

**ADVISORY COMMITTEE  
ON  
BANKRUPTCY RULES**

**Chapel Hill, NC  
March 8-10, 2006**

Volume 1 of 2

ADVISORY COMMITTEE ON BANKRUPTCY RULES  
Meeting of March 8-10, 2006  
Chapel Hill, North Carolina

Agenda

Introductory Items

1. Approval of minutes (Judge Zilly)
  - (a) Santa Fe meeting September 2005
  - (b) Sarasota meeting March 2005 (revised minutes)
2. Oral reports on meetings of other rules committees:
  - (a) January 2006 meeting of the Committee on Rules of Practice and Procedure (Judge Zilly and Professor Morris)
  - (b) Report on Appellate Rules Committee (Judge Zilly)
  - (c) January 2006 meeting of the Committee on the Administration of the Bankruptcy System (Judge Klein and Judge Montali)
  - (d) December 2005 meeting of Advisory Committee on Civil Rules (Judge Walker)
  - (e) November 2005 meeting of Advisory Committee on Evidence (Judge Klein)

Action Items

3. Report on comments to published proposed amendments to Rules 1014, 3001, 3007, 4001, 6006, 7007.1 and proposed new Rules 6003, 9005.1 and 9037 (Professor Morris)
  - (a) Discussion on comments on published rules (Morris report) (copies of comments)
  - (b) Comments by Style Subcommittee of Standing Committee (Morris memo) (copies of comments) (Professor Prof. Daniel Capra will participate by telephone)
  - (c) Final approval of published rules, as modified (copies of published rules)
4. Report on Interim Bankruptcy Rules
  - (a) Oral report on subsequent action by the Standing Committee and the Judicial Conference after Santa Fe meeting (Judge Zilly and Professor Morris)

- (b) Report on local court adoption of the Interim Rules and changes and modifications to Interim Rules by local courts (Professor Morris)
- (c) Report on comments and suggestions received on the Interim Rules; handout outlining comments and suggestions (Professor Morris)
- (d) Review of each Interim Rule, as modified, and recommendation for publication as National Rule.
- (e) Review and approval of Rules previously adopted for National Rules required by new law
  - [1] Rule 2015(a)
  - [2] Rule 3016(d)
- (f) Review of proposed Rule 3016(b)
- (g) Report on possible technical amendments to Interim Rules (Professor Morris)
  - [1] New Interim Rule 1015(b) – change two references in National Rule 1015(b) to “522(b)(1)” to “522(b)(2)”; change reference to “522(b)(2)” to “522(b)(3)”
  - [2] others as appropriate
- (h) Review of Judge Bufford’s proposed chapter 15 rules (Morris memo)
- (i) Review of United States Trustee proposed changes to Interim Rule 1007(b)(3) concerning credit counseling
- (j) Review of proposed changes to Interim Rule 1007(b)(7) concerning financial management training (Morris memo)

5. Report by the Attorney Conduct and Health Care Subcommittee (Judge Schell)

Old Business

- (a) ABA Task Force Request of June 21, 2005, concerning attorney compliance - Santa Fe agenda item 7 referred to subcommittee
- (b) Judge Mannes recommendation concerning representation of small claims by corporations - Santa Fe agenda item 15 referred to subcommittee

6. Report by the Business Subcommittee (Judge Swain and Professors Resnick and Janger)

Old Business

- (a) Judge Klein’s suggestion relating to service of process initiating objections to claims and opinion in State Line Hotel 2005 WL 857471 (Santa Fe agenda item 14)

(b) Corporate ownership issue and applicability of Rule 7007.1 in involuntary cases and chapter 15 proceedings (Santa Fe agenda item 13)

New Business

(c) Business Rules and Forms Amendments (Morris memo)

- (1) Proposed Standard Form Small Business Plan – (adopt as Official Form 25A)
- (2) Proposed Standard Form Disclosure Statement – (adopt as Official Form 25B)
- (3) Discussion about possible combined plan and disclosure statement.
- (4) New proposed Rule 2015(a)(6) and accompanying proposed Official Form 25C (relating to sections 434/435 of new law reporting on profitability of small business debtor)
- (5) New proposed Rule 2015.3 and proposed accompanying Official Form 26 (corporate reporting required by section 419 of new law) (entities that a debtor has a controlling or substantial interest in)
- (6) Proposed new Rule 3016(d) and proposed amendment to Rule 9009

7. Report by Consumer Subcommittee (Judge Wedoff)

New Business

- (a) Review of Means Test Forms (Official Forms 22A, 22B, and 22C) Judge Wedoff)
- (b) Proposed Rule 4008 and impact of new section 524 on the reaffirmation process
- (c) Section 521(b)(1) issue (amending Rule 1007(c)) (Morris memo)
- (d) Section 521(f)(4)(B) issue (amending Rule 1007(b),(c)) (Morris memo)
- (e) Rule 1007(b)(7),(c) concerning financial management training (Morris memo)

8. Report by Privacy, Public Access and Appeals Subcommittee (Judge Klein)

Old Business

- (a) Judge Adam's proposal to amend the separate document provisions of Rule 9021 - Santa Fe Agenda Item 10(a) referred to subcommittee
- (b) Judge Rasure's suggestion on behalf the Bankruptcy Judge's Advisory Group about timing raised by Rule 3002(c)(5)

9. Report of Forms Subcommittee (Judge Walker and Ms. Ketchum)

Old Business

- (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.

New Business

- (c) Review of Official Forms and proposed changes in light of new law
- (d) Proposed amendment to Rule 1005 to reflect the change to 8 years between discharges. (Morris memo)

10. Review of Time-Computation Template (Morris memo)

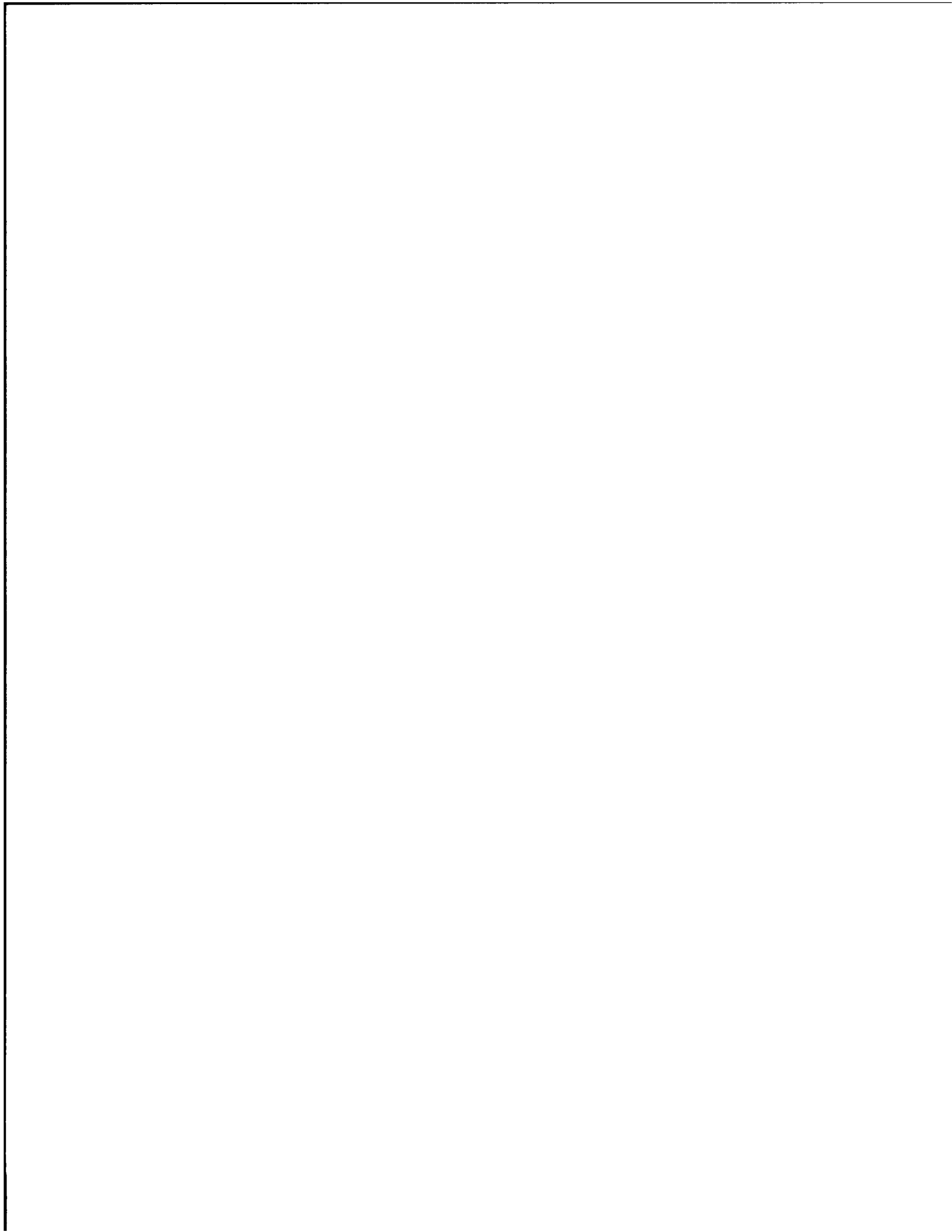
Discussion Items

- 11. Report concerning the restyling of the Civil Rules; impact on the bankruptcy rules. (Judge Zilly and Professor Morris) (Morris memo)
- 12. E Government Committee report concerning published Rule 9037 (Professor Morris)
- 13. Report on Joint Subcommittee on Venue and Chapter 11 Matters (John Shaffer)
- 14. Revision of Director's Procedural Forms 240, Reaffirmation Agreement, and 281, Appearance of Child Support Creditor or Representative. (Ms. Ketchum)
- 15. Discussion on electronic transmission of agenda materials (Judge Zilly)
- 16. Discussion of place and time for spring meeting 2007 (possible locations – East Coast, California Wine Country, Phoenix or Tucson area) (Judge Zilly)

Information Items

- 17. Rules Docket
- 18. *Bull Pen*: Proposed amendments to Rule 5001(b) are in the "bull pen" awaiting transmission to the Standing Committee.

19. Next meeting reminder: September 14-15, 2006, Seattle, Washington



**ADVISORY COMMITTEE ON BANKRUPTCY RULES**

**Chair:**

Honorable Thomas S. Zilly  
United States District Judge  
United States District Court  
United States Courthouse  
700 Stewart Street, Suite 15229  
Seattle, WA 98101

Honorable William H. Pauley III  
United States District Judge  
United States District Court  
2210 Daniel Patrick Moynihan  
United States Courthouse  
500 Pearl Street  
New York, NY 10007-1581

**Members:**

Honorable R. Guy Cole, Jr.  
Circuit Judge  
United States Court of Appeals  
127 Joseph P. Kinneary  
United States Courthouse  
85 Marconi Boulevard  
Columbus, OH 43215

Honorable Eugene R. Wedoff  
Chief Judge  
United States Bankruptcy Court  
Everett McKinley Dirksen  
United States Courthouse  
219 South Dearborn Street  
Chicago, IL 60604

Honorable Irene M. Keeley  
Chief Judge  
United States District Court  
500 West Pike Street, 2<sup>nd</sup> Floor  
Clarksburg, WV 26301

Honorable James D. Walker, Jr.  
United States Bankruptcy Judge  
United States Bankruptcy Court  
433 Cherry Street  
Macon, GA 31201-7957

Honorable Laura Taylor Swain  
United States District Judge  
United States District Court  
Thurgood Marshall United States  
Courthouse, Room 1205  
40 Foley Square  
New York, NY 10007

Honorable Christopher M. Klein  
United States Bankruptcy Judge  
United States Bankruptcy Court  
3-200 United States Courthouse  
501 I Street  
Sacramento, CA 95814-2322

Honorable Richard A. Schell  
United States District Judge  
United States District Court  
United States Courthouse Annex  
Bank One Building  
200 North Travis Street  
Sherman, TX 75090

Honorable Mark B. McFeeley  
United States Bankruptcy Judge  
United States Bankruptcy Court  
500 Gold Avenue, S.W.  
Albuquerque, NM 87102



**ADVISORY COMMITTEE ON BANKRUPTCY RULES (CONTD.)**

Dean Lawrence Ponoroff  
Tulane University School of Law  
Weinmann Hall  
6329 Freret Street  
New Orleans, LA 70118-6231

K. John Shaffer, Esquire  
Stutman, Treister & Glatt, P.C.  
1901 Avenue of the Stars, 12<sup>th</sup> Floor  
Los Angeles, CA 90067

J. Michael Lamberth, Esquire  
Lamberth, Cifelli, Stokes & Stout, P.A.  
3343 Peachtree Road, N.E., Suite 550  
Atlanta, GA 30326

G. Eric Brunstad, Jr., Esquire  
Bingham McCutchen LLP  
One State Street  
Hartford, CT 06103

Director, Commercial Litigation Branch,  
Civil Division, U.S. Dept. of Justice (ex officio)  
J. Christopher Kohn, Esquire  
P.O. Box 875, Ben Franklin Station  
Washington, DC 20044-0875  
(1100 L Street, N.W., 10<sup>th</sup> Floor, Room 10036  
Washington, DC 20005)

**Reporter:**

Professor Jeffrey W. Morris  
University of Dayton  
School of Law  
300 College Park  
Dayton, OH 45469-2772

**Advisors and Consultants:**

James J. Waldron  
Clerk, United States Bankruptcy Court  
Martin Luther King, Jr. Federal Building  
and United States Courthouse  
Third Floor, 50 Walnut Street  
Newark, NJ 07102-3550

Donald Walton, Acting Deputy Director  
Executive Office for United States Trustees  
20 Massachusetts Avenue, N.W., Suite 8000  
Washington, DC 20530

Melissa B. Jacoby, Associate Professor  
University of North Carolina School of Law  
100 Ridge Road  
Chapel Hill, NC 27599-3380

Professor Edward J. Janger  
Brooklyn Law School  
250 Joralemon Street  
Brooklyn, NY 11201

Patricia S. Ketchum, Esquire  
1607 22<sup>nd</sup> Street, N.W.  
Washington, DC 20008-1921

**Liaison Member:**

Honorable Harris L Hartz  
United States Circuit Judge  
United States Court of Appeals  
201 Third Street, N.W., Suite 1870  
Albuquerque, NM 87102

**ADVISORY COMMITTEE ON BANKRUPTCY RULES (CONTD.)**

**Liaison from Committee on the  
Administration of the Bankruptcy System:**

Honorable Dennis Montali  
United States Bankruptcy Judge  
United States Bankruptcy Court  
235 Pine Street  
San Francisco, CA 94104

**Secretary:**

Peter G. McCabe  
Secretary, Committee on Rules of  
Practice and Procedure  
Washington, DC 20544

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#### **CM/ECF Working Group**

Judge Mark McFeeley

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Thomas S. Zilly Chair	D	Washington (Western)	Member: 2000 Chair: 2004	---- 2007
G. Eric Brunstad, Jr.	ESQ	Connecticut	2005	2008
Ransey Guy Cole, Jr.	C	Sixth Circuit	2003	2006
Irene M. Keeley	D	West Virginia (Northern)	2002	2008
Christopher M. Klein	B	California (Eastern)	2000	2006
J. Christopher Kohn*	DOJ	Washington, DC	-----	Open
J. Michael Lamberth	ESQ	Georgia	2005	2008
Mark B. McFeeley	B	New Mexico	2001	2007
William H. Pauley III	D	New York (Southern)	2005	2008
Lawrence Ponoroff	ACAD	Louisiana	2004	2007
Richard A. Schell	D	Texas (Eastern)	2003	2006
K. John Shaffer	ESQ	California	2000	2006
Laura Taylor Swain	D	New York (Southern)	2002	2008
James D. Walker, Jr.	B	Georgia (Middle)	1999	2006
Eugene R. Wedoff	B	Illinois (Northern)	2004	2007
Jeffrey W. Morris Reporter	ACAD	Ohio	1998	Open

Principal Staff:     John K. Rabiej (202) 502-1820  
                            Jim Wannamaker (202) 502-1910

\* Ex-officio

## JUDICIAL CONFERENCE RULES COMMITTEES

### Chairs

Honorable David F. Levi  
Chief Judge, United States District Court  
United States Courthouse  
501 I Street, 14<sup>th</sup> Floor  
Sacramento, CA 95814

Honorable Carl E. Stewart  
United States Circuit Judge  
United States Court of Appeals  
2299 United States Court House  
300 Fannin Street  
Shreveport, LA 71101-3074

Honorable Thomas S. Zilly  
United States District Judge  
United States District Court  
United States Courthouse  
700 Stewart Street, Suite 15229  
Seattle, WA 98101

Honorable Lee H. Rosenthal  
United States District Judge  
United States District Court  
11535 Bob Casey U.S. Courthouse  
515 Rusk Avenue  
Houston, TX 77002-2600

Honorable Susan C. Bucklew  
United States District Judge  
United States District Court  
United States Courthouse  
801 North Florida Avenue, Suite 1430  
Tampa, FL 33602

Honorable Jerry E. Smith  
United States Circuit Judge  
United States Court of Appeals  
12621 Bob Casey U.S. Courthouse  
515 Rusk Avenue  
Houston, TX 77002-2698

### Reporters

Professor Daniel R. Coquillette  
Boston College Law School  
885 Centre Street  
Newton Centre, MA 02159

Professor Patrick J. Schiltz  
University of St. Thomas  
School of Law  
1000 La Salle Avenue, MSL 400  
Minneapolis, MN 55403-2015

Professor Jeffrey W. Morris  
University of Dayton  
School of Law  
300 College Park  
Dayton, OH 45469-2772

Professor Edward H. Cooper  
University of Michigan  
Law School  
312 Hutchins Hall  
Ann Arbor, MI 48109-1215

Professor Sara Sun Beale  
Duke University School of Law  
Science Drive and Towerview Road  
Box 90360  
Durham, NC 27708-0360

Professor Daniel J. Capra  
Fordham University  
School of Law  
140 West 62nd Street  
New York, NY 10023

**ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS**

**Staff:**

John K. Rabiej  
Chief, Rules Committee Support Office  
Administrative Office of the  
United States Courts  
Washington, DC 20544

Phone 202-502-1820  
Fax 202-502-1755

James N. Ishida  
Attorney-Advisor  
Office of Judges Programs  
Administrative Office of the  
United States Courts  
Washington, DC 20544

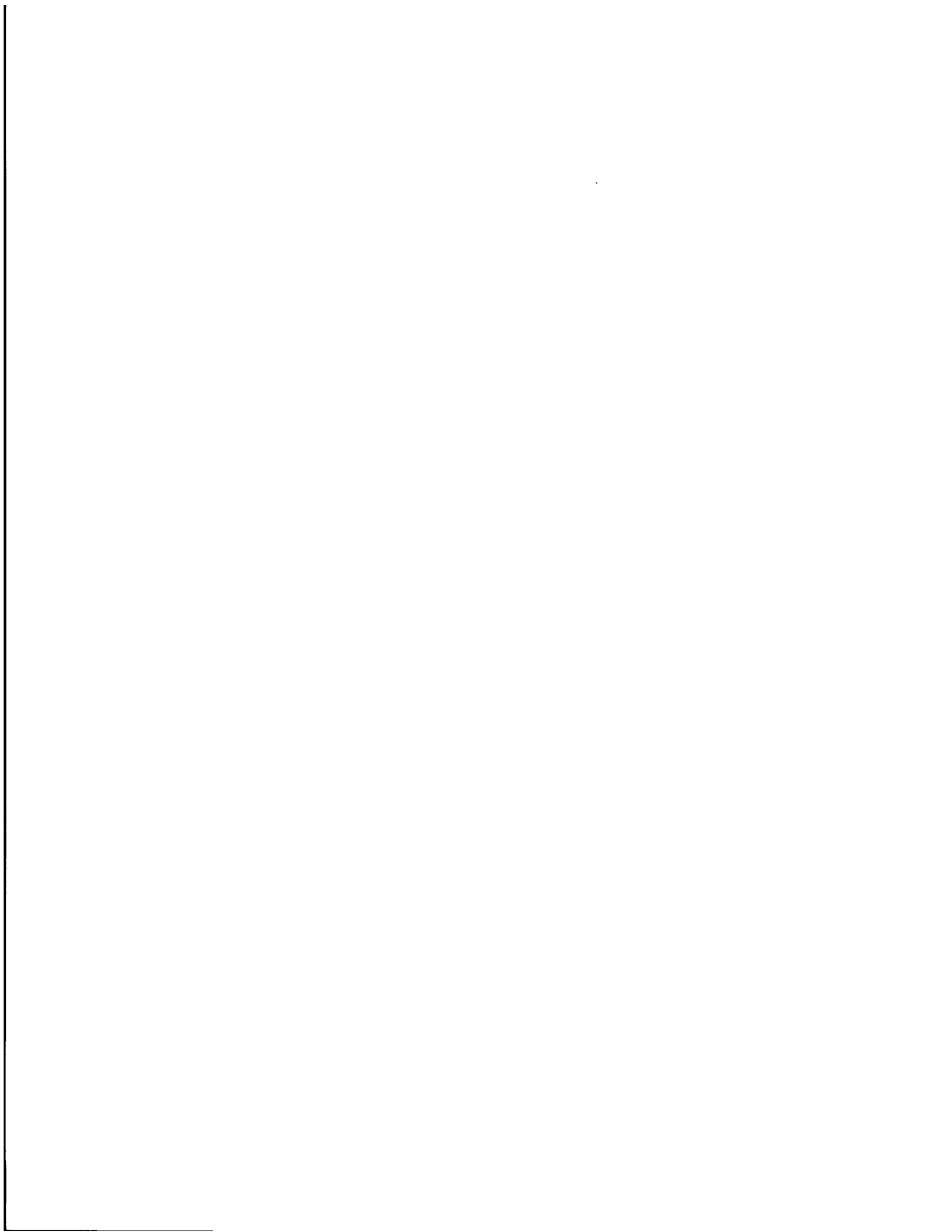
Phone 202-502-1820  
Fax 202-502-1755

Judith W. Krivit  
Administrative Specialist  
Rules Committee Support Office  
Administrative Office of the  
United States Courts  
Washington, DC 20544

Phone 202-502-1820  
Fax 202-502-1755

James H. Wannamaker III  
Senior Attorney  
Bankruptcy Judges Division  
Administrative Office of the  
United States Courts  
Washington, DC 20544

Phone 202-502-1900  
Fax 202-502-1988



**ADVISORY COMMITTEE ON BANKRUPTCY RULES**

**Meeting of September 29 - 30, 2005  
Santa Fe, N.M.**

**Draft Minutes**

The following members attended the meeting:

District Judge Thomas S. Zilly, Chairman  
District Judge Ernest C. Torres  
District Judge Laura Taylor Swain  
District Judge Irene M. Keeley  
District Judge Richard A. Schell  
District Judge William H. Pauley III  
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  
G. Eric Brunstad, Jr., Esquire  
J. Michael Lamberth, Esquire

The following members were unable to attend the meeting:

Circuit Judge R. Guy Cole, Jr.  
Dean Lawrence Ponoroff

The following persons also attended the meeting:

Professor Jeffrey W. Morris, Reporter  
Professor Edward J. Janger, adviser to the committee  
Bankruptcy Judge Dennis Montali, liaison from the Committee on the  
Administration of the Bankruptcy System (Bankruptcy Administration Committee)  
District Judge David F. Levi, chair of the Committee on Rules of Practice and  
Procedure (Standing Committee)  
Circuit Judge Harris L. Hartz, liaison from the Standing Committee  
Peter G. McCabe, secretary of the Standing Committee  
Donald F. Walton, Acting Deputy Director, Executive Office for U.S. Trustees



(EOUST)

Mark A. Redmiles, National Civil Enforcement Coordinator, EOUST

James J. Waldron, Clerk, U.S. Bankruptcy Court for the District of New Jersey

Ms. Patricia S. Ketchum, adviser 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, Administrative Office

James H. Wannamaker, Bankruptcy Judges Division, Administrative Office

Robert Niemic, Research Division, Federal Judicial Center (FJC)

Philip S. Corwin, Butera & Andrews, Washington, D.C.

Jeffrey A. Tassej, Tassej & Associates, Washington, D.C.

Michael F. McEneny, Sidley Austin Brown & Wood, Washington, D.C.

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, Judge Levi, liaisons, advisers, staff, and guests to the meeting. The Chairman introduced the three new members, Judge Pauley, Mr. Brunstad, and Mr. Lamberth. The Chairman noted that this is the Committee's first meeting in years without Judge A. Thomas Small, the former chairman. Judge Levi commended the Committee on developing the Interim Rules and Official Forms in such a short time in order to implement the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the bankruptcy reform act). He stated that the remarkable achievement reflects the quality of the people on the Committee and the care of former Chief Justice William H. Rehnquist in selecting the members. Judge Levi praised the former Chief Justice for his support of the rulemaking process and his lightning quick grasp of ideas. Judge Levi stated that Chief Justice John G. Roberts, Jr., also supports the rulemaking process. The Chief Justice has been a member of the Advisory Committee on Appellate Rules for a number of years as an attorney and as a judge.

The Chairman briefed the Committee on the June 2005 meeting of the Standing Committee. The Standing Committee gave its final approval to the proposed amendments to Rules 1009, 5005(a), 5005(c), and 7004. A proposed amendment to Rule 4002 was withdrawn as a result of the passage of the bankruptcy reform legislation. The proposed amendments to Rules 1009, 5005(a), 5005(c), and 7004 were approved by the Judicial Conference at its meeting in September 2005. The Standing Committee also approved the publication of proposed amendments to Rules 3001, 3007(c)-(f), 4001, 6006, and proposed new Rules 6003, 9005.1, and 9037. The Standing Committee approved the publication of proposed amendments to Rules 1014, 3007(b), and 7007.1 at its meeting in January 2005.

**The Committee approved the minutes of the March 2005 meeting in Sarasota, Florida, and the August 2005 meeting in Washington, D.C. with minor corrections from Judge Swain and Mr. Kohn.**

Judge Montali reported on the June 2005 meeting of the Bankruptcy Administration Committee. Judge Montali stated that the Bankruptcy Administration Committee has developed interim procedures regarding fee waivers in chapter 7 cases, guidance for safeguarding the confidentiality of tax information provided under section 521 of the Bankruptcy Code, and procedures for approving agencies which provide credit counseling and personal financial management training courses in the six judicial districts served by bankruptcy administrators. Mr. Waldron stated that the interim procedures protect the confidentiality of tax information by requiring that a party seeking access to the information must file a written request for the debtor to file the tax returns and a motion for access to tax information which has been filed.

Judge Walker reported on the April 2005 meeting of the Advisory Committee on Civil Rules. He discussed the Civil Rules Committee's work on revision of the class action rules, the electronic discovery rules, and the restyling project. Judge Klein reported on the April 2005 meeting of the Advisory Committee on Evidence Rules. He stated that the Evidence Rules Committee does not favor amending the rules unless an amendment is required by an act of Congress or by a decision by the Supreme Court. The Evidence Rules Committee did not propose any amendments for publication in August 2005.

### **Action Items**

Interim Rules and Official Forms. The Chairman reported that the Standing Committee approved the Interim Rules and Official Forms by email ballot in August 2005. The Executive Committee of the Judicial Conference approved the Official Forms and transmitted the Interim Rules for adoption by the courts. After the Interim Rules and Official Forms were distributed to the courts, publishers, and the public, Senator Charles E. Grassley wrote the Chief Justice expressing concern about some of the Interim Rules. The Director of the Administrative Office responded and enclosed a memorandum prepared by the Reporter.

Comments on the Interim Rules and Official Forms may be submitted by mail or electronically through a special link on the federal rulemaking page of the Judiciary's Internet website. The Chairman stated that 20 comments had been received by the time of the meeting. He stated that it might be possible to hold a public hearing on the Interim Rules and Official Forms this winter. The Interim Rules and Official Forms are expected to apply to bankruptcy cases from October 17, 2005, until final rules are promulgated and effective under the regular Rules Enabling Act process. Meanwhile, the Committee will continue to study the Bankruptcy Reform Act and expects to request permission to publish proposed new and amended rules based on the Interim Rules and the comments received on them at some time in 2006. The Committee discussed whether it would be better to publish the proposed new rules and forms early and provide for an extended comment period or to publish the proposed new rules and forms at the

usual time in August, when the courts and practitioners have had more experience working with the bankruptcy reform act and the Interim Rules and Official Forms.

Several Committee members stressed the importance of following the normal Rules Enabling Act process. Judge Levi stated that the Rules Enabling Act process derives its legitimacy from its participatory nature and openness to public scrutiny. The Chairman stated that the Committee tried to follow the spirit of the Rules Enabling Act by posting the Interim Rules and Official Forms on the Internet. The Committee discussed the distinction between correcting minor typos in the Interim Rules and Official Forms and making more significant changes and whether extensive changes are likely in the rules and forms published for comment. The Committee also discussed the distinction between amendments to the rules, which are approved by the Supreme Court and transmitted to Congress, and amendments to the Official Forms, which are prescribed by the Judicial Conference.

Official Forms 22A and 22C. Mr. Redmiles stated that the Internal Revenue Service has separated its local standards for housing and utilities into mortgage/rent expenses and non-mortgage expenses. This requires modification of the Statement of Current Monthly Income and Means Test Calculation, Official Form 22A or 22A(Alt.), and the Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income, Official Form 22C or 22C(Alt.). The Committee considered suggested modifications of Official Forms 22A and 22C drafted by Judge Wedoff and Mr. Redmiles. Mr. Redmiles withdrew his drafts.

In order to preserve the original numbering scheme, the Committee agreed to designate two revised lines as lines 20A and 20B on Official Form 22A and as lines 25A and 25B on Official Form 22C. The IRS has declined to post the separate standards on its own website and will not use the separate standards for tax collection, but the standards will be posted on the EOUST website. In order to give filers information on where to get the required numbers, the Committee agreed to add a reference to the EOUST website to lines 20A and 20B of Official Form 22A and to lines 25A and 25B of Official Form 22C. The Committee agreed to add a section in which a debtor who contends that the process set out in lines 20A and 20B or lines 25A and 25B does not accurately compute the allowance to which the debtor is entitled under the IRS Housing and Utilities Standards can assert that an additional amount should be allowed and can set out the basis for that contention.

The Committee discussed the deduction of actual future payments on secured claims and the directive not to include insurance and taxes on line 41 of the current form 22A. Mr. Frank stated that the debtor is required to pay the insurance and taxes even if the lender does not hold the funds in escrow. Mr. Redmiles stated that the debtor does not get the deduction twice because these payments are backed out of the IRS Standards in the calculation of the deduction on line 20B or on line 25B. The Committee agreed to the change on Official Forms 22A and 22C. **A motion to revise Official Forms 22A(Alt.) and 22C(Alt.) was approved without dissent. A motion to withdraw the existing Official Forms 22A and 22C and to redesignate the amended Official Forms 22A(Alt.) and 22C(Alt.) as Official Forms 22A and 22C was**

**approved without dissent.**

The Committee considered suggested amendments to Form 22C, Statement of Current Monthly Income and Disposable Income Calculation, drafted by Judge Wedoff and Mr. Frank to provide for the calculation of the applicable commitment period for the chapter 13 plan. One draft calculated the applicable commitment period first and then the debtor's disposable income. The other draft reversed the two calculations. Judge Wedoff stated that a compromise approach would require the debtor to make the calculation set out on the draft amendments but would permit the debtor to contend that the income of the debtor's non-filing spouse should not be counted.

The Committee discussed whether all chapter 13 debtors should be required to calculate the applicable commitment period at the beginning of the case when it is a confirmation issue which will not arise in many cases and much of the information is available on other forms. Several Committee members stated that capturing the information at the beginning of the case on a single form would help debtors, creditors, and the standing trustee and would make the chapter 13 system more efficient. Judge McFeeley stated that spelling out the required information would make it easier for pro se debtors to prepare their repayment plans. The Reporter stated that, if the calculation is not part of the national form, chapter 13 trustees may require debtors to make the calculation on a separate form. Differing local practices could hinder national creditors.

Judge Montali suggested requiring the debtor to furnish the information without making the calculation or selecting a checkbox. Professor Resnick suggested revising the checkboxes on page 1 of the form to avoid an estoppel argument against the debtor. The Committee agreed to preface the checkboxes with the phrase "According to the calculation required by this statement, check the boxes as indicated." **A motion to approve Judge Wedoff's draft amendment of Official Form 22C, as revised, was approved by a vote of 8-4.** Professor Resnick suggested revising the checkboxes on Official Form 22A to read as follows: "According to the calculations required by this statement:  The presumption arises.  The presumption does not arise. (Check the box as directed in Parts I, III, and VI of this statement.)" **A motion to approve the suggested language for Official Form 22A was approved without dissent. The chairman's suggestion to make the same change on Official Form 22C also was approved without dissent.**

The National Bankruptcy Conference has written the Committee expressing concern that, by taking a position on the interpretation of section 707(b), the Official Forms force debtors to make statements, under penalty of perjury, regarding significant issues of law with which the debtors do not agree and which could be considered admissions in later proceedings. The National Bankruptcy Conference expressed concern specifically with including a non-filing spouse's income in the means test and not deducting other necessary expenses unless they fit in the categories listed on the form.

Professor Resnick stated that Official Form 22 should be neutral. He stated that the means test form is a pleading and that the debtor should be allowed to assert a good faith position on the form. Professor Resnick stated that, even if the debtor asserts that the non-filing spouse's income should not be included on Form 22A and, as a result, the clerk does not send creditors an initial presumption of abuse notice within 10 days of the petition, the United States trustee still gets the means test form and could contest the debtor's assertion. Judge Wedoff stated that the safe harbor provision in section 707(b) requires that some debtors include their non-filing spouse's income. He stated that, by excluding the non-filing spouse's income, these debtors would not be required to complete the rest of the form. The Committee also discussed whether debtors should be allowed to deduct other necessary expenses which are not included in the IRS standards listed on the form. Professor Resnick moved to reconsider inclusion of a non-filing spouse's income and the deduction of other necessary expenses. Several Committee members expressed concern about changing the form just before October 17, 2005, effective date of the bankruptcy reform act. Mr. Walton stated that the form is based on lots of compromises and discussions, which could be upset by reopening the two issues. **The motion to reconsider failed by a vote of 9-4. The Chairman referred the National Bankruptcy Conference's letter and the issues raised by the letter to the Consumer Subcommittee for consideration as part of the revision of the national rules.**

Implementation of Section 522(q). The Interim Rules include an amendment to Rule 4004(c)(1)(I) to implement sections 522(q) and 727(a)(10) of the Bankruptcy Code. The Reporter stated that the Committee limited the provision to chapter 7 cases because section 522(q) only applies in a handful of states where the homestead exemption could exceed \$125,000 and discharges in individual chapter 11, 12, and 13 cases are entered only after the completion of plan payments. In addition, the chapter 7 provision requires that the court make a positive finding while the chapter 11, chapter 12, and chapter 13 provisions require negative findings. The Reporter stated that waiting until national rules are enacted may not be appropriate, however, because the debtor may make an early payout under the plan or the choice of law provisions in section 522(b)(3) may extend the geographic reach of those state's high exemption laws. Judge Wedoff stated that the Committee should deal with the issue in order to avoid unnecessary work and inconsistent local procedures in the courts.

Professor Resnick stated that requiring the debtor to state, under penalty of perjury, that section 522(q) does not apply, i.e., that the debtor has not committed a crime, in order to claim a valid homestead exemption could force the debtor to commit perjury. Judge Wedoff stated that section 522(q) has two elements — the felony and the pending proceeding. He stated that, if there is no pending proceeding, there is no perjury and, if the debtor has already been convicted, a creditor could use that conviction to object to the discharge.

The Committee discussed whether the issue could be simplified by requiring a notice that, unless a creditor objects, the court will find that there is no reasonable basis to believe that section 522(q) applies to the debtor and that there are no pending proceedings. Because creditors may not know whether there is a pending proceeding, the Committee also discussed either

requiring all individual debtors in chapter 11, chapter 12, and chapter 13 to file a section 522(q) statement or requiring the debtor to file a statement if the debtor claims a homestead exemption which exceeds \$125,000. The Committee also discussed the timing of the notice or statement. Should the notice be given or the statement filed at the beginning of the case or should the notice or statement come when the debtor has completed the plan payments or requests a hardship discharge? **By a vote of 8-1, the Committee agreed in principle to require an individual debtor in chapter 11, 12, or 13 case to file a section 522(q) statement if the debtor claims a homestead exemption which exceeds \$125,000 and to require that the statement be filed just before the discharge.**

The Reporter presented a draft of Interim Rule 1007(b)(8) and (c). The Committee agreed to strike the phrase "by the debtor" from subdivision (c). The Committee discussed what would happen if an individual debtor in a chapter 11, 12, or 13 case completes the plan payments and is required to file the statement but does not do so. The Reporter stated that the case would be closed without a discharge. One Committee member stated that, if the debtor no longer has an attorney, the trustee may advise the debtor to file the statement. The Committee agreed to revise subdivision (c) to require that the statement required by subdivision (b)(8) should be filed "not earlier than the date of the last payment made by the debtor under the plan or the date of a motion for entry of discharge under §§ 1141(d)(5)(B), 1228(b), or 1328(b)." Mr. Adelman suggested that the phrase "to the best of the debtor's knowledge" be deleted from subdivision (b)(8) since the requirement is included in Rule 1008. The Committee agreed. The Committee agreed to revise the Committee Note to state that creditors receive notice of the time to move for postponement of the discharge, not to object to the statement. **A motion to approve Interim Rule 1007(b)(8) and (c) and the Committee Note as revised was approved without dissent.**

The Reporter presented a draft of Interim Rule 2002(f)(11) to require that creditors be given notice of the time to move for postponement of the discharge under sections 1141(d)(5)(B), 1228(b), or 1328(b). **A motion to approve Interim Rule 2002(f)(11) and the Committee Note was approved without dissent.** The Reporter presented a draft of Interim Rule 4004(c)(3) to provide that the court shall not grant a discharge in an individual chapter 11, 12, or 13 case earlier than 30 days after the filing of the statement required under Rule 1007(b)(8). Because not every debtor is required to file the statement, the Committee agreed to substitute "If the debtor is required to file a statement under Rule 1007(b)(8), the court shall not grant a discharge earlier than 30 days after the filing of the statement." **A motion to approve Interim Rule 4004(c)(3) as revised was approved without dissent.**

Failure to Provide or File Requested Tax Documents. The Reporter stated that the bankruptcy court in the Southern District of New York had noted that section 1228 of the bankruptcy reform act states that the court shall not grant a chapter 7 debtor a discharge unless the debtor has provided requested tax documents to the court. Because the court may not know whether any tax documents have been requested or whether the debtor has filed additional returns with the tax authorities but not with the court, Professor Resnick suggested that the debtor be required to file a statement that all requested income tax returns or transcripts have been filed.

Mr. Waldron stated that, as provided in section 315(c) of the bankruptcy reform act, the Director of the Administrative Office has established procedures for safeguarding the confidentiality of tax information. The procedures state that the United States trustee, bankruptcy administrator, trustee, or other party in interest file a written request that a debtor file copies of tax returns with the court. **The Committee agreed in principle that, if a request for tax documents has been made and filed, the debtor must file a statement that all of the tax documents have been provided.**

The Reporter presented a draft of Interim Rule 4004(c)(1)(K) to provide that the court shall not issue the discharge in a chapter 7 case if the debtor has failed to file with the court each federal income tax return or transcript of such tax return as required under section 521(f) of the Code. The Committee agreed to substitute "the debtor has not filed with the court any tax documents required to be filed under § 521(f)." The Committee discussed how the clerk would know whether the debtor had filed all of the tax documents since the debtor may file additional documents with the tax authorities during the course of the case. The Committee agreed to substitute "a motion to delay discharge, alleging that the debtor has not filed with the court all tax documents required to be filed under § 521(f), is pending." **A motion to approve Interim Rule 4004(c)(1)(K) as revised was approved without dissent.** The Committee agreed to substitute the following for the first paragraph of the Committee Note covering the two amendments to Interim Rule 4004: "Subdivision (c)(1) is amended by adding subparagraph (K) to implement § 1228(a) of Public Law No. 109-8." **A motion to approve the Committee Note as revised was approved without dissent.**

Interim Rule 8001(f). The Reporter stated that Interim Rule 8001(f) covers a direct appeal to the court of appeals from a final judgment, order, or decree of the bankruptcy court and from an appeal of an interlocutory order or decree of the bankruptcy court. Although the Interim Rule suggests that a grant of leave to appeal is required for any interlocutory appeal, section 158(a)(2) of title 28 authorizes interlocutory appeals of interlocutory orders and decrees issued under section 1121(d) of the Bankruptcy Code. The Reporter presented a draft amendment to cover all three forms of appeals. **A motion to approve the proposed amendment to Interim Rule 8001(f) approved without dissent.**

Other Pending Matters Including Comments on the Interim Rules and Official Forms. Bankruptcy Judge Robert E. Grant wrote the Committee concerning the impact of the Interim Rules and the amendment of section 524 of the Bankruptcy Code on the reaffirmation process. The Reporter stated that the proposed amendment to Rule 4008 which was to be effective on December 1, 2005, has been withdrawn as a result of the passage of the bankruptcy reform act but that there still may be a need to require that reaffirmation agreements be filed earlier. Judge Montali suggested that the timing problem could be resolved by dividing Rule 4008 and putting the new section 524(k) provisions in the second paragraph. **A suggestion to defer the matter and consider it as part of the amendment of the national rules was approved without dissent. The matter will be referred to the Consumer Subcommittee for further action.**

The Committee also discussed the comments on the Interim Rules and Official Forms submitted by Bankruptcy Judge Bruce A. Markell, Bankruptcy Judge Robert J. Kressel, and others. The Committee discussed how to disseminate the Interim Rules and clearly indicate the changes since the Interim Rules were originally approved in August. The Chairman suggested distributing "redline" copies of the Interim Rules which are amended and copies of the complete Interim Rules, including the ones which have been amended. A Committee member suggested dating updates to the Interim Rules.

The Committee discussed the small business profitability and compliance report required by section 434 of the bankruptcy reform act. Because the reporting provision is not effective until 60 days after rules are enacted to implement it, the form was not included in the Interim Rules and Official Forms. The Reporter stated he plans to contact experts on bankruptcy insolvency accounting for suggestions for the form.

Model Plan and Disclosure Statement. Professor Janger stated that a group of members of the Business Subcommittee has completed a draft model plan for small chapter 11 debtors and expects to prepare a draft model disclosure statement for consideration at the March meeting. He stated that the group probably also will prepare a combined model plan and disclosure statement for the March meeting. Professor Janger said the group had shortened the model plan from 12 pages to 5. Professor Resnick stated that the model plan is a "bare bones" plan which can be modified as necessary. He stated that the debtor can use the model plan or write its own plan as long as the plan is not inconsistent with the Bankruptcy Code. Ms. Ketchum suggested that the model plan include a statement that the form can be supplemented or customized. The Committee discussed the model plan and made several changes in the draft. The Committee also discussed the statutory provision for the courts to approve their own model plans and disclosure statements. **A motion to approve the draft model plan in principle was approved without dissent. Further consideration of the model plan and disclosure statement will be on the agenda for the March 2006 meeting.**

Proposed Rule 2002(g)(4), the Bankruptcy Reform Act, and Interim Rule 2002. A pending amendment to Rule 2002(g) would allow an entity to designate an address for the purpose of receiving notices. The proposed amendment is pending before Congress with an effective date of December 1, 2005. The amendment was requested by creditors and endorsed by the Judiciary as a means of providing additional service while saving money. Sections 342(e) and (f), which were added to the Bankruptcy Code by the reform act, provide that a creditor in an individual chapter 7 or 13 case may file a notice of address which must be used by the debtor and the court thereafter in that case and that an entity may file with any bankruptcy court a notice that all courts must use for that creditor in all chapter 7 and chapter 13 cases. The Committee has concluded that the new statutory provisions do not conflict with the proposed amendment to Rule 2002(g)(4), even if the statute gives creditors additional rights.

The Reporter stated that existing Rule 2002(g)(2), provides, however, 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, which does not take into account the new section 342(f). The Reporter suggested that an exception for section 342(f) of the Code be added to Interim Rule 2002(g)(2). **A motion to incorporate an exception for section 342(f) in Interim Rule 2002(g)(2) was approved without dissent. A motion to approve the Interim Rules as amended was approved without dissent.**

Official Form 1, Voluntary Petition. Official Form 1 was intended to function both as a voluntary petition under the appropriate chapter of the Bankruptcy Code and as a petition for recognition under chapter 15. Ms. Ketchum stated that the language in the signature block labeled "Signature of a Foreign Representative of a Recognized Foreign Proceeding" probably works reasonably well for a foreign representative filing a voluntary petition after recognition has been granted, but that the language does not work well for a foreign representative seeking recognition under chapter 15.

Ms. Ketchum suggested revising the form to include two signature blocks: one for filing a voluntary case and one for seeking recognition. Mr. Shaffer suggested using a single signature block for foreign representatives with two checkboxes. Ms. Ketchum presented a draft revision incorporating the suggestion. The draft struck the words "of a Recognized Foreign Representative" from the title of the signature block, the word "main" from the first sentence of the statement, and the second sentence of the statement in its entirety. The checkboxes were as follows: " The debtor requests relief in accordance with chapter 15 of title 11, United States Code. Certified copies of the documents required by § 1515 of title 11 are attached.  Pursuant to § 1511 of title 11, United States Code, the debtor requests relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached." Judge Montali suggested substituting "I request" for "The debtor requests" in each checkbox. The Committee agreed. **A motion to approve the amendment to Official Form 1 as revised was approved without dissent.**

Official Forms 9G and 9H, § 341 Notices for Chapter 12 Family Farmers. Ms. Ketchum stated that the bankruptcy reform legislation amended section 109(f) of the Bankruptcy Code to extend relief under chapter 12 to family fishermen. She stated that the title of the form on page 1 and the first explanation on page 2 refer only to family farmers. She stated that the absence of a reference to family fishermen could be confusing to creditors in a family fishermen case. **The Committee agreed to defer the matter to the March 2006 meeting. The matter will be referred to the Forms Subcommittee.**

Letter from the ABA Task Force on Attorney Discipline. The Committee discussed a letter dated June 21, 2005, from the American Bar Association Task Force on Attorney Discipline. **The Committee concluded that no change was required in the Interim Rules. The Chairman referred the matter to the Subcommittee on Attorney Conduct and Health Care for further consideration as part of the revision of the national rules.**

Objections to Exemptions. At its meetings in September 2004 and March 2005, the

Committee discussed proposed amendments to Rule 4003(b) to extend the time to object to exemptions when the debtor's claim of exemptions has no good faith basis and to Rule 4003(b) to permit creditors to object to the exemption as a defense to a lien avoidance action notwithstanding that the Rule 4003(b) objection period has expired. **The proposed amendment to Rule 4003(d) was approved in principle at the March meeting and both amendments were then referred to the Consumer Subcommittee for further study.**

The Reporter stated that the subcommittee has recommended extending the 30-day objection period in Rule 4003(b) to 60 days after the meeting of creditors and adding a new subdivision (b)(2) which provides that the trustee may file an objection at any time up to one year after the closing of the case if the debtor fraudulently asserted the claim of exemption. The Committee discussed whether a Rule 9011 standard would be better, but agreed to retain the fraud standard and the one-year deadline, which are the same as those for revoking the debtor's discharge under section 727(d) of the Bankruptcy Code. Mr. Brunstad stated that the fraud standard would protect a debtor who innocently submits an unjustified claim of exemptions. Because the trustee is discharged when the case is closed, the Committee agreed to provide in subdivision (b)(2) that the United States trustee also can object up to one year after closing. The Committee agreed to correct the reference to § 522(b)(3) in the first paragraph of the Committee Note. **A motion to approve the proposed amendments and the Committee Note as revised was approved without dissent.**

Director's Procedural Forms. Ms. Ketchum presented draft revisions of Director's Procedural Forms 18J, 18JO, 18F, 18FH, 18W, and 18WH, discharge forms for use in joint cases, chapter 12 cases, and chapter 13 cases. She asked that the Committee members review the drafts and respond by email by October 4, 2005 with any suggested changes.

Ms. Ketchum stated that most of the draft revision of Form B201, Notice to Individual Consumer Debtor under § 342(b) of the Bankruptcy Code, represented a consensus of the Subcommittee on Forms but that the subcommittee was unable to agree on the signature blocks. Ms. Ketchum stated that a pro se debtor must read and sign the notice but there are questions about whether a debtor with an attorney or a bankruptcy petition preparer must file a copy of the notice and who should sign it. Judge Montali stated that section 110 of the Code requires that a petition preparer sign all documents the preparer prepares for filing. The signature blocks for individual or joint debtors and for petition preparers on Official Form 1, Voluntary Petition, include references to obtaining or providing the 342(b) notice. Because section 342(b) requires that the clerk provide a notice to an individual, consumer debtor before the case is filed, several Committee members stated that requiring the debtor to sign and file a copy of the notice would avoid any question about whether the notice has been given. Mr. Frank stated that a separate filing by the debtor's attorney is not needed because the attorney would usually have the debtor sign the notice and retain the signed copy in the attorney's files. The Committee agreed to delete the certification by the debtor's attorney. **A motion to approve Form B201 as revised was approved without dissent.**

Ms. Ketchum presented two versions of a draft revision of Form B240, Reaffirmation Agreement. The two versions differed in where the caption is placed and how much of the form would be filed with the court. The Committee agreed to use Mr. Kohn's version of the form with the caption on the first page and the entire form to be filed. The Committee agreed with Judge Klein's suggestion to substitute the following for the last two sentences of the Order Approving Reaffirmation Agreement: "COURT ORDER: The court grants the debtor's motion and approves the reaffirmation agreement described above." **A motion to approve Form B240 as revised was approved with one dissenting vote.**

Rule 5001(b) and Court Hearings During Emergencies. At its meeting in September 2003, the Committee approved in principle a proposed amendment to Rule 5001(b) which would authorize bankruptcy judges to hold court outside the district in emergencies. Further action was deferred until Congress acted on the related amendment to section 152(c) of title 28. The catastrophic events of Hurricane Katrina brought the matter back to Congress. The Federal Judiciary Emergency Special Sessions Act of 2005, Public Law 109-63, was signed by the President on September 9, 2005. The Committee reviewed the draft language approved in 2003 and agreed to move the phrase "except as provided in 28 U.S.C. § 152(c)(2)" to the end of the rule and to change the statutory reference in the Committee Note to "§ 152(c)(2)." **A motion to approve the proposed amendment and the Committee Note as revised was approved without dissent.**

#### **Information and Discussion Matters**

Rules 1005 and 1007 and Official Form 10, Proof of Claim. The Committee discussed the inclusion of federal tax identification numbers other than social security numbers in captions and statements as provided in Rules 1005 and 1007. The Committee discussed the status of the proposed amendment to Official Form 10 to facilitate electronic filing. The Reporter stated that, if the amendment to Form 10 is published in August 2006, it can take effect at the same time as the related amendments to Rule 3001 which were published in August 2005. **The chairman referred these matters to the Subcommittee on Forms.** An amendment to Schedule I of Official Form 6 was requested by the EOUST and published in August 2004. As a result of the enactment of the bankruptcy reform act, the EOUST amendment was withdrawn and Schedule I was amended to require that married debtors in chapter 7, 11, 12, and 13 cases include their non-filing spouses' income, whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. The amendment to Schedule I was effective on October 17, 2005. **The Committee endorsed the withdrawal of the EOUST amendment since it is no longer needed.**

Notice of Newly Discovered Assets. Bankruptcy Judge Dana L. Rasure wrote the Committee on behalf of the Bankruptcy Judges Advisory Group concerning timing issues raised by Rule 3002(c)(5). The Committee discussed the matter at the March 2005 meeting and referred it to the Subcommittee on Privacy, Public Access, and Appeals. **The Committee agreed to defer the matter pending the planned study of the time periods in all federal**

rules.

Separate Document Requirement. The Subcommittee on Privacy, Public Access, and Appeals has been considering whether Rule 9021 should be amended to address the impact of the recent revision of Civil Rule 58 and whether the separate document requirement should be modified in bankruptcy matters. Professor Resnick stated that many bankruptcy attorneys would be shocked to know that, if a judgment is not set forth in a separate document, judgment is not entered for purposes of appeal until 150 days after the judgment is entered on the docket. Judge Klein said the change in the Civil Rule, which is incorporated by Bankruptcy Rule 9021, took care of the problem because 150 days has passed by the time the appellate court sees the appeal. Because the subcommittee was unable to agree on whether any change is needed in the separate document requirement in bankruptcy matters and, if so, what change, the Chairman suggested taking no action at this time. Professor Resnick suggested referring the issue to the subcommittee to define what is a separate document. **The Committee agreed to refer the issue to the Privacy, Public Access, and Appeals Subcommittee.**

Additional Time to Appeal. The Subcommittee on Technology and Cross Border Insolvency and the full Committee have considered whether Rule 8002 or Rule 9006 should be amended to provide additional time for the appeal of judgments, degrees, or orders in bankruptcy cases. **The Committee deferred action pending the planned study of the time periods in all federal rules.**

Restyled Civil Rules. The Committee discussed the need to review the interplay between the restyled Civil Rules and the Bankruptcy Rules and to send any recommendations for changes in the restyled rules to the Civil Rules Committee by December 15, 2005. All Committee members volunteered to assist in the review. **The Reporter said he and the Chairman would divide the restyled Civil Rules and allocate them to groups of two or three Committee members and staff for review.**

#### Administrative Matters

The Chairman extended very special thanks for their service to the four members who are leaving the Committee: Judge Torres, Professor Resnick, Mr. Frank, and Mr. Adelman.

The Committee's next regularly scheduled meeting will be at the Carolina Inn, Chapel Hill, N.C., in March 2006. The Chairman stated that three days may be needed for the spring meeting. **Subsequent to the meeting, the Chairman scheduled the meeting for March 8 - 10, 2006.** The Chairman stated that, if a number of substantive comments are received on the Interim Rules and Official Forms, they may be set for a public hearing in Washington. The fall 2006 meeting will be in the West, possibly in Seattle, Jackson Hole, or the Napa Valley. The Chairman asked that Committee members email their preferences to him.

Respectfully submitted,

James H. Wannamaker, III

## **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  
Dean Lawrence Ponoroff  
Eric L. Frank, Esquire  
Howard L. Adelman, Esquire  
K. John Shaffer, Esquire  
J. Christopher Kohn, Esquire

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  
Patricia S. Ketchum, consultant 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 recommended 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©, and 7004, and Schedule I of Official Form 6. Proposed amendments to Rules 1009, 4002, 5005©, 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©. **A motion to recommend final approval of the proposed amendment to Rule 5005© 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 advices 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 balanced compromise that 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, 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 of the Standing 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©. 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©, 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 the addition of the language "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 (2) limit or 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 the Forms 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 filed claim "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.** [Note: Subsequent to the meeting, the chairman determined to defer publication until summer 2006 to avoid confusion with amendments for the bankruptcy bill.]

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© 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 limit 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 concerning contested matters and Rule 2014 concerning authorization to employ attorneys. 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 on Attorney Conduct and Health Care.**

Case Management, Telephonic Participation, and Status Reports. Although it did not have an opportunity to consider the specific draft language of proposed new rule 2021, 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.**

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 alternatives 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 change 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 time counting rules. Judge Walker moved to re-refer the matter to the Technology 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 conforming 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 pending 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 the 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. Rasura 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 Rasura 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.

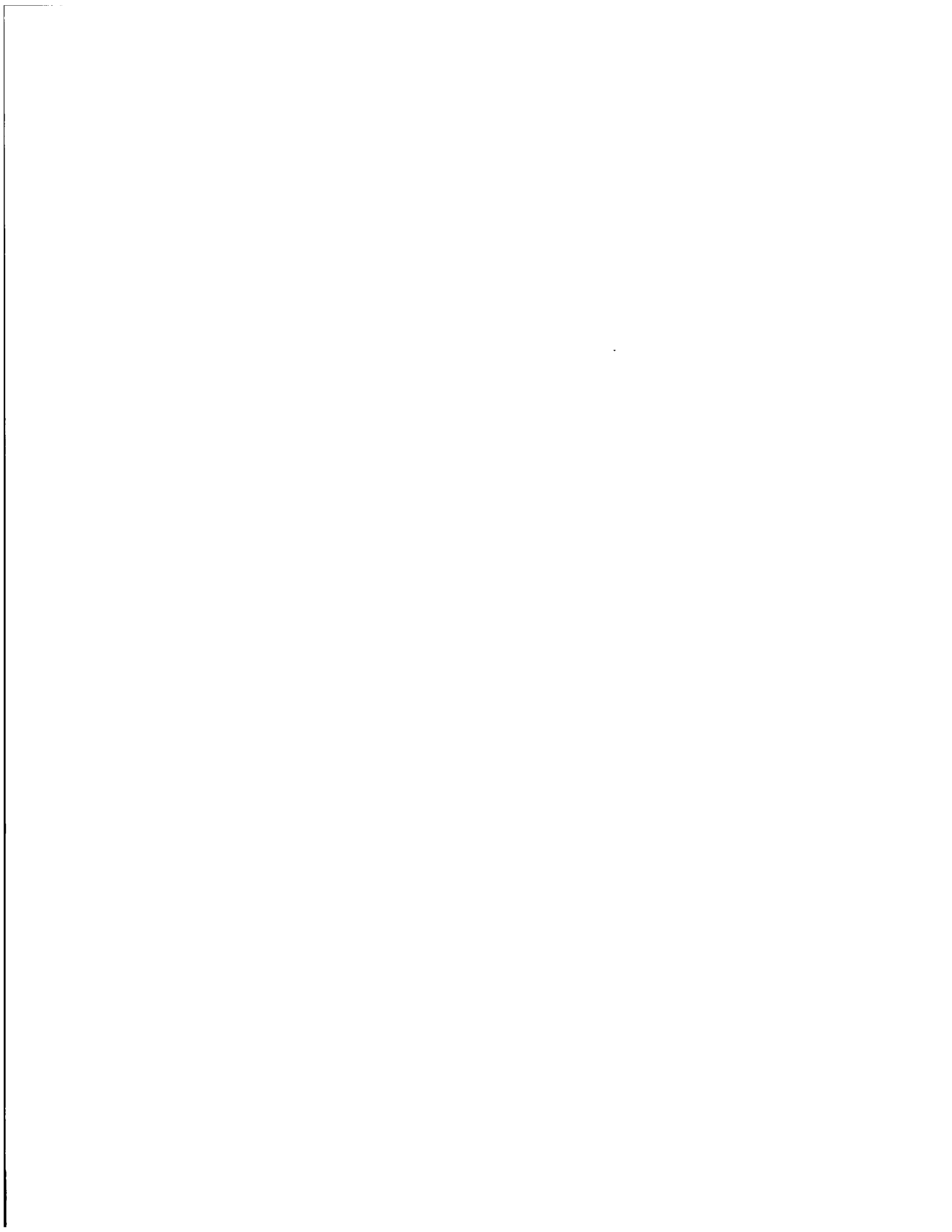
Respectfully submitted,

James H. Wannamaker, III

Item 2 will be an oral report.



Draft minutes of the January 2006 meeting of the Standing Committee  
will be distributed at the meeting.



MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES  
FROM: JEFF MORRIS, REPORTER  
RE: COMMENTS ON PENDING RULES AMENDMENTS  
DATE: FEBRUARY 6, 2006

In August of 2005, the Administrative Office published the draft of proposed amendments to Rules 1014, 3001, 3007, 4001, 6006, and 7007.1, as well as new Rules 6003, 9005.1, and 9037 for comment. The comment period closes on February 15, 2006, and I will supplement this memorandum with an update of the comments we receive as to these rules. As of the date of this memorandum, we have received only five comments on the draft rules, but we anticipate additional comments on several of the rules. We received no comments on the proposed amendments to Rules 1014 and 7007.1, and new Rule 9005.1. The comments received to date address the remaining rules.

**Rule 3001**

The amendment to this rule limits the number of pages that can be attached to a proof of claim, and it requires the claimant to provide copies of relevant documents with the proof of claim. **Mr. Anthony Sabino** (Comment 05-BK-005) of New York opposed the amendment on several grounds. First, he suggests that since the vast majority of filed claims contain only three or four pages of supporting documentation, there is little need for the rule. He also asserts that the rule should be entirely permissive with respect to the submission of a summary of the documents. He expressed concern that a summary may be misleading or inadequate, and essentially unnecessary if the document is only 26 pages as compared to the maximum of 25

pages that can be filed with the proof of claim form under the proposed rule.

First, if most claim form attachments consist of relatively few pages, then the rule will not apply, and no inconvenience will result. Second, any page limit set by the rule is subject to the case of a particular document exceeding the limit by one or two pages. That is inevitable whenever any rule sets a maximum number of pages. I believe that this inevitable side effect is relatively minor, and creditors will quickly become acclimated to the limit. Mr. Sabino also recognized that electronic filing of lengthy documents can create problems for persons also trying to file documents or those who may wish to search the court's record. I do not believe that the Advisory Committee should change Rule 3001 from the form in which it was published.

**Mr. Jack Horsley** (Comment 05-BK-002) also suggested a change in the language of the proposed amendments to Rule 3001. In particular, he suggests that the rule explicitly state that the supporting documentation for the proof of claim be "verified under oath." Official Form 10 (Proof of Claim) already includes a statement regarding the penalties for presenting fraudulent claims, so it is questionable whether the documents be "verified under oath." I do not believe that any change is necessary in the rule as published.

### **Rule 3007**

This rule was amended in two ways. First, the rule was rewritten to prohibit the inclusion of a request for relief that would be governed by Rule 7001 (adversary proceedings) in a claims objection. Claims objections, however, could be included in a complaint initiating an adversary proceeding. Secondly, the proposal includes extensive amendments that introduce the concept of omnibus objections to claims and set out limits on those filings. **Mr. Sabino** (Comment 05-BK-005) also offered some comments on this rule. He supports the rule with one minor caveat. He

recommends adding a subdivision (g) to the rule that would authorize the courts to impose additional limits or conditions on the use of omnibus claims objections “when the interests of justice so require.” Subdivision (c) of the rule already provides some discretion for the courts with regard to omnibus claims objections, so a new subdivision (g) may not be necessary. The discretion granted in Subdivision (c) is not quite the same as that suggested by Mr. Sabino, but I believe that the Committee’s view was that the rule should set out the format for the omnibus claims objections and that there generally should not be deviations from that form. The more that these practices become localized, the less value the rule will be in ensuring that creditors receive effective notice of objections to their claims. Therefore, reinserting significant discretion for the courts may be counterproductive to the purposes of the amendment.

**Mr. Jack Horsley** (Comment 05-BK-002) also commented on few parts of the proposed amendments to Rule 3007. One comment related to a portion of the rule that was not amended, so no action need be taken on that matter. Mr. Horsley’s other comment questioned the propriety of the amendment that is Rule 3007(d)(5). That subparagraph includes the failure to timely file a proof of claim as one form of objection to claims that can be joined in an omnibus claim objection. He suggests a specific deadline, but that is not a realistic solution. The deadline for filing a proof of claim can vary based on the nature of the creditor (governmental units have a different deadline than other creditors), and the deadlines themselves may vary depending on the chapter under which the case is pending. Consequently, I do not believe that a change in the rule from the published version is necessary.

#### **Rule 4001**

**Hon. Marvin Isgur (Bankr. J., S.D. Tex.)** (Comment 05-BK-004) offered several



comments about the proposed amendments to Rule 4001. First, he notes that the proposal is intended to operate most often in large chapter 7 and chapter 11 cases, but the rule applies as well to smaller cases in these chapters as well as in chapters 12 and 13. In those cases, the request for relief and the order may not be very lengthy, so Judge Isgur proposes that the rule contain an exception that would permit the filing of a motion for the use of cash collateral and a proposed form of order without an accompanying introductory statement if the motion and order do not each exceed six pages in length. This same exception could be made as to motions to obtain credit under Rule 4001(c).

I think Judge Isgur makes a good point that there may be many instances in which the need for the protections built into the proposed amendments to Rule 4001 may not be necessary. Inserting a limit in the rule for motions and orders that are not lengthy seems sensible.

Judge Isgur also notes that the service provisions in the rule do not include service in chapter 13 cases and do not specifically provide for service on any other party with an interest in the property that is the subject of the motion. For example, if the movant is seeking authority to acquire a lien superior to a lien already existing on the property, Judge Isgur asserts that the rule specifically direct that notice be given to that person. He also believes that the rule should require service on any person who has requested notice in the case.

Judge Isgur also suggests that it may be appropriate to grant an exemption from these procedures if local rules are in place to govern these actions in individual debtor cases. These cases are numerous, and routine systems are preferable in those cases to the elaborate process anticipated by the proposed amendments to Rule 4001.

The Committee may wish to consider adding a requirement of service on the trustee, if

any is appointed, and any person requesting notices in the case. Moreover, notice should be given to any person who claims a specific interest in the property that is the subject of the motion. Further, the Committee should consider whether the rule should permit the courts to opt out of the full range of restrictions in matters in which the debtor is an individual with primarily consumer debts. That would leave open to the courts the possibility of other procedures to govern these numerous and routine activities.

### **Rule 6003**

Judge Isgur also offered commentary on the proposed new Rule 6003 (Comment 05-BK-005). He expressed concern that the limitation on a debtor's ability to reject a lease during the first 20 days of a case may result in an administrative expense liability that could be avoided if the debtor rejected a lease immediately upon the commencement of the case. The safety valve in the rule that permits relief in the face of "immediate and irreparable harm" is insufficient in Judge Isgur's view. It seems that his concern is only with the impact of the rule on the ability of a debtor to reject an executory contract or unexpired lease. The Committee could consider amending the rule to delete the reference in subdivision (c) to the rejection of executory contracts and leases. It might also be the case that the short period of time during which the court cannot act (as opposed to the debtor asking for the relief) means that there will be little or no real impact on debtor or estate liability. For these reasons, I do not believe it is necessary to make any changes to Rule 6003, although a statement could be added to the Committee Note reiterating that the rule does not limit the time when a motion to assume, assign, or reject contracts or leases can be made.

## **Rule 9037**

This amendment aims to protect privacy by requiring persons who file documents with the court to redact specified information from the document prior to filing. **Mr. Jack Horsley** (Comment 05-BK-002) suggests that the filing party also redact any “employee number” if the person identified in the filing is a state or federal employee. I am not aware of these identification numbers, and there is no indication that either the Judicial Conference Privacy Policy nor the other Advisory Committees have identified this as an issue for the rules. Consequently, I do not believe that a change in the rule from the published form is warranted on this issue.

**Ms. Marjorie K. Lynch** (Comment 05-BK-001) is the Bankruptcy Administrator for the Eastern District of North Carolina. She objects to the restrictions on access to the redacted information in documents filed with the court. She suggests that the rule be revised to provide specifically that the Bankruptcy Administrator and United States trustee have access to the redacted information. It appears that her comments are addressed only to materials that are “submitted” to the court as compared to documents “filed” with the court. This is presumably the debtor’s statement of social security number submitted under Rule 1007(f) and provided on Official Form 21. Since this is a matter that is not really addressed in the new rule 9037, the comment is more properly addressed to the other rule and form. The Advisory Committee considered the propriety of access to the debtor’s social security number by the trustee and others when Rule 1007(f) and Official Form 21 were promulgated. I do not believe that any change is necessary to Rule 9037 as it was published based on these comments.

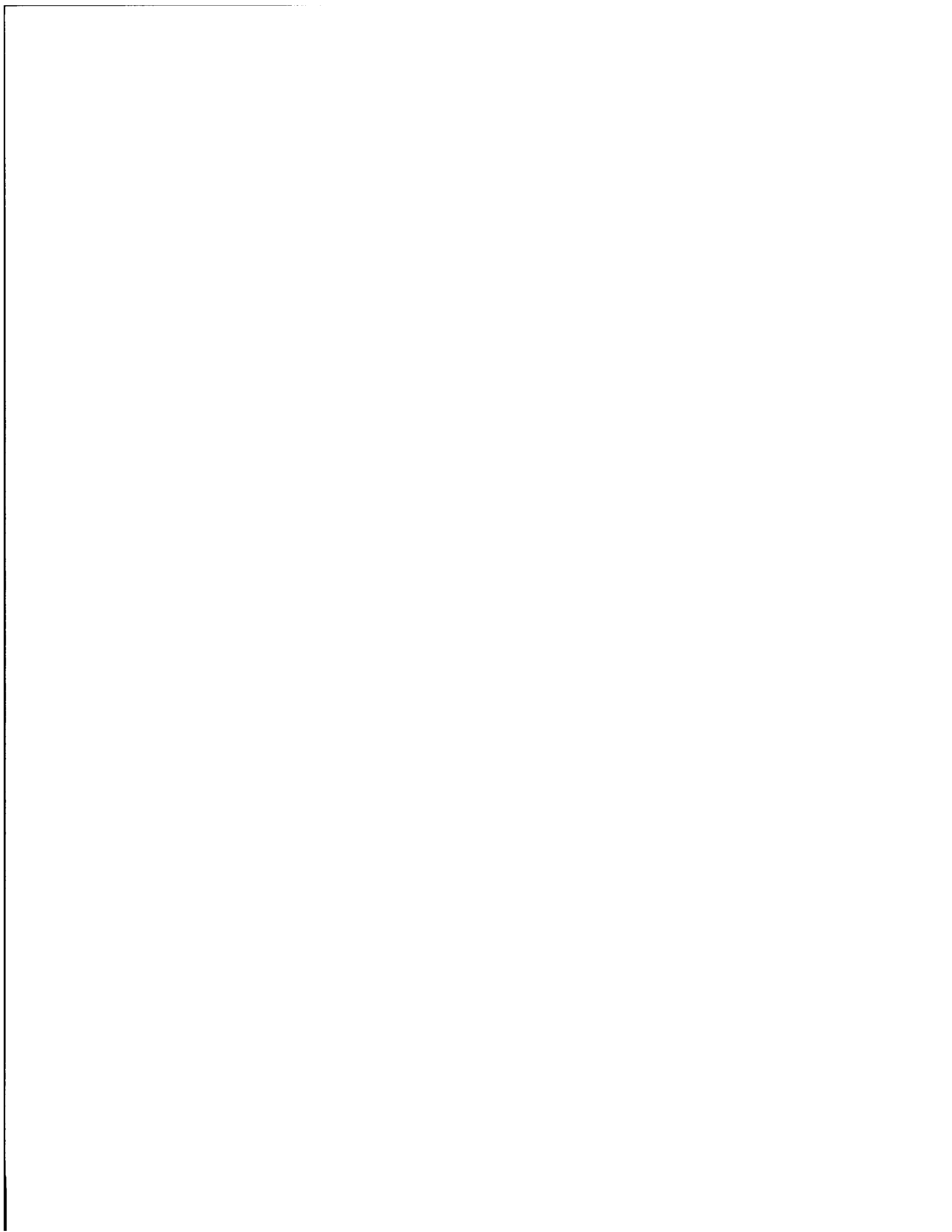
### **Comments from the Style Subcommittee of the Standing Committee**

Separately attached are comments that were submitted to the Advisory Committee by the Style Subcommittee of the Standing Committee.<sup>1</sup> These comments address the rules that were published in August 2005. The Style Subcommittee's comments on Rule 9037 are addressed in a separate memorandum.

Under the new protocols for making style changes to the draft rules, the Style Subcommittee of the Standing Committee will be submitting comments on the published rules. If the suggestions are "substantive", the Advisory Committee will make the decision as to the language of the Rule. If the suggestion is "stylistic", the Style Subcommittee's suggestion presumptively governs, and the Advisory Committee must overcome that presumption through its presentation to the Standing Committee in June. There is ample opportunity to discuss with the Style Subcommittee any disagreements that may exist in decisions on style prior to the meeting of the Standing Committee.

---

<sup>1</sup> Also attached are my somewhat informal comments on or reactions to the suggested edits submitted by the Standing Committee's Style Subcommittee.



MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES  
FROM: JEFF MORRIS, REPORTER  
RE: COMMENTS ON PROPOSED RULES  
DATE: FEBRUARY 16, 2006

In addition to the comments we previously received and which are addressed in a separate memorandum, we received comments on several of the proposed rules from the National Bankruptcy Conference (NBC). In addition to offering comments on the proposals, the NBC has suggested language for the Committee to consider in amending the proposals. The comments and suggestions involve Rules 3001, 4001, 6003, and 6006.

**RULE 3001**

The NBC believes that Rule 3001 should not be changed from its current form. They suggest that the summaries may be difficult to prepare within the page limits set out in the proposed rule, and they would be much more costly to the parties as compared to compliance with the rule in its current form. The NBC did suggest, however, that if the problem of voluminous claim forms clogging the courts' electronic filing systems warrants the change, that the rule instead simply be amended to authorize courts in chapter 11 cases to order that voluminous documents not be filed with the proof of claim and that the claimant in that instance also be required to serve a copy of the writing on any party in interest that requests a copy. The same treatment would be given to documents that are evidence of the perfection of a security interest.

This recommendation is based primarily on the issue of electronic filing of claims and the

pressures that places on the parties who are attempting to file their own claims or who may be attempting to search the claims record in the case. If technology improves to the extent that these delays or problems with electronic filing of claims are resolved, the need for limiting the length of documents that support claims will be unnecessary. The NBC recommendation also suggests that the problem of lengthy documents is more likely to arise in chapter 11 cases than in cases under the other chapters of the Code, so they suggest that the rule be amended to restrict the page limitation rule to chapter 11 cases. They further suggest that even in those cases, the page limitation be imposed only if the court, for cause, so orders.

#### **RULE 4001**

The NBC poses a number of objections to the proposed amendments to Rule 4001. First, and foremost, the NBC asserts that the Rule should not require an introductory statement that is limited to three pages and that summarizes the transaction. They do not believe that it is possible to distill all of the material facts of the transaction into so few pages. Moreover, they object to the inclusion of proposed subdivision (c)(1)(C) which refers to the application of Rule 9024 to shortcomings of the introductory statement. Under the proposed rule, the introductory statement would presumably need to include all material facts about the financing arrangement. The potential of having the transaction unwound long after the loan has been made on the basis that the introductory statement was insufficient would, in their view, introduce sufficient uncertainty into the transaction that it would adversely affect the availability of debtor in possession financing. They also note that referring to Rule 9024 within the body of another rule raises questions about the failure to refer to Rule 9024 elsewhere in the rules. It could be construed to mean something different in Rule 4001 matters than in matters arising under other rules. The

specific insertion of Rule 9024 in this way also may conflict with the mootness protection otherwise available under § 364(e) of the Code.

The NBC also notes that the proposed rule is written without distinguishing between interim relief and final relief. That is, the proposed rule is intended to ensure that parties in interest and the court have sufficient opportunity and notice regarding the agreements and orders being sought under Rule 4001. Those concerns may be paramount when a party is seeking immediate relief, but they should not be a concern after the passage of time that is sufficient to allow the full and careful review of the proposed financing arrangement. In their view, a party should be bound by the court's order approving a financing arrangement if they have not objected to the transaction in a timely fashion as long as they have had a fair opportunity to review the materials. Rule 4001(b)(2) limits the court's ability to order "full" relief until after at least 15 days notice. In the interim, relief is available only to prevent immediate and irreparable harm. Thus, interested parties will have at least that time to review the entire filing prior to the entry of any order granting final approval of a financing arrangement under Rule 4001. This does reduce the strength of the primary arguments presented to the Committee about the amendments to Rule 4001. If sufficient time exists to review the entire package of materials, the significance of the summary and the page limitations thereon are of less consequence. The NBC also believes that if the motion were to be prepared as required by the proposed rule, it would be extremely lengthy and unnecessarily repetitive. The introductory statement would contain information that was then restated in the body of the motion, and the agreement itself would certainly be appended to the motion. The proposed form of the order approving the financing would also be served on the interested parties. This would unnecessarily burden the reader.



The NBC also suggests that Rule 4001(c)(1)(B) not require the movant to set out the reasons why each of the listed provisions referred to in that subparagraph were included in the agreement. Often, the answer may be as simple as “because the creditor insisted” or “I didn’t care whether that provision was in the agreement or not.” Moreover, the reason why a particular provision is not really of interest to the other parties in the case. They are more concerned with the existence and potential impact of those provisions. Consequently, adding to the motion information about the reasons for including the provisions would not provide any assistance to anyone evaluating the propriety of the financing arrangement.

The NBC also believes that the service requirements of the proposed rule are inadequate. In addition to the parties that the proposed rule requires to be served under subdivision (c)(1)(D), they would suggest that service be required to be given to any other party that has requested to be served. This suggestion is consistent with that of Judge Isgur in Comment 05-BK-004. It seems to be noncontroversial, and I would recommend that we add the language proposed by the NBC to Rule 4001(c)(1)(C) and (d)(1)(D).

Finally, the NBC suggests that the list of provisions contained in a financing arrangement that must be disclosed in the motion for authority to obtain credit be expanded to include any provisions that establish deadlines for filing a plan of reorganization or obtaining approval of a disclosure statement, or puts limits on the time to set a hearing on confirmation or to obtain confirmation of a plan. This provision is slightly different from subdivision (c)(1)(B)(5) of the proposed rule, but it reaches slightly different provisions that are material to the interests of other parties in the case and are similar to the kinds of provisions that the proposed rule requires the movant to disclose. Thus, it seems a reasonable addition to the proposed rule.

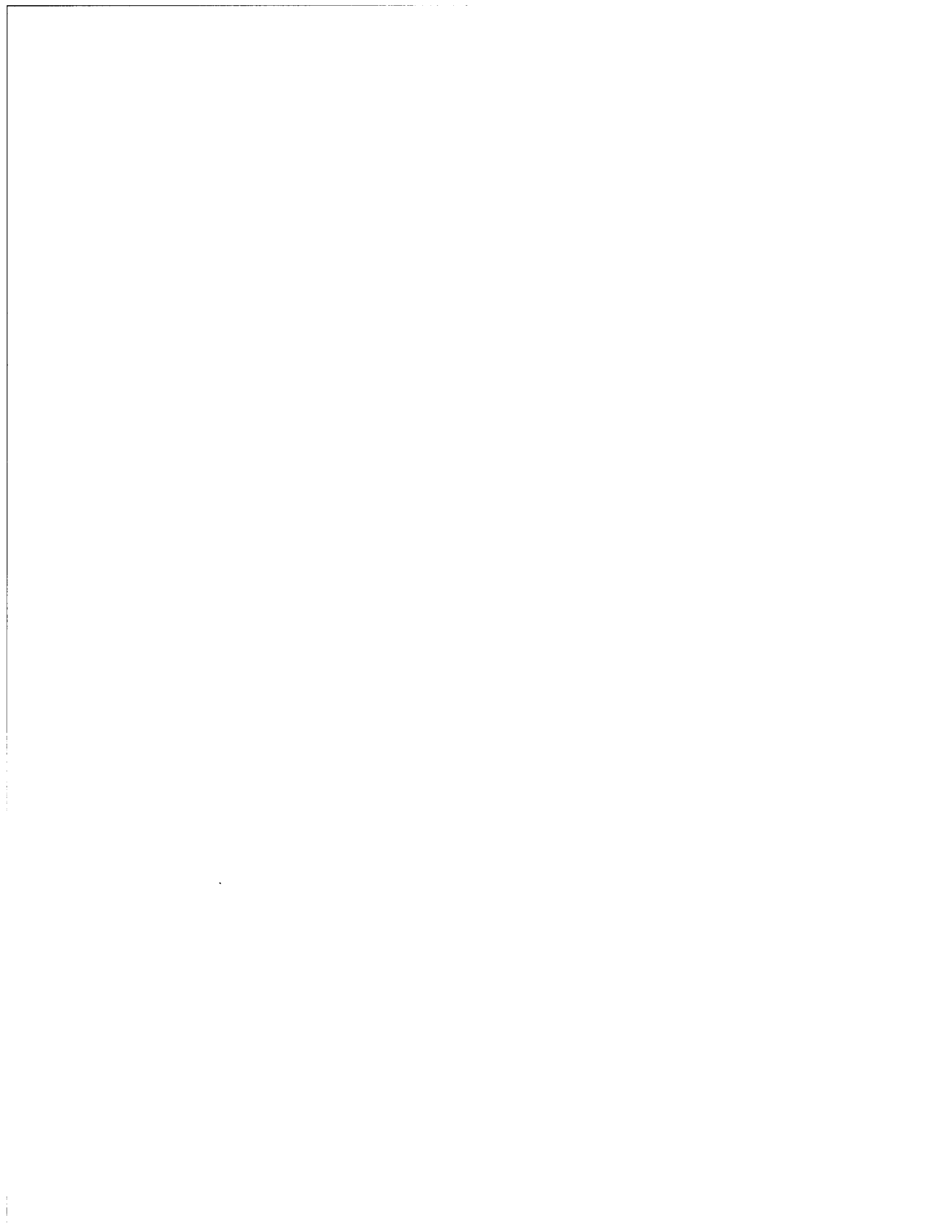
### **RULE 6003**

The NBC generally supports the proposed amendment, but it again submits a proposed change that is consistent with a change suggested by Judge Isgur. That is, the NBC recommends that the proposed rule be amended to permit the court to authorize the debtor to reject (but not assume or assign) executory contracts or unexpired leases during the first 20 days of the case. They point out, as did Judge Isgur, that requiring the debtor to wait to reject a lease or contract that is clearly burdensome could have very negative consequences for the estate and its other creditors. Expenses that arise out of the continued effect of the contract or lease could be administrative expenses even though the estate received no benefit from the contract or lease. Simply deleting the reference to rejection of the contracts or leases in subdivision (3) of the rule would solve that problem. I believe that is a positive change to the rule and recommend its adoption.

### **Rule 6006**

This rule would allow omnibus assumptions and assignments of executory contracts and unexpired leases in certain situations. The NBC generally supports the proposal, but it offers one change to the proposed rule. Under the proposed rule, there is no authority for the trustee or debtor in possession to pursue an omnibus motion for the assumption of multiple leases with different parties. The NBC asserts that these omnibus motions should be allowed because they will each present the same issue for the court to resolve. That is, the court must decide whether the debtor can provide adequate assurances of an ability to perform its obligations under the agreement in the future. Since those issues are the same for every party in the matter, the NBC asserts that joining them in a single omnibus motion is consistent with the allowance of omnibus

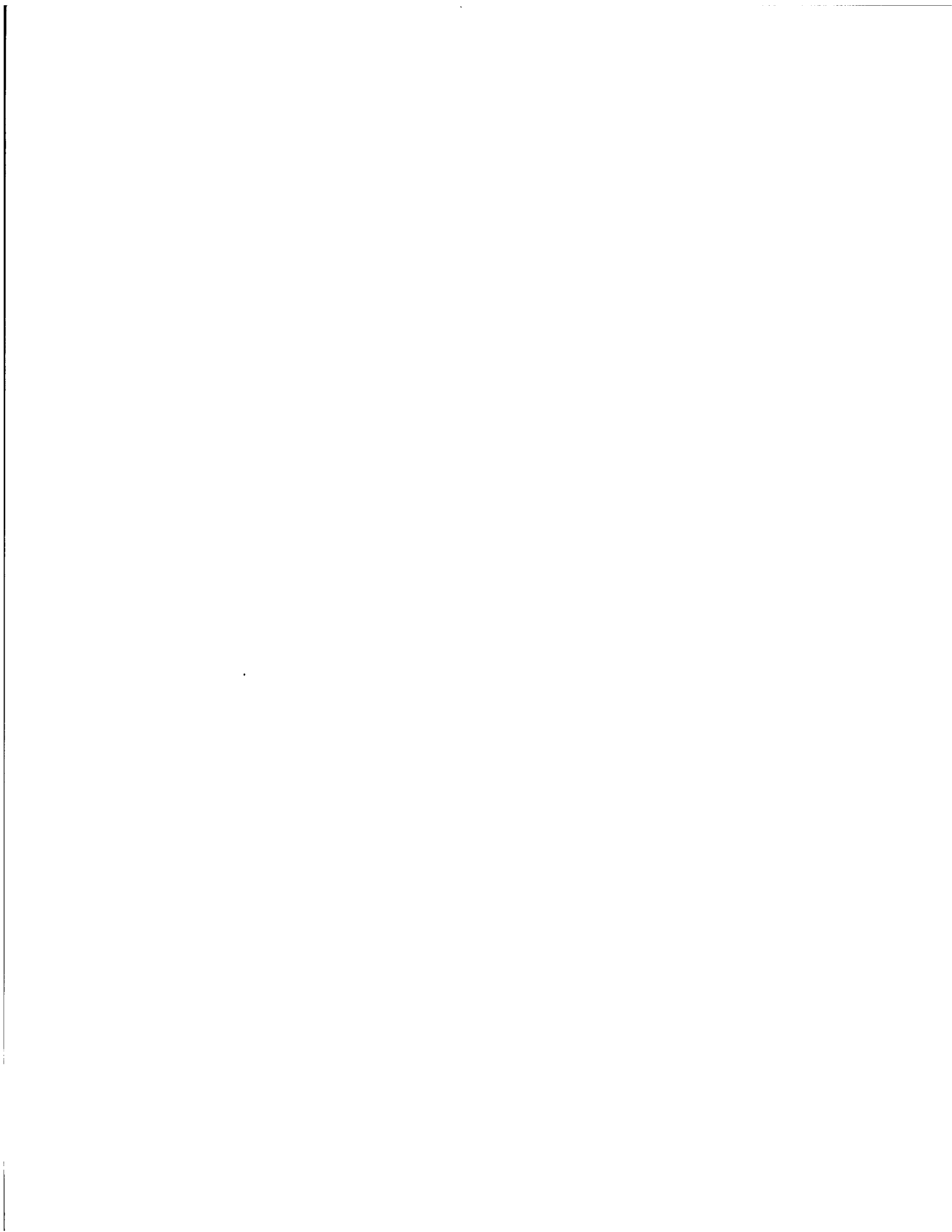
motions when a large number of leases or contracts are being assigned to a single entity. The rule as proposed would allow a court to approve such an omnibus motion under its general authority which the NBC would denominate as Rule 6006(e)(3). (The NBC would take the Committee's proposed single type of allowed omnibus motions in Rule 6006(e) and add the other ground for omnibus motions thereby making the catch all that the court can "otherwise authorize" omnibus motions a subparagraph (e)(3).) They assert that this is a type of transaction that warrants omnibus motion treatment, and recognizing that in the body of the rule is superior to requiring the court to make a specific finding authorizing those motions under the version of the rule proposed by the Committee.



**2005 BANKRUPTCY RULES COMMENTS CHART**

<b>05-BK</b>	<b>NAME OF INDIVIDUAL AND/OR ORGANIZATION</b>	<b>DATE REC'D</b>	<b>RULE</b>	<b>DATE RESP</b>
<u>05-BK-001</u>	Marjorie Lynch	9/15	9037	9/20
<u>05-BK-002</u> <u>05-CV-006</u> <u>05-CR-004</u>	Jack E. Horsley, J.D.	11/07	Preliminary Draft	11/08
<u>05-BK-003</u> <u>05-AP-001</u> <u>05-CR-008</u> <b>Testify 1/6/06</b> <b>AZ</b>	Shay D. Stautz on behalf of NAPBS (National Association of Professional Background Screeners)	12/8	49.1 <b>Testimony Attached</b>	12/12
<u>05-BK-004</u>	Hon. Marvin Isgur	1/05	Rules 4001 and 6003	1/09
<u>05-BK-005</u>	Anthony Michael Sabino	1/17	Rules 3001, 3007, 4004, 6006, 1014	1/17
<u>05-BK-006</u> <u>05-AP-002</u> <u>05-CV-025</u> <u>05-CR-011</u>	John R. Tunheim	2/8	FRCP	2/15
<u>05-BK-007</u>	Richard Levin on behalf of National Bankruptcy Conference	2/15	3001 c,d, 4001, 6003, 6006	2/15
<u>05-BK-008</u> <u>05-AP-003</u> <u>05-CV-027</u> <u>05-CR-014</u>	Peter A. Winn	2/15	25(a)(5), 5.2, 49.1, 9037	2/15
<u>05-BK-009</u> <u>05-CV-028</u> <u>05-CR-010</u>	Mark J. Golden on behalf of National Court Reporters Association	2/8	5.2, 49.1, 9037	2/15
<u>05-BK-010</u> <u>05-AP-004</u> <u>05-CV-029</u> <u>05-CR-015</u>	Gregory A. Beck on behalf of Public Citizen Litigation Group	2/15	5.2, 49.1, 25, 9037	2/15
<u>05-BK-011</u>	Hon. Robert E. Grant	2/15	3007	2/15
<u>05-BK-012</u> <u>05-AP-005</u> <u>05-CV-030</u> <u>05-CR-016</u>	Chris Jay Hoofnagle on behalf of the Electronic Privacy Information Center	2/15	5.2, 49.1, 9037, 25(a)(5)	2/15
<u>05-BK-013</u> <u>05-CV-032</u> <u>05-CR-019</u>	Lucy A. Dalglish, Esq. on behalf of The Reporters Committee for Freedom of the Press	2/15	5.2, 49.1, 9037	2/15





05-BK- 001

 Marjorie  
Lynch/NCEBA/04/USCOURT  
S

09/15/2005 01:21 PM

To rules\_comments@ao.uscourts.gov

cc

bcc

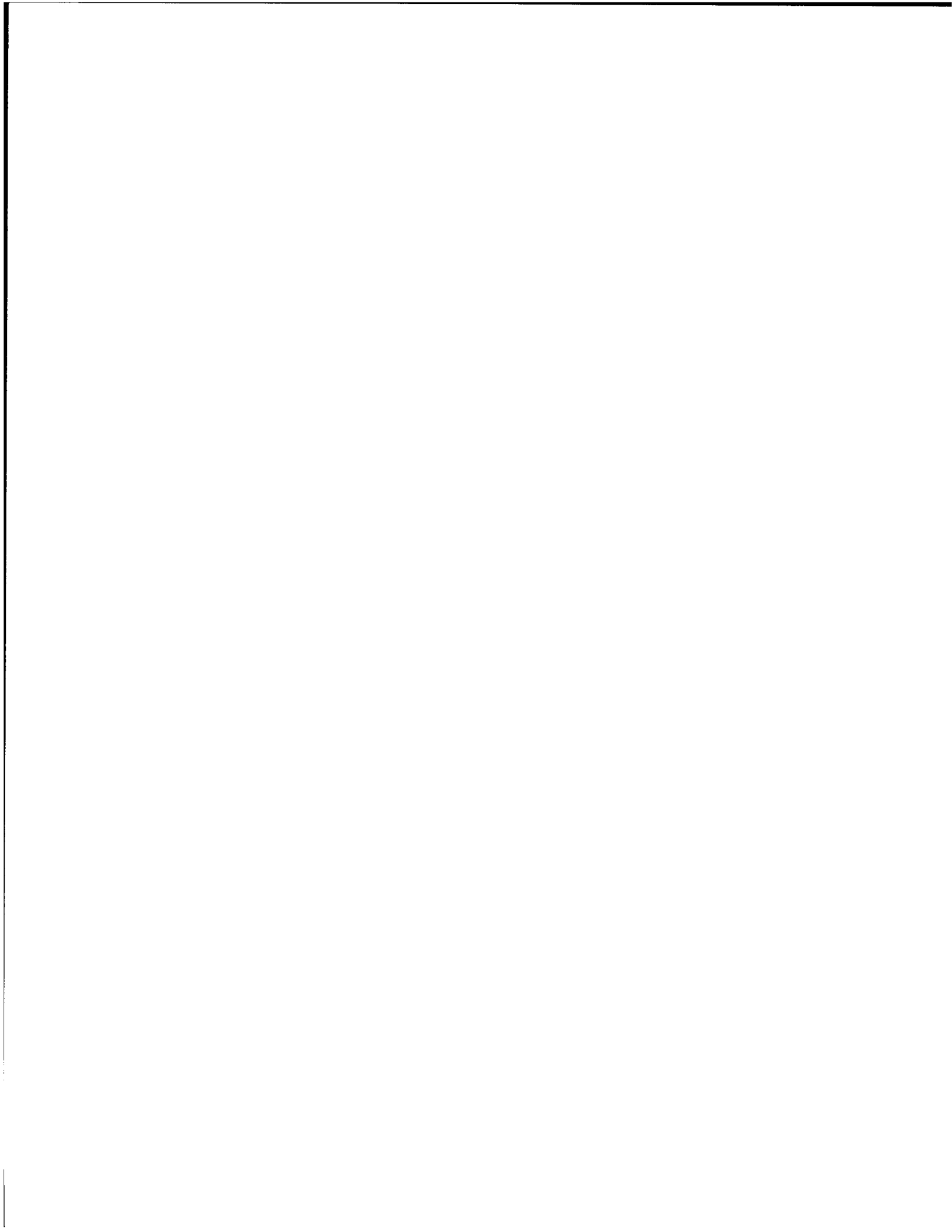
Subject Bankruptcy Administrator and US Trustee Access to  
"submitted" documents

Rule 9027 restricts access to documents with certain identifying information by allowing for the redaction of certain information or by excluding the information from the cm/ecf docket when it is deemed "submitted" by the debtor.

The BA and UST may need access to this information and it would be unduly burdensome to these agencies, given the volume of cases they are dealing with, to separately request access in each and every case as needed. The information in question is not privileged and is discoverable in any bankruptcy case by these agencies. An exception to this rule should be made for the BA and UST with respect to these "submitted" materials.

Marjorie K. Lynch  
U.S. Bankruptcy Administrator  
252.237.6854/919.856.4886  
marjorie\_lynch@nceba.uscourts.gov





05-BK-002

JACK E. HORSLEY, J.D.

LAWYER / AUTHOR

FELLOW AMERICAN COLLEGE OF TRIAL LAWYERS

05-CV-006 913 NORTH 31ST STREET • MATTOON, ILLINOIS 61938-2271  
(217) 235-5954

GENERAL, JAGD (HON. RES. [RET.])

SEE WHO'S WHO IN AMERICA AND

WHO'S WHO IN AMERICAN LAW

WHO'S WHO IN THE WORLD

CABLE: JALEY  
EDITORIAL CONSULTANT  
RN MAGAZINE AND  
MEDICAL ECONOMICS

05-CR-004

October 31, 2005

Peter G McCabe, Esquire.  
Secretary  
Committee On Rules Of Practice and Procedure  
of the  
Judicial Conference Of The United States  
Washington D C 20544

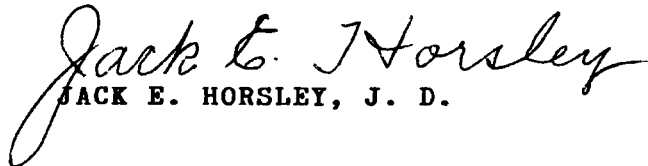
Dear Mr. McCabe: . . .

Your letter of October 21st was thoughtful and kind and I thank you for it. It is an honor for me to be invited to participate in the excellent work of the Committee under your able handling as its Secretary.

Careful review of the August 2005 Preliminary Draft is a challenge because its contents are excellent as framed. However, I have some suggestions which it may be desired to consider. They are detailed in the enclosed summation.

Thank you for your courtesies and I extend best wishes to you and the members of your prestigious Committee.

Respectfully,

  
JACK E. HORSLEY, J. D.

JEH: bgg

SUMMATION OF SUGGESTIONS ADDRESSING  
THE PRELIMINARY DRAFT OF  
PROPOSED AMENDMENTS TO THE FEDERAL  
RULES OF PROCEDURE

By Jack E. Horsley, J. D.

~~On page 12, it may be suggested to insert the following on line 6~~  
after the word "destroyed:

" , verified under oath"

The same insert may be well taken if placed after the word  
"by" on line 17.

Likewise, it may be the Committee would look with favor  
on inserting the same statement on line 2, page 15  
next after the word "writing".

On page 17, line 31, would it be well taken to specify  
in line (5) what the word "timely" means? I suggest \* \* \* as  
within ten days before the authorized time ~~next~~ after the  
word "filed". The "ten days" may be too short a time but  
it comes to me it is possible "timely" may be too lacking  
in specificity.

I look with favor upon pages 17 through 33 but it may be

you and the Committee might share my feeling that 100 days as stated in line 28 might be insufficient. I suggest perhaps 150 days would be a better time for the limitation of time expressed on line 28.

Passing to page 38, might it not be better to add paragraph (5) between lines 13 and 14 to state this addressing public employees: "The employee number if the person is a state or federal employee". It maybe the person involved would be such an employee and recording this should be something which would properly be within the ambit of the information required.

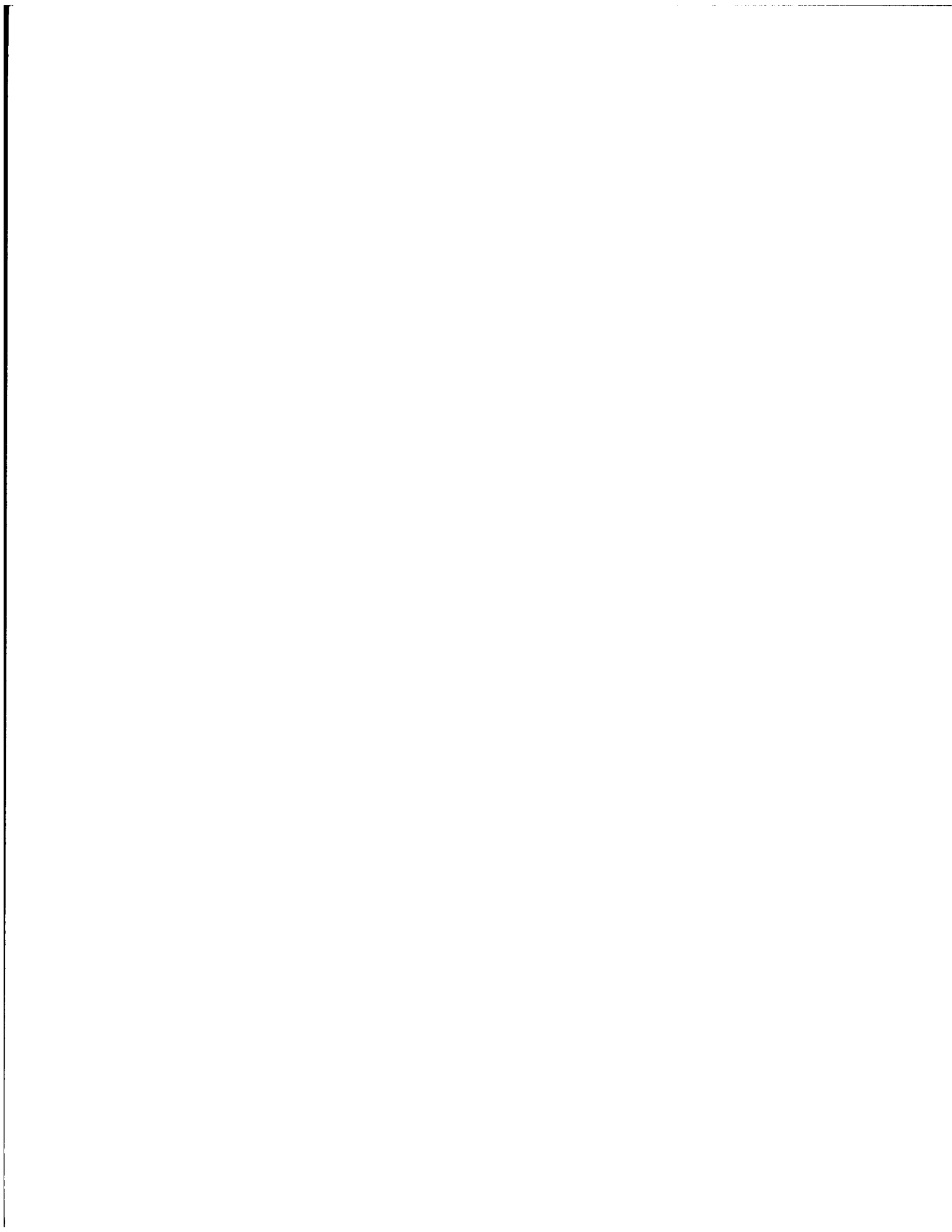
It may be the same information would be something to be inserted as (5) between lines 9 and 10 on page 45 if the Committee favors it as an insert between these lines. Moreover, the same material may be favorably looked upon as an insert between lines 13 and 14, page 150.

I read the substance of the current forms, pages 67 to 131. I look favorably upon these materials and have no suggestions for additional inclusions or modifications.

Furthermore, review of pages 132 through 141 evokes nothing about which I would have any recommendations but on page 142 something does occur to me. Is it not possible that "reasonable" at the close of line 48 may be inadequate to set the time intended? True, it gives a generous time aspect but might it not be better to be specific? If you and the Committee concur in my feeling perhaps this could be inserted immediately after "notice" on line 49", after deleting "reasonable" on line 48: "not less than 21 days prior to the prehearing and submission .

Passing to page 150, please refer to my suggestion about inserting (5) between lines 10 and 11 on page 45 and if the Committee and you favor the suggestion addressing page 45, the same suggestion is made with respect to an insert between lines 13 and 14 on page 150.

Careful study of all parts of this Preliminary Draft produces no other remarks except to speak favorably with respect to the Committee's superior work product.





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2111 Wilson Blvd., Suite 700  
Arlington, Virginia 22201

phone 703.351.5057  
fax 703.522.1738

05-CR-008

December 8, 2005

Mr. Peter G. McCabe, Secretary  
Committee on Rules of Practice and Procedure  
Administrative Office of the United States Courts  
Washington, DC 20544

Dear Mr. McCabe:

I understand the Judicial Conference Advisory Committee on Criminal Rules will hold a public hearing on the proposed amendments to the rules and forms on January 9, 2006 in Phoenix, Arizona. I am writing on behalf of the National Association of Professional Background Screeners, which represents almost 500 firms nationwide who rely on court records to conduct criminal background checks for employers. As such, NAPBS has a substantial interest in these proceedings. NAPBS is particularly interested in the implications of rule 49.1 of the Criminal Rules section. **Mike Sankey**, Associate Member Director of NAPBS, would like the opportunity to present the Association's perspective by providing testimony before the advisory committee at the Jan. 9, hearing. In accordance, with the requirements put forth by the committee, I am informing you of Mr. Sankey's intention to testify 30 days in advance of the hearing. A preliminary draft copy of his testimony and the Association's recommended language for Rule 49.1 are attached to this letter. On behalf of NAPBS, I thank you for your consideration. I know the entire Association looks forward to the opportunity to aid the Committee by providing our unique insight into the filing and records system.

Sincerely,

Shay D. Stautz  
On behalf of NAPBS  
Vice-President for Technology Programs  
Collins & Company, Inc.  
stautzs@collinsandcompany.com

cc Mike Sankey Associate Member, NAPBS  
Jason Morris, Co-Chairman NAPBS  
Tracey Seabrook, Executive Director, NAPBS

-----DRAFT-----DRAFT-----DRAFT-----

**The Use of Date of Birth in Criminal Filings and Records**  
Testimony of the National Association of Professional Background Screeners  
Provided by Mike Sankey, Associate Member Director of NAPBS  
January 9, 2006

I appreciate the opportunity to provide testimony to you today on behalf of the National Association of Professional Background Screeners (NAPBS), an association of nearly 500 firms nationwide who provide essential background screening services for employers and landlords across the nation. On their behalf, I would like to address the provisions in the proposed rule changes that address the filing and display of key “identifiers” in court records – identifiers such as full names, social security numbers and dates of birth. NAPBS is completely aware of the sensitivity of this issue, and we applaud the Conference’s initiatives to increase the privacy protections of the nation’s citizens. However, some of these proposed changes will severely affect the ability of background screeners to conduct their essential services, and we believe a slight change to the proposed rules can maintain the increased privacy protection to citizens while maintaining background screeners’ ability to perform their services, which are so important for safety in the workplace and in the renting industry.

First, let me provide a bit of context for our industry. Background screening companies are engaged by employers and landlords to do background checks on potential employees or tenants. As such, we serve employers, job applicants, landlords and potential tenants by providing the critical information employers and landlords need to make safe, intelligent hiring and leasing decisions. This information is essential because, in the case of employers, they are compelled to investigate the backgrounds of those they hire if the would-be employee is in a position to potentially harm a third party. This covers many categories of employees. Failure to conduct adequate background checks of employees can make an employer vulnerable to a lawsuit for negligent hiring practices. Aside from mitigating employer liability, background screening protects the public, other employees, and the employer. Ensuring a dangerous person does not have the opportunity to abuse his or her employment position is in the public interest. Industry statistics indicate that 10 percent of applicants who are screened have criminal records. That statistic is particularly unsettling when viewed in the light of another, that the cost to the American economy due to workplace violence is estimated at \$55 billion each year in lost wages alone.

A key point must be made about these kinds of background searches – they are *always* conducted with the consumer’s written consent, as required by the Federal Fair Credit Reporting Act and several state fair credit reporting acts.

A major component of such background checks is a criminal history search. This criminal history component of employment screening is dependant on access to court records, as provided for under law by the Freedom of Information Act. Screeners use information provided by a consumer to verify his or her criminal history through public



documents. However, because of concern over protecting citizens from identity theft, critical identifiers are being increasingly stripped from available public court records. The removal of these identifiers, specifically social security numbers and dates of birth, makes it hard or impossible for screeners to do their jobs adequately and efficiently. The proposed rule change of 49.1, which seeks to redact information from filings in criminal proceedings, is another example of this trend.

Citizens have a right to privacy, and they have a need for employment and security. The system we operate under requires a certain balance to see that they receive all of these. Rule 49.1, in stripping the day and month of birth for adults in criminal cases, fails to maintain this balance. Without a full date of birth, numerous "false positives" are generated when individuals are screened for employment purposes. Since many people having the same or similar names are born in the same year, their records cannot be distinguished without more complete information, leaving employers to guess about the criminal history of those they intend to hire. The absence of this information requires the individual to "prove" the record in question belongs to someone else, which delays the start of their employment, and results in additional work for court employees when assisting individuals to resolve potential issues related to criminal records. This delay can cost honest applicants jobs, or, if an employer decides not to wait, can allow dishonest applicants with criminal histories to obtain sensitive jobs. In the effort to protect consumers from criminals and identity theft, the removal of identifiers could unwittingly make the public more vulnerable to criminals.

The removal of key identifiers from federal criminal court records is particularly disconcerting for two reasons: 1.) Those convicted in federal courts are often the most serious offenders. 2.) State courts often look to federal courts as a model. If federal courts fail to include adequate identifier information, state court systems are likely to follow suit.

It is also important to note that if identifiers, like date of birth, are not available in a database, employers will be required to pull every relevant court file to try to establish identification, putting a strain upon the resources of clerks' offices. Given the number of background checks that are conducted, thousands each day, requests to access court files may be overwhelming. Employers and background screeners will need to see the public files. The courts may need to add staff to handle the requests for public records, which will have a financial impact on courts and taxpayers. In addition to adding to a significant burden to private enterprise, employers, and consumers, the stripping of necessary identifiers may create an extra burden for the courts themselves.

As the preeminent association for those who conduct employment screening, our members understand public concern for personal data security. We understand concerns about identity theft. Our screens are conducted for the expressed purpose of finding out if people are who they say they are. It is understandable for the federal courts to seek to protect the personal information of citizens. NAPBS agrees that social security numbers or financial account numbers may need to be redacted in court records to address these concerns. However, an individual's date of birth is not as useful or relevant to identity

theft as a social security number, where a criminal endeavors to fraudulently obtain credit using someone else's identity. NAPBS is not aware that the listing of the date of birth of those convicted of crimes in public records has ever resulted in a case of identity theft or misuse of personal data. We see no evidence to suggest a rule change stripping date of birth, while well-intentioned, will serve to protect either the individuals involved or the public at large.

However, for all the reasons I mentioned, failure to include full dates of birth in the filings and records for adults charged in criminal proceedings will almost certainly harm job seekers, employers and the public. In the face of this, the Committee must consider modifying Rule 49.1 to allow for full dates of birth.

On behalf of every member of NAPBS, I thank the Committee for the opportunity to present our industry's views and comments here today. I am happy to answer any questions members of the Committee wish to pose at this time.

**NAPBS RECOMMENDED AMENDMENT TO RULE 49.1**

From the Criminal Procedure portion (Pg. 150):

**Rule 49.1 Privacy Protection for Filings Made with the Court\*\***

- 1 (a) Redacted Filings. Unless the court orders otherwise,
- 2 an electronic or paper filing made with the court that
- 3 includes a social security number, or an individual's tax
- 4 identification number, a name of a person known to be a
- 5 minor, a person's birth date, a financial account
- 6 number or the home address of a person may include
- 7 only:
- 8 (1) the last four digits of the social security number
- 9 and tax identification number;
- 10 (2) the minor's initials;
- 11 (3) the year of birth for minors; and the day, month, and
- 12 year of birth for adults;
- 13 (4) the last four digits of the financial account
- 14 number; and
- 15 (5) the city and state of the home address.

## **The Use of Date of Birth in Criminal Filings and Records**

Testimony of the National Association of Professional Background Screeners

Provided by Mike Sankey, Associate Member Director of NAPBS

Hermosa Inn, Scottsdale, AZ, January 6th, 2006

I appreciate the opportunity to testify before you today on behalf of the National Association of Professional Background Screeners (NAPBS), an association of nearly 500 firms that provide background screening services to over 500,000 employers and landlords across America. On behalf of our members and the people we serve, I would like to speak about the provisions in the proposed rule changes that address the filing and display of key "identifiers" in court records – identifiers such as full names, social security numbers, and dates of birth. NAPBS is completely aware of the sensitivity of this issue, and we applaud the Committee's initiatives to increase the privacy protections of the nation's citizens.

However, we would direct the Committee's attention to one aspect of the proposed changes that is problematic. Removing, or encouraging the removal of, the dates of birth for adults in criminal filings will impact the hiring procedures of nearly every employer in this country, and it will likely make citizens more vulnerable to crime. We believe a slight change to the proposed rules can maintain increased privacy protection to citizens without disrupting the employee or tenant screening procedures that are so important for safety in the workplace and in the renting industry. As I will elaborate on, NAPBS strongly urges the Committee to consider a slight modification of the proposed changes to Rule 49.1 to retain full dates of birth in criminal court record filings. To this end, we have submitted modifying language for your consideration with this written testimony.

First, let me provide a bit of context for our industry. Background screening companies are engaged by employers and landlords to do background checks on potential employees and tenants. As such, we serve employers, job applicants, landlords and potential tenants by providing the critical information employers and landlords need to make safe, intelligent hiring and leasing decisions. This information is essential because, in the case of employers, our customers are compelled to investigate the backgrounds of those they would hire if the would-be employee is in a position to potentially harm a third party. This covers many categories of employees. Failure to conduct adequate background checks of employees can make an employer vulnerable to a lawsuit for negligent hiring practices. Aside from mitigating employer liability, background screening protects the public, other employees, and the employer. Ensuring a dangerous person does not have the opportunity to abuse his or her employment position is in the public interest. Industry statistics indicate that 10 percent of all applicants fail to disclose their criminal histories when asked on applications. This statistic is particularly unsettling when viewed in the light of another -- that the cost to the American economy due to workplace violence is estimated at \$55 billion each year in lost wages alone.

A key point must be made about the kinds of background searches we do – they are *always* conducted with the consumer's written consent, as required by the Federal Fair Credit Reporting Act and several state fair credit reporting acts.

A major component of background checks is a criminal history search. This criminal history component of employment screening is dependant on access to court records, as provided for under law by the Freedom of Information Act. Screeners use information provided by a consumer to verify his or her criminal history through public documents. However, because of concern over protecting citizens from identity theft, critical identifiers are increasingly being stripped from available public court records. The removal of these identifiers, specifically social security numbers and dates of birth, makes it hard or impossible for screeners to do their jobs adequately and efficiently. The proposed change to Rule 49.1, which seeks to redact information from filings in criminal proceedings, is another example of this trend.

Citizens have a right to privacy, and they have a need for employment and security. The system we operate under requires a certain balance to see that they receive all of these. The proposed Rule 49.1, in stripping the day and month of birth for adults in criminal cases, fails to maintain this balance. Without a *full* date of birth, numerous "false positives" are generated when individuals are screened for employment purposes. Since many people having the same or similar names are born in the same year, their records cannot be distinguished without more complete information, leaving employers to guess about the criminal history of those they intend to hire. The absence of this information requires the individual to "prove" the record in question belongs to someone else, which delays the start of their employment, and results in additional work for court employees when assisting individuals to resolve potential issues related to criminal records. This delay can cost honest applicants jobs, or, if an employer decides not to wait, can allow dishonest applicants with criminal histories to obtain sensitive jobs. In the effort to protect consumers from criminals and identity theft, the removal of identifiers could unintentionally make the public more vulnerable to criminals.

Six percent of criminal convictions are federal crimes. Some of these are arguably the most serious crimes - crimes like those that involve terrorism. Taking date of birth out of federal court records *blinds* screeners to that six percent. We would not feel comfortable if we failed to check the passports of six percent of foreign visitors. Our standards should not be more lax for those we take into our homes and businesses. Without access to identifiers in records, screeners lose the ability to keep applicants honest. If date of birth is not readily available in federal court records, how many applicants with federal criminal histories will lie to gain employment?

Significantly, the rule changes implemented by this Committee and the Judicial Conference will have consequences reaching beyond the *federal* courts. State courts look to federal courts as a model. If federal courts fail to include adequate identifier information, state court systems will likely follow suit. This will make criminal background checks on those who commit the remaining 94% of crimes (at the state and local level) also difficult or impossible to conduct.

Another potential impact of the rule change is a substantial increase on the burden of court clerks. If identifiers, like date of birth, are not available in a database, employers

will be required to pull every relevant court file to try to establish identification, putting a strain upon the resources of clerks' offices. Given the number of background checks that are conducted, thousands each day, requests to access court files may be overwhelming. Employers and background screeners will need to see the public files. The courts may need to add staff to handle the requests for public records, which will have a financial impact on courts and taxpayers. In addition to adding to a significant burden to private enterprise, employers, and consumers, the stripping of necessary identifiers may create an extra burden for the courts themselves.

As the preeminent association for those who conduct employment screening, our members understand public concern for personal data security. We understand concerns about identity theft. Our screens are conducted for the expressed purpose of finding out if people are who they say they are. It is understandable for the federal courts to seek to protect the personal information of citizens. NAPBS agrees that social security numbers or financial account numbers may need to be redacted in court records to address these concerns. However, an individual's date of birth is not as useful or relevant to identity theft as a social security number, where a criminal endeavors to fraudulently obtain credit using someone else's identity. NAPBS is not aware that the listing of the date of birth of those convicted of crimes in public records has ever resulted in a case of identity theft or misuse of personal data. While well-intentioned, we see no evidence to suggest that a rule change stripping date of birth will serve to protect either the individuals involved or the public at large.

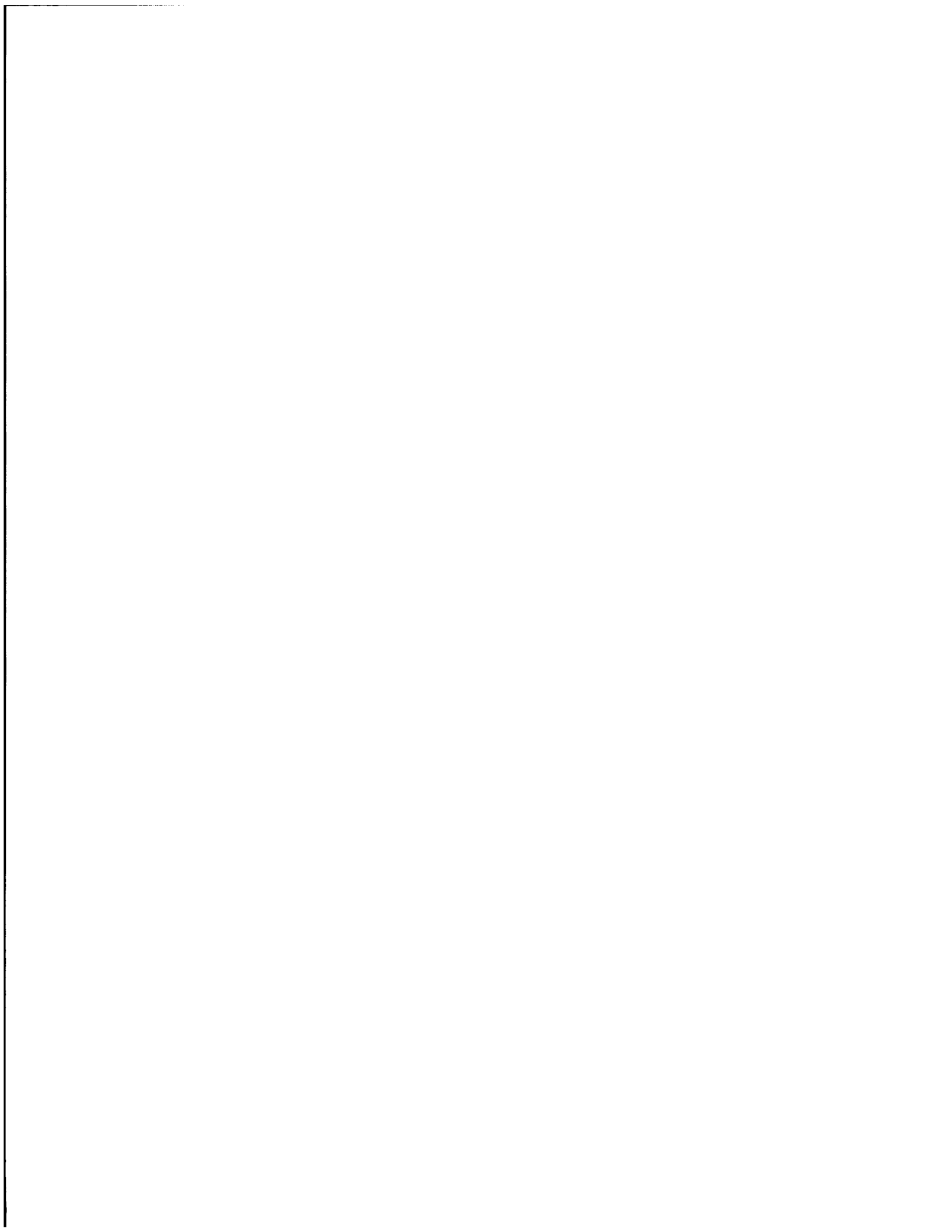
While we cannot be sure of the benefits of removing dates of birth, we can be sure of the consequences. For all the reasons I have mentioned here, failure to include full dates of birth in the records for adults charged in criminal proceedings will almost certainly harm job seekers, employers, and the public. Every screen conducted by every employer or landlord on every applicant will be affected by a failure to include this information. The removal of identifiers will create increased strain on the resources of court clerks. It will make it hard or impossible for screeners to identify the six percent of criminals convicted of a federal crime. The sure result of this failure will be that average citizens will be less safe, at their workplaces and in their homes. In the face of all this, NAPBS strongly urges the Committee to consider a slight modification of the proposed changes to Rule 49.1 to retain full dates of birth in the criminal court record filings. To this end, we have submitted modifying language for your consideration with this written testimony.

On behalf of the nearly 500 member of NAPBS who serve the nation's employers and public, I thank the Committee for the opportunity to present our industry's views and comments here today. I am happy to answer any questions members of the Committee wish to pose at this time.

From the Criminal Procedure portion (Pg. 150):

**Rule 49.1 Privacy Protection for Filings Made with the Court\*\***

- 1 **(a) Redacted Filings.** Unless the court orders otherwise,  
2 an electronic or paper filing made with the court that  
3 includes a social security number, or an individual's tax  
4 identification number, a name of a person known to be a  
5 minor, a person's birth date, a financial account  
6 number or the home address of a person may include  
7 only:  
8 (1) the last four digits of the social security number  
9 and tax identification number;  
10 (2) the minor's initials;  
11 (3) the year of birth for minors; and the day, month, and  
12 year of birth for adults;  
13 (4) the last four digits of the financial account  
14 number; and  
(5) the city and state of the home address.





UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION  
515 RUSK AVENUE  
HOUSTON, TEXAS 77002

05-BK-004

CHAMBERS OF  
**MARVIN ISGUR**  
UNITED STATES BANKRUPTCY JUDGE

December 22, 2005

Mr. Peter G. McCabe  
Secretary of the Committee on Rules of Practice and Procedures  
Administrative Office of the United States Courts  
Washington, D.C. 20544

Dear Mr. McCabe and Members of the Committee:

I am a United States Bankruptcy Judge in the Southern District of Texas. Please accept my thanks for all of the work and effort that has resulted in the proposed amendments to the Federal Rules of Bankruptcy Procedure. I have several comments for your consideration.

Most of my comments concern the application of rules that—while beneficial in large chapter 7 or chapter 11 cases—may be harmful in the administration of smaller cases and in consumer cases.

- I. **Rule 4001.** The proposed amendments to Rule 4001 appear to be directed at eliminating perceived abuses in complex matters. Please consider the following:
  - A. **Rule 4001(b) as it applies to simple cash collateral orders in simple cases.** It is not uncommon to have small chapter 11 cases (and even some larger chapter 13 cases) in which a concise order authorizing the use of cash collateral may be appropriate. Often, these orders will only be 1-5 pages in length. As the Committee is aware, there are many more cases in this category than there are complex chapter 11 cases. Accordingly, I suggest that a new subsection 4001(b)(1)(B)(5) be inserted that reads as follows:

“(5) the introductory statement is not required if each of the motion and the proposed form of order are (i) less than 6 pages in length, (ii) double spaced, and (iii) in twelve point or greater type.”<sup>1</sup>
  - B. **Rule 4001(c) as it applies to small loans in small cases.** The same comments set forth in paragraph I(A) applies to Rule 4001(c) and motions to obtain credit.

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<sup>1</sup> Proposed language is submitted solely for the purpose of promoting discussion of a method for evaluating whether the introductory statement would be helpful in particular cases.



C. **Rule 4001(d) as it applies to exempt property in consumer cases.** The local rules of the Southern District of Texas provide for the mandatory use of certain forms with respect to motions for relief from the stay on exempt homes and vehicles. The local rules also require a pre-filing conference on these motions. There are a series of form orders that may be submitted by agreement under current S.D. Tex. BLR 4001(d). Although these procedures are relatively new, I estimate that over 300 proposed 4001(d) orders are filed monthly in the Southern District of Texas. I also note that the service provisions in the proposed subsection "D" provides for no service at all in chapter 13 cases. The proposed amendments will have a material, adverse effect on practice in our Court. Accordingly, I request the following additions:

(1) The contents of the current proposed subsection (B) shall become "(B)(1)."

(2) The following subsections should be added:

"(B)(2) the introductory statement is not required if each of the motion and the proposed form of order are (i) less than 6 pages in length, (ii) double spaced, and (iii) in twelve point or greater type;

(B)(3) the introductory statement is not required if: (i) the debtor is an individual; (ii) the rules of the local court provide for an exception for certain cases in which the debtor is an individual; and (iii) the case in which the motion is filed qualifies for the local rule's exception."

(3) At the end of subsection "D", please add the following sentence: "In a case in which the debtor is an individual, the motion shall be served on (i) any party claiming a lien on or an interest in the subject matter of the motion, (ii) parties requesting notice, (iii) any committee elected under § 705 or appointed pursuant to § 1102 of the Code or its authorized agent, and (iv) such other entities as may be directed by the Court or by local rule."

D. **General comments about notice under all of proposed Rule 4001.** I do not understand why service of all Rule 4001 matters is so limited in cases involving entities. At a minimum, I suggest that the service provisions be expanded to include parties requesting notice and parties with a lien on or an interest in the matter that is the subject of the motion. Perhaps I misread the notice rules, but they appear not to require notice on parties requesting notice or on those directly affected by the motion. By way of example, proposed Rule 4001(c)(1)(D) appears to provide that a motion seeking to authorize an extension of credit to be secured by a senior lien

on collateral that is presently encumbered by a lien would not be required to be served on the current lien holder.

2. **Rule 6003.** I am concerned about the interplay between § 365(d)(3) and § 502 with respect to the newly proposed rule. There is a good faith interpretation of current law that a debtor must perform under leases until the leases are rejected and that a failure to perform will result in an administrative claim against the estate. I am concerned that the use of the terms "immediate and irreparable harm" may be so strong as to preclude a debtor's rejection of a lease in order to avoid the accrual of an administrative claim against the estate. There may be abuses of which I am not aware that necessitate such a change. However, I would prefer that the Committee leave open the possibility that a lease could be rejected within 20 days on a lesser showing than "immediate and irreparable harm." I note that the Committee references current Rule 4001(b)(2) and (c)(2). Under those rules (dealing with cash collateral use or obtaining credit), interim orders are generally issued when there is immediate and irreparable harm. I do not know how the Court can fashion equivalent interim relief with respect to a burdensome lease where the debtor is seeking to avoid the accrual of an administrative claim. For example, a debtor may have abandoned a premises pre-bankruptcy, but be obliged to make payments under § 365(d)(3). Under those circumstances, does the Committee believe that there is "immediate and irreparable harm?" If so, clarification in a comment to the notes would be helpful. If not, I suggest that the lease rejection provision be based on a lesser standard.

Overall, I find the proposed rules changes most helpful. I ask that the Committee consider the comments in this letter with respect to possible modifications. I ask that particular attention be given to the proposed changes to Rule 4001(d). Adoption of the proposed rule without change would result in a significant (and in my view, unnecessary) cost to consumer debtors in the Southern District of Texas.

Sincerely,

/s/

Marvin Isgur



**SABINO & SABINO, P.C.**

ATTORNEYS AT LAW

92 Willis Avenue, 2nd Floor

Mineola, New York 11501

516-294-3199

Fax: 516-747-9405

E-mail: [legal-lion@earthlink.net](mailto:legal-lion@earthlink.net)

[www.sabinolaw.com](http://www.sabinolaw.com)

05-BK- 005

ANTHONY MICHAEL SABINO  
MARY JANE C. SABINO

ADMITTED IN NEW YORK  
PENNSYLVANIA  
AND THE UNITED STATES  
SUPREME COURT

6 January 2006

Hon. Peter G. McCabe, Secretary  
Committee on Rules of Practice and Procedure  
of the Judicial Conference of the United States  
Thurgood Marshall Federal Judiciary Building  
Washington, D.C. 20544

Re: Preliminary Draft of Proposed Amendment to Federal Rules (August, 2005)

Dear Mr. McCabe:

I write to provide comments and suggestions regarding the above. By way of information, in addition to my many years of practice before the federal courts, I am a professor of law, the author of numerous law review articles on various topics of federal law, and have been honored by several federal judges citing same in their legal opinions. That having been said, permit me to turn to my brief, specific comments, which are limited to certain of the proposed changes to the Federal Rules of Bankruptcy Procedure.

Rule 3001(c) and (d)---Proof of Claim

I must respectfully disagree with the proposed amendment of this Rule, albeit in part. The proposal of an absolute restriction on supporting document to a Proof of Claim, not to exceed 25 pages (5 pages for the perfection of a security interest) is, in my opinion, unnecessary, unduly restrictive, and has more potential for harm than good.

The proposed Committee Note states the proposal is rooted in the difficulties inherent in the electronic filing of documents. That much is certain; notwithstanding the benefits of the modern age of electronic court filings, lengthy or complex documents pose new problems with readability, transmission errors, loss of data, and so on. The Committee is correct in seeking to alleviate such problems, but its approach is wrong.

First, the problem is overstated. To be sure, I have no quantitative evidence, but I must respectfully express my sincere doubt that the Committee does either. My experience informs me that the overwhelming majority of claims consist of merely the standard B-10 Proof of Claim itself and, at most, two or three pages of supporting documentation. Given the rarity of a Proof of Claim and supporting documents totaling more than 25 pages, a specific page limit in the Rule is simply unnecessary

The proposed Rule can do more harm than good. If supporting documentation is only 26 pages, what is the sense in compelling creditors to craft yet another document? What if a summary is simply inadequate to the task? What if the summary engenders more confusion and controversy than if the full documentation was attached? This makes the 25 page limit problematic at best, and advances the argument for a Rule without such an arbitrary limit. To be clear, all the above applies to the proposed 5 page limit to documenting the perfection of a security interest.

Here is a counterproposal; revise Rule 3001 to state a claimant *may* file a summary of its supporting documentation in lieu of complete copies. A permissive approach is vastly superior to an inflexible rule. This leaves the decision in the hands of the party most familiar with the claim---the creditor itself.

#### Rule 3007(c), (d), (e), and (f)---Objections to Claims

Overall, the Rule 3007 amendment is an excellent step. It codifies what has become a prevailing practice, particularly in large cases, to smoothly and efficiently deal with claims with a nearly identical basis for objection, i.e., duplicate or late claims. In plain terms, this is already being done in courts; why not recognize and regularize the practice with an actual Rule? Moreover, the proposal discreetly limits when such omnibus objections may be used, by clarifying when an omnibus objection is permitted. This prevents abuse by confining omnibus objections to specific circumstances.

One suggestion---the Committee might wish to add a subsection (g), roughly along the lines that:

(g) The court, on the timely motion of a party in interest or on its own motion, and after a hearing on notice, may further limit or condition the making of an omnibus objection pursuant to this Rule, when the interests of justice so require.

My purpose is based upon some concern that a court should be specifically authorized to modify the application of the Rule if the interests of justice so require. Such an additional proviso gives the court that right and that flexibility.

#### Other Proposals to Amend the Bankruptcy Rules

I wish to note my support for other proposals to amend the Bankruptcy Rules, and briefly state as follows.

The proposed changes for Rule 4004 are an excellent idea. Motions to use cash collateral, obtain credit, *et cetera*, are typically controversial and come at a time when the case is very new and more confusion than clarity abounds. Compelling parties to provide a cogent summary of terms, a proposed order, a complete copy of the underlying agreement, and specifying service to the most crucial committees and parties will lift the fog of a case's first days.

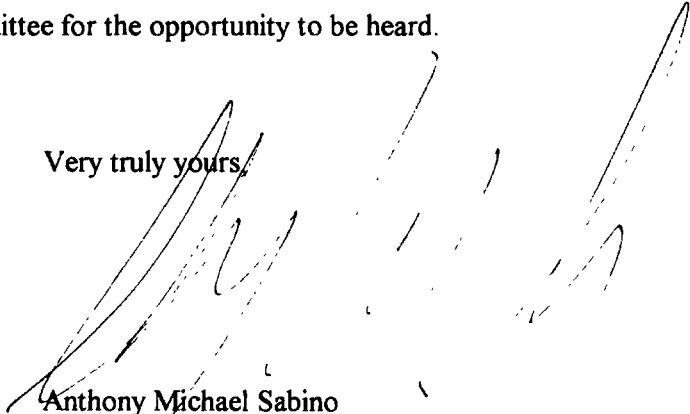
I support the proposed changes to Rule 6006, largely for the same positive attributes that I discussed above regarding the proposed changes to Rule 3007. The key benefits to be derived from this amendment are: a) greater efficiency; b) conspicuous disclosure in the motion; c) greater ease and assurance of affected parties to find if in fact they are an affected party; d) greater ease in ascertaining the terms of the proposed action, i.e., curing default amounts; and e) a 100 contract/lease limit (here, this limit makes sense).

As I did with Rule 3007, I would only add that I would like to see that addition of a final proviso assuring judicial flexibility and control in the interests of justice.

The amendment to Rule 1014 is as welcome as it is overdue. It is beyond peradventure that courts have the ability to dismiss or transfer cases on their own motion. The proposal simply codifies what is already a maxim.

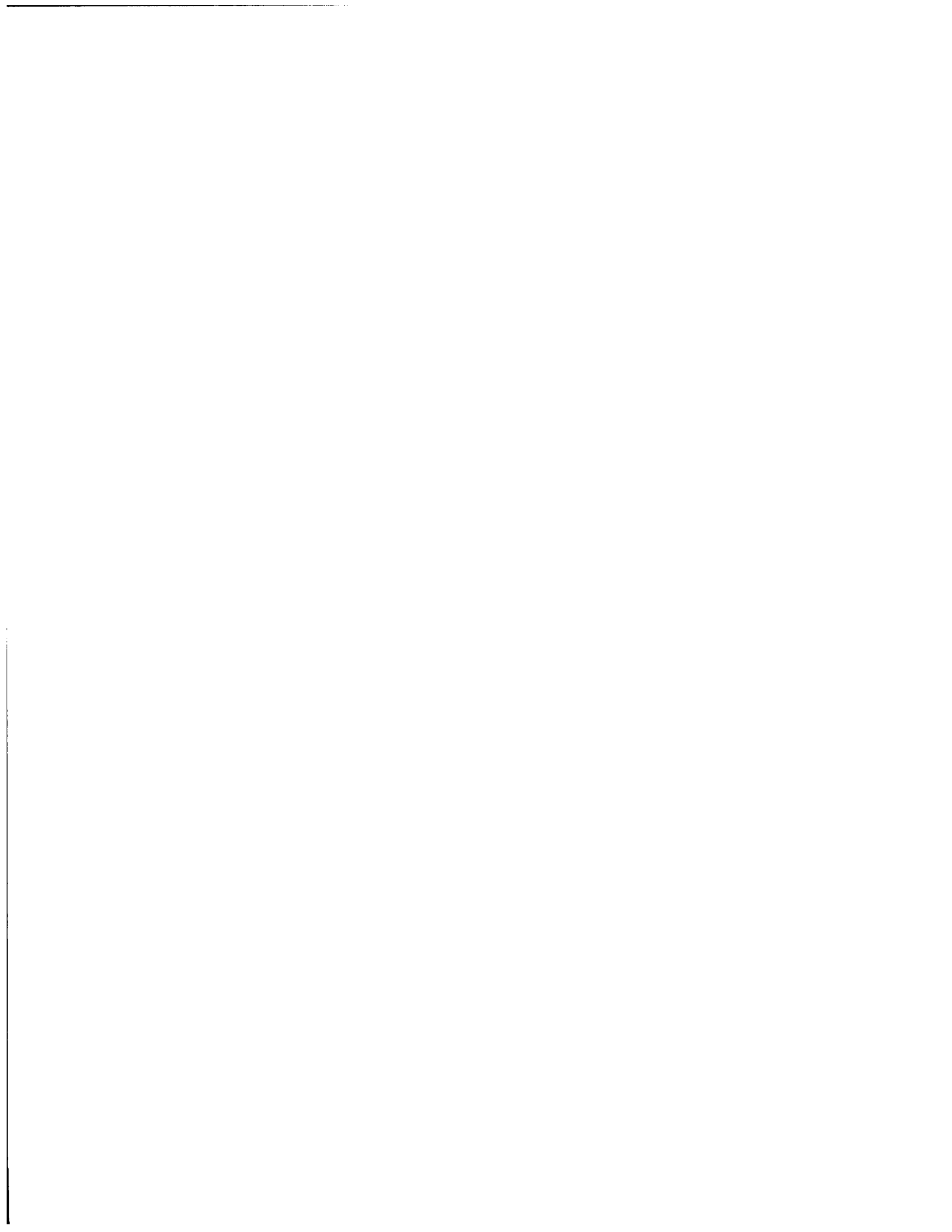
I thank you and the Committee for the opportunity to be heard.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Anthony Michael Sabino', written over a dashed line.

Anthony Michael Sabino  
Professor of Law  
Peter J. Tobin College of Business  
St. John's University, New York and  
Partner, Sabino & Sabino, P.C.

AMS/dal



COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT  
OF THE  
JUDICIAL CONFERENCE OF THE UNITED STATES  
WASHINGTON, D.C. 20544

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SONIA SOTOMAYOR  
T. JOHN WARD

February 8, 2006

05-AP- 002

Honorable David F. Levi  
Chief Judge  
United States District Court  
2504 Robert T. Matsui  
United States Courthouse  
501 I Street  
Sacramento, CA 95814-7300

05-BK- 006

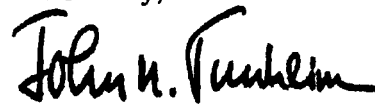
05-CV- 025

05-CR- 011

Dear Judge Levi,

Enclosed please find the comments of the Judicial Conference Committee on Court Administration and Case Management regarding the Proposed Rules to Address Privacy and Security Concerns as required by the E-Government Act of 2002. Our Committee appreciates the work you have done, as well as the opportunity to comment on this important issue. Do not hesitate to contact me with any questions or concerns.

Sincerely,



John R. Tunheim

cc: Abel Mattos  
John Rabiej

Enclosure



Comments of the Committee on Court Administration and Case Management  
on Proposed Rules to Address Privacy and Security Concerns  
as Required by the E-Government Act of 2002

Background

In an effort to balance the competing interests of the public's right to have access to court information and the need to protect personal data in the electronic age, this Committee began studying privacy and public access to electronic case files in 1999. After two years of study, a public comment period, and a public hearing, the Committee recommended to the Judicial Conference of the United States the adoption of a policy that would allow access to civil and bankruptcy cases, with the requirement that specific personal identifiers (Social Security numbers, financial account numbers, dates of birth and names of minor children) be partially redacted from the document. The CACM Committee recommended that such access to criminal cases be studied for two years because of safety and security concerns unique to criminal cases. In September 2001, the Judicial Conference adopted this policy. (JCUS-SEP/OCT 01, pp. 48-50). Following a study that revealed no instances substantiating such concerns, this Committee, together with the Committee on Criminal Law, recommended that public access to criminal cases also be allowed. The Conference adopted this position (JCUS-SEP 03, pp. 15-16) and later adopted specific guidance recommended by this Committee for public access to criminal cases. (JCUS-MAR 04, p. 10). This guidance provides that redaction of personal information is also required for criminal documents, with the addition of the redaction of home address to city and state. The Conference-approved guidance also addresses whether certain documents and information should be included in public criminal case files.<sup>1</sup>

Proposed Federal Rule of Appellate Procedure 25. Filing and Service

Proposed Federal Rule of Appellate Procedure 25 would apply the proposed bankruptcy privacy rule and the proposed criminal privacy rule in cases that applied those rules below. In all other cases on appeal, the proposed civil privacy rule would apply, except the criminal rule would apply when a extraordinary writ is sought in a criminal case. This approach is consistent with the Privacy Policy's statement that appellate cases are to be treated the same way the cases were treated below and the Committee supports the rule as proposed. It also specifically recognizes that, because the Case Management/Electronic Case Files system for the courts of appeals is not yet operational, there is less experience with privacy issues at the appellate level.

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<sup>1</sup> A copy of the Judicial Conference Privacy Policy (the Privacy Policy) and the Criminal Implementation Guidance are attached for your reference and are available at [www.privacy.uscourts.gov](http://www.privacy.uscourts.gov).

Further, the Committee recognizes the fact that the proposed appellate rule gives more specific guidance than does the privacy policy in making the proposed civil privacy rule generally applicable, with specific exceptions. Thus, the proposed rule addresses how to treat matters that originate in the court of appeals or that come from an administrative agency or entity other than a lower court.

Proposed Federal Rule of Bankruptcy Procedure 9037, Privacy Protection For  
Filings Made with the Court

Proposed Federal Rule of Bankruptcy Procedure 9037 would require redaction of the standard personal identifiers (Social Security number, financial account number, name of minor child and date of birth) and would also provide for exemptions from the requirement. Further, it addresses sealed documents, protective orders, use of a reference list and waiver of the redaction requirements. This proposed rule, like the others, is largely based upon the Privacy Policy, as the notes make clear, and, in large part, the Committee supports it. However, the Committee does wish to point out several concerns it has regarding specific portions of the proposed rule.

Subsection (a) states that a filing "may include only" the redacted versions of the identifiers while subsection(g) states that a party waives the protections of redaction as to its own information if that information is not filed under seal and not redacted. The Privacy Policy *requires* redaction and does not contain an explicit waiver. The Notes to the proposed rules clarify that the waiver only applies to the specific information filed without redaction and not under seal and that if such is done accidentally, a party may seek relief from the court. It also points out that the waiver provision may be beneficial in cases where a party determines that costs of redaction may outweigh its privacy benefits. Based on these clarifications, the Committee supports the waiver provision and understands that in order for this provision to be possible, the wording of the redaction requirements must remain permissive.

This proposed rule, as do the proposed civil and criminal rules, includes exemptions from the redaction requirement that the current policy does not specifically include. The Committee understands the need for these exemptions and generally supports them. However, concern has been expressed that the exemption for records of a court "whose decision is being reviewed" may not be appropriate because the language could be read to suggest appellate review, in which bankruptcy courts do not engage. However, the record in a bankruptcy case does often contain a record from another court proceeding as evidence, or otherwise. The Committee therefore suggests that thought be given to using language other than "reviewed" in the wording of this exemption. (For example, perhaps the rule could refer to a court whose "decision becomes part of the record.") Since identical wording is used for this exemption in the proposed civil and criminal rules, as well, this suggestion would apply to those rules as well. Regardless of the specific wording, the Committee believes that the focus should remain on the fact that a record from another court does not need to be redacted.

Proposed Federal Rule of Civil Procedure 5.2, Privacy Protections for Filings  
Made with the Court

Proposed Federal Rule of Civil Procedure 5.2 would also require redaction of the standard personal identifiers and also provides for exemptions from these requirements. Like the bankruptcy rule, it also addresses sealed documents, protective orders, use of a reference list and waiver of the redaction requirements. Again, the basic structure and provisions of this rule are similar to the Privacy Policy and the Committee supports it. There are, however, two specific points the Committee wishes to make regarding the proposed civil rule.

First, our comments made above in reference to the proposed bankruptcy rule regarding the waiver provision and the exemption for records of a court "whose decision is being reviewed," also apply to the civil rule. Second, the Committee has some concerns regarding subsection (c), which provides for limitations on remote access to electronic case files.

The Privacy Policy provided for such limitations only in the context of social security cases on the grounds that such cases often contain voluminous administrative records that necessarily include the claimant's social security number and detailed medical and financial information.<sup>2</sup> The proposed rule retains limited access to these cases, which the Committee supports, yet also provides for limited access in immigration cases. In previous communications with the Rules Committee, this Committee opposed extension of such limited access because it views social security cases as distinctive since extensive personal information is necessary in every case. We suggested that other types of cases be handled on a case by cases basis rather than by category. However, this Committee indicated that it would consider limited access for immigration cases if it could be demonstrated that their volume is substantial and that the information routinely appearing in their records should be protected. The Committee recognizes that there has been a substantial increase in the number of immigration cases in the federal courts since this restriction was first suggested. The Committee also appreciates that the data routinely contained in such cases includes personal and identifying information. Thus, the Committee would support limited electronic access to the bulk of documents in immigration cases as long as the initiating documents (e.g., opinions issued by the Bureau of Immigration Appeals and Immigration Judges) and orders and opinions remain remotely, electronically available to the public. Because these documents would likely contain personal information, the Committee further suggests that the party filing the appeal from the prior decision be required to redact the initiating document as it would any other filing under the proposed civil rule.

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<sup>2</sup> Even though the Privacy Policy limits remote public electronic access to filings in social security cases, such limitation is not intended to apply to court opinions. The Committee assumes that opinions will be available in immigrations cases as well, if the same limitations are applied.

Proposed Federal Rule of Criminal Procedure 49.1: Privacy Protection for Filings  
Made with the Court

Proposed Federal Rule of Criminal Procedure 49.1 would apply the same redaction provisions as the other proposed rules, with the addition of home address to city and state. Likewise, it also contains exemptions from these provisions as do the bankruptcy and civil rule. Again, the Committee generally supports this proposed rule, but has several specific areas of concern. First, our comments about the waiver and exemption for records of a court "whose decision is being reviewed" would again apply to this proposed rule.

Further, the Committee notes that the exemptions from redaction in the criminal rule are more extensive than those in bankruptcy and civil. It exempts the same documents as the other rules, but also exempts habeas filings, a filing in relation to a criminal matter or investigation that is prepared before the filing of a criminal charge or that is not filed as part of any docketed criminal case, arrest or search warrants, and charging documents or affidavits in support thereof. The Committee is concerned that this list may be overly inclusive and suggests that personal identifiers can be redacted from many of these documents, such as executed warrants and charging documents. This redaction will allow the document to be included in the public file while still protecting the privacy of the individual concerned.

It should be noted that the initial Privacy Policy did not allow for remote public electronic access to criminal files and that such access was only recommended by the CACM Committee and approved by the Judicial Conference after a two-year pilot program and study conducted by the Federal Judicial Center revealed no instances of harm and a substantial benefit to the bar and public in the 11 courts where such access was permitted.

When the Judicial Conference decided in September 2003 to allow remote electronic public access to criminal case files subject to the redaction requirements, it stayed the implementation of this change until the CACM Committee could work with the Committee on Defender Services and the Committee on Criminal Law to develop guidance for implementation of access to electronic criminal case files. That guidance, which the Judicial Conference approved, explains that certain documents and information are not to appear in the public case file, in paper or electronic form, at the courthouse or via remote access. These included presentence and pretrial reports, juvenile records, statements of reasons, unexecuted warrants of any kind, sealed documents, and identifying information about jurors and potential jurors. This is designated as "III. Documents for which public access should not be provided" (Part III of the guidance) and it is not clear how the exemptions of the proposed rule relates to this guidance. In order to comply with current policy, many courts are redacting or having filers redact the stated personal identifiers from executed warrants so that they can be filed and available to the public. Likewise, courts are being instructed to redact copies of documents with juror identifying information, such as the foreperson's name in the form of his or her signature, so that a copy of the indictment can be included in the public criminal case file, whether it be paper or electronic. The original indictment or other document with this information is most often sealed to protect

the identifying information.

If the proposed rule is intended to permit the filing of the name of the grand jury foreperson, thereby identifying that individual, it contravenes the guidance, and the Committee would oppose it. The notes mention the guidance, even the specifics of Part III, yet suggest that their substance can be accommodated by sealing the documents. The problem with sealing the indictment without providing a redacted version for the public file is that there then is no public access to that document. If a redacted document is filed in addition to the sealed document, the public can see the substance of the indictment, such as its specific counts, without impacting the privacy, in this case, the grand jury foreperson.

The Committee understands that there may be opposition to requiring redaction of these documents for several reasons. The first being, in the case of an indictment, concern about the impact of redaction upon the requirement in Rule 6 of the Federal Rules of Criminal Procedure that the indictment be signed by the foreperson. Following the guidance, the indictment would still be signed and returned in open court, where it could be stated on the record that the foreperson's signature is on the return. However, to protect the identity of the foreperson, the publicly available copy of the indictment would confirm but not display the signature of the foreperson. The indictment with the signature could be sealed or retained by the government. There may also be concern over retaining two copies of the indictment, one sealed with the signature and one public without it. This concern is understandable because it does require some duplication of records, but it is necessary in order to both protect the juror and provide the public with the information contained in the charging document. Finally, concern has been expressed over who will effect the redaction of the indictment. In keeping with the redaction requirements elsewhere in the Privacy Policy, it is recommended that the government, as the filer of the document, have this responsibility.

In summary, the CACM Committee generally supports the proposed privacy rules and recognizes and appreciates the difficult task undertaken by the Rules Committee in drafting them. The CACM Committee also appreciates the opportunity to comment on the proposed rules and to have been included during the drafting process. Please do not hesitate to contact Abel Mattos of the Court Administration Policy Staff at 202-502-1560 if you have any questions.

**Attachments**

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### **Report of the Judicial Conference Committee on Court Administration and Case Management on Privacy and Public Access to Electronic Case Files**

The Judicial Conference of the United States requested that its Committee on Court Administration and Case Management examine issues related to privacy and public access to electronic case files. The Committee on Court Administration and Case Management formed a special subcommittee for this purpose. This subcommittee, known as the Subcommittee on Privacy and Public Access to Electronic Case Files, consisted of four members of the Committee on Court Administration and Case Management: Judge John W. Lungstrum, District of Kansas, Chair; Judge Samuel Grayson Wilson, Western District of Virginia; Judge Jerry A. Davis, Magistrate Judge, Northern District of Mississippi; and Judge J. Rich Leonard, Bankruptcy Judge, Eastern District of North Carolina, and one member from each of four other Judicial Conference Committees (liaison Committees): Judge Emmet Sullivan, District of Columbia, liaison from the Committee on Criminal Law; Judge James Robertson, District of Columbia, liaison from the Committee on Automation and Technology; Judge Sarah S. Vance, Eastern District of Louisiana, liaison from the Committee on the Administration of the Bankruptcy System; and Gene W. Lafitte, Esq., Liskow and Lewis, New Orleans, Louisiana, liaison from the Committee on the Rules of Practice and Procedure. After a lengthy process described below, the Subcommittee on Privacy and Public Access to Electronic Case Files, drafted a report containing recommendations for a judiciary-wide privacy and access policy.

The four liaison Committees reviewed the report and provided comments on it to the full Committee on Court Administration and Case Management. After carefully considering these comments, as well as comments of its own members, the Committee on Court Administration and Case Management made several changes to the subcommittee report, and adopted the amended report as its own.

#### **Brief History of the Committee's Study of Privacy Issues**

The Committee on Court Administration and Case Management, through its Subcommittee on Privacy and Public Access to Electronic Case Files (the Subcommittee) began its study of privacy and security concerns regarding public electronic access to case file information in June 1999. It has held numerous meetings and conference calls and received information from experts and academics in the privacy arena, as well as from court users, including judges, court clerks, and government agencies. As a result, in May 2000, the Subcommittee developed several policy options and alternatives for the creation of a judiciary-wide electronic access privacy policy which were presented to the full Committee on Court Administration and Case Management and the liaison committees at their Summer 2000 meetings. The Subcommittee used the opinions and feedback from these committees to further refine the policy options.

In November 2000, the Subcommittee produced a document entitled "Request for Comment on Privacy and Public Access to Electronic Case Files." This document contains the alternatives the Subcommittee perceived as viable following the committees' feedback. The Subcommittee published this document for public comment from November 13, 2000 through January 26, 2001. A website at [www.privacy.uscourts.gov](http://www.privacy.uscourts.gov) was established to publicize the comment document and to collect the comments. Two hundred forty-two comments were received from a very wide range of interested persons including private citizens, privacy rights groups, journalists, private investigators, attorneys, data re-sellers and representatives of the financial services industry. Those comments, in summary and full text format, are available at that website.

On March 16, 2001, the Subcommittee held a public hearing to gain further insight into the issues surrounding privacy and access. Fifteen individuals who had submitted written comments made oral presentations to and answered the questions of Subcommittee members. Following the hearing, the Subcommittee met, considered the comments received, and reached agreement on the policy recommendations contained in this document.

### **Background**

Federal court case files, unless sealed or otherwise subject to restricted access by statute, federal rule, or Judicial Conference policy, are presumed to be available for public inspection and copying. See *Nixon v. Warner Communications, Inc.*, 435 U.S. 589 (1978) (holding that there is a common law right "to inspect and copy public records and documents, including judicial records and documents"). The tradition of public access to federal court case files is also rooted in constitutional principles. See *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 575-78 (1980). However, public access rights are not absolute, and courts balance access and privacy interests in making decisions about the public disclosure and dissemination of case files. The authority to protect personal privacy and other legitimate interests in nondisclosure is based, like public access rights, in common law and constitutional principles. See *Nixon*, 435 U.S. at 596 ("[E]very court has supervisory power over its own records and files, and access has been denied where court files might have become a vehicle for improper purposes").

The term "case file" (whether electronic or paper) means the collection of documents officially filed by the litigants or the court in the context of litigation, the docket entries that catalog such filings, and transcripts of judicial proceedings. The case file generally does not include several other types of information, including non-filed discovery material, trial exhibits that have not been admitted into evidence, drafts or notes by judges or court staff, and various documents that are sometimes known as "left-side" file material. Sealed material, although part of the case file, is accessible only by court order.

Certain types of cases, categories of information, and specific documents may require special protection from unlimited public access, as further specified in the sections on civil, criminal, bankruptcy and appellate case files below. See *United States Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989) (noting that technology may affect the balance between access rights and privacy and security interests). To a great extent, these recommendations rely upon counsel and litigants to act to protect the interests of their clients and themselves. This may necessitate an effort by the courts to educate the bar and the public about the fact that documents filed in federal court cases may be available on the Internet.

It is also important to note that the federal courts are not required to provide electronic access to case files (assuming that a paper file is maintained), and these recommendations do not create any entitlement to such access. As a practical matter, during this time of transition when courts are implementing new practices, there may be disparity in access among courts because of varying technology. Nonetheless, the federal courts recognize that the public should share in the benefits of information technology, including more efficient access to court case files.

These recommendations propose privacy policy options which the Committee on Court Administration and Case Management (the Committee) believes can provide solutions to issues of privacy and access as those issues are now presented. To the extent that courts are currently experimenting with procedures which differ from those articulated in this document, those courts should reexamine those procedures in light of the policies outlined herein. The Committee recognizes that technology is ever changing and these recommendations may require frequent re-examination and revision.

## Recommendations

The policy recommended for adoption by the Judicial Conference is as follows:

### General Principles

1. There should be consistent, nationwide policies in federal courts in order to ensure that similar privacy protections and access presumptions apply regardless of which federal court is the custodian of a particular case file.
2. Notice of these nationwide policies should be given to all litigants in federal court so that they will be aware of the fact that materials which they submit in a federal court proceeding could become available on the Internet.
3. Members of the bar must be educated about the policies and the fact that they must protect their clients by carefully examining the documents that they file in federal court for sensitive, private information and by making the appropriate motions to protect documents from electronic access when necessary.
4. Except where otherwise noted, the policies apply to both paper and electronic files.
5. Electronic access to docket sheets through PACERNet and court opinions through court websites will not be affected by these policies.
6. The availability of case files at the courthouse will not be affected or limited by these policies.
7. Nothing in these recommendations is intended to create a private right of action or to limit the application of Rule 11 of the Federal Rules of Civil Procedure.

### Case Types

#### Civil Case Files

**Recommendation: That documents in civil case files should be made available electronically to the same extent that they are available at the courthouse with one exception (Social Security cases should be excluded from electronic access) and one change in policy (the requirement that certain "personal data identifiers" be modified or partially redacted by the litigants). These identifiers are Social Security numbers, dates of birth, financial account numbers and names of minor children.**

The recommendation provides for liberal remote electronic access to civil case files while also adopting some means to protect individual privacy. Remote electronic access will be available only through the PACERNet system which requires registration with the PACER service center and the use of a log in and password. This creates an electronic trail which can be retraced in order to determine who accessed certain information if a problem arises. Further, this recommendation contemplates that certain personal, identifying information will not be included in its full and complete form in case documents, whether electronic or hard copy. For example, if the Social Security number of an individual must be included in a document, only the last four digits of that number will be used whether that document is to be filed electronically or at the courthouse. If the involvement of a minor child must be mentioned, only that child's initials should be used; if an individual's date of birth is necessary, only the year should be used; and, if financial account numbers are relevant, only the last four digits should be recited in the document. It is anticipated that as courts develop local rules and instructions for the use and implementation of Electronic Case Filing (ECF), such rules and instructions will include direction on the truncation by the litigants of personal identifying information. Similar rule changes would apply to courts which are imaging documents.



Providing remote electronic access equal to courthouse access will require counsel and pro se litigants to protect their interests through a careful review of whether it is essential to their case to file certain documents containing private sensitive information or by the use of motions to seal and for protective orders. It will also depend upon the discretion of judges to protect privacy and security interests as they arise in individual cases. However, it is the experience of the ECF prototype courts and courts which have been imaging documents and making them electronically available that reliance on judicial discretion has not been problematic and has not dramatically increased or altered the amount and nature of motions to seal. It is also the experience of those courts that have been making their case file information available through PACERNet that there have been virtually no reported privacy problems as a result.

This recommended "public is public" policy is simple and can be easily and consistently applied nationwide. The recommended policy will "level the geographic playing field" in civil cases in federal court by allowing attorneys not located in geographic proximity to the courthouse easy access. Having both remote electronic access and courthouse access to the same information will also utilize more fully the technology available to the courts and will allow clerks' offices to better and more easily serve the needs of the bar and the public. In addition, it might also discourage the possible development of a "cottage industry" headed by data re-sellers who, if remote electronic access were restricted, could go to the courthouse, copy the files, download the information to a private website, and charge for access to that website, thus profiting from the sale of public information and undermining restrictions intended to protect privacy.

Each of the other policy options articulated in the document for comment presented its own problems. The idea of defining what documents should be included in the public file was rejected because it would require the courts to restrict access at the courthouse to information that has traditionally been available from courthouse files. This would have the net effect of allowing less overall access in a technological age where greater access is easy to achieve. It would also require making the very difficult determination of what information should be included in the public file.

The Committee seriously considered and debated at length the idea of creating levels of access to electronic documents (i.e., access to certain documents for specific users would be based upon the user's status in the case). The Committee ultimately decided that levels of access restrictions were too complicated in relation to the privacy benefits which could be derived therefrom. It would be difficult, for example, to prohibit a user with full access to all case information, such as a party to the case, from downloading and disseminating the restricted information. Also, the levels of access would only exist in relation to the remote electronic file and not in relation to the courthouse file. This would result in unequal remote and physical access to the same information and could foster a cottage industry of courthouse data collection as described above.

Seeking an amendment to the Federal Rules of Civil Procedure was not recommended for several reasons. First, any such rules amendment would take several years to effectuate, and the Committee concluded that privacy issues need immediate attention. There was some discussion about the need for a provision in Fed. R. Civ. P. 11 providing for sanctions against counsel or litigants who, as a litigation tactic, intentionally include scurrilous or embarrassing, irrelevant information in a document so that this information will be available on the Internet. The Committee ultimately determined that, at least for now, the current language of Fed. R. Civ. P. 11 and the inherent power of the court are sufficient to deter such actions and to enforce any privacy policy.

As noted above, this recommendation treats Social Security cases differently from other civil case files. It would limit remote electronic access. It does contemplate, however, the existence of a skeletal electronic file in Social Security cases which would contain documents such as the complaint, answer

and dispositive cross motions or petitions for review as applicable but not the administrative record and would be available to the court for statistical and case management purposes. This recommendation would also allow litigants to electronically file documents, except for the administrative record, in Social Security cases and would permit electronic access to these documents by litigants only.

After much debate, the consensus of the Committee was that Social Security cases warrant such treatment because they are of an inherently different nature from other civil cases. They are the continuation of an administrative proceeding, the files of which are confidential until the jurisdiction of the district court is invoked, by an individual to enforce his or her rights under a government program. Further, all Social Security disability claims, which are the majority of Social Security cases filed in district court, contain extremely detailed medical records and other personal information which an applicant must submit in an effort to establish disability. Such medical and personal information is critical to the court and is of little or no legitimate use to anyone not a party to the case. Thus, making such information available on the Internet would be of little public benefit and would present a substantial intrusion into the privacy of the claimant. Social Security files would still be available in their entirety at the courthouse.

#### **Criminal Case Files**

**Recommendation: That public remote electronic access to documents in criminal cases should not be available at this time, with the understanding that the policy will be reexamined within two years of adoption by the Judicial Conference.**

The Committee determined that any benefits of public remote electronic access to criminal files were outweighed by the safety and law enforcement risks such access would create. Routine public remote electronic access to documents in criminal case files would allow defendants and others easy access to information regarding the cooperation and other activities of defendants. Specifically, an individual could access documents filed in conjunction with a motion by the government for downward departure for substantial assistance and learn details of a defendant's involvement in the government's case. Such information could then be very easily used to intimidate, harass and possibly harm victims, defendants and their families.

Likewise, routine public remote electronic access to criminal files may inadvertently increase the risk of unauthorized public access to preindictment information, such as unexecuted arrest and search warrants. The public availability of this information could severely hamper and compromise investigative and law enforcement efforts and pose a significant safety risk to law enforcement officials engaged in their official duties. Sealing documents containing this and other types of sensitive information in criminal cases will not adequately address the problem, since the mere fact that a document is sealed signals probable defendant cooperation and covert law enforcement initiatives.

The benefit to the public of easier access to criminal case file information was not discounted by the Committee and, it should be noted that, opinions and orders, as determined by the court, and criminal docket sheets will still be available through court websites and PACER and PACERNet. However, in view of the concerns described above, the Committee concluded that individual safety and the risk to law enforcement personnel significantly outweigh the need for unfettered public remote access to the content of criminal case files. This recommendation should be reconsidered if it becomes evident that the benefits of public remote electronic access significantly outweigh the dangers to victims, defendants and their families, and law enforcement personnel.

#### **Bankruptcy Case Files**

**Recommendation: That documents in bankruptcy case files should be made generally available electronically to the same extent that they are available at the courthouse, with a similar policy change for personal identifiers as in civil cases; that § 107(b)(2) of the Bankruptcy Code should be amended to establish privacy and security concerns as a basis for the sealing of a document; and that the Bankruptcy Code and Rules should be amended as necessary to allow the court to collect a debtor's full Social Security number but display only the last four digits.**

The Committee recognized the unique nature of bankruptcy case files and the particularly sensitive nature of the information, largely financial, which is contained in these files; while this recommendation does provide open remote electronic access to this information, it also accommodates the privacy concerns of individuals. This recommendation contemplates that a debtor's personal, identifying information and financial account numbers will not be included in their complete forms on any document, whether electronic or hard copy (i.e., only the last four digits of Social Security and financial account numbers will be used). As the recommendation recognizes, there may be a need to amend the Bankruptcy Code to allow only the last four digits of an individual debtor's Social Security number to be used. The bankruptcy court will collect the full Social Security number of debtors for internal use, as this number appears to provide the best way to identify multiple bankruptcy filings. The recommendation proposes a minor amendment to § 107(a) to allow the court to collect the full number, but only display the last four digits. The names of minor children will not be included in electronic or hard copies of documents.

As with civil cases, the effectiveness of this recommendation relies upon motions to seal filed by litigants and other parties in interest. To accomplish this result, an amendment of 11 U.S.C. § 107(b), which now narrowly circumscribes the ability of the bankruptcy courts to seal documents, will be needed to establish privacy and security concerns as a basis for sealing a document. Once again, the experiences of the ECF prototype and imaging courts do not indicate that this reliance will cause a large influx of motions to seal. In addition, as with all remote electronic access, the information can only be reached through the log-in and password- controlled PACERNet system.

The Committee rejected the other alternatives suggested in the comment document for various reasons. Any attempt to create levels of access in bankruptcy cases would meet with the same problems discussed with respect to the use of levels of access for civil cases. Bankruptcy cases present even more issues with respect to levels of access because there are numerous interests which would have a legitimate need to access file information and specific access levels would need to be established for them. Further, many entities could qualify as a "party in interest" in a bankruptcy filing and would need access to case file information to determine if they in fact have an interest. It would be difficult to create an electronic access system which would allow sufficient access for that determination to be made without giving full access to that entity.

The idea of collecting less information or segregating certain information and restricting access to it was rejected because the Committee determined that there is a need for and a value in allowing the public access to this information. Further, creating two separate files, one totally open to the public and one with restricted access, would place a burden on clerks' offices by requiring the management of two sets of files in each case.

#### **Appellate Case Files**

**Recommendation: That appellate case files be treated at the appellate level the same way in which they are treated at the lower level.**

This recommendation acknowledges the varying treatment of the different case types at the lower level and carries that treatment through to the appellate level. For cases appealed to the district court or the court of appeals from administrative agencies, the documents in the appeal will be treated, for the purposes of remote electronic access, in the same manner in which they were treated by the agency. For cases appealed from the district court, the case file will be treated in the manner in which it was treated by the district court with respect to remote electronic access.

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### **Guidance for Implementation of the Judicial Conference Policy on Privacy and Public Access to Electronic Criminal Case Files**

In September 2001, the Judicial Conference of the United States adopted a policy on privacy and public access to electronic case files (JCUS-SEP/OCT 01, pp. 48-50). This policy addressed civil, criminal, bankruptcy and appellate case files separately. With regard to criminal case files, the policy prohibited remote public access to criminal case files at that time, with the explicit statement that the Conference would revisit this issue within two years. In March 2002, the Judicial Conference approved the establishment of a pilot project that would allow 11 courts, ten district courts and one court of appeals, to provide remote electronic public access to criminal case files (JCUS-MAR 02, p. 10). A study of these courts conducted by the Federal Judicial Center outlined the advantages and disadvantages of such access, to court employees, the bar, and the public. The study did not reveal any instances of harm due to remote access to criminal documents. The results of the study were reported to the Committees on Court Administration and Case Management and Criminal Law.

The Committee on Court Administration and Case Management reviewed and discussed the study in depth, ultimately concluding that the benefits of remote public electronic access to criminal case file documents outweighed the risks of harm such access potentially posed. This decision was based not only on the results of the FJC study, but also on the extensive information the Committee, through its Privacy Subcommittee, gathered and evaluated during the period of deliberation that led to the Judicial Conference's adoption of the initial privacy policy in September 2001. That process included the receipt of 242 comments from a wide variety of interested persons including private citizens, privacy advocacy groups, journalists, attorneys, government agencies, private investigators, data re-sellers and members of the financial services industry. It also included a public hearing at which 15 individuals representing a wide spectrum of public, private, and government interest made oral presentations and answered questions from Privacy Subcommittee members.

From the comments received and presentations made, it was clear that remote electronic access to public case file information provides numerous benefits. Specifically, several speakers noted that such access provides citizens the opportunity to see and understand the workings of the court system, thereby fostering greater confidence in government. The benefit that electronic access "levels the geographic playing field" by allowing individuals not located in proximity to the courthouse easy access to what is already public information was also frequently mentioned. Others noted that providing remote electronic access to this same public information available at the courthouse would discourage the creation of a "cottage industry" by individuals who could go to the courthouse, copy and scan information, download it to a private website and charge for access, thus profiting from the sale of public information and undermining restrictions intended to protect privacy.

After thoroughly analyzing and weighing all of the information before it, in June 2003, the Committee on Court Administration and Case Management recommended that the Judicial Conference amend its prohibition on remote public access to electronic criminal case files, the amendment to become effective only after specific guidance for the

courts was developed. The Committee on Criminal Law concurred in this recommendation.

At its September 2003 session, the Conference discussed the issue and adopted the recommendation, thereby amending its policy regarding remote public access to electronic criminal case file documents to permit such access to be the same as public access to criminal case file documents at the courthouse with the effective date of this new policy delayed until such time as the Conference approves specific guidance on the implementation and operation of the policy developed by the Committees on Court Administration and Case Management, Criminal Law and Defender Services (JCUS-SEP 03, pp. 15-16).

This guidance, which was prepared by a specially-created subcommittee consisting of members from the Committees on Court Administration and Case Management, Criminal Law and Defender Services and approved by the Judicial Conference, sets forth the implementation guidelines required by the Judicial Conference. This document has three parts. The first provides a short explanation of the policy on remote public access to electronic criminal case files and explains how it relates to similar policies for other case types. The second part provides information about the redaction requirements which are an integral part of the policy and require the court to educate the bar and other court users. The third part is a discussion of specific documents that courts are not to make available to the public.

**I. Explanation of the policy permitting remote public access to electronic criminal case file documents**

Not all documents associated with a criminal case are properly included in the criminal case file. The policy regarding remote public electronic access to criminal case file documents is intended to make all case file documents that are available to the public at the courthouse available to the public via remote, electronic access if a court is making documents remotely, electronically available through the Case Management/Electronic Case Files system or by the scanning of paper filings to create an electronic image. Simply stated, if a document can be accessed from a criminal case file by a member of the public at the courthouse, it should be available to that same member of the public through the court's electronic access system. This is true if the document was filed electronically or converted to electronic form.

This policy treats criminal case file documents in much the same way civil and bankruptcy case file documents are treated. Filers of documents have the obligation to partially redact specific personal identifying information from documents before they are filed. (See Section II, below for a discussion of redaction requirements.) However, because of the security and law enforcement issues unique to criminal case file information, some specific criminal case file documents will not be available to the public remotely or at the courthouse. (See Section III, below for a discussion of these documents.) It is not the intent of this policy to expand the documents that are to be included in the public criminal case file and, thereby, available both at the courthouse and electronically to those with PACER access.

It should also be noted that at its September 2003 session, the Judicial Conference adopted a policy that provides for the electronic availability of transcripts of court proceedings. The effective date of this policy is delayed pending a report of the Judicial

Resources Committee regarding the impact the policy may have on court reporter compensation. However, once that policy becomes effective, there are separately articulated requirements and procedures regarding redaction which will apply to transcripts in criminal cases.

## II. Redaction and Sealing Requirements

The policy adopted by the Conference in September 2003 states in part:

Upon the effective date of any change in policy regarding remote public access to electronic criminal case file documents, require that personal data identifiers be redacted by the filer of the document, whether the document is filed electronically or in paper, as follows:

1. Social Security numbers to the last four digits;
2. financial account numbers to the last four digits;
3. names of minor children to the initials;
4. dates of birth to the year; and
5. home addresses to city and state[.]

In order to inform all court users of these requirements, courts should post a Notice of Electronic Availability of Criminal Case File Documents on their websites and in their clerks' offices. An example of such a notice appears below. As part of the pilot project and study conducted by the Federal Judicial Center (FJC), participating courts were asked to implement similar redaction requirements and to inform all court users of these requirements. To assist in these requests, the participating courts were provided with a sample Notice of Electronic Availability of Criminal Case File Documents that was reviewed by a Subcommittee of the Committee on Court Administration and Case Management, with a representative from the Criminal Law Committee, that was working with the FJC on the study's design. It was suggested that the courts post this notice on their websites and in their clerks' offices in order to inform all filers and other court users that documents filed in criminal cases will be available to the general public on the Internet and that the filer has the obligation to redact the specified identifying information from the document prior to filing. A version of this notice, updated to reference the E-Government Act of 2002, is provided.

Please be informed that documents filed in criminal cases in this court are now available to the public electronically.

You shall not include sensitive information in any document filed with the court. You must remember that any personal information not otherwise protected will be made available over the Internet via WebPACER. The following personal data identifiers must be partially redacted from the document whether it is filed traditionally or electronically: Social Security numbers to the last four digits; financial account numbers to the last four digits; names of minor children to the initials; dates of birth to the year; and home addresses to the city and state.

In compliance with the E-Government Act of 2002, a party wishing to file a document containing the personal data identifiers specified above may file an

unredacted document under seal. This document shall be retained by the court as part of the record. The court may, however, also require the party to file a redacted copy for the public file.

Because filings will be remotely, electronically available and may contain information implicating not only privacy but also personal security concerns, exercise caution when filing a document that contains any of the following information and consider accompanying any such filing with a motion to seal. Until the court has ruled on any motion to seal, no document that is the subject of a motion to seal, nor the motion itself or any response thereto, will be available electronically or in paper form.

- 1) any personal identifying number, such as driver's license number;
- 2) medical records, treatment and diagnosis;
- 3) employment history;
- 4) individual financial information;
- 5) proprietary or trade secret information;
- 6) information regarding an individual's cooperation with the government;
- 7) information regarding the victim of any criminal activity;
- 8) national security information; and
- 9) sensitive security information as described in 49 U.S.C. § 114 (s).

Counsel is strongly urged to share this notice with all clients so that an informed decision about the inclusion of certain materials may be made. If a redacted document is filed, it is the sole responsibility of counsel and the parties to be sure that all documents and pleadings comply with the rules of this court requiring redaction of personal data identifiers. The clerk will not review filings for redaction.

The court should also be aware that it will need to partially redact the personal identifiers listed above from documents it prepares that routinely contain such information (e.g., order setting conditions of release).

### **III. Documents for which public access should not be provided**

The following documents shall not be included in the public case file and should not be made available to the public at the courthouse or via remote electronic access:

- unexecuted summonses or warrants of any kind (e.g., search warrants, arrest warrants);
- pretrial bail or presentence investigation reports;
- statements of reasons in the judgment of conviction;
- juvenile records;
- documents containing identifying information about jurors or potential jurors;
- financial affidavits filed in seeking representation pursuant to the Criminal Justice Act;
- ex parte requests for authorization of investigative, expert or other



- services pursuant to the Criminal Justice Act; and
- sealed documents (e.g., motions for downward departure for substantial assistance, plea agreements indicating cooperation)

Courts maintain the discretion to seal any document or case file sua sponte. If the court seals a document after it has already been included in the public file, the clerk shall remove the document from both the electronic and paper public files as soon as the order sealing the document is entered. Counsel and the courts should appreciate that the filing of an unsealed document in the criminal case file will make it available both at the courthouse and by remote electronic access. Courts should assess whether privacy or law enforcement concerns, or other good cause, justify filing the document under seal.

There are certain categories of criminal case documents that are available to the public in the clerk's office but will not be made available electronically because they are not to be included in the public case file for individual criminal cases. These include but are not limited to vouchers for claims for payment, including payment for transcripts, (absent attached or supporting documentation) submitted pursuant to the Criminal Justice Act. (For detailed guidance about the public availability of Criminal Justice Act information, please see paragraph 5.01 of Volume VII of *Guide to Judiciary Policies and Procedures*.)

#### **Model Local Rule Regarding Privacy and Public Access to Electronic Criminal Case Files**

In compliance with the policy of the Judicial Conference of the United States, and the E-Government Act of 2002, and in order to promote electronic access to documents in the criminal case files while also protecting personal privacy and other legitimate interests, parties shall refrain from including, or shall partially redact where inclusion is necessary, the following personal data identifiers from all documents filed with the court, including exhibits thereto, whether filed electronically or in paper, unless otherwise ordered by the court.

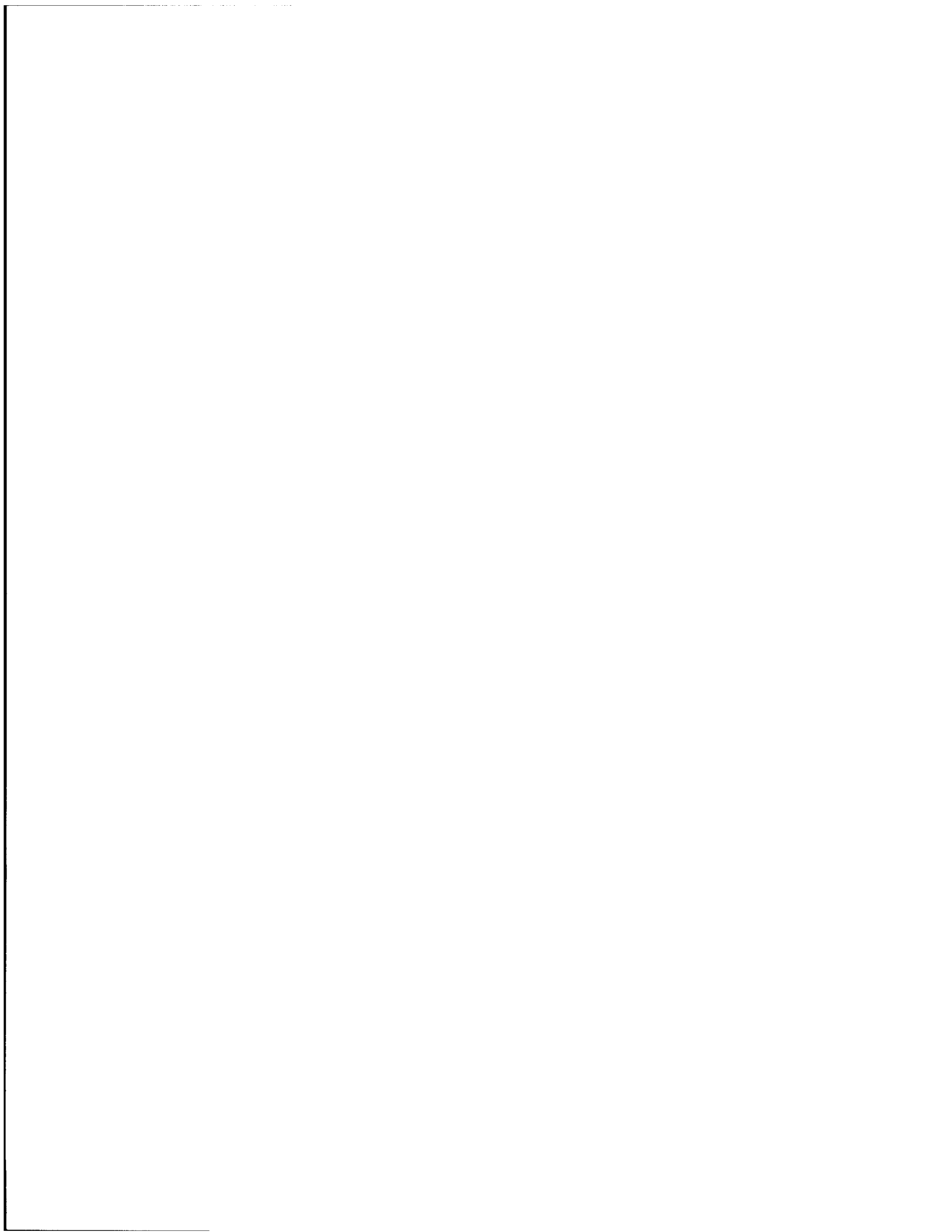
- a. **Social Security numbers.** If an individual's Social Security number must be included, only the last four digits of that number should be used.
- b. **Names of minor children.** If the involvement of a minor child must be mentioned, only the initials of the child should be used.
- c. **Dates of birth.** If an individual's date of birth must be included, only the year should be used.
- d. **Financial account numbers.** If financial account numbers are relevant, only the last four digits of the number should be used.
- e. **Home addresses.** If a home address must be included, only the city and state should be listed.

In compliance with the E-Government Act of 2002, a party wishing to file a document containing the personal data identifiers listed above may file an unredacted document under seal. This document shall be retained by the court as part of the record. The court, may, however, still require the party to file a redacted copy for the public file.

The responsibility for redacting these personal identifiers rests solely with counsel and the parties. The clerk will not review filings for compliance with this rule.

#### **COMMENTARY**

Parties should consult the "Guidance for Implementation of the Judicial Conference Policy on Privacy and Public Access to Electronic Criminal Case Files." This Guidance explains the policy permitting remote public access to electronic criminal case file documents and sets forth redaction and sealing requirements for documents that are filed. The Guidance also lists documents for which public access should not be provided. A copy of the Guidance is available at the court's website.



NATIONAL BANKRUPTCY CONFERENCE  
A Voluntary Organization Composed of Persons Interested in the  
Improvement of the Bankruptcy Code and Its Administration

05-BK-007

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February 15, 2006

**By Electronic Transmission**

Peter G. McCabe, Secretary  
Committee on Rules of Practice and Procedure  
Judicial Conference of the United States  
Washington, D.C. 20544

Re: Proposed Amendments to Bankruptcy Rules

Dear Mr. McCabe:

The National Bankruptcy Conference<sup>1</sup> has studied the proposed amendments to the Federal Rules of Bankruptcy Procedure, which were published for comment on August 15, 2005. Although the Conference believes that on the whole, the amendments will provide needed improvements to practice and procedure in the bankruptcy court, the Conference submits these comments in the hopes of drawing the Committee's attention to areas of potential problems and further improvements in the proposed amendments.

**Rules 3001(c) and (d)**

The proposed amendments would modify Rule 3001(c) to require that where a claim is based upon a writing and the writing exceeds 25 pages, instead of filing the writing, the claimant must file a copy of relevant excerpts from the writing and a summary of the writing, which together "shall not exceed the total of 25 pages." Similarly, subsection (d) provides that if evidence of perfection is contained in a writing that exceeds five pages, the claimant must file a copy of any relevant excerpts and a written summary, which together "shall not exceed five pages." We understand that these proposed amendments derive from concerns expressed by the clerks' offices that lengthy writings submitted in electronic form create technical difficulties. The Conference is concerned that in a chapter 11 case, it may not be possible to comply with these page limitations, as some of the underlying writings are voluminous and cannot be adequately summarized within the page limitations. Further, while the information required to complete a proof of claim form is straightforward and easy to prepare, it will be costly and time consuming to have counsel draft these summaries. As a result, the Conference strongly recommends that Rule 3001(c) and (d) not be changed.

**CONFEREES**

PAUL H. ANDRESKY  
DOUGLAS G. BAIRD  
R. NEAL BAISON  
H. BRUCE BERNSTEIN  
RICHARD F. BRODIE  
L. B. M. CLARK  
MICHAEL J. CRAMER  
DAVID G. EPSTEIN  
CHAIM J. FORTIGANG  
S. ELIZABETH GIBSON  
DANIEL M. GROSSMAN  
MARIA L. GOLDSTEIN  
ROBERT A. GRUNBERG  
NITEL HENNESSY  
BARBARA J. HOSNER  
CARI M. JENKS  
KINNEITH KILL  
DAVID A. LANDER  
JONATHAN M. LANDER  
JOE LIU  
F. BRUCE LINDARD  
KITTI LUNDIN  
RAIPHEE MAHLY  
MORRIS W. MACY  
BRUCE A. MARKILL  
RICHARD D. MARLIN  
HARVEY R. MILLER  
HERBERT P. MINKEL, JR.  
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GERALD F. MUNITZ  
PATRICK A. MURPHY  
SALLY SEHOLLZNIELY  
HAROLD S. NOVIKOFF  
ISAAC M. PACHULSKI  
RANDAL C. PECKER  
ALAN N. RESNICK  
LEONARD M. ROSEN  
MARY DAVIES SCOTT  
RAYMOND L. SHAPIRO  
MYRON M. SHIFFERD  
EDWIN E. SMITH  
GEOFFREY K. SMITH  
HENRY J. SOMMER  
RICHARD S. TOLER  
GEORGE M. TRISLER  
J. RONALD TRUST  
ELIZABETH WARREN  
EUGENE R. WIDOFF  
JAY L. WESTBROOK  
ROBERT J. WHITE  
BRADY C. WILKINSON

**EMERITUS**

HERBERT H. ANDERSON  
JOHN A. BARRILL  
GEORGE BRODY  
STEPHEN H. CASH  
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RONALD DEKOVIN  
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ADMINISTRATIVE OFFICE  
SUZANNE ARMSTRONG BINGHAM  
ARMSTRONG & ASSOCIATES  
INTERNATIONAL, INC.

<sup>1</sup> See the attached for a description of the National Bankruptcy Conference.

Mr. Peter McCabe  
February 15, 2006  
Page 2

However, if the Rules Committee decides that the rule must be modified to meet the needs of the clerks' offices, then the Conference recommends that the rule be modified so that in a chapter 11 case, a court can enter an order directing that voluminous documents (as defined by the court) need not be filed and specifying how parties in interest can get copies. Should the Committee decide an amendment is needed, our proposed revisions are attached.

### **Rule 4001**

Changes Applicable to Subsections (b), (c) and (d). The proposed amendments would require that any motion for use of cash collateral, to obtain credit and relating to relief from the automatic stay include an introductory statement, not to exceed three pages, that summarizes all material provisions of the motion, including certain specified information. For the reasons discussed in greater detail below, the Conference does not believe that three pages is a realistic or achievable limit. While use of cash collateral may be less complicated to describe than relief under subsections (c) and (d), the Conference urges the Committee to modify its proposed amendment and provide that each motion contain a brief introductory summary or table that summarizes all material provisions of the motions. We have proposed specific language in the attached draft amendment.

The Conference also suggests that the "service" provision of each subsection be modified to provide service on those parties who have requested special notice in writing from the trustee.

Motion for Use of Cash Collateral (Rule 4001(b)). In addition to the foregoing modifications, the Conference proposes a technical modification to subsection (b). We believe the word "material" should be inserted before the word "term" in subsection (b)(1)(B)(3). Again, the proposed change is in the attached draft.

Obtaining Credit (Rule 4001(c)). These amendments are similar to the proposed amendments to subsection (b); however, the list of provisions that must be described in the motion itself is somewhat longer and the amendments add a new provision, (1)(C), which authorizes the court to grant relief under Rule 9024 "if it determines that the introductory statement did not adequately disclose a material element of the agreement." In addition to some minor technical changes that are identified in the attached draft amendments, the Conference strongly urges the Committee to delete the reference to Bankruptcy Rule 9024, both here and in subsection (d), for several reasons.

First, relief under Rule 9024 is available if a party can make the requisite showing under the Rule. The reference to Rule 9024 in Rule 4001 probably adds nothing; a party must still meet the requirements of the Rule in order to get relief. However, the reference might unintentionally suggest an alternative, perhaps lower standard for relief based on the specific provisions of Rule 4001. Second, including a reference to Rule 9024 in Rule 4001 suggests that relief under Rule 9024 may not be available for orders entered under other Bankruptcy Rules because they do not specifically reference it. Third, materiality is in the eyes of the beholder, and an after-the-fact decision that a material term was omitted (particularly if

done unintentionally) should not warrant action under Rule 9024. Fourth, it is unclear what relief can be obtained under Rule 9024. The Rule provides that "the court may relieve a party or a party's legal representative from an . . . order" for various reasons, including "misrepresentation." For example, one can imagine a situation where a specific event of default was not disclosed in the summary. Later, a creditor files a motion under Rule 9024 seeking to set aside the provision. Can the moving party obtain an order relieving another party, namely the debtor-in-possession or trustee, from application of the provisions, and can it do so for a period of up to one year from the date the order was entered? Can it get broader relief and overturn the order in its entirety? Additionally, while the Conference has some sympathy for actions taken by the court at the initial hearing, when there is little time to review the entire motion and accompanying agreement, it has less sympathy when the court enters an order after a final hearing because the parties and the court will have had sufficient time to review the motion in its entirety and the pertinent terms of the attached agreement before the final hearing, which must be at least 15 days later. Clearly, the failure to include a term in the summary should not form the basis for relief under Rule 9024 if the borrowing order is entered after the final hearing. Finally, how would relief under 9024 reconcile with mootness on appeal under section 364(e) of the Bankruptcy Code? On balance, the Conference questions the soundness of including a special provision that purports to apply Rule 9024.

The Conference also suggests several modifications to subsection (c)(1)(B) in the attached draft amendments. One clarifies that the required disclosures specified in (1)(B) apply to both the provisions included in the summary and the new provisions specified in the proposed amendment. We also suggest that the moving party not have to disclose the reasons for each provision, but that the moving party must disclose the extent to which any provision may affect the estate if interim relief is granted, but a final order is never entered. These provisions may be the most important to consider before entering interim relief. The Conference also suggests inclusion of another provision in the list under subsection (c)(1)(B) and another addition to (c)(1)(B)(3). These are all set out in the attachment.

Agreement Relating to Relief From the Automatic Stay, etc. (Rule 4001(d)). The Conference proposes parallel modifications to subsection (d). They are contained in the attached draft amendments.

### **Rule 6003**

The proposed amendments to Rule 6003 would prohibit a court from granting certain specified relief within 20 days after the date of the filing of the petition. No orders could be entered within the 20-day period on an application under Rule 2014, a motion to use, sell, lease or otherwise incur an obligation regarding property of the estate, including a motion to pay all or a portion of a fee petition claim (but not a motion under Rule 4001), or a motion to assume, assign or reject an executory contract or unexpired lease under section 365. The Conference proposes a modification to subsection (c) to permit a court to authorize rejection of an executory contract or unexpired lease during the 20-day period because it could save the estate substantial costs. Again, we refer you to the attached drafts.

Mr. Peter McCabe  
February 15, 2006  
Page 4

**Rule 6006**

The proposed amendments to Rule 6006 would preclude the trustee from seeking authority to assume or assign multiple executory contracts or unexpired leases in one motion, except under limited circumstances. The Conference believes that the proposed amendments should be modified to permit the trustee to file an omnibus motion to assume multiple leases with different parties because the showing of adequate assurances will be common to all parties to the leases.

Please feel free to contact me at (212) 735-2800, the Conference Chair Donald S. Bernstein at (212) 450-4092, or Robert White, Esq., the Chair of the Chapter 11 Committee of the Conference at (310) 246-8485, should you have any additional questions regarding this matter.

Very truly yours,

*/s/ Richard Levin*

Richard Levin  
Vice-Chair

Attachment

cc: Prof. Jeffrey Morris

**PROPOSED AMENDMENTS TO THE  
FEDERAL RULES OF BANKRUPTCY PROCEDURE**

**Rule 3001. Proof of Claim**

\* \* \* \* \*

(c) CLAIM BASED ON A WRITING. When a claim, or an interest in property of the debtor securing the claim, is based on a writing, a copy of the writing shall be filed with the proof of claim; provided however, that in a case under chapter 11 of this title, and for good cause shown, the court may enter an order directing that voluminous writings not be filed with the proof of claim and requiring that, on the request of a party in interest, the claimant shall promptly serve on that party a copy of the writing. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the proof of claim. If the writing exceeds 25 pages, the claimant shall instead file a copy of relevant excerpts of the writing and a summary of the writing which together shall not exceed a total of 25 pages. If the claimant has not filed a copy of the complete writing, on request of a party in interest, the claimant shall promptly serve on that party a copy of the complete writing.

(d) EVIDENCE OF PERFECTION OF SECURITY INTEREST. If a security interest in property of the debtor is claimed, the proof of claim shall be accompanied by evidence that the security interest has been perfected. If the evidence of perfection is a writing, the claimant shall file a copy of the writing with the proof of claim; provided however, that in a case under chapter 11 of this title, and for good cause shown, the court may enter an order directing that voluminous writings not be filed with the proof of claim and requiring that, on the request of a party in interest, the claimant shall promptly serve on that party a copy of the writing. If the writing exceeds five pages, the claimant shall instead file a copy of relevant excerpts of the writing and a summary of the evidence of perfection, which together shall not exceed a total of five pages. If the claimant has not filed a copy of the complete writing, on request of a party in interest, the claimant shall promptly serve on that party a copy of the complete writing.

\* \* \* \* \*



\* \* \* \* \*

**Rule 4001. Relief from Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Use of Cash Collateral; Obtaining Credit; Agreements**

\* \* \* \* \*

(b) USE OF CASH COLLATERAL.

(1) *Motion; Service.*

(A) Motion. A motion for authority to use cash collateral shall be made in accordance with Rule 9014 and shall be accompanied by a proposed form of order.

(B) Contents. The motion shall include ~~an~~ a brief introductory statement, ~~not to exceed three pages, summarizing or table that lists or summarizes~~ all material provisions of the motion, including:

(1) the name of each entity with an interest in the cash collateral;

(2) the purposes for the use of the cash collateral;

(3) the material terms, including duration, of the use of the cash collateral; and

(4) any liens, cash payments, or other adequate protection that will be provided to each entity with an interest in the cash collateral or, if no additional adequate protection is proposed, an explanation of why each entity's interest is adequately protected.

(C) Service. The motion shall be served on any entity with an interest in the cash collateral, any party that has requested in writing to the trustee or debtor in possession notice of pleadings filed in the case, any committee elected under § 705 or appointed under § 1102 of the Code or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under § 1102, the creditors included on the list filed under Rule 1007(d), and any other entity that the court may direct.

\* \* \* \* \*

(c) OBTAINING CREDIT.

(1) *Motion; Service.*

(A) Motion. A motion for authority to obtain credit shall be made in accordance with Rule 9014 and shall be accompanied by a copy of the credit agreement and a proposed form of order.

(B) Contents. The motion shall include ~~an~~ a brief introductory statement, ~~not to exceed three pages, summarizing or table that lists or summarizes~~ all material provisions of the proposed credit agreement, including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions. If the proposed credit agreement or proposed order includes any of the following provisions, the introductory statement or table also shall briefly list or summarize each provision, and the body of the motion shall describe the nature and extent of each such provision, ~~and~~ identify the specific location of the provision in each of the proposed form of order, agreement, or other document, and disclose the extent to which such provision may affect the estate if interim approval is granted, but final relief is denied, as provided under Rule 4001(c)(2):

(1) the granting of priority or a lien on property of the estate under § 364(c) or (d);

(2) the providing of adequate protection or priority with respect to a claim that arose before the commencement of the case, including the granting of a lien on property of the estate to secure the claim, or the use of property of the estate or credit obtained under § 364 to make cash payments on account of the claim;

(3) a determination with respect to the validity, enforceability, avoidability, priority, or amount of a claim that arose before the commencement of the case, or of any lien securing the claim;

(4) a waiver or modification of the provisions of the Code or applicable rules relating to the automatic stay;

(5) a waiver or modification of any entity's ~~authority~~right to file a plan, to seek an extension of time in which the debtor has the exclusive right to file a plan, ~~or the right to request the use of cash collateral under § 363(c), or to request authority to obtain credit under § 364;~~

(6) the establishment of deadlines for filing a plan of reorganization, for obtaining approval of a disclosure statement, for setting a hearing on confirmation, or for obtaining entry of a confirmation order;

(7) ~~\_\_\_\_\_~~ a waiver or modification of the applicability of nonbankruptcy law relating to the perfection of a lien on property of the estate, or on the foreclosure or other enforcement of the lien;

(78) a release, waiver, or limitation on any claim or other cause of action belonging to the estate or the trustee, including any modification of the statute of limitations or other deadline to commence an action;

(89) indemnification of any entity;

(910) a release, waiver, or limitation of any right under § 506(c); or

(101) the writing of a lien on any claim or cause of action arising under § 544, 545, 547, 548, 549, 553(b), 723(a), or 724(a).

(C) ~~Application of Rule 9024. The court may grant appropriate relief under Rule 9024 if it determines that the introductory statement did not adequately disclose a material element of the agreement.~~(D) ~~Service.~~ The motion shall be served on any party that has requested in writing to the trustee or debtor in possession notice of pleadings filed in the case, any committee elected under § 705 or appointed under § 1102 of the Code or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under § 1102, on the creditors included on the list filed under Rule 1007(d), and on such other entities as the court may direct.

\* \* \* \* \*

(d) AGREEMENT RELATING TO RELIEF FROM THE AUTOMATIC STAY, PROHIBITING OR CONDITIONING THE USE, SALE, OR LEASE OF PROPERTY, PROVIDING ADEQUATE PROTECTION, USE OF CASH COLLATERAL, AND OBTAINING CREDIT.

(1) *Motion; Service.*

(A) Motion. A motion for approval of an agreement (1) to provide adequate protection, (2) to prohibit or condition the use, sale, or lease of property, (3) to modify or terminate the stay provided for in § 362, (4) to use cash collateral, or (5) between the debtor and an entity that has a lien or interest in property of the estate pursuant to which the entity consents to the creation of a lien senior or equal to the entity's lien or interest in such property shall be accompanied by a copy of the agreement and a proposed form of order.

(B) Contents. The motion shall include ~~and a brief~~ introductory statement; ~~not to exceed three pages, summarizing or table that lists or summarizes~~ all material provisions of the agreement. ~~The introductory statement or table also shall briefly list or summarize each provision~~ motion also shall state whether the relief requested includes any of the provisions of the type listed in subdivision (c)(1)(B), and the body of the motion and, if so, shall describe the nature and extent of each provision, explain the reasons for each provision, and identify the specific location of the provision in each of the proposed form of order, agreement, or other document.

(C) Application of Rule 9024. ~~The court may grant appropriate relief under Rule 9024 if it determines that the introductory statement did not adequately disclose a material element of the agreement.~~ (D) Service. The motion shall be served on any party that has requested in writing to the trustee or debtor in possession notice of pleadings filed in the case, any committee elected under § 705 or appointed under § 1102 of the Code or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under § 1102, on the creditors included on the list filed under Rule 1007(4), and on such other entities as the court may direct.

\* \* \* \* \*

**PROPOSED AMENDMENTS TO THE  
FEDERAL RULES OF BANKRUPTCY PROCEDURE**

**Rule 6003. Interim and Final Relief Immediately Following the Commencement of the Case-Applications for Employment, Motions for Use, Sale, or Lease of Property, and Motions for Assumptions, Assignments, and Rejections of Executory Contracts**

Except to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 20 days after the filing of the petition, grant relief regarding the following:

- (a) an application under Rule 2014;
- (b) a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition, but not a motion under Rule 4001, and
- (c) a motion to assume, or assign, ~~or reject~~ an executory contract or unexpired lease in accordance with § 365.

**Rule 6006. Assumption, Rejection or Assignment of an Executory Contract or Unexpired Lease**

\* \* \* \* \*

(e) LIMITATIONS. The trustee shall not seek authority to assume or assign multiple executory contracts or unexpired leases in one motion unless (1) all executory contracts or unexpired leases to be assumed or assigned are between the same parties or are to be assigned to the same assignee or, (2) the trustee seeks to assume, but not assign, unexpired leases of real property with different parties, or (3) the court otherwise authorizes the motion to be filed. Subject to subdivision (f), the trustee may join requests for authority to reject multiple executory contracts or unexpired leases in one motion.

(f) OMNIBUS MOTIONS. A motion to reject or, if permitted under subdivision (e), a motion to assume or assign multiple executory contracts or unexpired leases that are not between the same parties shall:

- (1) state in a conspicuous place that parties receiving the omnibus motion should locate their names and their contracts or leases listed in the motion;
- (2) list parties alphabetically and identify the corresponding contract or lease;

(3) specify the terms, including the curing of defaults, for each requested assumption or assignment;

(4) specify the terms, including, the identity of each assignee and the adequate assurance of future performance by each assignee, for each requested assignment;

(5) be numbered consecutively with other omnibus motions to assume, assign, or reject executory contracts or unexpired leases; and

(6) be limited to no more than 100 executory contracts or unexpired leases.

(g) FINALITY OF DETERMINATION. The finality of any order respecting an executory contract or unexpired lease included in an omnibus motion shall be determined as though such contract or lease had been the subject of a separate motion.

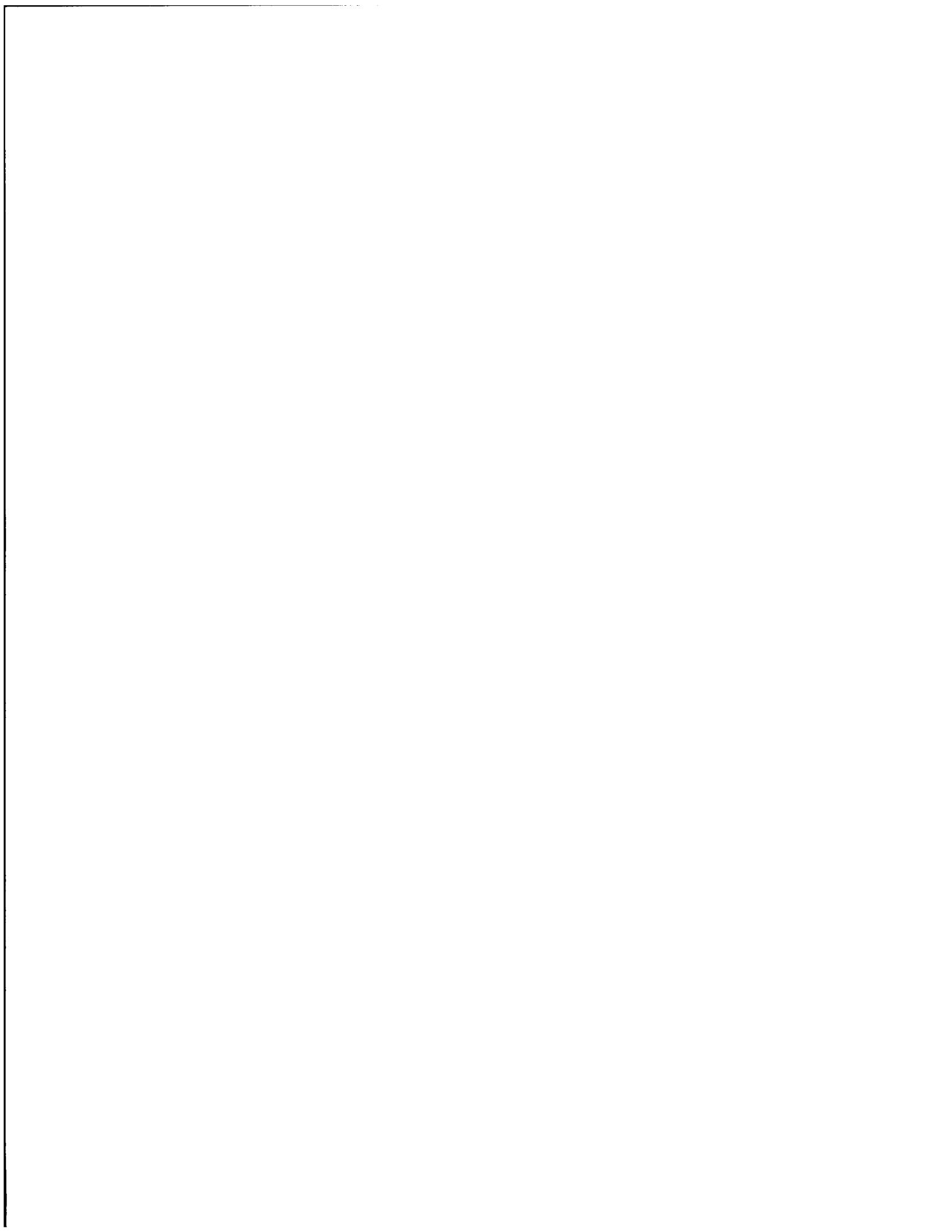
## **National Bankruptcy Conference**

*A non-profit, non-partisan, self-supporting organization of approximately sixty lawyers, law professors and bankruptcy judges who are leading scholars and practitioners in the field of bankruptcy law. Its primary purpose is to advise Congress on the operation of bankruptcy and related laws and any proposed changes to those laws.*

**History.** The National Bankruptcy Conference (NBC) was formalized in the 1940s, at the request of Congress, from a nucleus of the nation's leading bankruptcy scholars, who gathered informally in the 1930s to assist Congress in the drafting of the Chandler Act of 1938, the first comprehensive revision of U.S. bankruptcy law since the Bankruptcy Act of 1898. Members of the NBC formed the core of the Commission on the Bankruptcy Laws of the United States, which in 1973 proposed the overhaul of our bankruptcy laws that led to enactment in 1978 of the Bankruptcy Code, and were heavily involved in the work of the National Bankruptcy Review Commission (NBRC) whose 1997 report led to the legislation that overhauled our bankruptcy laws in 2005. The NBC has been active as a resource to Congress on every major piece of bankruptcy legislation since 1978.

**Current Members.** Membership in the NBC is by invitation only. Among the NBC's 55 active members are leading bankruptcy scholars from major law schools, current and former judges from nine different judicial districts, and practitioners from leading law firms throughout the country who have been involved in most of the major corporate reorganization cases of the last three decades. The NBC also includes leading consumer bankruptcy experts and experts on commercial, employment, pension, mass tort and tax related bankruptcy issues. It also includes former members of the congressional staff who participated in drafting the Bankruptcy Code as originally passed in 1978 and former members and staff of the NBRC.

**Policy Positions.** The Conference regularly takes substantive positions on issues implicating bankruptcy law and policy. It does not, however, take positions on behalf of any organization or interest group. Instead, the NBC seeks to reach a consensus of its members—who represent a broad spectrum of political and economic perspectives—based on their knowledge and experience as practitioners, judges and scholars. The Conference's positions are considered in light of the stated goals of our bankruptcy system: debtor rehabilitation, equal treatment of similarly situated creditors, preservation of jobs, prevention of fraud and abuse, and economical insolvency administration. Conferees are always mindful of their mutual pledge to "leave their clients at the door" when they participate in the Conference's deliberations. The Conference also provides advisory services to policy makers on technical matters relating to bankruptcy law and practice.





700 Stewart Street, Suite 5220  
Seattle, WA 98101  
(206) 553-4985  
Fax: (206) 553-4073

Peter G. McCabe  
Secretary, Committee on Rules of  
Practice and Procedure  
Administrative Office of the U.S. Courts  
1 Columbus Circle, N.E.  
Suite 4170  
Washington, D.C. 20544

05-AP- 003

05-BK- 008

05-CV- 027

Re: Proposed Rule 5.2 – FED.R.CIV.P.  
Proposed Rule 49.1 – FED.R.CRIM.P.  
Proposed Rule 25(a)(5) – FED.R.APP.P.  
Proposed Rule 9037 – FED.R.BANKR.P.

05-CR- 014

Dear Mr. McCabe:

I am submitting these comments with respect to the proposed federal rules of practice and procedure referenced above, relating to the protection of privacy of court records in civil cases, criminal cases, bankruptcy cases and appellate cases. I am an Assistant U.S. Attorney, but also serve as an adjunct professor at the University of Washington School of Law where I teach Privacy Law. I have written and spoken frequently on the problem of balancing public access and privacy in the context of a system of electronic court records.<sup>1</sup> In preparing these comments, I have received helpful suggestions from Justice John Dooley, Judge Ronald Hedges, Robert Deyling, Professor Peter Swire, as well as many other people who have been active in the Sedona Conference and in the Courtroom 21 Project at William and Mary Law School. The views I express, however, are my own.

As set forth below, I believe that the proposed rules successfully balance the right of public access to court records against the need to protect from misuse the sensitive personal and commercial information that may be contained in them. I also believe that, consistent with current funding limitations, the proposed rules implement the Congressional directive in the E-Government Act of 2002 to make court records available on-line, while still protecting the privacy and security of sensitive information in court records, and that they do so in a manner that is consistent with the Constitutional right of access to court records. Finally, at the end of my comments, I suggest a minor change in the proposed rules which could take advantage of the

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<sup>1</sup> See, e.g., Peter A. Winn, *Online Court Records: Balancing Judicial Accountability and Privacy in an Age of Electronic Information*, 79 Wash. L. Rev. 307 (2004).

existing PACER technology to facilitate greater public access to court records, while, at the same time, enhancing the ability of litigants to protect sensitive information in court filings.

Any system of court records in a free society must be open to the watchful gaze of the public. The openness of judicial proceedings and records serves to check against the misuse of judicial power, and increases public respect and involvement by citizens in the legal system.<sup>2</sup> For this reason, every federal circuit protects the right of public access to judicial proceedings and court records—either under the First Amendment or as a matter of common law. At the same time, unfair publicity can be used by parties as an instrument of oppression—for instance, when parties attempt to use the public nature of judicial proceedings to generate unfair publicity and achieve an unfair advantage in the underlying litigation. Thus, there are times when the disclosure of sensitive personal or business information can create unacceptable risks of a miscarriage of justice, and cause unnecessary harm to parties and non-parties alike. As Justice Powell wisely noted:

[T]he right to inspect and copy judicial records is not absolute. Every court has supervisory power over its own records and files, and access has been denied where court files might have become a vehicle for improper purposes.<sup>3</sup>

Courts have long been aware of the need to balance the public's general right of access to judicial records against the need, on occasion, to protect information in judicial proceedings and court records from improper disclosure. Balancing the competing claims of transparency and privacy has never been a simple task. Both sets of interests—those in favor of the disclosure of information, and those in favor of protecting it—can be supported by forceful and cogent arguments. Over the years, however, in case after case, as courts have carefully weighed and decided between these competing interests, general common law principles have arisen which establish the proper balance between transparency and privacy.

Our society is now engaged in an electronic revolution. Information is processed faster and more cheaply than ever before in the past, and used in ways that were never before

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<sup>2</sup> See Blackstone, Commentaries on the Laws of England, III, Ch. 23, p. 377 (1768) (“[T]he only effectual and legal verdict is the public verdict.”), see also Vol. IV, Ch. 3 “On Courts in General”, p. 24 (“A court of record is that where the acts and judicial proceedings are enrolled in parchment for a perpetual memorial and testimony.”) Blackstone, of course, was greatly influenced by the Italian legal scholar, Cesare Beccaria, who argued strongly for the need for transparency in judicial proceedings. See Beccaria, On Crimes and Punishments, Ch. 14, p. 36 (1764) (“All trials should be public, that opinion, which is the best, or perhaps the only cement of society, may curb the authority of the powerful, and the passions of the judge, and that the people may say, ‘We are protected by the laws; we are not slaves.’”).

<sup>3</sup> *Nixon v. Warner Communications, Inc.* 435 U.S. 589, 598 (1978).

imaginable. Courts, as quintessential information processing systems, are not immune from the effects of these technological changes. The adoption of electronic filing systems by state and federal courts has allowed the legal system to realize substantial operational benefits, and has permitted the public to more easily access and understand the federal judicial process. At the same time, the electrification of judicial records has created new threats to the integrity of the judicial process and the administration of justice which did not exist in the past.

In the days of a paper based system of court records, much of the sensitive information contained in court files was protected merely by the cost of retrieving the records. Only those with a relatively strong and individualized interest in the information would take time out of their day to travel to the clerk's office, wait in line, fill out the necessary forms to request the retrieval of the records, wait for the clerk to find the files, read through them to find the relevant records, copy them, and then pay the necessary copy charges. As a result, while records in a paper based system were technically "public" in the sense that any member of the public had the ability to access almost any court record, the vast bulk of the sensitive information in judicial records was protected by a the sheer difficulty of accessing the particular record in question. This fact greatly reduced the dangers of the misuse of sensitive information—something which was recognized by the Supreme Court when it recognized and granted legal protection to the "practical obscurity" of court records.<sup>4</sup>

The practical obscurity of paper records allowed our legal system to treat court records as public, although we still could enjoy substantial practical protections for any sensitive personal information in those records. Now that judicial records are fully electronic, however, computers can search, compile, aggregate and combine vast quantities of information in court records in a matter of minutes, and at minimal cost. Technological change brings its rewards and its punishments indifferently. As we enjoy the great convenience of a system of on-line electronic court records, we also must mourn the death of practical obscurity. As our new technology renders all court records fully transparent, the risk of misuse of sensitive personal information in court files dramatically expands. Thus, the death of practical obscurity has not eliminated the need for the courts to continue to engage in the careful process of balancing transparency and privacy—it has merely made this balancing process infinitely more difficult.

Whether one views these changes as a blessing or a curse, there is no turning back. The inevitability of the technological revolution in court records was acknowledged by Congress in section 205 of the E-Government Act of 2002 (the "E-Government Act" or the "Act").<sup>5</sup> In the Act, Congress directed the federal courts to provide for electronic public access to court records. With its usual desire to eat its public cake and have its privacy too, Congress also directed that the federal courts establish rules governing such electronic access which would protect the

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<sup>4</sup> *United States Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749, 764 (1989).

<sup>5</sup> Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913-2915.

privacy and security of personal information. For this Herculean task, Congress saw fit to provide no additional funding to the courts. Congress did provide the courts with the following suggestion--that the rules adopted by the courts to address privacy and security concerns take into account the "best practices of federal and state courts." Unfortunately, since federal and state courts have only recently implemented their systems of electronic access, there is relatively little experience measuring the costs and benefits of different competing systems of electronic access.

The subject itself is relatively obscure. There is only a small number of people at the state and federal levels who are even interested in the problem--consisting mostly of certain federal and state judges, staff attorneys at the Administrative Office of U.S. Courts, attorneys like myself at the Department of Justice, as well as information brokers, the media, privacy advocates, and law professors. There has been an excellent dialogue among this group, and the process does not appear to have been politicized. However, the various technologies are changing too quickly for there to be any clear consensus about "best practices." We are all scrambling, and we will be lucky if we can just muddle through. One thing is clear with respect to the federal process. With no new funds, the federal courts have only the computer systems that were in place before the passage of the E-Government Act. For better or for worse, for the foreseeable future, the PACER system will be the technological backbone of the federal courts.

The federal PACER system uses a system of computer privileges to manage remote access to court records. There are roughly *three* different levels of privileges.

1) The first level of privileges allows court records to be filed "under seal." Access to this information is not permitted to members of the general public.

2) The second level of privileges allows on-line access to court records on an individualized basis--to specially named persons only. While this level of privileges is usually used when a record is filed under seal, the technology actually permits any other specifically designed person to have on-line access on an individualized basis.

3) The third level of privileges--the default--allows access to the general public--or more accurately, to any person who possesses a userid and a password, and pays a small fee to download the pleading.

In addition to the system of remote electronic access, it is still possible to file paper records with the clerk's office. Such paper based filings are still permitted for the bulky records on review from federal administrative proceedings, social security cases, immigration cases or on collateral attack from other state and federal tribunals in *habeas corpus* litigation. In these cases, the pleadings themselves are filed electronically, but the administrative records are allowed to remain in paper form. At some point, it may be assumed that this system will change when the records of the various tribunals themselves become electronic.

It is important to note that given the PACER's system's computer architecture, there is no option to make all judicial records available to any person at no cost on the Internet. Userids and passwords are necessary to insure the financial integrity of a self-financing system in the absence of a specific Congressional appropriation to pay for a new one. Interestingly, this aspect of the PACER technology indirectly, and probably unintentionally, allows greater protection for the privacy and security of sensitive information in court records. When all users are required to maintain a minimum level of financial accountability to obtain their userids and passwords, the courts are in a better position to police what users do with the information. Users who engage in systematic misuse of personal information in judicial records are at risk of losing their privileges. While hardly a perfect system, PACER does provide some protection against the most obvious potential harms which would take place if all information in court records were freely and anonymously searchable through powerful Internet search engines like Google. However, there are also aspects of PACER's technology which are probably best described as a technological purgatory. The PACER system's technology was not designed with the competing goals of facilitating access and protecting privacy in mind. As a result it contains very few privacy enhancing technologies--e.g., software programs which can automatically identify and flag sensitive information such as social security numbers, or programs which permit the easy and effective redaction of sensitive information in pleadings. Thus, in fashioning the proposed rules, the Judicial Conference is necessarily constrained by the limits of the PACER technology.

To make up for the lack of privacy enhancing technologies, the proposed rules make attorneys the front line in the protection of sensitive information in judicial filings. The rules provide that if sensitive information is in a document that needs to be protected, the decision to do so must be made before it is filed, not afterwards. And the rules also caution attorneys to file sensitive personal information under seal or in a redacted form, after obtaining permission from the court. Unfortunately, while attorneys may be in a good position to decide what information of their clients is in need of protection, they may not be quite as attuned to the need to protect the sensitive personal information of others--the opposing party, witnesses to the case, jurors, and the many other voluntary and involuntary participants in the judicial system. This is an obvious weakness in the rules, but, given the PACER technology, there appears to be little choice in the matter. The courts have done the best they can with the technological cards they have been dealt by Congress, and attorneys will have to bear that burden until Congress steps in with financial assistance.

In an attempt to lessen the burden on attorneys, the proposed rules create a presumption that certain identifiers not be placed in the court record, and they permit the redaction without court approval of certain sensitive information--social security and tax identification numbers, names of minor children, birth dates, and financial account numbers. As the comment makes clear, similar forms of information would also probably qualify--such as driver's license and alien registration numbers. One could add to this list individual health identification numbers and physician identification numbers, as well as other similar types of numerical identification systems.

The presumption in the proposed rules that certain types of personal identifiers be excluded from the public record, may appear to change the traditional presumption about the openness of court records. However, as the comments to the rules emphasize, the rules are not intended to affect the limitations on sealing that are otherwise applicable under the law. In the past, of course, courts would have excluded such obviously sensitive information from the court record after a case by case balancing. But courts have never held that the right of public access requires that individuals be exposed to a needless risk of identity theft, merely because personal identifiers happen to be contained in otherwise public court records. Accordingly, the proposed rules eliminate the time-consuming balancing process. Instead, the rules implement the mandate of Congress in the E-Government Act, which codifies a result that earlier common law and Constitutional decisions would have reached in any event.

Finally, the rules permit the entry of protective orders. As we have seen, protective orders may be used to seal sensitive information by redaction or by the removal of the record itself from the public record. However, the proposed rules also permit a second option which was not previously available in the days of paper records. The rule allows for protective orders to be entered to provide that remote electronic access to certain records be limited to the parties and their attorneys alone, with the general public access limited to access "at the courthouse." This is an extremely interesting and important step. It appears to be an attempt to permit parties, upon court order, to create within the electronic filing system a "proxy" for the practical obscurity of the days of paper records.

There are good pragmatic reasons to try to create an "intermediate" form of access to court records--that is, to attempt to re-create something like the old system of "practical obscurity." For instance, many court records contain large amounts of confidential medical records. While the courts certainly could require the redaction of medical information in a social security case, the cost of doing so would be prohibitive. It would also be unfair, since social security claimants are often in distressed financial circumstances. Likewise, the files in immigration and naturalization appeals also contain similar sensitive personal information for which it would be burdensome and unfair to require redaction. Accordingly, for these types of files, it makes eminent practical sense to have an intermediate system of access. Under the proposed rules, then, on-line access is available for the parties and their attorneys, with public access otherwise available "at the courthouse." For social security and immigration cases, the rules create a presumption that the intermediate system of access will be the default. In other cases, the parties can seek protective orders to obtain similar treatment if they believe similar treatment is needed. Such treatment would appear to be most appropriate in almost any case in which there is a large amount of sensitive information--administrative appeals of Medicare claims and personal injury suits with large amounts of health records come immediately to mind.

An intermediate system of access certainly complies with the Constitutional and common law right to public access. The cases establishing a strong right of access to court records only apply where the public has been denied access to a judicial record *in toto*--that is, where the underlying information is filed *under seal*. So long as the public has some means of access to the

underlying information (for instance, the same "at the courthouse access" the public has always had), the courts are free to impose different levels of computerized privileges for different types of court records within the on-line system.

While I praise the proposed rules' attempt to establish an intermediate system of access, the "at the courthouse" rule appears to be misguided. In an electronic age, such a rule cannot actually re-create the old system of practical obscurity; it merely imposes a system of "contrived inconvenience." The proposed rule does not protect sensitive information in court records from a "cottage" industry of copyists, who travel from courthouse to courthouse, selling the information from court files to third parties without restriction—a cottage industry that already appears to thriving. The "at the courthouse" rule also discriminates against people who may reside farther away from the courthouse, in favor of people who reside nearer to the courthouse. The "at the courthouse" rule still requires clerks' offices to expend valuable staff time addressing their requests for access, and forces the needless conversion of electronic into paper records at public expense. Finally, since staff at clerks' offices may not legally screen access requests, the "at the courthouse only" rule is unlikely to secure any meaningful privacy. For instance, a stalker seeking information about his victim will still be able anonymously and secretly to obtain the personal information he seeks. The artificiality and burdensomeness of the "at the courthouse" solution may even discourage some judges from entering protective orders which use this option, in spite of the obvious need at times for a system which avoids the cost of redacting large amounts of sensitive personal and commercial information.

While I strongly support the attempt in the proposed rules to create an intermediate level of access, I would respectfully suggest that there may be a much simpler way to achieve it—one which takes advantage of the existing PACER technology. Instead of providing for "at the courthouse" access, the proposed rules could provide simply for remote electronic access for any interested member of the public, upon request, after notice to the parties (a notice which is automatically emailed to the parties without cost by the operation of the PACER system). In the absence of any objection, access would then be automatically granted, and the requesting person would receive the same level of access to the court file as the parties themselves enjoy. Local rules could be established to provide for a briefing schedule if any of the parties objected to access. The objecting party would, of course, then have the burden to meet the Constitutional and common law requirement for limiting such access. They would also have the expense of redacting any particularly sensitive information they wished to protect if their objection were overruled. Of course, in the vast majority of cases—as in the days of paper records—such access would raise little if any concern of harm. Furthermore, unlike an "at the courthouse" system of access, the parties with a direct interest in protecting their personal information would be in a position to know who, for instance, wanted to review their medical records. If a university researcher or a newspaper reporter wished to review social security records in a study of the Social Security Administration's treatment of claimants, it is unlikely that many claimants would object, particularly if the requester had no interest in the individual persons in the file but was only interested in general trends. On the other hand, if the requesting party were believed to be a stalker and a party feared the potential misuse of any of the sensitive information in the court

record, that party would then be in a position to object to the access to the information, or to pursue other legal remedies they might have under applicable law.

As a matter of drafting, I would respectfully suggest that the proposed rule be changed to replace the words "at the courthouse" with "as otherwise ordered by the court, or as provided for by local rule." The court could then, on a case by case basis, or by local rule, establish a procedure for allowing the parties to seek permission to use a system of intermediate access, could implement a schedule for filing any objections, and could establish any other procedures to account, as necessary, for the specific concerns of the parties.

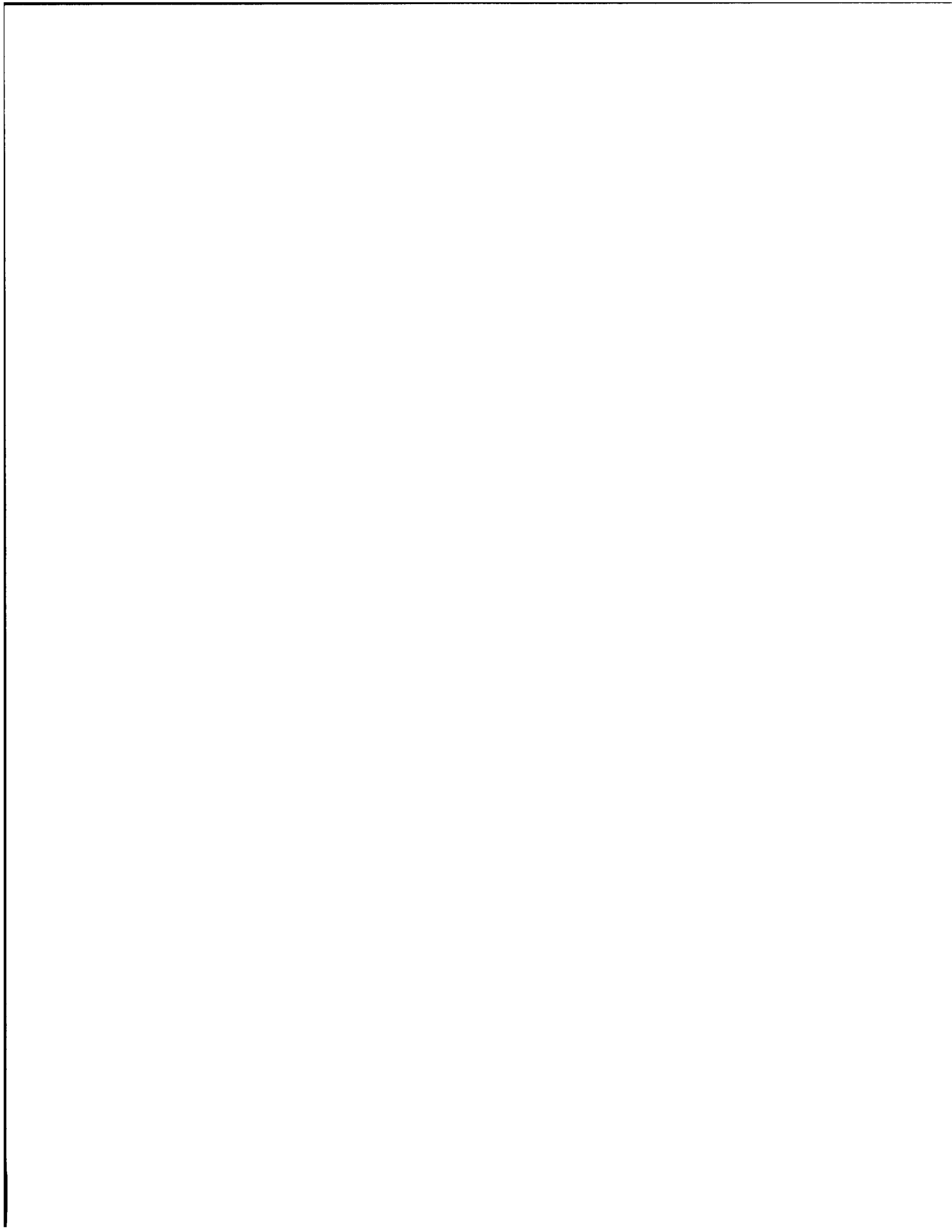
Please do not take my comment as suggesting anything less than full respect for what has already been accomplished in the draft rules. As presently drafted, the proposed rules successfully navigate between the Scylla of a electronic court system of complete publicity, and the Charybdis of a system of complete privacy. This achievement is even more remarkable given the technological limits of the PACER system, and the lack of funding by Congress. I would only suggest that the PACER system may have a greater capacity to solve certain problems than the drafters of the rules may have been aware. Thus, instead of attempting to "retrofit" the PACER system to reverse engineer an equivalent of "practical obscurity," it may be more appropriate to exploit the existing PACER technology to provide a different, and potentially more convenient form of "intermediate" access. This intermediate access would be individualized, instead of anonymous; and it would offer a system of accountability, if not a system of full privacy. I hope the Committee seriously considers amending the proposed rules to incorporate what I respectfully submit may be a practical and workable solution.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Peter A. Winn". The signature is fluid and cursive, with a large initial "P" and "W".

Peter A. Winn







05-CV- 028

February 8, 2006

05-BK- 009

Peter G. McCabe, Secretary  
Committee on Rules of Practice and Procedure  
Administrative Office of the United States Courts  
1 Columbus Cir., Ste. 4170  
Washington, D.C. 20544

05-CR- 010

Dear Mr. McCabe,

On behalf of the National Court Reporters Association (NCRA), I respectfully submit the following comments regarding the proposed privacy protection rules of the Federal Rules of Civil Procedure 5.2, Criminal Procedure 49.1 and Bankruptcy 9037. We applaud the efforts of the Advisory Committees to amend the rules of practice and procedure to comply with the mandates of the E-Government Act of 2002 to address privacy and security concerns relating to the electronic filing of court documents.

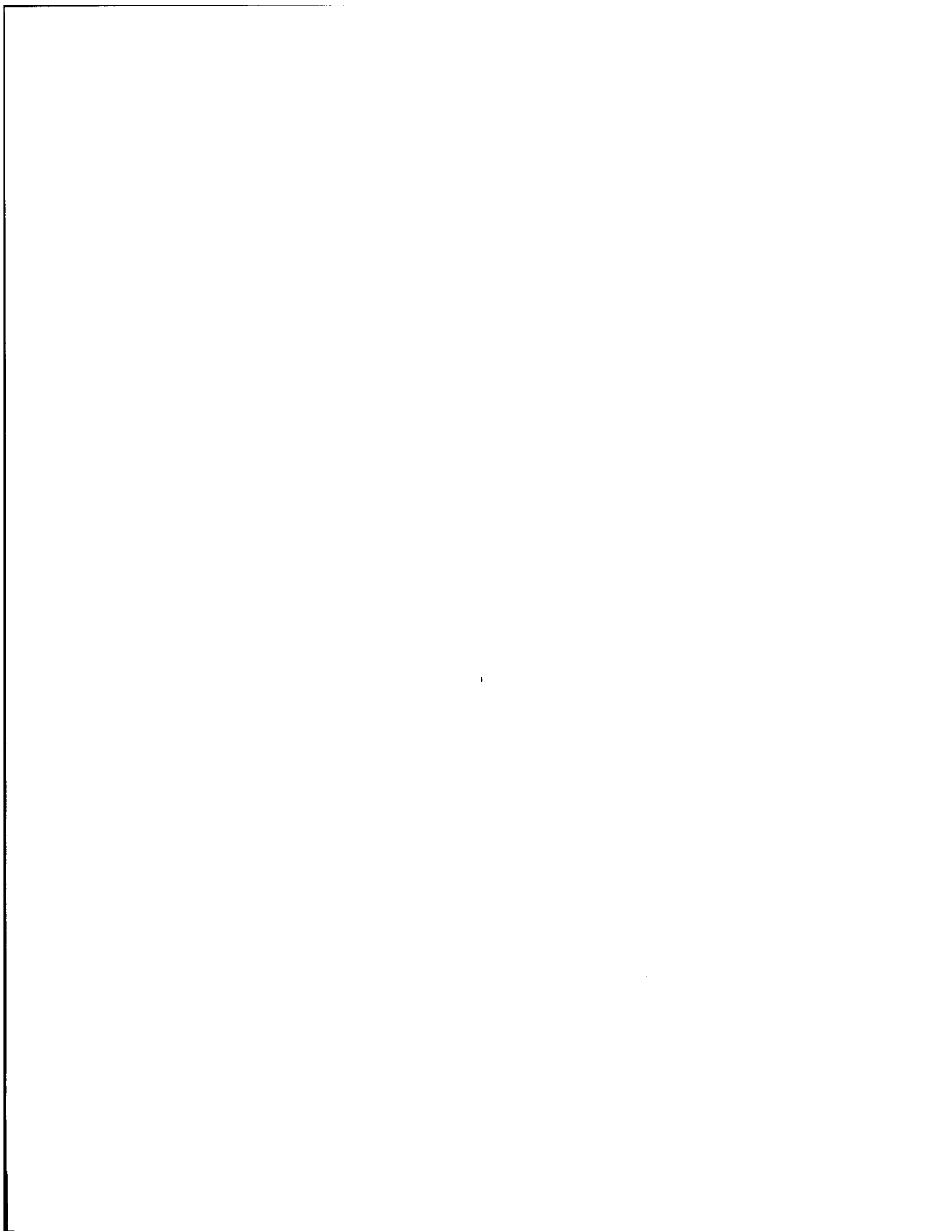
NCRA shares the Advisory Committees goals to increase the privacy protections of our nation's citizens in order to ensure the security of personal data. NCRA seeks to ensure that members of the court family will not be adversely affected by these new requirements to redact information. The Committee on Court Administration and Case Management adopted a policy that requires counsel/parties to identify the personal information to be redacted and protects reporters/transcribers from responsibility for failure to redact or errors associated with redaction. Furthermore, in each of the proposed new rules, the Committee Notes expressly state that the responsibility to identify the personal information to be redacted in filings rests solely with counsel and the parties. NCRA proposes that the following language be added to the Privacy Protection Rules to ensure that this intent is codified in the rules:

*(b) Responsibility for redacted filings. The responsibility for identifying the personal information to be redacted in filings made with the courts rests solely with counsel and the parties. Clerks are not required to review documents filed with the courts for compliance with this rule. Nothing in this rule is intended to create a private right of action against court reporters or transcribers for any failure to redact the required information or for any errors associated with such redaction.*

Thank you for your consideration of our comments.

Sincerely,

Mark J. Golden, CAE  
Executive Director & CEO



**PUBLIC CITIZEN LITIGATION GROUP**  
1600 TWENTIETH STREET, NW  
WASHINGTON, DC 20009  
(202) 588-1000  
(202) 588-7795 (fax)

05-AP- 004

05-BK- 010

February 15, 2006

05-CV- 029

**By Electronic Submission**

Peter G. McCabe, Secretary  
Committee on Rules of Practice and Procedure  
Administrative Office of the United States Courts  
Washington, DC 20544

05-CR- 015

**Re: Proposed Amendments to Federal Rules of Civil, Criminal, Bankruptcy, and  
Appellate Procedure—Comments of Public Citizen Litigation Group**

Dear Mr. McCabe:

Enclosed are the comments of Public Citizen Litigation Group on the proposed amendments to the Federal Rules of Civil, Criminal, Bankruptcy, and Appellate Procedure. If you or any Committee member has any questions or concerns, do not hesitate to contact me. Thank you.

Sincerely,

s/ Gregory A. Beck  
Gregory A. Beck

**PUBLIC CITIZEN LITIGATION GROUP**

1600 TWENTIETH STREET, NW

WASHINGTON, DC 20009

(202) 588-1000

(202) 588-7795 (fax)

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**Comments of Public Citizen Litigation Group  
on the Proposed Amendments to the Federal Rules  
of Civil, Criminal, Bankruptcy, and Appellate Procedure**

**February 15, 2006**

**Introduction**

Public Citizen Litigation Group (“PCLG”) is filing these comments on the proposed amendments to the Federal Rules of Civil, Criminal, Bankruptcy, and Appellate Procedure that were published for comment by the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States on August 15, 2005.

PCLG is a ten-lawyer public interest law firm located in Washington, D.C. It is a division of Public Citizen, a nonprofit advocacy organization with more than 100,000 members nationwide. Since its founding in 1972, PCLG has worked toward improving the administration of justice in the courts. It has submitted proposals to amend the civil and appellate rules and has frequently commented on proposed amendments to these rules. Collectively, PCLG’s lawyers have litigated hundreds of cases in the federal courts and have appeared before the Supreme Court of the United States, every federal circuit (in most of them, on many occasions), many federal district courts across the country, and

the courts of many states. As a result, PCLG's lawyers have considerable experience with the rules and issues that are the subject of the proposed amendments. In addition, PCLG has extensively litigated cases involving both consumer privacy and public access to judicial records, and is thus qualified to address the balancing process that must occur when attempting to accommodate these sometimes competing interests.

In general, PCLG supports the proposed amendments. As the courts move to make more records available online, it is critical that they scrupulously protect private information. We have concerns, however, about the way the proposed rules reconcile these admittedly important privacy interests with the interest of the public in access to court filings. In particular, certain provisions in the proposed rules will lead to overprotection of privacy interests at the expense of the public's interest in access to judicial records. We suggest several changes to the proposed rules that would ameliorate these concerns.

#### **I. Proposed Federal Rule of Civil Procedure 5.2**

PCLG strongly supports the protection of private information in court filings. The proposed rule generally does a good job of protecting this information by requiring in subdivision (a) the partial redaction of Social Security numbers, tax identification numbers, names of minors, birth dates, and financial account numbers. The rule also properly allows the court to order redaction of additional private information in particular cases pursuant to subdivision (e). However, we believe that the proposed rule in several

ways goes too far in restricting access to filings.

**A. Limitations on Remote Access in Social Security and Immigration Cases**

PCLG opposes proposed subdivision (c), which bars *all* remote electronic access by the public to filings in Social Security appeals and immigration cases. The committee note to the proposed rule contends that “[t]hose actions are entitled to special treatment due to the prevalence of sensitive information and the volume of filings.” With one exception, however, we do not agree that these considerations warrant the special treatment given to these types of cases. Indeed, as explained further below, the proposed rule would have the unfortunate effect of blocking socially beneficial use of the courts’ files, while leaving the most private and sensitive information, including unredacted Social Security and financial account numbers, freely available to identity thieves and data brokers at the courthouse.

The first reason given for the rule—the prevalence of sensitive information—does not justify the imposition of the bar on remote electronic access. Many other kinds of cases may contain information just as sensitive (such as civil suits over health benefits, claims of workplace discrimination, and civil claims regarding violence against women or the sexual abuse of minors), but are given no special protection under the rule.

Bankruptcy cases, in particular, often involve detailed private financial information, but will continue to be available online under the proposed rule. In general, we believe that

private information in Social Security and immigration cases should be protected in the same way as in these other types of litigation—through application of subdivisions (a), (d), and (e) of the proposed rule—rather than by carving out a specific and total exemption for these two particular categories of cases.

We recognize, however, that the administrative record in Social Security and some immigration cases might raise particular privacy concerns not present in other cases because, for example, the record may contain private identifiers that are exempt from the redaction requirement pursuant to subdivision (b)(2), or health and financial information that would be both private and not of interest to the general public. These files are generally kept confidential at the agency level, and we support continuing to restrict electronic access to the files in the district court absent a court's decision to the contrary. This restriction would not constitute a substantial change from current practice; administrative records are frequently exempt from electronic filing requirements under local rules, because the rules provide either a specific exception for administrative records or a more general exception for filings that are particularly large or difficult to convert to electronic form.<sup>1</sup>

Other documents, such as the briefs of the parties, may also contain private information, but this information would be limited in scope to issues relevant to deciding

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<sup>1</sup>The administrative record in Social Security cases, along with the rest of the record, is not currently available online pursuant to the Judicial Conference's policy on public access to electronic case files. See <http://www.privacy.uscourts.gov/Policy.htm>.



the case. In addition, these filings would be subject to the redaction requirement of subdivision (a) and would thus not contain the kinds of private information that could subject parties to identity theft. In particular cases, the court could also allow redaction of other private information pursuant to subdivision (e)(1). And in cases where private information is too extensive for redaction to be practical, the court could either order redaction of the parties' names, or limit remote access to the record pursuant to subdivision (e)(2). These decisions, however, should be narrowly tailored and made on a case-by-case basis instead of pursuant to a categorical exception. Courts have traditionally relied on such case-by-case decisionmaking to decide questions regarding public access to records and are guided in this process by well-defined case law.<sup>2</sup>

Although it may be simpler to allow parties and courts to skip case-by-case decisionmaking in favor of a presumption of secrecy, such a system would close almost *all* filings in these cases to the public. Parties in most cases have no incentive to argue that the record should be available on the Internet, so motions to make cases available online would rarely, if ever, be made. If the default rule were a restricted file, this default therefore would almost never be overridden unless the court independently undertook to

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<sup>2</sup>The public benefits from allowing access to filings even in cases that primarily involve private matters because such access discourages abuse of the system by both parties and courts. *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 569 (1980) (noting that openness "giv[es] assurance that the proceedings were conducted fairly for all concerned, and [] discourage[s] perjury, the misconduct of participants, and decisions based on secret bias or partiality").

examine the privacy interests at stake. In contrast, parties have a strong self-interest in protecting themselves from identity theft and invasions of privacy, and can be expected to vigorously enforce these interests by demanding additional protection in cases that truly raise such concerns. A rule that provides a presumption of openness therefore ensures appropriate levels of protection in cases raising genuine privacy issues, while at the same time assuring that the public will properly have access to filings in the remainder of cases. In contrast, the proposed rule risks a slippery slope of categorical exceptions—if Social Security and immigration cases should not be available online, what about, for example, bankruptcy cases? The presumption should favor public access whenever possible.

Even if the Committee is inclined to retain an exception for Social Security cases, the rules should not treat immigration cases the same way. Unlike Social Security cases, which are already exempted from online availability pursuant to the Judicial Conference's policy on public electronic access to files, no such exception is currently followed in immigration cases. Eliminating the proposed immigration exception therefore would not entail a change in policy or risk unpredictable effects. Although immigration files may well contain some information that the participants would prefer to keep private, they often do not involve the detailed financial and health documentation that is regularly part of the agency record in Social Security cases. Particular cases, of course, might warrant greater protection. For example, immigration benefits cases can involve private financial information, and aliens in certain removal cases would face potential danger if their

identities were revealed in the public record. But in these cases the court can readily address the problem under subdivisions (d) and (e) without blocking remote access to all other immigration filings.

Moreover, barring remote electronic access to the records of district courts, which review agency decisions, would shield problems at the agency level from the public eye and thereby undermine the watchdog function of the public and press. Courts have recognized serious problems in the agency adjudication of immigration cases resulting from clogged dockets, biased immigration judges, and summary affirmances by the Board of Immigration Appeals. *See, e.g.,* Adam Liptak, *Courts Criticize Judges' Handling of Asylum Cases*, N.Y. Times, Dec. 26, 2005, at A1. As a consequence of these problems, the U.S. Court of Appeals for the Seventh Circuit in one recent opinion noted that “adjudication of [immigration] cases at the administrative level has fallen below the minimum standards of legal justice.” *Benslimane v. Gonzales*, 430 F.3d 828, 830 (7th Cir. 2005). Public access to government records serves as a key check against the arbitrary use of power that can occur when government operations are allowed to proceed in secret. *See, e.g., Littlejohn v. Bic Corp.*, 851 F.2d 673, 682 (3d Cir. 1988) (“Public access serves to promote trustworthiness of the judicial process, to curb judicial abuses, and to provide the public with a more complete understanding of the judicial system, including a better perception of its fairness.”). Indeed, public access to the record in immigration cases is even more important than in many other types of cases because of

the critical nature of the litigation to the lives of the participants. Immigration removal orders can involve literally life-and-death decisions about whether to send aliens back to countries where they may be persecuted or killed.

To be sure, the continued availability of these files at the courthouse goes some way toward allowing the public to engage in its oversight role. But the E-Government Act of 2002, pursuant to which these rules were proposed, was enacted on the premise that public availability of documents on the Internet is necessary “to provide increased opportunities for citizen participation in government” and “[t]o make the Federal Government more transparent and accountable.” Pub. L. No. 107-347, § 2(b)(2) & (9). There is a legitimate public interest in remote electronic access to the court’s files in many cases. Reporters based in distant cities, for example, may not have easy access to the courthouse to review the paper version of filings. Remote electronic access is also extremely useful, if not essential, for academics conducting research into court files that are scattered throughout the country. And lawyers and pro se litigants often use filings in other cases to use as a model when crafting their own arguments or to gauge the bases for decisions in other cases. Indeed, all the policy concerns that mandate public access to files at the courthouse also support making public access *easier* by making the files available on the Internet.

Nor does proposed subdivision (c)(2)’s allowance for online access to the court’s ultimate disposition satisfy the public’s interest in openness, because access to the filings

of the parties is often necessary to an understanding of the court's decision. See *Brown & Williamson Tobacco Corp. v. FTC*, 710 F.2d 1165, 1177 (6th Cir. 1983) (noting that court documents "often provide important, sometimes the only, bases or explanations for a court's decision"). Potentially dispositive filings such as motions for summary judgment are the foundation on which the court's resolution of a case is based, and should remain open to the public "absent the most compelling reasons." *Gambale v. Deutsche Bank AG*, 377 F.3d 133, 140 (2d Cir. 2004). Without access to records that influenced a judge's decision, "[h]ow else are observers to know what the suit is about or assess the judges' disposition of it?" *Baxter Int'l, Inc. v. Abbott Labs.*, 297 F.3d 544, 547 (7th Cir. 2002).

The remaining justification for the proposed rule—the volume of filings—is also inadequate to justify restricting remote access to Social Security or immigration cases. Subdivision (c)(2) contemplates that the files will in any case have to be accessible in electronic form from computers at the courthouse, and making the same documents also available over the Internet would not pose a substantial additional burden on the resources of the courts or parties. Furthermore, judges would not be significantly burdened because parties can be expected to flag privacy issues on their own without significant judicial involvement, and because judges have long experience with the familiar process of balancing privacy concerns against the public interest in open access. Although the government would be put to the additional burden of redacting the information specified by subdivision (a) from its filings, this requirement is unlikely to be overwhelming given

subdivision (b)'s exclusion from the redaction requirement of the records of administrative agencies.<sup>3</sup> We do not believe any extra burden on the government imposed by requiring it to redact its own original filings justifies overriding the public's compelling interest in remote access.

Ironically, to accommodate the government's interest in avoiding the burden of redaction in these two categories of cases, the proposed rule excepts from the redaction requirement even private information like Social Security numbers, birth dates, and financial account numbers—the very types of information most likely to be used for identity theft. Although paper filings, in addition to electronic submissions, are required to be redacted pursuant to subdivision (a), subdivision (b)(5) exempts Social Security and immigration cases from this requirement. This private information would be fully accessible from paper files and public computer terminals at the courthouse, and would thus receive even *less* privacy protection than the same information in other cases. Determined identity thieves cannot be expected to be deterred merely because they are unable to access court files from their personal computers at home. In addition, restricting remote access enhances the market value of data brokers who could obtain private information from the courthouse and disseminate it for a fee.

Finally, one other potential quirk in the language of the proposed rule deserves

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<sup>3</sup>In immigration cases, the burden of redaction would not be a new one, since the Judicial Conference's current policy on public access to electronic case files does not, as noted above, exclude immigration cases from public access and redaction requirements.

mention. Subdivision (c)(2) provides that the public “may have *electronic* access to the full record at the courthouse.” However, because the proposed rule purports to govern the privacy of both paper and electronic filings, the rule’s failure to mention public access to the paper version of the court’s files might be read to prohibit by implication this traditional form of public access. Allowing only electronic access to the files would prohibit *all* public access to those filings that are filed only in paper form. We therefore recommend that the proposed rule be revised to recognize the public’s right to access the court’s “physical and electronic” files.

To satisfy fully the goals of the E-Government Act, the rules should ensure that the public has access to judicial records to the greatest extent consistent with privacy concerns. This can best be achieved by modifying subdivision (c) to prohibit only remote non-party access to the administrative record, and to leave other privacy concerns to be resolved under subdivisions (d) and (e). Subdivision (c)(2) could thus be re-worded as follows: “any other person may have physical and electronic access to the full record at the courthouse, but may not have remote access to the administrative record.”

Subdivisions (c)(2)(A) and (B) could then be eliminated.

#### **B. Filings Made Under Seal**

Subdivision (d) of the proposed rule provides that a “court may order that a filing be made under seal without redaction.” This subdivision allows the court to order an unredacted document to be filed *as a substitute* to the redacted filing, thus ensuring that

no public version of the filing will be available unless the court subsequently orders that such an additional filing be made. The text of the proposed rule does not limit the type of “filing” covered by the rule, and thus appears to allow the court to order a document to be filed under seal regardless of whether the filing contains private information that would ordinarily require redaction under subdivisions (a) or (e). Because the rule prohibits access to paper versions at the courthouse in addition to online versions, the rule appears to grant the courts a general authority to seal any filing for any reason.

Such a general grant of power is unnecessary because, as recognized by the committee note to the proposed rule, the courts already have the inherent power to seal documents pursuant to their supervisory authority over their own records and files. See *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 598 (1978). In cases where the court seals a document under this authority, the E-Government Act would then prohibit the document from being made available online. Pub. L. No. 107-347, § 205(c)(2). The judicial power to seal documents, however, is tempered by requirements that the court adopt certain procedural protections and carefully balance the public’s strong presumption of access against the privacy interests involved. See, e.g., *Press Enter. Co. v. Superior Ct.*, 464 U.S. 501, 510-11 (1984); *Media Gen. Operations, Inc. v. Buchanan*, 417 F.3d 424, 429 (4th Cir. 2005).

To be sure, the committee note goes some way toward clarifying the impact of the proposed rule by stating that it is not intended to limit or expand traditional doctrines



governing sealing, but merely to “reflect the possibility that redaction may provide an alternative to sealing.” The committee note, however, does not have the force of law, *Ross v. Marshall*, 426 F.3d 745, 752 n.13 (5th Cir. 2005), and the text of the rule itself appears to suggest the opposite—providing *sealing* as an alternative to *redaction*. Under the judicial doctrines for sealing documents, courts are traditionally required to consider alternatives such as redaction *prior* to sealing documents. *See, e.g., Buchanan*, 417 F.3d at 429.

Given the recognized authority of the courts to seal filings in appropriate circumstances, subdivision (c) of the proposed rule is unnecessary and should be stricken. At a minimum, however, we recommend that the proposed rule be amended by adding the clause “When authorized by law,” to the start of the first sentence of subdivision (d). This amendment would help ensure that courts do not construe the provision as a general grant of authority to seal documents unmoored from traditional restrictions on that authority and would implicitly limit invocation of the rule to those cases where sealing is necessary to protect privacy interests that outweigh the public’s compelling interest in open court files.

### **C. Filings Subject to Protective Orders**

We support proposed subdivision (e), which authorizes the court to issue protective orders requiring redaction of additional information or to limit remote electronic access to filings. We also generally support the language in the rule allowing

these restrictions only in cases where “necessary to protect private or sensitive information that is not otherwise protected under Rule 5.2(a).” However, we believe that the word “sensitive” sets too low of a bar for information entitled to protection. Companies, for example, frequently desire to shield “sensitive” commercial information from competitors and the public, but courts recognize that “this desire [] cannot be accommodated . . . without seriously undermining the tradition of an open judicial system.” *Brown & Williamson*, 710 F.2d at 1180; see *Baxter Int’l*, 297 F.3d at 545, 547 (denying motion to seal “commercially sensitive information,” and holding that “many litigants would like to keep confidential the salary they make, the injuries they suffered, or the price they agreed to pay under a contract, but when these things are vital to claims made in litigation they must be revealed”). Similarly, courts have rejected the government’s attempt to shield information from public view on claimed grounds of national security. See *Union Oil Co. v. Leavell*, 220 F.3d 562, 567 (7th Cir. 2000) (noting that “[e]ven disputes about claims of national security are litigated in the open”). Courts therefore properly restrict public access to information only when it is a legitimate trade secret, is covered by a recognized privilege, or is required by statute to be maintained in confidence. *Baxter Int’l*, 297 F.3d at 546. We strongly urge, therefore, that the rule be strictly limited to information that is truly *private*, i.e., not merely sensitive.

In addition, the proposed subdivision (e) currently does not require consideration of the public interest prior to restricting access to judicial records. In many cases, neither

party has a motivation to advocate for the public interest in open proceedings. For example, defendants in product liability cases often demand, and are willing to pay a premium for, secrecy as a condition of settlement; and plaintiffs, who will receive the premium, generally have little interest in defending the public's right to access court files at the cost of a lower settlement for themselves. As a result, courts are frequently faced with unopposed motions to seal the record and can be expected to receive similar motions under proposed subdivision (e). The rule should therefore specify that the court is required to consider the public interest prior to restricting access to filings. *See Citizens First Nat'l Bank v. Cincinnati Ins. Co.*, 178 F.3d 943, 945 (7th Cir. 1999) ("The judge is the primary representative of the public interest in the judicial process . . ."). In the absence of these safeguards, we are concerned that large swaths of documents may be subjected to redaction, and many other documents taken offline, based on vague claims of commercial secrecy, personal privacy, national security, and "sensitivity."<sup>4</sup>

These concerns can best be addressed by rewording the first sentence of subdivision (e) as follows: "If necessary to protect private information that is not

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<sup>4</sup>As noted above, PCLG recommends that the Committee delete proposed subdivision (d). If the Committee is inclined to retain the subdivision, however, PCLG's suggestion to limit subdivision (d) to cases "authorized by law" would incorporate the judge-made rules governing sealing that already require the court to balance privacy interests in the case against the public right of access. These traditional limitations would not necessarily be recognized, however, in the context of a decision about whether to redact additional information or to restrict remote access to a file. For this reason, the consideration of the public interest should be explicitly written into subdivision (e).

otherwise protected under Rule 5.2(a), and only where the interest in privacy outweighs the public interest in openness, a court may by order in a case: . . . .”

## **II. Proposed Federal Rule of Criminal Procedure 49.1**

PCLG’s comments regarding proposed Federal Rule of Civil Procedure 5.2(d) and (e) apply equally to the corresponding sections of proposed Federal Rule of Criminal Procedure 49.1. We note only that public access to judicial records is even more critical in the criminal context. *See Press Enter. Co.*, 464 U.S. at 508-09.

## **III. Proposed Federal Rule of Bankruptcy Procedure 9037**

PCLG’s comments regarding proposed Federal Rule of Civil Procedure 5.2(d) and (e) apply equally to the corresponding sections of proposed Federal Rule of Bankruptcy Procedure 9037.

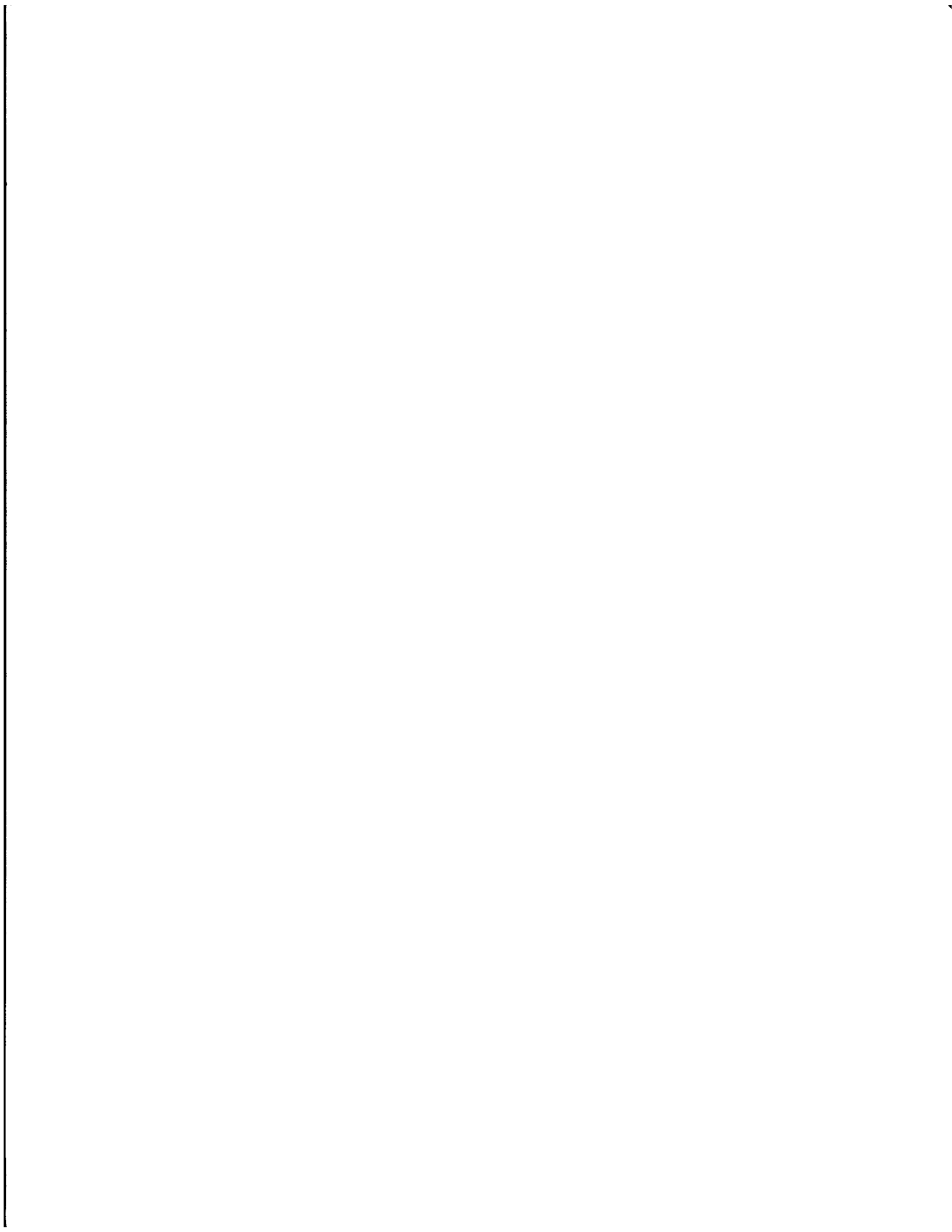
## **IV. Proposed Federal Rule of Appellate Procedure 25**

PCLG generally supports the protection of private information on appeal to the same extent it is protected in the district court. However, the public availability of filings in the court of appeals is especially critical “because the appellate record normally is vital to the case’s outcome.” *Baxter Int’l*, 297 F.3d at 545. Filings in a court of appeals are also less likely to contain private information than filings in the district court because the issues on appeal are often narrower in scope and legal rather than factual in nature.

Although the record on appeal under Federal Rule of Appellate Procedure 10(a) consists of all papers and exhibits filed in the district court, original *filings* in the court of appeals,

including the joint appendix, are typically focused on the narrow questions at issue on appeal. In addition, courts have recognized that parties have the ability to “pare down the appellate record” by sending irrelevant documents back to the district court. *Baxter Int’l*, 297 F.3d at 548.

For this reason, the categorical exception in proposed FRCP 5.2(c) for Social Security and immigration cases does not make sense as a rule on appeal. If the Committee is inclined to retain FRCP 5.2(c), PCLG therefore supports adding a provision specifying that the rule does not apply to filings in the court of appeals. At a minimum, however, we believe that the rule should provide that appellate briefs and potentially dispositive motions should be remotely available to the public in these cases, absent a court’s decision to the contrary. Lawyers and pro se litigants rely on their ability to view these filings in order to craft arguments in other cases and to appreciate the bases of a court’s decision, and these documents are also necessary to enable the public and press to understand the court’s ultimate disposition of the case. In those filings that do raise privacy concerns, courts can deal with the problem under FRCP 5.2(d) and (e).



**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA**

**ROBERT E. GRANT, JUDGE**

**2128 E. ROSS ADAIR FEDERAL BUILDING  
1300 SOUTH HARRISON STREET  
FORT WAYNE, INDIANA 46802**

**TELEPHONE: (260) 426 - 2455  
FACSIMILE: (260) 424 - 3716**

February 15, 2006

05-BK- 011

Mr. Peter G. McCabe, Secretary  
Committee on Rules of Practice & Procedure  
Administrative Offices of the U.S. Courts  
Thurgood Marshall Federal Judiciary Bldg.  
One Columbus Circle, N.E.  
Washington, DC 20554

Re: Proposed Amendments to the Federal Rules of Bankruptcy Procedure

Dear Mr. McCabe:

I would like to take this opportunity to comment upon proposed changes to Bankruptcy Rule 3007 concerning objections to claims. Paragraphs (c) and (d) effectively authorize the use of omnibus objections to claims in all cases. As the committee must be well aware, while the use of omnibus objections may have certain efficiencies they also create problems, can be confusing and may be easily misunderstood by the creditors who receive them. This reality is undoubtedly what lies behind the limitations which proposed paragraphs (d) and (e) place upon their use, including (e)(6) which would prevent an omnibus objection from addressing more than 100 claims. While omnibus objections certainly have their place, rather than apparently authorizing them in all instances, as a paragraph (c) appears to do, it would be a more appropriate to give the Bankruptcy Courts some flexibility and make the use of omnibus objections a matter committed to the court's discretion. The proposed amendments to Rule 6006(e) specifically do this where the assumption or assignment of executory contracts is concerned. That rule requires separate motions for each such contract, unless they are between the same parties or to be assigned to the same assignee or the court authorizes the use of a single motion. That same philosophy should also be applied to the use of claims objections in Rule 3002. Accordingly, I would suggest that paragraph (c) of the proposed amended rule be reworded as follows:

Unless otherwise ordered by the court, objections to more than one claim shall not be joined in a single objection.

Paragraph (d) could then be revised to include the following introductory language:

If authorized by the court, subject to subdivision (e) . . . .

Changes along these lines would preserve all of the virtues that omnibus objections might offer but it would also allow the court to avoid their use unless the facts of a particular case suggest that their benefits outweigh the troubles and confusion they may tend to create.

In addition to expressing my preference for making the use of omnibus objections discretionary, it is also appropriate to make some comments with regard to three of the situations in which proposed paragraph (d) would authorize their use; in particular (d)(3), (d)(4) and (d)(6).

Paragraph (d)(3) would authorize the use of an omnibus objection where the claims in question "have been replaced by subsequently filed proofs of claim." There would seem to be no need to file an objection to a claim which has been superseded or replaced by an amended claim. In traditional civil litigation when a pleading has been superseded by an amended pleading, the original pleading, be it a complaint or an answer, is of no further force or effect. See e.g., 188 L.L.C. vs. Trinity Industries Inc., 300 F.3d 730, 736 (7th Cir. 2002) ("an amended pleading ordinarily supersedes the prior pleading, the prior pleading is in effect withdrawn . . . and becomes functus officio"). There is no reason why this same principal should not be applied to amended claims which are clearly designated as such on the official form. Such an approach would promote judicial economy by eliminating the need for trustees or other parties in interest to object to claims which are, in effect, no longer before the court. The rules should not be written in a way that promotes the filing of unnecessary objections and that is what the proposed rule does when it authorizes the filing of an objection to a particular claim simply because it has been replaced by a subsequently filed claim.

Proposed paragraph (d)(4) would authorize an objection to a claim because it has been "transferred in accordance with rule 3001(e)." Although there are proposed amendments to Rule 3001, I do not see anything in the preliminary draft which proposes to change the present text of Rule 3001(e). That rule, as you know, deals with proofs of claim where the claim has been transferred to someone other than the original creditor. If the transfer occurs before a claim has been filed, the claim is to be filed by the transferee. If the transfer occurs after a claim has been filed, the transferee simply files a notice of the transfer with the Bankruptcy Court, the transferor is then given notice of that fact, advising it that it has 20 days within which to object to the alleged transfer, and absent objection the transferee is substituted for the transferor on the court's records. There seems to be something unfair in creating a rule which specifically addresses the issue of how we will deal with transferred claims and then creating another rule which suggests that the mere fact a claim has been transferred constitutes cause to deny it. Furthermore, Congress has specified the reasons that a claim is not to be allowed in § 502(b)(1)-(9) and the fact that it has been transferred from one entity to another is not among them. I realize that claims trading can create difficulties and confusion and is a matter some debate. Nonetheless, Congress, and not the rules committee, would seem to be the



proper place to address that issue and to decide whether or not such claims should be denied. Perhaps I have misconstrued the apparent purpose of proposed Rule 3007(d)(4) and the committee had something else in mind. If so, I apologize for my criticism but would, nonetheless, suggest that, whatever it is the committee might be striving for here, it express its wishes more clearly.

Proposed Rule 3007(d)(6) would authorize an omnibus objection if a claim has been "satisfied or released during the case . . ." This proposal conflicts with the requirements of the Bankruptcy Code. Section 502 is quite specific as to what the court is to do once a claim has been objected to. The court is to determine the amount due "as of the date of the petition, and . . . allow [the] claim in such amount . . ." 11 U.S.C. § 502(b). Consequently, when it comes to determining the amount due a creditor, except to the extent authorized by § 506(b), the court is directed to focus on the amount due as of the date of the petition – subsequent events such as payment or other satisfaction of the claim do not change the amount due as of that date. I will readily acknowledge that if a claim has been satisfied or released after it has been filed, that is certainly a very good reason not to make any further distribution on account of that claim. But it is not a reason to say, in effect, that nothing was due as of the date of the petition. Whatever administrative or record keeping needs the trustee or debtors-in-possession might have to fulfill to substantiate the lack of a distribution on account of a such claim can undoubtedly be satisfied in a way other than completely denying a claim that is otherwise entirely valid.

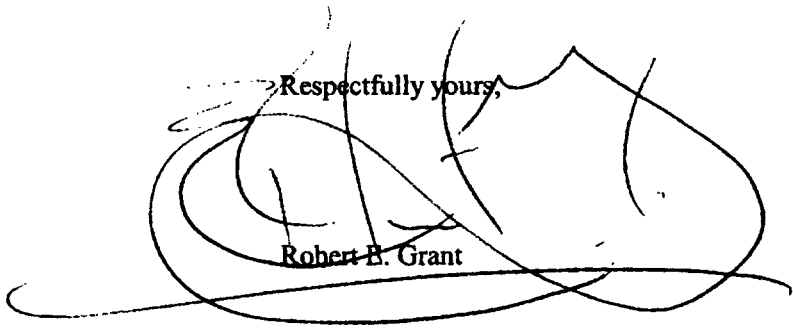
My final comment concerns not the proposed amendments themselves, but rather the committee note which accompanies them. The second to the last paragraph of the note to Rule 3007 indicates that the use of an omnibus objection does not prevent the objector from raising other objections to those claims at a later date. The authority for this observation is § 502(j) of the Bankruptcy Code. That portion of the Code states that a claim which has been allowed or disallowed may be "reconsidered for cause." Most of the decisions which have addressed a sufficient cause to reconsider an order on a claim have equated it with the showing that is generally expected of a litigant under Rule 60 of the Federal Rules of Civil Procedure. This is a more rigorous standard than what the committee seems to have in mind. The committee's commentary seems to contemplate the possibility that objections could be filed serially, so that if one challenge is not successful the objector can, in a steady drip, drip, drip, continue to file other objections until it finds one that meets with success or the creditor gives up in frustration. In traditional civil litigation, the splitting of a cause of action is something which is frowned upon. That same principle should be equally laudatory when it comes to objections to proofs of claims. If an objector knows of more than one reason that a particular claim should be challenged, I cannot see any good reason which would excuse it from raising all of those objections at the same time, so that the court can deal with them all at once. If, at a later time, the objector would become aware of additional reasons that a claim should be challenged, it could then make use of § 502(j), and rely upon the newly discovered information as cause to reconsider the court's prior order. If the rules committee would like to make an exception to that principle it should do so directly, by specifically proposing a rule on the subject, rather than through comments contained in a note addressing a rule on some other issue.

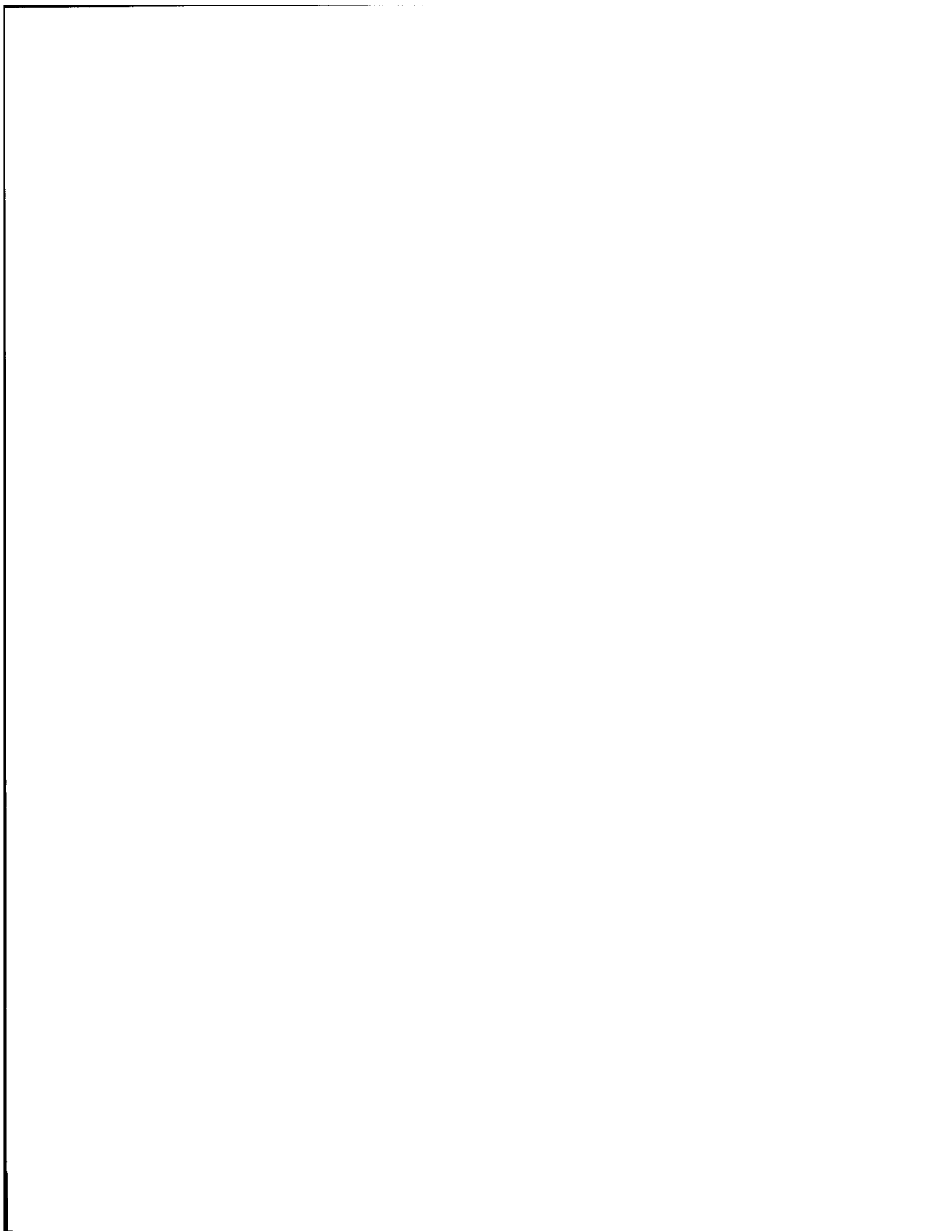
I appreciate the opportunity to offer my observations concerning the committee's proposal to change the bankruptcy rules. If you have any questions concerning my comments or would need

additional information concerning them, please feel free to contact me.

Respectfully yours,

Robert B. Grant

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom, positioned over the printed name.



**ELECTRONIC PRIVACY INFORMATION CENTER**

1000 14th Street, N.W., Washington, D.C. 20005-4001  
Tel: 202-331-0600 Fax: 202-331-0601  
http://www.epicprive.org

[Submitted Electronically at <http://www.uscourts.gov/rules/>]

February 15, 2006

Secretary of the Committee on Rules of Practice and Procedure  
Administrative Office of the United States Courts  
Washington, DC 20544

Re: Comments of EPIC concerning Proposed Rule 5.2 of the Federal Rules of Civil Procedure; Proposed Rule 49.1 of the Federal Rules of Criminal Procedure; Proposed Rule 9037 of the Federal Rules of Bankruptcy Procedure and Proposed Rule 25(a)(5) of the Federal Rules of Appellate Procedure.

**Introduction**

Thank you for soliciting public comment on privacy and court records. The Electronic Privacy Information Center (EPIC) is a public interest research center in Washington, D.C. It was established in 1994 to focus public attention on emerging civil liberties issues and to protect privacy, the First Amendment, and constitutional values.

EPIC occupies a unique space in this debate because the organization both advocates for the right of privacy and pursues access to government records under the Freedom of Information Act. EPIC is one of two judicially-recognized entities with "news media" status under the Freedom of Information Act.<sup>1</sup> EPIC is a strong supporter of access to government information. At the same time, the presence of personal information within public records raises serious privacy issues. **We wish to emphasize that the very purpose of public records—the ability of the individual to learn about the government—is turned on its head when the records include excessive personal information. Instead of being citizens' window into government activities, public records are giving the government, law enforcement, and data brokers a**

<sup>1</sup> *Elec. Privacy Info. Ctr. v. DOD*, 241 F. Supp. 2d 5 (D.D.C. 2003).

05-AP- 005

05-BK- 012

05-CV- 030

05-CR- 016

**window into our daily lives. Without privacy protections, court and other public records will be commodified for commercial purposes unrelated to government oversight.**

Court records are becoming the fodder for dossiers on Americans. Currently in Congress, lobbyists from data companies are attempting to place an exemption into privacy legislation that would free data companies from consumer protections, so long as the information they sell is present in a public record. This would mean that companies that traffic in sensitive personal information--including Social Security Numbers--would not have to abide by security safeguards or inform consumers if this information was stolen! The data brokers are banking on the courts to pour personal information into the public record so that it can be sold without privacy safeguards.

We wish to highlight five points to guide the Committee in its revisions of rules to protect personal information in public records:

*Minimization is key to protecting privacy*

First, we recommend that court systems generally approach privacy issues by first determining whether they need the personal information collected. Institutions should not collect personal information unless it is necessary for some legitimate purpose. This practice, known as minimization, encourages entities to collect the minimum amount of information necessary to carry out a government function. Minimization is highly effective at reducing privacy risks.

*Paper and Courthouse Access should be protected too*

Second, the relevant issue here is not access to electronic records, but rather access to public records. If electronic records are treated in a more restrictive fashion, it only means that the average person will have reduced access to the information in those records. Sophisticated data aggregators and others have the resources to visit the actual courthouse and scan paper

records, which then are effectively made "electronic." Commercial data brokers employ hundreds of stringers who hand-copy sensitive personal information out of paper public records.

We therefore encourage the Committee to revise rule 5.2(c). This section limits online reproduction of certain sensitive case files, but allows complete access from within the courthouse. This loophole will allow sophisticated data aggregators to collect sensitive health information and personal identifiers.

*Consider limitations on the use of personal information in public records*

Third, we urge the Committee to consider use limitations to protect privacy. Under such a scheme, acceptable uses could be defined for public records that are consistent with the policy reasons for providing them to the public. One system worth visiting was reviewed by the Supreme Court in *LAPD v. United Reporting*.<sup>2</sup> As noted above, in that case, the LAPD only released arrest information to the public for specific purposes, including law enforcement, research, and journalistic uses. Commercial resale of the information was restricted.

*Reduce the appearance of unique identifiers*

Fourth, we urge the Committee to pay particular attention to the minimization of unique identifiers. Unique identifiers make aggregation and secondary use of public records possible. The Committee has recommended the partial redaction of Social Security Numbers, dates of birth, and account numbers. Because redaction policies are not consistent (some institutions redact the first five digits of the SSN, while others redact the last four), we recommend complete removal of the SSN from the file. Partial redaction allows sophisticated data companies to "reidentify," or reconstruct, full SSNs.

We furthermore recommend that home addresses, telephone numbers and mother's maiden names be redacted. These identifiers are being used by the credit industry to

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<sup>2</sup> 528 U.S. 32 (1999).

"authenticate" individuals for new accounts, and therefore, their availability exposes individuals to identity theft.

*Limit Bulk Downloads*

Finally, we recommend that the Committee consider limitations on bulk downloads of documents from the PACER system. There is increasing evidence that lists of personal information obtained from companies and public records in bulk are being used to target individuals for scams. For instance, the Iowa Attorney General has initiated a probe of database seller "Walter Karl" for providing lists to scam artists.<sup>3</sup> The company has used database technology to locate individuals who are "impulsive buyers...primarily mature" and "highly impulsive consumers...sure to respond to all of your low-end offers."<sup>4</sup> More recently, the Wall Street Journal covered the story of an identity thief who located victims by acquiring lists of prison inmates.<sup>5</sup> Bulk access should be allowed for legitimate journalistic, research, and academic purposes, but not for commercial solicitations or profiling.

Respectfully submitted,

/s

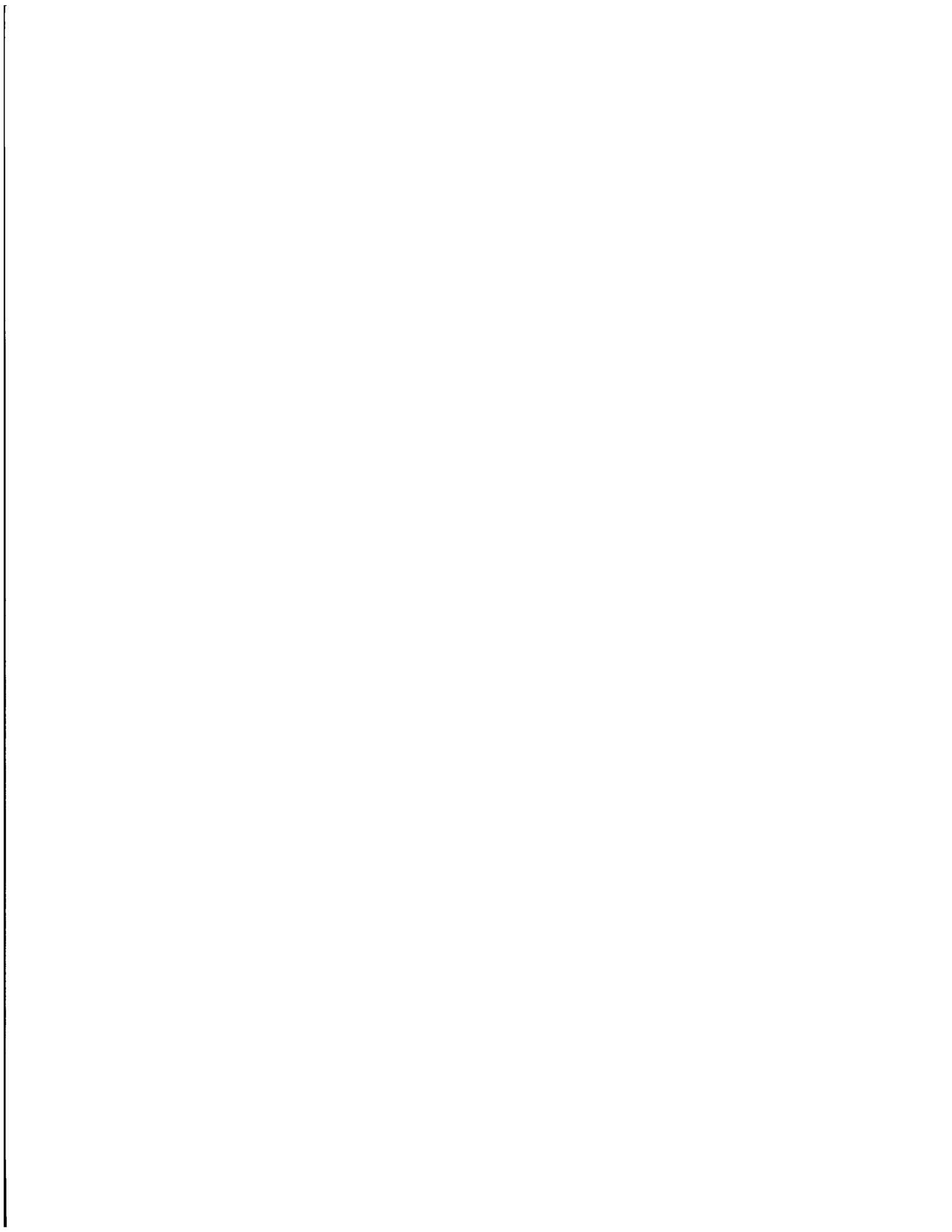
Chris Jay Hoofnagle  
Electronic Privacy Information Center

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<sup>3</sup> Attorney General of Iowa, A.G. asks Court to Order List Broker to Respond to Telemarketing Fraud Probe State asks court to order list-broker "Walter Karl, Inc." to cooperate with consumer protection investigation of direct mail and telemarketing schemes, Mar. 3, 2005, available at [http://www.state.ia.us/government/ag/latest\\_news/releases/mar\\_2005/Walter\\_Karl.html](http://www.state.ia.us/government/ag/latest_news/releases/mar_2005/Walter_Karl.html).

<sup>4</sup> Affidavit of Barbara Blake, Investigator, Office of the Attorney General of Iowa, Mar. 1, 2005, available at [http://www.state.ia.us/government/ag/latest\\_news/releases/mar\\_2005/Walter%20Karl%20BBlake%20Affidavit%203-1-05.pdf](http://www.state.ia.us/government/ag/latest_news/releases/mar_2005/Walter%20Karl%20BBlake%20Affidavit%203-1-05.pdf).

<sup>5</sup> Andrea Coombes, *Identity Thieves Head Off to College*, Oct. 25, 2005, available at <http://online.wsj.com/article/SB113019456857878139.html>. See also David Lazarus, *Annuities Used as Come On*, San Francisco Chron., Oct. 26, 2005, available at <http://www.sfgate.com/cgi-bin/article.cgi?file=/c/a/2005/10/26/BUG3CFDSU11.DTL> (marketers buy lists to target customers for grey-market schemes); Adam Smith, *Ruining My Credit Was Easy, Thief Says*, St. Petersburg Times, Oct. 23, 2005, available at [http://www.sptimes.com/2005/10/23/Worldandnation/Ruining\\_my\\_credit\\_was.shtml](http://www.sptimes.com/2005/10/23/Worldandnation/Ruining_my_credit_was.shtml) (identity thieves use list of consumers with good credit to target victims).





**Comments of The Reporters Committee for Freedom of the Press**

February 15, 2006

To: The Committee on Rules of Practice and Procedure of the Judicial Conference of the United States  
www.uscourts.gov/rules

Re: Judicial Conference Advisory Committees on the Bankruptcy, Civil, and Criminal Rules request for comments on proposed amendments to the federal rules and forms

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The Reporters Committee for Freedom of the Press submits these comments in response to the Request for Comments on proposed amendments to the federal rules and forms regarding proposed policies concerning privacy protection in court filings, issued by the Judicial Conference Advisory Committees on the Bankruptcy, Civil, and Criminal Rules (“the Committees”).

We appreciate the opportunity to be heard on this important issue.

**General Interest of Signatory**

The Reporters Committee is a voluntary, unincorporated association of reporters and editors working to defend the First Amendment rights and freedom of information interests of the news media. The Reporters Committee has provided representation, guidance and research in First Amendment and Freedom of Information Act litigation since 1970. The Reporters Committee also has published a series of special reports on court secrecy, including Anonymous Juries in 2000, Gag Orders in 2001, Access to Terrorism Proceedings in 2002, Secret Dockets in 2003, and Grand Juries in 2004, and a series of reports on electronic access to court records, including Access to Electronic Records in 2003 and Electronic Access to Court Records: Ensuring Access in the Public Interest in 2002.

The Reporters Committee assists journalists by providing free legal information via a hotline and by filing *amicus curiae* briefs in cases involving the interests of the news media. It also produces several publications to inform journalists and lawyers about media law issues, including a quarterly magazine, *The News Media and the Law*, and a biweekly newsletter, *News Media Update*.

As both a news organization and an advocate of free press issues, the Reporters Committee has a strong interest in the policies governing filings made in the federal courts.

## Introduction

The Reporters Committee has a strong interest in the accessibility of *all types of information* currently available through public court records in civil, criminal, and bankruptcy cases. Remote access enables the news media to discover and report important stories. Electronic court records, in particular, are of tremendous value to reporters because they can be mass-analyzed to detect systemic trends. Journalists in the emerging field of computer-assisted reporting frequently use computerized court records to break stories of major public importance. To cite a few examples:

- In January 2004, *The Miami Herald* published a four-part series exposing problems in the Florida criminal justice system, including severe racial disparities and overuse of “adjudication withheld” determinations that erase convictions from people’s records. The *Herald*’s reporting was based on a computer analysis of electronic court records in more than 800,000 cases. (See Manny Garcia & Jason Grotto, *Justice Withheld*, MIAMI HERALD, Jan. 25-28, 2004.)
- Also in January 2004, *The Denver Post* reported that, in 41 percent of Colorado’s child abuse and neglect cases, including some resulting in deaths, social service agencies had missed warnings of problems. The story was based on a computer-assisted analysis of thousands of state records, including court documents. (See David Olinger, *The Loss of Innocents*, DENVER POST, Jan. 18, 2004.)
- In October 2003, *The (Louisville) Courier-Journal* used computer analysis of court records to report that more than 2,000 indictments in Kentucky had been pending for more than three years, and that hundreds of cases had been dismissed for lack of prosecution. (See R.G. Dunlop, et al., *Justice Delayed: Justice Denied*, LOUISVILLE COURIER-JOURNAL, Oct. 12-19, 2004 (four-part series).)
- In September 2000, *The Chicago Tribune* analyzed 3 million state and federal computer records, including court records, to determine that more than 1,700 people had been killed accidentally due to mistakes by nurses across the country. The paper traced the errors largely to cost-cutting measures that overburdened nurses in their daily routines. (See Michael J. Berens, *Dangerous Care: Nurses’ Hidden Role in Medical Error*, CHICAGO TRIB., Sept. 10-12, 2000 (three-part series).)

All of these stories would have been far more difficult (if not impossible) to report in the absence of electronic access to various types of information in civil, criminal, and bankruptcy court records. There is factual information of interest and value to the public in all areas.

In addition, remote access improves the news media's coverage of individual cases. The depth and quality of news stories are enhanced when reporters can obtain court filings by remote access at all times, rather than just during weekday business hours. Journalists have also told us that remote access to judicial records helps them to be more accurate. These advances ultimately help make the judicial system more accountable to the public.

Because the Reporters Committee itself does not routinely gather or disseminate information from court records, we will devote the remainder of this comment to addressing the Committees' questions more pertinent to our role as a free press advocate, i.e., those that pertain to exemption or restriction of categories of information.

### **Comments re: Proposed Rules**

Our response to several subdivisions of the proposed Civil, Criminal, and Bankruptcy rules concerning privacy protection for filings are the same. To avoid repetition, we group our responses to these provisions together.

#### **I. Years of Birth and Minors' Names Should Remain Public; Redacted Information Should be Unsealed when there is Great Public Interest.**

##### **Proposed Fed. R. Civ. P. 5.2(a); Fed. R. Crim. P. 49.1(a); Fed. R. Bankr. P. 9037(a): Redacted Filings**

We propose that years of birth and minors' names not be exempt from the right of access. Journalists use these personal identifiers to correctly identify the subjects of their stories. The full name of a minor child, for instance, is of legitimate interest to a journalist who is covering a case of alleged abuse or neglect and seeks to confirm that she has correctly identified the victim. Likewise, an investigative reporter may need the date of birth of a criminal defendant in the course of investigating the allegations against him.

We also suggest that the Committees consider adding a provision that acknowledges that members of the public may, under this policy, ask the judge to unseal the unredacted version of a pleading containing a redacted personal identifier (or require the litigant to disclose the information, if an unredacted version is not on file with the court).

We believe the provision also should specify the *standard* governing such a request – for example, by requiring release of the information if the public's interest in it outweighs the asserted interest in privacy.

This revision would not create a new right, because members of the public already may file a motion to intervene in a judicial proceeding for purposes of unsealing a court record. Rather, it would clarify that there may be circumstances in which the redacted information is of legitimate public interest, and should be released.

## II. Remote Access Should Be Equivalent to Access at the Courthouse.

### **Proposed Fed. R. Civ. P. 5.2(c): Limitations on Remote Access to Electronic Files; Social Security Appeals and Immigration Cases**

We begin by setting out what we consider the correct presumption for any policy on remote access to court records: namely, that *remote electronic access to case files should be just as extensive as that available at the courthouse*. That approach is true to both the legal principles and the policy considerations underlying the public's right of access to the judicial system.

As a legal matter, providing co-extensive remote and paper access is the most faithful means of accommodating the public's established First Amendment and common-law rights. Indeed, courts across the country have repeatedly held that the public has a qualified right of access to judicial proceedings and records.<sup>1</sup> The purpose for which access is sought does not matter. In adult criminal and civil cases alike, a record filed with a court is presumed to be public unless the judge has sealed it on the basis of case-specific findings that explain why the presumption of access has been overcome.

Public policy considerations also justify remote access to court records. As the U.S. Court of Appeals for the Second Circuit has said, "Monitoring both provides judges with critical views of their work and deters arbitrary judicial behavior. Without monitoring . . . the public could have no confidence in the conscientiousness, reasonableness, or honesty of judicial

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<sup>1</sup> See, e.g., *Nixon v. Warner Communications, Inc.*, 435 U.S. 589 (1978) (recognizing common-law right of access to judicial records); *U.S. v. Ochoa-Vasquez*, 428 F.3d 1015, 1027-31 (11th Cir. 2005) (right of access to court dockets); *Republic of Philippines v. Westinghouse Elec. Corp.*, 949 F.2d 653 (3d Cir. 1991) (right of access to trial records); *Rushford v. New Yorker Magazine, Inc.*, 846 F.2d 249, 253 (4th Cir. 1988) (right of access to documents filed with a summary judgment motion); *Anderson v. Cryovac*, 805 F.2d 1 (1st Cir. 1986) (long-standing presumptive public access to judicial records); *Matter of Continental Illinois Securities Litigation*, 732 F.2d 1302 (7th Cir. 1984) (presumptive public access to judicial proceedings); *Associated Press v. U.S. (DeLorean)*, 705 F.2d 1143 (9th Cir. 1983) (First Amendment right of access to court records); *Brown & Williamson Tobacco Co. v. FTC*, 710 F.2d 1165 (6th Cir. 1983) (First Amendment and common law rights of access); *Newman v. Graddick*, 696 F.2d 796 (11th Cir. 1983) (presumptive right of access to court records); *In re Nat'l Broadcasting Co.*, 635 F.2d 945 (2d Cir. 1980) (strong presumption of right of access).

proceedings.” *United States v. Amodeo*, 71 F.3d 1044, 1048 (2d Cir. 1995). The public’s capacity to monitor the justice system is greatly enhanced when records are available online.

By limiting remote access to social security appeals and immigration cases only to parties and their attorneys, the Committee indicates that certain data currently available to the public will not be accessible online. Such a policy would inflict a grave public disservice. Information found in documents filed in all court cases should be made available to the public electronically to the same extent they are available at the courthouse in paper form.

Presumably the Committee makes this distinction based on the notion that some information is of legitimate interest to the public, but too "sensitive" to be readily available.<sup>2</sup> Such a proposal promotes the theory of "practical obscurity" – a doctrine articulated in a case with which we are quite familiar, *United States Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) – yes, these documents are public, but by forcing someone to travel to a courthouse and look up a file, they are, for all practical purposes, "obscure," if not exactly secret.

The phrase "practical obscurity" was coined by the government and used by the U.S. Supreme Court as part of its reasoning in the *Reporters Committee* decision. The case had nothing to do with the public’s right of access to court records, but rather concerned FBI compilations of such records and the interpretation of the Freedom of Information Act. The *Reporters Committee* case is not germane to formulating a policy of electronic access to court records.

More importantly, institutionalizing "practical obscurity" does not truly serve the purpose of protecting privacy interests. The "obscure" information will still be compiled by private companies, used by businesses, and even compiled in commercial electronic databases. In addition, truly sensitive information that serves no public purpose and would cause harm if released can be sealed from public view – both online and at the courthouse – through a protective order.

Often information that is personal and of no public value in one context, can be critical to public understanding of the judicial process in another context. An immigration decision, for instance, may seem like a purely private matter, but investigating how factors like race, country of origin, or evidence of persecution affect immigration determinations, requires a close look at all the records in searchable, sortable form. The ability to investigate and monitor immigration

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<sup>2</sup>The "volume of filings" does not seem to justify lesser electronic access to these cases since many types of criminal and civil cases, such as class action or RICO litigations, involve a high volume of filings but the Committees have not chosen to exclude them from electronic access.

decisions is particularly important considering that immigration courts only rarely issue published opinions explaining the justifications for their decisions. Social security appeals provide another example. While there is private material in a social security appeal, the parties are only before the court because they seek official state action to establish their rights, and the public has a great interest in understanding what arguments parties made, and what evidence courts found persuasive. There is always a public interest in knowing how courts decide these issues, what they consider, and what they don't.

Recently, reporters at *The Miami Herald* discovered from an analysis of hundreds of thousands of computerized case records that white criminal offenders are almost 50 percent more likely than blacks to receive a plea agreement that erases felony convictions from their records, even if they plead guilty. (See Manny Garcia & Jason Grotto, *Odds Favor Whites for Plea Deals*, MIAMI HERALD, Jan. 26, 2004.) That is precisely the kind of reporting on racial disparities needed to draw public attention to the issue. Restricting online access to the data will make it far more difficult, if not impossible, for reporters to expose such problems.

Serving the public interest in knowing how the courts operate means that the records must be presumptively open, allowing problems to be addressed on a case-by-case basis, not by cutting off meaningful access to a broad swath of important information. Restrictions on access based on the nature of a case would be a gross disservice to the public interest.

Opponents of online access to court records typically protest that it threatens the privacy interests of litigants. Even assuming that such interests are legitimate,<sup>3</sup> experience in other jurisdictions has shown that this concern is overstated. States such as New York and Maryland, which have enacted liberal electronic access policies, have not suffered any adverse results. Nor have the federal courts. We urge the Committee not to strike entire categories of information from online availability until at least awaiting the results of actual practice, not unsupported fears.

As the Committee is aware, our legal system generally addresses the misuse of information through after-the-fact remedies, not through prior restraints on the information's availability. Under federal law, for example, identity theft is a felony with the potential for serious jail time. See 18 U.S.C. § 1028(a)(7) (identity theft is punishable by up to 15 years in prison, and more if used to facilitate terrorism). The threat of severe criminal penalties, combined with aggressive law enforcement, is the best means of discouraging identity theft.

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<sup>3</sup>The scope of litigants' "privacy" rights in documents that they file with a court is debatable, to say the least. The courts are a publicly financed institution, and litigants in civil disputes have availed themselves of the judicial process voluntarily.

Similarly, any concerns about the potential harms of non-meritorious allegations (for example) are best addressed through after-the-fact remedies, not prior restraints. Depending on the circumstances, abuse of such information might give rise to a claim for libel or defamation. Judges also have other remedies, such as entering sealing orders for particularly sensitive cases, at their disposal.

In short, existing law already provides remedies for the rare instances of abuse that might result, in isolated cases, from the widespread availability of court records over the Internet. We therefore encourage the Committee to give existing law an opportunity to address any problems that might arise, rather than rush to cut off electronic access to public information in advance.

We strongly urge the Committee to reject any attempts to make electronically accessible court records less available than those accessible at the courthouse.

### **III. The Standards for Sealing Filings and Entering Protective Orders Should be Explained.**

**Proposed Fed. R. Civ. P. 5.2(d); Fed. R. Crim. P. 49.1(c); Fed. R. Bankr. P. 9037(c): Filings Made Under Seal**

**Proposed Fed. R. Civ. P. 5.2(e); Fed. R. Crim. P. 49.1(d); Fed. R. Bankr. P. 9037(d): Protective Orders**

For clarity, we suggest that the provisions for filings made under seal and protective orders specify the *standards* governing such requests – for example, by requiring specific findings on the record and giving the public an opportunity to be heard on the issue and by requiring a show of good cause that the party would otherwise suffer an undue burden. *See Press-Enterprise Co. v. Superior Ct. of Calif.*, 464 U.S. 501, 510 (1984) (a party may only overcome the public's first amendment right of openness if it shows "that closure is essential to preserve higher values and is narrowly tailored to serve that interest."); Fed. R. Civ. P. 26(c) (on good faith and for good cause shown, a court may enter a protective order "to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense."). As we mentioned on page 4 regarding redactions, we also recommend adding a provision that acknowledges that members of the public may, under these policies, ask the judge to unseal sealed filings and remove protective orders when the public's interest in the information outweighs the asserted interest in privacy. Again, these revisions would not create new rights, but would clarify the circumstances under which information may be sealed or protected and when it should be released.

## Conclusion

We appreciate the chance to weigh in on the proposed amendments to the federal rules issued by the Judicial Conference Advisory Committees on the Bankruptcy, Civil, and Criminal Rules as the Committees reevaluate their policies concerning access to court records. Because a policy of broad remote access to court documents improves the quality of news coverage and enhances the public's capacity to monitor the judicial system, we ask the Committees to create a remote access system that is as extensive as paper access at the courthouse.

Respectfully submitted,

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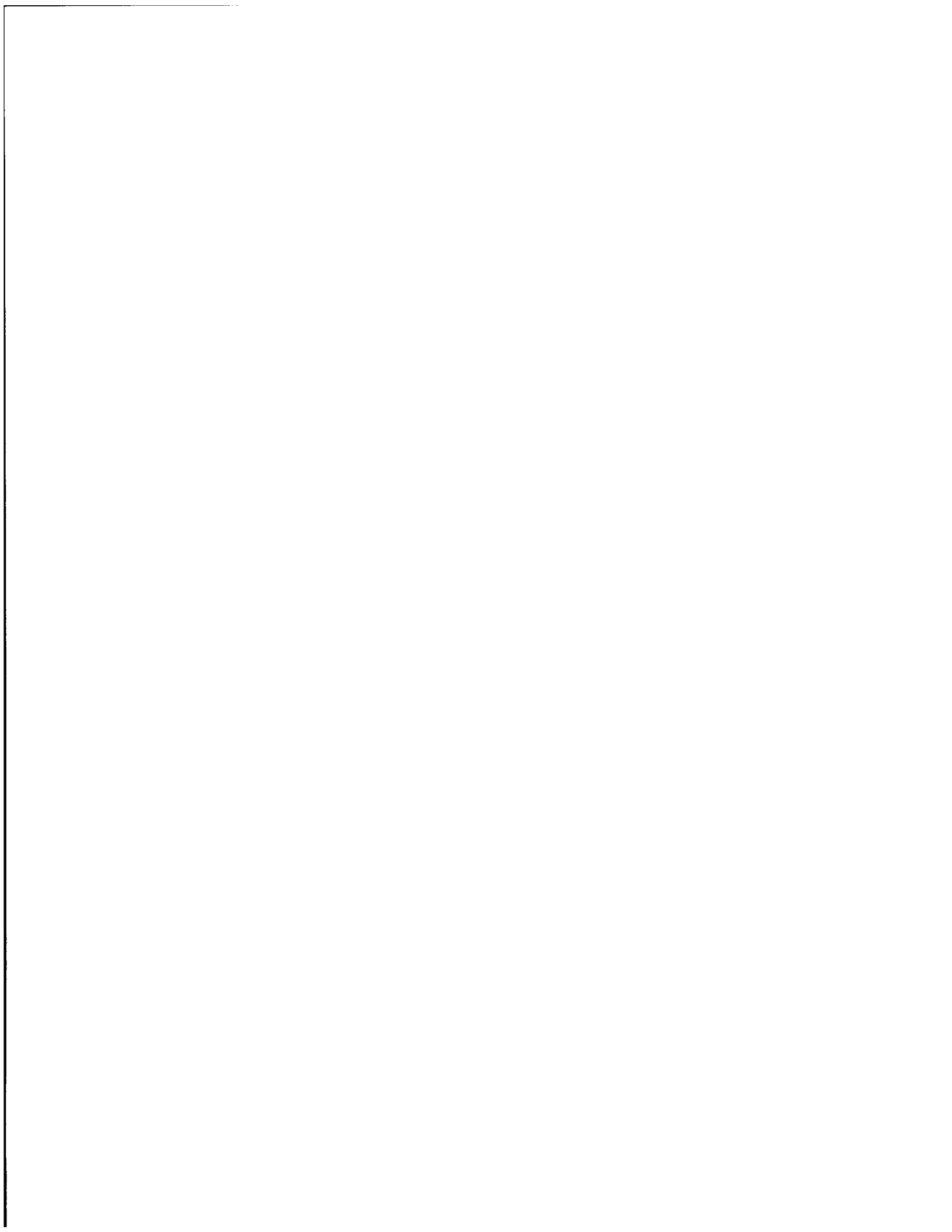
Lucy A. Dalglish, Esq.  
Executive Director

Gregg P. Leslie, Esq.  
Legal Defense Director

Susan K. Burgess, Esq.  
McCormick Tribune Legal Fellow

The Reporters Committee for Freedom of the Press  
1101 Wilson Blvd., Ste. 1100  
Arlington, VA 22209  
(703) 807-2100





UNITED STATES BANKRUPTCY COURT  
DISTRICT OF VERMONT

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67 Merchants Row, Post Office Box 6648  
Rutland, Vermont 05702-6648  
Tel. (802) 776-2002  
Fax (802) 776-2020

05-BK- 014

CLERK OF COURT  
Thomas J. Hart

Electronically submitted via the Internet  
to <http://www.uscourts.gov/rules>

February 15, 2006

Peter G. McCabe, Secretary  
Committee on Rules of Practice and Procedure  
of the Judicial Conference of the United States  
Administrative Office of the U.S. Courts  
Thurgood Marshall Federal Judiciary Building  
One Columbus Circle N.E.  
Washington, D.C. 20544

Re: Proposed amendments to the Federal Rules of Bankruptcy Procedure,  
Rule 3001(d)

Dear Mr. McCabe:

I write relative to the May 2, 2005 memorandum of the Hon. Thomas S. Zilly, Chair of the Advisory Committee on Bankruptcy Rules to the Hon. David F. Levi, Chair of the Standing Committee on the Rules of Practice and Procedure of the Judicial Conference of the United States. The memorandum proposed changes to certain bankruptcy rules. Thank you for the opportunity to comment.

At a meeting of this district's bankruptcy bar that I attended practitioners expressed concern with the proposed amendment to Rule 3001(d), Evidence of Perfection of Security Interest relative to a Proof of Claim, and I offered to convey their concern to the Committee.

The proposed amendment limits to five pages the writing evidencing perfection of the security interest. Typically, the writing would be a copy of the mortgage document. Practitioners stated that although they understand the need to limit the quantity of electronic bytes submitted into the court's computers, and the merit of submitting just the "critical" pages, today's mortgages are approximately 15 pages. Restricting the writing to five pages, thus requiring the claimant to *file a copy of relevant excerpts of the writing and a summary of the evidence of perfection*, would be cumbersome for the claimant, but moreover would not serve the interests of members of the public reading the document because different readers have different needs as to what they would

consider relevant in the document. Moreover, if the mortgages are available in electronic format and hence submitted in PDF they would not be likely to clog the system in the same way that scanned in documents of the past would.

Thus, on behalf of the Vermont bankruptcy bar I would request that the Committee increase the page limitation in Rule 3001(d) to 15 pages.

The practitioners also took notice of the proposed amendment to Rule 3001(c), Claim Based on a Writing, limiting the writing to 25 pages, and wondered whether in the interest of "electronic byte control" this limit could be lowered somewhat, allowing the requested increase in Rule 3001(d) to approximately 15 pages. I believe this is a sound and reasonable suggestion. Thus, I convey this request on their behalf as well.

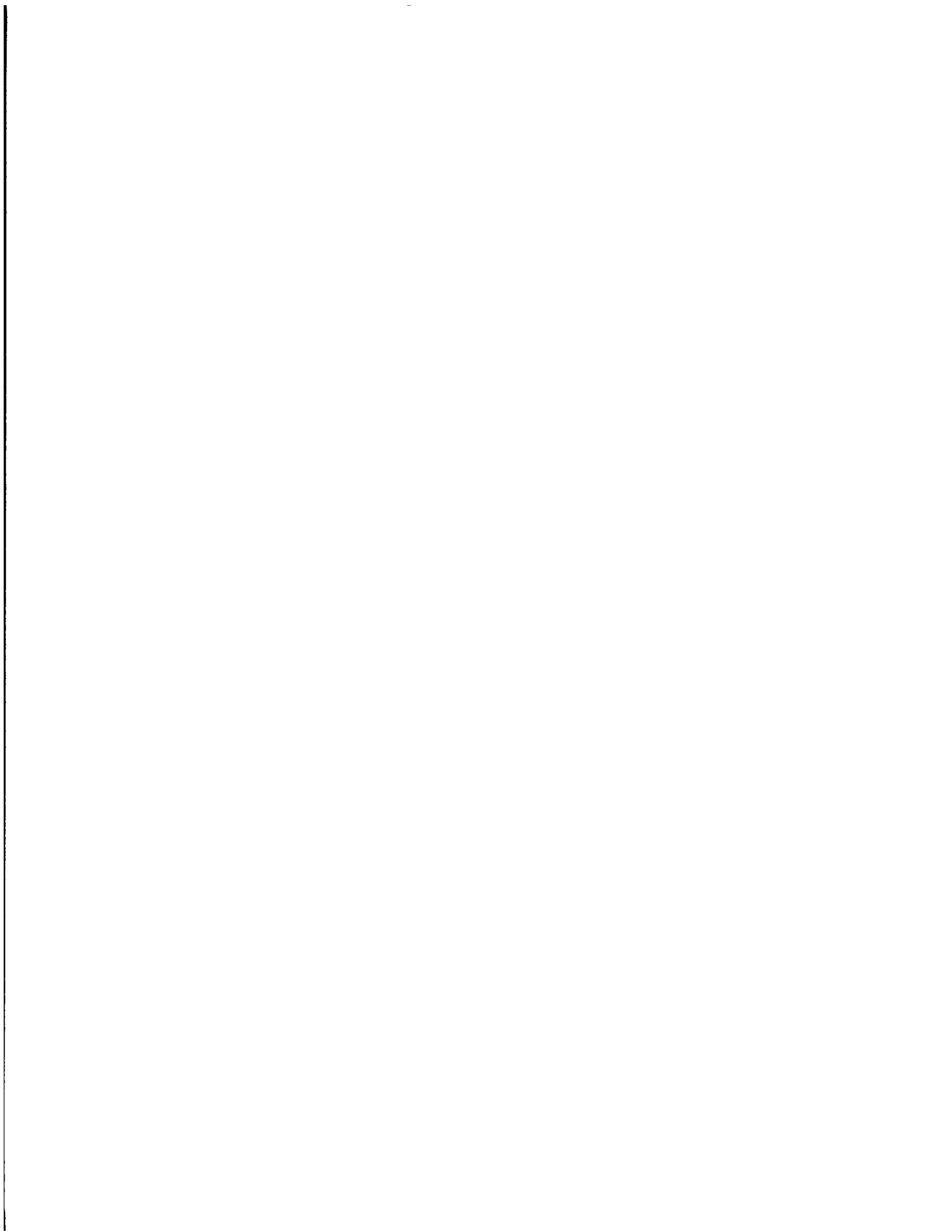
Again, I thank you for the opportunity to comment and would be happy to answer any question you or your committee has about these comments.

Yours truly,

*/s/*

Thomas J. Hart  
Clerk of Court

RECOMMENDATIONS  
OF THE  
STANDING COMMITTEE STYLE SUBCOMMITTEE



**PROPOSED AMENDMENTS TO THE  
FEDERAL RULES OF BANKRUPTCY PROCEDURE\***

**Rule 3001. Proof of Claim**

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\* \* \* \* \*

2

(c) CLAIM BASED ON A WRITING. When a claim, or

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an interest in property of the debtor securing the claim, is

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based on a writing, ~~the original or a duplicate~~ a copy of the

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writing shall be filed with the proof of claim. If the writing

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has been lost or destroyed, a statement of the circumstances

7

of the loss or destruction shall be filed with the proof of

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claim. If the writing exceeds 25 pages, the claimant shall

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instead file a copy of relevant excerpts of the writing and a

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summary of the writing which together shall not exceed a

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total of 25 pages. If the claimant has not filed a copy of the

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complete writing, on request of a party in interest, the

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claimant shall promptly serve on that party a copy of the

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complete writing.

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\*New material is underlined; matter to be omitted is lined through.

15 (d) EVIDENCE OF PERFECTION OF SECURITY  
16 INTEREST. If a security interest in property of the debtor is  
17 claimed, the proof of claim shall be accompanied by evidence  
18 that the security interest has been perfected. If the evidence  
19 of perfection is a writing, the claimant shall file a copy of the  
20 writing with the proof of claim. If the writing exceeds five  
21 pages, the claimant shall instead file a copy of relevant  
22 excerpts of the writing and a summary of the evidence of  
23 perfection, which together shall not exceed a total of five  
24 pages. If the claimant has not filed a copy of the complete  
25 writing, on request of a party in interest, the claimant shall  
26 promptly serve on that party a copy of the complete writing.

27 \* \* \* \* \*

**COMMITTEE NOTE**

Subdivisions (c) and (d) of the rule are amended to provide that claimants must file duplicates of writings upon which a claim is based or which evidence perfection of any claimed security interest. The rule previously authorized the claimant to file either the original writing or a duplicate thereof. If the writings that support the claim

in length. If the writings exceed five pages, the claimant must instead file a summary of the writings and a duplicate of relevant excerpts. The summary and relevant excerpts of evidence of perfection may not exceed five pages in the aggregate.

Under both subdivisions (c) and (d), if the claimant files a summary rather than a duplicate of the complete writing, the claimant must serve a copy of the complete writing upon any party in interest that requests a copy.

**Rule 3007. Objections to Claims**

1           (a) OBJECTIONS TO CLAIMS. An objection to the  
2           allowance of a claim shall be in writing and filed. A copy of  
3           the objection with notice of the hearing thereon shall be  
4           mailed or otherwise delivered to the claimant, the debtor or  
5           debtor in possession, and the trustee at least 30 days prior to  
6           the hearing. ~~If an objection to a claim is joined with a~~  
7           ~~demand for relief of the kind specified in Rule 7001, it~~  
8           ~~becomes an adversary proceeding.~~

9           (b) DEMAND FOR RELIEF REQUIRING AN  
10          ADVERSARY PROCEEDING. A party in interest shall not  
11          include a demand for relief of a kind specified in Rule 7001



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12 in an objection to the allowance of a claim, but an objection  
13 to the allowance of a claim may be included in an adversary  
14 proceeding.

may include  
the

15 (c) LIMITATION ON JOINDER OF CLAIMS  
16 OBJECTIONS. Unless otherwise ordered by the court, or  
17 permitted by subdivision (d), objections to more than one  
18 claim shall not be joined in a single objection.

19 (d) OMNIBUS OBJECTION. Subject to subdivision (e),  
20 objections to more than one claim may be joined in an  
21 omnibus objection if all the claims were filed by the same  
22 entity, or the objections are based solely on the grounds that  
23 the claims should be disallowed, in whole or in part, for one

because

24 or more of the following reasons:

- 25 (1) they duplicate other claims;  
26 (2) they have been filed in the wrong case;  
27 (3) they have been replaced by subsequently filed  
28 proofs of claim;

29 (4) they have been transferred in accordance with Rule

30 3001(e);

31 (5) they were not timely filed;

32 (6) they have been satisfied or released during the case

33 in accordance with the Code, applicable rules, or a court

34 order;

35 (7) they were presented in a form that does not comply

36 with applicable rules, and the objection states that the objector

37 is unable to determine the validity of the claim because of the

38 noncompliance;

39 (8) they are interests, rather than claims; and<sup>e</sup> or ✓

40 (9) they assert priority in an amount that exceeds the

41 maximum amount under § 507 of the Code.

42 (e) REQUIREMENTS FOR OMNIBUS OBJECTION.

43 An omnibus objection ~~under subdivision (d)~~ shall: ✓

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44 (1) state in a conspicuous place that claimants

45 receiving the objection should locate their names and claims

✓ 46 as listed in the objection;

47 (2) list claimants alphabetically, provide a cross-

48 reference to claim numbers, and, if appropriate, list claimants

49 by category of claims;

50 (3) state the grounds of the objection to each claim

51 and provide a cross-reference to the pages in the omnibus

52 objection pertinent to the stated grounds;

53 (4) state in the title ~~of the omnibus objection~~ the ✓

54 identity of the objector and the grounds for the objections;

55 (5) be numbered consecutively with other omnibus

56 objections filed by the same objector; and

57 (6) contain objections to no more than 100 claims.

58 (f) FINALITY OF OBJECTION. The finality of any

59 order regarding a claim objection included in an omnibus

60 objection shall be determined as though the claim had been  
61 subject to an individual objection.

#### COMMITTEE NOTE

The rule is amended in a number of ways. First, the amendment prohibits a party in interest from including in a claim objection a request for relief that requires an adversary proceeding. A party in interest may, however, include an objection to the allowance of a claim in an adversary proceeding. Unlike a contested matter, an adversary proceeding requires the service of a summons and complaint which puts the defendant on notice of the potential for an affirmative recovery. Permitting the plaintiff in the adversary proceeding to include an objection to a claim would not unfairly surprise the defendant as might be the case if the action were brought as a contested matter that included an action to obtain relief of a kind specified in Rule 7001.

The rule as amended does not require that a party include an objection to the allowance of a claim in an adversary proceeding. If a claim objection is filed separately from a related adversary proceeding, the court may consolidate the objection with the adversary proceeding under Rule 7042.

The rule also is amended to authorize the filing of a pleading that joins objections to more than one claim. Such filings present significant opportunity for efficient administration of large cases, but the rule includes restrictions on the use of these omnibus objections to ensure the protection of the due process rights of the claimants.

Unless the court orders otherwise, objections to more than one claim may be joined in a single pleading only if all of the claims were

seeking to appeal any such order is neither required, nor permitted, to await the court's resolution of all other joined objections. The rule permits the joinder of objections for convenience, and that convenience should not impede timely review of a court's decision with respect to each claim. Whether the court's action as to a particular objection is final, and the consequences of that finality, are not addressed by this amendment.

**Rule 4001. Relief from Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Use of Cash Collateral; Obtaining Credit; Agreements**

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\* \* \* \* \*

(b) USE OF CASH COLLATERAL.

(1) *Motion; Service.*

(A) Motion. A motion for ~~authorization authority~~ to use cash collateral shall be made in accordance with Rule 9014 and shall be accompanied by a proposed form of order served on any entity which has an interest in the cash collateral, on any committee elected pursuant to § 705 or appointed pursuant to § 1102 of the Code or its authorized agent, or, if the case is a chapter 9 municipality case or a

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11 ~~chapter 11 reorganization case and no committee of unsecured~~  
12 ~~creditors has been appointed pursuant to § 1102, on the~~  
13 ~~creditors included on the list filed pursuant to Rule 1007(d),~~  
14 ~~and on such other entities as the court may direct.~~

15 (B) Contents. The motion shall include an  
16 introductory statement, not to exceed three pages,  
17 summarizing all material provisions of the motion, including:

18 (1) the name of each entity with an interest in  
19 the cash collateral;

20 (2) the purposes for <sup>using</sup> ~~the use of~~ the cash  
21 collateral;

22 (3) the terms <sup>of its use</sup> including <sup>the</sup> ~~duration, of the use of~~  
23 ~~the cash collateral;~~ and

24 (4) any liens, cash payments, or other  
25 adequate protection that will be provided to each entity with  
26 an interest in the cash collateral or, if no additional adequate

27 protection is proposed, an explanation of why each entity's  
28 interest is adequately protected.

: (1)

29 (C) Service. The motion shall be served on any  
30 entity with an interest in the cash collateral ~~any committee~~ ; (2)  
31 elected under § 705 or appointed under § 1102 of the Code or  
32 its authorized agent ~~or, if the case is a chapter 9 municipality~~ ✓  
33 case or a chapter 11 reorganization case and no committee of  
34 unsecured creditors has been appointed under § 1102, the  
35 creditors included on the list filed under Rule 1007(d) ; ~~and~~ (3)  
36 any other entity that the court may direct s

37 \* \* \* \* \*

38 (c) OBTAINING CREDIT.


39 (1) *Motion; Service.*

40 (A) Motion. A motion for authority to obtain  
41 credit shall be made in accordance with Rule 9014 and shall  
42 be accompanied by a copy of the credit agreement and a  
43 proposed form of order served on any committee elected

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44 pursuant to § 705 or appointed pursuant to § 1102 of the Code  
45 or its authorized agent, or, if the case is a chapter 9  
46 municipality case or a chapter 11 reorganization case and no  
47 committee of unsecured creditors has been appointed pursuant  
48 to § 1102, on the creditors included on the list filed pursuant  
49 to Rule 1007(d), and on such other entities as the court may  
50 direct. The motion shall be accompanied by a copy of the  
51 agreement.

52 (B) Contents. The motion shall include an  
53 introductory statement, not to exceed three pages,  
54 summarizing all material provisions of the proposed credit  
55 agreement, including interest rate, maturity, events of default,  
56 liens, borrowing limits, and borrowing conditions. If the  
57 proposed credit agreement or proposed order includes any of  
58 the following provisions, the motion shall describe the nature  
59 and extent of each provision, explain the reasons for each





one

60 provision, and identify the specific location of the provision

61 in the proposed form of order, agreement, or other document:

62 (1) the granting of priority or a lien on

63 property of the estate under § 364(c) or (d);

64 (2) the providing of adequate protection or

65 priority for a claim that arose before the

66 commencement of the case, including the granting of a lien on

67 property of the estate to secure the claim, or the use of

68 property of the estate or credit obtained under § 364 to make

69 cash payments on account of the claim;

70 (3) a determination with respect to the

71 validity, enforceability, priority, or amount of a claim that

72 arose before the commencement of the case, or of any lien

73 securing the claim;

74 (4) a waiver or modification of the

75 provisions of the Code or applicable rules relating to the

76 automatic stay;

Code



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to

commenced

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commenced

15 FEDERAL RULES OF BANKRUPTCY PROCEDURE

77 (5) a waiver or modification of any entity's  
78 authority to file a plan, to seek an extension of time in which  
79 the debtor has the exclusive right to file a plan, or the right to ✓  
80 request the use of cash collateral under § 363(c) or request ✓  
81 authority to obtain credit under § 364;

82 (6) a waiver or modification of the  
83 applicability of nonbankruptcy law relating to the perfection  
84 of a lien on property of the estate, or on the foreclosure or  
85 other enforcement of the lien;

86 (7) a release, waiver, or limitation on any  
87 claim or other cause of action belonging to the estate or the  
88 trustee, including any modification of the statute of  
89 limitations or other deadline to commence an action;

✓ 90 the (8) indemnification of any entity;

91 (9) a release, waiver, or limitation of any  
92 right under § 506(c); or

93 (10) the granting of a lien on any claim or ✓  
94 cause of action arising under § 544, 545, 547, 548, 549,  
95 553(b), 723(a), or 724(a).

96 (C) Application of Rule 9024. The court may  
97 grant appropriate relief under Rule 9024 if it determines that ✓  
98 the introductory statement did not adequately disclose a  
99 material element of the agreement.

100 (D) Service. The motion shall be served on any  
101 committee elected under § 705 or appointed under § 1102 of  
102 the Code or its authorized agent or, if the case is a chapter 9 ✓  
103 municipality case or a chapter 11 reorganization case and no  
104 committee of unsecured creditors has been appointed under  
105 § 1102, on the creditors included on the list filed under Rule

✓ ; 1007(d), and on such other entities as the court may direct ✓  
106 any \*\*\*\*\*  
107

108 (d) AGREEMENT RELATING TO RELIEF FROM  
109 THE AUTOMATIC STAY, PROHIBITING OR

any of the following agreements shall be accompanied by a copy of the agreement and a proposed form of order:

17 FEDERAL RULES OF BANKRUPTCY PROCEDURE

110 CONDITIONING THE USE, SALE, OR LEASE OF

111 PROPERTY, PROVIDING ADEQUATE PROTECTION,

112 USE OF CASH COLLATERAL, AND OBTAINING

113 CREDIT.

114 (1) *Motion; Service.*

115 (A) Motion. A motion for approval of ~~an agreement~~

an agreement

116 (A1) to provide adequate protection, (B2) to prohibit or an agreement

117 condition the use, sale, or lease of property, (E3) to modify or an agreement

an agreement

118 terminate the stay provided for in § 362, (D4) to use cash an agreement

119 collateral, or (E5) between the debtor and an entity that has a

120 lien or interest in property of the estate pursuant to which the

121 entity consents to the creation of a lien senior or equal to the

122 entity's lien or interest in such property shall be served on any

123 committee elected pursuant to § 705 or appointed pursuant to

124 § 1102 of the Code or its authorized agent, or, if the case is a

125 chapter 9 municipality case or a chapter 11 reorganization

126 case and no committee of unsecured creditors has been



127 appointed pursuant to § 1102, on the creditors included on the  
128 list filed pursuant to Rule 1007(d), and on such other entities  
129 as the court may direct. ~~The motion shall be accompanied by~~  
130 ~~a copy of the agreement and a proposed form of order.~~

131 (B) Contents. The motion shall include an  
132 introductory statement, not to exceed three pages,  
133 summarizing all material provisions of the agreement. The  
134 motion also shall state whether the relief requested includes  
135 any of the provisions listed in subdivision (c)(1)(B) and, if so,  
136 shall describe the nature and extent of each provision, explain  
137 the reasons for each <sup>one</sup> provision, and identify <sup>its</sup> the specific  
138 location of the provision in the proposed form of order,  
139 agreement, or other document.

140 (C) Application of Rule 9024. The court may  
141 grant <sup>g</sup> appropriate relief under Rule 9024 if it determines that  
142 the introductory statement did not adequately disclose a  
143 material element of the agreement.

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: (1)

144 (D) Service. The motion shall be served on ~~any~~  
145 committee elected under § 705 or appointed under § 1102 of  
146 the Code or its authorized agent, or, if the case is a chapter 9  
147 municipality case or a chapter 11 reorganization case and no  
148 committee of unsecured creditors has been appointed under  
149 § 1102, on the creditors included on the list filed under Rule  
150 1007(d), and <sup>(2)</sup> on <sup>any</sup> <sup>entity</sup> such other entities as the court may direct. <sup>S</sup>

151

\*\*\*\*\*

COMMITTEE NOTE

The rule is amended to require that parties seeking authority to use cash collateral, to obtain credit, and to obtain approval of agreements to provide adequate protection, modify or terminate the stay, or to grant a senior or equal lien on property, submit with those requests a proposed order granting the relief, and that they provide more extensive notice to interested parties of a number of specified terms. The motion must include a summary, not to exceed three pages, which will assist the court and interested parties in understanding the nature of the relief requested. In addition to the summary, the rule requires that motions under subdivisions (c) and (d) state whether the movant is seeking approval of any of the provisions listed in subdivision (c)(1)(B), and where those provisions are located in the documents. These provisions are frequently included in agreements of these types, and the rule is intended to

enhance the ability of the court and interested parties to find and evaluate those provisions.

The rule limits the introductory summary to three pages. The parties to agreements and lending offers frequently have concise summaries of their transactions that contain a list of the material provisions of the agreements, even if the agreements themselves are very lengthy. A similar summary should allow the court and interested parties to understand the relief requested. The court may grant relief under Rule 9024 if it determines that a material element of the requested financing, or agreement regarding the stay or cash collateral usage, was not adequately disclosed in the introductory statement.

Other amendments are stylistic.

Rule 6003. Interim and Final Relief Immediately <sup>Commences</sup> After ~~Following the Commencement of the Case~~ Applications for Employment; Motions for Use, Sale, or Lease of Property; and Motions for Assumptions, Assignments, and Rejections of Executory Contracts

- 1 ~~Except to the extent that~~ relief is necessary to avoid <sup>Unless</sup>
- 2 immediate and irreparable harm, the court shall not, within 20
- 3 days after <sup>the filing of</sup> the petition, grant relief regarding <sup>on</sup> the
- 4 following: <sup>is filed</sup>
- 5 (a) an application under Rule 2014;

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6 (b) a motion to use, sell, lease, or otherwise incur an

7 obligation regarding property of the estate, including a motion

8 to pay all or part of a claim that arose before the filing of the

was filed

9 petition, but not a motion under Rule 4001; and

10 (c) a motion to assume, assign, or reject an executory

11 contract or unexpired lease in accordance with § 365.

under

**COMMITTEE NOTE**

There can be a flurry of activity during the first days of a bankruptcy case. This activity frequently takes place prior to the formation of a creditors' committee, and it also can include substantial amounts of materials for the court and parties in interest to review and evaluate. This rule is intended to alleviate some of the time pressures present at the start of a case so that full and close consideration can be given to matters that may have a fundamental impact on the case.

The rule provides that the court cannot grant relief on applications for the employment of professional persons, motions for the use, sale, or lease of property of the estate other than such a motion under Rule 4001, and motions to assume, assign, or reject executory contracts and unexpired leases for the first 20 days of the case, unless it is necessary to avoid immediate and irreparable harm. This standard is taken from Rule 4001(b)(2) and (c)(2), and decisions under those provisions should provide guidance for the application of this provision.



This rule does not govern motions and applications made more than 20 days after the filing of the petition.

**Rule 6006. Assumption, Rejection or Assignment of an Executory Contract or Unexpired Lease**

1

\* \* \* \* \*

2

(e) LIMITATIONS. The trustee shall not seek authority

3

to assume or assign multiple executory contracts or unexpired

4

leases in one motion unless ~~all executory contracts or~~

5

~~unexpired leases to be assumed or assigned~~ are between the

6

same parties or are to be assigned to the same assignee, or the

7

court otherwise authorizes the motion to be filed. Subject to

8

subdivision (f), the trustee may join ~~requests for authority to~~

9

~~reject multiple executory contracts or unexpired leases in one~~

10

~~motion~~

11

(f) OMNIBUS MOTIONS. A motion to reject or, if

12

permitted under subdivision (e), a motion to assume or assign

they

in one motion

23 FEDERAL RULES OF BANKRUPTCY PROCEDURE

13 multiple executory contracts or unexpired leases that are not  
14 between the same parties shall:

15 (1) state in a conspicuous place that parties receiving  
16 the omnibus motion should locate their names and their  
17 contracts or leases listed in the motion;

18 (2) list parties alphabetically and identify the  
19 corresponding contract or lease;

20 (3) specify the terms, including the curing of defaults,  
21 for each requested assumption or assignment;

22 (4) specify the terms, including the identity of each  
23 assignee and the adequate assurance of future performance by  
24 each assignee, for each requested assignment;

25 (5) be numbered consecutively with other omnibus  
26 motions to assume, assign, or reject executory contracts or  
27 unexpired leases; and

28 (6) be limited to no more than 100 executory  
29 contracts or unexpired leases.

30 (g) FINALITY OF DETERMINATION. The finality of any  
31 order ~~respecting~~ an executory contract or unexpired lease  
32 included in an omnibus motion shall be determined as though  
33 such contract or lease had been the subject of a separate  
34 motion.

regarding

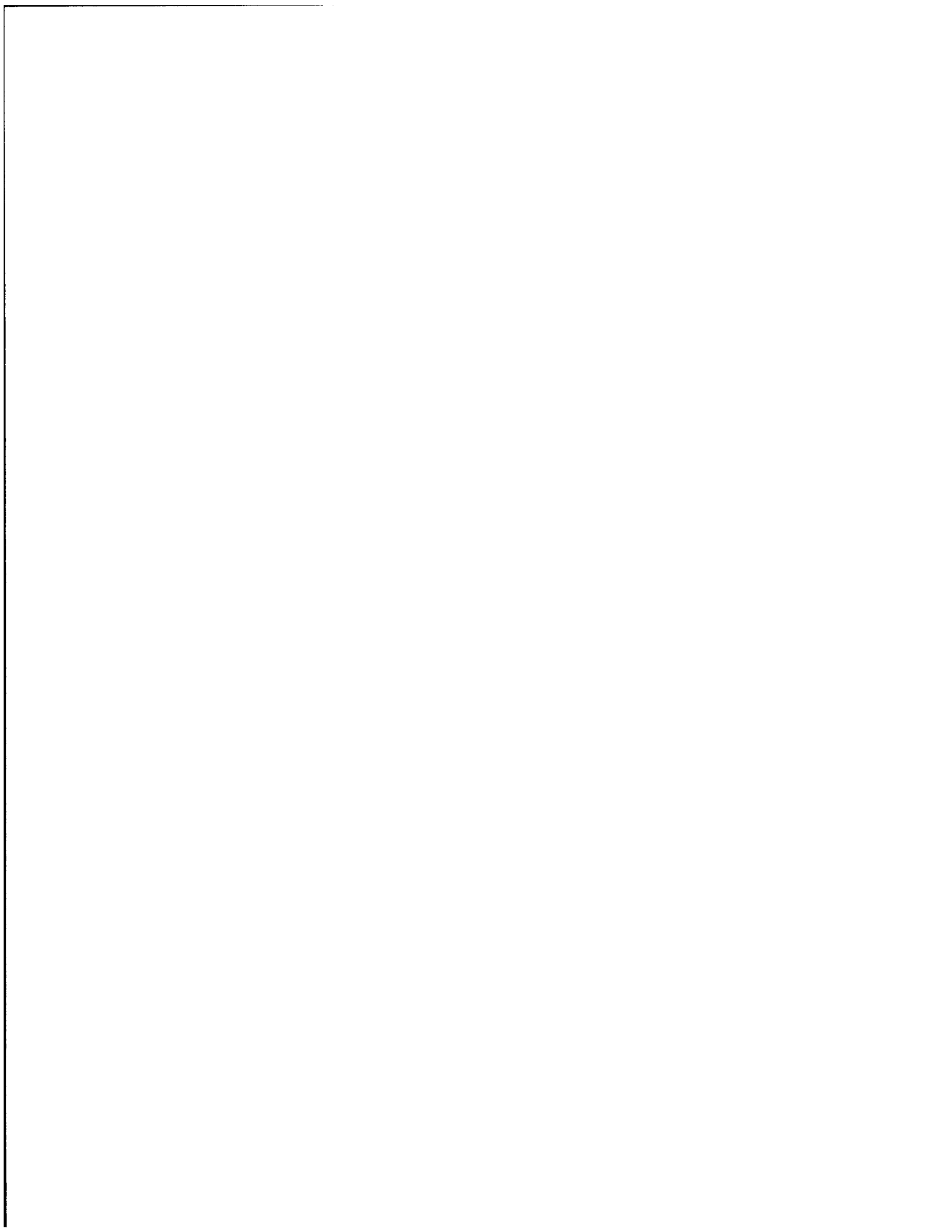
the

#### COMMITTEE NOTE

The rule is amended to authorize the use of omnibus motions to reject multiple executory contracts and unexpired leases. In some cases there may be numerous executory contracts and unexpired leases, and this rule permits the combining of up to one hundred of these contracts and leases in a single motion to initiate the contested matter.

The rule also is amended to authorize the use of a single motion to assume or assign executory contracts and unexpired leases (i) when such contracts and leases are with a single nondebtor party, (ii) when such contracts and leases are being assigned to the same assignee, or (iii) the court authorizes the filing of a joint motion to assume or to assume and assign executory contracts and unexpired leases under other circumstances that are not specifically recognized in the rule.

An omnibus motion to assume, assign, or reject multiple executory contracts and unexpired leases must comply with the procedural requirements set forth in subdivision (f) of the rule, unless the court orders otherwise. These requirements are intended to ensure that the nondebtor parties to the contracts and leases receive effective



STANDING COMMITTEE - STYLE SUBCOMMITTEE COMMENTS  
ON PROPOSED BANKRUPTCY RULE AMENDMENTS

**Rule 3001.**

I agree with the proposed changes to this Rule.

**Rule 3007.**

In subdivision (b), I agree with the changes suggested on lines 12 and 13. I have some concern about deleting references to the form of the objection (that is, an objection to the allowance of a claim), but the structure of the sentence I think clearly indicates that the objection referred to in the last phrase of the sentence is the objection to the allowance of a claim.

I agree with the deletion of the comma on line 16.

I agree with the changes suggested to subdivision (d).

I agree with the changes recommended for subdivision (e).

**Rule 4001.**

In subdivision (b)(1)(B), I think that we should retain the original language. Substituting “using” for “the use of” takes the rule away from its grounding in § 363 of the Code. Also, in subparagraph (B)(3), the restructuring of that subparagraph is even more awkward than the original formulation.

Subparagraph (b)(1)(C) suggests a vertical list of the entities being served. I agree with that stylistic change, although I am not sure I understand why the dash is inserted on line 32.

In subdivision (c)(1)(B), I would not delete the word “credit” on line 57. “Credit agreement” is really what we are talking about, and given the language on lines 42 and 43 of the proposed rule, I think the word “credit” should stay in the provision. As to the deletion of “proposed” on line 57, the question is simply whether the first “proposed” on line 57 is sufficient to modify the word “order” as it shows up later on that line. I agree with the other stylistic changes proposed on line 60.

On line 62, I would have the sentence begin “A grant or priority to” or “A lien on”.

I would not make the change on line 64. That is essentially a substantive change. There is not a provision of adequate protection, but rather the agreement can provide adequate protection through a variety of terms. Therefore, suggesting it is a “provision” as the proposal would be inaccurate. I would make the change that they suggest on line 65 (substitute “for” for “with respect to”), but I would not make the change on line 66. “Commencement of the case” is a regularly used term of art and appears elsewhere throughout the Code and Rules.

I would be reluctant to make the change suggested on line 70. I do not think “about” is a complete substitute for “with respect to.” That is, the Court could make a determination “about” a variety of things that could include the validity of a lien or claim. On the other hand, that determination may not be with respect to the lien or claim. It may be splitting hairs, but my gut feeling there is a slight difference. The same comments about commencement of the case as noted earlier would apply to line 72. I would accept the proposed change on line 75.

I would make the change suggested on line 78, and on line 79, I would also delete the word “or.” On line 80, I would leave the last comma where it is.

I would make the change proposed on line 90, but I would not make the change proposed on line 93. It seems to me that “granting a lien” includes the possibility of a lien arising at a potentially future date; whereas, the “grant of a lien” (as the proposed change would have it) suggests that the order itself might constitute the grant of the lien. We want to reach situations in which the Court order directs the debtor to grant a lien at some other time or in some other document, and the proposed change might take away that possibility.

I agree with the proposed change on line 97.

As to subparagraph (D)(lines 100-106), I do not have any strong feelings one way or the other about creating a vertical list. Since there are only two groups that would be listed in the Rule, the need for a vertical list seems questionable. I would raise the same issue with respect to the dash set out on line 102 as previously discussed with respect to line 32 of the Rule.

As to subdivision (d)(1)(A), I agree with the proposed changes with one exception. The proposed introductory language could be improved by deleting the word “agreements” which appears in handwriting at the very top of the page. I think that word is unnecessary since the words “an agreement” shows up throughout the vertical list set out below.

As to subparagraph (B)(lines 131-139), I would accept each of the proposed changes. As noted previously, I would also accept the deletion of the word “appropriate” on line 141.

I have the same comments about subparagraph (D)(lines 144-150) as I had regarding lines 100-106.

### **Rule 6003.**

As to the title, I would agree to the substitution of “after” for “following.” I would not make the other changes to the title for reasons described previously.

The change proposed to line 1 of the Rule raises the same issue as was discussed under Rule 9037(g). That is, does “unless” mean the same as “except to the extent that”? As to line 3, the phrase generally used throughout the rules is “the filing of the petition” rather than when a “petition is filed”. Consequently, I would keep the language as originally published. I would accept the

substitution “on” for “regarding”. Lines 8-9 presents the same issue with respect to the filing of the petition.

As to line 11, I would agree with the proposed substitution of “under” for “in accordance with”. That is also consistent with Rule 6006(d) currently in the Rules.

**Rule 6006.**

I think that the changes on lines 3-4 are acceptable. The change suggested on lines 8 and 10 is purely stylistic, and I would not object to it, although it would not be my choice.

I would agree with the deletion of “omnibus” on line 16, but I would not delete “listed” on line 17. Taking out the word “listed” suggests that the contract releases are contained in the motion. I think what we anticipate instead is a list of contracts or leases rather than the actual contractual leases themselves. Therefore, deleting “listed” would somewhat change the meaning of the Rule.

I agree with the changes called for on lines 22 and 24.

I think that the changes in subdivision (g) are purely stylistic. My personal preference would be to make the change on line 33, but not accept the proposed change to line 31.





**STYLE PROCESS**  
**Standing Rules Committee**  
**SEPTEMBER 21, 2005**

1. Coordinating with the Style Consultant –

The advisory-committee reporters are strongly encouraged to share rule drafts early in the process with Professor Joseph Kimble, the consultant to the Standing Committee's Style Subcommittee. The reporters should consider electronically copying the style consultant with preliminary drafts as they are being drafted.

2. Submitting a Draft to the Rules Office –

The reporter submits the proposed rule amendment to the Rules Committee Support Office (ordinarily, three to four weeks before the scheduled meeting date).

3. Transmitting the Draft to the Advisory Committee and the Style Consultant –

The Rules Office will format the proposed rule amendment for the advisory committee, copy and include it in agenda materials, and send a copy to the style consultant. Ideally, the consultant should receive the copy at least two weeks before the meeting.

4. Style Consultant's Suggestions –

The style consultant may provide the reporter (copying the Style Subcommittee chair) with comments and suggested edits on the proposed rule amendment no later than one week before the scheduled advisory-committee meeting, unless the consultant had less than one week to review the proposal, in which case the period is split in half.

5. Reporter's Discretion –

The reporter may accept, defer action on, or decline to accept the style consultant's suggested edits, with the understanding that style changes later proposed by the Style Subcommittee must be adopted by the advisory committee (see # 7).

6. Style Subcommittee Recommends Edits After Publication –

The Style Subcommittee, in consultation with its consultants, will review rule amendments published for comment and submit its suggested edits to the advisory-

committee chair and reporter no later than 30 days before the public-comment period ends.

7. Style Changes –

Style Subcommittee edits that involve pure style issues ordinarily control. The advisory committee may recommend that the Standing Committee adopt different language on a matter of pure style (see # 10).

8. Substantive Changes –

The advisory committee may reject any edit that it believes will affect substantive meaning. Determining whether a specific edit represents a substantive change is solely within the advisory committee's judgment, subject to reconsideration by the Standing Committee.

9. Style Subcommittee's Review After the Advisory Committee's Final Action –

The agenda materials sent to Standing Committee members before their meeting will contain the rule amendment as approved by the advisory committee after public comment, with a recommendation that it be transmitted to the Judicial Conference for approval. The Style Subcommittee will review any changes made after publication by the advisory committee in light of public comment and submit suggested edits to the advisory-committee chair and reporter no later than one week before the Standing Committee meeting. The chair may accept style edits on behalf of the advisory committee.

10. Standing Committee's Final Review –

The Standing Committee will review any Style Subcommittee edits to the published version of the rule amendment. The Style Subcommittee chair may also request the Standing Committee to reconsider the advisory committee's determination to reject an edit because it represents a substantive change. The advisory-committee chair may ask the Standing Committee to reconsider edits recommended by the Style Subcommittee.

**AMENDMENTS TO THE FEDERAL  
RULES OF BANKRUPTCY PROCEDURE\***

**Rule 1014. Dismissal and Change of Venue**

1           (a) DISMISSAL AND TRANSFER OF CASES.

2                   (1) *Cases Filed in Proper District.*

3           If a petition is filed in the proper district, the court, on the  
4           timely motion of a party in interest or on its own motion, and  
5           after hearing on notice to the petitioners, the United States  
6           trustee, and other entities as directed by the court, may  
7           transfer the case ~~may be transferred~~ to any other district if the  
8           court determines that the transfer is in the interest of justice or  
9           for the convenience of the parties.

10                   (2) *Cases Filed in Improper District.*

11           If a petition is filed in an improper district, the court, on  
12           the timely motion of a party in interest or on its own motion,  
13           and after hearing on notice to the petitioners, the United  
14           States trustee, and other entities as directed by the court, may

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\*New material is underlined; matter to be omitted is lined through.

2 FEDERAL RULES OF BANKRUPTCY PROCEDURE

15 ~~dismiss the case or transfer it the case may be dismissed or~~  
16 ~~transferred~~ to any other district if the court determines that  
17 transfer is in the interest of justice or for the convenience of  
18 the parties.

19 \* \* \* \* \*

#### COMMITTEE NOTE

Courts have generally held that they have the authority to dismiss or transfer cases on their own motion. The amendment recognizes this authority and also provides that dismissal or transfer of the case may take place only after notice and a hearing.

#### Rule 7007.1. Corporate Ownership Statement

1 \* \* \* \* \*

2 (b) TIME FOR FILING.

3 A party shall file the statement required under Rule  
4 7007.1(a) with its first ~~pleading in an adversary proceeding~~  
5 appearance, pleading, motion, response, or other request

6 addressed to the court. A party shall file a supplemental  
7 statement promptly upon any change in circumstances that  
8 this rule requires the party to identify or disclose.

**COMMITTEE NOTE**

The rule is amended to clarify that a party must file a corporate ownership statement with its initial paper filed with the court in an adversary proceeding. The party's initial filing may be a document that is not a "pleading" as defined in Rule 7 F.R. Civ. P., which is made applicable in adversary proceedings by Rule 7007. The amendment also brings Rule 7007.1 more closely in line with Rule 7.1 F.R. Civ. P.

**PROPOSED AMENDMENTS TO THE  
FEDERAL RULES OF BANKRUPTCY PROCEDURE\***

**Rule 3001. Proof of Claim**

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14

\* \* \* \* \*

(c) CLAIM BASED ON A WRITING. When a claim, or an interest in property of the debtor securing the claim, is based on a writing, ~~the original or a duplicate~~ a copy of the writing shall be filed with the proof of claim. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the proof of claim. If the writing exceeds 25 pages, the claimant shall instead file a copy of relevant excerpts of the writing and a summary of the writing which together shall not exceed a total of 25 pages. If the claimant has not filed a copy of the complete writing, on request of a party in interest, the claimant shall promptly serve on that party a copy of the complete writing.

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\*New material is underlined; matter to be omitted is lined through.

15 (d) EVIDENCE OF PERFECTION OF SECURITY  
16 INTEREST. If a security interest in property of the debtor is  
17 claimed, the proof of claim shall be accompanied by evidence  
18 that the security interest has been perfected. If the evidence  
19 of perfection is a writing, the claimant shall file a copy of the  
20 writing with the proof of claim. If the writing exceeds five  
21 pages, the claimant shall instead file a copy of relevant  
22 excerpts of the writing and a summary of the evidence of  
23 perfection, which together shall not exceed a total of five  
24 pages. If the claimant has not filed a copy of the complete  
25 writing, on request of a party in interest, the claimant shall  
26 promptly serve on that party a copy of the complete writing.

27 \* \* \* \* \*

**COMMITTEE NOTE**

Subdivisions (c) and (d) of the rule are amended to provide that claimants must file duplicates of writings upon which a claim is based or which evidence perfection of any claimed security interest. The rule previously authorized the claimant to file either the original writing or a duplicate thereof. If the writings that support the claim

3 FEDERAL RULES OF BANKRUPTCY PROCEDURE

are 25 pages or less, the claimant must attach a copy of the writings to the proof of claim, whether or not the claimant provides a summary of the writings. The attached writings and summary together must not exceed 25 pages. Similarly, if the writings that evidence perfection of a security interest do not exceed five pages, the claimant must file a copy of those writings with the proof of claim. The claimant also may attach a summary of the writings evidencing perfection, but the total of the summary and the writings evidencing perfection of a security interest must not exceed five pages.

Subdivisions (c) and (d) are amended to establish limits on the length of documents being attached to a proof of claim. Some documents can be extremely lengthy and may pose particular problems, especially when they are filed electronically. Voluminous documents can cause undue delays both in the filing of the proof of claim as well as in searches of the court's record. Shortened versions of the writings should prevent these problems. Consequently, the rule directs the claimant to file a summary of the writing upon which the claim is based along with copies of the relevant portions of the writing. For example, if a writing must be signed by the debtor to be enforceable, the relevant excerpts likely would include the debtor's signature. The claimant makes the initial determination of relevancy, but to the extent that the attachment does not include relevant excerpts, the evidentiary effect of the proof of claim under subdivision (f) would be limited.

Under subdivision (c), writings on which the claim is based may not exceed 25 pages in length, and if they do, the claimant must instead attach a duplicate of relevant excerpts of the writings and a summary of the complete writings. The summary and the relevant excerpts also may not exceed 25 pages in the aggregate. Similarly, under subdivision (d), any attachment to the proof of claim to provide evidence of perfection of a security interest may not exceed five pages



in length. If the writings exceed five pages, the claimant must instead file a summary of the writings and a duplicate of relevant excerpts. The summary and relevant excerpts of evidence of perfection may not exceed five pages in the aggregate.

Under both subdivisions (c) and (d), if the claimant files a summary rather than a duplicate of the complete writing, the claimant must serve a copy of the complete writing upon any party in interest that requests a copy.

**Rule 3007. Objections to Claims**

1           (a) OBJECTIONS TO CLAIMS. An objection to the  
2           allowance of a claim shall be in writing and filed. A copy of  
3           the objection with notice of the hearing thereon shall be  
4           mailed or otherwise delivered to the claimant, the debtor or  
5           debtor in possession, and the trustee at least 30 days prior to  
6           the hearing. ~~If an objection to a claim is joined with a~~  
7           ~~demand for relief of the kind specified in Rule 7001, it~~  
8           ~~becomes an adversary proceeding.~~

9           (b) DEMAND FOR RELIEF REQUIRING AN  
10          ADVERSARY PROCEEDING. A party in interest shall not  
11          include a demand for relief of a kind specified in Rule 7001

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12 in an objection to the allowance of a claim, but an objection  
13 to the allowance of a claim may be included in an adversary  
14 proceeding.

15 (c) LIMITATION ON JOINDER OF CLAIMS  
16 OBJECTIONS. Unless otherwise ordered by the court, or  
17 permitted by subdivision (d), objections to more than one  
18 claim shall not be joined in a single objection.

19 (d) OMNIBUS OBJECTION. Subject to subdivision (e),  
20 objections to more than one claim may be joined in an  
21 omnibus objection if all the claims were filed by the same  
22 entity, or the objections are based solely on the grounds that  
23 the claims should be disallowed, in whole or in part, for one  
24 or more of the following reasons:

25 (1) they duplicate other claims;

26 (2) they have been filed in the wrong case;

27 (3) they have been replaced by subsequently filed  
28 proofs of claim;

29           (4) they have been transferred in accordance with Rule  
30           3001(e);

31           (5) they were not timely filed;

32           (6) they have been satisfied or released during the case  
33           in accordance with the Code, applicable rules, or a court  
34           order;

35           (7) they were presented in a form that does not comply  
36           with applicable rules, and the objection states that the objector  
37           is unable to determine the validity of the claim because of the  
38           noncompliance;

39           (8) they are interests, rather than claims; and

40           (9) they assert priority in an amount that exceeds the  
41           maximum amount under § 507 of the Code.

42           (e) REQUIREMENTS FOR OMNIBUS OBJECTION.

43           An omnibus objection under subdivision (d) shall:

7 FEDERAL RULES OF BANKRUPTCY PROCEDURE

44 (1) state in a conspicuous place that claimants  
45 receiving the objection should locate their names and claims  
46 as listed in the objection;

47 (2) list claimants alphabetically, provide a cross-  
48 reference to claim numbers, and, if appropriate, list claimants  
49 by category of claims;

50 (3) state the grounds of the objection to each claim  
51 and provide a cross-reference to the pages in the omnibus  
52 objection pertinent to the stated grounds;

53 (4) state in the title of the omnibus objection the  
54 identity of the objector and the grounds for the objections;

55 (5) be numbered consecutively with other omnibus  
56 objections filed by the same objector; and

57 (6) contain objections to no more than 100 claims.

58 (f) FINALITY OF OBJECTION. The finality of any  
59 order regarding a claim objection included in an omnibus

60 objection shall be determined as though the claim had been  
61 subject to an individual objection.

#### COMMITTEE NOTE

The rule is amended in a number of ways. First, the amendment prohibits a party in interest from including in a claim objection a request for relief that requires an adversary proceeding. A party in interest may, however, include an objection to the allowance of a claim in an adversary proceeding. Unlike a contested matter, an adversary proceeding requires the service of a summons and complaint which puts the defendant on notice of the potential for an affirmative recovery. Permitting the plaintiff in the adversary proceeding to include an objection to a claim would not unfairly surprise the defendant as might be the case if the action were brought as a contested matter that included an action to obtain relief of a kind specified in Rule 7001.

The rule as amended does not require that a party include an objection to the allowance of a claim in an adversary proceeding. If a claim objection is filed separately from a related adversary proceeding, the court may consolidate the objection with the adversary proceeding under Rule 7042.

The rule also is amended to authorize the filing of a pleading that joins objections to more than one claim. Such filings present significant opportunity for efficient administration of large cases, but the rule includes restrictions on the use of these omnibus objections to ensure the protection of the due process rights of the claimants.

Unless the court orders otherwise, objections to more than one claim may be joined in a single pleading only if all of the claims were

filed by the same entity, or if the objections are based solely on the grounds set out in subdivision (d) of the rule. Objections of the type listed in subdivision (d) often can be resolved without material factual or legal disputes. Objections to multiple claims permitted under the rule must comply with the procedural requirements set forth in subdivision (e). Among those requirements is the requirement in subdivision (e)(5) that these omnibus objections be consecutively numbered. Since these objections may not join more than 100 objections in any one omnibus objection, there may be a need for several omnibus objections to be filed in a particular case. Consecutive numbering of each omnibus objection and the identification of the objector in the title of the objection is essential to keep track of the objections on the court's docket. For example, the objections could be titled Debtor in Possession's First Omnibus Objection to Claims, Debtor in Possession's Second Omnibus Objection to Claims, Creditors' Committee's First Omnibus Objection to Claims, and so on. Titling the objections in this manner should avoid confusion and aid in tracking the objections on the docket.

Use of omnibus objections does not preclude the objecting party from raising other objections to claims listed on an omnibus objection. Section 502(j) of the Code authorizes reconsideration of claims, so this rule likewise recognizes the splitting of objections to claims. *See* Restatement (Second) of Judgments § 26 (1982). Consequently, a claim included in an omnibus objection based on one or more grounds set out in subdivision (d) could be included in another omnibus objection based on a different ground. The claim might also be subject to an objection on any other ground.

Subdivision (f) provides that an order resolving an objection to any particular claim is treated, for purposes of finality, as if the claim had been the subject of an individual objection. A party

seeking to appeal any such order is neither required, nor permitted, to await the court's resolution of all other joined objections. The rule permits the joinder of objections for convenience, and that convenience should not impede timely review of a court's decision with respect to each claim. Whether the court's action as to a particular objection is final, and the consequences of that finality, are not addressed by this amendment.

**Rule 4001. Relief from Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Use of Cash Collateral; Obtaining Credit; Agreements**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10

\* \* \* \* \*

(b) USE OF CASH COLLATERAL.

(1) *Motion; Service.*

(A) Motion. A motion for ~~authorization~~ authority to use cash collateral shall be made in accordance with Rule 9014 and shall be accompanied by a proposed form of order ~~served on any entity which has an interest in the cash collateral, on any committee elected pursuant to § 705 or appointed pursuant to § 1102 of the Code or its authorized agent, or, if the case is a chapter 9 municipality case or a~~

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11 ~~chapter 11 reorganization case and no committee of unsecured~~  
12 ~~creditors has been appointed pursuant to § 1102, on the~~  
13 ~~creditors included on the list filed pursuant to Rule 1007(d),~~  
14 ~~and on such other entities as the court may direct.~~

15 (B) Contents. The motion shall include an  
16 introductory statement, not to exceed three pages,  
17 summarizing all material provisions of the motion, including:

18 (1) the name of each entity with an interest in  
19 the cash collateral;

20 (2) the purposes for the use of the cash  
21 collateral;

22 (3) the terms, including duration, of the use of  
23 the cash collateral; and

24 (4) any liens, cash payments, or other  
25 adequate protection that will be provided to each entity with  
26 an interest in the cash collateral or, if no additional adequate



27 protection is proposed, an explanation of why each entity's  
28 interest is adequately protected.

29 (C) Service. The motion shall be served on any  
30 entity with an interest in the cash collateral, any committee  
31 elected under § 705 or appointed under § 1102 of the Code or  
32 its authorized agent, or, if the case is a chapter 9 municipality  
33 case or a chapter 11 reorganization case and no committee of  
34 unsecured creditors has been appointed under § 1102, the  
35 creditors included on the list filed under Rule 1007(d), and  
36 any other entity that the court may direct.

37 \* \* \* \* \*

38 (c) OBTAINING CREDIT.

39 (1) *Motion; Service.*

40 (A) Motion. A motion for authority to obtain  
41 credit shall be made in accordance with Rule 9014 and shall  
42 be accompanied by a copy of the credit agreement and a  
43 proposed form of order served on any committee elected

13 FEDERAL RULES OF BANKRUPTCY PROCEDURE

44 ~~pursuant to § 705 or appointed pursuant to § 1102 of the Code~~  
45 ~~or its authorized agent, or, if the case is a chapter 9~~  
46 ~~municipality case or a chapter 11 reorganization case and no~~  
47 ~~committee of unsecured creditors has been appointed pursuant~~  
48 ~~to § 1102, on the creditors included on the list filed pursuant~~  
49 ~~to Rule 1007(d), and on such other entities as the court may~~  
50 ~~direct. The motion shall be accompanied by a copy of the~~  
51 ~~agreement.~~

52 (B) Contents. The motion shall include an  
53 introductory statement, not to exceed three pages,  
54 summarizing all material provisions of the proposed credit  
55 agreement, including interest rate, maturity, events of default,  
56 liens, borrowing limits, and borrowing conditions. If the  
57 proposed credit agreement or proposed order includes any of  
58 the following provisions, the motion shall describe the nature  
59 and extent of each provision, explain the reasons for each

60 provision, and identify the specific location of the provision  
61 in the proposed form of order, agreement, or other document:

62 (1) the granting of priority or a lien on  
63 property of the estate under § 364(c) or (d);

64 (2) the providing of adequate protection or  
65 priority with respect to a claim that arose before the  
66 commencement of the case, including the granting of a lien on  
67 property of the estate to secure the claim, or the use of  
68 property of the estate or credit obtained under § 364 to make  
69 cash payments on account of the claim;

70 (3) a determination with respect to the  
71 validity, enforceability, priority, or amount of a claim that  
72 arose before the commencement of the case, or of any lien  
73 securing the claim;

74 (4) a waiver or modification of the  
75 provisions of the Code or applicable rules relating to the  
76 automatic stay;

15 FEDERAL RULES OF BANKRUPTCY PROCEDURE

77 (5) a waiver or modification of any entity's  
78 authority to file a plan, to seek an extension of time in which  
79 the debtor has the exclusive right to file a plan, or the right to  
80 request the use of cash collateral under § 363(c), or request  
81 authority to obtain credit under § 364;

82 (6) a waiver or modification of the  
83 applicability of nonbankruptcy law relating to the perfection  
84 of a lien on property of the estate, or on the foreclosure or  
85 other enforcement of the lien;

86 (7) a release, waiver, or limitation on any  
87 claim or other cause of action belonging to the estate or the  
88 trustee, including any modification of the statute of  
89 limitations or other deadline to commence an action;

90 (8) indemnification of any entity;

91 (9) a release, waiver, or limitation of any  
92 right under § 506(c); or

93                   (10) the granting of a lien on any claim or  
94                   cause of action arising under § 544, 545, 547, 548, 549,  
95                   553(b), 723(a), or 724(a).

96                   (C) Application of Rule 9024. The court may  
97                   grant appropriate relief under Rule 9024 if it determines that  
98                   the introductory statement did not adequately disclose a  
99                   material element of the agreement.

100                  (D) Service. The motion shall be served on any  
101                  committee elected under § 705 or appointed under § 1102 of  
102                  the Code or its authorized agent, or, if the case is a chapter 9  
103                  municipality case or a chapter 11 reorganization case and no  
104                  committee of unsecured creditors has been appointed under  
105                  § 1102, on the creditors included on the list filed under Rule  
106                  1007(d), and on such other entities as the court may direct.

107   \* \* \* \* \*

108                  (d) AGREEMENT RELATING TO RELIEF FROM  
109                  THE AUTOMATIC STAY, PROHIBITING OR

17 FEDERAL RULES OF BANKRUPTCY PROCEDURE  
110 CONDITIONING THE USE, SALE, OR LEASE OF  
111 PROPERTY, PROVIDING ADEQUATE PROTECTION,  
112 USE OF CASH COLLATERAL, AND OBTAINING  
113 CREDIT.

114 (1) *Motion; Service.*

115 (A) Motion. A motion for approval of an agreement  
116 (~~A~~1) to provide adequate protection, (~~B~~2) to prohibit or  
117 condition the use, sale, or lease of property, (~~C~~3) to modify or  
118 terminate the stay provided for in § 362, (~~D~~4) to use cash  
119 collateral, or (~~E~~5) between the debtor and an entity that has a  
120 lien or interest in property of the estate pursuant to which the  
121 entity consents to the creation of a lien senior or equal to the  
122 entity's lien or interest in such property shall be ~~served on any~~  
123 ~~committee elected pursuant to § 705 or appointed pursuant to~~  
124 ~~§ 1102 of the Code or its authorized agent, or, if the case is a~~  
125 ~~chapter 9 municipality case or a chapter 11 reorganization~~  
126 ~~case and no committee of unsecured creditors has been~~

127 ~~appointed pursuant to § 1102, on the creditors included on the~~  
128 ~~list filed pursuant to Rule 1007(d), and on such other entities~~  
129 ~~as the court may direct. The motion shall be accompanied by~~  
130 ~~a copy of the agreement and a proposed form of order.~~

131 (B) Contents. The motion shall include an  
132 introductory statement, not to exceed three pages,  
133 summarizing all material provisions of the agreement. The  
134 motion also shall state whether the relief requested includes  
135 any of the provisions listed in subdivision (c)(1)(B) and, if so,  
136 shall describe the nature and extent of each provision, explain  
137 the reasons for each provision, and identify the specific  
138 location of the provision in the proposed form of order,  
139 agreement, or other document.

140 (C) Application of Rule 9024. The court may  
141 grant appropriate relief under Rule 9024 if it determines that  
142 the introductory statement did not adequately disclose a  
143 material element of the agreement.

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144 (D) Service. The motion shall be served on any  
145 committee elected under § 705 or appointed under § 1102 of  
146 the Code or its authorized agent, or, if the case is a chapter 9  
147 municipality case or a chapter 11 reorganization case and no  
148 committee of unsecured creditors has been appointed under  
149 § 1102, on the creditors included on the list filed under Rule  
150 1007(d), and on such other entities as the court may direct.

151

\* \* \* \* \*

**COMMITTEE NOTE**

The rule is amended to require that parties seeking authority to use cash collateral, to obtain credit, and to obtain approval of agreements to provide adequate protection, modify or terminate the stay, or to grant a senior or equal lien on property, submit with those requests a proposed order granting the relief, and that they provide more extensive notice to interested parties of a number of specified terms. The motion must include a summary, not to exceed three pages, which will assist the court and interested parties in understanding the nature of the relief requested. In addition to the summary, the rule requires that motions under subdivisions (c) and (d) state whether the movant is seeking approval of any of the provisions listed in subdivision (c)(1)(B), and where those provisions are located in the documents. These provisions are frequently included in agreements of these types, and the rule is intended to



enhance the ability of the court and interested parties to find and evaluate those provisions.

The rule limits the introductory summary to three pages. The parties to agreements and lending offers frequently have concise summaries of their transactions that contain a list of the material provisions of the agreements, even if the agreements themselves are very lengthy. A similar summary should allow the court and interested parties to understand the relief requested. The court may grant relief under Rule 9024 if it determines that a material element of the requested financing, or agreement regarding the stay or cash collateral usage, was not adequately disclosed in the introductory statement.

Other amendments are stylistic.

**Rule 6003. Interim and Final Relief Immediately Following the Commencement of the Case — Applications for Employment; Motions for Use, Sale, or Lease of Property; and Motions for Assumptions, Assignments, and Rejections of Executory Contracts**

- 1           Except to the extent that relief is necessary to avoid  
2           immediate and irreparable harm, the court shall not, within 20  
3           days after the filing of the petition, grant relief regarding the  
4           following:  
5           (a) an application under Rule 2014;

- 6           (b) a motion to use, sell, lease, or otherwise incur an  
7           obligation regarding property of the estate, including a motion  
8           to pay all or part of a claim that arose before the filing of the  
9           petition, but not a motion under Rule 4001; and  
10           (c) a motion to assume, assign, or reject an executory  
11           contract or unexpired lease in accordance with § 365.

#### COMMITTEE NOTE

There can be a flurry of activity during the first days of a bankruptcy case. This activity frequently takes place prior to the formation of a creditors' committee, and it also can include substantial amounts of materials for the court and parties in interest to review and evaluate. This rule is intended to alleviate some of the time pressures present at the start of a case so that full and close consideration can be given to matters that may have a fundamental impact on the case.

The rule provides that the court cannot grant relief on applications for the employment of professional persons, motions for the use, sale, or lease of property of the estate other than such a motion under Rule 4001, and motions to assume, assign, or reject executory contracts and unexpired leases for the first 20 days of the case, unless it is necessary to avoid immediate and irreparable harm. This standard is taken from Rule 4001(b)(2) and (c)(2), and decisions under those provisions should provide guidance for the application of this provision.

This rule does not govern motions and applications made more than 20 days after the filing of the petition.

**Rule 6006. Assumption, Rejection or Assignment of an Executory Contract or Unexpired Lease**

1 \* \* \* \* \*

2 (e) LIMITATIONS. The trustee shall not seek authority  
3 to assume or assign multiple executory contracts or unexpired  
4 leases in one motion unless all executory contracts or  
5 unexpired leases to be assumed or assigned are between the  
6 same parties or are to be assigned to the same assignee, or the  
7 court otherwise authorizes the motion to be filed. Subject to  
8 subdivision (f), the trustee may join requests for authority to  
9 reject multiple executory contracts or unexpired leases in one  
10 motion.

11 (f) OMNIBUS MOTIONS. A motion to reject or, if  
12 permitted under subdivision (e), a motion to assume or assign

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13 multiple executory contracts or unexpired leases that are not  
14 between the same parties shall:

15 (1) state in a conspicuous place that parties receiving  
16 the omnibus motion should locate their names and their  
17 contracts or leases listed in the motion;

18 (2) list parties alphabetically and identify the  
19 corresponding contract or lease;

20 (3) specify the terms, including the curing of defaults,  
21 for each requested assumption or assignment;

22 (4) specify the terms, including the identity of each  
23 assignee and the adequate assurance of future performance by  
24 each assignee, for each requested assignment;

25 (5) be numbered consecutively with other omnibus  
26 motions to assume, assign, or reject executory contracts or  
27 unexpired leases; and

28 (6) be limited to no more than 100 executory  
29 contracts or unexpired leases.

30 (g) FINALITY OF DETERMINATION. The finality of any  
31 order respecting an executory contract or unexpired lease  
32 included in an omnibus motion shall be determined as though  
33 such contract or lease had been the subject of a separate  
34 motion.

#### COMMITTEE NOTE

The rule is amended to authorize the use of omnibus motions to reject multiple executory contracts and unexpired leases. In some cases there may be numerous executory contracts and unexpired leases, and this rule permits the combining of up to one hundred of these contracts and leases in a single motion to initiate the contested matter.

The rule also is amended to authorize the use of a single motion to assume or assign executory contracts and unexpired leases (i) when such contracts and leases are with a single nondebtor party, (ii) when such contracts and leases are being assigned to the same assignee, or (iii) the court authorizes the filing of a joint motion to assume or to assume and assign executory contracts and unexpired leases under other circumstances that are not specifically recognized in the rule.

An omnibus motion to assume, assign, or reject multiple executory contracts and unexpired leases must comply with the procedural requirements set forth in subdivision (f) of the rule, unless the court orders otherwise. These requirements are intended to ensure that the nondebtor parties to the contracts and leases receive effective

notice of the motion. Among those requirements is the requirement in subdivision (f)(5) that these motions be consecutively numbered (e.g., Debtor in Possession's First Omnibus Motion for Authority to Assume Executory Contracts and Unexpired Leases, Debtor in Possession's Second Omnibus Motion for Authority to Assume Executory Contracts and Unexpired Leases, etc.). There may be a need for several of these motions in a particular case. Thus, consecutive numbering of each motion is essential to keep track of these motions on the court's docket. Numbering the motions consecutively should avoid confusion that might otherwise result from similar or identically titled motions.

Subdivision (g) of the rule provides that the finality of any order respecting an executory contract or unexpired lease included in an omnibus motion shall be determined as though such contract or lease had been the subject of a separate motion. A party seeking to appeal any such order is neither required, nor permitted, to await the court's resolution of all other contracts or leases included in the omnibus motion to obtain appellate review of the order. The rule permits the listing of multiple contracts or leases for convenience, and that convenience should not impede timely review of the court's decision with respect to each contract or lease.

**Rule 9005.1. Constitutional Challenge to a Statute —  
Notice, Certification, and Intervention**

1 Rule 5.1 F.R.Civ.P. applies in cases under the Code.

**COMMITTEE NOTE**

The rule is added to adopt the new rule added to the Federal Rules of Civil Procedure. The new Civil Rule replaces Rule 24(c)

F.R.Civ.P., so the cross reference to Civil Rule 24 contained in Rule 7024 is no longer sufficient to bring the provisions of new Civil Rule 5.1 into adversary proceedings. This rule also makes Civil Rule 5.1 applicable to all contested matters and other proceedings within the bankruptcy case.

**Rule 9037. Privacy Protection For Filings Made with the Court\*\***

- 1           (a) LIMITS ON INFORMATION DISCLOSED IN A  
2           FILING. Unless the court orders otherwise, an electronic or  
3           paper filing made with the court that includes a social security  
4           number or tax identification number; a name of a person,  
5           other than the debtor, known to be and identified as a minor;  
6           a person's birth date; or a financial account number may  
7           include only:  
8                   (1) the last four digits of the social security number  
9                   and tax identification number;  
10                   (2) the minor's initials;

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\*\*Amendments proposed to the Bankruptcy, Civil, and Criminal Rules implementing the E-Government Act and the Judicial Conference privacy policy are included in a side-by-side comparison chart on page 158.

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11 (3) the year of birth; and

12 (4) the last four digits of the financial account  
13 number.

14 (b) EXEMPTIONS FROM THE REDACTION  
15 REQUIREMENT. The redaction requirement of subdivision

16 (a) does not apply to the following:

17 (1) the record of an administrative or agency  
18 proceeding unless filed with a proof of claim;

19 (2) the record of a court or tribunal whose decision  
20 is being reviewed, if that record was not subject to  
21 subdivision (a) when originally filed;

22 (3) filings covered by subdivision (c) of this rule;  
23 and

24 (4) filings that are subject to § 110 of the Code.

25 (c) FILINGS MADE UNDER SEAL. The court may  
26 order that a filing be made under seal without redaction. The



27 court may later unseal the filing or order the person who made  
28 the filing to file a redacted version for the public record.

29 (d) PROTECTIVE ORDERS. If necessary to protect  
30 private or sensitive information that is not otherwise protected  
31 by subdivision (a), a court may by order in a case under the  
32 Code:

33 (1) require redaction of additional information; or  
34 (2) limit or prohibit remote electronic access by a  
35 nonparty to a document filed with the court.

36 (e) OPTION FOR ADDITIONAL UNREDACTED  
37 FILING UNDER SEAL. A party making a redacted filing  
38 under subdivision (a) may also file an unredacted copy under  
39 seal. The court must retain the unredacted copy as part of the  
40 record.

41 (f) OPTION FOR FILING A REFERENCE LIST. A  
42 filing that contains information redacted under subdivision (a)  
43 may be filed together with a reference list that identifies each

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44 item of redacted information and specifies an appropriate  
45 identifier that uniquely corresponds to each item of redacted  
46 information listed. The reference list must be filed under seal  
47 and may be amended as of right. Any references in the case  
48 to an identifier in the reference list will be construed to refer  
49 to the corresponding item of information.

50 (g) WAIVER OF PROTECTION OF IDENTIFIERS. A  
51 party waives the protection of subdivision (a) as to the party's  
52 own information to the extent that such information is filed  
53 not under seal and without redaction.

#### COMMITTEE NOTE

The rule is adopted in compliance with section 205(c)(3) of the E-Government Act of 2002, Public Law No. 107-347. Section 205(c)(3) requires the Supreme Court to prescribe rules “to protect privacy and security concerns relating to electronic filing of documents and the public availability . . . of documents filed electronically.” The rule goes further than the E-Government Act in regulating paper filings even when they are not converted to electronic form, but the number of filings that remain in paper form is certain to diminish over time. Most districts scan paper filings into the electronic case file, where they become available to the public in the same way as documents initially filed in electronic form. It is

electronic availability, not the form of the initial filing, that raises the privacy and security concerns addressed in the E-Government Act.

The rule is derived from and implements the policy adopted by the Judicial Conference in September 2001 to address the privacy concerns resulting from public access to electronic case files. *See* <http://www.privacy.uscourts.gov/Policy.htm>. The Judicial Conference policy is that documents in case files generally should be made available electronically to the same extent they are available at the courthouse, provided that certain “personal data identifiers” are not included in the public file.

While providing for the public filing of some information, such as the last four digits of an account number, the rule does not intend to establish a presumption that this information never could or should be protected. For example, it may well be necessary in individual cases to prevent remote access by nonparties to any part of an account number or social security number. It may also be necessary to protect information not covered by the redaction requirement — such as driver’s license numbers and alien registration numbers — in a particular case. In such cases, the party may seek protection under subdivision (c) or (d). Moreover, the rule does not affect the protection available under other rules, such as Rules 16 and 26(c) of the Federal Rules of Civil Procedure, or under other sources of protective authority.

Parties must remember that any personal information not otherwise protected by sealing or redaction will be made available over the internet. Counsel should notify clients of this fact so that an informed decision may be made on what information is to be included in a document filed with the court.

The inclusion of a debtor's full social security number on the notice of the § 341 meeting of creditors, however, is an example of full information that is made available to creditors. Of course, that information is not filed with the court, see Rule 1007(f) (the debtor "submits" this information), and the copy of the notice that is filed with the court does not include the full social security number. Thus, since the full social security number is not filed with the court, it is not available to a person searching that record.

The clerk is not required to review documents filed with the court for compliance with this rule. The responsibility to redact filings rests with counsel and the parties.

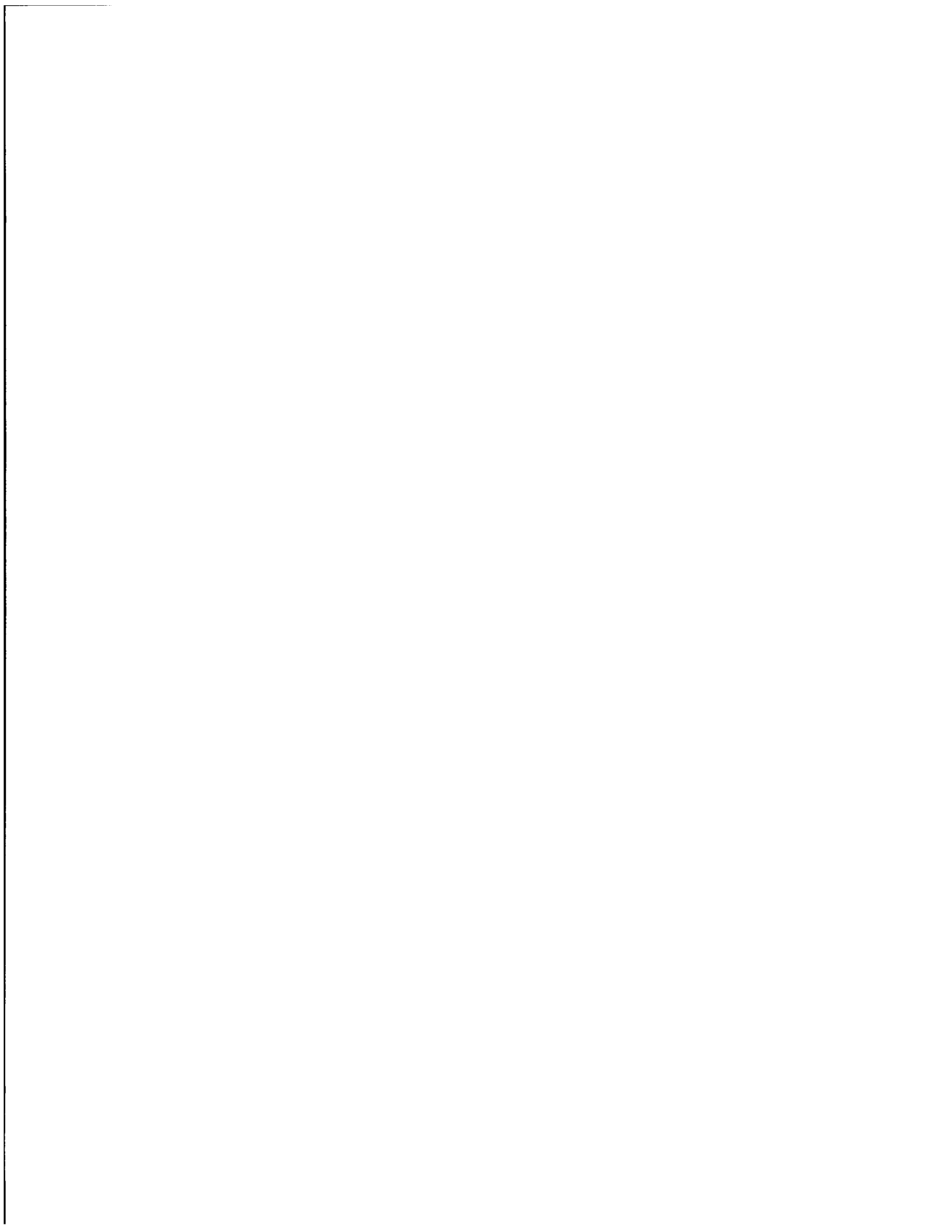
Subdivision (d) recognizes the court's inherent authority to issue a protective order to prevent remote access to private or sensitive information and to require redaction of material in addition to that which would be redacted under subdivision (a) of the rule. These orders may be issued whenever necessary either by the court on its own motion, or on motion of a party in interest.

Subdivision (e) allows a party who makes a redacted filing to file an unredacted document under seal. This provision is derived from section 205(c)(3)(iv) of the E-Government Act. Subdivision (f) allows parties to file a reference list of redacted information. This provision is derived from section 205(c)(3)(v) of the E-Government Act, as amended in 2004.

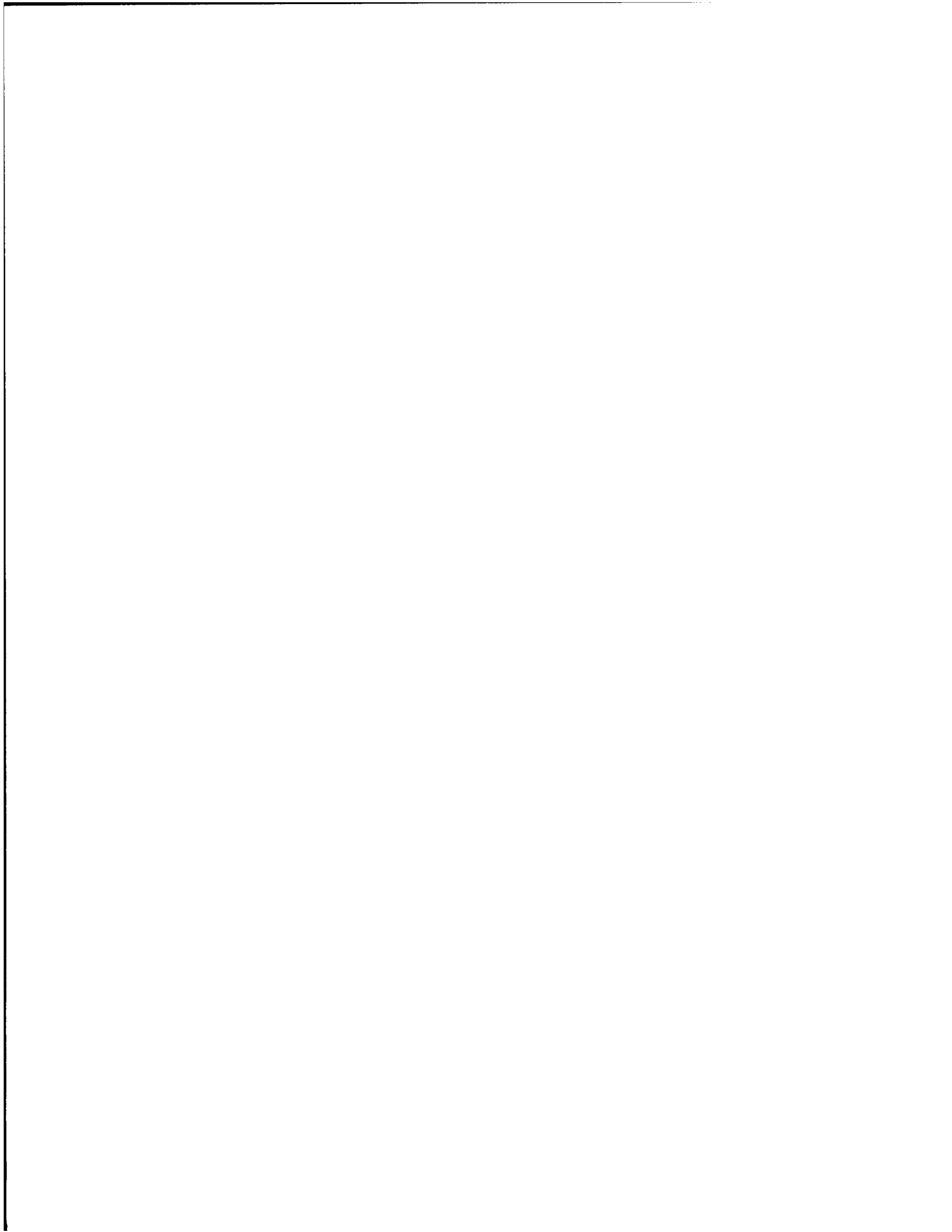
In accordance with the E-Government Act, subdivision (f) of the rule refers to "redacted" information. The term "redacted" is intended to govern a filing that is prepared with abbreviated identifiers in the first instance, as well as a filing in which a personal identifier is edited after its preparation.

Subdivision (g) allows a party to waive the protections of the rule as to its own personal information by filing it in unredacted form. A party may wish to waive the protection if it determines that the costs of redaction outweigh the benefits to privacy. As to financial account numbers, the instructions to Schedules E and F of Official Form 6 note that the debtor may elect to include the complete account number on those schedules rather than limit the number to the final four digits. Including the complete number would operate as a waiver by the debtor under subdivision (g) as to the full information that the debtor set out on those schedules. The waiver operates only to the extent of the information that the party filed without redaction. If a party files an unredacted identifier by mistake, it may seek relief from the court.

Trial exhibits are subject to the redaction requirements of Rule 9037 to the extent they are filed with the court. Trial exhibits that are not initially filed with the court must be redacted in accordance with the rule if and when they are filed as part of an appeal or for other reasons.



Item 4(a) will be an oral report.





Jurisdiction	Court Website	Direct Link to Order	Adopts All	No Action; Not on Website	Adopts Some	Adopts with Amendments
1 <sup>st</sup> BAP	<a href="http://www.bap1.uscourts.gov/">http://www.bap1.uscourts.gov/</a>			X		
6 <sup>th</sup> BAP	<a href="http://www.ca6.uscourts.gov/internet/bap/bap.htm">http://www.ca6.uscourts.gov/internet/bap/bap.htm</a>			X		
8 <sup>th</sup> BAP	<a href="http://www.ca8.uscourts.gov/bap/bapinf.htm">http://www.ca8.uscourts.gov/bap/bapinf.htm</a>			X		
9 <sup>th</sup> BAP	<a href="http://www.ce9.uscourts.gov/bap">http://www.ce9.uscourts.gov/bap</a>	<a href="http://www.ce9.uscourts.gov/Web/bap.nsf/BAPDocumentView/genord&amp;interimrules/\$file/genord&amp;interimrules.pdf">http://www.ce9.uscourts.gov/Web/bap.nsf/BAPDocumentView/genord&amp;interimrules/\$file/genord&amp;interimrules.pdf</a>	X			
10 <sup>th</sup> BAP	<a href="http://www.bap10.uscourts.gov/">http://www.bap10.uscourts.gov/</a>	<a href="http://www.bap10.uscourts.gov/bap/General_Order_02_with_Exhibit_A.pdf">http://www.bap10.uscourts.gov/bap/General_Order_02_with_Exhibit_A.pdf</a>	X			
Alabama M	<a href="http://www.almb.uscourts.gov/">http://www.almb.uscourts.gov/</a>	<a href="http://www.almb.uscourts.gov/adminorders/2005/adoption_of_interim_bankruptcy_rules.pdf">http://www.almb.uscourts.gov/adminorders/2005/adoption_of_interim_bankruptcy_rules.pdf</a>	X			
Alabama N	<a href="http://www.alnb.uscourts.gov/">http://www.alnb.uscourts.gov/</a>	<a href="http://www.alnb.uscourts.gov/forms/admin0505.pdf">http://www.alnb.uscourts.gov/forms/admin0505.pdf</a>	X			
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Alaska	<a href="http://www.akb.uscourts.gov/">http://www.akb.uscourts.gov/</a>	<a href="http://www.akb.uscourts.gov/2005-01.pdf">http://www.akb.uscourts.gov/2005-01.pdf</a>	X			
Arizona	<a href="http://www.azb.uscourts.gov/">http://www.azb.uscourts.gov/</a>	<a href="http://www.azb.uscourts.gov/azb/Documents.nsf/050e21a3424efa3c88256a1c0000a6b4/7b7d557354d25a7507257099007acf2a/\$FILE/GeneralOrder94.pdf">http://www.azb.uscourts.gov/azb/Documents.nsf/050e21a3424efa3c88256a1c0000a6b4/7b7d557354d25a7507257099007acf2a/\$FILE/GeneralOrder94.pdf</a>				X
Arkansas E/W	<a href="http://www.arb.uscourts.gov/">http://www.arb.uscourts.gov/</a>	<a href="http://www.arb.uscourts.gov/orders-rules-opinions/orders/GO25.pdf">http://www.arb.uscourts.gov/orders-rules-opinions/orders/GO25.pdf</a>	X			
California C	<a href="http://www.cacb.uscourts.gov/">http://www.cacb.uscourts.gov/</a>	<a href="http://www.cacb.uscourts.gov/cacb/courtprocedures.nsf/ED1AF319B3F2FA9588257090005781BF/\$FILE/05-02.pdf?OpenElement">http://www.cacb.uscourts.gov/cacb/courtprocedures.nsf/ED1AF319B3F2FA9588257090005781BF/\$FILE/05-02.pdf?OpenElement</a>	X			

California E	<a href="http://www.caeb.uscourts.gov/">http://www.caeb.uscourts.gov/</a>	<a href="http://www.casb.uscourts.gov/PDF&amp;Downloads/general_order_169.pdf">http://www.casb.uscourts.gov/PDF&amp;Downloads/general_order_169.pdf</a>	X			
California N (except Rule 4002 (b)(2)(B))	<a href="http://www.canb.uscourts.gov/">http://www.canb.uscourts.gov/</a>	<a href="http://www.canb.uscourts.gov/canb/Documents.nsf/d1b2f9e9e38b74448825671d0066647b/c14ba6a76cc85965882570880063127c?OpenDocument">http://www.canb.uscourts.gov/canb/Documents.nsf/d1b2f9e9e38b74448825671d0066647b/c14ba6a76cc85965882570880063127c?OpenDocument</a>			**all but 4002(b)(2)(B)	
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Colorado (All but form 1B)	<a href="http://www.cob.uscourts.gov/default.asp">http://www.cob.uscourts.gov/default.asp</a>	<a href="http://www.cob.uscourts.gov/orders/gpo2005-6interimbapcparules.pdf">http://www.cob.uscourts.gov/orders/gpo2005-6interimbapcparules.pdf</a>			**except for Form 13B	
Connecticut	<a href="http://www.ctb.uscourts.gov/">http://www.ctb.uscourts.gov/</a>	<a href="http://www.ctb.uscourts.gov/Notices/Standing%20Order%208.pdf">http://www.ctb.uscourts.gov/Notices/Standing%20Order%208.pdf</a>	X			
D.C.	<a href="http://www.dcb.uscourts.gov/">http://www.dcb.uscourts.gov/</a>	<a href="http://www.dcb.uscourts.gov/pdf_files/Order_of_October_2005_Adopting_Interim_Rules_as_Local_Rules.pdf">http://www.dcb.uscourts.gov/pdf_files/Order_of_October_2005_Adopting_Interim_Rules_as_Local_Rules.pdf</a>	X			
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Georgia S	<a href="http://www.gas.uscourts.gov/usbc/usbc.html">http://www.gas.uscourts.gov/usbc/usbc.html</a>	<a href="http://www.gas.uscourts.gov/usbc/gen_order_2005-2.pdf">http://www.gas.uscourts.gov/usbc/gen_order_2005-2.pdf</a>	X			

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Idaho	<a href="http://www.id.uscourts.gov/">http://www.id.uscourts.gov/</a>	<a href="http://www.id.uscourts.gov/docs/BKInterimRules199.pdf">http://www.id.uscourts.gov/docs/BKInterimRules199.pdf</a>	X			
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Iowa N	<a href="http://www.ianb.uscourts.gov/">http://www.ianb.uscourts.gov/</a>	<a href="http://www.ianb.uscourts.gov/localrules/Standing_Order_15.pdf">http://www.ianb.uscourts.gov/localrules/Standing_Order_15.pdf</a>	X			
Iowa S	<a href="http://www.iasb.uscourts.gov/">http://www.iasb.uscourts.gov/</a>	<a href="http://www.iasb.uscourts.gov/iasbftp/generalorders/2005-2.pdf">http://www.iasb.uscourts.gov/iasbftp/generalorders/2005-2.pdf</a>	X			
Kansas	<a href="http://www.ksb.uscourts.gov/">http://www.ksb.uscourts.gov/</a>	<a href="http://www.ksb.uscourts.gov/interim/SO_05_5_FederalInterim.pdf">http://www.ksb.uscourts.gov/interim/SO_05_5_FederalInterim.pdf</a>	X			
Kentucky E	<a href="http://www.kyeb.uscourts.gov/">http://www.kyeb.uscourts.gov/</a>	<a href="http://www.kyeb.uscourts.gov/kyeb/Rules/SO20051014InterimRules.pdf">http://www.kyeb.uscourts.gov/kyeb/Rules/SO20051014InterimRules.pdf</a>	X			
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Louisiana W	<a href="http://www.lawb.uscourts.gov/">http://www.lawb.uscourts.gov/</a>	<a href="http://www.lawb.uscourts.gov/court/BKReform/OrderBKReform.pdf">http://www.lawb.uscourts.gov/court/BKReform/OrderBKReform.pdf</a>	X			
Maine	<a href="http://www.meb.uscourts.gov/">http://www.meb.uscourts.gov/</a>	<a href="http://www.meb.uscourts.gov/Pdf/Interim_Rules.pdf">http://www.meb.uscourts.gov/Pdf/Interim_Rules.pdf</a>	X			
Maryland	<a href="http://www.mdb.uscourts.gov/">http://www.mdb.uscourts.gov/</a>	<a href="http://207.41.17.84/images/adminorders/05-02.pdf">http://207.41.17.84/images/adminorders/05-02.pdf</a>	X			
Massachusetts	<a href="http://www.mab.uscourts.gov/">http://www.mab.uscourts.gov/</a>	<a href="http://www.mab.uscourts.gov/pdf/ocuments/Standing%20Order%2005.01.pdf">http://www.mab.uscourts.gov/pdf/ocuments/Standing%20Order%2005.01.pdf</a>	X			
Michigan E	<a href="http://www.mieb.uscourts.gov/">http://www.mieb.uscourts.gov/</a>	<a href="http://www.mieb.uscourts.gov/rulesAndForms/OrderAmendingLBR.10.12.2005.pdf">http://www.mieb.uscourts.gov/rulesAndForms/OrderAmendingLBR.10.12.2005.pdf</a>	X			
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Minnesota	<a href="http://www.mnb.uscourts.gov/">http://www.mnb.uscourts.gov/</a>	<a href="http://www.w2.mnb.uscourts.gov/WebDir/Html/CMdir/ORDERADOPTRULES.pdf">http://www.w2.mnb.uscourts.gov/WebDir/Html/CMdir/ORDERADOPTRULES.pdf</a>	X			
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Mississippi S	<a href="http://www.mss.uscourts.gov/">http://www.mss.uscourts.gov/</a>	<a href="http://www.mss.uscourts.gov/GeneralOrders/InterimRulesOrder.pdf">http://www.mss.uscourts.gov/GeneralOrders/InterimRulesOrder.pdf</a>	X			
Missouri E	<a href="http://www.moeb.uscourts.gov/">http://www.moeb.uscourts.gov/</a>	<a href="http://www.moeb.uscourts.gov/pdfs/implementation_order.pdf">http://www.moeb.uscourts.gov/pdfs/implementation_order.pdf</a>	X			
Missouri W	<a href="http://www.mow.uscourts.gov/">http://www.mow.uscourts.gov/</a>	<a href="http://www.mow.uscourts.gov/bapca2005/OrderAdoptingInterimRules.pdf">http://www.mow.uscourts.gov/bapca2005/OrderAdoptingInterimRules.pdf</a>	X			
Montana	<a href="http://www.mtb.uscourts.gov/">http://www.mtb.uscourts.gov/</a>	<a href="http://www.mtb.uscourts.gov/Reports/General%20Order%200503.pdf">http://www.mtb.uscourts.gov/Reports/General%20Order%200503.pdf</a>	X			

Nebraska	<a href="http://www.neb.uscourts.gov/">http://www.neb.uscourts.gov/</a>	<a href="http://www.neb.uscourts.gov/pdf/geno0505.pdf">http://www.neb.uscourts.gov/pdf/geno0505.pdf</a>	X			
Nevada	<a href="http://www.nvb.uscourts.gov/">http://www.nvb.uscourts.gov/</a>	<a href="http://www.nvb.uscourts.gov/nvb/Documents.nsf/60dc297abb01e63b8825645f006922f2/03fbd3fea8872168825709c00776ee0/\$FILE/ibr.pdf">http://www.nvb.uscourts.gov/nvb/Documents.nsf/60dc297abb01e63b8825645f006922f2/03fbd3fea8872168825709c00776ee0/\$FILE/ibr.pdf</a>	X			
New Hampshire	<a href="http://www.nhb.uscourts.gov/">http://www.nhb.uscourts.gov/</a>	<a href="http://www.nhb.uscourts.gov/PublicNotices/05-06.pdf">http://www.nhb.uscourts.gov/PublicNotices/05-06.pdf</a>	X			
New Jersey	<a href="http://www.njb.uscourts.gov/">http://www.njb.uscourts.gov/</a>	<a href="http://www.njb.uscourts.gov/notice/2005_10_13_JHW_General_Order_Adopting_Interim_Rules.pdf">http://www.njb.uscourts.gov/notice/2005_10_13_JHW_General_Order_Adopting_Interim_Rules.pdf</a>	X			
New Mexico	<a href="http://www.nmcourt.fed.us/bkdocs/">http://www.nmcourt.fed.us/bkdocs/</a>	<a href="http://www.nmcourt.fed.us/web/BDOCS/Files/ntp0507.pdf">http://www.nmcourt.fed.us/web/BDOCS/Files/ntp0507.pdf</a>	X			
New York E	<a href="http://www.nyeb.uscourts.gov/">http://www.nyeb.uscourts.gov/</a>	<a href="http://www.nyeb.uscourts.gov/AdminOrders/ORD497.pdf">http://www.nyeb.uscourts.gov/AdminOrders/ORD497.pdf</a>	X			
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North Dakota	<a href="http://www.ndb.uscourts.gov/">http://www.ndb.uscourts.gov/</a>	<a href="http://www.ndb.uscourts.gov/orders/2005.10.13.InterimRulesGO.pdf">http://www.ndb.uscourts.gov/orders/2005.10.13.InterimRulesGO.pdf</a>	X			

Ohio N	<a href="http://www.ohnb.uscourts.gov/">http://www.ohnb.uscourts.gov/</a>	<a href="http://www.ohnb.uscourts.gov/judges/GeneralOrders/GO_2005-11_Adoption%20of%20Interim%20Bankruptcy%20Rules_Amended.pdf">http://www.ohnb.uscourts.gov/judges/GeneralOrders/GO_2005-11_Adoption%20of%20Interim%20Bankruptcy%20Rules_Amended.pdf</a>	X			
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Puerto Rico	<a href="http://www.prb.uscourts.gov/">http://www.prb.uscourts.gov/</a>	<a href="http://www.prb.uscourts.gov/generders/GO%2005-04.pdf">http://www.prb.uscourts.gov/generders/GO%2005-04.pdf</a>	X			
Rhode Island	<a href="http://www.rib.uscourts.gov/">http://www.rib.uscourts.gov/</a>	<a href="http://www.rib.uscourts.gov/Docs/BKLegislation2005/GO05-004_LBRrules.pdf">http://www.rib.uscourts.gov/Docs/BKLegislation2005/GO05-004_LBRrules.pdf</a>	X			Also Adopted Local R

South Carolina (adds to local rules)	<a href="http://www.scb.uscourts.gov/">http://www.scb.uscourts.gov/</a>	<a href="http://www.scb.uscourts.gov/images/lrForms/LocalRules_2005.pdf">http://www.scb.uscourts.gov/images/lrForms/LocalRules_2005.pdf</a>	X			
South Dakota	<a href="http://www.sdb.uscourts.gov/">http://www.sdb.uscourts.gov/</a>	<a href="http://www.sdb.uscourts.gov/LocalRules/GeneralOrders/20051014%20GO.pdf">http://www.sdb.uscourts.gov/LocalRules/GeneralOrders/20051014%20GO.pdf</a>	X			
Tennessee E	<a href="http://www.tneb.uscourts.gov/">http://www.tneb.uscourts.gov/</a>	<a href="http://www.tneb.uscourts.gov/pdf/alerts/05-08.pdf">http://www.tneb.uscourts.gov/pdf/alerts/05-08.pdf</a>	X			
Tennessee M	<a href="http://www.tnmb.uscourts.gov/">http://www.tnmb.uscourts.gov/</a>	<a href="http://www.tnmb.uscourts.gov/documents/AO127-18.pdf">http://www.tnmb.uscourts.gov/documents/AO127-18.pdf</a>	X			
Tennessee W	<a href="http://www.tnwb.uscourts.gov/">http://www.tnwb.uscourts.gov/</a>	<a href="http://www.tnwb.uscourts.gov/pdfs/AInterimBankRules.pdf">http://www.tnwb.uscourts.gov/pdfs/AInterimBankRules.pdf</a>	X			
Texas E	<a href="http://www.txeb.uscourts.gov/">http://www.txeb.uscourts.gov/</a>	<a href="http://www.txeb.uscourts.gov/general%20orders/g.o.05-2.pdf">http://www.txeb.uscourts.gov/general%20orders/g.o.05-2.pdf</a>	X			
Texas N	<a href="http://www.txnb.uscourts.gov/">http://www.txnb.uscourts.gov/</a>	<a href="http://www.txnb.uscourts.gov/orders/2005-04.pdf">http://www.txnb.uscourts.gov/orders/2005-04.pdf</a>	X			
Texas S	<a href="http://www.txsd.uscourts.gov/">http://www.txsd.uscourts.gov/</a>	<a href="http://www.txsd.uscourts.gov/bkgenord/go2005-6.pdf">http://www.txsd.uscourts.gov/bkgenord/go2005-6.pdf</a>	X			
Texas W	<a href="http://www.txwb.uscourts.gov/">http://www.txwb.uscourts.gov/</a>	<a href="http://www.txwb.uscourts.gov/pdf/standing_order_interim_rules.pdf">http://www.txwb.uscourts.gov/pdf/standing_order_interim_rules.pdf</a>	X			
Utah	<a href="http://www.utb.uscourts.gov/">http://www.utb.uscourts.gov/</a>	<a href="http://www.utb.uscourts.gov/localrulegroup/standingorder2.pdf">http://www.utb.uscourts.gov/localrulegroup/standingorder2.pdf</a>	X			
Vermont	<a href="http://www.vtb.uscourts.gov/">http://www.vtb.uscourts.gov/</a>	<a href="http://www.vtb.uscourts.gov/issues/ord05-2.pdf">http://www.vtb.uscourts.gov/issues/ord05-2.pdf</a>			**court asks that local forms are still used	
Virginia E	<a href="http://www.vaeb.uscourts.gov/">http://www.vaeb.uscourts.gov/</a>	<a href="http://www.vaeb.uscourts.gov/notice/standing_order_05-9_package.pdf">http://www.vaeb.uscourts.gov/notice/standing_order_05-9_package.pdf</a>	X			
Virginia W	<a href="http://www.vawb.uscourts.gov/courtweb/enter">http://www.vawb.uscourts.gov/courtweb/enter</a>	<a href="http://www.vawb.uscourts.gov/courtweb/enter1.html">http://www.vawb.uscourts.gov/courtweb/enter1.html</a>	X			
Washington E	<a href="http://www.waeb.uscourts.gov/">http://www.waeb.uscourts.gov/</a>	<a href="http://www.waeb.uscourts.gov/GeneralOrders/GO_10-05.pdf">http://www.waeb.uscourts.gov/GeneralOrders/GO_10-05.pdf</a>	X			

Washington W	<a href="http://www.wawb.uscourts.gov/">http://www.wawb.uscourts.gov/</a>	<a href="http://www.wawb.uscourts.gov/forum3/files/uGeneralOrders/22.pdf">http://www.wawb.uscourts.gov/forum3/files/uGeneralOrders/22.pdf</a>	X			
West Virginia N	<a href="http://www.wvnb.uscourts.gov/">http://www.wvnb.uscourts.gov/</a>	<a href="http://www.wvnb.uscourts.gov/generalorder%2005-02.pdf">http://www.wvnb.uscourts.gov/generalorder%2005-02.pdf</a>	X			
West Virginia S	<a href="http://www.wvsn.uscourts.gov/">http://www.wvsn.uscourts.gov/</a>	<a href="http://www.wvsn.uscourts.gov/genord/GenOrd05-02.pdf">http://www.wvsn.uscourts.gov/genord/GenOrd05-02.pdf</a>	X			
Wisconsin E	<a href="http://www.wieb.uscourts.gov/">http://www.wieb.uscourts.gov/</a>	<a href="http://www.wieb.uscourts.gov/ctsv4i/pdf/Adoption%20of%20Interim%20Bankruptcy%20Rules.pdf">http://www.wieb.uscourts.gov/ctsv4i/pdf/Adoption%20of%20Interim%20Bankruptcy%20Rules.pdf</a>	X			
Wisconsin W	<a href="http://www.wiwb.uscourts.gov/bankruptcy/">http://www.wiwb.uscourts.gov/bankruptcy/</a>			**Link to Interim Rules on uscourts.gov site but no official order to adopt	** site last updated 10/5/2005; may not have posted order	
Wyoming	<a href="http://www.wywb.uscourts.gov/">http://www.wywb.uscourts.gov/</a>	<a href="http://www.wywb.uscourts.gov/docs/GeneralOrders/AdoptInterBkruptRules.pdf">http://www.wywb.uscourts.gov/docs/GeneralOrders/AdoptInterBkruptRules.pdf</a>	X			



**SUMMARY OF COMMENTS ON THE INTERIM RULES AND  
OFFICIAL FORMS ADOPTED OR PROMULGATED TO  
IMPLEMENT PUBLIC LAW NO. 109-8**

<u>Comment #</u>	<u>Commentator</u>	<u>Comment/Committee Action</u>
05-BR-001	Sen. Grassley	The proposed rules fail to require debtors to submit a certificate of completion of the financial management course, they do not require the debtor's attorney to make certifications required by the amendments, and they should not require motions under § 707(b) to state with particularity the grounds for the motion. <i>Reply sent to Sen. Grassley and distributed to Committee.</i>
05-BR-002	Prof. Neustadter	Suggests that the provisions of § 707(b) require that every debtor complete the full means test form rather than exempt those persons below the state median income level from the expense side of the calculation. <i>Committee considered the issue and concluded that the determination that a debtor's income is below the state median satisfies the statutory requirement.</i>
05-BR-003	Mr. Barnes	Suggests that Schedule D be amended to include a line setting out the total unsecured claims. <i>No action taken by Committee. Schedule D does not ask for a total of unsecured claims.</i>
05-BR-004	Mr. Dunn	Was the word "or" on line 79 incorrectly stricken from Proposed Rule 1007(c)? <i>This was corrected in the revisions adopted at the Santa Fe meeting.</i>
05-BR-005	Ms. Crawford	Questions the means test form as to the potential for double counting of housing expenses and mortgage payments. <i>Revised Official Form addresses the issue.</i>
05-BR-006	Judge McManus	Error in the Committee Note to Official Form 5 in

the cross reference to the Code section governing the patient care ombudsman.

*Cross reference error corrected.*

05-BR-007	Mr. Karl	Comments relate to treatment of ERISA claims in chapter 11 cases. <i>Comment unrelated to the bankruptcy amendments and Interim Rules.</i>
05-BR-008	Mr. Yerbich	Comment suggests that the forms should instruct the user of the form to include the name of a parent or guardian whenever a minor is listed on the form. <i>No change recommended for form. Instructions direct that minor's name not be used consistent with the Bankruptcy Amendments.</i>
05-BR-009	Mr. Barnes	Suggests deleting "plus 1" from the signature line on Official Form 6. <i>The "plus 1" reference is necessary to include the Sheet listing the information collected for the statistical collection purposes of the Administrative Office. Individual debtors have to complete one more sheet than other debtors.</i>
05-BR-010	Mr. Barnes	Suggests deleting reference on Schedule F to deduction of value of collateral because the Schedule deals only with unsecured claims. <i>Schedule F was corrected and that phrase was deleted from the Form.</i>
05-BR-011	Judge Grant	<ol style="list-style-type: none"><li>1. There is an inconsistency between Interim Rule 4003(b)(2) and existing Rule 1009(a). The existing rule does not appear to allow an amendment to the schedule of exemptions, but the Interim Rule assumes such amendments are possible.</li><li>2. Reaffirmations must be filed within 30 days after the discharge, but the new amendments to the Code require that the agreement be filed prior to the discharge.</li></ol> <p><i>1. Interim Rule 4003 has been slightly revised to clarify the time for filing objections to exemptions when a case is reopened. There may still be a need</i></p>

*to consider whether existing Rule 1009(a) should be revised.*

*2. The inconsistency will not arise because the proposed amendment to Rule 4003 was withdrawn so that the conflict with the Code would not arise.*

05-BR-012	Judge Markell	<p>How can the interim rules which are not promulgated under the Rules Enabling Act override the existing rules?</p> <p><i>The Interim Rules do not override the existing rules because the existing rules themselves are effectively repealed to the extent that they conflict with the Bankruptcy Code, as amended. Consequently, the Interim Rules are consistent with the remaining effective Bankruptcy Rules.</i></p>
05-BR-013	Mr. Hong	<p>Interim Rule 1007(c) conflicts with amended § 521(i)(1) which sets a 45 day limit for filing schedules, etc.</p> <p><i>The Interim Rule does not conflict in that it sets a shorter time within which to file the schedules, etc. The statute provides that the case is automatically dismissed if the debtor fails to file all of the required materials within 45 days of the filing of the petition.</i></p>
05-BR-014	Mr. Redden	<p>The Committee Notes and Interim Rules contain references to “health care” ombudsmen, and the reference should be to “patient care” ombudsmen.</p> <p><i>References corrected to “patient care” ombudsman.</i></p>
05-BR-015	Judge Mund	<p>Petition should have a box to designate the debtor as a “small business debtor”.</p> <p><i>Petition form includes a check box for small business debtors.</i></p>
05-BR-016	Judge Nugent	<p>No comments on specific rules.</p>
05-BR-017	Mr. Diamond	<p>Rule 8001(f)(2) questions whether the rule properly identifies matters being appealed.</p> <p><i>Interim Rule 8001(f)(2) was revised at the Santa Fe meeting to clarify the applicability of the rule to appeals of both final and interlocutory matters.</i></p>

05-BR-018

Profs. Culhane  
& White

Means test form for chapter 7 cases (B22A) should include a debtor's spouse's income only in joint cases. Deductions for "Other Necessary Expenses" should be expanded to allow the debtor to list any necessary expense even if not listed in the Internal Revenue Manual as a category of such expenses. The form also should not require the debtor to forgo legal arguments through the operation of a check box system that makes the debtor state that the case is an abuse.

*The form was changed to permit greater flexibility for the debtor to complete the form without making admissions as to the legal effect of the information set out on the form.*

05-BR-019

Mr. Yerbich

Interim Rule 4008(b)(1)(b) should not provide an opportunity for debtors to state that documentation of a social security number does not exist. Same is true with regard to tax returns or tax transcripts. Instead of saying that the debtor can state that documentation of a tax return does not exist, the rule should require that the debtor file a copy of the return or give the reason why no return was filed with the IRS.

*The comment actually applies to Interim Rule 4002(b) rather than Rule 4008. The rule was not changed regarding social security numbers because a debtor who does not have a social security number could not comply with the rule if it were changed as suggested. For example, an alien may not have a social security number but may file a bankruptcy petition. As to the tax returns, the language adopted by the Interim Rule ("statement that such documentation does not exist") should accomplish the goal of the suggestion. If the debtor did not file a return, he or she would have to so state to comply with the Interim Rule.*

05-020

Mr. Bernstein

The NBC asserts that the means test form is not neutral and should not require debtors to admit legal conclusions to which they disagree. The comment suggests that the form improperly forecloses

arguments regarding the allowance of other necessary expenses as well as the inclusion or exclusion of a non-debtor spouse's income in the calculation of the means test. They also assert that the form improperly limits the debtor's ability to deduct mortgage payments.

*The form was revised at the Santa Fe meeting to address the issues of the other necessary expenses and the non-debtor spouse's income. The Committee rejected the suggestion that the mortgage payments can be deducted when the amount was already included in the housing expense allowed by the IRS standards.*

- |           |                  |   |
|-----------|------------------|---|
| 05-BR-021 | Mr. Yerbich      | <p>Form 22C does not include a method for computing disposable income in chapter 13 cases where the debtor's income is less than the applicable state median income. He suggests amending line 23 of the form and adding a check box in line 56 to identify specific cases as proceeding under § 1325(b)(3).</p> <p><i>The form has been changed in a manner that includes this information in Part II of the form.</i></p>                           |
| 05-BR-022 | Mr Rogovy        | <p>Director's Form B200 states that individual debtors must use Official Form 8 (Chapter 7 Individual Debtor's Statement of Intention) in cases under chapters 11, 12, and 13.</p> <p><i>The B200 Form on the website does not include an instruction to individual debtors in the other chapters to file an Official Form 8.</i></p>   |
| 05-BR-023 | Mr. Trimmier     | <p>Director's Form B240 requires excessive disclosure by debtors who are reaffirming debts owed to credit unions. They should only have to state that they believe that the reaffirmation is in their best interest, that they can afford the payments, and that they have received the Reaffirmation Disclosure Statement and signed the agreement. They should not be required to disclose anything else, including the budgetary calculations.</p> |
| 05-BR-024 | Judge Williamson | <p>Rule 1019(2) should not provide a new time for</p>   |

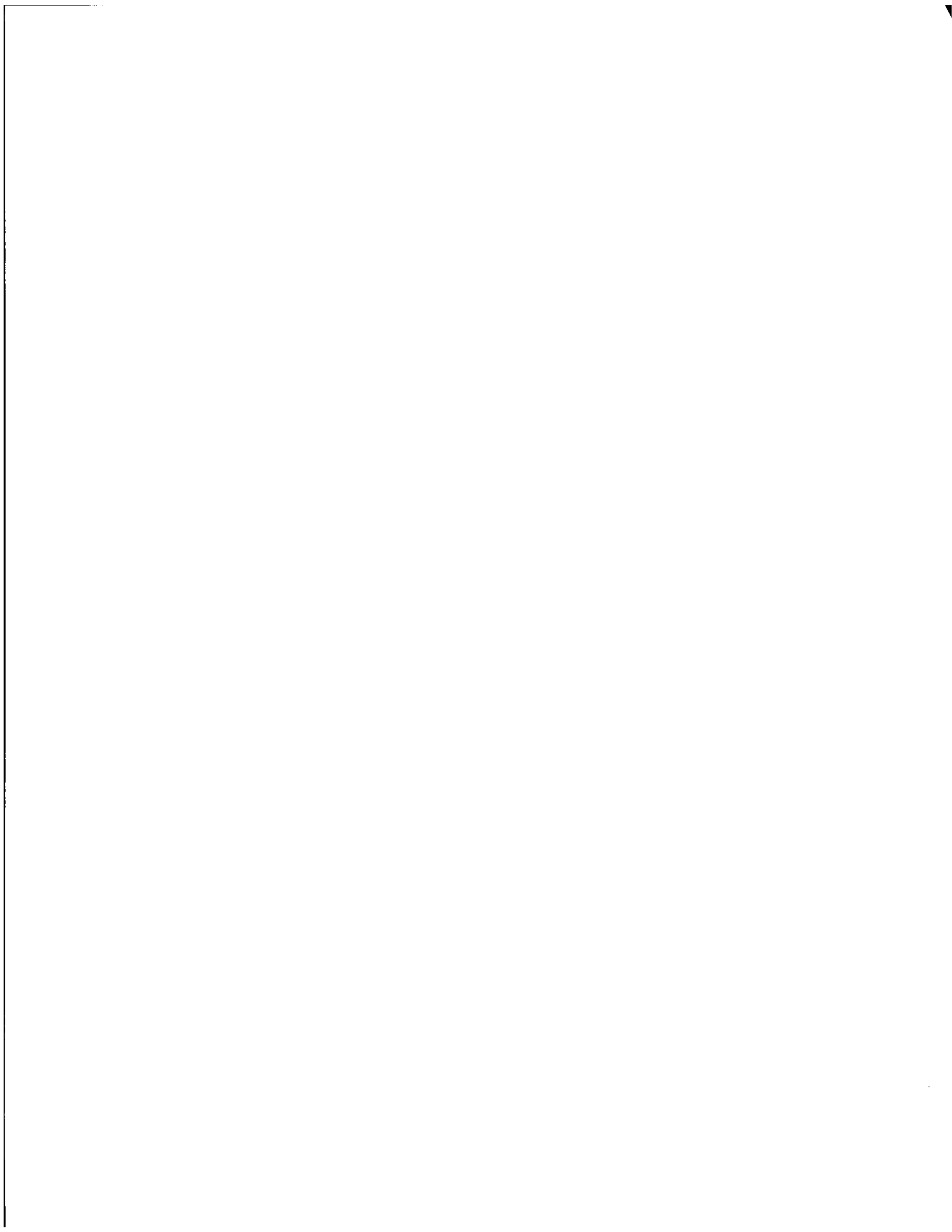
filing a motion to convert a case under § 707(b) because that section provides that such a motion is only available in “a case filed by an individual debtor under this chapter....” If a debtor files a chapter 13 petition and that case is thereafter converted to chapter 7, it is not a case filed by the debtor under chapter 7, and § 707(b) would not appear to apply. In any event, this issue is more properly left to the courts in the first instance rather than having the rules suggest that such a motion can be brought in a case converted to chapter 7 from another chapter.

Item 4(d) will be an oral report.



Copies of the Interim Rules  
will be distributed at the Meeting.

The Interim Rules are posted at  
<http://www.uscourts.gov/rules/interim.html>.





**PROPOSED AMENDMENTS TO THE  
FEDERAL RULES OF BANKRUPTCY PROCEDURE\***

**Rule 2015. Duty to Keep Records, Make Reports, and  
Give Notice of Case**

1           (a) TRUSTEE OR DEBTOR IN POSSESSION. A trustee  
2 or debtor in possession shall

3   \* \* \* \* \*

4                         (6) in a chapter 11 small business case, unless the  
5 court, for cause, sets another reporting interval, file and  
6 transmit to the United States trustee for each calendar month  
7 after the order for relief, a report on the appropriate Official  
8 Form as required by § 308 of the Code. If the order for relief  
9 is within the first 15 days of a calendar month, a report shall  
10 be filed for the portion of the month that follows the order for  
11 relief. If the order for relief is after the 15th day of a calendar  
12 month, the period for the remainder of the month shall be  
13 included in the report for the next calendar month. Each

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\*New material is underlined; matter to be omitted is lined through.

14 report shall be filed no later than 15 days after the last day of  
15 the calendar month.

16 \* \* \* \* \*

#### COMMITTEE NOTE

Section 308, which was added to the Bankruptcy Code in 2005, requires a small business debtor to submit periodic reports on profitability and projected and actual cash receipts and disbursements. The section also requires that the small business debtor report on compliance with the rules generally as well as the filing of necessary tax returns. Rule 2015(a)(6) is added to implement the requirement to file reports and to establish timing intervals for filing reports. The court may set different intervals based on the particular circumstances of the case.

**[Rule 2015(a)(6) relates to § 434 of the 2005 Act.]**

#### **Rule 3016. Filing of Plan and Disclosure Statement in a Chapter 9 Municipality or Chapter 11 Reorganization Case**

1 \* \* \* \* \*

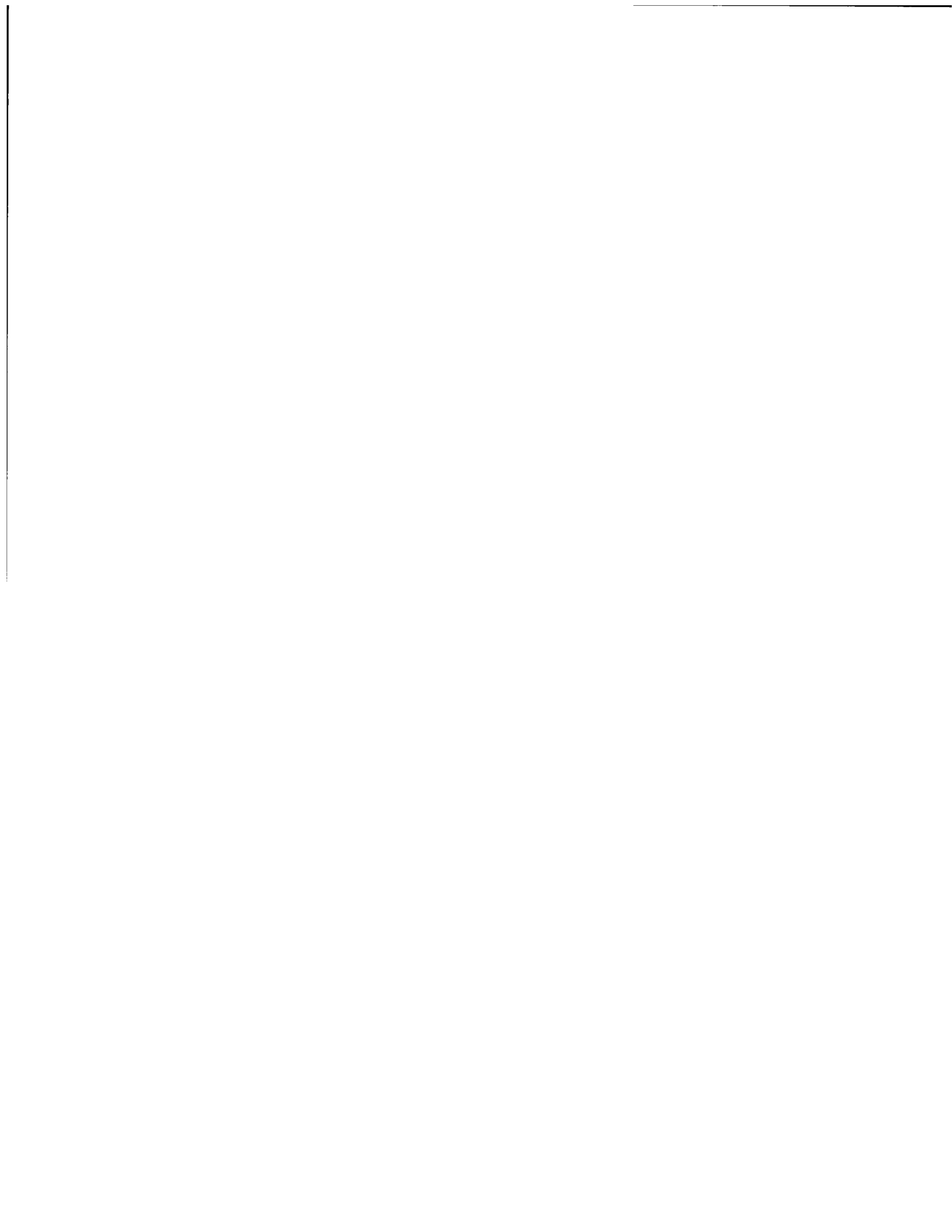
2 (d) FORM OF DISCLOSURE STATEMENT AND  
3 PLAN IN SMALL BUSINESS CASE. In a small business  
4 case, the court may approve a disclosure statement and may  
5 confirm a plan that conforms substantially to the appropriate

- 6 Official Form or other standard form approved by the court.

#### COMMITTEE NOTE

Subdivision (d) is added to implement § 433 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 requires the promulgation of Official Forms for plans and disclosure statements in small business cases. Section 1125(f)(2) provides that the court may approve a disclosure statement submitted on the appropriate Official Form promulgated under these rules or on a standard form approved by the court. New subdivision (d) of this rule is added to implement those provisions. These rules take no position on whether a court may require a local standard form disclosure statement or plan in lieu of the Official Forms.

**[The amendments to Rule 3016 relate to §§ 431 and 433 of the 2005 Act]**



MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES  
FROM: JEFF MORRIS, REPORTER  
RE: RULE 3016(b)  
DATE: FEBRUARY 15, 2006

Rule 3016(b) requires that a disclosure statement or evidence showing compliance with § 1126(b) (preterition acceptance of a plan) be filed within the time fixed by the court. The 2005 amendments to the Code included an extensive revision of § 1125(f) that creates a need to amend Rule 3016(b). Under the new version of § 1125(f), the court may determine that the plan in a small business case provides sufficient information so that no disclosure statement is required. Therefore, if the court finds that a disclosure statement is unnecessary, the debtor (or plan proponent) will not file one. This would violate Rule 3016(b) as it is currently written. Therefore, the rule should be amended to recognize that in small business cases there may be instances in which no disclosure statement will be filed in the case. While § 1125(f) includes other provisions governing the consideration of plans and disclosure statements in small business cases, those provisions are self-executing and I do not believe that they require any change in the rules. The amended rule follows.

**RULE 3016. Filing of Plan and Disclosure Statement in a Chapter 9 Municipality or Chapter 11 Reorganization Case**

\* \* \* \* \*

1  
2 (b) Unless the court determines under § 1125(f)(1) that a  
3 disclosure statement is not necessary, in ~~in~~ a chapter 9 or 11 case, a

4 disclosure statement under § 1125 or evidence showing compliance  
5 with § 1126(b) of the Code shall be filed with the plan or within  
6 the time fixed by the court.

7 \* \* \* \* \*

COMMITTEE NOTE

Subdivision (b) of the rule is amended to reflect the 2005 amendments to § 1125(f) of the Bankruptcy Code. Under the new provision, the court may find that the reorganization plan submitted in a small business case provides adequate information and renders the submission of a separate disclosure statement unnecessary. In that event, no disclosure statement would be filed. The rule is amended to account for that possibility and dispenses with the filing of a disclosure statement upon an appropriate determination by the court.

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES  
FROM: JEFF MORRIS, REPORTER  
RE: TECHNICAL AMENDMENTS TO RULE 1015(b)  
DATE: FEBRUARY 15, 2006

The 2005 amendments to the Bankruptcy Code renumbered a part of § 522(b). Previously, the subsection included only (b)(1) and (b)(2). Congress substantially amended § 522(b), and in the process, former subsections (b)(1) and (b)(2) became (b)(2) and (b)(3), respectively.

This change in § 522(b) requires a change to Rule 1015(b). The rule references § 522(b)(1) and (2), but those references are no longer accurate. As a result, the technical change set out below is necessary. Moreover, since this change is a result of the 2005 amendments, it should be included both in the Interim Rules as well as in the proposed draft of national rules for submission to the Standing Committee and publication in August 2006.

**RULE 1015. Consolidation or Joint Administration of Cases Pending in Same Court**

1 \* \* \* \* \*  
2 (b) CASES INVOLVING TWO OR MORE RELATED  
3 DEBTORS. If a joint petition or two or more petitions are pending  
4 in the same court by or against (1) a husband and wife, or (2) a  
5 partnership and one or more of its general partners, or (3) two or  
6 more general partners, or (4) a debtor and an affiliate, the court

7 may order the joint administration of the estates. Prior to entering  
8 an order the court shall give consideration to protecting creditors of  
9 different estates against potential conflicts of interest. An order  
10 directing joint administration of individual cases of a husband and  
11 wife shall, if one spouse has elected the exemptions under § 522(b)  
12 ~~(1)~~ (2) of the Code and the other has elected the exemptions under  
13 § 522 (b)~~(2)~~ (3), fix a reasonable time within which either may  
14 amend the election so that both have elected the same exemptions.  
15 The order shall notify the debtors that unless they elect the same  
16 exemptions within the time fixed by the court, they will be deemed  
17 to have elected the exemptions provided by § 522(b)~~(1)~~ (2).

18

\* \* \* \* \*

#### COMMITTEE NOTE

The rule is amended to conform to the change in the numbering of § 522(b) of the Code that was made as a part of the 2005 amendments to the Code. Former subsections (b)(1) and (b)(2) of § 522 were renumbered as subsections (b)(2) and (b)(3), respectively. The rule is amended to make to the parallel change.



MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES  
FROM: JEFF MORRIS, REPORTER  
RE: CHAPTER 15 ANCILLARY AND CROSS BORDER RULES  
DATE: FEBRUARY 8, 2006

Chapter 15 was added to the Code in 2005, and several Interim Rules were adopted to implement these new provisions. For example, Interim Rule 2002(p) and (q) address noticing requirements for creditors with foreign addresses, and Interim Rule 2015(d) includes a new subdivision (d) that establishes a deadline by which a foreign representative must file certain notices. In addition, Interim Rules 1007(a)(4), 1010, 1011, 3002(c)(6), 3003(c)(3), and 5012 also implement provision the 2005 amendments to the Code. None of the comments we have thus far received have focused on the Interim Rules that apply in Chapter 15 cases. Bankruptcy Judge Samuel A. Bufford (C.D. Cal.), however, has submitted to the Committee a lengthy paper that includes a recommendation that the Committee adopt a comprehensive set of rules to apply in chapter 15 cases.

Because Judge Bufford's suggestions are comprehensive, I believe that the Committee should consider them as a whole. Time does not permit the study of the proposal by the Subcommittee on Cross Border Insolvencies, so I am recommending that the full package of chapter 15 rules proposed by Judge Bufford be sent to the Subcommittee for its consideration and recommendation at the September 2006 or March 2007 meeting. This will put any such "chapter 15 rules" on track to become effective one year after the Interim Rules become effective as national rules. I believe that this delay is not as significant as would be a delay in the Interim

Rules either initially or as national rules. I believe that the Interim Rules fill the procedural gaps in chapter 15 as we concluded when recommending the Interim Rules. Moreover, there are a very limited number of chapter 15 cases filed, and many of these cases involve relatively substantial and sophisticated parties and counsel who have experience in these matters. They are often able to assist the courts in the management of the cases even in the absence of a complete package of rules to govern the case. Therefore, although there would be a one year delay in the promulgation of a package of chapter 15 rules, the delay should not have too detrimental an effect on the prosecution of most of these cases.

I have reviewed Judge Bufford's comments and suggestions, and the remainder of this memo will address them to the extent that apply specifically to the Interim Rules adopted to implement chapter 15 of the Code. Most of his suggestions relevant to the Interim Rules apply to Interim Rules 2002(p) and (q), 3002(c)(6), and 5012. Those Interim Rules identify the persons to whom notices must be sent, establish an extended proof of claim filing deadline for creditors with foreign addresses, and address issues related to communications between courts in different countries.

In Judge Bufford's proposed Rule 15001, he suggests expanding the list of persons to whom notices should be sent as compared to the list set out in Interim Rule 2002(q)(1) and (2)<sup>1</sup>. In addition to the persons who would receive notices under the Interim Rule, Judge Bufford's proposal would require service as well on the 20 largest unsecured creditors located in the United States, the 20 largest creditors in each foreign proceeding of the debtor, "all United States

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<sup>1</sup> This list is also included in Interim Rule 1007(a)(4) which requires the foreign representative to attach a mailing matrix to the petition for recognition to provide the clerk with a ready mailing list for sending notices.

secured creditors, all secured creditors in foreign countries who are known to the movant, and the United States trustee.” The Advisory Committee concluded that this extensive a list of notice recipients in unnecessary at the initiation of the chapter 15 case, although I think it makes sense to add the United States trustee to the list of persons receiving notice of the petition for recognition and notice of the court’s intention to communicate with a foreign court or foreign representative. See Interim Rule 2002(q)(1) and (2). Thus, I recommend that Interim Rule 2002(q) be amended as set out at the conclusion of this memorandum.

Judge Bufford also has suggested through his proposed Rule 15006(c) that foreign creditors or security interest holders be given 90 days notice of the time for filing a proof of claim. This does not change Rule 3002(c). The Advisory Committee, however, also adopted Interim Rule 3002(c)(6) which permits the court to grant additional time to a “creditor with a foreign address” in appropriate circumstances. I believe that the Committee’s solution is superior to Judge Bufford’s for two reasons. First, Interim Rule 3002(c)(6) contains a flexible solution to the problem of “foreign creditors” receiving insufficient notice. That is absent from Judge Bufford’s proposal. Second, the Interim Rules identify these persons as creditors for whom “notice is being sent to a foreign address”. This is a superior formulation because it establishes a more objective and certain standard for application of the rules as compared to “foreign creditors” without any refinement of the phrase.

Judge Bufford does offer another suggestion about notices that the Committee should consider. Specifically, his Rule 15006(d) requires that notice of the deadline to file a proof of claim must be given in the “official language of the country to which notice is directed.” He also suggests in that rule that the notice be “delivered by the same means that domestic notices and

legal proceedings are delivered in that country, unless the court orders otherwise.” This proposal arguably would increase the effectiveness of the notice, but it may be unnecessarily expensive for the debtor. The transactions between the debtor and a particular creditor may have been conducted entirely under a language different from that of the official language of the country to which the notice is being sent. This could require the debtor to translate notices into a number of languages even though the debtor has conducted the business entirely in English. If the rule were to adopt any language requirement, it would seem more fitting to set it according to the language used by the parties in their transactions. This would not cover many tort creditors, but it would apply to most of the debtor’s creditors. Nevertheless, I think it could be a source of litigation if the parties disagree over the appropriate language. Consequently, I think it is preferable not to adopt this proposal of Judge Bufford, at least until a more complete study of his package of rules is conducted.

Judge Bufford also has proposed an elaborate rule to govern communications with foreign courts. His Rule 15015 largely adopts the guidelines for court to court communications adopted by the International Insolvency Institute and the American Law Institute. His Rule 15015 is nearly four pages long (single spaced), and is very detailed. By way of contrast, Interim Rule 5012 is very brief and leaves to the courts much of the details that are contained in the III/ALI guidelines. At this time, I believe it is appropriate to give the courts a chance to work under the very general Interim Rule 5012 rather than adopting the elaborate system that Judge Bufford’s proposal adopts. Many of the provisions of Rule 15015 are repetitive of chapter 15 sections and would generally not fit within the Committee’s practice of avoiding situations in which we largely just restate a particular Code section. If the experience of courts leads to a

consensus on the format of these communications, it might be appropriate to expand Interim Rule 5012 by adopting those formats. In the meantime, I believe that parties to chapter 15 cases will be able to select those portions of the III/ALI Guidelines that may be particularly apt for their case and obtain court approval of the use of those provisions. I would not suggest adopting them as a rule at this early stage of the life of chapter 15.

Given the foregoing, a revised Interim Rule 2002(p) and (q) is set out below. The underlining shows the insertion of the United States trustee in the list of entities to which notices must be sent under the Rule. Also added are the suggested (though not recommended) subdivisions (p)(3) and (p)(4).

**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           (a) TWENTY-DAY NOTICES TO PARTIES IN  
2           INTEREST. Except as provided in subdivisions (h), (I), (l), (p),  
3           and (q) of this rule, the clerk, or some other person as the court  
4           may direct, shall give the debtor, the trustee, all creditors and  
5           indenture trustees at least 20 days' notice by mail of:

6                               \* \* \* \* \*

7           (b) TWENTY-FIVE-DAY NOTICES TO PARTIES IN

8 INTEREST. Except as provided in subdivision (l) of this rule, the  
9 clerk, or some other person as the court may direct, shall give the  
10 debtor, the trustee, all creditors and indenture trustees not less than  
11 25 days notice by mail of (1) the time fixed for filing objections  
12 and the hearing to consider approval of a disclosure statement or,  
13 under § 1125(f), to make a final determination whether the plan  
14 provides adequate information so that a separate disclosure  
15 statement is not necessary; and (2) the time fixed for filing  
16 objections and the hearing to consider confirmation of a chapter 9,  
17 chapter 11, or chapter 13 plan.

18 (c) CONTENT OF NOTICE.

19 (1) *Proposed Use, Sale, or Lease of Property.*

20 Subject to Rule 6004 the notice of a proposed use, sale, or lease of  
21 property required by subdivision (a)(2) of this rule shall include the  
22 time and place of any public sale, the terms and conditions of any  
23 private sale and the time fixed for filing objections. The notice of  
24 a proposed use, sale, or lease of property, including real estate, is  
25 sufficient if it generally describes the property. The notice of a  
26 proposed sale or lease of personally identifiable information under  
27 § 363(b)(1)(A) or (B) of the Code shall state whether the sale is  
28 consistent with a policy prohibiting the transfer of the information.

29 \* \* \* \* \*

30 (f) OTHER NOTICES. Except as provided in subdivision  
31 (l) of this rule, the clerk, or some other person as the court may  
32 direct, shall give the debtor, all creditors, and indenture trustees  
33 notice by mail of: (1) the order for relief; (2) the dismissal or the  
34 conversion of the case to another chapter, or the suspension of  
35 proceedings under § 305; (3) the time allowed for filing claims  
36 pursuant to Rule 3002; (4) the time fixed for filing a complaint  
37 objecting to the debtor's discharge pursuant to § 727 of the Code as  
38 provided in Rule 4004; (5) the time fixed for filing a complaint to  
39 determine the dischargeability of a debt pursuant to § 523 of the  
40 Code as provided in Rule 4007; (6) the waiver, denial, or  
41 revocation of a discharge as provided in Rule 4006; (7) entry of an  
42 order confirming a chapter 9, 11, or 12 plan; (8) a summary of the  
43 trustee's final report in a chapter 7 case if the net proceeds realized  
44 exceed \$1,500; (9) a notice under Rule 5008 regarding the  
45 presumption of abuse; (10) a statement under § 704(b)(1) as to  
46 whether the debtor's case would be presumed to be an abuse under  
47 § 707(b); and (11) the time to request a delay in the entry of the  
48 discharge under §§ 1141(d)(5)(C), 1228(f), and 1328(h). Notice of  
49 the time fixed for accepting or rejecting a plan pursuant to Rule  
50 3017(c) shall be given in accordance with Rule 3017(d).

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(g) ADDRESSING NOTICES

\* \* \* \* \*

(2) Except as provided in § 342(f) of the Code, 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 2002(g)(1), the notices shall be mailed to the address shown on the list of equity security holders.

\* \* \* \* \*

(p) NOTICE TO A FOREIGN CREDITOR.

(1) If, at the request of a party in interest or the United States trustee, or on its own initiative, the court finds that a notice mailed within the time prescribed by these rules would not be sufficient to give a creditor with a foreign address to which notices under these rules are mailed reasonable notice under the circumstances, the court may order that the notice be supplemented with notice by other means or that the time prescribed for the notice by mail be enlarged.

(2) Unless the court for cause orders otherwise, a creditor with a foreign address to which notices under this rule are



74 mailed shall be given at least 30 days' notice of the time fixed for  
75 filing a proof of claim under Rule 3002(c) or Rule 3003(c).

76 [(3) Any notice to a creditor with a foreign address  
77 shall be given in the official language of the country to which  
78 notice is directed.

79 (4) Unless the court orders otherwise, any notice to  
80 a creditor with a foreign address shall be delivered by the same  
81 means that notices in legal proceedings are delivered in that  
82 country.]<sup>2</sup>

83 (q) NOTICE OF PETITION FOR RECOGNITION OF  
84 FOREIGN PROCEEDING AND OF COURT'S INTENTION TO  
85 COMMUNICATE WITH FOREIGN COURTS AND FOREIGN  
86 REPRESENTATIVES.

87 (1) *Notice of Petition for Recognition.* The clerk,  
88 or some other person as the court may direct, shall forthwith give  
89 the debtor, all administrators in foreign proceedings of the debtor,  
90 all entities against whom provisional relief is being sought under §  
91 1519 of the Code, all parties to any litigation in which the debtor is  
92 a party and that is pending in the United States at the time of the  
93 filing of the petition, the United States trustee, and such other

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<sup>2</sup> While I do not recommend the addition of subdivisions (p)(3) and (4), they are provided along with the corresponding additions to the Committee Note for the consideration of the Committee.

94 entities as the court may direct, at least 20 days' notice by mail of  
95 the hearing on the petition for recognition of a foreign proceeding.  
96 The notice shall state whether the petition seeks recognition as a  
97 foreign main proceeding or foreign nonmain proceeding.

98 (2) *Notice of Court's Intention to Communicate*  
99 *with Foreign Courts and Foreign Representatives.* The clerk, or  
100 some other person as the court may direct, shall give the debtor, all  
101 administrators in foreign proceedings of the debtor, all entities  
102 against whom provisional relief is being sought under § 1519 of  
103 the Code, all parties to any litigation in which the debtor is a party  
104 and that is pending in the United States at the time of the filing of  
105 the petition, the United States trustee, and such other entities as the  
106 court may direct, notice by mail of the court's intention to  
107 communicate with a foreign court or foreign representative as  
108 prescribed by Rule 5012.

#### COMMITTEE NOTE

Subdivision (b) is amended to provide for 25 days' notice of the time for the court to make a final determination whether the plan in a small business case can serve as a disclosure statement. Conditional approval of a disclosure statement in a small business case is governed by Rule 3017.1 and does not require 25 days' notice. The court may consider this matter in a hearing combined with the confirmation hearing in a small business case.

Subdivision (c)(1) is amended to require that a trustee leasing or selling personally identifiable information under § 363(b)(1)(A) or (B) of the Code, as amended in 2005, include in

the notice of the lease or sale transaction a statement as to whether the lease or sale is consistent with a policy prohibiting the transfer of the information.

Section 1514(d) of the Code, added in 2005, requires that such additional time as is reasonable under the circumstances be given to creditors with foreign addresses with respect to notices and the filing of a proof of claim. Thus, subdivision (p)(1) is added to the rule to give the court flexibility to direct that notice by other means shall supplement notice by mail, or to enlarge the notice period, for creditors with foreign addresses. If cause exists, such as likely delays in the delivery of mailed notices in particular locations, the court may order that notice also be given by email, facsimile, or private courier. Alternatively, the court may enlarge the notice period for a creditor with a foreign address. It is expected that in most situations involving foreign creditors, fairness will not require any additional notice or extension of the notice period. This rule recognizes that the court has discretion to establish procedures to determine, on its own initiative, whether relief under subdivision (p) is appropriate, but that the court is not required to establish such procedures and may decide to act only on request of a party in interest.

Subdivisions (f)(9) and (10) are new. They reflect the 2005 amendments to §§ 342(d) and 704(b) of the Bankruptcy Code. Section 342(d) requires the clerk to give notice to creditors shortly after the commencement of the case as to whether a presumption of abuse exists. Subdivision (f)(9) adds this notice to the list of notices that the clerk must give. Subdivision (f)(10) implements the amendment to § 704(b) which requires the court to provide a copy to all creditors of a statement by the United States trustee or bankruptcy administrator as to whether the debtor's case would be presumed to be an abuse under § 707(b) not later than five days after receiving it.

Subdivision (f)(11) is also added 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 request a delay of the entry of the discharge in the case.

Subdivision (g)(2) of 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).

Subdivision (p)(2) is added to the rule to grant creditors with a foreign address to which notices are mailed at least 30 days' notice of the time within which to file proofs of claims if notice is mailed to the foreign address, unless the court orders otherwise. If cause exists, such as likely delays in the delivery of notices in particular locations, the court may extend the notice period for creditors with foreign addresses. The court may also shorten the additional notice time if circumstances so warrant. For example, if the court in a chapter 11 case determines that supplementing the notice to a foreign creditor with notice by electronic means, such as email or facsimile, would give the creditor reasonable notice, the court may order that the creditor be given only 20 days' notice in accordance with Rule 2002(a)(7).

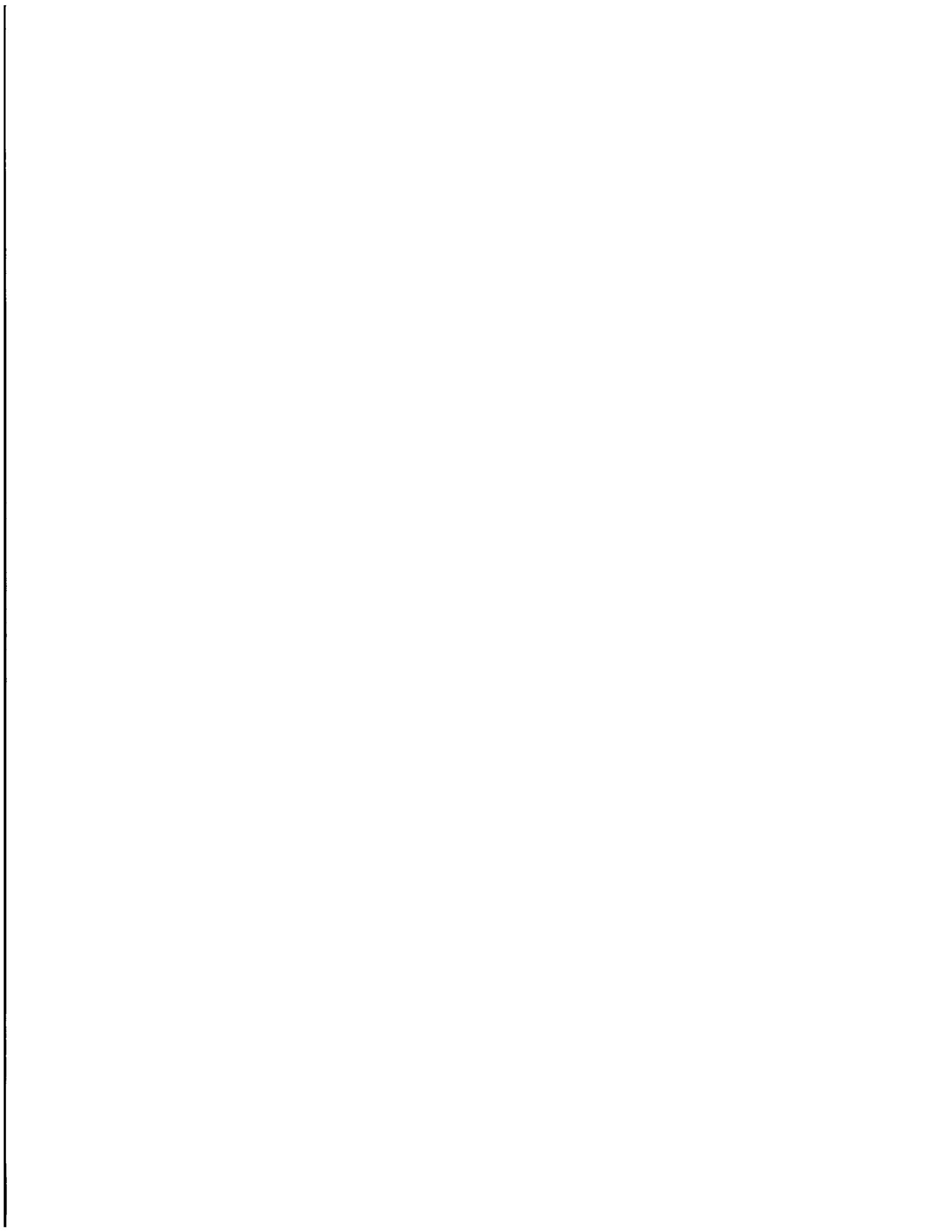
[Subdivision (p)(3) requires that notices being sent to creditors with a foreign address be given in the official language of the country where the creditor is considered located under this rule. This will improve the effectiveness of the notice.

Subdivision (p)(4) is added to the rule to require that a notices being sent to a creditor with a foreign address will be sent in a manner that the creditor would expect. The notice must be given in the same manner of service that applies in a legal proceeding pending in the recipient's home country.]

Subdivision (q) is added to require that notice of the hearing on the petition for recognition of a foreign proceeding be given to the debtor, all administrators in foreign proceedings of the debtor, entities against whom provisional relief is sought, the United States trustee, and entities with whom the debtor is engaged in litigation at the time of the commencement of the case. There is no need at this stage of the proceedings to provide notice to all creditors. If the foreign representative should take action to

commence a case under another chapter of the Code, the rules governing those proceedings will operate to provide that notice is given to all creditors.

The rule also requires notice of the court's intention to communicate with a foreign court or foreign representative under Rule 5012.



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*Chambers of the*  
**HONORABLE SAMUEL L. BUFFORD**  
United States Bankruptcy Judge

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DATE: January 20, 2006  
TO: Advisory Committee on Bankruptcy Rules  
FROM: Judge Samuel L. Bufford  
RE: Proposed Bankruptcy Rules for Chapter 15 – Notes

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Rule 15001 provides generally for the service of motions under chapter 15. Because chapter 15 is normally invoked only when a foreign proceeding (or several foreign proceedings) is pending, there are international administrators, creditors and other parties in interest who should be notified of a motion under chapter 15 for such notice. Typically § 1505 will be invoked in a domestic bankruptcy case where the trustee or another entity seeks to take action abroad for the benefit of the domestic estate. In such cases, notice to domestic creditors typically will be sufficient, because any action abroad will have to meet the procedural requirements of the applicable country. However, if there is a related proceeding pending abroad, whether a main proceeding or a nonmain proceeding, Rule 15001 recognizes that the debtor, trustee and creditors in any such foreign proceeding are also entitled to receive appropriate notice of an application under § 1505. This rule specifies who should be given notice in chapter 15 cases and in other matters arising under chapter 15.

Rule 15002 recognizes that international and foreign sources may not be readily available to a United States court. In consequence, it requires a party citing international or foreign source in papers filed with the court to provide a copy of the material, and a translation into English. Sections 1508 and 1501 contemplate that cases under chapter 15 and other United States bankruptcy cases with foreign dimensions may require the consideration of foreign laws, including statutes and case law.

Rule 15003 provides a procedure for a trustee or other entity to be authorized to act in a foreign country under § 1505 on behalf of an estate created under § 541. Such an estate exists in a case commenced under chapter 7, chapter 9, chapter 11, chapter 12 or chapter 13. However, a petition filed under chapter 15 does not create such an estate.

Rule 15004 provides for a request for comity or cooperation under §1509(b)(3).

Such a motion may be made after a court grants recognition under § 1517 of a foreign main proceeding or a foreign non-main proceeding.

Rule 15005 provides for a foreign representative to advise a United States court that the foreign representative intends to commence a case under another chapter of the U.S. Bankruptcy Code. Section 1511(b) requires such notice to a court that has granted recognition to a foreign main or non-main proceeding before a foreign representative files such a domestic case in the United States.

Rule 15006 provides for an expanded period of time for filing a claim or interest, pursuant to § 1514(d). In addition, the rule provides that, absent a court order to the contrary, the notice be given in the same way that court notices are traditionally given in that country. Finally, the rule also requires that the notice be given in the local language of that country.

Rule 15007 provides a procedure for an application for recognition of a foreign case as a foreign main case or a foreign non-main case. This is one of the most important functions of chapter 15. It is very important to respect the due process rights of foreign administrators, foreign creditors and foreign debtors in making this application. At the same time, § 1517(c) requires that a court make a decision on such an application "at the earliest possible time." Rule 15007 provides a procedure to make such a decision promptly while respecting the due process rights of foreign parties in interest.

Rule 15008 invokes the applicable domestic provisions in Rule 4001 for relief from stay, prohibiting or conditioning the use, sale, or lease of property, which § 1520(a) makes applicable after the recognition of a foreign main proceeding. This rule makes the applicable domestic rules available and applicable in such circumstances.

Rule 15009 provides generally that Rule 7001 and the rules in part VII apply to adversary proceedings under chapter 15. In addition to those proceedings listed in Rule 7001, it provides that the following proceedings unique to a chapter 15 case are governed by the part VII rules: A proceeding to obtain an injunction under § 1519; a request for relief under § 1521(a)(1)(2)(3) or (6); and a proceeding to recover money or property under § 549 or 552 by a foreign representative. Furthermore, § 1519(e) provides that the standards, procedures, and limitations applicable to an injunction shall apply to relief sought under § 1519. Pursuant to this provision, such relief must be sought by an adversary proceeding under Rule 7001.

Rule 15010 provides that any request for security or bond in connection with relief under § 1522(b) must be made by a motion pursuant to Rule 15001. Section 1522(b), which authorizes a court to entrust the distribution of some or all of the debtor's assets located in the United States to the foreign representative or another person, provided that the court has satisfied the interest of creditors in the United States are sufficiently protected. Such protection is typically provided by an appropriate bond.



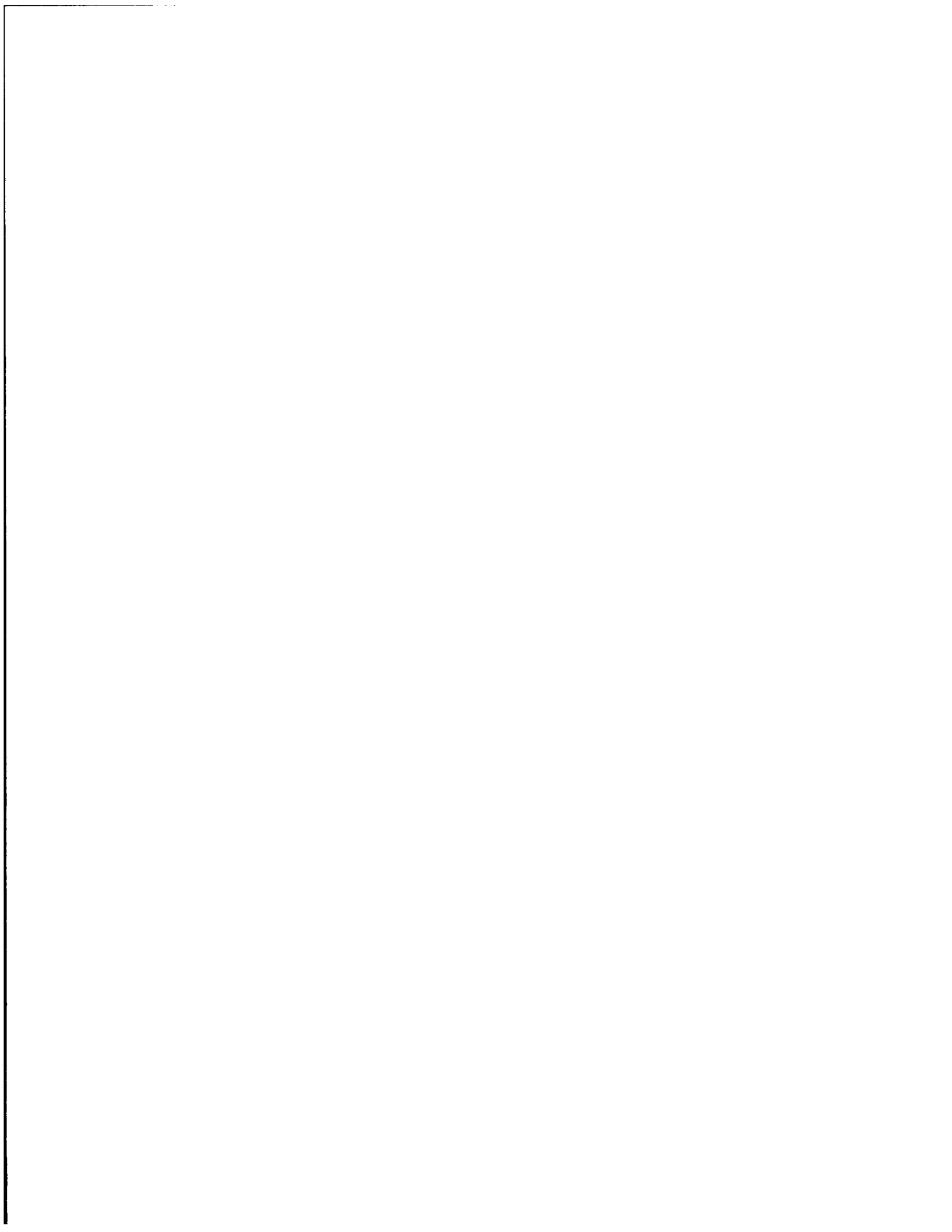
Rule 15011 provides generally for the intervention in a domestic U.S. case by a foreign representative, pursuant to § 1524. Such intervention may be sought in any federal or state court in the United States. Rule 15011 makes it clear that the foreign representative must comply with the local rules of any such court where the foreign representative seeks to intervene.

Rule 15012 provides the procedure for an application for cooperation and direct communication between a trustee or debtor in possession and foreign courts. Such authorization is to be sought by application. Compliance with the notice provisions of Rule 15001 is not required.

Rule 15013 recognizes that chapter 15 does not cover all of the procedures that may be required for the coordination of specific multinational cases. This rule recognizes that specific procedures may be as provided by the use of Protocol, under practice that has previously developed. This rule provides that approval for a Protocol shall be sought by motion in compliance with Rule 15001.

Rule 15014 recognizes that a party in interest, typically a debtor, may seek a ruling by a domestic court that a case filed under another chapter of the Bankruptcy Code qualifies as a main proceeding for international purposes under foreign countries' versions of the Model Law or other appropriate authority. A similar practice has developed in the European Union under EU Regulation 1346/2000. Debtors or trustees in the United States may seek a similar domestic order, in the hopes that it will be applied by foreign courts.

Rule 15015 provides generally for court-to-court communications pursuant to § 1525-1527. The International Insolvency Institute and the American Law Institute have developed guidelines applicable to court-to-court communications in cross-border cases. This rule incorporates those guidelines as United States procedure.



## **DRAFT PART 15 – ANCILLARY AND OTHER CROSS-BORDER CASES**

### **Rule 15001. Chapter 15 Motions: Form and Service.**

A motion under chapter 15 shall comply with Rule 9013. In addition, the motion shall be served on the 20 largest unsecured creditors located in the United States, the administrator appointed in any foreign proceeding with respect to the debtor or a member of the same corporate group as the debtor, the 20 largest unsecured creditors in each such foreign proceeding, all United States secured creditors, all secured creditors in foreign countries who are known to the movant, and the United States Trustee. Furthermore, every such motion other than one which may be considered ex parte shall be served by the moving party on the trustee, if the motion arises in a case filed under chapter 7, 9, 11, 12 or 13.

### **Rule 15002. Foreign Authorities.**

Any paper filed with the court that cites a foreign or international authority in a case under title 11, shall attach a copy of the international foreign authority, with a translation into English.

### **Rule 15003. Authorization to Act in Foreign Country.**

Authorization to act in a foreign country pursuant to § 1505 shall be made on motion of the trustee or other entity seeking such authorization. The motion shall be made in compliance with Rule 9013, and shall be served as provided in Rule 15001. An order pursuant to this provision may be granted after notice and a hearing.

### **Rule 15004. Motion for Comity or Cooperation.**

A request for comity or cooperation under § 1509(b)(3) shall be made by motion pursuant to Rule 15001.

### **Rule 15005. Advice of Foreign Representative's Intent to Commence a Case Under § 1511.**

Any foreign representative who intends to commence a case under § 1511(a) shall file a notice of intent to commence a domestic bankruptcy case with the court that has granted a petition for recognition under § 1515. Such a notice shall be served as provided

by Rule 15001.

**Rule 15006. Filing Proof of Claim or Equity Security Interest by Foreign Creditor or Equity Security Holder in Chapter 9 Municipality or Chapter 11 Reorganization case.**

(a) Applicability of rule

This rule applies in chapter 9 and 11 cases to foreign creditors and foreign equity security holders.

(b) The filing of a claim or statement of interest under Rule 3003 by a foreign creditor or security interest holder shall be made as provided by Rule 3003.

(c) Notice to a foreign creditor or security interest holder shall be given at least 90 days before the deadline for filing a claim or notice of interest, unless otherwise ordered by the court.

(d) Notice of a deadline to file a claim or security interest under Rule 3003 shall be given in the official language of the country to which the notice is directed. In addition, the notice shall be delivered by the same means that domestic notices and legal proceedings are delivered in that country, unless the court orders otherwise.

**Rule 15007. Application for Recognition.**

(a) A foreign representative's petition for recognition shall be filed with the court. In addition, it shall be set for hearing pursuant to Rule 15001 upon 15 days notice, or such notice as is provided by the local rules of the court.

(b) A petition for recognition shall be served pursuant to Rule 15001.

(c) If a petition for recognition requests the recognition of a foreign proceeding as a foreign main proceeding, the petition shall be accompanied by evidence of the location of the debtor's registered office, or the habitual residence in the case of an individual. All such documents shall be translated into English pursuant to § 1515(d).

(d) A party contending that a foreign proceeding is not a foreign main proceeding shall file evidence complying with Rule 7056 in support of the party's contention.

(e) A party seeking to rebut the presumption of § 1516(c), that the debtor's registered office or habitual residence is the center of the debtor's main interest, shall file evidence complying with Rule 7056 in opposition to such a determination. Should it appear

from the affidavits of such a party that the party cannot for reasons stated present evidence essential to justify the party's opposition, the court may order a continuance to permit evidence to be obtained or discovery to be had or may make such other order as is just. When a motion for recognition of a foreign main proceeding is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, supported by admissible evidence, must set forth specific facts showing that there is a genuine issue for trial.

(f) If the court finds that there is a genuine issue for trial on the recognition of a foreign main proceeding, the court shall conduct an evidentiary hearing at the earliest possible time, consistent with § 1517(c).

**Rule 15008. Relief from Automatic Stay: Prohibiting or Conditioning Use, Sale, or Lease of Property; Use of Cash Collateral.**

(a) A motion for relief from stay, prohibiting or conditioning the use, sale, or lease of property shall be made pursuant to Rule 4001(a). A motion for use of cash collateral shall be made pursuant to Rule 4001(b). A motion pursuant to this rule shall be served pursuant to Rule 15001.

(b) A motion for relief from the automatic stay of §§ 361 and 362, as provided by § 1520, shall be made pursuant to Rule 4001(a).

**Rule 15009. Adversary Proceedings Under Rule 7001.**

(a) Rule 7001 applies to adversary proceedings under chapter 15.

(b) In addition to those proceedings listed in Rule 7001, the following proceedings in a chapter 15 case are adversary proceedings governed by the rules of Part VII:

(1) A proceeding to recover money or property under § 549 or 552;

(2) A proceeding to obtain an injunction or other equitable relief under § 1519;

(3) a request for relief under § 1521(a)(1), (2), (3) or (6);

(4) An action initiated by a foreign representative pursuant to § 1523.

**Rule 15010. Protection of Creditors and Other Interested Persons.**

Any request for security or bond sought in connection with relief under § 1522(b) or

(c) shall be made by motion pursuant to Rule 15001.

**Rule 15011. Intervention by a Foreign Representative.**

Intervention in any proceedings in a state or federal court in the United States by a foreign representative shall be pursuant to the rules applicable to that court.

**Rule 15012. Cooperation and Direct Communication Between the Trustee and Foreign Courts.**

A trustee or other person, including an examiner, authorized by the court shall obtain authorization from the court to communicate directly with a foreign judge. Such authorization may be requested by application after notice and a hearing.

**Rule 15013. Protocols.**

A party seeking approval in the form of a protocol of an agreement concerning the coordination of proceedings shall seek such approval by motion pursuant to Rule 15001.

**Rule 15014. Recognition of Domestic Case as a Main or Non-Main Proceeding.**

(a) A party in interest may request that the court designate a case under chapter 7, 9, 11, 12 or 13 as a main proceeding or a non-main proceeding. Such a request shall be made by motion, and shall comply with the requirements of Rule 15001.

(b) A motion for designation of a case as a main proceeding pursuant to paragraph (a) shall be supported by evidence that the center of the debtor's main interests is located in the United States.

(c) A motion for designation of a case as a non-main proceeding pursuant to paragraph (a) shall be supported by evidence that the debtor has an establishment in the United States.

**Rule 15015. Court-to-Court Communication.**

(a) A court may communicate with a foreign court in connection with matters relating to proceedings before it for the purposes of coordinating and harmonizing proceedings before it with those in the other State.

(b) A court may communicate with an administrator in a foreign State or an authorized representative of the court in that State in connection with the coordination and harmonization of the proceedings before it with the proceedings in the other State.

(c) A court may permit a duly authorized administrator to communicate with a foreign court directly, subject to the approval of the foreign court, or through an administrator in the other jurisdiction or through an authorized representative of the foreign court on such terms as the court considers appropriate.

(d) A court may receive communications from a foreign court or from an authorized representative of the foreign court or from a foreign administrator. The court may respond directly if the communication is from a foreign court (subject to paragraph (f) of this rule) in the case of two-way communications and may respond directly or through an authorized representative of the court or through a duly authorized administrator if the communication is from a foreign administrator.

(e) Communications from a court to a foreign court may take place by or through:

- (1) Sending or transmitting copies of formal orders, judgments, opinions, reasons for decision, endorsements, transcripts of proceedings, or other documents directly to the foreign court and providing advance notice to counsel for affected parties in such manner as the court considers appropriate;
- (2) Directing counsel, a foreign administrator or a trustee to transmit or deliver copies of documents, pleadings, affidavits, factums, briefs, or other documents that are filed or to be filed with the court to the foreign court in such fashion as may be appropriate and providing advance notice to counsel for affected parties in such manner as the court considers appropriate;
- (3) Participating in two-way communications with the foreign court by telephone or video conference call or other electronic means, subject to paragraph (f).

(f) In the event of communications between the courts in accordance with paragraphs (a) and (d) by means of telephone or video conference call or other electronic means, unless otherwise directed by either of the two courts:

- (1) Counsel for all affected parties may participate in person during the communication. Advance notice of the communication shall be given to all parties in accordance with the rules of procedure applicable in each court;
- (2) The communication between the courts shall be on the record;
- (3) The courts and judges in each court may communicate fully with each other to establish appropriate arrangements for the communication without the

necessity for participation by counsel unless otherwise ordered by either of the courts.

(g) In the event of communications between the court and an authorized representative of the foreign court or a foreign administrator in accordance with paragraphs (b) and (d) by means of telephone or video conference call or other electronic means, unless otherwise directed by the court:

- (1) Counsel for all affected parties may participate in person during the communication. Advance notice of the communication shall be given to all parties in accordance with the rules of procedure applicable in each court;
- (2) The communication shall be on the record;
- (3) Judges in each court may communicate fully with the authorized representative of the foreign court or the foreign administrator to establish appropriate arrangements for the communication without the necessity for participation by counsel unless otherwise ordered by the court.

(h) A court may conduct a joint hearing with another court. In connection with any such joint hearing, the following applies, unless otherwise ordered or unless otherwise provided in any previously approved Protocol applicable to such joint hearing:

- (1) Each court shall be able to simultaneously hear the proceedings in the other court;
- (2) Evidentiary or written materials filed or to be filed in one court shall be transmitted to the other court or made available electronically in a publicly accessible system in advance of the hearing. Transmittal of such material to the other court or its public availability in an electronic system shall not be subject the party filing the material in one court to the jurisdiction of the other court;
- (3) Submissions or applications by the representative of any party should be made only to the court in which the representative making the submissions is appearing unless the representative is specifically given permission by the other court to make submissions to it;
- (4) Subject to paragraph (f)(2), the court may communicate with the foreign court in advance of a joint hearing, with or without counsel being present, to establish guidelines for the orderly making of submissions and rendering of decisions by the courts, and to coordinate and resolve any procedural, administrative, or preliminary matters relating to the joint hearing;
- (5) Subject to paragraph (f)(2), the court, subsequent to the joint hearing, may



communicate with the foreign court, with or without counsel present, for the purpose of determining whether coordinated orders could be made by both courts and to coordinate and resolve any procedural or nonsubstantive matters relating to the joint hearing.

(l) The court may, except upon proper objection on valid grounds and then only to the extent of such objection, recognize and accept as authentic the provisions of statutes, statutory or administrative regulations, and rules of court of general application applicable to the proceedings in the foreign jurisdiction without the need for further proof or exemplification thereof.

(j) The court may, except upon proper objection on valid grounds and then only to the extent of such objection, accept that orders made in the proceedings in the other jurisdiction were duly and properly made or entered on or about their respective dates and accept that such orders require no further proof or exemplification for purposes of the proceedings before it, subject to all such proper reservations as in the opinion of the court are appropriate regarding proceedings by way of appeal or review that are actually pending in respect of any such orders.

(k) The court may coordinate proceedings before it with proceedings in another State by establishing a service list that may include parties that are entitled to receive notice of proceedings before the court in the other State ("non-resident parties"). All notices, applications, motions, and other materials served for purposes of the proceedings before the court may be ordered to also be provided to or served on the non-resident parties by making such materials available electronically in a publicly accessible system or by facsimile transmission, certified or registered mail or delivery by courier, or in such other manner as may be directed by the court.

(l) The foreign administrator or a representative of creditors in the proceedings in the other State or an authorized representative of the court in the other State may appear and be heard by the court without thereby becoming subject to the jurisdiction of the court.

(m) The court may direct that any stay of proceedings affecting the parties before it shall, subject to further order of the court, not apply to applications or motions brought by such parties before the other court or that relief be granted to permit such parties to bring such applications or motions before the other court on such terms and conditions as it considers appropriate. Court-to-court communications in accordance with paragraphs (e) and (f) hereof may take place if an application or motion brought before the court affects or might affect issues or proceedings in the court in the other State.

(n) A court may communicate with a foreign court or with an authorized representative of such court in the manner prescribed by this rule for purposes of coordinating and harmonizing proceedings before it with proceedings in the other jurisdiction regardless of the form of the proceedings before it or before the foreign court wherever there is commonality among the issues and/or the parties in the proceedings.

(o) Directions issued by the court under this rule are subject to such amendments, modifications, and extensions as may be appropriate for the purposes described in this rule and to reflect the changes and developments from time to time in the proceedings before it and before the foreign court. Any directions may be supplemented, modified, and restated from time to time and such modifications, amendments, and restatements should become effective upon being accepted by both courts. If either court intends to supplement, change, or abrogate directions issued under this rule in the absence of joint approval by both courts, the court shall give the foreign courts involved reasonable notice of its intention to do so.

(p) Arrangements contemplated under this rule do not constitute a compromise or waiver by the court of any powers, responsibilities, or authority and do not constitute a substantive determination of any matter in controversy before the court or before the foreign court nor a waiver by any of the parties of any of their substantive rights and claims or a diminution of the effect of any of the orders made by the court or the foreign court.

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES  
FROM: JEFF MORRIS, REPORTER  
RE: NONUNIFORM RESPONSES TO CREDIT COUNSELING REQUIREMENT  
DATE: FEBRUARY 14, 2006

The United States Trustee Program has noted that some courts have adopted local rules that appear to conflict with the Interim Rules. An email message from Mr. Donald Walton to Judge Zilly stated that

We have informally surveyed our offices regarding the implementation of Interim Rule 1007(b)(3) which requires the filing with the petition of a credit counseling certificate or a pleading requesting a waiver under sections 109(h)(3) or (4). Even though the Interim Rules were almost uniformly adopted, there appears to be significant non-conformity with enforcement of the pre-petition credit counseling requirement. Either by administrative order or informal procedure a number of courts grant automatic extensions for the filing of a credit counseling certificate. For example, the Western District of Washington implemented Local Rule 5003-1(a) which allows clerk office personnel, without court intervention, to grant a 30-day extension for the obtaining of credit counseling post-petition. In other districts, clerks issue a deficiency notice which gives the debtor 15 days to file a certificate of completion of credit counseling, but the notice does not require the debtor to show either pre-petition counseling or exigent circumstances to excuse the lack of pre-petition counseling.

We are concerned that while the Rules Committee spent considerable time developing uniform rules for implementation of the BAPCPA, individual courts have imposed substantive changes to those rules which alter the requirements of the new legislation. I would be grateful if you might consider either contacting the local courts to remind them of the section 109(h) requirement and/or consider a national rule to address this issue. Thank you.

As to Mr. Walton's message, it suggests a couple of things to me. First, there are a lot of problems with the credit counseling obligations and the issuance of the certificates. The courts seem to be trying to fit a square peg in a round hole, and the statute makes that particularly

difficult. The result is that many cases (particularly of pro se debtors) may need to be dismissed with the added consequence of further limits on the automatic stay because the debtor is now a serial filer. Moreover, the debtor has paid the filing fee and will have to pay another to get the case refiled. Some courts have attempted to end run this provision by "striking" the petition rather than dismissing it. In theory, since the case is stricken, it is as if no petition were ever filed, so the serial debtor limitations on the automatic stay would not kick in. I am not sure what the Administrative Office thinks of all this, but I imagine that if my petition never existed, my filing fee should be returned.

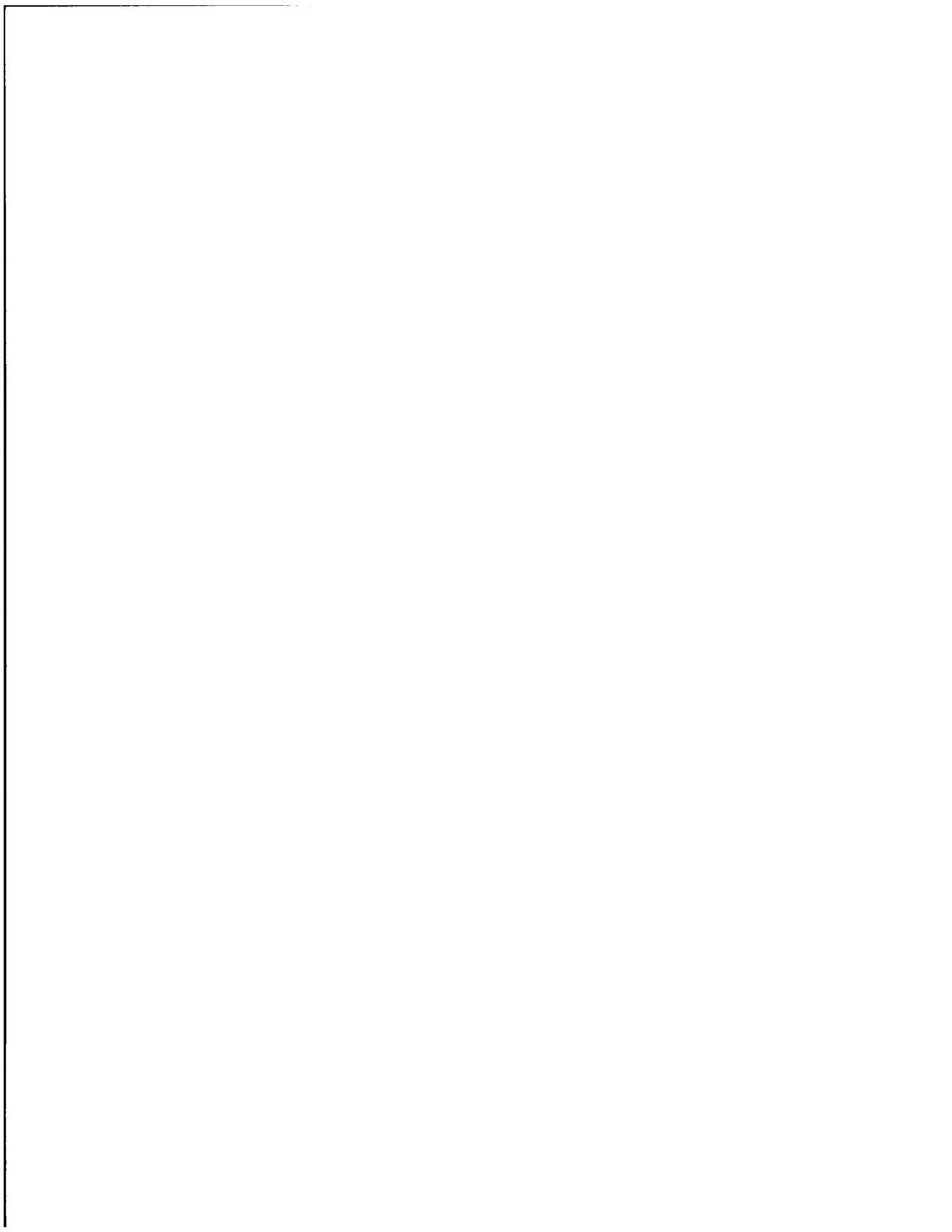
I have separately prepared a proposed amendment to Rule 1007 to attempt to address the problem. As Mr. Walton has noted, correctly in my opinion, the statute only allows three reasons for not filing the certificate or being permitted to file it during the case: military service in a combat zone; mental or physical incapacity; and a waiver for exigent circumstances. The statute (§ 521(b)(1)) requires the debtor to file the credit counseling agency's certificate, but it does not say when that must happen. We chose in Rule 1007 to require it to be filed with the petition. Many other documents, including the schedules, can be filed within an additional 15 days. We rejected that automatic extension for a number of reasons that I still find persuasive. I think we should keep the requirement that the certificate be filed with the petition, but I think we need to expand the coverage of the rule as regards the requests for waiver. That's where my focus is on another option.

I have proposed that Rule 1007(b)(3) be revised to set out in a vertical list the options available to debtors regarding credit counseling. Under Interim Rule 1007(b)(3), debtors can either file their credit counseling certificate and repayment plan with the petition, they can file a

statement indicating that they are covered by the military or incapacity exceptions from the credit counseling requirement entirely, or they can request that the court grant an extension to obtain the counseling due to exigent circumstances. In my proposed amendment to that rule, I have added another category to the list. A debtor can, in appropriate circumstances, file a statement along with the petition that states that the debtor has already obtained the necessary counseling but has not yet received the credit counseling certificate. The debtor then would have an additional period in which to obtain and file the certificate. The Code only provides that the debtor obtain the counseling and file the certificate. It does not establish the time for filing the certificate. It is only because of our decision in Interim Rule 1007(c) that debtors must file the certificates at the time of the filing of the petition. Therefore, we are well within our power under the Rules Enabling Act to change the timing requirement to accommodate those situations where the debtor is simply waiting to receive a piece of paper.

This change in the rule would also be combined with a new notice that the clerk will give to filers that reminds them of their obligation to comply with Rule 1007 and the credit counseling duty, as well as to inform them of the consequences of a failure to comply with the Code and Rules. The case will likely be dismissed, they will essentially forfeit a filing fee, and they may not have the full benefit of the automatic stay in a subsequently filed case. If the debtor still wants to file the petition and commence the case in the face of such a warning, then there is much less concern about the debtor suffering the consequences of making an incomplete filing. This should reduce the courts' concern about protecting individual debtors from the consequences of particularly bad decisions that they may make out of ignorance of the Code and the Rules.

This solution is one that is proposed as an amendment to the national rules and not as an Interim Rule. Mr. Walton's point that some courts that have adopted the Interim Rules only to "opt out" by local rules that permit the commencement of a case without a proper credit counseling certificate is a separate issue. We hoped and urged the courts to adopt the Interim Rules in whole, but we certainly cannot force the courts to adopt them in that manner. Moreover, Rule 9029 does not apply to the Interim Rules, so the courts are free to reject any portions of them and to otherwise adopt positions inconsistent with the Interim Rules. If many courts are doing so, it seems to me that we need to look at what they are doing to get the benefit of that experience as we go forward in the rulemaking process. In the meantime, I think that the proposed amendment to Rule 1007 may make the courts more willing to adopt a national standard. It is also possible that as people become familiar with the changes made to the Code in 2005, many of the problems will go away.



Dear Judge Zilly:

We have informally surveyed our offices regarding the implementation of Interim Rule 1007(b)(3) which requires the filing with the petition of a credit counseling certificate or a pleading requesting a waiver under sections 109(h)(3) or (4). Even though the Interim Rules were almost uniformly adopted, there appears to be significant non-conformity with enforcement of the pre-petition credit counseling requirement. Either by administrative order or informal procedure a number of courts grant automatic extensions for the filing of a credit counseling certificate. For example, the Western District of Washington implemented Local Rule 5003-1(a) which allows clerk office personnel, without court intervention, to grant a 30-day extension for the obtaining of credit counseling post-petition. In other districts, clerks issue a deficiency notice which gives the debtor 15 days to file a certificate of completion of credit counseling, but the notice does not require the debtor to show either pre-petition counseling or exigent circumstances to excuse the lack of pre-petition counseling.

We are concerned that while the Rules Committee spent considerable time developing uniform rules for implementation of the BAPCPA, individual courts have imposed substantive changes to those rules which alter the requirements of the new legislation. I would be grateful if you might consider either contacting the local courts to remind them of the section 109(h) requirement and/or consider a national rule to address this issue. Thank you.

DONALD F. WALTON  
Acting Deputy Director  
Executive Office for United States Trustees



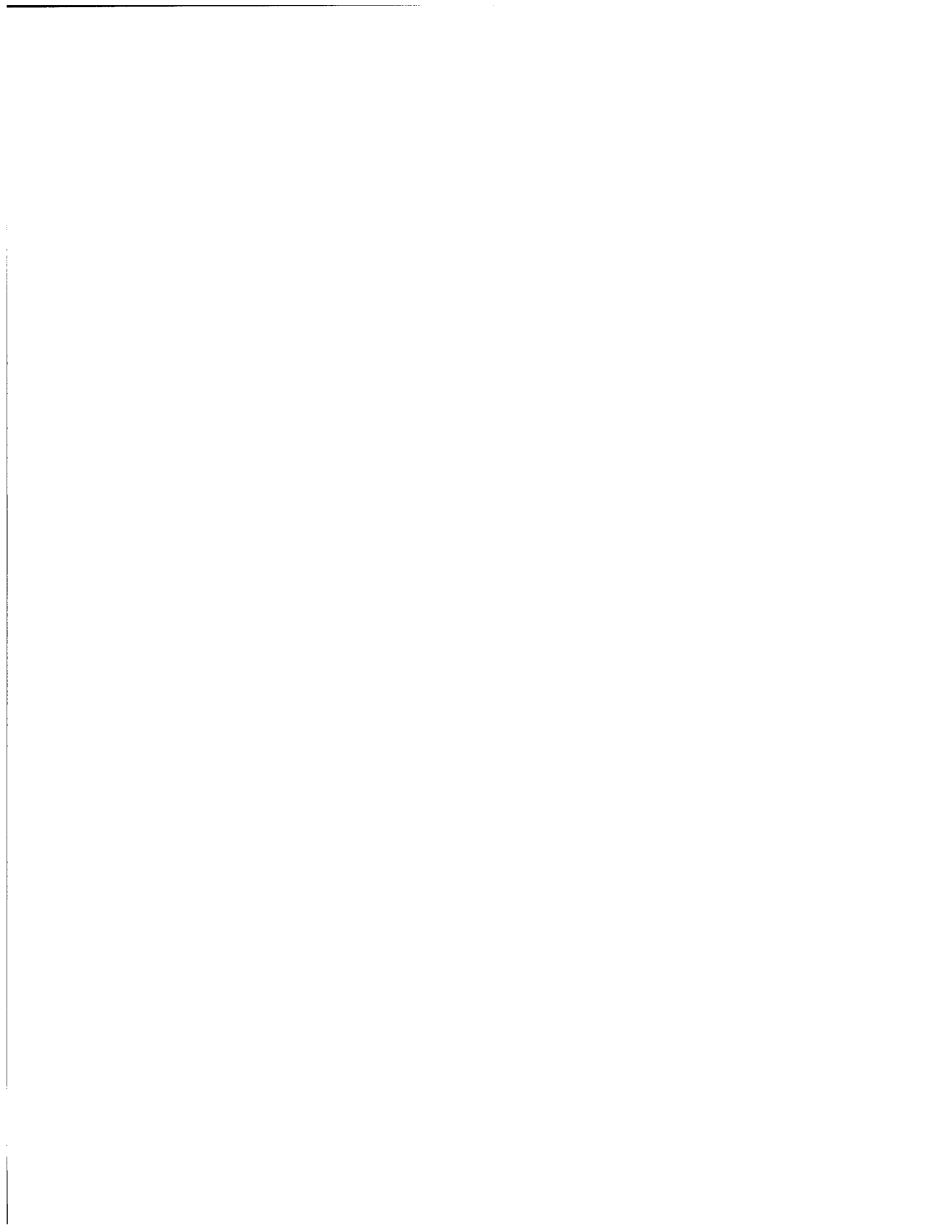
Tom:

Interesting. Our rule was drafted with the assistance of the US Trustee's office locally. We meet the requirements of the rule by requiring the debtor to fill out a certification requesting the extension that requires a statement of the exigent circumstances and that they requested credit counseling and were unable to obtain it. Because we require the certification at the time of the filing, I think we are in compliance with BR 1007(b)(3). Initially in our district there were no in-person credit counseling options and attorneys were concerned that it would be very difficult to get the counseling before bankruptcy. We have delegated to the clerk the authority to approve these or refer them to a judge, similar to our procedure for requests to pay filing fees in installments. I think all requests have been approved. We have recently initiated a study to determine what reasons are given, how many extensions have been requested, etc., to determine if our procedure needs to be changed so that there is more judicial oversight. From my standpoint, as long as the debtor obtains the counseling before the deadline, I don't see the problem. I think the statute is intended to give the debtors the opportunity through counseling to see if they can avoid bankruptcy, so in that sense, if they don't get it before they file, that purpose is not accomplished. On the flip side, counseling agencies nationwide are reporting that they are not seeing anyone who is able to do the kind of repayment plan they would offer to avoid bankruptcy. There is plenty of case law on this and courts and clerks are all over the map.

Let me know what else you hear.

Karen

Karen A. Overstreet, Chief Judge  
United States Bankruptcy Court  
for the Western District of Washington



**RULE 5003-1. CLERK - GENERAL/AUTHORITY** [Cases filed on or after October 17, 2005]

**(a) Delegation of Ministerial Orders.** The clerk and such deputies as the clerk may designate are authorized to sign and enter without further direction the following orders, which are deemed to be of a ministerial nature:

(1) orders on motions and applications of the type described in Rule 77, Fed.R.Civ.P., except that the clerk is not authorized to grant orders or judgments for default;

(2) orders permitting the payment of filing fees in installments and fixing the number, amount, and dates of payment;

(3) orders granting an initial 30-day extension of the time to file a certificate that the debtor has received a briefing from an approved credit counseling agency, as provided in 11 U.S.C. § 109(h)(3);

(4) orders discharging a trustee and closing a case after such case has been fully administered;

(5) orders reopening cases that have been closed due to administrative error;

(6) orders authorizing the trustee to pay expenses of administration of \$500.00 or less in chapter 7 cases; and

(7) orders requiring debtors to file amended schedules in a converted case.

**(b) Administrative Regulations.** The clerk is authorized to promulgate regulations governing administrative matters, including the submission of forms, content and format of creditor mailing lists, mode of payment of filing fees, and disposition of records. Such regulations shall be available for public reference, and shall be published in such publications and at such intervals as the clerk deems appropriate.

**(c) Custody and Disposition of Exhibits and Depositions.** CR 79(g), Local Rules W.D. Wash., controls the custody of exhibits and depositions.

**(d) Deposit of Funds in the Registry of the Bankruptcy Court.**

(1) *Order for Deposit into Court Registry.* Except for deposits required by law or court order, a party desiring to deposit funds into the registry of the court must file an application, which shall include a detailed explanation of the facts and circumstances necessitating the deposit of estate funds into the registry. The application and a proposed order shall be delivered to the financial deputy clerk, who will review the proposed order for compliance with this rule prior to submitting the proposed order to the court.

(2) *Proposed Orders Directing Deposit of Funds by Clerk.* A proposed order directing the clerk to deposit funds into the registry of the court must include the following:

(A) the amount to be deposited;

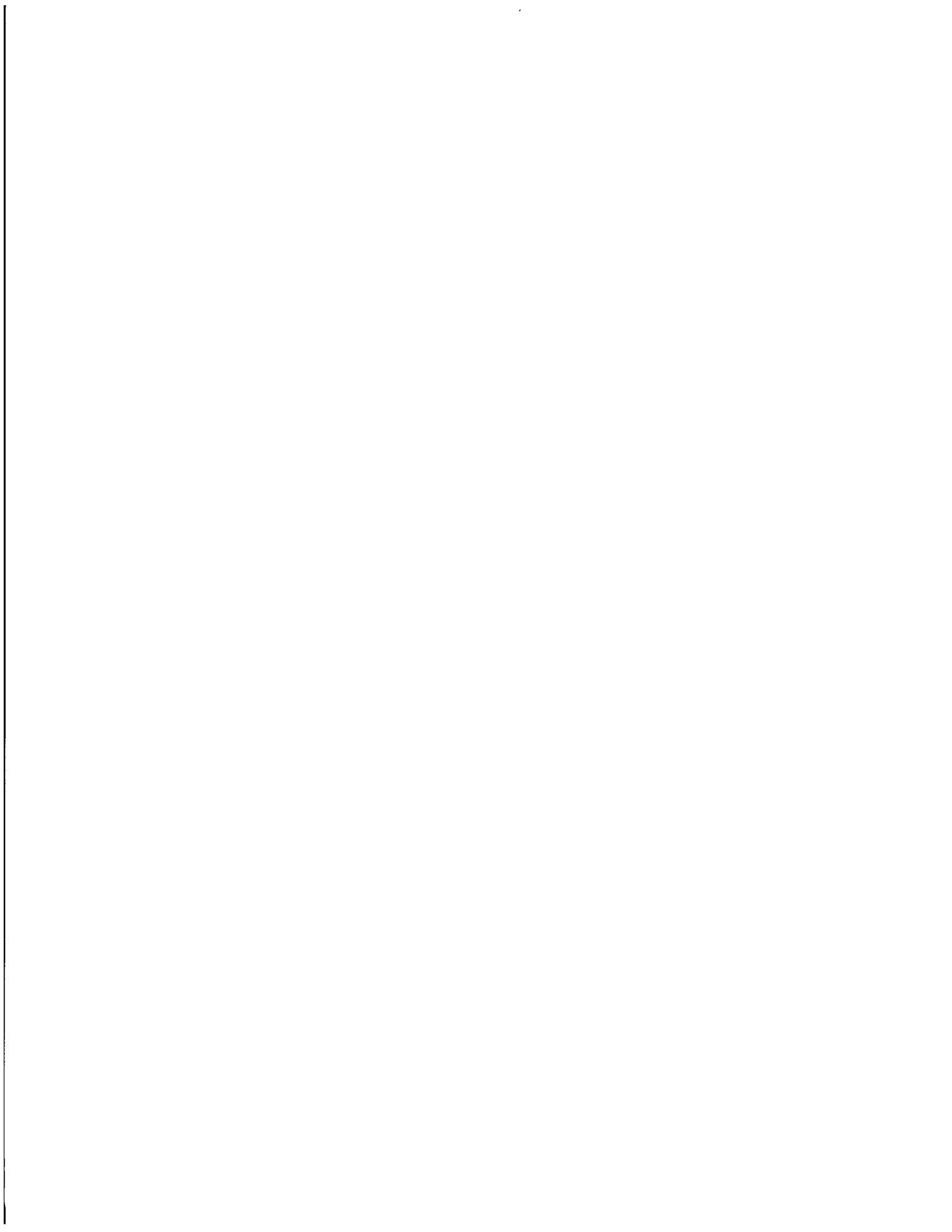
(B) a direction to the clerk to deposit registry funds of \$25,000 or more in accordance with 31 C.F.R. Part 202;

(C) a direction to the clerk to deposit funds of less than \$25,000 into a non-interest bearing account with the U.S. Treasury; and

(D) language directing the clerk to deduct from the income earned on the deposit a fee as prescribed by the Judicial Conference of the United States, without further order of the court.

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Item 4(j) will be distributed separately.



TO: Honorable Thomas S. Zilly, Chair  
Advisory Committee on Bankruptcy Rules

FROM: Richard Schell for the Subcommittee on Attorney Conduct and Health Care

DATE: December 14, 2005

RE: Report of the Subcommittee on Attorney Conduct and Health Care

The Subcommittee on Attorney Conduct and Health Care met by phone at 1 p.m. Central Time on December 12, 2005. All members of the subcommittee were able to join the conference call. The participants were Judge William Pauley, Judge Mark McFeeley, John Shaffer, Michael Lamberth, Professor Jeff Morris, James Wannamaker and me.

The subcommittee met for the purpose of discussing and formulating a recommendation to the full Advisory Committee on two matters that were referred to the subcommittee. The first matter has to do with a letter sent to the Advisory Committee by members of the ABA Task Force on Attorney Discipline, while the second matter involves a proposal by Judge Paul Mannes to allow corporate creditors, and other creditors which are artificial entities, to be represented by non-attorneys where the amount of the claim is small.

(1) Item 7 from the September 2005 Santa Fe, NM agenda. In a letter dated June 21, 2005, members of the ABA Task Force on Attorney Discipline express their concern about provisions contained in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 which impose new duties on attorneys of "reasonable investigation" [see section 707(b)(4)(C)] and "inquiry" [see section 707(b)(4)(D)]. The Task Force is concerned about how those new duties might impact issues of discipline, suspension and disbarment affecting an attorney's general privilege to practice before the bankruptcy court. Because of the potential for increased litigation involving attorney compliance with these new duties, the ABA Task Force members urge the Advisory Committee to include somewhere in the new Federal Rules of Bankruptcy Procedure a recommendation that each bankruptcy court "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."

The members of the subcommittee believe that such a recommendation to the bankruptcy courts from the Advisory Committee on Bankruptcy Rules is both unnecessary and outside the scope of the committee's responsibility. Such a recommendation is unnecessary because Rule 9011 already provides the framework for the courts to resolve issues involving attorneys who sign petitions, pleadings and written

motions without first making the inquiry or investigation that is reasonable under the circumstances. Further, 11 USC section 707 specifically refers to Rule 9011 and the procedures contained therein.

In addition, because the Advisory Committee's responsibility is to develop national rules, the subcommittee believes that making recommendations to the bankruptcy courts about their own local rules and general orders on attorney discipline goes beyond the scope of the Advisory Committee's responsibility. Also, members of the subcommittee noted that in many instances, attorney conduct in bankruptcy cases is governed by the rules of the applicable district court. We do not believe that the Advisory Committee on Bankruptcy Rules is in a position to offer guidance to the district courts on their rules of attorney conduct and responsibility.

(2) Item 15 from the September 2005 Santa Fe, NM agenda. In an email dated April 6, 2005, Judge Paul Mannes (Bankr. D.Md.) proposes that the Advisory Committee promulgate a rule that authorizes corporations and other parties, other than individuals, to appear without counsel through a non-attorney representative where the amount in controversy is minimal. Alternatively, he suggests that we recommend a rule that would allow each court the latitude to authorize such parties to appear through a non-attorney representative.

The subcommittee members generally agreed with the assessment given by Professor Jeff Morris in his memo at tab 15 of the Santa Fe agenda. As Jeff points out, the BAPCPA of 2005 included an amendment to section 341(c) that any creditor holding a consumer debt may appear and participate in the meeting of creditors in a case under Chapter 7 or Chapter 13 without an attorney. But this provision applies only to creditors holding consumer debts, only to Chapter 7 and Chapter 13 cases, and only to appearances and participation in meetings of creditors. Judge Mannes' proposal appears to invite the Advisory Committee to develop a rule allowing non-attorney representation that goes beyond that which Congress has approved.

Furthermore, the subcommittee took note of clearly established law that, as a general rule, a corporation may appear in federal court only through an attorney. See Rowland v. California Men's Colony, 506 U.S. 194 at 202 (1993). Therefore, the members of the subcommittee believe that it would be improper for the Advisory Committee to develop a rule of procedure that would purport to authorize that which is contrary to established law and exceeds that which Congress has specifically approved. For these reasons, the subcommittee recommends that the Advisory Committee on Bankruptcy Rules respectfully decline to implement Judge Mannes proposal.



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](mailto:jmiller@jaffelaw.com)) or Lisa Hill Fenning (tel. 213-621-6233; email: [lfenning@dbllp.com](mailto: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. Aliard  
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

**ABA TASK FORCE ON ATTORNEY DISCIPLINE**  
**CONTACT LIST**

(excluding judges and government employees)

Catherine E. Vance  
Development Specialists, Inc.  
6375 Riverside Drive, Suite 200  
Dublin, Ohio 43017  
Phone: (614) 734-2717  
Fax: (614) 734-2718  
Email: cvance@dsi.biz

Lisa Hill Fenning  
Dewey Ballantine LLP  
333 South Grand Avenue, Suite 2600  
Los Angeles, CA 90071-1530  
Phone: (213) 621-6233  
Fax: (213) 621-6133  
Email: lfenning@deweyballantine.com

Marc S. Stern  
5610 20<sup>th</sup> Avenue NW  
Seattle, WA 98107-5216  
Phone: (206) 448-7996  
Fax: (206) 784-8916  
Email: mstern@abanet.org

Jan Ostrovsky  
Crocker Kuno, LLC  
1325 Fourth Avenue, Suite 940  
Seattle, WA 98101  
Phone: (206) 624-9894  
Fax: (206) 624-8598  
Email: jostrovsky@crockerkuno.com

Dean Nancy B. Rapoport  
University of Houston Law Center  
100 Law Center  
Houston, TX 77204-6060  
Phone: (713) 743-2100  
Fax: (713) 743-2122  
Email: nrapoport@uh.edu  
Assistant: Kelli L. Cline (Kcline2@central.uh.edu)  
Assistant: Susan Hartman (Shartman@central.uh.edu)

Judith Greenstone Miller  
Jaffe Raitt Heuer & Weiss, P.C.  
27777 Franklin Road, Suite 2500  
Southfield, MI 48034  
Phone: (248) 727-1429  
Fax: (248) 351-3082  
Email: jmiller@jaffelaw.com

William H. Schorling  
Klett Rooney Lieber & Schorling  
12<sup>th</sup> Floor, Two Logan Square  
Philadelphia, PA 19103-2756  
Phone: (215) 567-7500  
Fax: (215) 567-2737  
Email: whschorling@klettrooney.com

David A. Greer  
Williams Mullen Hofheimer Nusbaum  
9999 Waterside Drive, Suite 700  
Norfolk, Virginia 23510  
Phone: (757) 629-0617  
Fax: (757) 629-0700  
Email: Dgreer@williamsmullen.com

David W. Allard  
Allard & Fish, PC  
535 Griswold St., Ste. 2600  
Detroit, MI 48226  
Phone: (313) 961-6141  
Fax: (313) 961-6142  
Email: dallard@allardfishpc.com

Robert R. Keatinge  
Holland & Hart  
Ste. 3200  
555 17<sup>th</sup> St.  
Denver, CO 80202-3921  
Phone: (303) 295-8595  
Fax: (303) 295-8261  
Email: rkeatinge@hollandhart.com

Jean K. FitzSimon  
Bridge Associates, LLC  
747 Third Avenue  
Suite 32A  
New York, NY 10017  
Phone: (212) 207-4710, x 17 (New York)  
Phone: (312) 670-0665 (Chicago)  
Fax: (212) 207-9294  
Email: jfitzsimon@bridgellc.com

Jeffrey L. Solomon  
Law Offices of Jeffrey L. Solomon  
40 Crossways Park Drive  
Woodbury, NY 11797  
Phone: (516) 632-8884  
Fax: (516) 551-1667  
Email: Jefflaw99@optonline.net

James H. (Jim) Cossitt  
Attorney & Counsellor at Law  
202 KM Bldg., 40 - 2<sup>nd</sup> St. E.  
Kalispell, MT 59901-4563  
Phone: (406) 752-5616  
Fax: None  
Email: [jhc@abanet.org](mailto:jhc@abanet.org)

Student researcher  
Jimmy Dahu  
3001 Hillcroft Apt. 510  
Houston, TX 77057  
Cell: (832)605-3824  
Email: [jd050780@yahoo.com](mailto:jd050780@yahoo.com)

Paul G. Swanson  
Steinhilber, Swanson, Marcs, Marone & McDermott  
107 Church Ave.  
P. O. Box 617  
Oshkosh, WI 54903-0617  
Phone: (920) 235-6690  
Fax: (920) 426-5530  
Email: [pswanson@oshkoshlawyers.com](mailto:pswanson@oshkoshlawyers.com)

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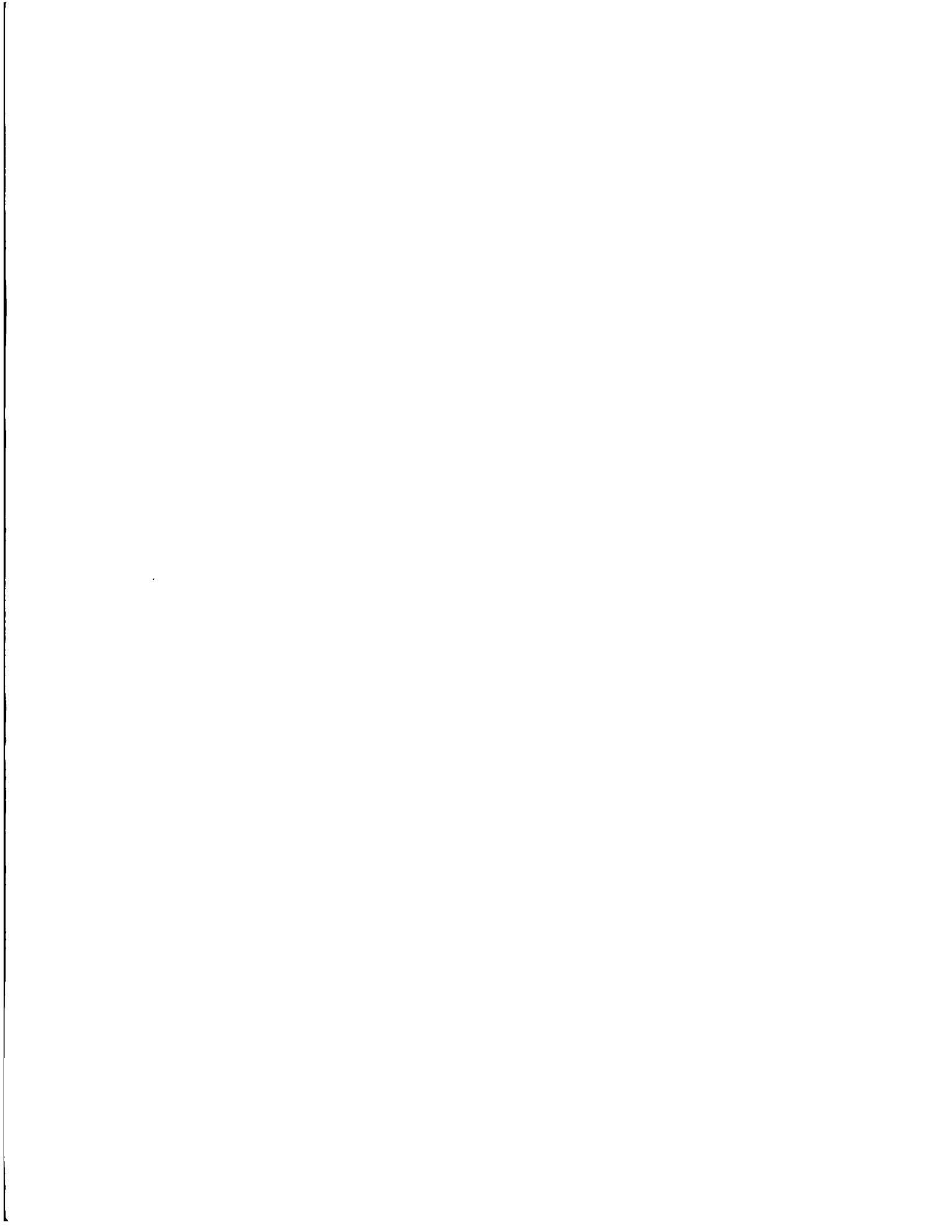
PAUL  
MANNES/MDB/04/USCOURT  
S  
(Bankr Judge)  
04/06/2005 12:06 PM

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.

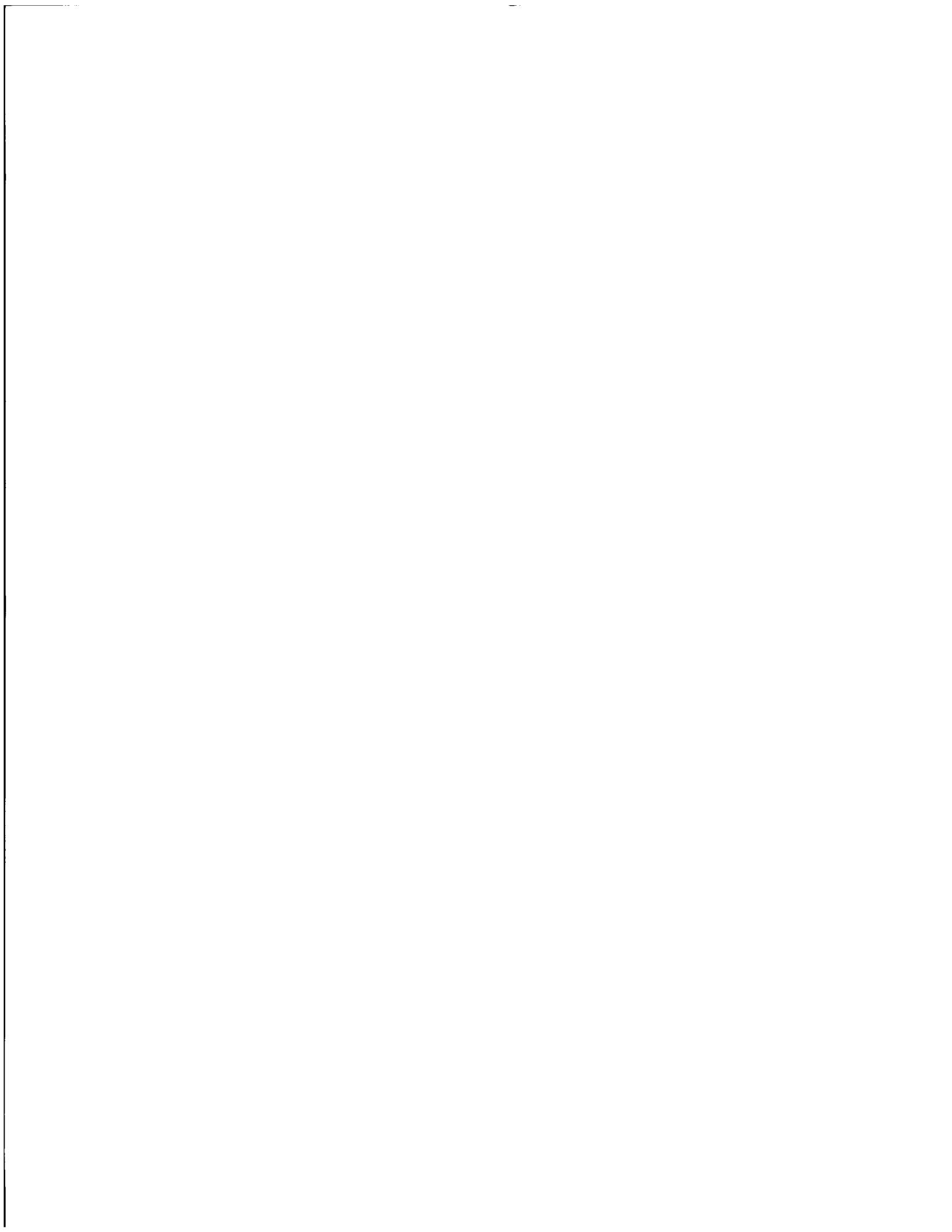
Paul



**ADVISORY COMMITTEE  
ON  
BANKRUPTCY RULES**

**Chapel Hill, NC  
March 8-10, 2006**

Volume 2 of 2





ADVISORY COMMITTEE ON BANKRUPTCY RULES  
Meeting of March 8-10, 2006  
Chapel Hill, North Carolina

Agenda

Introductory Items

1. Approval of minutes (Judge Zilly)
  - (a) Santa Fe meeting September 2005
  - (b) Sarasota meeting March 2005 (revised minutes)
2. Oral reports on meetings of other rules committees:
  - (a) January 2006 meeting of the Committee on Rules of Practice and Procedure (Judge Zilly and Professor Morris)
  - (b) Report on Appellate Rules Committee (Judge Zilly)
  - (c) January 2006 meeting of the Committee on the Administration of the Bankruptcy System (Judge Klein and Judge Montali)
  - (d) December 2005 meeting of Advisory Committee on Civil Rules (Judge Walker)
  - (e) November 2005 meeting of Advisory Committee on Evidence (Judge Klein)

Action Items

3. Report on comments to published proposed amendments to Rules 1014, 3001, 3007, 4001, 6006, 7007.1 and proposed new Rules 6003, 9005.1 and 9037 (Professor Morris)
  - (a) Discussion on comments on published rules (Morris report) (copies of comments)
  - (b) Comments by Style Subcommittee of Standing Committee (Morris memo) (copies of comments) (Professor Prof. Daniel Capra will participate by telephone)
  - (c) Final approval of published rules, as modified (copies of published rules)
4. Report on Interim Bankruptcy Rules
  - (a) Oral report on subsequent action by the Standing Committee and the Judicial Conference after Santa Fe meeting (Judge Zilly and Professor Morris)

- (b) Report on local court adoption of the Interim Rules and changes and modifications to Interim Rules by local courts (Professor Morris)
- (c) Report on comments and suggestions received on the Interim Rules; handout outlining comments and suggestions (Professor Morris)
- (d) Review of each Interim Rule, as modified, and recommendation for publication as National Rule.
- (e) Review and approval of Rules previously adopted for National Rules required by new law
  - [1] Rule 2015(a)
  - [2] Rule 3016(d)
- (f) Review of proposed Rule 3016(b)
- (g) Report on possible technical amendments to Interim Rules (Professor Morris)
  - [1] New Interim Rule 1015(b) – change two references in National Rule 1015(b) to “522(b)(1)” to “522(b)(2)”; change reference to “522(b)(2)” to “522(b)(3)”
  - [2] others as appropriate
- (h) Review of Judge Bufford’s proposed chapter 15 rules (Morris memo)
- (i) Review of United States Trustee proposed changes to Interim Rule 1007(b)(3) concerning credit counseling
- (j) Review of proposed changes to Interim Rule 1007(b)(7) concerning financial management training (Morris memo)

5. Report by the Attorney Conduct and Health Care Subcommittee (Judge Schell)

Old Business

- (a) ABA Task Force Request of June 21, 2005, concerning attorney compliance - Santa Fe agenda item 7 referred to subcommittee
- (b) Judge Mannes recommendation concerning representation of small claims by corporations - Santa Fe agenda item 15 referred to subcommittee

6. Report by the Business Subcommittee (Judge Swain and Professors Resnick and Janger)

Old Business

- (a) Judge Klein’s suggestion relating to service of process initiating objections to claims and opinion in State Line Hotel 2005 WL 857471 (Santa Fe agenda item 14)

(b) Corporate ownership issue and applicability of Rule 7007.1 in involuntary cases and chapter 15 proceedings (Santa Fe agenda item 13)

New Business

(c) Business Rules and Forms Amendments (Morris memo)

- (1) Proposed Standard Form Small Business Plan – (adopt as Official Form 25A)
- (2) Proposed Standard Form Disclosure Statement – (adopt as Official Form 25B)
- (3) Discussion about possible combined plan and disclosure statement.
- (4) New proposed Rule 2015(a)(6) and accompanying proposed Official Form 25C (relating to sections 434/435 of new law reporting on profitability of small business debtor)
- (5) New proposed Rule 2015.3 and proposed accompanying Official Form 26 (corporate reporting required by section 419 of new law) (entities that a debtor has a controlling or substantial interest in)
- (6) Proposed new Rule 3016(d) and proposed amendment to Rule 9009

7. Report by Consumer Subcommittee (Judge Wedoff)

New Business

- (a) Review of Means Test Forms (Official Forms 22A, 22B, and 22C) Judge Wedoff)
- (b) Proposed Rule 4008 and impact of new section 524 on the reaffirmation process
- (c) Section 521(b)(1) issue (amending Rule 1007(c)) (Morris memo)
- (d) Section 521(f)(4)(B) issue (amending Rule 1007(b),(c)) (Morris memo)
- (e) Rule 1007(b)(7),(c) concerning financial management training (Morris memo)

8. Report by Privacy, Public Access and Appeals Subcommittee (Judge Klein)

Old Business

- (a) Judge Adam's proposal to amend the separate document provisions of Rule 9021 - Santa Fe Agenda Item 10(a) referred to subcommittee
- (b) Judge Rasure's suggestion on behalf the Bankruptcy Judge's Advisory Group about timing raised by Rule 3002(c)(5)

9. Report of Forms Subcommittee (Judge Walker and Ms. Ketchum)

Old Business

- (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.

New Business

- (c) Review of Official Forms and proposed changes in light of new law
- (d) Proposed amendment to Rule 1005 to reflect the change to 8 years between discharges. (Morris memo)

10. Review of Time-Computation Template (Morris memo)

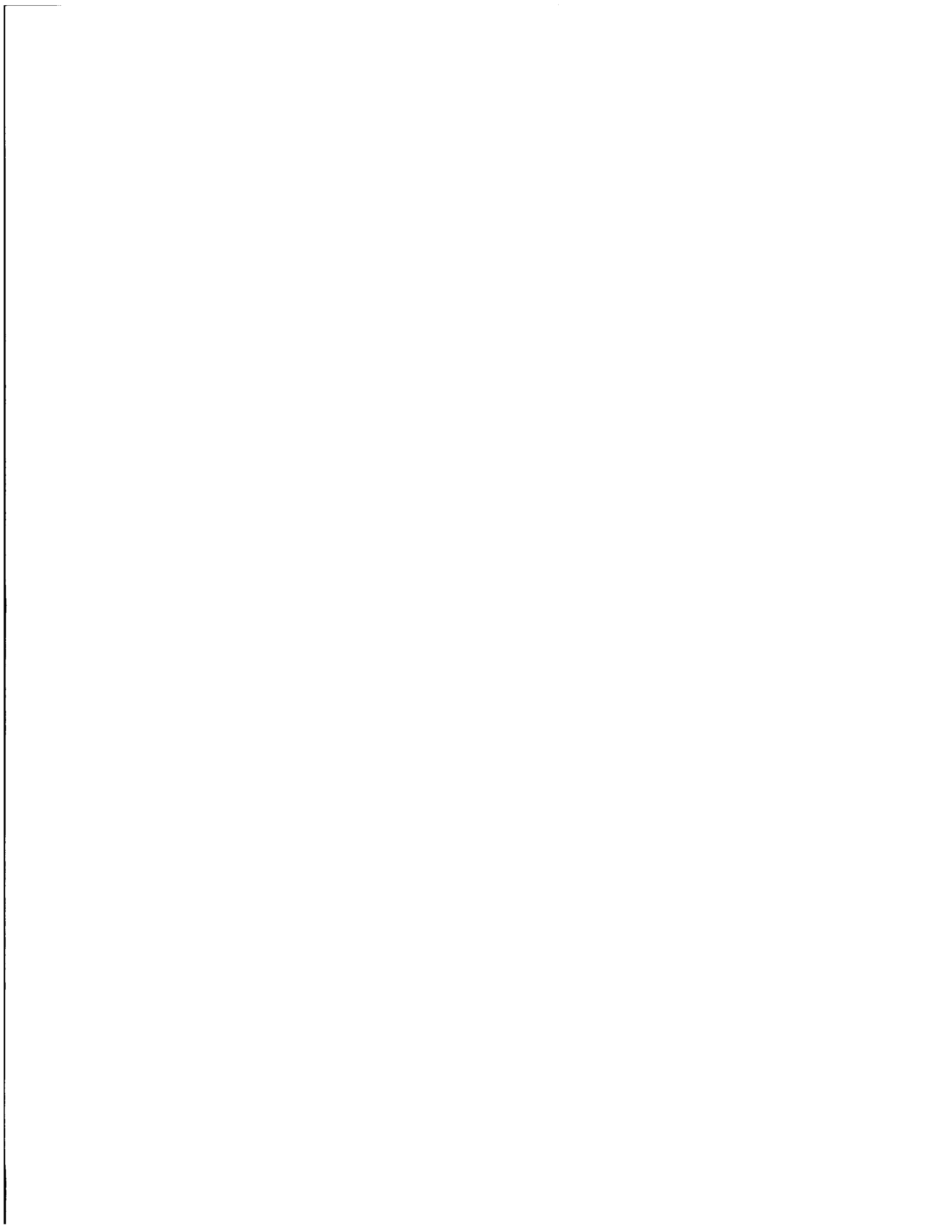
Discussion Items

- 11. Report concerning the restyling of the Civil Rules; impact on the bankruptcy rules. (Judge Zilly and Professor Morris) (Morris memo)
- 12. E Government Committee report concerning published Rule 9037 (Professor Morris)
- 13. Report on Joint Subcommittee on Venue and Chapter 11 Matters (John Shaffer)
- 14. Revision of Director's Procedural Forms 240, Reaffirmation Agreement, and 281, Appearance of Child Support Creditor or Representative. (Ms. Ketchum)
- 15. Discussion on electronic transmission of agenda materials (Judge Zilly)
- 16. Discussion of place and time for spring meeting 2007 (possible locations – East Coast, California Wine Country, Phoenix or Tucson area) (Judge Zilly)

Information Items

- 17. Rules Docket
- 18. *Bull Pen*: Proposed amendments to Rule 5001(b) are in the "bull pen" awaiting transmission to the Standing Committee.

19. Next meeting reminder: September 14-15, 2006, Seattle, Washington



MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES  
FROM: JEFF MORRIS  
RE: SERVICE OF OBJECTIONS TO CLAIMS  
DATE: FEBRUARY 14, 2006

At the meeting in Santa Fe, the Committee considered briefly whether the rules should be amended to clarify the service requirements for an objection to a claim. In part, the matter was raised in response to the decision of the Ninth Circuit BAP in In re State Line Motel, Inc., 322 B.R. 123 (9<sup>th</sup> Cir. BAP 2005). As noted in the memorandum originally included in the agenda book for the Santa Fe meeting and included immediately after this memorandum, the BAP there held that service of an objection to a claim is sufficient if it is mailed or otherwise delivered to the claimant under Rule 3007. The court rejected the argument that service should be made in the manner of a complaint as set out in Rule 7004. The rejected argument is based in part on the idea that an objection to a claim is akin to a motion initiating a contested matter. Rule 9014(b) provides that those motions must be served in the manner provided for service of a summons and complaint under Rule 7004. The majority of the court was not persuaded that this was the proper method of service because a predicate to the application of Rule 9014(b) is that the litigation is a contested matter that is “not otherwise governed by these rules.” Rule 3007 otherwise governs the procedure for objections to claims, so there is no need to rely on the more general provisions of Rule 9014.

Since the decision in State Line Motel, two other cases have been decided on the issue, and each adopts the same position as the Ninth Circuit BAP. In In re Anderson, 330 B.R. 180

(Bankr. S.D. Tex. 2005), the chapter 13 debtor objected to the claim of a creditor. The debtor mailed the objection to the claim to the address set out on the proof of claim as the address to which notices should be sent. The court noted that some courts have held that objections to claims must be sent in the manner of a summons and complaint, but held that “the better analysis leads to the conclusion that mailing as required by Rule 3007 constitutes sufficient and proper service, and that service under Rule 7004 is not required.” 330 B.R. at 186. Similarly, the court in In re Hawthorne, 326 B.R. 1 (Bankr. D.D.C. 2005), concluded that “Rule 3007, as the specific rule dealing with objections to claims, controls service of such an objection, not Rule 9014(b).” 326 B.R. at 3. The Hawthorne court further noted that the same reasoning applies to an objection to a debtor’s claimed exemption. Under Rule 4003(b), the party objecting to the exemption is directed to deliver or mail the objection to the trustee, the person filing the list of exempt property, and the attorney for the person who filed the list of exempt property. This specific form of notice controls the more general form applicable under Rule 9014(b).

The consistent decisions of the courts in these cases suggests that it may be premature for the Rules Committee to weigh in on the issue. If a consensus is building among the courts as to the proper method of service for an objection to a claim, there may be no need to amend the rule. Thus, I would recommend no change to Rule 3007 at this time to address the issue of the proper method of service of objections to claims. I will continue to monitor developments on this topic, and can prepare updates on the issue if the Committee or the Chair desires.



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 ~~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**

\* \* \* \* \*

1  
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.

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES  
FROM: JEFF MORRIS, REPORTER  
RE: BUSINESS RULES AND FORMS AMENDMENTS  
DATE: FEBRUARY 4, 2006

The extensive amendments made to the Bankruptcy Code that became effective on October 17, 2005 included several provisions directing the Judicial Conference or the Supreme Court to promulgate certain forms and rules. In particular, sections 433, 434, and 435 of the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) require the promulgation of an Official Form Plan of Reorganization and Disclosure Statement for use in small business cases, and rules and forms relating to the reporting of financial information in those cases. Section 419 of the Act requires the promulgation of rules and forms for all chapter 11 cases that will set out the “value, operations, and profitability” of closely held entities in which the debtor holds a substantial or controlling interest.

The Business Subcommittee previously presented to the Advisory Committee the proposed Official Form Plan of Reorganization in chapter 11 small business cases. The Committee approved the form at the meeting in Santa Fe in September. The Subcommittee continued to meet by regular teleconferences to prepare a proposed Official Form of Disclosure Statement as well as the forms called for by §§ 419, 434, and 435 of the Act. The Subcommittee also prepared proposed amendments and additions to the Rules to implement the forms.

The directives in the Act that the Judicial Conference or the Supreme Court promulgate these rules and forms included provisions setting a different effective date for these rules and

forms than applied generally in the Act. For example, §§ 433 and 435 provide that the rules and forms for small business plans of reorganization and disclosure statements (§433) and forms and rules regarding the periodic reporting of financial information by small business debtors (§ 434) are to be prescribed in accordance with the Rules Enabling Act.<sup>1</sup> Thus, they could not become effective for at least three years if the normal course of promulgation is followed under the Rules Enabling Act. Section 434 of the Act has an even more unusual effective date. That section inserts § 308 into the Bankruptcy Code, but it provides that this section (which requires periodic filing of financial information by small business debtors) is not effective until “60 days after the date on which rules are prescribed” to implement that section of the Code. Given the separate effective dates for these rules and forms as contemplated by Congress as a part of BAPCPA, there was no need to prepare and propose these rules and forms as a part of the Interim Rules and expedited Official Forms process. Rather, the following rules and forms are being proposed in the normal course of the Rules Enabling Act Process.

Although the Advisory Committee has already approved the Official Form Plan of Reorganization for a Small Business Debtor, the plan is reproduced for your review. The Advisory Committee has not yet approved the proposed Official Form Disclosure Statement, and you should refer to the Form Plan of Reorganization when studying the Form Disclosure Statement. The Business Subcommittee also recommends for publication the Official Form for Periodic Reporting of Financial Information for Small Business Debtors and the Official Form for the Reporting of Information Regarding Assets of the Estate as required by § 419 of

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<sup>1</sup> Section 435 of the Act actually refers to 28 U.S.C. § 2073 rather than 28 U.S.C. § 2075 as the section authorizing the promulgation of the rules and forms to implement § 434 of the Act.

BAPCPA. Finally, the Business Subcommittee recommends rules amendments and additions to Bankruptcy Rules 2015, 2015.2, and 3016. The proposals are attached in the following order:

Official Form 25A, SMALL BUSINESS PLAN OF REORGANIZATION

Official Form 25B, SMALL BUSINESS DISCLOSURE STATEMENT

RULE 2015(a)(6) (amendment to require periodic financial reporting by small business debtors)

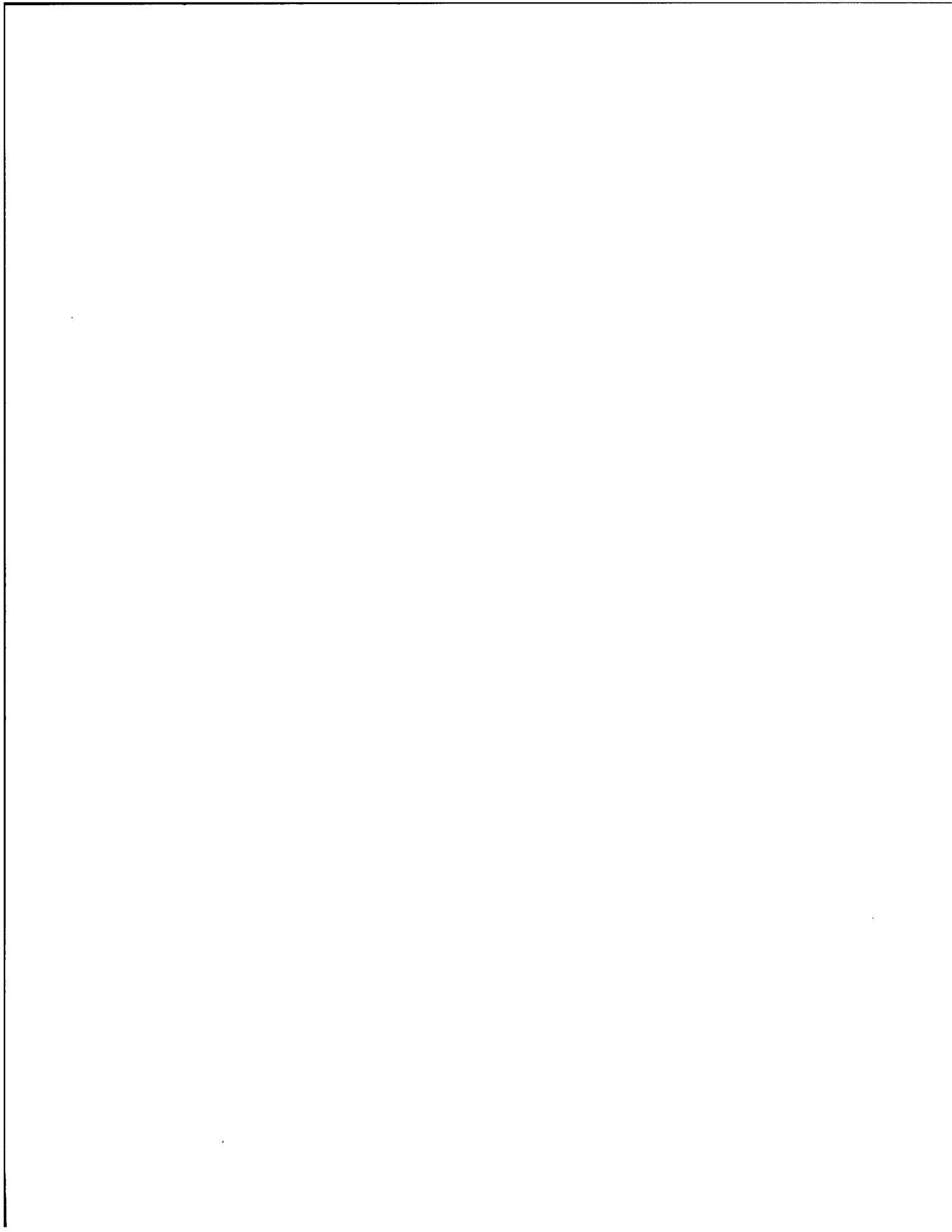
Official Form 25C, PERIODIC FINANCIAL REPORTING FORM FOR SMALL BUSINESS DEBTORS

RULE 2015.3 (new rule to implement § 419 of BAPCPA - report of debtor's substantial or controlling interests in closely held entities)

Official Form 26, REPORTING FORM FOR CLOSELY HELD ENTITIES IN WHICH DEBTOR HOLDS A SUBSTANTIAL OR CONTROLLING INTEREST

RULE 3016(d) (amendment to authorize optional use of form plan and disclosure statement)

RULE 9009 (amendment to reflect optional use of form plan and disclosure statement)





United States Bankruptcy Court

District of \_\_\_\_\_

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_

Small Business Case under Chapter 11

**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 [insert the name of the debtor] (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. 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 that 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. (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. Note: Section 1129(a)(9)(D) of the Code provides that a secured tax claim which would otherwise meet the description of a priority tax claim under § 507(a)(8) of the Code, is to be paid in the same manner and over the same period as prescribed in § 507(a)(8) ]

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,] will be paid in full on the effective date of this Plan (as defined in Article VII), in cash, or upon such other terms as may be agreed upon by the holder of the claim and the Debtor.

3.03 Priority Tax Claims . Each holder of a priority tax claim will 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) will accrue and be timely paid 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 will 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:

<b>Class</b>	<b>Impairment</b>	<b>Treatment</b>
Class 1 - Priority Claims	[State whether impaired or unimpaired.]	[Insert treatment of priority claims in this Class, including the form, amount and timing of distribution, if any. For example: "Class 1 is unimpaired by this Plan, and each holder of a Class 1 Priority Claim will 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, including the form, amount and timing of distribution, if any.]
Class 3 - General Unsecured Creditors	[State whether impaired or unimpaired.]	[Insert treatment of unsecured creditors in this Class, including the form, amount and timing of distribution, if any.][Add administrative convenience class if applicable]
Class 4 - Equity Security Holders of the Debtor	[State whether impaired or unimpaired.]	[Insert treatment of equity security holders in this Class, including the form, amount and timing of distribution, if any.]

**ARTICLE V**  
**ALLOWANCE AND DISALLOWANCE OF CLAIMS**

5.01 Disputed Claim. A disputed claim means a claim that 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 will be made on account of a disputed claim unless such claim is allowed [by a final non-appealable order].

5.03 Settlement of Disputed Claims. The Debtor will 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/or unexpired leases.]

(b) The Debtor will be conclusively deemed to have rejected all executory contracts and/or unexpired leases not expressly assumed under section 6.01(a) above, or before 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 must 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 Code shall apply when terms defined or construed in the Code are used in this Plan, and they are supplemented by the following definitions: [Insert additional definitions if necessary].

7.02 Effective Date of Plan. The effective date of this Plan is the eleventh business day following the date of the entry of the order of confirmation. But if a stay of the confirmation order is in effect on that date, the effective date will be the first business day after that date on which no stay of the confirmation order is in effect, provided that the confirmation order has not been vacated.

7.03 Severability. If any provision in this Plan is determined to be unenforceable, the determination will 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 will be binding upon, and will 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 do 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 or the Federal Rules of Bankruptcy Procedure), the laws of the State of \_\_\_\_\_ govern this Plan and any agreements, documents, and instruments executed in connection with this Plan, except as otherwise provided in this Plan.]

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

## **ARTICLE VIII DISCHARGE**

[If the debtor is not entitled to discharge under 11 U.S.C. § 1141(d)(3) change this heading to “**NO DISCHARGE OF DEBTOR.**”]

8.01. **[Option 1 – If Debtor is an individual and § 1141(d)(3) 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. The 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 2 -- If the Debtor is a partnership and section 1141(d)(3) of the Code is not applicable]**

Discharge. On the confirmation date of this Plan, the debtor will 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. The Debtor will not be discharged from any debt imposed by this Plan.

**[Option 3 -- If the Debtor is a corporation and § 1141(d)(3) is not applicable]**  
Discharge. On the confirmation date of this Plan, the debtor will 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 will 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 4 – If § 1141(d)(3) 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.

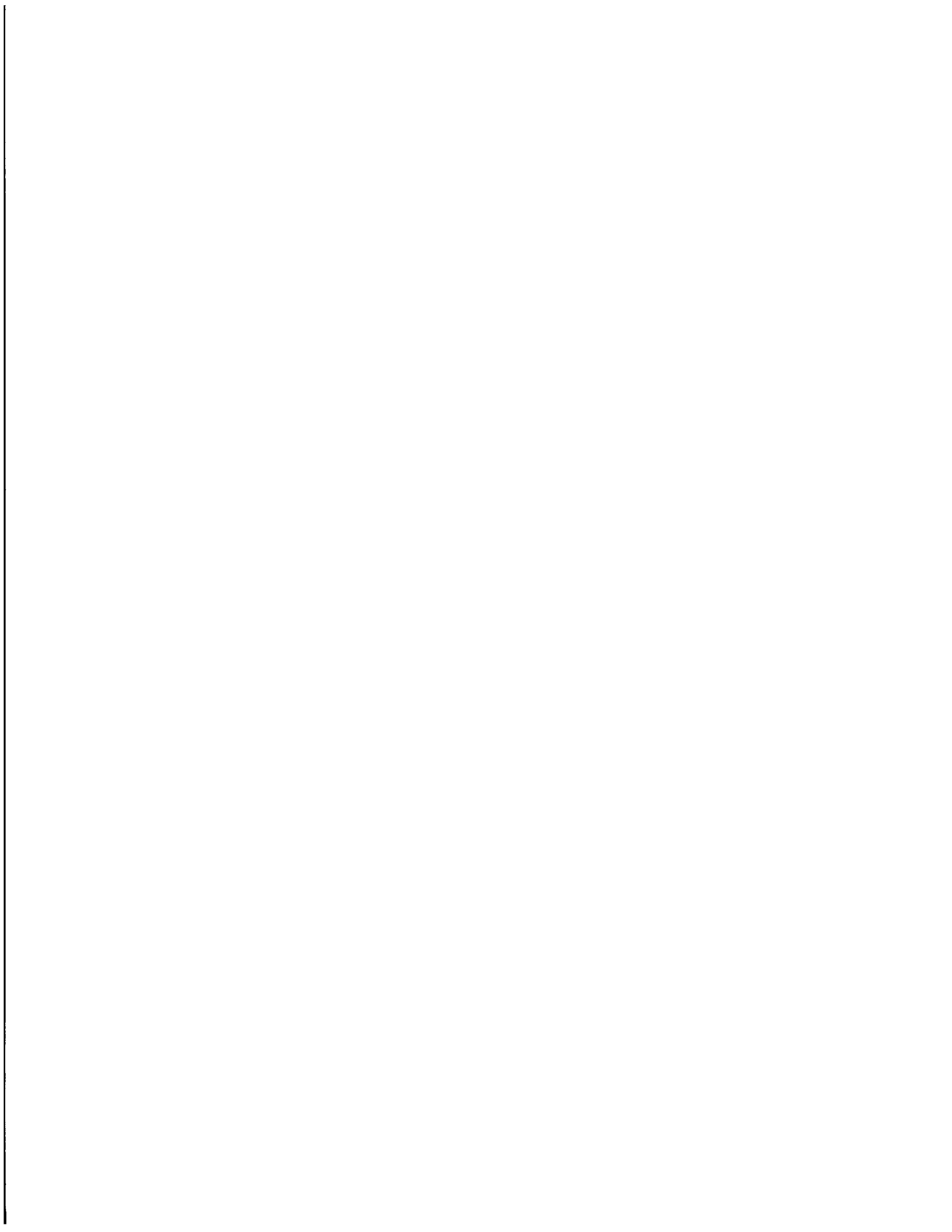
## **Article IX OTHER PROVISIONS**

**[Insert other provisions, as applicable.]**

Respectfully submitted,

By: \_\_\_\_\_  
The Plan Proponent

By: \_\_\_\_\_  
Attorney for the Plan Proponent



[DRAFT – January 12, 2006]

**Committee Note For Form Small Business Plan of Reorganization**

1. This form small business chapter 11 plan of reorganization (the “Form” or the “Form Plan”) is promulgated pursuant to § 433 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. This Form may be used in cases where the Debtor (the “Debtor”) (whether an individual or an artificial entity) is a small business debtor within the meaning of § 101(51D) of the Code. This Form is intended to be used in conjunction with the form small business chapter 11 disclosure statement (Official Form \_\_).
2. Because the type of Debtor and the details of the proposed plan of reorganization (the “Plan”) may vary, this Form is intended to provide an illustrative format, rather than a specific prescription for the language or content of a plan for any particular case.



## **Instructions for Form Plan of Reorganization**

### **BACKGROUND AND GENERAL INSTRUCTIONS**

1. This form small business chapter 11 plan of reorganization (the “Form” or the “Form Plan”) is promulgated pursuant to § 433 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. This Form may be used in cases where the debtor (the “Debtor”) (whether an individual or an artificial entity) is a small business debtor within the meaning of § 101(51D) of the Code. The Form is intended to be used in conjunction with the form small business chapter 11 disclosure statement (Official Form \_\_). Because the type of Debtor and the details of the proposed Plan will vary from case to case, this Form is intended to provide an illustrative format, rather than a specific prescription for the language or content of a Plan in any particular Case.
2. In many places in this Form, language will appear in brackets. The bracketed language will sometimes instruct the Plan’s Proponent (the “Proponent”) to provide certain information. At other times, the bracketed language will provide optional or alternative language that should be used when and where appropriate. Proponents should make the necessary insertions and/or delete inapplicable language.

### **SPECIFIC INSTRUCTIONS**

#### **SUMMARY**

3. The first Article of the Form should provide a summary of the Debtor’s proposed Plan. It should describe the manner in which the Plan will be consummated and the source of funds for payments to be made under the Plan. These sources might include an infusion of capital, loan proceeds, sale of assets, cash flow from operations, or future income. The summary should also describe the treatment of the various classes of claimants under the Plan.

#### **CLASSIFICATION OF CLAIMS AND INTERESTS**

4. The second Article of the Form describes each of the classes of claimants that will receive a distribution under the Plan. The first class of claimants should consist of claimants entitled to priority pursuant to § 507 of the Code other than those entitled to priority under §§ 507(a)(2), (3) or (8). The second class of claimants should consist of creditors with an allowed secured claim. Secured creditors are usually classified individually, with each secured creditor being placed in its own class. Additional classes should be added for each claimant with an allowed secured claim. Next, unsecured claimants, not entitled to priority, should be classified. The Proponent may, to the extent allowed by relevant law, create additional classes of unsecured claims,

including an administrative convenience class pursuant to § 1122(b) of the Code. The last class of claimants is the holders of equity interests in the debtor.

#### TREATMENT OF ADMINISTRATIVE EXPENSE CLAIMS, U.S. TRUSTEES FEES, AND PRIORITY TAX CLAIMS

5. The treatment of certain claims, such as administrative expense claims, allowed under § 503 of the Code, and priority tax claims, allowed under § 507(a)(8) of the Code, is statutorily specified. Therefore, these claims are not placed into classes. Their treatment is described in the third Article of the Form Plan.

#### TREATMENT OF CLAIMS AND INTERESTS UNDER THE PLAN

6. The fourth Article of the Plan specifies the treatment accorded the various classes of claims and interests provided for under the Plan.
7. Priority claimants other than those allowed under § 503 and 507(a)(8) must be classified and paid in full under the Plan unless the claimant agrees otherwise.
8. Secured creditors are generally each placed in their own class, with their particular treatment specified for that class. Section 1129(a)(9)(D) of the Code provides that a secured tax claim which would otherwise meet the description of a priority tax claim under § 507(a)(8) of the Code is to be paid in the same manner and over the same period as prescribed in § 507(a)(8).
9. The Plan should describe the treatment of the general unsecured claimants. An administrative convenience class may be created pursuant to § 1122(b), and other classes of unsecured claims may be created to the extent permitted by applicable case law.
10. Finally, the Plan should describe the treatment of equity interest holders.

#### ALLOWANCE AND DISALLOWANCE OF CLAIMS

11. The fifth Article of the Plan deals with disputed claims. A disputed claim means a claim that has not been allowed or disallowed. No distribution will be made on account of a disputed claim unless such claim is allowed. The Debtor will 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.

#### PROVISIONS FOR EXECUTORY CONTRACTS AND UNEXPIRED LEASES

12. The sixth Article deals with executory contracts and unexpired leases of the Debtor. The Debtor should list all executory contracts and unexpired leases that it has already assumed, or which it intends to assume pursuant to the Plan. All other executory contracts will be deemed rejected.

## GENERAL PROVISIONS

13. The seventh Article of the Plan provides certain general provisions. Definitions from the Code are incorporated by reference, and any other definitions required by the Plan should be listed in section 7.01 of the Form. If a governing law clause is desired, it should be included here, and if the Debtor is a corporation, provisions required by §1123(a)(6) of the Code should be included.

## DISCHARGE

14. The eighth Article of the plan describes the effect of discharge under the Plan. When and whether the Debtor is entitled to a discharge under the Plan will depend, among other things, upon whether the debtor is an individual, partnership or corporation, and whether the Debtor is continuing in business after consummation of the Plan. The Proponent should choose the appropriate language from the options provided.

## OTHER PROVISIONS

15. To the extent that other provisions, not provided in the Form are required, they should be placed in the ninth Article of the Plan.

Form 25B  
(12/08)

United States Bankruptcy Court

\_\_\_\_\_ District of \_\_\_\_\_

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_

Small Business Case under Chapter 11

**DISCLOSURE STATEMENT**

*Table of Contents*

[Insert when text is finalized]

## I. INTRODUCTION

This is the disclosure statement (the "Disclosure Statement") in the small business chapter 11 case of \_\_\_\_\_ (the "Debtor"). This Disclosure Statement contains information about the Debtor and describes the [insert name of plan] (the "Plan") filed by [the Debtor] on [insert date]. A full copy of the Plan is attached to this Disclosure Statement as Exhibit A. ***Your rights may be affected. You should read the Plan and this Disclosure Statement carefully and discuss them with your attorney. If you do not have an attorney, you may wish to consult one.***

The proposed distributions under the Plan are discussed at pages \_\_\_ - \_\_\_ of this Disclosure Statement. [General unsecured creditors are classified in Class \_\_, and will receive a distribution of \_\_\_ % of their allowed claims, to be distributed as follows \_\_\_\_\_.]

### A. Purpose of This Document

This Disclosure Statement describes:

- The Debtor and significant events during the bankruptcy case,
- How the Plan proposes to treat claims or equity interests of the type you hold (*i.e.*, what you will receive on your claim or equity interest if the plan is confirmed),
- Who can vote on or object to the Plan,
- What factors the Bankruptcy Court (the "Court") will consider when deciding whether to confirm the Plan,
- Why [the Proponent] believes the Plan is feasible, and how the treatment of your claim or equity interest under the Plan compares to what you would receive on your claim or equity interest in liquidation, and
- The effect of confirmation of the Plan.

Be sure to read the Plan as well as the Disclosure Statement. This Disclosure Statement describes the Plan, but it is the Plan itself that will, if confirmed, establish your rights.

### B. Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing

The Court has not yet confirmed the Plan described in this Disclosure Statement. This section describes the procedures pursuant to which the Plan will or will not be confirmed.

1. *Time and Place of the Hearing to [Finally Approve This Disclosure Statement and] Confirm the Plan*

The hearing at which the Court will determine whether to [finally approve this Disclosure Statement and] confirm the Plan will take place on [insert date], at [insert time], in Courtroom \_\_, at the [Insert Courthouse Name, and Full Court Address, City, State, Zip Code].

2. *Deadline For Voting to Accept or Reject the Plan*

If you are entitled to vote to accept or reject the plan, vote on the enclosed ballot and return the ballot in the enclosed envelope to [insert address]. See section IV.A. below for a discussion of voting eligibility requirements.

Your ballot must be received by [insert date] or it will not be counted.

3. *Deadline For Objecting to the [Adequacy of Disclosure and] Confirmation of the Plan*

Objections to [this Disclosure Statement or to] the confirmation of the Plan must be filed with the Court and served upon [insert entities] by [insert date].

4. *Identity of Person to Contact for More Information*

If you want additional information about the Plan, you should contact [insert name and address of representative of plan proponent].

C. **Disclaimer**

*The Court has [conditionally] approved this Disclosure Statement as containing adequate information to enable parties affected by the Plan to make an informed judgment about its terms. The Court has not yet determined whether the Plan meets the legal requirements for confirmation, and the fact that the Court has approved this Disclosure Statement does not constitute an endorsement of the Plan by the Court, or a recommendation that it be accepted. [The Court's approval of this Disclosure Statement is subject to final approval at the hearing on confirmation of the Plan. Objections to the adequacy of this Disclosure Statement may be filed until \_\_\_\_\_.]*

II. **BACKGROUND**

A. **Description and History of the Debtor's Business**

The Debtor is a [corporation, partnership, etc.]. Since [insert year operations commenced], the Debtor has been in the business of \_\_\_\_\_. [Describe the Debtor's business].

B. **Insiders of the Debtor**

[Insert a detailed list of the names of Debtor's insiders as defined in §101(31) of the United States Bankruptcy Code (the "Code") and their relationship to the Debtor. For each insider, list all compensation paid by the Debtor or its affiliates to that person or entity during the

two years prior to the commencement of the Debtor's bankruptcy case, as well as compensation paid during the pendency of this chapter 11 case.]

**C. Management of the Debtor Before and During the Bankruptcy**

During the two years prior to the date on which the bankruptcy petition was filed, the officers, directors, managers or other persons in control of the Debtor (collectively the "Managers") were [List the Managers of the Debtor prior to the petition date].

The Managers of the Debtor during the Debtor's chapter 11 case have been: [List Managers of the Debtor during the Debtor's chapter 11 case.]

After the effective date of the order confirming the Plan, the directors, officers, and voting trustees of the Debtor, any affiliate of the Debtor participating in a joint Plan with the debtor, or successor of the Debtor under the Plan (collectively the "Post Confirmation Managers"), will be: [List Post Confirmation Managers of the Debtor.] The responsibilities and compensation of these Post Confirmation Managers are described in section \_\_ of this Disclosure Statement.

**D. Events Leading to Chapter 11 Filing**

[Describe the events that led to the commencement of the Debtor's bankruptcy case.]

**E. Significant Events During the Bankruptcy Case**

[Describe significant events during the Debtor's bankruptcy case:

- Describe any asset sales outside the ordinary course of business, debtor in possession financing, or cash collateral orders.
- Identify the professionals approved by the court.
- Describe any adversary proceedings that have been filed or other significant litigation that has occurred (including contested claim disallowance proceedings), and any other significant legal or administrative proceedings that are pending or have been pending during the case in a forum other than the Court.
- Describe any steps taken to improve operations and profitability of the Debtor.
- Describe other events as appropriate.]

**F. Projected Recovery of Avoidable Transfers [Choose the option that applies]**

**[Option 1 – If the Debtor does not intend to pursue avoidance actions]**

The Debtor does not intend to pursue preference, fraudulent conveyance, or other avoidance actions.

**[Option 2 – If the Debtor intends to pursue avoidance actions]**

The Debtor estimates that up to \$ \_\_\_\_\_ may be realized from the recovery of fraudulent, preferential or other avoidable transfers. While the results of litigation cannot be predicted with certainty and it is possible that other causes of action may be identified, the following is a summary of the preference, fraudulent conveyance and other avoidance actions filed or expected to be filed in this case:

Transaction	Defendant	Amount Claimed

]

**[Option 3 – If the Debtor does not yet know whether it intends to pursue avoidance actions]**

The Debtor has not yet completed its investigation with regard to prepetition transactions. If you received a payment or other transfer within 90 days of the bankruptcy, or other transfer avoidable under the Code, the Debtor may seek to avoid such transfer.

**G. Current and Historical Financial Conditions**

The identity and fair market value of the estate’s assets are listed in Exhibit B. [Identify source and basis of valuation].

The Debtor’s most recent financial statements [if any] issued before bankruptcy, each of which was filed with the Court, are set forth in Exhibit C.

[The operating reports and any other periodic reporting forms filed since the commencement of the Debtor’s bankruptcy case are set forth in Exhibit D.] [A summary of the debtor’s periodic operating reports filed since the commencement of the Debtor’s bankruptcy case is set forth in Exhibit D.]

**III. SUMMARY OF THE PLAN OF REORGANIZATION**

**A. What is the Purpose of the Plan of Reorganization?**

As required by the Code, the Plan places claims and equity interests in various classes and describes the treatment each class will receive. The Plan also states whether each class of claims or equity interests is impaired or unimpaired. If the Plan is confirmed, your recovery will be limited to the amount provided by the Plan.



**B. Unclassified Claims**

Certain types of claims are automatically entitled to specific treatment under the Code. They are not considered impaired, and holders of such claims do not vote on the Plan. They may, however, object if, in their view, their treatment under the Plan does not comply with that required by the Code. As such, the Plan Proponent has *not* placed the following claims in any class:

1. *Administrative Expenses*

Administrative expenses are costs or expenses of administering the Debtor's chapter 11 case which are allowed under § 507(a)(2) of the Code. Administrative expenses also include the value of any goods sold to the debtor in the ordinary course of business and received within 20 days before the date of the bankruptcy petition. The Code requires that all administrative expenses be paid on the effective date of the Plan, unless a particular claimant agrees to a different treatment.

The following chart lists the Debtor's estimated administrative expenses, and their proposed treatment under the Plan:

<b>Type</b>	<b>Estimated Amount Owed</b>	<b>Proposed Treatment</b>
Expenses Arising in the Ordinary Course of Business After the Petition Date		Paid in full on the effective date of the Plan, or according to terms of obligation if later
The Value of Goods Received in the Ordinary Course of Business Within 20 Days Before the Petition Date		Paid in full on the effective date of the Plan, or according to terms of obligation if later
Professional Fees, as approved by the Court.		Paid in full on the effective date of the Plan, or according to separate written agreement, or according to court order if such fees have not been approved by the Court on the effective date of the Plan
Clerk's Office Fees		Paid in full on the effective date of the Plan
Other administrative expenses		Paid in full on the effective date of the Plan or according to separate written agreement
Office of the U.S. Trustee Fees		Paid in full on the effective date of the Plan
<b>TOTAL</b>		

2. *Priority Tax Claims*

Priority tax claims are unsecured income, employment, and other taxes described by § 507(a)(8) of the Code. Unless the holder of such a § 507(a)(8) priority tax claim agrees otherwise, it must receive the present value of such claim, in regular installments paid over a period not exceeding 5 years from the order of relief.

The following chart lists the Debtor's estimated § 507(a)(8) priority tax claims and their proposed treatment under the Plan:

Description (name and type of tax)	Estimated Amount Owed	Date of Assessment	Treatment
			Pmt interval = [Monthly] payment = Begin date = End date = Interest Rate % = Total Payout Amount = \$
			Pmt interval = [Monthly] payment = Begin date = End date = Interest Rate % = Total Payout Amount = \$

C. **Classes of Claims and Equity Interests**

The following are the classes set forth in the Plan, and the proposed treatment that they will receive under the Plan:

1. *Classes of Secured Claims*

Allowed Secured Claims are claims secured by property of the Debtor's bankruptcy estate (or that are subject to setoff) to the extent allowed as secured claims under § 506 of the Code. If the value of the collateral or setoffs securing the creditor's claim is less than the amount of the creditor's allowed claim, the deficiency will [be classified as a general unsecured claim].

The following chart lists all classes containing Debtor's secured prepetition claims and their proposed treatment under the Plan:

Class #	Description	Insider? (Yes or No)	Impairment	Treatment

	<i>Secured claim of:</i> Name =  Collateral description =  Allowed Secured Amount = \$ _____  Priority of lien =  Principal owed = \$ _____ Pre-pet. arrearage = \$ _____  Total claim = \$ _____		[State whether impaired or unimpaired]	[Monthly] Pmt =  Pmts Begin =  Pmts End =  [Balloon pmt] =  Interest rate % =  Treatment of Lien =  [Additional payment required to cure defaults] =
	<i>Secured claim of:</i> Name =  Collateral description =  Allowed Secured Amount = \$ _____ Priority of lien =  Principal owed = \$ _____ Pre-pet. arrearage = \$ _____  Total claim = \$ _____		[State whether impaired or unimpaired]	Monthly Pmt =  Pmts Begin =  Pmts End =  [Balloon pmt] =  Interest rate % =  Treatment of Lien =  [Additional payment required to cure defaults] =

2. *Classes of Priority Unsecured Claims*

Certain priority claims that are referred to in §§ 507(a)(1), (4), (5), (6), and (7) of the Code are required to be placed in classes. The Code requires that each holder of such a claim receive cash on the effective date of the Plan equal to the allowed amount of such claim. However, a class of holders of such claims may vote to accept different treatment.

The following chart lists all classes containing claims under §§ 507(a)(1), (4), (5), (6), and (a)(7) of the Code and their proposed treatment under the Plan:

Class #	Description	Impairment	Treatment
---------	-------------	------------	-----------

	Priority unsecured claim pursuant to Section [insert]  Total amt of claims = \$	[State whether impaired or unimpaired]	
	Priority unsecured claim pursuant to Section [insert]  Total amt of claims = \$	[State whether impaired or unimpaired]	

3. *Class[es] of General Unsecured Claims*

General unsecured claims are not secured by property of the estate and are not entitled to priority under § 507(a) of the Code. [Insert description of §1122(b) convenience class if applicable.]

The following chart identifies the Plan's proposed treatment of Class[es] \_\_ through \_\_, which contain general unsecured claims against the Debtor:

Class #	Description	Impairment	Treatment
	[1122(b) Class]	[State whether impaired or unimpaired]	[Insert proposed treatment, such as "Paid in full in cash on effective date of the Plan or when due under contract or applicable nonbankruptcy law"]
	General Unsecured Class	[State whether impaired or unimpaired]	Monthly Pmt = Pmts Begin = Pmts End = [Balloon pmt] = Interest rate % from [date] = Estimated percent of claim paid =

4. *Class[es] of Equity Interest Holders*

Equity interest holders are parties who hold an ownership interest (*i.e.*, equity interest) in the Debtor. In a corporation, entities holding preferred or common stock are equity interest holders. In a partnership, equity interest holders include both general and limited partners. In a limited liability company ("LLC"), the equity interest holders are the members. Finally, with respect to an individual who is a debtor, the debtor is the equity interest holder.

The following chart sets forth the Plan's proposed treatment of the class[es] of equity interest holders: [There may be more than one class of equity interests in, for example, a partnership case, or a case where the prepetition debtor had issued multiple classes of stock.]

Class #	Description	Impairment	Treatment
	Equity interest holders	[State whether impaired or unimpaired]	

**D. Means of Implementing the Plan**

1. *Source of Payments*

Payments and distributions under the Plan will be funded by the following:

[Describe the source of funds for payments under the Plan.]

2. *Post-confirmation Management*

The Post Confirmation Managers of the Debtor, and their compensation, shall be as follows:

Name	Affiliations	Insider (yes or no)?	Position	Compensation

**E. Risk Factors**

The proposed Plan has the following risks:

[List all risk factors that might affect the Debtor's ability to make payments and other distributions required under the Plan.]

**F. Executory Contracts and Unexpired Leases**

The Plan, in Exhibit 5.1, lists all executory contracts and unexpired leases that the Debtor will assume under the Plan. Assumption means that the Debtor has elected to continue to perform the obligations under such contracts and unexpired leases, and to cure defaults of the

type that must be cured under the Code, if any. Exhibit 5.1 also lists how the Debtor will cure and compensate the other party to such contract or lease for any such defaults.

If you object to the assumption of your unexpired lease or executory contract, the proposed cure of any defaults, or the adequacy of assurance of performance, you must file and serve your objection to the Plan within the deadline for objecting to the confirmation of the Plan, unless the Court has set an earlier time.

All executory contracts and unexpired leases that are not listed in Exhibit 5.1 will be rejected under the Plan. Consult your adviser or attorney for more specific information about particular contracts or leases.

If you object to the rejection of your contract or lease, you must file and serve your objection to the Plan within the deadline for objecting to the confirmation of the Plan.

***[The Deadline for Filing a Proof of Claim Based on a Claim Arising from the Rejection of a Lease or Contract Is \_\_\_\_\_. Any claim based on the rejection of a contract or lease will be barred if the proof of claim is not timely filed, unless the Court orders otherwise.]***

#### **G. Tax Consequences of Plan**

***Creditors and Equity Interest Holders Concerned with How the Plan May Affect Their Tax Liability Should Consult with Their Own Accountants, Attorneys, And/Or Advisors.***

The following are the anticipated tax consequences of the Plan: [List the following general consequences as a minimum: (1) Tax consequences to the Debtor of the Plan; (2) General tax consequences on creditors of any discharge, and the general tax consequences of receipt of plan consideration after confirmation.]

### **IV. CONFIRMATION REQUIREMENTS AND PROCEDURES**

To be confirmable, the Plan must meet the requirements listed in §§ 1129(a) or (b) of the Code. These include the requirements that: the Plan must be proposed in good faith; at least one impaired class of claims must accept the plan, without counting votes of insiders; the Plan must distribute to each creditor and equity interest holder at least as much as the creditor or equity interest holder would receive in a chapter 7 liquidation case, unless the creditor or equity interest holder votes to accept the Plan; and the Plan must be feasible. These requirements are not the only requirements listed in § 1129, and they are not the only requirements for confirmation.

#### **A. Who May Vote or Object**

Any party in interest may object to the confirmation of the Plan if the party believes that the requirements for confirmation are not met.

Many parties in interest, however, are not entitled to vote to accept or reject the Plan. A creditor or equity interest holder has a right to vote for or against the Plan only if that creditor or equity interest holder has a claim or equity interest that is both (1) allowed or allowed for voting purposes and (2) impaired.

In this case, the Plan Proponent believes that classes \_\_\_\_\_ are impaired and that holders of claims in each of these classes are therefore entitled to vote to accept or reject the Plan. The Plan Proponent believes that classes \_\_\_\_\_ are unimpaired and that holders of claims in each of these classes, therefore, do not have the right to vote to accept or reject the Plan.

1. *What Is an Allowed Claim or an Allowed Equity Interest?*

Only a creditor or equity interest holder with an “allowed” claim or an allowed equity interest has the right to vote on the Plan. Generally, a claim is “allowed” if either (1) the Debtor has scheduled the claim on the Debtor’s schedules, unless the claim has been scheduled as disputed, contingent, or unliquidated, or (2) the creditor has filed a proof of claim, unless an objection has been filed to such proof of claim. When a claim is not “allowed,” the creditor or equity interest holder holding the claim or equity interest cannot vote unless the Court, after notice and hearing, either overrules the objection or allows the claim or equity interest for voting purposes pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure.

***The deadline for filing a proof of claim in this case was \_\_\_\_\_.  
[If applicable – The deadline for filing objections to disputed claims is \_\_\_\_\_.]***

2. *What Is an Impaired Claim or Impaired Equity Interest?*

As noted above, the holder of an allowed claim or equity interest has the right to vote only if it is in a class that is *impaired* under the Plan. As provided in § 1124 of the Code, a class is considered impaired if the Plan alters the legal, equitable, or contractual rights of the members of that class.

3. *Who is Not Entitled to Vote*

The holders of the following five types of claims and equity interests are *not* entitled to vote:

- holders of claims and equity interests that have been disallowed by an order of the Court;
- holders of other claims or equity interests that are not “allowed claims” or “allowed equity interests” (as discussed above), unless they have been “allowed” for voting purposes.
- holders of claims or equity interests in unimpaired classes;

- holders of claims entitled to priority pursuant to §§ 507(a)(2), (a)(3), and (a)(8) of the Code; and
- holders of claims or equity interests in classes that do not receive or retain any value under the Plan;
- administrative expenses.

***Even If You Are Not Entitled to Vote on the Plan, You Have a Right to Object to the Confirmation of the Plan [and to the Adequacy of the Disclosure Statement].***

4. *Who Can Vote in More Than One Class*

A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim, or who otherwise hold claims in multiple classes, is entitled to accept or reject a Plan in each capacity, and should cast one ballot for each claim.

**B. Votes Necessary to Confirm the Plan**

If impaired classes exist, the Court cannot confirm the Plan unless (1) at least one impaired class of creditors has accepted the Plan without counting the votes of any insiders within that class, and (2) all impaired classes have voted to accept the Plan, unless the Plan is eligible to be confirmed by “cram down” on non-accepting classes, as discussed later in Section [ B.2.].

1. *Votes Necessary for a Class to Accept the Plan*

A class of claims accepts the Plan if both of the following occur: (1) the holders of more than one-half (1/2) of the allowed claims in the class, who vote, cast their votes to accept the Plan, and (2) the holders of at least two-thirds (2/3) in dollar amount of the allowed claims in the class, who vote, cast their votes to accept the Plan.

A class of equity interests accepts the Plan if the holders of at least two-thirds (2/3) in amount of the allowed equity interests in the class, who vote, cast their votes to accept the Plan.

2. *Treatment of Nonaccepting Classes*

Even if one or more impaired classes reject the Plan, the Court may nonetheless confirm the Plan if the nonaccepting classes are treated in the manner prescribed by § 1129(b) of the Code. A plan that binds nonaccepting classes is commonly referred to as a “cram down.” plan. The Code allows the Plan to bind nonaccepting classes of claims or equity interests if it meets all the requirements for consensual confirmation except the voting requirements of § 1129(a)(8), of the Code does not “discriminate unfairly,” and is “fair and equitable” toward each impaired class that has not voted to accept the Plan.



***You should consult your own attorney if a "cramdown" confirmation will affect your claim or equity interest, as the variations on this general rule are numerous and complex.***

**C. Liquidation Analysis**

To confirm the Plan, the Court must find that all creditors and equity interest holders who do not accept the Plan will receive at least as much under the Plan as such claim and equity interest holders would receive in a chapter 7 liquidation. A liquidation analysis is attached to this Disclosure Statement as Exhibit E.

**D. Feasibility**

The Court must find that confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtor or any successor to the Debtor, unless such liquidation or reorganization is proposed in the Plan.

**1. Ability to Initially Fund Plan**

The Plan Proponent believes that the Debtor will have enough cash on hand on the effective date of the Plan to pay all the claims and expenses that are entitled to be paid on that date. Tables showing the amount of cash on hand on the effective date of the Plan, and the sources of that cash are attached to this disclosure statement as Exhibit F.

**2. Ability to Make Future Plan Payments And Operate Without Further Reorganization**

The Plan Proponent must also show that it will have enough cash over the life of the Plan to make the required Plan payments.

The Plan Proponent has provided projected financial information. Those projections are listed in Exhibit G.

The Plan Proponent's financial projections show that the Debtor will have an aggregate annual average cash flow, after paying operating expenses and post-confirmation taxes, of \$ \_\_\_\_\_. The final Plan payment is expected to be paid on \_\_\_\_\_.

[Summarize the numerical projections, and highlight any assumptions that are not in accord with past experience. Explain why such assumptions should now be made.]

***You Should Consult with Your Accountant or other Financial Advisor If You Have Any Questions Pertaining to These Projections.***

**V. EFFECT OF CONFIRMATION OF PLAN**

- A. **DISCHARGE OF DEBTOR** [If the debtor is not entitled to discharge pursuant to 11 U.S.C. § 1141(d)(3) change this heading to “**NO DISCHARGE OF DEBTOR.**”]

**[Option 1 – If Debtor is an individual and § 1141(d)(3) is not applicable]**

Discharge. Confirmation of the Plan does not discharge any debt provided for in the Plan until the court grants a discharge on completion of all payments under the 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 2 -- If the Debtor is a partnership and § 1141(d)(3) of the Code is not applicable]**

Discharge. On the effective date of the Plan, the debtor shall be discharged from any debt that arose before confirmation of the 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 the Plan. After the effective date of the Plan your claims against the debtor will be limited to the debts imposed by the Plan.

**[Option 3 -- If the Debtor is a corporation and § 1141(d)(3) is not applicable]**

Discharge. On the effective date of the Plan, the debtor shall be discharged from any debt that arose before confirmation of the 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 the 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). After the effective date of the Plan your claims against the debtor will be limited to the debts described in clauses (i) through (iii) of the preceding sentence.

**[Option 4 – If § 1141(d)(3) 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.

B. **Modification of Plan**

The Plan Proponent may modify the Plan at any time before confirmation of the Plan. However, the Court may require a new disclosure statement and/or revoting on the Plan.

[If the Debtor is not an individual, add the following: “The Plan Proponent may also seek to modify the Plan at any time after confirmation only if (1) the Plan has not been substantially consummated *and* (2) the Court authorizes the proposed modifications after notice and a hearing.”]

[If the Debtor is an individual, add the following: "Upon request of the Debtor, the United States trustee, or the holder of an allowed unsecured claim, the Plan may be modified at any time after confirmation of the Plan but before the completion of payments under the Plan, to (1) increase or reduce the amount of payments under the Plan on claims of a particular class, (2) extend or reduce the time period for such payments, or (3) alter the amount of distribution to a creditor whose claim is provided for by the Plan to the extent necessary to take account of any payment of the claim made other than under the Plan."]

**C. Final Decree**

Once the estate has been fully administered, as provided in Rule 3022 of the Federal Rules of Bankruptcy Procedure, the Plan Proponent, or such other party as the Court shall designate in the Plan Confirmation Order, shall file a motion with the Court to obtain a final decree to close the case. Alternatively, the Court may enter such a final decree on its own motion.

**D. Other Plan Provisions**

[Insert other provisions here, as necessary and appropriate.]

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[Signature of the Plan Proponent]

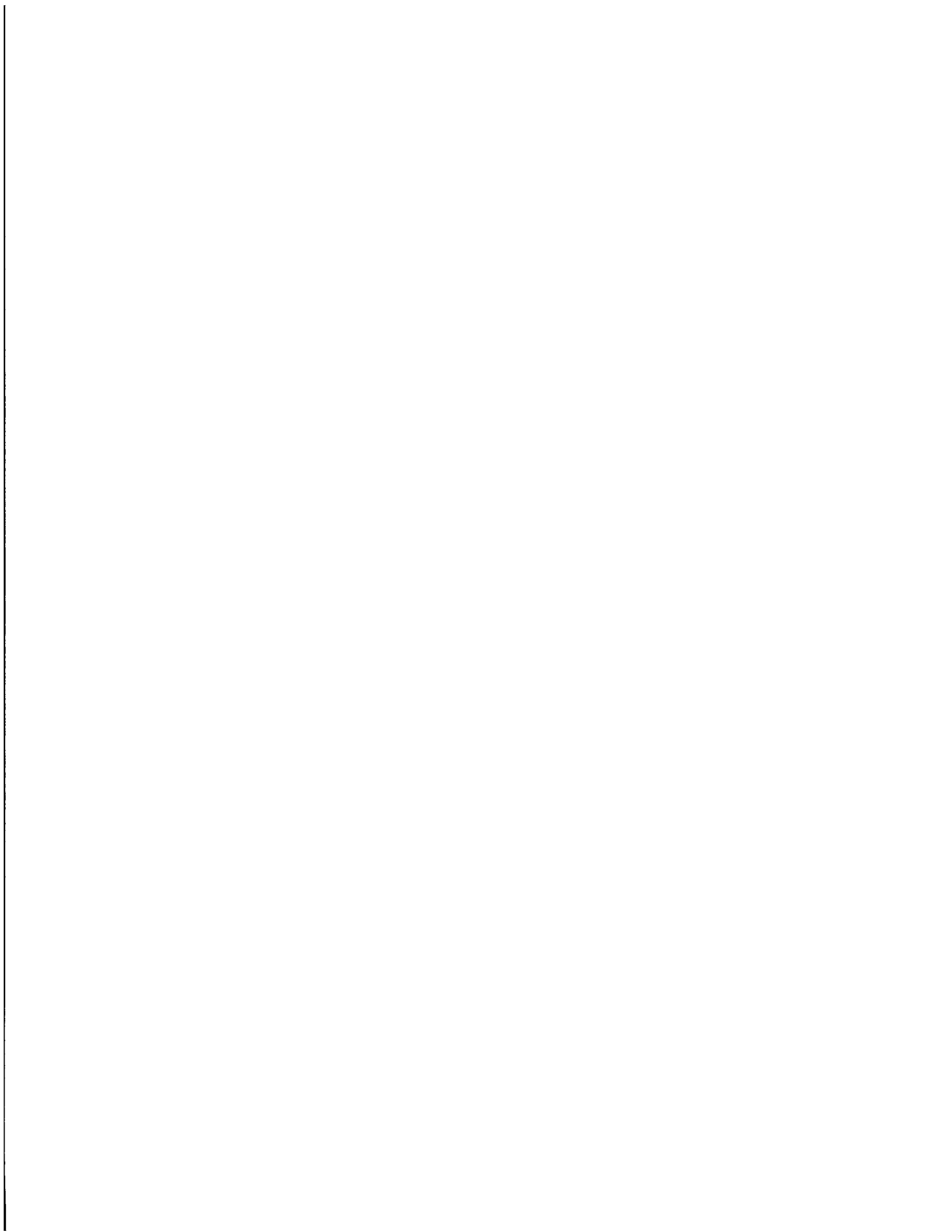
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[Signature of the Attorney for the Plan Proponent]

**EXHIBITS**

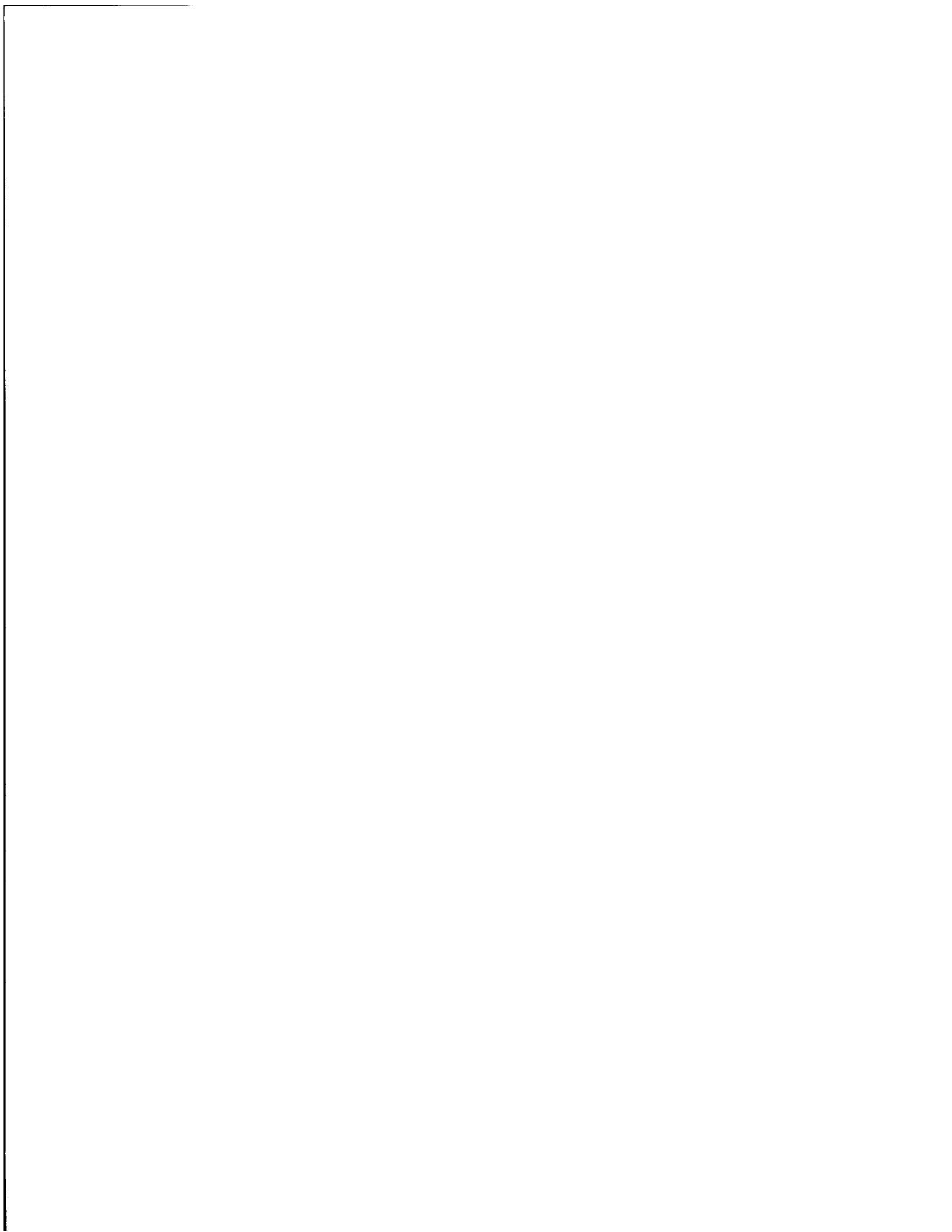
**Exhibit A – Copy of Proposed Plan of Reorganization**

**Exhibit B - Identity and Value of Material Assets of Debtor**  
(to be taken from Schedules filed in case)

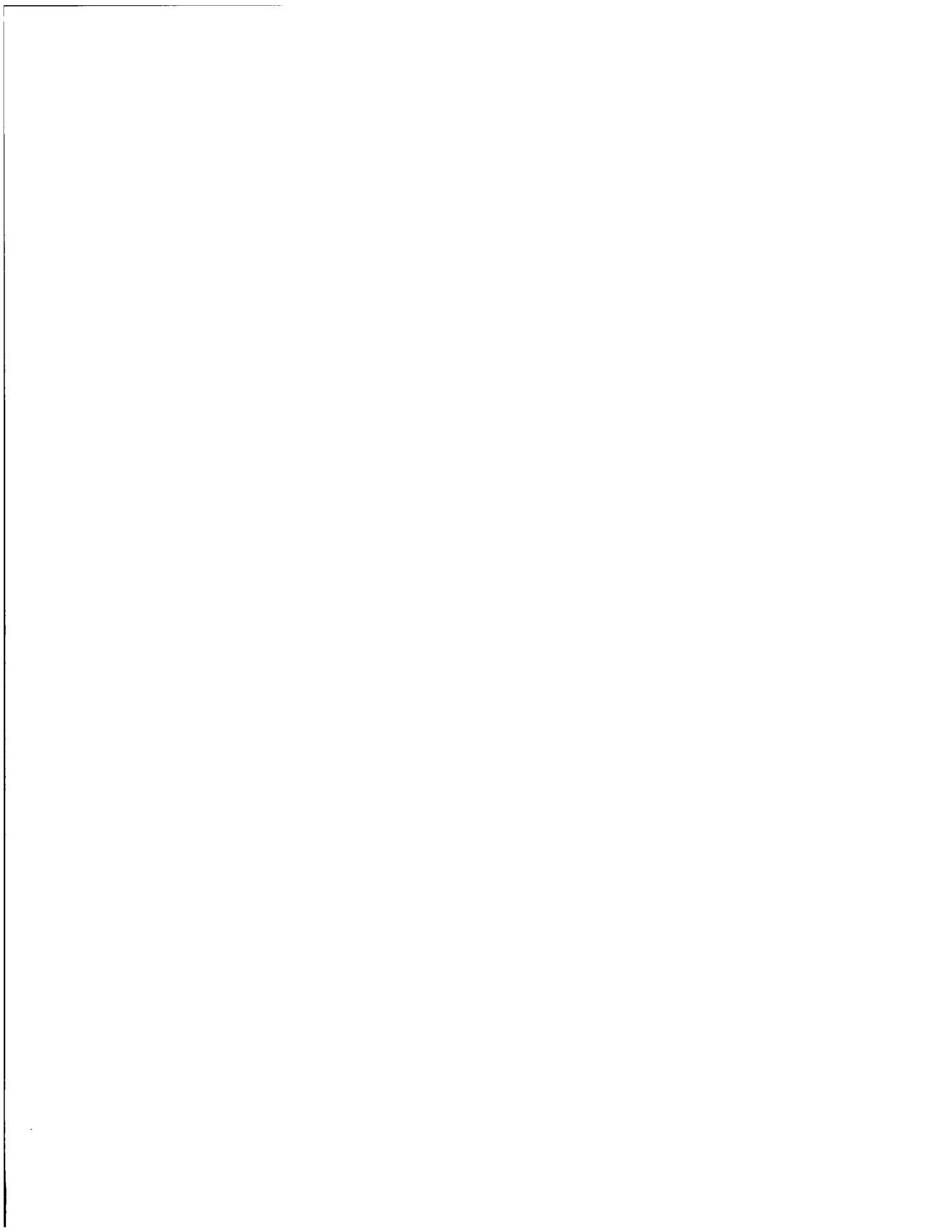


**Exhibit C – Prepetition Financial Statements and Tax Returns**  
(to be taken from those filed with petition)





**Exhibit D – Postpetition Operating Reports and Other Financial Filings**  
(to be taken from filings made by Debtor)



**Exhibit E – Liquidation Analysis**

***Plan Proponent's Estimated Liquidation Value of Assets***

**Assets**

a. Cash on hand	\$
b. Accounts receivable	\$
c. Inventory	\$
d. Office furniture & equipment	\$
e. Machinery & equipment	\$
f. Automobiles	\$
g. Building & Land	\$
h. Customer list	\$
i. Investment property (such as stocks, bonds or other financial assets)	\$
j. Lawsuits or other claims against third-parties.	\$
k. Other intangibles (such as avoiding powers actions)	\$

***Total Assets at Liquidation Value*** \$

**Less:**

Secured creditors' recoveries \$

**Less:**

Chapter 7 trustee fees and expenses \$

**Less:**

Chapter 11 administrative expenses \$

**Less:**

Priority claims, excluding administrative expense claims \$

**[Less:**

Debtor's claimed exemptions] \$

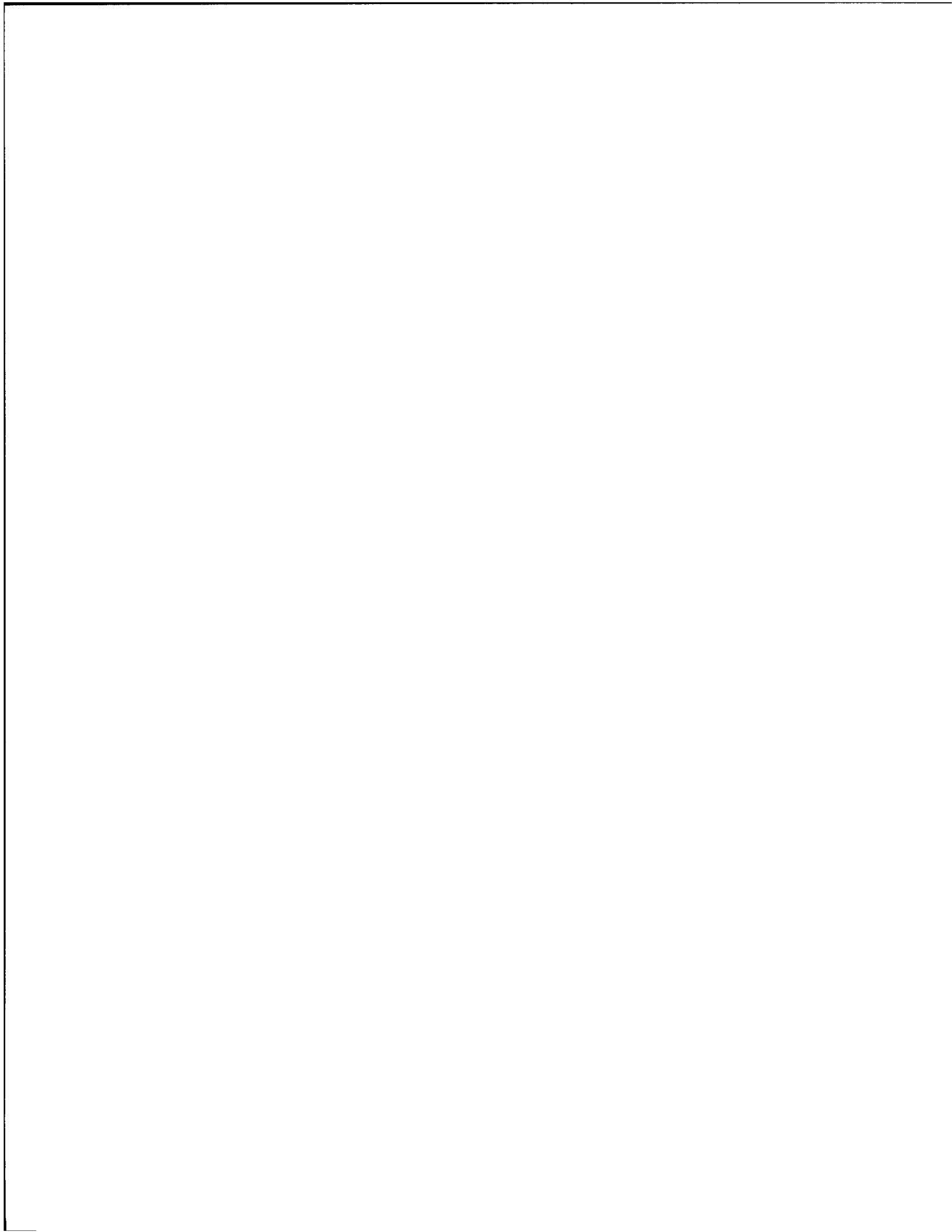
(1) Balance for unsecured claims \$

(2) Total dollar amount of unsecured claims \$

***Percentage of Claims Which Unsecured Creditors Would Receive Or Retain in a Chapter 7 Liquidation:*** \$

***Percentage of Claims Which Unsecured Creditors Will Receive or Retain under the Plan:*** \_\_\_\_\_% [Divide (1) by (2)]

\_\_\_\_\_%

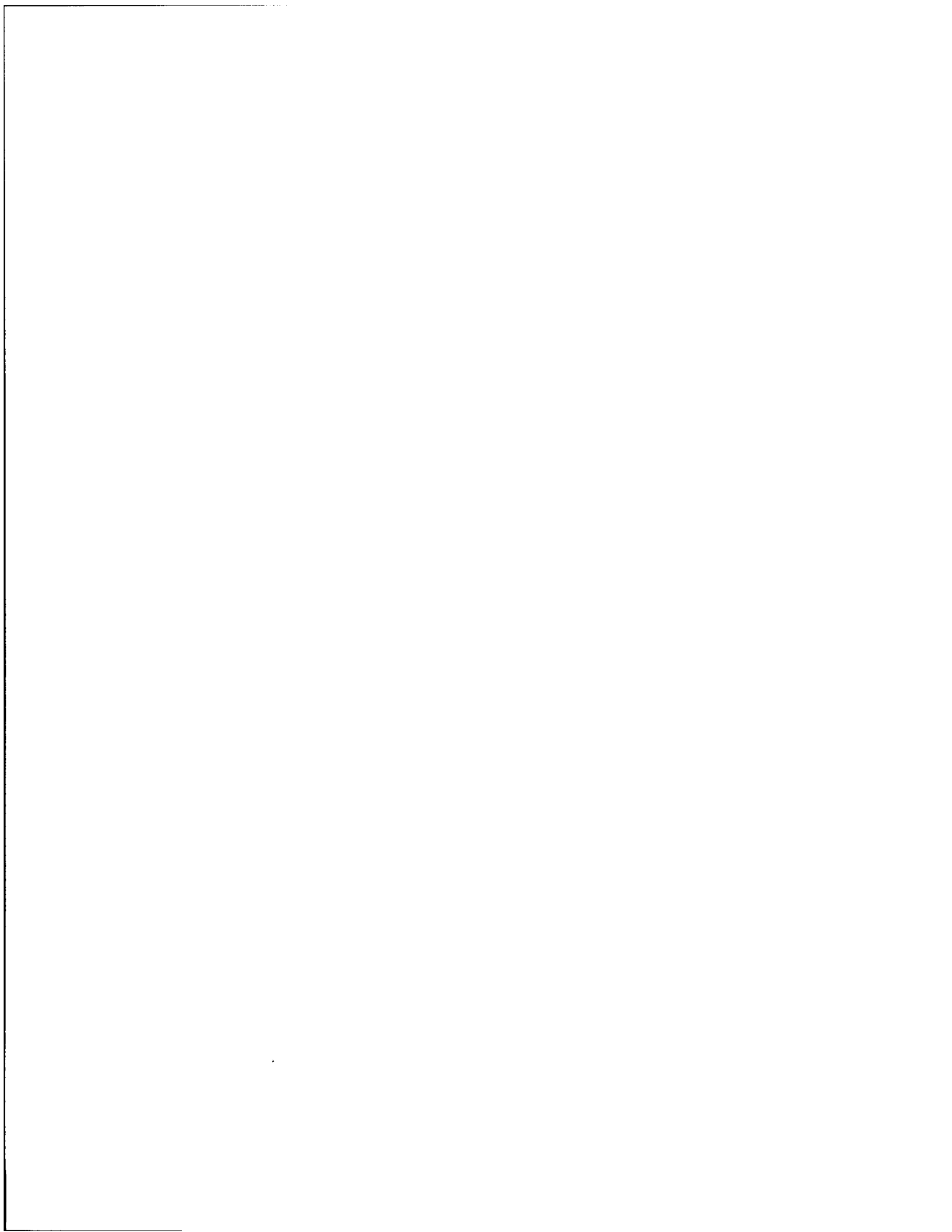


**Exhibit F – Cash on hand on the effective date of the Plan**

<b>Cash on hand on effective date of the Plan:</b>	\$
<i>Less –</i>	
Amount of administrative expenses payable on effective date of the Plan	-
Amount of statutory costs and charges	-
Amount of cure payments for executory contracts:	-
Other Plan Payments due on effective date of the Plan	-
	\$
Balance after paying these amounts.....	

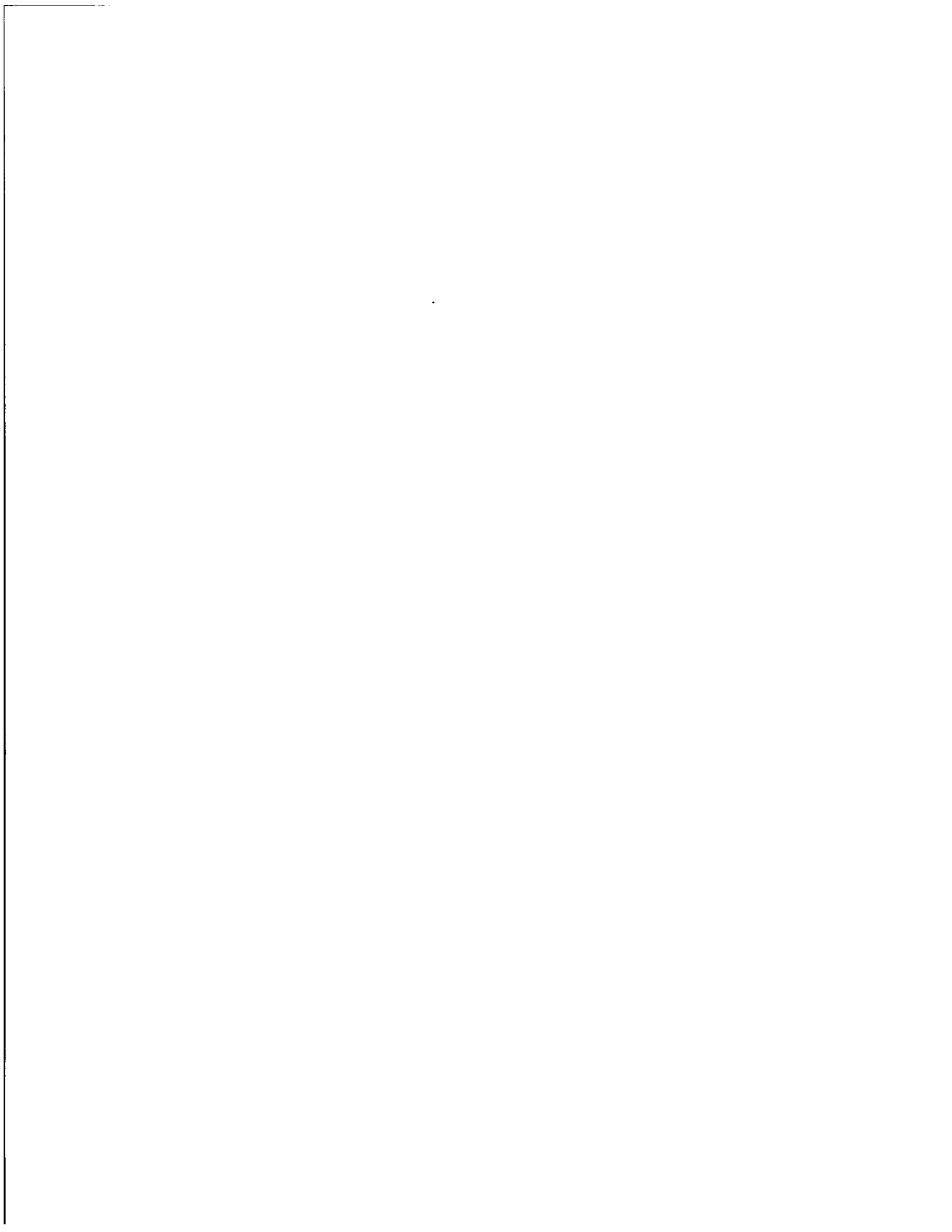
The sources of the cash Debtor will have on hand by the effective date of the Plan are estimated as follows:

\$	Cash in Debtor's bank account now
+	Additional cash Debtor will accumulate from net earnings between now and effective date of the Plan [state the basis for such projections]
+	Borrowing [separately state terms of repayment]
+	Capital Contributions
+	Other
\$	Total [This number should match "cash on hand" figure noted above]



**Exhibit G – Projections of Cash Flow and Earnings for Post-Confirmation Period**





[DRAFT – January 24, 2006]

### **Committee Note For Form Disclosure Statement**

This small business chapter 11 disclosure statement form is promulgated pursuant to § 433 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. It may be used in cases where the debtor (whether an individual or an artificial entity) is a small business debtor under § 101(51D) of the Code. This form disclosure statement provides a format for disseminating information to parties in interest about the plan of reorganization in a small business debtor's chapter 11 case, so that those parties can make reasonably informed judgments whether to accept, reject or object to a proposed plan of reorganization or liquidation.

The form is intended to be used in conjunction with the form small business chapter 11 plan (Official Form \_\_). As required by §433 of the Code, the form seeks to strike a practical balance between the reasonable needs of the courts, the United States trustee, creditors, and other parties in interest for reasonably complete information, on the one hand, and economy and simplicity for debtors, on the other.

Because the relevant legal requirements for, and effect of a plan's confirmation may vary depending on the nature of the debtor and the details of the proposed plan, this form is intended to provide an illustrative format for disclosure, rather than a specific prescription for the language or content of a particular disclosure statement. The form highlights the factual and legal disclosures required for adequate disclosure under section 1125 of the Code. The form is not intended to restrict a plan proponent from providing additional information where that would be useful. plan proponents are encouraged to present material information in as clear a fashion as possible, including, where feasible, the provision of an accompanying executive summary, approved by the court, that highlights the particular creditor's or interest holder's voting status and treatment under the plan..

Rule 3016 specifies the manner in which the disclosure statement is to be filed. Rule 3017 specifies the manner in which the court will consider it. Rule 3017.1 specifies special procedures for the court's conditional approval of a disclosure statement in a small business case.

## Instructions for Form Disclosure Statement

### BACKGROUND AND GENERAL INSTRUCTIONS

1. This small business chapter 11 disclosure form is promulgated pursuant to § 433 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. This form may be used in cases where the debtor (whether an individual or an artificial entity) is a small business debtor within the meaning of § 101(51D) of the Code. This form provides a format for disseminating information to parties in interest about the plan of reorganization in a debtor's small business chapter 11 case, so that those parties can make reasonably informed judgments whether to accept, reject or object to the plan. Because the relevant legal requirements for and effects of a plan's confirmation may vary depending on the nature of the debtor, and because the details of any proposed reorganization necessarily vary, this form is intended to provide a format for disclosure, rather than a specific prescription for the language or content of a disclosure statement in any particular case. The form highlights the factual and legal disclosures required by § 1125 of the Code in connection with the plan's confirmation. It is not intended to restrict the plan's proponent from providing additional information where that would be useful.
2. Proponents are encouraged to present material information in as clear a fashion as possible, including, where feasible, an accompanying executive summary, approved by the court, that highlights the particular creditor or interest holder's voting status and treatment under the plan.
3. Some language in this form appears in brackets. The bracketed language sometimes instructs the plan's proponent to provide certain information, and sometimes provides optional or alternative language that should be used when and where appropriate. Proponents should make the necessary insertions and/or delete inapplicable language.

### SPECIFIC INSTRUCTIONS

#### INTRODUCTORY SECTION

4. The introductory section describes the purpose of the disclosure statement, provides procedural information regarding confirmation of the plan, including where to obtain additional information, whether particular claimants or interest holders will be entitled to vote on the plan, and details the procedures and deadlines for filing objections to confirmation of the plan. A copy of the plan should be attached to the debtor's disclosure statement as Exhibit A. Where the proposed distribution to unsecured creditors and other classes can be succinctly summarized, describe that distribution in the second introductory paragraph.

5. In some cases, the court will approve the debtor's disclosure statement prior to solicitation of acceptance or rejection of the plan. See Rule 3017. In other cases, the court may conditionally approve the disclosure statement, and combine the hearing on the adequacy of disclosure and the hearing on confirmation of the plan into one hearing. See Rule 3017.1. Use the bracketed language as appropriate in subsections I.B. and I.C.

## BACKGROUND SECTION

6. The second part of disclosure statement provides a history of the debtor's business, both before and during the debtor's bankruptcy case. In this section, the Proponent should describe the debtor's business, the events that led to the filing of the debtor's bankruptcy petition, and the key events in the debtor's bankruptcy case, and identify the people who managed the debtor during the case and who will manage the debtor after the plan is confirmed. The Proponent should disclose its intentions with regard to, and the status of, avoidance actions. If the debtor or proponent intends to bring an avoidance action against a particular creditor or equity interest holder, the disclosure statement should disclose this fact so that the creditor or equity interest holder can use that information to determine the value of their claim or interest when considering whether to accept or reject the plan. If the debtor or plan proponent is uncertain as to what avoidance actions might be brought, that fact should be disclosed as well, so that claimants and equity interest holders can take that information into account, as well, when considering whether to accept or reject the plan.
7. The debtor is required to file a schedule of material assets when it commences a case. A schedule of the debtor's material assets, along with the basis for their valuation should be attached to the debtor's disclosure statement as Exhibit B. Under § 1116 of the Code, the debtor must also file its most recent prepetition financial statements with the petition. These financial statements should be attached to the debtor's disclosure statement as Exhibit C.
8. Sections 434 and 435 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, and § 308 of the Code require the debtor to file periodic operating reports with the court. These reports, or a summary, should be attached to the debtor's disclosure statement as Exhibit D.

## SUMMARY OF PLAN

9. The third part of the disclosure statement describes the treatment of various creditors and equity interest holders who will receive distributions under the plan. Because the treatment of certain claims, such as administrative expense claims, allowed under § 503 of the Code, and priority tax claims, allowed under §507(a)(8) of the Code, is statutorily specified, these claims are not placed into classes. Secured creditors are generally each placed in their own class, with the particular treatment specified for that class. Section 1129(a)(9)(D) of the Code provides that a secured tax claim which would

otherwise meet the description of a priority tax claim under § 507(a)(8) of the Code is to be paid in the same manner and over the same period as prescribed in § 507(a)(8) of the Code. While it is not required, the proponent may, where applicable, wish to classify claims under § 507(a)(9) and (10) of the Code. Finally, the disclosure statement should describe the treatment of the general unsecured claimants and equity interest holders. An administrative convenience class may be created pursuant to § 1122(b) of the Code, and other classes of unsecured claims may be created to the extent permitted by applicable case law. Also, while the suggested language of the form contemplates that plan distributions will be in the form of monthly payments, other forms of consideration are permitted and this section of the disclosure statement should be modified to describe clearly the form(s), methods and timing of payments to be made under the particular plan.

10. The disclosure statement should also detail the sources of funds for payments to be made under the Plan. These should include the sources of funds for payments to be made on the effective date of the Plan (detailed in Exhibit F), and the source of payments that will be made over the life of the Plan. The description should be supported by projections about the income and profitability of the debtor. The Plan Proponent must also fully describe post-confirmation management, as required by § 1129(a)(5) of the Code. The disclosure statement should also describe any risk factors that might influence the debtor's ability to complete the payments or affect the value of the distributions provided for under the Plan. Also, the disclosure statement should list any material executory contracts that will be assumed pursuant to the Plan, as well as any material contracts that will be rejected. To the extent possible, the tax consequences of the Plan should also be summarized.

#### CONFIRMATION REQUIREMENTS AND PROCEDURES SECTION

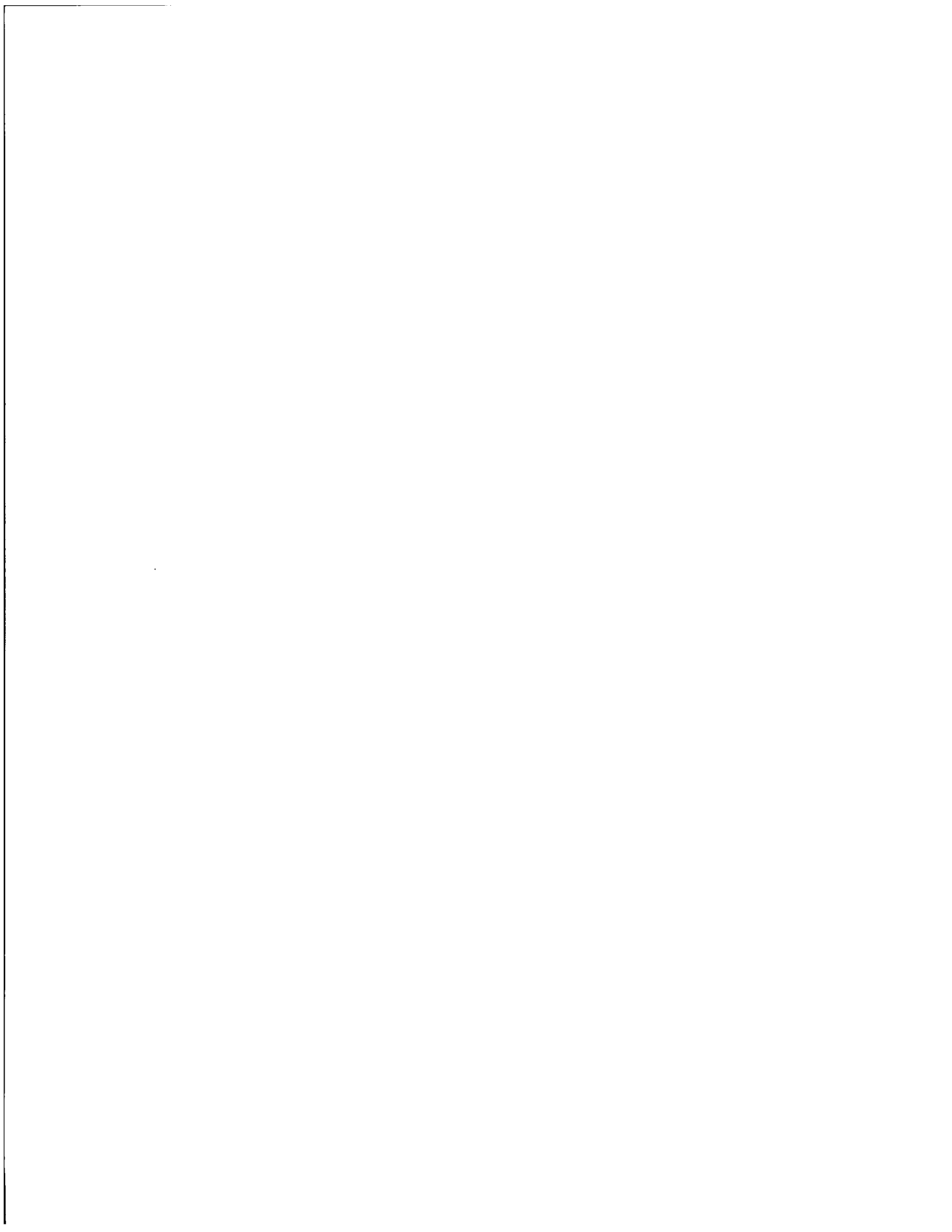
11. The fourth part of the disclosure statement sets forth the procedures and requirements for confirmation. In this regard, the disclosure statement should inform creditors and equity interest holders of (1) which class they are in, (2) whether they are entitled to vote, and (3) the amount of their claim allowed for voting purposes. This may be accomplished in the disclosure statement itself or, as noted above, in a summary statement, approved by the court, and sent to the parties in interest along with the disclosure statement. A liquidation analysis of the debtor should be attached to the disclosure statement as Exhibit E. As noted above, the sources of funds for payments to be made on the effective date of the plan should be detailed in Exhibit F, and projections about the profitability and cash flow of the debtor's business after confirmation should be attached to the disclosure statement as Exhibit G.

#### EFFECT OF PLAN CONFIRMATION

12. The fifth part of the disclosure statement describes the effect of Plan confirmation. The language used here should be chosen with care, as the

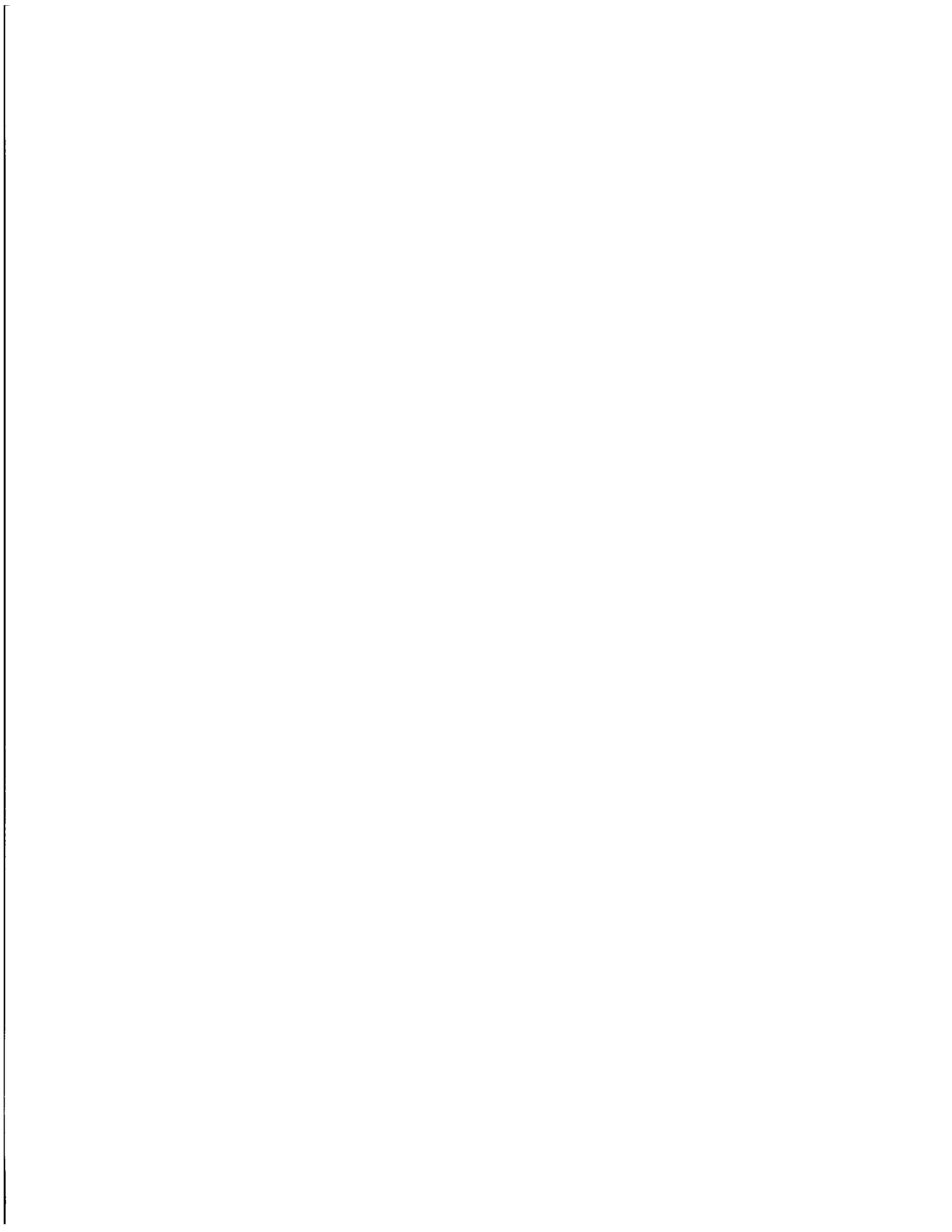
effect of confirmation differs depending on whether the debtor is an individual, partnership or corporation, and on whether the debtor will continue in business post-confirmation or will, instead, be liquidated.

13. If the plan provides that, after its confirmation, property of the estate will vest in and be distributed by someone other than the debtor, the disclosure statement should identify any such property and the person in whom the property will vest.



Item 6(c)(3) will be an oral report.





**Rule 2015. Duty To Keep Records, Make Reports, And Give Notice Of Case Or Change Of Status.**

\* \* \* \* \*

(a)(6) In a small business case, file and transmit to the United States Trustee monthly periodic financial reports that conform substantially to the appropriate Official Form. Each report shall be filed and transmitted not later than 15 days after the last day of the calendar month following the month covered by the report. The initial report shall cover the period from the date of the order for relief until the end of that calendar month. If the order for relief is dated after the 15<sup>th</sup> day of the month, the report for the next calendar month should also cover the month in which the order for relief was entered. The obligation to file periodic monthly reports shall terminate on the effective date of the confirmed plan or dismissal or conversion of the case.

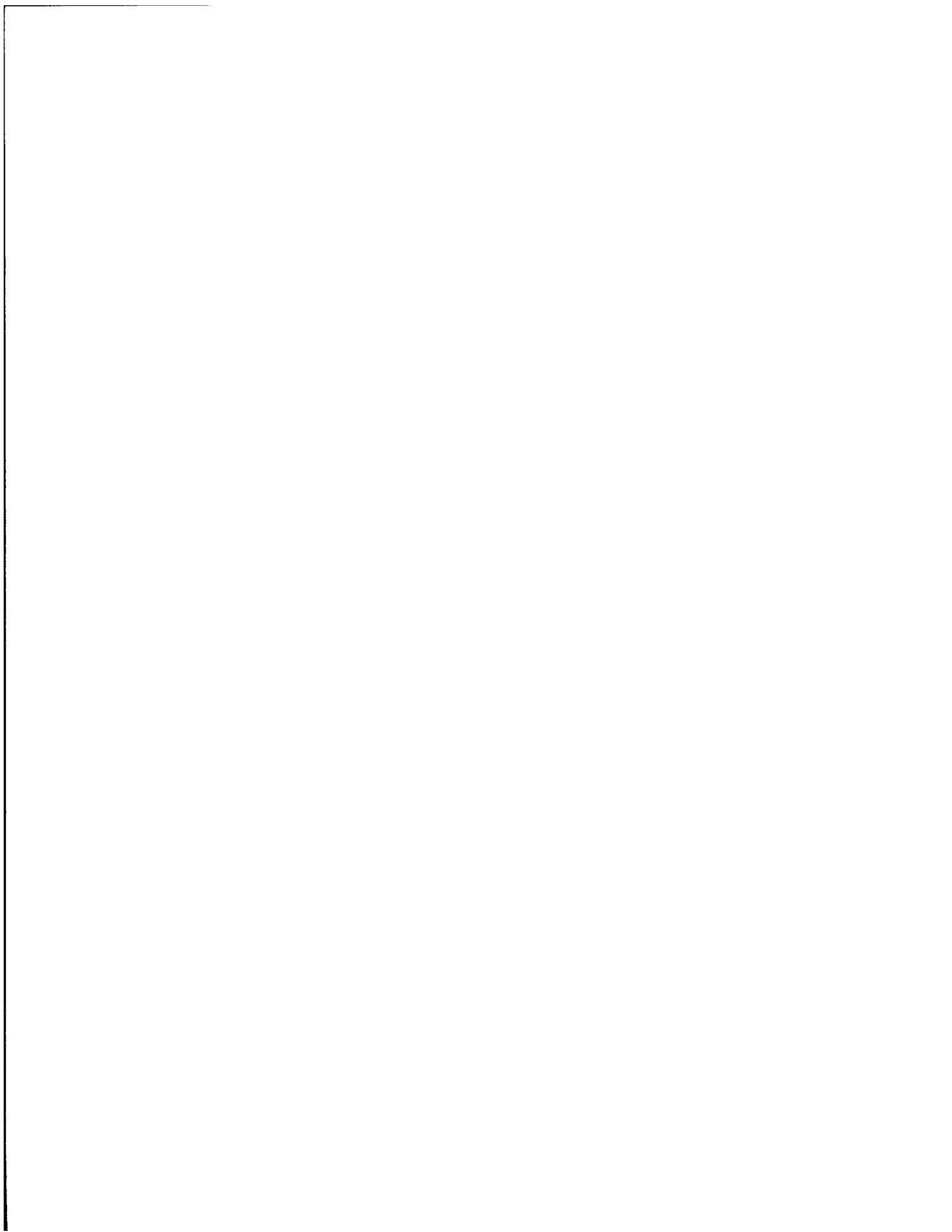
\* \* \* \* \*

**Committee Note**

This rule implements national uniform reporting requirements for small business debtors as required by §§ 434 and 435 of BAPCPA. The official form allows for some substitution of information, with the approval of the U.S. Trustee, in those circumstances where the debtor's existing financial information is adequate. The form seeks to balance the need of creditors, the court, and the U.S. Trustee for adequate financial reporting against the burden on the estate of providing such reports. Reporting pursuant to this Rule does not relieve the debtor of any other obligations to provide information or documents to the U.S. Trustee imposed by the Code or these Rules or other applicable law.

**Instructions**

Complete the required identification information carefully, respond to each item on the form as directed, and sign the form under penalty of perjury before filing it with the court and transmitting a copy to the office of the United States Trustee.



**United States Bankruptcy Court**  
District of \_\_\_\_\_

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_

Small Business Case under Chapter 11

**SMALL BUSINESS MONTHLY OPERATING REPORT**

Month: \_\_\_\_\_

Date Filed: \_\_\_\_\_

Line of Business: \_\_\_\_\_

NAICS Code: \_\_\_\_\_

IN ACCORDANCE WITH TITLE 28, SECTION 1746, OF THE UNITED STATES CODE, I DECLARE UNDER PENALTY OF PERJURY THAT I HAVE EXAMINED THE FOLLOWING SMALL BUSINESS MONTHLY OPERATING REPORT AND THE ACCOMPANYING ATTACHMENTS AND, TO THE BEST OF MY KNOWLEDGE, THESE DOCUMENTS ARE TRUE, CORRECT AND COMPLETE.

RESPONSIBLE PARTY:

\_\_\_\_\_  
ORIGINAL SIGNATURE OF RESPONSIBLE PARTY

\_\_\_\_\_  
PRINTED NAME OF RESPONSIBLE PARTY

<b>QUESTIONNAIRE: (All questions to be answered on behalf of the debtor.)</b>	<b>YES</b>	<b>NO</b>
1. IS THE BUSINESS STILL OPERATING?	<input type="checkbox"/>	<input type="checkbox"/>
2. DID YOU SELL ANY ASSETS OTHER THAN INVENTORY THIS MONTH?	<input type="checkbox"/>	<input type="checkbox"/>
3. HAVE YOU PAID ANY BILLS YOU OWED BEFORE YOU FILED BANKRUPTCY?	<input type="checkbox"/>	<input type="checkbox"/>
4. DID YOU PAY ANYTHING TO YOUR ATTORNEY OR OTHER PROFESSIONALS THIS MONTH?	<input type="checkbox"/>	<input type="checkbox"/>
5. DID YOU PAY ALL YOUR BILLS ON TIME THIS MONTH?	<input type="checkbox"/>	<input type="checkbox"/>
6. DID YOU PAY YOUR EMPLOYEES ON TIME?	<input type="checkbox"/>	<input type="checkbox"/>
7. HAVE YOU FILED ALL OF YOUR TAX RETURNS AND PAID ALL OF YOUR TAXES THIS MONTH?	<input type="checkbox"/>	<input type="checkbox"/>
8. DID YOU TIMELY FILE ALL OTHER REQUIRED GOVERNMENT FILINGS?	<input type="checkbox"/>	<input type="checkbox"/>
9. DID YOU PAY ALL OF YOUR INSURANCE PREMIUMS THIS MONTH?	<input type="checkbox"/>	<input type="checkbox"/>
10. DID ANY INSURANCE COMPANY CANCEL YOUR POLICY THIS MONTH?	<input type="checkbox"/>	<input type="checkbox"/>
11. HAVE YOU BORROWED MONEY FROM ANYONE THIS MONTH?	<input type="checkbox"/>	<input type="checkbox"/>
12. DO YOU HAVE ANY BANK ACCOUNTS OPEN OTHER THAN THE DIP ACCOUNT?	<input type="checkbox"/>	<input type="checkbox"/>

13. DID YOU HAVE ANY UNUSUAL OR SIGNIFICANT UNANTICIPATED EXPENSES THIS MONTH?
14. DID YOU DEPOSIT ALL THE RECEIPTS FOR YOUR BUSINESS INTO THE DIP ACCOUNT THIS MONTH?
15. DID THE BUSINESS SELL ANY GOODS OR PROVIDE SERVICES OR TRANSFER ANY ASSETS TO ANY BUSINESS RELATED TO THE DIP IN ANY WAY?
16. DO YOU PLAN TO CONTINUE TO OPERATE THE BUSINESS NEXT MONTH?
17. ARE YOU CURRENT ON YOUR QUARTERLY FEE PAYMENT TO THE U.S. TRUSTEE ?

**TAXES**

DO YOU HAVE ANY PAST DUE TAX RETURNS OR PAST DUE POST-PETITION TAX OBLIGATIONS?

IF YES, PLEASE PROVIDE A WRITTEN EXPLANATION INCLUDING WHEN SUCH RETURNS WILL BE FILED, OR WHEN SUCH PAYMENTS WILL BE MADE AND THE SOURCE OF THE FUNDS FOR THE PAYMENT.

*(Exhibit A)*

**INCOME**

PLEASE SEPARATELY LIST ALL OF THE INCOME YOU RECEIVED FOR THE MONTH. THE LIST SHOULD INCLUDE ALL INCOME FROM CASH AND CREDIT TRANSACTIONS. (THE U.S. TRUSTEE MAY WAIVE THIS REQUIREMENT.)

**TOTAL INCOME** \_\_\_\_\_

*(Exhibit B)*

**EXPENSES**

PLEASE SEPARATELY LIST ALL EXPENSES PAID BY CASH OR BY CHECK FROM YOUR BANK ACCOUNTS THIS MONTH. INCLUDE THE DATE PAID, WHO WAS PAID THE MONEY, THE PURPOSE AND THE AMOUNT. (THE U.S. TRUSTEE MAY WAIVE THIS REQUIREMENT.)

**TOTAL EXPENSES** \_\_\_\_\_

*(Exhibit C)*

**CASH PROFIT**

INCOME FOR THE MONTH (TOTAL FROM EXHIBIT B) \_\_\_\_\_

EXPENSES FOR THE MONTH (TOTAL FROM EXHIBIT C) \_\_\_\_\_

(Subtract Line C from Line B) **CASH PROFIT FOR THE MONTH** \_\_\_\_\_

*(EXHIBIT D)*

**UNPAID BILLS**

PLEASE ATTACH A LIST OF ALL DEBTS (INCLUDING TAXES) WHICH YOU HAVE INCURRED SINCE THE DATE YOU FILED BANKRUPTCY BUT HAVE NOT PAID. THE LIST MUST INCLUDE THE DATE THE DEBT WAS INCURRED, WHO IS OWED THE MONEY, THE PURPOSE OF THE DEBT AND WHEN THE DEBT IS DUE. (THE U.S. TRUSTEE MAY WAIVE THIS REQUIREMENT.)

**TOTAL PAYABLES** \_\_\_\_\_

*(Exhibit E)*

**MONEY OWED TO YOU**

PLEASE ATTACH A LIST OF ALL AMOUNTS OWED TO YOU BY YOUR CUSTOMERS FOR WORK YOU HAVE DONE OR THE MERCHANDISE YOU HAVE SOLD. YOU SHOULD INCLUDE WHO OWES YOU MONEY, HOW MUCH IS OWED AND WHEN IS PAYMENT DUE. (THE U.S. TRUSTEE MAY WAIVE THIS REQUIREMENT.)

**TOTAL RECEIVABLES** \_\_\_\_\_

**BANKING INFORMATION**

PLEASE ATTACH A COPY OF YOUR LATEST BANK STATEMENT FOR EVERY ACCOUNT YOU HAVE AS OF THE DATE OF THIS FINANCIAL REPORT OR HAD DURING THE PERIOD COVERED BY THIS REPORT.

*(EXHIBIT F)*

**EMPLOYEES**

NUMBER OF EMPLOYEES WHEN THE CASE WAS FILED? \_\_\_\_\_

NUMBER OF EMPLOYEES AS OF THE DATE OF THIS MONTHLY REPORT? \_\_\_\_\_

**PROFESSIONAL FEES**

*BANKRUPTCY RELATED:*

PROFESSIONAL FEES RELATING TO THE BANKRUPTCY PAID DURING THIS REPORTING PERIOD? \_\_\_\_\_

TOTAL PROFESSIONAL FEES RELATING TO THE BANKRUPTCY PAID SINCE THE FILING OF THE CASE? \_\_\_\_\_

*NON-BANKRUPTCY RELATED:*

PROFESSIONAL FEES PAID NOT RELATING TO THE BANKRUPTCY PAID DURING THIS REPORTING PERIOD? \_\_\_\_\_

TOTAL PROFESSIONAL FEES PAID NOT RELATING TO THE BANKRUPTCY PAID DURING THIS REPORTING PERIOD? \_\_\_\_\_

**PROJECTIONS**

COMPARE YOUR ACTUAL INCOME AND EXPENSES TO THE PROJECTIONS FOR THE FIRST 180-DAYS OF YOUR CASE PROVIDED AT THE INITIAL DEBTOR INTERVIEW.

DIFFERENCE BETWEEN PROJECTED INCOME AND ACTUAL INCOME: \_\_\_\_\_

DIFFERENCE BETWEEN PROJECTED EXPENSES AND ACTUAL EXPENSES: \_\_\_\_\_

DIFFERENCE BETWEEN PROJECTED CASH PROFIT AND ACTUAL CASH PROFIT: \_\_\_\_\_

TOTAL PROJECTED INCOME FOR THE NEXT MONTH: \_\_\_\_\_

TOTAL PROJECTED EXPENSES FOR THE NEXT MONTH: \_\_\_\_\_

TOTAL PROJECTED CASH PROFIT FOR THE NEXT MONTH: \_\_\_\_\_

**ADDITIONAL INFORMATION**

**PLEASE ATTACH ALL FINANCIAL REPORTS INCLUDING AN INCOME STATEMENT AND BALANCE SHEET WHICH YOU PREPARE INTERNALLY.**

**Rule 2015.3. Reports of Financial Information on Entities in Which a Chapter 11 Estate Holds a Controlling or Substantial Interest.**

- (a) Reporting Requirement. In a chapter 11 case, the trustee or debtor in possession shall file periodic financial reports of the value, operations, and profitability of each entity that is not also a debtor in a jointly administered case under title 11, and in which the estate holds a substantial or controlling interest. The reports shall be prepared as prescribed by the appropriate official form, and shall be based upon the most recent information reasonably available to the trustee or debtor in possession.
- (b) Time for Filing; Service. The first report required by subdivision (a) of this rule shall be filed no later than five days before the first date set for the meeting of creditors under § 341 of the Code. Subsequent reports shall be filed no less frequently than every six months thereafter, until the earlier of (i) a plan of reorganization becomes effective or (ii) the case is closed, dismissed, or converted to a case under another chapter of the Code. Copies of the report shall be served on the United States trustee, any committee appointed under § 1102 of the Code, and any other party in interest that has filed a request therefor.
- (c) Presumption of Substantial or Controlling Interest; Judicial Determination. An entity of which the estate controls or owns at least a 20 percent interest, shall be presumed to be an entity in which the estate has a substantial or controlling interest for purposes of this rule. An entity in which the estate controls or owns less than a 20 percent interest shall be presumed not to be an entity in which the estate has a substantial or controlling interest for purposes of this rule. Upon application to the court, such entity, any holder of an interest therein, the U.S. Trustee, or any other party in interest may seek to rebut either presumption. Upon such application, the court shall, after notice and a hearing, determine whether the estate's interest in the entity is substantial or controlling.
- (d) Modification of Reporting Requirement. The court may, after notice and a hearing, vary the reporting requirement established by subdivision (a) of this rule upon a demonstration that a trustee or debtor in possession is not able, after good faith effort, to comply with those reporting requirements.
- (e) Notice and Protective Orders. No later than [20] days before filing the first report required by this rule, the trustee or debtor in possession shall send notice to the entity in which the estate has a substantial or controlling interest, and to all known holders of an interest in that entity, that the trustee or debtor in possession expects to file and serve financial information relating to the entity in accordance with this rule. The entity in which the estate has a substantial or controlling interest or a person holding an interest in that entity, may request protection of the information under section 107 of the Code.
- (f) Unless the court orders otherwise, the pendency of a request under subdivisions (c),(d), or (e) of this rule shall not alter or stay the requirements of subdivision (a) of this rule.



### **Committee Note**

This rule implements § 419 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”). Reports should be made on the appropriate official form. While § 419 of BAPCPA places the obligation to report upon the “debtor,” this rule extends the obligation to include cases in which a trustee has been appointed.



# United States Bankruptcy Court

\_\_\_\_\_ District Of \_\_\_\_\_

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_

Chapter \_\_\_\_\_

## PERIODIC REPORT ON PROFITABILITY OF ENTITIES IN WHICH THE ESTATE HOLDS A SUBSTANTIAL OR CONTROLLING INTEREST

The estate of [Name of Debtor] holds a substantial or controlling interest in the following entities:

Name of Entity	Interest of the Estate	Tab #

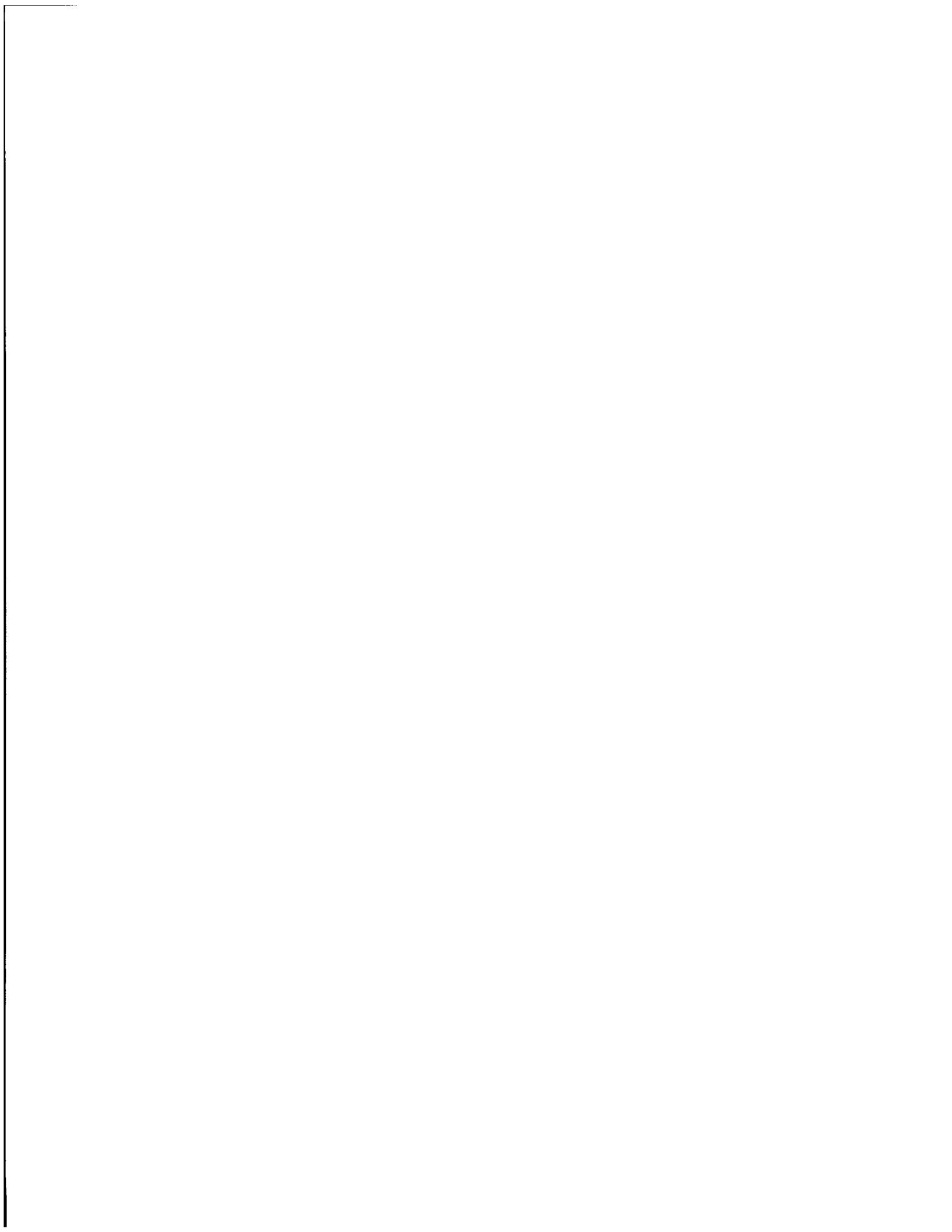
This the semi-annual report on the profitability of those entities required by Bankruptcy Rule 2015.2. This periodic report (the "Periodic Report") contains reports ("Entity Reports") on the value, operations, and profitability of the entities listed above.

Each Entity Report consists of three exhibits. Exhibit A contains a valuation estimate for the entity as of [a date not more than two years prior to the date of this report]. It also contains a description of the valuation method used. Exhibit B contains a balance sheet, income statement, statement of cash flows, and a statement of changes in owners' equity for the period since the last Entity Report, along with summarized footnotes. Exhibit C describes the estate's interest in the entity and contains a description of the entity's business operations.

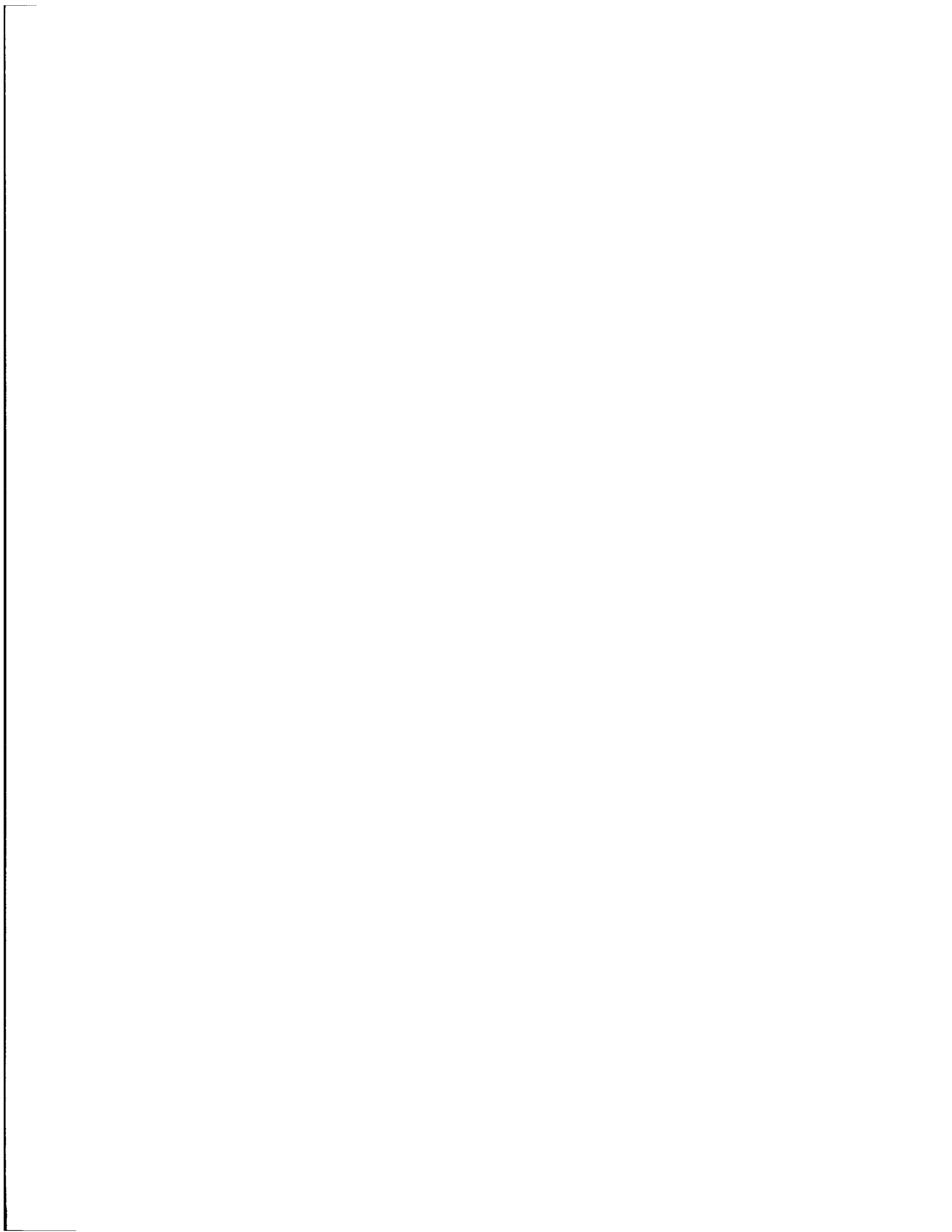


**Exhibit A**  
**Valuation Estimate for [name of entity]**

[Provide a statement of the entity's value, including a description of the basis for the valuation and the valuation method used. This valuation must show the date as of which it was made, and be no more than two years old.]



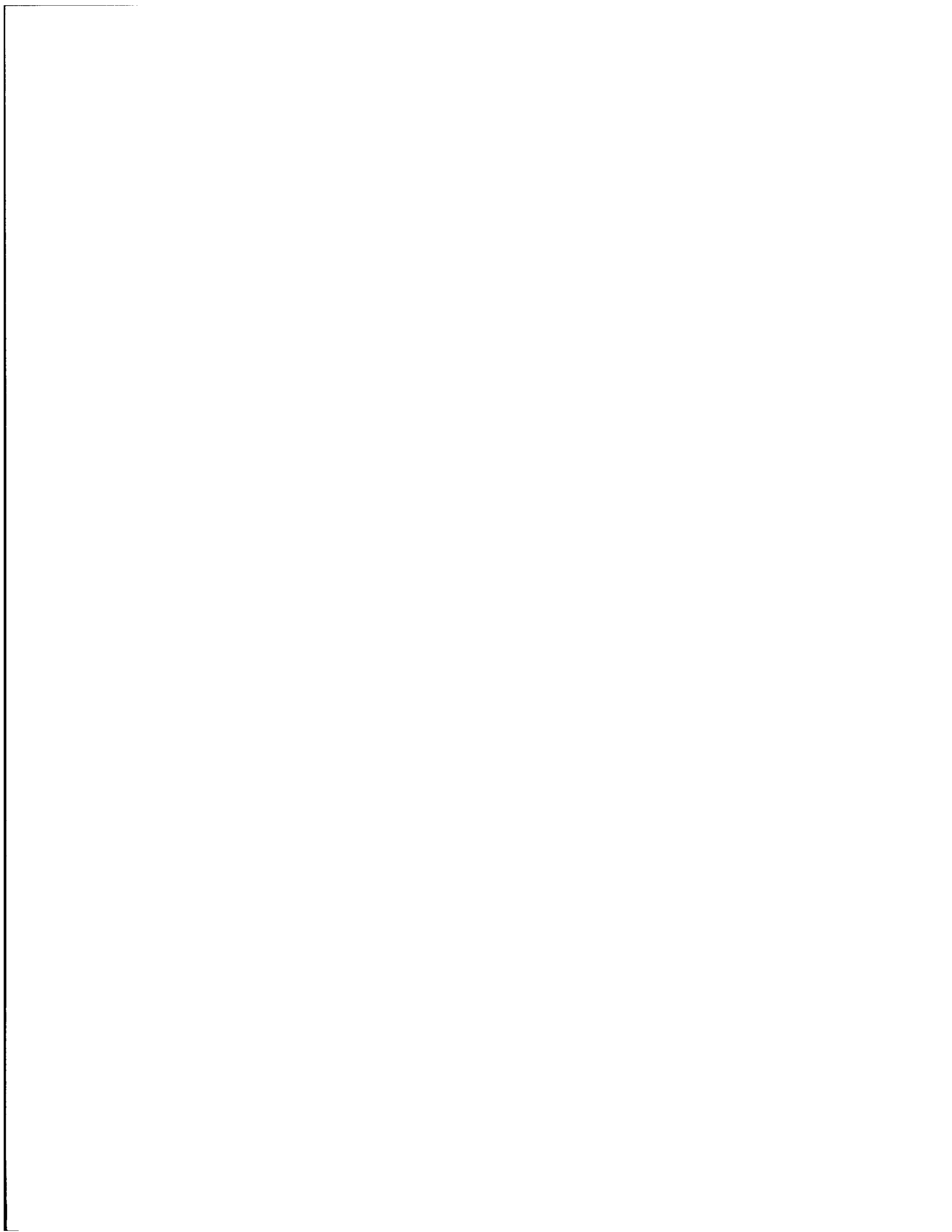
**Exhibit B**  
**Book Value and Profitability Statements for [Insert name of Entity]**





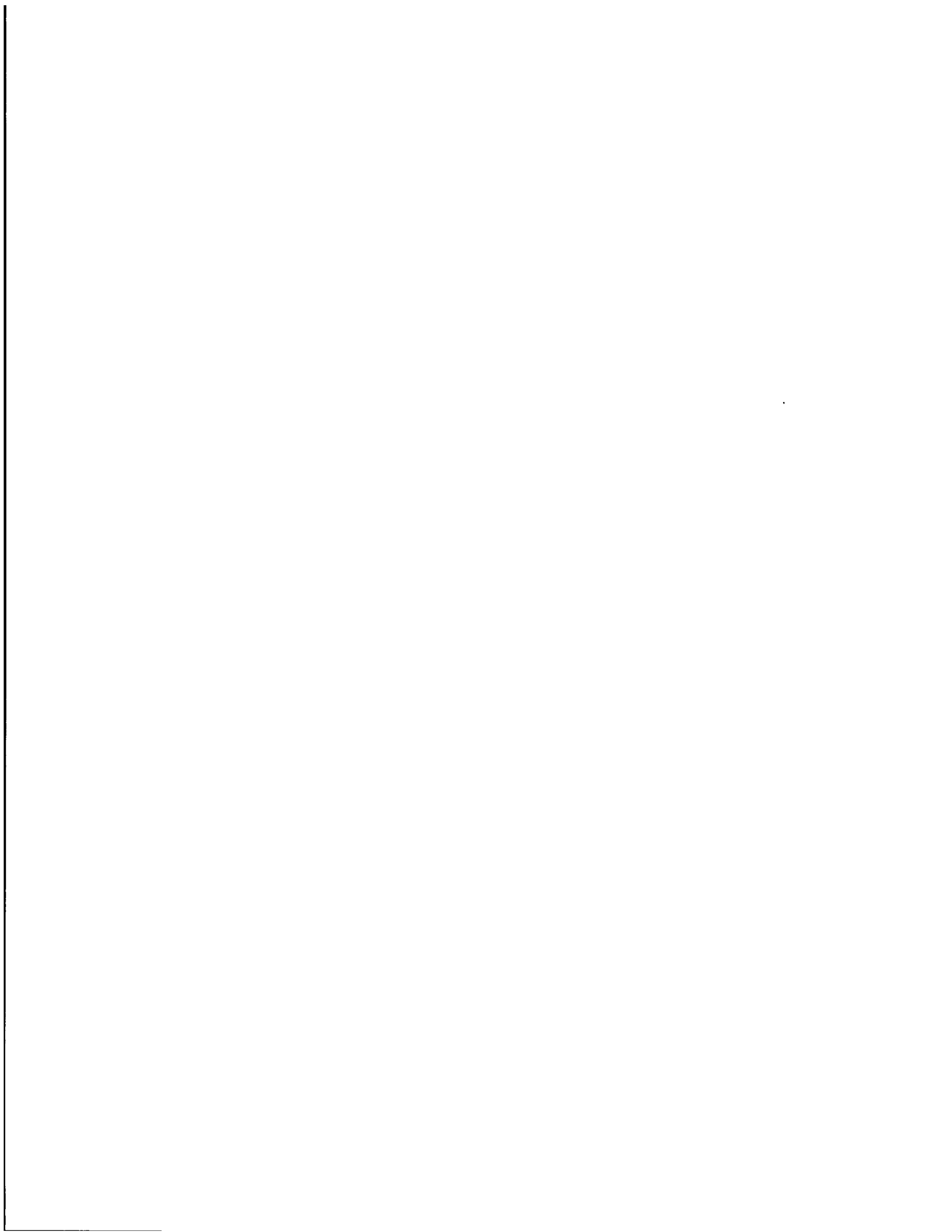
**Exhibit B-1**  
**Balance Sheet for [name of entity]**  
As of [date]

[Provide a balance sheet dated as of the end of the most recent six-month period of the current fiscal year and as of the end of the preceding fiscal year.]



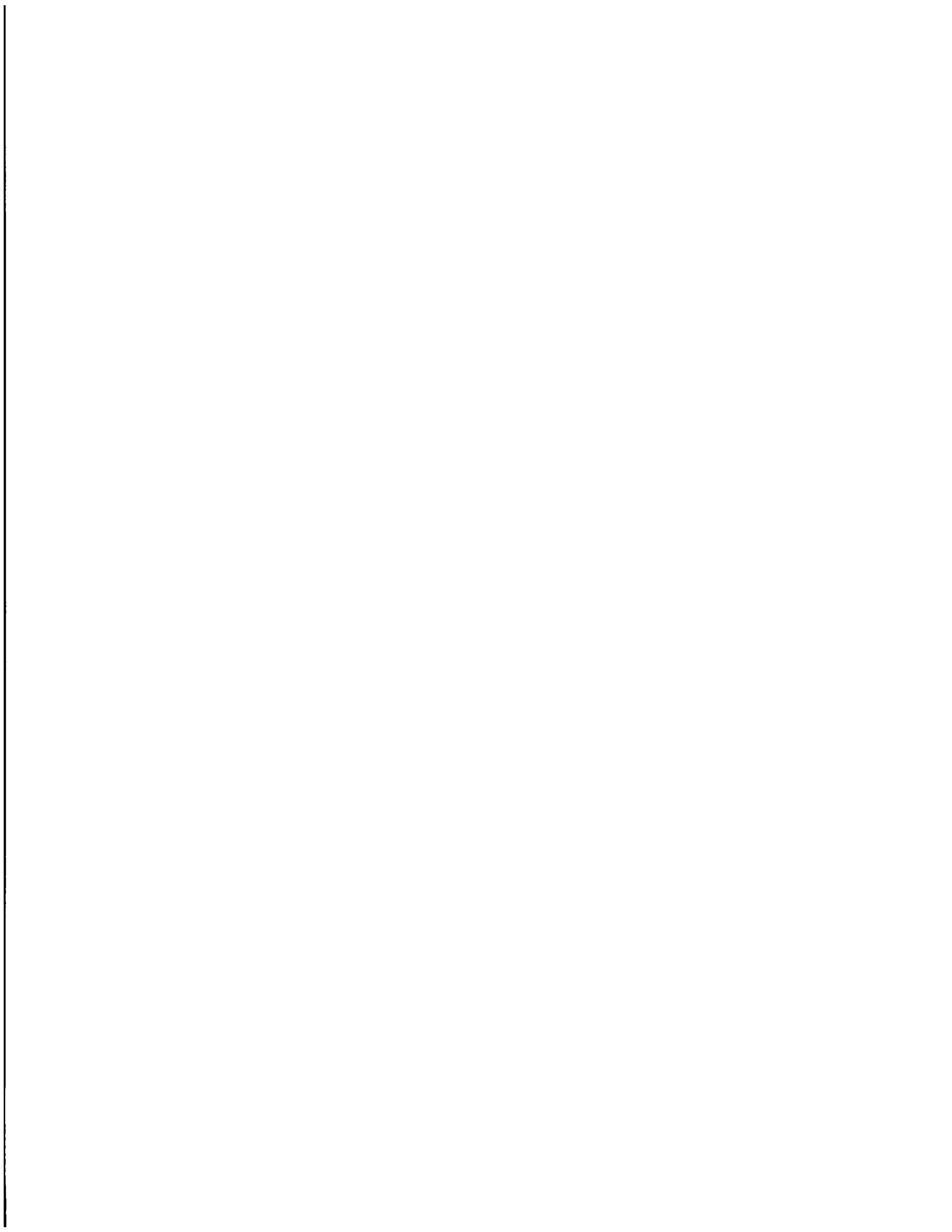
**Exhibit B-2**  
**Statement of Income (Loss) for [name of entity]**  
Period ending [date]

[Provide a statement of income that covers the period between the end of the preceding fiscal year and the end of the most recent six-month period of the current fiscal year and for the prior fiscal year.]



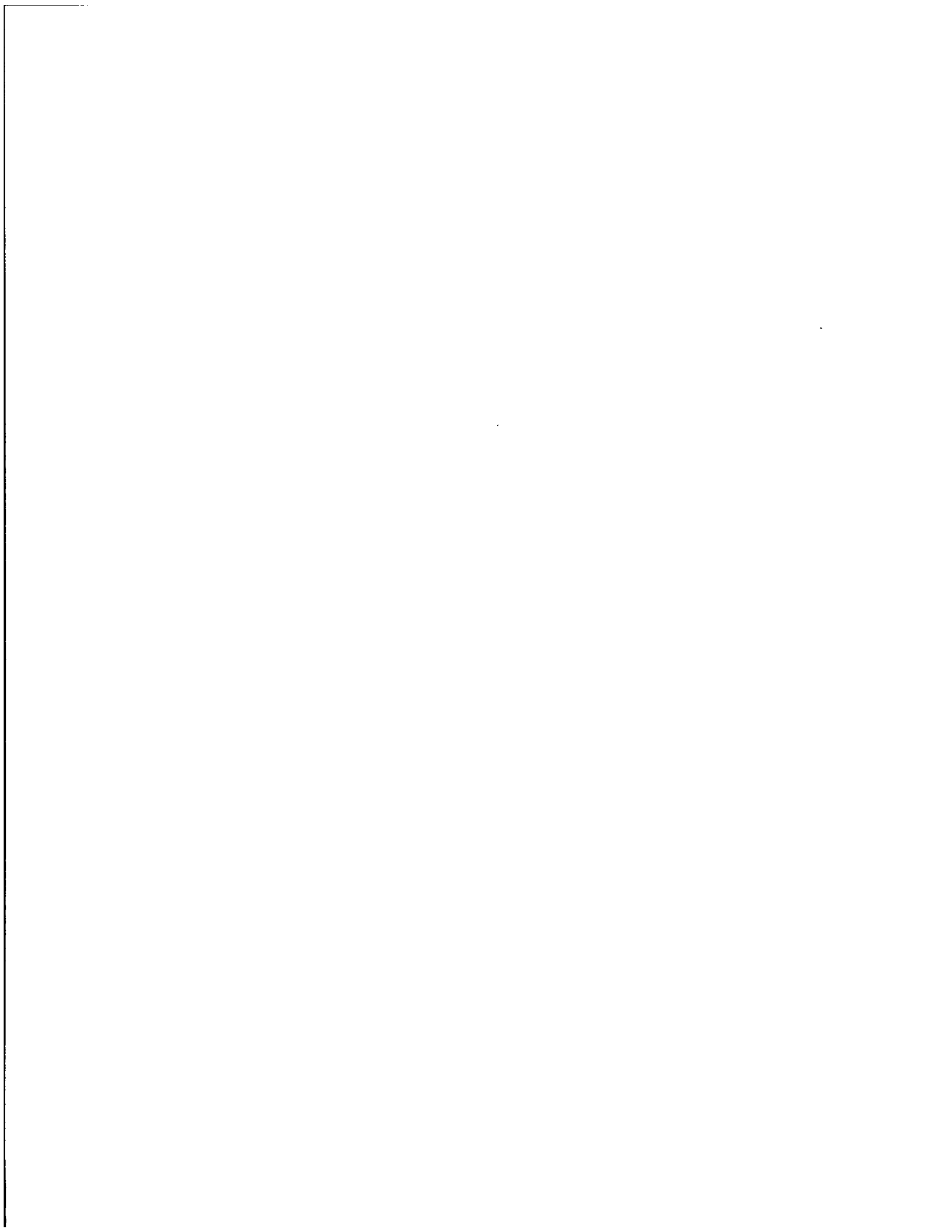
**Exhibit B-3**  
**Statement of Cash Flows for [name of entity]**  
For the period ending [date]

[Provide a statement of changes in cash flows that covers the period between the end of the preceding fiscal year and the end of the most recent six-month period of the current fiscal year and for the prior fiscal year.]



**Exhibit B-4**  
**Statement of Changes in Shareholders' Equity (Deficit) for [name of entity]**  
period ending [date]

[Provide a statement of changes in shareholders' equity that covers the period between the end of the preceding fiscal year and the end of the most recent six-month period of the current fiscal year and for the prior fiscal year.]





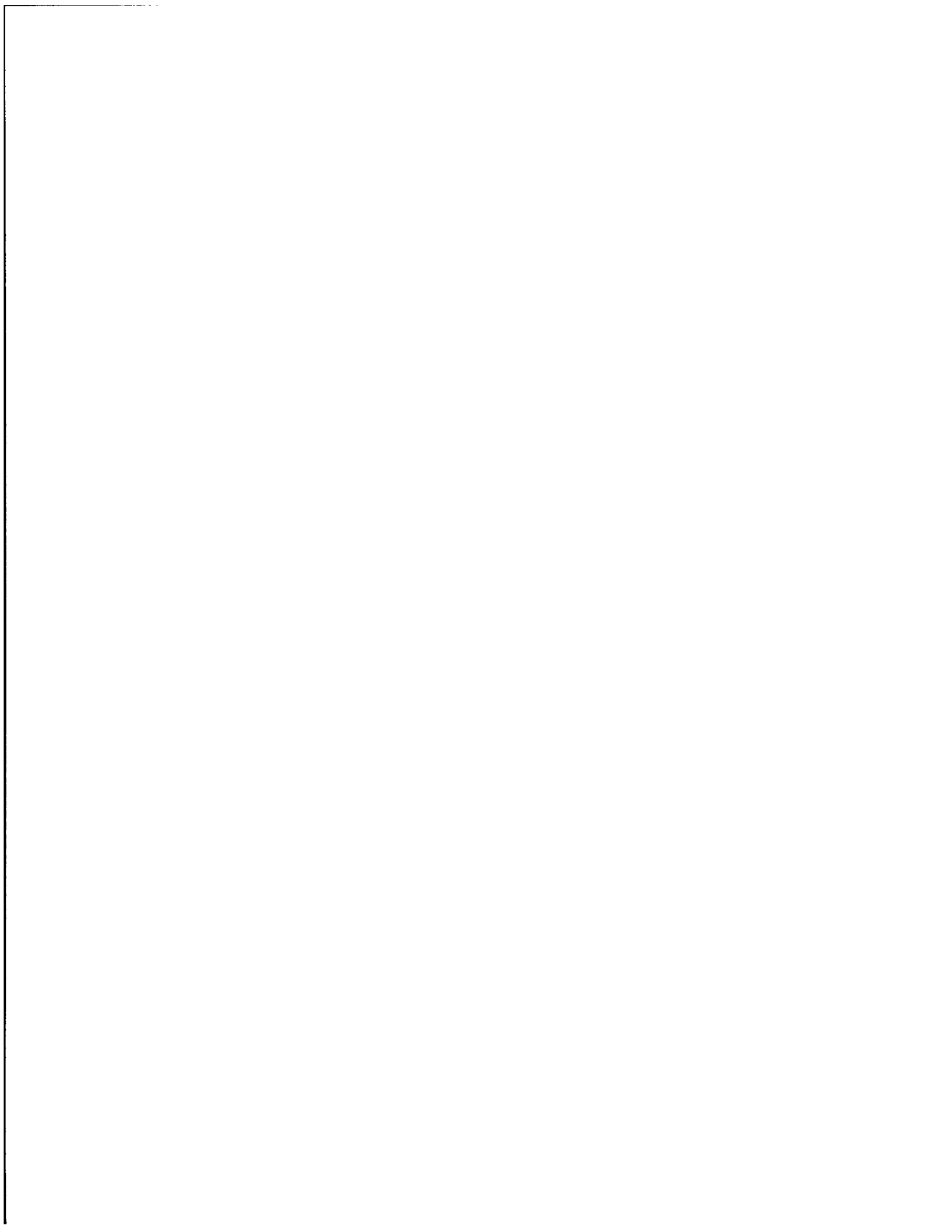
## **Exhibit C**

### **Description of the Estate's Interest and Description of Operations for [name of entity]**

[Describe the nature and extent of the estate's interest in the entity.

Describe the business conducted and intended to be conducted by the entity, focusing on the entity's dominant business segment(s) including:

- Principal product produced or services rendered and methods of distribution
- Description of the status of a new product or segment if a public announcement has been made or information publicly disseminated
- Sources and availability of raw materials
- Any significant patents, trademarks, licenses, franchises and concessions held
- Seasonality of the business
- Dependence upon a single customer or a few customers
- Dollar amount of backlog orders believed to be firm
- Exposure to renegotiation or redetermination or termination of significant contracts
- Competitive conditions facing the entity]



## Committee Note

This form periodic report on profitability of entities in which the estate holds a substantial or controlling interest (the "Form") implements § 419 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. This Form shall be used when required by Bankruptcy Rule 2015.2, with such variations as may be approved by the court pursuant to subdivisions (d) and (e) of that rule.

## Instructions

### General Instructions

1. This form periodic report on profitability of entities in which the estate holds a substantial or controlling interest (the "Form") implements § 419 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"). This Form shall be used when required by Bankruptcy Rule 2015.2, with such variations as may be approved by the court pursuant to subdivisions (d) and (e) of that rule.
2. In a chapter 11 case, the trustee or debtor in possession shall file periodic financial reports of the value, operations, and profitability ("Periodic Reports") of each entity that is not also a debtor in a jointly administered case under title 11, and in which the estate holds a substantial or controlling interest. The reports shall be prepared as prescribed by this Form, and shall be based upon the most recent information reasonably available to the trustee or debtor in possession,
3. The first Periodic Report required by subdivision (a) of Bankruptcy Rule 2015.2 shall be filed no later than five days before the first date set for the meeting of creditors under § 341 of the Code. Subsequent Periodic Reports shall be filed no less frequently than every six months thereafter, until a plan of reorganization becomes effective or the case is closed, dismissed, or converted to a case under another chapter of the Code. Copies of the Periodic Report shall be served on the U.S. Trustee, any committee appointed under § 1102 of the Code, and any other party in interest that has filed a request therefor.
4. Bankruptcy Rule 2015.2 implements the requirement of section 419 of BAPCPA that the estate file periodic reports on valuation, profitability and operations, with regard to entities in which the estate holds a substantial or controlling interest. Where the estate controls or owns at least a 20 percent interest, the rule presumes that the estate's interest is substantial or controlling. Where the estate controls or owns less than a 20 percent interest, the rule presumes that the estate's interest is not substantial or controlling. The question of substantial or controlling interest is, however, a factual one to be decided by the court in the event of a dispute.

### Specific Instructions

5. Each entity subject to the reporting requirement of Bankruptcy Rule 2015.2 shall be listed in the table contained on the first page of the form. Reports for each such entity shall be placed behind separate tabs, and each such report shall consist of three exhibits. Exhibit A shall provide valuation information. Exhibit B shall provide balance sheet and profitability information, and Exhibit C shall provide a report of operations for the entity.
6. Exhibit B shall include the following financial statements:
  - (a) A balance sheet dated as of the end of the most recent six-month period of the current fiscal year and as of the end of the preceding fiscal year.
  - (b) A statement of income covering the period between the end of the preceding fiscal year and the end of the most recent six-month period of the current fiscal year and for the prior fiscal year.
  - (c) A statement of changes in cash flows covering the period between the end of the preceding fiscal year and the end of the most recent six-month period of the current fiscal year and for the prior fiscal year.
  - (d) A statement of changes in shareholders' equity covering the period between the end of the preceding fiscal year and the end of the most recent six-month period of the current fiscal year and for the prior fiscal year.

#### Instructions for Exhibit A – Valuation

7. Provide a statement of the entity's value, including a description of the basis for the valuation and the valuation method used. This valuation must be no more than two years old.

#### Instructions for Exhibit B – Financial Statements and Profitability

8. The financial statements may be unaudited.
9. The balance sheet contained in Exhibit B-1 may include only major captions with the exception of inventories. Data as to raw materials, work in process and finished goods inventories shall be included either on the face of the balance sheet or in the notes to the financial statements, if applicable. Where any major balance sheet caption is less than 10% of total assets, the caption may be combined with others. Subject to the preceding statement, the balance sheet shall be substantially in the form below:

XYZ Company  
Balance Sheet

As of \_\_\_\_\_

<u>Assets</u>	<u>Year to date</u>	<u>Prior Fiscal Year</u>
Cash and cash items	_____	_____
Marketable securities	_____	_____
Accounts and notes receivable (non-affiliates), net of allowances	_____	_____
Accounts due from affiliates	_____	_____
Inventories	_____	_____
Raw materials	_____	_____
Work in Process	_____	_____
Finished goods	_____	_____
Long-term contract costs	_____	_____
Supplies	_____	_____
LIFO reserve	_____	_____
Total inventories	_____	_____
Prepaid expenses	_____	_____
Other current assets	_____	_____
Total current assets	_____	_____
Securities of affiliates	_____	_____
Indebtedness of affiliates (non-current)	_____	_____
Other investments	_____	_____
Property, plant and equipment, net of accumulated depreciation and amortization	_____	_____
Intangible assets	_____	_____
Other assets	_____	_____
Total Assets	_____	_____

<u>Liabilities and Shareholder's Equity</u>	<u>Year to date</u>	<u>Prior Fiscal Year</u>
Accounts and notes payable (non-affiliates)	_____	_____
Payable to affiliates	_____	_____
Administrative claims	_____	_____
Other current liabilities	_____	_____
Total current liabilities	_____	_____

Bonds, mortgages and other long-term debt, including capitalized leases	_____	_____
Indebtedness to affiliates (non-current)	_____	_____
Other liabilities	_____	_____
Commitments and contingencies	_____	_____
Deferred credits	_____	_____
Minority interests in consolidated subsidiaries	_____	_____
Preferred stock subject to mandatory redemption or whose redemption is outside the control of the issuer	_____	_____
Total liabilities	_____	_____
Liabilities subject to compromise	_____	_____
Shareholders' equity	_____	_____
Total liabilities and shareholder's equity	_____	_____

10. The statement of income contained in Exhibit B-2 shall also include major captions. When any major income statement caption is less than 15% of net income for the most recent fiscal year, the caption may be combined with others. Notwithstanding these tests, de minimis amounts need not be shown separately. Subject to the preceding statement the statement of income shall be in substantially the form below:

XYZ Company  
Statement of income (loss)  
For the periods ending \_\_\_\_\_

	<u>Year to date</u>	<u>Prior Fiscal Year</u>
Net sales and gross revenues	_____	_____
Costs and expenses applicable to sales and revenues	_____	_____
Gross profit	_____	_____
Selling, general and administrative expenses	_____	_____
Provision for doubtful accounts	_____	_____
Other general expenses	_____	_____
Operating income	_____	_____
Non-operating income	_____	_____
Interest and amortization of debt discount	_____	_____
Non-operating expenses	_____	_____
Income or loss before income tax expense	_____	_____

Income tax expense	_____	_____
Minority interest in income of consolidated subsidiaries	_____	_____
Equity in earnings of unconsolidated subsidiaries and 50 per cent or less owned persons	_____	_____
Income or loss from continuing operations	_____	_____
Discontinued operations	_____	_____
Income or loss before extraordinary items and cumulative effects of changes in accounting principles	_____	_____
Extraordinary items, net of tax	_____	_____
Cumulative effects of changes in accounting principles	_____	_____
Net income (loss)	_____	_____
Earnings per share data	_____	_____

(d) The statement of changes in financial position in Exhibit B-3 may be abbreviated, starting with a single figure of funds provided by operations and showing other changes individually only when they exceed 10% of the average of funds provided by operations for the most recent fiscal year. Notwithstanding this test, de minimis amounts need not be shown separately. Subject to the foregoing the statement of income shall be in substantially the form that follows:

XYZ Company  
Statement of cash flows  
For the periods ending \_\_\_\_\_

	Year to date	Prior Fiscal Year
Net cash provided by operating activities	_____	_____
Cash flows from investing activities	_____	_____
Capital expenditures	_____	_____
Sale of _____	_____	_____
Other (describe)	_____	_____
Net cash provided (used) in investing activities	_____	_____
Cash flows provided by financing activities	_____	_____
Net borrowings under line-of-credit	_____	_____
Principal payments under capital leases	_____	_____
Proceeds from issuance of long-term debt	_____	_____
Proceeds from sale of stock	_____	_____

Dividends paid	_____	_____
Net cash provided (used) in financing activities	_____	_____
Net increase in cash and cash equivalents	_____	_____
Cash and cash equivalents Beginning of period	_____	_____
End of period	_____	_____

(e) Subject to subdivision (d) above, the statement of changes in shareholder equity in Exhibit B-4 shall be in substantially the form below:

XYZ Company  
Statement of changes in shareholder's equity (deficit)  
For the periods ending

	Year to date	Prior Fiscal Year
Balance, beginning of period	_____	_____
Comprehensive net income	_____	_____
Net income	_____	_____
Other comprehensive income, net of tax	_____	_____
Unrealized gains (losses) on securities	_____	_____
Foreign translation adjustments	_____	_____
Minimum pension liability adjustment	_____	_____
Issuance of stock	_____	_____
Dividends paid	_____	_____
Balance, end of period	_____	_____

(f) If the financial information, as presented, misrepresents, or is misleading as to, the value or profitability of the entity, the financial statements shall include disclosures either on the face of the financial statements or in accompanying footnotes sufficient to correct any misimpression. Disclosures shall encompass for example, accounting principles and



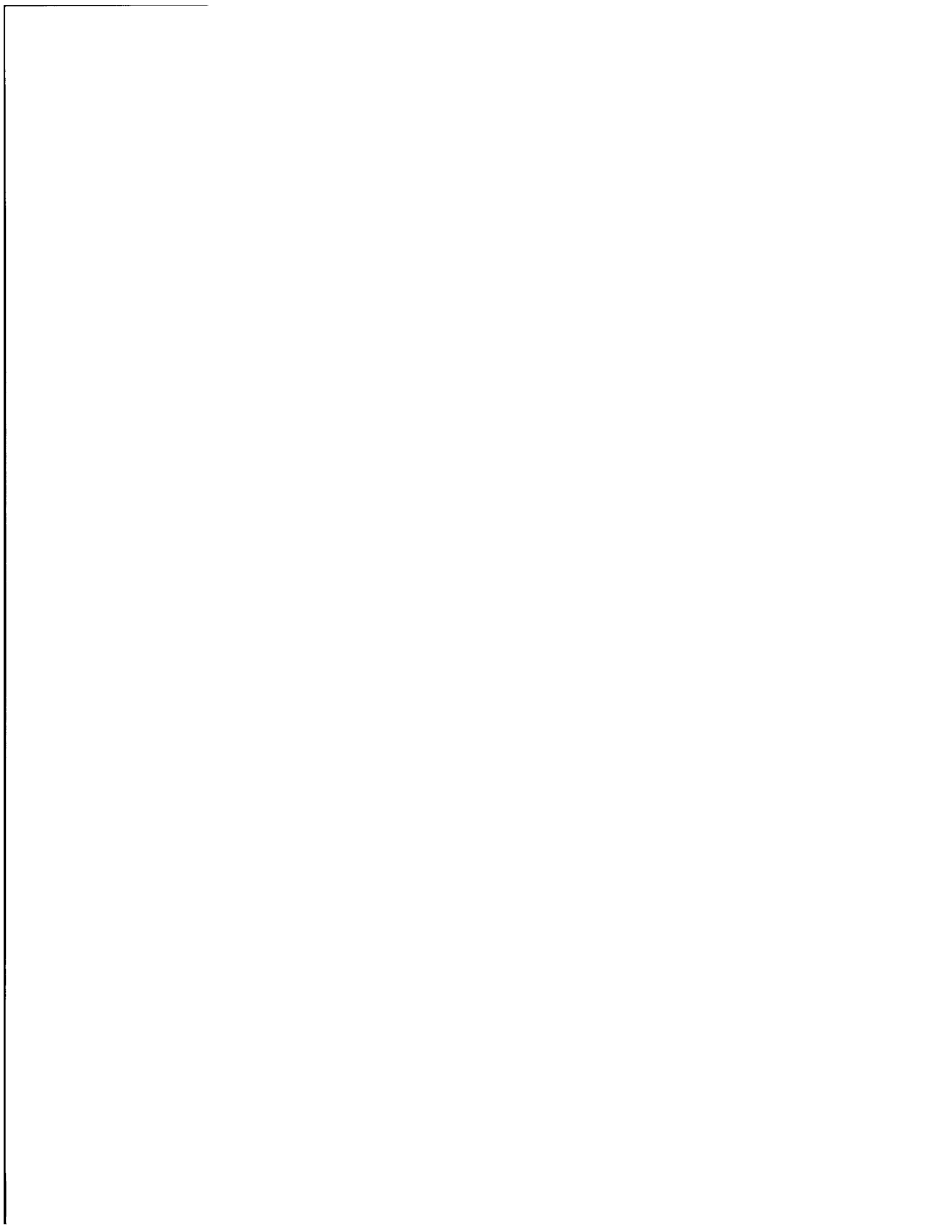
practices; estimates inherent in the preparation of financial statements; status of long-term contracts; capitalization including significant borrowings or modification of existing financing arrangements; and the reporting entity resulting from business combinations or dispositions. Where material contingencies exist, disclosure of such matters shall be provided.

(g) If appropriate, the income statement shall show earnings per share and dividends declared per share applicable to common stock. The basis of the earnings per share computation shall be stated together with the number of shares used in the computation.

(h) In addition to the financial statements required above, debtors in the development stage shall provide the cumulative financial statements (condensed to the same degree as allowed above) and disclosures required by Statement of Financial Accounting Standards No. 7, "Accounting and Reporting by Development Stage Enterprises" to the date of the latest balance sheet presented.

#### Instructions for Exhibit C – Description of Estate's Interest and Description of Operations

11. The description of operations contained in Exhibit C of the Form shall describe the nature and extent of the Debtors interest in the entity, as well as the business done and intended to be done by the entity, focusing on the entity's dominant business segment(s) including:
- Principal product produced or services rendered and methods of distribution
  - Description of the status of a new product or segment if a public announcement has been made or information publicly disseminated
  - Sources and availability of raw materials
  - Any significant patents, trademarks, licenses, franchises and concessions held
  - Seasonality of the business
  - Dependence upon a single customer or a few customers
  - Dollar amount of backlog orders believed to be firm
  - Exposure to renegotiation or redetermination or termination of significant contracts
  - Competitive conditions facing the entity



**Rule 3016. Filing of Plan and Disclosure Statement in a Chapter 9 Municipality or Chapter 11 Reorganization Case**

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(d) STANDARD FORM SMALL BUSINESS DISCLOSURE STATEMENT AND PLAN. In a case in which the debtor is a small business as defined in § 101(51D) of the Code, the plan and disclosure statement submitted in the case may be in the form prescribed by the appropriate Official Forms.

**COMMITTEE NOTE**

Subdivision (d) is added to the rule to implement § 433 of Public Law No. 109-8. That section directs the Judicial Conference of the United States to prescribe official form disclosure statements and plans of reorganization for small business debtors. The rule permits the plan proponent to use these forms, but the rule does not require that only these forms be used in cases of small business debtors. Section 1125(f) of the Code provides that the court may approve an Official Form of plan and disclosure statement, or it may approve plans and disclosure statements on other forms approved by the court. Subdivision (d) recognizes this option and, in conjunction with the amendment to Rule 9009, allows the plan proponent to submit plans and disclosure statements other than on the Official Forms.

**RULE 9009. Forms**

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Except as provided in Rule 3016(d), the Official Forms prescribed by the Judicial Conference of the United States shall be observed and used with alterations as may be appropriate. Forms may be combined, and their contents rearranged to permit economies in their use. The Director of the Administrative Office

6 of the United States Courts may issue additional forms for use  
7 under the Code. The forms shall be construed as consistent with  
8 these rules and the Code.

#### COMMITTEE NOTE

The rule is amended to provide that the Rules do not require a plan proponent to use the Official Form of plans of reorganization and disclosure statements in small business chapter 11 cases. The use of those forms is optional, and the proponent may submit a plan and disclosure statement in those cases that does not conform to the Official Forms. Nothing in this rule or in Rule 3016(d) should be construed to limit the court's authority to approve or reject any such plan or disclosure statement, but a plan or disclosure statement submitted on an Official Form may not be rejected on the basis of its form.

Conversation: Current Monthly Income forms

Subject: Current Monthly Income forms

As Pat Ketchum requested, Eric Frank, Mark Redmiles and I have the reviewed comments received to date on Official Forms B22A-C, for reporting current monthly income and related computations. We also discussed a set of preliminary recommendations that may be issued by the National Bankruptcy Conference, as well as ideas that we developed ourselves. Our conclusion--with two caveats that I'll mention later--is that the forms are working well and do not require any structural changes. At the same time, we are recommending a number of wording changes, either to track relevant statutory or regulatory language more closely, or simply to provide greater clarity in the instructions. All of these wording changes are highlighted in red in the attached copies of the forms.

The NBC recommendations raise two issues that would require structural changes to the Chapter 7 and 13 forms. We did not come to any conclusion as to whether these changes should be made, but if the Forms Subcommittee believes that it would be helpful to have draft revised forms consistent with the NBC recommendations, we would work to prepare them in advance of our March meeting.

The first of these two issues affects the Chapter 7 form. Our current form calls for a calculation to determine whether a debtor falls within the safe harbor under Section 707(b)(7), since that results in the debtor being immune from any assertion of the means test, eliminating the need to calculate a presumption of abuse. The statute provides for another safe harbor, in Section 707(b)(6), which prohibits parties other than the court, U.S. Trustee, or bankruptcy administrator from bringing any motion under Section 707(b)(1). The calculation of this safe harbor is different from that under Section 707(b)(7), because it does not call for the current monthly income of a non-filing spouse to be included. Current Form B22A does not compute the 707(b)(6) safe harbor. This computation would require adding another part to the form, similar to Parts II and III of the Chapter 13 form.

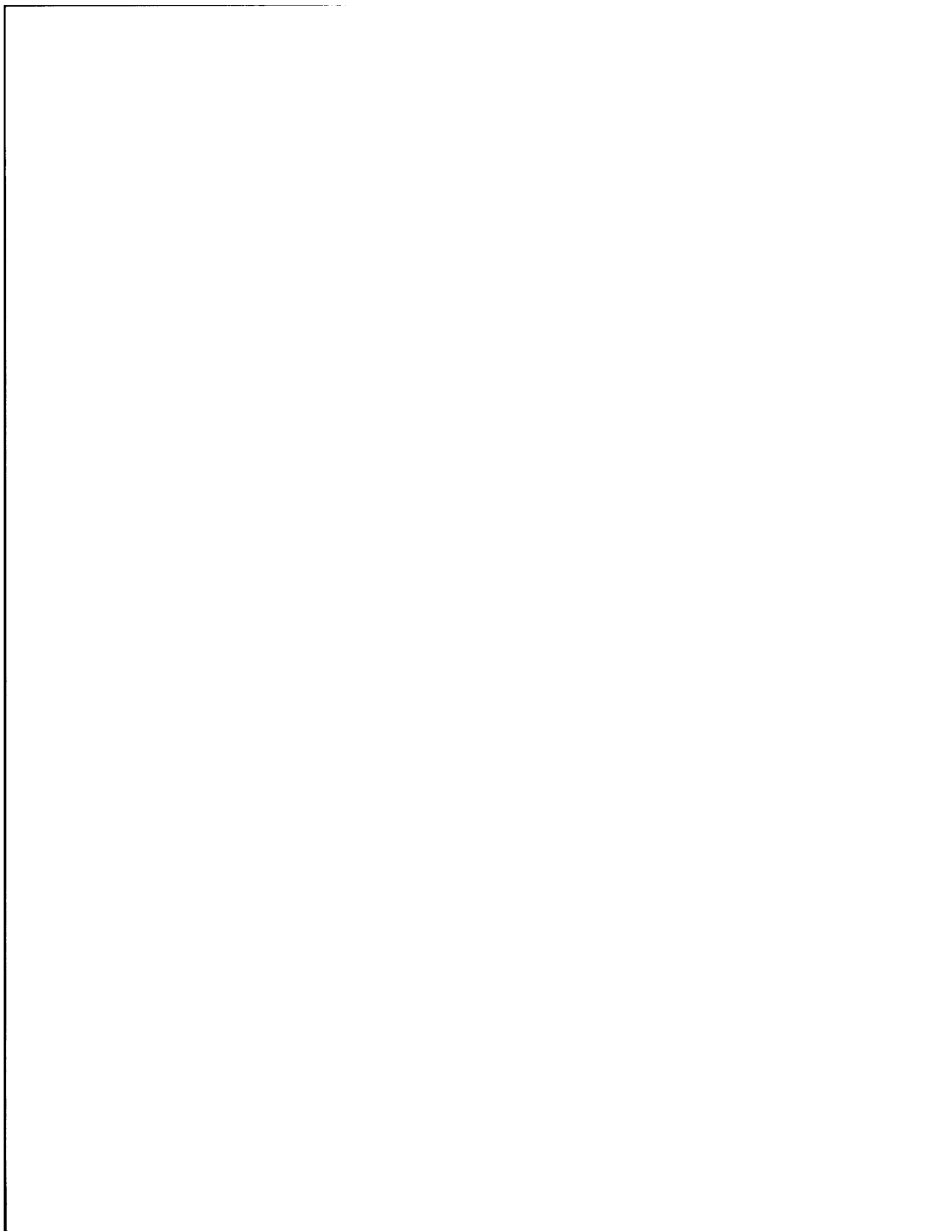
The second issue affects the Chapter 13 form. That form, as it now exists, calculates current monthly income for purposes of determining (1) the extent of the debtor's applicable commitment period (under 1325(b)(4)) and (2) the need to use the Chapter 7 means test in determining disposable income (under 1325(b)(3)). If the means test is required, the form then calculated disposable income, by applies means test deductions to current monthly income as earlier determined. The NBC suggests that current monthly income for this last purpose (calculating the amount of disposable income) could be reduced by Section 1325(b)(2) to a smaller level than current monthly income for the form's other purposes. Specifically, the suggestion is that only current monthly income actually ""received by the debtor"--as opposed to household expenses paid by some other person or entity--can be disposable income under 1325(b)(2). To accommodate this suggestion, the form would have to be substantially changed, to remove payments from other entities from the disposable income calculation.

Again, if the Forms Subcommittee would like us to prepare amended forms to deal with either of these two issues, please let us know. Otherwise, our suggestions are included in the attached versions of the forms.

--

Gene Wedoff

Eugene R. Wedoff  
United States Bankruptcy Court  
Northern District of Illinois



**Form B22A (Chapter 7) (2/06)**

In re \_\_\_\_\_  
Debtor(s)

Case Number: \_\_\_\_\_  
(If known)

According to the calculations required by this statement:  
 **The presumption arises.**  
 **The presumption does not arise.**  
 (Check the box as directed in Parts I, III, and VI of this statement.)

**CHAPTER 7 STATEMENT OF CURRENT MONTHLY INCOME  
AND MEANS TEST CALCULATION**

In addition to Schedule I and J, this statement must be completed by every individual Chapter 7 debtor, whether or not filing jointly, whose debts are primarily consumer debts. Joint debtors may complete one statement only.

**Part I. EXCLUSION FOR DISABLED VETERANS**

<b>1</b>	<p>If you are a disabled veteran described in the Veteran's Declaration in this Part I, (1) check the box at the beginning of the Veteran's Declaration, (2) check the box for "The presumption does not arise" at the top of this statement, and (3) complete the verification in Part VIII. Do not complete any of the remaining parts of this statement.</p> <p><input type="checkbox"/> <b>Veteran's Declaration.</b> By checking this box, I declare under penalty of perjury that I am a disabled veteran (as defined in 38 U.S.C. § 3741(1)) whose indebtedness occurred primarily during a period in which I was on active duty (as defined in 10 U.S.C. § 101(d)(1)) or while I was performing a homeland defense activity (as defined in 32 U.S.C. §901(1)).</p>
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**Part II. CALCULATION OF MONTHLY INCOME FOR § 707(b)(7) EXCLUSION**

<b>2</b>	<p><b>Marital/filing status.</b> Check the box that applies and complete the balance of this part of this statement as directed.</p> <p>a. <input type="checkbox"/> <b>Unmarried. Complete only Column A ("Debtor's Income") for Lines 3-11.</b></p> <p>b. <input type="checkbox"/> <b>Married, not filing jointly, with declaration of separate households.</b> By checking this box, debtor declares under penalty of perjury: "My spouse and I are legally separated under applicable non-bankruptcy law or my spouse and I are living apart other than for the purpose of evading the requirements of § 707(b)(2)(A) of the Bankruptcy Code." <b>Complete only Column A ("Debtor's Income") for Lines 3-11.</b></p> <p>c. <input type="checkbox"/> <b>Married, not filing jointly, without the declaration of separate households set out in Line 2.b above. Complete both Column A ("Debtor's Income") and Column B (Spouse's Income) for Lines 3-11.</b></p> <p>d. <input type="checkbox"/> <b>Married, filing jointly. Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 3-11.</b></p>											
	<p>All figures must reflect average monthly income received from all sources, derived during the six calendar months prior to filing the bankruptcy case, ending on the last day of the month before the filing. If the amount of monthly income varied during the six months, you must divide the six-month total by six, and enter the result on the appropriate line.</p>	<b>Column A Debtor's Income</b>	<b>Column B Spouse's Income</b>									
<b>3</b>	<b>Gross wages, salary, tips, bonuses, overtime, commissions.</b>	\$	\$									
<b>4</b>	<p><b>Income from the operation of a business, profession or farm.</b> Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 4. Do not enter a number less than zero. <b>Do not include any part of the business expenses entered Line b as a deduction in Part V.</b></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:5%; text-align:center;">a.</td> <td>Gross receipts</td> <td align="center">\$</td> </tr> <tr> <td style="text-align:center;">b.</td> <td>Ordinary and necessary business expenses</td> <td align="center">\$</td> </tr> <tr> <td style="text-align:center;">c.</td> <td>Business income</td> <td 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										
<b>5</b>	<p><b>Rent and other real property income.</b> Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 5. Do not enter a number less than zero. <b>Do not include any part of the operating expenses entered on Line b as a deduction in Part V.</b></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:5%; text-align:center;">a.</td> <td>Gross receipts</td> <td align="center">\$</td> </tr> <tr> <td style="text-align:center;">b.</td> <td>Ordinary and necessary operating expenses</td> <td align="center">\$</td> </tr> <tr> <td style="text-align:center;">c.</td> <td>Rent and other real property income</td> <td align="center">Subtract Line b from Line a</td> </tr> </table>	a.	Gross receipts	\$	b.	Ordinary and necessary operating expenses	\$	c.	Rent and other real property income	Subtract Line b from Line a		
a.	Gross receipts	\$										
b.	Ordinary and necessary operating expenses	\$										
c.	Rent and other real property income	Subtract Line b from Line a										
<b>6</b>	<b>Interest, dividends and royalties.</b>	\$	\$									
<b>7</b>	<b>Pension and retirement income.</b>	\$	\$									
<b>8</b>	<b>Any amounts paid by another person or entity, on a regular basis, for the household expenses of the debtor or the debtor's dependents, including child or spousal support.</b> Do not include amounts paid by the debtor's spouse if Column B is completed.	\$	\$									



9	<b>Unemployment compensation.</b> Enter the amount in the appropriate column(s) of Line 9. 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 \$ _____	\$ _____
10	<b>Income from all other sources.</b> If necessary, list additional sources on a separate page. <b>Do not include</b> 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. Specify source and amount.			
	a.		\$ _____	
	b.		\$ _____	
Total and enter on Line 10			\$ _____	\$ _____
11	<b>Subtotal of Current Monthly Income for § 707(b)(7).</b> Add Lines 3 thru 10 in Column A, and, if Column B is completed, add Lines 3 through 10 in Column B. Enter the total(s).		\$ _____	\$ _____
12	<b>Total Current Monthly Income for § 707(b)(7).</b> If Column B has been completed, add Line 11, Column A to Line 11, Column B, and enter the total. If Column B has not been completed, enter the amount from Line 11, Column A.		\$ _____	

**Part III. APPLICATION OF § 707(b)(7) EXCLUSION**

13	<b>Annualized Current Monthly Income for § 707(b)(7).</b> Multiply the amount from Line 12 by the number 12 and enter the result.	\$ _____
14	<b>Applicable median family income.</b> Enter the median family income for the applicable state and household size. (This information is available by family size at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.) a. Enter debtor's state of residence: _____ b. Enter debtor's household size: _____	\$ _____
15	<b>Application of Section 707(b)(7).</b> Check the applicable box and proceed as directed. <input type="checkbox"/> <b>The amount on Line 13 is less than or equal to the amount on Line 14.</b> Check the box for "The presumption does not arise" at the top of page 1 of this statement, and complete Part VIII; do not complete Parts IV, V, VI or VII. <input type="checkbox"/> <b>The amount on Line 13 is more than the amount on Line 14.</b> Complete the remaining parts of this statement.	

**Complete Parts IV, V, VI, and VII of this statement only if required. (See Line 15.)**

**Part IV. CALCULATION OF CURRENT MONTHLY INCOME FOR § 707(b)(2)**

16	<b>Enter the amount from Line 12.</b>	\$ _____
17	<b>Marital adjustment.</b> If you checked the box at Line 2.c, enter the amount of the income listed in Line 11, Column B that was NOT paid on a regular basis for the household expenses of the debtor or the debtor's dependents. If you did not check box at Line 2.c, enter zero.	\$ _____
18	<b>Current monthly income for § 707(b)(2).</b> Subtract Line 17 from Line 16 and enter the result.	\$ _____

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

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

19	<b>National Standards: food, clothing, household supplies, personal care, and miscellaneous.</b> Enter "Total" amount from IRS National Standards for Allowable Living Expenses for the applicable family size and income level. (This information is available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.)	\$ _____
20A	<b>Local Standards: housing and utilities; non-mortgage expenses.</b> Enter the amount of the IRS Housing and Utilities Standards; non-mortgage expenses for the applicable county and family size. (This information is available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.)	\$ _____

20B	<p><b>Local Standards: housing and utilities; mortgage/rent expense.</b> Enter, in Line a below, the amount of the IRS Housing and Utilities Standards; mortgage/rent expense for your county and family size (this information is available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> 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 42; subtract Line b from Line a and enter the result in Line 20B. <b>Do not enter an amount less than zero.</b></p> <table border="1" style="width:100%; border-collapse: collapse;"> <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:10%;">\$</td> <td style="width:25%;"></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 42</td> <td>\$</td> <td></td> </tr> <tr> <td style="text-align:center;">c.</td> <td>Net mortgage/rental expense</td> <td>Subtract Line b from Line a.</td> <td></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 42	\$		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 42	\$												
c.	Net mortgage/rental expense	Subtract Line b from Line a.												
21	<p><b>Local Standards: housing and utilities; adjustment.</b> if you contend that the process set out in Lines 20A and 20B does not accurately compute the allowance to which you are entitled under the IRS Housing and Utilities Standards, enter any additional amount to which you contend you are entitled, and state the basis for your contention in the space below:</p> <p>_____</p> <p>_____</p> <p>_____</p>	\$												
22	<p><b>Local Standards: transportation; vehicle operation/public transportation expense.</b> 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 8.</p> <p><input type="checkbox"/> 0   <input type="checkbox"/> 1   <input type="checkbox"/> 2 or more.</p> <p>Enter the amount from IRS Transportation Standards, Operating Costs &amp; Public Transportation Costs for the applicable number of vehicles in the applicable Metropolitan Statistical Area or Census Region. (This information is available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.)</p>	\$												
23	<p><b>Local Standards: transportation ownership/lease expense; Vehicle 1.</b> 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.)</p> <p><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 <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> 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 42; subtract Line b from Line a and enter the result in Line 23. <b>Do not enter an amount less than zero.</b></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:5%; text-align:center;">a.</td> <td style="width:60%;">IRS Transportation Standards, Ownership Costs, First Car</td> <td style="width:10%;">\$</td> <td style="width:25%;"></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 42</td> <td>\$</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> <td></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 42	\$		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 42	\$												
c.	Net ownership/lease expense for Vehicle 1	Subtract Line b from Line a.												
24	<p><b>Local Standards: transportation ownership/lease expense; Vehicle 2.</b> Complete this Line only if you checked the "2 or more" Box in Line 23.</p> <p>Enter, in Line a below, the amount of the IRS Transportation Standards, Ownership Costs, Second Car (available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> 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 42; subtract Line b from Line a and enter the result in Line 24. <b>Do not enter an amount less than zero.</b></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:5%; text-align:center;">a.</td> <td style="width:60%;">IRS Transportation Standards, Ownership Costs, Second Car</td> <td style="width:10%;">\$</td> <td style="width:25%;"></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 42</td> <td>\$</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> <td></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 42	\$		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 42	\$												
c.	Net ownership/lease expense for Vehicle 2	Subtract Line b from Line a.												
25	<p><b>Other Necessary Expenses: taxes.</b> 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. <b>Do not include real estate or sales taxes.</b></p>													
26	<p><b>Other Necessary Expenses: mandatory payroll deductions.</b> Enter the total average monthly payroll deductions that are required for your employment, such as mandatory retirement contributions, union dues, and uniform costs. <b>Do not include discretionary amounts, such as non-mandatory 401(k) contributions.</b></p>	\$												
27	<p><b>Other Necessary Expenses: life insurance.</b> Enter average monthly premiums that you actually pay for term life insurance for yourself. <b>Do not include premiums for insurance on your depend-</b></p>													

	<b>ents, for whole life or for any other form of insurance.</b>	\$
28	<b>Other Necessary Expenses: court-ordered payments.</b> Enter the total monthly amount that you are required to pay pursuant to court order, such as spousal or child support payments. <b>Do not include payments on past due support obligations included in Line 44.</b>	\$
29	<b>Other Necessary Expenses: education for employment or for a physically or mentally challenged child.</b> 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.	\$
30	<b>Other Necessary Expenses: childcare.</b> Enter the average monthly amount that you actually expend on childcare (baby-sitting, day care, nursery and preschool). <b>Do not include other educational payments.</b>	\$
31	<b>Other Necessary Expenses: health care.</b> 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. <b>Do not include payments for health insurance or health savings accounts listed in Line 34.</b>	\$
32	<b>Other Necessary Expenses: telecommunication services.</b> Enter the average monthly amount that you actually pay for telecommunication services other than your basic home telephone service—such as cell phones, pagers, call waiting, caller id, special long distance, or internet service—to the extent necessary for your health and welfare or that of your dependents. <b>Do not include any amount previously deducted.</b>	\$
33	<b>Total Expenses Allowed under IRS Standards.</b> Enter the total of Lines 19 through 32.	\$

**Subpart B: Additional Expense Deductions under § 707(b)**  
**Note: Do not include any expenses that you have listed in Lines 19-32**

34	<b>Health Insurance, Disability Insurance, and Health Savings Account Expenses.</b> List and total the average monthly amounts that you actually pay for yourself, your spouse, or your dependents in the following categories.		\$	
	a.	Health Insurance		\$
	b.	Disability Insurance		\$
	c.	Health Savings Account		\$
				Total: Add Lines a, b and c
35	<b>Continued contributions to the care of household or family members.</b> 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.		\$	
36	<b>Protection against family violence.</b> 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. The nature of these expenses will be kept confidential by the court.		\$	
37	<b>Home energy costs.</b> Enter the average monthly amount, in excess of the allowance specified by IRS Local Standards for Housing and Utilities, that you actually expend for home energy costs. <b>You must provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary.</b>		\$	
38	<b>Education expenses for dependent children less than 18.</b> 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. <b>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.</b>		\$	
39	<b>Additional food and clothing expense.</b> 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 <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.) <b>You must provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary.</b>		\$	
40	<b>Continued charitable contributions.</b> 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).		\$	
41	<b>Total Additional Expense Deductions under § 707(b).</b> Enter the total of Lines 34 through 40		\$	

<b>Subpart C: Deductions for Debt Payment</b>																								
<b>42</b>	<p><b>Future payments on secured claims.</b> For each of your debts that is secured by an interest in property that you own, list the name of the 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. Mortgage debts should include payments of taxes and insurance required by the mortgage. 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: 25%;">Name of Creditor</th> <th style="width: 40%;">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 style="text-align: right;">\$</td> </tr> <tr> <td>b.</td> <td></td> <td></td> <td style="text-align: right;">\$</td> </tr> <tr> <td>c.</td> <td></td> <td></td> <td style="text-align: right;">\$</td> </tr> <tr> <td colspan="3"></td> <td style="text-align: right;">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																					
a.			\$																					
b.			\$																					
c.			\$																					
			Total: Add Lines a, b and c.																					
<b>43</b>	<p><b>Other payments on secured claims.</b> If any of debts listed in Line 42 are secured by your primary residence, a motor vehicle, or other property necessary for your support or the support of your dependents, you may include in your deduction 1/60th of any amount (the "cure amount") that you must pay the creditor in addition to the payments listed in Line 42, in order to maintain possession of the property. The cure amount would include any sums in default that must be paid in order to avoid repossession or foreclosure. List and total any such amounts in the following chart. 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: 25%;">Name of Creditor</th> <th style="width: 40%;">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 style="text-align: right;">\$</td> </tr> <tr> <td>b.</td> <td></td> <td></td> <td style="text-align: right;">\$</td> </tr> <tr> <td>c.</td> <td></td> <td></td> <td style="text-align: right;">\$</td> </tr> <tr> <td colspan="3"></td> <td style="text-align: right;">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																					
<b>44</b>	<p><b>Payments on priority claims.</b> Enter the total amount of all priority claims (including priority child support and alimony claims), divided by 60.</p>			\$																				
<b>45</b>	<p><b>Chapter 13 administrative expenses.</b> If you are eligible to file a case under Chapter 13, complete the following chart, 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%; text-align: center;">a.</td> <td style="width: 55%;">Projected average monthly Chapter 13 plan payment.</td> <td style="width: 40%; 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 <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> 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> </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 <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> 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 <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.)	x																						
c.	Average monthly administrative expense of Chapter 13 case	Total: Multiply Lines a and b																						
<b>46</b>	<p><b>Total Deductions for Debt Payment.</b> Enter the total of Lines 42 through 45.</p>			\$																				
<b>Subpart D: Total Deductions Allowed under § 707(b)(2)</b>																								
<b>47</b>	<p><b>Total of all deductions allowed under § 707(b)(2).</b> Enter the total of Lines 33, 41, and 46.</p>			\$																				

<b>Part VI. DETERMINATION OF § 707(b)(2) PRESUMPTION</b>		
<b>48</b>	Enter the amount from Line 18 (Current monthly income for § 707(b)(2))	\$
<b>49</b>	Enter the amount from Line 47 (Total of all deductions allowed under § 707(b)(2))	\$
<b>50</b>	Monthly disposable income under § 707(b)(2). Subtract Line 49 from Line 48 and enter the result	\$
<b>51</b>	60-month disposable income under § 707(b)(2). Multiply the amount in Line 50 by the number 60 and enter the result.	\$

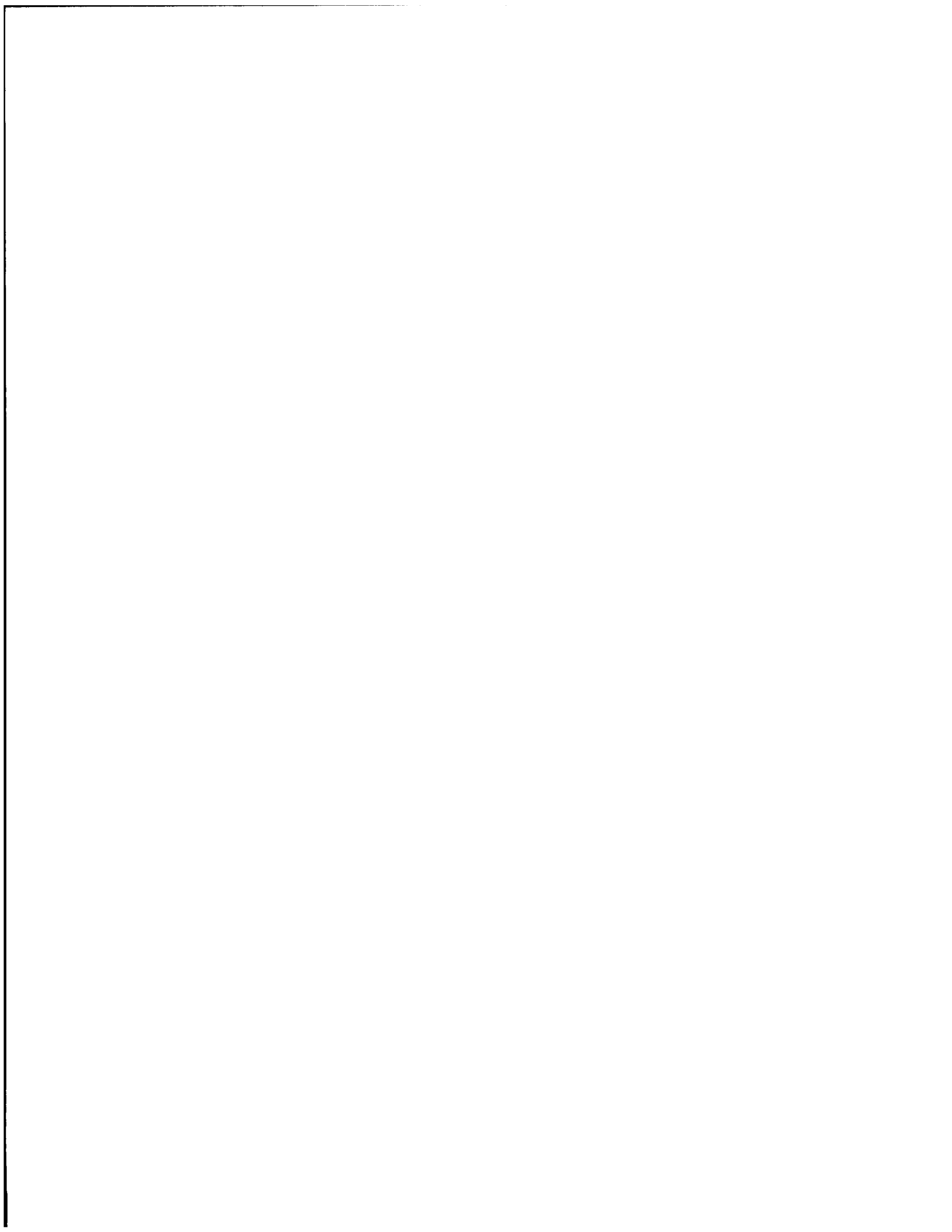
52	<p><b>Initial presumption determination.</b> Check the applicable box and proceed as directed.</p> <p><input type="checkbox"/> <b>The amount on Line 51 is less than \$6,000</b> Check the box for "The presumption does not arise" at the top of page 1 of this statement, and complete the verification in Part VIII. Do not complete the remainder of Part VI.</p> <p><input type="checkbox"/> <b>The amount set forth on Line 51 is more than \$10,000.</b> Check the box for "The presumption arises" at the top of page 1 of this statement, and complete the verification in Part VIII. You may also complete Part VII. Do not complete the remainder of Part VI.</p> <p><input type="checkbox"/> <b>The amount on Line 51 is at least \$6,000, but not more than \$10,000.</b> Complete the remainder of Part VI (Lines 53 through 55).</p>
53	<p><b>Enter the amount of your total non-priority unsecured debt</b> <span style="float: right;">\$</span></p>
54	<p><b>Threshold debt payment amount.</b> Multiply the amount in Line 53 by the number 0.25 and enter the result. <span style="float: right;">\$</span></p>
55	<p><b>Secondary presumption determination.</b> Check the applicable box and proceed as directed.</p> <p><input type="checkbox"/> <b>The amount on Line 51 is less than the amount on Line 54.</b> Check the box for "The presumption does not arise" at the top of page 1 of this statement, and complete the verification in Part VIII.</p> <p><input type="checkbox"/> <b>The amount on Line 51 is equal to or greater than the amount on Line 54.</b> Check the box for "The presumption arises" at the top of page 1 of this statement, and complete the verification in Part VIII. You may also complete Part VII.</p>

**Part VII: ADDITIONAL EXPENSE CLAIMS**

56	<p><b>Other Expenses.</b> 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 border="1" style="width:100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr> <th style="width:5%;"></th> <th style="width:70%;">Expense Description</th> <th style="width:25%;">Monthly Amount</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">a.</td> <td></td> <td style="text-align: center;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td></td> <td style="text-align: center;">\$</td> </tr> <tr> <td style="text-align: center;">c.</td> <td></td> <td style="text-align: center;">\$</td> </tr> <tr> <td colspan="2" style="text-align: right;">Total: Add Lines a, b and c</td> <td style="text-align: center;">\$</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 VIII: 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>	
	Date: _____	Signature: _____ <span style="display: block; text-align: center; font-size: small;">(Debtor)</span>
	Date: _____	Signature: _____ <span style="display: block; text-align: center; font-size: small;">(Joint Debtor, if any)</span>



**Form B22B (Chapter 11) (2/06)**

In re \_\_\_\_\_  
Debtor(s)

Case Number: \_\_\_\_\_  
(If known)

**CHAPTER 11 STATEMENT OF CURRENT MONTHLY INCOME**

In addition to Schedules I and J, this statement must be completed by every individual Chapter 11 debtor, whether or not filing jointly. Joint debtors may complete one statement only.

<b>Part I. CALCULATION OF CURRENT MONTHLY INCOME</b>														
<b>1</b>	<p><b>Marital/filing status.</b> Check the box that applies and complete the balance of this part of this statement as directed.</p> <p>a. <input type="checkbox"/> Unmarried. <b>Complete only Column A ("Debtor's Income") for Lines 2-10.</b></p> <p>b. <input type="checkbox"/> Married, not filing jointly. <b>Complete only Column A ("Debtor's Income") for Lines 2-10.</b></p> <p>c. <input type="checkbox"/> Married, filing jointly. <b>Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 2-10.</b></p>			<b>Column A</b>	<b>Column B</b>									
	<p>All figures must reflect average monthly income received from all sources, derived during the six calendar months prior to filing the bankruptcy case, ending on the last day of the month before the filing. If the amount of monthly income varied during the six months, you must divide the six-month total by six, and enter the result on the appropriate line.</p>			<b>Debtor's Income</b>	<b>Spouse's Income</b>									
<b>2</b>	<b>Gross wages, salary, tips, bonuses, overtime, commissions.</b>			\$	\$									
<b>3</b>	<p><b>Net income from the operation of a business, profession, or farm.</b> Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 3. Do not enter a number 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%;">Gross receipts</td> <td style="width: 20%;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Ordinary and necessary business expenses</td> <td>\$</td> </tr> <tr> <td style="text-align: center;">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												
<b>4</b>	<p><b>Net rental and other real property income.</b> Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 4. Do not enter a number 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%;">Gross receipts</td> <td style="width: 20%;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Ordinary and necessary operating expenses</td> <td>\$</td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Rent and other real property income</td> <td>Subtract Line b from Line a</td> </tr> </table>			a.	Gross receipts	\$	b.	Ordinary and necessary operating expenses	\$	c.	Rent and other real property income	Subtract Line b from Line a	\$	\$
a.	Gross receipts	\$												
b.	Ordinary and necessary operating expenses	\$												
c.	Rent and other real property income	Subtract Line b from Line a												
<b>5</b>	<b>Interest, dividends, and royalties.</b>			\$	\$									
<b>6</b>	<b>Pension and retirement income.</b>			\$	\$									
<b>7</b>	<b>Any amounts paid by another person or entity, on a regular basis, for the household expenses of the debtor or the debtor's dependents, including child or spousal support.</b> Do not include contributions from the debtor's spouse if Column B is completed.			\$	\$									
<b>8</b>	<p><b>Unemployment compensation.</b> 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: 30%;">Debtor \$ _____</td> <td style="width: 30%;">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 \$ _____												
<b>9</b>	<p><b>Income from all other sources.</b> If necessary, list additional sources on a separate page. <b>Do not include</b> 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. Specify source and amount.</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center;">a.</td> <td style="width: 75%;"></td> <td style="width: 20%;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td></td> <td>\$</td> </tr> </table> <p>Total and enter on Line 9</p>			a.		\$	b.		\$	\$	\$			
a.		\$												
b.		\$												
<b>10</b>	<b>Subtotal of current monthly income.</b> 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).			\$	\$									
<b>11</b>	<b>Total current monthly income.</b> 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: 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.)*

12

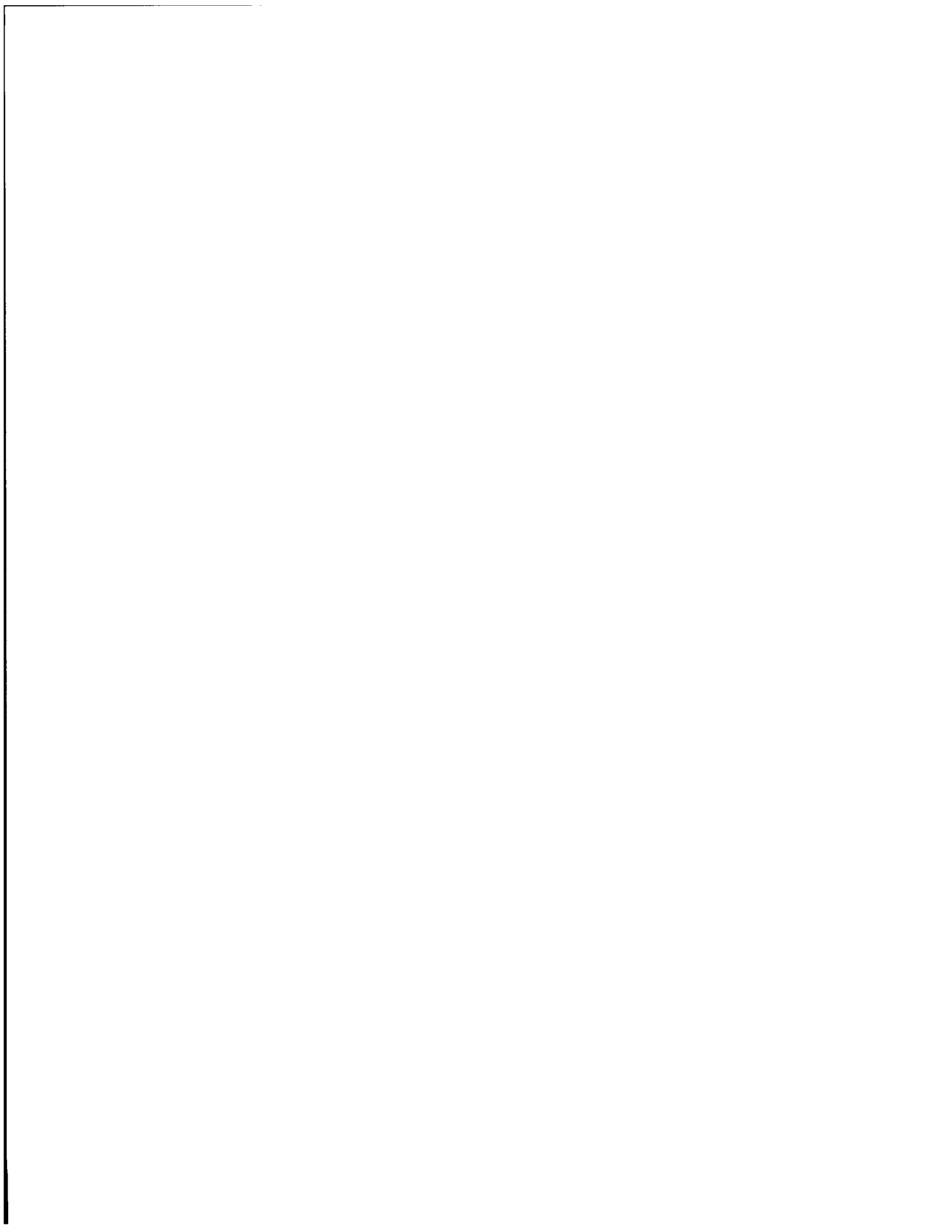
Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
(Debtor)

Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
(Joint Debtor, if any)





In re \_\_\_\_\_  
Debtor(s)

Case Number: \_\_\_\_\_  
(If known)

According to the calculations required by this statement:

The applicable commitment period is 3 years.

The applicable commitment period is 5 years.

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

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

(Check the boxes as directed in Lines 17 and 23 of this statement.)

## CHAPTER 13 STATEMENT OF CURRENT MONTHLY INCOME AND CALCULATION OF COMMITMENT PERIOD AND DISPOSABLE INCOME

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.

<b>Part I. REPORT OF INCOME</b>														
<b>1</b>	<b>Marital/filing status.</b> Check the box that applies and complete the balance of this part of this statement as directed. a. <input type="checkbox"/> Unmarried. <b>Complete only Column A ("Debtor's Income") for Lines 2-10.</b> b. <input type="checkbox"/> Married. <b>Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 2-10.</b>  All figures must reflect average monthly income received from all sources, derived during the six calendar months prior to filing the bankruptcy case, ending on the last day of the month before the filing. If the amount of monthly income varied during the six months, you must divide the six-month total by six, and enter the result on the appropriate line.			<b>Column A</b>	<b>Column B</b>									
			<b>Debtor's</b>	<b>Spouse's</b>										
			<b>Income</b>	<b>Income</b>										
<b>2</b>	<b>Gross wages, salary, tips, bonuses, overtime, commissions.</b>			\$	\$									
<b>3</b>	<b>Income from the operation of a business, profession, or farm.</b> Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 3. Do not enter a number less than zero. <b>Do not include any part of the business expenses entered on Line b as a deduction in Part IV.</b> <table border="1" style="width: 100%; margin-top: 5px;"> <tr> <td style="width: 5%;">a.</td> <td style="width: 75%;">Gross receipts</td> <td style="width: 20%;">\$</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												
<b>4</b>	<b>Rent and other real property income.</b> Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 4. Do not enter a number less than zero. <b>Do not include any part of the operating expenses entered on Line b as a deduction in Part IV.</b> <table border="1" style="width: 100%; margin-top: 5px;"> <tr> <td style="width: 5%;">a.</td> <td style="width: 75%;">Gross receipts</td> <td style="width: 20%;">\$</td> </tr> <tr> <td>b.</td> <td>Ordinary and necessary operating expenses</td> <td>\$</td> </tr> <tr> <td>c.</td> <td>Rent and other real property income</td> <td>Subtract Line b from Line a</td> </tr> </table>			a.	Gross receipts	\$	b.	Ordinary and necessary operating expenses	\$	c.	Rent and other real property income	Subtract Line b from Line a	\$	\$
a.	Gross receipts	\$												
b.	Ordinary and necessary operating expenses	\$												
c.	Rent and other real property income	Subtract Line b from Line a												
<b>5</b>	<b>Interest, dividends, and royalties.</b>			\$	\$									
<b>6</b>	<b>Pension and retirement income.</b>			\$	\$									
<b>7</b>	<b>Any amounts paid by another person or entity, on a regular basis, for the household expenses of the debtor or the debtor's dependents, including child or spousal support.</b> Do not include amounts paid by the debtor's spouse.			\$	\$									
<b>8</b>	<b>Unemployment compensation.</b> 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%; margin-top: 5px;"> <tr> <td style="width: 40%;">Unemployment compensation claimed to be a benefit under the Social Security Act</td> <td style="width: 30%;">Debtor \$ _____</td> <td style="width: 30%;">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 \$ _____												
<b>9</b>	<b>Income from all other sources.</b> Specify source and amount. If necessary, list additional sources on a separate page. Total and enter on Line 9. <b>Do not include</b> 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%; margin-top: 5px;"> <tr> <td style="width: 5%;">a.</td> <td style="width: 75%;"></td> <td style="width: 20%;">\$</td> </tr> <tr> <td>b.</td> <td></td> <td>\$</td> </tr> </table>		a.		\$	b.		\$	\$	\$				
a.		\$												
b.		\$												
<b>10</b>	<b>Subtotal.</b> 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).			\$	\$									
<b>11</b>	<b>Total.</b> 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.			\$	\$									

<b>Part II. CALCULATION OF § 1325(b)(4) COMMITMENT PERIOD</b>		
12	<b>Enter the amount from Line 11.</b>	
13	<b>Marital adjustment.</b> 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 paid on a regular basis for the household expenses of you or your dependents. Otherwise, enter zero.	
14	<b>Subtract Line 13 from Line 12 and enter the result.</b>	
15	<b>Annualized current monthly income for § 1325(b)(4).</b> Multiply the amount from Line 14 by the number 12 and enter the result.	\$
16	<b>Applicable median family income.</b> Enter the median family income for applicable state and household size. (This information is available by family size at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.) a. Enter debtor's state of residence: _____ b. Enter debtor's household size: _____	\$
17	<b>Application of § 1325(b)(4).</b> Check the applicable box and proceed as directed. <input type="checkbox"/> <b>The amount on Line 15 is less than the amount on Line 16.</b> Check the box for "The applicable commitment period is 3 years" at the top of page 1 of this statement and continue with Part III of this statement. <input type="checkbox"/> <b>The amount on Line 15 is not less than the amount on Line 16.</b> Check the box for "The applicable commitment period is 5 years" at the top of page 1 of this statement and continue with Part III of this statement.	

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

<b>Part IV. CALCULATION OF DEDUCTIONS ALLOWED UNDER § 707(b)(2)</b>		
<b>Subpart A: Deductions under Standards of the Internal Revenue Service (IRS)</b>		
24	<b>National Standards: food, clothing, household supplies, personal care, and miscellaneous.</b> 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 <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.)	\$
25A	<b>Local Standards: housing and utilities; non-mortgage expenses.</b> Enter the amount of the IRS Housing and Utilities Standards; non-mortgage expenses for the applicable county and family size. (This information is available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.)	\$

25B	<p><b>Local Standards: housing and utilities; mortgage/rent expense.</b> Enter, in Line a below, the amount of the IRS Housing and Utilities Standards; mortgage/rent expense for your county and family size (this information is available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> 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 25B. <b>Do not enter an amount less than zero.</b></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:5%; text-align:center;">a.</td> <td style="width:60%;">IRS Housing and Utilities Standards; mortgage/rent Expense</td> <td style="width:15%;">\$</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 47</td> <td>\$</td> </tr> <tr> <td style="text-align:center;">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/rent 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/rent 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.									
26	<p><b>Local Standards: housing and utilities; adjustment.</b> if you contend that the process set out in Lines 25A and 25B does not accurately compute the allowance to which you are entitled under the IRS Housing and Utilities Standards, enter any additional amount to which you contend you are entitled, and state the basis for your contention in the space below:</p> <p>_____</p> <p>_____</p> <p>_____</p>	\$									
27	<p><b>Local Standards: transportation; vehicle operation/public transportation expense.</b> 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 &amp; Public Transportation Costs for the applicable number of vehicles in the applicable Metropolitan Statistical Area or Census Region. (This information is available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.)</p>	\$									
28	<p><b>Local Standards: transportation ownership/lease expense; Vehicle 1.</b> 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 <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> 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 28. <b>Do not enter an amount less than zero.</b></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:5%; text-align:center;">a.</td> <td style="width:60%;">IRS Transportation Standards, Ownership Costs, First Car</td> <td style="width:15%;">\$</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 47</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 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><b>Local Standards: transportation ownership/lease expense; Vehicle 2.</b> 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 <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> 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. <b>Do not enter an amount less than zero.</b></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:5%; text-align:center;">a.</td> <td style="width:60%;">IRS Transportation Standards, Ownership Costs, Second Car</td> <td style="width:15%;">\$</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 47</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 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><b>Other Necessary Expenses: taxes.</b> 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. <b>Do not include real estate or sales taxes.</b></p>	\$									
31	<p><b>Other Necessary Expenses: mandatory payroll deductions.</b> Enter the total average monthly payroll deductions that are required for your employment, such as mandatory retirement contributions, union dues, and uniform costs. <b>Do not include discretionary amounts, such as non-mandatory 401(k) contributions.</b></p>	\$									

32	<b>Other Necessary Expenses: life insurance.</b> Enter average monthly premiums that you actually pay for term life insurance for yourself. <b>Do not include premiums for insurance on your dependents, for whole life or for any other form of insurance.</b>	\$
33	<b>Other Necessary Expenses: court-ordered payments.</b> Enter the total monthly amount that you are required to pay pursuant to court order, such as spousal or child support payments. <b>Do not include payments on past due support obligations included in Line 49.</b>	\$
34	<b>Other Necessary Expenses: education for employment or for a physically or mentally challenged child.</b> 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.	
35	<b>Other Necessary Expenses: childcare.</b> Enter the average monthly amount that you actually expend on childcare (baby-sitting, day care, nursery and preschool). <b>Do not include other educational payments.</b>	\$
36	<b>Other Necessary Expenses: health care.</b> 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. <b>Do not include payments for health insurance or health savings accounts listed in Line 39.</b>	\$
37	<b>Other Necessary Expenses: telecommunication services.</b> Enter the average monthly amount that you actually pay for telecommunication services other than your basic home telephone service—such as cell phones, pagers, call waiting, caller id, special long distance, or internet service—to the extent necessary for your health and welfare or that of your dependents. <b>Do not include any amount previously deducted.</b>	\$
38	<b>Total Expenses Allowed under IRS Standards.</b> 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	<p><b>Health Insurance, Disability Insurance, and Health Savings Account Expenses.</b> List and total the average monthly amounts that you actually pay for yourself, your spouse, or your dependents in the following categories.</p> <table border="1" style="width: 100%;"> <tr> <td style="text-align: center;">a.</td> <td>Health Insurance</td> <td style="text-align: center;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Disability Insurance</td> <td style="text-align: center;">\$</td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Health Savings Account</td> <td style="text-align: center;">\$</td> </tr> <tr> <td colspan="2"></td> <td style="text-align: center;">Total: Add Lines a, b, and c</td> </tr> </table>	a.	Health Insurance	\$	b.	Disability Insurance	\$	c.	Health Savings Account	\$			Total: Add Lines a, b, and c	\$
a.	Health Insurance	\$												
b.	Disability Insurance	\$												
c.	Health Savings Account	\$												
		Total: Add Lines a, b, and c												
40	<b>Continued contributions to the care of household or family members.</b> 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. <b>Do not include payments listed in Line 34.</b>	\$												
41	<b>Protection against family violence.</b> 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. The nature of these expenses will be kept confidential by the court.	\$												
42	<b>Home energy costs.</b> Enter the average monthly amount, in excess of the allowance specified by IRS Local Standards for Housing and Utilities, that you actually expend for home energy costs. <b>You must provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary.</b>	\$												
43	<b>Education expenses for dependent children under 18.</b> 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. <b>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.</b>	\$												
44	<b>Additional food and clothing expense.</b> 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 <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.) <b>You must provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary.</b>	\$												
45	<b>Continued charitable contributions.</b> 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	<b>Total Additional Expense Deductions under § 707(b).</b> Enter the total of Lines 39 through 45.	\$												

**Subpart C: Deductions for Debt Payment**

<b>47</b>	<p><b>Future payments on secured claims.</b> For each of your debts that is secured by an interest in property that you own, list the name of the 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. Mortgage debts should include payments of taxes and insurance required by the mortgage. If necessary, list additional entries on a separate page.</p>			
	Name of Creditor	Property Securing the Debt	60-month Average Payment	
	a.		\$	
	b.		\$	
	c.		\$	
			Total: Add Lines a, b, and c	\$

<b>48</b>	<p><b>Other payments on secured claims.</b> If any of debts listed in Line 47 are secured by your primary residence, a motor vehicle, or other property necessary for your support or the support of your dependents, you may include in your deduction 1/60th of any amount (the "cure amount") that you must pay the creditor in addition to the payments listed in Line 47, in order to maintain possession of the property. The cure amount would include any sums in default that must be paid in order to avoid repossession or foreclosure. List and total any such amounts in the following chart. If necessary, list additional entries on a separate page.</p>			
	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	\$

<b>49</b>	<p><b>Payments on priority claims.</b> Enter the total amount of all priority claims (including priority child support and alimony claims), divided by 60.</p>	\$
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<b>50</b>	<p><b>Chapter 13 administrative expenses.</b> Multiply the amount in Line a by the amount in Line b, and enter the resulting administrative expense.</p>			
	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 <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.)	x	
	c.	Average monthly administrative expense of Chapter 13 case	Total: Multiply Lines a and b	\$

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

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

<b>53</b>	<p><b>Total current monthly income.</b> Enter the amount from Line 20.</p>	\$
<b>54</b>	<p><b>Support income.</b> 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.</p>	\$
<b>55</b>	<p><b>Qualified retirement deductions.</b> 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).</p>	\$
<b>56</b>	<p><b>Total of all deductions allowed under § 707(b)(2).</b> Enter the amount from Line 52.</p>	\$
<b>57</b>	<p><b>Total adjustments to determine disposable income.</b> Add the amounts on Lines 54, 55, and 56 and enter the result.</p>	\$

58	<b>Monthly Disposable Income Under § 1325(b)(2).</b> Subtract Line 57 from Line 53 and enter the result.	\$ <span style="border: 1px solid black; display: inline-block; width: 60px; height: 20px;"></span>
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**Part VI: ADDITIONAL EXPENSE CLAIMS**

59	<b>Other Expenses.</b> 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. <i>(If this a joint case, both debtors must sign.)</i>	
	Date: _____	Signature: _____ (Debtor)
	Date: _____	Signature: _____ (Joint Debtor, if any)

Dear Tom and Jeff,

In preparation for our March meeting, the Consumer Subcommittee was asked to consider the need for further amendment of Interim Rule 4008, dealing with reaffirmations. In that connection, the subcommittee suggests a non-substantive amendment to the rule, as discussed below.

### Background

(a) BACCPA. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 made very substantial changes to reaffirmation procedure, codified in § 524 of the Bankruptcy Code. As affects procedure in bankruptcy court, the major change introduced by BAPCPA was a provision for judicial consideration of a statement required to be submitted by a reaffirming debtor under § 524(k)(6)(A). The required statement compares the monthly amount that the debtor has agreed to pay under a filed reaffirmation agreement with the debtor's monthly disposable income (total income less actual expenses); the statement generates a presumption of undue hardship if the monthly reaffirmation payment exceeds monthly disposable income. The procedure for judicial review is defined by § 524(m), which provides:

- (1) that such a § 524(k)(6)(A) presumption "shall be reviewed by court";
- (2) that the presumption "may be rebutted in writing by the debtor if the [required] statement includes an explanation that identifies additional sources of funds to make the [reaffirmation] payments";
- (3) that "(i)f the presumption is not rebutted to the satisfaction of the court, the court may disapprove such agreement";
- (4) that the agreement may not be disapproved without a hearing on notice to the debtor and creditor;
- (5) that the hearing must be concluded before the debtor's discharge is entered; and
- (6) that none of these presumption procedures apply to debts reaffirmed with credit unions.

(b) Initial Committee Response. In response to the new procedure, the Bankruptcy Rules Committee proposed two modified interim rules. First, in Rule 4004, a new subparagraph (c)(1)(J) was added, providing that if a presumption of undue hardship has arisen under § 524(m), entry of the debtor's discharge should be delayed, thus allowing any hearing on the presumption to be concluded before the entry, as required by § 524(m). Second, in Rule 4008, a provision was added requiring the debtor to explain any discrepancy between the income and expenses shown on Schedules I and J and those shown on the § 524(k)(6)(A) statement. No change was made in the original language of Rule 4008, which deals with the hearing that continues to be required under a pre-BAPCPA provision (§ 524(d)) to approve the reaffirmation agreements of unrepresented debtors. No rule was adopted governing the procedure for a hearing



under § 524(m) because the statute itself defines the relevant procedures.

#### Potential problem

During our meeting in Santa Fe, Dennis Montali suggested that the revised Rule 4008 might be confusing, in that it dealt with two different subjects, without differentiating headings, in the same paragraph. For example, a reader might conclude that the statement required under § 524(k)(6)(A) had something to do with the § 524(d) hearing required for unrepresented debtors.

#### Suggested solution

Dennis and I believe, and the subcommittee concurs, that the potential for confusion can be remedied by clearly distinguishing between the two separate topics now covered by Rule 4008. To that end, we suggest:

(a) adding to the current heading of the rule (“Discharge and Reaffirmation Hearing”) the phrase “Statement in Support of Reaffirmation Agreement,” introduced by a semicolon; and

(b) using subheadings (“REAFFIRMATION HEARING” and “STATEMENT IN SUPPORT OF REAFFIRMATION AGREEMENT”) to distinguish the two topics dealt with by the rule.

In addition, we suggest giving the full reference to § 524(k)(6)(A), rather than simply § 524(k), because that subsection is very long (extending over five pages of the Norton Code edition), and so readers may have difficulty in determining where the requirement for the statement is to be found. And finally, we suggest a minor stylistic change, from “any difference” to “the difference” in the last phrase of rule, since the phrase only applies where “there is a difference.”

A copy of the current interim rule, marked to show the suggested changes, is attached.

Please let me know if anything more on this issue would be helpful.

--

Gene Wedoff

Eugene R. Wedoff  
United States Bankruptcy Court  
Northern District of Illinois

**Rule 4008. Discharge and Reaffirmation Hearing:  
Statement in Support of Reaffirmation Agreement**

**(a) REAFFIRMATION HEARING.** Not more than 30 days following the entry of an order granting or denying a discharge, or confirming a plan in a chapter 11 reorganization case concerning an individual debtor and on not less than 10 days notice to the debtor and the trustee, the court may hold a hearing as provided in § 524(d) of the Code. A motion by the debtor for approval of a reaffirmation agreement shall be filed before or at the hearing.

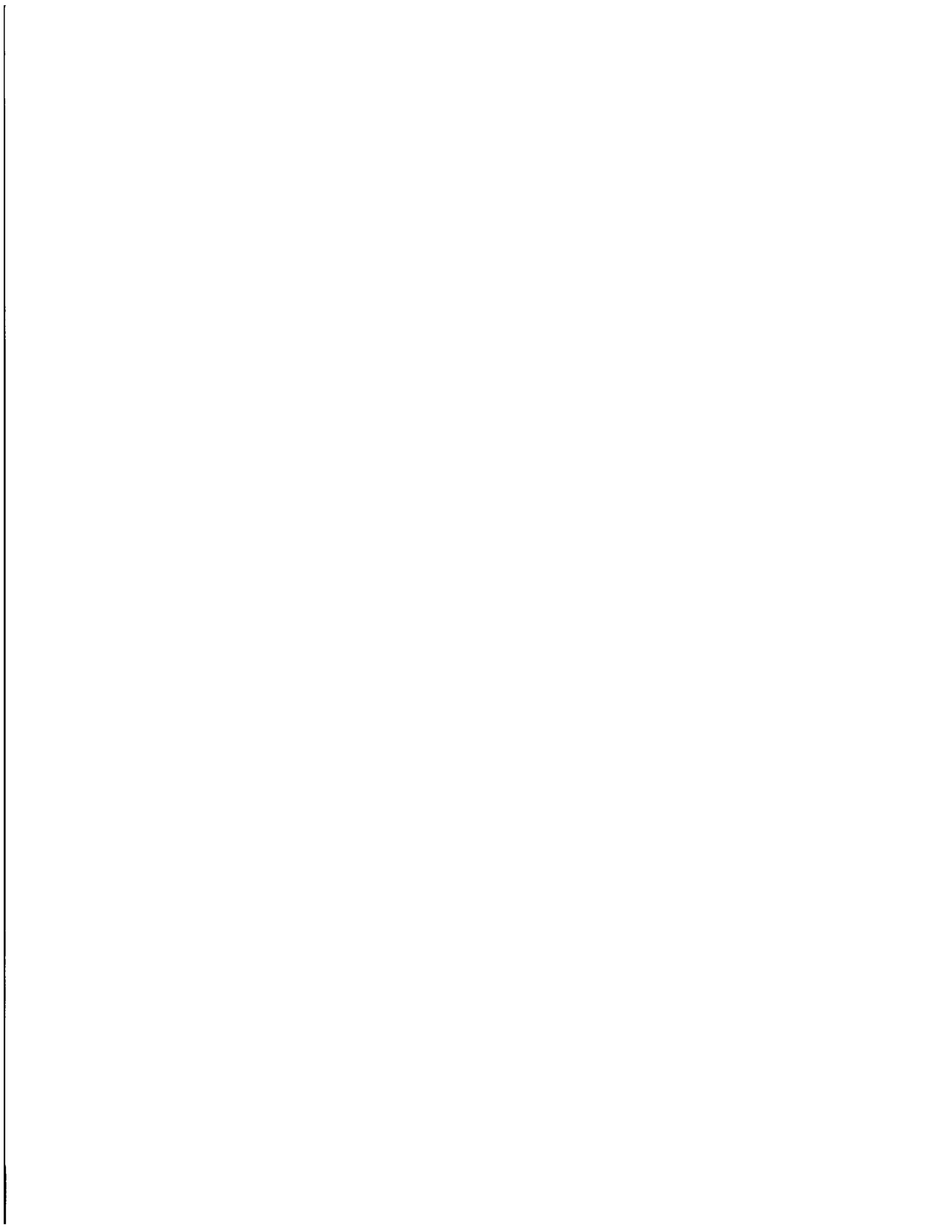
**(b) STATEMENT IN SUPPORT OF REAFFIRMATION AGREEMENT.**

The debtor's statement required under § 524(k)(6)(A) shall be accompanied by a statement of the total income and total expense amounts stated on schedules I and J. If there is a difference between the income and expense amounts stated on schedules I and J and the statement required under § 524(k)(6)(A), the accompanying statement shall include an explanation of the difference.

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES  
FROM: JEFFREY W. MORRIS, REPORTER  
RE: CREDIT COUNSELING POSTPONEMENT  
DATE: FEBRUARY 9, 2006

Under § 109(h)(1) of the Bankruptcy Code, every individual debtor must receive credit counseling prior to commencing a bankruptcy case unless limited exceptions apply. Debtors engaged in military service in a military combat zone and those who are unable because of incapacity or other disability are excepted from the requirement of pre-bankruptcy credit counseling. Under § 109(h)(3) debtors also may commence a case without first completing credit counseling if they submit to the court a “certification” setting out the exigent circumstances that warrant a waiver of the credit counseling requirement. The certification also must state that the “debtor requested credit counseling services from an approved budget and credit counseling agency, but was unable to obtain the services ... during the five-day period beginning on the date on which the debtor made that request.” If the court finds this certification to be satisfactory, the court can grant an exemption from the requirement of pre-bankruptcy credit counseling. That exemption, however, ceases to apply on the later of the date on which the debtor obtains the counseling or thirty (30) days after the debtor files the petition. For cause, the court can extend that thirty-day period for an additional fifteen (15) days.

Interim Rule 1007(b)(3) requires the debtor to file a certificate of credit counseling, and Interim Rule 1007(c) requires the debtor to file the certificate with the petition in a voluntary case. This requirement does not apply, however, if the exceptions of § 109(h)(4) apply (military service

in an active combat zone or incapacity by reason or mental illness or mental deficiency), or if the debtor files a certification under § 109(h)(3).

Because the credit counseling certificate requirement arises at the time the petition is filed, decisions regarding the application of § 109(h)(3) are among the first decisions being published by the courts since the effective date of the Bankruptcy Amendments. A number of debtors either have filed petitions without a certificate of completion of a credit counseling program, or have filed one form of paper or another seeking a postponement in meeting the requirement. In one of the first cases to address the issue, the court noted that postponement of the pre-bankruptcy credit counseling requirement provided under § 109(h)(3) requires a “certification”. This certification in turn must be signed by the debtor and must comply with 28 U.S.C. § 1746. That section provides that

whenever, under any law of the United States ... any matter is required or permitted to be supported, evidenced, established or proved by the sworn declaration, verification, certificate ... [the following form may be used]:

\* \* \* \* \*

(2) If executed within the United States, its territories or commonwealths: ‘I declare (or certify, verify or state) under penalty or perjury that the foregoing is true and correct. Executed on (date).’

In re Hubbard, 333 B.R. 377 (Bankr. S.D. Tex. 2005). The Hubbard court further noted that the request for the waiver must set out the exigent circumstances creating the need for a waiver, including a description of the efforts taken to obtain pre-petition credit counseling. While the court expressed concern that the motion filed in the case was largely conclusory and set out general efforts undertaken by the debtor’s counsel to determine the availability of credit counseling services, other courts have noted that debtor’s counsel is the agent of the debtor in seeking the availability of credit

counseling, so actions taken by the attorney can satisfy the requirement that the debtor has sought counseling unsuccessfully. The actions must be specific to the debtor, and general statements regarding lack of access to credit counseling would be insufficient. Hubbard at 386.

The courts generally have found the language of § 109(h) relatively straightforward in their application of the provision to motions for postponement of the pre-petition credit counseling requirement. See, e.g. In re Hubbard, 333 B.R. 377 (Bankr. S.D. Tex. 2005); In re Cleaver, 333 B.R. 430 (Bankr. D.S. Oh. 2005); In re Graham, 2005 W.L. 3629925 (Bankr. W.D. Ky., December 21, 2005). Even with this “plain meeting” resolution of issues under the section, the courts have chosen different ways to ultimately resolve the matters. For example, in Hubbard the court concluded that the failure to file a credit counseling certificate or proper request for waiver rendered the debtor entirely ineligible for bankruptcy relief. The court noted that § 109(h) states that the filing of one or the other of those documents is a prerequisite to a debtor obtaining any relief under the Bankruptcy Code. Specifically, § 109(h)(1) provides in part that “an individual may not be a debtor under this title unless such individual has, during the 180-day period preceding the date of the filing of the petition by such individual received ... credit counseling. While this requirement is subject to exceptions under subsections (2) and (3) of that provision, if those exceptions are not applicable, the Hubbard court concluded that the petition should be stricken. The Cleaver court, on the other hand, concluded that the case needed to be dismissed.

There can be serious consequences to the decision of a court whether to strike the petition or to dismiss the case. If the court strikes the petition, the result is that no case was ever filed. Actions taken by creditors to collect after the filing of the petition would not be in violation of the stay since there was no case. Presumably, debtors would have a right to recover any filing fee that

they paid to the court. If the case is dismissed, on the other hand, the automatic stay would have been in effect and the commencement of a case would support the retention of the filing fee by the clerk's office. Furthermore, if there is no case because the petition is stricken, it is unclear how the court would have authority to take any action within the "case." In Hubbard the court held that no case was commenced and yet issued a show case order to the debtor's counsel as to why the fees and expenses should not be returned to the debtors.

A number of other decisions are being rendered in courts across the country on this issue. It might be prudent to let the courts resolve these matters in the first instance. Once the bar becomes more used to the practices required under the amended Bankruptcy Code many, if not all, of these issues may go away. On the other hand, the courts have recognized that debtors have always sought bankruptcy relief at the very latest moment in time. Foreclosures are imminent, repossessions are threatened or have already occurred, and similar actions are pending when debtors finally meet with an attorney to seek bankruptcy relief. Most courts have found these situations to present "exigent circumstances under § 109(h)(4), but some have concluded that the statutory requirement of "exigent circumstances" means something other than just the immediacy of the need for bankruptcy relief. For example, the court in In re Valdez, 335 B.R. 801 (Bankr S.D. Fl. 2005) held that exigent circumstances under § 109 means that there are circumstances that prevent the debtor from obtaining the required budget and credit counseling. Another court has similarly noted that the focus should be not so much on the imminence of the event that threatens the debtor with loss of property and requires filing of the petition for relief in order to invoke the automatic stay, but on the reasons why the debtor was unable to obtain the required credit counseling prior to having to file for relief. In re Talib, 335 B.R. 424 (Bankr. W.D. Mo. 2005). The split in the cases is not one that the

Rules can resolve. It is up to the courts to determine whether a postponement of the credit counseling obligation is proper in any particular case. That may not be true as to all aspects of the issue.

Section 109(h)(3) arguably makes bankruptcy unavailable for debtors who do not have a certificate indicating they have completed credit counseling, unless the debtor has been unable to obtain credit counseling for five days after first requesting the counseling. Thereafter, the debtor can file a petition and also file a request for a postponement under § 109(h)(3). These substantive requirements set out in §109(h)(3)(A) cannot be overridden by the Bankruptcy Rules. Nonetheless, debtors who do meet those requirements could seek an extension of time to file a certification that additional time to complete credit counseling is necessary if they can show that their inability to file the documents is a result of excusable neglect. Bankruptcy Rule 9006(b)(1) authorizes such motions, and enlargement of time is not limited by Rule 9006(b)(3). The Interim Rules amend that rule only to the extent that it applies to certain filings by small business debtors. Thus far, the courts have not addressed the application of Rule 9006 in this area. It may provide some protection for debtors who are forced to file petitions in order to prevent foreclosure actions or repossessions from occurring. Whether the “excusable neglect” standard is sufficiently flexible to provide the protection necessary for debtors facing extreme time pressures remains to be seen. Again, the question for the Advisory Committee is whether additional rule changes should be adopted to address this issue.

The Rules also can address whether a person who has obtained the prepetition credit counseling but has not obtained a certificate from the counseling service can commence a case. Under Interim Rule 1007(c), the debtor must file a copy of the certificate with the petition. Some have suggested that debtors should be allowed to file the certificate within 15 days of the



commencement of the case just like the schedules. The Committee decided against that deadline because of concerns that debtors (and particularly pro se debtors) might be misled into thinking that credit counseling is not required prior to commencing the case. Requiring the filing of the certificate with the petition reinforces the idea that debtors must receive the counseling before filing absent either exigent circumstances or the military combat service/mental incapacity exception. On the other hand, a few recent decisions have identified at least two scenarios under which Interim Rule 1007(c) may create an unnecessary problem for some debtors. In the first scenario, the debtor has completed the credit counseling obligation, but he or she is unable to get the certificate from the counseling provider. In that circumstance, the debtor has met the eligibility requirement for relief set out in § 109(h), but the absence of the certificate presents an obstacle to filing under Rule 1007(c). Arguably, the Rule should be amended to address this situation and permit the debtor to commence the case and file the credit counseling certificate within a reasonable time thereafter.

The second scenario in which Interim Rule 1007(c) may unnecessarily restrict debtor access to bankruptcy relief occurs when the debtor attempts to obtain credit counseling prior to filing a petition, but is unable to do so prior to a sale of their home in a pending foreclosure. For example, assume that there are two debtors facing foreclosure sales scheduled for February 5, and on February 7 the debtors try to obtain credit counseling. In one instance, the counseling agency indicates that it can provide the counseling on February 8, and in the other, counseling is only available on February 11. A counseling session on February 11 is more than 5 days after the request for the counseling, so that debtor might be eligible for a postponement under § 109(h)(3). For the debtor who can receive counseling on February 8, however, counseling would be available within 5 days, and that would appear to make the debtor ineligible for relief until after the foreclosure sale. Unlike

the delayed issuance of a certificate from the credit counselor, the debtor in this instance appears to be ineligible for relief until he or she receives the counseling. Obviously, the rules cannot override the statute to resolve this problem, but the rules could be amended to address the first scenario set out above.

The following amendment to Interim Rule 1007 is intended to permit a debtor to commence a case without first filing a certificate of a credit counselor. It is limited to circumstances in which the debtor files a statement that he or she has received the counseling but has not yet received the certificate. The debtor still must file the certificate with the court, but the rule would extend the deadline. The Interim Rule is set out with underlining and strikeouts to show changes that are proposed to the Rule as it was adopted in August and October.

**Rule 1007. Lists, Schedules, Statements, and Other Documents;**

**Time Limits**

1 (a) LIST OF CREDITORS AND EQUITY SECURITY  
2 HOLDERS, AND CORPORATE OWNERSHIP STATEMENT.

3 \* \* \* \* \*

4 (4) Chapter 15 Case. Unless the court orders otherwise, a  
5 foreign representative filing a petition for recognition under chapter  
6 15 shall file with the petition a list containing the name and address  
7 of all administrators in foreign proceedings of the debtor, all parties  
8 to any litigation in which the debtor is a party and that is pending in  
9 the United States at the time of the filing of the petition, and all

10 entities against whom provisional relief is being sought under § 1519  
11 of the Code.

12 (5) *Extension of Time.* Any extension of time for the filing  
13 of lists required by this subdivision may be granted only on motion  
14 for cause shown and on notice to the United States trustee and to any  
15 trustee, committee elected under § 705 or appointed under § 1102 of  
16 the Code, or other party as the court may direct.

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

19 (1) Except in a chapter 9 municipality case, the debtor, unless  
20 the court orders otherwise, shall file the following schedules,  
21 statements, and other documents, prepared as prescribed by the  
22 appropriate Official Forms, if any:

23 (A) schedules of assets and liabilities;

24 (B) a schedule of current income and expenditures;

25 (C) a schedule of executory contracts and unexpired  
26 leases;

27 (D) a statement of financial affairs;

28 (E) copies of all payment advices or other evidence of  
29 payment, if any, with all but the last four digits of the debtor's social  
30 security number redacted, received by the debtor from an employer  
31 within 60 days before the filing of the petition; and

32 (F) a record of any interest that the debtor has in an  
33 account or program of the type specified in § 521(c) of the Code.

34 (2) An individual debtor in a chapter 7 case shall file a  
35 statement of intention as required by § 521(a) of the Code, prepared  
36 as prescribed by the appropriate Official Form. A copy of the  
37 statement of intention shall be served on the trustee and the creditors  
38 named in the statement on or before the filing of the statement.

39 (3) Unless the United States trustee has determined that the  
40 credit counseling requirement of § 109 does not apply in the district,  
41 an individual debtor must file

42 (A) the certificate and debt repayment plan, if any,  
43 required by § 521(b),

44 (B) a statement that the debtor has completed credit  
45 counseling as required under § 109(h)(1) but has not received the  
46 certificate from the credit counseling agency,

47 (C) a certification under § 109(h)(3), or

48 (D) a request for a determination by the court under §  
49 109(h)(4).

50 (4) Unless § 707(b)(2)(D) applies, an individual debtor in a  
51 chapter 7 case with primarily consumer debts shall file a statement of  
52 current monthly income prepared as prescribed by the appropriate  
53 Official Form, and, if the debtor has current monthly income greater

54 than the applicable median family income for the applicable state and  
55 household size, the calculations in accordance with § 707(b),  
56 prepared as prescribed by the appropriate Official Form.

57 (5) An individual debtor in a chapter 11 case shall file a  
58 statement of current monthly income, prepared as prescribed by the  
59 appropriate Official Form.

60 (6) A debtor in a chapter 13 case shall file a statement of  
61 current monthly income, prepared as prescribed by the appropriate  
62 Official Form, and, if the debtor has current monthly income greater  
63 than the median family income for the applicable state and family  
64 size, a calculation of disposable income in accordance with §  
65 1325(b)(3), prepared as prescribed by the appropriate Official Form.

66 (7) An individual debtor in a chapter 7 or chapter 13 case shall  
67 file a statement regarding completion of a course in personal financial  
68 management, prepared as prescribed by the appropriate Official Form.

69 (8) If an individual debtor in a chapter 11, 12, or 13 case has  
70 claimed an exemption under § 522(b)(3)(A) in an amount in excess  
71 of the amount set out in § 522(q)(1) in property of the kind described  
72 in § 522(p)(1), the debtor shall file a statement as to whether there is  
73 pending a proceeding in which the debtor may be found guilty of a  
74 felony of a kind described in § 522(q)(1)(A) or found liable for a debt  
75 of the kind described in § 522(q)(1)(B).

76 (c) TIME LIMITS.<sup>1</sup> In a voluntary case, the schedules, and  
77 statements, and other documents required by subdivision (b)(1), (4),  
78 (5), and (6) shall be filed with the petition, or within 15 days  
79 thereafter, except as otherwise provided in subdivisions (d), (e), (f),  
80 and (h) of this rule. In an involuntary case, the list in subdivision  
81 (a)(2), and the schedules, statements, and other documents required  
82 by subdivision (b)(1) shall be filed by the debtor within 15 days of the  
83 entry of the order for relief. The documents required by subdivision  
84 (b)(3)(A), (C), and (D) shall be filed with the petition in a voluntary  
85 case. Unless the court orders otherwise, if the debtor has filed a  
86 statement under subdivision (b)(3)(B), the documents required by  
87 subdivision (b)(3)(A) shall be filed within 15 days of the order for  
88 relief. The statement required by subdivision (b)(7) shall be filed by  
89 the debtor within 45 days after the first date set for the meeting of  
90 creditors under § 341 of the Code in a chapter 7 case, and no later  
91 than the last payment made by the debtor as required by the plan or  
92 the filing of a motion for entry of a discharge under § 1328(b) in a  
93 chapter 13 case. The statement required by subdivision (b)(8) shall  
94 be filed by the debtor not earlier than the date of the last payment  
95 made under the plan or the date of the filing of a motion for entry of  
96 a discharge under §§ 1141(d)(5)(B), 1228(b), or 1328(b). Lists,

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<sup>1</sup>Includes amendments that take effect on December 1, 2005.

97 schedules, statements, and other documents filed prior to the  
98 conversion of a case to another chapter shall be deemed filed in the  
99 converted case unless the court directs otherwise. Except as provided  
100 in § 1116(3) of the Code, any extension of time for the filing of the  
101 schedules, statements, and other documents may be granted only on  
102 motion for cause shown and on notice to the United States trustee and  
103 to any committee elected under § 705 or appointed under § 1102 of  
104 the Code, trustee, examiner, or other party as the court may direct.  
105 Notice of an extension shall be given to the United States trustee and  
106 to any committee, trustee, or other party as the court may direct.

107

\* \* \* \* \*

#### **COMMITTEE NOTE**

The title of this rule is expanded to refer to “documents” in conformity with the 2005 amendments to § 521 and related provisions of the Bankruptcy Code that include a wider range of documentary requirements.

Subdivision (a) is amended to require that any foreign representative filing a petition for recognition to commence a case under chapter 15, which was added to the Code in 2005, file a list of entities with whom the debtor is engaged in litigation in the United States. The foreign representative filing the petition for recognition also must list any entities against whom provisional relief is being sought as well as all administrators in foreign proceedings of the debtor. This should ensure that the entities most interested in the case, or their representatives, will receive notice of the petition under Rule 2002(q).

Subdivision (b)(1) addresses schedules, statements, and other documents that the debtor must file unless the court orders otherwise and other than in a case under Chapter 9. This subdivision is

amended to include documentary requirements added by the 2005 amendments to § 521 that apply to the same group of debtors and have the same time limits as the existing requirements of (b)(1). Consistent with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2921 (2002), the payment advices should be redacted before they are filed.

Subdivision (b)(2) is amended to conform the renumbering of the subsections of § 521.

Subdivisions (b)(3) through (b)(7) are new. They implement the 2005 amendments to the Bankruptcy Code. Subdivision (b)(3) provides a procedure for filing documents relating to the nonprofit credit counseling requirement provided by the 2005 amendments to § 109.

Subdivision (b)(4) addresses the filing of information about current monthly income, as defined in § 101, for certain chapter 7 debtors and, if required, additional calculations of expenses required by the 2005 revisions to § 707(b).

Subdivision (b)(5) addresses the filing of information about current monthly income, as defined in § 101, for individual chapter 11 debtors. The 2005 amendments to § 1129(a)(15) condition plan confirmation for individual debtors on the commitment of disposable income as defined in § 1325(b)(2), which is based on current monthly income.

Subdivision (b)(6) addresses the filing of information about current monthly income, as defined in § 101, for chapter 13 debtors and, if required, additional calculations of expenses. These changes are necessary because the 2005 amendments to § 1325 require that determinations of disposable income start with current monthly income.

Subdivision (b)(7) reflects the 2005 amendments to §§ 727 and 1328 that condition the receipt of a discharge on the completion of a personal financial management course, with certain exceptions.

Subdivision (b)(8) 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 chapters 11, 12, and 13 in which an exemption is claimed in excess of the amount allowed under § 522(q)(1) provides the court with a basis to conclude, in the absence of any contrary information, that § 522(q) does not apply. Creditors receive notice under Rule 2002(f)(11) of the time to request postponement of the entry of the discharge so that they can challenge the debtor's assertions in the Rule 1007(b)(8) statement in appropriate cases.

Subdivision (c) is amended to include time limits for the filing requirements added to subdivision (b) due to the 2005 amendments to the Bankruptcy Code, and to make conforming amendments. Separate time limits are provided for the documentation of credit counseling and for the statement of the completion of the financial management course. While most documents relating to credit counseling must be filed with the voluntary petition, the credit counseling certificate and debt repayment plan can be filed with the court within 15 days of the filing of a voluntary petition if the debtor files a statement under subdivision (b)(3)(B) with the petition.

Subdivision (c) of the rule is also amended to recognize the limitation on the extension of time to file schedules and statements when the debtor is a small business debtor. Section 1116(3), added to the Bankruptcy Code in 2005, establishes a specific standard for courts to apply in the event that the debtor in possession or the trustee seeks an extension for filing these forms for a period beyond 30 days after the order for relief.

The amendment to the rule makes relief available to a debtor who is entitled to relief under the Code. It does not expand relief in any way. Rather, it addresses a problem that may exist more in some parts of the country than in others, but it is a problem that is not the fault of any debtor whose access to bankruptcy relief should not be restricted by a rule requirement that a specific paper be filed with the petition when the Code does not include that same requirement.

The rules might also be amended to permit the clerk to reject a petition if the petition does not have attached to it a document called for by proposed Rule 1007(b)(3). Under the proposed rule, the debtor either must file with the petition the certificate and budget analysis (presumably the most common situation), a certification of exigent circumstances under § 109(h)(3), a request for a determination that the debtor is excepted from the credit counseling requirement under § 109(h)(4), or a statement that counseling has been obtained but that the debtor is just waiting to receive the counselor's certificate. Under Interim Rule 1007(b)(3) and (c), if the debtor files a petition without the certificate, the debtor faces the dismissal of the case. If the case is dismissed, the automatic stay in a subsequently filed case commenced by the debtor could be severely restricted or nonexistent depending on the number of prior cases. The debtor also effectively forfeits the filing fee in the case. This is particularly problematic in pro se cases. If the clerk were authorized to reject these defective filings, however, the debtor could avoid the dismissal of the case and could prevent the loss of the debtor's filing fee and the negative impact of multiple filings on the availability of the automatic stay. Giving the clerk this authority would require an amendment to Rule 5005(a)(1) as well as the reversal of the strong policy set out in that rule against allowing the clerk to refuse to accept any document because it is in an improper form. That rule was amended in 1993 to make explicit that the enforcement of the Bankruptcy Rules and local rules are for the court and not for the clerk. It would be a substantial, if not complete, reversal of that policy to permit the clerk to reject a petition because it was not accompanied by a particular form or document. Consequently, it does not seem to be a realistic solution. If the clerk could, however, provide a specific notice to debtors that highlights the four exclusive options set out in the proposed amendment to Interim Rule 1007(b)(3) and (c). The notice would inform the debtor that if the petition is not accompanied by an appropriate

document, the case might be dismissed without notice and there would be no automatic stay in effect and the debtor would have to pay a second filing fee to commence a second case. At least in this way, the debtor who insists on filing the apparently defective petition is on specific notice of the consequences of taking that action. Such a proposed notice form follows.

## **NOTICE TO INDIVIDUAL DEBTORS**

**YOU MUST ATTACH TO YOUR BANKRUPTCY PETITION ONE OF THE FOLLOWING DOCUMENTS. IF YOU FAIL TO INCLUDE ONE OF THESE DOCUMENTS, YOUR CASE MAY BE DISMISSED BY THE COURT. IF THE CASE IS DISMISSED, THERE WILL BE NO LONGER BE AN AUTOMATIC STAY OF CREDITOR COLLECTION ACTIONS, AND IF YOU STILL WANT TO OBTAIN BANKRUPTCY RELIEF YOU WILL HAVE TO FILE ANOTHER BANKRUPTCY PETITION. THIS WILL INVOLVE THE PAYMENT OF ANOTHER FILING FEE, AND THE AUTOMATIC STAY EITHER MAY BE LIMITED OR UNAVAILABLE IN THE SUBSEQUENT CASE.**

**PLEASE CHECK THE APPROPRIATE BOX IDENTIFYING ATTACHED DOCUMENTS:**

- Credit Counseling Certificate and Debt Repayment Plan, if any, required by § 521(b)**
- Statement that you have already completed credit counseling but have not yet received your certificate from the credit counseling agency (certificate must still be filed with the court within 15 days)**
- Certification that there are exigent circumstances that merit a postponement of the completion of credit counseling until after the filing of the petition (court approval is required for the postponement)**
- A request for a determination by the court under § 109(h)(4) that the credit counseling requirement does not apply because you are on active military duty in a military combat zone, you suffer from a mental illness or deficiency that makes you incapable of making rational decisions regarding your financial responsibilities, or you are physically unable to participate in an in person, telephone, or Internet briefing on credit counseling and budgeting.**

**If you do not attach to your petition any of the listed documents, your case may be dismissed.**



MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES  
FROM: JEFF MORRIS  
RE: SECTION 524(f)(4) ANNUAL REPORT  
DATE: FEBRUARY 14, 2006

Among the amendments to the Bankruptcy Code that became effective on October 17, 2006, is new § 521(f)(4). That section provides that if the court, the United States trustee, or any party in interest requests, chapter 13 debtors must file statements of their postpetition monthly income and expenses. In the absence of a confirmed plan, the statement must be filed at the later of 90 days after the end of the tax year in which the case was filed, or one year after the commencement of the case. After confirmation of a plan, § 524(f)(4)(B) provides that these reports, if requested, must be filed annually until the case is closed. These annual reports must be filed no later than 45 days before the anniversary of confirmation of the chapter 13 plan.

According to its terms, the debtor's obligations under § 521(f) are triggered by a request of the court, the United States trustee, or any party in interest. Thus, the obligation to file these reports arguably would not arise in the absence of such a request. Notwithstanding this triggering mechanism, I believe that all of the courts will require chapter 13 debtors to provide this information in each case. It is comparable to the obligation of a chapter 13 debtor to commit all of his or her disposable income to fund the plan for three years. That obligation arises out of § 1325(b)(1), but that section arguably applies only in the face of an objection to plan by the trustee or the holder of an allowed unsecured claim. Nevertheless, the submission of all disposable income into the plan is essentially universal in chapter 13 cases. Chapter 13 trustees

would certainly object to a plan that did not include the payment of all of the debtor's disposable income into the plan unless the plan would otherwise satisfy in full all of the unsecured claims. So, the formality of an objection to the plan is usually unnecessary. The same practice is likely to arise under § 521(f)(4). Therefore, it seems appropriate to include in the rules a duty for debtors to file the necessary reports.

Interim Rule 1007(b) should be amended by adding a new subparagraph (9) to that subdivision that will require the debtor to file the appropriate form setting out income and expenses under § 521(f)(4). A proposed amendment to the rule follows as does a recommended form.

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

1 (a) LIST OF CREDITORS AND EQUITY SECURITY  
 2 HOLDERS, AND CORPORATE OWNERSHIP STATEMENT.  
 3 \* \* \* \* \*  
 4 (4) *Chapter 15 Case.* Unless the court orders otherwise, a  
 5 foreign representative filing a petition for recognition under  
 6 chapter 15 shall file with the petition a list containing the name and  
 7 address of all administrators in foreign proceedings of the debtor,  
 8 all parties to any litigation in which the debtor is a party and that is  
 9 pending in the United States at the time of the filing of the petition,

10 and all entities against whom provisional relief is being sought  
11 under § 1519 of the Code.

12 (5) *Extension of Time.* Any extension of time for the filing  
13 of lists required by this subdivision may be granted only on motion  
14 for cause shown and on notice to the United States trustee and to  
15 any trustee, committee elected under § 705 or appointed pursuant  
16 to under § 1102 of the Code, or other party as the court may direct.

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

19 (1) Except in a chapter 9 municipality case, the debtor,  
20 unless the court orders otherwise, shall file the following  
21 schedules, statements, and other documents, prepared as prescribed  
22 by the appropriate Official Forms, if any:

23 (A) schedules of assets and liabilities; ;

24 (B) a schedule of current income and expenditures; ;

25 (C) a schedule of executory contracts and unexpired  
26 leases, ~~and~~;

27 (D) a statement of financial affairs ;

28 (E) copies of all payment advices or other evidence of  
29 payment, if any, with all but the last four digits of the debtor's  
30 social security number redacted, received by the debtor from an  
31 employer within 60 days before the filing of the petition; and



32 (F) a record of any interest that the debtor has in an  
33 account or program of the type specified in § 521(c) of the Code.

34 (2) An individual debtor in a chapter 7 case shall file a  
35 statement of intention as required by § 521(a) of the Code,  
36 prepared as prescribed by the appropriate Official Form. A copy of  
37 the statement of intention shall be served on the trustee and the  
38 creditors named in the statement on or before the filing of the  
39 statement.

40 (3) Unless the United States trustee has determined that the  
41 credit counseling requirement of § 109 does not apply in the  
42 district, an individual debtor must file the certificate and debt  
43 repayment plan, if any, required by § 521(b), a certification under §  
44 109(h)(3), or a request for a determination by the court under §  
45 109(h)(4).

46 (4) Unless § 707(b)(2)(D) applies, an individual debtor in a  
47 chapter 7 case with primarily consumer debts shall file a statement  
48 of current monthly income prepared as prescribed by the  
49 appropriate Official Form, and, if the debtor has current monthly  
50 income greater than the applicable median family income for the  
51 applicable state and household size, the calculations in accordance  
52 with § 707(b), prepared as prescribed by the appropriate Official  
53 Form.

54                   (5) An individual debtor in a chapter 11 case shall file a  
55                   statement of current monthly income, prepared as prescribed by the  
56                   appropriate Official Form.

57                   (6) A debtor in a chapter 13 case shall file a statement of  
58                   current monthly income, prepared as prescribed by the appropriate  
59                   Official Form, and, if the debtor has current monthly income  
60                   greater than the median family income for the applicable state and  
61                   family size, a calculation of disposable income in accordance with  
62                   § 1325(b)(3), prepared as prescribed by the appropriate Official  
63                   Form.

64                   (7) An individual debtor in a chapter 7 or chapter 13 case  
65                   shall file a statement regarding completion of a course in personal  
66                   financial management, prepared as prescribed by the appropriate  
67                   Official Form.

68                   (8) If an individual debtor in a chapter 11, 12, or 13 case  
69                   has claimed an exemption under § 522(b)(3)(A) in an amount in  
70                   excess of the amount set out in § 522(q)(1) in property of the kind  
71                   described in § 522(p)(1), the debtor shall file a statement as to  
72                   whether there is pending a proceeding in which the debtor may be  
73                   found guilty of a felony of a kind described in § 522(q)(1)(A) or  
74                   found liable for a debt of the kind described in § 522(q)(1)(B).

75                   (9) In a chapter 13 case, the debtor shall file with the court not

76 later than 45 days prior to the anniversary of the confirmation of a  
77 plan, a statement of monthly income and expenses under § 521  
78 (f)(4)(B).

79 (c) TIME LIMITS. In a voluntary case, the schedules,  
80 statements, and other documents required by subdivision (b)(1),  
81 (4), (5), and (6) shall be filed with the petition, or within 15 days  
82 thereafter, except as otherwise provided in subdivisions (d), (e), (f),  
83 and (h) of this rule. In an involuntary case, the list in subdivision  
84 (a)(2), and the schedules, statements, and other documents required  
85 by subdivision (b)(1) shall be filed by the debtor within 15 days of  
86 the entry of the order for relief. The documents required by  
87 subdivision (b)(3) shall be filed with the petition in a voluntary  
88 case. The statement required by subdivision (b)(7) shall be filed by  
89 the debtor within 45 days after the first date set for the meeting of  
90 creditors under § 341 of the Code in a chapter 7 case, and no later  
91 than the last payment made by the debtor as required by the plan or  
92 the filing of a motion for entry of a discharge under § 1328(b) in a  
93 chapter 13 case. The statement required by subdivision (b)(8) shall  
94 be filed by the debtor not earlier than the date of the last payment  
95 made under the plan or the date of the filing of a motion for entry  
96 of a discharge under §§ 1141(d)(5)(B), 1228(b), or 1328(b). Lists,  
97 schedules, statements, and other documents filed prior to the

98 conversion of a case to another chapter shall be deemed filed in the  
99 converted case unless the court directs otherwise. Except as  
100 provided in § 1116(3) of the Code, any extension of time for the  
101 filing of the schedules, statements, and other documents may be  
102 granted only on motion for cause shown and on notice to the  
103 United States trustee and to any committee elected under § 705 or  
104 appointed under § 1102 of the Code, trustee, examiner, or other  
105 party as the court may direct. Notice of an extension shall be given  
106 to the United States trustee and to any committee, trustee, or other  
107 party as the court may direct.

108

\* \* \* \* \*

#### **COMMITTEE NOTE**

The title of this rule is expanded to refer to “documents” in conformity with the 2005 amendments to § 521 and related provisions of the Bankruptcy Code that include a wider range of documentary requirements.

Subdivision (a) is amended to require that any foreign representative filing a petition for recognition to commence a case under chapter 15, which was added to the Code in 2005, file a list of entities with whom the debtor is engaged in litigation in the United States. The foreign representative filing the petition for recognition also must list any entities against whom provisional relief is being sought as well as all administrators in foreign proceedings of the debtor. This should ensure that the entities most interested in the case, or their representatives, will receive notice of the petition under Rule 2002(q).

Subdivision (b)(1) addresses schedules, statements, and other documents that the debtor must file unless the court orders otherwise and other than in a case under Chapter 9. This

subdivision is amended to include documentary requirements added by the 2005 amendments to § 521 that apply to the same group of debtors and have the same time limits as the existing requirements of (b)(1). Consistent with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2921 (2002), the payment advices should be redacted before they are filed.

Subdivision (b)(2) is amended to conform the renumbering of the subsections of § 521.

Subdivisions (b)(3) through (b)(7) are new. They implement the 2005 amendments to the Bankruptcy Code. Subdivision (b)(3) provides a procedure for filing documents relating to the nonprofit credit counseling requirement provided by the 2005 amendments to § 109.

Subdivision (b)(4) addresses the filing of information about current monthly income, as defined in § 101, for certain chapter 7 debtors and, if required, additional calculations of expenses required by the 2005 revisions to § 707(b).

Subdivision (b)(5) addresses the filing of information about current monthly income, as defined in § 101, for individual chapter 11 debtors. The 2005 amendments to § 1129(a)(15) condition plan confirmation for individual debtors on the commitment of disposable income as defined in § 1325(b)(2), which is based on current monthly income.

Subdivision (b)(6) addresses the filing of information about current monthly income, as defined in § 101, for chapter 13 debtors and, if required, additional calculations of expenses. These changes are necessary because the 2005 amendments to § 1325 require that determinations of disposable income start with current monthly income.

Subdivision (b)(7) reflects the 2005 amendments to §§ 727 and 1328 that condition the receipt of a discharge on the completion of a personal financial management course, with certain exceptions.

Subdivision (b)(8) 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 chapters 11, 12, and 13 in which an exemption is claimed in excess of the amount allowed under § 522(q)(1) provides the court with a basis to conclude, in the absence of any contrary information, that § 522(q) does not apply. Creditors receive notice under Rule 2002(f)(11) of the time to request postponement of the entry of the discharge so that they can challenge the debtor's assertions in the Rule 1007(b)(8) statement in appropriate cases.

Subdivision (b)(9) is added to the rule to require a debtor to file a statement under § 521(f)(4)(B). That section provides that the debtor must file a statement of monthly income and expenses during the duration of the plan if the United States trustee, a party in interest, or the court requests. As a practical matter, such requests are likely to be made in every case, so establishing the requirement under the rules provides a uniform system for debtors to follow in submitting the information. Debtors must file Official Form \_\_\_\_\_ in the time set out in the rule.

Subdivision (b)(9) does not include a requirement that debtors file Official Form \_\_\_\_\_ to meet their obligations under § 521(f)(4)(A). That section applies only if there is no confirmed plan in the case for at least one year. That is a relatively rare occurrence, so it is unnecessary for the rules to address that situation. If no plan is confirmed within that time, the court, the United States trustee, and any party in interest can request that the debtor file an Official Form \_\_\_\_\_.

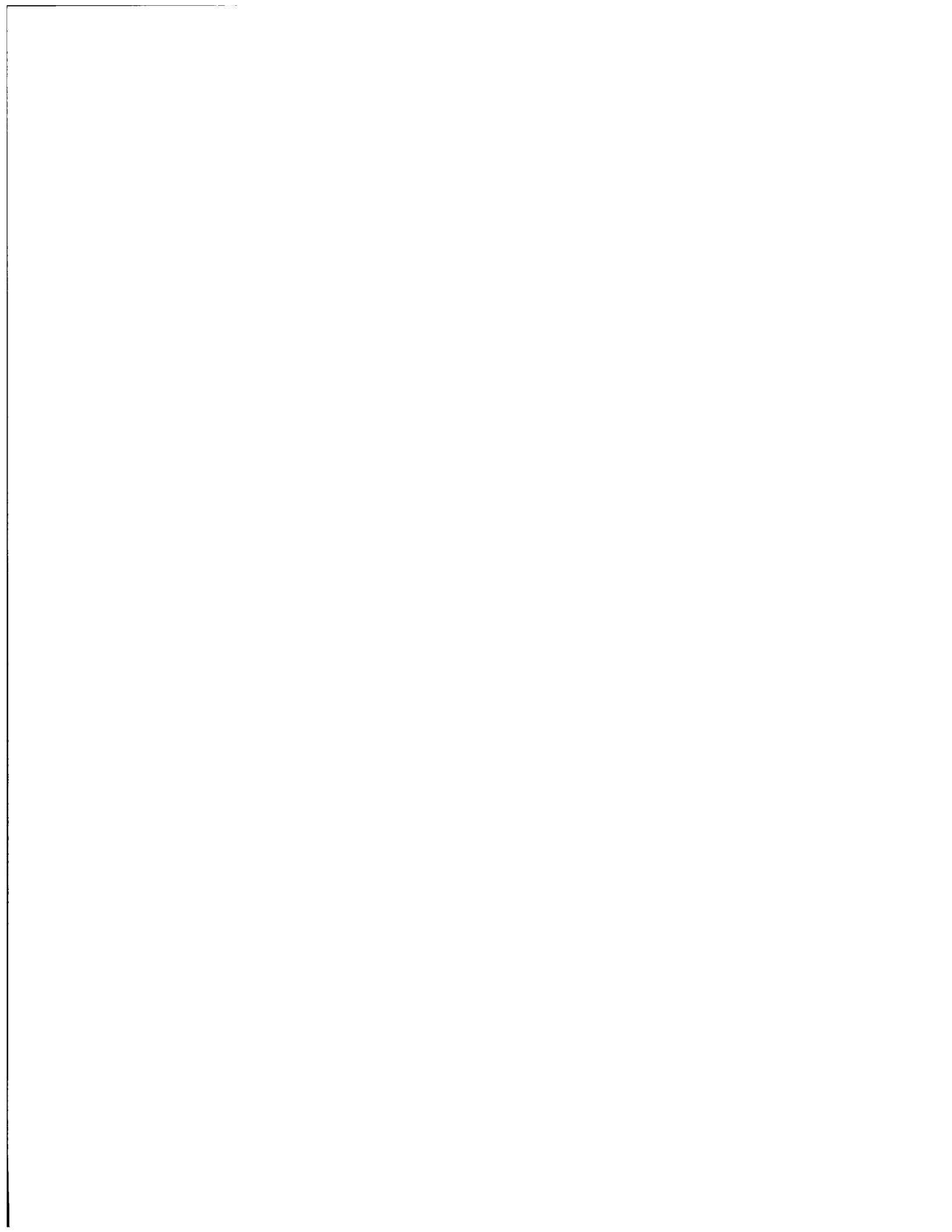
Subdivision (c) is amended to include time limits for the filing requirements added to subdivision (b) due to the 2005 amendments to the Bankruptcy Code, and to make conforming amendments. Separate time limits are provided for the documentation of credit counseling and for the statement of the completion of the financial management course.

Subdivision (c) of the rule is also amended to recognize the limitation on the extension of time to file schedules and statements when the debtor is a small business debtor. Section 1116(3), added

to the Bankruptcy Code in 2005, establishes a specific standard for courts to apply in the event that the debtor in possession or the trustee seeks an extension for filing these forms for a period beyond 30 days after the order for relief.

Attached is a form for the annual reporting of a chapter 13 debtor's monthly income and expenses as would be required under the proposed amendment that adds subdivision (b)(9) to Rule 1007.

(PROPOSED OFFICIAL FORM B25)





# United States Bankruptcy Court

\_\_\_\_\_ District of \_\_\_\_\_

In re \_\_\_\_\_,  
Debtor(s)

Case No. \_\_\_\_\_  
Chapter: 13

## INCOME and EXPENSE FOR TAX YEAR ENDING \_\_\_\_\_

### INCOME

The column labeled "Spouse" must be completed in all cases filed by joint debtors and by a married debtor whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.

INCOME	DEBTOR	SPOUSE
1. Gross Wages/Salary/Commissions	\$ _____	\$ _____
2. LESS PAYROLL DEDUCTIONS	\$ _____	\$ _____
Payroll Taxes and Social Security	\$ _____	\$ _____
Insurance	\$ _____	\$ _____
Union Dues	\$ _____	\$ _____
Other (Specify) _____	\$ _____	\$ _____
3. SUBTOTAL PAYROLL DEDUCTIONS	\$ _____	\$ _____
4. TOTAL NET ANNUAL TAKE HOME PAY	\$ _____	\$ _____
5. Regular net income from operation of business or profession or farm (attach detailed statement or Schedule C or F from Tax Return)	\$ _____	\$ _____
6. Net income from real property (attached detailed statement or Schedule E from Tax Return)	\$ _____	\$ _____
7. Interest and dividends	\$ _____	\$ _____
8. Alimony, maintenance or support payments payable to the debtor for the debtor's use or that of dependents	\$ _____	\$ _____
9. Social security or government assistance Specify: _____	\$ _____	\$ _____
10. Pension or retirement income	\$ _____	\$ _____
11. Other Income Specify: _____ Specify: _____	\$ _____	\$ _____
12. SUBTOTAL OF LINES 5 THROUGH 11	\$ _____	\$ _____
13. TOTAL ANNUAL INCOME (add amounts shown on lines 4 and 12)	\$ _____	\$ _____
14. MONTHLY INCOME (amounts on line 13 divided by 12)	\$ _____	\$ _____
15. TOTAL COMBINED MONTHLY INCOME \$ _____		

Is any person responsible with the debtor(s) for the support of any dependent?  Yes  No  
If yes, name: \_\_\_\_\_

Does any person, other than the debtor or the debtor's spouse, contribute to household income?  Yes  No  
If yes, name: \_\_\_\_\_ Amount Contributed (Monthly): \$ \_\_\_\_\_

## EXPENSES

Check this box if a joint petition is filed and debtor's spouse maintains a separate household. Complete a separate schedule of expenditures labeled "Spouse."

- |  |          |
|--|----------|
| 1. Rent or home mortgage payment (include lot rented for mobile home)  | \$ _____ |
| a. Are real property taxes included? <input type="checkbox"/> Yes <input type="checkbox"/> No  |          |
| b. Is property insurance included? <input type="checkbox"/> Yes <input type="checkbox"/> No  |          |
| 2. Utilities   | \$ _____ |
| a. Electricity and heating fuel  | \$ _____ |
| b. Water and sewer   | \$ _____ |
| c. Telephone   | \$ _____ |
| d. Other _____   | \$ _____ |
| 3. Home maintenance (repair and upkeep)  | \$ _____ |
| 4. Food  | \$ _____ |
| 5. Clothing  | \$ _____ |
| 6. Laundry and dry cleaning  | \$ _____ |
| 7. Medical and dental expenses   | \$ _____ |
| 8. Transportation (not including car payments)   | \$ _____ |
| 9. Recreation, clubs and entertainment, newspapers, magazines, etc.  | \$ _____ |
| 10. Charitable contributions   | \$ _____ |
| 11. Insurance (not deducted from wages or included in home mortgage payments)  |          |
| a. Homeowner's or renter's   | \$ _____ |
| b. Life  | \$ _____ |
| c. Health  | \$ _____ |
| d. Auto  | \$ _____ |
| e. Other _____   | \$ _____ |
| 12. Taxes (not deducted from wages or included in home mortgage)<br>(Specify) _____  | \$ _____ |
| 13. Installment payments (do not list payments included in the plan)   |          |
| a. Auto  | \$ _____ |
| b. Other _____   | \$ _____ |
| c. Other _____   | \$ _____ |
| 14. Alimony, maintenance and support paid to others (not included in the plan)   | \$ _____ |
| 15. Payments for support of additional dependents not living at your home  | \$ _____ |
| 16. Other _____  | \$ _____ |
| 17. PLAN PAYMENTS  | \$ _____ |
| 18. TOTAL EXPENSES   | \$ _____ |
| 19. MONTHLY EXPENSES (line 18 divided by 12)   | \$ _____ |
| 20. MONTHLY NET INCOME:  |          |
| a. Total monthly Income from Income Statement line 15  | \$ _____ |
| b. Total monthly expenses from line 19, above, plus expenses from line 19 of separate<br>schedule of spouse living separate and apart, if applicable | \$ _____ |
| c. Monthly net income (a. minus b.)  | \$ _____ |

## DECLARATION CONCERNING DEBTOR'S STATEMENT OF ANNUAL INCOME AND EXPENSE

### DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

I declare under penalty of perjury that I have read the foregoing Statement of Annual Income and Expenses for the tax year ending \_\_\_\_\_, consisting of \_\_\_\_\_ sheets, including this signature sheet, and that it is true and correct to the best of my knowledge, information, and belief.

Date \_\_\_\_\_ Signature: \_\_\_\_\_

Debtor

Date \_\_\_\_\_ Signature: \_\_\_\_\_

(Joint Debtor, if any)

[If joint case, both spouses must sign.]

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### DECLARATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h) and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required by that section.

Printed or Typed Name of Bankruptcy Petition Preparer \_\_\_\_\_ Social Security No. \_\_\_\_\_  
*(Required by 11 U.S.C. § 110.)*

If the bankruptcy petition preparer is not an individual, state the name, title (if any), address, and social security number of the officer, principal, responsible person, or partner who signs this document.

\_\_\_\_\_

Address \_\_\_\_\_

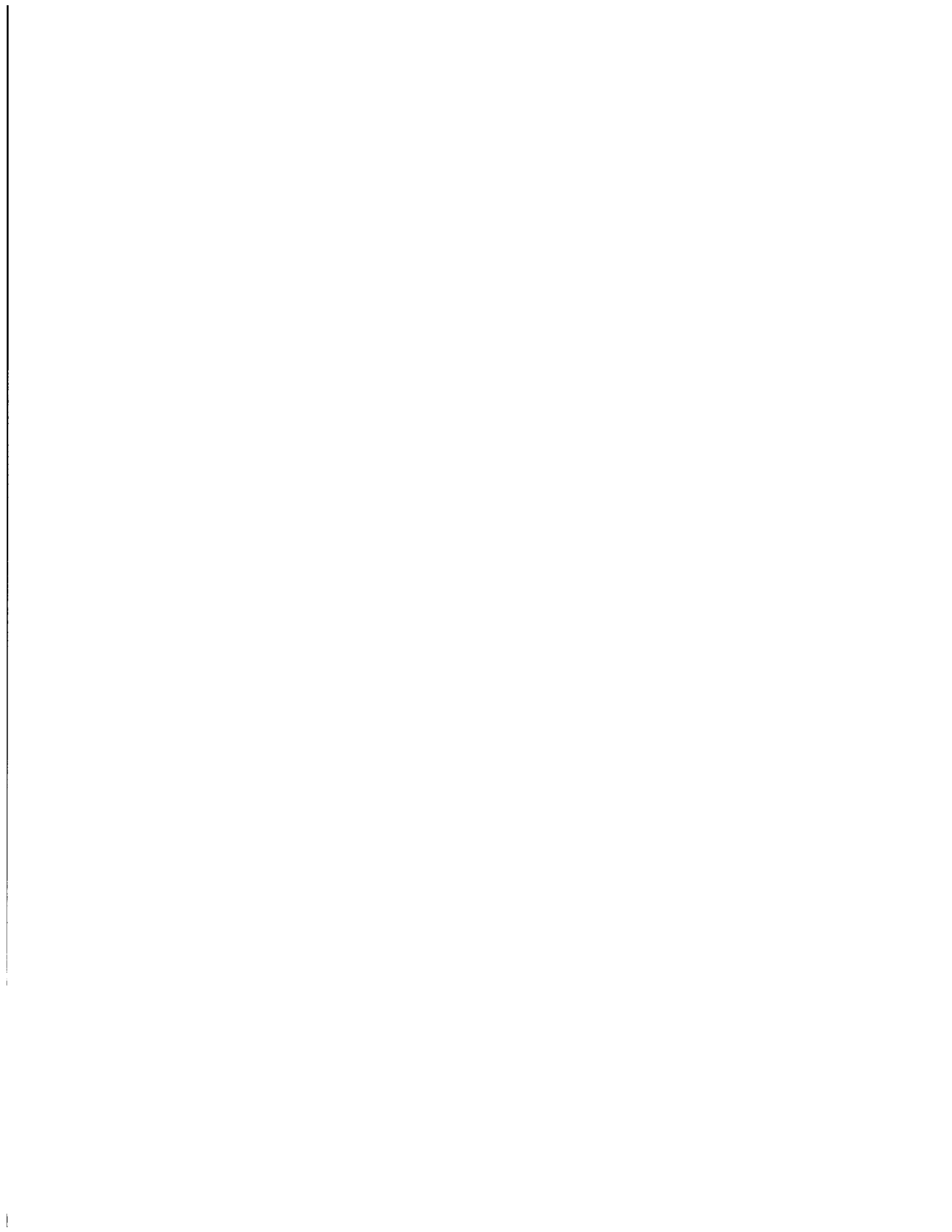
X \_\_\_\_\_  
Signature of Bankruptcy Petition Preparer

\_\_\_\_\_ Date

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document, unless the bankruptcy petition preparer is not an individual:

*If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person*

*A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both 11 U.S.C. § 110; 18 U.S.C. § 156.*



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 (5<sup>th</sup> Cir. 1998); *Rubin v. Schottenstein, Zox & Dunn*, 110 F.3d 1247, 1253 n.4 (6<sup>th</sup> Cir. 1997), vacated on other grounds 143 F.3d 263 (6<sup>th</sup> 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 (1<sup>st</sup> 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 (9<sup>th</sup> Cir. 1996); *In re Seiscom Delta, Inc.*, 857 F.2d 279 (5<sup>th</sup> 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 (9<sup>th</sup> 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**

1 (a) Bankruptcy dockets

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

9 \* \* \* \* \*

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**

\* \* \* \* \*

(c) Time for Filing.

\* \* \* \* \*

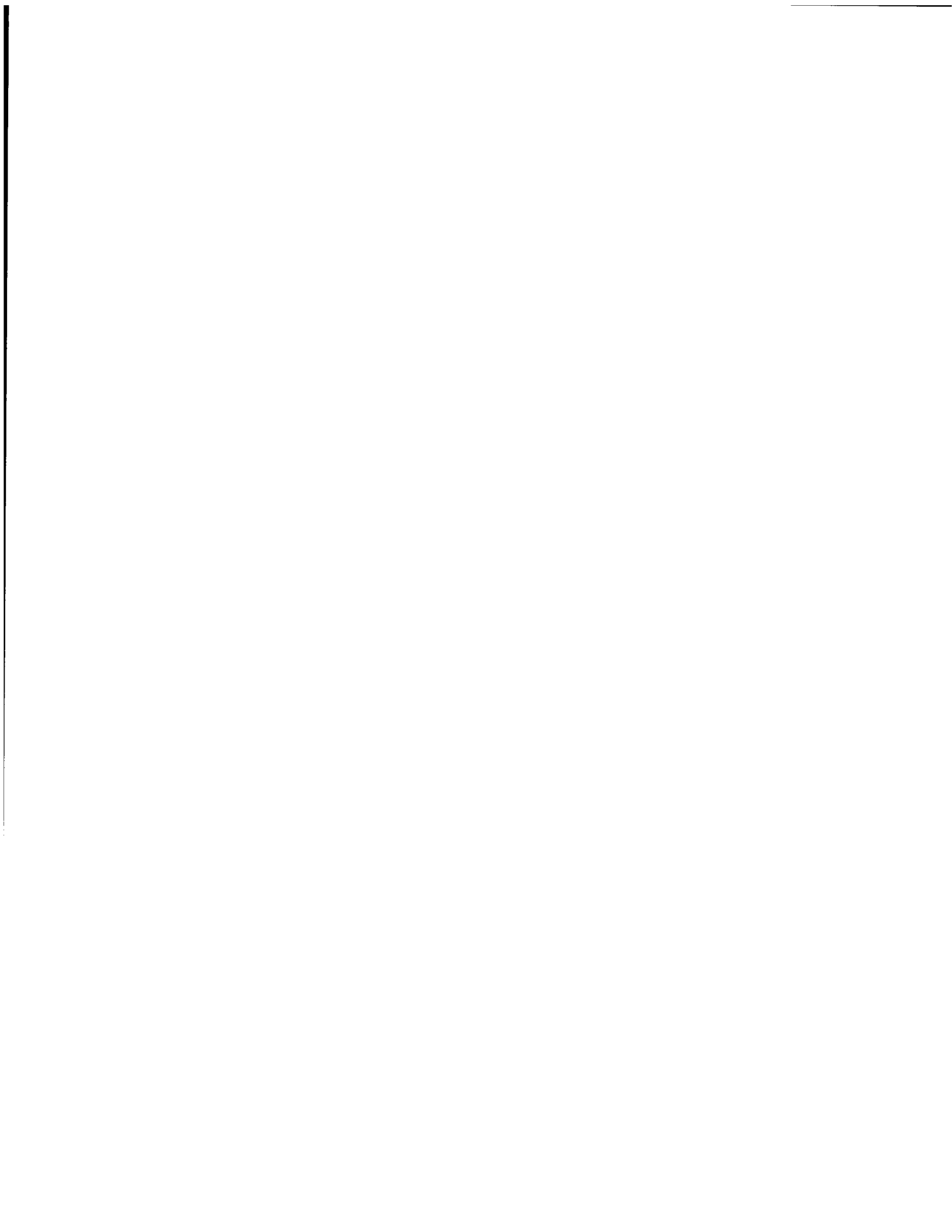
(5) If notice of insufficient assets to pay a dividend was given to creditors ~~pursuant to~~ under Rule 2002(e), and subsequently the trustee notifies the court that payment of a dividend appears possible, the clerk shall ~~notify~~ give at least 90 days notice by mail to the creditors of that fact 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.

Item 9(a) will be discussed along with the proposed privacy template rule,  
Rule 9037, which is part of Items 3 and 12



UNITED STATES BANKRUPTCY COURT _____ DISTRICT OF _____		<b>PROOF OF CLAIM</b>
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: _____		<b>Court Claim Number:</b> _____ (If known)
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 <sup>2</sup> interest or <sup>2</sup> 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.)		
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"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or <sup>1</sup> (1)(B).
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"/> Wages, salaries, or commissions (up to \$10,000*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. §507(a)(4).
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"/> Contributions to an employee benefit plan - 11 U.S.C. §507(a)(5).
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 side.  DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, please explain:		<input type="checkbox"/> Up to \$2,225* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. §507(a)(7).
		<input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. §507(a)(8).
		<input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. §507(a)(____).
		Amount entitled to priority:  \$ _____
		*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
Date: _____	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.	<b>FOR COURT USE ONLY</b>

# 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](http://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

DATE: February 15, 2006  
TO: Advisory Committee on Bankruptcy Rules  
FROM: Patricia S. Ketchum, Consultant  
SUBJECT: Report of the Forms Subcommittee

The Forms Subcommittee has reviewed all of the Official Forms that were amended to conform to the requirements of the 2005 Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) and the comments received concerning them, both formal and informal. The subcommittee is recommending minor amendments to several forms based on these comments, some of which are not directly related to BAPCPA but arose from the general scrutiny of the forms inspired by the new law. The subcommittee also is recommending amendments to several additional forms to enable the courts and the Administrative Office to fulfill new statistical reporting requirements enacted as part of BACPA and which take effect in October 2006.

Forms amendments related to statistical reporting requirements and certain other statutory provisions in conformity with BAPCPA need to be amended effective October 17, 2006. Accordingly, they should be presented to the Judicial Conference for approval at its September 2006 session. Other proposed amendments can await the effective date of proposed amendments to the rules, December 1, 2008. Proposed Committee Notes to accompany publication of all the amended forms will be distributed at the meeting.

Under "old business," the subcommittee re-presents the amendments to the Proof of Claim form approved in March 2005 that were held back from publication as unrelated to BAPCPA. In addition, amended versions of two Director's forms are included under "Information Items" for the Committee's review and comment.

Several forms are not part of this report. Proposed amendments to the three "means test" forms will be discussed by the Consumer Subcommittee. The four new official forms, the three required in chapter 11 small business cases and the report on affiliates in which the debtor

has a substantial or controlling interest (required in any chapter 11 case involving a debtor having such interests), will be presented by the Business Subcommittee.

#### “Old Business” - Official Form 10

Amendments to Rule 3001 and to Official Form 10, the Proof of Claim, were approved for publication at the Committee’s March 2005 meeting. These proposed amendments would authorize a creditor to attach copies of the documents supporting the creditor’s claim, limit the size of attachments to a total of 30 pages (including a maximum of 5 pages of evidence of perfection), and authorize the use of “relevant excerpts” of the documents if they exceed 30 pages. The proposed amendments to the form conform to the proposed amendments to the rule. In addition, the proposed amendments would require personal identifiers in the supporting documents to be redacted in compliance with the privacy policy of the Judicial Conference, the E-Government Act, and the proposed Rule 9037.

After the enactment of BAPCPA in April 2005, it was decided to postpone publication of these amendments and limit published proposals for amending Official Forms to those needed to implement BAPCPA. Although the Committee plans to publish the BAPCPA amendments in August 2006 along with the proposed BAPCPA amendments to the rules, including these further amendments to Official Form 10 should not create any problems. In addition, publication in August 2006 will put the amendments on schedule to take effect at the same time as the proposed amendments to Rules 3001 and 9037.

#### “New Business” - Forms Requiring Only Minor Amendments

##### Amendments That Can Proceed on the Normal Rules Schedule

Three forms that contain only the same minor amendment are: (1) Official Form 4, List of Creditors Holding 20 Largest Unsecured Claims; (2) Official Form 6B, (Schedule of) Executory



Contracts and Unexpired Leases; and, (3) Official Form 6H, (Schedule of) Codebtors. These amendments expand the direction to avoid disclosing the name of a minor child (11 U.S.C. § 112) by adding language directing the debtor to provide contact information for a guardian or other legally responsible adult. The current form contains a reference to Rule 1007(m), but a commentator suggested that more detailed direction would help *pro se* debtors to complete the schedules correctly. These amendments can proceed on the normal rules schedule.

Official Form 6B, Schedule of Personal Property, would be amended in Questions 13, 14, and 21– in which the debtor lists stock and other interests in corporations, partnerships, joint ventures, and similar entities – a direction to “State whether any interest is subject to separate reporting under Fed. R. Bankr. 2015.3.” This proposed amendment would support the new Rule 2015.3 which will take effect December 1, 2008. Accordingly, this proposed amendment to the form should take effect at the same time.

Official Form 7, Statement of Financial Affairs, would be amended in Questions 3a. and 3b. to make the sentence that differentiates potentially avoidable transfers which must be reported from those below the statutory threshold which do not need to be reported. The revision replaces the confusing “if [the total transferred] . . . is not less than \$600” with the somewhat clearer “unless [the total transferred] . . . is less than \$600.” There also seem to have been versions of Official Form 7 circulating that used the phrase “more than \$600,” the report of which triggered review of Questions 3 a.- c. The review resulted in adding to Question 3b. the sentence in 3a. which directs the debtor to label payments made on account of a domestic support obligation or as part of alternative repayment plan. These amendments can proceed on the normal rules schedule.

Official Form 9I, the § 341 Notice used in chapter 13 cases would be amended to alert creditors (and the debtor) that a governmental unit has an extended deadline for filing tax claims based on returns filed by the debtor during the pendency of the case. This amendment would track the amendment prescribing the deadline in (currently Interim) Rule 3002(c)(1). This

amendment can proceed on the normal rules schedule.

#### Amendments that Should Take Effect October 2006

Official Form 5, the Involuntary Petition, would be amended in the sections labeled “Type of Debtor” and “Nature of Business” to match more closely the similarly labeled sections on the Voluntary Petition. These amendments are statistics-related and should take effect in October 2006.

Official Form 6, Declaration Concerning Debtor’s Schedules would be amended in the signature section for an individual debtor to require the debtor to state the number of pages in the schedules “plus 2,” to include the both the Summary of Schedules and the Statistical Summary of Certain Liabilities and Related Data. This is a conforming change related to 28 U.S.C. § 159, which was enacted in 2005 as part of BAPCPA and takes effect October 17, 2006. Accordingly, this amendment should take effect at the same time.

Official Forms 9G and 9H, the § 341 Notices used in chapter 12 cases would be amended to add “family fishermen” in the heading of the form and to the description of chapter 12 on the reverse side. These are conforming amendments and should take effect in October 2006.

#### Forms Containing Statistics-Related Amendments

These more extensive changes are being proposed to Official Forms 1, the Voluntary Petition, and certain schedules in Official Form 6, Schedules of Assets and Liabilities. For the most part, they relate directly to provisions in 28 U.S.C. § 159. Several changes to Form 1, however, have been requested by the Committee on the Administration of the Bankruptcy System (Bankruptcy Administration Committee) or others, independent of § 159. As stated above, § 159 has a separate effective date of October 17, 2006. All of these amendments, therefore, need to take effect on that date.

Official Form 1- Voluntary Petition. The Statistics Division, now having a few months' experience with the October 2005 version of the petition, has requested that the new information being requested concerning whether the debtor is a nonprofit entity be separated from the choices concerning "Nature of Business," so that debtors would be limited to only one choice in the "Nature of Business" section of the form. This request presented an opportunity to sharpen the language of the "nonprofit" box as well as isolate it from the "Nature of Business" choices. The new box uses the term "tax-exempt" rather than the broader "nonprofit." As the "Nature of Business" part of the form applies only to certain business debtors, the amended form would make it clear that only the narrow range of entities listed are expected to complete that section.

The Bankruptcy Administration Committee had requested that some attempt be made to determine the number of cases filed as pre-packaged chapter 11s. The Bankruptcy Administration Committee members are aware the information obtained will be flawed to some degree, but consider the prospect of some information to be better than the complete lack of information. Accordingly, the proposed form adds to the existing box labeled "Chapter 11 Debtors," in which we try to determine at the outset whether a chapter 11 case involves a "small business debtor," a third section containing checkboxes to be used if a plan is being filed with the petition and if acceptances of the plan were solicited preterition. The language used with the checkboxes was taken from § 1126(b) of the Code.

The staff of the Statistics Division suggested deleting the checkboxes for ranges of estimated assets and estimated liabilities. Under 28 U.S.C. § 159, the Division will be collecting actual dollar values of assets and liabilities from the schedules. The subcommittee, however, is persuaded that there should be some information about the size of the case available when the petition is filed—both for case management purposes and for public information. Accordingly, the estimated asset and liability checkboxes would be retained, but the number of ranges reduced.

On page 2 of the form, the section labeled "Certification Concerning Debt Counseling by Individual /Joint Debtors" would be expanded to four possible statements from the current two

statements. One new statement covers the circumstance where the U.S. trustee or bankruptcy administrator has determined that the existing resources in the district are inadequate, making the requirement inapplicable to debtors generally. The other new statement covers the exemption for disability or military duty. Interim Rule 1007(c) requires debtors who complete the credit counseling requirement preterition to file the certificate of completion issued by the credit counseling organization with the petition. The debtor's statement that he/she/they have completed the requirement would contain a new direction to attach the certificate. In addition, minor stylistic changes have been made to pages 2 and 3 of the form.

Official Form 6 - Schedules of Assets and Liabilities. The proposed changes to Official Form 6 that are related to the enlarged statistical reporting requirements of 28 U.S.C. § 159 involve the following six parts of the form: (1) Summary of Schedules and Statistical Summary of Certain Liabilities and Related Data, (2) Schedule 6-D, Creditors Holding Secured Claims, (3) Schedule 6E - Creditors Holding Unsecured Claims Entitled to Priority, (4) Schedule 6F - Creditors Holding Unsecured Claims Not Entitled to Priority, (5) Schedule 6I - Current Income of Individual Debtor(s), and (6) Schedule 6J - Current Expenditures of Individual Debtor(s).

28 U.S.C. § 159 requires the Director of the Administrative Office to submit to Congress annually a report and analysis of the assets and liabilities scheduled by individual debtors with primarily consumer debts who file cases under chapters 7, 11, and 13. These statistics are to be broken down by chapter and aggregated for each judicial district. Under subsection (c)(3) of § 159, the information must include all of the following: total assets, total liabilities, totals in each category of assets and liabilities, current monthly income, average income, and average expenses. This data is in addition to the information about debt "in categories which are predominantly nondischargeable" which the Committee provided for in October 2005 with the new statistical summary page.

All of the additional information that will be required can be retrieved from the schedules and from the "means test" forms, but would be very labor-intensive in cases not filed

electronically. Accordingly, the Statistics Division and CM/ECF programming staffs requested that the Summary of Schedules be modified to collect all the information in one place. To accomplish this, several changes have been made to the Statistical Summary. First, the title would be changed to the broader "Statistical Summary of Certain Liabilities and Related Data," as some of the new items to be reported there are not liabilities. The instructions would be revised to direct an individual debtor whose debts are not primarily consumer debts to check a box at the top indicating the debtor's status as a non-consumer. This would achieve two purposes—indicating to the clerk with an affirmative statement that information from the individual's case should not be included in the §159 report, and enabling the instructions on the signature line for individual debtors on the Declaration Concerning Debtor's Schedules to be very simple, "Total shown on summary page plus 2."

The "predominantly nondischargeable" debt section of the form is unchanged. Added at the bottom, however, are two new sections, each introduced with the direction, "State the following." The first section collects "average income," "average expenses," and "current monthly income" from specific lines in Schedules I and J and the "means test" form for the chapter under which the case is filed. The second new section collects totals in certain categories not shown on the general "Summary of Schedules," which reports only the total owed to creditors who are secured, have priority for all or part of the claims, or have only a general unsecured claim. The new totals are the "Unsecured Portion, if Any" from Schedule D - Creditors Holding Secured Claims, plus the "Amount Entitled to Priority" and the "Amount Not Entitled to Priority, if Any," both from Schedule E - Creditors Holding Unsecured Claims Entitled to Priority. This section also repeats the total from Schedule F - Creditors Holding Unsecured Claims Not Entitled to Priority so that, by totaling all the unsecured nonpriority amounts, a complete total of the debtor's obligations in that category will be created. This number will facilitate statistical reporting by category and also can be used, if the debtor chooses, to produce a component of the "means test," the total nonpriority unsecured debt, which is reported on Form 22A, line 53. Creating a separate total for the "Amount Entitled to Priority" will establish the number to be reported in that category.

Conforming changes are proposed for Schedules D and E by adding new totals boxes for the columns that do not have them currently. In addition, the instructions for these forms are revised to direct debtors to add the amounts in all columns to create the necessary totals and to report those totals on the Statistical Summary of Certain Liabilities and Related Data. The instructions on these schedules also would be amended to add the direction to include contact information for the guardian of any minor child. Schedule F would be amended minimally to add the direction concerning a minor child's guardian and instruct the debtor to report the total from the schedule both on the Summary of Schedules and on the Statistical Summary of Certain Liabilities and Related Data.

The changes to Schedules I and J consist of changing the phrase "Total Monthly Income" or "Total Monthly Expenses" to "Average Monthly Income" and "Average Monthly Expenses." The schedules already use the word "average," so the change is not substantive, but is made for the purpose of conforming the terminology in these two schedules to the terminology used by Congress in 28 U.S.C. § 159. The changes appear on lines 15 and 16 of Schedule I and on lines 18, 20a., and 20b. of Schedule J.

#### Addendum - Official Form 23

Official Form 23, the Debtor's Certification of Completion of Instruction Course Concerning Personal Financial Management, was a new form added in October 2005 to implement § 521. The form implements Interim Rule 1007(b)(7), which requires an individual debtor in a chapter 7 or chapter 13 case to file "a statement" regarding completion of a course in personal financial management "prepared as prescribed by the appropriate Official Form." Section 727(a)(11) requires a debtor to complete such a course as a condition for receiving a discharge. The penalty for noncompliance is closing of the case without discharging the debtor.

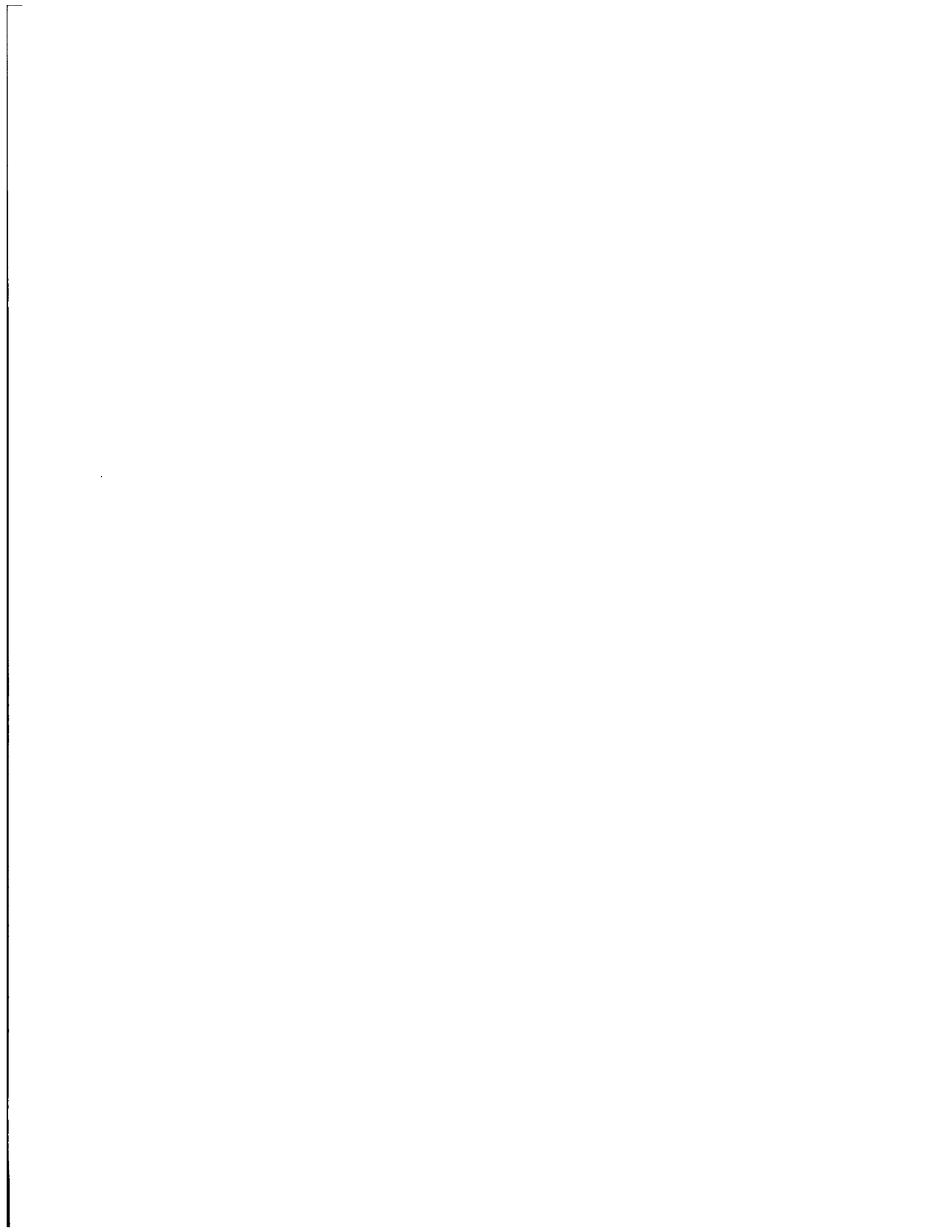
There have been two recent incidents of feedback concerning this form. One district reported frequent misuse of the form by debtors to file their certificate of completion of

preterition credit counseling and recommended added instructions about the purpose of the form and the separate deadlines for filing it in chapter 7 and chapter 13 cases. This district also reported “hearing” that the U.S. trustee was requiring providers of personal financial management courses to furnish debtors with certificates of completion as a condition of U.S. trustee approval. If true, this district recommended revising the sentence concerning the attaching of such a certificate to delete the “if furnished” language.

Subsequently, another district questioned “why we have this form,” adding credibility to the possibility that U.S. trustees are requiring personal financial management instructors to furnish debtors with certificates of completion, at least in some districts. As the interim rule requires a debtor to file “a statement” using an Official Form, I have attached a copy of the form showing possible revisions that would state unequivocally that a certificate of completion is attached and provide instructions about filing the form and the relevant deadlines.

If the requirement that personal financial management instructors furnish certificates of completion is a national requirement, rather than a local one, the Committee may want to consider amending the Interim Rule 1007(b)(7) and abrogating the form as no longer necessary or required. If the Committee determines to retain the form, it probably should be amended along the lines proposed in the attached copy.

Attachments





# United States Bankruptcy Court

\_\_\_\_\_ District Of \_\_\_\_\_

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_

Chapter \_\_\_\_\_

## LIST OF CREDITORS HOLDING 20 LARGEST UNSECURED CLAIMS

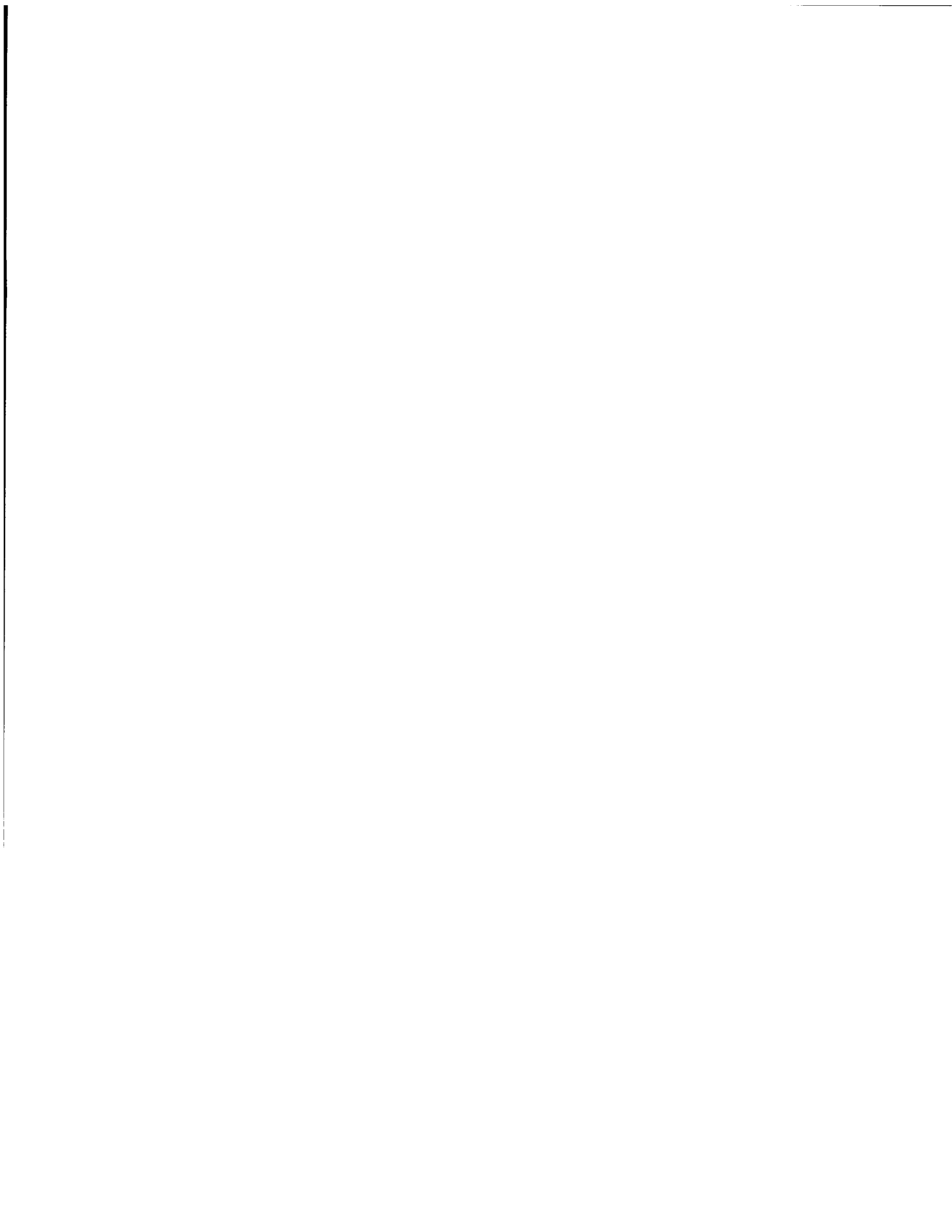
Following is the list of the debtor's creditors holding the 20 largest unsecured claims. The list is prepared in accordance with Fed. R. Bankr. P. 1007(d) for filing in this chapter 11 [or chapter 9] case. The list does not include (1) persons who come within the definition of "insider" set forth in 11 U.S.C. § 101, or (2) secured creditors unless the value of the collateral is such that the unsecured deficiency places the creditor among the holders of the 20 largest unsecured claims. If a minor child is one of the creditors holding the 20 largest unsecured claims, indicate that by stating "a minor child" and do not disclose the child's name. See 11 U.S.C. § 112. If "a minor child" is stated, also include the name, address, and legal relationship to the minor child of a person described in Fed. R. Bankr. P. 1007(m).

(1)	(2)	(3)	(4)	(5)
<i>Name of creditor and complete mailing address, including zip code</i>	<i>Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted</i>	<i>Nature of claim (trade debt, bank loan, government contract, etc.)</i>	<i>Indicate if claim is contingent, unliquidated, disputed or subject to setoff</i>	<i>Amount of claim [if secured also state value of security]</i>

Date: \_\_\_\_\_

\_\_\_\_\_  
Debtor

*[Declaration as in Form 2]*



<b>United States Bankruptcy Court</b>		<b>INVOLUNTARY PETITION</b>
District of _____		
IN RE (Name of Debtor – If Individual: Last, First, Middle)		ALL OTHER NAMES used by debtor in the last 8 years (Include married, maiden, and trade names )
LAST FOUR DIGITS OF SOC. SEC. NO./Complete EIN or other TAX I.D. NO. (If more than one, state all.)		
STREET ADDRESS OF DEBTOR (No. and street, city, state, and zip code)		MAILING ADDRESS OF DEBTOR (If different from street address)
COUNTY OF RESIDENCE OR PRINCIPAL PLACE OF BUSINESS	ZIP CODE	ZIP CODE
LOCATION OF PRINCIPAL ASSETS OF BUSINESS DEBTOR (If different from previously listed addresses)		
CHAPTER OF BANKRUPTCY CODE UNDER WHICH PETITION IS FILED		
<input type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 11		
<b>INFORMATION REGARDING DEBTOR (Check applicable boxes)</b>		
<b>Nature of Debts</b> Petitioners believe: <input type="checkbox"/> Debts are primarily consumer debts <input type="checkbox"/> Debts are primarily business debts  BRIEFLY DESCRIBE NATURE OF BUSINESS	<b>Type of Debtor</b> (Form of Organization) <input type="checkbox"/> Individual (Includes Joint Debtor) <input type="checkbox"/> Corporation (Includes LLC and LLP) <input type="checkbox"/> Other (If debtor is not one of the above entities, check this box and provide the information provided below.) State Type of Entity: _____	<b>Nature of Business</b> <input type="checkbox"/> Health Care Business <input type="checkbox"/> Single Asset Real Estate as defined in 11 U.S.C. § 101 (51)(B) <input type="checkbox"/> Railroad <input type="checkbox"/> Stockbroker <input type="checkbox"/> Commodity Broker <input type="checkbox"/> Clearing Bank
<b>VENUE</b>	<b>FILING FEE (Check one box)</b>	
<input type="checkbox"/> Debtor has been domiciled or has had a residence, principal place of business, or principal assets in the District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.  <input type="checkbox"/> A bankruptcy case concerning debtor's affiliate, general partner or partnership is pending in this District.	<input type="checkbox"/> Full Filing Fee attached  <input type="checkbox"/> Petitioner is a child support creditor or its representative, and the form specified in § 304 (g) of the Bankruptcy Reform Act of 1994 is attached.	
<b>PENDING BANKRUPTCY CASE FILED BY OR AGAINST ANY PARTNER OR AFFILIATE OF THIS DEBTOR (Report information for any additional cases on attached sheets.)</b>		
Name of Debtor	Case Number	Date
Relationship	District	Judge
<b>ALLEGATIONS</b> (Check applicable boxes)		COURT USE ONLY
1. Petitioner (s) are eligible to file this petition pursuant to 11 U.S. § 303 (b). 2. The debtor is a person against whom an order for relief may be entered under title 11 of the United States Code. 3.a The debtor is generally not paying such debtor's debts as they become due, unless such debts are the subject of a bona fide dispute as to liability or amount; or b. Within 120 days preceding the filing of this petition, a custodian, other than a trustee receiver, or agent appointed or authorized to take charge of less than substantially all of the property of the debtor for the purpose of enforcing a lien against such property, was appointed or took possession.		

*If a child support creditor or its representative is a petitioner, and if the petitioner files the form specified in § 304 (g) of the Bankruptcy Reform Act of 1994, no fee is required.*

Name of Debtor \_\_\_\_\_

**TRANSFER OF CLAIM**

Check this box if there has been a transfer of any claim against the debtor or to any petitioner. Attach all documents evidence the transfer and any statements that are required under Bankruptcy Rule 1003(a).

**REQUEST FOR RELIEF**

Petitioner(s) request that an order for relief be entered against the debtor under the chapter of title 11, United States Code, specified in this petition. If any petitioner is a foreign representative appointed in a foreign proceeding, a certified copy of the order of the court granting recognition is attached.

Petitioner(s) declare under penalty of perjury that the foregoing is true and correct according to the best of their knowledge, information, and belief.

x \_\_\_\_\_  
 Signature of Petitioner or Representative (State title)

Name of Petitioner \_\_\_\_\_ Date Signed \_\_\_\_\_

Name & Mailing  
 Address of Individual \_\_\_\_\_  
 Signing in Representative Capacity \_\_\_\_\_

x \_\_\_\_\_  
 Signature of Attorney \_\_\_\_\_ Date \_\_\_\_\_

Name of Attorney Firm (If any) \_\_\_\_\_

Address \_\_\_\_\_

Telephone No. \_\_\_\_\_

x \_\_\_\_\_  
 Signature of Petitioner or Representative (State title)

Name of Petitioner \_\_\_\_\_ Date Signed \_\_\_\_\_

Name & Mailing  
 Address of Individual \_\_\_\_\_  
 Signing in Representative Capacity \_\_\_\_\_

x \_\_\_\_\_  
 Signature of Attorney \_\_\_\_\_ Date \_\_\_\_\_

Name of Attorney Firm (If any) \_\_\_\_\_

Address \_\_\_\_\_

Telephone No. \_\_\_\_\_

x \_\_\_\_\_  
 Signature of Petitioner or Representative (State title)

Name of Petitioner \_\_\_\_\_ Date Signed \_\_\_\_\_

Name & Mailing  
 Address of Individual \_\_\_\_\_  
 Signing in Representative Capacity \_\_\_\_\_

x \_\_\_\_\_  
 Signature of Attorney \_\_\_\_\_ Date \_\_\_\_\_

Name of Attorney Firm (If any) \_\_\_\_\_

Address \_\_\_\_\_

Telephone No. \_\_\_\_\_

**PETITIONING CREDITORS**

Name and Address of Petitioner	Nature of Claim	Amount of Claim
Name and Address of Petitioner	Nature of Claim	Amount of Claim
Name and Address of Petitioner	Nature of Claim	Amount of Claim

Note: If there are more than three petitioners, attach additional sheets with the statement under penalty of perjury, each petitioner's signature under the statement and the name of attorney and petitioning creditor information in the format above. Total Amount of Petitioners' Claims

\_\_\_\_\_ continuation sheets attached

In re \_\_\_\_\_  
Debtor

Case No. \_\_\_\_\_  
(If known)

## SCHEDULE B - PERSONAL PROPERTY

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "x" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether husband, wife, or both own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

**Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.**

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property." In providing the information requested in this schedule, do not include the name or address of a minor child. Simply state "a minor child." See 11 U.S.C. § 112. If "a minor child" is stated, also include the name, address, and legal relationship to the child of a person described in Fed. R. Bankr. P. 1007(m).

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITH- OUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
1. Cash on hand.  2. Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and home- stead associations, or credit unions, brokerage houses, or cooperatives.  3. Security deposits with public util- ities, telephone companies, land- lords, and others.  4. Household goods and furnishings, including audio, video, and computer equipment.  5. Books; pictures and other art objects; antiques; stamp, coin, record, tape, compact disc, and other collections or collectibles.  6. Wearing apparel.  7. Furs and jewelry.  8. Firearms and sports, photo- graphic, and other hobby equipment.  9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.  10. Annuities Itemize and name each issuer.  11. Interests in an education IRA as defined in 26 U.S.C. § 530(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. § 529(b)(1). Give particulars. (File separately the record(s) of any such interest(s). 11 U.S.C. § 521(c); Fed. R. Bankr. P. 1007(b)).				

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_  
(If known)

**SCHEDULE B - PERSONAL PROPERTY**  
(Continuation Sheet)

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITH- OUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
<p>12. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Give particulars.</p> <p>13. Stock and interests in incorporated and unincorporated businesses. Itemize. State whether any interest is subject to separate reporting under Fed. R. Bankr. P. 2015. 3.</p> <p>14. Interests in partnerships or joint ventures. Itemize. State whether any interest is subject to separate reporting under Fed. R. Bankr. P. 2015. 3.</p> <p>15. Government and corporate bonds and other negotiable and non-negotiable instruments.</p> <p>16. Accounts receivable.</p> <p>17. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.</p> <p>18. Other liquidated debts owed to debtor including tax refunds. Give particulars</p> <p>19. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule A – Real Property.</p> <p>20. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.</p> <p>21. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each. State whether any interest is subject to separate reporting under Fed R Bankr. P. 2015. 3.</p>				

In re \_\_\_\_\_,  
Debtor

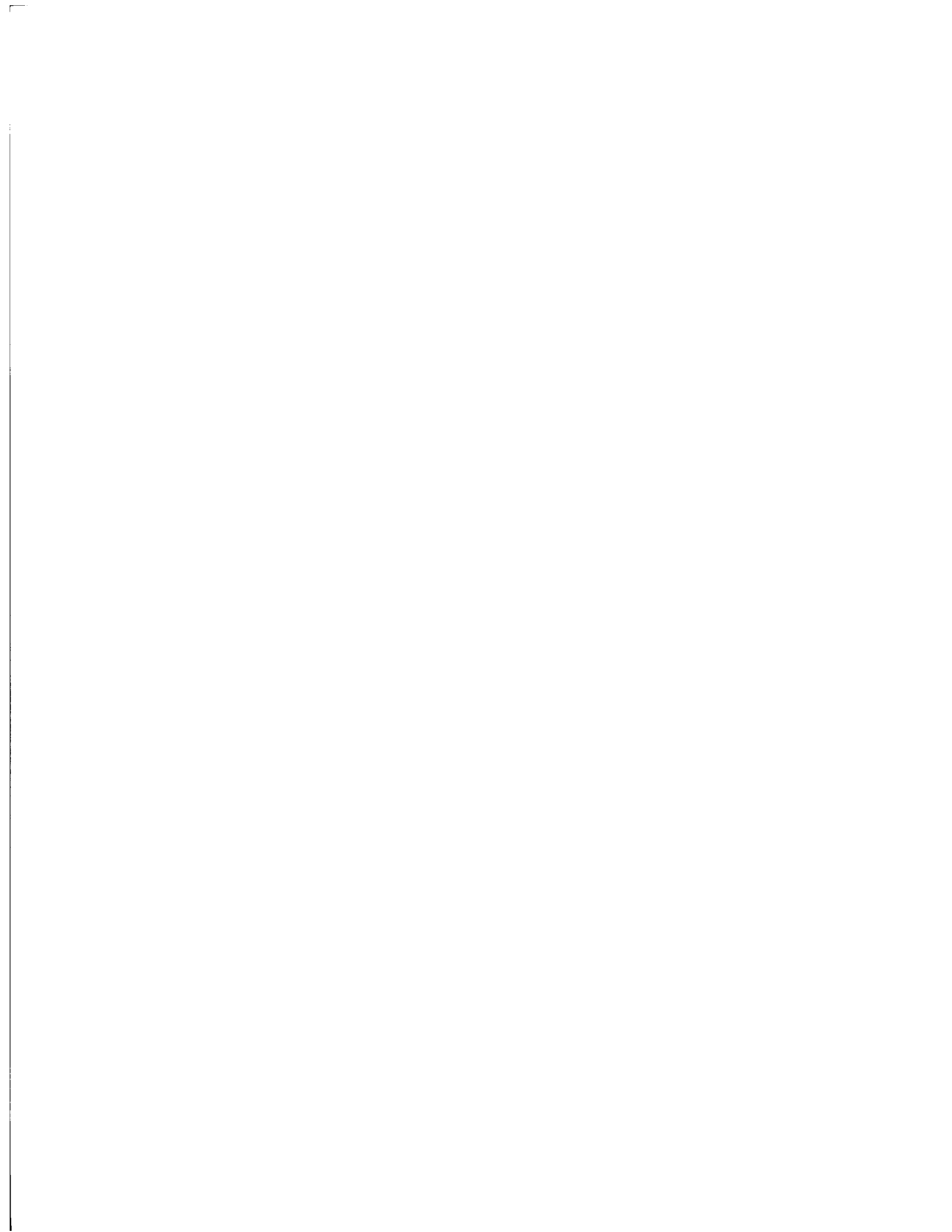
Case No. \_\_\_\_\_  
(If known)

## SCHEDULE B - PERSONAL PROPERTY

(Continuation Sheet)

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITH- OUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
<p>22. Patents, copyrights, and other intellectual property. Give particulars.</p> <p>23. Licenses, franchises, and other general intangibles. Give particulars.</p> <p>24. Customer lists or other compilations containing personally identifiable information (as defined in 11 U.S.C § 101(41A)) provided to the debtor by individuals in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes.</p> <p>25. Automobiles, trucks, trailers, and other vehicles and accessories.</p> <p>26. Boats, motors, and accessories.</p> <p>27. Aircraft and accessories.</p> <p>28. Office equipment, furnishings, and supplies.</p> <p>29. Machinery, fixtures, equipment, and supplies used in business.</p> <p>30. Inventory.</p> <p>31. Animals</p> <p>32. Crops - growing or harvested. Give particulars.</p> <p>33. Farming equipment and implements.</p> <p>34. Farm supplies, chemicals, and feed.</p> <p>35. Other personal property of any kind not already listed. Itemize.</p>				
_____ continuation sheets attached Total ▶				\$

(Include amounts from any continuation sheets attached. Report total also on Summary of Schedules.)





In re \_\_\_\_\_,  
Debtor

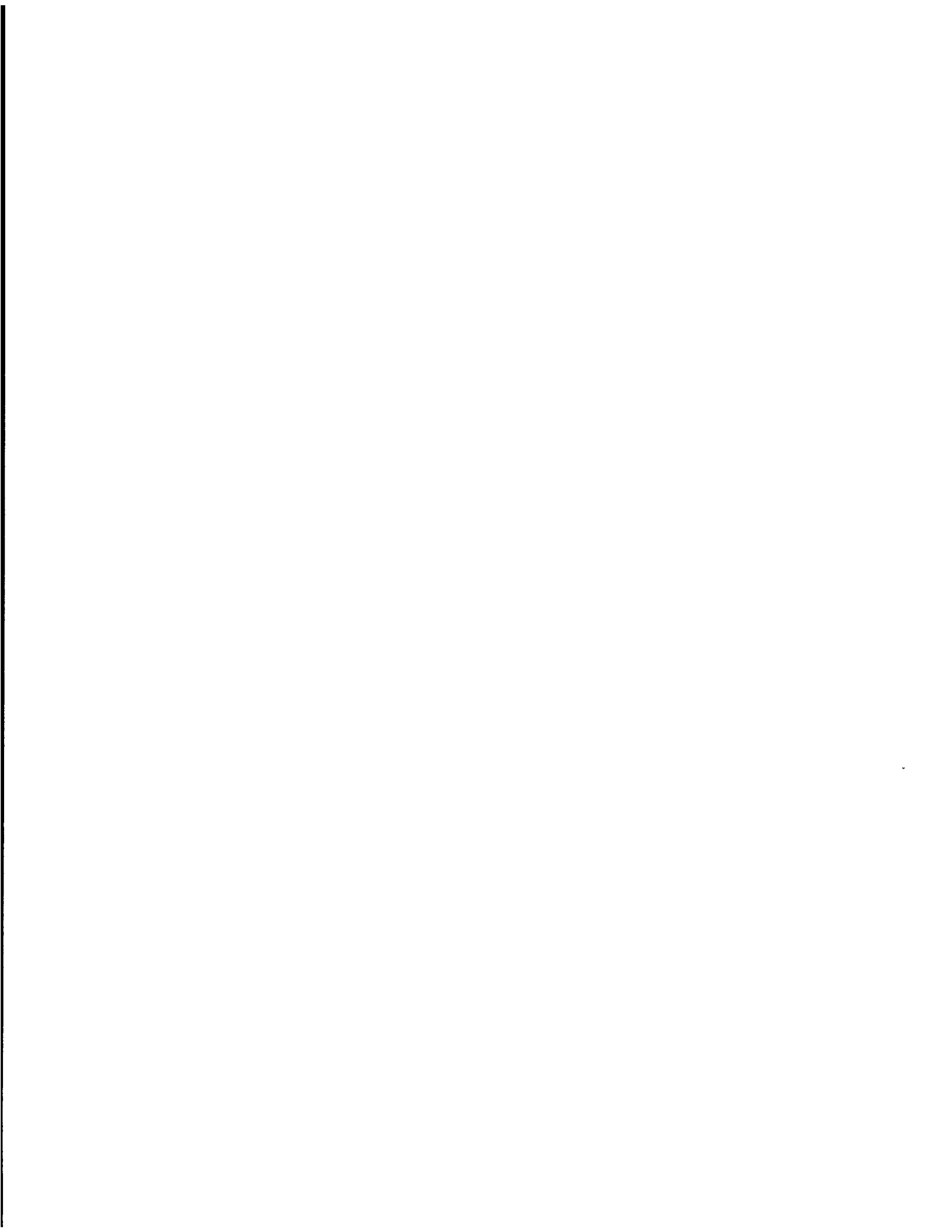
Case No. \_\_\_\_\_  
(if known)

### SCHEDULE G - EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests. State nature of debtor's interest in contract, i.e., "Purchaser," "Agent," etc. State whether debtor is the lessor or lessee of a lease. Provide the names and complete mailing addresses of all other parties to each lease or contract described. If a minor child is a party to one of the leases or contracts, indicate that by stating "a minor child" and do not disclose the child's name. See 11 U.S.C. § 112. If "a minor child" is stated, also include the name, address, and legal relationship to the minor child of a person described in Fed. R. Bankr. P. 1007(m).

Check this box if debtor has no executory contracts or unexpired leases.

<b>NAME AND MAILING ADDRESS, INCLUDING ZIP CODE, OF OTHER PARTIES TO LEASE OR CONTRACT.</b>	<b>DESCRIPTION OF CONTRACT OR LEASE AND NATURE OF DEBTOR'S INTEREST. STATE WHETHER LEASE IS FOR NONRESIDENTIAL REAL PROPERTY. STATE CONTRACT NUMBER OF ANY GOVERNMENT CONTRACT.</b>



In re \_\_\_\_\_,  
Debtor

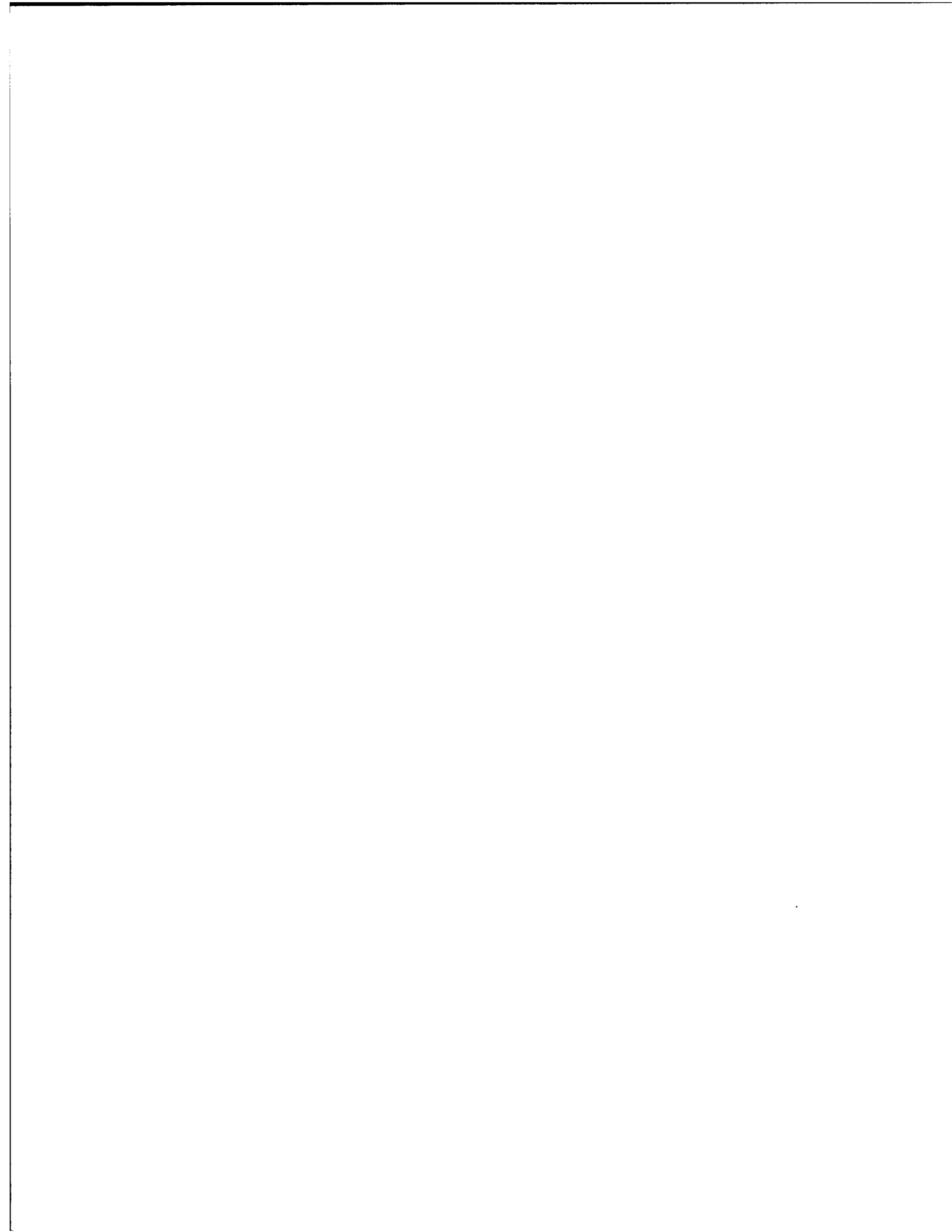
Case No. \_\_\_\_\_  
(if known)

### SCHEDULE H - CODEBTORS

Provide the information requested concerning any person or entity, other than a spouse in a joint case, that is also liable on any debts listed by debtor in the schedules of creditors. Include all guarantors and co-signers. If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within the eight year period immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state, commonwealth, or territory. Include all names used by the nondebtor spouse during the eight years immediately preceding the commencement of this case. If a minor child is a codebtor or a creditor, indicate that by stating "a minor child" and do not disclose the child's name. See 11 U.S.C. § 112. If "a minor child" is stated, also include the name, address, and legal relationship to the minor child of a person described in Fed. R. Bankr. P. 1007(m).

Check this box if debtor has no codebtors.

NAME AND ADDRESS OF CODEBTOR	NAME AND ADDRESS OF CREDITOR



In re \_\_\_\_\_

Debtor

Case No. \_\_\_\_\_

(If known)

# DECLARATION CONCERNING DEBTOR'S SCHEDULES

## DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

I declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of \_\_\_\_\_ sheets, and that they are true and correct to the best of my knowledge, information, and belief. (Total shown on summary page plus 2.)

Date \_\_\_\_\_

Signature: \_\_\_\_\_  
Debtor

Date \_\_\_\_\_

Signature: \_\_\_\_\_  
(Joint Debtor, if any)

[If joint case, both spouses must sign.]

## DECLARATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h) and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required by that section.

Printed or Typed Name of Bankruptcy Petition Preparer \_\_\_\_\_

Social Security No. \_\_\_\_\_  
(Required by 11 U.S.C. § 110.)

*If the bankruptcy petition preparer is not an individual, state the name, title (if any), address, and social security number of the officer, principal, responsible person, or partner who signs this document*

\_\_\_\_\_

Address \_\_\_\_\_

X \_\_\_\_\_  
Signature of Bankruptcy Petition Preparer

\_\_\_\_\_ Date

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document, unless the bankruptcy petition preparer is not an individual:

*If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.*

*A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both 11 U.S.C. § 110, 18 U.S.C. § 156*

## DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF A CORPORATION OR PARTNERSHIP

I, the \_\_\_\_\_ [the president or other officer or an authorized agent of the corporation or a member or an authorized agent of the partnership] of the \_\_\_\_\_ [corporation or partnership] named as debtor in this case, declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of \_\_\_\_\_ sheets, and that they are true and correct to the best of my knowledge, information, and belief. (Total shown on summary page plus 1.)

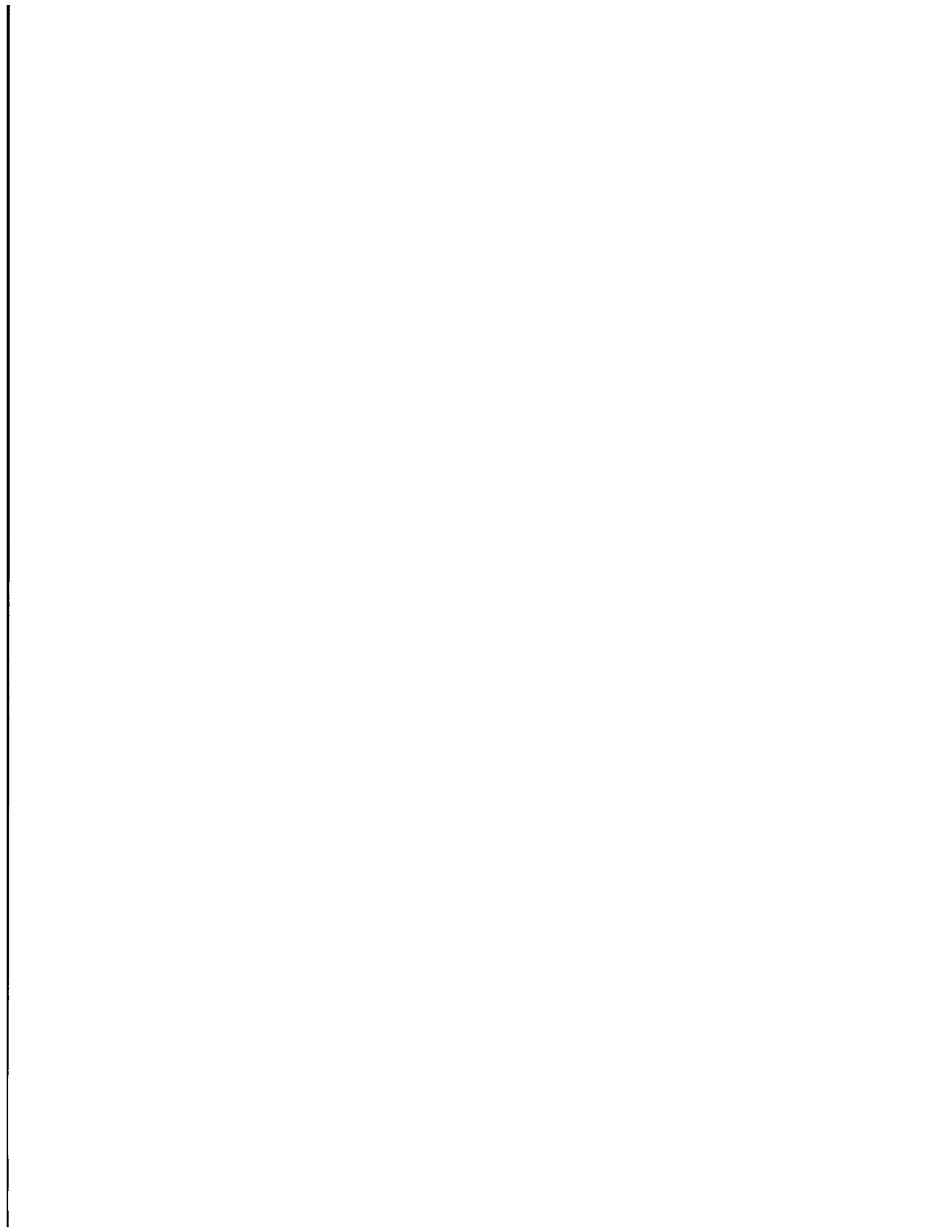
Date \_\_\_\_\_

Signature: \_\_\_\_\_

\_\_\_\_\_  
[Print or type name of individual signing on behalf of debtor.]

*[An individual signing on behalf of a partnership or corporation must indicate position or relationship to debtor.]*

*Penalty for making a false statement or concealing property. Fine of up to \$500,000 or imprisonment for up to 5 years or both. 18 U.S.C. §§ 152 and 3571*



## UNITED STATES BANKRUPTCY COURT

\_\_\_\_\_ DISTRICT OF \_\_\_\_\_

In re: \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_  
(if known)

### STATEMENT OF FINANCIAL AFFAIRS

This statement is to be completed by every debtor. Spouses filing a joint petition may file a single statement on which the information for both spouses is combined. If the case is filed under chapter 12 or chapter 13, a married debtor must furnish information for both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. An individual debtor engaged in business as a sole proprietor, partner, family farmer, or self-employed professional, should provide the information requested on this statement concerning all such activities as well as the individual's personal affairs. Do not include the name or address of a minor child in this statement. Indicate payments, transfers and the like to minor children by stating "a minor child." See 11 U.S.C. § 112. If "a minor child" is stated, include the name, address, and legal relationship to the minor child of a person described in Fed. R. Bankr. P. 1007(m).

Questions 1 - 18 are to be completed by all debtors. Debtors that are or have been in business, as defined below, also must complete Questions 19 - 25. **If the answer to an applicable question is "None," mark the box labeled "None."** If additional space is needed for the answer to any question, use and attach a separate sheet properly identified with the case name, case number (if known), and the number of the question.

#### DEFINITIONS

*"In business."* A debtor is "in business" for the purpose of this form if the debtor is a corporation or partnership. An individual debtor is "in business" for the purpose of this form if the debtor is or has been, within six years immediately preceding the filing of this bankruptcy case, any of the following: an officer, director, managing executive, or owner of 5 percent or more of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or self-employed full-time or part-time. An individual debtor also may be "in business" for the purpose of this form if the debtor engages in a trade, business, or other activity, other than as an employee, to supplement income from the debtor's primary employment.

*"Insider."* The term "insider" includes but is not limited to: relatives of the debtor; general partners of the debtor and their relatives; corporations of which the debtor is an officer, director, or person in control; officers, directors, and any owner of 5 percent or more of the voting or equity securities of a corporate debtor and their relatives; affiliates of the debtor and insiders of such affiliates; any managing agent of the debtor. 11 U.S.C. § 101.

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#### 1. Income from employment or operation of business

None

State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business, including part-time activities either as an employee or in independent trade or business, from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the **two years** immediately preceding this calendar year. (A debtor that maintains, or has maintained, financial records on the basis of a fiscal rather than a calendar year may report fiscal year income. Identify the beginning and ending dates of the debtor's fiscal year.) If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income of both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT

SOURCE

## 2. Income other than from employment or operation of business

None

State the amount of income received by the debtor other than from employment, trade, profession, operation of the debtor's business during the **two years** immediately preceding the commencement of this case. Give particulars. If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income for each spouse whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT

SOURCE

## 3. Payments to creditors

*Complete a. or b., as appropriate, and c.*

None

a. *Individual or joint debtor(s) with primarily consumer debts:* List all payments on loans, installment purchases of goods or services, and other debts to any creditor made within **90 days** immediately preceding the commencement of this case unless the aggregate value of all property that constitutes or is affected by such transfer is less than \$600. Indicate with an asterisk (\*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and creditor counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR

DATES OF  
PAYMENTS

AMOUNT  
PAID

AMOUNT  
STILL OWING

None

b. *Debtor whose debts are not primarily consumer debts:* List each payment or other transfer to any creditor made within **90 days** immediately preceding the commencement of the case unless the aggregate value of all property that constitutes or is affected by such transfer is less than \$5,000. If the debtor is an individual, indicate with an asterisk (\*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and creditor counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments and other transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR

DATES OF  
PAYMENTS/  
TRANSFERS

AMOUNT  
PAID OR  
VALUE OF  
TRANSFERS

AMOUNT  
STILL  
OWING



None

c. *All debtors:* List all payments made within **one year** immediately preceding the commencement of this case to or for the benefit of creditors who are or were insiders. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR AND RELATIONSHIP TO DEBTOR	DATE OF PAYMENT	AMOUNT PAID	AMOUNT STILL OWING
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#### 4. Suits and administrative proceedings, executions, garnishments and attachments

None

a. List all suits and administrative proceedings to which the debtor is or was a party within **one year** immediately preceding the filing of this bankruptcy case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

CAPTION OF SUIT AND CASE NUMBER	NATURE OF PROCEEDING	COURT OR AGENCY AND LOCATION	STATUS OR DISPOSITION
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None

b. Describe all property that has been attached, garnished or seized under any legal or equitable process within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON FOR WHOSE BENEFIT PROPERTY WAS SEIZED	DATE OF SEIZURE	DESCRIPTION AND VALUE OF PROPERTY
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#### 5. Repossessions, foreclosures and returns

None

List all property that has been repossessed by a creditor, sold at a foreclosure sale, transferred through a deed in lieu of foreclosure or returned to the seller, within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR OR SELLER	DATE OF REPOSSESSION, FORECLOSURE SALE, TRANSFER OR RETURN	DESCRIPTION AND VALUE OF PROPERTY
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**6. Assignments and receiverships**None  

a. Describe any assignment of property for the benefit of creditors made within **120 days** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include any assignment by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF ASSIGNEE	DATE OF ASSIGNMENT	TERMS OF ASSIGNMENT OR SETTLEMENT
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None  

b. List all property which has been in the hands of a custodian, receiver, or court-appointed official within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CUSTODIAN	NAME AND LOCATION OF COURT CASE TITLE & NUMBER	DATE OF ORDER	DESCRIPTION AND VALUE Of PROPERTY
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**7. Gifts**None  

List all gifts or charitable contributions made within **one year** immediately preceding the commencement of this case except ordinary and usual gifts to family members aggregating less than \$200 in value per individual family member and charitable contributions aggregating less than \$100 per recipient. (Married debtors filing under chapter 12 or chapter 13 must include gifts or contributions by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON OR ORGANIZATION	RELATIONSHIP TO DEBTOR, IF ANY	DATE OF GIFT	DESCRIPTION AND VALUE OF GIFT
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**8. Losses**None  

List all losses from fire, theft, other casualty or gambling within **one year** immediately preceding the commencement of this case **or since the commencement of this case**. (Married debtors filing under chapter 12 or chapter 13 must include losses by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

DESCRIPTION AND VALUE OF PROPERTY	DESCRIPTION OF CIRCUMSTANCES AND, IF LOSS WAS COVERED IN WHOLE OR IN PART BY INSURANCE, GIVE PARTICULARS	DATE OF LOSS
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**9. Payments related to debt counseling or bankruptcy**

None

List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of a petition in bankruptcy within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS OF PAYEE	DATE OF PAYMENT, NAME OF PAYER IF OTHER THAN DEBTOR	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
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**10. Other transfers**

None

a. List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within **two years** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF TRANSFEREE, RELATIONSHIP TO DEBTOR	DATE	DESCRIBE PROPERTY TRANSFERRED AND VALUE RECEIVED
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None

b. List all property transferred by the debtor within **ten years** immediately preceding the commencement of this case to a self-settled trust or similar device of which the debtor is a beneficiary.

NAME OF TRUST OR OTHER DEVICE	DATE(S) OF TRANSFER(S)	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY OR DEBTOR'S INTEREST IN PROPERTY
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**11. Closed financial accounts**

None

List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within **one year** immediately preceding the commencement of this case. Include checking, savings, or other financial accounts, certificates of deposit, or other instruments; shares and share accounts held in banks, credit unions, pension funds, cooperatives, associations, brokerage houses and other financial institutions. (Married debtors filing under chapter 12 or chapter 13 must include information concerning accounts or instruments held by or for either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF INSTITUTION	TYPE OF ACCOUNT, LAST FOUR DIGITS OF ACCOUNT NUMBER, AND AMOUNT OF FINAL BALANCE	AMOUNT AND DATE OF SALE OR CLOSING
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**12. Safe deposit boxes**

None

List each safe deposit or other box or depository in which the debtor has or had securities, cash, or other valuables within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include boxes or depositories of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF BANK OR OTHER DEPOSITORY	NAMES AND ADDRESSES OF THOSE WITH ACCESS TO BOX OR DEPOSITORY	DESCRIPTION OF CONTENTS	DATE OF TRANSFER OR SURRENDER, IF ANY
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**13. Setoffs**

None

List all setoffs made by any creditor, including a bank, against a debt or deposit of the debtor within **90 days** preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATE OF SETOFF	AMOUNT OF SETOFF
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**14. Property held for another person**

None

List all property owned by another person that the debtor holds or controls.

NAME AND ADDRESS OF OWNER	DESCRIPTION AND VALUE OF PROPERTY	LOCATION OF PROPERTY
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**15. Prior address of debtor**

None

If debtor has moved within **three years** immediately preceding the commencement of this case, list all premises which the debtor occupied during that period and vacated prior to the commencement of this case. If a joint petition is filed, report also any separate address of either spouse.

ADDRESS	NAME USED	DATES OF OCCUPANCY
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**16. Spouses and Former Spouses**

- None  If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within **eight years** immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state.

NAME

**17. Environmental Information.**

For the purpose of this question, the following definitions apply:

"Environmental Law" means any federal, state, or local statute or regulation regulating pollution, contamination, releases of hazardous or toxic substances, wastes or material into the air, land, soil, surface water, groundwater, or other medium, including, but not limited to, statutes or regulations regulating the cleanup of these substances, wastes, or material.

"Site" means any location, facility, or property as defined under any Environmental Law, whether or not presently or formerly owned or operated by the debtor, including, but not limited to, disposal sites.

"Hazardous Material" means anything defined as a hazardous waste, hazardous substance, toxic substance, hazardous material, pollutant, or contaminant or similar term under an Environmental Law.

- None  a. List the name and address of every site for which the debtor has received notice in writing by a governmental unit that it may be liable or potentially liable under or in violation of an Environmental Law. Indicate the governmental unit, the date of the notice, and, if known, the Environmental Law:

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW
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- None  b. List the name and address of every site for which the debtor provided notice to a governmental unit of a release of Hazardous Material. Indicate the governmental unit to which the notice was sent and the date of the notice.

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW
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- None  c. List all judicial or administrative proceedings, including settlements or orders, under any Environmental Law with respect to which the debtor is or was a party. Indicate the name and address of the governmental unit that is or was a party to the proceeding, and the docket number.

NAME AND ADDRESS OF GOVERNMENTAL UNIT	DOCKET NUMBER	STATUS OR DISPOSITION
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**18. Nature, location and name of business**

- None  a. *If the debtor is an individual*, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partner in a partnership, sole proprietor, or was self-employed in a trade, profession, or other activity either full- or part-time within **six years** immediately preceding the commencement of this case, or in

which the debtor owned 5 percent or more of the voting or equity securities within **six years** immediately preceding the commencement of this case.

*If the debtor is a partnership*, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities, within **six years** immediately preceding the commencement of this case.

*If the debtor is a corporation*, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities within **six years** immediately preceding the commencement of this case.

NAME	LAST FOUR DIGITS OF SOC. SEC. NO./ COMPLETE EIN OR OTHER TAXPAYER I.D. NO.	ADDRESS	NATURE OF BUSINESS	BEGINNING AND ENDING DATES
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- None  b. Identify any business listed in response to subdivision a., above, that is "single asset real estate" as defined in 11 U.S.C. § 101.

NAME	ADDRESS
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The following questions are to be completed by every debtor that is a corporation or partnership and by any individual debtor who is or has been, within **six years** immediately preceding the commencement of this case, any of the following: an officer, director, managing executive, or owner of more than 5 percent of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership, a sole proprietor, or self-employed in a trade, profession, or other activity, either full- or part-time.

*(An individual or joint debtor should complete this portion of the statement **only** if the debtor is or has been in business, as defined above, within six years immediately preceding the commencement of this case. A debtor who has not been in business within those six years should go directly to the signature page.)*

#### 19. Books, records and financial statements

- None  a. List all bookkeepers and accountants who within **two years** immediately preceding the filing of this bankruptcy case kept or supervised the keeping of books of account and records of the debtor.

NAME AND ADDRESS	DATES SERVICES RENDERED
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- None  b. List all firms or individuals who within **two years** immediately preceding the filing of this bankruptcy case have audited the books of account and records, or prepared a financial statement of the debtor.

NAME	ADDRESS	DATES SERVICES RENDERED
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None  c. List all firms or individuals who at the time of the commencement of this case were in possession of the books of account and records of the debtor. If any of the books of account and records are not available, explain.

NAME	ADDRESS
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None  d. List all financial institutions, creditors and other parties, including mercantile and trade agencies, to whom a financial statement was issued by the debtor within **two years** immediately preceding the commencement of this case.

NAME AND ADDRESS	DATE ISSUED
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**20. Inventories**

None  a. List the dates of the last two inventories taken of your property, the name of the person who supervised the taking of each inventory, and the dollar amount and basis of each inventory.

DATE OF INVENTORY	INVENTORY SUPERVISOR	DOLLAR AMOUNT OF INVENTORY (Specify cost, market or other basis)
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None  b. List the name and address of the person having possession of the records of each of the inventories reported in a., above.

DATE OF INVENTORY	NAME AND ADDRESSES OF CUSTODIAN OF INVENTORY RECORDS
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**21. Current Partners, Officers, Directors and Shareholders**

None  a. If the debtor is a partnership, list the nature and percentage of partnership interest of each member of the partnership.

NAME AND ADDRESS	NATURE OF INTEREST	PERCENTAGE OF INTEREST
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None  b. If the debtor is a corporation, list all officers and directors of the corporation, and each stockholder who directly or indirectly owns, controls, or holds 5 percent or more of the voting or equity securities of the corporation.

NAME AND ADDRESS	TITLE	NATURE AND PERCENTAGE OF STOCK OWNERSHIP
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**22 . Former partners, officers, directors and shareholders**

None

a. If the debtor is a partnership, list each member who withdrew from the partnership within **one year** immediately preceding the commencement of this case.

NAME	ADDRESS	DATE OF WITHDRAWAL
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None

b. If the debtor is a corporation, list all officers, or directors whose relationship with the corporation terminated within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS	TITLE	DATE OF TERMINATION
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**23 . Withdrawals from a partnership or distributions by a corporation**

None

If the debtor is a partnership or corporation, list all withdrawals or distributions credited or given to an insider, including compensation in any form, bonuses, loans, stock redemptions, options exercised and any other perquisite during **one year** immediately preceding the commencement of this case.

NAME & ADDRESS OF RECIPIENT, RELATIONSHIP TO DEBTOR	DATE AND PURPOSE OF WITHDRAWAL	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
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**24. Tax Consolidation Group.**

None

If the debtor is a corporation, list the name and federal taxpayer identification number of the parent corporation of any consolidated group for tax purposes of which the debtor has been a member at any time within **six years** immediately preceding the commencement of the case.

NAME OF PARENT CORPORATION	TAXPAYER IDENTIFICATION NUMBER (EIN)
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**25. Pension Funds.**

None

If the debtor is not an individual, list the name and federal taxpayer identification number of any pension fund to which the debtor, as an employer, has been responsible for contributing at any time within **six years** immediately preceding the commencement of the case.

NAME OF PENSION FUND	TAXPAYER IDENTIFICATION NUMBER (EIN)
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*[If completed by an individual or individual and spouse]*

I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct.

Date \_\_\_\_\_

Signature \_\_\_\_\_  
of Debtor

Date \_\_\_\_\_

Signature \_\_\_\_\_  
of Joint Debtor  
(if any)

*[If completed on behalf of a partnership or corporation]*

I, declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct to the best of my knowledge, information and belief.

Date \_\_\_\_\_

Signature \_\_\_\_\_

\_\_\_\_\_  
Print Name and Title

[An individual signing on behalf of a partnership or corporation must indicate position or relationship to debtor.]

\_\_\_\_\_ continuation sheets attached

*Penalty for making a false statement: Fine of up to \$500,000 or imprisonment for up to 5 years, or both 18 U.S.C. §§ 152 and 3571*

**DECLARATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)**

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required by that section.

\_\_\_\_\_  
Printed or Typed Name and Title, if any, of Bankruptcy Petition Preparer

\_\_\_\_\_  
Social Security No.(Required by 11 U.S.C. § 110.)

*If the bankruptcy petition preparer is not an individual, state the name, title (if any), address, and social security number of the officer, principal, responsible person, or partner who signs this document.*

\_\_\_\_\_

\_\_\_\_\_  
Address

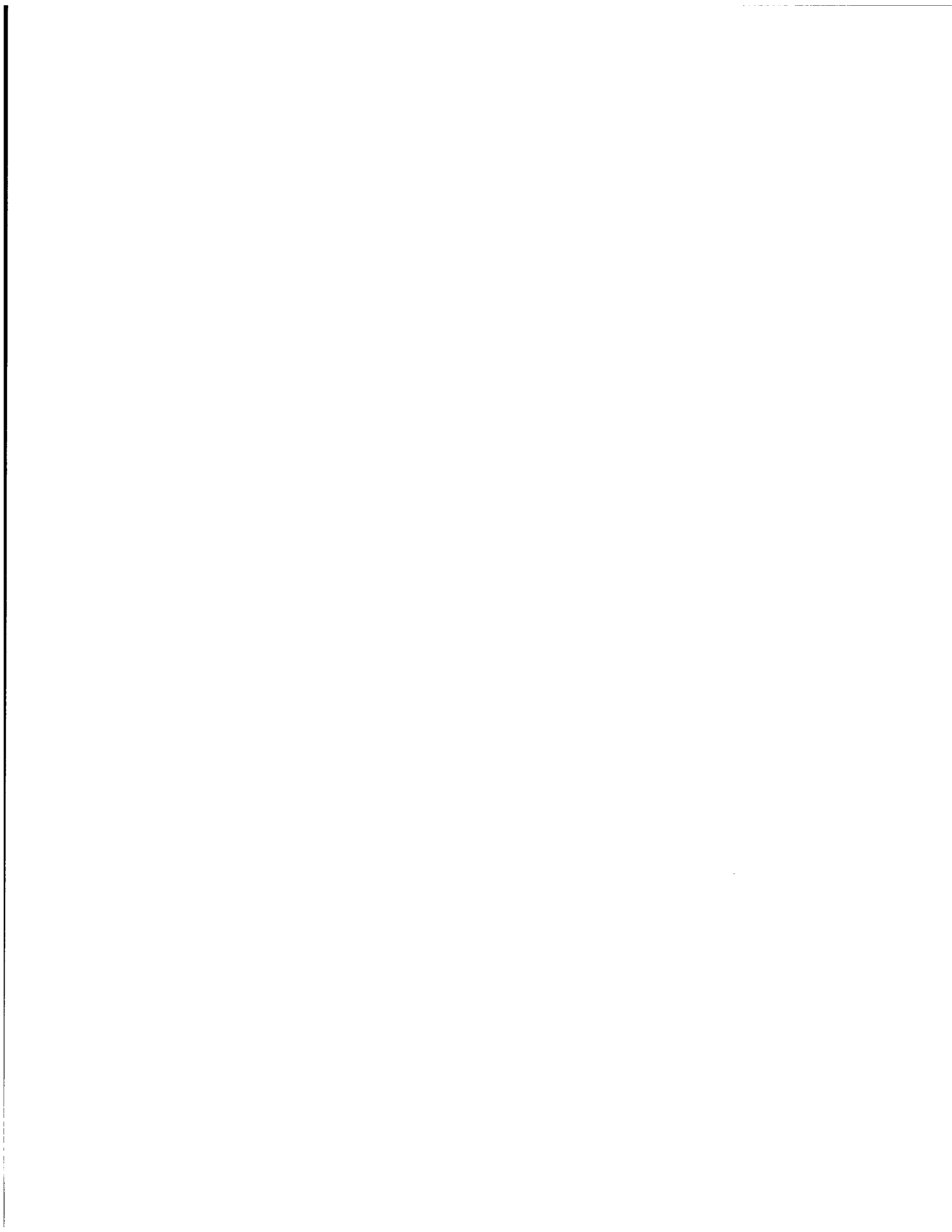
X \_\_\_\_\_  
Signature of Bankruptcy Petition Preparer

\_\_\_\_\_  
Date

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual:

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.

***A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 18 U.S.C. § 156.***





## EXPLANATIONS

Form B9G (10/06)

Filing of Chapter 12 Bankruptcy Case	A bankruptcy case under Chapter 12 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 12 allows family farmers and family fishermen to adjust their debts pursuant to a plan. A plan is not effective unless confirmed by the court. You may object to confirmation of the plan and appear at the confirmation hearing. A copy or summary of the plan [is included with this notice] <i>or</i> [will be sent to you later], and [the confirmation hearing will be held on the date indicated on the front of this notice] <i>or</i> [you will be sent notice of the confirmation hearing]. The debtor will remain in possession of the debtor's property and may continue to operate the debtor's business unless the court orders otherwise.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions against the debtor and certain codebtors are listed in Bankruptcy Code § 362 and § 1201. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages. Under certain circumstances, the stay may be limited in duration or not exist at all, although the debtor may have the right to request the court to extend or impose a stay.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. <i>The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim from other assets in the bankruptcy case. To be paid you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. <b>Filing Deadline for a Foreign Creditor:</b> The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.
Discharge of Debts	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523 (a) (2), (4), or (6), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and any required filing fee by that Deadline.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors, even if the debtor's case is converted to chapter 7. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Foreign Creditors	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.

Refer To Other Side For Important Deadlines and Notices



## EXPLANATIONS

Form B9H (10/06)

Filing of Chapter 12 Bankruptcy Case	A bankruptcy case under Chapter 12 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by the debtor listed on the front side, and an order for relief has been entered. Chapter 12 allows family farmers and family fishermen to adjust their debts pursuant to a plan. A plan is not effective unless confirmed by the court. You may object to confirmation of the plan and appear at the confirmation hearing. A copy or summary of the plan [is included with this notice] <i>or</i> [will be sent to you later], and [the confirmation hearing will be held on the date indicated on the front of this notice] <i>or</i> [you will be sent notice of the confirmation hearing]. The debtor will remain in possession of the debtor's property and may continue to operate the debtor's business unless the court orders otherwise.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions against the debtor and certain codebtors are listed in Bankruptcy Code § 362 and § 1201. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; and starting or continuing lawsuits or foreclosures. Under certain circumstances, the stay may be limited in duration or not exist at all, although the debtor may have the right to request the court to extend or impose a stay.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. <i>The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim from other assets in the bankruptcy case. To be paid you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. <b>Filing Deadline for a Foreign Creditor:</b> The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.
Discharge of Debts	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523 (a) (2), (4), or (6), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and any required filing fee by that Deadline.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Foreign Creditors	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.
Refer To Other Side For Important Deadlines and Notices	



**EXPLANATIONS**

**Form B9I (10/06)**

<p>Filing of Chapter 13 Bankruptcy Case</p>	<p>A bankruptcy case under Chapter 13 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 13 allows an individual with regular income and debts below a specified amount to adjust debts pursuant to a plan. A plan is not effective unless confirmed by the bankruptcy court. You may object to confirmation of the plan and appear at the confirmation hearing. A copy or summary of the plan [is included with this notice] <i>or</i> [will be sent to you later], and [the confirmation hearing will be held on the date indicated on the front of this notice] <i>or</i> [you will be sent notice of the confirmation hearing]. The debtor will remain in possession of the debtor's property and may continue to operate the debtor's business, if any, unless the court orders otherwise.</p>
<p>Legal Advice</p>	<p>The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.</p>
<p>Creditors Generally May Not Take Certain Actions</p>	<p>Prohibited collection actions against the debtor and certain codebtors are listed in Bankruptcy Code § 362 and § 1301. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to exceed or impose a stay.</p>
<p>Meeting of Creditors</p>	<p>A meeting of creditors is scheduled for the date, time, and location listed on the front side. <i>The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice</p>
<p>Claims</p>	<p>A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim from other assets in the bankruptcy case. To be paid you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. <b>Filing Deadline for a Foreign Creditor:</b> The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.</p>
<p>Discharge of Debts</p>	<p>The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523 (a) (2) or (4), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and any required filing fee by that deadline.</p>
<p>Exempt Property</p>	<p>The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors, even if the debtor's case is converted to chapter 7. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.</p>
<p>Bankruptcy Clerk's Office</p>	<p>Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.</p>
<p>Foreign Creditors</p>	<p>Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.</p>

Refer To Other Side For Important Deadlines and Notices



United States Bankruptcy Court  
DISTRICT OF

Voluntary Petition

Name of Debtor (if individual, enter Last, First, Middle):	Name of Joint Debtor (Spouse) (Last, First, Middle):
All Other Names used by the Debtor in the last 8 years (include married, maiden, and trade names):	All Other Names used by the Joint Debtor in the last 8 years (include married, maiden, and trade names):
Last four digits of Soc. Sec./Complete EIN or other Tax I.D. No. (if more than one, state all):	Last four digits of Soc. Sec./Complete EIN or other Tax I.D. No. (if more than one, state all):
Street Address of Debtor (No. & Street, City, and State):  <b>ZIPCODE</b>	Street Address of Joint Debtor (No. & Street, City, and State):  <b>ZIPCODE</b>
County of Residence or of the Principal Place of Business:	County of Residence or of the Principal Place of Business:
Mailing Address of Debtor (if different from street address):  <b>ZIPCODE</b>	Mailing Address of Joint Debtor (if different from street address):  <b>ZIPCODE</b>

Location of Principal Assets of Business Debtor (if different from street address above):  
  
**ZIPCODE**

<p><b>Type of Debtor</b> (Form of Organization) (Check one box.)</p> <p><input type="checkbox"/> Individual (includes Joint Debtors)</p> <p><input type="checkbox"/> Corporation (includes LLC and LLP)</p> <p><input type="checkbox"/> Partnership</p> <p><input type="checkbox"/> Other (If debtor is not one of the above entities, check this box and state type of entity below.)</p> <p>_____</p>	<p><b>Nature of Business</b> (If debtor is any of the following, check one box.)</p> <p><input type="checkbox"/> Health Care Business</p> <p><input type="checkbox"/> Single Asset Real Estate as defined in 11 U.S.C. § 101(51B)</p> <p><input type="checkbox"/> Railroad</p> <p><input type="checkbox"/> Stockbroker</p> <p><input type="checkbox"/> Commodity Broker</p> <p><input type="checkbox"/> Clearing Bank</p> <p><b>Tax-Exempt Entity</b> (Check box, if applicable.)</p> <p><input type="checkbox"/> Debtor is a tax-exempt organization under Title 26 of the United States Code (the Internal Revenue Code).</p>	<p><b>Chapter of Bankruptcy Code Under Which the Petition is Filed</b> (Check one box.)</p> <p><input type="checkbox"/> Chapter 7      <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Main Proceeding</p> <p><input type="checkbox"/> Chapter 9      <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Nonmain Proceeding</p> <p><input type="checkbox"/> Chapter 11</p> <p><input type="checkbox"/> Chapter 12</p> <p><input type="checkbox"/> Chapter 13</p> <hr/> <p><b>Nature of Debts</b> (Check one box.)</p> <p><input type="checkbox"/> Consumer/Non-Business      <input type="checkbox"/> Business</p>
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<p><b>Filing Fee</b> (Check one box.)</p> <p><input type="checkbox"/> Full Filing Fee attached.</p> <p><input type="checkbox"/> Filing Fee to be paid in installments (applicable to individuals only). Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form 3A.</p> <p><input type="checkbox"/> Filing Fee waiver requested (applicable to chapter 7 individuals only). Must attach signed application for the court's consideration. See Official Form 3B.</p>	<p><b>Chapter 11 Debtors</b></p> <p><b>Check one box:</b></p> <p><input type="checkbox"/> Debtor is a small business debtor as defined in 11 U.S.C. § 101(51D).</p> <p><input type="checkbox"/> Debtor is not a small business debtor as defined in 11 U.S.C. § 101(51D).</p> <p><b>Check if:</b></p> <p><input type="checkbox"/> Debtor's aggregate noncontingent liquidated debts owed to non-insiders or affiliates are less than \$2 million.</p> <p><b>Check all applicable boxes:</b></p> <p><input type="checkbox"/> A plan is being filed with this petition.</p> <p><input type="checkbox"/> Acceptances of the plan were solicited prepetition from one or more classes of creditors.</p>
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**Statistical/Administrative Information**

Debtor estimates that funds will be available for distribution to unsecured creditors.

Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.

Estimated Number of Creditors									
1-49	50-99	100-199	200-999	1,000-5,000	5,001-10,000	10,001-25,000	25,001-50,000	50,001-100,000	Over 100,000
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Estimated Assets				
<input type="checkbox"/> \$0 to \$10,000	<input type="checkbox"/> \$10,000 to \$100,000	<input type="checkbox"/> \$100,000 to \$1 million	<input type="checkbox"/> \$1 million to \$100 million	<input type="checkbox"/> More than \$100 million

Estimated Liabilities				
<input type="checkbox"/> \$0 to \$50,000	<input type="checkbox"/> \$50,000 to \$100,000	<input type="checkbox"/> \$100,000 to \$1 million	<input type="checkbox"/> \$1 million to \$100 million	<input type="checkbox"/> More than \$100 million

THIS SPACE IS FOR COURT USE ONLY

<b>Voluntary Petition</b> <i>(This page must be completed and filed in every case.)</i>	Name of Debtor(s):
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**Prior Bankruptcy Case Filed Within Last 8 Years** (If more than one, attach additional sheet.)

Location Where Filed:	Case Number:	Date Filed:
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**Pending Bankruptcy Case Filed by any Spouse, Partner, or Affiliate of this Debtor** (If more than one, attach additional sheet.)

Name of Debtor:	Case Number:	Date Filed:
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District:	Relationship:	Judge:
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<p align="center"><b>Exhibit A</b></p> <p>(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11.)</p> <p><input type="checkbox"/> Exhibit A is attached and made a part of this petition.</p>	<p align="center"><b>Exhibit B</b></p> <p>(To be completed if debtor is an individual whose debts are primarily consumer debts.)</p> <p>I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter. I further certify that I have delivered to the debtor the notice required by 11 U.S.C. § 342(b).</p> <p>X _____ Signature of Attorney for Debtor(s) (Date)</p>
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**Exhibit C**

Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety?

- Yes, and Exhibit C is attached and made a part of this petition.
- No.

**Certification Concerning Debt Counseling by Individual/Joint Debtor(s)**

(Check **one** box.)

- I/we have received approved budget and credit counseling during the 180-day period preceding the filing of this petition. (Attach certificate and debt repayment plan, if any, conforming to the requirements of 11 U.S.C. § 109(h)(1).)
- Based on exigent circumstances, I/we request an exemption for a period of 30 days from the requirement that I/we obtain budget and credit counseling prior to filing this bankruptcy petition. (Petition must be accompanied by a certification conforming to the requirements of 11 U.S.C. § 109(h)(3)(A).)
- The requirements of 11 U.S.C. § 109(h)(1) are inapplicable in this district because the United States trustee has determined that the approved nonprofit budget and credit counseling agencies for this district are not reasonably able to provide adequate services.
- I am exempt from the requirements of 11 U.S.C. § 109(h)(1) due to incapacity, disability, or active military duty in a military combat zone. (Petition must be accompanied by a motion for determination under 11 U.S.C. § 109(h)(4).)

**Information Regarding the Debtor - Venue**

(Check any applicable box.)

- Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.
- There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.
- Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the United States in this District, or has no principal place of business or assets in the United States but is a defendant in an action or proceeding [in a federal or state court] in this District, or the interests of the parties will be served in regard to the relief sought in this District.

**Statement by a Debtor Who Resides as a Tenant of Residential Property**

(Check all applicable boxes.)

- Landlord has a judgment against the debtor for possession of debtor's residence. (If box checked, complete the following.)

\_\_\_\_\_  
(Name of landlord that obtained judgment)

\_\_\_\_\_  
(Address of landlord)

- Debtor claims that under applicable nonbankruptcy law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after the judgment for possession was entered, and
- Debtor has included with this petition the deposit with the court of any rent that would become due during the 30-day period after the filing of the petition.

**Voluntary Petition**

*(This page must be completed and filed in every case.)*

Name of Debtor(s):

**Signatures**

**Signature(s) of Debtor(s) (Individual/Joint)**

I declare under penalty of perjury that the information provided in this petition is true and correct.

[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.

[If no attorney represents me and no bankruptcy petition preparer signs the petition] I have obtained and read the notice required by 11 U.S.C. § 342(b).

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X \_\_\_\_\_  
Signature of Debtor

X \_\_\_\_\_  
Signature of Joint Debtor

\_\_\_\_\_  
Telephone Number (if not represented by attorney)

\_\_\_\_\_  
Date

**Signature of a Foreign Representative**

I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition.

(Check only **one** box.)

I request relief in accordance with chapter 15 of title 11, United States Code. Certified copies of the documents required by 11 U.S.C. § 1515 are attached.

Pursuant to 11 U.S.C. § 1511, I request relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached

X \_\_\_\_\_  
(Signature of Foreign Representative)

\_\_\_\_\_  
(Printed Name of Foreign Representative)

\_\_\_\_\_  
Date

**Signature of Attorney**

X \_\_\_\_\_  
Signature of Attorney for Debtor(s)

\_\_\_\_\_  
Printed Name of Attorney for Debtor(s)

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Date

**Signature of Non-Attorney Bankruptcy Petition Preparer**

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section. Official Form 19B is attached.

\_\_\_\_\_  
Printed Name and title, if any, of Bankruptcy Petition Preparer

\_\_\_\_\_  
Social Security number (If the bankruptcy petition preparer is not an individual, state the Social Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer.) (Required by 11 U.S.C. § 110.)

\_\_\_\_\_  
Address

X \_\_\_\_\_

\_\_\_\_\_  
Date

Signature of bankruptcy petition preparer or officer, principal, responsible person, or partner whose Social Security number is provided above.

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual.

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person

*A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.*

**Signature of Debtor (Corporation/Partnership)**

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.

The debtor requests the relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X \_\_\_\_\_  
Signature of Authorized Individual

\_\_\_\_\_  
Printed Name of Authorized Individual

\_\_\_\_\_  
Title of Authorized Individual

\_\_\_\_\_  
Date

# United States Bankruptcy Court

District Of \_\_\_\_\_

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_

Chapter \_\_\_\_\_

## SUMMARY OF SCHEDULES

Indicate as to each schedule whether that schedule is attached and state the number of pages in each. Report the totals from Schedules A, B, D, E, F, I, and J in the boxes provided. Add the amounts from Schedules A and B to determine the total amount of the debtor's assets. Add the amounts of all claims from Schedules D, E, and F to determine the total amount of the debtor's liabilities. Individual debtors with primarily consumer debts must also complete the "Statistical Summary of Certain Liabilities and Related Data" if they file a case under chapter 7, 11, or 13.

NAME OF SCHEDULE	ATTACHED (YES/NO)	NO. OF SHEETS	ASSETS	LIABILITIES	OTHER
A - Real Property			\$		
B - Personal Property			\$		
C - Property Claimed as Exempt					
D - Creditors Holding Secured Claims				\$	
E - Creditors Holding Unsecured Priority Claims (Total of Claims on Schedule E)				\$	
F - Creditors Holding Unsecured Nonpriority Claims				\$	
G - Executory Contracts and Unexpired Leases					
H - Codebtors					
I - Current Income of Individual Debtor(s)					\$
J - Current Expenditures of Individual Debtors(s)					\$
<b>TOTAL</b>			\$	\$	

# United States Bankruptcy Court

District Of \_\_\_\_\_

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_

Chapter \_\_\_\_\_

## STATISTICAL SUMMARY OF CERTAIN LIABILITIES AND RELATED DATA (28 U.S.C. § 159)

If you are an individual debtor whose debts are primarily consumer debts filing a case under chapter 7, 11 or 13, you must report all information requested below. If you are an individual debtor whose debts are NOT primarily consumer debts and, therefore, are not required to report any information here,

Check this box.

**Summarize the following types of liabilities, as reported in the Schedules, and total them.**

Type of Liability	Amount
Domestic Support Obligations (from Schedule E)	\$
Taxes and Certain Other Debts Owed to Governmental Units (from Schedule E)	\$
Claims for Death or Personal Injury While Debtor Was Intoxicated (from Schedule E)	\$
Student Loan Obligations (from Schedule F)	\$
Domestic Support, Separation Agreement, and Divorce Decree Obligations Not Reported on Schedule E	\$
Obligations to Pension or Profit-Sharing, and Other Similar Obligations (from Schedule F)	\$
<b>TOTAL</b>	\$

**[The foregoing information is for statistical purposes only under 28 U.S.C. § 159.]**

**State the following:**

Average Income (from Schedule I, Line 16)	\$
Average Expenses (from Schedule J, Line 18)	\$
Current Monthly Income (from Form 22A Line 18; <b>OR</b> , Form 22B Line 11; <b>OR</b> , Form 22C Line 20 )	\$

**State the following:**

1. Total from Schedule D, "UNSECURED PORTION, IF ANY" column		\$
2. Total from Schedule E, "AMOUNT ENTITLED TO PRIORITY" column.	\$	
3. Total from Schedule E, "AMOUNT NOT ENTITLED TO PRIORITY, IF ANY" column		\$
4. Total from Schedule F		\$
5. Total of non-priority unsecured debt (sum of 1, 3, and 4)		\$

In re \_\_\_\_\_,  
**Debtor**

Case No. \_\_\_\_\_  
**(If known)**

**SCHEDULE D – CREDITORS HOLDING SECURED CLAIMS**

State the name, mailing address, including zip code, and last four digits of any account number of all entities holding claims secured by property of the debtor as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests.

List creditors in alphabetical order to the extent practicable. If a minor child is a creditor, indicate that by stating "a minor child" and do not disclose the child's name. See 11 U.S.C. § 112. If "a minor child" is stated, also include the name, address, and legal relationship to the minor child of a person described in Fed. R. Bankr. P. 1007(m). If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H – Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Total the columns labeled "Amount of Claim Without Deducting Value of Collateral" and "Unsecured Portion, if Any" in the boxes labeled "Total(s)" on the last sheet of the completed schedule. Report the total from the column labeled "Amount of Claim Without Deducting Value of Collateral" also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report the total from the column labeled "Unsecured Portion, if Any" on the Statistical Summary of Certain Liabilities and Related Data.

Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND AN ACCOUNT NUMBER <i>(See Instructions Above)</i>	CODEBTOR HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO.  		VALUE \$					
ACCOUNT NO.  		VALUE \$					
ACCOUNT NO.  		VALUE \$					
continuation sheets attached						\$	\$
Subtotal ► (Total of this page)						\$	\$
Total ► (Use only on last page)						\$	\$

(Report also on Summary of Schedules.)

(If applicable, report also on Statistical Summary of Certain Liabilities and Related Data.)

In re \_\_\_\_\_,

Case No. \_\_\_\_\_

Debtor

(If known)

**SCHEDULE D – CREDITORS HOLDING SECURED CLAIMS**

(Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND AN ACCOUNT NUMBER <i>(See Instructions Above)</i>	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO.								
			VALUE \$					
ACCOUNT NO.								
			VALUE \$					
ACCOUNT NO.								
			VALUE \$					
ACCOUNT NO.								
			VALUE \$					
ACCOUNT NO.								
			VALUE \$					
							\$	\$
							\$	\$

Sheet no. \_\_\_ of \_\_\_ continuation sheets attached to Schedule of Creditors Holding Secured Claims

Subtotal (s) ►  
(Total(s) of this page)

Total(s) ►  
(Use only on last page)

(Report also on Summary of Schedules.)

(If applicable, report also on Statistical Summary of Certain Liabilities and Related Data.)

In re \_\_\_\_\_  
Debtor

Case No. \_\_\_\_\_  
(if known)

## SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided. Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name, mailing address, including zip code, and last four digits of the account number, if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of the petition. Use a separate continuation sheet for each type of priority and label each with the type of priority.

The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, indicate that by stating "a minor child" and do not disclose the child's name. See 11 U.S.C. § 112. If "a minor child" is stated, also include the name, address, and legal relationship to the minor child of a person described in Fed. R. Bankr. P. 1007(m).

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H-Codebtors. If a joint petition is filed, state whether husband, wife, both of them or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of claims listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all claims listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

Report the total of amounts entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts who file a case under chapter 7 or 13 report this total also on the Statistical Summary of Certain Liabilities and Related Data.

Report the total of amounts not entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts not entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts who file a case under chapter 7 report this total also on the Statistical Summary of Certain Liabilities and Related Data.

Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

**TYPES OF PRIORITY CLAIMS** (Check the appropriate box(es) below if claims in that category are listed on the attached sheets)

**Domestic Support Obligations**

Claims for domestic support that are owed to or recoverable by a spouse, former spouse, or child of the debtor, or the parent, legal guardian, or responsible relative of such a child, or a governmental unit to whom such a domestic support claim has been assigned to the extent provided in 11 U.S.C. § 507(a)(1).

**Extensions of credit in an involuntary case**

Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. § 507(a)(3).

**Wages, salaries, and commissions**

Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to \$10,000\* per person earned within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).

**Contributions to employee benefit plans**

Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(5).



In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_  
(if known)

**Certain farmers and fishermen**

Claims of certain farmers and fishermen, up to \$4,925\* per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(6).

**Deposits by individuals**

Claims of individuals up to \$2,225\* for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. § 507(a)(7).

**Taxes and Certain Other Debts Owed to Governmental Units**

Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C. § 507(a)(8).

**Commitments to Maintain the Capital of an Insured Depository Institution**

Claims based on commitments to the FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Currency, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U.S.C. § 507 (a)(9).

**Claims for Death or Personal Injury While Debtor Was Intoxicated**

Claims for death or personal injury resulting from the operation of a motor vehicle or vessel while the debtor was intoxicated from using alcohol, a drug, or another substance. 11 U.S.C. § 507(a)(10).

\* Amounts are subject to adjustment on April 1, 2007, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

\_\_\_\_\_ continuation sheets attached

In re \_\_\_\_\_  
Debtor

Case No. \_\_\_\_\_  
(If known)

## SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

(Continuation Sheet)

Type of Priority for Claims Listed on This Sheet

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.)	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM	AMOUNT ENTITLED TO PRIORITY	AMOUNT NOT ENTITLED TO PRIORITY, IF ANY
Account No.									
Account No.									
Account No.									
Account No.									

Sheet no. \_\_\_ of \_\_\_ sheets attached to Schedule of Creditors  
Holding Priority Claims

Subtotals▶  
(Totals of this page)

\$	\$	
----	----	--

Total▶

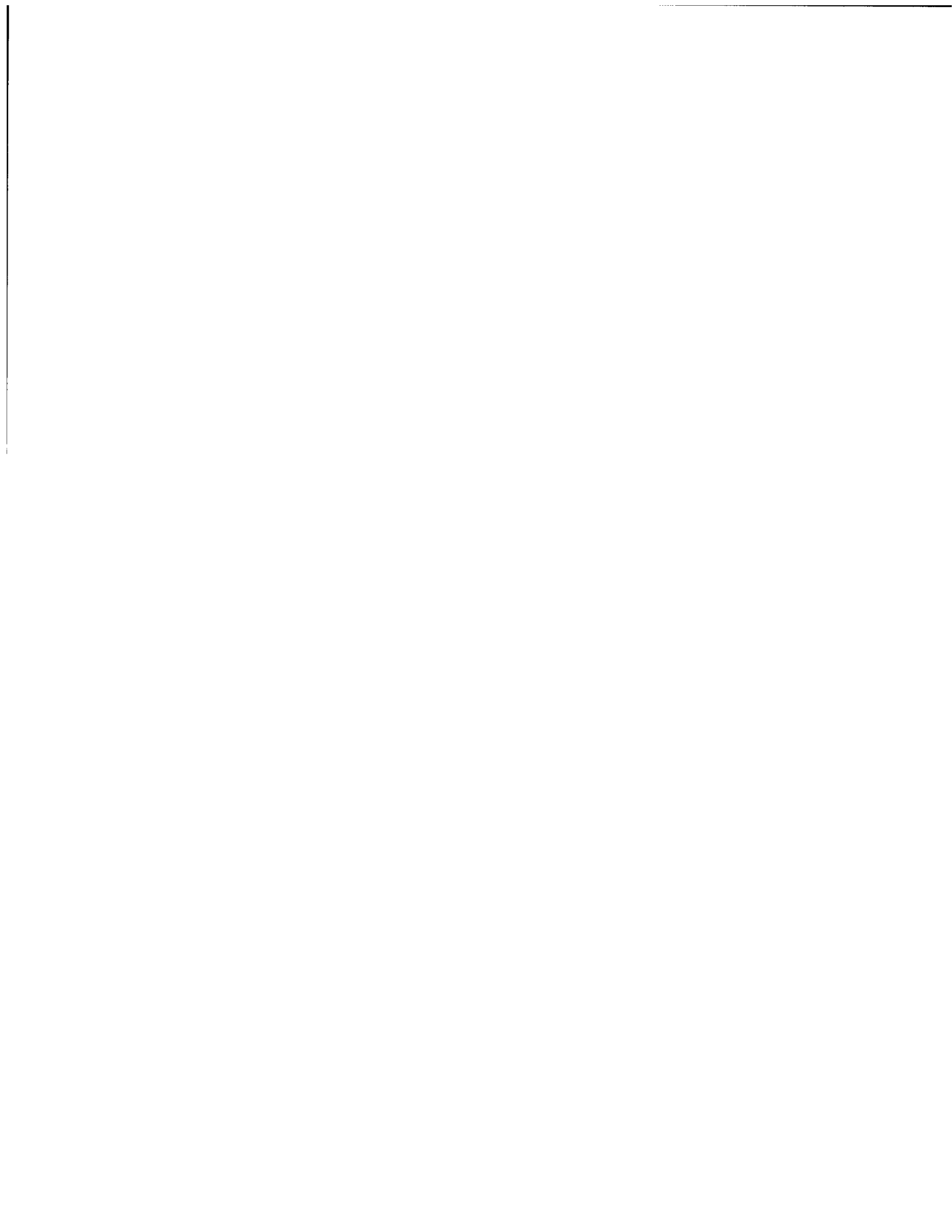
(Use only on last page of the completed  
Schedule E. Report also on the Summary  
of Schedules.)

\$		
----	--	--

Totals▶

(Use only on last page of the completed  
Schedule E. If applicable, report also on  
the Statistical Summary of Certain  
Liabilities and Related Data.)

	\$	\$
--	----	----



In re \_\_\_\_\_

Case No. \_\_\_\_\_

Debtor

(If known)

## SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, indicate that by stating "a minor child" and do not disclose the child's name. See 11 U.S.C. § 112. If "a minor child" is stated, also include the name, address, and legal relationship to the minor child of a person described in Fed. R. Bankr. P. 1007(m). Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts filing a case under chapter 7, report this total also on the Statistical Summary of Certain Liabilities and Related Data..

Check this box if debtor has no creditors holding unsecured claims to report on this Schedule F.

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER <small>(See instructions above.)</small>	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO.							
ACCOUNT NO.							
ACCOUNT NO.							
ACCOUNT NO.							
<b>Subtotal</b> ▶							\$
<b>Total</b> ▶							\$

\_\_\_\_ continuation sheets attached

(Use only on last page of the completed Schedule F.)  
( Report also on Summary of Schedules and, if applicable, on the Statistical  
Summary of Certain Liabilities and Related Data.)

In re \_\_\_\_\_  
Debtor

Case No. \_\_\_\_\_  
(If known)

**SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS**  
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER <small>(See instructions above.)</small>	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO.  							
ACCOUNT NO.  							
ACCOUNT NO.  							
ACCOUNT NO.  							
ACCOUNT NO.  							
Sheet no. ___ of ___ sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims							Subtotal▶ \$
Total▶ (Use only on last page of the completed Schedule F.) ( Report also on Summary of Schedules and, if applicable on the Statistical Summary of Certain Liabilities and Related Data.)							\$

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_  
(if known)

## SCHEDULE I - CURRENT INCOME OF INDIVIDUAL DEBTOR(S)

The column labeled "Spouse" must be completed in all cases filed by joint debtors and by every married debtor, whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. Do not state the name of any minor child.

Debtor's Marital Status:	DEPENDENTS OF DEBTOR AND SPOUSE	
	RELATIONSHIP:	AGE:
<b>Employment:</b>	DEBTOR	SPOUSE
Occupation		
Name of Employer		
How long employed		
Address of Employer		

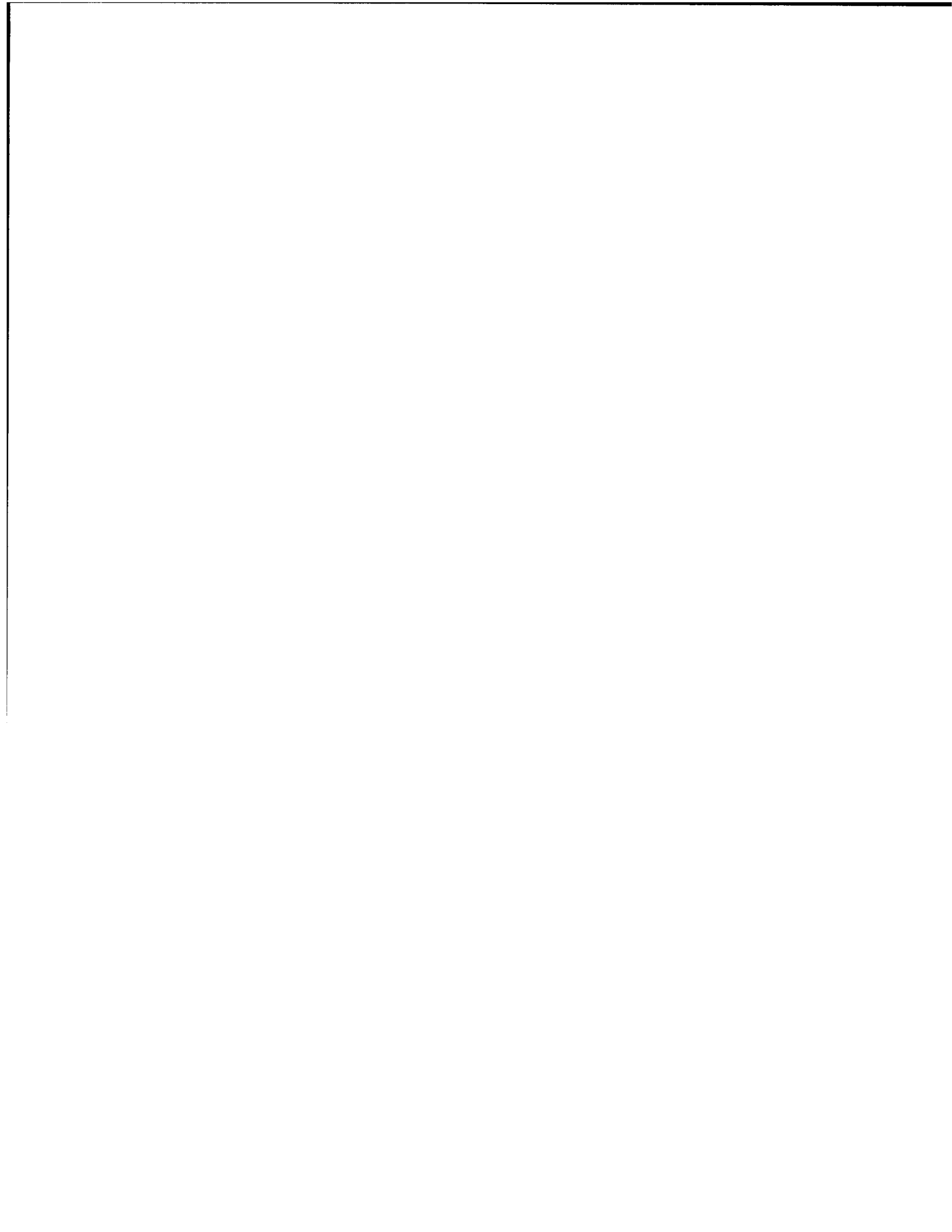
INCOME: (Estimate of average monthly income)	DEBTOR	SPOUSE
1. Current monthly gross wages, salary, and commissions (Prorate if not paid monthly.)	\$ _____	\$ _____
2. Estimate monthly overtime	\$ _____	\$ _____
3. SUBTOTAL	\$ _____ \$ _____	
4. LESS PAYROLL DEDUCTIONS		
a. Payroll taxes and social security	\$ _____	\$ _____
b. Insurance	\$ _____	\$ _____
c. Union dues	\$ _____	\$ _____
d. Other (Specify): _____	\$ _____	\$ _____
5. SUBTOTAL OF PAYROLL DEDUCTIONS	\$ _____ \$ _____	
6. TOTAL NET MONTHLY TAKE HOME PAY	\$ _____ \$ _____	
7. Regular income from operation of business or profession or farm. (Attach detailed statement)	\$ _____	\$ _____
8. Income from real property	\$ _____	\$ _____
9. Interest and dividends	\$ _____	\$ _____
10. Alimony, maintenance or support payments payable to the debtor for the debtor's use or that of dependents listed above.	\$ _____	\$ _____
11. Social security or government assistance (Specify): _____	\$ _____	\$ _____
12. Pension or retirement income	\$ _____	\$ _____
13. Other monthly income (Specify): _____	\$ _____	\$ _____
14. SUBTOTAL OF LINES 7 THROUGH 13	\$ _____	\$ _____
15. AVERAGE MONTHLY INCOME (Add amounts shown on lines 6 and 14)	\$ _____ \$ _____	
16. COMBINED AVERAGE MONTHLY INCOME: (Combine column totals from line 15; if there is only one debtor repeat total reported on line 15 )	\$ _____	

(Report also on Summary of Schedules and, if applicable,  
on Statistical Summary of Certain Liabilities and Related Data.)

17. Describe any increase or decrease in income reasonably anticipated to occur within the year following the filing of this document:

\_\_\_\_\_

\_\_\_\_\_



In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_  
(if known)

### SCHEDULE J - CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S)

Complete this schedule by estimating the average monthly expenses of the debtor and the debtor's family. Prorate any payments made bi-weekly, quarterly, semi-annually, or annually to show monthly rate.

Check this box if a joint petition is filed and debtor's spouse maintains a separate household. Complete a separate schedule of expenditures labeled "Spouse."

- 1. Rent or home mortgage payment (include lot rented for mobile home) \$ \_\_\_\_\_
  - a. Are real estate taxes included? Yes \_\_\_\_\_ No \_\_\_\_\_
  - b. Is property insurance included? Yes \_\_\_\_\_ No \_\_\_\_\_
- 2. Utilities:
  - a. Electricity and heating fuel \$ \_\_\_\_\_
  - b. Water and sewer \$ \_\_\_\_\_
  - c. Telephone \$ \_\_\_\_\_
  - d. Other \_\_\_\_\_ \$ \_\_\_\_\_
- 3. Home maintenance (repairs and upkeep) \$ \_\_\_\_\_
- 4. Food \$ \_\_\_\_\_
- 5. Clothing \$ \_\_\_\_\_
- 6. Laundry and dry cleaning \$ \_\_\_\_\_
- 7. Medical and dental expenses \$ \_\_\_\_\_
- 8. Transportation (not including car payments) \$ \_\_\_\_\_
- 9. Recreation, clubs and entertainment, newspapers, magazines, etc. \$ \_\_\_\_\_
- 10. Charitable contributions \$ \_\_\_\_\_
- 11. Insurance (not deducted from wages or included in home mortgage payments)
  - a. Homeowner's or renter's \$ \_\_\_\_\_
  - b. Life \$ \_\_\_\_\_
  - c. Health \$ \_\_\_\_\_
  - d. Auto \$ \_\_\_\_\_
  - e. Other \_\_\_\_\_ \$ \_\_\_\_\_
- 12. Taxes (not deducted from wages or included in home mortgage payments)  
(Specify) \_\_\_\_\_ \$ \_\_\_\_\_
- 13. Installment payments: (In chapter 11, 12, and 13 cases, do not list payments to be included in the plan)
  - a. Auto \$ \_\_\_\_\_
  - b. Other \_\_\_\_\_ \$ \_\_\_\_\_
  - c. Other \_\_\_\_\_ \$ \_\_\_\_\_
- 14. Alimony, maintenance, and support paid to others \$ \_\_\_\_\_
- 15. Payments for support of additional dependents not living at your home \$ \_\_\_\_\_
- 16. Regular expenses from operation of business, profession, or farm (attach detailed statement) \$ \_\_\_\_\_
- 17. Other \_\_\_\_\_ \$ \_\_\_\_\_
- 18. AVERAGE MONTHLY EXPENSES (Total lines 1-17. Report also on Summary of Schedules and, if applicable, on the Statistical Summary of Certain Liabilities and Related Data.) \$ \_\_\_\_\_
- 19. Describe any increase or decrease in expenditures reasonably anticipated to occur within the year following the filing of this document:  
\_\_\_\_\_
- 20. STATEMENT OF MONTHLY NET INCOME
  - a. Average monthly income from Line 15 of Schedule I \$ \_\_\_\_\_
  - b. Average monthly expenses from Line 18 above \$ \_\_\_\_\_
  - c. Monthly net income (a. minus b.) \$ \_\_\_\_\_





MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES  
FROM: JEFF MORRIS, REPORTER  
RE: CONFORMING AMENDMENT TO RULE 1005  
DATE: FEBRUARY 1, 2006

Among the changes to the Code made in 2005 was the extension of the period during which the debtor is ineligible to receive another chapter 7 discharge. Debtors now must wait eight years between cases in order to be eligible for a chapter 7 discharge in the second case as compared to a six year wait under the prior version of § 727(a)(8) of the Bankruptcy Code.

In response to the change, we have already amended the voluntary petition (Official Form 1) to require the debtor to include any names used in the eight years prior to the commencement of the case, but we overlooked a parallel amendment to Rule 1005. That Rule sets out the requirements for the caption of the petition, and it should be amended to reflect the eight year period between discharges. An amended form of the rule follows.

**RULE 1005. Caption of Petition**

1           The caption of a petition commencing a case under the Code  
2           shall contain the name of the court, the title of the case, and the  
3           docket number. The title of the case shall include the  
4           following information about the debtor: name, employer  
5           identification number, last four digits of the social security  
6           number or individual debtor's tax identification number, any  
7           other federal tax identification number, and all names used

8                    within ~~six~~ eight years before filing the petition. If the petition  
9                    is not filed by the debtor, it shall include all names used by the  
10                   debtor which are known to the petitioners.

#### COMMITTEE NOTE

The rule is amended to require the disclosure of all names used by the debtor in the past eight years. Section 727(a)(8) was amended to extend the time between chapter 7 discharges from six to eight years, and the rule is amended to implement that change. The rule also is amended to require the disclosure of the last four digits of an individual debtor's tax identification number. This truncation of the number applies only to individual debtors. This is consistent with the requirements of Rule 9037.

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES  
FROM: JEFF MORRIS, REPORTER  
RE: TIME COMPUTATION AND RULE 9006  
DATE: FEBRUARY 7, 2006

The Standing Committee appointed an Ad Hoc Committee to consider the propriety of introducing new time computational rules for adoption by the Appellate, Bankruptcy, Civil, and Criminal Rules Committees. The first stage of the process was to identify the time computational rules among each set of rules and to propose amendments to harmonize the rules governing the counting of days under each set of rules. Thus, the effort is focused on the method for counting days under the rules as opposed to the creation of any particular deadline under the rules. The Ad Hoc Committee will continue its study of other time related issues for the rules. For example, that Committee is considering the possibility of setting time periods under each set of procedural rules in multiples of seven days to reduce dramatically the need for a computational rule that must address the impact of deadlines falling on weekends.<sup>1</sup> The Ad Hoc Committee has not yet taken any action on that issue, and any such action is likely to be in the form of a directive to each Advisory Committee to study its rules to determine whether adoption of the seven day regime is sensible.

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<sup>1</sup> The presence of holidays, including those that fall other than on Mondays such as July 4 and Thanksgiving, will require the continued operation of a time computational rule like Rule 9006(a) notwithstanding time periods being set as a multiple of seven. The fact that bankruptcy courts are always open under Rule 5001(a) also creates the possibility of a filing initially being made on a weekend. In that event, deadlines based on that filing would always fall on a weekend and the time computational rule would still be needed.

As of December 1, 2005, there are over 200 Bankruptcy Rules in effect. With the adoption of the Interim Rules as national rules, as well as the adoption of other rules that are currently in the rules enabling act process, there will be more than 210 rules to review. Most of the rules do not contain deadlines, but a good many do include specific deadlines that would have to be reviewed and perhaps adjusted.

The pendency of the time computation rule project has caused us in part to postpone our consideration of an amendment to the deadline for filing a notice of appeal under Rule 8002(a). It would be more sensible to make that change, if at all, as a part of a "global" review of deadlines under the rules.

The Ad Hoc Committee's recommendation is set out in the attached memorandum. Its proposed amendment to Rule 9006 is consistent with its recommendation for amendments to Appellate Rule 26, Civil Rule 6, and Criminal Rule 45. In general, the proposed amendment seeks to clarify the rule by referring to calendar days and by providing an explicit directive about the "direction" in which one counts days. That is, while most deadlines are set out as arriving a stated number of days after a particular filing or event, some deadlines are set out as occurring a stated number of days before a particular filing or event. In those situations, one must count "backwards" from the time of the triggering filing or event in contrast to the normal "forward" counting as in most rules. The solution adopted by the Ad Hoc Committee and recommended to each Advisory Committee is to continue counting in the order directed by the rule. For example, if a rule requires a paper to be filed ten days before a Wednesday, it would require that the paper be filed on a Sunday. Rule 9006(a), for example, provides that deadlines falling on a weekend are extended to the next day that is not a Saturday, Sunday or holiday. If one continues counting

backwards, the paper would be due to be filed on the Friday prior to the Sunday, or 12 days before the triggering event. If the rule were to adopt a forward counting mechanism for all deadlines that fall on a weekend, the filing deadline would be on the Monday after the Sunday, or just 9 days prior to the triggering event. These issues are addressed in greater detail in the Ad hoc Committee’s memorandum which includes a draft of proposed amendments to Civil Rule 6. I have prepared a proposed amendment to Rule 9006(a) that would be substituted for existing Rule 9006(a). The current Rule 9006(a) would be deleted, including the reference to periods of less than 8 days. The proposed amendment to Rule 9006(a) follows immediately, and the Time Computation Committee’s memorandum and suggested version of Civil Rule 6 is appended thereafter. Please note that the “[CITE]” at the end of the last paragraph in the Committee Note discussing subdivision (a)(1) will ultimately be replaced by examples of time periods that would be changed under the rules from 10 days to 14 days, for example.

**Rule 9006. Time**

- 1                   **(a)    Computing Time.** The following rules apply in computing
- 2   any time period specified in these rules or in any local rule,
- 3   court order, or statute.
- 4                   **(1)    *Period Stated in Days.*** When the period is stated in
- 5   days,
- 6   **(A)**    exclude the day of the act, event, or default
- 7   that triggers the period;
- 8   **(B)**    count every day, including intermediate
- 9   Saturdays, Sundays, and legal holidays; and

10 (C) include the last day of the period unless it is  
11 a Saturday, Sunday, legal holiday, or — if  
12 the act to be done is filing a paper in court  
13 — a day on which weather or other  
14 conditions make the clerk’s office  
15 inaccessible. When the last day is excluded,  
16 the period continues to run until the end of  
17 the next day that is not a Saturday, Sunday,  
18 legal holiday, or day when the clerk’s office  
19 is inaccessible.

20 (2) ***Period Stated in Hours.*** When the period is stated  
21 in hours,

22 (A) begin counting immediately on the  
23 occurrence of the act, event, or default that  
24 triggers the period;

25 (B) count every hour, including hours during  
26 intermediate Saturdays, Sundays, and legal  
27 holidays; and

28 (C) if the period would end at a time on a  
29 Saturday, Sunday, legal holiday, or — if the  
30 act to be done is filing a paper in court — a  
31 day on which weather or other conditions

32 make the clerk's office inaccessible, then  
33 continue the period until the same time on  
34 the next day that is not a Saturday, Sunday,  
35 legal holiday, or day when the clerk's office  
36 is inaccessible.

37 (3) ***“Legal Holiday” Defined.*** “Legal holiday” means:

- 38 (A) the day set aside by statute for observing  
39 New Year's Day, Martin Luther King Jr.'s  
40 Birthday, Washington's Birthday, Memorial  
41 Day, Independence Day, Labor Day,  
42 Columbus Day, Veterans' Day,  
43 Thanksgiving Day, or Christmas Day; and  
44 (B) any other day declared a holiday by the  
45 President, Congress, or the state where the  
46 district court is located.

#### COMMITTEE NOTE

**Subdivision (a).** Subdivision (a) has been amended to simplify and clarify the provisions that describe how deadlines are computed. Subdivision (a) governs the computation of any time period found in a Federal Rule of Bankruptcy Procedure, a local rule, a court order, or a statute. A local rule may not direct that a deadline be computed in a manner inconsistent with subdivision (a). See Rule 9029(a)(1).

The time-computation provisions of subdivision (a) apply only when a time period needs to be computed. They do not apply when a fixed time to act is set. If, for example, a rule or order requires that a paper be filed “no later than November 1, 2007,” then the paper is due on November 1, 2007. But if a rule or order requires that a paper be filed “within 10 days” or “within 72 hours,” subdivision (a) describes how that deadline is computed.



**Subdivision (a)(1).** New subdivision (a)(1) addresses the computation of time periods that are stated in days. (It also applies to the rare time periods that are stated in weeks, months, or years. See, e.g., Fed. R. Evid. 901(b)(8).)

Under former Rule 9006(a), a period of 8 days or more was computed differently than a period of 7 days or less. Intermediate Saturdays, Sundays, and legal holidays were included in computing the longer periods, but excluded in computing the shorter periods. Former Rule 9006(a) thus made computing deadlines unnecessarily complicated and led to counterintuitive results.

Under new subdivision (a)(1), all deadlines stated in days (no matter the length) are computed in the same way. The day of the act, event, or default that triggers the deadline is not counted. Every other day — including intermediate Saturdays, Sundays, and legal holidays — is counted, with only one exception: If the period ends on a Saturday, Sunday, or legal holiday, then the deadline is extended to the next day that is not a Saturday, Sunday, or legal holiday. (When the act to be done is filing a paper in court, a day on which the clerk’s office is not accessible because of the weather or another reason is treated like a Saturday, Sunday, or legal holiday.) Thus, a paper that must be filed within 10 days after the entry of an order on Tuesday, August 21, 2007, is due on Friday, August 31, 2007. But a paper that must be filed within 10 days after the entry of an order on Wednesday, August 22, 2007, is not due until Tuesday, September 4, 2007, because the tenth day (September 1) is a Saturday and Monday (September 3) is Labor Day.

The Federal Rules of Bankruptcy Procedure contain both forward-looking time periods and backward-looking time periods. A forward-looking time period requires something to be done within a period of time *after* an act, event, or default. See, e.g., Rule 4007(c) (dischargeability complaint “shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a)”). A backward-looking time period requires something to be done within a period of time *before* an act, event, or default. See, e.g., Rule 2002(a)(1) (clerk shall give at least 20 days notice of the § 341 meeting of creditors). In determining what is the “next” day for purposes of subdivision (a)(1)(C) (as well as for purposes of subdivision (a)(2)(C)), one should continue counting in the same direction — that is, forward when computing a forward-looking period and backward when computing a backward-looking period. If, for example, a paper is due within 10 days *after* an event, and the tenth day falls on Saturday, March 15, then the paper is due on Monday, March 17. But if a paper is due 10 days *before* an event, and the tenth day falls on Saturday, March 15, then the paper is due on Friday, March 14.

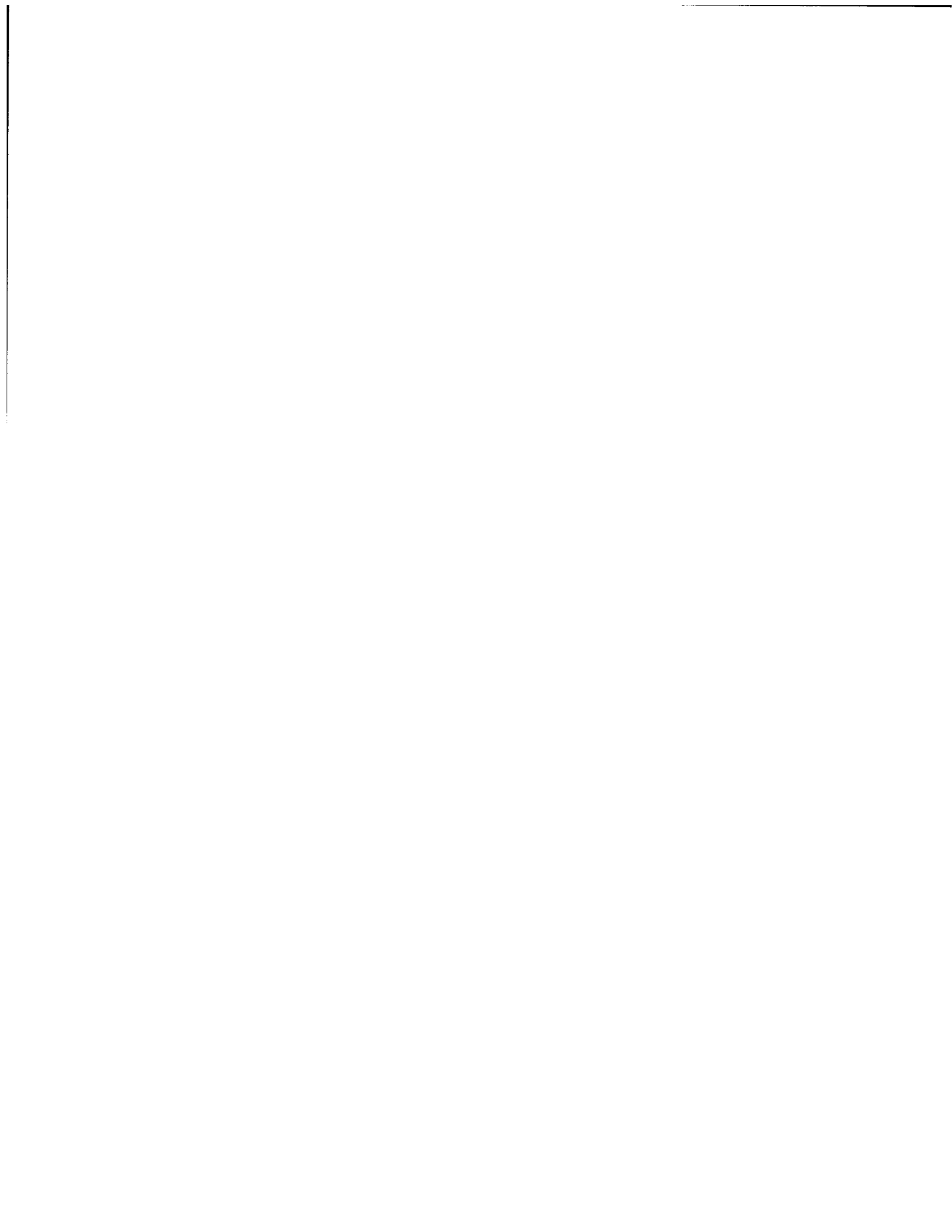
Periods previously expressed as 10 days or less will be shortened as a practical matter by the decision to count intermediate Saturdays, Sundays, and legal holidays in computing all periods. Many of those periods have been lengthened to compensate for the change. See, e.g., [CITE].

**Subdivision (a)(2).** New subdivision (a)(2) addresses the computation of time periods

that are stated in hours. No such deadline currently appears in the Federal Rules of Bankruptcy Procedure. But some statutes contain deadlines stated in hours, see, e.g., 28 U.S.C. § 3771(d)(3), as do some court orders issued in expedited proceedings.

Under new subdivision (a)(2), a deadline stated in hours starts to run immediately on the occurrence of the act, event, or default that triggers the deadline. The deadline generally ends when the time expires. If, however, the deadline ends at a specific time (say, 2:00 p.m.) on a Saturday, Sunday, or legal holiday, then the deadline is extended to the same time (2:00 p.m.) on the next day that is not a Saturday, Sunday, or legal holiday. (Again, when the act to be done is filing a paper in court, a day on which the clerk's office is not accessible because of the weather or another reason is treated like a Saturday, Sunday, or legal holiday.)

**Subdivision (a)(3).** New subdivision (a)(3) defines "legal holiday" for purposes of the Federal Rules of Bankruptcy Procedure, including the time-computation provisions of subdivisions (a)(1) and (a)(2).



## MEMORANDUM

**DATE:** January 20, 2006

**TO:** Advisory Committees

**FROM:** Judge Mark R. Kravitz, Chair  
Time-Computation Subcommittee

**RE:** Time-Computation Template

Last year, the Standing Committee created a Time-Computation Subcommittee and charged it with examining the time-computation provisions found in the Appellate, Bankruptcy, Civil, Criminal, and Evidence Rules. Judge David Levi asked me to chair the Subcommittee, and he asked Prof. Patrick Schiltz, the reporter to the Appellate Rules Committee, to serve as the Subcommittee's reporter. The Subcommittee's main task is to attempt to simplify the time-computation rules and to eliminate inconsistencies among those rules.

A "time-computation rule" is not a deadline, but rather a rule that directs how a deadline is to be computed. Thus, Appellate Rule 27(a)(3)(A) — which provides that a response to a motion must be filed within eight days after service of that motion — is not a time-computation rule. But Appellate Rule 26(a)(2) — which provides that, in computing a deadline of less than 11 days, intermediate Saturdays, Sundays, and legal holidays should be excluded — is a time-computation rule.

The Subcommittee will focus on time-computation rules, not on deadlines. If changes to the time-computation rules are recommended, it will be up to the individual advisory committees to decide whether their respective deadlines should be adjusted or whether changes should be made to other rules, such as the rules that give courts the authority to alter deadlines.<sup>1</sup> The Subcommittee will likely act as a "clearinghouse" for information about such changes and help to coordinate the work of the advisory committees, but the Subcommittee will not itself address such topics as whether a defendant should have more than seven days to move for a judgment of acquittal under Criminal Rule 29(c)(1) or whether the "safe harbor" of Civil Rule 11(c)(1)(A)

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<sup>1</sup>*See, e.g.*, FED. R. APP. P. 26(b); FED. R. BANKR. P. 9006(b); FED. R. CIV. P. 6(b); FED. R. CRIM. P. 45(b).

should be longer than 21 days. Obviously, the expertise needed to address such questions resides in the advisory committees, not in the Subcommittee.

The ultimate goal of the Subcommittee is to recommend to the advisory committees a time-computation template containing uniform and simplified time-computation rules. The Subcommittee has spent the past four months working toward that goal. In early September, I circulated to the advisory committee chairs and reporters and then to the Subcommittee members a report drafted by Prof. Schiltz that listed all of the time-computation rules that are presently found in the Appellate, Bankruptcy, Civil, and Criminal Rules and that are obvious candidates for inclusion in the template. (The Evidence Rules have a few deadlines,<sup>2</sup> but no provisions about how to compute those deadlines.) Prof. Schiltz also identified three issues that are not now addressed by the rules of practice and procedure, but that might merit attention. A copy of Prof. Schiltz's report is attached.

On October 4, the Subcommittee met via conference call, reviewed all of the issues identified by Prof. Schiltz, and made tentative decisions about what should be included in the template. In November, Prof. Schiltz circulated a draft template that attempted to implement the Subcommittee's decisions. On December 14, the Subcommittee met again via conference call (the advisory committee reporters joined us), reviewed the draft template, and decided on a number of changes. Prof. Schiltz then drafted a revised template that incorporated all of those changes. That template was favorably reviewed by the Standing Committee at its meeting earlier this month.

The template is attached. At this point, we are asking that the advisory committees review the template and share any concerns or suggestions that they have. That input can be communicated through the advisory committee reporters or directly to Prof. Schiltz (pjschiltz@stthomas.edu) or me (Mark\_Kravitz@ctd.uscourts.gov). Following the spring advisory committee meetings, the Subcommittee will review any comments that we receive and prepare a final template. We hope to present that final template to the Standing Committee at its June 2006 meeting.

Assuming that the template is approved by the Standing Committee, the advisory committees will then have to draft amendments to their respective time-computation rules. The advisory committees will also have to review their deadlines and decide whether to propose changes to those deadlines in light of the new time-computation rules. Our hope is to publish both the proposed changes to the time-computation rules and the proposed changes to the deadlines in August 2007, so that the bench and bar can consider them as a package. The tentative schedule for the time-computation project is thus as follows:

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<sup>2</sup>See, e.g., FED. R. EVID. 412(c)(1)(A), 413(b), 414(b), 415(b).

Fall 2005	Time-Computation Subcommittee drafts template
January 2006	Template reviewed by Standing Committee
Spring 2006	Template reviewed by advisory committees
Late Spring 2006	Time-Computation Subcommittee reviews comments from Standing Committee and advisory committees and approves final template
June 2006	Standing Committee approves final template
Fall 2006	Advisory committees consider amendments to time-computation rules to reflect final template and begin work on revising deadlines
Spring 2007	Advisory committees approve amendments to time-computation rules and deadlines for publication
June 2007	Standing Committee approves amendments to time-computation rules and deadlines for publication
August 2007	Amendments to time-computation rules and deadlines published for comment

I wish to draw your attention to two additional issues. Both of these issues are identified in Prof. Schiltz's report, and both were discussed by the Subcommittee. For reasons that I will describe, though, the Subcommittee ultimately decided — and the Standing Committee agreed — that the issues should be addressed by other committees. At its January meeting, the Standing Committee indicated that it would appreciate guidance from the advisory committees on both of these issues.

1. *Accessibility of Clerk's Office.* Under both the template and the existing rules, "a day on which weather or other conditions make the clerk's office inaccessible" is treated like a Saturday, Sunday, or legal holiday for time-computation purposes. The question is whether the concept of "inaccessibility" should be rethought in light of the emergence of electronic service and filing. Should a clerk's office be deemed "inaccessible" if inclement weather closes the office, but the clerk's servers continue to operate, and thus electronic filing is possible? Alternatively, should a clerk's office be deemed "inaccessible" if the weather is fine but the clerk's servers go down and thus electronic filing is not possible? What if the servers go down for only an hour? Four hours? Eight hours?

This is a thorny problem raising important policy issues that will need to be discussed at length. This is also a problem that will benefit from the expertise of the members of the Subcommittee on Technology — the same Subcommittee that has in the past proposed rules governing electronic service and filing. For those reasons, this problem has been referred to that Subcommittee. It is likely, though, that this issue will eventually end up before the advisory committees, and, as I noted, the Standing Committee and the Subcommittee on Technology are now looking for guidance from the advisory committees on how to proceed.

2. *The “Three-Day Rule.”* The “three-day rule” is found in Appellate Rule 26(c), Bankruptcy Rule 9006(f), Civil Rule 6(e), and Criminal Rule 45(c). It provides that, when a party is required to act within a prescribed period after a paper is served on that party, and the paper is served by any means except personal service, three days are added to the prescribed period.

Some have suggested that the three-day rule should be abolished. It complicates time computation by forcing parties to figure out whether they get three extra days to respond to a paper. In the past, parties have had difficulty grasping the fact that the three-day rule applies only when a deadline is triggered by the *service* of a paper, and not when a deadline is triggered by some other event, such as the *filing* of a paper or the entry of a court order. This difficulty, in turn, has caused parties to miss deadlines.

Another problem with the current version of the three-day rule is that it creates an incentive for parties to use mail service and to avoid other means of service. For example, when a party serves an opponent electronically, the opponent gets three extra days, even though, in the vast majority of cases, the opponent will receive the paper instantaneously. If the deadline is 10 days, the opponent will, as a practical matter, have 13 days to work on its response. If the party instead serves the opponent by U.S. mail, the paper will not be delivered for at least two or three days, giving the opponent only 10 or 11 days to work on its response.

The Subcommittee discussed the three-day rule and decided that it should not be abolished. The Subcommittee feared that, if it was abolished, parties would avoid personal service, electronic service, and service by commercial carrier, and opt instead for U.S. mail. The Subcommittee thought that it might make sense to apply the three-day rule only to service by U.S. mail, but the rules of practice and procedure were just amended in 2002 to extend the three-day rule to electronic service, reflecting a decision that the Standing Committee made on the recommendation of the Subcommittee on Technology. Our Subcommittee did not feel comfortable revisiting such a recent decision of the Standing Committee. However, at its January meeting, the Standing Committee indicated that it would like guidance from the advisory committees regarding whether its decision should be revisited.

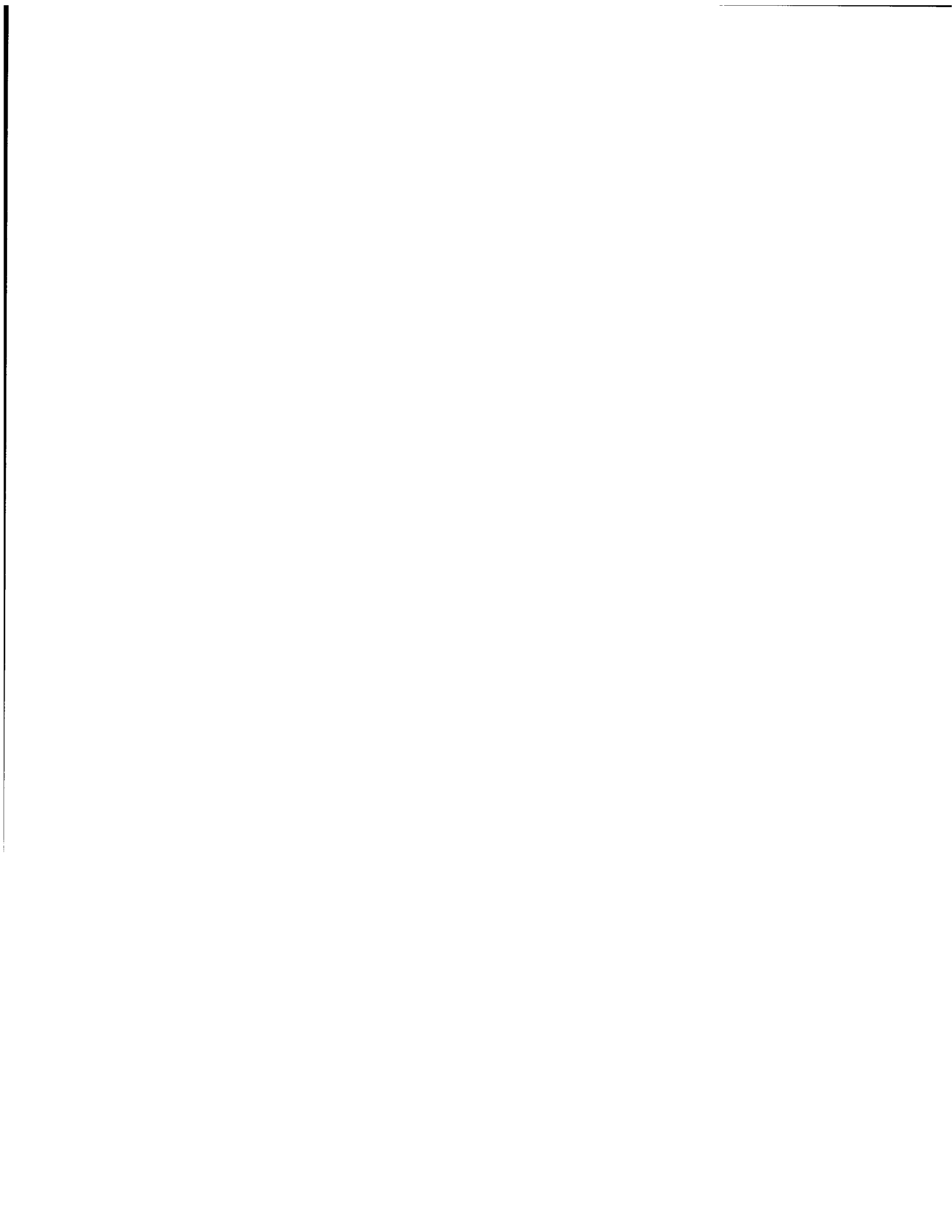
Our Subcommittee was also reluctant to address the question of whether to modify the three-day rule because the question implicates several other issues. In many courts, electronic service and filing is now mandatory for most parties. Those parties will file and serve

electronically no matter what the three-day rule provides. The fact that mandatory electronic filing and service is likely to become pervasive within the next decade may have implications for whether the three-day rule should be maintained. In addition, the three-day rule is necessary only because, under the rules of practice and procedure, service by U.S. mail is effective on mailing, service by commercial carrier is effective on delivery to the carrier, and service by electronic means is effective on transmission. If service were effective on some other event — such as *receipt* — then the justification for the three-day rule would disappear. The problems with the three-day rule may justify a reexamination of the rules regarding the effectiveness of service.

The Subcommittee determined, and the Standing Committee agreed, that this issue is best addressed, at least as an initial matter, by the advisory committees. If there is strong sentiment for change among the advisory committees, then either the Subcommittee on Technology or another subcommittee will likely be asked to coordinate work on this issue, as it is obviously important to maintain consistency among the rules of practice and procedure.

Thank you for your assistance with these matters.





**I. SCOPE OF TIME-COMPUTATION RULES**

**A. Appellate Rule**

**Rule 26. Computing and Extending Time**

(a) **Computing Time.** The following rules apply in computing any period of time specified in these rules or in any local rule, court order, or applicable statute . . . .

**B. Bankruptcy Rule**

**Rule 9006. Time**

(a) **Computation.** In computing any period of time prescribed or allowed by these rules or by the Federal Rules of Civil Procedure made applicable by these rules, by the local rules, by order of court, or by any applicable statute . . . .

**C. Civil Rule**

**Rule 6. Time**

(a) **COMPUTATION.** In computing any period of time prescribed or allowed by these rules, by the local rules of any district court, by order of court, or by any applicable statute . . . .

**D. Criminal Rule**

**Rule 45. Computing and Extending Time**

(a) **Computing Time.** The following rules apply in computing any period of time specified in these rules, any local rule, or any court order . . . .

**E. Comment**

Appellate Rule 26(a), Bankruptcy Rule 9006(a), and Civil Rule 6(a) make clear that their time-computation provisions apply to any “applicable statute,” as well as to federal rules, local rules, and court orders. For some reason, Criminal Rule 45(a) does not mention “applicable statutes.” I do not know why the newly restyled Criminal Rule is inconsistent with the other rules, but the Subcommittee may want to address this inconsistency.

## II. EXCLUDING DAY OF EVENT

### A. Appellate Rule

#### Rule 26. Computing and Extending Time

(a) **Computing Time.** The following rules apply in computing any period of time specified in these rules or in any local rule, court order, or applicable statute:

(1) Exclude the day of the act, event, or default that begins the period.

### B. Bankruptcy Rule

#### Rule 9006. Time

(a) **Computation.** In computing any period of time prescribed or allowed by these rules or by the Federal Rules of Civil Procedure made applicable by these rules, by the local rules, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included.

### C. Civil Rule

#### Rule 6. Time

(a) **COMPUTATION.** In computing any period of time prescribed or allowed by these rules, by the local rules of any district court, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included.

### D. Criminal Rule

#### Rule 45. Computing and Extending Time

(a) **Computing Time.** The following rules apply in computing any period of time specified in these rules, any local rule, or any court order:

(1) ***Day of the Event Excluded.*** Exclude the day of the act, event, or default that begins the period.

**E. Comment**

Appellate Rule 26(a)(1), Bankruptcy Rule 9006(a), Civil Rule 6(a), and Criminal Rule 45(a)(1) are consistent in substance and, as far as I know, have created no problems for the bench or bar. It appears that only “restyling” to make the language consistent may be needed.

**III. 11-DAY RULE: EXCLUDING INTERMEDIATE SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS**

**A. Appellate Rule**

**Rule 26. Computing and Extending Time**

(a) **Computing Time.** The following rules apply in computing any period of time specified in these rules or in any local rule, court order, or applicable statute:

\* \* \* \* \*

(2) Exclude intermediate Saturdays, Sundays, and legal holidays when the period is less than 11 days, unless stated in calendar days.

**B. Bankruptcy Rule**

**Rule 9006. Time**

(a) **Computation.** In computing any period of time prescribed or allowed by these rules or by the Federal Rules of Civil Procedure made applicable by these rules, by the local rules, by order of court, or by any applicable statute . . . . When the period of time prescribed or allowed is less than 8 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

**C. Civil Rule**

**Rule 6. Time**

(a) **COMPUTATION.** In computing any period of time prescribed or allowed by these rules, by the local rules of any district court, by order of court, or by any applicable statute . . . . When the period of time prescribed or allowed is

less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

**D. Criminal Rule**

**Rule 45. Computing and Extending Time**

(a) **Computing Time.** The following rules apply in computing any period of time specified in these rules, any local rule, or any court order:

\* \* \* \* \*

(2) **Exclusion from Brief Periods.** Exclude intermediate Saturdays, Sundays, and legal holidays when the period is less than 11 days.

**E. Comment**

Appellate Rule 26(a)(2), Bankruptcy Rule 9006(a), Civil Rule 6(a), and Criminal Rule 45(a)(2) are consistent in substance, with two exceptions. First, the dividing line under the Bankruptcy Rule is 8 days, whereas the dividing line under the Appellate, Civil, and Criminal Rules is 11 days. Second, the Appellate Rule alone recognizes the concept of “calendar days.” (More about calendar days below.)

The “11-day rule” (which I will call it, for the sake of simplicity) is the most criticized of the time-computation rules. The 11-day rule makes computing deadlines unnecessarily complicated and leads to counterintuitive results — such as parties sometimes having less time to file papers that are due in 14 days than they have to file papers that are due in 10 days.<sup>3</sup> The Subcommittee should consider eliminating the 11-day rule and providing instead that “days are days” — i.e., that intermediate Saturdays, Sundays, and legal holidays are always counted, no matter how long the deadline. A “days are days” rule would also moot the

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<sup>3</sup>

If a ten-day period and a fourteen-day period start on the same day, which one ends first? Most sane people would suggest the ten-day period. But, under the Federal Rules of Civil Procedure, time is relative. Fourteen days usually lasts fourteen days. Ten days, however, never lasts just ten days; ten days always lasts at least fourteen days. Eight times per year ten days can last fifteen days. And, once per year, ten days can last sixteen days.

Miltimore Sales, Inc. v. Int’l Rectifier, Inc., 412 F.3d 685, 686 (6th Cir. 2005). Ed Cooper points out that a 10-day deadline can actually extend to 17 days, if it begins running on a Friday, December 22.

inconsistency between the 8-day dividing line in the Bankruptcy Rule and the 11-day dividing line in the Appellate, Civil, and Criminal Rules.

#### **IV. CALENDAR DAYS**

##### **A. Appellate Rule**

As noted above, the Appellate Rules alone recognize the concept of “calendar days.” Appellate Rule 26(a)(2) provides that, in computing a deadline of less than 11 days, intermediate Saturdays, Sundays, and legal holidays should be excluded *unless the deadline is stated in calendar days*. If the deadline is stated in calendar days, then “days are days,” and intermediate Saturdays, Sundays, and legal holidays are counted.

Only one deadline in the Appellate Rules is stated in calendar days: Appellate Rule 41(b) requires that “[t]he court’s mandate must issue 7 calendar days after the time to file a petition for rehearing expires, or 7 calendar days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later.”

In addition, Appellate Rule 26(c) — the “3-day rule” (discussed below) — is stated in calendar days: “When a party is required or permitted to act within a prescribed period after a paper is served on that party, 3 calendar days are added to the prescribed period unless the paper is delivered on the date of service stated in the proof of service.” (The equivalent provision in the Bankruptcy, Civil, and Criminal Rules is simply stated in “days.”)

Finally, Appellate Rule 25(a)(2)(B)(ii) provides that a brief or appendix is timely filed if, on or before the last day for filing, it is “dispatched to a third-party commercial carrier for delivery to the clerk within 3 calendar days.” And Appellate Rule 25(c)(1)(C) lists as an authorized method of service transmittal “by third-party commercial carrier for delivery within 3 calendar days.”

##### **B. Bankruptcy Rule**

The Bankruptcy Rules do not refer to calendar days.

##### **C. Civil Rule**

The Civil Rules do not refer to calendar days.

**D. Criminal Rule**

The Criminal Rules do not refer to calendar days.

**E. Comment**

The use of calendar days by the Appellate Rules — but not by the Bankruptcy, Civil, or Criminal Rules — is a major inconsistency in the time-computation rules. The inconsistency would not exist but for the 11-day rule. If that rule were eliminated — if “days were days” — then the Appellate Rules would no longer need to use the concept of calendar days, as all days would be counted as calendar days. This is another reason for the Subcommittee to consider eliminating the 11-day rule.

**V. LAST DAY OF PERIOD ON SATURDAY, SUNDAY, OR LEGAL HOLIDAY**

**A. Appellate Rule**

**Rule 26. Computing and Extending Time**

(a) **Computing Time.** The following rules apply in computing any period of time specified in these rules or in any local rule, court order, or applicable statute:

\* \* \* \* \*

(3) Include the last day of the period unless it is a Saturday, Sunday, [or] legal holiday . . . .

**B. Bankruptcy Rule**

**Rule 9006. Time**

(a) **Computation.** In computing any period of time prescribed or allowed by these rules or by the Federal Rules of Civil Procedure made applicable by these rules, by the local rules, by order of court, or by any applicable statute . . . . The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday . . . in which event the period runs until the end of the next day which is not one of the aforementioned days.

**C. Civil Rule**

**Rule 6. Time**

(a) **COMPUTATION.** In computing any period of time prescribed or allowed by these rules, by the local rules of any district court, by order of court, or by any applicable statute . . . . The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday . . . in which event the period runs until the end of the next day which is not one of the aforementioned days.

**D. Criminal Rule**

**Rule 45. Computing and Extending Time**

(a) **Computing Time.** The following rules apply in computing any period of time specified in these rules, any local rule, or any court order:

\* \* \* \* \*

(3) **Last Day.** Include the last day of the period unless it is a Saturday, Sunday, [or] legal holiday . . . . When the last day is excluded, the period runs until the end of the next day that is not a Saturday, Sunday, [or] legal holiday . . . .

**E. Comment**

Appellate Rule 26(a)(3), Bankruptcy Rule 9006(a), Civil Rule 6(a), and Criminal Rule 45(a)(3) are consistent in substance, and, as far as I know, neither the bench nor the bar have had difficulty understanding that when a deadline ends on a Saturday, Sunday, or legal holiday, the deadline is extended to the next day that is not a Saturday, Sunday, or legal holiday. It appears that only “restyling” to make the language consistent may be needed.

**VI. LAST DAY OF PERIOD ON DAY CLERK’S OFFICE INACCESSIBLE**

**A. Appellate Rule**

**Rule 26. Computing and Extending Time**



- (a) **Computing Time.** The following rules apply in computing any period of time specified in these rules or in any local rule, court order, or applicable statute:

\* \* \* \* \*

- (3) Include the last day of the period unless . . . if the act to be done is filing a paper in court — [it is] a day on which the weather or other conditions makes the clerk's office inaccessible.

**B. Bankruptcy Rule**

**Rule 9006. Time**

- (a) **Computation.** In computing any period of time prescribed or allowed by these rules or by the Federal Rules of Civil Procedure made applicable by these rules, by the local rules, by order of court, or by any applicable statute . . . . The last day of the period so computed shall be included, unless . . . when the act to be done is the filing of a paper in court, [it is] a day on which weather or other conditions have made the clerk's office inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days.

**C. Civil Rule**

**Rule 6. Time**

- (a) **COMPUTATION.** In computing any period of time prescribed or allowed by these rules, by the local rules of any district court, by order of court, or by any applicable statute . . . . The last day of the period so computed shall be included, unless . . . when the act to be done is the filing of a paper in court, [it is] a day on which weather or other conditions have made the office of the clerk of the district court inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days.

**D. Criminal Rule**

**Rule 45. Computing and Extending Time**

- (a) **Computing Time.** The following rules apply in computing any period of time specified in these rules, any local rule, or any court order:

\* \* \* \* \*

- (3) **Last Day.** Include the last day of the period unless it is a . . . day on which weather or other conditions make the clerk’s office inaccessible. When the last day is excluded, the period runs until the end of the next day that is not a Saturday, Sunday, legal holiday, or day when the clerk’s office is inaccessible.

**E. Comment**

Appellate Rule 26(a)(3), Bankruptcy Rule 9006(a), Civil Rule 6(a), and Criminal Rule 45(a)(3) are consistent in substance, except that newly restyled Criminal Rule 45(a)(3) eliminates the “act to be done is filing” qualifier. The reason for this omission is not clear to me, but the Subcommittee may wish to address it.

The Subcommittee may also wish to consider whether to address the myriad problems that will arise as electronic filing becomes pervasive. For example, suppose that the clerk’s office is physically open, but electronic filing is not possible because of problems with the clerk’s computer system? Or because of problems with the filing attorney’s or party’s computer system? Or suppose the opposite: The clerk’s office is physically closed, but electronic filing is possible 24 hours per day, 365 days per year. Should the rules provide that a paper that is filed electronically at 11:59 p.m. on the last day of a deadline is timely, even though it was filed after clerk’s office had closed?

My summer research assistant looked at a sample of local and state rules, but was unable to find any provision directed specifically at electronic accessibility. It may be that attempting to address these issues now would be premature, and that we should instead give courts and local rulemakers a few years to identify the issues that electronic filing will present and experiment with various means of addressing those issues.

**VII. DEFINITION OF “LEGAL HOLIDAY”**

**A. Appellate Rule**

**Rule 26. Computing and Extending Time**

- (a) **Computing Time.** The following rules apply in computing any period of time specified in these rules or in any local rule, court order, or applicable statute:

\* \* \* \* \*

- (4) As used in this rule, “legal holiday” means New Year’s Day, Martin Luther King, Jr.’s Birthday, Presidents’ Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day, Christmas Day, and any other day declared a holiday by the President, Congress, or the state in which is located either the district court that rendered the challenged judgment or order, or the circuit clerk’s principal office.

**B. Bankruptcy Rule**

**Rule 9006. Time**

- (a) **Computation.** . . . As used in this rule . . . , “legal holiday” includes New Year’s Day, Birthday of Martin Luther King, Jr., Washington’s Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or by the state in which the court is held.

**C. Civil Rule**

**Rule 6. Time**

- (a) **COMPUTATION.** . . . As used in this rule . . . , “legal holiday” includes New Year’s Day, Birthday of Martin Luther King, Jr., Washington’s Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or by the state in which the district court is held.

**D. Criminal Rule**

**Rule 45. Computing and Extending Time**

- (a) **Computing Time.** The following rules apply in computing any period of time specified in these rules, any local rule, or any court order:

\* \* \* \* \*

- (4) **“Legal Holiday” Defined.** As used in this rule, “legal holiday” means:

- (A) the day set aside by statute for observing:

- (I) New Year's Day;
- (ii) Martin Luther King, Jr.'s Birthday;
- (iii) Washington's Birthday;
- (iv) Memorial Day;
- (v) Independence Day;
- (vi) Labor Day;
- (vii) Columbus Day;
- (viii) Veterans' Day;
- (ix) Thanksgiving Day;
- (x) Christmas Day; and

(B) any other day declared a holiday by the President, the Congress, or the state where the district court is held.

**E. Comment**

Appellate Rule 26(a)(4), Bankruptcy Rule 9006(a), Civil Rule 6(a), and Criminal Rule 45(a)(4) are essentially consistent in substance, with the one difference reflecting the fact that most of the circuit courts to which the Appellate Rules apply encompass more than one state, whereas most of the bankruptcy and district courts to which the Bankruptcy, Civil, and Criminal Rules apply encompass only one state. As far as I know, this provision has not created any difficulties and needs only to be "restyled" to make the language consistent.

**VIII. 3-DAY RULE: ADDING 3 DAYS UNLESS PERSONALLY SERVED**

**A. Appellate Rule**

**Rule 26. Computing and Extending Time**

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- (c) **Additional Time after Service.** When a party is required or permitted to act within a prescribed period after a paper is served on that party, 3 calendar days are added to the prescribed period unless the paper is delivered on the date of service stated in the proof of service. For purposes of Rule 26(c), a paper that is served electronically is not treated as delivered on the date of service stated in the proof of service.

**B. Bankruptcy Rule**

**Rule 9006. Time**

\* \* \* \* \*

- (f) **Additional time after service by mail or under Rule 5(b)(2)(C) or (D) F.R.Civ.P.** When there is a right or requirement to do some act or undertake some proceedings within a prescribed period after service of a notice or other paper and the notice or paper other than process is served by mail or under Rule 5(b)(2)(C) or (D) F. R. Civ. P., three days shall be added to the prescribed period.

**C. Civil Rule**

**Rule 6. Time**

\* \* \* \* \*

- (e) **ADDITIONAL TIME AFTER SERVICE UNDER RULE 5(b)(2)(B), (C), OR (D).** Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party under Rule 5(b)(2)(B), (C), or (D), 3 days shall be added to the prescribed period.

**D. Criminal Rule**

**Rule 45. Computing and Extending Time**

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- (c) **Additional Time After Service.** When these rules permit or require a party to act within a specified period after a notice or a paper has been served on that party, 3 days are added to the period if service occurs in the manner provided under Federal Rule of Civil Procedure 5(b)(2)(B), (C), or (D).

## E. Comment

Appellate Rule 26(c), Bankruptcy Rule 9006(f), Civil Rule 6(e), and Criminal Rule 45(c) are essentially consistent. The only differences reflect the fact that the service authorized under Appellate Rule 25(c) differs from the service authorized under Civil Rule 5(b) (which is incorporated by reference into the Bankruptcy Rules<sup>4</sup> and the Criminal Rules<sup>5</sup>). For example, Appellate Rule 25(c)(1)(C) authorizes service by third-party commercial carriers such as Federal Express, while Civil Rule 5(b)(2)(D) authorizes such service only if the party being served has consented.

The Subcommittee should consider whether the 3-day rule might be eliminated as part of a general effort to ensure that, to the extent possible, “days are days.” The 3-day rule complicates time computation by forcing parties to figure out whether or not they get 3 extra days. In the past, parties have had particular difficulty grasping the fact that the 3-day rule applies only when a deadline is triggered by the *service* of a paper, and not when a deadline is triggered by some other event, such as the *filing* of a paper or the entry of a court order.

The 3-day rule harkens back to the time when almost all service was either in person or by mail. The concern was that a party facing, say, a 10-day deadline to respond to a paper would have 10 real days if the paper was served personally, but only about 7 real days if the paper was served by mail. The 3-day rule was designed to put all served parties in roughly the same position and thus to eliminate strategic behavior by serving parties.

Today, the 3-day rule has been expanded to cover every type of service except personal service, and thus it seems likely that 3 days are being added to the vast majority of service-triggered deadlines. Rather than continue to complicate time computation with the 3-day rule, the Subcommittee may want to consider abolishing the rule, leaving the advisory committees free to add 3 days to those service-triggered deadlines that need the extra time.

Abolishing the 3-day rule would simplify time computation. It might, however, introduce the type of strategic behavior that the 3-day rule was designed to curtail. For example, a party might opt for mail rather than electronic or personal service in order to give his or her opponent 2 or 3 fewer days to work on a response. Note, though, that similar incentives already exist under the present rule. For example, a party might opt for mail rather than electronic service because,

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<sup>4</sup>See FED. R. BANKR. P. 7005.

<sup>5</sup>See FED. R. CRIM. P. 49(b).

although both gain the benefit of the 3-day rule, mail service is likely to take 2 or 3 days, whereas electronic service is likely to be instantaneous.

## **IX. OTHER ISSUES**

There are several issues that the rules of practice and procedure do not currently address but perhaps should. Those issues include the following:

### **A. Deadlines stated in hours**

Congress is increasingly imposing (or considering imposing) deadlines stated in hours, without giving any instructions about how those deadlines should be computed. For example, the Justice for All Act of 2004 provides that, if a victim of a crime files a mandamus petition complaining that the district court has denied the victim the rights that he or she enjoys under the Act, “[t]he court of appeals shall take up and decide such application forthwith within 72 hours after the petition has been filed.” 18 U.S.C. § 3771(d)(3).

Suppose such a petition is filed at 2:00 p.m. on Thursday. By when must the court of appeals “take up and decide” the petition? By 2:00 p.m. Sunday? By 9:01 a.m. Monday? By 2:00 p.m. Monday? By 2:00 p.m. Tuesday? By 5:00 p.m. Tuesday?

The Subcommittee may want to recommend new provisions describing how deadlines stated in hours should be computed. This would be a difficult drafting exercise — made more difficult by the fact that, as far as I can tell, no local rules or state rules address the computation of deadlines stated in hours.

### **B. “Backward-looking” deadlines**

The rules are silent about how backward-looking deadlines are computed. For example, Civil Rule 56(c) provides that a summary judgment motion “shall be served at least 10 days before the time fixed for the hearing.” If the 10th day falls on a Saturday, must the motion be served by the previous Friday or by the following Monday? The Subcommittee may want to consider proposing template language that would address this issue.

**C. Deadlines stated in 7-day increments**

Ed Cooper has suggested the possibility that all deadlines could be stated in 7-day increments — i.e., 7 days, 14 days, 21 days, etc. This would reduce the problem of deadlines ending on a Saturday or Sunday, although it would not eliminate the problem altogether (parties can be served on — and thus deadlines can run from — a Saturday or Sunday), nor reduce the problem of deadlines ending on legal holidays.





1 **Rule 6. Computing and Extending Time**

2 (a) **Computing Time.** The following rules apply in computing any time period specified in  
3 these rules or in any local rule, court order, or statute.

4 (1) ***Period Stated in Days.*** When the period is stated in days,

5 (A) exclude the day of the act, event, or default that triggers the period;

6 (B) count every day, including intermediate Saturdays, Sundays, and legal  
7 holidays; and

8 (C) include the last day of the period unless it is a Saturday, Sunday, legal  
9 holiday, or — if the act to be done is filing a paper in court — a day on  
10 which weather or other conditions make the clerk’s office inaccessible.

11 When the last day is excluded, the period continues to run until the end of  
12 the next day that is not a Saturday, Sunday, legal holiday, or day when the  
13 clerk’s office is inaccessible.

14 (2) ***Period Stated in Hours.*** When the period is stated in hours,

15 (A) begin counting immediately on the occurrence of the act, event, or default  
16 that triggers the period;

17 (B) count every hour, including hours during intermediate Saturdays, Sundays,  
18 and legal holidays; and

19 (C) if the period would end at a time on a Saturday, Sunday, legal holiday, or  
20 — if the act to be done is filing a paper in court — a day on which weather  
21 or other conditions make the clerk’s office inaccessible, then continue the

1 period until the same time on the next day that is not a Saturday, Sunday,  
2 legal holiday, or day when the clerk's office is inaccessible.

3 (3) **“Legal Holiday” Defined.** “Legal holiday” means:

4 (A) the day set aside by statute for observing New Year's Day, Martin Luther  
5 King Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence  
6 Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, or  
7 Christmas Day; and

8 (B) any other day declared a holiday by the President, Congress, or the state  
9 where the district court is located.

10 **Committee Note**

11  
12 **Subdivision (a).** Subdivision (a) has been amended to simplify and clarify the provisions  
13 that describe how deadlines are computed. Subdivision (a) governs the computation of any time  
14 period found in a Federal Rule of Civil Procedure, a local rule, a court order, or a statute. A local  
15 rule may not direct that a deadline be computed in a manner inconsistent with subdivision (a).  
16 See Rule 83(a)(1).

17  
18 The time-computation provisions of subdivision (a) apply only when a time period needs  
19 to be computed. They do not apply when a fixed time to act is set. If, for example, a rule or  
20 order requires that a paper be filed “no later than November 1, 2007,” then the paper is due on  
21 November 1, 2007. But if a rule or order requires that a paper be filed “within 10 days” or  
22 “within 72 hours,” subdivision (a) describes how that deadline is computed.

23  
24 **Subdivision (a)(1).** New subdivision (a)(1) addresses the computation of time periods  
25 that are stated in days. (It also applies to the rare time periods that are stated in weeks, months,  
26 or years. See, e.g., Fed. R. Evid. 901(b)(8).)

27  
28 Under former Rule 6(a), a period of 11 days or more was computed differently than a  
29 period of 10 days or less. Intermediate Saturdays, Sundays, and legal holidays were included in  
30 computing the longer periods, but excluded in computing the shorter periods. Former Rule 6(a)  
31 thus made computing deadlines unnecessarily complicated and led to counterintuitive results.  
32 For example, a 10-day period and a 14-day period that started on the same day usually ended on  
33 the same day — and, not infrequently, the 10-day period actually ended later than the 14-day  
34 period. See *Miltimore Sales, Inc. v. Int'l Rectifier, Inc.*, 412 F.3d 685, 686 (6th Cir. 2005).

1 Under new subdivision (a)(1), all deadlines stated in days (no matter the length) are  
2 computed in the same way. The day of the act, event, or default that triggers the deadline is not  
3 counted. Every other day — including intermediate Saturdays, Sundays, and legal holidays — is  
4 counted, with only one exception: If the period ends on a Saturday, Sunday, or legal holiday,  
5 then the deadline is extended to the next day that is not a Saturday, Sunday, or legal holiday.  
6 (When the act to be done is filing a paper in court, a day on which the clerk’s office is not  
7 accessible because of the weather or another reason is treated like a Saturday, Sunday, or legal  
8 holiday.) Thus, a paper that must be filed within 10 days after the entry of an order on Tuesday,  
9 August 21, 2007, is due on Friday, August 31, 2007. But a paper that must be filed within 10  
10 days after the entry of an order on Wednesday, August 22, 2007, is not due until Tuesday,  
11 September 4, 2007, because the tenth day (September 1) is a Saturday and Monday  
12 (September 3) is Labor Day.  
13

14 The Federal Rules of Civil Procedure contain both forward-looking time periods and  
15 backward-looking time periods. A forward-looking time period requires something to be done  
16 within a period of time *after* an act, event, or default. See, e.g., Rule 59(b) (motion for new trial  
17 “shall be filed no later than 10 days after entry of the judgment”). A backward-looking time  
18 period requires something to be done within a period of time *before* an act, event, or default.  
19 See, e.g., Rule 56(c) (summary judgment motion “shall be served at least 10 days before the time  
20 fixed for the hearing”). In determining what is the “next” day for purposes of subdivision  
21 (a)(1)(C) (as well as for purposes of subdivision (a)(2)(C)), one should continue counting in the  
22 same direction — that is, forward when computing a forward-looking period and backward when  
23 computing a backward-looking period. If, for example, a paper is due within 10 days *after* an  
24 event, and the tenth day falls on Saturday, March 15, then the paper is due on Monday, March 17.  
25 But if a paper is due 10 days *before* an event, and the tenth day falls on Saturday, March 15, then  
26 the paper is due on Friday, March 14.  
27

28 Periods previously expressed as 10 days or less will be shortened as a practical matter by  
29 the decision to count intermediate Saturdays, Sundays, and legal holidays in computing all  
30 periods. Many of those periods have been lengthened to compensate for the change. See, e.g.,  
31 [CITE].  
32

33 **Subdivision (a)(2).** New subdivision (a)(2) addresses the computation of time periods  
34 that are stated in hours. No such deadline currently appears in the Federal Rules of Civil  
35 Procedure. But some statutes contain deadlines stated in hours, see, e.g., 28 U.S.C. § 3771(d)(3),  
36 as do some court orders issued in expedited proceedings.  
37

38 Under new subdivision (a)(2), a deadline stated in hours starts to run immediately on the  
39 occurrence of the act, event, or default that triggers the deadline. The deadline generally ends  
40 when the time expires. If, however, the deadline ends at a specific time (say, 2:00 p.m.) on a  
41 Saturday, Sunday, or legal holiday, then the deadline is extended to the same time (2:00 p.m.) on  
42 the next day that is not a Saturday, Sunday, or legal holiday. (Again, when the act to be done is

1 filing a paper in court, a day on which the clerk's office is not accessible because of the weather  
2 or another reason is treated like a Saturday, Sunday, or legal holiday.)  
3

4 **Subdivision (a)(3).** New subdivision (a)(3) defines "legal holiday" for purposes of the  
5 Federal Rules of Civil Procedure, including the time-computation provisions of subdivisions  
6 (a)(1) and (a)(2).

MEMORANDUM

TO: ADVISORY COMMITTEE ON CIVIL RULES

FROM: THOMAS S. ZILLY, CHAIR  
ADVISORY COMMITTEE ON BANKRUPTCY RULES

RE: RESTYLED CIVIL RULES

DATE: DECEMBER 15, 2005

The Advisory Committee on Bankruptcy Rules conducted a review of the restyled Federal Rules of Civil Procedure. Six subgroups of the Committee studied Rules 1-16, 17-25, 26-37, 38-53, 54-63, and 64-82, respectively. The primary purpose of the review was to determine whether the restyling of the Civil Rules, once effective, will require any amendments to the Bankruptcy Rules to conform to the changes made to the Civil Rules. The review also was intended to determine whether any of the stylistic changes might have any substantive impact on the Bankruptcy Rules either in Part VII of those Rules or otherwise.

The Advisory Committee on Bankruptcy Rules congratulates the Advisory Committee on Civil Rules and its consultants for the exceptional effort in the restyling project. The restyling significantly improves the Civil Rules both as to their clarity and readability. We thank the Civil Rules Committee for its contribution to the fair and efficient administration of justice in civil and bankruptcy cases.

Our initial review of the restyled Civil Rules suggests that approximately ten Bankruptcy Rules may need to be amended to conform to the changes in the Civil Rules, and we will be proposing those amendments to the Standing Committee in due course. As to the Civil Rules, our Committee offers the following comments and suggestions for your consideration. In no

instance did we find any change in the language of the rules that created specific problems for the application of these rules in bankruptcy cases and proceedings. We did, however, make several observations about the rules and offer them to you for your consideration.

### **Civil Rule 12**

The restyling of this rule includes reconfiguring former subdivision (c) into subdivisions (c) and (d) with former subdivision (d) becoming new subdivision (I). This does the least damage to the structure of the subdivisions, but it still creates a problem for persons who are conducting research under this rule and Bankruptcy Rule 7012. We will be proposing a conforming amendment to Rule 7012, and in the Committee Note to that rule amendment we will refer specifically to the changed configuration of Civil Rule 12. We think that the Committee Note to restyled Civil Rule 12 should include a specific statement that subdivision (c) is being split into subdivisions (c) and (d) and that restyled subdivision (I) is former subdivision (d). The side by side form of the published restyled rules makes these changes abundantly clear, but in the future, only the final version of the rules will published. Those rules generally include the dated Committee Notes, and if the Note were to include a description that warns the reader of the changes in the subdivision numbering it may avoid confusion in the future.

### **Civil Rule 40**

The proposed style amendment to Civil Rule 40 deletes from the options the court has for scheduling trials the alternative of "such other manner as the courts deem expedient." The two options that would be left appear to permit either (i) the court to set trial on its own, or (ii) a party to request a trial date "with notice to the other parties." This potentially might interfere with "self calendaring" systems, in which a party can select an available date, without prior notice to other

parties. The separate Style-Substance Track amendment to Civil Rule 40, however, may be intended to resolve the matter by deleting the language about parties making requests and providing notice. We bring this to the attention of the Advisory Committee only to make sure that the Committee intends the change to permit a court to operate self calendaring systems, if the court believes that such systems are desirable.

### **Civil Rule 43**

The proposed restyling of Civil Rule 43 would, among other things, renumber existing Rules 43(d), (e), and (f) as (b), (c), and (d), respectively. This has the potential of creating confusion, particularly since the Advisory Committee Notes to Civil Rule 43 and Bankruptcy Rule 9014 would contain outdated references (for example, the 2002 Committee Note to Rule 9014 refers to Civil Rule 43(e), which would be changed to Rule 43(c)). Some of the confusion would be alleviated if the proposed Committee Note to Civil Rule 43 made express reference to the renumbering of the sections. A sentence to that effect could be added to the proposed Committee Note in a manner comparable to that suggested for restyled Civil Rule 12.

### **Civil Rule 45**

The last sentence of restyled Civil Rule 45(b)(1) would require some prior notice to other parties "before [a subpoena] is served." We have two concerns about this proposed amendment. First, the requirement of service of notice of the subpoena on other parties "before" the subpoena is served on the person from whom documents are requested without any further guidance, may lead to confusion and potential litigation. For example, would service 30 seconds "before" suffice, or would service have to be sufficiently "before" so that opposing parties would have an opportunity to act before the subject of the subpoena is served? The consensus of our Committee



was that service on other parties should be "with" or "contemporaneously with" service on the subpoenaed party.

Second, our Committee was concerned that this amendment was more than merely "stylistic." Indeed, the proposed Committee Note suggests that its purpose is to resolve conflicting interpretations of the current rule. We have not conducted a review of the case law in the area. We simply note that the Committee Note seems to suggest that the style change is intended to resolve at least some degree of conflict among the courts.

#### **Civil Rule 59**

The Committee may wish to consider revising the title of the rule to "New Trial; Altering or Amending a Judgment" in order to reflect the full subject matter of the rule. Rule 59(e) includes both altering and amending judgments, and adding that reference in the title of the rule would make it consistent with the text of the subsection.

#### **Civil Rule 64**

Rule 64(a) refers to remedies that provide "for seizing a person or property to satisfy a potential judgment." We would suggest that this portion of the rule be revised slightly to state that every remedy is available that "provides for seizing a person or property to secure satisfaction of the potential judgment." The change would make clear that the seizure of the person is not to satisfy the potential judgment, but rather to secure the satisfaction of the judgment.

The Committee questioned whether it is necessary for Rule 64(e) to include the descriptions of subject matter of 28 U.S.C. § 2361 and 28 U.S.C. § 2284. Since these provisions contain nothing beyond the matters included in the Rule's description, a simple reference to the

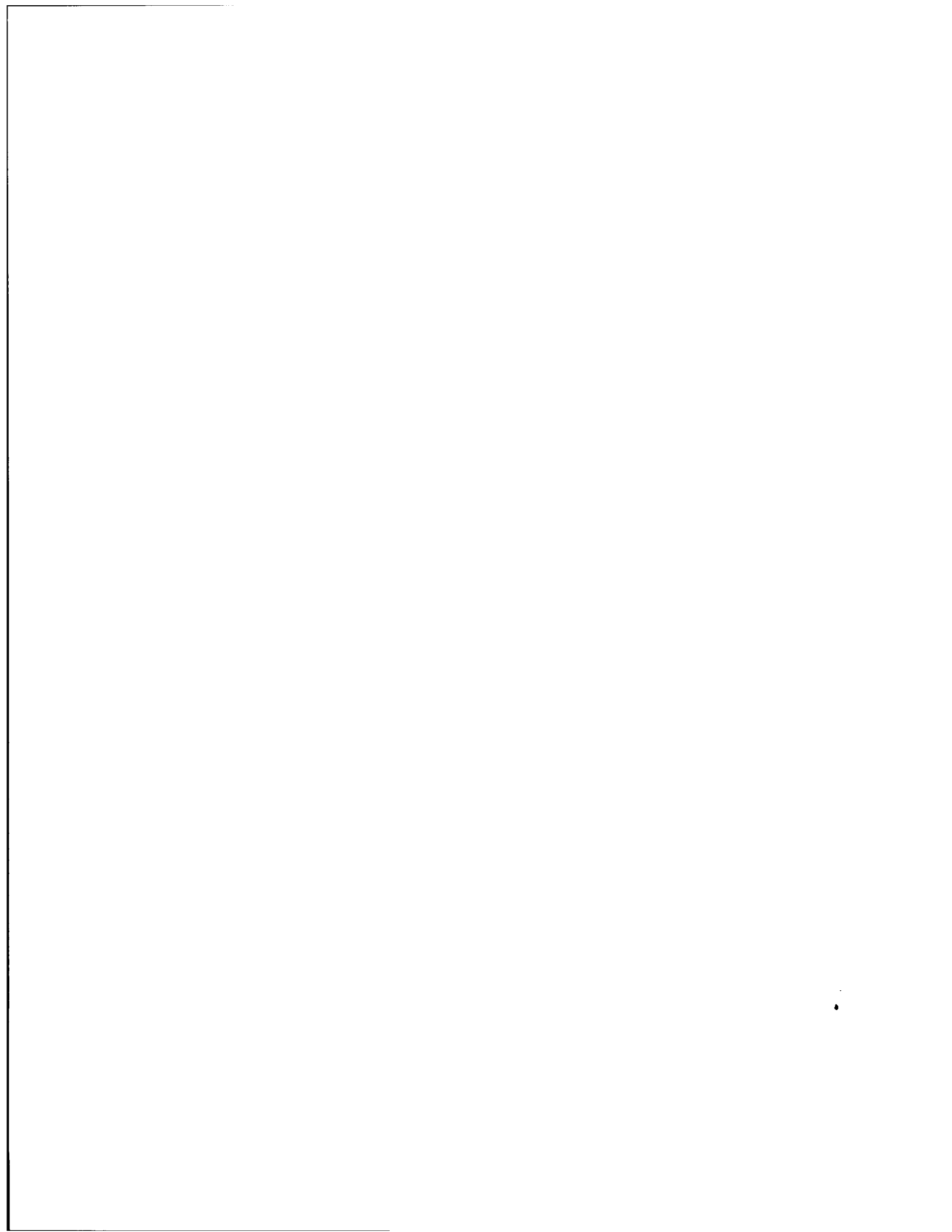
particular sections seems sufficient.

### **Civil Rule 68**

The second sentence of subdivision (c) of the rule begins with “It must be served ...” The use of “it” refers to the offer of judgment, but the preceding sentence in the subdivision includes other matters. The second sentence could avoid any ambiguity by stating that “The offer must be served ...”

### **Civil Rule 69**

The restyled rule changes the word “directs” in subdivision (a)(1) to “orders”. In the bankruptcy rules, we use “directs” as a broader term that covers standing orders and local rules, so that stylistic choice may be significant if applied to our rules. The Global Drafting Issues table indicates that the Advisory Committee prefers the use of “orders” rather than “directs”, but we have some concern that it may leave open some question about the application of local rules or other directives by courts when the rule refers only to orders as compared to the language in the existing version of Rule 69(a)(1).



MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES  
FROM: JEFF MORRIS, REPORTER  
RE: E-GOVERNMENT RULE – BANKRUPTCY RULE 9037  
DATE: FEBRUARY 2, 2006

The E-Government Act requires all Federal agencies, including courts, to make their records available electronically. The Act also directs the Supreme Court promulgate rules that will protect the privacy and security concerns created by electronic filing systems. In August of 2005, proposed Appellate, Civil, Criminal and Bankruptcy Rules to address the issue were published for comment. Bankruptcy Rule 9037 is the E-Government Rule applicable in bankruptcy cases. One comment was received with regard to the proposed rules, and that comment focused on the need of investigators to have criminal records include the birth date of persons convicted of crimes. The comment was submitted by the National Association of Background Screeners, and it did not indicate any need for a change in Bankruptcy Rule 9037 as it was published in August 2005. A representative of the group also testified before the Criminal Rules Committee during a break in the meeting of the Standing Committee in January. I was present for the testimony, and there was no reference to any need to amend either the proposed Appellate, Civil, or Bankruptcy Rules that implement the E-Government Act. From the nature of the discussion during the testimony, it does not appear that the Criminal Rules Committee will be recommending any change to their rule based on the testimony.

Notwithstanding the absence of commentary, there are suggested changes to proposed Bankruptcy Rule 9037. These changes are a result of additional review by the Style

Subcommittee of the Standing Committee as well as discussions among the Reporters of the Advisory Committees to ensure that whatever version of the rule is finally adopted that it be as consistent as possible across the rules.

The result of these discussions is the following version of Rule 9037. It is intended to be as close to the E-Government Rule being proposed by the Appellate, Civil, and Criminal Rules Committees. The changes proposed from the form of the Rule as published are set out below. That is, while Rule 9037 is entirely new, the underlining and strike outs show the changes from what was published in August.

**Rule 9037. Privacy Protection for Filings Made with the Court**

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(a) REDACTED FILINGS.

(1) Unless the court orders otherwise, in an electronic or paper filing ~~made~~ with the court that ~~includes~~ contains a social security number or tax identification number;<sup>1</sup> a name of a person, other than the debtor, known to be and identified as a minor; a person's birth date; or a financial account number<sup>2</sup> , the filing may include only:

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<sup>1</sup> The Style Subcommittee of the Standing Committee recommends that social security number and tax identification number be hyphenated. I do not believe that hyphens should be inserted in social security number or tax identification number. I went to the Social Security Administration website, and they do not include any hyphenation. Furthermore, our fairly recent amendment to Bankruptcy Rule 1007(f) does not hyphenate those words.

<sup>2</sup> The Style Subcommittee again would insert a hyphen between "financial" and "account."

- 8 (A) the last four digits of ~~the~~ a social security number  
9 ~~and~~ or tax identification number;
- 10 (B) the minor's initials;
- 11 (C) the year of a person's birth; and
- 12 (D) the last four digits of ~~the~~ a financial account  
13 number.

14 (2) The court may by order require additional redactions to  
15 protect sensitive information or the security of a person or  
16 property.<sup>3</sup>

17 (b) EXEMPTIONS FROM THE REDACTION REQUIREMENT.

18 The redaction requirement of ~~subdivision (a)~~ does not apply to  
19 the following:

20 (1) the record of an administrative agency proceeding unless  
21 filed with a proof of claim;

22 (2) the record of a court or tribunal whose decision is being

23 reviewed [whose decision becomes part of the record]<sup>4</sup>, if

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<sup>3</sup> This additional language was suggested by Prof. Cooper, the Reporter for the Civil Rules Committee. He notes that redaction is a much less restrictive solution than sealing a record. The addition of a new subparagraph (2) necessitates the renumbering of former subdivision (a) (1)-(4) into (a)(1) (A)-(D).

<sup>4</sup> The bracketed language is a change recommended by CACM. That Committee noted that concern has been expressed that the exemption for records of a court "whose decision is being reviewed" may not be appropriate because the language could be read to suggest appellate review, in which bankruptcy courts do not engage. However, the record in a bankruptcy case does often contain a record from another court proceeding as evidence, or otherwise. The Committee therefore suggests that thought be given to using language other than "reviewed" in

24 that record was not subject to ~~subdivision (a)~~ the redaction  
25 requirement when originally filed;

26 (3) filings covered by subdivision (c) of this rule; and

27 (4) filings that are subject to § 110 of the Code.

28 (c) FILINGS MADE UNDER SEAL. The court may order that a  
29 filing be made under seal without redaction. The court may later  
30 unseal the filing or order the person who made the filing to file a  
31 redacted version for the public record.

32 (d) PROTECTIVE ORDERS. If necessary to protect private or  
33 sensitive information that is not otherwise protected under  
34 subdivision (a), ~~a~~ the court may by order in a case under the Code:

35 (1) require redaction of additional information; or

36 (2) limit or prohibit a nonparty's remote electronic access ~~by a~~  
37 ~~nonparty~~ to a document filed with the court.

38 (e) OPTION FOR ADDITIONAL UNREDACTED FILING

39 UNDER SEAL. A party making a redacted filing ~~under~~  
40 ~~subdivision (a)~~ may also file an unredacted copy under seal.

41 The court must retain the unredacted copy as part of the record.

42 (f) OPTION FOR FILING REFERENCE LIST. A filing that

43 contains redacted information ~~redacted under subdivision (a)~~

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the wording of this exemption. (For example, perhaps the rule could refer to a court whose  
“decision becomes part of the record.”)

44 may be filed together with a reference list that identifies each  
45 item of redacted information and specifies an appropriate  
46 identifier that uniquely corresponds to each item ~~of redacted~~  
47 ~~information~~ listed. The ~~reference~~ list must be filed under seal  
48 and may be amended as of right. Any references in the case to  
49 ~~an~~ a listed identifier ~~in the reference list~~ will be construed to  
50 refer to the corresponding item of information.

51 (g) WAIVER OF PROTECTION OF IDENTIFIERS. A party  
52 waives the protection of subdivision (a) as to the party's own  
53 information ~~to the extent that the party files such information~~  
54 ~~not under seal and~~ by filing it without redaction and not under  
55 seal.





## E-GOVERNMENT RULES COMPARISON CHART

CIVIL	CRIMINAL	BANKRUPTCY
<p><b>Rule 5.2. Privacy Protection For Filings Made with the Court</b></p> <p style="text-align: center;"><i>in</i></p> <p>(a) <b>Redacted Filings.</b> Unless the court orders otherwise, an electronic or paper filing made with the court that includes a social security number or an individual's tax identification number, a name of a person known to be a minor, a person's birth date, or a financial account number may include only:</p> <ol style="list-style-type: none"> <li>(1) the last four digits of the social security number or and tax identification number;</li> <li>(2) the <del>minor's</del> initials;</li> <li>(3) the year of birth; and</li> <li>(4) the last four digits of the financial account number.</li> </ol> <p style="text-align: right;"><i>of a minor</i></p>	<p><b>Rule 49.1 Privacy Protection For Filings Made with the Court</b></p> <p style="text-align: center;"><i>contains in</i></p> <p>(a) <b>Redacted Filings.</b> Unless the court orders otherwise, an electronic or paper filing made with the court that includes a social security number or an individual's tax identification number, a name of a person known to be a minor, a person's birth date, a financial account number or the home address of a person, may include only:</p> <ol style="list-style-type: none"> <li>(1) the last four digits of the social security number or and tax identification number;</li> <li>(2) the <del>minor's</del> initials;</li> <li>(3) the year of birth;</li> <li>(4) the last four digits of the financial account number; and</li> <li>(5) the city and state of the home address.</li> </ol> <p style="text-align: right;"><i>, the filing</i></p>	<p><b>Rule 9037. Privacy Protection For Filings Made with the Court</b></p> <p style="text-align: center;"><i>in</i></p> <p>(a) <b>REDACTED FILINGS.</b> Unless the court orders otherwise, an electronic or paper filing made with the court that includes a social security number or tax identification number; a name of a person, other than the debtor, known to be and identified as a minor; a person's birth date; or a financial account number may include only:</p> <ol style="list-style-type: none"> <li>(1) the last four digits of the social security number or and tax identification number;</li> <li>(2) the <del>minor's</del> initials;</li> <li>(3) the year of birth; and</li> <li>(4) the last four digits of the financial account number.</li> </ol>

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CIVIL	CRIMINAL	BANKRUPTCY
<p>(b) Exemptions from the Redaction Requirement. The redaction requirement of <del>Rule 5.2(a)</del> does not apply to the following:</p> <ol style="list-style-type: none"> <li>(1) in a forfeiture proceeding, a financial account number that identifies the property alleged to be subject to forfeiture;</li> <li>(2) the record of an administrative or agency proceeding;</li> <li>(3) the official record of a state-court proceeding;</li> <li>(4) the record of a court or tribunal whose decision is being reviewed, if that record was not subject to <del>Rule 5.2(a)</del> when originally filed;</li> <li>(5) a filing covered by Rule 5.2(c) or (d); and</li> <li>(6) a filing made in an action brought under 28 U.S.C. § 2241, 2254, or 2255.</li> </ol> <p><i>the redaction requirement</i></p> <p><i>the redaction requirement</i></p> <p><i>filing that is related</i></p>	<p>(b) Exemptions from the Redaction Requirement. The redaction requirement of <del>Rule 49.1(a)</del> does not apply to the following:</p> <ol style="list-style-type: none"> <li>(1) in a forfeiture proceeding, a financial account number or real property address that identifies the property alleged to be subject to forfeiture;</li> <li>(2) the record of an administrative or agency proceeding;</li> <li>(3) the official record of a state-court proceeding;</li> <li>(4) the record of a court or tribunal whose decision is being reviewed, if that record was not subject to <del>(a)</del> when originally filed;</li> <li>(5) a filing covered by (c) of this rule;</li> <li>(6) a filing made in an action brought under 28 U.S.C. § 2254 or 2255;</li> <li>(7) a filing made in an action brought under 28 U.S.C. § 2241 that does not relate to the petitioner's immigration rights;</li> <li>(8) a filing in any court in relation to a criminal matter or investigation that is prepared before the filing of a criminal charge or that is not filed as part of any docketed criminal case;</li> <li>(9) an arrest or search warrant; and</li> <li>(10) a charging document and an affidavit filed in support of any charging document.</li> </ol> <p><i>and</i></p>	<p>(b) EXEMPTIONS FROM THE REDACTION REQUIREMENT. The redaction requirement of <del>subdivision (a)</del> does not apply to the following:</p> <ol style="list-style-type: none"> <li>(1) the record of an administrative or agency proceeding unless filed with a proof of claim;</li> <li>(2) the record of a court or tribunal whose decision is being reviewed, if that record was not subject to <del>subdivision (a)</del> when originally filed;</li> <li>(3) filings covered by subdivision (c) of this rule; and</li> <li>(4) filings that are subject to § 110 of the Code.</li> </ol> <p><i>the redaction requirement</i></p>

CIVIL	CRIMINAL	BANKRUPTCY
<p>(c) <b>Limitations on Remote Access to Electronic Files, Social Security Appeals and Immigration Cases.</b> Unless the court orders otherwise, <del>in an action for benefits under the Social Security Act, and in an action or proceeding relating to an order of removal, relief from removal, or immigration benefits or detention,</del> access to an electronic file is authorized as follows:</p> <ol style="list-style-type: none"> <li>(1) the parties and their attorneys may have remote electronic access to any part of the case file, including the administrative record;</li> <li>(2) any other person may have electronic access to the full record at the courthouse, but may have remote electronic access only to: <ol style="list-style-type: none"> <li>(A) the docket maintained by the court; and</li> <li>(B) an opinion, order, judgment, or other disposition of the court, but not any other part of the case file or the administrative record.</li> </ol> </li> </ol>	<p><i>in</i></p> <p><i>in actions for benefits under the Social Security Act and in immigration cases,</i></p>	

CIVIL	CRIMINAL	BANKRUPTCY
<p>(d) <b>Filings Made Under Seal.</b> The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the person who made <del>the filing</del> to file a redacted version for the public record.</p> <p>(g) <del>(e)</del> <b>Protective Orders.</b> If necessary to protect private or sensitive information that is not otherwise protected under Rule 5.2(a), <del>the court</del> may by order <del>in a case</del>:</p> <p>(1) require redaction of additional information; or</p> <p>(2) limit or prohibit remote electronic access <del>by a non-party</del> to a document filed with the court.</p> <p>(e) <del>(g)</del> <b>Option for Additional Unredacted Filing Under Seal.</b> A party making a redacted filing <del>under Rule 5.2(a)</del> may also file an unredacted copy under seal. The court must retain the unredacted copy as part of the record.</p>	<p>(c) <b>Filings Made Under Seal.</b> The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the person who made the filing to file a redacted version for the public record.</p> <p>(d) <b>Protective Orders.</b> If necessary to protect private or sensitive information that is not otherwise protected under Rule 49.1(a), <del>the court</del> may by order <del>in a case</del>:</p> <p>(1) require redaction of additional information; or <del>a nonparty's</del></p> <p>(2) limit or prohibit remote electronic access <del>by a nonparty</del> to a document filed with the court.</p> <p>(e) <b>Option for Additional Unredacted Filing Under Seal.</b> A party making a redacted filing <del>under Rule 49.1(a)</del> may also file an unredacted copy under seal. The court must retain the unredacted copy as part of the record.</p>	<p>(c) <b>FILINGS MADE UNDER SEAL.</b> The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the person who made the filing to file a redacted version for the public record.</p> <p>(d) <b>PROTECTIVE ORDERS.</b> If necessary to protect private or sensitive information that is not otherwise protected by subdivision (a), <del>the court</del> may by order <del>in a case under the Code</del>:</p> <p>(1) require redaction of additional information; or</p> <p>(2) limit or prohibit remote electronic access <del>by a nonparty</del> to a document filed with the court.</p> <p>(e) <b>OPTION FOR ADDITIONAL UNREDACTED FILING UNDER SEAL.</b> A party making a redacted filing <del>under subdivision (a)</del> may also file an unredacted copy under seal. The court must retain the unredacted copy as part of the record.</p>

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(g) **Option for Filing a Reference List.** A filing that contains information ~~redacted under Rule 5.2(a)~~ may be ~~filed together with~~ a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item of ~~redacted information~~ listed. The ~~reference~~ list must be filed under seal and may be amended as of right. Any reference in the case to an identifier ~~in the reference list~~ will be construed to refer to the corresponding item of information.

(h) **Waiver of Protection of Identifiers.** A party waives the protection of Rule 5.2(a) as to the party's own information to the extent that ~~the party files such information~~ not under seal and without redaction.

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(f) **Option for Filing a Reference List.** A filing that contains information ~~redacted under Rule 49.1(a)~~ may be ~~filed together with~~ a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item of ~~redacted information~~ listed. The ~~reference~~ list must be filed under seal and may be amended as of right. Any reference in the case to an identifier ~~in the reference list~~ will be construed to refer to the corresponding item of information.

(g) **Waiver of Protection of Identifiers.** A party waives the protection of (a) as to the party's own information to the extent that ~~the party files such information~~ not under seal and without redaction.

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and not under seal.

by filing it

~~redacted~~

(f) **OPTION FOR FILING A REFERENCE LIST.** A filing that contains information ~~redacted under subdivision (a)~~ may be ~~filed together with~~ a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item of ~~redacted information~~ listed. The ~~reference~~ list must be filed under seal and may be amended as of right. Any references in the case to an identifier ~~in the reference list~~ will be construed to refer to the corresponding item of information.

(g) **WAIVER OF PROTECTION OF IDENTIFIERS.** A party waives the protection of subdivision (a) as to the party's own information to the extent that ~~the party files such information~~ is filed not under seal and without redaction.

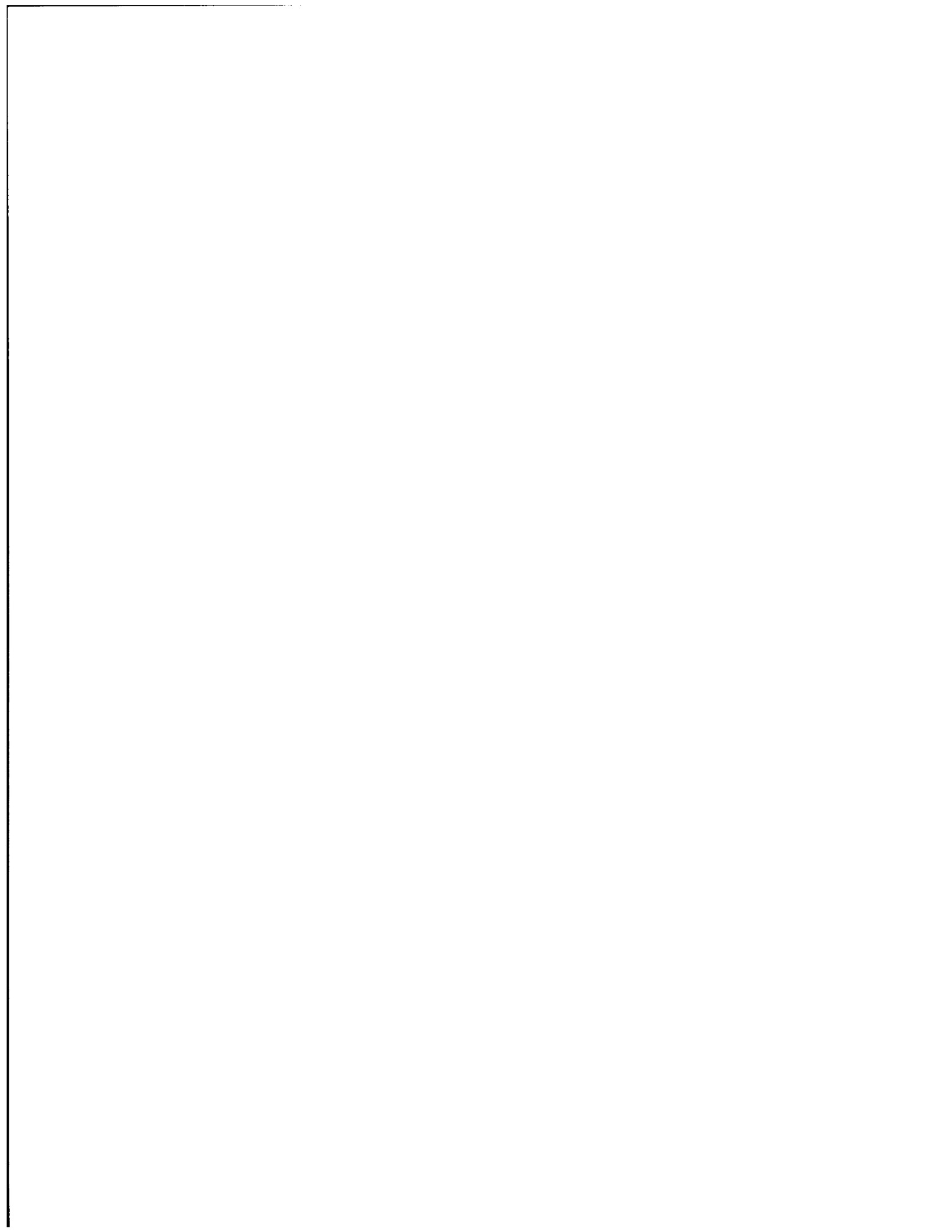
may include

may include

a listed

by filing it

and not under seal



COMMENTS ON THE STANDING COMMITTEE  
STYLE SUBCOMMITTEE RECOMMENDATIONS

**Rule 9037. Privacy Protection for Filings Made with the Court.**

In subdivision (a), I would accept some of the suggestions and reject others. For example, adding the word “in” and deleting “made” in the first several lines of the subdivision are acceptable. I also think substituting “contains” for “includes” is also an improvement. I do not believe that hyphens should be inserted in social security number or tax identification number. I went to the Social Security Administration website, and they do not include any hyphenation. Furthermore, our fairly recent amendment to Bankruptcy Rule 1007(f) does not hyphenate those words. I would also insert the words “an individual’s” in front of “tax identification number” in subdivision (a). That was inadvertently left out of the Bankruptcy Rule, but it is included in the civil and criminal rules versions. Therefore, making the insertion will make the rule consistent with those of the two rules. I would also agree to the insertion of the words “, the filing” before the vertical list of subparagraphs. I would not make the change to subdivision (a)(2) because the Style Subcommittee’s next suggestion in subparagraph (a)(3) is to insert a possessive noun. It makes no sense to change the possessive form in subparagraph (2) when you’re inserting it in subparagraph (3).

I agree with the changes in subdivision (b).

No changes are recommended for subdivision (c). As to subdivision (d), changing “a” to “the” is acceptable, but I cannot agree with the proposed deletion of “in a case under the Code.” We need to retain that reference in the rule because its absence could create confusion. The rule could be viewed as one applicable only in adversary proceedings or contested matters (or both), and in that event it would exclude other filings made with the Court that are part of the case but not part of any contested matter or adversary proceeding. Among the important documents in that category are the petition and schedules. Other documents as well fall into that category. Therefore, it is essential that we retain the reference to cases under the Code in the rule. I agree with the change suggested in subdivision (d)(2), and would note that the insertion of the possessive form at this point in the rule is further reason to reinsert it in subdivision (a)(2) contrary to the recommendation of the Style Subcommittee.

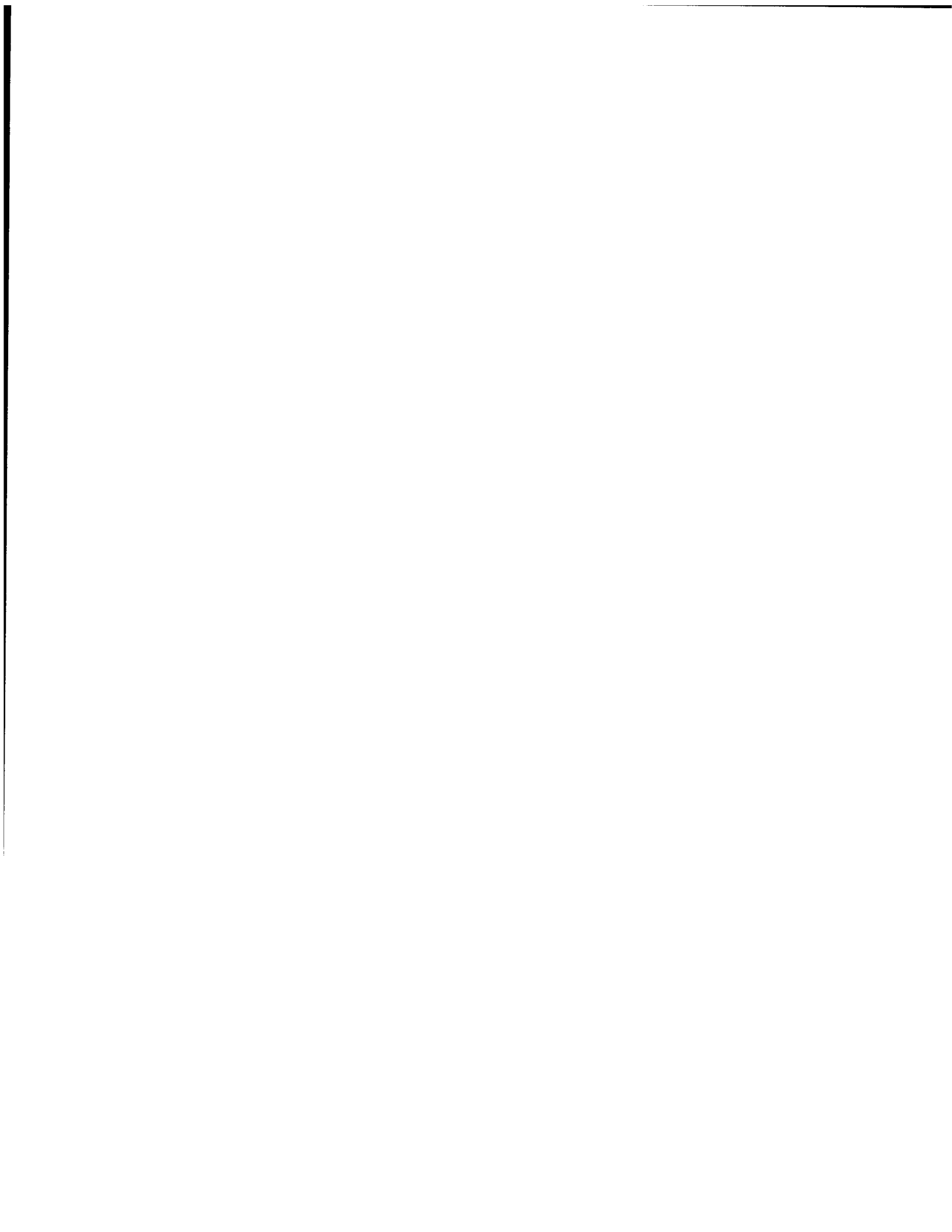


I agree with the proposed change to subdivision (e).

I agree with the proposed changes to subdivision (f) with one significant exception. The rule would be changed to provide that “A filing that contains redacted information may include a reference list ...” This is a significant change in the originally proposed rule. The originally proposed rule anticipates a reference list that is separate from the document that is being filed. That is, the list would not be included in the filing, it would be a separate filing. The way the rule is proposed to be rewritten, it would seem that the list would be part of the document being filed, and it would not be possible to separate out that portion to maintain privacy.

The proposed change to subdivision (g) could be problematic. The published version makes reference to the fact that waiver is only “to the extent” that information is filed. Removing that reference could result in the rule meaning that the waiver would extend beyond the specific information or document filed. The waiver as described in subdivision (g) is a waiver of “the protection of subdivision (a) as to the party’s own information.” One could argue that the new language means that the protection of subdivision (a) relates to information, so that the new language referring to “it” sufficiently ties the extent of waiver back to the specific information publicly filed. While the language in the published version of the subdivision is perhaps inelegant, it may be more functional and less likely to generate disputes.

Copies of Item 13 will be distributed separately.



## MEMORANDUM

DATE: February 16, 2006  
TO: Advisory Committee on Bankruptcy Rules  
FROM: Patricia S. Ketchum, Consultant  
SUBJECT: Amended Director's Forms

Two Director's forms containing proposed amendments are attached for your review and comment. Form B 240 is the Reaffirmation Agreement form. Form B 281 is the Appearance of Child Support Creditor or Representative form which is used to obtain a waiver the filing fee, as authorized by § 304(g) of the Bankruptcy Reform Act of 1994 (Pub. L. No. 103-394).

The first proposed change to the Reaffirmation Agreement would add a box at the top of the first page in which the filer would use checkboxes to indicate whether the presumption of hardship is triggered by the agreement. If the presumption is triggered, § 524 of the Code requires the court to review the agreement. A box on the first page of the document providing the court with the information needed concerning whether review is necessary would assist the courts in processing these agreements. The second change concerns the "Amount Reaffirmed" at the bottom of the first page. The statute states that the "Amount Reaffirmed" "shall be" the total amount of debt that the debtor agrees to reaffirm and the total of any costs and fees accrued to the date of the agreement. As issued in October 2005, the form itemized these components. This has proved somewhat confusing to practitioners, and, after further study, it would seem that stating only one amount and describing it as including fees and costs, if any, would satisfy the requirements of the statute. The third change is to add to Part B, the agreement itself, a line for the printed name of the actual creditor. As originally issued, the form simply followed what was dictated in § 524, which requires a signature line titled "Accepted by Creditor," but fails to provide for stating the creditor's name.

The proposed revisions to Form B 281 add instructions not to disclose a minor child's name and to include contact information for a child's guardian.

Attachments



B 240 - Reaffirmation Agreement  
(03/06) **DRAFT**

**Presumption of Undue Hardship**  
 **No Presumption of Undue Hardship**  
(Check box as directed in Part D: Debtor's Statement  
in Support of Reaffirmation Agreement.)

United States Bankruptcy Court

District of \_\_\_\_\_

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_  
Chapter \_\_\_\_\_

**REAFFIRMATION AGREEMENT**

*[Indicate all documents included in this filing by checking each applicable box.]*

- |  |   |
|--|---|
| <input type="checkbox"/> Part A: Disclosures, Instructions, and Notice to Debtor (Pages 1 - 5) | <input type="checkbox"/> Part D: Debtor's Statement in Support of Reaffirmation Agreement |
| <input type="checkbox"/> Part B: Reaffirmation Agreement                                       | <input type="checkbox"/> Part E: Motion for Court Approval                                |
| <input type="checkbox"/> Part C: Certification by Debtor's Attorney                            | <input type="checkbox"/> Proposed Order Approving Reaffirmation Agreement                 |
- [Check this box if]* Creditor is a Credit Union as defined in §19(b)(1)(a)(iv) of the Federal Reserve Act

**PART A: DISCLOSURE STATEMENT, INSTRUCTIONS AND NOTICE TO DEBTOR**

**1. DISCLOSURE STATEMENT**

*Before Agreeing to Reaffirm a Debt, Review These Important Disclosures:*

**SUMMARY OF REAFFIRMATION AGREEMENT**

This Summary is made pursuant to the requirements of the Bankruptcy Code.

**AMOUNT REAFFIRMED**

The amount of debt you have agreed to reaffirm: \$ \_\_\_\_\_

*The amount of debt you have agreed to reaffirm includes all fees and costs (if any) that have accrued as of the date of this disclosure. Your credit agreement may obligate you to pay additional amounts which may come due after the date of this disclosure. Consult your credit agreement.*

**ANNUAL PERCENTAGE RATE**

*[The annual percentage rate can be disclosed in different ways, depending on the type of debt.]*

a. If the debt is an extension of "credit" under an "open end credit plan," as those terms are defined in § 103 of the Truth in Lending Act, such as a credit card, the creditor may disclose the annual percentage rate shown in (I) below or, to the extent this rate is not readily available or not applicable, the simple interest rate shown in (ii) below, or both.

(I) The Annual Percentage Rate disclosed, or that would have been disclosed, to the debtor in the most recent periodic statement prior to entering into the reaffirmation agreement described in Part B below or, if no such periodic statement was given to the debtor during the prior six months, the annual percentage rate as it would have been so disclosed at the time of the disclosure statement: \_\_\_\_\_%.

— And/Or ---

(ii) The simple interest rate applicable to the amount reaffirmed as of the date this disclosure statement is given to the debtor: \_\_\_\_\_%. If different simple interest rates apply to different balances included in the amount reaffirmed, the amount of each balance and the rate applicable to it are:

\$ \_\_\_\_\_ @ \_\_\_\_\_ %;  
\$ \_\_\_\_\_ @ \_\_\_\_\_ %;  
\$ \_\_\_\_\_ @ \_\_\_\_\_ %.

b. If the debt is an extension of credit other than under than an open end credit plan, the creditor may disclose the annual percentage rate shown in (I) below, or, to the extent this rate is not readily available or not applicable, the simple interest rate shown in (ii) below, or both.

(I) The Annual Percentage Rate under §128(a)(4) of the Truth in Lending Act, as disclosed to the debtor in the most recent disclosure statement given to the debtor prior to entering into the reaffirmation agreement with respect to the debt or, if no such disclosure statement was given to the debtor, the annual percentage rate as it would have been so disclosed: \_\_\_\_\_%.

— And/Or ---

(ii) The simple interest rate applicable to the amount reaffirmed as of the date this disclosure statement is given to the debtor: \_\_\_\_\_%. If different simple interest rates apply to different balances included in the amount reaffirmed,

the amount of each balance and the rate applicable to it are:

\$ \_\_\_\_\_ @ \_\_\_\_\_ %;  
\$ \_\_\_\_\_ @ \_\_\_\_\_ %;  
\$ \_\_\_\_\_ @ \_\_\_\_\_ %.

c. If the underlying debt transaction was disclosed as a variable rate transaction on the most recent disclosure given under the Truth in Lending Act:

The interest rate on your loan may be a variable interest rate which changes from time to time, so that the annual percentage rate disclosed here may be higher or lower.

d. If the reaffirmed debt is secured by a security interest or lien, which has not been waived or determined to be void by a final order of the court, the following items or types of items of the debtor's goods or property remain subject to such security interest or lien in connection with the debt or debts being reaffirmed in the reaffirmation agreement described in Part B.

<u>Item or Type of Item</u>	<u>Original Purchase Price or Original Amount of Loan</u>
-----------------------------	---

*Optional---At the election of the creditor, a repayment schedule using one or a combination of the following may be provided:*

**Repayment Schedule:**

Your first payment in the amount of \$ \_\_\_\_\_ is due on \_\_\_\_\_ (date), but the future payment amount may be different. Consult your reaffirmation agreement or credit agreement, as applicable.

---Or---

Your payment schedule will be: \_\_\_\_\_ (number) payments in the amount of \$ \_\_\_\_\_ each, payable (monthly, annually, weekly, etc.) on the \_\_\_\_\_ (day) of each \_\_\_\_\_ ( week, month, etc.), unless altered later by mutual agreement in writing.

---Or---

A reasonably specific description of the debtor's repayment obligations to the extent known by the creditor or creditor's representative.



## 2. INSTRUCTIONS AND NOTICE TO DEBTOR

**Reaffirming a debt is a serious financial decision.** The law requires you to take certain steps to make sure the decision is in your best interest. If these steps are not completed, the reaffirmation agreement is not effective, even though you have signed it.

1. Read the disclosures in this Part A carefully. Consider the decision to reaffirm carefully. Then, if you want to reaffirm, sign the reaffirmation agreement in Part B (or you may use a separate agreement you and your creditor agree on).

2. Complete and sign Part D and be sure you can afford to make the payments you are agreeing to make and have received a copy of the disclosure statement and a completed and signed reaffirmation agreement.

3. If you were represented by an attorney during the negotiation of your reaffirmation agreement, the attorney must have signed the certification in Part C.

4. If you were not represented by an attorney during the negotiation of your reaffirmation agreement, you must have completed and signed Part E.

5. The original of this disclosure must be filed with the court by you or your creditor. If a separate reaffirmation agreement (other than the one in Part B) has been signed, it must be attached.

6. If the creditor is not a Credit Union and you were represented by an attorney during the negotiation of your reaffirmation agreement, your reaffirmation agreement becomes effective upon filing with the court unless the reaffirmation is presumed to be an undue hardship as explained in Part D. If the creditor is a Credit Union and you were represented by an attorney during the negotiation of your reaffirmation agreement, your reaffirmation agreement becomes effective upon filing with the court.

7. If you were not represented by an attorney during the negotiation of your reaffirmation agreement, it will not be effective unless the court approves it. The court will notify you and the creditor of the hearing on your reaffirmation agreement. You must attend this hearing in bankruptcy court where the judge will review your reaffirmation agreement. The bankruptcy court must approve your reaffirmation agreement as consistent with your best interests, except that no court approval is required if your reaffirmation agreement is for a consumer debt secured by a mortgage, deed of trust, security deed, or other lien on your real property, like your home.

## YOUR RIGHT TO RESCIND (CANCEL) YOUR REAFFIRMATION AGREEMENT

You may rescind (cancel) your reaffirmation agreement at any time before the bankruptcy court enters a discharge order, or before the expiration of the 60-day period that begins on the date your reaffirmation agreement is filed with the court, whichever occurs later. To rescind (cancel) your reaffirmation agreement, you must notify the creditor that your reaffirmation agreement is rescinded (or canceled).

### Frequently Asked Questions:

What are your obligations if you reaffirm the debt? A reaffirmed debt remains your personal legal obligation. It is not discharged in your bankruptcy case. That means that if you default on your reaffirmed debt after your bankruptcy case is over, your creditor may be able to take your property or your wages. Otherwise, your obligations will be determined by the reaffirmation agreement which may have changed the terms of the original agreement. For example, if you are reaffirming an open end credit agreement, the creditor may be permitted by that agreement or applicable law to change the terms of that agreement in the future under certain conditions.

Are you required to enter into a reaffirmation agreement by any law? No, you are not required to reaffirm a debt by any law. Only agree to reaffirm a debt if it is in your best interest. Be sure you can afford the payments you agree to make.

What if your creditor has a security interest or lien? Your bankruptcy discharge does not eliminate any lien on your property. A "lien" is often referred to as a security interest, deed of trust, mortgage or security deed. Even if you do not reaffirm and your personal liability on the debt is discharged, because of the lien your creditor may still have the right to take the security property if you do not pay the debt or default on it. If the lien is on an item of personal property that is exempt under your State's law or that the trustee has abandoned, you may be able to redeem the item rather than reaffirm the debt. To redeem, you make a single payment to the creditor equal to the current value of the security property, as agreed by the parties or determined by the court.

**NOTE:** When this disclosure refers to what a creditor "may" do, it does not use the word "may" to give the creditor specific permission. The word "may" is used to tell you what might occur if the law permits the creditor to take the action. If you have questions about your reaffirming a debt or what the law requires, consult with the attorney who helped you negotiate this agreement reaffirming a debt. If you don't have an attorney helping you, the judge will explain the effect of your reaffirming a debt when the hearing on the reaffirmation agreement is held.

**PART B: REAFFIRMATION AGREEMENT.**

I (we) agree to reaffirm the debts arising under the credit agreement described below.

1. Brief description of credit agreement:

2. Description of any changes to the credit agreement made as part of this reaffirmation agreement:

SIGNATURE(S):

Borrower:

Accepted by creditor:

\_\_\_\_\_

\_\_\_\_\_

(Print Name)

(Printed Name of Creditor)

\_\_\_\_\_

\_\_\_\_\_

(Signature)

(Signature)

Date: \_\_\_\_\_

\_\_\_\_\_

(Printed Name and Title of Individual  
Signing for Creditor)

Co-borrower, if also reaffirming these debts:

\_\_\_\_\_

Date of creditor acceptance:

(Print Name)

\_\_\_\_\_

(Signature)

Date: \_\_\_\_\_

**PART C: CERTIFICATION BY DEBTOR'S ATTORNEY (IF ANY).**

*[Check each applicable box.]*

I hereby certify that (1) this agreement represents a fully informed and voluntary agreement by the debtor; (2) this agreement does not impose an undue hardship on the debtor or any dependent of the debtor; and (3) I have fully advised the debtor of the legal effect and consequences of this agreement and any default under this agreement.

*[If applicable and the creditor is not a Credit Union.]* A presumption of undue hardship has been established with respect to this agreement. In my opinion, however, the debtor is able to make the required payment.

Printed Name of Debtor's Attorney: \_\_\_\_\_

Signature of Debtor's Attorney: \_\_\_\_\_

Date: \_\_\_\_\_

**PART D: DEBTOR'S STATEMENT IN SUPPORT OF REAFFIRMATION AGREEMENT**

*[Read and complete numbered paragraphs 1 and 2, OR, if the creditor is a Credit Union and the debtor is represented by an attorney, read the un-numbered paragraph below. Sign the appropriate signature line(s) and date your signature. If you complete paragraphs 1 and 2 and your income less monthly expenses does not leave enough to make the payments under this reaffirmation agreement, check the box at the top of page 1 indicating "Presumption of Undue Hardship." Otherwise, check the box at the top of page 1 indicating "No Presumption of Undue Hardship"]*

1. I believe this reaffirmation agreement will not impose an undue hardship on my dependents or me. I can afford to make the payments on the reaffirmed debt because my monthly income (take home pay plus any other income received) is \$ \_\_\_\_\_, and my actual current monthly expenses including monthly payments on post-bankruptcy debt and other reaffirmation agreements total \$ \_\_\_\_\_, leaving \$ \_\_\_\_\_ to make the required payments on this reaffirmed debt. I understand that if my income less my monthly expenses does not leave enough to make the payments, this reaffirmation agreement is presumed to be an undue hardship on me and must be reviewed by the court. However, this presumption may be overcome if I explain to the satisfaction of the court how I can afford to make the payments here: \_\_\_\_\_.

2. I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement.

Signed: \_\_\_\_\_  
(Debtor)  
\_\_\_\_\_  
(Joint Debtor, if any)

Date: \_\_\_\_\_

— Or —

*[If the creditor is a Credit Union and the debtor is represented by an attorney]*

I believe this reaffirmation agreement is in my financial interest. I can afford to make the payments on the reaffirmed debt. I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement.

Signed: \_\_\_\_\_  
(Debtor)  
\_\_\_\_\_  
(Joint Debtor, if any)

Date: \_\_\_\_\_

**PART E: MOTION FOR COURT APPROVAL**

*(To be completed only if the debtor is not represented by an attorney.)*

**MOTION FOR COURT APPROVAL OF REAFFIRMATION AGREEMENT**

I (we), the debtor(s), affirm the following to be true and correct:

I am not represented by an attorney in connection with this reaffirmation agreement.

I believe this reaffirmation agreement is in my best interest based on the income and expenses I have disclosed in my Statement in Support of this reaffirmation agreement, and because (provide any additional relevant reasons the court should consider):

Therefore, I ask the court for an order approving this reaffirmation agreement.

Signed: \_\_\_\_\_  
(Debtor)

\_\_\_\_\_  
(Joint Debtor, if any)

Date: \_\_\_\_\_

United States Bankruptcy Court

District of \_\_\_\_\_

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_  
Chapter \_\_\_\_\_

**ORDER APPROVING REAFFIRMATION AGREEMENT**

The debtor(s) \_\_\_\_\_ have filed a motion for approval of the  
(Name(s) of debtor(s))

reaffirmation agreement dated \_\_\_\_\_ made between the debtor(s) and  
(Date of agreement)

\_\_\_\_\_. The court held the hearing required by 11 U.S.C. § 524(d)  
(Name of creditor)

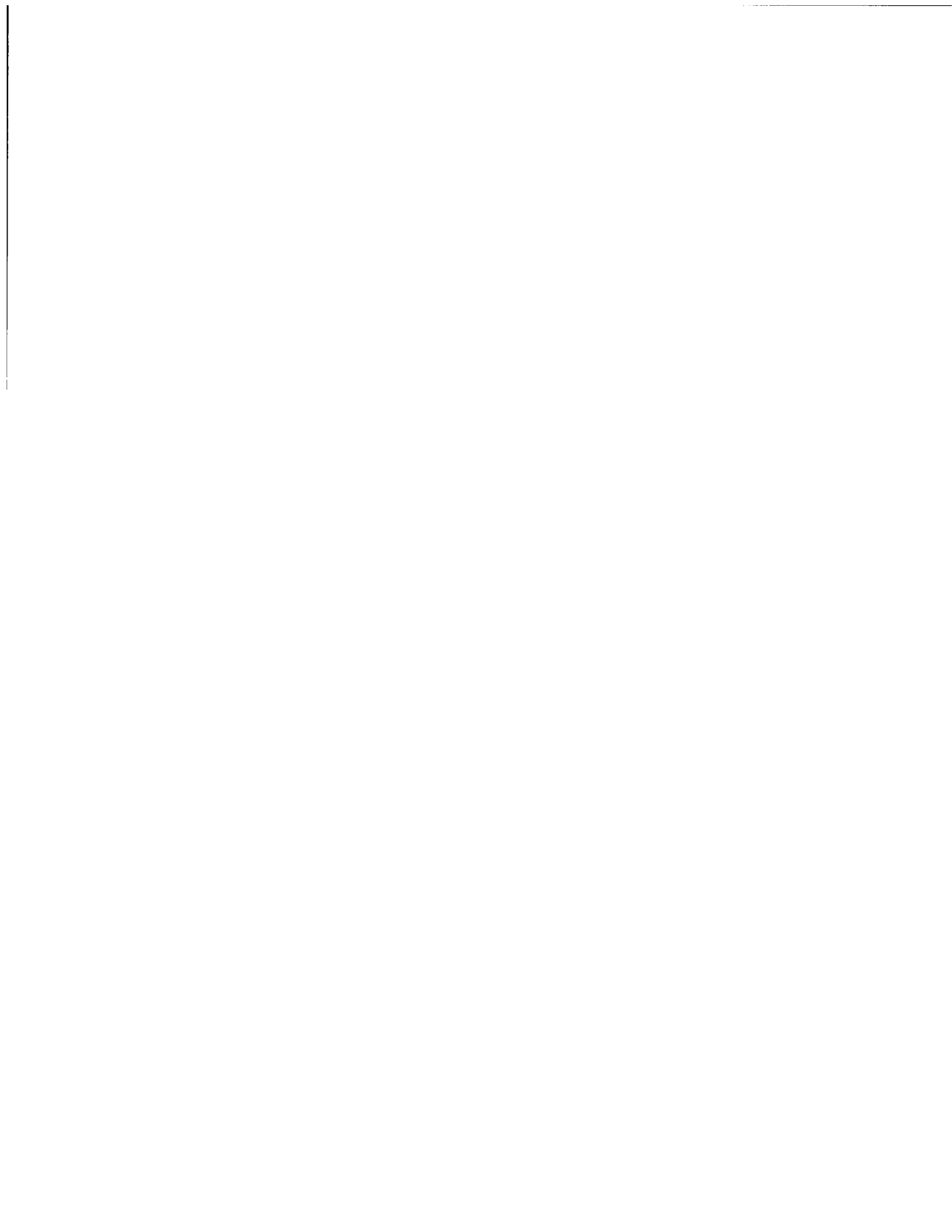
on notice to the debtor(s) and the creditor on \_\_\_\_\_.  
(Date)

COURT ORDER: The court grants the debtor's motion and approves the reaffirmation agreement described above.

BY THE COURT

Date: \_\_\_\_\_

\_\_\_\_\_  
*United States Bankruptcy Judge*





# United States Bankruptcy Court

\_\_\_\_\_ District Of \_\_\_\_\_

In re \_\_\_\_\_  
Debtor

Case No. \_\_\_\_\_

Chapter \_\_\_\_\_

## APPEARANCE OF CHILD SUPPORT CREDITOR\* OR REPRESENTATIVE

I certify under penalty of perjury that I am a child support creditor\* of the above-named debtor, or the authorized representative of such child support creditor, with respect to the child support obligation which is set out below.

Name:  
Organization:  
Address:

Telephone Number:

\_\_\_\_\_  
Date:

X \_\_\_\_\_  
Child Support Creditor\* or Authorized Representative

### Summary of Child Support Obligation

Amount in arrears:

\$ \_\_\_\_\_

Amount currently due per week or per month  
on a continuing basis:

\$ \_\_\_\_\_  
(Per week) (per month)

If child support has been assigned:

Amount of support which is owed under assignments:

\$ \_\_\_\_\_

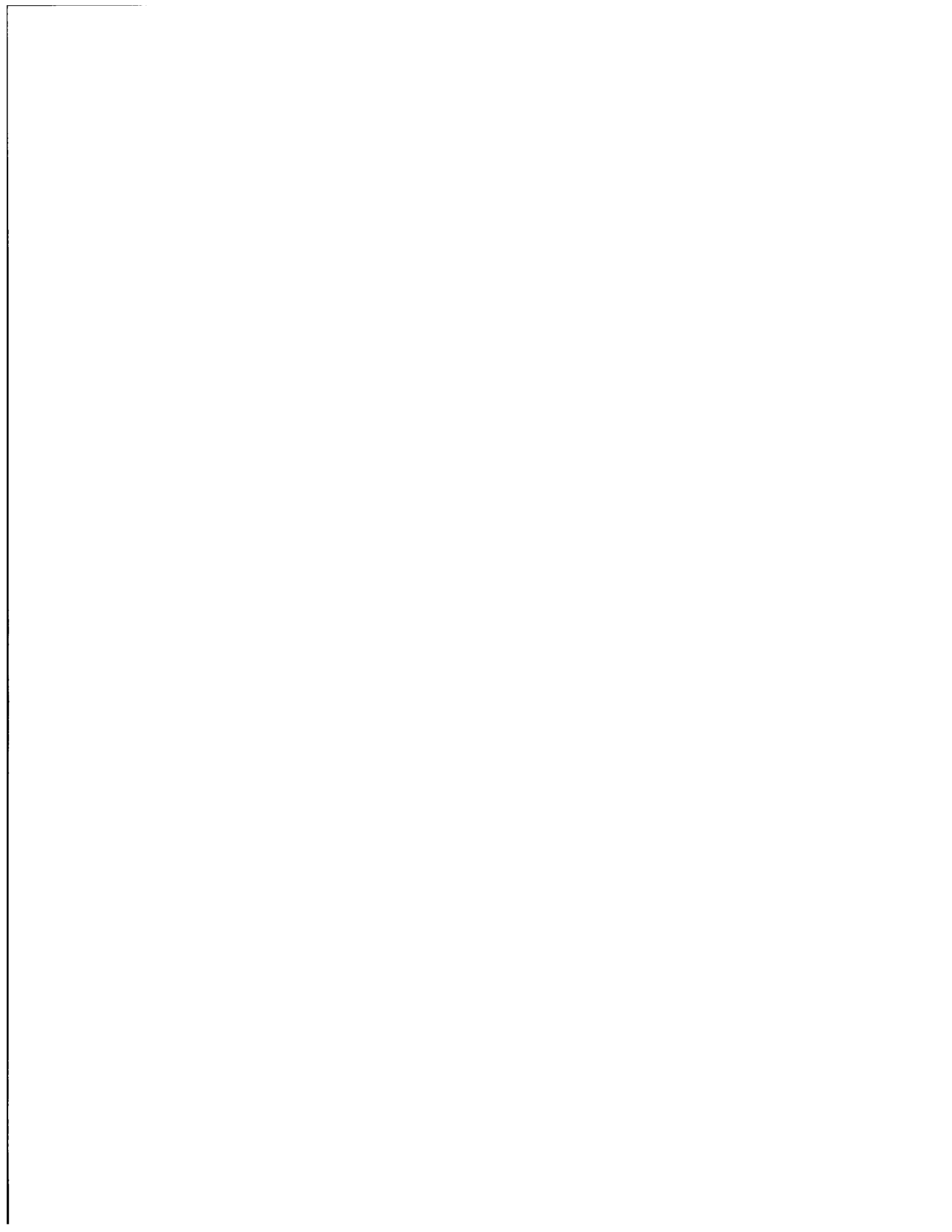
Amount owed primary child support creditor (balance not  
assigned):

\$ \_\_\_\_\_

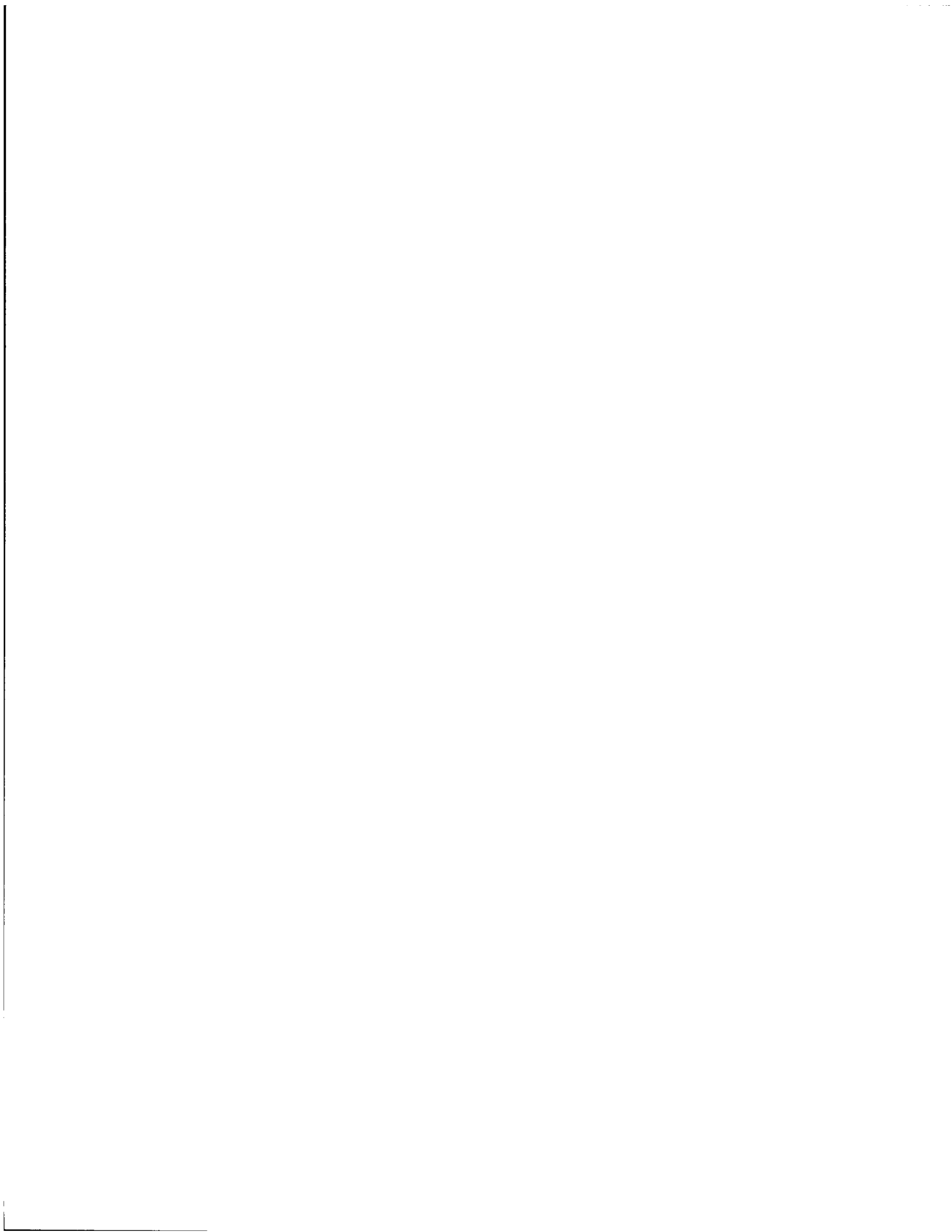
**Attach an itemized statement of account**

\* Child support creditor includes both a creditor to whom the debtor has a primary obligation to pay child support as well as any entity to whom such support has been assigned, if pursuant to Section 402(a)(26) of the Social Security Act or if such debt has been assigned to the Federal Government or to any State or political subdivision of a State.

If a child support creditor is a minor child, indicate that by stating "a minor child" and do not disclose the child's name. 11 U.S.C. § 112. If a "minor child" is stated, also include the name, address, and legal relationship to the minor child of a person described in Fed. R. Bankr. P. 1007(m).



Item 15 will be an oral report.



The next meeting of the Committee will take place

September 14 - 15, 2006

at

Seattle, Washington



The Committee will discuss dates and locations for  
the spring 2007 meeting.



**Bankruptcy Rules Tracking Docket (By Rule Number)****1/30/06****12/1/05 Amendments**

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

## Interim Rules, Forms, etc. Prompted by Bankruptcy Reform Legislation

Rules, Official Forms	Status Pending Further Action	Tentative Effective Date
Rules 1006, 1007, 1009, 1010, 1011, 1017, 1019, 1020, 1021, 2002, 2003, 2007.1, 2007.2, 2015, 2015.1, 2015.2, 3002, 3003, 3016, 3017.1, 3019, 4002, 4003, 4004, 4006, 4007, 4008, 5003, 5008, 5012, 6004, 6011, 8001, 8003, 9006, 9009	8/05 - Approved by Committee as Suggested Interim Rules 8/05 - Approved by Standing Committee and transmitted to courts for adoption as Interim Rules 9/05 - Interim Rules 1007, 2002, 4004, and 8001 amended by Committee 10/05 - Amended Interim Rules approved by Standing Committee and transmitted to courts for adoption 3/06 - Committee agenda for review before publication as draft amendments to National Rules	10/17/05 as Interim Rules  12/1/08 as National Rules
Rules 2015(a), 3016(d)	8/05 - Approved request for publication as amendments to National Rules (not part of Interim Rules) 6/06 - Standing Committee agenda	12/1/08 as National Rules
ABA Task Force request concerning attorney compliance	9/05 - Referred to Subcommittee on Attorney Conduct and Health Care 3/06 - Committee agenda	
Official Forms 1, 3A, 3B, 4, 5, 6A-J, 7, 8, 9A-I, 10, 16A, 18, 19A, 19B, 22A, 22B, 22C, 23, 24	8/05 - Approved by Committee 8/05 - Approved by Standing Committee and Executive Committee of Judicial Conference as Official Forms 9/05 - Official Forms 1, 22A, and 22C amended by Committee 10/05 - Amended Official Forms approved by Standing Committee and Executive Committee of Judicial Conference 3/06 - Committee agenda for review before publication as draft permanent amendments	10/17/05 as Official Forms
Director's Forms 18J, 18JO, 18F, 18FH, 18W, 18WH, 200, 201, 240, 280	9/05 - Reviewed by Committee 10/05 - Issued by Director of Administrative Office	10/17/05
Form Plan and Disclosure Statement	9/05 - Model plan approved in principle 9/05 - Model plan and disclosure statement referred to Business Subcommittee 3/06 - Committee agenda	12/1/08



Form for report on value, operations, and profitability of related entities	9/05 - Referred to Business Subcommittee 3/06 - Committee agenda	12/1/08
Periodic report on small business debtor's profitability, cash flow, and compliance	9/05 - Referred to Business Subcommittee 3/06 - Committee agenda	12/1/08

## Active Items

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
<p><b>Rules 1005, 1007</b> Use of other taxpayer ID numbers</p>		<p>3/05 - Committee considered, referred to Subcommittee on Privacy, Public Access &amp; Appeals 9/05 - Referred to Forms Subcomt. 3/06 - Committee agenda</p>	
<p><b>Rule 1009</b> 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 approval 9/05 - Judicial Conference approval</p>	12/1/06
<p><b>Rules 1010, 1011</b> Rule 7007.1 applied in involuntary cases</p>	Committee proposal	<p>9/04 - Committee considered, referred to Reporter 3/05 - Committee considered, tabled to 9/05 9/05 - Referred to Business Subcommittee 3/06 - Committee agenda</p>	
<p><b>Rule 1014</b> Clarifies that court may act <i>sua sponte</i> to dismiss or convert a case</p>	Joint Subcommittee on Venue and Chapter 11 Matters	<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>	12/1/07

<p><b>Rule 2002(g)(1)</b> Address for notices</p>	<p>05-BK- D Judge Robert D. Martin Clerk Marcia M. Anderson 10/25/05</p>	<p>10/05 - Sent to chair and reporter 11/05 - Also sent to CM/ECF staff</p>	
<p><b>Rule 2021</b> Large chapter 11 case management and teleconferences</p>	<p>Joint Subcommittee on Venue and Chapter 11 Matters</p>	<p>8/04 - Discussed by Joint Subcommittee 9/05 - Referred to Joint Subcomt. 3/06 - Committee agenda</p>	
<p><b>Rule 3001</b> 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><b>Rule 3002(c)(5)</b> 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 Subcommittee 9/05 - Deferred pending study of time periods in all federal rules</p>	
<p><b>Rule 3007(b)</b> 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><b>Rule 3007(c)-(f)</b> Omnibus objections to claims</p>	<p>Joint Subcommittee on Venue and Chapter 11 Matters</p>	<p>8/04 - Considered by Joint Subcomt. 9/04 - Approved in principle by Committee 1/05 - Revised by Joint Subcomt. 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><b>Rule 3007</b> Service of objections to claims</p>	<p>Judge Klein</p>	<p>9/05 - Referred to Business Subcommittee 3/06 - Committee agenda</p>	
<p><b>Rules 3020, 4001(a)</b> Automatic stay terminated at confirmation</p>	<p>05-BK-C Nicholas P. Spallas 9/30/05</p>	<p>10/05 - Sent to chair and reporter</p>	
<p><b>Rule 4001</b> Requirements for cash collateral motions</p>	<p>Joint Subcommittee on Venue and Chapter 11 Matters</p>	<p>8/04 - Discussed by Joint Subcomt. 9/04 - Discussed by Committee 1/05 - Approved by Joint Subcomt. 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><b>Rule 4002</b> 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 Rules</p>	<p>10/17/05</p>
<p><b>Rule 4003(b)</b> Objection to exemptions in converted case</p>	<p>05-BK-B Judge Samuel L. Buford 9/15/05</p>	<p>9/05 - Sent to chair and reporter</p>	
<p><b>Rule 4003(b)</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 approved for publication</p>	
<p><b>Rule 4003(d)</b> Lien holder's objection to avoidance notwithstanding the 30-day limit</p>	<p>04-BK-B Judge Eugene R. Wedoff 2/17/04</p>	<p>9/04 - Committee considered as part of Rule 4003(b) amendment, referred to Consumer Subcommittee 3/05 - Committee considered, referred to Consumer Subcomt. 9/05 - Committee approved for publication</p>	

<p><b>Rule 4008</b> Reaffirmation agreement to be filed within 30 days of discharge</p>	<p>01-BK-E Bankruptcy 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 Committee and Executive Committee due to conflicting provisions in bankruptcy reform legislation 3/06 - Committee agenda as part of review of Interim Rules</p>	
<p><b>Rule 5001(b)</b> Holding court outside the district in an emergency</p>		<p>9/03 - Committee approved in principle; further action deferred 9/05 - Committee approved for publication</p>	
<p><b>Rule 5005(a)(2)</b> 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 approval</p>	<p>12/1/06 Fast Track</p>

<p><b>Rule 5005(c)</b> 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 approval</p>	<p>12/1/06</p>
<p><b>Rule 6003 (new)</b> First day orders</p>	<p>Joint Subcommittee on Venue and Chapter 11 Matters</p>	<p>8/04 - Discussed by Joint Subcomt. 9/04 - Discussed by Committee 1/05 - Approved by Joint Subcomt. 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><b>Rule 6006</b> Omnibus Motions to Assume or Reject</p>	<p>Joint Subcommittee on Venue and Chapter 11 Matters</p>	<p>8/04 - Considered by Joint Subcomt. 9/04 - Approved in principle by Committee 1/05 - Approved by Joint Subcomt. 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><b>Rule 7004(b)(9), (g)</b> 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 approval</p>	<p>12/1/06</p>
<p><b>Rule 7007.1</b> 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><b>Rule 8002(a)</b> Extending the appeal time</p>	<p>Committee proposal</p>	<p>9/04 - Committee considered, referred to Technology and Cross Border Insolvency Subcommittee 1/05 - Subcommittee recommended taking no action 3/05 - Referred to Technology and Cross Border Insolvency Subcomt. 9/05 - Committee deferred action pending study of time periods in all federal rules</p>	



<p><b>Rule 9005.1 (new)</b>          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><b>Rule 9021</b>          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, Public Access and Appeals Subcommittee          9/05 - Referred to Privacy, Public Access and Appeals Subcommittee          3/06 - Committee agenda</p>	
<p><b>Rule 9037 (new)</b>          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>

<b>New Rule</b> Representation of corporations in small claims matters	05-BK-A (see also 00-BK-D, 98-BK-A) Judge Paul Mannes	9/05 - Referred to Attorney Conduct and Health Care Subcommittee 3/06 - Committee agenda	
<b>Official Form 10</b> Amend Proof of Claim form (See Rule 3001)	04-BK-A Glen K. Palman 2/19/04	3/04 - Referred to reporter, chair and Forms Subcommittee 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 - Referred to Forms Subcomt. 3/06 - Committee agenda	

### Inactive Items / Historical Information

Suggestion	Docket No., Source & Date	Status
<b>Rule 1019(3)</b> Superceding claims required in cases converted chapter 7	04-BK-G Attorney Thomas Yerbich 11/8/04	3/05 - Committee considered, no action taken <b>NO FURTHER ACTION</b>
<b>Rules 6004(a), 2002(c)(1)</b> Sale of property	04-BK-F Judge Vincent Zurzolo 9/15/04	10/04 - Referred to reporter for review 3/05 - Committee considered, no action taken <b>NO FURTHER ACTION</b>
<b>Rule 9006</b> Limit after-the-fact extensions of time under Rules 3004 and 3005.	03-BK-005 Judge Dennis Lynn 1/6/04	1/04 - Referred to chair, reporter, and committee 9/04 - Committee deferred action <b>FURTHER ACTION MAY BE APPROPRIATE</b>

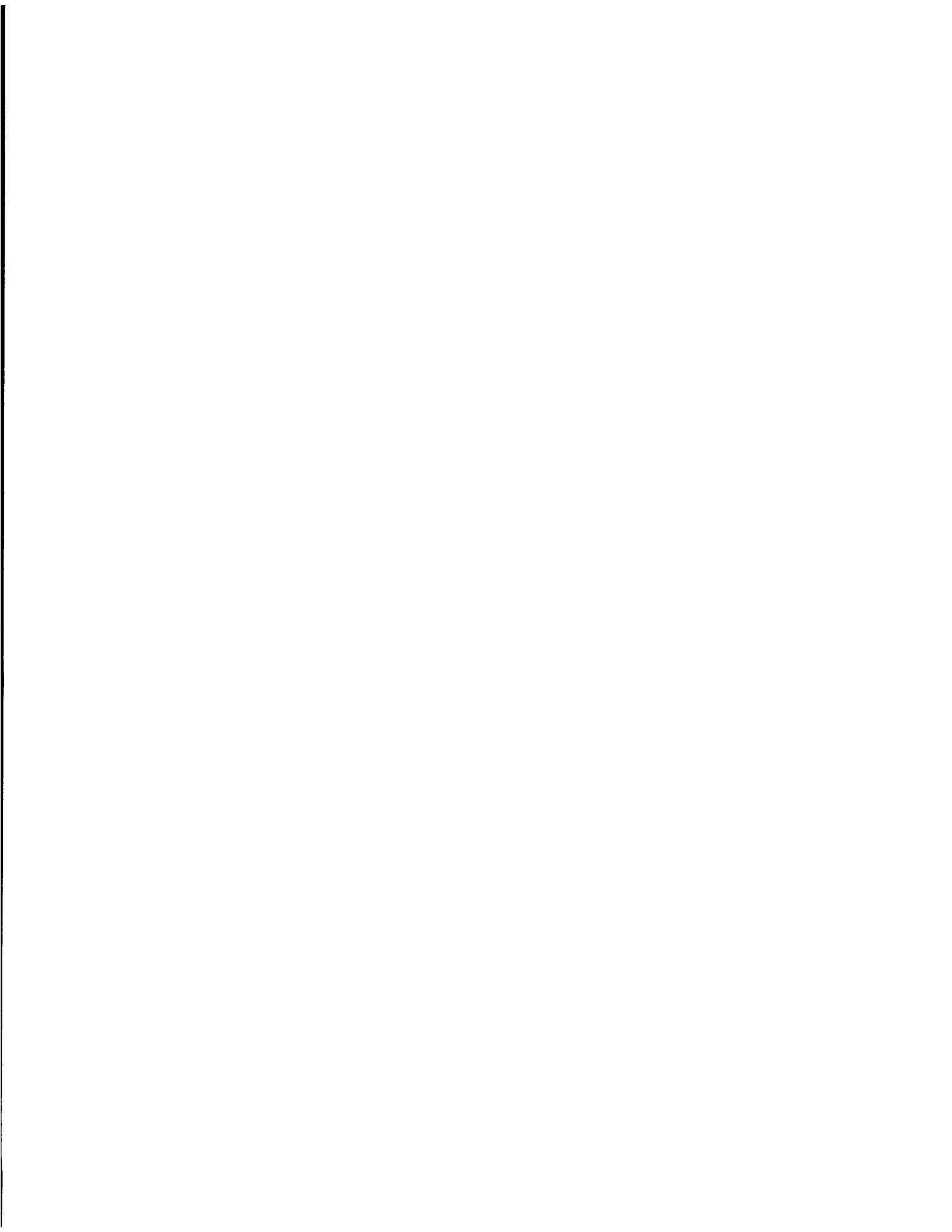
<p><b>Rule 9036</b>  Notice by electronic means is ineffective if sender knows notice did not reach intended recipient</p>	<p>Committee proposal (see 02-BK-A)</p>	<p>9/04 - Committee considered, referred to Technology Subcommittee  12/04 - Subcommittee discussion  3/05 - Committee consideration, no action taken  <b>NO FURTHER ACTION</b></p>
<p><b>Official Form 6, Schedule I</b>  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  8/05 - Included in revision for reform legislation  <b>NO FURTHER ACTION</b></p>



**ADVISORY COMMITTEE  
ON  
BANKRUPTCY RULES**

**Chapel Hill, NC  
March 8-10, 2006**

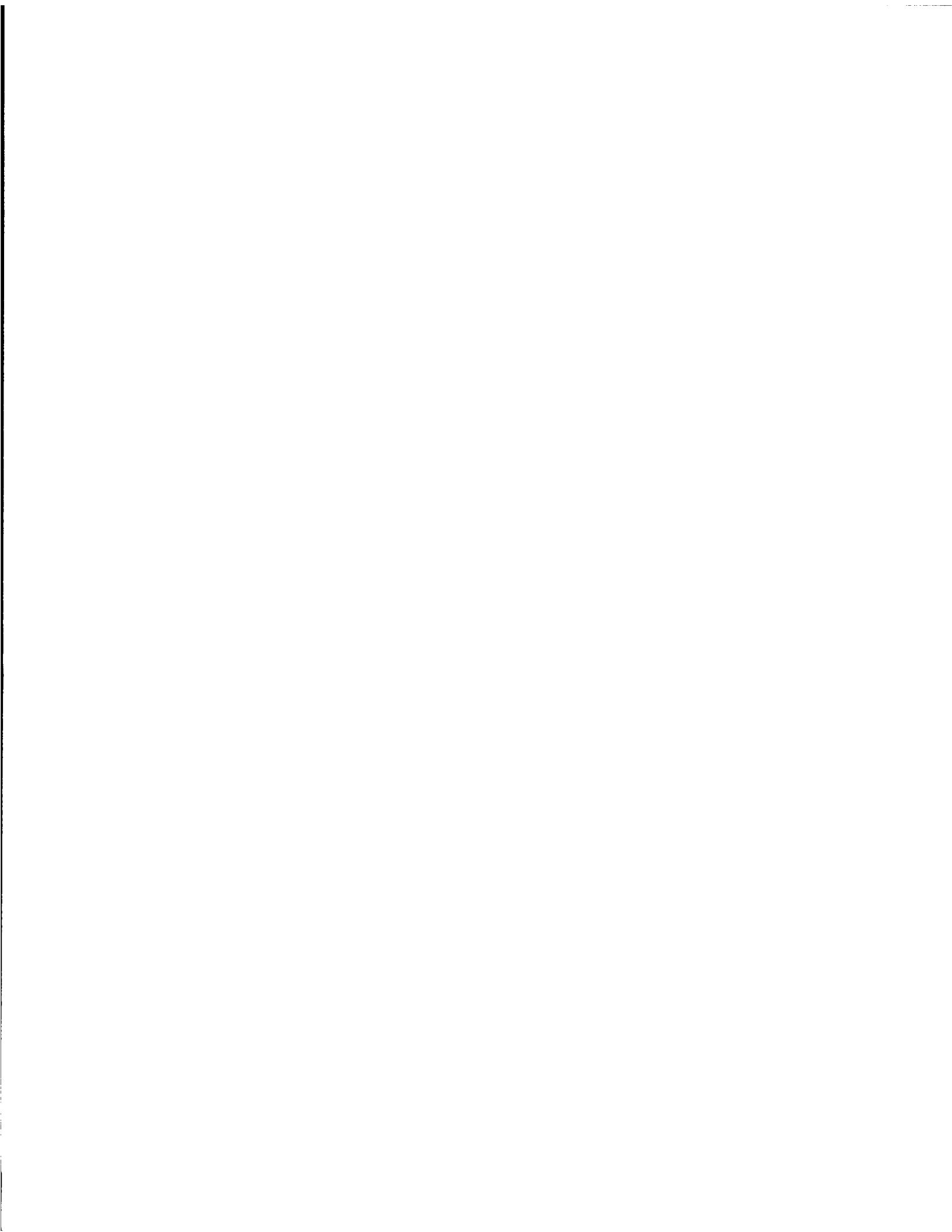
Volume 3 of 3



ADVISORY COMMITTEE ON BANKRUPTCY RULES  
Meeting of March 8-10, 2006  
Chapel Hill, North Carolina

Volume 3

1. Published Amendments
2. Interim Rules
3. Official Forms
4. Committee Notes





**PROPOSED AMENDMENTS TO THE  
FEDERAL RULES OF BANKRUPTCY PROCEDURE\***

**Rule 1014. Dismissal and Change of Venue**

1           (a) DISMISSAL AND TRANSFER OF CASES.

2                   (1) *Cases Filed in Proper District.*

3           If a petition is filed in the proper district, the court, on  
4           the timely motion of a party in interest or on its own  
5           motion, and after hearing on notice to the petitioners, the  
6           United States trustee, and other entities as directed by the  
7           court, may transfer the case ~~may be transferred~~ to any other  
8           district if the court determines that the transfer is in the  
9           interest of justice or for the convenience of the parties.

10                   (2) *Cases Filed in Improper District.*

11           If a petition is filed in an improper district, the court, on  
12           the timely motion of a party in interest or on its own  
13           motion, and after hearing on notice to the petitioners, the  
14           United States trustee, and other entities as directed by the

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\*New material is underlined; matter to be omitted is lined through.

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15 court, may dismiss the case or transfer it ~~the case may be~~  
16 ~~dismissed or transferred~~ to any other district if the court  
17 determines that transfer is in the interest of justice or for  
18 the convenience of the parties.

19 \* \* \* \* \*

**COMMITTEE NOTE**

Courts have generally held that they have the authority to dismiss or transfer cases on their own motion. The amendment recognizes this authority and also provides that dismissal or transfer of the case may take place only after notice and a hearing.

**Rule 3001. Proof of Claim**

1 \* \* \* \* \*  
2 (c) CLAIM BASED ON A WRITING. When a claim, or an  
3 interest in property of the debtor securing the claim, is based on a  
4 writing, ~~the original or a duplicate~~ a copy of the writing shall be  
5 filed with the proof of claim. If the writing has been lost or  
6 destroyed, a statement of the circumstances of the loss or  
7 destruction shall be filed with the proof of claim. If the writing

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8 exceeds 25 pages, the claimant shall instead file a copy of relevant  
9 excerpts of the writing and a summary of the writing which  
10 together shall not exceed a total of 25 pages. If the claimant has  
11 not filed a copy of the complete writing, on request of a party in  
12 interest, the claimant shall promptly serve on that party a copy of  
13 the complete writing.

14 (d) EVIDENCE OF PERFECTION OF SECURITY

15 INTEREST. If a security interest in property of the debtor is  
16 claimed, the proof of claim shall be accompanied by evidence that  
17 the security interest has been perfected. If the evidence of  
18 perfection is a writing, the claimant shall file a copy of the writing  
19 with the proof of claim. If the writing exceeds five pages, the  
20 claimant shall instead file a copy of relevant excerpts of the writing  
21 and a summary of the evidence of perfection, which together shall  
22 not exceed a total of five pages. If the claimant has not filed a copy  
23 of the complete writing, on request of a party in interest, the

24 claimant shall promptly serve on that party a copy of the complete  
25 writing.

26

\* \* \* \* \*

#### COMMITTEE NOTE

Subdivisions (c) and (d) of the rule are amended to provide that claimants must file duplicates of writings upon which a claim is based or which evidence perfection of any claimed security interest. The rule previously authorized the claimant to file either the original writing or a duplicate thereof. If the writings that support the claim are 25 pages or less, the claimant must attach a copy of the writings to the proof of claim, whether or not the claimant provides a summary of the writings. The attached writings and summary together must not exceed 25 pages. Similarly, if the writings that evidence perfection of a security interest do not exceed five pages, the claimant must file a copy of those writings with the proof of claim. The claimant also may attach a summary of the writings evidencing perfection, but the total of the summary and the writings evidencing perfection of a security interest must not exceed five pages.

Subdivisions (c) and (d) are amended to establish limits on the length of documents being attached to a proof of claim. Some documents can be extremely lengthy and may pose particular problems, especially when they are filed electronically. Voluminous documents can cause undue delays both in the filing of the proof of claim as well as in searches of the court's record. Shortened versions of the writings should prevent these problems. Consequently, the rule directs the claimant to file a summary of the writing upon which the claim is based along with copies of the

relevant portions of the writing. For example, if a writing must be signed by the debtor to be enforceable, the relevant excerpts likely would include the debtor's signature. The claimant makes the initial determination of relevancy, but to the extent that the attachment does not include relevant excerpts, the evidentiary effect of the proof of claim under subdivision (f) would be limited.

Under subdivision (c), writings on which the claim is based may not exceed 25 pages in length, and if they do, the claimant must instead attach a duplicate of relevant excerpts of the writings and a summary of the complete writings. The summary and the relevant excerpts also may not exceed 25 pages in the aggregate. Similarly, under subdivision (d), any attachment to the proof of claim to provide evidence of perfection of a security interest may not exceed five pages in length. If the writings exceed five pages, the claimant must instead file a summary of the writings and a duplicate of relevant excerpts. The summary and relevant excerpts of evidence of perfection may not exceed five pages in the aggregate.

Under both subdivisions (c) and (d), if the claimant files a summary rather than a duplicate of the complete writing, the claimant must serve a copy of the complete writing upon any party in interest that requests a copy.

### **Rule 3007. Objections to Claims**

1            (a) OBJECTIONS TO CLAIMS. An objection to the  
2            allowance of a claim shall be in writing and filed. A copy  
3            of the objection with notice of the hearing thereon shall be

4 mailed or otherwise delivered to the claimant, the debtor or  
5 debtor in possession, and the trustee at least 30 days prior to  
6 the hearing. ~~If an objection to a claim is joined with a~~  
7 ~~demand for relief of the kind specified in Rule 7001, it~~  
8 ~~becomes an adversary proceeding.~~

9 (b) DEMAND FOR RELIEF REQUIRING AN  
10 ADVERSARY PROCEEDING. A party in interest shall  
11 not include a demand for relief of a kind specified in Rule  
12 7001 in an objection to the allowance of a claim, but an  
13 objection to the allowance of a claim may be included in an  
14 adversary proceeding.

15 (c) LIMITATION ON JOINDER OF CLAIMS  
16 OBJECTIONS. Unless otherwise ordered by the court, or  
17 permitted by subdivision (d), objections to more than one  
18 claim shall not be joined in a single objection.

19 (d) OMNIBUS OBJECTION. Subject to subdivision  
20 (e), objections to more than one claim may be joined in an

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21 omnibus objection if all the claims were filed by the same  
22 entity, or the objections are based solely on the grounds that  
23 the claims should be disallowed, in whole or in part, for one  
24 or more of the following reasons:

25 (1) they duplicate other claims;

26 (2) they have been filed in the wrong case;

27 (3) they have been replaced by subsequently filed  
28 proofs of claim;

29 (4) they have been transferred in accordance with  
30 Rule 3001(e);

31 (5) they were not timely filed;

32 (6) they have been satisfied or released during the  
33 case in accordance with the Code, applicable rules, or a  
34 court order;

35 (7) they were presented in a form that does not  
36 comply with applicable rules, and the objection states that

37 the objector is unable to determine the validity of the claim  
38 because of the noncompliance;

39 (8) they are interests, rather than claims; and

40 (9) they assert priority in an amount that exceeds  
41 the maximum amount under § 507 of the Code.

42 (e) REQUIREMENTS FOR OMNIBUS OBJECTION.

43 An omnibus objection under subdivision (d) shall:

44 (1) state in a conspicuous place that claimants  
45 receiving the objection should locate their names and  
46 claims as listed in the objection;

47 (2) list claimants alphabetically, provide a cross-  
48 reference to claim numbers, and, if appropriate, list  
49 claimants by category of claims;

50 (3) state the grounds of the objection to each claim  
51 and provide a cross-reference to the pages in the omnibus  
52 objection pertinent to the stated grounds;



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53 (4) state in the title of the omnibus objection the  
54 identity of the objector and the grounds for the objections;

55 (5) be numbered consecutively with other omnibus  
56 objections filed by the same objector; and

57 (6) contain objections to no more than 100 claims.

58 (f) FINALITY OF OBJECTION. The finality of any  
59 order regarding a claim objection included in an omnibus  
60 objection shall be determined as though the claim had been  
61 subject to an individual objection.

#### COMMITTEE NOTE

The rule is amended in a number of ways. First, the amendment prohibits a party in interest from including in a claim objection a request for relief that requires an adversary proceeding. A party in interest may, however, include an objection to the allowance of a claim in an adversary proceeding. Unlike a contested matter, an adversary proceeding requires the service of a summons and complaint which puts the defendant on notice of the potential for an affirmative recovery. Permitting the plaintiff in the adversary proceeding to include an objection to a claim would not unfairly surprise the defendant as might be the case if the action were brought as a contested matter that included an action to obtain relief of a kind specified in Rule 7001.

The rule as amended does not require that a party include an objection to the allowance of a claim in an adversary proceeding. If a claim objection is filed separately from a related adversary proceeding, the court may consolidate the objection with the adversary proceeding under Rule 7042.

The rule also is amended to authorize the filing of a pleading that joins objections to more than one claim. Such filings present significant opportunity for efficient administration of large cases, but the rule includes restrictions on the use of these omnibus objections to ensure the protection of the due process rights of the claimants.

Unless the court orders otherwise, objections to more than one claim may be joined in a single pleading only if all of the claims were filed by the same entity, or if the objections are based solely on the grounds set out in subdivision (d) of the rule. Objections of the type listed in subdivision (d) often can be resolved without material factual or legal disputes. Objections to multiple claims permitted under the rule must comply with the procedural requirements set forth in subdivision (e). Among those requirements is the requirement in subdivision (e)(5) that these omnibus objections be consecutively numbered. Since these objections may not join more than 100 objections in any one omnibus objection, there may be a need for several omnibus objections to be filed in a particular case. Consecutive numbering of each omnibus objection and the identification of the objector in the title of the objection is essential to keep track of the objections on the court's docket. For example, the objections could be titled Debtor in Possession's First Omnibus Objection to Claims, Debtor in Possession's Second Omnibus Objection to Claims, Creditors' Committee's First Omnibus Objection to Claims, and so on.

Titling the objections in this manner should avoid confusion and aid in tracking the objections on the docket.

Use of omnibus objections does not preclude the objecting party from raising other objections to claims listed on an omnibus objection. Section 502(j) of the Code authorizes reconsideration of claims, so this rule likewise recognizes the splitting of objections to claims. *See* Restatement (Second) of Judgments § 26 (1982). Consequently, a claim included in an omnibus objection based on one or more grounds set out in subdivision (d) could be included in another omnibus objection based on a different ground. The claim might also be subject to an objection on any other ground.

Subdivision (f) provides that an order resolving an objection to any particular claim is treated, for purposes of finality, as if the claim had been the subject of an individual objection. A party seeking to appeal any such order is neither required, nor permitted, to await the court's resolution of all other joined objections. The rule permits the joinder of objections for convenience, and that convenience should not impede timely review of a court's decision with respect to each claim. Whether the court's action as to a particular objection is final, and the consequences of that finality, are not addressed by this amendment.

**Rule 4001. Relief from Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Use of Cash Collateral; Obtaining Credit; Agreements**

1

\* \* \* \* \*

2

(b) USE OF CASH COLLATERAL.

3 (1) *Motion; Service.*

4 (A) Motion. A motion for ~~authorization~~  
5 authority to use cash collateral shall be made in accordance  
6 with Rule 9014 and shall be accompanied by a proposed  
7 form of order ~~served on any entity which has an interest in~~  
8 ~~the cash collateral, on any committee elected pursuant to §~~  
9 ~~705 or appointed pursuant to § 1102 of the Code or its~~  
10 ~~authorized agent, or, if the case is a chapter 9 municipality~~  
11 ~~case or a chapter 11 reorganization case and no committee~~  
12 ~~of unsecured creditors has been appointed pursuant to §~~  
13 ~~1102, on the creditors included on the list filed pursuant to~~  
14 ~~Rule 1007(d), and on such other entities as the court may~~  
15 ~~direct.~~

16 (B) Contents. The motion shall include an  
17 introductory statement, not to exceed three pages,  
18 summarizing all material provisions of the motion,  
19 including:

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20 (1) the name of each entity with an interest

21 in the cash collateral;

22 (2) the purposes for the use of the cash

23 collateral;

24 (3) the terms, including duration, of the use

25 of the cash collateral; and

26 (4) any liens, cash payments, or other

27 adequate protection that will be provided to each entity

28 with an interest in the cash collateral or, if no additional

29 adequate protection is proposed, an explanation of why

30 each entity's interest is adequately protected.

31 (C) Service. The motion shall be served on any

32 entity with an interest in the cash collateral, any committee

33 elected under § 705 or appointed under § 1102 of the Code

34 or its authorized agent, or, if the case is a chapter 9

35 municipality case or a chapter 11 reorganization case and

36 no committee of unsecured creditors has been appointed

37 under § 1102, the creditors included on the list filed under  
38 Rule 1007(d), and any other entity that the court may direct.

39 \* \* \* \* \*

40 (c) OBTAINING CREDIT.

41 (1) *Motion; Service.*

42 (A) Motion. A motion for authority to obtain  
43 credit shall be made in accordance with Rule 9014 and  
44 shall be accompanied by a copy of the credit agreement and  
45 a proposed form of order served on any committee elected  
46 pursuant to § 705 or appointed pursuant to § 1102 of the  
47 Code or its authorized agent, or, if the case is a chapter 9  
48 municipality case or a chapter 11 reorganization case and  
49 no committee of unsecured creditors has been appointed  
50 pursuant to § 1102, on the creditors included on the list  
51 filed pursuant to Rule 1007(d), and on such other entities as  
52 the court may direct. The motion shall be accompanied by  
53 a copy of the agreement.

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54 (B) Contents. The motion shall include an  
55 introductory statement, not to exceed three pages,  
56 summarizing all material provisions of the proposed credit  
57 agreement, including interest rate, maturity, events of  
58 default, liens, borrowing limits, and borrowing conditions.  
59 If the proposed credit agreement or proposed order includes  
60 any of the following provisions, the motion shall describe  
61 the nature and extent of each provision, explain the reasons  
62 for each provision, and identify the specific location of the  
63 provision in the proposed form of order, agreement, or  
64 other document:

65 (1) the granting of priority or a lien on  
66 property of the estate under § 364(c) or (d);

67 (2) the providing of adequate protection or  
68 priority with respect to a claim that arose before the  
69 commencement of the case, including the granting of a lien  
70 on property of the estate to secure the claim, or the use of

71 property of the estate or credit obtained under § 364 to  
72 make cash payments on account of the claim;

73 (3) a determination with respect to the  
74 validity, enforceability, priority, or amount of a claim that  
75 arose before the commencement of the case, or of any lien  
76 securing the claim;

77 (4) a waiver or modification of the  
78 provisions of the Code or applicable rules relating to the  
79 automatic stay;

80 (5) a waiver or modification of any  
81 entity's authority to file a plan, to seek an extension of time  
82 in which the debtor has the exclusive right to file a plan, or  
83 the right to request the use of cash collateral under § 363(c),  
84 or request authority to obtain credit under § 364;

85 (6) a waiver or modification of the  
86 applicability of nonbankruptcy law relating to the



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87 perfection of a lien on property of the estate, or on the  
88 foreclosure or other enforcement of the lien;

89 (7) a release, waiver, or limitation on any  
90 claim or other cause of action belonging to the estate or the  
91 trustee, including any modification of the statute of  
92 limitations or other deadline to commence an action;

93 (8) indemnification of any entity;

94 (9) a release, waiver, or limitation of any  
95 right under § 506(c); or

96 (10) the granting of a lien on any claim or  
97 cause of action arising under § 544, 545, 547, 548, 549,  
98 553(b), 723(a), or 724(a).

99 (C) Application of Rule 9024. The court may  
100 grant appropriate relief under Rule 9024 if it determines  
101 that the introductory statement did not adequately disclose a  
102 material element of the agreement.

103                    (D) Service. The motion shall be served on any  
104                    committee elected under § 705 or appointed under § 1102  
105                    of the Code or its authorized agent, or, if the case is a  
106                    chapter 9 municipality case or a chapter 11 reorganization  
107                    case and no committee of unsecured creditors has been  
108                    appointed under § 1102, on the creditors included on the  
109                    list filed under Rule 1007(d), and on such other entities as  
110                    the court may direct.

111                    \* \* \* \* \*

112                    (d) AGREEMENT RELATING TO RELIEF FROM  
113                    THE AUTOMATIC STAY, PROHIBITING OR  
114                    CONDITIONING THE USE, SALE, OR LEASE OF  
115                    PROPERTY, PROVIDING ADEQUATE PROTECTION,  
116                    USE OF CASH COLLATERAL, AND OBTAINING  
117                    CREDIT.

118                    (1) *Motion; Service.*

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119 (A) Motion. A motion for approval of an  
120 agreement (~~A~~1) to provide adequate protection, (~~B~~2) to  
121 prohibit or condition the use, sale, or lease of property,  
122 (~~C~~3) to modify or terminate the stay provided for in § 362,  
123 (~~D~~4) to use cash collateral, or (~~E~~5) between the debtor and  
124 an entity that has a lien or interest in property of the estate  
125 pursuant to which the entity consents to the creation of a  
126 lien senior or equal to the entity's lien or interest in such  
127 property shall be ~~served on any committee elected pursuant~~  
128 ~~to § 705 or appointed pursuant to § 1102 of the Code or its~~  
129 ~~authorized agent, or, if the case is a chapter 9 municipality~~  
130 ~~case or a chapter 11 reorganization case and no committee~~  
131 ~~of unsecured creditors has been appointed pursuant to §~~  
132 ~~1102, on the creditors included on the list filed pursuant to~~  
133 ~~Rule 1007(d), and on such other entities as the court may~~  
134 ~~direct. The motion shall be accompanied by a copy of the~~  
135 agreement and a proposed form of order.

136                    (B) Contents. The motion shall include an  
137                    introductory statement, not to exceed three pages,  
138                    summarizing all material provisions of the agreement. The  
139                    motion also shall state whether the relief requested includes  
140                    any of the provisions listed in subdivision (c)(1)(B) and, if  
141                    so, shall describe the nature and extent of each provision,  
142                    explain the reasons for each provision, and identify the  
143                    specific location of the provision in the proposed form of  
144                    order, agreement, or other document.

145                    (C) Application of Rule 9024. The court may  
146                    grant appropriate relief under Rule 9024 if it determines  
147                    that the introductory statement did not adequately disclose a  
148                    material element of the agreement.

149                    (D) Service. The motion shall be served on any  
150                    committee elected under § 705 or appointed under § 1102  
151                    of the Code or its authorized agent, or, if the case is a  
152                    chapter 9 municipality case or a chapter 11 reorganization

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153 case and no committee of unsecured creditors has been  
154 appointed under § 1102, on the creditors included on the  
155 list filed under Rule 1007(d), and on such other entities as  
156 the court may direct.  
157 \* \* \* \* \*

#### COMMITTEE NOTE

The rule is amended to require that parties seeking authority to use cash collateral, to obtain credit, and to obtain approval of agreements to provide adequate protection, modify or terminate the stay, or to grant a senior or equal lien on property, submit with those requests a proposed order granting the relief, and that they provide more extensive notice to interested parties of a number of specified terms. The motion must include a summary, not to exceed three pages, which will assist the court and interested parties in understanding the nature of the relief requested. In addition to the summary, the rule requires that motions under subdivisions (c) and (d) state whether the movant is seeking approval of any of the provisions listed in subdivision (c)(1)(B), and where those provisions are located in the documents. These provisions are frequently included in agreements of these types, and the rule is intended to enhance the ability of the court and interested parties to find and evaluate those provisions.

The rule limits the introductory summary to three pages. The parties to agreements and lending offers frequently have concise summaries of their transactions that contain a list of the material provisions of the agreements, even if the agreements themselves are

very lengthy. A similar summary should allow the court and interested parties to understand the relief requested. The court may grant relief under Rule 9024 if it determines that a material element of the requested financing, or agreement regarding the stay or cash collateral usage, was not adequately disclosed in the introductory statement.

Other amendments are stylistic.

**Rule 6003. Interim and Final Relief Immediately Following the Commencement of the Case — Applications for Employment; Motions for Use, Sale, or Lease of Property; and Motions for Assumptions, Assignments, and Rejections of Executory Contracts**

1           Except to the extent that relief is necessary to avoid  
2           immediate and irreparable harm, the court shall not, within 20  
3           days after the filing of the petition, grant relief regarding the  
4           following:  
5                   (a) an application under Rule 2014;  
6                   (b) a motion to use, sell, lease, or otherwise incur an  
7           obligation regarding property of the estate, including a motion  
8           to pay all or part of a claim that arose before the filing of the  
9           petition, but not a motion under Rule 4001; and

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10 (c) a motion to assume, assign, or reject an executory

11 contract or unexpired lease in accordance with § 365.

#### COMMITTEE NOTE

There can be a flurry of activity during the first days of a bankruptcy case. This activity frequently takes place prior to the formation of a creditors' committee, and it also can include substantial amounts of materials for the court and parties in interest to review and evaluate. This rule is intended to alleviate some of the time pressures present at the start of a case so that full and close consideration can be given to matters that may have a fundamental impact on the case.

The rule provides that the court cannot grant relief on applications for the employment of professional persons, motions for the use, sale, or lease of property of the estate other than such a motion under Rule 4001, and motions to assume, assign, or reject executory contracts and unexpired leases for the first 20 days of the case, unless it is necessary to avoid immediate and irreparable harm. This standard is taken from Rule 4001(b)(2) and (c)(2), and decisions under those provisions should provide guidance for the application of this provision.

This rule does not govern motions and applications made more than 20 days after the filing of the petition.

#### **Rule 6006. Assumption, Rejection or Assignment of an Executory Contract or Unexpired Lease**

2           (e) LIMITATIONS. The trustee shall not seek authority  
3           to assume or assign multiple executory contracts or unexpired  
4           leases in one motion unless all executory contracts or  
5           unexpired leases to be assumed or assigned are between the  
6           same parties or are to be assigned to the same assignee, or the  
7           court otherwise authorizes the motion to be filed. Subject to  
8           subdivision (f), the trustee may join requests for authority to  
9           reject multiple executory contracts or unexpired leases in one  
10          motion.

11          (f) OMNIBUS MOTIONS. A motion to reject or, if  
12          permitted under subdivision (e), a motion to assume or assign  
13          multiple executory contracts or unexpired leases that are not  
14          between the same parties shall:

15                 (1) state in a conspicuous place that parties receiving  
16                 the omnibus motion should locate their names and their  
17                 contracts or leases listed in the motion;



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18 (2) list parties alphabetically and identify the  
19 corresponding contract or lease;

20 (3) specify the terms, including the curing of defaults,  
21 for each requested assumption or assignment;

22 (4) specify the terms, including the identity of each  
23 assignee and the adequate assurance of future performance by  
24 each assignee, for each requested assignment;

25 (5) be numbered consecutively with other omnibus  
26 motions to assume, assign, or reject executory contracts or  
27 unexpired leases; and

28 (6) be limited to no more than 100 executory  
29 contracts or unexpired leases.

30 (g) FINALITY OF DETERMINATION. The finality of any  
31 order respecting an executory contract or unexpired lease  
32 included in an omnibus motion shall be determined as though  
33 such contract or lease had been the subject of a separate  
34 motion.

**COMMITTEE NOTE**

The rule is amended to authorize the use of omnibus motions to reject multiple executory contracts and unexpired leases. In some cases there may be numerous executory contracts and unexpired leases, and this rule permits the combining of up to one hundred of these contracts and leases in a single motion to initiate the contested matter.

The rule also is amended to authorize the use of a single motion to assume or assign executory contracts and unexpired leases (I) when such contracts and leases are with a single nondebtor party, (ii) when such contracts and leases are being assigned to the same assignee, or (iii) the court authorizes the filing of a joint motion to assume or to assume and assign executory contracts and unexpired leases under other circumstances that are not specifically recognized in the rule.

An omnibus motion to assume, assign, or reject multiple executory contracts and unexpired leases must comply with the procedural requirements set forth in subdivision (f) of the rule, unless the court orders otherwise. These requirements are intended to ensure that the nondebtor parties to the contracts and leases receive effective notice of the motion. Among those requirements is the requirement in subdivision (f)(5) that these motions be consecutively numbered (*e.g.*, Debtor in Possession's First Omnibus Motion for Authority to Assume Executory Contracts and Unexpired Leases, Debtor in Possession's Second Omnibus Motion for Authority to Assume Executory Contracts and Unexpired Leases, etc.). There may be a need for several of these motions in a particular case. Thus, consecutive numbering of each motion is essential to keep track of these motions on the court's docket. Numbering the motions

consecutively should avoid confusion that might otherwise result from similar or identically titled motions.

Subdivision (g) of the rule provides that the finality of any order respecting an executory contract or unexpired lease included in an omnibus motion shall be determined as though such contract or lease had been the subject of a separate motion. A party seeking to appeal any such order is neither required, nor permitted, to await the court's resolution of all other contracts or leases included in the omnibus motion to obtain appellate review of the order. The rule permits the listing of multiple contracts or leases for convenience, and that convenience should not impede timely review of the court's decision with respect to each contract or lease.

**Rule 7007.1. Corporate Ownership Statement**

1  
2  
3  
4  
5  
6

\* \* \* \* \*

(b) TIME FOR FILING.

A party shall file the statement required under Rule 7007.1(a) with its first ~~pleading in an adversary proceeding~~ appearance, pleading, motion, response, or other request addressed to the court. A party shall file a supplemental

7 statement promptly upon any change in circumstances that  
8 this rule requires the party to identify or disclose.

**COMMITTEE NOTE**

The rule is amended to clarify that a party must file a corporate ownership statement with its initial paper filed with the court in an adversary proceeding. The party's initial filing may be a document that is not a "pleading" as defined in Rule 7 F.R. Civ. P., which is made applicable in adversary proceedings by Rule 7007. The amendment also brings Rule 7007.1 more closely in line with Rule 7.1 F.R. Civ. P.

**Rule 9005.1. Constitutional Challenge to a Statute —  
Notice, Certification, and Intervention**

1 Rule 5.1 F.R.Civ.P. applies in cases under the Code.

**COMMITTEE NOTE**

The rule is added to adopt the new rule added to the Federal Rules of Civil Procedure. The new Civil Rule replaces Rule 24(c) F.R.Civ.P., so the cross reference to Civil Rule 24 contained in Rule 7024 is no longer sufficient to bring the provisions of new Civil Rule 5.1 into adversary proceedings. This rule also makes Civil Rule 5.1 applicable to all contested matters and other proceedings within the bankruptcy case.

**Rule 9037. Privacy Protection For Filings Made with the Court\*\***

- 1           (a) LIMITS ON INFORMATION DISCLOSED IN A  
2           FILING. Unless the court orders otherwise, an electronic or  
3           paper filing made with the court that includes a social security  
4           number or tax identification number; a name of a person,  
5           other than the debtor, known to be and identified as a minor;  
6           a person's birth date; or a financial account number may  
7           include only:
- 8                   (1) the last four digits of the social security number  
9                   and tax identification number;
- 10                   (2) the minor's initials;
- 11                   (3) the year of birth; and
- 12                   (4) the last four digits of the financial account  
13           number.

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\*\*Amendments proposed to the Bankruptcy, Civil, and Criminal Rules implementing the E-Government Act and the Judicial Conference privacy policy are included in a side-by-side comparison chart on page 158.

14 (b) EXEMPTIONS FROM THE REDACTION  
15 REQUIREMENT. The redaction requirement of subdivision

16 (a) does not apply to the following:

17 (1) the record of an administrative or agency  
18 proceeding unless filed with a proof of claim;

19 (2) the record of a court or tribunal whose decision  
20 is being reviewed, if that record was not subject to  
21 subdivision (a) when originally filed;

22 (3) filings covered by subdivision (c) of this rule;  
23 and

24 (4) filings that are subject to § 110 of the Code.

25 (c) FILINGS MADE UNDER SEAL. The court may  
26 order that a filing be made under seal without redaction. The  
27 court may later unseal the filing or order the person who made  
28 the filing to file a redacted version for the public record.

29 (d) PROTECTIVE ORDERS. If necessary to protect  
30 private or sensitive information that is not otherwise protected

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31 by subdivision (a), a court may by order in a case under the

32 Code:

33 (1) require redaction of additional information; or

34 (2) limit or prohibit remote electronic access by a

35 nonparty to a document filed with the court.

36 (e) OPTION FOR ADDITIONAL UNREDACTED

37 FILING UNDER SEAL. A party making a redacted filing

38 under subdivision (a) may also file an unredacted copy under

39 seal. The court must retain the unredacted copy as part of the

40 record.

41 (f) OPTION FOR FILING A REFERENCE LIST. A

42 filing that contains information redacted under subdivision (a)

43 may be filed together with a reference list that identifies each

44 item of redacted information and specifies an appropriate

45 identifier that uniquely corresponds to each item of redacted

46 information listed. The reference list must be filed under seal

47 and may be amended as of right. Any references in the case

48 to an identifier in the reference list will be construed to refer  
49 to the corresponding item of information.

50 (g) WAIVER OF PROTECTION OF IDENTIFIERS. A  
51 party waives the protection of subdivision (a) as to the party's  
52 own information to the extent that such information is filed  
53 not under seal and without redaction.

**COMMITTEE NOTE**

The rule is adopted in compliance with section 205(c)(3) of the E-Government Act of 2002, Public Law No. 107-347. Section 205(c)(3) requires the Supreme Court to prescribe rules “to protect privacy and security concerns relating to electronic filing of documents and the public availability . . . of documents filed electronically.” The rule goes further than the E-Government Act in regulating paper filings even when they are not converted to electronic form, but the number of filings that remain in paper form is certain to diminish over time. Most districts scan paper filings into the electronic case file, where they become available to the public in the same way as documents initially filed in electronic form. It is electronic availability, not the form of the initial filing, that raises the privacy and security concerns addressed in the E-Government Act.

The rule is derived from and implements the policy adopted by the Judicial Conference in September 2001 to address the privacy concerns resulting from public access to electronic case files. See <http://www.privacy.uscourts.gov/Policy.htm>. The Judicial Conference policy is that documents in case files generally should be made



available electronically to the same extent they are available at the courthouse, provided that certain “personal data identifiers” are not included in the public file.

While providing for the public filing of some information, such as the last four digits of an account number, the rule does not intend to establish a presumption that this information never could or should be protected. For example, it may well be necessary in individual cases to prevent remote access by nonparties to any part of an account number or social security number. It may also be necessary to protect information not covered by the redaction requirement — such as driver’s license numbers and alien registration numbers — in a particular case. In such cases, the party may seek protection under subdivision (c) or (d). Moreover, the rule does not affect the protection available under other rules, such as Rules 16 and 26(c) of the Federal Rules of Civil Procedure, or under other sources of protective authority.

Parties must remember that any personal information not otherwise protected by sealing or redaction will be made available over the internet. Counsel should notify clients of this fact so that an informed decision may be made on what information is to be included in a document filed with the court.

The inclusion of a debtor’s full social security number on the notice of the § 341 meeting of creditors, however, is an example of full information that is made available to creditors. Of course, that information is not filed with the court, see Rule 1007(f) (the debtor “submits” this information), and the copy of the notice that is filed with the court does not include the full social security number. Thus, since the full social security number is not filed with the court, it is not available to a person searching that record.

The clerk is not required to review documents filed with the court for compliance with this rule. The responsibility to redact filings rests with counsel and the parties.

Subdivision (d) recognizes the court's inherent authority to issue a protective order to prevent remote access to private or sensitive information and to require redaction of material in addition to that which would be redacted under subdivision (a) of the rule. These orders may be issued whenever necessary either by the court on its own motion, or on motion of a party in interest.

Subdivision (e) allows a party who makes a redacted filing to file an unredacted document under seal. This provision is derived from section 205(c)(3)(iv) of the E-Government Act. Subdivision (f) allows parties to file a reference list of redacted information. This provision is derived from section 205(c)(3)(v) of the E-Government Act, as amended in 2004.

In accordance with the E-Government Act, subdivision (f) of the rule refers to "redacted" information. The term "redacted" is intended to govern a filing that is prepared with abbreviated identifiers in the first instance, as well as a filing in which a personal identifier is edited after its preparation.

Subdivision (g) allows a party to waive the protections of the rule as to its own personal information by filing it in unredacted form. A party may wish to waive the protection if it determines that the costs of redaction outweigh the benefits to privacy. As to financial account numbers, the instructions to Schedules E and F of Official Form 6 note that the debtor may elect to include the complete account number on those schedules rather than limit the number to the final four digits. Including the complete number would operate as a waiver by the debtor under subdivision (g) as to the full information that the

debtor set out on those schedules. The waiver operates only to the extent of the information that the party filed without redaction. If a party files an unredacted identifier by mistake, it may seek relief from the court.

Trial exhibits are subject to the redaction requirements of Rule 9037 to the extent they are filed with the court. Trial exhibits that are not initially filed with the court must be redacted in accordance with the rule if and when they are filed as part of an appeal or for other reasons.



**PROPOSED AMENDMENTS TO THE  
FEDERAL RULES OF BANKRUPTCY PROCEDURE\***

**Rule 1006. Filing Fee**

1           (a) GENERAL REQUIREMENT. Every petition shall be  
2           accompanied by the filing fee except as provided in  
3           subdivisions (b) and (c) of this rule. For the purpose of this  
4           rule, “filing fee” means the filing fee prescribed by 28 U.S.C.  
5           § 1930(a)(1)-(a)(5) and any other fee prescribed by the  
6           Judicial Conference of the United States under 28 U.S.C.  
7           § 1930(b) that is payable to the clerk upon the commencement  
8           of a case under the Code.

9           (b) PAYMENT OF FILING FEE IN INSTALLMENTS.

10           (1) *Application for ~~Permission~~ to Pay Filing Fee in*  
11           *Installments.* A voluntary petition by an individual shall be  
12           accepted for filing if accompanied by the debtor’s signed  
13           application, prepared as prescribed by the appropriate Official  
14           Form, stating that the debtor is unable to pay the filing fee

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\*New material is underlined; matter to be omitted is lined through.

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15 except in installments. ~~The application shall state the~~  
16 ~~proposed terms of the installment payments and that the~~  
17 ~~applicant has neither paid any money nor transferred any~~  
18 ~~property to an attorney for services in connection with the~~  
19 ~~case.~~

20 \* \* \* \* \*

21 (3) *Postponement of Attorney's Fees.* ~~The filing fee~~  
22 All installments of the filing fee must be paid in full before  
23 the debtor or chapter 13 trustee may make further payments  
24 pay an to an attorney or any other person who renders services  
25 to the debtor in connection with the case.

26 (c) WAIVER OF FILING FEE. A voluntary chapter 7  
27 petition filed by an individual shall be accepted for filing if  
28 accompanied by the debtor's application requesting a waiver  
29 under 28 U.S.C. § 1930(f), prepared as prescribed by the  
30 appropriate Official Form.

**COMMITTEE NOTE**

Subdivision (a) is amended to include a reference to new subdivision (c), which deals with fee waivers under 28 U.S.C. § 1930(f), which was added in 2005.

Subdivision (b)(1) is amended to delete the sentence requiring a disclosure that the debtor has not paid an attorney or other person in connection with the case. Inability to pay the filing fee in installments is one of the requirements for a fee waiver under the 2005 revisions to 28 U.S.C. § 1930(f). If the attorney payment prohibition were retained, payment of an attorney's fee would render many debtors ineligible for installment payments and thus enhance their eligibility for the fee waiver. The deletion of this prohibition from the rule, which was not statutorily required, ensures that debtors who have the financial ability to pay the fee in installments will do so rather than request a waiver.

Subdivision (b)(3) is amended in conformance with the changes to (b)(1) to reflect the 2005 amendments. The change is meant to clarify that (b)(3) refers to payments made after the debtor has filed the bankruptcy case and after the debtor has received permission to pay the fee in installments. Otherwise, the subdivision may conflict with intent and effect of the amendments to subdivision (b)(1).

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

- 1 (a) LIST OF CREDITORS AND EQUITY SECURITY
- 2 HOLDERS, AND CORPORATE OWNERSHIP
- 3 STATEMENT.

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4 \* \* \* \* \*

5 (4) Chapter 15 Case. Unless the court orders  
6 otherwise, a foreign representative filing a petition for  
7 recognition under chapter 15 shall file with the petition a list  
8 containing the name and address of all administrators in  
9 foreign proceedings of the debtor, all parties to any litigation  
10 in which the debtor is a party and that is pending in the United  
11 States at the time of the filing of the petition, and all entities  
12 against whom provisional relief is being sought under § 1519  
13 of the Code.

14 ~~(4)~~ (5) Extension of Time. Any extension of time for  
15 the filing of lists required by this subdivision may be granted  
16 only on motion for cause shown and on notice to the United  
17 States trustee and to any trustee, committee elected pursuant  
18 to under § 705 or appointed ~~pursuant to~~ under § 1102 of the  
19 Code, or other party as the court may direct.



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

22 (1) Except in a chapter 9 municipality case, the  
23 debtor, unless the court orders otherwise, shall file the  
24 following schedules, statements, and other documents,  
25 prepared as prescribed by the appropriate Official Forms, if  
26 any:

27 (A) schedules of assets and liabilities; ;

28 (B) a schedule of current income and  
29 expenditures; ;

30 (C) a schedule of executory contracts and  
31 unexpired leases, ~~and~~ ;

32 (D) a statement of financial affairs, ~~prepared as~~  
33 ~~prescribed by the appropriate Official Forms~~ ;

34 (E) copies of all payment advices or other  
35 evidence of payment, if any, with all but the last four digits of  
36 the debtor's social security number redacted, received by the

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37 debtor from an employer within 60 days before the filing of  
38 the petition; and

39 (F) a record of any interest that the debtor has in  
40 an account or program of the type specified in § 521(c) of the  
41 Code.

42 (2) An individual debtor in a chapter 7 case shall file  
43 a statement of intention as required by § 521(a) 521(2) of the  
44 Code, prepared as prescribed by the appropriate Official  
45 Form. A copy of the statement of intention shall be served on  
46 the trustee and the creditors named in the statement on or  
47 before the filing of the statement.

48 (3) Unless the United States trustee has determined  
49 that the credit counseling requirement of § 109 does not apply  
50 in the district, an individual debtor must file the certificate  
51 and debt repayment plan, if any, required by § 521(b), a  
52 certification under § 109(h)(3), or a request for a  
53 determination by the court under § 109(h)(4).

54           (4) Unless § 707(b)(2)(D) applies, an individual  
55           debtor in a chapter 7 case with primarily consumer debts shall  
56           file a statement of current monthly income prepared as  
57           prescribed by the appropriate Official Form, and, if the debtor  
58           has current monthly income greater than the applicable  
59           median family income for the applicable state and household  
60           size, the calculations in accordance with § 707(b), prepared as  
61           prescribed by the appropriate Official Form.

62           (5) An individual debtor in a chapter 11 case shall file  
63           a statement of current monthly income, prepared as prescribed  
64           by the appropriate Official Form.

65           (6) A debtor in a chapter 13 case shall file a statement  
66           of current monthly income, prepared as prescribed by the  
67           appropriate Official Form, and, if the debtor has current  
68           monthly income greater than the median family income for  
69           the applicable state and family size, a calculation of

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70 disposable income in accordance with § 1325(b)(3), prepared  
71 as prescribed by the appropriate Official Form.

72 (7) An individual debtor in a chapter 7 or chapter 13  
73 case shall file a statement regarding completion of a course in  
74 personal financial management, prepared as prescribed by the  
75 appropriate Official Form.

76 (8) If an individual debtor in a chapter 11, 12, or 13  
77 case has claimed an exemption under § 522(b)(3)(A) in an  
78 amount in excess of the amount set out in § 522(q)(1) in  
79 property of the kind described in § 522(p)(1), the debtor shall  
80 file a statement as to whether there is pending a proceeding in  
81 which the debtor may be found guilty of a felony of a kind  
82 described in § 522(q)(1)(A) or found liable for a debt of the  
83 kind described in § 522(q)(1)(B).

84 (c) TIME LIMITS.\* In a voluntary case, the schedules,  
85 and statements, and other documents required by subdivision

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\*Includes amendments that take effect on December 1, 2005.

86 (b)(1), (4), (5), and (6); other than the statement of intention,  
87 shall be filed with the petition, or within 15 days thereafter,  
88 except as otherwise provided in subdivisions (d), (e), (f), and  
89 (h) of this rule. In an involuntary case, the list in subdivision  
90 (a)(2), and the schedules, ~~and~~ statements, and other  
91 documents required by subdivision (b)(1) other than the  
92 statement of intention, shall be filed by the debtor within 15  
93 days of the entry of the order for relief. The documents  
94 required by subdivision (b)(3) shall be filed with the petition  
95 in a voluntary case. The statement required by subdivision  
96 (b)(7) shall be filed by the debtor within 45 days after the first  
97 date set for the meeting of creditors under § 341 of the Code  
98 in a chapter 7 case, and no later than the last payment made  
99 by the debtor as required by the plan or the filing of a motion  
100 for entry of a discharge under § 1328(b) in a chapter 13 case.  
101 The statement required by subdivision (b)(8) shall be filed by  
102 the debtor not earlier than the date of the last payment made

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103 under the plan or the date of the filing of a motion for entry of  
104 a discharge under §§ 1141(d)(5)(B), 1228(b), or 1328(b).  
105 Lists, schedules, ~~and~~ statements, and other documents filed  
106 prior to the conversion of a case to another chapter shall be  
107 deemed filed in the converted case unless the court directs  
108 otherwise. Except as provided in § 1116(3) of the Code, any  
109 ~~Any~~ extension of time for the filing of the schedules, ~~and~~  
110 statements, and other documents may be granted only on  
111 motion for cause shown and on notice to the United States  
112 trustee and to any committee elected under § 705 or appointed  
113 under § 1102 of the Code, trustee, examiner, or other party as  
114 the court may direct. Notice of an extension shall be given to  
115 the United States trustee and to any committee, trustee, or  
116 other party as the court may direct.

117 \* \* \* \* \*

#### COMMITTEE NOTE

The title of this rule is expanded to refer to “documents” in conformity with the 2005 amendments to § 521 and related

provisions of the Bankruptcy Code that include a wider range of documentary requirements.

Subdivision (a) is amended to require that any foreign representative filing a petition for recognition to commence a case under chapter 15, which was added to the Code in 2005, file a list of entities with whom the debtor is engaged in litigation in the United States. The foreign representative filing the petition for recognition also must list any entities against whom provisional relief is being sought as well as all administrators in foreign proceedings of the debtor. This should ensure that the entities most interested in the case, or their representatives, will receive notice of the petition under Rule 2002(q).

Subdivision (b)(1) addresses schedules, statements, and other documents that the debtor must file unless the court orders otherwise and other than in a case under Chapter 9. This subdivision is amended to include documentary requirements added by the 2005 amendments to § 521 that apply to the same group of debtors and have the same time limits as the existing requirements of (b)(1). Consistent with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2921 (2002), the payment advices should be redacted before they are filed.

Subdivision (b)(2) is amended to conform the renumbering of the subsections of § 521.

Subdivisions (b)(3) through (b)(7) are new. They implement the 2005 amendments to the Bankruptcy Code. Subdivision (b)(3) provides a procedure for filing documents relating to the nonprofit credit counseling requirement provided by the 2005 amendments to § 109.

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Subdivision (b)(4) addresses the filing of information about current monthly income, as defined in § 101, for certain chapter 7 debtors and, if required, additional calculations of expenses required by the 2005 revisions to § 707(b).

Subdivision (b)(5) addresses the filing of information about current monthly income, as defined in § 101, for individual chapter 11 debtors. The 2005 amendments to § 1129(a)(15) condition plan confirmation for individual debtors on the commitment of disposable income as defined in § 1325(b)(2), which is based on current monthly income.

Subdivision (b)(6) addresses the filing of information about current monthly income, as defined in § 101, for chapter 13 debtors and, if required, additional calculations of expenses. These changes are necessary because the 2005 amendments to § 1325 require that determinations of disposable income start with current monthly income.

Subdivision (b)(7) reflects the 2005 amendments to §§ 727 and 1328 that condition the receipt of a discharge on the completion of a personal financial management course, with certain exceptions.

Subdivision (b)(8) 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 chapters 11, 12, and 13 in which an exemption is claimed in excess of the amount allowed under § 522(q)(1) provides the court with a basis to conclude, in the absence of any contrary information, that § 522(q) does not apply.



Creditors receive notice under Rule 2002(f)(11) of the time to request postponement of the entry of the discharge so that they can challenge the debtor's assertions in the Rule 1007(b)(8) statement in appropriate cases.

Subdivision (c) is amended to include time limits for the filing requirements added to subdivision (b) due to the 2005 amendments to the Bankruptcy Code, and to make conforming amendments. Separate time limits are provided for the documentation of credit counseling and for the statement of the completion of the financial management course.

Subdivision (c) of the rule is also amended to recognize the limitation on the extension of time to file schedules and statements when the debtor is a small business debtor. Section 1116(3), added to the Bankruptcy Code in 2005, establishes a specific standard for courts to apply in the event that the debtor in possession or the trustee seeks an extension for filing these forms for a period beyond 30 days after the order for relief.

**Rule 1009. Amendments of Voluntary Petitions, Lists, Schedules and Statements**

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\* \* \* \* \*

2

(b) STATEMENT OF INTENTION. The statement of

3

intention may be amended by the debtor at any time before

4

the expiration of the period provided in § 521(a) ~~521(2)(B)~~ of

14 FEDERAL RULES OF BANKRUPTCY PROCEDURE  
5 the Code. The debtor shall give notice of the amendment to  
6 the trustee and to any entity affected thereby.

7 \* \* \* \* \*

**COMMITTEE NOTE**

Subdivision (b) is amended to conform to the 2005 amendments to § 521 of the Code.

**Rule 1010. Service of Involuntary Petition and Summons;  
~~Petition Commencing Ancillary Case~~ For Recognition of  
a Foreign Nonmain Proceeding**

1 On the filing of an involuntary petition or a petition  
2 ~~commencing a case ancillary to~~ for recognition of a foreign  
3 nonmain proceeding the clerk shall forthwith issue a  
4 summons for service. When an involuntary petition is filed,  
5 service shall be made on the debtor. When a petition  
6 ~~commencing an ancillary case~~ for recognition of a foreign  
7 nonmain proceeding is filed, service shall be made on the  
8 ~~parties against whom relief is sought pursuant to § 304(b)~~  
9 debtor, any entity against whom provisional relief is sought

10 under § 1519 of the Code, and on any other parties as the  
11 court may direct. The summons shall be served with a copy  
12 of the petition in the manner provided for service of a  
13 summons and complaint by Rule 7004(a) or (b). If service  
14 cannot be so made, the court may order that the summons and  
15 petition be served by mailing copies to the party's last known  
16 address, and by at least one publication in a manner and form  
17 directed by the court. The summons and petition may be  
18 served on the party anywhere. Rule 7004 (e) and Rule 4 (l)  
19 F.R.Civ.P. apply when service is made or attempted under  
20 this rule.

#### COMMITTEE NOTE

This rule is amended to implement the 2005 amendments to the Bankruptcy Code, which repealed § 304 of the Code and replaced it with chapter 15 governing ancillary and other cross-border cases. Under chapter 15, a foreign representative commences a case by filing a petition for recognition of a pending foreign nonmain proceeding. The amendment requires service of the summons and petition on the debtor and any entity against whom the representative is seeking provisional relief. Until the court enters a recognition order under § 1517, no stay is in effect unless the court enters some form of provisional relief under § 1519. Thus, there is no need to

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serve all creditors of the debtor upon filing the petition for recognition. Only those entities against whom specific provisional relief is sought need to be served. The court may direct that service be made on additional entities as appropriate.

This rule does not apply to a petition for recognition of a foreign main proceeding.

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

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

9 \* \* \* \* \*

**COMMITTEE NOTE**

The rule is amended to reflect the 2005 amendments to the Bankruptcy Code, which repealed § 304 of the Code and added

chapter 15. Section 304 covered cases ancillary to foreign proceedings, while chapter 15 of the Code governs ancillary and other cross-border cases and introduces the concept of a petition for recognition of a foreign proceeding.

**Rule 1017. Dismissal or Conversion of Case; Suspension**

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\* \* \* \* \*

2

(e) DISMISSAL OF AN INDIVIDUAL DEBTOR'S

3

CHAPTER 7 CASE OR CONVERSION TO A CASE

4

UNDER CHAPTER 11 or 13 FOR SUBSTANTIAL ABUSE.

5

The court may dismiss or, with the debtor's consent, convert

6

an individual debtor's case for ~~substantial~~ abuse under

7

§ 707(b) only on motion ~~by the United States trustee or on the~~

8

~~court's own motion~~ and after a hearing on notice to the debtor,

9

the trustee, the United States trustee, and any other entities as

10

the court directs.

11

(1) Except as otherwise provided in § 704(b)(2), a ~~A~~

12

motion to dismiss a case for ~~substantial~~ abuse under § 707(b)

13

or (c) may be filed ~~by the United States trustee~~ only within 60

18 FEDERAL RULES OF BANKRUPTCY PROCEDURE  
14 days after the first date set for the meeting of creditors under  
15 § 341(a), unless, on request filed ~~by the United States trustee~~  
16 before the time has expired, the court for cause extends the  
17 time for filing the motion to dismiss. The ~~United States~~  
18 ~~trustee party filing the motion~~ shall set forth in the motion all  
19 matters to be considered ~~submitted to the court for its~~  
20 ~~consideration~~ at the hearing. A motion to dismiss under  
21 § 707(b)(1) and (3) shall state with particularity the  
22 circumstances alleged to constitute abuse.

23 \* \* \* \* \*

#### COMMITTEE NOTE

Subdivisions (e) and (e)(1) are amended to implement the 2005 revisions to § 707 of the Code. These revisions permit conversion of a chapter 7 case to a case under chapter 11 or 13, change the basis for dismissal or conversion from “substantial abuse” to “abuse,” authorize parties other than the United States trustee to bring motions under § 707(b) under certain circumstances, and add § 707(c) to create an explicit ground for dismissal based on the request of a victim of a crime of violence or drug trafficking. The conforming amendments to subdivision (e) preserve the time limits already in place for § 707(b) motions, except to the extent that § 704(b)(2) sets the deadline for the United States trustee to act. In contrast to the grounds for a motion to dismiss under § 707(b)(2),

which are quite specific, the grounds under § 707(b)(1) and (3) are very general. Subdivision (e) therefore requires that motions to dismiss under §§ 707(b)(1) and (3) state with particularity the circumstances alleged to constitute abuse to enable the debtor to respond.

**Rule 1019. Conversion of Chapter 11 Reorganization Case, Chapter 12 Family Farmer's Debt Adjustment Case, or Chapter 13 Individual's Debt Adjustment Case to a Chapter 7 Liquidation Case**

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\* \* \* \* \*

(2) NEW FILING PERIODS. A new time period for filing ~~claims~~, a motion under § 707(b) or (c), a claim, a complaint objecting to discharge, or a complaint to obtain a determination of dischargeability of any debt shall commence ~~under pursuant to Rules 1017, 3002, 4004, or 4007, provided~~ that a new time period shall not commence if a chapter 7 case had been converted to a chapter 11, 12, or 13 case and thereafter reconverted to a chapter 7 case and the time for filing ~~claims~~, a motion under § 707(b) or (c), a claim, a complaint objecting to discharge, or a complaint to obtain a

20 FEDERAL RULES OF BANKRUPTCY PROCEDURE  
12 determination of the dischargeability of any debt, or any  
13 extension thereof, expired in the original chapter 7 case.

14 \* \* \* \* \*

#### COMMITTEE NOTE

Subdivision (2) is amended to provide a new filing period for motions under § 707(b) and (c) of the Code when a case is converted to chapter 7.

**Rule 1020. Election to be Considered a Small Business in  
~~a Chapter 11 Reorganization Case~~ Small Business  
Chapter 11 Reorganization Case**

1 In a chapter 11 reorganization case, a debtor that is a small  
2 business may elect to be considered a small business by filing  
3 a written statement of election not later than 60 days after the  
4 date of the order for relief.

5 (a) SMALL BUSINESS DEBTOR DESIGNATION. In  
6 a voluntary chapter 11 case, the debtor shall state in the  
7 petition whether the debtor is a small business debtor. In an  
8 involuntary chapter 11 case, the debtor shall file within 15  
9 days after entry of the order for relief a statement as to



10 whether the debtor is a small business debtor. Except as  
11 provided in subdivision (c), the status of the case with respect  
12 to whether it is a small business case shall be in accordance  
13 with the debtor's statement under this subdivision, unless and  
14 until the court enters an order finding that the debtor's  
15 statement is incorrect.

16 (b) OBJECTING TO DESIGNATION. Except as  
17 provided in subdivision (c), the United States trustee or a  
18 party in interest may file an objection to the debtor's  
19 statement under subdivision (a) not later than 30 days after the  
20 conclusion of the meeting of creditors held under § 341(a) of  
21 the Code, or within 30 days after any amendment to the  
22 statement, whichever is later.

23 (c) APPOINTMENT OF COMMITTEE OF  
24 UNSECURED CREDITORS. If the United States trustee has  
25 appointed a committee of unsecured creditors under  
26 § 1102(a)(1), the case shall proceed as a small business case

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27 only if, and from the time when, the court enters an order  
28 determining that the committee has not been sufficiently  
29 active and representative to provide effective oversight of the  
30 debtor and that the debtor satisfies all the other requirements  
31 for being a small business. A request for a determination  
32 under this subdivision may be filed by the United States  
33 trustee or a party in interest only within a reasonable time  
34 after the failure of the committee to be sufficiently active and  
35 representative. The debtor may file a request for a  
36 determination at any time as to whether the committee has  
37 been sufficiently active and representative.

38 (d) PROCEDURE FOR OBJECTION OR  
39 DETERMINATION. Any objection or request for a  
40 determination under this rule shall be governed by Rule 9014  
41 and served on the debtor, the debtor's attorney, the United  
42 States trustee, the trustee, any committee appointed under  
43 § 1102 or its authorized agent, or, if no committee of

44 unsecured creditors has been appointed under § 1102, on the  
45 creditors included on the list filed under Rule 1007(d), and on  
46 such other entities as the court may direct.

#### COMMITTEE NOTE

Under the Bankruptcy Code, as amended in 2005, there are no provisions permitting or requiring a small business debtor to elect to be treated as a small business. Therefore, there is no longer any need for a rule on elections to be considered a small business.

The 2005 amendments to the Code include several provisions relating to small business cases under chapter 11. Section 101 of the Code includes definitions of “small business debtor” and “small business case.” The purpose of the new language in this rule is to provide a procedure for informing the parties, the United States trustee, and the court of whether the debtor is a small business debtor, and to provide procedures for resolving disputes regarding the proper characterization of the debtor. Because it is important to resolve such disputes early in the case, a time limit for objecting to the debtor’s self-designation is imposed. Rule 9006(b)(1), which governs enlargement of time, is applicable to the time limits set forth in this rule.

An important factor in determining whether the debtor is a small business debtor is whether the United States trustee has appointed a committee of unsecured creditors under § 1102 of the Code, and whether such a committee is sufficiently active and representative. Subdivision (c), relating to the appointment and activity of a committee of unsecured creditors, is designed to be consistent with the Code’s definition of “small business debtor.”

**Rule 1021. Health Care Business Case**

1           (a) HEALTH CARE BUSINESS DESIGNATION.  
2           Unless the court orders otherwise, if a petition in a case under  
3           chapter 7, chapter 9, or chapter 11 states that the debtor is a  
4           health care business, the case shall proceed as a case in which  
5           the debtor is a health care business.

6           (b) MOTION. The United States trustee or a party in  
7           interest may file a motion for a determination as to whether  
8           the debtor is a health care business. The motion shall be  
9           transmitted to the United States trustee and served on the  
10           debtor, the trustee, any committee elected under § 705 or  
11           appointed under § 1102 of the Code or its authorized agent,  
12           or, if the case is a chapter 9 municipality case or a chapter 11  
13           reorganization case and no committee of unsecured creditors  
14           has been appointed under § 1102, on the creditors included on  
15           the list filed under Rule 1007(d), and such other entities as the

16 court may direct. The motion shall be governed by Rule  
17 9014.

### COMMITTEE NOTE

Section 101(27A) of the Code, added in 2005, defines a health care business. This rule provides procedures for identifying the debtor as a health care business. The debtor in a voluntary case, or petitioning creditors in an involuntary case, will usually make the identification by checking the appropriate box on the petition. If a party in interest or the United States trustee disagrees with the determination by the debtor or the petitioning creditors as to whether the debtor is a health care business, this rule provides procedures for resolving the dispute.

**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 (a) TWENTY-DAY NOTICES TO PARTIES IN  
2 INTEREST. Except as provided in subdivisions (h), (l), and  
3 ~~(f)~~ (l), (p), and (q) of this rule, the clerk, or some other person  
4 as the court may direct, shall give the debtor, the trustee, all  
5 creditors and indenture trustees at least 20 days' notice by  
6 mail of:

8 (b) TWENTY-FIVE-DAY NOTICES TO PARTIES IN  
9 INTEREST. Except as provided in subdivision (l) of this  
10 rule, the clerk, or some other person as the court may direct,  
11 shall give the debtor, the trustee, all creditors and indenture  
12 trustees not less than 25 days notice by mail of (1) the time  
13 fixed for filing objections and the hearing to consider  
14 approval of a disclosure statement or, under § 1125(f), to  
15 make a final determination whether the plan provides  
16 adequate information so that a separate disclosure statement  
17 is not necessary; and (2) the time fixed for filing objections  
18 and the hearing to consider confirmation of a chapter 9,  
19 chapter 11, or chapter 13 plan.

20 (c) CONTENT OF NOTICE.

21 (1) *Proposed Use, Sale, or Lease of Property.*

22 Subject to Rule 6004 the notice of a proposed use, sale, or  
23 lease of property required by subdivision (a)(2) of this rule

24 shall include the time and place of any public sale, the terms  
25 and conditions of any private sale and the time fixed for filing  
26 objections. The notice of a proposed use, sale, or lease of  
27 property, including real estate, is sufficient if it generally  
28 describes the property. The notice of a proposed sale or lease  
29 of personally identifiable information under § 363(b)(1)(A) or  
30 (B) of the Code shall state whether the sale is consistent with  
31 a policy prohibiting the transfer of the information.

32 \* \* \* \* \*

33 (f) OTHER NOTICES. Except as provided in subdivision  
34 (l) of this rule, the clerk, or some other person as the court  
35 may direct, shall give the debtor, all creditors, and indenture  
36 trustees notice by mail of: (1) the order for relief; (2) the  
37 dismissal or the conversion of the case to another chapter, or  
38 the suspension of proceedings under § 305; (3) the time  
39 allowed for filing claims pursuant to Rule 3002; (4) the time  
40 fixed for filing a complaint objecting to the debtor's discharge

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41 pursuant to § 727 of the Code as provided in Rule 4004; (5)  
42 the time fixed for filing a complaint to determine the  
43 dischargeability of a debt pursuant to § 523 of the Code as  
44 provided in Rule 4007; (6) the waiver, denial, or revocation  
45 of a discharge as provided in Rule 4006; (7) entry of an order  
46 confirming a chapter 9, 11, or 12 plan; ~~and~~ (8) a summary of  
47 the trustee's final report in a chapter 7 case if the net proceeds  
48 realized exceed \$1,500; (9) a notice under Rule 5008  
49 regarding the presumption of abuse; (10) a statement under §  
50 704(b)(1) as to whether the debtor's case would be presumed  
51 to be an abuse under § 707(b); and (11) the time to request a  
52 delay in the entry of the discharge under §§ 1141(d)(5)(C),  
53 1228(f), and 1328(h). Notice of the time fixed for accepting  
54 or rejecting a plan pursuant to Rule 3017(c) shall be given in  
55 accordance with Rule 3017(d).

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57 (g) ADDRESSING NOTICES



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(2) Except as provided in § 342(f) of the Code, 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 2002(g)(1), the notices shall be mailed to the address shown on the list of equity security holders.

\* \* \* \* \*

(p) NOTICE TO A FOREIGN CREDITOR.

(1) If, at the request of a party in interest or the United States trustee, or on its own initiative, the court finds that a notice mailed within the time prescribed by these rules would not be sufficient to give a creditor with a foreign address to which notices under these rules are mailed reasonable notice

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75 under the circumstances, the court may order that the notice  
76 be supplemented with notice by other means or that the time  
77 prescribed for the notice by mail be enlarged.

78 (2) Unless the court for cause orders otherwise, a  
79 creditor with a foreign address to which notices under this  
80 rule are mailed shall be given at least 30 days' notice of the  
81 time fixed for filing a proof of claim under Rule 3002(c) or  
82 Rule 3003(c).

83 (q) NOTICE OF PETITION FOR RECOGNITION OF  
84 FOREIGN PROCEEDING AND OF COURT'S INTENTION  
85 TO COMMUNICATE WITH FOREIGN COURTS AND  
86 FOREIGN REPRESENTATIVES.

87 (1) Notice of Petition for Recognition. The clerk, or  
88 some other person as the court may direct, shall forthwith  
89 give the debtor, all administrators in foreign proceedings of  
90 the debtor, all entities against whom provisional relief is  
91 being sought under § 1519 of the Code, all parties to any

92 litigation in which the debtor is a party and that is pending in  
93 the United States at the time of the filing of the petition, and  
94 such other entities as the court may direct, at least 20 days'  
95 notice by mail of the hearing on the petition for recognition of  
96 a foreign proceeding. The notice shall state whether the  
97 petition seeks recognition as a foreign main proceeding or  
98 foreign nonmain proceeding.

99 *(2) Notice of Court's Intention to Communicate with*  
100 *Foreign Courts and Foreign Representatives.* The clerk, or  
101 some other person as the court may direct, shall give the  
102 debtor, all administrators in foreign proceedings of the debtor,  
103 all entities against whom provisional relief is being sought  
104 under § 1519 of the Code, all parties to any litigation in which  
105 the debtor is a party and that is pending in the United States  
106 at the time of the filing of the petition, and such other entities  
107 as the court may direct, notice by mail of the court's intention

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108 to communicate with a foreign court or foreign representative  
109 as prescribed by Rule 5012.

#### COMMITTEE NOTE

Subdivision (b) is amended to provide for 25 days' notice of the time for the court to make a final determination whether the plan in a small business case can serve as a disclosure statement. Conditional approval of a disclosure statement in a small business case is governed by Rule 3017.1 and does not require 25 days' notice. The court may consider this matter in a hearing combined with the confirmation hearing in a small business case.

Subdivision (c)(1) is amended to require that a trustee leasing or selling personally identifiable information under § 363(b)(1)(A) or (B) of the Code, as amended in 2005, include in the notice of the lease or sale transaction a statement as to whether the lease or sale is consistent with a policy prohibiting the transfer of the information.

Section 1514(d) of the Code, added in 2005, requires that such additional time as is reasonable under the circumstances be given to creditors with foreign addresses with respect to notices and the filing of a proof of claim. Thus, subdivision (p)(1) is added to the rule to give the court flexibility to direct that notice by other means shall supplement notice by mail, or to enlarge the notice period, for creditors with foreign addresses. If cause exists, such as likely delays in the delivery of mailed notices in particular locations, the court may order that notice also be given by email, facsimile, or private courier. Alternatively, the court may enlarge the notice period for a creditor with a foreign address. It is expected that in most situations involving foreign creditors, fairness will not require any additional notice or extension of the notice period. This rule recognizes that the court has discretion to establish procedures to determine, on its own initiative,

whether relief under subdivision (p) is appropriate, but that the court is not required to establish such procedures and may decide to act only on request of a party in interest.

Subdivisions (f)(9) and (10) are new. They reflect the 2005 amendments to §§ 342(d) and 704(b) of the Bankruptcy Code. Section 342(d) requires the clerk to give notice to creditors shortly after the commencement of the case as to whether a presumption of abuse exists. Subdivision (f)(9) adds this notice to the list of notices that the clerk must give. Subdivision (f)(10) implements the amendment to § 704(b) which requires the court to provide a copy to all creditors of a statement by the United States trustee or bankruptcy administrator as to whether the debtor's case would be presumed to be an abuse under § 707(b) not later than five days after receiving it.

Subdivision (f)(11) is also added 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 request a delay of the entry of the discharge in the case.

Subdivision (g)(2) of 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).

Subdivision (p)(2) is added to the rule to grant creditors with a foreign address to which notices are mailed at least 30 days' notice of the time within which to file proofs of claims if notice is mailed to the foreign address, unless the court orders otherwise. If cause exists, such as likely delays in the delivery of notices in particular locations, the court may extend the notice period for creditors with foreign addresses. The court may also shorten the additional notice time if circumstances so warrant. For example, if the court in a chapter 11 case determines that supplementing the notice to a foreign creditor with notice by electronic means, such as email or facsimile, would give the creditor reasonable notice, the court may order that the creditor be given only 20 days' notice in accordance with Rule 2002(a)(7).

Subdivision (q) is added to require that notice of the hearing on the petition for recognition of a foreign proceeding be given to the debtor, all administrators in foreign proceedings of the debtor, entities against whom provisional relief is sought, and entities with whom the debtor is engaged in litigation at the time of the commencement of the case. There is no need at this stage of the proceedings to provide notice to all creditors. If the foreign representative should take action to commence a case under another chapter of the Code, the rules governing those proceedings will operate to provide that notice is given to all creditors.

The rule also requires notice of the court's intention to communicate with a foreign court or foreign representative under Rule 5012.

**Rule 2003. Meeting of Creditors or Equity Security Holders**

1 (a) DATE AND PLACE. Except as provided in § 341(e)  
2 of the Code, in ~~in~~ a chapter 7 liquidation or a chapter 11  
3 reorganization case, the United States trustee shall call a  
4 meeting of creditors to be held no fewer than 20 and no more  
5 than 40 days after the order for relief. In a chapter 12 family  
6 farmer debt adjustment case, the United States trustee shall  
7 call a meeting of creditors to be held no fewer than 20 and no  
8 more than 35 days after the order for relief. In a chapter 13  
9 individual's debt adjustment case, the United States trustee  
10 shall call a meeting of creditors to be held no fewer than 20  
11 and no more than 50 days after the order for relief. If there is  
12 an appeal from or a motion to vacate the order for relief, or if  
13 there is a motion to dismiss the case, the United States trustee  
14 may set a later date for the meeting. The meeting may be held  
15 at a regular place for holding court or at any other place  
16 designated by the United States trustee within the district

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17 convenient for the parties in interest. If the United States  
18 trustee designates a place for the meeting which is not  
19 regularly staffed by the United States trustee or an assistant  
20 who may preside at the meeting, the meeting may be held not  
21 more than 60 days after the order for relief.

22 \* \* \* \* \*

**COMMITTEE NOTE**

If the debtor has solicited acceptances to a plan before commencement of the case, § 341(e), which was added to the Bankruptcy Code in 2005, authorizes the court, on request of a party in interest and after notice and a hearing, to order that a meeting of creditors not be convened. The rule is amended to recognize that a meeting of creditors might not be held in those cases.

**Rule 2007.1. Appointment of Trustee or Examiner in a Chapter 11 Reorganization Case**

1 \* \* \* \* \*

2 (b) ELECTION OF TRUSTEE.

3 \* \* \* \* \*

4 (3) *Report of Election and Resolution of Disputes.*



5 (A) Report of Undisputed Election. If no dispute  
6 arises out of the election is not disputed, the United States  
7 trustee shall promptly file a report of certifying the election,  
8 including the name and address of the person elected and a  
9 statement that the election is undisputed. The report shall be  
10 accompanied by a verified statement of the person elected  
11 setting forth the person's connections with the debtor,  
12 creditors, any other party in interest, their respective attorneys  
13 and accountants, the United States trustee, or any person  
14 employed in the office of the United States trustee. The  
15 United States trustee shall file with the report an application  
16 for approval of the appointment in accordance with  
17 subdivision (c) of this rule. The report constitutes  
18 appointment of the elected person to serve as trustee, subject  
19 to court approval, as of the date of entry of the order  
20 approving the appointment.

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21 (B) Dispute Arising Out of an Disputed Election.

22 If a dispute arises out of an ~~the election is disputed~~, the United  
23 States trustee shall promptly file a report stating that the  
24 election is disputed, informing the court of the nature of the  
25 dispute, and listing the name and address of any candidate  
26 elected under any alternative presented by the dispute. The  
27 report shall be accompanied by a verified statement by each  
28 candidate elected under each alternative presented by the  
29 dispute, setting forth the person's connections with the debtor,  
30 creditors, any other party in interest, their respective attorneys  
31 and accountants, the United States trustee, ~~and~~ or any person  
32 employed in the office of the United States trustee. Not later  
33 than the date on which the report of the disputed election is  
34 filed, the United States trustee shall mail a copy of the report  
35 and each verified statement to any party in interest that has  
36 made a request to convene a meeting under § 1104(b) or to  
37 receive a copy of the report, and to any committee appointed

38 under § 1102 of the Code. Unless a motion for the resolution  
39 of the dispute is filed not later than 10 days after the United  
40 States trustee files the report, any person appointed by the  
41 United States trustee under § 1104(d) and approved in  
42 accordance with subdivision (c) of this rule shall serve as  
43 trustee. If a motion for the resolution of the dispute is timely  
44 filed, and the court determines the result of the election and  
45 approves the person elected, the report will constitute  
46 appointment of the elected person as of the date of entry of  
47 the order approving the appointment.

48 (c) APPROVAL OF APPOINTMENT. An order  
49 approving the appointment of a trustee elected under  
50 § 1104(b) or appointed under § 1104(d), or the appointment  
51 of an examiner under § 1104(d) of the Code, shall be made on  
52 application of the United States trustee. The application shall  
53 state the name of the person appointed and, to the best of the  
54 applicant's knowledge, all the person's connections with the

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55 debtor, creditors, any other parties in interest, their respective  
56 attorneys and accountants, the United States trustee, ~~and or~~  
57 persons employed in the office of the United States trustee.  
58 ~~Unless the person has been elected under § 1104(b), the~~ The  
59 application shall state the names of the parties in interest with  
60 whom the United States trustee consulted regarding the  
61 appointment. The application shall be accompanied by a  
62 verified statement of the person appointed setting forth the  
63 person's connections with the debtor, creditors, any other  
64 party in interest, their respective attorneys and accountants,  
65 the United States trustee, ~~and or~~ any person employed in the  
66 office of the United States trustee.

#### COMMITTEE NOTE

Under § 1104(b)(2) of the Code, as amended in 2005, if an eligible, disinterested person is elected to serve as trustee in a chapter 11 case, the United States trustee is directed to file a report certifying the election. The person elected does not have to be appointed to the position. Rather, the filing of the report certifying the election itself constitutes the appointment. The section further provides that in the

event of a dispute in the election of a trustee, the court must resolve the matter. The rule is amended to be consistent with § 1104(b)(2).

When the United States trustee files a report certifying the election of a trustee, the person elected must provide a verified statement, similar to the statement required of professional persons under Rule 2014, disclosing connections with parties in interest and certain other persons connected with the case. Although court approval of the person elected is not required, the disclosure of the person's connections will enable parties in interest to determine whether the person is disinterested.

**Rule 2007.2. Appointment of Patient Care Ombudsman  
in a Health Care Business Case**

1           (a) ORDER TO APPOINT PATIENT CARE  
2           OMBUDSMAN. In a chapter 7, chapter 9, or chapter 11 case  
3           in which the debtor is a health care business, the court shall  
4           order the appointment of a patient care ombudsman under  
5           § 333 of the Code, unless the court, on motion of the United  
6           States trustee or a party in interest filed not later than 20 days  
7           after the commencement of the case or within another time  
8           fixed by the court, finds that the appointment of a patient care  
9           ombudsman is not necessary for the protection of patients  
10           under the specific circumstances of the case.

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11 (b) MOTION FOR ORDER TO APPOINT  
12 OMBUDSMAN. If the court has ordered that the  
13 appointment of an ombudsman is not necessary, or has  
14 ordered the termination of the appointment of an ombudsman,  
15 the court, on motion of the United States trustee or a party in  
16 interest, may order the appointment at any time during the  
17 case if the court finds that the appointment of an ombudsman  
18 has become necessary to protect patients.

19 (c) APPOINTMENT OF OMBUDSMAN. If a patient  
20 care ombudsman is appointed under § 333, the United States  
21 trustee shall promptly file a notice of the appointment,  
22 including the name and address of the person appointed.  
23 Unless the person appointed is a State Long-Term Care  
24 Ombudsman, the notice shall be accompanied by a verified  
25 statement of the person appointed setting forth the person's  
26 connections with the debtor, creditors, patients, any other  
27 party in interest, their respective attorneys and accountants,

28 the United States trustee, and any person employed in the  
29 office of the United States trustee.

30 (d) TERMINATION OF APPOINTMENT. On motion  
31 of the United States trustee or a party in interest, the court  
32 may terminate the appointment of a patient care ombudsman  
33 if the court finds that the appointment is not necessary for the  
34 protection of patients.

35 (e) MOTION. A motion under this rule shall be governed  
36 by Rule 9014. The motion shall be transmitted to the United  
37 States trustee and served on the debtor, the trustee, any  
38 committee elected under § 705 or appointed under § 1102 of  
39 the Code or its authorized agent, or, if the case is a chapter 9  
40 municipality case or a chapter 11 reorganization case and no  
41 committee of unsecured creditors has been appointed under  
42 § 1102, on the creditors included on the list filed under Rule  
43 1007(d), and such other entities as the court may direct.

**COMMITTEE NOTE**

Section 333 of the Code, added in 2005, requires the court to order the appointment of a health care ombudsman within the first 30 days of a health care business case, unless the court finds that the appointment is not necessary for the protection of patients. The rule recognizes this requirement and provides a procedure by which a party may obtain a court order finding that the appointment of a patient care ombudsman is unnecessary. In the absence of a timely motion under subdivision (a) of this rule, the court will enter an order directing the United States trustee to appoint the ombudsman.

Subdivision (b) recognizes that, despite a previous order finding that a patient care ombudsman is not necessary, circumstances of the case may change or newly discovered evidence may demonstrate the necessity of an ombudsman to protect the interests of patients. In that event, a party may move the court for an order directing the appointment of an ombudsman.

When the appointment of a patient care ombudsman is ordered, the United States trustee is required to appoint a disinterested person to serve in that capacity. Court approval of the appointment is not required, but subdivision (c) requires the person appointed, if not a State Long-Term Care Ombudsman, to file a verified statement similar to the statement filed by professional persons under Rule 2014 so that parties in interest will have information relevant to disinterestedness. If a party believes that the person appointed is not disinterested, it may file a motion asking the court to find that the person is not eligible to serve.

Subdivision (d) permits parties in interest to move for the termination of the appointment of a patient care ombudsman. If the movant can show that there no longer is any need for the ombudsman, the court may order the termination of the appointment.



**Rule 2015. Duty to Keep Records, Make Reports, and Give Notice of Case or Change of Status**

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(d) FOREIGN REPRESENTATIVE. In a case in which the court has granted recognition of a foreign proceeding under chapter 15, the foreign representative shall file any notice required under § 1518 of the Code within 15 days after the date when the representative becomes aware of the subsequent information.

~~(d)~~ (e) TRANSMISSION OF REPORTS. In a chapter 11 case the court may direct that copies or summaries of annual reports and copies or summaries of other reports shall be mailed to the creditors, equity security holders, and indenture trustees. The court may also direct the publication of summaries of any such reports. A copy of every report or summary mailed or published pursuant to this subdivision shall be transmitted to the United States trustee.

**COMMITTEE NOTE**

The rule is amended to fix the time for the filing of notices under § 1519 which was added to the Code in 2005. Former subdivision (d) is renumbered as subdivision (e).

**Rule 2015.1. Patient Care Ombudsman**

1           (a) REPORTS. Unless the court orders otherwise, a  
2           patient care ombudsman, at least 10 days before making a  
3           report under § 333(b)(2) of the Code, shall give notice that the  
4           report will be made to the court. The notice shall be  
5           transmitted to the United States trustee, posted conspicuously  
6           at the health care facility that is the subject of the report, and  
7           served on the debtor, the trustee, all patients, and any  
8           committee elected under § 705 or appointed under § 1102 of  
9           the Code or its authorized agent, or, if the case is a chapter 9  
10           municipality case or a chapter 11 reorganization case and no  
11           committee of unsecured creditors has been appointed under  
12           § 1102, on the creditors included on the list filed under Rule  
13           1007(d), and such other entities as the court may direct. The

14 notice shall state the date and time when the report will be  
15 made, the manner in which the report will be made, and, if the  
16 report is in writing, the name, address, telephone number,  
17 email address, and website, if any, of the person from whom  
18 a copy of the report may be obtained at the debtor's expense.

19 (b) AUTHORIZATION TO REVIEW CONFIDENTIAL  
20 PATIENT RECORDS. A motion by a health care  
21 ombudsman under § 333(c) to review confidential patient  
22 records shall be governed by Rule 9014, served on the patient  
23 and any family member or other contact person whose name  
24 and address has been given to the trustee or the debtor for the  
25 purpose of providing information regarding the patient's  
26 health care, and transmitted to the United States trustee  
27 subject to applicable nonbankruptcy law relating to patient  
28 privacy. Unless the court orders otherwise, a hearing on the  
29 motion may be commenced no earlier than 15 days after  
30 service of the motion.

**COMMITTEE NOTE**

This rule is new. It implements § 333, added to the Code in 2005. Subdivision (a) is designed to give parties in interest, including patients or their representatives, sufficient notice so that they will be able to review written reports or attend hearings at which reports are made. The rule permits a notice to relate to a single report or to periodic reports to be given during the case. For example, the ombudsman may give notice that reports will be made at specified intervals or dates during the case.

Subdivision (a) of the rule requires that the notice be posted conspicuously at the health care facility in a place where it will be seen by patients and their families or others visiting the patient. This may require posting in common areas and patient rooms within the facility. Because health care facilities and the patients they serve can vary greatly, the locations of the posted notice should be tailored to the specific facility that is the subject of the report.

Subdivision (b) requires the ombudsman to notify the patient and the United States trustee that the ombudsman is seeking access to confidential patient records so that they will be able to appear and be heard on the matter. This procedure should assist the court in reaching its decision both as to access to the records and appropriate restrictions on that access to ensure continued confidentiality. Notices given under this rule are subject to provisions under applicable federal and state law that relate to the protection of patients' privacy, such as the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (HIPAA).

**Rule 2015.2. Transfer of Patient in Health Care Business Case**

1           Unless the court orders otherwise, if the debtor is a health  
2           care business, the trustee may not transfer a patient to another  
3           health care business under § 704(a)(12) of the Code unless the  
4           trustee gives at least 10 days' notice of the transfer to the  
5           patient care ombudsman, if any, and to the patient and any  
6           family member or other contact person whose name and  
7           address has been given to the trustee or the debtor for the  
8           purpose of providing information regarding the patient's  
9           health care subject to applicable nonbankruptcy law relating  
10          to patient privacy.

**COMMITTEE NOTE**

This rule is new. Section 704(a)(12), added to the Code in 2005, authorizes the trustee to relocate patients when a health care business debtor's facility is in the process of being closed. The Code permits the trustee to take this action without the need for any court order, but the notice required by this rule will enable a patient care ombudsman appointed under § 333, or a patient who contends that the trustee's actions violate § 704(a)(12), to have those issues resolved before the patient is transferred.

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This rule also permits the court to enter an order dispensing with or altering the notice requirement in proper circumstances. The facility could be closed immediately, or very quickly, such that 10 days' notice would not be possible in some instances. In that event, the court may shorten the time required for notice.

Notices given under this rule are subject to provisions under applicable federal and state law that relate to the protection of patients' privacy, such as the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (HIPAA).

**Rule 3002. Filing Proof of Claim or Interest**

1 \* \* \* \* \*

2 (c) TIME FOR FILING. In a chapter 7 liquidation,  
3 chapter 12 family farmer's debt adjustment, or chapter 13  
4 individual's debt adjustment case, a proof of claim is timely  
5 filed if it is filed not later than 90 days after the first date set  
6 for the meeting of creditors called under § 341(a) of the Code,  
7 except as follows:

8 (1) A proof of claim filed by a governmental unit,  
9 other than for a claim resulting from a tax return filed under  
10 § 1308, is timely filed if it is filed not later than 180 days after

11 the date of the order for relief. On motion of a governmental  
12 unit before the expiration of such period and for cause shown,  
13 the court may extend the time for filing of a claim by the  
14 governmental unit. A proof of claim filed by a governmental  
15 unit for a claim resulting from a tax return filed under § 1308  
16 is timely filed if it is filed not later than 180 days after the  
17 date of the order for relief or 60 days after the date of the  
18 filing of the tax return, whichever is later.

19 \* \* \* \* \*

20 (6) If notice of the time for filing a proof of claim has  
21 been mailed to a creditor at a foreign address, on motion filed  
22 by the creditor before or after the expiration of the time, the  
23 court may extend the time by not more than 60 days if the  
24 court finds that the notice was not sufficient under the  
25 circumstances to give the creditor a reasonable time to file a  
26 proof of claim.

**COMMITTEE NOTE**

Subdivision (c)(1) is amended to reflect the addition of § 1308 to the Bankruptcy Code in 2005. This provision requires that chapter 13 debtors file tax returns during the pendency of the case, and imposes bankruptcy-related consequences if debtors fail to do so. Subdivision (c)(1) provides additional time for governmental units to file a proof of claim for tax obligations with respect to tax returns filed during the pendency of a chapter 13 case.

Paragraph (c)(6) is added to give the court discretion to extend the time for filing a proof of claim for a creditor who received notice of the time to file the claim at a foreign address, if the court finds that the notice was not sufficient, under the particular circumstances, to give the foreign creditor a reasonable time to file a proof of claim. This amendment is designed to comply with § 1514(d), which was added to the Code in 2005 and requires that the rules and orders of the court provide such additional time as is reasonable under the circumstances for foreign creditors to file claims in cases under all chapters of the Code.

**Rule 3003. Filing Proof of Claim or Equity Security Interest in Chapter 9 Municipality or Chapter 11 Reorganization Cases**

1

\* \* \* \* \*

2

(c) FILING PROOF OF CLAIM.



3 (1) *Who May File.* Any creditor or indenture trustee  
4 may file a proof of claim within the time prescribed by  
5 subdivision (c)(3) of this rule.

6 (2) *Who Must File.* Any creditor or equity security  
7 holder whose claim or interest is not scheduled or scheduled  
8 as disputed, contingent, or unliquidated shall file a proof of  
9 claim or interest within the time prescribed by subdivision  
10 (c)(3) of this rule; any creditor who fails to do so shall not be  
11 treated as a creditor with respect to such claim for the  
12 purposes of voting and distribution.

13 (3) *Time for Filing.* The court shall fix and for cause  
14 shown may extend the time within which proofs of claim or  
15 interest may be filed. Notwithstanding the expiration of such  
16 time, a proof of claim may be filed to the extent and under the  
17 conditions stated in Rule 3002(c)(2), (c)(3), ~~and (c)(4)~~, and  
18 (c)(6).

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19 (4) *Effect of Filing Claim or Interest.* A proof of  
20 claim or interest executed and filed in accordance with this  
21 subdivision shall supersede any scheduling of that claim or  
22 interest pursuant to § 521(a)(1) of the Code.

23 (5) *Filing by Indenture Trustee.* An indenture trustee  
24 may file a claim on behalf of all known or unknown holders  
25 of securities issued pursuant to the trust instrument under  
26 which it is trustee.

27 \* \* \* \* \*

#### COMMITTEE NOTE

The rule is amended to implement § 1514(d), which was added to the Code in 2005, by making the new Rule 3002(c)(6) applicable in chapter 9 and chapter 11 cases. Section 1514(d) requires that creditors with foreign addresses be provided such additional time as is reasonable under the circumstances to file proofs of claims.

#### **Rule 3016. Filing of Plan and Disclosure Statement in a Chapter 9 Municipality or Chapter 11 Reorganization Case**

1 \* \* \* \* \*

2 (b) DISCLOSURE STATEMENT. In a chapter 9 or 11  
3 case, a disclosure statement under § 1125 or evidence  
4 showing compliance with § 1126(b) of the Code shall be filed  
5 with the plan or within a time fixed by the court, unless the  
6 plan is intended to provide adequate information under  
7 § 1125(f)(1). If the plan is intended to provide adequate  
8 information under § 1125(f)(1), it shall be so designated and  
9 Rule 3017.1 shall apply as if the plan is a disclosure  
10 statement.

11 \* \* \* \* \*

**COMMITTEE NOTE**

Subdivision (b) is amended to recognize that, in 2005, § 1125(f)(1) was added to the Code to provide that the plan proponent in a small business case need not file a disclosure statement if the plan itself includes adequate information and the court finds that a separate disclosure statement is unnecessary. If the plan is intended to provide adequate information in a small business case, it may be conditionally approved as a disclosure statement under Rule 3017.1 and is subject to all other rules applicable to disclosure statements in small business cases.

**Rule 3017.1. Court Consideration of Disclosure Statement in a Small Business Case**

1 (a) CONDITIONAL APPROVAL OF DISCLOSURE  
2 STATEMENT. ~~If the debtor is~~ In a small business case ~~and~~  
3 ~~has made a timely election to be considered a small business~~  
4 ~~in a chapter 11 case,~~ the court may, on application of the plan  
5 proponent or on its own initiative, conditionally approve a  
6 disclosure statement filed in accordance with Rule 3016~~(b)~~.

7 On or before conditional approval of the disclosure statement,  
8 the court shall:

9 (1) fix a time within which the holders of claims and  
10 interests may accept or reject the plan;

11 (2) fix a time for filing objections to the disclosure  
12 statement;

13 (3) fix a date for the hearing on final approval of the  
14 disclosure statement to be held if a timely objection is filed;

15 and

16 (4) fix a date for the hearing on confirmation.

17 (b) APPLICATION OF RULE 3017. Rule 3017(a), (b),  
18 (c), and (e) do not apply to a conditionally approved  
19 disclosure statement. Rule 3017(d) applies to a conditionally  
20 approved disclosure statement, except that conditional  
21 approval is considered approval of the disclosure statement  
22 for the purpose of applying Rule 3017(d).

23 (c) FINAL APPROVAL.

24 (1) *Notice.* Notice of the time fixed for filing  
25 objections and the hearing to consider final approval of the  
26 disclosure statement shall be given in accordance with Rule  
27 2002 and may be combined with notice of the hearing on  
28 confirmation of the plan.

29 (2) *Objections.* Objections to the disclosure statement  
30 shall be filed, transmitted to the United States trustee, and  
31 served on the debtor, the trustee, any committee appointed  
32 under the Code and any other entity designated by the court at

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33 any time before final approval of the disclosure statement or  
34 by an earlier date as the court may fix.

35 (3) *Hearing.* If a timely objection to the disclosure  
36 statement is filed, the court shall hold a hearing to consider  
37 final approval before or combined with the hearing on  
38 confirmation of the plan.

#### COMMITTEE NOTE

Section 101 of the Code, as amended in 2005, defines a “small business case” and “small business debtor,” and eliminates any need to elect that status. Therefore, the reference in the rule to an election is deleted.

As provided in the amendment to Rule 3016(b), a plan intended to provide adequate information in a small business case under § 1125(f)(1) may be conditionally approved and is otherwise treated as a disclosure statement under this rule.

#### **Rule 3019. Modification of Accepted Plan Before or After Confirmation in a Chapter 9 Municipality or Chapter 11 Reorganization Case**

1 (a) In a chapter 9 or chapter 11 case, after a plan has been  
2 accepted and before its confirmation, the proponent may file  
3 a modification of the plan. If the court finds after hearing on

4 notice to the trustee, any committee appointed under the  
5 Code, and any other entity designated by the court that the  
6 proposed modification does not adversely change the  
7 treatment of the claim of any creditor or the interest of any  
8 equity security holder who has not accepted in writing the  
9 modification, it shall be deemed accepted by all creditors and  
10 equity security holders who have previously accepted the  
11 plan.

12 (b) If the debtor is an individual, a request to modify the  
13 plan under § 1127(e) of the Code shall identify the proponent  
14 and shall be filed together with the proposed modification.  
15 The clerk, or some other person as the court may direct, shall  
16 give the debtor, the trustee, and all creditors not less than 20  
17 days' notice by mail of the time fixed for filing objections  
18 and, if an objection is filed, the hearing to consider the  
19 proposed modification, unless the court orders otherwise with  
20 respect to creditors who are not affected by the proposed

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21 modification. A copy of the notice shall be transmitted to the  
22 United States trustee. A copy of the proposed modification  
23 shall be included with the notice. Any objection to the  
24 proposed modification shall be filed and served on the debtor,  
25 the proponent of the modification, the trustee, and any other  
26 entity designated by the court, and shall be transmitted to the  
27 United States trustee. An objection to a proposed  
28 modification is governed by Rule 9014.

#### COMMITTEE NOTE

Section 1127 was amended in 2005 to provide for modification of a confirmed plan in a chapter 11 case of an individual debtor. The rule is amended to establish the procedure for filing and objecting to a proposed modification of a confirmed plan.

#### **Rule 4002. Duties of Debtor**

1 (a) IN GENERAL. In addition to performing other duties  
2 prescribed by the Code and rules, the debtor shall:  
3 (1) attend and submit to an examination at the times  
4 ordered by the court;



5 (2) attend the hearing on a complaint objecting to  
6 discharge and testify, if called as a witness;

7 (3) inform the trustee immediately in writing as to the  
8 location of real property in which the debtor has an interest  
9 and the name and address of every person holding money or  
10 property subject to the debtor's withdrawal or order if a  
11 schedule of property has not yet been filed pursuant to Rule  
12 1007;

13 (4) cooperate with the trustee in the preparation of an  
14 inventory, the examination of proofs of claim, and the  
15 administration of the estate; and

16 (5) file a statement of any change of the debtor's  
17 address.

18 (b) INDIVIDUAL DEBTOR'S DUTY TO PROVIDE  
19 DOCUMENTATION.

20 (1) Personal Identification. Every individual debtor  
21 shall bring to the meeting of creditors under § 341:

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22 (A) a picture identification issued by a  
23 governmental unit, or other personal identifying information  
24 that establishes the debtor's identity; and

25 (B) evidence of social security number(s), or a  
26 written statement that such documentation does not exist.

27 (2) Financial Information. Every individual debtor  
28 shall bring to the meeting of creditors under § 341 and make  
29 available to the trustee the following documents or copies of  
30 them, or provide a written statement that the documentation  
31 does not exist or is not in the debtor's possession:

32 (A) evidence of current income such as the most  
33 recent payment advice;

34 (B) unless the trustee or the United States trustee  
35 instructs otherwise, statements for each of the debtor's  
36 depository and investment accounts, including checking,  
37 savings, and money market accounts, mutual funds and

38 brokerage accounts for the time period that includes the date  
39 of the filing of the petition; and

40 (C) documentation of monthly expenses claimed  
41 by the debtor when required by § 707(b)(2)(A) or (B).

42 (3) Tax Return. At least 7 days before the first date  
43 set for the meeting of creditors under § 341, the debtor shall  
44 provide to the trustee a copy of the debtor's Federal income  
45 tax return for the most recent tax year ending immediately  
46 before the commencement of the case and for which a return  
47 was filed, including any attachments, or a transcript of the tax  
48 return, or provide a written statement that the documentation  
49 does not exist.

50 (4) Tax Returns Provided to Creditors. If a creditor,  
51 at least 15 days before the first date set for the meeting of  
52 creditors under § 341, requests a copy of the debtor's tax  
53 return that is to be provided to the trustee under subdivision  
54 (b)(3), the debtor shall provide to the requesting creditor a

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55 copy of the return, including any attachments, or a transcript  
56 of the tax return, or provide a written statement that the  
57 documentation does not exist at least 7 days before the first  
58 date set for the meeting of creditors under § 341.  
59 (5) The debtor's obligation to provide tax returns  
60 under Rule 4002(b)(3) and (b)(4) is subject to procedures for  
61 safeguarding the confidentiality of tax information established  
62 by the Director of the Administrative Office of the United  
63 States Courts.

#### COMMITTEE NOTE

This rule is amended to implement the directives of § 521(a)(1)(B)(iv) and (e)(2) of the Code, which were added by the 2005 amendments. These Code amendments expressly require the debtor to file with the court, or provide to the trustee, specific documents. The amendments to the rule implement these obligations and establish a time frame for creditors to make requests for a copy of the debtor's Federal income tax return. The rule also requires the debtor to provide documentation in support of claimed expenses under § 707(b)(2)(A) and (B).

Subdivision (b) is also amended to require the debtor to cooperate with the trustee by providing materials and documents

necessary to assist the trustee in the performance of the trustee's duties. Nothing in the rule, however, is intended to limit or restrict the debtor's duties under § 521, or to limit the access of the Attorney General to any information provided by the debtor in the case. The rule does not require that the debtor create documents or obtain documents from third parties; rather, the debtor's obligation is to bring to the meeting of creditors under § 341 the documents which the debtor possesses. Any written statement that the debtor provides indicating either that documents do not exist or are not in the debtor's possession must be verified or contain an unsworn declaration as required under Rule 1008.

Because the amendment implements the debtor's duty to cooperate with the trustee, the materials provided to the trustee would not be made available to any other party in interest at the § 341 meeting of creditors other than the Attorney General. Some of the documents may contain otherwise private information that should not be disseminated. For example, pay stubs and financial account statements might include the social security numbers of the debtor and the debtor's spouse and dependents, as well as the names of the debtor's children. The debtor should redact all but the last four digits of all social security numbers and the names of any minors when they appear in these documents. This type of information would not usually be needed by creditors and others who may be attending the meeting. If a creditor perceives a need to review specific documents or other evidence, the creditor may proceed under Rule 2004.

Tax information produced under this rule is subject to procedures for safeguarding confidentiality established by the Director of the Administrative Office of the United States Courts.

**Rule 4003. Exemptions**

\* \* \* \* \*

1 (b) OBJECTING TO A CLAIM OF EXEMPTIONS.

2 (1) Except as provided in paragraph (2), a party in  
3 interest may file an objection to the list of property claimed as  
4 exempt ~~only~~ within 30 days after the meeting of creditors held  
5 under § 341(a) is concluded or within 30 days after any  
6 amendment to the list or supplemental schedules is filed,  
7 whichever is later. The court may, for cause, extend the time  
8 for filing objections if, before the time to object expires, a  
9 party in interest files a request for an extension.

10 (2) An objection to a claim of exemption based on  
11 § 522(q) shall be filed before the closing of the case. If an  
12 exemption is first claimed after a case is reopened, an  
13 objection shall be filed before the reopened case is closed.



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5 fixed for filing a motion to dismiss the case under Rule  
6 1017(e), the court shall forthwith grant the discharge unless:

7 \* \* \* \* \*

8 (F) a motion to extend the time for filing a motion  
9 to dismiss the case under Rule 1017(e)~~(f)~~ is pending, or

10 (G) the debtor has not paid in full the filing fee  
11 prescribed by 28 U.S.C. § 1930(a) and any other fee  
12 prescribed by the Judicial Conference of the United States  
13 under 28 U.S.C. § 1930(b) that is payable to the clerk upon  
14 the commencement of a case under the Code, unless the court  
15 has waived the fees under 28 U.S.C. § 1930(f);

16 (H) the debtor has not filed with the court a  
17 statement regarding completion of a course in personal  
18 financial management as required by Rule 1007(b)(7);

19 (I) a motion to delay or postpone discharge under  
20 § 727(a)(12) is pending; or





Subdivision (c)(1)(I) is new. It reflects the 2005 addition to the Bankruptcy Code of § 727(a)(12). This provision is linked to § 522(q). Section 522(q) limits the availability of the homestead exemption for individuals who have been convicted of a felony or who owe a debt arising from certain causes of action within a particular time frame. The existence of reasonable cause to believe that § 522(q) may be applicable to the debtor constitutes grounds for withholding the discharge.

Subdivision (c)(1)(J) is new. It reflects the 2005 revisions to § 524 of the Bankruptcy Code that alter the requirements for approval of reaffirmation agreements. Section 524(m) sets forth circumstances under which a reaffirmation agreement is presumed to be an undue hardship. This triggers an obligation to review the presumption and may require notice and a hearing. Subdivision (c)(1)(J) has been added to prevent the discharge from being entered until the court approves or disapproves the reaffirmation agreement in accordance with § 524(m).

Subdivision (c)(1)(K) is new. It implements § 1228(a) of Public Law No. 109-8.

The rule is also amended by adding subdivision (c)(3) that postpones the entry of the discharge of an individual debtor in a case under chapter 11, 12, or 13 if there is a question as to the applicability of § 522(q) of the Code. The postponement provides an opportunity for a creditor to file a motion to limit the debtor's exemption under that provision.



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5 FARMER'S DEBT ADJUSTMENT CASE, OR CHAPTER  
6 13 INDIVIDUAL'S DEBT ADJUSTMENT CASE; NOTICE  
7 OF TIME FIXED. Except as provided in subdivision (d), a  
8 ~~A~~ complaint to determine the dischargeability of a debt under  
9 § 523(c) shall be filed no later than 60 days after the first date  
10 set for the meeting of creditors under § 341(a). The court  
11 shall give all creditors no less than 30 days' notice of the time  
12 so fixed in the manner provided in Rule 2002. On motion of  
13 a party in interest, after hearing on notice, the court may for  
14 cause extend the time fixed under this subdivision. The  
15 motion shall be filed before the time has expired.

16 (d) TIME FOR FILING COMPLAINT UNDER ~~§ 523(c)~~  
17 523(a)(6) IN CHAPTER 13 INDIVIDUAL'S DEBT  
18 ADJUSTMENT CASE; NOTICE OF TIME FIXED. On  
19 motion by a debtor for a discharge under § 1328(b), the court  
20 shall enter an order fixing the time to file a complaint to  
21 determine the dischargeability of any debt under § ~~523(c)~~

22 523(a)(6) and shall give no less than 30 days' notice of the  
23 time fixed to all creditors in the manner provided in Rule  
24 2002. On motion of any party in interest after hearing on  
25 notice the court may for cause extend the time fixed under  
26 this subdivision. The motion shall be filed before the time  
27 has expired.

28 \* \* \* \* \*

**COMMITTEE NOTE**

Subdivision (c) is amended to reflect the 2005 amendments to § 1328(a) of the Bankruptcy Code. This revision expands the exceptions to discharge upon completion of a chapter 13 plan. Subdivision (c) extends to chapter 13 the same time limits applicable to other chapters of the Code with respect to the two exceptions to discharge that have been added to § 1328(a) and that are within § 523(c).

The amendment to subdivision (d) reflects the 2005 amendments to § 1328(a) that expands the exceptions to discharge upon completion of a chapter 13 plan, including two out of three of the provisions that fall within § 523(c). However, the 2005 revisions to § 1328(a) do not include a reference to § 523(a)(6), which is the third provision to which § 523(c) refers. Thus, the need for subdivision (d) is now limited to that provision.

**Rule 4008. Discharge and Reaffirmation Hearing**

1 Not more than 30 days following the entry of an order  
2 granting or denying a discharge, or confirming a plan in a  
3 chapter 11 reorganization case concerning an individual  
4 debtor and on not less than 10 days' notice to the debtor and  
5 the trustee, the court may hold a hearing as provided in  
6 § 524(d) of the Code. A motion by the debtor for approval of  
7 a reaffirmation agreement shall be filed before or at the  
8 hearing. The debtor's statement required under § 524(k) shall  
9 be accompanied by a statement of the total income and total  
10 expense amounts stated on schedules I and J. If there is a  
11 difference between the income and expense amounts stated on  
12 schedules I and J and the statement required under § 524(k),  
13 the accompanying statement shall include an explanation of  
14 any difference.

**COMMITTEE NOTE**

Rule 4008 is amended to reflect the 2005 addition of §§ 524(k)(6)(A) and 524(m) to the Bankruptcy Code. These

provisions require that a debtor file a signed statement in support of a reaffirmation agreement, and authorize a court to review the agreement if, based on the assertions on the statement, the agreement is presumed to be an undue hardship. The rule revision requires that an accompanying statement show the total income and expense amounts stated on schedules I and J and an explanation of any discrepancies. This will allow the court to evaluate the reaffirmation for undue hardship as § 524(m) requires. A corresponding change has been made to Rule 4004(c) to prevent the entry of a discharge until the court has approved or disapproved the reaffirmation agreement in accordance with § 524(m).

**Rule 5003. Records Kept By the Clerk**

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\* \* \* \* \*

(e) REGISTER OF MAILING ADDRESSES OF  
FEDERAL AND STATE GOVERNMENTAL UNITS AND  
CERTAIN TAXING AUTHORITIES. The United States or  
the state or territory in which the court is located may file a  
statement designating its mailing address. The United States,  
state, territory, or local governmental unit responsible for the  
collection of taxes within the district in which the case is  
pending may file a statement designating an address for  
service of requests under § 505(b) of the Code, and the

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11 designation shall describe where further information  
12 concerning additional requirements for filing such requests  
13 may be found. The clerk shall keep, in the form and manner  
14 as the Director of the Administrative Office of the United  
15 States Courts may prescribe, a register that includes ~~these~~ the  
16 mailing addresses designated under this subdivision, but the  
17 clerk is not required to include in the register more than one  
18 mailing address for each department, agency, or  
19 instrumentality of the United States or the state or territory.  
20 If more than one address for a department, agency, or  
21 instrumentality is included in the register, the clerk shall also  
22 include information that would enable a user of the register to  
23 determine the circumstances when each address is applicable,  
24 and mailing notice to only one applicable address is sufficient  
25 to provide effective notice. The clerk shall update the register  
26 annually, effective January 2 of each year. The mailing  
27 address in the register is conclusively presumed to be a proper



28 address for the governmental unit, but the failure to use that  
29 mailing address does not invalidate any notice that is  
30 otherwise effective under applicable law.

31 \* \* \* \* \*

**COMMITTEE NOTE**

The rule is amended to implement the addition of § 505(b)(1) to the Code in 2005, which allows taxing authorities to designate addresses to use for the service of a request under that subsection.

**Rule 5008. Notice Regarding Presumption of Abuse in Chapter 7 Cases of Individual Debtors**

1 In a chapter 7 case of an individual with primarily  
2 consumer debts in which a presumption of abuse has arisen  
3 under § 707(b), the clerk shall give to creditors notice of the  
4 presumption of abuse in accordance with Rule 2002 within 10  
5 days after the date of the filing of the petition. If the debtor  
6 has not filed a statement indicating whether a presumption of  
7 abuse has arisen, the clerk shall give notice to creditors within  
8 10 days after the date of the filing of the petition that the

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9 debtor has not filed the statement and that further notice will  
10 be given if a later filed statement indicates that a presumption  
11 of abuse has arisen. If a debtor later files a statement  
12 indicating that a presumption of abuse has arisen, the clerk  
13 shall give notice to creditors of the presumption of abuse as  
14 promptly as practicable.

#### COMMITTEE NOTE

This rule is new. The 2005 revisions to § 342 of the Bankruptcy Code require that clerks give written notice to all creditors not later than 10 days after the date of the filing of the petition that a presumption of abuse has arisen under § 707(b). A statement filed by the debtor will be the source of the clerk's information about the presumption of abuse. This rule enables the clerk to meet its obligation to send the notice within the statutory time period set forth in § 342. In the event that the court receives the debtor's statement after the clerk has sent the first notice, and the debtor's statement indicates a presumption of abuse, this rule requires that the clerk send a second notice.

#### **Rule 5012. Communication and Cooperation With Foreign Courts and Foreign Representatives**

1 Except for communications for scheduling and  
2 administrative purposes, the court in any case commenced by

3 a foreign representative shall give at least 20 days' notice of  
4 its intent to communicate with a foreign court or a foreign  
5 representative. The notice shall identify the subject of the  
6 anticipated communication and shall be given in the manner  
7 provided by Rule 2002(q). Any entity that wishes to  
8 participate in the communication shall notify the court of its  
9 intention not later than 5 days before the scheduled  
10 communication.

#### COMMITTEE NOTE

This rule is new. It implements § 1525 which was added to the Code in 2005. The rule provides an opportunity for parties in the case to take appropriate action prior to the communication between courts or between the court and a foreign representative to establish procedures for the manner of the communication and the right to participate in the communication. Participation in the communication includes both active and passive participation. Parties wishing to participate must notify the court at least 5 days before the hearing so that ample time exists to make arrangements necessary to permit the participation.

#### Rule 6004. Use, Sale, or Lease of Property

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\* \* \* \* \*

2 (g) SALE OF PERSONALLY IDENTIFIABLE  
3 INFORMATION.

4 (1) Motion. A motion for authority to sell or lease  
5 personally identifiable information under § 363(b)(1)(B) shall  
6 include a request for an order directing the United States  
7 trustee to appoint a consumer privacy ombudsman under  
8 § 332. The motion shall be governed by Rule 9014 and shall  
9 be served on any committee elected under § 705 or appointed  
10 under § 1102 of the Code, or if the case is a chapter 11  
11 reorganization case and no committee of unsecured creditors  
12 has been appointed under § 1102, on the creditors included on  
13 the list of creditors filed under Rule 1007(d), and on such  
14 other entities as the court may direct. The motion shall be  
15 transmitted to the United States trustee.

16 (2) Appointment. If a consumer privacy ombudsman  
17 is appointed under § 332, no later than 5 days before the  
18 hearing on the motion under § 363(b)(1)(B), the United States

19 trustee shall file a notice of the appointment, including the  
20 name and address of the person appointed. The United States  
21 trustee's notice shall be accompanied by a verified statement  
22 of the person appointed setting forth the person's connections  
23 with the debtor, creditors, any other party in interest, their  
24 respective attorneys and accountants, the United States  
25 trustee, or any person employed in the office of the United  
26 States trustee.

27 ~~(g)~~(h) STAY OF ORDER AUTHORIZING USE, SALE,  
28 OR LEASE OF PROPERTY. An order authorizing the use,  
29 sale, or lease of property other than cash collateral is stayed  
30 until the expiration of 10 days after entry of the order, unless  
31 the court orders otherwise.

**COMMITTEE NOTE**

This rule is amended to implement §§ 332 and 363(b)(1)(B), which were added to the Code in 2005.

**Rule 6011. Disposal of Patient Records in Health Care Business Case**

1 (a) NOTICE BY PUBLICATION UNDER § 351(1)(A).

2 A notice regarding the claiming or disposing of patient  
3 records under § 351(1)(A) shall not identify patients by name  
4 or other identifying information, but shall:

5 (1) identify with particularity the health care facility  
6 whose patient records the trustee proposes to destroy;

7 (2) state the name, address, telephone number, email  
8 address, and website, if any, of a person from whom  
9 information about the patient records may be obtained and  
10 how those records may be claimed; and

11 (3) state the date by which patient records must be  
12 claimed, and that if they are not so claimed the records will be  
13 destroyed.

14 (b) NOTICE BY MAIL UNDER § 351(1)(B). Subject to  
15 applicable nonbankruptcy law relating to patient privacy, a  
16 notice regarding the claiming or disposing of patient records

17 under § 351(1) (B) shall, in addition to including the  
18 information in subdivision (a), direct that a patient's family  
19 member or other representative who receives the notice  
20 inform the patient of the notice, and be mailed to the patient  
21 and any family member or other contact person whose name  
22 and address have been given to the trustee or the debtor for  
23 the purpose of providing information regarding the patient's  
24 health care, and to insurance companies known to have  
25 provided health care insurance to the patient.

26 (c) PROOF OF COMPLIANCE WITH NOTICE  
27 REQUIREMENT. Unless the court orders the trustee to file  
28 proof of compliance with § 351(1)(B) under seal, the trustee  
29 shall not file, but shall maintain, the proof of compliance for  
30 a reasonable time.

31 (d) REPORT OF DESTRUCTION OF RECORDS. The  
32 trustee shall file, not later than 30 days after the destruction of  
33 patient records under § 351(3), a report certifying that the

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34 unclaimed records have been destroyed and explaining the  
35 method used to effect the destruction. The report shall not  
36 identify patients by name or other identifying information.

#### COMMITTEE NOTE

This rule is new. It implements § 351(1), which was added to the Code in 2005. That provision requires the trustee to notify patients that their patient records will be destroyed if they remain unclaimed for one year after the publication of a notice in an appropriate newspaper. The Code provision also requires that individualized notice be sent to each patient and to the patient's family member or other contact person.

The variety of health care businesses and the range of current and former patients present the need for flexibility in the creation and publication of the notices that will be given. Nevertheless, there are some matters that must be included in any notice being given to patients, their family members, and contact persons to ensure that sufficient information is provided to these persons regarding the trustee's intent to dispose of patient records. Subdivision (a) of this rule lists the minimum requirements for notices given under § 351(1)(A), and subdivision (b) governs the form of notices under § 351(1)(B). Notices given under this rule are subject to provisions under applicable federal and state law that relate to the protection of patients' privacy, such as the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (HIPAA).

Subdivision (c) directs the trustee to maintain proof of compliance with § 351(1)(B), but it prohibits filing the proof of compliance unless the court orders the trustee to file it under seal



because the proof of compliance may contain patient names that should or must remain confidential.

Subdivision (d) requires the trustee to file a report with the court regarding the destruction of patient records. This certification is intended to ensure that the trustee properly completed the destruction process. However, because the report will be filed with the court and ordinarily will be available to the public under § 107, the names, addresses, and other identifying information of the patient shall not be included in the report to protect patient privacy.

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

\* \* \* \* \*

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

3                   (1) Timely Appeal Required. A certification of a  
4           judgment, order, or decree of a bankruptcy court to a court of  
5           appeals under 28 U.S.C. § 158(d)(2) shall not be treated as a  
6           certification entered on the docket within the meaning of  
7           § 1233(b)(4)(A) of Public Law No. 109-8 until a timely  
8           appeal has been taken in the manner required by subdivisions

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9 (a) or (b) of this rule and the notice of appeal has become  
10 effective under Rule 8002.

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

23 (A) Certification by Court on Request or Court's  
24 Own Initiative.

25                    (i) Before Docketing or Grant of Leave to  
26                    Appeal. Only a bankruptcy court may make a certification on  
27                    request or on its own initiative while the matter is pending in  
28                    the bankruptcy court.

29                    (ii) After Docketing or Grant of Leave to  
30                    Appeal. Only the district court or bankruptcy appellate panel  
31                    involved may make a certification on request of the parties or  
32                    on its own initiative while the matter is pending in the district  
33                    court or bankruptcy appellate panel.

34                    (B) Certification by All Appellants and Appellees  
35                    Acting Jointly. A certification by all the appellants and  
36                    appellees, if any, acting jointly may be made by filing the  
37                    appropriate Official Form with the clerk of the court in which  
38                    the matter is pending. The certification may be accompanied  
39                    by a short statement of the basis for the certification, which  
40                    may include the information listed in subdivision (f)(3)(C) of  
41                    this rule.

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42 (3) Request for Certification; Filing; Service;

43 Contents.

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

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

50 (C) A request for certification shall include the  
51 following:

52 (i) the facts necessary to understand the  
53 question presented;

54 (ii) the question itself;

55 (iii) the relief sought;

56 (iv) the reasons why the appeal should be  
57 allowed and is authorized by statute or rule, including why a

58 circumstance specified in 28 U.S.C. § 158(d)(2)(A)(i)-(iii)

59 exists; and

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

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

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

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

72 (4) Certification on Court's Own Initiative.

73 (A) A certification of an appeal on the court's own  
74 initiative under 28 U.S.C. § 158(d)(2) shall be made in a

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75 separate document served on the parties in the manner  
76 required for service of a notice of appeal under Rule 8004.  
77 The certification shall be accompanied by an opinion or  
78 memorandum that contains the information required by  
79 subdivision (f)(3)(C)(i)-(iv) of this rule.  
80 (B) A party may file a supplementary short  
81 statement of the basis for certification within 10 days after the  
82 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 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.

**Rule 8003. Leave to Appeal**

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(d) If leave to appeal is required by 28 U.S.C. § 158(a) and has not earlier been granted, the authorization of a direct appeal by a court of appeals under 28 U.S.C. § 158(d)(2) shall be deemed to satisfy the requirement for leave to appeal.





11 on motion made after the expiration of the specified period  
12 permit the act to be done where the failure to act was the  
13 result of excusable neglect.

14 (2) *Enlargement Not Permitted.* The court may not  
15 enlarge the time for taking action under Rules 1007(d),  
16 2003(a) and (d), 7052, 9023, and 9024.

17 (3) *Enlargement Limited.* The court may enlarge the  
18 time for taking action under Rules 1006(b)(2), 1007(c) with  
19 respect to the time to file schedules and statements in a small  
20 business case, 1017(e), 3002(c), 4003(b), 4004(a), 4007(c),  
21 8002 and 9033, only to the extent and under the conditions  
22 stated in those rules.

23 \* \* \* \* \*

**COMMITTEE NOTE**

Section 1116(3) of the Code, as amended in 2005, places specific limits on the time for filing schedules and a statement of affairs in small business cases. The rule is amended to recognize that extensions of time for filing these documents are governed by Rule 1007(c), which is amended to recognize restrictions on expanding the time to file these documents in small business cases.

**Rule 9009. Forms**

1           The Official Forms prescribed by the Judicial  
2           Conference of the United States shall be observed and used  
3           with alterations as may be appropriate. Forms may be  
4           combined and their contents rearranged to permit economies  
5           in their use. The Director of the Administrative Office of the  
6           United States Courts may issue additional forms for use under  
7           the Code. The forms shall be construed to be consistent with  
8           these rules and the Code. References in the Official Forms to  
9           these rules shall include the Interim Rules approved by the  
10          Committee on Rules of Practice and Procedure to implement  
11          Public Law No. 109-8.

**COMMITTEE NOTE**

The Official Forms refer to the Federal Rules of Bankruptcy Procedure. This rule is amended so that the reference to rules in the Official Forms includes the Interim Rules that implement the provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Public Law Number 109-8).

## **New and Revised Official Forms**

**(October 2005)**

Form B1, Voluntary Petition

Form B3A, Application to Pay Filing Fee in Installments

Form B3B, Application for Waiver of Chapter 7 Filing Fee

Form B4, List of Creditors Holding 20 Largest Unsecured Claims

Form B5, Involuntary Petition

Form B6, Cover Sheet

Form B6, Summary of Schedules (includes Statistical Summary of Certain Liabilities)

Form B6A, Real Property

Form B6B, Personal Property

Form B6C, Property Claimed as exempt

Form B6D, Creditors Holding Secured Claims

Form B6E, Creditors Holding Unsecured Priority Claims

Form B6F, Creditors Holding Unsecured Nonpriority Claims

Form B6G, Executory Contracts and Unexpired Leases

Form B6H, Codebtors Form 6I, Current Income of Individual Debtor(s)

Form B6I, Current Income of Individual Debtor(s)

Form B6J, Current Expenditures of Individual Debtor(s)

Form B6, Declaration Concerning Debtor's Schedules

Form B7, Statement of Financial Affairs

Form B8, Chapter 7 Individual Debtor's Statement of Intention

Form B9A, § 341 Notice, Chapter 7 Individual or Joint Debtor No Asset Case

Form B9B, § 341 Notice, Chapter 7 Corporation/Partnership No Asset Case

Form B9C, § 341 Notice, Chapter 7 Individual or Joint Debtor Asset Case

Form B9D, § 341 Notice, Chapter 7 Corporation/Partnership Asset Case

Form B9E, § 341 Notice, Chapter 11 Individual or Joint Debtor Case

Form B9E (Alt.), § 41 Notice, Chapter 11 Individual or Joint Debtor Case

Form B9F, § 341 Notice, Chapter 11 Corporation/Partnership Case

Form B9F (Alt.), § 341 Notice, Chapter 11 Corporation/Partnership Case

Form B9G, § 341 Notice, Chapter 12 Individual or Joint Debtor Family Farmer

Form B9H, § 341 Notice, Chapter 12 Corporation/Partnership Family Farmer

Form B9I, § 341 Notice, Chapter 13 Case

Form B10, Proof of Claim

Form B16A, Caption (Full)

Form B18, Discharge of Debtor

Form B19A, Declaration and Signature of Non-Attorney Bankruptcy Petition Preparer

Form B19B, Notice to Debtor by Non-Attorney Bankruptcy Petition Preparer

Form B22A, Statement of Current Monthly Income and Means Test Calculation (Chapter 7)

Form B22A, Statement of Current Monthly Income and Means Test Calculation (Chapter 7) (with separate IRS housing allowance)

Form B22B, Statement of Current Monthly Income (Chapter 11)

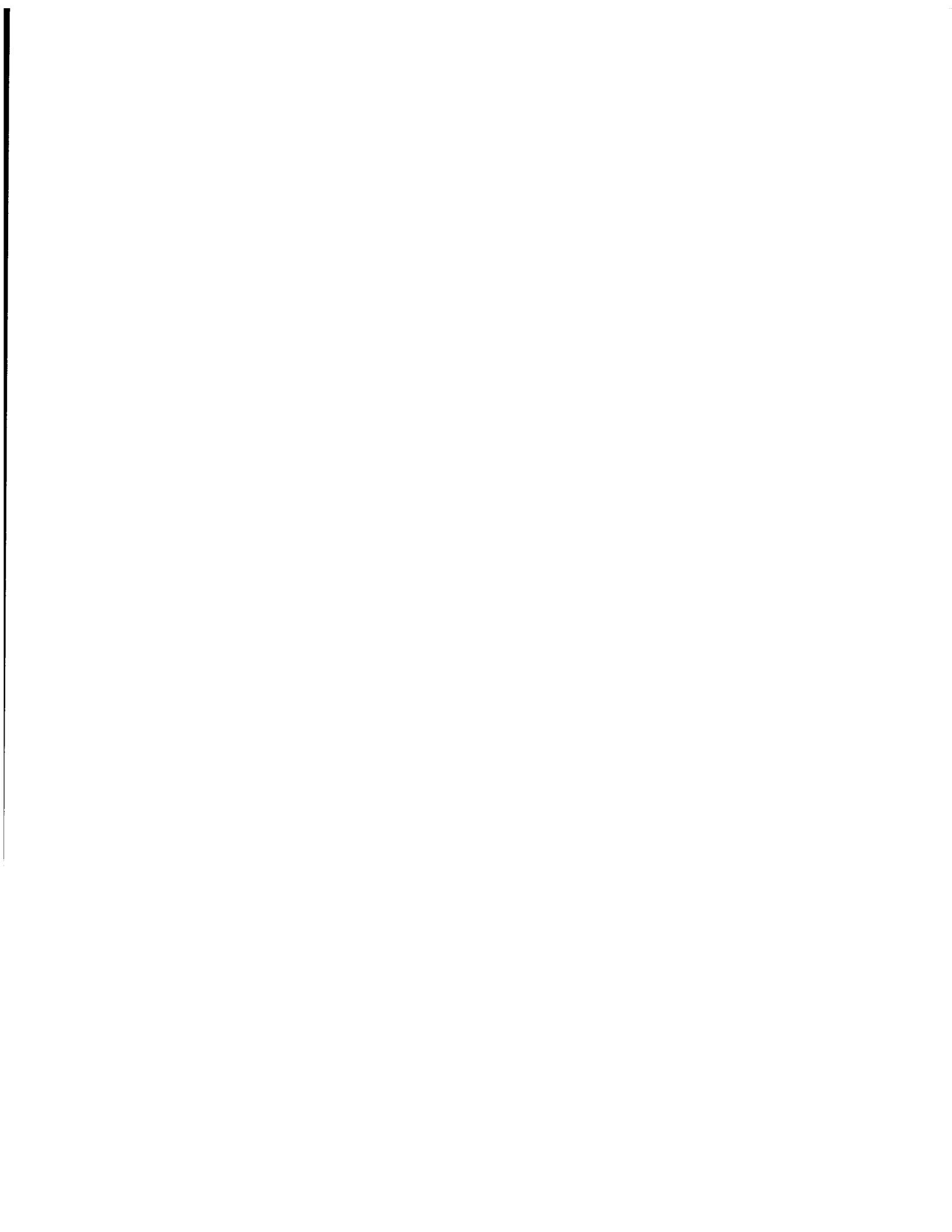
Form B22C, Statement of Current Monthly Income and Disposable Income Calculation (Chapter 13)

Form B22C, Statement of Current Monthly Income and Disposable Income Calculation (Chapter 13) (with separate IRS housing allowance)

Form B23, Debtor's Certification of Completion of Instructional Course Concerning Financial Management

Form B24, Certification to Court of Appeals

**Committee Notes (10/05)**





<b>Voluntary Petition</b> <i>(This page must be completed and filed in every case)</i>		Name of Debtor(s):	
<b>Prior Bankruptcy Case Filed Within Last 8 Years</b> (If more than one, attach additional sheet)			
Location Where Filed		Case Number:	Date Filed:
<b>Pending Bankruptcy Case Filed by any Spouse, Partner or Affiliate of this Debtor</b> (If more than one, attach additional sheet)			
Name of Debtor:		Case Number:	Date Filed:
District:		Relationship:	Judge:
<p style="text-align: center;"><b>Exhibit A</b></p> <p>(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11.)</p> <p><input type="checkbox"/> Exhibit A is attached and made a part of this petition.</p>		<p style="text-align: center;"><b>Exhibit B</b></p> <p style="text-align: center;">(To be completed if debtor is an individual whose debts are primarily consumer debts )</p> <p>I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter. I further certify that I delivered to the debtor the notice required by § 342(b) of the Bankruptcy Code.</p> <p>X _____ Signature of Attorney for Debtor(s)                      Date</p>	
<p style="text-align: center;"><b>Exhibit C</b></p> <p>Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety?</p> <p><input type="checkbox"/> Yes, and Exhibit C is attached and made a part of this petition.</p> <p><input type="checkbox"/> No</p>		<p style="text-align: center;"><b>Certification Concerning Debt Counseling by Individual/Joint Debtor(s)</b></p> <p><input type="checkbox"/> I/we have received approved budget and credit counseling during the 180-day period preceding the filing of this petition.</p> <p><input type="checkbox"/> I/we request a waiver of the requirement to obtain budget and credit counseling prior to filing based on exigent circumstances. (Must attach certification describing )</p>	
<b>Information Regarding the Debtor (Check the Applicable Boxes)</b>			
<b>Venue</b> (Check any applicable box)			
<input type="checkbox"/> Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.			
<input type="checkbox"/> There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.			
<input type="checkbox"/> Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the United States in this District, or has no principal place of business or assets in the United States but is a defendant in an action or proceeding [in a federal or state court] in this District, or the interests of the parties will be served in regard to the relief sought in this District			
<b>Statement by a Debtor Who Resides as a Tenant of Residential Property</b>			
<i>Check all applicable boxes.</i>			
<input type="checkbox"/> Landlord has a judgment against the debtor for possession of debtor's residence. (If box checked, complete the following.)			
_____			
(Name of landlord that obtained judgment)			
_____			
(Address of landlord)			
<input type="checkbox"/> Debtor claims that under applicable nonbankruptcy law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after the judgment for possession was entered, and			
<input type="checkbox"/> Debtor has included in this petition the deposit with the court of any rent that would become due during the 30-day period after the filing of the petition.			

**Voluntary Petition**

*(This page must be completed and filed in every case)*

Name of Debtor(s):

**Signatures**

**Signature(s) of Debtor(s) (Individual/Joint)**

I declare under penalty of perjury that the information provided in this petition is true and correct.

[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.

[If no attorney represents me and no bankruptcy petition preparer signs the petition] I have obtained and read the notice required by § 342(b) of the Bankruptcy Code.

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X \_\_\_\_\_  
Signature of Debtor

X \_\_\_\_\_  
Signature of Joint Debtor

\_\_\_\_\_  
Telephone Number (If not represented by attorney)

\_\_\_\_\_  
Date

**Signature of a Foreign Representative**

I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition.

(Check only one box.)

I request relief in accordance with chapter 15 of title 11, United States Code. Certified copies of the documents required by § 1515 of title 11 are attached.

Pursuant to § 1511 of title 11, United States Code, I request relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached.

X \_\_\_\_\_  
(Signature of Foreign Representative)

\_\_\_\_\_  
(Printed Name of Foreign Representative)

\_\_\_\_\_  
Date

**Signature of Attorney**

X \_\_\_\_\_  
Signature of Attorney for Debtor(s)

\_\_\_\_\_  
Printed Name of Attorney for Debtor(s)

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Date

**Signature of Non-Attorney Bankruptcy Petition Preparer**

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section Official Form 19B is attached.

\_\_\_\_\_  
Printed Name and title, if any, of Bankruptcy Petition Preparer

\_\_\_\_\_  
Social Security number (If the bankruptcy petition preparer is not an individual, state the Social Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer )(Required by 11 U.S.C. § 110.)

\_\_\_\_\_  
Address

X \_\_\_\_\_

\_\_\_\_\_  
Date

Signature of Bankruptcy Petition Preparer or officer, principal, responsible person, or partner whose social security number is provided above

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

*A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both 11 U.S.C. §110; 18 U.S.C. §156.*

**Signature of Debtor (Corporation/Partnership)**

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor

The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

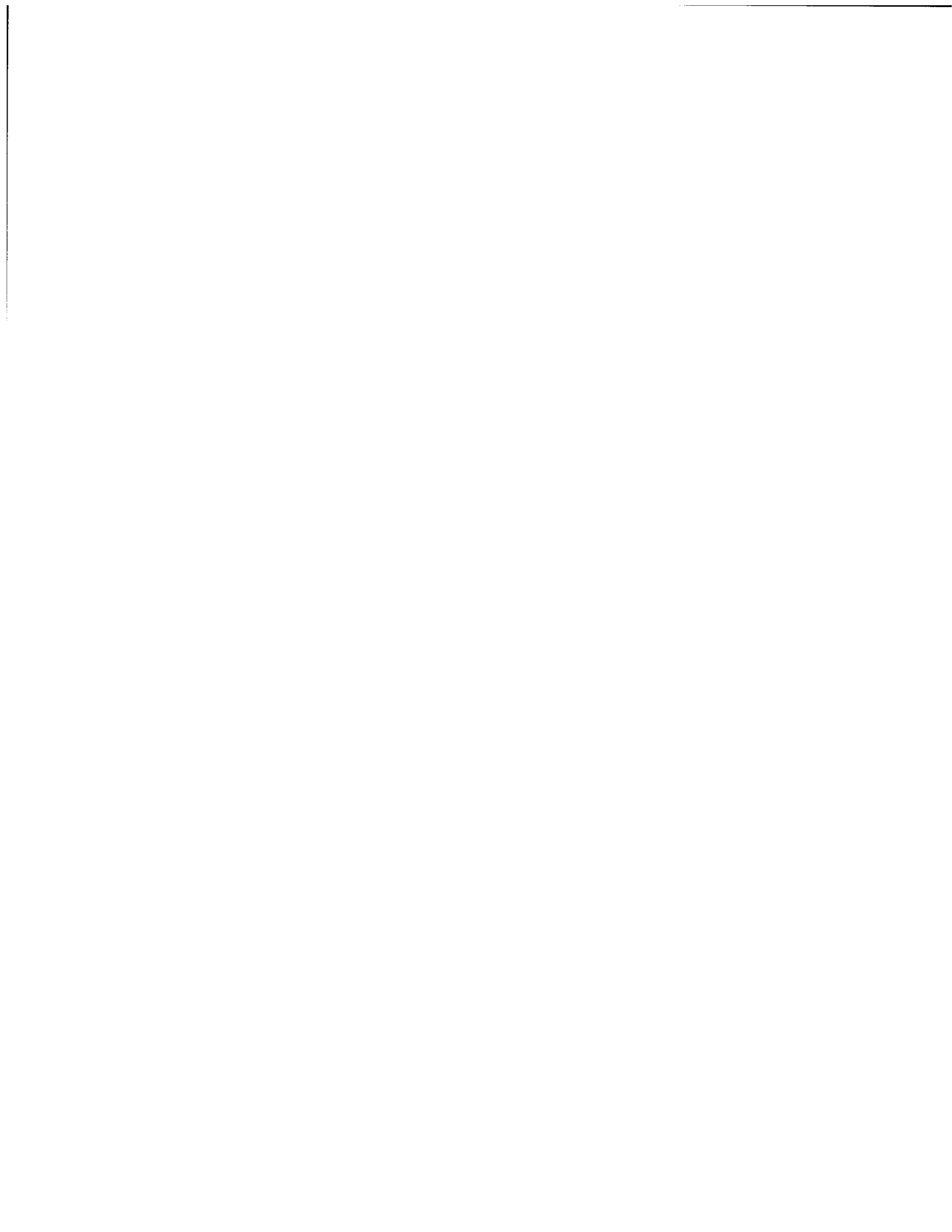
X \_\_\_\_\_  
Signature of Authorized Individual

\_\_\_\_\_  
Printed Name of Authorized Individual

\_\_\_\_\_  
Title of Authorized Individual

\_\_\_\_\_  
Date





# United States Bankruptcy Court

District Of \_\_\_\_\_

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_

Chapter \_\_\_\_\_

## APPLICATION TO PAY FILING FEE IN INSTALLMENTS

- In accordance with Fed. R. Bankr. P. 1006, I apply for permission to pay the filing fee amounting to \$ \_\_\_\_\_ in installments
- I am unable to pay the filing fee except in installments.
- Until the filing fee is paid in full, I will not make any additional payment or transfer any additional property to an attorney or any other person for services in connection with this case.
- I propose the following terms for the payment of the Filing Fee.\*

\$ \_\_\_\_\_ Check one  With the filing of the petition, or  
 On or before \_\_\_\_\_

\$ \_\_\_\_\_ on or before \_\_\_\_\_

\$ \_\_\_\_\_ on or before \_\_\_\_\_

\$ \_\_\_\_\_ on or before \_\_\_\_\_

\* The number of installments proposed shall not exceed four (4), and the final installment shall be payable not later than 120 days after filing the petition. For cause shown, the court may extend the time of any installment, provided the last installment is paid not later than 180 days after filing the petition. Fed. R. Bankr. P. 1006(b)(2)

- I understand that if I fail to pay any installment when due, my bankruptcy case may be dismissed and I may not receive a discharge of my debts.

\_\_\_\_\_  
Signature of Attorney Date

\_\_\_\_\_  
Signature of Debtor Date  
(In a joint case, both spouses must sign)

\_\_\_\_\_  
Name of Attorney

\_\_\_\_\_  
Signature of Joint Debtor (if any) Date

### DECLARATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required under that section, and (4) I will not accept any additional money or other property from the debtor before the filing fee is paid in full

\_\_\_\_\_  
Printed or Typed Name and Title, if any, of Bankruptcy Petition Preparer

\_\_\_\_\_  
Social Security No. (Required by 11 U.S.C. § 110.)

*If the bankruptcy petition preparer is not an individual, state the name, title (if any), address, and social security number of the officer, principal, responsible person, or partner who signs the document.*

\_\_\_\_\_  
Address

x \_\_\_\_\_  
Signature of Bankruptcy Petition Preparer

\_\_\_\_\_  
Date

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document, unless the bankruptcy petition preparer is not an individual

*If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person. A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.*

# United States Bankruptcy Court

\_\_\_\_\_ District Of \_\_\_\_\_

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_

Chapter \_\_\_\_\_

### ORDER APPROVING PAYMENT OF FILING FEE IN INSTALLMENTS

IT IS ORDERED that the debtor(s) may pay the filing fee in installments on the terms proposed in the foregoing application.

IT IS ORDERED that the debtor(s) shall pay the filing fee according to the following terms:

\$ \_\_\_\_\_ Check one  With the filing of the petition, or  
 On or before \_\_\_\_\_

\$ \_\_\_\_\_ on or before \_\_\_\_\_

\$ \_\_\_\_\_ on or before \_\_\_\_\_

\$ \_\_\_\_\_ on or before \_\_\_\_\_

IT IS FURTHER ORDERED that until the filing fee is paid in full the debtor(s) shall not make any additional payment or transfer any additional property to an attorney or any other person for services in connection with this case.

BY THE COURT

Date: \_\_\_\_\_

\_\_\_\_\_  
*United States Bankruptcy Judge*

**APPLICATION FOR WAIVER OF THE CHAPTER 7 FILING FEE  
FOR INDIVIDUALS WHO CANNOT PAY THE FILING FEE  
IN FULL OR IN INSTALLMENTS**

The court fee for filing a case under chapter 7 of the Bankruptcy Code is \$274.

If you cannot afford to pay the full fee at the time of filing, you may apply to pay the fee in installments. A form, which is available from the bankruptcy clerk's office, must be completed to make that application. If your application to pay in installments is approved, you will be permitted to file your petition, completing payment of the fee over the course of four to six months.

If you cannot afford to pay the fee either in full at the time of filing or in installments, then you may request a waiver of the filing fee by completing this application and filing it with the Clerk of Court. A judge will decide whether you have to pay the fee. By law, the judge may waive the fee only if your income is less than 150 percent of the official poverty line applicable to your family size and you are unable to pay the fee in installments. You may obtain information about the poverty guidelines at [www.uscourts.gov](http://www.uscourts.gov) or in the bankruptcy clerk's office.

**Required information.** Complete all items in the application, and attach requested schedules. Then sign the application on the last page. If you and your spouse are filing a joint bankruptcy petition, you both must provide information as requested and sign the application.

In re: \_\_\_\_\_  
Debtor(s)

Case No. \_\_\_\_\_  
(if known)

**APPLICATION FOR WAIVER OF THE CHAPTER 7 FILING FEE  
FOR INDIVIDUALS WHO CANNOT PAY THE FILING FEE IN FULL OR IN INSTALLMENTS**

**Part A. Family Size and Income**

1. Including yourself, your spouse, and dependents you have listed or will list on Schedule I (Current Income of Individual Debtors(s)), how many people are in your family? (Do not include your spouse if you are separated AND are not filing a joint petition.) \_\_\_\_\_

2. Restate the following information that you provided, or will provide, on Line 16 of Schedule I. Attach a completed copy of Schedule I, if it is available.

Total Combined Monthly Income (Line 16 of Schedule I): \$ \_\_\_\_\_

3. State the monthly net income, if any, of dependents included in Question 1 above. Do not include any income already reported in Item 2. If none, enter \$0.

\$ \_\_\_\_\_

4. Add the "Total Combined Monthly Income" reported in Question 2 to your dependents' monthly net income from Question 3.

\$ \_\_\_\_\_

5. Do you expect the amount in Question 4 to increase or decrease by more than 10% during the next 6 months? Yes \_\_\_ No \_\_\_

If yes, explain.

**Part B: Monthly Expenses**

6. EITHER (a) attach a completed copy of Schedule J (Schedule of Monthly Expenses), and state your total monthly expenses reported on Line 18 of that Schedule, OR (b) if you have not yet completed Schedule J, provide an estimate of your total monthly expenses.

\$ \_\_\_\_\_

7. Do you expect the amount in Question 6 to increase or decrease by more than 10% during the next 6 months? Yes \_\_\_ No \_\_\_

If yes, explain.

**Part C. Real and Personal Property**

EITHER (1) attach completed copies of Schedules A (Real Property) and Schedule B (Personal Property), OR (2) if you have not yet completed those schedules, answer the following questions.

8. State the amount of cash you have on hand: \$ \_\_\_\_\_

9. State below any money you have in savings, checking, or other accounts in a bank or other financial institution.

Bank or Other Financial Institution	Type of Account such as savings, checking, CD	Amount
_____	_____	\$ _____
_____	_____	\$ _____

10. State below the assets owned by you. **Do not list ordinary household furnishings and clothing.**

Home	Address _____ _____	Value \$ _____ Amount owed on mortgages and liens \$ _____
Other real estate	Address _____ _____	Value \$ _____ Amount owed on mortgages and liens \$ _____
Motor vehicle	Model/Year _____ _____	Value \$ _____ Amount owed \$ _____
Motor vehicle	Model/Year _____ _____	Value \$ _____ Amount owed \$ _____
Other	Description _____ _____	Value \$ _____ Amount owed \$ _____

11. State below any person, business, organization, or governmental unit that owes you money and the amount that is owed.

Name of Person, Business, or Organization that Owes You Money	Amount Owed
_____	\$ _____
_____	\$ _____

**Part D. Additional Information.**

12. Have you paid an **attorney** any money for services in connection with this case, including the completion of this form, the bankruptcy petition, or schedules? Yes \_\_\_ No \_\_\_  
If yes, how much have you paid? \$ \_\_\_\_\_
13. Have you promised to pay or do you anticipate paying an **attorney** in connection with your bankruptcy case? Yes \_\_\_ No \_\_\_  
If yes, how much have you promised to pay or do you anticipate paying? \$ \_\_\_\_\_
14. Have you paid **anyone other than an attorney** (such as a bankruptcy petition preparer, paralegal, typing service, or another person) any money for services in connection with this case, including the completion of this form, the bankruptcy petition, or schedules? Yes \_\_\_ No \_\_\_  
If yes, how much have you paid? \$ \_\_\_\_\_
15. Have you promised to pay or do you anticipate paying **anyone other than an attorney** (such as a bankruptcy petition preparer, paralegal, typing service, or another person) any money for services in connection with this case, including the completion of this form, the bankruptcy petition, or schedules? Yes \_\_\_ No \_\_\_  
If yes, how much have you promised to pay or do you anticipate paying? \$ \_\_\_\_\_
16. Has anyone paid an attorney or other person or service in connection with this case, on your behalf? Yes \_\_\_ No \_\_\_  
If yes, explain.



United State Bankruptcy Court  
District of \_\_\_\_\_

In re: \_\_\_\_\_  
Debtor(s)

Case No. \_\_\_\_\_

**ORDER ON DEBTOR'S APPLICATION FOR WAIVER OF THE CHAPTER 7 FILING FEE**

Upon consideration of the debtor's "Application for Waiver of the Chapter 7 Filing Fee," the court orders that the application be:

GRANTED.

This order is subject to being vacated at a later time if developments in the administration of the bankruptcy case demonstrate that the waiver was unwarranted.

DENIED.

The debtor shall pay the chapter 7 filing fee according to the following terms:

\$ \_\_\_\_\_ on or before \_\_\_\_\_

\$ \_\_\_\_\_ on or before \_\_\_\_\_

\$ \_\_\_\_\_ on or before \_\_\_\_\_

\$ \_\_\_\_\_ on or before \_\_\_\_\_

Until the filing fee is paid in full, the debtor shall not make any additional payment or transfer any additional property to an attorney or any other person for services in connection with this case.

IF THE DEBTOR FAILS TO TIMELY PAY THE FILING FEE IN FULL OR TO TIMELY MAKE INSTALLMENT PAYMENTS, THE COURT MAY DISMISS THE DEBTOR'S CHAPTER 7 CASE.

SCHEDULED FOR HEARING.

A hearing to consider the debtor's "Application for Waiver of the Chapter 7 Filing Fee" shall be held on \_\_\_\_\_ at \_\_\_\_\_ am/pm at \_\_\_\_\_.  
(address of courthouse)

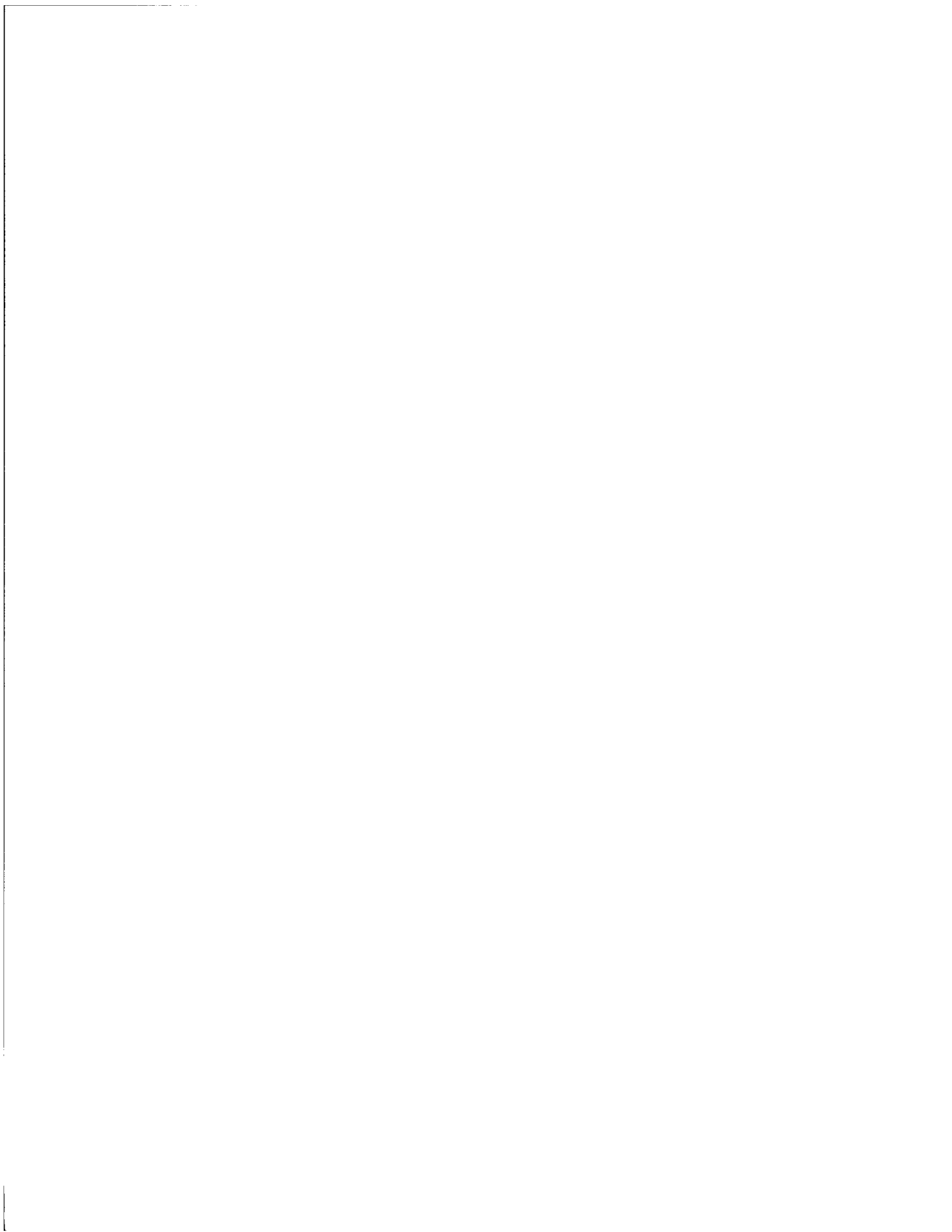
IF THE DEBTOR FAILS TO APPEAR AT THE SCHEDULED HEARING, THE COURT MAY DEEM SUCH FAILURE TO BE THE DEBTOR'S CONSENT TO THE ENTRY OF AN ORDER DENYING THE FEE WAIVER APPLICATION BY DEFAULT.

BY THE COURT:

DATE: \_\_\_\_\_

\_\_\_\_\_  
United States Bankruptcy Judge





# United States Bankruptcy Court

\_\_\_\_\_ District Of \_\_\_\_\_

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_

Chapter \_\_\_\_\_

## LIST OF CREDITORS HOLDING 20 LARGEST UNSECURED CLAIMS

Following is the list of the debtor's creditors holding the 20 largest unsecured claims. The list is prepared in accordance with Fed. R. Bankr. P. 1007(d) for filing in this chapter 11 [or chapter 9] case. The list does not include (1) persons who come within the definition of "insider" set forth in 11 U.S.C. § 101, or (2) secured creditors unless the value of the collateral is such that the unsecured deficiency places the creditor among the holders of the 20 largest unsecured claims. If a minor child is one of the creditors holding the 20 largest unsecured claims, indicate that by stating "a minor child" and do not disclose the child's name. See 11 U.S.C. § 112; Fed. R. Bankr. P. 1007(m).

(1)	(2)	(3)	(4)	(5)
<i>Name of creditor and complete mailing address including zip code</i>	<i>Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted</i>	<i>Nature of claim (trade debt, bank loan, government contract, etc.)</i>	<i>Indicate if claim is contingent, unliquidated, disputed or subject to setoff</i>	<i>Amount of claim [if secured also state value of security]</i>

Date \_\_\_\_\_

\_\_\_\_\_  
Debtor

*[Declaration as in Form 2]*







Form B6  
(10/05)

## **FORM 6. SCHEDULES**

Summary of Schedules  
Statistical Summary of Certain Liabilities

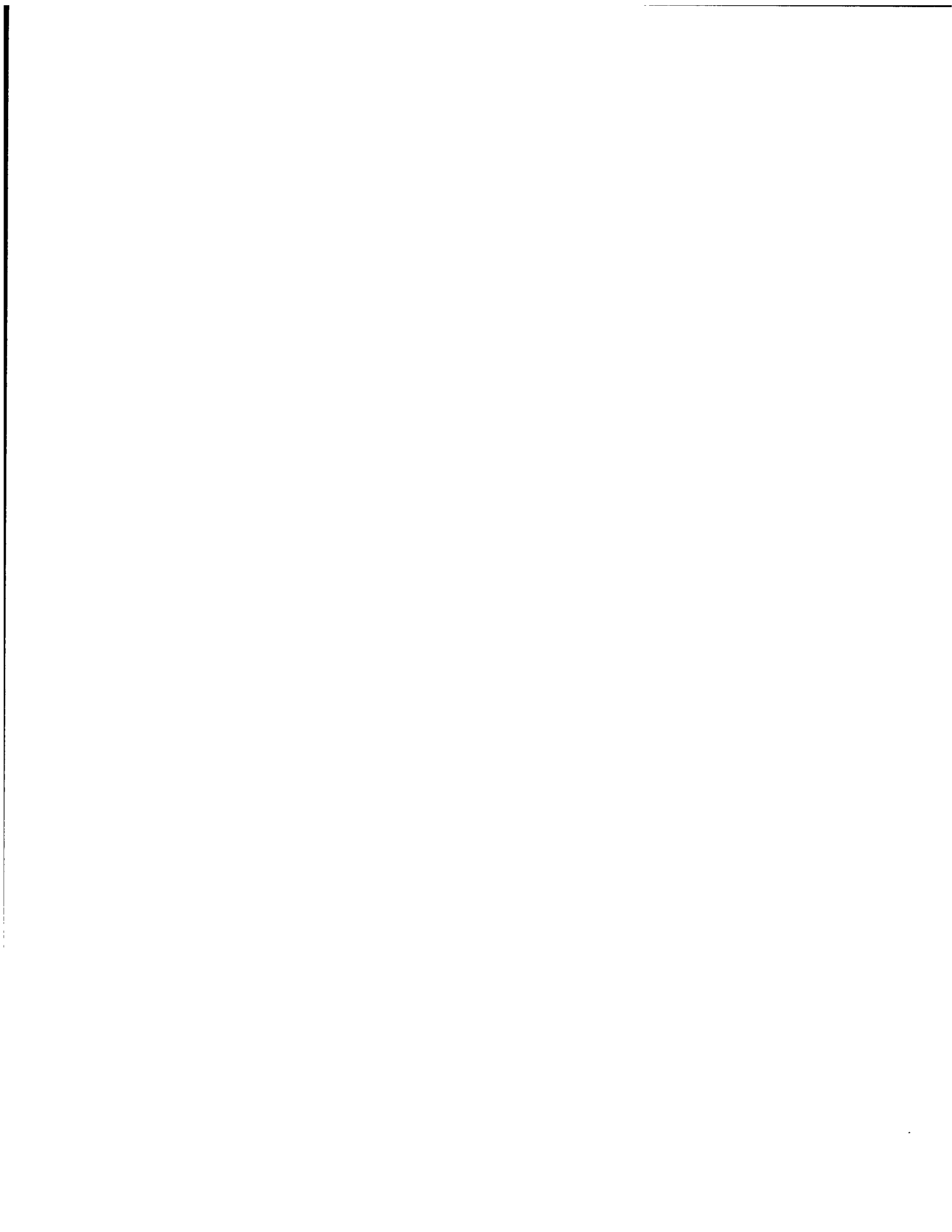
Schedule A - Real Property  
Schedule B - Personal Property  
Schedule C - Property Claimed as Exempt  
Schedule D - Creditors Holding Secured Claims  
Schedule E - Creditors Holding Unsecured Priority Claims  
Schedule F - Creditors Holding Unsecured Nonpriority Claims  
Schedule G - Executory Contracts and Unexpired Leases  
Schedule H - Codebtors  
Schedule I - Current Income of Individual Debtor(s)  
Schedule J - Current Expenditures of Individual Debtor(s)

Unsworn Declaration under Penalty of Perjury

**GENERAL INSTRUCTIONS:** The first page of the debtor's schedules and the first page of any amendments thereto must contain a caption as in Form 16B. Subsequent pages should be identified with the debtor's name and case number. If the schedules are filed with the petition, the case number should be left blank

Schedules D, E, and F have been designed for the listing of each claim only once. Even when a claim is secured only in part or entitled to priority only in part, it still should be listed only once. A claim which is secured in whole or in part should be listed on Schedule D only, and a claim which is entitled to priority in whole or in part should be listed on Schedule E only. Do not list the same claim twice. If a creditor has more than one claim, such as claims arising from separate transactions, each claim should be scheduled separately.

Review the specific instructions for each schedule before completing the schedule.



# United States Bankruptcy Court

\_\_\_\_\_ District Of \_\_\_\_\_

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_

Chapter \_\_\_\_\_

## SUMMARY OF SCHEDULES

Indicate as to each schedule whether that schedule is attached and state the number of pages in each. Report the totals from Schedules A, B, D, E, F, I, and J in the boxes provided. Add the amounts from Schedules A and B to determine the total amount of the debtor's assets. Add the amounts of all claims from Schedules D, E, and F to determine the total amount of the debtor's liabilities. Individual debtors must also complete the "Statistical Summary of Certain Liabilities."

### AMOUNTS SCHEDULED

NAME OF SCHEDULE	ATTACHED (YES/NO)	NO. OF SHEETS	ASSETS	LIABILITIES	OTHER
A - Real Property			\$		
B - Personal Property			\$		
C - Property Claimed as Exempt					
D - Creditors Holding Secured Claims				\$	
E - Creditors Holding Unsecured Priority Claims				\$	
F - Creditors Holding Unsecured Nonpriority Claims				\$	
G - Executory Contracts and Unexpired Leases					
H - Codebtors					
I - Current Income of Individual Debtor(s)					\$
J - Current Expenditures of Individual Debtors(s)					\$
<b>TOTAL</b>			\$	\$	



**United States Bankruptcy Court**  
District Of \_\_\_\_\_

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_

Chapter \_\_\_\_\_

**STATISTICAL SUMMARY OF CERTAIN LIABILITIES (28 U.S.C. § 159)**  
**[Individual Debtors Only]**

Summarize the following types of liabilities, as reported in the Schedules, and total them.

Type of Liability	Amount
Domestic Support Obligations (from Schedule E)	\$
Taxes and Certain Other Debts Owed to Governmental Units (from Schedule E)	\$
Claims for Death or Personal Injury While Debtor Was Intoxicated (from Schedule E)	\$
Student Loan Obligations (from Schedule F)	\$
Domestic Support, Separation Agreement, and Divorce Decree Obligations Not Reported on Schedule E	\$
Obligations to Pension or Profit-Sharing, and Other Similar Obligations (from Schedule F)	\$
TOTAL	\$

**The foregoing information is for statistical purposes only under 28 U.S.C. § 159.**

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_  
(If known)

### SCHEDULE A - REAL PROPERTY

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a co-tenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether husband, wife, or both own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

**Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.**

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim."

If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

DESCRIPTION AND LOCATION OF PROPERTY	NATURE OF DEBTOR'S INTEREST IN PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION	AMOUNT OF SECURED CLAIM

Total ▶  
(Report also on Summary of Schedules.)



In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_  
(If known)

## SCHEDULE B - PERSONAL PROPERTY

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "x" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether husband, wife, or both own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petitioner is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

**Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.**

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property." In providing the information requested in this schedule, do not include the name or address of a minor child. Simply state "a minor child."

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
1 Cash on hand  2 Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and home-stead associations, or credit unions, brokerage houses, or cooperatives  3 Security deposits with public utilities, telephone companies, landlords, and others  4 Household goods and furnishings, including audio, video, and computer equipment  5 Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles  6 Wearing apparel  7 Furs and jewelry  8 Firearms and sports, photographic, and other hobby equipment  9 Interests in insurance policies Name insurance company of each policy and itemize surrender or refund value of each  10 Annuities Itemize and name each issuer  11 Interests in an education IRA as defined in 26 U S C § 530(b)(1) or under a qualified State tuition plan as defined in 26 U S C § 529(b)(1) Give particulars (File separately the record(s) of any such interest(s) 11 U S C § 521(c), Rule 1007(b))				

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_  
(If known)

**SCHEDULE B - PERSONAL PROPERTY**  
(Continuation Sheet)

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITH- OUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
<p>12 Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans Give particulars</p> <p>13 Stock and interests in incorporated and unincorporated businesses Itemize</p> <p>14 Interests in partnerships or joint ventures Itemize</p> <p>15 Government and corporate bonds and other negotiable and non-negotiable instruments</p> <p>16 Accounts receivable</p> <p>17 Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled Give particulars</p> <p>18 Other liquidated debts owed to debtor including tax refunds Give particulars</p> <p>19 Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule A - Real Property</p> <p>20 Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust</p> <p>21 Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims Give estimated value of each</p>				

In re \_\_\_\_\_,  
Debtor

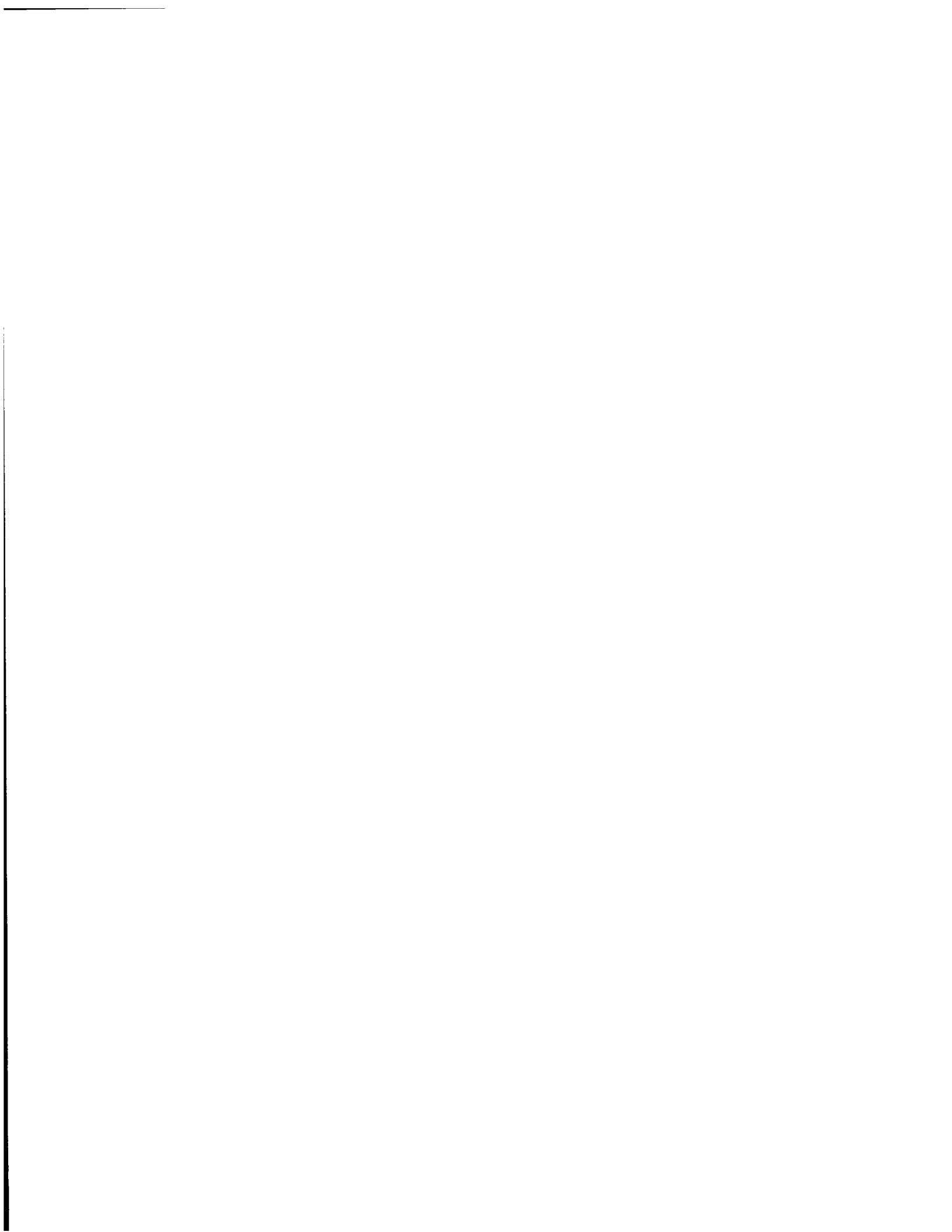
Case No. \_\_\_\_\_  
(If known)

### SCHEDULE B - PERSONAL PROPERTY

(Continuation Sheet)

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITH- OUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
22 Patents, copyrights, and other intellectual property Give particulars  23 Licenses, franchises, and other general intangibles Give particulars  24 Customer lists or other compilations containing personally identifiable information (as defined in 11 U.S.C. § 101(41A)) provided to the debtor by individuals in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes  25 Automobiles, trucks, trailers, and other vehicles and accessories  26 Boats, motors, and accessories  27 Aircraft and accessories  28 Office equipment, furnishings, and supplies  29 Machinery, fixtures, equipment, and supplies used in business  30 Inventory  31 Animals  32 Crops - growing or harvested Give particulars  33 Farming equipment and implements  34 Farm supplies, chemicals, and feed  35 Other personal property of any kind not already listed Itemize				
_____ continuation sheets attached Total ▶				\$

(Include amounts from any continuation sheets attached Report total also on Summary of Schedules )



In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_  
(If known)

### SCHEDULE C - PROPERTY CLAIMED AS EXEMPT

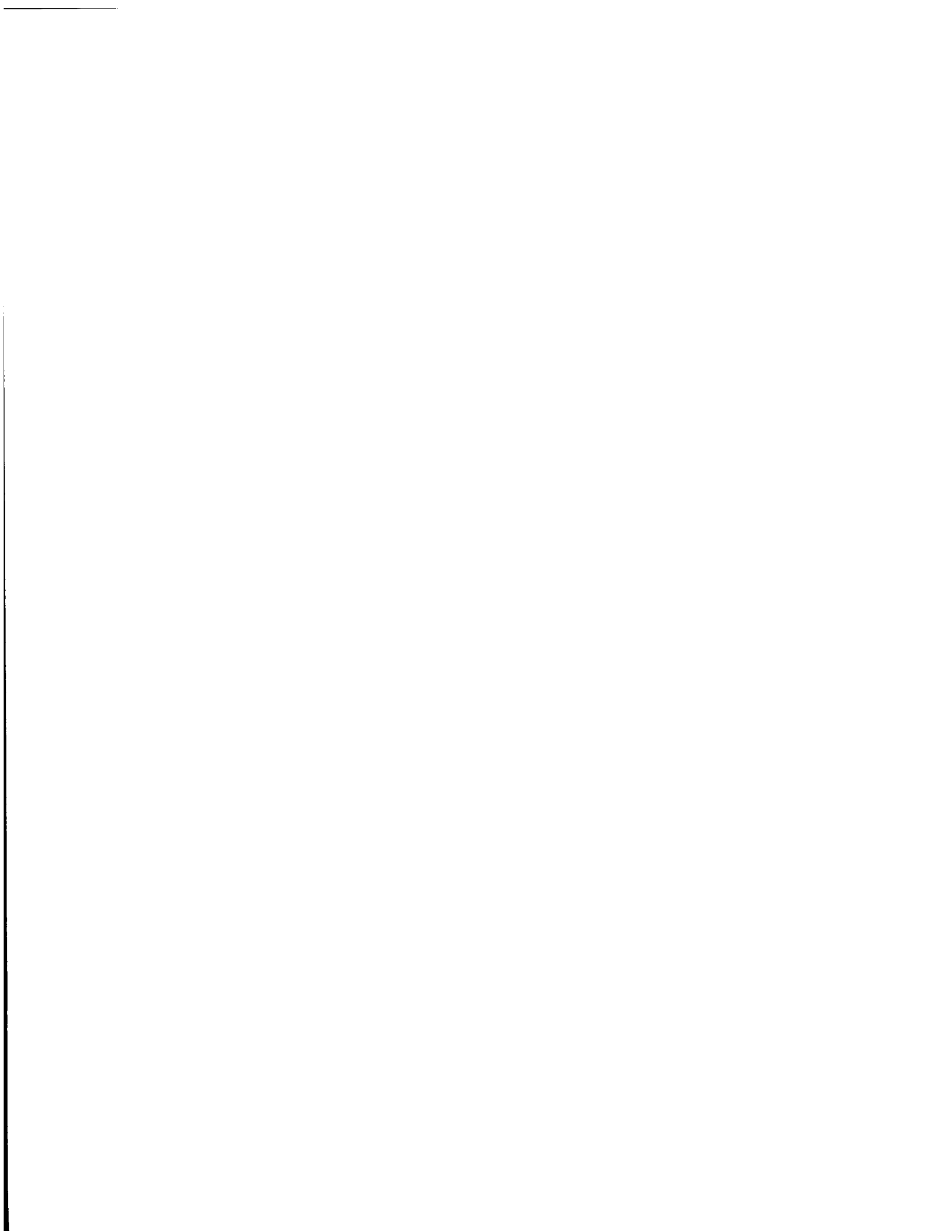
Debtor claims the exemptions to which debtor is entitled under:  
(Check one box)

- 11 U.S.C. § 522(b)(2)
- 11 U.S.C. § 522(b)(3)

Check if debtor claims a homestead exemption that exceeds \$125,000.

DESCRIPTION OF PROPERTY	SPECIFY LAW PROVIDING EACH EXEMPTION	VALUE OF CLAIMED EXEMPTION	CURRENT VALUE OF PROPERTY WITHOUT DEDUCTING EXEMPTION





(10/05)

In re \_\_\_\_\_  
**Debtor**

Case No. \_\_\_\_\_  
 (If known)

**SCHEDULE D – CREDITORS HOLDING SECURED CLAIMS**

State the name, mailing address, including zip code, and last four digits of any account number of all entities holding claims secured by property of the debtor as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests.

List creditors in alphabetical order to the extent practicable. If a minor child is a creditor, indicate that by stating "a minor child" and do not disclose the child's name. See 11 U.S.C. § 112; Fed. R. Bankr. P. 1007(m). If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H – Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND A ACCOUNT NUMBER <i>(See Instructions Above)</i>	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO.			VALUE \$					
ACCOUNT NO.			VALUE \$					
ACCOUNT NO.			VALUE \$					
ACCOUNT NO.			VALUE \$					
ACCOUNT NO.			VALUE \$					
continuation sheets attached Subtotal ► (Total of this page) Total ► (Use only on last page)							\$	

Form B6D – Cont.  
(10/05)

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_  
(If known)

**SCHEDULE D – CREDITORS HOLDING SECURED CLAIMS**  
(Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND A ACCOUNT NUMBER <i>(See Instructions Above)</i>	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO.								
			VALUE \$					
ACCOUNT NO.								
			VALUE \$					
ACCOUNT NO.								
			VALUE \$					
ACCOUNT NO.								
			VALUE \$					
ACCOUNT NO.								
			VALUE \$					

Sheet no. \_\_\_ of \_\_\_ continuation sheets attached to Schedule of Creditors Holding Secured Claims

Subtotal ►  
(Total of this page)

\$

Total ►  
(Use only on last page)

\$

In re \_\_\_\_\_  
Debtor

Case No \_\_\_\_\_  
(if known)

## SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided. Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name, mailing address, including zip code, and last four digits of the account number, if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of the petition. Use a separate continuation sheet for each type of priority and label each with the type of priority.

The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, indicate that by stating "a minor child" and do not disclose the child's name. See 11 U.S.C. § 112; Fed.R.Bankr.P. 1007(m).

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H-Codebtors. If a joint petition is filed, state whether husband, wife, both of them or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of claims listed on each sheet in the box labeled "Subtotal" on each sheet. Report the total of all claims listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

Report the total of amounts entitled to priority listed on each sheet in the box labeled "Subtotal" on each sheet. Report the total of all amounts entitled to priority listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. If applicable, also report this total on the Means Test form.

Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

**TYPES OF PRIORITY CLAIMS** (Check the appropriate box(es) below if claims in that category are listed on the attached sheets)

**Domestic Support Obligations**

Claims for domestic support that are owed to or recoverable by a spouse, former spouse, or child of the debtor, or the parent, legal guardian, or responsible relative of such a child, or a governmental unit to whom such a domestic support claim has been assigned to the extent provided in 11 U.S.C. § 507(a)(1).

**Extensions of credit in an involuntary case**

Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. § 507(a)(3).

**Wages, salaries, and commissions**

Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to \$10,000\* per person earned within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).

**Contributions to employee benefit plans**

Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(5).

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_  
(if known)

**Certain farmers and fishermen**

Claims of certain farmers and fishermen, up to \$4,925\* per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(6).

**Deposits by individuals**

Claims of individuals up to \$2,225\* for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. § 507(a)(7).

**Taxes and Certain Other Debts Owed to Governmental Units**

Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C. § 507(a)(8).

**Commitments to Maintain the Capital of an Insured Depository Institution**

Claims based on commitments to the FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Currency, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U.S.C. § 507 (a)(9).

**Claims for Death or Personal Injury While Debtor Was Intoxicated**

Claims for death or personal injury resulting from the operation of a motor vehicle or vessel while the debtor was intoxicated from using alcohol, a drug, or another substance. 11 U.S.C. § 507(a)(10).

\* Amounts are subject to adjustment on April 1, 2007, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

\_\_\_\_\_ continuation sheets attached

In re \_\_\_\_\_,  
Debtor

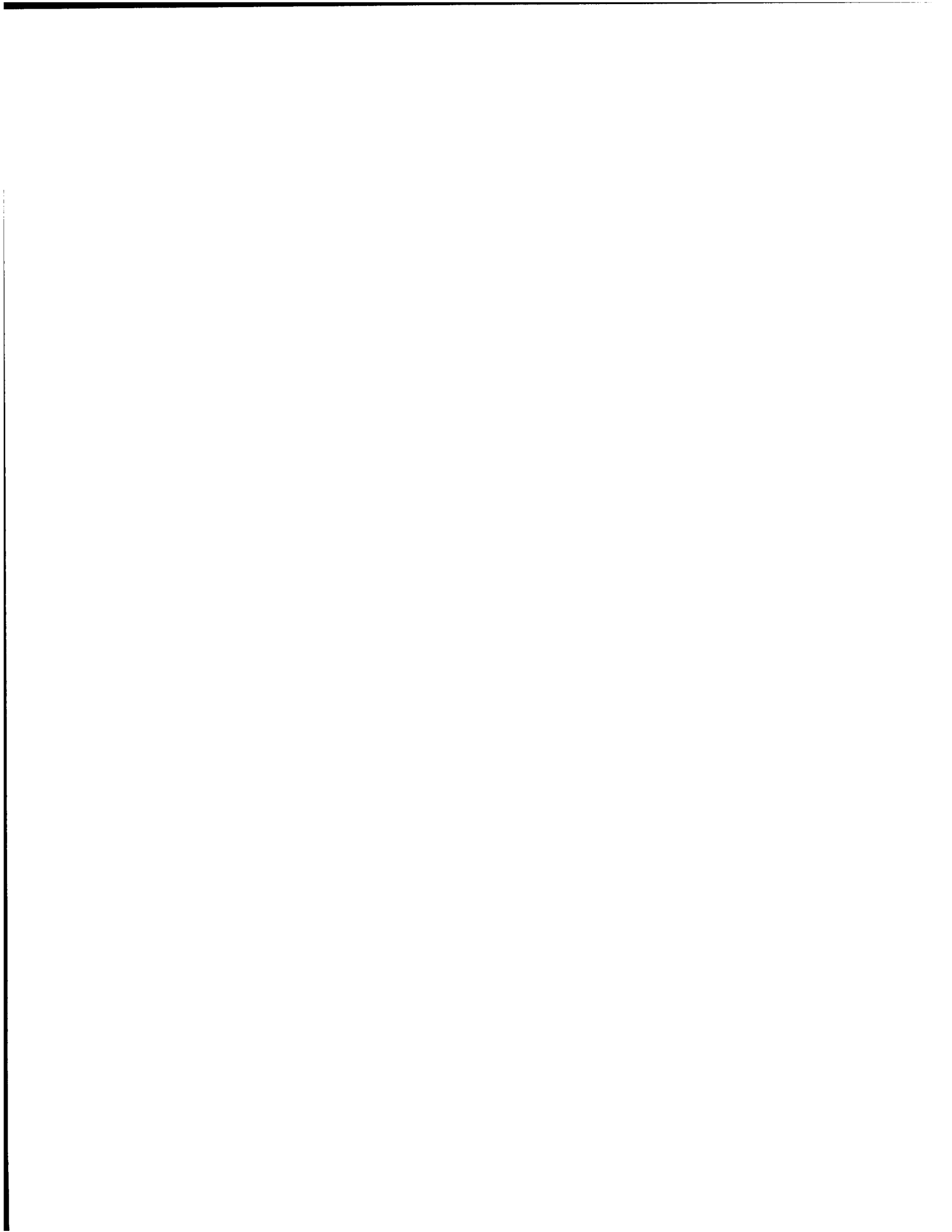
Case No. \_\_\_\_\_  
(If known)

## SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

(Continuation Sheet)

**TYPE OF PRIORITY**

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.)	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM	AMOUNT ENTITLED TO PRIORITY
Account No.								
Account No.								
Account No.								
Account No.								
Account No.								
<b>Subtotal</b> ▶							\$	\$
(Total of this page)								
<b>Total</b> ▶							\$	\$
(Use only on last page of the completed Schedule E (Report total also on Summary of Schedules)								



In re \_\_\_\_\_,

Case No. \_\_\_\_\_

Debtor

(If known)

### SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, indicate that by stating "a minor child" and do not disclose the child's name. See 11 U.S.C. § 112; Fed.R.Bankr.P. 1007(m). Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

Check this box if debtor has no creditors holding unsecured claims to report on this Schedule F.

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER <small>(See instructions above )</small>	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO							
ACCOUNT NO							
ACCOUNT NO							
ACCOUNT NO							
Subtotal ▶							\$
Total ▶							\$

\_\_\_\_ continuation sheets attached

(Use only on last page of the completed Schedule F )  
( Report also on Summary of Schedules )



In re \_\_\_\_\_,  
 Debtor

Case No. \_\_\_\_\_  
 (If known)

**SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS**  
 (Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER <small>(See instructions above)</small>	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM	
ACCOUNT NO								
ACCOUNT NO								
ACCOUNT NO								
ACCOUNT NO								
ACCOUNT NO								
Sheet no ____ of ____ sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims							Subtotal ▶	\$
							Total ▶	\$

(Use only on last page of the completed Schedule F )  
 ( Report also on Summary of Schedules )

In re \_\_\_\_\_,  
Debtor

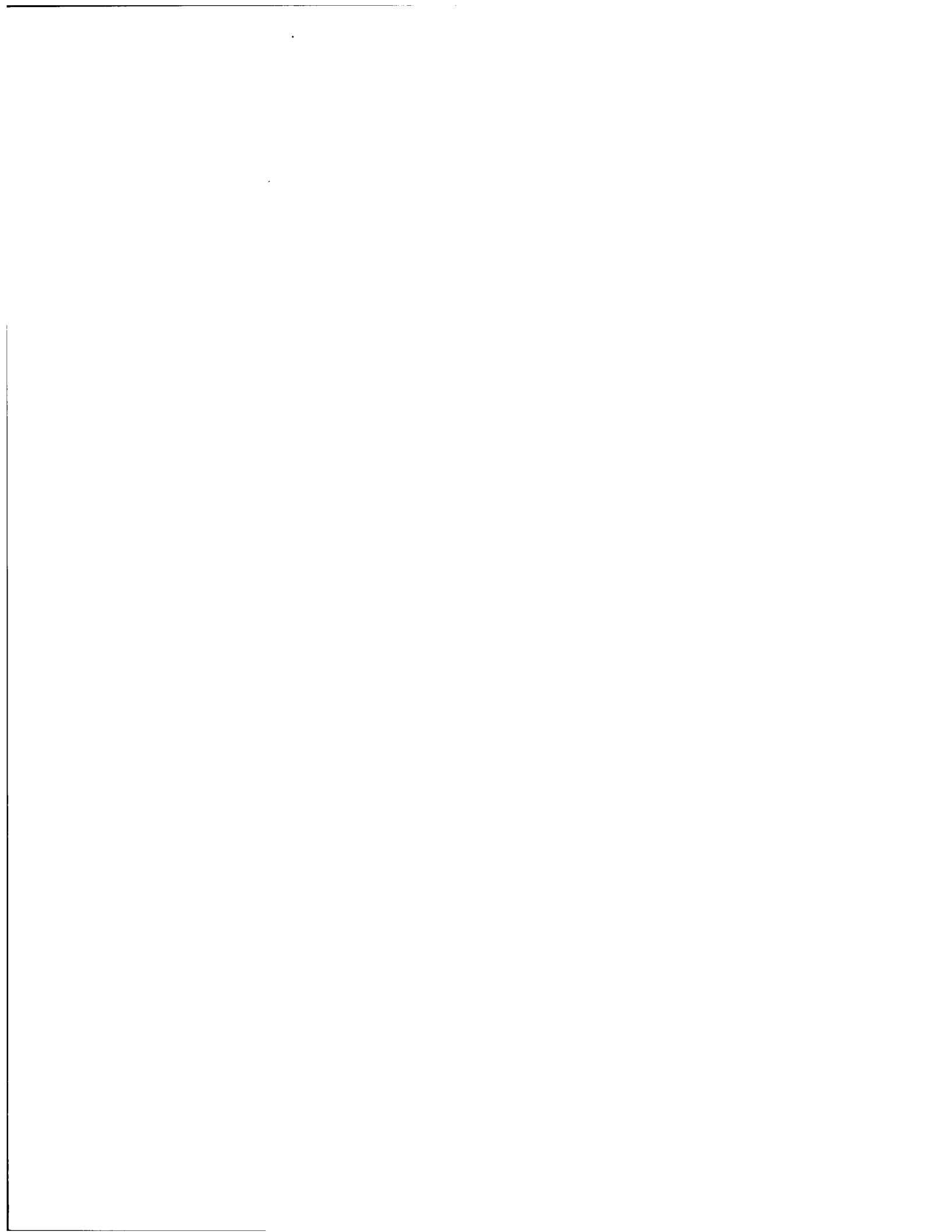
Case No. \_\_\_\_\_  
(if known)

### SCHEDULE G - EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests. State nature of debtor's interest in contract, i.e., "Purchaser," "Agent," etc. State whether debtor is the lessor or lessee of a lease. Provide the names and complete mailing addresses of all other parties to each lease or contract described. If a minor child is a party to one of the leases or contracts, indicate that by stating "a minor child" and do not disclose the child's name. See 11 U.S.C. § 112; Fed.R. Bankr. P. 1007(m).

Check this box if debtor has no executory contracts or unexpired leases.

NAME AND MAILING ADDRESS, INCLUDING ZIP CODE, OF OTHER PARTIES TO LEASE OR CONTRACT.	DESCRIPTION OF CONTRACT OR LEASE AND NATURE OF DEBTOR'S INTEREST. STATE WHETHER LEASE IS FOR NONRESIDENTIAL REAL PROPERTY. STATE CONTRACT NUMBER OF ANY GOVERNMENT CONTRACT.



In re \_\_\_\_\_,  
Debtor

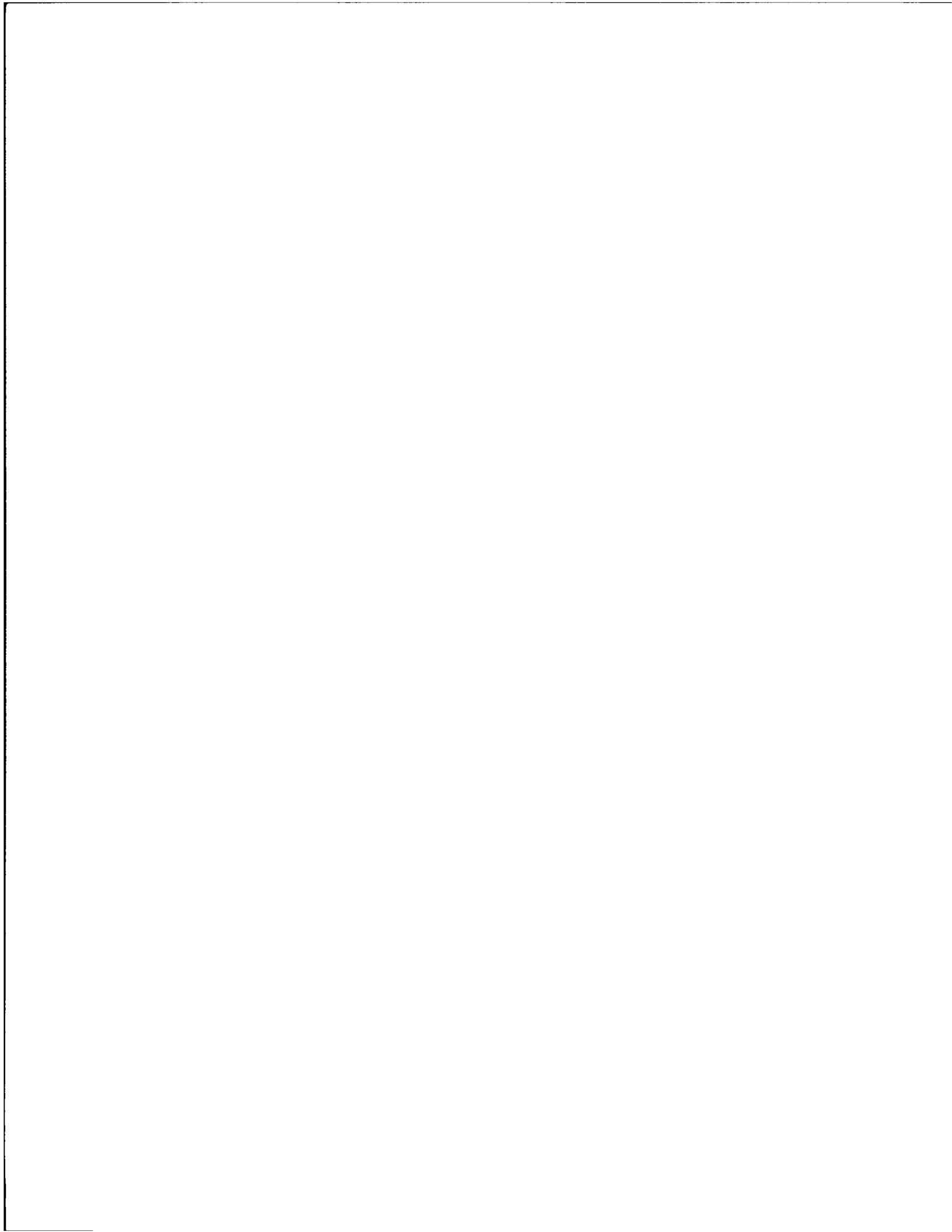
Case No. \_\_\_\_\_  
(if known)

### SCHEDULE H - CODEBTORS

Provide the information requested concerning any person or entity, other than a spouse in a joint case, that is also liable on any debts listed by debtor in the schedules of creditors. Include all guarantors and co-signers. If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within the eight year period immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state, commonwealth, or territory. Include all names used by the nondebtor spouse during the eight years immediately preceding the commencement of this case. If a minor child is a codebtor or a creditor, indicate that by stating "a minor child" and do not disclose the child's name. See 11 U.S.C. § 112; Fed. Bankr. P. 1007(m).

Check this box if debtor has no codebtors.

NAME AND ADDRESS OF CODEBTOR	NAME AND ADDRESS OF CREDITOR



In re \_\_\_\_\_, Debtor

Case No. \_\_\_\_\_ (if known)

### SCHEDULE I - CURRENT INCOME OF INDIVIDUAL DEBTOR(S)

The column labeled "Spouse" must be completed in all cases filed by joint debtors and by a married debtor in a chapter 7, 11, 12, or 13 case whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. Do not state the name of any minor child.

Debtor's Marital Status:	DEPENDENTS OF DEBTOR AND SPOUSE	
	RELATIONSHIP:	AGE:
<b>Employment:</b>	DEBTOR	SPOUSE
Occupation		
Name of Employer		
How long employed		
Address of Employer		

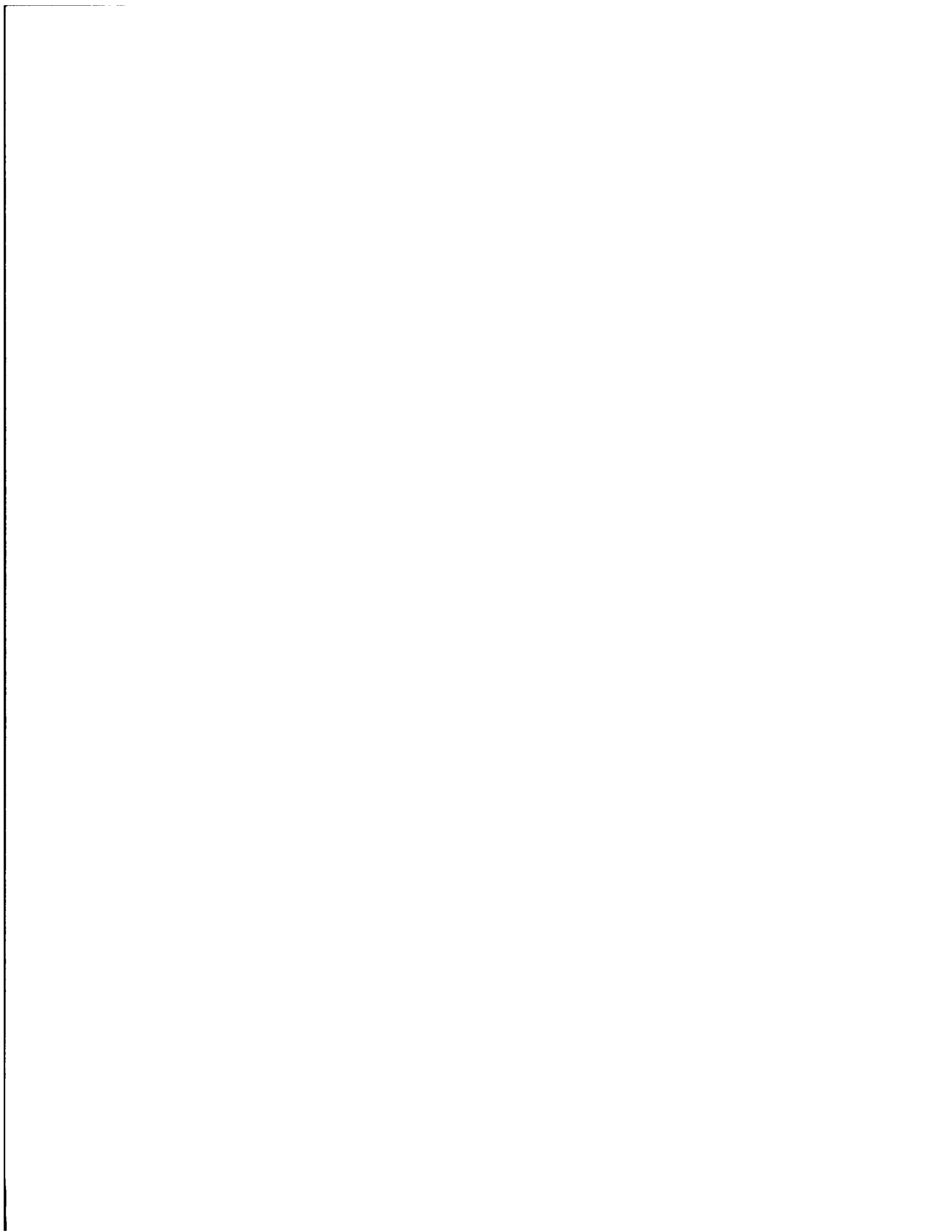
INCOME: (Estimate of average monthly income)	DEBTOR	SPOUSE
1. Current monthly gross wages, salary, and commissions (Prorate if not paid monthly.)	\$ _____	\$ _____
2. Estimate monthly overtime	\$ _____	\$ _____
3. SUBTOTAL	\$ _____ \$ _____	
4. LESS PAYROLL DEDUCTIONS		
a. Payroll taxes and social security	\$ _____	\$ _____
b. Insurance	\$ _____	\$ _____
c. Union dues	\$ _____	\$ _____
d. Other (Specify): _____	\$ _____	\$ _____
5. SUBTOTAL OF PAYROLL DEDUCTIONS	\$ _____ \$ _____	
6. TOTAL NET MONTHLY TAKE HOME PAY	\$ _____ \$ _____	
7. Regular income from operation of business or profession or farm. (Attach detailed statement)	\$ _____	\$ _____
8. Income from real property	\$ _____	\$ _____
9. Interest and dividends	\$ _____	\$ _____
10. Alimony, maintenance or support payments payable to the debtor for the debtor's use or that of dependents listed above.	\$ _____	\$ _____
11. Social security or government assistance (Specify): _____	\$ _____	\$ _____
12. Pension or retirement income	\$ _____	\$ _____
13. Other monthly income (Specify): _____	\$ _____	\$ _____
14. SUBTOTAL OF LINES 7 THROUGH 13		
15. TOTAL MONTHLY INCOME (Add amounts shown on lines 6 and 14)	\$ _____ \$ _____	
16. TOTAL COMBINED MONTHLY INCOME:	\$ _____	

(Report also on Summary of Schedules.)

17. Describe any increase or decrease in income reasonably anticipated to occur within the year following the filing of this document:

\_\_\_\_\_

\_\_\_\_\_



In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_  
(if known)

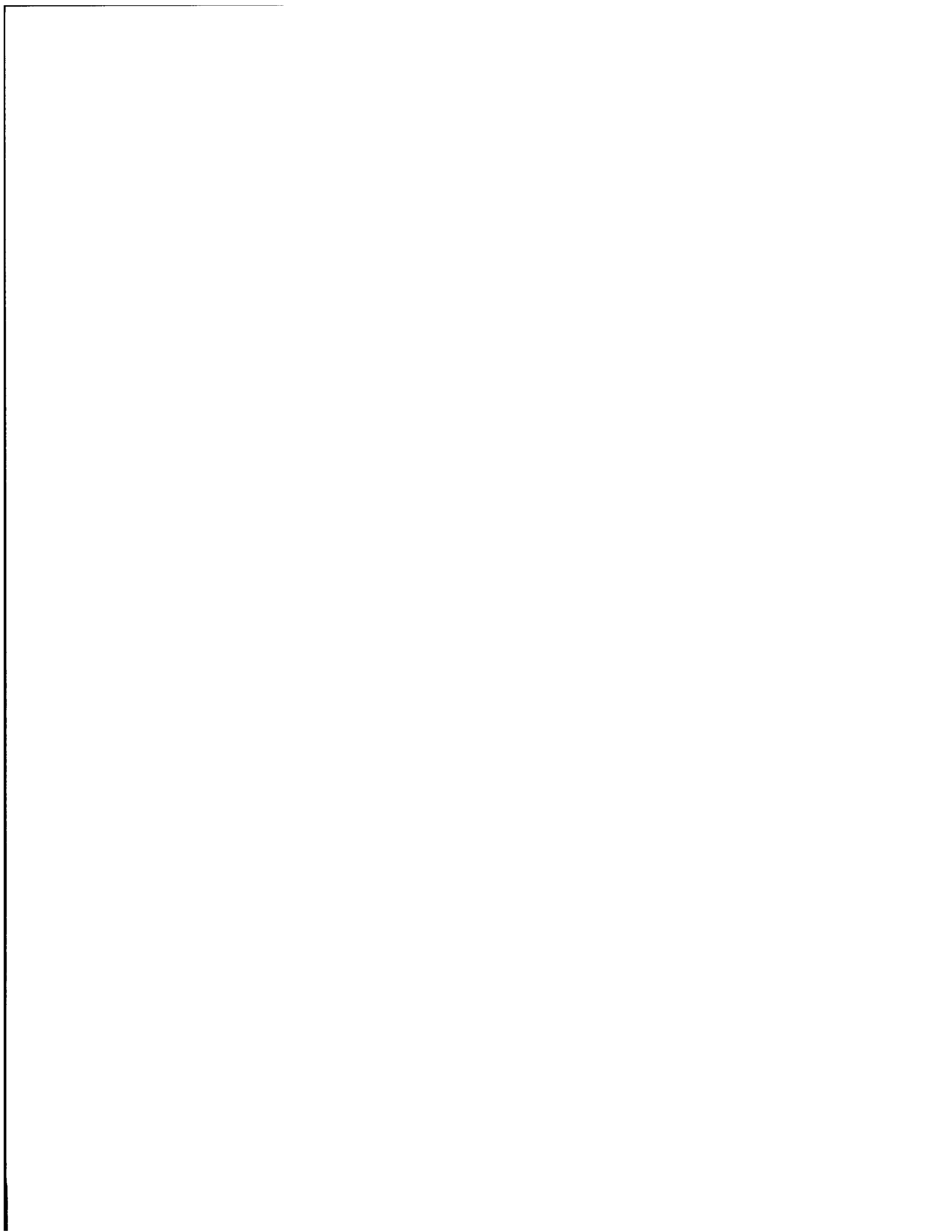
### SCHEDULE J - CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S)

Complete this schedule by estimating the average monthly expenses of the debtor and the debtor's family. Pro rate any payments made bi-weekly, quarterly, semi-annually, or annually to show monthly rate.

Check this box if a joint petition is filed and debtor's spouse maintains a separate household. Complete a separate schedule of expenditures labeled "Spouse."

- 1. Rent or home mortgage payment (include lot rented for mobile home) \$ \_\_\_\_\_
  - a. Are real estate taxes included? Yes \_\_\_\_\_ No \_\_\_\_\_
  - b. Is property insurance included? Yes \_\_\_\_\_ No \_\_\_\_\_
- 2. Utilities: a. Electricity and heating fuel \$ \_\_\_\_\_
  - b. Water and sewer \$ \_\_\_\_\_
  - c. Telephone \$ \_\_\_\_\_
  - d. Other \_\_\_\_\_ \$ \_\_\_\_\_
- 3. Home maintenance (repairs and upkeep) \$ \_\_\_\_\_
- 4. Food \$ \_\_\_\_\_
- 5. Clothing \$ \_\_\_\_\_
- 6. Laundry and dry cleaning \$ \_\_\_\_\_
- 7. Medical and dental expenses \$ \_\_\_\_\_
- 8. Transportation (not including car payments) \$ \_\_\_\_\_
- 9. Recreation, clubs and entertainment, newspapers, magazines, etc. \$ \_\_\_\_\_
- 10. Charitable contributions \$ \_\_\_\_\_
- 11. Insurance (not deducted from wages or included in home mortgage payments)
  - a. Homeowner's or renter's \$ \_\_\_\_\_
  - b. Life \$ \_\_\_\_\_
  - c. Health \$ \_\_\_\_\_
  - d. Auto \$ \_\_\_\_\_
  - e. Other \_\_\_\_\_ \$ \_\_\_\_\_
- 12. Taxes (not deducted from wages or included in home mortgage payments) (Specify) \_\_\_\_\_ \$ \_\_\_\_\_
- 13. Installment payments: (In chapter 11, 12, and 13 cases, do not list payments to be included in the plan)
  - a. Auto \$ \_\_\_\_\_
  - b. Other \_\_\_\_\_ \$ \_\_\_\_\_
  - c. Other \_\_\_\_\_ \$ \_\_\_\_\_
- 14. Alimony, maintenance, and support paid to others \$ \_\_\_\_\_
- 15. Payments for support of additional dependents not living at your home \$ \_\_\_\_\_
- 16. Regular expenses from operation of business, profession, or farm (attach detailed statement) \$ \_\_\_\_\_
- 17. Other \_\_\_\_\_ \$ \_\_\_\_\_
- 18. TOTAL MONTHLY EXPENSES (Report also on Summary of Schedules) \$ \_\_\_\_\_
- 19. Describe any increase or decrease in expenditures reasonably anticipated to occur within the year following the filing of this document: \_\_\_\_\_
- 20. STATEMENT OF MONTHLY NET INCOME
  - a. Total monthly income from Line 16 of Schedule I \$ \_\_\_\_\_
  - b. Total monthly expenses from Line 18 above \$ \_\_\_\_\_
  - c. Monthly net income (a. minus b.) \$ \_\_\_\_\_





In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_  
(If known)

## DECLARATION CONCERNING DEBTOR'S SCHEDULES

### DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

I declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of \_\_\_\_\_ (Total shown on summary page plus 1.) sheets, and that they are true and correct to the best of my knowledge, information, and belief

Date \_\_\_\_\_

Signature \_\_\_\_\_  
Debtor

Date \_\_\_\_\_

Signature \_\_\_\_\_  
(Joint Debtor, if any)

[If joint case, both spouses must sign.]

### DECLARATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I declare under penalty of perjury that (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h) and 342(b), and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required by that section

Printed or Typed Name of Bankruptcy Petition Preparer \_\_\_\_\_

Social Security No \_\_\_\_\_

(Required by 11 U.S.C. § 110.)

If the bankruptcy petition preparer is not an individual, state the name, title (if any), address, and social security number of the officer, principal, responsible person, or partner who signs this document.

Address \_\_\_\_\_

X \_\_\_\_\_  
Signature of Bankruptcy Petition Preparer

\_\_\_\_\_ Date

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document, unless the bankruptcy petition preparer is not an individual

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both 11 U.S.C. § 110, 18 U.S.C. § 156

### DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF A CORPORATION OR PARTNERSHIP

I, the \_\_\_\_\_ [the president or other officer or an authorized agent of the corporation or a member or an authorized agent of the partnership] of the \_\_\_\_\_ [corporation or partnership] named as debtor in this case, declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of \_\_\_\_\_ sheets, and that they are true and correct to the best of my knowledge, information, and belief (Total shown on summary page plus 1.)

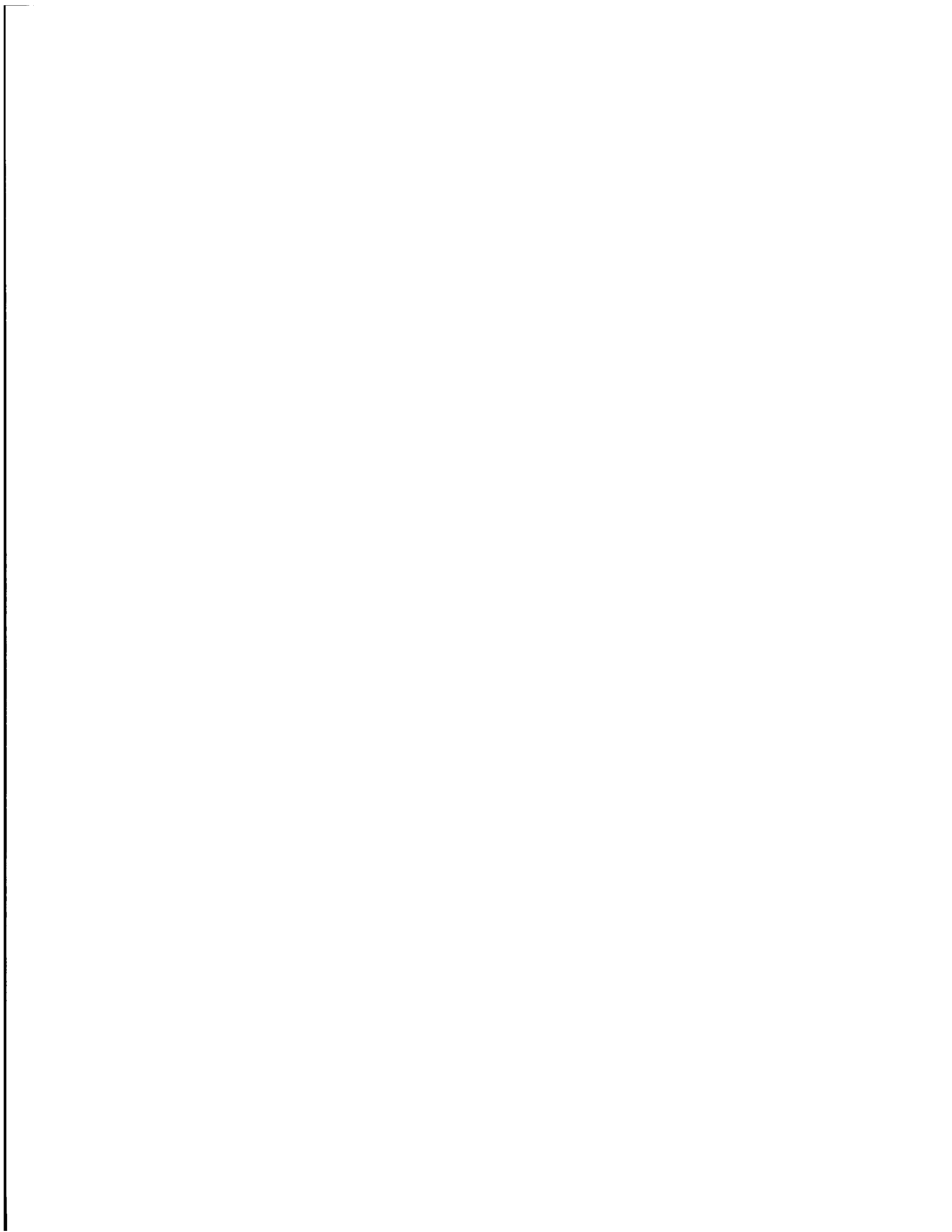
Date \_\_\_\_\_

Signature \_\_\_\_\_

\_\_\_\_\_  
[Print or type name of individual signing on behalf of debtor]

[An individual signing on behalf of a partnership or corporation must indicate position or relationship to debtor.]

-----Penalty for making a false statement or concealing property: Fine of up to \$500,000 or imprisonment for up to 5 years or both 18 U.S.C. §§ 152 and 3571



## UNITED STATES BANKRUPTCY COURT

\_\_\_\_\_  
DISTRICT OF \_\_\_\_\_

In re: \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_  
(if known)

### STATEMENT OF FINANCIAL AFFAIRS

This statement is to be completed by every debtor. Spouses filing a joint petition may file a single statement on which the information for both spouses is combined. If the case is filed under chapter 12 or chapter 13, a married debtor must furnish information for both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. An individual debtor engaged in business as a sole proprietor, partner, family farmer, or self-employed professional, should provide the information requested on this statement concerning all such activities as well as the individual's personal affairs. Do not include the name or address of a minor child in this statement. Indicate payments, transfers and the like to minor children by stating "a minor child." See 11 U.S.C. § 112; Fed. R. Bankr. P. 1007(m).

Questions 1 - 18 are to be completed by all debtors. Debtors that are or have been in business, as defined below, also must complete Questions 19 - 25. **If the answer to an applicable question is "None," mark the box labeled "None."** If additional space is needed for the answer to any question, use and attach a separate sheet properly identified with the case name, case number (if known), and the number of the question.

#### DEFINITIONS

*"In business."* A debtor is "in business" for the purpose of this form if the debtor is a corporation or partnership. An individual debtor is "in business" for the purpose of this form if the debtor is or has been, within six years immediately preceding the filing of this bankruptcy case, any of the following: an officer, director, managing executive, or owner of 5 percent or more of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or self-employed full-time or part-time. An individual debtor also may be "in business" for the purpose of this form if the debtor engages in a trade, business, or other activity, other than as an employee, to supplement income from the debtor's primary employment.

*"Insider."* The term "insider" includes but is not limited to: relatives of the debtor; general partners of the debtor and their relatives; corporations of which the debtor is an officer, director, or person in control; officers, directors, and any owner of 5 percent or more of the voting or equity securities of a corporate debtor and their relatives; affiliates of the debtor and insiders of such affiliates; any managing agent of the debtor. 11 U.S.C. § 101.

#### 1. Income from employment or operation of business

None

State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business, including part-time activities either as an employee or in independent trade or business, from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the **two years** immediately preceding this calendar year. (A debtor that maintains, or has maintained, financial records on the basis of a fiscal rather than a calendar year may report fiscal year income. Identify the beginning and ending dates of the debtor's fiscal year.) If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income of both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT

SOURCE

**2. Income other than from employment or operation of business**None  

State the amount of income received by the debtor other than from employment, trade, profession, operation of the debtor's business during the **two years** immediately preceding the commencement of this case. Give particulars. If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income for each spouse whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT

SOURCE

**3. Payments to creditors**None  
*Complete a. or b., as appropriate, and c.*

a. *Individual or joint debtor(s) with primarily consumer debts:* List all payments on loans, installment purchases of goods or services, and other debts to any creditor made within **90 days** immediately preceding the commencement of this case if the aggregate value of all property that constitutes or is affected by such transfer is not less than \$600. Indicate with an asterisk (\*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and creditor counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR

DATES OF  
PAYMENTSAMOUNT  
PAIDAMOUNT  
STILL OWINGNone  

b. *Debtor whose debts are not primarily consumer debts:* List each payment or other transfer to any creditor made within **90 days** immediately preceding the commencement of the case if the aggregate value of all property that constitutes or is affected by such transfer is not less than \$5,000. (Married debtors filing under chapter 12 or chapter 13 must include payments and other transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR

DATES OF  
PAYMENTS/  
TRANSFERSAMOUNT  
PAID OR  
VALUE OF  
TRANSFERSAMOUNT  
STILL  
OWINGNone  

c. *All debtors:* List all payments made within **one year** immediately preceding the commencement of this case to or for the benefit of creditors who are or were insiders. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR  
AND RELATIONSHIP TO DEBTORDATE OF  
PAYMENTAMOUNT  
PAIDAMOUNT  
STILL OWING**4. Suits and administrative proceedings, executions, garnishments and attachments**

None  

a. List all suits and administrative proceedings to which the debtor is or was a party within **one year** immediately preceding the filing of this bankruptcy case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

CAPTION OF SUIT AND CASE NUMBER	NATURE OF PROCEEDING	COURT OR AGENCY AND LOCATION	STATUS OR DISPOSITION
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None  

b. Describe all property that has been attached, garnished or seized under any legal or equitable process within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON FOR WHOSE BENEFIT PROPERTY WAS SEIZED	DATE OF SEIZURE	DESCRIPTION AND VALUE OF PROPERTY
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#### 5. Repossessions, foreclosures and returns

None  

List all property that has been repossessed by a creditor, sold at a foreclosure sale, transferred through a deed in lieu of foreclosure or returned to the seller, within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR OR SELLER	DATE OF REPOSSESSION, FORECLOSURE SALE, TRANSFER OR RETURN	DESCRIPTION AND VALUE OF PROPERTY
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#### 6. Assignments and receiverships

None  

a. Describe any assignment of property for the benefit of creditors made within **120 days** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include any assignment by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF ASSIGNEE	DATE OF ASSIGNMENT	TERMS OF ASSIGNMENT OR SETTLEMENT
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None  

b. List all property which has been in the hands of a custodian, receiver, or court-appointed official within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CUSTODIAN	NAME AND LOCATION OF COURT CASE TITLE & NUMBER	DATE OF ORDER	DESCRIPTION AND VALUE OF PROPERTY
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**7. Gifts**None  

List all gifts or charitable contributions made within **one year** immediately preceding the commencement of this case except ordinary and usual gifts to family members aggregating less than \$200 in value per individual family member and charitable contributions aggregating less than \$100 per recipient. (Married debtors filing under chapter 12 or chapter 13 must include gifts or contributions by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON OR ORGANIZATION	RELATIONSHIP TO DEBTOR, IF ANY	DATE OF GIFT	DESCRIPTION AND VALUE OF GIFT
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**8. Losses**None  

List all losses from fire, theft, other casualty or gambling within **one year** immediately preceding the commencement of this case **or since the commencement of this case**. (Married debtors filing under chapter 12 or chapter 13 must include losses by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

DESCRIPTION AND VALUE OF PROPERTY	DESCRIPTION OF CIRCUMSTANCES AND, IF LOSS WAS COVERED IN WHOLE OR IN PART BY INSURANCE, GIVE PARTICULARS	DATE OF LOSS
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**9. Payments related to debt counseling or bankruptcy**None  

List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of a petition in bankruptcy within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS OF PAYEE	DATE OF PAYMENT, NAME OF PAYER IF OTHER THAN DEBTOR	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
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**10. Other transfers**

None  

- a. List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within **two years** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF TRANSFEREE, RELATIONSHIP TO DEBTOR	DATE	DESCRIBE PROPERTY TRANSFERRED AND VALUE RECEIVED
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None  

- b. List all property transferred by the debtor within **ten years** immediately preceding the commencement of this case to a self-settled trust or similar device of which the debtor is a beneficiary.

NAME OF TRUST OR OTHER DEVICE	DATE(S) OF TRANSFER(S)	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY OR DEBTOR'S INTEREST IN PROPERTY
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### 11. Closed financial accounts

None  

- List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within **one year** immediately preceding the commencement of this case. Include checking, savings, or other financial accounts, certificates of deposit, or other instruments; shares and share accounts held in banks, credit unions, pension funds, cooperatives, associations, brokerage houses and other financial institutions. (Married debtors filing under chapter 12 or chapter 13 must include information concerning accounts or instruments held by or for either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF INSTITUTION	TYPE OF ACCOUNT, LAST FOUR DIGITS OF ACCOUNT NUMBER, AND AMOUNT OF FINAL BALANCE	AMOUNT AND DATE OF SALE OR CLOSING
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### 12. Safe deposit boxes

None  

- List each safe deposit or other box or depository in which the debtor has or had securities, cash, or other valuables within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include boxes or depositories of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF BANK OR OTHER DEPOSITORY	NAMES AND ADDRESSES OF THOSE WITH ACCESS TO BOX OR DEPOSITORY	DESCRIPTION OF CONTENTS	DATE OF TRANSFER OR SURRENDER, IF ANY
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### 13. Setoffs



None

List all setoffs made by any creditor, including a bank, against a debt or deposit of the debtor within **90 days** preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATE OF SETOFF	AMOUNT OF SETOFF
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#### 14. Property held for another person

None

List all property owned by another person that the debtor holds or controls.

NAME AND ADDRESS OF OWNER	DESCRIPTION AND VALUE OF PROPERTY	LOCATION OF PROPERTY
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#### 15. Prior address of debtor

None

If debtor has moved within **three years** immediately preceding the commencement of this case, list all premises which the debtor occupied during that period and vacated prior to the commencement of this case. If a joint petition is filed, report also any separate address of either spouse.

ADDRESS	NAME USED	DATES OF OCCUPANCY
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#### 16. Spouses and Former Spouses

None

If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within **eight years** immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state.

NAME

**17. Environmental Information.**

For the purpose of this question, the following definitions apply:

"Environmental Law" means any federal, state, or local statute or regulation regulating pollution, contamination, releases of hazardous or toxic substances, wastes or material into the air, land, soil, surface water, groundwater, or other medium, including, but not limited to, statutes or regulations regulating the cleanup of these substances, wastes, or material.

"Site" means any location, facility, or property as defined under any Environmental Law, whether or not presently or formerly owned or operated by the debtor, including, but not limited to, disposal sites.

"Hazardous Material" means anything defined as a hazardous waste, hazardous substance, toxic substance, hazardous material, pollutant, or contaminant or similar term under an Environmental Law.

- None  a. List the name and address of every site for which the debtor has received notice in writing by a governmental unit that it may be liable or potentially liable under or in violation of an Environmental Law. Indicate the governmental unit, the date of the notice, and, if known, the Environmental Law:

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW
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- None  b. List the name and address of every site for which the debtor provided notice to a governmental unit of a release of Hazardous Material. Indicate the governmental unit to which the notice was sent and the date of the notice.

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW
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- None  c. List all judicial or administrative proceedings, including settlements or orders, under any Environmental Law with respect to which the debtor is or was a party. Indicate the name and address of the governmental unit that is or was a party to the proceeding, and the docket number.

NAME AND ADDRESS OF GOVERNMENTAL UNIT	DOCKET NUMBER	STATUS OR DISPOSITION
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**18. Nature, location and name of business**

- None  a. *If the debtor is an individual*, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partner in a partnership, sole proprietor, or was self-employed in a trade, profession, or other activity either full- or part-time within **six years** immediately preceding the commencement of this case, or in which the debtor owned 5 percent or more of the voting or equity securities within **six years** immediately preceding the commencement of this case.

*If the debtor is a partnership*, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities, within **six years** immediately preceding the commencement of this case.

*If the debtor is a corporation*, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities within **six years** immediately preceding the commencement of this case.

NAME	LAST FOUR DIGITS OF SOC. SEC. NO./ COMPLETE EIN OR OTHER TAXPAYER I.D. NO.	ADDRESS	NATURE OF BUSINESS	BEGINNING AND ENDING DATES
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- None  b. Identify any business listed in response to subdivision a., above, that is "single asset real estate" as defined in 11 U.S.C. § 101.

NAME	ADDRESS
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The following questions are to be completed by every debtor that is a corporation or partnership and by any individual debtor who is or has been, within **six years** immediately preceding the commencement of this case, any of the following: an officer, director, managing executive, or owner of more than 5 percent of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership, a sole proprietor, or self-employed in a trade, profession, or other activity, either full- or part-time.

*(An individual or joint debtor should complete this portion of the statement **only** if the debtor is or has been in business, as defined above, within six years immediately preceding the commencement of this case. A debtor who has not been in business within those six years should go directly to the signature page.)*

#### 19. Books, records and financial statements

- None  a. List all bookkeepers and accountants who within **two years** immediately preceding the filing of this bankruptcy case kept or supervised the keeping of books of account and records of the debtor.

NAME AND ADDRESS	DATES SERVICES RENDERED
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- None  b. List all firms or individuals who within **two years** immediately preceding the filing of this bankruptcy case have audited the books of account and records, or prepared a financial statement of the debtor.

NAME	ADDRESS	DATES SERVICES RENDERED
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- None  c. List all firms or individuals who at the time of the commencement of this case were in possession of the books of account and records of the debtor. If any of the books of account and records are not available, explain.

NAME	ADDRESS
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- None  d. List all financial institutions, creditors and other parties, including mercantile and trade agencies, to whom a financial statement was issued by the debtor within **two years** immediately preceding the commencement of this case.

NAME AND ADDRESS

DATE ISSUED

**20. Inventories**

- None  a. List the dates of the last two inventories taken of your property, the name of the person who supervised the taking of each inventory, and the dollar amount and basis of each inventory.

DATE OF INVENTORY

INVENTORY SUPERVISOR

DOLLAR AMOUNT  
OF INVENTORY  
(Specify cost, market or other basis)

- None  b. List the name and address of the person having possession of the records of each of the inventories reported in a., above.

DATE OF INVENTORY

NAME AND ADDRESSES  
OF CUSTODIAN  
OF INVENTORY RECORDS**21 . Current Partners, Officers, Directors and Shareholders**

- None  a. If the debtor is a partnership, list the nature and percentage of partnership interest of each member of the partnership.

NAME AND ADDRESS

NATURE OF INTEREST

PERCENTAGE OF INTEREST

- None  b. If the debtor is a corporation, list all officers and directors of the corporation, and each stockholder who directly or indirectly owns, controls, or holds 5 percent or more of the voting or equity securities of the corporation.

NAME AND ADDRESS

TITLE

NATURE AND PERCENTAGE  
OF STOCK OWNERSHIP**22 . Former partners, officers, directors and shareholders**

- None  a. If the debtor is a partnership, list each member who withdrew from the partnership within **one year** immediately preceding the commencement of this case.

NAME

ADDRESS

DATE OF WITHDRAWAL

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None  b. If the debtor is a corporation, list all officers, or directors whose relationship with the corporation terminated within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS	TITLE	DATE OF TERMINATION
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**23 . Withdrawals from a partnership or distributions by a corporation**

None  If the debtor is a partnership or corporation, list all withdrawals or distributions credited or given to an insider, including compensation in any form, bonuses, loans, stock redemptions, options exercised and any other perquisite during **one year** immediately preceding the commencement of this case.

NAME & ADDRESS OF RECIPIENT, RELATIONSHIP TO DEBTOR	DATE AND PURPOSE OF WITHDRAWAL	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
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**24. Tax Consolidation Group.**

None  If the debtor is a corporation, list the name and federal taxpayer identification number of the parent corporation of any consolidated group for tax purposes of which the debtor has been a member at any time within **six years** immediately preceding the commencement of the case.

NAME OF PARENT CORPORATION	TAXPAYER IDENTIFICATION NUMBER (EIN)
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**25. Pension Funds.**

None  If the debtor is not an individual, list the name and federal taxpayer identification number of any pension fund to which the debtor, as an employer, has been responsible for contributing at any time within **six years** immediately preceding the commencement of the case.

NAME OF PENSION FUND	TAXPAYER IDENTIFICATION NUMBER (EIN)
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\* \* \* \* \*

*[If completed by an individual or individual and spouse]*

I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct.

Date \_\_\_\_\_ Signature \_\_\_\_\_  
of Debtor

Date \_\_\_\_\_ Signature \_\_\_\_\_  
of Joint Debtor  
(if any)

*[If completed on behalf of a partnership or corporation]*

I, declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct to the best of my knowledge, information and belief

Date \_\_\_\_\_ Signature \_\_\_\_\_

Print Name and Title \_\_\_\_\_

[An individual signing on behalf of a partnership or corporation must indicate position or relationship to debtor ]

\_\_\_\_\_ continuation sheets attached

*Penalty for making a false statement Fine of up to \$500,000 or imprisonment for up to 5 years, or both 18 U.S.C. §§ 152 and 3571*

**DECLARATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)**

I declare under penalty of perjury that (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b), and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required by that section

Printed or Typed Name and Title, if any, of Bankruptcy Petition Preparer \_\_\_\_\_ Social Security No (Required by 11 U.S.C. § 110 ) \_\_\_\_\_

*If the bankruptcy petition preparer is not an individual, state the name, title (if any), address, and social security number of the officer, principal, responsible person, or partner who signs this document.*

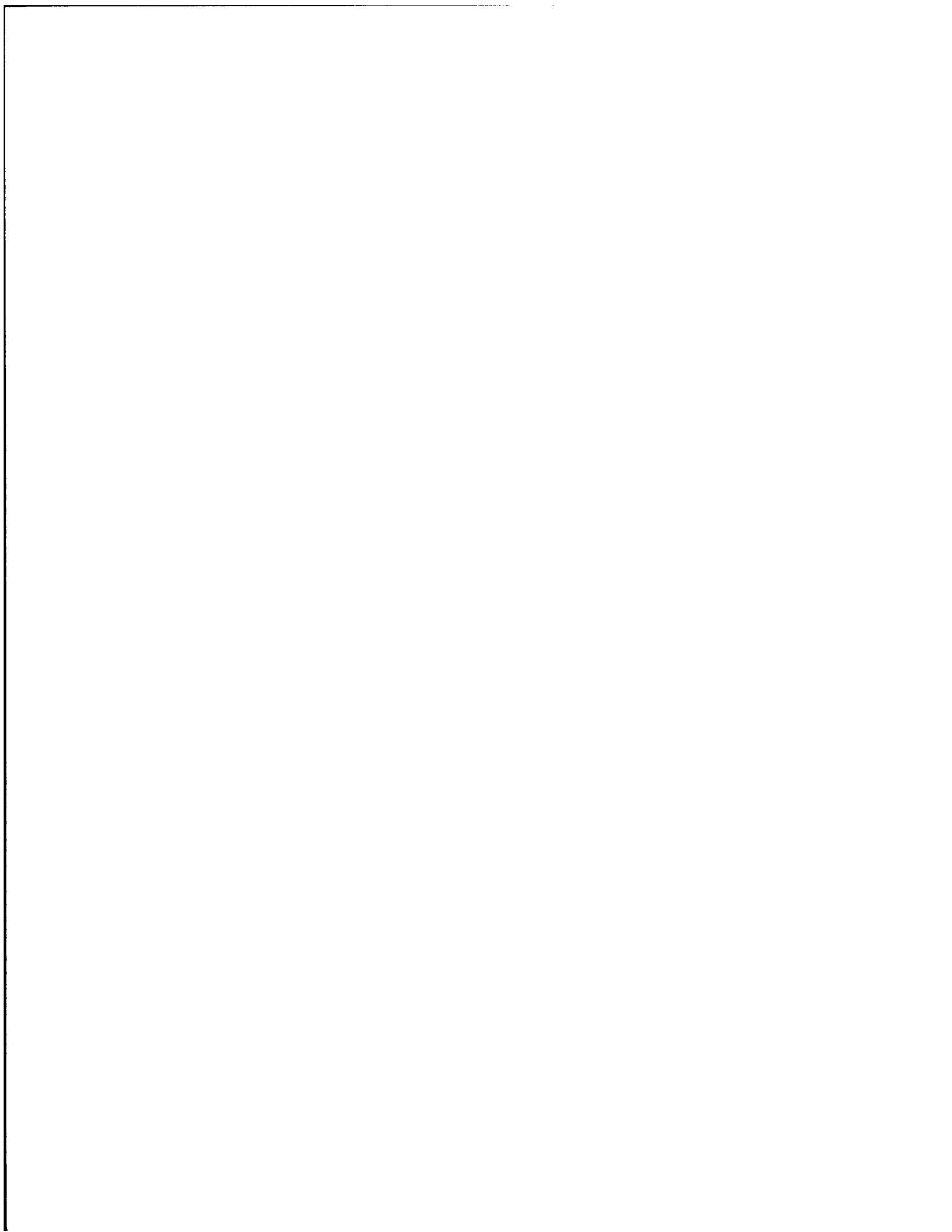
\_\_\_\_\_  
Address

X \_\_\_\_\_  
Signature of Bankruptcy Petition Preparer Date

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person

*A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 18 U.S.C. § 156.*



## United States Bankruptcy Court

District Of \_\_\_\_\_

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_  
Chapter 7

### CHAPTER 7 INDIVIDUAL DEBTOR'S STATEMENT OF INTENTION

- I have filed a schedule of assets and liabilities which includes debts secured by property of the estate.
- I have filed a schedule of executory contracts and unexpired leases which includes personal property subject to an unexpired lease.
- I intend to do the following with respect to the property of the estate which secures those debts or is subject to a lease:

Description of Secured Property	Creditor's Name	Property will be Surrendered	Property is claimed as exempt	Property will be redeemed pursuant to 11 U.S.C. § 722	Debt will be reaffirmed pursuant to 11 U.S.C. § 524(c)

Description of Leased Property	Lessor's Name	Lease will be assumed pursuant to 11 U.S.C. § 362(h)(1)(A)

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Debtor

#### DECLARATION OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section.

\_\_\_\_\_  
Printed or Typed Name of Bankruptcy Petition Preparer

\_\_\_\_\_  
Social Security No. (Required under 11 U.S.C. § 110.)

*If the bankruptcy petition preparer is not an individual, state the name, title (if any), address, and social security number of the officer, principal, responsible person or partner who signs this document.*

\_\_\_\_\_  
Address

X \_\_\_\_\_  
Signature of Bankruptcy Petition Preparer

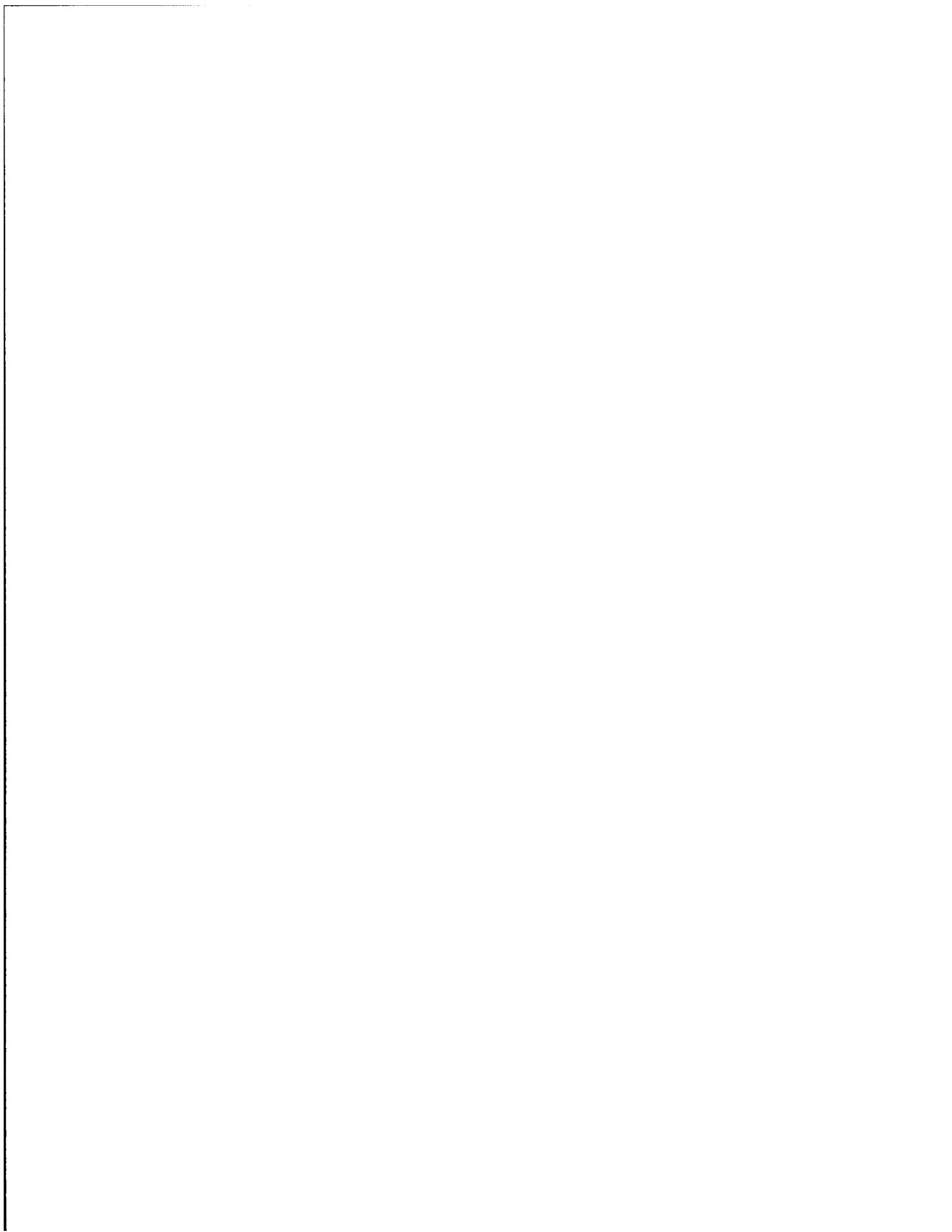
\_\_\_\_\_  
Date

Names and Social Security Numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual:

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.

*A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.*







**EXPLANATIONS**

**Form B9A (10/05)**

Filing of Chapter 7 Bankruptcy Case	A bankruptcy case under Chapter 7 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.
Presumption of Abuse	If the presumption of abuse arises, creditors may have the right to file a motion to dismiss the case under § 707(b) of the Bankruptcy Code. The debtor may rebut the presumption by showing special circumstances.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. <i>The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.
Do Not File a Proof of Claim at This Time	There does not appear to be any property available to the trustee to pay creditors. <i>You therefore should not file a proof of claim at this time.</i> If it later appears that assets are available to pay creditors, you will be sent another notice telling you that you may file a proof of claim, and telling you the deadline for filing your proof of claim. If this notice is mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.
Discharge of Debts	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that the debtor is not entitled to receive a discharge under Bankruptcy Code § 727 (a) or that a debt owed to you is not dischargeable under Bankruptcy Code § 523 (a) (2), (4), or (6), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint Objecting to Discharge of the Debtor or to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and any required filing fee by that Deadline.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objections by the "Deadline to Object to Exemptions" listed on the front side.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Foreign Creditors	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.

Refer To Other Side For Important Deadlines and Notices



**EXPLANATIONS**

**Form B9B (10/05)**

Filing of Chapter 7 Bankruptcy Case	A bankruptcy case under Chapter 7 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered.
<b>Legal Advice</b>	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; and starting or continuing lawsuits or foreclosures. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. <i>The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.
Do Not File a Proof of Claim at This Time	There does not appear to be any property available to the trustee to pay creditors. <i>You therefore should not file a proof of claim at this time.</i> If it later appears that assets are available to pay creditors, you will be sent another notice telling you that you may file a proof of claim, and telling you the deadline for filing your proof of claim. If this notice is mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Foreign Creditors	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.

Refer To Other Side For Important Deadlines and Notices



**EXPLANATIONS**

**Form B9C (10/05)**

Filing of Chapter 7 Bankruptcy Case	A bankruptcy case under Chapter 7 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. <i>The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim from other assets in the bankruptcy case. To be paid you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. <b>Filing Deadline for a Foreign Creditor:</b> The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.
Discharge of Debts	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that the debtor is not entitled to receive a discharge under Bankruptcy Code § 727 (a) or that a debt owed to you is not dischargeable under Bankruptcy Code § 523 (a) (2), (4), or (6), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint Objecting to Discharge of the Debtor or to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and any required filing fee by that Deadline.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objections by the "Deadline to Object to Exemptions" listed on the front side.
Presumption of Abuse	If the presumption of abuse arises, creditors may have the right to file a motion to dismiss the case under § 707(b) of the Bankruptcy Code. The debtor may rebut the presumption by showing special circumstances.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Liquidation of the Debtor's Property and Payment of Creditors' Claims	The bankruptcy trustee listed on the front of this notice will collect and sell the debtor's property that is not exempt. If the trustee can collect enough money, creditors may be paid some or all of the debts owed to them, in the order specified by the Bankruptcy Code. To make sure you receive any share of that money, you must file a Proof of Claim, as described above.
Foreign Creditors	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.

Refer To Other Side For Important Deadlines and Notices





**EXPLANATIONS**

**Form B9D (10/05)**

Filing of Chapter 7 Bankruptcy Case	A bankruptcy case under Chapter 7 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered.
<b>Legal Advice</b>	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; and starting or continuing lawsuits or foreclosures. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. <i>The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim from other assets in the bankruptcy case. To be paid, you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. <b>Filing Deadline for a Foreign Creditor:</b> The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.
Liquidation of the Debtor's Property and Payment of Creditors' Claims	The bankruptcy trustee listed on the front of this notice will collect and sell the debtor's property that is not exempt. If the trustee can collect enough money, creditors may be paid some or all of the debts owed to them, in the order specified by the Bankruptcy Code. To make sure you receive any share of that money, you must file a Proof of Claim, as described above.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Foreign Creditors	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.

Refer To Other Side For Important Deadlines and Notices



**EXPLANATIONS**

**Form B9E (10/05)**

<p>Filing of Chapter 11 Bankruptcy Case</p>	<p>A bankruptcy case under Chapter 11 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 11 allows a debtor to reorganize or liquidate pursuant to a plan. A plan is not effective unless confirmed by the court. You may be sent a copy of the plan and a disclosure statement telling you about the plan, and you might have the opportunity to vote on the plan. You will be sent notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the debtor's property and may continue to operate any business.</p>
<p><b>Legal Advice</b></p>	<p>The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.</p>
<p>Creditors Generally May Not Take Certain Actions</p>	<p>Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.</p>
<p>Meeting of Creditors</p>	<p>A meeting of creditors is scheduled for the date, time, and location listed on the front side. <i>The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice. The court, after notice and a hearing, may order that the United States trustee not convene the meeting if the debtor has filed a plan for which the debtor solicited acceptances before filing the case.</p>
<p>Claims</p>	<p>A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. You may look at the schedules that have been or will be filed at the bankruptcy clerk's office. If your claim is scheduled and is <i>not</i> listed as disputed, contingent, or unliquidated, it will be allowed in the amount scheduled unless you filed a Proof of Claim or you are sent further notice about the claim. Whether or not your claim is scheduled, you are permitted to file a Proof of Claim. If your claim is not listed at all <i>or</i> if your claim is listed as disputed, contingent, or unliquidated, then you must file a Proof of Claim or you might not be paid any money on your claim and may be unable to vote on a plan. The court has not yet set a deadline to file a Proof of Claim. If a deadline is set, you will be sent another notice. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. <b>Filing Deadline for a Foreign Creditor:</b> The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.</p>
<p>Discharge of Debts</p>	<p>Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. <i>See</i> Bankruptcy Code § 1141 (d). Unless the court orders otherwise, however, the discharge will not be effective until completion of all payments under the plan. A discharge means that you may never try to collect the debt from the debtor except as provided in the plan. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523 (a) (2), (4), or (6), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and any required filing fee by that Deadline. If you believe that the debtor is not entitled to receive a discharge under Bankruptcy Code § 1141 (d) (3), you must file a complaint with the required filing fee in the bankruptcy clerk's office not later than the first date set for the hearing on confirmation of the plan. You will be sent another notice informing you of that date.</p>
<p>Exempt Property</p>	<p>The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors, even if the debtor's case is converted to chapter 7. The debtor must file a list of property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.</p>
<p>Bankruptcy Clerk's Office</p>	<p>Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.</p>
<p>Foreign Creditors</p>	<p>Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.</p>
<p align="center">Refer To Other Side For Important Deadlines and Notices</p>	
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**EXPLANATIONS**

**Form B9E(ALT) (10/05)**

<p>Filing of Chapter 11 Bankruptcy Case</p>	<p>A bankruptcy case under Chapter 11 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 11 allows a debtor to reorganize or liquidate pursuant to a plan. A plan is not effective unless confirmed by the court. You may be sent a copy of the plan and a disclosure statement telling you about the plan, and you might have the opportunity to vote on the plan. You will be sent notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the debtor's property and may continue to operate any business.</p>
<p>Legal Advice</p>	<p>The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.</p>
<p>Creditors Generally May Not Take Certain Actions</p>	<p>Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.</p>
<p>Meeting of Creditors</p>	<p>A meeting of creditors is scheduled for the date, time, and location listed on the front side. <i>The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice. The court, after notice and a hearing, may order that the United States trustee not convene the meeting if the debtor has filed a plan for which the debtor solicited acceptances before filing the case.</p>
<p>Claims</p>	<p>A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. You may look at the schedules that have been or will be filed at the bankruptcy clerk's office. If your claim is scheduled and is <i>not</i> listed as disputed, contingent, or unliquidated, it will be allowed in the amount scheduled unless you filed a Proof of Claim or you are sent further notice about the claim. Whether or not your claim is scheduled, you are permitted to file a Proof of Claim. If your claim is not listed at all <i>or</i> if your claim is listed as disputed, contingent, or unliquidated, then you must file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side or you might not be paid any money on your claim and may be unable to vote on a plan. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. <b>Filing Deadline for a Foreign Creditor:</b> The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.</p>
<p>Discharge of Debts</p>	<p>Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. <i>See</i> Bankruptcy Code § 1141 (d). Unless the court orders otherwise, however, the discharge will not be effective until completion of all payments under the plan. A discharge means that you may never try to collect the debt from the debtor except as provided in the plan. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523 (a) (2), (4), or (6), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and any required filing fee by that Deadline. If you believe that the debtor is not entitled to receive a discharge under Bankruptcy Code § 1141 (d) (3), you must file a complaint with the required filing fee in the bankruptcy clerk's office not later than the first date set for the hearing on confirmation of the plan. You will be sent another notice informing you of that date.</p>
<p>Exempt Property</p>	<p>The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors, even if the debtor's case is converted to chapter 7. The debtor must file a list of property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.</p>
<p>Bankruptcy Clerk's Office</p>	<p>Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.</p>
<p>Foreign Creditors</p>	<p>Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.</p>
<p align="center">Refer To Other Side For Important Deadlines and Notices</p>	
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**EXPLANATIONS**

**Form B9F (10/05)**

<p>Filing of Chapter 11 Bankruptcy Case</p>	<p>A bankruptcy case under Chapter 11 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 11 allows a debtor to reorganize or liquidate pursuant to a plan. A plan is not effective unless confirmed by the court. You may be sent a copy of the plan and a disclosure statement telling you about the plan, and you might have the opportunity to vote on the plan. You will be sent notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the debtor's property and may continue to operate any business.</p>
<p><b>Legal Advice</b></p>	<p>The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.</p>
<p>Creditors Generally May Not Take Certain Actions</p>	<p>Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; and starting or continuing lawsuits or foreclosures. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.</p>
<p>Meeting of Creditors</p>	<p>A meeting of creditors is scheduled for the date, time, and location listed on the front side. <i>The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice. The court, after notice and a hearing, may order that the United States trustee not convene the meeting if the debtor has filed a plan for which the debtor solicited acceptances before filing the case.</p>
<p>Claims</p>	<p>A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. You may look at the schedules that have been or will be filed at the bankruptcy clerk's office. If your claim is scheduled and is <i>not</i> listed as disputed, contingent, or unliquidated, it will be allowed in the amount scheduled unless you filed a Proof of Claim or you are sent further notice about the claim. Whether or not your claim is scheduled, you are permitted to file a Proof of Claim. If your claim is not listed at all <i>or</i> if your claim is listed as disputed, contingent, or unliquidated, then you must file a Proof of Claim or you might not be paid any money on your claim and may be unable to vote on a plan. The court has not yet set a deadline to file a Proof of Claim. If a deadline is set, you will be sent another notice. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. <b>Filing Deadline for a Foreign Creditor:</b> The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.</p>
<p>Discharge of Debts</p>	<p>Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. <i>See</i> Bankruptcy Code § 1141 (d). A discharge means that you may never try to collect the debt from the debtor, except as provided in the plan. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 1141 (d) (6) (A), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and any required filing fee by that deadline.</p>
<p>Bankruptcy Clerk's Office</p>	<p>Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.</p>
<p>Foreign Creditors</p>	<p>Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.</p>
<p align="center">Refer To Other Side For Important Deadlines and Notices</p>	
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**EXPLANATIONS**

**Form B9F ALT (10/05)**

<p>Filing of Chapter 11 Bankruptcy Case</p>	<p>A bankruptcy case under Chapter 11 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 11 allows a debtor to reorganize or liquidate pursuant to a plan. A plan is not effective unless confirmed by the court. You may be sent a copy of the plan and a disclosure statement telling you about the plan, and you might have the opportunity to vote on the plan. You will be sent notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the debtor's property and may continue to operate any business.</p>
<p><b>Legal Advice</b></p>	<p>The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.</p>
<p>Creditors Generally May Not Take Certain Actions</p>	<p>Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; and starting or continuing lawsuits or foreclosures. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.</p>
<p>Meeting of Creditors</p>	<p>A meeting of creditors is scheduled for the date, time, and location listed on the front side. <i>The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice. The court, after notice and a hearing, may order that the United States trustee not convene the meeting if the debtor has filed a plan for which the debtor solicited acceptances before filing the case.</p>
<p>Claims</p>	<p>A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. You may look at the schedules that have been or will be filed at the bankruptcy clerk's office. If your claim is scheduled and is <i>not</i> listed as disputed, contingent, or unliquidated, it will be allowed in the amount scheduled unless you filed a Proof of Claim or you are sent further notice about the claim. Whether or not your claim is scheduled, you are permitted to file a Proof of Claim. If your claim is not listed at all <i>or</i> if your claim is listed as disputed, contingent, or unliquidated, then you must file a Proof of Claim by the "Deadline to File Proof of Claim" listed on the front side, or you might not be paid any money on your claim and may be unable to vote on a plan. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. <b>Filing Deadline for a Foreign Creditor:</b> The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.</p>
<p>Discharge of Debts</p>	<p>Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. <i>See</i> Bankruptcy Code § 1141 (d). A discharge means that you may never try to collect the debt from the debtor, except as provided in the plan. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 1141 (d) (6) (A), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and any required filing fee by that deadline.</p>
<p>Bankruptcy Clerk's Office</p>	<p>Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.</p>
<p>Foreign Creditors</p>	<p>Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.</p>
<p align="center">Refer To Other Side For Important Deadlines and Notices</p>	
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**EXPLANATIONS**

**Form B9G (10/05)**

<p>Filing of Chapter 12 Bankruptcy Case</p>	<p>A bankruptcy case under Chapter 12 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 12 allows family farmers to adjust their debts pursuant to a plan. A plan is not effective unless confirmed by the court. You may object to confirmation of the plan and appear at the confirmation hearing. A copy or summary of the plan [is included with this notice] <i>or</i> [will be sent to you later], and [the confirmation hearing will be held on the date indicated on the front of this notice] <i>or</i> [you will be sent notice of the confirmation hearing]. The debtor will remain in possession of the debtor's property and may continue to operate the debtor's business unless the court orders otherwise.</p>
<p><b>Legal Advice</b></p>	<p>The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.</p>
<p>Creditors Generally May Not Take Certain Actions</p>	<p>Prohibited collection actions against the debtor and certain codebtors are listed in Bankruptcy Code § 362 and § 1201. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages. Under certain circumstances, the stay may be limited in duration or not exist at all, although the debtor may have the right to request the court to extend or impose a stay.</p>
<p>Meeting of Creditors</p>	<p>A meeting of creditors is scheduled for the date, time, and location listed on the front side. <i>The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.</p>
<p>Claims</p>	<p>A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim from other assets in the bankruptcy case. To be paid you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. <b>Filing Deadline for a Foreign Creditor:</b> The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.</p>
<p>Discharge of Debts</p>	<p>The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523 (a) (2), (4), or (6), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and any required filing fee by that Deadline.</p>
<p>Exempt Property</p>	<p>The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors, even if the debtor's case is converted to chapter 7. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.</p>
<p>Bankruptcy Clerk's Office</p>	<p>Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.</p>
<p>Foreign Creditors</p>	<p>Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.</p>
<p align="center">Refer To Other Side For Important Deadlines and Notices</p>	
<p> </p>	



**EXPLANATIONS**

**Form B9H (10/05)**

<p>Filing of Chapter 12 Bankruptcy Case</p>	<p>A bankruptcy case under Chapter 12 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by the debtor listed on the front side, and an order for relief has been entered. Chapter 12 allows family farmers to adjust their debts pursuant to a plan. A plan is not effective unless confirmed by the court. You may object to confirmation of the plan and appear at the confirmation hearing. A copy or summary of the plan [is included with this notice] <i>or</i> [will be sent to you later], and [the confirmation hearing will be held on the date indicated on the front of this notice] <i>or</i> [you will be sent notice of the confirmation hearing]. The debtor will remain in possession of the debtor's property and may continue to operate the debtor's business unless the court orders otherwise.</p>
<p><b>Legal Advice</b></p>	<p>The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.</p>
<p>Creditors Generally May Not Take Certain Actions</p>	<p>Prohibited collection actions against the debtor and certain codebtors are listed in Bankruptcy Code § 362 and § 1201. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; and starting or continuing lawsuits or foreclosures. Under certain circumstances, the stay may be limited in duration or not exist at all, <b>although the debtor may have the right to request the court to extend or impose a stay.</b></p>
<p>Meeting of Creditors</p>	<p>A meeting of creditors is scheduled for the date, time, and location listed on the front side. <i>The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.</p>
<p>Claims</p>	<p>A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim from other assets in the bankruptcy case. To be paid you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. <b>Filing Deadline for a Foreign Creditor:</b> The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.</p>
<p>Discharge of Debts</p>	<p>The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523 (a) (2), (4), or (6), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and any required filing fee by that Deadline.</p>
<p>Bankruptcy Clerk's Office</p>	<p>Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.</p>
<p>Foreign Creditors</p>	<p>Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.</p>
<p align="center">Refer To Other Side For Important Deadlines and Notices</p>	
<p> </p>	



**EXPLANATIONS**

**Form B91 (10/05)**

<p>Filing of Chapter 13 Bankruptcy Case</p>	<p>A bankruptcy case under Chapter 13 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 13 allows an individual with regular income and debts below a specified amount to adjust debts pursuant to a plan. A plan is not effective unless confirmed by the bankruptcy court. You may object to confirmation of the plan and appear at the confirmation hearing. A copy or summary of the plan [is included with this notice] <i>or</i> [will be sent to you later], and [the confirmation hearing will be held on the date indicated on the front of this notice] <i>or</i> [you will be sent notice of the confirmation hearing]. The debtor will remain in possession of the debtor's property and may continue to operate the debtor's business, if any, unless the court orders otherwise.</p>
<p><b>Legal Advice</b></p>	<p>The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.</p>
<p>Creditors Generally May Not Take Certain Actions</p>	<p>Prohibited collection actions against the debtor and certain codebtors are listed in Bankruptcy Code § 362 and § 1301. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to exceed or impose a stay.</p>
<p>Meeting of Creditors</p>	<p>A meeting of creditors is scheduled for the date, time, and location listed on the front side. <i>The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice</p>
<p>Claims</p>	<p>A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim from other assets in the bankruptcy case. To be paid you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. <b>Filing Deadline for a Foreign Creditor:</b> The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.</p>
<p>Discharge of Debts</p>	<p>The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523 (a) (2) or (4), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and any required filing fee by that deadline.</p>
<p>Exempt Property</p>	<p>The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors, even if the debtor's case is converted to chapter 7. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.</p>
<p>Bankruptcy Clerk's Office</p>	<p>Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.</p>
<p>Foreign Creditors</p>	<p>Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.</p>

Refer To Other Side For Important Deadlines and Notices

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 box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.  <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case.  <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.	THIS SPACE IS FOR COURT USE ONLY
Name and address where notices should be sent: _____	Telephone number: _____	
Last four digits of account or other number by which creditor identifies debtor: _____	Check here <input type="checkbox"/> replaces if this claim <input type="checkbox"/> amends a previously filed claim, dated: _____	
<b>1. Basis for Claim</b> <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input type="checkbox"/> Other _____		
<input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Last four digits of your SS #: _____ Unpaid compensation for services performed from _____ (date) to _____ (date)		
<b>2. Date debt was incurred:</b> _____	<b>3. If court judgment, date obtained:</b> _____	
<b>4. Classification of Claim.</b> Check the appropriate box or boxes that best describe your claim and state the amount of the claim at the time case filed. See reverse side for important explanations.		
<b>Unsecured Nonpriority Claim</b> \$ _____  <input type="checkbox"/> Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or if c) none or only part of your claim is entitled to priority.	<b>Secured Claim</b>  <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff).  Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral: \$ _____  Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____	
<b>Unsecured Priority Claim</b>  <input type="checkbox"/> Check this box if you have an unsecured claim, all or part of which is entitled to priority.  Amount entitled to priority \$ _____  Specify the priority of the claim: <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B) <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,000)* earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5).	<input type="checkbox"/> Up to \$2,225* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____). *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.	
<b>5. Total Amount of Claim at Time Case Filed:</b> \$ _____ (unsecured) _____ (secured) _____ (priority) _____ (Total) <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
<b>6. Credits:</b> The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.  <b>7. Supporting Documents:</b> Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.  <b>8. Date-Stamped Copy:</b> To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.		THIS SPACE IS FOR COURT USE ONLY
Date _____	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any): _____	



## INSTRUCTIONS FOR PROOF OF CLAIM FORM

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

### — DEFINITIONS —

**Debtor**

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

**Creditor**

A creditor is any person, corporation, or other entity to whom the debtor owed a debt on the date that the bankruptcy case was filed.

**Proof of Claim**

A form telling the bankruptcy court how much the debtor owed a creditor at the time the bankruptcy case was filed (the amount of the creditor's claim). This form must be filed with the clerk of the bankruptcy court where the bankruptcy case was filed.

**Secured Claim**

A claim is a secured claim to the extent that the creditor has a lien on property of the debtor (collateral) that gives the creditor the right to be paid from that property before creditors who do not have liens on the property.

Examples of liens are a mortgage on real estate and a security interest in a car, truck, boat, television set, or other item of property. A lien may have been obtained through a court proceeding before the bankruptcy case began; in some states a court judgment is a lien. In addition, to the extent a creditor also owes money to the debtor (has a right of setoff), the creditor's claim may be a secured claim. (See also *Unsecured Claim.*)

**Unsecured Claim**

If a claim is not a secured claim it is an unsecured claim. A claim may be partly secured and partly unsecured if the property on which a creditor has a lien is not worth enough to pay the creditor in full.

**Unsecured Priority Claim**

Certain types of unsecured claims are given priority, so they are to be paid in bankruptcy cases before most other unsecured claims (if there is sufficient money or property available to pay these claims). The most common types of priority claims are listed on the proof of claim form. Unsecured claims that are not specifically given priority status by the bankruptcy laws are classified as *Unsecured Nonpriority Claims.*

### Items to be completed in Proof of Claim form (if not already filled in)

**Court, Name of Debtor, and Case Number:**

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

**Information about Creditor:**

Complete the section giving the name, address, and telephone number of the creditor to whom the debtor owes money or property, and the debtor's account number, if any. If anyone else has already filed a proof of claim relating to this debt, if you never received notices from the bankruptcy court about this case, if your address differs from that to which the court sent notice, or if this proof of claim replaces or changes a proof of claim that was already filed, check the appropriate box on the form.

**1. Basis for Claim:**

Check the type of debt for which the proof of claim is being filed. If the type of debt is not listed, check "Other" and briefly describe the type of debt. If you were an employee of the debtor, fill in your social security number and the dates of work for which you were not paid.

**2. Date Debt Incurred:**

Fill in the date when the debt first was owed by the debtor.

**3. Court Judgments:**

If you have a court judgment for this debt, state the date the court entered the judgment.

**4. Classification of Claim**

**Secured Claim:**

Check the appropriate place if the claim is a secured claim. You must state the type and value of property that is collateral for the claim, attach copies of the documentation of your lien, and state the

amount past due on the claim as of the date the bankruptcy case was filed. A claim may be partly secured and partly unsecured. (See DEFINITIONS, above).

**Unsecured Priority Claim:**

Check the appropriate place if you have an unsecured priority claim, and state the amount entitled to priority. (See DEFINITIONS, above). A claim may be partly priority and partly nonpriority if, for example, the claim is for more than the amount given priority by the law. Check the appropriate place to specify the type of priority claim.

**Unsecured Nonpriority Claim:**

Check the appropriate place if you have an unsecured nonpriority claim, sometimes referred to as a "general unsecured claim". (See DEFINITIONS, above.) If your claim is partly secured and partly unsecured, state here the amount that is unsecured. If part of your claim is entitled to priority, state here the amount **not** entitled to priority.

**5. Total Amount of Claim at Time Case Filed:**

Fill in the total amount of the entire claim. If interest or other charges in addition to the principal amount of the claim are included, check the appropriate place on the form and attach an itemization of the interest and charges.

**6. Credits:**

By signing this proof of claim, you are stating under oath that in calculating the amount of your claim you have given the debtor credit for all payments received from the debtor.

**7. Supporting Documents:**

You must attach to this proof of claim form copies of documents that show the debtor owes the debt claimed or, if the documents are too lengthy, a summary of those documents. If documents are not available, you must attach an explanation of why they are not available.

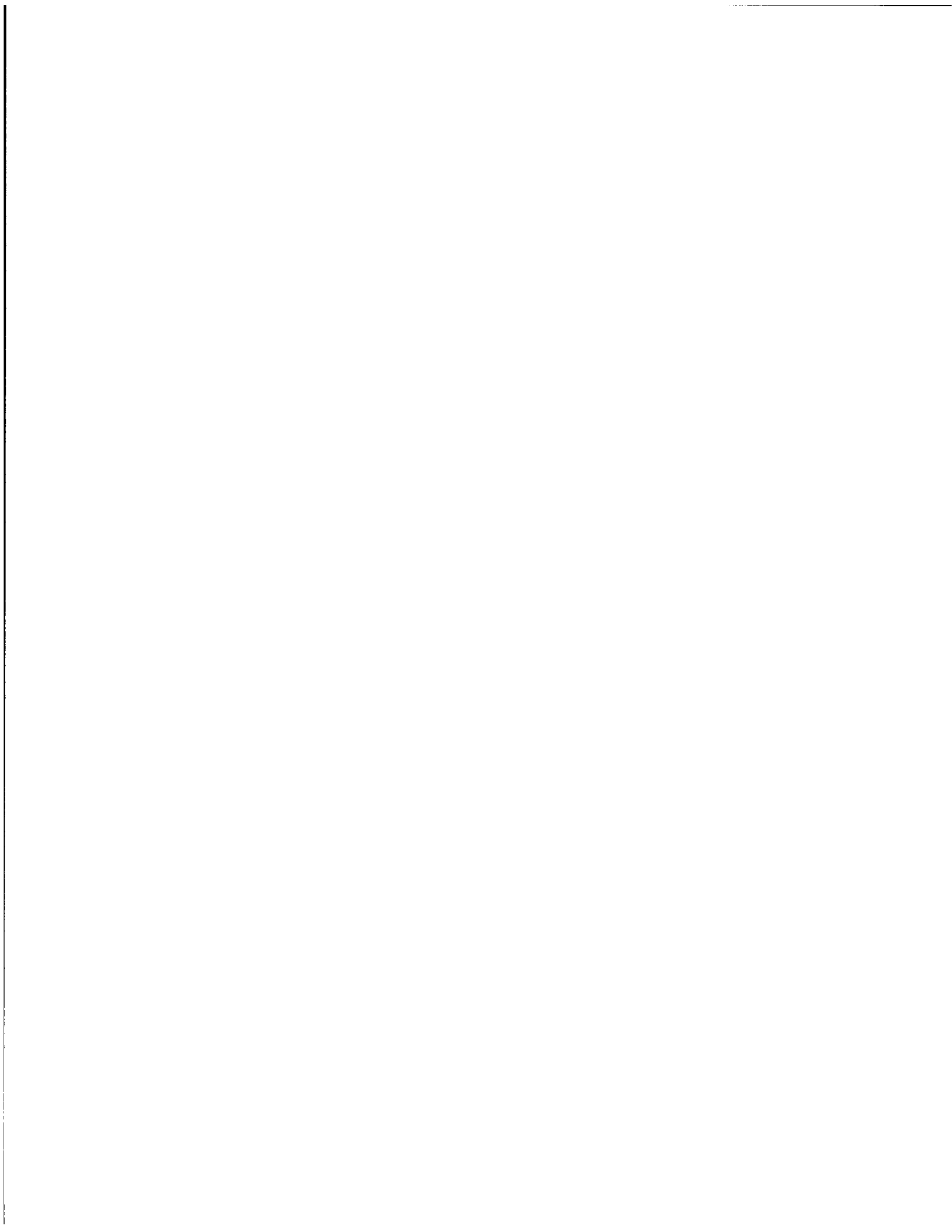
**Form 16A. CAPTION (FULL)**

**United States Bankruptcy Court**

\_\_\_\_\_ District Of \_\_\_\_\_

In re _____,	)	
<i>[Set forth here all names including married,</i>	)	
<i>maiden, and trade names used by debtor within</i>	)	
<i>last 8 years.]</i>	)	
Debtor	)	Case No. _____
	)	
Address _____	)	
	)	
_____	)	Chapter _____
	)	
Last four digits of Social Security No(s): _____	)	
	)	
Employer's Tax Identification No(s). <i>[if any]</i> : _____	)	
_____	)	

*[Designation of Character of Paper]*



# United States Bankruptcy Court

\_\_\_\_\_ District Of \_\_\_\_\_

In re \_\_\_\_\_, )

*[Set forth here all names including married,  
maiden, and trade names used by debtor within  
last 8 years.]* )

Debtor )

Case No. \_\_\_\_\_

Address \_\_\_\_\_ )

\_\_\_\_\_ )

Chapter 7

Last four digits of Social Security No(s): \_\_\_\_\_ )

Employer's Tax Identification No(s). *[if any]*: \_\_\_\_\_ )

## DISCHARGE OF DEBTOR

It appearing that the debtor is entitled to a discharge, **IT IS ORDERED:** The debtor is granted a discharge under section 727 of title 11, United States Code, (the Bankruptcy Code).

Dated: \_\_\_\_\_

BY THE COURT

\_\_\_\_\_  
United States Bankruptcy Judge

**SEE THE BACK OF THIS ORDER FOR IMPORTANT INFORMATION.**

## EXPLANATION OF BANKRUPTCY DISCHARGE IN A CHAPTER 7 CASE

This court order grants a discharge to the person named as the debtor. It is not a dismissal of the case and it does not determine how much money, if any, the trustee will pay to creditors.

### **Collection of Discharged Debts Prohibited**

The discharge prohibits any attempt to collect from the debtor a debt that has been discharged. For example, a creditor is not permitted to contact a debtor by mail, phone, or otherwise, to file or continue a lawsuit, to attach wages or other property, or to take any other action to collect a discharged debt from the debtor. [*In a case involving community property*: There are also special rules that protect certain community property owned by the debtor's spouse, even if that spouse did not file a bankruptcy case.] A creditor who violates this order can be required to pay damages and attorney's fees to the debtor.

However, a creditor may have the right to enforce a valid lien, such as a mortgage or security interest, against the debtor's property after the bankruptcy, if that lien was not avoided or eliminated in the bankruptcy case. Also, a debtor may voluntarily pay any debt that has been discharged.

### **Debts That are Discharged**

The chapter 7 discharge order eliminates a debtor's legal obligation to pay a debt that is discharged. Most, but not all, types of debts are discharged if the debt existed on the date the bankruptcy case was filed. (If this case was begun under a different chapter of the Bankruptcy Code and converted to chapter 7, the discharge applies to debts owed when the bankruptcy case was converted.)

### **Debts that are Not Discharged.**

Some of the common types of debts which are not discharged in a chapter 7 bankruptcy case are:

- a. Debts for most taxes;
- b. Debts incurred to pay nondischargeable taxes;
- c. Debts that are domestic support obligations;
- d. Debts for most student loans;
- e. Debts for most fines, penalties, forfeitures, or criminal restitution obligations;
- f. Debts for personal injuries or death caused by the debtor's operation of a motor vehicle, vessel, or aircraft while intoxicated;
- g. Some debts which were not properly listed by the debtor;
- h. Debts that the bankruptcy court specifically has decided or will decide in this bankruptcy case are not discharged;
- i. Debts for which the debtor has given up the discharge protections by signing a reaffirmation agreement in compliance with the Bankruptcy Code requirements for reaffirmation of debts.
- j. Debts owed to certain pension, profit sharing, stock bonus, other retirement plans, or to the Thrift Savings Plan for federal employees for certain types of loans from these plans.

This information is only a general summary of the bankruptcy discharge. There are exceptions to these general rules. Because the law is complicated, you may want to consult an attorney to determine the exact effect of the discharge in this case.

# United States Bankruptcy Court

\_\_\_\_\_ District Of \_\_\_\_\_

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_

Chapter \_\_\_\_\_

## DECLARATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (11 U.S.C. § 110)

I declare under penalty of perjury that:

- (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110;
- (2) I prepared the accompanying document for compensation and have provided the debtor with a copy of that document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342 (b); and
- (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required by that section.

\_\_\_\_\_  
Printed or Typed Name of Bankruptcy Petition Preparer

*If the bankruptcy petition preparer is not an individual, state the name, address, and social security number of the officer, principal, responsible person or partner who signs this document.*

\_\_\_\_\_  
Social Security No.

\_\_\_\_\_  
Address

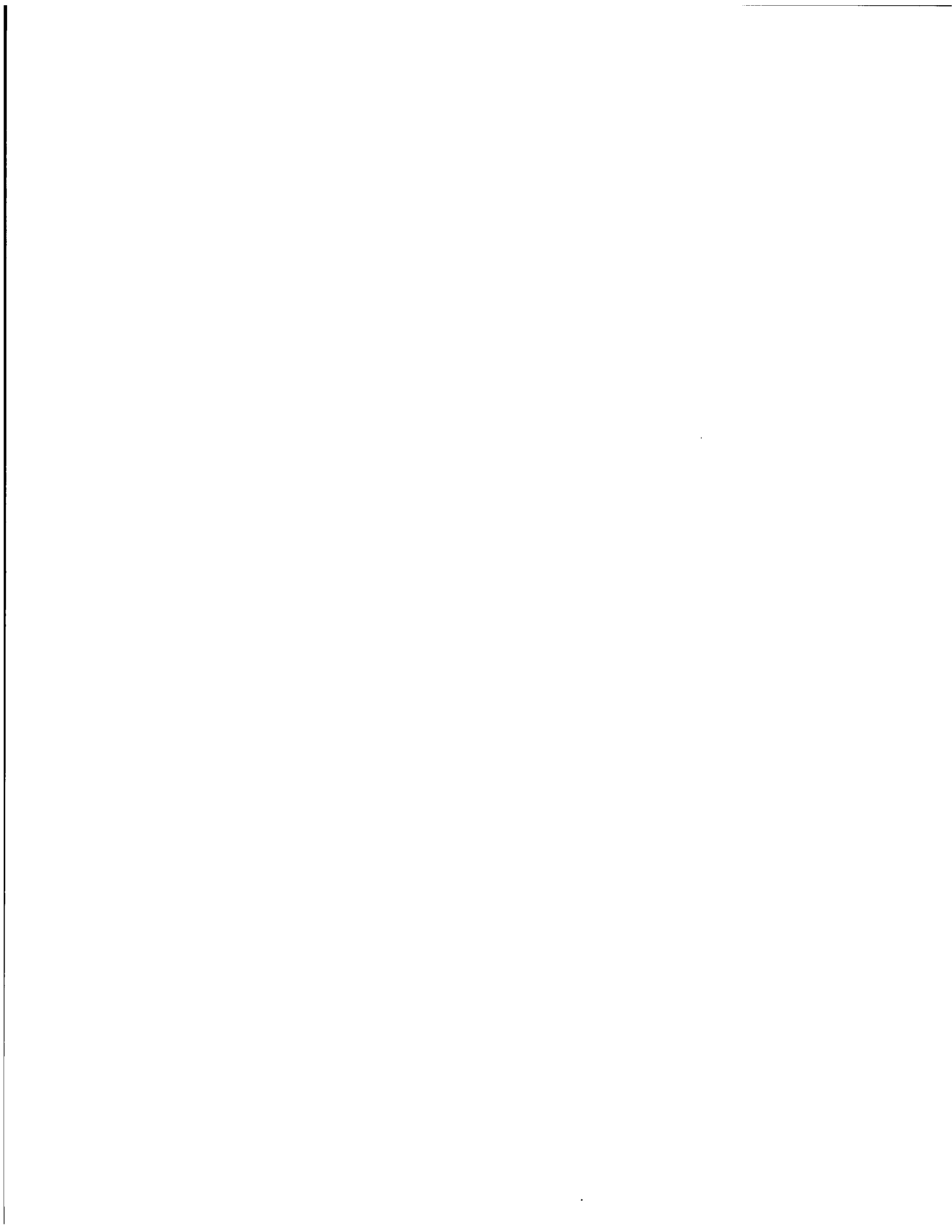
X \_\_\_\_\_  
Signature of Bankruptcy Petition Preparer

\_\_\_\_\_  
Date

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document, unless the bankruptcy petition preparer is not an individual:

*If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.*

*A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.*



Form 19B  
(10/05)

# United States Bankruptcy Court

\_\_\_\_\_ District Of \_\_\_\_\_

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_

Chapter \_\_\_\_\_

**NOTICE TO DEBTOR BY NON-ATTORNEY BANKRUPTCY PETITION PREPARER**

*[Must be filed with any document prepared by a bankruptcy petition preparer.]*

I am a bankruptcy petition preparer. I am not an attorney and may not practice law or give legal advice. Before preparing any document for filing as defined in § 110(a)(2) of the Bankruptcy Code or accepting any fees, I am required by law to provide you with this notice concerning bankruptcy petition preparers. Under the law, § 110 of the Bankruptcy Code (11 U.S.C. § 110), I am forbidden to offer you any legal advice, including advice about any of the following:

- whether to file a petition under the Bankruptcy Code (11 U.S.C. § 101 et seq.);
- whether commencing a case under chapter 7, 11, 12, or 13 is appropriate;
- whether your debts will be eliminated or discharged in a case under the Bankruptcy Code;
- whether you will be able to retain your home, car, or other property after commencing a case under the Bankruptcy Code;
- concerning the tax consequences of a case brought under the Bankruptcy Code;
- concerning the dischargeability of tax claims;
- whether you may or should promise to repay debts to a creditor or enter into a reaffirmation agreement with a creditor to reaffirm a debt;
- concerning how to characterize the nature of your interests in property or your debts; or
- concerning bankruptcy procedures and rights.

*[The notice may provide additional examples of legal advice that a bankruptcy petition preparer is not authorized to give.]*

In addition, under 11 U.S.C. § 110(h), the Supreme Court or the Judicial Conference of the United States may promulgate rules or guidelines setting a maximum allowable fee chargeable by a bankruptcy petition preparer. As required by law, I have notified you of the maximum amount, if any, before preparing any document for filing or accepting any fee from you.

\_\_\_\_\_  
Signature of Debtor                      Date  
*[In a joint case, both spouses must sign.]*

\_\_\_\_\_  
Joint Debtor (if any)                      Date



Form 19B Cont.  
(10/05)

**DECLARATION AND SIGNATURE OF NON-ATTORNEY  
BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)**

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required by that section.

\_\_\_\_\_  
Printed or Typed Name and Title, if any, of  
Bankruptcy Petition Preparer

\_\_\_\_\_  
Social Security No.  
(Required by 11 U.S.C. § 110.)

*If the bankruptcy petition preparer is not an individual, state the name, title (if any), address, and social security number of the officer, principal, responsible person, or partner who signs this document.*

\_\_\_\_\_

\_\_\_\_\_  
Address

X \_\_\_\_\_  
Signature of Bankruptcy Petition Preparer

\_\_\_\_\_  
Date

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document, unless the bankruptcy petition preparer is not an individual:

*If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.*

**A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.**

**Form B22A (Chapter 7) (10/05)**

In re \_\_\_\_\_  
Debtor(s)

Case Number: \_\_\_\_\_  
(If known)

According to the calculations required by this statement:  
 **The presumption arises.**  
 **The presumption does not arise.**  
 (Check the box as directed in Parts I, III, and VI of this statement.)

**STATEMENT OF CURRENT MONTHLY INCOME AND MEANS TEST CALCULATION**  
FOR USE IN CHAPTER 7 ONLY

In addition to Schedule I and J, this statement must be completed by every individual Chapter 7 debtor, whether or not filing jointly, whose debts are primarily consumer debts. Joint debtors may complete one statement only.

<b>Part I. EXCLUSION FOR DISABLED VETERANS</b>		
<b>1</b>	If you are a disabled veteran described in the Veteran's Declaration in this Part I, (1) check the box at the beginning of the Veteran's Declaration, (2) check the box for "The presumption does not arise" at the top of this statement, and (3) complete the verification in Part VIII. Do not complete any of the remaining parts of this statement.  <input type="checkbox"/> <b>Veteran's Declaration.</b> By checking this box, I declare under penalty of perjury that I am a disabled veteran (as defined in 38 U.S.C. § 3741(1)) whose indebtedness occurred primarily during a period in which I was on active duty (as defined in 10 U.S.C. § 101(d)(1)) or while I was performing a homeland defense activity (as defined in 32 U.S.C. §901(1)).	

<b>Part II. CALCULATION OF MONTHLY INCOME FOR § 707(b)(7) EXCLUSION</b>														
<b>2</b>	<b>Marital/filing status.</b> Check the box that applies and complete the balance of this part of this statement as directed. a. <input type="checkbox"/> Unmarried. <b>Complete only Column A ("Debtor's Income") for Lines 3-11.</b> b. <input type="checkbox"/> Married, not filing jointly, with declaration of separate households. By checking this box, debtor declares under penalty of perjury: "My spouse and I are legally separated under applicable non-bankruptcy law or my spouse and I are living apart other than for the purpose of evading the requirements of § 707(b)(2)(A) of the Bankruptcy Code." <b>Complete only Column A ("Debtor's Income") for Lines 3-11.</b> c. <input type="checkbox"/> Married, not filing jointly, without the declaration of separate households set out in Line 2.b above. <b>Complete both Column A ("Debtor's Income") and Column B (Spouse's Income) for Lines 3-11.</b> d. <input type="checkbox"/> Married, filing jointly. <b>Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 3-11.</b>  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.			<b>Column A Debtor's Income</b>	<b>Column B Spouse's Income</b>									
<b>3</b>	Gross wages, salary, tips, bonuses, overtime, commissions.			\$	\$									
<b>4</b>	Income from the operation of a business, profession or farm. Subtract Line b from Line a and enter the difference on Line 4. Do not enter a number less than zero. <b>Do not include any part of the business expenses entered on Line b as a deduction in Part V.</b> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td align="center">a.</td> <td>Gross receipts</td> <td align="center">\$</td> </tr> <tr> <td align="center">b.</td> <td>Ordinary and necessary business expenses</td> <td align="center">\$</td> </tr> <tr> <td align="center">c.</td> <td>Business income</td> <td 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												
<b>5</b>	Rent and other real property income. Subtract Line b from Line a and enter the difference on Line 5. Do not enter a number less than zero. <b>Do not include any part of the operating expenses entered on Line b as a deduction in Part V.</b> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td align="center">a.</td> <td>Gross receipts</td> <td align="center">\$</td> </tr> <tr> <td align="center">b.</td> <td>Ordinary and necessary operating expenses</td> <td align="center">\$</td> </tr> <tr> <td align="center">c.</td> <td>Rental income</td> <td 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												
<b>6</b>	Interest, dividends and royalties.			\$	\$									
<b>7</b>	Pension and retirement income.			\$	\$									
<b>8</b>	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.			\$	\$									

9	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: <table border="1" style="width:100%; border-collapse: collapse; margin-top: 5px;"> <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:20%;">Spouse \$ _____</td> <td style="width:20%;"></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 \$ _____									
10	Income from all other sources. If necessary, list additional sources on a separate page. <b>Do not include</b> 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. Specify source and amount. <table border="1" style="width:100%; border-collapse: collapse; margin-top: 5px;"> <tr> <td style="width:5%;">a.</td> <td style="width:60%;"></td> <td style="width:10%; text-align:right;">\$</td> <td style="width:25%;"></td> </tr> <tr> <td>b.</td> <td></td> <td style="text-align:right;">\$</td> <td></td> </tr> </table> Total and enter on Line 10	a.		\$		b.		\$		\$	\$
a.		\$									
b.		\$									
11	<b>Subtotal of Current Monthly Income for § 707(b)(7).</b> Add Lines 3 thru 10 in Column A, and, if Column B is completed, add Lines 3 through 10 in Column B. Enter the total(s).	\$	\$								
12	<b>Total Current Monthly Income for § 707(b)(7).</b> If Column B has been completed, add Line 11, Column A to Line 11, Column B, and enter the total. If Column B has not been completed, enter the amount from Line 11, Column A.	\$	\$								

**Part III. APPLICATION OF § 707(b)(7) EXCLUSION**

13	<b>Annualized Current Monthly Income for § 707(b)(7).</b> Multiply the amount from Line 12 by the number 12 and enter the result.	\$	
14	<b>Applicable median family income.</b> Enter the median family income for the applicable state and household size. (This information is available by family size at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.) a. Enter debtor's state of residence: _____ b. Enter debtor's household size: _____	\$	
15	<b>Application of Section 707(b)(7).</b> Check the applicable box and proceed as directed. <input type="checkbox"/> <b>The amount on Line 13 is less than or equal to the amount on Line 14.</b> Check the box for "The presumption does not arise" at the top of page 1 of this statement, and complete Part VIII; do not complete Parts IV, V, VI or VII. <input type="checkbox"/> <b>The amount on Line 13 is more than the amount on Line 14.</b> Complete the remaining parts of this statement.		

Complete Parts IV, V, VI, and VII of this statement only if required. (See Line 15.)

**Part IV. CALCULATION OF CURRENT MONTHLY INCOME FOR § 707(b)(2)**

16	<b>Enter the amount from Line 12.</b>	\$	
17	<b>Marital adjustment.</b> If you checked the box at Line 2.c, enter the amount of the income listed in Line 11, Column B that was NOT regularly contributed to the household expenses of the debtor or the debtor's dependents. If you did not check box at Line 2.c, enter zero.	\$	
18	<b>Current monthly income for § 707(b)(2).</b> Subtract Line 17 from Line 16 and enter the result.	\$	

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

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

19	<b>National Standards: food, clothing, household supplies, personal care, and miscellaneous.</b> Enter "Total" amount from IRS National Standards for Allowable Living Expenses for the applicable family size and income level. (This information is available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.)	\$	
20A	<b>Local Standards: housing and utilities; non-mortgage expenses.</b> Enter the amount of the IRS Housing and Utilities Standards; non-mortgage expenses for the applicable county and family size.	\$	

	(This information is available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court).											
20B	<p><b>Local Standards: housing and utilities; mortgage/rent expense.</b> Enter, in Line a below, the amount of the IRS Housing and Utilities Standards; mortgage/rent expense for your county and family size (this information is available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> 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 42; subtract Line b from Line a and enter the result in Line 20B. <b>Do not enter an amount less than zero.</b></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 Housing and Utilities Standards; mortgage/rental expense</td> <td style="width:20%; text-align:right;">\$</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 42</td> <td style="text-align:right;">\$</td> </tr> <tr> <td style="text-align:center;">c.</td> <td>Net mortgage/rental expense</td> <td style="text-align:right;">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 42	\$	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 42	\$										
c.	Net mortgage/rental expense	Subtract Line b from Line a.										
21	<p><b>Local Standards: housing and utilities; adjustment.</b> If you contend that the process set out in Lines 20A and 20B does not accurately compute the allowance to which you are entitled under the IRS Housing and Utilities Standards, enter any additional amount to which you contend you are entitled, and state the basis for your contention in the space below:</p> <hr/> <hr/> <hr/>		\$									
22	<p><b>Local Standards: transportation; vehicle operation/public transportation expense.</b> 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 8.</p> <p><input type="checkbox"/> 0   <input type="checkbox"/> 1   <input type="checkbox"/> 2 or more.</p> <p>Enter the amount from IRS Transportation Standards, Operating Costs &amp; Public Transportation Costs for the applicable number of vehicles in the applicable Metropolitan Statistical Area or Census Region. (This information is available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.)</p>		\$									
23	<p><b>Local Standards: transportation ownership/lease expense; Vehicle 1.</b> 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.)</p> <p><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 <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> 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 42; subtract Line b from Line a and enter the result in Line 23. <b>Do not enter an amount less than zero.</b></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%; 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 42</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 42	\$	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 42	\$										
c.	Net ownership/lease expense for Vehicle 1	Subtract Line b from Line a.										
24	<p><b>Local Standards: transportation ownership/lease expense; Vehicle 2.</b> Complete this Line only if you checked the "2 or more" Box in Line 23.</p> <p>Enter, in Line a below, the amount of the IRS Transportation Standards, Ownership Costs, Second Car (available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> 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 42; subtract Line b from Line a and enter the result in Line 24. <b>Do not enter an amount less than zero.</b></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%; 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 42</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 42	\$	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 42	\$										
c.	Net ownership/lease expense for Vehicle 2	Subtract Line b from Line a.										
25	<p><b>Other Necessary Expenses: taxes.</b> 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. <b>Do not include real estate or sales taxes.</b></p>		\$									
26	<p><b>Other Necessary Expenses: mandatory payroll deductions.</b> Enter the total average monthly payroll deductions that are required for your employment, such as mandatory retirement contributions, union dues, and uniform costs. <b>Do not include discretionary amounts, such as non-mandatory 401(k) contributions.</b></p>		\$									

27	<b>Other Necessary Expenses: life insurance.</b> Enter average monthly premiums that you actually pay for term life insurance for yourself. <b>Do not include premiums for insurance on your dependents, for whole life or for any other form of insurance.</b>	\$	
28	<b>Other Necessary Expenses: court-ordered payments.</b> Enter the total monthly amount that you are required to pay pursuant to court order, such as spousal or child support payments. <b>Do not include payments on past due support obligations included in Line 44.</b>	\$	
29	<b>Other Necessary Expenses: education for employment or for a physically or mentally challenged child.</b> 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.	\$	
30	<b>Other Necessary Expenses: childcare.</b> Enter the average monthly amount that you actually expend on childcare. <b>Do not include payments made for children's education.</b>	\$	
31	<b>Other Necessary Expenses: health care.</b> 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. <b>Do not include payments for health insurance listed in Line 34.</b>	\$	
32	<b>Other Necessary Expenses: telecommunication services.</b> 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. <b>Do not include any amount previously deducted.</b>	\$	
33	<b>Total Expenses Allowed under IRS Standards.</b> Enter the total of Lines 19 through 32.	\$	
<b>Subpart B: Additional Expense Deductions under § 707(b)</b> <b>Note: Do not include any expenses that you have listed in Lines 19-32</b>			
34	<b>Health Insurance, Disability Insurance and Health Savings Account Expenses.</b> 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		\$
35	<b>Continued contributions to the care of household or family members.</b> 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.	\$	
36	<b>Protection against family violence.</b> 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.	\$	
37	<b>Home energy costs in excess of the allowance specified by the IRS Local Standards.</b> Enter the average monthly amount by which your home energy costs exceed the allowance in the IRS Local Standards for Housing and Utilities. <b>You must provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary.</b>	\$	
38	<b>Education expenses for dependent children less than 18.</b> 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. <b>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.</b>	\$	
39	<b>Additional food and clothing expense.</b> 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 <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.) <b>You must provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary.</b>	\$	
40	<b>Continued charitable contributions.</b> 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).	\$	
41	<b>Total Additional Expense Deductions under § 707(b).</b> Enter the total of Lines 34 through 40	\$	

<b>Subpart C: Deductions for Debt Payment</b>																								
<b>42</b>	<p><b>Future payments on secured claims.</b> For each of your debts that is secured by an interest in property that you own, list the name of the 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. Mortgage debts should include payments of taxes and insurance required by the mortgage. 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: 25%;">Name of Creditor</th> <th style="width: 40%;">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 style="text-align: right;">\$</td> </tr> <tr> <td>b.</td> <td></td> <td></td> <td style="text-align: right;">\$</td> </tr> <tr> <td>c.</td> <td></td> <td></td> <td style="text-align: right;">\$</td> </tr> <tr> <td colspan="3"></td> <td style="text-align: right;">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																					
a.			\$																					
b.			\$																					
c.			\$																					
			Total: Add Lines a, b and c.																					
<b>43</b>	<p><b>Past due payments on secured claims.</b> If any of the debts listed in Line 42 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: 25%;">Name of Creditor</th> <th style="width: 40%;">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 style="text-align: right;">\$</td> </tr> <tr> <td>b.</td> <td></td> <td></td> <td style="text-align: right;">\$</td> </tr> <tr> <td>c.</td> <td></td> <td></td> <td style="text-align: right;">\$</td> </tr> <tr> <td colspan="3"></td> <td style="text-align: right;">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																					
<b>44</b>	<p><b>Payments on priority claims.</b> Enter the total amount of all priority claims (including priority child support and alimony claims), divided by 60.</p>			\$																				
<b>45</b>	<p><b>Chapter 13 administrative expenses.</b> If you are eligible to file a case under Chapter 13, complete the following chart, 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%; text-align: center;">a.</td> <td style="width: 55%;">Projected average monthly Chapter 13 plan payment.</td> <td style="width: 40%; 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 <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> 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> </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 <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> 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 <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.)	x																						
c.	Average monthly administrative expense of Chapter 13 case	Total: Multiply Lines a and b																						
<b>46</b>	<p><b>Total Deductions for Debt Payment.</b> Enter the total of Lines 42 through 45.</p>			\$																				
<b>Subpart D: Total Deductions Allowed under § 707(b)(2)</b>																								
<b>47</b>	<p><b>Total of all deductions allowed under § 707(b)(2).</b> Enter the total of Lines 33, 41, and 46.</p>			\$																				

<b>Part VI. DETERMINATION OF § 707(b)(2) PRESUMPTION</b>		
<b>48</b>	Enter the amount from Line 18 (Current monthly income for § 707(b)(2))	\$
<b>49</b>	Enter the amount from Line 47 (Total of all deductions allowed under § 707(b)(2))	\$
<b>50</b>	<b>Monthly disposable income under § 707(b)(2).</b> Subtract Line 49 from Line 48 and enter the result	\$
<b>51</b>	<b>60-month disposable income under § 707(b)(2).</b> Multiply the amount in Line 50 by the number 60 and enter the result.	\$

<b>52</b>	<p><b>Initial presumption determination.</b> Check the applicable box and proceed as directed.</p> <p><input type="checkbox"/> <b>The amount on Line 51 is less than \$6,000</b> Check the box for "The presumption does not arise" at the top of page 1 of this statement, and complete the verification in Part VIII. Do not complete the remainder of Part VI.</p> <p><input type="checkbox"/> <b>The amount set forth on Line 51 is more than \$10,000.</b> Check the box for "The presumption arises" at the top of page 1 of this statement, and complete the verification in Part VIII. You may also complete Part VII. Do not complete the remainder of Part VI.</p> <p><input type="checkbox"/> <b>The amount on Line 51 is at least \$6,000, but not more than \$10,000.</b> Complete the remainder of Part VI (Lines 53 through 55).</p>
<b>53</b>	<p><b>Enter the amount of your total non-priority unsecured debt</b> <span style="float: right;">\$</span></p>
<b>54</b>	<p><b>Threshold debt payment amount.</b> Multiply the amount in Line 53 by the number 0.25 and enter the result. <span style="float: right;">\$</span></p>
<b>55</b>	<p><b>Secondary presumption determination.</b> Check the applicable box and proceed as directed.</p> <p><input type="checkbox"/> <b>The amount on Line 51 is less than the amount on Line 54.</b> Check the box for "The presumption does not arise" at the top of page 1 of this statement, and complete the verification in Part VIII.</p> <p><input type="checkbox"/> <b>The amount on Line 51 is equal to or greater than the amount on Line 54.</b> Check the box for "The presumption arises" at the top of page 1 of this statement, and complete the verification in Part VIII. You may also complete Part VII.</p>

**Part VII: ADDITIONAL EXPENSE CLAIMS**

<b>56</b>	<p><b>Other Expenses.</b> 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 border="1" style="width:100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr> <th style="width:5%;"></th> <th style="width:65%;">Expense Description</th> <th style="width:30%;">Monthly Amount</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">a.</td> <td></td> <td style="text-align: center;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td></td> <td style="text-align: center;">\$</td> </tr> <tr> <td style="text-align: center;">c.</td> <td></td> <td style="text-align: center;">\$</td> </tr> <tr> <td colspan="2" style="text-align: right;">Total: Add Lines a, b and c</td> <td style="text-align: center;">\$</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 VIII: VERIFICATION**

<b>57</b>	<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>Date: _____</p>	<p>Signature: _____ (Debtor)</p>
	<p>Date: _____</p>	<p>Signature: _____ (Joint Debtor, if any)</p>

**Form B22B (Chapter 11) (10/05)**

In re \_\_\_\_\_  
Debtor(s)

Case Number: \_\_\_\_\_  
(If known)

**STATEMENT OF CURRENT MONTHLY INCOME**  
FOR USE IN CHAPTER 11

In addition to Schedules I and J, this statement must be completed by every individual Chapter 11 debtor, whether or not filing jointly. Joint debtors may complete one statement only.

<b>Part I. CALCULATION OF CURRENT MONTHLY INCOME</b>																
<b>1</b>	<p><b>Marital/filing status.</b> Check the box that applies and complete the balance of this part of this statement as directed.</p> <p>a. <input type="checkbox"/> Unmarried. <b>Complete only Column A ("Debtor's Income") for Lines 2-10.</b></p> <p>b. <input type="checkbox"/> Married, not filing jointly. <b>Complete only Column A ("Debtor's Income") for Lines 2-10.</b></p> <p>c. <input type="checkbox"/> Married, filing jointly. <b>Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 2-10.</b></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>		<b>Column A Debtor's Income</b>	<b>Column B Spouse's Income</b>												
<b>2</b>	<b>Gross wages, salary, tips, bonuses, overtime, commissions.</b>		\$	\$												
<b>3</b>	<p><b>Net income from the operation of a business, profession, or farm.</b> Subtract Line b from Line a and enter the difference on Line 3. Do not enter a number 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: 45%;">Gross receipts</td> <td style="width: 10%;">\$</td> <td style="width: 40%;"></td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Ordinary and necessary business expenses</td> <td>\$</td> <td></td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Business income</td> <td></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													
<b>4</b>	<p><b>Net rental and other real property income.</b> Subtract Line b from Line a and enter the difference on Line 4. Do not enter a number 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: 45%;">Gross receipts</td> <td style="width: 10%;">\$</td> <td style="width: 40%;"></td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Ordinary and necessary operating expenses</td> <td>\$</td> <td></td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Rental income</td> <td></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													
<b>5</b>	<b>Interest, dividends, and royalties.</b>		\$	\$												
<b>6</b>	<b>Pension and retirement income.</b>		\$	\$												
<b>7</b>	<b>Regular contributions to the household expenses of the debtor or the debtor's dependents, including child or spousal support.</b> Do not include contributions from the debtor's spouse if Column B is completed.		\$	\$												
<b>8</b>	<p><b>Unemployment compensation.</b> 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 \$ _____														
<b>9</b>	<p><b>Income from all other sources.</b> If necessary, list additional sources on a separate page. <b>Do not include</b> 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. Specify source and amount.</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%;">\$</td> <td style="width: 40%;"></td> </tr> <tr> <td style="text-align: center;">b.</td> <td></td> <td>\$</td> <td></td> </tr> </table> <p>Total and enter on Line 9</p>		a.		\$		b.		\$		\$	\$				
a.		\$														
b.		\$														
<b>10</b>	<b>Subtotal of current monthly income.</b> 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).		\$	\$												
<b>11</b>	<b>Total current monthly income.</b> 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: 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.)*

12

Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
(Debtor)

Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
(Joint Debtor, if any)

In re \_\_\_\_\_  
Debtor(s)

Case Number: \_\_\_\_\_  
(If known)

According to the calculations required by this statement:

The applicable commitment period is 3 years.

The applicable commitment period is 5 years.

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

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

(Check the boxes as directed in Lines 17 and 23 of this statement.)

## 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.

<b>Part I. REPORT OF INCOME</b>																	
			Column A Debtor's Income	Column B Spouse's Income													
<b>1</b>	<b>Marital/filing status.</b> Check the box that applies and complete the balance of this part of this statement as directed. a. <input type="checkbox"/> Unmarried. <b>Complete only Column A ("Debtor's Income") for Lines 2-10.</b> b. <input type="checkbox"/> Married. <b>Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 2-10.</b> 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.																
<b>2</b>	<b>Gross wages, salary, tips, bonuses, overtime, commissions.</b>			\$	\$												
<b>3</b>	<b>Income from the operation of a business, profession, or farm.</b> Subtract Line b from Line a and enter the difference on Line 3. Do not enter a number less than zero. <b>Do not include any part of the business expenses entered on Line b as a deduction in Part IV.</b> <table border="1" style="width: 100%; margin-top: 5px;"> <tr> <td style="width: 5%;">a.</td> <td style="width: 40%;">Gross receipts</td> <td style="width: 15%;">\$</td> <td style="width: 40%;"></td> </tr> <tr> <td>b.</td> <td>Ordinary and necessary business expenses</td> <td>\$</td> <td></td> </tr> <tr> <td>c.</td> <td>Business income</td> <td colspan="2">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															
<b>4</b>	<b>Rent and other real property income.</b> Subtract Line b from Line a and enter the difference on Line 4. Do not enter a number less than zero. <b>Do not include any part of the operating expenses entered on Line b as a deduction in Part IV.</b> <table border="1" style="width: 100%; margin-top: 5px;"> <tr> <td style="width: 5%;">a.</td> <td style="width: 40%;">Gross receipts</td> <td style="width: 15%;">\$</td> <td style="width: 40%;"></td> </tr> <tr> <td>b.</td> <td>Ordinary and necessary operating expenses</td> <td>\$</td> <td></td> </tr> <tr> <td>c.</td> <td>Rental income</td> <td colspan="2">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															
<b>5</b>	<b>Interest, dividends, and royalties.</b>			\$	\$												
<b>6</b>	<b>Pension and retirement income.</b>			\$	\$												
<b>7</b>	<b>Regular contributions to the household expenses of the debtor or the debtor's dependents, including child or spousal support.</b> Do not include contributions from the debtor's spouse.			\$	\$												
<b>8</b>	<b>Unemployment compensation.</b> 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%; margin-top: 5px;"> <tr> <td style="width: 40%;">Unemployment compensation claimed to be a benefit under the Social Security Act</td> <td style="width: 10%;">Debtor \$ _____</td> <td style="width: 50%;">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 \$ _____															
<b>9</b>	<b>Income from all other sources.</b> Specify source and amount. If necessary, list additional sources on a separate page. Total and enter on Line 9. <b>Do not include</b> 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%; margin-top: 5px;"> <tr> <td style="width: 5%;">a.</td> <td style="width: 40%;"></td> <td style="width: 15%;">\$</td> <td style="width: 40%;"></td> </tr> <tr> <td>b.</td> <td></td> <td>\$</td> <td></td> </tr> </table>			a.		\$		b.		\$		\$	\$				
a.		\$															
b.		\$															
<b>10</b>	<b>Subtotal.</b> 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).			\$	\$												
<b>11</b>	<b>Total.</b> 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.			\$	\$												

<b>Part II. CALCULATION OF § 1325(b)(4) COMMITMENT PERIOD</b>		
12	<b>Enter the amount from Line 11.</b>	
13	<b>Marital adjustment.</b> 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	<b>Subtract Line 13 from Line 12 and enter the result.</b>	
15	<b>Annualized current monthly income for § 1325(b)(4).</b> Multiply the amount from Line 14 by the number 12 and enter the result.	\$
16	<b>Applicable median family income.</b> Enter the median family income for applicable state and household size. (This information is available by family size at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.) a. Enter debtor's state of residence: _____ b. Enter debtor's household size: _____	\$
17	<b>Application of § 1325(b)(4).</b> Check the applicable box and proceed as directed. <input type="checkbox"/> <b>The amount on Line 15 is less than the amount on Line 16.</b> Check the box for "The applicable commitment period is 3 years" at the top of page 1 of this statement and complete Part VII of this statement. <b>Do not complete Parts III, IV, V or VI.</b> <input type="checkbox"/> <b>The amount on Line 15 is not less than the amount on Line 16.</b> Check the box for "The applicable commitment period is 5 years" at the top of page 1 of this statement and continue with Part III of this statement.	

<b>Part III. APPLICATION OF § 1325(b)(3) FOR DETERMINING DISPOSABLE INCOME</b>		
18	<b>Enter the amount from Line 11.</b>	\$
19	<b>Marital adjustment.</b> 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	<b>Current monthly income for § 1325(b)(3).</b> Subtract Line 19 from Line 18 and enter the result.	
21	<b>Annualized current monthly income for § 1325(b)(3).</b> Multiply the amount from Line 20 by the number 12 and enter the result.	\$
22	<b>Applicable median family income.</b> Enter the amount from Line 16.	\$
23	<b>Application of § 1325(b)(3).</b> Check the applicable box and proceed as directed. <input type="checkbox"/> <b>The amount on Line 21 is more than the amount on Line 22.</b> Check the box for "Disposable income is determined under § 1325(b)(3)" at the top of page 1 of this statement and complete the remaining parts of this statement. <input type="checkbox"/> <b>The amount on Line 21 is not more than the amount on Line 22.</b> Check the box for "Disposable income is not determined under § 1325(b)(3)" at the top of page 1 of this statement and complete Part VII of this statement. <b>Do not complete Parts IV, V, or VI.</b>	

<b>Part IV. CALCULATION OF DEDUCTIONS ALLOWED UNDER § 707(b)(2)</b>		
<b>Subpart A: Deductions under Standards of the Internal Revenue Service (IRS)</b>		
24	<b>National Standards: food, clothing, household supplies, personal care, and miscellaneous.</b> 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 <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.)	\$
25A	<b>Local Standards: housing and utilities; non-mortgage expenses.</b> Enter the amount of the IRS Housing and Utilities Standards; non-mortgage expenses for the applicable county and family size. (This information is available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.)	\$

<b>25B</b>	<p><b>Local Standards: housing and utilities; mortgage/rent expense.</b> Enter, in Line a below, the amount of the IRS Housing and Utilities Standards; mortgage/rent expense for your county and family size (this information is available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> 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 25B. <b>Do not enter an amount less than zero.</b></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:5%; text-align:center;">a.</td> <td style="width:65%;">IRS Housing and Utilities Standards; mortgage/rent Expense</td> <td style="width:30%; text-align:right;">\$</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 47</td> <td style="text-align:right;">\$</td> </tr> <tr> <td style="text-align:center;">c.</td> <td>Net mortgage/rental expense</td> <td style="text-align:right;">Subtract Line b from Line a.</td> </tr> </table>	a.	IRS Housing and Utilities Standards; mortgage/rent 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/rent 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.									
<b>26</b>	<p><b>Local Standards: housing and utilities; adjustment.</b> if you contend that the process set out in Lines 25A and 25B does not accurately compute the allowance to which you are entitled under the IRS Housing and Utilities Standards, enter any additional amount to which you contend you are entitled, and state the basis for your contention in the space below:</p> <hr/> <hr/> <hr/>	\$									
<b>27</b>	<p><b>Local Standards: transportation; vehicle operation/public transportation expense.</b> 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.</p> <p>Enter the amount from IRS Transportation Standards, Operating Costs &amp; Public Transportation Costs for the applicable number of vehicles in the applicable Metropolitan Statistical Area or Census Region. (This information is available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.)</p>	\$									
<b>28</b>	<p><b>Local Standards: transportation ownership/lease expense; Vehicle 1.</b> 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 <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> 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 28. <b>Do not enter an amount less than zero.</b></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:5%; text-align:center;">a.</td> <td style="width:65%;">IRS Transportation Standards, Ownership Costs, First Car</td> <td style="width:30%; 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 47</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 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.									
<b>29</b>	<p><b>Local Standards: transportation ownership/lease expense; Vehicle 2.</b> 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 <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> 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. <b>Do not enter an amount less than zero.</b></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:5%; text-align:center;">a.</td> <td style="width:65%;">IRS Transportation Standards, Ownership Costs, Second Car</td> <td style="width:30%; 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 47</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 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.									
<b>30</b>	<p><b>Other Necessary Expenses: taxes.</b> 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. <b>Do not include real estate or sales taxes.</b></p>	\$									
<b>31</b>	<p><b>Other Necessary Expenses: mandatory payroll deductions.</b> Enter the total average monthly payroll deductions that are required for your employment, such as mandatory retirement contributions, union dues, and uniform costs. <b>Do not include discretionary amounts, such as non-mandatory 401(k) contributions.</b></p>	\$									

32	<b>Other Necessary Expenses: life insurance.</b> Enter average monthly premiums that you actually pay for term life insurance for yourself. <b>Do not include premiums for insurance on your dependents, for whole life or for any other form of insurance.</b>	\$
33	<b>Other Necessary Expenses: court-ordered payments.</b> Enter the total monthly amount that you are required to pay pursuant to court order, such as spousal or child support payments. <b>Do not include payments on past due support obligations included in Line 49.</b>	\$
34	<b>Other Necessary Expenses: education for employment or for a physically or mentally challenged child.</b> 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.	
35	<b>Other Necessary Expenses: childcare.</b> Enter the average monthly amount that you actually expend on childcare. <b>Do not include payments made for children's education.</b>	\$
36	<b>Other Necessary Expenses: health care.</b> 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. <b>Do not include payments for health insurance listed in Line 39.</b>	\$
37	<b>Other Necessary Expenses: telecommunication services.</b> 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. <b>Do not include any amount previously deducted.</b>	\$
38	<b>Total Expenses Allowed under IRS Standards.</b> Enter the total of Lines 24 through 37.	\$
<b>Subpart B: Additional Expense Deductions under § 707(b)</b> <b>Note: Do not include any expenses that you have listed in Lines 24-37</b>		
39	<b>Health Insurance, Disability Insurance, and Health Savings Account Expenses.</b> 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	<b>Continued contributions to the care of household or family members.</b> 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. <b>Do not include payments listed in Line 34.</b>	\$
41	<b>Protection against family violence.</b> 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	<b>Home energy costs in excess of the allowance specified by the IRS Local Standards.</b> Enter the average monthly amount by which your home energy costs exceed the allowance in the IRS Local Standards for Housing and Utilities. <b>You must provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary.</b>	\$
43	<b>Education expenses for dependent children under 18.</b> 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. <b>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.</b>	\$
44	<b>Additional food and clothing expense.</b> 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 <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.) <b>You must provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary.</b>	\$
45	<b>Continued charitable contributions.</b> 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	<b>Total Additional Expense Deductions under § 707(b).</b> Enter the total of Lines 39 through 45.	\$

<b>Subpart C: Deductions for Debt Payment</b>			
47	<b>Future payments on secured claims.</b> For each of your debts that is secured by an interest in property that you own, list the name of the 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. Mortgage debts should include payments of taxes and insurance required by the mortgage. If necessary, list additional entries on a separate page.		
	Name of Creditor	Property Securing the Debt	60-month Average Payment
	a.		\$
	b.		\$
	c.		\$
			Total: Add Lines a, b, and c
			\$
48	<b>Past due payments on secured claims.</b> 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	<b>Payments on priority claims.</b> Enter the total amount of all priority claims (including priority child support and alimony claims), divided by 60.		\$
50	<b>Chapter 13 administrative expenses.</b> 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 <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> 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	<b>Total Deductions for Debt Payment.</b> Enter the total of Lines 47 through 50.		\$
<b>Subpart D: Total Deductions Allowed under § 707(b)(2)</b>			
52	<b>Total of all deductions allowed under § 707(b)(2).</b> Enter the total of Lines 38, 46, and 51.		\$

<b>Part V. DETERMINATION OF DISPOSABLE INCOME UNDER § 1325(b)(2)</b>		
53	<b>Total current monthly income.</b> Enter the amount from Line 20.	\$
54	<b>Support income.</b> 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	<b>Qualified retirement deductions.</b> 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	<b>Total of all deductions allowed under § 707(b)(2).</b> Enter the amount from Line 52.	\$
57	<b>Total adjustments to determine disposable income.</b> Add the amounts on Lines 54, 55, and 56 and enter the result.	\$
58	<b>Monthly Disposable Income Under § 1325(b)(2).</b> Subtract Line 57 from Line 53 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)

**United States Bankruptcy Court**  
\_\_\_\_\_ District Of \_\_\_\_\_

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_

Chapter \_\_\_\_\_

**DEBTOR'S CERTIFICATION OF COMPLETION OF INSTRUCTIONAL COURSE  
CONCERNING PERSONAL FINANCIAL MANAGEMENT**

*[Complete one of the following statements.]*

I/We, \_\_\_\_\_, the debtor(s) in the above-  
(Printed Name(s) of Debtor and Joint Debtor, if any)  
styled case hereby certify that on \_\_\_\_\_ I/we completed an instructional  
(Date)  
course in personal financial management provided by \_\_\_\_\_,  
(Name of Provider)  
an approved personal financial management instruction provider. If the provider furnished a  
document attesting to the completion of the personal financial management instructional  
course, a copy of that document is attached.

I/We, \_\_\_\_\_, the debtor(s) in the above-  
styled  
(Printed Names of Debtor and Joint Debtor, if any)  
case, hereby certify that no personal financial management course is required because:  
*[Check the appropriate box.]*

- I am/We are incapacitated or disabled, as defined in 11 U.S.C. § 109(h);
- I am/We are on active military duty in a military combat zone; or
- I/We reside in a district in which the United States trustee (or bankruptcy administrator) has determined that the approved instructional courses are not adequate at this time to serve the additional individuals who would otherwise be required to complete such courses.

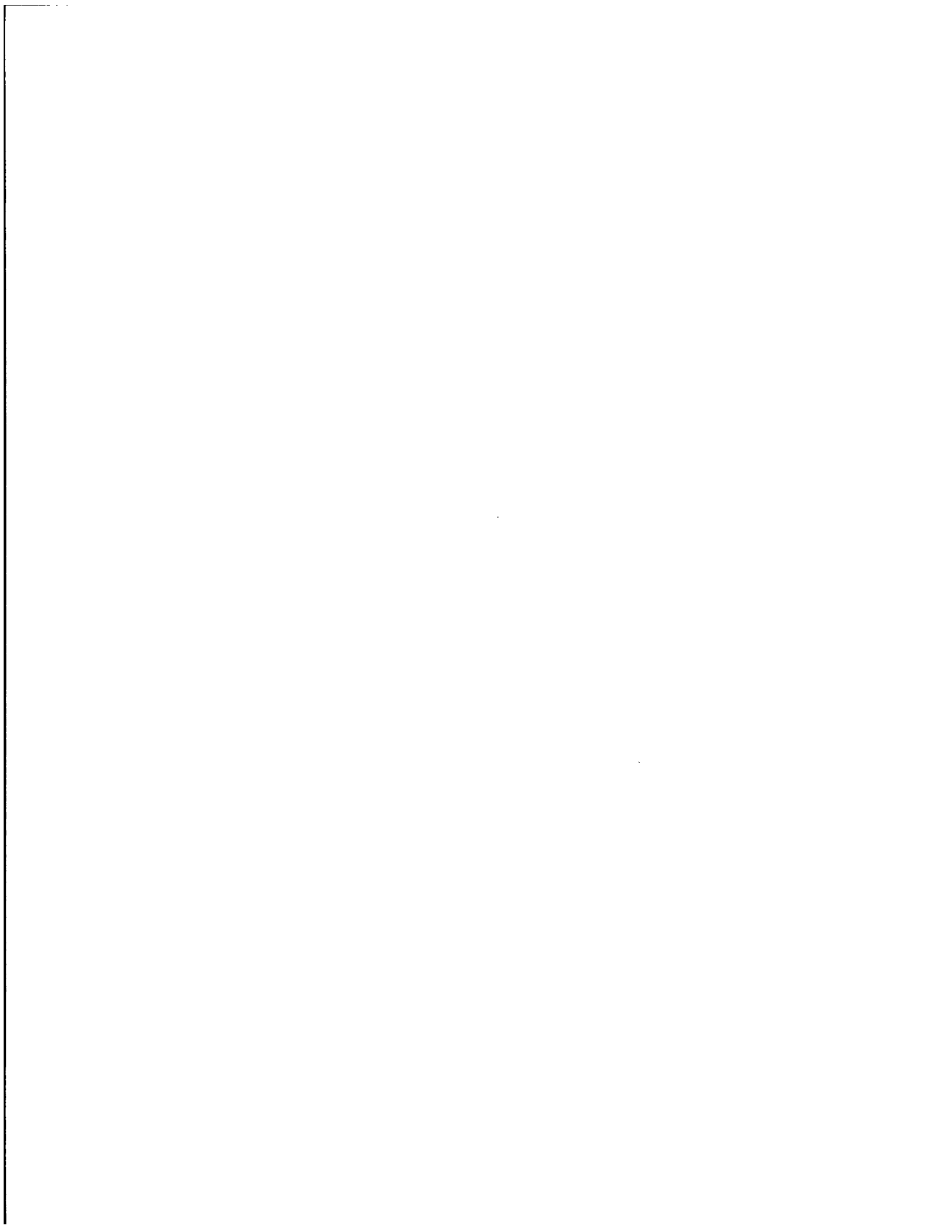
Signature of Debtor: \_\_\_\_\_

Date: \_\_\_\_\_

Signature of Joint Debtor: \_\_\_\_\_

Date: \_\_\_\_\_





[Caption as described in Fed. R. Bankr. P. 7010 or 9004(b), as applicable.]

**CERTIFICATION TO COURT OF APPEALS  
BY ALL PARTIES**

A notice of appeal having been filed in the above-styled matter on \_\_\_\_\_ [Date], \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, [Names of all the appellants and all the appellees, if any], who are all the appellants [and all the appellees] hereby certify to the court under 28 U.S.C. § 158(d)(2)(A) that a circumstance specified in 28 U.S.C. § 158(d)(2) exists as stated below.

Leave to appeal in this matter  is  is not required under 28 U.S.C. § 158(a).

*[If from a final judgment, order, or decree]* This certification arises in an appeal from a final judgment, order, or decree of the United States Bankruptcy Court for the \_\_\_\_\_ District of \_\_\_\_\_ entered on \_\_\_\_\_ [Date].

*[If from an interlocutory order or decree]* This certification arises in an appeal from an interlocutory order or decree, and the parties hereby request leave to appeal as required by 28 U.S.C. § 158(a).

*[The certification shall contain one or more of the following statements, as is appropriate to the circumstances.]*

The judgment, order, or decree involves a question of law as to which there is no controlling decision of the court of appeals for this circuit or of the Supreme Court of the United States, or involves a matter of public importance.

*Or*

The judgment, order, or decree involves a question of law requiring resolution of conflicting decisions.

*Or*

An immediate appeal from the judgment, order, or decree may materially advance the progress of the case or proceeding in which the appeal is taken.

*[The parties may include or attach the information specified in Rule 8001(f)(3)(C).]*

Signed: *[If there are more than two signatories, all must sign and provide the information requested below. Attach additional signed sheets if needed.]*

\_\_\_\_\_  
Attorney for Appellant (or Appellant,  
if not represented by an attorney)

\_\_\_\_\_  
Attorney for Appellant (or Appellant  
if not represented by an attorney)

\_\_\_\_\_  
Printed Name of Signer

\_\_\_\_\_  
Printed Name of Signer

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone No.

\_\_\_\_\_  
Telephone No.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

COMMITTEE NOTE

The form is amended to implement amendments to the Bankruptcy Code contained in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109 - 8, 119 Stat. 23 (April 20, 2005). The period for which the debtor must provide all names used and information about any prior bankruptcy cases is now eight years to match the required time between the granting of discharges to the same debtor in § 727(a)(8) of the Code as amended in 2005. The box indicating the debtor's selection of a chapter under which to file the case has been amended to delete "Sec. 304 - Case ancillary to foreign proceeding" and replace it with "Chapter 15 Petition for Recognition of a Foreign Main Proceeding" and "Chapter 15 Petition for Recognition of a Foreign Nonmain Proceeding" reflecting the 2005 repeal of § 304 and enactment of chapter 15 of the Code. A statement of venue to be used in a chapter 15 case also has been added.

The section of the form labeled "Type of Debtor" has been revised and subtitled "Form of Organization." This section is revised to make it clear that a limited liability corporation ("LLC") and limited liability partnership ("LLP") should identify itself as a "corporation." A new section titled "Nature of Business" has been created that includes both existing check boxes that identify certain types of debtors for which the Bankruptcy Code provides special treatment, such as stockbrokers and railroads, and a new checkbox for a "health care business" for which the 2005 amendments to the Code include specific requirements. This section of the form also contains checkboxes for single asset real estate debtors and nonprofit organizations which will be used by trustees and creditors and by the Director of the Administrative Office of the United States Courts in preparing statistical reports and analyses. The statistical section of the form also is amended to provide more detail concerning the number of creditors in a case. A check box also has been added for a debtor to indicate that the debtor is applying for a waiver of the filing fee, to implement the 2005 enactment of 28 U.S.C. § 1930(f) authorizing the bankruptcy court to waive the filing fee in certain circumstances.

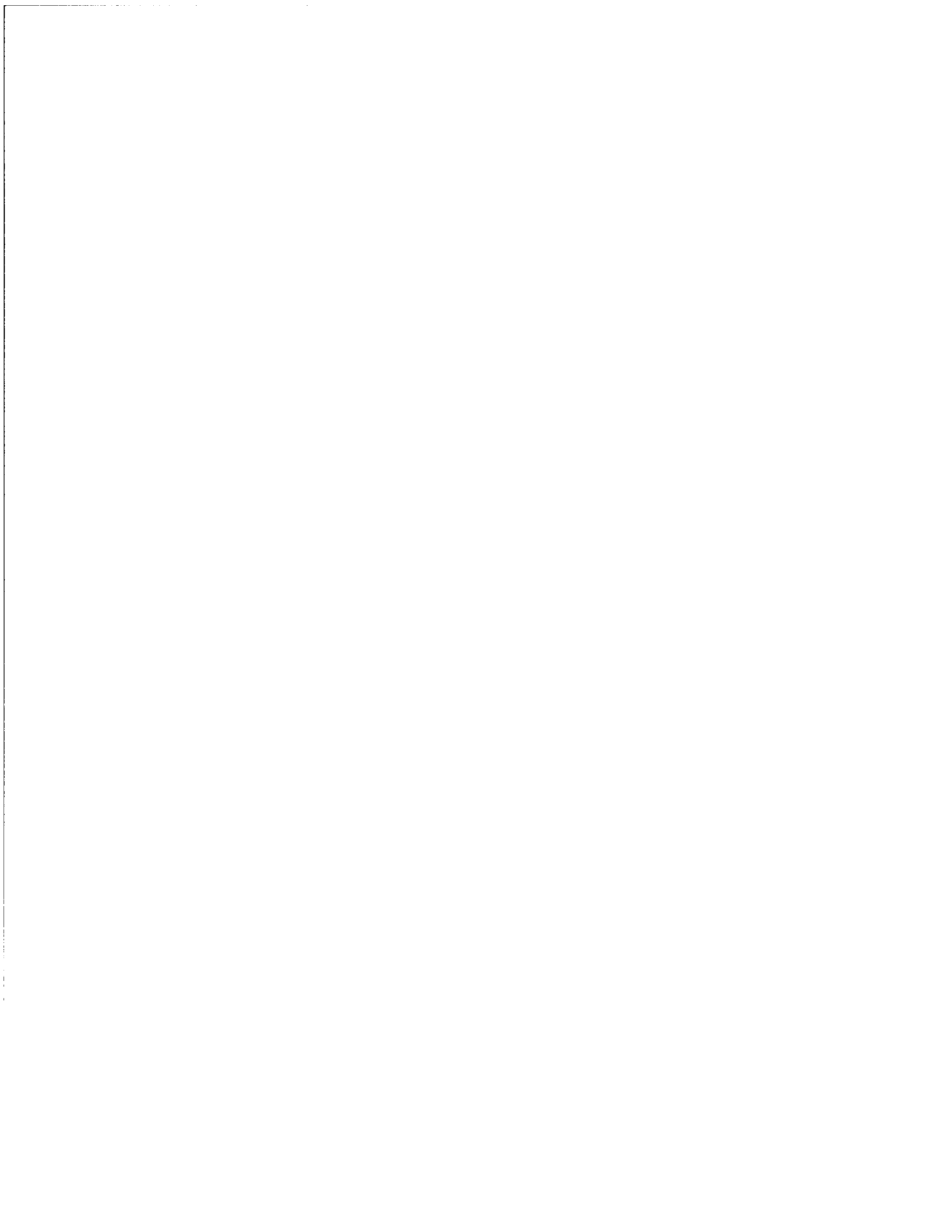
Although the 2005 Act eliminated an eligible debtor's option to elect to be treated as a "small business" in a chapter 11 case, new provisions for such debtors added to the Code in 2005 make it desirable to identify eligible debtors at the outset of the case. Accordingly, the section of the form labeled "Chapter 11 Small Business" has been revised and renamed "Chapter 11 Debtors" for this purpose. Chapter 11 debtors that meet the definition of "small business debtor" in § 101 of the Code are directed to identify themselves in this section of the form. In addition, chapter 11 debtors whose aggregate noncontingent debts owed to non-insiders or affiliates are less than \$2 million are directed to identify themselves in this section.

A space is provided for individuals to certify that they have received budget and credit counseling prior to filing, as required by § 109(h) which was added to the Code in 2005, or to request a waiver of the requirement. Space also is provided for a debtor who is a tenant of residential real property to state whether the debtor's landlord has a judgment against the debtor for possession of the premises, whether under applicable nonbankruptcy law the debtor would be permitted to cure the monetary default, and whether the debtor has made the appropriate deposit with the court. This addition to the form implements § 362(l) which was added to the Code in 2005.

The signature sections and the declaration under penalty of perjury by an individual debtor concerning the notice received about bankruptcy relief, the declaration under penalty of perjury by a bankruptcy petition preparer, and the declaration and certification by an attorney all are amended to include new material mandated by the 2005 Act. A signature section also is provided for a representative of a foreign proceeding.

COMMITTEE NOTE

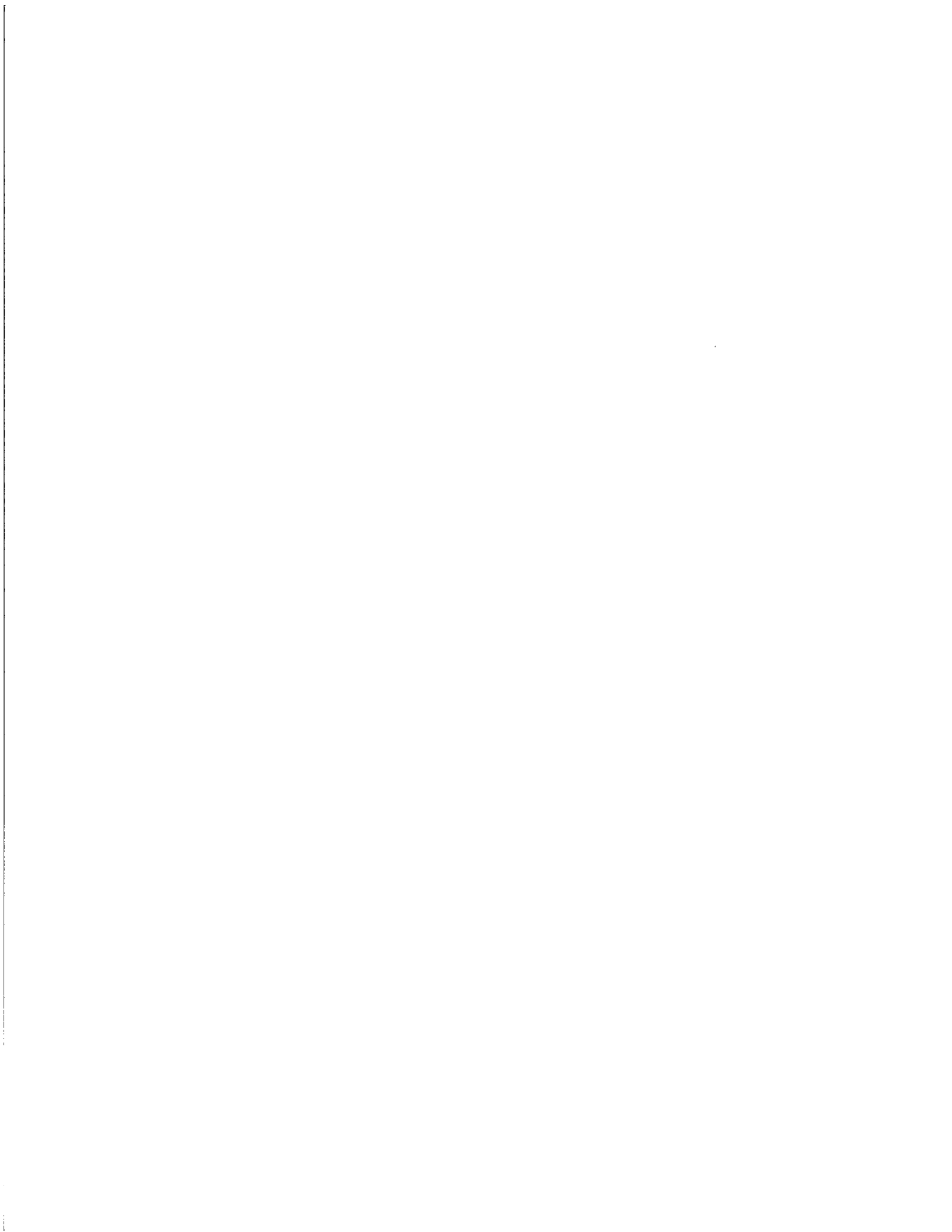
The form is amended to direct the debtor to state that, until the filing fee is paid in full, the debtor will not make any additional payment or transfer any additional property to an attorney or any other person for services in connection with the case. The declaration and certification by a non-attorney bankruptcy petition preparer in the form are amended to include material mandated by § 110 of the Code as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109 - 8, 119 Stat. 23 (April 20, 2005). The certification by a non-attorney bankruptcy petition preparer is re-named a declaration and also is revised to include material mandated by § 110 of the Code as amended in 2005. The order is amended to provide space for the court to set forth a payment schedule other than the one proposed by the debtor.



COMMITTEE NOTE

This form is new. 28 U.S.C. § 1930(f), enacted as part of the Bankruptcy Abuse and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (April 20, 2005), provides that “under procedures prescribed by the Judicial Conference of the United States, the district court or the bankruptcy court may waive the filing fee in a case under chapter 7 of title 11 for an individual if the court determines that such individual has income less than 150 percent of the income official poverty line . . . applicable to a family of the size involved and is unable to pay that fee in installments.” To implement this provision, Interim Rule 1006 adds a new subdivision (c). Official Form 3B is the form referenced in that subdivision, and is to be used by individual chapter 7 debtors when applying for a waiver of the filing fee. A corresponding standard order also is included.

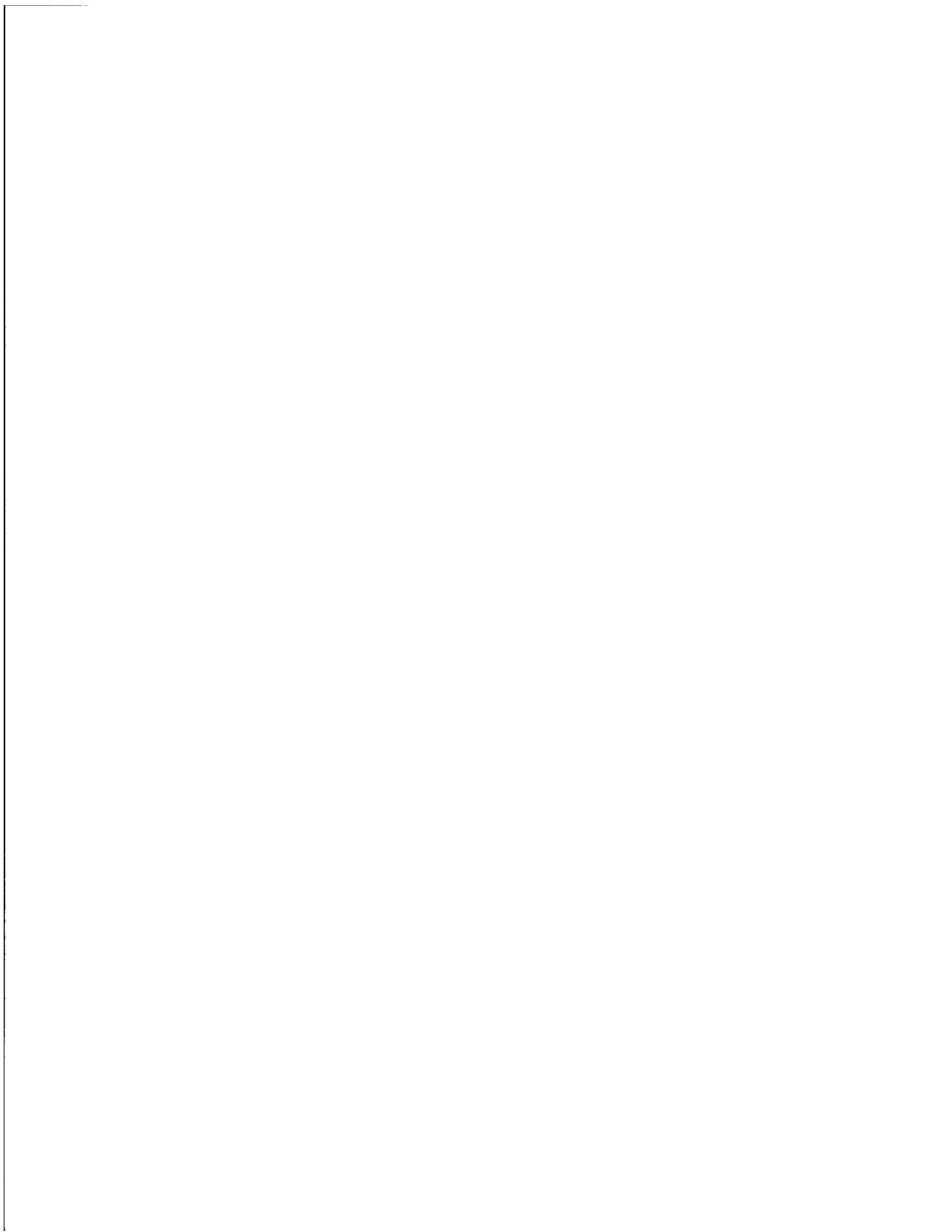




Form 4

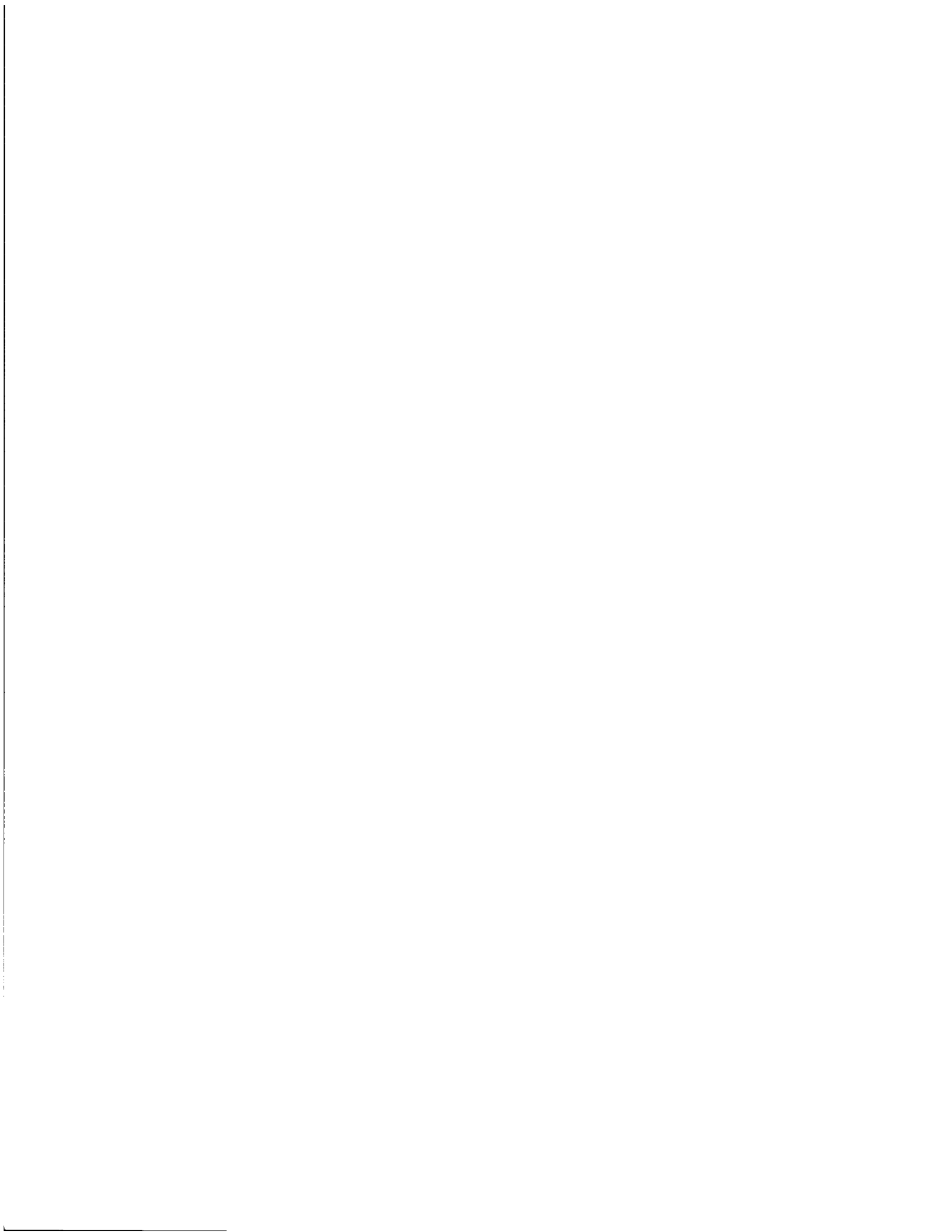
COMMITTEE NOTE

The form is amended to direct that the name of any minor child not be disclosed. The amendment implements § 112 of the Code, which was added by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109 - 8, 119 Stat. 23 (April 20, 2005).



COMMITTEE NOTE

The form has been amended to delete statistical information no longer required and to add "as to liability or amount" to the language concerning debts that are the subject of a bona fide dispute, in conformity with § 303 of the Code as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109 - 8, 119 Stat. 23 (April 20, 2005). The petitioning creditors must now provide, to the extent known to them, all other names used by the debtor during the 8 years, rather than 6 years, before the filing of the petition. A new check box is provided for the petitioning creditors to identify the debtor that is a "health care business" as defined in § 101 of the Code, thereby alerting the court and the United States trustee of the necessity under § 333 to appoint an ombudsman to represent the interests of the patients of the health care business. These amendments also implement the 2005 amendments to the Code. A new checkbox also is provided for a "clearing bank," which may become a debtor upon the filing of a petition at the direction of the Board of Governors of the Federal Reserve System; this addition conforms to an amendment to § 109(b)(2) of the Code which was enacted in 2000.



COMMITTEE NOTE

The forms of the Schedules of Assets and Liabilities are amended to implement the provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109 - 8, 119 Stat. 23, (April 20, 2005). An amendment that directs the debtor to avoid disclosing the name of any minor child occurs in several of the schedules in conformity with § 112 which was added to the Code in 2005. Section 112 provides for the debtor to provide the name of any minor child confidentially to the court, should the trustee need the information to evaluate properly the information filed by the debtor.

The "Statistical Summary of Certain Liabilities" is added to collect information needed to prepare statistical reports required under 28 U.S.C. § 159, which was enacted as part of the 2005 Act.

Schedules A, B, C, and D are amended to delete the word "market" from the columns in which the debtor reports the value of various kinds of property. Amendments to § 506 of the Code enacted in 2005 specify that "replacement value" must be used in connection with certain property. The schedules no longer specify "market" value and permit the debtor to choose the appropriate one, whether that be replacement, market, or some other value. Valuation of property, generally, is the subject of extensive provisions in the Code, and the deletion of the word "market" from the determinations of value to be made by the debtor on the schedules is intended to remove any inference about choice of valuation standard. This deletion simply indicates that the form takes no position on which Code provision or valuation standard may be applicable in any instance.

The following paragraphs describe changes that are specific to each schedule.

Schedule B - Personal Property is amended to require the debtor to list any interests in an education IRA, as § 541(b)(5), added to the Code in 2005, makes special provision for them. The schedule also is amended to require the debtor to disclose the existence of any customer lists or

other compilations containing personally identifiable information provided by an individual to the debtor in connection with obtaining a product or service from the debtor for personal, family, or household purposes. This amendment implements § 332, which was added to the Code in 2005.

Schedule C - Property Claimed as Exempt is amended to delete descriptive information concerning the length of domicile required for the debtor to qualify to claim certain exemptions. Any summary of the amendments enacted in 2005 to § 522 of the Code concerning these requirements might inadvertently cause the debtor to lose important rights. Accordingly, the form now directs the debtor to indicate whether exemptions are being claimed under § 522(b)(2) or § 522(b)(3) and whether the debtor claims a homestead exemption that exceeds \$125,000.

Schedule E - Creditors Holding Unsecured Priority Claims is amended to implement the changes in priority to which a claim may be entitled under 11 U.S.C. § 507 as amended by the 2005 Act and to add the new priority included in the Reform Act for claims for death or personal injury while the debtor was intoxicated. "Subtotal" and "Total" boxes have been added to the column labeled "Amount Entitled to Priority" to assist the individual debtor to complete the Means Test form.

Schedule G - Executory Contracts and Unexpired Leases is amended by deleting the note to the debtor advising that parties listed on this schedule may not receive notice of the filing of the bankruptcy case unless they also are listed on one of the schedules of liabilities. The better practice is for all parties to transactions with the debtor to receive notice of the filing of the case, and an amendment to Rule 1007 requiring the debtor to provide a mailing list that includes these parties is scheduled to take effect December 1, 2005.

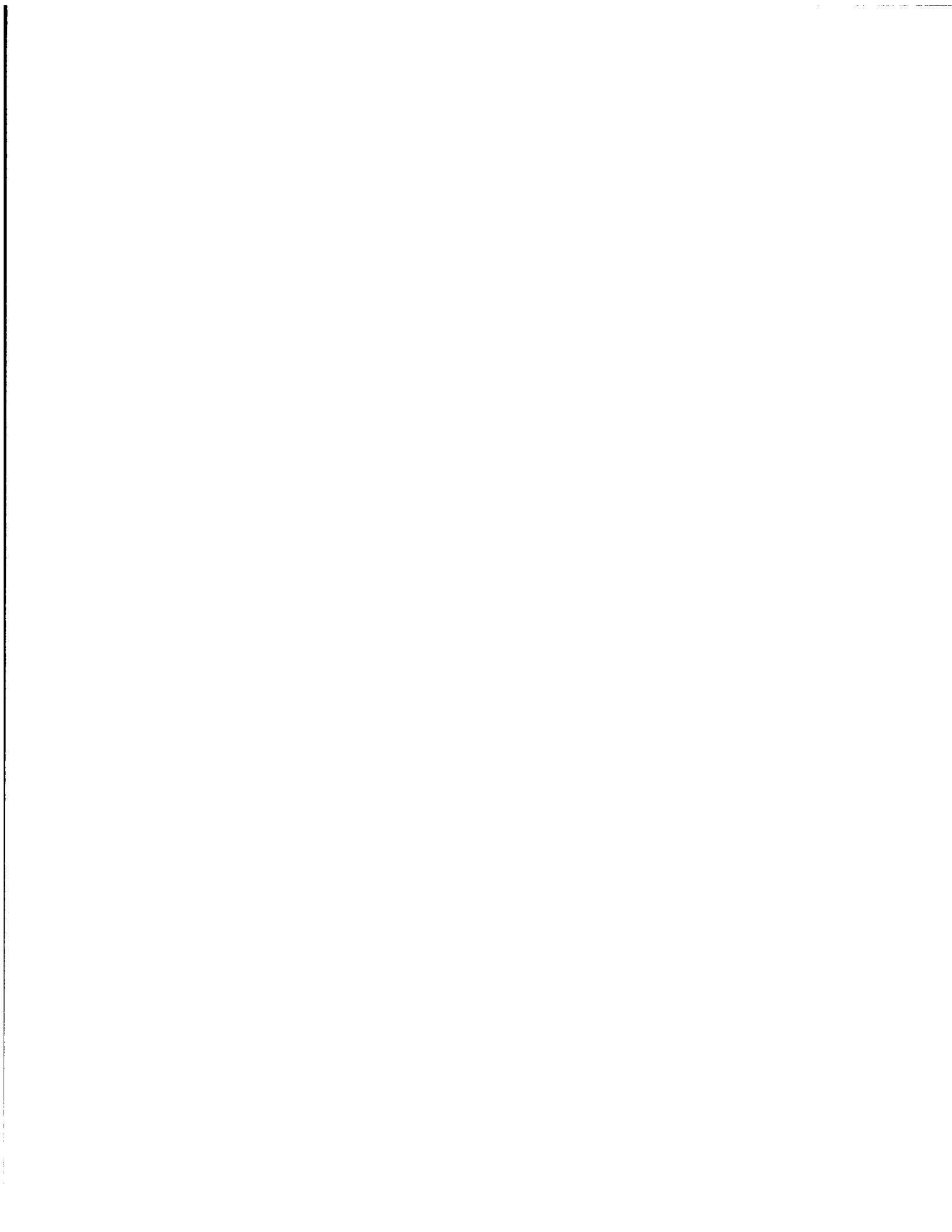
Schedule H - Codebtors is amended to add specifics about community property jurisdictions in connection with the requirement to provide the name of any spouse of a debtor who resides or resided in a community property jurisdiction. This amendment also mirrors amendments made in 1997 to Official Form 7, the Statement of Financial Affairs, and will assure that these codebtors receive notice of the filing of the bankruptcy case. The form also is amended to extend from six years to eight years the time period for which this information is reported pursuant to the 2005 amendments to § 727(a)(8) of the Code.

Schedule I - Current Income of Individual Debtor(s) is amended to require the income of a nondebtor spouse to be reported in cases filed under chapters 7 and 11. Line numbers have been added to assist the debtor in calculating and reporting totals. A new subtotal line for income from sources other than as an employee and a new "total monthly income" line provide for this form to be used in conjunction with Schedule J to satisfy the requirements of § 521(a)(1)(B)(v), which was added to the Code in 2005. The form also has been revised to provide the statement concerning any anticipated increase or decrease in income required in § 521(a)(1)(B)(vi), which also was added to the Code in 2005.

Schedule J - Current Expenditures of Individual Debtor(s). A direction has been added to require the debtor to report any increase or decrease in expenses anticipated to occur within the year following the filing of the document, as required by § 521(a)(1)(B)(vi), which was added to the Code in 2005. The form also is amended to provide, in conjunction with Schedule I, a statement of monthly net income, itemized to show how the amount is calculated, as required by § 522(a)(1)(B)(v), which was added to the Code in 2005.

Declaration Concerning Debtor's Schedules. The declaration by a non-attorney bankruptcy petition preparer is amended to include material mandated by § 110 of the Code as amended in 2005.





## COMMITTEE NOTE

The form is amended in several ways to reflect changes in the Bankruptcy Code made by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109 - 8, 119 Stat. 23 (April 20, 2005). A new sentence in the introduction advises the debtor not to disclose the name and address of any minor child.

The definition of "in business" is amended in the introductory section and in Question 1 and Question 18 to clarify that various part-time activities can result in the debtor being "in business" for purposes of the form.

Question 1 is amended to specify that, in addition to the income from the debtor's primary employment, the debtor must include income from part-time activities either as an employee or from self-employment. The debtor now also will report the source of all income from employment or operation of a business, even if there is only one source, in order to assist the trustee in reviewing the pay stubs, etc., filed by the debtor in the case.

Question 3 is amended to accommodate amendments to § 547(c) of the Code enacted in 2005 which exempt from recovery by the trustee payments by a debtor for a domestic support obligation or as part of an alternative repayment schedule negotiated by an approved nonprofit budgeting and credit counseling agency. In addition, Question 3 now requires a debtor with primarily non-consumer debts to report only those transfers that aggregate more than \$5,000 to any creditor in the 90-day period prior to the filing of the petition, as a result of the addition of § 547(c)(9) to the Code in 2005.

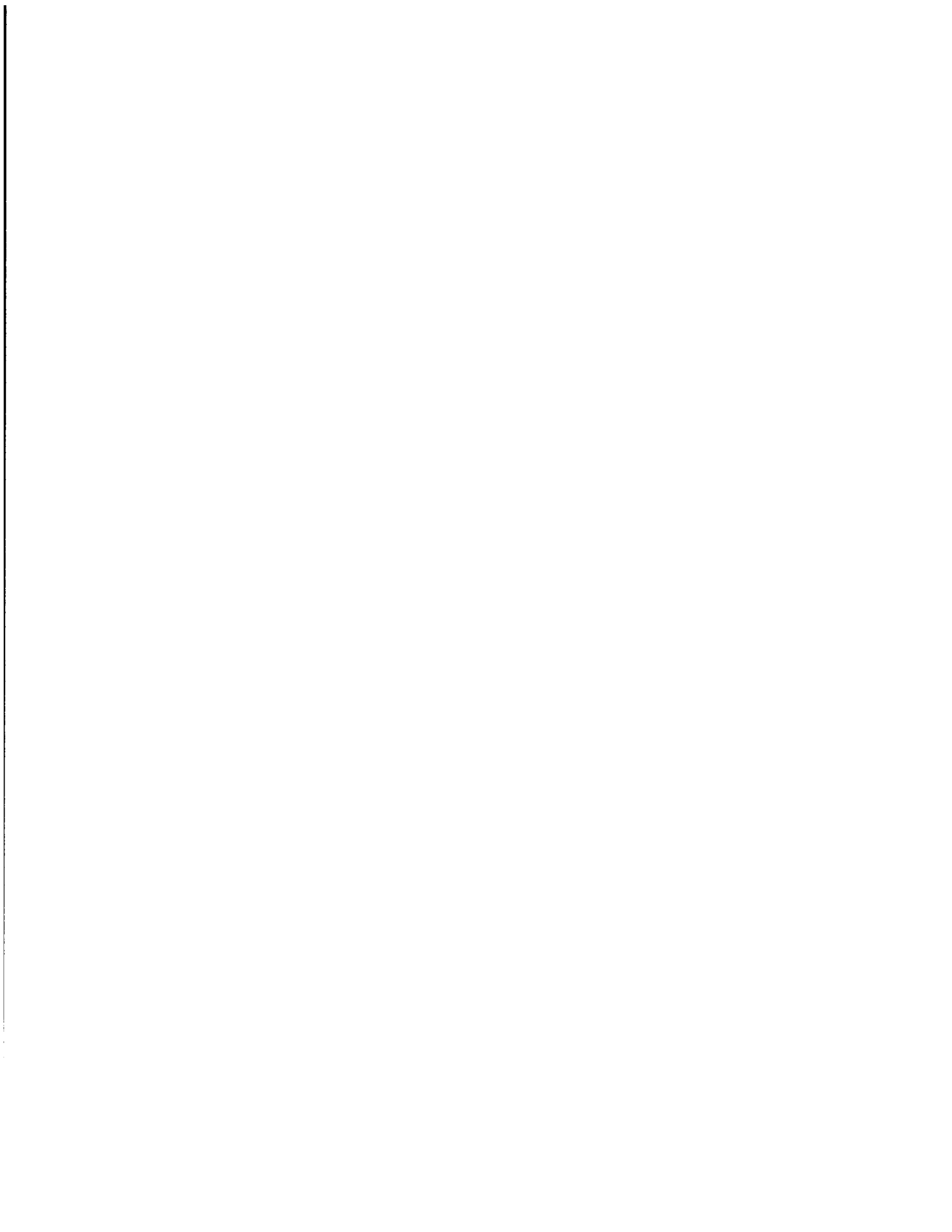
In Question 10, the extension of the reachback period for transfers from one year to two years reflects the 2005 amendment to § 548(a)(1) of the Code to permit a trustee to avoid a fraudulent transfer made by the debtor within two years of the date of the filing of the petition. Question 10 also is amended to implement new § 548(e) added to the Code in 2005 to require the debtor to disclose all transfers to any self-settled asset protection trust within the ten years before the filing of the petition.

Question 15 is amended to extend from two years to three years the prepetition time period for which the debtor must disclose the addresses of all premises occupied by the debtor. This information will assist the trustee, the United States trustee, and the court to ascertain whether any homestead exemption asserted by the debtor is properly claimed under § 522(v)(3)(A) as amended, and §§ 522(p) and (q) as added to the Code in 2005.

The form also is amended to extend from six years to eight years the period before the filing of the petition concerning which the debtor is required to disclose the name of the debtor's spouse or of any former spouse who resides or resided with the debtor in a community property state. In addition, the certification by a non-attorney bankruptcy petition preparer is renamed a "declaration" and is amended to include material mandated by 11 U.S.C. § 110 as amended by the 2005 Act.

COMMITTEE NOTE

The form is amended to conform to § 521(a)(6), which was added to the Code by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (April 20, 2005), by adding a section covering personal property subject to an unexpired lease and an option labeled “lease will be assumed pursuant to 11 U.S.C. § 362(h)(1)(A)” to the choices a debtor may make. The certification by a non-attorney bankruptcy petition preparer in the form is renamed a “declaration” and is amended to include material mandated by the 2005 amendments to § 110 of the Code.



COMMITTEE NOTE

The form is amended in a variety of way to implement the provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (April 20, 2005). All versions of the form are amended to advise creditors to consult an attorney concerning what rights they may have in the specific case. All versions of the form are also amended to provide information about filing claims to creditors with foreign addresses and to advise those creditors to consult a lawyer familiar with United States bankruptcy law regarding any questions they may have about their rights in a particular case. These amendments implement § 1514, which was added to the Code in 2005.

Forms 9A and 9C are amended to include a box in which the clerk can notify creditors in a chapter 7 case filed by an individual with primarily consumer debts whether the presumption of abuse has arisen under § 707(b) of the Code as amended in 2005. Under § 342(d) of the Code, the clerk has a duty to notify creditors concerning the presumption within ten days of the filing of the petition. If cases in which the debtor does not file Official Form 22A with the petition, the forms provide for the clerk to state that insufficient information has been filed, and to inform creditors that if later-filed information indicates that the presumption arises, creditors will be sent another notice.

In cases involving serial filers (debtors who have filed more than one case within a specified period), the automatic stay provided by § 362(a) of the Code as amended in 2005 may not apply or may be limited in duration, unless the stay is extended or imposed by court order. The form contains a general statement alerting debtors to this possibility.

Section 1514, added to the Code in 2005, also requires that a secured creditor with a foreign address be advised whether the creditor is required to file a proof of claim, and Forms 9B, 9D, 9E, 9E (Alt.), 9F, 9F (Alt.), 9G, 9H, and 9I are amended to include general information addressing that question. Forms 9E, 9E (Alt.), 9F, and 9F (Alt.) also are amended to inform creditors that in a case in which the debtor has filed a plan for which it has solicited acceptances before filing the case, the court may, after notice and a hearing, order that the United States trustee not convene a meeting of creditors.

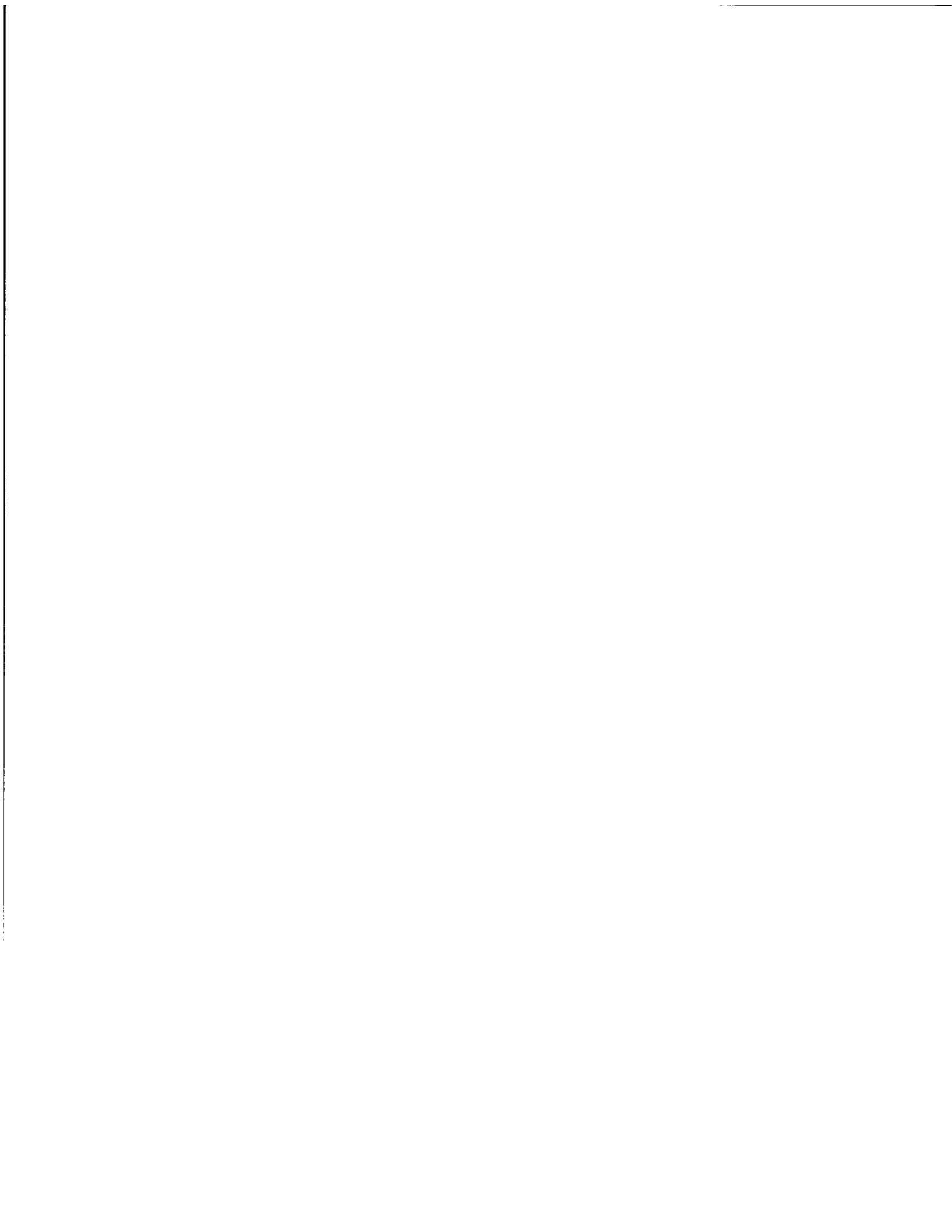
Forms 9E and 9E Alt. are amended to state that, unless the court orders otherwise, an individual chapter 11 debtor's discharge is not effective until completion of all payments under the plan, as provided in § 1141(d)(5) which was added to the Code in 2005. Forms 9F and 9F (Alt.) are amended to include a deadline to file a complaint to determine the dischargeability of a debt, in conformity with § 1141(d)(6) which was added to the Code in 2005.

Form 9I is amended to include a deadline to file a complaint to determine the dischargeability of certain debts. This amendment implements 2005 amendment to § 1328(a)(1) of the Code.

COMMITTEE NOTE

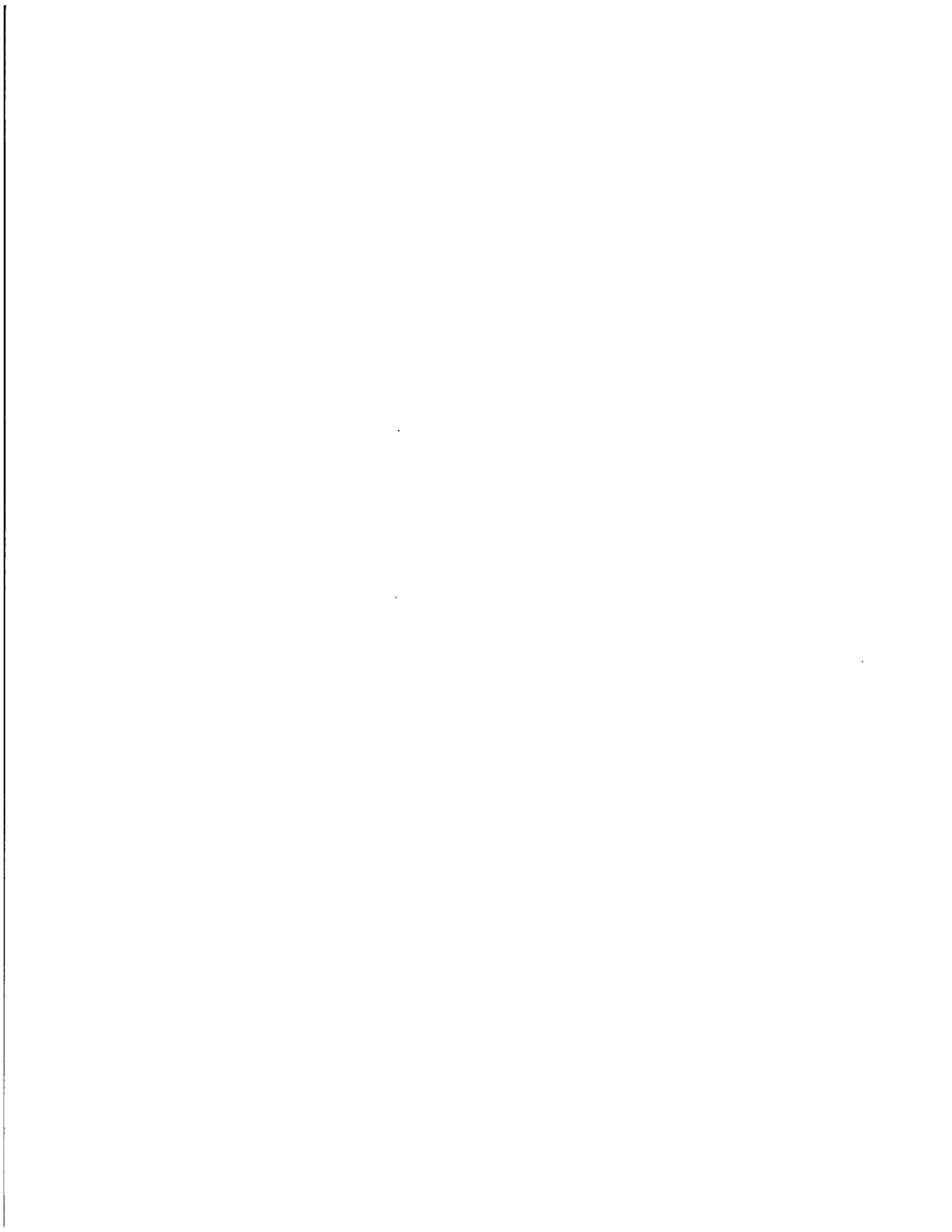
The form is amended to conform to changes in the priority afforded the claims of certain creditors in § 507(a) of the Code as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (April 20, 2005).





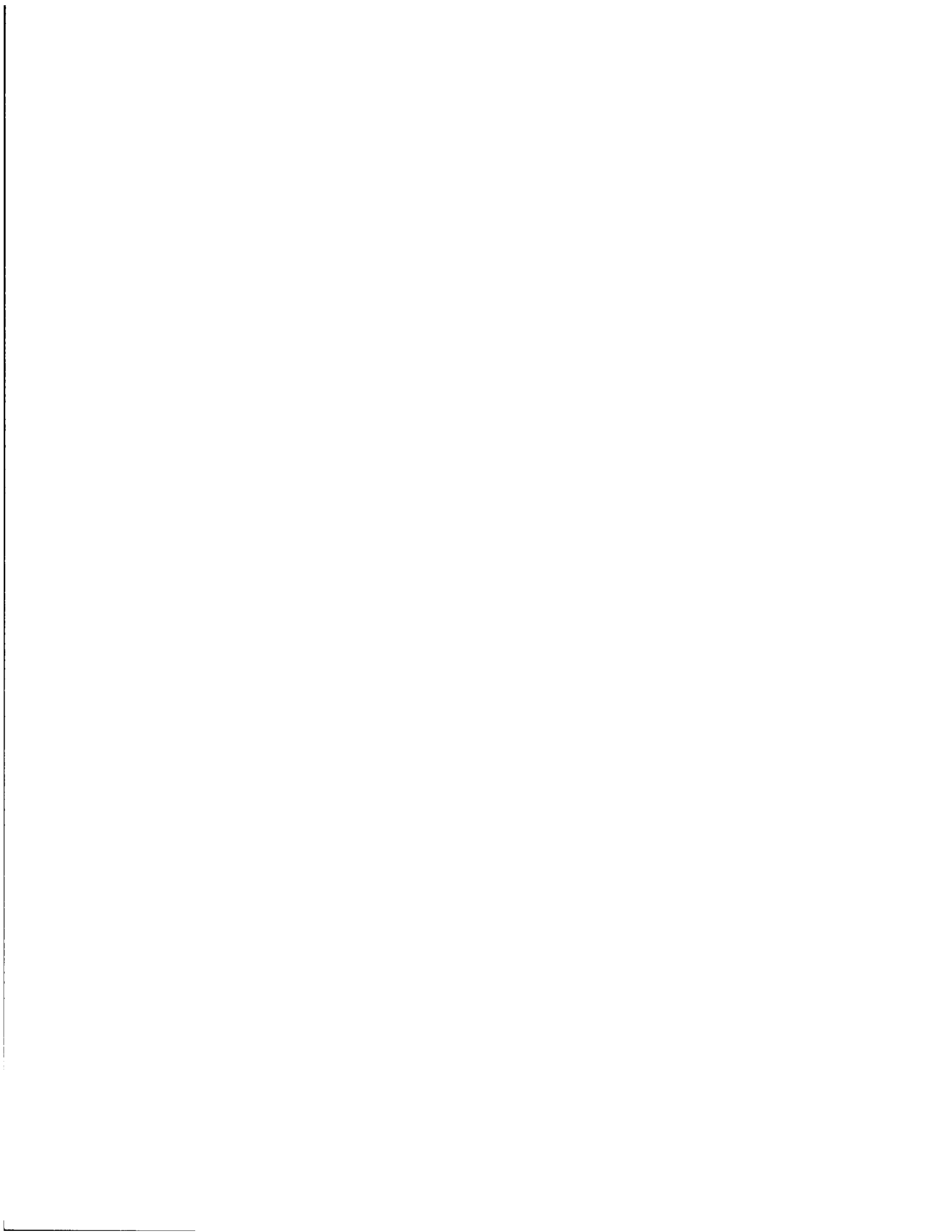
COMMITTEE NOTE

The form is amended to require that the title of the case include all names used by the debtor within the last eight years in conformity with § 727(a)(8) as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (April 20, 2005), extending from six years to eight years the period during which a debtor is barred from receiving successive discharges.



COMMITTEE NOTE

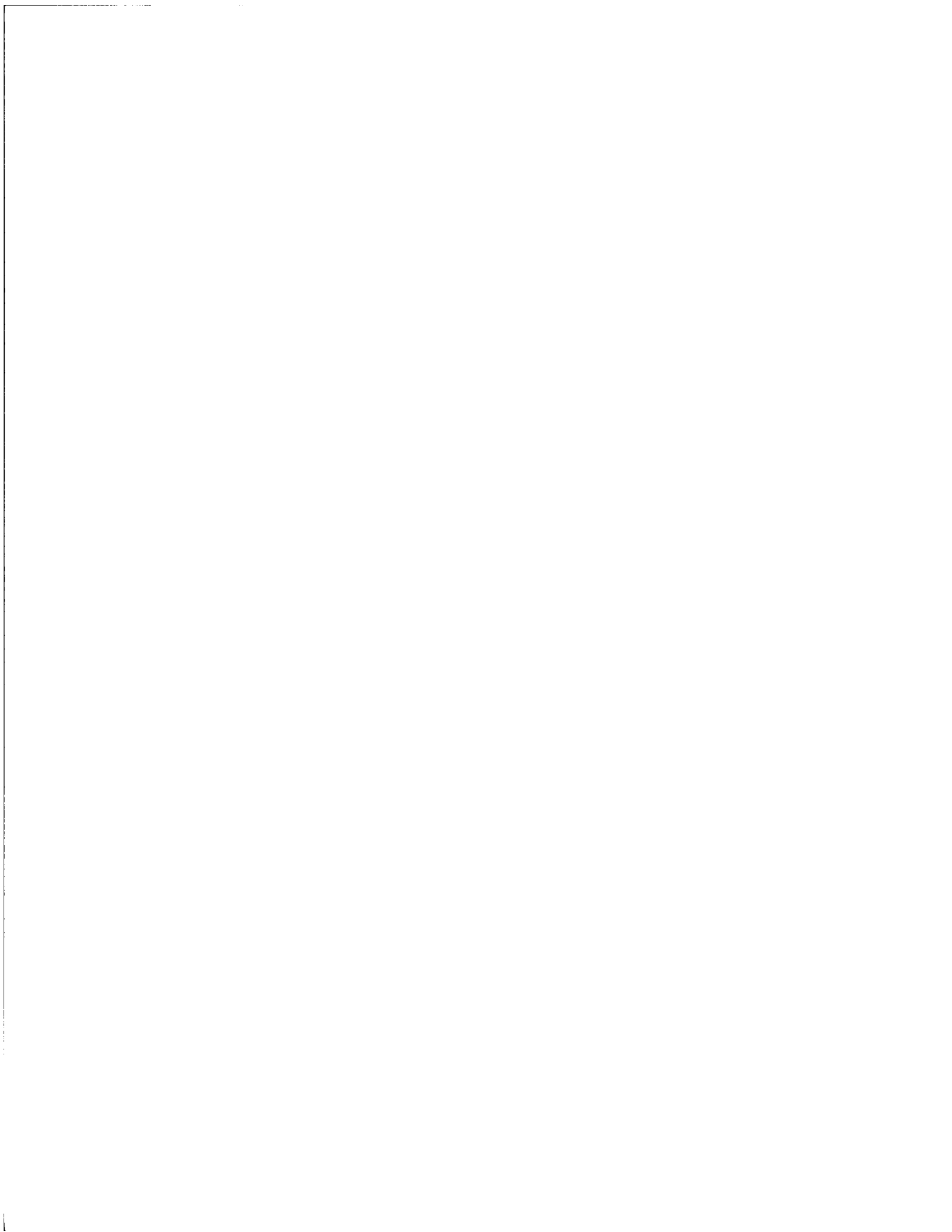
The form is amended to require that the title of the case include all names used by the debtor within the eight years prior to the filing of the petition in the case in conformity with § 727(a)(8) as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (April 20, 2005), extending from six years to eight years the period during which a debtor is barred from receiving successive discharges. The explanation part of the form is amended to include additional types of debts that are not discharged under § 523(a) as amended in 2005 and to revise certain terminology in conformity with provisions of the 2005 Act.



Form 19A

COMMITTEE NOTE

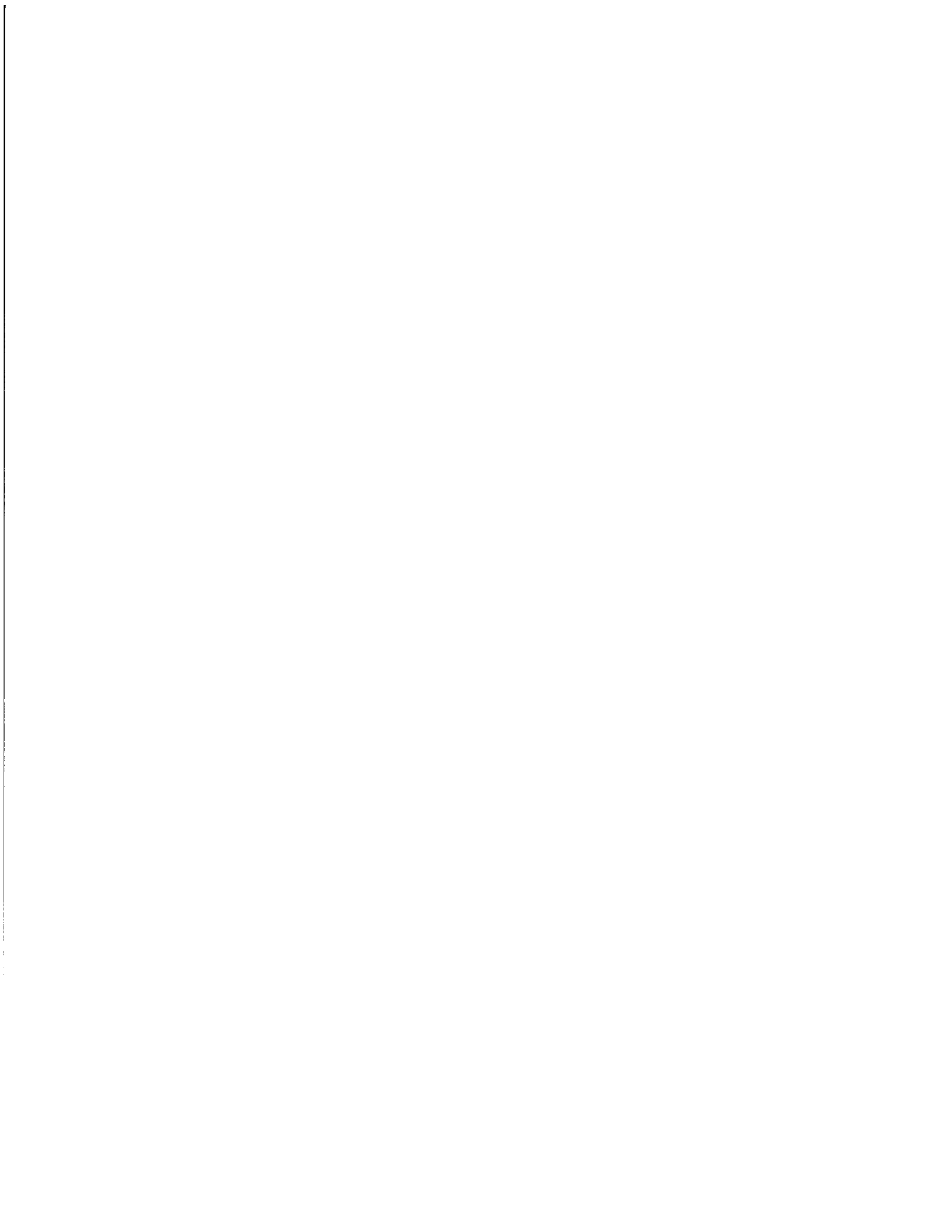
The certification by a non-attorney bankruptcy petition preparer in this form is renamed a "declaration" and is amended to include material mandated by amendments to § 110 of the Code in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (April 20, 2005).



COMMITTEE NOTE

This form is new. It contains the notice a non-attorney bankruptcy petition preparer is required to give to a debtor under § 110 of the Code as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (April 20, 2005). The notice states, in language mandated in the 2005 Act, that the bankruptcy petition preparer is not an attorney and must not give legal advice. The form includes examples of advice a bankruptcy petition preparer may not give that are taken from § 110(e)(2), which also was added to the Code in 2005. The notice must be signed by the debtor and by the bankruptcy petition preparer and filed with any document for filing prepared by the bankruptcy petition preparer.





## COMMITTEE NOTE

### A. Overview

One of the changes in bankruptcy practice introduced by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 is a definition of “current monthly income,” set out in § 101(10A) of the Code. Certain individual debtors in Chapter 7, all individual debtors in Chapter 11, and all Chapter 13 debtors are required to calculate their income under this definition. Certain Chapter 7 and 13 debtors are further required to calculate deductions from current monthly income allowed under the means test of § 707(b)(2)(A). Chapter 7 debtors subject to the means test may, as a result of these calculations, be subject to a presumption of abuse. The means test deductions are used in Chapter 13 to calculate disposable income under § 1325(b)(2) and (3). To comply with the reporting and calculation requirements involving current monthly income and the means test, three separate forms have been provided – one for Chapter 7, one for Chapter 11, and one for Chapter 13. This note first describes the “current monthly income” calculation that is common to all three of the forms, next describes the means test deductions employed in the Chapter 7 and 13 forms, and finally addresses particular issues that are unique to each of the separate forms.

### B. Calculation of current monthly income

Current monthly income (“CMI”), as defined in § 101(10A), has different purposes in each of the three chapters in which it is used, but basic computation is the same. CMI is a monthly average of defined “income” received in the six calendar months prior to the bankruptcy filing by the debtor and, in a joint case, the debtor’s spouse. The “income” to be included in this average is (1) income from all sources, whether or not taxable, and (2) any amount paid by an entity other than the debtor (or the debtor’s spouse in a joint case) on a regular basis for the household expenses of the debtor, the debtors dependents, and (in a joint case) the debtor’s spouse if not otherwise a dependent. However, the income to be averaged is defined as not including “benefits received under the Social Security Act” and certain payments received by victims of terrorism, war crimes, and crimes against humanity.

The forms address the calculation of CMI, in each chapter, by a series of line entries, divided into columns providing for separate entries by the debtor and the debtor’s spouse. The calculation line entries are set out in Part II of the Chapter 7 form, and Part I of the forms for Chapter 11 and Chapter 13. These line entries for calculating CMI are introduced by a set of instructions and check boxes indicating when the “debtor’s spouse” column is required to be completed. The instructions also direct the required averaging of the income reported on the line entries.

The line entries specify several common types of income and then include a "catch-all" line for other types. The specific entry lines address gross wages; business and rental income; interest, dividends, and royalties; pension and retirement income; and regular contributions to the debtor's household expenses. Gross wages (before taxes) are required to be entered. Consistent with usage in the Internal Revenue Manual and the American Community Survey of the Census Bureau, business and rental income is defined as gross receipts less ordinary and necessary expenses. Unemployment compensation is given special treatment. Because the federal government provides funding for state unemployment compensation under the Social Security Act, there may be a dispute about whether unemployment compensation is a "benefit received under the Social Security Act." The forms take no position on the merits of this argument, but give debtors the option of making the argument by reporting unemployment compensation separately from their current monthly income. The separate reporting allows parties in interest to determine the materiality of an exclusion of unemployment compensation and to challenge it. The forms provide instruction for proper totaling of the income lines.

C. Means test deductions from current monthly income

Deductions from CMI are set out in § 707(b)(2)(A)(ii)-(iv). The forms for Chapter 7 and Chapter 13 have identical sections (Parts V and III, respectively) for calculating these deductions. The calculations are divided into subparts reflecting three different kinds of allowed deductions.

1. Deductions under IRS standards

Subpart A deals with deductions from CMI, set out in § 707(b)(2)(A)(ii), for "the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards, and the debtor's actual monthly expenses for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service for the area in which the debtor resides." The forms provide entry lines for each of the specified expense deductions under the IRS standards, and instructions on the entry lines identify the web pages where the relevant IRS allowances can be found. As with all of the deductions in § 707(b)(2)(A)(ii), deductions under the IRS standards are subject to the proviso that they not include "any payments for debts."

The IRS National Standards provide a single allowance for food, clothing, household supplies, personal care, and miscellany, depending on income and household size. The forms contain an entry line for the applicable allowance.

The IRS Local Standards provide separate deductions for housing and utilities and for transportation, with different amounts for different areas of the country, depending on the debtor's family size and number of the number of the debtor's vehicles. Each of the amounts specified by the IRS in the Local Standards are treated by the IRS as a cap on actual expenses, but because § 707(b)(2)(A)(ii)(I) provides for deduction in the "amounts specified under the . . . Local Standards," the forms treat these amounts as allowed deductions.

~~[For use with the alternate versions of the Chapter 7 and 13 forms: The Local Standards for housing and utilities separate this expense category into a utilities/maintenance component and a mortgage/rental expense component. The utilities/maintenance component is a simple allowance, covering a variety of expenses involved in the operation of a residence. The mortgage/rental expense component covers the cost of acquiring the residence; for homeowners with mortgages, the mortgage/rental expense thus involves debt payment, since the cost of a mortgage is part of the allowance. Accordingly, the form requires debtors to deduct from allowance for mortgage/rental expense the average monthly mortgage payment (principal and interest), up to the full amount of the IRS mortgage/rental expense. This average payment is as reported on the separate line of the form for deductions of secured debt pursuant to § 707(b)(2)(a)(iii).] (Under revision)~~

~~[For use with the original versions of the Chapter 7 and 13 forms: The Local Standards for housing and utilities provide a single expense allowance covering both the cost of acquiring housing (rent or mortgage payments) and the cost of utilities, insurance, and maintenance connected with the housing. Because this allowance includes debt payment, the form directs debtors to deduct any portion of the allowance that includes payments on debts secured by their homes. The proper manner of calculating this deduction from the housing and utilities allowance will have to be determined by judicial decisions.] (Under revision)~~

The Local Standards for transportation separate this expense category into a vehicle operation/public transportation component and a component for ownership/lease expense. The amount of the vehicle operation/public transportation allowance depends on the number of vehicles the debtor operates, with debtors who do not operate vehicles being given a public transportation expense. The instruction for this line item makes it clear that every debtor is thus entitled to some transportation expense allowance. No debt payment is involved in this allowance. However, for debtors with debt secured by the vehicles that they operate, the ownership/lease expense does involve debt payment. Accordingly, the form requires debtors to reduce the allowance for ownership/lease expense by the average monthly loan payment amount (principal and interest), up to the full amount of the IRS ownership/lease expense amount. This average payment is as reported on the separate line of the form for deductions of secured debt pursuant to § 707(b)(2)(a)(iii).

The IRS does not set out allowances for "Other Necessary Expenses." Rather, it sets out a number of categories for such expenses, and describes the nature of the expenses that may be deducted in each of these categories. Section 707(b)(2)(a)(ii) allows a deduction for the debtor's actual expenses in these specified categories, subject to its requirement that payment of debt not be included. Several of the IRS categories deal with debt repayment and so are not included in the forms. Several other categories deal with expense items that are more expansively addressed by specific statutory allowances. The remaining IRS categories are set out in individual line entries. Instructions on the individual entry lines reflect limitations imposed by the IRS and the need to avoid inclusion of items deducted elsewhere on the forms.

The forms call for a subtotal of the deductions allowed under the IRS standards.

2. Additional statutory expense deductions

In addition to the IRS expense deductions, subclauses (I), (II), (IV), and (V) of § 707(b)(2)(A)(ii) allow six special expense deductions. Each of these additional expense items is set out on a separate line entry in Subpart B, introduced by an instruction that there should not be double counting of any expense already included in the IRS deductions. Contributions to tax-exempt charities provide another statutory expense deduction. Specifically, § 1325(b)(2)(A)(ii) expressly allows a deduction from CMI for such contributions (up to 15% of the debtor's gross income), and § 707(b)(1) provides that in considering whether a Chapter 7 filing is an abuse, the court may not take into consideration "whether a debtor . . . continues to make [tax-exempt] charitable contributions." Accordingly, Subpart B also includes an entry line for charitable contributions. Again, the forms call for the additional statutory expense deductions to be subtotaled.

3. Deductions for payment of debt

Subpart C of the forms deals with deductions from CMI for payment of secured and priority debt, as well as a deduction for administrative expenses that would be incurred if the debtor paid debts through a Chapter 13 plan. In accord with § 707(b)(2)(A)(iii), the deduction for secured debt is divided into two entry lines – one for payments that are contractually due during the 60 months following the bankruptcy filing, the other for amounts needed to retain necessary collateral securing debts in default. In each situation, the instructions for the entry lines require dividing the total payment amount by 60, as the statute directs. Priority debt, deductible pursuant to § 707(b)(2)(A)(iv), is treated on a single entry line, also requiring division by 60. The defined deduction for the expenses of administering a Chapter 13 plan is allowed by § 707(b)(2)(A)(ii)(III) only for debtors eligible for Chapter 13. The forms treat this deduction in an entry line that requires the eligible debtor to state the amount of the prospective Chapter 13 plan payment and multiply that payment amount by the percentage fee established for the debtor's district by the Executive Office for United States Trustees. The forms refer debtors to a website that will set out this percentage fee. An entry line is provided for subtotaing the debt payment deductions.

4. Total deductions

Finally, the forms direct that the subtotals from Subparts A, B, and C be added together to arrive at the total of allowed deductions from CMI.

5. Additional claimed deductions

The forms do not provide for deductions from CMI for expenses in categories that are not specifically identified as "Other Necessary Expenses" in the Internal Revenue Manual. However,

debtors may wish to claim expenses that do not fall within the categories listed as "Other Necessary Expenses" in the forms. The forms provide sections (Part VII in the Chapter 7 form and Part V in the Chapter 13 form) for such expenses to be identified and totaled. Although expenses listed in these sections are not deducted from CMI for purposes of the forms' calculations, the listing provides a basis for debtors to assert that these expenses should be deducted from CMI under § 707(b)(2)(A)(ii)(I), and that the results of the forms' calculation are therefore inaccurate.

D. The Chapter-specific forms

1. Chapter 7

The Chapter 7 form has several unique aspects. The form includes, in the upper right corner of the first page, a check box requiring the debtor to state whether or not a presumption of abuse exists as a result of the calculations required by the form. This check box is intended to give clerks of court a conspicuous indication of the cases for which they will be required to provide notice of a presumption of abuse pursuant to § 342(d).

Part I of the form implements the provision of § 707(b)(2)(D) that excludes certain disabled veterans from any form of means testing, making it unnecessary to compute the CMI of such veterans. Debtors who declare under penalty of perjury that they are disabled veterans within the statutory definition are directed to verify their declaration in Part VII, to check the "no presumption" box at the beginning of the form, and to disregard the remaining parts of the form.

Part II of the form is the computation of current monthly income ("CMI") as defined in § 101(10A). Section 707(b)(2) eliminates standing to assert the means test's presumption of abuse if the debtor's annualized CMI does not exceed a defined median state income. For this purpose, the CMI of the debtor's spouse is added to the debtor's CMI even if the debtor's spouse is not a joint debtor, unless the debtor declares under penalty of perjury that the spouses are legally separated or living separately other than for purposes of evading the means test. Accordingly, the calculation of CMI in Part II directs a computation of the CMI of the debtor's spouse in all cases of married debtors where the debtor is unable to make the specified declaration or where the debtors are filing jointly, and the CMI of both spouses in these cases is added for purposes of determining standing under § 707(b)(7).

Part III of the form provides for the comparison of the debtor's CMI for purposes of § 707(b)(7) to the applicable state median income. It then directs debtors whose income does not exceed the applicable median to verify the form and check the "no presumption" box at the beginning of the form, but not to complete the remaining parts of the form. Debtors whose CMI does exceed the applicable state median are required to complete the remaining parts of the form.

Part IV of the form provides for an adjustment to the CMI of a married debtor, not filing jointly, whose spouse's CMI was included with the debtor's for purposes of determining standing

to assert the means test presumption. The means test itself does not charge a married debtor in a non-joint case with the income of the non-filing spouse, but rather only with contributions made by that spouse to the household expenses of the debtor and the debtor's dependents, as provided in the definition of CMI in § 101(10A). Accordingly, Part IV calls for the combined CMI total of Part II to be reduced by the amount of the non-filing spouse's income that was not contributed to the household expenses of the debtor or the debtor's dependents.

Part V of the form provides for a calculation of allowed deductions from the debtor's CMI, as described above.

Part VI provides for a determination of whether the debtor's CMI, less the allowed deductions, gives rise to a presumption of abuse under § 707(b)(2)(A). Depending on the outcome of this determination, the debtor is directed to check the appropriate box at the beginning of the form and to sign the verification in Part VIII. Part VII allows the debtor to claim additional deductions, as discussed above.

## 2. Chapter 11

The Chapter 11 form is the simplest of the three, since the means-test deductions of § 707(b)(2) are not employed in determining the extent of an individual Chapter 11 debtor's disposable income. Rather, § 1129(a)(15) requires payments of disposable income "as defined in section 1325(b)(2)," and that paragraph allows calculation of disposable income under judicially-determined standards, rather than pursuant to the means test deductions, specified for higher income Chapter 13 debtors by § 1325(b)(3). However, § 1325(b)(2) does require that CMI be used as the starting point in the judicial determination of disposable income, and so the Chapter 11 form requires this calculation (in Part I of the form), as described above, together with a verification (in Part II).

## 3. Chapter 13

Like the Chapter 7 form, the form for Chapter 13 debtors contains a number of special provisions. Because § 1325(b)(3) employs the means test deductions for debtors whose CMI exceeds the applicable state median income, the upper right corner of the first page includes check boxes requiring the debtor to state whether § 1325(b)(3) applies, thus quickly informing standing trustees and other interested parties of the need to consider these deductions.

Part I of the form is the calculation of CMI, as described above.

Part II of the form compares the debtor's CMI to the applicable state median, allowing the determination of the applicability of the means-test deductions required by § 1325(b)(3).

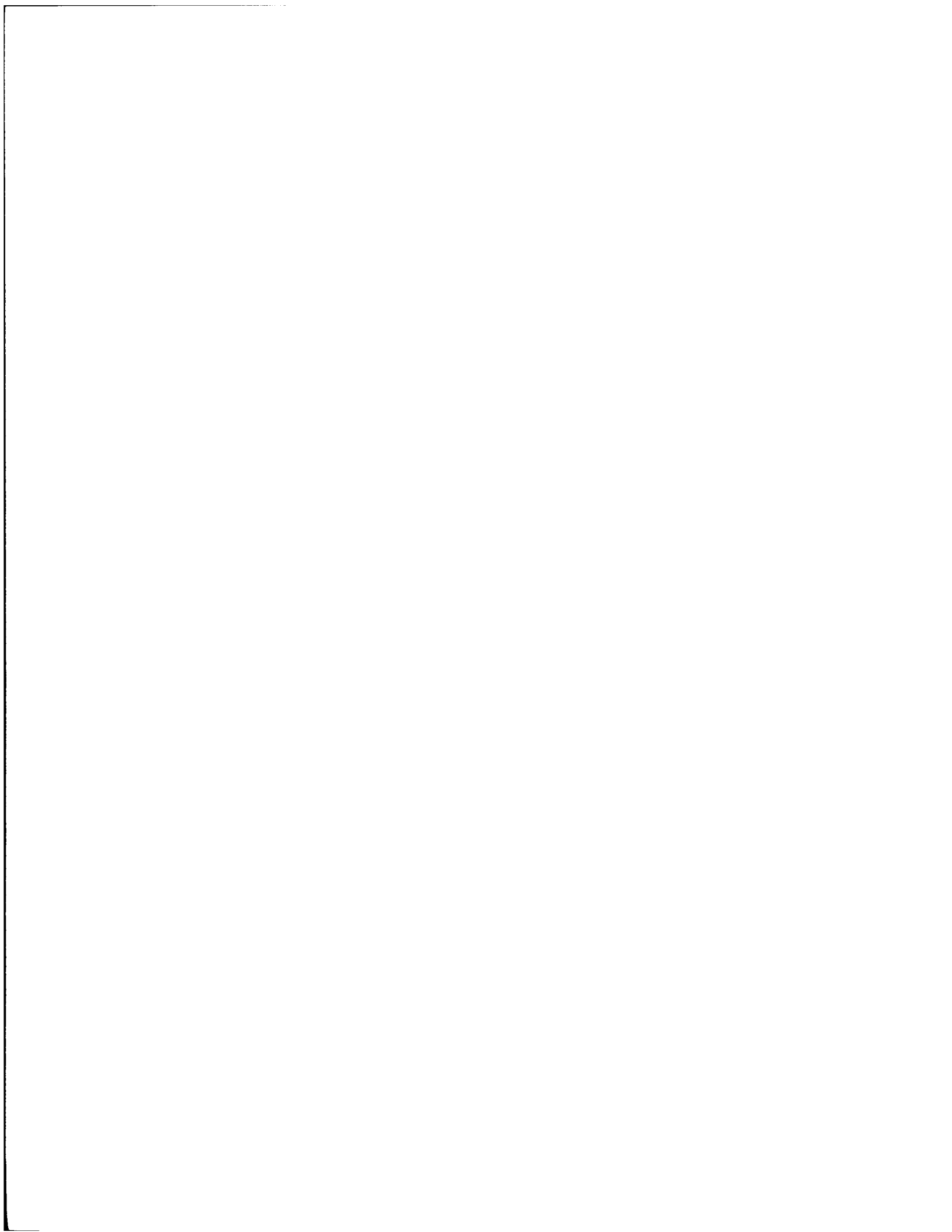
Part III provides for calculation of the means-test deductions provided in § 707(b)(2), described above, as incorporated by § 1325(b)(3) for debtors with CMI above the applicable state median.

Part IV provides for three adjustments required by special provisions affecting disposable income. First, § 1325(b)(2) itself excludes from CMI in the determination of disposable income certain “child support payments, foster care payments, [and] disability payments for a dependent child[.]” Because payments of this kind are included in the definition of CMI in § 101(10A), a line entry for deduction of these payments is provided. Second, a line entry is provided for deduction of contributions by the debtor to certain retirement plans, listed in § 541(b)(7)(B), since that provision states that such contributions “shall not constitute disposable income, as defined in section 1325(b)(2)[.]” Third, the same line entry also allows a deduction from disposable income for payments on loans from retirement accounts that are excepted from the automatic stay by § 362(b)(19), since § 1322(f) provides that for a “loan described in section 362(b)(19) . . . any amounts required to repay such loan shall not constitute ‘disposable income’ under section 1325.”

The Chapter 13 form does not provide a deduction from disposable income for the Chapter 13 debtor’s anticipated attorney fees. There is no specific statutory allowance for such a deduction, and none appears necessary. Section 1325(b)(1)(B) requires that disposable income contributed to a Chapter 13 plan be used to pay “unsecured creditors.” A debtor’s attorney who has not taken a security interest in the debtor’s property is an unsecured creditor who may be paid from disposable income.

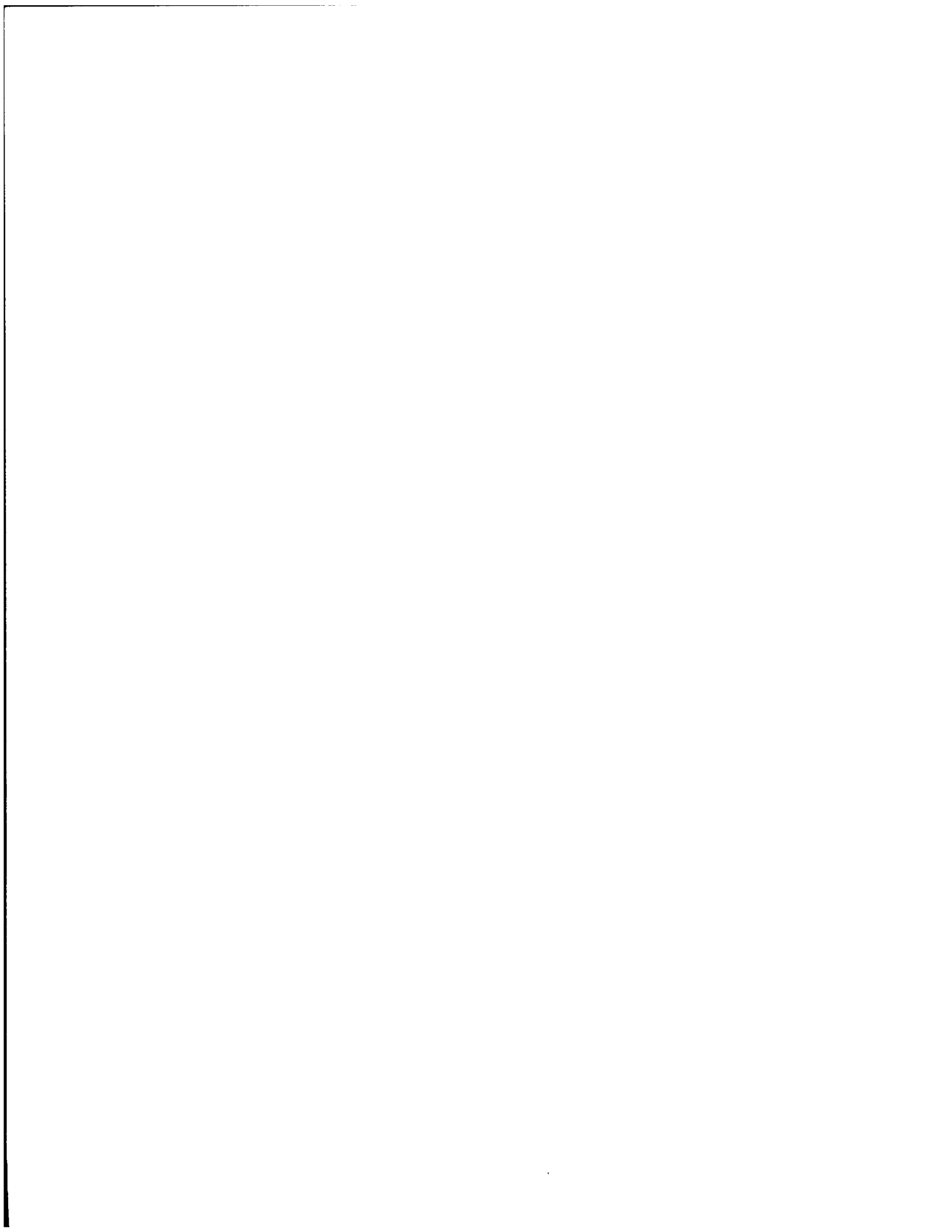
Part V of the form allows the debtor to claim additional deductions, as described above, and Part VI is the verification.





COMMITTEE NOTE

The form is new. Sections 727(a)(11) and 1328(g)(1), which were added to the Code by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (April 20, 2005), require the debtor to complete an instructional course concerning personal financial management as a condition for receiving a discharge. The completed form, when filed by the debtor, will signal the clerk that this condition has been satisfied.



COMMITTEE NOTE

This form is new. Rule 8001, as amended in 2005, requires that any certification of an appeal, bankruptcy court judgment, order, or decree directly to the United States Court of Appeals by all the appellants and appellees (if any) acting jointly be filed on this form.

