ADVISORY COMMITTEE ON BANKRUPTCY RULES

Meeting of September 7-8, 1995

Portland, Oregon

Minutes

The Advisory Committee met at the Portland Marriott Hotel. The following members were present:

Bankruptcy Judge Paul Mannes, Chairman

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

Professor Charles J. Tabb

R. Neal Batson, Esquire

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 Alan N. Resnick, Reporter

Circuit Judge Alice M. Batchelder was unable to attend. District Judge Thomas S. Ellis, III, liaison to the Committee from the Committee on Rules of Practice and Procedure, also was unable to attend.

District Judge Alicemarie H. Stotler, chair of the Committee on Rules of Practice and Procedure ("Standing Committee"), attended the meeting. Peter G. McCabe, Assistant Director of the Administrative Office of the United States Courts ("Administrative Office") and Secretary to the Standing Committee, also attended.

The following additional persons attended all or part of the meeting: District Judge Paul A. Magnuson, Chair, Committee on the Administration of the Bankruptcy System; Kevyn Orr, Deputy Director, Executive Office for United States Trustees; Richard G. Heltzel, Clerk, United States Bankruptcy Court for the Eastern District of California; Patricia S. Channon, 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 are 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 Items

The Committee approved the minutes of the March 1995 meeting subject to correction on page 24 of the title of the periodical mentioned there to "American Bankruptcy Law Journal."

The Chairman and the Reporter briefed the Committee on actions taken at the July 1995 meeting of the Standing Committee. Both the preliminary drafts and the final drafts of proposed amendments to the bankruptcy rules were approved. With respect to the amendments to Rule 5005 concerning electronic filing, the Standing Committee approved use of the word "document" in the bankruptcy rule, as requested by the Committee, even though the other advisory committees are using the word "paper." The Committee preferred the broader "document" in recognition that some material filed electronically may never exist in paper form and to clarify that such material will be available for public access under § 107 of the Bankruptcy Code.

Another matter discussed at the Standing Committee meeting was the appropriate title for Committee Notes. A question had arisen concerning whether these should be titled Advisory Committee Notes, or

whether they should be considered Standing Committee Notes, because the Advisory Committees report to the Standing Committee, which can approve or not approve any Committee Note. The Reporter stated that these notes presently are titled Committee Notes, but some publishers re-title them as Advisory Committee Notes. Professor Resnick also said that the Supreme Court orders prescribing rules do not include the Committee Notes. Judge Stotler said that she is not very concerned about nomenclature, but believes that if the Standing Committee changes a rule, the Committee Note should go back to the Advisory Committee for any rewriting. Professor Resnick, however, raised the point that there may not be sufficient time to do that if the Standing Committee changes the rule after the public comment period. Rather, the rule must be forwarded almost immediately to the Judicial Conference. Judge Stotler said she would like to establish as a standard procedure: 1) rewrite of the Committee Note by the Chairman and Reporter of the Advisory Committee, 2) fax of revised Committee Note to the Advisory Committee members for their approval, and 3) fax of approved rewrite to the Standing Committee. There was no objection to the proposed procedure.

In connection with the Standing Committee's recent Self- Study, Judge Stotler distributed to the Committee copies of an issues summary questionnaire and invited the members to use it to evaluate the recommendations. The Committee also discussed several of the recommendations.

Several members expressed reservations about any recommendation that, in the name of supporting diversity in committee membership, would seem to be advising the Chief Justice on how appointments should be made. Several members noted that the Chief Justice already appears to be appointing people of diverse characteristics and backgrounds, and the consensus was that the recommendation is both unnecessary and inappropriate.

The Committee discussed at length the circulation of materials among the members by the Reporter and by the Rules Committee Support Office. Mr. McCabe mentioned that the rules office soon may have the capacity to receive suggestions from the public by e-mail. The Reporter stated that, if suggestions were to be accepted in this form and a large volume of messages are received, reporters may need to be authorized to exercise some discretion concerning them. A reporter currently has to address every letter received, he said, and to require a reporter to draft a full memorandum and response to every suggestion received by e-mail might be unduly burdensome, depending on the number of messages received.

Several methods of screening and prioritizing suggestions were discussed, with a view toward enabling a committee to better control the use of its reporter's energies and the limited time for meetings. These included circulating suggestions tentatively, with two or three "for" votes needed to bring a suggestion to the agenda for a meeting, having a "miscellaneous day" every other year, and increased telephone and facsimile communication among the members between meetings, so that meeting time can be spent on matters of strategy and substance.

Judge Stotler said she thought the current procedural rules of the rules committees would permit the Committee to adopt any of these strategies. Mr. Klee cautioned that the Committee needs to be careful, in any procedure it adopts, not to violate any applicable open meeting rule. The Reporter observed that the use of subcommittees has worked very well for the Committee, enabling it to use its meeting time well. In closing, he stressed that sometimes a suggestion that is non-meritorious in itself can lead the Committee to a needy area.

Rules

Uniform Local Rule Numbering, Rule 9029. At the March 1995 meeting, the Committee approved a uniform local rule numbering system subject to certain modifications to be implemented, including the addition of cross-references. Ms. Channon and Professor Resnick explained that the Committee's intentions regarding the modifications had been unclear. That was the reason for returning the proposed numbering system, with all modifications in place, to the Committee for further approval. The proposal as resubmitted also contained further improvements suggested by the subcommittee on local rules. The Committee discussed what the policy should be when a district promulgates a new rule or cannot fit one of its existing rules into the prescribed numbering system. Ms. Channon stated that such problems likely would be rare because the system was derived from analysis of all existing local rules. If the situation were to arise, the attorneys in the Bankruptcy Judges Division of the Administrative Office, all of whom are familiar with the numbering system, would be available to assist a district in assigning a uniform number. Professor Tabb suggested adding a "catchall" number such as 9999-1 for those few rules that do not fit any existing topic. The Committee requested that the subcommittee add to the draft of the memorandum that will accompany the numbering system explicit instructions to the districts concerning rules that do not seem to fit and stating that a district is welcome to add any further cross-references it deems helpful within the numbering system. **A motion to approve the uniform local rule numbering system, to include in it the material (bracketed in the draft) directing use of the topic names as well as the numbers, to recommend that the alphabetical list of topics accompany the numbering system, to recommend that districts be given at least one year to convert their rules to the system, to designate the Bankruptcy Judges Division to provide technical support and advice during the conversion process, and to authorize the subcommittee to make minor changes to the system as may be necessary carried by a vote of 11 - 2.**

Rule 7062. The Reporter recited the background, including the potential for undesirable unintended consequences if the amendments approved in March 1995 were to become the rule, and the problems that Rule 7062 presents with respect to contested matters and confirmation orders. Some members noted that Rule 62, Fed.R.Civ.P., stays only execution and proceedings to enforce a judgment and suggested that application of Rule 7062 to contested matters was largely harmless, because "execution" rarely would occur in a contested matter. As an alternative to the amendments originally proposed, Judge Kressel had suggested limiting Rule 7062 to adversary proceedings by amending Rule 9014 to delete mention of Rule 7062. Mr. Klee, however, said he still was troubled by the fact that Rule 7001 requires an adversary proceeding for obtaining "equitable relief," even though confirmation orders often grant equitable relief without an adversary proceeding. Mr. Batson said the growing list of exceptions in Rule 7062 and proposals to add more arise from the perceived need to move things along in a bankruptcy case and the difficulty of obtaining a stay. Chairman Mannes said he thought there was a consensus that Rule 7062 ought to be pared down, although the specifics of how to accomplish that and address both the issue of the effective date of orders and the preservation of appellate rights were not clear. He stated his intention to appoint a subcommittee to work out proposals for the Committee's consideration. Judge Restani asked whether there was consensus on shifting the burden to create a 10-day stay of the effectiveness of all orders. Judge Robreno asked whether imposing such a stay would take away discretion which a judge now has: an order is effective upon docketing, although not enforceable for ten days, but a judge can always provide for a stay of effect. Staying the effectiveness of all orders would affect injunctions also, he added. A non-binding vote disclosed three members in favor of orders being effective immediately (as a default) and seven in favor of delayed effect (as a default). **Judge Mannes appointed Judge Kressel to serve as chair of a subcommittee to work on these issues with Mr. Batson, Mr. Smith, Mr. Kohn, Mr. Sommer, and Mr. Klee to serve as members.**

Rule 3010. The Reporter said his memorandum on the suggestion to amend this rule needed correcting in one respect. The memorandum states that unclaimed money in a bankruptcy case escheats to the government after five years. In fact, although the money is paid into the United States Treasury, it never escheats because it remains subject to claim by the owner. The legislative history to section 347 of the Code, however, erroneously states that escheat occurs.

Mr. Klee stated that he previously had suggested providing for a minimum amount of a distribution check in a chapter 11 case, as the present rule covers only cases under chapters 7 and 13. At that time, the Committee had requested him to reserve his suggestion until other amendments to the rule were being considered. He asked that, if any of the suggested changes were approved, his proposal concerning chapter 11 cases also be considered.

The suggestion to raise from $5 to $30 the minimum amount for which a chapter 7 trustee must write a distribution check to a creditor was made by the Bankruptcy Judges Advisory Committee, but there was no documentation concerning the assertions that it costs more than $5 to issue the check and that creditors do not want to receive such small amounts. Mr. Orr said the cost of issuing a check varies greatly and depends on the efficiency of the individual trustee. Mr. Heltzel stated that while raising the amount might lessen the work of a trustee, it would create more work for the clerk, who would spend much more time than at present processing requests from creditors who want their money.

A motion not to amend the rule carried, 11 - 0.

A similar suggestion to raise the minimum amount of a check to be issued by a standing chapter 13 trustee from $15 to $45 failed for want of a motion. Some members noted that a chapter 13 trustee issues monthly checks, and that the rule provides for amounts due a creditor to accrue until the minimum is satisfied.

Rule 3015(f). The Bankruptcy Judges Advisory Committee also suggested that Rule 3015(f) establish a deadline of two days prior to the hearing on confirmation of a chapter 13 plan for filing an objection to confirmation. Presently, the rule simply requires that an objection be filed "before confirmation," and the Reporter stated that it is intended to afford the greatest flexibility to the districts. Some districts hold confirmation hearings on the same day as a chapter 13 debtor's § 341 meeting, and the two days recommended by the judges would -- in those districts --deprive creditors of the opportunity to examine the debtor prior to the deadline for filing an objection. Professor Resnick said nothing in the rule prevents a court from setting a reasonable deadline. **A motion to take no action carried by a vote of 11-0.**

Rule 9014. The Bankruptcy Judges Advisory Committee suggested that Rule 9014 should be amended to make Rule 7005 applicable in contested matters. The purpose would be to permit service of pleadings filed subsequent to the motion to be served on the party's attorney rather than on the party. **The Committee referred this suggestion to its subcommittee on long range planning, which is working on a comprehensive proposal for rules governing motion practice in bankruptcy.**

Rule 3017(d). Mr. Klee had suggested that the rule be amended to authorize the court, in its discretion, to order that ballots and copies of the plan and disclosure statement not be mailed to an impaired class of creditors. Mr. Klee had stated that this would allow a plan proponent who intended to "go straight to cramdown" to save expenses. Mr. Klee had noted further that certain creditors which the plan proponent

formerly could have treated as unimpaired --- and thereby avoided providing them with voting materials --- no longer are considered unimpaired since enactment of the 1994 amendments to the Code. The Reporter stated the background of the proposal and said there appeared to be a question whether the proposal would conflict with a creditor's right under section 1126(a) of the Code to "accept or reject a plan." After discussion, **a motion to take no action carried by a vote of 7 - 3.**

Rule 3002. Mr. Sommer had suggested that the rule be amended to require a creditor filing a late claim to serve copies on the debtor and the trustee. The suggestion was discussed at the March 1995 meeting but not resolved. Subsequently, two attorneys had written separately to suggest that a creditor be required to serve a copy of any claim on the debtor and debtor's attorney, regardless of whether the claim were timely or tardily filed, and further suggesting that failure to make service be grounds for disallowance. The Reporter stated that, although there should be some consequence for failing to meet a requirement of a rule, establishing disallowance as a penalty probably would violate the Rules Enabling Act by altering a substantive right created by the Bankruptcy Code. **A motion to take no action carried 9 - 2.**

Rules 1019(1)(B), 2003(d), 4004(b), 4007(c), and 4007(d). These rules currently provide that a party may obtain relief by a motion "made" before the specified deadline. Professor Tabb had suggested that the word "made" should be changed to "filed" throughout the rules. After analyzing the rules in question, the Reporter said he had drafted amendments making the suggested change in four rules that specify a deadline and in which it appeared that the motion typically would be made in writing. In Rule 1019(1)(B), however, where the subject matter suggested that the motion often might be made orally, the Reporter had drafted an amendment providing for either an oral motion or a written motion filed before the deadline. Although there are other rules in which the word "made" is used in connection with a motion, no amendments were proposed because the provision in which "made" is used does not relate to a time limit. The Reporter's draft also included stylistic changes and conformed Rule 2003(d) to proposed amendments to Rule 2007.1 on election of a chapter 11 trustee. **A motion to adopt the Reporter's drafts carried by a vote of 11 - 2.** A member inquired why the draft of proposed amendments to Rule 2003(d) used the phrase "the presiding officer" on line 12, rather than the "United States trustee" consistently throughout. The Reporter said that "United States trustee" should be used for consistency and the consensus of the Committee was to substitute "United States trustee" for "presiding officer" in line 12.

Rule 3008. Professor Lawrence P. King had suggested amending the rule to state explicitly that the court may deny a motion to reconsider the allowance or disallowance of a claim without notice and a hearing. Professor King had said an amendment would clarify the original intent that notice and a hearing are required only if the motion to reconsider is granted and the judge plans to consider the merits of the allowance or disallowance. **A motion to take no action carried 7 - 3.**

Rule 1003. Bankruptcy Judge S. Martin Teel, Jr., had suggested amendments to the rule to address the situation when three creditors have filed the petition, but the debtor avers that the claim of one or more of them is disputed or contingent. Judge Teel also suggested that a debtor averring the existence of 12 or more creditors be required to state on the list of creditors whether any of their claims are contingent or disputed. **A motion to take no action carried by a vote of 8 - 2.**

Rule 2004(c). Bankruptcy Judge Charles E. Matheson had suggested that Rule 2004 be amended, because he thinks it is not clear in the current rule whether a court can order the examination of a

nondebtor to be held outside the judicial district of the court issuing the order (or more than 100 miles from where the court sits). The Reporter said he did not agree that the rule is unclear on that point, but had discovered a mismatch between Rule 2004(c) and Federal Rule of Civil Procedure 45 concerning the issuance of a subpoena for the examination. (Fed. R. Civ. P. 45 is applicable through Rule 9016, which governs issuance of a subpoena in a bankruptcy proceeding.) Professor Resnick had drafted proposed amendments covering both matters. After discussion, the Committee altered the final sentence of the proposed draft to more closely track Fed. R. Civ. P. 45(a) concerning who can issue a subpoena and to make it clear that an attorney who is admitted either in the district in which the examaination is to take place or in the district where the case is pending can issue the subpoena in the name of the court for the district in which the examination is to take place. **A motion to accept the Reporter's draft amendments to Rule 2004(c) as altered by the Committee carried, 7 - 4.** The Committee then discussed also adding to Rule 2004(a) language stating that an order for an examination may be issued "after notice and a hearing." A poll of the judges on the Committee disclosed that some judges routinely handle motions for Rule 2004 examinations ex parte while others do not. Some members said the examination should be available upon notice issued in the same manner as a subpoena with no prior court order. **A motion to table and refer Rule 2004(a) to the Reporter for further study, drafting of alternative proposals, and reconsideration at the next meeting, carried by a vote of 11 - 2.**

Rules 2002(a) and (f). The Reporter stated that an attorney had requested amendments to the rules that would add to the information required in the combined notice of the commencement of the case and the meeting of creditors. Specifically, the notice would have to inform the creditor of the amount the debtor alleges is owed to the creditor, the account number by which the debtor is known to the creditor, whether the debtor asserts that the debt is contingent, disputed, or unliquidated, and the presence of any codebtor, guarantor, etc. Mr. Heltzel said it is impossible for the clerk, who prepares the notice for printing and mailing, to customize it separately for each creditor in each case. The Reporter noted that Congress recently had considered a statutory amendment that resembled the suggestion concerning account numbers. Ultimately, because of the practical inability of clerks' offices to comply, Congress enacted a provision requiring the account number only on notices actually sent by the debtor and providing expressly that failure to include the information does not invalidate any notice. **A motion to take no action carried 12 - 1.** After the vote, Mr. Smith stated that the technology exists to provide this information when the noticing function has been delegated to the debtor, as often occurs in large chapter 11 cases. The debtor, who creates the schedules, can transfer the data to the materials to be mailed, he said. The clerk, however, does not have the same capability. The consensus was that the Committee supports the goal of providing each creditor with the best and most complete notice possible, will continue to monitor advances in technology, and will continue to propose amendments to maximize the benefits offered by these advances when it considers such action to be appropriate.

Preliminary Discussion Items

Bankruptcy Judge Steven W. Rhodes had written a letter recommending to the Committee his court's local rule on motion procedure, his article on statutory (and rules-related) causes of delay and expense in bankruptcy cases, and suggesting that his court's local rule imposing a 90-day deadline for filing proofs of claim in chapter 11 cases be adopted as a national rule. **The Committee rejected the suggestion for a deadline for filing a proof of claim in a chapter 11 case and referred the materials on motion practice and Judge Rhodes' article to the newly-appointed subcommittee on litigation.** (See, Subcommittee Reports, Long Range Planning, infra.)

District Judge Paul Magnuson, chairman of the Committee on the Administration of the Bankruptcy

System ("Bankruptcy Committee), had referred to the Committee three suggestions

that arose from the Bankruptcy Committee's long range planning project. **The Committee rejected the suggestion that there be authorization to appoint a special master in a bankruptcy proceeding.** The 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.

The second suggestion, that there be a separate procedure for handling "small claims" in a bankruptcy case, was very similar to one contained in a letter from Peter H. Arkison, Esquire. The consensus was that existing creditor rights might be adversely affected by a streamlined "small claims" procedure. As the bankruptcy rules cannot modify substantive rights of the parties, the Committee determined that legislative amendments would be required. Accordingly, **the Committee rejected this suggestion also.**

The third suggestion was that bankruptcy judges "be encouraged" to appoint experts to review applications for compensation filed by professionals. The consensus was that use of experts for this purpose is a good idea, and that authority to implement it already exists in Rule 706 of the Federal Rules of Evidence. Accordingly, **the Committee rejected the suggestion to amend the bankruptcy rules.**

Two suggestions had been referred to the Committee as part of the judiciary's efforts to cut the cost of operating the court system. One suggestion was that Rule 2013 be abrogated. Ms. Channon stated, however, that the reporting and compilation of professional fees awarded by the court now is an automated operation. Accordingly, the cost of compliance with the rule is small; whereas the benefit to the court's integrity is great.

The Committee rejected the suggestion that Rule 2013 be abrogated.

The second suggestion was that Rule 2002 be amended to require the United States trustee either to provide notice to all creditors of the (motion and) hearing on dismissal for failure to file schedules and statements or to pay the clerk for providing notice. Ms. Channon suggested instead that the Committee consider amending Rule 1017 to limit to the debtor and the trustee the notice of a motion and hearing to dismiss on this ground. Rule 1017 already provides for limited notice of a motion to dismiss for failure to pay filing fees or for substantial abuse. The amendment could provide for the United States trustee to request that notice be sent to all creditors if the circumstances warrant, and creditors would continue to receive notice in the event the case actually were dismissed. **It was the sense of the Committee that such an amendment would be appropriate, and it directed the Reporter to prepare a draft for the next meeting.**

Subcommittee Reports

Long Range Planning. Mr. Klee gave a summary of the results of the Federal Judicial Center's survey to determine perceived problem areas in the rules. He requested that subcommittees be appointed to study and make specific recommendations in the two areas identified in the survey as creating problems --- litigation and attorney admissions and ethics. Ms. Wiggins suggested that the Committee might need a third subcommittee to evaluate the large number of specific and technical recommendations made by survey respondents.

Judge Mannes said that attorney admissions are a separate subject from the problem of ethics in a multilateral situation and that the district court already is guarding the admissions gate. **He said that the ethics issues should be studied by the existing subcommittee on attorney disclosure and Rule 2014, which is chaired by Mr. Smith.**

Professor Resnick said that the Reporter for the Standing Committee is organizing a symposium on ethics and admission issues to be held in conjunction with the January 1996 meeting of the Standing Committee. One of the issues to be examined, he said, is should the national rules deal with ethics? Judge Stotler said that the Standing Committee would do the first, seminal work, which might help the Committee steer its projects.

Mr. Smith said that his subcommittee already had reached a preliminary decision that drafting a code of ethics might be beyond the scope of its assignment and that such a project should at least be postponed because of the work being done in the area by others. He said he does see a need for national standards because bankruptcy practice is national. A further area for study, he said, is attempting to define "conflict," an issue the American Law Institute is working on in connection with a Restatement of the Law Governing Lawyers, which the ALI recently has published in a "final draft." This draft contains almost nothing on the bankruptcy aspects of this issue, an oversight he intends to call to the drafters' attention. Other projects that the subcommittee is undertaking relate directly to Rule 2014, he said. These are 1) studying the Reporter's 1992 memorandum concerning the American Bar Association's resolutions, 2) improving the language of both Rule 2014 and Rule 2016, particularly the word "connections," 3) developing guidance on disclosures and a form to serve as a model for making them, and 4) proposing a better procedure for appointing counsel in a case.

Judge Mannes directed the subcommittee to go forward and, at the same time, stay in touch with the related work of the Standing Committee and other groups. He appointed Judge Batchelder, Judge Cordova, Judge Kressel, and Mr. Rosen to join Mr. Klee as members of the subcommittee.

Judge Mannes also appointed Mr. Klee to chair a new litigation subcommittee to propose solutions to the litigation problems identified in the Federal Judicial Center survey. He appointed Judge Restani, Judge Kressel, Mr. Batson, Mr. Smith, and Mr. Sommer to serve as members.

Technology. Mr. Heltzel reported that the court system in Prince George's County, Maryland, is experimenting with a product developed by Arthur Andersen & Co. for electronic receipt, filing, and service of documents. The parties pay a transmission fee directly to Arthur Andersen.

Liaison with the Advisory Committee on Civil Rules. Judge Restani reported that the civil rules committee is continuing to work on Rule 23 and class actions. She said that there no longer seems to be the same interest in collapsing the categories of classes as appeared at the committee's April 1995 meeting. Interest now seems to focus on interlocutory appeal as of right on the issue of certification and a "probable success" test, she said. The committee members also seem to be questioning how useful class action is in a mass tort situation, whether class actions should be "reined in," and whether to permit settlement classes.

Alternative Dispute Resolution. Professor Tabb reported that the subcommittee had met in May 1995 to

discuss whether to recommend any of the proposals circulated in draft at the March 1995 committee meeting. The subcommittee had decided not to propose any amendments at this time, he said, in part because numerous ADR experiments are going on and extensive work on a model local rule is underway by a task force made up of representatives from many interested organizations. The subcommittee will continue to monitor activity and to consider whether any amendments to the national rules would be appropriate.

Style. Judge Duplantier reported that the subcommittee had gone over all the drafts that were submitted to the Standing Committee.

Official Bankruptcy Forms

Form 1. The Committee questioned whether the box labeled "Type of Debtor" on page 1 should mention "municipality" expressly, rather than leaving such an entity to identify itself in the "other" category, and whether the category labeled "Individual(s)" should be changed to "Individual/Joint." **The Committee requested Ms. Channon to check on the number of filings by municipalities and on the statistical treatment of joint debtors' cases.** On page 2, a member questioned the statement which an individual debtor is required to sign under penalty of perjury, because it lists chapter choices most debtors probably are not eligible to proceed under but says "I understand I may proceed under chapters 7, 11, 12, and 13 . . . ." The member suggested changing "may" to "might." The Reporter stated that the language on the form was enacted directly by Congress, and the question of changing it should be brought to the Bankruptcy Review Commission and thence to Congress. He also said Rule 9009 possibly could be construed to permit a departure from the statutorily prescribed wording if required for the context. Another member said the use of "or" in the sentence indicates that the list is disjunctive and provides a context that gives a meaning of "might," or conditionality, to the word "may." **A motion to approve the form for publication without changing the debtor's statement carried by a vote of 8 - 5.** In addition, the Committee **approved suggestions by Mr. Klee to change the wording of the request for relief by a corporation or partnership from "I request" to "The debtor requests" and to change the word "person" to "entity" in numbered paragraph 6 of Exhibit A to the petition.**

Form 3. **The Committee approved the proposed Application and Order to Pay Filing Fees in Installments with the substitution of "may" for "will" in numbered paragraph 5 of the application and the substitution of "may" for "shall" in the first sentence of the order.**

Form 6. **The Committee approved the proposed Schedule F with the further amendment of "non priority" to "nonpriority" in the label on the checkbox to be used if the debtor has no creditors holding such claims.**

Form 8. **The Committee approved the proposed Individual Debtor's Statement of Intention subject to deletion of the words "the debtor" in numbered paragraph 1, the substitution of "I intend to do the following" for "My intention" in numbered paragraph 3, and the deletion of numbered paragraph 3 of the draft.**

Form 9. The subcommittee's draft contained a notice to persons with disabilities, directing such persons to telephone the clerk's office for "reasonable accommodations." Mr. Heltzel requested guidance on

compliance with this notice. Several members stated that inclusion of the notice would be premature, because the judiciary is not covered by the Americans with Disabilities Act, the issue is an institutional one for the entire federal judiciary, and is now under study by another committee of the Judicial Conference. Another factor, said Mr. McCabe, is the recently enacted Congressional Accountability Act, which brings Congress under many laws including the ADA. The Act gives the judiciary two years to comment on what similar requirements should apply to the judiciary, and the Administrative Office is preparing a report for the Congress. **A motion to delete the disability notice from the proposed form carried, 6 - 4.** The chairman of the forms subcommittee, Mr. Sommer, suggested that the Committee could include in its publication of the forms a notice that the Committee is considering including such a notice on this and other forms and requesting comment, both on the content of the notice and on which forms should contain it. **A motion to include such a "notice of intent" in the publication of the forms carried, 6 - 5. A motion to include the notice but direct the public to contact the office of the United States trustee concerning any accommodations needed at a § 341 meeting failed by a vote of 4 - 8.** The Committee discussed whether the directive: "Do not file a proof of claim unless you receive a court notice to do so," which appears on the current notice in no asset cases, is appropriately worded. The directive was requested by the bankruptcy clerks who do not want to have to process claim forms that never will be used. **A motion to add the word "please" at the beginning of the directive carried, 6 - 4. There was consensus further that consistent terminology should be used throughout the eleven versions of the form, particularly with respect to "bankruptcy clerk" and "bankruptcy clerk's office." The Committee approved the form with the changes as voted.**

Form 10. **The Committee approved a number of changes to the proof of claim for publication and comment.** These included deleting "In re" and the parentheses around "Name of Debtor," deleting the direction to attach evidence of perfection of security interest from the checkbox labeled "SECURED CLAIM," and, in numbered paragraph 7 ("SUPPORTING DOCUMENTS"), substituting for "or evidence of security interests," the words "mortgages, security agreements, and evidence of perfection of lien." The Committee approved making it clearer that the specific priorities listed are subcategories of an unsecured priority claim by inserting a direction to specify the priority of the claim and attempting to improve the format of this part of the form. The Committee also approved clarifying that the tax priority is for taxes and penalties "owed to" a governmental unit. In numbered paragraph 5, the Committee rewrote the checkbox to read as follows: "Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges." In numbered paragraph 6, the Committee deleted the references to setoffs. Instead, the new instruction sheet will add the following sentence to the definition of secured claim: " In addition, to the extent a creditor owes money to the debtor, the creditor's claim is a secured claim." The Committee directed the forms subcommittee to make conforming changes throughout the instruction sheet. The Committee also changed "company" to "corporation" and revised other language to make the instruction sheet more general.

There was not enough time to complete work on the forms. Mr. Sommer suggested that Committee members send written comments to the subcommittee as soon as possible. He said the subcommittee would consider these and circulate a revised forms package.

Recognition of Judge Meyers

The chairman noted that this meeting marked the end of Judge Meyers' term as a member of the Committee and thanked him for his six years of conscientious service.

Next Meeting

The Committee selected September 26-27, 1996, as the dates for its next autumn meeting. (The Committee will meet March 21- 22, 1996, in Charleston, South Carolina.[1])

Respectfully submitted,

Patricia S. Channon

1. After the conclusion of the meeting, it was decided to move the March 1996 meeting to Memphis, TN.