ADVISORY COMMITTEE ON BANKRUPTCY RULES
Meeting of March 29 - 30, 2012
Phoenix, Arizona

(DRAFT MINUTES)

The following members attended the meeting:

Bankruptcy Judge Eugene R. Wedoff, Chair
Circuit Judge Sandra Segal Ikuta
Circuit Judge Adalberto Jordan
District Judge Karen Caldwell
District Judge Jean Hamilton
District Judge Robert James Jonker
Bankruptcy Judge Arthur I. Harris
Bankruptcy Judge Elizabeth L. Perris
Bankruptcy Judge Judith H. Wizmur
Professor Edward R. Morrison
Michael St. Patrick Baxter, Esquire
Richardo I. Kilpatrick, Esquire
J. Christopher Kohn, Esquire
David A. Lander, Esquire
John Rao, Esquire

The following persons also attended the meeting:

Professor S. Elizabeth Gibson, reporter
District Judge James A. Teilborg, liaison from the Committee on Rules of Practice and Procedure (Standing Committee)
District Judge Joan Humphrey Lefkow, liaison from the Committee on the Administration of the Bankruptcy System (Bankruptcy Committee)
Professor Daniel Coquillette, reporter of the Standing Committee
Peter G. McCabe, secretary of the Standing Committee
Patricia S. Ketchum, advisor to the Committee
Ramona D. Elliott, Deputy Director /General Counsel, Executive Office for U.S. Trustees (EOUST)
Lisa Tracy, Associate General Counsel, EOUST
James J. Waldron, Clerk, U.S. Bankruptcy Court for the District of New Jersey
Jonathan Rose, Rules Committee Support Officer, Administrative Office of the U.S. Courts (Administrative Office)
Benjamin Robinson, Administrative Office
James H. Wannamaker, Administrative Office
Scott Myers, Administrative Office
Molly Johnson, Federal Judicial Center (FJC)
Lauren Rosi, Senior Products Analyst, VISA

Raymond J. Obuchowski, Esq., on behalf of the National Association of Bankruptcy Trustees.

Professor Troy McKenzie, assistant reporter, was unable to attend the meeting.

Introductory Items

1. Greetings.

The Chair asked participants to introduce themselves, and he welcomed Ramona Elliott to her first meeting as the Committee's liaison from the Executive Office for U.S. Trustees. The Chair also congratulated Judge Jordon on his ascent to the appellate bench.

2. Approval of minutes of the Chicago meeting of September 26 – 27, 2011.

The Committee approved the Chicago minutes with several minor changes.

3. Oral reports on meetings of other committees.

(A) January 2012 meeting of the Committee on Rules of Practice and Procedure (the Standing Committee).

The Chair reported that the Standing Committee approved all of the Advisory Committee's recommendations. He noted that one topic of conversation was the terminology to use to convey the idea of electronic transmission in the context of the revised bankruptcy appellate rules projected for publication this fall. The Reporter added that a special committee drawn from all the advisory committees would consider the issue, and that Jim Waldron would represent this Committee on the project.

The Reporter also explained that in approving publication this fall of the Committee's proposed amendment to Rule 7054, the Standing Committee corrected a long-standing grammatical error in the first sentence of subsection (b) by changing the verb "provides" to "provide."

(B) January 2012 meeting of the Committee on the Administration of the Bankruptcy System.

Judge Perris attended the meeting on behalf of the Chair. She and Judge Lefkow said that cost containment and development of a policy for recall judges dominated the agenda. Judge Perris added that she was concerned during the technology discussion that access by external users to bankruptcy data under NextGen was being conflated with allowing people access to data about judicial decisions.

(C) November 2011 and March 2012 meetings of the Advisory Committee on Civil Rules.

Judge Harris said that proposed amendments to Rule 45 were approved for publication and that the Civil Rules Committee recommended final approval at its March 2012 meeting with some modifications in response to public comments. He noted the impact in bankruptcy of the Rule 45 change would be discussed at Agenda Item 8-D. He said the focus of much of the rest of the Civil Rules Committee meeting was on rule changes dealing with e-discovery and evidence preservation that came out of the mini-conference held at Duke University in the spring of 2011. He said e-discovery/preservation rule changes might be ready for publication in the summer of 2013.

(D) October 2011 meeting and upcoming April 2012 meeting of the Advisory Committee on Evidence.

Judge Wizmur said the restyled evidence rules went into effect last December, and that a number of rule changes are under consideration. She said the Evidence Committee is also working on the "privilege project" which will be a compendium of federal common law privileges.

(E) October 2011 meeting and upcoming April 2012 meeting of the Advisory Committee on Appellate Rules.

The Reporter said that there are two issues under consideration by the Appellate Rules Committee that affect bankruptcy appeals. A change to Appellate Rule 6, which deals with bankruptcy appeals, is on track to be published this summer. The timing is designed to coincide with the proposal at Agenda Item 9-A of this meeting that the Committee approve publication this summer of the revised Bankruptcy Part VIII rules.

The Reporter said that a proposed change to Appellate Rule 28(a)(6), requiring that an appellate brief combine into one section the statement of the case and the proposed facts was relevant to Part VIII revision because the bankruptcy version of the rule tracks the language of the appellate rule.

(F) Bankruptcy CM/ECF Working Group and the CM/ECF NextGen Project.

Judge Perris reported that NextGen has progressed to the point that the CM/ECF Working Group and CM/ECF NextGen are merging. NextGen will become CM/ECF, and the plan is to reuse as much of the existing CM/ECF code as possible. She said the roll out would be an iterative process and the first version, which would have limited new functionality, probably would not be operational until 2014.

Jim Waldron spoke about the bankruptcy *pro se* "Pathfinder" that was created to pilot some of the capabilities of NextGen. He explained that the Pathfinder was designed to facilitate electronic filing by unrepresented debtors. He said it was in the debugging process now, and that he expected it would go live in three courts (D-NJ, D-NM and CD-CA) in June 2012. Judge Perris added that the *pro se* Pathfinder works a little like TurboTax, and that the language for the input questions was derived from the new forms being worked on by the Forms Modernization Project (the FMP). She said that the work of the FMP would be discussed at Agenda Item 7-A, along with a recommendation to publish several FMP forms this fall.

Subcommittee Reports and Other Action Items

4. Report by the Subcommittee on Consumer Issues.

(A) Recommendation on comment received on published amendments to Rule 3007(a).

Judge Harris directed members to the Reporter's memo in the agenda materials for a summary of the reasons that the Advisory Committee published an amendment to Rule 3007(a) last fall that would allow for negative notice on claims objections. He said Subcommittee now recommends deferring action on the proposal for two reasons. First, there was one objection to the proposal that warranted further consideration. Second, the chapter 13 working group is considering multiple vehicles for objecting to claims, including handling the objections in plans. Judge Harris said that exercise requires developing a uniform service standard that would apply both to plans and claims objections outside a chapter 13 plan.

One member questioned whether a uniform negative notice procedure needed to be considered at the same time as objections made through a chapter 13 plan and suggested moving forward on the comment against the negative notice process published last fall. But other members favored considering all the issues at the same time, **and a motion to defer passed without objection.**

(B) Recommendation concerning Suggestion (11-BK-B) by Judge A. Benjamin Goldgar to amend Rule 3002(a) to require secured creditors to file proofs of claim.

Judge Harris said that the Consumer and Business Subcommittees have different recommendations about whether secured creditors in all chapters should be required to file proofs of claim. The Consumer Subcommittee favors such a requirement, but the Business Subcommittee had concerns about unintended consequences in chapter 11. Several Business Subcommittee members added they are reluctant to support a requirement to file secured claims in part because the current lack of such a requirement has not been an issue in chapter 11.

Judge Harris said that in light of the opposition by some members, the Consumer Subcommittee recommends deferring the issue for this meeting while it considers potential changes to the time limits in chapters 12 and 13. He said the Subcommittee requested guidance, however, on whether the proposal should apply just in chapters 12 and 13, or in all chapters.

Judge Wizmur repeated the general concern of unintended consequences in chapter 11, and Mr. Kohn said one example was a concern about unnecessarily submitting to the bankruptcy court's jurisdiction by filing a proof of claim, even when the claimant is not disputing the debtor's admission of debt as reported on the schedules. He said the proposed process would impose an unnecessary procedure when claims are uncontested.

Mr. Baxter did not oppose further consideration by the Consumer Subcommittee, but he said that there is no current problem in chapter 11. He agreed that creditors sometimes choose not to file a proof of claim in chapter 11 to avoid submitting themselves to the Bankruptcy Court's jurisdiction. But, Mr. Rao questioned whether imposing a claims filing date in chapter 11 would affect jurisdiction. If the creditor does not dispute the amount the debtor lists on the schedules, there is no need to file a claim. But if there is a dispute and the creditor wants the court to resolve it, a claim will have to be filed, and the proposal just provides a deadline in those situations.

One member wondered if a claim secured by the right of set-off might be affected by a mandatory filing deadline, and another member said a negative implication might arise if there is a requirement to file secured claims in chapter 13 but not other chapters.

After further discussion, members agreed that more study is needed, and **a motion to defer consideration until the proposed chapter 13 plan and rules are ready for consideration passed without objection.**

(C) Recommendation concerning Suggestion (10-BK-H) by chapter 13 trustee Debra L. Miller to amend Rule 3002 to provide a deadline for filing deficiency claims resulting from the sale of collateral.

For the reasons set forth in the Assistant Reporter's memo in the agenda materials, the Subcommittee concluded that the proposed amendment is unnecessary. **Accordingly, the Committee took no further action.**

(D) Recommendation concerning technical amendments to Rule 4004(c)(1) to clarify the introductory language and to conform to the simultaneous amendment of Rule 1007(b)(7).

Judge Harris explained that the proposed changes to Rule 4004(c)(1) were meant to conform the rule to pending changes to Rule 1007(b)(7) that are scheduled to take effect December 1, 2013. **The Committee approved the technical amendments to Rule 4004(c)(1) described in the Reporter's memo in the agenda materials, subject to restyling, effective December 1, 2013.** Because the changes would merely conform the rule to pending changes to Rule 1007(b)(7), the Committee concluded that publication is not necessary.

5. Joint Report by the Subcommittees on Consumer Issues and Forms.

(A) Recommendation concerning comments received on published amendments to Official Form 6C. *Memo at Tab A5(A) of the Addendum to the agenda materials.*

Judge Harris said that the proposed amendment to Official Form 6C proved controversial. The amendment, intended to reflect the Supreme Court's decision in *Schwab v. Reilly*, 130 S. Ct. 2652 (2010), would have added a checkbox to the form that would allow debtors to state the value of a claimed exemption as the "full fair market value of the exempted property." Judge Harris said that testimony from the National Association of Bankruptcy Trustees (the NABT), as well as several written comments, was that the checkbox approach would mislead *pro se* debtors. Most exemptions are statutorily defined dollar amounts and so might be held to only be properly claimed in dollar terms. The NABT was concerned that the checkbox approach would lead to many assertions of full market value exemption without legal basis that would generate objections from the trustee and slow down the bankruptcy process. Moreover, critics said, debtor counsel familiar with *Schwab* were already making the "full market value" exemption on the existing version of the form in appropriate circumstances, so there seemed little need to prompt the language through a checkbox.

Consumer groups generally favored the checkbox approach because many debtors would not be aware of the *Schwab* language, and Judge Harris said that at least one subcommittee member favored approving the form as published. Because many attorneys were already writing *Schwab* language into the existing version of the form, however, the majority of the Subcommittee recommended withdrawing the amendment at this time, and asking the Forms Modernization Project to consider any *Schwab* revisions.

Judge Harris also reported that the Subcommittees had considered whether rule amendments might be proposed in order to obtain prompt determinations of a trustee's decision whether to administer assets not fully exempted, but that none of the several suggestions for amendments appeared workable.

Committee members discussed the comments, and **a motion to withdraw the amendment to Official Form 6C passed with two dissenting votes. The vote withdrawing the amendment included a disclaimer that the Advisory Committee was not expressing an opinion or making an inference about the emerging practice of writing in *Schwab* language**

on the current version of the form. The Chair asked the Forms Modernization Project to further consider an amendment to Official Form 6C that would more directly address the *Schwab* decision while accounting for the concerns raised in the comments.

(B) Recommendation concerning comments received on published amendments to Rule 1007 and Rule 5009 and the conforming amendment to Form 23.

The Chair said that the published amendments to Rule 1007 and Rule 5009, and the conforming amendment to Official Form 23 (previously approved at the fall 2010 meeting and held in the bullpen), were designed to relieve the debtor of the obligation to file Form 23 if the provider of an instructional course concerning personal financial management directly notifies the court that the debtor has completed the course.

He said the comments were generally favorable with one objection, by attorney Jeanne C. Hovenden, who argued that the debtor's attorney might recommend not filing the certificate because in rare circumstances a discharge might not be in the debtor's best interest. (Although not discussed at the meeting, a late-filed comment from Mr. Raymond P. Bell supported Ms. Hovenden). The Chair explained, however, that there are other methods of avoiding or waiving the discharge if that appears prudent in a particular circumstance, and he recommended that the proposed amendments be approved.

After discussing the arguments for and against the proposed amendments, the Advisory Committee approved Rules 1007 and 5009 as published, and decided to hold the conforming revision to Official Form 23 in bullpen until the spring 2013 meeting, so the rules and forms would all be on track to become effective December 1, 2013.

(C) Report on planning for a mini-conference to be held in conjunction with the Advisory Committee's fall meeting to gather input on the new mortgage forms, Form 10 (Attachment A), Form 10 (Supplement 1), and Form 10 (Supplement 2), and the desirability of including a complete loan history on Form 10 (Attachment A).

Judge Perris said that the Consumer and Forms Subcommittees have begun planning for a mini-conference on the mortgage forms to ensure that these forms are enabling debtors and trustees to obtain the information they need to deal properly with home mortgages and that the disclosure requirements are not imposing an undue burden on mortgage creditors or costs on the debtors. She said that the mini-conference would he held the day before the fall Advisory Committee meeting and that it would be designed to allow the Advisory Committee to determine – with the benefit of actual experience with the new forms – whether any refinements are needed.

She said that the two Subcommittees planned to invite the following constituencies as participants: home mortgage servicers and attorneys, consumer debtor attorneys, chapter 13 trustees, bankruptcy judges, and clerks of courts. The next steps will be to contact the targeted participants, both to solicit suggestions for issues that the mini-conference should address and to identify about 20 representative attendees.

(D) Recommendation concerning Suggestion 11-BK-D by chapter 13 trustee staff attorney Sabrina L. McKinney to provide a space on the proof of claim (Form 10) to designate the general unsecured amount of a claim and recommendation to eliminate the instruction to attach a power of attorney, if any.

The Reporter explained that there were two issues pertaining to the proof of claim form for the Advisory Committee to consider. A chapter 13 staff attorney, Sabrina McKinney, raised the first issue. The Reporter said that the way the proof of claim form breaks out the constituent parts (general unsecured, priority unsecured, and secured) and reports the total claim amount has changed over the years. As described in the agenda materials, the proof of claim form has been changed three times in the past 15 years – sometimes requiring the creditor to state the total claim amount and then report only that amount unless some portion of the claim is entitled to secured or priority status, and sometimes requiring the creditor to report constituent amounts (general unsecured, priority unsecured, and secured) and then add the constituent parts to the total claim amount.

The form was changed to its present form (requiring the creditor to state the total claim amount and then report the priority or secured amounts only if relevant) in 2007, because adding up the reported constituent amounts in the prior version often resulted in a total that was different than the total amount claimed. Because the differences between the sum of the constituent parts and the total amount claimed are sometimes due to arithmetic errors, and sometimes because constituent parts overlap (for example, a claim can both secured and entitled to priority treatment), any discrepancy required extra attention by the trustee.

The Reporter said Ms. McKinney nevertheless suggests changing the form back to its pre-2007 version because she has found that without a space to specifically set general unsecured claims, creditors misidentify their claims as secured or entitled to priority.

Because both methods of reporting the constituent and total claim amounts have had critics over the years, and the form was only recently changed, the Joint Subcommittee recommended no further changes at this time. The Reporter noted, however, that new forms are being drafted by the Forms Modernization Project in the context of the next generation of CM/ECF, and that there may be a technological solution to the issue. **After a short discussion, the matter was referred to the Forms Modernization Project to be considered in the ordinary course.**

The Reporter said that member John Rao suggested eliminating the parenthetical in the signature block that requires the creditor's agent to "attach a power of attorney, if any." Mr. Rao explained that Bankruptcy Rule 9010(c) provides that no power of attorney is needed to file a proof of claim. **The Advisory Committee approved the suggestion.** It concluded that publication was not necessary because the change would conform the form to the rule, and recommended that the change go into effect December 1, 2012 along with the previously approved change to line 7 (described at Agenda Item 23-C). The Subcommittee suggested that no immediate action be taken to make corresponding changes in the signature blocks of Official Forms 10S1 and 10S2, due to the possibility that these forms might be altered as a result of the mini-conference on mortgage forms.

6. Report by the Chapter 13 Form Plan Drafting Group on a national form chapter 13 plan and related rule amendments.

Mr. Rao gave the report. He said that over the past year, the Chapter 13 Form Plan Drafting Group has been exploring the adoption of an official form plan for chapter 13. An official form would have several benefits. First, it would make the practice of plan confirmation more uniform. Many districts require the use of local model plans containing distinctive features. These differences impose substantial costs on creditors with regional or national businesses and on software vendors, whose products must accommodate all of the local variations. A national form would also allow for earlier resolution of differences in interpretation. Finally, a national form could provide a specific location within the form for any variances from its standard provisions. This would aid bankruptcy judges in independently reviewing chapter 13 plans for conformity with applicable law, consistent with the Supreme Court's direction in *United Student Aid Funds, Inc. v. Espinosa*, 130 S. Ct. 1367, 1381 n.14 (2010).

The Working Group quickly realized that because many procedures differ from one district or even one judge to the next, there would be a need for rule amendments in addition to a national form plan. Mr. Rao said that the Working Group had not yet finished its work, but that it anticipated changes to Rules 3002, 3012, 3015, 4003, 7001, and 9009. Mr. Rao said a proposed official chapter 13 plan and the related rule amendments would likely be ready for consideration by the Advisory Committee this fall or next spring with a prospect for publication in the summer of 2013.

7. Report by the Subcommittee on Forms.

   (A) Report on the status of the Forms Modernization Project and recommendation concerning publication of proposed new individual financial forms developed by the project.

Judge Perris said that the Forms Modernization Project (FMP) had largely completed drafting revised individual debtor forms, and has scheduled the first drafting session for the non-individual forms for April 2012. She said that in preparing for the non-individual drafting session, the FMP developed the following guiding principles after soliciting feedback from trustees, debtor and creditor attorneys, and claims agents:

- Eliminate requests for information that pertain only to individuals.
- To the extent possible, parallel how businesses commonly keep their financial records. For example, provide cash flow information in a form more consistent with business financial reporting rather than in the form currently required by Schedules I and J.
- Include information identifying where and how the requested data departs from data maintained according to standard accounting practices.
- Provide better instructions about how to value assets on the schedules, and provide a valuation methodology that would allow people who commonly sign schedules to respond without needing expert valuations.
- Revise the secured debt schedule to clarify when debts are cross-collateralized and the relative priority of secured creditors.
- Require responsive information to be set out in the forms themselves and not simply included as attachments.
- Use a more open-ended response format, as compared to the draft individual debtor forms.
- Keep inter-district variations to a minimum, particularly with respect to the mailing matrix.

Judge Perris said that the look and feel of the new non-individual forms would likely be quite different from the individual forms. There will be more open-ended questions, and the design of the questions will be more understandable than the current forms to accountants and others who are involved in filing non-individual cases.

Judge Perris reminded the Advisory Committee that at its fall 2011 meeting it recommended a subset of the new individual forms for publication and comment this summer. She reiterated the reasons for this decision. Although the design of the new forms should lead unsophisticated debtors to provide better information because the questions are more understandable, the same design choices necessarily make the new forms longer and harder for end users to review manually. Once NextGen becomes fully operational, however, it will capture and store all the information the debtor enters on the form, and end users will be able to develop customized reports that will make review faster. So, Judge Perris explained, acceptance of the new individual forms would depend in part on whether NextGen is able to capture and store the form data fields when the new forms go into effect.

Judge Perris said that although the first release of NextGen could occur in late 2013, or early 2014, it was not yet certain whether that release would be able to collect and store all form

data, so an incremental approach still made sense. She said the Subcommittee recommended that the fee forms (B3A and B3B), income and expense forms (Schedules I and J), and the means-test forms (B22A-1, B22A-2, B22B, B22C-1 and B22C-2) be published for comment this summer. These particular forms, she said, were not much longer than the form versions they would replace and would therefore be usable by judges, clerks and attorneys even if the data report capability was not available on the projected effective date of December 1, 2013. And publishing at least some of the forms now would allow for broader feedback than the prepublication feedback the FMP has received so far.

John Rao said he was concerned that because the forms were substantially different than the current versions, the bar would need extensive training to become familiar with them, and that such training would need to be repeated for each incremental release of forms. Other members acknowledged that possibility, but continued to support this incremental first step because the feedback might expose concerns in the FMP approach that could be addressed early on and minimize overall disruption of transitioning to new forms.

After further discussion, the Advisory Committee recommended publishing for comment Forms B3A, B3B, B6I, B6J, B22A-1, B22A-2, B22B, B22C-1 and B22C-2, along with the accompanying instructions and committee notes, as set out in the agenda materials. Judge Perris explained that form instructions are generally drafted by Administrative Office staff and, although they are reviewed by the Forms Subcommittee, are not typically included in a publication package or submitted to the Judicial Conference for approval. In this case, however, she said the Subcommittee recommended including the instructions in the publication package because they will provide valuable context for reviewers. She said that she anticipated that after the comment period ends, the Subcommittee and Advisory Committee would consider any necessary revisions and would submit for final approval only the proposed forms and committee notes. **After the meeting, the Advisory Committee approved by email vote additional changes to B22C-1 to correct a drafting error in lines 17 and 21 that was inconsistent with the current version of B22C. It also approved an amended B22 Committee Note that reflected the FMP formatting changes as well other substantive changes approved by the Advisory Committee, discussed below.**

(B) Recommendations by the Subcommittees on Consumer Issues and Forms on the comments on the published amendments to Official Form 22C reflecting the Supreme Court's decision in *Hamilton v. Lanning*, 130 S. Ct. 2464 (2010), and on revising Official Forms 22A and 22C to reflect the IRS allocation of internet services in National & Local Standards.

The Chair said that there were two comments on the proposed *Lanning* amendment to Official Form 22C that would require the debtor to report expected changes in income or expenses for the one-year period after filing the bankruptcy. Attorney Peter Lively argued that the amendment was inconsistent with a Ninth Circuit opinion on the issue of whether there is an

applicable commitment period when projected disposable income is zero or a negative number. Henry J. Sommer, writing on behalf of the National Association of Consumer Bankruptcy Attorneys, stated that the proposed amendment is unnecessary and confusing because changes in income and expenses in the year after filing are already required to be reported on Schedules I and J and can be addressed by motions to modify a confirmed Chapter 13 plan.

The Joint Subcommittee concluded that neither comment warranted reconsidering the proposed amendment to Form 22C. With respect the Mr. Lively's comment, the Joint Subcommittee found that requiring information about changes in income and expenses does not prevent the debtor from arguing that there is no applicable commitment period if there is no projected disposable income. In this respect, the Chair explained, the proposed revised form continues to apply the rule that the applicable commitment period is determined by the debtor's current monthly income under 11 U.S.C. § 1325(b)(4), rather than by the debtor's projected disposable income, determined under 11 U.S.C. § 1325(b)(2).

The Subcommittee was also unpersuaded by Mr. Sommer's comments. Schedules I and J report different income and expenses than those called for in calculating projected disposable income under Form 22C. And modification of a confirmed plan is not an appropriate method for dealing with changes of the kind involved in *Lanning.* Proper treatment of projected disposable income is a requirement for plan confirmation in the first instance.

The Chair said the Subcommittee also continued to recommend approval of the two amendments to Official Forms 22A and 22C addressing changes in the IRS collections standards, noting that no objections were made to the cell phone amendment that was published.

After a short discussion, the Advisory Committee approved the amendments to Official Forms 22A and 22C as recommended by the Joint Subcommittee. Because the forms are also part of the Forms Modernization publication package, however, and to avoid having the previously published amendments take effect in 2012 and then reformatted versions of the forms designed by the Forms Modernization Project take effect in 2013, the Advisory Committee incorporated the proposed amendments into the "modernized" versions to be published this summer.

8. Report by the Subcommittee on Business Issues.

(A) Recommendation on Suggestion 11-BK-I by Judge Erik P. Kimball to amend Rules 7008 and 7012; Suggestion 11-BK-K by Chief Judge Bruce W. Black and Judges A. Benjamin Goldgar and Carol Doyle to amend Rules 7008, 9027, and 9033, and to create new Rule 9008.1; and Suggestion 11-BK-L by Chief Judge Arthur J. Gonzalez to amend the general order referring bankruptcy cases and matters from the district court to the bankruptcy court, all in response to the Supreme Court's decision in *Stern v. Marshall*, 131 S. Ct. 2594 (2011).

Judge Wizmur said that each of the suggestions provided slightly different proposed solutions to the Supreme Court's *Stern* decision. Before *Stern*, a proceeding was treated by the Bankruptcy Rules as either core or non-core and, if core, the bankruptcy judge was empowered to hear and finally determine it. After *Stern*, courts have confronted the argument that some proceedings may be core – as provided by 28 U.S.C. § 157(b) – and nevertheless be beyond a bankruptcy judge's constitutional power to enter final judgment. The purpose of the suggestions is to prevent a party from alleging (or agreeing) that a proceeding is "core" as a statutory matter, and then later asserting that it is not "core" as a constitutional matter. Each of the suggestions attempts to address the problem by altering portions of the Bankruptcy Rules that rely on the core/non-core distinction.

The Subcommittee agreed that the rules currently add to the confusion created by *Stern* because they rely on the core/non-core distinction. It therefore supported amending four rules -- 7008, 7012, 9027 and 9033 -- to remove references to core or non-core proceedings and require only a statement as to whether the parties consent to final judgment by a bankruptcy judge. The proposed changes, set out in the Addendum at Tab A8, would leave to the bankruptcy judge the determination of whether the judge has authority to enter a final judgment in a particular matter. The recommended amendments would also require that the bankruptcy court issue proposed findings of facts and conclusions of law in matters where a final judgment is not appropriate.

Judge Wizmur said that in one respect the Subcommittee's proposals may go too because they *require* the bankruptcy judge to make propose findings if consent to a final judgment is not given. Mr. Rao added that in situations where there is consent, there is a need for some sort of mechanism requiring the judge to announce whether a final order would be entered or just findings and conclusions. Other members agreed with Judge Wizmur that that to the extent possible, any rule amendments should simply remove existing ambiguities raised by making a core/non-core distinction, and leave to the bankruptcy judge the determination of whether or not it is appropriate in a particular matter to enter a final order, issue proposed findings of fact and conclusions of law, or take some other action.

After further discussion, the Advisory Committee recommended publication of proposed amendments to Rules 7008, 7012, 9027 and 9033, as revised at the meeting (subject to review by the Style Subcommittee). The Advisory Committee also drafted and recommended publication of an amendment to Rule 7016 to create a new subdivision (b) providing that the bankruptcy court, on its own motion or that of a party, must determine whether it will enter final orders and judgment, issue proposed findings and conclusions, or take some other action in a proceeding. Final versions of the proposed amendments were approved by the Advisory Committee by email vote after the meeting. The Advisory Committee's recommendation included a statement that the proposed amendments and new rule were not intended to address the question of whether party consent is sufficient to permit a bankruptcy judge to enter a final judgment if the judge did not otherwise have authority to do so.

(B) Recommendation on Suggestion 11-BK-F by Judge Peter W. Bowie to amend Rules 7004(e), 7012, and 9006(f) to provide that the deadline for responding to a summons runs from the date of service rather than the date of issuance.

The Subcommittee agreed with the suggestion that the current deadline for response to a summons, based on issuance rather than service of the summons, may sometimes give the defendant less time in bankruptcy than in ordinary civil litigation, but the Subcommittee noted that the issuance date is arguably less subject to dispute than the service date, especially if service is by mail. Moreover, speedy resolution of disputes in bankruptcy is favored and supports a shorter response time than in non-bankruptcy civil litigation. The Subcommittee did favor, however, shortening the time a litigant can wait before serving the summons after issuance. It therefore recommended amending Rule 7004(e) to provide that the summons is valid for only 7 days after issuance rather than 14 days, as set forth at page 203-04 of the agenda materials. **The Advisory Committee unanimously accepted the Subcommittee's recommendation that the proposed amendment to Rule 7004(e) be published for comment in August. The Advisory Committee also approved a Committee Note documenting the change by email vote after the meeting.**

(C) Recommendation to clarify Rule 1014(b) regarding notice of the hearing on a motion to determine where cases will proceed if petitions are filed in different districts by, against, or regarding the same debtor or related debtors.

The Reporter said that last fall, the Advisory Committee approved a proposed amendment to Rule 1014(b) addressing the procedure when petitions involving the same or related debtors are pending in different courts. The proposed amendment, recommended for publication in August, would provide that proceedings in subsequently filed cases are stayed only upon order of the court in which the first-filed petition is pending.

After the fall 2011 meeting, the Advisory Committee's style consultant raised the issue of who should give notice of a hearing on a Rule 1014(b) motion, and in considering the question, the Style Subcommittee questioned whether the list of recipients of the notice is sufficiently broad. Because the questions went beyond matters of style, the Chair referred them back to the Subcommittee.

Judge Wizmur said that the Business Subcommittee reconsidered the wording of the amendment to Rule 1014(b). With respect to who should give notice, the Subcommittee recommended no change because Rule 1014(b)'s reference to a "hearing on notice" is consistent with the wording of Rule 1014(a)(1) and (2), is a frequently used phrase throughout the rules, and can be given specific content by a court order.

With respect to who should receive notice, the Subcommittee recommended broadening the language as set forth in the agenda materials so that it is clear that parties in the second case should be given notice of the hearing. **The Advisory Committee agreed with the Business Subcommittee's analysis and approved Rule 1014(b) for publication as set forth in the agenda materials.**

(D) Report on the impact on the Bankruptcy Rules of proposed amendments to Civil Rules 37 and 45, which were published in August 2011.

Judge Wizmur said that the Subcommittee noted possible problems with the changes to Rules 37 and 45 but concluded that on the whole the changes would be beneficial to bankruptcy courts and practitioners, just as they would in the district court context, and that, as described in the agenda materials, there would be unique impacts in bankruptcy proceedings only in rare circumstances. It therefore recommended no action at this time in response to the changes.

Mr. Wannamaker pointed out that once the changes to Rule 45 take effect, the Director's subpoena forms, which inclue language from that rule, will need to be updated.

9. Report by the Subcommittee on Privacy, Public Access, and Appeals.

(A) Recommendation on publication of the proposed revision of the Part VIII rules.

The Reporter reminded the Advisory Committee that it previously approved for publication the first half of the bankruptcy appellate rules (8001 through 8012), other than 8001 and 8010. With respect to Rule 8001, the Advisory Committee had concerns about the definition of "transmit" and the presumption of electronic transmissions for *pro se* filers. She said the Standing Committee also had questions about the term "transmit" in Rule 8001, as well as concerns that using the term "appellate court" to refer to the district court and BAPs, but not the court of appeals, was confusing. With respect to Rule 8010, the Advisory Committee asked the Subcommittee to resolve issues about the procedure for preparing and filing a transcript when the court records testimony electronically without a court reporter present.

The Reporter said the Subcommittee considered the suggestions from the Advisory Committee and the Standing Committee, that it made revisions to Rule 8001 and 8010, and that it now recommends that the Advisory Committee ask the Standing Committee to publish for comment this August the full set of revised Part VIII rules included as Appendix B to the agenda materials. The Reporter reviewed each of the rules and described changes from current practice, noting that full details of the changes were set forth in the agenda materials beginning at page 85 of the Addendum.

Rule 8001. The Reporter said the definitions of "transmission" and "appellate court" were deleted. The rule now simply says that document must be sent electronically unless there is

an exception and refers to district court, BAP and court of appeals by name. Because of repeated references throughout the appellate rules to "district court or BAP," the acronym BAP for bankruptcy appellate panel was retained. **The Advisory Committee approved Rule 8001 for publication.**

Rule 8010. The Subcommittee changed the draft after consulting with clerks of bankruptcy courts and others. The rule now provides that the court reporter would be required to file documents only in the bankruptcy court, and that all transcription duties would be carried out by court reporters and transcription services, not the clerk's office. The rule also clarifies that the term "reporter" includes the person or service that the court designates to transcribe the electronic recording. **The Advisory Committee approved Rule 8010 as set forth in the agenda materials.**

Rule 8009. After discussing the changes to Rule 8010, Mr. Rao noted that a cross reference in Rule 8009(b)(1)(A) to "the reporter, *as defined in 8010(a)(1),*" should be repeated when the reference to "the reporter" is made in 8009(b)(2)(A). **The Advisory Committee approved Rule 8009 as set forth in the agenda materials with Mr. Rao's suggested modification.**

Rule 8013. **Approved as set forth in the agenda materials.**

Rule 8014. **Approved as set forth in the agenda materials.**

Rule 8015. **Approved as set forth in the agenda materials – deleting the phrase, "if a cover is used it must be white" at line 115 on page 73 – and accepting several technical corrections suggested by members at the meeting.**

Rule 8016. **Approved as set forth in the agenda materials.**

Rule 8017. **Approved as set forth in the agenda materials.**

Rule 8018. **Approved as set forth in the agenda materials.**

Rule 8019. **Approved as set forth in the agenda materials.**

Former Proposed Rule 8020. The Reporter noted that in earlier drafts, proposed Rule 8020 carried forward the provisions of current Rule 8013. The Subcommittee previously determined that there was no need to instruct district courts and BAPs on the actions they may take (affirm, modify, reverse, or remand with instructions) in ruling on bankruptcy appeals. The Subcommittee now suggested that the remainder of the rule – prescribing the weight to be accorded the bankruptcy court's findings of fact – can be deleted because it duplicates Rule 7052, and because FRAP does not contain a similar rule. **The Advisory Committee approved**

deleting proposed Rule 8020 from the draft, but suggested that the report to the Standing Committee make clear that the deletion of a topic covered by current Rule 8013 is not intended to change existing law.

Rule 8020. **Approved as set forth in the agenda materials.** The Reporter said she would revise Committee Note to indicate the rule is derived from current Rule 8020, as well as FRAP 38 and 46(c).

Rule 8021. **Approved as set forth in the agenda materials, removing the sentence in the committee note that says costs do not include attorney fees.**

Rule 8022. **Approved as set forth in the agenda materials.**

Rule 8023. **Approved as set forth in the agenda materials.**

Rule 8024. **Approved as set forth in the agenda materials.**

Rule 8025. **Approved as set forth in the agenda materials.**

Rule 8026. **Approved as set forth in the agenda materials, with the following changes: add language at the end of (b)(1) that FRCP 83 governs the procedure for local rulemaking, and changing "judge" to "court" at line 20.**

Rule 8027. **Approved as set forth in the agenda materials.**

Rule 8007. **The revision to subdivision (c) -- described at page 95 of the agenda materials -- approved as set forth in the agenda materials, and, at page 417, line 44, added "court of appeals."**

The Reporter noted that all of the Part VIII rules would undergo final revisions by the Style Subcommittee prior to publication this summer.

(B) Recommendation concerning Suggestion (11-BK-E) by retired Bankruptcy Judge A. Thomas Small and Professor Alan N. Resnick to allow litigants in an adversary proceeding to limit their appeal rights.

Judge Jordan said that the Subcommittee considered the suggestion, but, for reasons discussed in the agenda materials, concluded that no rule amendments are needed. Summarizing the memo in the agenda materials, he noted that litigants can already limit their appeal rights by contract, and some Subcommittee members were concerned that a bankruptcy judge aware of such a stipulation might treat the case differently. The Subcommittee was also concerned that any rule change that limited litigant access to an Article III court, even by consent, should not be

undertaken without fully considering whether it implicates the Supreme Court's *Stern v. Marshall* decision. No member objected to the Subcommittee's decision to take no further action.

(C) Recommendation concerning Suggestion (11-BK-J) by the Judicial Conference's Committee on Court Administration and Case Management (CACM) for bankruptcy rule and form amendments intended to reduce the likelihood that the privacy of debtors' social security numbers will be breached.

The Reporter reviewed the CACM proposal to remove the requirement in Rule 2002(a)(1) that the full social security number (SSN) be included in the notice of meeting of creditors mailed or electronically sent to creditors. She said that the requirement in Rule 2002(a)(1) to send creditors the debtor's full social security number was added in 2003 in conjunction with a privacy amendment to Rule 1005 that limited the caption to the last four numbers of the debtor's SSN. As originally proposed, only Rule 1005 would have been amended and creditors would have received meeting of creditor notices with only the last four numbers of the debtor's SSN.

Private creditors, the credit reporting industry, United States trustees, and the Justice Department all expressed concern during the publication period leading up to the 2003 change that providing only the last four digits of social security numbers would create problems in identifying debtors. They said that this truncated information could lead to inadvertent violations of the automatic stay and discharge injunction. They also stated that it could limit the ability of creditors and trustees to determine whether a particular debtor had obtained bankruptcy relief previously and was engaged in a serial bankruptcy filing and that it could hamper law enforcement efforts to prosecute debtors for bankruptcy fraud and related crimes. As a result of the comments, the Rule 1005 amendment – truncating the caption – was joined with an amendment to Rule 1007(f) requiring the debtor to submit (but not file) the full SSN to the court, and an amendment to Rule 2002(a)(1) requiring that the notice of meeting of creditors sent to parties in interest contain the debtor's full SSN. Official Form 21 was adopted for the debtor's use in submitting the SSN to the court.

The Reporter explained that the AO conducted two studies and concluded that although internal judiciary users still needed the debtor's full SSN, its use among creditors was declining. The studies noted a greater reliance on SSNs by public creditors such as the IRS, and recommended that CACM approve distribution of the SSN to public (but not private) creditors by secure electronic means.

The studies also recounted a number of ways that the debtor's SSN has been inadvertently made public and suggested that amending Rule 2002(a)(1) – to include only the last four digits of the SSN on the meeting of creditors notice – would make inadvertent disclosure much less likely. The authors also suggested that a warning be added to Form

21stating that the form should not be filed on the docket. CACM adopted the recommendations of the study authors.

The Reporter said that the Subcommittee recognized that the CACM suggestion rests on the balancing of competing concerns: on the one hand, the interest in protecting debtors against the inappropriate public disclosure of their SSNs, and, on the other, the legitimate need for creditors and other participants in the bankruptcy system for this information. The Subcommittee noted that, as long as debtors are still required to provide the court with their full SSNs, as they would be even if the suggestion is adopted, there remains a risk of erroneous disclosure, but that imposing greater restrictions on access to full SSNs would at least decrease the incidence of breaches of privacy.

In discussing the competing interests, the Subcommittee concluded that the AO studies show that there is still a need for access to debtors' SSNs among both public and private creditors and that it would be premature at this time to propose removal of the full SSN from the notice of the meeting of creditors. The Subcommittee also was not convinced that there is an appropriate basis for drawing a distinction between the degrees of access granted public and private creditors. It therefore recommended against amending Rule 2002(a)(1) to distribute only the last four digits of the SSN to private parties in interest. The Subcommittee agreed, however, that a warning should be placed on Form 21 to reduce the possibility that is would be inadvertently filed on the public docket.

Mr. Kohn stated his support for the Subcommittee's recommendation and reaffirmed that the IRS needs the full SSN to identify debtors. Mr. Kilpatrick also agreed with the recommendation, noting that many of his clients, including smaller creditors such as state credit unions, still needed the full SSN. Mr. Rao questioned whether a warning on Form 21 would have any effect. If the debtor is *pro se*, the clerk handles docketing, and if represented, the debtor's attorney would handle docketing. Both clerks and debtor attorneys handle the form on a routine basis and know not to file it. He did not object to a warning on Form 21, but suggested that a warning should also be added to the Form 9 notice of the meeting of creditors that is sent to parties in interest, because the AO studies indicated that those notices are sometimes attached to a creditor's proof of claim and wind up on the claims register, which is public. Judge Harris suggested a modification to the proposed warning on Form 21 that simply states that it should not be filed, (rather than *requiring* that it be "submitted"), because in his court the form generally is not used – the clerk or the debtor's attorney simply fills in a field in CM/ECF. **After further discussion, the Advisory Committee agreed with the Subcommittee and decided to take no action with respect to Rule 2002. After the meeting Advisory Committee approved adding warnings to Form 9 and 21 by email vote.** Because the warnings would simply conform to the existing policy not to file the debtor's SSN, the Advisory Committee recommended that the warnings go into effect December 1, 2012, without publication. The warning to Form 21 was added to the top of the form as follows:

> Do not file this form as part of the public case file. This form must be submitted separately and must not be included in the court's public electronic records. Please consult local court procedures for submission requirements.

Each version of Form 9 would be revised to include the following warning on the front near the top of the form:

> Creditors – Do not file this notice in connection with any proof of claim you submit to the court.

And the information about filing proofs of claims on the back of each version of Form 9 would include the following information:

> Do not include this notice with any filing you make with the court.

10. Report by the Subcommittee on Attorney Conduct and Health Care.

> Recommendation concerning Suggestion 10-BK-G by Geoffrey L. Berman for the adoption of national standards, in addition to local court rules and state law rules on professional responsibility, for practice in the bankruptcy court of any district.

Mr. Rao said that the Subcommittee discussed Mr. Berman's suggestion, but for the reasons detailed in the agenda materials recommended taking no action. The Subcommittee concluded that the court and the state bar association had sufficient power to discipline attorneys. Professor Coquillette supported the Subcommittee's recommendation, noting that the Standing Committee has considered a national bar three times over the years, but has not gone forward because of federal/state issues. No action was taken by the Committee.

11. Report by the Subcommittee on Technology and Cross Border Insolvency.

> Recommendation concerning the possibility of adopting a bankruptcy rule establishing standards for electronic signatures by parties other than attorneys.

The Reporter said that the Forms Modernization Project has raised the need for the Advisory Committee to consider rule changes that would allow for electronic signatures. The Subcommittee considered two initial questions: (1) whether and under what circumstances bankruptcy courts should accept for filing documents signed electronically without requiring the retention of a paper copy containing a "wet" or original signature; and (2) if retention of an original signature is required, who should maintain the paper document bearing the signature.

The Subcommittee reviewed current practices and suggested three alternatives. One is set out in a model local rule adopted by several bankruptcy courts, which requires retention of

original documents with wet signatures and imposes the duty of retention on the entity -- most commonly the debtor's attorney – that files the document electronically. Another approach, used in at least two other bankruptcy courts, does not require retention of paper documents with original signatures. Instead, these courts require that, for any electronically-filed document signed by someone other than the filing attorney, the document be accompanied by a declaration of authenticity wet-signed by the non-attorney. That declaration is scanned and maintained, in electronic form, by the clerk's office. A third approach is taken by the Internal Revenue Service, pursuant to 26 U.S.C. § 6061(b)(2), which validates electronic signatures on tax returns. The IRS uses personal identification numbers as electronic signatures, with no requirement for any original wet-signed document.

Professor Coquillette said that the issue of electronic signature would affect other federal courts and that the Standing Committee would likely be interested, and that a joint advisory subcommittee might be appropriate. **Accordingly, the Advisory Committee deferred any action until the next meeting.** After the meeting, the Chair learned that although the issue will arise in the context of the procedures of other federal courts, it would be appropriate for electronic signatures to be addressed initially in the bankruptcy context. Accordingly, the Advisory Committee will continue to examine the issue with the goal of recommending an amendment to the bankruptcy rules that establishes a uniform procedure for electronic signatures.

12. Recommendations on published amendments to Rules 9006, 9013, and 9014, and Official Form 7.

Rules 9006, 9013, and 9014 were proposed to be amended to highlight the default deadlines for the service of motions and written responses. An amendment to Official Form 7 was proposed to make its definition of insider adhere more closely to the Code. The Chair reported that none of these recommendations received any negative comments. Accordingly, **a motion recommending final approval of the published amendments to Rules 9006, 9013, and 9014, and Official Form 7 passed without objection.**

Discussion Items

13. Suggestion 12-BK-A by Judge Michael J. Kaplan to amend Official Form 3B to exclude non-cash governmental assistance from the calculation of the debtor's income.

The Chair reviewed the suggestion and agreed with Judge Kaplan that non-cash governmental assistance, such as food stamps, was not to be included in calculating the income used to determine eligibility for a fee waiver under the Judicial Conference regulations. He noted that the Advisory Committee had already recommended publishing Official Form 3B as part of the first set of forms from the Forms Modernization Project and recommended an amendment to the form that would provide space for the debtor to state the amount of any such

income without adding it into the income calculation. **The Advisory Committee approved adding a new line to the FMP version of Form 3B to be published for comment in August. Final language was approved by email vote after the meeting.**

14. Suggestion 12-BK-B by Bankruptcy Clerk Matthew T. Loughney on behalf of the Bankruptcy Noticing Working Group to amend Rule 2002(f)(7) to require notice of the confirmation of the debtor's chapter 13 plan of reorganization.

    Referred to the Consumer Subcommittee.

15. Suggestion 12-BK-C by Judge Barry S. Schermer to amend Official Form 10 (Attachment A) to clarify the treatment of an escrow shortage.

    Referred to the Forms and Consumer Subcommittees for consideration at the mortgage forms mini-conference.

16. Suggestion 12-BK-D by Judge S. Martin Teel, Jr. to amend Rule 7001(1) as it concerns compelling the debtor to deliver the value of property to the trustee.

    Referred to the Consumer Subcommittee.

17. Suggestion 11-BK-N by Attorney David S. Yen for a rule and form for applications to waive fees, other than filing fees, under 28 U.S.C. § 1930(f)(2).

    Referred to the Consumer Subcommittee.

18. Suggestion 11-BK-M by Attorney Jim Spencer to amend Rule 9027 to require that a notice of removal be filed with the bankruptcy clerk.

    Referred to the Business Subcommittee.

19. Oral report on revision of Official Forms 9C, 9D, 9E, 9E(Alt.), 9F, 9F(Alt.), 9G, 9H, and 9I to encourage creditors to obtain the proof of claim form from the federal rulemaking website, rather than the bankruptcy clerk's office.

Mr. Wannamaker explained that since the proof of claim form is no longer mailed to creditors in asset cases, the BNC was now amending the instructions on the back of Official Forms 9C, 9D, 9E, 9E(Alt.), 9F, 9F(Alt.), 9G, 9H, and 9I to encourage creditors to obtain the proof of claim form the federal rulemaking website, rather than the bankruptcy clerk's office. He suggested that it might make sense to update the official versions of the forms to reflect the BNC practice.

Mr. Myers said he wasn't sure there was a simple fix, however. He said that many courts were modifying the notices with links to their local court website instead of the national website, and in larger cases claims venders provided unique instructions.

The Chair referred the matter to the Forms Modernization Project to be taken up in the ordinary course.

Information Items

20. Oral report on the status of bankruptcy-related legislation.

Mr. Wannamaker updated the Advisory Committee on pending legislation. He said the temporary bankruptcy judgeship bill has passed the House of Representatives. If the legislation is enacted, the judgeships would be paid for through an increase in the chapter 11 filing fee.

21. Oral update on opinions interpreting section 521(i) of the Bankruptcy Code. *Added to the Agenda: Update on opinions interpreting section 109(h) of the Bankruptcy Code.*

The Reporter said that there have been no case law changes in opinions interpreting 11 U.S.C. § 521(i). The courts still find that automatic dismissal under that Code provision is not "automatic" when used by a debtor to avoid bankruptcy administration or denial of discharge. She said it was unlikely that there would be a sea change in the case law that would form a basis for a rule on automatic dismissals, and she did not think further monitoring of the case law was needed. **The Advisory Committee agreed that further reports on the 11 U.S.C. § 521(i) case law is unnecessary.**

The Reporter added to the agenda an oral report on case law interpreting the recent technical amendments to 11 U.S.C. § 109(h). She said that the amendment seemed to be *intended* to allow the debtor to receive a credit counseling briefing on the petition date, so long as the briefing was completed before the petition was actually filed. Prior to the amendment, a literal reading of section 109(h) seemed to require the briefing to be received by the calendar day before the petition was filed. The problem with the technical amendment, she said, was that a literal reading now seems to allow the briefing to be received *after* the petition is filed, so long as it is received on the same calendar day.

The Reporter said that the only case to date interpreting the new language in § 109(h) held that date of filing means *moment* of filing and that the credit counseling briefing must be received before the moment of filing. This interpretation is consistent with the official form, but if case law were to change, there might be a need to update the official form. **The Chair asked the Reporter to monitor section 109(h) case law and report back at the fall meeting.**

22. New procedures for the Standing Committee and its advisory committees approved by the Judicial Conference at its September 2011 meeting.

The Chair reviewed new Judicial Conference procedures stating that correspondence with the public about the rules and forms out for publication are to be posted on the public website. He said he did not believe that an individual member's discussions with a member of the public about a proposed rule would need to be published *unless* the member was acting on behalf of the Advisory Committee, but asked members to be cautious about whether they might be perceived as representing the Advisory Committee on controversial issues.

23. *Bull Pen*.

A. Proposed new Rule 8007.1 and the proposed amendment to Rule 9024 (indicative rulings), approved at the September 2008 meeting. **Deleted (included in the Part VIII rules to be published in August).**

B. Amendment to Official Form 23 to implement the proposed amendment to Rule 1007(b)(7), which would authorize financial management course providers to file notification of the debtor's completion of the course, approved at September 2010 meeting. **Remain in the bullpen** (see Agenda Item 5-B).

C. Amendment to Box 7 on Official Form 10 to add a reminder to attach the new mortgage attachment form, Official Form 10 (Attachment A), and the statement concerning open-end or revolving consumer credit agreements required by proposed Rule 3001(c)(3)(A), approved at April 2011 meeting. **Change to Official Form 10 to go into effect December 1, 2012** (see Agenda Item 5-D).

24. Rules Docket.

Mr. Wannamaker asked members to email him with any comments or changes.

25. Future meetings.

The Chair announced that the fall 2012 meeting would be held September 11 - 12, 2012[1], at the Hotel Monaco in Portland, Oregon. He said that locations being considered for the spring 2013 meeting were New York City; Charleston, South Carolina; and Fort Lauderdale, Florida.

26. New business.

[1] After the meeting, the dates of the Portland Advisory Committee meeting were changed to September 20 – 21, 2012.

The Chair said he had one new item. In honor of Mark A. Redmiles, former liaison to the Committee from the EOUST, he asked for approval of the following resolution:

Resolution of the Advisory Committee on Bankruptcy Rules

Whereas, Mark A. Redmiles, as a representative of the Executive Office for United States Trustees, began serving as a liaison from that office to the Advisory Committee on Bankruptcy Rules on May 6, 2005;

Whereas, since that time, Mark A. Redmiles devoted countless hours in developing and amending the forms, familiarly known as the "Means Test Forms," for establishing a presumption of abuse under Section 707(b)(2) of the Bankruptcy Code and for determining disposable income under Section 1325(b) of the Code;

Whereas, Mark A. Redmiles has been an unofficial ambassador of the Advisory Committee to the Internal Revenue Service, creating an effective interchange between the Service and the Committee on matters in which the Service's Collection Financial Standards affect the application of Sections 707(b) and 1325(b);

Whereas, Mark A. Redmiles has been an effective member of several subcommittees of the Advisory Committee, including Subcommittees on Business Issues; Consumer Issues; Attorney Conduct and Health Care; and Privacy, Public Access, and Appeals;

Whereas, Mark A. Redmiles has been an effective member of the special working groups of the Advisory Committee dealing with forms modernization and a form plan for Chapter 13 cases;

Whereas, in all of his work with the Advisory Committee, Mark A. Redmiles has exhibited timeliness, dedication, open-mindedness, and friendship, while conforming to the highest ethical standards of the legal profession; and

Whereas, Mark A. Redmiles has now been assigned to other positions in the Executive Office for United States Trustees that will largely end his work with the Advisory Committee;

Now, therefore, be it resolved that the Advisory Committee on Bankruptcy Rules extends to Mark A. Redmiles both its deep appreciation for all that he has done on behalf of the Committee and its best wishes for success in his new undertakings.

The resolution was unanimously approved.

27. Adjourn.

Draft Minutes, Bankruptcy Rules Committee, Spring 2012

Respectfully submitted,

Scott Myers