ADVISORY COMMITTEE
ON
BANKRUPTCY RULES

Boston, MA
October 1-2, 2009

ADVISORY COMMITTEE ON BANKRUPTCY RULES
Meeting of October 1 - 2, 2009
Boston, Massachusetts

Introductory Items

1. Greetings and Introduction of new members. (Judge Swain)

2. Approval of minutes of San Diego meeting of March 26 - 27, 2009. (Judge Swain)

   - Draft minutes.

3. Oral reports on meetings of other committees:

   (A) June 2009 meeting of the Committee on Rules of Practice and Procedure, including approval of

   ※ Proposed amendments to Rules 2003, 2019, 3001, and 4004, and new Rules 1004.2 and 3002.1, and Official Forms 22A, 22B, and 22C published for comment in August 2009,
   ※ Proposed amendments to Rules 1007, 1014, 1015, 1018, 1019, 4001, 4004, 5009, 7001, and 9001, new Rule 5012, and Official Form 23 transmitted to the Judicial Conference for final approval,
   ※ Technical amendment to Exhibit D to Official Form 1 transmitted to the Judicial Conference for final approval, and
   ※ Amendment to Civil Rule 8(c) to delete the requirement that a bankruptcy discharge must be pleaded as an affirmative defense.

   (Judge Swain and Professor Gibson)

   - Draft minutes of the Standing Committee will be circulated separately.

   (B) June 2009 meeting of the Committee on the Administration of the Bankruptcy System, including status of proposed BAPCPA technical amendments. (Judge Conti and Judge Swain)

   (C) April 2009 meeting of the Advisory Committee on Civil Rules. (Judge Wedoff)

   (D) April 2009 meeting of the Advisory Committee on Evidence. (Judge Wizmur)

   (E) Bankruptcy CM/ECF Working Group and the CM/ECF NextGen Project. (Judge Perris)

(F) Progress report from the Sealing Committee. (Judge Hopkins and Professor Gibson)

(G) Progress report from the Privacy Committee. (Judge Coar and Professor Gibson)

(H) Report on the outcome of the subcommittee best practices review. (Judge Rosenthal and Judge Swain)

- Guidelines adopted by the Executive Committee of the Judicial Conference.

Subcommittee Reports and Other Action Items

4. Report by the Subcommittee on Consumer Issues. (Judge Wedoff and Professor Gibson)

(A) Recommendation concerning Judge Mund's suggestion for a mini Form 22C for debtors who convert from chapter 7 to chapter 13 (Suggestion 09-BK-C) (Judge Wedoff and Professor Gibson)

- Memo of August 26, 2009, by Professor Gibson.

(B) Recommendation concerning possible revision of Schedule C to deal with the extent of a claimed exemption; issues that the Supreme Court will be considering in Schwab v. Reilly (08-538). (Judge Wedoff)

- Memo of August 26, 2009, by Judge Wedoff.

(C) Recommendations concerning addition of creditor certification to Form 10, the Proof of Claim, prompted by Judge Small's suggestion regarding claims filed by bulk claims purchasers (San Diego Agenda Item 4(D)), and other Proof of Claim issues. (Judge Wedoff, Judge Perris, Professor Gibson, Mr. Myers).

- Memo of August 26, 2009, by Professor Gibson.
- Exhibit 1, Form 10 illustrating proposed revisions (including amendments approved at the March 2009 meeting).
- Exhibit 2, Form 10 illustrating additional revisions concerning interest on secured claims and the identity of the person filing or completing the claim)

5. Report of the Subcommittee on Forms. (Judge Perris, Professor Gibson, Mr. Myers)

(A) Recommendations on proposed changes to Form 10, the Proof of Claim, concerning annual interest rate are included in Agenda Item 4(C).

(B) Recommendation on Suggestion 08-BK-K by Judges Isgur, Magner, and Bohm to

create two new forms to address problems related to claims secured by a debtor's home – an addendum to the proof of claim which sets out the full loan history and a calculation of the mortgage arrearage and a second form which serves as a payment change notice; Judge Shea-Stonum's alternative approach. (Judge Perris, Professor Gibson)

- Memo of August 26, 2009, by Professor Gibson.
- Revised Loan History Form proposed by Judge Isgur and his colleagues in the Southern District of Texas.
- Notice of Change in Monthly Mortgage Amount proposed by Judge Isgur and his colleagues.
- Proof of Claim Addendum created by Judge Shea-Stonum and attached to her opinion in McDermott v. Countrywide Home Loans, Inc., No. 07-51027 (Bankr. N.D. Ohio July 31, 2009).

(C) Oral report on status of the Bankruptcy Forms Modernization Project. (Judge Perris)

- Exemplars of Clear Communications' proposed format for petition and schedules.
- Memo of September 2, 2009, requesting that the listed functional requirements be included in CM/ECF Next Gen specifications for system design.
- The first pages of the current petition form and of the draft petition form.

(D) Oral status report on the revision of Director's Form B240, the Reaffirmation Agreement, and the development of an electronic version. (Judge Perris, Mr. Waldron)

- Draft Reaffirmation Documents Questionnaire.
- Official Form 27, Reaffirmation Agreement Cover Sheet, and Amended Form B240A, Reaffirmation Agreement, which will be populated by the Reaffirmation Documents Questionnaire.

(E) Oral report on proposed new summons in a foreign non-main proceeding prepared in response to a suggestion by staff attorney Mark Diamond of the Bankruptcy Court for the Southern District of New York that a Director's Form be issued in conformity with Rule 1010(a). (Mr. Wannamaker and Professor Gibson).

- Draft of proposed Form B250F, Summons in a Foreign Nonmain Proceeding.

(F) Report on proposed revision of the Certificates of Services on the bankruptcy summons, Director's Forms B250A, B250B, B250C, B250D, and B250E, to conform to Rule 7004 and Fed. R. Civ. P. 4 regarding who may serve process. (Mr. Wannamaker and Professor Gibson).

- Memo of August 26, 2009, by Professor Gibson.
- Drafts of proposed amendments to Director's Forms B250A, B250B, B250C, B250D, and B250E.

(G) Oral report on proposed new discharge form for individual chapter 11 debtors prepared in response to court requests. (Mr. Wannamaker and Professor Gibson).

- Draft of proposed new Director's Form B18RI.

(H) Oral report on proposed bankruptcy judgment form prepared in response to Judge Benjamin Goldgar's suggestion. (Judge Perris, Professor Gibson, Mr. Myers)

- Draft of proposed new Director's Form B261C.

(I) Oral report on proposed amendments to Director's Forms B200, B210, B231A, B231B, and B250E, to conform to the December 1, 2009, time-computation amendments to the Bankruptcy Rules. (Mr. Myers and Mr. Wannamaker)

- Drafts of proposed amendments to Director's Forms B200, B210, B231A, and B231B.
- A draft of proposed amendments to Director's Form B250E is included in Agenda Item 5(F).

6. Report of the Subcommittee on Business Issues. (Judge Hopkins and Professor Gibson)

(A) Recommendation concerning Judge Kressel's comments on the last sentence of Rule 1007(k). (Judge Hopkins and Professor Gibson)

- Memo of August 7, 2009, by Professor Gibson.

(B) Recommendation concerning the suggestions by Judge Mund and Judge Kennedy that Rule 9031 be amended to remove prohibition on special masters. (Judge Hopkins and Professor Gibson)

- Memo of August 7, 2009, by Professor Gibson.

7. Report of the Subcommittee on Privacy, Public Access, and Appeals. (Judge Pauley and Professor Gibson)

(A) Oral report on the special open subcommittee meeting on revision of the Part VIII rules held September 30, and plans for further work. (Judge Pauley, Professor Gibson, and Judge Swain)

- Working draft of the proposed revision dated September 6, 2009.

(B) Discussion of whether to continue the indicative ruling amendments in the *Bull Pen* and/or to incorporate the amendments into the revised Part VIII rules. (March 2009 agenda item 7(B)) (Judge Pauley, Professor Gibson, and Judge Swain)

- Proposed new Rule 8007.1 and the amendment to Rule 9024 as approved at the September 2008 meeting.

(C) Recommended response to the Appellate Rules Committee's request for views on potential amendment to Appellate Rule 6(b)(2)(A) regarding timing of notice of appeal following ruling of District Court or BAP on motion for rehearing. (Judge Pauley and Professor Gibson)

- Memo of August 18, 2009, by Professor Gibson.

8. Report by the Subcommittee on Technology and Cross Border Insolvency. (Judge Coar)

9. Report of the Subcommittee on Attorney Conduct and Health Care. (Judge Schell)

10. Report concerning the proposed amendment to Civil Rule 56 and the possible need for a Bankruptcy Rule amendment in light of the Civil Rule amendment's impact on the timing of summary judgment motions in contested matters and adversary proceedings. (March 2009 agenda item 7(B)) (Judge Wedoff)

- Memo of August 19, 2009, by Judge Wedoff.
- Civil Rules Committee Report on the proposed amendment.

11. Discussion of whether the time limits in Rule 7054(b) should be changed to conform to Civil Rule 54 and the new time computation provisions.

Memo of August 26, 2009, by Professor Gibson.

12. Guidelines for the use of standing orders.

- Memo of August 27, 2009, by Professor Gibson (with input from the ad hoc group of bankruptcy judges) as to whether a bankruptcy supplement is necessary.
- Guidelines as approved by the Standing Committee and proposed to the Judicial Conference.

Discussion Items

13. Discussion of impact of the restyled Evidence Rules on bankruptcy matters and recommendation on a response to the restyling. (Judge Swain, Professor Gibson)

- Memo of August 27, 2009, by Professor Gibson.

14. Oral report on the status of pending legislation, including authorizing modification of certain home mortgages in chapter 13 cases and legislation liberalizing exemptions for debtors with medical problems. (Mr. Wannamaker, Judge Swain, Professor Gibson)

15. Section 521(i) update. (Prof Gibson)

- Memo of August 26, 2009, by Professor Gibson.

Information Items

16. Rules Docket.

17. Notice to local courts concerning reviewing Interim Rule 1007-I in light of the upcoming time computation amendments to Rule 1007. (Judge Swain)

- A memo by the Director of the Administrative Office on Interim Rule 1007-I will be distributed separately.

18. *Bull Pen*: Proposed amendments to Official Form 10, approved at the March 2009 meeting, are included in Exhibit 1 to Item 4C above.

Proposed new Rule 8007.1 and the proposed amendment to Rule 9024 (indicative rulings), approved at the September 2008 meeting, are set out at Item 7B above.

19. Oral report on the preparation of a definitive set of Bankruptcy Rules. (Mr. Ishida)

20. Future meetings:

Spring 2010 meeting, Windsor Court Hotel, New Orleans, April 29 - 30, 2010.
Possible locations for the fall 2010 meeting.

21. New business:

22. Adjourn.

ADVISORY COMMITTEE ON BANKRUPTCY RULES

Members	Position	District/Circuit	Start Date	End Date
David H. Coar	D	Illinois (Northern)	2007	2010
Jeffery Hopkins	B	Ohio (Southern)	2007	2010
J. Michael Lamberth	ESQ	Georgia	2005	2011
William H. Pauley III	D	New York (Southern)	2005	2011
Lawrence Ponoroff	ACAD	Louisiana	2004	2010
Richard A. Schell	D	Texas (Eastern)	2003	2009
S. Elizabeth Gibson Reporter	ACAD	Ohio	2008	Open
Principal Staff:				
Peter G. McCabe		(202) 502-1800		
Jim H. Wannamaker		(202) 502-1900		

ADVISORY COMMITTEE ON BANKRUPTCY RULES

Chair:	**Reporter:**
Honorable Laura Taylor Swain United States District Judge United States District Court Daniel P. Moynihan U. S. Courthouse 500 Pearl Street - Suite 755 New York, NY 10007	Professor S. Elizabeth Gibson Burton Craige Professor of Law 5073 Van Hecke-Wettach Hall Univ. of North Carolina at Chapel Hill C.B. #3380 Chapel Hill, NC 27599-3380
Members:	
Michael St. Patrick Baxter Covington & Burling LLP 1201 Pennsylvania Avenue, NW Washington, DC 20004-2401	Honorable David H. Coar United States District Court 1478 Everett McKinley Dirksen United States Courthouse 219 South Dearborn Street Chicago, IL 60604
Honorable R. Guy Cole, Jr. United States Circuit Judge United States Court of Appeals 127 Joseph P. Kinneary United States Courthouse 85 Marconi Boulevard Columbus, OH 43215	Honorable Jeffery P. Hopkins United States Bankruptcy Court Atrium Two, Suite 800 221 East Fourth Street Cincinnati, OH 45202
J. Christopher Kohn, Esquire Director, Commercial Litigation Branch Civil, U.S. Dept. of Justice (ex officio) 1100 L Street, N.W., 10th Flr, Rm 10036 Washington, DC 20005	J. Michael Lamberth, Esquire Lamberth, Cifelli, Stokes & Stout, P.A. 3343 Peachtree Road, N.E., Suite 550 Atlanta, GA 30326
David A. Lander Thompson Coburn LLP One US Bank Plaza St. Louis, MO 63101	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

ADVISORY COMMITTEE ON BANKRUPTCY RULES (CONT'D.)

John Rao, Esquire National Consumer Law Center 7 Winthrop Square, 4th Floor Boston, MA 02110-1245	Honorable Richard A. Schell United States District Court United States Courthouse 7940 Preston Road Plano, TX 75024
Honorable Eugene R. Wedoff United States Bankruptcy Court Everett McKinley Dirksen United States Courthouse 219 South Dearborn Street Chicago, IL 60604	Honorable Judith H. Wizmur Chief Judge United States Bankruptcy Court Mitchell H. Cohen U. S. Courthouse 2nd Floor – 400 Cooper Street Camden, NJ 08102-1570
Advisors and Consultants: Patricia S. Ketchum, Esquire 113 Richdale Avenue #35 Cambridge, MA 02140	 Mark A. Redmiles, Deputy Director Executive Office for U.S. Trustees 20 Massachusetts Ave., N.W., Suite 8000 Washington, DC 20530
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	
Liaison Member: Honorable James A. Teilborg United States District Judge United States District Court 523 Sandra Day O'Connor United States Courthouse 401 West Washington Street Phoenix, AZ 85003-2146	**Liaison from Committee on the Administration of the Bankruptcy System:** Honorable Joy Flowers Conti United States District Court 5250 United States Post Office and Courthouse 700 Grant Street Pittsburgh, PA 15219-1906
Secretary: Peter G. McCabe Secretary, Committee on Rules of Practice and Procedure Washington, DC 20544	

ADVISORY COMMITTEE ON BANKRUPTCY RULES
SUBCOMMITTEES/LIAISON ASSIGNMENTS

Subcommittee on Attorney Conduct and Healthcare Judge Richard A. Schell, Chair Judge William H. Pauley, III Judge David H. Coar John Rao, Esq. J. Michael Lamberth, Esq. Mark A. Redmiles, Esq, *EOUST liaison*	**Subcommittee on Privacy, Public Access and Appeals** Judge William H. Pauley, III, Chair Judge Elizabeth L. Perris Judge Richard A. Schell J. Christopher Kohn, Esq. Michael St. Patrick Baxter, Esq. David A. Lander, Esq. Mark A. Redmiles, Esq, *EOUST liaison*
Subcommittee on Business Issues Judge Jeffery P. Hopkins, Chair Judge Eugene R. Wedoff Judge David H. Coar J. Christopher Kohn, Esq. J. Michael Lamberth, Esq. Michael St. Patrick Baxter, Esq. David A. Lander, Esq. James J. Waldron, *ex officio* Mark A. Redmiles, Esq, *EOUST liaison*	**Subcommittee on Style** Dean Lawrence Ponoroff, Chair Judge David H. Coar Judge Judith H. Wizmur J. Michael Lamberth, Esq. David A. Lander, Esq.
Subcommittee on Consumer Issues Judge Eugene R. Wedoff, Chair Judge R. Guy Cole Judge William H. Pauley III Judge Jeffery P. Hopkins Judge Judith H. Wizmur John Rao, Esq. David A. Lander, Esq. James J. Waldron, *ex officio* Mark A. Redmiles, Esq, *EOUST liaison*	**Subcommittee on Technology and Cross Border Insolvency** Judge David H. Coar, Chair Judge R. Guy Cole, Jr. Judge Richard A. Schell Dean Lawrence Ponoroff Michael St. Patrick Baxter, Esq. David A. Lander, Esq. Mark A. Redmiles, Esq, *EOUST liaison*

ADVISORY COMMITTEE ON BANKRUPTCY RULES (CONT'D)
SUBCOMMITTEES/LIAISON ASSIGNMENTS

Subcommittee on Forms Judge Elizabeth L. Perris, Chair Judge Judith H. Wizmur J. Christopher Kohn, Esq. John Rao, Esq. David A. Lander, Esq. James J. Waldron, *ex officio* Mark A. Redmiles, Esq., *EOUST liaison* Patricia S. Ketchum, Esq., *Consultant*	**Forms Modernization Project** Judge Elizabeth L. Perris, Chair Judge Jeffery P. Hopkins Judge Judith H. Wizmur J. Christopher Kohn, Esq. John Rao, Esq. J. Michael Lamberth, Esq. David A. Lander, Esq. James J. Waldron, *ex officio* Patricia S. Ketchum, Esq., *Consultant*
CM/ECF Working Group Judge Elizabeth L. Perris --- **Civil Rules Liaison:** Judge Eugene R. Wedoff	**Sealing Committee Liaison:** Judge Jeffery P. Hopkins --- **Evidence Committee Liaison:** Judge Judith H. Wizmur

Item 1 will be an oral report.

ADVISORY COMMITTEE ON BANKRUPTCY RULES
Meeting of March 26 - 27, 2009
San Diego, California

(Draft Minutes)

The following members attended the meeting:

District Judge Laura Taylor Swain, Chair
District Judge David H. Coar
District Judge William H. Pauley, III
District Judge Richard A. Schell
Bankruptcy Judge Jeffery P. Hopkins
Bankruptcy Judge Elizabeth L. Perris
Bankruptcy Judge Eugene R. Wedoff
Bankruptcy Judge Judith H. Wizmur
Dean Lawrence Ponoroff
Michael St. Patrick Baxter, Esquire
J. Christopher Kohn, Esquire
J. Michael Lamberth, Esquire
David A. Lander, Esquire
John Rao, Esquire

The following persons also attended the meeting:

Professor S. Elizabeth Gibson, reporter
District Judge Thomas Zilly, former chair
Bankruptcy Judge Thomas Small, former chair
Professor Jeffery W. Morris, former reporter (attended telephonically)
Professor Alan Resnick, former reporter and former member
Bankruptcy Judge Christopher M. Klein, former member
G. Eric Brunstad, Jr., Esquire, former member
District Judge James A. Teilborg, liaison from the Committee on Rules of Practice and Procedure (Standing Committee)
District Judge Joy Flowers Conti, liaison from the Committee on the Administration of the Bankruptcy System (Bankruptcy Committee)
District Judge Lee H. Rosenthal, chair of the Standing Committee
Peter G. McCabe, secretary of the Standing Committee
Mark Redmiles, Deputy Director, Executive Office for U.S. Trustees (EOUST)
Lisa Tracy, Counsel to the Director, EOUST
James J. Waldron, Clerk, U.S. Bankruptcy Court for the District of New Jersey
John Rabiej, Administrative Office of the U.S. Courts (Administrative Office)
James Ishida, Administrative Office
James H. Wannamaker, Administrative Office
Stephen "Scott" Myers, Administrative Office
Robert J. Niemic, Federal Judicial Center

Phillip S. Corwin, Butera & Andrews

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

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

Introductory Items

1. Greetings and Introduction of new members.

The Chair welcomed the members and guests to the meeting. She noted this meeting was in part a celebration of former member Judge Irene Keeley, former member Eric Brunstad and former reporter, Professor Jeffery Morris, all of whom finished up their formal service to the Committee at the fall meeting in Denver. The Chair said Judge Keeley, unfortunately, could not attend the meeting, and expressed her regrets. Mr. Brunstad was in attendance and Professor Morris was able to attend telephonically. The Chair thanked both of the former members and the former reporter for their dedicated and effective Committee service. Finally, the Chair welcomed former chairs Judge Tom Small and Judge Tom Zilly and former reporter Professor Alan Resnick, and thanked them for participating in the Special Open Meeting of the Subcommittee on Privacy, Public Access, and Appeals, held the day before this meeting, to discuss revision of the Bankruptcy Appellate Rules.

2. Approval of minutes of Denver meeting of October 2-3, 2008.

The minutes were approved without objection.

3. Oral reports on meetings of other committees:

(A) January 2009 meeting of the Committee on Rules of Practice and Procedure, including status of Time Computation changes.

The Chair reported on the work of the Committee on Rules of Practice and Procedure (the Standing Committee). She said that the Standing Committee accepted the Committee's recommendation to publish for comment amendments to Rule 6003 that would make clear that notwithstanding the rule's requirement that the relief specified in the rule cannot be entered until 21 days after a petition has been filed, such relief may have a retroactive effective date. She said some of the Standing Committee members had questions about the proposed revisions to Forms

22A and 22C substituting "number of persons" and "family size" for certain references to "household" and "household size" on those forms. She said the Consumer Subcommittee would address those concerns at agenda item 4(C)(1).

(B) November 2008 meeting of the Advisory Committee on Appellate Rules.

The Chair said that the Appellate Rules Committee was considering a proposed amendment to Appellate Rule 40 that would clarify the applicability of the 45-day period for filing a petition for rehearing a case that involves a federal officer or employee.

The Chair said another issue under review was how to handle problems that arise when an appeal taken before entry of a judgment that requires a separate document under Civil Rule 58 is followed by a post-judgment motion that is timely only because of the failure to enter the judgment in a separate document. She said that the Appellate Rules Committee was not considering a rule amendment at this time, but that it would instead seek to improve the awareness of the separate document requirement. Another possible solution discussed would be to create a prompt in CM/ECF for judges and clerks to have the judgment set out in a separate document.

(C) January 2009 meeting of the Committee on the Administration of the Bankruptcy System.

Judge Conti gave the report. She said the Bankruptcy Committee was apprised of progress in the ongoing case weight study and the current staffing of bankruptcy judges. She said the Bankruptcy Committee also considered retirement benefits for bankruptcy judges and magistrate judges who are elevated to Article III judges. The issue was how many years of bankruptcy judge service could be applied to the calculation of service as an Article III judge. She said the recommendation was to count five years of bankruptcy service.

(D) November 2008 meeting of the Advisory Committee on Civil Rules and hearings on proposed Civil Rules amendments, including the proposed amendments to Civil Rule 56.

Judge Wedoff gave the report. He said that the major issues were proposed amendments to Rule 56 and Rule 26 that had been published for comment, and that had been the subject of public hearings. He said that the upshot of the hearings was widespread approval of the proposed amendments to Rule 26, and challenges to two of the propose changes to Rule 56.

Judge Wedoff said one of the challenges to proposed Rule 56 concerned a provision that requires, unless the court orders otherwise, that the movant include a brief statement of material facts that are asserted to be undisputed. Under the proposal, the respondent, in addition to submitting a brief, would have to address each fact by accepting it, disputing it, or accepting it in part and disputing it in part. Judge Wedoff said that, in the end, the recommendation was to remove this "point-counterpoint" proposal.

The other Rule 56 issue was the result of a broad restyling of the civil rules in 2007. Under the 2007 restyling project, instances of the word "shall" throughout the civil rules were replaced with "must," "may," or "should," based on case law applying to the rule. With respect to restyled Rule 56, "should" replaced "shall" in 2007, as in "The judgment ... *should* be rendered if [the record shows] that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Judge Wedoff said that the Civil Rules Committee considered many comments from the bar that the change implied that a judge has more discretion in granting the motion than the case law supports. After considering a change from "should" to "must," the recommendation was to go back to "shall."

(E) October 2008 meeting of the Advisory Committee on Evidence.

Judge Schell said the Evidence Committee has completed the final third of its restyling project, and that it plans to recommend publishing all the restyled rules this summer.

The Chair thanked Judge Schell and announced that Judge Wizmur would be the new liaison to the Evidence Committee.

(F) Bankruptcy CM/ECF Working Group.

Judge Perris said that the CM/ECF Working Group continues to review and prioritize the many modifications requests it receives.

(G) Progress report from the Sealing Committee.

The Reporter gave the report. She said that all cases filed in 2006 had been had been reviewed. She noted that no bankruptcy cases have been sealed in their entirety over that timeframe. She said the Sealing Committee would next move to "phase three" of the project which would be to review the cases that have been sealed.

Subcommittee Reports and Other Action Items

4. Report by the Subcommittee on Consumer Issues.

(A) Recommendation concerning modifications to the proposed amendment to Rule 3001(c) and new Rule 3002.1 concerning post-petition mortgage fees in chapter 13 cases, which were tentatively approved at the Denver meeting, in light of additional suggestions.

The Reporter gave the report. She said that at the fall meeting in Denver, the Committee approved a preliminary draft of amendments to Rule 3001(c), and a new Rule 3002.1, for publication this coming fall. She said that the Subcommittee considered informal comments on the Denver draft and that it recommended two changes to proposed Rule 3002.1 before publishing. She said the first recommended change, shown at page 26 of the agenda book,

would slightly modify the procedure in subsection (e) of the Rule. **A motion to approve Rule 3002.1(e), as revised at page 26 of the agenda book, carried without objection.**

The Reporter said the Subcommittee also agreed with a comment that the proposed 30-day deadline in subsection (c) of Rule 3002.1 for a creditor to provide notice of post-petition charges was too short, and it recommended extending the time-frame to 180 days. The Reporter said the proposed change was shown at page 29 of the agenda book.

Judge Klein asked whether changing the time period in subsection (c) to 180 days would prohibit closing the case until that time period ran. Judge Wedoff said the change would not affect case closing because subsection (e) of the Rule requires that the creditor must provide a statement after plan payments have been completed that no outstanding payments remain due under the agreement. **After additional discussion, a motion reapproving Rule 3002.1(c), as revised at page 29 of the agenda book, passed without objection.**

Professor Resnick suggested several word changes to the proposed Rule 3001(c) amendments to clarify that those amendments applied only in cases involving individual debtors. **After discussing Professor Resnick's suggestions, the Committee reapproved its recommendation to publish proposed Rule 3001(c), subject to review by the Style Subcommittee, as set out at pages 35-37 and including the language added to (c)(1) shown at page 83 (Agenda Item 4(D) of the materials), with the following changes: add "consumer" before "credit" at line 7 on page 83; change the heading for (c)(2) on page 35 to "Additional Requirements in a Case of an Individual Debtor"; begin (c)(2) with "In a case in which a debtor is an individual:"; and change (c)(3) to (c)(2)(D) and remove the caption for that subparagraph.**

The Committee also approved a conforming change to Form 10 as set out at pages 84 and 85 of the agenda book with the addition of the word "consumer" after "revolving" on line 6.

(B) Recommendation concerning modification of Rule 4004 to authorize extending the time to file an objection to discharge in light of potential "gap period" issues. See, e.g., Zedan v. Habas, 529 F.3d 398 (7th Cir. 2008).

The Reporter explained that at the October 2008 meeting, the Committee asked the Consumer Subcommittee to consider whether, in light of the Seventh Circuit's Zedan decision, there is a need to amend Rule 4004 to address the situation in which there is a gap between the deadline for objecting to discharge and the actual entry of the discharge order. If a trustee or creditor learns during that gap period of fraud committed by the debtor, a literal reading of the current rule and § 727(d) of the Code precludes both an objection to discharge (because it would be untimely) and the revocation of the discharge once it is entered (because knowledge of the fraud would have been obtained *before* the entry of the discharge).

The Reporter said the Subcommittee carefully considered the matter over the course of two conference calls and that it recommended changing the rule. She said the Subcommittee

suggested two options for how Rule 4004(b) might be amended to address the gap issue, both of which were set out in the agenda materials beginning at page 56.

After discussing the alternatives, the Committee voted to recommend publishing option 1 (pages 56-57 of the Agenda materials, with the following change: add "The motion must be filed promptly after the movant discovers the facts on which the objection is based."

(C) (1) Report concerning response to questions raised by the Standing Committee on the use of the terms "household" and "family" on Official Forms 22A and 22C.

Judge Wedoff said that at the October 2008 meeting, the Committee approved a recommendation to publish proposed changes in the means test forms – 22A and 22C – to eliminate in certain lines references to "household size" and replace that term with "number of persons" or "family size," and to include an instruction to count the "number of persons ... that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support."

Judge Wedoff said that when the recommendation was brought before the Standing Committee, a member asked whether there could ever be a situation where the debtor could claim someone as a "dependent" who could not be claimed as an exemption on the debtor's tax return. In light of the Standing Committee question, the Chair asked the Consumer Subcommittee for clarification before submitting the request to publish the proposed changes for comment.

Judge Wedoff explained that the Bankruptcy Code allows for deduction from current monthly income for the debtor's "dependents" -- *see*, § 707(b)(2)(A)(ii)(I), -- but that it does not define "dependants." Accordingly, the means-test forms allow for a definition that is broader than the IRS definition.

Moreover, the IRS itself recognizes that there are situations in which someone may be a "dependent" for purposes of the expense allowances even though that person is not allowed as an exemption on the taxpayer's current income tax return. The IRS Manual's discussion of both national and local expense standards states that there may be "reasonable exceptions" to the general rule that "the total number of persons allowed for determining family size should be the same as those allowed as exemptions." The examples the Manual gives are "foster children or children for whom adoption is pending." IRS Manual 5.15.1.7, 5.15.1.9 (05-09-2008). Judge Wedoff said that the Subcommittee therefore concluded that the wording of the instruction was appropriate.

The Chair said that this explanation and the recommendation to publish would be conveyed to the Standing Committee.

(2) Report concerning consideration of a possible amendment to Form 22C in reference to the calculation of disposable income in chapter 13 cases.

Judge Wedoff said that Subcommittee considered whether Form 22C should be amended to reflect decisions questioning its calculation of "projected disposable income" under § 1325(b)(1)(B) of the Bankruptcy Code. He said the term is not defined by the Code, and that there is a circuit split as to its meaning, with one line of cases holding that the form correctly bases projected disposable income on the pre-filing six month average of the debtor's income, and a second line holding that the post-filing changes in the debtor's income must he taken into account.

Judge Wedoff said that the Subcommittee recommended no change to the form at this time for at least two reasons: First, he noted that Schedule I already provides information about "actual" income at the time of filing that would allow for determination about projected disposable income without a change to Form 22. Second, because the case law is in flux, any change in the form might signal (incorrectly) that the Committee is taking a position. After discussing the matter, the Committee agreed that a change was not appropriate at this time.

(3) Recommendation concerning possible revisions to the instructions on Forms 22A, 22B, and 22C regarding the reporting of regular payments by another person or entity for the household expenses of the debtor or the debtor's dependents.

Judge Wedoff said that the Subcommittee recommended a technical change to the means test forms to avoid double counting in the income of joint debtors "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 support paid for that purpose." He said the forms contain blanks in each column for reporting such income in joint cases, and that the Subcommittee recommended adding at the relevant line of each form an instruction clarifying that the income should only be reported in only one column. **A motion to amend Forms 22A, 22B, and 22C, as described at page 68 of the agenda book, was approved without objection.**

(4) Recommendation as to whether Form 22A should require the filing of means test information where only one debtor in a joint case is exempt from the means test presumption.

Judge Wedoff said that there are currently three exclusions from the means test presumption of abuse established by § 707(b)(2) of the Bankruptcy Code, dealing with (1) disabled veterans, (2) debtors who do not have primarily consumer debts, and (3) certain current or former members of the National Guard and reserves called to active duty or involved with homeland defense activities (a new exclusion added by the National Guard and Reservists Debt Relief Act of 2008, effective December 19, 2008).

The Committee amended Form 22A on an emergency basis in December 2008 to implement the National Guard/reservist exclusion. Prior that change, Form 22A did not expressly deal with the question of whether a particular exclusion should apply to the spouse of

an excluded debtor in a joint case. In reviewing the statutory language for the National Guard/reservists exclusion, however, the Committee concluded that the exclusion was "personal" to the debtor and added an instruction that required the debtor and the debtor's spouse to complete separate forms if the exclusion was applicable to only one of them.

Because the 12/08 version of Form 22A was revised on an emergency basis, the Committee only considered changes necessary to implement the National Guard/reservist exclusion. In the case of the other two exclusions, the form continued the practice established when BAPCPA went into effect in 2005 of allowing joint debtors to complete a single Form 22A if the exclusion applied to either one of them.

After adoption of the 12/08 version of Form 22A, the Consumer Subcommittee was asked to consider, in a more deliberate fashion, the question of how the exclusions from means testing should be treated in joint cases.

Judge Wedoff said that all three exclusions from means testing were established by different statutory language, so the Subcommittee considered them separately. After extensive analysis (described in pages 69-76 of the agenda materials), the Subcommittee concluded that each of the statutory exclusions was identified by ambiguous language that could support either limiting the exclusion to the debtor or extending it to the debtor's spouse. Accordingly, the Subcommittee recommended that an instruction be added to the form that would allow, but not require, separate filings by spouses in joint cases for each of the exclusions. He said the Subcommittee offered two alternative formulations of an instruction that would implement the proposed change.

After discussing the Subcommittee's recommendation, the Committee voted to recommend publishing for comment the first of the two alternatives on page 75 of the agenda materials, with one dissent.

(D) Report on Judge Thomas Small's Suggestion 08-BK-J that Rule 3001 be amended to facilitate identification of stale claims and inadequately documented claims filed after the bulk transfer of consumer debts.

The Reporter said that the Subcommittee designated a working group to consider a problem identified by Judge Small of inadequate documentation of bulk claims. She said the working group identified three issues for consideration: (1) should bulk claim purchasers be required to provide more or different evidence in support of their claim; (2) should some or all creditors be required to state whether a claim is timely under the relevant statute of limitations; (3) what should be the consequence of a creditor's failure to comply with Rule 3001?

With respect to more, or additional, evidence, the working group concluded that because the terms for open end credit agreements change frequently, a filer should be required to attach the last account statement sent to the debtor prior to the filing of the bankruptcy. The working group recommended publishing a change to Rule 3001(c) that would effect this requirement, as set forth on page 83 of the agenda materials. **The Committee approved this recommendation,**

along with the conforming changes to Form 10 shown on pages 84-85, in the context of Agenda Item 4(A).

The working group considered, but was unable to come to a consensus concerning a rules amendment specifically requiring that evidence of any assignment be attached to the proof of claim, with two members arguing that requiring filing of the last account statement should adequately identify the creditor in most situations.

The working group considered, but did not recommend, requiring creditors to state whether a statute of limitations defense is applicable to their claim because: (1) it would shift the burden of proof on the matter; and (2) members thought that there were too many factors involved in a statute of limitations defense to affirmatively certify whether it is applicable. In discussing this issue, committee members agreed with the reasoning of the working group.

Judge Wedoff said the working group thought that the new sanctions provision of Rule 3001(c) recommended at agenda item 4(A) probably went as far as the Bankruptcy Code allows for non-compliance in the filing requirements for a proof of claim.

In response, Judge Small said that he agreed that the proposed sanctions would be helpful, but he did not think they get to the heart of the problem: that the debtor would be required to expend resources to object to the claim before any sanctions could come into play. He suggested instead that the rules could be amended to state that the failure to attach a writing to a claim form would mean that no claim had been filed, and that it could be disregarded.

Other members questioned this approach, and suggested instead that the filer be required to certify on Form 10 the accuracy of the claim with language similar to the debtor's certification on Form 1. **Because the certification issue had not previously been discussed by the Subcommittee, the Chair directed Judge Wedoff and the Subcommittee to consider the issue and to report back at the October meeting.**

(E) Recommendation concerning Judge Keith Lundin's Suggestion 08-BK-L to amend Rule 2003 to provide a procedure for holding open a meeting of creditors to allow a chapter 13 debtor additional time to file tax returns with the taxing authorities.

Judge Wedoff said that the Subcommittee considered a procedure proposed by Judge Lundin to amend Rule 2003 to "hold open" a meeting of creditors under § 1308(b) of the Bankruptcy Code in order to allow a chapter 13 debtor additional time to file tax returns with taxing authorities. He said that the Subcommittee concluded that the issue could best be addressed by amending existing Rule 2003(e), which governs adjournments, to require the filing of notice of an adjournment. The Subcommittee reasoned that "holding open" a meeting, the term used in § 1308(b), is the same as an "adjournment."

Judge Wedoff added that, under the Subcommittee's proposed amendment, the "presiding official" would be required to file a notice specifying the date and time to which a meeting is adjourned, which would have the effect of creating a new deadline for filing the tax returns.

Judge Wedoff also noted that the amendment, if adopted, would be consistent with case law in the First Circuit that a trustee's attempt to adjourn the § 341 meeting for an unspecified time period does not "hold open" the meeting.

Mr. Kohn suggested a better procedure would be a new rule (2003.1) specifically addressing "holding open" under § 1308(b), and requiring the trustee to explain the need to hold open the meeting to file the tax returns. **After additional discussion, the Committee recommended publishing Rule 2003(e), as set forth at pages 101-102 of the agenda materials, except that the word "notice" was replaced with "statement."**

5. Report of the Subcommittee on Business Issues.

(A) Recommendation concerning the suggestion by the Loan Syndications and Trading Association and the Securities Industry and Financial Markets Association that Rule 2019 be repealed and suggestions by the National Bankruptcy Conference and other commentators that the rule be retained and/or expanded.

Judge Hopkins reviewed the position of Loan Syndications and Trading Association, and the Securities Industry and Financial Markets Association that Rule 2019 be repealed, in contrast to the position of National Bankruptcy Conference and others that the disclosures required by the rule be expanded. He said the Subcommittee carefully considered the arguments for repealing the rule, but that ultimately decided in favor of more rather than less disclosure. He said that the Subcommittee recommends publishing for comment a proposed expansion of the rule as set out at pages 117 to 123 of the agenda materials.

The Reporter explained that the proposed revision was a complete restyling of Rule 2019, and that it expanded both the types of groups required to disclose something, as well as what must be disclosed.

Professor Resnick said that requiring disclosure from an "entity that represents more than one creditor" could be over-inclusive, and thought it should be limited to representations of more than one creditor or equity security holder "acting in concert." He noted that he thought the current rule had the same problem of over-inclusiveness.

The Reporter responded that the Subcommittee intended to require Rule 2019 disclosure even if the representation wasn't in concert, so that a law firm representing more than one creditor in a bankruptcy case would be required to disclose such representation, even if the creditors had completely different types of claims. **A motion to approve proposed Rule 2019 for publication, as set forth at lines 117 to 123, with one stylistic correction pointed out by Judge Hopkins, and subject to further restyling by the Style Subcommittee, carried with one objection.**

(B) Recommendation concerning the suggestion by Judge Wedoff and former panel trustee Philip Martino that a streamlined procedure be created for the approval and payment of certain types of administrative expenses.

Judge Hopkins said the Subcommittee considered the suggestions from Judge Wedoff and Mr. Martino for a streamlined procedure for certain administrative expenses, such as compensation for a chapter 7 trustee in a case that is converted to chapter 13. He said the Subcommittee ultimately concluded that using a proof-of-claim-like process (along with deemed allowance) was not consistent with the Bankruptcy Code's requirement under § 503 of a request for payment and court authorization after notice and a hearing. Accordingly, the Subcommittee recommended no change. **After a short discussion, the Committee accepted the Subcommittee's recommendation of no change.**

6. Report of the Subcommittee on Forms.

(A) Proposed revision of Director's Form B240, the Reaffirmation Agreement; proposal for development of an electronic version.

Judge Perris said that in response to many comments received in connection with the Forms Modernization Project's requests for input about the current forms, the Forms Subcommittee decided to try revising director's form B240 (the reaffirmation agreement). She said that Subcommittee was also experimenting with a possible electronic implementation as a "test run" of how using conditional logic in filling out a form might improve the accuracy of the information collected.

She said that the revised version of B240 was set out at page 174 of the agenda materials. She noted the following differences with respect to the current version: it is shorter; and it integrates the agreement and the statutory disclosures in a way such that prevents its use with user-prepared agreements. She said the Subcommittee considered but decided not to create a second version of disclosure statements to be used with user-prepared agreements.

Jim Waldron said he was working on an electronic version of the revised form that contained conditional logic so that the user would be directed to complete only the relevant portions of the form. He gave a short demonstration of an incomplete version of the electronic form.

Judge Perris said that the Subcommittee had three questions for the Committee:

(1) Should it proceed with the revision of Form B240 as set out in the materials? **The Committee supported going forward.**

(2) Should the Subcommittee create a second form of disclosures to be used with a user-prepared reaffirmation agreement? **The Committee did not support creating a second form of disclosures.**

(3) Should the Subcommittee continue to develop a technological implementation of the form? **The Committee supported the effort.**

(B) Recommendation on suggestions by the courts in the Southern District of New York and the Eastern District of Pennsylvania that a space be added to Official Form 10 to designate what portion of the claim is a general unsecured claim.

Mr. Wannamaker said that he spoke to the courts that made the request and that revision of the form was no longer needed because planned CM/ECF changes will accommodate the problem. **The Committee accepted the recommendation that no change be made.**

7. Report of the Subcommittee on Privacy, Public Access, and Appeals.

(A) Oral report on the special open subcommittee meeting on revision of the Part VIII rules held March 25, 2009, and plans for further work.

Judge Pauley said that the participants at the Subcommittee's open meeting supported a significant revision and restyling of the current Part VIII rules. He said that some participants suggested going beyond making the bankruptcy appellate rules more "FRAP"-like because, at least with respect to electronic filing, the Federal Rules of Appellate Procedure themselves seemed outdated. Judge Pauley said he thought that overall the special open meeting was a success, and he thanked the staff of the AO for the work they put in to set up the meeting.

The Reporter agreed that the meeting was a success, and that the discussion was very valuable. She said the participants divided up into small groups to provide specific rule comments, and that the Subcommittee intended to gather those comments and use them to refine Mr. Brunstad's draft over the summer in preparation for the next open meeting in the fall.

The Chair and Judge Rosenthal said they would invite the reporter and chair of the Appellate Rules Committee to the planned fall open meeting in Boston. They expected that there would be further discussion at that time of whether there should be a coordinated effort by all the advisory committees to update rules to take better advantage of electronic filings.

Mr. Brunstad said he thought that there was uniform agreement that restyling was worthwhile. He said there was more limited support for some of the FRAP innovations and his sense was that that the Subcommittee would look at them on a "innovation by innovation" basis.

Judge Pauley asked for the sense of the Committee about whether the Subcommittee should continue on this project. **There was unanimous support for the Subcommittee's continuation of this work.**

(B) Discussion of whether proposed new Rule 8007.1 and the proposed amendment to Rule 9024 on indicative rulings should be submitted for publication as approved at the October meeting or held for submission as part of the revision of the Part VIII rules.

Judge Pauley said the Subcommittee recommended holding proposed new Rule 8007.1 and the proposed amendment to Rule 9024 in the Bull Pen for now and incorporating them into a full revision of the appellate rules if appropriate. **The motion was seconded and approved without objection.**

8. Report by the Subcommittee on Technology and Cross Border Insolvency. (Judge Coar)

Judge Coar said that the Reporter prepared two memos concerning new proposed Rule 1004.2, one at pages 276-281 of the agenda materials, and the other distributed at the meeting. He said that, as published, the new rule provides in subdivision (b) that the U.S. trustee or a party in interest may challenge the center of main interests ("COMI") designation made in a chapter 15 petition. The rule provides that this challenge must be made by motion "filed no later than 60 days after the notice of the petition has been given to the movant under Rule 2002(q)(1)."

Judge Coar said that the Subcommittee had been persuaded by comments that the proposed 60-day time period for challenging COMI designation was too long, and that a challenge should be filed before the hearing on the petition for recognition is held. He said the Subcommittee recommends providing some flexibility to the seven-day deadline proposed in the Reporter's memorandum at page 278 of the materials by replacing the sentence that begins on line 5 with : "Unless the court orders otherwise, the motion shall be filed no later than seven days before the date set for the hearing on the petition for recognition."

Judge Coar said that the Subcommittee did not recommend that a subdivision (c) be added to proposed Rule 1004.2, as discussed on pages 279 through 278 of the agenda materials. He said the Subcommittee concluded that § 1517(d) of the Code, which allows modification or termination of recognition, does not require a rule setting a deadline for seeking such relief and that the flexibility provided by the statute is preferable to an absolute deadline. **The Committee agreed with the Subcommittee's reasoning and recommended republishing Rule 1004.2 as set forth on pages 278-279 of the agenda materials replacing the sentence beginning on line 5 with: "Unless the court orders otherwise, the motion shall be filed no later than seven days before the date set for the hearing on the petition for recognition."**

The Subcommittee also considered a comment from Judge Samuel Bufford that the notice provisions in proposed Rules 1004.2(b) and 5012, and the proposed amendment to Rule 5009, be expanded to include all secured creditors and at least the 20 largest unsecured creditors. Judge Coar said that Judge Bufford's proposed extended service list was similar to the list included in several chapter 15 specific rules on the same topic that he submitted to the Committee's for consideration in January 2006.

Judge Coar said that, as published, proposed Rules 1004.2(b), 5009(c), and 5012 incorporate the same list that Rule 2002(q) prescribes for notice of the hearing on the petition for recognition. The Committee Note to Rule 2002(q) explains the absence of creditors on the service list as follows:

> 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.

Judge Coar said the Subcommittee was aware that the Committee's original decision about who should receive notice of the hearing on the petition was based on the desire to avoid unnecessary cost and burden. He said the Subcommittee was not aware of any complaints or judicial challenges to the notice provisions of Rule 2002(q) since it went into effect as an interim rule in 2005 and that it therefore recommended no changes to the service lists of rules published last August. **The Committee also agreed with the Subcommittee's recommendation not the service lists for proposed new Rules 1004.2 and 5012, or the amendment to Rule 5009(c).**

9. Report of the Subcommittee on Attorney Conduct and Health Care.

Judge Schell said that there was no business for the Subcommittee since the last Committee meeting.

10. (A) Recommendations concerning action in response to comments received on proposed new Rules 1004.2 and 5012, and proposed amendments to Rules 1007, 1014, 1015, 1018, 1019, 4004, 5009, 7001, and 9001, which were published in August 2008.

The Reporter reviewed the comments to the rules published in August, 2008. She noted that the Committee had already considered the comments related to new Rule 1004.2, as well as Judge Bufford's comment concerning the service list for Rules 1004.2(b), 5009(c), and 5012, at Agenda Item 8. She said there were also comments on Rules 1019, 4004, 5009, and 7001. She recommended that all of the "no comment" rules (Rules 1007, 1014, 1015, 1018, and 9001), be approved as published.

Rule 1019. The Reporter said that Mr. Martin P. Sheehan, a chapter 7 panel trustee, on behalf of himself and the National Association of Bankruptcy Trustees ("NABT") submitted a comment supporting the proposed new period in Rule 1019 for a trustee to object to exemptions after a case is converted to chapter 7, but opposing the exception for cases converted more than a year after confirmation as "arbitrary."

The Reporter said that the Committee imposed the one-year restriction in the rule to strike a balance between competing considerations. On the one hand, providing a new objection period removes an incentive a debtor may have to strategically file a chapter 13 case (where creditors and the trustee may have little incentive to object to exemptions) and convert to chapter 7 after the exemption period runs. On the other hand, a case converted to chapter 7 after a substantial period of time is much less likely to have been initiated as a chapter 13 case simply to avoid scrutiny of claimed exemptions, and finality of exempt status in chapter 13 at some point prevents unfairness to a debtor who has improved the property in reliance on the exemption.

Because the one-year restriction represents a fair compromise between these countervailing considerations, the Reporter recommended approving Rule 1019 as published. The Committee agreed with the Reporter's recommendation.

Rules 4004 and 7001. The Reporter recounted the related proposed amendments to Rules 4004 and 7001. The published amendments to Rule 7001 divided the rule into subdivisions (a) and (b), and included in proposed subdivision (a)(4) that that certain objections to discharge – those specified in subdivision (b) – would not be treated as adversary proceedings. New subdivision (b) stated that an objection to discharge under § 727(a)(8), (a)(9), or 1328(f) is commenced by motion and is governed by Rule 9014. The proposed amendment to Rule 4004(a) provided a deadline for filing motions under Rule 7001(b), and the 4004(c)(1)(B) amendment referred to motions as well as complaints objecting to discharge.

Bankruptcy Judges Robert Kressel and Robert Grant, and former reporter Professor Alan Resnick all expressed the view that the content in proposed Rule 7001(b) is misplaced because it deals with contested matters. In light of those comments, the Reporter redrafted that rules as set forth at pages 270-273 of the materials, by removing the (a) and (b) designations, in Rule 7001, providing a "motion carve-out" for §§ 727(a)(8), (a)(9), and 1328(f) at Rule 7001(4), and moving the substance of published 7001(b) to Rule 4004. **The Committee discussed the Reporter's drafts, and approved them, as set forth in the materials with minor changes, including adding a sentence to the committee note of Rule 7001 that the discharge objections carved out at Rule 7001(4) are governed by Rule 4004(d). The Committee determined that the rules as revised should be sent to the Standing Committee for final approval without the need for republication.**

Rule 5009. The Reporter said that Judge Grant had also commented that proposed 5009(b) would place an unnecessary burden on the clerk. The proposed amendment would require the clerk to notify the debtor that the case will be closed without a discharge unless the statement of completion of a personal financial management course is filed within the time limit specified in Rule 1007(c). Judge Grant said that the notice reminder should simply be included with the other deadlines in the § 341 notice.

The Reporter acknowledged that the new requirement would place an additional noticing burden on the clerks, but she thought the practice was already fairly common. She said that after receiving Judge Grant's comment, she asked Jim Waldron, the Committee's clerk liaison, to survey the clerks to determine whether the requirement would be unduly burdensome. Mr. Waldron reported back that most clerks reported a practice similar to proposed Rule 5009(b) and did not think it was burdensome. Because Rule 5009(b) would merely make such notices uniform, the Reporter recommended approving the rule as published. **The Committee agreed with the Reporter's recommendation, and approved the amendment to Rule 5009 as published.**

The Committee also approved the remaining "no comment" rules (Rules 1014, 1015, 1018, and 9001), as published.

(B) Technical amendment to Official Form 23 to conform to proposed amendment to Rule 1007(c).

The Reporter said that Rule 1007(c), published for comment in August 2008, and just approved by the Committee in the previous agenda item, will change the deadline for a chapter 7 debtor to file a statement of completion of a personal financial management course from 45 days to 60 days after the first date set for the meeting of creditors. She said that, if approved by the Standing Committee, the Judicial Conference and the Supreme Court, and if Congress does not act to the contrary, the change will go into effect December 1, 2010. She therefore recommended a conforming amendment be made to Official Form 23. **The Committee agreed, and recommended that a conforming amendment be made to Official Form 23 (changing the 45 day reference in the form to 60 days), effective December 1, 2010, the same day as the proposed change to Rule 1007(c) is schedule to take effect. Because the change is conforming, the Committee recommended that it be made without publishing for comment.**

11. Recommendation on time computation changes to Rule 4001(d)(2) and (3) which were overlooked in the package of time computation changes submitted earlier and approved by the Judicial Conference at its meeting in September 2008.

The Reporter said that time periods Rule 4001(d)(2) and (3) should have been included in the package of time computation amendments approved by the Judicial Conference in September 2008, but were overlooked. She recommended that the changes be approved without publication, to go into effect December 1, 2010 (the earliest date practical under the Rules Enabling Act). **The Committee agreed, and recommended the time period changes to Rule 4001 as set out at pages 286-287 of the agenda materials.**

12. Oral report on proposed amendment to Civil Rule 8(c) to delete the requirement that a bankruptcy discharge must be pleaded as an affirmative defense.

Judge Wedoff and Mr. Kohn presented alternative views as to whether the discharge in bankruptcy should be removed as an affirmative defense from the list in Civil Rule 8(c).

Mr. Kohn was in favor of keeping the defense in the Rule 8(c) list to discourage debtors from sandbagging, that is, waiting until late in the post-bankruptcy debt collection litigation to seek determination of whether the debtor's liability for the obligation was actually discharged. He said that requiring assertion of the issue as an affirmative defense ensured that it would be litigated early in the case.

Mr. Kohn said his primary concern was with respect to claims such as certain tax claims or student loan debts where there was a good faith basis for assuming that the claim had not discharged. In at least those cases, he said, the debtor should be required to affirmatively state at the beginning of subsequent litigation that he or she believes the debt was discharged in a previous bankruptcy. He suggested some alternative language in Rule 8(c) or Rule 60 to deal with claims that were "clearly" discharged to prevent the possibility that the debtor would lose the discharge simply by failing to plead the defense.

Judge Wedoff said that the affirmative defense requirement should be removed from Rule 8(c) because the discharge is a statutory grant under § 524 of the Bankruptcy Code that the

debtor simply cannot waive. Professor Resnick agreed, noting that § 524(a)(1) says the discharge "voids" any judgment "whether or not discharge [of the debt] is waived." Mr. Brunstad also agreed, asserting that as currently drafted, Rule 8(c) essentially operates to shift the burden to the debtor to "prove" a prior debt was discharged in bankruptcy.

After additional discussion, a motion that the Committee advise the Civil Rules Committee to recommend removing the bankruptcy discharge from the list of affirmative defenses in Civil Rule 8(c) was approved with one dissent (Mr. Kohn).

13. Report concerning the proposed amendment to Civil Rule 56 and the possible need for a Bankruptcy Rule amendment in light of the Civil Rule amendment's impact on the timing of summary judgment motions in contested matters and adversary proceedings.

Judge Wedoff suggested that the Committee may need to consider revising Rule 7056 in anticipation of a proposed change to Civil Rule 56 that requires that a motion for summary judgment may be filed at any time until 30 days after the close of discovery. The suggestion was discussed but no vote was taken because the Civil Rules Committee has not yet proposed new Rule 56.

Discussion Items

14. Oral report on status of the Bankruptcy Forms Modernization Project.

Mr. Myers said that the Forms Modernization Project has retained Carolyn Bagin, a forms expert, to help it streamline its evaluation of the existing bankruptcy forms, develop recommendations for making the forms more user-friendly and less error-prone, and to take advantage of modern technology. He said that the Project's technology subgroup became convinced that a forms revision expert would be very helpful after meeting last fall with representatives of the IRS and the U.S. Census Bureau who have utilized such experts. The Administrative Office solicited bids from three forms experts on behalf of the Project, and Ms. Bagin was selected. Judge Perris added that Ms. Bagin will participate in the Project's next group meeting at the end of June in Washington D.C.

Judge Perris said that the Project's analytical subgroup continues to move forward with its evaluation of the data requested by the current Official Forms. The subgroup has broken down Official Bankruptcy Form 1 (the petition), Official Form 6 (the schedules), Official Form 7 (the statement of financial affairs), and Official Forms 22A-C (the means test), into their constituent elements, classified each element into certain categories (i.e., income, expenses, assets, etc.), and put the elements in a large spreadsheet so that they can be sorted by category. This process will make it easier to identify information duplication or overlap and to aid in eventual restructuring of the forms so that information is requested in a more structured and understandable fashion.

15. Oral report on planning for the future of the CM/ECF system.

Judge Perris said the project is now called "next gen" and that three user groups have been identified (clerks, chambers, and external users). She said that these three groups will be tasked with providing the underlying requirements the next generation of CM/ECF and that the clerks group is now underway identifying their requirements. She added that the chambers and external users groups will be starting up shortly.

16. Oral report on withdrawal of suggestion 08-BK-G by the Executive Office for United States Trustees to amend Rules 1017(e) and 4004(c).

The Reporter said that Mr. Redmiles has withdrawn the EOUST's suggestion.

17. Oral report on the status of legislation authorizing modification of certain home mortgages in chapter 13 cases and requiring notice to the debtor and trustee of fees, costs, or charges which arise from the mortgages and are incurred while the case is pending.

Mr. Wannamaker discussed pending legislation that, if passed, would affect mortgage fees and charges in chapter 13 and would allow bankruptcy judges to modify (cram down) the debtor's home mortgage in chapter 13. He said the current legislation includes certain reporting requirements, primarily of the GAO, and the Administrative Office was discussing options that would facilitate tracking of cases that include a cram down. He said that because the legislation would require the debtor to certify taking certain steps before attempting to cram down a home mortgage in chapter 13, that the Administrative Office would be able to identify cram down cases by tracking the filed certifications. He said that the Administrative Office anticipates there will need to be an Official Form of debtor certifications if the legislation passes. The Reporter said that such an Official Form would likely be taken up by the Forms Subcommittee on an expedited basis. She added that, if passed, the legislation would also affect this Committee's proposed rule changes concerning fees and charges in chapter 13, and those rules would have to be revisited.

18. Suggestion 08-BK-K by Judges Marvin Isgur, Elizabeth Magner, and Jeff Bohm to create two new forms to address problems related to claims secured by a debtor's home – an addendum to the proof of claim which sets out the full loan history and a calculation of the mortgage arrearage and a second form which serves as a payment change notice.

The Chair referred the suggestion to the Forms Subcommittee for consideration in the context of the Committee's recommendation at Agenda Item 4(A) to publish new Rule 3002.1, and amendments to Rule 3001(c).

19. Oral report on status of request by the Committee on Codes of Conduct for review of disclosure by the parties in connection with contested matters and other bankruptcy litigation in order to facilitate conflict screening.

The Reporter said that the Committee is still awaiting renewal or revision of the request.

20. Oral report on planning for review of the restyled Evidence Rules.

The Chair said the Committee would be divided into thirds for review of the three parts of restyled rules after the Standing Committee approves the rules for publication. Individual members will provide comments to the Reporter, the Chair and staff by mid-July and a conference call will be scheduled for late July with each group. The Reporter will then prepare a consolidated memorandum for consideration by the Committee at its fall 2009 meeting, and the Reporter will then transmit comments, as revised, to Evidence Committee.

21. Oral report on new privacy rules review project.

Judge Rosenthal said the privacy rules project is the second phase of a project that began when electronic filing began. She said now that electronic filing is universal, it is time to review the privacy rules in light of problems that have developed. To that end, the Standing Committee has established a Privacy Subcommittee composed of members and the reporters from each of the rules advisory committees, and of members of the Committee on Court Administration and Case Management.

The Privacy Subcommittee will review and report on whether the existing privacy rules are adequate and whether access is adequate. Judge Rosenthal added that the reformulation of the Privacy Subcommittee at this time is fortuitous because public interest groups have begun to audit court files to determine whether privacy is adequately protected.

The Chair announced that Judge Coar will be the Bankruptcy Rules Committee representative on the Privacy Subcommittee.

22. Oral report on Suggestion 09-BK-A, by Michael Fritz for revision of Schedule D.

The Reporter reviewed the suggestion of Michael Fritz, Bankruptcy Administrator for the Middle District of Alabama. Mr. Fritz suggests that Schedule D would be more useful to the court, the BA/UST and creditors if the debtor was required to disclose the contract interest rate, payment amount, and remaining length of the note for all secured debt.

The Reporter asked Committee members whether there was support for referring the suggestion to the Forms Subcommittee for further consideration. Judge Perris said that the suggestion goes to an issue that the forms modernization project membership is currently debating. She said that the Bankruptcy Code itself does not address the specifics of what must be disclosed about the debtor's financial affairs. Rather, that information seems to have developed over time, after specific requests, without much consideration for the overall burden involved in completing a bankruptcy filing. She said that in reviewing the current schedules, project members have concluded that a certain amount of detail is necessary, and desirable. She added, however, that requesting additional data increases the complexity of the forms, and makes filling them out more difficult.

Other members questioned whether the additional information was necessary in all cases, and suggested that it could be requested, if needed, later in the case. **After additional discussion, the Committee decided to take no further action at this time.**

Information Items

23. Rules Docket.

Mr. Wannamaker asked members to let him know if they thought any changes were needed to the rules docket.

24. Oral report on the response to the Executive Committee's request that Conference Committees review the draft Best Practices Guide to Using Subcommittees of Judicial Conference Committees and report on the status of subcommittees.

Judge Rosenthal reported that the Standing Committee timely made its submission to the Executive Committee, and that there did not seem to be any objection to the current approach to using subcommittees practiced by the Rules Advisory Committees.

25. Status of notice to local courts concerning the need to review local rules in light of the upcoming time computation amendments.

Mr. Rabiej said the time computation rules have been approved by the Supreme Court, and have been delivered to Congress, and that congressional judiciary staff was moving forward with the necessary bills to amend 29 statutes that would be affected by the changes. Judge Rosenthal added that a letter would soon go out to chief judges telling them of the need to update their local rules.

26. *Bull Pen*:

Proposed amendments to Rule 3001(c), Rule 9024, Form 22A, and Form 22C; and proposed new Rules 3002.1 and 8007.1, all of which were approved at the last meeting and placed in the Bull Pen, have been addressed in the manner discussed in the agenda items above. As a result, only Rules 9024 and 8007.1 will remain in the Bull Pen pending further review of the bankruptcy appellate rules.

27. Future meetings:

> September 30, 2009, Part VIII special open subcommittee meeting at Harvard Law School, followed by October 1-2, 2009, Committee meeting at the Langham Hotel in Boston.

The Chair asked members to email suggestions for the location of the spring 2010 meeting.

28. New business:

No new business.

29. Adjourn.

Respectfully submitted,

Stephen "Scott" Myers

JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

ANTHONY J. SCIRICA
CHAIRMAN, EXECUTIVE COMMITTEE

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April 8, 2009

MEMORANDUM

To: Conference Committee Chairs

From: Anthony J. Scirica

RE: CONFERENCE COMMITTEE USE OF SUBCOMMITTEES

I am transmitting to you a copy of the revised section of the document, *The Judicial Conference of the United States and its Committees*, that deals with subcommittees. The revisions were approved by the Executive Committee after considering comments from Conference committees. The modifications (1) delete language that discourages standing subcommittees (eliminating any distinction between standing and ad hoc subcommittees), (2) add a requirement for regular review of the need for existing subcommittees, (3) make clear that the term "non-members" refers to persons who are not serving on any Judicial Conference committee, and (4) clarify the role of the committee chair with regard to communications written on behalf of the committee or subcommittee to recipients who are not members of the committee. The full updated *Judicial Conference of the United States and its Committees* can be found on the J-Net at the Judicial Conference page.

The Executive Committee also adopted changes, based on committee comments, to the proposed best-practices guide to using subcommittees. The Executive Committee approved the revised guide and asked that it be distributed to Conference committee chairs. A copy of this guide is attached. In addition, the Executive Committee lifted the moratorium on establishing new subcommittees.

The Executive Committee appreciates your assistance in its examination of how Conference committees use subcommittees, and hopes that the new procedures, as well as the suggestions in the guide, will be helpful to you.

cc: James C. Duff
Committee Staff

Attachments

* * * * *

II. COMMITTEES OF THE JUDICIAL CONFERENCE

* * * * *

B. ROLE OF COMMITTEE CHAIRS

* * * * *

2. Subcommittees

It is the Conference's preference that work be performed by full committees. Chairs may appoint subcommittees composed of committee members as necessary, but the number of subcommittees and meetings should be held to the minimum needed to accomplish the work of the committee. The approval of the Chief Justice, through the Conference Secretary, is required to appoint non-members (*i.e.*, persons who are not already members of any Judicial Conference committee) to subcommittees, ad hoc committees, and task forces, etc. The Conference Secretary maintains a list of all existing subcommittees, and chairs should notify the Secretary when one is established.

If the work of a subcommittee requires a face-to-face meeting, the meeting should be held contiguous to a regular committee meeting or in Washington, D.C.; exceptions must be approved by the chair of the Executive Committee. Generally, the chair of the full committee should sign any communication written on behalf of the committee or any subcommittee to recipients who are not members of the committee.

Chairs should periodically review the need for existing subcommittees. Such review should take place, at a minimum, on the appointment of a new committee chair and at the five-year committee jurisdictional review.

JCUS and its Committees, p. 4 (Sep. 2007).

CONFERENCE COMMITTEE GUIDE TO USING SUBCOMMITTEES

February 2009

INTRODUCTION

Subcommittees can be an important tool in the accomplishment of the business of the Judicial Conference committees. Chairs have established subcommittees for a variety of reasons, such as to address complex or technical issues, to increase oversight of a particular program, to address emergencies, or to prepare to implement a specific statute. However subcommittees can cause additional complications and call on staff resources and expense. This guide is designed to help maximize the effectiveness of subcommittees, while maintaining appropriate accountability and resource constraints.

The Judicial Conference policy on subcommittees, cited below, is contained in the document, *The Judicial Conference of the United States and its Committees*, which was endorsed by the Conference in September 1998, and updated since then by the Executive Committee. The policy seeks to accommodate practical realities while assuring that subcommittees are used in a focused manner to support the collegial decision making of, and not as a surrogate for, the full committee.

> It is the Conference's preference that work be performed by full committees. Chairs may appoint subcommittees composed of committee members as necessary, but the number of subcommittees and meetings should be held to the minimum needed to accomplish the work of the committee. The approval of the Chief Justice, through the Conference Secretary, is required to appoint non-members (*i.e.*, persons who are not already members of any Judicial Conference committee) to subcommittees, ad hoc committees, and task forces, etc. The Conference Secretary maintains a list of all existing subcommittees, and chairs should notify the Secretary when one is established.
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> If the work of a subcommittee requires a face-to-face meeting, the meeting should be held contiguous to a regular committee meeting or in Washington, D.C.; exceptions must be approved by the chair of the Executive Committee. Generally, the chair of the full committee should sign any communication written on behalf of the committee or any subcommittee to recipients who are not members of the committee.
>
> Chairs should periodically review the need for existing subcommittees. Such review should take place, at a minimum, on the appointment of a new committee chair and at the five-year committee jurisdictional review.

JCUS and its Committees, p. 4 (Sep. 2007).

ROLE OF COMMITTEE CHAIR

A newly appointed committee chair should review existing subcommittees to ensure that each remains justified. The committee chair may establish a new subcommittee and designate its members and chair. At the time the chair of a subcommittee is designated, the committee chair should discuss with the chair of the subcommittee such subjects as subcommittee procedures, the relationship of the subcommittee with the full committee, whether teleconference or face-to-face meetings will be necessary, and how best to coordinate with the committee chair.

The committee chair should consider the impact on committee staffing resources when creating and assigning tasks to subcommittees. The committee chair should advise the subcommittee chair of the availability of staff to assist with the work of the subcommittee and remind the subcommittee chair that staff serve under the supervision of the Director of the Administrative Office. Use of AO staff and expenditures by subcommittees must be approved in advance by the chair of the full committee, in consultation, where appropriate, with the AO Director.

MEMBERSHIP

Generally, the chair of a subcommittee should have at least one year of service on the full committee before being designated. This general requirement should not preclude the appointment as chair of a less experienced member when warranted by circumstances (e.g., where the member has unique knowledge and/or experience). The committee chair might consider committee members' special interests, experience, or expertise when selecting subcommittee members. Membership should be balanced in terms of points of view, experience, etc. The size of the subcommittee should be as small as is consistent with the requirements imposed by workload, deadlines, and need for expertise. Experience has shown that it is beneficial for the chair of the full committee to participate in as many teleconferences and meetings of the subcommittee as possible.

DURATION OF SUBCOMMITTEE

Subcommittees may be created for the duration of a particular project. Some committees establish longer-term subcommittees, such as those that enable quick responses to emergencies and those that maintain focus on recurring matters, e.g., budgeting or long-range planning. The chair of the full committee may dissolve a subcommittee whenever he or she determines to do so. All subcommittees (unless institutionally permanent, such as the Budget Committee's Economy Subcommittee and the Judicial Resources Committee's Judicial Statistics Subcommittee) must be reviewed periodically to see if disbanding is appropriate. A review of the existing subcommittees should be done when a new committee chair is appointed and in conjunction with the five-year committee jurisdictional review by the Executive Committee.

MISSION AND AUTHORITY

The mission of each subcommittee should be clearly defined in the records of the committee. Subcommittees are creatures of the full committee and generally do not have independent authority, unless it is granted by the Conference or the Executive Committee.

MEETINGS

Telephonic meetings are encouraged, as is use of other technologies, such as collaborative electronic workplaces, and the like. It is occasionally appropriate for more than one subcommittee, either of the same or different full committees, to meet jointly on matters of common interest. In-person subcommittee meetings should normally be held in conjunction with meetings of the full committee. Out-of-cycle, in-person subcommittee meetings in venues other than Washington, D.C. must be approved by the chair of the Executive Committee.

SUBCOMMITTEE RECORDS AND CORRESPONDENCE

Generally, the chair of the full committee should sign any communication on behalf of the committee or any subcommittee to recipients who are not members of the committee. In those rare instances when it is appropriate for the chair of a subcommittee to communicate with recipients who are not members of the committee, the communication must be expressly approved by the chair of the full committee. A general authorization to allow such communication by the subcommittee chair may be made, where appropriate, by the committee chair.

Information considered by the subcommittee should be available to interested members of the full committee.

Subcommittees often complete the majority of their work between meetings of the full committee using telephonic meetings, e-mail, and other means to generate a report to the full committee. This enables the subcommittee report to be prepared in the same way as, and included in, other agenda materials for the full committee, giving the committee sufficient time to consider the issues prior to its meeting.

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON CONSUMER ISSUES

RE: SUGGESTION FOR SHORT B 22 FORM FOR CASES CONVERTED FROM CHAPTER 7 TO CHAPTER 13

DATE: AUGUST 26, 2009

Bankruptcy Judge Geraldine Mund (C.D. Cal.) has submitted Suggestion 09-BK-C in which she questions the need for the completion of a new Form B 22 when a case is converted from chapter 7 to chapter 13. She notes that the debtor would have already completed Form 22A, and the information provided there might be sufficient for chapter 13 purposes. If not, she suggests that a new, short form might be devised that would avoid confusion on the part of debtors who believe that they have already completed all the necessary paperwork. This suggestion was referred to the Subcommittee and was carefully considered during the Subcommittee's conference call on July 22. **For the reasons discussed below, the Subcommittee recommends that a special B 22 form for cases converted from chapter 7 to chapter 13 not be proposed and that form B 22C continue to be used in these cases.**

Comparison of Forms 22A and 22C

There is significant overlap in the information sought in Official Form 22A and Form 22C. The inquiries in the two forms concerning income and deductions from income are identical.[1] There are sufficient differences between the two forms, however, that complete

[1] The same time periods apply to the information sought in the Form 22A filed in the chapter 7 case and the Form 22C that is later completed when the case is converted to chapter 13. Although for some purposes § 348 of the Code provides that the date of conversion of a case is treated as the date of filing the petition or commencement of a case, that rule does not apply to § 707 (means test), § 1325 (disposable income), or § 101(10A) (current monthly income).

reliance on the previously completed B 22A will not suffice for chapter 13 purposes. Current monthly income in chapter 13 is used to determine the applicable commitment period for the plan and the method of calculating disposable income. Rather than requiring the trustee, U.S. trustee, court, creditors, and others to examine the previously completed form in order draw new conclusions themselves from the information, the Subcommittee concluded that a debtor should be required to file a chapter 13 form that clearly indicates the applicable commitment period, the method for calculating disposable income, and – for above median income debtors – the amount of disposable income.

The Subcommittee therefore considered whether a shortened chapter 13 form should be created that would allow a debtor in a converted case to incorporate information already submitted in the Form 22A and supplement it with the additional information and conclusions needed for chapter 13. Such a form would be relatively straight-forward with respect to unmarried debtors because the calculation of income and deductions from income would be the same in the two forms and marital adjustments would not be required.

Creating a chapter 13 short form that could also be used by married debtors, however, raises additional complications. Insofar as Form 22A is concerned, there are three categories of married debtors: those filing jointly, those filing alone, and those filing alone and declaring that they and their spouse maintain separate households. For the latter category, only the filing spouse's income must be declared (except to the extent the non-filing spouse regularly contributes to the household expenses of the debtor or the debtor's dependents). *See* § 707(b)(7)(B). For chapter 13 purposes, however, a married debtor not filing jointly must declare the spouse's income, whether they live together or have separate households. *See*

§ 1325(b)(4)(A)(ii). The Subcommittee therefore determined that a short form is not feasible for debtors falling into that category because the Form 22A would not reveal the income information needed in chapter 13.

For the other two categories of married debtors – (1) filing jointly and (2) filing alone, but not declaring separate households – there is sufficient overlap of information on the 22A and the 22C that a short form might be devised. It does require the inclusion of some provisions in addition to the ones needed just for unmarried debtors, however. Attached is a rough draft of a form that illustrates the type of form that could be adopted for cases converted from chapter 7 to chapter 13 with respect to those two categories of married debtors and unmarried ones.

This form includes marital adjustments in two places to make it consistent with Form 22C. In Part II, married debtors who are not filing jointly are permitted to subtract spouses' income if they contend that such income should not be included in determining the applicable commitment period. No part of Form 22A provides the option of a marital adjustment under these circumstances. Part III also includes a marital adjustment for a married debtor not filing jointly. This adjustment is required by the statute and parallels an adjustment included in Form 22A. The draft short form includes Parts V and VI of Form 22C because there are no exact counterparts to this information in Form 22A. Part V is the calculation of disposable income, and it allows some deductions from income not available in chapter 7. It also allows for deductions for special circumstances, and they could differ in a longer lasting chapter 13 case from those in a chapter 7 case. Similarly, Part VI allows additional expenses to be claimed, which would not necessarily be the same as those claimed in chapter 7.

The Subcommittee's Recommendation

After its consideration of the draft short form, the Subcommittee determined that the adoption of such a form should not be pursued. Members of the Subcommittee noted the additional complexity that would result from the introduction of a new B 22 form, especially one that would not be applicable to all cases converted from chapter 7 to chapter 13. No one was aware of any problems that have been presented by requiring debtors in converted cases to complete Form 22C. Transferring information from the previously filed Form 22A to Form 22C is relatively simple, and doing so prevents the trustee and others from having to refer back to another form to see how the totals were calculated. Furthermore, in some cases the debtor in a case converted to chapter 13 may want to fill out a new form.

Attachment

Attachment

B 22D (Official Form 22D) (Case Converted from Chapter 7 to Chapter 13)

[Same info. at top of form – caption, case number, and check boxes]

CHAPTER 13 STATEMENT OF CURRENT MONTHLY INCOME AND CALCULATION OF COMMITMENT PERIOD AND DISPOSABLE INCOME – FOR A DEBTOR WHO HAS COMPLETED OFFICIAL FORM 22A

In addition to Schedules I and J, this statement must be completed by a chapter 13 debtor who completed Official Form 22A before the case was converted to chapter 13. Joint debtors may complete one statement only. **A debtor who checked box 2.b on Form 22A, declaring that the debtor is married, not filing jointly, and with a separate household from the spouse, must complete Official Form 22C instead of this statement.**

Part I. REPORT OF INCOME

1. **Current monthly income.** Enter the amount from Line 12 of Form 22A $_____

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

2. **Marital adjustment.** If you are married, but are not filing jointly with your spouse, AND if you contend that calculation of the commitment period under § 1325(b)(4) does not require inclusion of the income of your spouse, enter on Line 2 the amount of income listed in Line 11, Column B of Form 22A that was NOT paid on a regular basis for the household expenses of you or your dependents and specify, in the lines below, the basis for excluding this income (such as payment of the spouse's tax liability or the spouse's support of persons other than the debtor or the debtor's dependents) and the amount of income devoted to each purpose. If necessary, list additional adjustments on a separate page. If the conditions for entering this adjustment do not apply, enter zero.

a.		$
b.		$
c.		$

Total and enter on Line 2 $_____

3. **Subtract Line 2 from Line 1 and enter the result.** $_____

4. **Annualized current monthly income for § 1325(b)(4).** Multiply the amount from Line 3 by the number 12 and enter the result. $_____

5. **Applicable median family income.** Enter the amount from Line 14 of Form 22A. $_____

6. **Application of § 1325(b)(4).** Check the applicable box and proceed as directed.
❑ **The amount on Line 4 is less than the amount on Line 5.** Check the box for "The applicable commitment period is 3 years" at the top of page 1 of this statement and continue with this statement.

❑ **The amount on Line 4 is not less than the amount on Line 5.** Check the box for "The applicable commitment period is 5 years" at the top of page 1 of this statement and continue with this statement.

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

7. **Marital adjustment.** If you are married, but are not filing jointly with your spouse, enter the amount from Line 17 of Form 22A. If you are not married or are married and filing jointly, enter zero. $_____

8. **Current monthly income for § 1325(b)(3).** Subtract Line 7 from Line 1 and enter the result. $_____

9. **Annualized current monthly income for § 1325(b)(3).** Multiply the amount from Line 8 by the number 12 and enter the result. $_____

10. **Application of § 1325(b)(3).** Check the applicable box and proceed as directed.
❑ **The amount on Line 9 is more than the amount on Line 5.** 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.

❑ **The amount on Line 9 is not more than the amount on Line 5.** 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. **Do not complete Parts IV, V, or VI.**

Part IV. CALCULATION OF DEDUCTIONS FROM INCOME

11. **Total of all deductions from income.** Enter the amount from Line 47 of Form 22A. _____

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

12 - 18 [Take from current Part V of Form 22C, changing only the line number references.]

Part VI. ADDITIONAL EXPENSE CLAIMS

19. [Take from current Part VI of Form 22C.]

Part VII. VERIFICATION

20. [Same as current Part VII]

MEMORANDUM

To: Advisory Committee on Bankruptcy Rules

From: Consumer Subcommittee (ERW)

Re: Schedule C and *Schwab v. Reilly*: the extent of a claimed exemption

Date: August 26, 2009

On April 27, the Supreme Court granted certiorari in *Schwab v. Reilly*, 129 S.Ct. 2049, to review the decision of the Third Circuit in *In re Reilly*, 534 F.3d 173 (3d Cir. 2008). That decision arose from a Chapter 7 case in which the debtor, claiming an exemption in catering equipment, listed in Schedule C the same dollar amount for both the value of the equipment and the amount claimed exempt. The Third Circuit held by completing the schedule in this way, the debtor "indicates the intent to exempt her entire interest in a given property," so that, if there is not a timely objection, "the debtor is entitled to the property in its entirety." *Reilly*, 524 F.3d at 174. The Supreme Court limited its grant of certiorari to two issues:

1. When a debtor claims an exemption using a specific dollar amount that is equal to the value placed on the asset by the debtor, is the exemption limited to the specific amount claimed, or do the numbers being equal operate to "fully exempt" the asset, regardless of its true value?

2. When a debtor claims an exemption using a specific dollar amount that is equal to the value placed on the asset by the debtor, must a trustee who wishes to sell the asset object to the exemptions within the thirty day period of Rule 4003

even though the amount claimed as exempt and the type of property are within the exemption statute?

The issues that the Supreme Court will address in *Schwab* result from an ambiguity in Schedule C (Official Form 6C). The current form of the schedule requires only four statements regarding each exemption: (1) a description of the property claimed exempt, (2) a specification of the law providing the exemption, (3) the value of the claimed exemption, and (4) the current value of the property without deducting the exemption. The third category is ambiguous: when the debtor places a dollar amount in this category that is equal to the "current value" of the property listed in the fourth category, it is unclear whether the debtor intends to exempt the full value of the property—even if the actual property value is greater than the "current value" listed in the fourth category—or whether the debtor intends to limit the exemption claim to the amount stated in the third category. Courts have divided over this question, as the Third Circuit recognized, citing conflicting decisions. *Reilly*, 524 F.3d at 178-79.

Regardless of how the Supreme Court rules, it may be appropriate to resolve the ambiguity in the form. One way of doing so would be by providing check boxes in the third category of Schedule C, requiring the debtor to choose to exempt either (1) the debtor's entire interest in the property, even if that interest has a value greater than the "current value" set out in the fourth category or (2) an exemption limited to an amount stated in the third category. As amended, the relevant portion of the form might appear as follows:

DESCRIPTION OF PROPERTY	SPECIFY LAW PROVIDING EACH EXEMPTION	EXTENT OF CLAIMED EXEMPTION	CURRENT VALUE OF PROPERTY WITHOUT DEDUCTING EXEMPTION
		☐ Debtor's entire interest in the property ☐ Debtor's interest in the property to the extent of $_____	
		☐ Debtor's entire interest in the property ☐ Debtor's interest in the property to the extent of $_____	
		☐ Debtor's entire interest in the property ☐ Debtor's interest in the property to the extent of $_____	

An amendment such as this should be able to eliminate the possibility that the specification of a dollar amount could "signal [an] intent to exempt the property in its entirety," as the Third Circuit held in *Reilly*, 534 F.3d at 180. An exemption claim of the debtor's entire interest in the property would be unambiguous, and a specification of a dollar amount would clearly be a limit on the exemption claimed. With the ambiguity removed, debtors who believe that the exemption to which they are entitled equals or exceeds the value of the property would be free to claim their entire interest in the property as exempt, but the trustee would know that this is the debtor's claim and would be able to decide whether to object in light of that knowledge. With an unambiguous form, there would be no need to change the deadline for objections.

In the Consumer Subcommittee's consideration of this issue, questions were raised about the wording of any change to Form 6C, and the subcommittee determined that it would be appropriate to defer consideration of the issue until after the Supreme Court issues its ruling in *Schwab*, both because the outcome in that case could have an effect on the need for a change to the form and because any proposal made now could be viewed as attempting to influence the Supreme Court's decision. Finally, considering this issue during the Advisory Committee's April 2010 meeting (which would likely be after the Supreme Court's decision) would not delay implementation of any proposed change to the form.

Accordingly, the Consumer Subcommittee recommends that consideration of this issue be deferred until the Advisory Committee's April 2010 meeting.

4C

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEES ON CONSUMER ISSUES AND FORMS

RE: PROPOSED CHANGES TO OFFICIAL FORM 10

DATE: AUGUST 26, 2009

Both the Subcommittee on Consumer Issues and the Subcommittee on Forms have been considering possible changes to Official Form 10 (Proof of Claim), which they now recommend for approval by the Advisory Committee. They present this joint report so that the proposed changes can be considered together. The recommendation of the Consumer Subcommittee is discussed first, followed by the recommendation of the Forms Subcommittee. The memorandum concludes with a suggestion for how to proceed with the proposed changes following the October meeting.

Recommendation of the Consumer Subcommittee: Creditor Certification

At the March 2009 meeting of the Advisory Committee in San Diego, the Committee discussed concerns raised by Bankruptcy Judge Tom Small (E.D.N.C.) about proofs of claim ("POCs") filed by bulk purchasers of consumer debt (Suggestion 08-BK-J). Among the problems he noted were inadequacy of the documentation supporting the claims and the staleness of many of them. A working group of this Subcommittee (comprising Judge Wedoff, Messrs. Lander and Rao, and the reporter) discussed Judge Small's suggestion prior to the March meeting. Although the group concluded that there was not support on the Subcommittee for shifting to the creditor the burden of pleading timeliness of a claim, it decided that the creditor's

duty to engage in a careful review of the validity of a claim before filing a POC should be further emphasized by adding a creditor certification to Form 10. That suggestion was briefly discussed at the Advisory Committee meeting and referred to the Subcommittee for further consideration.

The certification issue was discussed by the Subcommittee during its July 22 conference call, and the Subcommittee agreed with the proposal that a certification be added to the signature block. The instructions to Form 10 currently state that "the person filing this proof of claim must sign and date it. FRBP 9011." The Subcommittee concluded that this bare reference to Rule 9011 is insufficient to alert many creditors to their duty to undertake an inquiry reasonable under the circumstances before filing a POC in order to determine that the factual contentions have evidentiary support and that the claim is warranted by existing law. Form 10 also includes the following statement at the end, under the signature block: "Penalty for presenting fraudulent claims: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571." Although it is useful to remind creditors of the possibility of criminal prosecution for fraudulent claims, that possibility is probably unlikely with respect to most proofs of claim.

The Subcommittee therefore recommends that a certification similar to the one that debtors are required to sign on the petition and other forms be added to the signature line of Form 10. The proposed language is: "By signing, the person filing the claim declares under penalty of perjury that the information provided above is true and correct." Because a POC does not require a creditor to state affirmatively anything about the statute of limitations, the addition of this language would not require a creditor to certify that the claim is timely. But it would serve to emphasize the creditor's obligation to investigate the validity of a claim before filing.

Because this proposal arose from concerns about the inadequacy of documentation

supporting claims, **the Subcommittee also recommends that Part 7 ("Documents") of Form 10 should be reworded from an instruction ("Attach redacted copies of any documents . . . .") to an affirmative statement ("I have attached redacted copies . . . .") in order to make the certification more meaningful.** The certification states that "the information provided above is true and correct," and therefore the Subcommittee concluded that the POC should require the creditor to make a statement about the adequacy of the documentation.

Exhibit 1 attached to this memorandum is a draft of Form 10 with the proposed changes indicated by underlining and strikeouts. (The language in Part 7 and related instructions that is highlighted was approved by the Advisory Committee at the March 2009 meeting and has been held in the *Bull Pen*, awaiting other changes to Form 10.)

Additional Issues Raised by the Consumer Subcommittee

Review of the proposed changes to Form 10 led to a discussion among some Subcommittee members about related issues that the Subcommittee wishes to call to the Advisory Committee's attention.

(1) Part 7 of the form currently instructs the claim filer to attach redacted copies of any documents that support the claim and that provide evidence of perfection of a security interest. In both cases the form goes on to state, "You may also attach a summary." When this part of the form was revised in the attached draft to make it an affirmative statement, the language was changed to "I have attached redacted copies or an accurate summary . . . ." This change prompted questions about the intended meaning of the current wording of the form and about its consistency with Rule 3001(c).

Rule 3001(c) says that when a claim is based on a writing, "the original or a duplicate

shall be filed with the proof of claim." In light of that directive in the rule, how should Form 10 be interpreted? Does its statement that "[y]ou may also attach a summary" mean that "you may attach a summary in addition to the document itself," or does it mean that "you are authorized to attach a summary in lieu of the document"? The proposed transformation of the existing language into an affirmative statement assumes that the latter meaning is the intended one. If that is correct, the question arises whether such an authorization to attach a summary rather than the document is consistent with the requirements of Rule 3001(c).

Former Committee member Bankruptcy Judge Jimmy Walker recalls that the "summary" language was added to Form 10 at a time when there was concern about the feasibility of electronically filing voluminous documents. He has explained:

> The idea of a claim summary came up when we were talking about the 25 page limitation rule. It seemed to be a procedure that could help the trustee understand how the claim arose and how it was documented. We reasoned that in small cases, the documents would be easier than a summary to provide to the court. In the big cases, the summary would be easier than a book length document and more useful. In all cases, parties at interest could always compel production of the original document or a copy of the document that would satisfy the rule of evidence. (July 27, 2009 email to Judge Laura Taylor Swain.)

As a matter of technological capability, it is apparently no longer a problem for lengthy documents to be filed electronically. Nevertheless, the point made by Judge Walker – that a summary may be more user friendly than the original document – still applies. The authorization for a summary may present a problem, however, when creditors who lack adequate documentation of their claim (perhaps because the claims were purchased in bulk) attach to their POCs a brief statement of information that they justify as a summary, or when creditors who have the underlying documents that are not voluminous file a summary instead of the agreement

itself.

The Subcommittee therefore suggests that the Committee discuss (a) whether the current instruction allowing a summary is intended to provide an alternative to attachment of the document itself; (b) if so, whether that authorization in the form should be retained; (c) if retained, whether any restrictions should be imposed on the use of a summary; and (d) whether Rule 3001(c) needs to be amended to authorize the use of summaries.

(2) The other issue that arose in response to the proposed revision of Form 10 concerns the identity of the person being addressed by the form. The proposed certification applies to "the person filing the claim," and that is the one who is directed to sign it. Elsewhere the form asks for an indication of whether "you" are the debtor or trustee. Parts 1 and 4 refer to "your claim," and under the proposed revision, Part 7 would state "I have attached." A question has been raised about whether Form 10 needs to be made clearer about whether it is referring the person who holds the claim, the person who files the POC, or the individual who completes the POC on behalf of the filer.

Under Rule 3003(b), it is the creditor or the creditor's authorized agent who may "execute" a POC, and under Rule 3004 a debtor or trustee can "file" a POC if the creditor does not. If the creditor or debtor is a corporation or partnership, should the form direct that it be signed by the "individual" completing the form, rather than the "person" who files it, in order to prevent corporate signatures? Is there any confusion caused by referring to the debtor or trustee who files a claim as "you," but then also referring to "your claim," which is in fact the claim of the creditor?

There are clearly some inconsistencies in Form 10 regarding the referents of the

pronouns. An issue for Committee discussion is whether these inconsistencies create sufficient confusion that the wording of the form should be changed or a separate form should be created for debtor/trustee-filed POCs. One possible solution would be to change "your claim" in Parts 1 and 4 to "the claim." That would eliminate the inconsistency resulting from referring to the debtor or trustee as "you." The Committee may also want to consider whether Part 7 should remain in the first person and whether the signature block should continue to refer to the "person filing this claim," or whether both sections should be changed to the "person [or individual] completing this form." Exhibit 2 is a draft of Form 10 with those changes included.

Recommendation of the Forms Subcommittee: Annual Interest Rate

Committee member Chris Kohn raised a question about the appropriateness of requiring that a POC for secured tax claims specify the annual interest rate, given that § 511 of the Bankruptcy Code provides that tax claims are to be paid under a confirmed plan at the interest rate that is applicable when the plan is confirmed. This issue was referred to the Forms Subcommittee and was discussed during its conference calls on July 20 and August 13. **The Subcommittee recommends that Part 4 of Form 10 and the related instructions be amended as indicated on Exhibit 2 and explained below.**

Item 4 of Form 10 addresses secured claims. Among the information requested is the "Annual Interest Rate." Mr. Kohn suggested that this information is either unknowable or irrelevant for tax claims and thus should not be required. Because § 511 provides that the interest rate at which tax claims are to be paid under a confirmed plan "shall be determined as of the calendar month in which the plan is confirmed," that rate often cannot be known with

certainty when the proof of claim is filed. If, however, the POC form is intended to require a statement of the interest rate applicable at the time the POC is filed or as of the commencement of the case, Mr. Kohn submitted that the rate is irrelevant and may in fact be misleading to the debtor and others, since it will not be the rate at which the tax claim is paid in the bankruptcy case.

The Subcommittee noted that in many respects the issue Mr. Kohn raised regarding tax claims is not different from that presented by other secured claims. To the extent that the *Till* decision applies, the contract rate at the time the bankruptcy case is commenced or the POC is filed will not be the interest rate at which a secured claim is paid under a confirmed plan. The Subcommittee concluded therefore that the form does not seek information about a future, then-unknown interest rate for plan payments, but rather it asks for the interest rate applicable at either the time the bankruptcy case is commenced or the POC is filed.

The instructions to Form 10 seem to state that it is the interest rate as of the commencement of the case that is to be provided, although there is a possible ambiguity in the wording. The instruction for item 4 provides that the filer shall "state annual interest rate and the amount past due on the claim as of the date of the bankruptcy filing." The question is whether "as of the date of the bankruptcy filing" modifies both annual interest rate and the amount past due, or only the latter. The form itself asks for "Annual Interest Rate_____%" and "Amount of arrearage and other charges as of the time case filed included in secured claim."

The Subcommittee concluded that Form 10 should be amended to clarify that the interest rate that must be provided in Item 4 is the rate applicable on the day that the case was filed. This information could be relevant for several purposes. First, its disclosure is necessary to determine

the basis for the calculation of the amount of the secured claim, including arrearages, as of the commencement of the case. That calculation is necessary for the audit of claims and for determining the amount of cure payments in a chapter 13 plan. Second, for oversecured claims, the interest rate as of the commencement of the case may be relevant in calculating the accrual of post-petition, pre-confirmation interest under § 506(b).

The Subcommittee also concluded that the POC should indicate whether the stated annual interest rate is fixed or variable. The existing form seems to assume a fixed rate (and thus does not currently specify the point in time for which the information is sought). But as is the case with secured tax claims, for which the interest rate changes periodically according to statute, or secured claims for which the underlying agreement provides for a variable rate, that assumption is often not correct. Requiring the creditor to indicate whether the rate is fixed or variable will provide more useful information about the secured claim.

The Subcommittee therefore recommends that in Part 4 of Form 10 the parenthetical "(at time case filed)" be inserted beneath "Annual Interest Rate____%" and that two check boxes for "Fixed" or "Variable" be added. The instructions on the back for that part of the form should also be amended to reflect these changes.

Suggested Procedure

Another change to Form 10 – the possibility of proposing an addendum for home mortgage claims – is being considered by the Forms Subcommittee and, if pursued, will not be brought forward until the spring meeting. Should the Advisory Committee approve the recommendations of the Consumer and Forms Subcommittees discussed above, the

Subcommittees suggest that those changes be held in the *Bull Pen*, along with the changes approved at the March 2009 meeting, until the spring 2010 meeting. At that time the Forms Subcommittee will present to the Advisory Committee any additional proposals for Form 10 amendments. An all-encompassing recommendation for a revision of Form 10 could then be sent forward to the Standing Committee. That timing would place the revised Form 10 on schedule to go into effect in December 2011, the same date as the effective date of amended Rule 3001(c) and new Rule 3002.1.

Attachments

B 10 (Official Form 10) (12/~~10~~11)

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):	❒ Check this box to indicate that this claim amends a previously filed claim. **Court Claim Number:** _____ (*If known*)
Name and address where notices should be sent: Telephone number:	Filed on: _____
Name and address where payment should be sent (if different from above): Telephone number:	❒ 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. ❒ 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.

❒ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

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.)

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: ❒ Real Estate ❒ Motor Vehicle ❒ 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: $**_____

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: ~~Attach~~I have attached redacted copies or an accurate summary of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. ~~You may also attach a summary.~~ If the claim is based on an open end or revolving consumer credit agreement, ~~you must~~I have attached a redacted copy of the last account statement sent to the debtor prior to the filing of the bankruptcy petition. ~~Attach~~I have attached redacted copies or an accurate summary of documents providing evidence of perfection of a security interest. ~~You may also attach a summary.~~ (*See instruction 7 and definition of "redacted" on reverse side.)*

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

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.

❒ Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

❒ Wages, salaries, or commissions (up to $10,950*) 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).

❒ Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).

❒ Up to $2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).

❒ Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).

❒ Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(__).

Amount entitled to priority:

$_____

**Amounts are subject to adjustment on 4/1/10 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 the notice address above. Attach copy of power of attorney, if any. By signing, the person filing the claim declares under penalty of perjury the information provided above is true and correct. ~~address above. Attach copy of power of attorney, if any.~~	**FOR COURT USE ONLY**

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

B 10 (Official Form 10) (12/~~10~~11) – Cont.

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. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if the trustee or another party in interest files an objection to your claim.

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~~You must 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. If the claim is based on an open end or revolving consumer credit agreement, you must attached a redacted copy of the last account statement sent to the debtor prior to the filing of the bankruptcy petition, whether it was sent by you or a prior holder of the claim. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary. FRBP 3001(c) and (d). If the claim is based on the delivery of health care goods or services, see instruction 2. Do not send original documents, as attachments may be destroyed after scanning.

Date and Signature:
The person filing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2), 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 a person, corporation, or other entity owed a debt by the debtor that arose on or before the date of the bankruptcy filing. See 11 U.S.C. §101 (10)

Claim
A claim is the creditor's right to receive payment on a debt owed by the debtor that arose on the date of the bankruptcy filing. See 11 U.S.C. §101 (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

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 to 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, individual's 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.

Evidence of Perfection

INFORMATION

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

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

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.

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.

B 10 (Official Form 10) (12/11)

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):	❒ Check this box to indicate that this claim amends a previously filed claim.
Name and address where notices should be sent: Telephone number:	**Court Claim Number:**_____ (*If known*) Filed on:_____
Name and address where payment should be sent (if different from above): Telephone number:	❒ 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. ❒ 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 the claim is secured, complete item 4.

If all or part of the claim is entitled to priority, complete item 5.

❒Check this box if the claim includes interest or other charges in addition to the principal amount of claim. Attach an itemized statement of interest or charges.

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.)

4. Secured Claim (See instruction #4 on reverse side.)
Check the appropriate box if the 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: ❒Real Estate ❒Motor Vehicle ❒Other
Describe:

Value of Property:$_____ **Annual Interest Rate**_____**%** ❒Fixed or ❒Variable
(at time case filed)

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: $**_____

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: The person completing this claim has attached redacted copies or an accurate summary of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. If the claim is based on an open end or revolving consumer credit agreement, the person completing this claim has attached a redacted copy of the last account statement sent to the debtor prior to the filing of the bankruptcy petition. The person completing this claim has attached redacted copies or an accurate summary of documents providing evidence of perfection of a security interest. (*See instruction 7 and definition of "redacted" on reverse side.)*

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❒ Wages, salaries, or commissions (up to $10,950*) 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).

❒ Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).

❒ Up to $2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).

❒ Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).

❒ Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(__).

Amount entitled to priority:

$_____

**Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

8. Signature: The person completing 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 the notice address above. Attach copy of power of attorney, if any. By signing, the person completing the claim declares under penalty of perjury the information provided above is true and correct.

Name: Date:

FOR COURT USE ONLY

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

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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, as of the date of the bankruptcy filing, annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

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.

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8. Date and Signature:
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Claim
A claim is the creditor's right to receive payment on a debt owed by the debtor that arose on the date of the bankruptcy filing. See 11 U.S.C. §101 (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 to 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, individual's 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.

Evidence of Perfection
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.

INFORMATION

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

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

Recommendations on proposed changes to Form 10, the Proof of Claim, concerning annual interest rate are included in Agenda Item 4(C).

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON FORMS

RE: RECOMMENDATION FOR CHAPTER 13 MORTGAGE PAYMENT FORMS

DATE: AUGUST 26, 2009

At the March 2009 meeting in San Diego, the Advisory Committee discussed a suggestion (08-BK-K) submitted by Bankruptcy Judges Isgur, Magner, and Bohm, which proposed two new official forms relating to home mortgages in chapter 13 cases. One form was an addendum to the proof of claim ("POC") for debts secured by home mortgages, and the other was a mortgage payment change notice. The forms were designed to provide a detailed history of the application of past payments, the assessment of charges, the placement of payments in suspense, and the handling of any escrow account. After discussion by the Advisory Committee, the suggestion was referred to the Subcommittee for further consideration.

Subsequent to the March meeting, the Bankruptcy Court for the Southern District of Texas published the proposed forms for comment on whether they should be adopted as local forms. A number of comments were submitted, including ones from mortgage servicers. In response to their comments, Judge Isgur and others engaged in discussions with some of the major servicers, which claim to service well over half of the mortgages that are in bankruptcy. As Judge Isgur describes it, "After much hard, but cooperative work by creditors, trustees and debtors, we arrived at a consensus form for further comment" as a local form in his district. With the agreement of Judges Magner and Bohm, Judge Isgur has now submitted that new form to the Advisory Committee in place of the previously submitted POC addendum form.

The revised form is proposed as an addendum to the POC. It is attached to this memorandum. The form consists of a spreadsheet that requires an itemization at the top of the form of all of the components of the claim, and then requires a detailed loan history for the three prior years. That history includes information about all payments received and how they were applied, all charges and fees assessed, disbursements from the escrow account, and amounts advanced by the servicer.

According to Judge Isgur, all of the information required is already contained in the servicers' databases and can be automatically retrieved. The servicers with whom Judge Isgur has communicated have indicated that they are hiring outside contractors to automate the forms and that they support its adoption at both the local and national level. Indeed, they prefer to have a uniform, national form, and they support Judge Isgur's effort to pursue the adoption of the revised form with the Advisory Committee.

Because Judge Isgur has not reached an agreement with the servicers concerning a mortgage payment change notice that would be appropriate as a national form, the originally submitted payment change form remains before the Committee. That form is also attached.

The Subcommittee's Consideration of the Proposed Forms

During its conference calls on July 20 and August 13, the Subcommittee carefully considered the desirability of creating national forms to assist in the implementation of the proposed amendments to Rule 3001(c) and new Rule 3002.1. Those rules are intended to require greater disclosure of information about amounts required to cure and maintain home mortgages in chapter 13 cases. The Subcommittee concluded that the promulgation of one or more uniform national forms that standardize how that information is provided would make the process more

efficient for everyone. It also acknowledged that Judge Isgur, by obtaining the agreement of a significant number of servicers for the implementation of a POC addendum form, has taken important strides toward the possible creation of such forms.

The Subcommittee discussed the proper timing for any recommendation of new mortgage payment forms. The proposed rules have just been published for comment, and comments are due in February 2010. The rules are likely to prompt a significant number of comments, and it is possible that the Advisory Committee will make some revisions to the rules at the spring 2010 meeting. If they are approved at that meeting and then sent on to the Standing Committee, they will be on track to go into effect in December 2011. The Subcommittee believes that it would be desirable to have implementing forms available as of the effective date of the amended rules, although that timing may not be possible. In order for the forms to take effect in December 2011, if they are official ones rather than Director's forms, they will need to be published for comment in August 2010. (The shorter time period results from the fact that forms do not have to be approved by the Supreme Court.) That means that the Advisory Committee would need to approve them for publication no later than next spring's meeting.

The Subcommittee considered the possibility of allowing the Bankruptcy Court for the Southern District of Texas to serve as a pilot project to see (1) if the proposed forms are approved for the district, and (2) how well they work. If the experience in the Southern District of Texas proves successful, the Subcommittee could then consider recommending the adoption of similar forms at the national level.

Following this course, however, would require delaying any recommendation for national official forms. The comment period for the proposed bankruptcy forms in the Southern District

of Texas ends on September 4, 2009. If approved, the forms will take effect in that district on April 1, 2010, which falls just a few weeks before the spring Advisory Committee meeting. There would therefore not be sufficient experience with the local forms at that point to provide a basis for Advisory Committee action.

The Subcommittee also reviewed a POC addendum form created by Bankruptcy Judge Marilyn Shea-Stonum that she has ordered Countrywide to submit with all claims it files in her district. *See* McDermott v. Countrywide Home Loans, Inc. (*In re* O'Neal), No. 07-51027 (Bankr. N.D. Ohio July 31, 2009). That form, which is attached, has the advantage of being simpler to read and understand than the Southern District of Texas addendum, but it may not be capable of automated completion.

After its discussions, the Subcommittee decided that the best course to take was to create a working group of the Subcommittee to consider in greater detail the possibility of creating a form to accompany a POC for chapter 13 home mortgage claims and a form for reporting changes in mortgage payments during the course of a chapter 13 case. The working group, consisting of Mr. Rao as chair, and Judge Wizmur, Mr. Redmiles, and Professor Gibson, will carefully review the forms submitted by Judges Isgur, Magner, and Bohm; Judge Shea-Stonum's form; and other local forms adopted by bankruptcy courts for reporting mortgage payment histories or providing notice of payment changes. Based on the recommendations of the working group, the Subcommittee will report to the Advisory Committee at the spring meeting on whether it proposes proceeding at that time with national forms to implement the requirements of Rules 3001(c) and 3002.1 with respect to home mortgages.

1	Servicer Loan #	1234567890		BK Case Num		06-12345	Servicer's Name	placeholder	For ARM loans only, the following reflects changes in principal and interest payment amounts:										
2	Borrower Name	Jane Doe		Last 4 digits of SSN		1234	Attorney Reference Number	placeholder	Date of Change	New Amount		Date of Change	New Amount		Date of Change	New Amount			
3	Is loan escrowed for insurance	Yes																	
4	Is Loan escrowed for taxes?	Yes																	
5	Principal Balance of this lien	$155,494.24		History as of Date		03/25/09	Bankruptcy Status	Active											
6	Accrued and unpaid interest																		
7	Escrow Balance	$19,167.94		Contractual Due Date		07/01/2007	Foreclosure Status	Suspended											
8	Suspense Balance	$2,156.83		Interest Rate		6.00%	Loss Mitigation Status	placeholder											
9	Corporate Advance Balance Recoverable From Borrower	$5,956.00		Funds to Be Applied		placeholder	Repayment Plan Status	placeholder											
10	Late Charge Balance	$0.00																	
11	Returned Check Balance	$0.00																	
12	Inspection/Other Fees	$0.00																	
13	Unbilled, pre-petition foreclosure and bankruptcy fees	$0.00																	
14	TOTAL TO BE SHOWN ON PROOF OF CLAIM	$182,805.01																	

	Transaction Description	Transaction Date	Loan Payment/ Contractual Due Date	Funds Received From Borrower/ Trustee/ Other	Total Payment Due/Total Payment Change	Principal Amount	Interest Amount	Escrow Amount/ Tax or Ins. Advance	Late Charge Assessed/ Waived/ Paid	Other Fees	Suspense Amount	Principal Balance	Escrow Balance/ Tax or Ins. Advance Balance	Suspense Balance	Late Charge Balance	Corporate Advance Amount Recoverable From Borrower	Servicer Advance Balance Recoverable From Borrower	Payee ID Description (If not listed, available on request)
15	Adjustment - Late Charge Assessed	03/20/2009	07/01/2007						(62.15)			155,494.24	(19,167.94)	2,156.83	(1,988.80)	0.00	(7,577.50)	
16	Payment Application	03/11/2009	07/01/2007	201.30							201.30	155,494.24	(19,167.94)	2,156.83	(1,926.65)	0.00	(7,577.50)	
17	Payment Application	03/11/2009	07/01/2007	65.65							65.65	155,494.24	(19,167.94)	1,955.53	(1,926.65)	0.00	(7,577.50)	
18	Disbursement from Escrow - Fire or Homeowners Insurance	02/27/2009						(2,062.00)				155,494.24	(19,167.94)	1,889.88	(1,926.65)	0.00	(7,577.50)	American Safeguard Insurance Co.
19	Payment Application	02/05/2009	06/01/2007			99.37	1,143.61	0.01			(1,242.99)	155,494.24	(17,105.94)	1,889.88	(1,926.65)	0.00	(7,577.50)	
20	Disbursement from Escrow - City Taxes	01/30/2009						(1,439.90)				155,593.61	(17,105.95)	3,132.87	(1,926.65)	0.00	(7,577.50)	Tax Collector, City of Abilene
21	Payment Application	01/16/2009	05/01/2007	1,640.00							1,640.00	155,593.61	(15,666.05)	3,132.87	(1,926.65)	0.00	(7,577.50)	
22	Payment Application	01/08/2009	05/01/2007			98.64	1,144.34	798.06			(2,041.04)	155,593.61	(15,666.05)	1,492.87	(1,926.65)	0.00	(7,577.50)	
23	Payment Application	12/22/2008	05/01/2007	159.28							159.28	155,692.25	(16,464.11)	3,533.91	(1,926.65)	0.00	(7,577.50)	
24	Payment Application	12/10/2008	05/01/2007	1,760.00							1,760.00	155,692.25	(16,464.11)	3,374.63	(1,926.65)	0.00	(7,577.50)	
25	Payment Application	11/18/2008	05/01/2007	226.57							226.57	155,692.25	(16,464.11)	1,614.63	(1,926.65)	0.00	(7,577.50)	
26	Corporate Advance Disbursement - Attorney Fee - Bankruptcy	11/18/2008										155,692.25	(16,464.11)	1,388.06	(1,926.65)	(100.00)	(7,577.50)	Zucker, Goldberg & Ackerman, LLC
27	Adjustment - Late Charge Assessed	11/17/2008	05/01/2007						(62.15)			155,692.25	(16,464.11)	1,388.06	(1,926.65)	0.00	(7,477.50)	
28	Payment Application	10/30/2008	04/01/2007			97.92	1,145.06	0.01				155,692.25	(16,464.11)	1,388.06	(1,864.50)	0.00	(7,477.50)	
29	Payment Application	10/30/2008	03/01/2007			97.21	1,145.77	0.01			(2,485.98)	155,790.17	(16,464.12)	1,388.06	(1,864.50)	0.00	(7,477.50)	
30	Payment Application	10/30/2008	02/01/2007			96.50	1,146.48	0.01			(1,242.99)	155,887.38	(16,464.13)	3,874.04	(1,864.50)	0.00	(7,477.50)	
31	Payment Application	10/16/2008	01/01/2007			95.79	1,147.19	0.01			(1,242.99)	155,983.88	(16,464.14)	5,117.03	(1,864.50)	0.00	(7,477.50)	
32	Reversal of Misapplied Funds	10/16/2008	01/01/2007			(95.79)	(1,147.19)	(1,373.91)			2,616.89	156,079.67	(16,464.15)	6,360.02	(1,864.50)	0.00	(7,477.50)	
33	Reversal of Misapplied Funds	10/16/2008	02/01/2007			(96.50)	(1,146.48)	(0.01)			1,242.99	155,983.88	(15,090.24)	3,743.13	(1,864.50)	0.00	(7,477.50)	
34	Payment Application	10/07/2008	02/01/2007			96.50	1,146.48	0.01				155,887.38	(15,090.23)	2,500.14	(1,864.50)	0.00	(7,477.50)	
35	Payment Application	10/07/2008	01/01/2007	4,096.00		95.79	1,147.19	1,373.91			236.12	155,983.88	(15,090.24)	2,500.14	(1,864.50)	0.00	(7,477.50)	
36	Disbursement from Escrow - City Taxes	10/06/2008						(1,310.51)				156,079.67	(16,464.15)	2,264.02	(1,864.50)	0.00	(7,477.50)	Tax Collector, City of Abilene
37	Corporate Advance Disbursement - Inspection Cost	09/16/2008										156,079.67	(15,153.64)	2,264.02	(1,864.50)	(15.00)	(7,477.50)	MCS Properties, Inc.
38	Corporate Advance Disbursement - Attorney Fee - Bankruptcy	09/08/2008										156,079.67	(15,153.64)	2,264.02	(1,864.50)	(300.00)	(7,462.50)	Zucker, Goldberg & Ackerman, LLC
39	Corporate Advance Disbursement - Attorney Cost - BK Filing Fee	09/08/2008										156,079.67	(15,153.64)	2,264.02	(1,864.50)	(150.00)	(7,162.50)	Zucker, Goldberg & Ackerman, LLC
40	Adjustment - Late Charge Assessed	08/19/2008	01/01/2007						(62.15)			156,079.67	(15,153.64)	2,264.02	(1,864.50)	0.00	(7,012.50)	
41	Disbursement from Escrow - City Taxes	08/05/2008						(1,310.52)				156,079.67	(15,153.64)	2,264.02	(1,802.35)	0.00	(7,012.50)	Tax Collector, City of Abilene
42	Corporate Advance Disbursement - BPO Cost	07/30/2008										156,079.67	(13,843.12)	2,264.02	(1,802.35)	(95.00)	(7,012.50)	Primer Real Estate Assessments
43	Payment Application	07/17/2008	12/01/2006			95.10	1,147.88	0.01				156,079.67	(13,843.12)	2,264.02	(1,802.35)	0.00	(6,917.50)	
44	Payment Application	07/17/2008	11/01/2006			94.40	1,148.58	0.01			(2,485.98)	156,174.77	(13,843.13)	2,264.02	(1,802.35)	0.00	(6,917.50)	
45	Reversal of Misapplied Funds	07/07/2008	11/01/2006			(94.40)	(1,148.58)	(798.06)			2,041.04	156,269.17	(13,843.14)	4,750.00	(1,802.35)	0.00	(6,917.50)	
46	Reversal of Misapplied Funds	07/07/2008	12/01/2006			(95.10)	(1,147.88)	(0.01)			1,242.99	156,174.77	(13,045.08)	2,708.96	(1,802.35)	0.00	(6,917.50)	
47	Corporate Advance Disbursement - Inspection Cost	06/19/2008										156,079.67	(13,045.07)	1,465.97	(1,802.35)	(15.00)	(6,917.50)	MCS Property Preservation, Inc.
48	Payment Application	06/11/2008	12/01/2006	850.00		95.10	1,147.88	0.01			(392.99)	156,079.67	(13,045.07)	1,465.97	(1,802.35)	0.00	(6,902.50)	
49	Payment Application	05/28/2008	12/01/2006	850.00							850.00	156,174.77	(13,045.08)	1,858.96	(1,802.35)	0.00	(6,902.50)	
50	Corporate Advance Refund - Inspection Fee	05/27/2008										156,174.77	(13,045.08)	1,008.96	(1,802.35)	0.00	(6,902.50)	MCS Property Preservation, Inc.
51	Corporate Advance Refund - Inspection Fee	05/27/2008										156,174.77	(13,045.08)	1,008.96	(1,802.35)	0.00	(6,902.50)	MCS Property Preservation, Inc.
52	Corporate Advance Refund - Inspection Fee	05/27/2008										156,174.77	(13,045.08)	1,008.96	(1,802.35)	0.00	(6,902.50)	MCS Property Preservation, Inc.
53	Payment Application	05/21/2008	12/01/2006	1,000.00							1,000.00	156,174.77	(13,045.08)	1,008.96	(1,802.35)	0.00	(6,902.50)	
54	Corporate Advance Disbursement - Inspection Cost	05/20/2008										156,174.77	(13,045.08)	8.96	(1,802.35)	(15.00)	(6,902.50)	MCS Property Preservation, Inc.
55	Adjustment - Late Charge Assessed	05/19/2008	12/01/2006						(62.15)			156,174.77	(13,045.08)	8.96	(1,802.35)	0.00	(6,887.50)	
56	Corporate Advance Disbursement - Inspection Cost	05/16/2008										156,174.77	(13,045.08)	8.96	(1,740.20)	(15.00)	(6,887.50)	MCS Property Preservation, Inc.
57	Payment Application	04/16/2008	11/01/2006			94.40	1,148.58	798.06			(2,041.04)	156,174.77	(13,045.08)	8.96	(1,740.20)	0.00	(6,872.50)	
58	Disbursement from Escrow - City Taxes	04/15/2008						(1,156.37)				156,269.17	(13,843.14)	2,050.00	(1,740.20)	0.00	(6,872.50)	Tax Collector, City of Abilene
59	Payment Application	04/15/2008	11/01/2006	2,050.00							2,050.00	156,269.17	(12,686.77)	2,050.00	(1,740.20)	0.00	(6,872.50)	
60	Corporate Advance Disbursement - Inspection Cost	04/11/2008										156,269.17	(12,686.77)	0.00	(1,740.20)	(15.00)	(6,857.50)	MCS Property Preservation, Inc.
61	Corporate Advance Disbursement - Attorney Fee - Bankruptcy	04/04/2008										156,269.17	(12,686.77)	0.00	(1,740.20)	(200.00)	(6,657.50)	Zucker, Goldberg & Ackerman, LLC
62	Corporate Advance Disbursement - Attorney Fee - Bankruptcy	04/01/2008										156,269.17	(12,686.77)	0.00	(1,740.20)	(500.00)	(6,657.50)	Zucker, Goldberg & Ackerman, LLC
63	Corporate Advance Disbursement - Inspection Cost	03/05/2008										156,269.17	(12,686.77)	0.00	(1,740.20)	(15.00)	(6,157.50)	MCS Property Preservation, Inc.
64	Disbursement from Escrow - Fire or Homeowners Insurance	03/04/2008						(2,094.99)				156,269.17	(12,686.77)	0.00	(1,740.20)	0.00	(6,142.50)	American Safeguard Insurance Co.
65	Late Charge Assessed	02/19/2008	11/01/2006						(62.15)			156,269.17	(10,591.78)	0.00	(1,740.20)	0.00	(6,142.50)	
66	Corporate Advance Disbursement - Inspection Cost	02/04/2008										156,269.17	(10,591.78)	0.00	(1,678.05)	(15.00)	(6,142.50)	MCS Property Preservation, Inc.
67	Adjustment - Late Charge Waived	01/31/2008	11/01/2006						62.15			156,269.17	(10,591.78)	0.00	(1,678.05)	0.00	(6,127.50)	
68	Corporate Advance Disbursement - BPO Cost	01/30/2008										156,269.17	(10,591.78)	0.00	(1,740.20)	(95.00)	(6,127.50)	Primer Real Estate Assessments
69	Disbursement from Escrow - City Taxes	01/28/2008						(1,333.41)				156,269.17	(10,591.78)	0.00	(1,740.20)	0.00	(6,032.50)	Tax Collector, City of Abilene
70	Disbursement from Escrow - City Taxes	01/28/2008						(1,370.78)				156,269.17	(9,258.37)	0.00	(1,740.20)	0.00	(6,032.50)	Tax Collector, City of Abilene
71	Disbursement from Escrow - City Taxes	01/28/2008						(1,333.40)				156,269.17	(7,887.59)	0.00	(1,740.20)	0.00	(6,032.50)	Tax Collector, City of Abilene
72	Disbursement from Escrow - City Taxes	01/28/2008						(301.07)				156,269.17	(6,554.19)	0.00	(1,740.20)	0.00	(6,032.50)	Tax Collector, City of Abilene
73	Adjustment - Late Charge Assessed	01/16/2008	11/01/2006						(62.15)			156,269.17	(6,253.12)	0.00	(1,740.20)	0.00	(6,032.50)	
74	Late Charge Assessed	01/16/2008	11/01/2006						(62.15)			156,269.17	(6,253.12)	0.00	(1,678.05)	0.00	(6,032.50)	
75	Payment Application	01/03/2008	11/01/2006								(945.24)	156,269.17	(6,253.12)	0.00	(1,615.90)	0.00	(6,032.50)	
76	Adjustment - Restricted Corporate Advance	01/03/2008										156,269.17	(6,253.12)	945.24	(1,615.90)	0.00	(6,032.50)	
77	Corporate Advance Disbursement - Inspection Cost	01/03/2008										156,269.17	(6,253.12)	945.24	(1,615.90)	(15.00)	(6,032.50)	MCS Property Preservation, Inc.
78	Payment Application	12/24/2007	11/01/2006	602.50							602.50	156,269.17	(6,253.12)	945.24	(1,615.90)	0.00	(6,017.50)	
79	Payment Application	12/24/2007	11/01/2006	130.66							130.66	156,269.17	(6,253.12)	342.74	(1,615.90)	0.00	(6,017.50)	

	Transaction Description	Transaction Date	Loan Payment Contractual Due Date	Funds Received From Borrower/ Trustee/ Other	Late Payment Due/Total Payment Charge	Principal Amount	Interest Amount	Escrow Amount/ Tax or Ins. Advance	Late Charge Assessed/ Waived/ Paid	Other Fees	Suspense Amount	Principal Balance	Escrow Balance/ Tax or Ins. Advance Balance	Suspense Balance	Late Charge Balance	Corporate Advance Amount Recoverable From Borrower	Servicer Advance Balance Recoverable From Borrower	Payee ID Description (If not listed, available on request)
80	Payment Application	12/10/2007	10/01/2006			93.71	1,149.27				(1,242.98)	156,269.17	(6,253.12)	212.08	(1,615.90)	0.00	(6,017.50)	
81	Payment Application	12/07/2007	10/01/2006	602.50							602.50	156,362.88	(6,253.12)	1,455.06	(1,615.90)	0.00	(6,017.50)	
82	Corporate Advance Disbursement - Inspection Cost	12/04/2007										156,362.88	(6,253.12)	852.56	(1,615.90)	(15.00)	(6,017.50)	MCS Property Preservation, Inc.
83	Payment Application	11/21/2007	10/01/2006	150.00							150.00	156,362.88	(6,253.12)	852.56	(1,615.90)	0.00	(6,002.50)	
84	Corporate Advance Disbursement - Inspection Cost	11/07/2007										156,362.88	(6,253.12)	702.56	(1,615.90)	(15.00)	(6,002.50)	MCS Property Preservation, Inc.
85	Payment Application	10/05/2007		586.26								156,362.88	(6,253.12)	702.56	(1,615.90)	0.00	(5,987.50)	
86	Adjustment - Restricted Corporate Advance	10/05/2007										156,362.88	(6,253.12)	702.56	(1,615.90)	0.00	(5,987.50)	
87	Payment Application	09/21/2007	10/01/2006	19.34							19.34	156,362.88	(6,253.12)	702.56	(1,615.90)	0.00	(5,987.50)	
88	Adjustment - Late Charge Assessed	09/18/2007	10/01/2006						(62.15)			156,362.88	(6,253.12)	683.22	(1,615.90)	0.00	(5,987.50)	
89	Payment Application	08/31/2007	09/01/2006			93.03	1,149.95				(1,242.98)	156,362.88	(6,253.12)	683.22	(1,553.75)	0.00	(5,987.50)	
90	Payment Application	08/27/2007	09/01/2006	602.50							602.50	156,455.91	(6,253.12)	1,926.20	(1,553.75)	0.00	(5,987.50)	
91	Adjustment - Late Charge Assessed	08/17/2007	09/01/2006						(62.15)			156,455.91	(6,253.12)	1,323.70	(1,553.75)	0.00	(5,987.50)	
92	Payment Application	08/15/2007	09/01/2006	602.50							602.50	156,455.91	(6,253.12)	1,323.70	(1,491.60)	0.00	(5,987.50)	
93	Corporate Advance Disbursement - Inspection Cost	08/02/2007										156,455.91	(6,253.12)	721.20	(1,491.60)	(15.00)	(5,987.50)	MCS Property Preservation, Inc.
94	Payment Application	07/31/2007	08/01/2006			92.35	1,150.63				(1,242.98)	156,455.91	(6,253.12)	721.20	(1,491.60)	0.00	(5,972.50)	
95	Payment Application	07/30/2007	08/01/2006	602.50							602.50	156,548.26	(6,253.12)	1,964.18	(1,491.60)	0.00	(5,972.50)	
96	Payment Application	07/24/2007	07/01/2006			91.68	1,151.30				(1,242.98)	156,548.26	(6,253.12)	1,361.68	(1,491.60)	0.00	(5,972.50)	
97	Payment Application	07/23/2007	07/01/2006	602.50							602.50	156,639.94	(6,253.12)	2,604.66	(1,491.60)	0.00	(5,972.50)	
98	Adjustment - Late Charge Assessed	07/18/2007	07/01/2006						(62.15)			156,639.94	(6,253.12)	2,002.16	(1,491.60)	0.00	(5,972.50)	
99	Payment Application	07/10/2007	07/01/2006	602.50							602.50	156,639.94	(6,253.12)	2,002.16	(1,429.45)	0.00	(5,972.50)	
100	Payment Application	06/26/2007	07/01/2006	602.50							602.50	156,639.94	(6,253.12)	1,399.66	(1,429.45)	0.00	(5,972.50)	
101	Adjustment - Late Charge Assessed	06/20/2007	07/01/2006						(62.15)			156,639.94	(6,253.12)	797.16	(1,429.45)	0.00	(5,972.50)	
102	Payment Application	06/06/2007	07/01/2006	602.50							602.50	156,639.94	(6,253.12)	797.16	(1,367.30)	0.00	(5,972.50)	
103	Corporate Advance Disbursement - Attorney Fee - Bankruptcy	05/31/2007										156,639.94	(6,253.12)	194.66	(1,367.30)	(650.00)	(5,972.50)	Zucker, Goldberg & Ackerman, LLC
104	Corporate Advance Disbursement - Attorney Cost - Bankruptcy	05/31/2007										156,639.94	(6,253.12)	194.66	(1,367.30)	(150.00)	(5,322.50)	Zucker, Goldberg & Ackerman, LLC
105	Payment Application	05/24/2007	06/01/2006			91.01	1,151.97				(1,242.98)	156,639.94	(6,253.12)	194.66	(1,367.30)	0.00	(5,172.50)	
106	Payment Application	05/22/2007	06/01/2006	602.50							602.50	156,730.95	(6,253.12)	1,437.64	(1,367.30)	0.00	(5,172.50)	
107	Disbursement from Escrow - Fire or Homeowners Insurance	05/18/2007						(2,062.00)				156,730.95	(6,253.12)	835.14	(1,367.30)	0.00	(5,172.50)	American Safeguard Insurance Co.
108	Corporate Advance Disbursement - Inspection Cost	05/17/2007										156,730.95	(4,191.12)	835.14	(1,367.30)	(15.00)	(5,172.50)	MCS Property Preservation, Inc.
109	Payment Application	05/16/2007	05/01/2006			90.34	1,152.64				(1,242.98)	156,730.95	(4,191.12)	835.14	(1,367.30)	0.00	(5,157.50)	
110	Corporate Advance Disbursement - Attorney Fee - Bankruptcy	05/14/2007										156,821.29	(4,191.12)	2,078.12	(1,367.30)	(150.00)	(5,157.50)	Zucker, Goldberg & Ackerman, LLC
111	Payment Application	05/08/2007	05/01/2006	602.50							602.50	156,821.29	(4,191.12)	2,078.12	(1,367.30)	0.00	(5,007.50)	
112	Payment Application	04/27/2007	05/01/2006	556.15							556.15	156,821.29	(4,191.12)	1,475.62	(1,367.30)	0.00	(5,007.50)	
113	Adjustment - Late Charge Assessed	04/17/2007	05/01/2006						(62.15)			156,821.29	(4,191.12)	919.47	(1,367.30)	0.00	(5,007.50)	
114	Payment Application	04/13/2007	04/01/2006			89.68	1,153.30		62.15		(1,305.13)	156,821.29	(4,191.12)	919.47	(1,305.15)	0.00	(5,007.50)	
115	Payment Application	04/10/2007	04/01/2006	556.15							556.15	156,910.97	(4,191.12)	2,224.60	(1,367.30)	0.00	(5,007.50)	
116	Corporate Advance Disbursement - Inspection Cost	04/05/2007										156,910.97	(4,191.12)	1,668.45	(1,367.30)	(15.00)	(5,007.50)	MCS Property Preservation, Inc.
117	Payment Application	03/27/2007	04/01/2006	556.15							556.15	156,910.97	(4,191.12)	1,668.45	(1,367.30)	0.00	(4,992.50)	
118	Adjustment - Late Charge Assessed	03/19/2007	04/01/2006						(62.15)			156,910.97	(4,191.12)	1,112.30	(1,367.30)	0.00	(4,992.50)	
119	Payment Application	03/15/2007	04/01/2006	556.15							556.15	156,910.97	(4,191.12)	1,112.30	(1,305.15)	0.00	(4,992.50)	
120	Corporate Advance Disbursement - Inspection Cost	03/07/2007										156,910.97	(4,191.12)	556.15	(1,305.15)	(15.00)	(4,992.50)	MCS Property Preservation, Inc.
121	Payment Application	02/27/2007	04/01/2006	556.15							556.15	156,910.97	(4,191.12)	556.15	(1,305.15)	0.00	(4,977.50)	
122	Corporate Advance Disbursement - Attorney Fee - Bankruptcy	01/09/2007										156,910.97	(4,191.12)	(0.00)	(1,305.15)	(200.00)	(4,977.50)	Zucker, Goldberg & Ackerman, LLC
123	Corporate Advance Disbursement - Inspection Cost	12/18/2006										156,910.97	(4,191.12)	(0.00)	(1,305.15)	(15.00)	(4,777.50)	MCS Property Preservation, Inc.
124	Late Charge Assessed	11/16/2006	04/01/2006						(62.15)			156,910.97	(4,191.12)	(0.00)	(1,305.15)	0.00	(4,762.50)	
125	Corporate Advance Disbursement - Inspection Cost	11/13/2006										156,910.97	(4,191.12)	(0.00)	(1,243.00)	(15.00)	(4,762.50)	MCS Property Preservation, Inc.
126	Corporate Advance Disbursement - BPO Cost	10/30/2006										156,910.97	(4,191.12)	(0.00)	(1,243.00)	(95.00)	(4,747.50)	Primer Real Estate Assessments
127	Corporate Advance Disbursement - Attorney Cost - Tax Search	10/18/2006										156,910.97	(4,191.12)	(0.00)	(1,243.00)	(190.00)	(4,652.50)	Federman & Phelan, LLP
128	Corporate Advance Disbursement - Attorney Cost - Service	10/18/2006										156,910.97	(4,191.12)	(0.00)	(1,243.00)	(132.50)	(4,552.50)	Federman & Phelan, LLP
129	Corporate Advance Disbursement - Attorney Cost - Recording	10/18/2006										156,910.97	(4,191.12)	(0.00)	(1,243.00)	(125.00)	(4,420.00)	Federman & Phelan, LLP
130	Late Charge Assessed	10/16/2006	04/01/2006						(62.15)			156,910.97	(4,191.12)	(0.00)	(1,243.00)	0.00	(4,295.00)	
131	Corporate Advance Disbursement - Attorney Cost - Sheriff Depo	10/16/2006										156,910.97	(4,191.12)	(0.00)	(1,180.85)	(1,000.00)	(4,295.00)	Federman & Phelan, LLP
132	Corporate Advance Disbursement - Attorney Fee - Foreclosure	10/16/2006										156,910.97	(4,191.12)	(0.00)	(1,180.85)	(175.00)	(3,295.00)	Federman & Phelan, LLP
133	Corporate Advance Disbursement - Attorney Fee - Foreclosure	10/16/2006										156,910.97	(4,191.12)	(0.00)	(1,180.85)	(520.00)	(3,120.00)	Federman & Phelan, LLP
134	Corporate Advance Disbursement - Inspection Cost	10/06/2006										156,910.97	(4,191.12)	(0.00)	(1,180.85)	(15.00)	(2,600.00)	MCS Property Preservation, Inc.
135	Corporate Advance Disbursement - BPO Cost	09/29/2006										156,910.97	(4,191.12)	(0.00)	(1,180.85)	(95.00)	(2,585.00)	Primer Real Estate Assessments
136	Disbursement from Escrow - City Taxes	09/22/2006						(1,411.66)				156,910.97	(4,191.12)	(0.00)	(1,180.85)	0.00	(2,490.00)	Tax Collector, City of Abilene
137	Disbursement from Escrow - City Taxes	09/22/2006						(1,239.99)				156,910.97	(2,779.46)	(0.00)	(1,180.85)	0.00	(2,490.00)	Tax Collector, City of Abilene
138	Disbursement from Escrow - City Taxes	09/22/2006						(1,411.66)				156,910.97	(1,539.47)	(0.00)	(1,180.85)	0.00	(2,490.00)	Tax Collector, City of Abilene
139	Disbursement from Escrow - City Taxes	09/22/2006						(127.81)				156,910.97	(127.81)	(0.00)	(1,180.85)	0.00	(2,490.00)	Tax Collector, City of Abilene
140	Late Charge Assessed	09/18/2006	04/01/2006						(62.15)			156,910.97	0.00	(0.00)	(1,180.85)	0.00	(2,490.00)	
141	Corporate Advance Disbursement - Inspection Cost	09/07/2006										156,910.97	0.00	(0.00)	(1,118.70)	(15.00)	(2,490.00)	MCS Property Preservation, Inc.
142	Corporate Advance Disbursement - Attorney Cost - Tax Search (	08/18/2006										156,910.97	0.00	(0.00)	(1,118.70)	(25.00)	(2,475.00)	Federman & Phelan, LLP
143	Corporate Advance Disbursement - Attorney Cost - Skip Trace	08/18/2006										156,910.97	0.00	(0.00)	(1,118.70)	(300.00)	(2,450.00)	Federman & Phelan, LLP
144	Corporate Advance Disbursement - Attorney Cost - Service	08/18/2006										156,910.97	0.00	(0.00)	(1,118.70)	(552.65)	(2,150.00)	Federman & Phelan, LLP
145	Late Charge Assessed	08/16/2006	04/01/2006						(62.15)			156,910.97	0.00	(0.00)	(1,118.70)	0.00	(1,597.35)	
146	Corporate Advance Disbursement - Attorney Cost - Title Search	08/11/2006										156,910.97	0.00	(0.00)	(1,056.55)	(425.00)	(1,597.35)	Federman & Phelan, LLP
147	Corporate Advance Disbursement - Attorney Cost - Tax Search	08/11/2006										156,910.97	0.00	(0.00)	(1,056.55)	(75.00)	(1,172.35)	Federman & Phelan, LLP
148	Corporate Advance Disbursement - Attorney Cost - Service	08/11/2006										156,910.97	0.00	(0.00)	(1,056.55)	(107.35)	(1,097.35)	Federman & Phelan, LLP
149	Corporate Advance Disbursement - Attorney Cost - Lis Pendens	08/11/2006										156,910.97	0.00	(0.00)	(1,056.55)	(40.00)	(990.00)	Federman & Phelan, LLP
150	Corporate Advance Disbursement - Attorney Cost - Filing Fee	08/11/2006										156,910.97	0.00	(0.00)	(1,056.55)	(200.00)	(950.00)	Federman & Phelan, LLP
151	Corporate Advance Disbursement - Attorney Fee - Foreclosure	08/11/2006										156,910.97	0.00	(0.00)	(1,056.55)	(100.00)	(750.00)	Federman & Phelan, LLP
152	Corporate Advance Disbursement - Attorney Fee - Foreclosure	08/11/2006										156,910.97	0.00	(0.00)	(1,056.55)	(650.00)	(650.00)	Federman & Phelan, LLP
153	Late Charge Assessed	07/11/2006	04/01/2006						(62.15)			156,910.97	0.00	(0.00)	(1,056.55)	0.00	0.00	
154	Reversal of Returned Check	07/11/2006	04/01/2006	(1,242.98)		(89.68)	(1,153.30)					156,910.97	0.00	(0.00)	(994.40)	0.00	0.00	
155	Payment Application	06/23/2006	04/01/2006	1,242.98		89.68	1,153.30					156,821.29	0.00	(0.00)	(994.40)	0.00	0.00	
156	Late Charge Assessed	06/18/2006	04/01/2006						(62.15)			156,910.97	0.00	(0.00)	(994.40)	0.00	0.00	

IN THE UNITED STATES BANKRUPTCY COURT

In re

Debtor(s)

Case No

Official Form _____

Statement by Lender of Mortgage Payment Change
On Claim Secured Solely by a Security Interest On the Debtor's Principal Residence

Section 1 Background Information

1	A	Lender name	
	B	Lender address to which notices should be sent	
	C	Lender address to which payments should be sent	
	D	Last four digits of any number by which creditor identifies debtor	
	E	Debtor's Name	
	F	Case Number	
	G	Court	

Section 2 Loan Information

2	A	Original Amount of Loan			
	B	If mortgage payment change is solely based on an escrow change, enter the interest rate and monthly payment	Rate	Payment	
	C	Original Date of Loan	Month	Day	Year
			12	1	2000
	D	Effective Date of Proposed Payment Change	Month	Day	Year
			12	1	2000
	E	Date through which the attached loan history is current	Month	Day	Year
			12	1	2000
	F	Escrow deposit at closing			
	G	Last date of each month on which payment can be made without penalty	10		

			Narrative Description of Method of selecting Rate or Date, summarized from Loan Documents	Amount
	H	Reference rate contained in loan for resetting of payment amount		0.0000%
	I	Reference date contined in loan documents for resetting payment amount		12/1/2000
	J	Add on Percentage contained in loan documents for resetting payment amount		0.0000%
	K	Number of months of amortization for payment reset		1
	L	Loan balance at reset date		$0.00
	M	New monthly principal payment		$0.00

Section 3 Escrow Information

FORECAST ESCROW DISBURSEMENTS BETWEEN 12/1/2000 AND 1/30/2002

		Date of Forecast Disbursement								
		Month	Day	Year	Amount	Purpose	Date for Reserve Purposes	# of Expected Deposits	Required Reserve at Reset Date	Amounts Due Within One Year
3	A									
	B									
	C									
	D									
	E									
	F									
	G									
	H									
	I									
	K									
	L									
	M					TOTAL			$0.00	$0.00

	N	Required Escrow Reserves at	12/1/2000	$0.00
	O	Balance in Escrow Account at	12/1/2000	$0.00
	P	Escrow Deficiency at	12/1/2000	$0.00
	Q	Initial escrow arrears payable through plan		$0.00
	R	Escrow arrears plan payments received as of	12/1/2000	$0.00
	S	Balance in escrow acount adjusted for amount of unpaid prepetition arrears		$0.00
	S	Monthly Escrow Deposit		$0.00
	T	**TOTAL MONTHLY PAYMENT**		$0.00
	U	Lender address to which payment should be sent		

Section 4 Signature Information

Date signed _____ Signature _____

Printed Name and Title of Signer _____

A COMPLETE LOAN HISTORY, IN THE OFFICIAL FORM, MUST BE ATTACHED

(Click on Arrow Below to Complete Loan History)

IN THE UNITED STATES BANKRUPTCY COURT
Southern District of Texas--Houston Division

In re John and Mary Debtor § Case No 08-99111
Debtor(s) §

Official Form _____
Statement by Lender of Mortgage Payment Change
On Claim Secured Solely by a Security Interest On the Debtor's Principal Residence

Section 1 Background Information

1	A	Lender name	Acme Mortgage and Loan
	B	Lender address to which notices should be sent	111 Main Street, Houston, Texas 77002
	C	Lender address to which payments should be sent	P O Box 1234, Nashville, TN 32222
	D	Last four digits of any number by which creditor identifies debtor	9911
	E	Debtor's Name	John and Mary Debtor
	F	Case Number	08-99111
	G	Court	Southern District of Texas--Houston Division

Section 2 Loan Information

2	A	Original Amount of Loan	$150,000 00		
	B	If mortgage payment change is solely based on an escrow change enter the interest rate and monthly payment	Rate	Payment	
	C	Original Date of Loan	Month 8 / Day 15 / Year 2007		8/15/2007
	D	Effective Date of Proposed Payment Change	Month 2 / Day 1 / Year 2009		2/1/2009
	E	Date through which the attached loan history is current	Month 12 / Day 31 / Year 2008		12/31/2008
	F	Escrow deposit at closing	$800 00		
	G	Last date of each month on which payment can be made without penalty	10		

		Narrative Description of Method of selecting Rate or Date, summarized from Loan Documents	Amount
	H	Reference rate contained in loan for resetting of payment amount	LIBOR 3 2500%
	I	Reference date contained in loan documents for resetting payment amount	Every 6 months starting 2/1/2009 2/1/2009
	J	Add on Percentage contained in loan documents for resetting payment amount	2 3750%
	K	Number of months of amortization for payment reset	348
	L	Loan balance at reset date	$148,317 46
	M	New monthly principal payment	$1,059 31

Section 3 Escrow Information

FORECAST ESCROW DISBURSEMENTS BETWEEN 12/31/2008 AND 3/1/2010

		Date of Forecast Disbursement: Month	Day	Year	Amount	Purpose	Date for Reserve Purposes	# of Expected Deposits	Required Reserve at Reset Date	Amounts Due Within One Year
3	A	3		2009	$2,500 00	Ad Valorem Taxes	1/16/2008	0	$2,500 00	$2,500 00
	B	13	15	2009	$800 00	Insurance	4/16/2009	3	$600 00	$800 00
	C		15	2009	$800 00	Insurance	10/16/2009	9	$200 00	$800 00
	D									
	E									
	F									
	G									
	H									
	I									
	K									
	L									
	M					TOTAL			$3,300 00	$4,100 00

	N	Required Escrow Reserves at	12/31/2008	$3,300 00
	O	Balance in Escrow Account at	12/31/2008	$0 00
	P	Escrow Deficiency at	12/31/2008	$3,300 00
	Q	Initial escrow arrears payable through plan		$3,791 67
	R	Escrow arrears plan payments received as of	12/31/2008	$500 00
	S	Balance in escrow account adjusted for amount of unpaid, prepetition arrears		$3,291 67
	S	Monthly Escrow Deposit		$342 36
	T	TOTAL MONTHLY PAYMENT		$1,401 67
	U	Lender address to which payment should be sent		P O Box 1234, Nashville, TN 32222

Section 4 Signature Information

Date signed 1/01/09 Signature
Printed Name and Title of Signer John Doe, Vice President

A COMPLETE LOAN HISTORY, IN THE OFFICIAL FORM, MUST BE ATTACHED

(Click on Green Tab Below to Complete Loan History)

Period	Beginning of pay period	End of Pay period	Contract Interest Rate on Loan This Period	Contractually Due Principal and Interest this Period	Total Payments Received this Period	Escrow arrears as of petition date	Payment Applied to Escrow Arrears	Payment Applied to Escrow	Legal Fees Charged to account	Appraisal Fees charged to account	Late fees charged to account	Inspection fees charged to account	Other Charges against account (attach detail)	Interest charged to account	Applied (advanced) to principal	Escrow Disbursement for Taxes	Escrow Disbursement for Insurance	Other Escrow Disbursements (attach detail)	Contractual Principal Balance if all Payments Had Been Made per Contract	Actual Principal Balance	Actual Cash Balance in Escrow
1	8/15/2007	10/10/2007	8.0000%	$1,100.00	$1,400.00	$3,791.67	$0.00	$300.00	$0.00	$0.00	$0.00	$0.00	$0.00	$1,000.00	$100.00	$0.00	$0.00	$0.00	$149,900.00	$149,900.00	$1,100.00
2	10/11/2007	11/10/2007	8.0000%	$1,100.00	$1,400.00			$300.00						$999.33	$100.67				$149,799.33	$149,799.33	$1,400.00
3	11/11/2007	12/10/2007	8.0000%	$1,100.00	$1,400.00			$300.00						$998.66	$101.34				$149,698.00	$149,698.00	$1,700.00
4	12/11/2007	1/10/2008	8.0000%	$1,100.00	$1,400.00			$300.00						$997.99	$102.01	$2,500.00			$149,595.98	$149,595.98	-$500.00
5	1/11/2008	2/10/2008	8.0000%	$1,100.00	$1,400.00			$300.00						$997.31	$102.69		$500.00		$149,493.29	$149,493.29	-$700.00
6	2/11/2008	3/10/2008	8.0000%	$1,100.00	$1,400.00			$300.00						$996.62	$103.38				$149,389.91	$149,389.91	-$400.00
7	3/11/2008	4/10/2008	8.0000%	$1,100.00	$1,400.00			$300.00						$995.93	$104.07				$149,285.84	$149,285.84	-$100.00
8	4/11/2008	5/10/2008	8.0000%	$1,100.00	$1,400.00			$300.00						$995.24	$104.76		$500.00		$149,181.08	$149,181.08	-$300.00
9	5/11/2008	6/10/2008	8.0000%	$1,100.00	$800.00					$25.00	$15.00			$994.54	-$194.54				$149,075.62	$149,375.62	-$300.00
10	6/11/2008	7/10/2008	8.0000%	$1,100.00						$25.00	$15.00			$995.84	-$1,035.84				$148,969.46	$150,411.46	-$300.00
11	7/11/2008	8/10/2008	8.0000%	$1,100.00				$500.00	$350.00	$25.00	$15.00			$1,002.74	-$1,892.74				$148,862.59	$152,304.20	$200.00
12	8/11/2008	9/10/2008	8.0000%	$1,100.00	$600.00					$25.00	$30.00			$1,015.36	-$440.36				$148,755.01	$152,744.56	$200.00
13	9/11/2008	10/10/2008	8.0000%	$1,100.00						$25.00	$30.00			$1,018.30	-$1,073.30				$148,646.71	$153,817.86	$200.00
14	10/11/2008	11/10/2008	8.0000%	$1,100.00										$1,025.45	-$1,025.45				$148,537.69	$154,843.31	$200.00
15	11/11/2008	12/10/2008	8.0000%	$1,100.00	$1,650.00			$250.00	$300.00					$1,032.29	$67.71				$148,427.94	$154,775.60	$500.00
16	12/11/2008	1/10/2009	8.0000%	$1,100.00	$1,650.00			$250.00	$300.00					$1,031.84	$68.16		$800.00		$148,317.46	$154,707.44	$0.00
17	1/11/2009	2/1/2009	8.0000%	$1,100.00										$1,031.38	-$1,031.38				$148,208.24	$155,738.82	$0.00

Instructions for Completion of Notice of Mortgage Payment Change

1 Download the Excel file to your computer and save the file before using it.

2. To move through the areas on the form, please complete the requested information and then press TAB. You need only complete the shaded areas. Other areas of the form will be automatically completed by the computer.

3 Complete page one of the form first

4 When completing section 2, please complete section 2B only if the payment change is based solely on an escrow payment adjustment If you complete section 2B, the form will instruct you NOT to complete sections H and I.

5. When completing section 3, please include only forecast disbursements for the requested time period set forth on the form. Do NOT include a RESPA reserve The form will calculate a RESPA reserve. Include all forecast escrow disbursements, whether or not cash is available in the escrow account

6. When page one is complete, click on the green Excel worksheet tab at the bottom of the page. The tab reads "Loan History". Clicking on this tab will take you to page 2

7 Page 2 is a loan history. The date ranges on the loan history are automatically created based on the information completed on page 1. When placing data onto the loan history, it should be placed in the time period in which the transaction actually occurred. For example, if a payment was received by the lender on April 15, but applied by the lender to a payment due on February 1, the payment should be shown only in the April 15 date range and should not be shown on February 1. The entire loan history must be completed from the commencement of the loan. If no data is placed in a field, the computer will treat the amount as $0.00 Accordingly, you need not place $0.00 in a field if there was no activity.

8. When completing the loan history, the form will require you to state the initial interest rate and the initial contractual payment amount. For convenience, the computer will assume that these amounts do not change. However, you should change these amounts as appropriate to reflect the contracts between the parties.

9. The data from page 2 is used by the computer to complete the calculations on page 1.

10. When the loan history is completed, click on the red Excel worksheet tab at the bottom of the page The tab reads "Cover Sheet". Clicking on this tab will take you to page 1.

11. The form is now complete. You may print the form or review it on your screen. Print page 1 from page 1 Print page 2 by clicking on the green tab and then printing

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION AT AKRON

In re:	)	Case No. <00-00000>
	)	
<NAME OF DEBTOR(S)>,	)	Chapter < 7 > < 11 > < 13 >
	)	
Debtor(s).	)	Judge Shea-Stonum
	)	
	)	ADDENDUM TO PROOF OF CLAIM

I. LOAN DATA

A. IDENTIFICATION OF COLLATERAL (check all that apply):

☐ Real Estate <ADDRESS>

☐ Residential
☐ Commercial

B. VALUE OF COLLATERAL: _____

C. SOURCE OF COLLATERAL VALUATION: _____

D. ORIGINAL LENDER: _____

E. CURRENT NOTE HOLDER OR NON-HOLDER WITH THE RIGHTS OF A HOLDER: _____

F. CURRENT LOAN SERVICER: _____.

BUSINESS CONTACT: _____

Telephone Number: _____

Fax Number: _____

E-mail: _____.

Payments should be made payable to: _____.

Address to which payments are to be sent: _____.

NAME OF CREDITOR'S ATTORNEY: _____

Telephone Number: _____

Fax Number: _____

E-mail:_____

G. DATE OF LOAN: _____

H. ORIGINAL PRINCIPAL AMOUNT DUE UNDER NOTE:_____

I. ORIGINAL INTEREST RATE ON NOTE: _____

☐ Fixed

☐ Adjustable

J. CURRENT INTEREST RATE: _____

☐ Fixed

☐ Adjustable

K. ORIGINAL MONTHLY PAYMENT AMOUNT: _____

L. CURRENT MONTHLY PAYMENT AMOUNT: _____

M. THE MONTHLY PAYMENT <INCLUDES AN ESCROW AMOUNT OF $_____ FOR REAL ESTATE TAXES, PROPERTY INSURANCE, OTHER> OR < DOES NOT INCLUDE AN ESCROW AMOUNT>.

N. DATE LAST PAYMENT RECEIVED: _____

O. AMOUNT OF LAST PAYMENT RECEIVED: _____

P. AMOUNT HELD IN SUSPENSE ACCOUNT:_____

Q. NUMBER OF PAYMENTS DUE: _____

II. AMOUNT ALLEGED TO BE DUE AS OF THE PETITION DATE

	Description of Charge (attach invoice and proof of payment for items H through K)	Total Amount of Charges	Number of Charges Incurred	Dates Charges Incurred
A.	PRINCIPAL	$		
B.	INTEREST	$		

EXHIBIT A

C.	TAXES	$		
D.	INSURANCE	$		
E.	LATE FEES	$		
F.	NON-SUFFICIENT FUNDS FEES	$		
G.	PAY-BY-PHONE FEES	$		
H.	BROKER PRICE OPINIONS	$		
I.	FORCE-PLACED INSURANCE	$		
J.	PROPERTY INSPECTIONS	$		
K.	OTHER CHARGES (describe in detail and state contractual basis for recovering the amount from the debtor)	$		

TOTAL OF PRE-PETITION DEBT: $_____

III. AMOUNT OF ALLEGED POST-PETITION DEFAULT

	Description of Charge (attach invoice and proof of payment for items H through K)	Total Amount of Charges	Number of Charges Incurred	Dates Charges Incurred
A.	PRINCIPAL	$		
B.	INTEREST	$		
C.	TAXES	$		
D.	INSURANCE	$		
E.	LATE FEES	$		
F.	NON-SUFFICIENT FUNDS FEES	$		
G.	PAY-BY-PHONE FEES	$		
H.	BROKER PRICE OPINIONS	$		
I.	FORCE-PLACED INSURANCE	$		

J.	PROPERTY INSPECTIONS	$		
K.	OTHER CHARGES (describe in detail and state the contractual basis for recovering the amount from the debtor)	$		

TOTAL OF POST-PETITION DEBT: $_____

IV. TOTAL INDEBTEDNESS

A. TOTAL PRE-PETITION DEBT (from section II): $_____

B. TOTAL POST-PETITION DEBT (from section III): $_____

C. LESS AMOUNT HELD IN SUSPENSE: $_____

TOTAL PRE-PETITION AND POST-PETITION INDEBTEDNESS OF DEBTOR(S) OWED TO MOVANT AS OF THE DATE OF THIS MOTION, <DATE>: $_____

V. AN ITEMIZED, PLAIN ENGLISH PAYMENT HISTORY FROM THE INCEPTION OF THE LOAN FORWARD IS ATTACHED TO THIS WORKSHEET AS EXHIBIT 1.

This Worksheet was prepared by:

_____

<Signature>
<Name>
<Title>
<Street Address>
<City, State and Zip Code>
<Phone Number>

Court name _____

If You Are an Individual Filing for Bankruptcy

United States Bankruptcy Court 2009

About Your Petition

Use this package of forms to file for bankruptcy if you are an individual and are filing by yourself or with your spouse because most of the debts you owe are for personal, family, or household purposes. When you submit these forms, the court opens your case and reviews your information. Since filing for bankruptcy is a serious action, it is important that you give complete and accurate answers. Note that you may change your petition any time before your case closes.

Please understand that filing a bankruptcy case is a public transaction. That means that anyone has a right to see your petition after you file it. Also, because bankruptcy can have severe results, you should carefully consider all of your options first.

Important	**Because bankruptcy can have severe results, including loss of your property, you should carefully consider all of your options before you file. A lawyer can explain to you what can happen as a result of filing for bankruptcy and what your options are. If you file for bankruptcy, a lawyer can help protect you, your family, and your possessions.**

Before you file this petition, you must do several things:

Find out in which district bankruptcy court you must file your petition. To find the court near you, go to http://www.uscourts.gov/courtlinks.

Contact the clerk's office of that court for any specific requirements that you might have to meet.

Receive counseling about credit from an approved agency within 180 days before you file. You may have the credit briefing one-on-one or in a group, by telephone or by internet. After you finish the counseling, you will receive a certificate which you should include in your petition package. For a list of approved providers, go to http://www.uscourts.gov/bankruptcycourts/approvedagencies.html.

When you file this petition, you must include several items in your petition package to open your bankruptcy case:

Voluntary Petition for Individuals Filing for Bankruptcy (Official Form 1).

Statement of Social Security Number (Official Form 21) to give us your full Social Security number privately.

Schedule of Assets and Liabilities (Official Form 6).

Names and addresses of all of your creditors, formatted as a mailing list according to instructions from your district court. (Your court may call this a *creditor matrix.*)

Credit counseling certificate that you received from the credit counseling agency.

Your filing fee. If you cannot pay the entire filing fee, you must also include either:

- *Application to Pay Filing Fee in Installments* (Official Form 3A), or
- *Application for Waiver of Chapter 7 Filing Fee* (Official Form 3B) if you are filing under Chapter 7.

Also, either when you file or within 15 days after you file your petition, you must file these forms to complete your package. The list shows common forms that any individual must file as well as forms that are specific to each chapter. You must include all of the common forms in your package. If a form does not apply to you, write *Does not apply* and sign it. For a copy of the official forms, go to http://www.uscourts.gov/bkforms/bankruptcy_forms.html#official.

For any individual who files for bankruptcy:

Statement of Financial Affairs (Official Form 7)

Summary of Schedules (Official Form 6)

Schedule A, Real Property (Official Form 6A)

Schedule B, Personal Property (Official Form 6B)

Schedule C, Property Claimed as Exempt (Official Form 6C)

Schedule D, Creditors Holding Secured Claims (Official Form 6D)

Schedule E, Creditors Holding Unsecured Priority Claims (Official Form 6E)

Schedule F, Creditors Holding Unsecured Non-Priority Claims (Official Form 6F)

Schedule G, Executory Contracts and Unexpired Leases (Official Form 6G)

Schedule H, Co-debtors (Official Form 6H)

Schedule I, Current Income of Individual Debtors (Official Form 6I)

Schedule J, Current Expenditures of Individual Debtors (Official Form 6J)

Declaration Concerning Debtor's Schedules (Official Form 6)

Attorney's Disclosure of Compensation (Official Form 6B)

Notice to Consumer Debtors Under § 342(b) of the Bankruptcy Code (Official Form B201)

If you file under Chapter 7:

Chapter 7 Individual Debtor's Statement of Intention (Official Form 8) — if you're filing under Chapter 7

Chapter 7 Statement of Current Monthly Income and Means-Test Calculation (Official Form 22A)

If you file under Chapter 11:

List of Creditors Holding 20 Largest Unsecured Claim (Official Form F)

Chapter 11 Statement of Current Monthly Income (Official Form 22B)

If you file under Chapter 13

Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income (Official Form 22C)

When you file for bankruptcy, you must have the original plus two copies of this petition package and all attachments. Be sure to make a copy of your paperwork for your records before you file it.

Court name _____

Official Form 1

Voluntary Petition for Individuals Filing for Bankruptcy

United States Bankruptcy Court 2009

If you need more space, attach a separate sheet to this package. Be sure to write your name on any pages you add. If any question does not apply to you, leave it blank.

Part 1: Tell us about yourself and your spouse if your spouse is filing with you

	About you:	About your spouse if your spouse is filing with you:
1. Your name	First name Middle Last	First name Middle Last
2. All other names you have used in the last 8 years Include your married or maiden names.	First name Middle Last First name Middle Last	First name Middle Last First name Middle Last
3. Where you live	Number Street City State ZIP Code County ( ) _____ – _____ Daytime phone ( ) _____ – _____ Cell phone	**If your spouse lives at a different address:** Number Street City State ZIP Code County ( ) _____ – _____ Daytime phone ( ) _____ – _____ Cell phone
	If your mailing address is different from the one above, fill it in here. Note that the court will send any notices to you at this mailing address. Number Street City State ZIP Code	**If your spouse's mailing address is different from yours, fill it in here.** Note that the court will send any notices to this mailing address. Number Street City State ZIP Code

	About you:	About your spouse if your spouse is filing with you:
	Have you lived in this district for at least 180 days before filing this petition? Yes No. Do not file your petition in the court for this district. Instead, file it where you lived before.	**Has your spouse lived in this district for at least 180 days before filing this petition?** Yes No. Do not file your petition in the court for this district. Instead, file it where you lived before.
4. Last 4 digits of your Social Security number	xxxx – xx – ____ ____ ____ ____ You must also fill out and attach a *Statement of Social Security Number* (Official Form B21) to tell us your entire Social Security number. We will keep that form confidential.	xxxx – xx – ____ ____ ____ ____ Your spouse must also fill out and attach a *Statement of Social Security Number* (Official Form B21) to tell us the entire Social Security number. We will keep that form confidential.

Part 2: Tell us about your case for bankruptcy

5. Why you are filing for bankruptcy

Optional

You lost your job or your income.
You can't pay your medical bills.
You can't pay all your credit card bills.
You can't pay all your utility bills.
You are facing foreclosure on your home.
You've had a court judgment against you to garnish your wages.
You need to adjust your mortgage.
Your vehicle is going to be repossessed.
Your business failed.
A fire, flood, or other disaster destroyed your property.
Other _____

6. Do you own a business?

Yes. Business name _____

Address _____
Number Street

_____ _____ _____
City State ZIP Code

Type of business _____

No

7. Your choice of relief

The Chapter of the Bankruptcy Code you want to file under

Chapter 7 — to liquidate and sell some of your property to pay what you owe

Chapter 11 — if you are a business, to reorganize your debts to pay what you owe (In some cases, if you are an individual consumer, you may be able to file under Chapter 11. However, this choice is usually too expensive for individuals.)

Chapter 12 — if most of your debts are from operating a family farm or a family fishery and you want to create a plan to pay what you owe over time

Chapter13 — to reorganize your debts and create a plan to pay what you owe over time

8. How you will pay the fee

If you file under Chapter ...	Your total fee is...
7	$299
11	$1.039
12	$239
13	$274

You will pay the entire fee when you file your petition. If you are paying the fee yourself, you may pay with cash, cashier's check, or money order. If your lawyer is paying for you, your lawyer may pay with a credit card or check with a pre-printed address.

You want to pay the fee in installments. If you choose this option, sign and attach the *Application to Pay Filing Fee in Installments* (Official Form 3A).

You request that your fee be waived (You may request this option only if you are filing for Chapter 7). If you choose this option, sign and attach the *Application for Waiver of Chapter 7 Filing Fee* (Official Form 3B).

9. Have you filed for bankruptcy within the last 8 years?

Yes. District _____ When ___/___/____ Case number _____
District _____ When ___/___/____ Case number _____
District _____ When ___/___/____ Case number _____

No

10. Are any bankruptcy cases pending that a spouse, partner, or affiliate filed?

Yes. Debtor _____ Relationship to you _____
District _____ When ___/___/____ Case number _____
Judge _____

Debtor _____ Relationship to you _____
District _____ When ___/___/____ Case number _____
Judge _____

No

11. Are you renting your home?

Yes. Check all that apply:

Your landlord has a judgment against you to possess your home.

Landlord's name _____

Landlord's address _____
Number Street

_____ _____ _____
City State ZIP Code

You claim that you have the right to stay in your rented home by paying your landlord the entire amount you owe as determined under the state or other nonbankruptcy law that applies to the judgment for possession.

With this petition, you have included the rent deposit that would be due during the 30 days after you file this petition.

You have served the landlord with this certification.

No. I own my home.

No. Other _____

Part 3: Tell us about any harmful property you may own

12. Do you own or have any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety?

Yes. What is it? _____

_____

Where is it? _____

No

Part 4: Tell us about your efforts to receive credit counseling. You MUST fill out this part.

The law requires that you receive credit counseling before you file for bankruptcy. You must truthfully check one of the following choices. If you cannot do so, you are not eligible to file.

If you file anyway, the court can dismiss your case, you will lose whatever filing fee you paid, and your creditors can begin collection activities again.

You received a briefing from an approved credit counseling agency within the 180 days before you filed your bankruptcy case and you received a certificate of completion.

Attach a copy of the certificate and a copy of any payment plan you developed with the agency.

You received a briefing from an approved credit counseling agency within the 180 days before you filed your case, but you do not have a certificate of completion.

Within15 days after you file your petition, you MUST file a copy of the certificate and any payment plan.

You asked for credit counseling services from an approved agency, but were unable to use those services during the 5 days between when you made your request and the following circumstances that merit a temporary waiver of the requirement.

Why should you receive a temporary waiver? _____

_____

You are not required to receive credit counseling because of:

Incapacity. You have a mental illness or a mental deficiency that makes you incapable of realizing or making rational decisions about finances.

Disability. Your physical disability causes you to be unable to participate in credit counseling in person, by phone, or through the internet, even after you reasonably tried to do so.

Active duty. You are currently on active military duty in a military combat zone.

Part 5: Answer these administrative questions for our records

13. Do you estimate that you will have funds available to pay unsecured creditors?

Yes. I will probably have funds available to pay unsecured creditors.

No. After any exempt property is excluded and administrative expenses paid, I will probably have no funds available to pay to unsecured creditors.

14. How many creditors do you estimate that you owe?

1-49	5,001-10,000
50-99	10,001-25,000
100-199	25,001-50,000
200-999	50,001-100,000
1,000-5,000	More than 100,000

15. How much do you estimate your assets to be worth?

$0-$50,000	$10,000,001-$50 million
$50,001-$100,000	$50,000,001-$100 million
$100,001-$500,000	$1,000,000,001-$500 million
$500,001-$1 million	$500,000,001-$1 billion
$1,000,001-$10 million	More than $1 billion

16. How much do you estimate your liabilities to be?

$0-$50,000	$10,000,001-$50 million
$50,001-$100,000	$50,000,001-$100 million
$100,001-$500,000	$1,000,000,001-$500 million
$500,001-$1 million	$500,000,001-$1 billion
$1,000,001-$10 million	More than $1 billion

Part 6: Sign here

For you

I declare under penalty of perjury that the information provided in this petition is true and correct.

If you have chosen to file under Chapter 7, you are aware that you 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 you and no bankruptcy petition preparer signs the petition, you 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.

_____ ____/____/_____
Your signature Date

_____ ____/____/_____
Your spouse's signature, if your spouse is filing with you Date

For you if you are filing this case without an attorney

Corporations and partnerships must have an attorney to file for bankruptcy. However, as an individual, the law allows you to represent yourself in bankruptcy court. But you should understand that many people find it **extremely difficult to represent themselves successfully. Because bankruptcy has long-term financial and legal consequences, we strongly recommend that you hire a qualified attorney.**

To be successful, you must correctly file and handle your bankruptcy case. The rules are very technical, and a misstep may affect your rights. For example, your case may be dismissed because you did not file a required document, pay a fee on time, attend a meeting or hearing, or cooperate with the court or case trustee. If that happens, you could lose your right to file another case or you may lose protections later, including the benefit of the automatic stay.

You must list all your property and debts in the schedules of this package. If you do not list a debt, the debt may not be discharged. The judge can also deny discharging all of your debts if you do something dishonest in your bankruptcy case, such as destroying or hiding property, falsifying records, or lying. The court randomly audits individual bankruptcy cases to determine if debtors have been accurate, truthful, and complete. **Bankruptcy fraud is a serious crime; you could be fined or imprisoned.**

If you decide to file without an attorney, the court expects you to follow the rules as if you had hired a lawyer. The court will not treat you differently because you are filing for yourself. To be successful, you must be familiar with the United States Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the local rules of the court in which your case is filed.

By signing here, you acknowledge that you understand the risks involved in filing without an attorney. I have read and understood this notice, am aware that filing a bankruptcy case without an attorney may cause me to lose my rights or property if I do not properly handle the case.

_____ ____/____/_____
Your signature Date

_____ ____/____/_____
Your spouse's signature, if your spouse is filing with you Date

For your attorney, if you used one

I, the attorney for the person named in this petition, declare that I have informed the person 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 chapter. I also certify that I have delivered to the person the notice required by 11 U.S.C. § 342(b).

_____ ___/___/_____
Signature of Attorney for Debtor Date

_____
Printed name

_____
Firm name

_____
Number Street

_____ _____ _____
City State ZIP Code

(_____) _____-- _____
Daytime phone

For your non-attorney petition preparer, if you used one

Under penalty of perjury, I declare 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 given the debtor 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 or accepting any fee from the debtor, as required in that section. Official Form 19 is attached.

_____ _____
Printed name Title

_____
Firm name, if it applies

_____
Number Street

_____ _____ _____
City State ZIP Code

(_____) _____-- _____
Daytime phone

___ ___ ___ -- ___ ___ -- ___ ___ ___ ___
Social Security number

(If the bankruptcy petition preparer is not an individual, give the SSN of the officer, principal, responsible person or partner of the bankruptcy petition preparer.) (Required by 11 U.S.C. § 110.)

_____
Signature of Bankruptcy Petition Preparer or officer, principal, responsible person, or partner whose Social-Security number is provided here.

___/___/_____
Date

Names and Social Security numbers of all other people who prepared or helped prepare this document, unless the bankruptcy petition preparer is not an individual.

___ ___ ___ - ___ ___ - ___ ___ ___ ___
Social Security number

(If the bankruptcy petition preparer is not an individual, give the SSN of the officer, principal, responsible person or partner of the bankruptcy petition preparer.) (Required by 11 U.S.C. § 110.)

_____
Signature of Bankruptcy Petition Preparer or officer, principal, responsible person, or partner whose Social-Security number is provided here.

___/___/_____
Date

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person. If you are a bankruptcy petition preparer and you do not comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure, you may be fined, imprisoned, or both. 11 U.S.C. § 110; 18 U.S.C. § 156.

75

When you file this petition package, you must bring with you:

Proof of your name, such as a driver's license, passport, or other government-issued identification.

A copy of your Social Security card.

Proof of your current address, such as a utility bill.

Your filing fee. If you cannot pay the entire fee, you must bring either the *Application to Pay Filing Fee in Installments* (Official Form 3A) or the *Application for Waiver of Chapter 7 Filing Fee* (Official Form 3B).

Your name _____
First Middle Last

Court name _____

Case number _____

Official Form 6B

Schedule A-B: Your Property

United States Bankruptcy Court 2009

About Schedule A-B

Use this form to list all of your property so that we may gain a clear picture of what you own and how much it is worth. When you file for bankruptcy, you must honestly list everything you own so that the courts can reasonably assess your situation and decide on the best course of action.

Tell us the *current market value* of the items in each category. *Current market value* is not how much you paid for the item; it is how much you could sell the item for if you were to sell it today. In certain categories, current market value may be difficult to figure out. When you cannot find the value from another source (such as *The Kelley Blue Book* for your car), estimate the value and include a note telling us how you figured it.

For ease, we've grouped the information by category. In each category, list unusually valuable items separately. In categories where you list many less valuable items (such as clothes), add the value of the items and report a total.

Make sure that the values you report on this form match the values you report on *Schedule C: Property Claimed as Exempt* and *Schedule D: Creditors Holding Secured Claims*.

On this form, do not list any interests you may have in executory contracts and unexpired leases (for example, a lease for your apartment or some kind of equipment). List those contracts or leases on *Schedule G: Executory Contracts and Unexpired Leases*.

Please be as complete and accurate as possible. If you need more space, attach a separate sheet to this form. Be sure to write your name, case number, and the line number on any pages you add.

Part 1: Tell Us About Your Property

Do you have...	Describe it and tell us where it is	Current market value Include secured claims or exemptions
A home?		
1. Single, detached home; duplex; townhouse; condominium; manufactured home; mobile home; motor home; recreational vehicle; vacation home; rental property Yes No	**Who owns it?** You Spouse Both of you Community Someone else _____	$_____
	Who owns it? You Spouse Both of you Community Someone else _____	$_____
Vehicles?		
2. Cars or vans Yes No	Make: _____ Model: _____ Year: _____ **Who owns it?** You Spouse Both of you Community Someone else _____	$_____
	Make: _____ Model: _____ Year: _____ **Who owns it?** You Spouse Both of you Community Someone else _____	$_____

Sample
July 2009

Case number _____

Part 1: Tell Us About Your Property

Do you have...	Describe it and tell us where it is	Current market value Include secured claims or exemptions
	Make: _____ Model: _____ Year: _____	Who owns it? You Spouse Both of you Community Someone else _____ $_____
	Make: _____ Model: _____ Year: _____	Who owns it? You Spouse Both of you Community Someone else _____ $_____
3. Trucks, trailers, jeeps, and other vehicles Yes No	Make: _____ Model: _____ Year: _____	Who owns it? You Spouse Both of you Community Someone else _____ $_____
4. Boats, motors, and accessories Canoes, kayaks, rowboats, sailboats, yachts Yes No	Make: _____ Model: _____ Year: _____	Who owns it? You Spouse Both of you Community Someone else _____ $_____
5. Aircraft, airplane hanger, and accessories Yes No	Make: _____ Model: _____ Year: _____	Who owns it? You Spouse Both of you Community Someone else _____ $_____
6. Other vehicles Scooters, ATVs, motorcycles, bicycles, minibike Yes No	Make: _____ Model: _____ Year: _____	Who owns it? You Spouse Both of you Community Someone else _____ $_____
Household Items?		
7. Household goods and furnishings Major appliances, furniture Yes No		$_____

Part 1: Tell Us About Your Property

Do you have...	Describe it and tell us where it is	Current market value Include secured claims or exemptions
8. Electronics Televisions and radios Audio, video, stereo, and digital equipment Music collections, media players Computers, printers, scanners Cell phones, iPods, Blackberries, cameras Electronic games ☐ Yes ☐ No		$_____
9. Collectibles of value Antiques and figurines Paintings, prints, or other original artwork Books, pictures, or other art objects Stamp, coin, or baseball card collections China and crystal Other collections or collectibles ☐ Yes ☐ No	**Who owns it?** ☐ You ☐ Spouse ☐ Both of you ☐ Community ☐ Someone else _____ ☐ A minor child	$_____
10. Equipment for hobbies Sports, photographic, exercise, and other hobby equipment Carpentry tools Musical instruments ☐ Yes ☐ No		$_____
11. Firearms ☐ Yes ☐ No		$_____
Personal items?		
12. Clothes Furs, leather coats, designer wear ☐ Yes ☐ No		$_____
13. Jewelry Heirloom jewelry, engagement rings, antique watches, gems, precious metals ☐ Yes ☐ No		$_____
Real estate?		
14. Any property in which you have a legal, equitable, or *future interest* (You expect to own property in the future through a will, deed, or trust.) Land, undeveloped lots, mobile home park space, boat slips, improvements including buildings and machinery Any property you own as a co-tenant, community property, or *life estate* (the right to own and use property only during your lifetime) ☐ Yes ☐ No	**Who owns it?** ☐ You ☐ Spouse ☐ Both of you ☐ Community ☐ Someone else _____ ☐ A minor child	Current value: $_____ Amount of secured claim: $ _____

Case number _____

Part 1: Tell Us About Your Property

Do you have...	Describe it and tell us where it is	Current market value Include secured claims or exemptions
Financial property?		
15. Cash How much money you have in your wallet, in your home, and on hand when you file your petition Yes No		$_____
16. Deposits of money Checking, savings, or other financial accounts Certificates of deposit Shares in banks, credit unions, brokerage houses, and other similar institutions Yes No	Checking account: _____ Checking account: _____ Savings account: _____ Certificates of deposit: _____ Money in safe deposit: _____ Other financial accounts: _____	$_____ $_____ $_____ $_____ $_____ $_____
17. Retirement or pension accounts Interests in IRA, ERISA, Keogh, or other pension or profit-sharing plans. Give particulars. Yes No	Retirement account: _____ Pension plan: _____ IRA: _____ ERISA-qualified plan: _____ Keogh: _____ Other: _____	$_____ $_____ $_____ Do not report a value $_____ $_____
18. Security deposits All credit accounts you have so that you may continue service or use from a company, such as agreements with landlords, public utilities (electric, gas, water), telecommunications companies, or others Yes No	Electric: _____ Gas: _____ Heating oil: _____ Security deposit on rental unit _____ Prepaid rent: _____ Telephone: _____ Water: _____ Rented furniture: _____ Other: _____	$_____ $_____ $_____ $_____ $_____ $_____ $_____ $_____ $_____
19. Annuities (a yearly payment of money, either for life or for a number of years) Yes. List and name each issuer. No	Annuity: _____ Issuer name: _____ Annuity: _____ Issuer name: _____ Annuity: _____ Issuer name: _____	$_____ $_____ $_____

Part 1: Tell Us About Your Property

Do you have...	Describe it and tell us where it is	Current market value Include secured claims or exemptions
20. Stock and interests in incorporated and unincorporated businesses Yes. List them. No		$_____
21. Government and corporate bonds and other negotiable and non-negotiable instruments *Negotiable instruments* include personal checks, cashiers' checks, promissory notes, and money orders. *Non-negotiable instruments* are those you cannot transfer to someone simply by signing or delivering them. Yes No		$_____
22. 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) Yes. Give specific information about them. Separately file the records of any interests.11 U.S.C. § 521(c).) No		$_____
23. Equitable or future interests, life estates, and rights or powers exercisable for your benefit Yes No		$_____
24. Patents, copyrights, trademarks, trade secrets, and other intellectual property Include proceeds from royalties and licensing agreements Yes. Give details. No		$_____
25. Licenses, franchises, and other general intangibles Building permits, exclusive licenses, cooperative association holdings, liquor licenses, professional licenses Yes. Give details. No		$_____
Money or property due to you?		
26. Tax refunds due to you from returns you already filed Yes No		Federal: $_____ State: $_____

Case number _____

Part 1: Tell Us About Your Property

Do you have...	Describe it and tell us where it is	Current market value Include secured claims or exemptions
27. Family support Alimony, spousal support, child support, maintenance, divorce settlement, and property settlements to which you are or may be entitled Yes. Give details. No		Alimony: $_____ Maintenance: $_____ Support: $_____ Property settlement: $_____
28. Other debts someone owes you Wages, disability insurance payments, disability benefits, sick pay you earned, vacation pay you earned, Workers' compensation due to you, Social Security benefits Yes No		$_____
29. Any interest in property that would be due to you after someone dies If you are the beneficiary of a living trust, expect proceeds from a life insurance policy, will inherit something from an existing estate Yes. Give details. No		$_____
30. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to set off claims Yes. Give estimated value of each. No		$_____

Insurance?

31. Interests in insurance policies Health, disability, or life insurance Credit, homeowner's, or renter's insurance Yes. Name the insurance company of each policy and list its value. No	Company name: _____ Beneficiary _____ Company name: _____ Beneficiary _____ Company name: _____ Beneficiary _____	Surrender or refund value $_____ Surrender or refund value $_____ Surrender or refund value $_____

Part 2: Tell Us About Any Business-Related Property You Have

Do you have...	Describe it and tell us where it is		Current value of your interest in it Do not deduct secured claims or exemptions
32. Business property		Who owns it? You Spouse Both of you Community Someone else _____ A minor child	$_____
33. Accounts receivable or commissions you already earned Yes No			$_____
34. Office equipment, furnishings, and supplies Computers, software, modems, printers, copiers, fax machines, rugs, telephones Yes No			$_____
35. Machinery, fixtures, equipment, and supplies you use in business Tools of your trade Yes No			$_____
36. Inventory Yes No			$_____
37. Interests in partnerships or joint ventures Yes. List them. No			$_____
38. Customer lists or other compilations that have personally identifiable information (as defined in 11 U.S.C. § 101(41A)) someone gave you to obtain a product or service from you primarily for personal, family, or household purposes. Yes No			$_____

Case number _____

Part 3: Tell Us About Any Farm-Related Property You Have

Do you have...	Describe it and tell us where it is	Current value of your interest in it Do not deduct secured claims or exemptions
39. Farmland Yes No	**Who owns it?** You Spouse Both of you Community Someone else _____ A minor child	$_____
40. Animals, livestock, poultry Yes No	**Who owns it?** You Spouse Both of you Community Someone else _____ A minor child	$_____
41. Crops—either growing or harvested Yes. Give details. No		$_____
42. Farming equipment and implements Yes No		$_____
43. Farm supplies, chemicals, and feed Yes No		$_____

Part 4: Tell Us About Any Property You Are Holding for Someone Else

44. Are you holding any property for a minor child? For instance, is the title of a car that a minor uses in your name? Or does a child own livestock or cattle that you care for? Yes No	$_____

Part 5: Tell Us About Any Property You Did Not List Above

45. Other property of any kind you did not already list Hot tub, season tickets Yes. Give details. No	$_____

Add all of your entries from this schedule. Write that number here: +

Add the entries from any pages you have attached. Write that number here: +

Total

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON FORMS

RE: FUNCTIONAL REQUIREMENTS REQUESTED FOR INCLUSION IN CM/ECF NEXT GEN SPECIFICATIONS FOR SYSTEM DESIGN

DATE: September 1, 2009

Members of the Forms Subcommittee have been serving as members of the Bankruptcy Forms Modernization Project.[1] The goals of that project include simplifying and improving collection of necessary information, increasing the accuracy of the responses on the forms, providing new and better analytical and workload resources for using information contained in bankruptcy forms, and coordinating Forms Modernization with the project to create the next generation of the CM/ECF (CM/ECF NextGen).

The project is currently focusing on the following:

1. Redesign and drafting of the initial petition package (petition, schedules and statement of financial affairs) to increase the debtor's comprehension of the forms and the accuracy of responses.
2. Making sure that the provision of additional technological options and the redesign of the forms serve the needs of end users (court, trustees, creditors).

The initial work on the petition packet, coupled with the recent work on the reaffirmation agreement package, have pointed out some of the ways that technology may be harnessed to help accomplish the goals of the Bankruptcy Forms Modernization Project. Discussed below are

[1] The Bankruptcy Forms Modernization Project is an undertaking of the Bankruptcy Rules Committee. The project, which began in 2008, is being carried out by an ad hoc group composed of members of the Rules Committee's Subcommittee on Forms working in liaison with representatives of other relevant Judicial Conference committees and judiciary units. The project is expected to take five to seven years to complete.

some examples of the ways in which incorporation of technological advances can benefit the bankruptcy system.

1. *Using Technology to Permit the Clerk to Automate the Uploading of Required Data from All Petitions, Including Those Filed by Parties Who Do Not File Electronically.* Currently the clerk must capture certain information from the bankruptcy petition as data and transmit that data to the United States Trustee and the AO Statistics Division. When a party does not file electronically, clerk's office personnel must manually input the required data so that it can be transmitted. This is a laborious process. In the process of modernizing the forms, technology could be used to reduce or eliminate the need for the clerk to manually input data.

2. *Customizing How Information on Particular Forms is Viewed.* The consultant retained to assist with the forms modernization project has produced a preliminary draft of the bankruptcy petition for individuals that is more logical to the debtor than the current petition because of instructions provided, order and content of information required, and format. During discussions about the draft, some have expressed concerns about the length of the form and the challenge of finding particular information that has been relocated on the form. The discussions have highlighted that formatting that may be helpful to the person completing the form may be less than optimal for one or more of the end users of the form. End users include the clerk, the judge, the AO Statistics Division, the case trustee, the U.S. Trustee, creditors, and other interested parties, all of whom have their own specialized interests.

These diverse interests can be accommodated by allowing parties viewing forms to customize how they view the information contained on the forms. To do that, the data on the forms has to be input into the CM/ECF system in a way that it can be extracted and reconfigured. That is the optimal solution. If that is not going to be possible, however, in formatting each of the forms, the drafters will have to ascertain and balance the competing desires and needs of those completing the forms and each of the different constituencies using the forms. Many end users want what is important to them to show up on page one or very early in the form. The first page of the current petition form and

the draft petition form are attached as an illustration of this point. The current form requests more information on the first page, including a lot of statistical information for the AO Statistics Division, than the revised draft, which has been designed to be more comprehensible by the debtor signing the form.

3. *Allowing Preparation of Customized Reports Using Information from Multiple Forms*. The recent drafting of the Reaffirmation Agreement Cover Sheet (Official Form 27), effective December 1, 2009, highlights another potential use of technology. This cover sheet extracts information from multiple forms (reaffirmation agreement and Schedules I and J), filed at different times in the case, and displays it in a condensed format used primarily by judges and the clerk. If it were possible to easily create such reports internally by extracting the desired information and displaying it in the order and format desired by the particular court, it might be possible to eliminate the need for a mandatory reaffirmation cover sheet.

In proceeding with the design work on the forms, for the reasons explained above, the Subcommittee on Forms has been discussing technological functional requirements for the modernized bankruptcy forms. The CM/ECF NextGen working group, which is soliciting functional requirements information from a broad range of judiciary units as well as other users and stakeholders, has requested the Rules Committee's input as to functional requirements relating to the modernization of the forms. NextGen Project staff utilizes the functional requirements information to develop detailed Business Model Templates that will be the focus of a further stage of work by technoloy experts, who will evaluate technological capabilities and develop specifications for the new system.

During its conference call on July 20, the Subcommittee discussed functional requirements for inclusion in the specifications for future versions of CM/ECF in order to accommodate the next generation of bankruptcy forms. **The Subcommittee requests that the Advisory Committee endorse the following list of functional requirements for CM/ECF Next Gen.** If endorsed by the Advisory Committee, these requirements will be transmitted to the staff of the CM/ECF NextGen Project for conversion into Business Problem Templates that

describe the details. The draft templates will be referred back to the Forms Modernization Project for review.

a. Reduce the need for the bankruptcy clerk to manually extract data from forms filed by pro se and other parties not using electronic case upload.

b. Allow courts to prepare customized reports for internal purposes extracting some information from multiple forms.

c. Increase ease of search for and retrieval of information contained in multiple forms.

d. Allow implementation of technology related to the forms on an incremental basis.

e. Include in NextGen a system that is capable of creating different levels of access to the information from the forms. For example, to the extent that the system allows accessing selected data or reconfiguring the data into custom reports, the system would be capable of limiting who could have such access or reconfiguration capacity, both within the judiciary and as to outside users

In addition, if the Advisory Committee endorses these functional requirements, the Bankruptcy Forms Modernization Project, on behalf of the Advisory Committee, will join with the CM/ECF NextGen Project in requesting that the policies of the Judicial Conference of the United States be adjusted as needed to allow the development and implementation of the technology necessary to meet these functional requirements. Issues regarding the breadth of access to information filed in electronic form are to be addressed at a later stage.

Attachments

B1 (Official Form 1) (1/08)

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. or Individual-Taxpayer I.D. (ITIN)/Complete EIN (if more than one, state all):	Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN)/Complete EIN (if more than one, state all):
Street Address of Debtor (No. and Street, City, and State): ZIP CODE	Street Address of Joint Debtor (No. and Street, City, and State): ZIP CODE
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): ZIP CODE	Mailing Address of Joint Debtor (if different from street address): ZIP CODE
Location of Principal Assets of Business Debtor (if different from street address above): ZIP CODE	

Type of Debtor
(Form of Organization)
(Check **one** box.)

- ☐ Individual (includes Joint Debtors)
  See Exhibit D on page 2 of this form.
- ☐ Corporation (includes LLC and LLP)
- ☐ Partnership
- ☐ Other (If debtor is not one of the above entities, check this box and state type of entity below.)

Nature of Business
(Check **one** box.)

- ☐ Health Care Business
- ☐ Single Asset Real Estate as defined in 11 U.S.C. § 101(51B)
- ☐ Railroad
- ☐ Stockbroker
- ☐ Commodity Broker
- ☐ Clearing Bank
- ☐ Other

Tax-Exempt Entity
(Check box, if applicable.)

- ☐ Debtor is a tax-exempt organization under Title 26 of the United States Code (the Internal Revenue Code).

Chapter of Bankruptcy Code Under Which the Petition is Filed (Check **one** box.)

- ☐ Chapter 7
- ☐ Chapter 9
- ☐ Chapter 11
- ☐ Chapter 12
- ☐ Chapter 13
- ☐ Chapter 15 Petition for Recognition of a Foreign Main Proceeding
- ☐ Chapter 15 Petition for Recognition of a Foreign Nonmain Proceeding

Nature of Debts
(Check one box.)

- ☐ Debts are primarily consumer debts, defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose."
- ☐ Debts are primarily business debts.

Filing Fee (Check one box.)

- ☐ Full Filing Fee attached.
- ☐ 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.
- ☐ Filing Fee waiver requested (applicable to chapter 7 individuals only). Must attach signed application for the court's consideration. See Official Form 3B.

Chapter 11 Debtors

Check one box:

- ☐ Debtor is a small business debtor as defined in 11 U.S.C. § 101(51D).
- ☐ Debtor is not a small business debtor as defined in 11 U.S.C. § 101(51D).

Check if:

- ☐ Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than $2,190,000.

Check all applicable boxes:

- ☐ A plan is being filed with this petition.
- ☐ Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).

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.

THIS SPACE IS FOR COURT USE ONLY

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

Estimated Assets

☐ $0 to $50,000	☐ $50,001 to $100,000	☐ $100,001 to $500,000	☐ $500,001 to $1 million	☐ $1,000,001 to $10 million	☐ $10,000,001 to $50 million	☐ $50,000,001 to $100 million	☐ $100,000,001 to $500 million	☐ $500,000,001 to $1 billion	☐ More than $1 billion

Estimated Liabilities

☐ $0 to $50,000	☐ $50,001 to $100,000	☐ $100,001 to $500,000	☐ $500,001 to $1 million	☐ $1,000,001 to $10 million	☐ $10,000,001 to $50 million	☐ $50,000,001 to $100 million	☐ $100,000,001 to $500 million	☐ $500,000,001 to $1 billion	☐ More than $1 billion

Court name _____

Official Form 1

Voluntary Petition for Individuals Filing for Bankruptcy

United States Bankruptcy Court 2009

If you need more space, attach a separate sheet to this package. Be sure to write your name on any pages you add. If any question does not apply to you, leave it blank.

Part 1: Tell us about yourself and your spouse if your spouse is filing with you

	About you:	About your spouse if your spouse is filing with you:
1. Your name	First name Middle Last	First name Middle Last
2. All other names you have used in the last 8 years Include your married or maiden names.	First name Middle Last First name Middle Last	First name Middle Last First name Middle Last
3. Where you live	Number Street City State ZIP Code County ( ) ___ – ___ Daytime phone ( ) ___ – ___ Cell phone	**If your spouse lives at a different address:** Number Street City State ZIP Code County ( ) ___ – ___ Daytime phone ( ) ___ – ___ Cell phone
	If your mailing address is different from the one above, fill it in here. Note that the court will send any notices to you at this mailing address. Number Street City State ZIP Code	**If your spouse's mailing address is different from yours, fill it in here.** Note that the court will send any notices to this mailing address. Number Street City State ZIP Code

q_s

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
Reaffirmation Documents Questionnaire

The answers to the questions below will provide the information that will be entered automatically in the appropriate fields of the Reaffirmation Cover Sheet (Official Form 27) and the Reaffirmation Documents (Form 240A). These forms must be completed and filed with the court before the reaffirmation agreement can be effective.

A. Information about Debtor and Creditor

1. What is the name(s) of the debtor(s): _____
(In a joint case list both debtors' names even if only one of the two debtors is reaffirming the debt.)

2. What is the debtor's case number ? _____

3. Under what chapter of the bankruptcy code is the debtor's case currently pending? _____

4. What is the creditor's name _____

5. Is the creditor a Credit Union? ❑ Yes ❑ No

(A credit union typically uses words like Credit Union or initials like C.U. or F.C.U. in its name)

6. Did an attorney help debtor negotiate this agreement? ❑ Yes ❑ No

7. If an attorney helped debtor negotiate this agreement, will the attorney sign the certification that the agreement does not impose an undue hardship on debtor or debtor's dependents?

❑ Yes ❑ No

B. Information about the Reaffirmation Agreement

8. Describe the original agreement being reaffirmed _____

9. Amount of Debt

a. Original amount of debt _____

b. Amount of debt on the date of the bankruptcy _____

c. Amount to be repaid under reaffirmation agreement _____

10. Annual Percentage Rate

a. What is the Annual Percentage Rate the debtor is agreeing to pay? _____

b. Is the Annual Percentage Rate a fixed rate ❑ or a variable rate ❑ ?

c. Is the Annual Percentage Rate to be paid under the reaffirmation agreement different from the original rate? ❑ Yes ❑ No

d. If the answer to c. is YES, what was the original rate? _____

e. If the Annual Percentage Rate is variable, describe the terms:

11. Credit Terms

a. Are there other credit terms that are part of the reaffirmation agreement? ❑ Yes ❑ No

b. Were these terms part of the credit terms before reaffirmation? ❑ Yes ❑ No

c. Is the creditor agreeing to provide the debtor with future additional credit? ❑ Yes ❑ No

d. If the answer to c. is YES, set forth the interest rate and any other terms that apply to the future credit.

12. Monthly Payment Terms

a. What are the Monthly Payment Terms? _____

b. What was the amount of each payment before the reaffirmation? _____

c. What is the amount of each payment under this reaffirmation agreement, if different from 12.b.? _____

d. When does the monthly payment under the reaffirmation agreement start?

_____

13. Collateral securing this debt.

a. Is there collateral securing this debt? ❑ Yes ❑ No

b. If so, briefly describe the collateral _____

and its current market value: _____.

c. Did the debt being reaffirmed arise from the purchase of the collateral? ❑ Yes ❑ No

d. If the answer to c. is YES, what was the purchase price of the collateral?_____

14. Has the creditor claimed that the debt is non-dischargeable? ❑ Yes ❑ No

If the answer is YES, the creditor must attach to the cover sheet a declaration indicating the nature of the debt and the basis for claiming that the debt is nondischargeable.

C. Debtor Financial Information

Bankruptcy Schedule I and J

15. Debtor's total monthly income (from Schedule I, Line 16) _____

16. Debtor's total monthly expenses (from Schedule J, Line [illegible]) _____

17. Total monthly payments on reaffirmed debts not listed on Schedule J _____

Present Financial Information

18. Present monthly income from all sources (after payroll deductions) _____

19. Present monthly expenses _____

20. Total monthly payments on reaffirmed debts (not included in expenses) _____

21. Net monthly income (subtract line 20 from lines 19 and 20) 0.00
(if this number is less than zero put the number in brackets)

22. If there is a difference between the monthly income listed on lines 15 and 18, why is there a difference (explain in detail)?

23. If there is a difference between the monthly expenses listed on lines 16 and 19, why is there a difference (explain in detail)?

24. The debtor believes that the reaffirmation agreement will not impose an undue hardship on the debtor or the debtor's dependents because (check one statement):

❑ Debtor's monthly income (line 18) exceeds debtor's monthly expenses (line 19 plus line 20)

❑ Check this box if the answer on Line 21 is less than zero. If the box is checked, explain in detail how the debtor plans to make the payments on the reaffirmed debt.

D. Disclosures and Signatures

Before entering into a reaffirmation agreement the debtor must review the important disclosures, instructions and definitions. *Click here* to review those disclosures.

❑ Place a check in the box to indicate that the debtor has read the disclosures.

By answering the questions above both the Reaffirmation Cover Sheet (Official Form B27) and the Reaffirmation Documents (B240) will be completed. The Reaffirmation Documents must be signed by the debtor, the creditor, and, any attorney who represented the debtor in negotiating the agreement and who certifies that the agreement does not impose an undue hardship on debtor. The Reaffirmation Cover Sheet must be signed by the party who provided this information, and, if line 21 and line 22 above are completed, by the debtor.

Reset Data

B27 (Official Form27) (12/09)

United States Bankruptcy Court

_____ District Of _____

In re _____,
Debtor

Case No. _____
Chapter ____

REAFFIRMATION AGREEMENT COVER SHEET

This form must be completed in its entirety and filed, with the reaffirmation agreement attached, within the time set under Rule 4008. It may be filed by any party to the reaffirmation agreement.

1. Creditor's Name: _____

2. Amount of the debt subject to this reaffirmation agreement:
$_____ on the date of bankruptcy $_____ to be paid under reaffirmation agreement

3. Annual percentage rate of interest: _____% prior to bankruptcy
_____% under reaffirmation agreement (____ Fixed Rate ____ Adjustable Rate)

4. Repayment terms (if fixed rate): $_____ per month for _____ months

5. Collateral, if any, securing the debt: Current market value: $_____
Description: _____

6. Does the creditor assert that the debt is nondischargeable? ___Yes ___No
(If yes, attach a declaration setting forth the nature of the debt and basis for the contention that the debt is nondischargeable.)

Debtor's Schedule I and J Entries		Debtor's Income and Expenses as Stated on Reaffirmation Agreement	
7.A. Total monthly income from Schedule I, line 16	$_____	7.B. Monthly income from all sources after payroll deductions	$_____
8.A. Total monthly expenses from Schedule J, line 18	$_____	8.B. Monthly expenses	$_____
9.A. Total monthly payments on reaffirmed debts not listed on Schedule J	$_____	9.B. Total monthly payments on reaffirmed debts not included in monthly expenses	$_____
		10.B. Net monthly income (subtract sum of lines 8.B. and 9.B. from line 7.B. If total is less than zero, put the number in brackets)	$ 0.00

11. Explain with specificity any difference between the income amounts (7.A. and 7.B):

12. Explain with specificity any difference between the expense amounts (8.A. and 8.B):

If line 11 or12 is completed, the undersigned debtor certifies that any explanation contained on those lines is true and correct.

_____
Signature of Debtor (only required if line 11 or 12 is completed)

Other Information

☐ Check this box if the total on line 10.B. is less than zero. If that number is less than zero, a presumption of undue hardship arises (unless the creditor is a credit union) and you must explain with specificity the sources of funds available to the debtor to make the monthly payments on the reaffirmed debt:

Was debtor represented by counsel during the course of negotiating this reaffirmation agreement?
_____Yes _____No

If debtor was represented by counsel during the course of negotiating this reaffirmation agreement, has counsel executed a certification (affidavit or declaration) in support of the reaffirmation agreement?
_____Yes _____No

FILER'S CERTIFICATION

I hereby certify that the attached agreement is a true and correct copy of the reaffirmation agreement between the parties identified on this Reaffirmation Agreement Cover Sheet.

_____
Signature

_____
Print/Type Name & Signer's Relation to Case

☐ **Presumption of Undue Hardship**
☐ **No presumption of Undue Hardship**
(Check one. See Debtor's Statement in Support of Reaffirmation Agreement (Part II. below) to determine which box to check.)

UNITED STATES BANKRUPTCY COURT

_____District of_____

In re _____, Debtor

Case No. _____
Chapter _____

REAFFIRMATION DOCUMENTS

Name of Creditor: _____

☐ *[Check this box if]* Creditor is a Credit Union

I. REAFFIRMATION AGREEMENT

Reaffirming a debt is a serious financial decision. Before entering into this Reaffirmation Agreement, the important disclosures, instructions and definitions found in Part IV of this Reaffirmation Documents packet must be reviewed by the debtor(s).

1. Brief description of the original agreement being reaffirmed _____
(*For example, auto loan*)

2. ***AMOUNT REAFFIRMED***: $_____

(The Amount Reaffirmed is the entire amount that the debtor is agreeing to pay. This may include unpaid principal, interest, and fees and costs (if any) arising on or before the date this Reaffirmation Agreement is signed. See the definition of "Amount Reaffirmed" in Part IV C below.)

3. The ***ANNUAL PERCENTAGE RATE*** applicable to the Amount Reaffirmed is_____%.

This is a (check one) ☐ Fixed rate ☐ Variable rate

[If the loan has a variable rate, the future interest rate may increase or decrease from the Annual Percentage Rate disclosed here. See definition of "Annual Percentage Rate" in Part IV C below.]

4. Reaffirmation Agreement Repayment Terms:

☐ $_____ per month for _____ months (if fixed term), starting on_____

5. Describe the collateral, if any, securing the debt:

Description: _____

Current Market Value $ _____

6. Did the debt that is being reaffirmed arise from the purchase of the collateral described above?

☐ Yes ☐ No

If yes, what was the purchase price for the collateral? _____

If no, what was the amount of the original loan? _____

7. Detail the changes made by this reaffirmation agreement to the most recent credit terms on the reaffirmed debt and any related agreement:

	Terms as of the Date of Bankruptcy	Terms After Reaffirmation
Balance due (including fees and costs)	_____	_____
Annual Percentage Rate	_____	_____
Monthly Payment	_____	_____

8. ☐ Check this box if the creditor is agreeing to provide the Debtor with additional future credit in connection with this Reaffirmation Agreement. Describe the credit limit, the Annual Percentage Rate that applies to future credit and any other terms on future purchases and advances using such credit.

II. DEBTOR'S STATEMENT IN SUPPORT OF REAFFIRMATION AGREEMENT

1. Were you represented by an attorney during the course of negotiating this agreement?

(check one) ☐ Yes ☐ No

2. Is the creditor a credit union? (check one) ☐ Yes ☐ No

3. If your answer to EITHER question 1. or 2. above is "No" complete a. and b. below:

a. My present monthly income and expenses are:

i. Monthly income from all sources after payroll deductions (take-home pay plus any other income) $ _____

ii. Monthly expenses (including all reaffirmed debts except this one) $ _____

iii. Amount available to pay this reaffirmed debt (subtract ii. from i.) $ 0.00

iv. Amount of monthly payment required for this reaffirmed debt $ _____

*If the monthly payment on this reaffirmed debt (line iv.) is **greater than** the amount you have available to pay this reaffirmed debt (line iii.), you must check the box at the top of page one that says "Presumption of Undue Hardship." Otherwise, you must check the box at the top of page one that says "No Presumption of Undue Hardship."*

b. I believe this reaffirmation agreement will not impose an undue hardship on my dependents or on me because (check one of the two statements below, if applicable):

☐ I can afford to make the payments on the reaffirmed debt because my monthly income is greater than my monthly expenses even after I include in my expenses the monthly payments on all debts I am reaffirming, including this one.

☐ I can afford to make the payments on the reaffirmed debt even though my monthly income is less than my monthly expenses after I include in my expenses the monthly payments on all debts I am reaffirming, including this one, because: (Use an additional page if needed for a full explanation.)

4. If your answers to BOTH questions 1. and 2. above were "Yes", check the following statement, if applicable:

☐ I believe this reaffirmation agreement is in my financial interest and I can afford to make the payments on the reaffirmed debt. *Also, check the box at the top of page one that says "No Presumption of Undue Hardship."*

III. CERTIFICATION BY DEBTORS AND SIGNATURES OF PARTIES

I (We) hereby certify that:

i. I (We) agree to reaffirm the debt described above.

ii. Before signing this reaffirmation agreement, I read the terms disclosed in this Reaffirmation Agreement (Part I) and the Disclosure Statement, Instructions and Definitions included in Part IV below;

iii. The Debtor's Statement in Support of Reaffirmation Agreement (Part II above) is true and complete;

iv. I am entering into this agreement voluntarily and fully informed of my rights and responsibilities; and

v. I have received a copy of this completed and signed Reaffirmation Documents packet.

SIGNATURE(S):

Date _____ Signature: _____
Debtor

Date _____ Signature: _____
(Joint Debtor, if any)

[If joint reaffirmation agreement, both debtors must sign.]

Reaffirmation Agreement Terms Accepted by Creditor:

Creditor: _____ _____
(Print Name) (Address)

_____ _____ _____
(Print Name of Representative) (Signature) (Date)

IV. CERTIFICATION BY DEBTOR'S ATTORNEY (IF ANY).

[To be filed only if the attorney represented the debtor during the course of negotiating this agreement.]

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.

☐ *[Check box, if the presumption of undue hardship box is checked on page 1 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.

Date _____ Signature: _____
Debtor's Attorney

V. DISCLOSURE STATEMENT AND INSTRUCTIONS TO DEBTOR

Before agreeing to reaffirm a debt, please review the terms disclosed in the Reaffirmation Agreement (Part I) and these additional important disclosures and instructions.
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, detailed in Part B below, are not completed, the reaffirmation agreement is not effective, even though you have signed it.

A. DISCLOSURE STATEMENT:

1. **What are your obligations if you reaffirm a debt?** A reaffirmed debt remains your personal legal obligation. Your reaffirmed debt 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. Your obligations will be determined by the reaffirmation agreement, which may have changed the terms of the original agreement. If you are reaffirming an open end credit agreement, that agreement or applicable law may permit the creditor to change the terms of that agreement in the future under certain conditions.

2. **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 that you agree to make.

3. **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. The property subject to a lien is often referred to as collateral. Even if you do not reaffirm and your personal liability on the debt is discharged, your creditor may still have a right under the lien to take the collateral if you do not pay or default on the debt. If the collateral is personal property that is exempt 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 collateral, as the parties agree or the court determines.

4. **How soon do you need to enter into and file a reaffirmation agreement?** If you decide to enter into a reaffirmation agreement, you must do so before you receive your discharge. After you have entered into a reaffirmation agreement and all parts of this Reaffirmation Documents packet requiring signature have been signed, either you or the creditor should file it as soon as possible. The signed agreement must be filed with the court no later than 60 days after the first date set for the meeting of creditors, so that the court will have time to schedule a hearing to approve the agreement if approval is required.

5. **Can you cancel the agreement?** You may rescind (cancel) your reaffirmation agreement at any time before the bankruptcy court enters your discharge, or during 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).

6. **When will this reaffirmation agreement be effective?**

a. If you *were represented* by an attorney during the negotiation of your reaffirmation agreement:

i. if the creditor is not a Credit Union, your reaffirmation agreement becomes effective upon filing with the court unless the reaffirmation is presumed to be an undue hardship in which case the agreement only becomes effective after the court approves it;

ii. if the creditor is a Credit Union, your reaffirmation agreement becomes effective upon filing with the court.

b. 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. To have the court approve your agreement you must file a motion. The court will notify you and the creditor of the hearing on your reaffirmation agreement. You must attend this hearing, at which time the judge will review your reaffirmation agreement. If the judge decides that the reaffirmation agreement is consistent with your best interests, the agreement will be approved and will become effective. However, 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, you do not need to file a motion or get court approval of your reaffirmation agreement.

7. **What if you have questions about what a creditor can do?** If you have questions about reaffirming a debt or what the law requires, consult with the attorney who helped you negotiate this agreement. If you do not have an attorney helping you, you may ask the judge to explain the effect of this agreement to you at the hearing to approve the reaffirmation agreement. When this disclosure refers to what a creditor "may" do, it is not giving any creditor permission to do anything. The word "may" is used to tell you what might occur if the law permits the creditor to take the action.

B. INSTRUCTIONS:

1. Review these Disclosures and carefully consider the decision to reaffirm. If you want to reaffirm, review and complete the information contained in the Reaffirmation Agreement (Part I above). If your case is a joint case, both spouses must sign the agreement if both are reaffirming the debt.

2. Complete the Debtor's Statement in Support of Reaffirmation Agreement (Part II above). Be sure that you can afford to make the payments that you are agreeing to make and that you 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, your attorney must sign and date the Certification By Debtor's Attorney section (Part III above).

4. You or your creditor must file with the court the original of this Reaffirmation Documents packet.

5. If you are not represented by an attorney, you must also complete and file with the court a separate form entitled "Motion for Court Approval of Reaffirmation Agreement." You can use form B_____ to do this.

C. DEFINITIONS:

1. **"Amount Reaffirmed"** means the total amount of debt that you are agreeing to reaffirm by entering into this agreement. The amount of debt includes any unpaid fees and costs arising on or before the date you sign the agreement that you are agreeing to pay. Your credit agreement may obligate you to pay additional amounts which arise after the date you sign this agreement. You should consult your credit agreement to determine whether you are obligated to pay additional amounts which may arise after the date of this agreement.

2. **"Annual Percentage Rate"** means the interest rate on a loan expressed under the rules required by federal law. The annual percentage rate (as opposed to the "stated interest rate") tells you the full cost of your credit including many of the creditor's fees and charges. You will find the annual percentage rate for your original agreement on the disclosure statement that was given to you when the loan papers were signed or on the monthly statements sent to you for an open end credit account such as a credit card.

3. **"Credit Union"** means a financial institution as defined in 12 U.S.C. § 461(b)(1)(A)(iv). It is owned and controlled by and provides financial services to its members and typically uses words like "Credit Union" or initials like "C.U." or "F.C.U." in its name.

Click Here to Return to Part D

Form B 250F (12/09) **– DRAFT --**

United States Bankruptcy Court

_____ District Of _____

In re _____, Debtor

Case No. _____ Chapter 15

SUMMONS IN A CHAPTER 15 CASE SEEKING RECOGNITION OF A FOREIGN NONMAIN PROCEEDING

To _____:

A petition for recognition of a foreign nonmain proceeding under chapter 15 of the United States Bankruptcy Code was filed in this bankruptcy court on _____ by a representative of the debtor named above. A copy of the petition is attached to this summons.

YOU ARE SUMMONED and required to file a motion or answer to the petition for recognition with the clerk of the bankruptcy court within __ days after the date of issuance of this summons.

Address of the clerk:

At the same time, you must also serve a copy of the motion or answer upon the foreign representative's attorney.

Name and address of foreign representative's attorney:

If you make a motion, your time to answer is governed by Fed. R. Bankr. P. 7012.

IF YOU FAIL TO RESPOND TO THIS SUMMONS, YOUR FAILURE WILL BE DEEMED TO BE YOUR CONSENT TO ENTRY OF AN ORDER RECOGNIZING THE FOREIGN NONMAIN PROCEEDING.

_____ (Clerk)

Date: _____ By: _____ (Deputy Clerk)

Pursuant to Fed. R. Bankr. P. 1010, service shall be made on the debtor, any entity against whom provisional relief is sought under section 1519 of the Bankruptcy Code, and on any other parties as the court may direct.

Fed. R. Bankr. P. 1011(b) provides that a motion or answer to the petition shall be filed within 21 days after service of the summons unless the court prescribes a different time.

CERTIFICATE OF SERVICE

I, _____ (name), certify that service of this summons and a copy of the petition for recognition was made on _____ (date) by:

☐ Mail service: Regular, first class United States mail, postage fully pre-paid, addressed to:

☐ Personal Service: By leaving the summons and petition with the party in interest to the petition or with an officer or agent of the party in interest at:

☐ Residence Service: By leaving the summons and petition with the following adult at:

☐ Certified Mail Service on an Insured Depository Institution: By sending the process by certified mail addressed to the following officer of the depository institution at:

☐ State Law: The summons and petition were served pursuant to the laws of the State of _____, as follows: [Describe briefly]

☐ Service in a Foreign Country: The summons and petition were served in a foreign country on an individual as provided by Fed. R. Civ. Proc 4(f), as incorporated by Fed. R. Bankr. P. 7004(a), or on a corporation as provided by Fed. R. Civ. P. 4(h), also incorporated by Fed. R. Bankr. P. 7004(a), as follows: [Describe briefly]

If service was made by personal service, by residence service, pursuant to state law, or in a foreign country, I further certify that I am, and at all times during the service of process was, not less than 18 years of age and not a party to the matter concerning which service of process was made.

Under penalty of perjury under the laws of the United States, I declare that the foregoing is true and correct.

Date _____ Signature _____

Print Name : _____

Business Address: _____

_____

If service is made in a foreign country pursuant to Fed. R. Civ. P. 4(f)(2),(3), attach a receipt signed by the addressee or other evidence that the summons and petition were delivered to the addressee. Fed. R. Civ. P. 4(l)(2), as incorporated by Fed. R. Bankr. P. 7004(a).

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON FORMS

RE: CERTIFICATE OF SERVICE IN DIRECTOR'S FORMS 250A, 250B, 250C, 250D, AND 250E

DATE: AUGUST 26, 2009

An issue was called to the attention of the Administrative Office concerning the inconsistency of the certifications in the Director's summons forms with the service of process provisions of Rule 7004. The matter was referred to this Subcommittee and was carefully considered during the Subcommittee's conference call on July 20. **The Subcommittee recommends that Forms 250A-E be amended to limit the certification regarding age and non-party status to instances in which service of the summons is accomplished by one of the methods permitted under Civil Rule 4.** The proposed revised forms are attached to this memorandum.

Service Methods under Rule 7004

Rule 7004, which governs service of process in adversary proceedings, incorporates some provisions of Civil Rule 4 and contains additional provisions unique to bankruptcy. Rule 7004(a)(1) makes applicable in adversary proceedings Civil Rule 4(a), (b), (c)(1), (d)(1), (e)-(j), (l), and (m). These incorporated provisions include the methods permitted by the civil rule for service on individuals, corporations, and other types of defendants. Rule 7004(a)(1) further states that "[p]ersonal service under rule 4(e)-(j) F.R.Civ.P. may be made by any person at least 18 years of age who is not a party." That provision concerning who may make service also

appears in Civil Rule 4(c)(2), which is not otherwise incorporated into the bankruptcy rule.

Rule 7004(b), unlike the civil rule, authorizes service by first class mail in addition to the methods authorized by subdivision (a). Subdivision (b) does not contain any limitation on who may effect service by mail. It is this difference between Rule 7004(a) and (b) that prompted the question about whether the certification requirements in Forms 250A-E are correct. It should be further noted that Rule 7004(c), which authorizes service by publication under certain circumstances, and Rule 7004(h), which prescribes the methods for service on an insured depository institution, also do not place any limits on who may serve the summons and complaint.

Current Wording of the Forms' Certificates of Service

Director's Forms 250A (Summons in an Adversary Proceeding), 250B (Summons and Notice of Pretrial Conference in an Adversary Proceeding), 250C (Summons and Notice of Trial in an Adversary Proceeding), and 250D (Third-Party Summons) each include a certificate of service that requires the person who served the summons to certify that "I am . . . not less than 18 years of age and not a party to the matter concerning which service of process was made." Form 250E (Summons to Debtor in an Involuntary Case) does not require the server to certify that he or she is not a party, but it does require the certification that "I am . . . more than 18 years of age." Each form then contains a line for the date of service and, except for Form 250E, provides check boxes for specifying the method of service.[1] Included among the options are service by regular, first class United States mail, by publication, and by certified mail on an insured

[1] Form 250E provides a blank space for describing the method of service and the address at which the debtor was served.

depository institution. *See, e.g.*, http://www.uscourts.gov/bkforms/official/b250a.pdf. Because Rule 7004 requires that service be effected by a non-party who is at least 18 years old only for those methods of service specified in Civil Rule 4(e)-(j), the summons forms are inconsistent with the rule in requiring that certification even when other methods of service are used.

The Subcommittee's Recommendation

The Subcommittee determined that the forms should be amended to make them consistent with Rule 7004. As they are currently worded, Forms 250A-D prohibit pro se litigants from serving process by mail, which is contrary to Rule 7004(b). Form 250E, while not requiring certification of non-party status, is also inconsistent with Rule 7004(b) in requiring a certification regarding age, even when service is accomplished by first-class mail or other method allowed only under the bankruptcy rule. The attached revised forms, which the Subcommittee recommends for approval, therefore require a certification regarding age and non-party status only when service was made by personal service, by residence service, or pursuant to state law – methods authorized by Civil Rule 4.[2]

[2] Form 250D (Third-Party Summons) was also revised to correct a mistaken reference to the "defendant" rather than the "third-party defendant" and to make the form easier to understand.

Form B 250A (12/09) – DRAFT –

United States Bankruptcy Court
_____ District Of _____

In re _____, Debtor	)	Case No. _____
	)	Chapter _____
_____ Plaintiff	)	
v.	)	Adv. Proc. No. _____
_____ Defendant	)	

SUMMONS IN AN ADVERSARY PROCEEDING

YOU ARE SUMMONED and required to file a motion or answer to the complaint which is attached to this summons with the clerk of the bankruptcy court within 30 days after the date of issuance of this summons, except that the United States and its offices and agencies shall file a motion or answer to the complaint within 35 days.

Address of the clerk:

At the same time, you must also serve a copy of the motion or answer upon the plaintiff's attorney.

Name and Address of Plaintiff's Attorney:

If you make a motion, your time to answer is governed by Fed. R. Bankr. P. 7012.

IF YOU FAIL TO RESPOND TO THIS SUMMONS, YOUR FAILURE WILL BE DEEMED TO BE YOUR CONSENT TO ENTRY OF A JUDGMENT BY THE BANKRUPTCY COURT AND JUDGMENT BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT.

_____ (Clerk of the Bankruptcy Court)

Date: _____ By: _____ (Deputy Clerk)

CERTIFICATE OF SERVICE

I, _____ (name), certify that service of this summons and a copy of the complaint was made _____ (date) by:

☐ Mail service: Regular, first class United States mail, postage fully pre-paid, addressed to:

☐ Personal Service: By leaving the process with the defendant or with an officer or agent of defendant at:

☐ Residence Service: By leaving the process with the following adult at:

☐ Certified Mail Service on an Insured Depository Institution: By sending the process by certified mail addressed to the following officer of the defendant at:

☐ Publication: The defendant was served as follows: [Describe briefly]

☐ State Law: The defendant was served pursuant to the laws of the State of _____, as follows: [Describe briefly]

If service was made by personal service, by residence service, or pursuant to state law, I further certify that I am, and at all times during the service of process was, not less than 18 years of age and not a party to the matter concerning which service of process was made.

Under penalty of perjury, I declare that the foregoing is true and correct.

Date _____ Signature _____

Print Name : _____

Business Address: _____

_____

Form B 250B (12/09) – Draft –

United States Bankruptcy Court
_____ District Of _____

In re _____, Debtor	)	Case No. _____
	)	Chapter _____
_____ Plaintiff	)	
v.	)	Adv. Proc. No. _____
_____ Defendant	)	

SUMMONS AND NOTICE OF PRETRIAL CONFERENCE IN AN ADVERSARY PROCEEDING

YOU ARE SUMMONED and required to file a motion or answer to the complaint which is attached to this summons with the clerk of the bankruptcy court within 30 days after the date of issuance of this summons, except that the United States and its offices and agencies shall file a motion or answer to the complaint within 35 days.

Address of the clerk:

At the same time, you must also serve a copy of the motion or answer upon the plaintiff's attorney.

Name and Address of Plaintiff's Attorney:

If you make a motion, your time to answer is governed by Fed. R. Bankr. P. 7012.

YOU ARE NOTIFIED that a pretrial conference of the proceeding commenced by the filing of the complaint will be held at the following time and place:

Address: Room:
Date and Time:

IF YOU FAIL TO RESPOND TO THIS SUMMONS, YOUR FAILURE WILL BE DEEMED TO BE YOUR CONSENT TO ENTRY OF A JUDGMENT BY THE BANKRUPTCY COURT AND JUDGMENT BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT.

_____ (Clerk of the Bankruptcy Court)

Date: _____ By: _____ (Deputy Clerk)

CERTIFICATE OF SERVICE

I, _____ (name), certify that service of this summons and a copy of the complaint was made _____ (date) by:

☐ Mail service: Regular, first class United States mail, postage fully pre-paid, addressed to:

☐ Personal Service: By leaving the process with the defendant or with an officer or agent of defendant at:

☐ Residence Service: By leaving the process with the following adult at:

☐ Certified Mail Service on an Insured Depository Institution: By sending the process by certified mail addressed to the following officer of the defendant at:

☐ Publication: The defendant was served as follows: [Describe briefly]

☐ State Law: The defendant was served pursuant to the laws of the State of _____, as follows: [Describe briefly]

If service was made by personal service, by residence service, or pursuant to state law, I further certify that I am, and at all times during the service of process was, not less than 18 years of age and not a party to the matter concerning which service of process was made.

Under penalty of perjury, I declare that the foregoing is true and correct.

Date _____ Signature _____

Print Name : _____

Business Address: _____

_____

Form B 250C (12/09) – DRAFT –

United States Bankruptcy Court
_____ District Of _____

In re _____, Debtor	)	Case No. _____
	)	Chapter _____
_____ Plaintiff	)	
v.	)	Adv. Proc. No. _____
_____ Defendant	)	

SUMMONS AND NOTICE OF TRIAL IN AN ADVERSARY PROCEEDING

YOU ARE SUMMONED and required to file a motion or answer to the complaint which is attached to this summons with the clerk of the bankruptcy court within 30 days after the date of issuance of this summons, except that the United States and its offices and agencies shall file a motion or answer to the complaint within 35 days.

Address of the clerk:

At the same time, you must also serve a copy of the motion or answer upon the plaintiff's attorney.

Name and Address of Plaintiff's Attorney:

If you make a motion, your time to answer is governed by Fed. R. Bankr. P. 7012.

YOU ARE NOTIFIED that a trial of the proceeding commenced by the filing of the complaint will be held at the following time and place:

Address: Room:
Date and Time:

IF YOU FAIL TO RESPOND TO THIS SUMMONS, YOUR FAILURE WILL BE DEEMED TO BE YOUR CONSENT TO ENTRY OF A JUDGMENT BY THE BANKRUPTCY COURT AND JUDGMENT BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT.

_____ (Clerk of the Bankruptcy Court)

Date: _____ By: _____ (Deputy Clerk)

CERTIFICATE OF SERVICE

I, _____ (name), certify that service of this summons and a copy of the complaint was made _____ (date) by:

☐ Mail service: Regular, first class United States mail, postage fully pre-paid, addressed to:

☐ Personal Service: By leaving the process with the defendant or with an officer or agent of defendant at:

☐ Residence Service: By leaving the process with the following adult at:

☐ Certified Mail Service on an Insured Depository Institution: By sending the process by certified mail addressed to the following officer of the defendant at:

☐ Publication: The defendant was served as follows: [Describe briefly]

☐ State Law: The defendant was served pursuant to the laws of the State of _____, as follows: [Describe briefly]

If service was made by personal service, by residence service, or pursuant to state law, I further certify that I am, and at all times during the service of process was, not less than 18 years of age and not a party to the matter concerning which service of process was made.

Under penalty of perjury, I declare that the foregoing is true and correct.

Date _____ Signature _____

Print Name : _____

Business Address: _____

_____

Form B 250D (12/09) – DRAFT –

United States Bankruptcy Court
_____ District Of _____

In re _____, Debtor	)	Case No. _____
_____ Plaintiff	)	Chapter _____
v.	)	Adv. Proc. No. _____
_____ Defendant, Third-party plaintiff	)	
v.	)	
_____ Third-party defendant	)	

THIRD-PARTY SUMMONS

YOU ARE SUMMONED and required to file a motion or answer to the third-party complaint which is attached to this summons with the clerk of the bankruptcy court within 30 days after the date of issuance of this summons, except that the United States and its offices and agencies shall file a motion or answer to the third-party complaint within 35 days.

Address of the clerk:

At the same time, you must also serve a copy of the motion or answer upon the defendant's attorney.

Name and Address of Defendant's Attorney:

At the same time, you must also serve a copy of the motion or answer upon the plaintiff's attorney.

Name and Address of Plaintiff's Attorney:

If you make a motion, your time to answer is governed by Fed. R. Bankr. P. 7012. If you are also being served with a copy of the complaint of the plaintiff, you have the option of not answering the plaintiff's complaint **unless** this is an admiralty or maritime action subject to the provisions of Fed. R. Civ. P. 9(h) and 14(c), in which case you are required to file a motion or an answer to both the plaintiff's complaint and the third-party complaint, and to serve a copy of your motion or answer upon the appropriate parties.

IF YOU FAIL TO RESPOND TO THIS SUMMONS, YOUR FAILURE WILL BE DEEMED TO BE YOUR CONSENT TO ENTRY OF A JUDGMENT BY THE BANKRUPTCY COURT AND JUDGMENT BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF DEMANDED IN THE THIRD-PARTY COMPLAINT.

_____ (Clerk of the Bankruptcy Court)

Date: _____ By: _____ (Deputy Clerk)

CERTIFICATE OF SERVICE

I, _____ (name), certify that service of this summons and a copy of the third-party complaint was made _____ (date) by:

☐ Mail service: Regular, first class United States mail, postage fully pre-paid, addressed to:

☐ Personal Service: By leaving the process with the third-party defendant or with an officer or agent of third-party defendant at:

☐ Residence Service: By leaving the process with the following adult at:

☐ Certified Mail Service on an Insured Depository Institution: By sending the process by certified mail addressed to the following officer of the third-party defendant at:

☐ Publication: The third-party defendant was served as follows: [Describe briefly]

☐ State Law: The third-party defendant was served pursuant to the laws of the State of _____, as follows: [Describe briefly]

If service was made by personal service, by residence service, or pursuant to state law, I further certify that I am, and at all times during the service of process was, not less than 18 years of age and not a party to the matter concerning which service of process was made.

Under penalty of perjury, I declare that the foregoing is true and correct.

Date _____ Signature _____

Print Name : _____

Business Address: _____

_____

Form B 250E (12/09) – DRAFT –

United States Bankruptcy Court
_____ District Of _____

In re _____ , Debtor*	)	Case No. _____
	)	
	)	Chapter _____
	)	

SUMMONS TO DEBTOR IN INVOLUNTARY CASE

To the above named debtor:

A petition under title 11, United States Code was filed against you in this bankruptcy court on _____ (date), requesting an order for relief under chapter _____ of the Bankruptcy Code (title 11 of the United States Code).

YOU ARE SUMMONED and required to file with the clerk of the bankruptcy court a motion or answer to the petition within 21 days after the service of this summons. A copy of the petition is attached.

Address of the clerk:

At the same time, you must also serve a copy of your motion or answer on petitioner's attorney.

Name and Address of Petitioner's Attorney:

If you make a motion, your time to answer is governed by Fed. R. Bankr. P. 1011(c).

If you fail to respond to this summons, the order for relief will be entered.

_____ (Clerk of the Bankruptcy Court)

Date: _____ By: _____ (Deputy Clerk)

* Set forth all names, including trade names, used by the debtor within the last 8 years. (Fed. R .Bankr. P. 1005).

CERTIFICATE OF SERVICE

I, _____ (name), certify that on _____ (date), I served this summons and a copy of the involuntary petition on _____ (name), the debtor in this case, by *[describe the mode of service and the address at which the debtor was served]*:

If service was made by personal service, by residence service, or pursuant to state law, I further certify that I am, and at all times during the service of process was, not less than 18 years of age and not a party to the matter concerning which service of process was made.

Under penalty of perjury, I declare that the foregoing is true and correct.

Date _____ Signature _____

Print Name : _____

Business Address: _____

_____

B18RI (Form 18RI) (12/09) – DRAFT –

United States Bankruptcy Court

_____ District Of _____

In re _____ Case No. _____

Debtor*

Address: _____ Chapter 11

_____

Last four digits of Social-Security or Individual Taxpayer-Identification (ITIN) No(s).,(if any): _____

Employer Tax-Identification (EIN) No(s).(if any):

_____

DISCHARGE OF INDIVIDUAL DEBTOR IN A CHAPTER 11 CASE

It appearing that the debtor is entitled to a discharge,

IT IS ORDERED:

The debtor is granted a discharge under section 1141(d) of title 11, United States Code, (the Bankruptcy Code).

BY THE COURT

Dated: _____ _____

United States Bankruptcy Judge

SEE THE BACK OF THIS ORDER FOR IMPORTANT INFORMATION.

** Set forth all names, including trade names, used by the debtor(s) within the last 8 years. For joint debtors, set forth the last four digits of both social-security numbers or individual taxpayer-identification numbers.*

EXPLANATION OF BANKRUPTCY DISCHARGE OF AN INDIVIDUAL IN A CHAPTER 11 CASE

This court order grants a discharge to the person named as the debtor. The discharge is issued after the debtor has completed all payments under the chapter 11 plan or the court has determined, after notice and a hearing, that the debtor is entitled to a discharge pursuant to section 1141(d)(5)(B) of the Bankruptcy Code without completing the chapter 11 plan payments. The discharge is not a dismissal of the case.

Collection of Discharged Debts Prohibited

The discharge prohibits any attempt to collect a discharged debt from the debtor. 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.

If a creditor has a lien, such as a mortgage or security interest, and the lien was not eliminated by the plan or by court order, the creditor may have the right to enforce the lien if the debtor fails to satisfy the lien claim as required by the plan. Also, a debtor may voluntarily pay any debt that has been discharged.

Debts that are Discharged and Debts that are Not Discharged

Except as otherwise specified in the chapter 11 plan, in the order confirming that plan, or in section 1141(d) of the Bankruptcy Code, the discharge eliminates the debtor's legal obligation to pay a debt which arose before confirmation of the plan.

Most, but not all, types of debts are discharged, but section 1141(d)(2) of the Code provides that certain types of debts are not discharged in an individual debtor's chapter 11 bankruptcy case. Some of the common types of debts which are not discharged are:

a. Debts for most taxes and debts incurred to pay nondischargeable taxes;

b. Debts that are domestic support obligations;

c. Debts for most student loans;

d. Debts for most fines, penalties, forfeitures, and criminal restitution obligations;

e. Debts for personal injuries or death caused by the debtor's operation of a motor vehicle, vessel, or aircraft while intoxicated;

f. Some debts which were not properly listed on the bankruptcy schedules by the debtor;

g. Debts that the bankruptcy court has specifically decided in this case are not discharged; and

h. 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. There are exceptions to the general rules. Because the law is complicated, you may want to consult an attorney concerning the effect of the discharge.

UNITED STATES BANKRUPTCY COURT

for the

_____ District of _____

In re _____ *Debtor*	)	Case No.
	)	
	)	Chapter
_____ *Plaintiff*	)	Adv. Proc. No.
v.	)	
_____ *Defendant*	)	

JUDGMENT IN AN ADVERSARY PROCEEDING

The court has ordered that *(check one)*:

❒ the plaintiff *(name)* _____, recover from the defendant *(name)* _____, the amount of _____ dollars ($ _____), which includes prejudgment interest at the rate of _____ %, and postjudgment interest at the rate of _____ %, along with costs.

❒ the plaintiff *(name)* _____, recover nothing, the action be dismissed on the merits, and the defendant *(name)* _____, recover costs from the plaintiff.

Date: _____ *CLERK OF COURT*

_____

Signature of Clerk or Deputy Clerk

B 200 (Form B200) (12/09)

UNITED STATES BANKRUPTCY COURT

REQUIRED LISTS, SCHEDULES, STATEMENTS, AND FEES

Voluntary Chapter 7 Case

☐ **Filing Fee of $245.** If the fee is to be paid in installments or the debtor requests a waiver of the fee, the debtor must be an individual and must file a signed application for court approval. Official Form 3A or 3B and Fed.R.Bankr.P. 1006(b), (c)

☐ **Administrative fee of $39 and trustee surcharge of $15.** If the debtor is an individual and the court grants the debtor's request, these fees are payable in installments or may be waived.

☐ **Voluntary Petition** (Official Form 1); **Names and addresses of all creditors** of the debtor. Must be filed WITH the petition. Fed.R.Bankr.P. 1007(a)(1).

☐ **Notice to Individual Debtor with Primarily Consumer Debts** under 11 U.S.C. § 342(b) (Director's Form 201), if applicable. Required if the debtor is an individual with primarily consumer debts. The notice must be GIVEN to the debtor before the petition is filed. Certification that the notice has been given must be FILED with the petition or within 15 days. 11 U.S.C. §§ 342(b), 521(a)(1)(B)(iii), 707(a)(3). Official Form 1 contains spaces for the certification.

☐ **Notice to debtor by "bankruptcy petition preparer"** (Official Form 19). Required if a "bankruptcy petition preparer" prepares the petition. Must be submitted WITH the petition. 11 U.S.C. § 110(b)(2).

☐ **Statement of Social Security Number** (Official Form 21). Required if the debtor is an individual. Must be submitted WITH the petition. Fed.R.Bankr.P. 1007(f).

☐ **Individual Debtor's Statement of Compliance with Credit Counseling Requirement** (Exhibit D to Official Form 1); **Certificate of Credit Counseling and Debt Repayment Plan,** if applicable; **Section 109(h)(3) certification or § 109(h)(4) request,** if applicable. Exhibit D is required if the debtor is an individual. Exhibit D must be filed WITH the petition. If applicable, the Certificate of Credit Counseling and Debt Repayment Plan must be filed with the petition or within 14 days. If applicable, the § 109(h)(3) certification or the § 109(h)(4) request must be filed WITH the petition. Fed.R.Bankr.P. 1007(b)(3), (c).

☐ **Statement disclosing compensation paid or to be paid to a "bankruptcy petition preparer"** (Director's Form 280). Required if a "bankruptcy petition preparer" prepares the petition. Must be submitted WITH the petition. 11 U.S.C. §110(h)(2).

☐ **Statement of current monthly income, etc.** (Official Form 22A). Required if the debtor is an individual. Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Schedules of assets and liabilities** (Official Form 6). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Schedule of executory contracts and unexpired leases** (Schedule G of Official Form 6). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Schedules of current income and expenditures.** All debtors must file these schedules. If the debtor is an individual, Schedules I and J of Official Form 6 must be used for this purpose. Must be filed with the petition or within 14 days. 11 U.S.C. § 521(1) and Fed.R.Bankr.P. 1007(b), (c).

☐ **Statement of financial affairs** (Official Form 7). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Copies of all payment advices or other evidence of payment** received by the debtor from any employer within 60 days before the filing of the petition. Required if the debtor is an individual. Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Statement of intention regarding secured property and unexpired leases** (Official Form 8). Required ONLY if the debtor is an individual and the schedules of assets and liabilities contain debts secured by property of the estate or personal property subject to an unexpired lease. Must be filed within 30 days or by the date set for the Section 341 meeting of creditors, whichever is earlier. 11 U.S.C. §§ 362(h) and 521(a)(2).

☐ **Statement disclosing compensation paid or to be paid to the attorney** for the debtor (Director's Form 203). Required if the debtor is represented by an attorney. Must be filed within 14 days or any other date set by the court. 11 U.S.C. § 329 and Fed.R.Bankr.P. 2016(b).

☐ **Certification of Completion of Instructional Course Concerning Financial Management** (Official Form 23), if applicable. Required if the debtor is an individual. Must be filed within 45 days of the first date set for the meeting of creditors. 11 U.S.C. § 727(a)(11) and Fed.R.Bankr.P. 1007(b)(7), (c).

REQUIRED LISTS, SCHEDULES, STATEMENTS, AND FEES
Voluntary Chapter 11 Case

☐ **Filing fee of $1,000.** If the fee is to be paid in installments, the debtor must be an individual and must file a signed application for court approval. Official Form 3A and Fed.R.Bankr.P. 1006(b).

☐ **Administrative fee of $39.** If the debtor is an individual and the court grants the debtor's request, this fee is payable in installments.

☐ **United States Trustee quarterly fee.** The debtor, or trustee if one is appointed, is required also to pay a fee to the United States trustee at the conclusion of each calendar quarter until the case is dismissed or converted to another chapter. The calculation of the amount to be paid is set out in 28 U.S.C. 1930(a)(6).

☐ **Voluntary Petition** (Official Form 1); **Names and addresses of all creditors**. Must be filed WITH the petition. Fed.R.Bankr.P. 1007(a)(1).

☐ **Notice to Individual Debtor with Primarily Consumer Debts** under 11 U.S.C. § 342(b) (Director's Form 201), if applicable. Required if the debtor is an individual with primarily consumer debts. The notice must be **GIVEN** to the debtor before the petition is filed. Certification that the notice has been given must be **FILED** with the petition or within 15 days. 11 U.S.C. §§ 342(b), 521(a)(1)(B)(iii), 1112(e). Official Form 1 contains spaces for the certification.

☐ **Notice to debtor by "bankruptcy petition preparer"** (Official Form 19). Required if a "bankruptcy petition preparer" prepares the petition. Must be submitted WITH the petition. 11 U.S.C. § 110(b)(2).

☐ **Statement of Social Security Number** (Official Form 21). Required if the debtor is an individual. Must be submitted **WITH** the petition. Fed.R.Bankr.P. 1007(f).

☐ **Individual Debtor's Statement of Compliance with Credit Counseling Requirement** (Exhibit D to Official Form 1); **Certificate of Credit Counseling and Debt Repayment Plan**, if applicable; **Section 109(h)(3) certification or § 109(h)(4) request**, if applicable. Required if the debtor is an individual. Exhibit D must be filed **WITH** the petition. If applicable, the Certificate of Credit Counseling and Debt Repayment Plan must be filed with the petition or within 14 days. If applicable, the § 109(h)(3) certification or the § 109(h)(4) request must be filed **WITH** the petition. Fed.R.Bankr.P. 1007(b)(3), (c).

☐ **Statement disclosing compensation paid or to be paid to a "bankruptcy petition preparer"** (Director's Form 280). Required if a "bankruptcy petition preparer" prepares the petition. Must be submitted WITH the petition. 11 U.S.C. §110(h)(2).

☐ **Statement of Current Monthly Income** (Official Form 22B). Required if the debtor is an individual. Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

List of Creditors holding the 20 largest unsecured claims (Official Form 4). Must be filed **WITH** the petition. Fed.R.Bankr.P. 1007(d).

☐ **Names and addresses of equity security holders of the debtor.** Must be filed with the petition or within 14 days, unless the court orders otherwise. Fed.R.Bankr.P. 1007(a)(3).

☐ **Schedules of Assets and Liabilities (Official Form 6).** Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Schedule of executory contracts and unexpired leases** (Schedule G of Official Form 6). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Schedules of Current Income and Expenditures.** All debtors must file these schedules. If the debtor is an individual, Schedules I and J of Official Form 6 must be used for this purpose. Must be filed with the petition or within 14 days. 11 U.S.C. § 521(1) and Fed.R.Bankr.P. 1007(b), (c).

☐ **Statement of Financial Affairs (Official Form 7).** Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Copies of all payment advices or other evidence of payment** received by debtor from any employer within 60 days before the filing of the petition. Required if the debtor is an individual. Must be filed **WITH** the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Statement disclosing compensation paid or to be paid to the attorney** for the debtor (Director's Form 203), if applicable. Required if the debtor is represented by an attorney. Must be filed within 14 days or any other date set by the court. 11 U.S.C. § 329 and Fed.R.Bankr.P. 2016(b).

☐ **Certificate of Completion of Instructional Course Concerning Financial Management** (Official Form 23), if applicable. Required if the debtor is an individual and § 1141(d)(3) applies. Must be filed no later than the date of the last payment under the plan or the filing of a motion for a discharge under § 1141(d)(5)(B). 11 U.S.C. § 1141(d)(3) and Fed.R.Bankr.P. 1007(b)(7), (c).

☐ **Statement concerning pending proceedings of the kind described in § 522(q)(1)**, if applicable. Required if the debtor is an individual and has claimed exemptions under state or local law as described in § 522(b)(3) in excess of $136,875. Must be filed no later than the date of the last payment made under the plan or the date of the filing of a motion for a discharge under § 1141(d)(5)(B). 11 U.S.C. § 1141(d)(5)(C) and Fed.R.Bankr.P. 1007(b)(8), (c).

REQUIRED LISTS, SCHEDULES, STATEMENTS, AND FEES
Chapter 12 Case

☐ **Filing Fee of $200.** If the fee is to be paid in installments, the debtor must be an individual and must file a signed application for court approval. Official Form 3A and Fed.R.Bankr.P. 1006(b).

☐ **Administrative fee of $39.** If the debtor is an individual and the court grants the debtor's request, this fee is payable in installments.

☐ **Voluntary Petition** (Official Form 1). **Names and addresses of all creditors** of the debtor. Must be filed WITH the petition. Fed.R.Bankr.P. 1007(a)(1)

☐ **Notice to Individual Debtor with Primarily Consumer Debts** under 11 U.S.C. § 342(b) (Director's Form 201), if applicable. Required if the debtor is an individual with primarily consumer debts. The notice must be GIVEN to the debtor before the petition is filed. Certification that the notice has been given must be FILED with the court in a timely manner. 11 U.S.C. §§ 342(b), 521(a)(1)(B)(iii). Official Form 1 contains spaces for the certification.

☐ **Notice to debtor by "bankruptcy petition preparer,"** (Official Form 19). Required if a "bankruptcy petition preparer" prepares the petition. Must be submitted WITH the petition. 11 U.S.C. § 110(b)(2).

☐ **Statement of Social Security Number** (Official Form 21). Required if the debtor is an individual. Must be submitted WITH the petition. Fed.R.Bankr.P. 1007(f).

☐ **Individual Debtor's Statement of Compliance with Credit Counseling Requirement** (Exhibit D to Official Form 1). **Certificate of Credit Counseling and Debt Repayment Plan**, if applicable. **Section 109(h)(3) certification or § 109(h)(4) request**, if applicable. Required if the debtor is an individual. Exhibit D must be filed WITH the petition. If applicable, the Certificate of Credit Counseling and Debt Repayment Plan must be filed with the petition or within 14 days. If applicable, the § 109(h)(3) certification or the § 109(h)(4) request must be filed WITH the petition. Fed.R.Bankr.P. 1007(b)(3), (c).

☐ **Statement disclosing compensation paid or to be paid to a "bankruptcy petition preparer"** (Director's Form 280). Required if a "bankruptcy petition preparer" prepares the petition. Must be submitted WITH the petition. 11 U.S.C. §110(h)(2).

☐ **Schedules of Assets and Liabilities** (Official Form 6). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Schedule of Executory Contracts and Unexpired Leases** (Schedule G of Official Form 6). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Schedules of Current Income and Expenditures.** All debtors must file these schedules. If the debtor is an individual, Schedule I and J of Official Form 6 must be used for this purpose. Must be filed with the petition or within 14 days. 11 U.S.C. § 521(1) and Fed.R.Bankr.P. 1007(b), (c).

☐ **Statement of Financial Affairs** (Official Form 7). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Copies of all payment advices** or other evidence of payment received by the debtor from any employer within 60 days before the filing of the petition if the debtor is an individual. Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Statement disclosing compensation paid or to be paid to the attorney** for the debtor (Director's Form 203), if applicable. Must be filed within 14 days or any other date set by the court. 11 U.S.C. § 329 and Fed.R.Bankr.P. 2016(b).

☐ **Chapter 12 Plan.** Must be filed within 90 days. 11 U.S.C. § 1221.

☐ **Statement concerning pending proceedings of the kind described in § 522(q)(1),** if applicable. Required if the debtor is an individual and has claimed exemptions under state or local law as described in §522(b)(3) in excess of $136,875. Must be filed no later than the date of the last payment made under the plan or the date of the filing of a motion for a discharge under § 1228(b). 11 U.S.C. § 1228(f) and Fed.R.Bankr.P. 1007(b)(8), (c).

REQUIRED LISTS, SCHEDULES, STATEMENTS, AND FEES
Chapter 13 Case

☐ **Filing fee of $235.** If the fee is to be paid in installments, the debtor must file a signed application for court approval. Official Form 3A and Fed.R.Bankr.P. 1006(b).

☐ **Administrative fee of $39.** If the court grants the debtor's request, this fee is payable in installments.

☐ **Voluntary Petition** (Official Form 1); **Names and addresses of all creditors** of the debtor. Must be filed WITH the petition. Fed.R.Bankr.P. 1007(a)(1).

☐ **Notice to Individual Debtor with Primarily Consumer Debts** under 11 U.S.C. § 342(b) (Director's Form 201), if applicable. Required if the debtor is an individual with primarily consumer debts. The notice must be GIVEN to the debtor before the petition is filed. Certification that the notice has been given must be FILED with the petition or within 15 days. 11 U.S.C. §§ 342(b), 521(a)(1)(B)(iii), 1307(c)(9). Official Form 1 contains spaces for the certification.

☐ **Notice to debtor by "bankruptcy petition preparer,"** (Official Form 19). Required if a "bankruptcy petition preparer" prepares the petition. Must be submitted WITH the petition. 11 U.S.C. § 110(b)(2).

☐ **Statement of Social Security Number** (Official Form 21). Must be submitted WITH the petition. Fed.R.Bankr.P. 1007(f).

☐ **Individual Debtor's Statement of Compliance with Credit Counseling Requirement** (Exhibit D to Official Form 1); **Certificate of Credit Counseling and Debt Repayment Plan,** if applicable; **Section 109(h)(3) certification or § 109(h)(4) request**, if applicable. Exhibit D must be filed WITH the petition. If applicable, the Certificate of Credit Counseling and Debt Repayment Plan must be filed with the petition or within 14 days. If applicable, the § 109(h)(3) certification or the § 109(h)(4) request must be filed WITH the petition. Fed.R.Bankr.P. 1007(b)(3), (c).

☐ **Statement disclosing compensation paid or to be paid to a "bankruptcy petition preparer"** (Director's Form 280). Required if a "bankruptcy petition preparer" prepares the petition. Must be submitted WITH the petition. 11 U.S.C. §110(h)(2).

Statement of Current Monthly Income, etc. (Official Form 22C). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007.

☐ **Schedules of Assets and Liabilities** (Official Form 6). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Schedule of Executory Contracts and Unexpired Leases** (Schedule G of Official Form 6). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Schedules of Current Income and Expenditures** (Schedules I and J of Official Form 6). Must be filed with the petition or within 14 days. 11 U.S.C. § 521(1) and Fed.R.Bankr.P. 1007(b), (c).

☐ **Statement of Financial Affairs** (Official Form 7). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Copies of all payment advices or other evidence of payment** received by the debtor from any employer within 60 days before the filing of the petition. Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).

☐ **Chapter 13 Plan.** Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 3015.

☐ **Statement disclosing compensation paid or to be paid to the attorney** for the debtor (Director's Form 203), if applicable. Must be filed within 14 days or any other date set by the court. 11 U.S.C. § 329 and Fed.R.Bankr.P. 2016(b).

☐ **Certificate of Completion of Instructional Course Concerning Financial Management** (Official Form 23). Must be filed no later than the date of the last payment made under the plan or the date of the filing of a motion for a discharge under § 1328(b). 11 U.S.C. § 1328(g)(1) and Fed.R.Bankr.P. 1007(b)(7), (c).

☐ **Statement concerning pending proceedings of the kind described in § 522(q)(1),** if applicable. Required if the debtor has claimed exemptions under state or local law as described in §522(b)(3) in excess of $136,875. Must be filed no later than the date of the last payment made under the plan or the date of the filing of a motion for a discharge under § 1328(b). 11 U.S.C. § 1328(h) and Fed.R.Bankr.P. 1007(b)(8), (c).

Form 210A (12/09)

United States Bankruptcy Court

_____ District Of _____

In re _____, Case No. _____

TRANSFER OF CLAIM OTHER THAN FOR SECURITY

A CLAIM HAS BEEN FILED IN THIS CASE or deemed filed under 11 U.S.C. § 1111(a). Transferee hereby gives evidence and notice pursuant to Rule 3001(e)(2), Fed. R. Bankr. P., of the transfer, other than for security, of the claim referenced in this evidence and notice.

_____
Name of Transferee

Name and Address where notices to transferee should be sent:

Phone: _____
Last Four Digits of Acct #: _____

Name and Address where transferee payments should be sent (if different from above):

Phone: _____
Last Four Digits of Acct #: _____

_____
Name of Transferor

Court Claim # (if known): _____
Amount of Claim: _____
Date Claim Filed: _____

Phone: _____
Last Four Digits of Acct. #: _____

I declare under penalty of perjury that the information provided in this notice is true and correct to the best of my knowledge and belief.

By: _____
Transferee/Transferee's Agent

Date: _____

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 & 3571.

Form 210B (12/09)

United States Bankruptcy Court

_____ District Of _____

In re _____, Case No. _____

NOTICE OF TRANSFER OF CLAIM OTHER THAN FOR SECURITY

Claim No. _____ (if known) was filed or deemed filed under 11 U.S.C. § 1111(a) in this case by the alleged transferor. As evidence of the transfer of that claim, the transferee filed a Transfer of Claim Other than for Security in the clerk's office of this court on _____ (date).

_____
Name of Alleged Transferor

Address of Alleged Transferor:

_____
Name of Transferee

Address of Transferee:

~~DEADLINE TO OBJECT TO TRANSFER~~

The alleged transferor of the claim is hereby notified that objections must be filed with the court within twenty-one (21) days of the mailing of this notice. If no objection is timely received by the court, the transferee will be substituted as the original claimant without further order of the court.

Date:_____

_____
CLERK OF THE COURT

B231A (Form 231A) (12/09)

United States Bankruptcy Court

_____ District Of _____

In re _____ Case No. _____

Debtor*

Address: _____ Chapter _____

_____

Last four digits of Social-Security or Individual Taxpayer-Identification (ITIN) No(s).,(if any): _____

Employer Tax-Identification (EIN) No(s).(if any): ____

_____

ORDER FIXING TIME TO OBJECT TO PROPOSED MODIFICATION OF CONFIRMED CHAPTER 12 PLAN

To the debtor, trustee, and creditors:

_____ filed a proposed modification of the confirmed plan on _____ (date).

A copy of the proposed modification is attached.

IT IS ORDERED AND NOTICE IS GIVEN THAT:

1. The last day for filing a written objection to the proposed modification is:

Date:

2. The proponent of the proposed modification is directed to serve a copy or summary of the proposed modification of the plan, together with a copy of this order, on the debtor, the trustee, the United States trustee, and all creditors no later than 21 days before the date set forth above.

3. Any objection to the proposed modification shall be filed and served on the debtor, the trustee, the United States trustee, and all creditors.

4. If an objection is filed, a hearing to consider the proposed modification will be held at:

Address	Room
	Date and Time

If no objection is filed, the court may not hold a hearing.

BY THE COURT

Date: _____

_____

United States Bankruptcy Judge

** Set forth all names, including trade names, used by the debtor(s) within the last 8 years. For joint debtors, set forth the last four digits of both social-security numbers or individual taxpayer-identification numbers.*

B231B (Form 231B) (12/09)

United States Bankruptcy Court

_____ District Of _____

In re _____ Case No. _____

Debtor*

Address: _____ Chapter _____

_____

Last four digits of Social-Security or Individual Taxpayer-Identification (ITIN) No(s).,(if any): _____

Employer Tax-Identification (EIN) No(s).(if any): ____

_____

ORDER FIXING TIME TO OBJECT TO PROPOSED MODIFICATION OF CONFIRMED CHAPTER 13 PLAN

To the debtor, trustee, and creditors:

_____ filed a proposed modification of the confirmed plan on _____ (date).

A copy of the proposed modification is attached.

IT IS ORDERED AND NOTICE IS GIVEN THAT:

1. The last day for filing a written objection to the proposed modification is:

Date:

2. The proponent of the proposed modification is directed to serve a copy or summary of the proposed modification of the plan, together with a copy of this order, on the debtor, the trustee, the United States trustee, and all creditors no later than 21 days before the date set forth above.

3. Any objection to the proposed modification shall be filed and served on the debtor, the trustee, the United States trustee, and all creditors.

4. If an objection is filed, a hearing to consider the proposed modification will be held at:

Address	Room
	Date and Time

If no objection is filed, the court may not hold a hearing.

BY THE COURT

Date: _____

_____

United States Bankruptcy Judge

* *Set forth all names, including trade names, used by the debtor(s) within the last 8 years. For joint debtors, set forth the last four digits of both social-security numbers or individual taxpayer-identification numbers.*

Proposed amendments to Director's Form B250E are set out in Agenda Item 5(F).

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON BUSINESS ISSUES

RE: SUGGESTION REGARDING RULE 1007(k)

DATE: AUGUST 7, 2009

Bankruptcy Judge Robert Kressel (D. Minn.) has submitted a suggestion (09-BK-D) that the Advisory Committee consider whether the last sentence of Rule 1007(k) should be deleted as either substantive or unnecessary. Rule 1007 prescribes various lists, schedules, statements, and other documents that must be filed in a bankruptcy case and the time limits for doing so. Subdivision (k) of that rule authorizes the bankruptcy court to order "the trustee, a petitioning creditor, committee, or other party" to prepare and file any of the required papers if they are not otherwise prepared and filed in accordance with the rule. The final sentence of that subdivision, which Judge Kressel questions, states as follows: "The court may approve reimbursement of the cost incurred in complying with such an order as an administrative expense."

Judge Kressel states that the authorization for reimbursement as an administrative expense appears to be substantive in nature and thus beyond the scope of the rulemaking authority. To the extent that the provision is consistent with § 503(b)(3)(A)[1] of the Code, he suggests that it is unnecessary.

This suggestion was referred to the Subcommittee on Business Issues. It discussed the matter during its conference call on July 13, 2009, and it recommends that no further action be

[1] As discussed below, the Subcommittee also considered whether such reimbursement is authorized by § 503(b)(1)(A) of the Code.

taken in response to the suggestion.

History of Rule 1007(k)

Rule 1007(k) was promulgated in 1983 as part of the initial set of bankruptcy rules under the Bankruptcy Code. The only change in wording since its enactment was the addition in 1987 of an exception for a debtor's statement of intention under § 521; no one other than the debtor can be ordered to prepare and file that paper. The final sentence regarding reimbursement of the cost of complying with the court's order has remained unchanged since the rule first went into effect.

The 1983 Committee Note states that subdivision (k) was derived from former Rules 108(d) and 10-108(a). Rule 108(d) authorized the court to require "the receiver, trustee, a petitioning creditor, or other party in interest to prepare and file any of the[] papers [required by the rule] within such time as the court shall fix" if the paper was not otherwise prepared and filed in accordance with the rule. The subdivision did not include any provision regarding reimbursement of the cost of complying with the court's order. Former Rule 10-108(a), which was applicable in chapter X cases, required the trustee or debtor in possession to file "at the expense of the estate" lists of creditors and shareholders, including specified information about their identities and claims or interests.

The predecessors to Rule 1007(k), therefore, were somewhat narrower in scope than the current provision. While former Rule 108(d) authorized the court to order someone other than the debtor to prepare and file documents, there was no express authorization for reimbursement from the estate of the costs of compliance. Only Rule 10-108(a), which itself imposed a filing obligation on the trustee or debtor in possession, stated that the estate would bear the cost of

compliance. Current Rule 1007(k), by contrast, expressly says that when the court orders someone, other than the one with the initial obligation to prepare and file documents, to undertake this task, the cost incurred in complying with the order may be treated as an administrative expense.

Caselaw Under Rule 1007(k)

The caselaw applying Rule 1007(k) is sparse, and no courts appear to have questioned the validity of or need for the final sentence of the subdivision. The two cases discussed below illustrate courts' application of the rule.

In re Taylor & Assocs., 193 B.R. 465 (Bankr. E.D. Tenn. 1996), *rev'd on other grounds*, 249 B.R. 431 (E.D. Tenn. 1997), was an involuntary chapter 7 case filed against a limited partnership. The debtor's general partner had died, and business operations had ceased. Relying on Rule 1007(k), the court ordered the interim trustee to file the list of creditors required by Rule 1007(a)(2) and the schedules and statements required by Rule 1007(b)(1), to the extent that the required information could be extracted from the debtor's books and records. The court directed that the costs incurred in preparing the list, schedules, and statements be reimbursed as an administrative expense. Interestingly, the court cited § 503(b)(1)(A)[2] as its authority for the latter order, rather than Rule 1007(k).

More recently, the court in Miller v. Advantage Credit Counseling Serv. (*In re* Miller), 336 B.R. 232 (Bankr. W.D. Pa. 2006), relied on Rule 1007(k) as authority to order a credit counseling service to deliver to the debtor or file a certificate of completion of credit counseling.

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[2] When the *Taylor* case was decided, § 503(b)(1)(A) provided that administrative expenses included "the actual, necessary costs and expenses of preserving the estate, including wages, salaries, and commissions for services rendered after the commencement of the case."

The credit counselor had withheld the certificate due to the debtor's nonpayment of its fee. Because of a showing of exigent circumstances, the credit briefing had occurred after the filing of the petition. Citing no authority, the court stated that the "budget and credit counseling agency would have an administrative expense claim in this case to the extent the briefing certificate is delivered to the debtor and to the extent the fees charged by it are reasonable." The court further noted that it was not deciding whether the debtor could "compel the agency to provide the certificate without any assurance(s) that the fees due the agency would be paid in full." *Id.* at 239 n.7.

The Subcommittee's Recommendation

Rule 1007(k)'s authorization for certain expenses to be treated as administrative expenses is unique. No other bankruptcy rule declares that a particular expenditure qualifies as an administrative expense. If the rule were to create a whole new category of administrative expenses that exceeded the scope of § 503, that would raise a serious issue about whether the rule's promulgation exceeded rulemaking authority under 28 U.S.C. § 2075. A bankruptcy rule, of course, may not "abridge, enlarge, or modify any substantive right."

The Subcommittee concluded, however, that the last sentence of Rule 1007(k) does not run afoul of that limitation on rulemaking authority. Its authorization for the court to approve as an administrative expense the cost of compliance with an order that a non-debtor prepare and file documents necessary for case administration does not enlarge (or abridge or modify) the substantive rights created by § 503. The rule is consistent with that statutory provision.

The preparation and filing of documents required by Rule 1007 by someone other than the debtor may be necessary in some cases, such as those discussed above, to preserve the estate.

As such, the cost incurred would fall within § 503(b)(1)(A)'s general description of administrative expenses.[3] More specific provisions of § 503 also apply. The cost incurred by a trustee could constitute an administrative expense under § 503(b)(2), since that expense could be compensated and reimbursed under § 330(a)(1). The cost incurred by a petitioning creditor in an involuntary case would fall within § 503(b)(3)(A). The cost incurred by a committee would fall within § 503(b)(2) if the attorney for the committee was seeking compensation and reimbursement, and under § 503(b)(3)(F) if an individual committee member was the one seeking payment. Finally, authority for approving the reimbursement request of any "other party" as an administrative expense would probably most frequently rest on the general provision of § 503(b)(1)(A).

That analysis of the statutory authority for the administrative expense provision of Rule 1007(k) then raises the second issue posed by Judge Kressel: is the provision necessary? A rule is not needed just to restate authority already provided by the Code. Instead, a rule should implement and provide necessary procedural details for statutory provisions. As shown by the *Taylor & Assocs.* case, which was discussed above, a court can just rely directly on § 503(b)(1)(A) or another provision of that statute as authority for reimbursing the costs of compliance with its Rule 1007(k) order as an administrative expense; the further authorization in the rule does not seem needed.

Nevertheless, the Subcommittee concluded that there is no reason at this point to remove the sentence from Rule 1007(k). It has been part of the rule from its beginning, for almost 26

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[3] Section 503(b)(1)(A) now reads that allowed administrative expenses include "the actual, necessary costs and expenses of preserving the estate." That provision is followed by a nonexclusive list of qualifying costs and expenses.

years. It does not seem to have caused any problems or confusion in the courts. And it may in fact serve a purpose of clarification. The sentence in the rule provides more succinctly and clearly than does § 503 that the cost of complying with a court's order under Rule 1007(k) may be treated as an administrative expense. Inclusion of that express authorization in the rule may also make the rule more palatable to those ordered by the court to prepare and file papers upon the debtor's failure to do so.

Because the Subcommittee concludes that the sentence creates no new substantive rights and that removal of the authorization for payment as an administrative expense at this point might give rise to the negative implication that such authority no longer exists, it recommends that no change be made to Rule 1007(k).

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON BUSINESS ISSUES

RE: SUGGESTION FOR AMENDMENT OR REPEAL OF RULE 9031 TO ALLOW USE OF SPECIAL MASTERS IN BANKRUPTCY CASES

DATE: AUGUST 7, 2009

Two bankruptcy judges have submitted suggestions that Rule 9031, which currently states that Civil Rule 53 does not apply in bankruptcy cases, be amended or deleted so that special masters can be appointed when needed in bankruptcy cases.[1] Judge Geraldine Mund (Bankr. C.D. Cal.) suggests that there are some complex chapter 11 cases and adversary proceedings in which a special master could be beneficial, and she questions the original basis for Rule 9031's prohibition (Suggestion 09-BK-C). Judge David Kennedy (Bankr. W.D. Tenn.) likewise suggests that Rule 9031 be amended to eliminate its prohibition on the authority of judges in bankruptcy cases to appoint special masters (Suggestion 09-BK-E). He has also presented the issue to the Subcommittee on Long-Range Planning of the Bankruptcy Administration Committee for its consideration.

This is not the first time that the issue of allowing the appointment of special masters has been raised with the Advisory Committee. On at least three occasions since Rule 9031's adoption in 1983, the Advisory Committee has considered and rejected suggestions that the rule's prohibition on the use of special masters be eliminated.

Judge Swain referred this issue to the Subcommittee on Business Issues, and after careful

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[1] The current version of Civil Rule 53 is attached to this memorandum as appendix A.

consideration and discussion, it voted unanimously to recommend that no change be made to Rule 9031.

History of Rule 9031

From its promulgation in 1983, Rule 9031 has provided that "Rule 53 F.R.Civ.P. does not apply in cases under the Code." The Advisory Committee Note simply states that "[t]his rule precludes the appointment of masters in cases and proceedings under the Code." When the Standing Committee submitted the complete set of new Bankruptcy Rules to the Judicial Conference in September 1982, it made special note of Rule 9031. It pointed out that, while the Bankruptcy Rules incorporate many Federal Rules of Civil Procedure, Rule 53 is not among them. This decision represented a change from former Bankruptcy Rule 513, which had provided that "[i]f a reference is made in a bankruptcy case by a judge to a special master, the Federal Rules of Civil Procedure applicable to masters apply." The Standing Committee explained that prior to the enactment of the Bankruptcy Code and related jurisdictional provisions, "judge" had referred to a district judge. Rule 513 therefore generally applied only when a district judge exercised jurisdiction over a chapter X case. The committee report then stated: "There does not appear to be any need for the appointment of special masters in bankruptcy cases by bankruptcy judges."

The minutes of the Standing Committee meeting of August 1982 shed a little more light on the decision to prohibit the appointment of special masters. There was discussion at the meeting about some of the bankruptcy rules the Advisory Committee was proposing, including Rule 9031. The minutes reflect that the Advisory Committee had decided not to permit "bankruptcy judges to appoint special masters" because "this would eliminate an area in which

charges of 'cronyism' had previously been leveled at the bankruptcy system." Judge Aldisert, chair of the Advisory Committee, also explained that the Committee "felt that bankruptcy judges should be directly involved in cases and should not delegate to masters."

Despite the focus during the promulgation of the rule on the appointment of special masters by bankruptcy judges, the wording of the rule has led to the conclusion that the prohibition also applies to district judges when they are exercising bankruptcy jurisdiction. Because of its reference to "cases under the Code" rather than to particular judges or courts, it has been interpreted as applying to all bankruptcy cases to which the Bankruptcy Rules apply, regardless of the presiding judge. Thus the rule applies to bankruptcy courts hearing core and non-core matters; to district courts, whether exercising original or appellate bankruptcy jurisdiction; and to bankruptcy appellate panels.[2]

The Advisory Committee's Reconsideration of Rule 9031

The Advisory Committee was informed at its June 1991 meeting that the Case Management Subcommittee of the Bankruptcy Administration Committee had inquired why Rule 9031 prohibited the use of special masters in bankruptcy cases. One member explained that the prohibition was intended to prevent the powers of bankruptcy judges from being diluted by a district court's appointment of a special master, rather than referral of a bankruptcy case or proceeding to a bankruptcy judge. Another participant said that the rule was also intended to prevent the referral of bankruptcy appeals to magistrate judges. One member noted that examiners were being appointed to carry out functions of special masters, and the reporter

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[2] The Bankruptcy Rules do not apply to proceedings in the courts of appeals. Rule 9031 therefore does not override the authority under FRAP 48 for a court of appeals to appoint a special master in matters ancillary to a bankruptcy or other type of proceeding pending before it.

responded that permitting the appointment of special masters would allow examiners to resume their original role. The minutes indicate that it was the sense of the Advisory Committee that the Subcommittee on Alternative Dispute Resolution should continue to study the issue.

At its September 1995 meeting, the Advisory Committee considered and rejected a suggestion made by the Bankruptcy Administration Committee that the bankruptcy rules be amended to authorize the appointment of special masters in bankruptcy cases and proceedings. This suggestion arose from the Bankruptcy Administration Committee's Long-Range Planning Subcommittee. The Advisory Committee minutes state that the committee "consensus was that a special master is too reminiscent of the former bankruptcy referee and that adequate alternatives exist in the authority to appoint a trustee and an examiner."

After this determination not to recommend an amendment of Rule 9031 was made, the Bankruptcy Administration Committee voted at its June 1996 meeting to request the Advisory Committee to reconsider that decision. The Bankruptcy Administration Committee also asked the Federal Judicial Center ("FJC") to study the issue of "appointing special masters in bankruptcy cases and proceedings as it relates to the goal of improved case management."

The FJC report recommended that Rule 9031 be amended to eliminate the prohibition on the appointment of special masters in bankruptcy cases. It suggested that the rule "provide procedures for such appointments in rare and unusually complex cases and proceedings under the Bankruptcy Code akin to the procedures established in Rule 53 of the Federal Rules of Civil Procedure for rare and unusually complex civil litigation in the district court." The report concluded that judges have inherent authority to appoint special masters and that there was no compelling reason for a procedural rule to prohibit the exercise of this authority in unusually

complex bankruptcy cases. It further noted that a trustee or examiner cannot perform the same duties that a special master might be appointed to perform.

After careful consideration of the issue at the September 1996 meeting, aided by a thorough memorandum prepared by Reporter Alan Resnick that recommended against amendment of Rule 9031, the Advisory Committee voted 8 to 5 not to amend the rule. The minutes of that meeting record a full discussion of the issue, during which competing views were expressed. Some members expressed the view that the authority to appoint a special master could be a useful tool in appropriate cases and that a rule should be adopted that authorized their use in bankruptcy cases under suitably limited circumstances. Others noted the history of patronage in bankruptcy that the Bankruptcy Code and Rules had been designed to avoid and suggested that the prohibition on receivers (under the Code) and special masters (in the Rules) was part of the solution to that problem. It was also questioned whether there was really any need for special masters in bankruptcy cases and whether the Code allows for their compensation out of the estate. Professor Resnick, in his memorandum, raised the further issue of the inefficiency of adding another layer of review to bankruptcy proceedings if findings of fact or conclusions of law were made by a special master.

The issue of special masters in bankruptcy arose once again in 2002. Judge David Kennedy wrote the chair of the Advisory Committee and inquired whether the Committee intended to reconsider the prohibition on the appointment of special masters. He suggested that, especially in light of the number of recent bankruptcy filings by large companies that presented complex issues, the time had come to provide this valuable case management tool for appropriate bankruptcy cases and proceedings. Around the time that Judge Kennedy sent his letter, two law

review articles were published (one by Judge Kennedy's law clerk) that took the position that Rule 9031 should be amended to authorize the use of special masters.[3]

In response to Judge Kennedy's letter and the publication of the law review articles, the Advisory Committee discussed at its September 2002 meeting whether to reconsider the position taken by the Committee in 1996 to retain Rule 9031's prohibition. The Advisory Committee determined to take no action at that time. Among other comments recorded by the minutes was Professor Resnick's review of the Committee's 1996 reconsideration of the rule. He noted that the Committee at that time "expressed concerns about the adjudicatory role of a special master who may make findings of fact and conclusions of law, the constitutionality of a special master's appointment by a non-article III judge, and the standard of review of a special master's findings of fact and conclusions of law by the bankruptcy judge and on appeal." The Advisory Committee during its 2002 discussions also noted the possibility of the use of a court-appointed expert pursuant to Evidence Rule 706. Questions were raised about the propriety of and authority for compensating a special master out of the estate.

Recommendation of the Subcommittee

The Subcommittee concluded that for several reasons Rule 9031 should not be amended to allow the use of special masters in bankruptcy cases. First, the Subcommittee believes that Rule 9031 should not be opened for reconsideration yet another time. While the Advisory Committee is not bound by doctrines of res judicata or stare decisis, the Subcommittee believes

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[3] R. Spencer Clift, III, *Should the Federal Rules of Bankruptcy Procedure Be Amended to Expressly Authorize United States District and Bankruptcy Courts to Appoint Special Masters in an Appropriate and Rare Bankruptcy Case or Proceeding?*, 31 U. MEM. L. REV. 353 (2001); Paulette J. Delk, *Special Masters in Bankruptcy: The Case Against Bankruptcy Rule 9031*, 67 MO. L. REV. 29 (2002).

that it is sound policy for the Committee to decline to revisit issues and arguments that have been fully considered by the Committee in the recent past unless there are indications of subsequent changes in circumstances that cast doubt on the prior determinations. Neither Judge Mund nor Judge Kennedy has suggested that such changes have occurred since 2002.[4]

The Subcommittee also concluded that, even if Rule 9031 were to be reconsidered, its prohibition on the use of special masters should be retained. Although concerns about "cronyism" may have faded to a large extent since the 1970s and early 1980s, the bankruptcy judge members of the Subcommittee indicated that they like not having appointment power, and some Subcommittee members worried about the possible return of cronyism if judges were given the authority to appoint special masters. The Subcommittee also finds persuasive some of the concerns that the Advisory Committee noted in the past, including the creation of greater complexity and expense resulting from the use of special masters. The use of a special master results in the addition of another level of decision making and review to a judicial scheme in which there are already multiple levels of review. One member also questioned the

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[4] In fact, there is at least one development since 2002 that supports the retention of Rule 9031. In 2004 a report was published by the Select Advisory Committee on Business Reorganization of the ABA's Business Bankruptcy Committee that recommended that the Bankruptcy Code be amended to expand the functions of examiners and increase the court's flexibility in ordering their appointment by U.S. trustees. *Second Report of the Select Advisory Committee on Business Reorganization*, 60 BUS. LAWYER 277 (Nov. 2004). The Committee supported that statutory option, rather than recommending the use of special masters in bankruptcy cases, because it concluded that "allowing bankruptcy courts to appoint special masters would raise certain policy concerns with respect to the bankruptcy system." Among the concerns the ABA committee noted was the greater deference that must be accorded a special master's findings of fact and conclusions of law than must be given to the report and recommendations of an examiner. The committee contrasted the decision-making authority of a special master to the reporting function of an examiner. It also questioned whether, given the history of bankruptcy jurisdiction, Congress would favor a scheme that allows a bankruptcy court to refer matters to another decision maker.

constitutional legitimacy of a delegation of authority twice removed from an Article III judge.

Finally, the Subcommittee doubts whether there is a need for the appointment of special masters in bankruptcy cases. No one is aware of any bankruptcy case in which a court has expressed frustration about the inability to appoint a special master, and it appears to the Subcommittee that the use of examiners is a sufficient alternative.

Attachment

Attachment A

Rule 53. Masters

(a) APPOINTMENT.

(1) *Scope.* Unless a statute provides otherwise, a court may appoint a master only to:

(A) perform duties consented to by the parties;

(B) hold trial proceedings and make or recommend findings of fact on issues to be decided without a jury if appointment is warranted by:

(I) some exceptional condition; or

(ii) the need to perform an accounting or resolve a difficult computation of damages; or

(C) address pretrial and posttrial matters that cannot be effectively and timely addressed by an available district judge or magistrate judge of the district.

(2) *Disqualification.* A master must not have a relationship to the parties, attorneys, action, or court that would require disqualification of a judge under 28 U.S.C. § 455, unless the parties, with the court's approval, consent to the appointment after the master discloses any potential grounds for disqualification.

(3) *Possible Expense or Delay.* In appointing a master, the court must consider the fairness of imposing the likely expenses on the parties and must protect against unreasonable expense or delay.

(b) ORDER APPOINTING A MASTER.

(1) *Notice.* Before appointing a master, the court must give the parties notice and an opportunity to be heard. Any party may suggest candidates for appointment.

(2) *Contents.* The appointing order must direct the master to proceed with all reasonable diligence and must state:

(A) the master's duties, including any investigation or enforcement duties, and any limits on the master's authority under Rule 53(c);

(B) the circumstances, if any, in which the master may communicate ex parte with the court or a party;

(C) the nature of the materials to be preserved and filed as the record of the master's activities;

(D) the time limits, method of filing the record, other procedures, and standards for reviewing the master's orders, findings, and recommendations; and

(E) the basis, terms, and procedure for fixing the master's compensation under Rule 53(g).

(3) *Issuing.* The court may issue the order only after:

(A) the master files an affidavit disclosing whether there is any ground for disqualification under 28 U.S.C. § 455; and

(B) if a ground is disclosed, the parties, with the court's approval, waive the disqualification.

(4) *Amending.* The order may be amended at any time after notice to the parties and an opportunity to be heard.

(c) MASTER'S AUTHORITY.

(1) *In General.* Unless the appointing order directs otherwise, a master may:

(A) regulate all proceedings;

(B) take all appropriate measures to perform the assigned duties fairly and efficiently; and

(C) if conducting an evidentiary hearing, exercise the appointing court's power to compel, take, and record evidence.

(2) *Sanctions.* The master may by order impose on a party any noncontempt sanction provided by Rule 37 or 45, and may recommend a contempt sanction against a party and sanctions against a nonparty.

(d) MASTER'S ORDERS. A master who issues an order must file it and promptly serve a copy on each party. The clerk must enter the order on the docket.

(e) MASTER'S REPORTS. A master must report to the court as required by the appointing order. The master must file the report and promptly serve a copy on each party, unless the court orders otherwise.

(f) ACTION ON THE MASTER'S ORDER, REPORT, OR RECOMMENDATIONS.

(1) *Opportunity for a Hearing; Action in General.* In acting on a master's order, report, or recommendations, the court must give the parties notice and an

opportunity to be heard; may receive evidence; and may adopt or affirm, modify, wholly or partly reject or reverse, or resubmit to the master with instructions.

(2) *Time to Object or Move to Adopt or Modify.* A party may file objections to—or a motion to adopt or modify—the master's order, report, or recommendations no later than 20 days after a copy is served, unless the court sets a different time.

(3) *Reviewing Factual Findings.* The court must decide de novo all objections to findings of fact made or recommended by a master, unless the parties, with the court's approval, stipulate that:

(A) the findings will be reviewed for clear error; or

(B) the findings of a master appointed under Rule 53(a)(1)(A) or (C) will be final.

(4) *Reviewing Legal Conclusions.* The court must decide de novo all objections to conclusions of law made or recommended by a master.

(5) *Reviewing Procedural Matters.* Unless the appointing order establishes a different standard of review, the court may set aside a master's ruling on a procedural matter only for an abuse of discretion.

(g) COMPENSATION.

(1) *Fixing Compensation.* Before or after judgment, the court must fix the master's compensation on the basis and terms stated in the appointing order, but the court may set a new basis and terms after giving notice and an opportunity to be heard.

(2) *Payment.* The compensation must be paid either:

(A) by a party or parties; or

(B) from a fund or subject matter of the action within the court's control.

(3) *Allocating Payment.* The court must allocate payment among the parties after considering the nature and amount of the controversy, the parties' means, and the extent to which any party is more responsible than other parties for the reference to a master. An interim allocation may be amended to reflect a decision on the merits.

(h) APPOINTING A MAGISTRATE JUDGE. A magistrate judge is subject to this rule only when the order referring a matter to the magistrate judge states that the reference is made under this rule.

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 28, 1983, eff. Aug. 1, 1983; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 22, 1993, eff. Dec. 1, 1993; Mar. 27, 2003, eff. Dec. 1, 2003; Apr. 30, 2007, eff. Dec. 1, 2007.)

Rule 8001. Scope of Rules

(a) These Part VIII rules govern procedure in the United States district courts and the bankruptcy appellate panels relating to appeals taken from judgments, orders, and decrees of bankruptcy judges.

(b) When these rules provide for filing a motion or other document in the bankruptcy court, the procedure must comply with the practice of the bankruptcy court. When these rules provide for filing a motion or other document in a court of appeals, the procedure must comply with the practice of the court of appeals.

Rule 8001 is modeled after FRAP 1. It is also patterned loosely after FRBP 7001, which identifies the scope of the Part VII rules. Like FRAP 1, Rule 8001 provides that the Part VIII rules govern appeals from bankruptcy judges to the district courts and the bankruptcy appellate panels. It also recognizes that, in instances where the Part VIII rules reference or provide for filings in the bankruptcy courts or the courts of appeals, filings in those courts must comply with the applicable practice of those courts. For example, Rule 8006(i) references the filing in the court of appeals of a request for permission to take a direct appeal of a certified matter. The request filed in the court of appeals must comply with applicable practice of the court of appeals. Similarly, Rule 8007(c)(4) references filing in the court of appeals a motion for a stay pending appeal. The motion filed in the court of appeals must comply with applicable practice of the court of appeals. In general, Part VIII takes advantage of the definitions used in Rules 9001 and 9002.

Rule 8002. Time for Filing Notice of Appeal

(a) Fourteen-day Period.

(1) The notice of appeal required by Rules 8003, 8004, or 8006 must be filed with the clerk within 14 days of the date of the entry of the judgment, order, or decree appealed from.

(2) If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days of the date on which the first notice of appeal was filed, or within the time otherwise allowed by this Rule 8002, whichever period last expires.

(3) A notice of appeal filed after the announcement of a decision or order but before entry of the judgment, order, or decree must be treated as filed after entry of the judgment, order, or decree and on the day thereof. A new or amended notice of appeal is not required, except as provided in Rule 8002(b)(2).

(4) If a notice of appeal is mistakenly filed with the district court or the bankruptcy appellate panel, the clerk of the district court or the clerk of the bankruptcy appellate panel must note thereon the date on which it was received and transmit it to the clerk and it is deemed filed with the clerk on the date so noted.

(b) Effect of Motion on Time for Appeal.

(1) If any party timely files in the bankruptcy court any of the following motions, the time for appeal for all parties runs from the entry of the order disposing of the last such motion outstanding:

(A) a motion to amend or make additional findings under Rule 7052, whether or not granting the motion would alter the judgment;

(B) to alter or amend the judgment under Rule 9023;

(C) for a new trial under Rule 9023; or

(D) for relief under Rule 9024 if the motion is filed no later than 14 days after the entry of judgment.

(2) If a party files a notice of appeal after the court announces or enters a judgment, order, or decree, but before it disposes of any motion listed in Rule 8002(b)(1), the notice becomes effective to appeal a judgment, order, or decree, in whole or in part, when the order disposing of the last such motion outstanding is entered. A party intending to challenge on appeal an order disposing of any motion listed in Rule 8002(b)(1) must file a notice of appeal of, or an amended notice of appeal adding, the order disposing of such motion. A party intending to challenge on appeal a judgment, order, or decree altered or amended upon any motion listed in Rule 8002(b)(1) must file a notice of appeal of, or an amended notice of appeal adding, the altered or amended judgment, order, or decree. The notice of appeal, or amended notice of appeal, must be filed in compliance with Rule 8003 within the time prescribed by this Rule 8002 measured from the entry of the order disposing of the last such motion outstanding, or the entry of any judgment, order, or decree altered or amended upon such motion, whichever is later. No additional fees will be required for filing an amended notice of appeal.

(c) Extension of Time for Appeal.

(1) The bankruptcy judge may extend the time for filing the notice of appeal by any party, unless the judgment, order, or decree appealed from:

(A) grants relief from an automatic stay under § 362, § 922, § 1201, or § 1301 of the Code;

(B) authorizes the sale or lease of property or the use of cash collateral under § 363 of the Code;

(C) authorizes the obtaining of credit under § 364;

(D) authorizes the assumption or assignment of an executory contract or unexpired lease under § 365 of the Code;

(E) approves a disclosure statement under § 1125 of the Code; or

(F) confirms a plan under § 943, § 1129, § 1225, or § 1325 of the Code.

(2) A request to extend the time for filing a notice of appeal must be made by written motion filed before the time for filing a notice of appeal has expired, except that such a motion filed not later than 21 days after the expiration of the time for filing a notice of appeal may be granted upon a showing of excusable neglect. An extension of time for filing a notice of appeal may not exceed 21 days from the expiration of the time for filing a notice of appeal otherwise prescribed by this rule or 14 days from the date of entry of the order granting the motion, whichever is later.

Rule 8002 is derived from current Rule 8002 and FRAP 4(a). Inasmuch as 28 U.S.C. § 158(c)(2) refers to Rule 8002 as prescribing the time for taking an appeal to a district court or bankruptcy appellate panel, Rule 8002 is retained as the appropriate rule for specifying the timeliness of an appeal. Rule 8002(b)(2) clarifies that, if a timely motion of the kind specified in Rule 8002(b)(1) is filed, any party wishing to appeal an order disposing of such a motion, or any judgment, order, or decree altered or amended as a result of such an order, must either amend an existing notice of appeal to include the order or the altered or amended judgment, order, or decree, or file an original notice of appeal that includes the order or the altered or amended judgment, order, or decree in compliance with these Part VIII Rules. As used in these Part VIII rules, the term "clerk" refers to the clerk of the bankruptcy court. See FRBP 9001(3). The clerk of the district court or the clerk of the bankruptcy appellate panel are referred to, respectively, as the "clerk of the district court" and the "clerk of the bankruptcy appellate panel." Under Rule 8003(a)(3)(C), a party filing a notice of appeal is generally required to file a prescribed fee. Pursuant to Rule 8002(b)(3), a party is not required to file an additional fee in connection with filing an amended notice of appeal.

Rule 8003. Appeal as of Right; How Taken; Joint Appeals

(a) Filing the Notice of Appeal.

(1) An appeal from a judgment, order, or decree of a bankruptcy judge to a district court or a bankruptcy appellate panel as permitted by 28 U.S.C. § 158(a)(1) or (a)(2) must be taken by filing a notice of appeal with the clerk within the time allowed by Rule 8002.

(2) An appellant's failure to take any step other than timely filing a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the district court or the bankruptcy

appellate panel deems appropriate, which may include dismissal of the appeal.

(3) The notice of appeal must

(A) conform substantially to the appropriate Official Form;

(B) contain the names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their respective attorneys; and

(C) be accompanied by the prescribed fee.

Upon request of the clerk, each appellant must file a sufficient number of copies of the notice of appeal to enable the clerk to comply promptly with Rule 8002(c).

(b) Joint or Consolidated Appeals.

(1) When two or more parties are entitled to appeal from a judgment, order, or decree of a bankruptcy judge and their interests make joinder practicable, they may file a joint notice of appeal. They may then proceed on appeal as a single appellant.

(2) When the parties have filed separate timely notices of appeal, the appeals may be joined or consolidated by the reviewing district court, bankruptcy appellate panel, or court of appeals.

(c) Service of the Notice of Appeal.

(1) The clerk must serve notice of the filing of a notice of appeal by transmitting a copy to counsel of record for each party other than the appellant or, if a party is not represented by counsel, to the party's last known address.

(2) Failure to serve notice does not affect the validity of the appeal.

(3) The clerk must note on each copy served the date of the filing of the notice of appeal and must note in the docket the names of the parties to whom copies are transmitted and the date of the transmission.

(4) The clerk must forthwith transmit to the United States trustee a copy of the notice of appeal, but failure to transmit notice to the United States trustee does not affect the validity of the appeal.

(d) Transmittal of the Notice of Appeal to the District Court or Bankruptcy Appellate Panel; Docketing of the Appeal.

(1) The clerk must forthwith transmit a copy of the notice of appeal to the clerk of the district court or the clerk of the bankruptcy appellate panel.

(2) Upon receipt of the notice of appeal, the clerk of the district court or the clerk of the bankruptcy appellate panel must docket the appeal under the title of the bankruptcy court action and must identify the appellant, adding the appellant's name if necessary, and give notice promptly to all parties to the judgment, order, or decree appealed from of the date on which the appeal was docketed.

Rule 8003 is derived from current Rule 8001(a) and FRAP 3. FRAP generally places in separate rules the procedures that address appeals as of right and appeals by leave. Rule 8003(b) is derived from FRAP 3(b). Rule 8003(c) is derived from current rule 8004 and FRAP 3(d). The notice of appeal required by Rule 8003(a) may be filed electronically, and must be filed electronically if required by applicable filing procedures. Service of the notice of appeal may also be accomplished electronically in accordance with applicable electronic notice procedures. If the clerk is required to mail copies of the notice of appeal to certain parties, the clerk may request each appellant to supply the clerk with the necessary copies. Rule 8003(d) alters existing procedure. Currently, a notice of appeal is not transmitted to the district court or the bankruptcy appellate panel, and the appeal is not docketed, until the record is designated and prepared. Consistent with FRAP, Rule 8003(d) provides for immediate transmittal and docketing of the appeal. Under Rule 8003(a)(3)(C), a party filing a notice of appeal is generally required to file a prescribed fee. Pursuant to Rule 8002(b)(3), a party is not required to file an additional fee in connection with filing an amended notice of appeal.

Rule 8004. Appeal by Leave to District Court or Bankruptcy Appellate Panel; How Taken

(a) Notice of Appeal and Motion for Leave to Appeal. An appeal from an interlocutory judgment, order, or decree of a bankruptcy judge as permitted by 28 U.S.C. § 158(a)(3) must be taken by filing with the clerk a notice of appeal of the judgment, order, or decree, as prescribed by rule 8003(a) within the time allowed by Rule 8002, accompanied by a motion for leave to appeal prepared in accordance with Rule 8004(b) and with proof of service in accordance with Rule 8010.

(b) Content of Motion; Answer.

(1) A motion for leave to appeal under 28 U.S.C. § 158(a) must contain:

(A) a statement of the facts necessary to an understanding of the questions to be presented by the appeal;

(B) a statement of those questions and of the relief sought;

(C) a statement of the reasons why leave to appeal should be granted; and

(D) a copy of the judgment, order, or decree appealed from, and any opinion or memorandum relating thereto.

(2) Within 14 days after service of the motion, an adverse party may file with the clerk of the district court or the clerk of the bankruptcy appellate panel, wherever the appeal is pending, a cross motion or an answer in opposition.

(c) Transmittal; Docketing of Appeal; Determination of Motion.

(1) The clerk must forthwith transmit the notice of appeal and the motion for leave to appeal, together with any statement of election allowed by Rule 8005, to the clerk of the district court or the clerk of the bankruptcy appellate panel.

(2) Upon receipt of the notice of appeal and motion for leave to appeal, the clerk of the district court or the clerk of the bankruptcy appellate panel must docket the appeal under the title of the bankruptcy court action and must identify the movant-appellant, adding the movant-appellant's name if necessary, and give notice promptly to all parties to the judgment, order, or decree appealed from of the date on which the appeal was docketed.

(3) The motion and any answer in opposition or cross-motion, must be submitted to the district court or bankruptcy appellate panel without oral argument unless otherwise ordered by the district court or the bankruptcy appellate panel.

(4) The clerk must transmit the notice of appeal, the motion for leave to appeal, and any statement of election allowed by Rule 8005, to the clerk of the district court or the clerk of the bankruptcy appellate panel prior to the designation and transmission of the record as prescribed by Rules 8008 and 8009.

(5) If leave to appeal is denied, the clerk of the district court or bankruptcy appellate panel shall dismiss the appeal.

(d) Appeal Improperly Taken Regarded as a Motion for Leave to Appeal. If a required motion for leave to appeal an interlocutory judgment, order, or decree is not filed, but a notice of appeal is timely filed, the district court or the bankruptcy appellate panel may grant leave to appeal or direct that a motion for leave to appeal be filed. The district court or the bankruptcy appellate panel may also deny leave to appeal but in so doing must consider the notice of appeal as a motion for leave to appeal. Unless an order directing that a motion for leave to appeal be filed provides otherwise, the motion must be filed within 14 days of entry of the order directing filing.

(e) Appeal Authorized by Court of Appeals Regarded as Satisfying Leave Requirement. If leave to appeal an interlocutory judgment, order, or decree is required by 28 U.S.C. § 158(a) and has not earlier been granted by the district court or the bankruptcy appellate panel, a court of appeals' authorization of a direct appeal under 28 U.S.C. § 158(d)(2) satisfies the requirement for leave to appeal.

Rule 8004 is derived from current Rule 8001(b) and FRAP 5. Under FRAP 5(d)(2), a notice of appeal need not be filed if the court of appeals grants permission to appeal. Rule 8004, however, retains the practice in bankruptcy appeals of requiring a notice of appeal to be filed along with a motion for leave to appeal. Rule 8004(c) clarifies that the clerk is to transmit the notice of appeal and the motion for leave to appeal, together with any statement of election allowed by Rule 8005, to the clerk of the district court or the clerk of the bankruptcy appellate panel prior to the designation and transmission of the record as prescribed by Rule 8009. This reflects what Rule 8008(a)(1) and 8009(b)(3) provide, namely that, if an appeal requires leave of the district court or bankruptcy appellate panel to proceed, the parties do not commence the process of designating the record until leave has been granted. Rule 8004(e) is derived from current Interim Rule 8003(d) and clarifies that a court of appeals' authorization to proceed with a direct appeal constitutes satisfaction of the leave to appeal requirement and, hence, a separate order granting leave to appeal by the district court or bankruptcy appellate panel need not be filed. For purposes of designating the record, entry of such an order by the court of appeals would trigger the requirements of Rule 8008 in the same manner as an order granting leave to appeal entered by the district court or the bankruptcy appellate panel if neither the district court nor the bankruptcy appellate panel granted leave to appeal previously. If the court of appeals grants permission to appeal, the record must be transmitted in accordance with FRAP 11 and 12(c). Rule 8004(c) alters existing procedure. Currently, a notice of appeal and motion for leave to appeal are not transmitted to the district court or the bankruptcy appellate panel, and the appeal is not docketed, until the motion is granted and the record is designated and prepared. Rule 8004(c) provides for immediate transmittal and docketing of the appeal. Rule 8004(b)(2) provides that any answer or cross-motion to the motion for leave to appeal must be filed in the district court or the bankruptcy appellate panel, whichever has the appeal.

Rule 8005. Election To Have Appeal Heard by District Court Instead of Bankruptcy Appellate Panel

(a) Filing of Statement of Election. An election to have an appeal heard by the district court under 28 U.S.C. § 158(c)(1) may be made only by a statement of election contained in a separate writing filed within the time prescribed by 28 U.S.C. § 158(c)(1).

(b) Timeliness of Filing. To be timely, an appellant must file with the clerk its statement of election with its notice of appeal within the time prescribed by Rule 8002 for the filing of a notice of appeal. To be timely, a party other than the appellant must file its statement of election with the clerk within 30 days after service of a notice of appeal.

(c) Transmission of Statement of Election. Upon receipt of a statement of election, the clerk must transmit the statement forthwith to the clerk of the bankruptcy appellate panel.

(d) Transfer of Motion or Appeal to District Court. Upon receipt from the clerk of a timely statement of election, the bankruptcy appellate panel must order forthwith the transfer of the appeal and any pending motion to the district court.

Rule 8005 is derived from current Rule 8001(e). The rule clarifies when a statement of election is timely taking into account the amended notice of appeal requirement of Rule 8003(b)(2). Rule 8005(c) requires immediate transfer of a filed statement of election, and Rule 8005(d) requires immediate transfer of the appeal from the bankruptcy appellate panel to the district court if the statement of election is timely, so that appellate proceedings may be directed as quickly as possible to the proper appellate court, including pending motions for relief that have been filed with the bankruptcy appellate panel.

Rule 8006. Certification for Direct Appeal to Court of Appeals; How Taken

(a) Final Orders, Judgments, or Decrees; Notice of Appeal. Certification of a final judgment, order, or decree of a bankruptcy judge for direct review in a court of appeals under 28 U.S.C. § 158(d)(2) must be sought by filing with the clerk a notice of appeal of the judgment, order, or decree, as prescribed by Rule 8003(a) within the time allowed by Rule 8002, and by compliance with the certification procedures of 28 U.S.C § 158(d)(2) and this Rule 8006.

(b) Interlocutory Orders, Judgments, or Decrees; Notice of Appeal and Motion for Leave to Appeal. Certification of an interlocutory judgment, order, or decree of a bankruptcy judge for direct review in a court of appeals under 28 U.S.C. § 158(d)(2) must be sought by filing with the clerk a notice of appeal of the judgment, order, or decree, and a motion for leave to appeal as prescribed by Rules 8003(a) and 8004(a) within the time allowed by Rule 8002, and by compliance with the certification procedures of 28 U.S.C § 158(d)(2) and this Rule 8006.

(c) Where to File Certification. A certification that one or more of the circumstances specified in 28 U.S.C. § 158(d)(2)(A)(i)-(iii) exists must be filed with the clerk of the court in which a matter is pending. A matter is pending in a bankruptcy court until the docketing, in accordance with Rule 8003(d)(2), of an appeal taken under 28 U.S.C. § 158(a)(1) or (2), or the docketing, in accordance with Rule 8004(c)(2), of an appeal taken under 28 U.S.C. § 158(a)(3). A matter is pending in a district court or a bankruptcy appellate panel after the docketing, in accordance with Rule 8003(d)(2), of an appeal taken under 28 U.S.C. § 158(a)(1) or (2), or the docketing, in accordance with Rule 8004(c)(2), of an appeal under 28 U.S.C. § 158(a)(3).

(d) Court that May Make Certification.

(1) Before Docketing in Appellate Court. Only a bankruptcy judge may make a certification on request or on its own motion while the matter is pending in the bankruptcy court.

(2) After Docketing in Appellate Court. Only the district court or the bankruptcy appellate panel may make a certification on request of the parties or on its own motion while the matter is pending in the district court or the bankruptcy appellate panel.

(e) Certification by All Appellants and Appellees Acting Jointly. A certification by all the appellants and appellees, if any, acting jointly that one or more of the circumstances specified in 28 U.S.C. § 158(d)(2)(A)(i)-(iii) exists may be made by filing the appropriate Official Form with the clerk of the court in which the matter is pending. The certification may be accompanied by a short statement of the basis for the certification, which may include the information listed in Rule 8006(g)(3). Upon filing, the clerk must enter the certification on the docket.

(f) Certification on Court's Own Motion.

(1) A certification on the court's own motion that one or more of the circumstances specified in 28 U.S.C. § 158(d)(2)(A)(i)-(iii) exists must be set forth in a separate document served on the parties in the manner required for service of a notice of appeal under Rule 8003(c)(1). The certification must be accompanied by an opinion or memorandum that contains the information required by Rule 8006(g)(3)(A)-(C).

(2) A party may file a supplementary short statement of the basis for certification within 14 days after the certification.

(g) Certification on Request; Filing; Service; Contents.

(1) A request for certification that the circumstances specified in 28 U.S.C. § 158(d)(2)(A)(i)-(iii) exist, or by a majority of the appellants and a majority of the appellees, if any, must be filed with the clerk of the court in which the matter is pending within the time specified by 28 U.S.C. § 158(d)(2).

(2) Notice of the filing of a request for certification must be served in the manner required for service of a notice of appeal under Rule 8003(c)(1).

(3) A request for certification must include the following:

(A) the facts necessary to understand the question presented;

(B) the question itself;

(C) the relief sought;

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

(E) an attached copy of the judgment, order, or decree that is the subject of the certification and any related opinion or memorandum.

(4) A party may file a response to a request for certification or a cross-request within 14 days after the notice of the request is served, or such other time as the court in which the matter is pending may fix.

(5) The request, cross-request, and any response is not governed by Rule 9014 and must be submitted without oral argument unless the court in which the matter is pending otherwise directs.

(6) A certification of an appeal under 28 U.S.C. § 158(d)(2) must be made in a separate document served on the parties.

(h) Effectiveness of Certification. A certification for direct review of a judgment, order, or decree of a bankruptcy court to a court of appeals under 28 U.S.C. § 158(d)(2) may not be treated as a certification entered on the docket within the meaning of § 1233(b)(4)(A) of Public Law No. 109-8 until a timely appeal has been taken in the manner required by subdivisions (a) or (b) of this rule and the notice of appeal has become effective under Rule 8002.

(i) Proceeding in Court of Appeals Following Certification. After a certification has been filed with the clerk of the court as prescribed by this Rule 8006, a request for permission to take a direct appeal must be filed with the court of appeals in accordance with the practice of the court of appeals.

Rule 8006 is derived from current Interim Rule 8001(f). The intent of the revision is to clarify the relevant procedures without duplicating the statutory requirements or time limits. Rule 8006(h) provides that a certification for direct review to a court of appeals may not be treated as a certification under the uncodified temporary procedural requirements of § 1233(b)(4)(A) of Public Law No. 109-8. The current Rule 8001(f), and this Rule 8006, replace the temporary uncodified procedures. Rule 8006(i) provides that, after a certification for direct review in the court of appeals has been filed, a request for permission to take a direct appeal must also be filed with the court of appeals in accordance with its rules and procedures. Pursuant to FRAP 5(a)(1), a party requesting discretionary permission to appeal must file a petition for permission to appeal. Pursuant to FRAP 5(a)(2), the time for filing the petition for permission to appeal with the court of appeals is the same as the time for filing a notice of appeal under FRAP 4(a) if no other time is specified by the statute or rule authorizing the appeal. Under FRAP 4(a), the time for filing is notice of appeal is 30 days from the entry of the judgment or order appealed from. Under FRAP 5(a)(3), if a party cannot seek permission to appeal from the court of appeals until a district court first

grants permission in an amended order, the time to file a petition for permission to appeal in the court of appeals runs from the district court's entry of its amended order. In the case of a request for permission to appeal following a certification, the time should run from the entry of the certification. It would be helpful if FRAP 5(a) were amended to make it clear that its provisions apply to certifications.

Rule 8007. Stay Pending Appeal; Bonds; Suspension of Proceedings

(a) Initial Motion in the Bankruptcy Court; Time to File.

(1) A party must ordinarily move first in the bankruptcy court for the following relief:

(A) a stay pending appeal of the judgment, order, or decree of a bankruptcy judge;

(B) approval of a supersedeas bond;

(C) an order suspending, modifying, restoring, or granting an injunction while an appeal is pending; or

(D) the suspension or continuance of proceedings in a case or other relief permitted by Rule 8007(f).

(2) A motion for a stay of the judgment, order, or decree of a bankruptcy judge pending appeal, or for approval of a supersedeas bond, may be made in the bankruptcy court before or after the filing of a notice of appeal of the judgment, order, or decree appealed from. A separate or amended notice of appeal need not be filed from an order of the bankruptcy court granting or denying a motion for a stay pending appeal, or granting or denying approval of a supersedeas bond.

(b) Approval of Supersedeas Bond; Stay of Execution. The court must grant a stay of execution of a money judgment upon approval of an adequate supersedeas bond.

(c) Motion in the District Court or Bankruptcy Appellate Panel; Conditions on Relief. A motion for the relief specified in Rules 8007(a) or (b), or to vacate or modify an order of the bankruptcy court granting the relief specified in Rules 8007(a) or (b), may be made to the district court, the bankruptcy appellate panel, or the court of appeals. If a statement of election is timely filed with the clerk as prescribed by Rule 8005, a motion for the relief specified in Rules 8007(a) or (b) must be made in the district court rather than the bankruptcy appellate panel. A motion for the relief specified in Rules 8007(a) or (b) filed in the district court, the bankruptcy appellate panel, or the court of appeals commences an original proceeding in which the court reviews the request for relief *de novo*.

(1) If made to the district court or the bankruptcy appellate panel, the motion must:

(A) show that moving first in the bankruptcy court would be impracticable if the moving party has not sought relief in the first instance in the bankruptcy court; or

(B) state that, a motion having been made, the bankruptcy court denied the motion or failed to afford the relief requested, and state any reasons given by the bankruptcy court for its action or inaction.

(2) If made to the district court or the bankruptcy appellate panel, the motion must also include:

(A) the reasons for granting the relief requested and the pertinent facts;

(B) originals or copies of affidavits or other sworn statements supporting facts subject to dispute; and

(C) relevant parts of the record.

(3) If made to the district court or the bankruptcy appellate panel, the moving party must give reasonable notice of the motion to all parties.

(4) If made to the court of appeals, the movant must comply with applicable practice of the court of appeals.

(d) Filing of Bond or other Security. The district court, the bankruptcy appellate panel, or the court of appeals, may condition the relief it grants under this rule on the filing of a bond or other appropriate security with the bankruptcy court.

(e) Requirement of Bond for Trustee or United States. When an appeal is taken by a trustee, a bond or other appropriate security may be required, provided that when an appeal is taken by the United States or an officer or agency thereof or by direction of any department of the Government of the United States, a bond or other security shall not be required.

(f) Continuation of Proceedings in the Bankruptcy Court. Notwithstanding Rule 7062, subject to the power of the district court, the bankruptcy appellate panel, or the court of appeals as provided in this rule or governing law, the bankruptcy judge may

(1) suspend or order the continuation of other proceedings in the case under the Code, or

(2) make any other appropriate order during the pendency of an appeal on such terms as will protect the rights of all parties in interest.

(g) Proceeding Against Surety. If a party gives security in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the bankruptcy court for purposes of enforcing the surety's liability on the bond or undertaking and irrevocably appoints the clerk as the surety's agent on whom any papers affecting the surety's liability on the bond or undertaking may be served. On motion, a surety's liability as stated on its bond or undertaking may be enforced in the bankruptcy court without the necessity of an independent action. The motion and any notice that the bankruptcy court prescribes may be served on the clerk, who must promptly transmit a copy to each surety whose address is known.

Rule 8007 is derived from current Rule 8005 and FRAP 8. Rule 8007(a)(1) expands the list of items enumerated in FRAP 8(a)(1) to reflect bankruptcy practice. Rule 8007(a)(2) clarifies that a motion for a stay pending appeal, or approval of a supersedeas bond, may be made before or after the filing of a notice of appeal. Rule 8007(a)(2) also recognizes that motions for stays pending appeal, and motions for approval of supersedeas bonds, are original proceedings in each court in which they may be filed subject to de novo consideration. Accordingly, a notice of appeal need not be filed with respect to an order granting or denying such motions. Rule 8007(b) reflects the rule, applicable to money judgments only, that a party may obtain a stay pending appeal as of right upon the court's approval of an adequate supersedeas bond. Occasionally a money judgment is entered other than in an adversary proceeding. Rule 8007(b) thus makes applicable to all money judgments entered in bankruptcy cases the relief available in adversary proceedings under Rule 7062. In general, a motion for a stay pending appeal filed in the court of appeals is governed by FRAP 8 and must comply with applicable procedures of the court of appeals.

Rule 8008. Record and Issues on Appeal

(a) Composition of the Record on Appeal and Statement of Issues on Appeal.

(1) Appellant's Duties. Within 14 days after filing the notice of appeal as prescribed by Rule 8003(a), entry of an order granting leave to appeal, or entry of an order disposing of the last timely motion outstanding of a kind listed in Rule 8002(b)(1), whichever is later, the appellant shall file with the clerk and serve on the appellee a designation of the items to be included in the record on appeal and a statement of the issues to be presented.

(2) Appellee's and Cross-Appellant's Duties. Within 14 days after the service of the appellant's designation and statement, the appellee may file and serve on the appellant a designation of additional items to be included in the record on appeal and, if the appellee has filed a cross appeal, the appellee as cross appellant shall

file and serve a statement of the issues to be presented on the cross appeal and a designation of additional items to be included in the record.

(3) Cross Appellee's Duties. A cross appellee may, within 14 days of service of the cross appellant's designation and statement, file and serve on the cross appellant a designation of additional items to be included in the record.

(4) Record on Appeal. Subject to Rule 8008(d), the record on appeal shall include the items designated by the parties as provided by Rules 8008(a)-(c), the notice of appeal, the judgment, order, or decree appealed from, any order granting leave to appeal, any opinion, findings of fact, and conclusions of law of the court, any transcript ordered as prescribed by Rule 8008(b), and any statement prescribed by Rule 8008(c). Notwithstanding the parties' designations, the district court, the bankruptcy appellate panel, or the court of appeals may order the inclusion of additional items from the record as part of the record on appeal.

(5) Copies for Clerk. If requested by the clerk, any party filing a designation of the items to be included in the record shall provide to the clerk a copy of the requested items designated or, if the party fails to provide the copy, the clerk shall prepare the copy at the party's expense.

(b) Transcript of Proceedings.

(1) Appellant's Duty to Order. Within 14 days after filing the notice of appeal, entry of an order granting leave to appeal, or entry of an order disposing of the last timely motion outstanding of a kind listed in Rule 8002(b)(1), whichever is later, the appellant must do either of the following:

(A) order from the reporter a transcript of such parts of the proceedings not already on file as the appellant considers necessary, subject to any local rule of the district court or bankruptcy appellate panel, and with the following qualifications:

(i) the order must be in writing; and

(ii) the appellant must, within the same period, file a copy of the order with the clerk; or

(B) file with the clerk a certificate stating that the appellant will not order a transcript.

(2) Cross Appellant's Duty to Order. Within fourteen days after the appellant files with the clerk the copy of the transcript order or certificate stating that appellant will not order a transcript, entry of an order granting leave to appeal, or entry of an order disposing of the last timely motion outstanding of a kind listed in Rule 8002(b)(1), whichever is later, the appellee as cross appellant must do either of the following:

(A) order from the reporter a transcript of such parts of the proceedings not ordered by appellant or already on file as the cross appellant considers necessary, subject to any local rule of the district court or bankruptcy appellate panel, and with the following qualifications:

(i) the order must be in writing; and

(ii) the cross appellant must, within the same period, file a copy of the order with the clerk; or

(B) file with the clerk a certificate stating that the cross appellant will not order a transcript.

(3) Appellee's or Cross Appellee's Right to Order. Within fourteen days after the appellant or cross appellant files with the clerk a copy of the transcript order or certificate stating that appellant or cross appellant will not order a transcript, entry of an order granting leave to appeal, or entry of an order disposing of the last timely motion outstanding of a kind listed in Rule 8002(b)(1), whichever is later, the appellee or cross appellee may order such additional transcripts as the appellee or cross appellee considers necessary, subject to any local rule of the district court or bankruptcy appellate panel, with the qualification that the order must be in writing and a copy of the order must be filed with the clerk.

(4) Payment. At the time of ordering, a party must make satisfactory arrangements with the reporter for paying the cost of the transcript.

(5) Unsupported Finding or Conclusion. If an appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant must include in the record a transcript of all evidence relevant to that finding or conclusion.

(c) Statement of the Evidence When the Proceedings Were Not Recorded or When a Transcript Is Unavailable. Within 14 days after filing the notice of appeal, entry of an order granting leave to appeal, or entry of an order disposing of the last timely motion outstanding of a kind listed in Rule 8002(b)(1), whichever is later, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection, if the transcript of a hearing or trial is unavailable. The statement must be served on the appellee, who may serve objections or proposed amendments within 14 days after being served. The statement and any objections or proposed amendments must then be submitted to the bankruptcy court for settlement and approval. As settled and approved, the statement must be included by the clerk in the record on appeal.

(d) Agreed Statement as the Record on Appeal. In place of the record on appeal as defined in Rule 8008(a), the parties may prepare, sign, and submit to the bankruptcy court a statement of the case showing how the issues presented by the appeal arose and were

decided by the bankruptcy judge. The statement must set forth only those facts averred and proved or sought to be proved that are essential to the court's resolution of the issues. If the statement is truthful, it, together with any additions that the bankruptcy court may consider necessary to a full presentation of the issues on appeal, must be approved by the bankruptcy court and must then be certified to the district court or the bankruptcy appellate panel as the record on appeal. The clerk must then transmit it to the clerk of the district court or the clerk of the bankruptcy appellate panel within the time provided by Rule 8009(b)(2). A copy of the agreed statement may be filed in place of the appendix required by Rule 8017(b).

(e) Correction or Modification of the Record.

(1) If any difference arises about whether the record truly discloses what occurred in the bankruptcy court, the difference must be submitted to and settled by that court and the record conformed accordingly.

(2) If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatment may be corrected and a supplemental record may be certified and transmitted:

(A) on stipulation of the parties;

(B) by the bankruptcy court before or after the record has been forwarded; or

(C) by the district court, or the bankruptcy appellate panel.

(3) All other questions as to the form and content of the record must be presented to the district court or bankruptcy appellate panel.

(f) Other. All parties must take any other action necessary to enable the clerk to assemble and transmit the record.

Rule 8008 is derived from current Rule 8006, current Rule 8007(a), and FRAP 10. Among other things, FRAP 10(a) provides that the record on appeal consists of all of the papers and exhibits filed in the district court -- i.e., all of the items filed in the district court case. This is often unworkable in the bankruptcy context, in which all of the items filed in the bankruptcy case may include tens of thousands, or even hundreds of thousands, of items. Rule 8008 retains the designation process of the current rules. Otherwise, Rule 8008 is patterned after FRAP 10. Ordinarily, the clerk will not require paper copies of the items designated as the record because the clerk will either transmit the items to the district court or the bankruptcy appellate panel electronically, or otherwise make them available electronically. If the clerk requires a paper copy of some or all of the items designated as part of the record, the clerk may request the parties to provide the necessary copies, and the rule requires the parties to comply with the request.

Rule 8009. Completion and Transmission of the Record; Notice of Mediation Procedure; Notice of Briefing Schedule; Assignment; Indicative Rulings

(a) Appellant's Duty. An appellant filing a notice of appeal must comply with Rule 8008 and must do whatever else is necessary to enable the clerk to assemble and transmit the record. If there are multiple appeals from a judgment or order, the clerk must transmit a single record.

(b) Duties of Reporter and Clerk of the Bankruptcy Court.

(1) Duty of reporter to prepare and file transcript. The reporter must prepare and file a transcript as follows:

(A) On receipt of a request for a transcript, the reporter must acknowledge on the request the date it was received and the date on which the reporter expects to have the transcript completed and must transmit the request, so endorsed, to the clerk or to the clerk of the district court or the clerk of the bankruptcy appellate panel.

(B) On completion of the transcript the reporter must file it with the clerk electronically and, if appropriate, notify the clerk of the district court or the clerk of the bankruptcy appellate panel.

(C) If the transcript cannot be completed within 30 days of receipt of the request the reporter must seek an extension of time from the clerk or from the clerk of the district court or the clerk of the bankruptcy appellate panel and the action of the clerk must be entered in the docket and the parties notified.

(D) If the reporter does not file the transcript within the time allowed, the clerk or the clerk of the district court or the clerk of the bankruptcy appellate panel must notify the bankruptcy judge.

(2) Duty of Clerk to Transmit Copy of Record; Notice of Mediation Procedure and Effect of Procedure on Briefing; Setting Briefing Schedule.

(A) Subject to Rule 8009(b)(3), when the record is complete for purposes of appeal, the clerk must transmit it electronically, or otherwise make it available in electronic form, to the clerk of the district court or the clerk of the bankruptcy appellate panel, unless the clerk of the district court or the clerk of the bankruptcy appellate panel requests a paper copy. If the clerk makes the record available in electronic form, the clerk must transmit electronically a notice to the clerk of the

district court or the clerk of the bankruptcy appellate panel stating that the record is available and how it may be accessed.

(B) On receipt of the transmission of the record, or notice of the availability of the record, the clerk of the district court or the clerk of the bankruptcy appellate panel must enter receipt on the docket and give prompt notice to all parties to the appeal.

(C) If the district court or bankruptcy appellate panel directs that paper copies of the record be furnished, the clerk of the district court or the clerk of the bankruptcy appellate panel must notify the appellant and, if the appellant fails to provide the copies, the clerk must prepare the copies at the expense of the appellant.

(D) If the district court or bankruptcy appellate panel has a mediation procedure applicable to appeals from bankruptcy judges, the clerk of the district court or the clerk of the bankruptcy appellate panel must notify the parties forthwith at the time of docketing of the appeal whether the mediation procedure has the effect of staying or modifying the time for filing briefs in the appeal, and the clerk must give adequate notice of the requirements of the mediation procedure.

(E) If the district court or the bankruptcy appellate panel establishes a briefing schedule at the time of docketing of the appeal or at the time of docketing of notice of transmission of the record or notice of availability of the record, whether by notice of the deadlines prescribed in Rules 8015 or 8017 or by order modifying the deadlines prescribed in Rules 8015 or 8017, the clerk must notify the parties forthwith at the time of docketing of the briefing schedule. If the district court or bankruptcy appellate panel does not establish a briefing schedule by notice or order, the deadlines prescribed by Rules 8015 or 8017 apply.

(3) Leave to Appeal; Transmission of Record. Subject to Rule 8009(c), if a motion for leave to appeal has been filed with the clerk as prescribed by Rule 8004, the clerk does not prepare and transmit the record unless and until leave to appeal has been granted by the district court or the bankruptcy appellate panel.

(c) Record for preliminary hearing. If prior to the time the record is transmitted as prescribed by Rule 8009(b)(2) a party moves in the district court or the bankruptcy appellate panel

(1) for leave to appeal,

(2) for dismissal;

(3) for a stay pending appeal;

(4) for approval of a supersedeas bond, or additional security on a bond or undertaking on appeal; or

(5) for any other intermediate order,

the clerk at the request of any party to the appeal must transmit to the clerk of the district court or the clerk of the bankruptcy appellate panel a copy of the parts of the record as any party to the motion or appeal designates.

(d) Retaining the Record Temporarily in the Bankruptcy Court. If the original record not available in electronic form is required to be transmitted to the clerk of the district court or the clerk of the bankruptcy appellate panel, the parties may stipulate, or the bankruptcy court on motion may order, that the clerk retain the actual record not available in electronic form temporarily for the parties to use in preparing papers on appeal. In that event the clerk must certify to the clerk of the district court or bankruptcy appellate panel that the record on appeal is complete. Upon receipt of the appellee's brief, or earlier if the district court or the bankruptcy appellate panel orders or the parties agree, the appellant must request the clerk to transmit the record.

(e) Retaining the Record by Court Order.

(1) The district court or the bankruptcy appellate panel may, by order or local rule, provide that a certified copy of the relevant docket entries for the items designated by the parties be transmitted instead of the entire record. But a party may at any time during the appeal request that designated parts of the record be transmitted.

(2) If the original record not available in electronic form is required to be transmitted to the clerk of the district court or the clerk of the bankruptcy appellate panel, the bankruptcy judge may order the record or some part of it be retained if the court requires it while the appeal is pending, subject, however, to call by the district court or the bankruptcy appellate panel.

(3) If part or all of the original record is ordered retained, the clerk must transmit to the district court or the bankruptcy appellate panel a copy of the order and the relevant docket entries together with the parts of the original record not retained by the bankruptcy judge and copies of any parts of the record designated by the parties.

(f) Retaining Parts of the Record in the Bankruptcy Court by Stipulation of the Parties. If the original record not available in electronic form is required to be transmitted to the clerk of the district court or the clerk of the bankruptcy appellate panel, the parties may agree by written stipulation filed with the clerk that designated parts

of the original record be retained in the bankruptcy court subject to call by the district court or the bankruptcy appellate panel or request by a party. The parts of the record so designated remain a part of the record on appeal.

(g) Assignment. A motion or appeal may not be referred to a magistrate judge.

(h) Indicative Rulings.

(1) Relief Pending Appeal. If a timely motion is made for relief that the bankruptcy court lacks authority to grant because of an appeal that has been docketed and is pending, the bankruptcy court may:

(A) defer consideration of the motion;

(B) deny the motion; or

(C) state that the court would grant the motion if the court in which the appeal is pending remands for that purpose or that the motion raises a substantial issue.

(2) Notice to Court in which the Appeal Is Pending. If the bankruptcy court states that it would grant the motion, or that the motion raises a substantial issue, the movant shall promptly notify the clerk of the court in which the appeal is pending if the movant wants to obtain a remand under Rule 8009(h)(3), and the movant must otherwise comply with applicable requirements of the court in which the appeal is pending.

(3) Remand After Indicative Ruling. If the bankruptcy court states that it would grant the motion or that the motion raises a substantial issue, the court in which the appeal is pending may remand for further proceedings. Upon remand, the court in which the appeal is pending retains jurisdiction unless it expressly dismissed the appeal. If the appeal is not dismissed, the parties shall promptly notify the clerk of the court in which the appeal is pending when the bankruptcy court has decided the motion on remand.

Rule 8009 is derived from current Rule 8007(b) and (c) and FRAP 11. Rule 8009(b)(2)(D) clarifies that the clerk must provide notice of the effect of any court-sponsored mediation procedure on any briefing schedule in the appeal, as well as the requirements of the procedure. Rule 8009(b)(2)(D) provides that notice of the briefing schedule may be provided and may be given at different points in time. To begin with, the clerk of the district court or the clerk of the bankruptcy appellate panel may send out a notice to the parties regarding the briefing schedule at the time of the docketing of the appeal. Rule 8017(a) provides that, ordinarily, the time for the appellant to file its opening brief begins to run from the time the record on appeal is transmitted to the clerk of the district court or the clerk of the bankruptcy appellate panel,

or notice of the availability of the record is transmitted. Thus, for example, the notice may state that appellant's brief is due 30 days after the record on appeal is transmitted to the clerk of the district court or the clerk of the bankruptcy appellate panel, or notice of the availability of the record is transmitted, appellee's brief is due 30 days after service of appellant's brief, and appellant's reply is due 15 days after service of appellee's brief, unless the district court or the bankruptcy appellate panel sets a different briefing schedule. In addition or alternatively, the clerk of the district court or the clerk of the bankruptcy appellate panel may send out a notice regarding the briefing schedule at the time the record is transmitted, or notice is transmitted regarding the availability of the record. Rule 8009(b)(3) clarifies procedures regarding motions for leave to appeal. Rule 8009(c) is derived from FRAP 11(g) and provides for the transmission of certain items to be used as part of certain preliminary hearings that may be held in the district court or the bankruptcy appellate panel prior to the preparation and transmission of the record on appeal. Rule 8009(g) concerns referrals of bankruptcy appeals to magistrate judges. If a bankruptcy matter is assigned on appeal to a magistrate judge, this may subject the matter to as many as four different stages of review as of right, and five or six different stages of review if the matter is heard en banc in the court of appeals, and/ or the Supreme Court ultimate considers the matter on certiorari. Rule 8009(g) would prohibit the assignment of bankruptcy appeals to magistrate judges. Rule 8009(h) is an adaption of FRCP 62.1 and FRAP 12.1. It provides a procedure for the issuance of an indicative ruling when a bankruptcy court determines that, because of a pending appeal, the court lacks jurisdiction to grant a request for relief that the court concludes is meritorious or raises a substantial issue. The rule, however, does not attempt to define the circumstances in which an appeal limits or defeats the bankruptcy court's authority to act in the face of a pending appeal. (Rule 8002(b) identifies motions that, if filed within the relevant time limit, suspend the effect of a notice of appeal filed before the last such motion is resolved. In these circumstances, the bankruptcy court has authority to resolve the motion without resorting to the indicative ruling procedure. Likewise, pursuant to Rule 8007, a bankruptcy court may resolve a motion requesting a stay pending appeal after a notice of appeal has been filed without having to resort to Rule 8009(h)). The court in which a bankruptcy appeal is pending, upon notification that the bankruptcy court has issued an indicative ruling and the filing of any appropriate motion in accordance with the procedures of that court, may remand to the bankruptcy court for a ruling on the motion for relief. The appellate court may also remand all proceedings, thereby terminating the initial appeal, if it expressly states that it is dismissing the appeal. It should do so, however, only when the appellant has stated clearly its intention to abandon the appeal. Otherwise, the appellate court may remand for the purpose of ruling on the motion, while retaining jurisdiction to proceed with the appeal after the bankruptcy court rules, provided that the appeal is not then moot and any party wishes to proceed. In addition to providing notice to the clerk of the appellate court of an indicative ruling, the movant may also be required to file an appropriate motion in the court in which the appeal is pending to obtain a remand under Rule 8009(h)(3), and must otherwise comply with the practices and procedures of that court.

Rule 8010. Filing and Service

(a) Filing.

(1) Filing with the Clerk. A paper required or permitted to be filed in the district court or the bankruptcy appellate panel must be filed with the clerk thereof.

(2) Filing: Method and Timeliness.

(A) In general. Filing may be accomplished by transmission to the clerk of the district court or the clerk of the bankruptcy appellate panel, but except as provided in Rule 8010(a)(2)(B) filing is not timely unless the clerk receives the paper within the time fixed for filing.

(B) A brief or appendix. A brief or appendix is timely filed if, on or before the last day for filing, it is:

(i) transmitted to the clerk of the district court or the clerk of the bankruptcy appellate panel in accordance with applicable electronic transmission procedures for the filing of papers in the district court or the bankruptcy appellate panel;

(ii) mailed to the clerk of the district court or the clerk of the bankruptcy appellate panel by First-Class Mail, or other class of mail that is at least as expeditious, postage prepaid, if the brief or appendix is permitted or required to be mailed under applicable filing procedures of the district court or bankruptcy appellate panel; or

(iii) dispatched to a third-party commercial carrier for delivery to the clerk of the district court or the clerk of the bankruptcy appellate panel within 3 calendar days, if the brief or appendix is permitted or required to be delivered to the clerk under applicable filing procedures of the district court or bankruptcy appellate panel.

(C) Inmate filing. A paper filed by an inmate confined in an institution is timely if deposited in the institution's internal mailing system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a declaration in compliance with 28 U.S.C. section 1746 or by a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.

(D) Electronic filing. A district court or bankruptcy appellate panel may by local rule permit or require papers to be

filed, signed, or verified by electronic means that are consistent with technical standards, if any, that the Judicial Conference of the United States establishes. A local rule may require filing by electronic means only if reasonable exceptions are allowed. A paper filed by electronic means in compliance with a local rule constitutes a written paper for the purposes of applying these rules.

(E) Quantity of Copies. If filed electronically, an original must be filed in the district court or bankruptcy appellate panel. If filed by mail or dispatch, an original and one copy of all papers must be filed when an appeal is to the district court. If filed by mail or dispatch, an original and three copies must be filed when an appeal is to a bankruptcy appellate panel. The district court or bankruptcy appellate panel may require that additional copies be furnished.

(3) Filing a Motion with a Judge. In appeals to the bankruptcy appellate panel, if a motion requests relief that may be granted by a single judge thereof, the judge may permit the motion to be filed with the judge. The judge must note the filing date on the motion and transmit it to the clerk.

(4) Clerk's Refusal of Documents. The clerk of the district court or the clerk of the bankruptcy appellate panel must not refuse to accept for filing any paper transmitted for that purpose solely because it is not presented in proper form as required by these Rules or by any local rule or practice. The district court or bankruptcy appellate panel may, by order, direct the correction of any deficiency in any paper that does not conform to the requirements of these Rules or applicable local rule, and may prescribe such other relief as the court deems appropriate.

(5) Privacy Protection. An appeal in a case whose privacy protection was governed by Rule 9037 is governed by the same rule on appeal.

(b) Service of All Papers Required. Copies of all papers filed by any party and not required by these Rules to be served by the clerk of the district court or the clerk of the bankruptcy appellate panel must, at or before the time of filing, be served by the party or a person acting for the party on all other parties to the appeal. Service on a party represented by counsel must be made on counsel.

(c) Manner of Service.

(1) Service may be any of the following:

(A) personal, including delivery to a responsible person at the office of counsel;

(B) by mail;

(C) by third-party commercial carrier for delivery within 3 calendar days; or

(D) by electronic means, if the party being served consents in writing, or as otherwise permitted or required by applicable local procedure.

(2) If authorized by local rule, a party may use the district court's or bankruptcy appellate panel's transmission equipment to make the electronic service under Rule 8010(c)(1)(D).

(3) When reasonable, considering such factors as the immediacy of the relief sought, distance, and cost, service on a party must be by a manner at least as expeditious as the manner used to file the paper with the district court or the bankruptcy appellate panel.

(4) Service by mail or by commercial carrier is complete on mailing or delivery to the carrier. Service by electronic means is complete on transmission, unless the party making service is notified contemporaneously with an attempted transmission that the paper was not transmitted successfully to the party served.

(d) Proof of Service.

(1) Papers presented for filing must contain either:

(A) an acknowledgment of service by the person served; or

(B) proof of service in the form of a statement by the person who made service certifying:

(i) the date and manner of service;

(ii) the names of the persons served; and

(iii) their mail or electronic addresses, facsimile numbers, or the addresses of the places of delivery, as appropriate for the manner of service.

(2) The clerk of the district court or the clerk of the bankruptcy appellate panel may permit papers to be filed without acknowledgment or proof of service at the time of filing but must require the acknowledgment or proof of service to be filed promptly thereafter.

(3) When a brief or appendix is filed by mailing, dispatch, or electronic transmission in accordance with this Rule 8010(a)(2)(B), the proof of service must also state the date and manner by which the

document was mailed, dispatched, or transmitted electronically to the clerk.

(e) Number of Copies. When these rules require the filing or furnishing of a number of copies, a court may require a different number by local rule or by order in a particular case.

(f) Signature. If filed electronically, every motion, response, reply, brief, or letter authorized by these Rules must indicate the electronic signature of the person filing the paper or, if the person is represented, by one of the person's attorneys. If filed in paper form, every motion, response, reply, brief, or letter authorized by these Rules must be signed by the person filing the paper or, if the person is represented, by one of the person's attorneys.

(g) Paper copies requested by court. Where a brief, motion, response, reply, letter, or other paper is filed electronically, the district court or bankruptcy appellate panel may request by order in a particular case or by local rule that a paper copy also be filed or delivered. The paper copies shall be filed or delivered in the number and within the time directed by the district court or bankruptcy appellate panel.

Rule 8010 is derived from current Rule 8008 and FRAP 25. FRAP 25 has considerably more detail than current Rule 8010. Rule 8010 adopts most of this detail. Rule 8010(a)(2)(E) provides that, in cases of paper filings, an original and one copy of all papers are to be filed if the appeal is to the district court, and an original and three copies are to be filed if the appeal is to the bankruptcy appellate panel, subject to adjustment by either court. This convention is used throughout these rules. The copy requirements do not apply to electronic filings, unless the court requests paper copies pursuant to Rule 8010(g). As used in these Part VIII rules, "transmission" includes electronic transmission, mailing, and hand delivery; "mailing" means delivery through the United States postal service or third-party commercial carrier equivalent; "delivery" includes transmission, mailing and hand delivery. Like FRAP 25(a)(5), Rule 8010(a)(5) provides that the privacy protection afforded by Rule 9037 also applies on appeal. This is included to avoid confusion and should not be construed to suggest inferentially that, unless specifically noted in these Part VIII Rules, the provisions of Part IX do not apply. Rule 8010(c)(4) provides that service of a paper electronically is complete on transmission, unless the party making service is notified contemporaneously at the time of an attempted transmission that the transmission was not successful. This is intended to capture situations in which the party attempting the transmission is notified by an electronically generated message contemporaneous with the attempted transmission that the transmission was a failure. It does not include non-contemporaneous notices of non-receipt. For example, if properly directed to a party's electronic address, service is still effective under the rule even though the party to whom the transmission is directed contends two weeks later that it did not receive the transmission. Rule 8010(f) requires an electronic signature for electronic filings, and a paper signature for paper filings. An electronic signature may be accomplished by typing the name of the person

submitting the paper on the signature line of the paper. Pursuant to Rule 8010(g), where a motion, response, reply, brief, appendix, or other paper is filed electronically, the district court or bankruptcy appellate panel may call for paper copies to be filed, either by order in a particular case, or by local rule requiring the filing or delivery of courtesy copies, chambers copies, and the like. The paper copies shall be filed or delivered in the amount and within the time directed by the district court or bankruptcy appellate panel.

Rule 8011. Corporate Disclosure Statement

(a) Who Must File. Any nongovernmental corporate party to a proceeding in a district court or a bankruptcy appellate panel must file a statement that identifies any parent corporation, any publicly held corporation that owns 10% or more of its stock, or states that there is no such corporation.

(b) Time for Filing; Supplemental Filing. A party must file the statement prescribed by Rule 8011(a) with its principal brief or upon filing a motion, response, petition, or answer in the district court or the bankruptcy appellate panel, whichever occurs first, unless a local rule requires earlier filing. Even if the statement has already been filed, the party's principal brief must include a statement before the table of contents. A party must supplement its statement whenever the information that must be disclosed under Rule 8011(a) changes.

Rule 8011 is derived from FRAP 26.1. If filed separately from a brief, motion, response, petition, or answer, the statement must be filed and served in accordance with Rule 8010.

Rule 8012. Motions; Expedition; Intervention

(a) Content of Motions; Response; Reply.

(1) Application for Relief. A request for an order or other relief, including an extraordinary writ, must be made by filing with the clerk of the district court or the clerk of the bankruptcy appellate panel a motion for such order or relief with proof of service on all other parties to the motion or appeal.

(2) Contents of a Motion.

(A) Grounds and Relief Sought. A motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it.

(B) Motion to Expedite. A motion to expedite the consideration of an appeal must explain why expedition is warranted and the circumstances that justify the district court or the bankruptcy appellate panel considering the appeal ahead of other matters. If a motion to expedite is granted, the district court or the bankruptcy appellate panel may accelerate

the transmission of the record, the deadline for filing briefs and other papers, oral argument, and resolution of the appeal. A motion to expedite may be filed with the district court or the bankruptcy appellate panel prior to docketing of an appeal as prescribed by Rules 8003(d)(2) or 8004(c)(2). If a statement of election is timely filed with the clerk as prescribed by Rule 8005, a motion to expedite made prior to docketing of an appeal must be made in the district court rather than the bankruptcy appellate panel.

(C) Accompanying Documents and Other Matter.

(i) Any affidavit, declaration, brief, or other paper necessary to support a motion must be served and filed with the motion.

(ii) An affidavit or declaration must contain only factual information, not legal argument.

(iii) A motion seeking substantive relief from a judgment, order, or decree of a bankruptcy judge must include a copy of the bankruptcy judge's order and any accompanying opinion as a separate exhibit.

(iv) A motion must contain or be accompanied by any other matter required by a specific provision of these Rules governing such a motion.

(D) Documents Barred or Not Required.

(i) A notice of motion is not required.

(ii) A proposed order is not required.

(3) Response and Reply; Time to File. Any party may file a response to a motion within 7 days after service of the motion, but the district court or the bankruptcy appellate panel may shorten or extend the time for responding to any motion. The movant may file a reply to a response within 7 days after service of the response.

(b) Determination of Motions for Procedural Orders. Notwithstanding Rule 8012(a)(3), motions for procedural orders, including any motion under Rule 9006, may be acted on at any time, without awaiting a response thereto and without a hearing. Any party adversely affected by such action may move for reconsideration, vacation, or modification of the action within 7 days of service of the procedural order.

(c) Determination of All Motions; Oral Argument. All motions will be decided without oral argument unless the district court or the bankruptcy appellate panel orders otherwise. A motion for a stay

pending appeal or for other emergency relief may be denied if not presented promptly.

(d) Emergency Motions.

(1) Whenever a movant requests expedited action on a motion on the ground that, to avoid irreparable harm, relief is needed in less time than would normally be required for the district court or the bankruptcy appellate panel to receive and consider a response, the word "Emergency" must precede the title of the motion.

(2) The emergency motion

(A) must be accompanied by an affidavit or declaration setting forth the nature of the emergency;

(B) must state whether all grounds advanced in support thereof were submitted to the bankruptcy judge and, if any grounds relied on were not submitted, why the motion should not be remanded to the bankruptcy judge for consideration in the first instance in the bankruptcy court;

(C) must include, when known, the email addresses, office addresses, and telephone numbers of moving and opposing counsel; and

(D) must be served as prescribed by Rule 8010.

(3) Prior to filing an emergency motion, the movant must make every practicable effort to notify opposing counsel in time for counsel to respond to the motion. The affidavit or declaration accompanying the emergency motion must also state when and how opposing counsel was notified, or if opposing counsel was not notified why it was not practicable to do so.

(e) Power of a Single Judge of the Bankruptcy Appellate Panel to Entertain Motions.

(1) A single judge of a bankruptcy appellate panel may grant or deny any request for relief which under these rules may properly be sought by motion, except that a single judge may not dismiss or otherwise decide an appeal or a motion for leave to appeal.

(2) The action of a single judge may be reviewed by the panel.

(f) Form of Papers; Page Limits; and Number of Copies.

(1) Format for Paper Copies.

(A) Reproduction. If a paper copy may or must be filed, a motion, response, reply, brief, affidavit, or declaration

authorized by this Rule 8012 may be reproduced by any process that yields a clear black image on light paper. The paper must be opaque and unglazed. Only one side of the paper may be used.

(B) Cover. A cover is not required for a motion, response, or reply, but there must be a caption that includes the case number, the name of the court, the title of the case, and a brief descriptive title indicating the purpose of the motion and identifying the party or parties for whom it is filed. If a paper copy may or must be filed and a cover is used, the cover must be white.

(C) Binding. If a paper copy may or must be filed, the document must be bound in any manner that is secure, does not obscure the text, and permits the document to lie reasonably flat when open and easy to scan.

(D) Paper size, line spacing, and margins. If a paper copy may or must be filed, the document must be on 8½ by 11 inch paper. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.

(E) Typeface and type styles. The document must comply with the typeface requirements of Rule 8014(a)(5) and the type-style requirements of Rule 8014(a)(6).

(2) Format for Electronic Filings. A motion, response, reply, brief, affidavit, or declaration authorized by this Rule 8012 and filed electronically must, when viewed on a screen or printed, comply with the appearance requirements of a paper copy pursuant to Rule 8012(f)(1) and length requirements of Rule 8012(f)(3).

(3) Page Limits. Unless the district court or the bankruptcy appellate panel permits or directs otherwise, a motion or a response to a motion must not exceed 10 pages, exclusive of the corporate disclosure statement and accompanying documents authorized by Rule 8012(a)(2)(C), and a reply to a response must not exceed 5 pages. Unless the district court or the bankruptcy appellate panel permits or directs otherwise, a brief in support of a motion or a response to a motion must not exceed 20 pages, exclusive of accompanying documents authorized by Rule 8012(a)(2)(C), and a brief in support of a reply must not exceed 10 pages.

(4) Number of Copies. Copies must be provided as required by Rule 8010(a)(2)(E).

(g) Intervention. Unless a statute provides another method, a person who wants to intervene in an appeal pending in the district court or the bankruptcy appellate panel must file a motion for leave to intervene with the clerk of the district court or the clerk of the bankruptcy appellate panel and serve a copy on all parties. The motion, or other notice of intervention authorized by statute, must be filed within 30 days after the appeal is docketed and must contain a concise statement of the interest of the moving party and the grounds for intervention.

Rule 8012 is derived from current Rule 8011, FRAP 27, FRAP 32(d) and (e), and FRAP 15(d). FRAP 27 has more detail than current Rule 8011. Rule 8012 adopts most of this detail. Rule 8012(a)(2)(B) clarifies procedures with respect to motions to expedite the consideration of an appeal. Rule 8012(g) is derived from FRAP 32(d). Rule 8012(g) clarifies procedures with respect to intervention and is derived from FRAP 15(d). In addition to the requirements of Rule 8012, motions and other papers authorized under the rule must be filed and served in accordance with Rule 8010.

Rule 8013. Form of Briefs

(a) Form of briefs. Unless the district court or the bankruptcy appellate panel by local rule otherwise provides, the form of brief must be as follows:

(1) Appellant's Brief. The appellant's brief must contain under appropriate headings and in the order here indicated:

(A) a corporate disclosure form, if required by Rule 8011;

(B) a table of contents with page references, and a table listing cases alphabetically arranged, statutes, and other authorities cited, with references to the pages of the brief where they are cited;

(C) a jurisdictional statement, including:

(i) the basis for the bankruptcy court's subject-matter jurisdiction, with citations to applicable statutory provisions and stating relevant facts establishing jurisdiction;

(ii) the basis for the district court's or bankruptcy appellate panel's jurisdiction, with citations to applicable statutory provisions and stating relevant facts establishing jurisdiction;

(iii) the filing dates establishing the timeliness of the appeal; and

(iv) an assertion that the appeal is from a final judgment, order, or decree, or information establishing the district court's or bankruptcy appellate panel's jurisdiction on some other basis;

(D) a statement of the issues presented and the applicable standard of appellate review;

(E) a statement of the case, which must first indicate briefly the nature of the case; a statement of the facts relevant to the issues presented for review, with appropriate references to the appendix or, if the reference is to an item not in the appendix, to the record; the course of the proceedings, and the disposition in the bankruptcy court;

(F) an argument, which may be preceded by a summary, and which must contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes, and parts of the record relied on;

(G) a short conclusion stating the precise relief sought; and

(H) the certificate of compliance, if required by Rule 8014(a)(7), Rule 8014(b), or Rule 8015(e)(3).

(2) Appellee's Brief. The appellee's brief must conform to the requirements of Rule 8013(a)(1), except that none of the following need appear unless the appellee is dissatisfied with the appellant's statement:

(A) the jurisdictional statement;

(B) the statement of the issues;

(C) the statement of the case; and

(D) the statement of the applicable standard of appellate review.

(b) Reply brief. The appellant may file a brief in reply to the appellee's brief. A reply brief must contain a table of contents, with page references, and a table of authorities listing cases alphabetically arranged, statutes, and other authorities and references to the pages of the reply brief where they are cited.

(c) No Further Briefs. No further briefs may be filed except with leave of the district court or the bankruptcy appellate panel.

(d) References to Parties. In briefs and at oral argument, counsel should minimize use of the terms "appellant" and "appellee." To make briefs clear, counsel should use the parties' actual names or the designations used in the bankruptcy court, or such descriptive terms as "the employee," "the injured person," "the taxpayer," "the ship," "the stevedore."

(e) References to the Record. References to the parts of the record contained in the appendix filed with the appellant's brief must be to the pages of the appendix.

(f) Reproduction of Statutes, Rules, Regulations, or Similar Material. If determination of the issues presented requires reference to the Code or other statutes, rules, regulations, or similar material, relevant parts thereof must be reproduced in the brief or in an addendum, or they may be supplied to the court in pamphlet form.

(g) Briefs in a Case Involving Multiple Appellants or Appellees. In a case involving more than one appellant or appellee, including consolidated cases, any number of appellants or appellees may join in a brief, and any party may adopt by reference a part of another's brief. Parties may also join in reply briefs.

(h) Citation of Supplemental Authorities. If pertinent and significant authorities come to a party's attention after the party's brief has been filed, or after oral argument but before a decision, a party who has filed a brief may promptly advise the clerk of the district court or the clerk of the bankruptcy appellate panel by letter signed by the party filing the letter or, if the party is represented, by one of the party's attorneys, with a copy to all other parties, setting forth the citations. The letter must state the reasons for the supplemental citations, referring either to the page of the brief or to a point argued orally. The body of the letter must not exceed 350 words. Any response must be made promptly and must be similarly limited.

Rule 8013 is derived from current Rule 8010(a) and (b) and FRAP 28. FRAP 28 has considerably more detail than current Rule 8010(a) and (b). Rule 8013 adopts most of this detail. Rule 8013(h) adopts the procedures of FRAP 28(j) with respect to the filing of supplemental authorities with the district court or the bankruptcy appellate panel after a brief has been filed or after oral argument. If the supplemental letter is filed electronically, the signature requirement must comply with Rule 8010(f).

Rule 8014. Format of Briefs, Appendices, and Other Papers; Length

(a) Format of a Brief; Paper Copies.

(1) Reproduction.

(A) If a paper copy may or must be filed, a brief may be reproduced by any process that yields a clear black image

on light paper. The paper must be opaque and unglazed. Only one side of the paper may be used.

(B) Text must be reproduced with a clarity that equals or exceeds the output of a laser printer.

(C) Photographs, illustrations, and tables may be reproduced by any method that results in a good copy of the original. A glossy finish is acceptable if the original is glossy.

(2) Cover. If a paper copy may or must be filed, except for filings by unrepresented parties, the cover of the appellant's brief must be blue; the appellee's, red; an intervenor's or amicus curiae's, green; any reply brief, gray; and any supplemental brief, tan. The front cover of a brief must contain:

(A) the number of the case centered at the top;

(B) the name of the court;

(C) the title of the case as prescribed by Rule 8003(d)(2) or 8004(c)(2);

(D) the nature of the proceeding and the name of the court below;

(E) the title of the brief, identifying the party or parties for whom the brief is filed; and

(F) the name, office address, telephone number, and email address of counsel representing the party for whom the brief is filed.

(3) Binding. If a paper copy may or must be filed, the brief must be bound in any manner that is secure, does not obscure the text, permits the brief to lie reasonably flat when open, and is easy to scan.

(4) Paper Size, Line Spacing, and Margins. If a paper copy may or must be filed, the brief must be on 8½ by 11 inch paper. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.

(5) Typeface. Either a proportionally spaced or monospaced face may be used.

(A) A proportionally spaced face must include serifs, but sans-serif type may be used in headings and captions. A proportionally spaced face must be 14-point or larger.

(B) A monospaced face may not contain more than 10½ characters per inch.

(6) Type Styles. A brief must be set in plain, roman style, although italics or boldface may be used for emphasis. Case names must be italicized or underlined.

(7) Length.

(A) Page limitation. A principal brief of the appellant or appellee may not exceed 30 pages, or a reply brief 15 pages, unless it complies with Rule 8014(a)(7)(B) and (C).

(B) Type-volume limitation.

(i) A principal brief of the appellant or appellee is acceptable if:

(α) it contains no more than 14,000 words; or

(β) it uses a monospaced face and contains no more than 1,300 lines of text.

(ii) A reply brief is acceptable if it contains no more than half of the type volume specified in Rule 8014(a)(7)(B)(i).

(iii) Headings, footnotes, and quotations count toward the word and line limitations. The corporate disclosure statement, table of contents, table of citations, statement with respect to oral argument, any addendum containing statutes, rules, or regulations, and any certificates of counsel do not count toward the limitation.

(C) Certificate of Compliance.

(i) If a paper copy may or must be filed, a brief submitted under this Rule 8014(a)(7)(B) or Rule 8015(e)(2) must include a certificate signed by the attorney, or an unrepresented party, that the brief complies with the type-volume limitation. The person preparing the certificate may rely on the word or line count of the word-processing system used to prepare the brief. The certificate must state either:

(α) the number of words in the brief; or

(β) the number of lines of monospaced type in the brief.

[(ii) Official Form ___ is a suggested form of a certificate of compliance. Use of Form ___ must be regarded as sufficient to meet

the requirements of Rule 8015(e)(3) and this Rule 8014(a)(7)(C)(i).]

(b) Form of Brief; Electronic Filings. A brief authorized by this Rule 8014 or Rule 8015 and filed electronically must, when viewed on a screen or printed, comply with the appearance and length requirements of a paper copy pursuant to Rule 8014(a) or 8015(e), except for the color requirements under Rule 8014(a)(2) or 8015(d). A brief submitted electronically under Rule 8014(a)(7)(B) or Rule 8015(e)(2) must include the certification required by Rule 8014(a)(7)(C), except that, instead of a signature, the certificate must indicate the electronic signature of the person making the certification.

(c) Form of Appendix; Paper Copies. If a paper copy may or must be filed, an appendix must comply with Rule 8014(a)(1), (2), (3), and (4), with the following exceptions:

(1) The cover of a separately bound appendix must be white.

(2) An appendix may include a legible photocopy of any document found in the record or of a printed judicial or agency decision.

(3) When necessary to facilitate inclusion of odd-sized documents such as technical drawings, an appendix may be a size other than 8½ by 11 inches, and need not lie reasonably flat when opened.

(d) Form of Appendix; Electronic Filings. An appendix authorized by this Rule 8014 and filed electronically must, when viewed on a screen or printed, comply with the appearance requirements of a paper copy pursuant to Rule 8014(c).

(e) Form of Other Papers.

(1) Motion. The form of a motion, response, or reply is governed by Rule 8012(f).

(2) Other Papers; Paper Copies. If a paper copy may or must be filed, any other paper, such as an addendum to a brief that set forth statutory provisions, must be reproduced in the manner prescribed by Rule 8014(a), with the following exceptions:

(A) A cover is not necessary if the caption and signature page of the paper together contain the information required by Rule 8014(a)(2). If a cover is used, it must be white.

(B) Letters setting forth supplemental authorities as prescribed by Rule 8013.

(3) Other Papers; Electronic Filings. Any other paper, such as an addendum to a brief, filed electronically must, when viewed on a screen or printed, comply with the appearance requirements of a paper copy pursuant to Rule 8014(e)(2).

(f) Local Variation. Every district court or bankruptcy appellate panel must accept documents that comply with the form and length requirements of this Rule 8014.

Rule 8014 is derived from current Rule 8010(c) and FRAP 32. FRAP 32 has considerably more detail than current Rule 8010(c). Rule 8014 adopts most of this detail. FRAP 32(a)(7) permits the length of a brief to conform either to a prescribed page limitation or a type-volume limitation. Rule 8014 adopts this convention. Rule 8014 requires an electronic signature for the certificate of compliance if the brief is submitted electronically under Rule 8014(a)(7)(B) or Rule 8015(e)(2). An electronic signature may be accomplished by typing the name of the person making the certificate on the signature line of the certificate. Like FRAP 32(e), Rule 8014(f) directs that every district court or bankruptcy appellate panel must accept documents that comply with the form and length requirements of the national rule. Accordingly, the district courts and bankruptcy appellate panels may not require by local rule or otherwise that briefs be limited to shorter page lengths or lesser type-volume restrictions than the national rule allows. Rule 8014(f) prevents the 'hour-glass' problem that occurs in cases in which the parties must constrict their appellate presentations in the district court or the bankruptcy appellate panel (and perhaps even forfeit arguments) owing to variations in local practice that limit briefs in some jurisdictions to as little as twenty pages, but then have the full benefit of the national page limit and type-volume rules established in FRAP 32 in the court of appeals. Sharply restricted page limitations or type-volume restrictions would also sometimes leave the parties with little room for argument after satisfying the procedural requirements of Rule 8013. A theme of the revised Part VIII rules is to make bankruptcy appellate practice in the district courts and the bankruptcy appellate panels as consistent as possible with bankruptcy appellate practice in the courts of appeals to avoid the inefficiencies of each party having to craft its presentation to conform to different practices and procedures at the different levels of appeals. Note: Rule 8014 calls for an official form for the certificate of compliance similar to Official Form 6 in the Appendix of FRAP Forms. In addition to the requirements of Rule 8014, briefs and other papers authorized under the rule must be filed and served in accordance with Rule 8010.

Rule 8015. Cross-Appeals

(a) Applicability. This rule applies to a case in which a cross-appeal is filed. Rules 8013(a)-(c), 8014(a)(2), 8014(a)(7)(A)-(B), and 8017(a) do not apply to such a case, except as otherwise provided in this Rule 8015.

(b) Designation of Appellant. The party who files a notice of appeal first is the appellant for purposes of this Rule 8015 and Rules 8017(b) and 8018. If notices are filed on the same day, the plaintiff, petitioner, applicant, or movant in the proceeding below is the

appellant. These designations may be modified by the parties' agreement or by court order.

(c) Briefs. In a case involving a cross-appeal:

(1) Appellant's Principal Brief. The appellant must file a principal brief in the appeal. That brief must comply with Rule 8013(a)(1).

(2) Appellee's Principal and Response Brief. The appellee must file a principal brief in the cross-appeal and must, in the same brief, respond to the principal brief in the appeal. That brief must comply with Rule 8013(a)(1), except that the brief need not include a statement of the case or a statement of the facts unless the appellee is dissatisfied with the appellant's statement.

(3) Appellant's Response and Reply Brief. The appellant must file a brief that responds to the principal brief in the cross-appeal and may, in the same brief, reply to the response in the appeal. That brief must comply with Rule 8013(a)(1)(A)-(E) and (G), except that none of the following need appear unless the appellant is dissatisfied with the appellee's statement in the cross-appeal:

(A) the jurisdictional statement;

(B) the statement of the issues;

(C) the statement of the case; and

(D) the statement of the applicable standard of appellate review.

(4) Appellee's Reply Brief. The appellee may file a brief in reply to the response in the cross-appeal. That brief must comply with Rule 8013(a)(1)(A) and (G) and must be limited to the issues presented by the cross-appeal.

(5) No Further Briefs. Unless the district court or the bankruptcy appellate panel permits, no further briefs may be filed in a case involving a cross-appeal.

(d) Cover. If a paper copy may or must be filed, except for filings by unrepresented parties, the cover of the appellant's principal brief must be blue; the appellee's principal and response brief, red; the appellant's response and reply brief, yellow; the appellee's reply brief, gray; an intervenor's or amicus curiae's brief, green; and any supplemental brief, tan. The front cover of a brief must contain the information required by Rule 8014(a)(2).

(e) Length.

(1) Page Limitation. Unless it complies with this Rule 8015(e)(2) and (3), the appellant's principal brief must not exceed 30 pages; the appellee's principal and response brief, 35 pages; the appellant's response and reply brief, 30 pages; and the appellee's brief, 15 pages.

(2) Type-Volume Limitation.

(A) The appellant's principal brief or the appellant's response and reply brief is acceptable if:

(i) it contains no more than 14,000 words; or

(ii) it uses a monospaced face and contains no more than 1,300 lines of text.

(B) The appellee's principal and response brief is acceptable if:

(i) it contains no more than 16,500 words; or

(ii) it uses a monospaced face and contains no more than 1,500 lines of text.

(C) The appellee's reply brief is acceptable if it contains no more than half of the type volume specified in this Rule 8015(e)(2)(A).

(3) Certificate of Compliance. A brief submitted under this Rule 8015(e)(2) must comply with Rule 8014(a)(7)(C) or Rule 8014(b).

(f) Time to Serve and File a Brief. Briefs must be served and filed as follows:

(1) The appellant must serve and file its principal brief within 30 days after docketing of the notice of transmission of the record or notice of availability of the record pursuant to Rule 8009(b)(2)(B).

(2) The appellee must serve and file its principal and response brief within 30 days after service of the principal brief of appellant.

(3) The appellant must serve and file its response and reply brief within 30 days after service of the principal and response brief of the appellee.

(4) The appellee must file its reply brief within fourteen days after service of the response and reply brief of the appellant, or 3 days before scheduled argument, whichever is earlier, unless the district court or the bankruptcy appellate panel, for good cause, allows a later filing.

(5) If an appellant or cross appellant fails to file a brief within the time provided by this Rule 8015, or within an extended time, an appellee or cross appeal may move to dismiss the appeal or cross appeal. An appellee or cross appellee who fails to file a brief will not be heard at oral argument on the appeal or cross appeal unless the district court or bankruptcy appellate panel grants permission.

Rule 8015 is derived from FRAP 28.1. It operates in the same way as FRAP 28.1.

Rule 8016. Brief of an Amicus Curiae

(a) When Permitted. The United States or its officer or agency, or a State, Territory, Commonwealth, or the District of Columbia may file an amicus-curiae brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court or if the brief states that all parties have consented to its filing. On its own motion, and with notice to all parties to an appeal, the district court or the bankruptcy appellate panel may request a brief by an amicus curiae.

(b) Motion for Leave to File. The motion for leave must be accompanied by the proposed brief and state:

(1) the movant's interest; and

(2) the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.

(c) Content and form. An amicus brief must comply with Rule 8014. In addition to the requirements of Rule 8014, the cover must identify the party or parties supported and indicate whether the brief supports affirmance or reversal. If an amicus curiae is a corporation, the brief must include a disclosure statement like that required by Rule 8011. An amicus brief need not comply with Rule 8013, but must include the following:

(1) a table of contents, with page references;

(2) a table of authorities listing cases alphabetically arranged, statutes, and other authorities, with references to the pages of the brief where they are cited;

(3) a concise statement of the identity of the amicus curiae, its interest in the case, and the source of its authority to file;

(4) an argument, which may be preceded by a summary and which need not include a statement of the applicable standard of review; and

(5) a certificate of compliance, if required by Rule 8014(a)(7)(C), Rule 8014(b), or 8015(e)(3).

(d) Length. Except by the court's permission, an amicus brief may be no more than one-half the maximum length authorized by these rules for a party's principal brief. If the court grants a party permission to file a longer brief, that extension does not affect the length of an amicus brief.

(e) Time for Filing. An amicus curiae must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the principal brief of the party being supported is due. A

court may grant leave for later filing, specifying the time within which an opposing party may answer.

(f) Reply Brief. Except by the court's permission, an amicus curiae may not file a reply brief.

(g) Oral Argument. An amicus curiae may participate in oral argument only with the court's permission.

(h) Citation of Supplemental Authorities. If pertinent and significant authorities come to a amicus' attention after the amicus' brief has been filed, or after oral argument but before a decision, an amicus who has filed a brief may promptly advise the clerk of the district court or the clerk of the bankruptcy appellate panel by letter signed by the amicus filing the letter or, if the amicus is represented, by one of the amicus' attorneys, with a copy to all other parties, setting forth the citations. The letter must state the reasons for the supplemental citations, referring either to the page of the brief or to a point argued orally. The body of the letter must not exceed 350 words. Any response must be made promptly and must be similarly limited.

Rule 8016 is derived from FRAP 29. The practice and procedure governing the filing of amicus briefs in the courts of appeals is well-established. Just as an amicus brief may be useful to a court of appeals in deciding an appeal, it may be equally useful to a district court or bankruptcy appellate panel, and the practice in the different courts should be the same to avoid the 'hour glass' problem that occurs when the presentation of an appeal is truncated in the district court or bankruptcy appellate panel in comparison to the court of appeals. Like Rule 8013(h), Rule 8016(h) adopts the procedures of FRAP 28(j) with respect to the filing by an amicus of supplemental authorities with the district court or the bankruptcy appellate panel after a brief has been filed or after oral argument. If the supplemental letter is filed electronically, the signature requirement must comply with Rule 8010(f). In addition to the requirements of Rule 8016, a brief or letter authorized under the rule must be filed and served in accordance with Rule 8010.

Rule 8017. Briefs and Appendix; Filing and Service

(a) Briefs. Unless the district court or the bankruptcy appellate panel by local rule or by order excuses the filing of briefs or specifies different time limits:

(1) The appellant must serve and file a brief within 30 days after docketing of the notice of transmission of the record or notice of availability of the record pursuant to Rule 8009(b)(2)(B).

(2) The appellee must serve and file a brief within 30 days after service of the brief of appellant.

(3) The appellant may serve and file a reply brief within 15 days after service of the brief of the appellee, or 3 days before

scheduled argument, whichever is earlier, unless the district court or the bankruptcy appellate panel, for good cause, allows a later filing.

(4) If an appellant fails to file a brief within the time provided by this rule, or within an extended time, an appellee may move to dismiss the appeal. An appellee who fails to file a brief will not be heard at oral argument unless the district court or bankruptcy appellate panel grants permission.

(b) Appendix to brief.

(1) Subject to Rule 8008(d) and Rule 8017(b)(4), the appellant must serve and file with the appellant's principal brief excerpts of the record as an appendix, which must include the following:

(A) the relevant entries in the bankruptcy docket;

(B) the complaint and answer or other equivalent pleadings;

(C) the judgment, order, or decree from which the appeal is taken;

(D) any other orders, pleadings, jury instructions, findings, conclusions, or opinions relevant to the appeal;

(E) the notice of appeal; and

(F) any relevant transcript or portion thereof.

An appellee, cross appellant, or cross appellee may also serve and file with its principal brief an appendix which contains material required to be included by the appellant or cross appellant, or relevant to the appeal or cross appeal, but omitted by appellant or cross appellant. The record is available to the district court or the bankruptcy appellate panel and the parties should include in the appendix only those materials that the district court or the bankruptcy appellate panel should examine. The unnecessary inclusion of items should be avoided.

(2) Format of the Appendix. The appendix must begin with a table of contents identifying the page at which each part begins. The pages of the appendix must be numbered consecutively, and may be numbered by a bate stamp or similar process. The relevant docket entries must follow the table of contents. Other parts of the record must follow chronologically. When pages from the transcript of proceedings are placed in the appendix, the transcript page numbers must be shown in the brackets immediately before the included pages. Omissions in the text of papers or of the transcript must be indicated by asterisks. Immaterial formal matters such as captions, subscriptions, acknowledgments, and the like should be omitted.

(3) Reproduction of Exhibits. Exhibits designated for inclusion in the appendix may be reproduced in a separate volume, or volumes, suitably indexed.

(4) Appeal on the Original Record Without an Appendix. The district court or the bankruptcy appellate panel may, either by rule for all cases or classes of cases or by order in a particular case, dispense with the appendix and permit an appeal to proceed on the original record with any copies of the record, or relevant parts, that the district court or bankruptcy appellate panel may order the parties to file.

Rule 8017 is derived from current Rule 8009, FRAP 31, FRAP 30, and Supreme Court Rule 26.2. Rule 8017 adopts in general the deadlines of FRAP 31. Rule 8017 retains the simpler practice of each party filing its own appendix rather than adopt the more complex procedures for negotiating and filing a joint appendix. In addition to the requirements of Rule 8017, briefs, appendices, and other papers authorized under the rule must be filed and served in accordance with Rule 8010. Pursuant to Rule 8010(g), where a brief, appendix, or other paper is filed electronically, the district court or bankruptcy appellate panel may call for paper copies to be filed or delivered. The paper copies shall be filed or delivered in the amount and within the time directed by the district court or bankruptcy appellate panel.

Rule 8018. Oral Argument

(a) Party's Statement. Any party may file a statement setting forth the reason why oral argument should, or need not, be allowed. A party may include this statement at the beginning of its principal brief or it may file it separately with its principal brief.

(b) Presumption of Oral Argument and Exception. Oral argument must be allowed in every case unless the district judge or the judges of the bankruptcy appellate panel unanimously determine after examination of the briefs and record that oral argument is unnecessary for any of the following reasons:

(1) the appeal is frivolous;

(2) the dispositive issue or issues have been authoritatively decided; or

(3) the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument.

(c) Notice of Argument; Postponement. The clerk of the district court or the clerk of the bankruptcy appellate panel must advise all parties of the date, time, and place for oral argument, and the time allowed for each side. A motion to postpone the argument or to allow

longer argument must be filed reasonably in advance of the hearing date.

(d) Order and Contents of Argument. The appellant opens and concludes the argument. Counsel must not read at length from briefs, records, or authorities.

(e) Cross-Appeals and Separate Appeals. If there is a cross-appeal, Rule 8015(b) determines which party is the appellant and which is the appellee for the purposes of oral argument. Unless the district court or the bankruptcy appellate panel directs otherwise, a cross-appeal or separate appeal must be argued when the initial appeal is argued. Separate parties should avoid duplicative argument.

(f) Nonappearance of a Party. Except as provided in Rules 8018(a) and 8018(c), if the appellee fails to appear for argument, the district court or the bankruptcy appellate panel may hear appellant's argument. If the appellant fails to appear for argument, the district court or bankruptcy appellate panel may hear the appellee's argument. If neither party appears, the case will be decided on the briefs, unless the district court or the bankruptcy appellate panel orders otherwise.

(g) Submission on Briefs. The parties may agree to submit a case for decision on the briefs, but the district court or the bankruptcy appellate panel may direct that the case be argued.

(i) Use of Physical Exhibits at Argument; Removal. Counsel intending to use physical exhibits other than documents at the argument must arrange to place them in the courtroom on the day of the argument before the court convenes. After the argument, counsel must remove the exhibits from the courtroom, unless the district court or the bankruptcy appellate panel directs otherwise. The clerk may destroy or dispose of the exhibits if counsel does not reclaim them within a reasonable time after the clerk gives notice to remove them.

Rule 8018 is derived from current Rule 8012 and FRAP 34. FRAP 34 has considerably more detail than current Rule 8012. Rule 8018 adopts most of this detail.

Rule 8019. Disposition of Appeal; Weight Accorded Bankruptcy Judge's Findings of Fact and Conclusions of Law

(a) Disposition of Appeal. On an appeal the district court or the bankruptcy appellate panel may affirm, modify, vacate, or reverse a bankruptcy judge's judgment, order, or decree, or remand with instructions for further proceedings.

(b) Accorded Weight. Findings of fact in matters over which the bankruptcy judge has jurisdiction under 28 U.S.C. §§ 157(b)(1) or 157(c)(2), whether based on oral or documentary evidence, must not

be set aside unless clearly erroneous, and due regard must be given to the opportunity of the bankruptcy judge to assess the credibility of the witnesses. Questions of law are subject to de novo review. A matter committed to the discretion of the bankruptcy judge is reviewed for abuse of discretion unless the bankruptcy judge applied an incorrect standard of law. Any matter may be reviewed for clear error. Proposed findings of fact and conclusions of law as to which a party has timely and specifically objected under Rule 9033 in matters over which the bankruptcy judge has jurisdiction under 28 U.S.C. § 157(c)(1) are subject to the provisions of Rule 9033 and the review that it prescribes.

Rule 8019 is derived from current Rule 8013. Rule 8019 clarifies that, in an appeal of an order, judgment, or decree over which the bankruptcy judge had jurisdiction under 28 U.S.C. §§ 157(b)(1) (core proceedings arising under title 11, or arising in a case under title 11), or 157(c)(2) (a proceeding related to a case under title 11 as to which all the parties have consented to have the bankruptcy judge hear and determine the proceeding), findings of fact, whether based on oral or documentary evidence, must not be set aside unless clearly erroneous, and due regard must be given to the opportunity of the bankruptcy judge to assess the credibility of the witnesses. Questions of law are always subject to do novo review. A matter committed to the discretion of the bankruptcy judge is reviewed for abuse of discretion unless the bankruptcy judge applied an incorrect standard of law. And any matter may be reviewed for clear error. In combination, these complete the general rules of appellate review. Consistent with FRBP 9033, in matters over which the bankruptcy judge had jurisdiction under 28 U.S.C. § 157(c)(1) (a proceeding that is related to a case under title 11 as to which all of the parties have not consented to have the bankruptcy judge hear and determine the proceeding), the district judge or bankruptcy appellate panel exercises de novo review of findings of fact as to which a party has timely and specifically objected. This cross-reference is added to avoid the confusion that sometimes arises under current Rule 8013 regarding whether its provisions apply to review of proposed findings of fact and conclusions of law governed by Rule 9033.

Rule 8020. Damages and Costs for Frivolous Appeal

If the district court or the bankruptcy appellate panel determines that an appeal from a judgment, order, or decree of a bankruptcy judge is frivolous, it may, after a separately filed motion or notice from the district court or the bankruptcy appellate panel and reasonable opportunity to respond, award just damages and single or double costs to the appellee. The relief authorized by this Rule 8020 should not be construed as limiting any other relief or power available to the district court or bankruptcy appellate panel.

Rule 8020 is derived from FRAP 38. The second sentence clarifies that the express provisions of this Rule do not limit or implicitly prohibit the exercise of any inherent or other authority or power that a district court or bankruptcy appellate panel may have in addressing appeals or the conduct of the parties.

Rule 8021. Costs

(a) Against Whom Assessed. The following rules apply unless the law provides or the district court or bankruptcy appellate panel orders otherwise:

(1) if an appeal is dismissed other than as provided in Rule 8023, costs are taxed against the appellant, unless the parties agree otherwise;

(2) if a judgment, order, or decree is affirmed, costs are taxed against the appellant;

(3) if a judgment, order, or decree is reversed, costs are taxed against the appellee;

(4) if a judgment, order, or decree is affirmed or reversed in part, or is vacated, costs may be allowed only as ordered by the court.

(b) Costs For and Against the United States. Costs for or against the United States, its agency, or officer may be assessed under Rule 8021(a) only if authorized by law.

(c) Costs Taxable on Appeal. Costs incurred in the production of copies of briefs, the appendices, exhibits, the record, and in the preparation and transmission of the record, the cost of the reporter's transcript if necessary for the determination of the appeal, the premiums paid for supersedeas bonds or other bonds to preserve rights pending appeal, and the fee for filing the notice of appeal must be taxed by the clerk as costs of the appeal in favor of the party entitled to costs under this Rule 8021. Costs do not include attorneys' fees. Each district court or bankruptcy appellate panel must, by local rule, fix the maximum rate for taxing the cost of producing necessary copies of a brief, appendix, exhibits, or the record authorized by these Rules. The rate must not exceed that generally charged for such work in the area where the office of the clerk of the district court or the clerk of the bankruptcy appellate panel is located and should encourage economical methods of copying. If the district court or the bankruptcy appellate panel has not adopted such a local rule, the clerk of the district court or the clerk of the bankruptcy appellate panel shall in taxing costs use the rate authorized by local rule of the court of appeals as prescribed by Rule 39(c) of the Federal Rules of Appellate Procedure.

(d) Bill of Costs; Objections. A party who wants costs taxed must, within 14 days after entry of judgment on appeal, file with the clerk of the district court or the clerk of the bankruptcy appellate panel, with proof of service, an itemized and verified bill of costs. Objections must be filed within 14 days after service of the bill of costs, unless the court extends the time. The clerk of the district court or the clerk

of the bankruptcy appellate panel must prepare and certify an itemized statement of costs.

Rule 8021 is derived from current Rule 8014 and FRAP 39. FRAP 39 has more detail than current Rule 8014. Rule 8021 adopts most of this detail.

Rule 8022. Motion for Rehearing

(a) Time to File; Contents; Answer; Action by the District Court or Bankruptcy Appellate Panel if granted

(1) Time. Unless the time is shortened or extended by order or local rule, any petition for rehearing by the district court or the bankruptcy appellate panel must be filed within 14 days after entry of judgment on appeal.

(2) Contents. The petition must state with particularity each point of law or fact that the petitioner believes the district court or the bankruptcy appellate panel has overlooked or misapprehended and must argue in support of the petition. Oral argument is not permitted.

(3) Answer. Unless the district court or the bankruptcy appellate panel requests, no answer to a petition for rehearing is permitted. But ordinarily, rehearing will not be granted in the absence of such a request.

(4) Action by the District Court or the Bankruptcy Appellate Panel. If a petition for rehearing is granted, the district court or the bankruptcy appellate panel may do any of the following:

(A) make a final disposition of the case without reargument;

(B) restore the case to the calendar for reargument or resubmission; or

(C) issue any other appropriate order.

(b) Time for Appeal Runs from Denial. If a timely motion for rehearing is filed, the time for appeal to the court of appeals for all parties runs from the entry of the order denying rehearing or the entry of a subsequent judgment on appeal.

(c) Form of Petition; Length. The petition must comply with Rule 8014(a)(1)-(6) and 8014(b). Copies must be served and filed as Rule 8017(a)(5) prescribes for the filing of a brief. Unless the district court or the bankruptcy appellate panel by local rule or order provides otherwise, a petition for rehearing must not exceed 15 pages.

Rule 8022 is derived from current Rule 8015 and FRAP 40. FRAP 40 has more detail than current Rule 8015. Rule 8022 adopts most of this detail. In

addition to the requirements of Rule 8022, a petition authorized under the rule must be filed and served in accordance with Rule 8010.

Rule 8023. Voluntary Dismissal

(a) Dismissal in the Bankruptcy Court. If an appeal has not been docketed in the district court or the bankruptcy appellate panel, the appeal may be dismissed by the bankruptcy judge on the filing of a stipulation for dismissal signed by all the parties, or on motion and notice by the appellant.

(b) Dismissal in the District Court or the Bankruptcy Appellate Panel. If an appeal has been docketed in the district court or the bankruptcy appellate panel, and the parties to the appeal sign and file with the clerk of the district court or the clerk of the bankruptcy appellate panel an agreement that the appeal be dismissed and pay any court costs or fees that may be due, the clerk of the district court or the clerk of the bankruptcy appellate panel must enter an order dismissing the appeal. An appeal may also be dismissed on motion of the appellant on terms and conditions fixed by the district court or the bankruptcy appellate panel.

(c) Settlement. If the parties have fully settled a controversy, and have agreed to dismiss an appeal, the parties must notify the district court or the bankruptcy appellate panel as expeditiously as possible. Thereafter, upon stipulation by the parties, the district court or the bankruptcy appellate panel may dismiss the appeal by reason of settlement.

(d) Dismissal for Failure to Prosecute. Upon 30 days' notice to the parties, a district court or bankruptcy appellate panel may order the dismissal of an appeal for failure to prosecute.

Rule 8023 is derived from current Rule 8001(c) and FRAP 42. Nothing in Rule 8023 prohibits a district court or bankruptcy appellate panel from dismissing an appeal for other reasons authorized by law. Parties frequently settle matters during an appeal. If the parties have fully settled a controversy, and have agreed to dismiss an appeal, they must notify the district court or the bankruptcy appellate panel as expeditiously as possible. The provision of this notice, however, should not, by itself, result in an automatic dismissal of an appeal. Frequently, settlements in bankruptcy require the approval of the bankruptcy judge to become effective under FRBP 9019. The provision of notice in Rule 8023(c) is designed to alert the district court or the bankruptcy appellate panel of the settlement so that additional time and resources are not wasted needlessly on resolving the appeal.

Rule 8024. Duties of Clerk on Disposition of Appeal

(a) Entry of Judgment on Appeal. The clerk of the district court or the clerk of the bankruptcy appellate panel must prepare, sign and enter the judgment following receipt of the opinion of the district court

or the bankruptcy appellate panel or, if there is no opinion, following the instruction of the district court or the bankruptcy appellate panel. The notation of a judgment in the docket constitutes entry of judgment.

(b) Notice of Orders or Judgments; Return of Record. Immediately on the entry of a judgment or order, the clerk of the district court or the clerk of the bankruptcy appellate panel must transmit a notice of the entry to each party to the appeal, to the United States trustee, and to the clerk, together with a copy of any opinion respecting the judgment or order, and must make a note of the transmission in the docket. Original papers transmitted as the record on appeal must be returned to the clerk on disposition of the appeal.

Rule 8024 is derived from current Rule 8016 and FRAP 45(c). It largely retains the provisions of current Rule 8016.

Rule 8025. Stay of Judgment of District Court or Bankruptcy Appellate Panel

(a) Automatic Stay of Judgment on Appeal. Judgments of the district court or the bankruptcy appellate panel are stayed until the expiration of 14 days after entry of the judgment, unless otherwise ordered by the district court or the bankruptcy appellate panel.

(b) Stay Pending Appeal to the Court of Appeals.

(1) On motion and notice to the parties to the appeal, the district court or the bankruptcy appellate panel may stay its judgment pending an appeal to the court of appeals.

(2) The stay must not extend beyond 30 days after the entry of the judgment of the district court or the bankruptcy appellate panel unless the period is extended for cause shown.

(3) If before the expiration of a stay entered pursuant to this subdivision there is an appeal to the court of appeals by the party who obtained the stay, the stay continues until final disposition by the court of appeals.

(4) A bond or other security may be required as a condition of the grant or continuation of a stay of the judgment.

(5) A bond or other security may be required if a trustee obtains a stay, but a bond or security may not be required if a stay is obtained by the United States or an officer or agency thereof or at the direction of any department of the Government of the United States.

(c) Automatic Stay of Order, Judgment, or Decree of Bankruptcy Judge. If the district court or the bankruptcy appellate

panel enters a judgment affirming an order, judgment, or decree of a bankruptcy judge, a stay of the judgment of the district court or the bankruptcy appellate panel automatically stays the order, judgment, or decree of the bankruptcy judge for the duration of the stay, unless otherwise ordered.

(d) Power of Court of Appeals Not Limited. This rule does not limit the power of a court of appeals or any judge thereof to stay a judgment pending appeal or to stay proceedings during the pendency of an appeal or to suspend, modify, restore, vacate, or grant a stay or an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of any judgment subsequently to be entered.

Rule 8025 is derived from current Rule 8017.

Rule 8026. Rules by Circuit Councils and District Courts; Procedure When There is No Controlling Law

(a) Local Rules by Circuit Councils and District Courts.

(1) Circuit councils which have authorized bankruptcy appellate panels pursuant to 28 U.S.C. § 158(b) and the district courts may, acting by a majority of the judges of the council or district court, make and amend rules governing practice and procedure for appeals from orders or judgments of bankruptcy judges to the district court or the bankruptcy appellate panel consistent with, but not duplicative of, Acts of Congress and the rules of this Part VIII.

(2) Local rules must conform to any uniform numbering system prescribed by the Judicial Conference of the United States. Rule 83 F.R.Civ.P. governs the procedure for making and amending rules to govern appeals in the district court or the bankruptcy appellate panel.

(3) A local rule imposing a requirement of form may not be enforced in a manner that causes a party to lose rights because of a nonwillful failure to comply with the requirement.

(b) Procedure When There is No Controlling Law.

(1) A district judge or bankruptcy appellate panel may regulate practice in any manner consistent with federal law, these Rules, the Official Forms, and local rules of the circuit council or the district court.

(2) No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, applicable federal rules, the Official Forms, or the local rules of the circuit council or district court unless the alleged violator has been furnished in the particular case with actual notice of the requirement.

Rule 8026 is derived from current Rule 8018.

Rule 8027. Suspension of Rules in Part VIII

In the interests of expediting decision or for other cause in a particular case, the district court or the bankruptcy appellate panel may suspend the requirements or provisions of the rules in Part VIII, except Rules 8001, 8002, 8003, 8004, 8005, 8006, 8007, 8014(a)(7), 8015(e), 8019, 8020, 8024, 8025, 8026, and 8027.

Rule 8027 is derived from current Rule 8019 and FRAP 2. Rule 8027 expands the list of rules that may not be suspended, namely those prescribing the manner and deadlines for taking an appeal as of right or by leave, the right of a party to file a statement of election, direct appeal certification, stays pending appeal, the page limit and type-volume requirements in appeals and cross-appeals, the disposition of an appeal, damages and costs for frivolous appeals, the duties of the clerk upon disposition of an appeal, the stay of a judgment in an appeal, the procedures for adopting local rules, and the suspension rule itself.

1136111.1.ADMINISTRATION

Rule 8007.1 Indicative Ruling on Motion for Relief Barred by Pending Appeal; Remand by Court in Which Appeal is Pending

(a) RELIEF PENDING APPEAL. If a timely motion is made for relief that the bankruptcy court lacks authority to grant because of an appeal that has been docketed and is pending, the bankruptcy court may:

(1) defer consideration of the motion;

(2) deny the motion; or

(3) state either that the court would grant the motion if the court in which the appeal is pending remands for that purpose or that the motion raises a substantial issue.

(b) NOTICE TO COURT IN WHICH THE APPEAL IS PENDING. If the bankruptcy court states that it would grant the motion, or that the motion raises a substantial issue, the movant shall promptly notify the clerk of the court in which the appeal is pending.

(c) REMAND AFTER INDICATIVE RULING. If the bankruptcy court states that it would grant the motion or that the motion raises a substantial issue, the court in which the appeal is pending may remand for further proceedings. Upon remand, the court in which the appeal is pending retains jurisdiction unless it expressly dismisses the appeal. If the appeal is not dismissed, the parties shall promptly notify the clerk of that court when the

bankruptcy court has decided the motion on remand.

COMMITTEE NOTE

This new rule is an adaptation of Rule 62.1 F.R.Civ.P. and Rule 12.1 F.R.App.P. It provides a procedure for issuance of an indicative ruling when a bankruptcy court determines that, because of a pending appeal, the court lacks jurisdiction to grant a motion for relief that the court concludes is meritorious or raises a substantial issue. The rule, however, does not attempt to define the circumstances in which an appeal limits or defeats the bankruptcy court's authority to act in the face of a pending appeal. (Rule 8002(b) identifies motions that, if filed within the relevant time limit, suspend the effect of a notice of appeal filed before the last such motion is resolved. In these circumstances, the bankruptcy court has authority to grant the motion without resorting to the indicative ruling procedure.)

The court in which a bankruptcy appeal is pending, upon notification that the bankruptcy court has issued an indicative ruling, may remand to the bankruptcy court for a ruling on the motion for relief. The appellate court may also remand all proceedings, thereby terminating the initial appeal, if it expressly states that it is dismissing the appeal. It should do so, however, only when the appellant has stated clearly its intention to abandon the appeal. Otherwise, the appellate court may remand for the purpose of a ruling on the motion, while retaining jurisdiction to proceed with the appeal after the bankruptcy court rules, provided that the appeal is not then moot and any party wishes to proceed.

Rule 9024. Relief from Judgment or Order

Rule 60 F.R.Civ.P. applies in cases under the Code except that (1) a motion to reopen a case under the Code or for the reconsideration of an order allowing or disallowing a claim against the estate entered without a contest is not subject to the one-year limitation prescribed in Rule 60(b), (2) a complaint to revoke a discharge in a chapter 7 liquidation case may be filed only within

the time allowed by § 727(e) of the Code, and (3) a complaint to revoke an order confirming a plan may be filed only within the time allowed by § 1144, § 1230, or § 1330. If the court lacks authority to grant a motion under this rule because an appeal has been docketed and is pending, the court may take any of the actions specified in Rule 8007.1(a).

COMMITTEE NOTE

This rule is amended to include a cross-reference to Rule 8007.1. That rule governs the issuance of an indicative ruling when relief is sought in the bankruptcy court, but that court lacks authority to grant the relief sought because an appeal has been docketed and is pending.

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON PRIVACY, PUBLIC ACCESS, AND APPEALS

RE: SUGGESTED AMENDMENT OF FRAP 6(b)(2)(A)(ii)

DATE: AUGUST 18, 2009

The Advisory Committee on Appellate Rules has asked for the views of this Advisory Committee on a possible change to FRAP 6(b)(2)(A), which governs a bankruptcy appeal to the court of appeals following the disposition of a motion for rehearing in a district court or a bankruptcy appellate panel. The Subcommittee considered this matter during its July 1, 2009, conference call, and it recommends that the Advisory Committee express its support for the Appellate Rules Committee's proposed amendment. It does, however, suggest that some additional wording changes be considered for inclusion in the amendment. The current version of Appellate Rule 6(b)(2)(A) is attached to this memorandum as Attachment A.

The proposed amendment would change the wording of Rule 6(b)(2)(A)(ii) to eliminate an ambiguity that was unintentionally introduced by the restyling of the appellate rules. The reference to a challenge to "an altered or amended judgment, order, or decree" would be changed to a challenge to "the alteration or amendment of a judgment, order, or decree." Thus, as amended, Rule 6(b)(2)(A)(ii) would read as follows (with the Appellate Rules Committee's proposed changes indicated):

> (ii) ~~Appellate review of~~ A party intending to challenge the order disposing of the motion – or the alteration or amendment of a judgment, order, or decree upon such a motion – ~~requires the party, in compliance with Rules 3(c) and 6(b)(1)(B),~~

~~to amend a previously filed notice of appeal. A party intending to challenge an altered or amended judgment, order, or decree~~ must file a notice of appeal, or an amended notice of appeal, in compliance with Rules 3(c) and 6(b)(1)(B). The notice or amended notice must be filed within the time prescribed by Rule 4 – excluding Rules 4(a)(4) and ~~4~~(b) – measured from the entry of the order disposing of the motion.

As is explained in more detail in the attached memo by Professor Struve, reporter to the Appellate Rules Committee, this change would track an amendment to the parallel provision of FRAP 4(a)(4)(B)(ii) that is scheduled to go into effect on December 1, 2009. Other changes to FRAP 6(b)(2)(A)(ii) are proposed in order to make the wording of the rule more consistent with the parallel Rule 4 provision.

The Subcommittee supports the amendment proposed by the Appellate Rules Advisory Committee. It would eliminate an ambiguity that has raised questions under FRAP 4(a)(4)(B)(ii) – whether the filing of an amended notice of appeal is required when a party is appealing from a judgment or order that is altered or amended in some insignificant or favorable manner – and would restore to Rule 6 the clear meaning of its pre-restyled version. It would also eliminate any suggestion that Rule 6 is intended to operate differently than the parallel Rule 4 provision.

In the course of its discussions, the Subcommittee noted that, even as amended, Appellate Rule 6(b)(2)(A)(ii) would differ in wording from the parallel Appellate Rule 4(a)(4)(B)(ii). The latter rule provides that the time for appealing from an order disposing of one of the listed post-trial motions or the alteration or amendment of a judgment runs from "the entry of the order disposing of the last such remaining motion." Rule 6(b)(2)(A)(ii), by contrast, measures the time

for filing a notice of appeal from "the entry of the order disposing of the motion." The same wording difference exists with respect to Rule 4(a)(4)(B)(I) and Rule 6(b)(2)(A)(I). The Subcommittee noted that Rule 4(a)(4) applies to several types of post-trial motions, whereas Rule 6(b)(2)(A) only applies to motions for rehearing, and that might be the source of the difference in wording of the two rules. Nevertheless, because more than one motion for rehearing could be filed in a bankruptcy appeal, the Subcommittee suggests that the time for filing a notice of appeal under Rule 6(b)(2)(A)(I) and (ii) run from the entry of the last order disposing of any such motion.

The actual wording of any amendment to Appellate Rule 6 should be left up to the Appellate Rules Committee. Nevertheless, the Subcommittee recommends that, in addition to conveying its support for the proposed amendment to Appellate Rule 6(b)(2)(A)(ii), the Advisory Committee also suggest that the Appellate Rules Committee consider the additional changes to Rule 6(b)(2)(A)(I) and (ii) that are highlighted below:

> (I) If a timely motion for rehearing under Bankruptcy Rule 8015 is filed, the time to appeal for all parties runs from the entry of the order disposing of the last such remaining motion. A notice of appeal filed after the district court or bankruptcy appellate panel announces or enters a judgment, order, or decree—but before disposition of allthe motions for rehearing—becomes effective when the order disposing of the last such remaining motion for rehearing is entered.
>
> (ii) ~~Appellate review of~~ A party intending to challenge the order disposing of the motion – or the alteration or amendment of a judgment, order, or decree upon such a motion – ~~requires the party, in compliance with Rules 3(c) and 6(b)(1)(B),~~

~~to amend a previously filed notice of appeal. A party intending to challenge an altered or amended judgment, order, or decree~~ must file a notice of appeal, or an amended notice of appeal, in compliance with Rules 3(c) and 6(b)(1)(B). The notice or amended notice must be filed within the time prescribed by Rule 4 – excluding Rules 4(a)(4) and ~~4~~(b) – measured from the entry of the order disposing of the last such remaining motion.

If the Advisory Committee on Appellate Rules agrees with the additional wording change suggested above, a similar change should be proposed to Bankruptcy Rule 8015. It currently provides: "If a timely motion for rehearing is filed, the time for appeal to the court of appeals for all parties shall run from the entry of the order denying rehearing or the entry of a subsequent judgment." Any such change can be considered as part of the Part VIII rules revision project.

Attachment A

Rule 6. Appeal in a Bankruptcy Case from a Final Judgment, Order, or Decree of a District Court or Bankruptcy Appellate Panel

* * * * *

(b) Appeal From a Judgment, Order, or Decree of a District Court or Bankruptcy Appellate Panel Exercising Appellate Jurisdiction in a Bankruptcy Case.

* * * * *

(2) **Additional Rules.** In addition to the rules made applicable by Rule 6(b)(1), the following rules apply:

(A) **Motion for rehearing.**

(I) If a timely motion for rehearing under Bankruptcy Rule 8015 is filed, the time to appeal for all parties runs from the entry of the order disposing of the motion. A notice of appeal filed after the district court or bankruptcy appellate panel announces or enters a judgment, order, or decree—but before disposition of the motion for rehearing—becomes effective when the order disposing of the motion for rehearing is entered.

(ii) Appellate review of the order disposing of the motion requires the party, in compliance with Rules 3(c) and 6(b)(1)(B), to amend a previously filed notice of

appeal. A party intending to challenge an altered or amended judgment, order, or decree must file a notice of appeal or amended notice of appeal within the time prescribed by Rule 4—excluding Rules 4(a)(4) and 4(b)—measured from the entry of the order disposing of the motion.

(iii) No additional fee is required to file an amended notice.

Attachment B

MEMORANDUM

DATE: October 20, 2008

TO: Advisory Committee on Appellate Rules

FROM: Catherine T. Struve, Reporter

RE: Item No. 08-AP-L

A pending amendment will remove an ambiguity in Rule 4(a)(4) that was pointed out in *Sorensen v. City of New York*, 413 F.3d 292 (2d Cir. 2005). The amendment was approved by the Judicial Conference in September; if the Supreme Court approves it and Congress takes no action to the contrary, the amendment will take effect December 1, 2009. The amendment would alter Rule 4(a)(4)(B)(ii) as follows:

> A party intending to challenge an order disposing of any motion listed in Rule 4(a)(4)(A), or a ~~judgment altered or amended~~ judgment's alteration or amendment upon such a motion, must file a notice of appeal, or an amended notice of appeal — in compliance with Rule 3(c) — within the time prescribed by this Rule measured from the entry of the order disposing of the last such remaining motion.

As *Sorensen* explains: "The [restyled] formulation could be read to expand the obligation to file an amended notice to circumstances where the ruling on the post-trial motion alters the prior judgment in an insignificant manner or in a manner favorable to the appellant, even though the appeal is not directed against the alteration of the judgment." *Sorensen v. City of New York*, 413 F.3d 292, 296 n.2 (2d Cir. 2005). The pending amendment removes that ambiguous reference to "a judgment altered or amended upon" a post-trial motion, and refers instead to "a judgment's alteration or amendment" upon such a motion.

During the course of research this summer, I became aware of a similar ambiguity in Rule 6(b)(2)(A)(ii), dealing with the effect of motions under Bankruptcy Rule 8015 on the time to appeal from a judgment, order, or decree of a district court or bankruptcy appellate panel exercising appellate jurisdiction in a bankruptcy case. Rule 6(b)(2)(A)(ii) states that "[a] party intending to challenge

an altered or amended judgment, order, or decree must file a notice of appeal or amended notice of appeal within the time prescribed by Rule 4 ... measured from the entry of the order disposing of the motion." Before the 1998 restyling of the FRAP, the comparable subdivision of Rule 6 instead read "A party intending to challenge **an alteration or amendment of the judgment, order, or decree** shall file an amended notice of appeal ...."

Part I of this memo briefly reviews the history of Rule 6(b)(2) and suggests that the Committee may wish to consider amending Rule 6(b)(2) for reasons similar to those that led the Committee to propose the pending amendment to Rule 4(a)(4)(B)(ii). Part II suggests possible language for such an amendment.

I. The history of Rule 6(b)(2)

The substance of current Rule 6(b)(2) came into the Rule in 1993, when the Rule was amended to read in relevant part:

> If any party files a timely motion for rehearing under Bankruptcy Rule 8015 in the district court or the bankruptcy appellate panel, the time for appeal to the court of appeals for all parties runs from the entry of the order disposing of the motion. A notice of appeal filed after announcement or entry of the district court's or bankruptcy appellate panel's judgment, order, or decree, but before disposition of the motion for rehearing, is ineffective until the date of the entry of the order disposing of the motion for rehearing. Appellate review of the order disposing of the motion requires the party, in compliance with Appellate Rules 3(c) and 6(b)(1)(ii), to amend a previously filed notice of appeal. A party intending to challenge an alteration or amendment of the judgment, order, or decree shall file an amended notice of appeal within the time prescribed by Rule 4, excluding 4(a)(4) and 4(b), measured from the entry of the order disposing of the motion. No additional fees will be required for filing the amended notice.

The Note indicates that this language was intended to track the language of Rule 4(a)(4). As amended in 1993, Rule 4(a)(4) then read in relevant part:

> If any party makes a timely motion of a type specified immediately below, the time for appeal for all parties runs from the entry of the order disposing of the last such motion outstanding. .... A notice of appeal filed after announcement or entry of the judgment but before disposition of any of the above motions is ineffective to

> appeal from the judgment or order, or part thereof, specified in the notice of appeal, until the date of the entry of the order disposing of the last such motion outstanding. Appellate review of an order disposing of any of the above motions requires the party, in compliance with Appellate Rule 3(c), to amend a previously filed notice of appeal. A party intending to challenge an alteration or amendment of the judgment shall file an amended notice of appeal within the time prescribed by this Rule 4 measured from the entry of the order disposing of the last such motion outstanding. No additional fees will be required for filing an amended notice.

Thus, prior to 1998, the relevant language in Rules 4(a)(4) and 6(b) was parallel. In 1998, the restyling condensed two of the Rule 4(a)(4) sentences into one ("A party intending to challenge an order disposing of any motion listed in Rule 4(a)(4)(A), or a judgment altered or amended upon such a motion, must file a notice of appeal, or an amended notice of appeal--in compliance with Rule 3(c)--within the time prescribed by this Rule measured from the entry of the order disposing of the last such remaining motion.") but the drafters did not attempt the same thing with Rule 6. The restyling also introduced into both Rule 4(a)(4) and Rule 6(b)(2) the ambiguity mentioned above.

Accordingly, current Rule 6(b)(2)(A)(ii) reads:

> (ii) Appellate review of the order disposing of the motion requires the party, in compliance with Rules 3(c) and 6(b)(1)(B), to amend a previously filed notice of appeal. A party intending to challenge an altered or amended judgment, order, or decree must file a notice of appeal or amended notice of appeal within the time prescribed by Rule 4 – excluding Rules 4(a)(4) and 4(b) – measured from the entry of the order disposing of the motion.

Removing the ambiguity in Rule 6(b)(2)(A)(ii) would seem to be worthwhile for the same reasons that justify the pending amendment to Rule 4(a)(4)(B)(ii). If the Committee decides to amend Rule 6(b)(2)(A)(ii), it may also wish to consider amending the provision's first sentence so that it tracks more closely the approach taken in Rule 4(a)(4)(B)(ii). Unless there is a reason for the two provisions to diverge, it seems preferable for their language to be as similar as possible. In addition, the first sentence of current Rule 6(b)(2)(A)(ii) might strike the reader as odd because it seems to assume that there has been a previously filed notice of appeal: It refers only to amending the prior notice, and not also to filing a new notice. Admittedly, common sense would dictate that if a notice has not previously been filed, one is required in order to challenge the order disposing of the Bankruptcy Rule 8015 motion. But there would seem to be no reason not to

refer to both possibilities (i.e., to both filing a notice of appeal and amending a prior notice of appeal), as is currently done in Rule 4(a)(4)(B)(ii) and the second sentence of Rule 6(b)(2)(A)(ii).

II. A possible amendment to Rule 6(b)(2)(A)(ii)

In case the Committee is inclined to consider amending Rule 6(b)(2)(A)(ii), here is possible language for such an amendment:

> (ii) ~~Appellate review of~~ A party intending to challenge the order disposing of the motion – or the alteration or amendment of a judgment, order, or decree upon such a motion – ~~requires the party, in compliance with Rules 3(c) and 6(b)(1)(B), to amend a previously filed notice of appeal. A party intending to challenge an altered or amended judgment, order, or decree~~ must file a notice of appeal, or an amended notice of appeal, in compliance with Rules 3(c) and 6(b)(1)(B). The notice or amended notice must be filed within the time prescribed by Rule 4 – excluding Rules 4(a)(4) and ~~4~~(b) – measured from the entry of the order disposing of the motion.

Committee Note

Subdivision (b)(2)(A)(ii). Subdivision (b)(2)(A)(ii) is amended to address problems that stemmed from the adoption — during the 1998 restyling project — of language referring to challenges to "an altered or amended judgment, order, or decree." Current Rule 6(b)(2)(A)(ii) states that "[a] party intending to challenge an altered or amended judgment, order, or decree must file a notice of appeal or amended notice of appeal ...." Before the 1998 restyling, the comparable subdivision of Rule 6 instead read "[a] party intending to challenge an alteration or amendment of the judgment, order, or decree shall file an amended notice of appeal ...."

The 1998 restyling made a similar change in Rule 4(a)(4). One court has explained that the 1998 amendment introduced ambiguity into that Rule: "The new formulation could be read to expand the obligation to file an amended notice to circumstances where the ruling on the post-trial motion alters the prior judgment in an insignificant manner or in a manner favorable to the appellant, even though the appeal is not directed against the

alteration of the judgment." *Sorensen v. City of New York*, 413 F.3d 292, 296 n.2 (2d Cir. 2005). Though the *Sorensen* court was writing of Rule 4(a)(4), a similar concern arises with respect to Rule 6(b)(2)(A)(ii).

Rule 4(a)(4) [was amended in 2009] to remove the ambiguity identified by the *Sorensen* court. The current amendment follows suit by removing Rule 6(b)(2)(A)(ii)'s reference to challenging "an altered or amended judgment, order, or decree," and referring instead to challenging "the alteration or amendment of a judgment, order, or decree." The amendment also revises the Rule so that it more closely parallels the language of Rule 4(a)(4)(B)(ii).

Item 8 will be an oral report.

Item 9 will be an oral report.

MEMORANDUM

To: Advisory Committee on Bankruptcy Rules

From: Gene Wedoff

Re: Filing deadline in proposed Civil Rule 56(b)

Date: August 19, 2009

On June 1, the Standing Committee approved for transmission to the Judicial Conference the amendment to Civil Rule 56 proposed by the Advisory Committee on Civil Rules. A copy of that proposal, with a revised Committee Note, is attached.

Rule 56 of the Civil Rules applies to adversary proceedings in bankruptcy under Bankruptcy Rule 7056 and to contested matters, unless the court orders otherwise, under Bankruptcy Rule 9014(c).

The Advisory Committee on Bankruptcy Rules may want to consider one aspect of proposed Rule 56, subsection (b), which establishes a default deadline for filing summary judgment motions at 30 days after the close of discovery.[1] Because of the speed with which bankruptcy issues are heard —including contested matters such as motions for relief from stay—the default deadline in the proposed rule would not come into effect in many situations, allowing a timely summary judgment motions to be filed shortly before a scheduled evidentiary hearing. Because

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1 Rule 56(b), as proposed, states: "Unless a different time is set by local rule or the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery."

subsection (a) of the proposed rule again states that the court "shall grant summary judgment" if the motion is meritorious, a bankruptcy court could consider itself bound to continue a scheduled evidentiary hearing to allow consideration of any timely filed summary judgment motion.

A more meaningful default deadline for bankruptcy purposes might be based on the date set for the evidentiary hearing rather than the close of discovery. Such a deadline could be established by amending Rule 7056 to read as follows: "Rule 56 Fed. R. Civ. P. applies in adversary proceedings except that, unless a different time is set by local rule or the court orders otherwise, a party may only file a motion for summary judgment until 30 days before a scheduled evidentiary hearing on the issues for which summary judgment is sought."

Rule 56: Clean Draft

PROPOSED AMENDMENT TO THE FEDERAL RULES OF CIVIL PROCEDURE

Rule 56. Summary Judgment

(a) Motion for Summary Judgment or Partial Summary Judgment. A party may move for summary judgment, identifying each claim or defense — or the part of each claim or defense — on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

(b) Time to File a Motion. Unless a different time is set by local rule or the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery.

(c) Procedures.

(1) ***Supporting Factual Positions.*** A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(2) ***Asserting That a Fact Is Not Supported by Admissible Evidence.*** A party may assert that the material cited to support or dispute a fact cannot be

presented in a form that would be admissible in evidence.

(3) ***Materials Not Cited.*** The court need consider only the cited materials, but it may consider other materials in the record.

(4) ***Affidavits or Declarations.*** An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.

(d) **When Facts Are Unavailable to the Nonmovant.** If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

(1) defer considering the motion or deny it;

(2) allow time to obtain affidavits or declarations or to take discovery; or

(3) issue any other appropriate order.

(e) **Failing to Properly Support or Address a Fact.** If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may:

(1) give an opportunity to properly support or address the fact;

(2) consider the fact undisputed for purposes of the motion;

(3) grant summary judgment if the motion and supporting materials — including the facts considered undisputed — show that the movant is entitled to it; or

(4) issue any other appropriate order.

(f) **Judgment Independent of the Motion.** After giving notice and a reasonable time to respond, the court may:

(1) grant summary judgment for a nonmovant;

(2) grant the motion on grounds not raised by a party; or

(3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.

(g) **Failing to Grant All the Requested Relief.** If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact — including an item of damages or other relief — that is not genuinely in dispute and treating the fact as established in the case.

(h) **Affidavit or Declaration Submitted in Bad Faith.** If satisfied that an affidavit or declaration under this rule is submitted in bad faith or solely for delay, the court — after notice and a reasonable time to respond — may order the submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result. An offending party or attorney may also be held in contempt or subjected to other appropriate sanctions.

COMMITTEE NOTE

Rule 56 is revised to improve the procedures for presenting and deciding summary-judgment motions and to make the procedures more consistent with those already used in many courts. The standard for granting summary judgment remains unchanged. The language of subdivision (a) continues to require that there be no genuine dispute as to any material fact and that ~~a party~~ the movant be entitled to judgment as a matter of law. The amendments will not affect continuing development of the decisional law construing and applying these phrases. ~~The source of contemporary summary-judgment standards continues to be three decisions from 1986: *Celotex Corp. v. Catrett*, 477 U.S. 317; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242; and *Matsushita Electrical Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574.~~

Subdivision (a). Subdivision (a) carries forward the summary-judgment standard expressed in former subdivision (c), changing only one word — genuine "issue" becomes genuine "dispute." "Dispute" better reflects the focus of a summary-judgment determination. As explained below, "shall" also is restored to the place it held from 1938 to 2007.

The first sentence is added to make clear at the beginning that summary judgment may be requested not only as to an entire case but also as to a claim, defense, or part of a claim or defense. The subdivision caption adopts the common phrase "partial summary judgment" to describe disposition of less than the whole action, whether or not the order grants all the relief requested by the motion.

"Shall" is restored to express the direction to grant summary judgment. The word "shall" in Rule 56 acquired significance over many decades of use. Rule 56 was amended in 2007 to replace "shall" with "should" as part of the Style Project, acting under a convention that prohibited any use of "shall." Comments on proposals to amend Rule 56, as published in 2008, have shown that neither of the choices available under the Style Project conventions — "must" or "should" — is suitable in light of the case law on

whether a district court has discretion to deny summary judgment when there appears to be no genuine dispute as to any material fact. Compare *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)("Neither do we suggest that the trial courts should act other than with caution in granting summary judgment or that the trial court may not deny summary judgment in a case in which there is reason to believe that the better course would be to proceed to a full trial. *Kennedy v. Silas Mason Co.*, 334 U.S. 249 * * * (1948))," with *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986)("In our view, the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial."). Eliminating "shall" created an unacceptable risk of changing the summary-judgment standard. Restoring "shall" avoids the unintended consequences of any other word.

Subdivision (a) also adds a new direction that the court should state on the record the reasons for granting or denying the motion. Most courts recognize this practice. Among other advantages, a statement of reasons can facilitate an appeal or subsequent trial-court proceedings. It is particularly important to state the reasons for granting summary judgment. The form and detail of the statement of reasons are left to the court's discretion.

The statement on denying summary judgment need not address every available reason. But identification of central issues may help the parties to focus further proceedings.

Subdivision (b). The timing provisions in former subdivisions (a) and (c) ~~[were consolidated and substantially revised as part of the time-computation amendments that took effect in 2009.] These provisions are adapted by new subdivision (b) to fit the context of amended Rule 56. The timing for each step is directed to filing.~~ are superseded. Although the rule allows a motion for summary judgment to be filed at the commencement of an action, in many cases the motion will be premature until the nonmovant has had time

to file a responsive pleading or other pretrial proceedings have been had. Scheduling orders or other pretrial orders can regulate timing to fit the needs of the case.

~~Subdivision (b)(2) sets an alternative filing time for a nonmovant served with a motion before the nonmovant is due to file a responsive pleading. The time the responsive pleading is due is determined by all applicable rules, including the Rule 12(a)(4) provision governing the effect of serving a Rule 12 motion.~~

Subdivision (c). Subdivision (c) is new. It establishes a common procedure for several aspects of summary-judgment motions synthesized from similar elements developed in the cases or found in many local rules.

~~The subdivision (c) procedure is designed to fit the practical needs of most cases. Paragraph (1) recognizes the court's authority to direct a different procedure by order in a case that will benefit from different procedures. The order must be specifically entered in the particular case. The parties may be able to agree on a procedure for presenting and responding to a summary-judgment motion, tailored to the needs of the case. The court may play a role in shaping the order under Rule 16.~~

~~The circumstances that will justify departure from the general subdivision (c) procedures are variable. One example frequently suggested reflects the (c)(2)(A)(ii) statement of facts that cannot be genuinely disputed. The court may find it useful, particularly in complex cases, to set a limit on the number of facts the statement can identify.~~

~~Paragraph (2) spells out the basic procedure of motion, response, and reply. It directs that contentions as to law or fact be set out in a separate brief. Later paragraphs identify the methods of supporting the positions asserted, recognize that the court is not obliged to search the record for information not cited by a party, and carry forward the authority to rely on affidavits and declarations.~~

~~Subparagraph (2)(A) directs that the motion must describe each claim, defense, or part of each claim or defense as to which summary judgment is sought. A motion may address discrete parts of an action without seeking disposition of the entire action.~~

~~The motion must be accompanied by a separate statement that concisely identifies in separately numbered paragraphs only those material facts that cannot be genuinely disputed and entitle the movant to summary judgment. Many local rules require, in varying terms, that a motion include a statement of undisputed facts. In some cases the statements and responses have expanded to identification of hundreds of facts, elaborated in hundreds of pages and supported by unwieldy volumes of materials. This practice is self-defeating. To be effective, the motion should focus on a small number of truly dispositive facts.~~

~~The response must, by correspondingly numbered paragraphs, accept, dispute, or accept in part and dispute in part each fact in the Rule 56(c)(2)(A)(ii) statement. Under Rule 56(c)(3), a response that a material fact is accepted or disputed may be made for purposes of the motion only.~~

~~The response may go beyond responding to the facts stated to support the motion by concisely identifying in separately numbered paragraphs additional material facts that preclude summary judgment.~~

~~The movant must reply — using the form required for a response — only to additional facts stated in the response. The reply may not be used to address materials cited in the response to dispute facts in the Rule 56(c)(2)(A)(ii) statement accompanying the motion. Except for possible further rounds of briefing, the exchanges stop at this point. A movant may file a brief to address the response without filing a reply, but this brief cannot address additional facts stated in the response unless the movant files a reply.~~

Subdivision (c)(1) addresses the ways to support an assertion that a fact can or cannot be genuinely disputed. It does not address the form for providing the required support. Different courts and

judges have adopted different forms including, for example, directions that the support be included in the motion, made part of a separate statement of facts, interpolated in the body of a brief or memorandum, or provided in a separate statement of facts included in a brief or memorandum.

Subdivision (c)(1)(A)~~(4)(A)~~ ~~addresses~~ describes the ~~ways to support a statement or dispute of fact. Item (i) Subparagraph (A) describes the~~ familiar record materials commonly relied upon and requires that the movant cite the particular parts of the materials that support ~~the~~ its facts positions. Materials that are not yet in the record — including materials referred to in an affidavit or declaration — must be placed in the record. Once materials are in the record, the court may, by order in the case, direct that the materials be gathered in an appendix, a party may voluntarily submit an appendix, or the parties may submit a joint appendix. The appendix procedure also may be established by local rule. Direction to a specific location in an appendix satisfies the citation requirement. So too it may be convenient to direct that a party assist the court in locating materials buried in a voluminous record.

Subdivision (c)(1)(B)~~(4)(A)(ii)~~ recognizes that a party need not always point to specific record materials. One party, without citing any other materials, may respond or reply that materials cited to dispute or support a fact do not establish the absence or presence of a genuine dispute. And a party who does not have the trial burden of production may rely on a showing that a party who does have the trial burden cannot produce admissible evidence to carry its burden as to the fact.

Subdivision (c)(2)~~(5)~~ provides that a ~~response or reply may be used to challenge the admissibility of~~ party may assert that material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence. ~~The statement in the response should include no more than a concise identification of the basis for the challenge. The challenge can be supported by argument in the brief, or may be made in the brief alone.~~ There is no need to make a separate motion to strike. If the case goes to trial, failure to challenge

admissibility at the summary-judgment stage does not forfeit the right to challenge admissibility at trial.

Subdivision (c)(3)~~(4)(B)~~ reflects judicial opinions and local rules provisions stating that the court may decide a motion for summary judgment without undertaking an independent search of the record. Nonetheless, the rule also recognizes that a court may consider record materials not called to its attention by the parties. ~~If the court intends to rely on uncited record material to grant summary judgment it must give notice to the parties under subdivision (f).~~

Subdivision (c)(4)~~(6)~~ carries forward some of the provisions of former subdivision (e)(1). Other provisions are relocated or omitted. The requirement that a sworn or certified copy of a paper referred to in an affidavit or declaration be attached to the affidavit or declaration is omitted as unnecessary given the requirement in subdivision (c)(1)(A)~~(4)(A)(i)~~ that a statement or dispute of fact be supported by materials in the record.

A formal affidavit is no longer required. 28 U.S.C. § 1746 allows a written unsworn declaration, certificate, verification, or statement subscribed in proper form as true under penalty of perjury to substitute for an affidavit.

Subdivision (d). Subdivision (d) carries forward without substantial change the provisions of former subdivision (f).

A party who seeks relief under subdivision (d) ~~should consider~~ may seek~~ing~~ an order deferring the time to respond to the summary-judgment motion.

Subdivision (e). Subdivision (e) addresses questions that arise when a ~~response or reply does not comply with Rule 56(c)~~ party fails to support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c). ~~requirements, when there is no response, or when there is no reply to additional facts stated in a response.~~ As explained below, ~~S~~summary judgment cannot be granted by default even if there is a complete failure to

respond to the motion ~~or reply~~, much less when an attempted response ~~or reply~~ fails to comply with ~~all~~ Rule 56(c) requirements. Nor should it be denied by default even if the movant completely fails to reply to a nonmovant's response. Before deciding on other possible action, subdivision (e)(1) recognizes that the court may afford an opportunity to ~~respond or reply in proper form~~ properly support or address the fact. In many circumstances this opportunity will be the court's preferred first step.

Subdivision (e)(2) authorizes the court to consider a fact as undisputed for purposes of the motion when response or reply requirements are not satisfied. This approach reflects the "deemed admitted" provisions in many local rules. The fact is considered undisputed only for purposes of the motion; if summary judgment is denied, a party who failed to make a proper Rule 56 response or reply remains free to contest the fact in further proceedings. And the court may choose not to consider the fact as undisputed, particularly if the court knows of record materials that show grounds for genuine dispute.

Subdivision (e)(3) recognizes that the court may grant summary judgment only if the motion and supporting materials — including the facts considered undisputed under subdivision (e)(2) — show that the movant is entitled to it. Considering some facts undisputed does not of itself allow summary judgment. If there is a proper response or reply as to some facts, the court cannot grant summary judgment without determining whether those facts can be genuinely disputed. Once the court has determined the set of ~~direct~~ facts — both those it has chosen to consider undisputed for want of a proper response or reply and any that cannot be genuinely disputed despite a procedurally proper response or reply — it must determine the legal consequences of these facts and permissible inferences from them.

Subdivision (e)(4) recognizes that still other orders may be appropriate. The choice among possible orders should be designed to encourage proper ~~responses and replies~~ presentation of the record. Many courts take extra care with pro se litigants, advising them of the need to respond and the risk of losing by summary judgment if an

adequate response is not filed. And the court may seek to reassure itself by some examination of the record before granting summary judgment against a pro se litigant.

Subdivision (f). Subdivision (f) brings into Rule 56 text a number of related procedures that have grown up in practice. After giving notice and a reasonable time to respond the court may grant summary judgment for the nonmoving party; grant ~~or deny~~ a motion on legal or factual grounds not raised by the ~~motion, response, or reply~~ parties; or consider summary judgment on its own. In many cases it may prove useful ~~to act by inviting~~ first to invite a motion; the invited motion will automatically trigger the regular procedure of subdivision (c).

Subdivision (g). Subdivision (g) applies when the court does not grant all the relief requested by a motion for summary judgment. It becomes relevant only after the court has applied the summary-judgment standard carried forward in subdivision (a) to each claim, defense, or part of a claim or defense, identified by the motion ~~under subdivision (c)(2)(A)(i)~~. Once that duty is discharged, the court may decide whether to apply the summary-judgment standard to dispose of a material fact that is not genuinely in dispute. The court must take care that this determination does not interfere with a party's ability to accept a fact for purposes of the motion only. A nonmovant, for example, may feel confident that a genuine dispute as to one or a few facts will defeat the motion, and prefer to avoid the cost of detailed response to all facts stated by the movant. This position should be available without running the risk that the fact will be taken as established under subdivision (g) or otherwise found to have been accepted for other purposes.

If it is readily apparent that the court cannot grant all the relief requested by the motion, it may properly decide that the cost of determining whether some potential fact disputes may be eliminated by summary disposition is greater than the cost of resolving those disputes by other means, including trial. Even if the court believes that a fact is not genuinely in dispute it may refrain from ordering that the fact be treated as established. The court may conclude that

it is better to leave open for trial facts and issues that may be better illuminated by the trial of related facts that must be tried in any event.

Subdivision (h). Subdivision (h) carries forward former subdivision (g) with ~~two~~ three changes. Sanctions are made discretionary, not mandatory, reflecting the experience that courts seldom invoke the independent Rule 56 authority to impose sanctions. See Cecil & Cort, Federal Judicial Center Memorandum on Federal Rule of Civil Procedure 56(g) Motions for Sanctions (April 2, 2007). In addition, the rule text is expanded to recognize the need to provide notice and a reasonable time to respond. Finally, authority to impose other appropriate sanctions also is recognized.

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: ELIZABETH GIBSON, REPORTER

RE: TIME LIMITS IN RULE 7054(b)

DATE: AUGUST 26, 2009

Rule 7054(a) makes Civil Rule 54(a)-(c) applicable in adversary proceedings. Subdivision (b) of the bankruptcy rule parallels Civil Rule 54(d). It provides in part that "[c]osts may be taxed by the clerk on one day's notice; on motion served within five days thereafter, the action of the clerk may be reviewed by the court." As of December 1, 2009, the one-day period in Rule 54(d) will be changed to 14 days, and the five-day period will be changed to seven days. No changes, however, were made to Rule 7054(b) as part of the time computation project.

It appears that Rule 7054(b) was overlooked when changes to rule time periods shorter than 30 days were considered by the Advisory Committee. The Committee therefore needs to decide whether it wants to propose the amendment of either time period in subdivision (b) to make the provision consistent with the parallel civil rule or to bring it into conformity with the new multiple-of-seven time periods elsewhere in the federal rules. The two time periods should be considered separately because they raise different issues.

<u>One-day period</u>

This period in Rule 54(d) was extended to 14 days for reasons other than implementation of the new time computation scheme. The Committee Note states that it was changed because the original one-day period "was unrealistically short." It goes on to explain that the "new 14-day period provides a better opportunity to prepare and present a response."

The Committee therefore should consider whether the current one-day provision has presented problems. The rule does not require the clerk to respond in one day; instead it just requires the party being taxed with costs to receive at least one day's notice. The Civil Rules Committee was concerned with whether that party had a sufficient opportunity to respond to the prevailing party's bill of costs. The rule does, however, go on to provide additional time to seek court review of the clerk's action. Whether the one-day period should be extended for reasons of fairness therefore seems to turn on whether one day is frequently too short a time period to allow an adequate response and whether the ability to seek court review provides a sufficient safety valve for the losing party. The experience of members of the Committee will be helpful in making that determination.

If the Committee decides that the current one-day notice period is not unreasonably short and does not need to be extended for that reason, consideration should be given to whether the period should be changed to seven days to make it a multiple of seven. Although five-day periods throughout the Bankruptcy Rules were changed to seven days, one-day periods are different. The elimination of the rule of not counting intermediate weekend days for periods shorter than eight days does not affect one-day periods. Such a period that commences on a Monday through Thursday does not span a weekend. And if the period begins on a Friday, one day later will still be Monday because under amended Rule 9006(a)(1)(C), a period ends on the next day that is not a Saturday, Sunday, or legal holiday.

The only other one-day period that I could find in the rules, which is in Rule 9006(d), was not changed as part of the time computation project. After December 1 it will continue to provide that "opposing affidavits may be served not later than one day before the hearing."

Five-day period

The consideration of this time period is more straight-forward. It was changed in Civil Rule 54(d) to seven days as part of the time computation project, just as five-day periods throughout the Bankruptcy Rules were changed to seven days. The failure to change this period in Rule 7054(b) was merely an oversight. It could be changed without publication as a technical amendment.

Recommendation

Because no one has brought to the Committee's attention concerns about the one-day notice period for taxing costs, I recommend that the one-day time period be retained unless the experience of members of the Committee suggests that it has caused hardships for parties. On the other hand, I recommend that the five-day period be changed to seven days to bring it into conformity with the new time computation scheme. If either period is amended, Director's Form B 263 ("Bill of Costs") also needs to be amended because it quotes the relevant portion of Rule 7054(b).

SUPPLEMENTAL GUIDANCE REGARDING THE APPLICATION OF THE STANDING ORDER GUIDELINES TO BANKRUPTCY COURTS

At its June 2009 meeting, the Committee on Rules of Practice and Procedure voted to submit to the Judicial Conference for its approval proposed Guidelines for Distinguishing Between Matters Appropriate for Standing Orders and Matters Appropriate for Local Rules and for Posting Standing Orders on a Court's Website. While the Guidelines, when approved by the Judicial Conference, will be applicable to the bankruptcy courts, the following supplemental guidance recognizes a specific need for further flexibility in the use of standing orders in those courts.

Standing Orders Are Appropriate to Address Matters that Require a Court Order to Override a Statutory Default Rule.

The Bankruptcy Code contains numerous provisions that apply "unless the court orders otherwise." A list of those statutory provisions is appended. When bankruptcy judges decide to create a district-wide or judge-specific exception to a statutory default provision, they often use standing orders, rather than local rules, in order to comply with the statutory requirement for a court order. *See, e.g.*, Gen. Order No. 08-01 (Bankr. N.D. Ill.) (ordering under § 521(a)(1)(B) that payment advices not be filed with the court); Gen. Order No. 8-2007 (Bankr. N.D. Ga.) (authorizing payment of preconfirmation adequate protection payments to the trustee under § 1326(a)(1)). Unlike district courts, bankruptcy courts are governed by rules prescribed under 28 U.S.C. § 2075, to which the supersession provision of the Rules Enabling Act does not apply. *See* 28 U.S.C. § 2072(b) ("All laws in conflict with such rules [prescribed under § 2072] shall be of no further force or effect after such rules have taken effect.") Accordingly, a national bankruptcy rule may not authorize courts by local rule to deviate from Bankruptcy Code

provisions that are prescribed "unless the court orders otherwise." Court orders, rather than local rules, are required to authorize procedures varying from these statutory default provisions. The use of standing orders for that purpose is appropriate to promote judicial efficiency and, through court websites and other appropriate notification mechanisms, public awareness of local court procedures.

Attachment

Bankruptcy Code Provisions that Apply "Unless the Court Orders Otherwise"

All provisions are in Title 11, U.S.C.

§ 324(b)

§ 330(c)

§ 363(c)(1)

§ 364(a)

§ 521(a)(1)(B),

§ 554(c) and (d)

§ 704(a)(7)

§ 1108

§ 1304(b)

§ 1326(a)(1)

§1520(a)(3)

In addition the following Bankruptcy Rule provisions apply "unless the court orders otherwise":

Rules 1007(a)(3), (a)(4), (b)(1), (c), 1019(5)(C), 1021(a), 2002(a)(1), (g)(3), 2003(b)(3), 2015.1(a), (b), 2015.2, 2015.3(f), 3006, 3015(g), 3019(b), 3020(e), 4001(a)(3), 6004(h), 6006(d), 8011(c), 9037(a)

REPORT OF THE JUDICIAL CONFERENCE

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

TO THE CHIEF JUSTICE OF THE UNITED STATES AND MEMBERS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES:

The Committee on Rules of Practice and Procedure met on June 1-2, 2009. All members attended, with the exception of Chief Justice Ronald George. John Kester and Deputy Attorney General David Ogden attended part of the meeting.

Representing the advisory rules committees were: Judge Carl E. Stewart, chair, and Professor Catherine T. Struve, reporter, of the Advisory Committee on Appellate Rules; Judge Laura Taylor Swain, chair, and Professor S. Elizabeth Gibson, reporter, of the Advisory Committee on Bankruptcy Rules; Judge Mark R. Kravitz, chair, and Professor Edward H. Cooper, reporter, of the Advisory Committee on Civil Rules; Judge Richard C. Tallman, chair, and Professor Sara Sun Beale, reporter, of the Advisory Committee on Criminal Rules; and Judge Robert L. Hinkle, chair, and Professor Daniel J. Capra, reporter, of the Advisory Committee on Evidence Rules.

Participating in the meeting were Peter G. McCabe, the Committee's Secretary; Professor Daniel R. Coquillette, the Committee's reporter; John K. Rabiej, Chief of the Administrative Office's Rules Committee Support Office; James N. Ishida, Jeffrey N. Barr, and Henry Wigglesworth, attorneys in the Office of Judges Programs in the Administrative Office; Joe

Rules 801-1103 with a request that they be published for comment. The proposed amendments are the final part of the project to "restyle" the Evidence Rules to make them clearer and easier to read, without changing substantive meaning. The Evidence Rules "restyling" project follows the successful restyling of the Federal Rules of Appellate, Criminal, and Civil Procedure. The Committee approved the advisory committee's recommendation to publish the proposed amendments to Rules 801-1103, along with restyled Rules 101-706, which were approved earlier but deferred for publication so that all the proposed restyling amendments to the Evidence Rules could be published in a single package.

Informational Items

The advisory committee continues to monitor cases applying the Supreme Court's decision in *Crawford v. Washington*, 541 U.S. 34 (2004), which held that the admission of "testimonial" hearsay violates the accused's right to confrontation unless the accused has an opportunity to cross-examine the declarant.

GUIDELINES FOR DISTINGUISHING BETWEEN LOCAL RULES AND STANDING ORDERS

At the request of several judges on circuit councils and in response to concerns expressed by lawyers, the Committee in early 2007 embarked on a study of the use of standing and general orders in district courts. In particular, the Committee was asked for guidance about the delineation between local rules and standing or general orders and about ways to improve access to standing or general orders on court web sites.

The Committee studied the general and standing orders and local rules in district courts posted on the courts' web sites and sent a survey to the chief district judge and chief bankruptcy judge of every district to obtain judges' views and suggestions. The Committee concluded that courts and judges have had difficulty in defining what subjects are appropriately addressed in standing or general orders on the one hand or in local rules on the other hand, primarily because

there are no national standards and very few local standards. Courts have also had difficulty in ensuring that standing or general orders are readily accessible to lawyers and litigants.

At its January 2009 meeting, the Committee considered a draft report and proposed voluntary guidelines — not rule changes that would impose requirements on courts — on standing and general orders. The report and guidelines were based on the results of the study and survey. The report describes the inconsistent uses of local rules, standing orders, administrative orders, and general orders, as well as problems in providing lawyers and litigants with adequate notice and access. The guidelines delineate matters appropriately addressed in standing or general orders and those appropriately addressed in local rules. In general, standing orders may be appropriate for internal administrative matters, emergency matters, transitory problems and issues, and rules of courtroom conduct that do not bear on substantive rules of practice. On the other hand, local rules are more appropriate to address filing, pretrial practice, motion practice, and other requirements imposed on litigants and lawyers. The guidelines also highlight ways to make standing and general orders on specific topics easier to find. The report and guidelines were revised in light of comments by members at the Committee meeting.

At its June 2009 meeting, the Committee unanimously agreed to forward the guidelines to the Judicial Conference with a recommendation that it adopt the guidelines and transmit them to the courts.

Recommendation: That the Judicial Conference —

> Approve the proposed *Guidelines for Distinguishing Between Matters Appropriate for Standing Orders and Matters Appropriate for Local Rules and for Posting Standing Orders on a Court's Web Site* and transmit them, along with an explanatory report, to the courts.

The proposed guidelines are in Appendix F, with an accompanying Committee report.

GUIDELINES FOR DISTINGUISHING BETWEEN MATTERS APPROPRIATE FOR STANDING ORDERS AND MATTERS APPROPRIATE FOR LOCAL RULES AND FOR POSTING STANDING ORDERS ON A COURT'S WEB SITE

I. Guidelines for Using Standing Orders

1. Standing Orders May Be Used for Internal Administration.

Standing orders are most useful and appropriate to address matters of internal administration. For such matters, notice and public comment are not necessary and in some cases not justified. Examples of matters of internal administration properly covered by standing orders include the following:

- Court security[1]
- Planning for emergencies[2]
- Using nonappropriated funds[3]
- General procedures for funds in court registry[4]
- Directives to court personnel[5]
- Division of workload[6]
- Referral to magistrate judges[7]
- Using resources[8]
- Juror wheels[9]
- Setting dates for naturalization hearings[10]
- Court implementation of judicial resources for initial appearances[11]
- General scheduling of motions, such as on a particular day of the week[12]
- Appointments, such as to Criminal Justice Act Panel[13]
- PACER fee exemptions[14]
- Closing or staffing courts on or after holidays[15]

2. Standing Orders Are Appropriate to Address Problems and Issues That Are Unlikely to Exist Beyond the Time Necessary to Implement a Local Rule.

Because of the procedural requirements for local rulemaking, a standing order may be necessary to address a problem that is anticipated to be of such short duration that it will be resolved by the time a local rule can be implemented. For example, some courts briefly suspended sentencing proceedings until the impact of *Blakely v. Washington* could be

analyzed, which was completed before a local rule suspending proceedings could have been implemented.[16]

3. Standing Orders Are Appropriate to Address Emergencies, During the Time Necessary to Implement a Local Rule.

A third appropriate use for a standing order as opposed to a local rule is to address what amounts to an emergency. For example, some district courts entered a standing order adopting the Interim Rules to Implement the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. Other courts have used standing orders to deal with unanticipated issues arising from particular kinds of cases, such as cases involving terrorism charges. If, however, the matter addressed is a continuing rather than a temporary one — and it affects members of the public — then a local rule should be developed to address it.[17]

4. Standing Orders May Be Appropriate to Address Rules of Courtroom Conduct as Opposed to Substantive Rules of Practice.

There are many standing orders that concern conduct in the courtroom. These can be district- or division-wide standing orders or individual-judge standing orders. Standing orders often set rules for "purely" courtroom conduct, such as eating and drinking in the courtroom, courtroom hours, whether lawyers should question witnesses from a podium or from counsel table, and whether lawyers must deliver courtesy copies to chambers.

Each judge of course has the authority to control his or her courtroom in the way that works best for that judge. Individual-judge standing orders may be appropriate if the judge has courtroom-conduct requirements that the local rules do not cover and the requirements govern purely courtroom conduct as opposed to more substantive matters. These Guidelines do not address a judge responding to case-management problems presented in a specific case by issuing orders in that case as opposed to issuing a standing order that applies generally.

An individual-judge standing order should not repeat the provisions of the local rules or district- or division-wide standing orders. To avoid confusion, where an individual-judge standing order does deviate from district- or division-wide standing orders or local rules that generally apply, the judge's standing order should clearly identify the deviation and what different approach is required.

Any standing order should be easy to find. The fact that many of the same topics or matters are inconsistently addressed — in local rules in some courts, in district- or division-wide standing orders in other courts, in individual-judge orders in yet other courts, or repeated with variations in some or all of these categories in some courts — adds to the

difficulty lawyers face in figuring out what standards apply and where to look for those standards.

The case law makes one outer limit clear. Whether issued by a district, a division, or an individual judge, a standing order that is inflexible or idiosyncratic may be found improper by an appellate court, particularly if there is a question as to adequate notice of the order. For example, in *In re Contempt Order of Petersen*, 441 F.3d 1266 (10th Cir. 2006), the magistrate judge entered an order of criminal contempt against a government lawyer who was five minutes late to a pretrial detention hearing. The lawyer had violated the judge's "standing policy" that any lateness would be sanctioned in the amount of $50, payable to the court — no excuses permitted. The court of appeals vacated the order, reasoning that it failed to take account of the circumstances of a particular case. It noted that the lawyer was in time to argue the motion, and that the judge made no effort to inquire into the reasons for the lawyer's tardiness. Moreover, the court was concerned that the lawyer had no notice of the "standing policy."

5. Rules on Filing, Pretrial Practice, Motion Practice, and Other Matters That Litigants Must Comply with Should Be Placed in Local Rules.

There are many standing orders — both district- and division-wide and individual-judge orders — that control such matters as electronic filing; special pleading requirements (such as in civil RICO cases); sealing criteria and procedures; electronic discovery protocols; filing and litigating motions, including summary judgment motions; limits on counsels' questions during voir dire; time limits on opening statements; transcribing audio recordings entered as evidence; applications for attorney fees; and filing memoranda of law. Many of these orders differ from local or national rules and some are in tension with or even contradict those rules. Issues relating to such matters as filing pleadings and motions, litigating motions, and developing criteria for sealing documents, are so important to the practicing bar that notice and public comment are essential.

With respect to electronic filing, the argument is sometimes made that technology develops so quickly that by the time a local rule can be implemented, it is outmoded and a new local rule is needed. But the prospect of technological development does not justify the placement of all electronic filing rules in standing orders. The model local rules developed by the Judicial Conference are flexible enough to accommodate technological change. It is notable that a number of districts have mandated electronic filing by standing order rather than local rule; but a standing order on such an important (and unchanging) matter is difficult to justify as necessary to accommodate constant changes in electronic filing. Filing requirements have a significant impact on lawyers and litigants and the local-rules comment process is important to developing workable and effective procedures. It is true, of course,

that the details of implementation of electronic filing may need fairly frequent updating, but that can be done by promulgating general local rules that cross reference a user's manual on the court's web site, as is the practice in many districts.

6. *Rules for Mediation and Other Forms of ADR, Sentencing, and Related Proceedings Should Be Placed in Local Rules.*

Some districts have standing orders that essentially provide a complete set of rules for such proceedings as ADR (including arbitration and mediation), sentencing (especially standards for probation and supervised release), and attorney disciplinary proceedings. Most districts have implemented such procedures in local rules, showing that standing orders are not necessary for these kinds of proceedings. It is recommended that courts operating under such district-wide standing orders consider transferring these procedures to their local rules. Placing these subject matters in local rules would provide the lawyers and litigants participating in these proceedings an opportunity to comment on them before they are promulgated.

7. *Standing Orders Should Not Duplicate a National or Local Rule.*

Under Civil Rule 83, Criminal Rule 57, and Bankruptcy Rule 9029, standing orders are not supposed to duplicate a national rule. Duplication must be distinguished from simply referring to a national rule, which is of course permissible. But if a standing order actually duplicates a national rule, it is both unnecessary and improper.

There is no similar prohibition on a standing order duplicating a local rule, but such duplication is problematic. Including the same subject matter in both a local rule and in a standing order is in itself confusing. The potential for confusion increases if one changes and the other does not, or if the standing order is close but not identical to the local rule. Minor variations, poor paraphrasing, or selective duplication will introduce even more confusion. It could be argued that duplicating some local rules in standing orders might increase the likelihood that the lawyers know of the requirements; but the risks of "incomplete" duplication, or a change in one rule but not the other, caution strongly against attempting to duplicate the terms of a local rule in a standing order.

8. *Standing Orders Must Not Abrogate or Modify a Local Rule.*

Some district courts have abrogated or modified a local rule by issuing a standing order, even without the justification of an emergency. Under Civil Rule 83, Criminal Rule 57, and Bankruptcy Rule 9029, a court may only regulate practice in a manner consistent with the district's local rules. The use of standing orders to abrogate or modify a local rule

is problematic, moreover, because it requires the practitioner to master both the local rule and the standing order and then to determine how they interact. The transaction costs outweigh whatever benefit might be argued to exist from changing a local rule by way of standing order.

II. Guidelines for Posting and Providing Access to Standing Orders

Given the lack of notice and public comment before standing orders are entered, it is critical that members of the public have a ready way to find and access them. Under current practice, members of the public can find this difficult because there is no consistent, predictable approach to posting standing orders on court web sites, and most courts do not have indexing or search functions that allow members of the public readily or reliably to find what they are looking for among all the posted standing orders.

In posting standing orders on court web sites, the following guidelines should be followed:

1. The home page for each court's web site should have a link entitled "Standing Orders."
2. The link should direct the user to a page with a further link to the court's general standing orders, and individual links for the standing orders of each judge on the court.
3. Notice of a new standing order, or a change to a standing order, should be on the court's web site for a reasonable period.
4. The posted standing orders for the court and for each individual judge should contain an index and a word-search function that allows the user to locate and access orders on particular topics or subjects and ensure that all relevant orders have been found.

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1. *See* Southern District of Texas, Order 2001-05, In Re: Weapon Possession in Court Facilities (limits individuals who can possess a firearm in courthouses).

2. *See* Northern District of Oklahoma, General Order 01-05 (adopting Occupant Emergency Plan for occupants of the courthouse).

3. *See* Southern District of Texas, Order 1995-13, In the Matter of Operations Without Appropriations for Fiscal Year 1996.

4. *See* Southern District of Texas, Order 1992-10, Authorizing Withdrawal of Excess Securities.

5. *See* Southern District of Texas, Order 1992-22, Order for Docketing Priority (directive to court personnel re importance of prompt docketing).

6. *See* Southern District of Texas, Order 2006-1, In the Matter of the Division of Work Calendar Year 2006.

7. *See* Northern District of Florida, Order dated 5/31/2000, Referral of Civil Cases to Full-time Magistrate Judges (ordering that all new social security cases be randomly assigned, on a rotating basis, to the division's full-time magistrate judges).

8. *See* Northern District of Florida, Order dated 10/2/2006, Authorization for In-District Travel for Clerk of Court and Chief Probation Officer (also authorizing agency-financed travel to FJC or AO training sessions).

9. *See* Southern District of Texas, Order 2005-09, In Re: Refilling the Master Jury Wheels.

10. *See* Southern District of Texas, Order 1990-44, Order Setting Naturalization Hearing Date.

11. *See* Southern District of Texas Order 1991-26, In the Matter of Guidelines for Coordination of Criminal Procedures (guidelines for coordinating criminal procedures in Houston Division to ensure that an apprehended defendant is brought before a magistrate judge as quickly as possible).

12. *See* District of South Carolina, Order of Judge Anderson (providing that civil motions are heard on Mondays at 1:30 p.m., and if Monday is a holiday, the next motion day is the following Monday).

13. *See* Northern District of Florida, Order dated 12/14/2006, Criminal Justice Act Panel (appointing a new member).

14. *See* Northern District of Florida, Order dated 4/7/2006, Exemption from Fees to PACER (authorizing fee exemption for academic researcher).

15. *See* Northern District of Oklahoma, General Order 06-19 (announcing closing of court on Friday, November 24, 2006).

16. *See* Northern District of Oklahoma, General Order 04-07 (stating that it was considering a moratorium on sentencing proceedings until it could study *Blakely*, and directing the U.S. Attorney to identify any case in which a delay might violate the Speedy Trial Act).

17. It could be argued that any "emergency" should be handled by an interim local rule rather than a standing order. *See* 28 U.S.C. § 2071(e) ("If the prescribing court determines that there is an immediate need for a rule, such court may proceed under this section without public notice and opportunity for comment, but such court shall promptly thereafter afford such notice and opportunity for comment."). But so long as there is ultimately a local (or national) rule implemented within a reasonably short time period to deal with the problem on a permanent basis, there is no real distinction between a standing order and an interim local rule — because both are implemented without a period for public comment.

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: ELIZABETH GIBSON, REPORTER

RE: REVIEW OF RESTYLED EVIDENCE RULES

DATE: AUGUST 27, 2009

The Advisory Committee on Evidence Rules has completed a restyling project of the Evidence Rules, and the proposed rules have just been published for public comment. Earlier this summer, each member of this Advisory Committee was asked to review a designated portion of the restyled rules to determine whether the proposed changes, if adopted, would require any conforming amendments of the bankruptcy rules and whether any of the proposed stylistic changes might have a substantive impact in the bankruptcy context.[1] This memorandum summarizes and discusses the comments that were submitted and gives suggestions for the ones that the Committee may want to consider further.

The Review Project

The proposed Evidence Rules were divided into three batches, each of which was reviewed by five or six members of the Committee. The groups of rules assigned for review were as follows: (1) Rules 101-502; (2) 601-706 and 1001-1008; and (3) 801-903 and 1101-1103. No one identified any problems or issues with the first group of rules. Only one issue was raised regarding the rules in the second group. With respect to the third group, two members noted issues raised by the proposed changes. The comments that raised issues about the wording

[1] In this memorandum, "substantive" means relating to the substance or meaning of a rule, as opposed to the style in which the rule is written. It is not intended to suggest that a rule goes beyond the scope of the Supreme Court's rule-making authority.

or impact of the restyled rules are numbered and summarized in the following chart.

Old	New
1. 801(d)(2) Admission by party-opponent. The statement is offered against a party and is	**801(d)(2) An Opposing Party's Statement.** The statement is offered against an opposing party and: *Issue: is it always clear in bankruptcy who the "opposing party" is? The restyling carries into the text from the heading the requirement that the party against whom the statement is to be used be an opponent. Query, are headings part of the text? Could the rule say "adverse" party? Would that be more clear in bankruptcy context?*
2. 803(2) Excited utterance. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.	**803(2) Excited Utterance.** A statement relating to a startling event or condition, made while the declarant was under the stress or excitement that it caused. *It looks like there is a typo - it should be "stress of excitement," not "stress or excitement"*
3. 803(4) Statements for purposes of medical diagnosis or treatment. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.	**803(4) Statement Made for Medical Diagnosis or Treatment.** A statement that: **(A)** is made for — and is reasonably pertinent to — medical diagnosis or treatment; and **(B)** describes medical history; past or present symptoms or sensations; or the inception or general character of their cause. *Issue: is (B) clear? By putting a semi-colon between "past or present symptoms or sensations" and "or the inception or general character of their cause," you split these concepts in two. But I think it is really one concept - past or present symptoms or sensations or the inception or general character of their cause - where inception or general character relate to the past or present symptoms or sensations.*

Old	New
4. 803(7) Absence of entry in records kept in accordance with the provisions of paragraph (6). Evidence that a matter is not included in the memoranda reports, records, or data compilations, in any form, kept in accordance with the provisions of paragraph (6), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.	**803(7) Absence of a Record of a Regularly Conducted Activity.** Evidence that a matter is not included in a record described in paragraph (6) if: **(A)** the evidence is admitted to prove that the matter did not occur or exist; and **(B)** a record was regularly kept for a matter of that kind. But this exception does not apply if the possible source of the information or other circumstances indicate a lack of trustworthiness. *(B) should say that the "record was regularly made and kept."*
5. 803(8) Public records and reports. Records, reports, statements, or data compilations, in any form, of public offices or agencies,	**803(8) Public Records.** A record of a public office setting out: *Issue: does the elimination of "agencies" make this rule any narrower? In bankruptcy public records are frequently introduced.*
6. 803(10) Absence of public record or entry. To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with rule 902, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry.	**803(10) Absence of a Public Record.** Testimony — or a certification under Rule 902 — that a diligent search failed to disclose a public record if the testimony or certification is admitted to prove that: **(A)** the record does not exist; or **(B)** a matter did not occur or exist, even though a public office regularly kept a record for a matter of that kind. *(B) should say "regularly made and kept"*

Old	New
7. 803(22) Judgment of previous conviction. Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the Government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility.	**(22) Judgment of a Previous Conviction.** Evidence of a final judgment of conviction if: **(A)** the judgment was entered after a trial or guilty plea, but not a nolo contendere plea; **(B)** the judgment was for a crime punishable by death or by imprisonment for more than a year; **(C)** the evidence is admitted to prove any fact essential to the judgment; and **(D)** when offered by the prosecutor in a criminal case for a purpose other than impeachment, the judgment was against the defendant. The pendency of an appeal may be shown but does not affect admissibility. *By including "and" between (C) and (D), it looks like the only time you can use the judgment of conviction is against the defendant. The language appears to change the meaning of the rule, which currently allows use of a prior conviction for impeachment purposes if the requirements of (A) through (C) are met.*
8. 804(a) Definition of unavailability. "Unavailability as a witness" **includes** situations in which the declarant [emphasis added]	**804(a) Criteria for Being Unavailable.** A declarant is considered to be unavailable as a witness if the declarant: *Query: does the elimination of "includes" from the preface make the revised rule less expansive than the original rule? In bankruptcy, use of the term "includes" signals a non-exclusive list.*

Old	New
9. 1101(d)(3) Miscellaneous proceedings. Proceedings for extradition or rendition; preliminary examinations in criminal cases; sentencing, or granting or revoking probation; issuance of warrants for arrest, criminal summonses, and search warrants; and proceedings with respect to release on bail or otherwise.	**(3)** miscellaneous proceedings such as: [list omitted] *Query: does the addition in "such as" in the revised rule expand the scope of what are miscellaneous proceedings? [This is the reverse of the issue under 804(a).] It seems to leave the door open for other miscellaneous proceedings.*
10. 701 Opinion Testimony by Law Witnesses. If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is	**701 Opinion Testimony by Lay Witnesses.** If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is . . . . *I was uncertain regarding the antecedent for "one." Does it refer to "testimony" or to "opinion"? Or does it refer to either or both? (I suppose you could also ask, "Does it matter?") In any event, a way to avoid the issue would be to say: "is limited to that which is: . . .".*
11. 804(b)(3) Statement Against Interest. . . . . A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.	**804(b)(3) Statement Against Interest.** A statement that: . . . (B) is supported by corroborating circumstances that clearly indicate its trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability. *This rule has been substantively restyled to provide that, in a criminal-case context, the hearsay exception for an unavailable declarant's statement against interest now requires the government (in addition to the criminal-case defendant), to show corroborating circumstances as a condition precedent to admitting an unavailable declarant's statement against penal interest. However, while the change to this rule is substantive, it does not appear to merit any corresponding alteration to the Bankruptcy Rules*

Consideration of the Comments

The comments submitted by Committee members fall into three categories: (1) those that are of a stylistic nature; (2) those that suggest that a proposed change might have a substantive effect; and (3) those that raise the possibility of the change having a special impact in bankruptcy cases. There is some overlap between categories, but below I discuss each comment as part of the category in which it seems to fit best.

Stylistic comments: Numbers 2, 3, and 10. I have discussed some of the issues raised by the comments with my colleague, Professor Ken Broun, who serves as a consultant to the Evidence Committee and was involved with the restyling project. He informed me that the change in Rule 803(2) (Excited Utterance) from "stress *of* excitement" to "stress *or* excitement" (emphasis added) was intentional. It was made in order to correct a typo that the reporter says has existed in the rule from its beginning. You may recall that the Evidence Rules were initially enacted by Congress. I am unsure whether the typo "of" was included in the legislation that Congress enacted or whether the mistake was made after enactment, but the word "of" appears in the legislation as printed in the U.S. Statutes at Large. Rule 803(2) therefore has read "stress of excitement" since 1975.

A change from "of" to "or" potentially changes the meaning of the rule as it has always been applied. It is possible that someone could make a statement under stress not caused by excitement. Such a statement would qualify as being made under "stress or excitement," but not under the "stress of excitement." This difference may be more theoretical than real, however, since under either version of the rule, the statement must "relat[e] to a startling event or condition" and that event or condition must have caused the stress. Nevertheless, because of the

possible impact on meaning, the Committee may wish to discuss this provision.

Comments 3 and 10 concern wording and punctuation choices that this Committee probably does not need to formally comment upon.

Comments regarding substantive effect: Numbers 4, 5, 6, 7, 8, 9, and 11. Starting with the last listed comment first, the change in Rule 804(b)(3) – making the corroborating circumstances requirement apply to the Government as well as the defendant in a criminal case – clearly is substantive. It, however, was proposed by the Evidence Committee separate from the restyling project and was published for comment in August 2008. The committee included it in the restyled rule in anticipation of its taking effect in December 2010, a year before the effective date of the restyled rules.

Comments 4 and 6 question the change in Rule 803(7) and (10) from requiring a record to be "regularly made and preserved" to requiring that it be "regularly kept." According to Professor Broun, this wording change was made because the Evidence Committee decided that only the word "kept" was needed. This change does possibly affect the meaning of the two provisions. An entity could keep a record that it did not make. That situation would satisfy the restyled provisions, but not the existing ones. Because of this possible change in meaning, the Committee may wish to discuss Rule 803(7) and (10).

The change in Rule 803(8), addressed by comment 5, from "public offices or agencies" to "a public office" was proposed in conjunction with the addition of a definition subsection to the Evidence Rules in § 101(b). There "public office" is defined to include a public agency. Thus, the reference to agency was deleted as unnecessary in Rule 803(8).

Comment 7 concerns Rule 803(22) – Judgment of a Previous Conviction. The comment

suggests that the meaning of the rule appears to be changed by the inclusion of "and" before the final requirement, thereby now limiting its applicability to the use of convictions against criminal defendants. Such a change is not intended, and I do not read the restyled rule as making it. As I read the rule, evidence of a judgment of conviction constitutes a hearsay exception if the requirements specified in (A), (B), and (C) are met. Those provisions impose no restrictions regarding the type of case, the party offering the evidence, or the person convicted. If, however, the condition specified in (D) applies as well – the prosecutor in a criminal case is offering the evidence for a purpose other than impeachment – the judgment of conviction must be one against the defendant. (Rule 609 separately covers the use of convictions for impeachment purposes.) Rule 803(22) might be clearer if the substance of (D) were set out in a separate sentence, but I do not think that the restyling creates a substantive change.

Comments 8 and 9 concern wording changes that arguably have the substantive effect of narrowing or expanding the existing rule. In Rule 804(a) the definition of the unavailability of a witness now says it "includes" the listed situations; the proposed rule would say a "declarant is considered to be unavailable if" one of the same listed situations exists. Because the term "includes" is not exclusive, the change appears to eliminate the possibility that some situations which are not listed could also qualify. The opposite change is proposed for Rule 1101(d)(3). The existing provision lists six categories of miscellaneous proceedings for which the Rules of Evidence are inapplicable. The restyled rule continues to list the same categories of proceedings, but prefaces them by stating "miscellaneous proceedings such as." The latter wording suggests that there could be others.

These wording changes do seem to change the meaning of the two provisions. Professor

Broun indicated to me, however, that the Committee's research showed that courts had not identified any situation other than the ones listed in Rule 804(a) in which a witness would be deemed unavailable. The restyling therefore does not change how the rule has been applied to date. He said that Rule 1101(d)(3) was changed to "such as" because the Evidence Committee determined that the list of miscellaneous proceedings in the current rule is not a complete listing of proceedings for which Congress has made the Evidence Rules inapplicable. Furthermore, the list is one that can repeatedly change as Congress exempts other proceedings from the Evidence Rules. The restyling is therefore intended to make the rule more accurate.

Comment regarding special impact in bankruptcy cases. Comment 1 addresses Rule 801(d)(2), currently captioned "Admission by party-opponent" and proposed to be captioned "An Opposing Party's Statement." The restyling inserts "an opposing" before party in describing whom a statement may be offered against. The comment points out that it is not always clear in a bankruptcy case who are opposing parties, and it raises the question whether "adverse party" would be better wording for bankruptcy purposes.

The configuration of parties in contested matters in bankruptcy cases is often different from that of civil and criminal cases in the district court, and it is unlikely that the Evidence Committee had bankruptcy cases in mind when it drafted the restyled rule. Nevertheless, it does not appear that the restyling would change how the current rule has been interpreted. It has been limited to opposing parties. Moreover, substitution of the term "adverse" may be problematic because courts have held that the provision is inapplicable to co-defendants who have adverse interests but are not on opposing sides of a case. If the Committee believes, however, that the restyled rule is likely to present problems concerning its application in bankruptcy proceedings, it

could consider whether a special bankruptcy rule altering the application of Rule 801(d)(2) in bankruptcy cases should be proposed.

Conclusion

The extent to which the Committee may wish to discuss the submitted comments depends in part on how it views its role with respect to the proposed restyled Evidence Rules. If the Committee determines that it should submit written comments as a committee only regarding proposed changes that have a particular impact in bankruptcy cases, then I suggest that only Rule 801(d)(2) possibly qualifies. Individual Committee members, of course, could submit their own comments on other rules as they see fit. If, however, the Committee decides that it is appropriate for it to comment on any rule for which it believes the restyling has an impact on meaning, then I recommend discussion of Rule 803(2), (7), and (10).

Item 14 will be an oral report.

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: ELIZABETH GIBSON, REPORTER

RE: AUTOMATIC DISMISSAL OF CASES UNDER § 521(i)

DATE: AUGUST 26, 2009

Since 2007 the Committee has been monitoring the developing case law under § 521(i) of the Bankruptcy Code to determine whether a consensus has emerged regarding its proper application and whether a rule or form should be proposed to implement its provision for the automatic dismissal of cases. The Committee concluded at prior meetings that, because bankruptcy and district courts remained divided over the extent to which courts retain discretion under the provision to deny dismissal, consideration of any rule or form proposal was premature. This memorandum provides an update on the § 521(i) case law and discusses in particular two 2009 decisions of the First and Ninth Circuits that are the first court of appeals decisions to interpret the provision.

Section 521(a)(1) and (i)

Section 521, which was significantly amended in 2005 by BAPCPA, specifies a debtor's duties in a bankruptcy case. Subsection (a)(1) of that provision requires the debtor to file a list of creditors and, "unless the court orders otherwise," other documents providing financial information. Among the documents required to be filed are "copies of all payment advices or other evidence of payment received within 60 days before the date of the filing of the petition." § 521(a)(1)(B)(iv). Subsection (i) provides, subject to certain exceptions, that if an individual debtor in a voluntary case fails to file the information required under (a)(1) within 45 days after

the petition is filed, "the case shall be automatically dismissed effective on the 46th day after the date of the filing of the petition." BAPCPA's introduction to the Code of a provision for the automatic dismissal of a case has raised numerous questions among courts and commentators and is what prompted the suggestion that a rule creating an implementing procedure be considered.

Conflicting Views about § 521(i)

As discussed by Reporter Jeff Morris in earlier memos, bankruptcy and district courts have disagreed over whether dismissal is always required when a debtor fails to timely file all of the information required by § 521(a)(1), or whether the bankruptcy court retains discretion to deny dismissal when doing so would prevent abuse or injustice. There are numerous cases in both camps, but the following two recent cases are illustrative.

In *In re* Catania, 397 B.R. 667 (Bankr. W.D.N.Y. 2008), a debtor filed copies of payment advices for several weeks of employment when she filed her petition. The payment advices for two weeks, however, were omitted. Although her lawyer later attempted to correct the mistake by filing a second set, this set was also incomplete. After more than 45 days passed from the date of the filing of the petition, the trustee moved for an order dismissing the case pursuant to § 521(i)(2). The bankruptcy court granted the motion, concluding that the case "has already been dismissed automatically by operation of section 521(i)(1), so that the trustee's motion essentially seeks only to memorialize that outcome." *Id.* at 669. The court stated that despite the debtor's intent to file all of the required payment advices, it "simply enjoys no discretion but to follow the direction of Congress." *Id.*

By contrast, the court in Simon v. Wells Fargo Bank (*In re* Amir), 2009 Bankr. LEXIS

1522 (Bankr. N.D. Ohio Mar. 17, 2009), agreed with what it described as a "growing majority of courts . . . ruling that a court does retain at least some discretion over whether to dismiss a case pursuant to § 521(i)(1)." *Id.* at * 16. The *pro se* debtor in that case moved to dismiss his chapter 7 case pursuant to § 521(i)(1) after the case was converted from chapter 13 and he was required to surrender possession of his Cadillac, Rolls Royce, and Bentley to the trustee. In denying the motion to dismiss based on the debtor's failure to file his means test form or any payment advices, the court refused "to interpret section 521(i) as a rigid get-out-of-bankruptcy-free card that even debtors abusing the bankruptcy process could use with impunity." *Id.* at * 21. The court concluded that it retained authority under the language of § 521(a)(1)(B) – "unless the court orders otherwise" – to waive the requirement that the debtor file the missing documents, even after the 45 day-period had expired. With the waiver granted, dismissal under § 521(i) was not required.

First and Ninth Circuit Opinions

The First Circuit was the first court of appeals to address the meaning and application of § 521(i). In the case before it, chapter 7 debtors moved under § 521(i)(2) to confirm the automatic dismissal of their case due to their failure to file payment advices and a statement of monthly net income within 45 days of the filing of their petition. Segarra-Miranda v. Acosta-Rivera (*In re* Acosta-Rivera), 557 F.3d 8 (1st Cir. 2009). Debtors took this action in order to prevent the trustee from settling the debtor husband's employment discrimination suit for an amount that would have been sufficient to pay all the bankruptcy claims in full but that the debtors believed was too low. The bankruptcy court denied the motion to dismiss after entering an order nunc pro tunc excusing the debtors from filing the documents. On appeal, the district

court reversed, holding that "'[a]fter the expiration of the specified period set forth in 11 U.S.C. § 521(i)(1), there are no exceptions, no excuses, only dismissal and the consequences that flow therefrom.'"

The First Circuit reversed the district court and held that the bankruptcy court retained authority to excuse the filing of documents required by § 521(a)(1)(B) after the 45-day period had expired. Noting the split in the case law, the court of appeals stated that neither line of authority "satisfies both head and heart in equal measure," but it said it was reluctant to interpret the statute in a way that would encourage bankruptcy abuse. *Id.* at 12-13. The court reasoned that by retaining the "unless the court orders otherwise" language in § 521(a)(1)(B), Congress intended bankruptcy courts to have "a meaningful opportunity to gauge whether missing information is 'required' in a particular case" and that the 45-day period was not intended as a limit on the court's exercise of discretion. *Id.* at 14. Here, because it had become clear that all claims would be paid in full, the bankruptcy court had properly concluded that the missing financial information was not required.

The First Circuit stressed that bankruptcy courts do not have "unfettered discretion to waive the disclosure requirements ex post." But it held that they could relieve the debtor of the filing requirements under § 521(a)(1)(B) when "there is no continuing need for the information or a waiver is needed to prevent automatic dismissal from furthering a debtor's abusive conduct." *Id.*

The Ninth Circuit in Wirum v. Warren (*In re* Warren), 568 F.3d 1113 (2009), agreed with the First Circuit's approach. In that case, the chapter 7 debtor moved to dismiss his case on the ground, among others, that he had failed to file the financial information required by § 521(a)(1)

within 45 days of filing his petition. The debtor filed his motion after the trustee indicated that there might be nonexempt assets available for distribution to creditors. The bankruptcy court denied the debtor's motion to dismiss after the court waived the requirement that the debtor file all of the information required by § 521(a)(1)(B). The district court reversed, holding that the bankruptcy court lacked discretion to waive the filing requirements after the 45-day deadline had expired and that dismissal was therefore required. The Ninth Circuit, like the First Circuit, reversed the district court and upheld the bankruptcy court's denial of dismissal.

The Ninth Circuit tracked the reasoning of the First Circuit and quoted extensively from its opinion. It held that "a bankruptcy court retains discretion to waive the § 521(a)(1) filing requirement even after the forty-five day filing deadline set forth in § 521(i)(1) has passed." *Id.* at 1117. Considering alternative readings of the statute, the Ninth Circuit concluded that declining to interpret the 45-day time limit as a restriction on the court's exercise of discretion furthers the congressional purpose underlying BAPCPA of preventing bankruptcy abuse. It characterized its decision as being contrary to the "majority of bankruptcy and districts courts to address this issue," but it concluded that the more restrictive reading of the statute adopted by those courts "would allow abusive and manipulative debtors to gain automatic dismissal and thereby encourage bankruptcy abuse." *Id.* at 1119.

Conclusion

With the two court of appeals decisions that recognize continued bankruptcy court discretion under § 521, despite the automatic dismissal provision of § 521(i)(1), there may be a growing trend of allowing dismissal to be denied when it is sought by a debtor who is attempting to escape the hardships of bankruptcy. Even so, it does not seem to me that the situation is yet

ripe for the consideration of a national rule creating a procedure for such dismissals. The case law is hardly settled at this point. As the First Circuit recognized, neither of the alternative readings of § 521(i) is completely satisfactory. It is possible, therefore, that other circuits will adopt a view contrary to that of the First and Ninth Circuits. Before undertaking the task of creating a rule governing § 521(i) dismissals, the Advisory Committee would be benefited by a broader agreement among the courts about when "automatically" under that provision really means "automatically" and when it allows judicial discretion to deny dismissal after the 45-day period has passed. Should the Committee, however, decide to pursue consideration of an implementing rule or form now, I suggest that the matter be referred to the Subcommittee on Consumer Issues.

Bankruptcy Rules Tracking Docket (By Rule or Form Number) 9/3/09

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rule 1004.2 (new), Chapter 15 rule	05-BK-B Judge Samuel Bufford 1/20/06 Committee proposal	3/06 - Referred to Subcommittee on Technology and Cross Border Insolvency 5/06 - Subcommittee discussed 6/06 - Subcommittee approved revised rule 9/06 - Committee approved for publication 3/07 - Publication deferred for further study 6/07 - Subcommittee discussed 9/07 - Committee approved for publication, held in bull pen 2/08 - Subcommittee discussed 3/08 - Committee approved for publication 6/08 - Standing Committee approved publication 8/08 - Published for public comment 1/09 - Subcommittee drafted revised rule 3/09 - Committee approved revised rule for republication 6/09 - Standing Committee approved republication 8/09 - Published for public comment	12/1/11

Rule 1007(a)(2) Creditors list in involuntary case	06-BK-057 Chief Deputy Clerk Margaret Grammar Gay	3/07 - Referred to Subcommittee on Business Matters 6/07 - Subcommittee discussed 9/07 - Committee approved for publication 1/08 - Standing Committee approved for publication 6/08 - Published for public comment 3/09 - Committee approved 6/09 - Standing Committee approved 9/09 - Judicial Conference agenda	12/1/10

Rules 1007(a), (c),(f),(h), 1011(b), 1019(5), 1020(a), 2002(a),(b),(o), (q), 2003(a),(d), 2006(c), 2007(b), 2007.2(a), 2008, 2015(a),(d), 2015.1(a),(b), 2015.2, 2015.3(b),(e), 2016(b),(c), 3001(e), 3015(b),(g), 3017(a),(f), 3019(b), 3020(e), 4001(a),(b),(c), 4002(b), 4004(a), 6003, 6004(b), (d),(g),(h), 6006(d), 6007(a), 7004(e), 7012(a), 8001(f), 8002(a),(b),(c), 8003(a),(c), 8006, 8009(a), 8015, 8017(a), 9006(d), 9027(e),(g), 9033(b),(c), Change deadlines of less than 30 days to multiples of 7	Committee proposal (Standing Committee's Time Computation Committee)	9/06 - Committee discussed time computation project, small groups to review deadlines in bankruptcy rules 12/06 - Ad hoc group of bankruptcy judges approved 3/07 - Committee approved for publication as revised 6/07 - Standing Committee approved for publication 8/07 - Published for public comment 2/08 - Considered by Subcommittee on Privacy, Public Access, and Appeals 3/08 - Committee approved 6/08 - Standing Committee approved 9/08 - Judicial Conference Approved 3/09 - Related statutory changes transmitted to Congress 3/09 - Supreme Court approved	12/1/09

Rules 1007(c), 4004, 5009 Additional notice that case may be closed without discharge	Committee proposal	3/07 - Committee discussed, referred to Subcommittee on Consumer Matters 6/07 - Subcommittee discussed 9/07 - Committee approved for publication, held in bull pen 6/08 - Standing Committee approved for publication 8/08 - Published for public comment 3/09 - Committee approved 6/09 - Standing Committee approved 9/09 - Judicial Conference agenda	12/1/10
Rule 1007(k) Delete as either unnecessary or substantive	Judge Robert J. Kressel 09-BK-D	07/09 - Subcommittee on Business Matters considered 10/09 - Committee agenda	
Interim Rule 1007-1, Official Form 22A Implement National Guard and Reservists Debt Relief Act of 2008	Committee Proposal	11/08 - Committee approved by email ballot 11/08 - Standing Committee approved 11/08 - Executive Committee approved on behalf of Judicial Conference 8/09 - Director's memo on revising the Interim Rule 10/09 - Committee agenda	12/19/08 12/1/09

Rules 1014, 1015 Chapter 15 amendments	Richard Broude	2/08 - Subcommittee on Technology and Cross Border Insolvency considered 3/08 - Committee approved for publication 6/08 - Standing Committee approved for publication 8/08 - Published for public comment 3/09 - Committee approved 6/09 - Standing Committee approved 9/09 - Judicial Conference agenda	12/1/10
Rules 1017(g) (new), 1019(6) Applications for payment of administrative expenses	Judge Eugene Wedoff Attorney Philip Martino	10/08 - Committee discussed, referred to Subcommittee on Business Matters 12/08 - Subcommittee considered 3/09 - Committee considered, no further action taken	
Rule 1017.1 Procedure for considering the debtor's certification of exigent circumstances		4/07 - Committee approved for publication 6/07 - Standing Committee approved for publication 8/07 - Published for public comment 3/08 - Committee withdrew after revising amendment to Exhibit D published in August 2006	

Rule 1018 Chapter 15 amendments; Is injunctive relief under §§ 1519(e), 1521(e) governed by Rule 7065?	05-BR-037 Insolvency Law Committee of the Business Law Section of State Bar of California	3/07 - Referred to Subcommittee on Technology and Cross Border Insolvency 6/07 - Subcommittee considered 9/07 - Committee considered 2/08 - Subcommittee considered 3/08 - Committee approved for publication 6/08 - Standing Committee approved for publication 8/08 - Published for public comment 3/09 - Committee approved 6/09 - Standing Committee approved 9/09 - Judicial Conference agenda	12/1/10
Rule 1019(2) New filing period for objection to exemptions in converted case	Judge Dennis Montali 06-BK-054, Judge Paul Mannes 07-BK-C	6/07 - Subcommittee on Consumer Matters discussed 9/07 - Committee approved for publication 1/08 - Standing Committee approved for publication 8/08 - Published for public comment 3/09 - Committee approved 6/09 - Standing Committee approved 9/09 - Judicial Conference agenda	12/1/10
Rule 2003 Procedure for holding open §341 meetings to give chapter 13 debtors more time to file tax returns	Judge Keith Lundin 08-BK-L	1/09 - Subcommittee on Consumer Matters discussed 3/09 - Committee approved for publication 6/09 - Standing Committee approved for publication 8/09 - Published for public comment	12/1/11

Rule 2016(c) Conform to amendment to § 110(h)	Committee proposal (technical amendment)	9/07 - Committee approved 10/07 - Considered by Style Subcommittee 2/08 - Considered by Consumer Subcommittee 3/08 - Committee approved revised amendment 6/08 - Standing Committee approved 9/08 - Judicial Conference approved 3/09 - Supreme Court approved	12/1/09
Rule 2019 Repeal the rule as unnecessary	Loan Syndication and Trading Association, Securities Industry and Financial Markets Association 07-BK-G	3/08 - Committee discussed, Chair directed the Assistant Reporter to prepare a review of the case law on Rule 2019 10/08 - Committee discussed, referred to Subcommittee on Business Matters 12/08, 2/09 - Subcommittee prepared revised rule 3/09 - Committee approved revised rule for publication 6/09 - Standing Committee approved for publication 8/09 - Published for public comment	12/1/11
Rules 3001(c), 3002.1 (new) Disclosure of postpetition mortgage fees	Committee proposal	5/08 - Subcommittee on Consumer Matters discussed 5/08 - Subcommittee on Consumer Matters discussed 10/08 - Committee considered 12/08 - Subcommittee on Consumer Matters prepared revised rules 3/09 - Committee approved revised rules for publication 6/09 - Standing Committee approved for publication 8/09 - Published for public comment	12/1/11

Rule 3001, Official Form 10 Facilitate identification of stale claims and inadequately documented claims filed after bulk transfer of consumer debts	Judge A. Thomas Small 08-BK-J	1/09 - Subcommittee on Consumer Matters discussed 3/09 - Committee approved amendment to Rule 3001(c)(1), consolidated with amendments to Rules 3001, 3002.1 above; certification consolidated with pending amendments to Form 10 7/09 - Subcommittee considered certification 10/09 - Committee agenda	12/1/11
Rule 4001(d)(2), (3) Additional time computation changes	Chair	3/09 - Committee approved as technical amendment 6/09 - Standing Committee approved as technical amendment 9/09 - Judicial Conference agenda	12/1/10
Rules 4004, 7001 Application of sections 1328(f), 727(a)(8),(9); objection to discharge by motion	Judge Neil Olack Committee proposal	9/06 - Referred to Subcommittee on Consumer Matters 12/06 - Subcommittee considered 2/07 - Subcommittee considered 3/07 - Committee considered, referred to Subcommittee 6/07 - Subcommittee considered 9/07 - Committee approved for publication 1/08 - Standing Committee approved for publication 8/08 - Published for public comment 3/09 - Committee approved as revised 6/09 - Standing Committee approved 9/09 - Judicial Conference agenda	12/1/10

Rules 4004(d), 7001(4) Classification of proceedings to object to or revoke discharge as adversary proceedings; objections to revoke discharge in gap period	Judge Frank Easterbrook 08-BK-E Zedan v. Habas, 529 F.3d 398 (7th Cir. 2008)	10/08 - Committee considered, no further action on classification, gap period issues referred to Subcommittee on Consumer Matters 12/08, 1/09 - Subcommittee prepared revised gap period rule 3/09 - Committee approved revised rule for publication 6/09 - Standing Committee approved for publication 8/09 - Published for public comment	12/1/11
Rule 4008(a) Requires use of Official Form coversheet	Committee proposal	4/07 - Committee approved for publication 6/07 - Standing Committee approved for publication 8/07 - Published for public comment 2/08 - Considered by Consumer Subcommittee 3/08 - Committee approved 6/08 - Standing Committee approved 9/08 - Judicial Conference approved 3/09 - Supreme Court approved	12/1/09
Rule 5009(b) (new) Closing case without entry of discharge	Committee proposal	6/07 - Committee approved for publication, held for new Rule 5009(c) for chapter 15 cases 3/08 - Committee approved for publication 6/08 - Standing Committee approved for publication 8/08 - Published for public comment 3/09 - Committee approved 6/09 - Standing Committee approved 9/09 - Judicial Conference agenda	12/1/10

Rules 5009(c), 9001, etc. Chapter 15 rules	05-BK-B Judge Samuel Bufford 1/20/06 Committee proposal	3/06 - Referred to Subcommittee on Technology and Cross Border Insolvency 5/06 - Subcommittee discussed 6/06 - Subcommittee approved revised amendments 9/06 - Committee approved Rules 5009, 9001 for publication 9/06 - Committee approved Rule 5012 for publication as revision of amendment published 08/06 3/07 - Publication deferred for further study 6/07 - Subcommittee discussed 9/07 - Committee approved for publication, held in bull pen 2/08 - Subcommittee discussed 3/08 - Committee approved for publication 6/08 - Standing Committee approved publication 8/08 - Published for public comment 3/09 - Committee approved 6/09 - Standing Committee approved 9/09 - Judicial Conference agenda	12/1/10

Rule 5012 (new) Communications with foreign courts	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee deferred for further study 6/07 - Subcommittee discussed 9/07 - Included in package of chapter 15 amendments approved for publication 3/08 - Committee approved for publication 6/08 - Standing Committee approved for publication 8/08 - Published for public comment 3/09 - Committee approved 6/09 - Standing Committee approved 9/09 - Judicial Conference agenda	12/1/10
Rule 6003 Issuance of orders during 20-day cooling off period	Bankruptcy Judges Advisory Group 08-BK-D	3/08 - Committee discussed 8/08 - Subcommittee on Attorney Conduct and Health Care discussed 10/08 - Committee approved for publication 1/09 - Standing Committee approved for publication 8/09 - Published for public comment	

Rules 7052, (new) 7058, 9021 Separate document requirement for judgments in an adversary proceeding or contested matter	04-BK- Judge David Adams Committee proposal	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 Subcommittee 9/05 - Referred to Subcommittee 3/06 - Referred to Subcommittee 7/06 - Subcommittee approved alternative amendments 9/06 - Committee approved revised amendment for publication 1/07 - Standing Committee approved in principle 3/07 - Committee approved for publication as submitted 6/07 - Standing Committee approved for publication 8/07 - Published for public comment 2/08 - Subcommittee considered 3/08 - Committee approved as technical amendment 6/08 - Standing Committee approved 9/08 - Judicial Conference approved 3/09 - Supreme Court approved	12/1/09

Rules 7052, 9015, 9023 "Decouple" time provisions in the rules from new 30-day periods in Civil Rules 50, 52, 59	Committee proposal	9/07 - Referred to Privacy, Public Access and Appeals Subcommittee 2/08 - Subcommittee considered 3/08 - Committee approved as technical amendment 6/08 - Standing Committee approved 9/08 - Judicial Conference approved 3/09 - Supreme Court approved	12/1/09
Rule 7054 Time provisions	Committee Proposal	10/09 - Committee agenda	
Rules 8001 - 8020 Revise Part VIII of the rules to more closely follow the Appellate Rules	Eric Brunstad	3/08 - Referred to Privacy, Public Access and Appeals Subcommittee 5/08 - Subcommittee discussed 8/08 - Subcommittee discussed 10/08 - Committee discussed 3/09 - Open meeting of Subcommittee on Privacy, Public Access, and Appeals 3/09 - Committee discussed 6/09 - Subcommittee discussed comments at open meeting 9/09 - Subcommittee discussed comments at open meeting 9/09 - 2nd open meeting 10/09 - Committee agenda	
Rule 8006 Premature filing of appellant's designation of items in the record on appeal	John Shaffer	12/07 - Subcommittee on Privacy, Public Access, and Appeals discussed 2/08 - Considered by subcommittee 3/08 - Committee took no action with the understanding that the issue could be addressed as part of a comprehensive review of the 8000 rules	

Rules 8007.1 (new), 9023, 9024 Indicative rulings	Committee proposal	8/08 - Subcommittee on Privacy, Public Access, and Appeals discussed 10/08 - Committee tentatively approved new Rule 8007.1 and Rule 9024 amendment for publication 3/09 - Rules 8007.1 and 9024 assigned to the Bull Pen	
Rule 9006(a) Template rule for time computation	Standing Committee's Time Computation Committee	9/06 - Committee discussed time computation project, small groups to review deadlines in bankruptcy rules 12/06 - Considered by ad hoc group of Committee members 1/07 - Discussed by Standing Committee 3/07 - Committee approved for publication 6/07 - Standing Committee approved for publication 8/07 - Published for public comment 3/08 - Committee approved revised amendment 6/08 - Standing Committee approved revised amendment 9/08 - Judicial Conference approved 3/09 - Supreme Court approved	12/1/09
Rule 9006(a)(1) Exclude weekends, holidays from computing 5 days to send creditors a copy of UST's statement on presumption of abuse	Bankruptcy Clerk, Southern District of New York	2/08 - Considered by Subcommittee on Privacy, Public Access, and Appeals 3/08 - Committee recommended statutory change of 5-day period in connection with time computation amendments 5/09 - Included in Pub. L. 111-16 signed by the President	

Rule 9006(a)(3)(A) Correct reference to Rule 6(a)(1)	Committee proposal	2/08 - Considered by Subcommittee on Privacy, Public Access, and Appeals 3/08 - Committee included in time amendment 6/08 - Standing Committee approved 9/08 - Judicial Conference approved 3/09 - Supreme Court approved	
Rule 9006(f) Correct cross-reference to Civil Rule 5(b)(2)	Bankruptcy Clerk, Middle District of North Carolina	2/08 - Considered by Subcommittee on Privacy, Public Access, and Appeals 3/08 - Committee approved as technical amendment 6/08 - Standing Committee approved 9/08 - Judicial Conference approved 3/09 - Supreme Court approved	
Rule 9031 Remove prohibition on special masters	Judge David Kennedy Judge Geraldine Mund 09-BK-C 09-BK-E	7/09 - Subcommittee on Business Matters considered 10/09 - Committee agenda	
New Rule Automatic dismissal under § 521(i)	06-BK-011 Judge Marvin Isgur 06-BK-020 National Association of Consumer Bankruptcy Attorneys	6/07 - Subcommittee on Consumer Matters discussed 9/07 - Committee discussed 2/08 - Considered by Consumer Subcommittee 3/08 - Committee discussed 10/08 - Committee discussed, Reporter to continue monitoring 3/09 - Committee discussed, Reporter to continue monitoring 10/09 - Committee agenda	
Creation of a definitive set of Bankruptcy Rules		3/09 - Committee discussed 10/09 - Committee agenda	

Which statutory bankruptcy deadlines should be amended as a result of change in computing time under Rule 9006(a)	Request by Time Computation Subcommittee	02/08 - Discussed by bankruptcy judges on the committee 3/08 - Committee recommended that 5-day deadlines in 11 U.S.C. §§ 109(h)(3)(A)(ii); 322(a); 332(a); 342(e)(2); 521(e)(3)(B); 521(i)(2); 704(b)(1)(B); 764(b), and 749(b) be changed to 7 days 6/08 - Standing Committee included in proposed legislation 9/08 - Judicial Conference approved 4/09 - H.R.1626 introduced by Cong. "Hank" Johnson, Jr. 5/09 - Judge Rosenthal's letter to the courts on implementation 5/09 - Pub. L. 111-16 signed by the President	12/1/09
Use of Subcommittees by Conference Committees	Judicial Conference Executive Committee	10/08 - Committee discussed request by Executive Committee for responses; response included in Standing Committee response 2/09 - Executive Committee approved revised guide for using subcommittees	
Use of Standing Orders (Rule 9029)	Request of judges on circuit councils, concerns expressed by lawyers	1/07 - Standing Committee authorized study 1/09 - Standing Committee considered draft report and proposed guidelines 3/09 - Advisory Committee discussed 4/09 - Bankruptcy judges on committee discussed 5/09 - Response sent to Standing Committee 6/09 - Standing Committee approves proposed Guidelines 9/09 - Judicial Conference agenda 10/09 - Bankruptcy supplement on Committee agenda	

Review of restyled evidence rules	Chair	10/08 - Committee discussed 3/09 - Committee discussed 6/09 - 3 ad hoc groups reviewed restyled rules 8/09 - Reporter consolidated comments in draft response 10/09 - Committee agenda	
Civil Rule 8(c) Deletion of bankruptcy discharge as affirmative defense	Judge Eugene Wedoff	4/08 - Civil Rules Committee discussed 10/08 - Committee discussed 3/09 - Committee approved deletion of affirmative defense 4/09 - Civil Rules Committee approved deletion 6/09 - Standing Committee approved 9/09 - Judicial Conference agenda	12/1/10
Civil Rule 56 Amendment's impact on timing of summary judgment motions in contested matters and adversary proceedings	Judge Wedoff	3/09 - Committee discussed 10/09 - Committee agenda	
Appellate Rule 6(b)(2)(A) Timing of notice of appeal after ruling on motion for rehearing	Advisory Committee on Appellate Rules	07/09 - Subcommittee on Privacy, Public Access, and Appeals discussed 10/09 - Committee agenda	
Official Form 6D Additional information for means test	Michael Fritz 09-BK-A	3/09 - Committee considered, no further action taken	

Official Form 6C Extent of claimed exemption Schwab v. Reilly	Judge Eugene Wedoff	7/09 - Subcommittee on Consumer Matters considered 10/09 - Committee agenda	
Official Form 10 Interest rate for secured tax claims	Christopher Kohn	7/09 - Subcommittee on Forms considered 10/09 - Committee agenda	
Official Form 10 Include space for an optional claim identifier	George Stevenson, chapter 13 trustee	7/09 - Subcommittee on Forms considered 10/09 - Committee agenda	
Official Form 10 Add a space for the general unsecured portion of a claim	Eastern District of Pennsylvania Southern District of New York	10/08 - Committee considered, referred to Subcommittee on Forms 12/08 - Subcommittee considered 3/09 - Committee considered, no further action taken	
Official Forms 22A, 22C Use "family" size instead of "household" size for National Standard deduction on line 19A etc. on Form 22A, line 24A etc on Form 22C	Judge Eugene Wedoff 3/6/08	3/08 - Referred to Subcommittee on Forms 5/08 - Subcommittee discussed 8/08 - Subcommittee discussed 10/08 - Committee approved 1/09 - Standing Committee questioned wording 1/09 - Subcommittee considered 3/09 - Committee approved for publication 6/09 - Standing Committee approved for publication 8/09 - Published for public comment	12/1/10

Official Form 22A If one joint debtor is exempt from the means test, does the other debtor have to file the means test information?	Judge Eugene Wedoff	1/09 - Subcommittee on Consumer Matters discussed 3/09 - Committee approved for publication 6/09 - Standing Committee approved for publication 8/09 - Published for public comment	12/1/10
Official Forms 22A, 22B, 22C revise instructions on reporting regular payments of household expenses by another person or entity	Judge Eugene Wedoff	1/09 - Subcommittee on Consumer Matters discussed 3/09 - Committee approved for publication 6/09 - Standing Committee approved for publication 8/09 - Published for public comment	12/1/10
Official Form 22C Calculation of disposable income under § 1325(b)	Subcommittee proposal	1/09 - Subcommittee discussed 3/09 - Committee considered, no further action taken	
Mini Form 22C (new) Cases converted to chapter 13	Judge Geraldine Mund 09-BK-C	7/09 - Subcommittee on Consumer Matters considered 10/09 - Committee agenda	
Official Form 23 Revise instructions to conform to proposed amendment to Rule 1007(c)	Mark Diamond, NYS Bankruptcy Court	3/09 - Committee approved as technical amendment 6/09 - Standing Committee approved 9/09 - Judicial Conference agenda	12/1/10

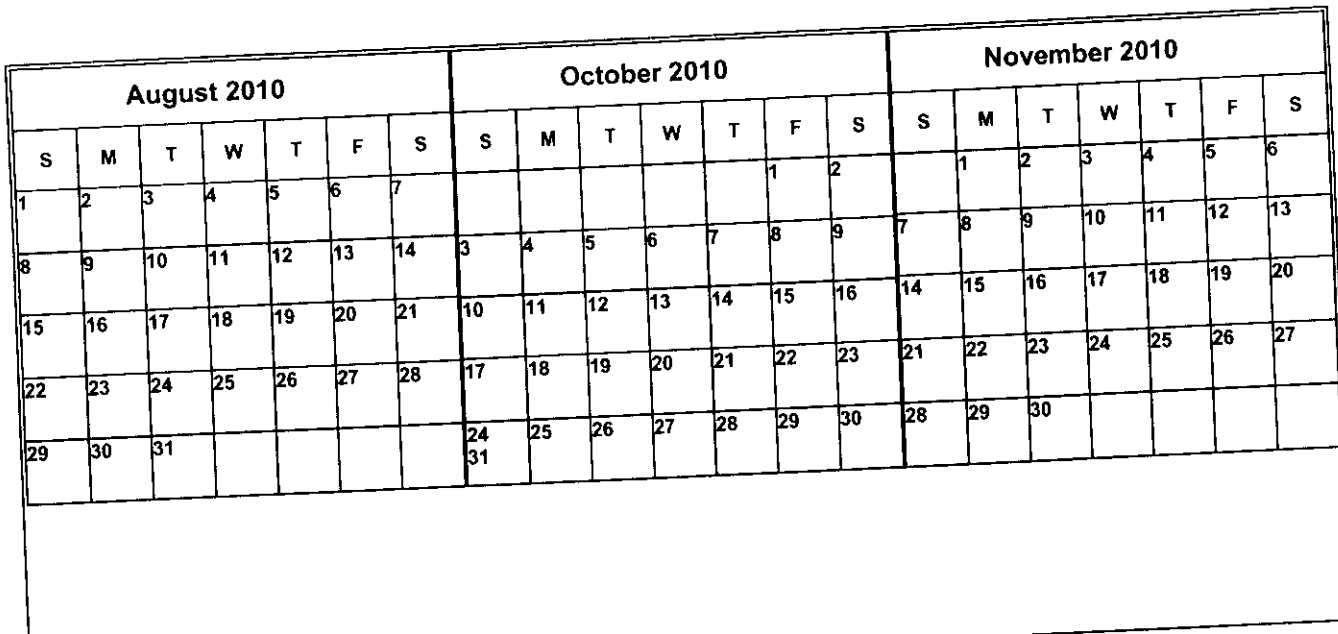
Official Form 27 (new) Cover sheet for reaffirmation or Form 240 as Official Form	Committee proposal	3/06 - Designation as Official Form referred to Forms Subcommittee 8/06 - Subcommittee discussed 9/06 - Committee tabled for 1 year 1/07 - Forms Subcommittee proposed cover sheet 3/07 - Committee approved for publication 6/07 - Standing Committee approved cover sheet for publication 8/07 - Published for comment 2/08 - Forms Subcommittee considered revised form 3/08 - Committee approved revised cover sheet 6/08 - Standing Committee approved 9/08 - Judicial Conference approved cover sheet form	12/1/09
Official Form 27 (new) Include § 524(k), Rule 4008(b) statement in Official Form	Bankruptcy Judges Advisory Group Committee proposal	6/07 - Subcommittee on Forms discussed, included in version of new Form 27 for publication 8/07 - Chair approved inclusion in Form 27 published for comment 9/07 - Committee ratified chair's decision to include	12/1/09
Official Forms Two new forms to address problems related to home mortgage claims	Judges Isgur, Magner, and Bohm 08-BK-K	3/09 - Committee discussed, referred to Subcommittee on Forms 8/09 - Court posts revised forms after public comment 7/09 - Subcommittee considered 10/09 - Committee agenda	

Official Forms, Director's Forms Review forms for consistency in certifications	Request by the Chair	3/08 - Request during discussion of new Form 283	
Official Forms Alternatives to paper-based format for forms; renumber Official Forms	Judge James D. Walker, Jr. 5/24/06 Judge Marvin Isgur 06-BK-011 Patricia Ketchum 6/9/07	9/06 - Committee will coordinate a study with the Administrative Office 8/07 - Discussion of how to organize the study 9/07 - Committee discussed and authorized chair to create group 1/08 - Organizational meeting for Forms Modernization Project 08 / 09 - Forms Modernization Subgroups continue work	
Director's Form 18RI (new) Individual chapter 11 discharge		6/09 - Subcommittee on Forms considered 7/09 - Subcommittee on Forms considered 10/09 - Committee agenda	12/1/09
Director's Forms 200, 210A, 231A, 231B, and 250E Update for time-computation amendments	Committee proposal	7/09 - Subcommittee on Forms considered 10/09 - Committee agenda	12/1/09

Director's Form 240 Reaffirmation agreement	Forms Subcommittee to implement BAPCPA 06-BK-B Kelly Sweeney, CDC, CO bankruptcy court 5/5/06 Judge Paul Mannes 08-BK-A Judges Randall Newsome and Robert Kressel	9/05 - Referred to Forms Subcommittee 10/05 - Amended form issued by Director of Administrative Office 8/06 - Issued by Director of Administrative Office 8/06 - Subcommittee approved further revision 9/06 - Committee approved revised form 12/06 - Issued by Director of Administrative Office 1/07 - Forms Subcommittee approved amendments 2/07 - Amendments deferred 10/08 - Committee discussed, referred to Subcommittee on Forms 12/08, 1/09 - Subcommittee considered revisions 3/09 - Committee discussed 6/09 - Subcommittee discussed 10/09 - Committee agenda	
Director's Forms 250A, 250B, 250C, 250D, and 250E revise certificates of service	Committee Proposal	6/09 - Subcommittee on Forms considered 7/09 - Subcommittee on Forms considered 10/09 - Committee agenda	12/1/09
Director's Form 250F (new) Foreign Nonmain Summons	Mark Diamond, NYS Bankruptcy Court	6/09 - Subcommittee on Forms considered 7/09 - Subcommittee on Forms considered 10/09 - Committee agenda	12/1/09
Director's Form 261C (new) Judgment form to implement new Rule 7058	Judge Benjamin Goldgar 09-BK-F	7/09 - Subcommittee on Forms Considered 10/09 - Committee agenda	12/1/09

Item 17 will be an oral report.
A copy of the Director's memorandum will be distributed separately.

Items 18-22 will be oral reports.



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September 2010

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5	6 Labor Day	7	8	9	10	11
12 Grandparents Day	13	14	15	16	17	18
19	20	21	22	23 Autumn Begins	24	25
26	27	28	29	30		
						U.S. Federal Holidays are in Red.

August 2010 Printfree.com Main Calendars Page October 2010