INFORMATION

Acknowledgment of Filing of Claim

To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may access the court's PACER system (www.pacer.psc.uscourts.gov) for a small fee to view your filed proof of claim.

Offers to Purchase a Claim

Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to Rule 3001(e) FRBP, any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 et seq.), and any applicable orders of the bankruptcy court.

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES
FROM: JEFF MORRIS, REPORTER
RE: AMENDMENTS TO RULE 4003
DATE: JANUARY 29, 2005

During the meeting at Half Moon Bay, the Committee considered proposed amendments to Bankruptcy Rule 4003. The amendments included an amendment to Rule 4003(b) that would extend the time allowed for objections to exemptions when the exemption claim was one made not in good faith. The second proposal was an amendment to Rule 4003(d) to permit creditors whose liens were subject to avoidance under § 522(f) of the Bankruptcy Code to object to the debtor's claim of exemption as a part of the lien avoidance contested matter notwithstanding that the thirty-day objection period of 4003(b) had expired.

After discussion of these issues within the Committee, the matter was referred to the Subcommittee on Consumer Issues. The Subcommittee met by teleconference on November 23, 2004, to discuss the issues. After consideration of the matter, the Subcommittee is recommending amendments to Bankruptcy Rule 4003 as set out below.

Rule 4003(b)–Extension of Time to Object to Improperly Claimed Exemptions.

This issue was originally raised with the Committee by Judge Wedoff and is described in greater detail at Tab 11 of the Agenda Book for the Half Moon Bay meeting in September, 2004. Under Rule 4003(b), parties in interest have thirty days from the conclusion of the § 341 meeting of creditors to file an objection to a claim of exemption. The Supreme Court in *Taylor v.*

Freeland & Cronz, 503 U.S. 638 (1992), held that the deadline for objecting to exemptions would be strictly construed against a trustee who attempted to object beyond the thirty-day deadline. While the Court noted that an argument might exist under § 105 of the Bankruptcy Code to authorize a later objection, the Court did not consider that argument since it had not been raised in the lower courts.

A consequence of the relatively short deadline set out in the Rule and the Supreme Court's holding in *Taylor* is that trustees and other parties in interest face a relatively short deadline for objecting to claims of exemption. Under *Taylor*, if the objection is not timely made, the property is exempt. Section 522(l) specifically provides that in the absence of an objection, "property claimed as exempt ... is exempt." Thus, even property for which there is no available exemption under applicable law becomes exempt if no party in interest files a timely objection. This "exemption by declaration" process operates to grant debtors greater exemptions than those to which they are entitled under the applicable law thereby creating a loss for creditors who would otherwise share in a distribution out of the sale of those properties.

Judge Wedoff suggested that the Rule be amended to permit later filed objections to exemptions when there is no good faith basis for the exemption claim under applicable law. He argued that the rules should not operate to permit "exemptions by declaration." Allowing objections to exemptions at any time up to the closing of the case when those exemption claims have no good faith basis furthers the goal of protecting debtors' interests in their right to claim appropriate exemptions while still protecting the interests of creditors and discouraging debtors from overreaching in their claims of exemption.

Countervailing arguments were raised to the proposal. For example, as the Supreme

Court noted in *Taylor*, deadlines are essential in litigation. The debtor has a right to know that a claim of exemption is final so that he/she can move on in their financial life. Furthermore, a debtor's claim of exemption is made in the context of an adversary process. The Code imposes no obligation of good faith on a debtor in the selection of exemptions. Rather, the Code and Rules authorize the trustee and other parties in interest to interpose objections to those claimed exemptions. If the trustee and other parties in interest fail to raise objections timely, the exemptions should be allowed. Moreover, the information necessary for the trustee or parties in interest to determine whether an objection is warranted generally is available to them at or before the § 341 meeting.

The Subcommittee reconsidered these arguments as well as several others. It also addressed a series of questions relevant to the issue. First, should there be any amendment to Rule 4003(b) to extend the deadline for objecting to exemption claims for which there is no basis in applicable law? Second, if an amendment is appropriate, what standard should apply to the extension of the objection deadline? The Subcommittee considered three separate standards for extending the deadline. Objections could be raised after the normal thirty-day deadline if the exemption was

- not claimed in good faith,
- claimed in a manner that was not warranted by existing law or a non-frivolous extension of the law, or
- claimed knowingly and fraudulently by the debtor.

The Subcommittee concluded that Rule 4003(b) should be amended. In reaching that conclusion, however, there were some widely divergent views as to the extent to which

amendments should be adopted. For example, several Subcommittee members were of the view that simply extending the thirty-day deadline in Rule 4003(b) to sixty days would be a sufficient change in the rule to allow trustees and other parties in interest sufficient time to evaluate debtors' claims for exemption. To the extent that the amendment was viewed as necessary to provide additional time for the review of exemption claims, this amendment would solve the problem. Others, however, took the view that the limited time available to object under the current rule is not the only problem. Rather, they consider the potential for exemption by declaration to be inconsistent with fundamental bankruptcy policy and should be prevented without the restriction of a time deadline when there is no basis for the debtor's claim. Consequently, simply extending the deadline to sixty days would not be a sufficient response.

A significant majority of the Subcommittee concluded that simply extending the deadline to sixty days was an insufficient amendment to resolve the problem. Thus, the discussion proceeded to the proper standard for inclusion in the amendment to Rule 4003(b). There was some support for the subjective "no good faith basis for claiming an exemption" standard. The argument in favor of the standard is that this would prevent intentional acts by debtors who are engaging in gamesmanship in the claim of excessive exemptions without penalizing a well meaning debtor.¹ The majority of the Subcommittee, however, took the position that an objective standard should be employed because the purpose of the amendment is not simply to

¹ The Subcommittee considered a hypothetical posed by Prof. Resnick in which the debtor was unsophisticated and claimed a particular exemption because he had been told by a third party (not by his or her attorney) that certain property could be retained as exempt. Despite the debtor's honesty in holding this mistaken belief, the Subcommittee concluded that the trustee should be permitted to object to the exemption, and under the proposal the trustee could object to the exemption even if the thirty day period had expired.

prevent gamesmanship, but also to prevent exemptions by declaration even if done in good faith. In either instance (i.e. intentional or unintentional claim of excessive exemptions), the harm to the bankruptcy estate and the bankruptcy process is the same. Consequently, the Subcommittee rejected the subjective standards of the “knowing and fraudulent” claim of exemptions² and exemptions claimed in good faith, in favor of the standard that permits later objections to the exemptions if the exemption claim is not “warranted under existing law or any non-frivolous argument for an extension of the existing law.” This standard is taken from Rule 9011(b)(2) and represents perhaps the most “objective” standard among the three considered by the Subcommittee. The Subcommittee rejected the notion of using a direct cross-reference to Rule 9011 in Rule 4003(b) because of the possibility of changes in that rule (whether under the pending bankruptcy reform legislation, or otherwise), and instead suggests the restatement of the language of that rule as it currently exists within Rule 4003(b).

The Subcommittee also addressed several other issues relevant to the amendment. First, the Subcommittee concluded that the extension of time beyond thirty days should apply only to the trustee and not to other parties in interest. The concern was that creditors could use the extended time for objection to engage in strategic behavior to seek reaffirmation agreements with debtors. Moreover, permitting the trustee to bring the action still would allow creditors to raise the issue through the trustee in appropriate circumstances. Consequently, the extended time under the proposed rule would apply only to the trustee. Secondly, the Subcommittee concluded that the time within which to object should be cut off with the closing of the case. In most

² This standard is taken from § 727(a)(4) of the Bankruptcy Code, and employing this standard in Rule 4003(b) would provide a link to case law decided under that Code section.

Chapter 7 cases, the closing of the case happens relatively quickly and debtors would not be unduly inconvenienced by the potential for an exemption objection being raised prior to the closing of the case. The Subcommittee recognized, however, that some Chapter 7 cases, particularly asset cases, remain open for quite some time. Delaying the expiration of the objection period until the close of the case could, in those instances, create significant inconvenience for debtors. Consequently, the proposed amendment includes optional language that would permit the debtor to seek an early determination of the propriety of the claimed exemption. This is comparable to a motion filed under Rule 6007(b) requiring the trustee to abandon property of the estate. A proposed version of Rule 4003(b) as amended is set out below.

RULE 4003 EXEMPTIONS

* * * * *

(b) OBJECTION OR MOTION FOR ALLOWANCE.

(1) A party in interest may file an objection to the list of property claimed as exempt only within 30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later. The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension. Copies of the objections shall be delivered or mailed to the trustee, the person filing the list, and the attorney for that person.

(2) Notwithstanding the time limits set forth in

13 subdivision (b)(1) of this rule, if the claim of exemption is not
14 warranted by existing law or by a non-frivolous argument for the
15 extension, modification, or reversal of existing law or the
16 establishment of new law, the trustee may file an objection to the
17 claim of exemption on such grounds at any time prior to the
18 closing of the case. The trustee shall deliver or mail the objection
19 to the person filing the list and the person's attorney.

20 (3) The debtor or any dependent of the debtor may
21 move for the allowance of any exemption at any time after 30 days
22 after the conclusion of the meeting of creditors held under §
23 341(a).

COMMITTEE NOTE

The rule is amended to permit the trustee to object to an exemption at any time up to the closing of the case on the ground that the claim of exemption is not warranted under existing law or through an extension of that law or under new law. The amendment does not extend the generally applicable objection deadline which still requires objections to be made within 30 days of the conclusion of the § 341 meeting of creditors, or within 30 days of any amendment to the list of exemptions. The Supreme Court has held that the deadline for filing objections is inelastic, and the short deadline can result in debtors retaining property as exempt simply by claiming it as exempt. *See* 11 U.S.C. § 522(*l*) (“property claimed as exempt on such list is exempt.”) This can lead debtors to claim exemptions to which they are not entitled in the hope that no party in interest will object and the exemption will arise solely by listing the property on the schedule of exempt

property. Extending the deadline for trustees to object to an exemption when there is no basis for the claim under existing law or a reasonable extension of that law discourages a debtor from asserting these exemptions. It would also permit the court to review and, in proper circumstances, deny improperly claimed exemptions thereby protecting the legitimate interests of creditors and the bankruptcy estate.

The amendment extends the objection deadline only for trustees. If a creditor or other party in interest becomes aware of information that calls into question an exemption claimed by debtor, and the thirty day deadline has passed, the party in interest can contact the trustee who may pose an objection if the underlying exemption claim is unwarranted. Since the extension of the objection deadline to the closing of the case could present difficulties for a debtor who needs a determination that particular property is exempt, the amendment also provides that the debtor can expedite consideration of the exemption claim by appropriate motion.

Lien Avoidance and Exemption Objections

The second issue considered by the Subcommittee on Consumer Issues was the need for an amendment to Rule 4003(b) to authorize a lien holder whose lien is subject to avoidance under § 522(f) of the Bankruptcy Code to defend that contested matter by raising an objection to the debtor's initial claim of exempt property. Once again, the issue arises because of the ability to engage in claiming "exemptions by declaration" under Rule 4003(b). In that circumstance, the debtor can make a claim of exemption for specific property that is much greater than that amount allowed under applicable law. A creditor with a lien on that property would have little or no incentive to review, evaluate, and object to the debtor's exemption claim because exemptions are

subject to creditor's liens. It is also true that the trustee and other creditors would have little or no incentive to object to an excessive exemption claim in that circumstance if the result of the granting of the objection would be no additional funds available to the estate. (If the objection were successful, it would not generate funds for the estate because the asset would still be liquidated for the benefit of the secured creditor.)

As noted in the materials at Tab 11 in the Half Moon Bay Agenda Book, the Courts largely have concluded that a creditor with a lien on the property that the debtor claims is exempt can raise the issue of the exemption in a contested matter to avoid that creditor's lien. The debtor can seek to avoid certain liens that impair the debtor's exemption by way of contested matter rather than adversary proceeding. Bankruptcy Rule 4003(d) does not specifically authorize creditors in that position to defend against the 522(f) action by challenging the debtor's exemption. The substantial majority of courts that have addressed the issue, however, have recognized that it would be unfair to require those creditors to file objections to the debtor's initial claim of exemption when they would have no reason to do so given their position as a secured creditor. The Subcommittee concluded that the rules should more closely align with the practice which permits these objections to be raised. As a result, the Subcommittee on Consumer Issues recommends that Rule 4003(d) be amended to clarify that secured creditors can raise objections to the debtor's underlying exemption for purposes of the contested matter seeking to avoid the creditor's lien.

This objection is limited in effect to application in the contested matter in which the

debtor is seeking to avoid the creditor's lien. It would not be an objection that would apply generally to the debtor's exemption claim. The thirty-day objection period would continue to apply to the creditor as regards the debtor's exemptions. Rule 4003(d) would be amended as follows to accomplish that goal.

Rule 4003. Exemptions.

* * * * *

(b) OBJECTING TO A CLAIM OF EXEMPTIONS. Except as provided in this rule, ~~A~~ a party in interest may file an objection to the list of property claimed as exempt only within 30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later. The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension. Copies of the objections shall be delivered or mailed to the trustee, the person filing the list, and the attorney for that person.

* * * * *

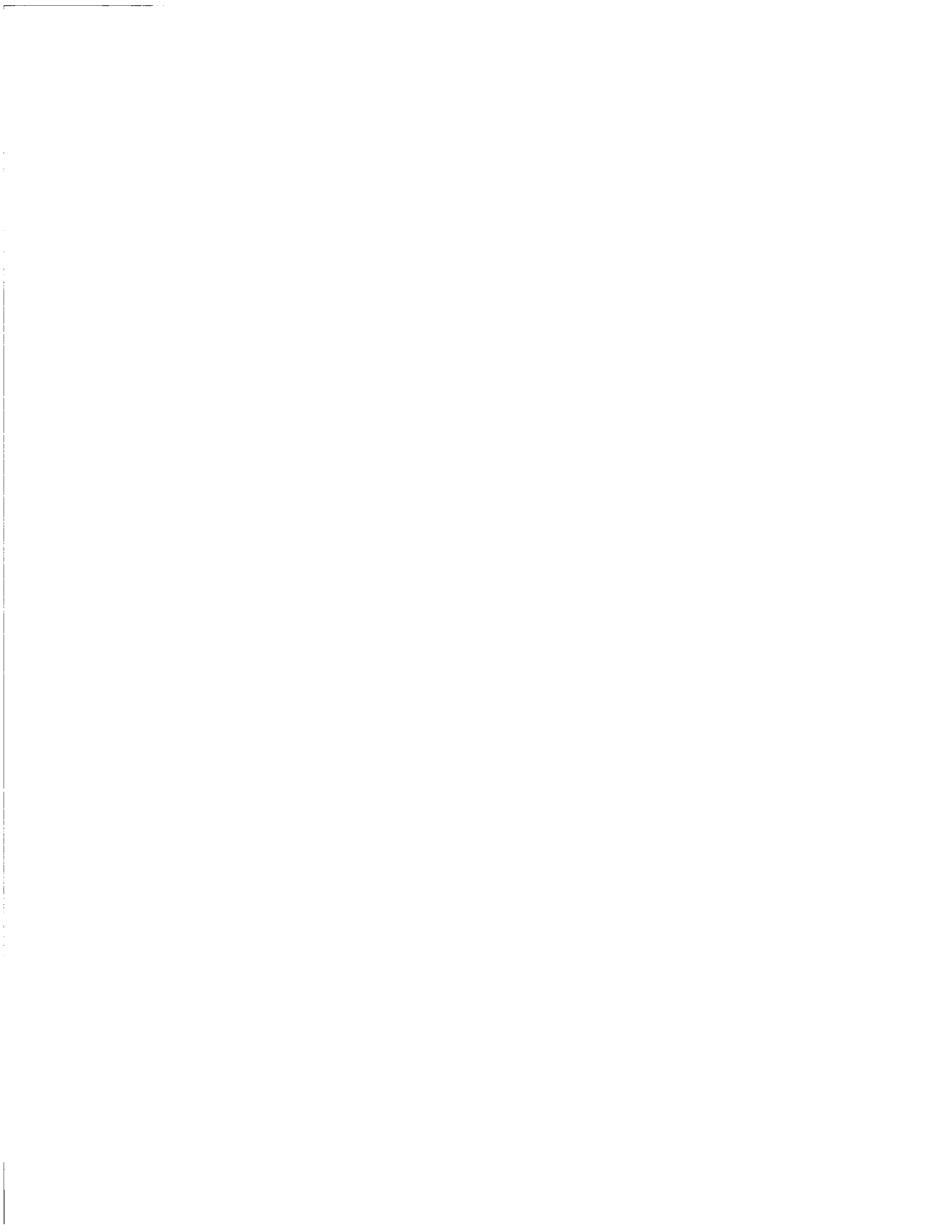
(d) AVOIDANCE BY DEBTOR OF TRANSFERS OF EXEMPT PROPERTY. A proceeding by the debtor to avoid a lien or other transfer of property exempt under § 522(f) of the Code

shall be by motion in accordance with Rule 9014. A creditor may object to such a motion by challenging the validity of an exemption asserted to be impaired by the lien notwithstanding the provisions of subdivision (b).

COMMITTEE NOTE

The rule is amended to clarify that a creditor with a lien on property that the debtor is attempting to avoid on the grounds that the lien impairs an exemption may raise in defense to the lien avoidance action any objection to the debtor's claimed exemption. The right to object is limited to an objection to the exemption of the property subject to the lien and for purposes of the lien avoidance action only. The creditor may not object to other exemption claims made by the debtor. Those objections, if any, are governed by Rule 4003(b).

(Note that this version of subdivision (b) does not reflect the changes to that provision as set out earlier in this memorandum.)



MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES
FROM: JEFF MORRIS, REPORTER
RE: RULE 9021 AND THE SEPARATE DOCUMENT RULE
DATE: FEBRUARY 10, 2005

The Subcommittee on Privacy, Public Access, and Appeals met by teleconference to consider whether to propose any amendment to Rule 9021 that would address the impact of the recent revisions to Civil Rule 58 that are incorporated by reference under Rule 9021. After a vigorous discussion, the Subcommittee could not reach a consensus on the matter. Instead, the Subcommittee recommends that the issue be reconsidered by the full Committee with that consideration focused on four alternatives. The alternatives are set out at the end of this memo following a presentation of the issues.

The Incorporation of Civil Rule 58 into the Bankruptcy Rules

Bankruptcy Rule 9021 generally incorporates by reference Rule 58 of the Federal Rules of Civil Procedure. One exception to that incorporation, however, is that the reference to Civil Rule 79(a) in Civil Rule 58 is read as a reference to Bankruptcy Rule 5003. Bankruptcy Rule 5003 requires the Clerk to maintain a docket in each case and to enter judgments on that docket showing the date when the entry was made. Bankruptcy Rule 5003(a). This cross-reference to Bankruptcy Rule 5003 in lieu of Civil Rule 79(a) has very little impact. Under either rule, the Clerk maintains a docket and must enter judgments showing the date of those judgments on the docket.

The incorporation of Civil Rule 58, however, recently has taken on a potentially more

significant meaning. Civil Rule 58 was amended effective December 1, 2002. The former Rule 58 provided that judgments are effective only when they are set forth on a separate document and entered as provided in Rule 79(a) of the Civil Rules. The Committee Note to the 2002 revision to Civil Rule 58 indicated that the separate document requirement was frequently ignored. The consequence of ignoring this requirement was that the time to appeal under Appellate Rule 4 did not begin to run. See, e.g., *United States v. Haynes*, 158 F.3d 1327, 1331 (D.C. Cir. 1998); *Hammack v. Baroid Corp.*, 142 F.3d 266, 269-70 (5th Cir. 1998); *Rubin v. Schottenstein, Zox & Dunn*, 110 F.3d 1247, 1253 n.4 (6th Cir. 1997), vacated on other grounds 143 F.3d 263 (6th Cir. 1998)(en banc). The failure of a party to raise the absence of a separate document, however, could constitute a waiver of the right to have the judgment entered on the civil docket. *Fiore v. Washington County Community Mental Health Center*, 960 F.2d 229, 226 (1st Cir. 1992)(en banc). In any event, the consequence of the failure to set out judgments on a separate document led the Civil and Appellate Rules Committees to recommend the changes to Rule 58 that became effective on December 1, 2002. Under the new version of Rule 58(b), when a separate document is required, judgment is *deemed* entered when the judgment is entered on the civil docket under Rule 79(a) and when it is either set forth on a separate document or when 150 days have run from the entry of the judgment on the civil docket under Rule 79(a), whichever is earlier. The purpose of the new definition of the time when a judgment becomes effective is to establish a final date on which orders become appealable, even in the absence of the judgment being entered on a separate document.

The incorporation of Civil Rule 58 under Bankruptcy Rule 9021 may be susceptible to two conflicting readings. The rule could be construed as incorporating nearly all of Civil Rule

58, except only that portion of Rule 58 that refers to Civil Rule 79(a). If the remainder of Civil Rule 58 is incorporated, then the provision of subdivision (b)(2) of that rule would apply in bankruptcy proceedings, and it would appear to extend the time for filing an appeal to 150 days after its inclusion on the docket in the absence of a separate document setting forth the order or judgment.

On the other hand, Bankruptcy Rule 9021 only incorporates Civil Rule 58 to the extent not otherwise provided in Rule 9021. Rule 9021 states that “a judgment is effective when entered as provided in Rule 5003.” The rule thus arguably “provides otherwise” if Rule 5003 establishes an effective date for judgments that is inconsistent with Civil Rule 58. Under Bankruptcy Rule 9021, the time of the entry of the judgment is defined entirely by Rule 5003. Bankruptcy Rule 5003(a) simply states that “the entry of a judgment or order in a docket shall show the date the entry is made.” Entry of a judgment is made in the manner prescribed by the Director of the Administrative office of the United States Courts. This procedure would seem to override the process set out in Civil Rule 58(b)(2).

It is clear that the “separate document rule” for judgments applies in bankruptcy cases. In *re Schimmels*, 85 F.3d 416 (9th Cir. 1996); *In re Seiscom Delta, Inc.*, 857 F.2d 279 (5th Cir. 1988). In *Dynamic Changes Hypnosis Center, Inc., v. PCH Holding LLC*, 306 B.R. 800 (E.D. Va. 2004), the District Court recognized that the separate document requirement applies in bankruptcy cases and concluded that the appellant had “waived its right to have the Bankruptcy Court’s judgment entered on a separate document.” *Id.* at 808. The Court in *Dynamic Changes* noted the amendment to Civil Rule 58 and specifically mentioned that Bankruptcy Rule 9021 has not been amended since the change to Civil Rule 58. In footnote 10 to the opinion, the Court

stated that the lack of any amendment to Bankruptcy Rule 9021 means that “the proper procedure for the Bankruptcy Court to follow is to set forth each final order on a separate document on the day the order was rendered, and for the Clerk to note the entry of that order on the publicly available bankruptcy docket.” *Id.* at 807, n.10. Thus, the District Court seems to have interpreted Bankruptcy Rule 9021 as not incorporating the change to Civil Rule 58 into the Bankruptcy Rules. I have been unable to find any other decisions rendered under Bankruptcy Rule 9021 applying the 2002 amendment to Civil Rule 58.

In *Garland v. Estate of Moloney (In re Garland)*, 295 B.R. 347 (9th Cir. BAP 203), the court held that a judgment not set forth on a separate document did not become effective under Bankruptcy Rule 9021 and Civil Rule 58 as incorporated into the Bankruptcy Rules. The bankruptcy court subsequent entered a judgment denying the debtor’s request for relief from the earlier order, and it was this subsequent order prepared by the court (counsel had prepared the initial order) that was final and presented an appealable order to the BAP. Judge Klein, writing for the court, noted that Bankruptcy Rule 9021 and Civil Rule 58 establish the same requirements for judgments, and he also noted that the revised version of Civil Rule 58 will apply in bankruptcy cases to set an outside date of 150 days after entry in the civil docket as the latest date on which the judgment will become effective.

While it is clear that the separate document requirement applies under both the Bankruptcy Rules and the Civil Rules, the definition of “entry” of a judgment may be different depending on the extent to which Civil Rule 58 is incorporated into Bankruptcy Rule 9021. Since Civil Rule 58(b)(2) now defines entry of a judgment in such a manner that it establishes a definite cut-off date for the entry of a judgment even in the absence of a separate document, the

question arises whether the bankruptcy rules should follow suit. While the *Garland* court construed existing Rule 9021 as fully incorporating Civil Rule 58(b)(2), the court in *Dynamic Changes* indicated that the rule does not include that new definition of entry of a judgment into the Bankruptcy Rules.

The Advisory Committee may conclude that the bankruptcy system is better served by leaving the Rule unchanged. Amending the Rule at this time would highlight the fact that some judgments are not properly entered when the court did not include the judgment on a separate document. In that instance, the circuit decisions under former Civil Rule 58 that held that the absence of a separate document caused the appeal time not to commence would continue to apply to bankruptcy court judgments for which no separate document was filed. This could cause parties to reopen appeals on matters long since resolved, if they realize that the judgment was not set out on a separate document..

The bankruptcy rules and the civil rules generally are intended to be consistent to the greatest extent possible. In the absence of some bankruptcy policy making a different rule necessary or appropriate, the same treatment typically applies in adversary proceedings in bankruptcy cases as compared to general civil cases. While there may be a justification for expediting appeals in bankruptcy cases because resolution of a particular appeal can have an impact on many otherwise unrelated matters in the case (e.g., if we win, we sell the division and reorganize the rest of the business; if we lose, we convert to chapter 7), that may not justify inconsistency between the Civil and Bankruptcy Rules. Therefore, it may be prudent to consider amending the Bankruptcy Rule 9021 to ensure that consistent treatment is available under both the Civil Rules and the Bankruptcy Rules.

In addition to the possibility of taking no action to amend Rule 9021, the following proposals are offered for the Committee's consideration. Alternative 1 is intended to make the appealability of final judgments and orders in bankruptcy adversary proceedings and contested matters consistent with the appealability of final judgments and orders in cases governed by the Civil Rules. This would further the goal of consistency between the sets of rules, and it provides a broader source of decisional law on the operation of the rule. On the other hand, this solution results in the extension of the time to appeal if the court does not comply with the separate document requirement for judgments. In that event, an aggrieved party would have 150 days from the time of the entry of the judgment on the docket to commence an appeal of the judgment.

Alternative 2 is similar to the first alternative, except that it would call for the deletion of only the third sentence of the rule. The result of this edit is that the bankruptcy rules would continue to have a specific and direct requirement of a separate document for judgments, and the rule would otherwise defer to the civil rules. The deletion of the third sentence would arguably prevent the argument that "entry" of a judgment is somehow established under Rule 5003 as asserted by the court in *Dynamic Changes*.

Alternative 3 would set the bankruptcy courts on a course separate from the district courts as regards the entry of judgments. It would delete the requirement that there be a separate document for a judgment to become effective.

ALTERNATIVE 1 – General Adoption of Civil Rule 58

Rule 9021. Entry of Judgment.

1

Except as otherwise provided herein, Rule 58 F.R.Civ.P.

2 applies in cases under the Code. ~~Every judgment entered in an~~
3 ~~adversary proceeding or contested matter shall be set forth on a~~
4 ~~separate document. A judgment is effective when entered as~~
5 ~~provided in rule 5003.~~ The reference in Rule 58 F.R.Civ.P. to Rule
6 79(a) F.R.Civ.P. shall be read as a reference to Rule 5003 of these
7 rules.

COMMITTEE NOTE

The rule is amended to incorporate Rule 58 F.R.Civ.P. into the Bankruptcy Rules in its entirety except for references in Civil Rule 58 to Civil Rule 79(a). Those references are deemed to be references to Bankruptcy Rule 5003 instead of references to Civil Rule 70(a). Consequently, a judgment that must be entered on a separate document is considered entered when it is entered on the bankruptcy docket and when it is either (1) set forth on a separate document or (2) when 150 days passes from the entry on the bankruptcy docket, whichever is earlier.

ALTERNATIVE 2 – Retention of Separate Document Requirement in Rule 9021

Rule 9021. Entry of Judgment.

1 Except as otherwise provided herein, Rule 58 F.R.Civ.P.
2 applies in cases under the Code. Every judgment entered in an
3 adversary proceeding or contested matter shall be set forth on a
4 separate document. ~~A judgment is effective when entered as~~

5 ~~provided in rule 5003.~~ The reference in Rule 58 F.R.Civ.P. to Rule
6 79(a) F.R.Civ.P. shall be read as a reference to Rule 5003 of these
7 rules.

COMMITTEE NOTE

The rule is amended by deleting that portion of the rule that attempted to define the effective date of a judgment. The deletion of the statement extends the incorporation of Rule 58 F. R. Civ. P. into the Bankruptcy Rules to include the provisions of that Civil Rule 58 that define the entry of a judgment whether or not a separate document setting forth the judgment exists. Under that rule, if the court issues a separate document setting forth the judgment, the judgment is entered at the later of the time of the issuance of the separate document or the docketing of that judgment by the clerk. If the court does not issue a separate document setting forth the judgment, then the judgment is deemed entered 150 days after the clerk enters the judgment on the docket. This will resolve matters relating to the timeliness of appeals when no separate document is issued.

Alternative 3 – A Separate “Entry of Judgment Rule” for Bankruptcy Cases

If the Committee believes that the bankruptcy rules should not have the same definition of “entry of judgment” as set out in Civil Rule 58, then it may be prudent to consider being even more specific in Rule 5003. To accomplish that goal, the rule might be amended to eliminate the separate document requirement. In many instances, orders are entered that include more than a simple entry of judgment. This is particularly true in contested matters as compared to adversary proceedings. Thus, eliminating the separate document requirement will follow some current practices. There would be no need to amend Bankruptcy Rule 9021 if the Advisory Committee

selects this option. Of course, such a solution could present problems by making it unclear whether particular orders are final and appealable. This could lead to parties filing notices of appeals in order to protect against a waiver if they are unclear as to whether a particular order is final and appealable. This problem already exists, to some extent, but a rule that would expand the concept of the entry of a final judgment would seem likely to make this an even more frequent occurrence. Of course, is this is what is happening in the courts already (and particularly in matters that are not adversary proceedings), then perhaps the rule should be amended to recognize this practice.

Rule 5003. Records Kept By the Clerk

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(a) Bankruptcy dockets

The clerk shall keep a docket in each case under the Code and shall enter thereon each judgment, order, and activity in that case as prescribed by the Director of the Administrative Office of the United States Courts. The entry of a judgment or order in a docket shall show the date the entry is made. Entry of the judgment is effective notwithstanding the failure of the court to issue a separate document as required under Rule 9021.

* * * * *

COMMITTEE NOTE

The rule is amended to clarify that the entry of a judgment dates from its being entered on the docket and is not postponed by the absence of a separate document setting forth the judgment. The

availability of notice of the docket entry by electronic means reduces the likelihood that parties will be unaware of the entry of the judgment, so delaying the effective date of the judgment for the issuance of a separate document is unnecessary. Unlike litigation under the Federal Rules of Civil Procedure, appeals in bankruptcy cases are treated on a more expedited basis with the notice of appeal due within ten days of its entry. This interest in expediting review would be overridden if the extended period of appeal available under Fed. R. Civ. P. 58(b)(2) were to apply in bankruptcy cases. This amendment makes clear that the appeal time begins to run from the time the judgment is docketed rather than from some later time when a separate document setting out the judgment is issued, or even a later point in time under Civil Rule 58(b)(2).

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES
FROM: JEFF MORRIS, REPORTER
RE: RULE 3002(c)(5) AND NOTICE OF POSSIBLE DIVIDEND
DATE: FEBRUARY 2, 2005

The Committee received a letter from Bankruptcy Judge Dana L. Rasure (N.D. Okla.), on behalf of the Bankruptcy Judges Advisory Group, regarding the operation of Rule 3002(c)(5). Under Rule 2002(e), creditors may be notified that there appear to be no assets in a case and that there will likely be no distribution to them. Consequently, they are informed under Rule 2002(e) that they need not file a proof of claim in the case. Notices of this type are quite common. If, however, it later appears that a distribution may be possible, Rule 3002(c)(5) requires the clerk to notify the creditors that they may file proofs of claim in the case. The problematic aspect of Rule 3002(c)(5) is that the rule directs the notice to state that creditors must file their proofs of claim “within 90 days after the mailing of the notice.” Moreover, as Judge Rasure notes, the court is not authorized to shorten or lengthen this period. See Bankruptcy Rule 9006(b)(3) and (c)(2) (subdivision (c)(2) bars reduction of the period, and subdivision (b)(3) allows enlargement, but only to the extent permitted under Rule 3002(c) which has no provision for enlarging the period set by that rule). Restricting the court’s ability to set a specific time for filing claims in this circumstance leaves Rule 3002(c)(5) as the only deadline for filing.

The problem with this deadline is its imprecision. The rule states that the filing period expires 90 days after the **mailing** of the notice. The problem is that these notices are typically sent out by the Bankruptcy Noticing Center (BNC), and the clerk of the court from which the

notice is issuing does not know at the time the notice is prepared exactly when the notices will be mailed. Furthermore, the creditors do not receive any certificate of service from the BNC, so they are not able to determine the date of mailing (other than by retaining the envelope that may include a postage date) so that they know when the starting point for counting the 90 day period set out in the Rule. It also appears that the BNC may “mail” the notices at different times depending on whether the notice is being sent by regular mail or electronically. This would arguably create different deadlines for the filing of claims even though the language of the notices would be identical. The potential for confusion and inconsistent treatment of similar matters should not be allowed to persist if a solution is available. Judge Rasure’s letter also suggests that the rule is ambiguous in that it refers to “mailing” although the BNC sends a substantial number of notices electronically. I believe that Rule 9036 sufficiently addresses that issue by authorizing the electronic noticing, but significant issues remain.

Judge Rasure also notes in her letter that the rule as written seems to require the application of Rule 9006(f) to the notice period thereby providing at least three extra days notice. She suggests that this additional time period exacerbates the indefiniteness of the timing as set out above. Her letter offers several scenarios in which creditors trying to ascertain the deadline for filing their claim will face difficult decisions in the application of that rule. These examples, in my opinion, are not significantly different than any other situation in which Rule 9006(f) applies. Thus, I do not believe that the counting issues created by Rule 9006(f) (which the Committee has recently addressed) do not provide a persuasive ground for amending Rule 3002(c).

That is not to say, however, that Rule 3002(c) cannot be clarified and improved by Judge

Rasure’s suggested solution. She suggests that the rule be amended so that it requires the clerk to “give 90 days notice by mail” rather than the current formulation that seems to set a requirement that cannot be met with precision. Judge Rasure offers Rule 2002(a) as an example of a rule that employs a more appropriate timing mechanism. With such a formulation, the clerk can set a date for filing claims under Rule 3002(c)(5) that would safely be more than 90 days from the date on which the notice is likely to be received. This would permit compliance with the rule in a way that she argues is not currently possible. I think that the change is a relatively minor one, yet it is one that will improve the rule. Several judges on the Bankruptcy Judges Advisory Group indicated that they have had a problem with the rule in the past. I have not been able to identify any reasons not to make the amendment other than that I am not aware of any problems that have arisen in the case law on the matter so that there is no pressing need for the change. If the Committee favors amending the rule, I think that Judge Rasure’s language addresses the problem. It is set out below.

RULE 3002. Filing Proof of Claim or Interest

1 * * * * *

2 (c) Time for Filing.

3 * * * * *

4 (5) If notice of insufficient assets to pay a dividend was given

5 to creditors pursuant to under Rule 2002(e), and subsequently the

6 trustee notifies the court that payment of a dividend appears

7 possible, the clerk shall ~~notify~~ give at least 90 days notice by mail

8 to the creditors of that fact and that they may file proofs of claim

9 ~~within 90 days after the mailing of the notice~~ by the date set out in
10 the notice.

COMMITTEE NOTE

The rule is amended to set a new period for providing notice to creditors that they may file a proof of claim in a case in which they were previously informed that there was no need to file a claim. Under Rule 2002(e), if it appears that there will be no distribution to creditors, the creditors are notified of this fact and are informed that if assets are later discovered and a distribution is likely that a new notice will be given to the creditors. This second notice is prescribed by Rule 3002(c)(5). The rule is amended to direct the clerk to give at least 90 days notice of the time within which creditors may file a proof of claim. Setting the deadline in this manner allows the notices being sent to creditor to be more accurate as regards the deadline than was possible under the prior rule. The rule previously began the 90 day notice period from the time of the mailing of the notice, and that date could vary and generally would not even be known to the creditor. Under the amended rule, the notice will identify a specific bar date for filing proofs of claim thereby being more helpful to the creditors.

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES
FROM: JEFF MORRIS, REPORTER
RE: REPORT OF JOINT SUBCOMMITTEE ON VENUE AND RELATED
MATTERS IN LARGE CHAPTER 11 CASES
DATE: JANUARY 29, 2005

Mr. Shaffer chaired the Joint Subcommittee on Venue which was a joint effort of the Advisory Committee on Bankruptcy Rules and the Bankruptcy Administration Committee. The Joint Committee studied various issues that may have some impact on the selection of venue in large chapter 11 cases. The Joint Committee sought to identify areas where the rules could be improved to make the location of a court less significant in the selection of the district in which to file a petition.

The Joint Committee first recommended an amendment to Rule 1014 that the Advisory Committee has already proposed for publication. The Standing Committee adopted that recommendation, and the amendment to Rule 1014 will be published in August. The amendment simply clarifies that the court may act on its own in dismissing a case or transferring the case to another district. The amendment also provides that the court can only take such action after notice and a hearing on the issue.

The Joint Committee continued its work since the last meeting of the Advisory Committee informed in large part by the discussions that took place during the meeting at Half Moon Bay in September. The Joint Committee met in early January to consider further drafts and to resolve matters raised by the Advisory Committee. The Joint Committee recommends

that the Advisory Committee recommend to the Standing Committee that three additional rules amendments be published for comment in August 2005. The amendments are to Rules 3007, 4001, and 6006. The amendments would authorize the joinder of objections to multiple claims under Rule 3007, and the joinder of actions to assume, assign, or reject executory contracts and unexpired leases under Rule 6006. A number of courts already permit such actions, and some local rules also allow the practice. These rules, if adopted, would serve to standardize the practice and reduce incentives to select one jurisdiction over another in the filing of a petition.

Other significant proposals from the Joint Committee are the proposed amendment to Rule 4001, and a new rule, Rule 6003, which will both place new limits on the scope of orders the court may enter at the earliest stages of a case. The ability to obtain “first day orders” is often cited as a reason for selecting a particular venue. In addition, the Joint Subcommittee had concerns about the ability of the court, creditors, and other parties in interest to evaluate effectively the often voluminous requests for relief at the initiation of the case. Amended Rule 4001 would impose new disclosure requirements with respect to motions to obtain debtor in possession financing and to use cash collateral. New Rule 6003 would govern a wide range of other requests for relief from the court in the first twenty days of a case. It requires that the court not grant specified kinds of relief at the very start of a case absent a showing of immediate and irreparable harm.

* * * * *

Case Management, Telephonic Participation and Status Reports in Chapter 11 Cases

The Joint Committee also determined that the rules should be amended specifically to authorize the use of telephonic conferences and to otherwise allow remote participation in certain

circumstances and to employ other case management techniques. The Joint Committee did not have an opportunity to consider specific language for such a rule, so the following should be considered a recommendation from the Joint Committee as to the principle of more open participation in matters without any position as to the draft set out below. The rule requires the court to hold an initial status conference in chapter 11 cases to consider a variety of case management tools such as requiring periodic status reports on the case, creation of a website specific to the case and for the use of interested parties, procedures to allow electronic participation in hearings, and the like. The implementation of these different means of case management are left to the discretion of the court. Experience with different kinds of cases will guide the courts as to the extent to which these case management orders are necessary in particular cases. In every chapter 11 case, however, the court must hold an initial status conference.

RULE 2021. Case Management and Participation by Electronic Means

1 (a) As soon as practical after the filing of a chapter 11 case, but not
2 later than 15 days after the meeting of creditors under §341(a), the
3 court shall fix a date to hold an initial status conference in the
4 chapter 11 case to consider, and if appropriate, enter orders:

- 5 (1) Establishing procedures for [participating or]
6 appearing in hearings by electronic means;
7 (2) Establishing procedures for the creation of a website
8 for the chapter 11 case including information

9 regarding pending and concluded proceedings, bar
10 dates, current service lists, scheduled court hearings,
11 dates for filing or objection deadlines, status reports,
12 any special procedures or case management orders
13 applicable to the chapter 11 case, information
14 regarding electronic access to filings, and such other
15 information as the court may direct which will
16 otherwise promote fair access and facilitate the
17 participation in the chapter 11 case; and

18 (3) Requiring counsel to the debtor in possession or
19 trustee to file with the clerk and serve upon the
20 persons appearing in the chapter 11 case, the
21 creditors included on the list filed pursuant to Rule
22 1007(d), and on such other entities as the court may
23 direct, a written status report on the progress of the
24 chapter 11 case. The status report shall include the
25 information described in subdivision (a)(2) of this
26 rule.

27 (b) Counsel to the debtor in possession or the trustee shall
28 give notice of the time and date of the initial status conference to
29 the persons described in subdivision (a)(3) of this rule.

COMMITTEE NOTE

This rule implements § 105(d) of the Code by requiring the court to hold a status conference at the beginning of a chapter 11 case and to establish a variety of procedures and case management policies to govern the case as it proceeds. Many chapter 11 cases involve parties who are quite distant from the court, and the initial case management order can include procedures to permit participation in hearings by electronic means if the court believes that such procedures are proper. Other possible case management orders include a requirement that periodic status reports be provided to interested parties and that a website be established to make information available to creditors and others about the case.

The need for one or more of these case management tools varies according to the case, and the court is given broad discretion as to the nature and extent to which these orders should be entered.



MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES
FROM: JEFF MORRIS, REPORTER
RE: COURT LOCATION IN EMERGENCY SITUATIONS
DATE: SEPTEMBER 8, 2005

In 2003 the Committee approved an amendment to Rule 5001 that would except the courts from the requirements of that rule to the extent that court proceedings might be held at another location under the proposed amendment to 28 U.S.C. § 152(c). That amendment was under consideration in response to problems faced by courts that were located in the area of the blackout that stretched from the Cleveland area to New York City. The catastrophic events of Hurricane Katrina brought the issue back to Congress. The Federal Judiciary Emergency Special Sessions Act of 2005, Public Law 109-63, mirrors the earlier considered legislation by amending 28 U.S.C. § 152(c) to authorize bankruptcy courts to hold court outside of their normal district. The legislation was signed by the President on September 9, 2005. Rule 5001 could be amended as set out in the attached memorandum that was included in the Skamania Agenda Book in 2003.



MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES
FROM: JEFF MORRIS, REPORTER
RE: COURT LOCATION AND RULE 5001(b)

As the attached memorandum from the Committee on the Administration of the Bankruptcy System notes, the courts have been preparing plans to ensure the continued operation of the courts in the event of emergencies. While the focus apparently has been on the impact of terrorist activities, the recent widespread blackout provides another example of the need for such planning. In the course of that planning, it became clear that some courts would be best served to conduct matters in another district. This led to the proposal now before the Judicial Conference to seek an amendment to 28 U.S.C. § 152(d) that would permit bankruptcy judges to hold court outside of the district in which they normally preside if emergency circumstances are present. Under the current provision, there is serious question as to whether a bankruptcy judge could hold court in the next most available court. The statutory amendment would resolve the problem, but existing Rule 5001(b) could pose another hurdle.

The following amendment to Rule 5001 is offered to meet the problem that may arise in the event that the proposed legislation is enacted. The issue does not appear controversial, and any change approved by the Committee can be held in abeyance until Congress acts on the proposed legislation. Adoption of the proposed amendment to Rule 5001(b) by the Committee at this time would permit us to forward the proposal to the Standing Committee as soon as legislation is enacted and would expedite final promulgation of the amendment. On the other hand, it may be prudent to await enactment of the legislation to be sure that any amendment to

the rule is consistent with that legislation. While that would delay the effective date of the rule amendment, the statute could be construed as overriding the rule and would permit a bankruptcy judge to hold court outside of his or her regular district if the emergency circumstances anticipated by the statute are present. In that event, delay in the promulgation of the rule would not have an adverse impact on the courts.

RULE 5001. Courts and Clerks' Offices

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(b) TRIALS AND HEARINGS; ORDERS IN CHAMBERS. All trials and hearings shall be conducted in open court and so far as convenient in a regular court room. Except as provided in 28 U.S.C. § 152(d), all ~~At~~ other acts or proceedings may be done or conducted by a judge in chambers and at any place either within or without the district; but no hearing, other than one ex parte, shall be conducted outside the district without the consent of all parties affected thereby.

COMMITTEE NOTE

The rule is amended to permit bankruptcy judges to hold hearings outside of the district in which the case is pending to the extent that the circumstances lead to the authorization of the court to take such action under the newly enacted amendment to 28 U.S.C. 152(d). Under that provision, bankruptcy judges may hold court outside of their districts in emergency situations and when the business of the court otherwise so requires. This amendment to the rule is intended to implement the legislation.

The proposed amendment could be adjusted to correspond to the statutory section that the

legislation finally adopts. Likewise, the reference in the Committee Note could be changed without difficulty. The Committee Note, however, might need to be changed if the language of any finally adopted statute differs in any significant way from the language of the proposal set out in the attached memorandum of the Committee on the Administration of the Bankruptcy System.



One Hundred Ninth Congress
of the
United States of America

AT THE FIRST SESSION

*Begun and held at the City of Washington on Tuesday,
the fourth day of January, two thousand and five*

An Act

To allow United States courts to conduct business during emergency conditions,
and for other purposes.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Judiciary Emergency Special Sessions Act of 2005".

**SEC. 2. EMERGENCY AUTHORITY TO CONDUCT COURT PROCEEDINGS
OUTSIDE THE TERRITORIAL JURISDICTION OF THE
COURT.**

(a) **CIRCUIT COURTS.**—Section 48 of title 28, United States Code, is amended by adding at the end the following:

"(e) Each court of appeals may hold special sessions at any place within the United States outside the circuit as the nature of the business may require and upon such notice as the court orders, upon a finding by either the chief judge of the court of appeals (or, if the chief judge is unavailable, the most senior available active judge of the court of appeals) or the judicial council of the circuit that, because of emergency conditions, no location within the circuit is reasonably available where such special sessions could be held. The court may transact any business at a special session outside the circuit which it might transact at a regular session.

"(f) If a court of appeals issues an order exercising its authority under subsection (e), the court—

"(1) through the Administrative Office of the United States Courts, shall—

"(A) send notice of such order, including the reasons for the issuance of such order, to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives; and

"(B) not later than 180 days after the expiration of such court order submit a brief report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives describing the impact of such order, including—

"(i) the reasons for the issuance of such order;

"(ii) the duration of such order;

"(iii) the impact of such order on litigants; and

"(iv) the costs to the judiciary resulting from such order; and

“(2) shall provide reasonable notice to the United States Marshals Service before the commencement of any special session held pursuant to such order.”.

(b) DISTRICT COURTS.—Section 141 of title 28, United States Code, is amended—

- (1) by inserting “(a)(1)” before “Special”;
- (2) by inserting “(2)” before “Any”; and
- (3) by adding at the end the following:

“(b)(1) Special sessions of the district court may be held at such places within the United States outside the district as the nature of the business may require and upon such notice as the court orders, upon a finding by either the chief judge of the district court (or, if the chief judge is unavailable, the most senior available active judge of the district court) or the judicial council of the circuit that, because of emergency conditions, no location within the district is reasonably available where such special sessions could be held.

“(2) Pursuant to this subsection, any business which may be transacted at a regular session of a district court may be transacted at a special session conducted outside the district, except that a criminal trial may not be conducted at a special session outside the State in which the crime has been committed unless the defendant consents to such a criminal trial.

“(3) Notwithstanding any other provision of law, in any case in which special sessions are conducted pursuant to this section, the district court may summon jurors—

“(A) in civil proceedings, from any part of the district in which the court ordinarily conducts business or the district in which it is holding a special session; and

“(B) in criminal trials, from any part of the district in which the crime has been committed and, if the defendant so consents, from any district in which the court is conducting business pursuant to this section.

“(4) If a district court issues an order exercising its authority under paragraph (1), the court—

“(A) through the Administrative Office of the United States Courts, shall—

“(i) send notice of such order, including the reasons for the issuance of such order, to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives; and

“(ii) not later than 180 days after the expiration of such court order submit a brief report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives describing the impact of such order, including—

“(I) the reasons for the issuance of such order;

“(II) the duration of such order;

“(III) the impact of such order on litigants; and

“(IV) the costs to the judiciary resulting from such order; and

“(B) shall provide reasonable notice to the United States Marshals Service before the commencement of any special session held pursuant to such order.”.

(c) BANKRUPTCY COURTS.—Section 152(c) of title 28, United States Code, is amended—

- (1) by inserting “(1)” after “(c)”; and

(2) by adding at the end the following:

“(2)(A) Bankruptcy judges may hold court at such places within the United States outside the judicial district as the nature of the business of the court may require, and upon such notice as the court orders, upon a finding by either the chief judge of the bankruptcy court (or, if the chief judge is unavailable, the most senior available bankruptcy judge) or by the judicial council of the circuit that, because of emergency conditions, no location within the district is reasonably available where the bankruptcy judges could hold court.

“(B) Bankruptcy judges may transact any business at special sessions of court held outside the district pursuant to this paragraph that might be transacted at a regular session.

“(C) If a bankruptcy court issues an order exercising its authority under subparagraph (A), the court—

“(i) through the Administrative Office of the United States Courts, shall—

“(I) send notice of such order, including the reasons for the issuance of such order, to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives; and

“(II) not later than 180 days after the expiration of such court order submit a brief report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives describing the impact of such order, including—

“(aa) the reasons for the issuance of such order;

“(bb) the duration of such order;

“(cc) the impact of such order on litigants; and

“(dd) the costs to the judiciary resulting from such order; and

“(ii) shall provide reasonable notice to the United States Marshals Service before the commencement of any special session held pursuant to such order.”

(d) UNITED STATES MAGISTRATE JUDGES.—Section 636 of title 28, United States Code, is amended in subsection (a) by striking “territorial jurisdiction prescribed by his appointment—” and inserting “district in which sessions are held by the court that

H. R. 3650—4

appointed the magistrate judge, at other places where that court may function, and elsewhere as authorized by law—”.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES
FROM: JEFF MORRIS, REPORTER
RE: APPLICABILITY OF RULE 7007.1 IN INVOLUNTARY CASES

Rule 7007.1 was added to the rules effective December 1, 2003. It requires corporations that are parties in adversary proceedings to file a corporate ownership statement so that the court can be made aware of other parties related to the party by their ownership of stock of the party. The rule was one of a group of rules adopted first by the Appellate Rules, and thereafter for inclusion in the Bankruptcy, Civil, and Criminal Rules. Rule 7007.1 applies to adversary proceedings, but it does not apply to contested matters. The Committee concluded that the short time for contested matters to be resolved made the operation of the rule ineffective. The Committee did not consider, however, whether the disclosure rule should apply in the case of an involuntary proceeding.

Involuntary cases are commenced by the filing of Official Form 5, the involuntary petition. The form essentially permits the petitioners to check the appropriate boxes to allege the statutory grounds for the entry of an order for relief. In a sense, it is comparable to a complaint that sets out the factual predicates for relief and pray for the entry of an order for relief. Rule 1010 provides that service of the summons and involuntary petition is to be made in the manner of service of a summons and complaint under Rule 7004. Thus, an involuntary petition can be viewed as comparable to a complaint that initiates an adversary proceeding. Under Rule 1011, the alleged debtor may contest the petition and is directed to present defenses and objections under Civil Rule 12. In short, the process is essentially an adversary proceeding. Consequently,

the rules governing the filing of corporate ownership statements should apply in these matters just as they do in adversary proceedings. Amendments to accomplish this follow.

**RULE 1010. Service of Involuntary Petition and Summons;
Petition Commencing Ancillary Case**

1 (a) Service of Involuntary Petition and Summons; Service of
2 Ancillary Petition. On the filing of an involuntary petition or a
3 petition commencing a case ancillary to a foreign proceeding the
4 clerk shall forthwith issue a summons for service. When an
5 involuntary petition is filed, service shall be made on the debtor.
6 When a petition commencing an ancillary case is filed, service
7 shall be made on the parties against whom relief is sought pursuant
8 to under § 304(b) of the Code and on any other parties as the court
9 may direct. The summons shall be served with a copy of the
10 petition in the manner provided for service of a summons and
11 complaint by Rule 7004(a) or (b). If service cannot be so made,
12 the court may order that the summons and petition be served by
13 mailing copies to the party's last known address, and by at least
14 one publication in a manner and form directed by the court. The
15 summons and petition may be served on the party anywhere. Rule
16 7004(e) and Rule 4(1) F.R.Civ.P. apply when service is made or
17 attempted under this rule.

18 (b) Corporate Ownership Statement. If the petitioner is a

19 corporation, the petitioner shall file with the involuntary petition a
20 corporate ownership statement containing the information
21 described in Rule 7007.1.

COMMITTEE NOTE

The rule is amended to require a corporate petitioner in an involuntary case to file a corporate ownership statement at the time of the filing of the petition. Just as in an adversary proceeding, corporate parties must provide this information to assist the courts in determining whether grounds for recusal exist for the judge to whom the matter is assigned.

Other changes are stylistic.

RULE 1011. Responsive Pleading of Motion in Involuntary and Ancillary Cases

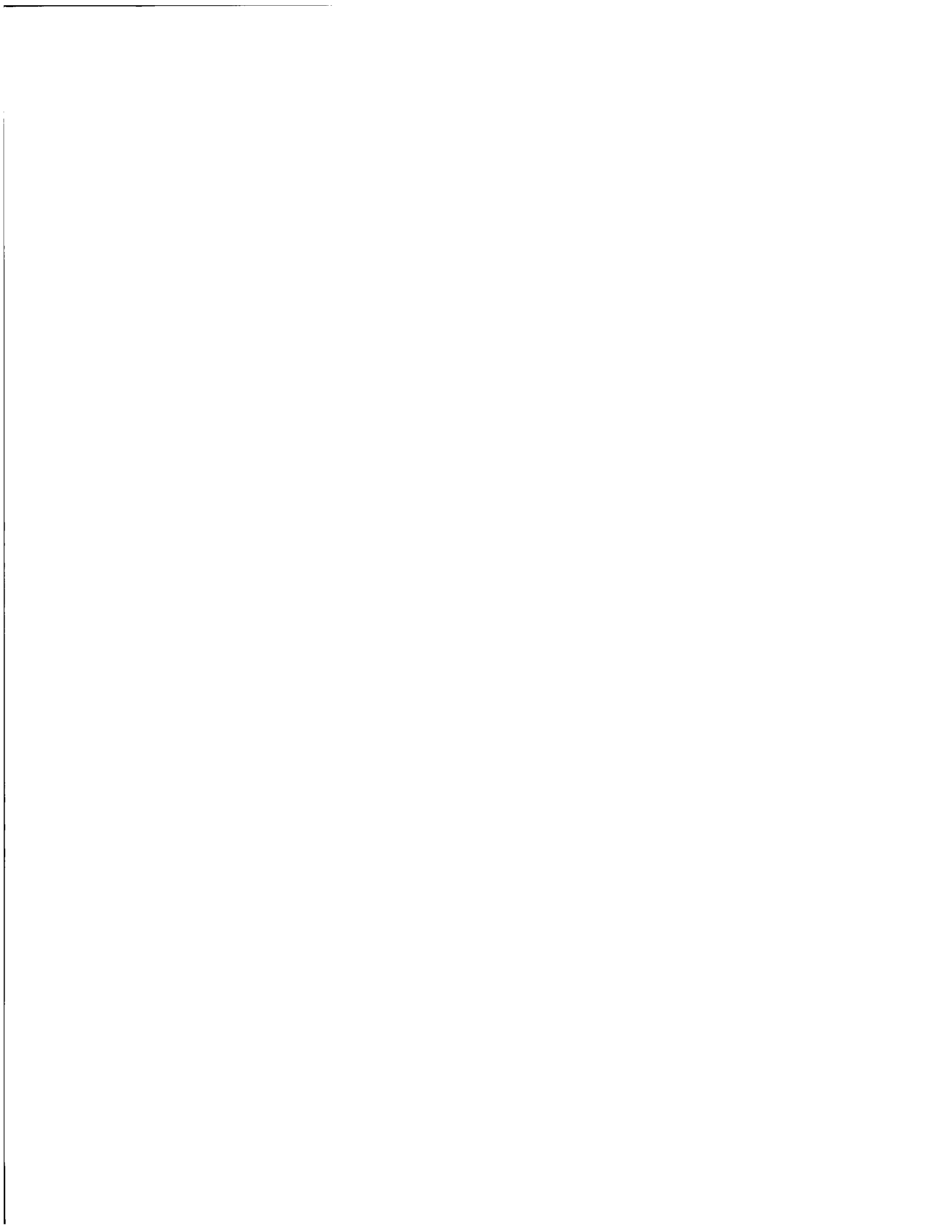
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2 (f) Corporate Ownership Statement. If the entity responding to the
3 involuntary petition or the petition commencing a case
4 ancillary to a foreign proceeding is a corporation, the entity
5 shall file with its first appearance, pleading, motion, response,
6 or other request addressed to the court a corporate ownership
7 statement containing the information described in Rule 7007.1.

COMMITTEE NOTE

The rule is amended in tandem with the amendment to Rule 1010 to require the parties to involuntary cases and cases ancillary to foreign proceedings to file corporate ownership statements to assist the court in determining whether recusal is necessary. These actions are in the nature of adversary proceedings, and it is both necessary and proper to have the parties inform the court about

related entities that may have an interest in the matter pending before the court.



INTERIM BANKRUPTCY RULES

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Rule 1010. Service of Involuntary Petition and Summons; Petition For Recognition of a Foreign Nonmain Proceeding

On the filing of an involuntary petition or a petition for recognition of a foreign nonmain proceeding the clerk shall forthwith issue a summons for service. When an involuntary petition is filed, service shall be made on the debtor. When a petition for recognition of a foreign nonmain proceeding is filed, service shall be made on the debtor, any entity against whom provisional relief is sought under § 1519 of the Code, and on any other parties as the court may direct. The summons shall be served with a copy of the petition in the manner provided for service of a summons and complaint by Rule 7004(a) or (b). If service cannot be so made, the court may order that the summons and petition be served by mailing copies to the party's last known address, and by at least one publication in a manner and form directed by the court. The summons and petition may be served on the party anywhere.

Rule 7004 (e) and Rule 4 (l) F.R.Civ.P. apply when service is made or attempted under this rule.

Rule 1011. Responsive Pleading or Motion in Involuntary and Cross-Border Cases

(a) WHO MAY CONTEST PETITION. The debtor named in an involuntary petition or a party in interest to a petition for recognition of a foreign proceeding may contest the petition. In the case of a petition against a partnership under Rule 1004, a nonpetitioning general partner, or a person who is alleged to be a general partner but denies the allegation, may contest the petition.

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES
FROM: JEFF MORRIS, REPORTER
RE: SERVICE OF CLAIMS OBJECTIONS - RULE 3007
DATE: SEPTEMBER 8, 2005

The Committee has in the past discussed the claims objection process both in connection with the recently proposed amendment to Rule 3007 and with regard to the amendments to Official Form 10. This discussion has highlighted the conflicting views of these proceedings as to the nature of the proof of claim form and objections to those claims. One view is that the proof of claim form is itself akin to a complaint in which the creditor sets forth the nature and amount of the claim against the debtor. From this it follows that an objection to a claim is in the nature of an answer to that complaint. The other view is that the objection to the claim is more like a complaint in that the claim is allowed under § 502 in the absence of an objection, so that an objection is necessary to initiate any action in the bankruptcy court regarding the claim. The previous discussions have not yielded a consensus. Fortunately, the Committee has not had to resolve the issue to complete its work on the amendments to the rules and forms to date. A recent decision of the Ninth Circuit BAP, however, shows that a resolution of the issue may need to be reached.

In Jorgenson v. State Line Hotel, Inc. (In re State Line Hotel, Inc.), 323 B.R. 703 (9th Cir. BAP 2005), the court addressed the issue of the minimum requirements for service of an objection to a claim under the Bankruptcy Rules. The debtor operated a casino at which the creditor alleged that she had suffered a personal injury on an escalator. The creditor filed a proof

of claim in the case but took no other action in the matter. The proof of claim simply asserted a claim of \$1,000,000 and listed the creditor's attorney's name and address as the location to which notices should be sent. The form also provided the claimant's address. Later in the case, the debtor objected to the claim (as a part of an omnibus claims objection), and mailed the objection to the claimant's attorney. It did not mail the objection to the claimant. There was no response to the objection, and the court disallowed the claim. Six months or so later, the claimant moved to vacate the order disallowing the claim on the grounds that the order was void for a lack of jurisdiction. Since the debtor had not served the claimant directly, if service was required under Rule 7004, the court's order granting the debtor's objection to the creditor's claim would have been void for lack of proper service. If service could be made under Rule 3007, on the other hand, the service by mail on the creditor's attorney at the address set out in the proof of claim was sufficient and the decision to sustain the objection to the claim would be upheld. The majority held that Rule 3007 governed the form of service of the objection, while the dissent argued that service was necessary under Rule 7004.

The majority and dissenting opinions set out the underlying dispute. The majority noted that Rule 3007 governs the procedure for objections to claims. That rule provides *inter alia* that "A copy of the objection with notice of hearing thereon shall be mailed or otherwise delivered to the claimant..." The majority distinguished "notice" from "service" and also rejected the argument that the filing of a proof of claim essentially initiates a contested matter and an objection to that claim is like an answer to that claim which can be served on the claimant's counsel just like an answer to a complaint can be served on the plaintiff's counsel under Rule 7005. Instead, the majority held that the debtor's objection to the claim initiated the contested

matter. Since this is a contested matter, the majority then considered the effect of Rule 9014 on the issue of service or notice of the objection and hearing on the objection. It concluded that the direction in Rule 9014(b) that the motion be served in the manner of a summons and complaint under Rule 7004 was not applicable because Rule 9014 explicitly defers to other rules that “otherwise” govern contested matters. Rule 3007 on claims objections is such a rule, so its directives on notice would override the provisions of Rule 9014. Ultimately, the majority held that the mailing of the notice to the debtor’s attorney was sufficient under Rule 3007 and that no service was required under Rules 9014 or 7004.

The dissent argued that claims objections under Rule 3007 are contested matters, and it cited to the original Committee Note to the rule in support of that conclusion. The Note states that “the contested matter initiated by an objection to a claim is governed by Rule 9014, unless a counterclaim by the trustee is joined with the objection to the claim.” This issue is clarified somewhat by the pending proposed amendment to the rule which is currently out for public comment. The dissent further argued that an earlier Ninth Circuit BAP decision governed the matter and required service of the objection in the manner of a summons and complaint as required under Rule 7004. United States v. Levoy (In re Levoy), 182 B.R. 827 (9th Cir. BAP 1995). In that case, the court stated that service of a claim objection under Rule 3007 must be done in compliance with Rule 7004 in the manner of a summons and complaint. In any event, State Line Hotels, Inc. demonstrates that there is some degree of confusion over the proper method for notifying or serving an objection to a claim.

The sheer volume of claims and claims objections makes a study and possible recommendation for amendment of Rules 3007 and 9014 to clarify the procedure a worthwhile

effort. The facts of State Line Hotel, Inc. provide an example of the confusion that exists regarding the proper procedure for the service of objections to claims and the notice of a hearing on the objection. It seems that the rule governing objections to claims is the best place to locate the service requirements for those objections. It might even be helpful to state in that rule that an objection to a claim commences a contested matter and that service of the objection and notice of the hearing on the objection are governed by that rule. Rule 9014 would govern all other aspects of the contested matter. Stating this explicitly in both Rule 3007 and Rule 9014 would eliminate any confusion about the service and notice obligations. Moreover, it would provide the Committee with an opportunity to reach a conclusion as to whether the filing of a proof of claim or the filing of an objection to the claim “initiates” the process.

This issue could be considered by the Subcommittee on Business issues since there are generally more claims objections filed in business cases than in consumer cases. Moreover, the pending amendments to Rule 3007 on omnibus objections are business related, and any changes in the rules governing these matters are most likely to be felt in the commercial and business cases.

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES
FROM: JEFF MORRIS, REPORTER
RE: NEED FOR CORPORATE COUNSEL IN SMALL MATTERS
DATE: SEPTEMBER 2, 2005

Hon. Paul Mannes (Bankr. D.Md.) has proposed that the rules be amended to authorize parties other than individuals to appear without counsel where a small amount is in controversy. Alternatively, Judge Mannes suggests that the rules could authorize courts to adopt local procedures to permit corporations to appear without counsel in bankruptcy cases. A copy of his email to the Committee is attached.

Judge Mannes noted that he had recently become aware of a case in which a corporate creditor held a valid claim under § 523(a)(2) involving only \$850. In his view, imposing the cost of counsel on the creditor in such a situation effectively denied any relief for the creditor. Interestingly, Congress has taken a small step toward such a position. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 included an amendment to § 341(c) of the Code. That section now includes a provision that

Notwithstanding any local court rule, provision of a state constitution, any otherwise applicable nonbankruptcy law, or any other requirement that representation at the meeting of creditors under subsection (a) be by an attorney, a creditor holding a consumer debt or any representative of the creditor (which may include an entity or an employee of an entity and may be a representative for more than one creditor) shall be permitted to appear at and participate in the meeting of creditors in a case under Chapter 7 or 13, either alone or in conjunction with an attorney for the creditor. Nothing in this subsection shall be construed to require any creditor to be represented by an attorney at any meeting of creditors.

This provision is limited in three significant ways. First, it relates to representation of a creditor holding a consumer debt, so that it would not be applicable in any other circumstance. Second, it applies only in Chapter 7 and Chapter 13 cases. Creditors could hold consumer debts in other chapter proceedings, but this section of the Code would not authorize them to appear in those cases. Finally, it applies only to appearances at and participation in meetings of creditors.

The last sentence of the section creates some additional ambiguity. It provides that “nothing in this subsection shall be construed to require any creditor to be represented by an attorney at any meeting of creditors.” It would appear that the purpose of this sentence is to prevent any negative inference from being drawn from the language of the subsection. That is, the last sentence seems to state that the authorization of representation of creditors holding consumer debts by someone other than an attorney should not be read to require a corporation to employ an attorney to represent the corporation at any meeting of creditors. Interestingly, this sentence refers only to meetings of creditors and not to other actions. Therefore, even if the provision cannot be read to bar, by negative inference, non-attorney representation of corporations at meetings of creditors, it still could be construed as prohibiting that type of representation in matters other than a meeting of creditors.

The circumstance identified by Judge Mannes as demonstrating the need for the rule, pursuit of a claim under § 523(a)(2), would not seem to be authorized by § 341(c) of the Code as recently amended. Congress was explicit in leaving open the possibility that a creditor can be represented by someone other than an attorney at a meeting of creditors. It did not leave the same opening for creditor representatives in other circumstances.

Judge Mannes’s proposal is consistent with the general purpose of the 2005 amendment to §341(c), but the limitation on the construction of that statute by its own terms raises questions

about whether a rule authorizing non-attorney representation of creditors in matters other than meetings of creditors may be inconsistent with the Code.

The proposal also raises a number of other difficult questions that should be studied before proposing such a solution, if the Committee believes a solution is necessary. Specifically, the rule may conflict with state law provisions on the unauthorized practice of law which generally govern in this area. Similar issues were presented to the Committee informally by the Joint Subcommittee on Venue regarding the admission to practice in bankruptcy courts located in a state other than the state in which a particular attorney is licensed. These same tensions between the state Supreme Courts and the Bankruptcy Rules would again be relevant.

As Judge Mannes has noted, another way to address the issue is to permit "local options" that would authorize individual bankruptcy courts to permit such representation. He suggests that such a rule would be more workable because it would permit courts to allow or restrict access consistent with local customs and practices. A rule based on the amount in controversy might be insufficient in a large urban location, but overly generous in more rural settings. Such a rule would still present most of the issues raised as to the proposal for a national rule, and I believe it should be treated similarly.

Given the ambiguity in §341(c) and the potential for conflict with the state Supreme Courts, I would recommend that the matter be sent to the Subcommittee on Attorney Conduct for further study. The Committee could take steps to identify the likely extent of conflict with the state Supreme Courts on the issue, as well as to study any rules in state courts or other local rules of the federal courts that authorize such representation. The Subcommittee could then report its recommendation to the Advisory Committee at the March 2006 meeting.

RECEIVED
4/6/05

05-BK-A

PAUL
MANNES/MD/04/USCOURT
S
(Bankr Judge)
04/06/2005 12:06 PM

To Peter McCabe/DCA/AO/USCOURTS@USCOURTS
cc resnial@ffhsj.com
bcc
Subject A rule

Peter

I would like to suggest a new rule regarding representation of corporations in "small claims" cases. This thought was triggered by a corporate creditor with a bona fide § 523(a)(2) case involving \$850. To make that corporate creditor obtain counsel works to deny the creditor relief. I therefore suggest that a rule of procedure be promulgated that either authorizes parties other than individuals to appear without counsel where the amount in controversy is less than a given figure. As a fallback position, I would suggest a rule that courts could authorize such a procedure, if there is a feeling that certain local custom and usages would be unduly offended by permitting corporations to show without counsel.

Paul

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES
FROM: JEFF MORRIS, REPORTER
RE: CIVIL RULES RESTYLING PROJECT
DATE: SEPTEMBER 9, 2005

The Advisory Committee on Civil Rules has published for comment a completely restyled version of the Civil Rules, and comments on the proposal are due by February 15, 2006. As with the restyling of the Criminal Rules, the restyling of the Civil Rules is intended to be limited to matters of style only, leaving unaltered the “substantive” aspects of the rules. Given the wholesale adoption of many of these rules in Part VII of the Bankruptcy Rules, it is essential that the restyled Civil Rules be studied carefully to determine the impact of these changes on the Bankruptcy Rules. In particular, references in the Bankruptcy Rules to specific provisions of the Civil Rules may need to be changed to account for the restyling. It is also imperative that we study the new Civil Rules carefully to determine whether any of the changes have any significant impact on bankruptcy proceedings. It may be that a stylistic change to a Civil Rule could have a more substantive impact in bankruptcy cases. Consequently, the review of the Civil Rules must go beyond just ensuring that the changes do not render existing cross references inaccurate. Moreover, I am sure that the Civil Rules Committee will appreciate a thorough review of the proposal by another Rules Committee. On a more parochial note, being heard on these style issues at this time may help our Committee as these issues find their way into the styling of amendments to the Bankruptcy Rules in the future.

There are a total of 82 Civil Rules, and it is a daunting task to take on a cover to cover

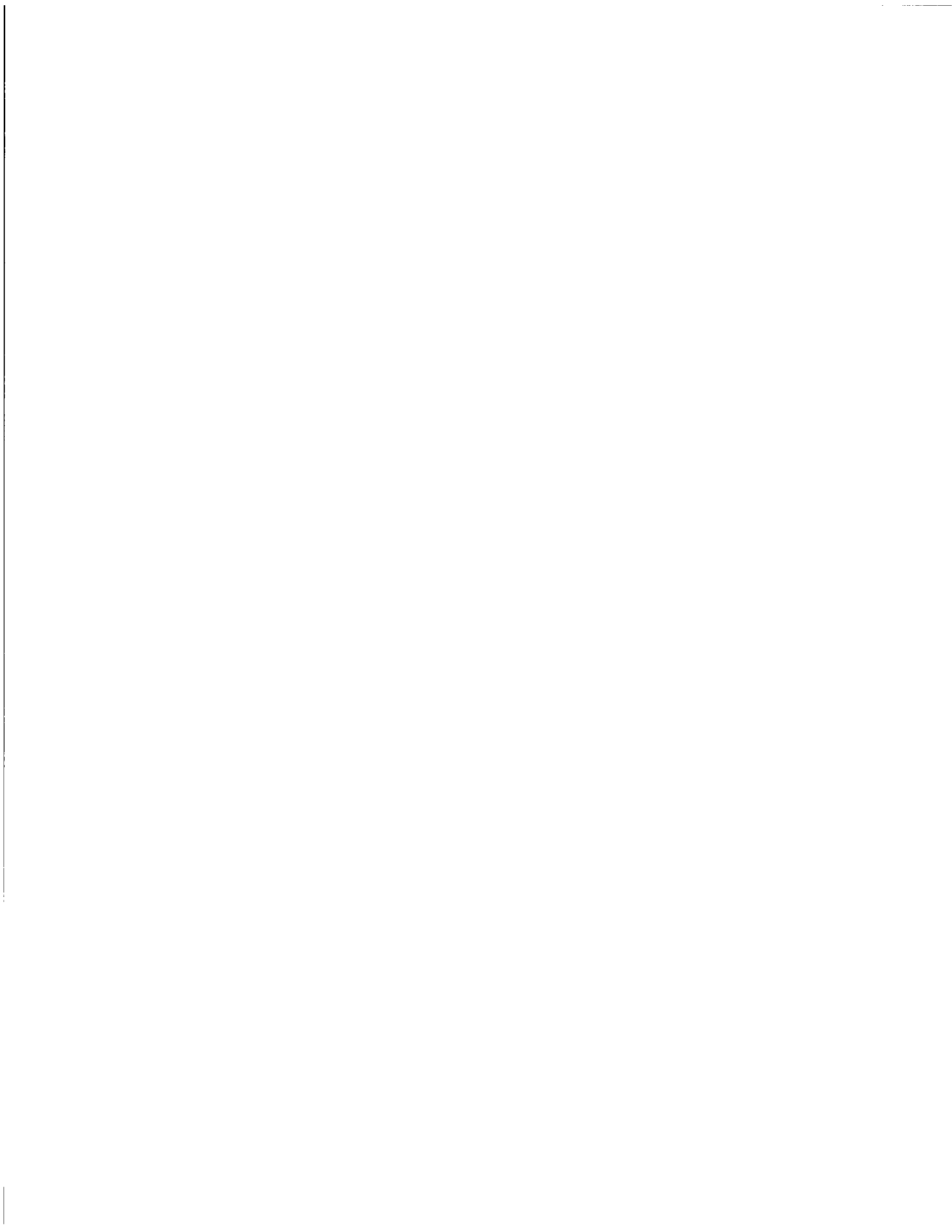
study of the proposed amendments. While such a study would be most likely to guarantee that each and every cross reference and other issue presented by the restyling of the Civil Rules would be noticed, such a study also poses the problem of leading to extreme exhaustion by anyone who would undertake the task. I think it would be more effective to share the burden among our Committee by creating teams of two Bankruptcy Rules Committee members who would be responsible for reviewing an assigned subset of the restyled Civil Rules. The two-member review teams could then focus their attention on 10 or 12 of the restyled Civil Rules, and they can report their findings and recommendations which would be compiled and reviewed to ensure that our comments on the proposals are consistent. Breaking the work into more manageable parts in this way would make it more likely that we can complete a full review of the materials in a timely fashion. It carries with it the risk that the two-person teams would end up duplicating efforts of other teams as well as come to differing conclusions about the proposals. I would expect to participate in the work of each team, and would try to limit these inconsistencies by informing each group of the conclusions reached by others. Given the number of groups and the volume of material being studied, however, some risk remains that there will be inconsistent positions suggested by the different teams. In any event, all comments on the restyled Civil Rules would have to be circulated to our full Committee for its approval prior the submission of our comments to the Civil Rules Committee.

These issues are probably lessened if there are fewer teams that have responsibility for a larger package of the restyled Civil Rules. For example, if there are three teams with four or five members, and each team has responsibility for approximately 30 rules, the risk of inconsistent positions is reduced because it will be easier to coordinate the work of only three groups as

compared to eight teams of two members each. Even assuming that this is the case (and I can envision three larger groups having as many differing opinions about the restyled rules as would eight teams of two members), I do not believe that the potential benefit outweighs the costs of proceeding in that manner. As any Committee member who has served on the Style Subcommittee can attest, conducting a “style review” is a painstaking task. The focus on each word and punctuation mark and the need to avoid making unintended substantive changes in the rule make this work especially time consuming. As with any review, the more eyes on the document, the better, but the more thorough the review the greater the amount of time needed to accomplish the task. Also, the restyled Civil Rules have undergone a rigorous and multilevel review prior to their publication, so the potential for gaps or inconsistencies in those rules has already been reduced dramatically. On balance, therefore, I believe the burden on the Committee to proceed with just two or three groups reviewing larger sections of the restyled Civil Rules is not worth the incremental benefit of the greater consistency that might follow from that method of review. Instead, I think that breaking the work into more manageable bundles for teams of two Committee members to take on is a more reasonable way to proceed.



Item 17 will be an oral report.



MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: JEFF MORRIS, REPORTER

RE: DEADLINE FOR NOTICE OF APPEAL AND COUNTING DAYS UNDER
RULE 9006

DATE: January 27, 2005

The Advisory Committee considered the issue of the time to file a notice of appeal at the meeting in September at Half Moon Bay. A copy of my memorandum prepared for the September meeting is attached. The discussion centered around two matters: the time to file a notice of appeal under Rule 8002, and the method for counting 10 day periods under Rule 9006. Concerns were expressed that the deadline for filing a notice of appeal was both too short, and that it presented a trap for the unwary who would be more generally familiar with the longer deadlines set for appeals in civil cases in both state and federal courts. The shorter deadline was identified as especially problematic because, unlike Civil Rule 6, Bankruptcy Rule 9006 does not exclude intervening Saturdays, Sundays, and holidays that occur during the 10 day appeal time set by Rule 8002. Thus, the argument was that the shortened deadline when combined with the different and "shorter" counting provision in Rule 9006 justified considering an amendment to Rule 8002 or Rule 9006, if not both. After discussion of the matter, it was referred to the Subcommittee on Technology and Cross Border Insolvency. The matter was sent to the Technology Subcommittee because the problem was initially raised in connection with delays in the service of judgments and orders on the parties by the Bankruptcy Noticing Center (BNC). The expansion of the CM/ECF system might resolve many of the concerns about the delay built

into a system under which the orders would be sent first to the BNC and thereafter to the parties.

The Subcommittee conducted two teleconferences to address the matter. The first meeting included an extensive discussion on the operation of the noticing system, the historical basis for the ten day appeal time, and the circumstances surrounding the change in the counting provisions in Rule 9006 and the nearly immediate reversal of that decision in the late 1980's. The Subcommittee also discussed at length whether any need existed for the proposed change in the Rules. Based on those discussion, the Subcommittee decided that it would be helpful to have additional information about the perceived need for a change to the time for filing a notice of appeal as well as more background on the Advisory Committee's actions in 1986-88 regarding the amendment and reinstatement of the counting provision in Rule 9006. To that end, Judge McFeeley agreed to conduct an informal survey of bankruptcy judges to get some idea of their views on the need for an amendment to extend the appeal time under Rule 8002, and Ms. Ketchum agreed to delve through the Committee's historical records to compile the relevant materials the Committee considered in its decision to reinstate the Rule 9006 counting rule that became effective on December 1, 1989.

The Subcommittee had the benefit of these materials for its second teleconference on the matter. Professor Resnick also participated in the second Subcommittee teleconference to add his recollections about the reinstatement of the counting provision in Rule 9006(a) which occurred just at the time that he first became the Reporter to the Committee. Copies of the survey results and Ms. Ketchum's memorandum are attached to this memorandum. The materials relating to the reinstatement of the Rule 9006(a) counting system which were attached to her original memorandum are lengthy and will be summarized in this memo.

Approximately 63 judges responded to the survey. The survey results indicated that most judges continue to use the BNC to serve orders and judgments, although a significant minority (23 of the 63) do not use the BNC. Of that group of judges who do not use the BNC, a slight majority indicated that delay was not the reason they chose not to use BNC for the service of these documents. More generally, only 5 of the judges indicated that they believed that the ten day rule for filing a notice of appeal had created a problem. Fifty-five of the judges stated that the ten day period had not caused any problems. Overall, the responding judges voted 38 to 19 against amending the rules to extend the appeal time beyond its current ten days. While the survey was not intended to be statistically valid, it gave the Subcommittee at least a feel for what the bankruptcy judges perceived about the need to amend the rules to extend the appeal time.

I also conducted a review of the case law for the past two years, and there does not seem to be any greater number of decisions suggesting a need for an amendment of the Rule. While there are always a few cases in which the ten day deadline cut off an appeal, there does not appear to be any significant increase in those cases. Professor Resnick also noted that he has not seen any noticeable increase in these cases in the past few years.

The Subcommittee also discussed the historical background for the ten day appeal time. The ten day deadline was set out in the Bankruptcy Act, and it was also contained in the Bankruptcy Rules when they were promulgated. The deadline also was included in a number of the versions of the bankruptcy reform legislation in the 1970's, and it was included even in the very latest stages prior to the final enactment of the Bankruptcy Code in 1978. I have not been able to find any reason why it was removed from the bill, but it is my assumption that Congress saw no need to include the deadline in the jurisdictional provisions governing appeals because

the deadline was already set forth in the Bankruptcy Rules. Thus, the ten day appeal time has been a part of the bankruptcy laws for decades.

The Subcommittee discussed the impact of changing the long standing ten day appeal rule on bankruptcy practice. The shortened appeal time was noted as particularly important to establish finality of orders of confirmation of plans, sale orders under § 363, and financing orders under § 364 of the Code. The transactions on which these orders depend frequently are made with the finality of these orders specifically in mind. And, as noted below, practitioners have suggested to the Committee in the past that this special shortened appeal rule is both justified and necessary in bankruptcy cases.

The Subcommittee considered whether the problem of shortened appeals could be relieved if the counting provision of Rule 9006(a) were amended to conform to F.R. Civ. P. 6 such that intervening Saturdays, Sundays, and holidays would be excluded for periods less than eleven days as opposed to periods less than eight days as under current Rule 9006(a). The Subcommittee discussion reiterated the need for relatively quick finality for orders as discussed above. Moreover, Rule 9006(a) provides that the rule governs counting not just for purposes of other rules, but also for other applicable statutes. For example, §§ 546(c) and 547(e) contain ten day periods that would be changed by adoption of the Civil Rules counting system. There are also state statutes that apply in bankruptcy cases (for example, UCC § 2-702) that include ten day periods, and the time periods set by those provisions would likewise be altered by an amendment to Rule 9006(a). There is no way to tell how many state statutes there may be that would be affected by a change in the counting rules should one be adopted. When Rule 9006(a) was amended in 1987 to conform to the Civil Rules counting method, the Advisory Committee was

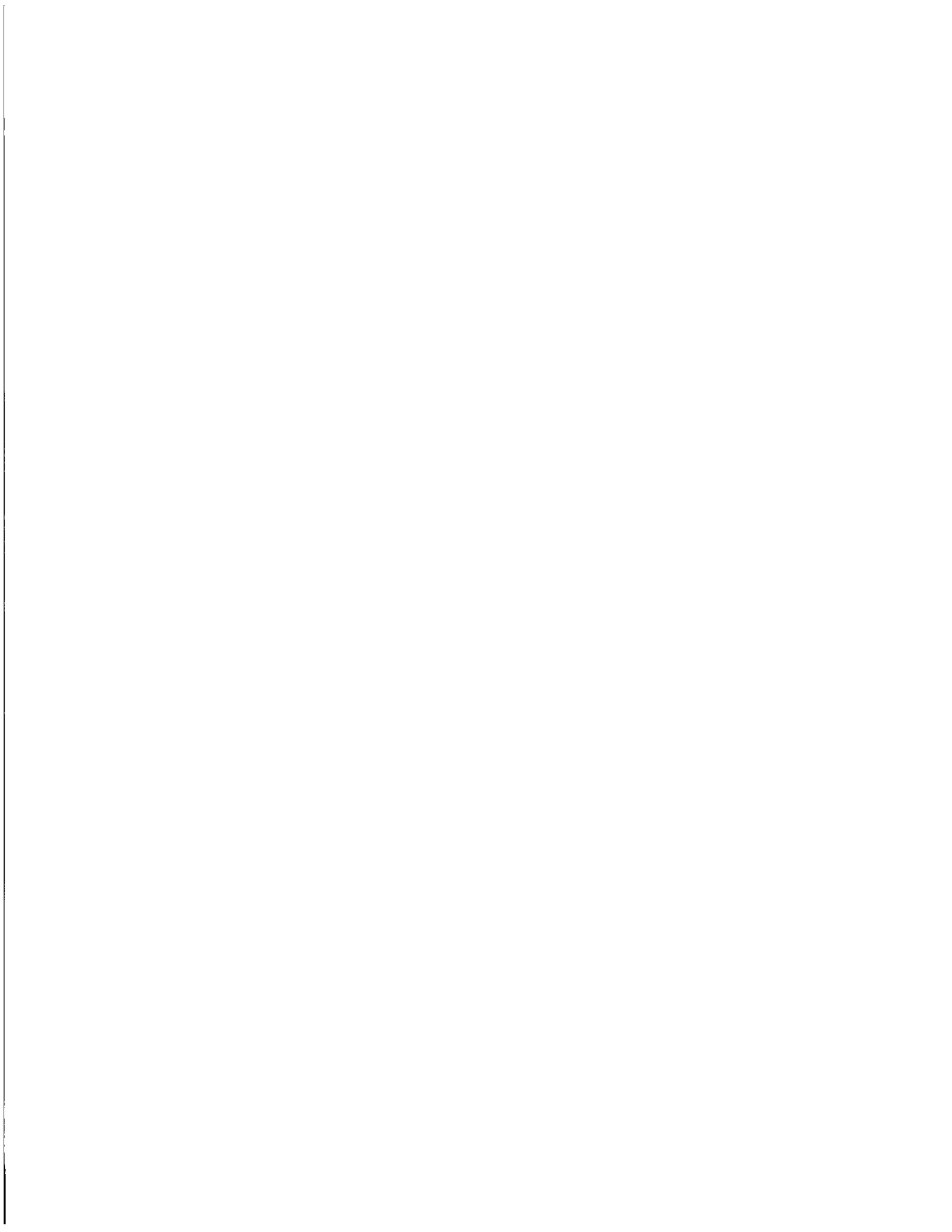
in the midst of considering voluminous materials to implement a wide range of changes made by amendments to the jurisdictional provisions governing bankruptcy cases. This issue seemed to have slipped in under the radar, but it was quickly noted by members of the bar that the change would have a profound affect on bankruptcy cases, particularly as it related to appeals. That led the Committee to seek an expedited reinstatement of the old rule (actually a slightly different version, but one that still treated ten day periods as they always had been). The Committee had a somewhat limited number of comments, but those that were received generally favored a speedy return to the former counting rule. Professor Resnick and Ms. Ketchum each recalled that the Committee felt a strong need to correct the error as quickly as possible once it became aware of the unintended consequences of the amendment.

These factors led the Subcommittee to conclude that it should recommend to the Advisory Committee that no change be made at this time either to Rule 8002 or Rule 9006. The absence of a demonstrated need for the change to meet a current and significant problem, along with the Committee's past experience with the change in the counting method adopted and immediately abandoned in the late 1980's combined to lead to this conclusion. The Subcommittee's vote was unanimous, except for Judge Swain who was unable to participate in the second teleconference and therefore did not vote on the matter.

Attachments: Reporter's memorandum for the Half Moon Bay meeting

Judge McFeeley's Survey Results

Ms. Ketchum's Memorandum on the 1987/1989 Amendment and Re-amendment



Bankruptcy Rules Tracking Docket (By Rule Number) 9/12/05

Approved Items - Pending Congressional Action (if any)

Suggestion	Effective Date
Rule 1007 Debtor to include matrix name/address persons for schedules D-H	12/1/05
Rule 2002(g) Allow entity to designate address for purpose of receiving notices	12/1/05
Rule 3004 Debtor or trustee may not file proof of claim until creditor time expires	12/1/05
Rule 3005 Conform to code	12/1/05
Rule 7004 Clerk can sign, seal, and issue summons electronically	12/1/05
Rule 9001 Notice provider definition	12/1/05
Rule 9006(f) Additional time after service by mail	12/1/05
Rule 9036 Notice by electronic means is complete upon transmission	12/1/05
Official Form 6, Schedule G¹ Amend to delete statement re notice	12/1/05

Active Items

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date

¹ Does not require approval by Congress or the Supreme Court

<p>Rules 1005, 1007 Use of other taxpayer ID numbers</p>		<p>3/05 - Committee considered, referred to Subcommittee on Privacy, Public Access & Appeals 9/05 - Committee agenda</p>	
<p>Rule 1009 Social security number - amended statement</p>		<p>4/04 - Committee approved for publication 6/04 - Standing Committee approved for publication 8/04 - Published for public comment 3/05 - Committee approval 6/05 - Standing Committee approved 9/05 - Judicial Conference</p>	<p>12/1/06</p>
<p>Rules 1010 and 1011 Rule 7007.1 applied in involuntary cases</p>	<p>Committee proposal</p>	<p>9/04 - Committee considered, referred to Reporter 3/05 - Committee considered, tabled to 9/05 9/05 Committee agenda</p>	
<p>Rule 1014 Clarifies that court may act <i>sua sponte</i> to dismiss or convert a case</p>	<p>Joint Subcommittee on Venue and Chapter 11 Matters</p>	<p>8/04 - Approved by Joint Subcommittee 9/04 - Committee approved for publication 1/05 - Standing Committee approved for publication 8/05 - Published for public comment</p>	<p>12/1/07</p>
<p>Rule 2021 Participation by telephonic means</p>	<p>Joint Subcommittee on Venue and Chapter 11 Matters</p>	<p>8/04 - Discussed by Joint Subcommittee 9/04 - Discussed by Committee 1/05 - Considered by Joint Subcommittee 3/05 - Committee considered, no action taken 9/05 - Committee agenda</p>	

<p>Rule 3001 Procedure for filing excerpts supporting proof of claim</p>	<p>04-BK-A Glen K. Palman for Claims Subcomt. of CM/ECF Working Group 2/19/04</p>	<p>9/04 - Committee considered, referred to Subcommittee on Forms 3/05 - Committee approved for publication 6/05 - Standing Committee approved for publication 8/05 - Published for public comment</p>	<p>12/1/07</p>
<p>Rule 3002(c)(5) Timing issues for notice of newly discovered assets</p>	<p>04-BK-E Judge Dana L. Rasure for Bankruptcy Judges Advisory Group 11/15/04</p>	<p>3/05 - Committee considered, referred to Privacy Subcomt. 9/05 - Committee agenda</p>	
<p>Rule 3007 Procedure for objection to claim - no affirmative relief at same time</p>		<p>9/04 - Committee approved for publication 1/05 - Standing Committee approved for publication 8/05 - Published for public comment</p>	<p>12/1/07</p>
<p>Rule 3007 Omnibus objections to claims</p>	<p>Joint Subcommittee on Venue and Chapter 11 Matters</p>	<p>8/04 - Considered by Joint Subcommittee 9/04 - Approved in principle by Committee 1/05 - Revised by Joint Subcommittee 3/05 - Committee approved for publication 6/05 - Standing Committee approved for publication 8/05 - Published for public comment</p>	<p>12/1/07</p>
<p>Rule 3007 Service of objections to claims</p>	<p>Judge Klein</p>	<p>9/05 - Committee agenda</p>	

<p>Rule 4001 Requirements for cash collateral motions</p>	<p>Joint Subcommittee on Venue and Chapter 11 Matters</p>	<p>8/04 - Discussed by Joint Subcommittee 9/04 - Discussed by Committee 1/05 - Approved by Joint Subcommittee 3/05 - Committee approved for publication 6/05 - Standing Committee approved for publication 8/05 - Published for public comment</p>	<p>12/1/07</p>
<p>Rule 4002 Clarify debtor's obligation to provide substantiating documents</p>	<p>03-BK-D Lawrence A. Friedman 8/1/03</p>	<p>8/03 - Sent to chair and reporter 9/03 - Committee considered, referred to Consumer Subcomt. 1/04 - Consumer Subcommittee considered at focus group meeting 3/04 - Committee approved for publication 6/04 - Standing Committee approved for publication 8/04 - Published for public comment 3/05 - Committee approval (as modified) 4/05 - Committee deferred action 8/05 - Included in Interim Rule</p>	<p>10/17/05</p>
<p>Rule 4003(b) Allow retroactive extension of deadline, and provide that secured creditors may object to exemption claim.</p>	<p>04-BK-B Judge Eugene R. Wedoff 2/17/04</p>	<p>3/04 - Sent to chair and reporter 9/04 - Committee considered, referred to Consumer Subcomt. 11/04 - Approved by Subcommittee 3/05 - Committee approved in part, referred to Consumer Subcomt. for further study 9/05 - Committee agenda</p>	

<p>Rule 4008 Reaffirmation agreement to be filed within 30 days of discharge</p>	<p>01-BK-E Francis F. Szczebak, Esq., for the BK Judges Advisory Group 11/30/01</p>	<p>1/02 - Referred to chair and reporter 3/02 - Committee considered, referred to subcommittee. 10/02 - Committee approved for publication 1/03 - Standing Committee approved for publication 8/03 - Published for public comment 3/04 - Committee approval 6/04 - Standing Committee approval 9/04 - Judicial Conference approval 4/05 - Withdrawn from Supreme Court at request of Executive Committee</p>	
<p>Rule 5001(b) Holding court outside the district in an emergency</p>		<p>9/03 - Committee approved in principle; further action deferred 9/05 - Committee agenda</p>	
<p>Rule 5005(a)(2) Court may permit or require electronic filing</p>	<p>04-BK-D Judge John W. Lungstrum 8/2/04</p>	<p>8/04 - Referred to reporter and chair 9/04 - Committee approved for publication 11/04 - Publication on "Fast Track" (3 month comment period) 3/05 - Committee approval (as modified) 6/05 - Standing Committee approval 9/05 - Judicial Conference</p>	<p>12/1/06 Fast Track</p>

<p>Rule 5005(c) Add Clerk of the Bankruptcy Appellate Panel and District Judge to entities already listed</p>	<p>03-BK-B Judge Robert J. Kressel 7/2/03</p>	<p>7/03 - Referred to chair and reporter 9/03 - Committee approved for publication 1/04 - Standing Committee approved for publication 8/04 - Published for Public Comment 3/05 - Committee approval 6/05 - Standing Committee approval 9/05 - Judicial Conference</p>	<p>12/1/06</p>
<p>Rule 6003 (new) First day orders</p>	<p>Joint Subcommittee on Venue and Chapter 11 Matters</p>	<p>8/04 - Discussed by Joint Subcommittee 9/04 - Discussed by Committee 1/05 - Approved by Joint Subcommittee 3/05 - Committee approved for publication 6/05 - Standing Committee approved for publication 8/05 - Published for Public Comment</p>	<p>12/1/07</p>
<p>Rule 6006 Omnibus Motions to Assume or Reject</p>	<p>Joint Subcommittee on Venue and Chapter 11 Matters</p>	<p>8/04 - Considered by Joint Subcommittee 9/04 - Approved in principle by Committee 1/05 - Approved by Joint Subcommittee 3/05 - Committee approved for publication 6/05 - Standing Committee approved for publication 8/05 - Published for Public Comment</p>	<p>12/1/07</p>

<p>Rule 7004(b)(9) and (g) Service of summons and complaint on attorney for debtor</p>	<p>Committee proposal</p>	<p>3/04 - Committee approved for publication 6/04 - Standing Committee approved for publication 8/04 - Published for public comment 3/05 - Committee approval (as modified) 6/05 - Standing Committee approval 9/05 - Judicial Conference</p>	<p>12/1/06</p>
<p>Rule 7007.1 Corporate ownership statement with initial filing</p>	<p>Committee proposal</p>	<p>9/04 - Committee approval as technical amendment without publication 1/05 - Standing Committee approved publication 8/05 - Published for Public Comment</p>	<p>12/1/07</p>
<p>Rule 8002(a) Extending the appeal time</p>	<p>Committee proposal</p>	<p>9/04 - Committee considered, referred to Technology Subcommittee for study 1/05 – Subcommittee recommended taking no action 3/05 - Committee considered, referred to Technology Subcomt. 9/05 - Committee agenda</p>	
<p>Rule 9005.1 (new) Incorporate proposed Civil Rule 5.1 in the bankruptcy rules.</p>	<p>03-BK-F Judge Geraldine Mund 10/14/03</p>	<p>10/03 - Referred to reporter and chair 3/04 - Committee considered and approved 4/04 - Civil Rules Committee tabled proposed Rule 5.1 1/05 - Standing Committee approved proposed Rule 5.1 3/05 - Committee approved for publication 6/05 - Standing Committee approved for publication 8/05 - Published for public comment</p>	<p>12/1/07</p>

<p>Rule 9021 Separate Document Requirement</p>	<p>04-BK- Judge David Adams</p>	<p>8/04 - Referred to Committee 9/04 - Committee considered, referred to Privacy, Public Access and Appeals Subcommittee 12/04 – Subcommittee discussed alternative approaches 3/05 - Committee approved in principle for contested matters, referred to Privacy Subcommittee 9/05 - Committee agenda</p>	
<p>Rule 9037 (new) Template privacy rule</p>	<p>E-Government Act § 205(c)(3)</p>	<p>9/04 - Committee considered and referred to Reporter, Judge Swain 3/05 - Committee approved for publication 6/05 - Standing Committee approved for publication 8/05 - Published for public comment</p>	<p>12/1/07</p>
<p>New Rule Representation of corporations in small claims matters</p>	<p>05-BK-A Judge Mannes</p>	<p>9/05 - Committee agenda</p>	
<p>Official Form 6, Schedule I Income of non-filing spouse disclosure</p>	<p>03-BK-D Lawrence A. Friedman 8/1/03</p>	<p>8/03 - Sent to chair and reporter 9/03 - Committee approved for publication 6/04 - Standing Committee approved for publication 8/04 - Published for public comment 3/05 - Committee approval, chair given discretion to refer to Forms Subcommittee if legislation passes 9/05 - Committee agenda</p>	

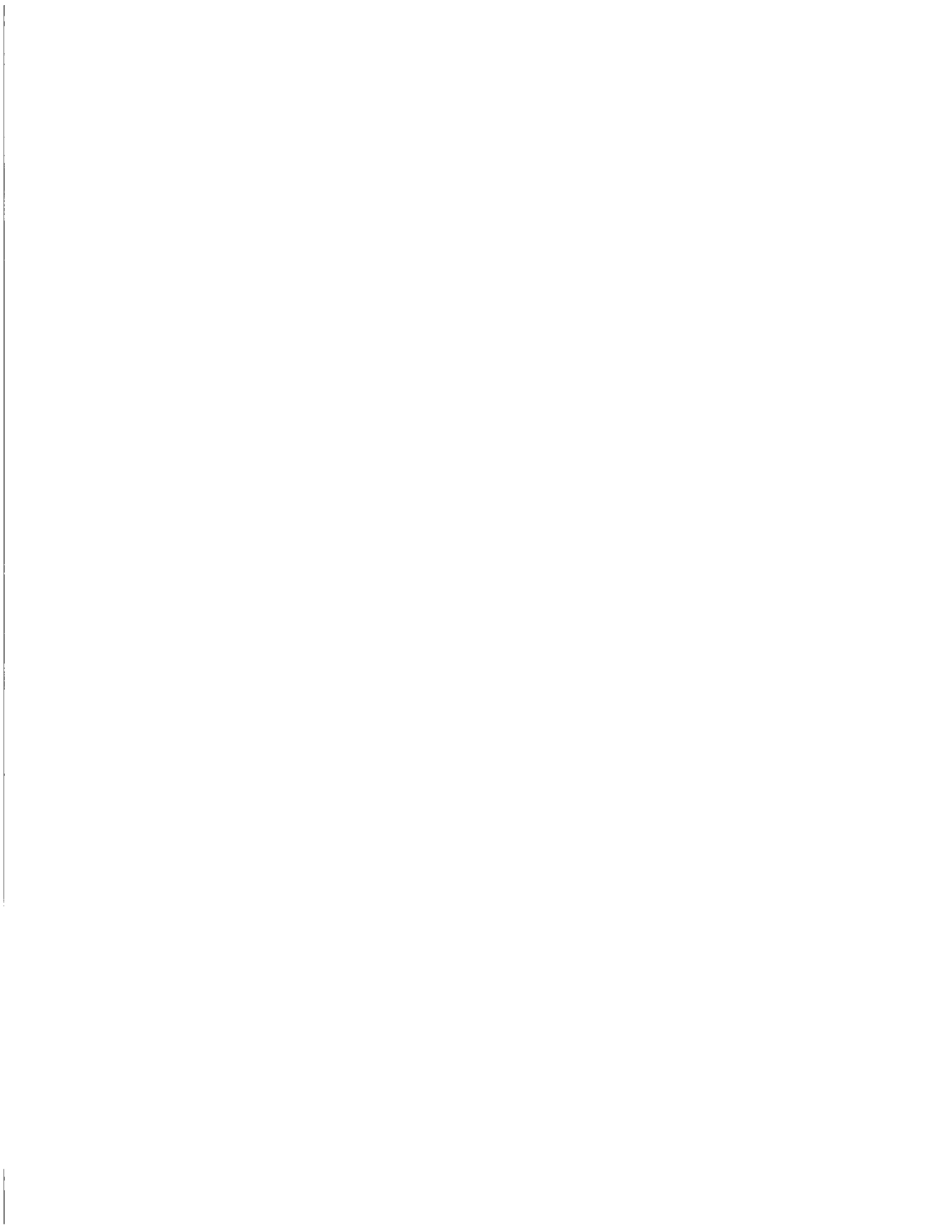
Official Form 10 Amend Proof of Claim form (See Rule 3001)	04-BK-A Glen K. Palman 2/19/04	3/04 - Referred to reporter, chair and Subcommittee on Forms 9/04 - Discussed by Committee, referred to Forms Subcommittee 12/05 - Approved by Subcommittee 3/05 - Committee approved for publication 6/05 - Committee deferred action 9/05 - Committee Agenda	
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Inactive Items / Historical Information

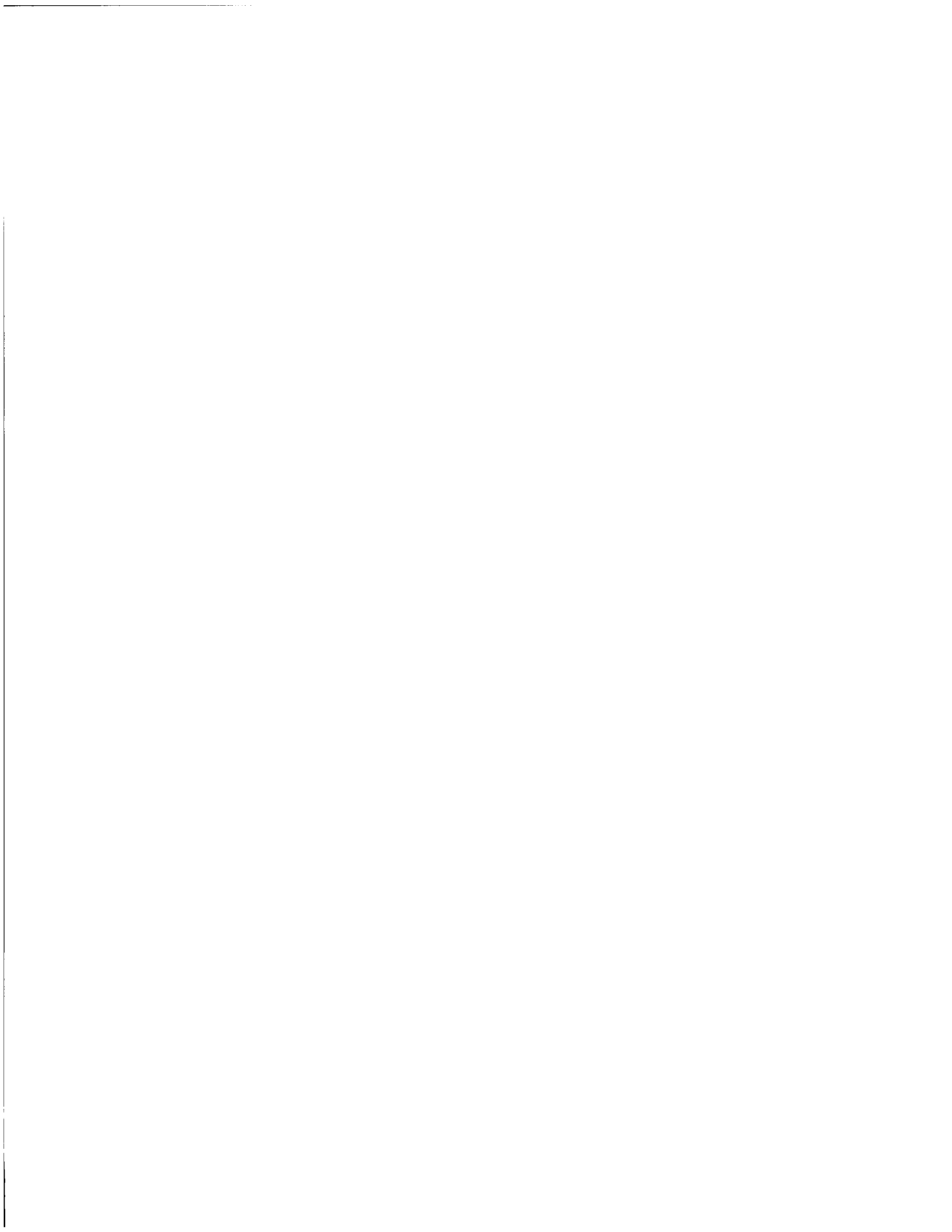
Suggestion	Docket No., Source & Date	Status
Rule 1019(3) Superceding claims required in cases converted chapter 7	04-BK-G Attorney Thomas Yerbich 11/8/04	3/05 - Committee considered, no action taken NO FURTHER ACTION
Rule 1019(5)(A) Deal with "nonexistence" of debtor-in-possession	04-BK-C R. Bradford Leggett, Esq. 5/21/04	5/04 - Referred to chair and reporter 9/04 - Tab 13 Discussed by Committee - Vote to take no action NO FURTHER ACTION REQUIRED
Rule 2016 Require debtor's attorney to disclose details of professional relationship with debtor	03-BK-D Lawrence A. Friedman 8/1/03	8/03 - Sent to chair and reporter 9/03 - Committee considered and referred to Consumer Subcommittee 1/04 - Consumer Subcommittee considered at focus group meeting 4/04 - Tabled motion carried NO FURTHER ACTION REQUIRED
Rule 3002(c) Provide exception for Chapters 7 and 13 corporate cases where debtor not an individual	01-BK-F Judge Paul Mannes 6/23/00	6/00 - Referred to chair, reporter, and committee NO FURTHER ACTION REQUIRED

<p>Rules 6004(a) and 2002(c)(1) Sale of property</p>	<p>04-BK-F Judge Vincent Zurzolo 9/15/04</p>	<p>10/04 - Referred to reporter for review 3/05 - Committee considered, no action taken</p> <p>NO FURTHER ACTION</p>
<p>Rule 7001 dispense with requirement of filing adversarial complaint in certain circumstances</p>	<p>03-BK-D Lawrence A. Friedman 8/1/03</p>	<p>8/03 - Sent to chair and reporter 9/03 - Committee considered and referred to Consumer Subcommittee 1/04 - Consumer Subcommittee considered at focus group meeting 3/04 - Committee considered and referred to Attorney Conduct Subcommittee</p> <p>NO FURTHER ACTION REQUIRED</p>
<p>Rule 9006 Limit after-the-fact extensions of time under Rules 3004 and 3005.</p>	<p>03-BK-005 Judge Dennis Lynn 1/6/04</p>	<p>1/04 - Referred to chair, reporter, and committee 9/04 - Committee defers action</p> <p>FURTHER ACTION MAY BE APPROPRIATE</p>
<p>Rule 9036 Notice by electronic means is ineffective if sender knows notice did not reach intended recipient</p>	<p>Committee proposal (see 02-BK-A)</p>	<p>9/04 - Committee considered, referred to Subcommittee on Technology 12/04 - Subcommittee discussion 3/05 - Committee consideration, no action taken</p> <p>NO FURTHER ACTION</p>
<p>Small Claims Procedure Establish a "small claims" procedure.</p>	<p>00-BK-D Judge Paul Mannes 3/13/00 (see also 98-BK-A)</p>	<p>5/00 - Referred to reporter, chair, and committee</p> <p>NO FURTHER ACTION REQUIRED</p>

There are no amendments pending in the "bull pen"
awaiting transmission to the Standing Committee



Item 21 will be an oral report.



The next meeting of the Committee will take place

March 9- 10, 2006

at

Carolina Inn, Chapel Hill, NC



The Committee will discuss dates and locations for
the fall 2006 meeting.

