ADVISORY COMMITTEE ON BANKRUPTCY RULES

Meeting of March 30-31, 1995

Lafayette, Louisiana

Minutes

The Advisory Committee on Bankruptcy Rules met in the Lafayette Hilton Hotel in Lafayette, Louisiana, March 30-31, 1995. The following members were present:

Bankruptcy Judge Paul Mannes, Chairman

Circuit Judge Alice M. Batchelder

District Judge Adrian G. Duplantier

District Judge Eduardo C. Robreno

Honorable Jane A. Restani, United States Court

of International Trade

Bankruptcy Judge Donald E. Cordova

Bankruptcy Judge Robert J. Kressel

Bankruptcy Judge James W. Meyers

Kenneth N. Klee, Esquire

J. Christopher Kohn, Esquire, United States

Department of Justice

Leonard M. Rosen, Esquire

Gerald K. Smith, Esquire

Henry J. Sommer, Esquire

Professor Charles J. Tabb

Professor Alan N. Resnick, Reporter

Joseph Patchan, Director, Executive Office for United States Trustees, and R. Neal Batson, Esquire, were unable to attend.

The following representatives of the Committee on Rules of Practice and Procedure also attended:

District Judge Alicemarie H. Stotler, Chair

District Judge Thomas S. Ellis, III, liaison to the Advisory Committee

The following additional persons attended the meeting: Judge Edward Leavy, United States Court of Appeals for the Ninth Circuit and former chairman of the Advisory Committee; Richard G. Heltzel, Clerk, United States Bankruptcy Court for the Eastern District of California; Patricia S. Channon and James H. Wannamaker, Bankruptcy Judges Division, Administrative Office of the United States Courts; Mark D. Shapiro, Rules Committee Support Office, Administrative Office of the United States Courts; and Elizabeth C. Wiggins, Federal Judicial Center.

The following summary of matters discussed at the meeting should be read in conjunction with the various memoranda and other written materials referred to, all of which are on file in the office of the Secretary to the Committee on Rules of Practice and Procedure. Unless otherwise indicated, all memoranda referred to were included in the agenda book for the meeting.

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

INTRODUCTORY MATTERS

The Chairman introduced Judge Leavy, the former chairman of the Advisory Committee. The Chairman also welcomed Judge Stotler and Judge Ellis to the meeting. **The Committee approved a resolution of thanks to the host committee chaired by Bankruptcy Judge Gerald H. Schiff.**

Minutes of Previous Meetings. Mr. Klee moved to approve the minutes of the September 1994 and December 1994 meetings with the substitution of the word "March" for "February" in the second line of page 9 of the September minutes. **The Committee approved the minutes, as amended, without dissent.**

Standing Committee Meeting. The Reporter stated that the Standing Committee had ratified the three suggested interim rules approved by the Advisory Committee at its December meeting. The suggested

interim rules were distributed to the courts with a letter dated January 17, 1995, from Judges Stotler and Mannes. The amendments to the Official Forms to conform to the Bankruptcy Reform Act of 1994 were approved by the Standing Committee in January and by the Judicial Conference on March 14.

The Reporter said the Standing Committee thought the Advisory Committee's request for authority to approve future increases in dollar amounts on the Official Bankruptcy Forms was premature because the next three-year adjustment required by 11 U.S.C. § 104(b), as amended, is not due until 1998. Since the statute requires that the Judicial Conference adjust the dollar amounts in several sections of the Bankruptcy Code after public notice, revision of the Official Forms can be included in the same resolution presented to the Conference. Judge Stotler asked that the Advisory Committee monitor the matter of the dollar adjustments.

The Reporter said the Standing Committee agreed to the Advisory Committee's request to communicate directly with the Bankruptcy Review Commission. In addition, members of the Advisory Committee were invited to communicate directly with Professor Thomas E. Baker concerning their response to the Self-Study of Federal Judicial Rulemaking undertaken by the Long Range Planning Subcommittee of the Standing Committee. Copies of the self-study were distributed at the meeting.

RULES

Comments on Proposed Amendments. The Reporter reviewed the comments on the proposed amendments to Rules 1006, 1007, 1019, 2002, 2015, 3002, 3016, 4004, 5005, 7004, 8008, and 9006, which were published in 1994. The first six letters commenting on the proposed amendments are discussed in the Reporter's memorandum of February 28, 1995. The three comments received later are covered by the Reporter's memorandum of March 15, 1995, which was distributed at the meeting. In addition, Bryan A. Garner, consultant to the Style Subcommittee of the Standing Committee, submitted a number of suggestions for stylistic changes in the proposed amendments.

The Reporter recommended no action on the general comments of Raymond A. Noble, Director of Legal Affairs for the New Jersey State Bar Association; Robert L. Jones, III, President, Arkansas Bar Association; and Lee Ann Huntington, Chair, Committee on Federal Courts, State Bar of California.

Susan J. Lewis, Legal Editor, Matthew Bender & Company, Inc., pointed out a typographical error in the reference to Rule 3003(c)(2) in the Committee Note to the proposed amendment to Rule 2002(h). The reference should be to Rule 3002(c)(2). **The Advisory Committee agreed to make the correction.**

Glenn Gregorcy, Chief Deputy Clerk, United States Bankruptcy Court for the District of Utah, commented that the proposed deletion of the words "and account" from Rule 2002(f)(8) "does nothing whatsoever" because, he wrote, only one notice is sent under the current rule in most courts. In other words, he stated, in most districts, the trustee's final report and the final account are the same document. James T. Watkins, who stated that his law firm represents 10 of the top 25 national issuers of credit cards in their bankruptcy cases nationwide, urged the Advisory Committee to abandon the proposed amendment. He stated that his firm regularly reviews the trustee's final report and account in order to

verify that the stated distributions have been received.

The Reporter said that, while Mr. Gregorcy assumes that the trustee's final report and account are one document in most courts, Mr. Watkins' comments indicate that there are two separate documents -- both of which may be helpful to creditors. **After a brief discussion, the committee took no action on the two comments.**

Richard M. Kremen offered a redraft of the proposed amendment to Rule 2002(h) on behalf of the Maryland Bar Association Committee on Creditors' Rights, Bankruptcy, and Insolvency. Judge Batchelder stated that Mr. Kremen's redraft appeared preferable for clarity. The Reporter suggested revising Mr. Kremen's redraft by substituting "under" for "pursuant to" in line 11; moving the phrase "the court may," from line 12 to line 14 before the word "direct"; and substituting the phrase "mailed only to the entities listed in the preceding sentence" for the phrase "limited as set forth above" in the final line. Judge Meyers moved the acceptance of Mr. Kremen's redraft, as revised. Mr. Rosen suggested changing the word "listed" in the revision to "specified." Judge Meyers agreed to the change. **The motion was approved without dissent.**

Mr. Kremen also suggested a change in the proposed amendment to Rule 3002 in order to implement the amendment to 11 U.S.C.

§ 502(b)(9) in the Bankruptcy Reform Act of 1994. The Reporter presented an alternative amendment to Rule 3002. The Reporter asked whether the revised amendments to Rules 3002 and 7004, which was amended directly by the Congress, should be published for comment. He said he believes publication is not required because the revisions just conform the rules to statutory changes in the Bankruptcy Reform Act of 1994. **The Committee agreed.**

Mary S. Elcano, Senior Vice President, General Counsel, United States Postal Service, suggested that Rule 2002 be amended to require service of a notice of dismissal on the debtor's employer and that Rule 7004 be revised to require service on the particular department, office, or unit of an agency out of which the debt in question arose. She stated this is needed so the agency can locate the source of the debt and file a proof of claim. The Reporter stated that the suggested change to Rule 2002 was unrelated to the proposed amendment published and would require separate publication. The Reporter stated that Ms. Elcano's concern about locating the source of a debt appeared to relate to notice of the bankruptcy filing and of the meeting of creditors pursuant to Rule 2002(a), not service of process under Rule 7004. He recommended no action on these comments.

Commenting on the proposed amendment to Civil Rule 5(e), and indirectly on a similar amendment to Rule 5005(a), as well as on electronic filing in general, Patricia M. Hynes, Chair, Committee on Federal Courts, Association of the Bar of the City of New York, expressed concern about access to electronic filing and electronic records, system compatibility, the authenticity and accuracy of electronic records. The Reporter stated that the Advisory Committee's Technology Subcommittee had focused on these same concerns in drafting the proposed amendment to Rule 5005 and the accompanying Committee Note. The proposed amendment mandates public access by reference to 11 U.S.C. § 107. The Reporter recommended no further action on Ms. Hynes' comments.

The Reporter stated that he had reviewed Mr. Garner's proposed stylistic changes and had included a number of the suggestions in a revised draft of the proposed amendments. Judge Duplantier stated that "under" does not mean the same thing as "pursuant to." The Reporter said that a number of years ago the Advisory Committee rejected the universal substitution of "under" for "pursuant to." Judge Restani moved to approve the Reporter's substitution of "under" for "pursuant to" in his revised draft. **After further discussion of the proposed stylistic changes, the Committee rejected the motion with two dissenting votes.** Judge Batchelder suggested that the Advisory Committee's Style Subcommittee consider the drafting conventions used in the proposed amendments to the Supreme Court Rules. **The Chairman requested that she review the proposed amendments to the Supreme Court Rules.**

The Advisory Committee then considered the Reporter's revised draft of each of the proposed amendments, including his post-publication changes.

Rule 1006. Judge Duplantier suggested deleting "that is to be" from lines 10-11 on page 1 of the Reporter's revised draft. After a discussion, he withdrew the motion. **A motion to approve the proposed amendment as published carried unanimously.**

Rule 1007. **The Advisory Committee approved the proposed amendment as published. The Committee subsequently agreed to change "pursuant to" to "under" in lines 25 and 26 on page 5.**

Rule 1019. **The Advisory Committee approved the proposed amendment as published. The Advisory Committee deleted the part of the Committee Note after "3002(c)(6)" in line 3 on page 8 and approved the remaining portion of the Committee Note.**

Rule 2002. Judge Meyers moved to retain "as the court may direct" on lines 4-5 of page 8 rather than substituting "whom the court directs." **The Advisory Committee agreed.** Mr. Smith moved to accept the substitution of "at least 20 days'" for "not less than 20 days" on lines 8-9. **The motion carried with one dissenting vote.** Judge Batchelder moved to accept each of the changes suggested by the Reporter and incorporated in the revised proposed amendments unless the Advisory Committee votes to make a specific modification in the revised proposed amendments. **The Advisory Committee agreed. The Advisory Committee agreed to substitute "that" for "who" on line 93 of page 13.** Mr. Sommer moved to substitute "under" for "pursuant to" on lines 102 and 103 of page 13 in order to track the language used in the Bankruptcy Code for the appointment or election of a committee. **The motion carried by a vote of 5-3. The Advisory Committee agreed to substitute "under" for "pursuant to" on lines 111, 112, and 119 on page 14. The Advisory Committee agreed to retain "pursuant to" rather than substituting "under" on lines 10 and 21 of page 9.** It was moved to delegate to the Reporter to review all of the revised proposed amendments and to use either "pursuant to" or "under" as is consistent with the Bankruptcy Code and to use "pursuant to" when the Code is not specific. **The motion passed by acclamation.**

Rule 2015. There were no changes in the proposed amendment.

Rule 3002(d). In response to the Advisory Committee's request, the Reporter prepared and distributed a draft of a new subsection (d). The new subsection would require a creditor that tardily files a claim in a

chapter 12 or chapter 13 case to mail copies of the tardy claim to the trustee and debtor. The Reporter stated that he prepared the draft to focus the discussion but opposed the proposal because of uncertainty about the sanction for failing to give the notice. He said the new subsection would require publication for comment.

The Reporter said that the debtor could provide for tardily-filed claims in its plan and the trustee could periodically check the claims register for tardy claims. Mr. Sommer stated that the notice requirement might create a new area of litigation. He said that, if a party learns about the bankruptcy, it should find out about the deadlines, especially a party with an important priority or administrative claim.

The Committee discussed whether the clerk or the creditor should be responsible for noticing a late-filed claim. The Reporter stated that the creditor may not know that its claim was received after the deadline and that requiring the clerk to give the notice would ensure that it is done. Judge Meyers and Mr. Heltzel said it is easier for the clerk to send every claim than to sort them and just send the tardy ones. **At the Chairman's suggestion, the Committee agreed to set the matter over to the September meeting.**

Rule 3002. The Reporter stated that he had deleted subsection (d) of the published amendment to Rule 3002 and revised subsection (c) and the Committee Note in order to conform the rule to the statute, as amended by the Bankruptcy Reform Act of 1994. He said he believed the revisions did not require publication. Mr. Klee moved to substitute "not later" for "no later" on line 14 of page 20. **The Advisory Committee agreed.** It was moved to substitute "not later than" for "before" in line 21 on page 21 and explain in the Committee Note that the change was made to clarify a possible ambiguity in the statute. **After discussing whether this extended the deadline, the Advisory Committee voted, with one dissent, to approve the motion. With one dissent, the Advisory Committee approved a motion to submit the revised draft of Rule 3002 to the Standing Committee without further publication.**

The Reporter offered an additional paragraph to be included in the Committee Note on page 22 to explain that "not later than" is used to avoid any confusion over whether a governmental unit's claim is timely filed if the claim is filed on the 180th day. **The Advisory Committee agreed to the inclusion.**

Rule 3016. **The Advisory Committee agreed to delete the Reporter's stylistic changes of "pursuant to" to "under" where not consistent with the usage in the Bankruptcy Code.**

Rule 4004. Mr. Klee suggested inserting "other" after "any" in line 29 on page 26 in order to be consistent with the statute and to move the word "also" to the beginning of the second sentence of the Committee Note. **The Advisory Committee agreed to the stylistic changes.**

The Committee on the Administration of the Bankruptcy System had requested Rule 4004 be further amended to provide that the court may delay issuing a discharge to a chapter 7 debtor who has not paid in full the proposed $15 trustee surcharge fee which is due when a case is converted to chapter 7. The Chairman asked whether the debtor's discharge should be denied over $15. The Reporter stated that the proposed revision should be published for comment if there is any controversy. Mr. Sommer moved to table the matter. **The motion carried without dissent.**

Rule 5005. There were no changes in the proposed amendment.

Rule 7004. The Reporter stated that the changes in this rule subsequent to its publication were stylistic except for specifying that subsection (g) was abrogated, incorporating the new subsection (h), and including the new introductory phrase in subsection (b) added by the Bankruptcy Reform Act of 1994.

Rule 8008. The post-publication changes are stylistic.

Rule 9006. The Reporter said changing "may not" to "shall" in line 4 on page 49 made the meaning clearer. Mr. Klee said the rule of construction in section 102 of the Bankruptcy Code dictates the use of "may not." The Reporter agreed to restore "may not."

Amendments to be submitted for publication. The Reporter presented proposed amendments to Rules 1020, 2002(a), 2002(n), 2007.1, 3018, 3021, 8001(a), 8001(e), 8020, 9015, and 9035 for submission to the Standing Committee with a request for publication. Judge Meyers asked the purpose of the amendment to Rule 3021. The Reporter said it is to provide flexibility in fixing the record date for the purpose of making distributions to holders of securities of record. Judge Restani commented on the frequency of amendments to Rule 2002. The Reporter stated that the Advisory Committee deals with Rule 2002 by subsection to avoid confusion. He said many of the amendments conform Rule 2002 to changes in other rules.

The Reporter stated that he received a number of suggestions for stylistic changes in the proposed amendments from Mr. Garner the night before the meeting. Judge Batchelder said the Advisory Committee should deal with substantive matters and refer the suggested stylistic changes to the Style Subcommittee. It was moved to submit the proposed amendments to Rules 1020, 2002(a), 2002(n), 3018, 3021, 8001(a), 8001(e), 8020, 9015, and 9035 for publication along with the proposed amendment to Rule 3017 included in Agenda Item 7. The Style Subcommittee is to review the proposed amendments and circulate its changes to the committee members, who will have one week to object to the stylistic changes. As restyled, the proposed amendments then will be submitted to the Standing Committee for publication. **The Advisory Committee approved the proposed arrangements.**

Rule 2007.1. At its December meeting, the Advisory Committee approved Interim Bankruptcy Rule 1, which provides that the United States trustee will appoint the person elected as a chapter 11 trustee, subject to court approval. This comports with the other references in chapter 11 to the appointment of a trustee.

Marvin E. Jacob and Una M. O'Boyle had suggested in a letter a number of changes in the interim rule. In drafting proposed Rule 2007.1, the Reporter incorporated their suggestions that copies of the United States trustee's report of a disputed election go to the party who requested the election and to the creditors' committee (line 34) and that the ten-day period for moving to resolve a disputed election run from the filing of the report (line 40).

Mr. Sommer expressed concern that other parties may need notice of the report of disputed election. The

Reporter suggested substituting "has made a request to convene a meeting under § 1104(b) or to receive a copy of the report," for "made a request under § 1104(b)". Judge Restani moved to approve the Reporter's suggested change. Judge Robreno suggested adding "all persons for whom ballots were cast". The Reporter said the suggested phrase would include creditors for whom a proxy vote is cast. He said trustee candidates probably would request a copy. **Judge Restani's motion carried with one dissent.**

The Reporter recommended substituting "United States trustee files the report" for "date of the creditors' meeting called under § 1104(b) of the Code". Mr. Rosen so moved. After a colloquy with Mr. Klee, the Reporter agreed to substitute "Unless a" for "If no" in line 38 on page 4, "not later than" for "within" on line 39, and "any" for "a" on line 42. Judge Restani moved for the approval of the revision. **The motion carried without dissent.**

Mr. Klee suggested substituting the language in lines 42 - 45, as revised, for the phrase "a person appointed trustee under

§ 1104(d) shall serve as trustee" on lines 12 - 13 on page 3. **Mr. Rosen's motion to make the change was approved without dissent.** The Reporter stated that the rule should specify that equity security holders can not convene a meeting to elect a trustee or solicit proxies. **Accordingly, the Advisory Committee agreed without dissent to add the word "only" after "solicited" on line 21 on page 3 and "of creditors" after "committee" on the same line.**

Mr. Rosen asked if someone other than the United States trustee could file a report of a disputed election. The Reporter said they could object to the United States trustee's report. In order to allow a party to object without waiting for the report, Mr. Klee suggested substituting "not later than" for "within" on line 39 of page 4. **The Advisory Committee agreed.** Professor Tabb suggested substituting "Unless a" for "If no" on line 38 of page 4. **Judge Restani moved to make the change and the Advisory Committee approved her motion without dissent.** Mr. Smith suggested deleting "approval of" from line 24 on page 3. **The Advisory Committee agreed.**

The General Counsel for the Executive Office for United States Trustees has expressed concern about the authority of the United States trustee to preside at the election of a chapter 11 trustee. **In response, the Advisory Committee voted unanimously to insert the sentence "The United states trustee shall preside at the meeting." after "2002" on line 20 on page 3.**

After the December meeting and lengthy discussions with Mr. Patchan concerning the application of proposed Rule 2007.1, the Reporter revised the Committee Note to explain the need for court approval of the appointment of the elected trustee. The revised Committee Note, which was distributed at the meeting, includes an example of a situation in which the United States trustee might dispute the election, i.e., the United States trustee believes the person elected is not "disinterested." Mr. Klee suggested changing "not eligible" to "ineligible" in the sixth line of the fourth paragraph and "should" to "may" in the penultimate line of that paragraph. **The Advisory Committee agreed.**

After the Advisory Committee discussed various changes in the paragraph which begins "The rule", Professor Tabb moved to approve the Committee Note with the insertion of "appointment of the" after "the" in the first sentence of the paragraph; Mr. Klee's two stylistic changes in the next paragraph; and

the deletion of "(2)" in "§1104(b)(2)". At Mr. Klee's request, Professor Tabb agreed to the insertion of "primarily" after "necessary" in the penultimate line of the paragraph. At Mr. Rosen's suggestion, Professor Tabb agreed to the deletion of "of the appointment of the elected person after the disclosures required under Rule 2007.1(c)". **The amended motion carried without dissent.**

Rules 3017, 3017.1, 3018. At its September meeting, the Advisory Committee approved amendments to Rules 3017 and 3018 to provide flexibility in fixing the record date for the purpose of determining the parties entitled to receive solicitation materials and to vote on a chapter 11 plan. At its December meeting, the Advisory Committee approved the substance of a new Rule 3017.1 for court consideration of a disclosure statement in a small business case. Judge Kressel moved to approve the Reporter's draft of Rule 3017.1 **The motion carried unanimously.**

Mr. Rosen suggested adding "Other Than Small Business Cases" to the caption of Rule 3017. **The Advisory Committee agreed.** Judge Kressel stated that Rule 3017 does apply in small business cases if the debtor does not make a timely election to be treated as a small business. **The Advisory Committee reconsidered and withdrew the amendment to the caption.** Judge Robreno moved to delete "new. It is" from line 1 of the Committee Note on page 7. **The Advisory Committee agreed.**

Mr. Klee stated, that as the result of the deletion of subsection 1124(a)(3) in the Bankruptcy Reform Act of 1994, classes will be impaired even if they receive cash equal to the full, allowed amount of their claims. He said the rules should give the court discretion to dispense with sending out the disclosure statement if the plan proponent plans to go straight to cramdown on such a class. The Reporter asked if he would limit the amendment to former subsection 1124(a)(3) or make it applicable to any impaired class. Mr. Klee said the procedure should be available for any class not solicited.

Mr. Smith said that, as a matter of due process, members of an unsolicited class should get a one-page summary of what is being done to them and why their votes are not being sought. **The Reporter agreed to prepare a memorandum on the matter for the next meeting.**

Rule 3014. The Reporter prepared an amendment to Rule 3014 to provide a deadline for a section 1111(b) election in small business cases. He said he was unsure whether the deadline should be determined by reference to the date fixed pursuant to subsection (a)(2), (a)(3), or (a)(4) of Rule 3017.1. **After discussing the importance of fixing a date, the Advisory Committee agreed that the election "may be made no later than the date fixed under Rule 3017.1(a)(2) or another date the court may fix." The Advisory Committee approved the proposed amendment, as revised.**

Rule 9011. At its September 1994 meeting, the Advisory Committee discussed and approved a recommendation to amend Rule 9011 so that it conforms substantially to the 1993 amendments to Civil Rule 11. The Reporter was directed to draft appropriate language for the rule and Committee Note to provide that the 21-day "safe harbor" provision would not apply to motions for sanctions for the improper filing of a petition.

The Advisory Committee discussed revising lines 69 - 70 on page 4 to provide "A motion for sanctions for the filing of a petition in violation of subdivision (b) may be filed at any time. Any other". Several

committee members expressed concern about the statement that Rule 9011 motions "may be filed at any time." It was proposed to delete lines 69 - 70, insert "The" at the beginning of line 71, and insert ", except that this limitation shall not apply if the conduct alleged is the filing of a petition in violation of subsection (b)" after "corrected" on line 76. **The proposal was approved with one dissenting vote.** The Reporter agreed to correct typographical errors by inserting the word "to" at the beginning of line 37 and substituting "withdrawn" for "withdraw" on line 16 of the Committee Note on page 7.

Rule 1019. In February 1994, the Advisory Committee voted to delete the phrase "superseded case" in Rules 1007(c) and Rule 1019(3) and (4) because the use of the phrase gives the erroneous impression that conversion of a case results in a new case. The changes in Rule 1007(c) were part of the package of proposed rule amendments published for comment in September 1994. In addition to deleting "superseded" from Rule 1019, the Advisory Committee asked the Reporter to restyle the rule and divide it according to applicable Code chapter.

Mr. Klee said "within" on line 31 of page 4 should be "not later than". The Reporter agreed that "not later than" should be substituted for "within" throughout the proposed amendment. **The Advisory Committee accepted the change.** Mr. Klee said lines 19 and 31 should refer to a "holder of a claim" rather than a "creditor." **The Advisory Committee agreed.**

Judge Kressel said "a debtor" should be inserted after "not" in line 14 on page 3. **The Advisory Committee agreed.** Mr. Sommer expressed concern that lines 39 - 41 of the draft appear to take a substantive position on the interpretation of 11 U.S.C. § 348 as amended by the Bankruptcy Reform Act of 1994. **The Advisory Committee agreed that subsection (C)(i) on page 4 should be revised to implement the 1994 amendment to section 348. The Advisory Committee approved the proposed amendment, as revised.**

Rules 8002(c), 7062. In September 1993, the Advisory Committee voted to amend Rule 8002(c) to clarify that a motion for an extension of the time to file a notice of appeal must be "filed" -- rather than "made" -- within the ten-day period. In view of the Ninth Circuit's decision in In re Mouradick, 13 F.3d 326 (9th Cir. 1994), the Advisory Committee approved additional amendments at its September 1994 meeting designed to give a party that files a timely extension motion the benefit of an order granting the motion, regardless of when the extension motion is granted.

After the approval of the September 1994 amendments, the Committee asked the Reporter to compile an appropriate list of orders with respect to which the time to appeal may not be extended at all. In compiling the list the Reporter considered the orders listed in Rule 7062 as exceptions to Civil Rule 62's ten-day automatic stay of enforcement or execution with respect to a judgment. As a result, he proposed amending both Rule 8002(c) and Rule 7062.

Judge Kressel suggested transposing the numbers "1325" and "1225" in lines 19 and 20 on page 8 and in lines 15 and 16 on page 10. **The Advisory Committee agreed to make the correction. The Advisory Committee agreed to substitute "change the effect of" or similar language for "overrule" in the second sentence of the Committee Note to Rule 8002(c) on page 9.** Judge Restani suggested inserting "the automatic stay under" after "to" in line 2 on page 10. **The Advisory Committee agreed.** Mr. Sommer suggested substituting "may" for "must" in line 36 on page 8. **The Advisory Committee**

agreed.

Mr. Smith asked if the court has the ability to make an order effective immediately even if the order otherwise would be stayed for ten days. The Reporter said he believes the phrase "unless the court otherwise directs" in Rule 9014 authorizes the court to waive the application of Rule 7062 in a contested matter. Mr. Smith said Rule 7062 should give the court explicit discretion to except other orders from the ten-day stay, as Civil Rule 62 does. Mr. Klee said the parties should have an opportunity to get a stay pending appeal, even if an order is effective immediately, in order to preserve the constitutional right to consideration by an Article III judge.

Judge Kressel said Civil Rule 62 does not make sense in the bankruptcy context, which causes many of the problems with the bankruptcy rule. Professor Tabb said there should be a separate stay rule for contested matters. Mr. Klee said Rule 7062 should be published for comment as drafted while the Long Range Planning Subcommittee considers rationalizing Rules 9014 and 7062.

Mr. Klee moved to approve the proposed amendment to Rule 8002(c) with the changes made during the discussion. **The motion was approved unanimously.** Mr. Klee moved to approve the proposed amendment to Rule 7062 with the addition of a subsection (f) which states "any other order as the court may direct." **The Advisory Committee approved the motion by a 7-4 vote.**

Rule 2002. Attorney General Janet Reno proposed an amendment to Rule 2002(j)(4) in order to provide more effective notice to the United States. (Copies of her letter were distributed separately.) The proposed amendment, which is fashioned after local rules in several districts, was modified after a series of conversations between Mr. Kohn and the Reporter. The revised proposal would require that the notice to the United States attorney identify the agency through which the debtor became indebted and that the notice to the federal agency be addressed as the United States attorney directs in a filed request. Mr. Kohn said bankruptcy notices sent to the United States attorney often are ignored because there is no practical way to identify the agency and that notices sent to a federal agency often go to the address where the debtor makes payments.

Mr. Klee said he is sympathetic to the government's problem but that the proposed amendment goes to the heart of the bankruptcy process and puts the burden on the debtor to apprise the creditor of the nature of its claim. He said the debtor ought to be required to make a good faith effort to identify the agency, if it knows the name, but that the debtor should not risk losing its discharge. Mr. Smith said the emphasis should be on effective notice, not perceived due process questions. He stated that the government is a major creditor and millions of dollars are at stake. Mr. Smith said the proposed amendment is good for the debtor because compliance with the proposal is fairly easy and compliance should avoid challenges to the discharge.

Mr. Klee said the Congress wrestled with the issue of effective notice to creditors in considering the Bankruptcy Reform Act of 1994. The lawmakers compromised by requiring the debtor's Social Security number or taxpayer ID (instead of the debtor's account number) but excluding challenges to the discharge. The Reporter stated that the 1994 amendments gave the government 180 days to file a claim, which should be enough time to get the notice to the right place. Mr. Kohn said it is better to get the notice on the first day.

Mr. Klee suggested inserting "to the mailing address" after "addressed" on line 5 on page 5 to avoid any implication that the United States attorney could require the use of an account number. **The Advisory Committee agreed. A motion to approve the proposed amendment failed. The Chairman asked Mr. Kohn to revisit the matter and consider preparing another draft for the next meeting.**

The Chairman suggested that the Department of Justice consider preparing a national register of addresses to be used for bankruptcy notices to government agencies. Mr. Kohn said that would be very difficult because federal agencies' procedures for handling bankruptcy notices vary from district to district and agency to agency. Several committee members expressed sentiment for the development of local federal agency address registers similar to the ones which have been published as addendums to some local rules. Mr. Klee suggested requiring the sender to designate the agency only if known to the sender. The Advisory Committee discussed whether the sender or the debtor should be responsible for making sure the right address is used. Mr. Heltzel said the deputy clerk putting the creditor addresses into the court's computer system should not be required to recognize that a government agency's address needs to be changed.

Rule 6007(a). The Attorney General also requested in her letter that Rule 6007(a) be amended to require notice to the Environmental Protection Agency (EPA) of any proposed abandonment or disposition of estate property with respect to which there may be claims or obligations under statutes or regulations administered by the EPA. After a series of discussions between Mr. Kohn and the Reporter, the proposal was limited to the abandonment of nonresidential real property and the abandonment of hazardous substances and hazardous waste and broadened to include notice to state environmental agencies.

The Reporter stated that it may be difficult for trustees to comply with the proposed notice requirement because the referenced statutory definition of hazardous substances contains cross-references to a number of other environmental statutes. Several committee members questioned the meaning of the phrase "to which there is or may be a claim or cleanup obligation under any law administered by the United States Environmental Protection Agency or a state environmental unit" on lines 14 - 16 on pages 9 - 10.

The Reporter said it might be better to require notice to the EPA of any abandonment of nonresidential real property. Judge Restani stated that requiring notice of every abandonment effectively would be no notice at all. Mr. Klee stated that he favors the current requirement, which is limited to known claims or cleanup obligations. **The Chairman asked Mr. Kohn to revise the proposed amendment so that the notice requirement in subsection (a)(2) is limited to known claims.**

Rule 9006(b)(1). In In re Village Green Associates, No. AZ-94-1232-ZRH, slip op. (Bankr. 9th Cir. August 8, 1994), the Bankruptcy Appellate Panel of the Ninth Circuit found several ambiguities in Rule 9006(b)(1). The Reporter stated that the issues raised by the decision can be analyzed by considering two questions: 1) Should a court have the discretion to act, in the absence of a request, to extend a chapter 11 claims bar date or another deadline before the time period expires? and 2) Should a court have the discretion to act sua sponte -- for cause but without finding excusable neglect -- to extend a chapter 11 claims bar date or another deadline for all parties after the time period has expired? The Reporter stated that the rule could be revised to specify that the court has no discretion to extend the deadline after the time has expired absent a motion and a showing of excusable neglect, or to specify that the court can

extend the deadline for everyone for cause.

Professor Tabb moved to adopt the second, more liberal alternative. The motion was amended to require an initial vote on whether to amend the rule at all. Judge Meyers stated that Village Green Associates was an unpublished decision. **With one dissent, the Advisory Committee voted against making any changes in the rule.**

Rule 2014. Harvey R. Miller, of the law firm of Weil, Gotshal & Manges in New York, requested that the Advisory Committee study Rule 2014(a) and consider appropriate amendments to clarify the duty to disclose. The Reporter stated that, in response to a resolution adopted by the House of Delegates of the American Bar Association (ABA), the Advisory Committee considered Rule 2014 at its meeting in March 1992 and decided not to amend the rule. The Chairman said he put the matter on the agenda for the purpose of deciding whether to revisit it. The Reporter said he believes there are two issues: 1) Whether the rule can be clarified by being more specific and detailed in setting forth the facts that must be disclosed and 2) The application of the rule to large cases in which strict compliance is difficult or impossible.

Mr. Smith stated that he was responsible for the ABA resolution and that it was not intended to reduce disclosure. He said the rule should give bankruptcy attorneys who practice around the country guidance as to what types of connections they should disclose. Mr. Rosen stated that the rule does not address supplementation, which causes problems in large cases in which the parties change as the result of claims trading.

Judge Meyers agreed with the comments but expressed concern that it would appear that the Advisory Committee is intervening to give an attorney solace. Mr. Rosen said that the decision in In re Leslie Fay, No. 93-B-41724(TLB), slip op. (Bankr. SDNY December 15, 1994), which prompted Mr. Miller's letter, has been settled and there are no pending appeals. Judge Batchelder expressed concern that claims trading could be used as a means of disqualifying competent counsel and said the letter heightened existing concerns about the rule. **The Advisory Committee unanimously approved a motion to revisit the matter. The Chairman appointed Mr. Smith to head a Rule 2014 subcommittee. Mr. Smith may select the other members of the subcommittee.**

SUBCOMMITTEES

Local Rules. Ms. Channon distributed her memorandum on the 12 letters commenting on the proposed uniform numbering system for local rules. She said the Advisory Committee also received one oral comment from a former committee member. Ms. Channon said the comments were generally either favorable or favorable with qualifications or suggestions for modification. Two persons were opposed to both the proposed system and the entire idea of uniform numbering.

Ms. Channon said the Local Rules Subcommittee had decided that the subdivisions of the national rules should not be carried over into the uniform numbers, that the use of the prescribed titles should be mandated for the uniform numbers, and that the

uniform numbers should not have the exact same titles as the national rules.

Professor Tabb suggesting putting all miscellaneous matters in the 9000 series numbers unless there is an exact match with a national rule. Mr. Sommer said it is more logical to assign these rules to related national rules. Mr. Klee said there appears to be little impetus for completely restructuring the national rules and, therefore, the Advisory Committee should go forward with uniform numbers based on the current national rules.

Judge Leavy suggested that a list be published of the uniform numbers for all local rules, rather than requiring the districts to reorganize their rules according to the national numbers. Mr. Rosen said the problem in implementing the uniform numbers is that one local rule may relate to several national rules. Mr. Heltzel said that it would require a tremendous amount of work for each district to revise its local rules. He suggested compiling a database of local rules and making it available in a scannable format.

Judge Batchelder said the issue is no longer whether to require uniform local rule numbers but what is the best uniform number system. She said the question is what is the most expeditious, most efficient, and least objectionable system. Judge Meyers suggested that the districts be authorized either to use the uniform numbers or to add references to the uniform numbers to their existing rules. Professor Tabb moved to adopt the proposed uniform numbers set out in the attachment to Director Mecham's memorandum of November 22, 1994, except that references to subdivisions of the national rules are to be deleted and cross-references are to be included. **The motion carried with one dissenting vote.**

Long Range Planning. Judge Stotler led a discussion of the report prepared by the Long Range Planning Subcommittee of the Standing Committee. The committee members agreed that a five-year term for the chair of an Advisory Committee is desirable in order to oversee the lengthy rule-making process and preserve an institutional memory. There was no agreement on whether committee members should be eligible for appointment to a third term or whether the terms should be for two, three or four years.

At the request of the Advisory Committee, the Federal Judicial Center conducted a survey concerning the scope, format, and organization of the bankruptcy rules. A memorandum setting out the survey questions and a tabulation of the initial responses was distributed at the meeting.

Mr. Klee said the survey has not been completed but that some trends are apparent. He said that, although there is no ground swell of sentiment for a complete overhaul of the rules, there is support for improving the rules related to motion practice and the interaction between the 7000 series rules and the 9000 series. Ms. Wiggins stated that the survey indicated there is room for improving a number of rules. Mr. Klee said interest was expressed for developing ethical standards for practicing before the bankruptcy courts. The Reporter stated that the Standing Committee's reporter is tackling the issue as it relates to all federal courts.

Technology. **The Chairman assigned Mr. Heltzel, Mr. Klee, and Mr. Sommer to the Technology Subcommittee and designated Mr. Heltzel as chairman.** The Chairman stated that he will ask Judge James Barta, a former member of the Advisory Committee and the former chairman of the subcommittee, to serve as a consultant. Professor Tabb stated that the American Bankruptcy Law Journal will publish a

symposium issue on the bankruptcy rules, including a section on automation.

Civil Rules Liaison. Judge Restani stated that the Advisory Committee on Civil Rules met in Philadelphia with a number of experts to consider the need for revising Fed. R. Civ. P. 23, Class Actions. She stated that, although the rule does not work well in mass tort cases, there was little sentiment among the experts for a major overhaul of the rule. She said the Civil Committee will continue its exploration of the rule at a seminar at New York University in April.

Alternative Dispute Resolution. With the help of Ralph Mabey, a former member of the Advisory Committee, the subcommittee has conducted a national survey on local Alternative Dispute Resolution (ADR) programs in the bankruptcy courts. Professor Tabb promised to distribute copies of an article on the survey to committee members.

He stated that the ADR Subcommittee will meet at 3 p.m. on May 24, 1995, to consider drafting an ADR proposal for the September meeting. The meeting will be held at a hotel in the vicinity of O'Hare International Airport. Professor Tabb asked that any committee member interested in ADR contact him or another subcommittee member before the May meeting. Several committee members expressed their opposition to mandatory arbitration or mandatory mediation.

Forms. Mr. Sommer said the Forms Subcommittee has almost completed its revision of a number of forms and hopes to present the new, revamped forms at the September meeting. He said the Forms Subcommittee will meet at 10 a.m. on May 25, 1995, at a hotel in the vicinity of O'Hare International Airport.

UPCOMING MEETINGS

The Chairman announced that the next meeting will be in Portland, Oregon, on September 7 - 8, 1995. He suggested that the winter - spring meeting for 1996 be held in the eastern part of the country. The Reporter suggested March 21 - 22 or March 28 - 29, 1996, as possible meeting dates. The committee members agreed to inform Ms. Channon of their schedule conflicts for those dates within one week.

Respectfully submitted,

James H. Wannamaker, III

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